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DEPARTMENT OF AGRICULTURE

9 CFR Parts 317 and 381

[Docket No. 97–035F]

RIN 0583–AC47

Food Labeling: Nutrient Content Claims, Definition of Term; Healthy

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim final rule.

SUMMARY: In response to a petition, the Food Safety and Inspection Service (FSIS) is extending until January 1, 2000, the effective date of the requirement that individual meat and poultry products labeled as "healthy," or any other derivative of the term "health," contain no more than 360 mg sodium and meal-type products contain no more than 480 mg sodium. The petitioner raised issues regarding the technological feasibility of developing consumer-acceptable products with reduced sodium content and lack of scientific data about a link between sodium levels and health and safety factors. FSIS determined that the petitioner's concerns have merit and, as a result, is extending the effective date for the second tier, lower level sodium provisions.

DATES: *Effective date:* This rule is effective February 13, 1998. Written comments on extension of the effective date should be received by March 16, 1998. Written comments about instituting additional rulemaking should be received by May 19, 1998.

ADDRESSES: Submit one original and two copies of written comments to the FSIS Docket Clerk, Docket #97–035F, Room 102, Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700. All comments submitted on this rule will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Hudnall, Assistant Deputy Administrator, Office of Policy, Program Development and Evaluation; telephone (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

In the May 10, 1994, **Federal Register** (59 FR 24220), FSIS published a final rule to establish a definition of the term "healthy," or any other derivative of the term "health" and similar terms, on meat and poultry product labeling. The Agency believes it is important to give consumers accurate, informative labeling on meat and poultry products that conform with such labeling on other foods. The final rule provides a definition for the implied nutrient content claim "healthy" for individual and meal-type products. Under 9 CFR 317.363(b)(3) and 381.463(b)(3), for a food to qualify to use the term "healthy," or a derivative of that term, on its label or in its labeling, the product must not contain more than 360 mg of sodium, except it shall not contain more than 480 mg of sodium during the first 24 months of implementation (through November 10, 1997) per reference amount customarily consumed (RACC) and per labeled serving size. Under 9 CFR 317.363(b)(3)(i) and 381.463(b)(3)(i), a meal-type product, to qualify to bear this term, shall not contain more than 480 mg of sodium, except that it shall not contain more than 600 mg. of sodium during the first 24 months of implementation, per labeled serving size.

On December 7, 1996, FSIS received a petition from ConAgra, Inc., requesting that 9 CFR 317.363(b)(3) and 381.463(b)(3) be amended to "eliminate the sliding scale sodium requirement for foods labeled 'healthy' by eliminating the entire second tier levels of 360 mg sodium requirements for individual foods and 480 mg sodium for meal-type products." As an alternative, the petitioner requested that the effective date of November 10, 1997, be delayed until food technology can develop acceptable products with reduced sodium content, and until there is better understanding of the relationship between sodium and hypertension.

The petitioner cited as grounds for its request: (1) a lack of scientific basis supporting the Daily Reference Value for sodium (9 CFR 317.309(c)(9) and 381.409(c)(9)) and the allowable maximum levels of sodium in sections 317.363(b)(3) and 381.463(b)(3); (2) a lack of consumer acceptance of products containing low sodium levels; (3) a lack of acceptable sodium substitutes and the difficulties in manufacturing whole lines of products at these low sodium levels; and (4) USDA's failure to provide adequate notice and an opportunity for public comment on the "second tier" sodium levels in the healthy definition, to follow congressional intent and the directives of the Nutrition Labeling and Education Act of 1990, and to consider all the science available, particularly studies which demonstrate possible harm to the general population by low sodium diets. FSIS believes that some of these assertions have raised questions that warrant further consideration.

Regarding the efforts of industry to lower the sodium level in foods, the petitioner stated that the technology does not yet exist to manufacture certain low fat meat and poultry products at the lower, second tier "healthy" definition levels of sodium and still provide foods that will be acceptable to consumers. The petitioner submitted the results of a consumer survey that examines consumer acceptance of several products with different sodium levels. Although the survey found reductions in consumer acceptance at levels of 480 mg sodium compared with higher (600 mg) sodium levels, there was a statistically significant drop in acceptance at levels of 360 mg sodium per serving.

The petitioner described several technological concerns with lowering sodium levels in foods. These concerns related to the functional role of salt, such as the impact on the microbial stability of perishable products, changes in product texture and in water-binding capabilities, and effects on flavor characteristics of other ingredients and on total electrolyte levels that, according to the petitioner, play a critical role in product safety.

The Agency does not find merit in the petitioner's questions regarding the lack of scientific basis for the usefulness of lowered sodium levels in the diet of the general population. There is significant agreement that lower dietary sodium

levels reduce the risk of hypertension. (Note references at end of document.) The overwhelming majority of experts and of authoritative bodies still favors making recommendations for the general public to moderate sodium intake. This consensus is reflected in the Dietary Guidelines for Americans.

FSIS also finds the petitioner's claim that the Agency failed to provide adequate notice and an opportunity for public comment on the second tier sodium levels in the "healthy" definition to be without merit. The sodium requirements for individual USDA-regulated foods and meal-type products that were adopted in the "healthy" final rule were promulgated in response to full notice-and-comment rulemaking procedures. In the proposal, the Agency specifically asked for comments in evaluating whether the definition of "healthy" that was being proposed was appropriate. FSIS also acknowledged its proposed definition of the term "healthy" differed from the definition that was proposed by the Food and Drug Administration (FDA) with regard to sodium levels, and asked for comments on whether it was necessary that the two Agencies provide uniform criteria for use of this term or whether different definitions may be appropriate. FSIS fully considered all the comments it received, and then issued final sodium level regulations in accordance with proper notice-and-comment rulemaking provisions of the Administrative Procedure Act.

However, the Agency finds that the issues relative to technological and safety concerns of reduced sodium foods raise important new questions that merit further consideration. FSIS recognizes that the food industry has made a significant effort over the last few years to lower both the fat and sodium levels in meat food and poultry products while maintaining taste and texture attributes that are acceptable to consumers. The Agency continues to believe, however, that the scientific evidence suggests further reductions in fat and sodium intakes will result in meaningful public health gains.

FSIS has defined the term "healthy" to help consumers identify meat and poultry products that will help them meet guidelines for a healthy diet. Consumers appreciate the significance of this term, and many make purchasing decisions based on its presence on a food label. Therefore, manufacturers have an incentive to produce foods that qualify to bear this term. If the petitioner is correct that the technology does not yet exist that will permit manufacturers to produce certain types of low fat meat and poultry, products that will contain the second tier, lower levels of sodium, and still be acceptable to consumers, the possibility exists that "healthy" may disappear from the market for such foods. Therefore, the Agency finds that it needs to explore whether it has created an unattainable sodium standard for some meat and poultry products. If it is determined that the standard is unattainable, further determination must be made about the health implications, if any.

FSIS is considering whether to institute rulemaking to resolve the issues raised by the petitioner and to reevaluate the sodium provisions of its nutrient content claims regulations pertaining to the use of the term "healthy." In this document, the Agency is asking for data regarding the technological feasibility of reducing the sodium content of individual foods to 360 mg per RACC and of meal-type dishes to 480 mg sodium per labeled serving and for additional information or views on consumer acceptance of meat and poultry foods with such sodium levels.

With regard to technological feasibility, the Agency is asking for information about the availability or lack of availability of acceptable sodium substitutes, the difficulties in manufacturing different lines of meat and poultry products with lowered sodium levels, and the impact of these sodium levels on the shelf-life stability and the safety of the food. Are there certain types of meat and poultry products for which it is not possible to reach the second tier levels of sodium? If so, what are these foods? Should FSIS make special exemptions for them, or should FSIS exclude them from bearing the term "healthy?" The Agency also is asking for comments on other approaches to reduce the amount of sodium in meat and poultry products labeled "healthy." It is important that consumers seeking to eat a health-promoting diet have food choices available that enable them to reduce the amount of sodium in their diet.

The Agency believes it is in the public interest to extend the effective date for the lower standards for sodium in the definition of "healthy" in 9 CFR 317.363(b)(3) and 381.463(b)(3) while the Agency attempts to resolve the issues raised by the petition. Therefore, FSIS is announcing an extension in the effective date of the second tier, lower sodium level provisions until January 1, 2000.

FDA also was persuaded by the petitioner that it is in the public interest to stay its effective date for the lower standards for sodium in its definition of "healthy." Therefore in the April 1, 1997, **Federal Register** (62 FR 15390), FDA issued a stay in the effective date until January 1, 2000, for the second tier sodium levels to allow itself time to reevaluate the standard, the data contained in the petition, and any additional data that it may receive; to conduct any subsequent notice-and-comment rulemaking that it finds is necessary; and to allow ample time for implementation of the rule or of any changes in the rule that may result from the Agency's reevaluation.

If it appears from the comments that agreement exists that there are technological hurdles that cannot be overcome at this time for all, or certain types of, meat and poultry products, the Agency is interested in exploring options for maximizing the public health gains that would come from reducing dietary sodium levels. Therefore, FSIS has identified two options that it could consider.

As an option, FSIS could propose to amend the definition of "healthy" in 9 CFR 317.363(b)(3) and 381.463(b)(3), as requested in the petition, and could make the current sodium levels for individual foods and meal-type products the qualifying levels. FSIS may propose this option if the evidence submitted in response to this rule demonstrates that it is technologically impossible to find salt substitutes for use in any type of meat and poultry product that would satisfy the requirements for texture, safety, and consumer acceptance. There must be evidence that failure of some foods to meet the definition for "healthy" would significantly reduce consumers' choices in meeting guidelines for a healthy diet.

As a second option, the Agency could reconsider the sodium levels that it has established as the second tier of the "healthy" definition. For example, a possibility might be that individual meat food and poultry products would have to contain 360 mg sodium or less per RACC or at least 25 percent less sodium per RACC than the norm, as long as the final sodium level does not exceed 480 mg per RACC. For meal-type products, the Agency might consider the use of a percent reduction from the disclosure level.

If the definition is set at a reasonable achievable level of a 25 percent reduction from the disclosure level, more meat and poultry products are likely to be available. Further, market competition may encourage some manufacturers to exceed this minimal reduction. On the other hand, a primary consideration is whether a 25 percent reduction from the disclosure level or market basket norm is of adequate

dietary significance to warrant the use of the term "healthy."

Based on the above information, the Agency requests comments on whether it should institute rulemaking to reevaluate the sodium provisions of the nutrient claims regulations pertaining to the use of the term "healthy" and on the other issues raised in the petition.

FSIS is dispensing with the requirements of notice and opportunity for comment for this final rule because the Agency finds these procedures to be impracticable. In light of the information provided by the petition, FSIS must have additional time to reevaluate the standard for "healthy" with regard to sodium levels and to explore whether it has created an unattainable sodium standard and other technological issues. The Agency is finalizing this rule immediately because the original effective date for the second tier sodium level requirements has expired. However, FSIS is providing the public with an opportunity to comment on its decision to finalize immediately.

Executive Order 12866 and the Regulatory Flexibility Act

This final rule has been determined to be non-significant and was not reviewed by OMB under Executive Order 12866.

The Administrator has made an initial determination that this interim final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This interim final rule will impose no new requirements on small entities.

FSIS believes that net social benefits are associated with the adoption of this rule because the value of incremental benefits is likely to exceed the incremental costs. The incremental benefits include the potential reductions in the cases of hypertension associated with reduced consumption of sodium. The reductions in hypertension cases would tend to reduce the number of visits to doctors and hospitals associated with these heart diseases. It also would reduce cases of mortality associated with these diseases. The reductions in the costs associated with these mortality and morbidity cases constitute an incremental benefit to society. Society also is likely to benefit from increased productivity brought about by improved health and welfare of the workers consuming low sodium diets.

If the reduction in sodium levels reduces the preservation characteristics of the products, the industry might incur additional costs to preserve the products by other means such as by innovating new chemical preservatives. This incremental cost, however, could be offset by the reduced costs of sodium in the products. Hence, the costs associated with this rule are not likely to increase.

Unfortunately, we do not have data on the costs and benefits referred to above. Conceptually, however, it appears that the benefits are likely to exceed considerably the costs and result in a net benefit to society.

Executive Order 12988

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule (1) preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Requirements

Paperwork requirements for this rule have been approved under OMB Control Number 0583–0092.

References

1. Department of Health and Human Services, Public Health Service, "The Surgeon General's Report on Nutrition and Health," U.S. Government Printing Office, Washington, DC, pp. 139–143, 157–161, and 167–174, 1988.

2. Food and Nutrition Bureau (FNB)/ National Academy of Sciences), "Diet and Health," National Academy Press, Washington, DC, pp 353–356, 549–553, and 556–561, 1989.

3. Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure, "The Fifth Report of the Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure," *Archives of Internal Medicine*, 153: 154–183, 1993.

4. Nutrition Committee, American Heart Association, "Dietary Guidelines for Healthy American Adults—A Statement for Health Professionals from the Nutrition Committee, American Heart Association." *Circulation*, 94:1795–1800, 1996.

5. LSRO, "Evaluation of Publicly Available Scientific Evidence Regarding Certain Nutrient-Disease Relations for Sodium and Hypertension," Bethesda, MD, December 1991.

6. FNB, National Research Council, "Recommended Dietary Allowances," 10th ed., National Academy Press, Washington, DC, pp 247–261, 1989.

List of Subjects

9 CFR Part 317

Food labeling, Meat inspection.

9 CFR Part 381

Food labeling, Poultry and poultry products.

For the reasons discussed in the preamble, FSIS is amending parts 317 and 381 of the Federal meat and poultry products inspection regulations as set forth below:

PART 317—LABELING, MARKING DEVICES AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

Subpart B—Nutrition Labeling

§ 317.363 [Amended]

2. Section 317.363 is amended by removing the phrase "during the first 24 months of implementation" in paragraph (b)(3) introductory text and (b)(3)(i) and replacing it with "effective through January 1, 2000."

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450:21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

Subpart Y—Nutrition Labeling

§ 381.463 [Amended]

4. Section 381.463 is amended by removing the phrase "during the first 24 months of implementation" in paragraph (b)(3) introductory text and (b)(3)(i) and replacing it with "effective through January 1, 2000."

Done at Washington, DC, on: February 4, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–3718 Filed 2–12–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–57]

Establishment of Class E Airspace; St. Paul, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at St. Paul, MN. An airspace review for St. Paul, Downtown Holman Field, MN, indicated the need for surface area controlled airspace during periods when the control tower is closed. The surface area provides a safer operating environment for business/ corporate turbo jet and turbo prop aircraft which operate into and out of the airport when the control tower is

closed. The airport meets the minimum communications and weather observation and reporting requirements. Controlled airspace extending upward from the surface will contain aircraft executing instrument approach procedures.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, November 10, 1997, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at St. Paul, MN (62 FR 60461). The proposal was to add controlled airspace extending upward from the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during periods when the control tower is closed.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at St. Paul, MN, to accommodate aircraft executing the published instrument approach procedures at St. Paul, Downtown Holman Field, during periods when the control tower is closed. Controlled airspace extending upward from the surface is needed to contain aircraft executing these approaches. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MN E2 St. Paul, MN [New]

St. Paul, Downtown Holman Field, MN
(lat. 44°56′04″ N.; long. 93°03′36″ W.)
South St. Paul Municipal Richard E. Fleming Field, MN
(lat. 44°51′26″ N., long. 93°01′59″ W.)

Within a 4.1-mile radius of the St. Paul, Downtown Holman Field, excluding that airspace within a 1-mile radius of South St. Paul Municipal, Richard E. Fleming Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on January 22, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–3732 Filed 2–12–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–58]

Modification of Class E Airspace; Escanaba, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Escanaba, MI. A VHF Omnidirectional Range (VOR) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 36 has been developed for Delta County Airport. Controlled airspace extending upward from the surface is needed to contain aircraft executing the approach. This action enlarges the radius and adds a southern extension to the surface area, and enlarges the radius and adds a southern extension for the existing controlled airspace. This action also corrects the wording for the surface area, as given in the notice of proposed rulemaking, by deleting the part-time reference. This wording was included in error.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, November 10, 1997, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Escanaba, MI (62 FR 60462). The proposal was to add controlled airspace extending upward from the surface to contain aircraft conducting Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for surface areas for an airport are published in paragraph 6002, and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14

CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Escanaba, MI, to accommodate aircraft executing the VOR Rwy 36 SIAP and IFR operations at Delta County Airport by enlarging the radius and adding a southern extension to the surface area, and enlarging the radius and adding a southern extension for the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area For an airport.

* * * * *

AGL MI E2 Escanaba, MI [Revised]

Escanaba, Delta County Airport, MI
(lat. 45°43'22" N., long. 87°05'37" W.)
Escanaba VORTAC
(lat. 45°43'22" N., long. 87°05'23" W.)

Within a 4.3-mile radius of the Escanaba VORTAC; and within 2.6 miles each side of the Escanaba VORTAC 007 deg. radial, extending from the 4.3-mile radius to 7.4 miles north of the VORTAC; and within 2. 6 miles each side of the Escanaba VORTAC 101 deg. radial, extending from the 4.3-mile radius to 7.4 miles east of the VORTAC; and within 2.6 miles each side of the Escanaba VORTAC 266 deg. radial, extending from the 4.3-mile radius to 7.0 miles west of the VORTAC; and within 3.2-miles each side of the Escanaba VORTAC 171 deg. radial, extending from the 4.3-mile radius to 7.0 miles south of the VORTAC

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Escanaba, MI [revised]

Escanaba, Delta County Airport, MI
(lat. 45°43'22" N., long. 87°05'37" W.)
Escanaba VORTAC
(lat. 45°43'22" N., long. 87°05'23" W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Escanaba VORTAC; and within 2.6 miles each side of the Escanaba VORTAC 007 deg. radial, extending from the 6.8-mile radius to 7.4 miles north of the VORTAC; and within 2.6 miles each side of the Escanaba VORTAC 101 deg. radial, extending from the 6.8-mile radius to 7.8 miles east of the VORTAC; and within 2.6 miles north and 3.5 miles south of the Escanaba VORTAC 270 deg. radial, extending from the 6.8-mile radius to 11.7 miles west of the VORTAC; and within 3.2 miles each side of the Escanaba VORTAC 171 deg. radial, extending from the 6.8-mile radius to 7.0 miles south of the VORTAC.

* * * **

Issued in Des Plaines, Illinois on January 22, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–3733 Filed 2–12–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–51]

Establishment of Class E Airspace; Friendship (Adams), WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Friendship (Adams), WI. A Global Positioning System (GPS) - Standard Instrument Approach Procedure (SIAP) to Runway 33 has been developed for Adams County Legion Field Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL), within a 9.4-mile radius of the airport, is needed to contain aircraft executing the approach.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, December 10, 1997, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Friendship (Adams), WI (62 FR 65041). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were receive. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at friendship (Adams), WI. This action provides adequate controlled airspace extending upward from 700 to 1200 feet AGL to contain aircraft executing the GPS Rwy 33 SIAP and IFR operations at Adams County Legion Field Airport. The area would be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are

necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Friengship (Adams), WI [New]

Adams County Legion Field Airport, WI
(lat. 43°57'40" N, long. 89°47'17" W)

That airspace extending upward from 700 feet above the surface within a 9.4-mile radius of the Adams County Legion Field Airport, excluding that portion within the Necedah, WI, and New Lisbon, WI, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on January 22, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–3734 Filed 2–12–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–60]

Modification of Class E Airspace; Cumberland, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Cumberland, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 27 has been developed for Cumberland Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action adds an extension to the east for the existing controlled airspace.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, November 10, 1997, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Cumberland, WI (62 FR 60460). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain aircraft conducting Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Cumberland, WI, to accommodate aircraft executing the GPS Rwy 27 SIAP and IFR operations at Cumberland Municipal Airport by adding an extension to the east for the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997. and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet Or more above the surface of the earth.

* * * * *

AGL WI E5 Cumberland, WI [Revised]

Cumberland Municipal Airport, WI
(lat. 45°30'21" N., long. 91°58'52" W.)
Cumberland NDB
(lat. 45°30'33" N., long. 91°58'36" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Cumberland Municipal Airport; and within 2.7 miles each side of the 262° bearing from the Cumberland NDB extending from the 6.4-mile radius to 7.4 miles west of the airport; and within 2.0 miles each side of the 090° bearing from the Cumberland Municipal Airport extending from the 6.4-mile radius to 8.8 miles east of the airport.

* * * * *

Issued in Des Plaines, Illinois on January 22, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–3735 Filed 2–12–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 51

[Public Notice 2720]

Passport Procedures—Amendment to Validity of Passports Regulation

AGENCY: Bureau of Consular Affairs, State.

ACTION: Final rule.

SUMMARY: This final rule amends regulations to lower the age of eligibility for a passport valid for 10 years issued on or after February 1, 1998, from 18 years of age to 16 years of age. Specifically, the rule establishes the validity period of a regular passport issued on or after February 1, 1998 to an applicant 16 years of age or older as 10 years from date of issue, and to establish the validity of a regular passport issued on or after February 1, 1998 to an applicant under the age of 16 years for 5 years from date of issue. This is consistent with the Schedule of Fees for Consular Services at section 22.1 in Title 22 of the Code of Federal Regulations, as effective February 1, 1998.

DATES: Effective February 1, 1998. Comments: Although this rule takes effective February 1, 1998, interested persons are invited to submit written Comments on or before March 16, 1998.

ADDRESSES: Interested persons are invited to submit comments to: Director, Office of Passport Policy and Advisory Services, 1111 19th Street, N.W., Suite 260, Washington, D.C. 20524.

FOR FURTHER INFORMATION CONTACT: Sharon E. Palmer-Royston, Office of Passport Policy and Advisory Services, Bureau of Consular Affairs, Department of State (202) 955–0231.

SUPPLEMENTARY INFORMATION: Section 51.4(b) of the passport regulations in Title 22 of the Code of Federal Regulations establishes the period of validity of a regular passport. In this regard, section 217a of Title 22 in the United States Codes provides that "[a] passport shall be valid for a period of ten years from the date of issue, except that the Secretary of State may limit the validity of a passport to a period of less than ten years in an individual case or on a general basis pursuant to regulation".

This final rule would amend the existing regulation of section 51.4(b) of Title 22 of the Code of Federal Regulations by reducing the age of an applicant eligible for a passport valid for 10 years from 18 years of age to 16 years of age for a passport issued on or after February 1, 1998. The change will ensure consistency with changes being made effective February 1, 1998, in the Schedule of Fees for Consular Services, 22 CFR 22.1, which establishes the fee for a passport in part on the basis of whether the applicant is under age 16 or is age 16 or over. Under the new Schedule, an applicant age 16 or over will pay the fee associated with a ten-year passport. This reflects a decision by the Department of State, in connection with revising the fee schedule, that applicants ages 16 and 17 should now generally receive passports valid for ten years. The Department of State needs to make a corresponding change to 22 CFR 51.4(b), which otherwise would appear to limit an applicant age 16 or 17 to a five-year passport, even though such a person would be expected under the new fee schedule to pay for a ten-year passport.

The rule is not expected to have a significant economic impact on a substantial number of small entities and is not a major rule for purposes of advance congressional notification under the criteria of the Regulatory Flexibility Act. It will not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35. It has been reviewed under E.O. 12988 and been determined to be in compliance therewith. This rule is exempt from review under E.O. 12866 but has been reviewed internally to ensure consistency therewith. This rule does not raise federalism issues under E.O. 12612.

COMMENT PERIOD AND EFFECTIVE DATE: Exception.

The new Period of Validity of a Regular Passport will take effect February 1, 1998. Pursuant to 5 U.S.C. 553(b) and (d), the Department of State has decided to make this rule effective without a prior public notice and comment period and not to delay the effective date past February 1. Delaying the effective date would result in an inconsistency between the provisions governing the period of validity of regular passport at section 51.4(b) in Title 22 of the Code of Federal Regulations and the changes being made in the Schedule of Fees at sections 22.1 of Title 22 of the Code of Federal Regulations insofar as it relates to passport fees. Such inconsistency could cause confusion regarding the applicable passport fees and passport services, provided to applicants who are between 16 years of age and 18 years of age. Moreover, it is in the interest of a passport applicant who was previously eligible only for a passport valid for 5 years to become eligible as soon as possible for a passport with a validity of 10 years. This change effectively relieves a restriction on passport validity with respect to applicants ages 16 and 17. Finally, the Schedule of Fees was subject to 30 days notice and comment. The Department of State has concluded that advance notice and comment for the present rule is unnecessary and contrary to the public interest, and that the rule may take effect in less than 30 days from the date of publication.

PART 51—PASSPORTS

1. The authority citation for Part 51 continues to read as follows:

Authority: 22 U.S.C. 211a, 212, 213, 214, 214a, 216, 217a, 2671(d); 31 U.S.C. 9701; sec. 129, Pub. L. 102–138, 105 Stat. 661; E.O. 11295, 36 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

2. Section 51.4(b) is revised to read as follows:

§ 51.4 Validity of passports.

* * * * *

(b) Period of validity of a regular passport.

(1) A regular passport issued on or after February 1, 1998, to an applicant 16 years or age or older is valid for 10 years from date of issue unless limited by the Secretary to a shorter period.

(2) A regular passport issued on or after February 1, 1998 to an applicant under the age of 16 years is valid for 5 years from date of issue unless limited by the Secretary of State to a shorter period.

(3) The period of validity of a regular passport issued on or after January 1, 1983, and before February 1, 1998, unless limited by the Secretary of State to a shorter period is: 10 years from date of issue if issued to an applicant age 18 or older; five years from date of issue if issued to an applicant under age 18.

(4) The period of validity of a regular passport issued prior to January 1, 1983, is five years from date of issue.

* * * * *

Dated: January 29, 1998.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 98–3534 Filed 2–12–98; 8:45 am]

BILLING CODE 4710–06–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in March 1998.

EFFECTIVE DATE: March 1, 1998.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during March 1998.

For annuity benefits, the interest assumptions will be 5.50 percent for the first 25 years following the valuation date and 5.25 percent thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These annuity and lump sum interest assumptions are unchanged from those in effect for February 1998.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during March 1998, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 53 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums

Table I.—Annuity Valuations

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, . . . , and referred to generally as it) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
March 1998	.0550	1–25	.0525	>25	N/A	N/A

Table II.—Lump Sum Valuations

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0<y\leq n_r$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1<y\leq n_1+n_2$), interest rate i_2 shall apply from the valuation date for a period of $y-n_1$ years, interest rate i1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y>n_1+n_2$), interest rate i_3 shall apply from the valuation date for a period of $y-n_1-n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i1 shall apply for the following n1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date,		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_2	n_2
53	03–1–98	04–1–98	4.25	4.00	4.00	4.00	7	8

Issued in Washington, D.C., on this 4th day of February 1998.

David M. Strauss,

Executive Director,

Pension Benefit Guaranty Corporation.

[FR Doc. 98–3365 Filed 2–12–98; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA46

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Prime Balance Billing

AGENCY: Office of the Secretary, DOD.

ACTION: Interim final rule.

SUMMARY: This interim final rule establishes financial protections for TRICARE Prime enrollees in limited circumstances when they receive covered services from a non-network provider. This rule is being published to provide protection for TRICARE Prime enrollees.

DATES: This rule is effective March 16, 1998. Public comments must be received by April 14, 1998.

ADDRESSES: TRICARE Support Office (TSO), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Kathleen Larkin, Office of the Assistant Secretary of Defense (Health Affairs), telephone (703) 695–3350.

Questions regarding payment of specific claims under the CHAMPUS allowable charge method should be addressed to the appropriate TRICARE/CHAMPUS contractor.

SUPPLEMENTARY INFORMATION:

I. Overview of the Rule

This interim final rule implements section 731 of the FY 1996 National Defense Authorization Act and section 711 of the FY 1997 National Defense Authorization Act which modified 10 U.S.C. 1079(h) to provide protections for TRICARE Prime enrollees from balance billing situations in limited circumstances. Each regional TRICARE managed care support contractor is required to establish a network of civilian providers in areas where TRICARE Prime (the enrollment option) is offered. As is standard for Health Maintenance Organizations, enrollees in TRICARE Prime receive care from network providers. But on occasion, such as when a network provider is not available, or in emergencies, they may receive covered services from non-network providers. This rule provides protection in these situations; TRICARE Prime enrollees will be responsible for their copayments, but not for balance billing by non-participating providers.

II. Rulemaking Procedures

Executive order 12866 requires certain regulatory assessments for any significant regulatory action, defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

It has determined that this is not a significant regulatory action.

The interim final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 55).

This rule is being issued as an interim final rule, with comment period, as an exception to our standard practice of soliciting pubic comments prior to issuance. The Assistant Secretary of Defense (Health Affairs) has determined that following the standard practice in this case would be impracticable, unnecessary, and contrary to the pubic interest. This determination is based on several factors. First, this change directly implements a statutory amendment enacted by Congress expressly for this purpose. (See House Conference Report 104–724, p. 762, and House Report 104–563, p. 318) Second, this rule implements the statutory policy without embellishment. The rule simply implements the unambiguous Congressional policy of adjusting TRICARE/CHAMPUS payment rates to protect Prime enrollees when receiving authorized care for nonparticipating providers. Third, implementation of the statutory amendment, enacted September 23, 1996, has already been substantially delayed because of a separate statutory provision (section 8008 of the Department of Defense Appropriations Act), which expired September 30, 1997, and a further delay is unwarranted. Fourth, TRICARE Prime is a major "quality of life" program of the Department of Defense. Its success is of great importance to maintaining adequate retention rates of military personnel and, thus, the conduct of the military affairs function of the United States. Fifth, the unexpected imposition of balance billing requirements on TRICARE prime enrollees receiving authorized care has been voiced as a major complaint, undermining beneficiary trust in commitments made to Prime enrollees and ultimately the success of the TRICARE initiative. Public comments are invited. All comments will be carefully considered. A discussion of the major issues received by public comments will be included with the issuance of the permanent final rule, anticipated approximately 60 days after the end of the comment period.

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities, Military personnel, Reporting and recordkeeping requirements.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.14 is amended by adding paragraph (h)(1)(i)(D) to read as follows:

§ 199.14 Provider reimbursement methods.

* * * * *

(h) Reimbursement of Individual Health Care Professionals and Other Non-Institutional Health-Care Providers.

* * *

(1) Allowable charge method. * * *

(1) Introduction. * * *

(D) Special rule for TRICARE Prime Enrollees. In the case of a TRICARE Prime enrollee (see § 199.17) who receives authorized care from a non-participating provider, the CHAMPUS determined reasonable charge will be the CMAC level as established in paragraph (h)(1)(i)(B) of this section plus any balance billing amount up to the balance billing limit as referred to in paragraph (h)(1)(i)(C) of this section. The authorization for such care shall be pursuant to the procedures established by the Director, OCHAMPUS (also referred to as the TRICARE Support Office).

* * * * *

Dated: February 6, 1998.

L.M. Bynum,

Alternate Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–3502 Filed 2–12–98; 8:45 am]

BILLING CODE 5000–04–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 255

[Docket No. 96–4 CARP DPRA]

Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The Copyright Office of the Library of Congress is announcing final regulations that became effective on January 1, 1998, adjusting royalty rates to be paid under the mechanical compulsory license, section 115 of the 1976 Copyright Act, as amended, for use of physical, or non-digital, phonorecords. The Office addresses rates for physical phonorecord delivery today, and will address rates for digital phonorecord delivery in the future.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Fax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

The mechanical compulsory license, 17 U.S.C.115, provides a mechanism outside the realm of contract for persons who want to make and distribute phonorecords of nondramatic musical works that have been distributed in the United States by the copyright owner to obtain a compulsory license to perform that activity. A person is eligible for this compulsory license if: (1) He or she has not been able to serve a notice of intention to obtain the license on the copyright owner, and (2) a notice of intention has been filed with the Copyright Office. 17 U.S.C. 115(b)(1).

Until its demise in 1993, the Copyright Royalty Tribunal had authority to adjust the statutory rates for the making and distribution of physical phonorecords, and did so in 1987, setting the rates and terms for the mechanical compulsory license for at least the next ten years. *See* 52 FR 22637 (June 15, 1987). The Copyright Office currently administers the mechanical license, and responsibility for adjusting royalty rates rests with Copyright Arbitration Royalty Panels, known as CARPs. 17 U.S.C. 801(b)(1), 803. The Copyright Act provides that during the tenth calendar year following a ratesetting, any copyright owner or user whose royalty rates are specified by the statutory license may file a petition requesting an adjustment to the rates and terms. 17 U.S.C. 803(a)(1), (3).

On November 1, 1995, Congress passed the Digital Performance Right in Sound Recordings Act of 1995 (Digital Performance Act), Pub. L. 104–39, 109 Stat. 336 (1995), which amended sections 114 and 115 of the Copyright Act, and extended the mechanical license to digital phonorecord deliveries. The mechanical rate for physical, or non-digital, phonorecords can be the same as, or different from, the rate that applies to digital phonorecord deliveries.

The legislative history for the Digital Performance Act states that: "Through 1997, the royalty rate payable for digital phonorecord delivery shall be the same as for physical phonorecords. After 1997, the rates for digital phonorecord delivery will be determined as provided by the amended provisions section 115(c)(3) [sic], and need not be the same as for the making and distribution of physical phonorecords." H.R. Rep. No. 274, 104th Cong., 1st Sess. 28 (1995). The House Report further recognizes as separate digital and physical phonorecord rates, stating: "The terms and rates shall be established [for digital use] according to the same criteria that apply to the license for making and distributing physical phonorecords * * *" *Id.* at 29.

The most recent royalty rate applicable under 17 U.S.C.115 was described in Copyright Office regulations at 37 CFR 255.3(h), as follows: "For every phonorecord made and distributed on or after January 1, 1996, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.95 cents, or 1.3 cents per minute of playing time or fraction thereof, whichever amount is larger." *Id.*

The year 1997 was a window year for commencing a proceeding to further adjust the mechanical phonorecord compulsory license royalty rates. The Office initiated proceedings to adjust all section 115 rates in 1997; however, modifications were made due to requests by the interested parties for extra time to negotiate terms for a new rate.

At this time the Office is announcing final regulations that adjust royalty rates for reproduction and distribution of physical phonorecords. Rate adjustment for use of digital phonorecords under section 115 will be announced in the future. The Office bifurcates this procedure in order to finalize the rate adjustment for physical phonorecords, and then to consider important legal and policy issues brought forward by interested parties that relate to application of section 115 rates for digital phonorecord delivery.

History of the Current Proceeding

On July 17, 1996, the Copyright Office published a notice which, among other things, established a schedule for convening a CARP which would have set new rates for digital phonorecord deliveries before the existing rate expired. *See* 61 FR 37312 (July 17, 1996). As noted *supra*, 1997 also was a window year for adjusting royalty rates for the making and distribution of physical phonorecords. The Office requested comment from interested parties on the possibility of consolidating the two proceedings, and conducting a single CARP to adjust both the physical phonorecord and the digital phonorecord delivery rates. *See* 61 FR 37215 (July 17, 1996).

According to the interested parties, consisting of the Recording Industry Association of America (RIAA), the National Music Publishers' Association, Inc. (NMPA), and the Harry Fox Agency, Inc. (referred to together as the Parties), the proposed schedule did not allot sufficient time for negotiating a comprehensive joint proposal. Therefore, they filed a motion with the Office on November 8, 1996, asking the Office to vacate the proposed schedule to allow them time to continue their negotiations. The Office granted the Parties' motion and rescheduled the proceeding. *See* 61 FR 65243 (December 11, 1996).

Although the new schedule extended the negotiation period by three months, the Parties thought the time still insufficient for conducting the necessary negotiations, and requested a meeting with the Office to discuss difficulties associated with negotiating rates and terms for use of digital technology in an evolving marketplace. The Office granted the request and met with the Parties on January 9, 1997. At that meeting, the Parties again requested more time to conduct negotiations on rates and terms for the section 115 license, having acknowledged the need to establish the mechanical rate before they attempted to negotiate the rates for the digital delivery of phonorecords. The Office agreed to vacate the schedule. *See* 62 FR 5057 (February 3, 1997).

On November 7, 1997, NMPA, RIAA, and the Songwriters' Guild of America (SGA) filed a joint petition with the Copyright Office outlining a proposal to adjust the physical phonorecord and digital phonorecord delivery royalty rates. The Parties to the joint petition, having duly filed a proposal concerning the 1997 physical phonorecord and digital phonorecord delivery royalty rate adjustments, asked the Copyright Office to submit their proposal to a notice-and-comment proceeding to promulgate regulations to adjust the proposed rates and terms. Accordingly, pursuant to 17 U.S.C. 803(c) and 37 CFR 251.63(b), the Copyright Office invited public comment on the proposed rates and terms for adjusting the physical phonorecord and digital phonorecord delivery royalty rates, and on the regulatory language implementing the proposal.[1] Comments and Notices of Intent to Participate in a CARP proceeding, should it be necessary, were to be submitted to the Office by December 29, 1997.

The Office received four comments in response to its Notice of Proposed Rulemaking, including three Notices of Intent to Participate in any CARP proceeding which may be instituted in this matter. None of these filings contained comments or objections to rates proposed for the reproduction and distribution of physical phonorecords under the mechanical compulsory license. Because no comments opposing the rates for reproduction and distribution of physical phonorecords under 17 U.S.C.115 were received, the Librarian adopted those rates, effective January 1, 1998, but not the rates concerning reproduction and distribution of digital phonorecords, as they were previously published in the **Federal Register**. *See* 62 FR 63506 (December 1, 1997).

[1] According to 37 CFR 251.63: The Librarian may, upon the request of the parties, submit the agreed upon rate to the public in a notice-and-comment proceeding. The Librarian may adopt the rate embodied in the proposed settlement without convening an arbitration panel, provided that no opposing comment is received by the Librarian from a party with an intent to participate in a CARP proceeding. *Id.*

List of Subjects in 37 CFR Part 255

Copyright, Recordings.

For the reasons set forth above, the Copyright Office amends 37 CFR part 255 as follows:

PART 255—ADJUSTMENT OF ROYALTY PAYABLE UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

1. The authority citation for part 255 continues to read as follows:

Authority: 17 U.S.C. 801(b)(1) and 803.

§ 255.3 [Amended]

2. In § 255.3(a), the phrase "(b), (c), (d), (e), (f), (g), and (h)" is removed and the phrase "(b) through (m)" is added after the word "paragraphs".

3. In § 255.3(b), the phrase "(c), (d), (e), (f), (g), and (h)" is removed and the phrase "(c) through (m)" is added after the word "paragraphs".

4. In § 255.3(c), the phrase "(d), (e), (f), (g), and (h)" is removed and the phrase "(d) through (m)" is added after the word "paragraphs".

5. In § 255.3(d), the phrase "(e), (f), (g), and (h)" is removed and the phrase "(e) through (m)" is added after the word "paragraphs".

6. In § 255.3(e), the phrase "(f), (g), and (h)" is removed and the phrase "(f) through (m)" is added after the word "paragraphs".

7. In § 255.3(f), the phrase "(g), and (h)" is removed and the phrase "(g) through (m)" is added after the word "paragraphs".

8. In § 255.3(g), the phrase "paragraph (h)" is removed and the phrase "paragraphs (h) through (m)" is added after the phrase "pursuant to".

9. In § 255.3(h), the phrase ", subject to further adjustment pursuant to paragraphs (i) through (m) of this section" is added after the word "larger".

10. Add new paragraphs (i), (j), (k), (l), and (m) to § 255.3 to read as follows:

§ 255.3 Adjustment of royalty rate.

* * * * *

(i) For every phonorecord made and distributed on or after January 1, 1998, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 7.1 cents, or 1.35 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (j) through (m) of this section.

(j) For every phonorecord made and distributed on or after January 1, 2000, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 7.55 cents, or 1.45 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (k) through (m) of this section.

(k) For every phonorecord made and distributed on or after January 1, 2002, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 8.0 cents, or 1.55 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (l) through (m) of this section.

(l) For every phonorecord made and distributed on or after January 1, 2004, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 8.5 cents, or 1.65 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraph (m) of this section.

(m) For every phonorecord made and distributed on or after January 1, 2006, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 9.1 cents, or 1.75 cents per minute of playing time or fraction thereof, whichever amount is larger.

Dated: January 30, 1998.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

Librarian of Congress.

[FR Doc. 98–3703 Filed 2–12–98; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5964–1]

Technical Amendments to Approval and Promulgation of State Implementation Plans (SIP) for Louisiana: Motor Vehicle Inspection and Maintenance Program; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final disapproval; correction of effective date under CRA.

SUMMARY: On November 19, 1997 (62 FR 61633), the Environmental Protection Agency published in the **Federal Register** a final disapproval of the SIP revision submitted by the State of Louisiana for establishing and operating a motor vehicle Inspection and Maintenance (I/M) Program, which established an effective date of December 19, 1997. This document corrects the effective date of the rule to February 13, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808. Since certain statutory sanctions may be applied if the deficiency identified in the final disapproval is not corrected, this document also clarifies the timing of such sanctions.

EFFECTIVE DATE: This rule is effective on February 13, 1998.

FOR FURTHER INFORMATION CONTACT: Diane Taheri, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7460.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on November 19, 1997, by operation of law, the rule did not take effect on December 19, 1997, as stated therein. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

As discussed more fully in the November 19, 1997, final rule, under section 179(a)(2) of the Clean Air Act, since EPA has taken final action disapproving the SIP revision for the I/M Program, if the deficiency is not corrected within 18 months of the effective date of the final disapproval action, the Administrator must apply one of the sanctions set forth in section 179(b) of the Act. Since this document has corrected the effective date of the final disapproval to February 13, 1998, the 18-month sanctions clock time frame for the State to correct the deficiency begins February 13, 1998.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since November 19, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the November 19, 1997, **Federal Register** document.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the November 19, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 13, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2). Pursuant to section 307(b)(1) of the Clean Air Act, challenges to this amendment must be brought within 60 days of publication of the amendment.

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date. Pursuant to section 307(b)(1) of the Clean Air Act, challenges to this amendment must be brought within 60 days of publication of the amendment.

Dated: February 6, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3690 Filed 2–12–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–5963–9]

Technical Amendments to Clean Air Act Reclassification; Arizona-Phoenix Nonattainment Area; Ozone; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On November 6, 1997 (62 FR 60001), the Environmental Protection Agency published in the **Federal Register** a final rule finding that the Phoenix nonattainment area (Maricopa County, Arizona) has not attained the 1-hour ozone national ambient air quality standard (NAAQS) by the applicable attainment date in the Clean Air Act (CAA) for moderate ozone nonattainment areas, which established an effective date of December 8, 1998. The rule stated that revisions to the State Implementation Plan (SIP) are due by December 8, 1998. This document corrects the effective date of the rule to February 13, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808. This document does not change the December 8, 1998, SIP revision submission date.

EFFECTIVE DATE: This rule is effective on February 13, 1998.

FOR FURTHER INFORMATION CONTACT: Elizabeth Armour, EPA Region IX, at (415) 744–1730.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on November 6, 1997, **Federal Register** document, by operation of law, the rule did not take effect on December 8, 1998, as stated therein. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

The November 6, 1997, rule specifies that a revised SIP to meet the serious area requirements is due to be submitted by December 8, 1998, based on the need to meet the deadline for the attainment date for serious areas—November 19, 1999. Since the change in effective date of the rule has no impact on the reasons EPA established the December 8, 1998, revised SIP submission date, and since the State has been on notice of this action since the November 6, 1997, final rule was published in the **Federal Register**, EPA is not changing the December 8, 1998, deadline for submitting SIP revisions.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since November 6, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the November 6, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 13, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date. Pursuant to section 307(b)(1) of the Clean Air Act, challenges to this amendment must be brought within 60 days of publication of the amendment.

Dated: February 6, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3754 Filed 2–12–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300608; FRL–5767–7]

RIN 2070–AB78

Lambda-cyhalothrin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for the combined residues of the pyrethroid lambda-cyhalothrin and its epimer in or on alfalfa forage at 5.0 parts per million (ppm); alfalfa hay at 6.0 ppm; leaf lettuce at 2.0 ppm; brassica head and stem subgroup (broccoli, Chinese broccoli, Brussels sprouts, cabbage, Chinese (napa) cabbage, Chinese mustard, cauliflower, caval broccolo, and kohlrabi) at 0.4 ppm; replaces the term "grain dust" with "aspirated grain fractions" with a tolerance of 2.0 ppm; and increases the tolerance for poultry fat from 0.01 ppm to 0.03 ppm. Zeneca Ag Products requested these tolerances under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170).

DATES: This regulation is effective February 13, 1998. Objections and requests for hearings must be received by EPA on or before April 14, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300608], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300608], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by

sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300608]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Stephanie Willett, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5419, e-mail: willett.stephanie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 11, 1997 (62 FR 37234–37246)(FRL–5728–7), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of pesticide petition (PP) number 5F4588 for lambda-cyhalothrin tolerances on alfalfa, leaf lettuce, brassica subgroup, aspirated grain fractions, and an increase in the current poultry fat tolerance by Zeneca Ag Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, Delaware 19850–5458. This notice included a summary of the petition prepared by Zeneca Ag Products, as required under the FFDCA as amended by the Food Quality Protection Act (FQPA) of 1996. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.438 be amended by establishing tolerances for the combined residue of the insecticide, lambda-cyhalothrin and its epimer in or on raw agricultural commodities (RACs) alfalfa forage at 5.0 ppm; alfalfa hay at 6.0 ppm; leaf lettuce at 2.0 ppm; head and stem Brassica crop subgroup at 0.4 ppm; aspirated grain fractions at 2.0 ppm; and increasing the existing tolerance for poultry fat from 0.01 ppm to 0.03 ppm. The change in terminology from "grain dust" to "aspirated grain fractions" was recommended by the EPA, since the term "grain dust" is not used. The tolerance for aspirated grain fractions includes a mixture of all aspirated grains for which the pesticide has a tolerance, and should be established at the highest current tolerance set for any grain dust, which is 2.0 ppm.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue*** ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This hundredfold MOE is based on the same rationale as the hundredfold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic risks." These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1–day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues.

High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of lambda-cyhalothrin and its epimer, and to make a determination on aggregate exposure, consistent with section 408(b)(2). EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by lambda-cyhalothrin and its epimer are discussed below. Note that the studies discussed below were conducted using either cyhalothrin or lambda-cyhalothrin. Cyhalothrin and lambda-cyhalothrin are basically the same chemical, the differences are found in their stereo chemistry and the number of isomers in each mixture. Cyhalothrin consists of four stereo isomers in each mixture. Cyhalothrin consists of four stereo isomers while lambda-cyhalothrin is a mixture of the two isomers. The two lambda-cyhalothrin isomers are contained in cyhalothrin, they represent 40% of the cyhalothrin mixture. The major studies submitted to the Agency were conducted with cyhalothrin. However, these studies are used in support of registration for both mixtures. There is some evidence, based on subchronic studies in rats, that the two mixtures are not biologically different with respect to their mammalian toxicity.

1. *Acute toxicity.* Acute toxicity studies with the technical grade of the active ingredient lambda-cyahothrin: oral LD_{50} in the rat at 79 milligram per kilogram (mg/kg) (males) and 56 mg/kg (females) - Toxicity Category II; dermal LD_{50} in the rat at 632 mg/kg (males) and 696 mg/kg females - Toxicity Category II; primary eye irritation study showed mild irritation - Toxicity Category II; and primary dermal irritation study showed no irritation - Toxicity Category IV.

2. *Mutagenicity.* The following genotoxicity tests were all negative: a gene mutation assay (Ames), a mouse micronucleus assay, an *in-vitro* cytogenetics assay, and a gene mutation study in mouse lymphoma cells.

3. *Reproductive and developmental toxicity.* i. In a three-generation reproduction study, rats were fed diets containing cyhalothrin at 0, 10, 30 or 100 ppm (approximately 0, 0.5, 1.5 or 5.0 milligram per kilogram per day (mg/kg/day)). Parental toxicity was observed as decreased mean body weight and body weight gain during the premating and gestation periods at 5.0 mg/kg/day. There were no other treatment-related effects. Offspring toxicity was observed as reduced mean pup weight and pup weight gains during lactation, again at 5.0 mg/kg/day. No other treatment-related effects were observed. The reproductive and parental NOELs are 1.5 mg/kg/day and the reproductive and parental lowest observed effect level (LOELs) are 5.0 mg/kg/day. The developmental NOEL is 5.0 mg/kg/day (highest dose tested (HDT)).

ii. In a rabbit developmental toxicity study, rabbits were given gavage dose levels of cyhalothrin at: 0, 3, 10, 30 mg/kg/day during the gestation period (days 6 through 18). The maternal NOEL was 10 mg/kg/day and the maternal LOEL was 30 mg/kg/day based on decreased

body weight gain (48% of controls) during the dosing period. The developmental NOEL was 30 mg/kg/day (HDT). No developmental effects were observed.

iii. In a rat developmental study rats were given gavage dose levels of cyhalothrin at: 0, 5, 10, 15 mg/kg/day during the gestation period (days 6 through 15). The maternal NOEL was 10 mg/kg/day and the maternal LOEL was 15 mg/kg/day based on reduced body weight gain (70% of control) and food consumption (as low as 76%) during the dosing period. The developmental NOEL was greater than 15 mg/kg/day (HDT). No developmental effects were observed.

4. *90–day feeding study.* i. In a 90–day feeding study rats were fed, lambda-cyhalothrin at doses of 0, 10, 50 or 250 ppm (0, 0.5, 2.5, 12.5 mg/kg/day). The animals were examined once daily for clinical signs of toxicity. Body weights, food consumption, hematological and clinical chemistry parameters, urinalysis parameters, organ weights, and macroscopic and microscopic observations were recorded. Body weight gain and food consumption were significantly reduced for both sexes at 12.5 mg/kg/day. There was also a slight but statistically significant reduction in food efficiency in females at this dose level. The NOEL is 2.5 mg/kg/day and the lowest effect level (LEL) is 12.5 mg/kg/day based on reduction in body weight gain and food consumption in both sexes and food efficiency in females.

ii. In another 90–day feeding study in rats cyhalothrin was fed at doses of 0, 10, 50 or 250 ppm (0, 0.5, 2.5, 12.5 mg/kg/day). The animals were examined for clinical signs of toxicity. Body weights, food consumption, hematological and clinical chemistry parameters, urinalysis parameters, organ weights, and macroscopic and microscopic observations were recorded. Body weight gain was significantly reduced in males at 12.5 mg/kg/day. Body weight gain was also significantly reduced in females at this level, but only during the first week. Body weight gain was not significantly affected at lower dose levels. The NOEL is 2.5 mg/kg/day and the LEL is 12.5 mg/kg/day based on decreased body weight gain.

5. *28–day study.* In a 28–day study in the mouse, cyhalothrin was fed to mice in the diet as a range-finding study for carcinogenicity at 0, 5, 25, 100, 500, or 2,000 ppm (0, 0.65, 3.30, 13.5, 64.2 or 309 mg/kg/day for males and 0, 0.80, 4.17, 15.2, 77.9 or 294 mg/kg/day for females).The NOEL is 500 ppm and the LEL is 2,000 ppm based on mortality, clinical signs of toxicity, decreases in body weight gain and food consumption, changes in hematology and organ weights and minimal centrilobular hepatocyte enlargement.

6. *21–day dermal toxicity study.* In a 21–day dermal toxicity study rats were exposed dermally to doses of 1, 10, or 100 mg/kg of lambda-cyhalothrin (reduced to 50 mg/kg after two or three applications) 6 hours/day. No significant signs of skin irritation was observed at any dose level. Two male rats were found dead after three applications of 100 mg/kg. There was no evidence prior to death, at postmortem examination, or from histopathology, of the possible cause of death, but it is thought likely to be due to pyrethroid toxicity. Dosage was reduced to 50 mg/kg/day for the remaining 18 applications. Animals dosed with 50 mg/kg/day displayed clinical signs of slight general toxicity (bizarre behavior, paw flicking, splayed gait, sides pinched in, thin, tip-toe gait, reduced stability, dehydration and reduced splay reflex). Effects on body weight gain and food consumption were also seen in males at this dose level. No toxicologically significant treatment-related effects were observed at any other dose level. The NOEL is 10 mg/kg/day and the LEL is 100/50 mg/kg/day based on death (at 100 mg/kg/day only), clinical signs of toxicity and decreased body weight gain and food consumption.

7. *21–day inhalation study.* In a 21–day inhalation study rats were exposed nose-only for 6 hours/day, 5 days/week to lambda-cyhalothrin at 0.3, 3.3, or 16.7 µg/L. The NOEL was 0.3 µg/L and the LOEL was 3.3 µg/L based on decreased body weight gains (high dose males) and food consumption (high dose, both sexes), clinical signs of toxicity (paw flicking, tail erections, tiptoe gait, lachrymation or salivation), punctate foci on cornea (both sexes, mid- and high dose), raised prothrombin time, changes in hematology, clinical chemistry and urinalysis parameters and a slight increase in the incidence of alveolitis in females.

8. *12–month chronic/carcinogenicity feeding study.* In a 12–month chronic/carcinogenicity feeding study dogs were fed dose (by capsule) levels of lambda-cyhalothrin at 0, 0.1, 0.5, 3.5 mg/kg/day with a NOEL of 0.1 mg/kg/day. The LOEL for this study is established at 0.5 mg/kg/day based upon clinical signs of neurotoxicity.

9. *24–month chronic feeding/carcinogenicity study.* In a 24–month chronic feeding/carcinogenicity study rats were fed diets containing 0, 10, 50, and 250 ppm (0, 0.5, 2.5 or 12.5 mg/kg/day) of cyhalothrin. The LEL for chronic toxicity in rats is 12.5 mg/kg/day and the NOEL is 2.5 mg/kg/day. There was no indication of carcinogenic effects observed under the conditions of the study.

10. *Carcinogenicity study.* In a carcinogenicity study mice were fed dose levels of 0, 20, 100, or 500 ppm (0, 3, 15, or 75 mg/kg/day) of cyhalothrin in the diet for 2 years. A systemic NOEL was established at 100 ppm and systemic LOEL at 500 ppm based on decreased body weight gain in males throughout the study at 500 ppm. The EPA has classified lambda-cyhalothrin as a Group D carcinogen (not classifiable due to an equivocal finding in this study). No treatment-related carcinogenic effects were observed under the conditions of the study.

11. *Animal Metabolism.* Metabolism studies in rats demonstrated that distribution patterns and excretion rates in multiple oral dose studies are similar to single-dose studies. Accumulation of unchanged compound in fat upon chronic administration with slow elimination was observed. Otherwise, lambda-cyhalothrin was rapidly metabolized and excreted. The metabolism of lambda-cyhalothrin in livestock has been studied in the goat, chicken, and cow. Unchanged lambda-cyhalothrin is the major residue component of toxicological concern in meat and milk.

12. *Neurotoxicity studies.* Neurotoxicity studies will be required under a special data call-in letter pursuant to section 3(c)(2)(B) of FIFRA. Although these data are lacking, EPA has sufficient toxicity data to support these tolerances and these additional studies will not significantly change its risk assessment.

B. Toxicological Endpoints

1. *Acute toxicity.* For acute dietary risk assessment, EPA used a systemic NOEL of 0.5 mg/kg/day based on gait abnormalities in dogs on day 2 in the chronic toxicity study.

2. *Short - and intermediate - term toxicity.* For short-and intermediate-term MOE's EPA recommends us of a NOEL of 10.0 mg/kg/day from the 21-day dermal toxicity based on systemic toxicity at 50 mg/kg/day (LOEL). A dermal absorption rate of 25% was used based on weight of evidence available for structurally related pyrethroids. EPA used a NOEL of 0.3 µg/L from the 21–day inhalation study in rats based on clinical signs indicative of neurotoxicity (paw flicking) tail erections, and tiptoe gait) at 3.3 µg/L.

3. *Chronic toxicity.* EPA has established the reference dose (RfD) for lambda-cyhalothrin at 0.001 mg/kg/day

based on clinical signs of neurotoxicity (ataxia, convulsions) seen at the LEL of 0.5 mg/kg/day. This RfD is based on a 1–year oral study in dogs with a NOEL of 0.1 mg/kg/day and an uncertainty factor (UF) of 100. The LEL of 0.5 mg/kg/day was based on clinical signs of neurotoxicity (convulsions, ataxia, muscle tremors) and a slight increase in liquid feces.

4. *Carcinogenicity.* Based on the available carcinogenicity studies in two rodent species, lambda-cyhalothrin has been classified as a Group "D" chemical, "not classifiable as to human carcinogenicity". Although lambda-cyhalothrin was not shown to be carcinogenic in either the mouse or rat, the EPA Hazard Evaluation Division (HED) RfD/Peer review committee based the "D" classification on: (i) lambda-cyhalothrin was not tested at adequate dose levels for carcinogenicity testing in the mouse, and (ii) the equivocal nature of the findings with regard to the incidence of mammary adenocarcinomas. No additional cancer studies are being required at this time.

C. Exposures and Risks

1. *From food and feed uses.* The primary source of human exposure to lambda-cyhalothrin will be from ingestion of both raw and processed food commodities treated with lambda-cyhalothrin. Tolerances have been established in 40 CFR 180.438, 40 CFR 185.3765 and 40 CFR 186.3765 for combined residues of lambda-cyhalothrin and its epimer in or on a variety of food commodities. (The tolerances in 40 CFR 185.1310 and 186.3765 were removed and transferred to 40 CFR 180.438 on November 26, 1997, (62 FR 63010)(FRL–5755–5)). Risk assessments were conducted by EPA to assess dietary exposures and risks from lambda-cyhalothrin as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The acute dietary exposure assessment for lambda-cyhalothrin used Monte Carlo modeling incorporating anticipated residue and percent crop treated refinements. The acute dietary Margin of Exposure (MOE) calculated at the 99.9th percentile for the most highly exposed population subgroup (nonnursing infants < 1 year old) is 139. The MOE calculated at the 99.9th percentile for the general U.S. population is 311. EPA concludes that there is a reasonable certainty of no harm for MOE of 100 or greater. Therefore, the acute dietary risk assessment for lambda-cyhalothrin indicates a reasonable certainty of no harm.

ii. *Chronic exposure and risk.* The RfD used for the chronic dietary analysis is 0.001 mg/kg/day. The chronic dietary exposure assessment used anticipated residues and percent crop treated information. The chronic dietary exposure estimate for the overall U.S. population was calculated to be 0.000068 mg/kg/day, which utilized 6.8% of the RfD for the U.S. population. For the most highly exposed population subgroup (children 1–6 years old), chronic dietary exposure was estimated at 0.000192 mg/kg/day, which utilized 19.2% of the RfD.

EPA notes that the acute dietary risk assessments used Monte Carlo modeling (in accordance with Tier 3 of EPA June 1996 "Acute Dietary Exposure Assessment" guidance document) incorporating anticipated residues and percent crop treated refinements. The chronic dietary risk assessment used percent crop treated information and anticipated residues. Section 408 (b)(2)(E) authorizes EPA to consider available data and information on the anticipated residue levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. Section 408(b)(2)(F) allows the agency to use data on the actual percent of crop treated when establishing a tolerance only where the Agency can make the following findings: (a) That the data used are reliable and provide a valid basis for showing the percentage of food derived from a crop that is likely to contain residues; (b) that the exposure estimate does not underestimate the exposure for any significant subpopulation and; (c) where data on regional pesticide used and food consumption are available, that the exposure estimate does not understate exposure for any regional population. In addition, the Agency must provide for periodic evaluation of any estimates used.

The percent of crop treated estimates for lambda-cyhalothrin were derived from Federal and market survey data. EPA considers these reliable. A range of estimates are supplied by this data and the upper end of this range was used for the exposure assessment. By using this upper estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluation of the exposure of significant subpopulations including several regional groups. Review of this regional data allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. To meet the requirement for data on anticipated residues, EPA will issue a Data Call-In (DCI) notice pursuant to FFDCA section 408(f) requiring submission of data on anticipated residues in conjunction with approval of the registration under FIFRA.

2. *From drinking water.* Laboratory and field data have demonstrated that lambda-cyhalothrin is immobile in soil and will not leach into groundwater. Other data show that lambda-cyhalothrin is virtually insoluble in water and extremely lipophilic. As a result, EPA concludes that residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned from the water column. Further, a screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM1). Based on this screening assessment, the potential concentrations of a pyrethroid in groundwater at depths of 1 and 2 meters are essentially zero (<< 0.001 parts per billion (ppb)). Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 ppb Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would normally be treated before consumption.

i. *Acute exposure and risk.* The acute drinking water exposure and risk estimates are 0.000022 mg/kg/day (MOE 22,876) and 0.000042 mg/kg/day (MOE 11,956) for the overall population and non-nursing infants <1 year, respectively.

ii. *Chronic exposure and risk.* The chronic drinking water exposure and risk estimates are 0.000000 mg/kg/day (0.0% RfD utilized) and 0.000000 mg/kg/day (0.0% of RfD utilized) for the overall population and non-nursing infants < 1 year, respectively.

3. *From non-dietary exposure.* Lambda-cyhalothrin is currently

registered for use on the following residential non-food sites: general indoor/outdoor pest control (crack/crevice/spot), termiticide, ornamental plants and lawns around homes, parks, recreation areas and athletic fields, and golf course turf. Application of this pesticide in and around these sites is mainly limited to commercial applicators. Analyses were conducted which included an evaluation of potential non-dietary (residential) applicator, post-application and chronic dietary aggregate exposures associated with lambda-cyhalothrin products used for residential flea infestation control and agricultural/commercial applications. In the case of potential non-dietary health risks, conservative point estimates of nondietary exposures, expressed as total systemic absorbed dose (summed across inhalation and incidental ingestion routes) for each relevant product use category (i.e. lawn care) and receptor based on the toxicity endpoints selected by EPA for lambda-cyhalothrin, inhalation and incidental oral ingestion absorbed doses were combined and compared to the relevant systemic NOEL for estimating MOEs.

4. *Short- and intermediate term exposure and risk.* EPA used a NOEL of 0.3 µg/L (0.05 mg/kg/day) from the 21-day inhalation toxicity study in rats. The LOEL of 3.3 µg/L was based on decreased body weight gains and clinical signs of toxicity including paw flicking, tail erections and tiptoe gait. For short- and intermediate-term dermal exposure MOE calculations, EPA used a NOEL of 10.0 mg/kg/day based on systemic toxicity at 50 mg/kg/day (LOEL). The MOE is 100.

The short and intermediate-term non-dietary aggregate (non-dietary + chronic dietary (food and water)) MOEs for lambda-cyhalothrin indicate a substantial degree of safety. The total non-dietary (inhalation + incidental + ingestion + dermal) MOEs for post-application exposure for the lawn care products evaluated was estimated to be >15,000 for adults, 7,200 for children 1-6 years old, and 7,000 for infants < 1 year. It can be concluded that the potential non-dietary and aggregate (non-dietary + chronic dietary) exposures for lambda-cyhalothrin are associated with substantial margins of safety.

5. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

Although lambda-cyhalothrin is structurally similar to other members of the synthetic pyrethroids class of insecticide, EPA does not have, at this time, available data to determine whether lambda-cyhalothrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, lambda-cyhalothrin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that lambda-cyhalothrin has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The acute aggregate risk assessment takes into account exposure from food and water. The acute aggregate MOE calculated at the 99.9th percentile for the U.S. population is 307. The Agency generally has no cause for concern if total acute exposure calculated for the 99.9th percentile yields a MOE of 100 or larger. EPA concludes that there is a reasonable certainty that no harm will result from acute aggregate exposure to lambda-cyhalothrin residues.

2. *Chronic risk.* Aggregate chronic exposure is the sum of chronic exposure from food and water. Using the exposure assumptions described above, EPA has concluded that aggregate exposure to lambda-cyhalothrin from food and water will utilize 6.8% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result from chronic aggregate exposure to lambda-cyhalothrin residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. For lambda-cyhalothrin the aggregate MOE (inhalation + incidental oral + chronic dietary) summed across all product use categories was estimated to be 14,000 for the U.S. population. EPA concludes that the aggregate short- and intermediate-term risks do not exceed levels of concern, and that there is reasonable certainty that no harm will result from aggregate exposure to lambda-cyhalothrin residues.

E. Aggregate Cancer Risk for U.S. Population

Lambda-cyhalothrin has been classified by EPA as a Group "D" chemical, "not classifiable as to human carcinogenicity." Therefore, this risk assessment was not conducted.

F. Aggregate Risks and Determination of Safety for Infants and Children

In assessing the potential for additional sensitivity of infants and

children to residues of lambda-cyhalothrin, EPA considered data from developmental toxicity studies in rats and rabbits and a three-generation reproductive toxicity study in rats. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during prenatal development. Reproduction studies provide information relating to pre- and post-natal effects from exposure to the pesticide, information on the reproductive capability of mating animals, and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the no observed effect level (NOEL) in the animal study appropriate to the particular risk assessment. This hundredfold uncertainty (safety) factor is designed to account for inter-species extrapolation and intra-species variability. EPA believes that reliable data support using the standard hundredfold factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard factor.

1. *Developmental toxicity studies.* i. From the developmental toxicity study in rats, the maternal (systemic) NOEL was 10 mg/kg/day. The maternal LEL of 15 mg/kg/day was based on decreased body weight gain and decreased food consumption. The developmental (fetal) NOEL was > 15 mg/kg/day at the highest dose tested (HDT).

ii. From the developmental toxicity study in rabbits, the maternal (systemic) NOEL was 10 mg/kg/day. The maternal LEL of 30 mg/kg/day was based on decreased body weight gain. The developmental (fetal) NOEL was ≧ 30 mg/kg/day (HDT).

2. *Reproductive toxicity study.* From the three-generation reproductive toxicity study in rats, both the parental (systemic) and reproductive (pup) NOEL's were 1.5 mg/kg/day. Both the parental (systemic) and reproductive (pup) LEL's were 5 mg/kg/day. They were based on a significant decrease in parental body weight (systemic) or a significant decrease in pup body weight.

3. *Pre- and post-natal sensitivity.* The toxicology data base for lambda-cyhalothrin is complete with respect to current toxicological data requirements. There are no pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the three-generation reproductive toxicity study in rats. Based on the above, EPA concludes that reliable data support the use of the standard hundredfold margin of uncertainty factor and that an additional uncertainty factor is not warranted at this time.

4. *Acute risk.* The aggregate acute MOE calculated at the 99.9th percentile for non-nursing infants < 1 year old is 138. In a conservative policy, the Agency has no cause for concern if total acute exposure calculated for the 99.9th percentile yields a MOE of 100 or larger. Therefore, the Agency has no acute aggregate concern due to exposure to lambda-cyhalothrin.

5. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to lambda-cyhalothrin from food will utilize 19.2 percent of the RfD for children 1-6 years. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to lambda-cyhalothrin residues.

6. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background level) plus short-term and intermediate term residential exposure. The aggregate MOE was estimated to be 6,300 for children 1-6 years old, and 6,800 for infants < 1 year old. EPA concludes that the aggregate short- and intermediate-term risks do not exceed levels of concern, and that there is reasonable certainty that no harm will result from aggregate exposure to lambda-cyhalothrin residues.

G. Endocrine Disruption

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect on humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect***." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing screening and testing programs and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and enduse products for endocrine disrupter effects.

III. Other Considerations

A. Metabolism in Plants and Animals

The metabolism of lambda-cyhalothrin in plants and animals is adequately understood for the purposes of these tolerances. EPA has determined that plant and animal metabolites do not need to appear in the tolerance expression at this time. The residues to be regulated are lambda-cyhalothrin and its epimer as specified in 40 CFR 180.438.

B. Analytical Methodology

There is a practical analytical method available for determination of residues of lambda-cyhalothrin and its epimer. Adequate enforcement methodology (gas chromatography/electron capture detector) for plant and animal commodities is available to enforce the tolerances. EPA will provide information on this method to FDA. In the interim, the analytical method is available to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm. 119FF, Jefferson Davis hwy., Arlington, VA 22202, 703–305–5805.

C. Magnitude of Residues

Field residue data reflecting the application of lambda-cyhalothrin to alfalfa, leaf lettuce, and Brassica subgroup crops are acceptable in quantity, quality and location to support the proposed tolerances. Based on the transfer of residues from a worst-case diet consisting of various animal feed items containing residues of lambda-cyhalothrin and its epimer, the existing tolerances for meat, milk, poultry and eggs are acceptable, with the exception of poultry fat. An increase in the poultry

fat tolerance from 0.01 ppm to 0.03 ppm is needed.

D. International Residue Limits

No Codex maximum residue levels (MRLs) for residues of lambda-cyhalothrin have been established for alfalfa, leaf lettuce, or brassica subgroup crops. Mexico has not established MRLs for residues of lambda-cyhalothrin. Canada has established tolerances for residues of lambda-cyhalothrin on broccoli and cabbage at 0.4 ppm, which are the same levels as the U.S. tolerance.

IV. Conclusion

Therefore, as set forth in this document, tolerances are established for lambda-cyhalothrin and its epimer in or on alfalfa forage at 5.0 ppm; alfalfa hay at 6.0 ppm; leaf lettuce at 2.0 ppm; brassica head and stem subgroup (broccoli, Chinese broccoli, Brussels sprouts, cabbage, Chinese (napa) cabbage, Chinese mustard, cauliflower, caval broccolo, and kohlrabi) at 0.4 ppm; "aspirated grain fractions" at 2.0 ppm; and the tolerance for poultry fat is increased from 0.01 ppm to 0.03 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by April 14, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300608] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report

containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 29, 1998.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I, part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.438, the table to paragraph (a)(1) is amended by adding entries for alfafa forage; alfalfa hay; aspirated grain fractions; brassica, head and stem subgroup; lettuce, leaf; by revising the entries for poultry, fat; and by removing the entries for sorghum, grain dust; and wheat, grain dust, and broccoli and cabbage, to read as follows:

§ 180.438 Lambda-cyhalothrin; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
Alfalfa, forage,	5.0
Alfalfa, hay	6.0
Aspirated grain fractions	2.0
Brassica, head and stem subgroup,.	0.4
* * * * *	
Lettuce, leaf	2.0
* * * * *	
Poultry Fat	0.03
* * * * *	

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[FR Doc. 98–3751 Filed 2–12–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300617; FRL–5771–1]

RIN 2070–AB78

Benoxacor; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of benoxacor (4-(dichloroacetyl)-3,4-dihydro-3-methyl-2*H*-1,4-benzoxazine at 0.01 part per million (ppm) when used as an inert ingredient (safener) in pesticide formulations containing metolachlor in or on raw agricultural commodities for which tolerances have been established for metolachlor. It also removes time limitations for residues of benoxacor on the same commodities that expire on February 14, 1998. Novartis Crop Protection, Incorporated requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170).

DATES: This regulation is effective February 13, 1998. Objections and requests for hearings must be received by EPA on or before April 14, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300617], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300617], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300617]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Kerry B. Leifer, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 4W17, Crystal Station #1, 2800 Crystal Drive, Arlington, VA, (703) 308-8811, e-mail: leifer.kerry@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 30, 1992 (57 FR 29031), EPA established time-limited tolerances under section 408 of the FFDCA 21 U.S.C. 346a(d) for residues of benoxacor at 0.01 ppm when used as an inert ingredient (safener) in pesticide formulations containing metolachlor in or on raw agricultural commodities for which tolerances have been established for metolachlor. These time-limited tolerances expired on December 1, 1996. In the **Federal Register** of November 5, 1996 (61 FR 56954) (FRL–5572–8), EPA issued a notice pursuant to section 408 of FFDCA 21 U.S.C. 346a(e) announcing the filing of pesticide petition (PP7E3489) for tolerances by Novartis Crop Protection, Incorporated, P.O. Box 18300, Greensboro, NC 27419. This notice included a summary of the petition prepared by Novartis, the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.460 be amended to extend the time-limited tolerances for residues of benoxacor at 0.01 ppm when used as an inert ingredient (safener) in pesticide formulations containing metolachlor in or on raw agricultural commodities for which tolerances have been established for metolachlor from December 1, 1996, to December 1, 1998. On February 21, 1997 (62 FR 7941) (FRL–5583–4), EPA established time-limited tolerances for benoxacor at 0.01 ppm when used as an inert ingredient (safener) in pesticide formulations containing metolachlor in or on raw agricultural commodities for which tolerances have been established for metolachlor with an expiration date of February 14, 1998.

In the **Federal Register** of November 21, 1997 (62 FR 62304) (FRL–5755–4), EPA issued a notice pursuant to section 408 of FFDCA 21 U.S.C. 346a(e) announcing the filing of pesticide petition (PP7E3489) for tolerances by Novartis Crop Protection, Incorporated (formerly Ciba Crop Protection), P.O. Box 18300, Greensboro, NC 27419. This notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

The petition requested that the time limitation for tolerances established for residues of benoxacor at 0.01 ppm when used as an inert ingredient (safener) in pesticide formulations containing metolachlor in or on raw agricultural commodities for which tolerances have been established for metolachlor be removed based upon the chronic toxicity and oncogenicity data submitted as a condition of registration.

The basis for the time-limited tolerances that expire February 14, 1998, was given in the February 21, 1997 issue of the **Federal Register** (62 FR 7941). These time-limited tolerances were predicated on the expiration of pesticide product registrations that were made conditional due to the lack of certain chronic/oncogenicity data. The rationale for using time-limited tolerances was to encourage pesticide manufacturers to comply with the conditions of registration in a timely manner. There is no regulatory requirement to make tolerances time-limited due to the conditional status of a product under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. It is current EPA policy to no longer establish time limitations on tolerances if none of the conditions of registration have any bearing on human dietary risk. The current petition action meets that condition and thus the expiration dates associated with the crop tolerances are being deleted.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because

of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children.The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup, non-nursing infants less than one year old, was not regionally based.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of benoxacor and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of benoxacor when used as an inert ingredient (safener) in pesticide formulations containing metolachlor in or on raw agricultural commodities for which tolerances have been established for metolachlor at 0.01 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by benoxacor are discussed below.

1. *Acute toxicity.* A rat acute oral study with an LD_{50} >5,000 milligram/kilogram (mg/kg), a rabbit acute dermal study with an LD_{50} >2,010 mg/kg, a rat inhalation study with an LC_{50} >2,000 mg/liter, a primary eye irritation study in the rabbit showing moderate eye irritation, a primary dermal irritation study in the rabbit showing benoxacor is not a skin irritant, and a skin sensitization study which showed benoxacor to be a skin sensitizer in the Guinea pig. Results of a dermal absorption study show a maximum of 55.7% of benoxacor is absorbed by the rat following a 24-hour dermal exposure.

2. *Genotoxicity.* Benoxacor did not induce point mutations in vitro at limit (cytotoxic) concentrations in a *Salmonella* /mammalian microsome test or show any mutagenic activity in the Chinese hamster V79 mammalian point mutation test and is neither clastogenic nor aneugenic in the Chinese hamster at doses up to the limit dose of 5,000 mg/kg. Benoxacor did not induce unscheduled DNA synthesis in isolated rat hepatocytes at cytotoxic concentrations up to 20 micrograms/ml.

3. *Subchronic toxicity*—i. *Dogs.* In a subchronic feeding study in dogs (5 dogs/sex/dose), benoxacor was administered at doses of 0, 0.25, 1, 5, 50, 150, or 400 milligram/kilograms/day (mg/kg/day) for 90 days. The NOEL was 5 mg/kg/day and the lowest observed effect level (LOEL) 50 mg/kg/day based on increased liver and gallbladder weights.

ii. *Mice.* In a subchronic feeding study, CD-1 mice were administered dietary concentrations of 0, 50, 500, 2,000, and 6,000 ppm (approximately 0, 7.14, 70.7, 290, and 1,100 mg/kg/day for males and 0, 9.53, 99.8, 382, and 1,470 mg/kg/day for females) of benoxacor for 13 weeks. The systemic toxicity NOEL was 500 ppm (70.7 and 99.8 mg/kg/day in males and females respectively) and the systemic toxicity LOEL was 2,000 ppm (290 and 382 mg/kg/day in males and females respectively) based on increased incidence of renal cortex fibrosis and calcifications in males, and increases in water consumption, platelet counts, and liver and kidney weights in both males and females.

iii. *Rats.* In a subchronic feeding study in rats, six groups of 15 male and 15 female Sprague Dawley rats were fed benoxacor at dietary concentrations of approximately 0, 0.5, 5, 15, 50, or 300 mg/kg/day for 13 weeks. The NOEL was 5 mg/kg/day and the LOEL was 15 mg/kg/day based on increased incidence of kidney nephrosis.

4. *Dermal toxicity study.* In a 21-day dermal toxicity study, benoxacor was repeatedly applied daily to the shaved skin of 5 male and 5 female New Zealand white rabbits at dose levels of 0, 1, 500, or 1,010 mg/kg for 6/hours/day . The NOEL was >1,010 mg/kg/day.

5. *Developmental toxicity study*—i. *Rabbits.* In an oral developmental toxicity study, rabbits were administered benoxacor at doses of 0, 0.5, 2.5, 12.5,and 62.5 mg/kg/day. The systemic maternal NOEL was 12.5 mg/kg/day and the systemic maternal LOEL was 62.5 mg/kg/day based on decreased consumption values. The developmental toxicity NOEL was 12.5 mg/kg/day and the developmental toxicity LOEL was 62.5 mg/kg/day based on increased frequency of vertebral anomalies with or without associated rib anomalies.

ii. *Rats.* In an oral developmental toxicity study, rats were administered benoxacor at doses of 0, 1, 100, and 400 mg/kg/day. The systemic maternal NOEL was 100 mg/kg/day and the systemic maternal LOEL was 400 mg/kg/day based on increased maternal gross pathology findings, and decreased body weight gain. The developmental toxicity NOEL was 100 mg/kg/day and the developmental toxicity LOEL was 400 mg/kg/day based on decreased fetal weight, number of live fetuses, decreased uterine weight and increased early resorptions, and fetal visceral variations, malformations, and skeletal variations.

6. *Reproductive toxicity study.* In a two-generation reproduction study, Sprague-Dawley rats were fed in the diet with benoxacor at doses of 0, 10, 50, 100, 500, and 1,000 ppm for two generations. For parental/systemic toxicity, the NOEL was 50 ppm (3.55 mg/kg/day in the male and 4.51 mg/kg/day in the females) and the LOEL was 500 ppm (34.84 mg/kg/day in males and 41.21 mg/kg/day in females) based on decreased body weight and body weight gain in both sexes and both generations. For reproductive toxicity the NOEL was 50 ppm (3.55 mg/kg/day in the male and 4.51 mg/kg/day in the female) and the LOEL was 500 ppm (34.84 mg/kg/day in males,and 41.21 mg/kg/day in females) based on decreased pup body weight on lactation day 21 in both generations.

7. *Chronic toxicity study.* In a 52-week feeding study, benoxacor was administered orally to male and female beagle dogs (4/sex/group) at doses of 0, 1, 5, 40, or 80 mg/kg/day. The NOEL was 5 mg/kg/day and the LOEL was 40 mg/kg/day based upon decreases in mean body weight gain in males and increases in adjusted liver and kidney weights and increased lipofuscin deposition in the kidney in both sexes.

8. *Carcinogenicity study.* In a carcinogenicity study, CD-1 mice were fed benoxacor (50/sex/group) at dietary levels of 0, 10, 30, 600, and 1,200 ppm (0, 1.2, 3.7, 75, and 167 mg/kg/day for males and 0, 1.6, 4.7, 93, and 201 mg/kg/day for females) for 18 months. There was evidence of carcinogenicity at the two highest doses tested. Statistically ($p<0.05$) significant increases of squamous cell papillomas and combined papillomas/carcinomas were seen in the nonglandular stomach (forestomach) in both sexes at the highest dose tested. There were also statistically significant positive trends for carcinomas in male mice and for papillomas and combined papilloma/carcinoma in both sexes. For chronic toxicity, the NOEL was 30 ppm (3.7 mg/kg/day and 4.7 mg/kg/day in males and females, respectively) and the systemic LOEL was 600 ppm (75 mg/kg/day and 93 mg/kg/day in males and females, respectively) based on increased liver/body weight ratios in both sexes. The NOEL for mouse forestomach tumors was 3.7 mg/kg/day in males and 4.7 mg/kg/day in females with tumors occurring at 75 and 93 mg/kg/day in males and females. Dosing was considered adequate to assess the carcinogenic potential of benoxacor based on body weight reduction in males, treatment-related increased liver/body weight ratios in both sexes, and other treatment-related increased incidences of tumor and nontumor findings in the forestomach.

9. *Chronic/oncogenicity study.* In a combined chronic/oncogenicity study, Crl:CD BR rats (70 /sex/group) were fed benoxacor dosed at dietary levels of 0, 10, 50, 500, and 1,000 ppm (0, 0.4, 2.0, 20.6, and 41 mg/kg/day for males and 0, 0.6, 2.8, 28.2, and 59 mg/kg/day for females) for two years. Statistically significant ($p<0.01$) increasing trends were seen in male rats for forestomach squamous cell papillomas and papillomas and/or carcinomas combined. There was also a statistically significant ($p<0.05$) increasing trend for forestomach squamous cell carcinomas in male rats. There were significant differences in the pair-wise comparisons of the male high-dose group with the controls for forestomach squamous cell papillomas ($p<0.05$) and for papillomas and/or carcinomas combined ($p<0.01$). Statistically significant ($p<0.01$) increasing trends, and differences in the pair-wise comparisons of the high-dose group with the controls, were seen in female rats for forestomach squamous cell papillomas and papillomas and/or carcinomas combined. For chronic toxicity, the NOEL was 10 ppm (0.4 mg/kg/day and 0.6 mg/kg/day in males and females, respectively) and the systemic LOEL is 50 ppm (2.0 mg/kg/day in males) based on centrolobular hepatic enlargements with or without hepatocytic vacuolation in male rat livers. At a dose level of 2.6 mg/kg/day, hyperkeratosis of the forestomach in females was observed. The NOEL for rat forestomach tumors was 20.6 mg/kg/day in males and 28.2 in females with tumors occurring at 41 and 59 mg/kg/day in males and females.

B. Toxicological Endpoints

1. *Acute toxicity.* An acute dietary risk assessment for the general population, including infants and children, is not required because no treatment-related effects attributable to a single exposure (dose) were seen in oral studies conducted with benoxacor.

2. *Short- and intermediate-term toxicity.* A short- and intermediate-term risk assessment is not required for benoxacor. There was no systemic toxicity at 1,010 mg/kg/day (highest dose tested) in a 21-day dermal toxicity study in rabbits.

3. *Chronic toxicity.* EPA has established the RfD for benoxacor at 0.004 mg/kg/day. This RfD is based on a 2-year feeding study in rats with a NOEL of 0.4 mg/kg/day. An uncertainty factor of 100 was used in calculating the RfD to account for interspecies extrapolation and intra-species variability.

4. *Carcinogenicity.* EPA's Health Effects Division Carcinogenicity Peer Review Committee (CPRC) has determined that, in accordance with the EPA proposed Guidelines for Carcinogenic Risk Assessment (April 23, 1996), benoxacor's carcinogenic potential be characterized as "cannot be determined, but suggestive" based on increases in forestomach tumors in both sexes of mice and rats. The consensus of the CPRC was that these tumors have little or no relevance to humans. For cancer risk assessment purposes, the CPRC recommended using a threshold (MOE) approach based on the most sensitive precursor forestomach lesions. It was further recommended that the NOEL for rat forestomach lesions of 0.4 mg/kg/day be used as the point of departure for MOE calculations.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.460) for the residues of benoxacor in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to

assess dietary exposures and risks from benoxacor as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. Since there are no acute toxicological concerns for benoxacor, an acute dietary risk assessment was not required.

ii. *Chronic exposure and risk.* For the purpose of assessing chronic dietary exposure from benoxacor, EPA considered the proposed benoxacor tolerance of 0.01 ppm and the raw agricultural commodities for which tolerances have been established for metolachlor. There are no other established U.S. tolerances for benoxacor, and there are no other registered uses for benoxacor on food or feed crops in the United States. In conducting this exposure assessment, EPA assumed tolerance level residues and 100% crop treated, resulting in a large overestimation of dietary exposure and protective of any chronic dietary exposure scenario. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Review of this regional data allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Based on the chronic dietary exposure TMRC's of 0.000205 mg/kg/day for the U.S. population and 0.000828 mg/kg/day for the most highly exposed population subgroup (non-nursing infants less than one year old), this chronic dietary risk assessment resulted in the use of 5.13% of the RfD for the U.S. population and 20.7% of the RfD for the most highly exposed population subgroup. A cancer dietary MOE was calculated to be 1,950.

2. *From drinking water.* For the purposes of assessing chronic exposure in drinking water, EPA has considered the registered uses and the available data on persistence and mobility for benoxacor. The Agency has determined through a qualitative risk assessment that the physical and chemical characteristics of benoxacor are such that it is not expected to impact water resources. While benoxacor is mobile, it is not persistent (half-life in soil of 49 days under aerobic conditions and 70 days anaerobically). In light of these findings, EPA believes that benoxacor's use will not impact ground water or surface water resources, and therefore, is not expected to lead to exposure to humans through drinking water. If new uses are added in the future, OPP will reassess the potential impacts of benoxacor on drinking water as a part of the aggregate risk assessment process.

3. *From non-dietary exposure.* All registered metolachlor products to which benoxacor is added as a safener are commercial agricultural products not registered for residential use. The potential for non-occupational exposure to benoxacor by the general population is therefore unlikely except for the potential residues in food crops discussed above.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether benoxacor has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, benoxacor does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that benoxacor has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Since there are no acute toxicological concerns for benoxacor, EPA has no cause for concern for acute aggregate exposure.

2. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate chronic exposure to benoxacor from food and water will utilize 5.13% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants less than one year old (utilizing 20.7% of the RfD). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to benoxacor residues.

E. Aggregate Cancer Risk for U.S. Population

The carcinogenic risk from food uses of benoxacor for the general U.S. population was calculated by comparing the dietary exposure from benoxacor to the NOEL identified for use with the cancer risk assessment. Based on the NOEL selected by the CPRC for cancer risk characterization of 0.4 mg/kg/day, the cancer risk was estimated to result in a MOE of 1,950 contributed through all the published, pending and new uses for benoxacor. Based upon the extreme conservatism of the dietary exposure estimates and the fact that tumors were

observed only at dose levels far in excess of the selected NOEL, this MOE is at a level which the Agency does not consider raising a concern for excess lifetime cancer.

F. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—*i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of benoxacor, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pestfcide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the NOEL in the animal study appropriate to the particular risk assessment. This 100–fold uncertainty (safety) factor/MOE (safety) is designed to account for inter-species extrapolation and intra-species variability. EPA believes that reliable data support using the 100–fold uncertainty factor rather than the 1,000–fold margin/factor, when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children, the potency or unusual toxic properties of a compound, or the quality of the exposure data do not raise concerns regarding the adequacy of the standard margin/factor.

ii. *Developmental toxicity studies.* See Toxicological Profile in Unit II.A. of this preamble.

iii. *Reproductive toxicity study.* See Toxicological Profile in Unit II.A. of this preamble.

iv. *Pre- and post-natal sensitivity.* There is no evidence of increased sensitivity to young rats or rabbits following pre- or post-natal exposure to benoxacor.

v. *Conclusion.* The toxicological data base for evaluating pre- and post-natal toxicity for benoxacor is complete with respect to current data requirements. Because both developmental and reproductive effects occurred in the presence of parental (systemic) toxicity, these data do not suggest an increased pre- or post-natal sensitivity of children and infants to benoxacor exposure. Based on the above, EPA concludes that reliable data support use of a 100–fold MOE/uncertainty factor, rather than the standard 1,000–fold margin/factor to protect infants and children. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to benoxacor residues.

2. *Acute risk.* Since there are no acute toxicological concerns for benoxacor, EPA has no cause for concern for acute aggregate exposure.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to benoxacor from food will range from 3.69% of the RfD for females 13+ years, to 20.7% of the RfD for non-nursing infants less than one year old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to benoxacor residues.

4. *Cancer risk.* Carcinogenic risk to infants and children from food uses of benoxacor is addressed under Aggregate Cancer Risk for U.S. Population under Unit II.E. of this preamble.

III. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of benoxacor in plants and animals is adequately understood for purposes of these tolerances.

B. Analytical Enforcement Methodology

Adequate enforcement methodology, GC/NPD, is available to enforce the tolerance expression. An analytical methodology for the determination of benoxacor and its metabolites in plant and animal commodities (Ciba Analytical Method AG536(C)) is available from: Calvin Furlow, Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 119FF, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305-5229.

C. Magnitude of Residues

The magnitude of the residue in plants is adequately understood for the purposes of these tolerances.

D. International Residue Limits

No Codex Maximum Residue Levels have been established for residues of benoxacor on commodities for which a tolerance for metolachlor exist.

IV. Conclusion

Therefore, the tolerances are established for benoxacor (4-(dichloroacetyl)-3,4-dihydro-3-methyl-2*H*-1,4-benzoxazine) at 0.01 ppm when used as an inert ingredient (safener) in pesticide formulations containing metolachlor in or on raw agricultural commodities for which tolerances have been established for metolachlor.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by April 14, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's

contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300617] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels, or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. *801 et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 10, 1998.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.460 is revised to read as follows:

§ 180.460 Benoxacor; tolerances for residues.

(a) *General* . Tolerances are established for residues of the inert ingredient (safener) benoxacor (4-(dichloroacetyl)-3,4-dihydro-3-methyl-2*H*-1,4-benzoxazine) at 0.01 ppm when used in pesticide formulations containing metolachlor in or on raw agricultural commodities for which tolerances have been established for metolachlor.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 98–3750 Filed 2–12–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300540A; FRL–5769–2]

2070–AB78

Vinclozolin; Revocation of Certain Tolerances

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final rule.

SUMMARY: EPA is revoking the tolerances for residues of the pesticide vinclozolin in or on the raw agricultural commodities tomatoes, plums, prunes, grapes (other than wine grapes), and the food additive tolerances for prunes and raisins. EPA is revoking these tolerances because the uses associated with them have been voluntarily deleted from vinclozolin labels.

DATES: This regulation becomes effective February 13, 1998. Written objections and requests for hearings must be received on or before April 14, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300540A], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300540A], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300540A]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Mark Wilhite, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Special Review Branch, Crystal Station #1, 3rd floor, 2800 Crystal Drive, Arlington, VA 22202, telephone: (703) 308–8029; e-mail: wilhite.mark@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Vinclozolin (trade names Ronilan, Curalan, and Ornilan) is a fungicide first registered in 1981 to control various types of rot caused by *Botrytis spp., Sclerotinia spp*, and other types of mold and blight causing organisms, on strawberries, lettuce (all types), stonefruit, grapes, raspberries, onions, succulent beans, and turf in golf courses, commercial and industrial sites. Vinclozolin is also registered for use on ornamentals in green houses and nurseries.

II. Legal Authority

The Federal Food, Drug, and Cosmetic Act (FFDCA, 21 U.S.C. 301 et seq., as amended by the Food Quality Protection Act of 1996 (FQPA), Pub. L. 104–170) authorizes the establishment of tolerances (maximum residue levels), exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods pursuant to section 408 (21 U.S.C. 346(a), as amended). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA, and hence may not legally be moved in interstate commerce (21 U.S.C. 342). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136 et seq.).

III. Regulatory Background

In May 1997, when BASF requested amendment of its labels to include a use for succulent beans, BASF also requested deletion of several food and non-food uses from its vinclozolin registrations. These deletions were announced in the **Federal Register** Notice of August 13, 1997 (62 FR 43327)(FRL–5736–2). Since no comments were received they became effective on September 13, 1997. The proposal to revoke the tolerances for the pesticide vinclozolin on the raw agricultural commodities tomatoes, plums, prunes, grapes (other than wine grapes), the food additive tolerances for prunes and raisins, and the animal feed tolerance for dry grape pomace was published on August 27, 1997 (62 FR 45377)(FRL–5739–6). EPA proposed these revocations because it is EPA's general practice to revoke tolerances where the associated pesticide use has been deleted from all FIFRA labels. See 40 CFR 180.32(b).

In response to the proposal to revoke these tolerances, EPA received one comment from the California Environmental Protection Agency on behalf of the States FIFRA Issues Research and Evaluation Group (SFIREG). These comments are located in the OPP Docket under docket number OPP–300540. The commenter pointed out that EPA had not established a deadline for use of existing stocks of product labeled for the deleted uses, other than exhaustion of supplies, but had indicated that it intends to publish its final revocation notice relatively soon after the proposal was published. The commenter noted that this short time frame for final revocation would not allow for exhaustion of existing stocks, since the residues on these commodities which were treated with existing stocks after the revocation date would not be legal, but would be considered adulterated by FDA or states which have residue monitoring programs. In an earlier inquiry about this discrepancy, the commenter had been told by the Agency that it was using section 408(l)(5) to allow product in the channels of trade to be used legally, under the existing stocks provision, even if the use was after the tolerance has been revoked. Further, the commenter pointed out, these upcoming actions should be better communicated to the states and other interested parties so that they can prepare their laboratories and authorities for their implementation. The commenter suggested that the Agency's home page on the internet present up to date information.

In response to these comments, the Agency agrees that it should have, in this case, established a formal date for exhaustion of existing stocks in the original use deletion notice (62 FR

43327). After conferring again with BASF about the status of the products with these deleted uses for which tolerances are being revoked and examining its registration records, the Agency believes that there is no product in the channels of trade which bears labeling allowing its use on either tomatoes, plums, prunes or table grapes, since tomatoes and grapes were never registered in the United States, and plums and prunes were removed from the product labels by BASF in 1991. Accordingly, the tolerances may be revoked with little chance that legal use of existing stocks will occur, since these uses have not been in the channels of trade for many years and it is therefore unlikely that it is still in the hands of end-users. Therefore, EPA believes it should proceed with the revocation of tolerances, but in future, a more concentrated effort to alert states, through its home page on the internet or other means, will be made as well as by providing a precise date for exhaustion of existing stocks before proceeding with final revocation of tolerances. In addition, EPA would like to clarify its interpretation of section 408(l)(5) of the FFDCA.That section states:

Notwithstanding any other provision of this Act, if a tolerance or exemption for a pesticide chemical residue is revoked, suspended or modified under this section, an article of food shall not be deemed unsafe solely because of the presence of such pesticide chemical residue in or on such food if it is shown...(A) the residue is present as the result of an application or use of a pesticide at a time and in manner that was lawful under the Federal Insecticide, Fungicide, and Rodenticide Act; and (B) the residue does not exceed a level that was authorized at the time of that application or use to be present on the food under a tolerance ***

This provision legalizes pesticide residues of cancelled pesticides if both the use under FIFRA was legal (e.g. because applied in accordance with an existing stocks provision) and the treatment occured before revocation of the tolerance. If use occurs after revocation of the tolerance, this provision does not apply.

IV. Regulatory Assessment Requirements

This is a final revocation of a tolerance established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require special OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. The factual basis and the Agency's certification under section 605(b) for tolerance revocations published on December 17, 1997 (62 FR 66020)(FRL–5753–1), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Since no extraordinary circumstances exist as to the present revocation that would change EPA's previous analysis, the Agency is able to reference the general certificatio

V. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2)."

VI. Objections and Hearing Request

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person adversely affected by this regulation may, by April 14, 1998, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control [OPP–300540A] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Recoreds Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 3, 1998.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.380 is amended by revising paragraph (a) to read as follows:

§ 180.380 Vinclozolin; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the fungicide vinclozolin (3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione) and its metabolites containing the 3,5-dichloroaniline moiety in or on the food commodities in the table below. There are no U.S. registrations for Belgian endive, tops, cucumbers, grapes (wine), kiwi, pepper (bell) as of July 30, 1997. The tolerances will expire and are revoked on the date(s) listed in the following table:

Commodity	Parts per million	Expiration/ Revocation Date
Beans, succulent	2.0	10/1/99
Belgian endive, tops	5.0	None
Cucumbers	1.0	None
Grapes, (wine)	6.0	None
Kiwifruit	10.0	None
Lettuce, head	10.0	None
Lettuce (leaf)	10.0	None
Onions (dry bulb)	1.0	None
Peppers (bell)	3.0	None
Raspberries	10.0	None
Stonefruits, except plums/fresh prunes	25.0	None
Strawberries	10.0	None

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[FR Doc. 98–3748 Filed 2–12–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–47; RM–8992]

Radio Broadcasting Services; Westley, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 238A to Westley, California, as that community's first local aural transmission service, in response to a petition filed on behalf of Westley-Grayson Broadcasting Company. *See* 62 FR 6927, February 14, 1997. Coordinates used for Channel 238A at Westley are 37–28–13 and 121–11–14. With this action, the proceeding is terminated.

DATES: *Effective March 23, 1998.* A filing window for Channel 238A at Westley, California, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a separate Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–47, adopted January 28, 1998, and released February 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Westley, Channel 238A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–3736 Filed 2–12–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 231

[DFARS Case 97–D313]

Defense Federal Acquisition Regulation Supplement; Restructuring Costs

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8092 of the National Defense Appropriations Act for Fiscal Year 1998 and Section 804 of the National Defense Authorization Act for Fiscal Year 1998 concerning the reimbursement of external restructuring costs associated with a business combination.

DATES: *Effective date:* February 13, 1998.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before April 14, 1998, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfarsacq.osd.mil

Please cite DFARS Case 97–D313 in all correspondence related to this issue. E-mail comments should cite DFARS Case 97–D313 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberlin, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS 231.205–70, External restructuring costs, to implement Section 8092 of the National Defense Appropriations Act for Fiscal Year 1998 (Public Law 105–56), and Section 804 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85).

Section 8092 of Pub. L. 105–56 restricts DoD form using fiscal year 1998 funds to reimburse external restructuring costs associated with a business combination undertaken by a defense contractor unless certain conditions are met. These conditions include that either (1) the audited savings for DoD resulting from the restructuring will exceed the costs allowed by a factor of at least two to one; or (2) the savings for DoD resulting from the restructuring will exceed the costs allowed and the Secretary of Defense determines that the business combination will result in the preservation of a critical capability that might otherwise be lost to DoD.

Section 804 of Pub. L. 105–85 (1) specifies that similar conditions be met before DoD reimburses contractors for restructuring costs; (2) codifies this limitation on payment of restructuring costs under defense contracts at 10 U.S.C. 2324; and (3) repeals Section 818(a) of the National Defense Authorization Act for Fiscal Year 1995 (10 U.S.C. 2324 note). Section 818(a) required an official of DoD at the level of Assistant Secretary of Defense or above to certify in writing that projections of future cost savings resulting from the business combination were based on audited cost data and should result in overall reduced costs to DoD, prior to DoD reimbursing contractors for restructuring costs.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-price basis, and do not require application of the cost principle contained in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97–D313 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This rule implements Section 8092 of the National Defense Appropriations Act for Fiscal Year 1998 (Pub. L. 105–56), which was effective upon enactment on October 8, 1997; and Section 804 of the National Defense Authorizations Act for Fiscal Year 1998 (Pub. L. 105–85), which was effective upon enactment on November 18, 1997. These sections restrict the reimbursement of restructuring costs associated with a business combination of a defense contractor unless certain conditions are met. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 231

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 231 is amended as follows:

1. The authority citation for 48 CFR part 231 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 231.205–70 is revised to read as follows:

231.205–70 External restructuring costs.

(a) *Scope.* This subsection prescribes policies and procedures for allowing contractor external restructuring costs when savings would result for DoD. This subsection also implements 10 U.S.C. 2325, Section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337) (10 U.S.C. 2324 note), Section 8115 of the National Defense Appropriations Act for Fiscal Year 1997 (Pub. L. 104–208), and Section 8092 of the National Defense Appropriations Act for Fiscal Year 1998 (Pub. L. 105–56).

(b) *Definitions.* As used in this subsection:

(1) *Business combination* means a transaction whereby assets or operations of two or more companies not previously under common ownership or control are combined, whether by merger, acquisition, or sale/purchase of assets.

(2) *External restructuring activities* means restructuring activities occurring after a business combination that affect the operations of companies not previously under common ownership or control. They do not include restructuring activities occurring after a business combination that affect the operations of only one of the companies not previously under common ownership or control, or, when there has been no business combination, restructuring activities undertaken within one company. External restructuring activities are a direct outgrowth of a business combination. They normally will be initiated within 3 years of the business combination.

(3) *Restructuring activities* means nonroutine, nonrecurring, or extraordinary activities to combine facilities, operations, or workforce, in order to eliminate redundant capabilities, improve future operations, and reduce overall costs. Restructuring activities do not include routine or ongoing repositionings and redeployments of a contractor's productive facilities or workforce (e.g., normal plant rearrangement or employee relocation), nor do they include other routine or ordinary activities charged as indirect costs that would otherwise have been incurred (e.g., planning and analysis, contract administration and oversight, or recurring financial and administrative support).

(4) *Restructuring costs* means the costs, including both direct and indirect, of restructuring activities. Restructuring costs that may be allowed include, but are not limited to, severance pay for employees, employee retraining costs, relocation expense for retained employees, and relocation and rearrangement of plant and equipment. For purposes of this definition, if restructuring costs associated with

external restructuring activities allocated to DoD contracts are less than $2.5 million, the costs shall not be subject to the audit, review, certification, and determination requirements of paragraph (c)(1) of this subsection; instead, the normal rules for determining cost allowability in accordance with FAR part 31 shall apply.

(5) *Restructuring savings* means cost reductions, including both direct and indirect cost reductions, that result from restructuring activities. Reassignments of cost to future periods are not restructuring savings.

(c) *Limitations on cost allowability.* (1) Restructuring costs associated with external restructuring activities shall not be allowed unless—

(i) Such costs are allowable in accordance with FAR part 31 and DFARS part 231;

(ii) An audit of projected restructuring costs and restructuring savings is performed;

(iii) The cognizant administrative contracting officer (ACO) reviews the audit report and the projected costs and projected savings, and negotiates an advance agreement in accordance with paragraph (d)(8) of this subsection; and

(iv) For business combinations that occur—

(A) Prior to October 1, 1996, the Under Secretary of Defense (Acquisition & Technology) or the Principal Deputy certifies that projections of future restructuring savings resulting for DoD from the business combination are based on audited cost data and should result in overall reduced costs for DoD.

(B) October 1, 1996, through November 18, 1997, the Under Secretary of Defense (Acquisition & Technology) or the Principal Deputy—

(1) Certifies that projections of future restructuring savings resulting for DoD from the business combination are based on audited cost data and should result in overall reduced costs for DoD; and

(2) Determines in writing that the audited projected savings for DoD resulting from the restructuring will exceed either—

(i) The costs allowed by a factor of at least two to one; or

(ii) The costs allowed, and the business combination will result in the preservation of a critical capability that might otherwise be lost to DoD.

(C) After November 18, 1997, the Under Secretary of Defense (Acquisition & Technology) or the Principal Deputy determines in writing that the audited projected savings for DoD resulting from restructuring will exceed either—

(1) The costs allowed by a factor of at least two to one; or

(2) The costs allowed, and the business combination will result in the preservation of a critical capability that might otherwise be lost to DoD.

(2) The audit, review, certification, and determination required by paragraph (c)(1) of this subsection shall not apply to any business combination for which payments for restructuring costs were made before August 15, 1994, or for which the cognizant ACO executed an advance agreement establishing cost ceilings based on audit/negotiation of detailed cost proposals for individual restructuring projects before August 15, 1994.

(d) *Procedures and ACO responsibilities.* As soon as it is known that the contractor will incur restructuring costs for external restructuring activities, the cognizant ACO shall:

(1) Promptly execute a novation agreement, if one is required, in accordance with FAR subpart 42.12 and DFARS subpart 242.12 and include the provision at DFARS 242.1204(e).

(2) Direct the contractor to segregate restructuring costs and to suspend these amounts from any billings, final contract price settlements, and overhead settlements until the certification, or determination, or both, as applicable, in paragraph (c)(1)(iv) of this subsection is obtain.

(3) Require the contractor to submit an overall plan of restructuring activities and an adequately supported proposal for planned restructuring projects. The proposal must include a breakout by year by cost element, showing the present value of projected restructuring costs and projected restructuring savings.

(4) Notify major buying activities of contractor restructuring actions and inform them about any potential monetary impacts on major weapons programs, when known.

(5) Upon receipt of the contractor's proposal, as soon as practicable, adjust forward pricing rates to reflect the impact of projected restructuring savings. If restructuring costs are included in forward pricing rates prior to execution of an advance agreement in accordance with paragraph (d)(8) of this subsection, the contracting officer shall include a repricing clause in each fixed-price action that is priced based on the rates. The repricing clause must provide for a downward price adjustment to remove restructuring costs if the certification, or determination, or both, as applicable, required by paragraph (c)(1)(iv) of this subsection is not obtained.

(6) Upon receipt of the contractor's proposal, immediately request an audit review of the contractor's proposal.

(7) Upon receipt of the audit report, determine if restructuring savings will exceed restructuring costs on a present value basis. However, for business combinations that occur on or after October 1, 1996, the audited projected savings for DoD must exceed the costs allowed by a factor of at least two to one on a present value basis, unless the determination in paragraph (c)(1)(iv)(B) *(2)(ii)* or (c)(1)(iv)(C) *(2)* of this subsection applies.

(8) Negotiate an advance agreement with the contractor setting forth, at a minimum, a cumulative cost ceiling for restructuring projects and, when necessary, a cost amortization schedule. The costs may not exceed the amount of projected restructuring savings on a present value basis. The advance agreement shall not be executed until the certification, or determination, or both, as applicable, required by paragraph (c)(1)(iv) of this subsection is obtained.

(9) Submit to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology), ATTN: OUSD (A&T) DP/CPF, a recommendation for certification, or determination, or both, as applicable. Include the information described in paragraph (e) of this subsection.

(10) Consult with the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology), when paragraph (c)(1)(iv)(B) *(2)(ii)* or (c)(1)(iv)(C) *(2)* of this subsection applies.

(e) *Information needed to obtain certification and determination.* (1) The novation agreement (if one is required).

(2) The contractor's restructuring proposal.

(3) The proposed advance agreement.

(4) The audit report.

(5) Any other pertinent information.

(6) The cognizant ACO's recommendation for certification, or determination, or both, as applicable. This recommendation must clearly indicate one of the following, consistent with paragraph (c)(1)(iv) of this subsection:

(i) Contractor projections of future cost savings resulting for DoD from the business combination are based on audited cost data and should result in overall reduced costs for the Department.

(ii) The audited projected savings for DoD will exceed the costs allowed by a factor of at least two to one.

(iii) The business combination will result in the preservation of a critical capability that might otherwise be lost

to DoD, and the audited projected savings will exceed the costs allowed.

[FR Doc. 98–3714 Filed 2–12–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 10

[Docket No. OST–96–1472]

RIN: 2105–AC98

Privacy Act; Implementation

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final regulations [OST–96–1472] which were published on Wednesday, January 28, 1998 (63 FR 4195). The regulations related to implementing the Privacy Act of 1974 to exempt from certain provisions of the Act the Coast Guard's Marine Safety Information System.

DATES: Effective: February 15, 1998.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of General Counsel, C–10, Department of Transportation, Washington, DC 20590, telephone (202) 366–9156, FAX (202) 366–9170.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction amends Title 49 of the Code of Federal Regulations to exempt from certain provisions of the Privacy Act of 1974 the Coast Guard's Marine Safety Information System. This rule has no substantive effect on the regulated public.

Need for Correction

As published, the final regulation contains an incorrect effective date, which is later than the February 15, 1998, statutory deadline for implementing the Coast Guard's new Vessel Identification System (VIS), into which the Coast Guard's Marine Safety Information System is being integrated. This correction will change the date to February 15, 1998.

Correction to Publication

Accordingly, the final regulation [OST–96–1472] published on January 28, 1998, which was the subject of FR Doc. 98–1823, is corrected as follows:

Dates Section [Corrected]

1. On page 4195, in the third column, in the Dates section, "February 27, 1998" is corrected to read "February 15, 1998".

Issued in Washington, DC on February 9, 1998.

Nancy E. McFadden,

General Counsel.

[FR Doc. 98–3770 Filed 2–12–98; 8:45 am]

BILLING CODE [illegible]

NATIONAL RAILROAD PASSENGER CORPORATION

49 CFR Part 701

Revision of the Freedom of Information Act Regulations and Implementation of the Electronic Freedom of Information Act Amendments of 1996

AGENCY: National Railroad Passenger Corporation (Amtrak).

ACTION: Final rule.

SUMMARY: This revision to the rules of the National Railroad Passenger Corporation (Amtrak) provides substantive and administrative changes to conform to requirements of the Electronic Freedom of Information Act Amendments of 1996, 5 U.S.C. 552, as amended by Pub. L. 104–231 and reflects recent developments in case law. Amtrak also took this opportunity to streamline its rules and include updated cost figures to be used in calculating and charging fees.

EFFECTIVE DATE: Effective February 13, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Medaris Oliveri; National Railroad Passenger Corporation; Freedom of Information Office; 60 Massachusetts Avenue, N.E.; Washington, D.C. 20002 or by telephone at 202/906–2728.

SUPPLEMENTARY INFORMATION: On November 14, 1997, the National Railroad Passenger Corporation (Amtrak) published a Notice of Proposed Rulemaking with a Request for Comments, 49 CFR 61070. No responses were received by the comment deadline of December 15, 1997. The purpose of the present rule is to establish the effective date for the final rule using the same text as the proposed rule with a minor change to reflect the current title of Amtrak's President and Chief Executive Officer in paragraph (l) of § 701.2 definitions and in paragraph (a)(2) of § 701.10 appeals.

List of Subjects in 49 CFR Part 701

Freedom of Information.

Accordingly 49 CFR part 701 is revised to read as follows:

PART 701—AMTRAK FREEDOM OF INFORMATION ACT PROGRAM

Sec.

701.1 General provisions.
701.2 Definitions.
701.3 Policy.
701.4 Amtrak public information.
701.5 Requirements for making requests.
701.6 Release and processing procedures.
701.7 Timing of responses to requests.
701.8 Responses to requests.
701.9 Business information.
701.10 Appeals.
701.11 Fees.,
701.12 Other rights and services.

Authority: 5 U.S.C. 552; 49 U.S.C. 24301(e).

§ 701.1 General provisions.

This part contains the rules that the National Railroad Passenger Corporation ("Amtrak") follows in processing requests for records under the Freedom of Information Act (FOIA), Title 5 of the United States Code, section 552. Information routinely provided to the public (*i.e.*, train timetables, press releases) may be obtained without following Amtrak's FOIA procedures. As a matter of policy, Amtrak may make discretionary disclosures of records or information exempt under the FOIA whenever disclosure would not foreseeably harm an interest protected by an FOIA exemption; however, this policy does not create any right enforceable in court.

§ 701.2 Definitions.

Unless the context requires otherwise in this part, masculine pronouns include the feminine gender and "includes" means "includes but is not limited to."

(a) *Amtrak or Corporation* means the National Railroad Passenger Corporation.

(b) *Appeal* means a request submitted to the President of Amtrak or designee for review of an adverse initial determination.

(c) *Business days* means working days; Saturdays, Sundays, and legal public holidays are excluded in computing response time for processing FOIA requests.

(d) *Disclose or disclosure* means making records available for examination or copying, or furnishing a copy of nonexempt responsive records.

(e) *Electronic data* means records and information (including E-mail) that are created, stored, and retrievable by electronic means.

(f) *Exempt information* means information that is exempt from disclosure under one or more of the nine exemptions to the FOIA.

(g) *Final determination* means a decision by the President of Amtrak or

designee concerning a request for review of an adverse initial determination received in response to an FOIA request.

(h) *Freedom of Information Act or "FOIA"* means the statute as codified in section 552 of Title 5 of the United States Code as amended.

(i) *Freedom of Information Officer* means the Amtrak official designated to fulfill the responsibilities of implementing and administering the Freedom of Information Act as specifically designated under this part.

(j) *Initial determination* means a decision by an Amtrak FOIA Officer in response to a request for information under the FOIA.

(k) *Pages* means paper copies of standard office size or the cost equivalent in other media.

(l) *President* means the President and Chief Executive Officer (CEO) of the National Railroad Passenger Corporation (Amtrak) or designee.

(m) *Record* means any writing, drawing, map, recording, tape, film, photograph, or other documentary material by which information is preserved in any format, including electronic format. A record must exist and be in the possession and control of Amtrak at the time of the request to be subject to this part and the FOIA. The following are not included within the definition of the word "record":

(1) Library materials compiled for reference purposes or objects of substantial intrinsic value.

(2) Routing and transmittal sheets, notes, and filing notes which do not also include information, comments, or statements of substance.

(3) Anything that is not a tangible or documentary record such as an individual's memory or oral communication.

(4) Objects or articles, whatever their historical or value as evidence.

(n) *Request* means any request for records made pursuant to 5 U.S.C. 552(a)(3).

(o) *Requester or requesting party* means any person who has submitted a request to Amtrak.

(p) *Responsive records* means documents determined to be within the scope of a FOIA request.

§ 701.3 Policy.

(a) Amtrak will make records of the Corporation available to the public to the greatest practicable extent in keeping with the spirit of the law. Therefore, records of the Corporation are available for public inspection and copying as provided in this part with the exception of those that the Corporation specifically determines should not be disclosed either in the public interest, for the protection of private rights, or for the efficient conduct of public or corporate business, but only to the extent withholding is permitted by law.

(b) A record of the Corporation, or parts thereof, may be withheld from disclosure if it comes under one or more exemptions in 5 U.S.C. 552(b) or is otherwise exempted by law. Disclosure to a properly constituted advisory committee, to Congress, or to federal agencies does not waive the exemption.

(c) In the event one or more exemptions apply to a record, any reasonably segregable portion of the record will be made available to the requesting person after deletion of the exempt portions. The entire record may be withheld if a determination is made that nonexempt material is so inextricably intertwined that disclosure would leave only essentially meaningless words or phrases, or when it can be reasonably assumed that a skillful and knowledgeable person could reconstruct the deleted information.

(d) The procedures in this part apply only to records in existence at the time of a request. The Corporation has no obligation to create a record solely for the purpose of making it available under the FOIA or to provide a record that will be created in the future.

(e) Each officer and employee of the Corporation dealing with FOIA requests is directed to cooperate in making records available for disclosure under the Act in a prompt manner consistent with this part.

(f) The FOIA time limits will not begin to run until a request has been identified as being made under the Act and deemed received by the Freedom of Information Office.

(g) Generally, when a member of the public complies with the procedures established in this part for obtaining records under the FOIA, the request shall receive prompt attention, and a response shall be made within twenty business days.

§ 701.4 Amtrak public information.

(a) *Public reading room.* Amtrak maintains a public reading room at its headquarters at 60 Massachusetts Avenue, N.E. in Washington, D.C. The public reading room contains records required under the FOIA to be regularly available for public inspection and copying. A current subject-matter index shall be maintained of records in the public reading room that are available for inspection and copying. The index shall be updated at least quarterly with respect to newly included records. A copy of the index shall be provided upon request at a cost not to exceed the direct cost of duplication.

(b) *Electronic reading room.* Amtrak will make available electronically reading room records created by the Corporation on or after November 1, 1996 on its World Wide Web site which can be accessed at http://www.Amtrak.com. An index of the Corporation's reading room records will also be made available at the web site. The index will indicate reading room records that are available electronically.

(c) *Frequently requested information.* The FOIA requires that copies of records, regardless of form or format, released pursuant to a FOIA request under 5 U.S.C. 552(a)(3) that have become or are likely to become the subject of subsequent requests for substantially the same records be made publicly available. Such records created by the Corporation after November 1, 1996 will be made available electronically while records created prior to this date will be made available for inspection and copying in Amtrak's public reading room.

(1) Amtrak shall decide on a case-by-case basis whether records fall into the category of "frequently requested FOIA records" based on the following factors:

(i) Previous experience with similar records;

(ii) The nature and type of information contained in the records;

(iii) The identity and number of requesters and whether there is widespread media or commercial interest in the records.

(2) The provision in this paragraph is intended for situations where public access in a timely manner is important. It is not intended to apply where there may be a limited number of requests over a short period of time from a few requesters. Amtrak may remove the records from this category when it is determined that access is no longer necessary.

(d) *Guide for making requests.* A guide on how to use the FOIA for requesting records from Amtrak shall be made available to the public upon request. Amtrak's major information systems will be described in the guide.

§ 701.5 Requirements for making requests.

(a) *General requirements.* (1) A FOIA request can be made by "any person" as defined in 5 U.S.C. 551(2), which encompasses individuals (including foreign citizens; partnerships; corporations; associations; and local, state, tribal, and foreign governments). A FOIA request may not be made by a Federal agency.

(2) A request must be in writing, indicate that it is being made under the FOIA and provide an adequate description of the records sought. The request should also include applicable information regarding fees as specified in paragraphs (d) and (e) of this section.

(b) *How to submit a request.* (1) A request must clearly state on the envelope and in the letter that it is a Freedom of Information Act or "FOIA" request.

(2) The request must be addressed to the Freedom of Information Office; National Railroad Passenger Corporation; 60 Massachusetts Avenue, N.E.; Washington, D.C. 20002. Requests will also be accepted by facsimile at (202) 906–2169. Amtrak cannot assure that a timely or satisfactory response under this part will be given to written requests addressed to Amtrak offices, officers, or employees other than the Freedom of Information Office. Amtrak employees receiving a communication in the nature of a FOIA request shall forward it to the FOIA Office expeditiously. Amtrak shall advise the requesting party of the date that an improperly addressed request is received by the FOIA Office.

(c) *Content of the request.* (1) *Description of records*—Identification of records sought under the FOIA is the responsibility of the requester. The records sought should be described in sufficient detail so that Amtrak personnel can locate them with a reasonable amount of effort. When possible, the request should include specific information such as dates, title or name, author, recipient, subject matter of the record, file designation or number, or other pertinent details for each record or category of records sought.

(2) *Reformulation of a request.* Amtrak is not obligated to act on a request until the requester provides sufficient information to locate the record. Amtrak may offer assistance in identifying records and reformulating a request where: the description is considered insufficient, the production of voluminous records is required, or a considerable number of work hours would be required that would interfere with the business of the Corporation. The Freedom of Information Office shall notify the requester within ten business days of the type of information that will facilitate the search. The requesting party shall be given an opportunity to supply additional information and may submit a revised request, which will be treated as a new request.

(d) *Payment of fees.* The submission of a FOIA request constitutes an agreement to pay applicable fees accessed up to $25.00 unless the requesting party specifies a willingness to pay a greater or lesser amount or seeks a fee waiver or reduction in fees.

(1) *Fees in excess of $25.00.* When Amtrak determines or estimates that applicable fees are likely to exceed $25.00, the requesting party shall be notified of estimated or actual fees, unless a commitment has been made in advance to pay all fees. If only a portion of the fee can be estimated readily, Amtrak shall advise the requester that the estimated fee may be a portion of the total fee.

(i) In order to protect requesters from large and/or unexpected fees, Amtrak will request a specific commitment when it estimates or determines that fees will exceed $100.00.

(ii) A request shall not be considered received, and further processing carried out until the requesting party agrees to pay the anticipated total fee. Any such agreement must be memorialized in writing. A notice under this paragraph will offer the requesting party an opportunity to discuss the matter in order to reformulate the request to meet the requester's needs at a lower cost.

(iii) Amtrak will hold in abeyance for forty-five (45) days requests requiring agreement to pay fees and will thereafter deem the request closed. This action will not prevent the requesting party from refiling the FOIA request with a fee commitment at a subsequent date.

(2) *Fees in excess of $250.* When Amtrak estimates or determines that allowable charges are likely to exceed $250, an advance deposit of the entire fee may be required before continuing to process the request.

(e) *Information regarding fee category.* In order to determine the appropriate fee category, a request should indicate whether the information sought is intended for commercial use or whether the requesting party is a member of the staff of an educational or noncommercial scientific institution or a representative of the news media.

(f) *Records concerning other individuals.* If the request is for records concerning another individual, either a written authorization signed by that individual permitting disclosure of those records to the requesting party or proof that the individual is deceased (i.e., a copy of a death certificate or an obituary) will help to expedite processing of the request.

§ 701.6 Release and processing procedures.

(a) *General provisions.* In determining records that are responsive to a request, Amtrak will ordinarily include only records that exist and are in the possession and control of the Corporation as of the date that the search is begun. If any other date is used, the requesting party will be informed of that date.

(b) *Authority to grant or deny requests.* Amtrak's FOIA officer is authorized to grant or deny any request for records.

(c) *Notice of referral.* If Amtrak refers all or any part of the responsibility for responding to a request to another organization, the requesting party will be notified. A referral shall not be considered a denial of access within the meaning of this part. All consultations and referrals of requests will be handled according to the date that the FOIA request was initially received.

(d) *Creating a record.* There is no obligation on the part of Amtrak to create, compile, or obtain a record to satisfy a FOIA request. The FOIA also does not require that a new computer program be developed to extract the records requested. Amtrak may compile or create a new record, however, when doing so would result in a more useful response to the requesting party or would be less burdensome to Amtrak than providing existing records. The cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee that would be charged for providing the existing record.

(e) *Incomplete records.* If the records requested are not complete at the time of a request, Amtrak may, at its discretion, inform the requester that complete nonexempt records will be provided when available without having to submit an additional request.

(f) *Electronic records.* Amtrak is not obligated to process a request for electronic records where creation of a record, programming or a particular format would result in a significant expenditure of resources or interfere with the corporation's operations.

§ 701.7 Timing of responses to requests.

(a) *General.* (1) The time limits of the FOIA will begin only after the requirements for submitting a request as established in § 701.5 have been met, and the request is deemed received by the Freedom of Information Office.

(2) A request for records shall be considered to have been received on the later of the following dates:

(i) The requester has agreed in writing to pay applicable fees in accordance with § 701.5(d), or

(ii) The fees have been waived in accordance with § 701.11(k), or

(iii) Payment in advance has been received from the requester when required in accordance with § 701.11(i).

(3) The time for responding to requests set forth in paragraph (b) of this section may be delayed if:

(i) The request does not sufficiently identify the fee category applicable to the request;

(ii) The request does not state a willingness to pay all fees;

(iii) A request seeking a fee waiver does not address the criteria for fee waivers set forth in § 701.11(k);

(iv) A fee waiver request is denied, and the request does not include an alternative statement indicating that the requesting party is willing to pay all fees.

(b) *Initial determination.* Whenever possible, an initial determination to release or deny a record shall be made within twenty business days after receipt of the request. In "unusual circumstances" as described in paragraph (d) of this section, the time for an initial determination may be extended for ten business days.

(c) *Multitrack processing.* (1) Amtrak may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process a request or the number of pages involved.

(2) In general, when requests are received, Amtrak's FOIA Office will review and categorize them for tracking purposes. Requests within each track will be processed according to date of receipt.

(3) The FOIA Office may contact a requester when a request does not appear to qualify for fast track processing to provide an opportunity to limit the scope of the request and qualify for a faster track. Such notification shall be at the discretion of the FOIA Office and will depend largely on whether it is believed that a narrowing of the request could place the request on a faster track.

(d) *Unusual circumstances.* (1) The requesting party shall be notified in writing if the time limits for processing a request cannot be met because of unusual circumstances, and it will be necessary to extend the time limits for processing the request. The notification shall include the date by which the request can be expected to be completed. Where the extension is for more than ten business days, the requesting party will be afforded an opportunity to either modify the request so that it may be processed within the time limits or to arrange an alternative time period for processing the initial request or modified request.

(2) If Amtrak believes that multiple requests submitted by a requester or by a group of requesters acting in concert constitute a single request that would otherwise involve unusual circumstances and the requests involve clearly related matters, the requests may be aggregated. Multiple requests concerning unrelated matters may not be aggregated.

(3) Unusual circumstances that may justify delay include:

(i) The need to search for and collect the requested records from other facilities that are separate from Amtrak's headquarters offices.

(ii) The need to search for, collect, and examine a voluminous amount of separate and distinct records sought in a single request.

(iii) The need for consultation, which shall be conducted with all practicable speed, with agencies having a substantial interest in the determination of the request, or among two or more Amtrak components having a substantial subject-matter interest in the request.

(e) *Expedited processing.* (1) Requests and appeals may be taken out of order and given expedited treatment whenever it is determined that they involve a compelling need, which means:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; and

(ii) An urgency to inform the public about an actual or alleged Amtrak activity, if made by a person primarily engaged in disseminating information.

(2) A request for expedited processing may be made at the time of the initial request for records or at a later date.

(3) A requester seeking expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. This statement must accompany the request in order to be considered and responded to within the ten calendar days required for decisions on expedited access.

(4) A requester who is not a full-time member of the news media must establish that he is a person whose main professional activity or occupation is information dissemination, though it need not be his sole occupation. A requester must establish a particular urgency to inform the public about the Amtrak activity involved in the request.

(5) Within ten business days of receipt of a request for expedited processing, Amtrak shall determine whether to grant such a request and notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable.

(6) Amtrak shall provide prompt consideration of appeals of decisions denying expedited processing.

§ 701.8 Responses to requests.

(a) *Granting of requests.* When an initial determination is made to grant a request in whole or in part, the requesting party shall be notified in writing and advised of any fees charged under § 701.11(e). The records shall be disclosed to the requesting party promptly upon payment of applicable fees.

(b) *Adverse determination of requests.* (1) *Types of denials*—The requesting party shall be notified in writing of a determination to deny a request in any respect. Adverse determinations or denials of records consist of:

(i) A determination to withhold any requested record in whole or in part;

(ii) A determination that a requested record does not exist or cannot be located;

(iii) A denial of a request for expedited treatment; and

(iv) A determination on any disputed fee matter including a denial of a request for a fee waiver.

(2) *Deletions.* When practical, records disclosed in part shall be marked or annotated to show both the amount and location of the information deleted.

(3) *Content of denial letter.* The denial letter shall be signed by the Freedom of Information Officer or designee and shall include:

(i) A brief statement of the reason(s) for the adverse determination including any FOIA exemptions applied in denying the request;

(ii) An estimate of the volume of information withheld (number of pages or some other reasonable form of estimation). An estimate does not need to be provided if the volume is indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption;

(iii) A statement that an appeal may be filed under § 701.10 and a description of the requirements of that section; and

(iv) The name and title or position of the person responsible for the denial.

701.9 Business information.

(a) *General.* Business information held by Amtrak will be disclosed under the FOIA only under this section.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Business information* means commercial or financial information

held by Amtrak that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity including partnerships; corporations; associations; and local, state, tribal, and foreign governments.

(c) *Designation of business information.* A submitter of business information will use good faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(d) *Notice to submitters.* Amtrak shall provide a submitter with prompt written notice of an FOIA request or an appeal that seeks its business information when required under paragraph (e) of this section, except as provided in paragraph (h), in order to give the submitter an opportunity to object to disclosure of any specified portion of the information under paragraph (f). The notice shall either describe the business information requested or include copies of the requested records or portions of records containing the information.

(e) *When notice is required.* Notice shall be given to a submitter when:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) Amtrak has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* Amtrak will allow a submitter a reasonable amount of time to respond to the notice described in paragraph (d) of this section.

(1) A detailed written statement must be submitted to Amtrak if the submitter has any objection to disclosure. The statement must specify all grounds for withholding any specified portion of the information sought under the FOIA. In the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential.

(2) In the event that a submitter fails to respond within the time specified in the notice, the submitter will be considered to have no objection to disclosure of the information sought under the FOIA.

(3) Information provided by a submitter in response to the notice may be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* Amtrak shall consider a submitter's objections and specific grounds for disclosure in making a determination whether to disclose the information. In any instance, when a decision is made to disclose information over the objection of a submitter, Amtrak shall give the submitter written notice which shall include:

(1) A statement of the reason(s) why each of the submitter's objections to disclosure was not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements of this section shall not apply if:

(1) Amtrak determines that the information should not be disclosed;

(2) The information has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than the FOIA);

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous. In such a case, Amtrak shall within a reasonable time prior to a specified disclosure date, give the submitter written notice of the final decision to disclose the information; or

(5) The information requested is not designated by the submitter as exempt from disclosure in accordance with this part, unless Amtrak has substantial reason to believe that disclosure of the information would result in competitive harm.

(i) *Notice of a FOIA lawsuit.* Whenever a FOIA requester files a lawsuit seeking to compel disclosure of business information, Amtrak shall promptly notify the submitter.

(j) *Notice to requesters.* (1) When Amtrak provides a submitter with notice and an opportunity to object to disclosure under paragraph (f) of this section, the FOIA Office shall also notify the requester(s).

(2) When Amtrak notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, Amtrak shall also notify the requester(s).

(3) When a submitter files a lawsuit seeking to prevent the disclosure of business information, Amtrak shall notify the requester(s).

§ 701.10 Appeals.

(a) *Appeals of adverse determinations.* (1) The requesting party may appeal:

(i) A decision to withhold any requested record in whole or in part;

(ii) A determination that a requested record does not exist or cannot be located;

(iii) A denial of a request for expedited treatment; or

(iv) Any disputed fee matter or the denial of a request for a fee waiver.

(2) The appeal must be addressed to the President and Chief Executive Officer (CEO); National Railroad Passenger Corporation; 60 Massachusetts Avenue, N.E., Washington, D.C. 20002.

(3) The appeal must be in writing and specify the relevant facts and the basis for the appeal. The appeal letter and envelope must be marked prominently "Freedom of Information Act Appeal" to ensure that it is properly routed.

(4) The appeal must be received by the President's Office within thirty (30) days of the date of denial.

(5) An appeal will not be acted upon if the request becomes a matter of FOIA litigation.

(b) *Responses to appeals.* The decision on any appeal shall be made in writing.

(1) A decision upholding an adverse determination in whole or in part shall contain a statement of the reason(s) for such action, including any FOIA exemption(s) applied. The requesting party shall also be advised of the provision for judicial review of the decision contained in 5 U.S.C. 552(a)(4)(B).

(2) If the adverse determination is reversed or modified on appeal in whole or in part, the requesting party shall be notified, and the request shall be reprocessed in accordance with the decision.

(c) *When appeal is required.* The requesting party must appeal any adverse determination prior to seeking judicial review.

§ 701.11 Fees.

(a) *General.* Amtrak shall charge for processing requests under the FOIA in accordance with this section. A fee of $9.50 per quarter hour shall be charged for search and review. For information concerning other processing fees, refer to paragraph (e) of this section. Amtrak shall collect all applicable fees before releasing copies of requested records to the requesting party. Payment of fees shall be made by check or money order payable to the National Railroad Passenger Corporation.

(b) *Definitions.* For purposes of this section:

(1) *Search* means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within

records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format.

(2) *Review* means the process of examining a record located in response to a request to determine whether one or more of the statutory exemptions of the FOIA apply. Processing any record for disclosure includes doing all that is necessary to redact the record and prepare it for release. Review time includes time spent considering formal objection to disclosure by a commercial submitter under § 701.9, but does not include time spent resolving general legal or policy issues regarding the application of exemptions. Review costs are recoverable even if a record ultimately is not disclosed.

(3) *Reproduction* means the making of a copy of a record or the information contained in it in order to respond to a FOIA request. Copies can take the form of paper, microform, audiovisual materials, or electronic records (*i.e.*, magnetic tape or disk) among others. Amtrak shall honor a requester's specified preference for the form or format of disclosure if the record is readily reproducible with reasonable effort in the requested form or format by the office responding to the request.

(4) *Direct costs* means those expenses actually incurred in searching for and reproducing (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include such costs as the salary of the employee performing the work (the basic rate of pay for the employee plus applicable benefits and the cost of operating reproduction equipment). Direct costs do not include overhead expenses such as the costs of space and heating or lighting of the facility.

(c) *Fee categories.* There are four categories of FOIA requesters for fee purposes: "commercial use requesters," "representatives of the news media," "educational and non-commercial scientific institution requesters," and "all other requesters." The categories are defined in paragraphs (c)(1) through (5), and applicable fees, which are the same for two of the categories, will be assessed as specified in paragraph (d) of this section.

(1) *Commercial requesters.* The term "commercial use" request refers to a request from or on behalf of a person who seeks information for a use or purpose that furthers his commercial, trade, or profit interests, including furthering those interests through litigation. Amtrak shall determine, whenever reasonably possible, the use to which a requester will put the records sought by the request. When it appears that the requesting party will put the records to a commercial use, either because of the nature of the request itself or because Amtrak has reasonable cause to doubt the stated intended use, Amtrak shall provide the requesting party with an opportunity to submit further clarification. Where a requester does not explain the use or where explanation is insufficient, Amtrak may draw reasonable inferences from the requester's identity and charge accordingly.

(2) *Representative of the news media or news media requester* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of news). For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through an organization. A publication contract would be the clearest proof, but Amtrak shall also look to the past publication record of a requester in making this determination. A request for records supporting the news dissemination function of the requester shall not be considered to be for commercial use.

(3) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for commercial use but to further scholarly research.

(4) *Noncommercial scientific institution* refers to an institution that is not operated on a "commercial" basis, as that term is defined in paragraph (c)(1) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be in this category, the requesting party must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for commercial use but to further scientific research.

(5) *Other requesters* refers to requesters who do not come under the purview of paragraphs (c)(1) through (4) of this section.

(d) *Assessing fees.* In responding to FOIA requests, Amtrak shall charge the following fees unless a waiver or a reduction in fees has been granted under paragraph (k) of this section:

(1) *"Commercial use" requesters:* The full allowable direct costs for search, review, and duplication of records.

(2) *"Representatives of the news media" and "educational and non-commercial scientific institution" requesters:* Duplication charges only, excluding charges for the first 100 pages.

(3) *"All other" requesters:* The direct costs of search and duplication of records. The first 100 pages of duplication and the first two hours of search time shall be provided without charge.

(e) *Schedule of fees.* (1) *Manual searches*—Personnel search time includes time expended in either manual searches for paper records, searches using indices, review of computer search results for relevant records, and personal computer system searches.

(2) *Computer searches.* The direct costs of conducting a computer search will be charged. These direct costs will include the cost of operating a central processing unit for that portion of the operating time that is directly attributable to searching for responsive records as well as the costs of operator/programmer salary apportionable to the search.

(3) *Duplication fees.* Duplication fees will be charged all requesters subject to limitations specified in paragraph (d) of this section. Amtrak shall charge 25 cents per page for a paper photocopy of a record. For copies produced by computer (such as tapes or printouts), Amtrak will charge the direct costs, including the operator time in producing the copy. For other forms of duplication, Amtrak will charge the direct costs of that duplication.

(4) *Review fees.* Review fees will be assessed for commercial use requests. Such fees will be assessed for review conducted in making an initial determination, or upon appeal, when review is conducted to determine whether an exemption not previously considered is applicable.

(5) *Charges for other services.* The actual cost or amount shall be charged for all other types of output, production, and duplication (e.g., photographs, maps, or printed materials).

Determinations of actual cost shall include the commercial cost of the media, the personnel time expended in making the item available for release, and an allocated cost for the equipment used in producing the item. The requesting party will be charged actual production costs when a commercial service is required. Items published and available through Amtrak will be made available at the publication price.

(6) *Charges for special services.* Apart from the other provisions of this section, when Amtrak chooses as a matter of discretion to provide a special service such as certifying that records are true copies or sending records by other than ordinary mail, the direct costs of providing such services shall be charged.

(f) *Commitment to pay fees.* When Amtrak determines or estimates that applicable fees will likely exceed $25.00, the requesting party will be notified of the actual or estimated amount unless a written statement has been received indicating a willingness to pay all fees. To protect requesters from large and/or unexpected fees, Amtrak will request a specific commitment when it is estimated or determined that fees will exceed $100.00. See § 701.5(d) for additional information.

(g) *Restrictions in accessing fees.* (1) *General*— Fees for search and review will not be charged for a quarter-hour period unless more than half of that period is required.

(2) *Minimum fee.* No fees will be charged if the cost of collecting the fee is equal to or greater than the fee itself. That cost includes the costs to Amtrak for billing, receiving, recording, and processing the fee for deposit, which has been deemed to be $10.00.

(3) *Computer searches.* With the exception of requesters seeking documents for commercial use, Amtrak shall not charge fees for computer search until the cost of search equals the equivalent dollar amount of two hours of the salary of the operator performing the search.

(h) *Nonproductive searches.* Amtrak may charge for time spent for search and review even if responsive records are not located or if the records located are determined to be entirely exempt from disclosure.

(i) *Advance payments.* (1) When Amtrak estimates or determines that charges are likely to exceed $250, an advance payment of the entire fee may be required before continuing to process the request.

(2) When there is evidence that the requester may not pay the fees that would be incurred by processing the request, an advance deposit may be required. Amtrak may require the full amount due plus applicable interest and an advance payment of the full amount of anticipated fees before beginning to process a new request or continuing to process a pending request where a requester has previously failed to pay a properly charged FOIA fee within thirty (30) days of the date of billing. The time limits of the FOIA will begin only after Amtrak has received such payment.

(3) Amtrak will hold in abeyance for forty-five (45) days requests where deposits are due.

(4) Monies owed for work already completed (i.e., before copies are sent to a requester) shall not be considered an advance payment.

(5) Amtrak shall not deem a request as being received in cases in which an advance deposit or payment is due, and further work will not be done until the required payment is received.

(j) *Charging interest.* Amtrak may charge interest on any unpaid bill for processing charges starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate that Amtrak pays for short-term borrowing.

(k) *Waiver or reduction of fees.* (1) *Automatic waiver of fees*—When the costs for a FOIA request total $10.00 or less, fees shall be waived automatically for all requesters regardless of category.

(2) *Other fee waivers.* Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis. Records responsive to a request will be furnished without charge or at below the established charge where Amtrak determines, based on all available information, that disclosure of the requested information is in the public interest because:

(i) It is likely to contribute significantly to public understanding of the operations or activities of Amtrak, and

(ii) It is not primarily in the commercial interest of the requesting party.

(3) To determine whether the fee waiver requirement in paragraph (k)(2)(i) of this section is met, Amtrak will consider the following factors:

(i) *The subject of the request—whether the subject of the requested records concerns the operations or activities of Amtrak.* The subject of the requested records must concern identifiable operations or activities of Amtrak with a connection that is direct and clear, not remote or attenuated.

(ii) *The informative value of the information to be disclosed—whether the disclosure is likely to contribute to an understanding of Amtrak operations or activities.* The disclosable portions of the requested records must be meaningfully informative about Amtrak's operations or activities in order to be found to be likely to contribute to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure—whether disclosure of the requested information will contribute to public understanding.* The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject as opposed to the individual understanding of the requester. A requester's ability and expertise in the subject area as well as the requester's intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) *The significance of the contribution to public understanding—whether the disclosure is likely to contribute significantly to public understanding of Amtrak operations or activities.* The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent.

(4) To determine whether the fee waiver requirement in paragraph (k)(2)(ii) of this section is met, Amtrak will consider the following factors:

(i) *The existence and magnitude of a commercial interest—whether the requesting party has a commercial interest that would be furthered by the requested disclosure.* Amtrak shall consider any commercial interest of the requesting party (with reference to the definition of "commercial use" in paragraph (c)(1) of this section), or any person on whose behalf the requesting party may be acting that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) *The primary interest in disclosure—whether the magnitude of the identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is "primarily*

in the commercial interest of the requester." A fee waiver or reduction is justified where the public interest standard is satisfied and public interest is greater in magnitude than any identified commercial interest in disclosure.

(5) Requests for a fee waiver will be considered on a case-by-case basis, based upon the merits of the information provided. Where it is difficult to determine whether the request is commercial in nature, Amtrak may draw inference from the requester's identity and the circumstances of the request.

(6) Requests for a waiver or reduction of fees must address the factors listed in paragraphs (k) (3) and (4) of this section. In all cases, the burden shall be on the requesting party to present evidence of information in support of a request for a waiver of fees.

(l) *Aggregating requests.* A requester may not file multiple requests at the same time in order to avoid payment of fees. Where Amtrak reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of avoiding fees, Amtrak may aggregate those requests and charge accordingly. Amtrak may presume that multiple requests of this type made within a thirty-day period have been made in order to avoid fees. Where requests are separated by a longer period, Amtrak may aggregate them only when there exists a solid basis for determining that aggregation is warranted. Multiple requests involving unrelated matters may not be aggregated.

§ 701.12 Other rights and services.

Nothing in this part shall be construed as entitling any person, as of right, to any service or the disclosure of any record to which such person is not entitled under the FOIA.

Dated: January 30, 1998.

Sarah H. Duggin,

Vice President & General Counsel.

[FR Doc. 98–3529 Filed 2–12–98; 8:45 am]

BILLING CODE 7531–01–P

Proposed Rules

Federal Register
Vol. 63, No. 30
Friday, February 13, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 308, 318, and 381

[Docket No. 97–007N]

Notice of Policy Change; Elimination of Prior Approval for Proprietary Substances and Nonfood Compounds

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of policy change; request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is revising its policy regarding Agency approval of nonfood compounds and proprietary substances prior to use in official meat and poultry establishments. The compounds and substances currently subject to prior approval include maintenance and operating chemicals (sanitizers, cleaning compounds, water treatments, lubricants, and pesticides) and proprietary food processing chemicals (branding inks, scalding agents, rendering agents, and denaturants). FSIS recently proposed to eliminate the sanitation regulations requiring prior approval of some of these compounds and substances (contained in 9 CFR Parts 308 and 381, Subpart H). FSIS now is announcing that it is eliminating the prior approval system for all-nonfood compounds and proprietary substances and specifically requests comment on alternatives to the current prior approval system.

DATES: Comments must be received on or before April 14, 1998.

ADDRESSES: Submit one original and two copies of written comments to FSIS Docket Clerk, Docket #97–007N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12 St., SW, Washington, DC 20250–3700. All comments submitted in response to this notice will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Assistant Deputy Administrator, Regulations and Inspection Methods, Food Safety and Inspection Service, U.S. Department of Agriculture (202) 205–0699.

SUPPLEMENTARY INFORMATION:

Background

FSIS is planning to discontinue approving nonfood compounds and proprietary substances prior to use in official meat and poultry products establishments. Nonfood compounds are compounds used in official establishments, but which are not expected to become components of their products. Nonfood compounds subject to prior approval by FSIS include cleaning compounds, compounds for laundry use, paint removers, sanitizers, hand washing compounds, pesticides, boiler and water treatments, lubricants, solvents, and sewer and drain cleaners. Proprietary substances are used in the preparation of products. They are considered proprietary because all of their ingredients are not identified, either on the containers by common or chemical name or by some other means. Proprietary substances subject to prior approval by FSIS include: marking agents, such as branding and tattoo inks; food processing substances, such as poultry and hog scald agents and tripe denuding agents; denaturants; substances to control foaming in soups, stews, rendered fats, and curing pickle; and substances for cleaning or treating feet or other edible parts.

FSIS receives annually between 16,000 and 20,000 applications for approval of nonfood compounds and proprietary substances. It is important to note that many of these applications are requests for approval of formulation changes in or new use patterns for compounds and substances already approved for use in meat and poultry establishments. FSIS approves approximately 9,000 applications per year and rejects approximately 1,000. FSIS returns around 40 percent of the applications to applicants each year, for a variety of reasons: the application paperwork may not be complete; FSIS may request additional information, changes in chemical formulation, or revisions to the requested use patterns. FSIS annually publishes a list of the approved substances and compounds in FSIS Miscellaneous Publication No. 1419, "*List of Proprietary Substances and Nonfood Compounds*" (hereafter referred to as the *List*). This publication currently lists approximately 115,000 compound and substances produced by about 8,000 manufacturers.

FSIS does not test the products submitted for approval but evaluates them based on information submitted by manufacturers and other information in the Agency's files, including chemical formulations and information on proposed uses and labeling. FSIS also consults with the Food and Drug Administration (FDA), the Environmental Protection Agency (EPA), and the Occupational Safety and Health Administration (OSHA) in regard to those Agencies' determinations concerning the safety and suitability of the compound for the requested use. Generally, FSIS consults with FDA regarding the status of the substance or compound as an FDA-approved direct or indirect food additive. Also, FSIS sometimes consults with FDA regarding nonfood compounds that have been reviewed as drugs, such as hand washing agents. FSIS generally consults with EPA concerning that Agency's review and registration of pesticides with labeling claims. FSIS may consult with OSHA if the intended use of the substance or compound raises worker health and safety concerns.

FSIS's prior approval program obviously is somewhat redundant with those of the aforementioned agencies. However, the approval of these compounds prior to their intended use provides some assurance to meat and poultry processors that use of the compounds and substances will not result in the adulteration or contamination of food products, providing they are used properly. Prior approval has also ensured that certain compounds, such as sanitizers, meet minimum standards of effectiveness when used as directed. Consequently, as an additional unintended benefit of the prior approval program, the FSIS *List* has served as a marketing tool for chemical manufacturers and distributors; inclusion in the *List* immediately renders a nonfood compound or proprietary substance more marketable to meat and poultry processors.

However, this prior approval program is inconsistent with the new food safety strategy and approach set forth in FSIS Docket No. 93–016F, "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems" (61 FR 38806). Under these new regulations, every official meat and poultry establishment will be required to develop and implement HACCP, a science-based process control system designed to improve the safety of meat and poultry products. Establishments will be responsible for developing and implementing HACCP plans incorporating the controls necessary and appropriate to produce safe meat and poultry products. Consequently, establishments, not FSIS, will be responsible for determining whether the nonfood compounds and proprietary substances they use are safe and effective.

By terminating the prior approval program for nonfood compounds and proprietary substances and discontinuing publication of the *List*, FSIS will be able to redirect resources to better implement inspection under the HACCP regulations. FSIS will maintain, however, a small staff with expertise in nonfood compounds and proprietary substances. That staff will keep abreast of developments in this sector of chemical manufacturing, maintain liaison with outside organizations that have an interest in the area, and issue technical guidance, particularly to small meat and poultry plants, from time to time, as circumstances dictate.

FSIS will, of course, continue to require that meat and poultry products be neither adulterated nor misbranded through the misuse of proprietary additives and nonfood compounds. Enforcement activities in this regard will include, but are not limited to: organoleptic inspection of establishment premises and product; sampling for chemical residues as necessary; review of establishment records, including sanitation standard operating procedures, HACCP plans, and the use directions, pest control certifications, and other materials furnished to establishments by chemical manufacturers and suppliers; and requests for formulation information from chemical manufacturers themselves. In light of this, FSIS anticipates that establishments considering purchasing and using nonfood compounds and proprietary substances will demand formulation and other information from chemical manufacturers as part of their decision-making in the private marketplace. Manufacturers failing to provide such information could expect to lose their market share.

FSIS already has proposed to eliminate regulatory requirements for prior approval of certain nonfood compounds and proprietary substances in FSIS Docket No. 96–037P, "Sanitation Requirements for Official Meat and Poultry Establishments" (62 FR 45045; August 25, 1997). In that document, the Agency has proposed to clarify and consolidate the sanitation requirements for meat and poultry establishments, eliminate unnecessary differences between those regulations, make the existing sanitation regulations more compatible with the HACCP and sanitation Standard Operating Procedures (SOP) requirements, and convert command-and-control requirements to performance standards. As part of this comprehensive revision, FSIS proposed to eliminate the sanitation regulations that require certain equipment, processes, and nonfood compounds be approved by FSIS prior to use in meat or poultry establishments (contained in 9 CFR parts 308 and 381, subpart H). Compounds and substances currently requiring prior approval under the sanitation regulations include pesticides used in meat establishments (§ 308.3 (h)); disinfectants for implements used in dressing diseased meat carcasses (§ 308.8 (b)); and germicides, insecticides, rodenticides, detergents, and wetting agents used in poultry establishments (§ 381.60).

Compliance with Executive Order 12866

This action has been reviewed for compliance with Executive Order 12866. As this action is determined to be significant for purposes of Executive Order 12866, the Office of Management and Budget has reviewed it. FSIS has estimated that the adoption of this action is likely to generate net social benefits.

Executive Order 12866 requires identification and, if possible, quantification and monetization of incremental benefits and costs of this action. FSIS has identified two types of incremental benefits in the form of avoidance of costs that are currently being incurred by chemical manufacturers/distributors and by FSIS. These benefits are discussed below.

First, the action would eliminate the requirement that the chemical manufacturers file applications and obtain approval for nonfood compounds and proprietary substances prior to use. As stated above, FSIS receives between 16,000 and 20,000 applications per year. The economic burden of requesting FSIS approval of nonfood compounds and proprietary substances includes the administrative, mailing, and labor costs associated with preparing the required Agency forms. FSIS estimates that it takes about 25 minutes to prepare each submission. Assuming an hourly earnings rate of $20–$25 for each person preparing requests for prior approval, the annual economic burden is between $150,000 and $187,000. The elimination of this burden associated with the adoption of the proposed action would, therefore, translate into an incremental benefit of $150,000 and $187,000.

Second, FSIS incurs considerable costs in processing and approval or disapproval of the products. FSIS could re-allocate these resources to better implement the new HACCP requirements. One measure of this allocative efficiency is the amount of savings in administrative costs if FSIS were to eliminate the approval/disapproval program without redirecting resources to administration of the performance-based standards. The value of this allocative efficiency could not, however, be quantified because of uncertainty and unavailability of the required data. The required budgetary data overlap with the data for other regulatory functions of FSIS.

To sum up, the value of incremental benefits of the proposed action could be monetized only partially and amounts to $150,000 to $187,000 per year.

Social Costs

The incremental benefits of the proposed action need be compared with the incremental social costs to obtain the net social benefit (if the benefits exceed the costs) or the net social cost (if the costs exceed the benefits). FSIS has identified two types of social costs. The first type of social cost is the additional marketing expense that would be incurred by the industry. Currently, the industry is not required to incur much of this expense, because, as noted earlier, inclusion of the industry's products in FSIS's *List* serves as a marketing tool. After FSIS discontinues publication of the *List*, the chemical industry might have to develop additional methods to advertise and publicize its products for marketing. These marketing expenditures would represent incremental costs to society. Ideally, these costs should be quantified and juxtaposed against the value of incremental benefits referred to above. Unfortunately, FSIS could not quantify these costs because currently the industry does not incur these costs so that the required data are not available.

The second type of cost item is the expenditure on research required to develop and test nonfood compounds and proprietary substances that are demonstrably safe and effective. FSIS anticipates, however, that the elimination of the FSIS prior approval would not significantly change these costs. Chemical manufacturers will continue to be required to demonstrate the safety and efficacy of their products to FDA, EPA, and/or OSHA, as required. Because FDA, EPA, and OSHA will review the safety and efficacy of these compounds and substances in food processing environments, FSIS assumes that chemical manufacturers will continue to conduct the same sort of research to determine whether or not their products are safe and effective.

Furthermore, FSIS expects that meat and poultry establishments will request, as a condition of purchase, that chemical manufacturers somehow certify the safety and efficacy of their products. Establishments will keep on file any information provided by chemical manufacturers (written approvals from other agencies, letters of guaranty, etc.) as part of sanitation SOP, HACCP, or other records. FSIS inspectors may ask to review such information if they have questions about the composition or use of nonfood compounds and proprietary substances. FSIS anticipates, therefore, that manufacturers will continue to conduct research on nonfood compounds and proprietary substances in order to demonstrate their safety and efficacy to meat and poultry establishments, as well as to Federal Agencies.

It is acknowledged that the chemical manufacturing and distributing industry's costs of marketing would increase, but such an increase would bring about greater economic efficiency as it would internalize their costs by elimination of the external subsidy that was provided by FSIS. The industry's cost of research and development to demonstrate safety and efficacy of nonfood compounds and proprietary substances would not decrease because the industry would be required to continue this practice to comply with similar requirements by EPA, FDA or OSHA. Therefore, the only increase in the cost would be the additional expenditures on marketing the products. Moreover, this cost increase would be voluntary on the chemical manufacturers and distributors and would not be required by the proposed action.

Conceptually, it is possible that the value of subsidy provided by FSIS by publishing the *List* is greater than the marketing cost to be incurred by the chemical manufacturers and distributors. This is because publication of the *List* increases the value of information provided to the public at large. Such a provision tends to encourage entry of newer firms into the meat and poultry industries to compete with the existing firms. The non-publication of the *List* would, therefore, reduce the value of this information and hence reduce the social benefit. In practice, we could not quantify or monetize the value of this information to the society at large because of non-availability of data.

Net Social Benefits

FSIS believes that the incremental costs of marketing would be less than the incremental benefits identified and monetized above. These benefits include the benefits to the industry in the form of savings from the expenses of avoiding the economic burden of mailing and filing the Agency forms. Furthermore, the internalization of marketing costs by the firms in the industry would bring about a more competitive industry where product prices would more accurately reflect the marginal costs of production. The current system of publishing the *List* is tantamount to subsidization of the industry by FSIS. This subsidy brings about inefficiencies in the industry. Adoption of the proposed action would remove this subsidy and bring about a more competitive and efficient industry. A competitive industry is more likely to bring about greater product innovations in the chemical industry to ensure safer meat and poultry products. Also, the transparency in the chemical industry where prices reflect marginal costs would enable the chemical industry to make more informed choices.

To sum up, FSIS believes the incremental benefits are likely to exceed the incremental costs so that there are net social benefits associated with the proposed action. Also, the distribution burden of the incremental costs and benefits is not likely to be inequitable because, while the marketing costs for chemical manufacturers and distributors would increase, these businesses would also realize the benefits of reduced costs of filing forms required for approval of their products by FSIS.

Compliance with Regulatory Flexibility Act

FSIS certifies that the proposed action will not bring about a significant economic impact on a substantial number of small entities in the chemical manufacturing and distribution industry. The costs of developing and testing their products would not increase because, as noted earlier, these firms already incur similar development and testing costs to comply with health and safety requirements of FDA, EPA, and OSHA. Furthermore, production and distribution of proprietary substances and nonfood compounds is such a small segment of total production of these firms that it is not listed separately as a 4-digit industry in the Standard Industrial Classification (SIC) Manual published by the Office of Management and Budget (1987). For example, some of the proprietary substances and nonfood compounds are grouped in SIC 2842 with over a dozen other products.

FSIS also assures that there will not be any adverse economic impact on small meat and poultry plants as a result of discontinuation of publication of the *List*. This assurance is based on two reasons. As noted earlier, the manufacturers and distributors of proprietary substances and nonfood compounds will be required to continue their research and testing of their products to comply with FDA, EPA, and OSHA requirements. Small meat and poultry plants would also rely on documentation submitted by the chemical manufacturers and distributors to these agencies for meeting of their products. Also, in the long run, competition should ensure that chemical manufacturers and distributors maintain or improve the safety and efficacy features of their products so as to preserve or increase their market shares.

There will be no adverse economic impact on small communities, cities, and municipalities because these entities are not engaged either in production or distribution of proprietary substances and nonfood compounds, or in the meat and poultry products.

Alternatives to the Proposed Action

No Action

FSIS considered continuing the current prior approval program requirements, *i.e.*, taking no action, but has decided against it because the prior approval requirements are inconsistent with HACCP, economically inefficient, and somewhat inequitable. The HACCP requirements clearly define industry's responsibility for the safety of meat and poultry products, but provide the industry with greater flexibility to innovate and to customize their processes to the nature and volume of their production. The current prior approval requirements are inconsistent with HACCP and economically inefficient because they are based on a "command and control" regulatory

system that often fails to provide incentives to entrepreneurs to innovate new products, processes, and technologies which can result in safer meat and poultry products. Also, as noted earlier, the incremental costs of continuing the current system are likely to exceed the incremental benefits. The existing program is inequitable because it imposes the same amount of administrative burden on small and large chemical manufacturers and distributors; the relative burden is greater on small plants because, unlike large size plants, they cannot spread the costs over a larger quantity of output.

User Fees

FSIS considered the alternative of setting up a system of user fees charged to chemical manufacturers and distributors to cover the costs of approval or disapproval of the products. FSIS did not propose this alternative for several reasons. One is that the incremental costs of setting up such a system would probably exceed the incremental benefits. The incremental costs of this alternative would include the costs of setting up an administrative system of user charges for over 100,000 proprietary substances and nonfood compounds. The user fees should recover the total costs of administration of the program. These costs cannot be identified, let alone quantified, making it virtually impossible to set up a structure of user fees.

Alternatively, the user fees could be based on the value of benefits to the firms in the industry or to society at large. This approach would require quantification of the benefits. As noted above, only a small part of the benefits to chemical manufacturers and distributors could be quantified, so that this amount would fail to cover comprehensive costs of the program.

Finally, FSIS did not propose this alternative because the Agency does not have legislative authority to levy user charges to recover the costs of such a program. Although the Agricultural Marketing Service (AMS) has authority to levy user fees, it is not responsible for ensuring the safety of meat, poultry, and egg products. The Agricultural Reorganization Act of 1994 (Public Law 103–354) consolidated food safety responsibility with respect to these products under FSIS. Therefore, AMS is unlikely to be suitable to administer a user fee-funded program with a food safety objective.

Prior Approval by Third Parties

FSIS considered the feasibility of allowing industry recognized, non-government organizations or laboratories to test and certify nonfood compounds and proprietary substances for safety and efficacy. Chemical manufacturers could voluntarily submit samples of their products to third-party organizations, or qualified independent laboratories (e.g., Underwriters Laboratories) for testing and consequent approval or disapproval. The theoretical rationale for this option is that competing firms in compliance with the standards or exceeding them would have ample incentive to publicize the fact that their product(s) are approved by third party organizations and/or independent laboratories.

However, FSIS sees several disadvantages to this alternative. First, there is the potential for conflict of interest. For example, a laboratory testing and approving nonfood compounds and proprietary substances for a particular chemical manufacturer could be testing other products for that same manufacturer; hence there could be a perception that, to maintain its business, it would readily approve the proprietary substances and nonfood compounds.

Second, the complexity of the task of approving 16,000 to 20,000 products per year would probably require numerous laboratories specializing in different substances; the economies of scale associated with a standardized testing and rating system would not be realized.

Finally, the incremental costs of the approval/disapproval process to the laboratory or organization would likely exceed the incremental benefits of revenues from the fees earned by the laboratory organization, unless the fees were set so high that they covered the total costs plus a reasonable profit. If the fees were set too high, they could drive many small and marginal manufacturers and distributors of proprietary substances and nonfood compounds out of the market. Such an outcome would render this industry less competitive.

Nevertheless, FSIS specifically requests comments on whether an industry-recognized, non-government organization or laboratory could provide prior approval or a similar service to chemical manufacturers and distributors of nonfood compounds and proprietary substances. It is possible that a centralized, technically expert, third party could play an effective role in facilitating the marketing and appropriate use of nonfood compounds and proprietary substances. Economic theory suggests that, where the primary users and beneficiaries of a Federal service are a relatively circumscribed group, that group should bear the cost of the service. Therefore, FSIS requests comments on whether prior approval should be provided by a non-government agency, what type of prior approval system that would be appropriate and feasible within a user fee system, and whether interest in obtaining such a service is sufficient to support its costs.

Conclusion

In conclusion, FSIS is eliminating its prior approval program for nonfood compounds and proprietary substances. This prior approval program is somewhat redundant with the reviews performed by other Federal agencies and inconsistent with FSIS's HACCP regulations. FSIS is requesting comment on possible alternatives to its prior approval program for nonfood compounds and proprietary substances, including the feasibility of industry-recognized, non-government organizations or laboratories providing prior approval or similar services to chemical manufacturers .

Done in Washington, DC, February 4, 1998.

Thomas J. Billy,

Administrator, Food Safety Inspection Service.

[FR Doc. 98–3725 Filed 2–12–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–06–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model 172R Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Cessna Aircraft Company Model 172R airplanes. The proposed action would require modifying lower forward doorpost bulkhead by installing rivets. The proposed AD is the result of a report from the manufacturer that these rivets were erroneously omitted during manufacture of some of the new production airplanes. The actions specified by the proposed AD are intended to prevent reduced structural rigidity at the forward doorpost bulkhead, which, if not corrected, could result in structural cracking and possible loss of control of the airplane.

DATES: Comments must be received on or before April 24, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–96–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from The Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277, telephone (316) 941–7550, facsimile (316) 942–9008. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Eual Conditt, Senior Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Rm. 100, Mid-Continent Airport, Wichita, Kansas, 67209, telephone (316) 946–4128; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–96–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–96–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Cessna Aircraft Company (Cessna) notified the FAA of an airplane manufacturing error where some rivets were mistakenly omitted from the lower forward doorpost on both sides of several new production Cessna Model 172R airplanes. The rivets omitted are in an area of the airframe (bulkhead and attaching doublers), which is considered critical structure. The bulkhead and attaching doubler receive landing loads from the wing and flight loads through the lift strut attachment and wing.

Relevant Service Information

Cessna has issued Service Bulletin (SB) SB97–53–02, dated September 15, 1997, which specifies procedures for modifying the lower forward doorpost bulkhead on both sides of the airplane by installing doorpost rivets.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent reduced structural rigidity at the forward doorpost bulkhead, which, if not corrected, could result in structural cracking and possible loss of control of the airplane.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna Model 172R airplanes of the same type design, the proposed AD would require modifying the lower forward doorpost bulkhead on both sides of the affected model airplanes by installing rivets. Accomplishment of the proposed AD would be in accordance with Cessna Service Bulletin No. SB97–53–02, dated September 15, 1997.

Cost Impact

The FAA estimates that 87 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 14 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $150 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $86,130 or $990 per airplane. These figures would not apply if the owners/operators were to accomplish the proposed action prior to May 15, 1998, which is the deadline for warranty credit stated in the service bulletin. The FAA would assume that none of the owners/operators of the affected airplanes have already accomplished this action.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Cessna Aircraft Company: Docket No. 97–CE–96–AD.

Applicability: Model 172R airplanes (serial numbers 17280004 through 17280016, 17280018 through 17280050, 17280052 through 17280058, 17280060 through 17280062, 17280064, 17280066 through 17280082, 17280085 through 17280099, 17280101 through 17280113, 17280115, 17280116, 17280118 through 17280125, 17280128 through 17280131, and 17280138), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent reduced structural rigidity at the lower forward doorpost bulkhead, which if not corrected could result in structural cracking and possible loss of control of the airplane, accomplish the following:

(a) Modify the lower forward doorpost of the affected airplanes by installing the specified rivets in accordance with Cessna Aircraft Company Service Bulletin (SB) No. SB97–53–02; dated September 15, 1997.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Rm. 100, Mid-Continent Airport, Wichita, Kansas, 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to The Cessna Aircraft Company, P. O. Box 7706, Wichita, Kansas 67277; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 6, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3639 Filed 2–12–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–134–AD]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Models H–36 "Dimona" and HK 36 R "Super Dimona" Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Diamond Aircraft Industries GmbH (Diamond) Models H–36 "Dimona" and HK 36 R "Super Dimona" sailplanes. The proposed AD would require: inspecting the elevator rib area for damage on certain Models H–36 "Dimona" and HK 36 R "Super Dimona" sailplanes, and either immediately or eventually replacing the elevator ribs depending on the results of the inspection; replacing the M6 screws that attach the wheel axle to steel support with M8 screws on all of the affected airplanes; and inspecting the shoulder harness fittings for improper bonding on certain Diamond Model H–36 "Dimona" sailplanes, and repairing any harness with an improper bond. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Austria. The actions specified by the proposed AD are intended to prevent failure of either the shoulder harness fittings, elevator rib, or the wheel axle to steel support attachment, which could result in passenger injury caused by an inadequate restraint system; reduced sailplane controllability caused by structural damage to the elevator; and/or reduced sailplane controllability during takeoff, landing, and ground operations caused by the installation of incorrect wheel axle screws.

DATES: Comments must be received on or before March 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–134–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Diamond Aircraft Industries, G.m.b.H., N.A. Otto-Strabe 5, A–2700, Wiener Neustadt, Austria. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–134–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the

Regional Counsel, Attention: Rules Docket No. 97–CE–134–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Austro Control GmbH, which is the airworthiness authority for Austria, notified the FAA that unsafe conditions may exist on certain Diamond Models H–36 "Dimona", and HK 36 R "Super Dimona" sailplanes. The Austro Control GmbH reports the following:

—That a loose elevator rib on one of the above-referenced sailplanes was found during normal maintenance. Diamond reported to the Austro Control GmbH that improper sealing of the elevator was the cause of the problem;

—That improper bolts may have been installed on the attachment of the wheel axle to steel support on certain Models H–36 "Dimona" and HK 36 R "Super Dimona" sailplanes; and

—That the shoulder harness fittings to the main bulkhead on three Model H–36 "Dimona" sailplanes were found damaged. An example of how these harnesses were damaged is through the impact experienced when the canopy is opened with force.

These conditions, if not corrected in a timely manner, could result in failure of either the shoulder harness fittings, elevator rib, or the wheel axle to steel support attachment. This could lead to passenger injury caused by an inadequate restraint system; reduced sailplane controllability caused by structural damage to the elevator; and/or reduced sailplane controllability during takeoff, landing, and ground operations caused by the installation of incorrect wheel axle screws.

Relevant Service Information

The following service information references and provides information related to the above-referenced conditions:

—Diamond Service Bulletin No. 51, dated March 30, 1996, which specifies inspecting the elevator rib area for damage on the Diamond Models H–36 "Dimona" and HK 36 R "Super Dimona" airplanes, and replacing the elevator ribs. Diamond Work Instruction No. 21, dated March 20, 1996, includes the procedures necessary to accomplish the above-referenced actions;

—Hoffman Service Bulletin No. 27, dated May 31, 1991, which specifies replacing the M6 screws that attach the wheel axle to steel support with M8 screws on the Diamond Models H–36 "Dimona" and HK 36 R "Super Dimona" airplanes. Hoffman Work Instruction No. 10, dated May 29, 1991, includes the procedures necessary to accomplish the above-referenced actions; and

—Hoffman Service Bulletin 17, dated January 20, 1987, which specifies procedures for inspecting the shoulder harness fittings for improper bonding on certain Diamond Model H–36 "Dimona" sailplanes, and repairing any fittings with an improper bonding.

The Austro Control GmbH classified these service bulletins as mandatory and issued the following in order to assure the continued airworthiness of these airplanes in Austria: (1) Austrian AD No. 85, dated May 29, 1996, for the elevator condition; (2) Austrian AD No. 63, not dated, for the wheel axle screws condition; and (3) Austrian AD No. 54, not dated, for the shoulder harness fittings condition.

The FAA's Determination

This airplane model is manufactured in Austria and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Austro Control GmbH has kept the FAA informed of the situation described above.

The FAA has examined the findings of the Austro Control GmbH; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since unsafe conditions have been identified that are likely to exist or develop in other Diamond Models H–36 "Dimona" and HK 36 R "Super Dimona" sailplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting the elevator rib area for damage on certain Models H–36 "Dimona" and HK 36 R "Super Dimona" sailplanes, and either immediately or eventually replacing the elevator ribs depending on the results of the inspection; replacing the M6 screws that attach the wheel axle to steel support with M8 screws on all of the affected airplanes; and inspecting the shoulder harness fittings for improper bonding on certain Diamond Model H–36 "Dimona" sailplanes, and repairing any harness with an improper bond. Accomplishment of the proposed modifications would be in accordance with the previously referenced service information.

Cost Impact

The FAA estimates that 15 sailplanes in the U.S. registry would be affected by the elevator portion of the proposed AD, that it would take approximately 10 workhours per sailplane to accomplish the elevator portion of the proposed AD, and that the average labor rate is approximately $60 an hour. Kits cost approximately $100 per sailplane. Based on these figures, the total cost impact of the elevator portion of the proposed AD on U.S. operators is estimated to be $10,500, or $700 per sailplane.

The FAA estimates that 2 sailplanes in the U.S. registry would be affected by the wheel axle screws portion of the proposed AD, that it would take approximately 6 workhours per sailplane to accomplish the wheel axle screws portion of the proposed AD, and that the average labor rate is approximately $60 an hour. Kits cost approximately $165 per sailplane. Based on these figures, the total cost impact of the wheel axle screws portion of the proposed AD on U.S. operators is estimated to be $1,050, or $525 per sailplane.

The FAA estimates that 8 sailplanes in the U.S. registry would be affected by the shoulder harness fittings portion of the proposed AD, that it would take approximately 6 workhours per sailplane to accomplish the shoulder harness fittings portion of the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $10 per sailplane. Based on these figures, the total cost impact of the shoulder harness fittings portion of the proposed AD on U.S. operators is estimated to be $2,960, or $370 per sailplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Diamond Aircraft Industries GMBH: Docket No. 97–CE–134–AD.

Applicability: The following sailplane models and serial numbers, certificated in any category:

Model H–36 "Dimona" sailplanes, all serial numbers; and

Model H 36 R "Super Dimona" sailplanes, serial numbers 36301 through 36414.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of either the shoulder harness fittings, elevator rib, or the wheel axle to steel support attachment, which could result in passenger injury caused by an inadequate restraint system; reduced sailplane controllability caused by structural damage to the elevator; and/or reduced sailplane controllability during takeoff, landing, and ground operations caused by the installation of incorrect wheel axle screws, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, accomplish the following:

(1) For the Model H–36 "Dimona" sailplanes, all serial numbers; and the Model HK 36 R "Super Dimona" sailplanes, serial numbers 36301 through 36414, inspect the elevator rib area for damage. Accomplish this inspection in accordance with Diamond Work Instruction No. 21, dated March 20, 1996, as referenced in Diamond Service Bulletin No. 51, dated March 30, 1996.

(2) For the Model H–36 "Dimona" sailplanes, all serial numbers; and the Model HK 36 R "Super Dimona" sailplanes, serial numbers 36301 through 36327, replace the M6 screws that attach the wheel axle to steel support with M8 screws. Accomplish this replacement in accordance with Hoffman Work Instruction No. 10, dated May 29, 1991, as referenced in Hoffman Service Bulletin No. 27, dated May 31, 1991.

(3) For the Model H–36 "Dimona" sailplanes, serial numbers 3501 through 3539 and 3601 through 36143, inspect the shoulder harness fittings for improper bonding. Accomplish this inspection in accordance with Hoffman Service Bulletin 17, dated January 20, 1987.

(b) Prior to further flight after the inspections required by paragraphs (a)(1) and (a)(3) of this AD, accomplish the following:

(1) If any damage is found in the elevator rib area on any sailplane affected by paragraph (a)(1) of this AD, replace the elevator ribs in accordance with Diamond Work Instruction No. 21, dated March 20, 1996, as referenced in Diamond Service Bulletin No. 51, dated March 30, 1996.

(2) If an improper bonding is found on the shoulder harness fittings on any sailplane affected by paragraph (a)(3) of this AD, repair the shoulder harness fittings in accordance with Hoffman Service Bulletin 17, dated January 20, 1987.

(c) For the Model H–36 "Dimona" sailplanes, all serial numbers; and the Model HK 36 R "Super Dimona" sailplanes, serial numbers 36301 through 36414, within the next 3,000 hours time-in-service (TIS) after the effective date of this AD, replace the elevator ribs, unless already accomplished as required by paragraph (b)(1) of this AD. Accomplish this replacement in accordance with Diamond Work Instruction No. 21, dated March 20, 1996, as referenced in Diamond Service Bulletin No. 51, dated March 30, 1996.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) Questions or technical information related to the service information referenced in this AD should be directed to Diamond Aircraft Industries, G.m.b.H., N.A. Otto-Strabe 5, A–2700, Wiener Neustadt, Austria. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Austrian AD No. 85, dated May 29, 1996, for the elevator condition; Austrian AD No. 63, not dated, for the wheel axle screws condition; and Austrian AD No. 54, not dated, for the shoulder harness fittings condition.

Issued in Kansas City, Missouri, on February 6, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3638 Filed 2–12–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–3]

Proposed Modification of Class E Airspace; Athens, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at Athens, OH. An Instrument landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 25, has been developed for Ohio University Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to increase the radius of and add a northeast extension to the existing controlled airspace.

DATES: Comments must be received on or before March 30, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–3, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air

Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposals. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–3." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Athens, OH, to accommodate aircraft executing the proposed ILS Rwy 25 SIAP, at Ohio University Airport by increasing the radius and adding a northeast extension of the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 1 4 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Athens, OH [Revised]

Athens-Albany, Ohio University Airport, OH
(Lat. 39°12'39" N., long. 82°13'53" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Ohio University Airport and within 4.6 miles either side of the 061° bearing from the Ohio University Airport, extending from the 6.4-mile radius to 12.3 miles northeast of the airport.

* * * * *

Issued in Des Plaines, Illinois, on January 22, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–3728 Filed 2–12–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–4]

Proposed Modification of Class E Airspace; Springfield, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at Springfield, IL. An Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 31, Amendment 1, has been developed for Capital Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to increase the

radius of the existing controlled airspace.

DATES: Comments must be received on or before March 30, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–4, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–4." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Springfield, IL, to accommodate aircraft executing the proposed ILS Rwy 31 SIAP, Amendment 1, at Capital Airport by increasing the radius of the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IL E5 Springfield, IL [Revised]

Capital Airport, IL
(Lat. 39° 50′ 38″N., long. 89° 40′ 39″W.)
Capital VORTAC
(Lat. 39° 53′ 32″N., long. 89° 37′ 32″W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Capital Airport and within 3.1 miles either side of the Capital VORTAC 040° radial, extending from the 6.8-mile radius to 10.7 miles northeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on January 22, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–3729 Filed 2–12–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–2]

Proposed Modification of Class E Airspace; Lawrenceville, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at Lawrenceville, IL. A Nondirectional Beacon (NDB) or Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 4, Amendment 5, has been developed for Mount Carmenl Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to increase the radius of, and add a southwest extension to, the existing controlled airspace.

DATES: Comments must be received on or before April 6, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Council, AGL–7, Rules Docket No. 98–AGL–2, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568 .

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–2." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Lawrenceville, IL, to accommodate aircraft executing the proposed NDB or GPS Rwy 4 SIAP, Amendment 5, at Mount Carmel Municipal Airport by increasing the radius and adding a southwest extension to the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IL E5 Lawrenceville, IL [Revised]

Lawrenceville-Vincennes International Airport, IL
(Lat. 38° 45′ 51″ N., long. 87° 36′ 20″ W.)
Mount Carmel Municipal Airport, IL
(Lat. 38° 36′ 24″N., long. 87° 43′ 36″W.)
Lawrenceville VOR/DME
(Lat. 38° 46′ 12″N., long. 87° 36′ 14″W.)
Mount Carmel NDB
(Lat. 38° 36′ 43″N., long. 87° 43′ 34″W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Lawrenceville-Vincennes International Airport, and within 4.8 miles either side of the Lawrenceville VOR/DME 018° radial, extending from the 7.0-mile radius to 7.0 miles northeast of the VOR/DME; and within a 6.5-mile radius of Mount Carmel Municipal Airport, and within 2.7

miles either side of the 196° bearing from the Mount Carmel Municipal Airport, extending from the 6.5-mile radius to 7.4 miles south of the airport, and within 6.4 miles either side of the 206° bearing from the Mount Carmel NDB, extending from the 6.5-mile radius to 7.0 miles southwest of the NDB.

* * * * *

Issues in Des Plaines, Illinois on January 30, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–3730 Filed 2–12–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–1]

Proposed Modification of Class E Airspace; Washington Court House, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at Washington Court House, OH. A Nondirectional Beacon-A (NDB–A) Standard Instrument Approach Procedure (SIAP) has been developed for Fayette County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to increase the radius and enlarge the northeast extension of the existing controlled airspace.

DATES: Comments must be received on or before March 30, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–1, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–1." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Propose Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Washington Court House, OH, to accommodate aircraft executing the proposed NBA–A SIAP at Fayette County Airport by increasing the radius and enlarging the northeast extension of the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.7 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective

September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Washington Court House, OH [Revised]

Washington Court House, Fayette County Airport, OH
(Lat. 39°34′ 13″N., long. 83°25′ 14″W.)
Court House NDB
(Lat. 39°35′ 58″N., long. 83°23′ 32″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Fayette County Airport and within 6.4 miles either side of the 037° bearing from the Court House NDB, extending from the 6.5-mile radius to 7.0 miles northeast of the NDB, and within 2.2 miles either side of the 037° bearing from the Court House NDB, extending from the 6.5-mile radius to 10.0 miles northeast of the NDB.

* * * * *

Issued in Des Plaines, Illinois on January 22, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–3731 Filed 2–12–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 330, and 358

[Docket No. 96N–0420]

Over-the-Counter Human Drugs; Proposed Labeling Requirements; Notice of Availability of Study Data and Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period on specific data.

SUMMARY: The Food and Drug Administration (FDA) is reopening to March 30, 1998 the comment period on specific data related to the February 27, 1997, proposed rule to establish a standardized format for the labeling of over-the-counter (OTC) drug products (62 FR 9024). As part of that rulemaking proceeding, the agency collected data under a study entitled "Evaluation of Proposed Over-the-Counter (OTC) Label Format Comprehension," (Study A). This document announces the availability of the data and frequency tabulations that summarize the Study A data and reopens the comment period for the OTC rulemaking proceeding to allow an opportunity for comment on Study A.

DATES: Submit written comments on Study A by March 30, 1998.

ADDRESSES: Submit written comments on the information collected in Study A to the Dockets Management Branch (HFA–305), ATTN: Study A, OTC Drug Labeling Data Collection, Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kathryn J. Aikin. Food and Drug Administration, Division of Drug Marketing, Advertising, and Communications (HFD–40), 5600 Fishers Lane, Rockville, MD 20857, 301–827–2828, Aikink@cder.fda.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 27, 1997 (62 FR 9024), FDA published a proposed rule intended to enable consumers to better read and understand OTC drug product labeling and to more effectively apply the information in the labeling to the safe and effective use of such products. An important element of FDA'S proposed rule is a standardized labeling format for OTC drug products.

After issuing the proposed rule, FDA published in the **Federal Register** a notice under the Paperwork Reduction Act of 1995 announcing the agency's intention to conduct four studies relating to OTC drug products (62 FR 28482, May 23, 1997). The agency intends at this time to use two of the studies ("Evaluation of Proposed Over-the-Counter (OTC) Label Format Comprehension, Study A," and "Over-the-Counter (OTC) Label Format Preference, Study B") in deliberations on developing a standardized, easy to read and easy to understand, labeling format for OTC drug products (see 62 FR 9024). In the **Federal Register** of December 30, 1997 (62 FR 67770), the agency requested comments specifically related to Study B. The data and frequency tabulations for Study A are now available.

In Study A, consumers were invited to view examples of OTC label designs. Respondents were asked questions designed to measure knowledge and attitudes about OTC drug products, as well as decisions about proper use of the products. The agency is now seeking comments on the data developed under Study A, including the participants' responses on the comprehension elements measured for the specific label designs viewed. The comments on Study A will be included in the agency's deliberations on developing a final, standardized OTC labeling format regulation.

Interested persons may, on or before March 30, 1998, submit written comments on the data developed under Study A to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and labeled "ATTN: Study A, OTC Drug Labeling Data Collection." The data, frequency tabulations, and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic format of the data are available on the internet at: www.fda.gov/CDER/ or can be obtained in electronic form from the Dockets Management Branch at the address listed previously.

Dated: February 4, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–3625 Filed 2-12-98; 8:45 am]

BILLING CODE 4160–01–F

NATIONAL MEDIATION BOARD

29 CFR Part 1208

Freedom of Information Act, Implementation; Fee Schedule

AGENCY: National Mediation Board.

ACTION: Proposed rule.

SUMMARY: The National Mediation Board is proposing to amend its rule implementing the Freedom of Information Act (FOIA), as provided by the Freedom of Information Reform Act of 1986 (Pub. L. 99–570), which requires that the NMB promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of FOIA requests and establishing procedures and guidelines for determining when such fees should be waived or reduced. The proposed revisions substantially conform to the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget in 52 FR 10012 (March 27, 1987).

DATES: Comments must be received by: March 16, 1998.

ADDRESSES: Send or deliver written comments to: Ronald M. Etters, General Counsel, 1301 K Street, N.W., Suite 250, Washington, D.C. 20572, Telephone (202) 523–5920.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (Pub. L. 99–570) requires agencies to adopt regulations that conform to the

Act regarding procedures and fees for obtaining copies of agency records. The Reform Act specifically required the Office of Management and Budget (OMB) to develop and issue a schedule of fees and guidelines pursuant to notice and comment. That Act also required agencies to publish their own regulations for those same purposes based upon the OMB guidelines. The regulations represent NMB's response to that requirement. They are based upon the OMB guidelines.

Executive Order 12291

This rule is not a "major rule" under Executive Order 12291 because it is not "likely to result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets." Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply because the proposed rule does not impose any significant economic requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

These regulations, if promulgated in final form, will not result in any implications pursuant to the Paperwork Reduction Act.

List of Subjects in 29 CFR 1208

Freedom of information.

In consideration of the foregoing, the NMB proposes to amend Part 1208 of 29 CFR, Chapter X.

PART 1208—FREEDOM OF INFORMATION

1. The authority citation for part 1208 would continue to read as follows:

Authority: 44 Stat. 577, as amended; 45 U.S.C. 151–163.

2. Section 1208 would be revised to read as follows:

§ 1208.2 Production or disclosure of material or information.

(a) *Requests for identifiable records and copies.* (1) All requests for National Mediation Board records shall be filed in writing by mailing, faxing, or delivering the request to the Chief of Staff, National Mediation Board, Washington, DC 20572.

(2) The request shall reasonably describe the records being sought in a manner which permits identification and location of the records.

(i) If the description is insufficient to locate the records, the National Mediation Board will so notify the person making the request and indicate the additional information needed to identify the records requested.

(ii) Every reasonable effort shall be made by the Board to assist in the identification and location of the records sought.

(3) Upon receipt of a request for the records the Chief of Staff shall maintain records in reference thereto which shall include the date and time received, the name and address of the requester, the nature of the records requested, the action taken, the date the determination letter is sent to the requester, appeals and action thereon, the date any records are subsequently furnished, the number of staff hours and grade levels of persons who spent time responding to the request, and the payment requested and received.

(4) All time limitations established pursuant to this section with respect to processing initial requests and appeals shall commence at the time a written request for records is received at the Board's offices in Washington, D.C.

(i) An oral request for records shall not begin any time requirement.

(b) *Processing the initial request.* (1) *Time limitations.* Within 20 working days (excepting Saturdays, Sundays, and working holidays) after a request for records is received, the Chief of Staff shall determine and inform the requester by letter whether or the extent to which the request will be complied with, unless an extension is taken under paragraph (b)(3) of this section.

(2) Such reply letter shall include:

(i) A reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record, a brief explanation of how the exemption applies to the record withheld.

(ii) The name or names and positions of the person or persons, other than the Chief of Staff, responsible for the denial.

(iii) A statement that the denial may be appealed within thirty days by writing to the Chairman, National Mediation Board, Washington, D.C. 20572, and that judicial review will thereafter be available in the district in which the requester resides, or has his principal place of business, or the district in which the agency records are situated, or the District of Columbia.

(3) *Extension of time.* In unusual circumstances as specified in this paragraph, the Chief of Staff may extend the time for initial determination on requests up to a total of ten days (excluding Saturdays, Sundays, and legal public holidays). Extensions shall be granted in increments of five days or less and shall be made by written notice to the requester which sets forth the reason for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph "unusual circumstances" means, but only to the extent necessary to the proper processing of the request:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency or another division having substantial interest in the determination of the request, or the need for consultation among two or more components of the agency having substantial subject matter interest therein.

(4) *Treatment of delay as a denial.* If no determination has been dispatched at the end of the ten-day period, or the last extension thereof, the request may deem his request denied, and exercise a right of appeal, in accordance with § 1208.2(c). When no determination can be dispatched within the applicable time limit, the responsible official shall nevertheless continue to process the request; on expiration of the time limit he shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to treat the delay as a denial and to appeal to the Chairman of the Board in accordance with § 1208.2(c) and he may ask the requester to forego appeal until a determination is made.

(c) *Appeals to the Chairman of the Board.* (1) When a request for records has been denied in whole or in part by the Chief of Staff or other person authorized to deny requests, the requester may, within thirty days of its receipt, appeal the denial to the Chairman of the Board. Appeals to the Chairman shall be in writing, addressed to the Chairman, National Mediation Board, Washington, D.C. 20572.

(2) The Chairman of the Board will act upon the appeal within twenty working days (excluding Saturdays, Sundays and

legal public holidays) of its receipt unless an extension is made under paragraph (c)(3) of this section.

(3) In unusual circumstances as specified in this paragraph, the time for action on an appeal may be extended up to ten days (excluding Saturdays, Sundays and legal public holidays) minus any extension granted at the initial request level pursuant to § 1208.2(b)(3). Such extension shall be made written notice to the requester which sets forth the reason for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph "unusual circumstances" means, but only to the extent necessary to the proper processing of the appeal:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency or another division having substantial interest in the determination of the request or the need for consultation among components of the agency having substantial subject matter interest therein.

(4) *Treatment of delay as a denial.* If no determination on the appeal has been dispatched at the end of the twenty-day period or the last extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in a district court of the United States, as specified in 5 U.S.C. 552(a)(4). When no determination can be dispatched within the applicable time limit, the appeal will nevertheless continue to be processed; on expiration of the time limit the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to seek judicial review in the United States district court in the district in which he resides or has his principal place of business, the district in which the Board records are situated or the District of Columbia. The requester may be asked to forego judicial review until determination of the appeal.

(d) *Indexes of certain records.* (1) The National Mediation Board at its office in Washington, D.C. will maintain, make available for public inspection and copying, and publish quarterly (unless the Board determines by order published in the **Federal Register** that such publication would be unnecessary or impracticable) a current index of the materials available at the Board offices which are required to be indexed by 5 U.S.C. 552(a)(2).

(i) A copy of such index shall be available at cost from the National Mediation Board, Washington, D.C. 20572.

(ii) Reserved.

2. Section 1208.6 would be revised to read as follows:

§ 1208.6 Schedule of fees and methods of payment for services rendered.

(a) *Definitions.* For the purposes of this section the following definitions apply:

(1) The term *direct costs* means those expenditures which the National Mediation Board actually incurs in searching for, duplicating, and, in the case of commercial requesters, reviewing documents to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (the basic rate of pay for the employee plus sixteen percent of the rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting the facility in which the records are stored.

(2) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page and line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming.

(3) The term *duplication* refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, audiovisual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(4) The term *review* refers to the process of examining documents located in response to a commercial use request (see paragraph (a)(5) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term *commercial use request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the NMB will look first to the use which a requester will put the document requested. Where the NMB has reasonable cause to doubt the use is not clear from the request itself, the National Mediation Board may seek additional clarification before assigning the request to a specific category.

(6) The term *educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research.

(7) The term *non-commercial scientific institution* refers to an institution that is not operated on a commercial basis as that term is defined in paragraph (a)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) The term *representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. These examples are not intended to be all inclusive. In the case of "free-lance" journalists, they may be regarded as working for a news organization if they demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the NMB may also look to the past publication record of a requester in making this determination.

(b) *Exception of fee charges.* (1) With the exception of requesters seeking documents for a commercial use, the NMB will provide the first 100 pages of duplication and the first two hours of search time without charge. The world "pages" in this paragraph refers to paper copies of standard size, usually 8.5≥ × 11≥, or their equivalent in microfiche or computer disks. The term "search time" in this paragraph is based on a manual search for records. In applying this term to searches made by computer, when the cost of the search as set forth in paragraph (d)(2) of this section equals the equivalent dollar amount of two hours of the salary of the person performing the search, the NMB

will begin assessing charges for computer search.

(2) The NMB will not charge fees to any requesters, including commercial use requester, if the cost of collecting the fee would be equal to or greater than the fee itself.

(3)(i) The NMB will provide documents without charge or at reduced charges if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(ii) In determining whether disclosure is in the public interest under paragraph (b)(3)(i) of this section, the NMB will consider the following factors:

(A) *The subject of the request.* Whether the subject of the requested records concerns "the operations or activities of the government";

(B) *The informative value of the information to be disclosed.* Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(C) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* Whether disclosure of the requested information will contribute to "public understanding";

(D) *The significance of the contributions to the public understanding.* Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(E) *The existence and magnitude of a commercial interest.* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(F) *The primary interest in disclosure.* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(iii) A request for a fee waiver based on the public interest under paragraph (b)(3)(i) of this section must address the factors of (b)(3)(ii) as they apply to the request for records in order to be considered by the Chief of Staff.

(c) *Level of fees to be charged.* The level of fees to be charged by the NMB in accordance with the schedule set forth in paragraph (d) of this section, depends on the category of the requester. The fee levels to be charged are as follows:

(1) A request for documents appearing to be for commercial use will be charged to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought.

(2) A request for documents from an educational or non-commercial scientific institution will be charged for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(3) The NMB shall provide documents to requesters who are representatives of the news media for the cost of reproduction alone, excluding charges for the first 100 pages.

(4) The NMB shall charge requesters who do not fit into any of the categories above such fees which recover the full direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. All requesters must reasonably describe the records sought.

(d) The following fees shall be charged in accordance with paragraph (c) of this section:

(1) *Manual searches for records.* The salary rate (i.e., basic pay plus sixteen percent) of the employee(s) making the search. Search time under this paragraph and paragraph (d)(2) of this section may be charged for even if the NMB fails to locate responsive records or if records located are determined to be exempt from disclosure.

(2) *Computer searches for records.* The actual direct cost of providing the service, including computer search time directly attributable to searching for records responsive to a FOIA request, runs, and operator salary apportionable to the search.

(3) *Review of records.* The salary rate (i.e., basic pay plus sixteen percent) of the employee(s) conducting the review. This charge applies only to requesters who are seeking documents for commercial use and only to the review necessary at the initial administrative level to determine the applicability of any relevant FOIA exemptions, and not at the administrative appeal level or an exemption already applied.

(4) *Certification or authentication of records.* $2.00 per certification or authentication.

(5) *Duplication of records.* Fifteen cents per page for paper copy reproduction of documents, which the NMB determined is the reasonable direct cost of making such copies taking into account the average salary of the operator and the cost of the reproduction machinery. For copies of records prepared by computer, such as tapes or printouts, the NMB shall charge the actual cost, including operator time, of production of the tape or printout.

(6) *Forwarding material to destination.* Postage, insurance and special fees will be charged on an actual cost basis.

(7) *Other costs.* All other direct costs of preparing a response to a request shall be charged to requester in the same amount as incurred by NMB.

(e) *Aggregating requests.* When the NMB reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the NMB will aggregate any such requests and charge accordingly.

(f) *Charging interest.* Interest at the rate prescribed in 31 U.S.C. 3717 may be charged those requesters who fail to pay fees charged, beginning on the thirtieth day following the billing date. Receipt of a fee by the NMB, whether processed or not, will stay the accrual of interest. If a debt is not paid, the agency may use the provisions of the Debt Collection Act of 1982, (Pub. L. 97–365, 29 CFR part 1450) including disclosure to consumer reporting agencies, for the purpose of obtaining payment.

(g) *Advance payments.* The NMB will not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) The NMB estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then the NMB will notify the requester of the likely cost and obtain satisfactory assurances of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charge in a timely fashion (i.e., within thirty days of the date of the billing), in which case the NMB requires the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester. When the NMB acts under paragraph (g) (1) or (2) of this section, the

administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., twenty working days from receipt of initial requests and twenty working days from receipt of appeals from initial denial, plus permissible extension of these time limits) will begin only after the NMB has received fee payments described above.

(h) *Payment.* Payment of fees shall be made by check or money order payable to the United States Treasury.

Dated: February 1, 1998.

Stephen E. Crable,

Chief of Staff.

[FR Doc. 98–3115 Filed 2–12–98; 8:45 am]

BILLING CODE 7550–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 218, 250, and 256

RIN 1010–AC32

Postlease Operations Safety

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: These proposed revisions update and clarify MMS regulations concerning postlease operations. The revised rule provides authority to MMS to grant an easement and a right-of-use for an outer Continental Shelf (OCS) tract to a State lessee. It also clarifies the distinction between granting and directing a suspension, and the different consequences of each; sets out criteria to disqualify an operator with repeated poor operating performance from acquiring any new leaseholdings; and requires written accident reports.

DATES: MMS will consider all comments we receive by May 14, 1998. We will begin reviewing comments then and may not fully consider comments we receive after May 14, 1998.

ADDRESSES: Mail or hand-carry written comments (3 copies) to the Department of the Interior; Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team (Comments).

FOR FURTHER INFORMATION CONTACT: Kumkum Ray, Engineering and Operations Division, at (703) 787–1600.

SUPPLEMENTARY INFORMATION: The proposed revision of 30 CFR part 250, subpart A, is an effort to streamline and organize the various topics that apply in a general sense to all the other subparts under 30 CFR part 250. These postlease operations regulations would contain requirements as well as useful information and reference materials, with an emphasis on operations performance. We would include a newer edition of a document incorporated by reference (API RP 2A).

Definition of Lessee

We would include an owner of operating rights in the definition of lessee. We would emphasize in § 250.15(d) that, in addition to the lessee and operator, all persons who conduct lease activities on behalf of the lessee or operator must also comply with our regulations. The operator is responsible for the performance of its contractors. MMS will hold the operator accountable for the contractors' performance.

Performance standards

We would revise the regulation addressing crane operations to include certain specifications that apply to platforms in the Pacific OCS Region. Also, we would include two new sections under Performance standards: One on welding procedures and another on electrical equipment requirements. These requirements are repeated under Drilling (subpart D), Well-Completion (subpart E), and Well-Workover (Subpart F). Since the requirements apply to all exploration, development, and production operations, they would be listed in subpart A and would be removed from the various other subparts.

Disqualifying an operator

Safety is MMS's top priority for offshore operations. A new regulation has been proposed to provide criteria that MMS will consider, individually or collectively, in evaluating whether to disqualify operators with repeated poor safety performance from acquiring additional leases. In some particularly serious cases, this could also result in MMS disapproving or revoking a company's status as a designated operator. MMS will hold a meeting in Houston, Texas within the comment period of the rulemaking, to consult with industry before setting up criteria to implement this provision in our rules. We will publish the meeting notice in the **Federal Register**. We recognize that the vast majority of operators are conscientious in their operations. The intention of this provision is to safeguard you from the few that may be in dire non-compliance.

Civil Penalty

The reference related to civil penalty appeals has been deleted from subpart A. On August 8, 1997, MMS published a revision to subpart N which provides information related to civil penalty appeals.

Granting a right-of-use and easement

In our effort to establish and maintain a cooperative relationship with coastal States, and lessees of State submerged land oil and gas leases adjacent to the OCS, we are proposing to amend our regulations currently in § 250.7. (See proposed § 250.18). The proposed rule further implements the Secretary of the Interior's authority to regulate offshore operations under the OCS Lands Act. The rule would provide specific regulatory authority for Regional Directors to grant an easement and right-of-use on an OCS tract to the State lessee when the lease is near or adjacent to the Federal and State jurisdictional boundary. MMS would require an application processing fee, annual rental payments, and surety bonds from State lessees.

Suspensions

We are proposing to reorganize the section on suspensions to flow better and to distinguish clearly between granting or directing a suspension. A new provision at § 250.19 (l)(5) would authorize suspensions as necessary for the diligent development of marginal reserves that would otherwise not be developed. The proposed revisions to "effect of suspensions on lease terms" appear in § 250.19 and § 256.73.

Accident reports

Recent rapid growth in offshore exploration and production activities in the Gulf of Mexico has led to an attendant increase in accidents and injuries on the OCS related to these activities. Since safety is our top priority, MMS sees a strong need to upgrade our accident investigation functions to ensure the continued safety of OCS operations. The proposed rule adds a new requirement (proposed § 250.20(a)) that OCS operators, lessees, or permit holders provide the MMS District Supervisor with written reports concerning accidents on the OCS. We have provided a table to specify the reports required for different types of accidents. MMS will provide more guidance on thresholds for fires, and factors that impair safety, through Notices to Lessees. Safety concerns also prompted the new requirement in proposed paragraph (b) in this section to require evacuation statistics during natural occurrences such as earthquakes and hurricanes.

Lease term extensions

We are proposing to expand the reporting requirements under § 250.23 to require the lessee/operator to report to MMS when lease production is initiated, resumes before the end of the 180-day period after production ceased, and when leaseholding operations occur during the referenced 180-day interval. MMS needs this information in a timely manner to efficiently maintain the lessee/operator's lease status.

Format of the proposed rule

We have written this proposed rule in a plain English format. We have tried to set out these requirements in a straightforward and uncomplicated manner. The plain English format uses the term "you" which means the lessee, right-of-way holder, or person acting on behalf of a lessee or a right-of-way holder. We emphasize that "you" are responsible for ensuring that all requirements are met. We encourage your comments on our use of the plain English format in this proposed rule as well as future rulemaking.

Executive Order (E.O.) 12866

This rule is not a significant rule under E. O. 12866 and does not require a review by the Office of Management and Budget (OMB). The new or expanded requirements in the rule are designed to safeguard lives, property and the environment. They do not impose extensive burdens. Lessees of a State lease located adjacent to the OCS will have to pay a non-refundable filing fee if they apply for a right-of-use and easement. The economic effects of the rule will be minimal. If there is one application from State lessees per year, MMS will receive a total of approximately $2,350 in fees and $5,000 in rental.

There are some additional new or expanded reporting requirements in this rule. They do not impose extensive burdens, yet provide necessary data that MMS will use to safeguard offshore operations. The estimated additional burden for submitting copies of written accident reports is 1 hour. There are an estimated 142 responses and at the rate of $35 per hour it would cost reporters a total of $4, 970 per year. The estimated burden for evacuation statistics reports is 1 hour. There are an estimated 620 responses and at the rate of $35 per hour it would cost reporters a total of $21,700 per year. Since such events are extremely unpredictable, we are estimating that these events could occur once every three years. The estimated burden on lease production status is one-half hour per report on lease production status. There are an estimated 1,000 responses and at a rate of $35 per hour it would cost reporters $17,500 per year.

Regulatory Flexibility Act

The proposed changes to 30 CFR part 250, subpart A will not have a significant economic effect. In general, a company needs large technical and financial resources and experience to safely conduct offshore activities. However, many of the leases and operators have less than 500 employees and are small businesses. It is likely that a State lessee applying for a right-of-use and easement on the OCS may be a small business. The costs associated with obtaining the benefit (right-of-use and easement) would be minimal. The application fee is estimated to be $2,350 per application and the rental is estimated to be $5,000. A company is not expected to apply for more than one such application per year. There are some additional new or expanded reporting requirements in this rule but they do not impose extensive burdens. Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Paperwork Reduction Act

We have examined the proposed changes to 30 CFR part 218; 30 CFR part 250; subparts E and F; and 30 CFR part 256 under the Paperwork Reduction Act of 1995 (PRA). We have determined that no new reporting and information collection requirements are included and the currently approved collections of information for these sections remain unchanged.

With respect to 30 CFR part 250, subpart D, the proposed changes remove sections of the regulations that contain approved collections of information subject to the PRA (OMB control number 1010–0053) and relocate them to 30 CFR 250, subpart A. MMS will submit an inventory correction change to OMB for approval when this rule is published in final.

The proposed changes to 30 CFR 250, subpart A, do contain collections of information subject to the PRA, and MMS has submitted them to OMB for review and approval under section 3507(d) of the PRA.

As part of our continuing effort to reduce paperwork and respondent burdens, MMS invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burden. Submit your comments to the Office of Information and Regulatory Affairs; OMB; Attention: Desk Officer for the Department of the Interior (OMB control number 1010–NEW); 725 17th Street, N.W., Washington, D.C. 20503. Send a copy of your comments to the Rules Processing Team, Attn: Comments; Mail Stop 4020; Minerals Management Service; 381 Elden Street; Herndon, Virginia 20170–4817. You may obtain a copy of the supporting statement for the new collection of information by contacting the Bureau's Information Collection Clearance Officer at (202) 208–7744.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by March 16, 1998. This does not affect the deadline for the public to comment to MMS on the proposed regulations.

The title of the collection of information for the main portion of this proposed rule is "Proposed Rulemaking—30 CFR 250, Subpart A, General" (OMB control number 1010–NEW). The current subpart A regulations contain approved collections of information (OMB control number 1010–0030) which consist of reporting and recordkeeping requirements on designations of operator; performance capabilities and standards; lease cancellations; suspensions of production or other operations; determinations of well producibility; reinjection and subsurface storage of gas; reimbursements of postlease geological and geophysical data and information reproduction costs; accident reporting; access to facilities; and crane inspection, testing, maintenance and operator qualifications. MMS uses the information to ensure that operations on the OCS are carried out in a manner that is safe, pollution free, and do not interfere with the rights of other users on the OCS.

The proposed rule, rewritten in plain English, restructures the citations containing the information collection requirements approved for the current

30 CFR 250, subpart A, regulations, but they remain unchanged. It also relocates two requirements from other subparts of 30 CFR 250 that also remain unchanged.

The proposed rule contains the following new or expanded information collection requirements:

1. Sections 250.18(c) explains how lessees of a State lease located adjacent to the OCS may apply for a right-of-use and easement on the OCS, and includes a non-refundable filing fee for such applications. MMS will use the information to determine if the right-of-use and easement: serves the purpose specified in the grant when conducting exploration, development, and production activities or other operations on or off the lease; is maintained for such purposes specified; and does not unreasonably interfere with the operations of any other lessee. We estimate that the average burden for this new application process will be 5 hours and a filing fee of approximately $2,350 per application.

2. Section 250.20(a) expands accident reporting to include the requirement to submit copies of written follow-up reports in addition to oral notifications. MMS will use the information to upgrade the accident investigation functions. We estimate that the average burden for this new reporting requirement will be an additional 1 hour per report.

3. Section 250.20(b) requires reports on evacuation statistics for a natural occurrence (i.e., hurricanes, earthquakes, etc.). MMS will use the information to be informed when there could be a major disruption in the availability and supply of natural gas and oil due to natural occurrences, to advise the Coast Guard of rescue needs, and to alert the news media and interested public entities when production is shut in and when resumed. We estimate that the average burden for this reporting requirement will be 1 hour per report.

4. Sections 250.23(e), (f), and (g) expand the reporting requirements for lease term dependency and operations for respondents to report when lease production is initiated, resumes before the end of the 180-day period after production ceased, and when leaseholding operations occur during the referenced 180-day interval. MMS will use this information to efficiently maintain the lessee/operator's lease status. We estimate that the average burden for this expanded reporting requirement will be one-half hour per report.

Respondents are approximately 130 Federal OCS oil and gas or sulphur lessees and an estimate of one State lessee each year who will apply for OCS right-of-use and easement. The frequency of response is on occasion or annual. Responses to this collection of information are mandatory or are required to obtain or retain a benefit. MMS will protect proprietary information in accordance with the Freedom of Information Act and 30 CFR 250.18 (renumbered to 30 CFR 250.27 in this proposed rule), Data and information to be made available to the public.

MMS estimates the total annual reporting and recordkeeping "hour" burden for the requirements in this proposed rule to be 10,578 hours. This will reflect an increase of 2,150 hours for the new or expanded requirements described above when this new collection replaces the collection of information approved for the current requirements in 30 CFR 250, subpart A (1010–0030). MMS estimates the total annual reporting and recordkeeping "cost" burden of this proposed rule to be $2,350 for approximately one application filing fee per year under § 250.18(c).

In calculating the burden, MMS assumed that respondents perform some of the requirements and maintain some of the records in the normal course of their activities. MMS considers these to be usual and customary and did not include them in the burden estimates. You are invited to provide information if you disagree with this assumption.

MMS will summarize written responses to this notice and address them in the final rule. All comments will become a matter of public record.

1. MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for MMS to properly perform its functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

2. In addition, the PRA requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. MMS needs your comments on this item. Your response should split the cost estimate into two components: (a) Total capital and startup cost component, and (b) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: before October 1, 1995; to comply with requirements not associated with the information collection; for reasons other than to provide information or keep records for the Government; or as part of customary and usual business or private practices.

Takings Implication Assessment

The Department of the Interior (DOI) certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, MMS did not need to prepare a Takings Implication Assessment pursuant to Executive Order (E.O.) 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Unfunded Mandates Reform Act of 1995

DOI has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on State, local, and tribal governments, or the private sector.

E.O. 12988

DOI has certified to OMB that the rule meets the applicable reform standards provided in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform.

National Environmental Policy Act

DOI has also determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

List of Subjects

30 CFR Part 218

Continental shelf, Electronic funds transfers, Geothermal energy,

Government contracts, Indians—lands, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

30 CFR Part 256

Administrative practice and procedures, Continental shelf, Environmental Protection, Government contracts, Mineral royalties, Oil and gas exploration, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

Dated: February 6, 1998.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, Minerals Management Service (MMS) proposes to amend 30 CFR parts 218, 250, and 256 as follows:

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 396a *et seq.*; 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 351 *et seq.*; 1001 *et seq.*; 1701 *et seq.*; 31 U.S.C.A. 3335; 43 U.S.C. 1301 *et seq.*; 1331 *et seq.*; 1801 *et seq.*

2. In § 218.154 paragraphs (a) and (b) are revised to read as follows:

§ 218.154 Effect of suspensions on royalty and rental.

(a) MMS will not require a lessee to pay rental or minimum royalty for or during a period of suspension if the Regional Supervisor:

(1) Directs the suspension of both operations and production; or

(2) Directs the suspension of operations on a lease on which there is no producible well under the provisions of 30 CFR 250.19 (j)(1), (j)(2), (j)(4) or (k)(2).

(b) MMS will not relieve the lessee of the obligation to pay rental, minimum royalty, or royalty for or during the period of suspension if the Regional Supervisor approves a suspension of operations or production, or both, requested by a lessee under the provisions of 30 CFR 250.19 (j)(3), (j)(5), (k), (l) or (m)(1).

* * * * *

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

3. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1334 *et seq.*

4. 30 CFR Part 250 subpart A is revised to read as follows:

Subpart A—General

Authority and Definition of Terms

Sec.
250.1 Authority and applicability of this part.
250.2 Definitions.

Performance Standards

250.3 Under what standards will the Director regulate lease operations?
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250.12 Under what conditions will MMS disqualify an operator or lessee?
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Special Types of Approvals

250.14 Under what conditions will MMS give me an oral approval or an approval for alternate procedures and/or departures?
250.15 How do I designate an operator and local agent?

Naming and Identifying Platforms and Wells

250.16 How do I name platforms and wells?
250.17 What identification signs must I display?

Right-Of-Use and Easement

250.18 When will MMS grant a right-of-use and easement?

Suspensions

250.19 Under what conditions can operations or production be suspended?

Reporting Requirements

250.20 What accident reports and evacuation statistics must I submit?
250.21 Reports and investigations of apparent violations.
250.22 What archaeological reports and surveys must I submit?

Lease Term Extensions

250.23 What effect do production, drilling, or well-reworking have on the lease term?
250.24 Under what circumstance may MMS cancel my lease, with or without compensation?

Information: Submission, Reimbursement For, Availability To Public

250.25 What reporting information and report forms must I submit?
250.26 When will MMS reimburse me for reproduction costs?
250.27 Data and information to be made available to the public.

References

250.28 Documents incorporated by reference.
250.29 Paperwork Reduction Act requirements—information collection.

Subpart A—General

Authority and Definition of Terms

§ 250.1 Authority and applicability of this part.

(a) The Secretary of the Interior (Secretary) authorized MMS to regulate oil, gas and sulphur exploration, development, and production operations on the Outer Continental Shelf (OCS). Under this authority, the Director requires that all operations:

(1) Are conducted in accordance with the Act, the regulations in this part, MMS orders, the lease or right-of-way, and other applicable laws, regulations, and amendments; and

(2) Conform to sound conservation practice to preserve, protect, and develop mineral resources of the OCS to:

(i) Make resources available to meet the Nation's energy needs;

(ii) Balance orderly energy resource development with protection of the human, marine, and coastal environments;

(iii) Ensure the public receives a fair and equitable return on the resources of the OCS;

(iv) Preserve and maintain free enterprise competition; and

(v) Minimize or eliminate conflicts between the exploration, development, and production of oil and natural gas and the recovery of other resources.

(b) When you conduct operations on the OCS you will be required to submit requests, applications, and notices, or provide supplemental information, for MMS approval. The table that follows contains general references and the corresponding regulatory section for these processes. MMS will respond with either written or oral approvals. Refer to § 250.14(a) of this part for information on oral approvals.

TABLE—WHERE TO FIND INFORMATION FOR CONDUCTING OPERATIONS

To get information about	Refer to
Exploration Plans (EP)	§ 250.33.
Development and Production Plans (DPP).	§ 250.34.
Applications for Permit to Drill	§ 250.64.
Oil and gas well-completion operations.	§ 250.83.
Oil and gas well-workover operations.	§ 250.103.
Abandonment of wells	§ 250.111.
Oil and gas production safety systems.	§ 250.122.
Platforms and structures	§ 250.131.
Pipelines	§ 250.157.
Pipeline right-of-way	§ 250.160.
Flaring	§ 250.175.
Downhole commingling	§ 250.176.
Measurement of gas	§ 250.181.
Unitization	§ 250.190.
Training	§ 250.211.
Sulphur operations	§ 250.253.
Off-lease Geological and Geophysical permits.	Part 251.
Oil Spill Response Plans	Part 254.

§ 250.2 Definitions.

Terms used in this part will have the meanings given in the Act and as defined below:

Act means the OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*).

Affected State means with respect to any program, plan, lease sale, or other activity proposed, conducted, or approved pursuant to the provisions of the Act, any State:

(1) The laws of which are declared, pursuant to section 4(a)(2) of the Act, to be the law of the United States for the portion of the OCS on which such activity is, or is proposed to be, conducted;

(2) Which is, or is proposed to be, directly connected by transportation facilities to any artificial island or installation or other device permanently or temporarily attached to the seabed;

(3) Which is receiving, or in accordance with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the OCS and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) Which is designated by the Secretary of the Interior (Secretary) as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the OCS; or

(5) In which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents to the marine or coastal environment in the event of any oil spill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities.

Air pollutant means any airborne agent or combination of agents for which the Environmental Protection Agency (EPA) has established, pursuant to section 109 of the Clean Air Act, national primary or secondary ambient air quality standards.

Analyzed geological information means data collected under a permit or a lease which have been analyzed. Analysis may include, but is not limited to, identification of lithologic and fossil content, core analysis, laboratory analysis of physical and chemical properties, well logs or charts, results from formation fluid tests, and descriptions of hydrocarbon occurrences or hazardous conditions.

Archaeological resource means any material remains of human life or activities that are at least 50 years of age and that are of archaeological interest.

Attainment area means, for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator of EPA to be reliable) not to exceed any primary or secondary ambient air quality standards established by EPA.

Best available control technology (BACT) means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation, taking into account energy, environmental and economic impacts, and other costs. The Regional Director will verify the BACT on a case-by-case basis and it may include reductions achieved through the application of processes, systems, and techniques for the control of each air pollutant.

Best available and safest technology (BAST) means the best available and safest technologies which the Secretary determines to be economically feasible wherever failure of equipment would have a significant effect on safety, health, or the environment.

Coastal environment means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone.

Coastal zone means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder) strongly influenced by each other and in proximity to the shorelands of the several coastal States. The coastal zone includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches. The coastal zone extends seaward to the outer limit of the U.S. territorial sea and extends inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority in section 305(b)(1) of the Coastal Zone Management Act (CZMA) of 1972.

Competitive reservoir means a reservoir in which there are one or more well completions on each of two or more leases or portions of leases, with different lease operating interests, from which the lessees plan future production.

Conservation means preservation, economy, and avoidance of waste. It is especially important in the petroleum industry, since oil and gas are irreplaceable.

Correlative rights when used with respect to lessees of adjacent tracts, means the right of each lessee to be afforded an equal opportunity to explore for, develop, and produce, without waste, minerals from a common source.

Data means facts and statistics, measurements, or samples which have not been analyzed or processed.

Departures means approvals granted by the appropriate MMS representative for operating requirements/procedures other than those specified in the regulations found in this part. These requirements/procedures may be necessary to control a well; properly develop a lease; conserve natural resources, or protect life, property, or the marine, coastal, or human environment.

Development means those activities which take place following discovery of minerals in paying quantities, including geophysical activity, drilling, platform construction, and operation of all

onshore support facilities, and which are for the purpose of ultimately producing the minerals discovered.

Director means the Director of the MMS of the U.S. Department of the Interior.

District Supervisor means the MMS officer with authority and responsibility for a district within an MMS Region.

Easement means an authorization for a non-possessory, non-exclusive interest in a portion of an OCS tract, whether leased or unleased, which specifies the rights of the holder to use the area embraced in the easement in a manner consistent with the terms and conditions of the granting authority.

Emission offsets means emission reductions obtained from facilities, either onshore or offshore, other than the facility or facilities covered by the proposed Exploration Plan or Development and Production Plan.

Enhanced recovery operations means pressure maintenance operations, secondary and tertiary recovery, cycling, and similar recovery operations which alter the natural forces in a reservoir to increase the ultimate recovery of oil or gas.

Existing facility, as used in § 250.45, means an OCS facility described in an Exploration Plan or a Development and Production Plan approved before June 2, 1980.

Exploration means the commercial search for oil, gas, and sulphur. Activities classified as exploration include but are not limited to:

(1) Geophysical and geological (G&G) surveys where magnetic, gravity, seismic reflection, seismic refraction, gas sniffers, coring, or other systems are used to detect or imply the presence of oil, gas, or sulphur; and

(2) Any drilling, including the drilling in which a discovery of oil or natural gas in paying quantities or sulphur is made. This includes drilling of any additional well needed to delineate any reservoir and any drilling to enable the lessee to determine whether to proceed with development and production.

Facility, as used in § 250.11 concerning inspections, means any installation permanently or temporarily attached to the seabed (that includes manmade islands, and bottom-sitting structures) and any onshore installation used for oil, gas, or sulphur drilling, production, or related activities. Any group of installations that is interconnected with walkways, or any group of installations that includes a central or primary installation with processing equipment and one or more satellite or secondary installations, is a single facility unless the Regional Supervisor determines that the complexity of the individual installations justifies their classification as separate facilities.

Facility, as used in § 250.45 concerning air quality, means any installation or device permanently or temporarily attached to the seabed which is used for exploration, development, and production activities for oil, gas, or sulphur and which emits or has the potential to emit any air pollutant from one or more sources. All equipment directly associated with the installation or device is part of a single facility if the equipment is dependent on, or affects the processes of, the installation or device. During production, multiple installations or devices are a single facility if the installations or devices are directly related to the production of oil or gas at a single site. Any vessel used to transfer production from an offshore facility is part of the facility while physically attached to it.

Facility, as used in § 250.67(b) concerning hydrogen sulfide (H_2S), means a vessel, a structure, or an artificial island used for drilling, well-completion, well-workover, and/or production operations.

Gas reservoir means a reservoir that contains hydrocarbons predominantly in a gaseous (single-phase) state.

Gas-well completion means a well completed in a gas reservoir or in the gas-cap of an oil reservoir with an associated gas-cap.

Governor means the Governor of a State, or the person or entity designated by, or pursuant to, State law to exercise the powers granted to such Governor pursuant to the Act.

H_2S absent means:

(1) Drilling, logging, coring, testing, or producing operations have confirmed the absence of H_2S in concentrations that could potentially result in atmospheric concentrations of 20 ppm or more of H_2S; or

(2) Drilling in the surrounding areas and correlation of geological and seismic data with equivalent stratigraphic units have confirmed an absence of H_2S throughout the area to be drilled.

H_2S present means drilling, logging, coring, testing, or producing operations have confirmed the presence of H_2S in concentrations and volumes that could potentially result in atmospheric concentrations of 20 ppm or more of H_2S.

H_2S unknown means the designation of a zone or geologic formation where neither the presence nor absence of H_2S has been confirmed.

Human environment means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

Information when used without an adjective means G&G data that have been analyzed, processed, or interpreted.

Interpreted geological information means geological information, often in the form of schematic cross sections, 3-dimensional representations, and maps, developed by determining the geological significance of data and analyzed geological information.

Interpreted geophysical information means geophysical information, often in the form of seismic cross sections, 3-dimensional representations, and maps, developed by determining the geological significance of geophysical data and processed geophysical information.

Lease means an agreement which is issued under section 8 or maintained under section 6 of the Act and which authorizes exploration for, and development and production of, minerals. The term also means the area covered by that authorization, whichever is required by the context.

Lease term pipelines means those pipelines owned and operated by a lessee or operator that are completely contained within the boundaries of a single lease, unitized leases, or contiguous (not cornering) leases of that lessee or operator.

Lessee means a person who has entered into, or who is the MMS-approved assignee of, a lease with the United States to explore for, develop, and produce the leased minerals. The term *lessee* also includes an owner of operating rights for that lease.

Major Federal action means any action or proposal by the Secretary which is subject to the provisions of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. (2)(C) (i.e., an action which will have a significant impact on the quality of the human environment requiring preparation of an Environmental Impact Statement pursuant to section 102(2)(C) of the National Environmental Policy Act).

Marine environment means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

Marine remains means physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated.

Maximum production rate (MPR) means the approved maximum daily rate at which oil or gas may be produced from a specified oil-well or gas-well completion.

Minerals includes oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from "public lands" as defined in section 103 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1331.

Nonattainment area means, for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator of EPA to be reliable) to exceed any primary or secondary ambient air quality standard established by EPA.

Nonsensitive reservoir means a reservoir in which ultimate recovery is not decreased by high reservoir production rates.

Of archaeological interest means capable of providing scientific or humanistic understanding of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques, such as controlled observation, contextual measurement, controlled collection, analysis, interpretation, and explanation.

Oil reservoir means a reservoir that contains hydrocarbons predominantly in a liquid (single-phase) state.

Oil reservoir with an associated gas cap means a reservoir that contains hydrocarbons in both a liquid and gaseous (two-phase) state.

Oil-well completion means a well completed in an oil reservoir or in the oil accumulation of an oil reservoir with an associated gas cap.

Operating rights means any interest held in a lease with right to explore for, develop, and produce leased substances. Any assignment or transfer of operating rights may specify the depth of the borehole down to which the operating rights extend.

Operator means the person the lessee(s) designates as having control or management of operations on the leased area or a portion thereof.

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Person includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation.

Pipelines are the piping, risers, and appurtenances installed for the purpose of transporting oil, gas, sulphur, and produced waters.

Processed geological information means data collected under a permit or a lease which have been processed. Processing involves changing the form of data to facilitate interpretation. Processing operations may include, but are not limited to, applying corrections for known perturbing causes, rearranging or filtering data, and combining or transforming data elements. Reprocessing operations may include varying identified parameters for the detailed study of a specific problem area.

Producing in paying quantities means that a well is able to produce oil, gas, or both in a cost-effective manner. This means that the production quantities must yield a greater return than the total costs, including well-completion costs, of producing the hydrocarbons at the wellhead.

Production means those activities which take place after the successful completion of any means for the removal of minerals, including such removal, field operations, transfer of minerals to shore, operation monitoring, maintenance, and work-over operations.

Projected emissions means emissions, either controlled or uncontrolled, from a source or sources.

Regional Director means the MMS officer with responsibility and authority for a Region within MMS.

Regional Supervisor means the MMS officer with responsibility and authority for operations or other designated program functions within an MMS Region.

Right-of-use means any authorization to use OCS lands issued under this part.

Right-of-way pipelines are those pipelines which: (1) Are contained within the boundaries of a single lease or unitized leases but are not owned and operated by a lessee or operator of that lease or unit, (2) are contained within the boundaries of contiguous (not cornering) leases which do not have a common lessee or operator, (3) are contained within the boundaries of contiguous (not cornering) leases which have a common lessee or operator but are not owned and operated by that common lessee or operator, or (4) are contained within a block(s) which is unleased.

Routine operations, for the purposes of subpart F, means any of the following operations conducted on a well with the tree installed:

(1) Cutting paraffin;

(2) Removing and setting pump-through-type tubing plugs, gas-lift valves, and subsurface safety valves which can be removed by wireline operations;

(3) Bailing sand;

(4) Pressure surveys;

(5) Swabbing;

(6) Scale or corrosion treatment;

(7) Caliper and gauge surveys;

(8) Corrosion inhibitor treatment;

(9) Removing or replacing subsurface pumps;

(10) Through-tubing logging (diagnostics);

(11) Wireline fishing;

(12) Setting and retrieving other subsurface flow-control devices; and

(13) Acid treatments.

Sensitive reservoir means a reservoir in which high reservoir production rates will decrease ultimate recovery. Initially, all oil reservoirs with an associated gas cap are classified as sensitive.

Significant archaeological resource means those archaeological resources that meet the criteria of significance for eligibility to the National Register of Historic Places as defined in 36 CFR 60.4.

Suspension means a granted or directed deferral of the requirement to produce (Suspension of Production (SOP)) or to conduct leaseholding operations (Suspension of Operations (SOO)).

Waste of oil, gas, or sulphur means:

(1) The physical waste of oil, gas, or sulphur;

(2) The inefficient, excessive, or improper use, or the unnecessary dissipation, of reservoir energy;

(3) The locating, spacing, drilling, equipping, operating, or producing of any oil, gas, or sulphur well(s) in a manner which causes or tends to cause a reduction in the quantity of oil, gas, or sulphur ultimately recoverable under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; or

(4) The inefficient storage of oil.

Well-completion operations means the work conducted to establish production from a well after the production-casing string has been set, cemented, and pressure-tested.

Well-control fluid means drilling mud, completion fluid, or workover fluid as appropriate to the particular operation being conducted.

Workover operations means the work conducted on wells after the initial well-completion operation for the purpose of maintaining or restoring the productivity of a well.

You means the Lessee, right-of-way holder, or person acting on behalf of a lessee or a right-of-way holder.

Performance Standards

§ 250.3 Under what standards will the Director regulate lease operations?

The Director will regulate all operations under a lease, right-of-use and easement, or right-of-way to:

(a) Promote orderly exploration, development, and production of mineral resources;

(b) Prevent damage to or waste of any natural resource, life, property, or the environment; and

(c) Cooperate and consult with affected States, local governments, other interested parties, and relevant Federal agencies.

§ 250.4 What measures must I take to protect health, safety, property, and the environment?

(a) You must protect health, safety, property, and the environment by:

(1) Performing all operations in a safe and workmanlike manner; and

(2) Maintaining all equipment in a safe condition.

(b) You must immediately take all necessary precautions to control, remove, or otherwise correct any hazardous oil and gas accumulation or other health, safety, or fire hazard.

§ 250.5 What standards must crane operations meet?

To ensure the safety of facility operations, you must meet the requirements of paragraph (a) of this section. If your facility is located in the Pacific OCS Region, you must also meet the requirements of paragraph (b) of this section.

(a) In all cases, you must:

(1) Operate and maintain cranes installed on fixed platforms according to the American Petroleum Institute (API) Recommended Practice (RP) for Operation and Maintenance of Offshore Cranes (API RP 2D), and

(2) Keep records of inspection, testing and maintenance, and crane operator qualifications according to the provisions of API RP 2D at your field office nearest the OCS facility for a period of 2 years.

(b) This paragraph applies if your facility is located in the Pacific OCS region. You may use other power-operated load-handling equipment (such as air hoists or jib cranes) that has lower capacities and is generally used for smaller loads than pedestal-mounted revolving cranes. In this case, you must use such equipment according to specific sections of API RP 2D as follows:

(1) Subsection 3.2 for Handling the Load;

(2) Section 4 for Inspection, Testing and Maintenance (with the exception of 4.2.3, Load Test and 4.5, Crane Rerating); and

(3) Section 5 for Wire Rope and Sling Inspection, Requirement and Maintenance.

§ 250.6 What must a welding, burning, and hot tapping practices and procedures plan contain?

In this section, *welding* and *burning* include arc or fuel-gas *welding* and arc or fuel-gas (acetylene or other gas) cutting. The term *welding* includes welding, burning, and hot tapping activities.

(a) You must submit a Welding, Burning, and Hot Tapping Safe Practices and Procedures Plan to the District Supervisor before you begin drilling or production activities on a lease. You may not begin welding activities until the District Supervisor has approved your plan. A copy of the plan and its approval letter must be available at the facility for the life of the facility (platform or drilling rig).

(b) Your plan must include the following:

(1) Standards or requirements for qualifying personnel who conduct welding activities;

(2) Methods to ensure that only qualified personnel will conduct welding activities;

(3) Practices and procedures for safe welding. Practices and procedures must address:

(i) Welding in designated safe areas;

(ii) Welding in undesignated areas, including well bays;

(iii) Fire watches; and

(iv) Maintenance of welding equipment.

(4) Drawings showing any designated safe-welding areas; and

(5) Methods, practices and procedures to preclude spark producing activities (i.e., grinding, abrasive blasting/cutting and arc-welding) from becoming a source of ignition in hazardous locations.

(c) A welding supervisor or a designated person in charge must be thoroughly familiar with your welding plan. This person must ensure that each welder is properly qualified according to the welding plan. This person also must inspect all welding equipment before welding.

(d) Your welding equipment must meet the following requirements:

(1) All engine-driven welding equipment must be equipped with spark arrestors and drip pans;

(2) Welding leads must be completely insulated and in good condition;

(3) Hoses must be leak free and equipped with proper fittings, gauges, and regulators; and

(4) Oxygen and fuel gas bottles must be secured in a safe place.

(e) Before you weld, you must move any equipment containing hydrocarbons or other flammable substances at least 35 feet horizontally from the work site. You must move similar equipment located on lower decks at least 35 feet from the point of impact where slag, sparks, or other burning materials could fall. If moving this equipment is impractical, you must protect that equipment with flame-proofed covers, shield it with metal or fire-resistant guards or curtains, or render the flammable substances inert.

(f) While you weld, you must monitor all water-discharge-point sources from hydrocarbon-handling vessels. If a discharge of flammable fluids occurs, you must stop welding.

(g) If you cannot weld in an approved safe-welding area, you must meet the following requirements:

(1) You may not begin welding until the designated person-in-charge has authorized in writing that it is safe to proceed with the welding activity. Before beginning welding, the designated person-in-charge and the welder(s) must inspect the work area and areas below the work area for potential fire and explosion hazards.

(2) During welding, the person-in-charge must designate one or more persons as a fire watch. These persons must have no other duties while actual welding is in progress. The fire watch must have usable firefighting equipment. The fire watch must remain on duty for 30 minutes after welding activities end. If welding occurs in an area not equipped with a gas detector, the fire watch also must maintain a continuous surveillance during the welding and burning operation, with a portable gas detector.

(3) You may not weld piping, containers, tanks, or other vessels that have contained a flammable substance unless you have rendered the contents inert and the designated person-in-charge has determined it is safe to weld. This does not apply to approved hot taps.

(4) You may not weld in, or within 10 feet of, a well-bay or production area unless you have shut in all producing wells in that area.

(5) You may not weld while you drill, complete, workover, or conduct

wireline operations unless the fluids in the well are noncombustible and you have precluded the entry of formation hydrocarbons into the wellbore. This does not apply to welding in an approved safe-welding area.

§ 250.7 What requirements apply to electrical equipment?

The requirements in this section apply to all electrical equipment on all platforms, artificial islands, fixed structures, and their facilities.

(a) You must classify all areas in accordance with API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities.

(b) You must use trained and experienced personnel to maintain your electrical systems. They must have expertise in area classification, distribution system, performance characteristics and operation of electrical equipment, and associated hazards.

(c) You must install all electrical systems in accordance with API RP 14F, Recommended Practice for Design and Installation of Electrical Systems for Offshore Production Platforms. You do not have to comply with Sections 7.4, Emergency Lighting, and 9.4, Aids to Navigation Equipment.

(d) You must use a low-tension ignition system on each engine that has electric ignition. You must design and maintain the ignition system to minimize the release of electrical energy.

§ 250.8 When must I use best available and safest technologies (BAST)?

(a) You must use BAST on all new exploration, development, and production operations.

(b) You must use BAST on existing operations to avoid failure of equipment that would have a significant effect on safety, health, or the environment if the Director determines that:

(1) Using BAST is economically feasible; and

(2) The benefits of using BAST outweigh the costs.

(c) If you comply with the requirements of this part, MMS will consider you to be using BAST.

(d) MMS will analyze specific equipment and procedures or systems not covered by standards, codes, or practices to determine if their failure would have a significant effect on safety, health, or the environment. If MMS identifies significant effects on safety, health, and the environment, the Regional Supervisor may direct you to submit on a case-by-case basis the following analysis:

(1) Information necessary to indicate the use of BAST;

(2) Alternatives you are considering to the specific equipment or procedures;

(3) The rationale as to why you chose one safe alternative technology instead of another; and

(4) A discussion of the costs involved in the use of alternate technologies and the incremental benefits to be gained.

§ 250.9 How do I determine well producibility?

To determine whether a well is capable of producing in paying quantities, submit a written request to the District Supervisor. You must then meet the criteria in paragraphs (a) and (b) of this section. Once a lease has a well that MMS determines is capable of producing in paying quantities, no further determination of well producibility will be made on the lease. A determination of well producibility invokes minimum royalty status on the lease as provided in 30 CFR 202.53. If your well is located in the Gulf of Mexico (GOM), you must also meet the requirements of paragraph (c) of this section.

(a) You must give the District Supervisor a reasonable opportunity to witness each test that you conduct under paragraph (b) of this section. In lieu of witnessing a test, MMS will accept test data with your affidavit, or third-party test data, but you must receive the District Supervisor's approval for this arrangement *before* the test.

(b) You must conduct:

(1) A production test for oil wells that lasts at least 2 hours after flow stabilizes; and

(2) Either:

(i) A deliverability test for gas wells that lasts at least 2 hours after flow stabilizes, or

(ii) A four-point back pressure test.

(c) As evidence that a well in the GOM is capable of producing oil or gas in paying quantities, the GOM OCS Region will also consider the collective results of the following log, core analyses, and test criteria:

(1) Resistivity or induction electric log of the well showing a minimum of 15 feet of producible sand in one section. The producible section must not include any interval which appears to be water saturated. All of the sections you count as producible must exhibit:

(i) Electrical spontaneous potential exceeding 20-negative millivolts beyond the shale base line; or

(ii) Gamma ray log deflection of at least 70 percent of the maximum gamma ray deflection in the nearest clean water-bearing sand—if mud conditions prevent a 20-negative millivolt reading beyond the shale base line; and

(iii) A minimum true resistivity ratio of the producible section to the nearest clean water-bearing sand of at least 5:1.

(2) A log indicating sufficient porosity in the producible section.

(3) Sidewall cores and core analyses which indicate that the section is capable of producing oil or gas or evidence that an attempt was made to obtain such cores.

(4) A wireline formation test and/or mud-logging analysis which indicates that the section is capable of producing oil or gas.

§ 250.10 Under what conditions will MMS approve reinjection and subsurface gas storage?

(a) The Regional Supervisor may authorize you to reinject gas on the OCS to promote conservation of natural resources and to prevent waste. To receive MMS approval for reinjection, you must:

(1) Show that the reinjection will not result in undue interference with operations under existing leases; and

(2) Submit a written application to the Regional Supervisor for reinjection of gas.

(b) The Regional Supervisor will approve gas reinjection applications that:

(1) Enhance recovery projects;

(2) Prevent flaring of casinghead gas; or

(3) Implement other conservation measures approved by the Regional Supervisor.

(c) The Regional Supervisor may authorize subsurface storage of gas on the OCS for later commercial benefit. To receive MMS approval you must:

(1) Show that the subsurface storage of gas will not result in undue interference with operations under existing leases; and

(2) Sign a storage agreement which includes the required payment amount of a storage fee or rental.

(d) MMS may approve reinjection or storage of gas for locations on- or off-lease.

(1) If you produce gas from an OCS lease and store it in a reservoir on the lease or unit, you are not required to pay royalty until you remove or sell the gas from the storage reservoir.

(2) If you produce gas from an OCS lease and treat it at an off-lease or off-unit location, you must pay royalties when the gas is first produced.

(3) A reservoir on- or off-lease may contain both reinjected or stored gas and gas original to the reservoir. In this case, when you produce gas from the reservoir you must use an MMS-

approved formula to determine the amounts of injected or stored gas and gas original to the reservoir.

(e) Using a lease area for subsurface storage of gas, does not affect the continuance or expiration of the lease.

(f) You may not store gas on unleased lands unless the Regional Supervisor has approved a right-of-use and easement for that purpose, under § 250.18.

(g) To receive the Regional Supervisor's approval of your request to reinject gas into the cap rock of a salt dome containing a sulphur deposit, you must show that the injection:

(1) Is necessary to recover oil and gas contained in the cap rock; and

(2) Will not significantly increase potential hazards to present or future sulphur mining operations.

Inspection of Operations

§ 250.11 How often does MMS conduct inspections?

(a) To ensure that you are conducting operations in accordance with the Act, the regulations in this part, the lease or right-of-way, and other applicable laws and regulations, MMS will inspect your OCS facilities, including those facilities under jurisdiction of other Federal agencies that MMS inspects by agreement.

(1) MMS conducts a scheduled onsite inspection of each offshore facility that is subject to environmental or safety regulations under the Act at least once a year. The inspection determines whether environmental protection and safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents has been installed and is operating properly.

(2) MMS may also conduct periodic onsite inspection of any of your facilities without advance notice.

(b) When MMS conducts an inspection, you must provide:

(1) Access to all platforms, artificial islands, and other installations located on your leases or associated with your lease, right of easement, or right of way; and

(2) The use of helicopter landing sites and refueling facilities for helicopters used by MMS for regulating offshore operations.

(c) You must make available at all reasonable times for MMS inspection:

(1) The area covered under a lease, easement, right-of-way, or permit;

(2) All improvements, structures, and fixtures on these areas; and

(3) All records of design, construction, operation, maintenance, repairs, or investigations on or related to the area.

(d) Upon request, MMS will reimburse you for food, quarters, and transportation that you provide for MMS representatives while they inspect lease facilities and operations. You must send MMS your reimbursement request within 90 days of the inspection.

Disqualification and Appeals

§ 250.12 Under what conditions will MMS disqualify an operator or lessee?

MMS may disqualify an operator or lessee from acquiring any new leaseholdings or lease assignments, or disapprove or revoke your designation as operator, if your operating performance is unacceptable. In making this determination, MMS will consider, individually or collectively:

(a) Accidents and their nature;

(b) Pollution events, environmental damages and their nature;

(c) Incidents of non-compliance;

(d) Civil penalties;

(e) Failure to adhere to OCS lease obligations; or

(f) Any other relevant factors.

§ 250.13 How can I appeal a decision made under MMS regulations?

You may appeal orders or decisions issued under MMS regulations in subchapter B (parts 250 to 282) in accordance with part 290 of this title. When you appeal to the Director, you must continue to follow all requirements for compliance with the order or decision you appealed, unless the Secretary of the Interior (Secretary) or the Secretary's designee grants a stay of the request.

Special Types of Approvals

§ 250.14 Under what conditions will MMS give me an oral approval or an approval for alternate procedures and/or a departure?

(a) *Oral approvals.* When you apply for MMS approval of any activity, MMS normally gives you a written approval. However, you may receive oral approval from MMS under certain circumstances:

(1) MMS may give you oral approval to an oral request. You must confirm the oral request by submitting a written request to MMS within 72 hours of the oral approval. Oral approvals for gas flaring do not require a written follow-up request.

(2) MMS may give you oral approval to a written application when quick action is necessary. MMS will follow up its oral approval to your written application by forwarding a written approval to you and will include any conditions placed on the oral approval.

(3) Requests to, and approvals from, MMS for gas flaring are always oral. You are not required to submit a written request to follow-up your oral request. However, when you stop the approved flaring, you must promptly submit a written letter summarizing the location, dates and hours, and volumes of liquid hydrocarbons produced and gas flared associated with the approved flaring in accordance with 30 CFR part 250, subpart K.

(b) *Approval for alternate procedures.* You may use alternate procedures or equipment as follows:

(1) You may use new or alternate procedures or equipment, not covered in this part, if they provide a level of protection to the environment and ensure a measure of safety that is equal to or surpasses the current MMS requirements.

(2) Before using the new or alternate technique or equipment, you must have written approval from the District or Regional Supervisor, as appropriate.

(3) To receive MMS approval, you must either submit information or give an oral presentation to the District or Regional Supervisor, as appropriate, describing the site-specific application(s), performance characteristics, and safety features of the proposed procedure. The District or Regional Supervisor will respond to each proposal in writing.

(c) *Approval for departures.* If certain aspects of your proposed procedure or equipment deviate from or are not covered by MMS regulations, MMS may prescribe or approve exceptions from the operating requirements of this part.

§ 250.15 How do I designate an operator and local agent?

(a) You must provide the Regional Supervisor an executed Designation of Operator form unless you are the only lessee and are the only person conducting lease operations. When there is more than one lessee then the Regional Supervisor must receive and approve the Designation of Operator form from each lessee before the designated operator may commence operations on the leasehold.

(1) This designation is authority for the designated operator to act on your behalf and to fulfill your obligations under the Act, the lease, and the regulations in this part.

(2) When you are no longer the designated operator, you must immediately provide in writing the termination of your Designation of Operator to the Regional Supervisor. If you are also a designated royalty payor and will not continue to be in the future, you must also notify the Royalty Management Program of the termination of your Designation of Operator.

(3) When a Designation of Operator terminates, the Regional Supervisor must approve a new designated operator

under this paragraph before operator may continue.

(4) If your Designation of Operator is terminated, or a controversy develops between you and your designated operator, you and your designated operator must protect the lessor's interests.

(5) You, or your designated operator, must immediately provide the Regional Supervisor a written notification of any change of address.

(b) When you are not the sole lessee, you and your co-lessee(s) are jointly and severally responsible for fulfilling your obligations under the provisions of this subchapter, unless otherwise provided in the regulations in this subchapter. Should your designated operator fail to fulfill any of your obligations under this subchapter, the Regional Supervisor may require you or any or all of your co-lessee(s) to fulfill those obligations or other operational obligations under the Act, the lease, or the regulations in this subchapter.

(c) You or your designated operator may designate for the Regional Supervisor's approval, or the Regional Director may require you to designate, a local agent empowered to: receive notices, submit requests, applications, notices, or supplemental information; or fulfill your obligations under the Act, the lease, or the regulations in this part.

(d) Whenever the regulations in 30 CFR parts 250 to 282 require the lessee to meet a requirement or perform an action, the lessee, operator (if one has been designated), and the person actually performing the activity to which the requirement applies are jointly and severally responsible for compliance with the regulation.

Naming and Identifying Platforms and Wells

§ 250.16 How do I name platforms and wells?

(a) *In the Gulf of Mexico Region:* (1) Assign each platform a letter designation. For example, A, B, CA, or CB.

(i) After a platform is installed, rename each well that was drilled through a template and was assigned a number. Use a letter and number designation. For example, rename Well No. 1: A–1, B–1, or C–1; and

(ii) When you have more than one platform in a field (excluding complexes), include the designations for the field and use a different letter designation for each platform. For example, EC 221–A, EC 222–B, EC 223–C.

(2) In naming multiple well caissons, you must assign a letter designation.

(3) In naming single well caissons, you must use certain criteria as follows:

(i) For single well caissons that are not attached to a platform with a walkway, use the well designation. For example, Well No. 1;

(ii) For single well caissons that are attached to a platform with a walkway, use the same designation as the platform. For example, rename Well No.10 as A–10; and

(iii) For single well caissons with production equipment, use a letter designation. For example, Well No. 1 as A–1.

(b) *In the Pacific Region*, platforms are assigned a name designation.

(c) *In the Alaska Region*, platforms will be named and identified in accordance with the Regional Director's directions.

§ 250.17 What identification signs must I display?

(a) You must identify all platforms, structures, artificial islands, and mobile drilling units with a sign.

(1) You must display an identification sign that can be viewed from the waterline on at least one side of the platform. The sign must use at least 3-inch letters and figures.

(2) When helicopter landing facilities are present, you must display an additional identification sign that is visible from the air. The sign must use at least 12-inch letters and figures, and must also display the weight capacity of the helipad. If this sign is visible to both helicopter and boat traffic, then the sign in paragraph (a)(1) of this section is not required.

(3) Your identification sign must:

(i) List the name of the lessee or designated operator;

(ii) In the GOM OCS Region, list the area designation or abbreviation and the block number of the platform location as depicted on OCS Official Protraction Diagrams or leasing maps;

(iii) In the Pacific OCS Region, list the lease number on which the facility is located; and

(iv) List the name of the platform, structure, artificial island, or mobile drilling unit.

(b) You must identify singly completed wells and multiple completions as follows:

(1) For each singly completed well, list the lease number and well number on the wellhead or on a sign affixed to the wellhead;

(2) For wells with multiple completions, identify each completion individually at the wellhead; and

(3) For subsea wellheads, affix the required sign on the flowline that connects to the pipeline that connects to the subsea well at a convenient location on the receiving platform.

(c) Each identifying sign must be visible to approaching traffic and maintained in a legible condition.

Right-of-Use and Easement

§ 250.18 When will MMS grant a right-of-use and easement?

(a) *Granting a right-of-use and easement.* In addition to the rights and privileges granted to you under a lease issued or maintained under the Act, MMS may grant you a right-of-use and easement on the OCS if you meet these requirements:

(1) You must need the right-of-use and easement to construct and maintain off the lease platforms, artificial islands, and installations and other devices that are:

(i) Permanently or temporarily attached to the seabed; and

(ii) Used for conducting exploration, development, and production activities or other operations on your lease;

(2) You must exercise the right-of-use and easement in accordance with the provisions of this part;

(3) If you apply for a right-of-use and easement on a leased area, you must notify the lessee and give her/him an opportunity to comment on your application; and

(4) You must receive MMS approval for all platforms, artificial islands, and installations and other devices permanently or temporarily attached to the seabed.

(b) *Continuation of the right beyond lease termination.*

If your right-of-use and easement is on a lease, you may continue to exercise the right-of-use after the lease on which it is situated terminates. You must only use the right-of-use and easement for the purpose that the grant specifies. All future lessees of that portion of the OCS on which your right-of-use and easement is situated must continue to provide you the right-of-use and easement for the purpose that the grant specifies.

(c) *Granting a right-of-use and easement to adjacent State lessee.* MMS may grant a lessee of a State lease located adjacent to the OCS a right-of-use and easement on the OCS. MMS will require you to pay an application fee (see (c)(4)(i)) to reimburse us for our costs of processing your application. The Independent Offices Appropriations Act (31 U.S.C. 9701), Office of Management and Budget (OMB) Circular A–25, and the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996) require us to collect these fees. MMS will

specify the fee and rental payment amounts (under paragraph (c)(3)) of this section in notices to State lessees.

(1) MMS will only grant a right-of-use and easement under this paragraph to enable a State lessee to conduct and maintain a device that is permanently or temporarily attached to the seabed (i.e., a platform, artificial island, or installation). The lessee must use the device to explore for, develop, and produce oil and gas from the adjacent State lease and for other operations that are related to these activities.

(2) A right-of-use and easement granted under this section is subject to the regulations of this part and any terms and conditions that the Regional Director prescribes.

(3) For the whole or fraction of the first calendar year, and annually after that, you must pay to MMS, in advance, an annual rental payment in an amount MMS will establish in accordance with the statutes and OMB Circular A–25, referenced in paragraph (c) of this section.

(4) When you apply for a right-of-use and easement, you must pay:

(i) A non-refundable filing fee; and

(ii) The first year's rental according to paragraph (c)(3) of this section.

(5) With your application, you must describe the proposed use giving:

(i) Details of the proposed uses and activities including access needs and special rights-of-use that you may need;

(ii) A description of all facilities for which you are seeking authorization;

(iii) A map or plat describing primary and alternate project locations; and

(iv) A schedule for constructing any new facilities, drilling or completing any wells, anticipated production rates, and productive life of existing production facilities.

(6) Before MMS issues you a right-of-use and easement on the OCS, you must furnish the Regional Director a surety bond in the amount of $500,000. The Regional Director may require additional security from you (i.e., security over and above the prescribed $500,000) to cover additional costs and liabilities for regulatory compliance. This additional surety:

(i) Must be in the form of a supplemental bond or bonds meeting the requirements of § 256.54 or an increase in the amount of coverage of an existing surety bond; and

(ii) Covers additional costs and liabilities for regulatory compliance, including well abandonment, platform and structure removal, and site clearance from the seafloor of the right-of-use and easement.

Suspensions

§ 250.19 Under what conditions can operations or production be suspended?

(a) You may request approval of a suspension, or the Regional Supervisor may direct a suspension (Directed Suspension), for all or any part of a lease. Depending on the nature of the suspended activity, suspensions are labeled either Suspensions of Operations (SOO) or Suspensions of Production (SOP).

(b) A suspension may extend the term of a lease (see 30 CFR 250.23). The extension is equal to the length of time the suspension is in effect, except as provided in paragraph (c).

(c) A Directed Suspension does not extend the term of a lease when the Regional Supervisor direct a suspension because of:

(1) Gross negligence; or

(2) A willful violation of a provision of the lease or governing statutes and regulations.

(d) MMS may issue suspensions for a period of up to 5 years. The Regional Supervisor will set the length of the suspension based on the conditions of the individual case involved. MMS may grant consecutive suspensions.

(e) SOO's end automatically when the suspended operation commences.

(f) SOP's end automatically when production begins.

(g) A Directed Suspension normally terminates as specified in the letter directing the suspension.

(h) MMS may terminate any suspension when the Regional Supervisor determines the circumstances that justified the suspension no longer exist or that other lease conditions warrant termination. The Regional Supervisor will notify you of the reasons for termination and the effective date.

(i) You must submit your request for a suspension to the Regional Supervisor before the 180th day after you stop operations (see 30 CFR 250.23). MMS must receive the request before the lease term ends. The request must include:

(1) The justification for the suspension including the length of suspended period requested; and

(2) A schedule of work leading to the commencement or restoration of the suspended activity.

(j) The Regional Supervisor may grant or direct a suspension under any of the following circumstances:

(1) When necessary to comply with judicial or Congressional decrees prohibiting any activity or the permitting of those activities. The effective date of the suspension will be the effective date required by the action of the court or Congress;

(2) When activities pose a threat of serious, irreparable, or immediate harm. This would include damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment. MMS may require you to do a site-specific study (see § 250.19 (o)(1));

(3) When necessary for the installation of safety or environmental protection equipment;

(4) When necessary to carry out the requirements of the National Environmental Policy Act or to conduct an environmental analysis; or

(5) When necessary to allow for inordinate delays encountered in obtaining required permits or consents, including administrative or judicial challenges or appeals.

(k) The Regional Supervisor may direct a suspension when:

(1) You failed to comply with an applicable law, regulation, order, or provision of a lease or permit; or

(2) The suspension is in the interest of national security or defense.

(l) The Regional Supervisor may grant or direct an SOP when: the suspension is in the national interest; you have exercised diligence in pursuing production; the lease was drilled and a well was determined to be producible in accordance with 30 CFR 250.9 or 250.253; and it is necessary because the suspension will meet one of the following criteria:

(1) It will facilitate the proper development of a lease, including allowing you reasonable time to construct and install production facilities;

(2) It will allow you time to obtain adequate transportation facilities;

(3) It will allow you a reasonable amount of time to enter a sales contract for oil, gas, or sulphur. You must show that you are making a good faith effort to enter into the contract(s);

(4) It will avoid premature abandonment of a producing well(s);

(5) It will allow you to develop marginal reserves that would otherwise not be developed. You must provide a schedule of work commitments, with specific measurable milestones, which would lead to development; or

(6) It will allow you reasonable time to acquire, properly process/reprocess, and evaluate geophysical data or information. You must demonstrate a commitment to developing the lease, and the evaluation program must be designed to efficiently select a location for additional development wells, assist in siting development facilities, or locate an additional well needed to properly size production facilities.

(m) The Regional Supervisor may grant an SOO when necessary to allow you reasonable time to commence drilling or other operations when your good-faith efforts are prevented by reasons beyond your control, such as unexpected weather, unavoidable accidents, or drilling rig delays.

(n) A directed suspension may affect the payment of rental or royalties for the lease as provided in § 218.154.

(o) If MMS grants or directs a suspension under paragraph (j)(2) of this section, the Regional Supervisor may require you to:

(1) Conduct a site-specific study(s);

(2) Submit a revised EP (including any required mitigating measures);

(3) Submit a revised DPP (including any required mitigating measures); or

(4) Submit a revised Development Operations Coordination Document according to § 250.34.

(p) The Regional Supervisor must approve or prescribe the scope for any site-specific study that you perform under § 250.19 (o)(1).

(1) The study must evaluate the cause of the hazard, the potential damage, and the available mitigation measures.

(2) You must pay for the study unless you request, and the Regional Supervisor agrees to arrange, payment by another party.

(3) You must furnish copies and results of the study to the Regional Supervisor.

(4) MMS will make the results available to other interested parties and to the public.

(5) The Regional Supervisor will use the results of the study and any other information that becomes available:

(i) To decide if the suspension can be lifted.

(ii) To determine any actions that you must take to mitigate or avoid any damage to the environment, life, or property.

Reporting Requirements

§ 250.20 What accident reports and evacuation statistics must I submit?

(a) *Accident reports.* You must report accidents in accordance with the accident reporting table in this section. Copies of written company reports may be submitted to fulfill these requirements.

TABLE—ACCIDENT REPORTING

Type of accident	Reporting requirement
Major accidents, including fires, are those which cause (1) any death or serious injury resulting in substantial impairment of any bodily unit or function, or (2) property or equipment damage costing more than $25,000..	1. In the case of death or fire, orally notify the District Supervisor immediately. Otherwise, orally notify the District Supervisor within 24 hours. 2. Follow up with a preliminary written report within 10 days. 3. Submit a final written report in 45 days. 4. In all written reports, differentiate, to the extent practicable, between factual and conjectural or interpretive information.
Reportable accidents include (1) all other fires, (2) injuries requiring more than first aid treatment and which prevent the performance of normal work duties, or (3) property or equipment damage costing less than $25,000 and which impairs safety systems.	1. Notify the District Supervisor within 72 hours. 2. Follow up with a written report within 10 days. To the extent practicable, differentiate between factual and conjectural or interpretive information.
All explosions and blowouts connected with any activities or operations on a lease.	1. Orally notify the District Supervisor immediately. 2. Follow up with a written report within 10 days. To the extent practicable, differentiate between factual and conjectural or interpretive information.
Oil spills	Report all spills of oil in accordance with 30 CFR part 254.

(1) If you hold an easement, right-of-way, or other permit, you must comply with paragraph (a) of this section by notifying and reporting to the Regional Supervisor any accidents occurring on the area covered by the easement, right-of-way, or other permit.

(2) Investigations that MMS conducts under the authority of sections 22(d) (1) and (2) of the Act 43 U.S.C. 1348 d(1) and (2), are fact-finding proceedings with no adverse parties. The purpose of the investigation is to prepare a public report that determines the cause or causes of the accident. The investigations may involve panel meetings conducted by a chairperson appointed by MMS. The following requirements must be met for any panel meetings involving persons giving testimony:

(i) A person giving testimony may have legal and/or other representative(s) present to provide advice or counsel while the person is giving testimony. The chairperson may require a verbatim transcript to be made of all oral testimony. The chairperson also may accept a sworn written statement in lieu of oral testimony.

(ii) Only panel members, panel legal advisors, and panel experts may address questions to any person giving testimony.

(iii) The chairperson may issue subpoenas to persons to appear and provide testimony at a panel meeting. A subpoena may not require a person to attend a panel meeting held at a location more than 100 miles from where a subpoena is served.

(iv) Any person giving testimony is entitled to request compensation for mileage and fees for service within 90 days after the panel meeting. The compensated expenses must be similar to mileage and fees for service that are permitted to be compensated by U. S. District Courts.

(b) *Evacuation statistics for natural occurrences.* You must submit evacuation statistics to the Regional Supervisor for a natural occurrence such as an earthquake or hurricane. MMS will notify local and national authorities and the public, as appropriate. You must:

(1) Submit the statistics by telefax or E-mail as soon as possible when evacuation occurs;

(2) Submit statistics on a daily basis no later than 11 a.m. during the period of shut-in and evacuation;

(3) Inform MMS when you resume production; and

(4) Submit statistics either by MMS district or the total figures for your operations in the Region.

§ 250.21 Reports and investigations of apparent violations.

Any person may report to MMS an apparent violation or failure to comply with any provision of the Act, any provision of a lease, license, or permit issued under the Act, or any provision of any regulation or order issued under the Act. When MMS receives a report of an apparent violation, or when an MMS employee detects an apparent violation, MMS will investigate in accordance with its procedures.

§ 250.22 What archaeological reports and surveys must I submit?

(a) If it is likely that an archaeological resource exists in the lease area, the Regional Director will notify you in writing. You must include an archaeological report in the EP or DPP.

(1) If the archaeological report suggests that an archaeological resource may be present, you must either:

(i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be; or

(ii) Establish to the satisfaction of the Regional Director that an archaeological resource does not exist or will not be adversely affected by operations. This requires further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques the Regional Director considers appropriate. You must submit the investigation report to the Regional Director for review.

(2) If the Regional Director determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the Regional Director will notify you immediately. You must not take any action that may adversely affect the archaeological resource until the Regional Director has told you how to protect the resource.

(b) If you discover any archaeological resource while conducting operations in the lease area, you must immediately halt operations within the area of the discovery and report the discovery to the Regional Director. If investigations determine that the resource is significant, the Regional Director will tell you how to protect it.

Lease Term Extensions

§ 250.23 What effect do production, drilling, or well-reworking have on the lease term?

(a) Your lease expires at the end of its primary term unless you are producing in paying quantities or conducting drilling or well-reworking operations on your lease (see 30 CFR part 256). The objective of the drilling or well-reworking operations must be to establish continuous production on the lease. For purposes of this section, the term *operations* means *continuous* production, drilling, or well-reworking.

(b)(1) If you stop conducting operations during the last 180 days of your primary lease term, your lease will expire at the end of the primary lease term unless by the 180th day after you stop operations you either resume operations, or MMS receives your request for an SOO or an SOP that the Regional Supervisor later grants under § 250.19. If the Regional Supervisor denies your request for an SOO or an SOP and you do not resume operations within 180 days after you stop operations, your lease expires at the end of the primary lease term.

(2) If you extend your lease term under paragraph (b)(1), you must pay rental for each year or part of the year during which your lease continues in force beyond the end of the primary lease term.

(c) If you stop conducting operations on a lease that has continued beyond its primary term, then your lease will expire unless you resume operations or receive an SOO or an SOP from the Regional Supervisor under § 250.19 before the end of the 180th day after you stop operations

(d) You may ask the Regional Supervisor to allow you more than 180 days to resume operations on a lease continued beyond its primary term when operating conditions warrant. The request must be in writing and explain the operating conditions that warrant a longer period. In allowing additional time, the Regional Supervisor must determine that the longer period is in the national interest and that it conserves resources, prevents waste, or protects correlative rights.

(e) You must immediately notify MMS either orally or by fax or E-mail when you begin operations and follow up with a written report under paragraph (f) of this section.

(f) You must submit a report to the District Supervisor when lease production is initiated, lease production ceases, when production resumes before the end of the 180-day period after production ceased, and when any operations occur during the referenced 180-day interval.

(1) The report must contain:

(i) The lease number;

(ii) The well number(s) involved; and

(iii) The pertinent dates and a description of the operation.

(2) You must submit the report within 30 days after production either commences, resumes, or ceases, as appropriate, or 30 days after the leaseholding operation is completed.

(g) You must immediately report to the District Supervisor if production does not resume before the end of the 180-day period.

§ 250.24 Under what circumstances may MMS cancel my lease with or without compensation?

If the Secretary cancels your lease under this part or under part 256, you are entitled to compensation under paragraph (d) of this section. Paragraph (e) of this section gives conditions under which you will receive *no* compensation.

(a) *Conditions for canceling a lease with compensation.* The Secretary may cancel a lease after notice and opportunity for a hearing when:

(1) Continued activity on the lease, would probably cause harm or damage to life (including fish and other aquatic life), property, other mineral deposits (in areas leased or not leased), or the marine, coastal, or human environment;

(2) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time;

(3) The advantages of cancellation outweigh the advantages of continuing the lease in force; and

(4) A suspension has been in effect for at least 5 years, or you request termination of the suspension and lease cancellation.

(b) *Canceling a lease at the exploration stage.* MMS may not approve an EP under subpart B of this part if the Regional Supervisor determines that the proposed activities may cause serious harm or damage to life (including fish and other aquatic life), property, any mineral deposits, the national security or defense, or to the marine, coastal, or human environment. When you cannot modify the EP to avoid such conditions and the EP is subsequently disapproved under the regulations in subpart B of this part, the Secretary may cancel the lease if:

(1) The primary lease term has not expired and exploration has been prohibited for 5 years following the disapproval; or

(2) You request cancellation at an earlier time.

(c) *Extending or canceling a lease at development and production stage.* (1) MMS may extend your lease if you submit a DPP and the Regional Supervisor disapproves the plan in accordance with the regulations in subpart B of this part. Following the disapproval:

(i) MMS will allow you to hold the lease for 5 years maximum;

(ii) At any time within 5 years after the disapproval, you may reapply for approval of the same or a modified plan; and

(iii) The Regional Supervisor will approve, disapprove, or require modification of the plan under § 250.34(l).

(2) If the Regional Supervisor has not approved a DPP or required you to submit a DPP for approval or modification, the Secretary will cancel the lease:

(i) When the 5-year period described in paragraph (c)(1) of this section expires; or

(ii) If you request cancellation at an earlier time.

(d) *Amount of compensation for lease cancellation.* When the Secretary cancels a lease under paragraphs (a), (b), or (c) of this section, you are entitled to receive compensation under 43 U.S.C. 1334 (a)(2)(c). You must show the Director that the amount of compensation claimed is the lesser of paragraph (d)(1) or (d)(2) of this section:

(1) The fair value of the cancelled rights as of the date of cancellation, taking into account both:

(i) Anticipated revenues from the lease; and

(ii) Costs reasonably anticipated on the lease, including:

(A) Costs of compliance with all applicable regulations and operating orders; and

(B) Liability for cleanup costs or damages, or both, in the case of an oil spill.

(2) The excess, if any, over your revenues from the lease (plus interest thereon from the date of receipt to date of reimbursement) of:

(i) All consideration paid for the lease; and

(ii) All your direct expenditures:

(A) After the issue date of the lease; and

(B) For exploration or development, or both, under the lease plus interest on the consideration under paragraph (d)(2)(i) of this section and expenditures under paragraph (d)(2)(ii) from date of payment to date of reimbursement.

(3) Compensation for leases issued before September 18, 1978 will be equal to the amount specified in paragraph (d)(1).

(e) *Canceling a lease without compensation.* You will not receive compensation from MMS for lease cancellation if:

(1) MMS disapproves a DPP because you do not receive concurrence by the State under section 307(c)(3)(B)(i) or (ii) of the CZMA, and the Secretary of Commerce does not make the finding authorized by section 307(c)(3)(B)(iii) of the CZMA;

(2) You do not submit a DPP in accordance with § 250.34 or do not comply with the approved DPP;

(3) As the lessee of a nonproducing lease, you fail to comply with the Act, the lease, or the regulations issued under the Act, and the default continues for a period of 30 days after MMS mails you a notice by overnight mail;

(4) The Regional Supervisor disapproves a DPP because you fail to demonstrate compliance with the requirements of applicable Federal law; or

(5) The Secretary forfeits or cancels a producing lease under section (d) of the Act, 43 U.S.C. 1334(d).

Information: Submission, Reimbursement For, And Availability to Public

§ 250.25 What reporting information and report forms must I submit?

(a) You must submit required information as MMS prescribes.

(1) You may obtain copies of forms from, and submit completed forms to, the Regional or District Supervisor.

(2) Instead of paper copies of forms available from the Regional or District Supervisor, you may use your own computer generated forms which are equal in size to MMS's forms. The data on your form must be arranged in a format identical to the MMS form.

(3) You may submit digital data when the Region/District is equipped to accept it.

(b) You must include, for public information, one copy of any reports submitted on forms as MMS prescribes.

(1) You must mark it *Public Information.*

(2) You must include all required information except information exempt from public disclosure under § 250.27 or otherwise exempt from public disclosure under law or regulation.

§ 250.26 When will MMS reimburse me for reproduction costs?

(a) MMS will reimburse you for reasonable costs of reproduction when you submit geological data, geophysical data, analyzed geological information, processed geological and geophysical information, reprocessed geological and geophysical information, and interpreted geological and geophysical information for the Regional Director to review or select (and whether or not retained) in accordance with this part if:

(1) MMS receives your request for reimbursement within 90 days from the date of delivery and the Regional Supervisor determines that the requested reimbursement is proper; and

(2) The cost is at your lowest rate or at the lowest commercial rate established in the area, whichever is less.

(b) MMS will reimburse you for the reasonable processing costs of geological or geophysical information if:

(1) You processed—at the request of the Regional Supervisor—the geological or geophysical information, in a form or manner other than normally used in conducting business; or

(2) You collected the information under a permit that MMS issued you before October 1, 1985, and the Regional Supervisor requests the information.

(c) When you request reimbursement, you must identify reproduction and processing costs separately from acquisition costs.

(d) MMS will not reimburse you for data acquisition costs or for the costs of analyzing or processing geological information or interpreting geological or geophysical information.

§ 250.27 Data and information to be made available to the public.

MMS will protect data and information you submit under this part, except as described in this section. The tables in paragraphs (a) and (b) of this section describe what data and information will be made available to the public without the consent of the lessee and under what circumstances and in what time period.

(a) MMS will disclose information collected on MMS forms in accordance with the following table:

Data that you submit on form	In the following items	Will be released	And
MMS–123, Application for Permit to Drill.	All entries except items 17, 24, and 25.	At any time	The data and information in items 17, 24, and 25 will be released according to paragraph (b) of this section or when the well goes on production, whichever is earlier.

Data that you submit on form	In the following items	Will be released	And
MMS–124, Sundry Notices and Reports on Wells.	All entries except item 36	At any time	The data and information in item 36 will be released according to paragraph (b) of this section or when the well goes on production, whichever is earlier.
MMS–125, Well Summary Report	All entries except items 17, 24, 34, 37, and 46 through 87.	At any time	The data and information in the excepted items will be released according to paragraph (b) of this section or when the well goes on production, whichever is earlier. However, items 78 and 85 will not be released when the well goes on production unless the period of time in paragraph (b) of this section has expired.
MMS–126, Well Potential Test Report and Request for Maximum Production Rate (MPR).	All entries except item 101.	When the well goes on production.	The data and information in item 101 will be released 2 years after you submit it.
MMS–127, Request for Reservoir Maximum Efficient Rate (MER).	All entries except items 124 through 168.	At any time	The data and information in items 124 through 168 will be released according to the time periods in paragraph (b) of this section.
MMS–128, Semiannual Well Test Report.	All entries	At any time	

(b) MMS will disclose information not collected on MMS forms in accordance with the following table:

If	MMS will release	At this time	Additional provisions
The Director determines that data and information are needed to unitize operations on two or more leases, to ensure proper plans of development for competitive reservoirs, or to promote operational safety or protect the environment.	Geophysical data Geological data Reprocessed G&G information. Interpreted geological & geophysical information. Processed geophysical information. Analyzed geological information.	Any time.	Data and information will be shown only to persons with an interest.
The Director determines that data and information are needed for specific scientific or research purposes for the Government.	Geophysical data Geological data Reprocessed G&G information Interpreted geological & geophysical information. Processed geophysical information. Analyzed geological information.	Any time.	MMS will release data and information only if release would further the national interest without unduly damaging the competitive position of the lessee.
Data or information is collected with high-resolution systems (e.g., bathymetry, side-scan sonar, subbottom profiler, and magnetometer) to comply with safety or environmental protection requirements.	Geophysical data Geological data Processed geological & geophysical information. Interpreted G&G information ..	60 days after you submit the data or information, if the Regional Supervisor deems it necessary.	MMS will release the data and information earlier than 60 days if the Regional Supervisor determines it is needed by affected States to make decisions under subpart B of this part. The Regional Supervisor will reconsider earlier release if you satisfy him/her that it would unduly damage your competitive position.

If	MMS will release	At this time	Additional provisions
Your lease is no longer in effect.	Geophysical data Processed geophysical information. Reprocessed G&G information Interpreted G&G information ..	When your lease terminates or 10 years after the date you submit the data, whichever is earlier.	This release time applies only if the provisions in this table governing high resolution systems and the provisions in §252.7 do not apply.
Your lease is no longer in effect.	Geological data Analyzed geological information.	When your lease terminates ..	This release time applies only if the provisions in this table governing high resolution systems and the provisions in §252.7 do not apply.
Your lease is still in effect	Geophysical data Processed geophysical information. Reprocessed G&G information Interpreted G&G information ..	2 years after you submit it or 60 days after a lease sale if any portion of an offered block is within 50 miles of a well, whichever is later.	These release times apply only if the provisions in this table governing high resolution systems and the provisions in §252.7 do not apply. If the primary term specified in the lease is extended under §252.10, the extension applies to this provision.

If	MMS will release	At this time	Additional provisions
Data is released to the owner of an adjacent lease under subpart D of part 250.	Directional survey data	If the lessee from whose lease the directional survey was taken consents..	
Data and information are obtained from beneath unleased land as a result of a well deviation that has not been approved by the Regional or District Supervisor.	Any data or information obtained.	At any time	

References

§ 250.28 Documents incorporated by reference.

(a) MMS is incorporating by reference the documents listed in the table in paragraph (e) of this section. The Director of the Federal Register has approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(1) MMS will publish any changes to these documents in the **Federal Register**.

(2) The rule change will become effective without prior opportunity to comment when MMS determines that the revisions to a document result in safety improvements or represent new industry standard technology, and do not impose undue costs on the affected parties.

(b) MMS incorporated each document or specific portion by reference in the sections noted. The entire document is incorporated by reference, unless the text of the corresponding sections in this part calls for compliance with specific portions of the listed documents. In each instance, the applicable document is the specific edition or specific edition and supplement or addendum cited in this section.

(c) In accordance with § 250.14, you may comply with a later edition of a specific document incorporated by reference, provided:

(1) You demonstrate that compliance with the later edition provides a degree of protection, safety, or performance equal to or better than that which would be achieved by compliance with the listed edition; and

(2) You obtain the prior written approval for alternative compliance from the authorized MMS official.

(d) You may inspect these documents at the Minerals Management Service, 381 Elden Street, Room 3313, Herndon, Virginia; or at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, D.C. You may obtain the documents from the publishing organizations at the addresses given in the following table:

For	Write to
ACI Standards	American Concrete Institute, P.O. Box 19150, Detroit, MI 48219.
AISC Standards	American Institute of Steel Construction, Inc., P.O. Box 4588, Chicago, IL 60680.
ANSI/ASME Codes	American National Standards Institute, Attention Sales Department, 1430 Broadway, New York, NY 10018; and/or American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017.
API Recommended Practices, Specs, Standards, Manual of Petroleum Measurement Standards (MPMS) chapters.	American Petroleum Institute, 1220 L Street, N.W., Washington, D.C. 20005.
ASTM Standards	American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.
AWS Codes	American Welding Society, 550 N.W., LeJeune Road, P.O. Box 351040, Miami, FL 33135.
NACE Standards	National Association of Corrosion Engineers, P.O. Box 218340, Houston, TX 77218.

(e) This paragraph lists documents incorporated by reference. In order to easily reference text of the corresponding sections with the list of documents incorporated by reference, the list is in alphanumerical order by organization and document.

Title of documents	Incorporated by reference at
ACI Standard 318–95, Building Code Requirements for Reinforced Concrete, plus Commentary on Building Code Requirements for Reinforced Concrete (ACI 318R–95).	§ 250.138(b)(4)(i), (b)(6)(i), (b)(7), (b)(8)(i), (b)(9), (b)(10), (c)(3), (d)(1)(v), (d)(5), (d)(6), (d)(7), (d)(8), (d)(9), (e)(1)(i), (e)(2)(i).
ACI Standard 357–R–84, Guide for the Design and Construction of Fixed Offshore Concrete Structures, 1984.	§ 250.130(g); § 250.138(c)(2), (c)(3).
AISC Standard, Specification for Structural Steel for Buildings, Allowable Stress Design and Plastic Design, June 1, 1989, with Commentary.	§ 250.137(b)(1)(ii), (c)(4)(ii), (c)(4)(vii).
ANSI/ASME Boiler and Pressure Vessel Code, Section I, Power Boilers including Appendices, 1995 Edition.	§ 250.123(b)(1), (b)(1)(i); § 250.292(b)(1), (b)(1)(i).
ANSI/ASME Boiler and Pressure Vessel Code, Section IV, Heating Boilers including Nonmandatory Appendices A, B, C, D, E, F, H, I, and J, and the Guide to Manufacturers Data Report Forms, 1995 Edition.	§ 250.123(b)(1), (b)(1)(i); § 250.292(b)(1), (b)(1)(i).
ANSI/ASME Boiler and Pressure Vessel Code, Section VIII, Pressure Vessels, Divisions 1 and 2, including Nonmandatory Appendices, 1995 Edition.	§ 250.123(b)(1), (b)(1)(i); § 250.292(b)(1), (b)(1)(i).
ANSI/ASME B 16.5–1988 (including Errata) and B 16.5a-1992 Addenda, Pipe Flanges and Flanged Fittings.	§ 250.152(b)(2).
ANSI/ASME B 31.8–1995, Gas Transmission and Distribution Piping Systems	§ 250.152(a).

Title of documents	Incorporated by reference at
ANSI/ASME SPPE–1–1994 and SPPE–1d-1996 ADDENDA, Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations.	§ 250.126(a)(2)(i).
ANSI Z88.2—1992, American National Standard for Respiratory Protection	§ 250.67(g)(4)(iv), (j)(13)(ii).
API RP 2A, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms Working Stress Design, Nineteenth Edition, August 1, 1991, API Stock No. 811–00200.	§ 250.130(g); § 250.142(a).
API RP 2A, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms-Working Stress Design:(RP 2A–WSD) Twentieth Edition, July 1, 1993, API Stock No. 811–00200.	§ 250.130(g); § 250.142(a).
API RP 2A, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms-Working Stress Design:(RP 2A–WSD) Twentieth Edition, July 1, 1993, Supplement 1, December 1996, Effective Date, February 1, 1997, API Stock No. 811–00200.	§ 250.130(g); § 250.142(a).
API RP 2D, Recommended Practice for Operation and Maintenance of Offshore Cranes, Third Edition, June 1, 1995, API Stock No. G02D03.	§ 250.20(c); § 250.260(g).
API RP 14B, Recommended Practice for Design, Installation, Repair and Operation of Subsurface Safety Valve Systems, Fourth Edition, July 1, 1994, with Errata dated June 1996, API Stock No. § 250.130(g); § 250.142(a) G14B04.	§ 250.121(e)(4); § 250.124(a)(1)(i); § 250.126(d).
API RP 14C, Recommended Practice for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms, Fourth Edition, September 1, 1986, API Stock No. 811–07180.	§ 250.122(b), (e)(2); § 250.123(a), (b)(2)(i), (b)(4), (b)(5)(i), (b)(7), (b)(9)(v), (c)(2); § 250.124(a), (a)(5); § 250.152(d); § 250.154(b)(9); § 250.291(c), (d)(2); § 250.292(b)(2), (b)(4)(v); § 250.293(a).
API RP 14E, Recommended Practice for Design and Installation of Offshore Production Platform Piping Systems, Fifth Edition, October 1, 1991, API Stock No. G07185.	§ 250.122(e)(3); § 250.291(b)(2), (d)(3).
API RP 14F, Recommended Practice for Design and Installation of Electrical Systems for Offshore Production Platforms, Third Edition, September 1, 1991, API Stock No. G07190.	§ 250.53(c); § 250.123(b)(9)(v); § 250.292(b)(4)(v).
API RP 14G, Recommended Practice for Fire Prevention and Control on Open Type Offshore Production Platforms, Third Edition, December 1, 1993, API Stock No. G07194.	§ 250.123(b)(8), (b)(9)(v); § 250.292(b)(3), (b)(4)(v).
API RP 14H, Recommended Practice for Installation, Maintenance and Repair of Surface Safety Valves and Underwater Safety Valves Offshore, Fourth Edition, July 1, 1994, API Stock No. G14H04.	§ 250.122(d); § 250.126(d).
API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities, First Edition, June 1, 1991, API Stock No. G06005.	§ 250.53(b); § 250.122(e)(4)(i); § 250.123(b)(9)(i); § 250.291(b)(3); (d)(4)(i); § 250.292(b)(4)(i).
API RP 2556, Recommended Practice for Correcting Gauge Tables for Incrustation, Second Edition, August 1993, API Stock No. H25560.	§ 250.180(f)(2)(i)(C).
API Spec Q1, Specification for Quality Programs, Fifth Edition, December 1994, API Stock No. 811–00001.	§ 250.126(a)(2)(ii).
API Spec 6A, Specification for Wellhead and Christmas Tree Equipment, Seventeenth Edition, February 1, 1996, API Stock No. G06A17.	§ 250.126(a)(3) § 250.152 (b)(1), (b)(2).
API Spec 6AV1, Specification for Verification Test of Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, First Edition, February 1, 1996, API Stock No. G06AV1.	§ 250.126(a)(3).
API Spec 6D, Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves), Twenty-first Edition, March 31, 1994, API Stock No. G03200.	§ 250.152(b)(1).
API Spec 14A, Specification for Subsurface Safety Valve Equipment, Ninth Edition, July 1, 1994, API Stock No. G14A09.	§ 250.126(a)(3).
API Spec 14D, Specification for Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, Ninth Edition, June 1, 1994, with Errata dated August 1, 1994, API Stock No. G07183.	§ 250.126(a)(3).
API Standard 2545, Method of Gaging Petroleum and Petroleum Products, October 1965, reaffirmed October 1992; also available as ANSI/American Society of Testing Materials (ASTM) D 1085–65, API Stock No. H25450.	§ 250.180 (f)(2)(ii)(C).
API Standard 2551, Standard Method for Measurement and Calibration of Horizontal Tanks, First Edition, 1965, reaffirmed October 1992; also available as ANSI/ASTM D 1410–65, reapproved 1984, API Stock No. H25510.	§ 250.180(f)(2)(i)(C).
API Standard 2552, Measurement and Calibration of Spheres and Spheroids, First Edition, 1966, reaffirmed October 1992; also available as ANSI/ASTM D 1408–65, reapproved 1984, API Stock No. H25520.	§ 250.180(f)(2)(i)(C).
API Standard 2555, Method for Liquid Calibration of Tanks, September 1966, reaffirmed October 1992; also available as ANSI/ASTM D 1406–65, reapproved 1984, API Stock No. H25550.	§ 250.180(f)(2)(ii)(C).
MPMS, Chapter 2, Tank Calibration, Section 2A, Measurement and Calibration of Upright Cylindrical Tanks by the Manual Strapping Method, First Edition, February 1995, API Stock No. H022A1.	§ 250.180 (f)(2)(i)(A).
MPMS, Chapter 2, Section 2B, Calibration of Upright Cylindrical Tanks Using the Optical Reference Line Method, First Edition, March 1989; also available as ANSI/ASTM D4738–88, API Stock No. H30023.	§ 250.180 (f)(2)(i)(B).
MPMS, Chapter 3, Tank Gauging, Section 1A, Standard Practice for the Manual Gauging of Petroleum and Petroleum Products, First Edition, December 1994, API Stock No. H031A1.	§ 250.180 (f)(2)(ii)(A).
MPMS, Chapter 3, Section 1B, Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Tanks by Automatic Tank Gauging, First Edition, April 1992, API Stock No. H30060.	§ 250.180 (f)(2)(ii)(B).

Title of documents	Incorporated by reference at
MPMS, Chapter 4, Proving Systems, Section 1, Introduction, First Edition, July 1988, reaffirmed October 1993, API Stock No. H30081.	§ 250.180(c)(6)(i), (d)(3)(iv).
MPMS, Chapter 4, Section 2, Conventional Pipe Provers, First Edition, October 1988, reaffirmed October 1993, API Stock No. H30082.	§ 250.180(c)(6)(i), (d)(3)(iv).
MPMS, Chapter 4, Section 3, Small Volume Provers, First Edition, July 1988, reaffirmed October 1993, API Stock No. H30083.	§ 250.180(c)(6)(i), (d)(3)(iv).
MPMS, Chapter 4, Section 4, Tank Provers, First Edition, October 1988, reaffirmed October 1993, API Stock No. H30084.	§ 250.180(c)(6)(i), (d)(3)(iv).
MPMS, Chapter 4, Section 5, Master-Meter Provers, First Edition, October 1988, reaffirmed October 1993, API Stock No. H30085.	§ 250.180(c)(6)(i), (d)(3)(iv).
MPMS, Chapter 4, Section 6, Pulse Interpolation, First Edition, July 1988, reaffirmed October 1993, API Stock No. H30086.	§ 250.180(c)(6)(i) and (d)(3)(iv).
MPMS, Chapter 4, Section 7, Field-Standard Test Measures, First Edition, October 1988, API Stock No. H30087.	§ 250.180(c)(6)(i), (d)(3)(iv).
MPMS, Chapter 5, Metering, Section 1, General Considerations for Measurement by Meters, Third Edition, September 1995, API Stock No. H05013.	§ 250.180(c)(6)(ii).
MPMS, Chapter 5, Section 2, Measurement of Liquid Hydrocarbons by Displacement Meters, Second Edition, November 1987, reaffirmed October 1992, API Stock No. H30102.	§ 250.180(c)(6)(ii).
MPMS, Chapter 5, Section 3, Measurement of Liquid Hydrocarbons by Turbine Meters, Third Edition, September 1995, API Stock No. H05033.	§ 250.180(c)(6)(ii).
MPMS, Chapter 5, Section 4, Accessory Equipment for Liquid Meters, Third Edition, September 1995, with Errata, March 1996, API Stock No. H05043.	§ 250.180(c)(6)(ii).
MPMS, Chapter 5, Section 5, Fidelity and Security of Flow Measurement Pulsed-Data Transmission Systems, First Edition, June 1982, reaffirmed October 1992, API Stock No. H30105.	§ 250.180(c)(6)(ii).
MPMS, Chapter 6, Metering Assemblies, Section 1, Lease Automatic Custody Transfer (LACT) Systems, Second Edition, May 1991, API Stock No. H30121.	§ 250.180(c)(6)(iii)(A).
MPMS, Chapter 6, Section 6, Pipeline Metering Systems, Second Edition, May 1991, API Stock No. H30126.	§ 250.180(c)(6)(iii)(B)
MPMS, Chapter 6, Section 7, Metering Viscous Hydrocarbons, Second Edition, May 1991, API Stock No. H30127.	§ 250.180(c)(6)(iii)(C).
MPMS, Chapter 7, Temperature Determination, Section 2, Dynamic Temperature Determination, Second Edition, March 1995, API Stock No. H07022.	§ 250.180 (c)(6)(iv)(A), (f)(2)(iii)(A).
MPMS, Chapter 7, Section 3, Static Temperature Determination Using Portable Electronic Thermometers, First Edition, July 1985, reaffirmed March 1990, API Stock No. H30143.	§ 250.180 (c)(6)(iv)(B), (f)(2)(iii)(B)
MPMS, Chapter 8, Sampling, Section 1, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, Third Edition, October 1995; also available as ANSI/ASTM D 4057–88, API Stock No. H30161.	§ 250.180 (c)(6)(v), (f)(2)(iv).
MPMS, Chapter 8, Section 2, Standard Practice for Automatic Sampling of Liquid Petroleum and Petroleum Products, Second Edition, October 1995; also available as ANSI/ASTM D 4177, API Stock No. H30162.	§ 250.180 (c)(6)(v), (f)(2)(iv).
MPMS, Chapter 9, Density Determination, Section 1, Hydrometer Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products, First Edition, June 1981, reaffirmed October 1992; also available as ANSI/ASTM D 1298, API Stock No. H30181.	§ 250.180(c)(6)(vi)(A), (f)(2)(v)(A).
MPMS, Chapter 9, Section 2, Pressure Hydrometer Test Method for Density or Relative Density, First Edition, April 1982, reaffirmed October 1992, API Stock No. H30182.	§ 250.180(c)(6)(vi)(B), (f)(2)(v)(B).
MPMS, Chapter 10, Sediment and Water, Section 1, Determination of Sediment in Crude Oils and Fuel Oils by the Extraction Method, First Edition, April 1981, reaffirmed December 1993; also available as ANSI/ASTM D 473, API Stock No. H30201.	§ 250.180(c)(6)(vii)(A), (f)(2)(vi)(A).
MPMS, Chapter 10, Section 2, Determination of Water in Crude Oil by Distillation Method, First Edition, April 1981, reaffirmed December 1993; also available as ANSI/ASTM D 4006, API Stock No. H30202.	§ 250.180(c)(6)(vii)(B), (f)(2)(vi)(B).
MPMS, Chapter 10, Section 3, Determination of Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure), First Edition, April 1981, reaffirmed December 1993; also available as ANSI/ASTM D 4007, API Stock No. H30203.	§ 250.180(c)(6)(vii)(C), (f)(2)(vi)(C).
MPMS, Chapter 10, Section 4, Determination of Sediment and Water in Crude Oil by the Centrifuge Method (Field Procedure), Second Edition, May 1988; also available as ANSI/ASTM D 96, API Stock No. H30204.	§ 250.180(c)(6)(vii)(D), (f)(2)(vi)(D).
MPMS, Chapter 11.1, Volume Correction Factors, Volume 1, Table 5A—Generalized Crude Oils and JP–4 Correction of Observed API Gravity to API Gravity at 60 °F, and Table 6A—Generalized Crude Oils and JP–4 Correction of Observed API Gravity to API Gravity at 60 °F, First Edition, August 1980, reaffirmed October 1993; also available as ANSI/ASTM D 1250, API Stock No. H27000.	§ 250.180(c)(6)(viii)(A), (d)(3)(v)(B), (f)(2)(vii).
MPMS, Chapter 11.2.1, Compressibility Factors for Hydrocarbons: 0–90° API Gravity Range, First Edition, August 1984, reaffirmed May 1996, API Stock No. H27300.	§ 250.180(c)(6)(viii)(B).
MPMS, Chapter 11.2.2, Compressibility Factors for Hydrocarbons: 0.350–0.637 Relative Density (60°F/60°F) and −50°F to 140°F Metering Temperature, Second Edition, October 1986, reaffirmed October 1992; also available as Gas Processors Association (GPA) 8286–86, API Stock No. H27307.	§ 250.180(c)(6)(viii)(C).
MPMS, Chapter 11, Physical Properties Data, Addendum to Section 2.2, Compressibility Factors for Hydrocarbons, Correlation of Vapor Pressure for Commercial Natural Gas Liquids, First Edition, December 1994; also available as GPA TP–15, API Stock No. H27308.	§ 250.180(c)(6)(viii)(D).
MPMS, Chapter 11.2.3, Water Calibration of Volumetric Provers, First Edition, August 1984, reaffirmed, May 1996, API Stock No. H27310.	§ 250.180 (d)(3)(iv).

Title of documents	Incorporated by reference at
MPMS, Chapter 12, Calculation of Petroleum Quantities, Section 2, Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors, Including Parts 1 and 2, Second Edition, May 1995; also available as ANSI/API MPMS 12.2–1981, API Stock No. H30302.	§ 250.180 (c)(6)(ix), (d)(3)(v)(A), (d)(3)(v)(C).
MPMS, Chapter 14, Natural Gas Fluids Measurement, Section 3, Concentric Square-Edged Orifice Meters, Part 1, General Equations and Uncertainty Guidelines, Third Edition, September 1990; also available as ANSI/API 2530, Part 1, 1991, API Stock No. H30350.	§ 250.181(c)(1).
MPMS, Chapter 14, Section 3, Part 2, Specification and Installation Requirements, Third Edition, February 1991; also available as ANSI/API 2530, Part 2, 1991, API Stock No. H30351.	§ 250.181(c)(1).
MPMS, Chapter 14, Section 3, Part 3, Natural Gas Applications, Third Edition, August 1992; also available as ANSI/API 2530, Part 3, API Stock No. H30353.	§ 250.181(c)(1).
MPMS, Chapter 14, Section 5, Calculation of Gross Heating Value, Relative Density, and Compressibility Factor for Natural Gas Mixtures From Compositional Analysis, Revised, 1996; also available as ANSI/API MPMS 14.5–1981, order from Gas Processors Association, 6526 East 60th Street, Tulsa, Oklahoma 74145.	§ 250.181(c)(1).
MPMS, Chapter 14, Section 6, Continuous Density Measurement, Second Edition, April 1991, API Stock No. H30346.	§ 250.181(c)(1).
MPMS, Chapter 14, Section 8, Liquefied Petroleum Gas Measurement, First Edition, February 1983, reaffirmed May 1996, API Stock No. H30348.	§ 250.181(c)(1).
ASTM Standard C33–93, Standard Specification for Concrete Aggregates including Nonmandatory Appendix.	§ 250.138(b)(4)(i).
ASTM Standard C94–96, Standard Specification for Ready-Mixed Concrete	§ 250.138(e)(2)(i).
ASTM Standard C150–95a, Standard Specification for Portland Cement	§ 250.138(b)(2)(i).
ASTM Standard C330–89, Standard Specification for Lightweight Aggregates for Structural Concrete.	§ 250.138(b)(4)(i).
ASTM Standard C595–94, Standard Specification for Blended Hydraulic Cements	§ 250.138(b)(2)(i).
D1.1–96, Structural Welding Code—Steel, 1996, including Commentary	§ 250.137(b)(1)(i).
DI.4–79, Structural Welding Code—Reinforcing Steel, 1979	§ 250.138(e)(3)(ii).
NACE Standard MR–01–75–96, Sulfide Stress Cracking Resistant Metallic Materials for Oil Field Equipment, January 1996.	§ 250.67(p)(2).
NACE Standard RP 0176–94, Standard Recommended Practice, Corrosion Control of Steel Fixed Offshore Platforms Associated with Petroleum Production.	§ 250.137(d).

§ 250.29 Paperwork Reduction Act requirements—information collection.

(a) OMB has approved the information collection requirements in part 250 under 44 U.S.C. 3501 *et seq.* The table in paragraph (e) of this section lists the subpart in the rule requiring the information and its title, provides the OMB control number, and summarizes the reasons for collecting the information and how MMS uses the information. The associated MMS forms required by this part are listed at the end of this table with the relevant information.

(b) Respondents are OCS oil, gas, and sulphur lessees and operators. The requirement to respond to the information collections in this part are mandatory under the OCS Lands Act (43 U.S.C. 1331 *et seq.*) and the OCS Lands Act Amendments of 1978 (43 U.S.C. 1801 *et seq.*). Some responses are also required to obtain or retain a benefit. Proprietary information will be protected under § 250.27, Data and information to be made available to the public; parts 251 and 252 of this Chapter; and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations at 43 CFR part 2.

(c) The Paperwork Reduction Act of 1995 requires us to inform the public that an agency may not conduct or sponsor, and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

(d) Send comments regarding any aspect of the collections of information under this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 4230, 1849 C Street, N.W., Washington, D.C. 20240; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior (1010–XXXX), Washington, D.C. 20503.

(e) MMS is collecting this information for the reasons given in the following table:

30 CFR 250 subpart/title (OMB control No.)	Reasons for collecting information and how used
Subpart A General (1010–0030)	To inform MMS of actions taken to comply with general operational requirements on the OCS. To ensure that operations on the OCS meet statutory and regulatory requirements, are safe and protect the environment, and result in diligent exploration, development, and production on OCS leases.
Subpart B Exploration and Development and Production Plans (1010–0049).	To inform MMS, States, and the public of planned exploration, development, and production operations on the OCS. To ensure that operations on the OCS are planned to comply with statutory and regulatory requirements, will be safe and protect the human, marine, and coastal environment, and will result in diligent exploration, development and production of leases.
Subpart C Pollution Prevention and Control (1010–0057).	To inform MMS of measures to be taken to prevent water and air pollution. To ensure that appropriate measures are taken to prevent water and air pollution.
Subpart D Oil and Gas Drilling Operations (1010–0053).	To inform MMS of the equipment and procedures to be used in drilling operations on the OCS. To ensure that drilling operations are safe and protect the human, marine, and coastal environment.
Subpart E Oil and Gas Well-Completion Operations (1010–0067).	To inform MMS of the equipment and procedures to be used in well-completion operations on the OCS. To ensure that well-completion operations are safe and protect the human, marine, and coastal environment.

30 CFR 250 subpart/title (OMB control No.)	Reasons for collecting information and how used
Subpart F Oil and Gas Well-Workover Operations (1010–0043).	To inform MMS of the equipment and procedures to be used during well-workover operations on the OCS. To ensure that well-workover operations are safe and protect the human, marine, and coastal environment.
Subpart G Abandonment of Wells (1010–0079).	To inform MMS of procedures to be used during the temporary and permanent abandonment of wells. To ensure that wells are abandoned in a manner that is safe and minimizes conflicts with other uses of the OCS.
Subpart H Oil and Gas Production Safety Systems (1010–0059).	To inform MMS of the equipment and procedures to be used during production operations on the OCS. To ensure that production operations are safe and protect the human, marine, and coastal environment.
Subpart I Platforms and Structures (1010–0058).	To inform MMS with information regarding the design, fabrication, and installation of platforms on the OCS. To ensure the structural integrity of platforms installed on the OCS.
Subpart J Pipelines and Pipeline Rights-of-Way (1010–0050).	To provide MMS with information regarding the design, installation, and operation of pipelines on the OCS. To ensure that pipeline operations are safe and protect the human, marine, and coastal environment.
Subpart K Oil and Gas Production Rates (1010–0041).	To inform MMS of production rates for hydrocarbons produced on the OCS. To ensure that produced hydrocarbons, including those that are commingled, are measured accurately at secure locations for the purpose of determining royalty payments.
Subpart L Oil and Gas Production Measurement, Surface Commingling, and Security (1010–0051).	To inform MMS of the measurement of production, commingling of hydrocarbons, and site security plans. To ensure that produced hydrocarbons are measured and commingled to provide for accurate royalty payments and security is maintained.
Subpart M Unitization (1010–0068)	To inform MMS of the unitization of leases. To ensure that unitization prevents waste, conserves natural resources, and protects correlative rights.
Subpart N Remedies and Penalties (Not applicable).	The requirements in Subpart N are exempt from the Paperwork Reduction Act of 1995 in accordance with 5 CFR 1320.4.
Subpart O Training (1010–0078)	To inform MMS of training program curricula, course schedules, and attendance. To ensure that training programs are technically accurate and sufficient to meet safety and environmental requirements, and that workers are properly trained to operate on the OCS.
Subpart P Sulphur Operations (1010–0086).	To inform MMS of sulphur exploration and development operations on the OCS. To ensure that OCS sulphur operations are safe; protect the human, marine, and coastal environment; and will result in diligent exploration, development, and production of sulphur leases.
Form MMS–123, Application for Permit to Drill Subpart D, E, P (1010–0044).	To inform MMS of the procedures and equipment to be used in drilling operations. To ensure that drilling and well-completion are safe and protect the environment, use adequate equipment, conform with provisions of the lease, and the public is informed.
Form MMS–124, Sundry Notices & Reports on Wells Subpart D, E, F, G, P (1010–0045).	To inform MMS of well-completion and well-workover operations, changes to any ongoing well operations, and well abandonment operations. To ensure that MMS has up-to-date and accurate informa tion on OCS drilling and other lease operations; operations are safe and protect the human, marine, and coastal environment; abandoned sites are cleared of obstructions; and the public is informed.
Form MMS–125, Well Summary Report Subpart D, E, F, P (1010–0046).	To inform MMS of the results of well-completion or well-workover operations or changes in well status or condition. To ensure that MMS has up-to-date and accurate information on the status and condition of wells.
Form MMS–126, Well Potential Test Report & Request for Maximum Production Rate (MPR).	
Subpart K (1010–0039)	To inform MMS of the production potential of an oil or gas well and to verify a requested production rate. To ensure that production results in ultimate full recovery of hydrocarbons and energy resources are produced at a prudent rate.
Form MMS–127, Request for Reservoir Maximum Efficiency Rate (MER) Subpart K (1010–0018).	To inform MMS of data concerning oil and gas well-completion in a rate-sensitive reservoir and to verify requested efficiency rate. To ensure that reservoirs are classified correctly and the requested production rate will not waste oil or gas.
Form MMS–128, Semi annual Well Test Report Subpart K (1010–0017).	To inform MMS of the status and capacity of gas wells and verify production capacity. To ensure that depletion of reservoirs results in greatest ultimate recovery of hydrocarbons.
Form MMS–132, Evacuation Statistics Subpart A (used in the GOM Region) (1010–0030).	To inform MMS in the event of a major disruption in the availability and supply of natural gas and oil due to natural occurrences/hurricanes. To advise the U.S. Coast Guard of rescue needs, and to alert the news media and interested public entities when production is shut in and when resumed.

5. Sections 250.52, 250.53, 250.77, 250.78, 250.97 and 250.98 are removed and reserved.

PART 256—LEASING OF SULPHUR OR OIL AND GAS IN THE OUTER CONTINENTAL SHELF

6. The authority citation for part 256 is revised to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*, 42 U.S.C. 6213.

7. Section 256.1, is revised to read as follows:

§ 256.1 Purpose.

The purpose of the regulations in this part is to establish the procedures under which the Secretary of the Interior (Secretary) will exercise the authority to administer a leasing program for oil, gas and sulphur. The procedures under which the Secretary will exercise the authority to administer a program to grant rights-of-way, rights-of-use, and easements are addressed in other parts of this chapter.

8. Section 256.4, Authority, is revised to read as follows:

§ 256.4 Authority.

The outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331 *et seq.*) authorizes the Secretary of the Interior to issue, on a competitive basis, leases for oil and gas, and sulphur, in submerged lands of the outer Continental Shelf (OCS). The Act authorizes the Secretary to grant rights-of-way, rights-of-use, and easements through the submerged lands of the OCS. The Energy Policy and Conservation Act of 1975 (42 U.S.C. 6213), prohibits joint bidding by major oil and gas producers.

9. Section 256.35, Qualifications of lessees, is amended by adding paragraph (c) as follows:

§ 256.35 Qualification of lessees.

* * * * *

(c) MMS may disqualify you from acquiring any new leaseholdings or lease assignments if your operating performance is unacceptable according to 30 CFR 250.12.

10. Section 256.73 is revised to read as follows:

§ 256.73 Effect of suspensions on lease term.

(a) Normally, a suspension extends the term of a lease. The extension is equal to the length of time the suspension is in effect. The suspension will not extend the lease term when the Regional Supervisor directs a suspension because of:

(1) Gross negligence; or

(2) A willful violation of a provision of the lease or governing regulations.

(b) MMS issues suspensions for a period of up to 5 years. The Regional Supervisor will set the length of the suspension based on the conditions of the individual case involved. MMS may grant consecutive suspensions. For more information on suspension of operations or production refer to 30 CFR 250.19.

[FR Doc. 98–3533 Filed 2–12–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–040–FOR]

Texas Regulatory Program and Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Texas regulatory program and abandoned mine land plan (hereinafter the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of codification of the Texas Coal Mining Regulations in the Texas Administrative Code at Title 16, Economic Regulations, Chapter 12. The amendment is intended to conform the Texas Coal Mining Regulations to Texas Administrative Code formatting syntax, to correct typographical errors, and to allow for the publication of the rules in the Texas Administrative Code in full text rather than by reference.

This document sets forth the times and locations that the Texas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.s.t., March 16, 1998. If requested, a public hearing on the proposed amendment will be held on March 10, 1998. Requests to speak at the hearing must be received by 4:00 p.m., c.s.t. on March 2, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

Copies of the Texas program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Michale C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, P.O. Box 12967, Austin, Texas 78711–2967, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning the Texas program can be found at 30 CFR 943.10, 943.15, and 943.16.

II. Description of the Proposed Amendment

By letter dated January 23, 1998, (Administrative Record No. TX–645), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment at its own initiative. Texas proposes to codify the Texas Coal Mining Regulations (TCMR) in the Texas Administrative Code (TAC) at Title 16, Chapter 12 in full text rather than by reference.

Specifically, Texas proposes to codify TCMR Parts 700 through 850, pertaining to surface coal mining and reclamation operations, at 16 TAC §§ 12.1 through 12.710. Texas also proposes to codify TCMR §§ 051.800 through 0.51.817, pertaining to the Texas abandoned mine land reclamation program, at 16 TAC §§ 12.800 through 12.817. The codification proposal includes conforming Texas' regulations to the TAC formatting syntax, correcting typographical errors, and making other editorial changes.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on March 2, 1998. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 6, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98–3761 Filed 2–12–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–97–020]

RIN 2115–AE47

Drawbridge Operation Regulations: Passaic River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating rules for five bridges over the Passic River in New Jersey: the Jackson Street Bridge, at mile 4.6, the Bridge Street Bridge, at mile 5.6, the Clay Street Bridge, at mile 6.0, the New Jersey Transit Rail Operations (NJTRO) Bridge, at mile 11.7, and the Route 3 Bridge, at mile 11.8.

Essex and Hudson counties in New Jersey who jointly own the Jackson Street, Bridge Street and Clay Street bridges have requested that their bridges open on signal after a four hour notice is given. The New Jersey Transit Rail Operations (NJTRO) and New Jersey Department of Transportation (NJDOT) who own the NJTRO Bridge and the Route 3 Bridge, both over the Passaic River, have requested that their bridges open on signal after a six month notice is given.

This proposal will relieve the bridge owners of the burden of constantly having personnel available to open the bridges and should continue to provide for the needs of navigation.

DATES: Comments must reach the Coast Guard on or before April 14, 1998.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, Ma. 02110–3350, or deliver them to the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The District Commander maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the above address during business hours.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting

comments should include their names and addresses, identify this rulemaking (CGD1–97–020) and specific section of this proposal to which their comments apply, and give reasons for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in response to comments received. The Coast Guard does not plan to hold a public hearing; however, persons may request a public hearing by writing to the Coast Guard at the address listed under **ADDRESSES** in this document. The request should include the reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this matter, the Coast Guard will hold a public hearing at a time and place announced by a subsequent notice published in the **Federal Register** .

Background

The clearances at mean high water (MHW) and mean low water (MLW) for the five bridges affected by this proposed rule change are as follows: Jackson Street 15′ MHW & 20′ MLW, Bridge Street 7′ MHW & 12′ MLW, Clay Street 8′ MHW & 13′ MLW, NJTRO 26′ MHW & 31′ MLW and Route 3 35′ MHW & 40′ MLW.

The Jackson Street, Bridge Street and Clay Street bridges presently open on signal, except that, notice must be given before 2:30 a.m. for openings between 4:30 p.m. and 7 p.m. This proposed change to the operating regulations would require the bridges to open on signal after four hours notice is given.

The NJTRO Bridge presently opens on signal from 8 a.m. to 4 p.m., if at least six hours notice is given. From 4 p.m. to 8 a.m., the draw need not be opened. the Route 3 Bridge presently opens on signal, if at least six hours notice is given. New Jersey Transit Rail Operations records indicate there has not been a request to open the NJTRO Bridge since December, 1991. The New Jersey Department of Transportation records indicate there have been only ten bridge openings during the last ten years for the Route 3 Bridge. All ten openings were test openings.

Discusison of Proposal

This proposal to require a six month notice for bridge openings for the NJTRO and Route 3 bridges is warranted based upon their opening records. This proposed change to the operating regulations will require the NJTRO and Route 3 bridges to open on signal if six months notice is given.

The Coast Guard received requests to change the operating regulations on the Jackson Street, Bridge Street and Clay Street bridges from Essex and Hudson counties to require the bridges to open on signal if four hours notice is given. Additionally, the Coast Guard received requests to change the operating regulations for the NJTRO and Route 3 bridges from New Jersey Transit Rail Operations and New Jersey Department of Transportation to require the bridges to open on signal if a six month notice is given. These changes have been requested for these five bridges because there have been so few requests to open these bridges that the requested changes in the operating regulations is expected to relieve the bridge owners of the burden of crewing the bridges at times and still meet the present needs of navigation.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that bridges must operate in accordance with the needs of navigation while providing for the reasonable needs of land transportation. This rule adopts the operating hours which the Coast Guard believes to be appropriate based on the results of past experience with the roving drawtender crew operation and public comments. The Coast Guard believes this rule achieves the requirement of balancing the navigational rights of recreational boaters and the needs of land based transportation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under section 2.B.2.e.(34) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found not to have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued

under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In section 117.739 revise paragraphs (d), (f), (i), (m), and (n) to read as follows:

§ 117.739 Passaic River.

* * * * *

(d) The draw of the Jackson Street Bridge, mile 4.6, shall open on signal if at least four hours notice is given by calling the number posted at the bridge.

* * * * *

(f) The draw of the Bridge Street Bridge, mile 5.6, shall open on signal if at least four hours notice is given by calling the number posted at the bridge.

* * * * *

(i) The draw of the Clay Street Bridge, mile 6.0, shall open on signal if at least four hours notice is given by calling the number posted at the bridge.

* * * * *

(m) The draw of the NJTRO Bridge, mile 11.7, shall open on signal if at least six months notice is given by calling the number posted at the bridge.

(n) The draw of the Route 3 Bridge, mile 11.8, shall open on signal if at least six months notice is given by calling the number posted at the bridge.

* * * * *

Dated: January 9, 1998.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 98–3627 Filed 2–12–98; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 441

[FRL–5967–1]

Extension of Comment Period for Effluent Limitations Guidelines and Pretreatment Standards for the Industrial Laundries Point Source Category; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of extension of comment period.

SUMMARY: EPA is extending the comment period for the proposed effluent limitations guidelines and pretreatment standards for the industrial laundries point source category. The proposed rule was published in the **Federal Register** on December 17, 1997. The comment period for the proposed rule is extended by 30 days, ending on March 19, 1998. In addition, interested parties providing performance data, which may be used in calculating limits, will have until April 20, 1998 to submit data. This extension is being granted while taking into consideration the court-ordered promulgation date.

DATES: Comments regarding all issues related to the proposed rule will be accepted until March 19, 1998. Performance data, as specified herein, will be accepted until April 20, 1998.

ADDRESSES: Send written comments to W–97–14, Ms. Marta E. Jordan, Engineering and Analysis Division (4303), U. S. EPA, 401 M. Street S.W., Washington, DC 20460. Please submit any references cited in your comments. EPA requests an original and three copies of your written comments and enclosures (including references).

FOR FURTHER INFORMATION CONTACT: Marta E. Jordan, Engineering and Analysis Division (4303), U.S. Environmental Protection Agency, 401 M. St. SW, Washington, DC 20460 or call (202) 260–0817.

SUPPLEMENTARY INFORMATION: On December 17, 1997, EPA published proposed effluent limitations guidelines and pretreatment standards for the industrial laundries industry in the **Federal Register** for review and comment (62 FR 66182). The comment period was scheduled to end February 17, 1998.

EPA held two public hearings during this comment period to provide opportunities for the regulated community and other interested parties to comment on issues pertaining to the proposed rule.

EPA has received more than 100 requests to extend the comment period to allow more time to address the issues on which EPA solicited public comment. The comment period for all issues in the proposed rule is extended by 30 days, to March 19, 1998. In addition, EPA will accept performance data, as specified below, until April 20, 1998. Data that EPA will consider most useful is performance data that conforms to the EPA protocols delineated in the quality assurance project plan (QAPP) and sampling and analysis plans. The QAPP and sampling and analysis plans can be found in sections 5.5 and 6.5 of the rulemaking record, respectively. EPA is scheduled to promulgate pretreatment standards for this industry by June 1999. EPA is using its best efforts to comply with this deadline and expects to meet the schedule even with this extension of the comment period.

Dated: February 9, 1998.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 98–3753 Filed 2–12–98; 8:45 am]

BILLING CODE 6560–60–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Chapter IV

[HCFA–1037–N]

Medicare Program; Meeting of the Negotiated Rulemaking Committee on the Provider-Sponsored Organization Solvency Standards

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this document announces the date and location for a planned seventh meeting of the Negotiated Rulemaking Committee on the provider-sponsored organization (PSO) solvency standards. The purpose of this committee meeting is to negotiate a consensus of an interim final rule establishing solvency standards for provider-sponsored organizations under Part C of the Medicare program, as statutorily-mandated by the Balanced Budget Act of 1997, Pub. L. 105–33.

DATE AND ADDRESSES: Unless canceled by the Committee, this meeting will be held from 9:00 a.m. to 5:00 p.m. on March 3 and 4, 1998, in Room 800, Hubert H. Humphrey Building, 200 Independence Ave., SW, Washington, DC, 20201–0001.

MEETING INFORMATION: This is a planned meeting that may be canceled. The decision whether to hold this meeting will be available via the Internet on the HCFA homepage: http://www.hcfa.gov/medicare/mgdcare1.htm. For further information and/or a voicemail message as to whether the Committee will meet should be directed to Maureen Miller, (410) 786–1097.

SUPPLEMENTARY INFORMATION: The Balanced Budget Act (BBA) of 1997 establishes a new Medicare+Choice program under part C of title XVIII of the Social Security Act (the Act). Under this program, an eligible individual may elect to receive Medicare benefits through enrollment in a Medicare+Choice plan that has a contract with us, which may include a health plan offered by a PSO. The BBA establishes a definition of PSOs that will

be further clarified in forthcoming regulations. Section 4001 of the BBA mandates an expedited and modified negotiated rulemaking process for establishing solvency standards for PSOs. The standards must be published as an interim final rule, subject to comment, by April 1, 1998.

As required by the BBA, the Negotiated Rulemaking Committee reported to the Secretary by January 1, 1998, regarding its progress and movement toward building a consensus. The Committee is required to report its proposed standards to the Secretary by March 1, 1998. If, however, the Committee is unable to reach a consensus within the assigned time frame or at the completion of this additional meeting, the Health Care Financing Administration will proceed with publication of a rule using its rulemaking authority as established in the BBA.

Five 3-day meetings of the Committee have been held through October, November, December, and January that were facilitated by the Departmental Appeals Board. After the initial meetings at which informative presentations were heard, the Committee has been actively developing and negotiating PSO solvency standards. A sixth meeting, previously announced in an October 26, 1997 **Federal Register** Notice, will occur February 18, 19, and 20, 1998. However, due to the short time frame in which the Committee has had to work and the possibility that the Committee may need some additional meeting time to complete its work, this tentative final meeting is being scheduled for the first week of March. If the Committee is unable to complete work on the interim final rule at its February meeting and the facilitator believes an agreement could be reached with an additional meeting, then the meeting will occur on March 3 and 4. If the Committee reaches consensus during the February meeting, or if consensus is not reached and the Committee believes it is unlikely that an agreement can be reached within the extended time frame, the March meeting will not be held. The decision will be publicly available as directed above.

All meetings are open to the public without advanced registration. Public attendance at the meetings may be limited to space available. A summary of all proceedings is available for inspection in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: (202) 690–7890), or can be accessed through the HCFA Internet site at http://www/hcfa.gov/medicare/mgdcare1. Additional information related to the Committee will be available on the web site.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App.2).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 11, 1998.

Nancy-Ann Min Deparle,

Administrator, Health Care Financing Administration.

[FR Doc. 98–3841 Filed 2–12–98; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–12, RM–9220]

Radio Broadcasting Services; Speculator, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Michael Celenza and Peter Hunn seeking the allotment of Channel 243A to Speculator, NY, as the community's first local aural service. Channel 243A can be allotted to Speculator in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 43–29–50 North Latitude and 74–21–44 West Longitude. Canadian concurrence in the allotment is required since Speculator is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before March 30, 1998, and reply comments on or before April 14, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter Hunn, 604 Meadowbrook Circle, Fulton, NY 13069 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, 202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–12, adopted January 28, 1998, and released February 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–3740 Filed 2–12–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–16, RM–9213]

Radio Broadcasting Services; Three Rivers, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Live Oak Broadcasting requesting the allotment of Channel 265A at Three Rivers, Texas, as the community's second local FM service. Channel 265A can be allotted to in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.2 kilometers (2.6 miles) southeast in order to avoid a short-spacing conflict with the site specified in Station KONO(FM)'s construction permit for Channel 266C1 at Helotes, Texas. The coordinates for Channel 265A at Three Rivers are 28–25–45 NL and 98–09–51 WL.

DATES: Comments must be filed on or before March 30, 1998, and reply comments on or before April 14, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Henry E. Crawford, 1150 Connecticut Avenue, N.W., Suite 900, Washington, D.C. 20036 (counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–16, adopted January 28, 1998, and released February 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR PART 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–3739 Filed 2–12–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–13, RM–9212]

Radio Broadcasting Services; Topeka, Iola, and Emporia, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Shawnee Broadcasting Corporation, licensee of Station KWIC(FM), Channel 257A, Topeka, Kansas, proposing the substitution of Channel 257C3 for Channel 257A at Topeka and modification of Station KWIC(FM)'s license. In order to accomplish the upgrade at Topeka, Shawnee also requests the substitution of Channel 268A for Channel 257A at Iola, Kansas, and the modification of Station KIKS(FM)'s license; and the substitution of Channel 241A for Channel 258A at Emporia, Kansas, the modification of Station KRWV(FM)'s license accordingly. *See* Supplemental Information, *infra*.

DATES: Comments must be filed on or before March 30, 1998, and reply comments on or before April 14, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Howard J. Braun and Jerold L. Jacobs, Rosenman & Colin LLP, 1300—19th Street, NW, Suite 200, Washington, D.C. 20036 (counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–13, adopted January 28, 1998, and released February 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

All channels can be allotted to the noted communities in compliance with the Commission's minimum distance separation requirements. Channel 257C3 can be allotted to Topeka with a site restriction of 3.9 kilometers (2.4 miles) northeast. The coordinates for Channel 257C3 at Topeka are 39–01–12 NL and 95–41–25 WL. Channel 268A and Channel 241A can be allotted to Iola and Emporia respectively, at the transmitters sites specified in Station KIKS(FM)'s and Station KRWV(FM)'s authorizations. The coordinates for Channel 268A are 37–54–04 NL and 95–24–04 WL. The coordinates for Channel 241A at Emporia, Kansas, are 38–24–21 NL and 96–14–13 WL. As requested, we shall propose to modify the license of Station KWIC(FM) at Topeka, Kansas, to specify operation on Channel 257C3. In accordance with Section 1.420(g) of the Commission's Rules we will not accept competing expressions of interest or require that the petitioner demonstrate the availability of an additional equivalent channel at Topeka, Kansas.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–3738 Filed 2–12–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–15, RM–9142]

Radio Broadcasting Services; Brinkley and Colt, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of East Arkansas Broadcasters, Inc., permittee of Station KQMC-FM, Channel 272C2, Brinkley, Arkanasas, requesting the reallotment of Channel 272C2 to Colt, Arkansas, and modification of the authorization for Station KQMC-FM to specify Colt as its community of license, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. Coordinates used for Channel 272C2 at Colt, Arkansas, are 34–58–10 and 90–51–07.

DATES: Comments must be filed on or before March 30, 1998, and reply comments on or before April 14, 1998.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John F. Garziglia and Patricia M. Chuh, Esqs., Pepper & Corazzini, L.L.P., 1776 K Street, N.W., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–15, adopted January 28, 1998, and released February 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–3737 Filed 2–12–98; 8:45 am]

BILLING CODE 8712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 365, 385, and 387

[FHWA Docket No. FHWA–97–2709]

RIN 2125–AE01

Registration of For-Hire Motor Carriers, Property Brokers, and Freight Forwarders

AGENCY: Federal Highway Administration [FHWA], DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The FHWA proposes to adopt interim rules governing registration of for-hire motor property and passenger carriers, property brokers, and freight forwarders. The interim rules are required by 49 U.S.C. 13901–13905, provisions of the Interstate Commerce Commission Termination Act of 1995 (ICCTA), Pub. L. 104–88, 109 Stat. 803, that mandate a registration system to be administered by the Secretary of Transportation to replace the former Interstate Commerce Commission's licensing system for motor carriers, property brokers, and freight forwarders. It is anticipated that these interim rules would be used until the FHWA completes the rulemaking required by 49 U.S.C.13908 which is currently underway.

DATES: Comments must be received on or before April 14, 1998.

ADDRESSES: Submit written, signed comments to the docket number that appears in the heading of this document to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: *For information regarding rulemaking and operational issues:* Patricia Burke, Office of Motor Carrier Information Analysis, (202) 358–7028; and *for information regarding legal issues:* Michael Falk, Office of Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's home page at: http://www.nara.gov/nara/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/su_docs.

Statutory Background

The ICCTA eliminates the Interstate Commerce Commission (ICC), transfers certain ICC functions to the Department of Transportation, and, as particularly pertinent, at 49 U.S.C. 13901–13905, establishes a registration system to replace the licensing system previously administered by the ICC. The ICCTA requires that for-hire motor property and passenger carriers, property brokers, and freight forwarders operating in interstate or foreign commerce must register with the Secretary of Transportation (the Secretary) to provide such transportation or related services. The ICCTA further directs the Secretary to register such entities when minimum prescribed criteria are met.

Under 49 U.S.C. 13908, the Secretary, in cooperation with the States and after notice and opportunity for public comment, is directed to issue regulations to replace this registration system, as well as DOT's current identification number system (see 49 CFR 385.21), the single State registration system prescribed by 49 U.S.C. 14504, and the financial responsibility information system prescribed by 49 U.S.C. 13906, with a single, on-line Federal system. The new system envisioned by section 13908 is intended to "serve as a clearinghouse and depository of information on and identification of all foreign and domestic motor carriers, brokers, and freight forwarders, and others required to register with (DOT) as well as information on safety fitness and compliance with required levels of financial responsibility."

The ICCTA makes clear that the registration system prescribed in 49 U.S.C. 13901–13905 is intended only as a temporary, stand-alone procedure while DOT undertakes to design and implement the revised identification

and safety oversight system as directed by Congress. In an advance notice of proposed rulemaking (ANPRM), FHWA Docket No. MC–96–25 (FHWA 97–2349), Motor Carrier Replacement/ Information System, 61 FR 43816 (August 26, 1996), the FHWA initiated the process required by section 13908 to develop a single, on-line Federal system. The ANPRM invited comments from interested persons and entities concerning the four information systems that potentially could be embraced by the single system envisioned by section 13908. The ANPRM solicited responses to specific questions and, in particular, expressly invited comments on any necessary and appropriate changes to the registration system established by the ICCTA and whether and how it should be modified to contribute most effectively to the integrated system envisioned. Comments received in response to the ANPRM currently are being evaluated with a view toward developing a specific proposal as contemplated by section 13908.

Procedural Background

Since the ICCTA's implementation date, the FHWA has been processing registration requests submitted by motor property and passenger carriers, property brokers, and freight forwarders, generally under the licensing regulations of the former ICC, previously codified at 49 CFR part 1160, redesignated as 49 CFR part 365 at 61 FR 54706 (October 21, 1996). To accommodate registration requests in this process, the FHWA has been using the former ICC's application forms with minimal revisions to reflect the ICCTA's jurisdictional changes. This approach is consistent with section 204 of the ICCTA which preserves all ICC regulations, orders, decisions, and authorities that remain viable after enactment of the new law. On April 1, 1996, at 61 FR 14372, the FHWA adopted, in general, all viable ICC rules and decisions until such time as changes are warranted.

Under that general adoption principal, the FHWA has had ample occasion to review registration requests submitted under the former ICC's application procedures. The experience using the redesignated part 365 rules suggests the need for further refinement of the former ICC's regulations, procedures, and application forms on an interim basis to accommodate a registration system as is now temporarily in place rather than a licensing scheme for which they originally were developed.

In addition, the rulemaking initiated by today's NPRM embraces issues raised in petitions to reopen the ICC proceedings in which the original part 1160 rules were developed, Ex Parte No. 55 (Sub-No. 94) and Ex Parte No. 55 (Sub-No. 86), consolidated in 10 I.C.C.2d 386 (1994). The interim rules and application forms proposed here have been developed with attention to those reopening petitions filed by the American Bus Association (ABA) and the Transportation Lawyers Association Committee on Federal Agency Practice (TLA), supported by the American Insurance Association (AIA). The petitions were pending before the ICC at the time of its termination and, accordingly, were transferred to the FHWA for disposition.

The FHWA advises petitioners that their petitions and comments will be considered in this rulemaking to the extent that they are relevant to the registration system. Accordingly, the petitions and comments that have been submitted by the TLA, the ABA, and the AIA in response to the licensing rules issued by the former ICC will be placed in this docket and considered as part of this rulemaking. In addition, these parties are invited to amend their existing petitions or to submit further comments as they deem appropriate.

Statutory and Procedural Parameters for Registration

In this NPRM, the FHWA proposes to adopt revisions to the registration procedures and requirements as interim rules and proposes corresponding changes to the registration application forms and registration review and notification procedures. These revisions are intended to produce a simplified registration process consistent with the ICCTA, to accommodate other recent statutory changes that relate to the registration process (such as specialized considerations for certain registrant categories), and to consider relevant issues raised by the TLA and the ABA in their petitions to reopen the proceedings on which the former part 1160, now part 365, regulations are premised.

Given the generally simplified approach of the regulations now codified at part 365, the intended transitional nature of the registration system envisioned by the ICCTA, and the fact that the system may be altered significantly in the proceeding mandated by 49 U.S.C. 13908, the FHWA is attempting to avoid unnecessary or premature regulatory changes in this interim period. Accordingly, the part 365 interim rules proposed here essentially parallel the former part 1160 procedures to the extent they are compatible with the registration system mandated by the ICCTA.

The ICCTA's registration parameters permit some further streamlining, simplification, and modification of the rules and application forms at this interim stage. Most of the revisions proposed here are necessary to implement the statutorily prescribed registration system consistently and effectively among all affected transportation modes. Certain of the proposed procedural and information-gathering revisions would permit the FHWA to align and integrate more effectively the registration fitness and general safety screenings that now are housed within the FHWA. For example, the proposed coordinated submission of the MCS–150 forms with the registration applications would ensure that safety performance information would start accruing immediately with respect to even the newest registrant.

Certain other proposed procedural revisions are not statutorily prescribed, but derive from the FHWA's interest in administering the registration system in a manner that takes realistic account of industry norms and practices. The proposed extension of registration compliance time frames is so motivated. Finally, the proposed interim rules and registration forms also incorporate several new explanatory references and/or certification devices that are designed to best accommodate statutory changes affecting specific registrant categories. The expanded information directed to publicly funded passenger carriers and carriers or freight forwarders of household goods is representative of this approach.

Scope of Registration Obligation

With one significant revision discussed below, the FHWA's registration jurisdiction over motor carriers, property brokers, and freight forwarders essentially corresponds with that of the former ICC. All persons or commercial entities providing for-hire motor carrier transportation of property or passengers or forwarding or brokerage of property in interstate or foreign commerce are required to register with the FHWA pursuant to 49 U.S.C. 13901 *et seq.*

As specifically concerns freight forwarders, the ICCTA includes a registration provision at 49 U.S.C. 13903 that represents an expansion of the FHWA's jurisdiction as compared with the former ICC's licensing jurisdiction under the predecessor provision at 49 U.S.C. 10923. The ICCTA requires registration of both forwarders of general freight and household goods. *See* FHWA Docket No. MC–96–43

(notice of proposed rulemaking, 62 FR 4096, January 28, 1997).

For licensing and most other purposes, the ICC's jurisdiction over freight forwarders had been limited to the household goods segment of the forwarding industry by the Surface Freight Forwarder Deregulation Act of 1986, Pub. L. 99-521, 100 Stat. 2993 (October 22, 1986). Consistent with the ICCTA's expansion of registration jurisdiction to all interstate, for-hire surface freight forwarders, the freight forwarder industry expressly is advised of its revised registration and compliance obligations. All freight forwarders of general commodities, as well as household goods, are required to register their operations with the FHWA by filing Form OP–1(FF). This registration obligation extends, not only to new forwarder entrants, but also to those general commodities freight forwarders that previously held ICC authority mooted by the Surface Freight Forwarder Deregulation Act of 1986 and those forwarders previously issued authority by the former ICC restricted to the forwarding of household goods, but that also forward general freight.

The FHWA now is accepting and will continue to process registration applications on behalf of such entities. The interim rules and revised Form OP-1(FF) application proposed here would reflect the expansion of jurisdiction to general commodities forwarders.

We note that 49 U.S.C. 13541(a) provides that the Secretary shall exempt entities from the statutory provisions governing interstate transportation by motor carriers, property brokers, and freight forwarders upon a finding that application of an involved provision is not necessary to carry out the transportation policy of section 13101, is not necessary to protect shippers from the abuse of market power or that the involved transaction or service is of limited scope, and that such action is in the public interest. This exemption authority, however, is limited by the subsection 13541(e) provision that it not be used to relieve a person from the application of and compliance with any law, rule, regulation, standard, or order pertaining, as pertinent here, to insurance and safety fitness.

In view of the 49 U.S.C. 13541 exemption provisions, we specifically invite comments on whether the FHWA should consider relieving certain entities from specific interim registration requirements proposed here. In particular, we would like to receive views on the advisability of exempting from certain registration requirements, to the extent permitted under 49 U.S.C. 13541(e), specific transportation industry segments (*e.g.*, general commodity freight forwarders or transit operators that receive grants under 49 U.S.C. 5307, 5310, or 5311 as discussed subsequently in this notice). The FHWA will consider any comments received on this issue to assess the extent, if any, to which relief from particular registration requirements might be available and feasible under 49 U.S.C. 13541 or, alternatively, to evaluate the need for further legislative action to achieve meaningful relief in this area.

Interim Rules. The proposed interim rules are set forth below. For the most part they would provide for changes to the former part 1160 regulations only where necessary to render the registration process fully consistent with that mandated by the ICCTA. Essentially, they would represent a continuation of the procedures that have been followed under section 204 of the ICCTA's general adoption provisions since the FHWA initiated its registration responsibilities on January 1, 1996. To the limited extent that more significant changes to the registration rules or procedures are proposed (*e.g.*, provisions for integrating with the registration process transfers of ownership and submission of the MCS–150 forms), they either are mandated by jurisdictional changes in the new statute or are necessary to realize the full efficiencies inherent in the FHWA's unified registration and safety compliance monitoring.

As previously noted, however, comments received will be accorded full consideration with a view toward ensuring that the registration process is in keeping with the terms of the ICCTA and is consistent with administrative resources and other program elements within the FHWA's purview, particularly safety compliance. In addition, comments will assist the FHWA as it continually evaluates the effectiveness and responsiveness of the interim registration process in developing the single, on-line Federal replacement system mandated by 49 U.S.C. 13908.

Commenters are urged to formulate their responses to this proceeding with a view toward the interim nature of the involved rules. Although the rules proposed here are subject to full notice and comment procedures, interested participants should be aware that the FHWA intends to deal with such issues as the pre-registration safety fitness certification methodology in its rulemaking under 49 U.S.C. 13908.

Interim forms. With the exception of Mexican owned or controlled property carriers, all domestic and foreign for-hire motor property carriers and property brokers are required to file the Form OP–1 registration application form. All domestic and foreign for-hire motor passenger carriers are required to file the Form OP–1(P) registration application form. Freight forwarders of general commodities and household goods are required to file the form OP–1(FF) registration application form.

The FHWA is in the process of developing registration rules and procedures specifically applicable to Mexican carriers. Until such time as those rules are implemented, the interim registration rules proposed here would be applicable to Mexican carriers as follows:

(1) Mexican owned or controlled carriers that transport property (including otherwise exempt items) in foreign commerce between the U.S.-Mexico border and points in California, Arizona, New Mexico, and Texas, and Mexican owned or controlled enterprises established in the United States to transport international cargo in foreign commerce, subject to special provisions of the North American Free Trade Agreement (NAFTA), would file the Form OP–1(MX) registration application; and

(2) Mexican owned or controlled passenger carriers operating pursuant to special provisions of NAFTA, would file the Form OP–1(P) registration application.

This notice incorporates in the appendices to part 365 proposed revised versions of the registration application forms. As with the proposed interim registration regulations, the proposed revised application forms would closely resemble those used by the former ICC and would incorporate primarily incremental changes to reflect new statutory or jurisdictional references required by the ICCTA.

No materially new information collection procedures or uses are contemplated. The proposed revised registration forms would preserve to the extent feasible the information collection categories and format of the former ICC's licensing application forms. The proposed integration into the registration process of the MCS–150 filings would represent merely an effort to coordinate ongoing information collection processes, rather than a new information solicitation.

Indeed, the incremental revisions proposed to the forms, as well as the general streamlining and simplification of the application format and accompanying instructions, allow for a reduction in the estimated burden hours required for completing the OP–1, OP–1(P), and OP–1(FF) forms by prospective registrants. Concurrently with this

notice, we are submitting the forms as a revised information collection to the Office of Management and Budget (OMB) for review under section 2 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

As with the interim regulations proposed here, the revised registration forms would be used only as transitional devices while the 49 U.S.C. 13908 replacement system is being developed and implemented. The FHWA has minimized the form revisions proposed to preserve all viable aspects of a process with which the motor carrier, broker, and freight forwarder industries are familiar and comfortable.

In addition, the proposed interim rules would embrace procedures at § 365.511 to accomplish voluntary revocation of registrations. Essentially, this process and the accompanying Form OCE–46 closely parallel those presently in place. Indeed, the proposed revisions to the revocation request form only represent ministerial changes to reflect the FHWA's assumption of jurisdiction in this area and no new or revised information requests are involved. Accordingly, the voluntary revocation form need not be evaluated by OMB as a revised information collection device. Nonetheless, the FHWA will entertain comments of interested parties in this area, as well.

Registration Effective Periods

Section 103 of the ICCTA, 49 U.S.C. 13905(b), permits the Secretary to specify by regulation the effective dates for registrations issued under 49 U.S.C. 13902–13904. The Conference Report states that such terms are not to exceed periods of five years. H. Rep. No. 104–422, at 212 (1995). Registration applicants are advised that the comprehensive replacement system prescribed in 49 U.S.C. 13908 will address the issues of specific registration effective periods and registration renewal procedures. Accordingly, the proposed interim registration rules do not address such matters. Registrations issued pursuant to the interim rules adopted in this proceeding and any other registrations as provided in the rules issued pursuant to 49 U.S.C. 13908 will be subject to the effective periods established in that proceeding.

In the interim, the proposed rules provide that registrations would remain in effect as long as the registrant maintains compliance with all applicable statutory and regulatory provisions, including those pertaining to insurance coverage for the protection of the public, designation of process agents, tariffs or schedules, and motor carrier safety. Failure to maintain compliance would constitute sufficient grounds for revocation of registration authority by the FHWA.

Safety Fitness Evaluation

As previously noted, the proposed revised application forms and procedures would allow the FHWA to integrate effectively its recently acquired jurisdiction over the registration process with its existing safety compliance monitoring and rating responsibilities. This goal will be a paramount feature of the FHWA's rulemaking responsibilities under 49 U.S.C. 13908. The proposed interim registration process affords numerous possibilities for realizing efficiencies and collaborative safeguards in administering these unified safety fitness responsibilities.

For-hire motor carriers now have the assurance that safety fitness monitoring will be exercised consistently and continually—initially when the carriers are scrutinized as registrants and then under the FHWA's safety fitness monitoring and rating agenda. This affords enhanced prospects for integrating the safety information collection and evaluation processes administered within the FHWA. The more closely coordinated procedures proposed in the interim rules should inure to the benefit of the agency through administrative efficiencies, to the benefit of registrants through unification of filing responsibilities, and to the benefit of the motor carrier industry and general public through improved safety fitness monitoring of new entrants.

Specific measures incorporated in the proposed interim rules to effect these improvements include the following:

(1) Introduction of the requirement that all new motor carrier entrants submit a Form MCS–150 *concurrently with* their registration application forms;

(2) Expansion and clarification of the advisories provided on the registration forms concerning the scope of exemptions from DOT safety regulations; and

(3) Commitment of the FHWA to continual monitoring of the performance of new and unrated registrants *from the onset of their operations* under the Safety Compliance and Evaluation system.

Now that the FHWA's jurisdiction extends to both safety screening of prospective registrants and ongoing safety fitness evaluation and rating of operating carriers, the interim registration process offers significant prospects for effectively integrating pre- and post-registration safety monitoring and oversight. The safety compliance obligations of prospective registrants best can be highlighted by apprising them of their concurrent obligations to introduce themselves into the FHWA's safety surveillance processes using the Form MCS–150. Their compliance with this process can be facilitated by including the Form MCS–150 as an enclosure with the registration application. The proposed interim rules would specify that all motor carrier registration applications must be accompanied by a completed Form MCS–150 or must provide a U.S. DOT number for the registrant, indicating that a Form MCS–150 currently is on file. To conform with this requirement, the proposed interim rules would provide for a technical amendment to 49 CFR 385.21(b).

Revisions Concerning Household Goods Service

Motor Carriers and Property Brokers

The former part 1160 rules and the corresponding licensing forms used by the ICC recognized specialized service categories that distinguished motor property carriers and brokers of household goods from their general freight counterparts. These distinctions derived from statutory provisions previously codified at 49 U.S.C. 10922(c), 10923(a) and (c)(3) and (5), and 10924(a), that established distinct public need or public interest licensing criteria for household goods common carriers, household goods contract carriers, and household goods brokers, respectively. Accordingly, the licensing application forms that pertained to household goods carriers or brokers included specific certifications or information requests reflecting the heightened public need and public interest standards that distinguished the licensing criteria for such entrants from the more general fitness standards applicable to general freight carriers and brokers. Consistent with the need to conduct specialized pre-licensing evaluations of household goods carriers and brokers, such entities also were assessed a separate application filing fee.

Because the registration provisions of the ICCTA did not preserve the above-referenced distinct licensing criteria for household goods carriers and brokers, there is no need to continue separately evaluating such entrants in the interim registration system. With the exception of the arbitration provision discussed subsequently, the proposed interim rules and registration forms would no longer require household goods carriers and brokers to provide separate or

additional information, certifications, or fees in order to fulfill their registration obligations.

To identify household goods carriers and brokers for reporting and/or enforcement purposes, however, the proposed revised application forms would continue to request that registrants classify themselves with reference to their household goods service intentions. Similarly, the interim registration documents issued to such entities under the proposed rules would continue to specify household goods service where applicable.

Freight Forwarders

As previously discussed, the ICCTA embraces forwarders of both general freight and household goods. The proposed interim rules and the proposed freight forwarder registration application form would reflect this extension of the registration obligation beyond the household goods segment of the forwarding industry. Consistent with the approach adopted for motor property carriers and brokers, freight forwarder registration applicants under the proposed interim rules would be required to indicate the nature of their service (general freight, household goods, or a composite), and their registration documents would continue to reflect their service intentions. Separate filing fees would not be assessed for those entities seeking to register for more than one type of forwarder service category, however. As discussed below, the proposed revisions also would reflect the arbitration commitment imposed by the ICCTA as a condition of freight forwarder registration under 49 U.S.C. 14708.

Arbitration Certifications

The ICCTA, at 49 U.S.C. 14708, for the first time conditions registration of household goods carriers and household goods freight forwarders on their agreement to offer shippers arbitration as a means of settling disputes. Accordingly, the proposed interim rules would reflect this new pre-registration requirement and the proposed revised Form OP–1 (for motor property carriers) and Form OP–1(FF) (for freight forwarders) would incorporate an arbitration certification required of registrants in these limited categories.

The arbitration certification would be designed as an affirmative check-box entry on the involved registration forms and would be noted in the accompanying instructions. This format would strike a desirable balance between sufficiently apprising household goods motor carrier and freight forwarder registrants of their arbitration obligation and not unduly encumbering the registration process. As a further advisory measure, the registration documents issued to household goods carriers and forwarders would include a note referencing the arbitration commitment, as well as other pre-registration requirements—including insurance filing, process agent designations, and, to the limited extent applicable, tariff filing or publishing.

Compliance Time Frames

The proposed interim rules would extend the time frames for submitting to the FHWA supplemental compliance documents required as a condition to registration—*i.e.*, insurance or surety bond forms and designation of process agent forms. The system defined in former part 1160 provided for submission of the required compliance documents within an initial 20-day period from the date of publication of application filings—formerly in the "ICC Register," now in the "Federal Highway Administration-Office of Motor Carriers Register (FHWA–OMC Register)."[1]

Registrants that failed to meet this initial compliance deadline were advised by letter sent on the 30th day after publication that they had an additional 60-day period to effect compliance. They further were advised that, if this additional compliance period was not met, their registration requests would be dismissed for want of prosecution. In the FHWA's experience processing registration requests since the ICCTA's January 1, 1996, effective date, the vast majority of registration applicants failed to effect compliance within the initial 20-day period. They had to be advised further of their compliance obligations through correspondence that extended the compliance time period.

Under the revised compliance system proposed here, the interim registration rules would provide for a 90-day compliance period running from the date a registration notice is published in the "FHWA–OMC Register." They further would provide for automatic dismissal of any registration application for which the compliance requirement is not met. This expanded compliance time period would conform more appropriately with the commercial and circumstantial realities confronting registrants and the insurance and agent representatives with whom they must deal.

This proposed integration of the 90-day time frame and the dismissal for want of prosecution provision into the registration regulations, moreover, would bring equity and predictability to the registration process. It also would permit the FHWA to avoid the administratively burdensome and costly step of sending extension of time and dismissal correspondence to non-complying registrants. The proposed automatic dismissal of non-complying registration requests on the 90th post-publication day, moreover, would be administered without exception and regardless of registrant circumstances. This would foreclose the cumbersome process of entertaining individual waiver petitions or appeals to the announced procedures. The FHWA emphasizes that nothing in this proposed procedural reform would impede the processing of registration applications or in any way cause delay in the issuance of registration notices to those registrants that meet the compliance requirements in a timely manner.

The proposed extension of the compliance time limit to 90 days would serve as a concession to the many registrants that have found the initial 20-day limit unrealistic and the 60-day extension notification confusing. In reality, the proposed 90-day compliance time frame and non-negotiable dismissal provision would reflect prevailing compliance norms. They would relieve the registration process of supplemental correspondence and potentially arbitrary or inequitable extensions of time, granted on the basis of individual appeals.

Complaint Time Frames

The proposed interim rules would retain the 10-day time period for filing complaints in response to registration applications. The FHWA's experience in processing registration requests, as well as the licensing experience of the predecessor ICC, confirm that this 10-day time frame is reasonable and adequate to accommodate the interests of potential complainants and to ensure the continued integrity of the registration process. Indeed, since assuming registration jurisdiction under the ICCTA in January 1996, the FHWA has received only three protests in registration proceedings, involving challenges based on either the trade name of a motor property carrier registrant or the alleged Mexican ownership of an applicant. Given this statistically insignificant level of contested registration requests and the ability of the relatively few complainants to avail themselves of

[1] Published as the "ICC Register" from 1983 to 1995; retitled as the "FHWA–OMC Register" in 1996. It is a daily listing of motor carrier applications, decisions, and notices issued by FHWA's Office of Motor Carrier Information Analysis, Washington, DC 20590.

facsimile transmissions to make known their positions, there appears to be no persuasive basis for revising the 10-day time period.

Registrant Name Changes and Transfers

The proposed interim rules would incorporate provisions for accomplishing registrant name changes. These provisions are adapted from the name change procedures included as part of the ICC's regulations governing transfers of operating rights at former 49 CFR part 1181, redesignated as subpart D of 49 CFR part 365 at 61 FR at 54707. Under the proposed interim rules, as now, name changes would be confined to limited circumstances in which registrants change a legal or trade name, generally in situations that do not entail any change in the ownership or control of the business.

The proposed interim rules would not link the name change procedures to rules governing the transfer of registrations as had been the case under the former ICC's licensing jurisdiction. The statutory provision for transferring operating authority, previously codified at 49 U.S.C 10926, was omitted in the general revision of title 49, U.S.C., subtitle IV. Accordingly, we perceive no basis for continuing to entertain requests for the transfer of registrations, whether issued under the FHWA's jurisdiction or previously as ICC operating authority. The proposed interim rules would not retain those portions of recently redesignated 49 CFR part 365 subpart D, formerly 49 CFR part 1181, that govern transfer proceedings.

Although as a transitional measure the FHWA has been issuing registrations to transferees in proceedings filed pursuant to the former part 1181 transfer regulations, the FHWA proposes to discontinue this practice effective upon issuance of interim final rules in this proceeding. All pending transfer proceedings filed pursuant to former 49 CFR part 1181 would be processed. Any transfer applications filed on or after the effective date of interim final rules adopted in this proceeding would be returned to the parties with a notification that the filing fee would be applied to a new registration application, if submitted on the transferee's behalf within 30 days of the correspondence date.

The proposed interim registration rules would provide that any entity seeking to operate as a motor property or passenger carrier, property broker, or freight forwarder must identify its operations to the FHWA as a new registrant, using the appropriate application in the Form OP–1 Series. Upon issuance of the interim final rules, it no longer would be feasible to transfer operating rights previously issued by the ICC or registration documents issued under the FHWA's jurisdiction. Nor would it be permissible for registered entities to preserve and operate under an "MC" or "FF" number previously issued to another licensee or registrant.

Disclosure of Affiliations and Changes in Control

The ICCTA did not revive or continue those statutory provisions previously codified at 49 U.S.C. 11343, 11344, 11345, and 11348, to the extent they established jurisdiction and set forth standards for review of consolidations, mergers, and acquisitions of control of motor property carriers. Accordingly, in the previously referenced notice at 61 FR 14372, the FHWA advised motor property carriers that their acquisitions of control are no longer subject to approval and authorization pursuant to former section 11343. The regulations governing such transactions at 49 CFR parts 1186, 1187, and 1188, to the extent they involve motor property carriers, similarly are no longer viable and need not be integrated into the registration rules or procedures. Insofar as the ICCTA, at 49 U.S.C. 14303, provides for continuing jurisdiction by the Surface Transportation Board (STB) over motor passenger carrier mergers, consolidations, and control arrangements (but not transfers of such authority), the STB has jurisdiction to remove or revise, as appropriate, the former ICC's regulations governing such transactions at 49 CFR parts 1182, 1187, and 1188.

By proposing to eliminate prospects for transferring previously issued ICC operating authority or FHWA registrations, the FHWA does not intend otherwise to prohibit carriers from acquiring authority from existing registrants or from entering into collaborative business transactions, such as the purchase of customer lists or contracts, the goodwill of an ongoing concern, or trade names, logos, or company identities. When such practices or arrangements entail the assumption of a registrant's operations by a successor-in-interest, however, the new entrant would be required to file a registration application and would be assigned its own registration number, rather than that of the predecessor carrier, broker, or forwarder.

Although there is no residual jurisdiction over motor property carrier consolidations, mergers, and acquisitions of control as would require or permit the FHWA's preliminary review and approval of such transactions, there is a continuing need to include within the registration process safeguards and mechanisms for ascertaining registrants' ownership and control interests. The FHWA only can verify and monitor the fitness of all registrants by requiring that they provide and, where necessary, update information concerning their affiliations and control relationships.

Accordingly, the request for "AFFILIATIONS" information on the proposed registration application forms would be preserved. Further, to ensure that the information provided is not incomplete or misleadingly selective, the arbitrary 3-year time frame that now circumscribes this information request would be eliminated. Registrants would be expected to disclose on the application forms all commercial, financial, or management relationships they have had with any ICC-licensed or FHWA-registered entity during the full course of their commercial history.

On the same fitness oversight premise, the proposed interim rules would require that entities re-register any time there is a change in their ownership, control configuration, or commercial identity that exceeds the scope of a name change. The re-registration process would ensure a modicum of control over the accuracy and reliability of registration information on file with the FHWA. Only in this manner can the FHWA continue to monitor effectively the universe of registrants and maintain the integrity of the system we are charged with administering.

Reinstatement of Revoked Registrations/Authorities

For similar reasons, the FHWA proposes to revise the practice of reinstating revoked registrations, including those formerly issued as operating authorities by the ICC. As a transitional device since implementation of the ICCTA, the FHWA has been following the ICC's practice by permitting carriers, brokers, and forwarders that have had their authorities revoked without prejudice (either upon registrant request or due to a lapse in insurance coverage or other cause) to request reinstatement simply by filing new evidence of adequate financial responsibility and paying the required reinstatement fee.

Reinstatement has been permitted without regard to the amount of time that has elapsed since revocation of the involved registration/authority. Therefore, at the time of reinstatement there essentially is no assurance of accuracy or timeliness of the

information on file in the application forms originally submitted. It is of concern that this reinstatement process does not allow for sufficient control over the information profile the FHWA can maintain for affected carriers, brokers, and forwarders. Under such procedures, the FHWA may not adequately be able to observe its fitness oversight mandate, particularly in instances where a significant amount of time has passed since the registrant last conducted operations.

The FHWA is further constrained in its ability to pursue an unrestricted reinstatement policy by the express terms of the ICCTA at 49 U.S.C. 13905. That provision directs that only those motor carriers, brokers, and forwarders holding authority "in effect on the day before the effective date of this section (December 31, 1995) shall be deemed ... to be registered to provide such transportation or service under this part." Because the "grandfathering" provision was restricted in this manner, authorities issued by the former ICC that were in a revoked status on the day before the effective date of the ICCTA technically should not be susceptible to reinstatement or any other exercise of the FHWA's registration jurisdiction.

To ensure that the reinstatement process does not undermine or otherwise encumber the informational safeguards of the registration process, the FHWA proposes to no longer entertain reinstatement requests involving authorities filed more than one year after the effective date of the involved revocation. Registration requests on file prior to the effective date of interim final rules adopted in this proceeding would be processed irrespective of these limitations. As of the effective date, however, carriers, brokers, and freight forwarders with registrations or operating authorities that have been revoked for a period exceeding one year would be required to submit the appropriate application in the Form OP–1 Series and to register anew under the proposed interim rules.

Procedures for Voluntary Registration Revocation

The FHWA proposes to continue the practice of permitting registrants to request voluntary revocation of their registrations. Registrants seeking to do so would be required to submit Form OCE–46, Request for Revocation of Registration, to the FHWA, Office of Motor Carriers, Licensing and Insurance Division, as provided in the proposed interim rules at 49 CFR 365.511. The proposed revised version of this voluntary revocation form, incorporating only such changes as are necessary to reflect the FHWA's assumption of jurisdiction in this area, is set forth in the appendices to part 365. Registrations that have been revoked upon request of the registrant would be subject to the above-described reinstatement provisions in the same manner and to the same extent as registrations that have been revoked for failure to maintain required financial responsibility levels.

Reactivation of Dismissed or Withdrawn Applications

As a further measure to preserve the integrity of the registration system and to ensure the continuing accuracy of information provided on the application form, the proposed interim rules would provide that there no longer is an opportunity for applicants to reactivate a registration filing that has been dismissed for want of prosecution or withdrawn at the applicant's request. Submission of a new application in the Form OP–1 Series would be the only mechanism available to reinstitute such registration requests.

Special Transit Operation Provisions

The ICCTA amended the financial responsibility provisions of 49 U.S.C. 31138(e) by adding subsection (4), exempting from the requirements of that section for-hire motor transit operators that provide interstate service and that receive grants under 49 U.S.C. 5307, 5310, or 5311, or that contract to provide transportation service funded in whole or in part by such grant funds. In lieu of the minimum Federal levels of financial responsibility required of motor passenger carrier registrants generally, such transit operators (hereinafter identified as "Federal Transit Administration (FTA) grantees" or "transit service providers") are permitted to carry as their minimum financial responsibility obligation the highest level of insurance required by any of the States in which they operate.

The ICCTA amendment to 49 U.S.C. 31138(e) only adjusted the minimum financial responsibility levels FTA grantees are required to observe; it did not relieve FTA grantees with interstate transit service areas of their obligation to register with the FHWA as required of all interstate for-hire carriers under 49 U.S.C. 13902. Similarly, the ICCTA amendment did not relieve FTA grantees of their obligation under 49 U.S.C. 13906 to file with the FHWA evidence of insurance under 49 CFR part 387 as a condition of registration.

FTA grantees operating in interstate transit service areas that exceed commercial zone limits generally provide service of a nature that does not conform with any of the statutory exemption provisions that might otherwise remove carriers from the reach of FHWA jurisdiction and, thus, relieve them of registration obligations—*e.g.*, the commercial zone exemption of 49 U.S.C. 13506(b)(1), the "casual, occasional, or reciprocal" transportation exemption of 49 U.S.C. 13506(b)(2), or the taxicab exemption of 49 U.S.C. 13506(a)(2). In addition, FTA grantees are advised that there are no exemptions from registration requirements related to vehicle capacity, frequency of interstate operations, or the non-profit status of a transportation operation.

Further, the FHWA believes that no meaningful relief from statutory registration requirements can be made available to FTA grantees under the general exemption authority of 49 U.S.C. 13541. The statute expressly constrains the Secretary from exercising that exemption authority to relieve a person from the application of, and compliance with, any law or regulation pertaining to specified matters including insurance and safety fitness—matters integral to the registration process.

Accordingly, FTA grantees that provide interstate service within areas that exceed commercial zone limits are required to register their operations with the FHWA and, as part of that process, to file evidence that they maintain the minimum levels of financial responsibility coverage required under 49 U.S.C. 31138(e). This notice proposes to amend the 49 CFR part 387 regulations governing minimum levels of financial responsibility for motor carriers to reflect the revised compliance option made available by the ICCTA to transit service providers.

In administering the registration process as it pertains to FTA grantees, the FHWA recognizes that these transit service providers for the most part are small entities not accustomed to dealing with Federal agencies and generally inexperienced as concerns Federal motor carrier safety and economic regulation. Indeed, many of the FTA grantees are not primarily motor carriers, but offer transit service only as an ancillary feature of their principal social service or not-for-profit function. In keeping with the FHWA's longstanding policy of assisting small businesses in understanding and complying with regulatory requirements, and particularly in light of provisions of the Small Business Regulatory Enforcement Fairness Act of 1995 (SBREFA), the FHWA is committed to simplifying and

facilitating the registration process for FTA grantees.

Specific measures already in place to accomplish this include: (1) providing with the Form OP–1(P) a supplemental compliance information insert, advising FTA grantees of and requesting information about their insurance compliance options in a manner similar to that proposed in this notice for the "INSURANCE" section of the Form OP–1(P); (2) staffing a telephone information line ((202)358–7083) with access to registration specialists who can assist FTA grantees in completing the registration application form and filing the required evidence of financial responsibility; and (3) encouraging direct telephone contact between licensing specialists and FTA grantee registration applicants to correct deficiencies or clarify information in registration filings in lieu of rejecting applications.

As the FHWA continues to evaluate and implement the interim registration rules proposed here, we envision further opportunities to coordinate our registration screening responsibilities with FTA processes and to ease the registration paperwork burden for transit service providers by ensuring that all possible redundancies are eliminated from the registration application process for such applicants. To the extent that the 49 U.S.C. 13902(b) registration provisions subject FTA grantees to public interest considerations consistent with those in FTA's annual certifications and assurances for grants under 49 U.S.C. 5307, 5310, and 5311, we will confer with FTA to coordinate public interest findings if such findings are necessary in the registration process.

We are collaborating with the FTA to provide registration training opportunities for State officials who administer the grant programs. This will create an additional source of information for FTA grantees needing assistance in completing the registration application and in complying with registration requirements. We also are committed to facilitating and simplifying the insurance filing process for transit service providers by making available through the FTA to transit providers' insurance agents the BMC–91 and BMC–91X forms. (Other supplemental forms required to be filed by registration applicants—Form BOC–3 for designation of process agents and Form MCS–150 for registering with DOT—already are provided as part of the registration information package sent to prospective applicants.) Finally, we are working with FTA to develop a more informative information sheet targeted at transit service provider registration applicants. The information sheet, provided as a courtesy to all prospective registrants requesting Form OP–1(P), will profile transit service providers' particular financial responsibility requirements, advise transit service providers of the filing fee waiver option available to them, and address common FTA grantee concerns about properly identifying their form of business when registering their operations with the FHWA.

In sum, we anticipate maintaining and will work continually to strengthen the FHWA's ongoing collaborative effort with the FTA. Our goal is to eliminate all possible redundancies from the registration process and to afford FTA grantees the full benefit of effective and accessible information resources to facilitate their compliance with registration requirements.

Passenger Application Revisions Responsive to NAFTA Provisions

The proposed interim rules and Form OP–1(P) passenger carrier registration application would provide for processing applications filed pursuant to the North American Free Trade Agreement (NAFTA), including certain NAFTA provisions that have not yet been implemented. Passenger carrier operations that would be authorized pursuant to Phase III of NAFTA, if implemented, would be limited to bona fide international transportation between the U.S.-Mexico border and specified points in the United States. Carriers registered under this provision would not be permitted to transport passengers in intrastate commerce under 49 U.S.C. 13902(b)(3).

For clarification purposes, the proposed interim rules and Form OP–1(P) also include expanded references to other specialized service categories for Mexican owned or controlled passenger carriers providing special or tour bus operations across the U.S.-Mexico border, pursuant to already implemented NAFTA provisions.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue interim final rules at any time after the close of the comment period. In addition to late comments, the FHWA also will continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

The FHWA encourages commenters to develop their views while mindful of the interim nature of this proceeding and of its relationship to the ongoing collaborative efforts of the FHWA and those interested in developing a single, on-line information/registration system.

The FHWA has developed the rules, forms, and procedures proposed here after considerable transitional experience under the registration system adapted from the former ICC's licensing process. This has permitted our thorough assessment of the regulations and procedures as they pertain to our revised jurisdiction and our selective retention of those features that best conform with existing FHWA processes and the needs of registration applicants.

To the full extent practicable, the revised rules and application forms proposed here continue to reflect the predecessor licensing provisions administered by the former ICC and with which carriers, brokers, and forwarders now within the FHWA's registration jurisdiction already are familiar. For the most part, the proposed interim registration rules and application forms embrace limited changes that either are directly mandated by the ICCTA or are required to realize effective implementation of the FHWA's unified oversight of registration and monitoring of safety compliance. To a more limited extent this proceeding proposes discretionary revisions to the registration forms and procedures now in place. These changes are incremental, but would operate to ensure the continued integrity of the registration process while simplifying and clarifying registration guidelines for applicants.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this proposed action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the Department of Transportation's Regulatory Policies and Procedures. This proposed action preserves the essential nature of the registration procedures already in place, makes primarily incremental changes to accommodate the ICCTA's jurisdictional revisions or to facilitate the FHWA's management of the registration docket, and will be in place for only a limited, transitional period. Accordingly, it is anticipated that the economic impact of this proceeding will be minimal.

Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, Pub. L. 96–354, 5 U.S.C. 601–612, the FHWA has evaluated the anticipated effects of these proposed interim rules on small entities. Based on the evaluation, the FHWA hereby certifies that this proposed action would not have a significant economic impact on a substantial number of small entities.

Essentially, this rulemaking action would preserve in the new registration context mandated by the ICCTA the procedural guidelines and standards previously imposed upon motor carriers, property brokers, and household goods freight forwarders under the former ICC's licensing jurisdiction. Accordingly, the projected economic impact upon the vast majority of small entities affected by this proceeding is expected to be negligible. To the limited extent that the revised registration application forms clarify and simplify the registration process, particularly for first-time applicants, they can be expected to reduce filing burdens in a way that would have a positive, although not profound, economic impact on small entities. Although the revised statutory registration provisions expand the FHWA's regulatory reach to the general commodities segment of the freight forwarding industry, the FHWA finds the affected small entities not to be a population of sufficient size, nor the economic impact upon them to be of sufficient magnitude, to warrant a significant economic impact finding.

Executive Order 12612 (Federalism Assessment)

The interim rules proposed here have been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The proposed interim rules do not impose additional costs or burdens on the States, nor do they affect the ability of the States tc discharge traditional State government functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20,217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

The interim rules proposed here involve an information collection requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The revised registration application forms, however, in all critical respects would preserve the format, procedural guidance, and, to the full extent feasible, the substantive inquiries of their predecessor forms that have been approved by the Office of Management and Budget (OMB).

To the limited extent that the proposed forms would provide for revised information requests, the projected time required for applicants to respond to such information collections would be more than compensated by elimination of other previously requested data, rendered superfluous or irrelevant by the ICCTA. In addition, we anticipate that the revised instructions and streamlined response format of the application forms would clarify and simplify the registration process in a manner that would appreciably reduce the time required to complete the Form OP–1, OP–1(P), and OP–1(FF) registration applications.

Accordingly, we anticipate a downward revision in the estimated burden hours currently reflected in the OMB inventory for completion of Forms OP–1, OP–1(P), and OP–1(FF)—from 2.5 to 1.5 hours per response. This revision would make the burden hours reflected in the OMB inventory consistent with those already recorded for the Form OP–1(MX). That form was developed by the former ICC after that agency had the benefit of considerable experience using the other forms in the OP–1 Series. Thus, the Form OP–1(MX) already reflected streamlined and simplified instructions and organizational features. The FHWA finds that the 1.5 burden hours estimated for completion of Form OP–1(MX) represent a more realistic assessment of the time commitment that would be required of the average applicant for completion of any form in the proposed revised OP–1 Series. The estimated burden hours include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed to complete the forms, and completing and reviewing the collection of information.

The composite annual reporting burden ascribed in the OMB inventory to Forms OP–1, OP–1(P), and OP–1(FF) is 45,000 hours, based on an estimate of 18,000 application filings annually at 2.5 burden hours per response. The FHWA's recent experience in processing registration applications during Fiscal Years 1996 and 1997 indicates that the level of filings continues to remain relatively constant. The projection of 18,000 annual application filings on the proposed forms at the revised estimated paperwork burden of 1.5 hours per response yields an anticipated composite information collection burden of 27,000 hours annually.

The revised information collection requirements contained in this action will be submitted to OMB under the Paperwork Reduction Act and 5 CFR 1320. This document serves as the FHWA's 60-day notice under 5 CFR 1320.8(d)(1). Comments concerning the paperwork burden and burden hour estimates in this proceeding may be directed to OMB and the FHWA, respectively, by addressing them to:

Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503
and
Federal Highway Administration, Forms Clearance Officer Earl Coles (HMS–12), Office of Information and Management Services, 400 Seventh St., SW., Washington, DC 20590

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not affect the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 365

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Highways and roads, Motor carriers.

49 CFR Part 385

Administrative procedures, Commercial motor vehicle safety, Highways and roads, Highway safety, Motor carriers.

49 CFR Part 387

Freight forwarders, Highways and roads, Insurance, Motor carriers, Surety bonds.

Issued on: February 3, 1998.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA hereby proposes to amend title 49, Code of Federal Regulations, chapter III, subchapter B, by revising parts 365, 385, and 387 as set forth below:

1. Part 365 is revised to read as follows:

PART 365—REGISTRATION OF INTERSTATE, FOR-HIRE MOTOR CARRIERS, PROPERTY BROKERS, AND FREIGHT FORWARDERS

Subpart A—How to Register

365.101 Registrations governed by these rules.
365.103 Effective periods of registrations.
365.105 Modified procedure.
365.107 Starting the registration process: the Form OP–1 series.
365.109 Types of registrations.
365.111 Review of the registration application.
365.113 Changing the registration application form or filing supplementary evidence after the registration form is filed.
365.115 Obtaining a copy of the registration application.
365.117 Registrant withdrawal.
365.119 Disposition of registration applications.

Subpart B—Provisions Governing Opposed Registration Applications

365.201 Definitions.
365.203 Time periods for filing complaints.
365.205 Contents of the complaint.
365.207 Filing a reply statement.

Subpart C—Contesting Disposition of the Registration Application

365.301 Procedures for requesting reconsideration of a rejected registration application.
365.303 Procedures for appealing disposition of a registration application.

Subpart D—Provisions Governing Transfers or Changes in the Control, Ownership, or Name of a Registrant

365.401 Registration transfers and changes in ownership or control of registrants.
365.403 Procedures for changing the name or business form of a registrant.

Subpart E—General Rules Governing the Registration Process

365.501 Governing rules.
365.503 Contacting another party.
365.505 Serving copies of pleadings.
365.507 Replies to motions.
365.509 Facsimile filings.
365.511 Voluntary registration revocation.
365.513 Reinstatement of revoked registrations.
365.515 Discontinued applications.
Appendix A to Part 365—Form OP–1
Appendix B to Part 365—Form OP–1(P)
Appendix C to Part 365—Form OP–1(FF)
Appendix D to Part 365—Form OP–1(MX)
Appendix E to Part 365—Form OCE–46

Authority: 5 U.S.C. 553 and 559; 16 U.S.C. 1456; 49 U.S.C. 13101, 13301, 13901–13906, 14708, 31138, and 31144; 49 CFR 1.48.

Subpart A—How to Register

§ 365.101 Registrations governed by these rules.

These rules govern the registration of entities providing transportation or service of the following types:

(a) For-hire motor common or contract carriers of property or passengers, operating in interstate or foreign commerce;

(b) Brokers of for-hire motor vehicle transportation of property in interstate or foreign commerce;

(c) Freight forwarders of property in interstate or foreign commerce;

(d) Intrastate motor common carriers of passengers providing service on a route over which the carrier is registered to provide interstate operations; and

(e) Mexican carriers operating in interstate or foreign commerce as common, contract, or private motor carriers of property (including exempt items), between the U.S./Mexico border, on the one hand, and, on the other, points in California, Arizona, New Mexico, and Texas.

§ 365.103 Effective periods of registrations.

Registrations will remain in effect as long as the registrant maintains compliance with the requirements of this part and all applicable statutory and regulatory provisions, including those pertaining to insurance coverage for the protection of the public (49 CFR part 387); the designation of agents upon whom process may be served (49 CFR part 366); tariffs or schedules if applicable (49 CFR part 1312); and the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399). Failure to maintain compliance will constitute sufficient grounds for revocation of registration authority by the Federal Highway Administration (FHWA).

§ 365.105 Modified procedure.

The FHWA will handle registration requests using the modified procedure, if possible. Under this procedure, registration applicants and complainants submit statements made under oath (verified statements) to each other and to the FHWA.

§ 365.107 Starting the registration process: the Form OP–1 Series.

(a) All registration applicants shall file the appropriate form in the OP–1 Series, as follows:

(1) Form OP–1 for motor property common and contract carriers and property brokers;

(2) Form OP–1(P) for motor passenger common and contract carriers;

(3) Form OP–1(FF) for freight forwarders; and

(4) Form OP–1(MX) for Mexican for-hire or private motor carriers of property (including otherwise exempt items), seeking to operate pursuant to provisions of the North American Free Trade Agreement (NAFTA).

(b) Registration applicants may obtain the OP–1 forms by contacting FHWA regional offices identified at 49 CFR 390.27 and FHWA field offices, or by calling the FHWA, Office of Motor Carriers, Licensing and Insurance Division, at (202) 358–7046.

(c) A separate registration filing fee is required for each registration application submitted in each transportation or service category.

§ 365.109 Types of registrations.

(a) *General compliance.* (1) Motor property carriers, freight forwarders, property brokers, and certain types of motor passenger carriers, are required to be registered upon a finding that the registrant is willing and able to comply with all applicable statutory and regulatory provisions, including any safety regulations imposed by the Secretary and safety fitness requirements established under 49 U.S.C. 31144 (49 CFR parts 350–399) and the minimum financial responsibility requirements established under 49 U.S.C. 13906, 31138, and 31139 (49 CFR part 387). These registration applications can be opposed only on the grounds that the registrant is not in compliance with applicable safety fitness and financial responsibility requirements.

(2) Registrants in this category are:

(i) Motor common and contract carriers of property (except household goods);

(ii) Mexican motor common and contract carriers of property (except household goods) that perform private carriage and transport exempt items;

(iii) Motor carrier property brokers;

(iv) Freight forwarders of general commodities (except household goods); and

(v) Privately funded motor common and contract passenger carriers (i.e., carriers that receive no governmental assistance), providing special and charter operations, international charter

and tour bus services across the U.S.-Mexico border (provided by Mexican owned or controlled carriers), regular route service, or scheduled international transportation between the U.S.-Mexico border and specified points in the United States (provided by Mexican owned or controlled carriers subject to implementation of Phase III of the North American Free Trade Agreement).

Note: Motor passenger carrier registrants in this category (that are not Mexican owned or controlled) are authorized to provide regular route motor passenger carrier transportation entirely in one State if such intrastate transportation is to be provided on a route over which the carrier provides interstate transportation of passengers. Registrants that intend to provide intrastate service of this nature should so indicate on Form OP–1(P).

(b) *Public interest.* (1) Certain types of motor passenger carrier registrants are required to be registered upon a finding of the general compliance factors specified in paragraph (a) of this section, unless, on the basis of evidence presented by any person objecting to the registration, there is a finding that the transportation to be provided pursuant to the registration is not in the public interest.

(2) Registrants in this category are:

(i) Private motor passenger carrier recipients of governmental assistance, providing special or charter transportation; and

(ii) Public motor passenger carrier recipients of governmental assistance, providing regular-route transportation.

(c) *Public special or charter.* (1) Certain types of motor passenger carriers are to be registered upon a finding of the general compliance factors specified in paragraph (a) of this section and upon the further findings that: No motor carrier of passengers (other than a motor carrier of passengers which is a public recipient of governmental assistance) is providing or willing to provide the transportation; and the transportation is to be provided entirely in the area in which the public recipient provides regularly scheduled mass transportation services.

(2) Registrants in this category are public motor passenger carrier recipients of governmental assistance providing special or charter transportation.

(d) *Household goods.* (1) Certain types of motor property carriers and freight forwarders are to be registered upon a finding of the general compliance factors specified in paragraph (a) of this section and upon a further finding that the registrant agrees in accordance with 49 U.S.C. 14708 to offer its shippers of household goods arbitration as a means of settling disputes concerning damage and loss to household goods transported and certifies in its application that the required arbitration system is in place.

(2) Registrants in this category are:

(i) Motor common and contract carriers of household goods (including Mexican carrier registrants); and

(ii) Household goods freight forwarders.

§ 365.111 Review of the registration application.

(a) Registration applications will be reviewed for correctness, completeness, and adequacy of the information provided.

(1) Minor errors will be corrected without notification to the registrant.

(2) Materially incomplete registration forms will be rejected as provided in § 365.119. Registration applications that are in substantial compliance with these rules may be accepted.

(b) Registration applications submitted by motor carriers with "Unsatisfactory" safety fitness ratings will be rejected.

(c) A summary of the information provided on the accepted registration application will be published in the "Federal Highway Administration Office of Motor Carriers Register [FHWA–OMC Register]" to give notice to the public.

(d) Registration applicants must establish financial responsibility by filing, within 90 days from the date a registration notice is published in the *FHWA–OMC Register,* as appropriate:

(1) Form BMC–91 or 91X (bodily injury and property damage liability coverage) or Form BMC–82 (surety bond)—Bodily injury and property damage—motor property and passenger carriers; freight forwarders that provide pickup or delivery service directly or by using a local delivery service under their control.

Note: Motor passenger transit operators identified under 49 U.S.C. 31138(e)(4) that receive grants under 49 U.S.C. 5307, 5310, or 5311 or that contract to provide transportation service funded in whole or in part by such grant funds, may file proof of minimum financial responsibility at the highest level of insurance required by any of the States in which they operate in lieu of observing otherwise applicable Federal limits.

(2) Form BMC–84 (surety bond) or Form BMC–85 (trust fund agreement)—property brokers.

(3) Form BMC–34 or BMC–83 (surety bond)—Cargo liability—motor property common carriers and freight forwarders.

(e) All motor carrier, property broker, and freight forwarder registration applicants also must submit Form BOC–3—Designation of legal process agents—within 90 days from the date a registration notice is published in the "FHWA–OMC Register."

(f) Compliance with safety requirements by motor carrier and vehicle-operating freight forwarder registrants is established by:

(1) Completion of the safety fitness compliance certification on the registration application form;

(2) Submission of a completed Form MCS–150 with the registration application form or confirmation by providing a valid U.S. DOT number that the registrant currently has a Form MCS–150 on file; and

(3) Either of the following:

(i) Assignment of a DOT safety rating other than "Unsatisfactory"; or

(ii) For registration applicants that have not been assigned a DOT safety rating, immediate entry into the FHWA's Motor Carrier Management Information System (MCMIS) to permit continual monitoring of such registrants' operations, involving attention to vehicle inspections, accident reports, carrier size, commodities transported, and any performance-based operational data available through MCMIS.

(g) Registration applicants seeking to conduct operations for which tariffs are required to be filed or published may not commence operations until such tariffs are properly filed with the Surface Transportation Board under 49 CFR part 1312 or published and in effect.

(h) All registration application forms must be completed in English.

§ 365.113 Changing the registration application form or filing supplementary evidence after the registration form is filed.

(a) Once the registration application form is filed, the applicant may supplement evidence only with the approval of the FHWA, Office of Motor Carriers, Licensing and Insurance Division.

(b) Amendments to the registration application form generally are not permitted, but in exceptional circumstances may be entertained at the discretion of the FHWA, Office of Motor Carriers, Licensing and Insurance Division.

§ 365.115 Obtaining a copy of the registration application.

After publication of the registration notice, interested persons may request a copy of the registration application form submitted by contacting the office or official identified in the "FHWA–OMC Register."

§ 365.117 Registrant withdrawal.

If the registration applicant wishes to withdraw its application, it shall submit a dismissal request in writing to the Federal Highway Administration, Office of Motor Carriers, Licensing and Insurance Division, HIA–30, Suite 600, 400 Virginia Avenue , SW., Washington, DC 20024.

§ 365.119 Disposition of registration applications.

(a) Registration applications not in substantial compliance with this part will be rejected. Applicants will be informed in writing by the Director, Office of Motor Carrier Information and Analysis, of the reason for rejection. Filing fees for rejected applications are not refundable.

(b) If no complaints are received in response to registration applications published in the "FHWA–OMC Register" as provided under subpart B of this part, the registration will become effective by issuance of a certificate (motor common carriers), permit (motor contract carriers and forwarders), or license (property brokers). The registration will continue in effect only so long as the registrant remains in compliance with the requirements of this part and all applicable statutory provisions. The registrant is subject to suspension or revocation at any time for compliance failure.

(c) If a timely complaint is filed in response to a registration application as provided under subpart B of this part, the Director, Office of Motor Carrier Information and Analysis, will review the application record, including all complaint and reply evidence, and will issue a decision on the merits of the application.

Subpart B—Provisions Governing Opposed Registration Applications

§ 365.201 Definitions.

Complainant means a person filing valid opposition.

Complaint means a pleading filed by a person who opposes a registration.

§ 365.203 Time periods for filing complaints.

A complaint must be filed (received at the FHWA) within 10 days after the registration notice is published in the "FHWA-OMC Register." A copy of the complaint shall be sent to the registration applicant's representative at the same time. Failure to file a complaint within the stated time period or to provide a copy of the complaint to the representative constitutes a waiver of further participation in this proceeding.

§ 365.205 Contents of the complaint.

(a) All information upon which the complainant plans to rely must be set forth in the complaint.

(b) A complaint must be verified, as follows:

I, _____

verify under penalty of perjury, under the laws of the United States of America, that the information above is true and correct. Further, I certify that I am qualified and authorized to file this complaint.

(See 18 U.S.C. 1001 and 18 U.S.C. 1621 for penalties.)

_____

[Signature and Date]

(c) Complaints must respond directly to the statutory standards for review of registration requests as provided at 49 U.S.C. 13902–13904. As specifically concerns motor carrier registrations, complaints will be accepted only on the ground that the registrant fails or will fail to comply with applicable statutory and regulatory provisions, specifically the safety regulations of the Secretary of Transportation including the safety fitness requirements established under 49 U.S.C. 31144 (49 CFR parts 350–399) or minimum financial responsibility requirements established under 49 U.S.C. 13906, 31138, and 31139 (49 CFR part 387).

(d) A complaint not in substantial compliance with the rules in this part or applicable statutory standards may be rejected.

(e) A complainant wishing to withdraw from a proceeding shall inform the FHWA in writing.

§ 365.207 Filing a reply statement.

(a) If the registration application is opposed, the applicant may file a reply statement. The reply statement must be filed (received at the FHWA) within 20 days after "FHWA–OMC Register" publication.

(b) The reply statement may not contain new information. It shall only rebut or further explain matters previously raised.

(c) The reply statement need not be notarized or verified. The oath in the registration application applies to all information submitted in the registration process. Separate legal arguments, if presented, need not be notarized or verified.

Subpart C—Contesting Disposition of the Registration Application

§ 365.301 Procedures for requesting reconsideration of a rejected registration application.

(a) A registration applicant has the right to request reconsideration of the rejection of a registration application.

(b) The reconsideration request must be filed (received at the FHWA) in writing within 10 days of the date of the letter of rejection at the location noted therein and must state why the rejection of the registration application is believed to be in error.

(c) The reconsideration request will be reviewed by the Director, Office of Motor Carrier Information and Analysis, and the registration applicant shall be notified in writing of the decision upon reconsideration.

(d) If the request for reconsideration is successful and the registration filing is found to be proper, the registration application shall be deemed to have been filed properly as of the reconsideration decision date.

(e) If the request for reconsideration is denied, the registration applicant has the right to file an administrative appeal as prescribed at § 365.303.

§ 365.303 Procedures for appealing disposition of a registration application.

(a) A registration applicant has the right to appeal denial of the registration application or denial of a request to reconsider rejection of the application. A complainant has the right to appeal issuance of a registration.

(b) The appeal must be filed (received at the FHWA) in writing with the Associate Administrator for Motor Carriers, FHWA, 400 Seventh Street, SW., Washington, DC 20590, within 10 days of the date of the decision denying the application or issuing the registration or the letter denying the reconsideration request and must list all factual and procedural issues in dispute.

(c) The Associate Administrator for Motor Carriers may request the parties to submit additional data or to attend a conference to discuss the application. Failure of a party filing the appeal to provide the information requested or to attend the conference may result in dismissal of the appeal.

(d) The parties shall be notified in writing of the decision on administrative review and this decision shall constitute final agency action.

Subpart D—Provisions Governing Transfers or Changes in the Control, Ownership, or Name of a Registrant

§ 365.401 Registration transfers and changes in ownership or control of registrants.

(a) Transfers of registrations are not permitted. A person that purchases or otherwise acquires control of or the right to operate a previously registered entity must register anew to provide the operations in its own right by filing the appropriate form in the OP–1 Series and complying with the regulations set forth

in this part. A new registration number will be assigned to the acquiring entity.

(b) To ensure that commercial operations and service are not impeded or disrupted when registered entities engage in transactions involving the change of ownership or control, a registration will remain valid for a 60 day grace period irrespective of changes in ownership or control, so long as there is no lapse in compliance with applicable statutory and regulatory provisions, including required minimum levels of financial responsibility and safety requirements. This grace period runs from the date of change in ownership or control and is valid only so long as:

(1) The prior and new registrants jointly inform the FHWA's Office of Motor Carriers, Licensing and Insurance Division, in writing, of the circumstances giving rise to the change in ownership or control; and

(2) The acquiring entity has on file with the FHWA the appropriate registration application form in the OP–1 Series.

§ 365.403 Procedures for changing the name or business form of a registrant.

(a) *Scope.* The procedures set forth at this subpart apply to the following circumstances:

(1) A change in the form of a registrant's business, such as the incorporation of a sole proprietorship or partnership;

(2) A change in the legal name of a corporation or partnership or change in the trade name or assumed name of any entity;

(3) A transfer of a registration from a deceased or incapacitated spouse to the other spouse;

(4) A reincorporation and merger for the sole purpose of effecting a name change;

(5) An amalgamation or consolidation of a carrier and a non-carrier into a new carrier having a different name from either of the predecessor entities; and

(6) A change in the State of incorporation accomplished by dissolving the corporation in one State and reincorporating in another State.

(b) *Procedures.* To accomplish these changes, the registrant must send a letter to the Federal Highway Administration, Office of Motor Carriers, Licensing and Insurance Division, HIA–30, Suite 600, 400 Virginia Avenue, SW., Washington, DC 20024. The envelope should be marked "NAME CHANGE." The registrant must provide the following, to the extent applicable:

(1) The docket number(s) and name of the registrant requesting the change;

(2) A copy of the articles of incorporation and the State certificate reflecting the incorporation;

(3) The names of the owners of the stock and distribution of the shares;

(4) The names of the officers and directors of the corporation;

(5) A statement that there is no change in the ownership, management, or control of the business;

(6) When this procedure is being used to transfer a registration from a deceased or incapacitated spouse to the other spouse, documentation that the other spouse has the legal right to effect such change; and

(7) Payment of the fee for filing a name change request.

Subpart E—General Rules Governing the Registration Process

§ 365.501 Governing rules.

Except as provided in this part, all registration proceedings are governed by the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, and the Federal Rules of Civil Procedure, title 28, U.S.C.

§ 365.503 Contacting another party.

When a person wishes to contact another party or serve a pleading or letter on that party, it shall do so through the designated representative. The telephone and facsimile numbers of a registrant's representative shall be listed in the notice published in the "FHWA–OMC Register."

§ 365.505 Serving copies of pleadings.

(a) A registrant must serve all pleadings and letters on the FHWA and all known participants in the proceeding, except that a reply to a motion need only be served on the FHWA and the moving party.

(b) A complainant need serve only the FHWA and registrant with pleadings or letters.

§ 365.507 Replies to motions.

Replies to motions filed under this part must be filed (received at the FHWA) within 5 days of the date the motion is filed at the FHWA.

§ 365.509 Facsimile filings.

Facsimile filings of registration forms and supplemental information are not permitted. To assist parties in meeting the expedited time frames established for submitting complaints to a registration notice, however, the FHWA will accept facsimile filings of complaints and any reply or rebuttal evidence. (Facsimile number: (202) 358–7118.) Facsimile filings of these pleadings must be followed by submission of the original document and one copy for verification and recordkeeping purposes.

§ 365.511 Voluntary registration revocation.

(a) Registrants that seek to discontinue operations and have their registrations voluntarily revoked may do so by submitting Form OCE–46, "Request for Revocation of Registration," to the FHWA's Office of Motor Carriers, Licensing and Insurance Division, HIA–30, Suite 600, 400 Virginia Avenue SW., Washington, DC 20024.

(b) Registrations that have been voluntarily revoked are subject to the reinstatement provisions of § 365.513 in the same manner and to the same extent as those registrations that have been revoked due to a lapse in maintaining minimum levels of financial responsibility or for other cause.

§ 365.513 Reinstatement of revoked registrations.

(a) Registrations that have been revoked may be reinstated, provided that the reinstatement request and evidence of required minimum financial responsibility is filed within one year of the date of revocation of the involved registration.

(b) Requests for reinstatement should be submitted to the FHWA's Office of Motor Carriers, Licensing and Insurance Division, HIA–30, Suite 600, 400 Virginia Avenue SW., Washington, DC 20024, and should be accompanied by the required reinstatement fee.

(c) Revoked registrations will be reinstated only upon a determination that the registrant is in compliance with this part and all applicable statutory provisions.

§ 365.515 Discontinued applications.

Registration applications that have been rejected, denied, dismissed for want of prosecution, or withdrawn cannot be reactivated. This provision also is applicable to applications filed with the former Interstate Commerce Commission, including those applications dismissed for want of prosecution prior to January 1, 1995, for which a $400 reactivation fee formerly was assessed.

BILLING CODE 4910–22–P

Appendix A to Part 365—Form OP–1—Application to Register as a Motor Property Carrier or Broker

Instructions for Form OP–1—Application to Register as a Motor Property Carrier or Broker

These instructions will assist you in preparing accurate and complete registration filings. Applications that do not contain the required information will be rejected and

may result in a loss of the application fee. The application must be typed or printed in ink. If additional space is needed to provide a response to any item, use a separate sheet of paper. Identify application on each supplemental page and refer to the section and item number in the application for each response.

Section I

FHWA Registration History. If you now have any authority issued by the former ICC or if you are registered with or have a registration application pending before the Federal Highway Administration, check the "*YES*" box and indicate the docket number (MC number) you have been assigned. Example: MC–987654.

Applicant's Legal Business Name and Doing Business as Name. The applicant name should be your full legal business name—the name on the incorporation certificate, partnership agreement, tax records, etc. If you use a trade name that differs from your official business name, indicate this under "Doing Business As Name." Example: If you are John Jones, doing business as Quick Way Trucking, enter "John Jones" under APPLICANT'S LEGAL BUSINESS NAME and "Quick Way Trucking" under DOING BUSINESS AS NAME.

Because the FHWA uses computers to retain information about registered carriers, it is important to spell, space, and punctuate any name the same way each time you write it. Example: John Jones Trucking Co., Inc.; J. Jones Trucking Co., Inc.; and John Jones Trucking are considered three separate companies.

Business Address/Mailing Address. The business address is the physical location of the business. Examples: 756 Bounty Street; 15433 State Highway 23. If applicant receives mail at an address different from the business location, also provide the mailing address. Example: P.O. Box 3721. NOTE: To receive pertinent FHWA notices and to ensure that insurance documents filed on applicant's behalf are accepted; notify the FHWA in writing: Federal Highway Administration, Licensing and Insurance Division, HIA–30, Suite 6000, 400 Virginia Avenue, S.W., Washington, DC 20024, if the business or mailing address changes.

Representative. If someone other than the applicant is preparing this form, provide the representative's name, title, position, relationship to the applicant, address, and telephone and FAX numbers. Applicant's representative will be the contact person if there are questions concerning this application.

U.S. DOT Number. Registration applicants subject to the Federal Motor Carrier Safety Regulations also are required to register with U.S. Department of Transportation (U.S. DOT), for safety monitoring purposes. Motor carriers that already have been issued a U.S. DOT registration number should provide it; applicants that have not registered with U.S. DOT should do so by submitting a completed Form MCS–150, *Motor Carrier Identification Report*, with this application. [Note: Registrants claiming "EXEMPT" status under the Section IV—"SAFETY COMPLIANCE" portion of this form need not file Form MCS–150.]

Form of Business. A business is either a corporation, sole proprietorship, partnership, or limited liability company. If the business is a sole proprietorship, provide the name of the individual who is the owner. In this situation, the owner is the registration applicant. If the business is a partnership, provide the name of *each* partner.

Section II

Type of Operations. Check the appropriate box(es) for the type(s) of operations you are registering. A separate filing fee is required for *each type* of operations registered. See "Fee Policy" in the application form. (Note: A broker arranges for the transportation where the actual movement will be performed by registered motor carriers. Brokers assume no responsibility for the property being transported.)

Section III

Insurance Information. Check the appropriate box(es) to describe the type of business you will be conducting. If you operate vehicles with a gross vehicle rating of 10,001 pounds or more and haul only non-hazardous materials, you are required to maintain $750,000 minimum liability coverage for the protection of the public. Hazardous materials referred to in the insurance regulations at 49 CFR 387.303(b)a(2)(c) require $1 million minimum liability coverage; those at 49 CFR 387.303(b)(2)(b) require $5 million minimum liability coverage.

If you operate only vehicles with a gross vehicle weight rating under 10,001 pounds, you must maintain $300,000 minimum liability coverage. If you operate only such vehicles but will be transporting any quantity of Division 1.1., 1.2, or 1.3 explosives, any quantity of poison gas (Division 2.3, Hazard Zone A, or Division 6.1, Packing Group 1, Hazard Zone A material), or highway route controlled quantity of radioactive materials, you must maintain $5 million minimum liability coverage.

Property brokers must have on file with the FHWA a surety bond or trust fund agreement in the amount of $10,000.

Minimum levels of cargo insurance must be maintained by all motor property common carriers: $5,000 for loss of or damage to property carried on any one motor vehicle and $10,000 for loss of or damage to property occurring at any one time and place.

Appropriate insurance forms must be filed within 90 days after the date of the application is published in the FHWA Office of Motor Carriers Register: Form BMC–91 or BMC–91X for bodily injury and property damage: Form BMC–34 for cargo liability; Form BMC–84 for broker surety bond; and Form BMC–85 for broker trust fund agreement.

The FHWA does not furnish copies of insurance forms. You must contact your insurance company to arrange for the filing of all required insurance forms.

Section IV

Safety Certification. Applicants for motor carrier authority must complete the safety certification. You should check the "Yes" response only if you can attest to the truth of the statements. The "Applicant's Oath" at the end of the application form applies to all certifications, and false certifications are subject to the penalties described in that oath.

If you operate only vehicles with a gross weight rating under 10,000 pounds and will not transport hazardous materials, you are exempt from the U.S. DOT safety fitness regulations; however, you must certify that you are familiar with and will observe general operational safety fitness guidelines and applicable state and local laws relating to the safe operation of commercial motor vehicles.

You must check only *one* of the boxes in this section.

Section V

Affiliations. All applicants must disclose pertinent information concerning affiliations, if any with other former ICC licensed, now FHWA registered entities.

Sections VI

Household Goods Arbitration Certification. All motor carrier registrants that will transport household goods as defined at 49 U.S.C. 13102(10) must complete the required certification concerning arbitration as a condition of registration.

Section VII

Applicant's Oath. Applications may be prepared by the applicant or an authorized representative. In either case, *the oath must be signed by the applicant.* In the case of companies, an authorized employee in the ownership structure may sign. An individual with power of attorney to act on behalf of the applicant may sign, provided that proof of the power of attorney is submitted with the application.

Legal Process Agents

All motor carrier applicants must designate a process agent in each state where operations are authorized. All broker applicants must designate a process agent in each state in which offices are located and in which contracts will be written. Process agents who will accept legal filings on applicant's behalf are designated on FHWA Form BOC–3. Form BOC–3 must be filed within 90 days after the date notice of the application is published in the FHWA Register.

State Notification

Before beginning new or expanded interstate operations, all applicants must contact the appropriate regulatory agencies in every state in and through which the carrier will operate to obtain information regarding various state rules applicable to interstate authorities. It is the applicant's responsibility to comply with registration, fuel tax, and other state regulations and procedures. Begin this process by contacting the transportation regulatory agency for the state in which your business is located.

Mailing Instructions

To register, you must submit an *original and one copy* of this application with the appropriate filing fee.

Note: Retain a copy of the completed application form and any attachments for your own records.

Mailing addresses for applications:

All Documents With Fees Attached

Federal Highway Administration, P. O. Box 100147, Atlanta, GA 30384–0147

For Express Mail Only

Nationsbank Wholesale Lockbox 100147, 6000 Feldwood Road, 3rd Floor East, College Park, GA 30349

For Credit Card Users Only

FHWA, Licensing and Insurance Division, Suite 600, 400 Virginia Avenue, S.W., Washington, DC. 20024

Additional Assistance

FHWA Information Sources

Additional information on registration or monitoring the status of your applications is available through the FHWA's Automated Response Capability (ARC) telephone system. After dialing (202) 358–7000, press 1, then request appropriate menu number indicated below. You may use the ARC 24 hours a day, 7 days a week to obtain information in the following areas:

Information requested	Menu No.
• Status of your application ..... (Note: Tracking the status of your application can be simplified and expedited if you refer to the assigned docket number when making inquiries. You will be informed of your docket number by letter sent on the date notice of your application appears in the FHWA Office of Motor Carriers Register.)	1
• Assistance in filing your application	3
• Status of insurance and process agent filings	2

If you require information that is not available in the automated response system, the ARC will guide you to an appropriate staff member who will be able to assist you in other areas.

U.S. DOT Registration and Safety Ratings

• To obtain information on completing Form MCS–150 or to request a safety fitness review, write to: Director, Information Analysis, Federal Highway Administration, 400—7th St., S.W.—HIA–10, Washington, DC 20590, or call: (800) 832–5660 (Automated Response System).

• For information concerning a carrier's assigned safety rating, call: (800) 832–5660.

U.S. DOT Hazardous Materials Regulations

• To obtain information on whether the commodities you intend to transport are considered to be hazardous materials:

Refer to the provisions governing hazardous materials in the Federal Motor Carrier Safety Regulations at Parts 170 through 189 of Title 49 of the Code of Federal Regulations (CFR), particularly the Hazardous Materials Table at 49 CFR Part 172, or contact U.S. DOT at (202) 366–6121.

• To obtain information about DOT hazardous materials transportation registration requirements: Contact U.S. DOT at (202) 366–4109.

Federal Highway Administration Form OP–1—Application To Register as a Motor Property Carrier or Broker

This application is for all individuals and business requesting authority to operate as motor property common or contract carriers or property brokers.

For FHWA Use Only

Docket No. MC– _____

Filed _____

Fee No. _____

CC Approval No. _____

Section I—Applicant Information

Do you now have authority from the former ICC or the FHWA or an application being processed by the FHWA?

☐ Dec. 191 thru out No ☐Yes

If yes, identify the lead docket number(s)

_____

Does this application register revoked authority?

☐ NO ☐ YES

_____

Legal Business Name

_____

Doing Business as Name

_____

Business Address

_____

Street Name and Number

_____

City

_____

State/Zip Code

_____

Telephone Number

_____

Mailing Address (if different from above)

_____

Street Name and Number or P.O. Box

_____

City

_____

State/Zip Code

_____

Representative (Person who can respond to inquiries)

_____

Name and title, position, or relationship to applicant

_____

Street Name and Number

_____

Telephone Number

_____

City/State/Zip Code

Fax Number

U.S. DOT Number _____

[Note: Motor carrier registrants that have not been assigned a U.S. DOT number must submit a completed Form MCS–150, *Motor Carrier Identification Report*, with this application or must confirm their exempt status under the Section IV—SAFETY CERTIFICATION portion of this form.]

Form of Business (Check Only One)

☐ Corporation

State of Incorporation _____

☐ Sole Proprietorship

Name of Individual _____

☐ Partnership

Identify Partners _____

☐ Limited Liability Company

Section II—Type of Operations

You must submit a filing fee for each type of authority requested (for each box checked). Also, indicate within each authority category the type of commodities you will transport or broker.

☐ Motor Common Carrier
- ☐ General Freight
- ☐ Household Goods

☐ Motor Contract Carrier
- ☐ General Freight
- ☐ Household Goods

☐ Broker
- ☐ General Freight
- ☐ Household Goods

Fax Number

Section III—Insurance Information

This section must be completed by ALL motor property registration applicants. The dollar amounts in parentheses represent the minimum amount of bodily injury and property damage (liability) insurance coverage you must maintain and have on file with the FHWA.

Note: Refer to the instructions for information on cargo insurance filing requirements for motor common carriers and surety bond/trust fund agreement filings for property brokers.

☐ Will operate vehicles having Gross Vehicle Weight Ratings (GVWR) of 10,001 pounds or more to transport:
- ☐ Non-hazardous commodities ($750,000).
- ☐ Hazardous materials referenced in the FHWA's insurance regulations at 49 CFR 387.303(b)(2)(c) ($1,000,000).
- ☐ Hazardous materials referenced in the FHWA's insurance regulations at 49 CFR 387.303(b)(2)(b) ($5,000,000).

☐ Will operate only vehicles having Gross Vehicle Weight Ratings (GVWR) under 10,001 pounds to transport:
- ☐ Any quantity of Division 1.1, 1.2, 1.3 explosives, any quantity of poison gas (Division 2.3, Hazard Zone A, or Division 6.1, Packing Group 1, Hazard Zone A materials), or highway route controlled quantity of radioactive materials ($5,000,000).
- ☐ Commodities other than those listed above ($300,000).

Section IV—Safety Compliance (Motor Carrier Applicants Only)

Applicants Subject to Federal Motor Carrier Safety Regulations—If you will operate vehicles of more than 10,000 pounds GVWR and are, thus, subject to pertinent portions of the U.S. DOT's Federal Motor Carrier Safety Regulations at 49 CFR, Chapter

3, Subchapter B (Parts 350–399), you must certify as follows:

Applicant has access to and is familiar with all applicable U.S. DOT regulations relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials and it will comply with these regulations. In so certifying, applicant is verifying that, at a minimum, it:

(1) Has in place a system and an individual responsible for ensuring overall compliance with Federal Motor Carrier Safety Regulations;

(2) Can produce a copy of the Federal Motor Carrier Safety Regulations and the Hazardous Materials Transportation Regulations;

(3) Has in place a driver safety training/orientation program;

(4) Has prepared and maintains an accident register (49 CFR 390.15);

(5) Is familiar with DOT regulations governing driver qualifications and has in place a system for overseeing driver qualification requirements (49 CFR Part 391);

(6) Has in place policies and procedures consistent with DOT regulations governing driving and operational safety of motor vehicles, including drivers' hours of service and vehicle inspection, repair, and maintenance (49 CFR Parts 392, 395 and 396);

(7) Is familiar with and will have in place on the appropriate effective date, a system for complying with U.S. DOT regulations governing alcohol and controlled substances testing requirements (49 CFR 382 and 49 CFR Part 40).

☐ YES

Exempt Applicants—If you will operate only small vehicles (GVWR under 10,000 pounds) and will not transport hazardous materials, you are exempt from Federal Motor Carrier Safety Regulations, and must certify as follows:

Applicant is familiar with and will observe general operational safety guidelines, as well as any applicable state and local laws and requirements relating to the safe operation of commercial motor vehicles and the safe transportation of hazardous materials.

☐ YES

Section V—Affiliations

Affiliation With Other Former ICC Licensed or FHWA Registered Entities. Disclose any relationship you have or have had with any other FHWA-regulated (or former ICC licensed) entity. For example, this could be through a percentage of stock ownership, a loan, or a management position. If this requirement applies to you, provide the name of the company, MC number, U.S. DOT number, and that company's latest U.S. DOT safety rating. (If you require more space, attach the information to this application form.)

_____

_____

_____

Section VI—Household Goods Certification

Household Goods Arbitration Certification. All motor carrier registrants that will transport household goods as defined at 49 U.S.C. 13102(10) must certify as follows by checking the "YES" box below:

As a condition of registrant, registration agrees to offer its collect-on-delivery shippers of household goods arbitration as a means of settling disputes concerning damage and loss of household goods transported in accordance with 49 U.S.C. 14708.

☐ YES

Section VII—Applicant's Oath

This oath applies to this application and to all supplemental filings. *The signature must be that of applicant, not a legal representative.*

_____

Name and title,

I, _____,

verify under penalty of perjury, under the laws of the United States of America, that all information supplied on this form or relating to this application is true and correct. Further, I certify that I am qualified and authorized to file this application. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to 5 years and fines up to $10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up $2,000 or imprisonment up to 5 years for each offense.

I further certify under penalty of perjury, under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that if If have been so convicted, I am not ineligible to receive Federal benefits, either by court order or operation of law, pursuant to Section 5301 of the Anti-Drug Act of 1988 (21 U.S.C. 862).

Finally, I certify that applicant is not domiciled in Mexico or owned or controlled by persons of that country.

Signature _____

Date _____

Filing Fee Information

All applicants must submit a filing fee for each type of authority requested. The enclosed fee schedule will show the appropriate filing fee. The total amount due is equal to the fee times the number of *boxes* checked in Section II. [Note: Service on household goods and general freight within a single category does not require separate filing fees.] Fees for multiple authorities may be combined in a single payment.

Total number of boxes checked in Section II: _____ × filing fee $_____ = $_____

Indicate amount $ _____ and method of payments.

☐ Check or ☐ Money Order, payable to: Federal Highway Administration

☐ VISA ☐ Mastercard

Credit Card Number _____

Exiration Date _____

Signature _____

Date _____

Fee Policy

- Filing fees must be payable to the Federal Highway Administration, by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or by approved credit card.
- Separate fee are required for each type of authority requested. If applicant requests multiple types of permanent authority on one application form (for example, common and contract carrier authority) or if applicant submits more than one form in OP–1 Series in a single filing, multiple fees are required. The applicant may submit a single payment for the sum of the applicable fees.
- Filing fees must be sent, along with original and one copy of the application, to FHWA Lockbox, P.O. Box 100147, Atlanta, GA 30384–0147.
- After an application is received, the filing fee is not refundable.
- The FHWA reserves the right to discontinue processing any application for which a check is returned because of insufficient funds. The application will not be processed until the fee is paid in full.

Paperwork Burden. It is estimated that an average of 2.5 burden hours per response are required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to both the Federal Highway Administration, Licensing and Insurance Division, Suite 600, 400 Virginia Avenue, S.W., Washington, DC 20024, and to the Office of Management and Budget, Office of Information and Regulator Affairs (OMB No. 3120–0047), Washington, DC 20403.

Appendix B to Part 365—Form OP–1(P)—Application to Register as a Motor Passenger Carrier

Instructions for Form OP–1(P)—Application to Register as a Motor Passenger Carrier

These instructions will assist you in preparing accurate and complete registration filings. Applications that do not contain the required information will be rejected and may result in a loss of the application fee. The application must be typed or printed in ink. If additional space is needed to provide a response to any item, use a separate sheet of paper. Identify applicant on each supplemental page and refer to the section and item number in the application for each response.

Section I

FHWA Registration History. If you now have any authority issued by the former ICC or if you are registered with or have a registration application pending before the Federal Highway Administration, check the "*YES*" box and indicate the docket number (MC number) you have been assigned. Example: MC–987654.

Applicant's Legal Business Name and Doing Business as Name. The applicant name should be your full legal business name—the name on the incorporation certificate,

partnership agreement, tax records, etc. If you use a trade name that differs from your official business name, indicate this under "Doing Business As Name." Example: If you are John Jones, doing business as Quick Way Transit, enter "John Jones" under APPLICANT'S LEGAL BUSINESS NAME and "Quick Way Transit" under DOING BUSINESS AS NAME.

Because the FHWA uses computers to retain information about registered carriers, it is important that you spell, space, and punctuate any name the same way each time you write it. Example: John Jones Transit Co., Inc.; J. Jones Transit Co., Inc.; and John Jones Transit are considered three separate companies.

Business Address/Mailing Address. The business address is the physical location of the business. Example: 756 Bounty Street; 15433 State Highway 23. If applicant receives mail at an address different from the business location, also provide the mailing address. Example: P.O. Box 3721. NOTE: To receive pertinent FHWA notices and to ensure that insurance documents filed on applicant's behalf are accepted, notify the Federal Highway Administration, Licensing and Insurance Division, in writing [Suite 600, 400 Virginia Avenue, S.W., Washington, DC 20024] if the business or mailing address changes.

Representative. If someone other than the applicant is preparing this form, provide the representative's name, title, position, or relationship to the applicant, address, and telephone and FAX numbers. Applicant's representative will be the contact person if there are questions concerning this application.

U.S. DOT Number. Registration applicants subject to the Federal Motor Carrier Safety Regulations also are required to register with the U.S. Department of Transportation (U.S. DOT) for safety monitoring purposes. Motor carriers that already have been issued a U.S. DOT registration number should provide it; applicants that have not registered with U.S. DOT should do so by submitting a completed Form MCS–150, *Motor Carrier Identification Report*, with this application. [Note: Registrants claiming "EXEMPT" status under the Section IV—"SAFETY COMPLIANCE" portion of this form need not file Form MCS–150.]

Form of Business. A business is either a corporation, sole proprietorship, partnership or limited liability company. If the business is a sole proprietorship, provide the name of the individual who is the owner. In this situation, the owner is the authority applicant. If the business is a partnership, provide the name of *each* partner.

SECTION II

Type of Operations. Check the appropriate box(es) for the type(s) of operations you are registering. A separate filing fee is required for *each type* of operations registered. See "Fee Policy" in the application form.

Section III

Insurance Information. Check the appropriate box that describes the seating capacity of your vehicles. If *all* the vehicles you operate have a seating capacity of 15 passengers or fewer, you are required to maintain $1,500,000 minimum liability coverage. If *any* one of the vehicles you operate has a seating capacity of 16 passengers or more, you are required to maintain $5,000,000 minimum liability coverage.

Appropriate insurance forms must be filed within 90 days after the date notice of your application is published in the FHWA Office of Motor Carriers Register: Form BMC–91 or BMC–91X for bodily injury and property damage.

The FHWA does not furnish copies of insurance forms. You must contact your insurance company to arrange for the filing of all required insurance forms.

Grantees Under 49 U.S.C. 5307, 5310, or 5311

The insurance limits referenced above do not pertain to motor passenger carriers providing transportation service within a transit service area under an agreement with a Federal, State, or local government funded, in whole or in part, with a grant under 49 U.S.C. 5307, 5310, or 5311. Such carriers that seek to register to provide for-hire operations between points in a transit service area located in more than one State are required to maintain the minimum level of financial responsibility for their motor vehicles that is at least the highest level required for any of the States in which the transit service area is located. If you qualify for this special financial responsibility provision, you must complete the portion of Section III that includes a certification of eligibility and State insurance requirement information relevant to your particular transit service area.

Section IV

Safety Certification. Applicants for motor passenger carrier authority must complete the safety certification. You must check the "YES" response only if you can attest to the truth of the statements. The "Applicant's Oath" at the end of the application form applies to all certifications, and false certifications are subject to the penalties described in that oath.

If you are exempt from the U.S. DOT safety fitness regulations, you must certify that you are familiar with and will observe general operational safety fitness guidelines and applicable state and local laws relating to the safe operation of commercial motor vehicles.

You must check only *one* of the boxes in this section.

Section V

Funding Status. All applicants must disclose their funding status. If you are a public recipient applicant, you must submit the additional evidence indicated. (This evidence should be provided on a separate sheet of paper attached to your application.)

Section VI

Scope of Operating Authority. When developing passenger service descriptions, the following guidelines may be useful:

Special and charter operations and contract carrier operations generally are conducted over *irregular routes* (i.e., authority that is not restricted to particular roads or highways), between points in the United States.

Other passenger carrier operations generally are performed over *regular routes* (i.e., authority to perform regularly scheduled service between designated points and operating over named roads or highways).

Mexican owned or controlled passenger carriers seeking to perform operations authorized by the North American Free Trade Agreement must define their service as provided at Items (2) or (5) of this Section.

Section VII

Affiliations. All applicants must disclose pertinent information concerning their affiliations, if any, with other former ICC licensed, now FHWA registered entities.

Section VIII

Applicant's Oath. Applications may be prepared by the applicant or an authorized representative. In either case, *the oath must be signed by the applicant.* In the case of companies, an authorized employee in the ownership structure may sign. An individual with power of attorney to act on behalf of the applicant may sign, provided that proof of the power of attorney is submitted with the application.

Legal Process Agents

All applicants must designate a process agent in each state where operations are authorized. Process agents who will accept legal filings on applicant's behalf are designated on FHWA Form BOC–3. Form BOC–3 must be filed within 90 days after the date notice of the application is published in the FHWA Office of Motor Carriers Register.

State Notification

Before beginning new or expanded interstate operations, all applicants must contact the appropriate regulatory agencies in every state in and through which the carrier will operate to obtain information regarding various state rules applicable to interstate authorities. It is the applicant's responsibility to comply with registration, fuel tax, and other state regulations and procedures. Begin this process by contacting the transportation regulatory agency for the state in which your business is located.

Intrastate motor passenger applicants—If you are registering to provide *intrastate*, regular-route authority in conjunction with your interstate operations, you must send a description of the proposed service to the State transportation regulatory body of the State(s) in which the operations described in the application will be performed.

Mailing Instructions

To register, you must submit an original and one copy of this application with the appropriate filing fee.

Note: Retain a copy of the completed application form and any attachments for your own records.

Mailing address for applications:

All Documents with Fees Attached

Federal Highway Administration, P.O. Box 100147, Atlanta, GA 30384–0147

For Express Mail Only

Nationsbank Wholesale Lockbox 100147, 6000 Feldwood Road, 3rd Floor East, College Park, GA 30349

For Credit Card Users Only

FHWA, Licensing and Insurance Division, Suite 600, 400 Virginia Avenue, S.W., Washington, DC 20024

Additional Assistance

FHWA Information Sources

Additional information on registration or monitoring the status of your applications is available through the FHWA's Automated Response Capability (ARC) telephone system. After dialing (202) 358–7000, press 1, then request appropriate menu number indicated below. You may use the ARC 24 hours a day, 7 days a week to obtain information in the following areas:

Information requested	Menu No.
• Status of your application ..... (Note: Tracking the Status of your application can be simplified and expedited if you refer to the assigned docket number when making inquiries. You will be informed of your docket number by letter sent on the date notice of your application appears in the FHWA Office of Motor Carriers Register.)	1
• Assistance in filing your application	3
• Status of insurance and process agent filings	2

If you require information that is not available in the automated response system, the ARC will guide you to an appropriate FHWA staff member who will be able to assist you in other areas.

U.S. DOT Registration and Safety Ratings

• To obtain information on completing Form MCS–150 or to request a safety fitness review, write to: Director, Information Analysis, Federal Highway Administration, 400—7th St., SW.,—HIA–10, Washington, DC 20590, or call (800) 832–5660 (Automated Response System).

• For information concerning a carrier's assigned safety rating, call: (800) 832–5660.

Federal Highway Administration Form OP–1(P)—Application to Register as a Motor Passenger Carrier

This application is for all individuals and businesses requesting to register as motor passenger common or contract carriers.

For FHWA Use Only

Docket No. MC– _____

Filed _____

Fee No. _____

CC Approval No. _____

Section I—Applicant Information

Do you now have authority from the former ICC or the FHWA or an application being processed by the FHWA?

☐ NO ☐ YES

If yes, identify the lead docket number(s)

_____ _____

Does this application register revoked authority

☐ NO ☐ YES

_____

Legal Business Name

_____

Doing Business as Name

_____

Business Address

_____

Street Name and Number or P.O. Box

_____

City/State/Zip Code

Telephone Number

Mailing Address (if different from above)

_____

Street Name and Number

_____

City/State/Zip Code

Representative (Person who can respond to inquiries)

_____

Name and title, position, or relationship to applicant

_____

Street Name and Number

_____

City/State/Zip Code

_____

Telephone Number

_____

FAX Number

U.S. DOT Number _____

[**Note:** Motor carrier registrants that have not been assigned a U.S. DOT number must submit a completed Form MCS–150, *Motor Carrier Identification Report*, with this application or must confirm their exempt status under the Section IV—SAFETY CERTIFICATION portion of this form.]

Form of Business (Check Only One)

☐ Corporation

State of Incorporation _____

Sole Proprietorship

Name of Individual _____

Partnership

Identify Partners _____

Limited Liability Company

Section II—Type of Authority

You must submit a filing fee for each type of authority requested (for each box checked).

☐ Motor Passenger Common Carrier

☐ Motor Passenger Contract Carrier

Section III—Insurance Information

All motor passenger carrier applicants must maintain public liability insurance. The amounts in parentheses represent the minimum amount of coverage required.

Applicant will use vehicles with seating capacities of (check only one box):

☐ 16 passengers or more ($5,000,000)

☐ 15 passengers or fewer *only* ($1,500,000)

Grantees Under 49 U.S.C. 5307, 5310, or 5311

Certify, by checking the "YES" box below, that you provide passenger transportation service within a transit service area under an agreement with a Federal, State, or local government funded, in whole or in part, with a grant under 49 U.S.C. 5307, 5310 or 5311 and that you seek to register to provide for-hire operations between points in that transit service area located in more than one State.

☐ YES

Registrants in this category need not observe the minimum levels of financial responsibility indicated above, but are required to have filed and maintain evidence of financial responsibility at least at the highest level required for any of the States in which the transit service area is located. Indicate States in your transit service area and the State prescribed financial responsibility limit you will observe:

States: _____

Note: Grantees under 49 U.S.C. 5307, 5310, or 5311 that file evidence of State-prescribed financial responsibility limits that are lower than otherwise applicable Federal limits will be registered to provide interstate service only within their designated transit service areas.

Financial responsibility limit

$ _____

(Indicate amount)

as imposed by: _____

(Indicate State)

Section IV—Safety Compliance (Motor Carrier Applicants Only)

Applicants Subject to Federal Motor Carrier Safety Regulations—If you will operate vehicles of more than 10,000 pounds GVWR and are, thus, subject to pertinent portions of the U.S. DOT's Federal Motor Carrier Safety Regulations at 49 CFR, Chapter 3, Subchapter B (Parts 350–399), you must certify as follows:

Applicant has access to and is familiar with all applicable U.S. DOT regulations relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials and it will comply with these regulations. In so certifying, applicant is verifying that, at a minimum, it:

(1) Has in place a system and an individual responsible for ensuring overall compliance with Federal Motor Carrier Safety Regulations;

(2) Can produce a copy of the Federal Motor Carrier Safety Regulations and the Hazardous Materials Transportation Regulations;

(3) Has in place a driver safety training/orientation program;

(4) Has prepared and maintains an accident register (49 CFR 390.15);

(5) Is familiar with DOT regulations governing driver qualifications and has in place a system for overseeing driver qualification requirements (49 CFR Part 391);

(6) Has in place policies and procedures consistent with DOT regulations governing driving and operational safety of motor vehicles, including drivers' hours of service and vehicle inspection, repair, and maintenance (49 CFR Parts 392, 395 and 396);

(7) Is familiar with and will have in place on the appropriate effective date, a system for complying with U.S. DOT regulations governing alcohol and controlled substances testing requirements (49 CFR 382 and 49 CFR Part 40).

☐ YES

Exempt Applicants—If you will operate only small vehicles (GVWR under 10,000 pounds) and will not transport hazardous materials, you are exempt from Federal Motor Carrier Safety Regulations, and must certify as follows:

Applicant is familiar with and will observe general operational safety guidelines, as well as any applicable state and local laws and requirements relating to the safe operation of commercial motor vehicles and the safe transportation of hazardous materials.

☐ YES

Section V—Government Funding Status

Specify the nature of governmental financial assistance you receive, if any, by checking the appropriate box below. (Check only one box.)

☐ Public recipient—Applicant is any of the following: any state; any municipality, or other political subdivision of a state; any public agency or instrumentality of such entities of one or more state(s); an Indian tribe; and any corporation, board of other person owned or controlled by such entities or owned by, controlled by, or under common control with such a corporation, board, or person which is receiving or has ever received governmental financial assistance for the purchase or operation of any bus.

☐ Private recipient—Applicant is not a public recipient but is receiving, or has received in the past, governmental financial assistance in the form of a subsidy for the purchase, lease, or operation of any bus.

☐ Non-recipient—Applicant is not receiving, or using equipment acquired with, governmental financial assistance.

Public Interest Criteria: Regular route applicants and private recipient applicants may introduce supplemental evidence describing how the proposed service will respond to existing transportation needs or is otherwise consistent with the public interest. Filing this evidence with the application is optional, but it may be needed later, if the application is protested.

Public Recipient Applicants: All public recipient applicants for charter or special transportation must submit evidence to demonstrate either that:

(1) No motor common carrier of passengers (other than a motor common carrier of passengers that is a public recipient of governmental assistance) is providing, or is willing and able to provide, the transportation to be authorized by the certificate; or

(2) The transportation to be authorized by the certificate is to be provided entirely in the area in which the public recipient provides regularly scheduled mass transportation services.

Supplemental evidence should be provided on a separate sheet of paper attached to this application.

Fitness Only Criteria: No additional evidence is needed from non-recipient applicants for charter and special transportation and applicants for contract carrier operations.

Section VI—Scope of Operating Authority

(1) ☐ Charter and special transportation, in interstate or foreign commerce, between points in the United States.

(2) ☐ International charter and tour bus service across the U.S.—Mexico border provided by a Mexican owned or controlled carrier.

(3) ☐ Service as a common carrier over regular routes. (Regular route passenger carrier authority to perform regularly scheduled service only over named roads or highways.) Regular route passenger service includes authority to transport newspapers, baggage of passengers, express packages, and mail in the same motor vehicle with passengers, or baggage of passengers in a separate motor vehicle.

Applicants requesting authority to operate over regular routes—On a separate sheet of paper attached to the application, describe the specific routes over which you intend to provide regularly scheduled service. You must also furnish a map clearly identifying each regular route involved in your passenger carrier service description(s).

(4) ☐ Intrastate authority.

(a) Are you also requesting *intra*state authority to provide the service described in item 3?

☐ YES ☐ NO

(b) Do you already hold *inter*state authority to provide the service described above?

☐ YES ☐ NO

Note: The FHWA has no jurisdiction to register intrastate authority independently of interstate authority on the same routes. Also, no carrier may conduct operations under a certificate authorizing intrastate regular route service unless it *actually is conducting substantial operations* in interstate commerce over the same route.

(5) ☐ Scheduled international transportation between the U.S.—Mexico border and specified points in the United States provided by a Mexican owned or controlled carrier. (Note: Applications for this authority will be accepted only after the relevant access provision of the North American Free Trade Agreement is implemented.)

(6) ☐ Service as a contract carrier between points in the United States, under continuing contract(s) with persons or organizations requiring passenger transportation service;

☐ Service as a contract carrier between points in the United States, under continuing contract(s) with:

_____

Contracting persons or organizations

Section VII—Affiliations

Affiliation With Other Former ICC Licensed or FHWA Registered Entities. Disclose any relationship you have or have had with any other FHWA regulated or former ICC licensed entity. For example, this could be through a percentage of stock ownership, a loan, or a management position. If this requirement applies to you, provide the name of the company, MC number, U.S. DOT number, and that company's latest U.S. DOT safety rating. (If you require more space, attach the information to this application form.)

_____

_____

_____

Section VIII—Applicant's Oath

This oath applies to this application and to all supplemental filings. *The signature must be that of applicant, not a legal representative.*

I, _____

Name and title,

verify under penalty of perjury, under the laws of the United States of America, that all information supplied on this form or relating to this application is true and correct. Further, I certify that I am qualified and authorized to file this application. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to 5 years and fines up to $10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to $2,000 or imprisonment up to 5 years for each offense.

I further certify under penalty of perjury, under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal benefits, either by court order or operation of law, pursuant to Section 5301 of the Anti-Drug Act of 1988 (21 U.S.C. 862).

Finally, I certify that applicant is not domiciled in Mexico or owned or controlled by persons of that country. (Note: This portion of Applicant's Oath does not pertain to Mexican passenger carriers seeking to provide charter and tour bus service across the United States—Mexico international border or scheduled international transportation between the U.S.-Mexico border and specified points in the United States.)

_____

Signature

_____

Date

Filing Fee Information

All applicants must submit a filing fee for each type of registration requested. The enclosed fee schedule will show the appropriate filing fee. The total amount due is equal to the fee times the number of boxes checked in Section II Fees for multiple authorities may be combined in a single payment.

Total number of boxes checked in Section II _____ × filing fee $_____ = $_____

Indicate amount $_____ and method of payment

☐ Check or ☐ Money Order, payable to: Federal Highway Administration

☐ VISA ☐ Mastercard

Credit Card Number _____

Expiration Date _____

Signature _____

Date _____

Fee Policy

• Filing fees must be payable to the Federal Highway Administration, by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or by approved credit card.

• Separate fees are required for each type of registration requested. If applicant requests multiple types of registrations on one application form (for example, registration as both a common and contract carrier) or if applicant submits more than one form in the OP–1 Series in a single filing, multiple fees are required. The applicant may submit a single payment for the *sum of the applicable fees.*

• Filing fees must be sent, along with the original and one copy of the application, to FHWA Lockbox, P.O. Box 100147, Atlanta, GA 30384–0147.

• After an application is received, the filing fee is not refundable.

• The FHWA reserves the right to discontinue processing any application for which a check is returned because of insufficient funds. The application will not be processed until the fee is paid in full.

Paperwork Burden. It is estimated that an average of 2.5 burden hours per response are required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to both the Federal Highway Administration, Licensing and Insurance Division, Suite 600, 400 Virginia Avenue, S.W., Washington, DC 20024, and to the Office of Management and Budget, Office of Information and Regulatory Affairs (OMB No. 3120–0047), Washington, DC 20403.

Appendix C to Part 365—Form OP–1(FF)—Application to Register as a Freight Forwarder

Instructions for Form OP–1(FF)—Application for Freight Forwarder Authority

These instructions will assist you in preparing accurate and complete application filings. Applications that do not contain the required information will be rejected and may result in a loss of the application fee. The application must be typed or printed in ink. If additional space is needed to provide a response to any item, use a separate sheet of paper. Identify applicant on each supplemental page and refer to the section and item number in the application for each response.

Section I

FHWA Authority. If you now have any former ICC or Federal Highway Administration authority or have an application for authority being processed now by FHWA, check the "*YES*" box and indicate the docket or the MC number you have been assigned. Example: MC–987654.

Applicant's Legal Business Name and Doing Business as Name. The applicant name should be your full legal business name—the name on the incorporation certificate, partnership agreement, tax records, etc. If you use a trade name that differs from your official business name, indicate this under "Doing Business As Name." Example: If you are John Jones, doing business as Quick Way Forwarding, enter "John Jones" under APPLICANT'S LEGAL BUSINESS NAME and "Quick Way Forwarding" under DOING BUSINESS AS NAME.

Because the FHWA uses computers to retain information about licensed carriers, it is important that you spell, space, and punctuate any name the same way each time you write it. Example: John Jones Forwarding Co., Inc.; J. Jones Forwarding Co., Inc.; and John Jones Forwarding are considered three separate companies.

Business Address/Mailing Address. The business address is the physical location of the business. Example: 756 Bounty Street; 15433 State Highway 23. If applicant receives mail at an address different from the business location, also provide the mailing address. Example: P.O. Box 3721. NOTE: To receive pertinent FHWA notices and to ensure that insurance documents filed on applicant's behalf are accepted, notify the Licensing Section in writing (Federal Highway Administration, Licensing and Insurance Division, Suite 600, 400 Virginia Avenue, S.W., Washington, DC 20024) if business or mailing address changes.

Representative. If someone other than the applicant is preparing this form, provide the representative's name, title, position, or relationship to the applicant, address, and telephone and FAX numbers. Applicant's representative will be the contact person if there are questions concerning this application.

U.S. DOT Number. Vehicle operating freight forwarders (i.e., if you will provide a pickup or delivery service) subject to the Federal Motor Carrier Safety Regulations also are required to register with the U.S Department of Transportation (U.S. DOT) for safety monitoring purposes. Vehicle operating freight forwarders that already have been issued a U.S. DOT number should provide it; those that have not registered with U.S. DOT should do so by submitting a completed Form MCS–150, *Motor Carrier Identification Report*, with this application. [Note: Vehicle operating freight forwarder registrants claiming "EXEMPT" status under the Section IV— "SAFETY COMPLIANCE" portion of this form need not file Form MCS–150.]

Form of Business. A business is either a corporation, sole proprietorship, partnership, or limited liability company. If the business is a sole proprietorship, provide the name of the individual who is the owner. In this situation, the owner is the authority applicant. If the business is a partnership, provide the name of *each* partner.

Section II

Type of Authority. Check the appropriate box to confirm that you are requesting to register as a freight forwarder; then indicate the commodities you will forward—household goods, general freight, or both.

Section III—Insurance Information

All freight forwarder applicants must have on file with the FHWA proof of adequate insurance as follows:

(a) Public liability insurance—freight forwarders that perform transfer, collection, and delivery service must have on file evidence that you maintain appropriate levels of bodily injury and property damage (BI&PD) insurance and environmental restoration coverage—filed on Form BMC–91 or BMC–91X. Complete the "Insurance Information" in Section III.

Note: Freight forwarders that:

(1) Do not own or operate any motor vehicles upon the highways in the transportation of property,

(2) Do not perform transfer, collection, or delivery services, and

(3) Do not have motor vehicles operated under their direction and control in the performance of transfer, collection, or delivery services may request a waiver of liability insurance requirements by checking the appropriate box in this Section. Operating authority issued to such forwarders will indicate that BI&PD requirements have been waived. The waiver is conditional and is valid only as long as the forwarder remains in compliance with the non-vehicle operating conditions noted on its operating permit.)

(b) Cargo insurance—all freight forwarders must have on file minimum levels of cargo insurance—filed on Form BMC–34:

1. $5,000—for loss of or damage to property carried on any one motor vehicle; and

2. $10,000—for loss of or damage to or aggregate of losses of or damages to property occurring at any one time and place.

Appropriate insurance forms must be filed within 90 days after the date notice of your application is published in the FHWA Register: Form BMC–91 or BMC–91X for bodily injury and property damage, Form BMC–34 for cargo liability, Form BMC–84 for broker surety bond, and Form BMC–85 for broker trust fund agreement.

The FHWA does not furnish copies of insurance forms. You must contact your insurance company to arrange for the filing of all required insurance forms.

Section IV

Safety Certification. Vehicle operating freight forwarder applicants must complete the safety certification. You should check the "YES" response only if you can attest to the truth of the statements. The "Applicant's Oath" at the end of the application form applies to all certifications, and false certifications are subject to the penalties described in that oath.

If you operate only vehicles with a gross vehicle weight rating under 10,000 pounds and will not transport hazardous materials, you are exempt from the U.S. DOT safety fitness regulations; however, you must certify that you are familiar with and will observe general operational safety fitness guidelines and applicable state and local laws relating to the safe operation of commercial motor vehicles.

You must check only *one* of the boxes in this section.

Section V

Household Goods Arbitration Certification. All registrants that will forward household goods as defined at 49 U.S.C. 13102(10) must complete the required certification concerning arbitration as a condition of registration.

Section VI

Affiliations. All applicants must disclose pertinent information concerning affiliations, if any, with other former ICC, now FHWA licensed entities.

Section VII

Applicant's Oath. Applications may be prepared by the applicant or an authorized representative. In either case, *the oath must be signed by the applicant.* In the case of companies, an authorized employee in the ownership structure may sign. An individual with power of attorney to act on behalf of the applicant may sign, provided that proof of the power of attorney is submitted with the application.

Legal Process Agents

All applicants must designate a process agent in each state where operations are authorized. Process agents who will accept legal filings on applicant's behalf are designated on Form BOC–3. Form BOC–3 must be filed within 90 days after the date notice of the application is published in the FHWA Office of Motor Carriers Register.

State Notification

Before beginning new or expanded interstate operations, you must contact the appropriate regulatory agencies in every state involved in your operations to obtain information regarding various state rules applicable to interstate authorities. It is the applicant's responsibility to comply with any pertinent state regulations and procedures. Begin this process by contacting the transportation regulatory agency for the state in which your business is located.

Mailing Instructions

To file for authority you must submit an original and one copy of this application with the appropriate filing fee to: FHWA Lockbox, P.O. Box 100147, Atlanta, GA 30384–0147.

For Express Mail Only

Nationsbank Wholesale Lockbox 100147,
6000 Feldwood Road, 3rd Floor East,
College Park, GA 30349

Note: Retain a copy of the completed application form and any attachments for your own Records.

Additional Assistance

FHWA Information Sources

Additional information on registration or monitoring the status of your applications is available through the FHWA Automated Response Capability (ARC) telephone system. After dialing (202) 358–7000, press 1, then request appropriate menu number indicated below. You may use the ARC 24 hours a day, 7 days a week to obtain information in the following area:

Information requested	Menu No.
• Status of your application (Note: Tracking the Status of your application can be simplified and expedited if you refer to the assigned docket number when making inquiries. You will be informed of your docket number by letter sent on the date notice of your application appears in the FHWA Office of Motor Carriers Register.)	1
• Assistance in filing your application	3
• Status of insurance and process agent filings	2

If you require information that is not available in the automated response system, the ARC will guide you to an appropriate staff member who will be able to assist you in other areas.

U.S. DOT Registration and Safety Ratings

• To obtain information on completing Form MCS–150 or to request a safety fitness review, write to: Director, Information Analysis, Federal Highway Administration, 400 7th Street, S.W.—HIA–10, Washington, DC 20590, or call: (800) 832–5660 (Automated Response System).

• For information concerning a carrier's assigned safety rating, call: (800) 832–5660.

U.S. DOT Hazardous Material Regulations

• If a vehicle operating forwarder, to obtain information on whether the commodities you intend to transport are considered to be hazardous materials:

Refer to the provisions governing hazardous materials in the Federal Motor Carrier Safety Regulations at Parts 170 through 189 of Title 49 of the Code of Federal Regulations (CFR), particularly the Hazardous Materials Table at 49 CFR Part 172, or contact U.S. DOT at (202) 366–6121.

• To obtain information about DOT hazardous materials transportation registration requirements: Contact U.S. DOT at (202) 366–4109.

Federal Highway Administration Form OP–1(FF)—Application for Freight Forwarder Authority

This application is for all individuals and businesses requesting authority to operate as freight forwarders in interstate or foreign commerce. Freight forwarders are involved in the arrangement, assembly, and/or consolidation for transportation where the actual movement is performed by FHWA-licensed carriers. Forwarders arrange with the carriers for the actual line-haul transportation; they do not do it themselves. (Freight forwarders may provide local pickup and delivery services directly or by using a carrier under their control.) Freight forwarders issue bills of lading to shippers and are responsible for loss of or damage to the goods.

For FHWA Use Only

Docket No. FF– _____

Filed _____

Fee No. _____

CC Approval No. _____

Section I—Applicant Information

Do you now have authority from or an application being processed by the former ICC or FHWA?

☐ NO ☐ YES

If Yes, identify the lead docket number(s)

_____

Legal Business Name

_____

Doing Business as Name

_____

Business Address

_____

Street Name and Number

_____

City/State/Zip Code

_____

Telephone Number

_____

Mailing Address (if different from above)

_____

Street Name and Number

_____

City/State/Zip Code

_____

Representative (Person who can respond to inquiries)

_____

Name and title, position, or relationship to applicant

_____

Street Name and Number

_____

City/State/Zip Code

_____

Telephone Number

_____

FAX Number

U.S. DOT Number _____

Note: Vehicle operating freight forwarders that have not been assigned a U.S. DOT number must submit a completed Form MCS–150, *Motor Carrier Identification Report,* with this application or must confirm their exempt status under the Section IV—"SAFETY CERTIFICATION" portion of this form.

Form of Business (Check Only One.)

☐ Corporation

State of Incorporation _____

☐ Sole Proprietorship

Name of Individual _____

☐ Partnership

Identify Partners _____

☐ Limited Liability Company

Section II—Type of Authority

☐ Freight Forwarder
☐ General Freight
☐ Household Goods

Section III—Insurance Information

Freight forwarders that perform transfer, collection, and delivery service must have on file evidence of appropriate levels of liability insurance for the protection of the public. The dollar amounts in parentheses represent

the minimum amount of bodily injury and property damage (liability) insurance coverage you must maintain and have on file with the FHWA.

Note: All freight forwarder applicants should refer to the instructions for information on cargo insurance filing requirements.

☐ Will operate vehicles having Gross Vehicle Weight Ratings (GVWR) of 10,001 pounds or more to transport:
- ☐ Non-hazardous commodities ($750,000).
- ☐ Hazardous materials referenced in the FHWA's insurance regulations at 49 CFR 387.303(b)(2)(c) ($1,000,000).
- ☐ Hazardous materials referenced in the FHWA's insurance regulations at 49 CFR 387.303(b)(2)(b) ($5,000,000).

☐ Will operate only vehicles having Gross Vehicle Weight Ratings (GVWR) under 10,001 pounds to transport:
- ☐ Any quantity of Division 1.1, 1.2, or 1.3 explosives, any quantity of poison gas (Division 2.3, Hazard Zone A, or Division 6.1, Packing Group 1, Hazard Zone A materials), or highway route controlled quantity of radioactive materials ($5,000,000).
- ☐ Commodities other than those listed above ($300,000).

☐ Applicant seeks a waiver of liability (BI&PD) insurance requirements and certifies that in its forwarding operations it:
- ☐ (1) Will not own or operate any motor vehicles upon the highways in the transportation of property;
- ☐ (2) Will not perform transfer, collection, or delivery services; and
- ☐ (3) Will not have motor vehicles under its direction and control in the performance of transfer, collection, or delivery services.

Section IV—Safety Compliance (Vehicle Operating Freight Forwarder Only)

Applicants Subject to Federal Motor Carrier Safety Regulations—If you will operate vehicles of more than 10,000 pounds GVWR and are, thus, subject to pertinent portions of the U.S. DOT's Federal Motor Carrier Safety Regulations at 49 CFR, Chapter 3, Subchapter B (Parts 350–399), you must certify as follows:

Applicant has access to and is familiar with all applicable U.S. DOT regulations relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials and it will comply with these regulations. In so certifying, applicant is verifying that, at a minimum, it:

(1) Has in place a system and an individual responsible for ensuring overall compliance with Federal motor carrier safety regulation;

(2) Can produce a copy of the Federal Motor Carrier Safety Regulations and the Hazardous Materials Transportation Regulations;

(3) Has in place a driver safety training/orientation program;

(4) Has prepared and maintains an accident register (49 CFR 390.15);

(5) Is familiar with DOT regulations governing driver qualifications and has in place a system for overseeing driver qualification requirements (49 CFR Part 391);

(6) Has in place policies and procedures consistent with DOT regulations governing driving and operational safety of motor vehicles, including drivers' hours of service and vehicle inspection, repair, and maintenance (49 CFR Parts 392, 395 and 396);

(7) Is familiar with and will have in place on the appropriate effective date, a system for complying with U.S. DOT regulations governing alcohol and controlled substances testing requirements (49 CFR 382 and 49 CFR Part 40).

☐ YES

Exempt Applicants—If you will operate only small vehicles (GVWR under 10,000 pounds), and will not transport hazardous materials, you are, exempt from Federal Motor Carrier Safety Regulations, and must certify as follows:

Applicant is familiar with and will observe general operational safety guidelines, as well as any applicable state and local laws and requirements relating to the safe operation of commercial motor vehicles and the safe transportation of hazardous materials.

☐ YES

Section V—Household Goods Arbitration

Household Goods Arbitration Certification. All freight forwarder registrants that will forward household goods as defined at 49 U.S.C. 13102(10) must certify as follows by checking the "YES" box below:

As a condition of registration, registrant agrees to offer its collect-on-delivery shippers of household goods arbitration as a means of settling disputes concerning damage and loss of household goods transported in accordance with 49 U.S.C. 14708.

☐ YES

Section VI—Affiliations

Affiliation With Other Former ICC Licensed or FHWA Registered Entities. Disclose any relationship you have or have had with any other FHWA-licensed entity within the past 3 years. For example, this could be through a percentage of stock ownership, a loan, or a management position. If this requirement applies to you, provide the name of the company, MC-number, DOT number, and that company's latest U.S. DOT safety rating. (If you require more space, attach the information to this application form.)

_____

_____

_____

Section VII—Applicant's Oath

This oath applies to all supplemental filings to this application. *The signature must be that of applicant, not legal representative.*

I, _____
Name and title

verify under penalty of perjury, under the laws of the United States of America, that all information supplied on this form or relating to this application is true and correct. Further, I certify that I am qualified and authorized to file this application. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to 5 years and fines up to $10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to $2,000 or imprisonment up to 5 years for each offense.

I further certify under penalty of perjury, under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or state offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal benefits, either by court order or operation of law, pursuant to section 5301 of the Anti-Drug Act of 1988 (21 U.S.C. 862).

_____
Signature

_____
Date

Filing Fee Information

All applicants must submit a filing fee for each type of authority requested. The enclosed fee schedule will show the appropriate filing fee. The total amount due is equal to the fee times the number of boxes checked in Section II. Fees for multiple authorities may be combined in a single payment.

Total number of boxes checked in Section II: _____ × filing fee $_____ = $_____

Indicate amount $ _____ and amount of payment

☐ Check or ☐ Money Order, payable to: Federal Highway Administration

☐ VISA ☐ Mastercard

Credit Card Number _____

Expiration Date _____

Signature _____

Date _____

Fee Policy

- Filing fees must be payable to the Federal Highway Administration, by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or by approved credit card.
- Separate fees are required for each type of authority requested. If applicant requests multiple types of permanent authority on one application form (for example, common and contract carrier authority) or if applicant submits more than one form in the OP–1 Series in a single filing, multiple fees are required. The applicant may submit a single payment for the *sum of the applicable fees.*
- Filing fees must be sent, along with the original and one copy of the application, to Federal Highway Administration, P.O. Box 100147, Atlanta, GA 30384–0147. For express mail only: Nationsbank Wholesale Lockbox 100147, 6000 Feldwood Road, 3rd Floor East, College Park, GA 30349. For credit card only: FHWA, Licensing and Insurance Division, Suite 600, 400 Virginia Avenue, SW., Washington, DC, 20024.
- After an application is received, the filing fee is not refundable.
- The FHWA reserves the right to discontinue processing any application for which a check is returned because of

insufficient funds. The application will not be processed until the fee is paid in full.

Paperwork Burden. It is estimated that an average of 2.5 burden hours per response are required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to both the Federal Highway Administration, Licensing and Insurance Division, Suite 600, 400 Virginia Avenue, SW., Washington, DC 20024, and to the Office of Management and Budget, Office of Information and Regulatory Affairs (OMB No. 3120–0047), Washington, DC 10403.

Appendix D to Part 365—Form OP–1(MX)—Application for Registration of Mexican Property Carriers Provided by the North American Free Trade Agreement

Instructions for Form OP–1(MX)—Application by Mexican Carriers to Register as Provided by the North American Free Trade Agreement

These instructions will assist you in preparing accurate and complete registration filings. Applications that do not contain the required information will be rejected and may result in a loss of the application fee. The application must be completed in English and typed or printed in ink. If additional space is needed to provide a response to any item, use a separate sheet of paper. Identify applicant on each supplemental page and refer to the section and item number in the application for each response.

Section I

FHWA Registration History. If you now have any authority issued by the former ICC or if you are registered with or have a registration application pending before the Federal Highway Administration, check the "*YES*" box and indicate the docket number (MC number) you have been assigned. Example: MX–987654.

Applicant's Legal Business Name and Doing Business as Name. The applicant's name should be your full legal business name—the name on the incorporation certificate, partnership agreement, tax records, etc. If you use a trade name that differs from your official business name, indicate this under "Doing Business As Name." Example: If you are John Jones, doing business as Quick Way Trucking, enter "John Jones" under APPLICANT'S LEGAL BUSINESS NAME and "Quick Way Trucking" under DOING BUSINESS AS NAME.

Because the FHWA uses computers to retain information about licensed carriers, it is important to spell, space, and punctuate any name the same way each time you write it. Example: John Jones Trucking Co., Inc.; J. Jones Trucking Co., Inc.; and John Jones Trucking are considered three separate companies.

Business Address/Mailing Address. The business address is the physical location of the business. Example: 756 El Camino Real, Jalisco. If applicant receives mail at an address different from the business location, also provide the mailing address. Example: P.O. Box 3721. NOTE: To receive pertinent FHWA notices and to ensure that insurance documents filed on applicant's behalf are accepted, notify the Federal Highway Administration, Licensing and Insurance Division, Suite 600, 400 Virginia Avenue, S.W., Washington, DC 20024, if the business of mailing address changes.

Representative. If someone other than the applicant is preparing this form, provide the representative's name, title, position, or relationship to the applicant, address, and telephone and FAX numbers. Applicant's representative will be the contact person if there are questions concerning this application.

U.S. DOT Number. Registration applicants subject to the Federal Motor Carrier Safety Regulations also are required to register with U.S. Department of Transportation (U.S. DOT) for safety monitoring purposes. Motor Carriers that already have been issued a U.S. DOT registration number should provide it; applicants that have not registered with U.S. DOT should do so by submitting a completed Form MCS–150, *Motor Carrier Identification Report*, with this application. Note: Registrants claiming "EXEMPT" status under the Section IV— "SAFETY COMPLIANCE"portion of this form need.not file Form MCS–150

Form of Business. A business is either a corporation, sole proprietorship, partnership, or limited liability company. If the business is a sole proprietorship, provide the name of the individual who is the owner. In this situation, the owner is the registration applicant. If the business is a partnership, provide the name of *each* partner.

Section II

Type of Authority. Check the appropriate box(es) for the type(s) of operations you are registering. If you are desiring to establish a United States based enterprise, you may only check the last box in this section of the application form. Note: A separate filing fee is required for each type of operations registered. See "Fee Policy" in the application form.

Section III

Insurance Information. Check the appropriate box(es) to describe the type of business you will be conducting. If you operate vehicles with a gross vehicle weight rating exceeding 10,000 pounds and haul only non-hazardous materials, you are required to maintain $750,000 minimum liability coverage for the protection of the public. Hazardous materials referred to in the FHWA's insurance regulations at 49 CFR 1043.2(b)(2)(c) require $1 million minimum liability coverage; those at 49 CFR 1043.2(b)(2)(b) require $5 million minimum liability coverage.

If you operate only vehicles with a gross vehicle weight rating under 10,000 pounds, you must maintain $300,000 minimum liability coverage. If you operate only such vehicles but will be transporting any quantity of Division 1.1, 1.2 or 1.3 explosives; any quantity of poison gas (Division 2,3, Hazard Zone A or Division 6.1, Packing Group 1, Hazard Zone A materials); or highway route controlled quantity of radioactive materials, you must maintain $5 million minimum liability coverage.

Minimum levels of cargo insurance must be maintain by all motor property common carriers: $5,000 for loss of or damage to property carried on any one motor vehicle and $10,000 for loss of or damage to property occurring at any one time and place.

Appropriate insurance forms must be filed within 90 days after the date notice of your application is published in the FHWA Register: Form BMC–91 or BMC–91X for bodily injury and property damage, Form BMC–34 for cargo liability.

The FHWA does not furnish copies of insurance forms. You must contact your insurance company to arrange for the filing of all required insurance forms.

Section IV

Safety Certification. Applicants for motor carrier authority must complete the safety certification. You should check the "YES" response only if you can attest to the trust of the statements. The "Applicant's Oath" at the end of the application form applies to all certifications, and false certifications are subject to the penalties described in that oath.

If you operate only vehicles with a gross vehicle weight rating under 10,000 pounds and will not transport hazardous materials, you are exempt from the U.S. DOT safety fitness regulations; however, you must certify that you are familiar with and will observe general operational safety fitness guidelines and applicable state and local laws relating to the safe operation of commercial motor vehicles.

You must check only one of the boxes in this section.

Failure to comply with the safety fitness standards of the U.S. Department of Transportation will result in the revocation of the motor carrier authority.

Section V

Affiliations. All applicants must disclose pertinent information concerning affiliations, if any, with other former ICC or FHWA registered entities.

Section VI

Household Goods Arbitration Certification. All motor carrier registrants that will transport household goods as defined at 49 U.S.C. 13102(10) must complete the required certification concerning arbitration as a condition of registration.

Section VII

Applicant's Oath. Applications may be prepared by the applicant or an authorized representative. In either case, the oath must be signed by the applicant. In the case of companies, an authorized employee in the ownership structure may sign. An individual with power of attorney to act on behalf of the applicant may sign, provided that proof of the power of attorney is submitted with the application.

Legal Process Agents

All motor carrier applicants must designate a process agent in each state where operations are authorized. Process agents who will accept legal filings on applicant's behalf are designated on FHWA Form BOC–3. Form BOC–3 must be filed within 90 days after the date notice of the application is published in the FHWA Register.

State Notification

Before beginning operations, all applicants must contact the appropriate regulatory agencies in every state in and through which the carrier will operate to obtain information regarding various state rules applicable to interstate authorities. It is the applicant's responsibility to comply with registration, fuel tax, and other state regulations and procedures. Begin this process by selecting the state of California, New Mexico or Texas as your base state for payment of registration fees. See 49 CFR Part 1023. You should select the state in which you will operate the largest number of motor vehicles in the next year and contact that state's transportation agency (the California Public Utilities Commission, in San Francisco; the New Mexico State Corporation Commission, in Santa Fe; or the Texas Department of Transportation, in Austin), to obtain registration forms and instructions. Failure to accomplish this state registration could subject you to substantial state penalties as well as the potential loss of your operating authority.

Mailing Instructions

To file for authority you must submit an original and one copy of this application with the appropriate filing fee to FHWA.

Note: Retain a copy of the completed application form and any attachments for your own records.

Mailing addresses for applications:

All Documents with Fees Attached

Federal Highway Administration, P.O. Box 100147, Atlanta, GA 30384–0147

For Express Mail Only

Nationsbank Wholesale Lockbox 100147, 6000 Feldwood Road, 3rd Floor East, College Park, GA 30349

For Credit Card Users Only

FHWA, Licensing and Insurance Division, Suite 600, 400 Virginia Avenue, SW., Washington, DC 20024

Additional information on obtaining operating authority or monitoring the status of your application is available through the Automated Response Capability (ARC) telephone system. After dialing (202) 358–7000, press 1, then request appropriate menu number indicated below. You may use the ARC 24 hours a day, 7 days a week to obtain information in the following areas:

Additional Assistance

Information Sources

Information requested	Menu No.
• Status of your application	1
(Note: Tracking the status of your application can be simplified and expedited if you refer to the assigned docket number when making inquiries. You will be informed of your docket number by letter sent on the date notice of your application appears in the FHWA Register.)	
• Assistance in filing your application	3
• Status of insurance and process agent filings	2

If you require information that is not available in the automated response system, the ARC will guide you to an appropriate FHWA Staff member who will be able to assist you in other areas.

U.S. Department of Transportation Information Sources

U.S. DOT Registration and Safety Ratings

• To obtain information on registering with U.S. DOT (filing Form MCS–150) or to request a safety fitness review, write to: Director, Information Analysis, Federal Highway Administration, 400 7th St., S.W. HIA–10, Washington, DC 20590, or call: 800–832–5660 (Automated response system).

• For information concerning a carrier's assigned safety rating, call: (800) 832–5660.

U.S. DOT Hazardous Materials Regulations

• To obtain information on whether the commodities you intent to transport are considered to be hazardous materials:

Refer to the provisions governing hazardous materials in the Federal Motor Carrier Safety Regulations at Parts 170 through 189 of Title 49 of the Code of Federal Regulations (CFR), particularly the Hazardous Materials Table at 49 CFR Part 172, or contact U.S. DOT at (202) 366–6121.

• To obtain information about DOT hazardous materials transportation registration requirements: Contact U.S. DOT at (202) 366–4109.

This application is for all Mexican carriers requesting authority to transport property (including exempt items) in foreign commerce between the U.S.-Mexico Border and points in California, Arizona, New Mexico and Texas and for all Mexican owned or controlled enterprises established in the United States to transport international cargo in foreign commerce.

For FHWA Use Only

Docket No. MX– _____

DOT No. _____

Filed _____

Fee No. _____

CC Approval No. _____

Section—Applicant Information

Do you now have authority from or an application being processed by the former ICC or FHWA?

☐ NO ☐ YES

If yes, identify the lead docket number(s) _____

Legal Business Name

Doing Business as Name

Business Address

Telephone Number

Street Name and Number

City/State/Zip Code

Mailing Address (If different from above)

Street Name and Number

City/State/Zip Code

Representative (Person who can respond to inquiries)

Name and title, position, or relationship to applicant

Street Name and Number

City/State/Zip Code

Telephone Number

Fax Number

U.S. DOT Number _____

[**Note:** Motor carrier registrants that have not been assigned a U.S. DOT number must submit a completed Form MCS–150, *Motor Carrier Identification Report*, with this application or must confirm their exempt status under the Section IV—SAFETY CERTIFICATION portion of this form.]

Form of Business (Check only one.)

☐ Corporation

Mexican or U.S. State of Incorporation _____

☐ Sole Proprietorship

Name of Individual _____

☐ Partnership

Identify Partners _____

☐ Limited Liability Company

Section II—Type of Authority

You must submit a filing fee for *each* type of authority requested (for each box checked). Also, indicate within each authority category the type of commodities you will transport.

☐ Motor Common Carrier of Property
- ☐ General Freight
- ☐ Household Goods

☐ Motor Contract Carrier of Property
- ☐ General Freight
- ☐ Household Goods

☐ Private Carrier

☐ United States based enterprises providing truck services for the transportation of international cargo
- ☐ General Freight
- ☐ Household Goods

Section III—Insurance Information

This section must be completed by ALL motor property carrier applicants. The dollar

amounts in parentheses represent the minimum amount of bodily injury and property damage (liability) insurance coverage you must maintain and have on file with the FHWA.

Note: Refer to the instructions for information on cargo insurance filing requirements for motor common carriers.

☐ Will operate vehicles having Gross Vehicle Weight Ratings (GVWR) of 10,000 pounds or more to transport:
- ☐ Non-hazardous commodities ($750,000).
- ☐ Hazardous materials referenced in the FHWA's insurance regulations at 49 CFR 387.303(b)(2)(c) ($1,000,000).
- ☐ Hazardous materials referenced in the FHWA's insurance regulations at 49 CFR 387.303(b)(2)(b) ($5,000,000).

☐ Will operate only vehicles having Gross Vehicle Weight Ratings (GVWR) under 10,000 pounds to transport:
- ☐ Any quantity of Division 1.1, 1.2 or 1.3 explosives; any quantity of poison gas (Division 2.3, Hazard Zone A or Division 6.1, Packing Group 1, Hazard Zone A materials); or highway route controlled quantity of radioactive materials ($5,000,000).
- ☐ Commodities other than those listed above ($300,000).

Section IV—Safety Certification

Applicants Subject to Federal Motor Carrier Safety Regulations—If you will operate vehicles of more than 10,000 pounds GVWR and are, thus, subject to pertinent portions of the U.S. DOT's Federal Motor Carrier Safety Regulations at 49 CFR, Chapter 3. Subchapter B (Parts 350–399), you must certify as follows:

Applicant has access to and is familiar with all applicable U.S. DOT regulations relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials and it will comply with these regulations. In so certifying, applicant is verifying that, at a minimum, it:

(1) Has in place a system and an individual responsible for ensuring overall compliance with Federal Motor Carrier Safety Regulations;

(2) Can produce a copy of the Federal Motor Carrier Safety Regulations and the Hazardous Materials Transportation Regulations;

(3) Can produce on 48 hours notice records demonstrating compliance with the Federal Motor Carrier Safety Regulations and the Hazardous Materials Transportation Regulations;

(4) Has prepared and maintains an accident register (49 CFR 390.15);

(5) Is familiar with DOT regulations governing driver qualifications and has in place a system for overseeing driver qualification requirements (49 CFR Part 391);

(6) Has in place policies and procedures consistent with DOT regulations governing driving and operational safety of motor vehicles, including drivers' hours of service and vehicle inspection, repair, and maintenance (49 CFR Parts 392, 395 and 396); and

(7) Is familiar with and will have in place on the appropriate effective date, a system for complying with U.S. DOT regulations governing alcohol and controlled substances testing requirements (49 CFR 382 and 49 CFR Part 40).

☐ YES

Any authority sought pursuant to this application will remain in effect only as long as the carrier satisfies the safety fitness standards of the U.S. Department of Transportation. See *Safety Fitness Policy*, 8 I.C.C.2d 123 (1991).

Exempt Registrant—If you will operate only small vehicles (GVWR under 10,000 pounds) and will not transport hazardous materials of a type and/or amount required to be placarded, check here to indicate your exempt status and then complete the certification below:

☐ Exempt Registrant

Applicant is familiar with and will observe general operation safety guidelines, as well as any applicable state and local laws and requirements relating to the safe operation of commercial motor vehicles and the safe transportation of hazardous materials.

☐ YES

Section V—Affiliations

Affiliation With Other Former ICC or FHWA Registered Entities. Disclose any relationship you have or have had with any other former ICC or FHWA registered entity within the past 3 years. For example, this could be through a percentage of stock ownership, a loan, or a management position. If this requirement applies to you, provide the name of the company, MC-number, DOT number, and that company's latest U.S. DOT safety rating. (If you require more space, attach the information to this application form.)

_____

_____

_____

Section VI—Household Goods Certifications

Household Goods Arbitration Certification. All motor carrier registrants that will transport household goods as defined at 49 U.S.C. 13102(10) must certify as follows by checking the "YES" box below:

As a condition of registration, registrant agrees to offer its collect-on-delivery shippers of household goods arbitration as a means of settling disputes concerning damage and loss of household goods transported in accordance with 49 U.S.C. 14708.

☐ YES

Section VII—Applicant's Oath

This oath applies to all supplemental filings to this application. *The signature must be that of applicant, not legal representative.*

I, _____,
Name and title

verify under penalty of perjury, under the laws of the United States of America, that all information supplied on this form or relating to this application is true and correct. Further, I certify that I am qualified and authorized to file this application. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to 5 years and fines up to $10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to $2,000 or imprisonment up to 5 years for each offense.

I further certify under penalty of perjury, under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or state offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal benefits, either by court order or operation of law, pursuant to Section 5301 of the Anti-Drug Act of 1988 (21 U.S.C. 862).

Signature _____

Date _____

Fee Policy

- Filing fees must be payable to the Federal Highway Administration, by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or by approved credit card.
- Separate fees are required for each type of authority requested. If applicant requests multiple types of permanent authority for example, common and contract carrier authority, multiple fees are required. The applicant may submit a single payment for the *sum of the applicable fees.*

Filing fees must be sent, along with the original and one copy of the application, to FHWA, P.O. Box 100147, Atlanta, GA, 30384–0147.

- After an application is received, the filing fee is not refundable.
- The FHWA reserves the right to discontinue processing any application for which a check is returned because of insufficient funds. The application will not be processed until the fee is paid in full.

Filing Fee Information

All applicants must submit a filing fee for each type of authority requested. The enclosed fee schedule will show the appropriate filing fee. The total amount due is equal to the fee times the number of boxes checked in Section II. Fees for multiple authorities may be combined in a single payment.

Total number of boxes checked in Section II: _____ × filing fee
$_____=$_____

Indicate amount $ _____
and method of payment

☐ Check or ☐ Money Order, payable to: Federal Highway Administration

☐ VISA ☐ Mastercard

Credit Card Number _____

Expiration Date _____

Signature _____

Date _____

Paperwork Burden. It is estimated that an average of 1.5 burden hours per response are required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this

burden should be directed to both the Federal Highway Administration, Licensing and Insurance Division, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024, and, to the Office of Management and Budget, Office of Information and Regulatory Affairs (OMB No. 3120–0047), Washington, DC 20403.

Appendix E to Part 365—Form OCE–46—Request for Revocation of Registration

Federal Highway Administration

Request for Revocation of Registration

Docket No. _____

_____
Name of carrier, freight forwarder, or broker making request

_____
Address, City, State, Zip Code of requesting carrier

For the reasons stated below, this carrier, freight forwarder, or broker, which is the holder of the above-identified permits(s), certificates(s), or license(s), hereby requests revocation of such registration to the extent specified, in accordance with the provisions of 49 U.S.C. 13905.

Reason for request for revocation:

_____

It is clearly understood that upon revocation of this registration, operations which are revoked may not be resumed unless this authority is reinstated as provided at 49 CFR 365.96, or other registration shall have been issued.

_____
Type/print name of person authorized to submit this request

_____
Daytime Telephone Number

_____
Signature of person authorized to submit this request

_____
Date

Note: Signature must be notarized OR signed *in the presence* of a FHWA staff member.

Affix Notary Seal here

or

_____
Signature of FHWA Staff Member

_____
Date

_____
Title

City/County:_____ _____

State:_____ _____

Subscribed and sworn to before me this _____ day of _____, 19____

_____
My Commission Expires: _____

Paperwork Burden: it is estimated that an average of .5 burden hours per response are required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to both the Federal Highway Administration, Licensing and Insurance Division, Suite 600, 400 Virginia Avenue, S.W., Washington, DC 20024, and to the Office of Management and budget, Office of Information and Regulatory Affairs (OMB No. 2125–0571), Washington, DC 20503.

BILLING CODE 4910–22–M

PART 385—SAFETY FITNESS PROCEDURES

2. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 104, 504, 521(b)(5)(A), 5113, 31136, 31144, 31502; and 49 CFR 1.48.

3. In § 385.21, paragraph (b) is revised to read as follows:

§ 385.21 Motor carrier identification report.

* * * * *

(b) Except as provided at 49 CFR 365.111(f)(2), all motor carriers beginning operation after the effective date of this rule shall file the Motor Carrier Identification Report, Form MCS–150, within 90 days after beginning operations.

Note: For-hire motor carriers and vehicle operating freight forwarders required to register their operations as provided under 49 U.S.C. 13901–13905 must submit Form MCS–150 concurrently with their registration application as required under 49 CFR 365.111 (f)(2).

PART 387—MINIMUM LEVELS OF FINANCIAL REPONSIBILITY FOR MOTOR CARRIERS

4. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 14701, 31138, and 31139; and 49 CFR 1.48.

5. Section 387.33 is amended by designating the unumbered paragraph as paragraph (a), by adding the subheading "General limits" at the beginning of paragraph (a), and by adding paragraph (b) to read as follows:

§387.33 Financial responsibility, minimum levels.

(a) *General limits.* * * *

(b) *Limits applicable to transit service providers.* Notwithstanding the provisions of 49 CFR 387.33(a), the minimum level of financial responsibility for a motor vehicle used to provide transportation services within a transit service area located in more than one State under an agreement with a Federal, State, or local government funded, in whole or in part, with a grant under 49 U.S.C. 5307, 5310, or 5311, including transportation designed and carried out to meet the special needs of elderly individuals and individuals with disabilities, will be at least the highest level required for any of such States. Transit service providers conducting such operations must register as for-hire passenger carriers under part 365 of this subchapter, identify the States in which they operate under the applicable grants, and certify on their registration documents that they have in effect financial responsibility levels in an amount equal to or greater than the highest level required by any of the States in which they are operating under a qualifying grant.

[FR Doc. 98–3560 Filed 2–12–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Alaska Federal Subsistence Regional Advisory Council Meetings; Subsistence Management Regulations for Public Lands in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: This notice informs the public of the Regional Council meetings identified above. The public is invited to attend and observe meeting proceedings. In addition, the public is invited to provide oral testimony before the Councils on proposals to change Subsistence Management Regulations for Public Lands in Alaska for the 1998–99 regulatory year as set forth in a proposed rule on July 25, 1997 (62 FR 39987–40029). A booklet of proposed regulation changes was distributed to the public by mail on November 26, 1997.

The following agenda items will be discussed at each Regional Council meeting: (1) Introduction of Regional Council members and guests; (2) Old business; (3) New business: Member recruitment, Review and development of recommendations on Proposed Regulations for implementing Federal Fisheries Management Program ("Katie John" litigation), and Review and development of recommendations on proposals to change Subsistence Management Regulations (1998–1999) for Public Lands in Alaska.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o Thomas H. Boyd, Office of Subsistence

Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3888. For questions related to subsistence management issues on National Forest Service lands, inquiries may also be directed to Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802–1628; telephone (907) 586–7921.

SUPPLEMENTARY INFORMATION: Regional Council meetings—The Federal Subsistence Board announces the forthcoming public meetings of the Federal Subsistence Regional Advisory Councils. The Regional Council meetings will be held in the following Alaska locations, and begin on the specified dates:

Region 1 (Southeast)—Saxman—Mar. 9, 1998
Region 2 (Southcentral)—Glennallen—Mar. 18, 1998
Region 3 (Kodiak/Aleutians)—Kodiak—Mar. 5, 1998
Region 4 (Bristol Bay)—Dillingham—Mar. 12, 1998
Region 5 (Yukon-Kuskokwim Delta)—Bethel—Mar. 3, 1998
Region 6 (Western Interior)—Galena—Feb. 25, 1998
Region 7 (Seward Peninsula)—Unalakleet—Feb. 24, 1998
Region 8 (Northwest Arctic)—Kotzebue—Feb. 18, 1998
Region 9 (Eastern Interior)—Tanacross—Feb. 18, 1998
Region 10 (North Slope)—Barrow—Mar. 3, 1998

Notice of specific dates, times, and meeting locations will be published in local and statewide newspapers prior to the meetings. Locations and dates may need to be changed based on weather or local circumstances. Length of the Regional Council meetings will be determined by the amount of work on each Regional Council's agenda.

The Regional Councils have been established in accordance with Section 805 of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and Subsistence Management Regulations for Public Lands in Alaska, 36 CFR Part 242 and 50 CFR Part 100, Subparts A, B, and C (57 FR 22940–22964). The Regional Councils advise the Federal Government on all matters related to the subsistence taking of fish and wildlife on public lands in Alaska and operate in accordance with provisions of the Federal Advisory Committee Act.

The identified Regional Council meetings will be open to the public. The public is invited to attend these meetings, observe the proceedings, and provide comments to the Regional Councils.

Dated: February 3, 1998.

Susan K. Detwiler,

Acting Chair, Federal Subsistence Board.

[FR Doc. 98–3384 Filed 2–12–98; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 63, No. 30
Friday, February 13, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–98–00–3]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) announces a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: March 16, 1998, at 12:30 p.m. to 5:00 p.m.; March 17, 1998, from 8:00 a.m. to 5:00 p.m.; March 18, 1998, from 8:00 a.m. to 5:00 p.m.; and March 19, 1998, from 8:00 a.m. to 5:00 p.m. for the NOSB.

PLACE: Doubletree Hotel Ontario Airport, 222 N. Vineyard, Ontario, California 91764. Phone: (909) 983–0909.

FOR FURTHER INFORMATION CONTACT: Michael I. Hankin, Senior Marketing Specialist, Room 2510 South Building, U.S. Department of Agriculture, AMS, Transportation and Marketing, National Organic Program Staff, P.O. Box 96456, Washington, D.C. 20090–6456. Phone (202) 720–3252.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. Section 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of OFPA. The NOSB met for the first time in Washington, D.C., in March 1992 and currently has six committees working on various aspects of the program. The committees are: Crops Standards; Processing, Labeling and Packaging; Livestock Standards; Accreditation; Materials; and International Issues. In August 1994, the NOSB provided its initial recommendations for the National Organic Program (NOP) to the Secretary of Agriculture and since that time has submitted 30 addenda to the recommendations and reviewed more than 170 substances for inclusion on the National List of Allowed and Prohibited Substances. The last meeting of the NOSB was held in September 1996, in Indianapolis, Indiana. The Department of Agriculture (USDA) published its proposed rule for the NOP in the **Federal Register** (62 FR 65849) on December 16, 1997. An extension of the comment period on the proposed rule was published in the **Federal Register** (63 FR 6498–6499) on February 9, 1998. The comment period has been extended until April 30, 1998.

PURPOSE AND AGENDA: The main purposes of this meeting are to provide an opportunity for the NOSB to listen to comments from interested persons regarding the proposed rule for the NOP, for the NOSB to review its Committee reports on the proposed rule, and for the NOSB to prepare comments on the proposed rule to be submitted to USDA. Minutes of the NOSB meeting, including minutes of oral presentations to the NOSB, will be included in the public record of comments for the proposed rule.

A final agenda for this meeting will be available on March 2, 1998. Persons requesting copies of the final agenda should contact Ms. Karen Thomas at the above address or phone (202) 720–3252.

TYPE OF MEETING: All meetings will be open to the public. Individuals and organizations wishing to provide oral presentations to the NOSB on issues related to the proposed rule should forward the request to Ms. Karen Thomas at the above address or by FAX to (202) 690–3924 by March 10, 1998, in order to be scheduled. The NOSB has scheduled time for public input on March 16, 1998, beginning at 1:00 p.m. and continuing until 5:00 p.m. While persons wishing to make a presentation may sign up at the door, advance registration will ensure an opportunity to speak during the allotted time period and will help the NOSB better manage the meeting and accomplish the agenda. It is our intention to give each individual or organization approximately 5 minutes to present orally their views on the key issues of concern. All persons making an oral presentation are asked also to provide their views in writing. Such written submissions may of course supplement the oral presentation with additional material. Attendees who do not wish to make an oral presentation are invited to submit written comments to the NOSB at this meeting. Those persons submitting written comments should provide 20 copies to the NOSB. All such comments will be included in the minutes of the meeting and placed in the rulemaking record.

Dated: February 9, 1998.

Eileen S. Stommes,

Deputy Administrator, Transportation and Marketing.

[FR Doc. 98–3864 Filed 2–1–98; 12:37 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Coordination Best Practices Project

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Consumer Service's intention to request Office of Management and Budget approval of the Coordination Best Practices Project.

DATES: Written comments on this notice must be received by April 14, 1998.

ADDRESSES: Comments may be sent to: Barbara Hallman, Acting Director, Supplemental Food Programs Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology.

All comments to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection forms should be directed to Barbara Hallman, (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Title: Coordination Best Practices Project.

OMB Number: Not yet assigned.

Expiration Date: Three years from approval date.

Type of Request: New collection.

Abstract: Participation in continuous and comprehensive health care, coupled with good nutrition, has been shown to improve pregnancy outcomes and the health status of infants, children, and breastfeeding mothers. In recognition of the positive organizational and clinical outcomes that can result from improved coordination between the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and Community/Migrant Health Centers (C/MHCs), and between the WIC Program and Indian Health Service (IHS) facilities, Section 17(j) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(j)), as amended by the Healthy Meals for Healthy Americans Act of 1994, calls for WIC services to be provided at substantially more C/MHCs and for improved coordination of WIC services with those offered by IHS facilities. The purpose of the Coordination Best Practices Project is to identify 30–40 successful model coordination/collaboration efforts between the WIC Program and the C/MHCs funded by the Department of Health and Human Services' Bureau of Primary Health Care, and between the WIC Program and IHS programs and to showcase these in a "Best Practices Handbook." The handbook will be designed to provide information and to stimulate interaction and discussion between WIC, C/MHCs, and IHS programs. The handbook will also contain a tool for local sites to use in conducting an assessment of their current coordination efforts and in developing a plan to increase coordination/collaboration efforts.

Information for this study will be collected in two stages of telephone interviews with staff from WIC clinics, C/MHCs and IHS facilities across the country. First, descriptive information will be collected through telephone interviews from 100–150 sites, each consisting of a C/MHC or IHS facility and the WIC clinic with which they coordinate or collaborate. These sites will be identified from recommendations provided by a variety of agencies and organizations with knowledge of WIC and health care programs. Information from this first stage of data collection will be used to identify 60 potential model sites. These 60 sites will be contacted again by telephone to collect more in-depth information on the collaboration and coordination of the WIC and primary health care services at the local level. Finally, these data will be analyzed to identify 30–40 "best practice" models, which will be described in the Best Practices Handbook. Ten sites will be profiled in greater detail.

Affected Public: Federal, State and local governments, local nonprofit organizations including local WIC agencies, C/MHCs, and IHS facilities.

Estimated Number of Respondents: One staff member from each of the 100–150 sites in the first round of interviews. In the second round of interviews, one staff member from the C/MHC or IHS facility and one staff member of the coordinating/collaborating WIC clinic will be interviewed for each of the 60 sites.

Estimated Time Per Response: Phone interviews will average 30 minutes per site for the first round of 100–150 sites. Interviews will average 60 minutes for the second round of 60 sites with two interviews per site.

Estimated Total Annual Burden on Respondents: 195 hours.

Dated: February 2, 1998.

Yvette S. Jackson,

Acting Administrator, Food and Consumer Service.

[FR Doc. 98–3719 Filed 2–12–98; 8:45 am]

BILLING CODE 3410–30–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 16, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.
3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Office and Miscellaneous Supplies
(Requirements for the Naval Weapons Station, Charleston, South Carolina)

NPA: Lions Club Industries, Inc., Durham, North Carolina

Cushion, Seat Back, Vehicular
2540–00–737–3311
NPA: Work Training Center for the Handicapped, Chico, California

Services

Audio/Visual Duplication Service
Federal Emergency Management Agency
National Emergency Training Center
16825 South Seton Avenue
Emmitsburg, Maryland
NPA: York County Blind Center, York, Pennsylvania

Grounds Maintenance, Department of the Navy, Hadnot Point, French Creek & Hospital Point Areas, Camp Lejeune, North Carolina, NPA: Coastal Enterprises of Jacksonville, Inc, Jacksonville, North Carolina

Janitorial/Custodial
Bureau of Land Management, Farmington District Office
1235 La Plata Highway
Farmington, New Mexico
NPA: RCI, Inc., Albuquerque, New Mexico

Janitorial/Custodial
U.S. Army Reserve AFRC
3938 Old French Road
Erie, Pennsylvania
NPA: Dr. Gertrude A. Barber Center, Inc., Erie, Pennsylvania

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–3715 Filed 2–12–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: March 16, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 21 and December 19, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 F.R. 62284 and 66597) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Pillow, Bed
7210–01–448–9432

Services

Janitorial/Grounds Maintenance
U.S. Army Reserve Center, 1900 Green Springs Highway, Birmingham, Alabama

Mailroom Operation
Veterans Affairs Medical Center 1055 Clermont Street, Denver, Colorado

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–3716 Filed 2–12–98; 8:45 am]

BILLING CODE 6352–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration (PECSEA) will be held March 10, 1998, 9:00 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, D.C. The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Public Session

1. Opening remarks by the Chairman.

2. Presentation of papers or comments by the public.

3. Update on Administration export control initiatives.

4. Task Force reports.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 16, 1997, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: February 9, 1998.

William V. Skidmore,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 98–3626 Filed 2–12–98; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 7, 1997, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on canned pineapple fruit from Thailand. The review covers shipments of this merchandise to the United States during the period of review (POR) January 11, 1995, through June 30, 1996.

Based on our analysis of the comments received, and the correction of certain ministerial errors, these final results differ from the preliminary results. The final results are listed below in the section "Final Results of Review."

EFFECTIVE DATE: February 13, 1998.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler or Kris Campbell, Office of AD/CVD Enforcement 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1442 and (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations, codified at 19 CFR part 353, as they existed on April 1, 1997.

Background

This review covers three manufacturers/exporters of merchandise subject to the antidumping order on canned pineapple fruit from Thailand: Siam Food Products Public Company Ltd. (SFP), The Thai Pineapple Public Company, Ltd. (TIPCO), and Thai Pineapple Canning Industry Corp., Ltd. (TPC). On August 7, 1997, the Department of Commerce (the Department) published in the **Federal Register** a notice on *Canned Pineapple Fruit from Thailand; Preliminary Results and Partial Termination of Antidumping Duty Administrative Review* (62 FR 42487) (*Preliminary Results*). We received case briefs from the three respondents on September 8, 1997. Maui Pineapple Co., Ltd. (the petitioner) did not file a case brief. We received a rebuttal brief from the petitioner on September 17, 1997. Pursuant to a timely request by SFP and TIPCO, we held a public hearing on October 14, 1997, at which the three respondents and the petitioner made presentations.

The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended.

Scope of the Review

The product covered by this review is canned pineapple fruit ("CPF"). For purposes of this review, CPF is defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.*, juice-packed). Although these HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Comparison of United States Price and Normal Value

For both companies involved in this review, we calculated transaction-specific U.S. prices (export price (EP) or constructed export price (CEP), as applicable) and compared them to normal values (NV) based on either weighted-average third-country market prices or constructed values (CV). For price-to-price comparisons, we compared identical merchandise where possible. Where there were no sales of identical merchandise in the third-country market to compare to U.S. sales, we made comparisons of similar merchandise based on the characteristics listed in the Department's antidumping questionnaire.

Export Price and Constructed Export Price

For the price to the United States, we used EP or CEP as defined in section 772 of the Act. We calculated EP and CEP based on the same methodology used in the *Preliminary Results*, except that we corrected two errors in our computer program with respect to commission offsets and CEP offsets. Contrary to our intention, the program (1) included not only U.S. commissions, but also U.S. indirect selling expenses, in deriving the cap that limits the third-country commission offset, and (2) granted a CEP offset, where none was appropriate. We have also modified the program to correct certain ministerial errors identified by TPC. *See* Memorandum from Gabriel Adler to Kris Campbell, dated December 5, 1997, regarding analysis of TPC data for final results.

Normal Value

Where NV was based on a third-country price, we used the same methodology to calculate NV as that described in the *Preliminary Results*, with modifications for clerical errors with respect to TPC's data, and one additional exception. In the preliminary results, we erred in automatically basing NV on CV where comparison market sales of the most physically comparable product made during the first comparison month in the 90/60 day contemporaneity window were found to be below cost. For these final results, in accordance with our practice, we have revised our computer program to ensure that it searches the entire 90/60 day contemporaneity window for any sales of the most comparable product retained after the cost test, and bases NV on such sales if they exist. *See* TPC Sales Comment 2 below.

We note, however, that this methodology does not attempt to base NV on sales of other, less comparable, models in the event that we find all contemporaneous sales of the most comparable model to be below cost. On January 8, 1998, the Court of Appeals of the Federal Circuit issued a decision in *Cemex* v. *United States*, 1998 WL 3626 (Fed. Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using CV as the basis for foreign market value (normal value) when the Department finds home market sales to be outside the ordinary course of trade. Although the impact of the below-cost test on our matching methodology was raised generally (*see* Comment 2, below), the specific issue discussed in *Cemex* was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the "ordinary course of trade" to include sales below cost. *See* Section 771(15) of the Act. Because the Court's decision was issued so close to the deadline for completing this administrative review, we have not had

sufficient time to evaluate and apply (if appropriate and if there are adequate facts on the record) the decision to the facts of this "post-URAA" case. For these reasons, we have determined to continue to apply our policy regarding the use of CV when we have disregarded below-cost sales from the calculation of NV.

Where NV was based on CV, we used the same methodology as that described in the *Preliminary Results*, with the following exceptions:

SFP

1. We modified the margin calculation program to eliminate the double-counting of an adjustment to direct labor and overhead expenses;
2. We revised the calculation of general and administrative (G&A) and interest expenses to include data for the fiscal year corresponding to the last three months of 1995; and
3. We revised G&A expenses to exclude ocean freight charges that had been improperly included in the original calculation.

TIPCO

We revised the program to eliminate the double-counting of packing expenses in CV.

Cost of Production

As discussed in the *Preliminary Results*, we conducted an investigation to determine whether the respondents made third country sales of the foreign like product during the POR at prices below their cost of production (COP) within the meaning of section 773(b)(1) of the Act.

We calculated the COP following the same methodology as in the *Preliminary Results*, except that for SFP we corrected the errors discussed with respect to constructed value above, which also pertain to COP.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." In accordance with sections 773(b)(2)(B) and (C) of the Act, where 20 percent or more of a respondent's sales of a given product were made at prices below the COP, we disregarded the below-cost sales because such sales were found to be made within an extended period of time in "substantial quantities." Based on comparisons of third-country prices to weighted-average COPs for the POR, we determined, in accordance with section 773(b)(2)(D) of the Act, that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time. Where all contemporaneous sales of a specific product were made at prices below the COP, we calculated NV based on CV, in accordance with section 773(a)(4) of the Act.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the *Preliminary Results*. We received comments from the three respondents and rebuttal comments from the petitioner.

Sales Issues—General

Provisional Measures Cap

Respondents TPC and SFP argue that the Department erred in the *Preliminary Results* by calculating a single duty assessment rate based on all sales reported for the period of review. The respondents argue that such a calculation is contrary to the intent of the "provisional measures cap" (section 737 of the Act), which limits the assessment of duties on entries made between the date of the Department's preliminary determination and the date of the International Trade Commission's affirmative injury determination under section 735(b) of the Act ("the cap period") to the amounts deposited during this period.

According to the respondents, most of the dumping margins found during the period of review occurred with respect to sales of entries made during the cap period. The dumping found on these sales exceeded both the deposit rate in effect for the cap period and the rates found on sales of post-cap entries. The respondents argue that, even if the Customs Service (Customs) ultimately applies the cap to cap-period entries, the inclusion of these sales in the calculation of a single POR assessment rate, which is then applied to entries outside the cap period, will shift a portion of the excess liability from the cap period onto post-cap period entries, partially vitiating the intended effect of the cap. Instead, the respondents argue, the Department should calculate separate assessment rates for sales of entries made during the cap period and sales of entries made after the cap period.

The respondents acknowledge that the record contains entry dates for only a few of TPC's sales and none of SFP's sales, but claim that the record contains other data that would allow the Department to infer which sales correspond to data during the cap period. SFP further argues that if the Department decides that it must have SFP-specific entry data on the record in order to calculate separate assessment rates, it should allow SFP to collect such information from importers of SFP merchandise and to place the information on the record.

The petitioner argues that the Department's preliminary results correctly calculated a single weighted-average assessment rate based on the margins found on all entries during the period of review. According to the petitioner, the provisional measures cap has no bearing on the assessment of duties on entries after the cap period, because section 737 of the Act mandates a cap on deposits, not on assessments, with respect to entries subject to provisional measures. The petitioner contends that assessment of duties is governed instead by section 736 of the Act, which requires that assessment account for the full amount that normal value exceeds the export price, and which contains no limitation on the assessment of duties in the post-cap period. The petitioner argues that the courts have held that the Department has broad discretion in calculating assessment rates, since the Act does not specify how duties should be assessed. According to the petitioners, the Department's preliminary calculation is consistent with sections 736 and 737 of the Act, and the Department is not compelled to adopt the methodology proposed by the respondents.

The petitioner opposes the making of any inference with respect to the missing entry dates, arguing that surrogate entry dates would not be accurate and would not provide a specific link of sales to entries. Further, the petitioner opposes reopening of the record to gather the missing entry date data.

DOC Position: We disagree with respondents. Consistent with our established practice, and in accordance with 19 CFR 351.212,[1] we have calculated importer-specific POR-average assessment rates by "dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise for normal customs duty purposes." The provisional measures cap will be applied in this case, as in all cases, to the appropriate entries. Those entries will not be assessed final duties in excess of the amount of the deposit of estimated antidumping duties, in accordance with section 737(a) of the Act. We disagree with respondents that

[1] While the final regulations do not govern this review, they do describe the Department's current practice with respect to assessment.

section 737(a) also requires a change in our method of calculating duty assessment rates. In limiting the amounts to be assessed against provisional period entries, we have met our statutory obligation to disregard the antidumping duties due on such entries to the extent that the amount deposited is lower than the final duty amount. Further, the calculation of multiple assessment rates would raise concerns about possible manipulation of data to avoid AD duties and unrestrained dumping of certain merchandise subject to an order.

Even if it were otherwise appropriate to determine assessment rates based on the respondents' proposed methodology, they did not provide adequate information to allow a proper application of this methodology. SFP and TPC suggest that a return to master-list assessment is not necessary in order to achieve their request that we calculate multiple assessment rates for each importer. While we agree that the calculation of multiple assessment rates does not require a master list, the concerns that led us to discontinue the master-list approach (difficulties in tying specific entries to specific sales, particularly in CEP situations, as well as the practical difficulties, and the concomitant increase in the probability of administrative error, in assessing based on such ties) are also present regarding the proposals submitted by SFP and TPC. In order to calculate multiple assessment rates as proposed, we would have to determine the entry dates of the sales under review. In this case, the data regarding entry dates is largely incomplete, and we have no way to ascertain whether specific sales correspond to entries subject to the cap. Such incomplete information could lead to manipulation. For instance, a respondent could provide entry dates for the sales with the highest dumping margins and argue that this should form the basis for the cap-period assessment rate, while failing to report entry dates for non-dumped sales of provisional period entries, which would then be factored into, and could lower, the post-cap rate. The respondents' suggestions for estimating entry dates do not adequately allay these concerns.

Finally, we note that the calculation of a single assessment rate, as opposed to multiple rates for each such period, is not biased in favor of, or against, respondents. Under some situations, the single assessment rate methodology may result in the collection of a lesser amount of duties compared with assessment using multiple rates. For instance, this would hold true where the dumping rate during the provisional period exceeds the cap but is less than the post-cap-period dumping rate.

Sales Issues—TPC

Comment 1: Date of Sale

TPC argues that the Department should have relied on the date of invoice as the date of sale for EP sales and third country sales, rather than relying on the date of contract. According to TPC, this review is subject to the date of sale methodology set forth in the Department's proposed regulations, and this methodology bases date of sale on the date of invoice, except in rare situations such as those involving long-term contracts. TPC contends that the Department followed this practice in recent cases on *Yarn from Austria* and *Steel Wire Rod from India*, and maintains that there were no compelling reasons to depart from reliance on the date of invoice in the *Preliminary Results*.

The petitioner responds that the Department's use of contract date as the date of sale is supported by the Department's regulations and practice.

DOC Position: We disagree with TPC that the date of invoice is the appropriate date of sale for the sales in question. For these final results, we have continued to base date of sale on the date of contract.

TPC is correct that at the time of initiation of this review, the Department had a policy of normally relying on the date of invoice as the date of sale. *See Antidumping and Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments*, 61 FR 7308, 7381 (February 27, 1996) ("Proposed Regulations"); *see also* Memorandum from Susan G. Esserman to Joseph Spetrini and Barbara Stafford, March 29, 1996. The general presumption in favor of invoice date continues to be our normal practice. As explained in the preamble to the Department's final regulations,[2] "in the Department's experience, price and quantity are often subject to continued negotiation between the buyer and seller until a sale is invoiced." *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27348 (May 19, 1997) ("Final Regulations") at 27348.

However, this presumption applies "absent satisfactory evidence that the terms of sale were finally established on a different date." *Id.* at 27349. This caveat reflects an awareness that, "[i]n some cases, it may be inappropriate to rely on the date of invoice as the date of sale, because the evidence may indicate that, for a particular respondent, the material terms of sale *usually* are established on some date other than the date of invoice." *Id.* (emphasis added). Accordingly, "[i]f the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department *will* use that alternative date as the date of sale." *Id.* (emphasis added). For these reasons, while section 351.401(i) maintains the general presumption in favor of invoice date, it provides for the use of a different date of sale where the alternative date "better reflects the date on which the exporter or producer establishes the material terms of sale."

The evidence on the record indicates that there were changes to the contracted terms of TPC's POR sales for only one out of several hundred EP sales, and five out of several hundred third country sales. *See Memorandum from Case Analysts to Office Director, Regarding Verification of CEP sales by TPC* (CEP verification report) at 1 ("[W]e noted that for virtually all transactions the terms of sale were established on the date of contract, and these same terms were applied without modification on the date of invoice.") Thus, while the Department's date of sale policy provides that a written agreement may not provide a reliable indication that the material terms of sale are truly established, even if, for a particular sale, the terms were not renegotiated, the fact pattern presented by TPC is one where the invoiced terms of virtually *all* sales are identical to those set in the corresponding contracts. In the context of the Department's practice on date of sale, it is therefore reasonable to conclude that the material terms of the sales in question were usually set on the date of contract, and that the date of contract is therefore the appropriate basis for the date of sale.

Finally, we note that TPC anticipated from the outset of this review that the Department might reject the use of date of invoice as the date of sale. In its initial questionnaire response TPC stated that the Department might find the date of contract to be a more appropriate date of sale than the date of invoice, and provided the date of contract for EP and third-country sales even though the date of contract had not been specifically requested by the Department. *See* letter from Dickstein, Shapiro, Morin & Oshinsky to the Department of Commerce, Case No. A–549–813 (November 12, 1997), at 21. Subsequently, TPC provided, at the Department's request, certain additional third-country sales needed in order to

[2] While the final regulations do not govern this review, they do describe the Department's current practice with respect to date of sale.

base our third-country sales analysis on contract date. Thus, our determination that the contract date is the appropriate date of sale for EP and third-country sales does not prejudice TPC, because we had all information to perform our analysis basing the date of sale on the contract date for these transactions.

Comment 2: Matching of Sales in Contemporaneity Window

TPC argues that the Department erred in comparing U.S. sales to constructed value in instances where there were above-cost third-country sales of the most physically comparable product within the 90/60 day contemporaneity window. According to TPC, the Department's practice in model matching is, first, to search for above-cost comparison market sales of the most comparable product in the month of the U.S. sale and, if no such sales are found, to search three months back and two months after the month of the U.S. sale for any above-cost sales of that product (the 90/60 day contemporaneity window). TPC argues that the Department, contrary to its practice, immediately resorted to constructed value if comparison market sales of the most comparable product in the month of the U.S. sale were below cost, without searching for above-cost sales of that product elsewhere within the 90/60 day window.

The petitioner did not address this comment.

DOC Position: We agree with TPC. The Department's practice in past proceedings, which we have continued to follow in this review (*see Normal Value*, above), is to search the 90/60 day contemporaneity window to determine whether, based on the cost test, we disregarded all sales of the best model for comparison before resorting to CV. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081, 2111–12 (January 15, 1997) ("*AFBs VI*"). We have revised the Department's margin calculation program accordingly for these final results of review. Although SFP and TIPCO did not comment on this issue in their case briefs, the error identified by TPC was also contained in the programs used for calculation of the dumping margins of the other two respondents, and we have corrected those programs as well.

Comment 3: Calculation of CEP Profit

TPC argues that the Department erred in calculating CEP profit, because it calculated a ratio of total profit to total selling expenses that did not include imputed selling expenses, and applied that ratio to a U.S. selling expense figure that included imputed selling expenses. According to TPC, this treatment is inconsistent and overstates profit on U.S. selling activities.

The petitioner responds that the Department's calculation was consistent with the statute and the Department's practice.

DOC Position: We disagree with TPC. For these final results, we continued to exclude imputed selling expenses in deriving total actual profit. We included these expenses in the pool of U.S. selling expenses used to allocate a portion of total actual profit to each sale.

The preamble to the Final Regulations addresses this issue directly. In response to a comment that we should include imputed expenses in the total selling expenses used to derive total profit in order to avoid double counting, we stated, "We have not adopted this suggestion, because the Department does not take imputed expenses into account in calculating cost. Moreover, normal accounting principles permit the deduction of only actual booked expenses, not imputed expenses, in calculating profit." Final Regulations at 27354.

Our policy regarding imputed expenses in the CEP profit calculation was explained in greater detail recently in *AFBs VI*, as follows:

> Sections 772(f)(1) and 772(f)(2)(D) of the Tariff Act state that the per-unit profit amount shall be an amount determined by multiplying the total actual profit by the applicable percentage (ratio of total U.S. expenses to total expenses) and that the total actual profit means the total profit earned by the foreign producer, exporter, and affiliated parties. In accordance with the statute, we base the calculation of the total actual profit used in calculating the per-unit profit amount for CEP sales on actual revenues and expenses recognized by the company. In calculating the per-unit cost of the U.S. sales, we have included net interest expense. Therefore, we do not need to include imputed interest expenses in the "total actual profit" calculation since we have already accounted for actual interest in computing this amount under section 772(f)(1).
>
> When we allocated a portion of the actual profit to each CEP sale, we have included imputed credit and inventory carrying costs as part of the total U.S. expense allocation factor. This methodology is consistent with section 772(f)(1) of the statute which defines "total United States Expense" as the total expenses described under section 772(d) (1) and (2). Such expenses include both imputed credit and inventory carrying costs.

AFBs VI at 2127. This policy is also described in a recent policy bulletin. *See* Import Administration Policy Bulletin number 97/1, issued on September 4, 1997, concerning the *Calculation of Profit for Constructed Export Price Transactions*, at 3 and note 5. As in the *Preliminary Results*, we have followed this policy for these final results of review.

Comment 4: Level of Trade/CEP Offset

TPC argues that the Department erred in finding that CEP sales in the U.S. and third-country market were made at the same level of trade and in denying TPC a CEP offset. According to TPC, sales in the U.S. and third-country market would be at the same level of trade only if no adjustments were made for the activities of the U.S. reseller. However, TPC maintains, the level of trade for CEP sales must be determined after making adjustments for the reseller's activities, so that CEP sales necessarily were made at a less advanced level of trade than its third-country sales. TPC contends that since a level of trade adjustment is not possible, the Department should grant TPC a CEP offset.

The petitioner argues that adjustments to CEP for U.S. selling expenses do not automatically warrant a CEP offset, and contends that TPC has failed to demonstrate the existence of different levels of trade in the U.S. and third-country market, so that a CEP offset is not warranted.

DOC Position: We disagree with TPC. In the *Preliminary Results*, we expressly stated that, consistent with the statute, we had determined the level of trade for CEP sales *after* excluding those selling activities related to the expenses deducted under section 772(d) of the Act. Once these selling activities (which included warehousing, co-op advertising, and sales visits to customers) were excluded, we found that the selling functions performed for TPC's sales in the two markets were essentially the same, irrespective of channel of distribution, and were limited to the processing of sales-related documentation, invoicing, and collection of payment. *See Preliminary Results* at 42489. Since all of TPC's sales were made at the same level of trade, no level of trade adjustment or CEP offset is warranted in the calculation of TPC's antidumping margin.

Comment 5: TPC's Alleged Clerical Errors

Warranties: TPC argues that the Department erred in its recalculation of warranty expenses incurred by affiliated reseller MC Foods, Inc. (MFI) based on verification findings. According to TPC, the Department should have recalculated warranty expenses incurred

by affiliated reseller Mitsubishi International Corporation (MIC), not those incurred by MFI. Further, the expenses in question should have been decreased rather than increased.

The petitioner does not address TPC's claim.

DOC Position: We disagree with TPC that the Department should have recalculated warranty expenses incurred by affiliated reseller MIC, rather than those incurred by MFI. In the list of clerical error corrections presented at the outset of verification, TPC explained that it was necessary to make a correction to warranty expenses by one of its affiliated resellers, but incorrectly identified the reseller as MIC. *See* CEP verification report at Exhibit LA–1. In fact, in verifying warranty expenses, we found that the correction applied to MFI warranty expenses (and not to MIC expenses), and resulted in a small decrease of the MFI warranty expense ratio. *See* CEP verification report at exhibit LA–16. In the preliminary results, the Department was therefore correct in seeking to recalculate the MFI warranty expense ratio. However, we agree with TPC that the adjustment should have resulted in a decrease, rather than an increase, to those expenses. *See Id.*, containing worksheet recalculating the expenses. We have revised the MFI warranty expenses accordingly for these final results.

U.S. Direct Selling Expenses: TPC argues that certain revisions to TPC's U.S. sales database that were presented at verification with respect to bank fees were not properly implemented in the preliminary results of review. According to TPC, the spreadsheet presented at verification to revise the bank fees was incorrectly captioned, and this error was not detected by the Department when incorporating the revised data into the preliminary margin calculation program, resulting in adjustment to a different expense (billback expense).

The petitioner does not address this issue.

DOC Position: We agree with TPC. At verification, TPC indicated that an error had been made in the calculation of bank fees, which correspond to variable "DDIRSELU" in TPC's sales database. However, the revised spreadsheet presented by TPC was incorrectly captioned "DIRSELU", a variable name that corresponds to billback expenses, which are unrelated to bank fees. Despite this error, the record indicates that the correction in question, as verified by the Department, should have been made to bank fees and not to billback expenses. We have revised the margin calculation program accordingly.

U.S. Indirect Selling Expenses: TPC argues that the Department erred in the manner in which it increased indirect selling expenses incurred by affiliated reseller MIC on U.S. sales to account for certain unreported selling expenses. According to TPC, the expenses reported in the sales database under the indirect selling expense field (INDIRSU) included certain expenses that do not concern the under-reported expenses, namely handling and storage expenses. In the preliminary results, the Department increased the INDIRSU field by the ratio of the unreported selling expenses to the reported selling expenses. TPC argues that by doing so, the Department inadvertently increased the handling and storage expenses as well. TPC requests that the Department recalculate the indirect selling expenses so as not to increase the handling and storage expenses.

The petitioner argues that the Department correctly calculated indirect selling expenses, and maintain that there is no evidence on the record to support the correction proposed by TPC.

DOC Position: We agree with TPC. The record shows that the expenses reported in the indirect selling expense field included unrelated brokerage and handling expenses, and that these expenses varied by warehouse. *See* TPC's November 12, 1996 questionnaire response at 139; *see also* CEP verification report at Exhibit LA–31. For these final results, we have revised the indirect selling expenses so as not to increase the reported brokerage and handling expenses.

Inventory Carrying Costs: TPC argues that the Department erred in implementing a correction to inventory carrying costs presented by TPC at verification. According to TPC, these expenses varied by warehouse location, and the Department erred in identifying the Kansas warehouse.

The petitioner argues that there is no evidence on the record for TPC's claim that the warehouse in question was incorrectly identified.

DOC Position: We agree with TPC. In its preliminary results of review, the Department's program erroneously referred to the Kansas warehouse as "Kansas", but TPC identified this warehouse using other codes. We have revised the program to correct this error for the final results.

International Freight: TPC argues that the Department, in attempting to correct errors in TPC's reported international freight expenses for CEP sales that were identified by TPC at the outset of verification, made the following three errors: (1) the Department identified the destination based on the field DESTINU (which provides the location of the end customer) rather than WARLOC (which provides the location of the warehouse the merchandise was actually shipped to), (2) the Department did not apply a weight factor to the reported freight rates to convert the freight expenses to a standard 20 oz. case equivalent weight basis (the basis on which prices and adjustments are used in the program), and (3) the Department incorrectly applied the rate for eight-ounce merchandise to shipments to a single warehouse, rather than all warehouses.

The petitioner argues that there is no basis in the record to support TPC's allegation with respect to the third error described above.

DOC Position: We agree with TPC on all three points. We note, with respect to the third error, that TPC demonstrated at verification that the rate for shipments of eight-ounce merchandise applied to all shipments, irrespective of destination. *See* CEP verification report at Exhibit S–41.

CEP Selling Expenses: TPC argues that the Department incorrectly double counted inventory carrying expenses in the calculation of CEP selling expenses, and also deducted these expenses twice from U.S. price.

The petitioner does not comment on this claim.

DOC Position: We agree with TPC, and have revised the final results accordingly.

U.S. Commissions: TPC argues that the Department improperly treated U.S. commissions incurred on CEP sales in the margin calculation program, by both deducting such commissions from U.S. price and adding the same commissions to normal value.

The petitioner disagrees that commissions were double counted, and argue that U.S. commissions were deducted from normal value in the form of a commission offset.

DOC Position: We agree with TPC that we double counted U.S. commissions incurred on CEP sales in the preliminary results by subtracting these commissions from U.S. price and adding them to NV. The commission offset alluded to by petitioners consists of home market indirect selling expenses, capped by the amount of U.S. commissions. Although such an offset, when capped by U.S. expenses, results in a deduction from normal value in the amount of the U.S. expenses, the actual adjustment is for home market expenses rather than U.S. commissions. We have revised the margin calculation program accordingly. We note that the language suggested by TPC to correct this error pertains only to price-to-price comparisons. Since an identical error

was made for price-to-CV comparisons, we have also corrected this error.

Entered Values: TPC argues that the Department should incorporate into the margin calculation program revised entered value data that were presented at the outset of verification.

The petitioner does not comment on TPC's request.

DOC Position: We agree with TPC, and have incorporated the revised entered value information.

Sales Issues—TIPCO

Comment 1: Knowledge of Final Destination

TIPCO argues that the Department erred in disregarding certain U.S. sales based on a finding that the producer that supplied TIPCO with the merchandise involved in these sales knew the merchandise was destined for export to the United States. According to TIPCO, the manufacturer knew that its merchandise was destined for export, but did not know with certainty that it would be exported to the United States. TIPCO argues that the Department should therefore regard the sales in question as subject to TIPCO's antidumping margins, rather than the margins corresponding to the manufacturer of the merchandise.

The petitioner argues that the evidence on the record supports a conclusion that the manufacturer knew that its merchandise was destined for the United States.

DOC Position: We agree with the petitioner. The Department found at verification that the manufacturer of the merchandise in question was responsible for labeling, packing, and loading of the merchandise into containers. The labels applied by the manufacturer were standard U.S. market labels, listing U.S. distributors and nutrition facts as required by U.S. government regulations. Moreover, as explained by TIPCO officials at verification, CPF products with such labels are exported exclusively to the U.S. market. *See Memorandum from Case Analysts to Office Director, Regarding Verification of Sales by TIPCO,* July 30, 1997, at 5–6. Since the manufacturer was clearly in possession of information indicating the destination of the subject merchandise, we have determined that the manufacturer knew, or should have known, the ultimate destination of the subject merchandise purchased by TIPCO. Therefore, we have continued to exclude these sales from TIPCO's margin calculation for purposes of the final results of this review.

Comment 2: Use of CV for Certain U.S. Sales of Other Producers' Merchandise

TIPCO argues that the Department erred in comparing certain U.S. sales of merchandise produced by other manufacturers to constructed value, rather than comparing these sales to third-country sales of identical or similar products produced by TIPCO. TIPCO acknowledges that it did not sell merchandise produced by these suppliers to the third-country market (Germany) during the POR. However, according to TIPCO, it is more logical to compare the *selling* prices of other producers' merchandise to the *selling* prices of identical or similar TIPCO merchandise than to the *costs* of TIPCO merchandise.

The petitioner argues that the Department properly used CV for comparison to the sales in question. According to the petitioner, the Department did not learn of the identity of the producers of that merchandise until verification, and was thus unable to collect information on third-country sales involving merchandise produced by the same suppliers. The petitioner contends that there is therefore no basis for comparison of the U.S. sales in question to third-country sales of merchandise produced by TIPCO.

DOC Position: We disagree with TIPCO. The statutory definition of foreign like product requires sales of merchandise produced by the same manufacturer as that involved in the U.S. sales. *See* section 771(16) of the Act. Given this requirement, the record does not contain evidence that there are third-country sales of a foreign like product that would serve as a proper basis for comparison of the merchandise produced by the other manufacturers. Because TIPCO did not inform the Department until verification that certain of its U.S. sales involved merchandise produced by other manufacturers, and did not identify any sales of such merchandise in the comparison market, there is no foreign-like product to which the sales in question can be compared. Further, because TIPCO did not report the cost of the merchandise produced by the other manufacturer, there is no basis on which to calculate a constructed value using the actual cost of that merchandise. Therefore, the only alternative left to the Department is to compare the U.S. sales in question to the constructed value reported by TIPCO with respect to merchandise produced by TIPCO.

Comment 3: Double-Counting of Packing Charges

TIPCO argues that the Department double-counted packing in the calculation of constructed value.

The petitioner does not address TIPCO's comment.

DOC Position: We agree with TIPCO, and have revised the margin calculation program to eliminate the double-counting of packing in the calculation of constructed value.

Cost Issues—General

Fruit Cost Allocation Methodology: Respondents SFP and TIPCO claim that the Department's decision to allocate joint production costs (including fruit costs) using a net realizable value (NRV) methodology is unlawful. According to the respondents, the courts have disallowed the use of value-based data to allocate shared costs, finding that such allocations undermine the statutory requirement that production costs serve as an independent yardstick by which to judge the fairness of prices. Specifically, the respondents argue that the Court of Appeals for the Federal Circuit (CAFC) ruled in *IPSCO Inc.* v. *United States,* 965 F.2d 1056 (CAFC 1992)(IPSCO) that value-based cost allocations are unlawful, and the Court of International Trade (CIT) applied this ruling to the present case in *The Thai Pineapple Public Co., Ltd. et al.* v. *United States,* 946 F. Supp. 11 (CIT November 8, 1996), appeal filed May 15, 1997 (*TIPCO*). The respondents argue that, based on these precedents, the Department should accept an allocation of joint fruit costs on the basis of the weight of fruit used.

In the alternative, SFP argues that the Department should accept the allocation basis used in its normal accounting system during the POR. SFP points out that after the Department rejected the weight-based allocation of fruit costs in the original investigation (because such an allocation did not capture qualitative differences among different parts of a pineapple), SFP changed the manner in which fruit costs were allocated in its normal accounting system during the period of the first review, so as to ensure that qualitative differences among different parts of the fruit were properly reflected.

TIPCO adds that, even if an NRV methodology were a permissible basis for allocation of costs, the Department incorrectly calculated the NRV ratios based on sales prices and costs incurred during a five-year period prior to the POR, instead of using TIPCO's submitted POR NRV costs. TIPCO argues that if the Department insists on

using a value-based methodology, it should, at a minimum, base any such methodology solely on NRV ratios derived from costs and revenues during the POR.

In addition, TIPCO argues that the Department improperly applied NRV ratios to shared "upstream" labor and overhead expenses, which were incurred in the production of both CPF and juice. TIPCO contends that such expenses are not dependent on qualitative differences among raw material inputs, and should be allocated on a weight basis.

The petitioner argues that the Department's practice fully supports the use of a value-based allocation for shared costs, and that an NRV methodology results in a more reasonable and accurate allocation of costs than a weight-based methodology. The petitioner further argues that the new methodology used by SFP in its normal accounting system was in fact a weight-based method, and was therefore unreliable.

In addition, the petitioner contends that the use of an NRV methodology is entirely consistent with court rulings that establish that the Department's allocation methodologies must reflect actual production costs based on a company's normal (*i.e.*, historical) allocation formulas consistent with generally accepted accounting principles. According to the petitioner, the use of POR data to calculate NRV ratios (as advocated by TIPCO) would be inappropriate given that the cost allocation methodologies followed during the POR represented a change from the historical allocation bases.

The petitioner also claims that the Department properly allocated TIPCO's shared labor and overhead costs using an NRV methodology. The petitioner notes that the NRV ratios were derived in order to allocate all pre-split-off costs, including labor and overhead, and that labor and overhead cost data were used to derive the NRV ratios.

DOC Position: We agree with the petitioner. The Department's long-standing practice, now codified at section 773(f)(1)(A) of the Act, is to rely on data from a respondent's normal books and records if they are prepared in accordance with home country generally accepted accounting principles (GAAP) *and* reasonably reflect the costs of producing the merchandise. Also, as described in section 773(f)(1)(A) of the Act, the Department must consider whether reported allocations "have been historically used by the exporter or producer."

In the *Preliminary Results*, we found that the respondents had abandoned their historical fruit cost allocation methodologies during the POR. *See Preliminary Results* at 62 FR 42487, 42490. We carefully reviewed each of the new cost allocation methodologies to determine whether they were in accordance with home country GAAP and whether they allocated costs reasonably. We determined that the newly adopted fruit cost allocation methodologies were based on the relative weight of the fruit contained in the CPF produced. *Id.* As discussed in the final determination in the underlying investigation, the allocation of pineapple fruit costs among products solely on the basis of weight (*i.e.*, a quantitative factor) is inappropriate. *See Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand*, 60 FR 29553, 29561 (June 5, 1995) (*Final Determination*).[3] Since the newly adopted allocation methodologies do not incorporate any measure of the qualitative factor of the different parts of the pineapple, we find that such methodologies do not reasonably reflect the costs associated with production of canned pineapple fruit. A reasonable fruit cost allocation methodology is one that reflects the significantly different quality of the fruit parts that are used in the production of CPF versus those used in the production of juice products. *Id.* An allocation methodology based on net realizable value data recognizes these differences while a weight-based approach does not.

We disagree with respondents' arguments that the Court of Appeals for the Federal Circuit (CAFC) ruled in *IPSCO Inc.* v. *United States*, 965 F.2d 1056 (CAFC 1992)(*IPSCO*) that value-based cost allocations are unlawful. *IPSCO* involved the Department's use of an appropriate methodology for allocating costs between two grades of steel pipe. There were no physical differences between the two grades of pipe, only differences in quality and market value. Furthermore, the same materials, labor, and overhead went into the manufacturing lot that yielded both grades of pipe. Given these facts, the Department, in its final determination for the underlying case, allocated production costs equally between the two grades of pipe, reasoning that because they were produced simultaneously, the two grades of pipe in fact had identical production costs.

This aspect of the case was upheld in *IPSCO*, based on the CAFC's holding that the Department "computed constructed value according to the unambiguous terms of [the Act]." *IPSCO* at 1061. While the CAFC noted, in deferring to the Department's "consistent and reasonable interpretation of section 1677b(e)," that the allocation of costs based on relative value resulted in an unreasonable circular methodology (*i.e.*, because the value of the pipe became a factor in determining cost which became the basis for measuring the fairness of the selling price of pipe), nowhere did the appellate court indicate that use of an allocation methodology based on relative value was legally impermissible. *Id.* On the contrary, *IPSCO* suggests that the courts will defer to the Department's preference for reliance on a respondent's normal allocation methodologies, particularly when there are significant differences in the raw materials. The Department's reasoning in the instant case (*i.e.*, that the use of the pineapple cylinder in production of CPF and the use of the shells, cores, and ends, in production of juice and concentrate, requires a value-based allocation basis) is thus fully consistent with *IPSCO*.

We disagree with SFP that its normal accounting system during the POR allocated fruit costs in a manner that accounted for qualitative differences in the different parts of the fruit. Due to the proprietary nature of the facts at issue, our analysis of SFP's normal allocation methodology is contained in the proprietary version of a memorandum in the Department's Central Records Unit. *See Memorandum from William Jones through Cathie Miller to the File, Regarding SFP Fruit Cost Allocation* (December 5, 1997). As discussed in that memo, we have determined that SFP's normal allocation methodology during the POR does not "reasonably reflect" the cost of producing the merchandise and we cannot employ this method in our COP analysis. Alternatively, we have applied the NRV methodology used for the preliminary results in our calculations for these final results.

In response to TIPCO's argument that NRV ratios, to be used at all, should have been based on POR data, we continue to believe that we correctly relied upon historical data in calculating the NRV ratios used in the *Preliminary Results*. The NRV is commonly defined as the predicted selling price in the ordinary course of business less reasonably predictable costs of completion and disposal. *See Cost Accounting: A Managerial Emphasis* at 550 (Horngren, 9th ed.

[3] Although, as noted above, this aspect of the *Final Determination* was overturned by the CIT in *TIPCO*, it is currently on appeal before the CAFC.

1997). In order to calculate NRV ratios for the *Preliminary Results*, it was necessary to compare historical cost and sales data for pineapple fruit products over a period encompassing several years prior to the antidumping proceeding, and also to include data for markets where allegations of dumping had not been lodged. We therefore collected company-specific historical data from 1990 through 1994 and used this information to perform our calculations and adjust the allocation of shared costs.

Finally, with respect to the allocation of TIPCO's joint labor and overhead costs, we continue to believe that these costs should be allocated in the same manner as the costs of purchasing fruit. The Department recognizes that a "joint production process occurs when 'two or more products result simultaneously from the use of one raw materials as production takes place.'" *See Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Review and Notice of Revocation in Part*, 61 FR 58374, 58376 (November 14, 1996) (*PET Film*) (quoting Keeler, *Management Accountants' Handbook*, Fourth Ed. at 11:1). Moreover, a joint production process produces two distinct products and the essential point of that process is that the raw material, labor and overhead costs prior to the initial split-off requires an allocation to the final products. *See Management Accountant's Handbook* at 11:1. CPF and juice result from a joint production process because they both rely on the use of a single raw material, pineapple fruit. From the time when the fruit is purchased or grown until the fruit is processed in the Ginaca machine (which separates the fruit into its various parts), CPF and juice share the joint raw material, labor, and overhead costs. (After the Ginaca machine separates the fruit (*i.e.*, the "split-off point"), the cored pineapple cylinders are processed into CPF, and the remaining portions of the pineapple (*i.e.*, the shells, cores and ends) are processed separately in order to extract pineapple juice.) Since all costs up to the split-off point are joint costs, and since, as discussed above, there are qualitative differences in the different parts of the pineapple, all such costs (including labor and overhead) must be allocated in a manner that reflects those differences. Accordingly, it would be inappropriate to allocate the labor and overhead costs on a weight basis, as urged by TIPCO. Instead, for these final results we continue to allocate these costs on the basis of NRV ratios, since such an allocation reasonably reflects qualitative differences that exist between the joint raw materials used to produce CPF and juice.

Cost Issues—TPC

Comment 1: Calculation of Average Cost for POR

TPC argues that the Department should have calculated a separate cost of production for each fiscal year for which sales in the comparison market were compared to costs (*i.e.*, 1994, 1995, and 1996), rather than calculating a single average cost for the POR on the basis of 1995 and 1996 data. TPC contends that the calculation of a single average cost for the POR is not required by statute, and maintains that the Department has calculated separate fiscal year costs in other cases where the use of a single average cost would have created a distortion. TPC argues that calculation of separate fiscal year costs is necessary in this case in order to account for substantial increases in the cost of fresh pineapple and interest expenses from year to year. According to TPC, the calculation of a single average cost for the POR in the *Preliminary Results* distorted the price-cost comparison in such a way that sales early in the period appear to be below cost, while sales late in the period appear to have high profit margins. TPC further claims that this result was exacerbated because the Department did not include 1994 cost data in the calculation of the single average POR cost. TPC argues that a distortion also arises because its merchandise is held in inventory, so that, for instance, sales in early 1995 are made out of inventory produced in 1994. According to TPC, prices are determined based on the cost of inventory, and therefore a comparison of sales in early 1995 to average costs in 1995 would create a distortion. TPC argues that, instead, the Department should assign fiscal year costs to sales taking into account the average inventory period for each product.

The petitioner responds that it would be contrary to law and the Department's practice to rely on costs outside the POR. The petitioner points out that in the underlying investigation, the Department explicitly determined to use costs for the POI and not costs for the period before the POI, and that in the investigation the Department rejected arguments similar to those made by TPC in this review. According to the petitioner, the Department generally does not analyze the holding period in determining the appropriate reporting period for cost information, and TPC has offered no new arguments beyond those raised by the respondents in the underlying investigation. The petitioner further argues that the prevailing market conditions during the period reflected steady prices despite increasing costs, so that there is no evidence that a distortion arises from the comparison of prices to an average POR cost.

DOC Position: We disagree with TPC. The Department's normal methodology with respect to the averaging of costs is to calculate a single weighted-average cost for the entire period of investigation or review, except in unusual cases where there are substantial changes in cost, *e.g.*, cases involving high-inflation economies. *See Circular Welded Non-Alloy Steel Pipe and Tube From Mexico; Final Results of Antidumping Duty Administrative Review*, 62 FR 37014, 37024 (July 10, 1997); *see also Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes and Tubes From Taiwan*, 57 FR 53705 (November 12, 1992). This methodology is reasonable and in accordance with law, and has been consistently followed regardless of whether the costs of production inputs during the period were higher or lower than the costs in other periods. *See, e.g., Final Determination of Sales at Less than Fair Value: Stainless SteelBar From Spain*, 59 FR 66931 (December 28, 1994)(the Department declined to accept the petitioner's argument that the appropriate cost period was that period prior to the period of investigation, which reflected higher costs).

The Department believes that, absent strong evidence to the contrary, the cost structure during the POR (or period of investigation) is representative and can be used to calculate an estimate of the cost of production of that foreign like product in the ordinary course of business. Thus, although the statute grants the Department latitude in determining the appropriate cost reporting period, the Department has consistently required and used the per-unit weighted-average costs incurred during the POR.

The Department has departed from its normal practice of using POR weighted-average costs in certain rare situations where cost and price averages calculated over the entire period did not permit an appropriate comparison. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Static Random Access Memory Semiconductors From Taiwan*, 62 FR 51442, 51444 (October 1, 1997); *Final Determination of Sales at Less*

Than Fair Value: Erasable Programmable Read Only Memories (EPROMs) from Japan, 51 FR 39680, 39682 (October 30, 1986); *Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea*, 58 FR 15467, 15476 (March 23, 1993). However, we find that the pineapple industry did not experience significant price movements over the POR, and therefore we continue to believe that the costs incurred during the POR are reasonably representative of TPC's cost experience and the most relevant data to analyze whether current sales permit recovery of costs.

As for the "significant" increase in the cost of the raw material input that TPC claims to have experienced during the POR, we note that as with all commodities, price fluctuations in the raw pineapple are to be expected, as prices are dependent upon the supply and demand of that commodity. TPC has not identified, and we do not know of, any past case where the Department has abandoned its normal POR cost methodology on the basis of a fluctuation in the price of raw material inputs. Further, TPC's assertion that the cost of pineapple fruit increased substantially during the POR is misleading. While TPC is correct that the average cost of pineapple fruit was higher at the end of the POR than it was at the beginning of the POR, the average monthly costs fluctuated both upward and downward throughout the POR. Moreover, in its brief, TPC understates the 1994 average cost of pineapple fruit, relying on an average cost of pineapple for 1994 that included costs for nine months before the earliest 1994 sale it was required to report.

We are also unpersuaded by TPC's argument that its interest expenses increased substantially over the period, thus warranting calculation of separate costs for each fiscal year. The increase in interest rates noted by TPC is greatest when comparing the average interest expenses for 1994 to those for 1995. However, the interest expense ratio reported by TPC for 1995 is not, on its face, aberrational, whereas the interest expense ratio for 1994 (which TPC has treated as proprietary, and therefore cannot be disclosed in this notice), is strikingly low. *See* TPC case brief at 7.

As for TPC's additional argument that the average POR cost relied upon in the *Preliminary Results* is distorted by the exclusion of 1994 fiscal year costs from the average, we note that the Department's practice is to base its cost calculation on fiscal years overlapping the POR. No part of the TPC 1994 fiscal year overlaps the POR. Although third-country market sales in the last three months of 1994 might serve as a comparison basis for U.S. sales at the beginning of the POR under the Department's 90/60 day window for matching, we are unpersuaded that this is a sufficient reason to depart from the Department's practice. We have therefore continued to base the calculation of the weighted-average cost for the POR on 1995 and 1996 costs.

In sum, we find no compelling reason to depart from the Department's normal practice and to calculate separate costs for each fiscal year. We have continued to rely on a single weighted-average cost for the POR, based on 1995 and 1996 costs.

Cost Issues—SFP

Comment 1: Adjustment to Direct Labor and Overhead

SFP states that the Department inadvertently included a direct labor and overhead adjustment in its calculation of SFP's COP and CV. SFP argues that the adjustment would have been appropriate if the Department had used SFP's unadjusted costs, as reflected in its normal accounting records; but since the Department accepted SFP's revised allocation of labor and overhead costs, the adjustment is not necessary.

The petitioner claims that SFP is mistaken in claiming that the Department included the direct labor and overhead adjustment in the calculation of COP and CV for the preliminary results.

DOC Position: We agree with the respondent. The direct labor and overhead adjustment was included in the Department's calculation of SFP's cost of manufacturing used in the preliminary results. This can be confirmed by adding the materials, labor and overhead amounts shown in the cost calculation memo and comparing them to the cost of manufacturing also reported in that memo. Further, since the Department accepted SFP's revised allocation of labor and overhead costs, the adjustment in question was not necessary. We have revised labor and overhead costs accordingly for these final results.

Comment 2: Adjustments to Year-End Physical Inventory

SFP claims that the Department incorrectly included SFP's year-end inventory count adjustments in the calculation of COP and CV. SFP argues that these adjustments were recorded to correct for errors that occurred in tracking CPF inventory movement from production to semi-finished goods inventory, and then to finished goods inventory and sales. According to SFP, the Department's use of actual production quantities in its cost calculations has already accounted for a portion of its year-end adjustments, and the remaining adjustments are irrelevant to the cost of manufacturing since these adjustments are related to post-production inventory movement. SFP argues that in the alternative, if the year-end adjustments are included, the Department should use SFP's original, uncorrected production figures as the starting point for the calculation of unit costs.

The petitioner argues that SFP's original production figures contained errors and therefore should not be used for unit cost calculations. The petitioner further argues that SFP's year-end adjustments were not reflected in its submitted cost data, and that the Department therefore correctly revised SFP's production costs to include the adjustments.

DOC Position: We agree with the petitioner. The submitted cost data did not include any of SFP's year-end inventory adjustments, and the inventory tracking errors involved costs that arose throughout the POR. SFP accumulated these costs and reported them in the inventory amount on its balance sheet. These costs were not reflected on SFP's income statement until the end of 1996, when year-end adjustments were applied, nor were they included in the reported costs. Therefore, we have continued to include the year-end adjustments in our cost calculations for the final results. In applying the adjustments, we have pro-rated the total amount between the first six months of 1996 and the last six months of 1996 on the basis of production quantities.

Comment 3: Appropriate Period for G&A and Interest Expenses

SFP argues that the Department incorrectly calculated G&A and interest expenses. According to SFP, the Department's long-standing policy is to calculate G&A expenses from the audited financial statements which most closely correspond to the POR. SFP had two sets of financial statements during the POR, reflecting the fact that SFP changed its fiscal period to the calendar year at the end of 1995. The first set of financial statements covered the period October 1994 through September 1995, and the second set covers the last three months of 1995 (the "stub" year). In the preliminary results, the Department based G&A and interest expenses on the first of these financial statements only.

SFP argues that the Department should have also included in its calculation the expenses shown in SFP's stub year 1995 financial statements. SFP argues that in *Steel Products from Canada* the Department included expenses from a period of less than a full year in its G&A and interest expense calculations. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 13815, 13829–30 (March 28, 1996).

The petitioner argues that the Department followed its normal practice when it calculated SFP's G&A expenses using the audited financial statements for the fiscal year ending in September 1995. The petitioner claims that the Department's use of full year annual data to calculate SFP's G&A expenses was consistent with the methodology used in *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from Thailand*, 60 FR 22557, 22560–61 (May 8, 1995), where the Department stated that because of their nature as period costs, and due to the irregular manner in which many companies record G&A expenses, the Department generally looks to a full-year period in computing G&A expenses for COP and CV.

DOC Position: We agree with SFP. While stub year 1995 encompasses only three months, it represents an audited fiscal period (thus properly reflecting all costs related to this period), and falls entirely within our POR. We have therefore recalculated SFP's G&A and interest expense rates for these final results using both the audited financial statements for the year ending September 30, 1995, as well as the audited financial statements for the "stub year" ending December 31, 1995.

Comment 4—Movement Charges in G&A Expenses

SFP claims that the Department improperly included ocean freight charges in the calculation of G&A expenses. SFP argues that these charges are direct selling expenses, not G&A expenses. SFP further argues that all of its sales during the POR were made on an FOB Thailand basis, so that any ocean freight expenses are unrelated to subject merchandise.

The petitioner argues that the Department properly included ocean freight charges in the calculation of G&A expenses. The petitioner claims that SFP classifies these costs as G&A expenses in its accounting system and thus they should be included in the G&A expense calculation.

DOC Position: We agree with SFP. Ocean freight charges are properly classified as a movement expense and thus should not be included in the calculation of G&A expenses. Accordingly, we have corrected the G&A expense calculation for these final results by excluding the ocean freight charges.

Cost Issues—TIPCO

Comment 1: Foreign Exchange Gains and Losses on Accounts Receivable

TIPCO claims that the Department erred when it removed foreign exchange gains from the calculation of G&A expenses. TIPCO contends that a portion of the excluded exchange gains were related to loans and purchase transactions and therefore should be allowed as an offset to TIPCO's G&A expenses. TIPCO also argues that the remaining exchange gains are akin to gains on financing activity and thus should be treated in a manner similar to interest income on short-term financial assets. Therefore, TIPCO argues, the Department should apply the remaining exchange gains as an offset to interest expenses.

The petitioner argues that the Department properly followed its stated policy when it excluded foreign exchange gains earned on accounts receivable from the calculation of TIPCO's G&A expenses. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30364 (June 14, 1996). The petitioner also notes that it is Department practice to exclude foreign exchange gains on accounts receivable from the calculation of net interest expenses. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Silicomanganese from Venezuela*, 59 FR 55436, 55440 (November 7, 1994). The petitioner claims that TIPCO did not provide any information or explanation in support of its claim that exchange gains on accounts receivable were related to financing activities and, therefore, these amounts should be excluded from the calculations of TIPCO's G&A expenses and net interest expenses for the final results.

DOC Position: We agree with the petitioner. It is Department practice to include foreign exchange gains and losses on financial assets and liabilities in our COP and CV calculations, provided that the gains and losses are related to the company's production. Since the foreign exchange gains and losses incurred on accounts receivable are related to the sales function, rather than to production, these amounts should not be included in the calculations of COP and CV. Accordingly, we have excluded these amounts from G&A expenses and net interest expenses for the final results. However, we have included foreign exchange gains and losses incurred on loans in the calculation of COP and CV, as TIPCO demonstrated that these gains and losses were related to the company's financing activities.

Comment 2: Calculation of Profit for CV

TIPCO argues that the Department failed to include packing in the revenue and cost components of the CV profit calculation. According to TIPCO, the profit realized on sales must be allocated over the entire cost experience, and packing is a component of cost of goods sold.

The petitioner argues that the Department was correct in excluding packing from the profit calculation for TIPCO, because the home market net price and COP net price calculated by the Department did not include packing.

DOC Position: We agree with the petitioner. In the *Preliminary Results*, we calculated the profit rate in the margin program exclusive of packing. Therefore, the profit rate is correctly applied to a cost of manufacturing and general expense amount exclusive of packing. Accordingly, we have not revised the profit calculation for these final results.

Final Results of Review

As a result of our review, we determine that the following margins exist for the period January 11, 1995, through June 30, 1996:

Manufacturer/exporter	Margin (percent)
Siam Food Products Public Company Ltd	12.85
The Thai Pineapple Public Company, Ltd	27.85
Thai Pineapple Canning Industry Corp., Ltd	21.54

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. As discussed above, because the number of transactions involved in this review and other simplification methods prevent entry-by-entry assessments, we have calculated exporter/importer-specific assessment rates. With respect to both EP and CEP sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject

merchandise on each of that importer's entries under the relevant order during the review period. While the Department is aware that the entered value of the reviewed sales is not necessarily equal to the entered value of entries during the POR (particularly for CEP sales), use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided by section 751(a) of the Act: (1) The cash deposit rate for SFP, TIPCO, and TPC will be the rate established above; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less than fair value (LTFV) investigation, the cash deposit will continue to be the company-specific rate published in the final determination of the LTFV investigation; (3) if the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or the LTFV investigation, the cash deposit rate will be 24.64 percent, the "all others" rate established in the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as final reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 3, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–3763 Filed 2–12–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board (CSSPAB) will meet Wednesday, March 4, 1998, and Thursday, March 5, 1998, from 9 a.m. to 5:00 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on March 4 and 5, 1998, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology, Gaithersburg, Maryland in the Administration Building in Lecture Room A.

Agenda

- Welcome and Overview
- Issues Update and Briefings
- Pending Computer Security Legislation Updates
- CIO Briefings
- Information Security Briefing
- Privacy/Health Care Briefing
- Systems Certification Briefing
- Discussion
- Pending Business
- Public Participation
- Agenda Development for June Meeting
- Wrap-Up

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the CSSPAB Secretariat, Information Technology Laboratory, Building 820, Room 426, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001. It would be appreciated if 35 copies of written material were submitted for distribution to the Board and attendees no later than February 23, 1998. Approximately 20 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Roback, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, MD 20899–0001, telephone: (301) 975–3696.

Dated: February 10, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–3766 Filed 2–12–98; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020698C]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT), Groundfish Advisory Subpanel (GAP), Scientific and Statistical Committee Salmon Subcommittee, Scientific and Statistical Committee Economic Subcommittee, Scientific and Statistical Committee Groundfish Subcommittee, and the full Scientific and Statistical Committee (SSC) will hold meetings which are open to the public.

DATES: The meetings will be held on March 2–5, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Doubletree Hotel Portland Downtown, 310 SW Lincoln, Portland, OR 97201; telephone: (503) 221–0450.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Julie Walker, Fishery Management Analyst; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The GAP, the GMT, and the Groundfish Subcommittee of the SSC will meet jointly Monday, March 2, 1998, at 1 p.m. through Wednesday, March 4, at 10 a.m. The GMT will continue meeting Wednesday, March 4, from 10 a.m. to 5 p.m. The Salmon Subcommittee and the Economic Subcommittee of the SSC will meet Tuesday, March 3, at 8 a.m. through Wednesday, March 4, at 10 a.m., and the full SSC will meet Wednesday, March 4, at 10 a.m. through Thursday, March 5, at 5 p.m.

The purpose of the joint GAP, GMT, and Groundfish Subcommittee of the SSC's meeting is to discuss groundfish management and research issues, including but not limited to draft plan amendments to the Pacific Coast Groundfish Fishery Management Plan (including new definitions, essential fish habitat designation, overfishing and maximum sustainable yield control rules, and bycatch provisions), the proposed stock assessment review process, capacity reduction, and fixed gear sablefish management. These groups will address priorities for groundfish research on Wednesday, March 4, from 8 a.m. to 10 a.m. From 10 a.m. to 5 p.m., on Wednesday, March 4, the GMT will hold a work session to revise the draft amendment documents and materials related to the joint meeting.

The Salmon Subcommittee of the SSC will review the Klamath Ocean Harvest Model, Amendment 13 to the Salmon Plan, new Oregon hooking mortality figures, draft plan amendments to the Salmon Plan, possible revisions to the harvest modeling for Sacramento fall chinook, and other items scheduled on the agenda for the full SSC meeting.

The Economic Subcommittee of the SSC will discuss the economic data plan, the groundfish capacity reduction plan, and other items scheduled on the agenda of the full SSC meeting.

The full SSC will discuss the review of 1997 salmon fisheries and summary of 1998 stock abundance estimates, salmon estimation procedures and methodologies, draft plan amendments to the draft coastal pelagic species management plan, the Oregon coastal natural coho rebuilding analysis and progress report, groundfish final provisions for 1998 primary fixed gear sablefish season, groundfish capacity reduction program, and the groundfish stock assessment review process for 1998.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues will not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: February 9, 1998.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–3756 Filed 2–12–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020698B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Brendan P. Kelly, Ph.D., Juneau Center, School of Fisheries and Ocean Sciences, University of Alaska Fairbanks, 11120 Glacier Highway, Juneau, AK 99801 (Co-investigators: Dr Douglas Wartzok and Lori Quakenbush)(File No. 350–1434), has been issued a permit to take ringed seals (*Phoca hispida*) for the purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7721).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On December 17, 1997, notice was published in the **Federal Register** (62 FR 66054) that a request for a scientific research permit to take (i.e., harass) ringed seals had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: February 6, 1998.

Ann D. Terbush

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–3622 Filed 2–12–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020698A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications.

SUMMARY: Notice is hereby given that applications have been submitted in due form for a permit or the amend an existing permit to take marine mammals for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before March 16, 1998.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221); and

Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115–0070 (206/526–6150).

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on these particular requests would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided

the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Applicants

Alaska Fisheries Science Center, National Marine Mammal Laboratory, 7600 Sand Point Way, NE, Seattle, WA 98115 (File No. 782–1446) requests a permit to conduct aerial, ground and boat surveys annually for stock assessment of harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), Steller sea lions (*Eumetopias jubatus*), and northern elephant seals (*Mirounga angustirostris*). California sea lions and harbor seals will be: captured, tagged and branded for long term identification of individuals for information on reproductive success, survival and longevity; blood and biopsy sampled for contaminant analysis; tissue sampled for genetic analysis; and instrumented with VHF radio transmitters and/or time-depth recorders or satellite tags to document movements activity and foraging patterns. Elephant seals will be captured, tagged, marked and released. Animals will be incidentally harassed during these activities and accidental mortalities are requested for each species to be captured. Activities will occur in Washington, Oregon and Alaska.

University of Alaska Museum, 907 Yukon Drive, Fairbanks, AK 99775–6960 (File No. 704–1444) requests a permit to obtain and archive specimens from all species of Cetacea and Pinnipedia (except walrus) for scientific research purposes. Samples will be obtained from marine mammals taken by Alaska Native subsistence hunters, and scientists involved in marine mammal research under other permit. Samples will also be imported and exported.

Alaska Department of Fish and Game, P.O. Box 3–2000, Juneau, AK 99802 (Principal Investigators: Lloyd Lowry, Kathryn Frost, Jonathan Lewis, and Kenneth Pitcher), (File No. P66K) requests an amendment to Permit No. 1000. The original permit authorizes capture, tagging and sampling of harbor seals (*Phoca vitulina*) and spotted seals (*P. largha*) in Alaska. The Permittee wants to amend the permit by increasing the number of animals that may be injected with deuterium oxide, and the number of animals may be incidentally harassed during the conduct of the authorized activities and increased scat collection activities.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 6, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–3623 Filed 2–12–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration (NTIA)

Advisory Committee on Public Interest Obligations of Digital Television Broadcasters; Notice of Open Meeting

February 13, 1998.

ACTION: Notice is hereby given of a meeting of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, created pursuant to Executive Order 13038.

SUMMARY: The President established the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters (PIAC) to advise the Vice President on the public interest obligations of digital broadcasters. The Committee will study and recommend which public interest obligations should accompany broadcasters' receipt of digital television licenses. The President designated the National Telecommunications and Information Administration as secretariat for the Committee.

AUTHORITY: Executive Order 13038, signed by President Clinton on March 11, 1997.

DATES: The meeting will be held on Monday, March 2, 1998 from 8:30 a.m. until 5:00 p.m.

ADDRESSES: The meeting is scheduled to take place at the Annenberg School of Communications of the University of Southern California at 3502 Watt Way, Los Angeles, CA 90089–0281. This location is subject to change. If the location changes, another **Federal Register** notice will be issued. Updates about the location of the meeting will also be available on the Advisory Committee's homepage at www.ntia.doc.gov/pubintadvcom/pubint.htm or you may call Karen Edwards at 202–482–8056.

FOR FURTHER INFORMATION CONTACT: Karen Edwards, Designated Federal Officer and Telecommunications Policy Specialist, at the National Telecommunications and Information Administration; U.S. Department of Commerce, Room 4720; 14th Street and Constitution Avenue, N.W.; Washington, DC 20230. Telephone: 202–482–8056; Fax: 202–482–8058; E-mail: piac@ntia.doc.gov.

Media Inquiries

Please contact Paige Darden at the Office of Public Affairs, at 202–482–7002.

Agenda

Monday, March 2
- Opening remarks
- Briefings by producers on programming and access in the digital age
- Briefings on and discussion of free air time for political candidates
- Committee deliberations
- Public comment
- Committee business
- Closing remarks

This agenda is subject to change. For an updated, more detailed agenda, please check the Advisory Committee homepage at www.ntia.doc.gov/pubintadvcom/pubint.htm.

Public Participation

The meeting will be open to the public, with limited seating available on a first-come, first-served basis. This meeting is physically accessible to people with disabilities. Any member of the public requiring special services, such as sign language interpretation or other ancillary aids, should contact Karen Edwards at least five (5) working days prior to the meeting at 202–482–8056 or at piac@ntia.doc.gov.

Any member of the public may submit written comments concerning the Committee's affairs at any time before or after the meeting. The Secretariat's guidelines for public comment are described below and are available on the Advisory Committee website (www.ntia.doc.gov/pubintadvcom/pubint.htm) or by calling 202–482–8056.

Guidelines for Public Comment

The Advisory Committee on Public Interest Obligations of Digital Television Broadcasters welcomes public comments.

Oral Comment: In general, opportunities for oral comment will usually be limited to no more than five (5) minutes per speaker and no more than thirty (30) minutes total at each meeting.

Written Comment: Written comments must be submitted to the Advisory Committee Secretariat at the address listed below. Comments can be submitted either by letter addressed to the Committee (please place "Public Comment" on the bottom left of the envelope and submit at least thirty-five (35) copies) or by electronic mail to piac@ntia.doc.gov (please use "Public Comment" as the subject line). Written comments received within three (3) workings days of a meeting and comments received shortly after a meeting will be compiled and sent as briefing material to Committee members prior to the next scheduled meeting.

Obtaining Meeting Minutes

Within thirty (30) days following the meeting, copies of the minutes of the meeting may be obtained over the Internet at www.ntia.doc.gov/pubintadvcom/pubint.htm, by phone request at 202–482–8056 or 202–501–6195, by email request at piac@ntia.doc.gov or by written request to Karen Edwards; Advisory Committee on Public Interest Obligations of Digital Television Broadcasters; National Telecommunications and Information Administration; U.S. Department of Commerce, Room 4720; 14th Street and Constitution Avenue N.W.; Washington, DC 20230.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 98–3836 Filed 2–12–98; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Cambodia

February 9, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

A notice published in the **Federal Register** on November 21, 1997 (62 FR 62290) announces that if no solution is agreed upon in consultations between the Governments of the United States and Cambodia on Categories 331/631 the Committee for the Implementation of Textile Agreements may establish a limit for the twelve-month period beginning on October 29, 1997 and extending through October 28, 1998 at a level of not less than 1,250,841 dozen pairs.

Inasmuch as no agreement was reached during consultations on a mutually satisfactory solution, the United States Government has decided to control imports in Categories 331/631 for the period October 29, 1997 through October 28, 1998, as authorized by Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States remains committed to finding a solution concerning Categories 331/631. Should such a solution be reached in consultations with the Government of Cambodia, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 9, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 18, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 331/631, produced or manufactured in Cambodia and exported during the twelve-month period beginning on October 29, 1997 and extending through October 28, 1998, in excess of 1,250,841 dozen pairs[1].

Textile products in Categories 331/631 which have been exported to the United States prior to October 29, 1997 shall not be subject to this directive.

Textile products in Categories 331/631 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–3755 Filed 2–12–98; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after October 28, 1997.

COMMODITY FUTURES TRADING COMMISSION

Applications of the New York Mercantile Exchange for Designation as a Contract Market in Cinergy Electricity Futures and Options and Entergy Electricity Futures and Options, Submitted Under 45-Day Fast Track Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed terms and conditions for applications for contract market designation.

SUMMARY: The New York Mercantile Exchange (NYMEX or Exchange) has applied for designation as a contract market in Cinergy and Entergy electricity futures and option contracts. The proposals were submitted under the Commission's 45-day Fast Track procedures. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before March 2, 1998.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to NYMEX Cinergy and Entergy electricity futures and option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Joseph Storer of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581, telephone (202) 418–5282. Facsimile number: (202) 418–5527. Electronic mail: jstorer@cftc.gov.

SUPPLEMENTARY INFORMATION: The proposed designation applications were submitted pursuant to the Commission's Fast Track procedures for streamlining the review of futures contract rule amendments and new contract approvals (62 F.R. 10434). Under those procedures, the proposals, absent any contrary action by the Commission, may be deemed approved at the close of business on March 23, 1998, 45 days after receipt of the proposals. In view of the limited review period provided under the Fast Track procedures, the Commission has determined to publish for public comment notice of the availability of the terms and conditions for 15 days, rather than 30 days as provided for proposals submitted under the regular review procedures.

Copies of the proposed terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the internet on the CFTC website at www.cftc.gov under "What's Pending."

Other materials submitted by the NYMEX in support of the proposals may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposals, or with respect to other materials submitted by the NYMEX, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on February 6, 1998.

John R. Mielke,

Acting Director.

[FR Doc. 98–3633 Filed 2–12–98; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 97–94–NG]

Androscoggin Energy LLC; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Androscoggin Energy LLC (Androscoggin) long-term authorization to import up to 16.01 billion cubic feet (Bcf) of natural gas per year from Canada. The term of the authorization is for a period of 10 years commencing November 1, 1998, through October 31, 2008, or for 10 years after the commencement of deliveries if deliveries begin after November 1, 1998. This gas may be imported from Canada at the proposed interconnection of the TransQuebec and Maritimes Pipeline and the Portland Natural Gas Transmission System near Pittsburg, New Hampshire.

This order is available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities docket room, 3F–042, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 29, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 98–3722 Filed 2–12–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 98–05–NG]

Tenaska Washington Partners, L.P.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Tenaska Washington Partners, L.P., long-term authorization to import 50,000 MMBtu (approximately 50,000 Mcf) of natural gas per day from Canada commencing on January 28, 1998, and continuing through December 31, 2011. The natural gas will be imported at Sumas, Washington, under a supply arrangement with Puget Sound Energy, Inc.

This order is available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export

Activities docket room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 3, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 98–3723 Filed 2–12–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of General Counsel

Preparation of Report to Congress on Price-Anderson Act

AGENCY: Office of General Counsel, DOE.

ACTION: Notice of inquiry concerning preparation of report to Congress on the Price-Anderson Act; extension of due date for reply comments.

SUMMARY: The Department of Energy is extending until February 25, 1998, the due date for reply comments to a Notice of Inquiry concerning the continuation or modification of the provisions of the Price-Anderson Act.

DATES: Public comments were due on January 30, 1998. Reply comments must be received by February 25, 1998 (an extension from February 13, 1998).

ADDRESSES: Send 5 written copies of reply comments to: U.S. Department of Energy, Office of General Counsel, GC–52, 1000 Independence Ave. SW, Washington, DC 20585. If possible, a copy should also be e-mailed to PAA.notice@hq.doe.gov or provided on computer disk. This Notice, the comments submitted to DOE, and other relevant information will be available on the internet at "www.gc.doe.gov". The comments also may be examined between 9 a.m. and 4 p.m. at the U.S. Department of Energy, Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6020.

FOR FURTHER INFORMATION CONTACT: Ben McRae or Jeanette Helfrich, U.S. Department of Energy, Office of General Counsel, GC–52, 1000 Independence Ave. SW, Washington, DC 20585, (202) 586–6975.

SUPPLEMENTARY INFORMATION: On December 31, 1998, the Department of Energy published a Notice of Inquiry in the **Federal Register** (62 FR 68272) soliciting public comments concerning the continuation or modification of the provisions of the Price-Anderson Act. These comments will assist the Department in the preparation of a report on the Act to be submitted to Congress by August 1, 1998 as required by the Atomic Energy Act. The initial comments were due on January 30, 1998. In addition, reply comments on the initial comments were due on February 13, 1998.

Several of the initial comments indicated the comment period should be longer because of the complex legal and policy issues raised by the Notice of Inquiry. In response to these requests for a longer comment period, the Department has decided to change the due date for reply comments from February 13, 1998, to February 25, 1998. This extension will provide more time for the preparation of reply comments.

Issued in Washington, DC on February 9, 1998.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 98–3721 Filed 2–12–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC98–549–001 FERC–549]

Information Collection Submitted for Review and Request for Comments

February 9, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of October 2, 1997 (62 FR 51648) and has made this notation in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before March 16, 1998.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 726 Jackson Place, N.W., Washington, D.C. 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Division of Information Services, Attention: Mr. Michael Miller, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–549 "Gas Pipeline Rates: NGPA Title III and NGA Blanket Certificate Transactions".
2. *Sponsor:* Federal Energy Regulatory Commission.
3. *Control No.:* OMB No. 1902–0086. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is no change to the reporting burden. These are mandatory collection requirements.
4. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of Sections 311 and 312 Natural Gas Policy Act (NGPA) and Section 7 of the Natural Gas Act (NGA). The reporting requirements for implementing these provisions are contained in 18 Code of Federal Regulations (CFR) part 284. Under Part 284 of the Commission's regulations noninterstate pipelines that perform transportation service under NGPA section 311 (intrastate pipelines) or blanket certificates issued under Section 7 of the NGA (Hinshaw pipelines) are required to file an annual report containing specific details of each transaction initiated during the reporting year. Interstate pipelines performing unbundled sales service under a blanket certificate granted under part 284 of the regulations are required to file an annual report detailing specific information on each transaction initiated during the reporting year. Following approval of the initial filing, the individual

transactions commence on a self-implementing basis without case-by-case prior Commission determination. The information collected in these reports is used by the Commission to monitor the jurisdictional transportation activities of intrastate and Hinshaw pipelines and the unbundled sales activities of interstate natural gas pipelines.

5. *Respondent Description:* The respondent universe currently comprises on average, 90 respondents.

6. *Estimated Burden:* 795 total burden hours, 90 respondents, 1 response annually, 8.83 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 795 hours ÷ 2,088 hours per year × $109,889 per year = $41,840, average cost per respondent = $465.

Statutory Authority: Sections 311(a), 311(b), and 318 of the Natural Gas Policy Act (NGPA), 15 U.S.C. Sections 3371–3372; Section 7 of the Natural Gas Act (NGA) 15 U.S.C. 717–717w.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3708 Filed 2–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–171–012]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

February 10, 1998.

Take notice that on February 5, 1998, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Eighth Revised Sheet No. 10 to be effective November 1, 1997.

ANR states that the purpose of this filing is to comply with the Commission's January 21, 1998 Letter Order in this proceeding. That Order directed ANR to state in its tariff the Maximum Daily Capacity Release Rates for the storage service provided under ANR's Rate Schedule FSS.

ANR states that copies of the filing have been mailed to all affected customers and State regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commissions Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3711 Filed 2–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3189–013]

Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, Potomac Electric Power Company, and Public Service Electric and Gas Company; Notice of Filing

February 9, 1998.

Take notice that on January 26, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (collectively, and each doing business as GPU Energy), submitted a compliance filing pursuant to ordering paragraph P of the Commission's November 25, 1997, order in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 20, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3653 Filed 2–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3189–013]

Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, Potomac Electric Power Company, and Public Service Electric and Gas Company; Notice of Filing

February 9, 1998.

Take notice that on January 26, 1998, PP&L, Inc., tendered its compliance filing as required by Ordering Paragraph (P) of the Commission's order in Pennsylvania-New Jersey-Maryland Interconnection, 81 FERC ¶ 61.257 (1997).

PP&L states that copies of this filing have been served on the PJM Office of Interconnection, and on the PP&L customers under the bilateral transmission service agreements that are identified in the compliance filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 20, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3654 Filed 2–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–3189–013 and ER98–1608–000]

Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, Potomac Electric Power Company, Public Service Electric and Gas Company and Delmarva Power & Light Company; Notice of Filing

February 9, 1998.

Take notice that on January 26, 1997, Delmarva Power & Light Company of Wilmington, Delaware, tendered for filing its compliance report pursuant to Ordering Paragraphs P and T the Commission's November 25, 1997, order in Docket Nos. OA97–261–000 and ER97–1082–000, et al. (81 FERC ¶61,257 at 62,283).

Delmarva states that copies of the filing were served on the affected utilities, the Delaware Public Service Commission, Maryland Public Service Commission, and the Virginia State Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 20, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3655 Filed 2–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–3189–013 and ER98–1609–000]

Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, Potomac Electric Power Company, Public Service Electric and Gas Company and Atlantic City Electric Company; Notice of Filing

February 9, 1998.

Take notice that on January 26, 1998, Atlantic City Electric Company of Egg Harbor Township, New Jersey, tendered for filing its compliance report pursuant to Ordering Paragraphs P and T of the Commission's November 25, 1997, order in Docket Nos. OA97–261–000 and ER97–1082–000, et al., 81 FERC ¶61,257 and 62,283.

Atlantic states that copies of the filing have been served on the affected utility and the New Jersey Board of Public Utilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 20, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3656 Filed 2–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–3189–013 and ER97–1621–000]

Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, Potomac Electric Power Company, Public Service Electric and Gas Company, and Atlantic City Electric Company; Notice of Filing

February 9, 1998.

Take notice that on January 26, 1998, Atlantic City Electric Company submitted its compliance filing as required by Ordering Paragraphs (P) and (T) of the Commission's Order in Pennsylvania-New Jersey-Maryland Interconnection, *et al.*, 81 FERC ¶61,257 (1997).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 20, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to be become a party must file motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3657 Filed 2–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–459–001]

Bangor Energy Resale, Inc.; Notice of Filing

February 9, 1998.

Take notice that on January 16, 1998, Bangor Energy Resale, Inc., tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 20, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3658 Filed 2–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–96–001]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

February 10, 1998.

Take notice that on February 6, 1998, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets proposed to be effective February 1, 1998:

Second Revised Volume No. 1

Substitute Third Revised Sheet No. 10
Substitute Second Revised Sheet No. 10A
Substitute Fourth Revised Sheet No. 13
Substitute Second Revised Sheet No. 40A

Original Volume No. 2

Substitute Third Revised Sheet No. 220
Substitute Third Revised Sheet No. 243
Substitute Third Revised Sheet No. 265
Substitute Sixth Revised Sheet No. 291
Substitute Fourth Revised Sheet No. 601

Great Lakes states that the tariff sheets are being filed in compliance with the Commission's Order of January 30, 1998, in the above-named proceeding. 82 FERC ¶ 61,076 (1998). The order required Great Lakes to submit tariff sheets reflecting the necessary modifications to sheets filed by Great Lakes on December 23, 1997 in a tariff filing proposing to implement numerous procedural, operational, and administrative changes.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Copies of this filing are on file with the Commission and are available for public inspection in the Commission's Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3712 Filed 2–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–373–000]

Koch Gateway Pipeline Company; Notice Rescheduling Informal Settlement Conference

January 9, 1998.

Take notice that the informal settlement conference scheduled to convene in this proceeding on February 10, 1998 has been canceled and rescheduled for February 24, 1998, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Edith A. Gilmore at (202) 208–2158 or Sandra J. Delude at (202) 208–0583.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3660 Filed 2–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–128–000]

Midcoast Interstate Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

February 10, 1998.

Take notice that on February 6, 1998, Midcoast Interstate Transmission, Inc. (MIT) tendered for filing in its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective October 1, 1997:

SUB. 15th Revised Sheet No. 4

MIT states that the purpose of the filing of the Revised Tariff Sheet is to reflect correctly the ACA unit amount that the Commission has previously determined to be applicable to it.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3713 Filed 2–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–67–004]

Montaup Electric Company; Notice of Filing

February 9, 1998.

Take notice that on August 13, 1997, Montaup Electric Company, tendered for filing revised Attachments E & I to the Service Agreements in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888

First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 384.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 20, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3661 Filed 2–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–64–010]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

February 10, 1998.

Take notice that on February 4, 1998, Natural Gas Pipeline company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 247B, to be effective on November 1, 1997.

Natural states that the purpose of this filing is to rectify an inadvertent omission of text in Section 8.5(d) of its General Terms and Conditions.

Natural states that copies of the filing have been mailed to Natural's customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP97–64.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commissions Rules and Regulations. All such protests must be filed as provide in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3710 Filed 2–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG98–5–000]

Texas Gas Transmission Corporation; Notice of Filing

February 10, 1998.

Take notice that on January 29, 1998, Texas Gas Transmission Corporation (Texas Gas) filed revised standards of conduct to incorporate changes to its list of marketing affiliates.

Texas Gas states that it has served copies of its revised standards of conduct upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before February 25, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3709 Filed 2–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–653–000]

UtiliCorp United, Inc.; Notice of Filing

February 9, 1998.

Take notice that on July 14, 1997, UtiliCorp United, Inc., tendered for filing its amended revised open access transmission tariffs in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 20, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3662 Filed 2–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP92–236–012]

Williston Basin Interstate Pipeline Company; Notice of Refund Report

February 9, 1998.

Take notice that on January 30, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, tendered for filing with the Commission, its Refund Report made in compliance with the Commission's Letter Order issued December 10, 1997, in Docket No. RP92–236–009.

Williston Basin states that on December 31, 1997, additional refunds of amounts owed to shippers and/or invoices for amounts owed to Williston Basin were mailed to Williston Basin's shippers in connection with rates that were in effect from June 1, 1992 through December 31, 1995 with interest calculated through December 31, 1997, in accordance with Section 154.501 of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before February 11, 1998. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of his filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3659 Filed 2–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Sutter Power Plant and Transmission Line Project, California

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: In accordance with Section 102(2) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332, Western Area Power Administration (Western) intends to prepare an environmental impact statement (EIS) regarding the proposal by the Calpine Corporation (Calpine) to construct an electric generating facility and associated 230-kilovolt (kV) transmission line, approximately 3.5 miles in length, known as the Sutter Power Plant (SPP). Calpine has approached Western concerning an interconnection with Western's Keswick-Elverta and Olinda-Elverta Double-Circuit 230-kV Transmission Line. Because of the potential for incorporating new generation into Western's system, along with potential changes in the existing system, Western has determined to prepare an EIS, in accordance with U.S. Department of Energy's (DOE) NEPA Implementing Procedures, 10 CFR 1021, Appendices D5 and 6 to Subpart D. The California Energy Commission (CEC) is responsible for permitting the proposed SPP. The CEC responsibilities are similar to those of a lead agency under the California Environmental Quality Act (CEQA). In the spirit of the regulations of the Council on Environmental Quality (CEQ) implementing NEPA (40 CFR 1501.5(b)), Western and CEC will act as "joint lead agencies" for purposes of satisfying the requirements of NEPA and CEQA, respectively. In this notice, Western and CEC announce intentions to prepare an EIS and hold a public scoping meeting for the proposed project. Western's scoping will include notification of the public and Federal, State, local, and tribal agencies of the proposed action, and identification by the public and agencies of issues and reasonable alternatives to be considered in the EIS.

DATES: The scoping meeting will be Tuesday, March 3, 1998, beginning at 10 a.m. The meeting will be held at the Veterans Memorial Community Building, 1425 Circle Drive, Yuba City, California, 95993. Written comments on the scope of the EIS for the proposed SPP should be received no later than May 5, 1998. Comments on the project will be accepted throughout the NEPA process.

FOR FURTHER INFORMATION CONTACT: If you are interested in receiving future information or wish to submit written comments, please call or write Loreen McMahon, Project Manager, Western Area Power Administration, Sierra Nevada Customer Service Region, 114 Parkshore Drive, Folsom, California, 95630–4710, (916) 353–4460, FAX: (916) 985–1930, E-mail: mcmahon@wapa.gov. Comments may also be sent to Paul Richins, Project Manager, Energy Facilities Siting and Environmental Protection Division, California Energy Commission, 1516 Ninth Street, MS–15, Sacramento, California 95814, (916) 654–4074, E-mail: prichins@energy.state.ca.us. For general information on DOE's NEPA review procedures or status of a NEPA review, contact Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: Calpine proposes to construct the SPP on lands it owns north of Sacramento, California. The SPP will be a "merchant plant." SPP will not be owned by a utility nor by a utility affiliate selling power to its utility, nor is it supported by a long-term power purchase agreement with a utility. The SPP will instead sell power on a short and mid-term basis to customers and the on-the-spot market. Power purchases by customers will be voluntary, and all economic costs will be borne by Calpine.

The SPP project consists of a nominal 500 megawatt (MW) net electrical output natural gas-fired, combined cycle generating facility, a 230-kV switching station, and 3.5 miles of new 230-kV transmission line to connect with Western's Keswick-Elverta and Olinda-Elverta Double-Circuit 230-kV Transmission Line at some point south and west of the plant. A new 12-mile natural gas pipeline will be constructed to provide fuel for the project. The 16-inch gas pipeline will connect to an existing Pacific Gas and Electric natural gas supply line located to the west of the facility site. Potable water and cooling water will be provided by an on-site well system that will be developed as part of the project. It is expected that three wells will be developed to provide about 3,000 gallons per minute of water that will be needed during peak operating conditions. Sanitary waste will be treated on-site. The treated and other waste water generated in the operation of the plant will be discharged to an existing surface drainage system, requiring a National Pollutant Discharge Elimination System Permit.

The SPP will be located in Sutter County, California, on a portion of Calpine owned 77-acre parcel of land that contains a 49.5 MW cogeneration plant. Yuba City, California, is about 7 miles to the northeast; Oswald, California, is about 3.5 miles to the east; and Sacramento, California, is about 36 miles to the southeast of the proposed project site. The land surrounding the project area is farmland used to grow rice, walnuts, almonds, and other orchard crops.

Western was approached by Calpine to consider providing an outlet for the power produced by the SPP. Since this would require Western to make facility additions to its existing system to incorporate additional power from new generation, Western is required by the DOE's NEPA Implementing Procedures to prepare an EIS on the potential environmental impacts of this proposal. Western, therefore, agreed to be the lead Federal Agency, as defined at 40 CFR 1501.5. However, because the CEC has licensing responsibilities, Western has agreed to be a joint lead with the CEC and to utilize their expertise in siting issues.

The purpose of the CEC's Energy Facilities Siting and Environmental Protection Division (Division) is to ensure that needed energy facilities are authorized according to this process in an expeditious, safe, and environmentally acceptable manner. In addition, the Division prepares all environmental documentation for the CEC as required by CEQA. To attain its objectives, the Division maintains a staff of experts in more than 20 environmental and engineering disciplines. The Division's range of technical expertise allows it to perform balanced, totally independent evaluations of complex and controversial projects.

Western and the CEC will carefully examine public health and safety,

environmental impacts, and engineering aspects of the proposed power project, including all related facilities, such as electric transmission and natural gas lines. The permitting process is open to the public and includes input from the public and all interested parties as well as consultations with other Federal, State, local, and tribal agencies. The review process was initiated when Calpine filed an Application for Certification (AFC) with the CEC on December 15, 1997. On January 21, 1998, the CEC accepted the AFC as complete which begins a 1-year review process. General information on the CEC facility siting process and the SPP can be found on the CEC's Internet web site (http://www.energy.ca.gov/sitingcases/sutterpower). Since the project site is currently zoned for agricultural uses, Calpine will request Sutter County to permit a rezone of the 77-acre parcel to a planned development site, thus allowing industrial use. Western, CEC, and Sutter County reviews will occur concurrently.

The EIS will be prepared in accordance with the requirements of CEQ's NEPA implementing regulations (40 CFR 1500–1508) and DOE's NEPA Implementing Procedures (10 CFR 1021). Full public participation and disclosure are planned for the entire EIS process. It is anticipated that the EIS process will take 12 months and will include public information/scoping meetings; coordination and involvement with appropriate Federal, State, local, and tribal government agencies; public review and hearings on the published draft EIS; a published final EIS; a review period; and publication of a record of decision (ROD). Public information and scoping meetings will begin March 3, 1998. Publication of the ROD is anticipated in the fall of 1998.

Dated: February 5, 1998.

Michael S. Hacskaylo,

Acting Administrator.

[FR Doc. 98–3724 Filed 2–12–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5488–8]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed February 02, 1998 Through February 06, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980028, DRAFT EIS, COE, CA, Yuba River Basin Investigation Study, Flood Protection, Also Portions of the Feather River Basin below Oroville Dam, City of Maryville Yuba County, CA, Due: March 30, 1998, Contact: Jane Rinck (916) 557–6715.

EIS No. 980029, DRAFT EIS, COE, GA, Latham River/Jekyll Creek Environmental Restoration Project (Section 1135), To Establish the Without Project Condition, Atlantic Intracoastal Waterway (AIWW), Glynn County, GA, Due: March 30, 1998, Contact: William Bailey (912) 652–5781.

EIS No. 980030, DRAFT EIS, TVA, MS, Red Hills Power Project, Proposal to Purchase 440 megawatts (MW) of Electrial Energy, COE Section 404 Permit, Town of Ackerman, Choctaw County, MS, Due: March 30, 1998, Contact: Charles P. Nicholson (423) 632–3582.

EIS No. 980031, DRAFT EIS, BLM, NV, Trenton Canyon Mining Project, Construction, Operation and Expansion, Plan of Operation, Valma and North Peak Deposits, Humboldt and Lander Counties, NV, Due: April 14, 1998, Contact: Rodney Herrick (702) 623–1500.

EIS No. 980032, DRAFT EIS, COE, CA, Oakland Harbor Inner and Outer Deep Navigation (-50 Foot) Improvement Project, Implementation, Feasibility Study, Port of Oakland, Alameda and San Francisco Counties, CA, Due: March 30, 1998, Contact: Gail Staba (510) 272–1479.

EIS No. 980033, FINAL EIS, FHW, RI, Rhode Island Northeast Corridor Freight Rail Improvement Project, Major Investment Study, Implementation, Boston Switch in Central Falls to the Quonset Point/Davisville Industrial Park in North Kingtown, Funding, COE Section 10 and 404 Permits, Providence County, RI, Due: March 16, 1998, Contact: Ralph J. Rizzo (401) 528–4548.

EIS No. 980034, DRAFT SUPPLEMENT, NPS, CA, Santa Rosa Island Resources Management Plan, Improvements of Water Quality and Conservation of Rare Species and their Habitats, Channel Islands National Park, Santa Barbara County, CA, Due: March 30, 1998, Contact: Alan Schmierer (415) 427–1441.

EIS No. 980035, FINAL SUPPLEMENT, SCS, WV, North Fork Hughes River Watershed Plan, Installation of a Multi-purpose Roller Compacted Concrete Dam, Implementation and Funding, Flood Protection and COE Section 404 Permits, Ritchie County, WV, Due: March 16, 1998, Contact: Paul S. Dunn (304) 291–4153.

EIS No. 980036, DRAFT SUPPLEMENT, USA, TT, Theater Missile Defense (TMD) Extended Test Range (ETR) Project, Eglin Gulf Test Range to Conduct (TMD Testing or Training Activities, Santa Rosa Island and Cape San Blas, FL, Due: April 03, 1998, Contact: Linda Ninh (850) 882–6499.

Dated: February 10, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–3767 Filed 2–12–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5488–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 26, 1998 through January 30, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D–AFS–J65278–CO Rating EC2, South Quartzite Timber Sale, Timber Harvesting and Road Construction, White River National Forest, Rifle Ranger District, Grizzly Creek Rare II Area, Garfield County, CO.

Summary: EPA requested additional information related to helicopter yarding procedures and snag preservation in the project area.

ERP No. D–AFS–J65280–MT Rating EC2, Meadow Timber Sales, Implementation, Timber Harvesting, Road Construction and Prescribed Burning, Fortine Ranger District, Kootenai National Forest, Lincoln County, MT.

Summary: EPA expressed environmental concerns regarding existing degraded riparian habitat and water quality in the project area, particularly the North Fork of Meadow Creek. EPA believed additional information is needed to fully assess and mitigate all potential impacts of the management actions.

ERP No. D–AFS–L65202–AK Rating EC2, Crystal Creek Timber Harvest,

Implementation the 1997 Tongass Land Management Plan, Stikine Area, Tongass National Forest, AK.

Summary: EPA is concerned with the lack of specificity in how the existing Thomas Bay LTF would be reconstructed and operated with the implementation of any of the proposed action alternatives.

ERP No. D–BLM–J70019–WY Rating EU2, Jonah Field II Natural Gas Development Project, Exploration, Development and Production, Applications for Permit to Drill, Right-of-Way Grant, COE Section 404 Permit and NPDES Permit, Pinedale Resource Area and Green River Resource Area, Rock Spring District, Sublette County, WY.

Summary: EPA identified the potential adverse impacts to air to be environmentally unsatisfactory. EPA believed that there are reasonably available alternatives to the proposed action which could reduce the predicted environmental impact.

ERP No. D–NPS–L61215–OR Rating LO, rater Lake National Park, New Concession Contract for Visitor Services Plan, Implementation, OR.

Summary: EPA Region 10 used a screening tool to conduct a limited review of the Visitor Services Plan for Crater Lake National Park. Based upon the screen, EPA does not foresee having any environmental objections to the proposed project. Therefore, EPA will not be conducting a detailed review.

ERP No. D–NPS–L61217–OR Rating LO, Oregon Caves National Monument, General Management Plan, Development Concept Plan, Josephine County, OR.

Summary: EPA Region 10 used a screening tool to conduct a limited review of the Oregon Caves national Monument General Management Plan. Based upon the screen, EPA does not foresee having any environmental objections to the proposed project. Therefore, EPA will not be conducting a detailed review.

Final EISs

ERP No. F–AFS–L65281–ID, White Pine Creek Timber Sale, Implementation, Clearwater National Forest, Palouse Ranger District, Benewah and Latah Counties, ID.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory.

ERP No. F–AFS–L65283–WA, Long Draw Salvage Sale, Implementation, Okanogan National Forest, Tonasket Ranger District, Okanogan County, WA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–J31025–WY, Greybull Valley Irrigation District Dam and Reservoir Project, Issuance of Right-of-Way Permit and COE Section 404 Permit, Park County, WY.

Summary: EPA continued to express concerns with the lack of of the mitigation plan and suggested water quality monitoring be conducted and documented.

ERP No. F–USN–K11079–CA, Fleet and Industrial Supply Center/Vision 2000 Maritime Development, Disposal and Reuse, Funding, NPDES Permit, COE Section 10 and 404 Permits, City of Oakland, Alameda County, CA.

Summary: EPA continues to have concerns regarding possible contaminated dredge material and the proposed region of influence. Clarification of the issues was requested in the Record of Decision.

ERP No. FS–NOA–E86002–00, Snapper Grouper Fishery, Amendment 8 to the Fishery Management Plan, Regulatory Impact Review, South Atlantic Region.

Summary: EPA had no objection to the action as proposed.

Dated: February 10, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–3768 Filed 2–12–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[PF–786A; FRL–5768–9]

Notice of Filing; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: In the **Federal Register** of January 9, 1998 (63 FR 1457) (FRL–5762–6) EPA issued pesticide petition filing (PP) 7F4881. The petition was submitted by BASF Corporation and proposed that EPA establish a tolerances for residues of certain pesticide chemicals in or on various food commodities. EPA is correcting PP 7F4881 to add information that was inadvertently omitted from the original publication. EPA is also establishing a new comment period for this petition to allow the required 30 days.

DATES: Comments, identified by the docket control number PF–786A, must be received on or before March 16, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: Marion Johnson (PM 10), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 217, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-6788, e-mail: johnson.marion@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In FR Doc. 98-557, in the issue for Friday, January 9, 1998, at page 1457, in the third column, item "1. BASF Corporation," the first full paragraph is corrected to read as follows:

EPA has received a pesticide petition (PP 7F4881) from BASF Corporation, Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of Pridaben, [2 tert-butyl-5(4-tert-butylbenzylthio)-4-chloropyridazin-3(2*H*)-one] in or on the raw agricultural commodities: peaches and nectarine at 2.4 parts per million (ppm), plum and prune (fresh) at 0.7 ppm; prune dried at 2.2 ppm; cherry and apricot at 0.05 ppm; grape at 1.4 ppm and tree nut crops at 0.05 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 2, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–3586 Filed 2–12–98; 8:45 a.m.]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Amendment to Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on February 9, 1998 (63 FR 6568) of the regular

meeting of the Farm Credit Administration Board (Board) scheduled for February 12, 1998. This notice is to amend the agenda by revising the open session items of that meeting.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board were open to the public (limited space available), and parts of this meeting were closed to the public. The agenda for February 12, 1998, is amended by revising the open session to read as follows:

Open Session

A. *Approval of Minutes*
B. *New Business*
1. *Regulation*
—Organization; Balloting and Stockholder Reconsideration Issues [12 CFR Part 611] (Proposed)
2. *Other*
—FCA Year 2000 Compliance

Dated: February 11, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–3880 Field 2–11–98; 12:24 p.m.]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:20 a.m. on Tuesday, February 10, 1998, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Acting Chairman Andrew C. Hove, Jr., seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Director Joseph H. Neely (Appointive), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: February 10, 1998.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 98–3851 Filed 2–11–98; 12:23 pm]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Consultation with local officials to assure compliance with sections 110 and 206 of the Flood Disaster Protection Act of 1973 (Revisions to National Flood Insurance Program Maps).

Type of Information Collection: Reinstatement.

OMB Number: 3067–0148.

Abstract: These following certification forms (referred to as MT–2 series forms) will provide FEMA with assurances that all pertinent data relating to revisions to effective Flood Insurance Studies (FIS) are included in the submittal of requests for revisions. FEMA uses the information to review the assumptions made, parameters used, and results on technical accuracy, and to ensure that the FIS, Flood Insurance Rate Map (FIRM), and Flood Boundaries and Floodway Maps (FBFM) are included with the initial submittal.

FEMA Form 81–89, Revision Requester and Community Official Form—This form describes the location of the revision request, what is being requested, and which forms are required for the request.

Certification by Registered Professional Engineer and/or Land Surveyor—NFIP regulations require that scientific or technical data that is submitted in support of a revision request be certified by a registered professional engineer or land surveyor depending on the type of data being submitted. This allows a registered professional engineer or land surveyor to certify that the submitted data is correct to the best of his/her knowledge.

FEMA Form 81.89A, Credit Card Information—This form outlines the information required to process a request when the requester is paying by credit card.

FEMA Form 81–89B, Hydrologic Analysis Form—If a revision request is based on revised flood discharges, the requester must submit a revised hydrologic analysis. This form will allow FEMA to efficiently review the assumptions made, parameters used, and results on technical accuracy.

FEMA Form 81–89C, Riverine Hydraulic Analysis Form—If a revision request is based on improved hydrologic data/analysis, improved hydraulic analysis, or physical changes to the hydraulics of the flooding source, NFIP regulations require the revision requester to submit a hydraulic analysis. This form will allow FEMA to efficiently review the assumptions made, parameters used, and results for technical accuracy. In addition, the form ensures that the required hydraulic models to revise the FIS, FIRM, and FBFM are included with the initial submittal.

FEMA Form 81–89D, Riverine/Coastal Mapping Form—This form ensures that everything required to be shown on the requester's topographic work map in order to revise the FIRM and FBFM is included with the initial submittal. In addition, the NFIP regulations section 44 CFR 65.6(a)(6) requires that fill placed in a SFHA meet certain criteria. This form ensures that the fill was placed in accordance with the aforementioned NFIP regulations.

FEMA Form 81–89E, Channelization Form—If a submitted revision request includes a channelization project, this form must be completed. This form describes the channelization project and its impacts on the 100-year water-surface elevation.

FEMA Form 81–81–89F, Bridge/Culvert Form—If a submitted revision request includes a bridge or culvert, this form must be completed. This form describes the bridge or culvert and its impacts on the 100-year water-surface elevation.

FEMA Form 81–89G, Levee/Floodwall System Analyses Form—If a submitted revision request includes a levee or floodwall, this form must be completed. NFIP regulations section 44 CFR 65.10 requires that levees being credited with providing protection from a 100-year flood event meet certain criteria. This

form ensures that the levee was constructed in accordance with the aforementioned NFIP regulations.

FEMA Form 81–89H, Coastal Analysis Form—If a revision request is based on improved coastal analysis or physical changes to the coastal area, the requester must submit a revised coastal analysis. This form will allow FEMA to efficiently review the assumptions made, parameters used, and results for technical accuracy.

FEMA Form 81–89I, Coastal Structures Form—If a submitted revision request involves a coastal structure, this form must be completed. This form describes the coastal structure and its impacts on the 100-year flood elevations.

FEMA Form 81–89J, Dam Form—If a submitted revision request involves a dam, this form must be completed. This form describes the dam and its impacts on the 100-year flood elevations.

FEMA Form 81–89K, Alluvial Fan Flooding Forms—If a submitted revision request involves alluvial fan flooding, this form must be completed. NFIP regulations section 44 CFR 65.13 requires that certain analyses be performed for alluvial fan flooding. This form ensures these analyses are performed and allows the results of the analyses to be reviewed efficiently.

Affected Public: State, Local, or Tribal Government; Individuals or household; Businesses or other for profit.

Number of Respondents: 900.

Estimated Time per Respondent: 7.86.

Estimated Total Annual Burden Hours: 7,074.

Frequency of Response: On occasions.

Comments: Interested persons are invited to submit written comments on the proposed information collection to Victoria Wassmer, Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 on or before March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

Dated: February 4, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98–3744 Filed 2–12–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Progress Report.

Type of Information Collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0151.

Abstract: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288, as amended) authorizes the President to provide assistance to individuals and to State and local governments to help them to respond and recover from a disaster. In order to receive Federal assistance (i.e., Federal grants) States and local officials and officials of eligible private nonprofit organizations who have a responsibility for response to a major disaster and for the restoration of facilities in the aftermath of such events must provide information to FEMA. The information is required in accordance with FEMA regulations 44 CFR 206.204(f) and guidance published in FEMA 286, Public Assistance Guide.

Public Assistance grants are awarded to States eligible for Federal disaster assistance. FEMA regulation 44 CFR part 13, Uniform Requirements for Grant and Cooperative Agreements to State and Local Governments, places certain requirements on the State in its role as grantee for the Public Assistance Program, which includes monitoring and reporting program/project performance. States are required to submit progress reports on a quarterly basis which describe the status of those projects and any problems or circumstances expected to result in noncompliance with the approved grant conditions.

Affected Public: Not for profit institutions; State, Local and Tribal Governments.

Number of Respondents: 25.

Estimated Time per Respondent: 1.

Estimated Total Annual Burden Hours: 125.

Frequency of Response: Quarterly and Final.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to Victoria Wassmer, Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 on or before March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

Dated: February 6, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98–3745 Filed 2–12–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: National Fire Academy Executive Fire Officer Program Application for Admission.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0194.

Form(S): FEMA Form 95–22, Application for Admission

Abstract: FEMA Form 95–22, National Fire Academy Executive Fire Officer Program, Application for Admission is used by senior level executive fire officers to apply to the Executive Fire Officer Program. FEMA uses the application form to select the best qualified applicants for admission to the program.

Affected Public: State, Local or tribal Government.

Number of Respondents: 300.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 300.

Frequency of Response: On occasion.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to Victoria Wassmer, Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 on or before March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

Dated: February 6, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98–3746 Filed 2–12–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Report to Submit Technical or Scientific Data to Correct Mapping Deficiencies Unrelated to Community-Wide Elevation Determinations

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0257.

FEMA Form: 81–92, Application For Single Residential Lot or Structure Amendments and Revision to National Flood Insurance Program Maps.

Abstract: The certification form (also referred to as MT–EZ) is designed to assist requesters in gathering information that FEMA needs, to determine whether a single residential lot or structure is likely to be flooded during a flood event, that has a one-percent chance of being equaled or exceeded in any given year (base flood).

Affected Public: Individuals or households.

Number of Respondents: 5854.

Estimated Time per Respondent: 2.4 hours.

Estimated Total Annual Burden Hours: 14,050.

Frequency of Response: On occasion.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to Victoria Wassmer, Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

Dated: February 4, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98–3747 Filed 2–12–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1202–DR]

New Mexico; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Mexico (FEMA–1202–DR), dated January 29, 1998, and related determinations.

EFFECTIVE DATE: January 29, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 29, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of New Mexico, resulting from a severe winter storm on December 22–25, 1997, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Prb. Law 93–288 as amended, ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of New Mexico.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert E. Hendrix of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Mexico to have been affected adversely by this declared major disaster:

Chaves, DeBaca, Eddy, Guadalupe, Lincoln, Mora, Quay, Torrance, and Union Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 98–3742 Filed 2–12–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1202–DR]

New Mexico; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Mexico, (FEMA–1202-DR), dated January 29, 1998, and related determinations.

EFFECTIVE DATE: February 4, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New Mexico, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 29, 1997:

Roosevelt County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–3743 Filed 2–12–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1200–DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA–1200–DR), dated January 15, 1998, and related determinations.

EFFECTIVE DATE: February 4, 1998

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster which was closed effective January 21, 1998, is now reopened to allow for additional damage resulting from continuing severe storms. The incident period for this declared disaster is January 7, 1998, and continuing.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–3741 Filed 2–12–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 27, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Kennon R. Patterson, Sr., Boaz, Alabama; to acquire additional voting shares of Community Bancshares, Inc., Blountsville, Alabama, and thereby indirectly acquire Community Bank, Blountsville, Alabama.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Pethinaidu Veluchamy, and Parameswari Veluchamy, both of Oak Brook, Illinois; to each acquire additional voting shares of First Mutual Bancorp of Illinois, Inc., Harvey, Illinois, and thereby indirectly acquire Mutual Bank, Harvey, Illinois.

Board of Governors of the Federal Reserve System, February 9, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3651 Filed 2–12–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 3, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Donald H. Schafer, Chebanse, Illinois; to acquire additional voting shares of Federated Bancorp, Inc., Loda, Illinois, and thereby indirectly acquire Federated Bank, Onarga, Illinois.

Board of Governors of the Federal Reserve System, February 10, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3760 Filed 2–12–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval,

pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 9, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Glacier Bancorp, Inc., Kalispell, Montana; to merge with HUB Financial Corporation, Helena, Montana, and thereby indirectly acquire Valley Bank of Helena, Helena, Montana.

Board of Governors of the Federal Reserve System, February 9, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3650 Filed 2–12–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 13, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. United Community Bancshares, Inc., Gonzales, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of United Community Bank (in organization), Gonzales, Louisiana.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. LB Bancorp, Inc., Milwaukee, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Liberty Bank, Milwaukee, Wisconsin.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. The International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Kansas City, Kansas; to acquire up to 47.5 percent of the voting shares of Brotherhood Bancshares, Inc., Kansas City, Kansas; and thereby indirectly acquire Brotherhood Bank & Trust Company, Kansas City, Kansas.

Board of Governors of the Federal Reserve System, February 10, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3759 Filed 2–12–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, February 18, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 11, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3823 Filed 2–11–98; 10:00 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS) Joint meeting of the Subcommittee on Population-Specific Issues and the Subcommittee on Health Data Needs, Standards and Security.

Times and dates: 9:00 a.m.–5:00 p.m., March 2, 1998.

Place: Multipurpose Room, Central Building, Health Care Financing Administration, 7500 Security Boulevard, Baltimore, Maryland.

Status: Open.

Purpose: The Subcommittee will continue to assess the current status of data collection

efforts relating to post acute care. Presentations are planned regarding current data collection and analysis efforts by selected post acute care settings, including nursing home, rehabilitation and home health settings. Future plans for data collection, analysis and integration also will be discussed.

CONTACT PERSON FOR MORE INFORMATION: Substantive program information as well as a roster of committee members may be obtained from Carolyn Rimes, Lead Subcommittee Staff, Health Care Financing Administration, DHHS, 7500 Security Boulevard, C–3–21–06, Baltimore, Maryland 21244–1850, telephone (410) 786–6620, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Additional information about the full Committee is available on the NCVHS website, where the tentative agenda for the Subcommittee meeting will also be posted when available: http://aspe.os.dhhs.gov/ncvhs

Dated: February 9, 1998.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 98–3699 Filed 2–12–98; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–98–2]

Fiscal Year 1998 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications to carry out the functions of a National Center on Elder Abuse.

SUMMARY: The Administration on Aging announces that it will hold a cooperative agreement/grant award competition under this program announcement for a National Center on Elder Abuse. The deadline date for the submission of applications is April 20, 1998. Public and/or nonprofit agencies, organizations, and institutions are eligible to apply under this program announcement. To be considered for funding, however, Center applicants must demonstrate a proven track record of expert knowledge concerning the operation and organization of elder abuse programs at national, state, and local levels, as well as the requisite organizational capacity to carry out the activities of the Center on a national scale.

Application kits are available by writing to the Department of Health and Human Services, Administration on Aging, Office of Elder Rights Protection, 330 Independence Avenue, S.W., Room 4254, Washington, DC 20201, or by calling 202/619–2044.

Jeanette C. Takamura,

Assistant Secretary for Aging.

[FR Doc. 98–3693 Filed 2–12–98; 8:45 am]

BILLING CODE 4150–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No.97N–0438]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the information collection by March 16, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC, 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), FDA has submitted the following proposed collections of information to OMB for review and clearance.

User Fee Cover Sheet; Form FDA 3397—(OMB Control Number 0910–090297)—Reinstatement)

Under section 735 and 736 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379g and 379h), FDA has the authority to assess and collect user fees for certain drug and biologic product applications and supplements. Under this authority, pharmaceutical companies pay a fee for each new drug application, biologic product license application, biologic license application, or supplement submitted for review. Because the submission of user fees concurrently with applications and supplements is required, review of an application cannot begin until the fee is submitted. Form FDA 3397 is the user fee cover sheet, which is designed to provide the minimum necessary information to determine whether a fee is required for review of an application, to determine the amount of the fee required, and to account for and track user fees. The form provides a cross-reference of the fee submitted for an application with the actual application by utilizing a unique number tracking system. The information collected is used by FDA, Center for Drug Evaluation and Research (CDER), and Center for Biologics Evaluation and Research (CBER) to initiate the administrative screening of new drug applications, new biologic product license applications, and supplemental applications.

Respondents to this collection of information are drug and biologic product applicants.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
FDA 3397	200	9.44	1,888	.15	283

There are no capital costs or operating and maintenance costs associated with this collection.

Based on the agency's experience of 4 years, FDA estimates there are approximately 200 manufacturers of products subject to the Prescription Drug User Fee Act. Of the 200 manufacturers, CDER estimates 141 are drug manufacturers, and CBER estimates 59 are biologics manufacturers. CDER estimates there are 1,721 annual responses that include the following: 125 new drug applications, 1,098 chemistry supplements, 400 labeling supplements, and 98 efficacy supplements. CBER estimates there are 167 annual responses that include the following: 157 annual product supplements, and 10 original license applications.

Dated: February 9, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–3707 Filed 2–12–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–170]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Criteria for Medicare Coverage of Lung Transplants; *Form No.:* HCFA–R–170 (OMB# 0938–0670); *Use:* Medicare participating hospitals must file an application to be approved for coverage and payment of lung transplants performed on Medicare beneficiaries; *Frequency:* Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 16; *Total Annual Responses:* 16; *Total Annual Hours:* 1,910.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 3, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–3689 Filed 2–12–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Healthy Start Initiative—Phase II: Limited Competition Within the City of Milwaukee

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of availability of funds for a limited competition within the City of Milwaukee.

SUMMARY: The HRSA announces the availability funds in fiscal year 1998 for a single cooperative agreement for the replication of the Healthy Start Initiative (HSI) Phase II within the City of Milwaukee. The Healthy Start Initiative is a program of projects which, since FY 1991, has developed and implemented community-based strategies to reduce infant mortality in areas with a high incidence of infant mortality. The purpose of Healthy Start-Phase II is to operationalize successful infant mortality reduction strategies developed during the demonstration phase and to launch Healthy Start projects in new rural and urban communities (i.e., communities currently without a Healthy Start Initiative-funded project). Within the HRSA, the Healthy Start Initiative is administered by the Maternal and Child Health Bureau (MCHB). This cooperative agreement for Healthy Start-Phase II in the city of Milwaukee will be made under the program authority of Section 301 of the Public Health Service Act. Funds for this award were appropriated under Public Law 104–208.

To continue Healthy Start efforts to meet critical maternal and child health needs within the City of Milwaukee, public and nonprofit private organizations within the City of Milwaukee are encouraged to apply.

DATES: The application deadline date is Friday, February 20, 1998.

ADDRESS: Interested parties may contact the HRSA Grants Application Center for an application package. Requests should specify the Healthy Start Initiative—Phase II limited competition within the City of Milwaukee (CFDA #93.926b). The Center may be contacted by: *telephone:* 1–888–300–HRSA, *FAX:* 301–309–0579, or *e-mail:* HRSA.GAC@x.netcom.com. *Completed applications should be returned to:* Grants Management Officer (CFDA 93.926b), HRSA Grants Application Center, 40 West Gude Drive, Suite 100, Rockville, Maryland 20850.

Dated: February 9, 1998.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 98–3705 Filed 2–12–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Practitioner Data Bank; Change in User Fee and Elimination of Diskette Queries

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Withdrawal.

SUMMARY: National Practitioner Data Bank; Change in User Fee and Elimination of Diskette Queries notice, document 98–2637, pages 5811–5812, Volume 63, Number 23, in the issue of Wednesday, February 4, 1998, was published in error and is withdrawn from publication.

The correct version of the notice was published on Thursday, January 29,

1998, Document No. 98–2116, Volume 63, Number 19, page 4460.

Dated: February 9, 1998.

James J. Corrigan,

Acting Associate Administrator for Management and Program Support.

[FR Doc. 98–3704 Filed 2–12–98; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (60 FR 56605 as amended November 6, 1995; as last amended at 62 FR 43173–77 dated August 12, 1997). This notice reflects the title change of the Office of Information Resources Management (RS6) under the Office of Management and Program Support (RS).

I. Under RS6, make the following changes: A. Change the title of the organization to Office of Information Technology.

B. Amend the functional statement to read: Provides leadership in the development, review and implementation of policies and procedures to promote improved information resources management capabilities and practices throughout HRSA; (2) develops and coordinates HRSA-wide plans and budgets for the management of information technology and services, including centralized data processing, office automation and telecommunications; (3) develops and recommends policies and procedures relating to information resources management and support services; (4) identifies and coordinates HRSA-wide information needs and develops or coordinates with others the development of creative answers to these needs; (5) plans, manages, administers and coordinates the HRSA-wide microcomputer network including all required linkages to other networks inside and outside HRSA including mainframe systems; (6) provides information support to the Office of the Administrator and other HRSA organizational components; (7) designs, develops, catalogues and manages data bases, information resources, including those data bases developed within the HRSA Bureaus and offices, and the acquisition and use of external bases and information resources that support HRSA needs; (8) manages and coordinates state-of-the-art expertise for information science and technology; (9) assesses hardware and software systems to test their applicability and cost; provides consultation, technical advice and assistance and coordinates training in the use of ADP resources; (10) develops and manages an ongoing strategic planning program; (11) monitors and reviews legislative and regulatory activities and initiatives related to information technology; (12) develops and coordinates the implementation of information security programs; (13) maintains liaison and coordinates information resources management with the HRSA Bureaus and offices; (14) maintains liaison with HHS, other Federal agencies, States and professional organizations and associations concerning health information interests allied to the HRSA mission; and (15) reviews all HRSA requests for ADP resources, providing ADP clearance for all appropriately justified requests.

II. Delegation of Authority: All delegations and redelegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegations.

This reorganization is effective upon date of signature.

Dated: February 6, 1998.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 98–3706 Filed 2–12–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Refugee Resettlement Program: Proposed Allocations to States of FY 1998 Funds for Refugee Social Services

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Notice of proposed allocations to States of FY 1998 funds for refugee [1] social services.

SUMMARY: This notice establishes the proposed allocations to States of FY 1998 funds for social services under the Refugee Resettlement Program (RRP). In the final notice, allocation amounts could be adjusted slightly based on final adjustments in FY 1997 arrivals in some States. This notice reflects the decision by Congress to provide $14,000,000 under social services to address the needs of refugees and communities impacted by recent changes in Federal assistance programs relating to welfare reform. This notice also announces ORR's intention to eliminate the floor formula for States with small refugee populations, beginning in FY 1999.

EFFECTIVE DATE: Comments on the proposed allocations contained in this notice must be received by March 16, 1998.

ADDRESSES: Address written comments, in duplicate, to: Toyo Biddle, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

FOR FURTHER INFORMATION CONTACT: Toyo Biddle, Director, Division of Refugee Self-Sufficiency, (202) 401–9250.

SUPPLEMENTARY INFORMATION:

I. Amounts For Allocation

The Office of Refugee Resettlement (ORR) has available $129,990,000 in FY 1998 refugee social service funds as part of the FY 1998 appropriation for the Department of Health and Human Services (Pub. L. No. 105–78).

The FY 1998 House Appropriations Committee Report (H.R. Rept. No. 105–205) reads as follows with respect to social services funds:

The bill provides $129,990,000 for social services, an increase of $19,108,000 over the comparable fiscal year 1997 appropriation and the budget request. Funds are distributed by formula as well as through the

[1] In addition to persons who meet all requirements of 45 CFR 400.43, "Requirements for documentation of refugee status," eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. No. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. No. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100–461), 1990 (Pub. L. No. 101–167), and 1991 (Pub. L. No. 101–513). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the social service program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival or until they obtain permanent resident alien status, whichever comes first.

discretionary grant making process for special projects. The Committee agrees that $19,000,000 is available for assistance to serve communities affected by the Cuban and Haitian entrants and refugees whose arrivals in recent years have increased. The Committee has set-aside $16,000,000 for increased support to communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance. Finally, the Committee has set aside $14,000,000 to address the needs of refugees and communities impacted by recent changes in Federal assistance programs relating to welfare reform. The Committee urges ORR to assist refugees at risk of losing, or who have lost, benefits including SSI, TANF and Medicaid, in obtaining citizenship. In addition, ORR may initiate planning grants to create alternative cash and medical assistance programs for refugees.

The Committee recommends that ORR give special consideration in allocating grant funding to applicants providing rehabilitation services for victims of physical and mental torture. The Committee requests that ORR be prepared to testify regarding its activities in support of victims of torture during the fiscal year 1999 budget hearings.

The FY 1998 Senate Appropriations Committee Report (S. Rept. No. 105–58) adds the following:

The Committee is concerned that the current policy of the Office of Refugee Resettlement prohibiting the use of a portion of refugee social services and targeted assistance formula grant funds for refugees who have been in the United States for more than 5 years deprives some counties and States of the ability to give employment-related assistance to many of their refugee welfare recipients. The Committee urges the ORR to be flexible in considering waiver requests of the 5-year policy.

The Conference Report on Appropriations (H. Rept. No. 105–390) agrees with the House and Senate Reports regarding the allocation of social services.

The Director of the Office of Refugee Resettlement (ORR) proposes to use the $129,990,000 appropriated for FY 1998 social services as follows:

- $68,841,500 will be allocated under the 3-year population formula, as set forth in this notice for the purpose of providing employment services and other needed services to refugees.
- $12,148,500 will be awarded as social service discretionary grants through competitive grant announcements that will be issued separately from this notice.
- $19,000,000 will be awarded to serve communities most heavily affected by recent Cuban and Haitian entrant and refugee arrivals. These funds would be awarded through a discretionary grant announcement that will be issued separately from this notice.
- $16,000,000 will be awarded through discretionary grants for communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance. A grant announcement will be issued separately from this notice.
- $14,000,000 will be awarded to address the needs of refugees and communities impacted by recent changes in Federal assistance programs relating to welfare reform. Awards will be made through the Wilson/Fish grant announcement and discretionary grant announcements issued separately from this notice.

Refugee Social Service Funds

The population figures for the social services allocation include refugees, Cuban/Haitian entrants, Amerasians from Vietnam, and Kurdish asylees since these populations may be served through funds addressed in this notice. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program or indicate in its refugee program State plan that Cuban/Haitian entrants will be served in order to use funds on behalf of entrants as well as refugees.)

The Director proposes to allocate $68,841,500 to States on the basis of each State's proportion of the national population of refugees who had been in the U.S. 3 years or less as of October 1, 1997 (including a floor amount for States which have small refugee populations).

The use of the 3-year population base in the allocation formula is required by section 412(c)(1)(B) of the Immigration and Nationality Act (INA) which states that the "funds available for a fiscal year for grants and contracts [for social services]* * *shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year."

As established in the FY 1991 social services notice published in the **Federal Register** of August 29, 1991, section I, "Allocation Amounts" (56 FR 42745), a variable floor amount for States which have small refugee populations is calculated as follows: If the application of the regular allocation formula yields less than $100,000, then—

(1) a base amount of $75,000 is provided for a State with a population of 50 or fewer refugees who have been in the U.S. 3 years or less; and

(2) for a State with more than 50 refugees who have been in the U.S. 3 years or less: (a) a floor has been calculated consisting of $50,000 plus the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than $75,000, a base amount of $75,000 is provided for the State.

ORR intends FY 1998 to be the last year in which a floor allocation is used for States with small refugee populations. ORR's intention is to eliminate the floor formula beginning in FY 1999 and to use the 3-year refugee population allocations formula for all participating States. We invite comments, particularly from the floor States, regarding the potential impact of eliminating the floor.

Population To Be Served

Although the allocation formula is based on the 3-year refugee population, in accordance with the current requirements of 45 CFR Part 400 Subpart I—Refugee Social Services, States are not required to limit social service programs to refugees who have been in the U.S. only 3 years. However, under 45 CFR 400.152, States may not provide services funded by this notice, except for referral and interpreter services, to refugees who have been in the United States for more than 60 months (5 years).

In accordance with 45 CFR 400.147, States are required to provide services to refugees in the following order of priority, except in certain individual extreme circumstances: (a) all newly arriving refugees during their first year in the U.S., who apply for services; (b) refugees who are receiving cash assistance; (c) unemployed refugees who are not receiving cash assistance; and (d) employed refugees in need of services to retain employment or to attain economic independence.

ORR funds may not be used to provide services to United States citizens, since they are not covered under the authorizing legislation, with the following exceptions: (1) Under current regulations at 45 CFR 400.208, services may be provided to a U.S.-born minor child in a family in which both parents are refugees or, if only one parent is present, in which that parent is a refugee; and (2) under the FY 1989 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. No. 100–461), services may

be provided to an Amerasian from Vietnam who is a U.S. citizen and who enters the U.S. after October 1, 1988.

Service Priorities

In the past, a number of States have focused primarily on serving refugee cash assistance (RCA) recipients because of the need to help these refugees become employed and self-sufficient within the 8-month RCA eligibility period. Now, with the passage of welfare reform, refugee recipients of Temporary Assistance for Needy Families (TANF) also face a time limit for cash assistance and need appropriate services as quickly as possible to become employed and self-sufficient. In order for refugees to move quickly off TANF, we believe it is crucial for these refugees to receive refugee-specific services that are designed to address the employment barriers that refugees typically face. We, therefore, strongly encourage State Refugee Coordinators to make every effort to develop agreements with their State TANF program to utilize, to the maximum extent possible, the existing refugee service system in a State for refugee TANF participants.

Refugee social service funding should be used to assist refugee families to achieve economic independence. To this end, States are required to ensure that a coherent family self-sufficiency plan is developed for each eligible family that addresses the family's needs from time of arrival until attainment of economic independence. (See 45 CFR 400.79 and 400.156(g).) Each family self-sufficiency plan should address a family's needs for both employment-related services and other needed social services. The family self-sufficiency plan must include: (1) a determination of the income level a family would have to earn to exceed its cash grant and move into self-support without suffering a monetary penalty; (2) a strategy and timetable for obtaining that level of family income through the placement in employment of sufficient numbers of employable family members at sufficient wage levels; and (3) employability plans for every employable member of the family.

Reflecting section 412(a)(1)(A)(iv) of the INA, and in keeping with 45 CFR 400.145(c), States must ensure that women have the same opportunities as men to participate in all services funded under this notice, including job placement services. In addition, services must be provided to the maximum extent feasible in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women. The Director also strongly encourages the inclusion of refugee women in management and board positions in agencies that serve refugees. In order to facilitate refugee self-support, the Director also expects States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit, particularly in the case of large families. States are expected to make every effort to assure the availability of day care services for children in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, day care may be treated as a priority employment-related service under the refugee social services program. Refugees who are participating in employment services or have accepted employment are eligible for day care services for children. For an employed refugee, day care funded by refugee social service dollars should be limited to one year after the refugee becomes employed. States are expected to use day care funding from other publicly funded mainstream programs as a prior resource and are expected to work with service providers to assure maximum access to other publicly funded resources for day care.

In accordance with 45 CFR 400.146, social service funds must be used primarily for employability services designed to enable refugees to obtain jobs within one year of becoming enrolled in services in order to achieve economic self-sufficiency as soon as possible. Social services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Social service funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

In accordance with 45 CFR 400.156(e), refugee social services must be provided, to the maximum extent feasible, in a manner that is culturally and linguistically compatible with a refugee's language and cultural background. In light of the increasingly diverse population of refugees who are resettling in this country, refugee service agencies will need to develop practical ways of providing culturally and linguistically appropriate services to a changing ethnic population.

Services funded under this notice must be refugee-specific services which are designed specifically to meet refugee needs and are in keeping with the rules and objectives of the refugee program. Vocational or job skills training, on-the-job training, or English language training, however, need not be refugee-specific (45 CFR 400.156(d)).

English language training must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related activities (45 CFR 400.156(c)).

When planning State refugee services, States must take into account the reception and placement (R & P) services provided by local resettlement agencies in order to utilize these resources in the overall program design and to ensure the provision of seamless, coordinated services to refugees that are not duplicative (45 CFR 400.156(b)).

In order to provide culturally and linguistically compatible services in as cost-efficient a manner as possible in a time of limited resources, ORR encourages States and counties to promote and give special consideration to the provision of refugee social services through coalitions of refugee service organizations, such as coalitions of mutual assistance associations (MAAs), voluntary resettlement agencies, or a variety of service providers. ORR believes it is essential for refugee-serving organizations to form close partnerships in the provision of services to refugees in order to be able to respond adequately to a changing refugee picture. Coalition-building and consolidation of providers is particularly important in communities with multiple service providers in order to ensure better coordination of services and maximum use of funding for services by minimizing the funds used for multiple administrative overhead costs.

States should also expect to use funds available under this notice to pay for social services which are provided to refugees who participate in alternative projects. Section 412(e)(7)(A) of the INA provides that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (60 FR 15766, March 27, 1995). The notice on alternative projects does not contain provisions for the allocation of additional social service funds

beyond the amounts established in this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in planning its use of social service funds being allocated under the present notice.

The Use of MAAs

ORR believes that the use of qualified refugee mutual assistance associations in the delivery of social services helps to ensure the provision of culturally and linguistically appropriate services as well as increasing the effectiveness of the overall service system. Therefore, we expect States to use MAAs as service providers to the maximum extent possible. We strongly encourage States when contracting for services, including employment services, to give consideration to the special strengths of MAAs, whenever contract bidders are otherwise equally qualified, provided that the MAA has the capability to deliver services in a manner that is culturally and linguistically compatible with the background of the target population to be served. ORR also strongly encourages MAAs to ensure that their management and board composition reflect the major target populations to be served. ORR expects States to continue to assist MAAs in seeking other public and/or private funds for the provision of services to refugee clients.

States may use a portion of their social service grant, either through contracts or through the use of State/county staff, to provide technical assistance and organizational training to strengthen the capability of MAAs to provide employment services, particularly in States where MAA capability is weak or undeveloped.

ORR defines MAAs as organizations with the following qualifications:

a. The organization is legally incorporated as a nonprofit organization; and

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association is comprised of refugees or former refugees, including both refugee men and women.

II. [Reserved for Discussion of Comments In Final Notice]

III. Allocation Formulas

A. Allocation Formula

Of the funds available for FY 1998 for social services, $68,841,500 is proposed to be allocated to States in accordance with the formula specified below. A State's allowable allocation is calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees, Cuban/Haitian entrants, Amerasians from Vietnam, and Kurdish asylees who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated, as shown by the ORR Refugee Data System. The resulting per capita amount will be multiplied by—

3. The number of persons in item 2, above, in the State as of October 1, 1997, adjusted for estimated secondary migration.

The calculation above yields the formula allocation for each State. Minimum allocations for small States are taken into account.

IV. Basis of Population Estimates

The population estimates for the proposed allocation of funds in FY 1998 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1997, for estimated secondary migration. The data base includes refugees of all nationalities, Amerasians from Vietnam, Cuban and Haitian entrants, and Kurdish asylees.

For fiscal year 1998, ORR's proposed formula allocations for the States for social services are based on the numbers of refugees, Amerasians, Kurdish asylees, and entrants who arrived during the preceding three fiscal years: 1995, 1996, and 1997, based on arrival data by State. Therefore, estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1994, and September 30, 1997, who are thought to be living in each State as of October 1, 1997.

The estimates of secondary migration were based on data submitted by all participating States on Form ORR–11 on secondary migrants who have resided in the U.S. for 36 months or less, as of September 30, 1997. The total migration reported by each State was summed, yielding in- and out-migration figures and a net migration figure for each State. The net migration figure was applied to the State's total arrival figure, resulting in a revised population estimate.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. Eligible Amerasians and Kurdish asylees are included in the refugee figures.

With regard to Havana parolees, in the absence of reliable data on the State-by-State resettlement of this population, we are crediting each State that received entrant arrivals during the 3-year period from FY 1995–FY 1997 with a prorated share of the 5,992 parolees reported by the Immigration and Naturalization Service (INS) to have come to the U.S. directly from Havana in FY 1997. In addition, we have credited each State with the same share of FY 1995 and FY 1996 Havana parolees that they were credited with in the final FY 1996 and FY 1997 social service notices. The proposed allocations in this notice reflect these additional parolee numbers.

If a State does not agree with ORR's population estimate and wishes ORR to reconsider its population estimate, it should submit written evidence to ORR, including a list of refugees identified by name, alien number, date of birth, and date of arrival. Listings of refugees who are not identified by their alien numbers will not be considered. Such evidence should be submitted separately from comments on the proposed allocation formula no later than 30 days from the date of publication of this notice and should be addressed to: Loren Bussert, Division of Refugee Self-Sufficiency, Office of Refugee Resettlement, 370 L'Enfant Promenade, S.W., Washington, DC 20447, Telephone: (202) 401–4732.

Table 1, below, shows the estimated 3-year populations, as of October 1, 1997, of refugees (col. 1); entrants (col. 2); Havana parolees (col. 3); total refugee/entrant population, (col. 4); the proposed formula amounts which the population estimates yield (col. 5); and the proposed allocation amounts after allowing for the minimum amounts (col. 6).

These population estimates and proposed allocation amounts are intended to be as close to the final figures as was possible at the time they were developed. However, revisions may need to be made to reflect final adjustments in FY 1997 arrival data in some States.

V. Proposed Allocation Amounts

Funding will be contingent upon the submittal and approval of a State annual services plan that is developed on the basis of a local consultative process, as required by 45 CFR 400.11(b)(2) in the ORR regulations. The following amounts are proposed for allocation for refugee social services in FY 1998:

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND PROPOSED SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1998

State	Refugees [1] (1)	Entrants (2)	Havana parolees [2] (3)	Total population (4)	Proposed formula amount (5)	Proposed allocation (6)
Alabama	523	113	60	696	$152,467	$152,467
Alaska [3]	0	0	0	0	0	0
Arizona	4,986	539	316	5,841	1,279,541	1,279,541
Arkansas	184	13	6	203	44,470	83,516
California [4]	45,934	948	653	47,535	10,413,111	10,413,111
Colorado	3,450	9	7	3,466	759,269	759,269
Connecticut	2,125	297	178	2,600	569,561	569,561
Delaware	34	4	3	41	8,982	75,000
Dist. of Columbia	1,851	14	7	1,872	410,084	410,084
Florida	14,508	23,701	19,662	57,871	12,677,335	12,677,335
Georgia	8,426	247	149	8,822	1,932,565	1,932,565
Hawaii	252	1	0	253	55,423	94,470
Idaho	1,446	1	1	1,448	317,202	317,202
Illinois	11,469	446	244	12,159	2,663,574	2,663,574
Indiana	1,195	11	9	1,215	266,160	266,160
Iowa	4,889	6	3	4,898	1,072,966	1,072,966
Kansas	1,605	17	10	1,632	357,509	357,509
Kentucky [5]	3,071	576	239	3,886	851,275	851,275
Louisiana	1,350	239	159	1,748	382,920	382,920
Maine	674	1	0	675	147,867	147,867
Maryland	3,697	170	102	3,969	869,457	869,457
Massachusetts	7,181	151	111	7,443	1,630,478	1,630,478
Michigan	7,327	399	186	7,912	1,733,218	1,733,218
Minnesota	8,730	25	14	8,769	1,920,954	1,920,954
Mississippi	38	32	22	92	20,154	75,000
Missouri	5,765	22	17	5,804	1,271,436	1,271,436
Montana	227	0	0	227	49,727	88,774
Nebraska	1,672	40	16	1,728	378,539	378,539
Nevada [5]	693	812	541	2,046	448,201	448,201
New Hampshire	903	1	0	904	198,032	198,032
New Jersey	3,881	1,110	783	5,774	1,264,864	1,264,864
New Mexico	466	787	602	1,855	406,360	406,360
New York	38,406	1,180	775	40,361	8,841,560	8,841,560
North Carolina	3,181	45	23	3,249	711,732	711,732
North Dakota	1,164	4	3	1,171	256,522	256,522
Ohio	3,985	54	27	4,066	890,706	890,706
Oklahoma	774	17	10	801	175,469	175,469
Oregon	4,419	515	265	5,199	1,138,903	1,138,903
Pennsylvania	7,225	327	161	7,713	1,689,625	1,689,625
Rhode Island	346	7	3	356	77,986	100,000
South Carolina	346	8	3	357	78,205	100,000
South Dakota	670	0	0	670	146,772	146,772
Tennessee	3,581	225	102	3,908	856,094	856,094
Texas	11,498	1,067	687	13,252	2,903,009	2,903,009
Utah	2,573	1	0	2,574	563,865	563,865
Vermont	715	0	0	715	156,629	156,629
Virginia	4,838	251	140	5,229	1,145,475	1,145,475
Washington	17,111	66	29	17,206	3,769,180	3,769,180
West Virginia	14	1	0	15	3,286	75,000
Wisconsin	2,387	18	11	2,416	529,254	529,254
Wyoming	0	0	0	0	0	0
Total	251,785	34,518	26,339	312,642	68,487,973	68,841,500

[1] Includes: refugees, Kurdish asylees, and Amerasian immigrants from Vietnam.

[2] For FY 1997, 5992 Havana Parolees (HP's) were prorated to all States based on the States' proportion of the three year (FY 1995–1997) entrant population in the U.S. For FY 1996, Florida's HP's (7303) were based on actual data while HP's in other States (2611) were prorated based on the States' proportion of the three year (FY 1994–1996) entrant population. For FY 1995, Florida's HP's (8245) were based on actual data while HP's in other States (2188) were prorated based on the States' proportion of the three year (FY 1993–1995) entrant population.

[3] Alaska and Wyoming no longer participate in the Refugee Program.

[4] A portion of the California allocation is expected to be awarded to continue a Wilson/Fish project in San Diego.

[5] The allocation for Kentucky and Nevada is expected to be awarded to continue a Wilson/Fish project.

VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 93.566 Refugee Assistance—State Administered Programs)

Dated: February 9, 1998.

Lavinia Limon,

Director, Office of Refugee Resettlement.

[FR Doc. 98–3764 Filed 2–12–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the following meetings of the SAMHSA Special Emphasis Panel II in February 1998.

A summary of the meetings may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA, Office of Program Planning and Coordination (OPPC), Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301) 443–7390.

Substantive program information may be obtained from the individual named as Contact for the meetings listed below.

The meetings will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussions may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c) (3), (4), and (6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel II (SEP II).

Meeting Date: February 25–26, 1998.

Place: Residence Inn, 7335 Wisconsin Avenue, Montgomery I Room, Bethesda, MD 20814.

Closed: February 25, 1998 9:00 a.m.—February 26, 1998 at Adjournment.

Contact: Allen Smith, Room 17–89, Parklawn Building, Telephone: (301) 443–4783 and FAX: (301) 443–3437.

Committee Name: SAMHSA Special Emphasis Panel II (SEP II).

Meeting Date: February 26, 1998.

Place: Sheraton City Centre, Georgetown Room, 1143 New Hampshire Avenue, Washington, DC 20037.

Closed: February 26, 1998, 9:00 a.m. to adjournment.

Contact: George Lewis, Room 17–89 Parklawn Building, Telephone: (301) 443–4783 and FAX: (301) 443–3437.

Dated: February 9, 1998.

Jeri Lipov,

Committee Management Officer, SAMHSA.

[FR Doc. 98–3624 Filed 2–12–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4054–N–01]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 16, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Jóseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 5, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Comprehensive Section 8 Conforming Rule for the Section 8 Rental Certificate and Rental Voucher Program.

Office: Public and Indian Housing.

OMB Approval Number: 2577–0169.

Description of The Need for The Information and Its Proposed Use: Under the Section 8 Rental Certificate Program and Rental Voucher Program, the Department of Housing and Urban Development (HUD) enters into an Annual Contributions Contact (ACC) with Public Housing Agencies to assist very low-income families who enter into leases and rental agreements directly with private owners of existing rental housing.

Form Number: HUD–52515, 52517, 52578, 52578B, 52580, 52580A, 52595, 52646, 52663, 52665, 52667, 52672, 52673, 52681, and 52683.

Respondents: Individuals or Households and State, Local, or Tribal Government.

Frequency of Submission: Recordkeeping and On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	252,600		9		.30		677,503

Total Estimated Burden Hours: 677,503.

Status: Revision.

Contact: Cedric A. Brown, HUD, (202 708–3887 x4057 Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 98–3680 Filed 2–12–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–84]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 16, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 5, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Analysis of Proposed Main Construction Contract.

Office: Public and Indian Housing.

OMB Approval Number: 2577–0037.

Description of The Need for The Information and its Proposed Use: Form HUD–52396 is a comparison of actual bid cost on a conventionally developed public housing project to the approved pre-bid estimates. The form is prepared by the PHA and submitted to HUD when requesting approval for the award of the construction contract.

Form Number: HUD–52396.

Respondents: State, Local or Tribal Governments and Not-For-Profit Institutions.

Frequency of Submission: Annually and Recordkeeping.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Reporting	96		1.15		2		220
Recordkeeping	110		1		.25		28

Total Estimated Burden Hours: 248.

Status: Reinstatement, without changes.

Contact: William C. Thorson, HUD, (202) 708–4703; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 98–3681 Filed 2–12–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–42]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings

and other real property that HUD reviewed in 1997 for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

In accordance with 24 CFR part 581.3(b) landholding agencies are required to notify HUD by December 31, 1997, the current availability status and classification of each property controlled by the Agencies that were published by HUD as suitable and available which remain available for application for use by the homeless.

Pursuant to 24 CFR part 581.8 (d) and (e) HUD is required to publish a list of those properties reported by the Agencies and a list of suitable/unavailable properties including the reasons why they are not available.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days form the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expression of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Army:* Jeff Holste, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22315; (703) 428–6318; *Corps of Engineers:* Bob Swieconek, Army Corps of Engineers, Management and Disposal Division, Room 4224, 20 Massachusetts Ave. NW, Washington, DC 20314–1000; (202) 761–1749; *U.S. Navy:* Charles C. Cocks, Dept. of Navy, Real Estate Policy Division, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342; *U.S. Air Force:* Barbara Jenkins, Air Force Real Estate Agency (Area/MI), Bolling [illegible], 112 Luke Avenue, Suite 104, Washington, DC 20332–8020; (202) 767–4184; *GSA:* Brian K. Polly, Office of Property Disposal, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 501–2059; *Dept. of Veterans Affairs:* George L. Szwarcman, Land Management Service, Dept. of Veterans Affairs, room 414, Lafayette Bldg., 811 Vermont Ave. NW, Washington, DC 20420; (202) 565–5941; *Dept. of Energy:* Marsha Penhaker, Facilities Planning and Acquisition Branch, FM–20, Room 6H–058, Washington, DC 20585; (202) 586–0426; *Dept. of Transportation:* Philip Rockmaker, Space Management, Transportation Administrative Service Center, DOT, 400 Seventh St. SW, room 2310, Washington, DC 20590; (202) 366–4246; *Dept. of Interior:* Lola D. Knight, Property Management, Dept. of Interior, 1849 C St. NW, Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; (These are not toll-free numbers).

Dated: February 5, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

Title V Properties Reported in Year 97 Which Are Suitable and Available

Air Force

California

Buildings

Bldg. 604
Property #: 189010237
Fed Reg Date: 09/05/97
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 605
Property #: 189010238
Fed Reg Date: 09/05/97
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 612
Property #: 189010239
Fed Reg Date: 09/05/97
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 611
Property #: 189010240
Fed Reg Date: 09/05/97
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 613
Property #: 189010241
Fed Reg Date: 09/05/97
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 614
Property #: 189010242
Fed Reg Date: 09/05/97
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 615
Property #: 189010243
Fed Reg Date: 09/05/97
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 616
Property #: 189010244
Fed Reg Date: 09/05/97
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 617
Property #: 189010245
Fed Reg Date: 09/05/97
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 618
Property #: 189010246
Fed Reg Date: 09/05/97
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing; needs rehab.

Idaho

Buildings

Bldg. 2201
Property #: 189520005
Fed Reg Date: 09/05/97
Mountain Home Air Force Base
Mountain Home, ID, Co: Elmore, Zip: 83648–
Status: Underutilized
Comment: 6804 sq. ft., 1 story wood frame, most recent use—temporary garage for base fire dept. vehicles, presence of lead paint and asbestos shingles.

Maine

Land

Irish Ridge NEXRAD Site

Property #: 189640017
Fed Reg Date: 09/05/97
Loring AFB
Fort Fairfield, ME, Co: Aroostock, Zip: 04742–
Status: Unutilized
Comment: 3.491 acres in fee simple.

Gwen Site (Patten)
Property #: 189640018
Fed Reg Date: 07/04/97
Loring AFB
Stacyville, ME, Co: Herseytown, Zip: 04742–
Status: Unutilized
Comment: 19.3 acres in fee simple plus access easements.
GSA No: 1–D–ME–630

Montana

Land

6.43 acres
Property #: 189610003
Fed Reg Date: 09/05/97
Forsyth Training Site
MT, Co: Rosebud, Zip:
Status: Unutilized
Comment: 6.43 acres, most recent use—tech. oper. site for radar bombing range.

Buildings

Facility #1:
Property # 189530047
Fed Reg Date: 09/05/97
Havre Training Site
MT, Co: Hill, Zip: 59501–
Status: Excess
Comment: 6843 sq. ft., 1 story brick frame, good condition, most recent use—technical training site.

Bldg. 110
Property #: 189610001
Fed Reg Date: 09/05/97
Forsyth Training Site
MT, Co: Rosebud, Zip:
Status: Unutilized
Comment: 6843 sq. ft., needs repair, on top of bluff, most recent use—offices.

Bldg. 112
Property #: 189610002
Fed Reg Date: 09/05/97
Forsyth Training Site
MT, Co: Rosebud, Zip:
Status: Unutilized
Comment: 586 sq. ft., most recent use—cold storage.

Nebraska

Buildings

Bldg. 20
Property #: 189610004
Fed Reg Date: 09/05/97
Offutt Communications Annex 4
Silver Creek, NE, Co: Nance, Zip: 68663–
Status: Unutilized
Comment: 4714 sq. ft., most recent use—dormitory needs major repair.

South Dakota

Buildings

West Communications Annex
Property #: 189340051
Fed Reg Date: 09/05/97
Ellsworth Air Force Base
Ellsworth AFB, SD, Co: Meade, Zip: 57706–
Status: Unutilized
Comment: 2 bldgs. on 3.37 acres, remote area, lacks infrastructure, road hazards during winter storms, most recent use—industrial storage.

Summary of Properties for Air Force

Buildings = 16
Land = 3
Total Suitable and Available by agency = 19

Army

Alaska

Land

Harding Lake Recreation Area
Property #: 219540009
Fed Reg Date: 08/29/97
Fort Richardson
Anchorage, AK, Zip:
Statis: Underutilized
Comment: 25.5 acres, most recent use—recreation.

Buildings

Bldg. 400
Property #: 219440400
Fed Reg Date: 08/29/97
Fort Richardson
Ft. Richardson, AK, Zip: 99505–
Status: Unutilized
Comment: 13056 sq. ft., 2-story wood frame, presence of lead paint and asbestos, off-site use only.

Bldg. 402
Property #: 219440401
Fed Reg Date: 08/29/97
Fort Richardson
Ft. Richardson, AK, Zip: 99505–
Status: Unutilized
Comment: 13056 sq. ft., 2-story wood, presence of lead paint and asbestos, off-site use only.

Bldg. 407
Property #: 219440402
Fed Reg Date: 08/29/97
Fort Richardson
Ft. Richardson, AK, Zip: 99505–
Status: Unutilized
Comment: 13056 sq. ft., 2-story wood frame, presence of lead paint and asbestos, off-site use only.

Bldg. 1168
Property #: 219610636
Fed Reg Date: 08/29/97
Fort Wainwright
Ft. Wainwright, AK, Co: Fairbanks, Zip: 99703–
Status: Unutilized
Comment: 6455 sq. ft., concrete, presence of asbestos, most recent use—warehouse.

Bldg. 639
Property #: 219720152
Fed Reg Date: 08/29/97
Fort Richardson
Ft. Richardson, AK, Zip: 99505–6500
Status: Unutilized
Comment: 9246 sq. ft., concrete, most recent use—auditorium, poor condition, presence of asbestos/lead paint, off-site use only.

Alabama

Buildings

Bldg. 3704, Fort Rucker
Property #: 219340185
Fed Reg Date: 08/29/97
Ft. Rucker, AL, Co: Dale, Zip: 36362–5138
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood, needs rehab, most recent use—barracks, off-site use only.

Bldg. 3708, Fort Rucker
Property #: 219340189
Fed Reg Date: 08/29/97
Ft. Rucker, AL, Co: Dale, Zip: 36362–5138
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood, needs rehab, presence of asbestos, most recent use—barracks, off-site use only.

Bldg. 60101
Property #: 219520152
Fed Reg Date: 08/29/97
Shell Army Heliport
Ft. Rucker, AL, Co: Dale, Zip: 36362–5000
Status: Unutilized
Comment: 6082 sq. ft., 1-story, most recent use—airfield fire station, off-site use only.

Bldg. 60103
Property #: 219520154
Fed Reg Date: 08/29/97
Shell Army Heliport
Ft. Rucker, AL, Co: Dale, Zip: 36362–5000
Status: Unutilized
Comment: 12516 sq. ft., 2-story, most recent use—admin., off-site use only.

Bldg. 60110
Property #. 219520155
Fed Reg Date: 08/29/97
Shell Army Helicopter
Ft. Rucker, AL, Co: Dale, Zip: 36362–5000
Status: Unutilized
Comment: 8319 sq. ft., 1-story, most recent use—admin., off-site use only.

Bldg. 60113
Property #: 219520156
Fed Reg Date: 08/29/97
Shell Army Heliport
Ft. Rucker, AL, Co: Dale, Zip: 36362–5000
Ft. Richardson, AK, , Zip: 99505–
Status: Unutilized
Comment: 4000 sq. ft., 1-story, most recent use—admin., off-site use only.

Bldgs. 2802, 2805
Property #: 219620662
Fed Reg Date: 08/29/97
Fort Rucker
Ft. Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized
Comment: #2802=13,082 sq. ft., #2805=13,082 sq. ft., most recent use—admin., needs repair, off-site use only.

Arizona

Buildings

Bldg. 82013
Property #: 219240752
Fed Reg Date: 08/29/97
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2193 sq. ft., 1-story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 90327
Property #: 219240753
Fed Reg Date: 08/29/97
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 279 sq. ft., 1-story wood frame, possible asbestos, scheduled to become

vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 82007
Property #: 219240755
Fed Reg Date: 08/29/97
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 4386 sq. ft., 2-story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—storehouse, off-site use only.

Bldg. 82009
Property #: 219240756
Fed Reg Date: 08/29/97
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2444 sq. ft., 2-story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—storehouse, off-site use only.

Bldg. 84103, Fort Huachuca
Property #: 219310296
Fed Reg Date: 08/29/97
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 984 sq. ft., 1-story presence of asbestos and lead paint, most recent use—admin.

Bldg. 30012, Fort Huachuca
Property #: 219310298
Fed Reg Date: 08/29/97
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 237 sq. ft., 1-story block, most recent use—storage.

Bldg. 83102
Property #: 219330236
Fed Reg Date: 08/29/97
U.S. Army Intelligence Center, Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 984 sq. ft., 1-story wood, presence of asbestos, most recent use—office, off-site use only.

Bldg. 84010
Property #: 219330237
Fed Reg Date: 08/29/97
U.S. Army Intelligence Center, Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2147 sq. ft., 1-story wood, presence of asbestos, most recent use—office, off-site use only.

Bldg. 83027
Property #: 219410249
Fed Reg Date: 08/29/97
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 1993 sq. ft., 2-story wood, most recent use—admin.; off-site use only.

Bldg. 84007
Property #: 219410250
Fed Reg Date: 08/29/97
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2000 sq. ft., 2-story wood, most recent use—admin.; off-site use only.

Bldg. 30126
Property #: 219410252
Fed Reg Date: 08/29/97
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 9324 sq. ft., 1-story; wood; most recent use—maintenance; off-site use only.

Bldg. 84014
Property #: 219410253
Fed Reg Date: 08/29/97
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2260 sq. ft., 1-story; wood; most recent use—maintenance; off-site use only.

Bldg. S–106
Property #: 219420345
Fed Reg Date: 08/29/97
Yuma Proving Ground
Yuma, AZ, Co: Yuma/La Paz, Zip: 85635–9104
Status: Unutilized
Comment: 1101 sq. ft., 1-story, cold storage bldg., needs repair.

Bldg. S–306
Property #: 219420346
Fed Reg Date: 08/29/97
Yuma Proving Ground
Yuma, AZ, Co: Yuma/La Paz, Zip: 85635–9104
Status: Unutilized
Comment: 4103 sq. ft., 2-story, needs major rehab, scheduled to be vacated on or about 2/95.

Bldg. 83023
Property #: 219430247
Fed Reg Date: 08/29/97
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 1648 sq. ft., 1-story, wood frame, most recent use—instructional bldg., needs repair, off-site use only.

Bldg. 81028
Property #: 219430249
Fed Reg Date: 08/29/97
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2193 sq. ft., 2-story, wood frame, most recent use—admin., needs repair, off-site use only.

Bldg. 80111
Property #: 219430250
Fed Reg Date: 08/29/97
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2032 sq. ft., 1-story, wood frame, most recent use—instructional bldg., needs repair, off-site use only.

Bldg. 503, Yuma Proving Ground
Property #: 219520073
Fed Reg Date: 08/29/97
Yuma, AZ, Co: Yuma, Zip: 85365–9104
Status: Underutilized
Comment: 3789 sq. ft., 2-story, major structural changes required to meet floor loading & fire code requirements, presence of asbestos.

9 Bldgs.
Property #: 219610639
Fed Reg Date: 08/29/97
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Location: 82002, 82027, 82028, 83021, 83022, 85008, 85009, 85027, 85028
Status: Unutilized
Comment: various sq. ft., presence of asbestos, most recent use—barracks, off-site use only.

Bldg. 85005
Property #: 219610640
Fed Reg Date: 08/29/97
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 3515 sq. ft., presence of asbestos, most recent use—dining off-site use only.

Bldgs. 13548, 72918
Property #: 219620663
Fed Reg Date: 08/29/97
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: #13548=2048 sq. ft., most recent use—maint. shop, #72918=2822 sq. ft., most recent use—storage, possible asbestos/lead base paint, off-site use only.

Bldg. 41410
Property #: 219640508
Fed Reg Date: 08/29/97
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 582 sq. ft., presence of lead base paint, most recent use—admin., off-site use only.

Bldg. 71916
Property #: 219640509
Fed Reg Date: 08/29/97
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 1225 sq. ft., presence of asbestos/lead base paint, most recent use—storage, off-site use only.

11 Bldgs., Fort Huachuca
Property #: 219640510
Fed Reg Date: 08/29/97
#31209, 31210, 31211, 81104, 82001, 82010, 84025, 84026, 84027, 84028, 84105
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: various sq. ft., presence of asbestos/lead base paint, off-site use only.

Colorado

Buildings

Bldg. T–222
Property #: 219630126
Fed Reg Date: 08/29/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–5023
Status: Unutilized
Comment: 2750 sq. ft., poor condition, possible asbestos/lead based paint, most recent use—storage, off-site use only.

Bldg. P–1008
Property #: 219630127
Fed Reg Date: 08/29/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–5023
Status: Unutilized
Comment: 3362 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—service outlet, off-site use only.

Bldg. T–1827

Property #: 219630132
Fed Reg Date: 08/29/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–5023
Status: Unutilized
Comment: 2488 sq. ft., poor condition, possible asbestos/lead based paint, most recent use—service outlet, off-site use only.

Bldg. T–2438
Property #: 219630133
Fed Reg Date: 08/29/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–5023
Status: Unutilized
Comment: 4020 sq. ft., fair condition, most recent use—instruction bldg., off-site use only.

Bldg. T–6043
Property #: 219630136
Fed Reg Date: 08/29/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–5023
Status: Unutilized
Comment: 10225 sq. ft., poor condition, possible asbestos, most recent use—storage, off-site use only.

Bldg. T–6052
Property #: 219630137
Fed Reg Date: 08/29/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–5023
Status: Unutilized
Comment: 4458 sq. ft., poor condition, possible asbestos, most recent use—maintenance shop, off-site use only.

Bldg. T–6089
Property #: 219630139
Fed Reg Date: 08/29/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–5023
Status: Unutilized
Comment: 3150 sq. ft., poor condition, possible asbestos, most recent use—service outlet, off-site use only.

Bldg. S–6226
Property #: 219630141
Fed Reg Date: 08/29/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–5023
Status: Unutilized
Comment: 13154 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—admin., off-site use only.

Bldg. S–6230
Property #: 219630143
Fed Reg Date: 08/29/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–5023
Status: Unutilized
Comment: 13154 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—admin., off-site use only.

Bldg. S–6235
Property #: 219630144
Fed Reg Date: 08/29/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–5023
Status: Unutilized
Comment: 10038 sq. ft., poor condition, possible asbestos/lead based paint, most recent use—admin., off-site use only.

Bldg. S–6240
Property #: 219630145
Fed Reg Date: 08/29/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–5023
Status: Unutilized
Comment: 9985 sq. ft., poor condition, possible asbestos/lead based paint, most recent use—admin., off-site use only.

Bldg. S–6241
Property #: 219630146
Fed Reg Date: 08/29/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–5023
Status: Unutilized
Comment: 10038 sq. ft., poor condition, possible asbestos/lead based paint, off-site use only.

Bldgs. 6244, 6247
Property #: 219630148
Fed Reg Date: 08/29/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–5023
Status: Unutilized
Comment: fair condition, possible asbestos/lead based paint, most recent use—admin, off-site use only.

Bldgs. S–6245, S–6246
Property #: 219630149
Fed Reg Date: 08/29/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–5023
Status: Unutilized
Comment: fair condition, possible asbestos/lead based paint, most recent use—barracks, off-site use only.

Bldg. S–6260
Property #: 219630152
Fed Reg Date: 08/29/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–5023
Status: Unutilized
Comment: 2953 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—comm. bldg., off-site use only.

Bldg. S–6261
Property #: 219630153
Fed Reg Date: 08/29/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–5023
Status: Unutilized
Comment: 7778 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—storage, off-site use only.

Bldg. T–847
Property #: 219730209
Fed Reg Date: 10/03/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Comment: 10,286 sq. ft., 2-story, possible asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. P–1007
Property #: 219730210
Fed Reg Date: 10/03/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Comment: 3818 sq. ft., needs repair, possible asbestos/lead paint, most recent use—health clinic, off-site use only.

Bldg. T–1342
Property #: 219730211
Fed Reg Date: 10/03/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Comment: 13,364 sq. ft., possible asbestos/lead paint, most recent use—instruction bldg.

Bldg. T–1641
Property #: 219730212
Fed Reg Date: 10/03/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Comment: 3663 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. T–6005
Property #: 219730213
Fed Reg Date: 10/03/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Comment: 19,015 sq. ft., possible asbestos/lead paint, most recent use—warehouse.

Bldg. T–6028
Property #: 219730214
Fed Reg Date: 10/03/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Comment: 10,193 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. T–6049
Property #: 219730215
Fed Reg Date: 10/03/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Comment: 19,344 sq. ft., possible asbestos/lead paint, most recent use—youth center.

Bldg. P–6225A
Property #: 219730216
Fed Reg Date: 10/03/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Comment: 1040 sq. ft., possible asbestos/lead paint, most recent use—garage, off-site use only.

Bldg. S–6274
Property #: 219730217
Fed Reg Date: 10/03/97
Fort Carson
Ft. Carson, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Comment: 4751 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Georgia

Land

Land (Railbed)
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 17.3 acres extending 1.24 miles, no known utilities potential.

Buildings

Bldg. 5390
Property #: 219010137
Fed Reg Date: 08/29/97
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2432 sq. ft.; most recent use—dining room; needs rehab.

Bldg. 5362
Property #: 219010147
Fed Reg Date: 08/29/97
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 5559 sq. ft.; most recent use—service club; needs rehab.

Bldg. 5392
Property #: 219010151
Fed Reg Date: 08/29/97
Project Name: Fort Benning
Fort Benning, GA, Co: Mucogee, Zip: 31905–
Status: Unutilized
Comment: 2432 sq. ft.; most recent use—dining room needs rehab.

Bldg. 5391
Property #: 219010152
Fed Reg Date: 08/29/97
Project Name: Fort Benning
Fort Benning, GA, Co: Mucogee, Zip: 31905–
Status: Unutilized
Comment: 2432 sq. ft.; most recent use—dining room needs rehab.

Bldg. 4487
Property #: 219011681
Fed Reg Date: 08/29/97
Project Name: Fort Benning
Fort Benning, GA, Co: Mucogee, Zip: 31905–
Status: Unutilized
Comment: 1868 sq. ft.; most recent use—telephone exchange bldg.; needs substantial rehabilitation; 1 floor.

Bldg. 4319
Property #: 219011683
Fed Reg Date: 08/29/97
Project Name: Fort Benning
Fort Benning
Fort Benning, GA, Co: Mucogee, Zip: 31905–
Status: Unutilized
Comment: 2584 sq. ft.; most recent use—vehicle maintenance shop; needs substantial rehabilitation; 1 floor.

Bldg. 3400
Property #: 219011694
Fed Reg Date: 08/29/97
Project Name: Fort Benning
Fort Benning, GA, Co: Mucogee, Zip: 31905–
Fort Benning
Status: Unutilized
Comment: 2570 sq. ft.; most recent use—fire station; needs substantial rehabilitation; 1 floor.

Bldg. 2285
Property #: 219011704
Fed Reg Date: 08/29/97
Project Name: Fort Benning
Fort Benning
Fort Benning, GA, Co: Mucogee, Zip: 31905–
Status: Unutilized
Comment: 4574 sq. ft.; most recent use—clinic; needs substantial rehabilitation; 1 floor.

Bldg. 4092
Property #: 219011709
Fed Reg Date: 08/29/97
Project Name: Fort Benning
Fort Benning
Fort Benning, GA, Co: Mucogee, Zip: 31905–
Status: Unutilized
Comment: 336 sq. ft.; most recent use—inflammable materials storage; needs substantial rehabilitation; 1 floor.

Bldg. 4089
Property #: 219011710
Fed Reg Date: 08/29/97
Project Name: Fort Benning
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 176 sq. ft.; most recent use—gas station; needs substantial rehabilitation; 1 floor.

Bldg. 1235
Property #: 219014887
Fed Reg Date: 08/29/97
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 9367 sq. ft.; 1 story building; needs rehab; most recent use—General Storehouse.

Bldg. 1236
Property #: 219014888
Fed Reg Date: 08/29/97
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 9367 sq. ft.; 1 story building; needs rehab; most recent use—General Storehouse.

Bldg. 4491
Property #: 219014916
Fed Reg Date: 08/29/97
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 18240 sq. ft.; 1 story building; needs rehab; most recent use—Vehicle maintenance shop.

Bldg. 2150
Property #: 219120258
Fed Reg Date: 08/29/97
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3909 sq. ft., 1 story, needs rehab, most recent use—general inst. bldg.

Bldg. 3828
Property #: 219120266
Fed Reg Date: 08/29/97
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 628 sq. ft., 1 story, needs rehab, most recent use—general storehouse.

Bldg. 3086, Fort Benning
Property #: 21920688
Fed Reg Date: 08/29/97
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2 story, most recent use—barracks, needs major rehab, off-site removal only.

Bldg. 3089, Fort Benning
Property #: 219220689
Fed Reg Date: 08/29/97
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2 story, most recent use—barracks, needs major rehab, off-site removal only.

Bldg. 1252 Fort Benning
Property #: 219220694
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 583 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 1733 Fort Benning
Property #: 219220698
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 9375 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 3083 Fort Benning
Property #: 219220699
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1372 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 3856 Fort Benning
Property #: 219220703
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4111 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4881 Fort Benning
Property #: 219220707
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2449 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only.

Bldg. 4963 Fort Benning
Property #: 219220710
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only.

Bldg. 2396 Fort Benning
Property #: 219220712
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 9786 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 3085 Fort Benning
Property #: 219220715
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2253 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 4882 Fort Benning
Property #: 219220727
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only.

Bldg. 4967, Fort Benning
Property #: 219220728
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only.

Bldg. 5396, Fort Benning
Property #: 219220734
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 10944 sq. ft., 1 story, most recent use—general instruction bldg., needs major rehab, off-site removal only.

Bldg. 247, Fort Benning
Property #: 219220735
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1144 sq. ft., 1 story, most recent use—offices, needs major rehab, off-site removal only.

Bldg. 4977, Fort Benning
Property #: 219220736
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—offices, need repairs, off-site removal only.

Bldg. 4944, Fort Benning
Property #: 219220747
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, need repairs, off-site removal only.

Bldg. 4960, Fort Benning
Property #: 219220752
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3335 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 4969, Fort Benning
Property #: 219220753
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 8416 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 1758, Fort Benning
Property #: 219220755
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 7817 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 3817, Fort Benning
Property #: 219220758
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4000 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 4884, Fort Benning
Property #: 219220762
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.

Bldg. 4964, Fort Benning
Property #: 219220763
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.

Bldg. 4966, Fort Benning
Property #: 219220764
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.

Bldg. 4979, Fort Benning
Property #: 219220767
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 8657 sq. ft., 1 story, most recent use—supply bldg., need major rehab, off-site removal only.

Bldg. 4883, Fort Benning
Property #: 219220768
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2600 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only.

Bldg. 4965, Fort Benning
Property #: 219220769
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 7713 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only.

Bldg. 2513, Fort Benning
Property #: 219220770
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 9483 sq. ft., 1 story, most recent use—training center, need major rehab, off-site removal only.

Bldg. 2589, Fort Benning
Property #: 219220772
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 146 sq. ft., 1 story, most recent use—training bldg., need major rehab, off-site removal only.

Bldg. 4985, Fort Benning
Property #: 219220779
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 220 sq. ft., 1 story, most recent use—gas station, need major rehab, off-site removal only.

Bldg. 4979, Fort Benning
Property #: 219220780
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 400 Sq. ft., 1 story, most recent use—oil house, need repairs, off-site removal only.

Bldg. 4004, Fort Benning
Property #: 219310418
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 1835, Fort Benning
Property #: 219310443
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1712 sq. ft., 1-story, needs rehab, most recent use—day room off-site use only.

Bldg. 3072, Fort Benning
Property #: 219310447
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 479 sq. ft., 1-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.

Bldg. 4019, Fort Benning
Property #: 219310451
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3270 sq. ft., 2-story, needs rehab, most recent use—hdqtrs bldg., off-site use only.

Bldg. 4023, Fort Benning
Property #: 219310461
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2269 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.

Bldg. 4024, Fort Benning
Property #: 219310462
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3281 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.

Bldg. 4067, Fort Benning
Property #: 219310465
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4406 sq. ft., 1-story, needs rehab, most recent use—admin. off-site use only.

Bldg. 10847, Fort Benning
Property #: 219310476
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1056 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 10768, Fort Benning
Property #: 219310477
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1230 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 2683, Fort Benning
Property #: 219310478
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1816 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 354, Fort Gordon
Property #: 219330259
Fed Reg Date: 08/29/97
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4237 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 355, Fort Gordon
Property #: 219330260
Fed Reg Date: 08/29/97
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4237 sq. ft., 1-story wood, needs repairs, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 356, Fort Gordon
Property #: 219330261
Fed Reg Date: 08/29/97
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4237 sq. ft., 1-story wood, possible termite damage, needs repairs, most recent use—offices, off-site use only.

Bldg. 19601, Fort Gordon
Property #: 219330268
Fed Reg Date: 08/29/97
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2132 sq. ft., 1-story wood, possible termite damage, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 19602, Fort Gordon
Property #: 219330269
Fed Reg Date: 08/29/97
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 1555 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 332, Fort Gordon
Property #: 219330289
Fed Reg Date: 08/29/97
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 5340 sq. ft., 1-story wood, needs repair, presence of asbestos, most recent use—laboratory, off-site use only.

Bldg. 333, Fort Gordon
Property #: 219330290
Fed Reg Date: 08/29/97
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 5340 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—laboratory, off-site use only.

Bldg. 352, Fort Gordon
Property #: 219330294
Fed Reg Date: 08/29/97
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 560 sq. ft., 1-story metal, presence of asbestos, most recent use—equip. storage, off-site use only.

Bldg. 10501
Property #: 219410264
Fed Reg Date: 08/29/97
Fort Gordon
Fort Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2516 sq. ft.; 1 story; wood; needs rehab.; most recent use—office; off-site use only.

Bldg. 11813
Property #: 219410269
Fed Reg Date: 08/29/97
Fort Gordon
Fort Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 70 sq. ft., 1-story; metal, needs rehab.; most recent use—storage; off-site use only.

Bldg. 21314
Property #: 219410270
Fed Reg Date: 08/29/97
Fort Gordon
Fort Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 85 sq. ft., 1-story; needs rehab.; most recent use—storage; off-site use only.

Bldg. 951
Property #: 219410271
Fed Reg Date: 08/29/97
Fort Gordon
Fort Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 17,825 sq. ft.; 1 story; wood; needs rehab.; most recent use—workshop; off-site use only.

Bldg. 12809
Property #: 219410272
Fed Reg Date: 08/29/97
Fort Gordon
Fort Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2788 sq. ft., 1 story; wood; needs rehab.; most recent use—maintenance shop; off-site use only.

Bldg. 10306
Property #: 219410273
Fed Reg Date: 08/29/97
Fort Gordon
Fort Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 195 sq. ft., 1 story; wood; most recent use—oil storage shed; off-site use only.

Bldg. 2813, Ft. Benning
Property #: 219520074
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 40536 sq. ft., 4-story, most recent use—admin., needs major repair, off-site use only.

Bldg. T–901
Property #: 219520077
Fed Reg Date: 08/29/97
Hunter Army Airfield
Savannah, GA, Co. Chatham, Zip: 31409–
Status: Unutilized
Comment: 1828 sq. ft., 1-story, needs major repair, most recent use—admin., off-site use only.

Bldg. 2814, Fort Benning
Property #: 219520133
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 40536 sq. ft., 4-story, most recent use—barracks w/dining, needs major repair, off-site use only.

Bldg. 1755, Fort Benning
Property #: 219520170
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3142 sq. ft., needs rehab, most recent use—maint. shop, off-site use only.

Bldg. 4051, Fort Benning
Property #: 219520175
Fed Reg Date: 08/29/97
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 967 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. A1618, Fort Gordon
Property #: 219520184
Fed Reg Date: 08/29/97
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2800 sq. ft., 1-story, needs rehab, most recent use—storage, presence of asbestos & lead base paint, off-site use only.

Bldg. 2141
Property #: 219610655
Fed Reg Date: 08/29/97
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2283 sq. ft., needs repair, most recent use—office, off-site use only.

Bldg. 34300
Property #: 219620664
Fed Reg Date: 08/29/97
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2525 sq. ft., most recent use—auto svc store, possible asbestos, off-site use only.

Bldg. S–7332
Property #: 219630160
Fed Reg Date: 08/29/97
Fort Stewart
Hinesville, GA, Co: Liberty, Zip: 31314–
Status: Unutilized
Comment: 1140 sq. ft., fair condition, most recent use—admin., off-site use only.

Bldg. T–293
Property #: 219710230
Fed Reg Date: 08/29/97
Fort Stewart
Hinesville, GA, Co: Liberty, Zip: 31314–
Status: Excess
Comment: 5220 sq. ft., most recent use—admin., needs major repairs, off-site use only.

Bldg. T–963
Property #: 219710232
Fed Reg Date: 08/29/97
Fort Stewart
Hinesville, GA, Co: Liberty, Zip: 31314–
Status: Excess
Comment: 3108 sq. ft., most recent use—veh. maint. shop, needs major repairs, off-site use only.

Bldg. 107
Property #: 219720154
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 12823 sq. ft., needs rehab, most recent use—warehouse, off-site use only.

Bldg. 239
Property #: 219720155
Fed Reg Date: 08/29/97
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–

Status: Unutilized
Comment: 2817 sq. ft., needs rehab, most recent use—exchange service outlet, off-site use only.

Bldg. 322
Property #: 219720156
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 9600 sq. ft., needs rehab, most recent use—admin., off-site use only.

Bldg. 327
Property #: 219720157
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 996 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. 329
Property #: 219720158
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1001 sq. ft., needs rehab, most recent use—access cnt fac, off-site use only.

Bldg. 1727
Property #: 219720159
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 704 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. 1728
Property #: 219720160
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 7693 sq. ft., needs rehab, most use—storage, off-site use only.

Bldg. 1737
Property #: 219720161
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1500 sq. ft., needs rehab. most recent use—storage off-site use only.

Bldg. 2512
Property #: 219720162
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4378 sq. ft., needs rehab, most recent use—admin., off-site use only.

Bldg. 2515
Property #: 219720163
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—admin., off-site use only.

Bldg. 2517–2518, 2521–2525
Property #: 219720164
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., each, needs rehab, most recent use—education facility, off-site use only.

Bldgs. 2527–2531
Property#: 219720165
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., each, needs rehab, most recent use—admin., off-site use only.

Bldg. 2592
Property#: 219720166
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 11674 sq. ft., needs rehab, most recent use—gym, off-site use only.

Bldg. 2593
Property#: 219720167
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 13644 sq. ft., needs rehab, most recent use—parachute shop, off-site use only.

Bldg. 2595
Property #: 219720168
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3356 sq. ft., needs rehab, most recent use—chapel, off-site use only.

Bldgs. 2865, 2869, 2872
Property #: 219720169
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: approx. 1100 sq. ft. each, needs rehab, most recent use—shower fac., off-site use only.

Bldgs. 4400–4402
Property #: 219720170
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: various sq. ft., needs rehab, most recent use—admin., off-site use only.

Bldg. 4404
Property #: 219720171
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2723 sq. ft., needs rehab, most recent use—detached day room, off-site use only.

Bldg. 4405
Property #: 219720172
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 7670 sq. ft., needs rehab, most recent use—barracks, off-site use only.

Bldg. 4406
Property #: 219720173
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1372 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. 4407
Property #: 219720174
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1635 sq. ft., needs rehab, most recent use—admin., off-site use only.

11 Bldgs.
Property #: 219720175
Fed Reg Date: 08/29/97
Fort Benning
4428–4429, 4433–4436, 4441–4443, 4447–4448
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4425 sq. ft. each, needs rehab, most recent use—barracks, off-site use only.

6 Bldgs.
Property #: 219720176
Fed Reg Date: 08/29/97
Fort Benning
4450–4451, 4453–4454, 4456–4457
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4425 sq. ft. each, needs rehab, most recent use—barracks, off-site use only.

10 Bldgs.
Property #: 219720177
Fed Reg Date: 08/29/97
Fort Benning
4460–4461, 4463–4464, 4468, 4470–4474
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4425 sq. ft. each, needs rehab, most recent use—barracks, off-site use only.

Bldgs. 4432, 4440, 4445
Property #: 219720179
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: various sq. ft., needs rehab, most recent use—storage, off-site use only.

8 Bldgs.
Property #: 219720180
Fed Reg Date: 08/29/97
Fort Benning
4425, 4431, 4438–4439, 4452, 4458–4459, 4465
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2498 sq. ft. each, needs rehab, most recent use—dining facility, off-site use only.

6 Bldgs.
Property #: 219720181
Fed Reg Date: 08/29/97
Fort Benning
4430, 4437, 4449, 4455, 4462, 4467
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1884 sq. ft. each, needs rehab, most recent use—admin., off-site use only.

Bldg. 4444
Property #: 219720182

Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2284 sq. ft. needs rehab, most recent use—medical clinic, off-site use only.

Bldg. 4475
Property #: 219720183
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2213 sq. ft. needs rehab, most recent use—headquarters bldg., off-site use only.

Bldg. 4476
Property #: 219720184
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3148 sq. ft., needs rehab, most recent use—vehicle maint. shop, off-site use only.

Bldgs. 4478, 4485
Property #: 219720185
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3000 sq. ft. and 4366 sq. ft., needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 4480
Property #: 219720186
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3000 sq. ft., needs rehab, most recent use—mobilization dining facility, off-site use only.

Bldg. 4482
Property #: 219720187
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 300 sq. ft., needs rehab, most recent use—carpentry shop, off-site use only.

Bldg. 4640
Property #: 219720188
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3800 sq. ft., needs rehab, most recent use—exchange branch, off-site use only.

8 Bldgs.
Property #: 219720189
Fed Reg Date: 08/29/97
Fort Benning
4700–4701, 4704–4707, 4710–4711
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 6433 sq. ft. each, needs rehab, most recent use—unaccompanied personnel housing, off-site use only.

Bldgs. 4703, 4708–4709
Property #: 219720190
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3570 sq. ft. each, needs rehab, most recent use—battalion headquarters bldg., off-site use only.

Bldg. 4714
Property #: 219720191
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1983 sq. ft., needs rehab, most recent use—battalion headquarters bldg., off-site use only.

Bldg. 4702
Property #: 219720192
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3690 sq. ft., needs rehab, most recent use—dining facility off-site use only.

Bldgs. 4712–4713
Property #: 219720193
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1983 sq. ft. and 10270 sq. ft., needs rehab, most recent use—company headquarters bldg., off-site use only.

Bldg. T–930
Property #: 219730218
Fed Reg Date: 10/03//97
Fort Stewart
Hinesville, GA, Co: Liberty, Zip: 31314–
Status: Unutilized
Comment: 34098 sq. ft., poor condition, most recent use—laundry, off-site use only.

Bldg. T–931
Property #: 219730219
Fed Reg Date: 10/03/97
Fort Stewart
Hinesville, GA, Co: Liberty, Zip: 31314–
Status: Unutilized
Comment: 2232 sq. ft., poor condition, most recent use—gas gen. plant, off-site use only.

Bldg. T–949
Property #: 219730220
Fed Reg Date: 10/03/97
Fort Stewart
Hinesville, GA, Co: Liberty, Zip: 31314–
Status: Unutilized
Comment: 240 sq. ft. poor condition, most recent use—plant bldg., off-site use only.

Hawaii

Buildings

P–88
Property #: 219030324
Fed Reg Date: 08/29/97
Project Name: Aliamanu Military Reservation
Aliamanu Military Reservation
Honolulu, HI, Co: Honolulu, Zip: 96818–
Location: Approximately 600 feet from Main Gate on Aliamanu Drive.
Status: Unutilized
Comment: 45,216 sq. ft. underground tunnel complex, pres. of asbestos clean-up required of contamination, use of respirator required by those entering property, use limitations.

Bldg. S–823
Property #: 219520082
Fed Reg Date: 08/29/97
Wheeler Army Airfield
Wahiawa, HI, Zip: 96786–
Status: Unutilized
Comment: 3150 sq. ft., 2-story wood frame, most recent use—office, off-site use only.

Bldg. T–723
Property #: 219620657
Fed Reg Date: 08/29/97
Fort Shafter
Honolulu, HI, Zip: 96819–
Status: Unutilized
Comment: 1751 sq. ft., most recent use—store house, off-site use only.

Bldg. T–1629
Property #: 219620658
Fed Reg Date: 08/29/97
Schofield Barracks
Wahiawa, HI, Zip: 96786–
Status: Unutilized
Comment: 3287 sq. ft., most recent use—storage, possible termite infestation, off-site use only.

Bldg. T–587
Property #: 219640198
Fed Reg Date: 08/29/97
Schofield Barracks
Wahiawa, HI, Zip: 96786–
Status: Unutilized
Comment: 3448 sq. ft., most recent use—store house, off-site use only.

Bldg. P–591
Property #: 219640199
Fed Reg Date: 08/29/97
Schofield Barracks
Wahiawa, HI, Zip: 96786–
Status: Unutilized
Comment: 800 sq. ft., most recent use—store house, off-site use only.

Bldg. P–592
Property #: 219640200
Fed Reg Date: 08/29/97
Schofield Barracks
Wahiawa, HI, Zip: 96786–
Status: Unutilized
Comment: 800 sq. ft., most recent use—store house, off-site use only.

Bldg. T–674A
Property #: 219640201
Fed Reg Date: 08/29/97
Schofield Barracks
Wahiawa, HI, Zip: 96786–
Status: Unutilized
Comment: 4365 sq. ft., most recent use—office/classroom, off-site use only.

Bldg. T–675A
Property #: 219640202
Fed Reg Date: 08/29/97
Schofield Barracks
Wahiawa, HI, Zip: 96786–
Status: Unutilized
Comment: 4365 sq. ft., most recent use—offce, off-site use only.

Bldg. T–337
Property #: 219640203
Fed Reg Date: 08/29/97
Fort Shafter
Honolulu, HI, Co: Honolulu, Zip: 96819–
Status: Unutilized
Comment: 132 sq. ft., most recent use—storage, off-site use only.

Bldg. T–527

Property #: 219640204
Fed Reg Date: 08/29/97
Fort Shafter
Honolulu, HI, Co: Honolulu, Zip: 96819–
Status: Unutilized
Comment: 4131 sq. ft., most recent use—training center, off-site use only.

Bldg. P–593
Property #: 219710119
Fed Reg Date: 08/29/97
Schofield Barracks
Wahiawa, HI, Zip: 96786–
Status: Unutilized
Comment: 882 sq. ft. metal, good condition, off-site use only.

Bldg. P–594
Property #: 219710120
Fed Reg Date: 08/29/97
Schofield Barracks
Wahiawa, HI, Zip: 96786–
Status: Unutilized
Comment: 882 sq. ft. metal, good condition, off-site use only.

Bldg. P–225
Property #: 219710121
Fed Reg Date: 08/29/97
Fort Shafter Military Reservation
Honolulu, HI, Co: Honolulu, Zip: 96819–
Status: Unutilized
Comment: 330 sq. ft., most recent use—storage, requires complete cleaning, off-site use only.

Bldg. T–69
Property #: 219720198
Fed Reg Date: 08/29/97
Schofield Barracks
Wahiawa, HI, Zip: 96786–
Status: Unutilized
Comment: 3039 sq. ft., most recent use—chapel, needs repair, off-site use only.

Bldg. T–911
Property #: 219720199
Fed Reg Date: 08/29/97
Schofield Barracks
Wahiawa, HI, Zip: 96786–
Status: Unutilized
Comment: 4800 sq. ft., most recent use—office, needs repair, off-site use only.

Bldg. T–912
Property #: 219720200
Fed Reg Date: 08/29/97
Schofield Barracks
Wahiawa, HI, Zip: 96786–
Status: Unutilized
Comment: 4800 sq. ft., most recent use—office, needs repair, off-site use only.

Bldg. T–913
Property #: 219720201
Fed Reg Date: 08/29/97
Schofield Barracks
Wahiawa, HI, Zip: 96786–
Status: Unutilized
Comment: 4800 sq. ft., most recent use—office, needs repair, off-site use only.

Bldg. T–914
Property #: 219720202
Fed Reg Date: 08/29/97
Schofield Barracks
Wahiawa, HI, Zip: 96786–
Status: Unutilized
Comment: 144 sq. ft., most recent use—storage, needs repair, off-site use only.

Bldg. T–917
Property #: 219720203
Fed Reg Date: 08/29/97
Schofield Barracks
Wahiawa, HI, Zip: 96786–
Status: Unutilized
Comment: 1328 sq. ft., most recent use—office, needs repair, off-site use only.

Bldg. T–918
Property #: 219720204
Fed Reg Date: 08/29/97
Schofield Barracks
Wahiawa, HI, Zip: 96786–
Status: Unutilized
Comment: 1306 sq. ft., most recent use—classroom, needs repair, off-site use only.

Bldg. T–920
Property #: 219720205
Fed Reg Date: 08/29/97
Schofield Barracks
Wahiawa, HI, Zip: 96786–
Status: Unutilized
Comment: 1306 sq. ft., most recent use—office, needs repair, off-site use only.

Bldg. T–921
Property #: 219720206
Fed Reg Date: 08/29/97
Schofield Barracks
Wahiawa, HI, Zip: 96786–
Status: Unutilized
Comment: 1427 sq. ft., most recent use—office, needs repair, off-site use only.

Bldg. T–450
Property #: 219730221
Fed Reg Date: 10/03/97
Fort Shafter
Honolulu, HI, Co: Honolulu, Zip: 96819–
Status: Unutilized
Comment: 672 sq. ft., presence of asbestos/lead paint, most recent use—guest house, off-site use only.

Bldg. T–451
Property #: 219730222
Fed Reg Date: 10/03/97
Fort Shafter
Honolulu, HI, Co: Honolulu, Zip: 96819–
Status: Unutilized
Comment: 1348 sq. ft., presence of asbestos/lead paint, most recent use—guest house, off-site use only.

Bldg. T–452
Property #: 219730223
Fed Reg Date: 10/03/97
Fort Shafter
Honolulu, HI, Co: Honolulu, Zip: 96819–
Status: Unutilized
Comment: 672 sq. ft., presence of asbestos/lead paint, most recent use—guest house, off-site use only.

Bldg. T–453
Property #: 219730224
Fed Reg Date: 10/03/97
Fort Shafter
Honolulu, HI, Co: Honolulu, Zip: 96819–
Status: Unutilized
Comment: 1348 sq. ft., presence of asbestos/lead paint, most recent use—guest house, off-site use only.

Bldg. T–454
Property #: 219730225
Fed Reg Date: 10/03/97
Fort Shafter
Honolulu, HI, Co: Honolulu, Zip: 96819–
Status: Unutilized
Comment: 672 sq. ft., presence of asbestos/lead paint, most recent use—guest house, off-site use only.

Bldg. T–455
Property #: 219730226
Fed Reg Date: 10/03/97
Fort Shafter
Honolulu, HI, Co: Honolulu, Zip: 96819–
Status: Unutilized
Comment: 1348 sq. ft., presence of asbestos/lead paint, most recent use—guest house, off-site use only.

Bldg. T–456
Property #: 219730227
Fed Reg Date: 10/03/97
Fort Shafter
Honolulu, HI, Co: Honolulu, Zip: 96819–
Status: Unutilized
Comment: 672 sq. ft., presence of asbestos/lead paint, most recent use—guest house, off-site use only.

Bldg. T–457
Property #: 219730228
Fed Reg Date: 10/03/97
Fort Shafter
Honolulu, HI, Co: Honolulu, Zip: 96819–
Status: Unutilized
Comment: 1348 sq. ft., presence of asbestos/lead paint, most recent use—guest house, off-site use only.

Bldg. T–458
Property #: 219730229
Fed Reg Date: 10/03/97
Fort Shafter
Honolulu, HI, Co: Honolulu, Zip: 96819–
Status: Unutilized
Comment: 672 sq. ft., presence of asbestos/lead paint, most recent use—guest house, off-site use only.

Bldg. T–459
Property #: 219730230
Fed Reg Date: 10/03/97
Fort Shafter
Honolulu, HI, Co: Honolulu, Zip: 96819–
Status: Unutilized
Comment: 1348 sq. ft., presence of asbestos/lead paint, most recent use—guest house, off-site use only.

Bldg. T–460
Property #: 219730231
Fed Reg Date: 10/03/97
Fort Shafter
Honolulu, HI, Co: Honolulu, Zip: 96819–
Status: Unutilized
Comment: 672 sq. ft., presence of asbestos/lead paint, most recent use—guest house, off-site use only.

Illinois

Buildings

Bldg. 54
Property #: 219620666
Fed Reg Date: 08/29/97
Rock Island Arsenal
Rock Island, IL, Co: Rock Island, Zip: 61299–
Status: Unutilized
Comment: 2000 sq. ft., most recent use—oil storage, needs repair, off-site use only.

Kansas

Buildings

Bldg. 166, Fort Riley
Property #: 219410325
Fed Reg Date: 08/29/97
Ft. Riley, KS, Co: Geary, Zip: 66442–
Status: Unutilized
Comment: 3803 sq. ft., 3-story brick residence, needs rehab, presence of

asbestos, located within National Registered Historic District.
Bldg. 184, Fort Riley
Property #: 219430146
Fed Reg Date: 08/29/97
Ft. Riley, KS, Zip: 66442–
Status: Unutilized
Comment: 1959 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—boiler plant, historic district.
Bldg. P–313, Fort Riley
Property #: 219620668
Fed Reg Date: 08/29/97
Ft. Riley, KS, Co: 66442–
Status: Unutilized
Comment: 6222 sq. ft., most recent use—admin. bldg., needs repair, possible asbestos.
Bldg. P–138
Property #: 219730232
Fed Reg Date: 10/03/97
Fort Leavenworth
Leavenworth, KS, Zip: 66027–
Status: Unutilized
Comment: 5087 sq. ft., 2-story, possible asbestos/lead paint, most recent use—battalion hdqtrs., off-site use only.
Bldg. P–139
Property #: 219730233
Fed Reg Date: 10/03/97
Fort Leavenworth
Leavenworth, KS, Zip: 66027–
Status: Unutilized
Comment: 1798 sq. ft., possible asbestos/lead paint, most recent use—brigade hdqtrs., off-site use only.
Bldg. S–402
Property #: 219730234
Fed Reg Date: 10/03/97
Fort Leavenworth
Leavenworth, KS, Zip: 66027–
Status: Unutilized
Comment: 2792 sq. ft., possible asbestos/lead paint, most recent use—hospital clinic, off-site use only.
Bldg. S–404
Property #: 219730235
Fed Reg Date: 10/03/97
Fort Leavenworth
Leavenworth, KS, Zip: 66027–
Status: Unutilized
Comment: 4795 sq. ft., possible asbestos/lead paint, most recent use—hospital clinic, off-site use only.

Louisiana

Buildings

Bldg. 7311, Fort Polk
Property #: 219620681
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon, Zip: 71459–
Status: Underutilized
Comment: 643 sq. ft., most recent use—BOQ Transient.
Bldg. 7310, Fort Polk
Property #: 219620682
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon, Zip: 71459–
Status: Underutilized
Comment: 643 sq. ft., most recent use—BOQ Transient.
Bldg. 7309, Fort Polk
Property #: 219620683
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon, Zip: 71459–
Status: Underutilized
Comment: 643 sq. ft., most recent use—BOQ Transient, needs repair.
Bldg. 5917 A, B, C, D
Property #: 219630164
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–7100
Status: Unutilized
Comment: 3902 sq. ft., family housing, needs rehab.
Bldg. 7805, Fort Polk
Property #: 219640513
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Unutilized
Comment: 4172 sq. ft., 2-story, most recent use—barracks.
Bldg. 7806, Fort Polk
Property #: 219640514
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Unutilized
Comment: 4172 sq. ft., 2-story, most recent use—barracks.
Bldg. 7807
Fort Polk
Property #: 219640515
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Unutilized
Comment: 4172 sq. ft., 2-story most recent use—barracks.
Bldg. 7808
Fort Polk
Property #: 219640516
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., 2-story most recent use—barracks.
Bldg. 7809
Fort Polk
Property #: 219640517
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., 2-story most recent use—barracks.
Bldg. 7810
Fort Polk
Property #: 219640518
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., 2-story most recent use—barracks.
Bldg. 7811
Fort Polk
Property #: 219640519
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., 2-story most recent use—barracks.
Bldg. 7813
Fort Polk
Property #: 219640520
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., 2-story most recent use—barracks.
Bldg. 7814
Fort Polk
Property #: 219640521
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., 2-story most recent use—barracks.
Bldg. 7815
Fort Polk
Property #: 219640522
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., 2-story most recent use—barracks.
Bldg. 7816
Fort Polk
Property #: 219640523
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., 2-story most recent use—barracks.
Bldg. 8405
Fort Polk
Property #: 219640524
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 1029 sq. ft., most recent use—office.
Bldg. 8407
Fort Polk
Property #: 219640525
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 2055 sq. ft., most recent use—admin.
Bldg. 8408
Fort Polk
Property #: 219640526
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 2055 sq. ft., most recent use—admin.
Bldg. 8414
Fort Polk
Property #: 219640527
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.
Bldg. 8423
Fort Polk
Property #: 219640528
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.
Bldg. 8424
Fort Polk
Property #: 219640529
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.
Bldg. 8426
Fort Polk

Property #: 219640530
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8427
Fort Polk
Property #: 219640531
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8428
Fort Polk
Property #: 219640532
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8429
Fort Polk
Property #: 219640533
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8430
Fort Polk
Property #: 219640534
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8431
Fort Polk
Property #: 219640535
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8432
Fort Polk
Property #: 219640536
Fed Reg Date: 08/29/97
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8433
Property #: 219640537
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8446
Property #: 219640538
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 2093 sq. ft., most recent use—admin.

Bldg. 8449
Property #: 219640539
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 2093 sq. ft., most recent use—office.

Bldg. 8450
Property #: 219640540
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 2093 sq. ft., most recent use—admin.

Bldg. 8457
Property #: 219640541
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8458
Property #: 219640542
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8459
Property #: 219640543
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8460
Property #: 219640544
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8461
Property #: 219640545
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8462
Property #: 219640546
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8463
Property #: 219640547
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8501
Property #: 219640548
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, ZIP: 71459–
Status: Underutilized
Comment: 1687 sq. ft., most recent use—office.

Bldg. 8502
Property #: 219640549
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, ZIP: 71459–
Status: Underutilized
Comment: 1029 sq. ft., most recent use—office.

Bldg. 8540
Property #: 219640550
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, ZIP: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8541
Property #: 219640551
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, ZIP: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8542
Property #: 219640552
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, ZIP: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8543
Property #: 219640553
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, ZIP: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8544
Property #: 219640554
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, ZIP: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8545
Property #: 219640555
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, ZIP: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8546
Property #: 219640556
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, ZIP: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8547
Property #: 219640557
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, ZIP: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8548
Property #: 219640558
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, ZIP: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 8549
Property #: 219640559
Fed Reg Date: 08/29/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks.

Bldg. 7401
Property #: 219730236
Fed Reg Date: 10/03/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Unutilized
Comment: 1688 sq. ft., most recent use—classroom, off-site use only.

Bldg. 7402
Property #: 219730237
Fed Reg Date: 10/03/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Unutilized
Comment: 1675 sq. ft., most recent use—admin/supply, off-site use only.

Bldg. 7403
Property #: 219730238
Fed Reg Date: 10/03/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Unutilized
Comment: 2093 sq. ft., most recent use—admin/supply, off-site use only.

Bldg. 7404
Property #: 219730239
Fed Reg Date: 10/03/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Unutilized
Comment: 2093 sq. ft., most recent use—admin/supply, off-site use only.

Bldg. 7405
Property #: 219730240
Fed Reg Date: 10/03/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Unutilized
Comment: 1922 sq. ft., most recent use—recreation, off-site use only.

Bldg. 7406
Property #: 219730241
Fed Reg Date: 10/03/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Unutilized
Comment: 1675 sq. ft., most recent use—storage, off-site use only.

Bldg. 7407
Property #: 219730242
Fed Reg Date: 10/03/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Unutilized
Comment: 2093 sq. ft., most recent use—admin/supply, off-site use only.

Bldg. 7408
Property #: 219730243
Fed Reg Date: 10/03/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Unutilized
Comment: 2093 sq. ft., most recent use—admin/supply, off-site use only.

Bldg. 7412
Property #: 219730244
Fed Reg Date: 10/03/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Unutilized
Comment: 1029 sq. ft., most recent use—admin., off-site use only.

Bldg. 7419
Property #: 219730245
Fed Reg Date: 10/03/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Unutilized
Comment: 2777 sq. ft., most recent use—classroom, off-site use only.

Bldg. 7423
Property #: 219730246
Fed Reg Date: 10/03/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Unutilized
Comment: 4073 sq. ft., most recent use—barracks, off-site use only.

Bldg. 7424
Property #: 219730247
Fed Reg Date: 10/03/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Unutilized
Comment: 4073 sq. ft., most reent use—barracks, off-site use only.

Bldg. 7425
Property #: 219730248
Fed Reg Date: 10/03/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Unutilized
Comment: 4073 sq. ft., most recent use—barracks, off-site use only.

Bldg. 7437
Property #: 219730249
Fed Reg Date: 10/03/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Unutilized
Comment: 4073 sq. ft., most recent use—barracks, off-site use only.

Bldg. 7438
Property #: 219730250
Fed Reg Date: 10/03/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Unutilized
Comment: 4073 sq. ft., most recent use—barracks, off-site use only.

Bldg. 7453
Property #: 21930251
Fed Reg Date: 10/03/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Unutilized.
Comment: 1029 sq. ft., most recent use—admin., off-site use only.

Bldg. 7454
Property #: 219730252
Fed Reg Date: 10/03/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Unutilized.
Comment: 1922 sq. ft., most recent use—dining facility, off-site use only.

Bldg. 7455
Property #: 219730253
Fed Reg Date: 10/03/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Unutilized.
Comment: 2093 sq. ft., off-site use only.

Bldg. 7456
Property #: 219730254
Fed Reg Date: 10/03/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Unutilized.
Comment: 2453 sq. ft., off-site use only.

Bldg. 7457
Property #: 219730255
Fed Reg Date: 10/03/97
Fort Polk
Ft. Polk, LA, Co: Vernon Parish, Zip: 71459–
Status: Unutilized.
Comment: 2356 sq. ft., most recent use—dining, off-site use only.

Maryland

Buildings

Bldg. 6687
Property #: 219220446
Fed Reg Date: 08/29/97
Fort George G. Meade
Mapes and Zimbroski Roads
Ft. Meade, MD, Co: Anne Arundel, Zip: 20755–5115
Status: Unutilized.
Comment: 1150 sq. ft., presence of asbestos, wood frame, most recent use—veterinarian clinic, off-site removal only, sched. to be vacated 10/1/92.

Bldg. 370
Property #: 219730256
Fed Reg Date: 10/03/97
Fort Meade
Ft. Meade, MD, Co: Anne Arundel, Zip: 20755–5115
Status: Unutilized.
Comment: 19,583 sq. ft., most recent use—NCO club, possible asbestos/lead paint.

Bldg. 2424
Property #: 219730257
Fed Reg Date: 10/03/97
Fort Meade
Ft. Meade, MD, Co: Anne Arundel, Zip: 20755–5115
Status: Unutilized.
Comment: 2284 sq. ft., most recent use—admin., possible asbestos/lead paint.

Minnesota

Land

Land
Property #: 219120269
Fed Reg Date: 08/29/97
Twin Cities Army Ammunition Plant
New Brighton, MN, Co: Ramsey, Zip: 55112–
Status: Underutilized
Comment: Approx. 49 acres, possible contamination, secured area with alternate access.

Missouri

Buildings

Bldg. T599

Property #: 219230260
Fed Reg Date: 08/29/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 18270 sq. ft., 1-story, presence of asbestos, most recent use—storehouse, off-site use only.

Bldg. T1311
Property #: 219230261
Fed Reg Date: 08/29/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 2740 sq. ft., 1-story, presence of asbestos, most recent use—storehouse, off-site use only.

Bldg. T427
Property #: 219330299
Fed Reg Date: 08/29/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 10245 sq. ft., 1-story, presence of asbestos, most recent use—post office, off-site use only.

Bldg. T2171
Property #: 219340212
Fed Reg Date: 08/29/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., 1-story wood frame, most recent use—administrative, no handicap fixtures, lead base paint, off-site use only.

Bldg. T6822
Property #: 219340219
Fed Reg Date: 08/29/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 4000 sq. ft., 1-story wood frame, most recent use—storage, no handicap fiscutes, off-site use only.

Bldg. T1364
Property #: 219420393
Fed Reg Date: 08/29/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 1144 Sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only.

Bldg. T408
Property #: 219420433
Fed Reg Date: 08/29/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 10296 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T429
Property #: 219420439
Fed Reg Date: 08/29/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 2475 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T1497
Property #: 219420441
Fed Reg Date: 08/29/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of lead base paid, most recent use—admin/gen. purpose, off-site use only.

Bldg. T2139
Property #: 219420446
Fed Reg Date: 08/29/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T–2191
Property #: 219440334
Fed Reg Date: 08/29/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.

Bldg. T–2197
Property #: 219440335
Fed Reg Date: 08/29/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.

Bldg. T590
Property #: 219510110
Fed Reg Date: 08/29/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–
Status: Excess
Comment: 3263 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.

Bldg. T1246
Property #: 219510111
Fed Reg Date: 08/29/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–
Status: Excess
Comment: 1144 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.

Bldg. T2385
Property #: 219510115
Fed Reg Date: 08/29/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–
Status: Excess
Comment: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.

4 Bldgs.
Property #: 219710124
Fed Reg Date: 08/29/97
Fort Leonard Wood
83, 85, 89 Cable Street
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Unutilized
Comment: 1236 sq. ft., each, needs repair, presence of asbestos, most recent use—family quarters.

38 Bldgs.
Property #: 219710125
Fed Reg Date: 08/29/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Location: 1–16, 18, 20, 22, 24, 26–29, 31, 33–45 Depuy Street
Status: Unutilized
Comment: 1083–1485 sq. ft., each, needs repair, presence of asbestos, most recent use—family quarters.

14 Bldgs.
Property #: 219710126
Fed Reg Date: 08/29/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Location: 1–5, 7, 22, 24, 26, 28, 30, 32, 34, 36 Diamond Street
Status: Unutilized
Comment: 1083–1454 sq. ft. each, needs repair, presence of asbestos, most recent use—family quarters.

32 Bldgs.
Property #: 219710127
Fed Reg Date: 08/29/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Location: 1–17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 52, 54, 56, 58, 60, 62 Elwood Street
Status: Unutilized
Comment: 1083–1454 sq. ft. each, needs repair, presence of asbestos, most recent use—family quarters.

4 Bldgs.
Property #: 219710128
Fed Reg Date: 08/29/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Location: 1, 3, 5, 7 Epps Street
Status: Unutilized
Comment: 1083 sq. ft. each, needs repair, presence of asbestos, most recent use—family quarters.

46 Bldgs.
Property #: 219710129
Fed Reg Date: 08/29/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Location: Indiana Street
Status: Unutilized
Comment: 1083–1454 sq. ft. each, needs repair, presence of asbestos, most recent use—family quarters.

14 Bldgs.
Property #: 219710130
Fed Reg Date: 08/29/97

Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Location: Young Street
Status: Unutilized
Comment: 1083 sq. ft. each, needs repair, presence of asbestos, most recent use—family quarters.

Bldgs. T–2340 thru T2343
Property #: 219710138
Fed Reg Date: 08/29/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 9267 sq. ft. each, most recent use—storage/general purpose.

Bldg. 1226
Property #: 219730275
Fed Reg Date: 10/03/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Unutilized
Comment: 1600 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 1271
Property #: 219730276
Fed Reg Date: 10/03/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1280
Property #: 219730277
Fed Reg Date: 10/03/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. 1281
Property #: 219730278
Fed Reg Date: 10/03/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. 1282
Property #: 219730279
Fed Reg Date: 10/03/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.

Bldg. 1283
Property #: 219730280
Fed Reg Date: 10/03/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1284
Property #: 219730281
Fed Reg Date: 10/03/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 1285
Property #: 219730282
Fed Reg Date: 10/03/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.

Bldg. 1286
Property #: 219730283
Fed Reg Date: 10/03/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 1287
Property #: 219730284
Fed Reg Date: 10/03/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only.

Bldg. 1288
Property #: 219730285
Fed Reg Date: 10/03/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—dining facility, off-site use only.

Bldg. 1289
Property #: 219730286
Fed Reg Date: 10/03/97
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

North Carolina

Buildings

Building 8–3641
Property #: 219710025
Fed Reg Date: 8/29/97
Fort Bragg
Fort Bragg, NC, Co: Cumberland, Zip: 28307—
Status: Unutilized
Comment: 960 sq. ft., aluminum trailer, needs repair, possible asbestos and leadpaint, off-site use only.

Building A–3672
Property #: 219710026
Fed Reg Date: 08/29/97
Fort Bragg
Fort Bragg, NC, Co: Cumberland, Zip: 28307–
Status: Unutilized
Comment: 30 sq. ft., guard shack, needs repair, possible asbestos and leadpaint, off-site use only.

North Dakota

Buildings

Bldg. 1101
Property #: 219640213
Fed Reg Date: 08/29/97
Stanley R. Mickelsen Safeguard Complex
Nekoma, ND, Co: Ramsey, Zip: 58355–
Status: Unutilized
Comment: 2259 sq. ft., earth covered concrete bldg., needs rehab, off-site use only.

Bldg. 1110
Property #: 219640214
Fed Reg Date: 08/29/97
Stanley R. Mickelsen Safeguard Complex
Nekoma, ND, Co: Ramsey, Zip: 58355–
Status: Unutilized
Comment: 11956 sq. ft., concrete, needs rehab, off-site use only.

Bldg. 2101
Property #: 219640215
Fed Reg Date: 08/29/97
Stanley R. Mickelsen Safeguard Complex
Nekoma, ND, Co: Cavalier, Zip: 58249–
Status: Unutilized
Comment: 2259 sq. ft., earth covered concrete bldg., needs rehab, off-site use only.

Bldg. 2110
Property #: 219640216
Fed Reg Date: 08/29/97
Stanley R. Mickelsen Safeguard Complex
Nekoma, ND, Co: Cavalier, Zip: 58249–
Status: Unutilized
Comment: 11956 sq. ft., concrete, needs rehab, off-site use only.

Bldg. 4101
Property #: 219640217
Fed Reg Date: 08/29/97
Stanley R. Mickelsen Safeguard Complex
Nekoma, ND, Co: Walsh, Zip: 58355–
Status: Unutilized
Comment: 2259 sq. ft., earth covered concrete bldg., needs rehab, off-site use only.

Bldg. 4110
Property #: 219640218
Fed Reg Date: 08/29/97
Stanley R. Mickelsen Safeguard Complex
Nekoma, ND, Co: Walsh, Zip: 58355–
Status: Unutilized
Comment: 11956 sq. ft., concrete, needs rehab, off-site use only.

New Mexico

Buildings

Bldg. 357
Property #≤ 219330335
Fed Reg Date: 08/29/97
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized

Comment: 3600 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 32980
Property #≤ 219330340
Fed Reg Date: 08/29/97
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 451 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 28267
Property #≤ 219330351
Fed Reg Date: 08/29/97
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 617 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 29195
Property #≤ 219330352
Fed Reg Date: 08/29/97
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 56 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 34219
Property #≤ 219330353
Fed Reg Date: 08/29/97
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 720 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 19242
Property #≤ 219330357
Fed Reg Date: 08/29/97
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 450 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only.

Bldg. 34227
Property #≤ 219330358
Fed Reg Date: 08/29/97
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 675 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only.

Bldg. 1834
Property #: 219330366
Fed Reg Date: 08/29/97
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Underutilized
Comment: 150 sq. ft., 1-story, presence of asbestos, most recent use—animal kennel, off-site use only.

Bldg. 29196
Property #: 219330369
Fed Reg Date: 08/29/97
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Underutilized
Comment: 38 sq. ft., 1-story, presence of asbestos, most recent use—power plant bldg, off-site use only.

Bldg. 30174
Property #: 219330370
Fed Reg Date: 08/29/97
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Underutilized
Comment: 176 sq. ft., 1-story, presence of asbestos, off-site use only.

Bldg. 33136
Property #: 219330371
Fed Reg Date: 08/29/97
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Underutilized
Comment: 18 sq. ft., off-site use only.

Bldg. 364
Property #: 219730300
Fed Reg Date: 10/03/97
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Underutilized
Comment: 1992 sq. ft., presence of asbestos, poor condition, most recent use—office, off-site use only.

Bldg. 419
Property #: 219730301
Fed Reg Date: 10/03/97
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Underutilized
Comment: 4859 sq. ft., presence of asbestos, most recent use—storehouse, off-site use only.

Bldg. 421
Property #: 219730302
Fed Reg Date: 10/03/97
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Underutilized
Comment: 6418 sq. ft., presence of asbestos, most recent use—storehouse, off-site use only.

Nevada

Land

Parcel A
Property #: 219012049
Fed Reg Date: 08/29/97
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plan
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: At Foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Status: Unutilized
Comment: 160 acres, road and utility easements, no utility hookup, possible flooding problem.

Parcel B
Property #: 219012056
Fed Reg Date: 08/29/97
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plan
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: At Foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Status: Unutilized
Comment: 1920 acres; road and utility easements; no utility hookup; possible flooding problem.

Parcel C
Property #: 219012057
Fed Reg Date: 08/29/97
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plan
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at western edge of State Route 359
Status: Unutilized
Comment: 85 acres; road & utility easements; no utility hookup.

Parcel D
Property #: 219012058
Fed Reg Date: 08/29/97
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plan
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at western edge of State Route 359
Status: Unutilized
Comment: 955 acres; road & utility easements; no utility hookup.

Buildings

Bldgs. 00425–00449
Property #: 219011946
Fed Reg Date: 08/29/97
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plan
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Status: Unutilized
Comment: 1310–1640 sq. ft., one floor residential, semi/wood construction, good condition.

New York

Land

Land—6.965 Acres
Property #: 219540018
Fed Reg Date: 08/29/97
Dix Avenue
Queensbury, NY, Co: Warren, Zip: 12801–
Status: Unutilized
Comment: 6.96 acres of vacant land, located in industrial area, potential utilities.

Buildings

Bldg. 100, Fort Hamilton
Property #: 219340254
Fed Reg Date: 08/29/97
Bellmore, NY, Co: Nassau, Zip: 11710–
Status: Unutilized
Comment: 155 sq. ft., 1-story, most recent use—storage.

Bldg. 200, Fort Hamilton
Property #: 219340255
Fed Reg Date: 08/29/97
Bellmore, NY, Co: Nassau, Zip: 11710–
Status: Unutilized
Comment: 12000 sq. ft., 1-story, most recent use—office.

Bldg. 300, Fort Hamilton
Property #: 219340256

Fed Reg Date: 08/29/97
Bellmore, NY, Co: Nassau, Zip: 11710–
Status: Underutilized
Comment: 11000 sq. ft., 1-story, most recent use—reserve center.

Bldg. 900, Fort Hamilton
Property #: 219430259
Fed Reg Date: 08/29/97
Bellmore, NY, Co: Nassau, Zip: 11710–
Status: Underutilized
Comment: 400 sq. ft., 1-story, needs rehab, most recent use—material storage.

Bldgs. 2400, 2402, 2404
Property #: 219710131
Fed Reg Date: 08/29/97
Stewart Army Subpost
New Windsor, NY, Co: Orange, Zip: 12553–
Status: Unutilized
Comment: various sq. ft., most recent use—storage/dog kennel, need repairs, off-site use only.

Bldgs. 2308, 2310
Property #: 219710132
Fed Reg Date: 08/29/97
Stewart Army Subpost
New Windsor, NY, Co: Orange, Zip: 12553–
Status: Unutilized
Comment: 425 & 1834 sq. ft., most recent use—gas pump house/office/ motor pool, need repairs, off-site use only.

Bldgs. 1800, 1802, 1818
Property #: 219710133
Fed Reg Date: 08/29/97
Stewart Army Subpost
New Windsor, NY, Co: Orange, Zip: 12553–
Status: Unutilized
Comment: approx. 6500 sq. ft. each, most recent use—barracks/storage, need repairs, off-site use only.

Bldgs. 2612, 2614, 2616
Property #: 219710134
Fed Reg Date: 08/29/97
Stewart Army Subpost
New Windsor, NY, Co: Orange, Zip: 12553–
Status: Unutilized
Comment: 10052 sq. ft. each, most recent use—family housing, need repairs, off-site use only.

Ohio

Buildings

15 Units
Property #: 219230354
Fed Reg Date: 08/29/97
Military Family Housing
Ravenna Army Ammunition Plant
Ravenna, OH, Co: Portage, Zip: 44266–9297
Status: Excess.
Comment: 3 bedroom (7 units)—1,824 sq. ft. each, 4 bedroom (8 units)—2,430 sq. ft. each, 2-story wood frame, presence of asbestos, off-site use only.

7 Units
Property #: 219230355
Fed Reg Date: 08/29/97
Military Family Housing Garages
Ravenna Army Ammunition Plant
Ravenna, OH, Co: Portage, Zip: 44266–9297
Status: Excess
Comment: 1–4 stall garage and 6–3 stall garages, presence of asbestos, off-site use only.

Oklahoma

Buildings

Bldg. T–2606
Property #: 219011273
Fed Reg Date: 08/29/97
Project Name: Fort Sill
Fort Sill
2606 Currie Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2722 sq. ft.; possible asbestos, one floor wood frame; most recent use—Headquarters Bldg.

Bldg. T–838, Fort Sill
Property #: 219220609
Fed Reg Date: 08/29/97
838 Macomb Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable).

Bldg. T–954, Fort Sill
Property #: 219240659
Fed Reg Date: 08/29/97
954 Quinette Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop.

Bldg. T–1050, Fort Sill
Property #: 219240660
Fed Reg Date: 08/29/97
1050 Quinettee Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 6240 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—barracks.

Bldg. T–1051, Fort Sill
Property #: 219240661
Fed Reg Date: 08/29/97
1051 Quinette Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 6240 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—barracks.

Bldg. T–2740, Fort Sill
Property #: 219240669
Fed Reg Date: 08/29/97
2740 Miner Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 8210 sq. Ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.

Bldg. T–4050, Fort Sill
Property #: 219240676
Fed Reg Date: 08/29/97
4050 Pitman Street
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3177 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. P–3032, Fort Sill
Property #: 219240678
Fed Reg Date: 08/29/97
3032 Haskins Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 101 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—general storehouse.

Bldg. T–3325, Fort Sill
Property #: 219240681
Fed Reg Date: 08/29/97
3325 Naylor Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 8832 sq. st., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse.

Bldg. P–2610, Fort Sill
Property #: 219330372
Fed Reg Date: 08/29/97
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 512 sq. ft., 1-story, possible asbestos, most recent use—classroom, off-site use only.

Bldg. T1652, Fort Sill
Property #: 219330380
Fed Reg Date: 08/29/97
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1505 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T2705
Property #: 219330384
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1601 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T3026
Property #: 219330392
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2454 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T5637
Property #: 219330419
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1606 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T4226
Property #: 219440384
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 114 sq. ft., 1 story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only.

Bldg. P-1015
Property #: 219520197
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73501–5100
Status: Unutilized
Comment: 15402 sq. ft., 1 story, most recent use—storage, off-site use only.

Bldg. T–2648
2648 Tacy Street

Property #: 219540022
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Excess
Comment: 9407 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—general purpose warehouse.

Bldg. T–2649
2649 Tacy Street
Property #: 219540024
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Excess
Comment: 9374 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—general storehouse.

Bldg. T–4036
4036 Carrie Road
Property #: 219540034
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Excess
Comment: 4532 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—classroom.

Bldg. T–367
Property #: 219610736
Fed Reg Date: 08/29/97
Fort Sill Lawton, OK, Co: Comanche, Zip: 73503–
Status: Unutilized
Comment: 9370 sq. ft., possible asbestos, most recent use—storage, off-site use only.

Bldg. P–366
Property #: 219610740
Fed Reg Date: 08/29/97
Fort Sill Lawton, OK, Co: Comanche, Zip: 73503–
Status: Unutilized
Comment: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only.

Bldg. P–1700
Property #: 219620707
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Unutilized
Comment: 7574 sq. ft., most recent use—maint. shop/office, possible asbestos/lead paint, off-site use only.

Building T–266
Property #: 219710027
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2,419 sq. ft., possible asbestos and leadpaint, most recent use—classroom, off-site use only.

Building T–267
Property #: 219710028
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2,419 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.

Building T–598
Property #: 219710029
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 744 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.

Building T–1601
Property #: 219710032
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 5,258 sq. ft., possible asbestos and leadpaint, most recent use—chapel, off-site use only.

Building P–1800
Property #: 219710033
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2,545 sq. ft., possible asbestos and leadpaint, most recent use—military equipment, off-site use only.

Building P–1805
Property #: 219710034
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 106 sq. ft., possible asbestos and lead paint, most recent use—utility, off-site use only.

Building P–1806
Property #: 219710035
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 44 sq. ft., possible asbestos and leadpaint, most recent use—utility, off-site use only.

Building T–1942
Property #: 219710036
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1,549 sq. ft., possible asbestos and leadpaint, most recent use—shop office, off-site use only.

Building T–1960
Property #: 219710037
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 10,309 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.

Building T–1961
Property #≤: 219710038
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 7,128 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.

Building T–2035
Property #: 219710039
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 18,157 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.

Building T–2181
Property #: 219710040
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2,805 sq. ft., possible asbestos and leadpaint, most recent use—office, off-site use only.

Building T–2426
Property #: 219710041
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 8,676 sq. ft., possible asbestos and leadpaint, most recent use—office/storage, off-site use only.

Building T–2451
Property #: 219710043
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 9,470 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.

Building T–2607
Property #: 219710044
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 6,743 sq. ft., possible asbestos and leadpaint, most recent use—classroom, off-site use only.

Building T–2608
Property #: 219710045
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 6,737 sq. ft., possible asbestos and leadpaint, most recent use—classroom, off-site use only.

Building T–2952
Property #: 219710047
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 4,327 sq. ft., possible asbestos and leadpaint, most recent use—motor repair shop, off-site use only.

Building T–2953
Property #: 219710048
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 114 sq. ft., possible asbestos and leadpaint, most recent use—storehouse, off-site use only.

Building T–3152
Property #: 219710051
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100

Status: Unutilized
Comment: 3,151 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.
Building T–3153
Property #: 219710052
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3,151 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.
Building T–3154
Property #: 219710053
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3,151 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.
Building T–3155
Property #: 219710054
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3,151 sq. ft., possible asbestos and leadpaint, most recent use—repair shop, off-site use only.
Building T–4009
Property #: 219710056
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2,817 sq. ft., possible asbestos and leadpaint, most recent use—classroom, off-site use only.
Building T–4010
Property #: 219710057
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2,815 sq. ft., possible asbestos and leadpaint, most recent use—office, off-site use only.
Building T–4011
Property #: 219710058
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 9,456 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.
Building T–4026
Property #: 219710059
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 9,597 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.
Building T–4030
Property #: 219710060
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 9,618 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.
Building T–4068
Property #: 219710061
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 9,618 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.
Building T–4069
Property #: 219710062
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2,750 sq. ft., possible asbestos and leadpaint, most recent use—office, off-site use only.
Building T–4070
Property #: 219710063
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2,750 sq. ft., possible asbestos and leadpaint, most recent use—office, off-site use only.
Building T–4468
Property #: 219710064
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2,262 sq. ft., possible asbestos and leadpaint, most recent use—barracks, off-site use only.
Building P–5042
Property #: 219710066
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 119 sq. ft., possible asbestos and leadpaint, most recent use—heatplant, off-site use only.
Building T–5093
Property #: 219710067
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 9,361 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only.
6 Buildings
Property #: 219710085
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Location: P–6449, S–6451, T–6452, P–6460, P–6463, S–6450
Status: Unutilized
Comment: various sq. ft., possible asbestos and leadpaint, most recent use—range support, off-site use only.
4 Buildings
Property #: 219710086
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Location: T–6465, T–6466, T–6467, T–6468
Status: Unutilized
Comment: various sq. ft., possible asbestos and leadpaint, most recent use—range support, off-site use only.
Building P–6539
Property #: 219710087
Fed Reg Date: 08/29/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1,483 sq. ft., possible asbestos and leadpaint, most recent use—office, off-site use only.
Building T–2751, Fort Sill
Property #: 219720209
Fed Reg Date: 08/29/97
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 19510 sq. ft., most recent use—admin., possible asbestos/lead paint, off-site use only.
Bldg. T–205
Property #: 219730343
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 95 sq. ft., possible asbestos/lead paint, most recent use—waiting shelter, off-site use only.
Bldg. T–208
Property #: 219730344
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 20525 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only.
Bldg. T–210
Property #: 219730345
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 19,049 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.
Bldg. T–214
Property #: 219730346
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 6332 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only.
Bldgs. T–215, T–216
Property #: 219730347
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 6300 sq. ft., each, possible asbestos/lead paint, most recent use—storage, off-site use only.
Bldg. T–217
Property #: 219730348
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 6394 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only.

Bldgs. T–219, T–220
Property #: 219730349
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 152 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–810
Property #: 219730350
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 7205 sq. ft., possible asbestos/lead paint, most recent use—hay storage, off-site use only.

Bldgs. T–837, T–839
Property #: 219730351
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. P–902
Property #: 219730352
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 101 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. P–934
Property #: 219730353
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 402 sq. ft., possible asbestos/lead paint most recent use—storage, off-site use only.

Bldg. P–936
Property #: 219730354
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 342 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. S–956
Property #: 219730355
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1602 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–1177
Property #: 219730356
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 183 sq. ft., possibel asbestos/lead paint, most recent use—snack bar, off-site use only.

Bldgs. T–1468, T–1469
Property #: 219730357
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–1470
Property #: 219730358
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–1508
Property #: 219730359
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3176 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–1940
Property #: 219730360
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1400 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–1944
Property #: 219730361
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 449 sq. ft., possible asbestos/lead paint, off-site use only.

Bldgs. T–1954, T–2022
Property #: 219730362
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–2180
Property #: 219730363
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: possible asbestos/lead paint, most recent use—vehicle maint. facility, off-site use only.

Bldg. T–2184
Property #: 219730364
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 454 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–2185
Property #: 219730365
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 151 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only.

Bldgs. T–2186, T–2188, T–2189
Property #: 219730366
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1656–3583 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only.

Bldg. T–2187
Property #: 219730367
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1673 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–2209
Property #: 219730368
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1257 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–2240, T–2241
Property #: 219730369
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: approx. 9500 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–2262, T–2263
Property #: 219730370
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: approx. 3100 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only.

Bldgs. T–2271, T–2272
Property #: 219730371
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 232 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–2291 thru T–2296
Property #: 219730372
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 400 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

5 Bldgs.
Property #: 219730373
Fed Reg Date: 10/03/97
Fort Sill
T–2300, T–2301, T–2303, T–2306, T–2307
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized

Comment: various sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–2406
Property #: 219730374
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

4 Bldgs.
Property #: 219730375
Fed Reg Date: 10/03/97
#T–2427, T–2431, T–2433, T–2449
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: various sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

3 Bldgs.
Property #: 219730376
Fed Reg Date: 10/03/97
Fort Sill
#T–2430, T–2432, T–2435
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: approx. 8900 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. T–2434
Property #: 219730377
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 8997 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only.

Bldg. T–2606
Property #: 219730378
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3850 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–2746
Property #: 219730379
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 4105 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only.

Bldgs. T–2800, T–2809, T–2810
Property #: 219730380
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: approx. 19,000 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–2922
Property #: 219730381
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3842 sq. ft., possible asbestos/lead paint, most recent use—chapel, off-site use only.

Bldgs. T–2963, T–2964, T–2965
Property #: 219730382
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: approx. 3000 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only.

Bldgs. T–3001, T–3006
Property #: 219730383
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: approx. 9300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–3025
Property #: 219730384
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 5259 sq. ft., possible asbestos/lead paint, most recent use—museum, off-site use only.

Bldg. T–3314
Property #: 219730385
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 229 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldgs. T–3318, T–3324, T–3327
Property #: 219730386
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 8832–9048 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–3323
Property #: 219730387
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 8832 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. T–3328
Property #: 219730388
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 9030 sq. ft., possible asbestos/lead paint, most recent use—refuse, off-site use only.

Bldgs. T–4021, T–4022
Property #: 219730389
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 442–869 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–4065
Property #: 219730390
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3145 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only.

Bldg. T–4067
Property #: 219730391
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1032 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–4281
Property #: 219730392
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 9405 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldgs. T–4401, T–4402
Property #: 219730393
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2260 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

5 Bldgs.
Property #: 219730394
Fed Reg Date: 10/03/97
Fort Sill
#T–4403 thru T–4406, T–4408
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2263 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only.

Bldg. T–4407
Property #: 219730395
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3070 sq. ft., possible asbestos/lead paint, most recent use—dining facility, off-site use only.

4 Bldgs.
Property #: 219730396
Fed Reg Date: 10/03/97
Fort Sill
#T–4410, T–4414, T–4415, T–4418
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1311 sq. ft., possible asbestos/lead paint, most recent use—Office, off-site use only.

5 Bldgs.
Property #: 219730397
Fed Reg Date: 10/03/97
Fort Sill
#T–4411 thru T–4416 thru T–4417
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1244 sq. ft., possible asbestos/lead paint, most recent use—showers, off-site use only.

Bldg. T–4421
Property #: 219730398
Fed Reg Date: 010/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3070 sq. ft., possible asbestos/lead paint, most recent use—dining, off-site use only.

10 Bldgs.
Property #: 219730399
Fed Reg Date: 010/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2263 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only.

6 Bldgs.
Property #: 219730400
Fed Reg Date: 010/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Location: #T–4436, T–4440, T–4444, T–4445, T–4448, T–4449
Status: Unutilized
Comment: 1311–2263 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

5 Bldgs.
Property #: 219730401
Fed Reg Date: 010/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Location: #T–4441, T–4442, T–4443, T–4446, T–4447
Status: Unutilized
Comment: 1244 sq. ft., possible asbestos/lead paint, most recent use—showers, off-stie use only.

3 Bldgs.
Property #: 219730402
Fed Reg Date: 010/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Location: #T–4451, T–4460, T–4481
Status: Unutilized
Comment: various sq. ft., possible asbestos/lead paint, most recent use—dining, off-site use only.

12 Bldgs.
Property #: 219730403
Fed Reg Date: 010/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Location: #T–4454, T–4455, T–4457, T–4462, T–4464, T–4465, T–4466, T–4482, T–4483, T–4484, T–4485, T–4486,
Status: Unutilized
Comment: 2263 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only.

Bldgs. T–4461, T–4479
Property #: 219730404
Fed Reg Date: 010/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2265 sq. ft., possible asbestos/lead paint, most recent use—dayroom, off-site use only.

5 Bldgs.
Property #: 219730405
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Location: #T–4469, T–4470, T–4475, T–4478, T–4480
Status: Unutilized
Comment: 1311–2265 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

4 Bldgs.
Property #: 219730406
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Location: #T–4471, T–4472, T–4473, T–4477
Status: Unutilized
Comments: approx. 1244 sq. ft., possible asbestos/lead paint, most recent use—showers, off-site use only.

Bldg. T–4707
Property #: 219730407
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comments: 160 sq. ft., possible asbestos/lead paint, most recent use—waiting shelter, off-site use only.

Bldg. T–5005
Property #: 219730408
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comments: 3206 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–5041
Property #: 219730409
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comments: 763 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–5044, T–5045
Property #: 219730410
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comments: 1798/1806 sq. ft., possible asbestos/lead paint, most recent use—class rooms, off-site use only.

4 Bldgs.
Property #: 219730411
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Location: #T–5046, T–5047, T–5048, T–5049
Status: Unutilized
Comments: various sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. T–5094
Property #: 219730412
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3,204 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only.

Bldg. T–5095
Property #: 219730413
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3,223 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–5420
Property #: 219730414
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 189 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only.

Bldg. T–5595
Property #: 219730415
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 695 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. T–5639
Property #: 219730416
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 10,720 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldgs. T–7290, T–7291
Property #: 219730417
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 224/840 sq. ft., possible asbestos/lead paint, most recent use—kennel, off-site use only.

Bldgs. T–7701, T–7703
Property #: 219730418
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1,706/1,650 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–7775
Property #: 219730419
Fed Reg Date: 10/03/97
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1,452 sq. ft., possible asbestos/lead paint, most recent use—private club, off-site use only.

South Carolina

Buildings

Bldg. 5412
Property #: 219510139
Fed Reg Date: 08/29/97
Fort Jackson
Ft. Jackson, SC, Co: Richland, Zip: 29207–
Status: Excess
Comment: 3900 sq. ft., 1-story, wood frame, needs rehab, most recent use—admin., off-site use only.

Bldg. 3499

Property #: 219730310
Fed Reg Date: 10/03/97
Fort Jackson
Ft. Jackson, SC, Co: Richland, Zip: 29207–
Status: Unutilized
Comment: 3724 sq. ft., needs repair, most recent use—admin.

Bldg. E4831
Property #: 219730311
Fed Reg Date: 10/03/97
Fort Jackson
Ft. Jackson, SC, Co: Richland, Zip: 29207–
Status: Unutilized
Comment: 272 sq. ft., needs repair, most recent use—storage.

Bldg. 5418
Property #: 219730312
Fed Reg Date: 10/03/97
Fort Jackson
Ft. Jackson, SC, Co: Richland, Zip: 29207–
Status: Unutilized
Comment: 3900 sq. ft., needs repair, most recent use—admin.

Bldg. G7357
Property #: 219730313
Fed Reg Date: 10/03/97
Fort Jackson
Ft. Jackson, SC, Co: Richland, Zip: 29207–
Status: Unutilized
Comment: 49 sq. ft., most recent use—range bldg.

Bldg. H7471
Property #: 219730314
Fed Reg Date: 10/03/97
Fort Jackson
Ft. Jackson, SC, Co: Richland, Zip: 29207–
Status: Unutilized
Comment: 144 sq. ft., most recent use—range bldg.

Tennessee

Land

Holston Army Ammunition Plant
Property #: 219012338
Fed Reg Date: 08/29/97
Project Name: Holston Army Ammunition Plant
Kingsport, TN, Co: Hawkins, Zip: 61299–6000
Status: Unutilized
Comment: 8 acres; unimproved; could provide access; 2 acres unusable; near explosives.

Texas

Land

Old Camp Bullis Road
Property #:219420461
Fed Reg Date: 08/29/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 7.16 acres, rural gravel road.

Castner Range
Property #:219610788
Fed Reg Date: 08/29/97
Fort Bliss
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: approx. 56.81 acres, portion in floodway, most recent use—recreation picnic park.

Buildings

Bldg. P–3824, Fort Sam Houston
Property #: 219220398
Fed Reg Date: 08/29/97
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 2232 sq. ft., 1-story concrete structure, within National Landmark Historic Disctrict, off-site removal only.

Bldg. P–377, Fort Sam Houston
Property #: 219330444
Fed Reg Date: 08/29/97
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 74 sq. ft., 1-story brick, needs rehab, most recent use—scale house, located in National Historic District, off-site use only.

Bldg. T–5901
Property #: 219330486
Fed Reg Date: 08/29/97
Fort Sam Houston
San Antonio, TX Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 742 sq. ft., 1-story wood frame, most recent use—admin., off-site use only.

Bldg. 4480, Fort Hood
Property #: 219410322
Fed Reg Date: 08/29/97
Ft. Hood, TX, Co: Bell, Zip: 76544–
Status: Unutilized
Comment: 2160 sq. ft., 1-story, most recent use—storage, off-site use only.

Bldg. P–452
Property #: 219440449
Fed Reg Date: 08/29/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Excess
Comment: 600 sq. ft., 1 story stucco frame, lead paint, off-site removal only, most recent use—bath house.

Bldg. P–6615
Property #: 219440454
Fed Reg Date: 08/29/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Excess
Comment: 400 sq. ft., 1 story concrete frame, off-site removal only, most recent use—detached garage.

Bldg. 4201, Fort Hood
Property #: 219520201
Fed Reg Date: 08/29/97
Ft. Hood, TX, Co: Bell, Zip: 76544–
Status: Unutilized
Comment: 9000 sq. ft., 1-story, off-site use only.

Bldg. 4202, Fort Hood
Property #: 219520202
Fed Reg Date: 08/29/97
Ft. Hood, TX, Co: Bell, Zip: 76544–
Status: Unutilized
Comment: 5400 sq. ft., 1-story, most recent use—storage, off-site use only.

Bldg. P–1030
Property #: 219520203
Fed Reg Date: 08/29/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Excess
Comment: 8212 sq. ft., 1-story, most recent use—storage, presence of asbestos & lead base paint, located in Historic District, off-site use only.

Bldg. 439
Property #: 219610754
Fed Reg Date: 08/29/97
Ft. Hood
Ft. Hood, TX, Co: Coryell, Zip: 76544–
Status: Unutilized
Comment: 3983 sq. ft., needs rehab, most recent use—admin., off-site use only.

Bldg. 2046
Property #: 219610757
Fed Reg Date: 08/29/97
Fort Hood
Ft. Hood, TX, Co: Coryell, Zip: 76544–
Status: Unutilized
Comment: 2700 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. P–197
Property #: 219640220
Fed Reg Date: 08/29/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 13819 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. T–230
Property #: 219640221
Fed Reg Date: 08/29/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 18102 sq. ft., presence of asbestos/lead paint, most recent use—printing plant and shop, off-site use only.

Bldg. P–606B
Property #: 219640223
Fed Reg Date: 08/29/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, off-site use only.

Bldg. P–607
Property #: 219640224
Fed Reg Date: 08/29/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 12610 sq. ft., presence of asbestos/lead paint, most recent use—admin/classroom, off-site use only.

Bldg. P–608
Property #: 219640225
Fed Reg Date: 08/29/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 12676 sq. ft., presence of asbestos/lead paint, most recent use—admin/classroom, off-site use only.

Bldg. P–608A
Property #: 219640226
Fed Reg Date: 08/29/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 2914 sq. ft., presence of asbestos/lead paint, most recent use—admin/classroom, off-site use only.

Bldg. P–1000
Property #: 219640227
Fed Reg Date: 08/29/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized

Comment: 226374 sq. ft., presence of asbestos/lead paint, historic property, most recent use—hospital/medical center.

Bldg. P–2270
Property #: 219640230
Fed Reg Date: 08/29/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 14622 sq. ft., 2-story, historic bldg., presence of asbestos/lead paint, most recent use—auditorium.

Bldg. S–3898
Property #: 219640235
Fed Reg Date: 08/29/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 4200 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. S–3899
Property #: 219640236
Fed Reg Date: 08/29/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 4200 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only.

Building P–4190
Property #: 219640237
Fed Reg Date: 08/29/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 88067 sq. ft., historic bldg., presence of asbestos/lead paint, most recent use—admin/warehouse.

Building P–5126
Property #: 219640240
Fed Reg Date: 08/29/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 189 sq. ft., off-site use only.

Building P–6201
Property #: 219640241
Fed Reg Date: 08/29/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 3003 sq. ft., presence of asbestos/lead paint, most recent use—officers family quarters, off-site use only.

Building P–6202
Property #: 219640242
Fed Reg Date: 08/29/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 1479 sq. ft., presence of lead paint, most recent use—officers family quarters, off-site use only.

Building P–6203
Property #: 219640243
Fed Reg Date: 08/29/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 1381 sq. ft., presence of lead paint, most recent use—military family quarters, off-site use only.

Building P–6204
Property #: 219640244
Fed Reg Date: 08/29/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 1454 sq. ft., presence of asbestos/lead paint, most recent use—military family quarters, off-site use only.

Building 7137, Fort Bliss
Property #: 219640564
Fed Reg Date: 08/29/97
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: 35,736 sq. ft., 3-story, most recent use—housing, off-site use only.

Building 4630
Property #: 219710088
Fed Reg Date: 08/29/97
Fort Hood
Fort Hood, TX, Co: Bell, Zip: 76544–
Status: Unutilized
Comment: 21,833 sq. ft., most recent use—Admin., off-site use only.

Bldg. P–4224
Property #: 219720213
Fed Reg Date: 08/29/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Excess
Comment: 293 sq. ft., concrete, possible lead based paint, off-site use only.

Bldg. T–330
Property #: 219730315
Fed Reg Date: 10/03/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 59,149 sq. ft., presence of asbestos/lead paint, historical category, most recent use—laundry, off-site use only.

Bldgs. P–605A & P–606A
Property #: 219730316
Fed Reg Date: 10/03/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 2418 sq. ft., poor condition, presence of asbestos/lead paint, historical category, most recent use—indoor firing range, off-site use only.

Bldg. S–1150
Property #: 219730317
Fed Reg Date: 10/03/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 8629 sq. ft., presence of asbestos/lead paint, most recent use—instruction bldg., off-site use only.

Bldgs. S–1440—S–1446, S–1452
Property #: 219730318
Fed Reg Date: 10/03/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 4200 sq. ft., presence of lead, most recent use—instruction bldgs., off-site use only.

4 Bldgs.
Property #: 219730319
Fed Reg Date: 10/03/97
Fort Sam Houston
#S–1447, S–1449, S–1450, S–1451
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 4200 sq. ft., presence of asbestos/lead paint, most recent use—instruction bldgs., off-site use only.

Bldg. P–3500
Property #: 219730320
Fed Reg Date: 10/03/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 13,921 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—support of firing range, off-site use only.

Bldg. T–3551
Property #: 219730321
Fed Reg Date: 10/03/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 992 sq. ft., presence of asbestos/lead paint, most recent use—maint. shop, off-site use only.

Bldg. T–3552
Property #: 219730322
Fed Reg Date: 10/03/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 992 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—storage shed, off-site use only.

Bldg. T–3553
Property #: 219730323
Fed Reg Date: 10/03/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 992 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—storage shed, off-site use only.

Bldg. T–3554
Property #: 219730324
Fed Reg Date: 10/03/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 18,803 sq. ft., poor condition, presence of lead paint, most recent use—stable, off-site use only.

Bldg. T–3556
Property #: 219730325
Fed Reg Date: 10/03/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 1,300 sq. ft., poor condition, presence of lead paint, most recent use—stable, off-site use only.

Bldg. T–3557
Property #: 219730326
Fed Reg Date: 10/03/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 992 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—stable, off-site use only.

Bldg. P–4115
Property #: 219730327
Fed Reg Date: 10/03/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized

Comment: 529 sq. ft., presence of asbestos/lead paint historic bldg., most recent use—admin., off-site use only.

Bldg. 4205
Property #: 219730328
Fed Reg Date: 10/03/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 24,573 sq. ft., presence of asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. T–5112
Property #: 219730329
Fed Reg Date: 10/03/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 3663 sq. ft., presence of asbestos/lead paint, historical category, most recent use—post exchange, off-site use only.

Bldg. T–5113
Property #: 219730330
Fed Reg Date: 10/03/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 2550 sq. ft., presence of asbestos/lead paint, historical bldg. most recent use—medical clinic, off-site use only.

Bldg. T–5122
Property #: 219730331
Fed Reg Date: 10/03/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 3602 sq. ft., presence of asbestos/lead paint, historical category, most recent use—instruction bldg., off-site use only.

Bldg. T–5903
Property #: 219730332
Fed Reg Date: 10/03/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 5200 sq. ft., presence of asbestos/lead paint, historical category, most recent use—admin., off-site use only.

Bldg. T–5907
Property #: 219730333
Fed Reg Date: 10/03/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 570 sq. ft., presence of asbestos/lead paint, historical category, most recent use—admin., off-site use only.

Bldg. P–6271
Property #: 219730334
Fed Reg Date: 10/03/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 291 sq. ft., presence of asbestos/lead paint, most recent use—pump station, off-site use only.

Bldg. T–6284
Property #: 219730335
Fed Reg Date: 10/03/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 120 sq. ft., presence of lead paint, most recent use—pump station, off-site use only.

Bldg. T–5906
Property #: 219730420
Fed Reg Date: 10/03/97
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 570 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Virginia

Buildings

Bldg. 2436, Fort Belvoir
Property #: 219720215
Fed Reg Date: 08/29/97
Ft. Belvoir, VA, Co: Fairfax, Zip: 22060–5402
Status: Excess
Comment: 3200 sq. Ft., most recent use—storage, needs extensive repair, possible asbestos/lead paint, off-site use only.

Bldg. 409
Property #: 219730336
Fed Reg Date: 10/03/97
Fort Myer
Ft. Myer, VA, Co: Arlington, Zip: 22211–1199
Status: Unutilized
Comment: 2930 sq. ft., most recent use—storage, off-site use only.

Bldg. T–59
Property #: 219730337
Fed Reg Date: 10/03/97
Fort Monroe
Ft. Monroe, VA, Zip: 23651–
Status: Unutilized
Comment: 3282 sq. ft., wood, off-site use only.

Washington

Buildings

13 Bldgs., Fort Lewis
Property #: 219630199
Fed Reg Date: 08/29/97
A0402, CO723, CO726, CO727, CO902, CO903, CO906, CO907, CO922, CO923, CO926, CO927, C1250
Ft. Lewis, WA, Co: Pierce, Zip: 98433–9500
Status: Unutilized
Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only.

7 Bldgs., Fort Lewis
Property #: 219630200
Fed Reg Date: 08/29/97
AO438, AO439, CO901, CO910, CO911, CO918, CO919
Ft. Lewis, WA, Co: Pierce, Zip: 98433–9500
Status: Unutilized
Comment: 1144 sq. ft., possible asbestos/lead paint, most recent use—dayroom bldgs., off-site use only.

Bldg. AO608, Fort Lewis
Property #: 219630201
Fed Reg Date: 08/29/97
Ft. Lewis, WA, Co: Pierce, Zip: 98433–9500
Status: Unutilized
Comment: 2285 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—dining, off-site use only.

6 Bldgs., Fort Lewis
Property #: 219630204
Fed Reg Date: 08/29/97
CO908, CO728, CO921, CO928, C1008, C1108
Ft. Lewis, WA, Co: Pierce, Zip: 98433–9500
Status: Unutilized
Comment: 2207 sq. ft., possible asbestos/lead paint, most recent use—dining, off-site use only.

Bldg. CO909
Property #: 219630205
Fed Reg Date: 08/29/97
Fort Lewis
Ft. Lewis, WA, Co: Pierce, Zip: 98433–9500
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. CO920
Property #: 219630206
Fed Reg Date: 08/29/97
Fort Lewis
Ft. Lewis, WA, Co: Pierce, Zip: 98433–9500
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. C1249
Property #: 219630207
Fed Reg Date: 08/29/97
Fort Lewis
Ft. Lewis, WA, Co: Pierce, Zip: 98433–9500
Status: Unutilized
Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1164
Property #: 219630213
Fed Reg Date: 08/29/97
Fort Lewis
Ft. Lewis, WA, Co: Pierce, Zip: 98433–9500
Status: Unutilized
Comment: 230 sq. ft., possible asbestos/lead paint, most recent use—storehouse, off-site use only.

Bldg. 1307
Property #: 219630216
Fed Reg Date: 08/29/97
Fort Lewis
Ft. Lewis, WA, Co: Pierce, Zip: 98433–9500
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1309
Property #: 219630217
Fed Reg Date: 08/29/97
Fort Lewis
Ft. Lewis, WA, Co: Pierce, Zip: 98433–9500
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 2167
Property #: 219630218
Fed Reg Date: 08/29/97
Fort Lewis
Ft. Lewis, WA, Co: Pierce, Zip: 98433–9500
Status: Unutilized
Comment: 288 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. 4078
Property #: 219630219
Fed Reg Date: 08/29/97
Fort Lewis
Ft. Lewis, WA, Co: Pierce, Zip: 98433–9500
Status: Unutilized
Comment: 10200 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. 9599
Property #: 219630220
Fed Reg Date: 08/29/97
Fort Lewis
Ft. Lewis, WA, Co: Pierce, Zip: 98433–9500
Status: Unutilized
Comment: 12366 sq. ft., possible asbestos/ lead paint, most recent use—warehouse, off-site use only.

Bldg. A1404
Property #: 219640570
Fed Reg Date: 08/29/97
Fort Lewis
Ft. Lewis, WA, Co: Pierce, Zip: 98433–
Status: Unutilized
Comment: 557 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. A1419
Property #: 219640571
Fed Reg Date: 08/29/97
Fort Lewis Ft. Lewis, WA, Co: Pierce, Zip: 98433–
Status: Unutilized
Comment: 1307 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. A1420
Property #: 219640572
Fed Reg Date: 08/29/97
Fort Lewis
Ft. Lewis, WA, Co: Pierce, Zip: 98433–
Status: Unutilized
Comment: 5234 sq. ft., needs rehab, most recent use—vehicle maintenance shop, off-site use only.

11 Buildings
Property #: 219710143
Fed Reg Date: 08/29/97
Fort Lewis
Ft. Lewis, WA, Co: Pierce, Zip: 98433–
Location: #EO103–EO106, EO306, EO315–EO316, EO343–EO344, EO353–EO354
Status: Underutilized
Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only.

Bldgs. EO109, EO350
Property #: 219710144
Fed Reg Date: 08/29/97
Fort Lewis
Ft. Lewis, WA, Co: Pierce, Zip: 98433–
Status: Unutilized
Comment: 1165 sq. ft., possible asbestos/lead paint, most recent use—dayroom, off-site use only.

Bldgs. EO120, EO321, EO338
Property #: 219710145
Fed Reg Date: 08/29/97
Fort Lewis
Ft. Lewis, WA, Co: Pierce, Zip: 98433–
Status: Unutilized
Comment: 3810 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only.

5 Bldgs.
Property #: 219710146
Fed Reg Date: 08/29/97
Fort Lewis
Ft. Lewis, WA, Co: Pierce, Zip: 98433–
Location: #EO127, EO136, EO302, EO204, EO330
Status: Unutilized
Comment: 2284 sq. ft., possible asbestos/lead paint, most recent use—offices, off-site use only.

Bldg. EO136
Property #: 219710147
Fed Reg Date: 08/29/97
Fort Lewis
Ft. Lewis, WA, Co: Pierce, Zip: 98433–
Status: Unutilized
Comment: 3885 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only.

Bldgs. EO158-E0303
Property #: 219710148
Fed Reg Date: 08/29/97
Ft. Lewis, WA, Co: Pierce, Zip: 98433–
Status: Unutilized
Comment: 1675 sq. ft, possible asbestos/ leadpaint, most recent use—office, off-site use only.

Bldg. EO202
Property #: 219710149
Fed Reg Date: 08/29/97
Ft. Lewis, WA, Co: Pierce, Zip: 98433–
Status: Unutilized
Comment: 992 sq. ft, possible asbestos/ leadpaint, most recent use—office, off-site use only.

Bldg. EO312
Property #: 219710150
Fed Reg Date: 08/29/97
Ft. Lewis, WA, Co: Pierce, Zip: 98433–
Status: Unutilized
Comment: 3885 sq. ft, possible asbestos/ leadpaint, most recent use—officer's quarters, off-site use only.

Bldg. EO322
Property #: 219710151
Fed Reg Date: 08/29/97
Ft. Lewis, WA, Co: Pierce, Zip: 98433–
Status: Unutilized
Comment: 2250 sq. ft, possible asbestos/ leadpaint, most recent use—storage, off-site use only.

Bldg. EO325
Property #: 219710152
Fed Reg Date: 08/29/97
Ft. Lewis, WA, Co: Pierce, Zip: 98433–
Status: Unutilized
Comment: 3336 sq. ft, possible asbestos/ leadpaint, most recent use—officer's quarters, off-site use only.

Bldg. EO329
Property #: 219710153
Fed Reg Date: 08/29/97
Ft. Lewis, WA, Co: Pierce, Zip: 98433–
Status: Unutilized
Comment: 1843 sq. ft, possible asbestos/ leadpaint, most recent use—office, off-site use only.

Bldg. EO334
Property #: 219710154
Fed Reg Date: 08/29/97
Ft. Lewis, WA, Co: Pierce, Zip: 98433–
Status: Unutilized
Comment: 3779 sq. ft, possible asbestos/ leadpaint, most recent use—recreation, off-site use only.

Bldg. EO335
Property #: 219710155
Fed Reg Date: 08/29/97
Ft. Lewis, WA, Co: Pierce, Zip: 98433–
Status: Unutilized
Comment: 2207 sq. ft, possible asbestos/ leadpaint, most recent use—dining facility, off-site use only.

Bldg. EO347
Property #: 219710156
Fed Reg Date: 08/29/97
Fort Lewis
Ft. Lewis, WA, Co: Pierce, Zip: 98433–
Status: Unutilized
Comment: 1800 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldgs. EO349, EO110
Property #: 219710157
Fed Reg Date: 08/29/97
Fort Lewis
Ft. Lewis, WA, Co: Pierce, Zip: 98433–
Status: Unutilized
Comment: 1296 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

4 Bldgs.
Property #: 219710158
Fed Reg Date: 08/29/97
Fort Lewis
Ft. Lewis, WA, Co: Pierce, Zip: 98433–
Location: #EO351, EO308, EO207, EO108
Status: Unutilized
Comment: 1144 sq. ft., possible asbestos/lead paint, most recent use—dayroom, off-site use only.

Bldgs. EO352, EO307
Property #: 219710159
Fed Reg Date: 08/29/97
Fort Lewis
Ft. Lewis, WA, Co: Pierce, Zip: 98433–
Status: Unutilized
Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. EO355
Property #: 219710160
Fed Reg Date: 08/29/97
Fort Lewis
Ft. Lewis, WA, Co: Pierce, Zip: 98433–
Status: Unutilized
Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—training facility, off-site use only.

Bldg. B1008
Property #: 219720216
Fed Reg Date: 08/29/97
Ft. Lewis
Ft. Lewis, WA, Co: Pierce, Zip: 98433–
Status: Unutilized
Comment: 7387 sq. ft., 2-story, needs rehab, possible asbestos/ lead paint, most recent use—medical clinic, off-site use only.

Bldgs. B1011–B1012
Property #: 219720217
Fed Reg. Date: 08/29/97
Ft. Lewis
Ft. Lewis, WA, Co: Pierce, Zip: 98433–
Status: Unutilized
Comment: 922 sq. ft. and 1144 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only.

COE

Arkansas

Land

Parcel 01
Property #: 319010071
Fed Reg Date: 08/08/97
Project Name: DeGray Lake
DeGray Lake
Section 12
Arkadelphia, AR, Co: Clark, Zip: 71923–9361
Status: Unutilized

Comment: 77.6 acres.
Parcel 02
Property #: 319010072
Fed Reg Date: 08/08/97
Project Name: DeGray Lake
DeGray Lake
Section 13
Arkadelphia, AR, Co: Clark, Zip: 71923–9361
Status: Unutilized
Comment: 198.5 acres.
Parcel 03
Property #: 319010073
Fed Reg Date: 08/08/97
Project Name: DeGray Lake
DeGray Lake
Section 18
Arkadelphia, AR, Co: Clark, Zip: 71923–9361
Status: Unutilized
Comment: 50.46 acres.
Parcel 04
Property #: 319010074
Fed Reg Date: 08/08/97
Project Name: DeGray Lake
DeGray Lake
Section 24, 25, 30, 31
Arkadelphia, AR, Co: Clark, Zip: 71923–9361
Status: Unutilized
Comment: 236.37 acres.
Parcel 05
Property #: 319010075
Fed Reg Date: 08/08/97
Project Name: DeGray Lake
DeGray Lake
Section 16
Arkadelphia, AR, Co: Clark, Zip: 71923–9361
Status: Unutilized
Comment: 187.30 acres.
Parcel 06
Property #: 319010076
Fed Reg Date: 08/08/97
Project Name: DeGray Lake
DeGray Lake
Section 13
Arkadelphia, AR, Co: Clark, Zip: 71923–9361
Status: Unutilized
Comment: 13.0 acres.
Parcel 07
Property #: 319010077
Fed Reg Date: 08/08/97
Project Name: DeGray Lake
DeGray Lake
Section 34
Arkadelphia, AR, Co: Hot Spring, Zip: 71923–9361
Status: Unutilized
Comment: 0.27 acres.
Parcel 08
Property #: 319010078
Fed Reg Date: 08/08/97
Project Name: DeGray Lake
DeGray Lake
Section 13
Arkadelphia, AR, Co: Clark, Zip: 71923–9361
Status: Unutilized
Comment: 14.6 acres.
Parcel 09
Property #: 319010079
Fed Reg Date: 08/08/97
Project Name: DeGray Lake
DeGray Lake
Section 12
Arkadelphia, AR, Co: Hot Spring, Zip: 71923–9361
Status: Unutilized
Comment: 6.60 acres.
Parcel 10
Property #: 319010080
Fed Reg Date: 08/08/97
Project Name: DeGray Lake
DeGray Lake
Section 12
Arkadelphia, AR, Co: Hot Spring, Zip: 71923–9361
Status: Unutilized
Comment: 4.5 acres.
Parcel 11
Property #: 319010081
Fed Reg Date: 08/08/97
Project Name: DeGray Lake
DeGray Lake
Section 19
Arkadelphia, AR, Co: Hot Spring, Zip: 71923–9361
Status: Unutilized
Comment: 19.50 acres.
Lake Greeson
Property #: 319010083
Fed Reg Date: 08/08/97
Project Name: Lake Greeson
Section 7, 8 and 18
Murfreesboro, AR, Co: Pike. Zip: 71958–9720
Status: Unutilized
Comment: 46 acres.

Colorado

Buildings

Residence
Property #: 319720001
Fed Reg Date: 08/08/97
Cherry Creek Lake Project
3311 Parker Road
Aurora, CO, Co: Arapahoe, Zip: 80112–
Status: Excess
Comment: 1000 sq. ft. house and 900 sq. ft. garage, needs rehab, off-site use only.
Storage Shed
Property #: 319720002
Fed Reg Date: 08/08/97
Cherry Creek Lake Project
3311 Parker Road
Aurora, CO, Co: Arapahoe, Zip: 80112–
Status: Excess
Comment: 600 sq. ft. w/dirt floor, off-site use only.

District of Columbia

Buildings

Dalecarlia Reservoir
Property #: 319610004
Fed Reg Date: 08/08/97
Bldgs. 5900, 5902, 5906, 5908, 5910
Washington Aqueduct
Washington, DC, Zip: 20016–
Status: Excess
Comment: brick/frame residences in poor condition w/2 floors and basement, presence of asbestos, on National Historic Register, off-site use only.

Iowa

Buildings

Bldg.—Bridgeview
Property #: 319340003
Fed Reg Date: 08/08/97
Rathbun Lake Project, R.R. #3
Centerville, IA, Co: Appanoose, Zip: 52544–
Status: Unutilized
Comment: 416 sq. ft., 1-story, most recent use—storage, needs major rehab, off-site use only.
Bldg.—Island View
Property #: 319340004
Fed Reg Date: 08/08/97
Rathbun Lake Project, R.R. #3
Centerville, IA, Co: Appanoose, Zip: 52544–
Status: Unutilized
Comment: 416 sq. ft., 1-story, most recent use—storage, needs major rehab, off-site use only.
Bldg.—Rolling Cove
Property #: 319340005
Fed Reg Date: 08/08/97
Rathbun Lake Project, R.R. #3
Centerville, IA, Co: Appanoose, Zip: 52544–
Status: Unutilized
Comment: 416 sq. ft., 1-story, most recent use—storage, needs major rehab, off-site use only.
Tract 141
Property #: 319610005
Fed Reg Date: 08/08/97
Melos, Stanley, Camp Dodge
Johnston, IA, Co: Polk, Zip: 50131–
Status: Excess
Comment: 1104 sq. ft., most recent use—storage, needs rehab, possible asbestos, off-site use only.
2 Residence/1 Garage
Property #: 319710001
Fed Reg Date: 08/08/97
Rathbun Lake Project
Centerville, IA, Co: Appanoose, Zip: 52544–
Status: Excess
Comment: 1315 sq. ft. each house, 576 sq. ft. garage, off-site use only.

Kansas

Land

Parcel 1
Property #: 319010064
Fed Reg Date: 08/08/97
Project Name: El Dorado Lake
El Dorado Lake
Section 13, 24, and 18
(See County), KS, Co: Butler, Zip:
Status: Unutilized
Comment: 61 acres; most recent use—recreation.

Buildings

Trailer—Clinton Lake
Property #: 319410003
Fed Reg Date: 08/08/97
Lawrence, KS, Co: Douglas, Zip: 66046–
Rt. 5, Box 109B
Status: Excess
Comment: double-wide trailer (24x50), most recent use—residence, needs repair, off-site use only.
Washhouse/shower
Property #: 319620002
Fed Reg Date: 08/08/97
Pomona Lake
Vassar, KS, Co: Osage, Zip: 66543–
Status: Excess
Comment: 1274 sq. ft. metal bldg., most recent use—storage, needs repair, off-site use only.
Water Treatment Bldg.
Property #: 319620003
Fed Reg Date: 08/08/97
Pomona Lake

Vassar, KS, Co: Osage, Zip: 66543–
Status: Excess
Comment: 720 sq. ft. bldg., needs repair, off-site use only.

Dwelling
Property #: 319710002
Fed Reg Date: 08/08/97
Kanopolis Project
KS, Co: Ellsworth, Zip: 67464–
Status: Excess
Comment: 670 sq. ft., residence.

Residence, Perry Lake
Property #: 319710003
Fed Reg Date: 08/08/97
Perry, KS, Co: Jefferson, Zip: 66073–
Status: Excess
Comment: 1440 sq. ft. residence, presence of asbestos, off-site use only.

Mobile Home
Property #: 319710004
Fed Reg Date: 08/08/97
Hillsdale Lake
Paola, KS, Co: Miami, Zip: 66071–
Status: Unutilized
Comment: 23' x 62' modular, most recent use—storage, major repairs required, off-site use only.

Kentucky

Land

Tract 2625
Property #: 319010025
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky, and Tennessee
Cadiz, KY, Co: Trigg, Zip: 42211–
Location: Adjoining the village of Rockcastle.
Status: Excess
Comment: 2.57 acres; rolling and wooded.

Tract 2709–10 and 2710–2
Property #: 319010026
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Cadiz, KY, Co: Trigg, Zip: 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Status: Excess
Comment: 2.00 acres; steep and wooded.

Tract 2708–1 and 2709–1
Property #: 319010027
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Cadiz, KY, Co: Trigg, Zip: 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Status: Excess
Comment: 3.59 acres; rolling and wooded; no utilities.

Tract 2800
Property #: 319010028
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Cadiz, KY, Co: Trigg, Zip: 42211–
Location: 4½ miles in a southeasterly direction from the village of Rockcastle.
Status: Excess
Comment: 5.44 acres; steep and wooded.

Tract 2915
Property #: 319010029
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Cadiz, KY, Co: Trigg, Zip: 42211–
Location: 6½ miles west of Cadiz.
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities.

Tract 2702
Property #: 319010031
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Cadiz, KY, Co: Trigg, Zip: 42211–
Location: 1 mile in a southerly direction from the village of Rockcastle.
Status: Excess
Comment: 4.90 acres; wooded; no utilities.

Tract 4318
Property #: 319010032
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Canton, KY, Co: Trigg, Zip: 42212–
Location: Trigg Co. adjoining the city of Canton, KY. on the waters of Hopson Creek.
Status: Excess
Comment: 8.24 acres; steep and wooded.

Tract 4502
Property #: 319010033
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Canton, KY, Co: Trigg, Zip: 42212–
Location: 3½ miles in a southerly direction from Canton, KY.
Status: Excess
Comment: 4.26 acres; steep and wooded.

Tract 4611
Property #: 319010034
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Canton, KY, Co: Trigg, Zip: 42212–
Location: 5 miles south of Canton, KY.
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities.

Tract 4619
Property #: 319010035
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Canton, KY, Co: Trigg, Zip: 42212–
Location: 4½ miles south from Canton, KY.
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities.

Tract 4617
Property #: 319010036
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Canton, KY, Co: Trigg, Zip: 42212–
Location: 6½ miles south of Canton, KY.
Status: Excess
Comment: 1.75 acres; wooded.

Tract 1217
Property #: 319010042
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: On the north side of the Illinois Central Railroad.
Status: Excess
Comment: 5.80 acres; steep and wooded.

Tract 1906
Property #: 319010044
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: Approximately 4 miles east of Eddyville, KY.
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities.

Tract 1907
Property #: 319010045
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY.
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities.

Tract 2001 #1
Property #: 319010046
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities.

Tract 2001 #2
Property #: 319010047
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities.

Tract 2005
Property #: 319010048
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: Approximately 5½ miles east of Eddyville, KY.
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities.

Tract 2307
Property #: 319010049
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: Approximately 7½ miles southeasterly of Eddyville, KY.
Status: Excess
Comment: 11.43 acres; steep; rolling and wooded; no utilities.

Tract 2403
Property #: 319010050
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: 7 miles southeasterly of Eddyville, KY.

Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities.

Tract 2504
Property #: 319010051
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: 9 miles southeasterly of Eddyville, KY.
Status: Excess
Comment: 24.46 acres; steep and wooded; no utilities.

Tract 214
Property #: 319010052
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River.
Status: Excess
Comment: 5.5 acres; wooded; no utilities.

Tract 215
Property #: 319010053
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: 5 miles southwest of Kuttawa.
Status: Excess
Comment: 1.40 acres; wooded; no utilities.

Tract 241
Property #: 319010054
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities.

Tracts 306, 311, 315 and 325
Property #: 319010055
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: 2.5 miles southwest of Kuttawa, KY. on the waters of Cypress Creek.
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities.

Tracts 2305, 2306, and 2400–1
Property #: 319010056
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: 6½ miles southeasterly of Eddyville, KY.
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities.

Tract 500–2
Property #: 319010057
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Kuttawa, KY, Co: Lyon, Zip: 42055–
Location: Situated on the waters of Poplar Creek, approximately 1 mile southwest of Kuttawa, KY.
Status: Excess
Comment: 3.58 acres; hillside ridgeland and wooded; no utilities.

Tract 5203 and 5204
Property #: 319010058
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Linton, KY, Co: Trigg, Zip: 42212–
Location: Village of Linton, KY state highway 1254.
Status: Excess
Comment: 0.93 acres; rolling, partially wooded; no utilities.

Tract 5240
Property #: 319010059
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Linton, KY, Co: Trigg, Zip: 42212–
Location: 1 mile northwest of Linton, KY.
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities.

Tract 4628
Property #: 319011621
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Canton, KY, Co: Trigg, Zip: 42212–
Location: 4½ miles south from Canton, KY.
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements.

Tract 4619–B
Property #: 319011622
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Canton, KY, Co: Trigg, Zip: 42212–
Location: 4½ miles south from Canton, KY.
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements.

Tract 2403–B
Property #: 319011623
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42038–
Location: 7 miles southeasterly from Eddyville, KY.
Status: Unutilized
Comment: 0.70 acres, wooded; subject to utility easements.

Tract 241–B
Property #: 319011624
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements.

Tract 212 and 237
Property #: 319011625
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements.

Tract 215–B
Property #: 319011626
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: 5 miles southwest of Kuttawa
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract 233
Property #: 319011627
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: 5 miles southwest of Kuttawa
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract B—Markland Locks & Dam
Property #: 319130002
Fed Reg Date: 08/08/97
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw, KY, Co: Gallatin, Zip: 41095—
Status: Unutilized
Comment: 10 acres, most recent use—recreational, possible periodic flooding

Tract A—Markland Locks & Dam
Property #: 319130003
Fed Reg Date: 08/08/97
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw, KY, Co: Gallatin, Zip: 41095—
Status: Unutilized
Comment: 8 acres, most recent use—recreational, possible periodic flooding

Tract C—Markland Locks & Dam
Property #: 319130005
Fed Reg Date: 08/08/97
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw, KY, Co: Gallatin, Zip: 41095—
Status: Unutilized
Comment: 4 acres, most recent use—recreational, possible periodic flooding

Tract N–819
Property #: 319140009
Fed Reg Date: 08/08/97
Dale Hollow Lake & Dam Project
Illwill Creek, Hwy 90
Hobart, KY, Co: Clinton, Zip: 42601—
Status: Underutilized
Comment: 91 acres, most recent use—hunting, subject to existing easements.

Portion of Lock & Dam No. 1.
Property #: 319320003
Fed Reg Date: 08/08/97
Kentucky River
Carrolton, KY, Co: Carroll, Zip: 41008–0305
Status: Unutilized
Comment: approx. 3.5 acres (sloping), access monitored

Portion of Lock & Dam No. 2
Property #: 319320004
Fed Reg Date: 08/08/97
Kentucky River
Lockport, KY, Co: Henry, Zip: 40036–9999
Status: Underutilized
Comment: approx. 13.14 acres (sloping), access monitored.

Buildings

Green River Lock & Dam #3
Property #: 319010022
Fed Reg Date: 08/08/97
Project Name: Green River Lock & Dam #3
Rochester, KY, Co: Butler, Zip: 42273–
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site.
Status: Unutilized
Comment: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab.

Kentucky River Lock and Dam 3
Property #: 319010060
Fed Reg Date: 08/08/97
Project Name: Kentucky River Lock and Dam 3
Pleasureville, KY, Co: Henry, Zip: 40057–
Location: SR 421 North from Frankfort, KY. to highway 561, right on 561 approximately 3 miles to site.
Status: Unutilized
Comment: 897 sq. ft.; 2 story wood frame; structural deficiencies.

Bldg. 1
Property #: 319011628
Fed Reg Date: 08/08/97
Project Name: Kentucky River Lock and Dam
Kentucky River Lock and Dam
Carrolton, KY, Co: Carroll, Zip: 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to Highway 320, then left for about 1.5 miles to site.
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame; subject to periodic flooding; needs rehab.

Bldg. 2
Property #: 319011629
Fed Reg Date: 08/08/97
Project Name: Kentucky River Lock and Dam
Kentucky River Lock and Dam
Carrolton, KY, Co: Carroll, Zip: 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to Highway 320, then left for about 1.5 miles to site.
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame; subject to periodic flooding; needs rehab.

Utility Bldg, Nolin River Lake
Property #: 31920002
Fed Reg Date: 08/08/97
Moutardier Recreation Site
KY, Co: Edmonson, Zip:
Status: Unutilized
Comment: 541 sq. ft.; concrete block, off-site use only.

Louisiana

Land

Wallace Lake Dam and Reservoir
Property #: 319011009
Fed Reg Date: 08/08/97
Project Name: Wallace Lake Dam and Reservoir
SShreveport, LA, Co: Caddo, Zip: 71103–
Status: Unutilized
Comment: 11 acres; wildlife/forestry; no utilities.

Bayou Bodcau Dam and Reservoir
Property #: 319011010
Fed Reg Date: 08/08/97
Project Name: Bayou Bodcau Dam and Reservoir
Haughton, LA, Co: Caddo, Zip: 71037–9707
Status: Unutilized
Comment: 203 acres; wildlife/forestry; no utilities.

Minnesota

Land

Parcel D
Property #: 319011038
Fed Reg Date: 08/08/97
Project Name: Pine River
Pine River
Cross Lake, MN, Co: Crow Wing, Zip: 56442–
Location: 3 miles from city of Cross Lake, between highways 6 and 371.
Status: Excess
Comment: 17 acres; no utilities.

Tract 92
Property #: 319011040
Fed Reg Date: 08/08/97
Project Name: Sandy Lake
Sandy Lake
McGregor, MN, Co: Aitkins, Zip: 55760–
Location: 4 miles west of highway 65, 15 miles from city of McGregor.
Status: Excess
Comment: 4 acres; no utilities.

Tract 98
Property #: 319011041
Fed Reg Date: 08/08/97
Project Name: Leech Lake
Leech Lake
Benedict, MN, Co: Hubbard, Zip: 56641–
Location: 1 mile from city of Federal Dam, Mn.
Status: Excess
Comment: 7.3 acres; no utilities.

Missouri

Land

Harry S Truman Dam & Reservoir
Property #: 319030014
Fed Reg Date: 08/08/97
Project Name: Harry S Truman Dam & Reservoir
Warsaw, MO, Co: Benton, Zip: 65355–
Location: Triangular shaped parcel southwest of access road "B", part of Bledsoe Ferry Park Tract 150.
Status: Underutilized
Comment: 1.7 acres; potential utilities.

Buildings

Bldg. A
Property #: 319620004
Fed Reg Date: 08/08/97
Harry S. Truman Project
Warsaw, MO, Co: Benton, Zip: 65355–
Status: Excess
Comment: 1440 sq. ft. residence, off-site use only.

Bldg. B
Property #: 319620005
Fed Reg Date: 08/08/97
Harry S. Truman Project
Warsaw, MO, Co: Benton, Zip: 65355–
Status: Excess
Comment: 1440 sq. ft. residence, off-site use only.

Residence
Property #: 319710005
Fed Reg Date: 08/08/97
Pomme de Terre Project
Hermitage, MO, Co: Hickory, Zip: 65668–
Status: Excess
Comment: 1255 sq. ft. residence, presence of asbestos/lead paint, off-site use only.

Riverlands Ofc. Bldg.
Property #: 319730001
Fed Reg Date: 10/17/97
Melvin Price Locks & Dam
Access Road
West Alton, MO, Co: St. Charles, Zip: 63386–
Status: Excess
Comment: 5000 sq. ft., steel, most recent use—office, flood damaged, off-site use only.

Mississippi

Land

Parcel 7
Property #: 319011019
Fed Reg Date: 08/08/97
Project Name: Grenada Lake
Grenada Lake
Sections 22, 23, T24N
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized
Comment: 100 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 8
Property #: 319011020
Fed Reg Date: 08/08/97
Project Name: Grenada Lake
Grenada Lake
Section 20, T24N
Grenada, MS, Co: Yalobusha, Zip: 38901–0093
Status: underutilized
Comment: 30 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 9
Property #: 319011021
Fed Reg Date: 08/08/97
Project Name: Grenada Lake
Grenada Lake
Section 20, T24N, R7E
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized
Comment: 23 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 10
Property #: 319011022
Fed Reg Date: 08/08/97
Project Name: Grenada Lake
Grenada Lake
Section 16, 17, 18, T24N, R8E
Grenada, MS, Co: Calhoun, Zip: 38901–0903
Status: Underutilized
Comment: 490 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 2
Property #: 319011023
Fed Reg Date: 08/08/97
Project Name: Grenada Lake
Grenada Lake
Section 20 and T23N, R5E
Grenada, MS, Co: Grenada, Zip: 38901–0903
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 3
Property #: 319011024
Fed Reg Date: 08/08/97
Project Name: Grenada Lake
Grenada Lake

Section 4, T23N, R5E
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized
Comment: 120 acres; no utilities; most recent use—wildlife and forestry management; (13.5 acres/agriculture lease).

Parcel 4
Property #: 319011025
Fed Reg Date: 08/08/97
Project Name: Grenada Lake
Grenada Lake
Section 2 and 3, T23N, R5E
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 5
Property #: 319011026
Fed Reg Date: 08/08/97
Project Name: Grenada Lake
Grenada Lake
Section 7, T24N, R6E
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease).

Parcel 6
Property #: 319011027
Fed Reg Date: 08/08/97
Project Name: Grenada Lake
Grenada Lake
Section 9, T24N, R6E
Grenada, MS, Co: Yalobusha, Zip: 38903–0903
Status: Underutilized
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 11
Property #: 319011028
Fed Reg Date: 08/08/97
Project Name: Grenada Lake
Grenada Lake
Section 20, T24N, R8E
Grenada, MS, Co: Calhoun, Zip: 38901–0903
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 12
Property #: 319011029
Fed Reg Date: 08/08/97
Project Name: Grenada Lake
Grenada Lake
Section 25, T24N, R7E
Grenada, MS, Co: Yalobusha, Zip: 38903–0903
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 13
Property #: 319011030
Fed Reg Date: 08/08/97
Project Name: Grenada Lake
Grenada Lake
Section 34, T24N, R7E
Grenada, MS, Co: Yalobusha, Zip: 38903–0903
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease).

Parcel 14
Property #: 319011031
Fed Reg Date: 08/08/97
Project Name: Grenada Lake
Grenada Lake
Section 3, T23N, R6E
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 15
Property #: 319011032
Fed Reg Date: 08/08/97
Project Name: Grenada Lake
Grenada Lake
Section 4, T24N, R6E
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 16
Property #: 319011033
Fed Reg Date: 08/08/97
Project Name: Grenada Lake
Grenada Lake
Section 9, T23N, R6E
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized.
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 17
Property #: 319011034
Fed Reg Date: 08/08/97
Project Name: Grenada Lake
Grenada Lake
Section 17, T23N, R7E
Grenada, MS, Co: Yalobusha, Zip: 28901–0903
Status: Underutilized.
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 18
Property #: 319011035
Fed Reg Date: 08/08/97
Project Name: Grenada Lake
Grenada Lake
Section 22, T23N, R7E
Grenada, MS, Co: Yalobusha, Zip: 28902–0903
Status: Underutilized.
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 19
Property #: 319011036
Fed Reg Date: 08/08/97
Project Name: Grenada Lake
Grenada Lake
Section 9, T22N, R7E
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized.
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management.

Nebraska

Buildings

Bldg. A
Property #: 3197610006
Fed Reg Date: 08/08/97
Harlan County Lake Project
Republican City, NE, Co: Harlan, Zip: 68971–
Status: Excess.
Comment: 1760 sq. ft. residence, needs repair, off-site use only.

Bldg. B
Property #: 319710007
Fed Reg Date: 08/08/97
Harlan County Lake Project
Republican City, NE, Co: Harlan, Zip: 68971–
Status: Excess.
Comment: 720 sq. ft. residence, needs repair, off-site use only.

Bldg C
Property #: 319710008
Fed Reg Date: 08/08/97
Harland County Lake Project
Republican City, NE, Co: Harlan, Zip: 68971–
Status: Excess.
Comment: 720 sq. ft. residence, needs repair, off-site use only.

Ohio

Land

Hannibal Locks and Dam
Property #: 319010015
Fed Reg Date: 08/08/97
Project Name: Hannibal Locks and Dam
Ohio River
P.O. Box 8
Hannibal, OH, Co: Monroe, Zip: 43931–0008
Location: Adjacent to the new Martinsville Bridge.
Status: Underutilized
Comment: 22 acres; river bank.

Buildings

Baker Historic House
Property #: 319120018
Fed Reg Date: 08/08/97
Willow Island Locks and Dam
Newport, OH, Co: Washington, Zip: 45768–9801
Location: Located at lock site, downstream of lock and dam structure
Status: Unutilized
Comment: 1600 sq. ft. bldg. with ½ acre of land, 2 story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, off-site use only.

Oklahoma

Land

Pine Creek Lake
Property #: 319010923
Fed Reg Date: 08/08/97
Project Name: Pine Creek Lake
Section 27
(See County), OK, Co: McCurtain, Zip:
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Buildings

Water Treatment Plant
Property #: 319630001
Fed Reg Date: 08/08/97
Belle Starr, Eufaula Lake
Eufaula, OK, Co: McIntosh, Zip: 74432–
Status: Excess
Comment: 16'x16', metal, off-site use only.

Water Treatment Plant
Property #: 319630002
Fed Reg Date: 08/08/97
Gentry Creek, Eufaula Lake
Eufaula, OK, Co: McIntosh, Zip: 74432–
Status: Excess
Comment: 12'x16', metal, off-site use only.

Pennsylvania

Land

Mahoning Creek Lake
Property #: 319010018
Fed Reg Date: 08/08/97
Project Name: Mahoning Creek Lake
New Bethlehem, PA, Co: Armstrong, Zip: 16242–9603
Location: Route 28 north to Belknap, Road #4
Status: Excess
Comment: 2.58 acres; steep and densely wooded.

Tracts 610, 611, 612
Property #: 319011001
Fed Reg Date: 08/08/97
Project Name: Shenango River Lake
Shenango River Lake
Sharpsville, PA, Co: Mercer, Zip: 16150–
Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue.
Status: Excess
Comment: 24.09 acres; subject to flowage easement.

Tracts L24, L26
Property #: 319011011
Fed Reg Date: 08/08/97
Project Name: Crooked Creek Lake
Crooked Creek Lake
PA, Co: Armstrong, Zip: 03051–
Location: Left Bank—55 miles downstream of dam.
Status: Unutilized
Comment: 7.59 acres; potential for utilities.

Portion of Tract L–21A
Property #: 319430012
Fed Reg Date: 08/08/97
Crooked Creek Lake, LR 03051
Ford City, PA, Co: Armstrong, Zip: 16226–
Status: Unutilized
Comment: Approximately 1.72 acres of undeveloped land, subject to gas rights.

Buildings

Mahoning Creek Reservoir
Property #: 31921008
Fed Reg Date: 08/08/97
New Bethlehem, PA, Co: Armstrong, Zip: 16242–
Status: Unutilized
Comment: 1015 sq. ft., 2-story brick residence, off-site use only.

One Unit/Residence
Property #: 319430011
Fed Reg Date: 08/08/97
Conemaugh River Lake, RD #1, Box 702
Saltburg, PA, Co: Indiana, Zip: 15681–
Status: Unutilized
Comment: 2642 sq. ft., 1-story, 1-unit of duplex, fair condition, access restrictions.

Dwelling
Property #: 319620008
Fed Reg Date: 08/08/97
Lock & Dam 6, Allegheny River, 1260 River Rd.
Freeport, PA, Co: Armstrong, Zip: 16229–2023
Status: Unutilized
Comment: 2652 sq. ft., 3-story brick house, in close proximity to Lock and Dam, available for interim use for nonresidential purposes.

Dwelling
Property #: 319710009
Fed Reg Date: 08/08/97
Lock & Dam 4, Allegheny River
Natrona, PA, Co: Allegheny, Zip: 15065–2609
Status: Unutilized
Comment: 1,664 sq. ft., 2-story brick residence, needs repair, off-site use only.

South Carolina

Buildings

Bldg. 5
Property #: 319011548
Fed Reg Date: 08/08/97
Project Name: J.S. Thurmond Dam & Reservoir
J.S. Thurmond Dam and Reservoir
Clarks Hill, SC, Co: McCormick, Zip:
Location: ½ mile east of Resource Managers Office.
Status: Excess
Comment: 1,900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage, off-site removal only.

Tennessee

Land

Tract 6827
Property #: 319010927
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake
Dover, TN, Co: Stewart, Zip: 37058–
Location: 2½ miles west of Dover, TN.
Status: Excess
Comment: .57 acres; subject to existing easements.

Tracts 6002–2 and 6010
Property #: 319010928
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake
Dover, TN, Co: Stewart, Zip: 37058–
Location: 3½ miles south of village of Tabaccoport.
Status: Excess
Comment: 100.86 acres; subject to existing easements.

Tract 11516
Property #: 319010929
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake
Ashland City, TN, Co: Dickson, Zip: 37015–
Location: ½ mile downstream from Cheatham Dam
Status: Excess
Comment: 26.25 acres; subject to existing easements.

Tract 2319
Property #: 319010930
Fed Reg Date: 08/08/97
Project Name: J. Percey Priest Dam
J. Percy Priest Dam and Reservoir
Murfreesboro, TN, Co: Zip: 37130–
Location: West of Buckeye Bottom Road
Status: Excess
Comment: 14.48 acres; subject to existing easements.

Tract 2227
Property #: 319010931
Fed Reg Date: 08/08/97
Project Name: J. Percy Priest Dam
J. Percy Priest Dam and Reservoir
Murfreesboro, TN, Co: Rutherford, Zip: 37130–
Location: Old Jefferson Pike
Status: Excess
Comment: 2.27 acres; subject to existing easements.

Tract 2107
Property #: 319010932
Fed Reg Date: 08/08/97
Project Name: J. Percy Priest Dam
J. Percy Priest Dam and Reservoir
Murfreesboro, TN, Co: Rutherford, Zip: 37130–
Location: Across Fall Creek near Fall Creek camping area.
Status: Excess
Comment: 14.85 acres; subject to existing easements.

Tracts 2601, 2602, 2603, 2604
Property #: 319010933
Fed Reg Date: 08/08/97
Project Name: Cordell Hull Lake & Dam Pro.
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro, TN, Co: Jackson, Zip: 38562–
Location: TN Highway 56
Status: Unutilized
Comment: 11 acres; subject to existing easements.

Tract 1911
Property #: 319010934
Fed Reg Date: 08/08/97
Project Name: J. Percy Priest Dam
J. Percy Priest Dam and Reservoir
Murfreesboro, TN, Co: Rutherford, Zip: 37130–
Location: East of Lamar Road
Status: Excess
Comment: 15.31 acres; subject to existing easements.

Tract 2321
Property #: 319010935
Fed Reg Date: 08/08/97
Project Name: J. Percy Priest Dam
J. Percy Priest Dam and Reservoir
Murfreesboro, TN, Co: Rutherford, Zip: 37130–
Location: South of Old Jefferson Pike
Status: Excess
Comment: 12 acres; subject to existing easements.

Tract 7206
Property #: 319010936
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake
Dover, TN, Co: Stewart, Zip: 37058–
Location: 2½ miles SE of Dover, TN.
Status: Excess
Comment 10.15 acres; subject to existing easements.

Tracts 8813, 8814
Property #: 319010937
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake
Cumberland, TN, Co: Stewart, Zip: 37050–
Location: 1½ miles East of Cumberland City.
Status: Excess
Comment 96 acres; subject to existing easements.

Tract 8911
Property #: 319010938
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake
Cumberland City, TN, Co: Montgomery, Zip: 37050–
Location: 4 miles east of Cumberland City.
Status: Excess
Comment: 7.7 acres; subject to existing easements.

Tract 11503
Property #: 319010939
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake
Ashland City, TN, Co: Cheatham, Zip: 37015–
Location: 2 miles downstream from Cheatham Dam.
Status: Excess
Comment: 1.1 acres; subject to existing easements.

Tracts 11523, 11524
Property #: 319010940
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake
Ashland City, TN, Co: Cheatham, Zip: 37015–
Location: 2½ miles downstream from Cheatham Dam.
Status: Excess
Comment: 19.5 acres; subject to existing easements.

Tract 6410
Property #: 319010941
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake
Bumpus Mills, TN, Co: Stewart, Zip: 37028–
Location: 4½ miles SW. of Bumpus Mills
Status: Excess
Comment: 17 acres; subject to existing easements.

Tract 9707
Property #: 319010943
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake
Palmyer, TN, Co: Montgomery, Zip: 37142–
Location: 3 miles NE of Palmyer, TN. Highway 149
Status: Excess
Comment: 6.6 acres; subject to existing easements.

Tract 6949
Property #: 319010944
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake
Dover, TN, Co: Stewart Zip: 37058–
Location: 1½ miles SE of Dover, TN.
Status: Excess
Comment: 29.67 acres; subject to existing easements.

Tracts 6005 and 6017
Property #: 319011173
Fed Reg Date: 08/08/97
Project Name: Barkley Lake
Barkley Lake
Dover, TN, Co: Stewart Zip: 37058–
Location: 3 miles south of Village of Tabaccoport.
Status: Excess
Comment: 5 acres; subject to existing easements.

Tracts K–1191, K–1135
Property #: 319130007
Fed Reg Date: 08/08/97
Old Hickory Lock and Dam
Hartsville, TN, Co: Trousdale, Zip: 37074–
Status: Underutilized
Comment: 92 acres (38 acres in floodway), most recent use—recreation.

Tract A–102
Property #: 319140006
Fed Reg Date: 08/08/97
Dale Hollow Lake & Dam Project
Canoe Ridge, State Hwy 52
Celina, TN, Co: Clay, Zip: 38551–
Status: Underutilized
Comment: 351 acres, most recent use—hunting, subject to existing easements.

Tract A–120
Property #: 319140007
Fed Reg Date: 08/08/97
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina, TN, Co: Clay, Zip: 38551–
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements.

Tract A–20, A–21
Property #: 319140008
Fed Reg Date: 08/08/97
Dale Hollow Lake & Dam Project
Red Oak Ridge, State Hwy No. 53
Celina, TN, Co: Clay, Zip: 38551–
Status: Underutilized
Comment: 831 acres, most recent use—recreation, subject to existing easements.

Tract D–185
Property #: 319140010
Fed Reg Date: 08/08/97
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 53
Livingston, TN, Co: Clay, Zip: 38570–
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements.

Buildings

Cheatham Lock & Dam
Property #: 319520003
Fed Reg Date: 08/08/97
Tract D, Lock Road
Nashville, TN, Co: Davidson, Zip: 37207–
Status: Underutilized
Comment: 1100 sq. ft. dwelling w/storage bldgs on 7 acres, needs major rehab, contamination issues, approx. 1 acre in fldwy, modif. to struct. subj. to approval of St. Hist. Presv. Ofc.

Virginia

Buildings

Peters Ridge Site
Property #: 319430013
Fed Reg Date: 08/08/97
Gathright Dam
Covington, VA, Zip:
Status: Excess
Comment: 64 sq. Ft., metal bldg.

Metal Bldg.
Property #: 319620009
Fed Reg Date: 08/08/97
John H. Kerr Dam & Reservoir
VA, Co: Boydton, Zip:
Status: Excess
Comment: 800 sq. ft., most recent use—storage, off-site use only.

Wisconsin

Buildings

Former Lockmaster's Dwelling
Property #: 319011524
Fed Reg Date: 08/08/97
Project Name: Former Lockmaster's Dwelling
Cedar Locks
4527 East Wisconsin Road
Kaukauna, WI, Co: Outagamie, Zip: 54911–
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Property #: 319011525
Fed Reg Date: 08/08/97
Project Name: Former Lockmaster's Dwelling
Appleton 4th Lock
905 South Lowe Street
Appleton, WI, Co: Outagamie, Zip: 54911–
Status: Unutilized
Comment: 908 sq. ft.; 2 story wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Property #: 319011527
Fed Reg Date: 08/08/97
Project Name: Former Lockmaster's Dwelling
Kaukauna 1st Lock
301 Canal Street
Kankauna, WI, Co: Outagamie, Zip: 54131–
Status: Unutilized
Comment: 1290 sq. ft.; 2 story wood frame residence; needs rehab.; secured area with alternate access.

Former Lockmaster's Dwelling
Property #: 319011531
Fed Reg Date: 08/08/97
Project Name: Former Lockmaster's Dwelling
Appleton 1st Lock
905 South Oneida Street
Appleton, WI, Co: Outagamie, Zip: 54911–
Status: Unutilized
Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab.; secured area with alternate access.

Former Lockmaster's Dwelling
Property #: 319011533
Fed Reg Date: 08/08/97
Project Name: Former Lockmaster's Dwelling
Rapid Croche Lock
Lock Road
Wrightstown, WI, Co: Outagamie, Zip: 54180–
Location: 3 miles southwest of intersection State Highway 96 and Canal Road.
Status: Unutilized
Comment: 1952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab.

Former Lockmaster's Dwelling
Property #: 319011535
Fed Reg Date: 08/08/97
Project Name: Former Lockmaster's Dwelling
Little Kaukauna Lock
Little Kaukauna
Lawrence, WI, Co: Brown, Zip: 54130–
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Truck Highway "D") and River Street.
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Property #: 319011536
Fed Reg Date: 08/08/97
Project Name: Former Lockmaster's Dwelling
Little Chute, 2nd Lock
214 Mill Street
Little Chute, WI, Co: Outagamie, Zip: 54140–
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access.

West Virginia

Buildings

German Ridge Radio Transmitter
Property #: 319610002
Fed Reg Date: 08/08/97
Huntington, WV, Co: Wayne, Zip: 25701–
Status: Unutilized
Comment: 187 sq. ft. cinder block bldg. on .55 acre in remote area, most recent use—radio equipment room.

GSA

Alaska

Buildings

10 Office Buildings
Property #: 549710002
Fed Reg Date: 08/08/97
255 Gambell St.
Anchorage, AK, Co: Anchorage, Zip: 99501–
Status: Surplus
Comment: high maintenance costs, does not meet Fed. seismic standards, presence of asbestos, PCB's, lead paint.
GSA No.: 9–F–AK–750

3 Storage Buildings
Property #: 549710003
Fed Reg Date: 08/08/97
Anchorage Native Medical Center
255 Gambell St.
Anchorage, AK, Co: Anchorage, Zip: 99501–
Status: Surplus
Comment: high maintenance costs, does not meet Fed. seismic standards, presence of asbestos, PCB's, lead paint.
GSA No.: 9–F–AK–750

1 Hospital
Property #: 549710004
Fed Reg Date: 08/08/97
Anchorage Native Medical Center
255 Gambell St.
Anchorage, AK, Co: Anchorage, Zip: 99501–
Status: Surplus
Comment: 173,336 sq. ft., high maintenance costs, does not meet Fed. seismic standards, presence of asbestos, PCB's, lead paint.
GSA No.: 9–F–AK–750

Arkansas

Land

Hergett Substation
Property #: 549730017
Fed Reg Date: 09/12/97
305 N. Floyd St.
Jonesboro, AR, Co: Craighead, Zip:
Status: Excess
Comment: 1.55 acres, most recent use—electrical substation.
GSA No.: 7–B–AR–553

California

Buildings

112 Bldgs.—Skaggs Island
Property #: 549730001
Fed Reg Date: 09/05/97
Naval Security Group
Skaggs Island, CA, Co: Sonoma, Zip:
Status: Excess
Comment: 32–13, 374 sq. ft., temp. quonset huts to perm. wood/concrete, most recent use—housing, admin., support facilities, remote location, below sea level, high maintenance.
GSA No.: 9–N–CA–1488

Colorado

Land

Erie Substation
Property #: 549740002
Fed Reg Date: 11/14/97
Hwy 87
CO, Co: Weld, Zip:
Status: Excess
Comment: 2.75 acres, most recent use—electrical substation, (transmission lines)

Massachusetts

Land

Estate of S. Newburg
Property #: 549630017
Fed Reg Date: 08/08/97
Lois and Ellen Street
Haverhill, MA, Co: Essex, Zip: 01830–
Status: Excess
Comment: land—36,425 sq. ft.—two noncontiguous parcels, heavily wooded.
GSA No.: 1–G–MA–793

Michigan

Land

Parcel 3, Parcel B
Property #: 549730013
Fed Reg Date: 09/05/97
East Tawas, MI, Co: Iosco, Zip:
Status: Excess
Comment: 2.02 acres of land, wooded and primarily wetlands, restricted access.
GSA No.: 1–U–MI–500

Buildings

Parcel 1
Property #: 549730011
Fed Reg Date: 09/05/97
Old Lifeboat Station
East Tawas, MI, Co: Iosco, Zip:
Status: Excess
Comment: 2062 sq. ft. station bldg., garage, boathouse, oilhouse, possible asbestos/lead paint, eligible for listing on National Register of Historic Places.
GSA No.: 1–UU–MI–500

Parcel 2
Property #: 549730012
Fed Reg Date: 09/05/97
Tawas Point Lighthouse
East Tawas, MI, Co: Iosco, Zip:
Status: Excess
Comment: Lighthouse, duplex dwelling, garage, storage, possible asbestos/lead paint, wetlands, listed on National Register of Historic Places, restricted access.
GSA No.: 1–U–MI–500

Eagle Harbor Lighthouse
Property #: 549740018
Fed Reg Date: 12/26/97
Rt. 26
Eagle Harbor, MI, Co: Keweenaw, Zip: 44950-
Status: Excess
Comment: 2 bldgs., 3111 sq. ft., combined, presence of asbestos/lead paint, most recent use—museum and storage.
GSA No: 1–U–MI–420A

Nebraska

Land

Radar Site
Property #: 549740007
Fed Reg Date: 11/14/97
Hwy 92
Gandy, NE, Co: Logan, Zip: 69163-
Status: Surplus
Comment: .52 acres.
GSA No.: 7–C–NE–0523

New Jersey

Buildings

ESMT Manasquan
Property #: 549730025
Fed Reg Date: 10/17/97
Manasquan, NJ, Co: Monmouth, Zip:
Status: Excess
Comment: main bldg. (5714 sq. ft.), paint locker (96 sq. ft.), garage (3880 sq. ft.), need repairs, presence of asbestos/lead paint, Coast Guard easement.
GSA No.: 1–U–NJ–0632

New York

Buildings

Fed. Office Building
Property #: 549630011
Fed Reg Date: 08/08/97
35 Ryerson Street
Brooklyn, NY, Co: Kings, Zip:
Status: Excess
Comment: nine floors and basement, possible asbestos, needs rehab, most recent use—VA Clinic.
GSA No.: 1–G–NY–637A

Stockston School/Maint Garage
Property #: 549730024
Fed Reg Date: 10/17/97
Mill Street
Stockton, NY, Zip: 14784-
Status: Surplus
Comment: 13,555 sq. ft., 1-story, most recent use—training center, 4.8 acres of land.
GSA No.: 1–L–NY–0860

South Dakota

Land

Old Oahe Lock & Dam
Property #: 549740004
Fed Reg Date: 11/14/97
Lake Oahe Project
Ft. Pierre, SD, Co: Stanley, Zip: 57501–
Status: Excess
Comment: 1.91 acres, most recent use—old railroad grade, subject to existing easements.
GSA No.: 7–D–SD–0520

Texas

Buildings

Bryan Federal Building
Property #: 549730003
Fed Reg Date: 09/05/97
216 W 26th Street
Bryan, TX, Co: Brazos Zip: 77801–
Status: Underutilized
Comment: portion of 4000 sq. ft. bldg., most recent use—office, limitations due to potential historic significance.
GSA No.: 7–G–TX–1048

Bldg. 439
Property #: 879630011
Fed Reg Date: 11/14/97
Fort Crockett/53rd St. Housing
Galveston, TX, Co: Galveston Zip: 77553–
Status: Surplus
Comment: 1632 sq. ft. per floor, 2-story, most recent use—residential, historic properties.
GSA No.: 7–U–TX–0549G, H, I

Virginia

Buildings

Housing
Property #: 879120082
Fed Reg Date: 11/14/97
Rt. 637—Gwynnville Road
Gwynn Island, VA, Co: Mathews, Zip: 23066–
Status: Excess
Comment: 929 sq. ft., one story residence.
GSA No.: 4–U–DE–461

Wyoming

Land

Pavillion Substation
Property #: 549740003
Fed Reg Date: 11/14/97
Wind River Meridian
WY, Co: Fremont Zip:
Status: Excess
Comment: 0.11 acre tract, most recent use—powerline substation.

Summary of Properties for GSA

Buildings = 13
Land = 13
Total Suitable and Available by agency = 20

Interior

California

Buildings

Visitor Motel—Upper Kaweah
Property #: 619720007
Fed Reg Date: 09/05/97
Sequoia National Park
Three Rivers, CA, Zip: 93271–
Status: Unutilized
Comment: 39403 sq. ft., wood, 2-story, needs repair, presence of asbestos/lead paint, off-site use only.

New Jersey

Buildings

Former Tyberg Residence
Property #: 619720053
Fed Reg Date: 09/05/97
National Park Service
Wallpack, NJ, Co: Sussex, Zip: 07881–
Status: Unutilized
Comment: most recent use—housing, off-site use only.

Pennsylvania

Buildings

Former Florio House
Property #: 619720050
Fed Reg Date: 09/05/97
National Park Service
Bushkill, PA, Co: Monroe, Zip: 18324–
Status: Unutilized
Comment: 936 sq. ft., frame, most recent use—housing, off-site use only.

Former Hardtla House
Property #: 619720051
Fed Reg Date: 09/05/97
Ramondskill
Milford, PA, Co: Pike, Zip:
Status: Unutilized
Comment: 1527 sq. ft. frame, 2-story, needs repair, most recent use—housing, off-site use only.

Former Hickman House
Property #: 619720052
Fed Reg Date: 09/05/97
National Park Service
Bushkill, PA, Co: Monroe, Zip: 18324–
Status: Unutilized
Comment: approx. 1604 sq. ft. frame, 2-story, most recent use—housing, off-site use only.

Virginia

Buildings

Nichols Property
Property #: 619640009
Fed Reg Date: 09/05/97
Rt. 2, Box 554
Galax, VA, Co: Grayson, Zip: 24333–
Status: Unutilized
Comment: 1520 sq. ft., residence, off-site use only.

Golding Property
Property #: 619640010
Fed Reg Date: 09/05/97
Rt. 2, Box 555
Galax, VA, Co: Grayson, Zip: 24333–
Status: Unutilized
Comment: 2224 sq. ft. residence, needs repair, barn, rental cottage, shed, off-site use only.

West Virginia

Buildings

Emit Jennings House
Property #: 619740002
Fed Reg Date: 12/26/97
New River Gorge National River
Huffman Drive
McCreery, WV, Co: Raleigh, Zip: 25934–
Status: Excess
Comment: 1400 sq. ft. concrete block, needs rehab, off-site use only.

Webb House
Property #: 619740003
Fed Reg Date: 12/26/97
New River Gorge National River
Rt. 41 North
McCreery, WV, Co: Raleigh, Zip: 25934–
Status: Excess
Comment: 288 sq. ft. dwelling, off-site use only.

Gilliam House
Property #: 619740004
Fed Reg Date: 12/26/97
New River Gorge National River
Rt. 41 North
McCreery, WV, Co: Raleigh, Zip: 25934–
Status: Excess
Comment: 448 sq. ft. dwelling, off-site use only.

NAVY

Connecticut

Buildings

Pier 7
Property #: 779710063
Fed Reg Date: 09/05/97
Naval Undersea Warfare Center
New London, CT, Co: New London, Zip: 06320–5594
Status: Excess
Comment: 700' long by 30' wide, rectangular shaped reinforced concrete pier.

Georgia

Land

Naval Submarine Base
Property #: 779010229
Fed Reg Date: 09/05/97
Project Name: Naval Submarine Base
Grid R–2 to R–3 to V–4 to V–1
Kings Bay, GA, Co: Camden, Zip: 31547–
Status: Underutilized
Comment: 111.57 acres; areas may be environmentally protected; secured area with alternate access.

Hawaii

Land

1.49 acres, Ferry Terminal
Property #: 779740068
Fed Reg Date: 12/12/97
Naval Station, Pearl Harbor
Pearl Harbor, HI, Co: Honolulu, Zip: 96860–
Status: Underutilized
Comment: intermittent use, most recent use—parking.

Buildings

Bldg. S87, Radio Trans. Fac.
Property #: 779240011
Fed Reg Date: 09/05/97
Lualualei, Naval Station, Eastern Pacific
Wahiawa, HI, Co: Honolulu, Zip: 96786–3050
Status: Underutilized
Comment: 7566 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 64, Radio Trans. Facility
Property #: 779310004
Fed Reg Date: 09/05/97
Naval Computer & Telecommunications Area
Wahiawa, HI, Co: Honolulu, Zip: 96786–3050
Status: Unutilized
Comment: 3612 sq. ft., 1 story, access restrictions, needs rehab, most recent use—storage, off-site use only.

Bldg. 594
Property #: 779620011
Fed Reg Date: 09/05/97
Naval Station, Pearl Harbor
Pearl Harbor, HI, Co: Honolulu, Zip: 96860–
Status: Unutilized
Comment: 1300 sq. ft., most recent use—parking garage, off-site use only.

Bldgs. S233–S234, S241–S244
Property #: 779620012
Fed Reg Date: 09/05/97
Naval Station, Pearl Harbor
Pearl Harbor, HI, Co: Honolulu, Zip: 96860–
Status: Unutilized
Comment: 90 sq. ft. each, need repairs, most recent use—storage, off-site use only.

Bldgs. S229–S232
Property #: 779620013
Fed Reg Date: 09/05/97
Naval Station, Pearl Harbor
Pearl Harbor, HI, Co: Honolulu, Zip: 96860–
Status: Unutilized
Comment: 180 sq. ft. each, need repairs, most recent use—storage, off-site use only.

Bldg. 4 Naval Station
Property #: 779620043
Fed Reg Date: 09/05/97
Pearl Harbor, Bishop Point (Hickman AFB)
Pearl Harbor, HI, Co: Honolulu, Zip: 96860–
Status: Unutilized
Comment: 576 sq. ft., need rehab, most recent use—storage, off-site use only.

Bldg. 20 Naval Station
Property #: 779620044
Fed Reg Date: 09/05/97
Pearl Harbor, Bishop Point (Hickam AFB)
Pearl Harbor, HI, Co: Honolulu, Zip: 96860–
Status: Unutilized

Comment: 252 sq. ft., need rehab, most recent use—storage, off-site use only.

Bldg. 442 Naval Station
Property #: 779620088
Fed Reg Date: 09/05/97
Ford Island
Pearl Harbor, HI, Co: Honolulu, Zip: 96860–
Status: Excess
Comment: 192 sq. ft., most recent use—storage, off-site use only.

Bldg. S180
Property #: 779620039
Fed Reg Date: 09/05/97
Naval Station, Ford Island
Pearl Harbor, HI, Co: Honolulu, Zip: 96860–
Status: Unutilized
Comment: 3,412 sq. ft., 2-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible.

Bldg. S181
Property #: 779620040
Fed Reg Date: 09/05/97
Naval Station, Ford Island
Pearl Harbor, HI, Co: Honolulu, Zip: 96860–
Status: Unutilized
Comment: 4,258 sq. ft., 1-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible.

Bldg. 219
Property #: 779620041
Fed Reg Date: 09/05/97
Naval Station, Ford Island
Pearl Harbor, HI, Co: Honolulu, Zip: 96860–
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible.

Bldg. 220
Property #: 779640042
Fed Reg Date: 09/05/97
Naval Station, Ford Island
Pearl Harbor, HI, Co: Honolulu, Zip: 96860–
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible.

Bldg. 222
Property #: 779640043
Fed Reg Date: 09/05/97
Naval Station, Ford Island
Pearl Harbor, HI, Co: Honolulu, Zip: 96860–
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible.

Bldg. 148, Hale Moku Housing
Property #: 779720122
Fed Reg Date: 09/05/97
Navy Public Works Center, Pearl Harbor
Pearl Harbor, HI, Co: Honolulu, Zip: 96818–
Status: Excess
Comment: 2138 sq. ft., concrete/masonry/wood, needs major rehab, off-site use only.

Bldg. 5421
Property #: 779740002
Fed Reg Date: 10/17/97
Iroquois Point Housing
Navy Public Works Center
Ewa Beach, HI, Co: Honolulu, Zip: 96706–
Status: Excess
Comment: 1543 sq. ft., concrete/wood, possible asbestos/lead paint, off-site use only (may not be feasible).

Bldg. 5423
Property #: 779740003
Fed Reg Date: 10/17/97
Iroquois Point Housing
Navy Public Works Center
Ewa Beach, HI, Co: Honolulu, Zip: 96706–
Status: Excess
Comment: 336 sq. ft., concrete/wood, possible asbestos/lead paint, off-site use only (may not be feasible).

Bldg. 5425
Property #: 779740004
Fed Reg Date: 10/17/97
Iroquois Point Housing
Navy Public Works Center
Ewa Beach, HI, Co: Honolulu, Zip: 96706–
Status: Excess
Comment: 1543 sq. ft., concrete/wood, possible asbestos/lead paint, off-site use only (may not be feasible).

Bldg. 5427
Property #: 779740005
Fed Reg Date: 10/17/97
Iroquois Point Housing
Navy Public Works Center
Ewa Beach, HI, Co: Honolulu, Zip: 96706–
Status: Excess
Comment: 336 sq. ft., concrete/wood, possible asbestos/lead paint, off-site use only (may not be feasible).

Bldg. 5429
Property #: 779740006
Fed Reg Date: 10/17/97
Iroquois Point Housing
Navy Public Works Center
Ewa Beach, HI, Co: Honolulu, Zip: 96706–
Status: Excess
Comment: 1543 sq. ft., concrete/wood, possible asbestos/lead paint, off-site use only (may not be feasible).

Bldg. 5431
Property #: 779740007
Fed Reg Date: 10/17/97
Iroquois Point Housing
Navy Public Works Center
Ewa Beach, HI, Co: Honolulu, Zip: 96706–
Status: Excess
Comment: 336 sq. ft., concrete/wood, possible asbestos/lead paint, off-site use only (may not be feasible).

Bldg. 618, Ferry Terminal
Property #: 779740069
Fed Reg Date: 12/12/97
Naval Station, Pearl Harbor
Pearl Harbor, HI, Co: Honolulu, Zip: 96860–
Status: Underutilized
Comment: intermittent use, 315 sq. ft., most recent use—storage.

Bldg. 619, Ferry Terminal
Property #: 779740070
Fed Reg Date: 12/12/97
Naval Station, Pearl Harbor
Pearl Harbor, HI, Co: Honolulu, Zip: 96860–
Status: Underutilized
Comment: intermittent use, 1460 ft., most recent use—storage.

Bldg. 594, Ferry Terminal
Property #: 779740071
Fed Reg Date: 12/12/97
Naval Station, Pearl Harbor
Pearl Harbor, HI, Co: Honolulu, Zip: 96860–
Status: Excess
Comment: 1300 sq. ft., most recent use—parking shed, needs rehab.

Bldg. 566, Ferry Terminal
Property #: 779740072
Fed Reg Date: 12/12/97
Naval Station, Pearl Harbor
Pearl Harbor, HI, Co: Honolulu, Zip: 96860–
Status: Excess
Comment: 52 sq. ft., most recent use—sentry post.

Structure 5378, Ford Island
Property #: 779740073
Fed Reg Date: 12/12/97
Naval Station, Pearl Harbor
Pearl Harbor, HI, Co: Honolulu, Zip: 96860–
Status: Underutilized
Comment: intermittent use, berthing pier.

Maryland

Land

46.725 acres
Property #: 779710067
Fed Reg Date: 09/05/97
Naval Air Warfare Center
Willows Road
Lexington Park, MD, Co: St. Mary's, Zip:
Status: Unutilized
Comment: buffer area within Accident Potential Zone 2, no utilities, use and access restrictions.

North Carolina

Buildings

Bldg. 146, Camp Lejeune
Property #: 779620029
Fed Reg Date: 09/05/97
Greater Sandy Run Training Area
Camp Lejeune, NC, Co: Onslow, Zip: 28542–
Status: Unutilized
Comment: 1900 sq. ft., concrete block, most recent use—gas station, off-site use only.

Bldg. 117, Camp Lejeune
Property #: 779720042
Fed Reg Date: 09/05/97
Greater Sandy Run Training Area
Camp Lejeune, NC, Co: Onslow, Zip: 28542–
Status: Unutilized
Comment: 1456 sq. ft., frame, off-site use only.

Bldg. 118, Camp Lejeune
Property #: 779720043
Fed Reg Date: 09/05/97
Greater Sandy Run Training Area
Camp Lejeune, NC, Co: Onslow, Zip: 28542–
Status: Unutilized
Comment: 1456 sq. ft., frame, off-site use only.

Pennsylvania

Buildings

Bldg. 76
Property #: 779730075
Fed Reg Date: 10/03/97
Naval Inventory Control Point
Philadelphia, PA, Co: Philadelphia, Zip: 19111–5098
Status: Excess
Comment: 3475 sq. ft., cinder block/metal, most recent use—child care, needs repair, off-site use only.

Texas

Land

Peary Point #2
Property #: 779030001
Fed Reg Date: 09/05/97
Naval Air Station

Corpus Christi, TX, Co: Nueces, Zip: 78419–5000
Status: Excess
Comment: 43.48 acres; of land under lease until 8/93.

Virginia

Buildings

Bldg. 1470
Property #: 779640044
Fed Reg Date: 09/05/97
509 King Street
Portsmouth, VA, Zip: 23704–
Status: Unutilized
Comment: 21445 sq. ft., 3-story.

Bldg. V14
Property #: 779710013
Fed Reg Date: 09/05/97
Naval Base Norfolk
Norfolk, VA, Zip: 23511–
Status: Excess
Comment: 2800 sq. ft., presence of lead paint, most recent use—storage, off-site use only.

Bldg. V15
Property #: 779710014
Fed Reg Date: 09/05/97
Naval Base Norfolk
Norfolk, VA, Zip: 23511–
Status: Excess
Comment: 17179 sq. ft., presence of asbestos/lead paint, most recent use—shipboard repair, off-site use only.

Bldg. V16
Property #: 779710015
Fed Reg Date: 09/05/97
Naval Base Norfolk
Norfolk, VA, Zip: 23511–
Status: Excess
Comment: 2800 sq. ft., presence of lead paint, most recent use—storage, off-site use only.

Bldg. V31
Property #: 779710016
Fed Reg Date: 09/05/97
Naval Base Norfolk
Norfolk, VA, Zip: 23511–
Status: Excess
Comment: 23430 sq. ft., presence of lead paint/asbestos, off-site use only.

Bldg. LP196
Property #: 779710027
Fed Reg Date: 09/05/97
Naval Base Norfolk
Norfolk, VA, Zip: 23511–
Status: Excess
Comment: 297 gross sq. ft., off-site use only.

Bldg. R49
Property #: 779710028
Fed Reg Date: 09/05/97
Naval Base Norfolk
Norfolk, VA, Zip: 23511–
Status: Excess
Comment: 12000 sq. ft., need repair, presence of asbestos/lead paint, off-site use only.

Bldg. R56
Property #: 779710029
Fed Reg Date: 09/05/97
Naval Base Norfolk
Norfolk, VA, Zip: 23511–
Status: Excess
Comment: 4000 gross sq. ft., needs repair, presence of asbestos/lead paint, off-site use only.

Bldg. R60
Property #: 779710030
Fed Reg Date: 09/05/97
Naval Base Norfolk
Norfolk, VA, Zip: 23511–
Status: Excess
Comment: 3970 gross sq. ft., need repair, presence of asbestos/lead paint, off-site use only.

Bldg. V42
Property #: 779710032
Fed Reg Date: 09/05/97
Naval Base Norfolk
Norfolk, VA, Zip: 23511–
Status: Excess
Comment: 13026 gross sq. ft., needs repair, presence of asbestos/lead paint, off-site use only.

Bldg. V48
Property #: 779710034
Fed Reg Date: 09/05/97
Naval Base Norfolk
Norfolk, VA, Zip: 23511–
Status: Excess
Comment: 2408 gross sq. ft., presence of asbestos/lead paint, off-site use only.

Bldg. LP176
Property #: 779710035
Fed Reg Date: 09/05/97
Naval Base Norfolk
Norfolk, VA, Zip: 23511–
Status: Excess
Comment: 25611 gross sq. ft., off-site use only.

Bldg. U47
Property #: 779710036
Fed Reg Date: 09/05/97
Naval Base Norfolk
Norfolk, VA, Zip: 23511–
Status: Excess
Comment: 1000 gross sq. ft., off-site use only.

Bldg. V43
Property #: 779710037
Fed Reg Date: 09/05/97
Naval Base Norfolk
Norfolk, VA, Zip: 23511–
Status: Excess
Comment: 8754 gross sq. ft., presence of asbestos, off-site use only.

Bldg. V45
Property #: 779710038
Fed Reg Date: 09/05/97
Naval Base Norfolk
Norfolk, VA, Zip: 23511–
Status: Excess
Comment: 1343 gross sq. ft., battery contamination, presence of asbestos, off-site use only.

Bldg. LF38
Property #: 779710039
Fed Reg Date: 09/05/97
Naval Base Norfolk
Norfolk, VA, Zip: 23511–
Status: Excess
Comment: 5292 gross sq. ft., needs repair, off-site use only.

Bldg. V30AQ
Property #: 779710040
Fed Reg Date: 09/05/97
Naval Base Norfolk
Norfolk, VA, Zip: 23511–
Status: Excess
Comment: 340 gross sq. ft., needs repair, most recent use—storage, off-site use only.

Bldg. 34
Property #: 779710046
Fed Reg Date: 09/05/97
Naval Base Norfolk, St. Julien's Creek Annex
VA, Co: Chesapeake, Zip:
Status: Excess
Comment: 1260 sq. ft., off-site use only.

Bldg. 91
Property #: 779710047
Fed Reg Date: 09/05/97
Naval Base Norfolk, St. Julien's Creek Annex
VA, Co: Chesapeake, Zip:
Status: Excess
Comment: 780 sq. ft., off-site use only.

Bldg. 141
Property #: 779710048
Fed Reg Date: 09/05/97
VA, Co: Chesapeake, Zip:
Status: Excess
Comment: 414 sq. ft., off-site use only.

Bldg. 213
Property #: 779710049
Fed Reg Date: 09/05/97
Naval Base Norfolk, St. Julien's Creek Annex
VA, Co: Chesapeake, Zip:
Status: Excess
Comment: 1328 sq. ft., off-site use only.

Bldg. 224
Property #: 779710050
Fed Reg Date: 09/05/97
Naval Base Norfolk, St. Julien's Creek Annex
VA, Co: Chesapeake, Zip:
Status: Excess
Comment: 512 sq. ft., off-site use only.

Bldg. 237–238
Property #: 779710051
Fed Reg Date: 09/05/97
Naval Base Norfolk, St. Julien's Creek Annex
VA, Co: Chesapeake, Zip:
Status: Excess
Comment: 63 sq. ft., off-site use only.

Bldg. 241–243
Property #: 779710052
Fed Reg Date: 09/05/97
Naval Base Norfolk, St. Julien's Creek Annex
VA, Co: Chesapeake, Zip:
Status: Excess
Comment: 144 sq. ft., off-site use only.

Bldg. 251
Property #: 779710053
Fed Reg Date: 09/05/97
Naval Base Norfolk, St. Julien's Creek Annex
VA, Co: Chesapeake, Zip:
Status: Excess
Comment: 1134 sq. ft., off-site use only.

Bldg. 254
Property #: 779710054
Fed Reg Date: 09/05/97
Naval Base Norfolk, St. Julien's Creek Annex
VA, Co: Chesapeake, Zip:
Status: Excess
Comment: 156 sq. ft., off-site use only.

Bldg. 280
Property #: 779710055
Fed Reg Date: 09/05/97
Naval Base Norfolk, St. Julien's Creek Annex
VA, Co: Chesapeake, Zip:
Status: Excess
Comment: 126 sq. ft., off-site use only.

Bldg. 357
Property #: 779710056
Fed Reg Date: 09/05/97
Naval Base Norfolk, St. Julien's Creek Annex
VA, Co: Chesapeake, Zip:
Status: Excess
Comment: 2214 sq. ft., off-site use only.

Bldg. 360
Property #: 779710057
Fed Reg Date: 09/05/97
Naval Base Norfolk, St. Julien's Creek Annex
VA, Co: Chesapeake, Zip:
Status: Excess
Comment: 144 sq. ft., off-site use only.

Bldg. 383
Property #: 779710058
Fed Reg Date: 09/05/97
Naval Base Norfolk, St. Julien's Creek Annex
VA, Co: Chesapeake, Zip:
Status: Excess
Comment: 160 sq. ft., off-site use only.

Bldg. 2058A
Property #: 779720054
Fed Reg Date: 09/05/97
Naval Amphibious Base Little Creek
Norfolk, VA, Zip: 23521–2616
Status: Excess
Comment: 280 sq. ft., poor condition, most recent use—storage, off-site use only.

Bldg. 2076
Property #: 779720055
Fed Reg Date: 09/05/97
Naval Amphibious Base Little Creek
Norfolk, VA, Zip: 23521–2616
Status: Excess
Comment: 3000 sq. ft., fair condition, most recent use—offices, off-site use only.

Bldg. 3319
Property #: 779720059
Fed Reg Date: 09/05/97
Naval Amphibious Base Little Creek
Norfolk, VA, Zip: 23521–2616
Status: Excess
Comment: 9000 sq. ft., fair condition, most recent use—maintenance, off-site use only.

Bldg. 3373
Property #: 779720060
Fed Reg Date: 09/05/97
Naval Amphibious Base Little Creek
Norfolk, VA, Zip: 23521–2616
Status: Excess
Comment: 1800 sq. ft., fair condition, most recent use—office, off-site use only.

Bldg. 3627
Property #: 779720061
Fed Reg Date: 09/05/97
Naval Amphibious Base Little Creek
Norfolk, VA, Zip: 23521–2616
Status: Excess
Comment: 1200 sq. ft., fair condition, most recent use—laundry/dry cleaners, off-site use only.

Bldg. 3684
Property #: 779720062
Fed Reg Date: 09/05/97
Naval Amphibious Base Little Creek
Norfolk, VA, Zip: 23521–2616
Status: Excess
Comment: 2200 sq. ft., poor condition, most recent use—recreation pavillion, off-site use only.

Bldg. 3692
Property #: 779720063
Fed Reg Date: 09/05/97
Naval Amphibious Base Little Creek
Norfolk, VA, Zip: 23521–2616
Status: Excess
Comment: 3000 sq. ft., fair condition, most recent use—storage, off-site use only.

Bldg. 3151
Property #: 779720065
Fed Reg Date: 09/05/97
Naval Amphibious Base Little Creek
Norfolk, VA, Zip: 23521–2616
Status: Excess
Comment: 2600 sq. ft., fair condition, most recent use—office, off-site use only.

Bldg. SP–247
Property #: 779720106
Fed Reg Date: 12/26/97
Naval Base Norfolk Creek
Norfolk, VA, Zip: 23511–
Status: Unutilized
Comment: 3206 sq. ft., no utilities, presence of asbestos/lead paint, off-site use only.

Bldg. E26, Naval Base Norfolk
Property #: 779730042
Fed Reg Date: 09/19/97
Norfolk, VA, Zip:
Status: Excess
Comment: 21,654 sq. ft., 2-story, off-site use only.

Bldg. X379, Naval Base Norfolk
Property #: 779730043
Fed Reg Date: 09/19/97
Norfolk, VA, Zip:
Status: Excess
Comment: 1138 sq. ft., most recent use—recycling facility, off-site use only.

Bldg. N27
Property #: 779730046
Fed Reg Date: 09/19/97
Naval Base Norfolk
Norfolk, VA, Zip:
Status: Excess
Comment: 5166 sq. ft., most recent use—indoor playing courts, poor condition, off-site use only.

Bldg. 89
Property #: 779730047
Fed Reg Date: 09/19/97
Naval Base Norfolk
Norfolk, VA, Zip:
Status: Excess
Comment: 16,077 sq. ft., most recent use—office, poor condition, off-site use only.

Bldg. 138
Property #: 779730048
Fed Reg Date: 09/19/97
Naval Base Norfolk
St. Juliens Creek Annex
Portsmouth, VA, Zip: 23702–
Status: Excess
Comment: 192 sq. ft., most recent use—storage, poor condition, off-site use only.

Bldg. 215
Property #: 779730049
Fed Reg Date: 09/19/97
Naval Base Norfolk
St. Juliens Creek Annex
Portsmouth, VA, Zip: 23702–
Status: Excess
Comment: 1600 sq. ft., most recent use—storage, poor condition, off-site use only.

Bldg. 234
Property #: 779730050
Fed Reg Date: 09/19/97
Naval Base Norfolk
St. Juliens Creek Annex
Portsmouth, VA, Zip: 23702–
Status: Excess
Comment: 1161 sq. ft., most recent use—office, poor condition, off-site use only.

Bldg. 248
Property #: 779730051
Fed Reg Date: 09/19/97
Naval Base Norfolk
St. Juliens Creek Annex
Portsmouth, VA, Zip: 23702–
Status: Excess
Comment: 4858 sq. ft., most recent use—office, poor condition, off-site use only.

Bldg. 276
Property #: 779730052
Fed Reg Date: 09/19/97
Naval Base Norfolk
St. Juliens Creek Annex
Portsmouth, VA, Zip: 23702–
Status: Excess
Comment: 81 sq. ft., most recent use—storage, poor condition, off-site use only.

Bldg. 194
Property #: 779730053
Fed Reg Date: 09/19/97
Naval Base Norfolk
St. Juliens Creek Annex
Portsmouth, VA, Zip: 23702–
Status: Excess
Comment: 1580 sq. ft., most recent use—office, poor condition, off-site use only.

Bldg. NM–59A
Property #: 779730069
Fed Reg Date: 12/26/97
Naval Base Norfolk
Norfolk, VA, Zip: 23511–
Status: Excess
Comment: 14,044 sq. ft., presence of asbestos, most recent use—mobile facilities shop, off-site use only.

Bldg. 2069
Property #: 779740064
Fed Reg Date: 11/14/97
Naval Amphibious Base Little Creek
Norfolk, VA, Zip: 23521–2616
Status: Excess
Comment: 5000 sq. ft., most recent use—storage, off-site use only.

Bldg. 94
Property #: 779740075
Fed Reg Date: 12/12/97
St. Juliens Creek Annex
Portsmouth, VA, Zip: 23702–
Status: Unutilized
Comment: 361 sq. ft.

Bldg. 206
Property #: 779740076
Fed Reg Date: 12/12/97
St. Juliens Creek Annex
Portsmouth, VA, Zip: 23702–
Status: Unutilized
Comment: 204 sq. ft., most recent use—storage.

Bldg. 211
Property #: 779740077
Fed Reg Date: 12/12/97
St. Juliens Creek Annex
Portsmouth, VA, Zip: 23702–
Status: Unutilized
Comment: 165 sq. ft., most recent use—storage.

Bldg. 274
Property #: 779740078
Fed Reg Date: 12/12/97
St. Juliens Creek Annex
Portsmouth, VA, Zip: 23702–
Status: Unutilized
Comment: 81 sq. ft., most recent use—storage.

Bldg. 124

Property #: 779740079
Fed Reg Date: 12/12/97
St. Juliens Creek Annex
Portsmouth, VA, Zip: 23702–
Status: Unutilized
Comment: 4900 sq. ft., most recent use—office.

Bldg. 193
Property #: 779740080
Fed Reg Date: 12/12/97
St. Juliens Creek Annex
Portsmouth, VA, Zip: 23702–
Status: Unutilized
Comment: 1932 sq. ft., most recent use—office.

Bldg. P82
Property #: 779740081
Fed Reg Date: 12/12/97
Naval Station Norfolk
Norfolk, VA, Zip: 23511–
Status: Excess
Comment: 1324 sq. ft., most recent use—retail store.

Summary of Properties for Navy

Buildings = 88
Land = 4
Total Suitable and Available by agency = 92

VA

Alabama

Land

VA Medical Center
Property #: 979010053
Fed Reg Date: 09/05/97
Project Name: VA Medical Center
VAMC
Tuskegee, AL, Co: Macon, Zip: 36083–
Status: Underutilized
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped.

California

Land

Land
Property #: 979240001
Fed Reg Date: 09/05/97
4150 Clement Street
San Francisco, CA, Co: San Francisco, Zip: 94121–
Status: Underutilized
Comment: 4 acres; landslide area.

Indiana

Buildings

Bldg. 140, VAMC
Property #: 979230007
Fed Reg Date: 09/05/97
East 38th Street
Marion, IN, Co: Grant, Zip: 46952–
Status: Underutilized
Comment: 60 sq. ft., concrete block bldg., most recent use—trash house, access restrictions.

Maryland

Land

VA Medical Center
Property #: 979010020
Fed Reg Date: 09/05/97
Project Name: VA Medical Center
9500 North Point Road
Fort Howard, MD, Co: Baltimore, Zip: 21052–
Status: Underutilized
Comment: Approx. 10 acres, wetland and periodically floods, most recent use—dump site for leaves.

Pennsylvania

Buildings

Bldg. 25—VA Medical Center
Property #: 979210001
Fed Reg Date: 09/05/97
Delafield Road
Pittsburgh, PA, Co: Allegheny, Zip: 15215–
Status: Unutilized
Comment: 133 sq. ft., one story brick guard house, needs rehab.

Bldg. 3, VAMC
Property #: 979230012
Fed Reg Date: 09/05/97
1700 South Lincoln Avenue
Lebanon, PA, Co: Lebanon, Zip: 17042–
Status: Underutilized
Comment: portion of bldg. (3850 and 4360 sq. ft.), most recent use—storage, second floor—lacks elevator access.

Texas

Land

Land
Property #: 979010079
Fed Reg Date: 09/05/97
Project Name: Olin E. Teague Veterans Center
Olin E. Teague Veterans Center
1901 South 1st Street
Temple, TX, Co: Bell, Zip: 76504–
Status: Underutilized
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities.

Wisconsin

Land

VA Medical Center
Property #: 979010054
Fed Reg Date: 09/05/97
Project Name: VA Medical Center
County Highway E
Tomah, WI, Co: Monroe, Zip: 54660–
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities.

Buildings

Bldg. 8
Property #: 979010056
Fed Reg Date: 09/05/97
Project Name: VA Medical Center
VA Medical Center
County Highway E
Tomah, WI, Co: Monroe, Zip: 54660–
Status: Underutilized
Comment: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab.

Title V Properties for Year 97 which are Suitable and Unavailable

Air Force

Arizona

Buildings

Facility #4250
Property #: 189510043
Fed Reg Date: 09/05/97
Gila Bend AF Auxiliary Field
Gila Bend AZ, Co: Maricopa, Zip: 86025–
Status: Excess
Reason: Transferred to assist homeless.

Facility #4252
Property #: 189510044
Fed Reg Date: 09/05/97
Gila Bend AF Auxiliary Field
Gila Bend AZ, Co: Maricopa, Zip: 86025–
Status: Excess
Reason: Transferred to assist homeless.

California

Land

Norton Com. Facility Annex
Property #: 189010194
Fed Reg Date: 09/05/97
Project Name: Norton Com. Facility Annex
Norton AFB
Sixth and Central Streets
Highland, CA, Co: San Bernardino, Zip: 92409–5045
Status: Excess
Reason: Leased by "Baseline Little League".

Buildings

Hawes Site (KHGM)
Property #: 189010084
Fed Reg Date: 08/05/97
Project Name: Hawes Site
March AFB
Hinckley, CA, Co: San Bernardino, Zip: 92402–
Status: Unutilized
Reason: Contamination being cleaned up.

Colorado

Buildings

Bldg. 8026
Property #: 189730009
Fed Reg Date: 10/17/97
U.S. Air Force Academy
Colorado Springs, CO, Co: El Paso, Zip: 80814–2400
Status: Underutilized
Reason: in way of new construction.

Bldg. 9023
Property #: 189730010
Fed Reg Date: 10/17/97
U.S. Air Force Academy
Colorado Springs, CO, Co: El Paso, Zip: 80814–2400
Status: Underutilized
Reason: utilized.

Bldg. 9027
Property #: 189730011
Fed Reg Date: 10/17/97
U.S. Air Force Academy
Colorado Springs, CO, Co: El Paso, Zip: 80814–2400
Status: Underutilized
Reason: utilized.

Bldg. 9214
Property #: 189730012
Fed Reg Date: 10/17/97
U.S. Air Force Academy
Colorado Springs, CO, Co: El Paso, Zip: 80814–2400
Status: Underutilized
Reason: restricted area.

Flordia

Land

Woodland Tract
Property #: 189540020
Fed Reg Date: 09/05/97
Elgin AFB, AF Enlisted Widows' Home

Ft. Walton Beach, FL, Co: Okaloosa, Zip: 32542–5000
Status: Unutilized
Reason: To be excessed to the Dept. of Agriculture.

Buildings

Facility No. 0001
Property #: 189610010
Fed Reg Date: 09/05/97
Cocoa Beach Comm. Annex No. 2
Cocoa Beach, FL, Co: Brevard, Zip 32931–
Status: Unutilized
Reason: Disposal process by GSA.

Facility No. 00901
Property #: 189610011
Fed Reg Date: 09/05/97
Cocoa Beach Comm. Annex No. 1
Cocoa Beach,FL, Co: Brevard, Zip 32931–
Status: Unutilized
Reason: Disposal process by GSA.

Iowa

Buildings

Bldg. 00627
Property #: 189310001
Fed Reg Date: 09/05/97
Sioux Gateway Airport
Sioux City, IA, Co: Woodbury, Zip: 51110–
Status: Underutilized
Reason: Will be transferred to Sioux City.

Bldg. 00669
Property #: 189310002
Fed Reg Date: 09/05/97
Sioux Gateway Airport
Sioux City, IA, Co: Woodbury, Zip 51110–
Status: Unutilized
Reason: Will be transferred to Sioux City.

Idaho

Buildings

Bldg. 516
Property #: 189520004
Fed Reg Date: 09/05/97
Mountain Home Air Force Base
Mountain Home, ID Co: Elmore, Zip: 86348–
Status: Excess
Reason: Currently in use.

Kansas

Buildings

Bldg. 2703, Forbes Field
Property #: 189720042
Fed Reg Date: 09/05/97
KS, Co: Topeka, Zip:
Status: Unutilized
Reason: Utilized.

Michigan

Buildings

Bldg. 50
Property #: 189010790
Fed Reg Date: 09/05/97
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.

Bldg. 14
Property #: 189010833
Fed Reg Date: 09/05/97
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.

Bldg. 16
Property #: 189010834
Fed Reg Date: 09/05/97
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.

Bldg. 15
Property #: 189010864
Fed Reg Date: 09/05/97
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.

Montana

Buildings

Bldg. 00007
Property #: 189330066
Fed Reg Date: 09/05/97
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.

Bldg. 00008
Property #: 189330067
Fed Reg Date: 09/05/97
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.

Bldg. 00016
Property #: 189330068
Fed Reg Date: 09/05/97
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.

Bldg. 00023
Property #: 189330069
Fed Reg Date: 09/05/97
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.

Bldg. 00024
Property #: 189330070
Fed Reg Date: 09/05/97
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.

Bldg. 00027
Property #: 189330071
Fed Reg Date: 09/05/97
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.

Bldg. 00029
Property #: 189330072
Fed Reg Date: 09/05/97
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.

Bldg. 00031
Property #: 189330073
Fed Reg Date: 09/05/97
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.

Bldg. 00032
Property #: 189330074
Fed Reg Date: 09/05/97
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.

Bldg. 00035
Property #: 189330075
Fed Reg Date: 09/05/97
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.

Bldg. 00039
Property #: 189330076
Fed Reg Date: 09/05/97
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.

Bldg. 00040
Property #: 189330077
Fed Reg Date: 09/05/97
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.

Bldg. 00041
Property #: 189330078
Fed Reg Date: 09/05/97
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.

Bldg. 00042
Property #: 189330079
Fed Reg Date: 09/05/97
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.

Bldg. 00044
Property #: 189330080
Fed Reg Date: 09/05/97
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.

Malstrom Communications Annex
Property #: 189510023
Fed Reg Date: 09/05/97
(Transmitter), 39 78th St., N.
Malstrom AFB, MT, Co: Cascade, Zip: 59405–
Status: Excess
GSA No.: 7–D–MT–4240
Reason: Disposal process.

Nebraska

Land

Land/Offutt Comm. Annex No. 4
Property #: 189720041
Fed Reg Date: 09/05/97
Silver Creek, NE, Co: Nance, Zip: 68663–
Status: Unutilized
Reason: Asbestos in underground bunker.

Buildings

Bldg. 64
Property #: 189720040
Fed Reg Date: 09/05/97
Offutt AFB
Silver Creek, NE, Co: Nance, Zip: 68113–

Status: Unutilized
Reason: Utilized.

New Hampshire

Buildings

Bldg. 127
Property #: 189320057
Fed Reg Date: 09/05/97
New Boston Air Force Station
Amherst, NH, Co: Hillsborough, Zip: 03031–1514
Status: Excess
Reason: Ongoing installation mission consideration.

Texas

Buildings

Bldg. 697
Property #: 189110092
Fed Reg Date: 09/05/97
Project Name: Brooks Air Force Base
Brooks Air Force Base
San Antonio, TX, Co: Bexar, Zip: 78235–
Status: Unutilized
Reason: Change in agency mission.

Bldg. 698
Property #: 189110093
Fed Reg Date: 09/05/97
Project Name: Brooks Air Force Base
Brooks Air Force Base
San Antonio, TX, Co: Bexar, Zip: 78235–
Status: Unutilized
Reason: Change in agency mission.

Army

Georgia

Buildings

Bldg. 4090
Property #: 219630007
Fed Reg Date: 08/29/97
Fort Benning
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Underutilized
Reason: Plan to utilize as a museum.

Hawaii

Buildings

Bldg. S–275
Property #: 219540014
Fed Reg Date: 08/29/97
Fort DeRussy
Honolulu, HI, Zip: 96815–
Status: Unutilized
Reason: Mission use.

Illinois

Land

Bridge Ramp & Property
Property #: 219620665
Fed Reg Date: 08/29/97
Rock Island Arsenal
Rock Island, IL, Co: Rock Island, Zip: 61299–
Status: Unutilized
Reason: Being utilized.

Maryland

Buildings

Bldgs. TMA4, TMA5, TMA8, TMA9
Property #: 219320292
Fed Reg Date: 08/29/97
Fort George G. Meade
Ft. Meade, MD, Co: Anne Arundel, Zip: 20755–5115
Status: Unutilized
Reason: To be demolished.

North Carolina

Land

.92 Acre—Land
Property #: 219610728
Fed Reg Date: 08/29/97
Military Ocean Terminal, Sunny Point
Southport, NC, Co: Brunswick, Zip: 28461–5000
Status: Underutilized
Reason: Contains well owned by Town; within an explosive buffer zone.

10 Acre—Lane
Property #: 219610729
Fed Reg Date: 08/29/97
Military Ocean Terminal, Sunny Point
Southport, NC, Co: Brunswick, Zip: 28461–5000
Status: Underutilized
Reason: Within an explosives buffer zone.

257 Acre—Land
Property #: 219610730
Fed Reg Date: 08/29/97
Military Ocean Terminal, Sunny Point
Southport, NC, Co: Brunswick, Zip: 28461–5000
Status: Underutilized
Reason: Within an explosives buffer zone.

24.82 Acres—Tract of Land
Property #: 219620685
Fed Reg Date: 08/29/97
Military Ocean Terminal, Sunny Point
Southport, NC, Co: Brunswick, Zip: 28461–5000
Status: Underutilized
Reason: Explosive Buffer Zone.

New Mexico

Buildings

Bldg. 436
Property #: 219730303
Fed Reg Date: 10/03/97
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Reason: Withdrawn.

Bldg. 1310
Property #: 219730304
Fed Reg Date: 10/03/97
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Reason: Withdrawn.

Texas

Land

Vacant Land, Fort Sam Houston
Property #: 219220438
Fed Reg Date: 08/29/97
All of Block 1800, Portions of Blocks 1900, 3100 and 3200
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Reason: Clean-up process.

Buildings

Bldg. P–2000, Fort Sam Houston
Property #: 219220389
Fed Reg Date: 08/29/97
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Underutilized
Reason: Area programmed for future use.

Bldg. P–2001, Fort Sam Houston
Property #: 219220390
Fed Reg Date: 08/29/97
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Underutilized
Reason: Area programmed for future use.

Bldg. T–189, Fort Sam Houston
Property #: 219220402
Fed Reg Date: 08/29/97
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Underutilized
Reason: Area programmed for future use.

Bldg. S–1461
Property #: 219610772
Fed Reg Date: 08/29/97
Fort Sam Houston
TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Reason: Being utilized.

Virginia

Buildings

Bldg. T–181
Property #: 219630002
Fed Reg Date: 08/29/97
Fort Monroe
Ft. Monroe, VA, Zip: 23651–
Status: Underutilized
Reason: Currently occupied.

Bldg. T–182
Property #: 219630003
Fed Reg Date: 08/29/97
Fort Monroe
Ft. Monroe, VA, Zip: 23651–
Status: Underutilized
Reason: Currently occupied.

Bldg. T–183
Property #: 219630004
Fed Reg Date: 08/29/97
Fort Monroe
Ft. Monroe, VA, Zip: 23651–
Status: Underutilized
Reason: Currently occupied.

Bldg. T–184
Property #: 219630005
Fed Reg Date: 08/29/97
Fort Monroe
Ft. Monroe, VA, Zip: 23651–
Status: Underutilized
Reason: Currently occupied.

COE

California

Buildings

Santa Fe Flood Control Basin
Property #: 319011298
Fed Reg Date: 08/08/97
Project Name: Santa Fe Flood Control Basin
Irwindale, CA, Co: Los Angeles, Zip: 91706–
Status: Unutilized
Reason: Needed for contract personnel.

Florida

Buildings

Bldg. CN7
Property #: 319010012
Fed Reg Date: 08/08/97
Project Name: Ortona Lock Reservation
Ortona Lock Reservation, Okeechobee Waterway
Ortona, FL, Co: Glades, Zip: 33471–
Status: Unutilized
Reason: Disposal actions have been initiated.

Bldg. CN8

Property #: 319010013
Fed Reg Date: 08/08/97
Project Name: Ortona Lock Reservation
Ortona Lock Reservation, Okeechobee Waterway
Ortona, FL, Co: Glades, Zip: 33471–
Status: Unutilized
Reason: Disposal actions have been initiated.

Illinois

Land

Lake Shelbyville
Property #: 319240004
Fed Reg Date: 08/08/97
Project Name: Shelbyville, IL, Co: Shelby & Moultrie, Zip: 62565–9804
Status: Unutilized
Reason: Disposal action initiated.

Buildings

Bldg. 7
Property #: 319010001
Fed Reg Date: 08/08/97
Project Name: Ohio River Locks & Dam No. 53
Ohio River Locks & Dam No. 53
Grand Chain, IL, Co: Pulaski, Zip: 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 6
Property #: 319010002
Fed Reg Date: 08/08/97
Project Name: Ohio River Locks & Dam No. 53
Ohio River Locks & Dam No. 53
Grand Chain, IL, Co: Pulaski, Zip: 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 5
Property #: 319010003
Fed Reg Date: 08/08/97
Project Name: Ohio River Locks & Dam No. 53
Ohio River Locks & Dam No. 53
Grand Chain, IL, Co: Pulaski, Zip: 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 4
Property #: 319010004
Fed Reg Date: 08/08/97
Project Name: Ohio River Locks & Dam No. 53
Ohio River Locks & Dam No. 53
Grand Chain, IL, Co: Pulaski, Zip: 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 3
Property #: 319010005
Fed Reg Date: 08/08/97
Project Name: Ohio River Locks & Dam No. 53
Ohio River Locks & Dam No. 53
Grand Chain, IL, Co: Pulaski, Zip: 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Bldg. 2
Property #: 319010006
Fed Reg Date: 08/08/97
Project Name: Ohio River Locks & Dam No. 53
Ohio River Locks & Dam No. 53
Grand Chain, IL, Co: Pulaski, Zip: 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability..

Bldg. 1
Property #: 319010007
Fed Reg Date: 08/08/97
Project Name: Ohio River Locks & Dam No. 53
Ohio River Locks & Dam No. 53
Grand Chain, IL, Co: Pulaski, Zip: 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability.

Kentucky

Land

Carr Fork Lake
Property #: 319240003
Fed Reg Date: 08/08/97
5 miles SE of Hindman, KY., Hwy. 60
Hindman, KY, Co: Knott, Zip:
Status: Unutilized
Reason: Used as drainage field

North Dakota

Land

Tracts V–1971B, V–1971
Property #: 319620006
Fed Reg Date: 08/08/97
Garrison Dam/Lake Sakakawea
ND, Co: McKenzie, ZIP:
Status: Unutilized
Reason: sold to adjoining landowner to resolve encroachment.

Lot 3/0.16 acre
Property #: 319720003
Fed Reg Date: 08/08/97
Snake Creek Cabin Site/Tract C272A
ND, Co: Mclean, Zip:
Status: Unutilized
Reason: To be sold/encroachment.

Ohio

Buildings

Bldg.—Berlin Lake
Property #: 319640001
Fed Reg Date: 08/08/97
7400 Bedell Road
Berlin Center, OH, Co: Mahoning, Zip: 44401–9797
Status: Unutilized
Reason: Utilized as construction office.

Pennsylvania

Land

East Branch Clarion River Lake
Property #: 319011012
Fed Reg Date: 08/08/97
Project Name: East Branch Clarion River Lake
Wilcox, PA, Co: Elk, Zip:
Status: Underutilized
Reason: Location near damsite.

Dashields Locks and Dam
(Glenwillard, PA)
Property #: 319210009
Fed Reg Date: 08/08/97
Crescent Twp., PA, Co: Allegheny, Zip: 15046–0475
Status: Unutilized
Reason: Leased to Township. .

Buildings

Tract 302B
Property #: 319430017
Fed Reg Date: 08/08/97
Grays Landing Lock & Dam Project
Old Glassworks, PA, Co: Greene Zip: 15338–
Status: Unutilized
Reason: To be transferred to County.

Tract 353
Property #: 319430019
Fed Reg Date: 08/08/97
Grays Landing Lock & Dam Project
Greensboro, PA, Co: Greene, Zip: 15338–
Status: Unutilized
Reason: To be transferred to Borough.

Tract 402
Property #: 319430020
Fed Reg Date: 08/08/97
Grays Landing Lock & Dam Project
Greensboro, PA, Co: Greene, Zip: 15338–
Status: Unutilized
Reason: To be transferred to Borough.

Tract 403A
Property #: 319430021
Fed Reg Date: 08/08/97
Grays Landing Lock & Dam Project
Greensboro, PA, Co: Greene: Zip: 15338–
Status: Unutilized
Reason: To be transferred to Borough.

Tract 403B
Property #: 319430022
Fed Reg Date: 08/08/97
Grays Landing Lock & Dam Project
Greensboro, PA, Co: Greene, Zip: 15338–
Status: Unutilized
Reason: To be transferred to Borough.

Tract 403C
Property #: 319430023
Fed Reg Date: 08/08/97
Grays Landing Lock & Dam Project
Greensboro, PA, Co: Greene, Zip: 15338–
Status: Unutilized
Reason: To be transferred to Borough.

Tract 434
Property #: 319430024
Fed Reg Date: 08/08/97
Grays Landing Lock & Dam Project
Greensboro, PA, Co: Greene, Zip: 15338–
Status: Unutilized
Reason: To be transferred to Borough.

Tract No. 224
Property #: 319440001
Fed Reg Date: 08/08/97
Grays Landing Lock & Dam Project
Greensboro, PA, Co: Green, Zip: 15338–
Status: Unutilized
Reason: Disposal action initiated.

Govt. Dwelling
Property #: 319640002
Fed Reg Date: 08/08/97
Youghiogheny River Lake
Confluence, PA, Co: Fayette, Zip: 15424–9103
Status: Unutilized
Reason: Utilized as a conference area.

Texas

Land

Parcel #222
Property #: 319010421

Fed Reg Date: 10/17/97
Project Name: Lake Texoma
Lake Texoma TX, Co: Grayson, Zip:
Status: Excess
Reason: Landfill to be investigated.

Wisconsin

Buildings

Former Lockmaster's Dwelling
Property #: 319011526
Fed Reg Date: 08/08/97
Project Name: Former Lockmaster's Dwelling
DePere Lock
100 James Street
De Pere, WI, Co: Brown, Zip: 54115–
Status: Unutilized
Reason: In negotiation for transfer to the State.

DOT

Alaska

Buildings

Bldgs. 001A&B
Property #: 879720001
Fed Reg Date: 09/05/97
Spruce Cape Loran Station
Kodiak, AK, Co: Kodiak Is. Bor., Zip: 99615–
Status: Excess
Reason: Currently utilized by Navy.

California

Land

Excess Land at Eureka Housing
Property #: 879540001
Fed Reg Date: 09/05/97
Eureka, CA, Co: Humboldt, Zip: 95501–
Status: Unutilized
Reason: Encroachment on property.

Georgia

Land

Land—St. Simons Boathouse
Property #: 879540003
Fed Reg Date: 09/05/97
St. Simons Island, GA, Co: Glynn, Zip: 31522–0577
Status: Unutilized
Reason: Reversionary clause in deed.

Massachusetts

Buildings

Keepers Dwelling
Property #: 879240024
Fed Reg Date: 09/05/97
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport, MA, Co: Essex, Zip: 01966–
Status: Unutilized
Reason: Under a license agreement.

Assistant Keepers Dwelling
Property #: 879240025
Fed Reg Date: 09/05/97
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport, MA, Co: Essex, Zip: 01966–
Status: Unutilized
Reason: Under a license agreement.

Maine

Buildings

Mount Desert Rock Light
Property #: 879240023
Fed Reg Date: 09/05/97
U.S. Coast Guard
Southwest Harbor, ME, Co: Hancock, Zip: 04679–
Status: Unutilized
Reason: No electrical service.

Little River Light
Property #: 879240026
Fed Reg Date: 09/05/97
U.S. Coast Guard
Cutler, ME, Co: Washington, Zip:
Status: Unutilized
Reason: Well contamination.

Burnt Island Light
Property #: 879240027
Fed Reg Date: 09/05/97
U.S. Coast Guard
Southport, ME, Co: Lincoln, Zip: 04576–
Status: Unutilized
Reason: Under a historic lease.

Texas

Buildings

Brownsville Urban System
Property #: 879010003
Fed Reg Date: 09/05/97
Project Name: Brownsville Urban System (Grantee)
700 South Iowa Avenue
Brownsville, TX, Co: Cameron, Zip: 78520–
Status: Unutilized
Reason: City of Brownsville needs the property.

Energy

Idaho

Buildings

Bldg. CFA–613
Property #: 419630001
Fed Reg Date: 09/05/97
Central Facilities Area
Idaho National Engineering Lab
Scoville, ID, Co: Butte, Zip: 83415–
Status: Unutilized
Reason: being reviewed for its historical status.

Illinois

Buildings

Bldg. 603030018
Property #: 419730002
Fed Reg Date: 10/03/97
Argonne National Laboratory
Argonne, IL, Co: DuPage, Zip: 60439–
Status: Excess
Reason: disposal process.

Bldg. 006
Property #: 419730003
Fed Reg Date: 10/03/97
Argonne National Laboratory
Argonne, IL, Co: DuPage, Zip: 60439–
Status: Excess
Reason: disposal process.

Bldg. 026
Property #: 419730004
Fed Reg Date: 10/03/97
Argonne National Laboratory
Argonne, IL, Co: DuPage, Zip: 60439–
Status: Excess
Reason: disposal process.

Bldg. 028
Property #: 419730005
Fed Reg Date: 10/03/97
Argonne National Laboratory
Argonne, IL, Co: DuPage, Zip: 60439–
Status: Excess
Reason: disposal process.

Bldg. 809
Property #: 419730006
Fed Reg Date: 10/03/97
Argonne National Laboratory
Argonne, IL, Co: DuPage, Zip: 60439–
Status: Excess
Reason: disposal process.

Bldg. 826
Property #: 419730007
Fed Reg Date: 10/03/97
Argonne National Laboratory
Argonne, IL, Co: DuPage, Zip: 60439–
Status: Excess
Reason: disposal process.

Bldg. 829
Property #: 419730008
Fed Reg Date: 10/03/97
Argonne National Laboratory
Argonne, IL, Co: DuPage, Zip: 60439–
Status: Excess
Reason: disposal process.

Bldg. 829A
Property #: 419730009
Fed Reg Date: 10/03/97
Argonne National Laboratory
Argonne, IL, Co: DuPage, Zip: 60439–
Status: Excess
Reason: disposal process.

Louisiana

Buildings

3 Office Buildings
Property #: 419640002
Fed Reg Date: 09/05/97
St. James Terminal
St. James, LA, Co: St. James Parish, Zip: 70086–
Status: Underutilized
Reason: under lease.

Warehouse
Property #: 419640003
Fed Reg Date: 09/05/97
St. James Terminal
St. James, LA, Co: St. James Parish, Zip: 70086–
Status: Underutilized
Reason: under lease.

Laboratory
Property #: 419640004
Fed Reg Date: 09/05/97
St. James Terminal
St. James, LA, Co: St. James Parish, Zip: 70086–
Status: Underutilized
Reason: under lease.

Guard House
Property #: 419640005
Fed Reg Date: 09/05/97
St. James Terminal
St. James, LA, Co: St. James Parish, Zip: 70086–
Status: Underutilized
Reason: under lease.

2 Dock Operator Bldgs.
Property #: 419640006
Fed Reg Date: 09/05/97
St. James Terminal
St. James, LA, Co: St. James Parish, Zip: 70086–
Status: Underutilized
Reason: under lease.

New York

Buildings

Bldg. 118
Property #: 419710001
Fed Reg Date: 09/05/97
10 Pennsylvania Ave.
Upton, NY, Co: Suffolk, Zip: 11973–
Status: Excess
Reason: Disposal process.

GSA

Arizona

Land

Part of Old Mesa Substation
Property #: 549730008
Fed Reg Date: 08/01/97
NE corner of University Drive
Mesa, AZ, Co: Maricopa, Zip: 85203–
Status: Surplus
GSA No.: 9–B–AZ–803
Reason: Advertised.

California

Land

(P) Camp Elliott
Property #: 549310008
Fed Reg Date: 08/08/97
Rosedale Tract
San Diego, CA, Co: San Diego, Zip:
Status: Surplus
GSA No.: 9–GR(6)–CA–694A
Reason: Sale pending.

Buildings

Bakersfield Federal Building
Property #: 549710013
Fed Reg Date: 08/08/97
800 Truxton Avenue
Bakersfield, CA, Co: Kern, Zip: 93302–
Status: Excess
GSA No.: 9–G–CA–1478
Reason: City interest.

25-Units of Housing
Property #: 549730006
Fed Reg Date: 08/01/97
Former Naval Facility, Pt. Sur
Centerville Beach Detachment
CA, Co: Monterey, Zip:
Status: Surplus
GSA No.: 9–N–CA–1480
Reason: Homeless interest.

23 Admin/Misc Buldings
Property #: 549730007
Fed Reg Date: 08/01/97
Former Naval Facility, Pt. Sur
Centerville Beach Detachment
CA, Co: Monterey, Zip:
Status: Surplus
GSA No.: 9–N–CA–1480
Reason: Homeless interest.

Georgia

Land

NARACS Site
Property #: 549730002
Fed Reg Date: 09/05/97
North side of GA Hwy 36, 5 mi. west of I–75
GA, Co: Lamar, Zip:
Status: Excess
GSA No.: 4–U–GA–0855
Reason: County interest.

Iowa

Buildings

Naval Family Housing
Property #: 549720009
Fed Reg Date: 08/08/97
23-Units
Waverly, IA, Co: Bremer, Zip: 50677–
Status: Excess
GSA No.: 7–D–LA–0463B
Reason: Federal need.

Idaho

Land

160 acres
Property #: 549720008
Fed Reg Date: 08/08/97
Idaho National Engineering Lab
ID, Co: Jefferson, Zip: 83415–
Status: Surplus
GSA No.: 9–B–ID–542
Reason: Sale to County pending.

Illinois

Buildings

Parcel 2
Property #: 549610011
Fed Reg Date: 08/08/97
Portion Former Lock & Dam 51
Golconda, IL, Co: Pope, Zip: 62938–
Status: Excess
GSA No.: 2–D–IL–703
Reason: Public benefit.

Indiana

Land

Portion
Property #: 549620002
Fed Reg Date: 08/08/97
Bureau of Prisons Vigo Farm
Linden Twp, IN, Co: Vigo, Zip:
Status: Excess
GSA No.: 2–J–IN–507C
Reason: County is interested in negotiated sale.

Kansas

Buildings

Federal Office Building
Property #: 549640014
Fed Reg Date: 08/08/97
400 Houston Street
Manhattan, KS, Co: Riley, Zip: 66502–
Status: Surplus
GSA No.: 7–G–KS–0519
Reason: Public benefit interest.

Massachusetts

Buildings

17 Single Family Residences
Property #: 549520002
Fed Reg Date: 08/08/97
Navy Family Housing, Westover AFB
Chicopee, MA, Co: Hampden, Zip: 01022–
Status: Excess
Reason: Public body interest.

20 Fourplex Residences
Property #: 549520004
Fed Reg Date: 08/08/97
Navy Family Housing, Westover AFB
Chicopee, MA, Co: Hampden, Zip: 01022–
Status: Excess
Reason: Public body interest.

Maine

Land

Remote Center Air
Property #: 549610014
Fed Reg Date: 08/08/97
Gound Communication Facility
Westford Hill Road
Hodgdon, ME, Co: Aroostook, Zip: 04730–
Status: Excess
GSA No.: 1–ME–624
Reason: Sale scheduled.

Buildings

51 Housing Units w/garages
Property #: 549640012
Fed Reg Date: 08/08/97
Charleston Family Housing Complex
Maxwell Lane & Randolph Drive
Bangor, ME, Co: Penobscot, Zip: 04401–
Status: Excess
GSA No.: 1–D–ME–526H
Reason: Negotiated sale.

Michigan

Buildings

Detroit Job Corps Center
Property #: 549510002
Fed Reg Date: 08/08/97
10401 E. Jefferson & 1438 Garland;
1265 St. Clair
Detroit, MI Co: Wayne, Zip: 42128–
Status: Surplus
GSA No.: 2–L–MI–757
Reason: Education application.

Seul Choix Point Light
Property #: 549640005
Fed Reg Date: 08/08/97
Guilliver, MI, Co: Schoolcraft, Zip: 49840–
Status: Excess
GSA No.: 1–U–MI–679A
Reason: Public body interest.

Missouri

Buildings

Meteorological Observatory
Property #: 549740006
Fed Reg Date: 11/14/97
323 Farm Road
Monett, MO, Co: Berry, Zip: 65708–9351
Status: Surplus
GSA No.: 7–C–MO–0639
Reason: Educational interest.

Montana

Buildings

Bldg.—Conrad Training Site
Property #: 189420025
Fed Reg Date: 08/08/97
15 miles east of the City of Conrad
MT, Co: Pondera, Zip: 59425–
Status: Excess
Reason: Advertising.

North Carolina

Buildings

Federal Building
Property #: 549730021
Fed Reg Date: 09/12/97
140 4th Avenue West
Hendersonville, NC, Co: Henderson, Zip: 28739–
Status: Excess
GSA No.: 4–G–NC–726
Reason: Homeless interest.

Federal Building

Property #: 549730022
Fed Reg Date: 09/12/97
146 North Main Street
Rutherfordton, NC, Co: Rutherford, Zip: 28139–
Status: Excess
GSA No.: 4–G–NC–727
Reason: Homeless interest.

North Dakota

Buildings

House #1 (OJ1)
Property #: 549720010
Fed Reg Date: 08/08/97
OMEGA Station
213 2nd St. NE
LaMoure, ND, Co: LaMoure, Zip: 58458–
Status: Excess
GSA No.: 7–U–ND–0494A & B
Reason: Advertised.

House #2 (OJ2)
Property #: 549720011
Fed Reg Date: 08/08/97
OMEGA Station
216 2nd St. NE
LaMoure, ND, Co: LaMoure, Zip: 58458–
Status: Excess
GSA No.: 7–U–ND–0494A & B
Reason: Advertised.

House #3 (OJ3)
Property #: 549720012
Fed Reg Date: 08/08/97
OMEGA Station
310 2nd St. NE
LaMoure, ND, Co: LaMoure, Zip: 58458–
Status: Excess
GSA No.: 7–U–ND–0494A & B
Reason: Advertised.

House #4 (OJ4)
Property #: 549720013
Fed Reg Date: 08/08/97
OMEGA Station
316 2nd St. NE
LaMoure, ND, Co: LaMoure, Zip: 58458–
Status: Excess
GSA No.: 7–U–ND–0494A & B
Reason: Advertised.

House #5 (OJ5)
Property #: 549720014
Fed Reg Date: 08/08/97
OMEGA Station
122 4th Ave. NW
LaMoure, ND, Co: LaMoure, Zip: 58458–
Status: Excess
GSA No.: 7–U–ND–0494A & B
Reason: Advertised.

House #6 (OJ6)
Property #: 549720015
Fed Reg Date: 08/08/97
OMEGA Station
417 2nd St. NW
LaMoure, ND, Co: LaMoure, Zip: 58458–
Status: Excess
GSA No.: 7–U–ND–0494A & B
Reason: Advertised.

House #7 (OJ7)
Property #: 549720016
Fed Reg Date: 08/08/97
OMEGA Station
421 2nd St. NW
LaMoure, ND, Co: LaMoure, Zip: 58458–
Status: Excess
GSA No.: 7–U–ND–0494A & B
Reason: Advertised.

House #8 (OJ8)
Property #: 549720017
Fed Reg Date: 08/08/97
OMEGA Station
123 5th Ave. NW
LaMoure, ND, Co: LaMoure, Zip: 58458–
Status: Excess
GSA No.: 7–U–ND–0494A & B
Reason: Advertised.

House #9 (OJ9)
Property #: 549720018
Fed Reg Date: 08/08/97
OMEGA Station
517 2nd St. NW
LaMoure, ND, Co: LaMoure, Zip: 58458–
Status: Excess
GSA No.: 7–U–ND–0494A & B
Reason: Advertised.

House #10 (OJO)
Property #: 549720019
Fed Reg Date: 08/08/97
OMEGA Station
521 2nd St. NW
LaMoure, ND, Co: LaMoure, Zip: 58458–
Status: Excess
GSA No.: 7–U–ND–0494A & B
Reason: Advertised.

Nebraska

Buildings

Forecast Office
Property #: 549740005
Fed Reg Date: 11/14/97
11404 N 72nd Street
Omaha, NE, Co: Douglas, Zip: 58102–
Status: Surplus
GSA No.: 7–C–NE–0522
Reason: Homeless interest.

Nevada

Buildings

5 Single Family Residences
Property #: 549430004
Fed Reg Date: 08/08/97
Tonopah Housing Complex
Tonopah, NV, Co: Nye, Zip: 89049–
Status: Excess
GSA No.: 9–U–NV–467–C
Reason: Advertising.

13 Single Family Residences
Property #: 549430005
Fed Reg Date: 08/08/97
Tonopah Housing Complex
Tonopah, NV, Co: Nye, Zip: 89049–
Status: Excess
GSA No.: 9–U–NV–467–C
Reason: Advertised.

New York

Land

Galeville Army Training Site
Property #: 219510128
Fed Reg Date: 08/08/97
Shawangunk, NY, Co: Ulster, Zip: 12589–
Status: Excess
GSA No.: 2–D–NY–807
Reason: Federal need.

Ohio

Land

Bethany Relay Station
Property #: 549610008
Fed Reg Date: 08/08/97
8070 Tylersville Road
Union Township, OH, Co: Butler, Zip: 45040–
Status: Excess
GSA No.: 1–Z–OH–726B
Reason: Multiple public benefit interests.

Receiver Site
Property #: 549720001
Fed Reg Date: 08/08/97
Bethany Relay Station
Wayne, OH, Co: Butler, Zip: 45040–
Status: Surplus
GSA No.: 1–GR–OH–0726C
Reason: Negotiated sale in progress.

Buildings

65 North Fifth Street
Zanesville Federal Building
Property #: 549520018
Fed Reg Date: 08/08/97
Zanesville, OH, Co: Muskingum, Zip:
Status: Excess
GSA No.: 2–G–OH–781A
Reason: Public benefit interest from County.

Marblehead Light Tower
Property #: 549710005
Fed Reg Date: 08/08/97
East Harbor State Park
Marblehead, OH, Co: Ottawa, Zip: 43440–
Status: Excess
GSA No.: 1–U–OH–655–C
Reason: Public body interest.

Oregon

Land

Portion, Astoria Field Office
Property #: 549640015
Fed Reg Date: 08/08/97
Via Hwy 30
Astoria, OR, Co: Clatsop, Zip: 97103–
Status: Excess
GSA No.: 9–D–OR–447F
Reason: State interest.

Buildings

Gus Solomon U.S. Courthouse
Property #: 549730023
Fed Reg Date: 09/19/97
620 SW Main Street
Portland, OR, Co: Multnomah, Zip: 97205–
Status: Underutilized
GSA No.: 7–G–OR–724
Reason: Pending lease with County government.

Pennsylvania

Buildings

Federal Office Building
Property #: 549730004
Fed Reg Date: 08/01/97
1421 Cherry Street
Philadelphia, PA, Zip: 19107–
Status: Surplus
GSA No.: 4–G–PA–776
Reason: Negotiated sale in progress.

Presque Isle Light Station
Property #: 549730009
Fed Reg Date: 08/08/97
Erie, PA, Co: Erie, Zip: 16505–
Status: Excess
GSA No.: 4–U–PA–775
Reason: Historic monument interest.

Puerto Rico

Land

La Hueca—Naval Station
Property #: 549420006

Fed Reg Date: 08/08/97
Roosevelt Roads
Vieques, PR, Zip: 00765–
Status: Excess
Reason: Federal interest.

Tennessee

Buildings

Federal Building
Property #: 549730010
Fed Reg Date: 08/08/97
130 Main Street
Carthage, TN, Co: Smith, Zip: 37030–
Status: Excess
GSA No.: 4–G–TN–643
Reason: Homeless interest.

Texas

Buildings

7 Office Buildings
Property #: 549630007
Fed Reg Date: 08/08/97
Former SW Regional Headquarters
4400 Blue Mound Road
TX, , Zip: 76106–
Status: Excess
GSA No.: 7–U–TX–1041
Reason: Homeless interest.

5 Storage Buildings
Property #: 549630008
Fed Reg Date: 08/08/97
Former SW Regional Headquarters
4400 Blue Mound Road
TX, , Zip: 76106–
Status: Excess
GSA No.: 7–U–TX–1041
Reason: Homeless interest.

6 Misc. Buildings
Property #: 549630009
Fed Reg Date: 08/08/97
Former SW Regional Headquarters
4400 Blue Mound Road
TX, Zip: 76106–
Status: Excess
GSA No.: 7–U–TX–1041
Reason: Homeless interest.

Harlingen USARC
Property #: 549730005
Fed Reg Date: 08/01/97
1920 East Washington
Harlingen, TX, Co: Cameron, Zip: 78550–
Status: Surplus
GSA No.: 7–D–TX–1047
Reason: Educational interest.

Virginia

Buildings

National Weather Service
Property #: 549710001
Fed Reg Date: 08/08/97
Route 3
Volens, VA, Co: Halifax, Zip:
Status: Excess
GSA No.: 4–C–VA–713
Reason: Advertised for public sale.

Washington

Land

Sandpoint Control Tower
Property #: 549440003
Fed Reg Date: 08/08/97
Near 7600 Sandpoint Way, NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
GSA No.: 4–C–WA–1069
Reason: Federal requirement.

West Virginia

Buildings

Ravenswood Public Access Site
Property #: 549640013
Fed Reg Date: 08/08/97
No. 2, 4, 6 Washington Street South
Ravenswood, WV, Co: Jackson, Zip: 26164–
Status: Excess
GSA No.: 4–D–WV–526
Reason: Under existing lease to City.

Wyoming

Land

Former Portion/Warren AFB
Property #: 549730016
Fed Reg Date: 09/12/97
Cheyenne, WY, Co: Laramie, Zip: 82001–
Status: Surplus
GSA No.: 7–GR–WY–422V
Reason: Advertise.

NAVY

California

Buildings

Bldg. 29
Property #: 779730013
Fed Reg Date: 08/08/97
Naval Support Activity
Monterey, CA, Co: Monterey, Zip: 93943–
Status: Unutilized
Reason: demolition in process.

Bldg. 218
Property #: 779730014
Fed Reg Date: 08/08/97
Naval Support Activity
Monterey, CA, Co: Monterey, Zip: 93943–
Status: Unutilized
Reason: demolition in process.

3 Bldgs. La Mesa Village
Property #: 779740030
Fed Reg Date: 11/14/97
Naval Support Activity
#39, 40, 117
Monterey, CA, Co: Monterey, Zip: 93943–
Status: Excess
Reason: demolition in process.

9 Bldgs. La Mesa Village
Property #: 779740031
Fed Reg Date: 11/14/97
Naval Support Activity
#31, 33, 35, 36, 41, 116, 118, 121, 122
Monterey, CA, Co: Monterey, Zip: 93943–
Status: Excess
Reason: demolition in process.

5 Bldgs. La Mesa Village
Property #: 779740032
Fed Reg Date: 11/14/97
Naval Support Activity
#32, 38, 42, 119, 123
Monterey, CA, Co: Monterey, Zip: 93943–
Status: Excess
Reason: demolition in process.

12 Bldgs. La Mesa Village
Property #: 779740033
Fed Reg Date: 11/14/97
Naval Support Activity
#24–25, 45–48, 54–55, 57, 59, 113–114
Monterey, CA, Co: Monterey, Zip: 93943–
Status: Excess
Reason: demolition in process.

Bldg. 26 La Mesa Village
Property #: 779740034
Fed Reg Date: 11/14/97
Naval Support Activity
Monterey, CA, Co: Monterey, Zip: 93943–
Status: Excess
Reason: demolition in process.

23 Bldgs. La Mesa Village
Property #: 779740035
Fed Reg Date: 11/14/97
Naval Support Activity
1–5, 27–30, 50–53, 83–85, 124–125, 129–132, 136
Monterey, CA, Zip: 93943–
Status: Excess
Reason: demolition in process.

9 Bldgs. La Mesa Village
Property #: 779740036
Fed Reg Date: 11/14/97
Naval Support Activity
#37, 142–149
Monterey, CA, Zip: 93943–
Status: Excess
Reason: demolition in process.

Bldg. 115 La Mesa Village
Property #: 779740037
Fed Reg Date: 11/14/97
Naval Support Activity
Monterey, CA, Zip: 93943–
Status: Excess
Reason: demolition in process.

Bldg. 120 La Mesa Village
Property #: 779740038
Fed Reg Date: 11/14/97
Naval Support Activity
Monterey, CA, Zip: 93943–
Status: Excess
Reason: demolition in process.

Bldg. 23 La Mesa Village
Property #: 779740039
Fed Reg Date: 11/14/97
Naval Support Activity
Monterey, CA, Zip: 93943–
Status: Excess
Reason: demolition in process.

Bldg. 34 La Mesa Village
Property #: 779740040
Fed Reg Date: 11/14/97
Naval Support Activity
Monterey, CA, Zip: 93943–
Status: Excess
Reason: demolition in process.

Bldg. 37 La Mesa Village
Property #: 779740041
Fed Reg Date: 11/14/97
Naval Support Activity
Monterey, CA, Zip: 93943–
Status: Excess
Reason: demolition in process.

Bldg. 44 La Mesa Village
Property #: 779740042
Fed Reg Date: 11/14/97
Naval Support Activity
Monterey, CA, Zip: 93943–
Status: Excess
Reason: demolition in process.

Bldg. 49 La Mesa Village
Property #: 779740043
Fed Reg Date: 11/14/97
Naval Support Activity
Monterey, CA, Zip: 93943–
Status: Excess
Reason: demolition in process.

Bldg. 56 La Mesa Village
Property #: 779740044
Fed Reg Date: 11/14/97

Naval Support Activity
Monterey, CA, Zip: 93943–
Status: Excess
Reason: Demolition in process.
Bldg. 65–74, 86, 87
Property #: 779740067
Fed Reg Date: 12/12/97
Naval Postgraduate School
La Mesa
Monterey, CA, Zip: 93943–
Status: Excess
Reason: Demolition in process.

Florida

Land

Naval Public Works Center
Property #: 779010157
Fed Reg Date: 09/05/97
Project Name: Naval Base
Naval Air Station
Pensacola, FL, Co: Escambia, Zip: 32508–
Status: Unutilized
Reason: Prop. reverts to grantor when no longer needed by military..

Georgia

Land

Naval Submarine Base
Property #: 779010255
Fed Reg Date: 09/05/97
Project Name: Naval Submarine Base
Grid AA–1 to AA–4 to EE–7 to FF–2
Kings Bay, GA, Co: Camden, Zip: 31547–
Status: Underutilized
Reason: Buffer area for an explosive safety arc.

Maryland

Buildings

Bldg. 230
Property #: 779330010
Fed Reg Date: 09/05/97
Naval Communication Detachment
9190 Commo Road
Cheltenham, MD, Co: Prince George, Zip: 20397–5520
Status: Unutilized
Reason: Federal need expressed.

Maine

Buildings

Bldg. 376, Naval Air Station
Property #: 779320011
Fed Reg Date: 09/05/97
Topsham Annex
Topsham, ME, Co: Sagadahoc, Zip:
Status: Unutilized
Reason: Federal need.
Bldg. 383
Property #: 779720025
Fed Reg Date: 09/05/97
Topsham Annex, Naval Air Station
Brunswick, ME, Zip: 04011–
Status: Unutilized
Reason: Pending special legislation.
Bldg. 382
Property #: 779720026
Fed Reg Date: 09/05/97
Topsham Annex, Naval Air Station
Brunswick, ME, Zip: 04011–
Status: Unutilized
Reason: Pending special legislation.
Bldg. 381
Property #: 779720027
Fed Reg Date: 09/05/97
Topsham Annex, Naval Air Station
Brunswick, ME, Zip: 04011–
Status: Unutilized
Reason: Pending special legislation.

Ohio

Bulidings

Naval & Marine Corps Res. Cntr
Property #: 779320012
Fed Reg Date: 09/05/97
315 East LaClede Avenue
Youngstown, OH, Zip:
Status: Unutilized
Reason: Returning property to the City.

Puerto Rico

Buildings

Bldgs. 501 & 502
Property #: 779530007
Fed Reg Date: 09/05/97
U.S. Naval Radio Transmitter Facility
State Road No. 2
Juana Diaz, PR, Zip: 00795–
Status: Underutilized
Reason: Department of Defense interest.

Virginia

Land

Naval Base
Property #: 779010156
Fed Reg Date: 09/05/97
Project Name: Naval Base
Norfolk, VA, Co: Norfolk, Zip: 23508–
Status: Unutilized
Reason: Identified for use in developing admin. office space.

Buildings

Naval Medical Clinic
Property #: 779010109
Fed Reg Date: 09/05/97
Project Name: Naval Medical Clinic
6500 Hampton Blvd.
Norfolk, VA, Co: Norfolk, Zip: 23508–
Status: Unutilized
Reason: Planned for expansion space.

Virgin Islands

Land

Ham's Bluff Test Site
Property #: 779530006
Fed Reg Date: 09/05/97
Freddriksted, VI, Co: St. Croix, Zip: 00840–
Status: Unutilized
Reason: Department of Defense interest.

VA

Florida

Buildings

Bldg. 37, VAMC
Property #: 979230010
Fed Reg Date: 09/05/97
10,000 Bay Pines Blvd.
Bay Pines, FL, Co: Pinellas, Zip: 33504–
Status: Underutilized
Reason: Dedicated to patient care purposes.

Illinois

Land

VA Medical Center
Property #: 979010082
Fed Reg Date: 09/05/97
Project Name: VA Medical Center
3001 Green Bay Road
North Chicago, IL, Co: Lake, Zip: 60064–
Status: Underutilized
Reason: Fully used as a staging area for major construction project.

Indiana

Buildings

Bldg. 24, VAMC
Property #: 979230005
Fed Reg Date: 09/05/97
East 38th Street
Marion, IN, Co: Grant, Zip: 46952–
Status: Underutilized
Reason: Currently utilized.
Bldg. 105, VAMC
East 38th Street
Marion, IN, Co: Grant, ZIP 46952–
Status: Underutilized
Reason: Currently Utilized.
Bldg. 105, VAMC
East 38th Street
Marion, IN, Co: Grant, Zip: 46952–
Status: Underutilized
Reason: Integral part of the security system

Michigan

Land

VA Medical Center
Property #: 979010015
Fed Reg Date: 09/05/97
Project Name: VA Medical Center
5500 Armstrong Road
Battle Creek, MI, Co: Calhoun, Zip: 49016–
Status: Underutilized
Reason: Being used for patient and program activities.

New York

Land

VA Medical Center
Property #: 979010017
Fed Reg Date: 09/05/97
Project Name: VA Medical Center
Fort Hill Avenue
Canandaigua, NY, Co: Ontario, Zip: 14424–
Status: Underutilized
Reason: 13 acres/Canandaigua School Dist., 14.5 acres landlocked.

Pennsylvania

Land

VA Medical Center
Property #: 979010016
Fed Reg Date: 09/05/97
Project Name: VA Medical Center
New Castle Road
Butler, PA, Co: Butler, Zip: 16001–
Status: Underutilized
Reason: Used as natural drainage for facility property.
Land No. 645
Property #: 979010080
Fed Reg Date: 09/05/97
Project Name: VA Medical Center
VA Medical Center
Highland Drive
Pittsburgh, PA, Co: Allegheny, Zip: 15206–
Status: Unutilized
Reason: Property is essential to security and safety of patients.
Land—34.16 acres
Property #: 979340001
Fed Reg Date: 09/05/97
VA Medical Center
1400 Black Horse Hill Road

Coatesville, PA, Co: Chester, Zip: 19320–
Status: Underutilized
Reason: Needed for mission related functions.

Wyoming

Buildings

Bldg. 13
Property #: 979110001
Fed Reg Date: 09/05/97
Project Name: Medical Center
Medical Center
N.W. of town at the end of Fort Road
Sheridan, WY, Co: Sheridan, Zip: 82801–
Status: Unutilized
Reason: Planned for future use—currently used for storage.

Bldg. 79
Property #: 979110003
Fed Reg Date: 09/05/97
Project Name: Medical Center
Medical Center
N.W. of town at the end of Fort Road
Sheridan, WY, Co: Sheridan, Zip: 82801–
Status: Unutilized
Reason: VA uses as a filtration plant.

[FR Doc. 98–3348 Filed 2–12–98; 8:45 am]
BILLING CODE 4210–25–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–1620–01, WYW136142, WYW136458]

Notice of Availability of a Final Environmental Impact Statement (FEIS) on Two Separate Coal Lease Applications for Federal Coal in the Decertified Powder River Federal Coal Production Region, WY

SUMMARY: This notice announces the Availability of a FEIS pursuant to 40 CFR parts 1500–1508 for the Powder River (WYW136142) and Thundercloud (WYW136458) Coal Lease Applications in the Wyoming Powder River Basin. The Powder River tract is being considered for sale as a result of a coal lease application received from Powder River Coal Company (WYW136142) for Federal coal in an area adjacent to the company's North Antelope and Rochelle Mines. The Thundercloud tract is being considered for sale as a result of a coal lease application received from Kerr-McGee Coal Corporation (WYW136458), for Federal coal in an area adjacent to the company's Jacobs Ranch Mine. The two application areas are located about 9 miles apart in southeastern Campbell County, Wyoming.

DATES: The FEIS is scheduled to be available to the public on February 13, 1998. Two separate Records of Decision (one for each application) will be signed after the 30 day availability period ends on March 16, 1998.

ADDRESSES: Please address questions, comments, or requests for copies of the FEIS to the Casper District Office, Bureau of Land Management, Attn: Nancy Doelger, 1701 East E Street, Casper, Wyoming 82601, or fax them to 307–234–1525.

FOR FURTHER INFORMATION CONTACT: Nancy Doelger or Mike Karbs at the above address, or telephone: 307–261–7600.

SUPPLEMENTARY INFORMATION: Both applications were filed as maintenance tract lease-by-applications (LBAs) under the provisions of 43 Code of Federal Regulations (CFR) 3425.1.

On March 23, 1995, Powder River Coal Company filed a coal lease application with the BLM for a maintenance tract LBA for the following lands, which contain an estimated 515 million tons of Federal coal:

T. 41 N., R. 70 W., 6th P.M., Wyoming,
Sec. 6, lots 10 thru 13, and 18 thru 21;
Sec. 7, lots 6, 11, 14, and 19;
Sec. 18, lots 5, 12, 13, and 20;
T. 42 N., R. 70 W., 6th P.M., Wyoming,
Sec. 31, lots 5 thru 20;
Sec. 32, lots 1 thru 16;
Sec. 33, lots 1 thru 16;
Sec. 34, lots 1 thru 16;
Sec. 35, lots 1 thru 16;
T. 41 N., R. 71 W., 6th P.M., Wyoming,
Sec. 1, lots 5, 6, 11, and 12.

The area described contains 4,023.460 acres more or less.

The BLM has recommended that the following lands be excluded from the tract to enhance the value of remaining unleased Federal coal in the area:

T. 41 N., R. 71 W., 6th P.M., Wyoming,
Sec. 1, lots 5, 6, 11, and 12.

The area described contains 161.24 acres more or less.

The BLM further recommended that the following lands be included in the tract to avoid a potential bypass situation in the future:

T. 41 N., R. 71 W., 6th P.M., Wyoming,
Sec. 19, lot 5, and lot 12 (N½);
Sec. 20, lots 1 thru 4, lot 5 (N½), lot 6 (N½), lot 7 (N½), and lot 8 (N½);
Sec. 21, lot 4, and lot 5 (N½).

The area described contains 362.005 acres more or less.

The tract as amended by the BLM contains a total of 4,224.225 acres, more or less, and approximately 534 million tons of Federal coal and includes the following lands:

T. 41 N., R. 70 W., 6th P.M., Wyoming,
Sec. 6, lots 10 thru 13 and 18 thru 21;
Sec. 7, lots 6, 11, 14, and 19;
Sec. 18, lots 5, 12, 13, and 20;
Sec. 19, lot 5, and lot 12 (N½);
Sec. 20, lots 1 thru 4, lot 5 (N½), lot 6 (N½), lot 7 (N½), and lot 8 (N½);
Sec. 21, lot 4, and lot 5 (N½);
T. 42 N., R. 70 W., 6th P.M., Wyoming,
Sec. 31, lots 5 thru 20;
Sec. 32, lots 1 thru 16;
Sec. 33, lots 1 thru 16;
Sec. 34, lots 1 thru 16;
Sec. 35, lots 1 thru 16.

The North Antelope and Rochelle Mines are contiguous mines which are both adjacent to the lease application area. Both mines have approved mining and reclamation plans. The Rochelle Mine has an air quality permit approved by the Wyoming Department of Environmental Quality, Air Quality Division (WDEQ/AQD) to mine up to 30 million tons of coal per year. The North Antelope Mine has an air quality permit approved by the WDEQ/AQD to mine up to 35 million tons of coal per year. According to the application, Powder River Coal Company plans no production increase at either mine solely from the acquisition of the proposed lease; the additional tonnage would extend the life of both mines.

In 1992, Powder River Coal Company was the successful bidder on a maintenance coal lease (WYW119554) containing approximately 3,493 acres adjacent to the North Antelope and Rochelle Mines using the LBA process.

On April 14, 1995, Kerr-McGee Coal Corporation filed a coal lease application with the BLM for a maintenance tract LBA for the following lands, which contain an estimated 427 million tons of Federal coal:

T. 43 N., R. 70 W., 6th P.M., Wyoming,
Sec. 4, lots 8, 9, and 15 thru 18;
Sec. 5, lots 5 thru 20;
Sec. 6, lots 8 thru 23;
Sec. 7, lots 5 thru 7, lot 8 (N½), lots 9 thru 12; lot 13 (N½ and SE¼), and lot 19 (NE¼);
Sec. 8, lots 1 thru 16;
Sec. 9, lots 3 thru 6 and 11 thru 14;
T. 43 N., R. 71 W., 6th P.M., Wyoming,
Sec. 1, lots 5 thru 15, 19, and SE¼NE¼.

The area described contains 3,395.917 acres more or less.

The BLM has recommended that the following acreage be included in the tract to avoid a potential bypass situation in the future:

T. 43 N., R. 71 W., 6th P.M., Wyoming
Sec. 1, lot 16 (N½), lots 17 and 18;
Sec. 12, lot 1, and lot 2 (NE¼).

The area described contains 149.588 acres more or less.

The tract as amended by the BLM contains a total of 3,545.503 acres, more or less, and approximately 450 million tons of Federal coal and includes the following lands:

T. 43 N., R. 70 W., 6th P.M., Wyoming,
Sec. 4, lots 8, 9, and 15 thru 18;
Sec. 5, lots 5 thru 20;
Sec. 6, lots 8 thru 23;

Sec. 7, lots 5 thru 7, lot 8 (N½), lots 9 thru 12, lot 13 (N½ and SE¼), and lot 19 (NE¼);
Sec. 8, lots 1 thru 16;
Sec. 9, lots 3 thru 6 and 11 thru 14;
T. 43 N., R. 71 W., 6th P.M., Wyoming,
Sec. 1, lots 5 thru 15, lot 16(N½), lots 17 thru 19, and SE¼NE¼;
Sec. 12, lot 1, and lot 2 (NE¼).

The acreage applied for in Kerr McGee's application is known as the Thundercloud tract. It is part of the Thundercloud tract described in a 1983 BLM document entitled "Powder River Coal Region Tract Summaries," which was prepared in anticipation of a Federal coal sale proposed for 1984 that did not take place.

The Jacobs Ranch Mine has an air quality permit approved by the WDEQ/AQD to mine up to 35 million tons of coal per year. According to Kerr-McGee, the additional coal reserves would extend the life of the current mining operations at the Jacobs Ranch Mine.

Kerr-McGee was previously the successful bidder on a maintenance coal lease (WYW117924, issued effective October 1, 1992) containing approximately 1,709 acres adjacent to the Jacobs Ranch Mine using the LBA process.

The Powder River Regional Coal Team reviewed both competitive lease applications at their meeting on April 23, 1996, in Cheyenne, Wyoming, and recommended that both be processed.

The FEIS analyzes three alternatives. Under the Proposed Action, the BLM would hold a separate competitive sale for each tract as applied for, and issue a lease for each tract to the successful high bidder at each sale whose bid meets or exceeds the fair market value of the Federal coal as determined by BLM. The second alternative, Alternative 1 is the No Action Alternative, which assumes that neither maintenance tract would be leased, but that existing operations at the three mines adjacent to the LBA tracts would proceed as currently permitted. Under the third alternative, Alternative 2, BLM would hold a separate competitive sale for each tract as modified by the BLM, and issue a lease for each tract to the successful high bidder at each sale whose bid meets or exceeds the fair market value of the Federal coal as determined by BLM. Alternative 2 is the preferred alternative of the BLM.

The U.S. Forest Service (USFS) is a cooperating agency in the preparation of the EIS because the surface of some of the land included in both tracts is owned by the Federal Government and administered by the USFS as part of the Thunder Basin National Grasslands. The Office of Surface Mining Reclamation and Enforcement is also a cooperating agency in the preparation of the EIS because it is the Federal agency that would review the mining plans for the two tracts if they are leased, and recommend approval or disapproval of the mining plans to the Secretary of the Interior.

The DEIS was mailed to the public in August 1997, and the DEIS comment period extended though October 28, 1997. A public hearing was held on October 8, 1997, at the Holiday Inn in Gillette, Wyoming, pursuant to 43 CFR 3425.4. The purpose of the hearing was to receive comments on the DEIS, and on the fair market value, the maximum economic recovery, and the proposed separate competitive sales of coal from the two tracts. The ten comment letters that were received on the DEIS are included, with responses, in the FEIS.

Dated: February 5, 1998.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 98–3684 Filed 2–12–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1990–01]

Trenton Canyon Mine Project Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Draft Environmental Impact Statement and the initiation of a 60-day comment period.

SUMMARY: Pursuant to section 102 (2) (c) of the National Environmental Policy Act of 1969, notice is given that the Winnemucca Field Office of the Bureau of Land Management (BLM) has prepared, by third party contractor, a Draft Environmental Impact Statement on Newmont Gold Company's Trenton Canyon Project. This document became available February 13, 1998, and public comment will be accepted for a 60 day period beginning then.

DATES AND ADDRESSES: Written comments on the Draft Environmental Impact Statement must be received by the close of business April 14, 1998, to ensure consideration. Public meetings to receive oral and written comments have been scheduled for the following dates, times, and places: March 19, 1998 at 7 p.m. at the Winnemucca Field Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada; March 18, 1998 at 7 p.m. at the Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, Nevada.

A copy of the Draft Environmental Impact Statement can be obtained from: Bureau of Land Management, Winnemucca Field Office. ATTN: Rod Herrick, Project Coordinator, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445.

The Draft Environmental Impact Statement is also available for inspection at the following additional locations: Bureau of Land Management, Nevada State Office, 850 Harvard Way, Reno, Nevada; Humboldt County Library, Winnemucca, Nevada; Pershing County Library, Lovelock, Nevada; Lander County Library, Battle Mountain, Nevada; and the University of Nevada Library in Reno, Nevada.

FOR FURTHER INFORMATION CONTACT: Rod Herrick, Project Coordinator at the above Winnemucca Field Office address or telephone (702) 623–1500.

SUPPLEMENTARY INFORMATION: The Draft Environmental Impact Statement analyzes the potential environmental impacts that could result from the implementation of the proposed mine expansion. Alternatives analyzed are partial pit backfilling, reconfiguration of waste rock disposal areas, and the no action alternative.

The mine is located on public and private lands south of Interstate Highway 80, approximately 35 miles southeast of Winnemucca, Nevada and 18 miles northwest of Battle Mountain, Nevada. Approximately 1,480 acres would be disturbed by the proposed mine expansion, of which 633 are public and 847 private. The proposed project would include expansion of the existing open pits and waste rock storage areas; development of new open pits and waste rock storage areas; development of one or two new heap leach facilities, haul roads, solution ponds, diversion channels, growth media stockpiles, exploration roads and drill sites, and other ancillary facilities; and realignment of the primary access road . Approval would extend the life of the mine to 2005 plus 3 years reclamation.

Dated: January 24, 1997.

Ron Wenker,

District Manager.

[FR Doc. 98–2964 Filed 2–12–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–5700; 137796]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

February 4, 1998.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW137796 for lands in Sublette County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16–2/3 percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW137796 effective November 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 98–3686 Filed 2–12–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–5700; 134470]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

February 4, 1998.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW134470 for lands in Sublette County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW134470 effective November 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 98–3687 Filed 2–12–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1410–00; FF–14954]

Public Land Order No. 7313; Withdrawal of Public Lands for Wainwright Village Selection; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 9,151 acres of public lands from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, pursuant to Section 22(j)(2) of the Alaska Native Claims Settlement Act. Approximately 8,513 acres of the lands are located within the National Petroleum Reserve-Alaska. This action also reserves the lands for selection by the Olgoonik Corporation, the village corporation for Wainwright. This withdrawal is for a period of 120 days; however, any lands selected shall remain withdrawn by the order until they are conveyed. Any lands described herein that are not selected by the corporation will remain subject to the terms and conditions of any withdrawal or segregation of record.

EFFECTIVE DATE: February 13, 1998.

FOR FURTHER INFORMATION CONTACT: Shirley J. Macke, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5049.

By virtue of the authority vested in the Secretary of the Interior by Section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (1994), and in accordance with Section 12 of the Alaska Land Status Technical Corrections Act of 1992, 43 U.S.C. 1634(f) (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands, a portion of which are located within the boundaries of the National Petroleum Reserve-Alaska, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and are hereby reserved for selection under Section 12 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 (1994), by the Olgoonik Corporation, the village corporation for Wainwright:

Umiat Meridian

T. 16 N., R. 29 W., (Unsurveyed)
Secs. 1 to 12, inclusive.
T. 14 N., R. 30 W., (Surveyed)
Secs. 1 to 4, inclusive; and secs. 9 to 12, inclusive.
T. 4 S., R. 11 W., (Partially Surveyed)
Sec. 30, S½.
T. 4 S., R. 12 W., (Partially Surveyed)
Sec. 25, S½.

The areas described aggregate approximately 9,151 acres.

2. Prior to conveyance of any of the lands withdrawn by this order, the lands shall be subject to administration by the Secretary of the Interior under applicable laws and regulations, and his authority to make contracts and to grant leases, permits, rights-of-way, or easements shall not be impaired by this withdrawal.

3. This order constitutes final withdrawal action by the Secretary of the Interior under Section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (1994), to make lands available for selection by the Olgoonik Corporation, to fulfill the entitlement of the village of Wainwright under Section 12 and Section 14(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 and 1613 (1994).

4. This withdrawal will terminate 120 days from the effective date of this order; provided, any lands selected shall remain withdrawn pursuant to this order until conveyed. Any lands described in this order, not selected by the corporation, will be subject to the terms and conditions of any other withdrawal or segregation of record.

5. It has been determined that this action is not expected to have any significant effect on the subsistence uses and needs pursuant to Section 810(c) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3120(c) (1994), and this action is exempted from the National Environmental Policy Act of 1969, 42 U.S.C. 4321 note (1994), by Section 910 of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1638 (1994).

Dated: February 4, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–3603 Filed 2–12–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–1430–00 ;-N–58862, N–58864, N–58865, N–58867, N–58868, N–58869, N–58870, N–58872, N–58873, N–58874, N–58875, N–58876, N–58877, N–58878]

Notice of Realty Action: Lease/ Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public Purpose Lease/Conveyance.

SUMMARY: The following public lands in Clark County, Nevada, have been examined and found suitable for lease/ conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands are needed for development of multiple Senior, Middle, and Elementary Schools.

Mount Diablo Meridian, Nevada

T. 19 S., R. 62 E.,
Section 13, lot 7, 9;
Section 15, lot 11;
Section 16, lot 7;
Section 17, lot 12;
Section 18, lots 6, 11, 15;
Section 19, lot 15;
Section 20, lot 1;
Section 23, lot 1;
Section 24, lot 11.
T. 19 S., R. 62 E.,
Section 18, lot 2, S½NW¼SE¼;
Section 19, W½SE¼NE¼SW¼, SW¼NE¼SW¼.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe, and will be subject to:

1. Easements in accordance with the City of North Las Vegas Transportation Plan and as stated by letter to the Bureau of Land Management dated November 17, 1997.

2. N–58862 The south thirty feet (30′) and the west thirty feet (30′), TOGETHER WITH a fifteen foot (15′) radius located at the southwest corner of said parcel concave to the northeast, bounded on the south and west by thirty feet (30′).

3. N–58864 The north thirty feet (30′) and the east thirty feet (30′), TOGETHER WITH a fifteen foot (15′) radius located at the northeast corner of said parcel concave to the southwest, bounded on the north and east by thirty feet (30′).

4. N–58865 The west forty feet (40′), the south thirty feet (30′), and the east thirty feet (30′), TOGETHER WITH a fifteen foot (15′) radius located at the southeast corner of said parcel concave to the northwest, bounded on the south and east by thirty feet (30′), TOGETHER WITH a twenty-foot (20′) radius located at the southwest corner of said parcel concave to the northeast, bounded on the south by thirty feet (30′) and bounded on the west by forty feet (40′).

5. N–58867 The north forty feet (40′), the west thirty feet (30′), and the south thirty feet (30′), TOGETHER WITH a twenty foot (20′) radius located at the northwest corner of said parcel concave to the southeast, bounded on the north by forty feet (40′) and bounded on the west by thirty feet (30′), TOGETHER WITH a fifteen foot (15′) radius located at the southwest corner of said parcel concave to the northeast, bounded on the south and west by thirty feet (30′).

6. N–58868 The north thirty feet (30′), the east thirty feet (30′), the south forty feet (40′), and the west forty feet (40′), TOGETHER WITH a fifteen foot (15′) radius located at the northeast corner of said parcel concave to the southwest bounded on the north and east by thirty feet (30′), TOGETHER WITH a twenty foot (20′) radius located at the southeast corner of said parcel concave to the northwest, bounded on the east by thirty feet (30′) and bounded on the south by forty feet (40′), TOGETHER WITH a twenty five foot (25′) radius located at the southwest corner of said parcel concave to the northeast, bounded on the south and west by forty feet (40′), TOGETHER WITH a twenty foot (20′) radius located at the northwest corner of said parcel concave to the southeast, bounded on the north by thirty feet (30′) and bounded on the west by forty feet (40′).

7. N–58870 The south thirty feet (30′) and the west thirty feet (30′), TOGETHER WITH a fifteen foot (15′) radius located at the southwest corner of said parcel concave to the northeast, bounded on the south and west by thirty feet (30′),

8. N–58872 The south thirty feet (30′), the east thirty feet (30′), and the north forty feet (40′), TOGETHER WITH a twenty foot (20′) radius located at the northeast corner of said parcel concave to the southwest, bounded on the north by forty feet (40′) and bounded on the east by thirty feet (30′), TOGETHER WITH a fifteen foot (15′) radius located at the southeast corner of said parcel concave to the northwest, bounded on the south and east by thirty feet (30′).

9. N–58873 The north thirty feet (30′) and the east thirty feet (30′) TOGETHER WITH a fifteen foot (15′) radius located at the northeast corner of said parcel concave to the southwest, bounded on the north and east by thirty feet (30′).

10. N–58874 The west thirty feet (30′), the south thirty feet (30′), and the east forty feet (40′), TOGETHER WITH a fifteen foot (15′) radius located at the southwest corner of said parcel concave to the northeast, bounded on the west and south by thirty feet (30′), TOGETHER WITH a twenty foot (20′) radius located at the southeast corner of said parcel concave to the northwest, bounded on the east by forty feet (40′) and bounded on the south by thirty feet (30′).

11. N–58875 The west forty feet (40′) and the east thirty feet (30′) of the South Half (S½) and of the North Half (N½), TOGETHER WITH the south thirty feet (30′) of the North Half (N½) and the north thirty feet (30′) of the South Half (S½).

12. N–58876 The west thirty feet (30′) and the south thirty feet (30′), TOGETHER WITH a fifteen foot (15′) radius located at the southwest corner of said parcel concave to the northeast, bounded on the west and south by thirty feet (30′).

13. N–58877 The west thirty feet (30′) and the south thirty feet (30′), TOGETHER WITH a fifteen foot (15′) radius located at the southwest corner of said parcel concave to the northeast, bounded on the west and south by thirty feet (30′).

14. N–58878 The west thirty feet (30′) and the south thirty feet (30′), TOGETHER WITH a fifteen foot (15′) radius located at the southwest corner of said parcel concave to the northeast, bounded on the west and south by thirty feet (30′).

15. All valid and existing rights.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposal under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas District, 4765 Vegas Drive, Las Vegas, Nevada 89108.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for the senior, middle, and elementary schools. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for school sites.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: February 4, 1998.

Mark R. Chatterton,

Assistant District Manager, Non-Renewable Resources, Las Vegas, Nevada.

[FR Doc. 98–3683 Filed 2–12–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–1990–00]

Resource Management Plan Amendment, Jefferson County, Whitetail/Pipestone Area, Montana

AGENCY: Butte District Office, Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a Resource Management Plan (RMP) Travel Plan Amendment in cooperation with the Forest Service and the Montana Department of Fish, Wildlife and Parks that establishes comprehensive program guidance for the use of motorized vehicles within the Whitetail/Pipestone Management Area.

SUMMARY: The Headwaters Resource Area is initiating an RMP Amendment/Environmental Assessment to evaluate the effects of alternative strategies for managing motorized vehicle uses on public lands in the Whitetail/Pipestone area. This area is bordered on the west by I–15, running from Butte to Boulder, on the east by the Whitetail road running from Boulder to Whitehall, and on the south by Highway 2 running from Whitehall to Butte. Issues that are anticipated are: numbers of motorized users (ATVs and motorcycles) and their effect on grazing, soils (water quality), wildlife, non-motorized recreation users, and cultural values. Range, wildlife, cultural, soils and recreation resources will be analyzed for impacts.

It is planned that changes to existing RMP direction will not have significant effects and therefore Category 1 amendment procedures will be utilized at the onset.

This area-specified plan will be jointly prepared and implemented with the Beaverhead/Deerlodge National Forest with input from the Montana Department of Fish, Wildlife and Parks. Its primary goal will be to provide quality motorized and non-motorized recreation opportunities that are compatible with established management objectives for the area. Issue development and alternative analysis is being coordinated with all interested/affected individuals, interest groups and government agencies.

DATES: Public scoping is underway and alternative development will continue into winter. Field trips have been held in the past. The existing condition and alternatives will be sent to interested participants this winter with a decision planned for the fall of 1998. The final travel plan amendment is scheduled for public review in November 1998.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Butte District Office, Darrell L. McDaniel, P.O. Box 3388, Butte, MT 59702, telephone (406) 494–5059.

Orval T. Hadley,

Associate District Manager.

[FR Doc. 98–3688 Filed 2–12–98; 8:45 am]

BILLING CODE 4310–DN–P–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Central Gulf of Mexico; Notice of Leasing Systems, Sale 169

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the **Federal Register**:

1. Identifying the bidding systems to be used and the reasons for such use; and

2. Designating the tracts to be offered under each bidding system and the reasons for such designation.

This notice is published pursuant to these requirements.

1. *Bidding systems to be used.* In the Outer Continental Shelf (OCS) Sale 169, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)), as amended: (a) Bonus bidding with a fixed 16⅔ percent royalty on all unleased blocks in less than 200 meters of water; and (b)(i) bonus bidding with a fixed 16⅔-percent royalty on all unleased blocks in 200 to 400 meters of water with potential for a royalty suspension volume of up to 17.5 million barrels of oil equivalent; (ii) bonus bidding with a fixed 12½-percent royalty on all unleased blocks in 400 to 800 meters of water with potential for a royalty suspension volume of up to 52.5 million barrels of oil equivalent; and (iii) bonus bidding with a fixed 12½-percent royalty on all unleased blocks in water depths of 800 meters or more with potential for a royalty suspension volume of up to 87.5 million barrels of oil equivalent.

For bidding systems (b)(i), (ii), and (iii), the royalty suspension allocation rules are described in the Interim Rule (30 CFR Part 260) addressing royalty relief for new leases that was published in the **Federal Register** on March 25, 1996 (61 FR 12022).

a. *Bonus Bidding with a 16⅔-Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and

imposes greater risks on the lessee than systems with higher contingency payments but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b.(i) *Bonus Bidding with a 16⅔-Percent Royalty and a Royalty Suspension Volume (17.5 million barrels of oil equivalent).* This system is authorized by section (8)(a)(1)(H) of the OCSLA, as amended. This system complies with Sec. 304 of the Outer Continental Shelf Deep Water Royalty Relief Act (DWRRA). An incentive for development and production in water depths of 200 to 400 meters is provided through allocating royalty suspension volumes of 17.5 million barrels of oil equivalent to eligible fields.

b.(ii) *Bonus Bidding with a 12½-Percent Royalty and a Royalty Suspension Volume (52.5 million barrels of oil equivalent).* This system is authorized by section (8)(a)(1)(H) of the OCSLA, as amended. It has been chosen for blocks in water depths of 400 to 800 meters proposed for the Central Gulf of Mexico (Sale 169) to comply with Sec. 304 of the DWRRA. The 12½-percent royalty rate is used in deeper water because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow-water blocks. The use of a royalty suspension volume of 52.5 million barrels of oil equivalent for eligible fields provides an incentive for development and production appropriate for this water depth category.

b.(iii) *Bonus Bidding with a 12½-Percent Royalty and a Royalty Suspension Volume (87.5 million barrels of oil equivalent).* This system is authorized by section (8)(a)(1)(H) of the OCSLA, as amended. It has been chosen for blocks in water depths of 800 meters or more proposed for the Central Gulf of Mexico (Sale 169) to comply with Sec. 304 of the DWRRA. The use of a royalty suspension volume of 87.5 million barrels of oil equivalent for eligible fields provides an incentive for development and production appropriate for these deep-water depths.

2. *Designation of Blocks.* The selection of blocks to be offered under the four systems was based on the following factors:

a. Royalty rates on adjacent, previously leased tracts were considered to enhance orderly development of each field.

b. Blocks in deep water were selected for the 12½-percent royalty system based on the favorable performance of this system in these high-cost areas in past sales.

c. The royalty suspension volumes were based on the water depth specific volumes mandated by the DWRRA.

The specific blocks to be offered under each system are shown on the "Lease Terms, Bidding Systems, and Royalty Suspension Areas, Sale 169" map for Central Gulf of Mexico Lease Sale 169. This map is available from the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

Approved:

Thomas A. Readinger,

Acting Associate Director, Minerals Management Service.

Dated: February 6, 1998.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 98–3531 Filed 2–12–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Central Gulf of Mexico, Oil and Gas Lease Sale 169

AGENCY: Minerals Management Service.

ACTION: Final notice of sale.

1. *Authority.* The Minerals Management Service (MMS) is issuing this Final Notice of Sale under the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331–1356, as amended) and the regulations issued thereunder (30 CFR Part 256).

A "Sale Notice Package," containing this Notice and several supporting and essential documents referenced in the Notice, is available from the MMS Gulf of Mexico Regional Office Public Information Unit (see paragraph 15 of this Notice).

2. *Filing of Bids.* Bidders must comply with the following requirements. Times specified hereafter are local New Orleans times unless otherwise indicated.

(a) *Filing of Bids.* Sealed bids must be received by the Regional Director (RD), Gulf of Mexico Region, MMS, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, during normal business hours (8 a.m. to 4 p.m.) until the Bid Submission Deadline at 10 a.m., Tuesday, March 17, 1998. If the RD receives bids later than the time and date specified above, he will return the bids unopened to bidders. Bidders may not modify or withdraw their bids unless the RD receives a written modification or written withdrawal request prior to 10 a.m., Tuesday, March 17, 1998.

(b) *Bid Opening Time.* Bid Opening Time will be 9 a.m., Wednesday, March 18, 1998, at the Hyatt Regency Hotel, 500 Poydras Plaza, New Orleans, Louisiana. The MMS published a list of restricted joint bidders, which applies to this sale, in the **Federal Register** at 62 FR 52771, on October 9, 1997.

(c) *Natural Disasters.* In the event of widespread flooding or other natural disaster, the MMS Gulf of Mexico Regional Office may extend the bid submission deadline. Bidders may call (504) 736–0537 for information about the possible extension of the bid submission deadline due to such an event.

3. *Method of Bidding.*

(a) *Submission of Bids.* For each tract bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 169, not to be opened until 9 a.m., Wednesday, March 18, 1998." The total amount bid must be in a whole dollar amount, any cent amount above the whole dollar will be ignored by the MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document "Bid Form and Envelope" contained in the Sale Notice Package (see paragraph 15 of this Notice).

Bidders are advised that the MMS considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including paying the ⅕th bonus on all high bids. A statement to this effect will be included on each bid (see the document "Bid Form and Envelope" contained in the Sale Notice Package).

Bidders must execute all document in conformance with signatory authorizations on file in the MMS Gulf of Mexico Regional Office. Partnerships also must submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, e.g., 33.33333 percent. The MMS may require bidders to submit other documents in accordance with 30 CFR 256.46. The MMS warns bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders.

(b) *Submission of the ⅕th Bonus Payment.* Bidders must submit the ⅕th cash bonus using one of the following options:

(1) Bidders may submit with each bid ⅕th of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior—Minerals Management Service. For identification purposes, the following information must appear on the check or draft: Company name, GOM Company Number, and the area and block bid on (abbreviation acceptable); or

(2) Bidders may use electronic funds transfer (EFT) payment for ⅕th of the cash bonus, payable to the Minerals Management Service. Bidders who choose this method must contact the MMS Royalty Management (Mr. David Menard at (303) 231–3574) by the Bid Submission Deadline to inform the MMS of the bidder's intent to use EFT, to clarify EFT procedures to be used, and to designate an EFT Coordinator. Joint bidders must designate one bidder as EFT Coordinator. The EFT Coordinator refers to the bidder, i.e., the corporation, company, or partnership submitting the bid(s), or an individual citizen submitting bids on his or her own behalf (NOT an individual within a corporation/company/partnership) for an OCS Lease Sale. EFT Coordinators must submit the bids and ensure that the total of the ⅕th cash bonus for the high bids they submit is transferred to the MMS via EFT. The EFT payment shall be made by either the Fedwire Deposit System (same day payments) or the Automated Clearing House (overnight payments).

The Gulf of Mexico OCS Regional Office will advise bidders who submit high bids of the amount required for EFT payment. Promptly after notification, the EFT Coordinators must instruct their banks to send via EFT the sum of the ⅕th bonus for all high bids to the appropriate United States Treasury account. Instructions for making EFT ⅕th bonus payments are included in the Sale Notice Package. [These procedures/instructions are consistent with ⅘th bonus and first year rental payment procedures using EFT.]

Securing EFT payments. Bidders electing to use EFT procedures to pay the ⅕th bonus payments, EXCEPT for bidders who are current Federal OCS leaseholders AND are exempt from supplemental bonding requirements, must secure the EFT payments (see "Instructions for Making EFT ⅕th Bonus Payments" included with the Sale Notice Package).

A bidder opting to use EFT for the ⅕th bonus payment who does not meet the above criteria must secure the EFT payment by one of the three following methods:

(a) The bidder opting to use EFT for the ⅕th bonus payment may amend a $3 million areawide development bond by a Rider from the issuing surety to contain provisions that the bond may be used to cover pre-lease obligations. All other terms and conditions for the bond shall remain unchanged. The Rider must be notarized and must be in effect prior to submitting bids for OCS Lease Sale 169. If the $3 million areawide development coverage is through a U.S. Treasury Note then a notarized letter from the bidder agreeing to the terms that the Treasury Note may be used to cover pre-lease obligations must be approved by the MMS prior to bid submission for Sale 169. That provision must remain in effect until the EFT deposit is made. Details of using an updated areawide development bond to secure the EFT payment of the ⅕th bonus are included in the "Instructions for Making EFT ⅕th Bonus Payments" document included with the Sale Notice Package.

The EFT payment for ⅕th of the sum of the high bids on blocks must be received in the appropriate United States Treasury account no later than 2:00 p.m., Eastern Time, on March 19, 1998, the day after Bid Opening.

If the EFT payments are late or deficient in amount after 5:00 p.m., Eastern Time, on March 20, 1998, the MMS may call the bond/Treasury Note to cover the delinquent payment plus interest.

(b) The bidder opting to use EFT for the ⅕th bonus payment may submit in a separate sealed envelope accompanying the bids, a letter of credit (LOC) for at least ⅕th of the sum of all bids submitted by that bidder for Sale 169, including joint bids. A sample LOC is enclosed in the "Instructions for Making EFT ⅕th Bonus Payments" document included with the Sale Notice Package. The bidder must use that sample clean, stand-by, irrevocable LOC with no modifications.

The LOC must have a minimum coverage period of 120 days. The LOC must be from a bank that has a minimum Thomson BankWatch rating of: "C" for an LOC of less than $1 million; "B/C" for an LOC between $1 million to $10 million; or "B" for LOC over $10 million.

The LOC shall be submitted in a separate sealed envelope. Once the EFT payment in an amount sufficient to cover that bidder's high bids is credited to the appropriate United States Treasury account, the LOC accompanying those bids will be returned or may be picked up at the Gulf of Mexico Regional Office. Details of using an LOC to secure the EFT payment of the ⅕th bonus are included in the "Instructions for Making EFT ⅕th Bonus Payments" included with the Sale Notice Package. The envelope containing this LOC document should be in the following format:

LETTER OF CREDIT SECURING EFT PAYMENTS
Submitted by: Explorer LTD.
GOM Company No.: 20999

The EFT payment for ⅕th of the sum of the high bids on blocks must be received in the appropriate United States Treasury account no later than 2:00 p.m., Eastern Time, on March 19, 1998, the day after Bid Opening.

If the EFT payments are late or deficient in amount after 5:00 p.m., Eastern Time, on March 20, 1998, the MMS will draw on the LOC for the total amount due, including interest.

(c) Alternatively, the bidder opting to use EFT for depositing the ⅕th bonus payment may submit, in a separate sealed envelope accompanying the bids, a single payment for ⅕th of the sum of all bids submitted by that bidder for Sale 169, including joint bids. The lump sum payment(s) in the sealed envelope(s) must be by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior—Minerals Management Service. Once the EFT payment in an amount sufficient to cover that bidder's high bids is credited to the appropriate United States Treasury account, the lump sum payment accompanying those bids will be returned or may be picked up at the Gulf of Mexico Regional Office. Details of using lump sum check(s) to secure the EFT payment of the ⅕th bonus are included in the "Instructions for Making EFT ⅕th Bonus Payments" included with the Sale Notice Package. The envelope containing this payment should be in the following format:

LUMP SUM CHECK SECURING EFT PAYMENTS
Submitted by: Explorer LTD.
GOM Company No.: 20999

The EFT payment for ⅕th of the sum of the high bids on blocks must be received in the appropriate United States Treasury account no later than 2:00 p.m., Eastern Time, on March 19, 1998, the day after Bid Opening.

If the EFT payments are late or deficient in amount after 5:00 p.m., Eastern Time, on March 20, 1998, the MMS will deposit lump sum payments accompanying the bids into the appropriate United States Treasury account. Should these payments (which secure both high bids and unsuccessful bids) require a refund to the bidders, the MMS will refund the difference without

interest, through EFT as soon as practicable.

4. *Minimum Bid, Yearly Rental, and Bidding Systems.* The following minimum bid, yearly rental, and bidding systems apply to this sale:

(a) *Minimum Bid.* Bidders must submit a cash bonus in the amount of $25.00 or more per acre or fraction thereof with all bids submitted at this sale.

(b) *Yearly Rental.* All leases awarded on tracts in water depths of 200 meters and greater (i.e., tracts in any of the three royalty suspension areas), as depicted on the map "Lease Terms, Bidding Systems, and Royalty Suspension Areas, Sale 169," will require a yearly rental payment of $7.50 per acre or fraction thereof until initial production is obtained. This map is included in the Sale Notice Package.

All leases awarded on other tracts (i.e., those in water depths of less than 200 meters) will provide for a yearly rental payment of $5.00 per acre or fraction thereof until initial production is obtained.

(c) *Bidding Systems.* After initial production is obtained, leases will require a minimum royalty of the amount per acre or fraction thereof as specified as the yearly rental in paragraph 4(b) above, except during periods of royalty suspension as discussed in paragraph 4(c)(3) of this Notice. The following royalty systems will be used in this sale:

(1) *Leases with a 12½-Percent Royalty.* This royalty rate applies to tracts in water depths of 400 meters or greater; this area is shown on the Map "Lease Terms, Bidding Systems, and Royalty Suspension Areas, Sale 169" applicable to this Notice (see paragraph 13). Leases issued on the tracts offered in this area will have a fixed royalty rate of 12½ percent, except during periods of royalty suspension (see paragraph 4(c)(3) of this Notice).

(2) *Leases with a 16⅔-Percent Royalty.* This royalty rate applies to tracts in water depths of less than 400 meters (see aforementioned map). Leases issued on the tracts offered in this area will have a fixed rate of 16⅔ percent, except during periods of royalty suspension for leases in water depths 200 meters or greater (see paragraph 4(c)(3) of this Notice).

(3) *Royalty Suspension.* In accordance with Public Law 104–58, signed by the President on November 28, 1995, the MMS has developed procedures providing for the suspension of royalty payments on production from eligible leases issued as a result of this sale.

A map titled "Lease Terms, Bidding Systems, and Royalty Suspension Areas, Sale 169" depicting blocks in which such suspensions may apply is included in the Sale Notice Package.

The final rule specifying royalty suspension terms for lease sales in the Central and Western Gulf was published in the **Federal Register** on January 16, 1998 (63 FR 2626). Additional information pertaining to royalty suspension matters may be found in the document "Information to Lessees," contained in the Sale Notice Package.

5. *Equal Opportunity.* Bidders must have on file in the MMS Gulf of Mexico Regional Office, prior to lease award, the certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS–2033 (June 1985), and the Affirmative Action Representation Form, Form MMS–2032 (June 1985) (see the document "Information to Lessees for Sale 169" in the Sale Notice Package).

6. *Bid Opening.* Bid opening will begin at the bid opening time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time.

7. *Deposit of Payment.* Any payments made in accordance with paragraph 3(b) above will be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. *Withdrawal of Tracts.* The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid for the tract.

9. *Acceptance, Rejection, or Return of Bids.* The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any tract will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice, including the documents contained in the associated Sale Notice Package (see paragraph 15 of this Notice) and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $25.00 or more per acre or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the associated Sale Notice Package, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

To ensure that the Government receives a fair return for the conveyance of lease rights for this sale, tracts will be evaluated in accordance with established MMS bid adequacy procedures. A copy of the current procedures ("Summary of Procedures for Determining Bid Adequacy at Offshore Oil and Gas Lease Sales: Effective August 1997, with Sale 168") is available from the MMS Gulf of Mexico Regional Office Public Information Unit (see paragraph 15 of this Notice). This document incorporates changes announced in a **Federal Register** Notice at 62 FR 37589, dated July 14, 1997.

10. *Successful Bidders.* The following requirements apply to successful bidders in this sale:

(a) *Lease Issuance.* The MMS will require each person who has submitted a bid accepted by the authorized officer to execute copies of the lease (Form MMS–2005 (March 1986) as amended), pay the balance of the cash bonus bid along with the first year's annual rental for each lease issued by EFT in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I, as amended.

Additional information pertaining to this matter may be found in the document "Information to Lessees" contained in the Sale Notice Package.

(b) *Certification Regarding Nonprocurement Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.* Each person involved as a bidder in a successful high bid must have on file, in the MMS Gulf of Mexico Regional Office Adjudication Unit, a currently valid certification that the person is not excluded from participation in primary covered transactions under Federal nonprocurement programs and activities. A certification previously provided to that office remains currently valid until new or revised information applicable to that certification becomes available. In the event of new or revised applicable information, the MMS will require a subsequent certification before lease issuance can occur. Persons submitting such certifications should review the requirements of 43 CFR, Part 12, Subpart D, as amended in the **Federal Register** of June 26, 1995, at 60 FR 33035.

A copy of the certification form is contained in the Sale Notice Package.

11. *Leasing Maps and Official Protraction Diagrams.* The following Leasing Maps or Official Protraction Diagrams, which may be purchased from the MMS Gulf of Mexico Regional Office Public Information Unit (see the document "Information to Lessees" contained in the Sale Notice Package), depict the tracts offered for lease in this sale:

(a) Outer Continental Shelf (OCS) Leasing Maps—Louisiana Nos. 1 through 12. This is a set of 30 maps which sells for $32.

(b) Outer Continental Shelf Official Protraction Diagrams.

These diagrams sell for $2.00 each.

NH 15–12—Ewing Bank (rev. 12/02/76).
NH 16–4—Mobile (rev. 02/23/93).
NH 16–7—Viosca Knoll (rev. 12/02/76).
NH 16–10—Mississippi Canyon (rev. 05/01/96).
NG 15–3—Green Canyon (rev. 12/02/76).
NG 15–6—Walker Ridge (rev. 12/02/76).
NG 15–9—(No Name) (rev. 04/27/89).
NG 16–1—Atwater Valley (rev. 11/10/83).
NG 16–4—Lund (rev. 08/22/86).
NG 16–7—(No Name) (rev. 04/27/89).

12. *Description of the Areas Offered for Bids.*

(a) *Acreage Available for Leasing.* Acreage of blocks is shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased or transected by administrative lines such as the Federal/State jurisdictional line. Information on the unleased portions of such blocks, including the exact acreage, is included in the document:

"Central Gulf of Mexico Lease Sale 169—Final. Unleased Split Blocks and Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease."

The Sale Notice Package contains this document.

(b) *Tracts not available for leasing:* The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraph 11(a) and (b), except for those blocks or partial blocks already under lease and those blocks or partial blocks listed below. A list of Central Gulf of Mexico tracts currently under lease, titled "Central Gulf of Mexico Leased Lands List dated February 6, 1998" is included in the Sale Notice Package.

Although currently unleased, no bids will be accepted in this Sale on the following blocks which are currently under appeal: Main Pass Area, South and East Addition, Blocks 253 and 254, and Viosca Knoll Blocks 213 and 256.

Although currently unleased, no bids will be accepted in this Sale on the following blocks which are beyond the United States Exclusive Economic Zone. The offering of these blocks, which were identified in the proposed Notice of Sale as the Northern portion of the Western and Eastern Gaps, has been temporarily deferred by the Department of the Interior in anticipation of the early commencement of negotiations with the Government of Mexico on the delimitation of the continental shelf in the Western Gap beyond the EEZ of both countries.

Area NG15–09

Blocks

133 through 135
177 through 184
221 through 238
265 through 281
309 through 320
358

Area NG16–07

Blocks

172, 173
213 through 217
252 through 261
296 through 305
349

13. *Lease Terms and Stipulations.*

(a) Leases resulting from this sale will have initial terms as shown on the map "Lease Terms, Bidding Systems, and Royalty Suspension Areas, Sale 169." Copies of the map are included in the Sale Notice Package. Copies of the lease form are available from the MMS Gulf of Mexico Regional Office Public Information Unit (see the document "Information to Lessees" contained in the Sale Notice Package).

(b) The map titled "Stipulations and Deferred Blocks, Sale 169" depicts the blocks to which the four lease stipulations (Topographic Features, Live Bottoms, Military Areas, and Blocks South of Baldwin County, Alabama) apply. The text of the lease stipulations is contained in the document "Lease Stipulations for Oil and Gas Lease Sale 169;" this map and document are contained in the Sale Notice Package. These stipulations will become a part of any leases on applicable blocks resulting from Sale 169. Three of the stipulations (Topographic Features, Live Bottoms, and Military Areas) are the same stipulations used in Sale 166, Central Gulf, held in March 1997. (See the Final Notice of Sale for Sale 166 in the **Federal Register** at 62 FR 4789, January 31, 1997.)

14. *Information to Lessees.* The Sale Notice Package contains a document titled "Information to Lessees." These Information to Lessees items provide information on various matters of interest to potential bidders.

15. *Sale Notice Package.* The Sale Notice Package, and individual documents contained therein, are available from the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, either in writing or by telephone at (504) 736–2519 or (800) 200 –GULF.

The documents referenced below and contained in the Sale Notice Package contain information essential for bidders, and bidders are charged with the knowledge contained therein. Included in the Package are:

Cover sheet

Final Notice of Sale for Sale 169

Information to Lessees for Sale 169

Central Gulf of Mexico Leased Lands List dated February 6, 1998

Central Gulf of Mexico Lease Sale 169—Final. Unleased Split Blocks and Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease

Lease Stipulations for Oil and Gas Lease Sale 169

Debarment Certification Form

Bid Form and Envelope

Phone Numbers/Addresses of Bidders Form

Instructions for Making EFT 1/5th Bonus Payment

Lease Terms, Bidding Systems, and Royalty Suspension Areas, Sale 169 Map

Stipulations and Deferred Blocks, Sale 169 Map

For additional information, contact the Regional Supervisor for Leasing and Environment, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, or by telephone at (504) 736–2759. In addition, certain documents may be viewed and downloaded from the MMS World Wide Web site at http://www.mms.gov. The MMS also maintains a 24-hour Fax-on-Demand Service at (202) 219–1703.

Dated: February 6, 1998.

Robert E. Brown,

Acting Director, Minerals Management Service.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 98–3532 Filed 2–12–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(BJA)–1156]

RIN 1121–ZA93

Motor Vehicle Theft Prevention Act Program

AGENCY: Department of Justice, Office of Justice Programs, Bureau of Justice Assistance.

ACTION: Fiscal Year 1998 Request for Proposals (RFP).

SUMMARY: The Bureau of Justice Assistance (BJA) is soliciting grant applications from State governments interested in participating in the national voluntary motor vehicle theft prevention program, Watch Your Car, as authorized under the Motor Vehicle Theft Prevention Act of 1994 (MVTPA).

DATES: All applications must be returned with a postmark, or dated receipt by a private carrier no later than March 31, 1998.

ADDRESSES: All proposals must be mailed or sent to: Bureau of Justice Assistance; Attention: Watch Your Car Program Office; Bureau of Justice Assistance; 810 Seventh Street NW, Room 4239, Washington, DC. 20531.

FOR FURTHER INFORMATION CONTACT: The Bureau of Justice Assistance will soon mail program guides and application kits to each State. The State's automobile theft prevention authority, where one exists, is designated as the recipient. For those States without an authority, the State agency that administers the Byrne Formula Grant Program will be the recipient. However, any State agency involved in preventing motor vehicle theft may apply. Only one award will be made per State. Copies of the fact sheet describing the Program are available by calling the U.S. Department of Justice Response Center at 1–800–421–6770. The metropolitan Washington, DC., area number is 202–307–1480. Interested parties with Internet browsers and installed Adobe Acrobat software may download and print a copy of this announcement by accessing BJA's National Auto Theft Prevention Program home page at http://www.ojp.usdoj.gov/BJA/html/wyc.htm. Adobe Acrobat software, an on-line fact sheet on the Watch Your Car Program, samples of the decals, the recipient of the program guide and application kit for each State, and other graphical images and statistics pertaining to auto theft are also available at this site.

SUPPLEMENTARY INFORMATION:

Authority

Section 220001 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322, 108 Stat. 2074, codified at 42 U.S.C. 14171, contains the Motor Vehicle Theft Prevention Act (MVTPA). The MVTPA requires the Attorney General to establish a national voluntary motor vehicle theft prevention program. A proposed rule was published in the **Federal Register** on October 24, 1995. The final rule was subsequently published on August 6, 1996, and awards were made to the States of Arizona and New Mexico. An FY 1997 RFP was published in the **Federal Register** on April 14, 1997 and on September 30, 1997, grant awards were made to the States of Florida, Maryland, North Carolina, New Jersey, New York and Tennessee. The purpose of this announcement is to notify States, that have heretofore received no funding, of the availability of grant funds appropriated under the authority of Public Law 105–119, Making Appropriations for the Departments of Commerce, Justice, State, the Judiciary, and Related Agencies for the fiscal year ending September 30, 1998.

Grant Offering

BJA will be offering implementation grants for States that have no statewide motor vehicle theft prevention decal program in place and for States with existing programs that wish to make the transition to the Watch Your Car Program. Implementation grants will be awarded up to $150,000. BJA encourages innovative approaches to implementing comprehensive, unique anti-car-theft initiatives and will evaluate applications on the size and scope of the proposed project and how it can work in concert with other theft prevention measures. Other factors for consideration include the amount of public and private resources leveraged in the proposal.

Eligibility for Watch Your Car Funding

A State may apply on behalf of itself and/or its respective counties and municipalities. The application shall be submitted by the chief executive of the applicant State agency and in accordance with established BJA application guidelines. Any State that received funding under the Watch Your Car Program during fiscal years 1996 or 1997 is ineligible for funding during fiscal year 1998.

Background

The purpose of the Watch Your Car Program is to focus the attention of law enforcement on vehicles that are not routinely operated during the early morning hours or near international land borders or ports. The program enables proactive investigation of auto theft before a stolen vehicle report is filed.

Under this program, a motor vehicle owner must sign a consent form and obtain decals authorizing law enforcement officers to stop the motor vehicle if it is being driven under certain specified conditions, and take reasonable steps to determine whether the vehicle is being operated with the owner's consent. There are two conditions. Under the first condition, the owner may consent to have the car stopped if it is operated between the hours of 1 AM and 5 AM. Under the second condition, the owner may consent to have the car stopped if it crosses or is about to cross a United States land border or if it enters a port.

States elect to participate in the program solely at their option.

BJA is aware of similar types of theft prevention programs already in existence. The most common program is Combat Auto Theft (CAT), which is used on a statewide basis and by individual local jurisdictions in California, Louisiana, Minnesota, and Pennsylvania. Illinois has the Beat Auto Theft (BAT) Program and Texas originated the Help End Auto Theft (HEAT) Program.

Programs such as CAT, BAT and HEAT function on a statewide basis to insure a level of uniformity among participating municipalities and counties. These programs have worked successfully in their States of origin since police throughout the State could easily recognize their own decal. But if a thief drove a stolen vehicle across state lines, the police in the adjoining jurisdiction may not recognize the decal or if they did recognize it, lacked the authorization to stop the vehicle and check the identity of the driver. The dissimilarity of statewide programs has been further complicated by the proliferation of local anti-car theft programs in States with no statewide program. Numerous municipalities and counties have adopted a variety of programs utilizing differing emblems, icons, and symbols.

The main advantage of the national Watch Your Car Program is its use of a decal that will eventually become a recognizable icon by police nationwide. It features the capability of intra/interstate enforcement through the checking of vehicles with differing county and/or out-of-state license plates.

BJA's specifications call for the manufacture of tamper-resistant decals made from retro reflective sheeting to

make them easily discernible at night. The windshield decal(s) are to be applied on the outside of the glass directly above the inside rear-view mirror. The rear window decal is affixed on the exterior face along the lower left side.

The MVTPA Program compels a thief to remove tamper-resistant decals while alongside the vehicle, acting suspiciously and drawing attention to himself/herself. These impediments, in addition to other theft prevention devices such as steering wheel locks, increase the number of hurdles a thief must overcome and raises the level of theft deterrence.

The MVTPA requires, as a condition of participation, that each State agree to take reasonable steps to ensure that law enforcement officials throughout its jurisdiction are familiar with the program, and with the conditions under which motor vehicles may be stopped.

This program is a Federal program that operates separately from any existing State or local motor vehicle theft prevention program. It is not intended to preempt existing State or local laws or programs.

Application Requirements

Problem Statement

States wishing to apply shall provide an assessment of the auto theft problem in their jurisdiction and what efforts have been undertaken to address it. Applicants should contrast the severity of their auto theft problem to other States and discern the patterns and trends of auto theft. States should also identify what steps have been taken to decrease auto theft. For instance, does the State have an automobile theft prevention authority and what types of initiatives does it support to combat auto theft.

Goals and Objectives

The applicant must provide goals, objectives, and methods of implementation for the project that are consistent with the program announcement. Objectives should be clear, measurable, attainable, and focused on the methods used to conduct the project. Favorable consideration will be given to those applicants who merge their auto theft enforcement efforts and their prevention initiatives into a coherent strategy and establish goals and objectives based upon the anticipated collective outcome of both approaches.

Project Strategy or Design

The project strategy or design should describe the Watch Your Car program the State wishes to implement including its size and scope; outreach efforts to educate the public; statewide training programs to inform municipal, county and state law enforcement officers of the program; a description of the database if the State wishes to maintain a centralized computer registry; the production and dissemination of universal consent forms authorizing traffic stops by any local, State, or Federal law enforcement officer pursuant to the stipulated program condition(s); and efforts to be undertaken to enlist both public and private organizations such as auto dealers, auto insurance companies, and other major retail businesses willing to host registration programs and encourage employee participation.

Implementation Plan

Applicant should provide an implementation plan for the program outlined above. It should include a schedule to include milestones for significant tasks in a chart form.

Additional Resource Commitments

Applicants are encouraged to leverage other resources—State, local, or private—in support of this project.

Project Management Structure

The applicant should describe how the project will be structured, organized, and managed. It should identify and describe the qualifications and experience of the project director and project staff, how they will be selected, and their roles and responsibilities.

Organizational Capability

The applicant should describe the organizational experience, both programmatic and financial, that qualifies it to manage the project.

Program Evaluation

The program evaluation should indicate how the applicant will assess the success of project implementation and the extent to which the strategy achieved the project's goals and objectives.

Richard Ward,

Deputy Director, Bureau of Justice Assistance.

[FR Doc. 98–3632 Filed 2–12–98; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–017)]

NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Aviation Safety Reporting System Subcommittee (ASRS); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Aviation Safety Reporting System Subcommittee meeting.

DATES: Wednesday, March 11, 1998, 9 a.m. to 5 p.m.

ADDRESSES: Helicopter Association International, 1635 Prince Street, Alexandria, VA 22314–2818.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Connell, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/604–6654.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

- Update and Progress of Recommendations from November 1997 Meeting.
- Resolution of Outstanding Issues and Items from November 1997 Meeting.
- Report on Status of NASA Aviation Safety Program Progress in ASRS/ Aviation Performance Measuring System.
- Report on status of ASRS and Aviation Safety Partnership Programs.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: February 9, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–3757 Filed 2–12–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98018)]

NASA Advisory Council (NAC), Aeronautics and Space Transportation Technology Advisory Committee (ASTTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee.

DATES: Thursday, March 12, 1998, 8:30 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 7H46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aeronautics and Space Transportation Technology, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4729).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Aeronautics and Space Transportation Technology Overview
- Subcommittee Reports
- Scenario-Based Vehicle Study
- High-Speed Research—Phase ILA Planning
- University Strategy Ad Hoc Group Report
- Space Transportation Council Integrated Working Group

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: February 9, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–3758 Filed 2–12–98; 8:45 am]

BILLING CODE 7510–01–M

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's home page (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in February 1998. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in March 1998.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (described in the statute and the regulation) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

For plan years beginning before July 1, 1997, the applicable percentage of the 30-year Treasury yield was 80 percent. The Retirement Protection Act of 1994 (RPA) amended ERISA section 4006(a)(3)(E)(iii)(II) to change the applicable percentage to 85 percent, effective for plan years beginning on or after July 1, 1997. (The amendment also provides for a further increase in the applicable percentage—to 100 percent—when the Internal Revenue Service adopts new mortality tables for determining current liability.) The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in February 1998 is 4.94 percent (*i.e.*, 85 percent of the 5.81 percent yield figure for January 1998).

(Under section 774(c) of the RPA, the amendment to the applicable percentage was deferred for certain regulated public utility (RPU) plans for as long as six months. The applicable percentage for RPU plans has therefore remained 80 percent for plan years beginning before January 1, 1998. For "partial" RPU plans, the assumed interest rates to be used in determining variable-rate premiums can be computed by applying the rules in § 4006.5(g) of the premium rates regulation. The PBGC's 1997 premium payment instruction booklet also describes these rules and provides a worksheet for computing the assumed rate.)

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between March 1997 and February 1998. The rates for July through December 1997 in the table (which reflect an applicable percentage of 85 percent) apply only to non-RPU plans. However, the rates for months before July 1997 and after December 1997 apply to RPU (and "partial" RPU) plans as well as to non-RPU plans.

For premium payment years beginning in	The assumed interest rate is
March 1997	5.35
April 1997	5.54
May 1997	5.67
June 1997	5.55
July 1997	5.75
August 1997	5.53
September 1997	5.59
October 1997	5.53
November 1997	5.38
December 1997	5.19
January 1998	5.09
February 1998	4.94

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in March 1998 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 4th day of February 1998.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 98–3364 Filed 2–12–98; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39622; File No. SR–PHLX–97–45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend its By-Law Article XII, Section 12–10, With Respect to the Eligibility of Persons To Serve as Inactive Nominees

February 4, 1998.

Purusant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 15, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx.[2] The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx hereby proposes to amend its By-Law Article XII, Section 12–10, with respect to the eligibility of persons to serve as Inactive Nominees.[3] The text of the proposed rule change to By-Law Article XII, Section 12–10, is set forth in full in Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Phlx By-Law Article XII, Section 12–10, sets forth the eligibility requirements with respect to persons designated to serve as Inactive Nominees. An Inactive Nominee must be a person affiliated with a member organization who has submitted a membership application and met all membership qualification requirements, including an examination administered by the Phlx's Market Surveillance Department. The proposed amendment will allow an approved Inactive Nominee to assume the legal title to a membership on an intra-firm and expedited basis in the event of an emergency due to illness or other factors. In Amendment No. 1, the Phlx stated that an Inactive Nominee would serve in the "event of an emergency due to illness or other factors," and "would allow a member organization to have a full complement of traders or specialists available to conduct business on the Exchange trading floors by transferring legal title intra-firm to the inactive nominee thereby making that person an Exchange member."

The proposed rule change would subject a person designated as an Inactive Nominee to the existing membership application process, including fees. Additionally, the member organization with whom an Inactive Nominee is affiliated will be subject to a fee for the privilege of maintaining an Inactive Nominee's status.

A member organization seeking to designate an affiliated person as an Inactive Nominee shall submit a membership application on behalf of a proposed Inactive Nominee, who would go through the existing membership application process. Upon meeting all membership requirements and after posting for a two-week period in the membership Bulletin, this person will be registered as an Inactive Nominee. Upon notice filed with the Phlx Office of the Secretary in writing prior to 9 a.m. on any business day the Exchange is open, under specified circumstances, an Inactive Nominee may assume the legal title to a membership on an intra-firm basis and be eligible to transact business on the Exchange that day or for such longer period consistent with the seat lease or membership title and use agreement (ABC agreement).

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5) in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and national market system, as well as to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary,

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[1] 15 U.S.C. § 78s(b)(1).

[2] On January 14, 1998, the Exchange submitted Amendment No. 1 to the filing, in which it proposed a new rule, Phlx Rule 21, defining "Inactive Nominee," and explaining the role of an Inactive Nominee on the Phlx. *See* Letter from Murray L. Ross, vice President and Secretary, Phlx, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated January 14, 1998. Amendment No. 1 is described further in note 3 and in the text, below.

[3] In Amendment No. 1, the PHlx proposed a new rule, to be designated as Rule 21, which would define an Inactive Nominee as follows:

The term "inactive nominee" shall mean a natural person associated with and designated by a member organization whom has applied for and been approved by the Admissions Committee for such status and is registered as such with the Office of the Secretary. An inactive nominee shall have no rights or privileges of membership unless and until said inactive nominee becomes a member of the Exchange pursuant to the By-Laws and Rules of the Exchange. An inactive nominee merely stands ready to assume legal title to a membership upon notice by the member organization to the Office of the Secretary to be transferred intra-firm on an expedited basis.

Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–PHLX–97–45 and should be submitted by March 6, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A—Proposed Rule Change

The Philadelphia Stock Exchange, Inc.

By-Law Article XII, Section 12–10

Additions are in italics; deletions are bracketed

[Associate Memberships] *Inactive Nominees*

Ssection 12–10. *A member organization may designate an individual as an "Inactive Nominee." The member organization shall pay a fee for the privilege of maintaining the Inactive Nominee status.*

The following requirements shall apply to Inactive Nominees:

(a) To be eligible for Inactive Nominee status, an individual must be approved for membership in accordance with the Rules of the Exchange.

(b) An Inactive Nominee shall have no rights or privileges of membership unless and until said Inactive Nominee becomes an effective member and all applicable Exchange fees are paid.

(c) An Inactive Nominee's status will terminate after six months unless it has been reaffirmed in writing by the member organization or terminated prior thereto. Further, the Inactive Nominee's status must be reaffirmed in writing every six months thereafter to remain in effect.

[FR Doc. 98–3631 Filed 2–12–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 2731]

The Bureau of Oceans and International Environmental and Scientific Affairs (OES/S); 30-Day Notice of Information Collection

AGENCY: Department of State.

ACTION: 30-Day Notice of Information Collection; U.S.-Egypt Science and Technology Joint Fund Annual Grant Program.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB on or before March 16, 1998.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Emergency extension of a currently approved collection.

Originating Office: The Bureau of Oceans and International Environmental and Scientific Affairs (OES/S).

Title of Information Collection: U.S.-Egypt Science and Technology Joint Fund Annual Grant Program.

Frequency: Annually.

Form Number: None.

Respondents: Researchers requesting funding for science and technology programs.

Estimated Number of Respondents: 250.

Average Hours Per Response: 2 hours.

Total Estimated Burden: 500 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed form by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: February 2, 1998.

Glen H. Johnson,

Acting, Chief Information Officer.

[FR Doc. 98–3672 Filed 2–12–98; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF STATE

[Public Notice 2740]

Bureau of Diplomatic Security; 30-Day Notice of Information Collection; Request for Building Pass Identification Card (DS–1838)

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB on or before March 16, 1998.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Existing collection in use without an OMB control number.

Originating Office: The Bureau of Diplomatic Security (DS).

Title of Information Collection: Request for Building Pass Identification Card.

Frequency: On occasion.

Form Number: DS–1838.

Respondents: USG employees, Contractors, Vendors, Press, Caterers, Family Members, Retired employees, and others as needed.

Estimated Number of Respondents: 10,250.

Average Hours Per Response: 15 minutes.

Total Estimated Burden: 2,550 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management

Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed form by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: February 2, 1998.

Glen H. Johnson,

Acting Chief Information Officer.

[FR Doc. 98–3663 Filed 2–12–98; 8:45 am]

BILLING CODE 4710–43–M

DEPARTMENT OF STATE

[Public Notice No. 2736]

Bureau of Consular Affairs; 30-Day Notice of Information Collection; Application for Consular Report of the Death of an American Citizen abroad

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB on or before March 16, 1998.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Consular Affairs (CA).

Title of Information Collection: Report of the Death of an American Citizen abroad.

Frequency: On occasion.

Form Number: OF–180.

Respondents: Survivors, relatives, and estates of deceased American citizens who have died abroad.

Estimated Number of Respondents: 5,500.

Average Hours Per Response: 60 minutes.

Total Estimated Burden: 5,500 hours.

Public comments are being solicited to permit the agency to—

• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed form by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: February 2, 1998.

Glen H. Johnson,

Acting Chief Information Officer.

[FR Doc. 98–3664 Filed 2–12–98; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2738]

The Office of the Procurement Executive (A/OPR); 30-Day Notice of Information Collection; Department of State Acquisition Regulation (DOSAR)

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB on or before March 16, 1998

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of currently approved collection.

Originating Office: The Office of the Procurement Executive (A/OPR).

Title of Information Collection: Department of State Acquisition Regulation (DOSAR).

Frequency: On occasion.

Form Number: OMB #1405–0050.

Respondents: Prospective government contractors.

Estimated Number of Respondents: 2,000.

Average Hours Per Response: 128 hours.

Total Estimated Burden: 225,302.5 hours.

Public comments are being solicited to permit the agency to—

• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed form by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: February 2, 1998.

Glen H. Johnson,

Acting Chief Information Officer.

[FR Doc. 98–3665 Filed 2–12–98; 8:45 am]

BILLING CODE 4710–05–M

DEPARTMENT OF STATE

[Public Notice 2737]

The Office of Foreign Missions (OFM); 30-Day Notice of Information Collection; DSP–99, Application for Diplomatic Exemption From Taxes on Utilities, and DSP–99A, Application for Diplomatic Exemption From Taxes on Gasoline

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB on or before March 16, 1998.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: The Office of Foreign Missions (OFM).

Title of Information Collection: Application for Diplomatic Exemption from Taxes on Utilities, and, Application for Diplomatic Exemption from Taxes on Gasoline

Frequency: On occasion.

Form Number: DSP–99 and DSP–99A.

Respondents: Foreign diplomatic missions and personnel.

Estimated Number of Respondents: 40,000.

Average Hours Per Response: 12 minutes.

Total Estimated Burden: 664 hours.

Public comments are being solicited to permit the agency to—

• Evaluate whether the proposed information collection is necessary for

the proper performance of the agency functions.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed from by name: and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: February 2, 1998.

Glenn H. Johnson,

Acting Chief Information Officer.

[FR Doc. 98–3666 Filed 2–12–98; 8:45 am]

BILLING CODE 4710–44–M

DEPARTMENT OF STATE

[Public Notice 2736]

The Office of Foreign Missions (OFM); 30–Day Notice of Information Collection; DS–1972, Drivers License and Tax Exemption Card Application

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB on or before March 16, 1998.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: The Office of Foreign Missions (OFM).

Title of Information Collection: Drivers License and Tax Exemption Card Application.

Frequency: On occasion.

Form Number: DS–1972.

Respondents: Foreign mission personnel and their dependents in the United States.

Estimated Number of Respondents: 12,500.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 6,250 hours.

Public comments are being solicited to permit the agency to—

• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regrading this proposal. Comments should refer to the proposed form by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: February 2, 1998.

Glen H. Johnson,

Acting Chief Information Officer.

[FR Doc. 98–3667 Filed 2–12–98; 8:45 am]

BILLING CODE 4710–44–M

DEPARTMENT OF STATE

[Public Notice 2735]

The Office of Defense Trade Controls; 30-Day Notice of Information Collection; DTC Customer Service Survey

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB on or before March 16, 1998.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: New collection.

Originating Office: The Office of Defense Trade Controls (PM/DTC).

Title of Information Collection: DTC Customer Service Survey.

Frequency: Annually.

Form Number: None.

Respondents: U.S. Defense Industry Customers.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 10 minutes.

Total Estimated Burden: 150 hours.

Public comments are being solicited to permit the agency to—

• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed form by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: February 2, 1998.

Glen H. Johnson,

Acting Chief Information Officer.

[FR Doc. 98–3668 Filed 2–12–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2734]

Office of Overseas Schools; 30-Day Notice of Information Collection; Approval of Funding to Support Educational Projects (JF–45)

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB on or before March 16, 1998.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Orginating Office: Office of Overseas Schools (A/OS).

Title of Information Collection: Approval of Funding to Support Educational Projects.

Frequency: Annually.

Form Number: JF–45.

Respondents: The 190 Overseas American sponsored schools.

Estimated Number of Respondents: 190.

Average Hours Per Response: 25 minutes.

Total Estimated Burden: 47.50 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed form by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: February 2, 1998.

Glen H. Johnson,

Acting Chief Information Officer.

[FR Doc. 98–3669 Filed 2–12–98; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2733]

Bureau of Consular Affairs; 30-Day Notice of Information Collection

AGENCY: Department of State.

ACTION: 30-Day Notice of Information Collection; OF–230 I & II, Application for Immigrant Visa and Alien Registration.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB on or before March 16, 1998.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Consular Affairs.

Title of Information Collection: Application for Immigrant Visa and Alien Registration.

Frequency: On occasion.

Form Number: OF–230 I & II.

Respondents: Aliens.

Estimated Number of Respondents: 750,000.

Average Hours Per Response: 24 hours.

Total Estimated Burden: 18,000,000 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed form by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: February 2, 1998.

Glen H. Johnson,

Acting Chief Information Officer.

[FR Doc. 98–3670 Filed 2–12–98; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2732]

Bureau of Consular Affairs; 30-Day Notice of Information Collection; Nonimmigrant Treaty Trader/Investor Visa Application (OF–156(E))

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB.

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Consular Affairs (CA).

Title of Information Collection: Nonimmigrant Treaty Trader/Investor Visa Application.

Frequency: On occasion.

Form Number: OF–156(E).

Respondents: Aliens and enterprises that qualify for E–1 and E–2 nonimmigrant visas for the purpose of carrying on their business enterprise in the United States.

Estimated Number of Respondents: 15,000.

Average Hours Per Response: 2 hours.

Total Estimated Burden: 30,000 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed form by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: February 2, 1998.

Glen H. Johnson,

Acting Chief Information Officer.

[FR Doc. 98–3671 Filed 2–12–98; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2730]

Bureau of Consular Affairs; 30-Day Notice of Information Collection; Application For Consular Report of Birth Abroad of a Citizen of the United States of America

SUMMARY: The Department of State has submitted the following information collectin request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Consular Affairs (CA).

Title of Information Collection: Application For Consular Report of Birth Abroad of a Citizen of the United States of America.

Frequency: On occasion.

Form Number: FS–579.

Respondents: American parent of persons born abroad.

Estimated Number of Respondents: 40,000.

Average Hours Per Response: 20 minutes.

Total Estimated Burden: 13,334 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed form by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: February 2, 1998.

Glen H. Johnson,

Acting Chief Information Officer.

[FR Doc. 98–3673 Filed 2–12–98; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2729]

Bureau of Consular Affairs; 30-Day Notice of Information Collection; Building Access Application

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the application of this notice.

The following summarizes the information collection proposal submitted to OMB.

Type of Request: Revision of a currently approved collection.

Originating Office: Bureau of Diplomatic Security.

Title of Information Collection: Building Access Application.

Frequency: On occasion.

Form Number: DSP–97.

Respondents: Press Corps, maintenance personnel, visitors, and others as needed.

Estimated Number of Respondents: 10,250.

Average Hours Per Response: 15 minutes.

Total Estimated Burden: 2,550 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION : Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed form by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: February 2, 1998.

Glen H. Johnson,

Acting Chief Information Officer.

[FR Doc. 97–3674 Filed 2–12–98; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2727]

The Bureau of Consular Affairs; 30-Day Notice of Information Collection; Application to Determine Returning Resident Status

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB on or before March 16, 1998.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Consular Affairs.

Title of Information Collection: Application to Determine Returning Resident Status.

Frequency: On occasion.

Form Number: DSP–117.

Respondents: Returning lawfully alien for permanent resident.

Estimated Number of Respondents: 1,500.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 1,500 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Charles S.

Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed form by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: February 2, 1998.

Glen H. Johnson,

Acting Chief Information Officer.

[FR Doc. 98–3676 Filed 2–12–98; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2726]

Bureau of Consular Affairs; 30-Day Notice of Information Collection; Affidavit of Identifying Witness

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB on or before March 16, 1998.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: Bureau of Consular Affairs.

Title of Information Collection: Affidavit of Identifying Witness.

Frequency: On occasion.

Form Number: DSP–71.

Respondents: Citizens of the United States.

Estimated Number of Respondents: 88,000.

Average Hours Per Response: 5 minutes.

Total Estimated Burden: 7,333 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed form by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: February 2, 1998.

Glen H. Johnson,

Acting Chief Information Officer.

[FR Doc. 98–3677 Filed 2–12–98; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2725]

Bureau of Consular Affairs; 30-Day Notice of Information Collection; Nonimmigrant Fiance (e) Visa Application (OF–156K)

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB on or before March 16, 1998.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Consular Affairs.

Title of Information Collection: Nonimmigrant Fiance(e) Visa Application.

Frequency: On occasion.

Form Number: OF–156(K).

Respondents: Aliens seeking to obtain nonimmigrant visas.

Estimated Number of Respondents: 12,000.

Average Hours Per Response: 2 hours.

Total Estimated Burden: 24,000 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed form by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: February 2, 1998.

Glen H. Johnson,

Acting, Chief Information Officer.

[FR Doc. 98–3678 Filed 2–12–98; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2724]

Bureau of Public Affairs; Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, March 5–6, 1998 in Conference Room 1205.

The Committee will meet in open session from 9:00 a.m. through 12:00 p.m. on the morning of Thursday, March 5, 1998. The remainder of the Committee's sessions from 1:45 p.m. on Thursday, March 5, until 5:00 p.m. on Friday, March 6, 1998 will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (P.L. 92–463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (e-mail pahistoff@panet.us-state.gov).

Dated: January 28, 1998.

William Z. Slany,

Executive Secretary.

[FR Doc. 98–3679 Filed 2–12–98; 8:45 am]

BILLING CODE 4710–11–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 98–3324]

Critical Ship Safety Systems Table and Components of a Supplement Under the Alternate Compliance Program

AGENCY: Coast Guard, DOT.

ACTION: Notice of policy concerning critical ship safety systems and U.S. Supplement review process; request for comments.

SUMMARY: The Coast Guard announces a policy concerning critical ship safety systems, the creation of the Critical Ship Safety Systems Table, and their application to U.S. Supplements developed by classification societies seeking authorization under the Alternate Compliance Program. The Coast Guard also announces a policy determination on the components of a U.S. Supplement.

DATES: Comments are requested by April 14, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility [USCG–98–3324], U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address, between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

The Docket Management Facility maintains the public docket for this notice. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the above address, between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Raymond Petow or LCDR Daniel Pippenger, Marine Safety and Environmental Protection (G–MSE–1), U.S. Coast Guard Headquarters, telephone: (202) 267–2997 for questions concerning the substance of this notice or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, telephone: (202) 366–9329 for questions concerning the filing and reviewing of comments.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages submission of written data, views, or arguments on the Critical Ship Safety Systems Table. Persons submitting comments should include their name and address, identify this notice [USCG 98–3324], the specific section of the Table to which each comment applies, and the reason for the comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing, to the DOT Docket Management Facility at the address under **ADDRESSES**. If you want acknowledgment of receipt of your comment, enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period and may change this policy in view of the comments.

Background and Purpose

Critical Ship Safety Systems

The Coast Guard, in continuing to improve its Alternate Compliance Program, and in response to changes in the 1996 Coast Guard Authorization Act (Pub. L. 104–324) that permit the Coast Guard to rely on reports from other persons and permit expanded use of vessel classification societies (46 U.S.C. 3103, 3316), reviewed Subchapters D, F, H, I, and J of Title 46 of the Code of Federal Regulations (CFR) to determine critical ship safety systems. The review did not include Subchapter I–A (mobile offshore drilling units) and Subchapter O (chemical and gas carriers) as review of these subchapters, using the same process described here, is ongoing. These results will be published when the review is completed. This review also did not include operational requirements for which vessel owners and operators are still responsible and for which the Coast Guard retains authority to ensure compliance.

Critical ship safety systems encompass those systems that are addressed by the applicable regulations in 46 CFR relating to ship design and construction and, based on subjective and objective risk assessments, are necessary for the safe operations of vessels. The list of critical ship safety systems did not include those required by U.S. Statute.

Subjective assessments were obtained from a wide range of experts associated with the maritime industry including licensed mariners, vessel owners and operators, pilots, environmental organizations, private marine surveyors, and Coast Guard inspectors and plan reviewers. The assessments rated a list of shipboard systems from regulatory requirements, proposed by the Coast Guard program managers with experience in areas of vessel design, operation and inspection. Examples of systems listed included propulsion, steering, life saving appliances, and fire protection systems. Respondents were asked to write in other systems as they saw fit. The experts rated each system's probability of failure (ranging from not probable to likely) and the consequence of failure (ranging from negligible to catastrophic). These two factors were quantified and multiplied together to obtain a relative risk of system failure. The systems were then rank ordered based on relative risk of failure as determined using expert opinion.

Objective data was obtained from historical data contained in the Coast Guard's Marine Safety Information System (MSIS) database. The data included 500,000 records documenting discrepancies found during marine inspections, vessel boardings, and marine casualty investigations conducted during the period of 1986 to May 1997. Relative risk of system failure was assessed using the underlying assumption that systems with an historically high number of discrepancies or casualties were high risk and should be considered critical. The systems were then rank ordered based on relative risk of failure as determined using historical data. The high risk items from each assessment method were then combined to yield a single list of critical ship safety systems.

U.S. Supplement to Class Rules

The Coast Guard applied this list of critical ship safety systems to the Alternate Compliance Program (ACP) for which a final rule was published in the **Federal Register** (62 FR 67525) on December 24, 1997. The ACP alleviates some of the cost burden on the U.S. maritime industry resulting from the Coast Guard inspection program by eliminating duplicate plan review and inspections currently performed by both the Coast Guard and the classification societies. The ACP improves international competitiveness of the U.S. merchant fleet by allowing recognized and authorized classification societies to perform those inspections necessary for the issuance of a Certificate of Inspection (COI). The final rule provided details on the recognition and authorization process for a classification society wishing to participate in the ACP. The final rule explained that such a classification society is required to develop and receive Coast Guard approval of a U.S. Supplement to its rules. The supplement would contain those regulations applicable for issuance of a COI, which are not adequately covered by either the class society's rules or

applicable international standards. A supplement would also contain U.S. statutory requirements, SOLAS interpretations, and other regulatory requirements applicable to all ships.

The only U.S. Supplement approved to date—the U.S. Supplement to American Bureau of Shipping (ABS) Rules—was partly developed based on the underlying principle that class rules plus international standards must achieve a level of safety equivalent to that of Coast Guard regulatory requirements. Lacking a process by which to develop the supplement, the comparison to the regulatory requirements of 46 CFR related to the design and construction of vessels eligible for the ACP was done using a resource intensive line-by-line approach. Any instance in which a Coast Guard regulation was found to be inadequately covered by the combination of ABS Rules and international conventions resulted in an entry in the supplement. This approach was applied to each and every Title 46 regulation in Subchapters D, F, H, I, J, N, and O without regard to the fact that a system required by ABS rules and international standards may have provided an equivalent level of safety. As a result, several entries not germane to the safe operation of ABS classed vessels inspected under the ACP, appeared in the first U.S. Supplement to ABS Rules.

The line-by-line approach was a time consuming process for both the classification society and the Coast Guard. Further, the resulting supplement was likely to include requirements that provided little, if any, additional safety when the dissimilar standards were combined. With requests to participate in ACP from Lloyd's Register of Shipping, Det Norske Veritas and Germanischer Lloyd, it became apparent that a more efficient process of preparing and reviewing U.S. Supplements had to be developed. As such, the Coast Guard is adopting the risk-based approach described here which focuses on critical ship safety systems. Differences between class rules plus international standards and Coast Guard regulations are acceptable provided each critical ship safety system attains an equivalent level of safety.

The Coast Guard used the list of critical ship safety systems to develop a table which may be used as a tool during development and review of U.S. Supplements. The table of critical ship safety systems was created by comparing the list of critical ship safety systems developed by subjective and objective risk assessments to international standards to determine if the standards provided a level of safety for each critical system equivalent to that of the Coast Guard regulations. Critical ship safety systems adequately covered by international conventions were not included in the table. For example, steering gear systems, 46 CFR 58.25, were deemed to be critical by both subjective and objective analysis. However, the International Convention for the Safety of Life at Sea, as amended (SOLAS), Chapter II–1, Regulation 29 provides a level of safety for steering gear systems equivalent to the requirements of 46 CFR 58.25. Consequently, steering gear was not included in the table.

Although hull structures and stability are identified in the table as a critical ship safety system, for the purpose of developing a U.S. Supplement, a different approach was taken to assess whether classification society structural rules provide an equivalent level of safety. The structural design of any ship is based on many factors, including size, service, owner requirements, operating environment, and cargo, as well as the ship's classification society's calculation methods and philosophies on the importance of these and other factors. Classification society rules take these factors into consideration when determining the minimum required scantlings; which are the dimensions of the various framework parts of the structure, such as the frames, beams, flooring, stringers, and hull plating.

Because of the numerous factors, philosophies, and calculation methods, no two societies have the same rules for determining structural scantlings. Even within the same classification society, there may be several different ways to determine scantlings. For instance, an ABS classed tanker or bulk carrier may be designed using the ABS Rule book or the Safehull program. The ABS Rule book contains formulas for scantlings that have been developed over years of experience, whereas the Safehull program, a computer program developed by ABS, approaches structural design by linking the scantlings to the structural loadings expected over the life of the vessel. Since the basis of classification is to determine that a vessel's structure is fit for its intended purpose, a society generally puts a great deal of discretion into their rules to handle new or novel designs.

While it is possible to identify a number of major components that we think should be comparable in scantlings, to dictate specific requirements for each structure (*e.g.*, plate thickness, longitudinals, transverse framing) does not take into account such ancillary, but important, considerations such as corrosion allowances, inspection intervals, operating areas, coatings, cathodic protection, material selection/strength, shipyard, operator, crew and all other factors that have a great deal of influence on the long-term performance of a vessel's structure. Because of the system's nature of hull design, that is a hull design must consider all of the structural aspects of a hull (shell plating, longitudinals, transverse framing, decks, etc.) as a whole system, and not individually; a comparison of individual components is difficult since any possible shortcomings of one component can be offset by another component. For example, thinner shell plating can be compensated with additional stiffeners.

Therefore, the Coast Guard proposes to determine the equivalence of classification society structural rules through an assessment of the service history (structural failures documented in reports from classification society surveyors) of the classed fleet and the approach taken by the class society towards rule review and updating as appropriate. The ideal classification society not only maintains an excellent service history, but also takes an aggressive approach to rule review and updating by systematically evaluating casualty statistics and surveyor reports to identify trends and implement corrective changes before casualties occur. In evaluating a classification society, the Coast Guard will also compare the society's rules on structures to the International Association of Classification Society (IACS) requirements, and where appropriate, review the class society's reasoning for not adopting the IACS standard.

The stability portion of the critical ship safety systems table references International Maritime Organization (IMO) Resolution A.479(18), Code of Intact Stability for All Types of Ships Covered by IMO Instruments. The U.S. was a key player in the development of this international resolution and, therefore, it is accepted by the Coast Guard as an equivalent to the intact stability requirements in Title 46 CFR. Because SOLAS recommends vessels voluntarily comply with this resolution, and because the Coast Guard desires to harmonize its regulations with international standards, IMO Resolution A.479(18) was chosen as the standard by which to evaluate each class society's stability requirements.

Critical Ship Safety Systems Table

The following table contains those critical ship safety systems not adequately covered by international standards. Class societies must demonstrate that their class rules provide an equivalent level of safety to the regulatory cite for each of the critical ship safety systems. For the structures and stability section, the previously discussed methods of determining equivalence are applicable. In cases where equivalence cannot be shown, requirements must be included in the U.S. Supplement to bridge the gaps.

Critical system	Regulation (46 CFR * * *)
SUBCHAPTER D—TANK VESSELS	
Lifesaving appliances and arrangements	31.36–1.
Guards in dangerous places	32.02–15.
Anchors, chains, and hawsers	32.15–15.
Pressure vacuum relief valves	32.20–5.
Pumps, piping and hose for cargo handling	32.50.
Bilge systems	32.52.
Inert gas system	32.53.
Ventilation and venting	32.55.
Fire-extinguishing systems	34.05–5(a)(5), (a)(6), & (a)(7).
Carbon dioxide extinguishing system controls	34.15–10(f), 34.15–10(g).
Carbon dioxide extinguishing system piping	34.15–15(c).
Carbon dioxide extinguishing system storage	34.15–20(i).
Carbon dioxide extinguishing system alarms	34.15–30(a).
Deck foam system controls	34.20–10(a), 34.20–10(e).
Deck foam system piping	34.20–15(b).
Water spray extinguishing system piping	34.25–15(b).
Water spray extinguishing system nozzles	34.25–20(a).
Portable and semiportable extinguishers	34.50.
Self-contained breathing apparatus	35.30–20(c)(1).
Vapor control system	Part 39.
SUBCHAPTER F—MARINE ENGINEERING	
Power boilers: Adoption of Section I of the ASME Code	52.01–2.
Power boilers: Automatic controls	52.01–10.
Power boilers: Fusible plugs	52.01–50.
Power boilers: Safety valves and safety relief valves	52.01–120.
Heating boilers: Adoption of Section IV of the ASME Code	53.01–3.
Heating boilers: Pressure relieving devices	53.05.
Pressure vessels: Adoption of Division 1, Section VIII of ASME Code	54.01–2.
Pressure vessels: Standard hydrostatic test	54.10–10.
Pressure vessels: Pneumatic test	54.10–15.
Pressure vessels: Pressure relief devices	54.15.
Piping components	56.10–1.
Fittings	56.15.
Valves employing resilient seals	56.20–15.
Bilge and ballast piping	56.50–50.
Bilge pumps	56.50–55.
Systems containing oil	56.50–60.
Burner fuel-oil service systems	56.50–65.
Gasoline fuel systems	56.50–70.
Diesel fuel systems	56.50–75.
Tank vent piping	56.50–85.
Materials	56.60.
Welding	56.70.
Pressure tests	56.97.
Main propulsion machinery	58.05.
Internal combustion engines	58.10.
Periodic tests and inspections	Part 61.
Vital system automation	Part 62.
SUBCHAPTER H—PASSENGER VESSELS	
Lifesaving appliances and arrangements	70.28–1.
Ventilation	72.15.
Storm rails	72.40–10.
Barriers on vehicular ferries	72.40–15.
Guards in dangerous places	72.40–20.
Fixed fire extinguishing equipment	76.05–20.
Carbon dioxide system controls	76.15–10(f), 76.15–10(g).
Carbon dioxide system piping	76.15–15(c).
Carbon dioxide system storage	76.15–20(i).
Carbon dioxide system alarms	76.15–30(a).
Manual sprinkling system piping	76.23–20(b).
Manual sprinkling system heads	76.23–25(a).
Automatic sprinkling systems	76.25–1, 76.25–35(e).

Critical system	Regulation (46 CFR * * *)
Electric fire detecting system	76.27–15(b), 76.27–15(e).
Smoke detecting system	76.33–20(e), 76.33–20(f).
Manual alarm system	76.35–15(b), 76.35–15(d).
Portable and semiportable extinguishers	76.50.
Anchors, chains and hawsers	77.07.
Emergency equipment	77.30.
Fireman's outfit	77.35–5(a) & (b).
SUBCHAPTER I—CARGO AND MISCELLANEOUS VESSELS	
Lifesaving appliances and arrangements	90.27–1.
Structural fire protection	92.07–1(c).
Ventilation	92.15.
Storm rails	92.25–10.
Guards in dangerous places	92.25–15.
Fixed fire extinguishing systems	95.05–10(d), & (e).
Carbon dioxide extinguishing system controls	95.15–10(f), 95.15–10(g).
Carbon dioxide extinguishing system piping	95.15–15(c).
Carbon dioxide extinguishing system storage	95.15–20(i).
Carbon dioxide extinguishing system alarms	95.15–30(a).
Portable and semiportable extinguishers	95.50.
Anchors, chains and hawsers	96.07.
Fireman's outfit	96.35–5(a) & (b).
Anhydrous ammonia in bulk	98.25.
Vessels carrying marine portable tanks (MPTs)	98.30–3.
SUBCHAPTER J—ELECTRICAL ENGINEERING	
Generator construction and circuits	111.12.
Motors	111.25.
Overcurrent protection	111.50.
Circuit breakers	111.54.
Wiring materials and methods	111.60.
Motor circuits, controllers, and protection	111.70.
Lighting circuits and protection	111.75.
Electric power-operated boat winches	111.95.
Electric power-operated watertight door systems	111.97.
Hazardous locations	111.105.
Emergency power and lighting system	Part 112.
Fire and smoke detecting and alarm systems	113.10.
Automatic sprinkler alarm system	113.20.
General emergency alarm systems	113.25.
Internal communications	113.30.
Engine order telegraph	113.35.
Steering failure alarm systems	113.43.

Structures and Stability

Comment(s)

Structures:

Provide three examples from your classification society records of major structural failures in classed vessels over the last ten years along with the corrective action taken.

Provide three examples of major breaches in watertight integrity in the last ten years along with corrective action taken.

Provide three examples of major fractures in primary or secondary structural members in the last ten years along with corrective action taken.

List International Association of Classification Societies (IACS) requirements not incorporated into classification rules and discuss why they have not been included.

Demonstrate that Rules meet longitudinal strength requirements of IACS Uniform Requirements.

Rules should address structural materials requirements, including acceptable types, chemical and mechanical properties, certification, and manufacture procedures.

Rules should address structural welding procedures, including joint design, fitup, filler materials, acceptance standards, repair procedures, qualification procedures, NDT procedures.

Rules should include sections addressing requirements for primary and secondary structural members.

Stability: Rules should provide an equivalent level of safety to IMO Resolution A.479(18), Code of Intact Stability for All Types of Ships Covered by IMO Instruments.

Supplement Components

The Coast Guard sees the U.S. Supplement as being comprised of inputs from four distinct areas: critical ship safety systems, U.S. statutory requirements, interpretations of international conventions, and regulations applicable to all vessels sailing in U.S. waters. Statutory requirements are those contained in Titles 33 and 46 of the U.S.C. which are applicable to all U.S. flagged vessels which are eligible for participation in the ACP. International interpretations include those regulations in which the Coast Guard clarifies requirements of international conventions left to the satisfaction of the flag state. For example, SOLAS Chapter II–2, Regulation 4.7.2 states, "Ships shall be provided with fire hoses the number and diameter of which shall be to the satisfaction of the Administration." The Coast Guard provides clarification to this international requirement in 46 CFR 34.10–10, 76.10–10, 95.10–10, and 108.425 where fire hose specifications are spelled out for U.S. flagged vessels. The Coast Guard is working at the IMO to remove vague wording from international conventions such as

SOLAS by harmonizing interpretations with other countries. One of the Coast Guard's long-term goals is to eliminate the need for administration-specific interpretations to international conventions. Regulations applicable to all vessels include the navigation safety and pollution prevention regulations of Title 33 Code of Federal Regulations. The Coast Guard plans to develop and publish a Navigation and Vessel Inspection Circular (NVIC) listing statutory requirements, U.S. interpretations to international conventions, and regulations applicable to all vessels.

In summary, the Coast Guard will review U.S. Supplements submitted by class societies seeking authorization under the ACP against four lists of inputs: statutory requirements, international interpretations, regulations applicable to all vessels, and the critical ship safety systems table. Class societies can and should use these four lists to develop their U.S. Supplement. Anyone seeking information on the content of these lists can contact LCDR Petow or LCDR Pippenger at the number listed under FOR FURTHER INFORMATION. Any item on the lists relating to ship design or construction that is not adequately covered by class rules and applicable international conventions must be included in a U.S. Supplement. Classification societies are in no way prohibited from using the line-by-line approach (comparing class rules and international conventions to Title 46 regulations) in developing their U.S. Supplement. However, the Coast Guard believes the risk-based approach offers a more efficient means with which to develop a U.S. Supplement to classification Society Rules.

Dated: January 29, 1998.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–3628 Filed 2–12–98; 8:45 am]

BILLING CODE 4910–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 187; Mode Select Beacon and Data Link System

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 187 meeting to be held on March 10, 1998, starting at 9 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will be as follows: (1) Introductory Remarks; (2) Review and Approval of the Agenda; (3) Review and Approval of the Summary of the Previous Meeting; (4) Review and Approval of Change 3 to RTCA/DO–181A; (5) Review and Approval of Change 2 to RTCA/DO–218; (6) Other Business; (7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 9, 1998.

Janicie L. Peters,

Designated Official.

[FR Doc. 98–3727 Filed 2–12–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Wilmington International Airport, North Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Wilmington International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 16, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Campus Building, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia, 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Willard G. Plentl, P.E. Airport Director at the following address: Mr. Willard G. Plentl, P.E., Airport Director, Wilmington International Airport, 1740 Airport Boulevard, Wilmington, NC 28405.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the New Hanover County Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Southern Region, Atlanta Airports District Office, Mr. Terry R. Washington, Program Manager, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747, (404) 305–7143.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Wilmington International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 6, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by New Hanover County Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 8, 1998. The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 1998.

Proposed charge expiration date: March 31, 2014.

Total estimated PFC revenue: $8,251,051.

Application number: 98–03–C–00–ILM.

Brief description of proposed project(s): (1) Land acquisition; (2) construction of new equipment building; (3) airfield drainage system rehabilitation; (4) develop daylight/limited use taxiway; (5) establish a 1,000 foot safety area.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: (1) Air Taxi/Commercial Operators (ATCO), and (2) Large Certified Route Air Carriers filing RTSPA Form T–100 having less than 1,000 annual enplanements at ILM.

Any person may inspect the application in person at the FAA office

listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the New Hanover County Airport Authority.

Issued in College Park, Georgia on February 4, 1998.

Dell T. Jernigan,

Manager, Atlanta Airports Division, Southern Region.

[FR Doc. 98–3726 Filed 2–12–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Board of Directors on Thursday, March 19, 1998. The meeting begins at 10:00 a.m. and will have an Administrative Business session at 1:00 p.m. (Voting Board Members and staff Only). The letter designations that follow each item mean the following: (I) is an "information item;" (A) is an action item; (D) is a discussion item. This meeting includes the following items: (1) Introductions and ITS America Antitrust Policy and Conflict of Interest Statements; (2) Review and Approval of Previous Meeting's Minutes (A); (3) Federal Reports (I/D); (4) ISTEA Reauthorization Principles (A); (5) Report of the Executive Committee (I/D); (6) Coordinating Council Report (I); (7) State Chapters Council Reports (I); (8) ITS America Association Report (I); (9) ITS Awareness Program Update (I); (10) Futures Group Report (I); (11) Report of the ITS World Congress and Other International ITS Activities (I/D); (12) 1998 ITS America Annual Meeting (A); (13) ITS America IVI Activities (I/D); (14) Other Program Business. *Business Session* (Begins at 1 p.m.) (15) President's Report (I); (16) Report of the Membership Committee (I); (17) Report of the Membership Committee (I); (18) Governance Policy Report (I/D); (19) Nominating Committee Report (A); (20) Other Business; (21) Adjournment until May 6, 1998, Board of Directors Meeting in Detroit, MI.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of ITS AMERICA will meet on Thursday, March 19, 1998, from 10:00 a.m.–2:00 p.m.

ADDRESSES: Hyatt Regency O'Hare Hotel, Rosemont, IL. *Phone*: (847) 696–1234; *Fax*: (847) 696–1418.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue SW, Suite 800, Washington, D.C. 20024. Persons needing further information or who request to speak at this meeting should contact Kenneth Faunteroy at ITS AMERICA by telephone at (202) 484–4130 or by FAX at (202) 484–3483. The DOT contact is Mary C. Pigott, FHWA, HVH–1, Washington, D.C. 20590, (202) 366–9230. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued: February 9, 1998.

Jeffrey Paniati,

Deputy Director, ITS Joint Program Office.

[FR Doc. 98–3652 Filed 2–12–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA), DOT

[Docket No. RSPA–97–3224; Notice 11]

Pipeline Safety: Environmental Assessment for Risk Management Demonstration Project—Shell Pipe Line Corporation

AGENCY: Research and Special Programs Administration, Office of Pipeline Safety, DOT.

ACTION: Environmental Assessment.

SUMMARY: As part of its Congressional mandate to conduct a Risk Management Demonstration Program, the Office of Pipeline Safety (OPS) has been authorized to conduct demonstration projects with pipeline operators to determine how risk management might be used to complement and improve the existing Federal pipeline safety regulatory process. This is an environmental assessment of Shell Pipe Line Corporation's (SPLC) demonstration project. Based on this environmental assessment, OPS has preliminarily concluded that this proposed project will not have significant environmental impacts.

ADDRESSES: OPS requests that comments about this environmental assessment be submitted on or before March 16, 1998, so they can be considered before project approval. Comments should be sent to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001, or you can E-Mail your comments to ops.comments@rspa.dot.gov. Comments should identify the docket number RSPA–97–3224. Persons should submit the original comment document and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Elizabeth Callsen, OPS, (202) 366–4572, regarding the subject matter of this environmental assessment. Contact the Dockets Unit, (202) 366–9322, for docket material.

SUPPLEMENTARY INFORMATION:

A. Background and Purpose

A Presidential Directive to the Secretary of Transportation (October 16, 1996) stated that in implementing the Pipeline Risk Management Demonstration Program: "The Secretary shall require each project to achieve superior levels of public safety and environmental protection when compared with regulatory requirements that otherwise would apply." Thus, the process to select operators for this Demonstration Program involves a comprehensive review to ensure that the proposed project will provide the superior safety and environmental protection required by this Directive. This document summarizes the key points of this review for Shell Pipe Line Corporation's (SPLC) demonstration project, and evaluates the safety and environmental impacts of this proposed project.

This document was prepared in accordance with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332), the Council on Environmental Quality regulations (40 CFR 1500–1508), and Department of

Transportation Order 5610.1c, Procedures for Considering Environmental Impacts.

B. Description of the Proposed Action

As a result of a comprehensive review of the risk management demonstration project SPLC proposed, the Office of Pipeline Safety (OPS) proposes to approve this project for participation in the Demonstration Program.

The SPLC project would involve two pipeline segments:

(1) Texas-Louisiana 12" Ethylene Pipeline System—205 miles of 250 mi. (Within the States of Texas and Louisiana); and

(2) Cortez 30" Carbon Dioxide (CO2) Pipeline System—260 miles of 502 mi. (Within the States of Colorado and New Mexico).

A full description of the scope of this project appears in 62 FR 67932.

The OPS Project Review Team that conducted this review has concluded the SPLC project will:

1. Provide superior safety and environmental protection for both of the pipeline segments proposed for the demonstration project; and

2. Offer a good opportunity to evaluate risk management as a component of the Federal pipeline safety regulatory program.

The Project Review Team evaluated the project according to review protocols and criteria. This evaluation is documented in "OPS Project Review Team Evaluation of Shell Demonstration Project."

As a candidate for the Pipeline Risk Management Demonstration Program, SPLC conducted a thorough and systematic risk assessment to identify hazards and risks associated with operating both demonstration segments. This risk assessment is described in "OPS Project Review Team Evaluation of Shell Demonstation Project". Teams of SPLC personnel representing each demonstration pipeline system, and possessing an average of over 25 years of expertise in pipeline design, construction, operations, and maintenance, performed the assessments. These assessments confirmed expectations that the greatest risk to both segments is damage by third party excavation activities near the pipelines.

To control this risk, the SPLC teams identified a number of new preventative measures, as well as the enhancement of several existing activities, to address both identifying the possibility of the existence of any past excavation-related damage and the prevention of any future damage of this type. These risk control activities include:

Right of Way Surveillance:

- Increasing the frequency of air patrols beyond 26 per year.
- Improving the timeliness and effectiveness of air patrol reporting.
- Improving line-riding procedures and plans.
- Defining and implementing improved patrol activities at critical locations.

Pipeline Locating:

- Evaluating the need for additional and/or improved style of line markers.
- Labeling line markers with locating information.
- Installing vehicle barriers where above-ground facilities are near roads (Texas—Louisiana line only—no such equipment exists on the Cortez system.).
- Installing warning mesh prior to backfilling when the line is exposed for construction.
- Conducting annual depth of cover surveys at road crossings on the Cortez system; evaluating the need for such surveys on the Texas—Louisiana line.
- Furthering company involvement in and sponsorship of One-Call programs.
- Improving procedures and resources for communicating requirements for and managing third party crossings of the lines.

Public Awareness and Education:

- Conducting dispersion modeling and utilizing the results in improving emergency response plans and drills, and targeting recipients of pipeline safety mailings.
- Providing improved maps and user-friendly information to emergency responders.
- Developing a "Good Neighbor Plan" to increase public awareness.
- Improving existing repair (emergency response) plans and procedures.
- Conducting simulated release drills with emergency responders, and updating the Facility Response Plan manual.
- Conducting a corporate-wide workshop on best practices.

Except as noted above, these activities will be performed on both demonstration segments. In addition, for the Texas—Louisiana line, SPLC will conduct an internal inspection using a geometry/smart pig and compare the results with recent Close Interval Survey results to determine if there are any instances of prior unknown third party damage. For the Cortez system, SPLC will conduct a Close Interval Survey over the entire demonstration segment with emphasis on determining if prior third party damage has occurred. All of the risk control activities proposed by SPLC exceed regulatory requirements.

The OPS Project Review Team has reviewed these risk control activities and believes that significant improvements in Right-of-Way surveillance, pipeline locating, public education and awareness, and identification of the possibility of unknown past third party damage will result from this project. In addition, emergency preparedness would be improved through increased communications with local emergency responders, including the conduct of drills and the sharing of information from release modeling.

SPLC has also identified performance measures to monitor the effectiveness of these risk control activities throughout the life of the demonstration project to ensure that the desired outcome of improved protection is achieved. Measures have also been established to evaluate the institutionalization of risk management within SPLC. The performance measures will form the basis for OPS audits of demonstration project effectiveness.

For the Texas-Louisiana 12" Ethylene Pipeline System, no regulatory exemptions are being sought. The company will still be required to comply with all of the applicable requirements of 49 CFR part 195. In addition, the new and enhanced risk control activities to address third party damage risks will be implemented as noted above.

For the Cortez 30" Carbon Dioxide Pipeline System, relief from the maximum operating pressure requirement of 49 CFR 195.406 (a)(1–3) over a 25-mile segment immediately downstream of the Cortez Station—all of which is located in a rural and sparsely populated area—is being sought under this program. This regulatory requirement remains in full force over the remainder of the Cortez system, and all other applicable Part 195 requirements remain in full force for the entire pipeline. SPLC conducted several technical evaluations to demonstrate the safety of operating the initial 25 miles at the higher pressure. Furthermore, the installation of redundant over pressure protection systems, risk control activities to ensure the existing integrity of line, and safety precautions taken prior to increasing pressure will further minimize the risk associated with the increased operating pressure.

In addition to the risk control activities implemented to minimize the risk associated with increasing the Cortez Station discharge pressure, SPLC will implement the previously mentioned risk control activities to address past and future third party damage over the entire 260 mile Cortez demonstration segment. In addition, over the initial 25 miles downstream of

the Cortez Station, a depth of cover survey will be conducted and correlated with the Close Interval Survey results to help identify if there is any past third party damage.

The SPLC demonstration project does not involve the construction of any new pump station or pipeline. The increased operating pressure will be accomplished by making modifications to the existing Cortez Pump Station. In fact, with the flexibility to raise pressure above regulatory limits, SPLC can increase throughput (the amount of commodity transported) without having to construct an intermediate pump station near Blanco, NM. Such a project would involve major new construction, including bringing utilities to a relatively remote site.

More detailed descriptions of all aspects of the SPLC proposal, risk assessment, and the OPS rationale for approving the project, are available in the following documents:

(1) 62 FR 67932, "Pipeline Safety: Intent To Approve Shell Pipe Line Corporation for the Pipeline Risk Management Demonstration Program", December 30, 1997.

(2) "Demonstration Project Prospectus: Shell Pipe Line Corporation", available by contacting Elizabeth M. Callsen at 202–366–4572. Includes maps of the demonstration segments.

(3) "Shell Pipe Line Corporation—Application for DOT–OPS Risk Management Demonstration Program", available in Docket No. RSPA–97–3224 at the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–5046.

(4) "OPS Project Review Team Evaluation of Shell Demonstration Project".

These documents are incorporated by reference into this environmental assessment and are accessible to the public via the Pipeline Risk Management Information System (PRIMIS), at http://www.cycla.com/opsdemo.

C. Purpose and Need for Action

As authorized by Congress, OPS is conducting a structured Demonstration Program to evaluate the use of a comprehensive risk management approach in the operations and regulation of interstate pipeline facilities. This evaluation is being performed under strictly controlled conditions through a set of demonstration projects being conducted with interstate pipeline operators. Through the Demonstration Program, OPS will determine whether a risk management approach, properly implemented and monitored through a formal risk management regulatory framework, achieves:

(1) Superior safety and environmental protection; and

(2) Increased efficiency and service reliability of pipeline operations.

In May, 1997, SPLC submitted a Letter of Intent to OPS, asking to be considered as a Demonstration Program candidate. Using the consultative process described in Appendix A of the Requests for Application for the Pipeline Risk Management Demonstration Program (62 FR 14719), published on March 27, 1997, OPS is satisfied that SPLC's proposal will provide superior safety and environmental protection, and is prepared to finalize the agreement with SPLC on the provisions for the demonstration project.

D. Alternatives Considered

OPS has considered two alternatives; approval or denial of the SPLC demonstration project.

OPS's preferred alternative is approval of the SPLC demonstration project. OPS is satisfied that the proposal provides protection for both of the demonstration segments. For the Texas-Louisiana ethylene line, all of the proposed risk control activities go beyond the current regulatory requirements and thus provide a higher level of protection than exists today. OPS and SPLC will monitor and, if necessary, improve the effectiveness of the risk control activities throughout the demonstration period.

For the Cortez line, OPS is satisfied that the safety margin in the pipe can accommodate the proposed increase in pressure without adding significant additional risk to the public. Furthermore, SPLC has adequately demonstrated that the combination of third party damage and other risk control activities described earlier more than offset any increase in risk associated with the higher operating pressure in the first 25-miles of the line. If OPS does not approve the SPLC demonstration project, SPLC plans to construct a pump station near Blanco, NM, to achieve increased throughput on the Cortez line without raising pressure beyond regulatory limits. The construction site would be located in desert terrain, would cover approximately three acres, and would require a new right-of-way for the installation of nine to ten miles of electric transmission line.

E. Affected Environment and Environmental Consequences

The two pipelines proposed for this demonstration project transport distinctly different products that represent very different hazards. The Texas-Louisiana line transports chemical-grade ethylene, a flammable, highly volatile liquid that becomes a slightly lighter-than-air gas when released to the atmosphere. Under certain conditions, it could form an explosive vapor cloud until diluted or dispersed. The only potential environmental impact of an ethylene release would be the localized damage created by a fire or explosion in the vicinity of the release. Because of its volatile nature, ethylene is not considered a water pollutant. The Cortez system transports commercial grade carbon dioxide. Carbon dioxide is a naturally occurring component of air and presents no environmental hazard. However, at high concentrations in confined, low lying areas, it could represent an asphyxiation hazard until it is dispersed or diluted.

During the course of the consultation, SPLC presented the results of their risk control and decision support process that identified the risk control activities they propose to implement on the Cortez and Texas-Louisiana systems. The OPS Project Review Team carefully reviewed these activities and concluded that superior protection would be provided for both pipeline systems.

For the Texas-Louisiana Ethylene System, SPLC has not requested any exemptions or variances from the existing regulations. The risk assessment for the Texas-Louisiana system identified damage from third party excavation activities as the most significant contributor to potential pipeline ruptures and leaks. This conclusion is supported by the operating history of this system.

To address these third party damage risks, SPLC proposes to implement a number of risk control activities (mentioned previously). The OPS Project Review Team reviewed the Texas-Louisiana risk control activities during the consultation process and provided input that helped define the final set of activities. As stated previously, all of these risk control activities go beyond the existing regulations in providing additional assurance of safety. The OPS review included an examination for potentially negative, unintended outcomes from the proposed activities: No significant negative impacts were identified. OPS has concluded that the risk control activities listed above when combined

with the existing company practices (which comply with and in some cases exceed 49 CFR part 195 requirements) will reduce the likelihood of pipeline accidents and leaks on the Texas-Louisiana Ethylene System. The insights from the dispersion analysis and the improvements to the emergency response plans and drills should improve the responsiveness of the company and local officials to an event, should a leak or rupture occur. Thus, the consequences of a leak or rupture should be diminished. In summary, based on expected reductions in both the likelihood and consequences of leaks and ruptures, OPS has concluded that the proposed risk control activities will clearly reduce safety and environmental risks on the Texas-Louisiana system.

For the Cortez Carbon Dioxide system, the only activity SPLC proposes to take that would increase risk is increasing the operating pressure downstream of the Cortez pump station. For the initial 25 miles, the pressure might be increased by up to 11% above the limit currently established by the regulations. SPLC has conducted several technical evaluations to demonstrate that it could safely operate the pipeline at the higher pressure over the initial 25 mile segment. Furthermore, the installation of redundant over pressure protection systems, risk control activities to ensure the existing integrity of line, and safety precautions taken prior to and during the increase in pressure will minimize any risk associated with the increased operating pressure.

The risk assessment for the Cortez system identified damage from third party excavation activities as the most significant contributor to potential pipeline ruptures and leaks. To address these risks, SPLC proposes to implement a number of risk control activities (mentioned previously). The OPS Project Review Team reviewed the Cortez risk control activities during the consultation process and provided input that helped define the final set listed previously. This review included an examination for potentially negative, unintended outcomes from the proposed activities. No significant negative impacts were identified.

The PRT has concluded that the risk control activities listed above when combined with the existing company practices (which comply with and in some cases exceed 49 CFR part 195 requirements) will reduce the likelihood of third party damage related events on the Cortez system (the most significant risk to the system). The activities designed to identify instances of prior third party damage should increase the likelihood that prior unknown damage, if any, will be detected and remediated. These activities should minimize the likelihood that any such damage will result in leaks or ruptures at the higher operating pressure. OPS believes that this combination of risk control activities will reduce the likelihood of a Cortez system leak or rupture and more than offset the small increase in likelihood of line failure associated with higher operating pressure.

The insights from the dispersion analysis, the improvements to the emergency response plans and drills, and field personnel training should improve the responsiveness of the company and local officials to an event, should a leak or rupture occur. Thus, the consequences of a leak or rupture should be diminished. In summary, based on expected reductions in both the likelihood and consequences of leaks and ruptures, OPS concludes that the combination of risk control activities in conjunction with the increase in operating pressure by no more than 11% over the first 25 miles will result in superior protection of the public.

F. Environmental Justice Considerations

In accordance with Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority and Low-Income Populations), we have considered the effects of the demonstration project on minority and low-income populations. As explained above, OPS believes this project will provide superior safety and environmental protection along both demonstration project lines. The pipeline segments proposed for the project are routed through rural, sparsely populated, industrial and developing residential areas. A mixture of income levels resides along the segments. The risk control activities provide greater protection than mere compliance with existing regulations. Because risk management activities will be applied uniformly along both lines, residents and communities near each line will be afforded greater protection than they presently have, regardless of the residents' income level or minority status. Therefore, the proposed project does not have any dispropotionately high or adverse health or environmental effects on any minority or low-income populations along the demonstration segments.

G. Information Made Available to States, Local Governments, Individuals

OPS has recently (in January and February 1998) made the following documents publicly available, and incorporates them by reference into this environmental assessment:

(1) 62 FR 67932, "Pipeline Safety: Intent To Approve Shell Pipe Line Corporation for the Pipeline Risk Management Demonstration Program", December 30, 1997.

(2) "Demonstration Project Prospectus: Shell Pipe Line Corporation", January 1998, available by contacting Elizabeth M. Callsen at 202–366–4572. Includes maps of the demonstration segments. Purpose is to reach the public, local officials, and other stakeholders, and to solicit their input about the proposed project. Mailed to over 500 individuals, including Local Emergency Planning Committees (LEPC) and other local safety officials, Regional Response Teams (RRT) representing other federal agencies, state pipeline safety officials, conference attendees, and members of public interest groups.

(3) "Shell Pipe Line Corporation—Application for DOT–OPS Risk Management Demonstration Program", available in Docket No. RSPA–97–3224 at the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001, (202)366–5046.

(4) "OPS Project Review Team Evaluation of Shell Demonstration Project'.

OPS has previously provided information to the public about the SPLC project, and has requested public comment, using many different sources. OPS aired three electronic broadcast (June 5, 1997; September 17, 1997; and December 4, 1997) reporting on demonstration project proposals (including SPLC's proposal). Two earlier **Federal Register** notices (62 FR 40135; July 25, 1997 and 62 FR 53052; October 10, 1997) informed the public that SPLC was interested in participating in the Demonstration Program, provided general information about technical issues and risk control alternatives to be explored, and identified the geographic areas the demonstration project would traverse.

Since August, OPS has used an Internet-accessible data system called the Pipeline Risk Management Information System (PRIMIS) at http://www.cycla.com/opsdemo to collect, update, and exchange information about all demonstration candidates, including SPLC.

At a November 19, 1997, public meeting OPS hosted in Houston, TX, SPLC officials presented a summary of the proposed demonstration project and answered questions from meeting attendees. (Portions of this meeting were broadcast on December 4, 1997. This

broadcast is available on demand via our OPS website ops.dot.gov/tmvid.htm.)

H. Listing of the Agencies and Persons Consulted, Including Any Consultants

Persons/Agencies Directly Involved in Project Evaluation

Stacey Gerard, OPS/U.S. Department of Transportation

James C. Thomas (retired), OPS/U.S. Department of Transportation

Linda Daugherty, OPS/U.S. Department of Transportation

Elizabeth Callsen, OPS/U.S. Department of Transportation

Richard Lopez, OPS/U.S. Department of Transportation

Dana Arabie, Office of Conservation, Louisiana Department of Natural Resources

Mary McDaniel, Gas Services Division, Railroad Commission of Texas

Anthony Karahalios, Colorado Public Utilities Commission

Jim vonHerrmann, Cycla Corporation (consultant)

Robert Brown, Cycla Corporation (consultant).

Persons/Agencies Receiving Briefings/ Project Prospectus/Requests for Comment

Regional Response Team (RRT), Regions 6 & 8, representing the Environmental Protection Agency; the Coast Guard; the U.S. Departments of Interior, Commerce, Justice, Transportation, Agriculture, Defense, State, Energy, Labor; Health and Human Services; the Nuclear Regulatory Commission; the General Services Administration; and the Federal Emergency Management Agency (RRT Co-Chairs: Jim Knoy, EPA Region 8 and Cdr. Ed Stanton, Coast Guard 8th District).

I. Conclusion

Based on the above-described analysis of the proposed demonstration project, OPS has determined that there are no significant impacts associated with this action.

Issued in Washington, DC on February 9, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–3630 Filed 2–12–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–12; OTS No. 1150]

Gloversville Federal Savings and Loan Association, Gloversville, NY; Approval of Conversion Application

Notice is hereby given that on February 5, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Gloversville Federal Savings and Loan Association, Gloversville, New York, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: February 10, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–3702 Filed 2–12–98; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–11; OTS Nos. H–2471 and 12559]

Peoples Bancorp, M.H.C., Lawrenceville, NJ; Approval of Conversion Application

Notice is hereby given that on February 5, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Peoples Bancorp, M.H.C., Lawrenceville, New Jersey, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: February 10, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–3701 Filed 2–12–98; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–10: OTS Nos. H–3032 and 03401]

Pocahontas Federal Mutual Holding Company, Pocahontas, AR; Approval of Conversion Application

Notice is hereby given that on February 3, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Pocahontas Federal Mutual Holding Company, Pocahontas, Arkansas, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039–2010.

Dated: February 10, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–3700 Filed 2–12–98; 8:45 am]

BILLING CODE 6720–01–M

UNITED STATES INFORMATION AGENCY

Advisory Commission on Public Diplomacy; Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: The U.S. Advisory Commission on Public Diplomacy will meet on February 18 in Room 600, 301 4th Street, SW., Washington, DC, from 10 a.m. to 12 noon. At 10 a.m. the Commission will hold a panel discussion on training issues. The panelists are Colonel David Tretler, Dean of Faculty, National War College, and Dan Gillison, Chief of Staff and Manager, Human Resources and Quality, Xerox Corporation. At 11 a.m. the Commissioner will meet with Ms. Ruth Whiteside, Deputy Director, Foreign Service Institute, and Ms. Pamela Corey-Archer, Director of Career Development and Training, USIA, to discuss management's long-term training goals after reorganization and how agencies can adapt to the information technologies that are changing organizations.

FOR FURTHER INFORMATION CONTACT: Please call Betty Hayes, (202) 619–4468, if you are interested in attending the

meeting. Space is limited and entrance to the building is controlled.

Dated: February 9, 1998.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 98–3771 Filed 2–12–98; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 63, No. 30

Friday, February 13, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Civil Penalties

Correction

In notice document 98–2193, beginning on page 5401, in the issue of Monday, February 2, 1998, make the following corrections:

On page 5402, in the table, in the third column, in the third line, "(10/" should be moved to the next line.

On the same page, in the same column, in the fourth line, "440,500" should read "40,500."

BILLING CODE 1505-01-D

federal register

Friday
February 13, 1998

Part II

Federal Trade Commission

16 CFR Parts 1, 300, 301, and 303
Textile Fiber Products Identification Act, the Wool Products Labeling Act, and the Fur Products Labeling Act; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Parts 1, 300, 301, and 303

Rules and Regulations Under the Textile Fiber Products Identification Act, the Wool Products Labeling Act, and the Fur Products Labeling Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (Commission or FTC) amends the Rules and Regulations Under the Textile Fiber Products Identification Act (Textile Rules); the Rules and Regulations under the Wool Products Labeling Act (Wool Rules); the Rules and Regulations under the Fur Products Labeling Act (Fur Rules); and General Procedures, Subpart D, Administration of the Wool Products Labeling Act of 1939, Fur Products Labeling Act, and Textile Fiber Products Identification Act.

The Commission amends the Textile and Wool Rules to: Allow the listing of generic fiber names for fibers that have a functional significance and constitute less than 5% of the total fiber weight of covered products, without requiring disclosure of the functional significance of such fibers; eliminate the requirement that the front side of a label bear the words "Fiber Content on Reverse Side" when the fiber content disclosure is on the back of the label; streamline and simplify the requirements for placing information on labels; incorporate by reference the generic fiber names and definitions for manufactured fibers in International Organization for Standardization (ISO) Standard 2076: 1989, "Textiles—Man-made fibres—Generic names"; and modify the definitions of terms such as "mail order catalog," "mail order promotional material," and "invoice," to include those generated and disseminated electronically through the Internet or E-mail.

The Wool Rules have been modified to add examples of fiber labeling for articles made from the hair of certain cross-bred, wool-bearing animals. In addition, the Commission amends the Textile, Wool, and Fur Rules to specify that a Commission registered identification number (RN) will be subject to cancellation if, after a change in the material information contained on the RN application, a new application that reflects current business information is not promptly received by the Commission. The Commission amends the Fur Rules to increase the cost figure for exemption from the Rules from $20 to $150. Finally, the Commission removes Subpart D from its General Procedures.

DATES: The amended Rules are effective on March 16, 1998. The incorporation by reference of the ISO standard is approved by the Director of the Federal Register as of March 16, 1998.

ADDRESS: Requests for copies of the amended Rules should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Edwin Rodriguez, Attorney, Division of Enforcement, Federal Trade Commission, Sixth St. & Pennsylvania Ave., NW, Washington, DC 20580 (202) 326–3147, or Bret S. Smart, Program Advisor, Los Angeles Regional Office, Federal Trade Commission, 10877 Wilshire Blvd., Suite 700, Los Angeles, CA 90024 (310) 824–4314.

SUPPLEMENTARY INFORMATION:

I. Background

The Textile Fiber Products Identification Act (Textile Act), 15 U.S.C. 70, and the Wool Products Labeling Act (Wool Act), 15 U.S.C. 68, require marketers of covered textile and wool products to mark each product with: (1) The generic names and percentages by weight of the constituent fibers present in the product, in the order of predominance by weight; (2) the name under which the manufacturer or other responsible company does business or, in lieu thereof, the RN issued to the company by the Commission; and (3) the name of the country where the product was processed or manufactured. The Fur Products Labeling Act (Fur Act), 15 U.S.C. 69, requires marketers of covered fur products to mark each product to show: (1) the name of the animal that produced the fur; (2) that the fur product contains or is composed of used fur, when such is the fact; (3) that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact; (4) that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact; (5) the name under which the manufacturer or other responsible company does business or, in lieu thereof, the RN issued to the company by the Commission; and (6) the name of the country of origin of any imported furs used in the fur product. The Textile, Wool, and Fur Acts also contain advertising and recordkeeping provisions. Pursuant to section 7(c) of the Textile Act, 15 U.S.C. 70e(c); section 6(a) of the Wool Act, 15 U.S.C. 68d(a); and section 8(b) of the Fur Act, 15 U.S.C. 69f(b), the Commission has issued implementing regulations, the Textile Rules, 16 CFR Part 303; the Wool Rules, 16 CFR Part 300; and the Fur Rules, 16 CFR Part 301, respectively.

On February 12, 1996, the Commission published a Notice of Proposed Rulemaking requesting public comment on various possible amendments to the Textile Rules (Textile NPR) (61 FR 5340). On December 24, 1996, the Commission published two Notices of Proposed Rulemaking, requesting public comment on various possible amendments to the Wool Rules (Wool NPR) (61 FR 67739) and the Fur Rules (Fur NPR) (61 FR 67748). The 1996 NPRs followed a May 6, 1994 request for comments issued as part of the FTC's ongoing regulatory review program (59 FR 23645–46). In this notice, the Commission announces several amendments to the Textile, Wool, and Fur Rules, adopted as a result of those prior proceedings. The comments, described below, are on the public record and available for inspection during business hours in the Public Reference Branch, Room 130, Federal Trade Commission, Sixth St. and Pennsylvania Ave., N.W., Washington, DC 20580. The comments are cited in this notice by number and a shortened form of the name of the commenting party.

In response to the Textile NPR, 24 comments were filed by 23 parties, including manufacturers, trade associations, and governmental entities.[1] In response to the Wool NPR, nine comments were filed by eight trade associations and governmental entities, six of which had also responded to the

[1] The parties commenting on the Textile NPR are listed below, with the number assigned to each comment by the Office of the Secretary and a shortened form of the name used to cite to the comment hereafter: (1) The Polyester Council of America (PCA); (2) Association of Specialists in Cleaning and Restoration (ASCR); (3) American Fiber Manufacturers Association (AFMA); (4) Monsanto Company (Monsanto); (5) American Polyolefin Association, Inc. (APA); (6) National Association of Hosiery Manufacturers (NAHM); (7) J.C. Penney; (8) Ross & Hardies; (9) United States Association of Importers of Textiles and Apparel (USA–ITA); (10) Wrangler, Inc. (Wrangler); (11) Acrylic Council (Acrylic); (12) American Textile Manufacturers Institute (ATMI); (13) Fruit of the Loom; (14) Department of the Treasury, U.S. Customs Service (Customs); (15) Courtaulds Fibers, Inc. (Courtaulds); (16) Cotton Incorporated (Cotton); (17) American Apparel Manufacturers Association (AAMA); (18) Mexico, Subsecretaria de Negociaciones Comerciales Internacionales (Mexico); (19) Pillowtex Corporation (Pillowtex); (20) National Cotton Council of America (NCCA); (21) Courtaulds Fibers, Inc. (Courtaulds 2); (22) Pittsfield Weaving Company, Inc. (Pittsfield); (23) Industry Canada Consumer Products Directorate (Industry Canada); (24) Senator Strom Thurmond (Sen. Thurmond).

Textile NPR.[2] One comment was filed in response to the Fur NPR.[3]

II. Fiber Content Identification Labeling

A. Fibers Present in Amounts of Less Than 5%

Under the Textile and Wool Acts, a covered product is misbranded if it does not show on a stamp, tag, label or by other means the generic name and percentage of each fiber or combination of fibers present in the amount of 5% or more of the total fiber weight of the product.[4] The Textile Act permits the use of a generic fiber name for a fiber present in an amount less than 5% only when the fiber has a clearly established and definite functional significance when present in the amount contained in the textile product.[5] When such a fiber or combination of fibers does not have a functional significance, it must be identified as "other fiber" or "other fibers."[6] Section 3 of the Textile Rules, 16 CFR 303.3, implements this provision of the Textile Act, also stating, in subsection (b), that when manufacturers or other parties wish to disclose the presence of such a fiber by generic or fiber trademark name, the fiber content disclosure must include the functional significance of the fiber (for example, "4% spandex, for elasticity"). Section 3(b) of the Wool Rules, 16 CFR 300.3(b), contains a similar provision for non-wool fibers in a wool product. The Commission proposed amending both Rules to permit the use of generic fiber names for fibers that have a functional significance and are present in amounts less than 5%, without requiring disclosure of the functional significance.

Many comments supported the Commission's proposed amendment,[7] stating that it would benefit both consumers and businesses by making labels shorter.[8] Two comments in response to the Wool NPR opposed the amendment,[9] asserting that it could result in consumer confusion and even deception as to the value of small amounts of certain fibers in a garment.[10]

The Commission has decided to amend the Textile and Wool Rules by deleting the requirement to disclose functional significance. Eliminating the requirement will benefit industry by shortening and simplifying labels. It will also eliminate the problem of imported products often being delayed at borders for relabeling because labels fail to disclose the functional significance of fibers present in amounts of less than 5%.[11] The amendment will not harm consumers, who often know the functional significance of fibers used in small amounts, such as spandex. Manufacturers may, of course, voluntarily disclose the functional significance of such fibers when the information would be beneficial to consumers.

A few comments also recommended that the Commission amend the Rules to allow the listing of names of non-wool fibers with no functional significance and present in amounts less than 5%.[12] Because the prohibition on naming these fibers is statutory, however, the Commission cannot adopt the suggested amendment. The Commission will consider whether to recommend that Congress amend the Textile and Wool Acts in this manner.[13]

The Wool Rules also have been amended to add a definition of the term "trimmings." Section 300.24 of the Rules (redesignated herein as § 300.23) refers to "trimmings," which, if they do not contain wool, are generally exempt from the fiber content disclosure requirement. Unlike the Textile Rules, however, the Wool Rules do not define the term. The lack of a definition has sometimes resulted in problems, such as the retention of imports at the border by Customs officials or the refusal of delivery of goods by retailers, pending a resolution of the meaning of the term "trimmings" with respect to products covered by the Wool Rules. This problem has been remedied by adding a definition to the Wool Rules (§ 300.1(k)) that is cross-referenced to the definition of "trimmings" contained in the Textile Rules. This cross-reference does not constitute a change in § 300.24 (redesignated as § 300.23); it merely codifies the advice that has consistently been given to industry by Commission staff.

B. "Fiber Content on Reverse Side" Disclosure Requirement

The Textile and Wool Rules require that, with certain exceptions, all three disclosures—fiber content, company name or RN, and country of origin—be

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[2] The parties commenting on the Wool NPR are listed below, with the number assigned to the comment by the Office of the Secretary and a shortened form of the name used to cite to the comment hereafter: (1) American Fiber Manufacturers Association (AFMA); (2) The Wool Bureau, Inc. (Wool Bureau); (3) United States Association of Importers of Textiles and Apparel (USA–ITA); (4) and (4A) Northern Textile Association and Cashmere & Camel Hair Manufacturers Institute (NTA–CCMI); (5) American Textile Manufacturers Institute (ATMI); (6) Department of the Treasury, U.S. Customs Service (Customs); (7) American Apparel Manufacturers Association (AAMA); (8) Industry Canada Consumer Products Directorate (Industry Canada). (To distinguish between the Textile comments and the Wool comments, the term "wool" will be used with the comment number whenever the Wool comments are referenced.)

[3] (1) Fur Information Council of America (FICA).

[4] 15 U.S.C. 70b(b)(1) & (2); 15 U.S.C. 68b(a)(2). The Textile Act exempts certain textile products, including the "outer coverings of furniture." 15 U.S.C. 70j(a)(2). The Wool Act exempts carpets and upholsteries. 15 U.S.C. 68j. ASCR (2), pp.1–3, recommended that the Textile Act be amended to require fiber content identification labeling for the cover fabric of textile upholstered furniture, in order to harmonize with Canada and to provide information to consumers and upholstery cleaners relevant to the selection, use, and care of such furniture. Because the exemption for furniture upholstery is statutory, the Commission cannot require fiber content labeling for upholstery. Of course, manufacturers and sellers that wish to provide fiber content information can do so voluntarily.

[5] The Wool Act requires disclosure of any amount of wool even if under 5%. It does not, however, allow fiber names for other textile fibers present in amounts of less than 5%.

[6] 15 U.S.C. 70b(b)(1) & (2).

[7] J.C. Penney (7) p.1; USA–ITA (9) p.2 and (3-wool) p.2; Wrangler (10) p.1; ATMI (12) p.1 and (5-wool) p.1; Fruit of the Loom (13) p.1; AAMA (17) p.1 and (7-wool) p.1; Mexico (18) p.1; NCC (20) p.1.

[8] J.C. Penney (7) p.3; AAMA (17) p.1.

[9] Wool Bureau (2-wool) pp.1–2; NTA–CCMI (4-wool) p.2.

[10] NTA–CCMI (4), p.2, provided an example of a garment labeled "78% wool, 20% nylon, 2% cashmere," also bearing a prominent sleeve tag stating only "Cashmere Blend." Such labeling, however, would appear to be a violation of § 300.8(d) which provides that "[w]here a generic name * * * is used on any label, whether required or nonrequired, a full and complete fiber content disclosure with percentages shall be made on such label * * *." It may also violate § 300.8(f) which states that "[n]o * * * generic name or word * * * shall be used on any label or elsewhere on the product in such a manner as to be false, deceptive, or misleading as to fiber content * * *." NTA–CCMI (4A), at p.2, advocates prohibition of the naming of specialty fibers, such as "cashmere" or "camel hair," when they are present in quantities of less than 5%. The Commission believes that this proposal would be contrary to the intent of the Wool Act, which requires disclosure of any amount of wool in a product.

[11] Mexico (18) recommended at p.2 that the term "functional significance" be defined to avoid import/export access problems. A functionally significant fiber is a fiber that has an established quality or trait—such as strength or elasticity—when the presence of the fiber in a textile product imparts that same quality or trait to the product.

[12] NAHM (6) p.1; J.C. Penney (7) p.1; Fruit of the Loom (13) p.1. NAHM stated that because of technological advances, such as the production of "microfibers," fibers present in small amounts sometimes impart a "'hand' or feel to a product that are significant to the consumer." The Commission notes that fibers present in amounts less than 5% that impart special characteristics to a textile product may, in fact, have a functional significance enabling them to be listed on the label.

[13] Canada permits naming fibers that do not have a functional significance and are present in small amounts. Industry Canada (23) suggested, at p.2, that the proposed amendment to this section of the Rules would not harmonize with Canadian textile labeling regulations which state that "a fibre present in an amount less than 5% by mass must be stated by generic name or as 'other fibre'." The Commission notes that although the requirements of the two countries are not identical, manufacturers can easily comply with both by listing a fiber that is not functionally significant and present in an amount less than 5% as "other fiber."

made on the front of the label.[14] A proviso to this requirement, however, states that the fiber content disclosure may be placed on the back of a cloth label—sewn to the product at one end so that both sides of the label are readily accessible to the prospective purchaser—"if the front side of such label clearly and conspicuously shows the wording 'Fiber Content on Reverse Side.'" In the 1996 NPRs, the Commission proposed eliminating the "Fiber Content on Reverse Side" disclosure requirement.

Many comments supported the Commission's proposal, noting that consumers are accustomed to looking on both sides of a double-sided label for information about a textile product, and that consumers would be protected as long as the fiber identification information is "conspicuous and accessible."[15] Some asserted that because the amendment would decrease the amount of information required on labels, it would reduce the size of labels and perhaps reduce the cost of labeling for manufacturers and the cost of textile products to consumers.[16] In addition, the amendment would increase NAFTA harmonization by eliminating words that must be translated into French and Spanish to meet the requirements of Canada and Mexico.[17] Industry Canada stated that "[t]he flexibility provided by the amendment would more closely align the US requirements with those of Canada."[18]

The Commission has decided to amend the Textile and Wool Rules to eliminate the requirement that the front side of the label state "Fiber Content on Reverse Side" and to allow fiber content information to appear on the reverse side of any kind of label, not just cloth labels. The Rules further clarify that the required information may appear on the care label, required by the Commission's Trade Regulation Rule on the Care Labeling of Textile Wearing Apparel and Certain Piece Goods, 16 CFR Part 423, a practice already common in the industry. The Commission believes that the amendment will allow manufacturers greater flexibility, without diminishing the value of fiber information to consumers. Other streamlining amendments regarding the arrangement of information on the label will give added flexibility. Because all of the required disclosures must be conspicuous and accessible, there is little likelihood that the amendment will result in harm to consumers.[19]

C. Recognition of ISO Standard for Generic Fiber Names

Section 7(c) of the Textile Act, 15 U.S.C. 70e(c), authorizes and directs the Commission "to make such rules and regulations, including the establishment of generic names of manufactured fibers * * * as may be necessary and proper for administration and enforcement." Section 7 of the Textile Rules, 16 CFR 303.7, sets out the generic names and definitions for manufactured fibers currently recognized by the Commission. (The Wool Rules, 16 CFR 300.8(b), cross reference § 7 of the Textile Rules for purposes of fiber identification.) If a company develops a new fiber and wishes to use a new generic name, the manufacturer or producer of the fiber must file a written application with the Commission, under procedures set forth in 16 CFR 303.8, requesting the establishment of a new generic name for the fiber. The Commission proposed amending the Textile Rules to allow the use of a generic name for a manufactured fiber, if the name and fiber were recognized by an appropriate international standards-setting organization, such as the ISO.

The comments supported the Commission's proposed amendment, asserting that it could expedite the use of new fiber names on packaging and labeling, to the benefit of both manufacturers and consumers.[20] The comments also stated that the proposed amendment would continue to ensure that generic fiber names are used only for fibers that are in fact innovations in fiber technology.[21] Several comments supported Commission recognition of names recognized by the ISO for manufactured fibers.[22] The comments also advocated that the Commission retain its own petition procedure for new manufactured fiber names.[23]

The Commission has decided to amend the Textile Rules to incorporate by reference the generic fiber names and definitions for manufactured fibers in ISO Standard 2076: 1989, "Textiles—Man-made fibres—Generic names."[24] Incorporating the ISO standard will increase international harmonization and benefit manufacturers. A manufacturer or other marketer of a fiber not listed in § 7 of the Textile Rules but recognized in ISO's 1989 standard need not petition the Commission for recognition of the fiber name, but may simply use the ISO established name.[25] In addition, manufacturers may use ISO alternative fiber names for names currently recognized by the Commission. For example, "viscose," a name recognized by ISO, may be used as an alternative generic fiber name for some forms of "rayon."[26] "Elastane" may be used as an alternative to "spandex."[27] As a result, manufacturers will have more flexibility in labeling products for both domestic and international sale.

The Commission believes that consumers will not be harmed by its recognition of the ISO standard. Although the immediate result may be a few new and unfamiliar names on textile labels, consumers will learn these fiber names quickly, just as they have learned the names of new fibers recognized by the Commission through its own petition process.[28] Because most

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[14] 16 CFR 303.16(b); 16 CFR 300.10(a).

[15] J.C. Penney (7) pp.2–3; USA–ITA (9) p.5 and (3-wool) p.2; Wrangler (10) p.1; ATMI (12) pp.1–2 and (5-wool) p.2; Fruit of the Loom (13) p.1; AAMA (17) p.1 and (7-wool) p.2; NCC (20) p.1; Pittsfield (22) p.1; Industry Canada (23) p.2 and (8-wool) p.2; Wool Bureau (2-wool) p.2. NTA–CCMI (4) opposed the proposal, stating, at p. 3, that a "conspicuous and accessible" standard may be inadequate to protect consumers from deception.

[16] J.C. Penney (7) p.2; Wrangler (10) p.1; ATMI (12) pp.1–2; Fruit of the Loom (13) p.1; AAMA (17) p.1 and (7-wool) p.2; Pittsfield (22) p.1.

[17] AAMA (17) p.1 and (7-wool) p.2.

[18] Industry Canada (23) p.2 and (8-wool) p.2.

[19] Mexico (18) stated, at p.2, that in order to accord with Annex 311 of NAFTA and to avoid problems with Customs, the Commission should make it clear that "conspicuous and accessible" means that the label is capable of being easily seen with normal handling of the good. The Commission believes that section 303.16(b) of the Textile Rules, as amended herein, which requires the disclosures to be "set forth in such a manner as to be clearly legible, conspicuous, and readily accessible to the prospective purchaser," is sufficiently clear. Similar language is contained in section 300.10(a) of the Wool Rules. Disclosures that cannot be easily seen with normal handling are not "conspicuous and readily accessible."

[20] AFMA (3) p.5; NAHM (6) p.3; J.C. Penney (7) p.6; USA–ITA (9) p.8; ATMI (12) p.6; Fruit of the Loom (13) p.4; AAMA (17) p.2; NCC (20) p.1. Industry Canada (23) stated, at p.4, that the procedures in the proposed amendment "are consistent with those in Canada, and we would encourage their adoption."

[21] NAHM (6) p.3.

[22] AFMA (3) p.5; J.C. Penney (7) p.6; Fruit of the Loom (13) p.4.

[23] AFMA (3) p.5.

[24] A revision of ISO 2076 is under consideration at this time. The Commission understands that the revised standard will not become effective until sometime next year. When the revised standard is finalized, the Commission will amend the Textile Rules to incorporate the new standard by reference.

[25] Ten fiber names not previously recognized by the Commission are listed in the 1989 ISO Standard. Recognition of new fiber names added by ISO in the future will not be automatic. However, the Commission may accommodate future changes in the ISO Standard by amending the Textile Rules to incorporate the new Standard without going through the petition process.

[26] USA–ITA (9) recommended, at p.8, that the name "viscose" be allowed.

[27] AFMA (3) p. 5 and (1-wool), p.5, stated that the name "elastane" is commonly used worldwide for this fiber.

[28] For example, last year the Commission recognized "lyocell" as a new subclass of rayon. 61 FR 16385 (April 15, 1996). More recently, the Commission recognized "elastoester" as a new generic fiber. 62 FR 28342 (May 23, 1997).

of the fibers recognized by the ISO but not previously recognized by the Commission are not widely used in consumer textile products, the number of new names appearing on consumer labels probably will be small. Of course, it will be in the interests of any manufacturer or distributor marketing fibers or fiber names that are new and unfamiliar to American consumers to provide some kind of consumer education about the nature and properties of the fiber or the fact that the name is the equivalent of a name already familiar to consumers.

The Commission will retain its own list of manufactured fiber names. This will enable manufacturers that use generic names recognized by the Commission, but not recognized by ISO, to continue to use those fiber names. The Commission will also retain its petition procedure to allow manufacturers to apply to the Commission for the recognition of new generic fiber names not recognized by ISO. The American Fiber Manufacturers Association [29] requested that the Commission consider shortening or expediting its petition process. The Commission recognizes that the petition process can be lengthy because fiber name petitions often raise difficult, technical issues. The Commission does not believe that any changes to its procedural Rules are necessary, but will endeavor to shorten the time for review of fiber name petitions that may be filed in the future. Moreover, in the future, the Commission recommends that manufacturers seeking recognition of new fiber names first seek recognition from the ISO. While FTC recognition of new fibers recognized by ISO in the future will not be automatic, it can be accomplished easily by amending the Textile Rules to incorporate the most recent ISO standard.

D. New Specialty Wool Fibers

Wool Act Section 2(b) defines wool as "the fiber from the fleece of the sheep or lamb or hair of the Angora or Cashmere goat (and may also include the so-called specialty fibers from the hair of the camel, alpaca, llama, and vicuna) * * *." The Wool Rules allow mohair or cashmere fiber to be identified as "wool" or by the terms "mohair" or "cashmere" respectively.[30]

In the Wool NPR, the Commission noted that it had been informed that animals are being bred for new specialty fibers. For example, breeders have crossed female cashmere goats with angora males to produce an animal called a "cashgora." [31] Apparently, products made with this fiber are already on the market. The Commission sought comment as to whether it should amend the Wool Rules to include other specialty fibers, such as "cashgora."

The Commission received only two comments on this question. The Northern Textile Association and the Cashmere & Camel Hair Manufacturers Institute, commenting jointly, opposed amendment of the Wool Rules to include specialty fibers other than "mohair" and "cashmere." They stated that the Institute has analyzed these animal hair fibers and concluded that the physical properties of "cashgora" have not been sufficiently described or delineated to warrant inclusion as a specialty fiber under the Wool Rules.[32] No comments were filed by industry members involved in the cross breeding of goats or the production and marketing of products made with the resultant fibers.

Canada noted that although its regulations do not recognize "cashgora" as a generic fiber name, it has issued administrative interpretations permitting the identification of fiber obtained from this cross-bred goat as "Cashgora hair," "Cashgora fibre," "fur fibre," or "wool". Similarly, Canada permits identification of fiber from the paco-vicuna (a cross-breed between the alpaca and the vicuna) as "Paco-vicuna hair," "Paco-vicuna fibre," "fur fibre," or "wool".[33] To further the goal of label harmonization, the Commission has decided to follow the Canadian approach. Section 300.8(g) of the Wool Rules states:

> The term *fur fiber* may be used to describe the hair or fur fiber or mixtures thereof of any animal or animals other than the sheep, lamb, Angora goat, Cashmere goat, camel, alpaca, llama and vicuna. If the name, symbol, or depiction of any animal producing the hair or fur fiber is used on the stamp, tag, label, or other means of identification applied or affixed to the wool product, the percentage by weight of such hair or fur fiber in the total fiber weight of the wool product shall be separately stated in the required fiber content disclosure.

The Commission believes that this section of the Wool Rules already permits the identification of hair or fiber obtained from animals that are the result of cross-breeding between two wool-producing animals. Relevant examples have been added to those already listed at the end of this section.

E. Abbreviations for Generic Fiber Names

In the 1996 Textile and Wool NPRs, the Commission sought comment on a proposal to allow abbreviations for some common fiber names. While a number of industry members supported the idea, others opposed it as potentially confusing to consumers. Moreover, there was a lack of consensus as to which fiber names should be abbreviated and what abbreviations would be clear and appropriate. Most importantly, however, neither Canada nor Mexico allow abbreviations of fiber names; [34] nor do these governments foresee that fiber abbreviations will be feasible in the near future. Because there would be little benefit to U.S. textile producers if abbreviations were not allowed by all of the NAFTA trading partners, the Commission is not amending the rules to allow fiber abbreviations at this time. The Commission will re-examine this issue if, in the future, the Subcommittee on Labelling of Textile and Apparel Goods of the NAFTA Committee on Standards-Related Measures determines that abbreviations are feasible in all of the NAFTA countries.

III. Identification Numbers of Manufacturers or Other Responsible Parties

A. Interchangeable Use of RNs among NAFTA Countries

The Textile, Wool, and Fur Acts require that covered products bear a stamp, tag, or label showing the name, or other identification issued and registered by the Commission, of the manufacturer of the product or one or more persons subject to the Acts.[35] Pursuant to its Rules, the Commission issues registered numbers (RNs) to qualified applicants residing in the United States.[36] Canada has a similar system of "CA" numbers. Mexico does not at this time have a system of registered numbers for members of the textile industry. Mexico issues tax numbers to identify manufacturers and sellers of all products; however, this system was created for a different purpose and is not comparable to the RN and CA identification systems.

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[29] AFMA (3) p.5 and (1-wool) p.6.

[30] Section 19(a) of the Wool Rules, 16 CFR 300.19(a), states: "In setting forth the required fiber content of a product containing hair of the Angora goat known as mohair or containing hair or fleece of the Cashmere goat known as cashmere, the term 'mohair' or 'cashmere,' respectively, may be used for such fiber in lieu of the word 'wool,' provided the respective percentage of each such fiber designated as 'mohair' or 'cashmere' is given."

[31] *See* P. Tortora, Understanding Textiles, Fourth Edition at 106–107 (1992).

[32] NTA–CCMI (4-wool) p.4.

[33] Industry Canada (8-wool) p.4.

[34] Industry Canada (23) p.3 and (8-wool) p. 3; Mexico (18) p.3.

[35] 15 U.S.C. 70b(b)(3); 15 U.S.C. 68b(a)(2)(C); 15 U.S.C. 69b(2)(E).

[36] 16 CFR 303.20; 16 CFR 300.4; 16 CFR 301.26.

In the 1996 NPRs, the Commission sought comment on the advantages, disadvantages, and feasibility of sharing registered number databases among the NAFTA countries, or simply recognizing numbers registered in another NAFTA country, so that manufacturers and importers who wish to use registered numbers, instead of their names, would not have to register in more than one country. The Commission did not propose specific amendments to its Rules because statutory amendments would be needed before it could do so.

Many of the comments supported sharing registered identification information among the NAFTA countries because it would reduce administrative burdens and costs,[37] possibly resulting in savings to consumers.[38] The comments also asserted that sharing information could result in smaller labels, by eliminating multiple numbers, and ease the tracking of responsible parties across borders.[39] Some noted that sharing information is feasible in light of communications technologies now available, such as the Internet.[40]

The Commission believes that an integrated identification information system or, alternatively, mutually recognized identification systems, is a desirable goal for the future. It will pursue discussion of this issue with the NAFTA trading partners through the Subcommittee on Labelling of Textile and Apparel Goods. If appropriate in the future, it will recommend to Congress that the Textile, Wool, and Fur Acts be amended to allow for implementation of such a system.

B. Require RN Holders to Update Registration Information

RNs are subject to cancellation whenever they are procured or used improperly or contrary to the requirements of the Acts and Rules, or when otherwise deemed necessary in the public interest. The RN application form states that RN holders are obligated to notify the Commission about changes in the material information contained on the application. Nonetheless, many RN holders have changed their business name, business address, and/or company type (e.g., from proprietorship to corporation) without notifying the FTC about the change(s). As a result, the RN database currently contains much outdated information, which diminishes its utility to the public. For this reason, the Commission proposed amending the three Rules to add a provision that would subject an RN to cancellation if, after a change in the material information contained on the RN application, a new application reflecting current business information is not promptly received by the Commission.

The comments generally supported the Commission's proposal,[41] and the Commission has determined to incorporate this provision in the three Rules. The Commission believes that this provision is necessary to ensure the continuing utility of the RN database. In addition to containing outdated addresses, the RN database contains numerous entries for firms that are no longer in business.

The RN database is now available at the FTC's web site on the Internet.[42] Firms are urged to look up this service to check whether the information concerning their RN is current, and, if necessary, submit an update. The form to apply for an RN or to update an existing RN also is available on the Internet. The revised form appears in the Textile Rules at § 303.20(d). It has been removed from the Wool and Fur Rules, with the relevant sections cross-referenced to the Textile Rules.

IV. Country of Origin Labeling

A. Consistency Between FTC and U.S. Customs Service Requirements

The Textile and Wool Acts require identification of the country where the product was processed or manufactured.[43] In the Textile NPR, the Commission noted a possible inconsistency between FTC requirements and U.S. Customs Service rulings, effective on July 1, 1996, implementing Section 334 of the Uruguay Round Agreements Act (URAA).[44] Section 33(a)(3) of the Textile Rules and § 25a(a)(3) of the Wool Rules state that a textile product "made in the United States, either in whole or part of imported materials shall contain a label disclosing these facts; for example: 'Made in USA of imported fabric.'" The URAA, on the other hand, provides that the country of origin for certain categories of textile products—flat goods, such as sheets, towels, comforters, handkerchiefs, scarves, and napkins—is the country in which the fabric is created, not the country where further processing of the fabric takes place.[45] Customs has incorporated this "fabric rule" into its rulings implementing the general labeling requirements of Section 304 of the Tariff Act.[46] For the affected products, a country of origin statement that identifies fabric as "imported," but does not name the country in which the fabric was created—such as, "Made in U.S.A. of imported fabric"—will not satisfy Customs' labeling requirements resulting from the new textile origin rules under the URAA.

Country of origin disclosures must comply with the requirements of both FTC and Customs laws and regulations. Since the Textile NPR was published, Commission staff has met with Customs staff, as well as industry representatives, and any apparent inconsistency has now been resolved. A U.S. manufacturer can comply with both requirements by identifying the country of origin of the imported fabric and the fact that the ultimate product was made in the U.S. For example, a scarf of Chinese silk that is cut, dyed, and hemmed in the U.S. could be labeled: "Scarf made in USA of fabric made in China." This label provides consumers with accurate information on the origin of the product, as required by the Textile Act. It also identifies the origin of the fabric, consistent with the new URAA origin rules.[47] Sections 33 of the Textile Rules

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[37] NAHM (6) p.2; J.C. Penney (7) p.2, 4; USA–ITA (9) pp.6–7 and (3-wool), pp.3–4; Wrangler (10) p.1; ATMI (12) p.2 and (5-wool) pp.2–3; Fruit of the Loom (13) p.2; AAMA (17) p.2 and (7-wool) p.2; NCC (20) p.1; Pittsfield (22) p.2. On the other hand, the Fur Information Council (FICA) (1-fur), responding to the Fur Rules NPR, stated that it believes the current system is adequate and there is no need to develop an integrated system.

[38] Fruit of the Loom (13) p.2; Pittsfield (22) p.2.

[39] J.C. Penney (7) p.4; ATMI (12) p.2; Fruit of the Loom (13) p.2.

[40] J.C. Penney (7) p.2, 4.

[41] NAHM (6) p.2; J.C. Penney (7) p.2; USA–ITA (9) p.7 and (3-wool) p.4. One comment objected to the cancellation provision as too drastic. The Commission notes, however, that adverse consequences following a cancellation would be minimal. The canceled number would not be reassigned for some extended period of time, and could be reinstated when the firm furnishes the required updated information.

[42] The Commission's web site address is http://www.ftc.gov. Industry Canada has made CA numbers available on its web site at http://strategis.ic.gc.ca/cpd.

[43] 15 U.S.C. 70b(b)(4) & (5); 15 U.S.C. 68b(a)(2)(D). The Fur Act generally requires that country of origin be identified only for imported furs. 15 U.S.C. 69b(2)(F). Regulations implementing these requirements are found at 16 CFR 303.33; 16 CFR 300.25a; and 16 CFR 301.12.

[44] 19 U.S.C. 3592.

[45] Customs (14) p. 2–3. The textile product categories for which the country of origin is the country in which the fabric is created are listed at 19 U.S.C. 3592(b)(2)(A) and 19 CFR 102.21(c)(3)(ii). 19 CFR 102.21(e) sets out specific rules for each tariff classification.

[46] Customs (14) stated, at p.3, that "the origin rules set forth in section 334 * * * govern the origin determinations for purposes of the labeling requirements under 19 U.S.C. 1304 for textile and apparel products." The Tariff Act requires that every article of foreign origin imported into the United States must be marked to indicate to an ultimate purchaser the English name of the country of origin of the article.

[47] The labeling requirements under the Tariff Act, 19 U.S.C. 1304, apply only to imported articles of foreign origin; in this case, only the fabric (not the scarf itself) is imported and remains of foreign origin under the new URAA textile origin rules.

and 25a (now redesignated as section 25) of the Wool Rules have been amended to add clarifying examples.[48] Rulings issued by Customs regarding country of origin marking pursuant to the URAA indicate that Customs will permit disclosures that comply with the Textile Act, including the requirement to identify the processing and manufacturing of textiles that takes place in the United States.[49]

B. Use of Abbreviations and Symbols in Country of Origin Labeling

The Textile, Wool, and Fur Rules permit the use of abbreviations that "unmistakably indicate the name of a country," such as "Gt. Britain" for "Great Britain."[50] The abbreviation "USA" for "United States" is acceptable and used throughout the examples given for country of origin disclosures. In the 1996 NPRs, the Commission sought comment on the use of abbreviations for its NAFTA trading partners, such as "CAN" for "Canada" and "MEX" for "Mexico." The Commission also sought comment on the viability, benefits, and costs of allowing the use of symbols for the phrases "made in" or "product of" in country of origin disclosures.

Comments addressing this issue generally supported the use of abbreviations to identify the NAFTA countries.[51] Some specifically supported the use of "CAN" and "MEX,"[52] and no alternative abbreviations for these countries were suggested. The Commission believes that, as country of origin designations, "CAN" and "MEX" clearly indicate "Canada" and "Mexico." It notes, however, that at present U.S. Customs rulings do not permit these abbreviations.[53] If in the future, Customs regulations are changed to permit these abbreviations, the Commission will add "CAN" and "MEX" to its Textile, Wool, and Fur Rules as examples of acceptable country abbreviations.

A few comments supported allowing the use of symbols for the phrases "made in" or "product of" in country of origin labeling.[54] Others opposed the use of symbols,[55] or considered them unnecessary.[56] Customs noted that in general its regulations do not require "made in" or "product of" to appear before the name of the country of origin. The exception to this occurs when the name of a country or place other than the actual country of origin also appears on an imported article or its container. In this instance, the words "made in" or "product of," or other words of similar meaning, are required to prevent purchasers from being misled as to the origin of the product.[57] When that requirement is triggered, the use of a symbol to denote "made in" or "product of" would not satisfy Customs marking requirements.[58]

The Textile, Wool, and Fur Rules do not strictly require use of the words "made in" or "product of." In those instances where more than one country is mentioned on a label, as in the examples discussed in section IV.A. above, such words (or words describing more specifically the processing done in a particular country) are probably necessary to convey the required information to the consumer. Where only one country is named on the label, such words may not be needed. In that instance, the use of a symbol, such as a flag, next to the name of a country may be adequate to inform the consumer of the origin of the product.[59]

V. Placement of Label and Disclosures; Label Attachment

For a textile product with a neck, the Textile and Wool Acts,[60] as well as the Textile and Wool Rules, 16 CFR 303.15(b) and 300.5(b), require that a label be affixed to the inside center of the neck midway between the shoulder seams.[61] Both Rules allow for some flexibility by permitting a label containing the country of origin, fiber content, and RN or name of the company to appear in another conspicuous location on the inside or the outside of the garment, if the country of origin also is disclosed on a label affixed to the inside center of the neck or in close proximity. In this event, the country of origin would appear twice on the product. One comment recommended that the Rules be amended to eliminate this redundancy.[62]

The Commission has decided to adopt the suggested amendment and to streamline and simplify the label placement requirements. The three required disclosures may appear either on the same label or on separate labels. In a garment with a neck, the country of origin must continue to appear on the front side of a label in the neck, midway between the shoulder seams or in close proximity thereto. This requirement fulfills the Congressional intent of providing a standard and prominent location for the country of origin. If the fiber content and manufacturer identification appear on labels located somewhere other than the neck, however, the country of origin no longer has to be repeated on the additional label or labels. In addition, the fiber content and the name or RN of the responsible company may appear on the reverse side of a label. All disclosures must be clear, conspicuous and readily accessible to the consumer. Thus, the Commission is substituting a performance standard for the formerly somewhat rigid requirements about the placement of information on textile labels.

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[48] Sections 303.33(a)(3) and 300.25(a)(3) also have been amended to correct a misplaced comma that may have caused confusion by distorting the meaning of these provisions.

[49] Customs has approved the following country of origin markings that identify the processing or manufacturing in the United States in addition to the country of origin of the fabric: "Comforter Made in China Further Processed in U.S." and "Comforter Made in China Sewn in the U.S." (HQ 559625, Jan. 19, 1996); "Comforter Filled, Sewn and Finished in the U.S. With Shell Made in China" (HQ 559627, June 27, 1996); "Made in China Sewn and Stuffed in the U.S." and "Sewn and Stuffed in the U.S./Made in China" (HQ 559736, Apr. 11, 1996). For handkerchiefs and bandannas made in the United States from imported greige goods, Customs has ruled that "Fabric Made in [name of country]/Finished in USA" is an acceptable marking (HQ 559760, July 19, 1996). Customs stated in the same ruling that the use of additional references to U.S. processing, such as "Manufactured in USA from Fabric Made in [name of country]" is a matter within the jurisdiction of the FTC.

[50] 16 CFR 303.33(e); 16 CFR 300.25a(e); 16 CFR 301.12(e)(1).

[51] NAHM (6) p. 2; J.C. Penney (7) p. 2; USA–ITA (9) p. 7–8 and (3-wool) p. 5; Fruit of the Loom (13) p. 3; AAMA (17) p. 2 and (7-wool) p. 1; Pittsfield (22) p. 2–3. Abbreviations for country of origin were opposed by Wrangler (10) p. 2 and ATMI (12) p. 5 and (5-wool), p. 2. Mexico (18) stated, at p. 3, that "[t]he current Mexican Textile Standard, NOM 004–SCFI–1994, does not allow the use of abbreviations for country of origin names."

[52] Fruit of the Loom (13) p. 3; AAMA (17) pp. 2–3 and (7-wool) p. 1; USA–ITA (9) pp. 7–8 and (3-wool) p. 5.

[53] Customs (14) p. 5, citing C.S.D. 80–52 (July 23, 1979); C.S.D. 89–57 (Dec. 27, 1988); T.D. 56545 (4) (Oct. 21, 1965); and *Continental Mexican Rubber Co.* v. *United States*, Abstract No. 39882, 1 CCR 489 (Nov. 17, 1938). (The abbreviation "Mex" may be used to indicate Mexico as the country of origin only if it is used in conjunction with the name of the Mexican city and state in which the good originates.) Customs also noted that, pursuant to 19 U.S.C. 1625, any interested party may request reconsideration of these rulings.

[54] NAHM (6) p. 2–3; Fruit of the Loom (13) p. 3; Pittsfield (22) p. 2–3.

[55] Wrangler (10) p. 2; ATMI (12) p. 5 and (5-wool) p. 2; AAMA (17) p. 3 and (7-wool) p. 2.

[56] USA–ITA (9) p. 8 and (3-wool) p. 5.

[57] Customs (14) p. 6 and (6-wool) p. 3. The special requirements for such products are found at 19 CFR 134.46 (amended by TD–72) and 134.47.

[58] Customs (14) p. 7–8 and (6-wool) p. 3.

[59] Customs (14) p. 6 and (6-wool) p. 3 states that this disclosure would satisfy its marking requirements.

[60] 15 U.S.C. 70b(j); 15 U.S.C. 68b(f).

[61] ATMI (12) requested, at p. 4, that the Rules not require the label to be placed in the neckline because consumers often complain about irritation from labels. Because the requirement is statutory, the Commission cannot amend the Rules in this regard. The amendments to the Rules, however, clarify that the only disclosure required to be placed in the neck is the country of origin of the product.

[62] J.C. Penney (7) p. 2.

The Textile, Wool, and Fur Rules do not require permanent labels for the disclosures mandated by the Textile, Wool, and Fur Acts. They merely require that the label be sufficiently durable to remain affixed to the product until purchased by the consumer. The Textile and Wool NPRs sought comment on whether those Rules should be amended to require a permanent label.

Some comments supported requiring a permanent label for these disclosures because:

(1) Fiber content information is often necessary for post point-of-purchase reasons, such as determining the proper care method to be used, the recycling of textile products, and identifying fiber allergies; (2) a permanent country of origin label might make it more difficult to illegally relabel and trans-ship textile goods; and (3) permanent manufacturer identification information would help consumers in the event of a product defect or a product recall.[63] Other comments opposed amending the Rules to require a permanent label, stating that the Rules have worked well to date without such a requirement and that textile fiber product construction considerations may prevent the use of permanent labels for some products.[64]

The Commission has decided not to amend these Rules to require a permanent label for the disclosures required by the Textile, Wool and Fur Acts. Permanent labels are already widely used to make the required disclosures. U.S. Customs notes that its laws require country of origin labels to be permanently affixed to imported articles of wearing apparel.[65] Because of the Customs requirement, many manufacturers sew in labels with the information required by the Commission's Rules.[66] In addition, many manufacturers elect to place fiber information on the permanent care label that must be affixed to textile apparel products.[67] Because U.S. Customs requirements and voluntary industry practice often provide consumers with the benefits of a permanent label, the Commission has decided not to impose any additional requirement at this time. In considering proposed changes to its Care Labeling Rule, however, the Commission will consider requiring fiber identification on permanent labels for textile items with certain kinds of care instructions.[68] This could be accomplished easily by placing the fiber identification on the permanent care label, as many garment manufacturers already are doing.

VI. Internet Promotions and Electronic Transactions

Definitions of "mail order catalog" and "mail order promotional material" in the Textile and Wool Rules have been modified to recognize that such direct sales materials are now being disseminated on the Internet. Therefore, the statutory requirement that country of origin be disclosed in catalogs also applies to catalogs appearing on the Internet. Section 303.40 of the Textile Rules, addressing use of terms in written advertisements that imply the presence of a particular fiber, has been modified to include advertisements disseminated through the Internet or similar electronic media. Finally, definition of the term "invoice," used throughout the Textile and Wool Rules, has been revised to recognize that these documents may now be generated and disseminated electronically.

VII. Increase in Cost Figure for Exemption Under the Fur Rules

The Fur Rules, 16 CFR 301.39, provide for an exemption from some of the requirements of the Fur Act and Rules for fur trim or other fur items for which the cost to the manufacturer, or the manufacturer's selling price, does not exceed $20. Because this amount was last adjusted for inflation in 1969, the Fur NPR sought comment on an appropriate increase to this amount. The Fur Information Council of America, the only party to comment on the Fur Rules, urged that the amount be raised to $145, to account both for inflation and for the increasing cost of fur due to increase in demand.[69]

The Commission has determined to raise the exemption figure to $150. Given the increases in fur prices since 1969, as pointed out by the Fur Information Council, it appears that this amount would ensure that only items substantially made of fur would be subject to the Fur Rules.

VIII. Administration of the Textile, Wool, and Fur Rules

Subpart D of the Commission's procedural rules, 16 CFR 1, sets forth procedures with respect to requesting RNs and filing continuing guaranties[70] with the Commission. Because these provisions merely duplicate information already contained in the Textile, Wool, and Fur Rules, the Commission is removing Subpart D from the CFR.

IX. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–12, requires that the agency conduct an analysis of the anticipated economic impact of the proposed amendments on small businesses.[71] The purpose of a regulatory flexibility analysis is to ensure that the agency considers impact on small entities and examines alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA, 5 U.S.C. 605, provides, however, that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

Because the Textile, Wool, and Fur Acts, and the three sets of regulations issued thereunder, cover the manufacture, sale, offering for sale, and distribution of textile, wool, and fur products, respectively, the Commission believes that any amendments to the Textile, Wool, and Fur Rules may affect a substantial number of small businesses. Unpublished data prepared by the U.S. Census Bureau under contract to the Small Business Administration (SBA) show that there are many apparel manufacturers, covered by the Wool and/or Textile Rules, that are considered to be small businesses under applicable SBA size standards.[72] For example, there are 288 manufacturers of men's and boys' suits and coats (SIC Code 2311), more than 75% of which are small businesses. There are 488 manufacturers of men's and boys' shirts (SIC Code 2321), 75% of which are small businesses. More than 1,000 establishments manufacture women's, misses'', and juniors' suits, skirts, and coats (SIC Code 2337), most

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[63] ATMI (12) p. 2, 4 and (5-wool) p. 4; Fruit of the Loom (13) p. 3–4; Pittsfield (22) p. 1–2; NTA–CCMI (4) p. 3.

[64] USA–ITA (9) p. 5 and (3-wool) pp. 2–3; AAMA (17) p. 2 and (7-wool) p. 3; Industry Canada (23) p. 3 and (8-wool) p. 4.

[65] Customs (14) p. 2 and (6-wool) pp. 1–2.

[66] USA-ITA (9) p. 5 and (3-wool) pp. 2–3.

[67] Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods, 16 CFR 423.1(a).

[68] An Advance Notice of Proposed Rulemaking on the Care Labeling Rule was published in 60 FR 67102 (Dec. 28, 1995).

[69] FICA (1-fur) p. 2.

[70] A continuing guaranty is a guaranty from a seller to a buyer that textile, wool, or fur products that it sells are labeled in compliance with the relevant statute and regulations. 16 CFR 303.37–303.38; 16 CFR 300.33; and 16 CFR 301.48. A continuing guaranty can be filed with the FTC in the form that appears in the Textile Rules, § 303.38(b); the form has been removed from the Wool and Fur Rules, which are simply cross-referenced to the Textile Rules.

[71] The RFA addresses the impact of rules on "small entities," defined as "small businesses," "small governmental entities," and "small [not-for-profit] organizations." 5 U.S.C. 601. The Textile, Wool, and Fur Rules do not apply to the latter two types of entities.

[72] SBA's revised small business size standards are published at 13 CFR Part 121 (1997).

of which are small businesses. More than 1,400 establishments manufacture women's shirts and blouses (SIC Code 2331), about 95% of which are small businesses. There are 181 establishments manufacturing fur goods (SIC Code 2371), all of which are small businesses. Other small businesses are involved in the distribution and sale of products subject to one or more of these rules.

In the 1996 NPRs, the Commission stated its preliminary conclusion that the proposed amendments would not have a significant economic impact upon such entities. Comments received during the 1994 regulatory review of the Textile, Wool, and Fur Rules indicated that the current costs of complying with the Rules and their enabling statutes are minimal. Comments received in response to the 1996 NPRs indicated that the proposed amendments would not increase costs and might result in some small savings to the industry.

Elimination of required disclosures of: (1) Functional significance of named fibers present in less than 5% of product weight and (2) "Fiber Content on Reverse Side," in the Textile and Wool Rules, do not place any additional burdens or costs on manufacturers or sellers. By reducing the size of labels and enabling more efficient labeling of products traded within NAFTA countries, these amendments likely will result in slight cost reduction. Similarly, eliminating the repetition of country of origin and the streamlining of label placement requirements also may reduce the size of labels and simplify labeling requirements, resulting in slight cost savings. The incorporation into the Textile Rules of ISO Standard 2076: 1989, "Textiles—Man-made fibres—Generic names" will benefit manufacturers and sellers by increasing international harmonization. It will obviate the need for some petitions to the Commission to recognize additional generic fiber names, resulting in some cost savings to both government and industry.

Amending the Textile, Wool, and Fur Rules to clarify that an RN is subject to cancellation if, after a change in the material information contained on the RN application, a new application reflecting current business information is not promptly received by the Commission, is a clarifying provision that does not impose new obligations on businesses. Furthermore, while Commission cancellation of an identification number would require a business to re-apply, this may be done simply by submitting the identifying information already called for in the Rules. Therefore, the amendments will not impose any significant economic costs on industry members.

The addition to the Textile and Wool Rules of clarifying examples of country of origin disclosures that comply with both Commission and Customs law is not a substantive amendment to the Rules. It merely provides guidance as to how firms affected by both sets of regulations, including recent Customs regulations adopted pursuant to section 334 of the URAA, can easily craft disclosures to comply with both.

The increase from $20 to $150 of the cost figure exempting certain fur products from some requirements of the Fur Rules constitutes an inflationary and market adjustment that will slightly reduce compliance costs and burdens for members of this industry. The change, while likely important to some firms, is not expected to have a significant impact on the fur industry.

Finally, amendment of the Textile and Wool Rules to recognize that promotions and transactions can take place by means of computers does not impose significant economic costs on the industry. It merely updates the Rules to reflect the fact that printed materials, such as catalogs and invoices, can now be generated and transmitted electronically.

On the basis of available information, the Commission certifies that the amendments to the Textile, Wool, and Fur Rules, announced herein, will not have a significant economic impact on a substantial number of small businesses. Therefore, a final regulatory flexibility analysis is not necessary or appropriate.

X. Paperwork Reduction Act

The Textile, Wool, and Fur Rules contain various collection of information requirements for which the Commission has obtained clearance under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, Office of Management and Budget (OMB) Control Numbers 3084–1010, 3084–0100, 3084–0099. These requirements relate to the accurate disclosure of material information about textile, wool, and fur products, including fiber or fur content and country of origin. The Rules also require manufacturers and other marketers of covered products to maintain records that support claims on labels. Most of the disclosure requirements and all of the recordkeeping requirements are specifically mandated by the Textile, Wool, and Fur Acts. *See* 15 U.S.C. 70b, 70d; 15 U.S.C. 68b, 68d; 15 U.S.C. 69b, 69f, respectively.

The Commission has also obtained OMB clearance for: (1) Petitions under the Textile Rules requesting the establishment of generic names for textile fibers; (2) petitions under the Wool Rules concerning whether or not representations of the fiber content of a class of articles are commonly made, or whether or not the textile content of certain products is insignificant or inconsequential; and (3) petitions for an exemption under the Fur Act. A Notice soliciting public comments on extending these clearances through December 31, 1999, was published in the **Federal Register** last year. 61 FR 43764, 43766–67 (Aug. 26, 1996).

The amendments adopted herein will lower the paperwork burden associated with the current Rules. Eliminating certain disclosures (the functional significance of named fibers present in small amounts; the words "Fiber Content on Reverse Side;" and the repetition of the country of origin on certain kinds of labels) from the Textile and Wool Rules will allow for greater flexibility in labeling and will reduce labeling burdens. The incorporation into the Textile Rules of ISO Standard 2076: 1989, "Textiles—Man-made fibres—Generic names" will reduce labeling burdens by increasing international harmonization. In addition, it will obviate the need for some petitions to the Commission to recognize additional generic fiber names, thus lowering paperwork burdens.

The amendments to the Textile, Wool, and Fur Rules regarding the cancellation of RN numbers does not impose a paperwork burden on holders of RNs. The Rules, at 16 CFR 303.20, 16 CFR 300.4, and 16 CFR 301.26, already require companies to notify the FTC about changes in business names, addresses, company type, etc. The current proposal merely adds the element of cancellation by the Commission if these requirements are not met. Neither the initial filing procedures nor the requirement to update the information are new and therefore, no "burden" is imposed.

More importantly, the underlying certification itself does not meet the definition of "information" contained in the PRA. In implementing the Paperwork Reduction Act of 1995, OMB attempted to clarify the exemption for "certifications" in both the Notice of Proposed Rulemaking, 60 FR 30438, 30439 (June 8, 1995), and the Final Rule, 61 FR 44978, 44979 (Aug. 9, 1995) ("the exemption applies when the certification is used to identify an individual in a 'routine, non-intrusive, non-burdensome way'.") This language reflects current guidance in OMB/OIRA's Information Collection Review Handbook (1989), which discusses

exempt categories of inquiry (5 CFR 1320.3(h)(1)–(10)) that are not deemed to constitute "information." Certifications, as well as other forms of acknowledgments, comprise one of these categories.[73] Such inquiries are considered to be routine because response to the requests rarely requires examination of records, usually does not require consideration about the correct answer, and usually is provided on a form supplied by the government. See OMB/OIRA Handbook, p. 29. Accordingly, OMB's regulations exempt certifications from the clearance requirement, provided that no information need be reported beyond certain basic identifying information.[74]

List of Subjects in 16 CFR Parts 1, 300, 301, and 303

Furs, Incorporation by reference, Labeling, Textile fiber products identification, Trade practices, Wool products.

For the reasons set forth above, the Commission amends 16 CFR Part 1, 16 CFR Part 300, 16 CFR Part 301, and 16 CFR Part 303, as follows:

PART 1—GENERAL PROCEDURES

1. The authority citation for Part 1 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

Subpart D (§§ 1.31–1.34) [Removed]

2. Subpart D—Administration of the Wool Products Labeling Act of 1939, Fur Products Labeling Act, and Textile Fiber Products Identification Act, containing §§ 1.31, 1.32, 1.33, and 1.34, is removed.

PART 300—RULES AND REGULATIONS UNDER THE WOOL PRODUCTS LABELING ACT OF 1939

1. The authority citation for Part 300 continues to read as follows:

Authority: 15 U.S.C. 68 *et seq.* and 15 U.S.C. 70 *et seq.*

2. Section 300.1 is amended by revising paragraph (h) and adding paragraphs (j) and (k) to read as follows:

§ 300.1 Terms defined.

* * * * *

(h) The terms *mail order catalog* and *mail order promotional material* mean any materials, used in the direct sale or direct offering for sale of wool products, that are disseminated to ultimate consumers in print or by electronic means, other than by broadcast, and that solicit ultimate consumers to purchase such wool products by mail, telephone, electronic mail, or some other method without examining the actual product purchased.

* * * * *

(j) The terms *invoice* and *invoice or other paper* have the meaning set forth in § 303.1(h) of this chapter.

(k) The term *trimmings* has the meaning set forth in § 303.12 of this chapter.

3. Section 300.3(b) is revised to read as follows:

§ 300.3 Required label information.

* * * * *

(b) In disclosing the constituent fibers in information required by the Act and regulations in this part or in any non-required information, no fiber present in the amount of less than 5 percent shall be designated by its generic name or fiber trademark but shall be designated as "other fiber," except that the percentage of wool or recycled wool shall always be stated, in accordance with section 4(a)(2)(A) of the Act. When more than one of such fibers, other than wool or recycled wool, are present in amounts of less than 5 percent, they shall be designated in the aggregate as "other fibers." Provided, however, that nothing in this section shall prevent the disclosure of any fiber present in the product which has a clearly established and definite functional significance when present in the amount stated, as for example:

"98% wool
2% nylon."

4. In § 300.4, the section heading and paragraphs (c) and (e) are revised to read as follows, and the form following paragraph (e) is removed:

§ 300.4 Registered identification numbers.

* * * * *

(c) Registered identification numbers shall be used only by the person or firm to whom they are issued, and such numbers are not transferable or assignable. Registered identification numbers shall be subject to cancellation whenever any such number was procured or has been used improperly or contrary to the requirements of the Acts administered by the Federal Trade Commission, and regulations in this part, or when otherwise deemed necessary in the public interest. Registered identification numbers shall be subject to cancellation if the Commission fails to receive prompt notification of any change in name, business address, or legal business status of a person or firm to whom a registered identification number has been assigned, by application duly executed in the form set out in paragraph (e) of this section, reflecting the current name, business address, and legal business status of the person or firm.

* * * * *

(e) The form to apply for a registered identification number or to update information pertaining to an existing number is found in § 303.20(d) of this Chapter. The form is available upon request from the Commission's Los Angeles Regional Office, 10877 Wilshire Blvd., Suite 700, Los Angeles, CA 90024, or on the Internet at http://www.ftc.gov.

5. Section 300.5(b) is revised to read as follows:

§ 300.5 Required label and method of affixing.

* * * * *

(b) Each wool product with a neck must have a label disclosing the country of origin affixed to the inside center of the neck midway between the shoulder seams or in close proximity to another label affixed to the inside center of the neck. The fiber content and RN or name of the company may be disclosed on the same label as the country of origin or on another conspicuous and readily accessible label or labels on the inside or outside of the garment. On all other wool products, the required information shall be disclosed on a conspicuous and readily accessible label or labels on the inside or outside of the product. The country of origin disclosure must always appear on the front side of the label. Other required information may appear either on the front side or the reverse side of a label, provided that the information is conspicuous and readily accessible.

* * * * *

6. The last sentence of section 300.8(g) is revised to read as follows:

§ 300.8 Use of fiber trademark and generic names.

* * * * *

(g) * * * The following are examples of fiber content disclosures under this paragraph:

60% Wool
40% Fur Fiber
or
60% Wool

---

[73] Specifically, the first category consists of: "affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgments." 5 CFR 1320(h)(1).

[74] The information required on an RN application includes only the following: name of applicant firm, address of applicant, type of company, type of business, products, certification that the listed products are subject to the Textile, Wool, or Fur Acts, the name and title of the person completing the application, and the date. The form also includes spaces to enter, at the option of the applicant, telephone and fax numbers, web site address, and E-mail address.

30% Fur Fiber
10% Angora Rabbit
or
100% Cashgora Hair
or
100% Paco-Vicuna Hair

7. Section 300.10 is revised to read as follows:

§ 300.10 Disclosure of information on labels.

(a) Subject to the provisions of § 300.5(b), the required information may appear on any label or labels attached to the product, including the care label required by 16 CFR Part 423, provided all the pertinent requirements of the Act and regulations in this part are met and so long as the combination of required information and non-required information is not misleading. All parts of the required information shall be set forth in such a manner as to be clearly legible, conspicuous, and readily accessible to the prospective purchaser. All parts of the required fiber content information shall appear in type or lettering of equal size and conspicuousness.

(b) Subject to the provisions of § 300.8, any non-required information or representations placed on the product shall not minimize, detract from, or conflict with required information and shall not be false, deceptive, or misleading.

§ 300.21 [Removed]

§§ 300.22 through 300.25b [Redesignated as §§ 300.21 through 300.25a]

8. Section 300.21 is removed, and §§ 300.22, 300.23, 300.24, 300.25, 300.25a, and 300.25b are redesignated as 300.21, 300.22, 300.23, 300.24, 300.25, and 300.25a, respectively.

9. Newly redesignated § 300.25 is amended by revising paragraphs (a)(3), (a)(4) introductory text, and (a)(4)(i) to read as follows:

§ 300.25 Country where wool products are processed or manufactured.

(a) * * *

(3) Each wool product made in the United States, either in whole or in part of imported materials, shall contain a label disclosing these facts; for example:

"Made in USA of imported fabric"
or
"Knitted in USA of imported yarn" and

(4) Each wool product partially manufactured in a foreign country and partially manufactured in the United States shall contain on a label the following information:

(i) The manufacturing process in the foreign country and in the USA; for example:

"Imported cloth, finished in USA"
or
"Sewn in USA of imported components"
or
"Made in (foreign country), finished in USA"
or
"Scarf made in USA of fabric made in China"
or
"Comforter Filled, Sewn and Finished in the U.S. With Shell Made in China"

* * * * *

10. Section 300.33(b) is revised to read as follows, and the form following paragraph (b) is removed:

§ 300.33 Continuing guaranty filed with Federal Trade Commission.

* * * * *

(b) The prescribed form for a continuing guaranty is found in § 303.38(b) of this chapter. The form is available on request from the Federal Trade Commission's Los Angeles Regional Office, 10877 Wilshire Blvd., Suite 700, Los Angeles, CA 90024.

* * * * *

PART 301—RULES AND REGULATIONS UNDER THE FUR PRODUCTS LABELING ACT

1. The authority citation for Part 301 continues to read as follows:

Authority: 15 U.S.C. 69 *et seq.*

2. In § 301.26, the section heading and paragraphs (b)(2) and (d) are revised to read as follows, and the form following paragraph (d) is removed:

§ 301.26 Registered identification numbers.

* * * * *

(b)(1) * * *

(2) Registered identification numbers shall be subject to cancellation if the Federal Trade Commission fails to receive prompt notification of any change in name, business address, or legal business status of a person or firm to whom a registered identification number has been assigned, by application duly executed in the form set out in paragraph (d) of this section, reflecting the current name, business address, and legal business status of the person or firm.

* * * * *

(d) The form to apply for a registered identification number or to update information pertaining to an existing number is found in § 303.20(d) of this chapter. The form is available upon request from the Commission's Los Angeles Regional Office, 10877 Wilshire Blvd., Suite 700, Los Angeles, CA 90024, or on the Internet at http://www.ftc.gov.

3. In § 301.39, the first sentence of paragraph (a) and paragraph (c) are revised to read as follows:

§ 301.39 Exempted fur products.

(a) If the cost of any fur trim or other manufactured fur or furs contained in a fur product, exclusive of any costs incident to its incorporation therein, does not exceed one hundred fifty dollars ($150) to the manufacturer of the finished fur product, or if a manufacturer's selling price of a fur product does not exceed one hundred fifty dollars ($150), and the provisions of paragraphs (b) and (c) of this section are met, the fur product shall be exempted from the requirements of the Act and regulations in this part; provided, however, that if the fur product is made of or contains any used fur, or if the fur product itself is or purports to be the whole skin of an animal with the head, ears, paws and tail, such as a choker or scarf, the fur product is to be labeled, invoiced and advertised in accordance with the requirements of the Act and regulations in this part, regardless of the cost of the fur used in the fur product or the manufacturer's selling price. * * *

* * * * *

(c) If a fur product is exempt under this section and the manufacturer's selling price exceeds one hundred fifty dollars ($150), the manufacturer's or wholesaler's invoice shall carry information indicating such fur product is exempt from the provisions of the Act and regulations in this part; as for example: "FPL EXEMPT."

4. The heading of § 301.48 and paragraph (a)(3) are revised to read as follows, and the form following paragraph (a)(3) is removed:

§ 301.48 Continuing guaranty filed with Federal Trade Commission.

* * * * *

(a)(3) The prescribed form for a continuing guaranty is found in § 303.38(b) of this chapter. The form is available on request from the Federal Trade Commission's Los Angeles Regional Office, 10877 Wilshire Blvd., Suite 700, Los Angeles, CA 90024.

* * * * *

PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

1. The authority citation for Part 303 continues to read as follows:

Authority: 15 U.S.C. 70 *et seq.*

2. Footnote 1 of Part 303 is removed.

3. In § 303.1, paragraphs (h) and (u) are revised to read as follows:

§ 303.1 Terms defined.

* * * * *

(h) The terms *invoice* and *invoice or other paper* mean an account, order, memorandum, list, or catalog, which is issued to a purchaser, consignee, bailee, correspondent, agent, or any other person, in writing or in some other form capable of being read and preserved in a tangible form, in connection with the marketing or handling of any textile fiber product transported or delivered to such person.

* * * * *

(u) The terms *mail order catalog* and *mail order promotional material* mean any materials, used in the direct sale or direct offering for sale of textile products, that are disseminated to ultimate consumers in print or by electronic means, other than by broadcast, and that solicit ultimate consumers to purchase such textile products by mail, telephone, electronic mail, or some other method without examining the actual product purchased.

4. Section 303.3 is revised to read as follows:

§ 303.3 Fibers present in amounts of less than 5 percent.

(a) Except as permitted in sections 4(b)(1) and 4(b)(2) of the Act, as amended, no fiber present in the amount of less than 5 percent of the total fiber weight shall be designated by its generic name or fiber trademark in disclosing the constituent fibers in required information, but shall be designated as "other fiber." When more than one of such fibers are present in a product, they shall be designated in the aggregate as "other fibers." Provided, however, that nothing in this section shall be construed as prohibiting the disclosure of any fiber present in a textile fiber product which has a clearly established and definite functional significance when present in the amount contained in such product, as for example:

96 percent Acetate
4 percent Spandex.

(b) In making such disclosure, all of the provisions of the Act and regulations in this part setting forth the manner and form of disclosure of fiber content information, including the provisions of §§ 303.17 and 303.41 of this part relating to the use of generic names and fiber trademarks, shall be applicable.

5. Section 303.7 is amended by revising the introductory text to read as follows:

§ 303.7 Generic names and definitions for manufactured fibers.

Pursuant to the provisions of section 7(c) of the Act, the Commission hereby establishes the generic names for manufactured fibers, together with their respective definitions, set forth in this section and the generic names for manufactured fibers, together with their respective definitions, set forth in International Organization for Standardization (ISO) Standard 2076: 1989, "Textiles—Man-made fibres—Generic names." This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute, 11 West 42nd St., 13th floor, New York, N.Y. 10036. Copies may be inspected at the Federal Trade Commission, room 130, 6th St. & Pennsylvania Ave., NW, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St., NW, Suite 700, Washington, DC.

* * * * *

6. Section 303.8(a) introductory text is revised to read as follows:

§ 303.8 Procedure for establishing generic names for manufactured fibers.

(a) Prior to the marketing or handling of a manufactured fiber for which no generic name has been established or otherwise recognized by the Commission, the manufacturer or producer thereof shall file a written application with the Commission, requesting the establishment of a generic name for such fiber, stating therein:

* * * * *

7. Section 303.15(b) is revised to read as follows:

§ 303.15 Required label and method of affixing.

* * * * *

(b) Each textile fiber product with a neck must have a label disclosing the country of origin affixed to the inside center of the neck midway between the shoulder seams or in close proximity to another label affixed to the inside center of the neck. The fiber content and RN or name of the company may be disclosed on the same label as the country of origin or on another conspicuous and readily accessible label or labels on the inside or outside of the garment. On all other textile products, the required information shall be disclosed on a conspicuous and readily accessible label or labels on the inside or outside of the product. The country of origin disclosure must always appear on the front side of the label. Other required information may appear either on the front side or the reverse side of a label, provided that the information is conspicuous and readily accessible.

* * * * *

8. In § 303.16, paragraphs (a) introductory text, (a)(1), (b), and (c) are revised to read as follows:

§ 303.16 Arrangement and disclosure of information on labels.

(a) Subject to the provisions of § 303.15(b), information required by the Act and regulations in this Part may appear on any label or labels attached to the textile fiber product, including the care label required by 16 CFR Part 423, provided all the pertinent requirements of the Act and regulations in this Part are met and so long as the combination of required information and non-required information is not misleading. The required information shall include the following:

(1) The generic names and percentages by weight of the constituent fibers present in the textile fiber product, excluding permissive ornamentation, in amounts of 5 percent or more and any fibers disclosed in accordance with § 303.3(a) shall appear in order of predominance by weight with any percentage of fiber or fibers required to be designated as "other fiber" or "other fibers" appearing last.

* * * * *

(b) All parts of the required information shall be set forth in such a manner as to be clearly legible, conspicuous, and readily accessible to the prospective purchaser. All parts of the fiber content information shall appear in type or lettering of equal size and conspicuousness.

(c) Subject to the provisions of § 303.17, any non-required information or representations placed on the product shall not minimize, detract from, or conflict with required information and shall not be false, deceptive, or misleading.

* * * * *

9. Section 303.20 is amended by adding paragraph (b)(3) and revising paragraph (d) to read as follows:

§ 303.20 Registered identification numbers.

* * * * *

(b)(1) * * *

(3) Registered identification numbers shall be subject to cancellation if the Commission fails to receive prompt notification of any change in name, business address, or legal business status of a person or firm to whom a registered identification number has been assigned, by application duly executed in the form set out in paragraph (d) of this section, reflecting the current name, business address, and legal business status of the person or firm.

* * * * *

(d) Form to apply for a registered identification number or to update information pertaining to an existing number (the form is available upon request from the Commission's Los Angeles Regional Office, 10877 Wilshire Blvd., Suite 700, Los Angeles, CA 90024, or on the Internet at http://www.ftc.gov):

BILLING CODE 6750-01-P

APPLICATION FOR A REGISTERED IDENTIFICATION NUMBER ("RN")

DO NOT WRITE IN THIS SPACE

RN: _____

DATE ISSUED: _____ UPDATED: _____ BY: _____

1. PURPOSE OF APPLICATION. *(Both new applicants and update applicants must complete all entries on this form.)*

☐ APPLY FOR NEW RN

☐ UPDATE INFORMATION ON AN EXISTING RN. ENTER EXISTING RN NUMBER _____

2. LEGAL NAME OF APPLICANT FIRM

3. NAME UNDER WHICH APPLICANT DOES BUSINESS, IF DIFFERENT FROM LEGAL NAME

4. TYPE OF COMPANY. *(If "OTHER" is checked, please state the type of company.)*

☐ PROPRIETORSHIP ☐ PARTNERSHIP ☐ CORPORATION ☐ OTHER _____

5. ADDRESS OF PRINCIPAL OFFICE OR PLACE OF BUSINESS *(Include zip code. Address must be the actual location where business is conducted in the US. An additional mailing address or PO box address may also be listed, if desired.)*

OPTIONAL INFORMATION

TELEPHONE NUMBER:

FAX NUMBER:

E-MAIL ADDRESS:

INTERNET URL ADDRESS:

6. TYPE OF BUSINESS *(Put an "X" in all the boxes that apply)*

☐ MANUFACTURING ☐ IMPORTING ☐ WHOLESALING

☐ OTHER *(Please specify)* _____

7. LIST PRODUCTS *(To qualify for an RN, a company must be engaged in the importation, manufacturing, selling or other marketing of at least one product line subject to the Textile, Wool, or Fur Act.)*

8. CERTIFICATION

The products listed in item seven (7) above are subject to one or more of the following Acts: The Textile Fiber Products identification Act (15 U.S.C. §§ 70-70k), The Wool Products Labeling Act (15 U.S.C. §§ 68-68j), or the Fur Products Labeling Act (15 U.S.C. §§ 69-69k). By filing this form with the Federal Trade Commission, the company named above applies for a registered identification number to use on labels required by these Acts.

Under penalty of perjury, I certify that the information supplied on this form is true and correct.

SIGNATURE OF PROPRIETOR, PARTNER, OR CORPORATE OFFICIAL

9. NAME *(Please print or type)*	10. TITLE	11. DATE

INSTRUCTIONS

Regulations under the Textile Fiber Products Identification Act, the Wool Products Labeling Act, and the Fur Products Labeling Act provide that any USA company that is a manufacturer or marketer of fiber or fur products may, in lieu of the name under which it does business, be identified by its RN on labels required by these statutes.

In completing this application, please observe the following:

(a) All blanks must be filled in (except for optional information). Type or legibly print the required information.

(b) Item 8 must contain the original signature of a responsible company official.

(c) Send or fax one completed, signed copy to:

Federal Trade Commission
Los Angeles Regional Office
10877 Wilshire Blvd., Suite 700
Los Angeles, CA 90024-4341

Fax Number: (310) 824-4380

RNs are subject to cancellation if the holder fails to promptly submit an updated FTC Form 31 upon any change(s) in its legal name (box #2), type of company information (box #4), or business address (box #5).

FTC Form 31 (rev. 11/97)

BILLING CODE 6750-01-C

10. In § 303.33, the section heading and paragraphs (a)(3), (a)(4) introductory text, and (a)(4)(i) are revised to read as follows:

§ 303.33 Country where textile fiber products are processed or manufactured.

(a) * * *

(3) Each textile fiber product made in the United States, either in whole or in part of imported materials, shall contain a label disclosing these facts; for example:

Made in USA of imported fabric
or
Knitted in USA of imported yarn

and

(4) Each textile fiber product partially manufactured in a foreign country and partially manufactured in the United States shall contain on a label the following information:

(i) The manufacturing process in the foreign country and in the USA; for example:

Imported cloth, finished in USA
or
Sewn in USA of imported components
or
Made in (foreign country), finished in USA
or
Scarf made in USA of fabric made in China
or
Comforter Filled, Sewn and Finished in the U.S. With Shell Made in China'

* * * * *

11. Section 303.38(b) is revised to read as follows:

§ 303.38 Continuing guaranty filed with Federal Trade Commission.

* * * * *

(b) Prescribed form for a continuing guaranty:

BILLING CODE 6750-01-P

CONTINUING GUARANTY

1. LEGAL NAME OF GUARANTOR FIRM

2. NAME UNDER WHICH GUARANTOR FIRM DOES BUSINESS, IF DIFFERENT FROM LEGAL NAME

3. TYPE OF COMPANY

☐ PROPRIETORSHIP ☐ PARTNERSHIP ☐ CORPORATION

4. ADDRESS OF PRINCIPAL OFFICE OR PLACE OF BUSINESS *(Include Zip Code)*

OPTIONAL INFORMATION

TELEPHONE NUMBER:

FAX NUMBER:

INTERNET ADDRESS:

5. LAW UNDER WHICH THE CONTINUING GUARANTY IS TO BE FILED *(Put an 'X' in the appropriate boxes)*

☐ Under the Textile Fiber Products Identification Act (15 U.S.C. §§ 70-70k): The company named above, which manufactures, markets, or handles textile fiber products, guaranties that when it ships or delivers any textile fiber product, the product will not be misbranded, falsely or deceptively invoiced, or falsely or deceptively advertised, within the meaning of the Textile Fiber Products Identification Act and the rules and regulations under that Act.

☐ Under the Wool Products Labeling Act (15 U.S.C. §§ 68-68j): The company named above, which manufactures, markets, or handles wool products, guaranties that when it ships or delivers any wool product, the product will not be misbranded within the meaning of the Wool Products Labeling Act and the rules and regulations under that Act.

☐ Under the Fur Products Labeling Act (15 U.S.C. §§ 69-69k): The company named above, which manufactures, markets, or handles fur products, guaranties that when it ships or delivers any fur product, the product will not be misbranded, falsely or deceptively invoiced, or falsely or deceptively advertised, within the meaning of the Fur Products Labeling Act and the rules and regulations under that Act.

6. CERTIFICATION

Under penalty of perjury, I certify that the information supplied on this form is true and correct.

7. NAME *(Please print or type)*

SIGNATURE OF PROPRIETOR, PRINCIPAL PARTNER, OR CORPORATE OFFICIAL

8. TITLE

9. CITY AND STATE WHERE SIGNED

10. DATE

INSTRUCTIONS

The Textile Fiber Products Identification Act, The Wool Products Labeling Act, or the Fur Products Labeling Act provide that any marketer or manufacturer of fibrous or fur products covered by those Acts may file a continuing guaranty with the Federal Trade Commission. A continuing guaranty on file assures customer firms that the guarantor's products are in conformance with the Act(s) under which the guarantor has filed. Customer firms rely on the continuing guaranties for protection from liability if violations occur.

In completing this form, please observe the following:

(a) All appropriate blanks on the form should be filled in. Include your Zip Code in Item 4.

(b) In Item 6, signature of proprietor, partner, or corporate official of guarantor firm.

(c) Send two completed, signed original copies to:
Federal Trade Commission
Los Angeles Regional Office
10877 Wilshire Blvd., Suite 700
Los Angeles, CA 90024

(d) Do not fax application - mail signed originals only.

Continuing guaranties filed with the Commission continue in effect until revoked. The guarantor must immediately notify the Los Angeles Regional Office in writing of any change in business status. Any change in the address of the guarantor's principal office and place of business must also be promptly reported.

DO NOT USE THIS SPACE

Filed _____ 19 ____

FEDERAL TRADE COMMISSION

FTC Form 31-A (rev. 10/97))

BILLING CODE 6750-01-C

* * * * *

12. Section 303.40 is revised to read as follows:

§ 303.40 Use of terms in written advertisements that imply presence of a fiber.

The use of terms in written advertisements, including advertisements disseminated through the Internet and similar electronic media, that are descriptive of a method of manufacture, construction, or weave, and that by custom and usage are also indicative of a textile fiber or fibers, or the use of terms in such advertisements that constitute or connote the name or presence of a fiber or fibers, shall be deemed to be an implication of fiber content under section 4(c) of the Act, except that the provisions of this section shall not be applicable to non-deceptive shelf or display signs in retail stores indicating the location of textile fiber products and not intended as advertisements.

13. In § 303.42, the second sentence of paragraph (a) is revised to read as follows:

§ 303.42 Arrangement of information in advertising textile fiber products.

(a) * * * In making the required disclosure of the fiber content of the product, the generic names of fibers present in an amount 5 percent or more of the total fiber weight of the product, together with any fibers disclosed in accordance with § 303.3(a), shall appear in order of predominance by weight, to be followed by the designation "other fiber" or "other fibers" if a fiber or fibers required to be so designated are present.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–3495 Filed 2–12–98; 8:45 am]

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federal register

Friday
February 13, 1998

Part III

Federal Trade Commission

16 CFR Part 3
Rules of Practice; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 3

Rules of Practice

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule, with request for public comment.

SUMMARY: This document amends Commission Rule 3.11A (16 CFR 3.11A), which establishes "fast-track" procedures applicable in certain FTC adjudicatory proceedings. Under the amended rule, a respondent will have the option of electing these procedures in certain cases where the procedures have not previously been available. Amendments have also been made to improve and clarify notice procedures and other technical provisions of the Rule.

EFFECTIVE DATE: February 13, 1998. Public comments will be received until March 16, 1998.

ADDRESSES: Send comments to the Office of the Secretary, Federal Trade Commission, Room 159–H, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Cynthia Hogue Levy, (202) 326–2158, or Alex Tang, (202) 326–2447, Attorneys, Office of General Counsel, FTC, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On September 26, 1996, the Commission published and sought public comment on interim amendments to the rules governing the Commission's adjudicatory proceedings, 61 FR 50640. The interim amendments included a new Rule 3.11A, which makes expedited ("fast-track") procedures available to respondents in certain Commission adjudicatory proceedings challenging conduct that has been preliminarily enjoined by a federal court. The public comment period on the interim rule amendments ended November 25, 1996. The amendments became fully applicable to all proceedings commenced on or after January 1, 1997. The one public comment received by the Commission did not discuss Rule 3.11A.[1]

The Commission has determined that the Rule should make the fast-track option expressly available in certain circumstances even where no preliminary injunction of the challenged conduct has been issued. As the Commission observed in its statement accompanying the Rule, the Administrative Law Judge presiding over an adjudicatory proceeding may, in his or her discretion, treat discovery from the preliminary injunction hearing and transcripts of testimony in the preliminary injunction proceeding as if the material had been discovered and presented in the administrative proceeding. 61 FR at 50641. The Commission concludes that, where no preliminary injunction has been issued, implementation of an expedited schedule in the administrative proceeding nonetheless may be appropriate where the evidentiary record from the federal court injunctive proceeding is likely materially to facilitate prompt resolution of the adjudicatory proceeding. Accordingly, the Commission is amending the Rule to expand the availability of the fast-track procedures to cases in which the Commission determines that such circumstances exist. The Commission believes that this expansion of the Rule is in the public interest because it would foster expeditious resolution of allegations of possible law violations and reduce uncertainty for the affected respondent.

To accomplish expansion of the Rule, paragraph (b) has been bifurcated to address separately the conditions under which the fast-track option will be available and the mechanics of electing the procedure. Amended paragraph (b)(1) provides that a respondent may elect fast-track procedures either (i) if a federal court enters preliminary injunctive relief against some or all of the conduct alleged in the Commission's administrative complaint, or (ii) where no such injunction is issued, if the Commission determines that the evidentiary record resulting from the court proceeding is likely materially to facilitate the resolution of the administrative adjudication in accordance with the expedited schedule set forth in the Rule. In making the latter determination, the Commission will consider, *inter alia*, whether significant discovery has occurred in the federal court proceeding.

A conforming change has been made in paragraph (a) of the Rule by deleting language that preserved the Commission's discretion to take "appropriate action" in cases where "the preliminary injunction" is vacated. A preliminary injunction will not necessarily have been issued in every case where fast-track procedures may now apply. Further, even in cases where such an injunction is vacated after fast-track proceedings have been initiated, the Commission concludes that such proceedings should ordinarily continue to be conducted on an expedited basis. The Commission, however, retains its discretion under the Rule to extend the 13-month deadline specified for issuance of a final order and opinion where, *inter alia*, adherence to the deadline would result in a miscarriage of justice due to circumstances unforeseen at the time that the respondent elected fast-track procedures. § 3.11A(c)(3).

Amended paragraph (b)(2), dealing with timing of the respondent's fast-track election, has also been conformed to include a reference to the evidentiary record determination made by the Commission under paragraph (b)(1)(ii) of the Rule. Further, language in former paragraph (b) providing that the fast-track election could be made "after service of the administrative complaint challenging the merger or acquisition" has been modified in paragraph (b)(2) to refer simply to service of the "administrative complaint." This amendment makes fast-track procedures available in any appropriate administrative case, including cases under the Commission's authority respecting unfair or deceptive acts and cases involving anticompetitive practices other than mergers, provided that the Commission has filed a collateral action seeking preliminary injunctive relief against conduct alleged in the administrative complaint. Thus, Rule 3.11A is not restricted to cases involving mergers or acquisitions. As the Commission has previously indicated, however, 61 FR at 50641 n.2, fast-track procedures are likely as a practical matter to be available most often to respondents in cases involving mergers.

The Commission also notes that respondents may make a fast-track election under paragraph (b)(2) of the Rule before the necessary conditions specified in paragraph (b)(1) for fast-track treatment have been fulfilled. In such cases, the election will become effective only if a federal court thereafter issues a preliminary injunction, as required by paragraph (b)(1)(i), or the Commission determines that the evidentiary record from the federal court injunctive proceeding is likely materially to facilitate the expedited resolution of the administrative adjudication, as required by paragraph (b)(1)(ii).

The Rule provisions specifying the procedural deadlines for administrative cases in which fast-track scheduling applies are now consolidated in paragraph (c). Amended paragraph (c)(1) sets out the "triggering events," formerly found in paragraph (a), that

[1] The Commission will address that comment when it completes its full review of the rules' impact.

specify the dates upon which the fast-track deadlines are based. The triggering events have been expanded to include evidentiary record determinations made by the Commission under paragraph (b)(1)(ii). Amended paragraph (c)(2), which is the list of deadlines applicable to fast-track proceedings before the Administrative Law Judge, formerly comprised paragraph (c). Amended paragraph (c)(3) contains the 13-month deadline for issuance of a final order and opinion by the Commission that previously appeared in paragraph (a). Paragraph (c)(3) also contains new language explaining the effect on the 13-month deadline if an automatic stay of the adjudicatory proceeding is triggered by a motion to dismiss under Rule 3.26. As amended, the Rule explicitly provides that the 13-month deadline will be tolled for as long as the Rule 3.26 stay remains in effect.

Several clarifying changes have been made in the Rule. Amended paragraph (a) provides that, when the Commission designates a case as appropriate for election of fast-track procedures by a respondent (subject to the conditions set forth in paragraph (b)(1)), written notice of the Commission's designation will be provided. The notice will be given to the respondent (or to the potential respondent, if the administrative complaint has not yet been issued) at the time that it is served with the Commission's complaint for injunctive relief. These requirements are designed to forestall questions concerning whether and when the agency provided the notice specified in the Rule. The Commission continues to believe that certain cases may appear too complex at the outset to be designated as appropriate for the fast-track schedule. 61 FR at 50641. In such instances, the Commission will not notify the respondent of an option to elect fast-track procedures. This aspect of the Rule remains unchanged.

The revised Rule also clarifies that a respondent may elect fast-track procedures in cases where a preliminary injunction has been issued in a collateral federal court proceeding even if the injunction addresses only part of the conduct alleged in the Commission's administrative complaint. The Commission also intends that, under the revised Rule, a respondent will have an opportunity to elect fast-track procedures if injunctive relief is initially denied by the district court but later ordered as the result of judicial review. The amended Rule's reference to the court's entry of preliminary injunctive relief is intended to be consistent with the usage of the term "entry" in the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 58, 79. Finally, paragraph (d) of the Rule, dealing with discovery procedures in fast-track cases, has been deleted, and the text incorporated into paragraph (a). Various typographical and stylistic changes have been made throughout the Rule.

Because these amendments relate solely to agency practice, they are not subject to the notice-and-comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b)(A), or to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2). The amendments do not impose information collection requirements under the Paperwork Reduction Act. 44 U.S.C. 3501–3520.

List of Subjects in 16 CFR Part 3

Administrative practice and procedure, Claims, Equal access to justice, Lawyers

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, Chapter I, Subchapter A of the Code of Federal Regulations, as follows:

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

1. The authority for Part 3 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

2. Section 3.11A is revised to read as follows:

§ 3.11A Fast-track proceedings.

(a) *Scope and applicability.* This section governs the availability of fast-track procedures in administrative cases where the Commission files a collateral federal district court complaint that seeks preliminary injunctive relief against some or all of the conduct alleged in the Commission's administrative complaint. The Commission will afford the respondent the opportunity to elect such fast-track procedures, subject to the conditions set forth in paragraph (b)(1) of this section, in cases that the Commission designates as appropriate. In cases so designated, the Commission will provide written notice to each respondent at the time that it is served with the Commission's federal district court complaint for preliminary injunctive relief. Except as modified by this section, the rules contained in subparts A through I of part 3 of this chapter will govern fast-track procedures in adjudicative proceedings. Discovery will be governed by subpart D of this part, and the Administrative Law Judge may exercise his plenary authority under § 3.42(c)(6) to establish limitations on the number of depositions, witnesses, or any document production.

(b)(1) *Conditions.* In cases designated as appropriate by the Commission pursuant to paragraph (a) of this section, a respondent may elect fast-track procedures:

(i) if a federal court enters a preliminary injunction against some or all of the conduct alleged in the Commission's administrative complaint; or,

(ii) where no such injunction is entered, if the Commission determines that the Federal court proceeding has resulted in an evidentiary record that is likely materially to facilitate resolution of the administrative proceeding in accordance with the expedited schedule set forth in this section. The Commission will provide each respondent with written notice of any such determination.

(2) *Election.* A respondent that determines to elect fast-track procedures shall file a notice of such election with the Secretary by the latest of: three days after entry of a preliminary injunction as described in paragraph (b)(1)(i) of this section; three days after the respondent is served with notice of the Commission's determination under paragraph (b)(1)(ii) of this section; or three days after the respondent is served with the Commission's administrative complaint in the adjudicative proceeding. In proceedings involving multiple respondents, the fast-track procedures set forth in this section will not apply unless the procedures are elected by all respondents.

(c) *Deadlines in fast-track proceedings.*

(1) For purposes of this paragraph, "triggering event" means the latest of: entry of a preliminary injunction as described in paragraph (b)(1)(i) of this section; service on the last respondent of notice of the Commission's determination under paragraph (b)(1)(ii) of this section; service on the last respondent of the Commission's administrative complaint in the adjudicative proceeding; or filing with the Secretary by the last respondent of a notice electing fast-track procedures.

(2) *Proceedings before the Administrative Law Judge.* In fast-track proceedings covered by this section:

(i) The scheduling conference required by § 3.21(b) shall be held not later than three days after the triggering event.

(ii) Respondent's answer shall be filed within 14 days after the triggering event.

(iii) The Administrative Law Judge shall file an initial decision within 56 days following the conclusion of the evidentiary hearing. The initial decision

shall be filed no later than 195 days after the triggering event.

(iv) Any party wishing to appeal an initial decision to the Commission shall file a notice of appeal with the Secretary within three days after service of the initial decision. The notice shall comply with § 3.52(a) in all other respects.

(v) The appeal shall be in the form of a brief, filed within 21 days after service of the initial decision, and shall comply with § 3.52(b) in all other respects. All issues raised on appeal shall be presented in the party's appeal brief.

(vi) Within 14 days after service of the appeal brief, the appellee may file an answering brief, which shall comply with § 3.52(c). Cross-appeals, as permitted in § 3.52(c), may not be raised in an appellee's answering brief.

(vii) Within five days after service of the appellee's answering brief, the appellant may file a reply brief, in accordance with § 3.52(d) in all other respects.

(3) *Proceedings before the Commission.* In fast-track proceedings covered by this section, the Commission will issue a final order and opinion within 13 months after the triggering event. If the adjudicative proceeding is stayed pursuant to a motion filed under § 3.26, the 13-month deadline will be tolled for as long as the proceeding is stayed. The Commission may extend the date for issuance of the Commission's final order and opinion in the following circumstances: if necessary to permit the Commission to provide submitters of *in camera* material or information with advance notice of the Commission's intention to disclose all or portions of such material or information in the Commission's final order or opinion; or if the Commission determines that adherence to the 13-month deadline would result in a miscarriage of justice due to circumstances unforeseen at the time of respondent's election of fast-track procedures.

By direction of the Commission, Commissioner Azcuenaga not participating.

Donald S. Clark,

Secretary.

[FR Doc. 98–3506 Filed 2–12–98; 8:45 am]

BILLING CODE 6750–01–P

federal register

Friday
February 13, 1998

Part IV

Department of Housing and Urban Development

Regulatory Waiver Requests Granted; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4250–N–02]

Notice of Regulatory Waiver Requests Granted

AGENCY: Office of the Secretary, HUD.

ACTION: Public notice of the granting of regulatory waivers from April 1, 1997 through June 30, 1997.

SUMMARY: Under the Department of Housing and Urban Development Reform Act of 1989 (Reform Act), HUD is required to make public all approval actions taken on waivers of regulations. This notice is the twenty-sixth in a series, being published on a quarterly basis, providing notification of waivers granted during the preceding reporting period. The purpose of this notice is to comply with the requirements of Section 106 of the Reform Act.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Camille E. Acevedo, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–3055 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

For information concerning a particular waiver action for which public notice is provided in this document, contact the person whose name and address is set out for the particular item, in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989, the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by HUD. Section 106 of the Act (Section 7(q)(3)) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q)(3), provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to *issue* the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of today's document.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives issued by HUD (56 FR 16337, April 22, 1991). This is the twenty-sixth notice of its kind to be published under Section 106. This notice updates HUD's waiver-grant activity from April 1, 1997 through June 30, 1997. It also contains a waiver for 24 CFR 882.605(c), granted on January 16, 1997, and two waivers for 24 CFR 901.120(a) and (b), granted on February 28, 1997 and March 31, 1997, respectively.

For ease of reference, waiver requests granted by departmental officials authorized to grant waivers are listed in a sequence keyed to the section number of the HUD regulation involved in the waiver action. For example, a waiver-grant action involving exercise of authority under 24 CFR 58.73 (involving the waiver of a provision in 24 CFR part 58) would come early in the sequence, while waivers of 24 CFR part 990 would be among the last matters listed. Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in title 24 that is being waived as part of the waiver-grant action. (For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.) Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should HUD receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occur between July 1, 1997 through September 30, 1997.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: February 3, 1998.

Andrew Cuomo,

Secretary.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development April 1, 1997 Through June 30, 1997

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly before each set of waivers granted.

For Item 1, Waiver Granted for Section 281(g) of the National Affordable Housing Act, Contact: Debbie Ann Wills, Field Management Officer, U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 451 7th Street, S.W., Washington, D.C. 20410–7000, Telephone: (202) 708–2565, Fax: (202) 401–9681. Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

1. Regulation: Section 281(g) of the National Affordable Housing Act.

Project/Activity: The City of Homestead, Florida, requested a waiver of the HOME funds obligations deadline to finish two disaster projects.

Nature of Requirement: Section 281(g) of the National Affordable Housing Act, requires that HOME funds be committed, with legally binding written agreements, to affordable housing projects within 24 months of funds award.

Granted by: Jacquie Lawing, Acting Assistant Secretary for Community Planning and Development.

Date Granted: June 19, 1997.

Reasons Waived: Deobligation of the City's remaining unspent disaster HOME funds would create a hardship to residents by removing housing opportunities. The waiver will permit the City to retain, for an additional 90 days, uncommitted funds for the purpose of obligating funds to two projects.

For Item 2, Waiver Granted for Part 5, Contact: Gloria J. Cousar, Deputy Assistant Secretary for Public Housing Real Estate Performance, Funding, and Customer Service, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410, Telephone (202) 708–1380. (This is not a toll-free number.) Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

2. Regulation: 24 CFR 5.613(a).

Project/Activity: City of Scottsdale Housing Authority, Arizona; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides that the Total Tenant Payment for

families whose initial lease is effective on or after August 1, 1982, shall be the highest of: (1) 30 percent of Monthly Adjusted Income; (2) 10 percent of Monthly Income; or (3) the Welfare Rent.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: May 27, 1997.

Reasons Waived: The assisted family was forced to move when their unit failed Housing Quality Standards inspection, and the landlord would not make required repairs. Approval of the waiver permitted the single parent family to lease a unit in the same neighborhood, permitting the child to remain in the same school.

For Items 3 Through 8, Waivers Granted for 24 CFR Parts 58, 91, 92, 570, 576, and 582, Contact: Debbie Ann Wills, Field Management Officer, U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 451 7th Street, S.W., Washington, D.C. 20410–7000, Telephone: (202) 708–2565, Fax: (202) 401–9681. Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

3. Regulation: 24 CFR 58.73; 24 CFR 91.115; 24 CFR 92.207; 24 CFR 92.209; 24 CFR 92.214(a)(7); 24 CFR 92.222(b); 24 CFR 92.250; 24 CFR 92.251; 24 CFR 92.300(a)(1); 24 CFR 92.303; 24 CFR 92.352; Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Project/Activity: The State of Minnesota, requested a waiver of the HOME Program and Consolidated Plan requirements to facilitate its efforts on behalf of victims of the recent flooding in the Red River Valley.

Nature of Requirement: Pursuant to 24 CFR 5.110, which grants the authority to suspend certain statutory requirements of Section 290 of the Cranston-Gonzalez National Affordable Housing Act, the following HOME regulations were waived:

24 CFR 58.73, environmental requirements;

24 CFR 91.115, citizen participation plan;

24 CFR 92.207, eligible administrative and planning costs;

24 CFR 92.209, tenant-based rental assistance;

24 CFR 92.214(a)(7), prohibited activities;

24 CFR 92.222(b), match reduction;

24 CFR 92.250, maximum per-unit subsidy limit;

24 CFR 92.251, property standards;

24 CFR 92.300(a)(1), Community Housing Development Organizations (CHDOs);

24 CFR 92.303, CHDO tenant participation plan;

24 CFR 92.352, environmental requirements; and

Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Granted by: Jacquie Lawing, Acting Assistant Secretary for Community Planning and Development.

Date Granted: May 28, 1997.

Reasons Waived: Because of the severity of flooding, the Assistant Secretary determined that there was good cause to grant the waivers and suspend certain statutory requirements, pursuant to Section 290 of the Cranston-Gonzalez National Affordable Housing Act.

4. Regulation: 24 CFR 92.214(a)(7).

Project/Activity: The City of Chicago, Illinois, requested a waiver, on behalf of Carlton Apartments, to reimburse the Lakefront SRO Development Corporation for out-of-pocket costs for the installation of fire safety enhancements.

Nature of Requirement: 24 CFR 92.214(a)(7), of the HOME Program regulations, states that HOME funds may not be used to provide additional assistance to a project previously assisted with HOME funds, during the period of affordability or after the project has been completed for more than a year.

Granted by: Jacquie Lawing, Acting Assistant Secretary for Community Planning and Development.

Date Granted: June 9, 1997.

Reasons Waived: A waiver of 24 CFR 92.214(a)(7) was granted for good cause to reimburse the Lakefront SRO Development Corporation for the installation of fire safety enhancements.

5. Regulation: 24 CFR 570.201(e)(1).

Project/Activity: Delaware County, PA, requested a waiver of the method used for calculation of the public service cap.

Nature of Requirement: 24 CFR 570.201(e)(1), states that the amount of program income to be used in calculating the 15 percent public service cap, is the amount of program income received in the preceding program year.

Granted by: Jacquie Lawing, Acting Assistant Secretary for Community Planning and Development.

Date Granted: April 3, 1997.

Reasons Waived: The County requested a waiver because it received a substantial amount of program income, from a property sale, in its current program year as opposed to the proceeding year which is the year used in the public service cap calculation. The waiver will allow the County to use funds, available under the increased public service cap, for activities to provide services to the homeless at an emergency shelter, and to purchase equipment to provide training services for handicapped persons.

6. Regulation: 24 CFR 576.21.

Project/Activity: The State of Wisconsin, requested a waiver of the Emergency Shelter Grants (ESG) regulations at 24 CFR 576.21.

Nature of Requirement; HUD's regulations at 24 CFR 576.21 state that recipients of ESG funds are subject to the limits on the use of assistance for essential services established in section 414(a)(2)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(B)). Essential services are commonly defined as services that provide health, employment, drug abuse, and education to homeless persons.

Granted by: Jacquie Lawing, Acting Assistant Secretary for Community Planning and Development.

Date Granted: April 15, 1997.

Reasons Waived; Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act, the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources." The State provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

7. Regulation: 24 CFR 576.21.

Project/Activity: Hennepin County, Minnesota, requested a waiver of the Emergency Shelter Grants (ESG) regulations at 24 CFR 576.21.

Nature of Requirement; HUD's regulations at 24 CFR 576.21 state that recipients of ESG funds are subject to the limits on the use of assistance for essential services established in section 414(a)(2)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(B)). Essential services are commonly defined as services that provide health, employment, drug abuse, and education to homeless persons.

Granted by: Jacquie Lawing, Acting Assistant Secretary for Community Planning and Development.

Date Granted: May 19, 1997.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act, the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources". The County provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

8. Regulation: 24 CFR 576.21.

Project/Activity: The State of Minnesota, requested a waiver of the Emergency Shelter Grants (ESG) regulations at 24 CFR 576.21.

Nature of Requirement: HUD's regulations at 24 CFR 576.21 state that recipients of ESG funds are subject to the limits on the use of assistance for essential services established in section 414(a)(2)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(B)). Essential services are commonly defined as services that provide health, employment, drug abuse, and education to homeless persons.

Granted by: Jacquie Lawing, Acting Assistant Secretary for Community Planning and Development.

Date Granted: May 23, 1997.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act, the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources". The State provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

9. Regulation: 24 CFR 582.305(a).

Project/Activity: The Los Angeles County Housing Authority, requested a waiver for one of its homeless projects to allow two persons to reside in a Single Room Occupancy (SRO) type unit.

Nature of Requirements: 24 CFR 582.305(a) states that assistance will not be provided for units that fail to meet Housing Quality Standards (HQS) unless the owner corrects any deficiencies within 30 days from the date of the lease agreement, and the recipient verifies that all deficiencies have been corrected. This section of the regulations also cross references the HQS standards at 24 CFR 882.109(p)(2), which states that each SRO unit should not be occupied by more than one person.

Granted by: Jacquie Lawing, Acting Assistant Secretary for Community Planning and Development.

Date Granted: June 30, 1997.

Reasons Waived: The waiver was granted because the Secretary agreed with the housing authority's position that allowing two persons to share a room was a crucial part of the program to help chronic abusers build relationships and reconnect with society, which ultimately furthered purposes of the Act.

For Items 10 and 11, Waivers Granted for 24 CFR Parts 811 and 883, Contact: James B. Mitchell, Acting Director, Special Projects Division, Office of Asset Management and Disposition, U.S. Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410–7000, Telephone: (202) 708–1220. Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

10. Regulation: 24 CFR 811.108(a)(2).

Project/Activity: Defeasance and redemption of bonds, which financed a Section 8 assisted project in Campbell County, Wyoming, Parkside Apartments, FHA No. 109–35039.

Nature of Requirement: The regulation provides that upon full redemption of bond principal and interest, any remaining balance in the debt service reserve shall be remitted to HUD.

Granted by: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 27, 1997.

Reasons Waived: Banc One Capital Corporation wishes to purchase the mortgage note from the bond trustee for a price which, when added to Series 1979 Bond reserves of $342,838, will permit full discharge of outstanding bond principal. The Board of Campbell County Commissioners, has requested use of $79,600, of such reserves, to complete construction of the County Homeless Shelter. HUD consents to this request.

11. Regulation: 24 CFR 883.606(b).

Project/Activity: Refunding of bonds, which financed Section 8 FAF-assisted projects, for which Housing Assistance Payments Contracts are administered by the Oregon Housing and Community Services Department, which issued bonds to provide mortgage loans for the projects.

Nature of Requirement: The Regulation provides that a State Housing Finance Agency (the "HFA") may not collect a contract administration fee and loan override for the same Section 8 project.

Granted by: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 18, 1997.

Reasons Waived: HUD's criteria, for review and approval of FAF bond refundings, stated that a reduction in financing costs achieved by the refunding would not trigger a reduction of the dollar amount of HAP contract administration fees. HUD's case-by-case approvals of refunding proposals, in 1990 through 1993, allowed HFAs to take arbitrage spreads (override of up to 1.5 percent above the bond yield), as certified by bond counsel to be permissible under the Internal Revenue Code, without requiring the HFAs to reduce the contract administration fee. The Oregon HFA received HUD approval of refunding proposals which included both overrides and contract administration fees. HUD omitted to waive 24 CFR 883.606(b) for these refundings, which closed in September, 1991, and June, 1992, and hereby corrects that oversight by issuing this waiver.

For Item 12, Waiver Granted for Part 882, Contact: Office of the Deputy Assistant Secretary for Public and Assisted Housing Operations, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4226, Washington, DC 20410, Telephone, (202) 708–1842. (This is not a toll-free number.) Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

12. Regulation: 24 CFR 882.605(c).

Project/Activity: Central Oregon Regional Housing Authority; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation caps the amount of rent that can be paid for a manufactured home pad space at 110 percent of the applicable Fair Market Rent.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: January 16, 1997.

Reasons Waived: The waiver which authorized approval of a higher contract rent protected the elderly certificate holder from the threat of displacement and possible homelessness.

For Items 13 Through 21, Waivers Granted for 24 CFR Part 901, Contact: William C. Thorson, Director, Administration and Maintenance Division, Office of Public and Assisted Housing Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 4214, Washington, DC 20410, (202) 708–4703. Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

13. Regulation: 24 CFR 901.120(a) and (b).

Project Activity: Atlanta Housing Authority (AHA)—Public Housing Management Assessment Program (PHMAP).

Nature of Requirement: The regulation requires Field Offices to assess and notify each PHA of its PHMAP score within 180 days of its fiscal year end (FYE).

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: February 28, 1997.

Reasons Waived: There were concerns raised because of special circumstances affecting AHA's performance due to the Olympic Legacy Program. The waiver provided an extension until March 31, 1997.

14. Regulation: 24 CFR 901.120(a) and (b).

Project Activity: Oklahoma State Office—Public Housing Management Assessment Program (PHMAP).

Nature of Requirement: The regulation requires Field Offices to assess and notify each PHA of its PHMAP score within 180 days after the beginning of a PHA's fiscal year.

Granted by: Kevin Emanuel Marchman, Acting Assistant for Public and Indian Housing.

Date Granted: April 28, 1997.

Reasons Waived: Additional time was needed because the Oklahoma State Office is in the process of transferring its financial files to its partnership office in Denver, for data entry into the PHMAP module in SMIRPH. The waiver provided an additional 30 days.

15. Regulation: 24 CFR 901.100(b).

Project Activity: Public Housing Management Assessment Program (PHMAP) for Public Housing Agencies (PHAs) with Fiscal Year End (FYE) March 31, 1997.

Nature of Requirement: The regulations require public housing agencies to submit their PHMAP certifications within 60 days after the end of a PHA's fiscal year.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: May 1, 1997.

Reasons Waived: Due to delays in the printing and mailing of these two essential and informative documents, most PHAs did not receive the revised PHMAP Certification Form (form HUD–50072) and the Guidebook on time. The memorandum provides an extension of 30 calendar days for PHAs with FYE March 31, 1997, to submit their form HUD–50072 to local State/Area Office of Public Housing.

16. Regulation: 24 CFR 901.120(a) and (b).

Project Activity: Biloxi Housing Authority (BHA)—Public Housing Management Assessment Program (PHMAP).

Nature of Requirement: The regulation requires Field Offices to assess and notify each PHA of its PHMAP score within 180 days after the beginning of a PHA's fiscal year.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: March 31, 1997.

Reasons Waived: Due to the time necessary to complete the review reports for confirmatory reviews, a time extension was granted until April 30, 1997.

17. Regulation: 24 CFR 901.120(a) and (b).

Project Activity: Housing Authority of New Orleans (HANO)—Public Housing Management Assessment Program (PHMAP).

Nature of Requirement: The regulation requires Field Offices to assess and notify each PHA of its PHMAP score within 180 days after the beginning of a PHA's fiscal year.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: June 2, 1997.

Reasons Waived: Due to the scheduling, the Headquarters Confirmatory Review (HCR) report waiver was granted to provide an extension of the deadline until June 30, 1997, for completing the PHMAP assessment, and notifying HANO of its PHMAP score for the FYE September 30, 1996.

18. Regulation: 24 CFR 901.120(a) and (b).

Project Activity: Yazoo City Housing Authority (YCHA) and Richton Housing Authority (RHA)—Public Housing Management Assessment Program (PHMAP).

Nature of Requirement: The regulation requires Field Offices to assess and notify each PHA of its PHMAP score within 180 days after the beginning of a PHA's fiscal year.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: June 4, 1997.

Reasons Waived: Extra time was necessary to complete the confirmatory reviews and subsequent reports. The waiver provided an extension until August 30, 1997.

19. Regulation: 24 CFR 901.120(a) and (b).

Project Activity: Gonzales Housing Authority (GHA) and Waelder Housing Authority (WHA)—Public Housing Management Assessment Program (PHMAP).

Nature of Requirement: The regulation requires Field Offices to assess and notify each PHA of its PHMAP score within 180 days after the beginning of a PHA's fiscal year.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: June 26, 1997.

Reasons Waived: The waiver of 24 CFR 901.120(a) and (b) was concurrently granted to the San Antonio Office, to provide for time extension needed for HUD processing delayed by the above waiver to GHA and WHA. The regulation requires Field Offices to assess and notify each PHA of its PHMAP score within 180 days after the beginning of a PHA's fiscal year. The waiver of 24 CFR 901.120(a) and (b) provided an additional 30 days for GHA and WHA to submit their PHMAP certifications.

20. Regulation: 24 CFR 901.120(a) and (b).

Project Activity: Gonzales Housing Authority (GHA) and Waelder Housing Authority (WHA)—Public Housing Management Assessment Program (PHMAP).

Nature of Requirement: The regulations require public housing agencies to submit their PHMAP certifications within 60 days after the end of a PHA's fiscal year.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: June 26, 1997.

Reasons Waived: Because of the unusual circumstance of the Executive Director being unable to carry out her duties at both authorities, due to illness, the waiver provided an additional 30 days for GHA and WHA to submit their PHMAP certifications.

Comments: A waiver of 24 CFR 901.120(a) and (b) was concurrently granted to the San Antonio Office, to provide for the time extension needed for HUD processing that was delayed by the above waiver, to GHA and WHA. The regulation requires Field Offices to assess, and notify each PHA of its PHMAP score within 180 days after the beginning of a PHA's fiscal year.

21. Regulation: 24 CFR 901.130(e).

Project Activity: Biloxi Housing Authority—Public Housing Management Assessment Program (PHMAP).

Nature of Requirement: The regulations require the PHA to appeal by the 15th calendar day after the date the Field Office mailed the notification letter.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: May 15, 1997.

Reasons Waived: Due to the results of the confirmatory review being provided to the BHA at a closeout meeting, a 7 day extension was granted.

22. Regulation: 24 CFR 901.130(f).

Project Activity: Housing Authority of New Haven (HANH)—Public Housing Management Assessment Program (PHMAP).

Nature of Requirement: The regulations require the Department to respond to the PHA's appeal within 30 days. An additional 30 day extension was granted. (See the June 2 Waiver).

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: April 1, 1997 and June 2, 1997.

Reasons Waived: Due to the scheduling of the Headquarters Confirmatory Review (HCR) report, a waiver was granted to provide an extension of the deadline, until June 30, 1997, for completing the PHMAP assessment and notifying HANH of its PHMAP score for the FYE September 30, 1996.

For Items 23 Through 35, Waivers Granted for Parts 5, 913, and 982, Contact: Gloria J. Cousar, Deputy Assistant Secretary for Public Housing Real Estate Performance, Funding, and Customer Service, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410, Telephone (202) 708–1380. (This is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

23. Regulation: 24 CFR 913.107(a).

Project/Activity: A request was made by the Deshler Housing Authority (DHA), of Deshler, NE, to permit the establishment of ceiling rents for its entire low-rent inventory.

Nature of Requirement: The total tenant payment charged by a public housing agency (PHA) is usually 30 percent of Monthly Adjusted Income, except that a PHA can request and HUD can authorize a system of maximum rents or ceiling rents for a project or a class of units. Ceiling rents, defined in statute to reflect fair market value of the units, were authorized in the Housing and Community Development Act of 1987 and implemented in a series of Notices, but have never been codified in regulations. Therefore, a PHA's use of ceiling rents requires waiver of the cited regulations, in which tenant rent is defined as a function of tenant income.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for the Office of Public and Indian Housing.

Date Granted: April 24, 1997.

Reasons Waived: The establishment of ceiling rents will permit the Deshler Housing Authority to serve greater numbers of low-income wage-earning applicants, and will help reduce the current vacancy rate.

24. Regulation: 24 CFR 982.303(b).

Project/Activity: Newton Housing Authority, Massachusetts; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: April 4, 1997.

Reasons Waived: The waiver which provides extra search time was approved to prevent hardship to a large family with five disabled members.

25. Regulation: 24 CFR 982.303(b).

Project/Activity: Boston Housing Authority, Massachusetts; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: April 7, 1997.

Reasons Waived: The waiver was granted to provide extra search time to a wheelchair bound certificate holder who had to move because the lift, which had made his unit accessible, could not be satisfactorily repaired.

26. Regulation: 24 CFR 982.303(b).

Project/Activity: Department of Housing and Community Development, Massachusetts; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: April 14, 1997.

Reasons Waived: Approval of the waiver will help protect the large, intact family from becoming homeless. The additional time provided by this waiver will contribute to the stability of the family by giving them the opportunity to remain in the same community.

27. Regulation: 24 CFR 982.303(b).

Project/Activity: Klamath Housing Authority, Oregon; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: April 22, 1997.

Reasons Waived: The waiver, which provides additional search time, was granted to give this single parent family the opportunity to establish a stable living

environment, and allow the family to obtain training and services to break a cycle of domestic violence and homelessness.

28. Regulation: 24 CFR 982.303(b).

Project/Activity: Boston Housing Authority, Massachusetts; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: April 28, 1997.

Reasons Waived: The certificate holder was unable to seek housing during nearly half of the term of her certificate because of an injury. Without the waiver, which grants the family additional search time, it is likely that the family, a single mother and three children, including an infant, would become homeless.

29. Regulation: 24 CFR 982.303(b).

Project/Activity: Housing Authority of Santa Clara County, California; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: May 5, 1997.

Reasons Waived: Approval of the waiver, which provides additional search time, will prevent hardship to a certificate holder who suffers from cerebral palsy. His housing search has been slowed by a number of serious obstacles, including lack of transportation and the difficulty of finding an eligible unit that meets his special requirements, in an extremely tight housing market.

30. Regulation: 24 CFR 982.303(b).

Project/Activity: Housing Authority of Santa Clara County, California; Section 8 Certificate Program.

Nature of Requirement: The regulation provides for a maximum term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: May 27, 1997.

Reasons Waived: The waiver provides additional housing search time to a disabled certificate holder, whose ability to seek housing in an extremely tight housing market was severely restricted by her illness and by lack of adequate transportation.

31. Regulation: 24 CFR 982.303(b).

Project/Activity: Benicia Housing Authority, California; Section 8 Rental Voucher Program.

Nature of Requirement: The requirement provides for a maximum rental voucher term of 120 days during which a voucher holder may seek housing to be leased under the program.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: May 30, 1997.

Reasons Waived: The waiver provides extra search time for a disabled voucher holder whose medical condition has made it extremely difficult to find a suitable unit.

32. Regulation: 24 CFR 982.303(b).

Project/Activity: Housing Authority of the County of Santa Clara, California; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: May 30, 1997.

Reasons Waived: The waiver provides extra search time for a disabled certificate holder who was hospitalized during the time her certificate was in effect.

33. Regulation: 24 CFR 982.303(b).

Project/Activity: Vermont State Housing Authority; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: June 18, 1997.

Reasons Waived: Approval of the waiver allowed extra search time for a certificate holder with multiple disabilities, whose housing search was hampered by illness and severe winter weather during the time his certificate was in effect.

34. Regulation: 24 CFR 982.303(b).

Project/Activity: Montgomery County Housing Authority, Pennsylvania; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: June 19, 1997.

Reasons Waived: Approval of the waiver allows extra search time for a severely disabled certificate holder, who suffers from Multiple Sclerosis and complex environmental allergies. Her disabilities have made it difficult to seek housing and also greatly reduce the number of units suitable for her occupancy.

35. Regulation: 24 CFR 982.605(c).

Project/Activity: Central Oregon Regional Housing Authority; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation caps the amount of the rent that can be paid for a manufactured home pad space at 110 percent of the applicable Fair Market Rent.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: May 8, 1997.

Reasons Waived: The waiver which permits approval of a higher contract rent for the rental of the manufactured home pad will prevent displacement of a disabled couple from their manufactured home.

For Items 36 Through 38, Waivers Granted for Part 990, Contact: Joan DeWitt, Director, Finance and Budget Division, Office of Public and Assisted Housing Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 4210, Washington, D.C. 20410. Telephone (202) 708–1872. Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

36. Regulation: 24 CFR 990.107(b)(1) and 990.110(c)(2)(ii).

Project/Activity: Cambridge, MA Housing Authority. A request was made for a waiver of the PFS with regard to the execution of an energy performance contract.

Nature of Requirement: The regulation requires that current utility rates be used in the calculation of savings under an energy performance contract.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: May 6, 1997.

Reasons Waived: The PFS provides incentives for housing agencies to leverage private financing for the installation of energy conservation measures under the energy performance contracting program. The waiver will assist the CHA to enter into an energy performance contract, by allowing the use of a "floor rate", in the event that there are not sufficient funds to pay the debt service on the private financing because of a drop in rates, even if the contractor achieves the savings specified in the contract.

37. Regulation: 24 CFR 990.107(b)(1), 990.107(c), and 990.107(c)(2)(ii).

Project/Activity: Burlington, VT, Housing Authority (BHA). A request was made for two waivers of the PFS with regard to the execution of an energy performance contract between the BHA and the Vermont Energy Investment Corp.

Nature of Requirement: The regulation requires that current utility rates be used in calculation of savings under an energy performance contract. The regulation also requires that the Allowable Utilities Consumption Level be based on actual consumption during the rolling base period.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: May 13, 1997.

Reasons Waived: The PFS provides incentives for housing agencies to leverage private financing for the installation of energy conversation measures, under the energy performance contracting program. The first waiver will assist the BHA to enter into an energy performance contract by allowing the use of a "floor rate" in the event that there are not sufficient funds to pay the debt service on the private financing because of a drop in rates, even if the contractor achieves the savings specified in the contract.

The BHA was also granted a waiver to permit an adjustment to its Allowable Utilities Consumption Level (AUCL) for purposes of the energy performance contract

to take into account increased lighting necessary to bring the building involved in the contract into compliance with current national codes and standards.

38. Regulation: 24 CFR 990.109.

Project Activity: Chicago Housing Authority (CHA)—Public Housing Management Assessment Program (PHMAP).

Nature of Requirement: PFS regulations regarding the computation of dwelling rental income.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: June 19, 1997.

Reasons Waived: CHA needed relief to enter into an energy performance contract.

[FR Doc. 98–3682 Filed 2–12–98; 8:45 am]

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Friday
February 13, 1998

Part V

Railroad Retirement Board

20 CFR Part 220
Determining Disability; Final Rule

RAILROAD RETIREMENT BOARD

20 CFR Part 220

RIN 3220–AB18

Determining Disability

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board hereby amends its regulations with respect to determining when an employee is disabled for his or her regular railroad occupation. This final rule gives effect to an agreement between railroad labor and railroad management consistent with section 2(a)(2) of the Railroad Retirement Act which provides that labor and management shall cooperate with the Board in developing standards for determining when an employee's physical or mental condition disables him or her for work in his or her regular railroad occupation and thus there exists good cause not to delay its effectiveness beyond date of publication.

DATES: *Effective date:* This rule is effective February 13, 1998.

Applicability date: This rule shall be applicable February 13, 1998, but only with respect to applications for a disability annuity filed on or after January 1, 1998.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Senior Attorney, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 2(a)(2) of the Railroad Retirement Act (45 U.S.C. 231a(a)(2)) provides that the Board, with the cooperation of employers and employees, shall secure the establishment of standards determining the physical and mental conditions which permanently disqualify employees from performing their regular occupation in the railroad industry. The Board has never formally adopted such standards. The agency, in the past, has used provisional standards which were adopted in 1946 but which are now outdated. In 1991 the Board adopted Subpart C of Part 220 which provides for determining disability for work in an employee's regular railroad occupation. Under this regulation if an employee's physical or mental condition does not meet a listing found in Appendix 1 of Part 220 (which determines if an individual is able to engage in any employment both within and outside the railroad industry), the Board determines the employee's residual functional capacity and compares that to the demands of his or her regular railroad occupation to determine if the employee can continue to perform that job. However, Subpart C contains no specific standards which relate to specific railroad occupations. The Board amends Subpart C to add such standards with respect to certain railroad occupations.

Section 220.10 provides for the establishment of an Occupational Disability Advisory Committee made up of two physicians, one from recommendations from rail labor, one from recommendations of rail management. This committee shall review, from time to time, the disability standards developed by this regulation and the Occupational Disability Claims Manual (Manual) which supplements this regulation. The Board shall confer with this Committee before it amends this regulation or the Manual. It should be noted that the Board is not an agency subject to the Federal Advisory Committee Act. Accordingly, the Occupational Disability Advisory Committee will not be subject to that Act.

Section 220.11 contains the definitions of "regular railroad occupation", "permanent physical and mental impairment", and "residual functional capacity" as presently found in Part 220. In addition, it adds the definitions of "independent case evaluation" and "functional capacity test".

The current § 220.12 is removed, and the current § 220.14 "Evidence Considered" is redesignated § 220.12.

The introductory language and paragraph (a) of section 220.13 follow the present regulation and describe the sequential evaluation process for determining disability for an employee's regular railroad occupation. Initially, if an employee has been medically disqualified by his employer, the Board will presume that the employee is disabled for his regular railroad occupation if there is any objective medical evidence to support that determination. If the employee has not been so disqualified, the Board will determine if the employee's impairment(s) meet or equal a listing found in Appendix 1.

Section 220.13(b)(1) provides that if an employee has not been found disabled in the first two steps described above, the Board will then determine the employee's regular railroad occupation, based upon the employee's description of his or her job.

Section 220.13(b)(2)(i) provides that next the Board will determine if an employee's regular railroad occupation and impairment(s) are covered under the standards contained in a new Appendix 3 to Part 220. If both the occupation and impairment(s) are covered, the Board will confirm the existence of the impairment(s) by using the tests listed in Appendix 3 or by other valid diagnostic tests which could be used to establish an impairment as provided for in § 220.27 of this part. (Section 220.13(b)(2)(ii) of the proposed rule has been revised to clarify how an impairment is confirmed and that if an employee's impairment(s) cannot be confirmed, as provided for in this section, the employee will be found not disabled.) Once the impairment(s) is confirmed, Appendix 3 is applied to determine if the employee is disabled. (Section 220.13(b)(2)(iii).)

If the employee's regular railroad occupation and impairment(s) are not covered by Appendix 3, or if the medical evidence contains significant differences in interpretation of objective test findings which cannot be readily resolved, then the Board will not use Appendix 3, but will determine if the employee is disabled using an independent case evaluation (ICE) as set forth in § 220.13(b)(2)(iv). Likewise, if Appendix 3 does not yield a "disabled" finding, ICE will apply.

Section 220.13(b)(2)(iv), which describes ICE, is essentially a more detailed description of the process, which is described in § 220.13(b)(3) of the present regulation. Under this process the Board initially determines whether the evidence is complete (Step 1). The Board next confirms any impairment which has not been confirmed under § 220.13(b)(2)(ii) (Step 2). Next, the Board will determine whether there is a concordance of medical findings among physicians. If there is not, the Board will request additional medical evidence from the employee's treating physician(s) or procure additional consulting exams (Step 3). Once the Board establishes a concordance of medical findings, to the extent that it is possible, it will then assess the quality of the medical evidence under the factors set forth in § 220.14. This section sets forth factors which either support or call into question the validity of the medical findings. Thus, for example, the opinion of a treating physician, which is fully supported by medically acceptable clinical and diagnostic techniques, is given greater weight than one that is not so supported or is inconsistent with findings of other medical sources. Likewise, the claimant's description of

his or her own condition, if consistent with objective medical findings, is given more weight than one that is not consistent (Step 4). If, after assessment, the Board determines that there is no substantial objective evidence of an impairment, the Board will determine that the employee is not disabled.

If through the assessment in Step 4 it is determined that there is substantial objective evidence of an impairment, then in Step 5 the Board will determine the demands of the employee's regular railroad occupation. At this point, the Board will not only consider the employee's own description of his or her job, but also the employer's description as well as other sources such as the Dictionary of Occupational Titles and generic descriptions found in the Occupational Disability Claims Manual.

Next, the Board will determine the employee's residual functional capacity based upon the assessment performed in Step 4 and compare it to the job demands determined in Step 5. If the demands of the employee's regular railroad occupation exceed the employee's residual functional capacity, then the Board will find the employee disabled. If the demands do not exceed the residual functional capacity, then the Board will find the employee not disabled (Step 6).

The Board published this regulation as a proposed rule on September 24, 1997 (62 FR 50056), and invited comments by October 24, 1997. Two comments were received. One commentator suggested that the Board adopt the vision and hearing acuity requirements found in 49 CFR 240.121, which have been adopted by the Federal Railroad Administration for certification of locomotive engineers. However, the Board does not feel such a change is needed since an engineer who is disqualified by his employer for failure to meet the requirements of 49 CFR 240.121 would ordinarily be presumed disabled under the first paragraph of § 220.13. Another commentator expressed support for the regulation because it was in accord with an agreement reached in July 1997 between representatives of rail labor and rail management concerning occupational disability.

The final rule contains an Introduction to Appendix 3 which explains how to use the Appendix. In addition, the Board has corrected typographical errors in Appendix 3, and made the following substantive changes in Appendix 3 based upon advice from physicians representing rail labor and rail management:

A. Cancer

- 62 FR 50064—Under Assessment, second paragraph, second line, the phrase "in the Tables" was inserted after "All railroad occupations."
- 62 FR 50065—Footnote 3, Functional Impacts, the reference to "(MS) Minimally Significant" was deleted.
- 62 FR 50066—Footnote 5 was deleted and footnote 6 was redesignated footnote 5.

C. Cardiac

- 62 FR 50066—The confirmatory test for coronary artery disease, angiography, "Definite significant (>60%) of one vessel," was changed to "Definite occlusion (>60%) of one vessel."
- 62 FR 50067 through 50075—The disability tests, test results and disability classifications for "Echocardiogram" and "Cardiac catheterization" with results of "Decreased ejection fraction 40–55%" were deleted for all job titles. These tests were found in the proposed rule under the listings Angina, Aortic valve disease, Cardiomyopathy, Mitral valve disease, and Pericardial disease.
- 62 FR 50067 through 50075—The disability tests for "Echocardiogram" and "Cardiac catheterization" with results of "Poor ejection fraction <35%" were revised to read "Poor ejection fraction ≤35%" for all job titles. These tests were found in the proposed rule under the listings Angina, Aortic valve disease, Cardiomyopathy, Mitral valve disease, and Pericardial disease.
- 62 FR 50067, 50071 and 50072—In the proposed rule one of the disability tests for "Mitral valve disease" for trainman, signalman and trackman was "Cardiac catheterization" with a test result of "Mitral valve gradient >10mm Hg." This disability test, and its test result and disability classification was deleted. Another test result under "Mitral valve disease" for "Cardiac catheterization" was "Mitral valve gradient 5–10mm Hg." This test result was changed to "Mitral valve gradient ≥5mm Hg."
- 62 FR 50068, 50069, 50070, 50073, 50074, 50075—One of the disability tests for "Mitral valve disease" for engineer, dispatcher, carman, machinist, shop laborer, sales representative, and general office clerk was "Cardiac catheterization" with a test result of "Mitral valve gradient 5–10mm Hg." This disability test, and its test result and disability classification was deleted. Another test result under "Mitral valve disease" for "Cardiac catheterization" was "Mitral valve gradient >10mm Hg." This result was changed to "Mitral valve gradient ≥10mm Hg."
- 62 FR 50067, 50070, 50071, 50072—For job titles trainman, signalman, and trackman the disability tests were revised as follows:

Angina

—Stress test with a result of "Peak exercise 5–7 METS" the disability test, test result, and disability classification were deleted.
—Stress test with a result of "Peak exercise <5 METS" was revised to read "Stress test—Peak exercise ≤7 METS."
—Stress test with a result of "Definite ischemia <7 METS" was revised to read "Stress test: Significant ST changes—Definite ischemia ≤7 METS."
—Stress test with a result of "Definite ischemia >7 METS": the disability test, test result, and disability classification were deleted.

Aortic Valve Disease

—Stress test with a result of "Peak exercise 5-7 METS": the disability test, test result, and disability classification were deleted.
—Stress test with a result of "Peak exercise <5 METS" was revised to read: "Peak exercise ≤7 METS."

Coronary Artery Disease

—Stress test with a result of "Peak exercise 5–7 METS": the disability test, test result, and disability classification were deleted.
—Stress test with a result of "Peak exercise <5 METS" was revised to read: "Stress test —Peak exercise ≤7 METS."
—Stress test with a result of "Definite ischemia < or >7 METS" was revised to read: "Stress test—Definite ischemia ≤7 METS."
—Isotope, e.g., thallium study with a result of "Definite ischemia < or >7 METS" was revised to read: "Isotope, e.g., thallium study—definite ischemia ≤7 METS."

Cardiomyopathy

—Stress test with a result of "Peak exercise 5–7 METS" was revised to read: "Stress test—Peak exercise ≤7 METS."

Mitral Valve Disease

—Stress test with a result of "Peak exercise 5–7 METS" was revised to read: to "Peak exercise ≤7 METS."

- 62 FR 50067, 50068, 50069, 50070, 50072, 50073, 50074, 50075—For job titles engineer, dispatcher, carman, machinist, shop laborer, sales representative, and general office clerk

the disability tests were revised as follows:

Angina

—Stress test with a result of "Peak exercise 5–7 METS" the disability test, test result and disability classification were deleted.
—Stress test with a result of "Peak exercise <5 METS" was revised to read: "Stress test—Peak exercise ≤5 METS."
—Stress test: significant ST changes with a result of "Definite ischemia <7 METS" was revised to read: "Stress test—Definite ischemia ≤5 METS."
—Stress test: significant ST changes with a result of "Definite ischemia >7 METS": the disability test, test result, and disability classification were deleted.

Aortic Valve Disease

—Stress test with a result of "Peak exercise 5–7 METS": the disability test, test result, and disability classification were deleted.
—Stress test with a result of "Peak exercise <5 METS" was revised to read: "Stress test—Peak exercise ≤5 METS."

Coronary Artery Disease

—Stress test with a result of "Peak exercise 5–7 METS": the disability test, test result, and disability classification were deleted.
—Stress test with a result of "Peak exercise <5 METS" was revised to read: "Stress test—Peak exercise ≤5 METS."
—Stress test with a result of "Definite ischemia < or >7 METS" was revised to read: "Stress test—Definite ischemia ≤5 METS."
—Isotope, e.g., thallium study with a result of "Definite ischemia < or >7 METS" was revised to read: "Isotope, e.g., thallium study—Definite ischemia ≤5 METS."

Cardiomyopathy

—Stress test with a result of "Peak exercise 5–7 METS" was revised to read: "Stress test—Peak exercise ≤5 METS."

Mitral Valve Disease

—Stress test with a result of "Peak exercise 5–7 METS" was revised to read: "Stress test—Peak exercise ≤5 METS."

• 62 FR 50067 through 50074—For job titles trainman, engineer, dispatcher, carman, signalman, trackman, machinist, and shop laborer, under the listing of "Hypertension," the disability test of "Medical record review" with a result of "Diastolic >120 and systolic >160, 50% of the time"; the disability test, test result, and disability classification were deleted. For sales representative, under the listing "Hypertension," the disability test of "Medical record review" with a result of "Diastolic >120 and systolic >160, 50% of the time": the following was added: "and evidence of end organ damage (blood creatinine >2; urinary protein >½ gm; or EKG evidence of ischemia)."

• 62 FR 50067 through 50075—For all job titles, under "Ventricular ectopy," the disability test of "Medical record review" with a result of "Surgical rhythm procedure" and the disability classification were deleted.

D. Respiratory

• 62 FR 50076 through 50080—The listing "Asbestosis" was removed and, consequently, the designated confirmatory tests for this condition were also removed.

• 62 FR 50076 through 50080—The listing "Sleep Apnea" was removed and, consequently, the designated confirmatory tests for this condition were also removed.

• 62 FR 50076—The confirmatory tests for "Silicosis," "Chest X-ray (ILO interpreted)" with a minimum result of "At least 1/0 by NIOSH B reader," was removed.

• 62 FR 50076—The confirmatory test for "Restrictive lung disease" designated "Diffusing capacity" was changed to read: "DLCO."

• 62 FR 50076—The parenthetical "(race adjusted)" in the confirmatory test "Spirometry" for "Restrictive lung disease" was removed.

• 62 FR 50077 through 50080—The disability test for "Pulmonary fibrosis" and "Restrictive lung disease" for trainman, carman, signalman, trackman, machinist, and shop laborer designated "Diffusing capacity for CO" was changed to read: "DLCO."

• 62 FR 50076 through 50080—The disability test for "Asthma" and "Chronic bronchitis" for trainman, carman, signalman, trackman, machinist, and shop laborer designated "Spirometry" has an accompanying test result of "FEV1 with adequate treatment <40% predicted." The test result was changed to: "Repeated spirometry FEV1 <40% over a 12-month period."

• 62 FR 50077 through 50080—Under the listing Bronchiectasis, Chronic Bronchitis, Chronic Obstructive Pulmonary Disease (COPD), Pulmonary Fibrosis, and Silicosis for the job titles trainman, carman, signalman, trackman, machinist, and shop laborer the disability test "PCO2 arterial" was changed to read: "Resting ABG," and its accompanying test result was revised to read: "PCO2 arterial >50mm Hg if stable."

• 62 FR 50077 through 50080—Under the listings Bronchiectasis, Chronic Bronchitis, Chronic Obstructive Pulmonary Disease (COPD), and Pulmonary Fibrosis for the job titles trainman, carman, signalman, trackman, machinist, and shop laborer the disability test "Pulmonary exercise test" with a test result of "PO2 drop >5 torr at maximum exercise" was changed to read "Pulmonary exercise test or exercise ABG."

F. CE Spine

• 62 FR 50093—Under the listing "Rheumatoid arthritis: cervical" the minimum result under the confirmatory test of "Rheumatoid factor (blood test)" was changed from "High titer" to "Titer of rheumatoid factor."

• 62 FR 50094 through 50097—The disability test for "Spondylogenic compression of spinal cord:" for trainman, engineer, carman, signalman, trackman, machinist, and shop laborer designated "Physical examination: lower limb" has an accompanying test result of "Lower extremity weakness or spasticity." The test result was changed to: "Lower extremity weakness or significant spasticity."

• 62 FR 50094 through 50097—The disability test for trainman, engineer, carman, signalman, trackman, machinist, and shop laborer designated "Physical examination: cervical" was changed to read "Physical examination." This disability test can be found under the listings Cervical disc disease with myelopathy, Chronic herniated disc, Cervical spondylolysis, Cervical intervertebral disc degeneration, Fracture: posterior element with spinal canal displacement, Post-laminectomy syndrome, Cervical radiculopathy, and Spondylogenic compression of spinal cord.

G. Shoulder

• 62 FR 50097—The confirmatory test "Permanent functional limitation, elbow:" was changed to "Medical diagnosis leading to a permanent functional limitation of the elbow."

• 62 FR 50098 through 50099—The disability test for trainman, engineer, carman, signalman, trackman, machinist, and shop laborer under the listing "Permanent functional limitation, elbow:" was "Physical examination—range of motion." Its accompanying test result "Flexion limit to 60 degrees (30 degrees from 90)" was changed to "Flexion limited to 60 degrees."

H. Hand and Arm

• 62 FR 50099—The confirmatory tests for "Carpal tunnel syndrome" designated "Physical examination" with a minimum result of "Tinel's or Phalen's sign suggestive but not confirming" was removed.

• 62 FR 50099—One of the confirmatory tests for "Rheumatoid arthritis: hand" is "Rheumatoid factor." The minimum result for this test was changed from "High titer" to "Titer of rheumatoid factor."

• 62 FR 50100 through 50104—A disability test for trainman, carman, signalman, trackman, machinist, and shop laborer was "Strength (jamar)" with a test result for dominant and non-dominant hands for female and male. All references to these tests, their results and disability classifications were deleted. These disability tests were found in the proposed rule under the listings: Carpal tunnel syndrome, Fracture wrist, Hand permanent functional limitation, and Wrist permanent functional limitation.

• 62 FR 50100 through 50104—Two of the disability tests for the listing "Thumb: permanent functional limitation" were "Adduction of thumb" and "Opposition" with a result of "Loss <=7 cm." These disability tests, test results, and disability classifications were removed for all job titles.

I. Hip

• 62 FR 50105—One of the confirmatory tests for "Paget's disease" is "X-ray: hip." The minimum result for this test was changed from "Osteolytic and blastic lesions" to "Osteolytic or blastic lesions."

J. Knee

• 62 FR 50108—The confirmatory test for "Patellar-7 subluxation-recurrent" is a "Medical record review." The minimum result for this testing in the proposed rule was "History of recurrent subluxation with associated signs." The phrase "with associated signs" was removed.

K. Ankle and Foot

• 62 FR 50116 through 50120—One of the disability tests for the listing "Rheumatoid arthritis, foot:" is a "Medical record review." Its accompanying test result in the proposed rule was "Frequent flare-up with treatment." This test result was changed to "Chronic flare-up with treatment."

The Board has determined that this is a significant rule under Executive Order 12866. The Office of Management and Budget has approved the information collection (Job Information Report, RRB Forms G–251a and G–251b found in Appendix 3 of this part) associated with this rule and assigned it OMB control number 3220–0193.

List of Subjects in 20 CFR Part 220

Disability benefits, Railroad employees, Railroad retirement, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, part 220 of title 20 of the Code of Federal Regulations is amended as follows:

PART 220—DETERMINING DISABILITY

1. The authority citation for part 220 continues to read as follows:

Authority: 45 U.S.C. 231a; 45 U.S.C. 231f.

2. The heading of subpart C is revised to read as follows:

Subpart C—Disability Under the Railroad Retirement Act for Work in an Employee's Regular Railroad Occupation

3. Section 220.10 is revised to read as follows:

§ 220.10 Disability for work in an employee's regular railroad occupation.

(a) In order to receive an occupational disability annuity an eligible employee must be found by the Board to be disabled for work in his or her regular railroad occupation because of a permanent physical or mental impairment. In this subpart the Board describes in general terms how it evaluates a claim for an occupational disability annuity. In accordance with section 2(a)(2) of the Railroad Retirement Act this subpart was developed with the cooperation of employers and employees. This subpart is supplemented by an Occupational Disability Claims Manual (Manual) [1] which was also developed with the cooperation of employers and employees.

(b) In accordance with section 2(a)(2) of the Railroad Retirement Act, the Board shall select two physicians, one from recommendations made by representatives of employers and one from recommendations made by representatives of employees. These individuals shall comprise the Occupational Disability Advisory Committee (Committee). This Committee shall periodically review, as necessary, this subpart and the Manual and make recommendations to the Board with respect to amendments to this subpart or to the Manual. The Board shall confer with the Committee before it amends either this subpart or the Manual.

4. Section 220.11 is revised to read as follows:

§ 220.11 Definitions as used in this subpart.

Functional capacity test means one of a number of tests which provide objective measures of a claimant's maximal work ability and includes functional capacity evaluations which provide a systematic comprehensive assessment of a claimant's overall strength, mobility, endurance and capacity to perform physically demanding tasks, such as standing, walking, lifting, crouching, stooping or bending, climbing or kneeling.

Independent Case Evaluation (ICE) means the process for evaluating claims not covered by Appendix 3 of this part.

Permanent physical or mental impairment means a physical or mental impairment or combination of impairments that can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months.

Regular railroad occupation means an employee's railroad occupation in which he or she has engaged in service for hire in more calendar months than the calendar months in which he or she has been engaged in service for hire in any other occupation during the last preceding five calendar years, whether or not consecutive; or has engaged in service for hire in not less than one-half of all of the months in which he or she has been engaged in service for hire during the last preceding 15 consecutive calendar years. If an employee last worked as an officer or employee of a railway labor organization and if continuance in such employment is no longer available to him or her, the "regular occupation" shall be the position to which the employee holds seniority rights or the position which he or she left to work for a railway labor organization.

Residual functional capacity has the same meaning as found in § 220.120.

§ 220.12 [Removed]

§ 220.14 [Redesignated as § 220.12]

5. The current § 220.12 "Permanent physical or mental impairment, defined." is removed, and § 220.14 "Evidence considered." is redesignated as § 220.12.

6. Section 220.13 is amended by revising the section heading, the introductory text, and paragraph (b) to read as follows:

[1] The Manual may be obtained from the Board's headquarters at 844 North Rush Street, Chicago, IL 60611.

§ 220.13 Establishment of permanent disability for work in regular railroad occupation.

The Board will presume that a claimant who is not allowed to continue working for medical reasons by his employer has been found, under standards contained in this subpart, disabled unless the Board finds that no person could reasonably conclude on the basis of evidence presented that the claimant can no longer perform his or her regular railroad occupation for medical reasons. (See § 220.21 if the claimant is not currently disabled, but was previously occupationally disabled for a specified period of time in the past). The Board uses the following evaluation process in determining disability for work in the regular occupation:

* * * * *

(b) If the Board finds that the claimant does not have an impairment described in paragraph (a) of this section, it will—

(1) Determine the employee's regular railroad occupation, as defined in § 220.11, based upon the employee's own description of his or her job;

(2) Evaluate whether the claimant is disabled as follows:

(i) The Board first determines whether the employee's regular railroad occupation is an occupation covered under Appendix 3 of this part. Second, the Board will determine whether the employee's claimed impairment(s) is covered under Appendix 3 of this part. If claimant's regular railroad occupation or impairment(s) is not covered under Appendix 3 of this part, then the Board will determine if the employee is disabled under ICE as set forth in paragraph (b)(2)(iv) of this section.

(ii)(A) If the Board determines that, in accordance with paragraph (b)(2)(i) of this section, Appendix 3 of this part applies, then the Board will confirm the existence of the employee's impairment(s) using—

(*1*) The "highly recommended" and "recommended" tests set forth in Appendix 3 of this part that relate to the body part affected by the claimant's impairment(s); or

(*2*) By using valid diagnostic tests accepted by the medical community as described in § 220.27.

(B) If the employee's impairment(s) cannot be confirmed because there are significant differences in objective tests such as imaging study, electrocardiograms or other test results, and these differences cannot be readily resolved, the Board will determine if the employee is disabled under ICE as set forth in paragraph (b)(2)(iv) of this section. However, if the employee's impairment(s) cannot be confirmed, and there are no significant differences in objective medical tests which cannot be readily resolved, then the employee will be found not disabled.

(iii) Once the impairment(s) is confirmed, as provided for in paragraph (b)(2)(ii) of this section, the Board will apply Appendix 3 of this part. If Appendix 3 of this part dictates a "D" (disabled) finding, the Board will find the claimant disabled.

(iv) If the Board does not find the employee disabled using the standards in Appendix 3 of this part, then the Board will determine if the employee is disabled using ICE. To evaluate a claim under ICE the Board will use the following steps:

(A) *Step 1.* The Board will determine if the medical evidence is complete. Under this step the Board may request the claimant to take additional medical tests such as a functional capacity test or other consultative examinations;

(B) *Step 2.* If the employee's impairment(s) has not been confirmed, as provided for in paragraph (b)(2)(ii)(A)(*2*) of this section, the Board will next confirm the employee's impairment(s), as described in paragraph (b)(2)(ii)(A)(*2*) of this section;

(C) *Step 3.* The Board will determine whether the opinions among the physicians regarding medical findings are consistent, by reviewing the employee's medical history, physical and mental examination findings, laboratory or other test results, and other information provided by the employee or obtained by the Board. If such records reveal that there are significant differences in the medical findings, significant differences in opinions concerning the residual functional capacity evaluations among treating physicians, or significant differences between the results of functional capacity evaluations and residual functional capacity examinations, then the Board may request additional evidence from treating physicians, additional consultative examinations and/or residual functional capacity tests to resolve the inconsistencies;

(D) *Step 4.* When the Board determines that there is concordance of medical findings, then the Board will assess the quality of the evidence in accordance with § 220.112, which describes the weight to be given to the opinions of various physicians, and § 220.114, which describes how the Board evaluates symptoms such as pain. The Board will also assess the weight of evidence by utilizing § 220.14, which outlines factors to be used in determining the weight to be attributed to certain types of evidence. If, after assessment, the Board determines that there is no substantial objective evidence of an impairment, the Board will determine that the employee is not disabled;

(E) *Step 5.* Next, the Board determines the physical and mental demands of the employee's regular railroad occupation. In determining the job demands of the employee's regular railroad occupation, the Board will not only consider the employee's own description of his or her regular railroad occupation, but shall also consider the employer's description of the physical requirements and environmental factors relating to the employee's regular railroad occupation, as provided by the employer on the appropriate form set forth in Appendix 3 of this part, and consult other sources such as the Dictionary of Occupational Titles and the job descriptions of occupations found in the Occupational Disability Claims Manual, as provided for in § 220.10;

(F) *Step 6.* Based upon the assessment of the evidence in paragraph (b)(2)(iv)(D) of this section, the Board shall determine the employee's residual functional capacity. The Board will then compare the job demands of the employee's regular railroad occupation, as determined in paragraph (b)(2)(iv)(E) of this section. If the demands of the employee's regular railroad occupation exceed the employee's residual functional capacity, then the Board will find the employee disabled. If the demands do not exceed the employee's residual functional capacity, then the Board will find the employee not disabled.

7. A new section 220.14 is added to read as follows:

§ 220.14 Weighing of evidence.

(a) *Factors which support greater weight.* Evidence will generally be given more weight if it meets one or more of the following criteria:

(1) The residual functional capacity evaluation is based upon functional objective tests with high validity and reliability;

(2) The medical evidence shows multiple impairments which have a cumulative effect on the employee's residual functional capacity;

(3) Symptoms associated with limitations are consistent with objective findings;

(4) There exists an adequate trial of therapies with good compliance, but poor outcome;

(5) There exists consistent history of conditions between treating physicians and other health care providers.

(b) *Factors which support lesser weight.* Evidence will generally be given lesser weight if it meets one or more of the following criteria:

(1) There is an inconsistency between the diagnoses of the treating physicians;

(2) There is inconsistency between reports of pain and functional impact;

(3) There is inconsistency between subjective symptoms and physical examination findings;

(4) There is evidence of poor compliance with treatment regimen, keeping appointments, or cooperating with treatment;

(5) There is evidence of exam findings which is indicative of exaggerated or potential malingering response;

(6) The evidence consists of objective findings of exams that have poor reliability or validity;

(7) The evidence consists of imaging findings which are nonspecific and largely present in the general population;

(8) The evidence consists of a residual functional capacity evaluation which is supported by limited objective data without consideration for functional capacity testing.

8. Appendix 3—Railroad Retirement Board Occupational Disability Standards is added to part 220 to read as follows:

Appendix 3—Railroad Retirement Board Occupational Disability Standards

1. Introduction

1.01 The Board uses this appendix to adjudicate the occupational disability claims of employees with medical conditions and job titles covered by the Tables in this appendix. The Tables are divided into "Body Parts", with each Body Part further divided by job title. Under each job title there is a list of impairments and tests with accompanying test results which establish a finding of "D" (disabled). The use of these Tables is a three-step process. In the first step we determine whether the employee's regular railroad occupation is covered by the Tables; next we establish the existence of an impairment covered by the Tables; finally, we reach a disability determination. If we do not find an employee disabled under these Tables, the employee may still be found disabled using Independent Case Evaluation (ICE), as explained in subpart C of this part.

1.02 The Cancer Tables are treated in a different way than other body systems. Different types of cancer and their treatments have different functional impacts. In the Cancer Tables the impact of the impairment is seen as being significant or not significant. Therefore, these tables contain an "S" (significant) which is equivalent to a "D" rating. A detailed explanation of how to use those tables is in that section. The steps to use the remaining Tables are explained below:

2. Confirming the Impairment

2.01 Once we determine that the employee's regular railroad occupation is covered by the Job Titles in the Tables, we must determine the existence of an impairment covered by the Tables. This is done through the use of Confirmatory Tests. These tests can include information from medical records, surgical or operative reports, or specific diagnostic test results. Confirmatory Tests are listed in the initial section regarding each Body Part covered in the Tables. If an impairment cannot be confirmed because of inconsistent medical information, ICE may be required.

2.02 There are two types of Confirmatory Tests as follows.

2.03 "Highly Recommended" Tests—The designation of a confirmatory test as being "highly recommended" means that the test is almost always performed to confirm the existence of the impairment. For many conditions, only one "highly recommended" test finding is suggested to confirm the impairment. However, there may be times when that test is not available or is negative, but other more detailed testing confirms the impairment.

2.04 *Example A:* To confirm the condition of pulmonary hypertension, the Tables under Body Part C., Cardiac, designate as "highly recommended": an electrocardiogram which indicates definite right ventricular hypertrophy. However, the impairment may also be confirmed by insertion of a Swan-Ganz catheter into the pulmonary artery and the pulmonary artery pressure measured directly.

2.05 There may be some conditions for which several "highly recommended" tests are suggested to confirm an impairment. In these circumstances, we will use all "highly recommended" tests to establish the existence of the impairment.

2.06 *Example B:* Under Body Part E., Lumbar Sacral Spine, three highly recommended medical findings are identified for the diagnosis of chronic back pain, not otherwise specified. These findings include:

A. A history of back pain under medical treatment for at least one year, and

B. A history of back pain unresponsive to therapy for at least one year, and

C. A history of back pain with functional limitations for at least one year.

2.07 All three of these criteria must be satisfied to confirm the existence of chronic back pain.

2.08 Sometimes the employee may have undergone detailed testing which is as reliable as one of the "highly recommended" tests listed in the Tables. In cases where an impairment has not been confirmed by one of the designated "highly recommended" tests, the impairment may still be confirmed by "recommended" tests (see below) or by evidence acceptable under section 220.27 of this part.

2.09 Recommended Tests—The designation of a confirmatory test as "recommended" means that the test need not be performed, or be positive, to confirm the impairment. However, a positive test provides significant support for confirming the impairment. If there are no "highly recommended" tests for confirming the impairment, at least one of the "recommended" tests should be positive.

2.10 There are two categories of recommended tests which are described below.

A. *Imaging studies*—These studies can include MRI, CAT scan, myelogram, or plain film x-rays. For conditions where several of these imaging studies are identified as "recommended" tests, at least one of the test results should be positive and meet the confirmatory test criteria. For some conditions, such as degenerative disc condition, there are several equivalent imaging methods to confirm a diagnosis.

B. *Other tests*—This category of tests refers to non-imaging studies.

2.11 If there are no "highly recommended" confirmatory tests designated to confirm an impairment and the "recommended" confirmatory tests only include non-imaging procedures, at least one of these tests should be positive to confirm the impairment. The greater the number of tests that are positive, the greater the confidence that the correct diagnosis has been established.

2.12 *Example:* Under Body Part C., Cardiac, the diagnostic confirmatory tests for ventricular ectopy, a cardiac arrhythmia, include the following "recommended" tests:

A. Medical record review, i.e., a review of the claimant's medical records, or

B. Holter monitoring, or

C. Provocative testing producing a definite arrhythmia.

2.13 In this situation, only one of the "recommended" confirmatory tests need be positive to confirm the impairment. However, the more tests that are positive, the stronger the support for the diagnosis.

2.14 In no circumstance will the Board require that an invasive test be performed to confirm an impairment. Several of the Confirmatory Tests which are described in the Tables are invasive and it is not the intention of the Board to suggest that these be performed. The inclusion of invasive tests in the Tables Confirmatory Tests section is intended to help the Board evaluate the significance of findings from such tests that may have already been performed and which are part of the submitted medical record.

2.15 If an employee's impairment(s) cannot be confirmed by use of the confirmatory tests listed in the Tables, it still may be confirmed by medical evidence described in section 220.27 of this part. However, if a claimant's impairment(s) cannot be confirmed through use of the Tables or under section 220.27, and the medical evidence is complete and in concordance, the claimant will be found not disabled.

3. Disability Determination

3.01 Once the Board determines that the employee's regular railroad occupation is covered by one of the Job Titles in the Tables and that his or her alleged impairment fits into a Body Part covered by the Tables and can be confirmed, we examine the results of any of the disability tests listed under the impaifment. If the results from any of these tests indicate a "D" finding, the employee is found disabled. If none of the test results

indicate a "D" finding, then the employee's claim is evaluated using ICE.

3.02 *Example:* A trainman has angina as confirmed by the recommended tests under Body Part A: Cardiac—Angina. An echocardiogram shows that he has poor ejection fraction ≤35%. The employee is rated disabled. If none of the results of the listed disability tests match the results required for a "D" finding, then the employee's claim is evaluated under ICE.

Tables

A. Cancer
B. Endocrine
C. Cardiac
D. Respiratory
E. Lumbar Sacral Spine
F. Cervical Spine
G. Shoulder and Elbow
H. Hand and Arm
I. Hip
J. Knee
K. Ankle and Foot

A. Cancer

Cancer

Cancer conditions can be viewed as belonging to one of three categories.

Category 1: Significant impact on functional capacity or anticipated life span.

Category 2: Intermediate impact on functional capacity; large individual variability.

Category 3: No significant impact on functional capacity or expected life span.

The factors that are considered in developing these categories include the following:

Type of Cancer

The functional impact of different malignancies varies tremendously and each malignancy has to be considered on an individual basis.

Magnitude of Disease

The disability standards are based upon the magnitude or extent of disease. The extent of disease affects both anticipated life span and the functional capacity or work ability of the individual. Localized cancer including cancer "in situ" can frequently be completely cured and not have an impact on functional capacity or life span. In contrast, many cancers that have distant or significant regional spread generally have a poor prognosis. The magnitude or extent of disease is classified into three categories: local, regional and distant.

The criteria which are used to classify a cancer into one of the three categories are based upon the distillation of several staging methods into a single system [Miller, et al. (1992). Cancer Statistics Review, 1973 - 1989; NIH Publication No. 92 - 2789].

Effects of Treatment

Although some types of cancer may be potentially curable with radical surgery and/or radiation therapy, the treatment regimen may result in a significant impairment that could affect functional capacity and ability to work. For example, a person with a laryngeal tumor which had spread regionally could be cured by a complete laryngectomy and radiotherapy. However, this treatment could result in a loss of speech and significantly impair the individual's communicative skills or ability to use certain types of respiratory protective equipment.

Prognosis

Some cancers may have minimal impact on a person's functional capacity, but have a very poor prognosis with respect to life expectancy. For example, an individual with early stage brain cancer may be minimally impaired, but have a poor prognosis and minimal potential for surviving longer than two years. Five and two year survival data are presented in the Cancer Disability Guideline Table which follows.

The Cancer Disability Guideline Table provides information concerning the probability of survival for five years for local, regional, and distant disease for each type of malignancy. In addition, two-year survival data are also presented for all disease stages. The five-year survival data are based upon data collected from population-based registries in Connecticut, New Mexico, Utah, Hawaii, Atlanta, Detroit, Seattle and the San Francisco and East Bay area between 1983 and 1987 (Miller, 1992). The two-year data are from a cohort study initially diagnosed in 1988.

Assessment

The malignancies are classified as disabling (Category 1), potentially disabling (Category 2) and non-disabling (Category 3). Category 2 conditions must be evaluated with respect to how the worker's tumor affects the worker's ability to perform the job and an assessment of his life span.

Information concerning the potential impact of the malignancy on a worker's ability to perform a job is identified in the Functional Impact column in the table. All railroad occupations in the Tables are considered together. Functional impacts are classified as significant if the treatment or sequelae from treatment including radiotherapy, chemotherapy and/or surgery is likely to impair the worker from performing the job. If the treatment results in a significant impairment of another organ system, the individual should be evaluated for disability associated with impairment of that body part. For example, a person undergoing an amputation for a bone malignancy would have to be evaluated for an amputation of that body part. For many cancers, it is difficult to make generalizations regarding the level of impairment that will occur after the person has initiated or completed treatment. Nonsignificant impacts include those that are unlikely to have any effect on the individual's work capacity.

Cancer type	2-year[1]	5-year[1]	Disability status[2]	Functional impact[3]
Brain:				
Local		26	1	S
Regional		27.9	1	S
Distant		23.6	1	S
Female Breast:				
Regional		71.1	2	S
Distant		17.8	1	S
Colon:				
Local		91	2	S
Regional		60.1	2	S
Distant		6	1	S
Rectal:				
Local		84.5	2	S
Regional		50.7	2	S

Cancer type	2-year[1]	5-year[1]	Disability status[2]	Functional impact[3]
Distant		5.3	1	S
Esophagus:				
Local		18.5	1	S
Regional		5.2	1	S
Distant		1.8	1	S
Hodgkin's Disease:[4]				
Stage 1		90 - 95	3	S
Stage 2		86	2	S
Stage 3		<80	2	S
Stage 4		<80	1	S
Kidney/Renal Pelvis:				
Local		85.4	3	S
Regional		56.3	2	S
Distant		9	1	S
Larynx:				
Local		84.2	2	S
Regional		52.5	2	S
Distant		24	1	S
Acute Lymphocytic Leukemia:				
All		51.1	2	S
Chronic Lymphocytic Leukemia:				
All		66.2	2	S
Acute Myelogenous Leukemia:				
All		9.7	1	S
Chronic Myelogenous Leukemia:				
All		21.7	1	S
Liver/Intrahepatic Bile Duct:				
Local		15.1	1	S
Regional		5.8	1	S
Distant		1.9	1	S
Lung/Bronchus:[5]				
Local		45.6	2	S
Regional		13.1	1	S
Distant		1.3	1	S
Melanomas of Skin:				
Regional		53.6	2	S
Distant		12.8	1	S
Oral Cavity/Pharyngeal:				
Local		76.2	2	S
Regional		40.9	2	S
Distant		18.7	1	S
Pancreas:				
Local		6.1	1	S
Regional		3.7	1	S
Distant		1.4	1	S
Prostate:				
Local		91	3	S
Regional		80.4	2	S
Distant		28	1	S
Stomach:				
Local		55.4	1	S
Regional		17.3	1	S
Distant		2.1	1	S
Testicular:				
Distant		65.5	1	S
Thyroid:				
Regional		93.1	3	S
Distant		47.2	1	S
Bladder:				
Regional		46	2	S
Distant		9.1	1	S

[1]Source of 2 and 5 year survival data: Miller BA et al. Cancer Statistics Review 1973 - 1989. NIH Publication No. 92 - 2789.
[2]Disability Status:
Category 1: Significant impact on functional capacity or life span.
Category 2: Intermediate impact.
Category 3: No significant impact on functional capacity or life span.
[3]Functional Impacts:
(S) Significant -- significant potential for the effects of treatment (radiotheraphy, chemotherapy. surgery) to affect functional capacity.
[4]Hodgkin's disease data presented for each stage derived from American Cancer Society. American Cancer Society Textbook reference for unstaged cancer is derived from Cancer Statistics Review (See 3). In addition to other data, see: American Cancer Society Textbook of Clinical Oncology. Eds: Holleb AI, Fink DJ, Murphy GP, Atlanta: American Cancer Society, Inc. 1991.)
[5]Small cell carcinoma is classified as a 1.

B. Endocrine

Confirmatory test	Minimum result	Requirements
	BODY PART: ENDOCRINE CONFIRMATORY TESTS	
Diabetes, requiring insulin (IDDM): Medical record review	Confirmation of condition and need for insulin use	Highly recommended.

Disability test	Test result	Disability classification
	BODY PART: ENDOCRINE JOB TITLE: ENGINEER	
Diabetes, requiring insulin (IDDM): Medical record review	Confirmation of condition and need for insulin use	D

C. Cardiac

Confirmatory test	Minimum result	Requirements
	BODY PART: CARDIAC CONFIRMATORY TESTS	
Angina:		
Medical record review	Confirmed history of ischemia including copies of electrocardiogram.	Recommended.
Stress test	Definite ischemia on exercise test	Recommended.
Thallium study	Definite ischemia with exercise	Recommended.
Aortic valve disease:		
Cardiac catheterization	Proven and significant	Recommended.
Echocardiogram	Significant valve disease	Recommended.
Coronary artery disease:		
Medical record review	Documented ischemia with electrocardiogram confirmation.	Recommended.
Medical record review	Documented myocardial infarction	Recommended.
Stress test	Positive	Recommended.
Thallium study	Definite ischemia with exercise	Recommended.
Angiography	Definite occlusion (>60%) of one vessel	Recommended.
Cardiomyopathy:		
Echocardiogram	Proven ejection fraction ≤35%	Recommended.
Catheterization	Poor global function and not coronary artery disease	Recommended.
Hypertension:		
Medical record review	Documentation of hypertension for one year	Highly recommended.
Medical record review	Definite diagnosis by cardiologist or internist	Highly recommended.
Medical record review	Confirmation of medication use	Highly recommended.
Arrhythmia: heart block:		
Medical record review	Proven episode with electrocardiogram confirmation	Recommended.
Electrocardiogram	Documentation of arrhythmia	Recommended.
Mitral valve disease:		
Cardiac catheterization	Significant valve disease	Recommended.
Echocardiogram	Significant valve disease	Recommended.
Pericardial disease:		
Medical record review	Confirmed by cardiologist or internist	Highly recommended.
Pulmonary hypertension:		
Physical examination	Increased pulmonic sound or pulmonary ejection murmur by cardiologist or internist.	Recommended.
Electrocardiogram	Definite right ventricular hypertension	Highly recommended.
Ventricular ectopy:		
Medical record review	Definite episode within one year	Recommended.
Holter monitoring	Definite arrhythmia	Recommended.
Provocative testing	Positive response	Recommended.
Arrhythmia: supraventricular tachycardia:		
Medical record review	Definite episode within one year	Recommended.
Holter monitoring	Definite arrhythmia	Recommended.
Post heart transplant:		
Medical record review	Documented	Highly recommended.

Disability test	Test result	Disability classification
BODY PART: CARDIAC JOB TITLE: TRAINMAN		
Angina:		
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤7 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D
Stress test	Documented hypotensive response	D
Stress test: significant ST changes	Definite ischemia ≤7 METS	D
Aortic valve disease:		
Cardiac catheterization	Aortic gradient 25 - 50 mm HG.	
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤7 METS	D
Coronary artery disease:		
Myocardial infarction	Multiple infarctions	D
Echocardiogram	Confirmed ventricular aneurysm	D
Cardiac catheterization	Aortic gradient 25 - 50 mm Hg	D
Cardiac catheterization	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤7 METS	D
Medical record review	Unstable as diagnosed by a Cardiologist	D
Stress test	Documented hypotensive response	D
Stress test	Definite ischemia ≤ 7 METS	D
Isotope, e.g., thallium study	Definite ischemia ≤ 7 METS	D
Cardiomyopathy:		
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤7 METS	D
Hypertension:		
Medical record review	Diastolic >120 and systolic >160, 50% of the time and evidence of end organ damage (blood creatinine >2; urinary protein >½ gm; or EKG evidence of ischemia).	D
Arrhythmia: heart block:		
Holter	Documented asystole length >1.5 - 2 seconds	D
Medical record review	Documented syncope with proven arrhythmia	D
Mitral valve disease:		
Cardiac catheterization	Mitral valve gradient ≥5 mm Hg	D
Cardiac catheterization	Mitral regurgitation severe	D
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤7 METS	D
Pericardial disease:		
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Ventricular ectopy:		
Medical record review	Documented life threatening arrhythmia	D
Holter	Uncontrolled ventricular rhythm	D
Medical record review	Documented related syncope	D
Arrhythmia: supraventricular tachycardia:		
Medical record review	Documented related syncope	D
Post heart transplant:		
Medical record review	Post heart transplant	D
BODY PART: CARDIAC JOB TITLE: ENGINEER		
Angina:		
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D
Stress test	Documented hypotensive response	D
Stress test: significant ST changes	Definite ischemia ≤5 METS	D
Aortic valve disease:		
Cardiac catheterization	Aortic gradient 25 - 50 mm HG	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Coronary artery disease:		
Myocardial infarction	Multiple infarctions	D
Echocardiogram	Confirmed ventricular aneurysm	D
Cardiac catheterization	Aortic gradient 25 - 50 mm Hg	D
Cardiac catheterization	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Medical record review	Unstable as diagnosed by a Cardiologist	D
Stress test	Documented hypotensive response	D
Stress test	Definite ischemia ≤5 METS	D

Disability test	Test result	Disability classification
Isotope, e.g., thallium study	Definite ischemia ≤5 METS	D
Cardiomyopathy:		
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Hypertension:		
Medical record review	Diastolic >120 and systolic >160, 50% of the time and evidence of end organ damage (blood creatinine >2; urinary protein >½ gm; or EKG evidence of ischemia).	D
Arrhythmia: heart block:		
Holter	Documented asystole length >1.5 - 2 seconds	D
Medical record review	Documented syncope with proven arrhythmia	D
Mitral valve disease:		
Cardiac catheterization	Mitral valve gradient ≥10 mm Hg	D
Cardiac catheterization	Mitral regurgitation severe	D
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Pericardial disease:		
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Ventricular ectopy:		
Medical record review	Documented life threatening arrhythmia	D
Holter	Uncontrolled ventricular rhythm	D
Medical record review	Documented related syncope	D
Arrhythmia: supraventricular tachycardia:		
Medical record review	Documented related syncope	D
Post heart transplant:		
Medical record review	Post heart transplant	D
	BODY PART: CARDIAC JOB TITLE: DISPATCHER	
Angina:		
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D
Stress test	Documented hypotensive response	D
Stress test: significant ST changes	Definite ischemia ≤5 METS	D
Aortic valve disease:		
Cardiac catheterization	Aortic gradient 25 - 50 mm Hg	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Coronary artery disease:		
Myocardial infarction	Multiple infarctions	D
Echocardiogram	Confirmed ventricular aneurysm	D
Cardiac catheterization	Aortic gradient 25 - 50 mm Hg	D
Cardiac catheterization	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D
Stress test	Documented hypotensive response	D
Stress test	Definite ischemia ≤5 METS	D
Isotope, e.g., thallium study	Definite ischemia ≤5 METS	D
Cardiomyopathy:		
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Hypertension:		
Medical record review	Diastolic >120 and systolic >160, 50% of the time and evidence of end organ damage (blood creatinine >2; urinary protein >½ gm; or EKG evidence of ischemia).	D
Arrhythmia: heart block:		
Holter	Documented asystole length >1.5 - 2 seconds	D
Medical record review	Documented syncope with proven arrhythmia	D
Mitral valve disease:		
Cardiac catheterization	Mitral valve gradient ≥10 mm Hg	D
Cardiac catheterization	Mitral regurgitation severe	D
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Pericardial disease:		
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Ventricular ectopy:		
Medical record review	Documented life threatening arrhythmia	D

Disability test	Test result	Disability classification
Holter	Uncontrolled ventricular rhythm	D
Medical record review	Documented related syncope	D
Arrhythmia: supraventricular tachycardia:		
Medical record review	Documented related syncope	D
Post heart transplant:		
Medical record review	Post heart transplant	D
BODY PART: CARDIAC JOB TITLE: CARMAN		
Angina:		
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D
Stress test	Documented hypotensive response	D
Stress test: significant ST changes	Definite ischemia ≤5 METS	D
Aortic valve disease:		
Cardiac catheterization	Aortic gradient 25 - 50 mm HG.	
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Coronary artery disease:		
Myocardial infarction	Multiple infarctions	D
Echocardiogram	Confirmed ventricular aneurysm	D
Cardiac catheterization	Aortic gradient 25 - 50 mm Hg	D
Cardiac catheterization	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Medical record review	Unstable as diagnosed by a Cardiologist	D
Stress test	Documented hypotensive response	D
Stress test	Definite ischemia ≤ 5 METS	D
Isotope, e.g., thallium study	Definite ischemia ≤ 5 METS	D
Cardiomyopathy:		
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Hypertension:		
Medical record review	Diastolic >120 and systolic >160, 50% of the time and evidence of end organ damage (blood creatinine >2; urinary protein >½ gm; or EKG evidence of ischemia).	D
Arrhythmia: heart block:		
Holter	Documented asystole length >1.5 - 2 seconds	D
Medical record review	Documented syncope with proven arrhythmia	D
Mitral valve disease:		
Cardiac catheterization	Mitral valve gradient ≥10 mm Hg	D
Cardiac catheterization	Mitral regurgitation severe	D
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Pericardial disease:		
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Ventricular ectopy:		
Medical record review	Documented life threatening arrhythmia	D
Holter	Uncontrolled ventricular rhythm	D
Medical record review	Documented related syncope	D
Arrhythmia: supraventricular tachycardia:		
Medical record review	Documented related syncope	D
Post heart transplant:		
Medical record review	Post heart transplant	D
BODY PART: CARDIAC JOB TITLE: SIGNALMAN		
Angina:		
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤7 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D
Stress test	Documented hypotensive response	D
Stress test: significant ST changes	Definite ischemia ≤7 METS	D
Aortic valve disease:		
Cardiac catheterization	Aortic gradient 25 - 50 mm HG	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤7 METS	D
Coronary artery disease:		
Myocardial infarction	Multiple infractions	D

Disability test	Test result	Disability classification
Echocardiogram	Confirmed ventricular aneurysm	D
Cardiac catheterization	Aortic gradient 25 - 50 mm Hg	D
Cardiac catheterization	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤7 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D
Stress test	Documented hypotensive response	D
Stress test	Definite ischemia ≤7 METS	D
Isotope, e.g., thallium study	Definite ischemia ≤7 METS	D
Cardiomyopathy:		
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤7 METS	D
Hypertension:		
Medical record review	Diastolic >120 and systolic >160, 50% of the time and evidence of end organ damage (blood creatinine >2; urinary protein >½ gm; or EKG evidence of ischemia).	D
Arrhythmia: heart block		
Holter	Documented asystole length >1.5 - 2 seconds	D
Medical record review	Documented syncope with proven arrhythmia	D
Mitral valve disease:		
Cardiac catheterization	Mitral valve gradient ≥5 mm Hg	D
Cardiac catherization	Mitral regurgitation severe	D
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤7 METS	D
Pericardial disease:		
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Ventricular ectopy:		
Medical record review	Documented life threatening arrhythmia	D
Holter	Uncontrolled ventricular rhythm	D
Medical record review	Documented related syncope	D
Arrhythmia: supraventricular tachycardia:		
Medical record review	Documented related syncope	D
Post heart transplant:		
Medical record review	Post heart transplant	D
BODY PART: CARDIAC JOB TITLE: TRACKMAN		
Angina:		
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤7 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D
Stress test	Documented hypotensive response	D
Stress test: significant ST changes	Definite ischemia ≤7 METS	D
Aortic valve disease:		
Cardiac catheterization	Aortic gradient 25 - 50 mm HG	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤7 METS	D
Coronary artery disease:		
Myocardial infarction	Multiple infarctions	D
Echocardiogram	Confirmed ventricular aneurysm	D
Cardiac catheterization	Aortic gradient 25 - 50 mm Hg	D
Cardiac catheterization	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤7 METS	D
Medical record review	Unstable as diagnosed by a cardiologist	D
Stress test	Documented hypotensive response	D
Stress test	Definite ischemia ≤7 METS	D
Isotope, e.g., thallium study	Definite ischemia ≤7 METS	D
Cardiomyopathy:		
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤7 METS	D
Hypertension:		
Medical record review	Diastolic >120 and systolic >160, 50% of the time and evidence of end organ damage (blood creatinine >2; urinary protein >½ gm; or EKG evidence of ischemia).	D
Arrhythmia: heart block:		
Holter	Documented asystole length >1.5 - 2 seconds	D
Medical record review	Documented syncope with proven arrhythmia	D
Mitral valve disease:		
Cardiac catheterization	Mitral valve gradient ≥5 mm Hg	D
Cardiac catheterization	Mitral regurgitation severe	D

Disability test	Test result	Disability classification
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤7 METS	D
Pericardial disease:		
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Ventricular ectopy:		
Medical record review	Documented life threatening arrhythmia	D
Holter	Uncontrolled ventricular rhythm	D
Medical record review	Documented related syncope	D
Arrhythmia: supraventricular tachycardia:		
Medical record review	Documented related syncope	D
Post heart transplant:		
Medical record review	Post heart transplant	D
BODY PART: CARDIAC JOB TITLE: MACHINIST		
Angina:		
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D
Stress test	Documented hypotensive response	D
Stress test: significant ST changes	Definite ischemia ≤5 METS	D
Aortic valve disease:		
Cardiac catheterization	Aortic gradient 25 - 50 mm HG.	
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Coronary artery disease:		
Myocardial infarction	Multiple infarctions	D
Echocardiogram	Confirmed ventricular aneurysm	D
Cardiac catheterization	Aortic gradient 25 - 50 mm Hg	D
Cardiac catheterization	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Medical record review	Unstable as diagnosed by a cardiologist	D
Stress test	Documented hypotensive response	D
Stress test	Definite ischemia ≤5 METS	D
Isotope, e.g., thallium study	Definite ischemia ≤5 METS	D
Cardiomyopathy:		
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Hypertension:		
Medical record review	Diastolic >120 and systolic >160, 50% of the time and evidence of end organ damage (blood creatinine >2; urinary protein >½ gm; or EKG evidence of ischemia).	D
Arrhythmia: heart block:		
Holter	Documented asystole length >1.5 - 2 seconds	D
Medical record review	Documented syncope with proven arrhythmia	D
Mitral valve disease:		
Cardiac catheterization	Mitral valve gradient ≥10 mm Hg	D
Cardiac catheterization	Mitral regurgitation severe	D
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Pericardial disease:		
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Ventricular ectopy:		
Medical record review	Documented life threatening arrhythmia	D
Holter	Uncontrolled ventricular rhythm	D
Medical record review	Documented related syncope	D
Arrhythmia: supraventricular tachycardia:		
Medical record review	Documented related syncope	D
Post heart transplant:		
Medical record review	Post heart transplant	D
BODY PART: CARDIAC JOB TITLE: SHOP LABORER		
Angina:		
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D

Disability test	Test result	Disability classification
Stress test	Documented hypotensive response	D
Stress test: significant ST changes	Definite ischemia ≤5 METS	D
Aortic valve disease:		
Cardiac catheterization	Aortic gradient 25 - 50 mm HG.	
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Coronary artery disease:		
Myocardial infarction	Multiple infarctions	D
Echocardiogram	Confirmed ventricular aneurysm	D
Cardiac catheterization	Aortic gradient 25 - 50 mm Hg.	
Cardiac catheterization	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Medical record review	Unstable as diagnosed by a Cardiologist	D
Stress test	Documented hypotensive response	D
Stress test	Definite ischemia ≤5 METS	D
Isotope, e.g., thallium study	Definite ischemia ≤5 METS	D
Cardiomyopathy:		
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Hypertension:		
Medical record review	Diastolic >120 and systolic >160, 50% of the time and evidence of end organ damage (blood creatinine >2; urinary protein >½ gm; or EKG evidence of ischemia).	D
Arrhythmia: heart block:		
Holter	Documented asystole length >1.5 - 2 seconds	D
Medical record review	Documented syncope with proven arrhythmia	D
Mitral valve disease:		
Cardiac catheterization	Mitral valve gradient ≥10 mm Hg	D
Cardiac catheterization	Mitral regurgitation severe	D
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Pericardial disease:		
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Ventricular ectopy:		
Medical record review	Documented life threatening arrhythmia	D
Holter	Uncontrolled ventricular rhythm	D
Medical record review	Documented related syncope	D
Arrhythmia: supraventricular tachycardia:		
Medical record review	Documented related syncope	D
Post heart transplant:		
Medical record review	Post heart transplant	D

BODY PART: CARDIAC
JOB TITLE: SALES REPRESENTATIVE

Angina:		
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D
Stress test	Documented hypotensive response	D
Stress test: significant ST changes	Definite ischemia ≤5 METS	D
Aortic valve disease:		
Cardiac catheterization	Aortic gradient 25 - 50 mm HG	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Coronary artery disease:		
Myocardial infarction	Multiple infarctions	D
Echocardiogram	Confirmed ventricular aneurysm	D
Cardiac catheterization	Aortic gradient 25 - 50 mm Hg	D
Cardiac catheterization	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Medical record review	Unstable as diagnosed by a cardiologist	D
Stress test	Documented hypotensive response	D
Stress test	Definite ischemia ≤5 METS	D
Isotope, e.g., thallium study	Definite ischemia ≤5 METS	D
Cardiomyopathy:		
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D

Disability test	Test result	Disability classification
Hypertension:		
Medical record review	Diastolic >120 and systolic >160, 50% of the time and evidence of end organ damage (blood creatinine >2; urinary protein >½ gm; or EKG evidence of ischemia).	D
Arrhythmia: heart block:		
Holter	Documented asystole length >1.5 - 2 seconds	D
Medical record review	Documented syncope with proven arrhythmia	D
Mitral valve disease:		
Cardiac catheterization	Mitral valve gradient ≥10 mm Hg	D
Cardiac catheterization	Mitral regurgitation severe	D
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Pericardial disease:		
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Ventricular ectopy:		
Medical record review	Documented life threatening arrhythmia	D
Holter	Uncontrolled ventricular rhythm	D
Medical record review	Documented related syncope	D
Arrhythmia: supraventricular tachycardia:		
Medical record review	Documented related syncope	D
Post heart transplant:		
Medical record review	Post heart transplant	D

BODY PART: CARDIAC
JOB TITLE: GENERAL OFFICE CLERK

Angina:		
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D
Stress test	Documented hypotensive response	D
Stress test: significant ST changes	Definite ischemia ≤5 METS	D
Aortic valve disease:		
Cardiac catheterization	Aortic gradient 25 - 50 mm HG	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Coronary artery disease:		
Myocardial infarction	Multiple infarctions	D
Echocardiogram	Confirmed ventricular aneurysm	D
Cardiac catheterization	Aortic gradient 25 - 50 mm Hg	D
Cardiac catheterization	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Medical record review	Unstable as diagnosed by a Cardiologist	D
Stress test	Documented hypotensive response	D
Stress test	Definite ischemia ≤5 METS	D
Isotope, e.g., thallium study	Definite ischemia ≤5 METS	D
Cardiomyopathy:		
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Arrhythmia: heart block:		
Holter	Documented asystole length >1.5 - 2 seconds	D
Medical record review	Documented syncope with proven arrhythmia	D
Mitral valve disease:		
Cardiac catheterization	Mitral valve gradient ≥10 mm Hg	D
Cardiac catheterization	Mitral regurgitation severe	D
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Stress test	Peak exercise ≤5 METS	D
Pericardial disease:		
Cardiac catheterization	Poor ejection fraction ≤35%	D
Echocardiogram	Poor ejection fraction ≤35%	D
Ventricular ectopy:		
Medical record review	Documented life threatening arrhythmia	D
Holter	Uncontrolled ventricular rhythm	D
Medical record review	Documented related syncope	D
Arrhythmia: supraventricular tachycardia:		
Medical record review	Documented related syncope	D
Post heart transplant:		
Medical record review	Post heart transplant	D

D. Respiratory

Confirmatory test	Minimum result	Requirements
	BODY PART: RESPIRATORY CONFIRMATORY TESTS	
Asthma:		
Spirometry	FEV1/FVC ratio diminished	Recommended.
Spirometry	>15% change with administration of bronchodilator	Recommended.
Methacholine challenge test	Positive: FEV1 decrease >20% at (PC <=8 mg/ml)	Recommended
Bronchiectasis:		
Medical record review	Chronic cough and sputum	Recommended.
Chest X-ray	Bronchiectasis demonstrated	Recommended.
Chest CAT scan	Bronchiectasis demonstrated	Recommended.
Chronic bronchitis:		
Medical record review	Frequent cough -- 2 years duration	Highly recommended.
Chronic obstructive pulmonary disease:		
Spirometry	FEV1/FVC ratio below 65% when stable	Highly recommended.
Spirometry	FEV1 below 75% of predicted when stable	Highly recommended.
Cor pulmonale:		
Electrocardiogram	Definite right ventricular hypertrophy	Recommended.
Echocardiogram	Definite right ventricular hypertrophy	Recommended.
Pulmonary fibrosis:		
Lung biopsy	Diffuse fibrosis	Recommended.
Chest CAT scan	More than minimal fibrosis	Recommended.
Lung resection:		
Medical record review	At least one lobe resected	Highly recommended.
Pneumothorax:		
Medical record review	Required hospitalization with chest tube drainage	Highly recommended.
Restrictive lung disease:		
Chest X-ray	Restrictive lung changes	Recommended.
DLCO	Abnormal	Highly recommended.
Chest CAT scan	Restrictive lung changes	Recommended.
Spirometry	FVC <75% predicted	Highly recommended.
Silicosis:		
Medical record review	Occupational exposure for at least 1 year	Highly recommended.
Tuberculosis:		
Chest X-ray	Evidence of changes consistent with tuberculosis infection.	Recommended.
Culture	Positive	Recommended.

Disability test	Test result	Disability classification
	BODY PART: RESPIRATORY JOB TITLE: TRAINMAN	
Asthma:		
Spirometry	Repeated spirometry FEV1 <40% over a 12 month period.	
Bronchiectasis:		
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic bronchitis:		
Spirometry	Repeated spirometry FEV1 <40% over a 12 month period.	D
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic obstructive pulmonary disease (COPD):		
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Cor pulmonale:		
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Pulmonary fibrosis:		
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
DLCO	<45% predicted	D

Disability test	Test result	Disability classification
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Lung resection:		
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Restrictive lung disease:		
DLCO	<45% predicted	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Silicosis:		
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
BODY PART: RESPIRATORY JOB TITLE: CARMAN		
Asthma:		
Spirometry	Repeated spirometry FEV1 <40% over a 12 month period.	D
Bronchiectasis:		
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic bronchitis:		
Spirometry	Repeated spirometry FEV1 <40% over a 12 month period.	D
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic obstructive pulmonary disease (COPD):		
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Cor pulmonale:		
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Pulmonary fibrosis:		
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
DLCO	<45% predicted	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Lung resection:		
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Restrictive lung disease:		
DLCO	<45% predicted	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Silicosis:		
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
BODY PART: RESPIRATORY JOB TITLE: SIGNALMAN		
Asthma:		
Spirometry	Repeated spirometry FEV1 <40% over a 12 month period.	D
Bronchiectasis:		
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic bronchitis:		
Spirometry	Repeated spirometry FEV1 <40% over a 12 month period.	D

Disability test	Test result	Disability classification
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic obstructive pulmonary disease (COPD):		
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Cor pulmonale:		
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Pulmonary fibrosis:		
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
DLCO	<45% predicted	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Lung resection:		
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Restrictive lung disease:		
DLCO	<45% predicted	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Silicosis:		
Resting AGB	PCO2 arterial >50 mm Hg if stable	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
BODY PART: RESPIRATORY JOB TITLE: TRACKMAN		
Asthma:		
Spirometry	Repeated spirometry FEV1 <40% over a 12 month period.	D
Bronchiectasis:		
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Pulmonary exercise test or exercise ABG	PO2 >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic bronchitis:		
Spirometry	Repeated spirometry FEV1 <40% over a 12 month period.	D
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic obstructive pulmonary disease (COPD):		
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Cor pulmonale:		
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Pulmonary fibrosis:		
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
DLCO	<45% predicted	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Lung resection:		
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Restrictive lung disease:		
DLCO	<45% predicted	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Silicosis:		
Resting ABG	PCO2 arterial >50 mm Hg if stable	D

Disability test	Test result	Disability classification
Electrocardiogram	Definite positive right ventricular hypertrophy	D
BODY PART: RESPIRATORY JOB TITLE: MACHINIST		
Asthma:		
Spirometry	Repeated spirometry FEV1 <40% over a 12 month period.	D
Bronchiectasis:		
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic bronchitis:		
Spirometry	Repeated spirometry FEV1 <40% over a 12 month period.	D
Resting AGB	PCO2 arterial >50 mm Hg if stable	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic obstructive pulmonary disease (COPD):		
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Cor pulmonale:		
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Pulmonary fibrosis:		
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
DLCO	<45% predicted	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Lung resection:		
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Restrictive lung disease:		
DLCO	<45% predicted	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Silicosis:		
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
BODY PART: RESPIRATORY JOB TITLE: SHOP LABORER		
Asthma:		
Spirometry	Repeated spirometry FEV1 <40% over a 12 month period.	D
Bronchiectasis:		
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic bronchitis:		
Spirometry	Repeated spirometry FEV1 <40% over a 12 month period.	D
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic obstructive pulmonary disease (COPD):		
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Cor pulmonale:		
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Pulmonary fibrosis:		
Resting ABG	PCO2 arterial >50 mm Hg if stable	D

Disability test	Test result	Disability classification
DLCO	<45% predicted	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Lung resection:		
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Restrictive lung disease:		
DLCO	<45% predicted	D
Pulmonary exercise test or exercise ABG	PO2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO2 <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Silicosis:		
Resting ABG	PCO2 arterial >50 mm Hg if stable	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D

E. Lumbar Sacral Spine

Confirmatory test	Minimum result	Requirements
	BODY PART: LS SPINE CONFIRMATORY TESTS	
Ankylosing spondylitis:		
X-ray-lumbar sacral spine	Sacroilitis	Highly recommended.
HLA B27 (blood test)	Positive HLA B27 (90% case)	Recommended.
Backache, unspecified:		
Medical record review	History of back pain under medical treatment for at least 1 year.	Highly recommended.
Medical record review	History of back pain unresponsive to therapy for at least 1 year.	Highly recommended.
Medical record review	History of back pain with functional limitations for at least 1 year.	Highly recommended.
Chronic back pain, not otherwise specified:.		
Medical record review	History of back pain under medical treatment for at least 1 year.	Highly recommended.
Medical record review	History of back pain unresponsive to therapy for at least 1 year.	Highly recommended.
Medical record review	History of back pain with functional limitations for at least 1 year.	Highly recommended.
Cauda equina syndrome with bowel or bladder dysfunction:.		
Magnetic resonance imaging	Neural impingement of spinal nerves below L1	Recommended.
Computerized tomography	Neural impingement of spinal nerves below L1	Recommended.
Cystometrogram	Impaired bladder function	Recommended.
Rectal examination	Diminished rectal sphincter tone	Recommended.
Myelogram	Neural impingement of spinal nerves below L1	Recommended.
Degeneration of lumbar disc:		
X-ray lumbar sacral spine	Significant degenerative disc changes	Recommended.
Computerized tomography	Significant degenerative disc changes	Recommended.
Magnetic resonance imaging	Significant degenerative disc changes	Recommended.
Myelogram	Significant degenerative disc changes	Recommended.
Displacement of lumbar disc:.		
X-ray-lumbar sacral spine	Significant degenerative disc changes	Recommended.
Computerized tomography	Significant degenerative disc changes	Recommended.
Magnetic resonance imaging	Significant degenerative disc changes	Recommended.
Myelogram	Significant degenerative disc changes	Recommended.
Fracture: vertebral body:.		
Magnetic resonance imaging	Fracture vertebral body	Recommended.
Computerized tomography	Fracture vertebral body	Recommended.
X-ray-lumbar sacral spine	Fracture vertebral body	ommended.
Fracture: posterior element with spinal canal displacement:		
Magnetic resonance imaging	Fracture posterior spinal element with displacement of spinal canal.	Recommended.
Computerized tomography	Fracture posterior spinal element with displacement of spinal canal.	Recommended.
X-ray-lumbar sacral spine	Fracture posterior spinal element with displacement of spinal canal.	Recommended.

E. Lumbar Sacral Spine—Continued

Confirmatory test	Minimum result	Requirements
Fracture: posterior spinal element with no displacement:.		
X-ray-lumbar sacral spine	Fracture posterior spinal element	Recommended.
Magnetic resonance imaging	Fracture posterior spinal element	Recommended.
Computerized tomography	Fracture posterior spinal element	Recommended.
Fracture: spinous process:		
X-ray-lumbar sacral spine	Spinous process fracture	Recommended.
Magnetic resonance imaging	Spinous process fracture	Recommended.
Computerized tomography	Spinous process fracture	Recommended.
Fracture: Transverse process:		
Lumbar sacral spine	Transverse process fracture	Recommended.
Magnetic resonance imaging	Transverse process fracture	Recommended.
Computerized tomography	Transverse process fracture	Recommended.
Intervertebral disc disorder:		
X-ray-lumbar sacral spine	Significant disc degeneration	Recommended.
Magnetic resonance imaging	Significant disc degeneration	Recommended.
Computerized tomography	Significant disc degeneration	Recommended.
Myelogram	Significant disc degeneration	Recommended.
Lumbago:		
Medical record review: lumbar	History of back pain under medical treatment for at least 1 year.	Highly recommended.
Medical record review: lumbar	History of back pain unresponsive to therapy for at least 1 year.	Highly recommended.
Medical record review: lumbar	History of back pain with functional limitations for at least 1 year.	Highly recommended.
Lumbosacral neuritis:		
Magnetic resonance imaging	Evidence of neural compression	Recommended.
Electromyography	Definite denervation	Recommended.
Nerve conduction velocity	Definite slowing	Recommended.
Physical examination – atrophy	Atrophy in affected limb with 2 cm difference between limbs.	Recommended.
Physical examination: straight leg raise	Positive straight leg raise	Recommended.
Sensory examination	Loss of sensation in affected dermatomes	Recommended.
Medical history	History of radicular pain	Highly recommended.
Computerized tomography	Evidence of neural compression	Recommended.
Lumbar spinal stenosis:		
Computerized tomography	Significant narrowing: spinal cord canal or intervertebral foramen.	Recommended.
Magnetic resonance imaging	Significant narrowing: spinal cord canal or intervertebral foramen.	Recommended.
Myelogram	Significant narrowing: spinal cord canal or intervertebral foramen.	Recommended.
Mechanical complication of internal orthopedic device:		
Medical record review	Documentation of failure of implant following surgical procedure.	Highly recommended.
Osteomalacia:		
X-ray-lumbar sacral spine	Evidence of significant osteomalacia	Recommended.
Magnetic resonance imaging	Evidence of significant osteomalacia	Recommended.
Computerized tomography	Evidence of significant osteomalacia	Recommended.
Osteomyelitis, chronic-lumbar:		
X-ray-lumbar sacral spine	Evidence of chronic infection	Recommended.
Magnetic resonance imaging	Evidence of chronic infection	Recommended.
Computerized tomography	Evidence of chronic infection	Recommended.
Osteoporosis:		
Computerized tomography	Significant bone density loss	Recommended.
Dual photon absorptiometry	Significant bone density loss	Recommended.
X-ray-lumbar sacral spine	Significant bone density loss	Recommended.
Post laminectomy syndrome with radiculopathy:		
Medical record review: lumbar	Documented surgical history of laminectomy	Highly recommended.
Magnetic resonance imaging	Evidence of laminectomy	Recommended.
Electromyography	Definite denervation	Recommended.
Nerve conduction velocity	Definite slowing	Recommended.
Physical examination – atrophy	Atrophy in affected limb with 2 cm difference between limbs.	Recommended.
Physical examination: straight leg raise	Positive straight leg raise	Recommended.
Sensory examination	Loss of sensation in affected dermatomes	Recommended.
Medical record review: lumbar	History of radicular pain	Highly recommended.
Computerized tomography	Evidence of laminectomy	Recommended.
Myelogram	Evidence of laminectomy	Recommended.
Radiculopathy:		
Magnetic resonance imaging	Evidence of neural compression	Recommended.
Electromyography	Definite denervation	Recommended.

E. Lumbar Sacral Spine—Continued

Confirmatory test	Minimum result	Requirements
Nerve conduction velocity	Definite slowing	Recommended.
Physical examination – atrophy	Atrophy in affected limb with 2 cm difference between limbs.	Recommended.
Physical examination: straight leg raise	Positive straight leg raise	Recommended.
Sensory examination	Loss of sensation in affected dermatomes	Recommended.
Medical record review: lumbar	History of radicular pain	Highly recommended.
Computerized tomography	Evidence of neural compression	Recommended.
Myelogram	Evidence of neural compression	Recommended.
Sciatica:		
Magnetic resonance imaging	Evidence of neural compression	Recommended.
Electromyography	Definite denervation	Recommended.
Nerve conduction velocity	Definite slowing	Recommended.
Physical examination – atrophy	Atrophy in affected limb with 2 cm difference between limbs.	Recommended.
Physical examination: straight leg raise	Positive straight leg raise	Recommended.
Sensory examination	Loss of sensation in affected dermatomes	Recommended.
Medical history	History of radicular pain	Highly recommended.
Computerized tomography	Evidence of neural compression	Recommended.
Myelogram	Evidence of neural compression	Recommended.
Strains and sprains, unspecified:		
Medical record review	History of back pain under medical treatment for at least 1 year.	Highly recommended.
Medical record review	History of back pain unresponsive to therapy for at least 1 year.	Highly recommended.
Medical record review	History of back pain with functional limitations for at least 1 year.	Highly recommended.
Medical record review	Documented history of strain and/or sprain	Highly recommended.
Spondylolisthesis grade 1:		
X-ray-lumbar sacral spine	1 - 25% slippage	Recommended.
Computerized tomography	1 - 25% slippage	Recommended.
Magnetic resonance imaging	1 - 25% slippage	Recommended.
Spondylolisthesis grade 2:		
X-ray-lumbar sacral spine	26 - 50% slippage	Recommended.
Computerized tomography	26 - 50% slippage	Recommended.
Magnetic resonance imaging	26 - 50% slippage	Recommended.
Spondylolisthesis grade 3:		
X-ray-lumbar sacral spine	51 - 75% slippage	Recommended.
Computerized tomography	51 - 75% slippage	Recommended.
Magnetic resonance imaging	51 - 75% slippage	Recommended.
Spondylolisthesis grade 4:		
X-ray-lumbar sacral spine	Complete slippage	Recommended.
Computerized tomography	Complete slippage	Recommended.
Magnetic resonance imaging	Complete slippage	Recommended.
Spondylolisthesis-acquired:		
X-ray-lumbar sacral spine	Slippage	Recommended.
Computerized tomography	Slippage	Recommended.
Magnetic resonance imaging	Slippage	Recommended.
Spondylolsis:		
X-ray-lumbar sacral spine	Defect -- pars interarticularis	Recommended.
Computerized tomography	Defect -- pars interarticularis	Recommended.
Magnetic resonance imaging	Defect -- pars interarticularis	Recommended.
Sprains and strains, sacral:		
Medical record review: lumbar	History of back pain under medical treatment for at least 1 year.	Highly recommended.
Medical record review: lumbar	History of back pain unresponsive to therapy for at least 1 year.	Highly recommended.
Medical record review: lumbar	History of back with functional limitations for at least 1 year.	Highly recommended.
Medical record review: lumbar	Documented history of strain and/or sprain	Highly recommended.
Sprains and strains, sacroiliac:		
Medical record review: lumbar	History of back pain under medical treatment for at least 1 year.	Highly recommended.
Medical record review: lumbar	History of back pain unresponsive to therapy for at least 1 year.	Highly recommended.
Medical record review: lumbar	History of back pain with functional limitations for at least 1 year.	Highly recommended.
Medical record review: lumbar	Documented history of strain and/or sprain	Highly recommended.

Disability test	Test result	Disability classification
BODY PART: LS SPINE JOB TITLE: TRAINMAN		
Ankylosing spondylitis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Backache, unspecified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Chronic back pain, not otherwise specified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Cauda equina syndrome with bowel or bladder dysfunction:		
Computerized tomography	Disc extrusion with neural impingement, nerves < L1	D
Magnetic resonance imaging	Disc extrusion with neural impingement, nerves < L1	D
Physical examination	Lower extremity weakness	D
Cystometrogram	Impaired bladder function	D
Myelogram	Disc extrusion with neural impingement, nerves <L1	D
Physical examination: rectal	Impairment of sphincter tone	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Degeneration of lumbar disc:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Displacement of lumbar disc:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: vertebral body:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with displacement:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with no displacement:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: spinous process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture transverse process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Intervertebral disc disorder:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Lumbago:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Lumbosacral neuritis:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Physical examination	Lower extremity weakness	D
Lumbar spinal stenosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Significant narrowing of the spinal canal	D
Magnetic resonance imaging	Significant narrowing of the spinal canal	D
Myelogram	Significant narrowing of the spinal canal	D
Physical examination	Significant lower extremity weakness	D
Mechanical complication of internal orthopedic device:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Osteomalacia:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Osteomyelitis, chronic-lumbar:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Medical record review	Frequent flare-ups with objective findings	D
Osteoporosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Post laminectomy syndrome with radiculopathy:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D

Disability test	Test result	Disability classification
Physical examination	Significant lower extremity weakness	D
Post laminectomy syndrome:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
X-ray flexion/extension	Segmental instability	D
Radiculopathy:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Sciatica:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Strains and sprains, unspecified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 1:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylolisthesis grade 2:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 3:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 4:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylolisthesis – acquired:		
X-ray flexion/extension	Segmental instability	D
Spondylolysis:		
X-ray flexion/extension	Segmental instability	D
Sprains and strains, sacral:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Sprains and strains, sacroiliac:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Vertebral body compression fracture:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
BODY PART: LS SPINE JOB TITLE: ENGINEER		
Cauda equina syndrome with bowel or bladder dysfunction:		
Computerized tomography	Disc extrusion with neural impingement, nerves <L1	D
Magnetic resonance imaging	Disc extrusion with neural impingement, nerves <L1	D
Physical examination	Lower extremity weakness	D
Cystometrogram	Impaired bladder function	D
Myelogram	Disc extrusion with neural impingement, nerves <L1	D
Physical examination: rectal	Impairment of sphincter tone	D
BODY PART: LS SPINE JOB TITLE: CARMAN		
Ankylosing spondylitis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Backache, unspecified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Chronic back pain, not otherwise specified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Cauda equina syndrome with bowel or bladder dysfunction:		
Computerized tomography	Disc extrusion with neural impingement, nerves <L1	D
Magnetic resonance imaging	Disc extrusion with neural impingement, nerves <L1	D
Physical examination	Lower extremity weakness	D
Cystometrogram	Impaired bladder function	D
Myeolgram	Disc extrusion with neural impingement, nerves <L1	D
Physical examination: rectal	Impairment of sphincter tone	D

Disability test	Test result	Disability classification
Muscle strength assessment	Lifting capacity diminished by 50%	D
Degeneration of lumbar disc:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Displacement of lumbar disc:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: vertebral body:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with displacement:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with no displacement:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: spinous process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture transverse process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Intervertebral disc disorder:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Lumbago:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Lumbosacral neuritis:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Physical examination	Lower extremity weakness	D
Lumbar spinal stenosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Significant narrowing of the spinal canal	D
Magnetic resonance imaging	Significant narrowing of the spinal canal	D
Myelogram	Significant narrowing of the spinal canal	D
Physical examination	Significant lower extremity weakness	D
Mechanical complication of internal orthopedic device:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Osteomalacia:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Osteomyelitis, chronic-lumbar:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Medical record review	Frequent flare-ups with objective findings	D
Osteoporosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Post laminectomy syndrome with radiculopathy:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Post laminectomy syndrome:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
X-ray flexion/extension	Segmental instability	D
Radiculopathy:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Sciatica:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D

Disability test	Test result	Disability classification
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Strains and sprains, unspecified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 1:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylolisthesis grade 2:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 3:		
Muscle strength assessment	Lifting capacity diminshed by 50%	D
Spondylolisthesis grade 4:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylolisthesis-acquired:		
X-ray flexion/extension	Segmental instability	D
Spondylolysis:		
X-ray flexion/extension	Segmental instability	D
Sprains and strains, sacral:		
Muscle strength assessment	Lifting capacity diminshed by 50%	D
Sprains and strains, sacroiliac:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Vertebral body compression fracture:		
Muscle strength assessment	Lifting capacity diminshed by 50%	D
	BODY PART: LS SPINE **JOB TITLE: SIGNALMAN**	
Ankylosing spondylitis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Backache, unspecified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Chronic back pain, not otherwise specified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Cauda equina syndrome with bowel or bladder dysfunction:		
Computerized tomography	Disc extrusion with neural impingement, nerves <L1	D
Magnetic resonance imaging	Disc extrusion with neural impingement, nerves <L1	D
Physical examination	Lower extremity weakness	D
Cystometrogram	Impaired bladder function	D
Myelogram	Disc extrusion with neural impingement, nerves <L1	D
Physical examination: rectal	Impairment of sphincter tone	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Degeneration of lumbar disc:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Displacement of lumbar disc:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: vertebral body:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with displacement:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with no displacement:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: spinous process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture transverse process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Intervertebral disc disorder:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Lumbago:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Lumbosacral neuritis:		
Computerized tomography	Disc extrusion with neural impingement	D

Disability test	Test result	Disability classification
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Physical examination	Lower extremity weakness	D
Lumbar spinal stenosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Significant narrowing of the spinal canal	D
Magnetic resonance imaging	Significant narrowing of the spinal canal	D
Myelogram	Significant narrowing of the spinal canal	D
Physical examination	Significant lower extremity weakness	D
Mechanical complication of internal orthopedic device:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Osteomalacia:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Osteomyelitis, chronic-lumbar:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Medical record review	Frequent flare-ups with objective findings	D
Osteoporosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Post laminectomy syndrome with radiculopathy:		
Muscle strength assessment	Lifing capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Post laminectomy syndrome:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
X-ray flexion/extension	Segmental instability	D
Radiculopathy:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Sciatica:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Strains and sprains, unspecified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 1:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylolisthesis grade 2:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 3:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 4:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylolisthesis-acquired:		
X-ray flexion/extension	Segmental instability	D
Spondylolysis:		
X-ray flexion/extension	Segmental instability	D
Sprains and strains, sacral:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Sprains and strains, sacroiliac:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Vertebral body compression fracture:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
BODY PART: LS SPINE JOB TITLE: TRACKMAN		
Ankylosing spondylitis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D

Disability test	Test result	Disability classification
Backache, unspecified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Chronic back pain, not otherwise specified:		
Muscle strength assessment	Lifing capacity diminished by 50%	D
Cauda equina syndrome with bowel or bladder dysfunction:		
Computerized tomography	Disc extrusion with neural impingement, nerves <L1	D
Magnetic resonance imaging	Disc extrusion with neural impingement, nerves <L1	D
Physical examination	Lower extremity weakness	D
Cystometrogram	Impaired bladder function	D
Myelogram	Disc extrusion with neural impingement, nerves <L1	D
Physical examination: rectal	Impairment of sphincter tone	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Degeneration of lumbar disc:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Displacement of lumbar disc:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: vertebral body:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with displacement:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with no displacement:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: spinous process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture transverse process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Intervertebral disc disorder:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Lumbago:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Lumbosacral neuritis:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Physical examination	Lower extremity weakness	D
Lumbar spinal stenosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Significant narrowing of the spinal canal	D
Magnetic resonance imaging	Significant narrowing of the spinal canal	D
Myelogram	Significant narrowing of the spinal canal	D
Physcial examination	Significant lower extremity weakness	D
Mechanical complication of internal orthopedic device:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Osteomalacia:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Osteomyelitis, chronic-lumbar:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Medical record review	Frequent flare-ups with objective findings	D
Osteoporosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Post laminectomy syndrome with radiculopathy:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Post laminectomy syndrome:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D

Disability test	Test result	Disability classification
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
X-ray flexion/extension	Segmental instability	D
Radiculopathy:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Sciatica:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Strains and sprains, unspecified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 1:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylolisthesis grade 2:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 3:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 4:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylolisthesis-acquired:		
X-ray flexion/extension	Segmental instability	D
Spondylolysis:		
X-ray flexion/extension	Segmental instability	D
Sprains and strains, sacral:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Sprains and strains, sacroiliac:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Vetebral body compression fracture:		
Muscle strength assessment	Lifting capacity diminished by 50%	

BODY PART: LS SPINE
JOB TITLE: MACHINIST

Ankylosing spondylitis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Backache, unspecified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Chronic back pain, not otherwise specified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Cauda equina syndrome with bowel or bladder dysfunction:		
Computerized tomography	Disc extrusion with neural impingement, nerves <L1	D
Magnetic resonance imaging	Disc extrusion with neural impingement, nerves <L1	D
Physical examination	Lower extremity weakness	D
Cystometrogram	Impaired bladder function	D
Myelogram	Disc extrusion with neural impingement, nerves <L1	D
Physical examination: rectal	Impairment of sphincter tone	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Degeneration of lumbar disc:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Displacement of lumbar disc:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: vertebral body:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with displacement:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with no displacement:		
Muscle strength assessment	Lifting capacity diminished by 50%	D

Disability test	Test result	Disability classification
Fracture: spinous process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture transverse process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Intervertebral disc disorder:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Lumbago:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Lumbosacral neuritis:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Physical examination	Lower extremity weakness	D
Lumbar spinal stenosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Significant narrowing of the spinal canal	D
Magnetic resonance imaging	Significant narrowing of the spinal canal	D
Myelogram	Significant narrowing of the spinal canal	D
Physical examination	Significant lower extremity weakness	D
Mechanical complication of internal orthopedic device:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Osteomalacia:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Osteomyelitis, chronic-lumbar:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Medical record review	Frequent flare-ups with objective findings	D
Osteoporosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Post laminectomy syndrome with radiculopathy:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Post laminectomy syndrome:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
X-ray flexion/extension	Segmental instability	D
Radiculopathy:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Sciatica:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Strains and sprains, unspecified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade I:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylolisthesis grade 2:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 3:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 4:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylolisthesis-acquired:		
X-ray flexion/extension	Segmental instability	D

Disability test	Test result	Disability classification
Spondylolysis:		
X-ray flexion/extension	Segmental instability	D
Sprains and strains, sacral:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Sprains and strains, sacroiliac:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Vertebral body compression fracture:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
BODY PART: LS SPINE JOB TITLE: SHOP LABORER		
Ankylosing spondylitis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Backache, unspecified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Chronic back pain, not otherwise specified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Cauda equina syndrome with bowel or bladder dysfunction:		
Computerized tomography	Disc extrusion with neural impingement, nerves <L1	D
Magnetic resonance imaging	Disc extrusion with neural impingement, nerves <L1	D
Physical examination	Lower extremity weakness	D
Cystometrogram	Impaired bladder function	D
Myelogram	Disc extrusion with neural impingement, nerves <L1	D
Physical examination: rectal	Impairment of sphincter tone	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Degeneration of lumbar disc:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Displacement of lumber disc:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: vertebral body:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with displacement:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with no displacement:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: spinous process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture transverse process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Intervertebral disc disorder:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Lumbago:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Lumbosacral neuritis:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Physical examination	Lower extremity weakness	D
Lumbar spinal stenosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Significant narrowing of the spinal canal	D
Magnetic resonance imaging	Significant narrowing of the spinal canal	D
Myelogram	Significant narrowing of the spinal canal	D
Physical examination	Significant lower extremity weakness	D
Mechanical complication of internal orthopedic device:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Osteomalacia:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Osteomyelitis, chronic-lumbar:		
Muscle strength assessment	Lifting capacity diminished by 50%	D

Disability test	Test result	Disability classification
Medical record review	Frequent flare-ups with objective findings	D
Osteoporosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Post laminectomy syndrome with radiculopathy:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Post laminectomy syndrome:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
X-ray flexion/extension	Segmental instability	D
Radiculopathy:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Sciatica:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Strains and sprains, unspecified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 1:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylolisthesis grade 2:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 3:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 4:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylolisthesis-acquired:		
X-ray flexion/extension	Segmental instability	D
Spondylolysis:		
X-ray flexion/extension	Segmental instability	D
Sprains and strains, sacral:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Sprains and strains, sacroiliac:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Vertebral body compression fracture:		
Muscle strength assessment	Lifting capacity diminished by 50%	D

F. Cervical Spine

Confirmatory test	Minimum result	Requirements
	BODY PART: CE SPINE CONFIRMATORY TESTS	
Cervical disc disease with myelopathy:		
Physical examination: cervical	Evidence of myelopathy	Highly recommended.
Myelogram	Evidence of neurogenic compression	Recommended.
Computerized axial tomography	Evidence of neurogenic compression	Recommended.
Magnetic resonance imaging	Evidence of neurogenic compression	Recommended.
Chronic herniated disc:		
X-ray: cervical spine	Evidence of significant disc degeneration	Recommended.
Myelogram	Evidence of significant disc degeneration	Recommended.
Computerized axial tomography	Evidence of significant disc degeneration	Recommended.
Magnetic resonance imaging	Evidence of significant disc degeneration	Recommended.
Cervical spondylolysis:		
X-ray: cervical spine	Evidence of significant disc degeneration	Recommended.
Computerized axial tomography	Evidence of significant disc degeneration	Recommended.

F. Cervical Spine—Continued

Confirmatory test	Minimum result	Requirements
Magnetic resonance imaging	Evidence of significant disc degeneration	Recommended.
Cervical intervertebral disc degeneration:		
X-ray: cervical spine	Evidence of significant disc degeneration	Recommended.
Myelogram	Evidence of significant disc degeneration	Recommended.
Magnetic resonance imaging	Evidence of significant disc degeneration	Recommended.
Fracture: posterior element with spinal canal displacement:		
X-ray: cervical spine	Fractured posterior element with canal displacement	Recommended.
Computerized axial tomography	Fractured posterior element with canal displacement	Recommended.
Magnetic resonance imaging	Fractured posterior element with canal displacement	Recommended.
Fracture: transverse, spinous or posterior process:		
X-ray: cervical spine	Fracture of relevant part	Recommended.
Computerized axial tomography	Fracture of relevant part	Recommended.
Magnetic resonance imaging	Fracture of relevant part	Recommended.
Osteoarthritis, cervical:		
X-ray: cervical spine	Evidence of extensive disc degeneration	Recommended.
Computerized axial tomography	Evidence of extensive disc degeneration	Recommended.
Magnetic resonance imaging	Evidence of extensive disc degeneration	Recommended.
Post laminectomy syndrome:		
Medical records: cervical	Confirmed surgical history	Highly recommended.
Medical records: cervical	Continued pain post-surgery	Highly recommended.
Radiculopathy:		
Medical records: cervical	History of radicular pain	Highly recommended.
Physical examination: arm	Loss of reflexes in affected dermatomes	Recommended.
Physical examination: arm	Evidence of atrophy >2 cm	Recommended.
Electromyography	Definite denervation in muscle of affected nerve root	Recommended.
Myelogram	Evidence of neurogenic compression	Recommended.
Magnetic resonance imaging	Compression of spinal nerves	Recommended.
Computerized axial tomography	Compression of spinal nerves	Recommended.
Rheumatoid arthritis, cervical:		
Rheumatoid factor (blood test)	Titer of rheumatoid factor	Recommended.
X-ray: cervical spine	Rheumatoid changes of spine	Highly recommended.
Medical records review: cervical	Confirmation by rheumatologist or internist	Highly recommended.
Spondylogenic compression of spinal cord:		
Physical examination: cervical	Evidence of myelopathy	Highly recommended.
Computerized axial tomography	Evidence of neurogenic compression	Recommended.
Magnetic resonance imaging	Evidence of neurogenic compression	Recommended.
Myelogram	Evidence of neurogenic compression	Recommended.

Disability test	Test result	Disability classification
BODY PART: CE SPINE JOB TITLE: TRAINMAN		
Cervical disc disease with myelopathy:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Myelogram	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	
Physical examination: lower limb	Lower extremity weakness or significant spasticity	D
Physical examination	Multi-level neurologic compromise	D
Chronic herniated disc:		
Physical examination	Multi-level neurologic compromise	D
Cervical spondylolysis:		
Physical examination	Multi-level neurologic compromise	D
Cervical intervertebral disc degeneration:		
Physical examination	Multi-level neurologic compromise	D
Fracture: posterior element with spinal canal displacement:		
Physical examination	Multi-level neurologic compromise	D
Post laminectomy syndrome:		
Physical examination	Multi-level neurologic compromise	D
Cervical radiculopathy:		
Physical examination	Multi-level neurologic compromise	D
Spondylogenic compression of spinal cord:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D

Disability test	Test result	Disability classification
Myelogram	Significant spinal cord pressure	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination	Multi-level neurologic compromise	D
Physical examination: lower limb	Lower extremity weakness or significant spasticity	D
	BODY PART: CE SPINE JOB TITLE: ENGINEER	
Cervical disc disease with myelopathy:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Myelogram	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination: lower limb	Lower extremity weakness or significant spasticity	D
Physical examination	Multi-level neurologic compromise	D
Chronic herniated disc:		
Physical examination	Multi-level neurologic compromise	D
Cervical spondylolysis:		
Physical examination	Multi-level neurologic compromise	D
Cervical intervertebral disc degeneration:		
Physical examination	Multi-level neurologic compromise	D
Fracture: posterior element with spinal canal displacement:		
Physical examination	Multi-level neurologic compromise	D
Post laminectomy syndrome:		
Physical examination	Multi-level neurologic compromise	D
Cervical radiculopathy:		
Physical examination:	Multi-level neurologic compromise	D
Spondylogenic compression of spinal cord:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Myelogram	Significant spinal cord pressure	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination	Multi-level neurologic compromise	D
Physical examination: lower limb	Lower extremity weakness or significant spasticity	D
	BODY PART: CE SPINE JOB TITLE: DISPATCHER	
Cervical disc disease with myelopathy:		
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	D
Spondylogenic compression of spinal cord:		
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	D
	BODY PART: CE SPINE JOB TITLE: CARMAN	
Cervical disc disease with myelopathy:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Myelogram	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination: lower limb	Lower extremity weakness or significant spasticity	D
Physical examination	Multi-level neurologic compromise	D
Chronic herniated disc:		
Physical examination	Multi-level neurologic compromise	D
Cervical spondylolysis:		
Physical examination	Multi-level neurologic compromise	D
Cervical intervertebral disc degeneration:		
Physical examination	Multi-level neurologic compromise	D
Fracture: posterior element with spinal canal displacement:		
Physical examination	Multi-level neurologic compromise	D
Post laminectomy syndrome:		
Physical examination	Multi-level neurologic compromise	D
Cervical radiculopathy:		
Physical examination	Multi-level neurologic compromise	D

Disability test	Test result	Disability classification
Spondylogenic compression of spinal cord:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Myelogram	Significant spinal cord pressure	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination	Multi-level neurologic compromise	D
Physical examination: lower limb	Lower extremity weakness or significant spasticity	D
BODY PART; CE SPINE JOB TITLE: SIGNALMAN		
Cervical disc disease with myelopathy:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Myelogram	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination: lower limb	Lower extremity weakness or significant spasticity	D
Physical examination	Multi-level neurologic compromise	D
Chronic herniated disc:		
Physical examination	Multi-level neurologic compromise	D
Cervical spondylolysis:		
Physical examination	Multi-level neurologic compromise	D
Cervical intervertebral disc degeneration:		
Physical examination	Multi-level neurologic compromise	D
Fracture: posterior element with spinal canal displacement:		
Physical examination	Multi-level neurologic compromise	D
Post laminectomy syndrome:		
Physical examination	Multi-level neurologic compromise	D
Cervical radiculopathy:		
Physical examination	Multi-level neurologic compromise	D
Spondylogenic compression of spinal cord:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Myelogram	Significant spinal cord pressure	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination	Multi-level neurologic compromise	D
Physical examination: lower limb	Lower extremity weakness or significant spasticity	D
BODY PART: CE SPINE JOB TITLE: TRACKMAN		
Cervical disc disease with myelopathy:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Myelogram	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination: lower limb	Lower extremity weakness or significant spasticity	D
Physical examination	Multi-level neurologic compromise	D
Chronic herniated disc:		
Physical examination	Multi-level neurologic compromise	D
Cervical spondyloysis:		
Physical examination	Multi-level neurologic compromise	D
Cervical intervertebral disc degeneration:		
Physical examination	Multi-level neurologic compromise	D
Fracture: posterior element with spinal canal displacement:		
Physical examination	Multi-level neurologic compromise	D
Post laminectomy syndrome:		
Physical examination	Multi-level neurologic compromise	D
Cervical radiculopathy:		
Physical examination	Multi-level neurologic compromise	D
Spondylogenic compression of spinal cord:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Myelogram	Significant spinal cord pressure	D
Physical examination: rectal	Impairment of sphincter tone	D

Disability test	Test result	Disability classification
Physical examination	Multi-level neurologic compromise	D
Physical examination: lower limb	Lower extremity weakness or significant spasticity	D
	BODY PART: CE SPINE JOB TITLE: MACHINIST	
Cervical disc disease with myelopathy:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Myelogram	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination: lower limb	Lower extremity weakness or significant spasticity	D
Physical examination	Multi-level neurologic compromise	D
Chronic herniated disc:		
Physical examination	Multi-level neurologic compromise	D
Cervical spondylolysis:		
Physical examination	Multi-level neurologic compromise	D
Cervical intervertebral disc degeneration:		
Physical examination	Multi-level neurologic compromise	D
Fracture: posterior element with spinal canal displacement:		
Physical examination	Multi-level neurologic compromise	D
Post laminectomy syndrome:		
Physical examination	Multi-level neurologic compromise	D
Cervical radiculopathy:		
Physical examination	Multi-level neurologic compromise	D
Spondylogenic compression of spinal cord:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Myelogram	Significant spinal cord pressure	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination	Multi-level neurologic compromise	D
Physical examination: lower limb	Lower extremity weakness or significant spasticity	D
	BODY PART: CE SPINE JOB TITLE: SHOP LABORER	
Cervical disc disease with myelopathy:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Myelogram	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination: lower limb	Lower extremity weakness or significant spasticity	D
Physical examination	Multi-level neurologic compromise	D
Chronic herniated disc:		
Physical examination	Multi-level neurologic compromise	D
Cervical spondylolysis:		
Physical examination	Multi-level neurologic compromise	D
Cervical intervertebral disc degeneration:		
Physical examination	Multi-level neurologic compromise	D
Fracture: posterior element with spinal canal displacement:		
Physical examination	Multi-level neurologic compromise	D
Post laminectomy syndrome:		
Physical examination	Multi-level neurologic compromise	D
Cervical radiculopathy:		
Physical examination	Multi-level neurologic compromise	D
Spondylogenic compression of spinal cord:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Myelogram	Significant spinal cord pressure	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination	Multi-level neurologic compromise	D
Physical examination: lower limb	Lower extremity weakness or significant spasticity	D

Disability test	Test result	Disability classification
BODY PART: CE SPINE JOB TITLE: SALES REPRESENTATIVE		
Cervical disc disease with myelopathy:		
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	D
Spondylogenic compression of spinal cord:		
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	D
BODY PART: CE SPINE JOB TITLE: GENERAL OFFICE CLERK		
Cervical disc disease with myelopathy:		
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	D
Spondylogenic compression of spinal cord:		
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	D

G. Shoulder and Elbow

Confirmatory test	Minimum result	Requirements.
BODY PART: SHOULDER AND ELBOW CONFIRMATORY TESTS		
Arthritis, acromioclavicular:		
X-ray: shoulder	Significant degenerative changes of joint	Recommended.
Computerized tomography	Significant degenerative changes of joint	Recommended.
Magnetic resonance imaging	Significant degenerative changes of joint	Recommended.
Arthritis, glenohumeral:		
X-ray: shoulder	Significant degenerative changes of joint	Recommended.
Computerized tomography	Significant degenerative changes of joint	Recommended.
Magnetic resonance imaging	Significant degenerative changes of joint	Recommended.
Rotator cuff tear:		
Computerized tomography	Tear of rotator cuff	Recommended.
Magnetic resonance imaging	Tear of rotator cuff	Recommended.
Medical diagnosis leading to a permanent functional limitation of the elbow:		
Medical record review	Condition with permanent functional limitation	Highly recommended.
X-ray: elbow	Imaging confirmation of functional diagnosis	Recommended.
Magnetic resonance imaging	Imaging confirmation of functional diagnosis	Recommended.

Disability test	Test result	Disability classification
BODY PART: SHOULDER AND ELBOW JOB TITLE: TRAINMAN		
Arthritis, acromioclavicular:		
Physical examination – range of motion	<40 degrees flexion	D
Physical examination – range of motion	<40 degrees abduction	D
Arthritis, glenohumeral:		
Physical examination – range of motion	<40 degrees flexion	D
Physical examination – range of motion	<40 degrees abduction	D
Rotator cuff tear:		
Physical examination – range of motion	<40 degrees flexion	D
Physical examination – range of motion	<40 degrees abduction	D
Permanent functional limitation, elbow:		
Physical examination	>40 degrees deviation	D
Physical examination – range of motion	Flexion limit to 60 degrees	D
BODY PART: SHOULDER AND ELBOW JOB TITLE: ENGINEER		
Arthritis, acromioclavicular:		
Physical examination – range of motion	<40 degrees flexion	D
Physical examination – range of motion	<40 degrees abduction	D

Disability test	Test result	Disability classification
Arthritis, glenohumeral:		
Physical examination – range of motion	<40 degrees flexion	D
Physical examination – range of motion	<40 degrees abduction	D
Rotator cuff tear:		
Physical examination – range of motion	<40 degrees flexion	D
Physical examination – range of moiton	<40 degrees abduction	D
Permanent functional limitation, elbow:		
Physical examination	>40 degrees deviation	D
Physical examination – range of motion	Flexion limit to 60 degrees	D
BODY PART: SHOULDER AND ELBOW JOB TITLE: CARMAN		
Arthritis, acromioclavicular:		
Physical examination – range of motion	<40 degrees flexion	D
Physical examination – range of motion	<40 degrees abduction	D
Arthritis, glenohumeral:		
Physical examination – range of motion	<40 degrees flexion	D
Physical examination – range of motion	<40 degrees abduction	D
Rotator cuff tear:		
Physical examination – range of motion	<40 degrees flexion	D
Physical examination – range of motion	<40 degrees abduction	D
Permanent functional limitation, elbow:		
Physical examination	>40 degrees deviation	D
Physical examination – range of motion	Flexion limit to 60 degrees	D
BODY PART: SHOULDER AND ELBOW JOB TITLE: SIGNALMAN		
Arthritis, acromioclavicular:		
Physical examination – range of motion	<40 degrees flexion	D
Physical examination – range of motion	<40 degrees abduction	D
Arthritis, glenohumeral:		
Physical examination – range of motion	<40 degrees flexion	D
Physical examination – range of motion	<40 degrees abduction	D
Rotator cuff tear:		
Physical examination – range of motion	<40 degrees flexion	D
Physical examination – range of motion	<40 degrees abduction	D
Permanent functional limitation, elbow:		
Physical examination	>40 degrees deviation	D
Physical examination – range of motion	Flexion limit to 60 degrees	D
BODY PART: SHOULDER AND ELBOW JOB TITLE: TRACKMAN		
Arthritis, acromioclavicular:		
Physical examination – range of motion	<40 degrees flexion	D
Physical examination – range of motion	<40 degrees abduction	D
Arthritis, glenohumeral:		
Physical examination – range of motion	<40 degrees flexion	D
Physical examination – range of motion	<40 degrees abduction	D
Rotator cuff tear:		
Physical examination – range of motion	<40 degrees flexion	D
Physical examination – range of motion	<40 degrees abduction	D
Permanent functional limitation, elbow:		
Physical examination	>40 degrees deviation	D
Physical examination – range of motion	Flexion limit to 60 degrees	D
BODY PART: SHOULDER AND ELBOW JOB TITLE: MACHINIST		
Arthritis, acromioclavicular:		
Physical examination – range of motion	<40 degrees flexion	D
Physical examination – range of motion	<40 degrees abduction	D
Arthritis, glenohumeral:		
Physical examination – range of motion	<40 degrees flexion	D
Physical examination – range of motion	<40 degrees abduction	D
Rotator cuff tear:		
Physical examination – range of motion	<40 degrees flexion	D
Physical examination – range of motion	<40 degrees abduction	D
Permanent functional limitation, elbow:		
Physical examination	>40 degrees deviation	D

Disability test	Test result	Disability classification
Physical examination – range of motion	Flexion limit to 60 degrees	D
BODY PART: SHOULDER AND ELBOW JOB TITLE: SHOP LABORER		
Arthritis, acromioclavicular;		
Physical examination – range of motion	<40 degrees flexion	D
Physical examination – range of motion	<40 degrees abduction	D
Arthritis, glenohumeral:		
Physical examination – range of motion	<40 degrees flexion	D
Physical examination – range of motion	<40 degrees abduction	D
Rotator cuff tear:		
Physical examination – range of motion	<40 degrees flexion	D
Physical examination – range of motion	<40 degrees abduction	D
Permanent functional limitation, elbow:		
Physical examination	>40 degrees deviation	D
Physical examination – range of motion	Flexion limit to 60 degrees	D

H. Hand and Arm

Confirmatory test	Minimum result	Requirements
BODY PART: HAND AND ARM CONFIRMATORY TESTS		
Carpal tunnel syndrome:		
Medical record review	Pain, paresthesia and weakness in distribution median nerve.	Highly recommended.
Nerve conduction testing	Definite median nerve conduction slowing at wrist	Highly recommended.
Electromyography	Denervation in severe cases	Recommended.
Fracture: wrist:		
X-ray: wrist	Evidence of fracture	Highly recommended.
Hand: permanent functional limitation:		
Medical record review	Documentation of medical condition for permanent limitation.	Highly recommended.
Physical examination	Definite reproducible evidence of limitation	Highly recommended.
Imaging study (e.g. X-ray, CAT, MRI)	Positive confirmation of underlying condition	Highly recommended.
Rheumatoid arthritis: hand:		
Rheumatoid factor	Titer of rheumatoid factor	Recommended.
Medical record review	History of objective findings including serological studies	Highly recommended.
X-ray: hand	Characteristic rheumatoid changes	Highly recommended.
Tenosynovitis:		
Medical record review	History of chronic tenosynovitis and objective findings	Highly recommended.
Physical examination	Definite evidence of tenosynovitis	Highly recommended.
Thumb: Permanent functional limitation:		
Medical record review	Documentation of medical condition for permanent limitation.	Highly recommended.
Physical examination	Definite reproducible evidence of limitation	Highly recommended.
Imaging study (X-ray, CAT, MRI)	Positive confirmation of underlying condition	Highly recommended.
Wrist: Permanent functional limitation:		
Medical record review	Documentation of medical condition for permanent limitation.	Highly recommended.
Physical examination	Definite reproducible evidence of limitation	Highly recommended.
Imaging study (e.g. X-ray, CAT, MRI)	Positive confirmation of underlying condition	Highly recommended.

Disability test	Test result	Disability classification
BODY PART: HAND AND ARM JOB TITLE: TRAINMAN		
Fracture, wrist:		
Physical examination – range of motion	Extension – limit to 30 degrees	D
Physical examination – range of motion	Flexion – limit to 30 degrees	D
Physical examination – range of motion	Ankylosis: >20 degrees from neutral	D
Rheumatoid arthritis hand:		
Physical examination	Significant deformity	D
Medical record review	Significant flare-ups, under treatment with rheumatologist.	D

Disability test	Test result	Disability classification
Medical record review	Extensive medication use, under treatment with rheumatologist.	D
Thumb: permanent functional limitation:		
Adduction of thumb	Loss ≤4 cm	D
Ankylosis: degree from neutral	<20 degrees extension	D
Ankylosis: degree from neutral	<40 degrees flexion	D
Loss of extension or flexion	MCP or PIP: maximum flexion <40 degrees	D
Opposition	Loss ≤4 cm	D
Wrist: permanent functional limitation:.		
Physical examination – range of motion	Extension – limit to 30 degrees	D
Physical examination – range of motion	Flexion – limit to 30 degrees	D
Physical examination – range of motion	Ankylosis: >20 degrees from neutral	D
BODY PART: HAND AND ARM JOB TITLE ENGINEER		
Fracture, wrist:		
Physical examination – range of motion	Extension-limit to 30 degrees	D
Physical examination – range of motion	Flexion-limit to 30 degrees	D
Physical examination – range of motion	Ankylosis: >20 degrees from neutral	D
Rheumatoid arthritis hand:		
Physical examination	Significant deformity	D
Medical record review	Significant flare-ups, under treatment with rheumatologist.	D
Medical record review	Extensive medication use, under treatment with rheumatologist.	D
Thumb: permanent functional limitation:		
Adduction of thumb	Loss ≤4 cm	D
Ankylosis: degree from neutral	<20 degrees extension	D
Ankylosis: degree from neutral	<40 degrees flexion	D
Loss of extension or flexion	MCP or PIP: maximum flexion <40 degrees	D
Opposition	Loss ≤4 cm	D
Wrist: permanent functional limitation:		
Physical examination – range of motion	Extension – limit to 30 degrees	D
Physical examination – range of motion	Flexion – limit to 30 degrees	D
Physical examination – range of motion	Ankylosis: >20 degrees from neutral	D
BODY PART: HAND AND ARM JOB TITLE: DISPATCHER		
Fracture, wrist:		
Physical examination – range of motion	Extension – limit to 30 degrees	D
Physical examination – range of motion	Flexion – limit to 30 degrees	D
Physical examination – range of motion	Ankylosis: >20 degrees from neutral	D
Rheumatoid arthritis hand:		
Physical examination	Significant deformity	D
Medical record review	Significant flare-ups, under treatment with rheumatologist.	D
Medical record review	Extensive medication use, under treatment with rheumatologist.	D
Thumb: permanent functional limitation:		
Adduction of thumb	Loss ≤4 cm	D
Ankylosis: degree from neutral	<20 degrees extension	D
Ankylosis: degree from neutral	<40 degrees flexion	D
Loss of extension or flexion	MCP or PIP: maximum flexion <40 degrees	D
Opposition	Loss ≤4 cm	D
Wrist: permanent functional limitation:		
Physical examination – range of motion	Extension – limit to 30 degrees	D
Physical examination – range of motion	Flexion – limit to 30 degrees	D
Physical examination – range of motion	Ankylosis: >20 degrees from neutral	D
BODY PART: HAND AND ARM JOB TITLE: CARMAN		
Fracture, wrist:		
Physical examination – range of motion	Extension – limit to 30 degrees	D
Physical examination – range of motion	Flexion – limit to 30 degrees	D
Physical examination – range of motion	Ankylosis: >20 degrees from neutral	D
Rheumatoid arthritis hand:		
Physical examination	Significant deformity	D
Medical record review	Significant flare-ups, under treatment with rheumatologist.	D

Disability test	Test result	Disability classification
Medical record review	Extensive medication use, under treatment with rheumatologist.	D
Thumb: permanent functional limitation:		
Adduction of thumb:	Loss ≤4 cm	D
Ankylosis: degree from neutral	<20 degrees extension	D
Ankylosis: degree from neutral	<40 degrees flexion	D
Loss of extension or flexion	MCP of PIP: maximum flexion <40 degrees	D
Opposition	Loss ≤4 cm	D
Wrist: permanent functional limitation:		
Physical examination – range of motion	Extension – limit to 30 degrees	D
Physical examination – range of motion	Flexion – limit to 30 degrees	D
Physical examination – range of motion	Ankylosis: >20 degrees from neutral	D
BODY PART: HAND AND ARM JOB TITLE: SIGNALMAN		
Fracture, wrist:		
Physical examination – range of motion	Extension – limit to 30 degrees	D
Physical examination – range of motion	Flexion – limit to 30 degrees	D
Physical examination – range of motion	Ankylosis: >20 degrees from neutral	D
Rheumatoid arthritis hand:		
Physical examination	Significant deformity	D
Medical record review	Significant flare-ups, under treatment with rheumatologist.	D
Medical record review	Extensive medication use, under treatment with rheumatologist.	D
Thumb: permanent functional limitation:		
Adduction of thumb	Loss ≤4 cm	D
Ankylosis: degree from neutral	<20 degrees extension	D
Ankylosis: degree from neutral	<40 degrees flexion	D
Loss of extension or flexion	MCP or PIP: maximum flexion <40 degrees	D
Opposition	Loss ≤4 cm	D
Wrist: permanent functional limitation:		
Physical examination – range of motion	Extension – limit to 30 degrees	D
Physical examination – range of motion	Flexion – limit to 30 degrees	D
Physical examination – range of motion	Ankylosis: >20 degrees from neutral	D
BODY PART: HAND AND ARM JOB TITLE: TRACKMAN		
Fracture, wrist:		
Physical examination – range of motion	Extension – limit to 30 degrees	D
Physical examination – range of motion	Flexion –limit to 30 degrees	D
Physical examination – range of motion	Ankylosis: >20 degrees from neutral	D
Rheumatoid arthritis hand:		
Physical examination	Significant deformity	D
Medical record review	Significant flare-ups, under treatment with rheumatologist.	D
Medical record review	Extensive medication use, under treatment with rheumatologist.	D
Thumb: permanent functional limitation:		
Adduction of thumb	Loss ≤4 cm	D
Ankylosis: degree from neutral	<20 degrees extension	D
Ankylosis: degree from neutral	<40 degrees flexion	D
Loss of extension or flexion	MCP or PIP: maximum flexion <40 degrees	D
Opposition	Loss ≤4 cm	D
Wrist: permanent functional limitation:		
Physical examination – range of motion	Extension – – limit to 30 degrees	D
Physical examination – range of motion	Flexion – limit to 30 degrees	D
Physical examination – range of motion	Ankylosis: >20 degrees from neutral	D
BODY PART: HAND AND ARM JOB TITLE: MACHINIST		
Fracture, wrist:		
Physical examination – range of motion	Extension – limit to 30 degrees	D
Physical examination – range of motion	Flexion – limit to 30 degrees	D
Physical examination – range of motion	Ankylosis: >20 degrees from neutral	D
Rheumatoid arthritis hand:		
Physical examination	Significant deformity	D
Medical record review	Significant flare-ups, under treatment with rheumatologist.	D

Disability test	Test result	Disability classification
Medical record review	Extensive medication use, under treatment with rheumatologist.	D
Thumb: permanent functional limitation:		
Adduction of thumb	Loss ≤4 cm	D
Ankylosis: degree from neutral	<20 degrees extension	D
Ankylosis: degree from neutral	<40 degrees flexion	D
Loss of extension or flexion	MCP or PIP: maximum flexion <40 degrees	D
Opposition	Loss ≤4 cm	D
Wrist: permanent functional limitation:		
Physical examination – range of motion	Extension – limit to 30 degrees	D
Physical examination – range of motion	Flexion – limit to 30 degrees	D
Physical examination – range of motion	Ankylosis: >20 degrees from neutral	D
BODY PART: HAND AND ARM JOB TITLE: SHOP LABORER		
Fracture, wrist:		
Physical examination – range of motion	Extension – limit to 30 degrees	D
Physical examination – range of motion	Flexion – limit to 30 degrees	D
Physical examination – range of motion	Ankylosis: >20 degrees from neutral	D
Rheumatoid arthritis hand:		
Physical examination	Significant deformity	D
Medical record review	Significant flare-ups, under treatment with rheumatologist.	D
Medical record review	Extensive medication use, under treatment with rheumatologist.	D
Thumb: permanent functional limitation:		
Adduction of thumb	Loss ≤4 cm	D
Ankylosis: degree from neutral	<20 degrees extension	D
Ankylosis: degree from neutral	<40 degrees flexion	D
Loss of extension or flexion	MCP or PIP: maximum flexion <40 degrees	D
Opposition	Loss ≤4 cm	D
Wrist: permanent functional limitation:		
Physical examination – range of motion	Extension – limit to 30 degrees	D
Physical examination – range of motion	Flexion – limit to 30 degrees	D
Physical examination – range of motion	Ankylosis: >20 degrees from neutral	D
BODY PART: HAND AND ARM JOB TITLE: SALES REPRESENTATIVE		
Fracture, wrist:		
Physical examination – range of motion	Extension – limit to 30 degrees	D
Physical examination – range of motion	Flexion – limit to 30 degrees	D
Physical examination – range of motion	Ankylosis: >20 degrees from neutral	D
Rheumatoid arthritis hand:		
Physical examination	Significant deformity	D
Medical record review	Significant flare-ups, under treatment with rheumatologist.	D
Medical record review	Extensive medication use, under treatment with rheumatologist.	D
Thumb: permanent functional limitation:		
Adduction of thumb	Loss ≤4 cm	D
Ankylosis: degree from neutral	<20 degrees extension	D
Ankylosis: degree from neutral	<40 degrees flexion	D
Loss of extension or flexion	MCP or PIP: maximum flexion <40 degrees	D
Opposition	Loss ≤4 cm	D
Wrist: permanent functional limitation:		
Physical examination – range of motion	Extension – limit to 30 degrees	D
Physical examination – range of motion	Flexion – limit to 30 degrees	D
Physical examination – range of motion	Ankylosis: >20 degrees from neutral	D
BODY PART: HAND AND ARM JOB TITLE: GENERAL OFFICE CLERK		
Fracture, wrist:		
Physical examination – range of motion	Extension – limit to 30 degrees	D
Physical examination – range of motion	Flexion – limit to 30 degrees	D
Physical examination – range of motion	Ankylosis: >20 degrees from neutral	D
Rheumatoid arthritis hand:		
Physical examination	Significant deformity	D
Medical record review	Significant flare-ups, under treatment with rheumatologist.	D

Disability test	Test result	Disability classification
Medical record review	Extensive medication use, under treatment with rheumatologist.	D
Thumb: permanent functional limitation:		
Adduction of thumb	Loss ≤4 cm	D
Ankylosis: degree from neutral	<20 degree extension	D
Ankylosis: degree from neutral	<40 degree flexion	D
Loss of extension or flexion	MCP or PIP: maximum flexion <40 degrees	D
Opposition	Loss ≤4 cm	D
Wrist: permanent functional limitation:		
Physical examination – range of motion	Extension – limit to 30 degrees	D
Physical examination – range of motion	Flexion – limit to 30 degrees	D
Physical examination – range of motion	Ankylosis: >20 degrees from neutral	D

I. Hip

Confirmatory test	Minimum result	Requirements
BODY PART: HIP CONFIRMATORY TESTS		
Ankylosis, hip:		
X-ray: hip	Extreme joint destruction	Highly Recommended.
Physical examination – range of motion	No mobility	Highly Recommended.
Osteoarthritis, hip:		
X-ray: hip	<4 mm joint space, or other positive evidence	Recommended.
Magnetic resonance imaging	<4 mm joint space, or other positive evidence	Recommended.
Computerized axial tomography	<4 mm joint space, or other positive evidence	Recommended.
Osteomyelitis, hip:		
X-ray: hip	Evidence of chronic infection	Recommended.
Computerized axial tomography	Evidence of chronic infection	Recommended.
Paget's disease:		
X-ray: hip	Osteolytic or blastic lesions	Highly Recommended.
Alkaline phosphatase	Increased up to 50 times	Highly Recommended.
Hip replacement surgery:		
X-ray: hip	Evidence of artificial hip	Recommended.
Medical record review	Documentation of prior hip replacement	Recommended.

Disability test	Test result	Disability classification
BODY PART: HIP JOB TITLE: TRAINMAN		
Ankylosis, hip:		
Physical examination – range of motion	Ankylosis 5 degrees or >flexion	D
Physical examination – range of motion	Ankylosis internal rotation >5 degrees	D
Physical examination – range of motion	Ankylosis external rotation >10 degrees	D
Physical examination – range of motion	Ankylosis in abduction >5 degrees	D
Physical examination – range of motion	Ankylosis in adduction >5 degrees	D
Osteoarthritis, hip:		
X-ray: hip	0 mm cartilage interval	D
Physical examination – range of motion	30 degrees flexion contracture	D
Physical examination – range of motion	<50 degrees flexion	D
Physical examination – range of motion	<5 degrees abduction	D
Osteomyelitis, chronic hip:		
X-ray: hip	Significant joint destruction	D
Physical examination – range of motion	30 degrees flexion contracture	D
Physical examination – range of motion	<50 degrees flexion	D
Physical examination – range of motion	<5 degrees abduction	D
Medical record review	Documented occurrence of recurring infections with treatment.	D
Paget's disease:		
X-ray: hip	Significant joint destruction	D
Physical examination – range of motion	30 degrees flexion contracture	D
Physical examination – range of motion	<50 degrees flexion	D
Physical examination – range of motion	<5 degrees abduction	D
Hip replacement surgery:		
X-ray: hip	Evidence of artificial hip joint	D
Medical record review	Documentation of prior hip replacement	D

Disability test	Test result	Disability classification
	BODY PART: HIP JOB TITLE: ENGINEER	
Ankylosis, hip:		
Physical examination – range of motion	Ankylosis 5 degrees or >flexion	D
Physical examination – range of motion	Ankylosis internal rotation >5 degrees	D
Physical examination – range of motion	Ankylosis external rotation >10 degrees	D
Physical examination – range of motion	Ankylosis in abduction >5 degrees	D
Physical examination – range of motion	Ankylosis in adduction >5 degrees	D
Osteoarthritis, hip:		
X-ray: hip	0 mm cartilage interval	D
Physical examination – range of motion	30 degrees flexion contracture	D
Physical examination – range of motion	<50 degrees flexion	D
Physical examination – range of motion	<5 degrees abduction	D
Osteomyelitis, chronic hip:		
X-ray: hip	Signficant joint destruction	D
Physical examination – range of motion	30 degrees flexion contracture	D
Physical examination – range of motion	<50 degrees flexion	D
Physical examination – range of motion	<5 degrees abduction	D
Medical record review	Documented occurrence of recurring infections with treatment.	D
Paget's disease:		
X-ray: hip	Significant joint destruction	D
Physical examination – range of motion	30 degrees flexion contracture	D
Physical examination – range of motion	<50 degrees flexion	D
Physical examination – range of motion	<5 degrees abduction	D
Hip replacement surgery:		
X-ray: hip	Evidence of artificial hip joint	D
Medical record review	Documentation of prior hip replacement	D
	BODY PART: HIP JOB TITLE: CARMAN	
Ankylosis, hip:		
Physical examination – range of motion	Ankylosis 5 degrees or >flexion	D
Physical examination – range of motion	Ankylosis internal rotation >5 degrees	D
Physical examination – range of motion	Ankylosis external rotation >10 degrees	D
Physical examination – range of motion	Ankylosis in abduction >5 degrees	D
Physical examination – range of motion	Ankylosis in adduction >5 degrees	D
Osteoarthritis, hip:		
X-ray: hip	0 mm cartilage interval	D
Physical examination – range of motion	30 degrees flexion contracture	D
Physical examination – range of motion	<50 degrees flexion	D
Physical examination – range of motion	<5 degrees abduction	D
Osteomyelitis, chronic hip:		
X-ray: hip	Significant joint destruction	D
Physical examination – range of motion	30 degrees flexion contracture	D
Physical examination – range of motion	<50 degrees flexion	D
Physical examination – range of motion	<5 degrees abduction	D
Medical record review	Documented occurrence of recurring infections with treatment.	D
Paget's disease:		
X-ray: hip	Significant joint destruction	D
Physical examination – range of motion	30 degrees flexion contracture	D
Physical examination – range of motion	<50 degrees flexion	D
Physical examination – range of motion	<5 degrees abduction	D
Hip replacement surgery:		
X-ray: hip	Evidence of artificial hip joint	D
Medical record review	Documentation of prior hip replacement	D
	BODY PART: HIP JOB TITLE: SIGNALMAN	
Ankylosis, hip:		
Physical examination – range of motion	Ankylosis 5 degrees or >flexion	D
Physical examination – range of motion	Ankylosis internal rotation >5 degrees	D
Physical examination – range of motion	Ankylosis external rotation >10 degrees	D
Physical examination – range of motion	Ankylosis in abduction >5 degrees	D
Physical examination – range of motion	Ankylosis in adduction >5 degrees	D
Osteoarthritis, hip:		
X-ray: hip	0 mm cartilage interval	D
Physical examination – range of motion	30 degrees flexion contracture	D

Disability test	Test result	Disability classification
Physical examination – range of motion	<50 degrees flexion	D
Physical examination – range of motion	<5 degrees abduction	D
Osteomyelitis, chronic hip:		
X-ray: hip	Significant joint destruction	D
Physical examination – range of motion	30 degrees flexion contracture	D
Physical examination – range of motion	<50 degrees flexion	D
Physical examination – range of motion	<5 degrees abduction	D
Medical record review	Documented occurrence of recurring infections with treatment.	D
Paget's disease:		
X-ray: hip	Significant joint destruction	D
Physical examination – range of motion	30 degrees flexion contracture	D
Physical examination – range of motion	<50 degrees flexion	D
Physical examination – range of motion	<5 degrees abduction	D
Hip replacement surgery:		
X-ray: hip	Evidence of artificial hip joint	D
Medical record review	Documentation of prior hip replacement	D
BODY PART: HIP JOB TITLE: TRACKMAN		
Ankylosis, hip:		
Physical examination – range of motion	Ankylosis 5 degrees or >flexion	D
Physical examination – range of motion	Ankylosis internal rotation >5 degrees	D
Physical examination – range of motion	Ankylosis external rotation >10 degrees	D
Physical examination – range of motion	Ankylosis in abduction >5 degrees	D
Physical examination – range of motion	Ankylosis in adduction >5 degrees	D
Osteoarthritis, hip:		
X-ray: hip	0 mm cartilage interval	D
Physical examination – range of motion	30 degrees flexion contracture	D
Physical examination – range of motion	<50 degrees flexion	D
Physical examination – range of motion	<5 degrees abduction	D
Osteomyelitis, chronic hip:		
X-ray: hip	Significant joint destruction	D
Physical examination – range of motion	30 degrees flexion contracture	D
Physical examination – range of motion	<50 degrees flexion	D
Physical examination – range of motion	<5 degrees abduction	D
Medical record review	Documented occurrence of recurring infections with treatment.	D
Paget's disease:		
X-ray: hip	Significant joint destruction	D
Physical examination – range of motion	30 degrees flexion contracture	D
Physical examination – range of motion	<50 degrees flexion	D
Physical examination – range of motion	<5 degrees abduction	D
Hip replacement surgery:		
X-ray: hip	Evidence of artificial hip joint	D
Medical record review	Documentation of prior hip replacement	D
BODY PART: HIP JOB TITLE: MACHINIST		
Ankylosis, hip:		
Physical examination – range of motion	Ankylosis 5 degrees or >flexion	D
Physical examination – range of motion	Ankylosis internal rotation >5 degrees	D
Physical examination – range of motion	Ankylosis external rotation >10 degrees	D
Physical examination – range of motion	Ankylosis in abduction >5 degrees	D
Physical examination – range of motion	Ankylosis in adduction >5 degrees	D
Osteoarthritis, hip:		
X-ray: hip	0 mm cartilage interval	D
Physical examination – range of motion	30 degrees flexion contracture	D
Physical examination – range of motion	<50 degrees flexion	D
Physical examination – range of motion	<5 degrees abduction	D
Osteomyelitis, chronic hip:		
X-ray: hip	Significant joint destruction	D
Physical examination – range of motion	30 degrees flexion contracture	D
Physical examination – range of motion	<50 degrees flexion	D
Physical examination – range of motion	<5 degrees abduction	D
Medical record review	Documented occurrence of recurring infections with treatment.	D
Paget's disease:		
X-ray: hip	Significant joint destruction	D
Physical examination – range of motion	30 degrees flexion contracture	D

Disability test	Test result	Disability classification
Physical examination – range of motion	<50 degrees flexion	D
Physical examination – range of motion	<5 degrees abudction	D
Hip replacement surgery:		
X-ray: hip	Evidence of artificial hip joint	D
Medical record review	Documentation of prior hip replacement	D
BODY PART: HIP JOB TITLE: SHOP LABORER		
Ankylosis, hip:		
Physical examination – range of motion	Ankylosis 5 degrees of >flexion	D
Physical examination – range of motion	Ankylosis internal rotation >5 degrees	D
Physical examination – range of motion	Ankylosis external rotation >10 degrees	D
Physical examination – range of motion	Ankylosis in abduction >5 degrees	D
Physical examination – range of motion	Ankylosis in adduction >5 degrees	D
Osteoarthritis, hip:		
X-ray: hip	0 mm cartilage interval	D
Physical examination – range of motion	30 degrees flexion contracture	D
Physical examination – range of motion	<50 degrees flexion	D
Physical examination – range of motion	<5 degrees abduction	D
Osteomyelitis, chronic hip:		
X-ray: hip	Significant joint destruction	D
Physical examination – range of motion	30 degrees flexion contracture	D
Physical examination – range of motion	<50 degrees flexion	D
Physical examination – range of motion	<5 degrees abduction	D
Medical record review	Documented occurrence of recurring infections with treatment.	D
Paget's disease:		
X-ray; hip	Significant joint destruction	D
Physical examination – range of motion	30 degrees flexion contracture	D
Physical examination – range of motion	<50 degrees flexion	D
Physical examination – range of motion	<5 degrees abduction	D
Hip replacement surgery:		
X-ray: hip	Evidence of artificial hip joint	D
Medical record review	Documentation of prior hip replacement	D

J. Knee

Confirmatory test	Minimum result	Requirements
BODY PART: KNEE CONFIRMATORY TESTS		
Arthritis: knee:		
X-ray: knee	Evidence of significant degenerative changes	Recommended.
Collateral ligament tear with laxity:		
Physical examination: knee	Evidence of ligamentous laxity	Highly Recommended.
Magnetic resonance imaging	Evidence of ligamentous tear	Recommended.
Cruciate and collateral ligament tear with laxity:		
Magnetic resonance imaging	Tear of both ligaments	Recommended.
Physical examination	Evidence of ligamentous laxity	Highly Recommended.
Medical record review	Documentation of tear by arthroscopy	Recommended.
Cruciate ligament tear with laxity:		
Physical examination: knee	Evidence of ligamentous laxity	Highly Recommended.
Magnetic resonance imaging	Evidence of cruciate tear	Recommended.
Medical record review	Documentation of tear by arthroscopy	Recommended.
Intercondylar fracture:		
X-ray: knee	Evidence of fracture	Highly Recommended.
Osteomyelitis: knee:		
Medical record review	Documented history of osteomyelitis requiring treatment	Highly Recommended.
X-ray: knee	Evidence of chronic infection	Recommended.
Computerized tomography	Evidence of chronic infection	Recommended.
Magnetic resonance imaging	Evidence of chronic infection	Recommended.
Osteonecrosis:		
X-ray: knee	Necrosis of femoral condyle or tibial plateau	Recommended.
Computerized tomography	Necrosis of femoral condyle or tibial plateau	Recommended.
Magnetic resonance imaging	Necrosis of femoral condyle or tibial plateau	Recommended.
Patellofemoral arthritis:		
X-ray: knee	Evidence of arthritis	Recommended.
Magnetic resonance imaging	Evidence of arthritis	Recommended.
Physical examination	Crepitation with movement	Highly Recommended.

J. Knee—Continued

Confirmatory test	Minimum result	Requirements
Patellar fracture nonunion with displacement:		
X-ray: knee	Nonunion and displacement	Recommended.
Magnetic resonance imaging	Nonunion and displacement	Recommended.
Computerized tomography	Nonunion and displacement	Recommended.
Plateau fracture:		
X-ray: knee	Evidence of fracture	Recommended.
Computerized tomography	Evidence of fracture	Recommended.
Magnetic resonance imaging	Evidence of fracture	Recommended.
Meniscectomy -- medial or lateral:		
Medical record review	History of surgery	Highly Recommended.
Patellectomy:		
Physical examination: knee	Absent patella	Highly Recommended.
Patellar -- subluxation -- recurrent:		
Medical record review	History of recurrent subluxation	Highly Recommended.
Supracondylar fracture:		
X-ray: knee	Evidence of fracture	Recommended.
Magnetic resonance imaging	Evidence of fracture	Recommended.
Computerized tomography	Evidence of fracture	Recommended.
Total knee replacement:		
X-ray: knee	Presence of replacement knee	Recommended.
Medical record review	Documented surgical history	Recommended.
Tibial shaft fracture:		
X-ray: leg	Fracture of shaft	Recommended.
Magnetic resonance imaging	Evidence of fracture	Recommended.
Computerized tomography	Evidence of fracture	Recommended.

Disability test	Test result	Disability classification
BODY PART: KNEE JOB TITLE: TRAINMAN		
Arthritis knee:		
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
X-ray knee	0 - 1 mm cartilage interval with degenerative change	D
Meniscectomy, medial or lateral:		
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or >degrees)	D
Collateral ligament tear with laxity:		
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or > degrees)	D
Cruciate and collateral ligament tear:		
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or > degrees)	D
Cruciate ligament tear with laxity:		
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or > degrees)	D
Intercondylar fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or > degrees)	D
Osteomyelitis, chronic knee:		
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
Medical record review	Frequent episodes of infection requiring treatment	D
X-ray knee	0 - 1 mm cartilage interval with degenerative change	D
Osteonecrosis:		
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
X-ray knee	0 - 1 mm cartilage interval with degenerative change	D
Patellofemoral arthritis:		
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or > degrees)	D

Disability test	Test result	Disability classification
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
X-ray knee: patello femoral joint	0 mm cartilage interval with degenerative change	D
Patellar fracture nonunion with displacement:		
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or > degrees)	D
X-ray knee	Nonunion and >3 mm displacement	D
Plateau fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or > degrees)	D
Patellectomy:		
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or > degrees)	D
Patellar, subluxation, recurrent:		
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or > degrees)	D
Supracondylar fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or > degrees)	D
Tibial shaft fracture:		
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or > degrees)	D
Post fracture angulation	>20 degrees malalignment	D
	BODY PART: KNEE **JOB TITLE: ENGINEER**	
Arthritis knee:		
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
X-ray knee	0 - 1 mm cartilage interval with degenerative change	D
Meniscectomy, medial or lateral:		
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or > degrees)	D
Collateral ligament tear with laxity:		
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or > degrees)	D
Cruciate and collateral ligament tear:		
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or > degrees)	D
Cruciate ligament tear with laxity:		
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or > degrees)	D
Intercondylar fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or > degrees)	D
Osteomyelitis, chronic knee:		
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
Medical record review	Frequent episodes of infection requiring treatment	D
X-ray knee	0 - 1 mm cartilage interval with degenerative change	D
Osteonecrosis:		
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
X-ray knee	0 - 1 mm cartilage interval with degenerative change	D
Patellofemoral arthritis:		
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D
Physical examination -- range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
X-ray knee: patello femoral joint	0 mm cartilage interval with degenerative change	D
Patellar fracture nonunion with displacement:		
Physical examination -- range of motion	Range of motion: flexion <60 degrees	D

Disability test	Test result	Disability classification
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
X-ray knee	Nonunion and >3 mm displacement	D
Plateau fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Patellectomy:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Patellar, subluxation, recurrent:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Supracondylar fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Tibial shaft fracture:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Post fracture angulation	>20 degrees malalignment	D

BODY PART: KNEE
JOB TITLE: CARMAN

Arthritis knee:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
X-ray knee	0 - 1 mm cartilage interval with degenerative change	D
Meniscectomy, medial or lateral:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Collateral ligament tear with laxity:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Cruciate and collateral ligament tear:.		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Cruciate ligament tear with laxity:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Intercondylar fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Osteomyelitis, chronic knee:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
Medical record review	Frequent episodes of infection requiring treatment	D
X-ray knee	0 - 1 mm cartilage interval with degenerative change	D
Osteonecrosis:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
X-ray knee	0 - 1 mm cartilage interval with degenerative change	D
Patellofemoral arthritis:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
X-ray knee: patello femoral joint	0 mm cartilage interval with degenerative change	D
Patellar fracture nonunion with displacement:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
X-ray knee	Nonunion and >3 mm displacement	D
Plateau fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination – range of motion	Range of motion: flexion <60 degrees	D

Disability test	Test result	Disability classification
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Patellectomy:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Patellar, subluxation, recurrent:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Supracondylar fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Tibial shaft fracture:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Post fracture angulation	>20 degrees malalignment	D

BODY PART: KNEE
JOB TITLE: SIGNALMAN

Arthritis knee:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
X-ray knee	0 - 1 mm cartilage interval with degenerative change	D
Meniscectomy, medial or lateral:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Collateral ligament tear with laxity:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Cruciate and collateral ligament tear:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Cruciate ligament tear with laxity:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Intercondylar fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Osteomyelitis, chronic knee:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
Medical record review	Frequent episodes of infection requiring treatment	D
X-ray knee	0 - 1 mm cartilage interval with degenerative change	D
Osteonecrosis:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
X-ray knee	0 - 1 mm cartilage interval with degenerative change	D
Patellofemoral arthritis:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
X-ray knee: patello femoral joint	0 mm cartilage interval with degenerative change	D
Patellar fracture nonunion with displacement:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
X-ray knee	Nonunion and >3 mm displacement	D
Plateau fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Patellectomy:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Patellar, subluxation, recurrent:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D

Disability test	Test result	Disability classification
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Supracondylar fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Tibial shaft fracture:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Post fracture angulation	>20 degrees malalignment	D
BODY PART: KNEE JOB TITLE: TRACKMAN		
Arthritis knee:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
X-ray knee	0 - 1 mm cartilage interval with degenerative change	D
Meniscectomy, medial or lateral:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Collateral ligament tear with laxity:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Cruciate and collateral ligament tear:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Cruciate ligament tear with laxity:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Intercondylar fracture:		
Post fracture angulation	>20 degree angulation	D
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Osteomyelitis, chronic knee:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
Medical record review	Frequent episodes of infection requiring treatment	D
X-ray knee	0 - 1 mm cartilage interval with degenerative change	D
Osteonecrosis:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
X-ray knee	0 - 1 mm cartilage interval with degenerative change	D
Patellofemoral arthritis:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
X-ray knee: patello femoral joint	0 mm cartilage interval with degenerative change	D
Patellar fracture nonunion with displacement:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
X-ray knee	Nonunion and >3 mm displacement	D
Plateau fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Patellectomy:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Patellar, subluxation, recurrent:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Supracondylar fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D

Disability test	Test result	Disability classification
Tibial shaft fracture:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Post fracture angulation	>20 degrees malalignment	D
	BODY PART: KNEE JOB TITLE: MACHINIST	
Arthritis knee:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
X-ray knee	0 - 1 mm cartilage interval with degenerative change	D
Meniscectomy, medial or lateral:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Collateral ligament tear with laxity:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Cruciate and collateral ligament tear:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Cruciate ligament tear with laxity:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Intercondylar fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Osteomyelitis, chronic knee:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
Medical record review	Frequent episodes of infection requiring treatment	D
X-ray knee	0 - 1 mm cartilage interval with degenerative change	D
Osteonecrosis:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
X-ray knee	0 - 1 mm cartilage interval with degenerative change	D
Patellofemoral arthritis:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
X-ray knee	0 mm cartilage interval with degenerative change	D
Patellar fracture nonunion with displacement:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
X-ray knee	Nonunion and >3 mm displacement	D
Plateau fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Patellectomy:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Patellar, subluxation, recurrent:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Supracondylar fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Tibial shaft fracture:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Post fracture angulation	>20 degrees malalignment	D

Disability test	Test result	Disability classification
BODY PART: KNEE JOB TITLE: SHOP LABORER		
Arthritis knee:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
X-ray knee	0 - 1 mm cartilage interval with degenerative change	D
Meniscectomy, medial or lateral:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Collateral ligament tear with laxity:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Cruciate and collateral ligament tear:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Cruciate ligament tear with laxity:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Intercondylar fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Osteomyelitis, chronic knee:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
Medical record review	Frequent episodes of infection requiring treatment	D
X-ray knee	0 - 1 mm cartilage interval with degenerative change	D
Osteonecrosis:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
X-ray knee	0 - 1 mm cartilage interval with degenerative change	D
Patellofemoral arthritis:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16 - 20 degrees	D
Physical examination	Varus deformity, 8 - 12 degrees	D
X-ray knee: patellofemoral joint	0 mm cartilage interval with degenerative change	D
Patellar fracture nonunion with displacement:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
X-ray knee	Nonunion and >3 mm displacement	D
Plateau fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Patellectomy:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Patellar, subluxation, recurrent:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Supracondylar fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Tibial shaft fracture:		
Physical examination – range of motion	Range of motion: flexion <60 degrees	D
Physical examination – range of motion	Flexion contracture (20 or > degrees)	D
Post fracture angulation	>20 degrees malalignment	D

K. Ankle and Foot

Confirmatory test	Minimum result	Requirements
BODY PART: ANKLE AND FOOT CONFIRMATORY TESTS		
Ankle fracture:		
Medical record review	Documented history of ankle fracture	Recommended.
X-ray: ankle	Ankle fracture	Highly recommended.
Ankylosis, ankle:		
X-ray: ankle	Extensive joint destruction	Highly recommended.
Physical examination	No mobility	Highly recommended.
Arthritis, subtalar joint:		
X-ray: ankle	Evidence of significant arthritis: subtalar joint	Highly recommended.
Arthritis, talonavicular joint:		
X-ray: ankle	Significant arthritis: talonavicular joint	Highly recommended.
Achilles tendon rupture:		
Medical record review	Documentation of achilles tendon rupture	Highly recommended.
Physical examination	Rupture of achilles tendon	Highly recommended.
Arthritis, ankle:		
X-ray: ankle	Significant arthritis	Highly recommended.
Hindfoot fracture:		
X-ray: foot and ankle	Documentation of fracture	Highly recommended.
Rheumatoid arthritis, foot:		
Medical History	Documented history of condition	Highly recommended.
X-ray: foot	Significant arthritis	Highly recommended.

Disability test	Test result	Disability classification
BODY PART: ANKLE AND FOOT JOB TITLE: TRAINMAN		
Ankle fracture:		
X-ray: ankle	Displaced intra-articular fracture	D
Physical examination	Varus deformity >15 degrees	D
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Ankylosis, ankle:		
Physical examination – range of motion	Ankylosis in 20 degree or > dorsiflexion	D
Physical examination – range of motion	Ankylosis in 20 degree plantar flexion	D
Physical examination – range of motion	Ankylosis in int or ext malrotation >15 degrees	D
Physical examination – range of motion	Ankylosis in varus 10 or more degrees	D
Physical examination – range of motion	Ankylosis in valgus 10 or more degrees	D
Arthritis, subtalar joint (hindfoot):		
X-ray: ankle – subtalar joint	Subtalar joint space 0 mm	D
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Arthritis, talonavicular joint (hindfoot):		
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
X-ray: ankle – talonavicular joint	Talonavicular joint space 0 mm	D
Physical examination	Varus deformity >15 degrees	D
Achilles tendon rupture:		
Physical examination – range of motion	Plantar flexion capability, <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture, 20 degrees	D
Arthritis, ankle:		
X-ray: ankle	0 mm	D
Physical examination – range of motion	Plantar flexion capability, <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture, 20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Hindfoot fracture:		
X-ray: foot	Calcaneal fracture with Boehler angle <95 degrees	D
X-ray: foot	Subtalar fracture with Boehler angle <95 degrees	D
Physical examination	Varus angulation >20 degrees (hindfoot)	D
Physical examination	Valgus angulation >20 degrees (hindfoot)	D
Rheumatoid arthritis, foot:		
X-ray: foot	Significant degeneration	D
Medical record review	Chronic flare-up with treatment	D

Disability test	Test result	Disability classification
BODY PART: ANKLE AND FOOT JOB TITLE: ENGINEER		
Ankle fracture:		
X-ray: ankle	Displaced intra-articular fracture	D
Physical examination	Varus deformity >15 degrees	D
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Ankylosis, ankle:		
Physical examination – range of motion	Ankylosis in 20 degree or > dorsiflexion	D
Physical examination – range of motion	Ankylosis in 20 degree plantar flexion	D
Physical examination – range of motion	Ankylosis in int or ext malrotation >15 degrees	D
Physical examination – range of motion	Ankylosis in varus 10 or more degrees	D
Physical examination – range of motion	Ankylosis in valgus 10 or more degrees	D
Arthritis, subtalar joint (hindfoot):		
X-ray: ankle – subtalar joint	Subtalar joint space 0 mm	D
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Arthritis, talonavicular joint (hindfoot):		
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
X-ray ankle – talonavicular joint	Talonavicular joint space 0 mm	D
Physical examination	Varus deformity >15 degrees	D
Achilles tendon rupture:		
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexinn contracture 20 degrees	D
Arthritis, ankle:		
X-ray: ankle	0 mm	D
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Hindfoot fracture:		
X-ray: foot	Calcaneal fracture with Boehler angle <95 degrees	D
X-ray: foot	Subtalar fracture with Boehler angle <95 degrees	D
Physical examination	Varus angulation >20 degrees (hindfoot)	D
Physical examination	Valgus angulation >20 degrees (hindfoot)	D
Rheumatoid arthritis, foot:		
X-ray: foot	Significant degeneration	D
Medical record review	Chronic flare-up with treatment	D
BODY PART: ANKLE AND FOOT JOB TITLE: DISPATCHER		
Achilles tendon rupture:		
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Arthritis, ankle:		
X-ray: ankle	0 mm	D
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Hindfoot fracture:		
X-ray: foot	Calcaneal fracture with Boehler angle <95 degrees	D
X-ray: foot	Subtalar fracture with Boehler angle <95 degrees	D
Physical examination	Varus angulation >20 degrees (hindfoot)	D
Physical examination	Valgus angulation >20 degrees (hindfoot)	D
Rheumatoid arthritis, foot:		
X-ray: foot	Significant degeneration	D
Medical record review	Chronic flare-up with treatment	D
BODY PART: ANKLE AND FOOT JOB TITLE: CARIBAN		
Ankle fracture:		
X-ray: ankle	Displaced intra-articular fracture	D
Physical examination	Varus deformity >15 degrees	D
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Ankylosis, ankle:		
Physical examination – range of motion	Ankylosis in 20 degree or > dorisiflexion	D
Physical examination – range of motion	Ankylosis in 20 degree plantar flexion	D

Disability test	Test result	Disability classification
Physical examination – range of motion	Ankylois in int or ext malrotation >15 degrees	D
Physical examination – range of motion	Ankylosis in varus 10 or more degrees	D
Physical examination – range of motion	Ankylosis in valgus 10 or more degrees	D
Arthritis, subtalar joint (hindfoot):		
X-ray: ankle – subtalar joint	Subtalar joint space 0 mm	D
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Arthritis, talonavicular joint (hindfoot):		
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
X-ray: ankle – talonavicular joint	Talonavicular joint space 0 mm	0
Physical examination	Varus deformity >15 degrees	D
Achilles tendon rupture:		
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Arthritis, ankle:		
X-ray: ankle	0 mm	D
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Hindfoot fracture:		
X-ray: foot	Calcaneal fracture with Boehler angle <95 degrees	D
X-ray: foot	Subtalar fracture with Boehler angle <95 degrees	D
Physical examination	Varus angulation >20 degrees (hindfoot)	D
Physical examination	Valgus angulation >20 degrees (hindfoot)	D
Rheumatoid arthritis, foot:		
X-ray: foot	Significant degeneration	D
Medical record review	Chronic flare – up with treatment	D

BODY PART: ANKLE AND FOOT
JOB TITLE: SIGNALMAN

Ankle fracture:		
X-ray: ankle	Displaced intra-articular fracture	D
Physical examination	Varus deformity >15 degrees	D
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Ankylosis, ankle:		
Physical examination – range of motion	Ankylosis in 20 degree or > dorsiflexion	D
Physical examination – range of motion	Ankylosis in 20 degree plantar flexion	D
Physical examination – range of motion	Ankylosis in int or ext malrotation >15 degrees	D
Physical examination – range of motion	Ankylosis in varus 10 or more degrees	D
Physical examination – range of motion	Ankylosis in valgus 10 or more degrees	D
Arthritis, subtalar joint (hindfoot):		
X-ray: ankle – subtalar joint	Subtalar joint space 0 mm	D
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Arthritis, talonavicular joint (hindfoot):		
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
X-ray: ankle – talonavicular joint	Talonavicular joint space 0 mm	D
Physical examination	Varus deformity >15 degrees	D
Achilles tendon rupture:		
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Arthritis, ankle:		
X-ray: ankle	0 mm	D
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Hindfoot fracture:		
X-ray: foot	Calcaneal fracture with Boehler angle <95 degrees	D
X-ray: foot	Subtalar fracture with Boehler angle <95 degrees	D
Physical examination	Varus angulation >20 degrees (hindfoot)	D
Physical examination	Valgus angulation >20 degrees (hindfoot)	D
Rheumatoid arthritis, foot:		
X-ray: foot	Significant degeneration	D
Medical record review	Chronic flare-up with treatment	D

Disability test	Test result	Disability classification
BODY PART: ANKLE AND FOOT JOB TITLE: TRACKMAN		
Ankle fracture:		
X-ray: ankle	Displaced intra-articular fracture	D
Physical examination – range of motion	Varus deformity >15 degrees	D
Physical examinaton – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Ankylosis, ankle:		
Physical examination – range of motion	Ankylosis in 20 degree or > dorsiflexion	D
Physical examination – range of motion	Ankylosis in 20 degree plantar flexion	D
Physical examination – range of motion	Ankylosis in int or ext malrotation >15 degrees	D
Physical examination – range of motion	Ankylosis in varus 10 or more degrees	D
Physical examination – range of motion	Ankylosis in valgus 10 or more degrees	D
Arthritis, subtalar joint (hindfoot):		
X-ray: ankle – subtalar joint	Subtalar joint space 0 mm	D
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Arthritis, talonavicular joint (hindfoot):		
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
X-ray: angle – talonavicular joint	Talonavicular joint space 0 mm	D
Physical examination	Varus deformity >15 degrees	D
Achilles tendon rupture:		
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Arthritis, ankle:		
X-ray: ankle	0 mm	D
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination	Varus deformity >15 degrees	D
Hindfoot fracture:		
X-ray: foot	Calcaneal fracture with Boehler angle <95 degrees	D
X-ray: foot	Subtalar fracture with Boehler angle <95 degrees	D
Physical examination	Varus angulation >20 degrees (hindfoot)	D
Physical examination	Valgus angulation >20 degrees (hindfoot)	D
Rheumatoid arthritis, foot:		
X-ray: foot	Significant degeneration	D
Medical record review	Chronic flare-up with treatment	D
BODY PART: ANKLE AND FOOT JOB TITLE: MACHINIST		
Ankle fracture:		
X-ray: ankle	Displaced intra-articular fracture	D
Physical examination	Varus deformity >15 degrees	D
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Ankylosis, ankle:		
Physical examination – range of motion	Ankylosis in 20 degree or > dorsiflexion	D
Physical examination – range of motion	Ankylosis in 20 degree plantar flexion	D
Physical examination – range of motion	Ankylosis in int or ext malrotation >15 degrees	D
Physical examination – range of motion	Ankylosis in varus 10 or more degrees	D
Physical examination – range of motion	Ankylosis in valgus 10 or more degrees	D
Arthritis, subtalar joint (hindfoot):		
X-ray: ankle – subtalar joint	Subtalar joint space 0 mm	D
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Arthritis, talonavicular joint (hindfoot):		
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
X-ray: ankle – talonavicular joint	Talonavicular joint space 0 mm	D
Physical examination	Varus deformity >15 degrees	D
Achilles tendon rupture:		
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Arthritis, ankle:		
X-ray: ankle	0 mm	D
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Physical examination	Varus deformity >15 degrees	D

Disability test	Test result	Disability classification
Hindfoot fracture:		
X-ray: foot	Calcaneal fracture with Boehler angle <95 degrees	D
X-ray: foot	Subtalar fracture with Boehler angle <95 degrees	D
Physical examination	Varus angulation >20 degrees (hindfoot)	D
Physical examination	Valgus angulation >20 degrees (hindfoot)	D
Rheumatoid arthritis, foot:		
X-ray: foot	Significant degeneration	D
Medical record review	Chronic flare-up with treatment	D
BODY PART: ANKLE AND FOOT JOB TITLE: SHOP LABORER		
Ankle fracture:		
X-ray: ankle	Displaced intra-articular fracture	D
Physical examination	Varus deformity >15 degrees	D
Physical examination -- range of motion	Plantar flexion capability <5 degrees	D
Physical examination -- range of motion	Plantar flexion contracture 20 degrees	D
Ankylosis, ankle:		
Physical examination -- range of motion	Ankylosis in 20 degree or > dorsiflexion	D
Physical examination -- range of motion	Ankylosis in 20 degree plantar flexion	D
Physical examination -- range of motion	Ankylosis in int or ext malrotation >15 degrees	D
Physical examination -- range of motion	Ankylosis in varus 10 or more degrees	D
Physical examination -- range of motion	Ankylosis in valgus 10 or more degrees	D
Arthritis, subtalar joint (hindfoot):		
X-ray: ankle -- subtalar joint	Subtalar joint space 0 mm	D
Physical examination -- range of motion	Plantar flexion capability <5 degrees	D
Physical examination -- range of motion	Plantar flexion contracture 20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Arthritis, talonavicular joint (hindfoot):		
Physical examination -- range of motion	Plantar flexion capability <5 degrees	D
Physical examination -- range of motion	Plantar flexion contracture 20 degrees	D
X-ray: ankle -- talonavicular joint	Talonavicular joint space 0 mm	D
Physical examination	Varus deformity >15 degrees	D
Achilles tendon rupture:		
Physical examination -- range of motion	Plantar flexion capability <5 degrees	D
Physical examination -- range of motion	Plantar flexion contracture 20 degrees	D
Arthritis, ankle:		
X-ray: ankle	0 mm	D
Physical examination -- range of motion	Plantar flexion capability <5 degrees	D
Physical examination -- range of motion	Plantar flexion contracture 20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Hindfoot fracture:		
X-ray: foot	Calcaneal fracture with Boehler angle <95 degrees	D
X-ray: foot	Subtalar fracture with Boehler angle <95 degrees	D
Physical examination	Varus angulation >20 degrees (hindfoot)	D
Physical examination	Valgus angulation >20 degrees (hindfoot)	D
Rheumatoid arthritis, foot:		
X-ray: foot	Significant degeneration	D
Medical record review	Chronic flare-up with treatment	D

Disability test	Test result	Disability classification
BODY PART: ANKLE AND FOOT JOB TITLE: SALES REPRESENTATIVES		
Achilles tendon rupture:		
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Arthritis, ankle:		
X-ray: ankle	0 mm	D
Physical examination – range of motion	Plantar flexion capability <5 degrees	D
Physical examination – range of motion	Plantar flexion contracture 20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Hindfoot fracture:		
X-ray: foot	Calcaneal fracture with Boehler angle <95 degrees	D
X-ray: foot	Subtalar fracture with Boehler angle <95 degrees	D
Physical examination	Varus angulation >20 degrees (hindfoot)	D
Physical examination	Valgus angulation >20 degrees (hindfoot)	D
Rheumatoid arthritis, foot:		
X-ray: foot	Significant degeneration	D
Medical record review	Chronic flare-up with treatment	D

BILLING CODE 7536-01-P

Job Information Forms

Form Approved
OMB No. 3220-0193

JOB INFORMATION FORM

RRB Claim Number	
Employee's Name	
Date Released	
Regular Railroad Occupation*	
Location	
Date Last Worked	

* The regular railroad occupation is: 1) the occupation in which the employee has been engaged for more calendar months than any other occupation during the last preceding 5 calendar years, whether consecutive or not; or 2) the occupation which the employee has been in service for not less than one-half of all months in which the employee has been engaged in service during the last 15 consecutive calendar years; or 3) if an employee last worked as an officer or employee of a railway labor organization and if that employment is no longer available, the regular occupation shall be the position to which the employee holds seniority rights or the position left to work for the railway labor organization.

The above-named railroad employee has applied for an occupational disability benefit under section 2(a)(iv) of the Railroad Retirement Act. Railroad Retirement Board (RRB) regulation 20 CFR 220.13 (b)(2) provides that railroad employers may furnish pertinent information concerning the job duties the employee is required to perform. If you wish to provide job duty information on the above-named employee, it must be received by the RRB no later than _____.

EMPLOYER INFORMATION

The attached list of job duties indicate those duties generally performed by the employee.

Please provide any additional information on the duties the employee performed over the last 5 years, or 15 years if appropriate.

This information can be entered in the Remarks section or attached to this form.

G-251a(12-97)

Job information should be sent to:

U.S. RAILROAD RETIREMENT BOARD
844 NORTH RUSH STREET
CHICAGO, ILLINOIS 60611-2092
ATTENTION: DISABILITY PROGRAMS SECTION

or a facsimile may be sent to (312)751-7167.

Employer Certification - The information contained in this report is correct to the best of my knowledge and belief.

NAME _____ SIGNATURE _____
(Please Print)

TITLE _____ DATE ____/____/____
(Please Print)

TELEPHONE NO (___) _____

Remarks:

Paperwork Reduction Act Notice

Section 7 (b)(6) of the Railroad Retirement Act (RRA) allows the Railroad Retirement Board (RRB) to collect this information. While you are not required to respond, the information you provide will be used by the RRB in determining an applicant's eligibility for an occupational disability under the RRA.

We estimate that this form takes an average of 20 minutes per response to complete, including the time for reviewing the instructions, getting the needed data, and reviewing the completed form. *Federal agencies may not conduct or sponsor, and respondents are not required to respond to, a collection of information unless it displays a valid OMB number.* If you wish, send comments regarding the accuracy of our estimate or any other aspects of this form, including suggestions for reducing the completion time to: Chief of Information Management, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092 and to the Office of Management and Budget, Paperwork Reduction Project (3220-0193), Washington DC 20503. Please do not return this form to either of these addresses.

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Form Approved
OMB No. 3220-0193

JOB INFORMATION FORM

RRB Claim Number	
Employee's Name	
Date Released	
Regular Railroad Occupation*	
Location	
Date Last Worked	

* The regular railroad occupation is: 1) the occupation in which the employee has been engaged for more calendar months than any other occupation during the last preceding five calendar years, whether consecutive or not; or 2) the occupation which the employee has been in service for not less than one-half of all months in which the employee has been engaged in service during the last 15 consecutive calendar years; or 3) if an employee last worked as an officer or employee of a railway labor organization and if that employment is no longer available, the regular occupation shall be the position to which the employee holds seniority rights or the position left to work for the railway labor organization.

The above-named railroad employee has applied for an occupational disability benefit under section 2(a)(iv) of the Railroad Retirement Act. Railroad Retirement Board (RRB) regulation 20 CFR 220.13 (b)(2) provides that railroad employers may furnish pertinent information concerning the job duties the employee is required to perform. If you wish to provide job duty information on the above-named employee, it must be received by the RRB no later than _____.

EMPLOYER INFORMATION

You may wish to provide the RRB with job duty information. If so, the job information that is needed for a disability decision should include a full description of the basic duties to perform the occupation listed. For example, list the types of machinery, tools and/or equipment used, technical knowledge or skills involved, and number of people supervised. Also include the types of physical activities involved in a typical 8 hour work day, such as how many hours of walking, standing or sitting, what items are lifted and carried and how much these items weigh, and how often bending, crouching, kneeling, reaching and climbing are performed. If exposure to environmental hazards, such as working at heights or around dangerous machinery, in extreme temperatures or excessive noise are present, also list these.

G-251b(12-97)

This information can be entered in the Remarks section or attached to this form.

Job information should be sent to:

U.S. RAILROAD RETIREMENT BOARD
844 NORTH RUSH STREET
CHICAGO, ILLINOIS 60611-2092
ATTENTION: DISABILITY PROGRAMS SECTION

or a facsimile may be sent to (312)751-7167.

Employer Certification - The information contained in this report is correct to the best of my knowledge and belief.

NAME _____ SIGNATURE _____
(Please Print)

TITLE _____ DATE ____/____/____
(Please Print)

TELEPHONE NO (____) _____

Remarks:

Paperwork Reduction Act Notice

Section 7 (b)(6) of the Railroad Retirement Act (RRA) allows the Railroad Retirement Board (RRB) to collect this information. While you are not required to respond, the information you provide will be used by the RRB in determining an applicant's eligibility for an occupational disability under the RRA.

We estimate that this form takes an average of 20 minutes per response to complete, including the time for reviewing the instructions, getting the needed data, and reviewing the completed form. *Federal agencies may not conduct or sponsor, and respondents are not required to respond to, a collection of information unless it displays a valid OMB number.* If you wish, send comments regarding the accuracy of our estimate or any other aspects of this form, including suggestions for reducing the completion time to: Chief of Information Management, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092 and to the Office of Management and Budget, Paperwork Reduction Project (3220-0193), Washington DC 20503. Please do not return this form to either of these addresses.

G-251b (12-97)

Dated: January 14, 1998.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 98–2026 Filed 2–12–98; 8:45 am]

BILLING CODE 7905–01–C

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federal register

Friday
February 13, 1998

Part VI

Department of Justice

Bureau of Prisons

28 CFR Part 524

Progress Reports: Triennial Preparation; Final Rule

VOL
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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 524

[BOP–1067–F]

RIN 1120–AA63

Progress Reports: Triennial Preparation

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: The Bureau of Prisons is amending its regulations on progress reports to require that progress reports for designated inmates be prepared at least once every 36 months. The purpose of this change is to streamline operations at Bureau facilities while continuing to provide appropriate program services to inmates.

EFFECTIVE DATE: March 16, 1998.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on progress reports (28 CFR part 524, subpart E). A proposed rule on this subject was published in the **Federal Register** on March 5, 1997 (62 FR 10164).

Progress reports are used to maintain current information on an inmate such as his/her institutional adjustment, program participation, and readiness for release. Paragraph (e) of § 524.41 had previously specified that a progress report shall be prepared on each federal inmate at least once every 24 months, if for no other reason than to update report information. This paragraph was amended in 1995 to allow for a triennial rather than biennial progress report for inmates at independent camps. This amendment allowed the Bureau to allocate staff resources at independent camps in a more efficient manner. In order to extend such streamlining of operations to its other facilities, the Bureau proposed to require that a progress report be prepared on each designated inmate at least once every 36 months if not previously generated for another reason required by § 524.41. No comment was received on the proposed rule. The Bureau is therefore adopting the proposed rule as final without change.

Members of the public may submit further comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), does not have a significant impact on a substantial number of small entities. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

List of Subjects in 28 CFR Part 524

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 524 in subchapter B of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 524—CLASSIFICATION OF INMATES

1. The authority citation for 28 CFR part 524 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3521–3528, 3621, 3622, 3624, 4001, 4042, 4046, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 21 U.S.C. 848; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 524.41, paragraph (e) is revised to read as follows:

§ 524.41 Types of progress reports.

* * * * *

(e) *Triennial report*—prepared on each designated inmate at least once every 36 months if not previously generated for another reason required by this section.

* * * * *

[FR Doc. 98–3717 Filed 2–12–98; 8:45 am]

BILLING CODE 4410–05–P

Friday
February 13, 1998

Part VII

Environmental Protection Agency

40 CFR Parts 141 and 142
National Primary Drinking Water Regulations: Consumer Confidence; Proposed Rule

federal register

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

RIN 2040–AC 99

[FRL–5967–2]

National Primary Drinking Water Regulations: Consumer Confidence Reports

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of alternative definition.

SUMMARY: EPA is proposing to require community water systems to prepare and provide to their customers annual reports on the quality of the water delivered by the systems. This action is mandated by the 1996 amendments to the Safe Drinking Water Act (SDWA). These reports would provide valuable information to consumers of tap water from community water systems and allow them to make personal health-based decisions regarding their drinking water consumption.

DATES: Written comments on this proposed rule must be received by EPA on or before March 30, 1998. EPA will hold a public meeting about the proposal in Washington, DC on March 3, 1998 beginning at 9 a.m. A second public meeting will take place in San Francisco, CA on March 10, 1998 beginning at 9 a.m.

ADDRESSES: Send written comments on this proposed rule to the Consumer Confidence Report Comment Clerk: Water Docket MC–4101 (docket #W–97–18), Environmental Protection Agency: 401 M Street, S.W., Washington DC 20460. Please submit an original and three copies of your comments and enclosures (including references).

Commenters who want EPA to acknowledge receipt of their comments must enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to ow-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and forms of encryption. Electronic comments must be identified by Docket #W–97–18. Comments and data will also be accepted on disks in WordPerfect in 5.1 format or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The record for this rulemaking has been established under docket #W–97–18, and includes supporting documentation as well as printed paper versions of electronic comments. The record is available for review at EPA's Water Docket: 401 M Street, S.W., Washington DC 20460. For access to the Docket materials, call 202–260–3027 between 9:00 a.m. and 3:30 p.m. for an appointment and reference "Docket #W–97–18".

The public meetings will take place in the following locations: Washington, DC—EPA Auditorium, 401 M St, SW, Washington, DC. San Francisco—EPA, 1st floor conference rooms, 75 Hawthorne Street, San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: the Safe Drinking Water Hotline, toll free 800–426–4791 for general information about, and copies of, this document. For technical inquiries, contact: Françoise M. Brasier 202–260–5668 or Rob Allison 202–260–9836.

SUPPLEMENTARY INFORMATION:

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Regulated persons

Potentially regulated persons are community water systems.

Category	Example of regulated entities
Publicly-owned CWSs	Municipalities; County Governments; Water districts; Water and Sewer Authorities.
Privately-owned CWSs	Private water utilities; homeowners associations.
Ancillary CWSs	Persons who deliver drinking water as an adjunct to their primary business (e.g. trailer parks, retirement homes).

The table is not intended to be exhaustive. It provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 141.151 of the rule. If you have questions regarding the applicability of this section to a particular entity, consult the persons listed in the **FOR FURTHER INFORMATION CONTACT** section.

Consumer Right-To-Know Provisions in the Safe Drinking Water Act

The 1996 amendments to the Safe Drinking Water Act contain extensive provisions for consumer involvement and right-to-know that herald a new era of public participation in drinking water protection. These provisions are founded on the principle that consumers have a right to know what is in their drinking water and where it comes from before they turn on the tap. With the information provided in these provisions, consumers will be better able to make health decisions for themselves and their families.

The Consumer Confidence Reports are the centerpiece of public right-to-know in SDWA. The information contained in these reports can raise consumers' awareness of where their water comes from, show them the process by which safe drinking water is delivered to their homes, educate them about the importance of prevention measures such as source water protection to a safe drinking water supply. The reports can be a tool that starts a dialogue between consumers and their drinking water utilities, and one that gets consumers more involved in decisions which may affect their health. The information can be a means for consumers, especially those with special health needs, to make informed decisions regarding their drinking water. And finally, the reports

are a key to unlock more drinking water information. They will provide access through references or telephone numbers to source water assessments, health effects data, and additional information about the water system. The Agency is considering demonstrating its support for the consumer confidence reports by establishing, in consultation with the states, an award program which would recognize innovative reports.

Other right-to-know provisions in SDWA include changes to the public notification requirements, which will give the consumers of public water supplies more accurate and timely information on violations. Persons served by a public water system must be given notice within 24 hours of any violation of a national drinking water standard "that has the potential to have serious adverse effects on human health as a result of short-term exposure." EPA's regulation making these changes is scheduled to be promulgated in August, 1999.

In addition, the public will have access to the completed source water assessments. States are required under the 1996 SDWA amendments to assess the condition of every public water supply within the State, including the boundaries of the source of that water supply and contamination threats within that source. The consumer confidence reports will provide information on the availability of the assessment for that water supply.

By August, 1999, EPA will develop a national contaminant occurrence data base, that will provide information on the occurrence of both regulated and unregulated contaminants in public water systems. This information will be made available to the public through the Internet.

Finally, the public will be provided with early information on state variance decisions involving their public water system. Public water systems serving fewer than 10,000 persons that cannot meet national primary drinking water regulations may apply for a variance to use an alternate technology to meet the regulation. Consumers served by that water supply have a right to object to the variance.

All of these public right-to-know provisions are based on the belief that accountability to the public and the understanding and support of the public will be vital to address and prevent threats to drinking water quality in the years ahead. The provisions provide unprecedented opportunities for the public to participate in decisions related to the protection of their water supplies. If the public uses the opportunities, they can ensure that the choices made—particularly by EPA and the states, but also by water suppliers—respond to the public's needs and concerns.

I. Statutory Authority

Section 114 of the Safe Drinking Water Act Amendments of 1996 (Public Law 104–182), enacted August 6, 1996, amends Section 1414(c) of the Act (42 U.S.C. 300g–3(c)). A new section 1414(c)(4) provides for annual consumer confidence reports by community water systems to their customers. Section 1414(c)(4)(A) mandates a number of actions by the Administrator of the Environmental Protection Agency, who is required to develop and issue regulations within 24 months of the date of enactment (i.e. in August 1998). The regulations must be developed in consultation with public water systems, environmental groups, public interest groups, risk communication experts, the States, and other interested parties. The regulations must, at a minimum, require each community water system to mail to each customer of the system at least once annually a report on the level of contaminants in the drinking water purveyed by that system. The regulations are required by section 1414(c)(4)(A) to provide a "brief and plainly worded" definition of four terms: "maximum contaminant level goal," "maximum contaminant level," "variances," and "exemptions." In addition, section 1414(c)(4)(A) requires the regulations to contain brief statements in plain language regarding the health concerns that resulted in regulation of each regulated contaminant, and a brief and plainly worded explanation regarding contaminants that may reasonably be expected to be present in drinking water, including bottled water. Finally, section 1414(c)(4)(A) requires the regulations to provide for an EPA toll-free hotline that consumers can call for more information and explanation.

Section 1414 of SDWA, as amended, also provides, in a new section (c)(4)(B) of the Act, additional specific requirements for the contents of the consumer confidence reports. The reports are required to include, but need not be limited to, the following information:

- Information on the source of the water purveyed. (section 1414(c)(4)(B)(i))
- A brief and plainly worded definition of the terms "maximum contaminant level goal," "maximum contaminant level," "variances," and "exemptions," as provided in regulations by the Administrator. (section 1414(c)(4)(B)(ii))
- If any regulated contaminant is detected in the water purveyed by the community water system, a statement setting forth: (1) the maximum contaminant level goal, (2) the maximum contaminant level, (3) the level of such contaminant in the water system, and (4) for any regulated contaminant for which there has been a violation of the maximum contaminant level during the year covered by the report, the brief statement in plain language regarding the health concerns that resulted in regulation of that contaminant, as provided by the Administrator in regulations under section 1414(c)(4)(A). (section 1414(c)(4)(B)(iii))
- Information on compliance with national primary drinking water regulations, as required by the Administrator, and notice if the system is operating under a variance or exemption and the basis on which the variance or exemption was granted. (section 1414(c)(4)(B)(iv))
- Information on the levels of unregulated contaminants for which monitoring is required under section 1445(a)(2) (including levels of *Cryptosporidium* and radon where States determine they may be found.) (section 1414(c)(4)(B)(v))
- A statement that the presence of contaminants in drinking water does not necessarily indicate that the drinking water poses a health risk and that more information about contaminants and potential health effects can be obtained by calling the Safe Drinking Water hotline. (section 1414(c)(4)(B)(vi))

Section 1414(c)(4)(B) also provides that a community water system may include any additional information that it deems appropriate for public education. In addition, the Administrator may require, through regulation, a consumer confidence report to include for not more than three regulated contaminants, a brief statement in plain language regarding the health concerns that resulted in regulation of the contaminant even if there has not been a violation of the maximum contaminant level during the year concerned.

Section 1414(c)(4)(C) authorizes the Governor of a State to determine not to apply the mailing requirement to community water systems serving fewer than 10,000 persons. Such systems then would be required to inform their customers that the system will not be mailing the report; make the report available on request to the public; and publish the report annually in one or more local newspapers serving the areas in which the systems' customers are located.

Section 1414(c)(4)(D) allows those community water systems that are not required to meet the mailing requirements, and which serve 500 persons or fewer, to meet their consumer confidence report obligation by preparing an annual report and providing notice at least once per year to each customer by mail, by door-to-door delivery, by posting, or by any other means authorized in the regulations, that the consumer confidence report is available upon request.

Section 1414(c)(4)(E) provides that a State exercising primary enforcement responsibility may establish by rule, after public notice and comment, alternative requirements with respect to the form and content of the consumer confidence reports.

This rule, when issued in final form, is intended to fulfill the rulemaking requirements outlined in amended section 1414(c)(4).

II. Consultation With Public Water Systems, State and Local Governments, Environmental Groups, Public Interest Groups, and Risk Communication Experts

As required under section 1414 of SDWA, as amended, the Agency has met extensively with a broad range of groups in the development of this proposed rule. Early in the regulatory development process, EPA held a series of meetings with community water system operators and customers located in California, to obtain information about California's annual Water Quality Reports requirement, which has been in effect since 1990, and to learn from the California program's experiences. In particular, EPA held meetings with operators of small rural public water systems at the California Rural Water Association Annual Meeting held in February 1997. Also in February 1997, EPA met with a focus group of water customers in California to obtain information about their reactions to receiving annual reports about drinking water quality and how such reports should be structured and used. Finally, EPA met with members of the Association of California Water Agencies, primarily including representatives from large public water systems, public utility commissions, cities, and metropolitan areas.

The Agency met four times between February and July 1997 with a special working group of the National Drinking Water Advisory Council (NDWAC). The Advisory Council has been established under Section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act" and SDWA. By law, NDWAC is empowered to provide advice to EPA on regulatory issues. The Consumer Confidence Report Working Group, in turn, was established by NDWAC to provide advice to it on the particular issues raised in the development of EPA's regulation on consumer confidence reports.

The NDWAC Consumer Confidence Report Working Group was composed of a designated Federal officer; three NDWAC members who served as liaison between the full NDWAC and the Working Group; and eighteen other members. The Working Group contained members from public health organizations; local, State, and Federal government agencies with responsibilities for supervising public drinking water providers; operators of large and small drinking water systems; consumer representatives; environmental organizations; and business and trade associations. The Working Group met in four two-day sessions, between February and July 1997, to discuss issues raised by the consumer confidence report requirements in the 1996 SDWA amendments and to analyze and debate initial proposals for the consumer confidence report regulatory requirements. At the end of the Working Group meetings, in July 1997, the group submitted a draft of the regulations highlighting unresolved issues to the full NDWAC for its review. NDWAC in turn presented its recommendations to EPA on the regulation being proposed today in a NDWAC report submitted in August 1997. These documents are available in the Docket for this rulemaking.

In June 1997, EPA convened a one-day meeting of a group of private, State, and Federal experts in public health and the communication of risk-related information to general audiences. The panel critiqued preliminary ideas for the consumer confidence report regulatory requirements and provided suggestions to EPA on effective methods of communicating risk information.

As it developed today's regulatory proposal, EPA continued to meet with water system operators and customers. In May 1997 the Agency obtained the views of system operators in Wyoming, a State chosen because EPA operates the drinking water program in that State. The Agency also held a town meeting in Casper, Wyoming to solicit the views of water system customers.

EPA also received the views of a number of organizations on the potential contents of consumer confidence reports. In particular, Agency staff attended a one-day workshop in May 1997 sponsored by the Environmental Law Institute in which water customers and citizens in the Washington, D.C. area discussed communication of drinking water information. EPA also was provided the results of a series of focus groups held in six locations across the country by the American Water Works Association to obtain information and viewpoints about drinking water risk communication issues.

EPA also discussed the proposal with, and received comments from, another EPA advisory group, the Local Government Advisory Committee. EPA discussed the statute and EPA's plans for developing the proposal at a meeting with the Committee in San Francisco in February 1997, and provided a draft of the rule to the Committee and discussed the draft at its meeting in New Orleans in May 1997.

The rule being proposed today is based on the NDWAC recommendations to EPA and has been developed in close consultation with public water systems, environmental groups, public interest groups, risk communication experts, the States, and other interested parties, as required by the 1996 Amendments.

III. Discussion of Proposed Rule

A. Purpose and Applicability

The rule being proposed today establishes the minimum requirements for the content of consumer confidence reports.

The rule would apply to existing and new community water systems. "Community water systems" are a subset of "public water systems." A "public water system," as defined by section 1401 of SDWA, is "a system for the provision of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals." "Community water systems" are public water systems which serve year-round residents. Thus, systems that do not have 15 or more service connections used by year-round residents or regularly supply at least 25 year-round residents are not subject to today's rule.

Out of the approximately 180 thousand water systems in the United States, only approximately 60 thousand are considered community water systems. They range from large municipal systems that serve millions of persons to small systems, which serve fewer than 100 persons. Community water systems can be further categorized as publicly-owned systems, including systems owned and operated by municipalities, townships, counties,

water districts, and water authorities; privately-owned systems, which may be owned and operated by groups ranging from investor owned water companies to homeowners associations; and ancillary systems, which are small systems that provide water as an ancillary function of their principal business or enterprise. Ancillary systems are primarily mobile home parks and a variety of institutional water providers. Public, private, and ancillary community water systems are all subject to today's rule.

The balance of the water systems in the United States, or approximately 130 thousand systems, are either so-called "transient non-community systems" which do not serve the same people on a day to day basis (for example, highway rest stops) or "non-transient non-community systems" which serve at least 25 of the same people at least 6 months of the year (for example, schools). Because today's rule applies only to community water systems, as provided by Congress in the 1996 Amendments to SDWA, transient and non-transient non-community systems are not covered.

EPA notes that water wholesalers are also considered community water systems. However, if such a system did not retail water to any customer, i.e. billing unit or drinking water hook-up, the system would not have to prepare a consumer confidence report. EPA notes that these systems already provide monitoring information to the States. They would have to provide that information to the purchaser so that the purchaser can prepare the consumer confidence report. In the case of consecutive systems, i.e. a chain of utilities which provide water to each other, the system delivering water to the customers would be the one preparing the consumer confidence report.

B. Effective Dates and Rationale

Today's rule would become effective 30 days after publication of the final rule in the **Federal Register** and community water systems would have to deliver the first report to their customers within 13 months of the effective date of the regulations. The Agency is anxious that these requirements become effective as soon as practicable because of the importance of this provision. The Agency also believes that the proposed dates are practicable since they would give systems a full 14 months to prepare their first report. Each consumer confidence report is required to describe monitoring results for the past twelve-month period. EPA believes that giving community water systems a period slightly longer than a year to prepare the first report ensures that they will have the time to assemble the necessary information, to develop the necessary report format, and to arrange for distribution of the consumer confidence reports. In addition, some States are already implementing or developing their own reporting requirements. EPA also believes that the 14 month period after enactment of the rule would ensure that systems that had recently prepared a State mandated report would not be required to immediately prepare another report required by today's rule.

New community water systems, that is, community water systems that begin delivering water to customers after the effective date of today's rule, must deliver their first report within 18 months of the date that they begin delivering water to customers. EPA concluded that the longer period of time before delivery of the first reports would allow new systems to initiate and carry out a broader range of monitoring activities (some required monitoring requires at least one year's collection of data; other required monitoring may occur over a period in excess of 12 months). In addition, the 18 month period will allow new systems to develop and implement procedures for preparing and distributing the reports.

Some stakeholders argued that the Agency should propose that all reports be due on a certain date. They believed that this would give the reports more impact by allowing for an orchestrated outreach campaign at the time of issuance. The Agency believes however, that there are merits to allowing some flexibility since different utilities will have different start-up needs. States can make different decisions when they promulgate their regulations and would be free to impose a specific date for issuance of the consumer reports under their jurisdiction.

C. Rationale for Content of the Reports

In developing today's rule on the contents of consumer confidence reports prepared by community water systems, EPA sought to provide community water systems with the maximum amount of flexibility to design their reports, consistent with the requirements of the 1996 Amendments. The Agency therefore generally limited the requirements for the content of reports, found in §§ 141.153 and 141.154 of the proposed rule, to a clarification and explanation of the requirements in section 114 of the 1996 Amendments. In addition to today's rule, EPA is planning to prepare and issue detailed guidance that will provide supplementary information and examples of ways in which systems can prepare and present the data in consumer confidence reports. The Agency also will develop, prior to the effective date of the rule computerized "fill-in-the-blank" templates that water systems will be able to use if they are unable or do not choose to develop their own consumer confidence report format. The Agency anticipates that very small systems, in particular, will be able to use these templates to minimize the burden of preparing the reports.

1. Information on the Source of the Water Purveyed

Consumer confidence reports are intended primarily to convey information to persons served by community water systems about the quality of the water they are consuming. Thus, the emphasis of the reports is on "finished" rather than "source" water. Congress did, however, require the reports to include information about the sources of the water delivered by the system. In addition, many of the participants in public meetings on the consumer confidence reports held by EPA, and the members of the expert panel on risk communication convened by EPA, argued that the reports will be substantially more interesting and useful to persons if the reports provide context for the information about finished water. Therefore, today's rule specifies that each report must identify the sources of the water delivered by the community water system by providing information on the type of water (that is, whether the source is ground water, surface water, a combination of the two, or water obtained from another system); and the commonly used name or names (if any) and location of the body or bodies of water. Several commenters on the report requirements suggested to EPA that maps of water sources are a particularly effective means of communicating this information. The Agency is encouraging systems to use maps in the consumer confidence reports whenever possible, although maps have not been included in the mandatory contents of the reports.

One issue raised during the development of the proposal was whether the rule should require information on sources of contamination that may have an impact on the quality of the source water used by a community water system. Some stakeholders argued that if particular sources of contamination are known for the sources of water delivered by the community water system, the consumer confidence reports should provide a concise description of them. The public frequently has a general knowledge of

the contamination sources that affect particular surface water bodies, according to the advocates of this provision, and failing to provide information about them can reduce the credibility of the reports generally. Other stakeholders noted that the consumer confidence reports deal primarily with the quality of the finished water as it is delivered to its consumers. They argued that a requirement to provide information on contaminants in source water without regard to their presence in the finished water may lead to unnecessary concerns. The Agency notes the difficulty of definitively linking contaminants to specific sources and the liability issues that may arise if the reports attempt to do so without adequate documentation.

The 1996 Amendments to the Safe Drinking Water Act created a new program of source water assessments under section 1453 of the Act. The Agency has issued guidance on State Source Water Assessment and Protection Programs, under which States with primary enforcement authority must: (1) delineate the boundaries of the areas providing source waters for public water systems and (2) identify, to the extent practical, the origins of regulated and certain unregulated contaminants in the delineated area to determine the susceptibility of public water systems to such contaminants. Assessments are to be completed for all public water systems within two years after EPA's approval of the State's program with possible 18 month extensions.

In an effort to balance competing concerns regarding the provisions of information on contaminant sources in the report, today's rule creates a linkage with this Source Water Assessment program by requiring that if a source water assessment has been completed for the community water system, that system's consumer confidence report must notify customers of the availability of this information and the means to obtain it. This will allow interested parties to get accurate and detailed information on the sources of contaminants.

However, as recommended by the NDWAC, today's rule does not include a requirement that consumer confidence reports contain specific information about sources of contamination which may affect the quality of the source water, although it does require that generic information be provided about the likely sources of detected regulated contaminants. The Agency is inviting comments on this issue.

2. Definitions

The rule contains definitions in § 141.153 (c)(1) and (2) of four terms that must be used in consumer confidence reports: "Maximum contaminant level goal or MCLG," "Maximum Contaminant Level or MCL," "Variances," and "Exemptions." These definitions differ from those found in 40 CFR 141.2. The definitions are designed to explain key components of the national primary drinking water regulations in brief, plainly worded terms. The draft definitions were examined closely by the NDWAC Consumer Confidence Reports Working Group, by the expert panel, and by EPA's own staff. All of these reviewers recognized that the definitions, particularly the definitions for maximum contaminant level goal (MCLG) and maximum contaminant level (MCL), represent dramatic simplifications of complicated processes. The expert panel, in particular, recommended that EPA test these definitions and, if necessary, revise them. The Agency therefore is specifically requesting comments on these proposed definitions.

Maximum Contaminant Level Goal or MCLG is defined by the proposed rule as "The level of a contaminant in drinking water below which there is no known or expected risk to health." This definition therefore highlights the requirement in the SDWA that EPA set MCLGs at a level at which "no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety." The definition does not attempt to describe the use of Reference Doses to determine the MCLG for non-carcinogenic contaminants and Class C carcinogens, nor does it specify that for Class A and B carcinogens the MCLG must be set at zero. The expert panel was particularly concerned by the lack of context in the proposed definition, noting that it contains no information about how drinking water is determined to be safe. At the same time, the Panel recognized the difficulty of developing a simple and accurate description of the process that would be suitable for inclusion in the reports. Some panel members suggested that EPA develop a one-page handout on the process of setting MCLs and MCLGs, which could either be included in the reports or made separately available to drinking water consumers. EPA is requesting comment on this issue.

Maximum Contaminant Level or MCL is defined by the proposed rule as "the highest level of a contaminant that is allowed in drinking water." This definition highlights the function of the MCL as an enforceable standard under the primary drinking water regulations. The agency is aware that this definition does not provide an explanation of how the MCLs are set. As provided by SDWA, EPA sets MCLs as close to the corresponding MCLGs as "feasible with the use of the best technology, treatment techniques, and other means, which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions are available (taking cost into consideration)."

The expert panel in particular noted that these definitions do not provide any content for interpreting the health significance of a contaminant concentration above the MCLG but below the MCL and recommended that EPA use a longer definition of MCL such as: "the level determined to provide the best protection to health, given cost and treatment feasibility". The working group, however, was not able to agree on any characterization of the MCL beyond a minimal description of its regulatory function. Some members wanted to stress the safety factors built into the MCL setting process while others believed strongly that whenever an MCL is set above an MCLG the best protection to health is not achieved. One alternative would be to paraphrase language from the SDWA to provide additional context for the definitions. For example, MCLG might be defined as "The level of a contaminant in drinking water below which there is no known or expected risk to health, allowing an adequate margin of safety." MCL could then be defined as "The highest level of a contaminant that is allowed in drinking water, which is set as close to the MCL as feasible using the best available treatment technology." The Agency requests comments on the proposed definitions of both MCL and MCLG. Commenters should bear in mind that brevity and plain language are required by the Statute for these definitions.

The NDWAC Working Group recommended combining the definitions of variances and exemptions into a single definition, since in its opinion the two terms described a single concept. "Variances and exemptions" therefore are defined in the rule as "State permission not to meet an MCL or a treatment technique under certain conditions." Some members of the Working Group suggested adding the phrase "provided there is no unreasonable risk to health" to the definition, in order to inform report recipients that this is one of the statutory conditions for receiving a

variance or exemption. EPA is requesting comment on this suggestion.

The definitions section of the proposed rule also includes two definitions not mandated by the 1996 Amendments but considered necessary by EPA to address situations likely to be encountered by many systems. When an MCL cannot be established, EPA may set a treatment technique or action level. Section 141.153(c)(3) of the proposed rule states that when a report contains data on a contaminant for which EPA has set a treatment technique or an action level, the report must define treatment technique as "A required process intended to reduce the level of a contaminant in drinking water;" and must define action level as "The concentration of a contaminant which triggers treatment or other requirement which a water system must follow."

EPA notes that the use of these definitions in the consumer confidence reports is not meant in any way to alter the legal and enforceable definition of these terms.

3. Level of Detected Contaminants

Sections 1414(c)(4)(B)(iii) and (v) of SDWA as amended establish reporting requirements for "regulated" and "unregulated contaminants" detected in the water purveyed by a community water system. The Agency believes that information on contaminants detected by the system is the lynchpin of the reports. This is the information which will allow water consumers to make educated health-related decisions based on their personal circumstances. Therefore it is important that the information be as complete and accurate as feasible without falling into the trap of information overload.

As far as accuracy is concerned, the Agency is aware that choosing one number to put in the report which gives a true representation of the water that customers may have consumed during the year will sometimes be difficult. The quality of the water is subject to spatial and temporal variability. This variability is magnified in large systems where blending of several sources may occur. It is not feasible for the Agency to lay down hard and fast rules to deal with all instances where the quality of the water may be variable; therefore, the Agency is proposing a performance standard in § 141.153(d)(1) which requires operators to provide customers with an accurate picture of the level of contaminant they may have been exposed to during the year. The quantitative information on levels of detected contaminants may, however, provide only part of the picture. The Agency expects that systems may need to provide qualititative explanations of water quality variations as well. These explanations could, for example, describe to customers the fact that warm temperatures facilitate microbial growth and may necessitate higher levels of disinfectant in the water. EPA requests comment on the usefulness of such information.

EPA recognizes that this rule will require water system operators to present information on contaminants detected at very low levels. The Agency does not intend that operators report levels beneath the Minimum Detection Limits, based upon the analytic requirements listed in 40 CFR 141 Subpart C, which are levels so low that they are analytically invalid.

EPA believes that, in order for the public to make well-informed health decisions, the reports should contain information available to the systems on any contaminant which may have an impact on the health of persons whether or not monitoring for these contaminants is currently required by regulations promulgated under the SDWA. While section 1414(c)(4) does not explicitly require that the reports contain all of this information, EPA believes that such reporting is authorized under both section 1414(c)(4)(B) (which states that the contents of the report must include, but not be limited to, certain items) and section 1445(a)(2) (which authorizes the Administrator to require regulated systems to report information to the public on unregulated contaminants). On the other hand, the Agency does not want inadvertently to stop systems from performing additional voluntary monitoring by requiring disclosure of information the significance of which they could not explain. Therefore the Agency is proposing to include a provision which strongly encourages systems to include in the reports any information indicating a possible health concern from contaminants for which EPA has proposed an NPDWR or issued a health advisory. If, for example, a contaminant is found at a level exceeding a proposed MCL or a health advisory level of concern, EPA believes that the system should disclose this result to its customers. On the other hand, if the system believes that its voluntary monitoring results are inconclusive or insignificant from a health standpoint, it need not report them.

EPA proposes that the reports address, in separate sections, (1) the results of monitoring mandated by regulation for both regulated and unregulated contaminants as mandated by section 1414(c)(4)(B)(iii)and (v), and (2) the results of voluntary monitoring performed by the system that has shown a detection of radon or Cryptosporidium or the presence of any additional contaminant which a system elects to include in the reports.

With respect to the manner in which data are presented, the proposed rule contains a number of provisions:

a. The initial report must identify the twelve-month period that it covers. Subsequent reports must identify and cover successive twelve month periods, to ensure that gaps do not exist between periods covered by the reports.

b. Data on detected contaminants for which monitoring is mandatory would be displayed in a table. These data include contaminants subject to an MCL, action level or treatment technique (regulated contaminants), contaminants for which monitoring is required by § 141.40 (unregulated contaminants), and disinfection byproducts and microbiological contaminants (except Cryptosporidium) for which monitoring is required by §§ 141.140 and 141.142 (the information collection rule). The Agency is not mandating a particular format for the table. EPA is seeking to leave the maximum possible amount of flexibility to drinking water systems to design effective methods of presenting the required data. However, the rule would contain a number of provisions pertaining to the manner in which the data is presented.

If a system is allowed to monitor for certain contaminants less often than once a year, the report must include the date and results of the most recent sampling and a brief explanation (e.g. in a footnote) for why the sample was not taken within the reporting period (e.g., "monitoring only required once every 3 years").

The MCL for detected regulated contaminants should be presented in whole units. EPA has recalculated the MCLs in such units, and has incorporated them into Appendix A of the regulation. The MCLG for each contaminant should be expressed in the same units as the MCL. Detections also should be expressed in the same units. The Agency notes that it will continue to rely on the numbers reported to the State to comply with the regulations to determine compliance and undertake enforcement action if necessary. In no case would the way in which data is presented in the consumer confidence reports affect an enforcement decision on compliance with MCLs or action levels.

The expert panel encouraged EPA to allow community water systems to use illustrative examples to clarify the meaning of the detected levels (e.g., "equivalent to one drop in a railroad tank car"); in contrast, the NDWAC working group believed that such illustrations could be subject to misinterpretation or misuse. The Agency concluded that it would allow systems the

flexibility to adopt such examples, but would not encourage their use.

For contaminants subject to an NPDWR, EPA concluded that community water systems should be required to report "the highest test result used to determine compliance with an NPDWR." Thus, whenever compliance with an MCL is based on a monthly or quarterly average, the highest average for the year should be included in the table. If compliance is determined by averaging the results for various sampling points, only the average should be reported in the table. Several members of the NDWAC working group and members of the expert panel urged, instead, that ranges of results or highest values should be reported. Thus, when compliance is based on an average, in addition to reporting the average, the system would also report the highest value detected. The advocates of this approach noted that for some contaminants, such as TTHMs, parts of the distribution system may be exposed to concentrations above the average. The Agency concluded, however, that presentation of ranges and highest values could be confusing. Instead the Agency is proposing that for these contaminants, the reports clearly indicate that the results are based on an average and explain what an average means. Further, based on the NDWAC recommendations, the Agency is proposing an exception to this single number reporting. For MCLs such as TTHMs for which reporting is based on a system-wide average, and for which substantial variation of contaminant levels may occur within the distribution system, the reports should disclose instances where a significant portion (10%) of the population is consistently exposed to a level higher than the MCL. In such instances the reports would have to identify the portions of the service areas where consumers are exposed to these higher levels and specify what these levels are. The Agency would like specific comments on this issue. The Agency notes that these circumstances should not arise if the sampling points for TTHMs have been chosen in accordance with the regulations and is requesting commenters to submit specific data if they have information to the contrary. The Agency also notes that, at this time, this requirement would have no impact on systems serving fewer than 10,000 persons since they are exempt from the TTHM requirements. The Agency is also requesting comment on whether it is necessary for the reports to note contaminant levels that are averages and explain what that means for chronic contaminants where the MCL is based on cumulative exposure over many years.

EPA notes that while in the case of some regulated contaminants, water systems would report averages rather than the single highest level, in the case of detected unregulated contaminants, it expects water systems to report the highest detected level. Some concern was raised that this single highest level might not be representative of the water quality, and that consumers might be better served by putting in place instead a performance standard for the unregulated contaminants similar to that for the regulated contaminants, requiring systems to provide customers with an accurate picture of the level of contaminants they may have been exposed to during the year. The Agency is requesting comment on this issue.

The proposed rule would require community water systems to include in the table the likely source of any detected regulated contaminant. In general EPA is expecting systems to describe these sources in generic terms such as "agricultural runoff", "petrochemical plants". In some cases, however the system may have information obtained though a source water assessment which would allow the report to be more specific. When the source is not definitely known the system should include in the table the generic description of major sources derived from Appendix A. The inclusion of this requirement was the subject of lengthy discussion among stakeholders. While some believe that it is important for the public to understand that contaminants in the finished water are often the result of activities which are not under the control of the water systems, others were concerned that requiring operators, particularly of small systems, to seek specific information would be too burdensome. The Agency believes that providing generic descriptions for use in cases where a specific source is not definitely known appropriately balances those concerns. The Agency is requesting comments on this requirement and particularly on the usefulness of the generic list and on its wording.

The proposed rule requires a community water source that distributes water to its customers from several raw sources which are not blended, to include a separate column in its table of results for each service area. The report should also identify the service area for each entry point into the distribution system.

Today's rule requires community water systems to include specific information in their consumer confidence reports for every regulated contaminant detected in violation of an MCL. This information, which must include a clear and readily understandable explanation of the violation, the potential health effects, and the actions taken by the system to address the violation, need not be included in the table of results (though it may be). Instead, the system may provide the required information in a separate section on violations and what they mean, although that section should be clearly labeled as addressing violations and situated close to the table of results. The description of potential adverse health effects included in this section would use the relevant language of Appendix B. A discussion of the linkages between this proposed requirement and the requirements for public notification is included in Section VI of this preamble.

c. Additionally today's rule would require water systems to provide information on detection of Cryptosporidium, radon and other currently unregulated contaminants.

Information on Cryptosporidium would be included whether it is detected in compliance with the ICR regulations or through voluntary monitoring performed by a system. Specifically, the reports must include a summary of the monitoring results, information on how the monitoring was performed, and an explanation of the significance of the results. When EPA promulgated the ICR, it explained that its intent in collecting these data was to gain information that it could use in aggregate to determine national occurrence of Cryptosporidium and evaluate the treatment cost implications of new regulations. The Agency emphasized that these data should not be used to make judgements about the compliance of any specific water system with drinking water standards. The Agency is not changing this policy and remains aware that Cryptosporidium presents difficult measurement challenges. EPA was clear in its preamble for the ICR (61 FR 24363, May 14, 1996) that laboratory approval criteria for the ICR were designed to conduct national regulatory impact analysis and that better method performance would be needed for individual systems to comply with future rules. Therefore, while EPA believes that it is appropriate for the systems to disclose these results to their customers it is not dictating how. The proposed rule requires water systems that detect Cryptosporidium to summarize the results of monitoring but is not requiring that these data be included in the table to give systems more flexibility regarding how they display the information and how they explain the significance of the results to consumers. The rule also would require systems to explain how the monitoring was performed. This provision is not meant to require systems to give detailed explanations about laboratory methods or sampling protocols; rather, EPA expects the systems to provide some indication whether raw water or finished water was sampled and the extent of sampling. EPA requests comments about the inclusion of these data in the consumer confidence reports and the appropriate format for doing so.

When a system detects radon, the Agency is proposing that the reports must include the results of the monitoring, information on how the monitoring was performed, and an explanation of the significance of the results. EPA will provide examples in guidance of what such an explanation might be. As with Cryptosporidium, EPA does not expect detailed explanations of the sampling or laboratory methods.

When a system detects any other unregulated contaminant, the proposed rule would strongly encourage systems to determine if there is a health advisory or a proposed NPDWR for that contaminant in order to determine whether there may be a health concern which warrants inclusion of the data in the consumer confidence reports.

Note that for Cryptosporidium, radon, and any other contaminants for which monitoring is not required, the proposed rule allows systems the flexibility to present results either in the table or in another section of the report.

4. Compliance With National Primary Drinking Water Regulations

Under section 1414(c)(4)(B)(iv) of SDWA as amended, consumer confidence reports must contain information on compliance with

national primary drinking water regulations, as required by the Administrator. The statute speaks in terms of "compliance," which might be interpreted to require only certification of compliance/noncompliance with the NPDWR. However, the Agency believes it is appropriate to require reporting of any violation of the standards in the regulations, with the exception of violations of MCLs, which are addressed elsewhere in the consumer confidence reports. The Agency requests comments on the need to include all NPDWR violations as listed in the 144.153(e). An alternative would be to select only these violations which could clearly result in a health risk. If this alternative is recommended by commenters, they should include a discussion of how EPA could differentiate such violations, and specific suggestions for types of violations (e.g., record-keeping) that wouldn't need to be reported.

The proposed rule further specifies that the report must contain a clear and readily understandable explanation of the violation and its health significance. EPA recognizes that for violations other than MCLs and treatment techniques, explanations of health significance will need to be fairly general (e.g., for violation of a monitoring requirement, the explanation might be "Failure to perform required monitoring may cause contaminants with potentially adverse health effects to go undetected"). Finally, the report must describe the steps the system has taken to correct the violation. A full discussion of the linkage between this proposed requirement and the public notification requirements is included in Section VI of this preamble.

5. Variances and Exemptions

Section 1414(c)(4)(B)(iv) also mandates that consumer confidence reports must include "notice if the system is operating under a variance or exemption and the basis on which the variance or exemption was granted." In order to ensure that the public has an opportunity to fully understand the basis for the variance or exemption and to participate in consideration of it, the proposed rule adds a requirement that two additional items of information be included in the report. First, the report must provide the dates when the variance or exemption was issued and when it is due for renewal. Second, the report must provide a status report on the steps the system is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules for the variance or exemption. While the Agency is mindful of the importance of keeping the consumer confidence reports brief and relatively simple, it also believes that in the case of a variance or exemption, the public is best served by a complete explanation of the situation. The Agency requests comment on an alternate requirement which would call for a "brief status report on compliance with the terms of the variance or exemption."

6. Additional Information

Section 1414(c)(4)(A) requires EPA's consumer confidence report regulations to include a "brief and plainly worded explanation regarding contaminants that may reasonably be expected to be present in drinking water, including bottled water." Although the statute does not specify explicitly that reports delivered to customers of community water systems include this explanation, the Agency concluded that otherwise there would have been no function served when Congress required it to be included in the regulation. Further, section 1414(c)(4)(B) gives the Administrator the authority to require that additional information be included in the reports. The Agency is proposing therefore that such an explanation must be included in the reports.

Today's proposed rule includes three paragraphs in response to this requirement. The first explains that surface water and ground water provide the source water for both tap water and bottled water, and that both surface and ground water dissolve naturally-occurring minerals and radioactive material and can pick up substances resulting from the presence of animals or from human activity. The second paragraph provides a short description of the types of contaminants that may be present in source water. The third paragraph explains that EPA and the Food and Drug Administration prescribe regulations that limit the amount of certain contaminants in water provided by community water systems and in bottled water, respectively. As required by section 1414(c)(4)(B)(ii), it further explains that the presence of contaminants does not necessarily indicate that the water poses a health risk, and indicates that the EPA Safe Drinking Water Hotline can provide additional information about contaminants and health effects.

The NDWAC Working Group and the expert panel both debated the material at length. Some members were concerned that the language shifted the focus of the report from finished water to source water. In addition, members noted that the reports should not suggest that water can ever be completely free of contaminants, because naturally occurring contaminants are always going to be present in some concentration. Some commenters on the language suggested that the description of potential contaminants could unnecessarily alarm customers whose water did not contain all of the described categories of contaminants. The NDWAC's recommendation was that this section of the report should be entirely optional.

EPA believes that the statute requires that the report include an explanation for the presence of contaminants and has included this requirement in § 141.153(g)(1). The Agency agrees with stakeholders that the systems should be given flexibility in the wording of the explanation. Therefore, EPA's proposal includes optional language in proposed § 141.153(g)(1)(i),(ii) and (iii) which systems may use to fulfill the requirement. Alternatively, subparagraph (iv) provides minimal language that a system may use to fulfill the requirement. Systems may also develop their own language. EPA is proposing to require that the language of subparagraph(v) be included in all reports since this language is mandated by the statute in section 1414(c)(4)(B)(vi).

D. Required Health Information and Rationale

All consumer confidence reports are required by today's proposed regulation to include a statement that some people may be more vulnerable to contaminants in drinking water than the general population. The statement goes on to identify several categories of persons who may be particularly at risk from infections, and encourages them to seek advice from their health providers. It further informs people that EPA/CDC Guidelines on appropriate means to lessen the risk of infection from Cryptosporidium may be obtained from the EPA Safe Drinking Water Hotline and provides the number, as required by the 1996 Amendments. EPA is requesting comments on the clarity and usefulness of this statement, particularly whether it is clear that only certain populations are particularly at-risk from infectious contaminants and whether the statement is appropriate for inclusion in all reports.

In addition to the health effects information that must be included in the report where there is a violation of an MCL discussed above, the rule also specifies language that must be included in the reports if the system has identified a violation of a treatment technique. This required health information for violation of the surface water treatment rule describes the

organisms that may be present in unfiltered or inadequately treated surface water, and presents information about the health effects that may result from consumption of such water. This section also addresses acrylamide and epichlorohydrin, which are impurities in chemicals used in drinking water treatment, and which are limited under treatment techniques specified by EPA. Required health effects language also must be provided in consumer confidence reports about these contaminants, if their specified treatment techniques are violated.

E. Report Delivery

The rule being proposed today tracks section 1414(c) of SDWA with respect to how the reports should be delivered to drinking water system customers. It requires one copy of the report to be mailed to each customer, unless the Governor of a State has waived the mailing requirement and the system serves fewer than 10,000 persons. Systems for whom the mailing requirements have been waived are required to publish the report in one or more local newspapers serving the area in which the system is located; inform their customers, either in the newspapers in which the reports are published or by other means approved by the state, that the report will not be mailed; and make the reports available to the public upon request. A further exception is carved out in the Statute for systems serving 500 or fewer persons for which the Governor has waived the mailing requirements. These systems may forego publication of the report in a local newspaper if they provide notice by mail, door-to-door delivery, or posting in an appropriate location that the report is available upon request.

The Agency has clarified the report delivery requirements with respect to community water systems that are in Indian Country. Under the proposed rule, Tribal Leaders can exercise the same authority as State Governors to waive the mailing requirement for systems serving fewer than 10,000 persons, if EPA finds that the tribe is eligible to be treated in the same manner as a state under section 1451 of SDWA for purposes of the authority to waive the mailing requirements for such systems contained in section 1414(c). Under section 1451 (codified at 42 U.S.C. 300j–11) the Administrator of EPA is authorized to treat Indian Tribes in the same manner as States. Under today's rule, a tribe may seek eligibility to be treated in the same manner as a state for purposes of waiving the mailing requirement either by applying as part of the Tribe's application for primacy over the Public Water System Program or by applying separately for waiver authority. EPA is not requiring tribes to have primacy over other aspects of the Public water system Program to receive waiver authority.

Under either option, a tribe must demonstrate, using the procedures outlined in 40 CFR section 142.76, that it meets the treatment in the same manner as a state eligibility requirements contained in SDWA section 1451 and 40 CFR section 142.72: (1) federal recognition; (2) a governing body exercising substantial governmental duties and powers; (3) jurisdiction; and (4) capability. Consistent with the Agency's 1994 "Simplification Rule" which simplified the tribal eligibility process, a tribe that has been treated in the same manner as a state for purposes of another EPA program will not need to reestablish the first two criteria when applying to waiver authority. Rather, such a tribe will only need to demonstrate that it meets the jurisdictional and capability requirements. For detailed guidance on demonstrating the eligibility requirements, see 53 FR 37396, 37398–402 and 59 FR 64339–341. EPA proposes to amend CFR sections 142.72 and 142.78 to include the authority to waive the mailing requirement as a provision for which EPA is authorized to treat tribes in the same manner as states. EPA anticipates that a number of community water systems in Indian Country may be subject to this provision, and it is important for EPA to provide a mechanism by which the mailing requirement may be waived.

In areas of Indian country where EPA has not found a tribe eligible to waive the mailing requirement and no state has been explicitly approved to implement the PWS program, EPA may waive the mailing requirement of 40 CFR § 144.155(a). EPA does not believe it is appropriate to require Indian tribes to seek the authority to waive the mailing requirement because the SDWA does not require tribes to seek such authority and, while EPA has streamlined the process, seeking approval to be treated in the same manner as a state may still be a significant effort that Tribes may not wish to undertake solely to obtain the authority to waive the mailing requirement for consumer confidence reports. Yet, as noted above, EPA believes that small community water systems in Indian Country are just as likely, if not more likely to need the relief from the mailing requirement. EPA is authorized under SDWA § 1451, where it is inappropriate or administratively infeasible to treat tribes as identical to states for a particular provision, to administer such provision in a manner that will achieve the purposes of the provision. EPA intends to exercise that authority to waive the mailing requirement for small systems in Indian Country in consultation with the Tribe to achieve the purposes of Section 1414(c) where the relevant tribe has not been approved to be treated in the same manner as a state and no state has been explicitly approved by EPA to implement the Public Water System program. EPA solicits comment on this issue.

EPA considers "Indian country" or "Indian lands" to be: (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. See 40 CFR § 144.3; see also 18 U.S.C. § 1151. EPA has used the term "Indian lands" in the past under SDWA, but has defined it as "Indian country" as defined under 18 U.S.C. § 1151. See 40 CFR § 144.3. To avoid confusion, EPA will use the term "Indian country" in today's proposed rule.

In the course of its public meetings concerning the form and contents of the consumer confidence report requirements, EPA was urged by some members of the public to require the reports to be distributed to all consumers of water supplied by a particular community water system, rather than only to customers of the system which is the usage in section 1414(c). Advocates of the consumer-related approach argued that, for example, residents of apartment houses, condominiums, or other similar living accommodations might not be indicated in community water system billing records as customers, and thus would not receive personal copies of the reports. Rather than relying on their own customer lists, community water systems could obtain lists of postal patrons, utilize so-called criss-cross directories, use voter lists, or in some other way obtain lists of likely consumers of their supplied water. While the Agency recognizes that sending consumer confidence reports to water system customers may not reach every person who may have consumed water from the system, it believes that

alternative approaches may be more efficient than mandated mailings to all consumers. Therefore, today's rule calls for systems to make a "good faith" effort to reach consumers who do not receive water bills, using means recommended by the Director of the State Drinking Water Program. Such means may include posting the report on the Internet, publishing it in subdivision newsletters, or asking landlords or apartment managers to post the report in a conspicuous place in their building. The Agency specifically requests comments on this issue.

Under § 141.155(b) of the rule, a community water system must send one copy of its report to the Director of the State Drinking Water Program, in States with primary enforcement authority. This provision will help to ensure that reports are prepared and distributed annually, since the report submitted to the State Director must be accompanied by a written certification that the report has been distributed to the system's customers and that the information contained in the report is correct and consistent with the compliance monitoring data previously submitted to the State. States will have the opportunity to set up State clearinghouses of consumer confidence reports, either as a State function or through a designated third party, so that interested persons could obtain copies of consumer confidence reports from those clearinghouses. At a minimum, states that do not set up a clearinghouse must maintain a list of the phone numbers of community water systems operators to assist interested persons in obtaining reports.

Section 141.155(c) of the rule requires community water systems to mail a copy of their consumer confidence report to any other agency in the State with jurisdiction over community water systems. This could include public utilities commissions, if they have jurisdiction over rate making; public health agencies, which may either have primary jurisdiction over water systems or share that jurisdiction with other agencies; State environmental agencies; and State agricultural or natural resource agencies, if they have jurisdiction over water rights, wells, or other aspects of the system's source water. This section also authorizes the State Director to designate any other agencies or clearinghouses to which he can direct copies of the report to be sent.

Section 141.155(e) specifies that all systems, regardless of size, are required to make their consumer confidence report available to the public upon request. The rule does not specify the means that systems must use, leaving them free to mail copies of reports, send them by telefax, or place copies on an Internet site. However, EPA believes that the means chosen must be practical from the standpoint of all potential persons requesting copies of the report. Thus, placing a copy of the report on the Internet but refusing to mail a copy to a person without Internet access would be contrary to the intent of this provision of the rule. The Agency is also interested in getting comments from States on their ability or interest in placing reports on the Internet to simplify access to the reports for the general public.

Today's rule does not require that the report be delivered in languages other than English. However, § 141.153, discussed above, does require systems in communities with a large proportion of non-English speaking residents to include information in the appropriate language in their reports regarding the importance of the report or to offer additional information in that language.

EPA has been encouraged to require posting of the consumer confidence reports on the Internet. However, the Agency is uncertain whether all community water systems possess the necessary means to set up and maintain an Internet site or, in some case, even to access the Internet; and whether community water system customers would find such posting to be useful. Therefore, the Agency is requesting comments on this subject, as described below.

F. Special State Implementation and Primacy Requirements, and Rationale

As discussed in Section III.B., EPA is proposing that existing systems must deliver an initial report to customers within 14 months of the publication of the final rule in the **Federal Register**. New systems must deliver an initial report within 18 months after beginning water delivery service. See proposed section 141.152. Since EPA considers implementation of this rule to be a requirement for a State to obtain or maintain primary enforcement responsibility under SDWA Section 1413, each State with primacy must adopt the requirements of this Subpart (40 CFR 141 Subpart O) no later than two years after the final rule is published in the **Federal Register**. See proposed section 142.16(f). As a result, within several years, all primacy States should have primary responsibility for implementation of this rule. During any time period that this rule is effective but that a State does not have either interim or final primary enforcement responsibility for this rule, EPA will implement this rule directly in that State.

EPA is proposing that primacy States may adopt alternative requirements concerning the form and content of these reports through notice and comment rulemaking. EPA is proposing that the alternative requirements provide the same type and amount of information as required by the Federal regulations. Under the SDWA, a State in order to maintain primacy must adopt requirements which are no less stringent than the Federal regulations. In the case of consumer confidence reports, EPA is proposing to interpret stringency as type and amount of information. State members of the Working Group were concerned that this interpretation would limit the authority given to the states by Congress to develop alternative requirements with respect to form and content of the reports. EPA notes that this proposal contains few requirements not specifically mandated by the Statute. However, the Statute provides that the content of the report as prescribed by EPA's regulations need not be limited to the statutory elements. EPA has exercised this discretion in a few instances. For example, the rule would require information on the source of detected contaminant, and a warning on infectious agents. The Agency's interpretation of stringency would require state regulations to include the provisions for information on contaminant sources and the health warning to susceptible populations. EPA is requesting comments on whether any information beyond that specifically required by the Statute should be mandatory for inclusion in state regulations. Under the proposed rule, States already would have flexibility in specifying how the required information is presented. For example, definitions of terms, choice of units for the MCLs, or health effect language could be altered by the states. These changes would have to be approved by EPA in the context of primacy revisions.

The proposed rule contains a requirement that each State with primary enforcement authority make consumer confidence reports submitted to it available to the public upon request or maintain a list of telephone numbers for operators of community water systems that could be used by the public to request copies of reports directly from the water systems. Representatives from States expressed concern over the lack of resources in some states to serve as a central distribution point for the reports, and asserted that neither requirement was necessary, since States already maintain telephone numbers for the systems in the State, and State

Freedom of Information procedures are available if necessary to obtain access to documents held by the State. The Agency is requesting comments on whether either requirement should be incorporated into the regulation.

G. Health Effect Language and Rationale

The SDWA Amendments require EPA to develop and include in the consumer confidence report regulations "brief statements in plain language regarding the health concerns that resulted in regulation of each regulated contaminant." These statements are provided for use by community water systems in their reports as language that EPA believes accurately describes those health concerns that customers of the water system might appropriately have if they consume water containing contaminants at concentrations above the MCL.

The Agency has placed the brief statements on health concerns in an appendix to the regulations, because most community systems are in compliance with the regulations and will not need to refer to this language. However, the Agency considers the language of the statements to be mandatory for use in the consumer confidence reports, unless individual states choose to alter the language for their own regulations.

EPA examined a number of sources that could be used as the basis for the brief statements on health concerns, and held extensive discussions with the NDWAC working group and with its expert panel on the topic. The two groups looked primarily at the language developed by EPA for public notification purposes, (§ 141.32) which emphasizes how the MCLs were developed, and EPA's contaminant-specific fact sheets, which EPA distributes through the SDWA Hotline. The fact sheets convey more information on expected health effects on humans. In general, the language in Appendix B being proposed today is a distillation of information contained in EPA fact sheets which are included in the docket for this rulemaking.

The expert panel urged EPA to avoid scientific jargon in preparing the brief statements. The panel also stressed the importance of communicating effectively that MCLs are set using a conservative approach. Some members of the expert panel also stated that exceedence of an MCL does not necessarily lead to health effects. EPA believes that the proposed language conveys appropriate risk information by indicating that chronic adverse health effects "could" result from exposures "in excess" or "well in excess" of the MCL "over many years." In cases where human or animal exposure to high doses have indicated that a contaminant is a possible carcinogen, the language indicates that people who drink water containing the contaminant at levels above the MCL over many years "may have an increased risk of getting cancer." EPA believes that the proposed health effects language accurately conveys what is known about the risk from these contaminants, but is sensitive to the concern that some water system customers may interpret the language as indicating a significantly higher level of incremental risk than would actually result from exposures at the levels that are likely to occur. EPA is thus seeking comment on whether there are other ways to communicate to water system customers the degree of health risk they may face as a result of MCL violations.

The expert panel further recommended that the statements indicate whether human or animal studies formed the basis for identifying adverse health effects. However, EPA is not sure whether this information is useful to most customers in evaluating the health significance of MCL violations, and is mindful of the need to keep the language brief and easy to understand. Thus, the proposed language does not indicate whether the potential health effects were identified through human or animal studies. EPA is requesting comment on this issue.

More generally, EPA is requesting comments on whether the proposed language accurately summarizes the health concerns associated with each contaminant, whether the proposed language accurately reflects the risk assessments and health analyses underlying the regulations of each contaminant and whether the language adequately informs consumers of relevant health effects. EPA requests commenters to provide alternative health effects language and the rationale for such alternative language. The Agency itself will continue to explore the adequacy of the proposed health effects language for accurately and appropriately communicating information about risk. EPA also requests comments on the fact sheets and their accuracy in summarizing the health effects of regulated contaminants and whether, as an alternative to the language of Appendix B, systems should be allowed to simply enclose an approved EPA fact sheet to provide health effects information.

EPA is particularly interested in the language proposed for contaminants which present a special risk to pregnant women or children. Several stakeholders have advocated requiring all consumer confidence reports to include language alerting consumers to the dangers posed to pregnant women and children by certain contaminants. For example, nitrate, lead, and certain non-specified pesticides have been identified as possibilities for general information on risk. The Agency believes that inclusion of such a warning in all reports may not be warranted but plans to reconsider this issue for the final rule and is requesting comments on appropriate courses of action. The Agency notes that the MCL for nitrates and the action level for lead have been established at levels protective of these at-risk populations. The health effects language included in Appendix B reflects the special risk that these contaminants may cause. Most importantly, EPA's public notification regulations require immediate notification and explanation of health effects for violations of these standards, including impacts on pregnant women and children. EPA does not believe that the consumer confidence reports are adequate for addressing these risks because they will not generally be received soon enough. Nevertheless, violations of these standards will also be included in the reports. EPA is specifically requesting comments on the language in Appendix B. With regard to pesticides and other contaminants EPA is interested in information and data that commenters may have on the need for a special warning for pregnant women and children. EPA requests that commenters submit such information and data to the agency. EPA is also requesting comments on health effect language to be included in the consumer confidence reports for 3 regulated contaminants detected below the MCL (see Section IV.1 of this preamble). Commenters are also invited to consider this issue within the context of their response to the comments requested in Section IV.1.

Issues regarding the linkage between the language of Appendix B and the public notification requirements are discussed in Section VI of this preamble.

IV. Additional Requests for Public Comments

Throughout the preceding exposition, EPA has requested comment on various issues. Following are two more issues which did not fit cleanly into the discussion above and on which EPA would appreciate specific suggestions and comments.

1. Health Information on Additional Contaminants

The 1996 Amendments authorize the Administrator to require language describing health concerns to be included in reports for "not more than 3 regulated contaminants" other than those detected at levels above the MCL. This provision was discussed at length during the working group meetings. Some members of the NDWAC working group strongly encouraged the Agency to require health effect information for total trihalomethanes (TTHMs), nitrate, and arsenic, even if they were not detected at levels above their respective MCLs, because of their question concerning the protectiveness of the MCLs. Other commenters argued that providing health effects descriptions for chemicals detected at concentrations below their MCLs would be confusing to report recipients. The NDWAC recommended that the Administrator not avail herself of this authority at this time.

The Agency believes that it is important to use the authority provided by the statute in a judicious manner. Therefore it is requesting comments on the following alternatives, any of which may be included in the final rule.

One option would be to require health effects language whenever a regulated contaminant, for which EPA has proposed to lower the MCL or promulgated a revised MCL for which the effective date has not yet occurred, is detected at a level above the lower level. The immediate impact of this option would be that systems which detect TTHMs above the proposed revised MCL of 80 mg/l would have to include the language of Appendix B describing the health effects of TTHMs in their reports. The Agency would then consider, as it proposes additional revised MCLS, whether health effect language for these contaminants should be included in the consumer confidence reports. These possible inclusions would be discussed in the preamble to these future rulemakings and, where appropriate, a direct final rule could be issued to require their inclusion in the reports prior to the promulgation of the new standard. A likely candidate for future requirements under this scheme would be arsenic.

Another option would be to select 3 carcinogens for which the MCL allows a risk level in the range of 10^{-4} to 10^{-5}. Candidates on this list include:

Contaminant	Risk level
Carbon tetrachloride	2×10^{-5}
1,2-Dichloroethane	1×10^{-5}
Vinyl chloride	1×10^{-4}
Chlordane	7×10^{-5}
1,2-Dichloropropane	1×10^{-5}
Ethylene dibromide	1.25×10^{-4}
PCBs	1×10^{-4}
Dichloromethane	1×10^{-5}
Dioxin	1.3×10^{-4}
Hexachlorobenzene	5×10^{-5}
PAHs	1×10^{-5}

The Agency is requesting comments on which of these contaminants would be the most significant from a health standpoint if detected in the finished water. The Agency could rank these contaminants and systems would have to report their top three detects or select 3 contaminants outright. The Agency is also requesting comments on whether it should select a threshold for these contaminants such as detection of 50% or greater of the MCL below which no health effect language would be necessary.

2. Linkage With the Public Notification Requirements

EPA is currently revising its requirements for public notification. A water supplier triggers these requirements when it fails to comply with a MCL, treatment technique, or other NPDWR (i.e., monitoring and treatment procedures), or is subject to a variance or exemption under section 1415. Current regulations [40 CFR 141.32] require public notification:

—by electronic media within 72 hours if the violation represents an acute health risk;

—by newspaper within two weeks and by mail within 45 days if the water system violates a MCL or treatment technique; and

—by mail and newspaper within 90 days if the water system violates a monitoring or testing standard.

Under the 1996 SDWA Amendments, EPA must revise these standards so that consumers receive quicker notification in the event of a possible acute health risk, and so that water suppliers have more time (up to one year) to notify customers of violations with less immediate effects. The statutory requirements for these revisions would allow water systems to incorporate their reporting on less serious violations: (I) in the first bill (if any) prepared after the date of the occurrence of the violation, (II) in an annual report issued not later than 1 year after the date of the occurrence of the violation, or (III) by mail or direct delivery as soon as practicable, but not later than 1 year after the occurrence of the violation [section 1414(c)(2)(D)(i)].

The option exists for a linkage between the rule proposed today and those that EPA will revise for public notification. EPA recognizes that the inclusion of some public notice elements in annual consumer confidence reports could mean a significant savings of time and resources for some water systems, and is mindful of its responsibility under the Paperwork Reduction Act to avoid unnecessarily duplicative reporting requirements. On the other hand, EPA does not want to minimize the seriousness of any violation, and believes that it is essential that consumers know if and when their water supplier has failed to comply with drinking water regulations.

In trying to balance the issues noted above, EPA requests public comment on the following issues.

Regarding violations of MCLs, action levels, and treatment techniques, the Agency realizes that today's rule would duplicate the current public notification requirements by requiring inclusion of essentially the same information as is currently required in § 141.32(d) with the exception of the health effect language. The proposed rule would require a clear and readily understandable explanation of the violation, any potential adverse health effects, and the steps the system has taken to correct the violation. This could be helpful to consumers who might have overlooked or forgotten about the regular public notification. One issue on which EPA is specifically requesting comment is whether this health effect language would be appropriate for public notification requirements, since having a single set of health effects explanations would facilitate integration of the two rules. The Agency notes that when members of the working group discussed the health effect language they did not discuss it in that context. Under the current regulations any of these violations would have already been reported to the public and the consumer confidence reports were envisioned as a reminder of what customers had already been told. Further the working group was mindful of the limited amount of information which could be included in consumer confidence reports on any specific issue. However, EPA has started the process of revising the public notification requirements pursuant to the 1996 Amendments to the SDWA and this issue has been raised. Therefore, EPA requests comments on the following options:

As this rule is promulgated the Agency would replace the health effect language in § 141.32 with the language

proposed in Appendix B of today's proposal so that the same language would be included in consumer confidence reports and public notifications.

The Agency would not modify the public notification language until it promulgated revised regulations for public notification but the language proposed today would form the core of the public notification language and be expanded as seen fit for the purpose of public notification.

Today's proposal is similarly redundant with the current public notification requirements for violations of other NPDWRs (such as monitoring and reporting). A less redundant alternative would allow water systems to simply note a violation of an NPDWR and to attach to their consumer confidence report a copy of the notice issued at the time of the violation.

Finally, since SDWA allows public notice for less serious violations within one year, there might be some violations which systems would need to report exclusively in the consumer confidence report. These could even include MCL violations for some contaminants with strictly chronic health effects. This would allow community water systems to put out fewer mailings. Besides saving resources, a reduced number of mailings might encourage consumers to read those notices that they do receive. This option however would only be available to community water systems. Non-community water systems who are not subject to these requirements would have to issue a public notification for all violations.

If water suppliers were to report certain violations only in the consumer confidence report, EPA would add language along the following lines to the proposed regulation:

—[at § 141.153(d)(4)(ii)] If the report is used to satisfy the requirements of section 1414(c)(2)(D) of SDWA, the report must include information on [a subset to be determined of] violations which have occurred within the last 12 months.

—[at § 141.155(d)] Except when the report is used to satisfy the requirement of section 1414(c)(2)(D) of SDWA, the Governor of a State or the Tribal Leader can waive the mailing requirement of § 144.155(a) for community water systems serving fewer than 10,000 persons.

The Agency is requesting comments on this option. Particularly the Agency would welcome input on violations which systems could appropriately report exclusively in the consumer confidence reports. These comments will be used to inform both this rulemaking and the public notification revisions rulemaking.

V. Cost of Rule

EPA has estimated the costs of complying with the requirements of the proposed rule in terms of fixed costs and variable costs. Fixed costs include those costs that a community water system must incur to comply with the requirements regardless of how many copies of the report it must deliver. These costs include the costs associated with reviewing the regulations, collecting data regarding monitoring results and MCL violations, preparing the technical content of the consumer confidence report in a format suitable for distribution, identifying the recipients of the reports, and providing instructions about report production. Variable costs are costs that increase or decrease along with the number of consumer confidence reports to be delivered. These costs include costs of producing the reports (costs of paper, photocopying or printing, and labels), and inserting the reports in bills or otherwise delivering them. Based on its analysis, the Agency estimates the total fixed and variable annualized cost of delivering a report to every customer served by all community water systems nationally (except for California, which already requires notices similar to the consumer confidence reports required by the proposed rule) is $20,286,113. This includes $7,295,575 in fixed costs and $12,990,538 in variable costs. Table V.1 gives a breakdown of costs by system size and also shows state and federal costs.

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Table V.I

Summary Table (dollar figures rounded)	Number of Systems	Average Labor Hours Per System	Average Labor Cost Per System	Other Costs per System (e.g., postage)	Total Cost for Size Category
Systems serving ≤ 500	27,135	4.9	$49	$1	$1,366,247
Systems serving 501-1,000	6,294	13.5	$135	$160	$1,851,588
Systems serving 1,001-3,300	6,689	13.5	$135	$268	$2,692,990
Systems serving 3301-10,000	3,882	19.5	$468	$816	$4,985,822
Systems serving 10,001-50,000	2,319	24.6	$788	$2,301	$7,162,556
Systems serving >50,000	721	24.6	$788	$2,301	$2,226,909
Total System Cost					$20,286,113
Total State or Direct Implementation Primacy Agency Cost					$2,784,692
Total	47,040				$23,070,805

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For more information about the costs of the rule and how EPA estimated them, see the Regulatory Flexibility Screening Analysis and the Supporting Statement for the EPA Information Collection Request (ICR #1832.01) that EPA submitted for OMB approval under the Paperwork Reduction Act. EPA is requesting comment on its cost estimates and methodology.

VI. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of the recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is a "significant regulatory action" because it may raise novel legal or policy issues. The rule represents the first time that water systems will be required to submit important information to customers regarding the quality of their drinking water on a routine basis. Therefore, EPA submitted this action to OMB for review. Substantive changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

1. General

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), requires EPA to consider explicitly the effect of proposed regulations on small entities. The Agency assesses the impact of the proposed rule on small entities and considers regulatory alternatives if a rule has a significant economic impact on a substantial number of small entities. Under the RFA, 5 U.S.C. 601 *et seq.*, an agency must prepare an initial regulatory flexibility analysis (IRFA) describing the economic impact of a rule on small entities as part of rulemaking. However, under section 605(b) of the RFA, if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare an IRFA.

EPA has determined that this proposed rule will affect small water utilities, since it is applicable to all community water systems, including small systems. However, EPA has estimated the impact of the proposed rule and concluded that the impact of the rule will not be significant. Therefore, the Administrator is today certifying, pursuant to section 605(b) of the RFA, that this proposed rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification is as follows: the annualized compliance costs of the rule represent less than 1% of sales for small businesses and less than 1% of revenues for small governments. No small not-for-profit enterprises were identified as community water systems. For this analysis EPA selected systems serving 10,000 or fewer persons as the criterion for small water systems and therefore as the definition of small entity for the purposes of the RFA. This is the cut-off level specified by Congress in this provision for small system flexibility in delivery of the reports. Because this does not correspond to the definition established under the RFA, EPA has consulted with the Small Business Administration (SBA) on the use of this alternative definition (see next section). Further information supporting this certification is available in the public docket for this rule.

Since the Administrator is certifying this rule, the Agency did not prepare an IRFA. Nevertheless, the Agency has conducted outreach to address the small-entity impacts that do exist and to gather information. The Agency also has structured the rule to avoid significant impacts on a substantial number of small entities by providing flexibility to community water systems in the design of consumer confidence reports; offering them the choice to use a simplified format to prepare the reports; incorporating procedures by which small systems can make reports available to their customers by methods other than mailing; and by limiting the absolute requirement for distribution of reports to water system customers rather than consumers. Further the Agency notes that in general the regulations issued under SDWA place a lesser burden on small systems, for example, the TTHM and information collection rules do not apply to small systems. For most regulated contaminants, small systems have to collect fewer samples. Therefore the small systems operators will have significantly less information to report in consumer confidence reports.

2. Use of Alternative Definition

As explained above, for this assessment of impact on small entities, EPA has defined a small entity as a public water system (PWS) that serves 10,000 or fewer persons. PWSs affected by this proposal would include PWSs owned and operated by governmental jurisdictions as well as those that are privately owned. As indicated above, there are no PWSs owned by not-for-profit organizations.

EPA proposes to define "small entity" for purposes of its regulatory flexibility assessments under the RFA for all future drinking water regulations in the same way. By using this definition for the regulatory flexibility assessments, EPA will better reflect the realities of the drinking water industry. Furthermore, this definition is consistent with specific direction from Congress in several provisions of the 1996 amendments that provide relief from regulatory requirements for PWSs serving 10,000 or fewer people.

As previously described, the RFA requires an agency, whenever it publishes a notice of general rulemaking, to prepare a regulatory flexibility analysis that describes the impact of a rule on small entities unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. 5 U.S.C. §§ 603(a), 604(a) and 605(b). Under the RFA, the term "small entity" means "small business," "small governmental jurisdiction" and "small organization." These terms are further defined by the Act.

In the case of a "small business," the term has the same meaning as a "small business concern" under section 3 of the Small Business Act. "Small governmental jurisdiction" means the government of cities, counties, towns and villages, among others, with a population of less than 50,000. A "small organization" is any not-for-profit enterprise that is independently owned and operated. 5 U.S.C. § 601 (3), (4) & (5).

The RFA authorizes an agency to establish an alternative definition for these terms after an opportunity for

public comment. Additionally, in the case of an alternative definition of "small business," an agency must consult with the Office of Advocacy of the Small Business Administration (SBA) concerning such alternative definition.

EPA is today asking for public comment on its intention to define "small business," "small organization," and "small governmental jurisdiction" for purposes of the regulatory flexibility assessments for its drinking water regulations as a PWS serving 10,000 or fewer people. The Agency has consulted with the SBA Office of Advocacy. The Office of Advocacy agreed with the Agency's choice of systems serving less than 10,000 persons for an alternative small business definition for this rulemaking, and plans to revisit this issue with EPA in future rulemakings under SDWA.

The following provides additional explanation why the Agency proposes to use a different definition from that which would generally be applicable under the RFA.

The alternate definition will focus the Agency's regulatory flexibility analysis on those PWS most likely to experience an economic hardship associated with complying with new drinking water regulations to be proposed under the Safe Drinking Water Act (SDWA). There are several compelling factual, statutory and programmatic reasons to support the proposed definition.

SBA has by regulation defined small business concerns. SBA regulations typically define a small business in terms of either total revenues or total employees. Under SBA's definition, a "small," privately-owned water utility would be one with revenues of less than $5,000,000. Using this definition, "small" privately-owned water systems would include systems that serve up to approximately 40,000 people. Ninety-eight percent of PWSs serve populations of 10,000 or fewer. The average annual revenue for a system in this class size is less than $600,000.

The Agency has concluded that defining a "small entity" for RFA purposes as a PWS that serve 10,000 or fewer persons is both more reflective of the small water systems in the water supply industry and will provide a more meaningful analysis of those entities likely to have the most significant economic impacts as a result of drinking water regulations. It is the EPA's view that a population of 40,000 or fewer (or a private PWS with annual revenue of $5,000,000 or less) is not an appropriate criterion under the drinking water program for differentiating private small entities from larger ones. Using such a yardstick would not distinguish PWSs that have stronger technical expertise and revenue sources from those that do not. Using data from EPA's Community Water Supply Survey, a private community water system with revenues of $5 million would correspond to a system that serves more than 40,000 people. By contrast, community water systems that serve between 3,300 and 10,000 have a median revenue of $605,000. As a result, EPA believes it is reasonable to conclude that in virtually all circumstances, systems that serve 10,000 or fewer people have annual revenues well below $5 million. Given the economies of scale, the per family cost of system compliance with national drinking water regulations will be higher for systems serving populations of 10,000 or fewer because a smaller group of people will be paying for an inelastic set of regulatory requirements. Thus, the proposed definition will focus the Agency's resources on the needs and concerns of the systems that really need the assistance.

In addition to the fact that the proposed alternative definition of "small business" better reflects the reality of this industry, the definition is consistent both with Congressional direction for relief to small systems as well as EPA's historic regulatory practice. As part of the 1996 Safe Drinking Water Act Amendments, Congress expressly addressed the issue of small system size. Reflecting the same concerns that underlie the RFA, Congress recognized that PWSs below a certain size may have greater difficulty, for economic and technical reasons, in complying with the public health provisions of the SDWA than larger systems. Consequently, the 1996 amendments specifically provide that for systems serving under 10,000, the Administrator may allow alternative treatment technologies, modified monitoring schedules, and variances from maximum contaminant levels. Congress also provided that the Administrator may consider additional flexibility for systems that serve 3,300 people or fewer. Specifically, the Administrator may grant extensions of temporary exemptions from compliance with specific drinking water standards so long as the exemption does not result in an unreasonable risk to health. And, as discussed previously, the SDWA provisions on which this proposed rule are based provide still an additional level of flexibility in the report distribution requirements to systems serving 500 or fewer persons.

EPA has historically recognized that smaller systems have financial and technical difficulty in meeting Federal drinking water standards. As a result of this concern, the Agency's regulations have in some cases treated systems serving 10,000 or fewer customers differently. For example, in 1979, EPA issued regulations for one group of disinfection by-products (total trihalomethanes or TTHM) that exempted systems serving 10,000 or fewer persons. In 1994, EPA proposed the Stage 1 Disinfection/Disinfection By-Products rule, that provided systems serving 10,000 or fewer with at least 24 months longer than larger system to comply with the regulation depending on the system type. EPA routinely evaluates the economic impacts of a proposed drinking water regulation on public water systems (both publicly and privately owned) serving 10,000 or fewer people. EPA has specifically focused on this subgroup in the Disinfection Byproducts Stage 1, the Interim Enhanced Surface Water Treatment Rule and the Total Coliform Rule.

The Agency will be proposing a number of regulations over the next five years to meet its new SDWA obligations. The use of a single definition for purposes of the regulatory impact analysis for small business, small governmental jurisdiction, and small organization should decrease confusion for the regulated community and facilitate communication.

The Agency is interested in receiving comments on the use of this alternative definition of small entity.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1832.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street SW, Washington, DC 20460 or by calling (202) 260–2740. The information collection requirements are not effective until OMB approves them.

This information is being collected in order to fulfill the statutory requirements of section 114(c)(4) of the Safe Drinking Water Act Amendments of 1996 (Public Law 104–182) enacted August 6, 1996. Responses are mandatory.

The burden to the regulated community is based on the cost of the rule discussed under section V. The burden to community water systems is 459,505 hours at an annual cost of $20,286,113. The estimated number of

respondents is 47,040 community water systems. The frequency of responses is annual. The average burden per response is 9.5 hours. For additional information on burden to water systems by size category, see Table V.1 above. The annual burden to EPA and state primacy agencies over three years is based on 3 elements: preparing reports for some small community water systems, receiving and reviewing reports, and filing reports. EPA estimates the annual burden incurred by implementing agencies for activities associated with the proposed regulations to be approximately 98,230 hours at an annual cost of $2,784,692.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing way to comply with any previous applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street SW, Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, D.C. 20503, marked "Attention: Desk Officer for EPA." Include ICR number 1832.01 in any correspondence.

D. Enhancing the Intergovernmental Partnership

Executive Order 12875, "Enhancing Intergovernmental Partnerships," October 26, 1993, requires EPA to consult with State, tribal, and local entities in the development of rules that will affect them, and to document for OMB review the issues raised and how the issues were addressed. As described in Section II of the Supplementary Information above, EPA held extensive meetings with a wide variety of State, tribal, and local representatives, who provided meaningful and timely input in the development of the proposed rule. Summaries of the meetings have been included in the public docket for this rulemaking.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement including a cost-benefit analysis, for any proposed and final rules with "Federal Mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful, timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and informing, educating and advising small governments on compliance with the regulatory requirements.

Because this rule is not estimated to impose annual costs of $100 million or more on State, local, and tribal governments, or on the private sector, EPA is not required to prepare an unfunded mandate statement. This rule will establish requirements that affect small community water systems. EPA does not believe at this time that these requirements will significantly affect the systems or the governments that operate them. However, EPA is requesting comment on the issue. The Agency has already consulted with representatives of small governments that may be affected by the rule and will continue to do so prior to promulgation of the final rule. If EPA determines that the requirements may significantly or uniquely affect small governments, including tribal governments, the Agency will prepare a small government agency plan as required.

F. Environmental Justice

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), The Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. The Agency believes that two of today's proposed requirements will be particularly beneficial to these communities. One is that community water systems must include information in language other than English if a significant number of the population does not speak English. The other is that systems must make a good faith effort to reach consumers who are not bill paying customers.

G. Risk to Children Analysis

Under the Executive Order entitled "Protection of Children from Environmental Risks and Safety Risks," dated April 21, 1997, EPA must ensure that its policies, programs, activities, and standards address environmental and safety risks to children. Every regulatory action submitted to OMB for review under Executive Order 12866 must include information that evaluates the environmental health and safety effects of the planned regulation on children and explains why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The proposed regulation on consumer confidence reports addresses risks to children from contaminants in drinking water. The health effects language provided in Appendix B of the proposed rule identifies risks to infants and children from drinking water containing lead, nitrate, or nitrite in excess of specified levels. EPA is specifically requesting comments on this language and solicits information that could lead to inclusion of similar language for

violations of other contaminants particularly pesticides.

H. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) which are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards. Because this proposal does not involve or require the use of any technical standards, EPA does not believe that this Act is applicable to this rule. Moreover, EPA is unaware of any voluntary consensus standards relevant to this rulemaking. Therefore, even if the Act were applicable to this kind of rulemaking, EPA does not believe that there are any "available or potentially applicable" voluntary consensus standards.

List of Subjects in 40 CFR Parts 141 and 142

Environmental protection, Administrative practice and procedure, Chemicals, Indian-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: February 10, 1998.

Carol W. Browner,

Administrator.

For the reasons set out in the preamble, the Environmental Protection Agency proposes to amend 40 CFR parts 141 and 142 as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 is revised to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Subpart O is proposed to be added to read as follows:

Subpart O—Consumer Confidence Reports

Sec.
141.151 Purpose and applicability of this subpart.
141.152 Effective dates.
141.153 Content of the reports.
141.154 Required health information.
141.155 Report delivery.
Appendix A to Subpart O of Part 141—Regulated Contaminants
Appendix B to Subpart O of Part 141—Health Effect Language

Subpart O—Consumer Confidence Reports

§ 141.151 Purpose and applicability of this subpart.

(a) This subpart establishes the minimum requirements for the content of annual reports that community water systems must deliver to their customers. These reports must contain information on the quality of the water delivered by the systems and characterize the risks (if any) from exposure to contaminants in the drinking water in an accurate and understandable manner.

(b) Notwithstanding the provisions of § 141.3, this subpart applies only to community water systems.

(c) For the purpose of this subpart, customers are defined as billing units or hook-ups to which water is delivered by a community water system.

(d) A State that has primary enforcement responsibility may adopt by rule, after notice and comment, alternative requirements for the form and content of the reports. The alternative requirements must provide the same type and amount of information as required by §§ 141.153 and 141.154.

§ 141.152 Effective dates.

(a) The Regulations in this Subpart shall take effect on [date 30 days after publication of final rule in the **Federal Register**].

(b) Existing community water systems must deliver the first report by [date 14 months after publication of final rule in the **Federal Register**] and annually thereafter.

(c) New community water systems must deliver their first report within 18 months of the date they begin delivering water to customers and annually thereafter.

§ 141.153 Content of the reports.

(a) Each community water system must provide to its customers an annual report that contains the information specified in this section and § 141.154.

(b) *Information on the source of the water delivered.* (1) Each report must identify the source(s) of the water delivered by the community water system by providing information on:

(i) The type of the water: e.g. surface water, groundwater; and

(ii) The commonly used name (if any) and location of the body (or bodies) of water.

(2) If a source water assessment has been completed, the report must notify consumers of the availability of this information and the means to obtain it.

(c) *Definitions.* (1) Each report must include the following definitions:

(i) *Maximum Contaminant Level Goal or MCLG:* The level of a contaminant in drinking water below which there is no known or expected risk to health.

(ii) *Maximum Contaminant Level or MCL:* The highest level of a contaminant that is allowed in drinking water.

(2) A report for a community water system which has been granted a variance or an exemption must include the following definition:

Variances and Exemptions: State permission not to meet an MCL or a treatment technique under certain conditions.

(3) A report which contains data on a contaminant for which EPA has set a treatment technique or an action level must include the following definitions:

(i) *Treatment Technique:* A required process intended to reduce the level of a contaminant in drinking water.

(ii) *Action Level:* The concentration of a contaminant which triggers treatment or other requirement which a water system must follow.

(d) *Level of detected contaminants.* (1) Each report must contain relevant information to provide customers with an accurate picture of the level of contaminants they may have been exposed to during the year taking into account such factors as seasonal variations that produce changes in water quality.

(2) The first report must identify the 12-month period during which the data was collected. Each report thereafter must cover and identify a successive 12-month period.

(3) Each report must contain a discrete table depicting the data specified below. Any additional monitoring results which a community water system chooses to include in its report must be displayed separately.

(i) The data must be derived from data collected to comply with EPA and State monitoring and analytical requirements for:

(A) contaminants subject to an MCL, action level or treatment technique (regulated contaminants);

(B) any other contaminant for which monitoring is required by § 141.40 (unregulated contaminants); and

(C) monitoring for disinfection by-products or microbiological

contaminants as required by §§ 141.140 and 141.142, except as provided under paragraph (d)(4) of this section.

(ii) Where a system is allowed to monitor for certain contaminants less often than once a year, the report must include the results and date of the most recent sampling and a brief explanation for why the sample was not taken within the 12-month period covered by the report.

(iii) For detected regulated contaminants (listed in Appendix A to this subpart), the table must contain:

(A) The MCL for that contaminant expressed in whole numbers (such as those in Appendix A to this subpart);

(B) The MCLG for that contaminant expressed in the same units;

(C) If there is no MCL for a detected contaminant, the table must note whether there is a treatment technique or specify the action level applicable to that contaminant, and the report must include the definitions for treatment technique and action level specified in paragraph (c)(3) of this section;

(D) The highest contaminant level used to determine compliance with an NPDWR. This may be either an individual reading or an average, depending on compliance monitoring requirements for the contaminant. The table must clearly identify MCLs for which compliance is based on an average and explain what that means. When an MCL is based on a system-wide average and more than 10 percent of the customers are exposed to a level of contaminant which is consistently higher than the MCL, the report must contain information regarding the magnitude of exposure and the location of the exposed population.

(E) The likely source(s) for the contaminant. If the operator is not certain of the specific source of a contaminant, the reports must include the typical sources for that contaminant listed in Appendix A to this subpart.

(F) If a community water system distributes water to its customers from several raw sources and the sources are not blended, the table should contain a separate column for each service area and the report should identify the service area for each entry point.

(iv) The table must clearly identify regulated contaminants detected in violation of a MCL or exceeding an action level, and the report must contain a clear and readily understandable explanation of the violation including: the length of the violation, the potential adverse health effects, and actions taken by the system to address the violation. To describe the potential health effects the system must use the relevant language of Appendix B to this subpart.

(v) For detected unregulated contaminants for which monitoring is required, (except Cryptosporidium) the table must contain the highest level at which the contaminant was detected. The reports may include a brief explanation of the reasons for monitoring for unregulated contaminants.

(4) If the system has performed any monitoring for Cryptosporidium, including monitoring performed to satisfy the requirements of § 141.142, which indicates that Cryptosporidium may be present in the source water or the finished water, the report must include:

(i) A summary of the results of the monitoring;

(ii) Information on how the monitoring was performed; and

(iii) An explanation of the significance of the results.

(5) If the system has performed any monitoring for radon which indicates that radon may be present in the finished water, the report must include:

(i) the results of the monitoring;

(ii) information on how the monitoring was performed; and

(iii) an explanation of the significance of the results.

(6) If the system has performed additional monitoring which indicates the presence of other contaminants in the finished water, EPA strongly encourages systems to report any results which may indicate a health concern. To determine if results may indicate a health concern, EPA recommends that systems find out if EPA has proposed an NPDWR or issued a health advisory for that contaminant by calling the Safe Drinking Water Hotline (800–426–4791). EPA considers detects above a proposed MCL or health advisory level to indicate possible health concerns. For such contaminants, EPA recommends that the report include:

(i) The results of the monitoring; and

(ii) An explanation of the significance of the results noting the existence of a health advisory or a proposed regulation.

(e) *Compliance with NPDWR.* In addition to the requirements of § 141.153(d)(3)(iv), the report must:

(1) Note any violation of the following requirements:

(i) Monitoring and reporting;

(ii) Treatment techniques;

(A) Filtration and disinfection;

(B) Lead and copper control requirements;

(C) Treatment techniques for Acrylamide and Epichlorohydrin;

(iii) Record keeping;

(iv) Special monitoring requirements; and

(v) Violation of the terms of a variance, an exemption, or an administrative or judicial order; and

(2) Include a clear and readily understandable explanation of the violation, any potential adverse health effects, and the steps the system has taken to correct the violation. For a violation of a treatment technique, the report must include the relevant health effect language of § 141.154(c).

(f) *Variances and exemptions.* If a system has been granted a variance or an exemption, the report must contain:

(1) An explanation of the reasons for the variance or exemption;

(2) The date on which the variance or exemption was issued;

(3) A brief status report on the steps the system is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption; and

(4) A notice of any opportunity for public input in the review of the variance or exemption.

(g) *Additional information.* (1) The reports must contain a brief explanation regarding contaminants which may reasonably be expected to be found in drinking water including bottled water. This explanation may include the language of paragraphs (g)(1)(i) through (iii) of this section. Paragraph (g)(1)(iv) of this section is provided as a minimal alternative to paragraphs (g)(1)(i) through (iii) of this section. Systems may also develop their own comparable language. The report also must include the language of paragraph (g)(1)(v) of this section.

(i) The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally-occurring minerals and radioactive material, and can pick up substances resulting from the presence of animals or from human activity.

(ii) Contaminants that may be present in source water include:

(A) *Biological contaminants,* such as viruses and bacteria, which may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife.

(B) *Inorganic contaminants,* such as salts and metals, which can be naturally-occurring or result from urban storm run-off, industrial or domestic wastewater discharges, oil and gas production, mining, or farming.

(C) *Pesticides and herbicides,* which may come from a variety of sources such as agriculture, storm water runoff, and residential uses.

(D) *Organic chemicals,* including synthetic and volatile organics, which are by-products of industrial processes and petroleum production, and can also come from gas stations, urban storm water run-off and septic systems.

(E) *Radioactive materials,* which can be naturally-occurring or be the result of oil and gas production and mining activities. (iii) In order to ensure that tap water is safe to drink, EPA prescribes regulations which limit the amount of certain contaminants in water provided by public water systems. FDA regulations establish limits for contaminants in bottled water.

(iv) All drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants.

(v) The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency's Safe Drinking Water Hotline (800–426–4791).

(2) The report must include the telephone number of the owner, operator, or designee of the public water system as a source of additional information concerning the report.

(3) In communities with a large proportion of non-English speaking residents, the report must contain information in the appropriate language regarding the importance of the report or contain a telephone number or address where such residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language.

(4) The systems must include in the report information (e.g., time and place of regularly scheduled board meetings) about opportunities for public participation in decisions that may affect the quality of the water.

(5) The systems may include such additional information as they deem necessary for public education consistent with, and not detracting from, the purpose of the report.

§ 141.154 Required health information.

(a) All reports must prominently display the following language: Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. EPA/CDC guidelines on appropriate means to lessen the risk of infection by Cryptosporidium are available from the Safe Drinking Water Hotline (800–426–4791).

(b) Reports which identify a violation of a treatment technique must include the relevant language listed in paragraph (c) of this section:

(1) *Surface Water Treatment Rule:* (i) For unfiltered systems required to filter: Unfiltered water may contain organisms such as viruses, bacteria, and Giardia. When they are present in sufficient number, these organisms can cause symptoms such as diarrhea, cramps, headaches, and fatigue. EPA has determined that these organisms can be controlled more effectively by requiring water systems to filter that water rather than by setting an MCL.

(ii) For filtered systems in violation of the SWTR: Inadequately treated water may contain organisms such as viruses, bacteria, Giardia, and Legionella. When they are present in sufficient number, these organisms can cause symptoms such as diarrhea, cramps, headaches and fatigue. EPA has determined that these organisms can be controlled more effectively by requiring water systems to filter and disinfect that water than by setting an MCL.

(2) *Acrylamide:* Acrylamide is an impurity found in some chemicals used in drinking water treatment. EPA has determined that requiring proper use of water treatment chemicals is more effective than setting an MCL for their impurities. People who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system including paralysis and may have an increased risk of getting cancer.

(3) *Epichlorohydrin:* Epichlorohydrin is an impurity found in some chemicals used in drinking water treatment. EPA has determined that requiring proper use of water treatment chemicals is more effective than setting an MCL for their impurities. People who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach, eye, or skin irritation, and may have an increased risk of getting cancer.

§ 141.155 Report delivery.

(a) Except as provided in paragraph (e) of this section, each community water system must mail one copy of the report to each customer. In addition, the system must make a good faith effort to reach consumers who do not get water bills, using means recommended by the State.

(b) Each community water system must mail a copy of the report to the State with a certification that the report has been distributed to customers, and that the information is correct and consistent with the compliance monitoring data previously submitted to the State.

(c) Each community water system must mail a copy of the report to:

(1) Any other Agency in the State with jurisdiction over community water systems, such as Public Utility Commissions;

(2) To State consumer advocate offices (if any); and

(3) To any other Agency or Clearinghouse identified by the Drinking Water Program Director.

(d) Each community water system must make its reports available to the public upon request.

(e) The Governor of a State, or the Tribal Leader where the Tribe has met the eligibility requirements contained in § 142.72 for the purposes of waiving the mailing requirement, can waive the mailing requirement of paragraph (a) of this section for community water systems serving fewer than 10,000 persons. In consultation with the tribal government, the regional Administrator may waive the mailing requirement of paragraph (a) of this section in areas in Indian country where no tribe has been deemed eligible.

(1) Such systems must:

(i) Publish the reports in one or more local newspapers serving the area in which the system is located;

(ii) Inform the customers that the reports will not be mailed, either in the newspapers in which the reports are published or by other means approved by the State; and

(iii) Make the reports available to the public upon request.

(2) Systems serving 500 or fewer persons may forego the requirements of paragraphs (e)(1) (i) and (ii) of this section if they provide notice at least once per year to their customers by mail, door-to-door delivery or by posting in an appropriate location that the report is available upon request.

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Appendix A to Subpart O to Part 141—Regulated Contaminants

Key

AL=Action Level
TT=Treatment Technique
MCL=Maximum Contaminant Level
MCLG=Maximum Contaminant Level Goal
mg/l=milligrams per liter, or parts per million
μg/l=micrograms per liter, or parts per billion
nanograms/liter, or parts per trillion
picograms/liter, or parts per quadrillion
mrem/year=millirems per year (a measure of radiation absorbed by the body)
pCi/l=picocuries per liter (a measure of radioactivity)
MFL=million fibers per liter

Contaminant (units)	MCLG	MCL	Major Sources
Total Coliform Bacteria (including fecal coliform and E. coli)	0	presence of coliform bacteria in ≤5% of monthly samples, or if a routine sample and a follow up repeat sample are total coliform positive and one is also fecal coliform or E. coli positive	Human and animal fecal waste
Viruses, *Giardia*	0	TT	Human and animal fecal waste
Legionella	0	TT	Found naturally in water, multiplies in heating systems
Beta/photon emitters (mrem/yr)	0	4	Decay of natural and man-made deposits
Alpha emitters (pCi/l)	0	15	Erosion of natural deposits
Combined radium (pCi/l)	0	5	Erosion of natural deposits
Antimony (μg/l)	6	6	Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder
Arsenic (μg/l)	50	50	Runoff from orchards; natural deposits; Runoff from glass and electronics production wastes
Asbestos (MFL)	7	7	Decay of asbestos cement water mains; Erosion of natural deposits

Barium (mg/l)	2	2	Discharge of drilling wastes; Discharge from metal refineries; Erosion of natural deposits
Beryllium (μg/l)	4	4	Discharge from metal refineries and coal-burning factories; Discharge from electrical, aerospace, and defense industries
Cadmium (μg/l)	5	5	Corrosion of galvanized pipes; Erosion of natural deposits; Discharge from metal refineries; runoff from waste batteries and paints
Chromium (μg/l)	100	100	Discharge from steel and pulp mills; Erosion of natural deposits
Copper (mg/l)	1.3	AL=1.3	Corrosion of household plumbing systems; Erosion of natural deposits; Leaching from wood preservatives
Cyanide (μg/l)	200	200	Discharge from steel/metal factories; Discharge from plastic and fertilizer factories
Fluoride (mg/l)	4	4	Water additive which promotes strong teeth; Erosion of natural deposits; Discharge from fertilizer and aluminum factories
Lead (μg/l)	0	AL=15	Corrosion of household plumbing systems; Erosion of natural deposits
Mercury (μg/l)	2	2	Erosion of natural deposits; Discharge from refineries and factories; Runoff from landfills; Runoff from cropland
Nitrate (mg/l)	10	10	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits
Nitrite (mg/l)	1	1	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits
Selenium (μg/l)	50	50	Discharge from petroleum and metal refineries; Erosion of natural deposits; Discharge from mines
Thallium (μg/l)	0.5	2	Leaching from ore-processing sites; Discharge from electronics, glass, and drug factories
Turbidity	n/a	TT	Soil runoff

2,4-D (μg/l)	70	70	Runoff from herbicide used on row crops
2,4,5-TP(Silvex) (μg/l)	50	50	Residue of banned herbicide
Acrylamide	0	TT	Added to water during sewage/wastewater treatment
Alachlor (μg/l)	0	2	Runoff from herbicide used on row crops
Atrazine (μg/l)	3	3	Runoff from herbicide used on row crops
Benzo(a)pyrene [PAHs] (nanograms/l)	0	200	Leaching from linings of water storage tanks and distribution lines
Carbofuran (μg/l)	40	40	Leaching of soil fumigant used on rice and alfalfa
Chlordane (μg/l)	0	2	Residue of banned termiticide
Dalapon (μg/l)	200	200	Runoff from herbicide used on rights of way
Di (2-ethylhexyl)adipate (μg/l)	400	400	Leaching from PVC plumbing systems; Discharge from chemical factories
Di (2-ethylhexyl) phthlates (μg/l)	0	6	Discharge from rubber and chemical factories
Dinoseb (μg/l)	7	7	Runoff from herbicide used on soybeans and vegetables
Diquat (μg/l)	20	20	Runoff from herbicide use
Dioxin [2,3,7,8-TCDD] (picograms/l)	0	30	Emissions from waste incineration and other combustion; Discharge from chemical factories
Endothall (μg/l)	100	100	Runoff from herbicide use
Endrin (μg/l)	2	2	Residue of banned insecticide
Epichlorohydrin	0	TT	Discharge from industrial chemical factories; Added to water during treatment process
Glyphosate (μg/l)	700	700	Runoff from herbicide use
Heptachlor (nanograms/l)	0	400	Residue of banned termiticide
Heptachlor epoxide (nanograms/l)	0	200	Breakdown of heptachlor
Hexachlorobenzene (μg/l)	0	1	Discharge from metal refineries and agricultural chemical factories

Hexachlorocyclopentadiene (μg/1)	50	50	Discharge from chemical factories
Lindane (nanograms/1)	200	200	Runoff/leaching from insecticide used on cattle, lumber, gardens
Methoxychlor (μg/1)	40	40	Runoff/leaching from insecticide used on fruits, vegetables, alfalfa, livestock
Oxamyl [Vydate] (μg/1)	200	200	Runoff/leaching from insecticide used on apples, potatoes and tomatoes
PCBs [Polychlorinated biphenyls] (nanograms/1)	0	500	Runoff from landfills; Discharge of waste chemicals
Pentachlorophenol (μg/1)	0	1	Discharge from wood preserving factories
Picloram (μg/1)	500	500	Herbicide runoff
Simazine (μg/1)	4	4	Herbicide runoff
Toxaphene (μg/1)	0	3	Runoff/leaching from insecticide used on cotton and cattle
Benzene (μg/1)	0	5	Discharge from factories; Leaching from gas storage tanks and landfills
Carbon tetrachloride (μg/1)	0	5	Discharge from chemical plants and other industrial activities
Chlorobenzene (μg/1)	100	100	Discharge from chemical and agricultural chemical factories
Dibromochloropropane (nanograms/1)	0	200	Runoff/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards
o-Dichlorobenzene (μg/1)	600	600	Discharge from industrial chemical factories
p-Dichlorobenzene (μg/1)	75	75	Discharge from industrial chemical factories
1,2-Dichloroethane (μg/1)	0	5	Discharge from industrial chemical factories
1,1-Dichloroethylene (μg/1)	7	7	Discharge from industrial chemical factories
cis-1,2-Dichloroethylene (μg/1)	70	70	Discharge from industrial chemical factories
trans-1,2-Dichloroethylene (μg/1)	100	100	Discharge from industrial chemical factories
Dichloromethane (μg/1)	0	5	Discharge from pharmaceutical and chemical factories

1,2-Dichloropropane (μg/l)	0	5	Discharge from industrial chemical factories
Ethylbenzene (μg/l)	700	700	Discharge from petroleum refineries
Ethylene dibromide (nanograms/l)	0	50	Discharge from petroleum refineries
Styrene (μg/l)	100	100	Discharge from rubber and plastic factories; Leaching from landfills
Tetrachloroethylene (μg/l)	0	5	Leaching from PVC pipes; Discharge from factories and dry cleaners
1,2,4-Trichlorobenzene (μg/l)	70	70	Discharge from textile-finishing factories
1,1,1-Trichloroethane (μg/l)	200	200	Discharge from metal degreasing sites and other factories
1,1,2-Trichloroethane (μg/l)	3	5	Discharge from industrial chemical factories
Trichloroethylene (μg/l)	0	5	Discharge from petroleum refineries
TTHM [Total trihalomethanes] (μg/l)	0	100	By-product of drinking water chlorination
Toluene (mg/l)	1	1	Discharge from petroleum factories
Vinyl Chloride (μg/l)	0	2	Leaching from PVC piping; Discharge from plastics factories
Xylenes (mg/l)	10	10	Discharge from petroleum factories; Discharge from chemical factories

BILLING CODE 6560-50-C

Appendix B to Subpart O of Part 141—Health Effect Language

Biological Contaminants

(1) *Total Coliform.* Coliforms are bacteria which are naturally present in the environment and are used as an indicator that other, potentially-harmful bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.

(2) *Fecal coliform/E.Coli.* Fecal coliform and E. Coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Germs in these wastes can cause diarrhea, cramps, nausea, headaches, or fatigue.

Radioactive Contaminants

(3) *Beta/photon emitters.* Certain minerals are radioactive; photons and beta radiation are types of radioactivity. People who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(4) *Alpha emitters.* Certain minerals are radioactive and emit a form of radiation known as alpha radiation. People who drink water containing these alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(5) *Combined Radium 226/228.* People who drink water containing Radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.

Inorganic Contaminants

(6) *Antimony.* People who drink water containing antimony well in excess of the MCL over many years could experience changes in the cholesterol or glucose level in their blood.

(7) *Arsenic.* People who drink water containing arsenic well in excess of the MCL over many years could experience skin damage or problems with their nervous system.

(8) *Asbestos.* People who drink water containing asbestos in excess of the MCL over many years could get lung disease or may have an increased risk of getting cancer.

(9) *Barium.* People who drink water containing barium well in excess of the MCL over many years could experience high blood pressure.

(10) *Beryllium.* People who drink water containing beryllium in excess of the MCL over many years could experience bone or lung problems, or may have an increased risk of cancer.

(11) *Cadmium.* People who drink water containing cadmium well in excess of the MCL over many years could experience kidney problems.

(12) *Chromium.* People who drink water containing chromium well in excess of the MCL over many years could experience problems with their kidneys or circulation.

(13) *Copper.* Copper is an essential nutrient but people who drink water containing copper in excess of the action level over a relatively short amount of time could experience problems with their stomach or intestines. People who drink water containing copper well in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.

(14) *Cyanide.* People who drink water containing cyanide well in excess of the MCL over many years could experience weight loss, nerve damage, or problems with their thyroid.

(15) *Fluoride.* People who drink water containing fluoride well in excess of the MCL over many years could get bone disease.

(16) *Lead.* Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems, high blood pressure, or may be at an increased risk of getting cancer.

(17) *Mercury.* People who drink water containing mercury well in excess of the MCL over many years could experience kidney damage.

(18) *Nitrate.* Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and die. Adults who drink water containing nitrates well in excess of the MCL over many years could experience kidney or spleen problems.

(19) *Nitrite.* Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and die. Adults who drink water containing nitrite well in excess of the MCL over many years could experience kidney or spleen problems.

(20) *Selenium.* Selenium is an essential nutrient. However, people who drink water containing selenium well in excess of the MCL over many years could experience hair or fingernail losses, or problems with their kidneys, liver, nervous system, or circulation.

(21) *Thallium.* People who drink water containing thallium well in excess of the MCL over many years could experience changes in their blood, problems with their kidney, intestine, or liver, or hair loss.

(22) *Turbidity.* There is no MCL for turbidity, and turbidity has no health effects. However, turbidity can provide a medium for bacterial growth.

Synthetic Organic Chemicals Including Pesticides and Herbicides

(23) *2,4-D.* People who drink water containing the weed-killer 2,4-D well in excess of the MCL over many years could experience problems with their nervous system, kidneys, or liver.

(24) *2,4,5-TP (Silvex).* People who drink water containing silvex well in excess of the MCL over many years could experience minor liver or kidney problems.

(25) *Alachlor.* People who drink water containing alachlor in excess of the MCL over many years could have problems with their liver, kidneys, or spleen, or may have an increased risk of getting cancer.

(26) *Atrazine.* People who drink water containing atrazine in excess of the MCL over many years could experience weight loss, problems with their heart or retinas, some muscle deterioration, or may have an increased risk of getting cancer.

(27) *Benzo(a)pyrene [PAHs].* People who drink water containing benzo(a)pyrene in excess of the MCL over many years may have an increased risk of getting cancer.

(28) *Carbofuran.* People who drink water containing carbofuran well in excess of the MCL over many years could experience problems with their nervous or reproductive systems.

(29) *Chlordane.* People who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver, kidneys, heart, lungs, spleen or adrenal glands, or may have an increased risk of getting cancer.

(30) *Dalapon.* People who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.

(31) *Di (2-ethylhexyl) adipate.* People who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience reduced body weight or bone mass, problems with their liver or testicles, or may have an increased risk of getting cancer.

(32) *Di (2-ethylhexyl) phathalate.* People who drink water containing di (2-ethylhexyl) phthalate in excess of the MCL over many years may have problems with their liver, testicles, or experience adverse reproductive effects, and may have an increased risk of getting cancer.

(33) *Dinoseb.* People who drink water containing dinoseb well in excess of the MCL over many years could experience changes in their thyroid or testicles.

(34) *Dioxin (2,3,7,8-TCDD).* People who drink water containing dioxin in excess of the MCL over many years could experience problems with their reproductive system and may have an increased risk of getting cancer.

(35) *Diquat.* People who drink water containing diquat well in excess of the MCL over many years could get cataracts.

(36) *Endothall.* People who drink water containing endothall well in excess of the MCL over many years could experience an increase in the size of their stomach or intestines.

(37) *Endrin.* People who drink water containing endrin well in excess of the MCL over many years could experience convulsions or liver problems.

(38) *Glyphosate.* People who drink water containing glyphosate well in excess of the MCL over many years could experience problems with their kidneys or adverse reproductive effects.

(39) *Heptachlor.* People who drink water containing heptachlor in excess of the MCL over many years could experience extensive liver damage and may have an increased risk of getting cancer.

(40) *Heptachlor epoxide.* People who drink water containing heptachlor epoxide in excess of the MCL over many years could experience extensive liver damage, and may have an increased risk of getting cancer.

(41) *Hexachlorobenzene.* People who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, adverse reproductive effects, benign tumor of endocrine glands, and may have an increased risk of getting cancer.

(42) *Hexachlorocyclopentadiene.* People who drink water containing hexachloro-

cyclopentadiene well in excess of the MCL over many years could experience problems with their stomach or kidneys.

(43) *Lindane*. People who drink water containing lindane well in excess of the MCL over many years could experience problems with their kidneys or liver.

(44) *Methoxychlor*. People who drink water containing methoxychlor well in excess of the MCL over many years could experience problems with their liver, heart, or kidneys.

(45) *Oxamyl [Vydate]*. People who drink water containing oxamyl well in excess of the MCL over many years could experience weight loss.

(46) *PCBs [Polychlorinated biphenyls]*. People who drink water containing PCBs in excess of the MCL over many years could experience irritation of the nose, throat, or gastrointestinal tract, and may have an increased risk of getting cancer.

(47) *Pentachlorophenol*. People who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.

(48) *Picloram*. People who drink water containing picloram well in excess of the MCL over many years could experience problems with their liver.

(49) *Simazine*. People who drink water containing simazine in excess of the MCL over many years could experience tremors, have problems with their kidneys, liver, or thyroid, and have an increased risk of getting cancer.

(50) *Toxaphene*. People who drink water containing toxaphene in excess of the MCL over many years could suffer from kidney or liver degeneration, have problems with their nervous system, and may have an increased risk of getting cancer.

Volatile Organic Chemicals

(51) *Benzene*. People who drink water containing benzene in excess of the MCL over many years may have an increased risk of getting cancer.

(52) *Carbon Tetrachloride*. People who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(53) *Chlorobenzene*. People who drink water containing chlorobenzene well in excess of the MCL over many years could experience problems with their kidneys, liver, or nervous system.

(54) *Dibromochloropropane (DBCP)*. People who drink water containing DBCP in excess of the MCL over many years could experience some kidney damage and may have an increased risk of getting cancer.

(55) *o-Dichlorobenzene*. People who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, nervous systems, or damage to their blood cells.

(56) *para-Dichlorobenzene*. People who drink water containing p-dichlorobenzene well in excess of the MCL over many years could experience anemia, skin lesions, loss of appetite, damage to their liver, or changes in their blood.

(57) *1,2-Dichloroethane*. People who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.

(58) *1,1-Dichloroethylene*. People who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver and kidneys and may have an increased risk of getting cancer.

(59) *cis-1,2-Dichloroethylene*. People who drink water containing cis-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver, their circulation, or their nervous system.

(60) *trans-1,2-Dicholoroethylene*. People who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver, their circulation, or their nervous system.

(61) *Dichloromethane*. People who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.

(62) *1,2-Dichloropropane*. People who drink water containing 1,2-dichloropropane in excess of the MCL over many years could experience problems with their liver, kidneys, bladder, digestive or respiratory systems, and may have an increased risk of getting cancer.

(63) *Ethylbenzene*. People who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, central nervous system, or eyes.

(64) *Ethylene dibromide*. People who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their nervous system, liver, heart, or kidneys, and may have an increased risk of getting cancer.

(65) *Styrene*. People who drink water containing styrene in excess of the MCL over many years could have problems with their liver and may have an increased risk of getting cancer.

(66) *Tetrachloroethylene*. People who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, kidney or nervous system, and may have an increased risk of getting cancer.

(67) *1,2,4-Trichlorobenzene*. People who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.

(68) *1,1,1,-Trichloroethane*. People who drink water containing 1,1,1-trichloroethane well in excess of the MCL over many years could experience problems with their liver, nervous system or circulation.

(69) *1,1,2-Trichloroethane*. People who drink water containing 1,1,2-trichloroethane in excess of the MCL over many years could have problems with their liver or kidneys, and may have an increased risk of getting cancer.

(70) *Trichloroethylene*. People who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(71) *THMs [Total Trihalomethanes]*. People who drink water containing trihalomethanes in excess of the MCL over many years may have an increased risk of getting cancer.

(72) *Toluene*. People who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.

(73) *Vinyl Chloride*. People who drink water containing vinyl chloride in excess of the MCL over many years could have problems with their liver or nervous system, and may have an increased risk of getting cancer.

(74) *Xylenes*. People who drink water containing xylenes well in excess of the MCL over many years could experience damage to their nervous system or problems with their liver or kidneys.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for part 142 is revised to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Section 142.10 would be amended by adding a new paragraph (b)(6)(vii) to read as follows:

§ 142.10 Requirements for a determination of primary enforcement responsibility.

* * * * *

(b) * * *

(6) * * *

(vii) Authority to require community water systems to provide consumer confidence reports as required under 40 CFR part 141, subpart O.

* * * * *

3. Section 142.16 would be amended by adding paragraph (f) to read as follows:

§ 142.16 Special primacy requirements.

* * * * *

(f) Consumer confidence report requirements. (1) Each State that has primary enforcement responsibility must adopt the requirements of 40 CFR part 141, subpart O, no later than [date 2 years after date of publication of final rule in the **Federal Register**]. States must submit revised programs to EPA for approval using the procedures in § 142.12(b) through (d).

(2) Each State that has primary enforcement responsibility must make reports submitted to the States in compliance with 40 CFR 141.155(b) available to the public upon request or maintain a list of telephone numbers for operators of community water systems.

(3) Each State that has primary enforcement responsibility must maintain the certifications obtained pursuant to 40 CFR 141.155(b) for a period of 5 years.

4. Section 142.72 would be amended by revising the introductory text to read as follows:

§ 142.72 Requirements for tribal eligibility.

The Administrator is authorized to treat an Indian tribe as eligible to apply for primary enforcement for the Public Water System Program and the authority to waive the mailing requirements of 40 CFR 141.155(a) if it meets the following criteria:

* * * * *

5. Section 142.78 would be amended by revising paragraph (b) to read as follows:

§ 142.78 Procedure for processing an Indian tribe's application.

* * * * *

(b) A tribe that meets the requirements of 40 CFR 141.72 is eligible to apply for development grants and primacy enforcement responsibility for a Public Water System Program and associated funding under section 1443(a) of the Act and for primary enforcement responsibility for public water systems under section 1413 of the Act and for the authority to waive the mailing requirement of 40 CFR 141.155(a).

[FR Doc. 98–3752 Filed 2–12–98; 8:45 am]
BILLING CODE 6560–50–P

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federal register

Friday
February 13, 1998

Part VIII

Department of Education

Office of Elementary and Secondary Education

Advanced Placement Fee Payment Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.330]

Office of Elementary and Secondary Education

Advanced Placement Fee Payment Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Summary

The Secretary invites applications for new awards for FY 1998 under the Advanced Placement Fee Payment discretionary grant program and announces deadline dates for the transmittal of applications for funding under the program.

Purpose of Program

The primary purpose of the Advanced Placement Fee Payment Program is to enable States to reimburse part or all of the cost of advanced placement test fees for low-income individuals who (1) are enrolled in an advanced placement class; and (2) plan to take an advanced placement test. This program is authorized by section 1545 of the Higher Education Amendments of 1992, 20 U.S.C. 1070a–11, note.

Who May Apply

State educational agencies (SEAs) in any State, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the former Trust Territory of the Pacific Islands.

Deadline for Transmittal of Applications: March 20, 1998.

Deadline for Intergovernmental Review: April 10, 1998. The 60-day period for intergovernmental review has been waived.

Applications Available: February 13, 1998.

Available Funds: $3,000,000.

Estimated Range of Awards: $1,000 to $400,000.

Estimated Average Size of Awards: $50,000.

Estimated Number of Awards: 57.

**Note:* These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period

Up to 15 months. States receiving grants under this program may use the funds to reimburse eligible individuals for advanced placement tests taken in FY 1998, FY 1999, or both.

Requirements for Approval of Applications

In order to receive funding under this program, an SEA must submit to the Department an application that contains the following:

(a) A description of the advanced placement test fees the State will pay on behalf of individual students, including the approximate number of students on whose behalf the State will pay these fees and the approximate date the State expects each student to take the advanced placement exam;

(b) A description of the method by which eligible low-income individuals will be identified, and the steps the State will take to ensure that any students receiving payments under this program are eligible for such payments;

(c) A description of the State's plan to disseminate information on the availability of test fee payments to eligible individuals through secondary school teachers and guidance counselors;

(d) A description of the State's plan to evaluate the effectiveness of the program;

(e) An assurance that any funds received under this program will only be used to pay advanced placement test fees for qualifying low-income individuals;

(f) An assurance that the State will document the eligibility of each individual on whose behalf the State pays part or all of an advanced placement test fee in accordance with section 402A(e) of the Higher Education Act of 1965; and

(g) An assurance that funds provided under this program will be used to supplement and not supplant other Federal, State, local, or private funds available to assist low-income individuals in paying for advanced placement testing.

Allowable Activities

States receiving grants under this program may use the grant funds only to pay advanced placement test fees. The Department encourages States to undertake activities to increase the participation of low-income students in advanced placement classes and testing, but grant funds may not be used for this purpose.

Allocation of Funds

The Department intends to fund all applications meeting the requirements for approval of applications previously described in this notice. In determining the amount of grant funds to be allocated to each State, the Department will rely on the U.S. Census Bureau count of poor children ages 5–17 that is used for allocations under Title I, Part A, of the Elementary and Secondary Education Act of 1965, 20 U.S.C. 6311–6338. The Department will also consider the State's description of the advanced placement test fees it intends to pay, and whether those fees are reasonable and allowable. The application package will provide each State with an estimate of the approximate amount of grant funds it can expect to receive if all States participate in the program. In the event that all States do not participate in the program, the Department will reallocate the funds that would have been awarded to the non-participating States to States whose applications have been approved.

Waiver of Rulemaking

Because the Department intends to fund all applications meeting the requirements for approval of applications described in this notice, Department regulations governing the selection of new discretionary grant projects, codified at 34 CFR 75.200–75.222, will not apply to this program. While it is generally the practice of the Secretary to offer interested parties the opportunity to comment on such a regulation before it is implemented, section 437(d) of the General Education Provisions Act exempts from formal rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)). In order to make awards on a timely basis, the Secretary has decided to publish this regulation in final under the authority of section 437(d).

Applicable Statute and Regulations

Title XV, Part G, of the Higher Education Amendments of 1992, 20 U.S.C. 1070a–11, note. The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75 (except 75.200–75.222), 76, 77, 79, 80, 81, 82, 85, and 86.

The following definitions and other provisions are taken from the Advanced Placement Fee Payment Program statute, in Title XV, Part G, of the Higher Education Amendments of 1992. They are repeated in this application notice for the convenience of the applicant.

Definitions

As used in this section:

(a) The term *advanced placement test* includes only an advanced placement test approved by the Secretary of Education for the purposes of this section.

(b) The term "low-income individual" has the meaning given the term in

section 402A(g)(2) of the Higher Education Act of 1965.

*Note: Under section 402A(g)(2) of the Higher Education Act of 1965, the term *low-income individual* means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census (20 U.S.C. 1070a–11(g)(2)).

Information Dissemination

The SEA shall disseminate information on the availability of test fee payments under this program to eligible individuals through secondary school teachers and guidance counselors.

Supplementation of Funding

Funds provided under this program must be used to supplement and not supplant other Federal, State, and local or private funds available to assist low-income individuals in paying for advanced placement testing.

For Applications or Information Contact: Frank B. Robinson, U.S. Department of Education, School Improvement Programs, Portals Building, Room 4500, Washington, D.C. 20202–6140. Telephone (202) 260–2669. Internet address: frank__robinson@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1070a–11, note.

Dated: February 10, 1998.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 98–3762 Filed 2–12–98; 8:45 am]

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H.R. 1271/P.L. 105–155

FAA Research, Engineering, and Development Authorization Act of 1998 (Feb. 11, 1998; 112 Stat. 5)

H.R. 3042/P.L. 105–156

Environmental Policy and Conflict Resolution Act of 1998 (Feb. 11, 1998; 112 Stat. 8)

S. 1349/P.L. 105–157

To authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel PRINCE NOVA, and for other purposes. (Feb. 11, 1998; 112 Stat. 13)

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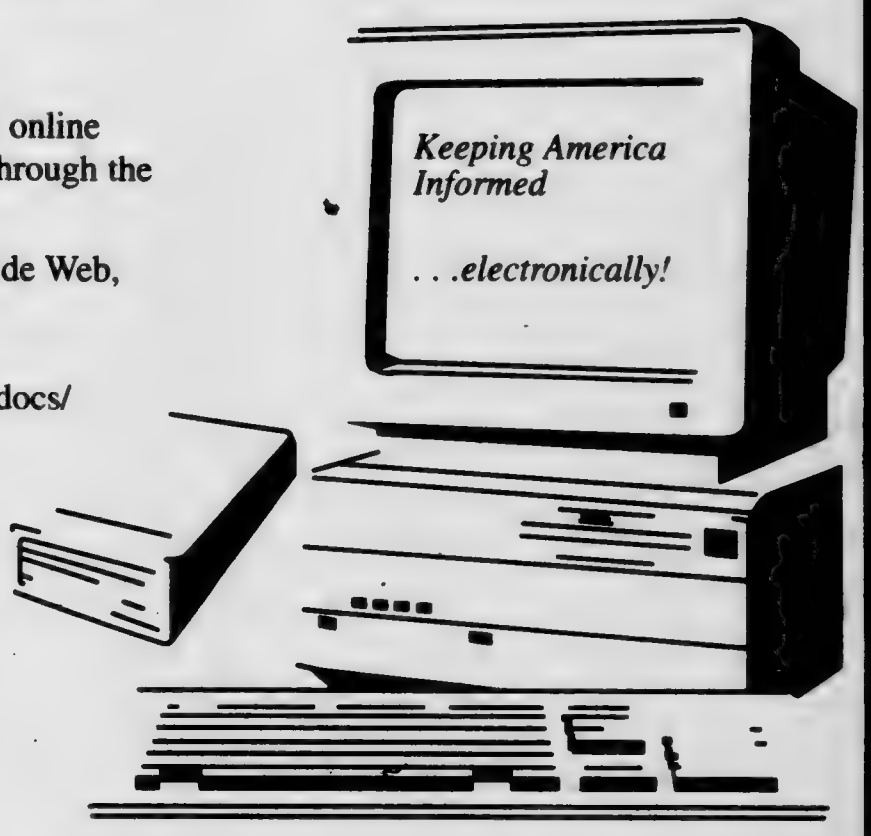

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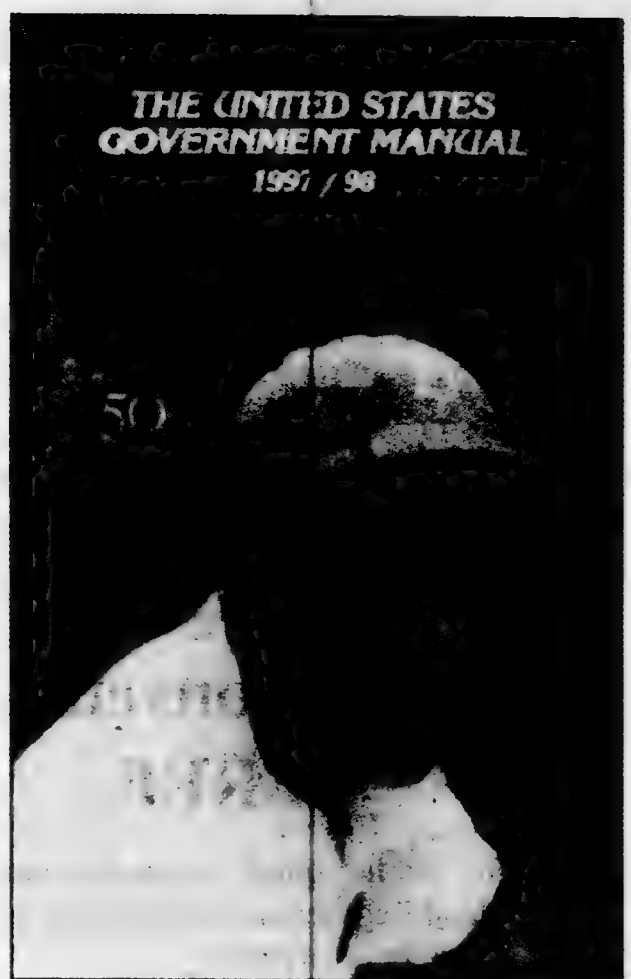

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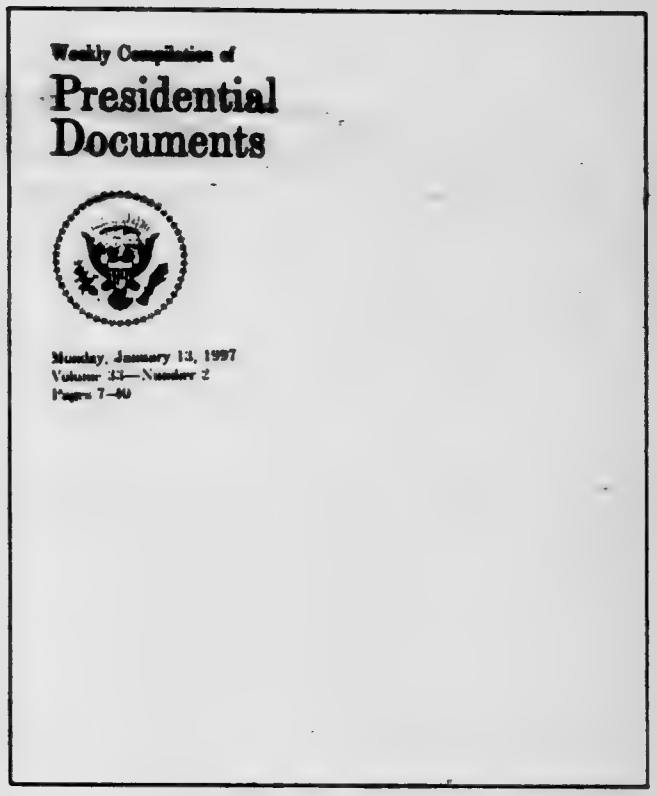

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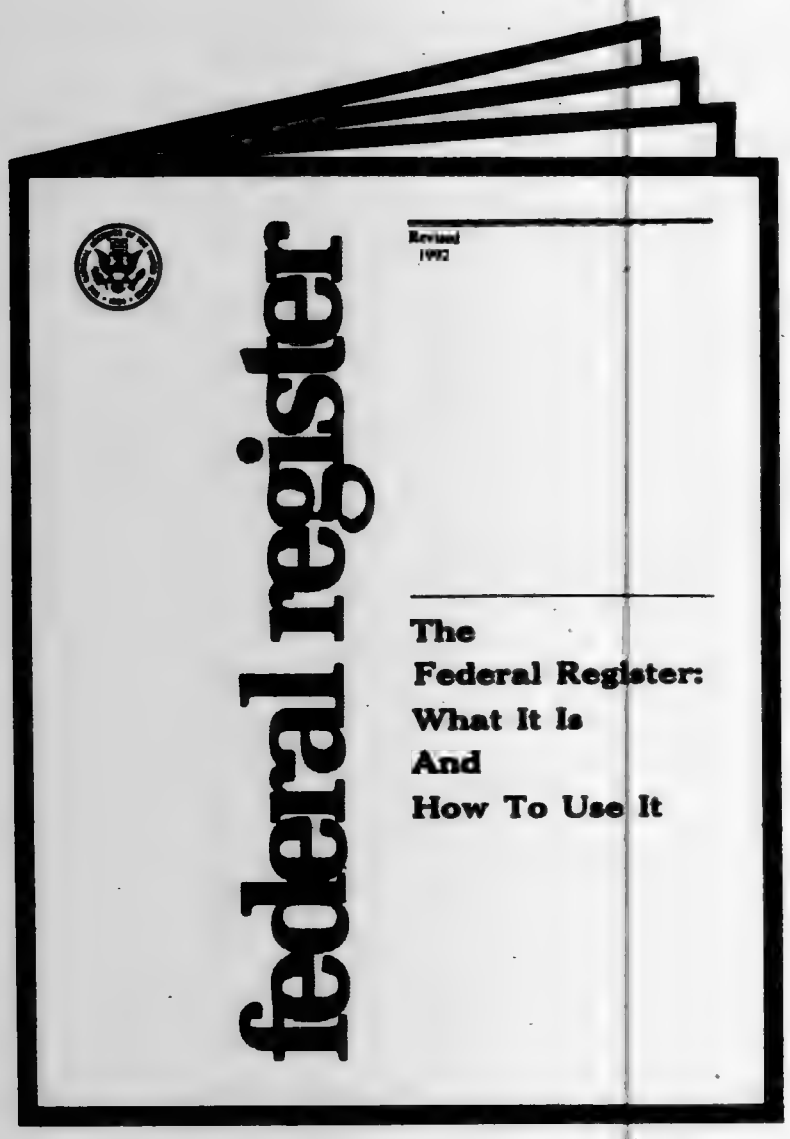

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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 63, No. 31
Tuesday, February 17, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–150–AD; Amendment 39–10324; AD 98–04–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 and A321 series airplanes, that requires activation of a spoiler function that allows partial ground spoiler activation with only one main landing gear compressed. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent possible delays in deceleration when landing with strong cross winds and/or on a contaminated runway, which could increase the potential for landing overrun.

DATES: Effective March 24, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 24, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320 and A321 series airplanes was published in the **Federal Register** on December 11, 1997 (62 FR 65227). That action proposed to require activation of a spoiler function that allows partial ground spoiler activation with only one main landing gear compressed.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Several commenters support the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 132 airplanes of U.S. registry will be affected by this AD, that it will take approximately 17 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $134,640, or $1,020 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–04–11 Airbus: Amendment 39–10324. Docket 97–NM–150–AD.

Applicability: Model A320 and A321 series airplanes on which Airbus Modification No. 24745 (Airbus Service Bulletin A320–27–1088, Revision 3, dated December 11, 1996) has not been accomplished, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance

of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible delays in deceleration when landing with strong cross winds and/or on a contaminated runway, which could increase the potential for landing overrun, accomplish the following:

(a) Within 12 months after the effective date of this AD, activate the spoiler "phased lift dumping" function by modifying the aircraft wiring at the level of the three spoiler elevator computer (SEC) connectors, in accordance with Airbus Service Bulletin A320–27–1088, Revision 03, dated December 11, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from theInternational Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Airbus Service Bulletin A320–27–1088, Revision 03, dated December 11, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 96–169–061(B), dated August 28, 1996.

(e) This amendment becomes effective on March 24, 1998.

Issued in Renton, Washington, on February 4, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3259 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–332–AD; Amendment 39–10321; AD 98–04–08]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–215–1A10 and CL–215–6B11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model CL–215–1A10 and CL–215–6B11 series airplanes. This action requires repetitive ultrasonic inspections to detect cracking of the lower caps of the wing front spar and rear spar, and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to detect and correct cracking of the lower caps of the wing front spar and rear spar, which could result in reduced structural integrity of the airplane.

DATES: Effective March 4, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 4, 1998.

Comments for inclusion in the Rules Docket must be received on or before March 19, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–332–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Bombardier, nc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–215–1A10 and CL–215–6B11 series airplanes. The TCA advises that fatigue cracks have been found in the lower caps of the wing front spar and rear spar at wing station 51 of several in-service airplanes. This condition, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Transport Canada Aviation issued Canadian airworthiness directives CF–92–26, dated December 23, 1992, and CF–93–07, dated March 26, 1993, in order to assure the continued airworthiness of these airplanes in Canada. Those Canadian airworthiness directives cite Bombardier Inc. Canadair Alert Wires 215–A454, dated December 23, 1992, and 215–A463, dated March 26, 1993, respectively, which provide procedures for ultrasonic inspection to detect cracking of the rear and front spar lower cap at the left and right wing station 51, and repair, if necessary.

Subsequently, the manufacturer issued Canadair Alert Service Bulletin 215–A454, Revision 1, dated May 25, 1995, and Canadair Alert Service Bulletin 215–A463, Revision 1, dated May 25, 1995, which describe procedures for repetitive ultrasonic inspections to detect fatigue cracking of the lower caps of the wing front and rear spars at wing station 51. For airplanes on which any discrepancy is found, the alert service bulletins also describe procedures for rework of the lower caps, and follow-on visual inspection of the front or rear spar web area and the lower skin area from inside the wing box.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCA has kept

the FAA informed of the situation described above. The FAA has examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to detect and correct cracking of the lower caps of the wing front spar and rear spar, which could result in reduced structural integrity of the airplane. This AD requires accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between This Rule and the Alert Service Bulletins

Operators should note that, although the alert service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires that repair of those conditions be accomplished in accordance with a method approved by the FAA.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 16 work hours to accomplish the required inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $960 per airplane, per inspection cycle.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**.

All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–332–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–04–08 Bombardier, Inc. (Formerly Canadair): Amendment 39–10321. Docket 97–NM–332–AD.

Applicability: Model CL–215–1A10 and CL–215–6B11 series airplanes, serial numbers 1001 through 1125 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the lower caps of the wing front spar and rear spar, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 3,000 total flight hours, or within 25 flight hours after the effective date of this AD, whichever occurs later: Perform an ultrasonic inspection to detect cracking of the lower cap of the wing front and rear spars at wing station 51,

in accordance with the Accomplishment Instructions of Canadair Alert Service Bulletin 215–A463, Revision 1, dated May 25, 1995 (for the front spar); and Canadair Alert Service Bulletin 215–A454, Revision 1, dated May 25, 1995 (for the rear spar). Thereafter, repeat the ultrasonic inspection at intervals not to exceed 600 flight hours. If any cracking is detected, prior to further flight, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Rework the lower cap of the front or rear spar, as applicable, in accordance with the alert service bulletin. And

(2) Visually inspect, from inside the wing box, the front spar web or the rear spar web, as applicable, and the lower skin area to detect cracks. If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Canadair Alert Service Bulletin 215–A454, Revision 1, dated May 25, 1995, and Canadair Alert Service Bulletin 215–A463, Revision 1, dated May 25, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directives CF–92–26, dated December 23, 1992, and CF–93–07, dated March 26, 1993.

(e) This amendment becomes effective on March 4, 1998.

Issued in Renton, Washington, on February 4, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3262 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–240–AD; Amendment 39–10323; AD 98–04–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A300 and A300–600 series airplanes, that requires repetitive inspections for cracking of the lugs of hinge brackets of inner airbrakes (spoilers) No. 1 and No. 2, and corrective action, if necessary. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent detachment of the spoilers and consequent reduced controllability of the airplane.

DATES: Effective March 24, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 24, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A300 and A300–600 series airplanes was published in the **Federal Register** on November 6, 1997 (62 FR 60047). That action proposed to require repetitive inspections for cracking of the lugs of hinge brackets of inner airbrakes (spoilers) No. 1 and No. 2, and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Clarification of Referenced Repair Drawings

The FAA has revised paragraph (b) of this final rule to clarify the referenced repair drawings by adding the company name, the applicable revision level, and the date of the drawings.

Conclusion

After careful review of the available data, including the clarification noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 102 Model A300 and A300–600 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $24,480, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–04–10 Airbus Industrie: Amendment 39–10323. Docket 97–NM–240–AD.

Applicability: All Model A300 and A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the lugs of hinge brackets of inner airbrakes (spoilers) No. 1 and No. 2 of both wings, which could result in detachment of the spoilers and consequent reduced controllability of the airplane, accomplish the following:

(a) Perform a high frequency eddy current (HFEC) inspection for cracking of the lugs of the center hinge brackets of spoilers No. 1 and No. 2, in accordance with Airbus Service Bulletin A300–57–0229 (for Model A300 series airplanes) or A300–57–6074 (for Model A300–600 series airplanes), both dated October 16, 1996, as applicable. Accomplish the inspection at the time specified in paragraph (a)(1), (a)(2), or (a)(3), as applicable, of this AD. If any discrepancy is found, prior to further flight, perform the follow-on actions specified in the Accomplishment Instructions of the applicable service bulletin. Repeat the HFEC inspection thereafter at intervals not to exceed 8,200 flight cycles.

(1) For airplanes that have accumulated less than 23,200 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 16,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 23,200 total flight cycles or more, but less than 36,500 total flight cycles as of the effective date of this AD: Inspect within 500 flight cycles after the effective date of this AD.

(3) For airplanes that have accumulated 36,500 total flight cycles or more as of the effective date of this AD: Inspect within 50 flight cycles after the effective date of this AD.

(b) Airbus Service Bulletins A300–57–6074 and A300–57–0229, both dated October 16, 1996, specify that the actions required by paragraph (a) of this AD may be accomplished in accordance with a method "left to the operator's discretion." [Operators may use a discretionary method only if that method has been approved as an alternative method of compliance in accordance with paragraph (c) of this AD.] Therefore, this AD requires that the replacement of a bracket as required by paragraph (a) be accomplished in accordance with the procedures specified in British Aerospace Repair Drawings (for Airbus Model A300 and A300–600 series airplanes) R572–40205, Revision F, dated August 12, 1997 (for a center hinge bracket), and/or R572–40208, Revision B, dated August 12, 1997 (for an inner or outer hinge bracket), as applicable.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections shall be done in accordance with Airbus Service Bulletin A300–57–0229, dated October 16, 1996, or Airbus Service Bulletin A300–57–6074, dated October 16, 1996; as applicable. The replacement shall be done in accordance with the following British Aerospace Repair, as applicable, which contain the specified list of effective pages:

Repair drawings referenced and date	Sheet No.	Revision level shown on sheet	Date shown on sheet
572–40205, Revision F, August 12, 1997	1, 8, 13–15	F	August 12, 1997.
	2–7, 9–12	A	March 6, 1996.
572–40208, Revision B, August 12, 1997	1, 6, 8–10	B	August 12, 1997.
	2–5, 7	A	February 21, 1996.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–060–211(B)R1, dated May 21, 1997.

(f) This amendment becomes effective on March 24, 1998.

Issued in Renton, Washington, on February 4, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3260 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-CE-58-AD; Amendment 39-10318; AD 98-04-05]

RIN 2120-AA64

Airworthiness Directives; Fairchild Aircraft Incorporated Models SA226-TC, SA226-T, SA226-T(B), and SA226-AT Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Fairchild Aircraft Incorporated (Fairchild) Models SA226-TC, SA226-T, SA226-T(B), and SA226-AT airplanes. This action requires inspecting the center flap hinge and wing trailing edge ribs at the flap actuator attach brackets for cracks and if no cracks are found, installing a doubler on the rib, or replacing a cracked rib with a new rib assembly that is reinforced with a doubler. This action is the result of high local stress concentration, which led to fatigue cracking of the wing trailing edge ribs. The actions specified by this AD are intended to prevent asymmetrical flap deflection, which could force the airplane into an uncommanded roll with possible loss of control of the airplane.

DATES: Effective March 10, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 10, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Fairchild Aircraft Inc., P. O. Box 32486, San Antonio, Texas, 78284; telephone (210) 824-9421. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 96-CE-58-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Hung Viet Nguyen, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0150; telephone (817) 222-5155; facsimile (817) 222-5960.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Fairchild Models SA226-TC, SA226-T, SA226-T(B), and SA226-AT airplanes was published in the Federal Register on June 11, 1997 (62 FR 31766). The action proposed to require:

- —Inspecting the wing trailing edge ribs at wing stations (WS) 98.385 and 100.635 for cracks,
- —Replacing any cracked rib with a new rib assembly (part number (P/N) 27-31085-1/2 or 27-31086-1/2 or an FAA-approved equivalent part number), and
- —Installing a reinforcement doubler (P/N 27K36075-7 or an FAA-approved equivalent part number), whether or not cracks are found.

Accomplishment of the proposed action would be in accordance with Fairchild Aircraft SA226 Series Service Bulletin SB 57-016, Issued: June 25, 1981; Revised: December 9, 1981.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

The commenter agrees with the proposed action and also notes a mistake in the serial numbers listed for the Model SA226-T(B) airplane in the applicability section of the proposed action. Instead of Model SA226-T(B), serial numbers T(B)275, and T(B)292 through T(B)378, the applicability section should read Model SA226-T(B), serial numbers T(B)276, and T(B)292 through T(B)378.

The FAA concurs with this comment and will change the applicability in the AD to reflect the changed serial numbers for Model SA226-T(B) airplanes.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the serial number change noted above and any minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 240 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 100 workhours per airplane to accomplish the installation of the doubler and 180 workhours per airplane to accomplish the installation of the new rib assembly and doubler, and that the average labor rate is approximately $60 an hour. Parts cost approximately $133 for both wing rib assemblies per airplane. The doubler can be manufactured from locally supplied materials. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $2,623,920 for the U.S. fleet or $10,933 per airplane for the rib assembly and doubler installations. The labor cost for the doubler installation is $6,000 per airplane and the doubler can be manufactured from locally supplied materials.

Regulatory Flexibility Determination and Analysis

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by government regulations. The RFA requires government agencies to determine whether rules will have a "significant economic impact on a substantial number of small entities," and, in cases where the rule will have an economic impact, the agency making the rule is obligated to conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses, small not-for-profit organizations that are independently owned and operated, or airports operated by small governmental jurisdictions. A "substantial number" is defined as a number that is not less than 11 and that is more than one-third of the small entities subject to a rule, or any number of small entities judged to be substantial by the rulemaking official. A "significant economic impact" is defined by an annualized net compliance cost, adjusted for inflation, which is greater than a threshold cost level for defined entity types.

There are an estimated 240 Fairchild SA226 series airplanes in the U.S. registry that will be affected by this action. For many of these airplanes, it is believed that the actions have already been completed. The entities affected by this AD are largely grouped in the Standard Industrial Classification (SIC) 4512, Operators of Aircraft for Hire, classified as "Unscheduled." FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, defines a small

entity in this classification as one that owns or operates nine or fewer aircraft.

In order to experience a significant economic impact under Order 2100.14A, an operator of aircraft for hire, unscheduled, will have to incur annualized costs of $4975 (1996 dollars) or more. Costs are estimated to be approximately $6,000 per airplane if only the doubler plates are installed, or as much as $10,933 per airplane if any ribs are found cracked and a rib assembly replacement is required, in addition to installing the doubler plate. Annualized costs are dependent on the required work, the cost of capital for airplane owners/operators, and the expected length of time that the required changes are expected to be in use. Since the changes are assumed to be permanent, the service life of the changes is the remaining life of the airplane. The cost of capital for the airplane owners/operators is assumed to be 15 percent. Under these conditions, no owner/operator of a single airplane will be subject to significant costs if the expected remaining service life of the aircraft is more than:

(a) 1.43 years (approximately 17 months), if the doubler plate installation is required; or

(b) 2.9 years (approximately 35 months) if both the doubler plate installation and rib replacement is required.

Ownership of the Model SA226 series airplanes (i.e.: the airplanes other than the Model SA226–TC) is very widely dispersed. There are five separate entities (excluding Swearingen) that show ownership of Model SA226 series airplanes in the U.S. Registry, each of which owns two Model SA226 series airplanes. According to the manufacturer, these airplanes typically have less than 10,000 hours total time-in-service (TIS), and are employed primarily as corporate aircraft with usage rates at approximately 400 hours TIS per year. Allocating a nominal remaining service life of 25,000 hours total TIS (out of a total service life of 35,000 hours) at the rate of 500 hours TIS per year, suggests remaining lives on the order of 50 years. Even with a remaining service life of half of this, or 25 years, annualized costs for both doubler plate installation and rib replacement would be on the order of $1,715. Thus, an owner of two such airplanes will experience annualized costs for the action of approximately $3,430, which is a figure less than 70 percent of threshold value for significant cost.

The manufacturer indicates that most of the Fairchild Model SA226–TC airplanes (80 of which were listed in the U.S. Registry records), have probably been modified under the 1981 service bulletin that will be made mandatory by this AD. Fairchild Model SA226–TC airplanes in service have average cumulative usage of approximately 25,000 to 30,000 hours total TIS, with a likely average annual usage in cargo service of 1,000 to 1,500 hours TIS, and an economic life of 35,000 hours total TIS. This suggests that most Fairchild Model SA226–TC airplanes have remaining lives of about five years (even without the modifications that are likely to extend the life of the aircraft). A five-year life for an airplane required to carry out both modifications implies that annualized costs will be approximately $3,300. Thus, an owner of a single aging unmodified Fairchild Model SA226–TC airplane will not experience a significant economic impact.

According to U.S. Registry records, there are 12 entities (excluding Sweringen) that own 2 or more Fairchild Model SA226–TC airplanes, accounting for a total of 49 airplanes. Because of the age of the aircraft and the likelihood of compliance with the original service bulletin (dated 1981), the FAA believes that significant impacts will not be felt by most owners of these airplanes. In addition, the eight owners of two or more of these airplanes account for less than one-tenth of the affected entities. For these reasons, the FAA has determined that this AD will not have a significant economic impact on a substantial number of small aircraft operators. The FAA solicited comments concerning the impact of this action on small entity owners of affected airplanes. Based on the possibility that the AD could have a significant impact on a substantial number of small entities, the FAA conducted a regulatory flexibility analysis.

A copy of the full Cost Analysis and Regulatory Flexibility Determination for this action may be examined at the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 96–CE–58–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

FAA's Aging Commuter Aircraft Policy

This action is consistent with the FAA's aging commuter airplane policy. This policy simply states that reliance on repetitive inspections of critical areas on airplanes utilized in commuter service carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. The alternative to installing the doubler or the new rib assembly would be relying on repetitive inspections to detect damaged wing ribs.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–04–05 Fairchild Aircraft Inc.: Amendment 39–10318; Docket No. 96–CE–58–AD.

Applicability: The following Models and serial numbered airplanes, certificated in any category.

Models	Serial Nos.
SA226–TC	TC201 through TC379;
SA226–T	T201 through T275, and T277 through T291;

Models	Serial Nos.
SA226–T(B)	T(B)276, and T(B)292 through T(B)378;
SA226–AT	AT001 through AT069.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 500 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

Note 2: The compliance time of this AD takes precedence over the compliance time in the Fairchild Service Bulletin referenced below.

To prevent asymmetrical flap deflection, which could force the airplane into an uncommanded roll with possible loss of control of the airplane, accomplish the following:

(a) Inspect both wing trailing edge ribs at the center flap actuator attach brackets, wing stations (WS) 98.385 and 100.635, for cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section, PART A, of Fairchild Aircraft Service Bulletin (SB) 57–016, Issued: June 25, 1981; Revised: December 9, 1981.

(1) If no cracks are found, prior to further flight, install the reinforcement doubler, part number(P/N) 27K36075–7, or an FAA-approved equivalent part number, in accordance with the ACCOMPLISHMENT INSTRUCTIONS section, PART B of Fairchild SB 57–016, Issued: June 25, 1981; Revised: December 9, 1981.

(2) If any cracks are found, prior to further flight, replace any cracked rib with a new rib assembly (P/N 27–31085–1/2 or 27–31086–1/2 or an FAA-approved equivalent part number) and install the new reinforcement doubler (P/N 27K36075–7 or an FAA-approved equivalent part number) in accordance with the ACCOMPLISHMENT INSTRUCTIONS section, PART B and PART C of Fairchild SB 57–016, Issued: June 25, 1981; Revised: December 9, 1981.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from Fort Worth Airplane Certification Office.

(d) The inspection, installation, and replacement required by this AD shall be done in accordance with Fairchild Service Bulletin SA226 Series SB 57–016, Issued: June 25, 1981; Revised: December 9, 1981. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Aircraft Inc., P.O. Box 32486, San Antonio, Texas, 78284. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–10318) becomes effective on March 10, 1998.

Issued in Kansas City, Missouri, on February 2, 1998.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3397 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–43; Amendment 39–10325; AD 98–04–13]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Limited Dart Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Rolls-Royce Limited (R–R) Dart series turboprop engines, that currently establishes a life limit for propeller low torque switches. This amendment adds two propeller low torque switch part numbers and two R–R Dart engine models that were omitted from the current AD, and establishes a calendar end-date for removal of propeller low torque switches from service. This amendment is prompted by the need to add omitted part numbers and engine models to the AD. The actions specified by this AD are intended to prevent cracking of the snap diaphragm in the propeller low torque switch, which could delay propeller auto-feathering and thereby adversely affect aircraft controllability.

DATES: Effective March 24, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 24, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce plc, Attn: Dart Engine Service Manager, East Kilbride, Glasgow G74 4PY, Scotland. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7747, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding Airworthiness Directive (AD) 90–08–12, Amendment 39–6473 (55 FR 12477, April 4, 1990), which is applicable to Rolls-Royce Limited (R–R) Dart series turboprop engines, was published in the **Federal Register** on October 2, 1995 (60 FR 51377). That action proposed to add two propeller low torque switch part numbers and two R–R Dart engine models that were omitted from AD 90–08–12. In addition, the proposed AD establishes 30 days after the effective date of the AD as a calendar end-date for removal of propeller low torque switches.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The manufacturer has confirmed that since the issuance of the NPRM, all affected engines have had the low torque switch removed. Therefore, there are no affected engines installed on aircraft of U.S. registry and further opportunity for comment is unnecessary.

The FAA has made some changes to the applicability paragraph of this AD to reflect the lack of affected engines installed on aircraft of U.S. registry and changes from Mk. to Mk. series.

There are approximately 2,880 engines of the affected design in the worldwide fleet. The FAA estimates that

450 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 1.5 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $3,800 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,750,500.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6473 (55 FR 12477, April 4, 1990) and by adding a new airworthiness directive, Amendment 39–10325, to read as follows:

98–04–13 Rolls-Royce Limited: Amendment 39–10325. Docket 94–ANE–43. Supersedes AD 90–08–12, Amendment 39–6473.

Applicability: Rolls-Royce Limited (R–R) Dart Mk. 506, 10, 511 series, 514 series, 525 series, 526, 527, 528 series, 529 series, 530, 531, 532 series, 535 series, 542 series, 551 series, and 552 series turboprop engines, installed on but not limited to the following aircraft: Gulfstream Aerospace Corp. G–159, British Aerospace HS 748, Fokker Aircraft F.27, Mitsubishi Heavy Industries YS–11, General Dynamics (Convair) 580 and 600 series, and Vickers Armstrongs (Aircraft Limited) Viscount.

Note 1: Rolls-Royce Limited engine models Mk. 515, 520, 533, 534, 536, and 543 were removed in this final rule from the NPRM as these engine models were not U.S.-validated.

Note 2: Other changes to the final rule's applicability from the NPRM's applicability are as follows:

Mk. 511 was changed to Mk. 511 series
Mk. 514 was changed to Mk. 514 series
Mk. 525 was changed to Mk. 525 series
Mk. 528 was changed to Mk. 528 series
Mk. 529 was changed to Mk. 529 series
Mk. 532 was changed to Mk. 532 series
Mk. 535 was changed to Mk. 535 series
Mk. 542 was changed to Mk. 542 series
Mk. 551 was changed to Mk. 551 series
Mk. 552 was changed to Mk. 552 series.

Note 3: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the snap diaphragm in the propeller low torque switch, which could delay propeller auto-feathering and thereby adversely affect aircraft controllability, remove from service propeller low torque switch part numbers (P/N) 3700892, 3700895, 3701232, 3500355, 3500356, 3500410 through 3500412, L944707 through L944709, L944738 through L944740, L944742 through L944744, L944769, L944772, and L944774, in accordance with R–R Dart Aero Engine Service Bulletin (SB) No. Da61–12, Revision 2, dated September 1978, as follows:

(a) Remove from service propeller low torque switches that have accumulated 5 or more calendar years time in service (TIS) on the effective date of this AD, within 30 days after the effective date of this AD, and replace with a serviceable part.

(b) Remove from service propeller low torque switches that have accumulated less than 5 calendar years TIS on the effective date of this AD, within 5 calendar years total TIS, or within 30 days after the effective date of this AD, whichever occurs later, and replace with a serviceable part.

(c) Remove from service propeller low torque switches that cannot have their in-service calendar time established within 30 days after the effective date of this AD, and replace with a serviceable part.

(d) Thereafter, remove from service new or overhauled propeller low torque switches at or prior to accumulating 5 calendar years TIS since initial installation on an engine. This limit includes storage or on-shelf time accumulated after initial installation on an engine. Overhaul of the propeller low torque switch zero-times the part.

(e) For the purpose of this AD, a serviceable part is defined as a new or overhauled propeller low torque switch with less than 5 calendar years TIS since first entry into service.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 4: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Engine Certification Office.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(h) The actions required by this AD shall be done in accordance with the following R–R SB:

Document No.	Pages	Revision	Date
Dart Aero Engine SB:			
No. Da61–12	1–4	2	September 1978.
	5–6	Original	May 1976.

Total pages: 6.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce plc, Attn: Dart Engine Service Manager, East Kilbride, Glasgow G74 4PY, Scotland. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on March 24, 1998.

Issued in Burlington, Massachusetts, on February 4, 1998.

James C. Jones,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–3516 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–55–AD; Amendment 39–10334; AD 98–04–22]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE, Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to SOCATA—Groupe AEROSPATIALE, Model TBM 700 airplanes. This action requires revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by this AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Effective March 13, 1998.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–55–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 426–6932, facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to SOCATA—Groupe AEROSPATIALE, Model TBM 700 airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48506). The action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the following comments received.

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–49–AD	Aerospace Technologies of Australia, Models N22B and N24A	62 FR 48520
97–CE–50–AD	Harbin Aircraft Mfg., Corporation Model Y12 IV	62 FR 48513
97–CE–51–AD	Partenavia Costruzioni Aeronautica, S.p.A., Models P68, AP68TP 300, AP68TP 600	62 FR 48524
97–CE–52–AD	Industrie Aeronautiche Meccaniche Rinaldo Piaggio S.p.A., Model P–180	62 FR 48502
97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499
97–CE–54–AD	Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538
97–CE–55–AD	SOCATA—Groupe Aerospatiale, Model TBM–700	62 FR 48506
97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	62 FR 48481
97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549
97–CE–58–AD	Raytheon Aircraft Company, Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517
97–CE–59–AD	Raytheon Aircraft Company, Model 2000	62 FR 48531
97–CE–60–AD	The New Piper Aircraft Corporation, Models PA–46–310P and PA–46–350P	62 FR 48542

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–61–AD	The New Piper Aircraft Corporation, Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	62 FR 48546
97–CE–62–AD	Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	62 FR 48535
97–CE–63–AD	Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	62 FR 48528
97–CE–64–AD	SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	62 FR 48510
97–NM–170–AD	Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	62 FR 48560
97–NM–171–AD	Sabreliner Corporation, Models 40, 60, 70, and 80 series	62 FR 48556
97–NM–172–AD	Gulfstream Aerospace, Model G–159 series	62 FR 48563
97–NM–173–AD	McDonnell Douglas, Models DC–3 and DC–4 series	62 FR 48553
97–NM–174–AD	Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	62 FR 48567
97–NM–175–AD	Frakes Aviation, Model G–73 (Mallard) and G–73T series	62 FR 48577
97–NM–176–AD	Fairchild, Models F27 and FH227 series	62 FR 48570
97–NM–177–AD	Lockheed, L–14 and L–18 series airplanes	62 FR 48574

Comment 1. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified 14 CFR part 39 (Airworthiness Directives) of the Federal Aviation Regulations.

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

Comment 2. AD is Inappropriate to Address Improper Operation of the Airplane

One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C. 40101, formerly the Federal Aviation Act) justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless of whether the unsafe condition results from maintenance, design defect, or any other reason.

This same commenter considers part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that is outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that

exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require a revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such a revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenter's request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues (such as accumulation of ice aft of the protected area) under those conditions. For these reasons, the FAA considers that no changes regarding visual cues are necessary in the final rule. However, for those operators that elect to identify airplane-specific visual cues, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 47 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9) can accomplish this action, the only cost impact upon the public is the time it will take the affected airplane owners/operators to incorporate this AFM revision.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator will accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–04–22 Socata-Groupe Aerospatiale: Amendment 39–10334; Docket No. 97–CE–55–AD.

Applicability: Model TBM 700 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing aft of the protected area.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

All wing icing inspection lights must be operative prior to flight into icing conditions at night. [**Note:** This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as –18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–10334) becomes effective on March 13, 1998.

Issued in Kansas City, Missouri, on February 6, 1998.

Michael Gallagher,

Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3649 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–60–AD; Amendment 39–10339; AD 98–04–29]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft Corporation Models PA–46–310P and PA–46–350P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to The New Piper Aircraft Corporation Models PA–46–310P and PA–46–350P airplanes. This action requires revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by this AD are intended to prevent minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Effective March 13, 1998.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–60–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 425–6932, facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to The New Piper Aircraft Corporation Models PA–46–310P and PA–46–350P airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48542). The action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the following comments received.

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–49–AD	Aerospace Technologies of Australia, Models N22B and N24A	62 FR 48520
97–CE–50–AD	Harbin Aircraft Mfg. Corporation, Model Y12 IV	62 FR 48513
97–CE–51–AD	Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	62 FR 48524
97–CE–52–AD	Industrie Aeronautiche Meccaniche Rinaldo Piaggio S.p.A., Model P–180	62 FR 48502
97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499
97–CE–54–AD	Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538
97–CE–55–AD	SOCATA—Groupe Aerospatiale, Model TBM–700	62 FR 48506
97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	62 FR 48481
97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549
97–CE–58–AD	Raytheon Aircraft Company, Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517
97–CE–59–AD	Raytheon Aircraft Company, Model 2000	62 FR 48531
97–CE–60–AD	The New Piper Aircraft Corporation, Models PA–46–310P and PA–46–350P	62 FR 48542
97–CE–61–AD	The New Piper Aircraft Corporation, Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	
97–CE–62–AD	Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	62 FR 48535
97–CE–63–AD	Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	62 FR 48528
97–CE–64–AD	SIAI-Marchetti S.r.l., (Augusta) Models SF600 and SF600A	62 FR 48510

Docket No.	Manufacturer/airplane model	Federal Register citation
97–NM–170–AD	Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	62 FR 48560
97–NM–171–AD	Sabreliner Corporation, Models 40, 60, 70, and 80 series	62 FR 48556
97–NM–172–AD	Gulfstream Aerospace, Model G–159 series	62 FR 48563
97–NM–173–AD	McDonnell Douglas, Models DC–3 and DC–4 series	62 FR 48553
97–NM–174–AD	Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	62 FR 48567
97–NM–175–AD	Frakes Aviation, Model G–73 (Mallard) and G–73T series	62 FR 48577
97–NM–176–AD	Fairchild Models F27 and FH227 series	62 FR 48570
97–NM–177–AD	Lockheed L–14 and L–18 series airplanes	62 FR 48574

Comment 1. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified 14 CFR part 39 (Airworthiness Directives) of the Federal Aviation Regulations.

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

Comment 2. AD Is Inappropriate To Address Improper Operation of the Airplane

One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C. 40101, formerly the Federal Aviation Act) justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless of whether the unsafe condition results from maintenance, design defect, or any other reason.

This same commenter considers part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that is outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require a revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be

integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such a revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenter's request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues (such as accumulation of ice aft of the protected area) under those conditions. For these reasons, the FAA considers that no changes regarding visual cues are necessary in the final rule. However, for those operators that elect to identify airplane-specific visual cues, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

Comment 6: Specific to Piper Airplanes

Commenter states that the NPRM states that the PA–46–310P aircraft are manufactured in Australia. The manufacturer states that the airplanes are manufactured in Vero Beach, which is in Florida, in the United States, not Australia. The FAA concurs with the commenter and will correct the error in the address of The New Piper Aircraft, Inc.

Further, the commenter adds that the limitations section of the current pilot operating handbook (POH) meets the spirit and intent of the proposed AD and renders the AD superfluous.

The FAA concurs that the POH contains some language that is used in the proposed AD, but also notes that it does not meet the full intent of the AD. Specifically, the POH does not address the hazards of freezing drizzle, does not identify freezing drizzle as being outside of the certification envelope, does not provide means for the pilot to determine when the icing conditions are beyond the certification envelope, nor does it provide information to the pilot of procedures to employ when exiting the condition. In the case of the accident precipitating this AD, the airplane was flown in conditions of freezing drizzle. Thus, while the referenced POH does provide some valuable information to the pilot, the information is incomplete in several crucial areas.

If at the next POH revision, the commenter revises the POH to incorporate all the essential elements of the AD and presents a request to the FAA for its use as an alternate to the AD, the FAA will evaluate it as an alternative means of compliance to the AD. This comment will not result in a change to the final rule.

FAA Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 399 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9) can accomplish this action, the only cost impact upon the public is the time it will take the affected airplane

owners/operators to incorporate this AFM revision.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of these requirements of this AD action, and that no operator will accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–04–26 The New Piper Aircraft Corporation: Amendment 39–10338; Docket No. 97–CE–60–AD.

Applicability: Models PA–46–310P and PA–46–350P airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing aft of the protected area.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft

records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–10338) becomes effective on March 13, 1998.

Issued in Kansas City, Missouri, on February 6, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3648 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–58–AD; Amendment 39–10336; AD 98–04–24]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA Airplanes, and 60, 65–B80, 65–B90, 90, F90, 100, 300, and B300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Raytheon Aircraft Company Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA airplanes, and 60, 65–B80, 65–B90, 90, F90, 100, 300, and B300 series airplanes. This action requires revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by this AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Effective March 13, 1998.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–58–AD, Room 1558, 601 E. 12th Street, Kansas City. Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 426–6932, facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Raytheon Aircraft Company Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA Airplanes and 60, 65–B80, 65–B90, 90, F90, 100, 300, and B300 series airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48517). The action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the following comments received.

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	Federal Register citation
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97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	62 FR 48481

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97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549
97–CE–58–AD	Raytheon Aircraft Company, Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517
97–CE–59–AD	Raytheon Aircraft Company, Model 2000	62 FR 48531
97–CE–60–AD	The New Piper Aircraft Corporation, Models PA–46–310P and PA–46–350P	62 FR 48542
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97–CE–63–AD	Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	62 FR 48528
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97–NM–172–AD	Gulfstream Aerospace, Model G–159 series	62 FR 48563
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97–NM–174–AD	Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	62 FR 48567
97–NM–175–AD	Frakes Aviation, Model G–73 (Mallard) and G–73T series	62 FR 48577
97–NM–176–AD	Fairchild, Models F27 and FH227 series	62 FR 48570
97–NM–177–AD	Lockheed, L–14 and L–18 series airplanes	62 FR 48574

Comment 1. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified 14 CFR part 39 (Airworthiness Directives) of the Federal Aviation Regulations.

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

Comment 2. AD Is Inappropriate to Address Improper Operation of the Airplane

One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C. 40101, formerly the Federal Aviation Act) justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless

of whether the unsafe condition results from maintenance, design defect, or any other reason.

This same commenter considers part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that is outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require a revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such a revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenter's request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues (such as accumulation of ice aft of the protected area) under those conditions. For these reasons, the FAA considers that no changes regarding visual cues are necessary in the final rule. However, for those operators that elect to identify airplane-specific visual cues, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections.

The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 2,140 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9) can accomplish this action, the only cost impact upon the public is the time it will take the affected airplane owners/operators to incorporate this AFM revision.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of this requirements of this AD action, and that no operator will accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–04–24 Raytheon Aircraft Company: Amendment 39–10336; Docket No. 97–CE–58–AD.

Applicability: Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, and 58TCA Airplanes and 60, 65–B80, 65–B90, 90, F90, 100, 300, and B300 series airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing, aft of the protected area.

—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN–FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

• These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private

pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–10336) becomes effective on March 13, 1998.

Issued in Kansas City, Missouri, on February 6, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3647 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–49–AD; Amendment 39–10336; AD 98–04–15]

RIN 2120–AA64

Airworthiness Directives; AeroSpace Technologies of Australia Pty Ltd. Models N22B and N24A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain AeroSpace Technologies of Australia (ASTA) Models N22B and N24A airplanes. This action requires revising the FAA-approved airplane flight manual (AFM) to specify procedures that will prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This AD is prompted by results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by this AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Effective March 13, 1998.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–49–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that will apply to AeroSpace Technologies of Australia Pty Ltd. (ASTA) Models N22B and N24A airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48520). The action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the following comments received.

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all public comments received for each of these proposed rules.

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97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499.
97–CE–54–AD	Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538.
97–CE–55–AD	SOCATA—Groupe Aerospatiale, Model TBM–700	62 FR 48506.
97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	62 FR 48481.

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97–NM–175–AD	Frakes Aviation, Model G–73 (Mallard) and G–73T series	62 FR 48577.
97–NM–176–AD	Fairchild, Models F27 and FH227 series	62 FR 48570.
97–NM–177–AD	Lockheed, L–14 and L–18 series airplanes	62 FR 48574.

Comment 1. Unsubstantiated Unsafe Condition for This Model

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The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

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Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

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One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

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of whether the unsafe condition results from maintenance, design defect, or any other reason.

This same commenter considers part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that is outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require a revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such a revision of the AFM is issuance of an AD. No change is necessary to the final rule.

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One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenter's request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues (such as accumulation of ice aft of the protected area) under those conditions. For these reasons, the FAA considers that no changes regarding visual cues are necessary in the final rule. However, for those operators that elect to identify airplane-specific visual cues, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

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While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

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This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 15 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9) can accomplish this action, the only cost impact upon the public is the time it will take the affected airplane owners/operators to incorporate this AFM revision.

The cost impact figure discussed above is based on the assumption that no operator has yet accomplished any of the requirements of this AD action, and that no operator will accomplish these actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98-04-18 Aerospace Technologies of Australia PTY Ltd.: Amendment 39-10330; Docket No. 97-CE-49-AD

Applicability: Models N22B and N24A airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the lower surface of the wing aft of the protected area.

—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All icing wing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"The Following Weather Conditions May be Conducive to Severe In-Flight Icing

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

Procedures for Exiting The Severe Icing Environment

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR

43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–10330) becomes effective on March 13, 1998.

Issued in Kansas City, Missouri, on February 6, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3646 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–59–AD; Amendment 39–10337; AD 98–04–25]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 2000 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Raytheon Aircraft Company Model 2000 airplanes. This action requires revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by this AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Effective March 13, 1998.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–59–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 426–6932, facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Raytheon Aircraft Company Model 2000 airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48531). The action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the following comments received.

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–49–AD	Aerospace Technologies of Australia, Models N22B and N24A	62 FR 48520
97–CE–50–AD	Harbin Aircraft Mfg. Corporation, Model Y12 IV	62 FR 48513
97–CE–51–AD	Partenavia Costruzioni Aeronautica, S.p.A., Models P68, AP68TP 300, AP68TP 600	62 FR 48524
97–CE–52–AD	Industrie Aeronautiche Meccaniche Rinaldo Piaggio S.p.A., Model P–180	62 FR 48502
97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499
97–CE–54–AD	Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538
97–CE–55–AD	SOCATA—Groupe Aerospatiale, Model TBM–700	62 FR 48506
97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	62 FR 48481
97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–58–AD	Raytheon Aircraft Company, Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517
97–CE–59–AD	Raytheon Aircraft Company, Model 2000	62 FR 48531
97–CE–60–AD	The New Piper Aircraft Corporation, Models PA–46–310P and PA–46–350P	62 FR 48542
97–CE–61–AD	The New Piper Aircraft Corporation, Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	
97–CE–62–AD	Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	62 FR 48535
97–CE–63–AD	Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	62 FR 48528
97–CE–64–AD	SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	62 FR 48510
97–NM–170–AD	Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	62 FR 48560
97–NM–171–AD	Sabreliner Corporation, Models 40, 60, 70, and 80 series	62 FR 48556
97–NM–172–AD	Gulfstream Aerospace, Model G–159 series	62 FR 48563
97–NM–173–AD	McDonnell Douglas, Models DC–3 and DC–4 series	62 FR 48553
97–NM–174–AD	Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	62 FR 48567
97–NM–175–AD	Frakes Aviation, Model G–73 (Mallard) and G–73T series	62 FR 48577
97–NM–176–AD	Fairchild, Models F27 and FH227 series	62 FR 48570
97–NM–177–AD	Lockheed, L–14 and L–18 series airplanes	62 FR 48574

Comment 1. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified 14 CFR part 39 (Airworthiness Directives) of the Federal Aviation Regulations.

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

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The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 51 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9) can accomplish this action, the only cost impact upon the public is the time it will take the affected airplane owners/operators to incorporate this AFM revision.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator will accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that

continued operational safety necessitates the imposition of the costs.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–04–25 Raytheon Aircraft Company: Amendment 39–10337; Docket No. 97–CE–59–AD.

Applicability: Model 2000 airplanes, (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing, aft of the protected area.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–10337) becomes effective on March 13, 1998.

Issued in Kansas City, Missouri, on February 6, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3645 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–61–AD; Amendment 39–10339; AD 98–04–27]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft Corporation Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to The New Piper Aircraft Corporation (Piper) Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000 airplanes. This action requires revising the FAA-approved airplane flight manual (AFM) to specify procedures that will prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

This AD is prompted by results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by this AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Effective March 13, 1998.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–61–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply Piper Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 16, 1997 (62 FR 48546). The action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the following comments received.

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–49–AD	Aerospace Technologies of Australia, Models N22B and N24A	62 FR 48520.
97–CE–50–AD	Harbin Aircraft Mfg. Corporation, Model Y12 IV	62 FR 48513
97–CE–51–AD	Partenavia Costruzioni Aeronautica, S.p.A., Models P68, AP68TP 300, AP68TP 600	62 FR 48524.
97–CE–52–AD	Industrie Aeronautiche Meccaniche Rinaldo Piaggio, S.p.A., Model P–180	62 FR 48502.
97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499.
97–CE–54–AD	Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538.
97–CE–55–AD	SOCATA—Groupe Aerospatiale, Model TBM–700	62 FR 48506.
97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	62 FR 48481.
97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549.

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–58–AD	Raytheon Aircraft Company, Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517.
97–CE–59–AD	Raytheon Aircraft Company, Model 2000	62 FR 48531.
97–CE–60–AD	The New Piper Aircraft Corporation, Models PA–46–310P and PA–46–350P	62 FR 48542.
97–CE–61–AD	The New Piper Aircraft Corporation, Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, and PA–42–1000.	62 FR 48546.
97–CE–62–AD	Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	62 FR 48535.
97–CE–63–AD	Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	62 FR 48528.
97–CE–64–AD	SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	62 FR 48510.
97–NM–170–AD	Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	62 FR 48560.
97–NM–171–AD	Sabreliner Corporation, Models 40, 60, 70, and 80 series	62 FR 48556.
97–NM–172–AD	Gulfstream Aerospace, Model G–159 series	62 FR 48563.
97–NM–173–AD	McDonnell Douglas, Models DC–3 and DC–4 series	62 FR 48553.
97–NM–174–AD	Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	62 FR 48567.
97–NM–175–AD	Frakes Aviation, Model G–73 (Mallard) and G–73T series	62 FR 48577.
97–NM–176–AD	Fairchild, Models F27 and FH227 series	62 FR 48570.
97–NM–177–AD	Lockheed, L–14 and L–18 series airplanes	62 FR 48574.

Comment 1. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified 14 CFR part 39 (Airworthiness Directives) of the Federal Aviation Regulations.

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

Comment 2. AD is Inappropriate to Address Improper Operation of the Airplane

One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C. 40101, formerly the Federal Aviation Act) justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless of whether the unsafe condition results from maintenance, design defect, or any other reason.

This same commenter considers part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is

certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that is outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require a revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such a revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenter's request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues (such as accumulation of ice aft of the protected area) under those conditions. For these reasons, the FAA considers that no changes regarding visual cues are necessary in the final rule. However, for those operators that elect to identify airplane-specific visual cues, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 5,265 airplanes in the U.S. registry would be affected by this AD, that it would take approximately 1 workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9) can accomplish this action, the only cost impact upon the public is the time it will take the affected airplane owners/operators to incorporate this AFM revision.

The cost impact figure discussed above is based on the assumption that no operator has yet accomplished any of the requirements of this AD action, and that no operator will accomplish these actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that

continued operational safety necessitates the imposition of the costs.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98-04-27 The New Piper Aircraft Corporation: Amendment 39-10339; Docket No. 97-CE-61-AD.

Applicability: Models PA-23, PA-23-160, PA-23-235, PA-23-250, PA-E23-250, PA-30, PA-39, PA-40, PA-31, PA-31-300, PA-31-325, PA-31-350, PA-34-200, PA-34-200T, PA-34-220T, PA-42, PA-42-720, PA-42-1000 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

NOTE 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.
—Accumulation of ice on the upper surface of the wing, aft of the protected area.
—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane

Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–10339) becomes effective on March 13, 1998.

Issued in Kansas City, Missouri, on February 6, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3644 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–56–AD; Amendment 39–10339; AD 98–04–23]

RIN 2120–AA64

Airworthiness Directives; Aerostar Aircraft Corporation Models PA–60–600, PA–60–601, PA–60–601P, PA–60–602P, and PA–60–700P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Aerostar Aircraft Corporation Models PA–60–600, PA–60–601, PA–60–601P, PA–60–602P, and PA–60–700P airplanes. This action requires revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by this AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Effective March 13, 1998.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–56–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 426–6932, facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Aerostar Aircraft Corporation Models PA–60–600, PA–60–601, PA–60–601P, PA–60–602P, and PA–60–700P airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48581). The action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the following comments received.

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–49–AD	Aerospace Technologies of Australia, Models N22B and N24A	62 FR 48520.
97–CE–50–AD	Harbin Aircraft Mfg. Corporation, Model Y12 IV	62 FR 48513.
97–CE–51–AD	Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	62 FR 48524.
97–CE–52–AD	Industrie Aeronautiche Meccaniche Rinaldo Piaggio S.p.A., Model P–180	62 FR 48502.
97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499.
97–CE–54–AD	Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538.
97–CE–55–AD	SOCATA—Groupe Aerospatiale, Model TBM–700	62 FR 48506.
97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	62 FR 48481.
97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549.
97–CE–58–AD	Raytheon Aircraft Company, Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517.
97–CE–59–AD	Raytheon Aircraft Company, Model 2000	62 FR 48531.

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–60–AD	The New Piper Aircraft Corporation, Models PA–46–310P and PA–46–350P	62 FR 48542.
97–CE–61–AD	The New Piper Aircraft Corporation, Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	62 FR 48546.
97–CE–62–AD	Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	62 FR 48535.
97–CE–63–AD	Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	62 FR 48528.
97–CE–64–AD	SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	62 FR 48510.
97–NM–170–AD	Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	62 FR 48560.
97–NM–171–AD	Sabreliner Corporation, Models 40, 60, 70, and 80 series	62 FR 48556.
97–NM–172–AD	Gulfstream Aerospace, Model G–159 series	62 FR 48563.
97–NM–173–AD	McDonnell Douglas, Models DC–3 and DC–4 series	62 FR 48553.
97–NM–174–AD	Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	62 FR 48567.
97–NM–175–AD	Frakes Aviation, Model G–73 (Mallard) and G–73T series	62 FR 48577.
97–NM–176–AD	Fairchild, Models F27 and FH227 series	62 FR 48570.
97–NM–177–AD	Lockheed, L–14 and L–18 series airplanes	62 FR 48574.

Comment 1. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified 14 CFR part 39 (Airworthiness Directives) of the Federal Aviation Regulations.

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

Comment 2. AD is Inappropriate to Address Improper Operation of the Airplane

One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C. 40101, formerly the Federal Aviation Act) justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless of whether the unsafe condition results from maintenance, design defect, or any other reason.

This same commenter considers part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that is outside the icing certification envelope does occur. Apart from the visual cues provided in these

final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require a revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such a revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenter's request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues (such as accumulation of ice aft of the protected area) under those conditions. For these reasons, the FAA considers that no changes regarding visual cues are necessary in the final rule. However, for those operators that elect to identify airplane-specific visual cues, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 526 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9) can accomplish this action, the only cost impact upon the public is the time it will take the affected airplane owners/operators to incorporate this AFM revision.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator will accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–04–23 Aerostar Aircraft Corporation: Amendment 39–10335; Docket No. 97–CE–56–AD.

Applicability: Models PA–60–600, PA–60–601, PA–60–601P, PA–60–602P, and PA–60–700P airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.
—Accumulation of ice on the upper surface of the wing, aft of the protected area.
—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in severe icing conditions.

• All wing icing inspection lights must be operative prior to flight into icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.
• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.
• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.
• Do not engage the autopilot.
• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.
• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.
• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.
• If the flaps are extended, do not retract them until the airframe is clear of ice.
• Report these weather conditions to Air Traffic Control."

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–10335) becomes effective on March 13, 1998.

Issued in Kansas City, Missouri, on February 6, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3643 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–54–AD; Amendment 39–10333; AD 98–04–21]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Limited Models BN–2A, BN–2B, and BN–2T Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Pilatus Britten-Norman Limited BN–2A, BN–2B, and BN–2T Series airplanes. This action requires revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by this AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Effective March 13, 1998.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–54–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 426–6932, facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Pilatus Britten-Norman Limited Models BN–2A, BN–2B, and BN–2T airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48458). The action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the following comments received.

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all public comments received for each of these proposed rules.

Docket no.	Manufacturer/airplane model	Federal Register citation
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97–CE–57–AD	Twin Commander Aircraft, Corporation Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549.
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97–NM–173–AD	McDonnell Douglas Models, DC–3 and DC–4 series	62 FR 48553.
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97–NM–176–AD	Fairchild, Models F27 and FH227 series	62 FR 48570.
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Comment 1. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified in 14 CFR part 39 (Airworthiness Directives) of the Federal Aviation Regulations.

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

Comment 2. AD is Inappropriate to Address Improper Operation of the Airplane

One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C. 40101, formerly the Federal Aviation Act) justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless of whether the unsafe condition results from maintenance, design defect, or any other reason.

This same commenter considers part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that is outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require a revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind

the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such a revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenter's request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues (such as accumulation of ice aft of the protected area) under those conditions. For these reasons, the FAA considers that no changes regarding visual cues are necessary in the final rule. However, for those operators that elect to identify airplane-specific visual cues, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 12 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9) can accomplish this action, the only cost impact upon the public is the time it will take the affected airplane owners/operators to incorporate this AFM revision.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of this requirements of this AD action, and that no operator will accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under

Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–04–21 Pilatus Britten-Norman Limited: Amendment 39–10333; Docket No. 97–CE–54–AD.

Applicability: Models BN–2A, BN–2B, and BN–2T airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the lower surface of the wing aft of the protected area.

—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All icing detection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as -18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the lower surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–10333) becomes effective on March 13, 1998.

Issued in Kansas City, Missouri, on February 6, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3642 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–51–AD; Amendment 39–10332; AD 98–04–20]

RIN 2120–AA64

Airworthiness Directives; Partenavia Costruzioni Aeronauticas, S.p.A. Model P68, AP68TP 300, AP68TP 600 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Partenavia Costruzioni Aeronauticas, S.p.A. Model P68, AP68TP 300, AP68TP 600 airplanes. This action requires revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by this AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Effective March 13, 1998.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–51–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 426–6932, facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Partenavia Costruzioni Aeronauticas, S.p.A. Model P68, AP68TP 300, AP68TP 600 airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48524). That action proposed to require the Limitations Section of the FAA-approved AFM to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the following comments received.

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all public comments received for each of these proposed rules.

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The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

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One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C. 40101, formerly the Federal Aviation Act) justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless of whether the unsafe condition results from maintenance, design defect, or any other reason.

This same commenter considers part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that is outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require a revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and

that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such a revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenter's request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues (such as accumulation of ice aft of the protected area) under those conditions. For these reasons, the FAA considers that no changes regarding visual cues are necessary in the final rule. However, for those operators that elect to identify airplane-specific visual cues, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

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While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 5 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9) can accomplish this action, the only cost impact upon the public is the time it will take the affected airplane owners/operators to incorporate this AFM revision.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of this requirements of this AD action, and that no operator will accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–04–20 Partenavia Construzioni Aeronauticas, S.p.A: Amendment 39–10332; Docket No. 97–CE–51–AD.

Applicability: Model P68, AP68TP 300, AP68TP 600 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"Warning

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.
—Accumulation of ice on the lower surface of the wing aft of the protected area.
—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–10332) becomes effective on March 13, 1998.

Issued in Kansas City, Missouri, on February 6, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3641 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–63–AD; Amendment 39–10340; AD 98–04–28]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Cessna Aircraft Company Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441 airplanes. This action requires revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. The proposed AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by this AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Effective March 13, 1998.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–63–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 426–6932, facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply Cessna Aircraft Company Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441 airplanes was published in the **Federal Register** September 16, 1997 (62 FR 48528). The action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

- require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- prohibit flight in severe icing conditions (as determined by certain visual cues);
- prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the following comments received.

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–49–AD	Aerospace Technologies of Australia, Models N22B and N24A	62 FR 48520
97–CE–50–AD	Harbin Aircraft Mfg. Corporation, Model Y12 IV	62 FR 48513
97–CE–51–AD	Partenavia Costruzioni Aeronautica, S.p.A., Models P68, AP68TP 300, AP68TP 600	62 FR 48524
97–CE–52–AD	Industrie Aeronautiche Meccaniche Rinaldo Piaggio S.p.A., Model P–180	62 FR 48502
97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499
97–CE–54–AD	Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538
97–CE–55–AD	SOCATA—Groupe Aerospatiale, Model TBM–700	62 FR 48506
97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	62 FR 48481
97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549
97–CE–58–AD	Raytheon Aircraft Company, Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517
97–CE–59–AD	Raytheon Aircraft Company, Model 2000	62 FR 48531
97–CE–60–AD	The New Piper Aircraft Corporation, Models PA–46–310P and PA–46–350P	62 FR 48542
97–CE–61–AD	The New Piper Aircraft Corporation, Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	62 FR 48546
97–CE–62–AD	Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	62 FR 48535
97–CE–63–AD	Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	62 FR 48528
97–CE–64–AD	SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	62 FR 48510
97–NM–170–AD	Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	62 FR 48560

Docket No.	Manufacturer/airplane model	Federal Register citation
97–NM–171–AD	Sabreliner Corporation, Models 40, 60, 70, and 80 series	62 FR 48556
97–NM–172–AD	Gulfstream Aerospace, Model G–159 series	62 FR 48563
97–NM–173–AD	McDonnell Douglas, Models DC–3 and DC–4 series	62 FR 48563
97–NM–174–AD	Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	62 FR 48567
97–NM–175–AD	Frakes Aviation, Model G–73 (Mallard) and G–73T series	62 FR 48577
97–NM–176–AD	Fairchild, Models F27 and FH227 series	62 FR 48570
97–NM–177–AD	Lockheed, L–14 and L–18 series airplanes	62 FR 48574

Comment 1. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified 14 CFR part 39 (Airworthiness Directives) of the Federal Aviation Regulations.

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

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While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 4,344 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9) can accomplish this action, the only cost impact upon the public is the time it will take the affected airplane owners/operators to incorporate this AFM revision.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of this requirements of this AD action, and that no operator will accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the

Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–04–28 Cessna Aircraft Company: Amendment 39–10340; Docket No. 97–CE–63–AD.

Applicability: Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing, aft of the protected area.

—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in severe icing conditions.

• All wing icing inspection lights must be operative prior to flight into icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

—Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–10340) becomes effective on March 13, 1998.

Issued in Kansas City, Missouri, on February 6, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3640 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-CE-45-AD; Amendment 39-10328; AD 98-04-16]

RIN 2120-AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC-12 and PC-12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft Ltd. (Pilatus) Models PC-12 and PC-12/45 airplanes. This AD requires inspecting the aileron tie-rod jam nuts for looseness, tightening any loose jam nuts, and installing a locking sleeve on both ends of the aileron tie-rod in the chain-drive of the aileron system. The AD results from an incident where the aileron tie-rod jam nuts on the chain-drive of the aileron system became loose. This caused a differential of aileron control between the pilot's control wheel and the co-pilot's control wheel. The actions specified by this AD are intended to prevent such aileron control differential caused by the aileron tie-rod jam nuts becoming loose, which could result in loss of aileron control and consequent loss of control of the airplane.

DATES: Effective April 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 2, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Pilatus Aircraft Ltd., CH-6370 Stans, Switzerland. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE-45-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; *telephone:* (816) 426-6932; *facsimile:* (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Models PC-12 and PC-12/45 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 6, 1997 (62 FR 52055). The NPRM proposed to require inspecting the aileron tie-rod jam nuts for looseness, tightening any loose jam nuts, and installing a locking sleeve on both ends of the aileron tie-rod in the chain-drive of the aileron system. Accomplishment of the proposed actions as specified in the NPRM would be in accordance with Pilatus Service Bulletin No. 27-001, dated March 25, 1997.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 40 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 5 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts will be provided by the manufacturer at no cost to the owner/operator of the affected airplanes. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $12,000, or $300 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98-04-16 Pilatus Aircraft Ltd.: Amendment 39-10328; Docket No. 97-CE-45-AD.

Applicability: Models PC-12 and PC-12/45 airplanes, serial numbers 101 through 169, certificated in any category.

Note 1: The modification required by this AD is incorporated at manufacture on Models PC-12 and PC-12/45 airplanes, beginning with serial number 170. Airplanes with this modification are not affected by this AD.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent a differential of aileron control between the pilot's control wheel and the co-pilot's control wheel caused by the aileron tie-rod jam nuts becoming loose, which could result in loss of aileron control and consequent loss of control of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect the aileron tie-rod jam nuts for looseness in accordance with the Accomplishment Instructions section of Pilatus Service Bulletin No. 27–001, dated March 25, 1997. Prior to further flight, tighten any loose jam nuts in accordance with the above-referenced service bulletin.

(b) Within the next 100 hours TIS after the effective date of this AD, install a locking sleeve on both ends of the aileron tie-rod in the chain-drive of the aileron system in accordance with the Accomplishment Instructions section of Pilatus Service Bulletin No. 27–001, dated March 25, 1997.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) The inspection, tightening, and installation required by this AD shall be done in accordance with Pilatus Service Bulletin No. 27–001, dated March 25, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pilatus Aircraft Ltd., CH–6370 Stans, Switzerland. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Swiss AD HB 97–174, dated April 30, 1997.

(f) This amendment (39–10328) becomes effective on April 2, 1998.

Issued in Kansas City, Missouri, on February 5, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3637 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–50–AD; Amendment 39–10331; AD 98–04–19]

RIN 2120–AA64

Airworthiness Directives; Harbin Aircraft Manufacturing Corporation Model Y12 IV Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Harbin Aircraft Manufacturing Corporation (HMAC) Model Y12 IV airplanes. This action requires revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by this AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Effective March 13, 1998.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–50–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 426–6932, facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Harbin Aircraft Manufacturing Corporation Model Y12 IV airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48513). The action proposed to revise the Limitations Section of the FAA-approved AFM to specify procedures that would:

- require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- prohibit flight in severe icing conditions (as determined by certain visual cues);
- prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the following comments received.

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–49–AD	Aerospace Technologies of Australia, Models N22B and N24A	62 FR 48520
97–CE–50–AD	Harbin Aircraft Mfg. Corporation, Model Y12 IV	62 FR 48513
97–CE–51–AD	Partenavia Costruzioni Aeronautiche, S.p.A., Models P68, AP68TP 300, AP68TP 600	62 FR 48524
97–CE–52–AD	Industrie Aeronautiche Meccaniche Rinaldo Piaggio S.p.A., Model P–180	62 FR 48502
97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499
97–CE–54–AD	Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538
97–CE–55–AD	SOCATA—Groupe Aerospatiale, Model TBM–700	62 FR 48506
97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	62 FR 48481
97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549
97–CE–58–AD	Raytheon Aircraft Company, Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517
97–CE–59–AD	Raytheon Aircraft Company, Model 2000	62 FR 48531
97–CE–60–AD	The New Piper Aircraft Corporation, Models PA–46–310P and PA–46–350P	62 FR 48542
97–CE–61–AD	The New Piper Aircraft Corporation, Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	62 FR 48546
97–CE–62–AD	Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	62 FR 48535
97–CE–63–AD	Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	62 FR 48528
97–CE–64–AD	SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	62 FR 48510
97–NM–170–AD	Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	62 FR 48560
97–NM–171–AD	Sabreliner Corporation, Models 40, 60, 70, and 80 series	62 FR 48556
97–NM–172–AD	Gulfstream Aerospace, Model G–159 series	62 FR 48563
97–NM–173–AD	McDonnell Douglas, Models DC–3 and DC–4 series	62 FR 48553
97–NM–174–AD	Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	62 FR 48567
97–NM–175–AD	Frakes Aviation, Model G–73 (Mallard) and G–73T series	62 FR 48577
97–NM–176–AD	Fairchild, Models F27 and FH227 series	62 FR 48570
97–NM–177–AD	Lockheed, L–14 and L–18 series airplanes	62 FR 48574

Comment 1. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified 14 CFR part 39 (Airworthiness Directives) of the Federal Aviation Regulations.

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

Comment 2. AD is Inappropriate to Address Improper Operation of the Airplane

One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C. 40101, formerly the Federal Aviation Act) justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless of whether the unsafe condition results from maintenance, design defect, or any other reason.

This same commenter considers part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that is outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require a revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such a revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenter's request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues (such as accumulation of ice aft of the protected area) under those conditions. For these reasons, the FAA considers that no changes regarding visual cues are necessary in the final rule. However, for those operators that elect to identify airplane-specific visual cues, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden

upon the public than was already proposed.

Cost Impact

The FAA has determined that there are no Harbin Model Y12 IV airplanes currently in the U.S. registry that will be affected by this AD. If any of these airplanes were registered in the U.S., it would take approximately 1 workhour per airplane to accomplish this action, and the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9) can accomplish this action, the only cost impact upon the public is the time it will take the affected airplane owners/operators to incorporate this AFM revision.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator will accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–04–19 Harbin Aircraft Manufacturing Corporation: Amendment 39–10331; Docket No. 97–CE–50–AD.

Applicability: Model Y12 IV airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crew members are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"Warning

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the lower surface of the wing aft of the protected area.

—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as –18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended

exposure to flight conditions more severe than those for which the airplane has been certificated.

- Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.
- Do not engage the autopilot.
- If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.
- If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.
- Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the lower surface further aft on the wing than normal, possibly aft of the protected area.
- If the flaps are extended, do not retract them until the airframe is clear of ice.
- Report these weather conditions to Air Traffic Control."

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–10331) becomes effective on March 13, 1998.

Issued in Kansas City, Missouri, on February 6, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3636 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–78–AD; Amendment 39–10341; AD 98–04–29]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, that requires a one-time visual inspection of the manual extension gearbox assembly of the main landing gear (MLG) to detect whether certain gearbox housings have been installed; repetitive dye penetrant inspections of these housings to determine whether cracking has occurred; and ultimately, replacement of these housings with correct housings. This amendment is prompted by a report indicating that a manual gearbox assembly which contained an incorrect housing was installed on a Model 727 series airplane. The actions specified by this AD are intended to detect the installation of manual extension gearbox assemblies with incorrect housings. This condition, if not corrected, could reduce the structural integrity of the manual extension gearbox assembly, and ultimately result in an inability to lock the MLG in a down position during landing.

DATES: Effective March 24, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 24, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter M. Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 727 series airplanes was published in the **Federal Register** on October 3, 1996 (61 FR 51621). That action proposed to require a one-time visual inspection of the manual extension gearbox assembly of the main landing gear (MLG) to detect whether this assembly contains the correct left and right gearbox housings/housing assemblies. If incorrect housings/housing assemblies are installed, that action also proposed to require repetitive dye penetrant inspections of these housings to determine whether cracking has occurred; and ultimately, replacement of these housings with correct housings.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Three commenters support the proposed rule.

Request to Withdraw the Proposal

Several commenters state that the proposed AD is unnecessary because AD 79–04–01 R3, amendment 39–4000 (45 FR 84014, December 22, 1980), addresses the problem, thus the proposed AD only duplicates time and effort. One of these commenters points out that the "incomplete information . . ." of Boeing Overhaul Manual 32–35–01 (referred to in the Discussion Section of the preamble of the proposed AD) is "a very gray area." This commenter contends that almost all overhaul manuals contain "incomplete information," even when components are affected by AD's. The commenters assert that it is the responsibility of the operators and component vendors to determine which parts are affected by an AD. Two of these commenters state that all of their gearbox housings comply with the requirements of AD 79–01–04 R3.

The FAA does not concur that the proposed AD should be withdrawn. The FAA acknowledges that, even though an overhaul manual may contain

incomplete information, operators are responsible for the overall airworthiness of the airplane. In addition, component vendors should be cognizant of AD's that affect parts they are overhauling.

However, as explained in the Discussion section of the preamble of the proposed AD, the FAA has received a report indicating that a manual extension gearbox assembly for the MLG on a Boeing Model 727 series airplane had been replaced with a modified gearbox assembly that did not comply with AD 79–01–04 R3. In light of this report and the fact that the manufacturer's overhaul manual contained incomplete information for a period of time, the FAA finds that there currently may be other Model 727 series airplanes in service that are operating with incorrect gearbox housing/housing assemblies installed. Therefore, the FAA has determined that a one-time visual inspection of the manual extension gearbox assembly of the main landing gear (MLG) is necessary to detect whether or not these discrepant housings have been installed.

Request to Extend Compliance Time for One-Time Visual Inspection

One commenter requests that the compliance time for accomplishing the proposed one-time visual inspection be extended from the proposed 6 months to the first "C" check after the effective date of the AD. The commenter points out that it has found no cracked gearbox housing since accomplishment of AD 79–04–01 R3.

The FAA does not concur. In developing an appropriate compliance time for this action, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the visual inspection. In consideration of these items, as well as the report indicating that a manual gearbox assembly containing an incorrect housing had been installed on an airplane in service, the FAA has determined that a 6-month compliance time is appropriate.

Request to Extend Compliance Time for Initial Dye Penetrant Inspection

One commenter requests that the compliance time for accomplishing the dye penetrant inspection required by paragraph (c) of the proposed AD be extended from the proposed "prior to further flight" to "within 100 hours time-in-service or 50 landings, whichever occurs first." The commenter states that the proposed compliance time is not justified because the FAA has not received recent reports of incorrect housing/housing assemblies that have been cracked. This commenter also states that it would have to special schedule its fleet of airplanes to accomplish this inspection within the proposed compliance time; this would entail considerable additional expenses and schedule disruptions.

The FAA concurs partially. The FAA finds that stress corrosion cracking in the vertical support attaching lugs of the MLG manual extension-gearbox housing is caused by the combined action of corrosion and stress, either external (applied) or internal (residual). It is difficult to predict when stress corrosion cracking will occur because corrosion is influenced by unpredictable factors, such as the operating environment, maintenance, and the passage of time. If those housings/housing assemblies are still installed on airplanes more than 17 years after AD 79–04–01 R3 was issued, there is a greater likelihood that stress corrosion cracking exists; therefore, the FAA finds that accomplishment of a dye penetrant inspection prior to further flight following accomplishment of the initial visual inspection is warranted.

However, the FAA's intent is that the dye penetrant inspection be conducted during a regularly schedule maintenance visit for the majority of the affected fleet, when the airplanes would be located at a base where special equipment and trained personnel would be readily available, if necessary. The FAA finds that in lieu of accomplishing a dye penetrant inspection, an operator may choose to replace the discrepant part with an updated part prior to further flight following accomplishment of the initial visual inspection. Therefore, paragraph (c) of the final rule has been revised to provide operators with this option.

Request to Revise Dye Penetrant Inspection Requirement

One commenter requests that operators be advised of where the incorrect gear boxes were found and of the source that obtained them. Subsequently, the discrepant gear boxes could be tracked and the proposed inspection requirements could be limited to those operators that received the discrepant housings from the suspect sources. The commenter also suggests that the initial visual inspection be accomplished within 300 landings and repeated at intervals not to exceed 6 months, and suggests that the replacement be accomplished within 18 months.

The FAA does not concur. The FAA is unable to determine all sources of discrepant housings. Therefore, the FAA finds that the proposed one-time visual inspection is necessary to determine whether certain gearbox housings have been installed. In addition, the FAA finds that a compliance time based on a number of landings is not acceptable because, as discussed previously, it is difficult to predict when stress corrosion cracking will occur.

Request to Revise Applicability of the Proposal

Two commenters request that the applicability of the proposed AD be revised to exclude airplanes whose operators are confident of their gearbox installations or have internal procedures to ensure that only correct housing/housing assemblies are installed in accordance with AD 79–04–01 R3.

The FAA does not concur. A one-time visual inspection to confirm the presence of correct housings should not pose an undue burden to operators. If an operator chooses to review its available records, however, to determine that incorrect manual extension gearbox assemblies have not been installed, the operator may request approval of an alternative method of compliance in accordance with the provisions of paragraph (d) of this AD.

Request to Revise Table 2 of the Proposal

One commenter requests that Table 2 of the proposed AD, which lists the part numbers of correct replacement housings and housing assemblies, be revised to include the Boeing part number of the die forging from which these parts could be made. (Not all of the correct parts are made from this forging.) The commenter points out that the part number on this die forging is easily ascertained and permanent, unlike the numbers on the housings/housing assemblies currently listed in Table 2. For the reasons the commenter states, the FAA concurs and has revised Table 2, as requested. In addition, because all the incorrect housings/housing assemblies are made from a certain die forging, the FAA has added the Boeing part number of that forging to Table 1, which lists the part numbers of incorrect housing and housing assemblies.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,560 Boeing Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,054 airplanes of U.S. registry will be affected by this AD.

The FAA estimates that it will take approximately 2 work hours per airplane to accomplish the required one-time visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $126,480, or $120 per airplane.

Should a dye penetrant inspection need to be performed, the FAA estimates that each inspection will take approximately 20 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed dye penetrant inspection on U.S. operators is estimated to be $1,200 per airplane, per inspection.

Should parts have to be replaced, the FAA estimates that it will take approximately 16 work hours per airplane to accomplish the replacement, at an average labor rate of $60 per work hour. Replacement parts will cost approximately $4,000 per housing. Based on these figures, the cost impact of replacement of parts on U.S. operators is estimated to be $4,960 per airplane if one housing is to be replaced, and $8,960 if both housings are to be replaced.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator will accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–04–29 Boeing: Amendment 39–10341. Docket 96–NM–78–AD.

Applicability: All Model 727 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect the installation of manual extension gearbox assemblies that do not contain required gearbox housings/housing assemblies, and ultimately could result in the inability of the flight crew to lock the main landing gear (MLG) in the down position during landing, accomplish the following:

(a) Within 6 months after the effective date of this AD, visually inspect the manual extension gearbox assembly of the MLG, in accordance with Boeing Service Bulletin 727–32–279, dated June 22, 1979, to determine whether left and right gearbox housings/housing assemblies having Boeing part numbers listed in Table 1 of this AD are installed.

Note 2: If the part number is not visible, a conductivity test may be performed to determine the type of housing material. Incorrect housings are made of 7079–T6 aluminum; correct housings are made of 7075–T73 aluminum.

TABLE 1.—BOEING PART NUMBERS OF INCORRECT HOUSINGS AND HOUSING ASSEMBLIES

Housings*	Housing assemblies
65–27485–3	65–27485–1
65–27485–4	65–27485–2
65–27485–9	65–27485–7
65–27485–10	65–27485–8

* All housings are made from die forging 65–27485–6.

(b) If none of the incorrect housings/housing assemblies are installed, no further action is required by this AD.

(c) If any of the incorrect housings/housing assemblies are installed, prior to further flight, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) Perform a dye penetrant inspection to detect cracking of the housing, in accordance with Boeing Service Bulletin 727–32–279, dated June 22, 1979.

(i) If no cracking is detected during the dye penetrant inspection, the incorrect housing/housing assembly may be reinstalled. Thereafter, accomplish the actions required by paragraphs (c)(1)(i)(A) and (c)(1)(i)(B) of this AD.

(A) After reinstallation, repeat the dye penetrant inspection at intervals not to exceed 9 months.

(B) Within 18 months after the initial dye penetrant inspection required by paragraph (c)(1) of this AD is accomplished, replace the housing/housing assemblies with parts having an applicable Boeing part number listed in Table 2 of this AD, in accordance with the service bulletin. This replacement constitutes terminating action for the repetitive dye penetrant inspections required by paragraph (c)(1)(i)(A) of this AD and, thereafter, no further action is required by this AD.

(ii) If any cracking is detected during the dye penetrant inspection, prior to further flight, replace the housing/housing assemblies with parts having an applicable Boeing part number listed in Table 2 of this AD, in accordance with the service bulletin. This replacement constitutes terminating action for the repetitive dye penetrant inspections required by paragraph (c)(1)(i)(A) of this AD and, thereafter, no further action is required by this AD.

(2) Replace the discrepant part with an applicable Boeing part number listed in Table 2 of this AD, in accordance with the service bulletin. Thereafter, no further action is required by this AD.

Note 3: This AD prohibits the reinstallation (or installation) of any housing that is cracked, even though the service bulletin provides instructions for reinstallation of a cracked, incorrect housing in certain circumstances.

TABLE 2.—BOEING PART NUMBERS OF CORRECT REPLACEMENT HOUSINGS AND HOUSING ASSEMBLIES

Housings*	Housing assemblies
65–27485–13	65–27485–11
65–27485–14	65–27485–12
65–27485–19	65–27485–17
65–27485–20	65–27485–18

* Housings may be made from die forging 65–27485–15.

Note 4: Although not listed in the service bulletin or in AD 79–04–01 R3 (amendment 39–4000), housings/housing assemblies having part numbers 65–27485–19/65–27485–17 and 65–27485–20/65–27485–18 are fully interchangeable with those having part numbers 65–27485–13/65–27485–11 and 65–27485–14/65–27485–12.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and replacement of parts shall be done in accordance with Boeing Service Bulletin 727–32–279, dated June 22, 1979. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 24, 1998.

Issued in Renton, Washington, on February 6, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3635 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–12–AD; Amendment 39–10329; AD 98–04–17]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. BN–2, BN–2A, and BN–2B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 97–03–03, which applies to certain Pilatus Britten-Norman Ltd. (Pilatus) BN–2, BN–2A, and BN–2B series airplanes that do not have Modification NB/M/1571 generator terminal diodes installed. AD 97–03–03 currently requires the installation of higher capacity diodes on the generator switches regardless of whether the airplane is equipped with the original 50 amp DC generating system or a Modification NB/M/1148, which is a 70 amp system. This action retains the actions of AD 97–03–03, but modifies the applicability section to reflect that this AD does not apply to Pilatus BN–2, BN–2A, and BN–2B series airplanes with 50 amp DC generation systems installed. This AD is the result of reports that the applicability section of AD 97–03–03 is incorrect. The actions specified by this AD are intended to prevent a loss of electrical power to the navigation, communications, and lighting systems, which could impair the pilot's ability to maintain control of the airplane.

DATES: Effective March 23, 1998.

The incorporation by reference of Pilatus Britten-Norman Aircraft Manufacturers Service Bulletin (SB) BN–2/SB.228, Issue 2, dated January 17, 1996, as listed in the regulations was previously approved by the Director of the Federal Register as of March 23, 1997 (62 FR 4909, February 3, 1997).

ADDRESSES: Service information that applies to this AD may be obtained from Pilatus Britten-Norman, Ltd., Bembridge, Isle of Wight, United Kingdom, PO35 5PR. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–12–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roger P. Chudy, Project Officer, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri, 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus BN–2, BN–2A, and BN–2B series airplanes equipped with Pilatus Modification NB/M/1148 (a 70 amp generating system), but without generator terminal diodes installed in accordance with Modification NB/M/1571, was published in the **Federal Register** on July 7, 1997, (62 FR 36240). The action proposed to supersede AD 97–03–03, which requires installing type 60S6 diodes on the terminals of the STBD (RIGHT) GEN and PORT (LEFT) GEN switches (SW2 and SW3), regardless of the generating system being used on the airplane. This superseding action retains the same action as AD 97–03–03, but changes the applicability section so that it applies only to the Pilatus BN–2, BN–2A, and BN–2B airplanes that have Modification NB/M/1148 (70 amp DC generation system) incorporated, and do not have Pilatus Modification NB/M/1571 (Introduction of Increased Rated Diode—70 amp DC generation system) incorporated. This action would not apply to certain Pilatus BN–2, BN–2A, and BN–2B series airplanes with a 50 amp DC generation system installed.

Accomplishment of this action would be in accordance with Pilatus Britten-Norman Ltd. Service Bulletin No. BN–2/SB.228, Issue 2, dated January 17, 1996.

The FAA's Determination

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 116 airplanes currently on the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $40 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $11,600 for the fleet or $100 per airplane. For purposes of estimating the cost of this AD, the FAA is presuming that none of the owners/operators have accomplished any of the actions on any of the affected airplanes.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing airworthiness directive (AD) 97–03–03, Amendment No. 39–9909, and by adding a new AD to read as follows:

98–04–17–Pilatus Britten-Norman LTD.: Amendment No. 39–10329; Docket No. 97–CE–12–AD; Supersedes AD 97–03–03, Amendment 39–9909.

Applicability: BN–2, BN–2A, and BN–2B series airplanes (all serial numbers), certificated in any category, that have Pilatus Britten-Norman (Pilatus) Modification NB/M/1148 (70 amp DC Generation System) incorporated, and do not have Pilatus Modification NB/M/1571 (Introduction of Increased Rated Diode-70 amp DC Generation System) incorporated.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent loss of electrical power to the navigation, communications and lighting systems, which could impair the pilot's ability to maintain control of the airplane, accomplish the following:

(a) Remove the diodes (quantity 2, part number (P/N) 340502014, type 10B1 or 10D1) installed on the terminals of the STBD (RIGHT) GEN and PORT (LEFT) GEN switches (SW2 and SW3), and install new approved diodes (quantity 2, P/N NB–81–5873, type 60S6) in accordance with the Accomplishment Instructions section in Pilatus Britten-Norman Aircraft Manufacturers Service Bulletin (SB) BN–2/SB.228, Issue 2, dated January 17, 1996.

(b) Accomplishment of paragraph (a) of this AD is considered incorporation of Modification NB/M/1571.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri, 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate. Alternative methods of compliance previously approved for AD 97–03–03 are considered approved for this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) The removal and installation required by this AD shall be done in accordance with Pilatus Britten-Norman Aircraft Manufacturers Service Bulletin (SB) BN–2/SB.228, Issue 2, dated January 17, 1996.

(1) This incorporation by reference of Pilatus Britten-Norman Aircraft Manufacturers Service Bulletin (SB) BN–2/SB.228, Issue 2, dated January 17, 1996 was approved previously by the Director of the Federal Register as of March 23, 1997 (62 FR 4909, February 3, 1997).

(2) Copies may be obtained from Pilatus Britten-Norman, Ltd., Bembridge, Isle of Wight, United Kingdom, PO35 5PR. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment supersedes AD 97–03–03, Amendment 39–9909.

(g) This Amendment (39–10329) becomes effective on March 23, 1998.

Issued in Kansas City, Missouri, on February 6, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3634 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWA–1]

Modifications of the Houston Class B Airspace Area; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This action delays the effective date for the modifications to the Houston, TX, Class B airspace area until March 26, 1998. The FAA is taking this action to coincide with the Houston sectional aeronautical chart.

DATES: The effective date of 0901 UTC, February 26, 1998, for the final rule published at 63 FR 4162 is delayed until 0901 UTC, March 26, 1998.

FOR FURTHER INFORMATION CONTACT: Sheri Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence

Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: Airspace Docket No. 95–AWA–1, published in the **Federal Register** on January 28, 1998 (63 FR 4162), modified the Houston, TX, Class B airspace area by reconfiguring two existing subarea boundaries and establishing an additional subarea. The effective date of this change is delayed until March 26, 1998.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a significant regulatory action under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Delay of Effective Date

The effective date of the final rule, Airspace Docket No. 95–AWA–1, as published in the **Federal Register** on January 28, 1998 (63 FR 4162), is hereby delayed until 0901 UTC, March 26, 1998.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Washington, DC, on February 6, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–3566 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–49]

Modification of Class E Airspace; Osceola, WI; Correction of Effective Date

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction of effective date.

SUMMARY: This action corrects an erroneous effective date for a final rule that was published in the **Federal Register** on January 13, 1998 (63 FR 1916), Airspace Docket Number 97–AGL–49. The Final Rule modified Class E airspace at Osceola, WI.

EFFECTIVE DATE: The effective date for the final rule published at 63 FR 1916 is corrected to be 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

Federal Register Docment 98–786, Airspace Docket Number 97–AGL–49, published on January 13, 1998 (63 FR 1916) modified the description of the Class E airspace area at Oscelo, WI. An erronous effective date of February 26, 1997, was published for this airspace. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the effective date for the Class E airspace area at Osceola, WI, as published in the **Federal Register** on January 13, 1998 (63 FR 1916), (FR Document 98–786), is corrected to read "0901 UTC, February 26, 1998".

Issued in De Plaines, Illinois on January 26, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–3572 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–29]

Amendment to Class E Airspace; Alliance, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule published on December 5, 1997, which revises Class E airspace at Alliance, NE.

DATES: The direct final rule published at 62 FR 64268 is effective on 0901 UTC April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on December 5, 1997 (62 FR 64268). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on January 30, 1998.

Jack K. Skeleton,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–3577 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–13]

RIN 2120–AA66

Realignment of VOR Federal Airway; Dallas/Fort Worth, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; correction; delay of effective date.

SUMMARY: This action delays the effective date for the realignment of Federal Airway 369 (V–369) located in the Dallas/Fort Worth, TX, area until April 23, 1998. The original effective date, February 28, 1998, was published in error and does not reflect the coordinated date established by the FAA's Southwest Region and the Headquarters FAA. Additionally, the routing will change slightly (1°) from what was published in the direct final rule to include Bilee intersection in the legal description. Lastly, this action serves as the confirmation document that the direct final rule which realigns V–369 will become effective on April 23, 1998.

DATES: The effective date of 0901 UTC, February 26, 1998, for the direct final rule published at 62 FR 67553 is delayed until 0901 UTC, April 23, 1998. The effective date of the correction in this document is 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Steve Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on December 29, 1997 (62 FR 67553). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective. No adverse comments were received, and thus this notice confirms that this final rule will become effective. The original effective date, published in the December 29, 1997, **Federal Register**, was February 28, 1998. However, this effective date was published in error and does not reflect the coordinated date established by the FAA's Southwest Region and the Headquarters FAA. The effective date is April 23, 1998.

Additionally, the routing will change slightly (1°) between the Navasota Very High Frequency Omnidirectional Range/Tactical Air Navigation and the Groesbeck Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME). The FAA's Southwest Region intended for the legal description to include Bilee intersection to keep departure and approach procedures unaffected by the addition of the Groesbeck VOR/DME. This change is considered to be extremely minor and does not alter the intent of the final rule.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Delay of Effective Date

The effective date of the direct final rule, Airspace Docket No. 97–ASW–13, as published in the **Federal Register** on December 29, 1997, (62 FR 67553), is hereby delayed until April 23, 1998.

Correction

In rule FR Doc. 97–33760 published in the **Federal Register** on December 29, 1997, 62 FR 67553, make the following correction to the V–369 airspace designation incorporated by reference in 14 CFR 71.1:

§ 71.1 [Corrected]

On page 67554, in the third column, three lines up from the bottom of the column, correct "From Navasota, TX; via Groesbeck, TX; to" to read "From Navasota, TX; via INT Navasota 342° and Groesbeck, TX, 161° radials; Groesbeck; to".

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

Issued in Washington, DC, on February 6, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–3567 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 732, 740, 742, 743, 744, 746, 762 and 774

[Docket No. 971006239–7239–01]

RIN 0694–AB35

Implementation of the Wassenaar Arrangement List of Dual-Use Items: Revisions to the Commerce Control List and Reporting Under the Wassenaar Arrangement

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim final rule; conforming saving clause dates.

SUMMARY: The Bureau of Export Administration (BXA) is conforming the dates identified in the savings clause of the interim rule implementing the Wassenaar Arrangement published in the **Federal Register** on January 15, 1998 (63 FR 2452). Shipments of items removed from eligibility for export or reexport under a particular License Exception authorization or the designator NLR may now be exported or reexported under that License Exception authorization or designator until (and including) April 15, 1998. This action should minimize industry's concerns about implementing the new licensing requirement provisions of the interim rule by the original date of February 17, 1998. Note that this rule does not affect the reporting requirements of Section 743.1 of the Export Administration Regulations, and any item removed from License Exception or NLR eligibility as a result of the January 15 rule may be subject to reporting requirements. As this rule conforms the saving clause dates, the April 15 date concerning submission of license applications identifying the new Export Control Classification Numbers (ECCNs) as a result of revisions to the numbering and structure of certain entries on the

Commerce Control List remains unchanged.

DATES: This correction is effective February 17, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Exporter Services, Regulatory Policy Division, Bureau of Export Administration, telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION: On January 15, 1998, the Bureau of Export Administration published in the **Federal Register** an interim rule that made changes to the Commerce Control List necessary to implement the Wassenaar Arrangement List of Dual-Use Items. The rule also removed License Exception availability for certain items controlled for missile technology reasons and for certain other items controlled for national security reasons for which the U.S. has agreed to license with extreme vigilance.

BXA has received many industry comments on the date of February 17, 1998, for submission of license applications for items removed from eligibility for export or reexport under a particular License Exception authorization or the designator NLR, stating that more time is required to determine how the rule affected their products and to develop and revise export compliance software necessary to implement the provisions of the Export Administration Regulations. To ensure that industry has adequate time to review and implement the changes to the EAR published on January 15, BXA is conforming the saving clause dates identified in the January 15 interim rule implementing the Wassenaar Arrangement. Shipments of items removed from eligibility for export or reexport under a particular License Exception authorization or NLR as a result of the January 15 rule may now be exported or reexported under that License Exception authorization or NLR until (and including) April 15, 1998. Note that this rule does not affect the reporting requirements of Section 743.1 of the Export Administration Regulations, and any item removed from License Exception or NLR eligibility as a result of the January 15 rule may be subject to reporting requirements. The April 15, 1998 date concerning submission of license applications identifying the new Export Control Classification Numbers (ECCNs) as a result of revisions to the numbering and structure of certain entries on the Commerce Control List is not changed by this rule.

Therefore, in rule FR Doc. 98–1, published on January 15, 1998 (63 FR 2452), on page 2454, in the third column, in the Saving Clause paragraph, last line, "February 17, 1998" is revised to read "April 15, 1998".

Dated: February 11, 1998.

William V. Skidmore,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 98–3905 Filed 2–13–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for two approved new animal drug applications (NADA's) from DuPont Merck Pharmaceutical Co. to Endo Pharmaceuticals, Inc.

EFFECTIVE DATE: February 17, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: DuPont Merck Pharmaceutical Co., DuPont Merck Plaza, MR2117, Wilmington, DE 19805, has informed FDA that it has transferred ownership of, and all rights and interests in NADA 30–525 (Oxymorphone hydrochloride) and NADA 35–825 (Naloxone hydrochloride), to Endo Pharmaceuticals, Inc., 223 Wilmington West Chester Pike, Chadds Ford, PA 19317. Accordingly, the agency is amending the regulations in 21 CFR 522.1462 and 522.1642 to reflect the transfer of ownership. The agency is also amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) by alphabetically adding a new listing for Endo Pharmaceuticals, Inc.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376e.

2. Section 510.600 is amended in paragraph (c)(1) by alphabetically adding a new entry for "Endo Pharmaceuticals, Inc." and in the table in paragraph (c)(2) by numerically adding a new entry for "060951" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * *	* * *
Endo Pharmaceuticals, Inc., 223 Wilmington West Chester Pike, Chadds Ford, PA 19317	060951
* * * *	* * *

(2) * * *

Drug labeler code	Firm Name and address
060951	Endo Pharmaceuticals, Inc., 223 Wilmington West Chester Pike, Chadds Ford, PA 19317.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1462 [Amended]

4. Section 522.1462 *Naloxone hydrochloride injection* is amended in paragraph (b) by removing "000056" and adding in its place "060951".

§ 522.1642 [Amended]

5. Section 522.1642 *Oxymorphone hydrochloride injection* is amended in paragraph (b) by removing "000056" and adding in its place "060951".

Dated: January 28, 1998.

Andrew J. Beaulieau,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–3902 Filed 2–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Tilmicosin Phosphate Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health, A Division of Eli Lilly and Co. The supplemental NADA provides for removal of the label warnings concerning subcutaneous use of tilmicosin phosphate injection in preruminating (veal) calves. Removal of the warning is based on a tissue residue depletion study in calves less than 1 month of age.

EFFECTIVE DATE: February 17, 1998.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1659.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285, is sponsor of NADA 140–929 that provides for the subcutaneous use of Micotil® 300 (tilmicosin phosphate) Injection for the treatment of cattle with bovine respiratory disease (BRD) associated with *Pasteurella haemolytica*. The drug is limited to use by or on the order of a licensed veterinarian. The firm filed a supplemental NADA providing for removal of the warning statements regarding use of the product in preruminating (veal) calves. The supplemental NADA is approved as of December 23, 1997, and the regulations are amended in 21 CFR 522.2471(d)(1)(iii) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.2471 [Amended]

2. Section 522.2471 *Tilmicosin phosphate injection* is amended in paragraph (d)(1)(iii) by removing the 13th and 14th sentences.

Dated: January 30, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–3897 Filed 2–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

Implantation or Injectable Dosage Form New Animal Drugs; Ivermectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Merial Ltd. The supplemental NADA provides for use of 1 percent ivermectin injection for treatment and control of grubs in American bison and a tolerance for residues of ivermectin and its metabolites in edible tissues.

EFFECTIVE DATE: February 17, 1998.

FOR FURTHER INFORMATION CONTACT: Estella Z. Jones, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Merial Ltd., 2100 Ronson Rd., Ilesin, NJ 08830–3077, is sponsor of NADA 128–409, which provides for the use of Ivomec® Injection (1 percent ivermectin) for cattle, swine, and reindeer. The firm filed a supplement that provides for use

of 1 percent ivermectin injection for treatment and control of grubs (*Hypoderma bovis*) in American bison. The supplemental NADA is approved as of December 19, 1997, and the regulations are amended in 21 CFR 522.1192 in paragraph (a)(2) and by adding new paragraph (d)(6) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

A tolerance for residues of ivermectin in the edible tissues of bison has not previously been established. At this time, a tolerance for residues of ivermectin and its metabolites in American bison is established in § 556.344 (21 CFR 556.344). Also, § 556.344 is revised to reflect a newer format.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 522.1192 is amended in paragraph (a)(2) by revising the heading and by adding new paragraph (d)(6) to read as follows:

§ 522.1192 Ivermectin injection.

(a) * * *

(2) *Cattle, reindeer, swine, and American bison.* * * *

(d) * * *

(6) *American bison*—(i) *Amount.* 200 micrograms per kilogram (10 milligrams per 110 pounds) of body weight.

(ii) *Indications for use.* It is used in American bison for the treatment and control of grubs (*Hypoderma bovis*).

(iii) *Limitations.* For subcutaneous use. Do not slaughter within 56 days of last treatment. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

4. Section 556.344 is revised to read as follows:

§ 556.344 Ivermectin.

The marker residue used to monitor the total residues of ivermectin and its metabolites in American bison is 22,23-dihydroavermectin B_1a. The target tissue is liver. A tolerance is established for 22,23-dihydroavermectin B_1a in liver as follows:

(a) *Cattle*: 100 parts per billion.
(b) *Swine*: 20 parts per billion.
(c) *Sheep*: 30 parts per billion.
(d) *Reindeer*: 15 parts per billion.
(e) *American bison*. 15 parts per billion.

Dated: January 30, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–3896 Filed 2–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 529

Certain Other Dosage Form New Animal Drugs; Tricaine Methanesulfonate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Western Chemical, Inc. The ANADA provides for the use of tricaine methanesulfonate in the water of fish and other cold-blooded aquatic animals for temporary immobilization.

EFFECTIVE DATE: February 17, 1998

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Western Chemical, Inc., 1269 Lattimore Rd., Ferndale, WA 98248, is the sponsor of ANADA 200–226, which provides for the use of tricaine methanesulfonate powder to be mixed in the water of fish and other cold-blooded animals to be used for anesthesia and tranquilization. Western Chemical's ANADA 200–226 is approved as a generic copy of Argent Chemical Laboratories' NADA 42–427 Finquel®. The ANADA is approved as of November 21, 1997, and the regulations are amended in 21 CFR 529.2503(b) to reflect the approval: The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 529.2503 [Amended]

2. Section 529.2503 *Tricaine methanesulfonate* is amended in paragraph (b) by removing "No.

051212" and adding in its place "Nos. 050378 and 051212".

Dated: January 21, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–3900 Filed 2–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. 89P-0439]

Medical Devices; Reclassification and Codification of Suction Lipoplasty System for Aesthetic Body Contouring

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has issued an order in the form of a letter to the American Society for Aesthetic Plastic Surgery (ASAPS) reclassifying the suction lipoplasty system for use in aesthetic body contouring from class III (premarket approval) to class II (special controls). The reclassification is based on information regarding the device contained in a reclassification petition submitted by ASAPS and other publicly available information. Accordingly, the order is being codified in the Code of Federal Regulations. This action is taken under the Medical Device Amendments of 1976 (the 1976 amendments) as amended by the Safe Medical Devices Act of 190 (the SMDA).

DATES: This regulation becomes effective March 19, 1998. The reclassification order was approved January 5, 1998

FOR FURTHER INFORMATION CONTACT: Stephen P. Rhodes, Center for Devices and Radiological Health (HFZ09410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 9409295) and the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 10109629), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are: Class I (general controls), class II (special controls), and class III (premarket approval).

Under the 1976 amendments, class II devices were defined as those devices for which there is insufficient information to show that general controls themselves will assure safety and effectiveness, but for which there is sufficient information to establish performance standards to provide such assurance. The SMDA broadened the definition of class II devices to mean those devices for which there is insufficient information to show that general controls themselves will assure safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and any other appropriate actions the agency deems necessary under section 513(a)(1)(B) of the act.

It is the agency's position that it is not necessary to obtain a new reclassification recommendation from a panel which had recommended reclassification into class II prior to the SMDA. If a panel recommended that a device be reclassified from class III into class II under the 1976 definition of class II, which included only performance standards as a class II control, clearly the Panel's recommendation for class II status would not change if controls, in addition to performance standards, could be added.

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures under section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Section 513(f)(2) of the act provides that FDA may initiate the reclassification of a device classified into class III under section 513(f)(1) of the act, or the manufacturer or importer of a device may petition the Secretary of the Department of Health and Human Services (the Secretary) to reclassify the device into class I or class II. FDA's regulations in 1A860.134 (21 CFR 860.134) set forth the procedures for the filing and review of a petition for reclassification of such class III devices. In order to change the classification of the device, it is necessary that the proposed new class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

Under section 513(f)(2)(B)(i) of the act, the Secretary may, for good cause shown, refer a petition to a device classification panel. If a petition is referred to a panel, the panel shall make a recommendation to the Secretary respecting approval or denial of the petition. Any such recommendation shall contain: (1) a summary of the reasons for the recommendation, (2) a summary of the data upon which the recommendation is based, and (3) an identification of the risks to health (if any) presented by the device with respect to which petition was filed.

II. Recommendation of the Panel

On December 28, 1988, FDA filed the reclassification petition submitted by ASAPS that requested reclassification of the suction lipoplasty system from class III into class II. FDA consulted with the General and Plastic Surgery Devices Advisory Panel (the Panel) of the

Medical Devices Advisory Committee during an open public meeting on January 26, 1989, and in a telephone conference on March 10, 1989. The Panel recommended that FDA reclassify the suction lipoplasty system intended for aesthetic body contouring from class III into class II. The Panel also recommended that FDA assign a high priority for the development of a performance standard for the generic type of device. Subsequently, in the **Federal Register** of November 13, 1996 (61 FR 58195), FDA issued the Panel's recommendation for public comment.

FDA considered the Panel's recommendation and tentatively agreed that the generic type of device, suction lipoplasty system intended for aesthetic body contouring, should be reclassified from class III into class II. FDA did not, however, agree with the Panel's recommendation that FDA assign a high priority for the development of a performance standard. Instead, FDA identified the following voluntary standards as special controls in lieu of a performance standard: (1) International Organization for Standardization (ISO) 10079091, Medical Suction Equipment, Part 1, Electrically Powered Suction Equipment—Safety Requirements, 1993; (2) Canadian Standards Association (CSA), Standard Z168.110994, Vacuum Devices Used for Suction and Drainage, 1994; and (3) International Standard ISO0910993 Biological Evaluation of Medical Devices Part I Evaluation and Testing, 1995.

Initially, FDA identified the voluntary standard entitled "Clinical Practice Guidelines, Plastic and Maxillofacial Surgery, American Society of Plastic and Reconstructive Surgeons, Chapter L: Localized Adiposity," September 1993, as a special control. Upon further review, however, FDA determined that this voluntary standard represents a clinical guideline which may vary, and thus is not appropriate for use as a special control.

FDA believes that the three voluntary standards identified in the previous paragraph, in addition to special labeling, will provide reasonable assurance of safety and effectiveness for the device.

FDA identified the following potential risks to health associated with the device: (1) Airborne bacterial or viral contamination of other patients and hospital personnel resulting from inefficient or overused in-line filters, (2) patient bio-incompatibility to the device materials, and (3) patient infection resulting from improper sterilization of the device or unsterile techniques.

After reviewing the data and information submitted in the petition and presented before the Panel, and after considering the Panel's recommendation and the comments received, FDA, based on the information set forth, issued an order to the petitioner on January 5, 1998, reclassifying the suction lipoplasty system intended for aesthetic body contouring, and substantially equivalent devices of this generic type, from class III into class II with the implementation of special controls.

The special controls are in compliance with consensus standards and labeling restrictions. The following are the consensus standards to which compliance may be assured:

1. International Organization for Standardization (ISO) 10079091, Medical Suction Equipment, Part 1, Electrically Powered Suction Equipment-Safety Requirements, 1993;

2. Canadian Standards Association (CSA), Standard Z168.110994, Vacuum Devices Used for Suction and Drainage, 1994; and

3. International Standard ISO0910993, Biological Evaluation of Medical Devices, Part I Evaluation and Testing, 1995.

The specific required labeling consists of the following statements in the Warnings and Precautions sections of the labeling:

Warnings Section

1. This device will not, in and of itself, produce significant weight reduction.

2. This device should be used with extreme caution in patients with chronic medical conditions, such as diabetes; heart, lung, or circulatory system disease; or obesity.

3. The volume of blood loss and endogenous body fluid loss may adversely affect intra and/or postoperative hemodynamic stability and patient safety. The capability of providing adequate, timely replacement is essential for patient safety.

Precautions Section

1. This device is designed to contour the body by removing localized deposits of excess fat through small incisions.

2. Use of this device is limited to those physicians who, by means of formal professional training or sanctioned continuing medical education (including supervised operative experience), have attained proficiency in suction lipoplasty.

3. Results of this procedure will vary depending upon patient age, surgical site, and experience of the physician.

4. Results of this procedure may or may not be permanent.

5. The amount of fat removed should be limited to that necessary to achieve a desired cosmetic effect.

6. All reusable components of the device must be sterilized and all disposable components replaced before using the device system on another patient.

Accordingly, as required by 1A860.134(b)(6) and (b)(7), FDA is announcing the reclassification of the generic type of device suction lipoplasty system from class III into class II. In addition, FDA is issuing the notice to codify the reclassification of the device by adding new 1A878.5040.

III. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this reclassification is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12886 and the Regulatory Flexibility Act (Pub. L. 9609354) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 10409121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104094)). Executive Order 12886 directs agencies to access all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of this device from class III into class II will relieve manufacturers of the cost of complying with the premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit small potential

competitors to enter the marketplace by lowering their costs. The Commissioner, therefore, certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore, a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

V. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this final rule are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (Pub. L. 1040913). Rather, the labeling statements are "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 878 is amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

1. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

2. Section 878.5040 is added to subpart E to read as follows:

§ 878.5040 Suction lipoplasty system.

(a) *Identification.* A suction lipoplasty system is a device intended for aesthetic body contouring. The device consists of a powered suction pump (containing a microbial filter on the exhaust and a microbial in-line filter in the connecting tubing between the collection bottle and the safety trap), collection bottle, cannula, and connecting tube. The microbial filters, tubing, collection bottle, and cannula must be capable of being changed between patients. The powered suction pump has a motor with a minimum of 1/3 horsepower, a variable vacuum range from 0 to 29.9 inches of mercury, vacuum control valves to regulate the vacuum with accompanying vacuum gauges, a single or double rotary vane (with or without oil), a single or double diaphragm, a single or double piston, and a safety trap.

(b) *Classification.* Class II (special controls). Consensus standards and labeling restrictions.

Dated: February 5, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–3776 Filed 2–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego, 98–001]

RIN 2115–AA97

Safety Zone: Colorado River, Bluewater Marina to La Paz County Park, Parker, AZ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the Colorado River beginning at Bluewater Marina in Parker, AZ, and extending approximately 10 miles south to La Paz County Park on the following dates: March 14, 1998 through March 15, 1998. The event requiring establishment of this safety zone is the Parker International Waterski Marathon.

The safety zone will consist of all navigable waters on the Colorado River extending approximately 10 miles south from Bluewater Marina in Parker, AZ, to Las Paz County Park. The safety zone is established to protect the lives and property of the event participants and spectators by establishing a safety zone around the entire event course. Entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port.

DATES: This temporary regulation becomes effective at 8 a.m. (PDT) on March 14, 1998, until 5 p.m. (PST) on March 14, 1998; then continues at 8 a.m. (PST) on March 15, 1998, until 5 p.m. (PST) on March 15, 1998.

ADDRESSES: Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego, CA 92101–1064.

FOR FURTHER INFORMATION CONTACT: Lieutenant Mike A. Arguelles, U.S. Coast Guard Marine Safety Office San Diego at (619) 683–6484.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publication of a notice of proposed rulemaking and delay of its effective date would be contrary to the public interest since the location of the Parker International Waterski Marathon, and other logistical details surrounding the event, were not finalized until a date fewer than 30 days prior to the event date.

Background and Purpose

The Parker International Waterski Marathon will consist of various waterski racing activities. The activities will take place from 8 a.m. (PST) until 5 p.m. each day from, and including, March 14, 1998 through, and including, March 15, 1998, in the navigable waters of the Colorado River, extending approximately 10 miles south from Bluewater Marina in Parker, AZ, to La Paz County Park. The race course will be marked by buoys and sponsor vessels to alert non-participants.

Discussion of Regulation

This regulation is necessary to protect the lives and property of the Parker International Waterski Marathon participants and spectators. The course is approximately 10 miles long and encompasses the entire water area on the Colorado River extending south from Bluewater Marina in Parker, AZ, to La Paz County Park. The course will be marked by buoys and sponsor vessels to alert non-participants.

On the following days and times, the course will be in use by vessels competing in the event: (1) March 14, 1998 through March 15, 1998, daily from 8:00 AM until 5:00 PM (PST). During these times, the Colorado River from Bluewater Marina in Parker, AZ, south to La Paz County Park, will be closed to all traffic with the exception of emergency vessels. No vessels other than participants, official patrol vessels, or emergency vessels will be allowed to enter into, transit through, or anchor within this zone unless specifically cleared by or through an official patrol vessel.

Regulatory Assessment

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that Order. It is not

significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR11040, February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this regulation and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.1B, this regulation is categorically excluded from further environmental documentation. This regulation is expected to have no significant effect on the environment. A Categorical Exclusion Determination and Environmental Analysis Checklist is available for inspection and copying in the docket to be maintained at the address listed under **ADDRESSES** in this preamble.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart F of part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for 33 CFR Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section 165.T–43 is added to read as follows:

§ 165.T11–043 Safety Zone: Colorado River, Bluewater Marina to La Paz County Park, Parker, AZ.

(a) *Location.* The following area constitutes a safety zone in the navigable waters of the Colorado River: the entire water area of the Colorado River beginning at the Bluewater Marina in Parker, AZ, and extending approximately 10 miles south to La Paz County Part.

(b) *Effective Dates.* This regulation becomes effective at 8 a.m. (PDT) on March 14, 1998, until 5 p.m. (PST) on March 14, 1998; then continues at 8 a.m. (PST) on March 15, 1998, until 5 p.m. (PST) on March 15, 1998, unless canceled earlier by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port.

Dated: January 30, 1998.

J.A. Watson, IV,

Commander, U.S. Coast Guard, Captain of the Port San Diego, California.

[FR Doc. 98–3913 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Western Alaska 98–001]

RIN 2115–AA97

Safety Zone; Summer Bay, Unalaska Island, AK

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in Summer Bay, Unalaska Island, AK. The temporary zone is needed to protect the ongoing salvage operation of the M/V KUROSHIMA and the salvage vessel M/V AMERICAN SALVOR. Entry of vessels or persons into this zone not involved in the salvage operation is prohibited unless specifically authorized by the Captain of the Port.

DATES: This temporary rule becomes effective on January 26, 1998 at 1:00 p.m. ADT and terminates on 28 February 1998 at 11:59 p.m. ADT.

FOR FURTHER INFORMATION CONTACT: LCDR Rick Rodriguez, Chief of Port Operations, Coast Guard Captain of the Port Western Alaska, Anchorage, 510 L Street, Suite 100; Anchorage, Alaska 99501; (907) 271–6700.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The purpose of this temporary safety zone is to allow the salvage vessel to conduct salvage operations unencumbered by vessels at or proceeding to anchor within the zone defined later in this rule.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent disruption of the safe salvage operation of the M/V KUROSHIMA.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; and 49 CFR 1.46.

2. A new temporary § 165.T17–001 is added to read as follows:

§ 165.T17–001 Summer Bay Safety Zone.

(a) *Location.* The following area is a Safety Zone: the area bounded by the following coordinates: from Second Priest Rock (N53–54.18, W166–28.0) north to N53–55.0, W166–28.0 east to N53–55.0, W166–26.6 south to the southwest bluff bordering Morris Cove (N53–54.70, W166–26.6.). Datum NAD 1983.

(b) *Effective dates.* This section becomes effective on January 26, 1998 at approximately 1:00 p.m. ADT and terminates on February 28, 1998 at approximately 11:59 p.m. ADT.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port.

Dated: January 26, 1998.

E.P. Thompson,

Captain, USCG, Captain of the Port Western Alaska.

[FR Doc. 98–3910 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 13–98–002]

RIN 2115–AE84

Clarification and Rearrangement of Puget Sound Vessel Traffic Service Regulated Navigation Area (RNA) Regulations

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule.

SUMMARY: By this direct final rule, the Coast Guard is rearranging and clarifying the current wording of Puget Sound Vessel Traffic Service Regulated Navigation Area Regulations. This action is necessary to clearly differentiate between conditions when "general regulations" and "congested regulations" apply within the Regulated Navigation Area of Puget Sound. This direct final rule will make no substantive changes in the meaning or interpretation of the existing regulations. The direct final rule is intended to improve understanding of, and compliance with, these regulations, and to make these regulations less subject to confusion by waterway users.

DATES: This rule is effective May 18, 1998, unless the Coast Guard receives a written adverse comment or written notice of intent to submit an adverse comment on or before April 20, 1998. If the Coast Guard receives a written adverse comment or notice of intent to submit a written adverse comment is received, the Coast Guard will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

ADDRESSES: You may mail or deliver comments to U.S. Coast Guard, Thirteenth Coast Guard District, Marine Safety Division, 915 2nd Avenue, Room 3506, Seattle, WA, 98174–1067. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. The telephone number is (206) 220–7217.

The Marine Safety Division maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: LT Chris Woodley, C–GD13 (moc–2), 915 2nd Avenue, Room 3506, Seattle, WA, 98174–1067, (206) 220–7217.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 13–98–002) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Regulatory Information

The Coast Guard is publishing a direct final rule, the procedures of which are outlined in 33 CFR 1.05–55, because no adverse comment is anticipated. If no adverse comment or written notice of intent to submit an adverse comment is received within the specified comment period, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, the Coast Guard will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if the Coast Guard receives a written adverse comment or written notice of intent to submit an adverse comment, the Coast Guard will publish a document in the **Federal Register** announcing withdrawal of all or part of this direct final rule. If an adverse comment applies to only part of this rule and it is possible to remove that part without defeating the purpose of this rule, the Coast Guard may adopt as final those parts of this rule on which no adverse comment was received. The part of this rule that was the subject of an adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of an adverse comment, the Coast Guard will publish a separate Notice of Proposed Rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered "adverse" if the comment explains why this rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.

Background and Purpose

On August 29, 1994, the Coast Guard published in the **Federal Register** [39 FR 44321] the Final Rule [CGD13 90–003] for a Regulated Navigation Area (RNA) for Puget Sound (33 CFR 165.1301) and adjacent waters in northwestern Washington to prevent vessel collisions and groundings, loss of property, loss of life, and environmental damage, resulting from conflicts between varied users of these waters. These regulations were intended to encompass fishing vessels, pleasure craft, ferries, towboats, and deep draft vessels. As written, the regulations of 33 CFR 165.1301 are unclear as to which provisions apply all the time (general regulations) and which provisions apply only when hazardous levels of vessel traffic congestion exist (congestion regulations). Currently, the only clarification between general and congested conditions is written in the Puget Sound Vessel Traffic Service Users Manual. This document is not legally binding and is subject to challenge. Consequently, it is necessary to rearrange and clarify the current text 33 CFR 165.1301 to promote a better understanding of these regulations by waterway users, and improve compliance within the Puget Sound Regulated Navigation Area. The proposed changes are in alignment with current practice, and with the "Discussion of Comments and Changes" section of the Final Rule published in the Federal Register on August 29, 1994.

Discussion of Rule

This direct final rule will rearrange and clarify the existing regulations of 33 CFR 165.1301, with particular emphasis on paragraphs (b), (c), and (d). Specifically, this direct final rule will make distinctions between when "general regulations" and "congestion regulations" apply within the Puget Sound Regulated Navigation Area. Paragraph 1301(b) will address applicability of the 72 COLREGS as is currently addressed in paragraph (c)(1). Paragraph 1301(c) will continue to be titled "General Regulations," but would be rearranged to contain existing provisions that apply at all times within the Puget Sound RNA. Paragraph 1301(d) would be renamed "Congestion Regulations" and will contain existing provisions that apply only when hazardous levels of congestion are deemed to exist by Puget Sound Vessel Traffic Service. The provisions of old paragraph (d), currently titled "Prohibited Fishing Areas," will be incorporated into new paragraphs (c) and (d). Paragraphs (a) and (e) will remain unchanged.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This direct final rule is a rearrangement and clarification of existing regulations. There is no substantive change as a result of this action. Waterway users currently affected by the current regulations of 33 CFR 165.1301 will not have to alter current practices, and will incur no additional cost in complying with this direct final rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The rearrangement and clarification of 33 CFR 165.1301 (b)–(d) will have no impact on small entities because no substantive changes or new interpretations are being made to the regulations. This section of the regulations is being rewritten to simply remove confusion and improve understanding of, and compliance with, the existing regulations. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2.1. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This direct final rule is a procedural clarification of an existing regulation which clearly does not have any environmental impacts. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

Part 165—[AMENDED]

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 C.F.R. 1.46.

2. Section 165.1301 is revised to read as follows:

§ 165.1301 Puget Sound and Adjacent Waters in Northwestern Washington—Regulated Navigation Area.

The following is a regulated navigation area—All of the following northwestern Washington waters under the jurisdiction of the Captain of the Port, Puget Sound: Puget Sound, Hood Canal, Possession Sound, Elliott Bay, Commencement Bay, the San Juan Archipelago, Rosario Strait, Guemes Channel, Bellingham Bay, U.S. waters of the Strait of the Strait of Juan de Fuca, Haro Strait, Boundary Pass, and Georgia Strait, and all lesser bays and harbors adjacent to the above.

(a) Definitions as used in this section:

(1) *Vessels engaged in fishing* are as identified in the definition found in Rule 3 of the International Regulations for Prevention of Collisions at Sea, 1972, (72 COLREGS), found in Appendix A, Part 81 of this chapter.

(2) *Hazardous levels of vessel traffic congestion* are as defined at the time by Puget Sound Vessel Traffic Service.

(b) Nothing in this section shall be construed as relieving any party from their responsibility to comply with applicable rules set forth in the 72 COLREGS.

(c) General Regulations: The provisions of this paragraph apply at all times.

(1) Vessels engaged in fishing or other operations—that are distinct from vessels following a TSS or a connecting precautionary area east of New Dungeness and which are not required by the Bridge to Bridge Radiotelephone Regulations to maintain a listening watch, are highly encouraged to maintain a listening watch on the Puget Sound Vessel Traffic Service (PSVTS) VHF–FM radio frequency for the area in which the vessel is operating. A safe alternative to the radio listening watch is to stay clear of the TSS and connecting precautionary area.

(2) Vessels engaged in gill net fishing at any time between sunset and sunrise in any of the waters defining the regulated navigation are of this section shall, in addition to the navigation lights and shapes required by Part 81 of this title (72 COLREGS), display at the end of the net most distant from the vessel on all-round (32-point) white light visible for a minimum of two nautical miles and displayed from at least three feet above the surface of the water.

(3) Vessels engaged in fishing, including gillnet and purse seine fishing, are prohibited in the following Prohibited Fishing Area: The Hood Canal Bridge, to include the waters within a one-half nautical mile radius of the center of the main ship channel

draw span during the immediate approach and transit of the draw by public vessels of the United States.

(4) East of New Dungeness, vessels engaged in fishing in a traffic lane or connecting precautionary area shall tend nets or other gear placed in the water so as to facilitate the movement of the vessel or gear from the traffic lane or precautionary area upon the approach of a vessel following the TSS.

(d) Congested Regulations: The provisions under this paragraph apply only when imposed in specific locations by Puget Sound Vessel Traffic Service. They are intended to enhance vessel traffic safety during periods and in locations where hazardous levels of vessel traffic congestion are deemed to exist by Puget Sound Vessel Traffic Service. Operations potentially creating vessel traffic congestion include, but are not limited to, vessels engaged in fishing, including gillnet or purse seine, recreational fishing derbies, regattas, or permitted marine events.

(1) Vessels engaged in fishing or other operations—that are distinct from vessels following a Traffic Separation Scheme (TSS) or a connecting precautionary area east of New Dungeness, may not remain in, nor their gear remain in, a traffic lane or a connecting precautionary area east of New Dungeness when a vessel following a TSS approaches. Such vessels not following a TSS or a connecting precautionary area shall draw in their gear, maneuver, or otherwise clear these areas so that their action is complete at least fifteen minutes before the arrival of a vessel following the TSS. Vessels which are required by this paragraph to remain clear of a connecting precautionary area east of New Dungeness or a traffic lane must also remain clear of the adjacent separation zone when in a TSS east of New Dungeness.

(2) A vessel following the TSS may not exceed a speed of 11 knots through the water.

(3) Vessels engaged in fishing, including gillnet and purse seine fishing, are prohibited in the following Prohibited Fishing Area: Edmonds/Kingston ferry crossing lanes, to include the waters within one-quarter nautical mile on either side of a straight line connecting the Edmonds and Kingston ferry landings during the hours that the ferry is operating.

(e) Authorization to deviate from this section.

(1) Commander, Thirteenth Coast Guard District may, upon written request, issue an authorization to deviate from this section if the proposed deviation provides a level of safety equivalent to or beyond that provided by the required procedure. An application for authorization must state the need for the deviation and describe the proposed alternative operation.

(2) PSVTS may, upon verbal request, authorize a deviation from this section for a voyage, or part of a voyage, if the proposed deviation provides a level of safety equivalent to or beyond that provided by the required procedure. The deviation request must be made well in advance to allow the requesting vessel and the Vessel Traffic Center (VTC) sufficient time to assess the safety of the proposed deviation. Discussions between the requesting vessel and the VTC should include, but are not limited to, information on vessel handling characteristics, traffic density, radar contracts, and environmental conditions.

(3) In an emergency, the master, pilot, or person directing the movement of the vessel following the TSS may deviate from this section to the extent necessary to avoid endangering persons, property, or the environment, and shall report the deviation to the VTC as soon as possible.

Dated: February 2, 1998.

J. David Spade,

Rear Admiral, U.S. Coast Guard District Commander

[FR Doc. 98–3914 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–5967–5]

OMB Approval Numbers Under the Paperwork Reduction Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for Regulation of Fuel and Fuel Additives, Standards for Reformulated and Conventional Gasoline.

EFFECTIVE DATE: This final rule is effective March 19, 1998.

FOR FURTHER INFORMATION CONTACT: Karen Smith 202–564–9674.

SUPPLEMENTARY INFORMATION: EPA is today amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. Today's amendment updates the table to list those information requirements promulgated under the Fuels and Fuel Additives, Standards for Reformulated and Conventional Gasoline which appeared in the **Federal Register** on February 16, 1994 (59 FR 7716–7878). This amendment incorporates Regulation of Fuel and Fuel Additives: Baseline Requirements for Gasoline Produced by Foreign Refiners (62 FR 45533, August 28, 1997). The affected regulations are codified at 40 Code of Federal Regulations (CFR) part 80 and part 9. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

These ICRs were previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

List of Subjects in 40 CFR Part 9

Regulation of fuels and fuels additives, and Reporting and recordkeeping requirements.

Dated: February 9, 1998.

Margo T. Oge, Director,

Office of Mobile Sources.

For the reasons set out in the preamble, 40 CFR Part 9 is amended as follows:

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242B, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding the new entries to the table to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR Citation	OMB Control No.
* * * * *	
Regulation of Fuels and Fuel Additives:	
80.40	2060–0277
80.65	2060–0277
80.68—80.69	2060–0277
80.74—80.77	2060–0277
80.79	2060–0277
80.91—80.94	2060–0277
80.101—80.106	2060–0277
80.125	2060–0277
80.128—80.130	2060–0277
* * * * *	

[FR Doc. 98–3886 Filed 2–13–98; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 53, and 58

[AD–FRL–5963–3]

RIN 2060–AE66

National Ambient Air Quality Standards for Particulate Matter and Revised Requirements for Designation of Reference and Equivalent Methods for $PM_{2.5}$ and Ambient Air Quality Surveillance for Particulate Matter; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The EPA is making minor clarification and/or corrections to the final rules revising 40 CFR parts 50, 53, and 58 published on July 18, 1997.

DATES: Effective on February 17, 1998.

FOR FURTHER INFORMATION CONTACT: Brenda Millar (MD–14), Monitoring and Quality Assurance Group, Emissions Monitoring and Analysis Division, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Telephone (919) 541–4036, e-mail: millar.brenda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On July 18, 1997, EPA revised the national ambient air quality standards for particulate matter set forth in 40 CFR part 50 by, among other things, establishing provisions for particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$) as measured by a new reference method or by an equivalent method. On the same day, EPA revised 40 CFR part 53 to set forth criteria for designation of candidate instruments as reference or equivalent methods for $PM_{2.5}$; it also revised 40 CFR part 58 to establish air quality monitoring, data reporting, and surveillance requirements for $PM_{2.5}$ and revise such requirements for particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). A review of the document resulted in the identification of a number of minor errors which this notice is correcting.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, is therefore not subject to review by the office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (P.L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 8094(2).

List of Subjects in 40 CFR Parts 50, 53, and 58

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 30, 1998.

Richard Wilson,

Acting Assistant Administrator, for Air and Radiation.

The following corrections are made to rule FR Doc. 97–18577, FRL–5725–2, "National Ambient Air Quality Standards for Particulate Matter" published on July 18, 1997 (62 FR 38652).

Appendix L to Part 50 [Corrected]

1. Page 38714, column 2, section 1.1—correct "§ 50.6" to read "§ 50.7" in the first sentence.

2. Page 38714, column 3, section 3.1, line 4 correct "2 μg/am³" to read "2 μg/m³."

3. Page 38720, Table L–1, correct the second footnote in the table by adding the symbol "*" before the word "Provision".

4. Page 38727, Figure L–5 is corrected as set forth below.

5. Page 38734, Figure L–12 is corrected as set forth below.

6. Page 38748, Figure L–26 is corrected as set forth below.

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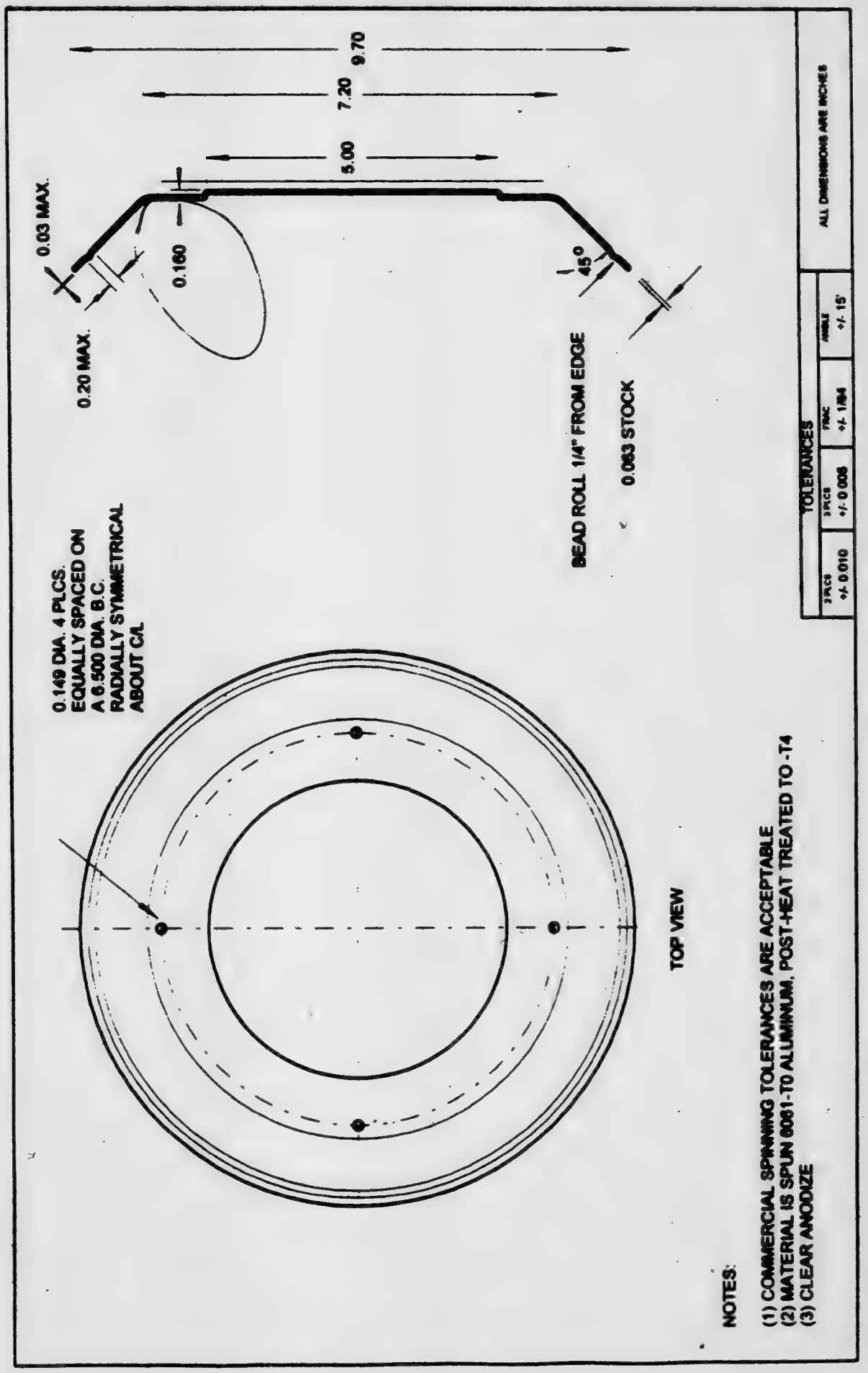

FIGURE L-5. 10-MICRON INLET, TOP

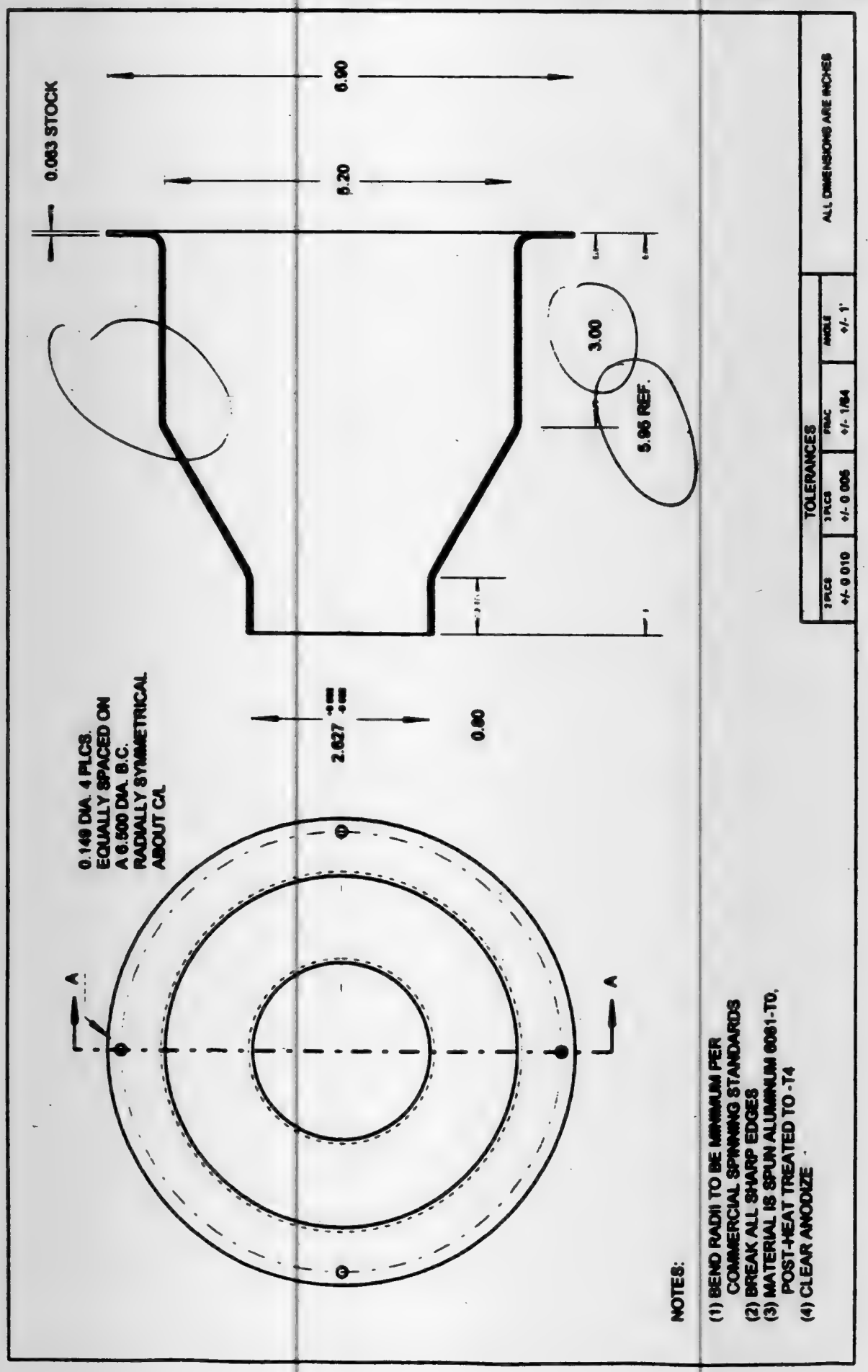

FIGURE L-12. 10-MICRON NOZZLE ENTRY SECTION

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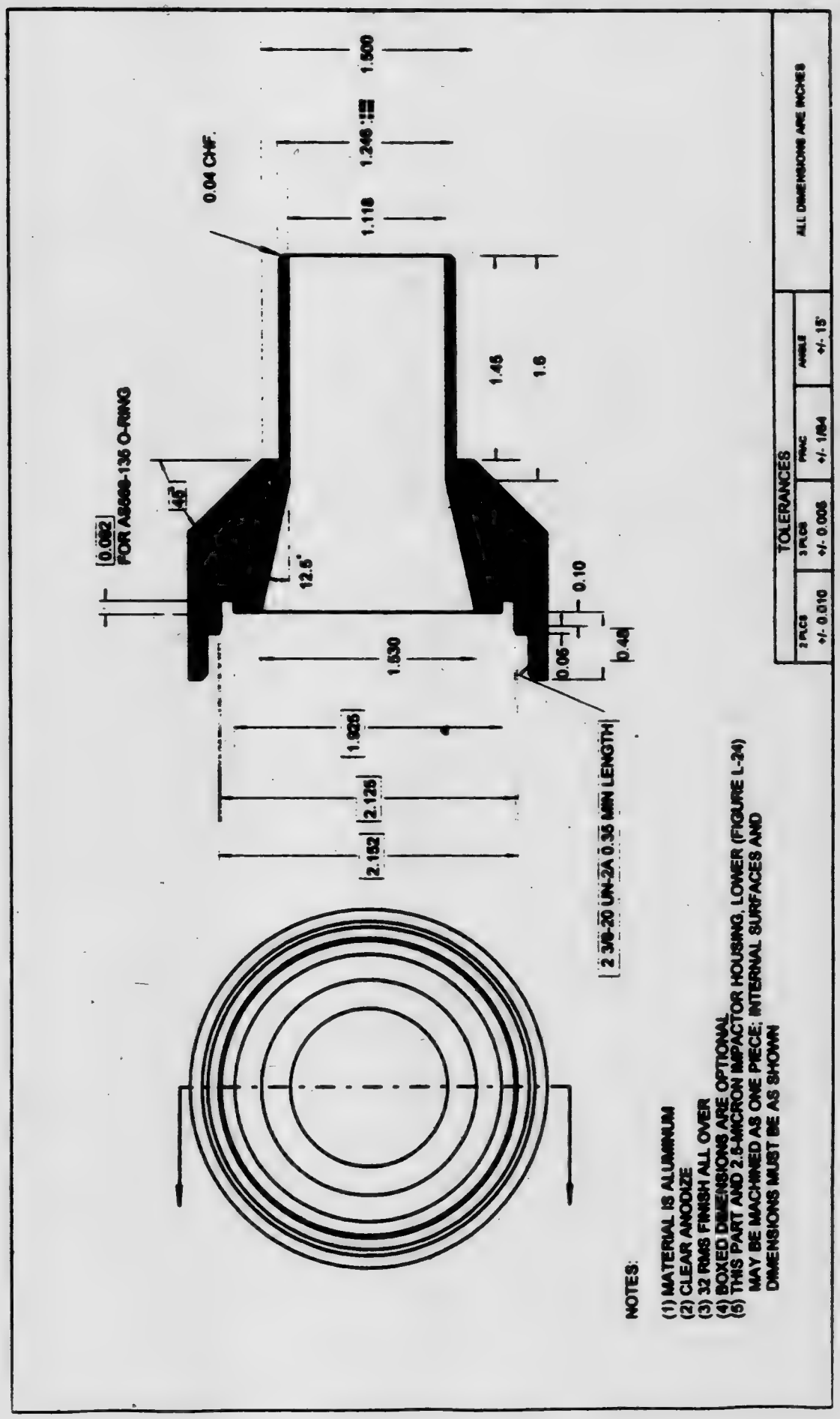

FIGURE L-26. FILTER HOLDER, TOP

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The following corrections are made to rule FR Doc. 97–18579, FRL–5726–6, "Revised Requirements for Designation of Reference and Equivalent Methods for $PM_{2.5}$ and Ambient Air Quality Surveillance for Particulate Matter; Final Rule" published on July 18, 1997 (62 FR 38764).

§ 53.3 [Corrected]

1. Page 38785, column 3, § 53.3(b), remove paragraph (b)(5).

§ 53.34 [Corrected]

2. Page 38795, column 2, paragraph (c)(2)(i), remove the paragraph designations (A) and (B), do not indent the first line below Equation 8, and correct that first line to read "if the corresponding $\tilde{R}_j$ is below:"

3. Page 38795, column 3, paragraph (c)(3), correct the first sentence to read "If $\tilde{R}_j$ falls outside the acceptable concentration range specified in Table C–4 of this subpart for any set, or if P_j Rp_j as applicable, exceeds the value specified in Table C–4 of this subpart for any set, that set of measurements shall be discarded."

4. Page 38795, column 3, paragraph (c)(5), third line; correct "(C_j)" to read "($\tilde{R}_j$)."

5. Page 38795, column 3, paragraph (c)(5), sixth line; correct "(R_j)" to have a bar over the "R" i.e., $\tilde{R}_j$.

Tables to Subpart C of Part 53 [Corrected]

6. Pages 38796 and 38797, Table C–4, wherever "R_j" appears correct to read "$\tilde{R}_j$."

§ 53.51 [Corrected]

7. Page 38800, column 1, paragraph (a)(3) second and last sentences—correct "ISO affiliate audits" and "ISO affiliates" to read "ISO-certified auditors."

§ 53.54 [Corrected]

8. Page 38804, column 2, paragraph (f)(7), correct the first sentence to read "Calculate the sample volume as $Q_{std,ave}$ multiplied by the sample time, excluding periods of power interruption."

§ 53.56 [Corrected]

9. Page 38807, column 2, paragraph (f)(5), line 5, correctly add the phrase for "the test run" after the word "data".

§ 53.57 [Corrected]

10. Page 38809, column 2, paragraph (g) Test results—correct the first sentence to read "Chamber radiant flux control."

Tables to Subpart E of Part 53 [Corrected]

11. Page 38812, Table E–1, under the column "Test Conditions," for section 53.57 filter temperature control test, add "±50" to the third item, to read "(c) Solar flux of 1000±50w/m^2."

12. Page 38812, Table E–1, under the column "Test Conditions" for section 53.58 Field precision test, the inequality symbol in the second item (b) should be reversed, to read "(b) $PM_{2.5}$ conc.≥ 10μg/m^3."

13. Page 38812, Table E–2, correct the spelling of the column heading "Characteristic"; under the column "Spectral Region" in the row "Allowed Tolerance" delete the 2's before ± in order to read "±35%, ±25%, ±10% and ±10%," and in the second entry for Band width under ultraviolet," correct the entry to read "0.32 to 0.40."

§ 53.61 [Corrected]

14. Page 38816, column 2, paragraph (g)(1)(ii), sixth line before and fourth line after equation 2, correct "1g/m^3" to read "1g/cm^3"

§ 53.64 [Corrected]

15. Page 38822, column 3, paragraph (g)(4)(ii) correct the phrase "With a number counting device such as an aerosol detector" to read "With an aerosol number counting device as a detector."

§ 58.1 [Corrected]

16. Page 38831, column 1, correct the definition of Metropolitan Statistical Area (MSA) to read "*Metropolitan Statistical Area (MSA)* as designated by the most recent decennial U.S. Census of Population Report."

§ 58.13 [Corrected]

17. Page 38831, column 2, § 58.13, paragraph (d) at end, add phrase, "except during periods or seasons exempted by the Regional Administrator."

§ 58.26 [Corrected]

18. Page 38833, column 1, § 58.26(d)(2), correct the next to last sentence to read, "These include those population-oriented SPMs that are eligible for comparison to the $PM_{2.5}$ NAAQS."

19. Page 38833, column 2, § 58.26(e), last sentence, correct the phrase "once a CMZ monitoring area has been determined" to read "once a monitoring area has been determined".

§ 58.31 [Corrected]

20. Page 38833, column 2, § 58.31(f), next to last line of paragraph, correct the word "zone" to read "zones."

Appendix A to Part 58 [Corrected]

21. Page 38837, column 3, paragraph 3.5.2.2, correct the first sentence to read, "The two collocated samples must be within 4 meters of each other, and particulate matter samplers must be at least 2 meters apart (1 meter apart for samplers having flow rates less than 200 liters/min.) to preclude airflow interference." The parenthetical phrase was inadvertently omitted.

22. Page 38838, column 1, paragraph 3.5.3.1(d), correct the word "samples" to read "samplers."

23. Page 38841, column 2, paragraph 5.5.3.2(b) correct the phrase "The standard deviation" to read "The standard error"

24. Page 38841, column 2, correct equation 28 to read as follows:

$$s'_{j,q} = \sqrt{\frac{1}{n_{j,q}-1} \times \left[\left(\sum_{i=1}^{n_{j,q}} d_i'^2 \right) - \left(n_{j,q} D'^2_{j,q} \right) \right] \times \frac{1}{n_{j,q}}}$$

24. Page 38843, Table A–1, column 3 "Coverage" correct the entry for "Manual and Automated Methods-Accuracy and Bias" to read "Every SLAMS monitor."

25. Page 38843, Table A–1, column 4 "Minimum Frequency" correct the entry "1." to read "1. Automated—once every 2 weeks; Manual—each calendar quarter (4/year).

Appendix D to Part 58 [Corrected]

26. Page 38846, column 2, paragraph 2.8.1.3.1(a), next to last line correct the phrase "collocated at a PAMS site if the MPA is also a PAMS area[2]." to read "collocated at a PAMS site in each PAMS area.[2]"

27. Page 38847, column 2, section 2.8.1.7.1 delete the third sentence.

28. Page 38847, column 3, correctly add a new sentence following the sentence which starts "Cb denotes "category b" and before the sentence beginning "S denotes other SLAMS . . ." to read "All other core SLAMS in this MPA are denoted by "C."

29. Page 38848, correct Figures 1 and 2 as set forth below.

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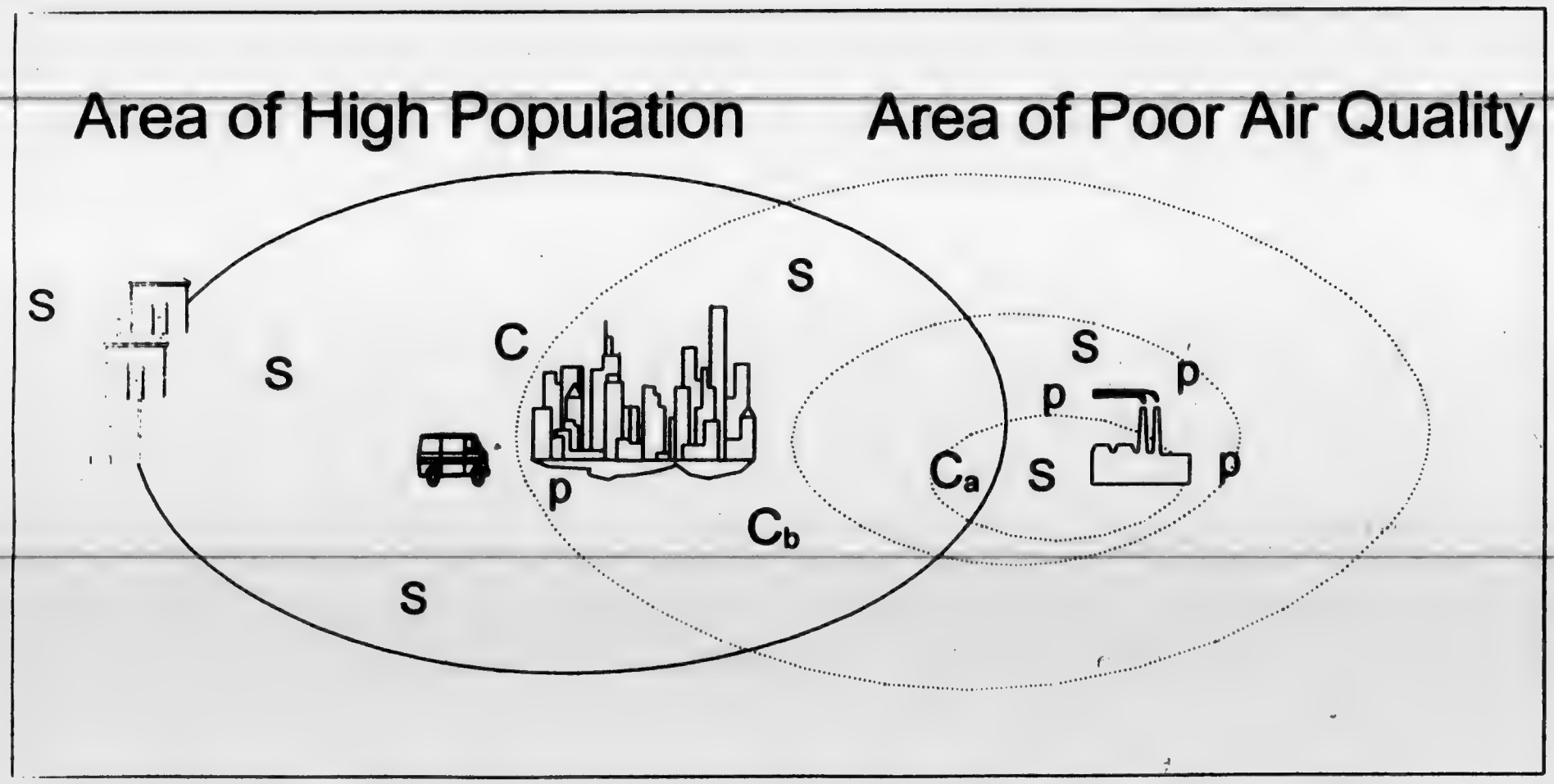
Figure 1. Hypothetical Monitoring Planning Area

Eastern Urban Model - showing location of monitors in relation to population and area of poor air quality

C=Core site S=other SLAMS site p=Special Purpose Monitor

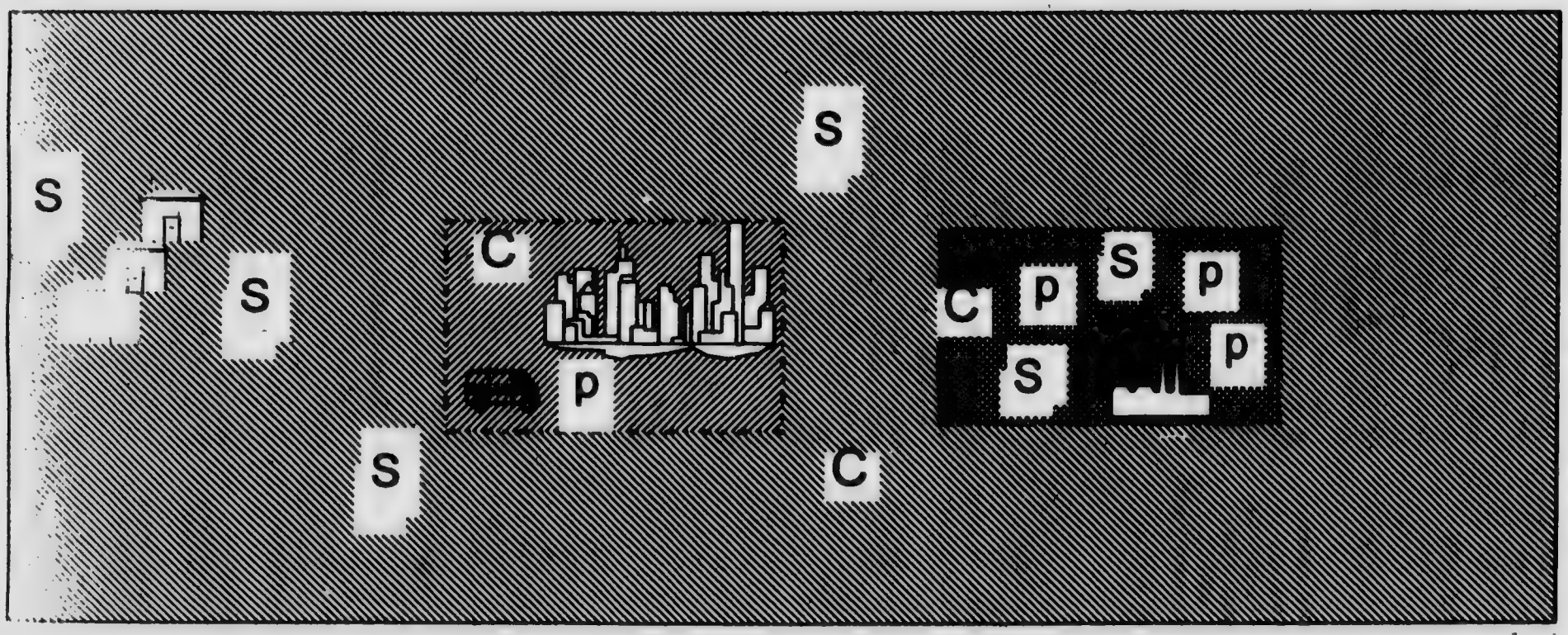


FR Doc. 98-3635 Filed 2-13-98; 8:45 am
BILLING CODE 6560-50-P

Figure 2. Hypothetical Monitoring Planning Area

Potential Community Monitoring Zones

C=Core site S=other SLAMS site p=Special Purpose Monitor



[FR Doc. 98–3178 Filed 2–13–98; 8:45 am]
BILLING CODE 6560–50–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL–5966–6]

Control of Air Pollution From Motor Vehicles and New Motor Vehicle Engines; Modification of Federal On-board Diagnostic Regulations for Light-Duty Vehicles and Light-Duty Trucks; Extension of Deficiency Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's action extends the EPA's allowance of deficiencies for vehicles certified to federal OBD standards through the 1999 model year.

EFFECTIVE DATE: This action becomes effective February 17, 1998.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–96–32. The docket is located at The Air Docket, 401 M. Street, SW., Washington, DC 20460, and may be viewed in room M1500 between 8:00 a.m. and 5:30 p.m., Monday through Friday. The telephone number is (202) 260–7548 and the facsimile number is (202) 260–4400. A reasonable fee may be charged by EPA for copying docket material.

FOR FURTHER INFORMATION CONTACT: Holly Pugliese, Vehicle Programs and Compliance Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Telephone 313–668–4288, or Internet e-mail at "pugliese.holly@epamail.epa.gov."

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those which manufacture new motor vehicles and engines. Regulated categories include:

Category	Examples of regulated entities
Industry	New motor vehicle and engine manufacturers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your product is regulated by this action, you should carefully examine the applicability criteria in § 86.099–17 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Electronic Availability
II. Introduction and Background
III. Requirements of the Final Rule
IV. Effective Date
V. Cost Effectiveness
VI. Public Participation
VII. Administrative Requirements
A. Executive Order 12866
B. Reporting and Recordkeeping Requirements
C. Impact on Small Entities
D. Unfunded Mandates Act
E. Congressional Review of Agency Rulemaking

I. Electronic Availability

Electronic copies of the preamble and regulatory text of this final rulemaking are available via the Internet on the Office of Mobile Sources (OMS) Home Page (http://www.epa.gov/OMSWWW/). Users can find OBD related information and documents through the following path once they have accessed the OMS Home Page: "Automobiles,""I/M & OBD,""On-Board Diagnostics Files."

II. Introduction and Background

On May 28, 1997, the EPA published a notice of proposed rulemaking (62 FR 28932) that proposed changes to the federal OBD requirements. Those proposed changes would be implemented beginning with the 1999 model year. The proposed revisions included a provision indefinitely extending the allowance of deficiencies for federal OBD vehicles. Today's action finalizes this extension through the 1999 model year.

III. Requirements of the Final Rule

Today's action finalizes a provision to extend the current flexibility provisions (i.e., "deficiency provisions") contained in 40 CFR part 86.094–17(i) through the 1999 model year, rather than being eliminated beyond the 1998 model year. EPA is taking this action at this time because EPA is beginning to certify vehicles for the 1999 model year. Though EPA is currently completing its preparation of the final rule associated with the notice of proposed rulemaking published on May 28, 1997, EPA will not be able to complete its review in time for the beginning of the 1999 model year. EPA has become concerned that manufacturers would not be able to use EPA's deficiency regulations for its certifications, and that this may lead to delays in certifications. Therefore, EPA is finalizing its proposal to extend the deficiency policy on an expedited basis, in order to allow manufacturers to request deficiencies in the 1999 model year. This will allow the Administrator to accept an OBD system as compliant in the 1999 model year even though specific requirements are not fully met. This provision neither constitutes a waiver from federal OBD requirements, nor does it allow compliance without meeting the minimum requirements of the CAA (i.e., oxygen sensor monitor, catalyst monitor, and standardization features).

EPA received no comments opposing extension of the deficiency provision. Any particular comments dealt with specific clarifications made in the notice of proposed rulemaking that EPA is not finalizing at this time. As EPA received no comments adverse to this revision, and as the Agency believes that, despite the best attempts by manufacturers to comply with the complex OBD requirements, there will still be unanticipated instances that cannot be remedied in time to meet production schedules, EPA is finalizing its deficiency provision for the 1999 model year. EPA will take final action regarding the remainder of its proposal, including further action on its deficiency policy, at a later date.

IV. Effective Date

This rule shall be effective on the date of publication in the **Federal Register**. This rule grants regulatory relief from full compliance with OBD regulations for vehicle manufacturers for a single model year. In addition, the agency finds good cause for this rule to be effective upon publication, as certifications of vehicles for the 1999 model year are likely to begin prior to thirty days from publication.

V. Cost Effectiveness

This final rulemaking alters an existing provision by extending the current allowance of deficiencies for federal OBD systems through the 1999 model year. EPA believes that the regulations being finalized today will provide cost savings by eliminating the need to fully comply with all technical requirements of the OBD regulations in the 1999 model year.

The costs and emission reductions associated with the federal OBD program were developed for the February 19, 1993, final rulemaking. The changes being finalized today do not affect the costs or emission reductions published as part of that rulemaking, with the possible exception

of decreasing costs for some manufacturers.

VI. Public Participation

The Agency held a public hearing on July 9, 1997, for public testimony on the proposed revisions. Those comments and the additional comments received during the public comment period are available in Air Docket A–96–32. The comments received on the proposed revisions are discussed and addressed in section IV. of this final rulemaking.

VII. Administration Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Reporting and Recordkeeping Requirements

Today's action does not impose any new information collection burden. The modification does not change the information collection requirements submitted to and approved by OMB in association with the OBD final rulemaking (58 FR 9468, February 19, 1993; and, 59 FR 38372, July 28, 1994). The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in 40 CFR 86.084–17 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0104 (EPA ICR No. 783.25).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Copies of the ICR document(s) may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (mail code 2136); Washington, DC 20460 or by calling (202) 260–2740. Include the ICR and / or OMB number in any correspondence.

C. Impact on Small Entities

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. This rule will not have a significant adverse economic impact on a substantial number of small businesses. This rulemaking will continue a regulatory relief policy for both large and small volume automobile manufacturers for a single model year. It will not have a substantial impact on such entities. This rulemaking will not have a significant impact on businesses that manufacture, rebuild, distribute, or sell automotive parts, nor those involved in automotive service and repair, as the revisions affect only requirements on automobile manufacturers.

D. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, or $100 million or more. Under section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action finalized today would not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

E. Congressional Review of Agency Rulemaking

Under section 810(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Reform Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Gasoline, Incorporation by reference, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: February 6, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 86 of title 40 of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 is revised to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

2. Section 86.094–17 is amended by revising paragraph (i) to read as follows:

§ 86.094–17 Emission control diagnostic system for 1994 and later light-duty vehicles and light-duty trucks.

* * * * *

(i) Upon application by the manufacturer, the Administrator may either waive the requirements of this section for specific components of any class or category of light-duty vehicles or light-duty trucks for model years 1994 or 1995 (or both), or through the

1999 model year, the Administrator may accept an OBD system as compliant even though specific requirements are not fully met. Such waivers or compliances without meeting specific requirements will be granted only if compliance would be infeasible or unreasonable considering such factors as, but not limited to, technical feasibility, lead time and production cycles including phase-in or phase-out of engines or vehicle designs and programmed upgrades of computers, and if any unmet requirements are not carried over from the previous model year except where unreasonable hardware modifications would be necessary to correct the non-compliance, and the manufacturer has demonstrated an acceptable level of effort toward compliance as determined by the Administrator. For alternate fueled vehicles (i.e. natural gas, liquefied petroleum gas, or methanol), beginning with the model year for which alternate fuel emission standards are applicable and extending through the 1999 model year, manufacturers may request the Administrator to waive specific monitoring requirements of this section for which monitoring may not be reliable with respect to the use of the alternate fuel. At a minimum, all vehicles covered by this section, including those receiving a waiver as described in this paragraph, shall be equipped with an OBD system meeting either the California OBD I requirements, or some acceptable portion of the California OBD II or federal OBD requirements as specified in this section, except that for the 1994 and 1995 model years EPA may grant a waiver to a system less than OBD I giving consideration to such factors as manufacturer projections of very low sales volume for an engine family (e.g., 5000 or less), scheduled phase-out of significant engine technology with the 1994 or 1995 model years for that engine family, and whether or not the engine, or any similar engine within the manufacturer's product line, has ever been equipped with an OBD I or similar OBD system.

* * * * *

[FR Doc. 98–3885 Filed 2–13–98; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[FRL–5965–3]

Technical Amendments to Dried Fermentation Solids and Solubles of Myrothecium Verrucaria; Exemption From the Requirement of a Tolerance on All Food Crops and Ornamentals; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On November 14, 1996 (61 FR 58331), the Environmental Protection Agency published in the **Federal Register** a final rule amending a final rule which established an exemption from the requirement of a tolerance for dried fermentation solids and solubles of myrothecium verrucaria on all food crops and ornamentals. The rule established an effective date of November 14, 1996. This document corrects the effective date of the November 14, 1996 amendment to February 17, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on February 17, 1998.

FOR FURTHER INFORMATION CONTACT: Angela Hofmann, (202) 260–2922.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on November 14, 1996 (61 FR 58331), by operation of law, the rule did not take effect on November 14, 1996, as stated therein. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 408(e)(2) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e)(2), provides that the Administrator, before issuing a final rule under section 408(e)(1), shall issue a proposed rule and allow 60 days for public comment unless the Administrator for good cause finds that it would be in the public interest to provide a shorter period. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under section 408(e)(2). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since November 14, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2). Under section 408(g)(1) of FFDCA today's rule is effective upon publication. Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith, relying upon the effective date stated in the November 14, 1996 **Federal Register**, should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the November 14, 1996, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA

will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 17, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, objections, hearing requests, and judicial review are limited to the amended effective date. Procedures for filing objections to and requests for hearings on this amendment are described in the November 14, 1996, **Federal Register** document.

Dated: February 6, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3691 Filed 2–13–98; 8:45 am]

BILLING CODE: 6560–50–F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190, 191, 192, 193, 195, and 199

[Docket No. RSPA–97–2251; Amdt Nos. 190–7; 191–13; 192–83; 193–15; 194–2; 195–61; 198–3; 199–17.]

RIN 2137–AD03

Pipeline Safety: Periodic Updates to Pipeline Safety Regulations (1997)

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Direct final rule.

SUMMARY: This final rule is part of an annual effort by OPS to improve safety by clarifying and updating the pipeline safety regulations. Revisions include updated references to voluntary specifications and standards incorporated by reference, and various clarifications and grammatical corrections. These updates reflect the most recent editions of each specification and standard incorporated by reference to enable pipeline operators to utilize current technology, materials, and practices. In addition, certain gender-specific terms have been replaced with gender-neutral terms. Consistent with the President's goals of regulatory reinvention and improvement of customer service, this final rule updates the pipeline safety regulations for 1997, thereby reducing costs and enhancing economic growth.

EFFECTIVE DATES: This direct final rule takes effect May 4, 1998. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of May 4, 1998. If RSPA does not receive any adverse comment or notice of intent to file an adverse comment by March 19, 1998 the rule will become effective on the date specified. RSPA will issue a subsequent notice in the **Federal Register** by April 20, 1998 after the close of the comment period to confirm that fact and reiterate the effective date. If an adverse comment or notice of intent to file an adverse comment is received, RSPA will issue a timely notice in the **Federal Register** to confirm that fact and RSPA would withdraw the direct final rule in whole or in part. RSPA may then incorporate the adverse comment into a subsequent direct final rule or may publish a notice of proposed rulemaking.

ADDRESSES: Comments should be sent to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should identify the docket number (RSPA–97–2251). Persons should submit the original document and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed, stamped postcard. The Dockets Facility is located on the plaza level of the Nassif Building in Room Number 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays when the facility is closed.

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366–0918, or by e-mail (eben.wyman@rspa.dot.gov), regarding the subject matter of this Notice; or the Dockets Unit, (202) 366-4453, for copies of this final rule or other material in the docket. Further information can be obtained by accessing OPS' Internet Home Page at: ops.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

In a March 1995 memorandum, President Clinton directed Federal regulatory agencies to, among other things, conduct a page-by-page review of all agency regulations, cutting or revising those that were obsolete, intrusive, or better handled by parties other than the Federal government (i.e., private business, State, or local government).

In response to the President's directive, RSPA issued a final rule on May 24, 1996 (61 FR 26121) that updated references to voluntary specifications and standards. This rulemaking is the second annual update of the pipeline safety regulations to reduce unnecessary burdens on the regulated community and to ensure that the pipeline safety regulations incorporate the most current technical standards and specifications.

Incorporation by Reference

RSPA is incorporating by reference all or portions of nine updated documents containing practices, codes, standards, and specifications developed and published by technical organizations, including the American Society of Mechanical Engineers, American Society for Testing and Materials, Manufacturers Standardization Society of the Valve and Fittings Industry, and National Fire Protection Association. The updated standards incorporate the latest technology and engineering practice. Adoption of these updated documents assures that pipeline operators will not be unnecessarily burdened with outdated materials, design, and construction requirements.

These documents can be obtained by contacting the following organizations:

1. American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428.
2. The American Society of Mechanical Engineers (ASME), United Engineering Center, 345 East 47th Street, New York, NY 10017.
3. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS), 127 Park Street, NW, Vienna, VA 22180.
4. National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101.

These documents are available for inspection at the following locations:

1. Office of Pipeline Safety, room 2335, U.S. Department of Transportation, 400 7th Street, SW, Washington, DC 20590.
2. Office of the **Federal Register**, 800 N. Capitol Street, NW, Suite 700, Washington, DC 20408.

Other revisions

Clarifications

This document amends the following pipeline safety regulations to clarify their meaning:

1. Section 192.16(b)(5) states that "The operator (if applicable), plumbers,

and heating contractors can assist in locating, inspecting, and repairing the customer's buried piping." This final rule clarifies the reference by deleting the term "plumbers" and inserting the phrase "plumbing contractors".

2. Section 192.614(b)(5) requires operators to "Provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins." This requirement can be confusing to the operator in terms of interpreting the meaning of "as far as practical." Therefore, this final rule amends this paragraph to require temporary marking of buried pipelines before excavation activities begin "except in emergency situations."

3. Section 195.56(a) describes safety-related condition reports "under § 191.55(a) . . .", which is inaccurate. Safety-related condition report requirements for Part 195 are contained in § 195.55(a). This final rule makes that clarification.

4. The last line of § 199.17(a) provides that "samples may be discarded following the end of the 365-period." This final rule clarifies that samples may be discarded following the end of the "365-day period." Also, this final rule revises the language containing the term "his representative," on line 8, to remove the specific reference to gender.

Grammatical Corrections

In various sections of the pipeline safety regulations, minor grammatical errors exist that need correction, and gender-specific language that need revision. The following are the grammatical corrections covered in this rulemaking:

1. § 190.7(a)—addition of a comma after the term "RSPA", on line 5, and revision of the language containing the term "him," on line 8, to remove the specific reference to gender.

2. § 190.203(a)—addition of a comma after the term "OPS", on line 3.

3. § 190.209—addition of a comma after the term "violation", on line 2.

4. § 192.107(b)(2)—addition of a comma after the term "section", on line 3.

5. § 193.2059(d)(1)(i)—deletion of the comma after the term "but" and the addition of a comma after the term "system" on line 8.

Updates

In § 191.21 of the pipeline safety regulations, an authorization date follows the Office of Management and Budget (OMB) Control Number. Although the OMB number is still current, this notice removes the unnecessary authorization date. This section is amended to read as follows:

1. § 191.21—the chart provided in this section is amended to remove the reference to the March 31, 1986, as the final date of approval for this OMB Control Number. This number is still current and there is no date limiting its authority.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and, therefore, was not reviewed by the Office of Management and Budget (OMB). The final rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Executive Order 12612

The final rule has been analyzed with the principles and criteria in Executive Order 12612 ("Federalism") (52 FR 41685), and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

Based on the facts available, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

There are no new information collection requirements in this final rule.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects

49 CFR Part 190

Compliance, Pipeline safety, Reporting.

49 CFR Part 191

Annual reports, Incident reports, Pipeline safety.

49 CFR Part 192

Incorporation by reference, Natural gas, Pipeline safety.

49 CFR Part 193

Incorporation by reference, Liquefied natural gas (LNG), Pipeline safety.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Incorporation by reference, Petroleum, Pipeline safety.

49 CFR Part 199

Drug and alcohol testing, Pipeline safety.

In consideration of the foregoing, RSPA amends 49 CFR Parts 190, 191, 192, 193, 195, and 199 as follows:

PART 190—[AMENDED]

1. The authority citation for Part 190 continues to read as follows:

Authority: 33 U.S.C. 1321; 49 U.S.C. 5101–5127, 60101 *et seq.*; and 49 CFR 1.53.

2. Paragraph (a) of § 190.7 is revised to read as follows:

§ 190.7 Subpoenas; witness fees.

(a) The Administrator, RSPA, the Chief Counsel, RSPA, or the official designated by the Administrator, RSPA, to preside over a hearing convened in accordance with this part, may sign and issue subpoenas individually on their own initiative or, upon request and adequate showing by any person participating in the proceeding that the information sought will materially advance the proceeding.

* * * * *

3. Paragraph (a) of § 190.203 is revised to read as follows:

§ 190.203 Inspections.

(a) Officers, employees, or agents authorized by the Associate Administrator for Pipeline Safety, RSPA, upon presenting appropriate credentials, are authorized to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties are relevant to determining the compliance of such persons with the requirements of 49 U.S.C. 60101 *et seq.*, or regulations or orders issued thereunder.

* * * * *

4. The introductory text of § 190.209 is revised to read as follows:

§ 190.209 Response options.

Within 30 days of receipt of a notice of probable violation, the respondent shall respond to the Regional Director who issued the notice in the following way:

* * * * *

PART 191—[AMENDED]

1. The authority citation for Part 191 continues to read as follows:

Authority: 49 U.S.C. 5121, 60102, 60103, 60104, 60108, 60117, 60118, and 60124; and 49 CFR 1.53.

§ 191.21 [Amended]

2. The heading of the chart in § 191.21 is amended to remove the phrase "APPROVED THROUGH MARCH 31, 1986."

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60118; and 49 CFR 1.53.

2. Paragraph (b)(5) of § 192.16 is revised to read as follows:

§ 192.16 Customer notification.

* * * * *

(b) * * *

(5) The operator (if applicable), plumbing contractors, and heating contractors can assist in locating, inspecting, and repairing the customer's buried piping.

* * * * *

3. Paragraph (b)(2) of § 192.107 is revised to read as follows:

§ 192.107 Yield strength (S) for steel pipe.

* * * * *

(b) * * *

(2) If the pipe is not tensile tested as provided in paragraph (b)(1) of this section, 24,000 p.s.i.

4. Paragraph (c)(5) of § 192.614 is revised to read as follows:

§ 192.614 Damage prevention program.

* * * * *

(c) * * *

(5) Provide for temporary marking of buried pipelines in the area of excavation activity before the activity begins, except in emergency situations.

* * * * *

5. Appendix A of part 192 is amended by revising paragraphs II. C (1), (2), (9) and (10), II. E (1) and II. F (1) to read as follows:

Appendix A To Part 192—Incorporated by Reference

II. Documents incorporated by reference. (Numbers in parentheses indicate applicable editions.)

* * * * *

C. * * *

(1) ASTM Designation: A 53 "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless" (A53–96).

(2) ASTM Designation A 106 "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (A106–95).

* * * * *

(9) ASTM Designation D638 "Standard Test Method for Tensile Properties of Plastics" (D638–96).

(10) ASTM Designation D2513 "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing and Fittings" (D2513–96a).

* * * * *

E. * * *

(1) MSS SP44–96 "Steel Pipe Line Flanges" (includes 1996 errata) (1996).

* * * * *

F. * * *

(1) NFPA 30 "Flammable and Combustible Liquids Code" (1996).

* * * * *

PART 193—[AMENDED]

1. The authority citation for Part 193 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109, 60110, 60113, 60118; and 49 CFR 1.53

2. Paragraph (d)(1)(i) of § 193.2059 is revised to read as follows:

§ 193.2059 Flammable vapor-gas dispersion protection.

* * * * *

(d) * * *

(1) * * *

(i) The rate of vaporization is not less than the sum of flash vaporization and vaporization from boiling by heat transfer from contact surfaces during the time necessary for spill detection, instrument response, and automatic shutdown by the emergency shutdown system, but not less than 10 minutes, plus, in the case of impounding systems for LNG storage tanks with side or bottom penetrations, the time necessary for the liquid level in the tank to reach the level of the penetration or equilibrate with the liquid impounded assuming failure of the internal shutoff valve.

* * * * *

3. Appendix A to Part 193 is amended by revising paragraphs II.E(1), II.G(1), to read as follows:

Appendix A To Part 193—Incorporation By Reference

* * * * *

II. Documents Incorporated by Reference. (Numbers in Parentheses Indicate Applicable Editions.)

* * * * *

E. * * *

1. ASME/ANSI B31.3 "Process Piping" (1996)—Includes 1996 Addenda.

* * * * *

G. * * *

1. NFPA 30 "Flammable and Combustible Liquids Code" (1996)

* * * * *

PART 195—[AMENDED]

1. The authority citation for Part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. Section 195.3 is amended by revising paragraph (c)(5) (i) and (ii) to read as follows:

§ 195.3 Matter incorporated by reference.

* * * * *

(c) * * *

(5) * * *

(i) ASTM Designation A 53 "Standard specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated Welded and Seamless" (A 53–96).

(ii) ASTM Designation: A 106 "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (A 106–95).

* * * * *

3. Paragraph (a) of § 195.56 is revised to read as follows:

§ 195.56 Filing safety-related condition reports.

(a) Each report of a safety-related condition under § 195.55(a) must be filed (received by the Administrator) in writing within 5 working days (not including Saturdays, Sundays, or Federal holidays) after the day a representative of the operator first determines that the condition exists, but not later than 10 working days after the day a representative of the operator discovers the condition. Separate conditions may be described in a single report if they are closely related. To file a report by facsimile (fax), dial (202) 366–7128.

* * * * *

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 46 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. Paragraph (a) of § 199.17 is revised to read as follows:

§ 199.17 Retention of samples and retesting.

(a) Samples that yield positive results on confirmation must be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days as required by the DOT Procedures. Within this 365-day period, the employee or the employee's representative, the operator, the Administrator, or, if the operator is subject to the jurisdiction of a state agency, the state agency may request that the laboratory retain the sample for

an additional period. If, within the 365-day period, the laboratory has not received a proper written request to retain the sample for a further reasonable period specified in the request, the sample may be discarded following the end of the 365-day period.

* * * * *

Issued in Washington, DC on January 27, 1998.

Kelley S. Coyner,

Acting Administrator.

[FR Doc. 98–2898 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket NHTSA–98–3345]

RIN 2127–AG06

Federal Motor Vehicle Safety Standards; Stability and Control of Medium and Heavy Vehicles During Braking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This document amends Federal Motor Vehicle Safety Standard (FMVSS) No. 121, Air Brake Systems, to allow the alternate placement of the external antilock braking system (ABS) malfunction indicator lamp on trailers that have limited or non-existent structures to which the lamp and associated wiring can be attached. The purpose of the malfunction indicator lamp is to inform drivers, and maintenance and inspection personnel, of malfunctions in a trailer's ABS. The agency will permit the placement of the lamp on certain trailers (such as liquid tank, dry bulk, container chassis, and lowbed trailers) on the left side of the trailer near the red rear side marker lamp, or the front face of the left rear fender of trailers equipped with fenders. In addition, this document defines the methodology that is used to measure distances between the lamps (closest edge of the effective projected luminous lens area of each lamp). This rulemaking allows designers and manufacturers maximum design flexibility in the location of the malfunction indicator lamp while still ensuring that the lamp will serve its purpose.

DATES: *Effective Date:* The amendments in this final rule are effective March 1, 1998. Optional early compliance with these changes is permitted beginning February 17, 1998.

Petitions for Reconsideration: Any petition for reconsideration of this rule must be received by NHTSA no later than April 3, 1998.

ADDRESSES: Petitions for Reconsideration should be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph P. Scott, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202) 366–8525.

SUPPLEMENTARY INFORMATION:

I. Background
II. Petitions for Reconsideration
A. Intensity and Photometric Requirements
B. Location
i. Advocates location petition
ii. TTMA location petition
III. NHTSA Decision
A. Intensity and Photometric Requirements
B. Location
IV. Costs
V. Regulatory Analysis and Notices

I. Background

On September 23, 1996, NHTSA published a final rule (Docket 92–29; Notice 11) amending Federal Motor Vehicle Safety Standard (FMVSS) No. 121, Air Brake Systems, to specify the location, labeling, color, activation protocol, and photometric intensity of antilock braking system (ABS) malfunction indicator lamps on the exterior of trailers and trailer convertor dollies. (61 FR 49691). The purpose of this malfunction indicator lamp is to inform drivers, and maintenance and inspection personnel, of malfunctions in a trailer's ABS.

New truck tractors are required to be equipped with ABS as of March 1, 1997, and new air-braked trailers and single-unit trucks will be required to be so equipped beginning March 1, 1998. These vehicles will also be required to be equipped with indicator lamps to alert their drivers of ABS malfunctions. Each truck, including a truck tractor, equipped to tow trailers will be required to be equipped with two in-cab warning lamps: one to indicate malfunctions in its own ABS, and another to indicate ABS malfunctions on units it tows. Trailers will be required to be equipped with an electrical circuit capable of signaling a trailer ABS malfunction to the cab of the towing unit.

NHTSA recognized that, during the initial transition period, there is a high likelihood that new ABS-equipped trailers will frequently be towed by older, non-ABS-equipped tractors or trucks that will not have the capability to receive ABS malfunction signals transmitted from trailers. Accordingly, to provide the driver, maintenance, and Federal and State inspection personnel with the ability to determine a malfunction with the trailer ABS, the agency requires that trailers, including convertor dollies, also be equipped with a separate external ABS malfunction indicator. A final rule responding to petitions for reconsideration extended this requirement until March 1, 2009 (61 FR 5949, February 15, 1996). During this interim eleven-year period, external ABS malfunction indicator lamps must be installed on trailers. The agency reasoned that, after that time period, there would be sufficient new ABS-equipped truck tractors and towing trucks fitted with the in-cab trailer ABS malfunction warning indicator lamps to obviate the need for the separate trailer-mounted ABS malfunction warning lamp.

As stated in the September 23, 1996, **Federal Register** Notice, NHTSA decided to require that the external trailer ABS malfunction indicator lamp be located near the rear of the trailer. The agency believes that this lamp will be readily seen by the drivers using their rearview mirrors, and during walk-around inspections. The agency notes that this lamp will only activate in those situations when the trailer ABS has malfunctioned or during the check of lamp function whenever power is first applied to the ABS and the vehicle is stationary. The external trailer ABS malfunction indicator lamp must be located near the rear of the left side of a trailer when viewed from the rear of the trailer, no closer than 150 mm (5.9 inches) and not more that 600 mm (23.6 inches) from the red rear side marker lamp. The agency selected this range to ensure a standardized location of this lamp near the trailer rear, thereby facilitating its being viewed by drivers, while providing flexibility to trailer manufacturers. This requirement combined the suggestions of Midland-Grau, TTMA, ATA, and Grote concerning the specific location requirements for the trailer ABS malfunction indicator relative to the red rear side marker lamp. This decision reflects several considerations. In this standardized location, the lamp can be seen by drivers, as well as fleet maintenance and roadside inspection personnel, during pre-trip and post-trip inspections.

Also as stated in the September 23, 1996, **Federal Register** Notice, NHTSA decided—after reviewing the docket comments—to amend the standard

requiring intensity and photometric requirements of the external trailer ABS malfunction indicator lamp. The commenters requested that conformance be allowed to the July 1972 version of the SAE J592 (as well as the June 1992 version), since the earlier version is referenced in FMVSS 108 and many currently-manufactured and stocked lamps have been certified as having met the earlier version of the standard. These commenters also stated that the agency's proposal to rotate the lamp 90 degrees was inappropriate since the requirement would necessitate designing new lamps for an extremely limited market. They suggested that such a redesign would add costs for little apparent gain. Alternatively, they requested the agency to require the use of a combination clearance/side marker lamp instead of a simple side marker lamp, because the combination lamps, which have "PC" marked on the lens or housing in accordance with SAE J759, Lighting Identification Code, have a uniform and wide diffused beam pattern throughout the full 180 degrees left and right range. NHTSA amended the standard to permit conformance to either the July 1972, or June 1992 version of SAE J592. Additionally, the standard has been amended to require that a combination clearance/side marker lamp with a "PC" marked on the lens or housing in accordance with SAE J759, Lighting Identification Code, be used as the external trailer ABS warning lamp. The agency agreed with the commenters that this change will provide additional flexibility, without any detriment to safety. Based on the available information concerning the light output pattern of combination clearance/side marker lamps, the agency decided that rotating the lamp is not necessary to achieve the intended function of this lamp.

II. Petitions for Reconsideration

NHTSA received two petitions for reconsideration to the September 23, 1996, final rule. The first petition received was from Advocates for Highway Safety (Advocates). Their concerns are with the external ABS malfunction indicator lamp's (1) intensity and photometric requirements, and (2) location. The second petition was from TTMA requesting that the location requirements not be specified dimensionally, to accommodate the placement of the lamp on certain trailers (such as liquid tank, dry bulk, container chassis, and lowbed trailers) that have limited surface area to which the malfunction indicator lamp can be attached. The petitions are summarized in following two sections (a) Intensity and Photometric Requirements, and (b) Location.

A. Intensity and Photometric Requirements

In its October 3, 1996, petition, Advocates for Highway Safety (Advocates) stated that they "support photometric standardization of ABS malfunction lamps in FMVSS No. 108, but we are concerned that marker lamp luminous intensity on very bright days with certain lighting angles by the sun may not be sufficient to ensure that truck drivers can determine that a malfunction lamp is lit."

B. Location

i. Advocates Location Petition

In its petition dated October 3, 1996, Advocates stated that "only intermittent and not continuous monitoring of the ABS status on converter dollies will be possible. Advocates is concerned about the possible negative safety implications of this outcome. Apart from this reservation, Advocates supports the new location protocol."

ii. TTMA location petition

On March 7, 1997, Truck Trailer Manufacturers Association (TTMA) petitioned NHTSA to modify 571.121 paragraph S5.2.3.3(c)(1)and be revised to read as follows—where brackets indicate deletions and underlining indicates additions:

"(c) Location requirements. (1) Each trailer that is not a trailer converter dolly shall be equipped with a lamp mounted on a permanent structure on the left side of the trailer as viewed from the rear [no closer than 150 mm (5.9 inches), and no farther than 600 mm (23.6 inches), from] *near* the red rear side marker lamp or on the front face of the left rear fender of trailers equipped with fenders."

TTMA's petition requested that the location requirements not be specified dimensionally, so as to accommodate the placement of the lamp on certain trailers, such as liquid tank, dry bulk, container chassis, and lowbed trailers that have limited surface area to which the malfunction indicator lamp can be attached.

III. NHTSA Decision

A. Intensity and Photometric Requirements

Advocates is correct in their assertion that marker lamp luminous intensity on very bright days with certain lighting angles by the sun may not be sufficient to ensure that truck drivers can determine that a malfunction lamp is lit, but failed to note that NHTSA has the same photometric requirements for clearance and side markers. This ABS malfunction indicator lamp is intended to be used as an indicator for the driver and maintenance and roadside inspection personnel, but is not intended to serve as an overly bright "warning beacon" to all other road users, when the ABS malfunctions. The foundation brakes are designed to function properly even when the ABS has malfunctioned.

In section "E. Intensity and Photometric Requirements" of the final rule, NHTSA specified—supported by industry comments—that the intensity and photometric requirements for the external ABS malfunction indicator lamp will be subjected to the same photometric [1] requirements as those specified in Standard No. 108.

On March 10, 1995, AAMA and TTMA petitioned NHTSA to require that the external ABS malfunction indicator lamp be subjected to the same photometric requirements as those specified in Standard No. 108. NHTSA tentatively agreed with these petitioners in its December 13, 1995, final rule and proposed that the lamps meet the photometric requirements for clearance, side marker, and identification lamps specified by SAE Recommended Practice J592 JUN92 for clearance lamps, which are referenced in Standard No. 108.

Specifically, the agency proposed that ABS malfunction indicator lamps meet the photometric performance requirements specified in SAE J592 JUN92 for the luminous intensity of side marker lamps. Those requirements specify minimum intensity values at test points of 45 degrees along a horizontal axis and 10 degrees along a vertical axis, when measured from a lamp distance of at least three meters. In addition, the agency proposed that the lamp be mounted on the trailer in such a manner that its beam is directed toward the front of the trailer and rotated 90 degrees so that its top and bottom become its sides. The agency believed that such an orientation of the lamp would ensure that its widest light beam is in a vertical plane just outboard of the side of the trailer, and hence would be more likely to be visible by the driver through the tractor's rearview mirrors.

Truck-Lite, TTMA, and Midland-Grau requested that conformance be allowed to the July 1972 version of SAE J592 (as well as the June 1992 version), since that earlier version is referenced in Standard No. 108 and many currently manufactured and stocked lamps have

[1] Photometric values specify the amount of light emitted by a lamp, when measured from a specific distance.

been certified as having met that version of the standard. These commenters also stated the agency's proposal to rotate the lamp 90 degrees was inappropriate since the requirement would necessitate designing new lamps for an extremely limited market. They suggested that such a design would add costs for little apparent gain. Alternatively, they requested the agency to require the use of a combination clearance/side marker lamp instead of a simple side marker lamp, because the combination lamps, which have "PC" marked on the lens or housing in accordance with the SAE J759, Lighting Identification Code, have a uniform and wide diffused beam pattern throughout the full 180 degree left and right range. Thus, if this type of lamp is used, rotating the lenses, or mounting the lamp facing toward the front of the trailer would be unnecessary.

After reviewing the comments, NHTSA has amended the standard to permit conformance to either the July 1972, or June 1992 version of SAE J592. Additionally, the standard is being amended to require that a combination clearance/side marker lamp with a "PC" marked on the lens or housing in accordance with SAE J759 JAN95, Lighting Identification Code, be used as the external trailer ABS warning lamp. The agency agrees with the commenters that this change will provide additional flexibility, without any detriment to safety. Based on the available information concerning the light output pattern of combination clearance/side marker lamps, the agency has decided that rotating the lamp is not necessary to achieve the intended function of this lamp.

After reviewing Advocates' petition, NHTSA concluded that it provided no new information or data that was not considered previously during the rulemaking process. The agency, therefore, denies Advocates' petition with respect to the intensity and photometric requirements.

B. Location

The agency agrees with Advocates that "only intermittent and not continuous monitoring of the ABS status on converter dollies will be possible." Since the structure of a trailer converter dolly is difficult to see from the cab of a towing vehicle, NHTSA does not expect that the ABS malfunction lamp on the dolly will be seen continuously by drivers through the rearview mirror on the towing vehicle.

In the final rule published on September 23, 1996, NHTSA specified that the ABS malfunction lamp on trailer converter dollies be located on a permanent structure of the dolly and be visible to a person standing on the road surface near the location of the lamp. The agency believes that the lamp placement will allow it to be readily seen during a walk-around vehicle inspection. FMVSS No. 121, S5.2.3.3(c)(2) requires that the lamp be located 375 mm or higher above the road surface with no portion of the lamp being obscured by any structure on the dolly, and that the lamp must be visible to a person standing 3 meters from its location. There were no objections to this location by any commenters, when it was proposed in the Federal Register notice. Hence, the agency decided to adopt this location requirement as proposed for the ABS malfunction lamp on dollies.

The agency agrees with TTMA that certain trailers, due to their design, would not be able to accommodate an ABS malfunction indicator lamp with the location specified in S5.2.3.3(c)(1). However, the agency believes that instead of deleting the dimensionally-specific requirements for locating the lamp on standard trailers, additional requirements should be included in FMVSS 121, S5.2.3.3 to accommodate those trailers about which TTMA is concerned. Therefore, to accommodate both current and future trailer design configurations that possess limited or non-existent structures to which the lamp can be secured and to allow designers and manufacturers maximum design flexibility in the construction of their equipment, NHTSA will permit the placement of the lamp on certain trailers, such as liquid tank, dry bulk, container chassis, and lowbed trailers:

(1) Near the red rear side marker lamp—readily viewed by the driver and maintenance and roadside inspection personnel; or

(2) On the front face of the left rear fender of trailers equipped with fenders.

This action will allow the light to be installed on an existing trailer surface area that is viewable by the driver, without the need for major design modifications. Therefore, this action will hold down the cost of complying with the mandated lamp.

The current location requirements, as specified in S5.2.3.3(c)(1), provide minimum and maximum dimensions for placement of the malfunction indicator lamp relative to the red rear side marker lamp. However, the regulatory text does not specify whether these dimensions are from the centerlines of the lamps or from the edges of the lamps. In this notice, the agency clarifies this ambiguity by specifying that the dimensions are based upon an edge-to-edge measurement between the lamps, and including a definition of the term, "effective projected luminous lens area," which is used in the regulatory text. Accordingly, the regulatory text is amended to reflect this clarification.

IV. Costs

NHTSA has already evaluated the economic impact of requiring trailers and dollies to be equipped with an external ABS malfunction indicator lamp in the final rule on heavy vehicle ABS published on March 10, 1995. The agency estimated that the unit cost of requiring an ABS lamp on trailers and dollies is $9.43. Since this rule does not require additional equipment, but only specifies location and a definition for "effective projected luminous lens area," the rule should not have any impact on previously estimated costs or benefits. The agency notes there will be some cost savings, compared to the September 1996 final rule, since manufacturers will not have to redesign those trailers lacking a structure on which to install the lamp. A significant minority of the trailers (approximately 25 percent) would have needed a permanent structure attached to the trailer to comply with the proposed requirement. Locating the lamp in the rear of the trailer also reduces installation costs and improves durability since less wire will be needed between the ABS electronic control unit (ECU) and the light it activates, compared to locating the indicator at the front of the trailer.

V. Regulatory Analysis and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking was not reviewed under Executive Order 12866, *Regulatory Planning and Review.* NHTSA has analyzed this proposal and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The impacts of the rule are so minimal as not to warrant preparation of a full regulation evaluation. As noted above, NHTSA has already evaluated the economic impact of requiring an external ABS malfunction indicator lamp. For details, see the Final Economic Assessment (FEA) titled, "Final Rules FMVSS Nos. 105 & 121 Stability and Control While Braking Requirements and Reinstatement of Stopping Distance Requirements for Medium and Heavy Vehicles," published in June 1994.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendment will not have a significant economic impact on a substantial number of small entities. Vehicle and brakes manufacturers typically do not qualify as small entities. Further, aside from the relatively small cost impacts noted above, the amendments will not affect costs or benefits beyond those addressed in the FEA for the ABS final rule. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws are affected.

4. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act of 1969. The agency has determined that implementation of this action will not have any significant effect on the quality of human environment. This final rule will result in no changes to motor vehicle or motor vehicle equipment production or disposal processes.

5. Executive Order 12778 (Civil Justice Reform)

This rulemaking will have no retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles produced for use in that State. The 49 U.S.C. 30161 sets forth a procedure for judicial review of rulemakings establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency is amending FMVSS No. 121, Air Brake Systems, in title 49 of the Code of Federal Regulations, Part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.121 is amended by adding a new definition of "Effective Projected Luminous Lens Area" to S4; by revising S5.2.3.3(c)(1); and by adding S5.2.3.3(c)(3) to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S4. Definitions

* * * * *

Effective projected luminous lens area means that area of the projection on a plane perpendicular to the lamp axis of that portion of the light-emitting surface that directs light to the photometric test pattern, and does not include mounting hole bosses, reflex reflector area, beads or rims that may glow or produce small areas of increased intensity as a result of uncontrolled light from small areas (½ degree radius around the test point).

* * * * *

S5.2.3.3 Antilock malfunction indicator

* * * * *

(c) Location requirements. (1) Each trailer that is not a trailer converter dolly shall be equipped with a lamp mounted on a permanent structure on the left side of the trailer as viewed from the rear, no closer than 150 mm (5.9 inches), and no farther than 600 mm (23.6 inches) from the red rear side marker lamp, when measured between the closest edge of the effective projected luminous lens area of each lamp.

* * * * *

(3) Each trailer that is not a trailer converter dolly and on which the malfunction indicator lamp cannot be placed within the location specified in S5.2.3.3(c)(1) shall be equipped with a lamp mounted on a permanent structure on the left side of the trailer as viewed from the rear, near the red rear side marker lamp or on the front face of the left rear fender of a trailer equipped with fenders.

* * * * *

Issued: February 5, 1998.

Ricardo Martinez, M.D.

Administrator.

[FR Doc. 98–3629 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 970829217–8025–02; I.D. 081597E]

RIN 0648–AJ79

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 18

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 18 to the Northeast Multispecies Fishery Management Plan (FMP). Framework Adjustment 18 allows pelagic midwater trawling for herring and mackerel in Multispecies Closed Areas I and II, the Gulf of Maine (GOM) multispecies closure areas, and in the Nantucket Lightship Closed Area, under certain conditions. The intent of this rule is to provide greater economic opportunity for pelagic midwater trawl vessels to harvest herring and mackerel while maintaining the conservation benefits of the current multispecies management measures.

DATES: Effective February 17, 1998.

ADDRESSES: Copies of Amendment 7 to the FMP, its regulatory impact review (RIR), and the final regulatory flexibility analysis (FRFA) contained within the RIR, its final supplemental environmental impact statement, and Framework Adjustment 18 documents are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, NMFS, Fishery Policy Analyst, 508–281–9279.

SUPPLEMENTARY INFORMATION:

Background

In 1994, at the request of the New England Fishery Management Council (Council), NMFS, by emergency action, closed three large areas of the Northeast multispecies fishery for the duration of the emergency to all fishing gear capable of catching multispecies (59 FR 63926, December 12, 1994, and amended at 60 FR 3102, January 13, 1995). These areas, known as Closed Areas I and II and the Nantucket Lightship Closed Area, cover approximately 4,800 square miles

(12432 sq. km.). In order to avoid a hiatus between the emergency action and the implementation of Amendment 7, the Council proposed and NMFS issued Framework Adjustment 9 (60 FR 19364, April 18, 1995) to implement the emergency measures on a permanent basis while Amendment 7 was being developed to address a long term objective of stock rebuilding. In 1996, Amendment 7 to the FMP continued the existing year-round closures and closed seasonally three additional large areas in the GOM (61 FR 27710, May 31, 1996). These areas currently remain closed to all gear capable of catching multispecies, including pelagic midwater trawls.

Recently, the Council was requested by industry participants to allow pelagic midwater trawling for herring and mackerel in the multispecies closed areas because these fisheries capture negligible amounts of regulated multispecies due to the spatial separation of pelagic and demersal species in the water column. Because of the low value of herring and mackerel, it is important to the industry that vessels have unimpeded access to these species throughout their migrations to ensure that the harvesting and/or processing capacity of the vessels is maximized. Large closed areas impede access and make fishing for herring and mackerel economically less feasible. These pelagic species are very important for commercial fishing vessels in New England that participate in joint ventures or in the directed domestic fishery. Due to the prohibition on fishing in closed areas and an increased reliance on closed areas for multispecies mortality reduction, it has become increasingly difficult to conduct these pelagic fishing operations.

Further details concerning justification for, and development of, Framework Adjustment 18 were provided in the preamble to the proposed rule (62 FR 49193, September 19, 1997).

This framework allows pelagic midwater trawling for herring and mackerel in Closed Areas I and II, the Nantucket Lightship Closed Area, and in the GOM Closed Areas (§ 648.81(a), (b), and (c)) under the following conditions: (1) Vessels must obtain and comply with a midwater trawl letter of authorization (LOA)(as currently required under § 648.80(d)(2) for the midwater trawl gear exemption) from the Administrator, Northeast Region, NMFS (Regional Administrator); (2) harvesting or processing vessels must carry observers, if required by NMFS (as currently required under the midwater trawl gear exemption), and (3) if the Regional Administrator determines, on the basis of sea sampling data or other credible information for this fishery, that the bycatch of regulated multispecies for the fishery or for any individual vessel exceeds, or is likely to exceed, 1 percent of herring and mackerel harvested, by weight, the Regional Administrator may place restrictions and/or conditions in the LOAs for any or all individual fishing operations, or, after consulting with the Council, the Regional Administrator may suspend or prohibit any or all midwater trawl activities in the closed areas.

Comments and Responses

Five comments were received concerning Framework Adjustment 18. Three of the comments were strongly supportive of the proposed rule and substantiate the finding in the Initial Regulatory Flexibility Act (IRFA) that this action will have a positive economic impact on small business entities. Two other comments were concerned about the potential bycatch of regulated multispecies and marine mammals.

Comment 1: A representative from a pelagic fishing company wrote in support of Framework Adjustment 18. The commenter stated that pelagic midwater trawl vessels have no bycatch of groundfish or marine mammals and disputed assertions to the contrary. To satisfy any perceived problems, the commenter stated that the pelagic trawl industry is willing to take observers, if requested to do so.

Response: Available herring and mackerel sea sampling data shows a minimal bycatch of regulated multispecies. NMFS will continue to collect sea sampling data and other information on these fisheries. This information will be essential for any future decision making purposes. A condition in the LOA necessary to participate in the pelagic midwater trawl fishery states that vessels must carry observers, if required by NMFS. On the basis of sea sampling data or other credible information for this fishery, if bycatch of regulated multispecies exceeds, or is likely to exceed, 1 percent of the catch of herring and mackerel, by weight, the Regional Administrator may place restrictions or conditions on the required midwater trawl LOA or, in consultation with the Council, suspend all midwater trawl activities in any or all of the closed areas. These precautions should alleviate any real or perceived problems with bycatch in the closed areas.

Comment 2: A representative from a commercial pelagic fishing association submitted written comments supporting Framework Adjustment 18. The commenter stated that allowing midwater trawl vessels into the multispecies closed areas would facilitate the orderly development of the offshore herring fishery. The commenter wrote that, as the herring fishery management plan is developed, it will be essential to gather accurate scientific data and information to respond to any concerns regarding marine mammal interactions with pelagic trawl gear.

Response: NMFS concurs. This final rule could facilitate the orderly development of the industry and provide important additional information on fishery bycatch and pelagic species biology.

Comment 3: A representative from a commercial fishing association submitted written comments supporting Framework Adjustment 18, indicating that it will provide greater economic opportunity for pelagic midwater trawl vessels to harvest herring and mackerel and maintain the conservation benefits of current multispecies management measures.

Response: NMFS concurs. The intent of this framework is to allow pelagic midwater trawling in the multispecies closed areas only if it does not adversely impact current efforts to rebuild depleted groundfish stocks. The RIR/IRFA concluded that this action will have a positive economic impact on small businesses.

Comment 4: A representative of the commercial fishing industry submitted a written comment expressing concern about bycatch of regulated multispecies (specifically cod, haddock, and pollock) in the midwater trawl fishery, if these areas are reopened to pelagic midwater trawl gear. The commenter wrote that groundfish occasionally leave the sea bottom and may, therefore, be vulnerable to capture with midwater trawl gear. The commenter emphasized that this is why 100–percent observer coverage should be required in the midwater trawl fishery. The commenter also questioned the validity of the data provided on the cost of 100–percent observer coverage in relation to the economic value of the pelagic fishery. The commenter stated that the cost of observers would be minimal compared with the value of the herring and mackerel caught in the areas and with the value of assured protection to groundfish.

Response: The Council and NMFS have been aware of the concern with multispecies bycatch throughout the development of Framework Adjustment 18. An important factor in the decision to allow midwater trawling is the fact

that available herring and mackerel sea sampling data and mackerel weighout data do not show a bycatch of regulated multispecies. The data do indicate some bycatch of nonregulated multispecies (whiting) and scup. Monitoring of data will continue with the implementation of Framework Adjustment 18, and appropriate action will be taken if the bycatch of regulated multispecies exceeds 1 percent, by weight, of harvested herring and mackerel. Since many of the vessels operating in these fisheries will be reporting their landings under the mackerel and multispecies fishery management plans, data will be available. Safeguards have been included in the framework whereby the midwater trawl fishery in the closed area(s) can be restricted or closed if the bycatch of regulated multispecies for the fishery exceeds 1 percent, by weight, of harvested herring and mackerel by any or all vessels. This will ensure that bycatch of regulated multispecies is minimal. Furthermore, vessels participating in these fisheries are not allowed to retain regulated multispecies and, therefore, have no incentive to capture them.

The Council considered requiring 100–percent observer coverage or having observers present whenever fish are transferred from a harvesting vessel to the processor, but it rejected these alternatives due to prohibitive costs and limited observer availability. Observer costs were found in the IRFA prepared by the Council to range from 8 percent to as much as 148 percent of ex-vessel revenues. These costs would average 55 percent of gross revenues for ton-class 3 vessels, and 14 percent of gross revenues for ton-class 4 vessels based on available herring catch rate data. Therefore, for vessels that land pelagics ashore and for some freezer trawlers, it would be economically unfeasible to require observers. That is why the alternative to require mandatory observers was rejected.

Importantly, however, the framework does require vessels to obtain and comply with the midwater trawl LOA, as described in § 648.80(d)(2), to fish in the closed areas. A condition in the LOA states that vessels must carry observers, if required by NMFS. Also, observers are currently required on processing vessels participating in joint venture operations.

Comment 5: A representative of the commercial fishing industry submitted a written comment stating that this rule could result in increased interactions between pelagic midwater trawl gear and marine mammals, especially harbor porpoise. The frequency of interactions could increase because the GOM closures coincide with periods of high harbor porpoise abundance, and the target species for both harbor porpoise and the midwater trawl fleet is herring. The commenter indicated that minimal sea sampling data is available upon which to base a final rule and expressed concern regarding compliance with the Marine Mammal Protection Act and the Endangered Species Act. Finally, it was stated that Framework Adjustment 18 should not compromise efforts already underway to rebuild groundfish and marine mammal stocks.

Response: NMFS appreciates the commenter's detailed discussion of the potential for bycatch of harbor porpoise and other marine mammals in the midwater herring and mackerel trawl fisheries and the need for observer coverage in these fisheries. The NMFS sea sampling program has collected information on marine mammal bycatch in foreign and domestic midwater trawl fisheries targeting mackerel in the Mid-Atlantic. Sample sizes for herring and mackerel midwater trawl trips in the GOM are small and provide limited information on marine mammal bycatch rates for these fisheries. Based upon the available data on midwater trawl fisheries, the 1996 marine mammal stock assessment report prepared by NMFS indicated that no takes of harbor porpoise have been documented in midwater trawl gear.

NMFS has the authority to place observers in the herring midwater trawl fishery for purposes of monitoring fish harvests as well as for monitoring any marine mammal and other endangered species bycatch.

An Endangered Species Act Section 7 consultation on this fishery resulted in a Biological Opinion issued on December 13, 1996. Since the conclusion of that consultation, Framework Adjustment 18 has been revised. Therefore, consultation on Framework Adjustment 18 was reinitiated. The new consultation concluded that impacts from fishing activities conducted under Framework Adjustment 18 will not change the basis for the December 13, 1996, determination that the overall operation of the multispecies fishery under the FMP, without modification, is likely to jeopardize the continued existence of the northern right whale may affect but is not likely to jeopardize the continued existence of other endangered or threatened species of whale, sea turtles, and fish under NMFS jurisdiction and will not result in adverse modification of critical habitat.

Changes in the Final Rule From the Proposed Rule

Some changes from the proposed rule were necessary to make Framework Adjustment 18 more succinct and to eliminate duplicative regulations. Other changes were made to more accurately reflect Council intent and to serve administrative purposes.

Section 648.80(d)(2) of the final rule requires vessels to have on board a midwater trawl LOA when fishing in the Gulf of Maine/Georges Bank (GOM/GB) and Stellwagen Bank/Jeffreys Ledge (SB/JL) Areas and the portion of the Nantucket Lightship Closed Area not within the GOM/GB and the SB/JL Areas. The proposed rule, while not substantively different, independently listed six other multispecies closed areas as being subject to the LOA requirement. Because these closed areas are subareas lying completely within the larger GOM/GB and SB/JL Areas, the final rule does not independently list them.

Section 648.80(d)(3) of the final rule allows vessels in the midwater trawl exemption in areas north of 42°20' N. lat. and in three specified multispecies closed areas to fish for, possess, or land only Atlantic herring, blueback herring, or mackerel. The proposed rule listed all seven of the multispecies closed areas. Because four of these multispecies closed areas are north of 42°20' N. lat., the final rule does not independently list them.

In § 648.80(d), paragraph 5 is added which requires vessels fishing under the midwater trawl exemption to carry a NMFS- approved sea sampler/observer, if requested by the Regional Administrator. This provision is already in the midwater trawl LOA and is specifically mentioned in the Council framework document. Adding this provision makes the regulations consistent with the LOA and better reflects Council intent.

In § 648.81(a)(2)(iii), the final rule specifies that the Regional Administrator shall determine the percent bycatch of regulated multispecies on the basis of sea sampling data and other credible information for the fishery. This was implied in the proposed rule but required clarification. The change from the proposed rule was made to more clearly reflect Council intent and to facilitate the administration of the regulation. Information on which to make decisions will be available on a fishery-wide basis and not only on limited data basis from the closed areas. This is consistent with NMFS's objective to reopen the multispecies

closed areas to midwater trawl vessels in a cautious manner while ensuring that the bycatch of regulated multispecies is minimal.

Classification

The Regional Administrator, Northeast Region, NMFS, determined that Framework Adjustment 18 is consistent with the Magnuson-Stevens Act and other applicable law.

Because this rule relieves restrictions on a sector of the fishing industry by allowing fishing for mackerel and herring to occur in areas currently closed to such fishing, under 5 U.S.C. 553(d)(1) it is not subject to a 30-day delay in effective date.

This action is authorized by 50 CFR part 648 and has been determined not to be significant for purposes of E.O. 12866.

The Council prepared an IRFA that describes the impact this rule would have on small entities. This action would have a significant, but positive, impact on small business entities because it is expected to increase the annual gross revenues of a substantial number of small business entities by more than 5 percent. The IRFA concluded that this action could affect all of the approximately 35 pelagic midwater trawl vessels (which are small business entities) participating in the fisheries by allowing them to fish in areas currently closed to them, thereby increasing their annual gross revenues by more than 5 percent. Ten to twelve additional vessels could enter these fisheries in the next year. However, it is unlikely that more vessels will enter the fisheries because of the expense, which is estimated to range from $75,000 to $250,000 depending on the changes made, to convert conventional trawl vessels into competitive midwater trawls. Because of the conversion expenses, many vessels would be precluded from entering these fisheries.

This action could improve the economic competitiveness of all U.S. Atlantic herring and mackerel harvesting operations and preserve the enforceability and effectiveness of the multispecies closed areas. The IRFA indicated that it is difficult to predict the exact increase in annual gross revenues as a result of allowing fishing in the currently closed areas due to the unpredictability of herring and mackerel migrations, but overall annual ex-vessel revenues for the fleet may potentially rise from between $255,684 to $767,051, as compared to taking no action.

As mentioned earlier, the Council had considered requiring the 100–percent observer coverage or having observers present when fish was transferred from the harvesting vessel to the processor, but rejected these alternatives because they were considered too costly for the fleet. No additional alternatives to minimize the economic impacts were considered by the Council because all the impacts are beneficial and need not be minimized. A copy of the IRFA analysis is available from the Council (see **ADDRESSES**). The FRFA incorporates the IRFA findings with the response to comments received, and addressed above, regarding the proposed rule. Framework Adjustment 18 is expected to increase the annual gross revenues of a substantial number of small business entities by more than 5 percent. Framework Adjustment 18 will have a significant, but positive, economic impact on a substantial number of small business entities.

This rule refers to a collection of information which is subject to the Paperwork Reduction Act and which has been approved under OMB control number 0648–0202.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 10, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 648.80 is amended by revising paragraphs (d)(2) and (d)(3), and by adding paragraph (d)(5) to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(d) * * *

(2) When fishing under this exemption in the GOM/GB and SB/JL Areas, and in the area described in § 648.81(c)(1), the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with all restrictions and conditions thereof.

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, or mackerel in areas north of 42°20' N. lat. and in the areas described in Sec. 648.81(a)(1), (b)(1), and (c)(1); and Atlantic herring, blueback herring, mackerel, or squid in all other areas south of 42°20' N. lat.; and

* * * * *

(5) The vessel must carry a NMFS-approved sea sampler/ observer, if requested by the Regional Administrator.

* * * * *

3. Section 648.81 is amended by adding paragraph (a)(2)(iii), and by revising paragraphs (a)(2)(ii), (b)(2) introductory text, (c)(2)(i), and (f)(2)(ii) to read as follows:

§ 648.81 Closed areas.

(a) * * *

(2) * * *

(ii) Fishing with or using pelagic hook or longline gear or harpoon gear, provided that there is no retention of regulated species, and provided that there is no other gear on board capable of catching NE multispecies; or

(iii) Fishing with pelagic midwater trawl gear, consistent with § 648.80(d), provided that the Regional Administrator shall review information pertaining to the bycatch of regulated multispecies, and, if the Regional Administrator determines, on the basis of sea sampling data or other credible information for this fishery, that the bycatch of regulated multispecies exceeds, or is likely to exceed, 1 percent of herring and mackerel harvested, by weight, in the fishery or by any individual fishing operation, the Regional Administrator may place restrictions and conditions in the letter of authorization for any or all individual fishing operations or, after consulting with the Council, suspend or prohibit any or all midwater trawl activities in the closed areas.

(b) * * *

(2) Paragraph (b)(1) of this section does not apply to persons on fishing vessels or fishing vessels fishing with gears as described in paragraph (a)(2) of this section, or that are transiting the area provided—

* * * * *

(c) * * *

(2) * * *

(i) Fishing with gears as described in paragraph (a)(2) of this section;

* * * * *

(f) * * *

(2) * * *

(ii) That are fishing with or using exempted gear as defined under this part, subject to the restrictions on midwater trawl gear in § 648.81(a)(2)(iii), and excluding pelagic gillnet gear capable of catching multispecies, except vessels may fish with a single pelagic gillnet, not longer than 300 ft (91.44 m.) and not greater

than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.62 cm), provided the net is attached to the boat, is fished in the upper two-thirds of the water column, and is marked with the owner's name and vessel identification number and provided there is no other gear on board capable of catching multispecies finfish; or

* * * * *

[FR Doc. 98–3791 Filed 2–10–98; 4:46 pm]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 31
Tuesday, February 17, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV98–932–1 PR]

Olives Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the California Olive Committee (Committee) under Marketing Order No. 932 for the 1998 and subsequent fiscal years. The Committee is responsible for local administration of the marketing order which regulates the handling of olives grown in California. Authority to assess olive handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year began January 1 and ends December 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by March 19, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Diane Purvis, Marketing Assistant, or Terry Vawter, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable olives beginning January 1, 1998, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 1998 fiscal year and subsequent fiscal years from $14.99 per ton to $17.10 per ton.

The California olive marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California olives. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997 fiscal year and subsequent fiscal years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on December 11, 1997, and unanimously recommended 1998 fiscal year expenditures of $1,750,400 and an assessment rate of $17.10 per ton of olives received during the 1997–98 crop year, which began August 1, 1997, and ends July 31, 1998. In comparison, last year's budgeted expenditures were $2,159,265. The assessment rate of $17.10 is $2.11 higher than the rate currently in effect.

Olive trees have an alternate-bearing characteristic causing a large crop one year and a small crop the next. Handler receipts of olives for the 1997–98 crop year were 85,585 tons, which is 59% less than the 144,075 tons received in 1996–97. Although the 1998 fiscal year budgeted expenditures are less than those in the prior year, the decrease in olive receipts necessitates an increase in the assessment rate to cover all

anticipated expenditures. If the assessment rate is not increased from the 1997 fiscal year assessment rate of $14.99, funds will fall approximately $467,481 short of 1998 fiscal year's budgeted expenses.

The major expenditures recommended by the Committee for the 1998 year include $357,900 for administration, $50,000 for research, and $1,308,500 for market development. Budgeted expenses for these items in 1997 were $390,890, $173,375, and $1,595,000, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, actual receipts of olives, and additional pertinent factors. The revised assessment rate should provide $1,463,504 in assessment income. Income derived from handler assessments, interest, and carryover of reserve funds would be adequate to cover budgeted expenses. Funds in the reserve (currently $287,996) would be kept within the maximum permitted by the order (approximately one fiscal year's expenses; § 932.40).

The assessment rate established in this rule would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee would continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department and are published in local newspapers. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 1998 fiscal year budget and those for subsequent fiscal years would be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,200 producers of olives in the production area and 4 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. None of the olive handlers may be classified as small entities, while the majority of olive producers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 1998 fiscal year and subsequent fiscal years from $14.99 per ton to $17.10 per ton. The Committee unanimously recommended 1998 fiscal year expenditures of $1,750,400 and an assessment rate of $17.10 per ton. The increased assessment rate is needed because the quantity of assessable olives for the 1998 fiscal year is 85,585 tons, a decrease of 59% from last year's crop of 144,075 tons. The $17.10 rate should provide $1,463,504 in assessment income and be adequate to meet this year's budgeted expenses, when combined with funds from the authorized reserve and interest income.

A review of historical and preliminary information pertaining to the upcoming fiscal year indicates that the grower prices for the 1997–98 crop year could range from $150 to $825 per ton of olives for canning sizes. Therefore, the estimated assessment revenue for the 1998 fiscal year as a percentage of total grower revenue could range between 11.4 and 2 percent, respectively. Because most of the canning sizes will probably be sold closer to the $825 per ton price, the estimated assessment revenue for the 1998 fiscal year as a percentage of total grower revenue will be closer to 2 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are expected to be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California olive industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 11, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on California olive handlers, none of which are small entities. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1998 fiscal year began on January 1, 1998, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable olives handled during such fiscal year; (3) all four handlers are represented on the Committee and participated in deliberations; and (4) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is proposed to be amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 932.230 is proposed to be revised to read as follows:

§ 932.230 Assessment rate.

On and after January 1, 1998, an assessment rate of $17.10 per ton is established for assessable olives grown in California.

Dated: February 9, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–3869 Filed 2–13–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

7 CFR Parts 3015, 3016 and 3019

RIN 0503–AA16

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

AGENCY: Department of Agriculture, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: USDA is proposing to revise its grants management regulations in order to bring the entitlement programs it administers under the same regulations that already apply to nonentitlement programs; and to identify exceptions to these general rules that apply only to entitlement programs. The effect of the first change would be that only one set of Federal administrative requirements would apply to awards that a grantee or subgrantee organization receives under USDA programs. That would be consistent with how most other Federal awarding agencies handle their codifications of governmentwide rules for grantees and subgrantees. In making the second change, this proposed rule would establish the following exceptions for entitlement programs: States and their governmental subgrantees would be required to conduct procurements under USDA entitlement programs in accordance with the specific procurement rules stated in the USDA regulations; the option to use State rules that differed from these Federal rules would not be available, as it is for procurements under nonentitlement programs; States and their governmental subgrantees would be required to exclude from consideration for a contract award any contractor that had developed draft product specifications, requirements, statements of work, invitations for bid, and/or requests for proposals for use by the grantee or subgrantee in conducting procurements under USDA entitlement programs; Financial reporting requirements under USDA entitlement programs would continue to be provided in the program-specific regulations rather than in the departmental regulations. This would not affect the reporting requirements themselves.

DATES: Written comments must be submitted on or before May 19, 1998.

ADDRESSES: Comments must be mailed or faxed to Gerald Miske, Supervisory Management Analyst, Fiscal Policy Division, Office of the Chief Financial Officer, USDA, Room 3022 South Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250; FAX (202) 690–1529. Written comments may be inspected at the above address from 8:00 a.m. to 5:00 p.m. A copy of the Regulatory Cost/Benefit Assessment referenced in the Regulatory Impact Analysis section of this preamble can be obtained from Gerald Miske, Supervisory Management Analyst, Fiscal Policy Division, Office of the Chief Financial Officer, USDA, Room 3022 South Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250. This assessment may be examined at the same address.

FOR FURTHER INFORMATION CONTACT: Gerald Miske, Supervisory Management Analyst, Fiscal Policy Division, Office of the Chief Financial Officer, USDA, at the above address; telephone (202) 720–1553.

SUPPLEMENTARY INFORMATION:

Background

The administrative requirements for awards and subawards under all USDA entitlement programs are currently in 7 CFR Part 3015, "Uniform Federal Assistance Regulations." The corresponding requirements for awards and subawards to State and local governmental organizations under USDA nonentitlement programs are in Subparts A through D of 7 CFR Part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;" and the administrative requirements for awards and subawards to nongovernmental, nonprofit organizations are in 7 CFR Part 3019, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." This proposed rule would expand the scope of Parts 3016 and 3019 to include entitlement programs, and delete administrative requirements for awards and subawards under such programs from the scope of Part 3015. It would also establish, in Subpart E to Part 3016, certain exceptions to the general administrative requirements that would apply only to the entitlement programs. The following text outlines the evolution of these proposed changes.

On March 11, 1988, USDA joined other Federal agencies in publishing a final grants management common rule applicable to assistance relationships established by grants and cooperative agreements, and by subawards thereunder, to State and local governments. Prior to that date, administrative requirements for awards and subawards under all USDA programs were codified at 7 CFR Part 3015. USDA implemented the common rule at 7 CFR Part 3016. At that time, the common rule did not apply to entitlement programs such as the Food Stamp and Child Nutrition Programs administered by the Food and Nutrition Service, USDA, and the public assistance programs administered by the Department of Health and Human Services (DHHS). However, Subpart E was reserved in the rule to subsequently address provisions specific to entitlement programs. Pending the publication of Subpart E to Part 3016, the USDA entitlement programs have remained under Part 3015. These programs included:

(1) Entitlement grants under the following programs authorized by the National School Lunch Act, as amended; (a) National School Lunch Program, General and Special Meal Assistance (sections 4 and 11 of the Act, respectively), (b) Commodity Assistance (section 6 of the Act), (c) Summer Food Service Program for Children (section 13 of the Act), and (d) Child and Adult Care Food Program (section 17 of the Act); (2) Entitlement grants under the following programs authorized by the Child Nutrition Act of 1966, as amended; (a) Special Milk Program for Children (section 3 of the Act), (b) School Breakfast Program (section 4 of the Act), and (c) State Administrative Expense Funds (section 7 of the Act); and (3) Entitlement grants for State Administrative Expenses under the Food Stamp Act of 1977, as amended (section 16 of the Act).

The exclusion of these programs from the scope of Part 3016 made that regulation apply only to USDA's nonentitlement programs. The principal nonentitlement programs administered by the Food and Nutrition Service include the Special Supplemental

Nutrition Program for Women, Infants and Children (WIC), the Commodity Supplemental Food Program (CSFP), the WIC Farmers' Market Nutrition Program (FMNP), the Nutrition Education and Training Program (NET), and the Emergency Food Assistance Program (TEFAP).

On August 24, 1995 (60 FR 44122), USDA published an interim rule at 7 CFR Part 3019 in order to implement the revised OMB Circular A–110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.* As with Part 3016, USDA did not include entitlement programs in the scope of Part 3019. Accordingly, a nonprofit private school operating the National School Lunch Program and the NET under subgrants from a State educational agency must currently apply Part 3015 to the former and Part 3019 to the latter. In excluding entitlements from the scope of Part 3019 at the time of its initial publication, USDA anticipated issuing a document that would provide a single set of grant and subgrant administrative rules for all types of organizations operating USDA entitlement programs.

This Notice of Proposed Rulemaking is USDA's first step in developing such a document. In publishing this proposed rule, USDA solicits comments on: (1) applying the provisions of Part 3016 to USDA entitlement program awards and subawards to State and local governmental organizations; (2) adopting proposed exceptions to be included in Subpart E of Part 3016; and (3) applying the provisions of Part 3019 to USDA entitlement program awards and subawards to nongovernmental, nonprofit organizations.

USDA is also making an editorial change in Part 3015 to correct the name of the USDA office responsible for Federal assistance policy.

Finally, USDA is making a technical change to recognize the recent reclassification of the Food Distribution Program on Indian Reservations (FDPIR) from nonentitlement to entitlement. This reclassification is based on the FDPIR's close relationship with the Food Stamp Program. The FDPIR is authorized by section 4(b) of the Food Stamp Act of 1977, as amended and, beginning in Fiscal Year 1997, awards made to States and Indian Tribal Organizations (ITOs) under this program have been funded from USDA's Food Stamp Program account. The program's characteristics place it in the same class with the entitlement programs, particularly the Food Stamp Program. The President's Budget for Fiscal year 1998 represents it as such.

This proposed rule would not affect USDA nonentitlement programs. As noted above, Part 3016 has covered grants and subgrants to State and local governments under these programs since its publication. Likewise, Part 3019 covers nonprofit organizations that operate nonentitlement programs.

In this proposed rule, USDA proposes those exceptions deemed most essential to establishing appropriate administrative requirements for grants and agreements under entitlement programs while bringing these programs under Parts 3016 and 3019. The promulgation of such rules would not, however, preclude the subsequent identification of additional exceptions for these programs.

In that regard, USDA has met with DHHS and the OMB to plan for the synchronization of administrative requirements for all entitlement programs. It was agreed that USDA would proceed with this limited scope rule because of its responsiveness to specific needs of program operators. The three agencies also agreed, however, that USDA and DHHS would collaborate in further refining administrative policies for entitlements programs. Such deliberations may lead to proposals for additional exceptions in Subpart E to Part 3016 and DHHS's parallel regulation.

At this time, USDA proposes the following specific exceptions for entitlement programs:

1. Adoption of Standards for State and Subgrantee Procurements. With certain qualifications discussed below, USDA proposes to adopt the rules found in section 3016.36(b) through (i) for procurements by States, and by local governments and ITOs operating as subgrantees of States, under USDA entitlement programs. This would differ from the general rules on State and subgrantee procurements under Federal awards. The general rule for States is stated in section 3016.36(a), which authorizes States to conduct procurements under Federal grants using the same procedures they apply to their procurements from nonfederal funds. Section 3016.37(a) extends this principle to States' administration of subgrants. This section instructs a State to "follow State law and procedures when awarding and administering subgrants of financial assistance (whether on a cost reimbursement or fixed amount basis) to local and Indian tribal governments." A State may therefore require its governmental subgrantees to conduct procurements under their subgrants in accordance with sections 3016.36(b) through (i), with State procurement rules, or with any combination of the two.

These general rules were included in the common rule codified at 7 CFR Part 3016 in keeping with Executive Order 12612, Federalism, dated October 30, 1987. Under the Federalism principle, a Federal awarding agency should rely to the maximum extent possible on State processes rather than prescribe Federal ones. The preamble to the common rule expressed this principle as follows: "Federal agencies should refrain from establishing uniform, national standards, and, where possible, defer to the States to establish them." (53 FR 8035) With respect to subgrantees, the preamble clarified that "local governments and Indian tribal governments will administer direct Federal grants according to the standards in the common rule and Federal pass-through funds subgranted from the State according to State laws and procedures." (53 FR 8036)(Emphasis in original.)

In publishing this proposed rule, USDA proposes to depart from this principle by requiring both States and their governmental subgrantees to use sections 3016.36(b) through (i) in conducting procurements under USDA entitlement programs. The Federalism principle has never been applied to grants under these programs because of their budget impact. State and local governmental procurements under such programs are currently subject to a modicum of Federal regulation; governmental grantees and subgrantees follow their own procurement rules to the extent they do not contravene those procurement requirements stated in applicable Federal regulations. USDA believes the nature of the entitlement programs warrants continuing this policy.

Federal liabilities to make payments to States under these programs are created in a manner that gives USDA less control than is the case with discretionary awards and other nonentitlement programs. The following cases illustrate this concern:

Food Stamp Program. Under a Food Stamp Program administrative cost grant, the Federal Government pays a statutorily prescribed share (generally 50 percent) of the State's allowable costs. The program's authorizing statute does not set a ceiling on the State administrative costs for which USDA is required to fund its prescribed share. Accordingly, USDA has sought supplemental appropriations whenever there has been a possibility that existing appropriations would prove insufficient to support cumulative grant levels.

National School Lunch Program. A State's grant award under the National School Lunch Program is determined by applying a formula consisting of the number of lunches of each authorized type served to eligible children, multiplied by the applicable payment rate prescribed by law. Once a State and its subgrantees have incurred the cost of serving school lunches to eligible children, there is an obligation for USDA to make the payments generated by this formula. If more eligible meals are served than the Federal budget provided for, a funding shortfall may result. Where information has indicated the possibility that this may occur, USDA has sought supplemental appropriations or taken other measures to ensure that the formula-generated amount would be available.

Program size is another feature of most USDA entitlement programs that necessitates more stringent Federal regulation of procurements involving funds made available for them. In Fiscal Year 1996, USDA disbursed approximately $1.9 billion for Food Stamp Program State administrative costs and $5.4 billion in cash and commodity assistance under the National School Lunch Program. Approximately 25,000 schools and school districts operate the National School Lunch Program, most of them as subgrantees of States. Moreover, many program operators are not only purchasing goods and services for use in the program, but are also engaging food service management companies to assume much of the responsibility for program operations. If procurement rules are to control how large numbers of program operators specify to contractors their operational responsibilities for Federal programs, the rules applicable to such actions must contain a core of minimum, uniform requirements crafted to protect the public funds.

As discussed above, State and local governments administering USDA's entitlement programs must currently follow the Federal procurement rules stated in Part 3015, which had applied to all Federal grants and subgrants to State and local governments before the publication of Part 3016. (See 7 CFR Part 3015, Subpart S.) The procurement requirements of section 3016.36(b) through (i), in effect, comprise an updated version of these older rules. Accordingly, USDA believes this proposal represents continuity in the administration of entitlement programs. In any event, USDA's experience administering grants to States under entitlement and nonentitlement programs suggests that the procurement rules found at section 3016.36(b) through (i) closely resemble the rules used by most States for their nonfederal procurements.

USDA believes the principal effect of adopting the procurement rules in section 3016.36(b) through (i) for procurements under USDA entitlement programs would be the strengthening of competition in such procurements. Existing rules at 7 CFR 3015.182 require States and other governmental organizations to conduct procurements under entitlement grants and subgrants in ways that maximize open and free competition.

However, some State and local procurement rules provide for preference in source selection for bidders located within the State or political subdivision, in order to promote the political entity's economic development. For example, State or local procurement rules may require that an outside bidder's bid be surcharged a prescribed percentage for price comparison purposes. Such geographical preferences are inherently noncompetitive because they can enable a local bidder to receive a contract without having submitted the lowest responsive bid. The old rules codified at 7 CFR Part 3015 proscribe certain practices as anti-competitive, but are silent on geographical preferences. By contrast, section 3016.36(c)(2) expressly prohibits them (except in certain cases that involve contracting for architectural and engineering services).

USDA is concerned that geographical preferences may have resulted in State agencies and local program operators obtaining goods and services for program purposes at more than the lowest available price. This represents an inefficient use of scarce program funds.

The Comptroller General has found such practices' restraining effects on competition acceptable only to the extent that their operation presents no more than a negligible obstacle to outside bidders' efforts to obtain contracts. Such determinations must be made on a case-by-case basis. For example, the Comptroller General found that a State rule requiring a two percent surcharge on outside bidders' bids satisfied this standard. (Matter of the Eagle Construction Company, B–191496, dated March 5, 1979) On the other hand, USDA has been asked to determine whether geographical preferences ranging from seven to 15 percent were consistent with the open and free competition requirements of section 3015.182. Such cases have placed USDA in the position of determining, on a case-by-case basis, "how much preference is too much." One State even asked USDA to disclose in advance the preference level USDA would accept.

USDA believes that maximum open and free competition promotes the most effective use of public funds made available for entitlement programs. Accordingly, USDA's proposal to apply section 3016.36(b) through (i) to States and their subgrantees includes the express prohibition in section 3016.36(c)(2) against the use of in-State or local geographical preferences in procurements conducted under USDA entitlement programs. Commenters are requested to respond to this proposal, whether they support or oppose it.

In addition to adopting the procurement rules of section 3016.36(b) through (i), with their prohibition of geographical preferences, for procurements under entitlement programs, USDA proposes to expressly prohibit another practice that it believes restricts full and open competition. A governmental grantee or subgrantee making a procurement under a USDA entitlement program would be precluded from accepting an offer from, or awarding the contract to, a contractor that had developed or drafted specifications, requirements, statements of work, invitations for bids or requests for proposals related to the procurement. USDA believes that allowing contractors to participate in procurements for which they had developed some or all of the procurement documents would afford them an unfair competitive advantage, to the detriment of full and open competition. This proposed change would not prohibit governmental grantees and subgrantees from using contractors to prepare any or all elements of a procurement. It would only eliminate such contractors from consideration for the actual award.

USDA believes this proposed prohibition is already implicit in the text of section 3016.36(c)(1)(v), which identifies organizational conflicts of interest as a situation considered to be restrictive of competition. USDA has also considered the possibility that expressly stating the prohibition with respect to entitlement programs may be misconstrued to restrict its applicability to this class of program. On the other hand, past experience in administering entitlement programs suggests that stating the prohibition more explicitly would significantly strengthen USDA's efforts to enforce it. In addition, this proposal follows the language of a parallel requirement at section 3019.43. Part 3019 and its underlying circular, A–110, apply only to nongovernmental,

nonprofit organizations, but they do represent the OMB's "state of the art" pronouncement on grant and subgrant administrative requirements. The fact that the OMB saw fit to express in A-110 both the broad prohibition of organizational conflicts of interest, and the specific case thereunder that USDA now proposes to include in Subpart E, suggests that the need for clarification of this issue extends beyond USDA.

Given the foregoing, USDA requests commenters to address the issues of whether the proposed prohibition is necessary, and to recommend ways to state it in Subpart E while avoiding misconstruction of its intent.

2. *Financial Reporting Requirements.* USDA also proposes to clarify that the Food Stamp and Child Nutrition Programs are exempt from the financial reporting requirements found in section 3016.41, but are subject to financial reporting requirements stated in program-specific regulations. This would not entail any change in existing financial reporting requirements under these programs. Both programs use program-specific financial reports approved by the OMB under the Paperwork Reduction Act of 1995. The existing OMB clearances on these reports would not require renewal before their stated expiration dates.

Regulatory Impact Analysis

Executive Order 12866

The Office of Management and Budget has reviewed this rule and has determined the rule to be significant under Executive Order 12866. In accordance with the provisions of Executive Order 12866, USDA has prepared a cost benefit assessment which analyzes the economic impact of this proposed rule on States, other grantees, and subgrantees operating USDA entitlement programs. The economic impact has two discrete dimensions: bringing these programs under the umbrella of Parts 3016 and 3019, and establishing the deviations and exceptions stated in Subpart E to Part 3016.

USDA believes that both dimensions would have a negligible economic impact. The new administrative requirements would generally continue the old rules that grantees and subgrantees have been using for USDA entitlement programs since Part 3015 was first published in 1981. Differences between the old and new rules are generally attributable to the evolution of Federal grants policy since 1981, including the "closing of loopholes."

USDA's belief that adopting the rules stated in sections 3016.36(b) through (i) for procurements by State and local governments under USDA entitlement programs would entail negligible economic impact or administrative burden is founded not only on the overall similarity between the new and old grants administrative rules, but also on the generic nature of procurement requirements themselves. USDA believes the requirements stated in sections 3016.36(b) through (i) comprise the minimum components of a sound procurement system. USDA's research on this issue suggests that most of these provisions are already universally applicable to grantee and subgrantee procurement systems.

Given the available evidence that State procurement rules generally follow those procurement rules stated in section 3016.36(b) through (i), USDA considered relying on State rules in accordance with section 3016.36(a). However, USDA decided to proceed with this aspect of the proposed rule for several reasons. First, State rules often allow geographical preference in source selection; the problems associated with that practice have already been explained. Second, Part 3016 expresses a standard for the kind of procurement systems USDA considers sufficient to protect the programs' interests. Without it, geographical preference and other anti-competitive practices by grantees and subgrantees would be more difficult to combat. Finally, Part 3016 contains a number of passages authorizing various aspects of awarding agency oversight. USDA believes the magnitude and nature of the entitlement programs necessitate retaining such explicit statements of oversight authority.

USDA does not have the database needed to quantify the foregoing generalizations about the costs and savings associated with this proposed rule. For example, USDA does not know how many procurements grantees and subgrantees currently make by the small purchase method and by formal advertising, how their mix of procurement methods might change under this proposed rule, how much they would save per transaction, how many businesses would be affected, whether insular territories and outlying areas would be disproportionately affected, etc. Accordingly, USDA requests commenters to provide feedback on the economic impact of this proposed rule.

As noted above, under this proposed rule financial reporting requirements would continue to be contained in the program-specific regulations rather than in Part 3016. Since the reporting requirements themselves would remain unchanged, this provision of the proposed rule would have no economic impact on grantees and subgrantees.

Civil Rights Impact Analysis

USDA does not believe that this rule will have a significant civil rights impact and invites comments on this.

Paperwork Reduction Act of 1995

The information collection requirements of this rule have been previously approved under # 0505–0008 for entitlement and nonentitlement programs. USDA believes that adopting this proposed rule would not impose additional information collection requirements on grantees and subgrantees.

Regulatory Flexibility Act

In accordance with the requirements of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the USDA Acting Chief Financial Officer has reviewed this rule and certifies that it does not have a significant economic impact on a substantial number of small entities. The potential economic impact is discussed above in connection with Executive Order 12866.

List of Subjects

7 CFR Part 3015

Grant programs, Intergovernmental relations.

7 CFR Part 3016

Grant programs.

7 CFR Part 3019

Grant programs.

Issued at Washington, D.C.

Irwin T. David,

Acting Chief Financial Officer.

Approved:

Dan Glickman,

Secretary of Agriculture.

Accordingly, USDA is proposing to amend 7 CFR chapter XXX as set forth below.

PART 3015—UNIFORM FEDERAL ASSISTANCE REGULATIONS

1. The authority citation for Part 3015 continues to read as follows:

Authority: 5 U.S.C. 301, Subpart I; 31 U.S.C. 7505, unless otherwise noted.

2. In § 3015.1 revise paragraphs (a)(1), (a)(3), (a)(4) and (d) to read as follows:

§ 3015.1 Purpose and scope of this part.

(a)(1) This part specifies the set of principles for determining allowable costs under USDA grants and cooperative agreements to State and local governments, universities, non-profit and for-profit organizations as set

forth in OMB Circulars A–87, A–21, A–122, and 48 CFR 31.2, respectively; and the general provisions that apply to all grants and cooperative agreements made by USDA.

* * * * *

(3) Rules for grants and cooperative agreements to State and local governments are found in Part 3016.

(4) Rules for grants and cooperative agreements to institutions of higher education, hospitals, and other non-profit organizations are found in part 3019.

* * * * *

(d) Responsibility for developing and interpreting the material for this part and in keeping it up-to-date is assigned to the Office of the Chief Financial Officer.

3. In § 3015.2 revise paragraphs (d)(3), (d)(4), (d)(5), and (d)(6) to read as follows:

§ 3015.2 Applicability.

* * * * *

(d) * * *

(3) Agencies or instrumentalities of the Federal government,

(4) Individuals,

(5) State and local governments, and

(6) Institutions of higher education, hospitals and other non-profit organizations.

* * * * *

PART 3016—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

4. The authority citation for Part 3016 continues to read as follows:

Authority: 5 U.S.C. 301.

5. In § 3016.4 remove paragraphs (a)(4) through (6), redesignate paragraphs (a)(7) through (10) as (a)(4) through (7) and revise paragraph (b) to read as follows:

§ 3016.4 Applicability.

* * * * *

(b) Entitlement programs. In USDA, the entitlement programs enumerated below are subject to subparts A–D and the modifications in subpart E.

(1) Entitlement grants under the following programs authorized by The National School Lunch Act:

(i) National School Lunch Program, General Assistance (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) National School Lunch Program, Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service Program for Children (section 13 of the Act), and

(v) Child and Adult Care Food Program (section 17 of the Act);

(2) Entitlement grants under the following programs authorized by The Child Nutrition Act of 1966:

(i) Special Milk Program for Children (section 3 of the Act),

(ii) School Breakfast Program (section 4 of the Act), and

(iii) Entitlement grants for State Administrative Expense Funds (section 7 of the Act); and

(3) Entitlement grants under the following programs authorized by the Food Stamp Act of 1977:

(i) Food Distribution Program on Indian Reservations (section 4(b) of the Act), and

(ii) State Administrative Expense Funds (section 16 of the Act).

6. Subpart E is added to read as follows:

Subpart E—Entitlement

§ 3016.60 Special procurement provisions.

(a) Notwithstanding §§ 3016.36(a) and 3016.37(a) of this part, States and subgrantees of States shall conduct procurements under the USDA entitlement program grants or subgrants specified in § 3016.4(b) in accordance with § 3016.36(b) through (i) of this part.

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals for use by a grantee or subgrantee in conducting procurements under the USDA entitlement program grants or subgrants specified in § 3016.4(b) shall be excluded from competing for such procurements.

§ 3016.61 Financial reporting.

The financial reporting provisions found in § 3016.41 do not apply to any of the USDA entitlement programs listed in § 3016.4(b) except the Food Distribution Program on Indian Reservations. The financial reporting requirements for these entitlement programs are found in the following program regulations:

(a) For the National School Lunch Program, 7 CFR 210.20(a);

(b) For the Special Milk Program for Children, 7 CFR 215.11(c);

(c) For the School Breakfast Program, 7 CFR 220.13(b);

(d) For the Summer Food Service Program for Children, 7 CFR 225.8;

(e) For the Child and Adult Care Food Program, 7 CFR 226.7(d);

(f) For State Administrative Expense Funds under section 7 of the Child Nutrition Act of 1966, 7 CFR 235.7(b); and

(g) For State Administrative Expenses under section 16 of the Food Stamp Act of 1977, 7 CFR 277.11.

PART 3019—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

7. The authority citation for Part 3019 continues to read as follows:

Authority: 5 U.S.C. 301.

8. In § 3019.1 designate the existing text as paragraph (a) and add paragraph (b) to read as follows:

Subpart A—General

§ 3019.1 Purpose.

(b) In USDA, this part also applies specifically to the grants, agreements and subawards to institutions of higher education, hospitals, and other non-profit organizations that are awarded to carry out the entitlement programs identified below:

(1) Entitlement grants under the following programs authorized by The National School Lunch Act:

(i) National School Lunch Program, General Assistance (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) National School Lunch Program, Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service Program for Children (section 13 of the Act), and

(v) Child and Adult Care Food Program (section 17 of the Act).

(2) Entitlement grants under the following programs authorized by The Child Nutrition Act of 1966:

(i) Special Milk Program for Children (section 3 of the Act), and

(ii) School Breakfast Program (section 4 of the Act).

(3) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

[FR Doc. 98–3720 Filed 2–13–98; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–37–AD]

RIN 2120–AA64

Airworthiness Directives; Superior Air Parts, Inc., Piston Pins Installed on Teledyne Continental Motors Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Superior Air Parts, Inc., piston pins installed on Teledyne Continental Motors reciprocating engines. This proposal would require removal from service of defective piston pins, and replacement with serviceable parts. This proposal is prompted by reports of numerous piston pin fractures. The actions specified by the proposed AD are intended to prevent the piston pin from puncturing the engine crankcase by the connecting rod, resulting in the loss of oil leading to total power failure and possible fire, or freeing the connecting rod, possibly puncturing the cylinder or jamming the engine crankshaft, resulting in catastrophic engine failure.

DATES: Comments must be received by April 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, *Attention:* Rules Docket No. 97–ANE–37–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Superior Air Parts, Inc. 14280 Gillis Rd., Dallas, TX 75244; telephone (800) 400–5949. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Paul Madej, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Ft. Worth, TX 76137–4298; telephone (817) 222–4635, fax (817) 222–5785.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–37–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–37–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) received numerous reports of fractured Parts Manufacturer Approval (PMA) Superior Air Parts, Inc. piston pins, Part Number (P/N) SA629690, installed on Teledyne Continental Motors IO–360, TSIO–360, and LTSIO–360 series reciprocating engines. The investigation reveals that some of these piston pins shipped from Superior Air Parts, Inc. between August 1, 1994, through June 20, 1996, may contain subsurface manufacturing imperfections, such as higher impurity levels and retained austenite as well as imperfections caused by final machining, such as grind burns. Failure of the piston pin may cause puncturing of the engine crankcase by the connecting rod resulting in the loss of oil leading to total power failure and possible fire. Failure of the piston pin may free the connecting rod, possibly puncturing the cylinder or cause jamming of the engine crankshaft resulting in catastrophic engine failure.

The FAA has reviewed and approved the technical contents of Superior Air Parts, Inc. Mandatory Service Bulletin (SB) No. 96–001, dated August 5, 1996, that states that piston pins, P/N SA629690, should be removed from service, and replaced with serviceable parts.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require, within 25 hours time in service after the effective date of this AD, removal from service of defective piston pins, and replacement with serviceable parts. The actions would be required to be accomplished in accordance with the SB described previously.

The FAA estimates that 2,322 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost $200 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,300,320.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the

location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Teledyne Continental Motors With PMA Superior Air Parts, Inc. Piston Pins, Part Number (P/N) SA629690: Docket No. 97–ANE–37–AD.

Applicability: Superior Air Parts, Inc., Parts Manufacturer Approval (PMA) piston pins, Part Number (P/N) SA629690, shipped from Superior Air Parts, Inc., from August 1, 1994, through June 20, 1996, installed on Teledyne Continental Motors IO–360–A, –AB, –C, –CB, –D, –DB, –G, –GB, –H, –HB, –J, –JB, –K, –KB; LTSIO–360–E, –EB, –KB; TSIO–360–A, –AB, –C, –CB, –D, –DB, –E, –F, –FB, –GB, –H, –HB, –JB, –KB, –LB, –MB series reciprocating engines, and which were overhauled or had cylinder head maintenance performed by a repair facility other than Teledyne Continental Motors after August 1, 1994. These engines are installed on but not limited to the following aircraft: Cessna 172XP, 336, 337, T337, P337, and T–41B/C (military); Maule M–4–210, M–4–210C, M–4–210S, M–4–210T, and M–5–210C; Swift Museum Foundation, Inc. GC–1A, GC–1B, New Piper Inc. PA–28–201T, PA–28R–201T, PA–28RT–201T, PA–34–200T, and PA–34–220T; Reims FR172, F337, and FT337; Goodyear Airship Blimp 22; Mooney M20–K; and Pierre Robin HR100.

Note 1: Shipping records, engine logbooks, work orders, and parts invoices check may allow an owner or operator to determine if this AD applies.

Note 2: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the piston pin from puncturing engine crankcase by the connecting rod, resulting in the loss of oil leading to total power failure and possible fire, or freeing the connecting rod, possibly puncturing the cylinder or jamming the engine crankshaft, resulting in catastrophic engine failure, accomplish the following:

(a) If an engine has not had a piston pin installed after August 1, 1994, or if an engine has had a piston pin installed after August 1, 1994, but it was installed by Teledyne Continental Motors, then no action is required.

(b) For engines that had a piston pin installed after August 1, 1994, by an entity other than Teledyne Continental Motors, within 25 hours time in service (TIS) after the effective date of this AD, determine if a suspect PMA Superior Air Parts, Inc. piston pin, P/N SA629620, could have been installed in accordance with Superior Air Parts, Inc. Mandatory Service Bulletin (SB) No. 96–001, dated August 5, 1996. If unable to verify that a suspect piston pin was not installed using a records check, disassemble the engine in accordance with the applicable Maintenance Manual or Overhaul Manual, visually inspect or verify for suspect piston pins, and accomplish the following:

(1) If it is determined that suspect PMA Superior Air Parts, Inc. piston pins, P/N SA629620, could have been installed, remove from service defective piston pins and replace with serviceable piston pins.

(2) If it is determined that suspect PMA Superior Air Parts, Inc. piston pins, P/N SA629620, could not have been installed, no further action is required.

(c) For the purpose of this AD, a serviceable piston pin is any piston pin that has been verified not to be a PMA Superior Air Parts, Inc. piston pin, P/N SA629690, shipped from Superior Air Parts, Inc., from August 1, 1994, through June 20, 1996. Installation of a PMA Superior Air Parts Inc. piston pin, P/N SA629690, that can not be verified to be outside of the suspect shipping period range, is prohibited after the effective date of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Special Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Special Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Special Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection may be performed.

Issued in Burlington, Massachusetts, on February 6, 1998.

James C. Jones,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–3796 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–98–004]

RIN 2115–AE46

Special Local Regulations; Annual Air and Sea Show, Fort Lauderdale, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for the City of Fort Lauderdale Annual Air & Sea Show. This event will be held annually on the first Friday, Saturday and Sunday of May, and will involve approximately 150 participating aircraft and vessels, and 3,000 spectator craft. The resulting congestion will create an extra or unusual hazard in the navigable waters. These regulations are necessary to provide for the safety of life on navigable waters during the event.

DATES: Comments must be received on or before March 19, 1998.

ADDRESSES: Comments may be mailed to U.S. Coast Guard Group Miami, 100 MacArthur Causeway Miami Beach, Florida 33139, or may be delivered to the Operations Department at the same address between 7 a.m. and 3:30 p.m., Monday through Friday, except federal holidays. The telephone number is (305) 535–4448. Comments will be a part of the public docket and will be available for copying and inspection at the same address.

FOR FURTHER INFORMATION CONTACT: LTJG J. Delgado Coast Guard Group Miami, Florida at (305) 535–4409.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names, addresses, identify this rulemaking (CGD07–98–004), and the specific section of this proposal to which their comments apply, and give reasons for each comment.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments received.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The City of Fort Lauderdale Annual Air & Sea Show is a three day event with approximately 130 aircraft and 18 ski boats, jet skis and off shore racing power boats. In addition, various military aircraft, including high performance aircraft, will be operating at high speeds and low altitudes in the area directly above the regulated area. The even will take place in the Atlantic Ocean from Fort Lauderdale beach to one nautical mile offshore between Oakland Park Boulevard and the 17th Street Causeway.

The proposed regulations will prohibit non-participating vessels from entering the regulated area, and directs participants to obey instructions from the patrol commander.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated area is prohibited for only 6.0 hours on Friday, and 8.0 hours on Saturday and Sunday on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under U.S.C. 605 (b) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as the regulations would only be in effect for approximately eight hours each day for three days each year. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

These proposed regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2 of Commandant Instruction M16475.1B. In accordance with that section, this proposal has been environmentally assessed (EA completed), and the Coast Guard has concluded that it will not significantly affect the quality of the human environment. An Environmental Assessment and a Finding of No Significant Impact have been prepared and are available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.731 is added to read as follows:

§ 100.731 Special Local Regulations; City of Ft. Lauderdale Air & Sea Show, Ft. Lauderdale.

(a) *Regulated area.* The following is a regulated area: All waters of the Atlantic Ocean west of a line drawn from 26–10.22 North, 080–05.9 West to 26–06.22 North, 080–05.34 West. All coordinates referenced use Datum: NAD 83.

(b) *Special Local Regulations.*

(1) All vessels, with the exception of event participants, are prohibited from entering the regulated area without the specific permission of the patrol commander.

(2) All vessels shall immediately follow any specific instructions given by event patrol craft and exercise extreme caution while operating in or near the regulated area. A succession of not fewer than five short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(3) After the termination of the Air and Sea Show event for each respective day, all vessels may resume normal operations.

(c) *Dates.* These regulations become effective annually on the first Friday, Saturday and Sunday of May, from 9 a.m. to 3 p.m. (EDT) on Friday, and from 9 a.m. to 5 p.m. (EDT) on Saturday and Sunday.

Dated: February 3, 1998.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 98–3912 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07 98–003]

RIN 2115–AE46

Special Local Regulations; Miami Beach, Florida

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for the Miami Super Boat Race. This event will be held annually

on the third Sunday of April 1000 feet offshore Miami Beach, between 12 p.m. and 4 p.m. Eastern Daylight Time (EDT). The regulations are necessary to provide for the safety of life on navigable waters during the event.

DATES: Comments must be received on or before March 19, 1998.

ADDRESSES: Comments may be mailed to U.S. Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, Florida 33139, or may be delivered to the Operations Department at the same address between 7 a.m. and 3:30 p.m., Monday through Friday, except federal holidays. The telephone number is (305) 535–4407. Comments will become a part of the public docket and will be available for copying and inspection at the same address.

FOR FURTHER INFORMATION CONTACT: LTJG J. Delgado, Coast Guard Group, Miami, FL at (305) 535–4409.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names, addresses, identify this rulemaking (CGD07–98–003), and the specific section of this proposal to which their comments apply, and give reasons for each comment.

The Coast Guard will consider all comments received during the comment period. The regulations may be changed in view of the comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under "ADDRESSES" and stating why a hearing would be beneficial. If it determines that the opportunity to make oral presentations will add to the rulemaking process, the Coast Guard will hold a public hearing at a time and place announced by a notice in the **Federal Register**.

Background and Purpose

Super Boat International Productions, Inc., is sponsoring a high speed power boat race with approximately thirty-five (35) race boats, ranging in length from 24 to 50 feet, participating in the event. There will be approximately two hundred (200) spectator crafts. The race will take place in the Atlantic Ocean 1,000 feet off the Miami Beach shore, from Miami Beach Clock Tower to Atlantic Heights. The race boats will be competing at high speeds with numerous spectator crafts in the area, creating an extra or unusual hazard in the navigable waterways. The proposed regulations will create regulated areas for the competing vessels and for spectator craft.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated area is prohibited for only four hours on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdiction with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as the regulations would only be in effect for approximately four hours for one day each year. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

These proposed regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2 of Commandment Instruction M16475.1B. In accordance with that section, this proposal has been environmentally assessed (EA completed), and the Coast Guard has concluded that it will not significantly affect the quality of the human environment. An Environmental Assessment and a Finding of No Significant Impact have been prepared and are available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continued to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.730 is added to read as follows:

§ 100.730 Annual Miami Super Boat Race; Miami Beach, Florida.

(a) Regulated Area:

(1) A regulated area is established by a line joining the following points:

25–46.3N, 080–07.85W; thence to,
25–46.3N, 080–06.82W; thence to,
25–51.3N, 080–06.2W; thence to,
25–51.3N, 080–07.18W; thence along the shoreline to the starting point. All coordinates referenced use Datum: NAD 83.

(2) A spectator area is established in the vicinity of the regulated area for spectator traffic and is defined by a lien joining the following points, beginning from:

25–51.3N, 080–06.15W; thence to,
25–51.3N, 080–05.85W; thence to,
25–46.3N, 080–06.55W; thence to,
25–46.3N, 080–06.77W; and back to the starting point. All coordinates referenced use Datum: NAD 83.

(3) A buffer zone of 300 feet separates the race course and the spectator areas.

(b) *Special local regulations:*

(1) Entry into the regulated area by other than event participants is prohibited unless otherwise authorized

by the Patrol Commander. At the completion of scheduled races and departure of participants from the regulated area, traffic may resume normal operations. At the discretion of the Patrol Commander, between scheduled racing events, traffic may be permitted to resume normal operations.

(2) A succession of not fewer than five short whistle or horn blasts from a patrol vessel will be the signal for any and all vessels to take immediate steps to avoid collision. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(3) Spectators are required to maintain a safe distance from the race course at all times.

(c) *Dates:* These regulations become effective annually at 12 p.m. and terminate at 4 p.m. EDT on the third Sunday in April.

Dated: February 3, 1998.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 98–3911 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 416, 482, 485, and 489

[HCFA–3745–N]

RIN 0938–AG79

Medicare and Medicaid Programs; Hospital Conditions of Participation; Provider Agreements and Supplier Approval; Extension of Comment Period

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of extension of comment period for proposed rule.

SUMMARY: This document extends the comment period for a proposed rule that generally would revise the hospital conditions of participation under Medicare and Medicaid, published in the **Federal Register** (62 FR 66726) on December 19, 1997. The comment period is extended 60 days for all provisions except the proposed new requirements relating to interactions between hospitals and organ procurement organizations, which are extended for an additional 14 days.

DATES: The comment period for all provisions except the proposed requirements under §§ 482.110(c) and 482.120(a)(8) is extended to 5 p.m. on April 20, 1998. The comment period for §§ 482.110(c) and 482.120(a)(8) is extended until March 3, 1998.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–3745–P, P.O. Box 7517, Baltimore, MD 21207–0517.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or Room C5–09–26, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–3745–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Frank Emerson, (410) 786–4656; Doris Jackson, RN, (410) 786–0095; Rachael Weinstein, RN, (410) 786–6775.

SUPPLEMENTARY INFORMATION: On December 19, 1997, we issued a proposed rulemaking in the **Federal Register** (62 FR 66726) that would revise the requirements that hospitals must meet to participate in the Medicare and Medicaid programs. In addition, in an effort to increase the number of organ donations, we proposed changes in the interaction between hospitals and organ procurement organizations. The proposed rule also specified that HCFA may terminate the participation agreement of a hospital, skilled nursing facility, home health agency, or other provider if the provider refuses to allow access to its facilities, or examination of its operations or records, by or on behalf of HCFA, as necessary to verify that it is complying with the Medicare law and regulations and the terms of its provider agreement. We announced that the public comment period would close at 5 p.m. on February 17, 1998.

Due to the complexity of this proposed rule and because numerous commenters have requested more time to analyze the potential consequences of the proposed rule, we have decided to extend the comment period, for all but one provision specified below, for an additional 60 days. This document announces the extension of the public comment period to April 20, 1998 for all the provisions of the proposed rule, except those related to the proposed new requirements under § 482.110(c) dealing with the responsibilities of hospitals with respect to organ donation and § 482.120(a)(8) dealing with the mandatory submission of transplant-related data to the Organ Procurement and Transplantation Network, the Scientific Registry, the organ procurement organizations, and the Department of Health and Human Services if a hospital performs any type of transplants.

Because of the importance this Administration places on improving organ donation and transplantation, we intend to separate out §§ 482.110(c) and 482.120(a)(8) of the proposed regulations dealing with the responsibilities of hospitals for organ donations and the mandatory submission of transplant-related data to the Organ Procurement and Transplantation Network, the Scientific Registry, the organ procurement organizations, and the Department of Health and Human Services if a hospital performs any type of transplants and publish them as a separate final rule as promptly as possible. Therefore, we are extending the comment period for these provisions for only two weeks. The comment period for §§ 482.110(c) and 482.120(a)(8) is extended until March 3, 1998.

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare Hospital Insurance; Program No. 93.778, Medical Assistance Program)

Dated: February 12, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: February 12, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–4073 Filed 2–13–98; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–98–3466]

46 CFR Part 298

RIN No. 2133–AB32

Putting Customers First in the Title XI Program

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Advance notice of proposed rulemaking; request for comments

SUMMARY: The Maritime Administration (MARAD) is soliciting public comment on whether MARAD should amend its existing regulations or alter its existing administrative practices governing the Title XI application process, standards for evaluation and approval of applications, and the process and documentation for closing of commitments to guarantee obligations issued under 46 CFR part 298 and if so, what changes should be made.

DATES: Comments must be received on or before March 19, 1998.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590–001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http:/dot.gov.

FOR FURTHER INFORMATION CONTACT: Mitchell D. Lax, Director, Office of Ship Financing, Maritime Administration, Washington, DC 20590, telephone (202) 366–5744.

SUPPLEMENTARY INFORMATION: In response to a 1993 recommendation from Vice President Gore's National Performance Review team, President Clinton issued Executive Order 12862, September 11, 1993, calling for "a revolution within the Federal Government to change the way it does business" by "putting customers first" and striving for a "customer-driven government" that matches or exceeds the best service available in the private sector. In October 1997, the National Performance Review team reported that Federal agencies, implementing the Executive Order, had launched a massive effort to improve governmental service and had made a noticeable difference.

On December 1, 1997, in a memorandum to Heads of Operating Administrations and Departmental Officers at the United States Department of Transportation, Secretary of Transportation Rodney E. Slater urged all Departmental officers and heads of Operating Administrations to ask their customers "what is important to them in the kinds and quality of services they want and what is their level of satisfaction with existing services." Secretary Slater emphasized that it is "this customer feedback that will be the basis for improving, revising, adding, or deleting standards when it makes sense and, ultimately, for helping us become a more customer-focused DOT." The purpose of this Advance Notice of Proposed Rulemaking (ANPRM) is to obtain such customer feedback in connection with the program for guarantees of financial obligations authorized by Title XI of the Merchant Marine Act, 1936, as amended, 46 App. U.S.C. 1271 *et seq.* (Title XI).

Title XI authorizes the Secretary of Transportation (Secretary) to provide guarantees of debt issued for the purpose of financing or refinancing (i) the construction, reconstruction or reconditioning of U.S-flag vessels or eligible export vessels built in United States shipyards and (ii) the construction of advanced shipbuilding technology and modern shipbuilding technology of a general shipyard facility located in the United States. Applications for obligation guarantees are made to MARAD acting under authority delegated by the Secretary to the Maritime Administrator. Prior to execution of a guarantee, MARAD must, among other things, make determinations of economic soundness of the proposed project and the financial and operating capability of the applicant. The Title XI program enables owners of eligible vessels and shipyards to obtain long-term financing on terms and conditions that may otherwise not be available.

MARAD requests that its customers, the shipyard and shipowner executives, their lawyers, accountants, investment bankers and other professionals, who have used or are familiar with the Title XI program, provide MARAD with their views about how the Title XI program is administered and how it could be improved. MARAD requests that these program customers address the application process, the review and approval standards employed by MARAD for the issuance of a commitment to guarantee obligations, the closing documentation, and the process for the issuance of the obligation guarantees. Although all comments are welcome, MARAD is particularly interested in comments concerning the following specific questions:

1. Are changes needed in the current application form (Form MA–163)? What specific changes should be made in the application procedure and the application form to make the process more efficient without eliminating critical information needed by MARAD to evaluate applications properly?

2. Should there be a separate application form for eligible export vessels and a separate application form for shipyard modernizations? What specific information in the current application Form MA–163 is unnecessary for a proper evaluation of these applications and should be deleted? What additional information is needed for these types of applications and should be added? Can there be a "one form fits all approach," or are there differences of sufficient magnitude to warrant separate application forms and procedures? A working draft of a possible application form covering shipyard modernization is available upon request.

3. Should MARAD permit the electronic filing of all or part of Title XI applications, and what special steps would be necessary to ensure privacy of business confidential information to facilitate an initiative in this direction?

4. Do any of the requirements for information on the applicant's and operator's qualifications (46 CFR 298.12) seek information which is unnecessary or redundant or is not generally required in commercial financing transactions of this type? Do they ask sufficient information to permit MARAD to screen out inappropriate and inexperienced applicants and operators? What specific changes, if any, would you make to the regulations?

5. Do the financial requirements (46 CFR 298.13) request financial information which is unnecessary or redundant? Do they seek sufficient information to permit MARAD to make valid determinations? Do they pose impracticable or excessive tests? What specific changes, if any, would you make to the regulations?

6. Do the requirements for information on the economic soundness (46 CFR 298.14) of a proposed project seek information which is unnecessary or redundant? Do they provide sufficient information to permit MARAD to make valid determinations about the commercial viability of an applicant's proposed project in the foreseeable future? Do they pose any impractical or excessive tests? What

specific changes, if any, would you make to the regulations?

7. On April 17, 1997, the Maritime Administrator issued Maritime Administrative Order (MAO) No. 520–1, Amendment 2 to clarify MARAD's existing policies and procedures with respect to economic considerations employed in evaluating applications for Title XI guarantees. The MAO is set out in full below. Should these administrative guidelines be placed into the Title XI regulations? Please support your reply with an explanation and specific examples of the benefits or problems that could inure from making these guidelines part of MARAD's regulations.

8. Do the documentation requirements for a closing on a commitment to guarantee obligations as set out in Subpart D of 46 CFR 298, and as incorporated into MARAD's standard vessel financing closing documents for U.S.-flag and eligible export vessels (which, incidentally, are available from MARAD on computer diskette) impose requirements that are unnecessary or redundant? What specific changes, if any, would you recommend MARAD make to its standard documentation or to its closing practices?

9. Should MARAD create special documents to govern closings on commitments to guarantee shipyard modernizations?

10. MARAD has previously preapproved designs, plans and specifications for ships that can be built under the Title XI program. Once a shipyard has had a design approved by MARAD, should MARAD waive the submission of the plans and specifications normally required by the application form? To what extent should MARAD require plans and specifications if the proposed ship would deviate from plans and specifications that have been previously approved by MARAD?

Persons interested in the efficient administration of the Title XI program are invited to submit written comments on the questions set out above, or to raise any other issues. Please make your suggestions and views as specific as possible, naming and quoting the practices and regulations that you believe should be changed. MARAD may subsequently hold a public meeting, if it believes that such a meeting would be helpful, to seek further clarification of the written issues raised. After consideration of the written comments and oral comments, if a public meeting is held, MARAD will decide whether to proceed with any specific proposed change to its existing regulations or administrative practices. Any changes proposed by MARAD will be the subject of a future Notice of Proposed Rulemaking.

By Order of the Maritime Administrator.

Dated: February 11, 1998.

Joel C. Richard,

Secretary.

[FR Doc. 98–3890 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–81–P

Notices

Federal Register
Vol. 63, No. 31
Tuesday, February 17, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–98–00–3]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) announces a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: March 16, 1998, at 12:30 p.m. to 5 p.m.; March 17, 1998, from 8 a.m. to 5 p.m.; March 18, 1998, from 8:00 a.m. to 5 p.m.; and March 19, 1998, from 8 a.m. to 5 p.m. for the NOSB.

PLACE: Doubletree Hotel Ontario Airport, 222 N. Vineyard, Ontario, California 91764. Phone: (909) 983–0909.

FOR FURTHER INFORMATION CONTACT: Michael I. Hankin, Senior Marketing Specialist, Room 2510 South Building, U.S. Department of Agriculture, AMS, Transportation and Marketing, National Organic Program Staff, PO Box 96456, Washington, DC 20090–6456. Phone (202)720–3252.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of OFPA. The NOSB met for the first time in Washington, D.C., in March 1992 and currently has six committees working on various aspects of the program. The committees are: Crops Standards; Processing, Labeling and Packaging; Livestock Standards; Accreditation; Materials; and International Issues. In August 1994, the NOSB provided its initial recommendations for the National Organic Program (NOP) to the Secretary of Agriculture and since that time has submitted 30 addenda to the recommendations and reviewed more than 170 substances for inclusion on the National List of Allowed and Prohibited Substances. The last meeting of the NOSB was held in September 1996, in Indianapolis, Indiana. The Department of Agriculture (USDA) published its proposed rule for the NOP in the **Federal Register** (62 FR 65849) on December 16, 1997. An extension of the comment period on the proposed rule was published in the **Federal Register** (63 FR 6498–6499) on February 9, 1998. The comment period has been extended until April 30, 1998.

Purpose and Agenda

The main purposes of this meeting are to provide an opportunity for the NOSB to listen to comments from interested persons regarding the proposed rule for the NOP, for the NOSB to review its Committee reports on the proposed rule, and for the NOSB to prepare comments on the proposed rule to be submitted to USDA. Minutes of the NOSB meeting, including minutes of oral presentations to the NOSB, will be included in the public record of comments for the proposed rule.

A final agenda for this meeting will be available on March 2, 1998. Persons requesting copies of the final agenda should contact Ms. Karen Thomas at the above address or phone (202) 720–3252.

Type of Meeting

All meetings will be open to the public. Individuals and organizations wishing to provide oral presentations to the NOSB on issues related to the proposed rule should forward the request to Ms. Karen Thomas at the above address or by FAX to (202) 690–3924 by March 10, 1998, in order to be scheduled. The NOSB has scheduled time for public input on March 16, 1998, beginning at 1 p.m. and continuing until 5 p.m. While persons wishing to make a presentation may sign up at the door, advance registration will ensure an opportunity to speak during the allotted time period and will help the NOSB better manage the meeting and accomplish the agenda. It is our intention to give each individual or organization approximately 5 minutes to present orally their views on the key issues of concern. All persons making an oral presentation are asked also to provide their views in writing. Such written submissions may of course supplement the oral presentation with additional material. Attendees who do not wish to make an oral presentation are invited to submit written comments to the NOSB at this meeting. Those persons submitting written comments should provide 20 copies to the NOSB. All such comments will be included in the minutes of the meeting and placed in the rulemaking record.

Dated: February 9, 1998.

Eileen S. Stommes,

Deputy Administrator, Transportation and Marketing.

[FR Doc. 98–3868 Filed 2–13–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Announcement of the Market Access Program for FY 1998

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: This notice announces the availability of funds for the Fiscal Year 1998 Market Access Progam (MAP).

DATES: All applications must be received by 5:00 p.m. Eastern Daylight Savings Time, April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720–4327.

SUPPLEMENTARY INFORMATION:

Introduction

The Commodity Credit Corporation (CCC) announces that applications are being accepted for participation in the Fiscal Year 1998 MAP. The MAP is designed to encourage the development, maintenance, and expansion of commercial export markets for U.S. agricultural commodities and products. Cost-share assistance is provided to eligible trade organizations to implement approved market

development programs. Financial assistance under the MAP will be made available on a competitive basis and applications will be reviewed against the evaluation criteria contained herein. The MAP is administered by personnel of the Foreign Agricultural Service (FAS).

Under the MAP, CCC enters into agreements with eligible participants to share the costs of certain overseas marketing and promotion activities. MAP participants may receive assistance for either generic or brand promotion activities. The MAP generally operates on a reimbursement basis.

Authority

The MAP is authorized under section 203 of the Agricultural Trade Act of 1978, as amended, and MAP regulations are set forth in 7 CFR part 1485.

Eligible Applicants

To participate in the MAP, an applicant must be: A nonprofit U.S. agricultural trade organization, a nonprofit state regional trade group (i.e., an association of State Departments of Agriculture), a U.S. agricultural cooperative, a State agency, or a small-sized U.S. commercial entity (other than a cooperative or producer association).

Available Funds

$90 million of cost-share assistance may be obligated under the MAP announcement to eligible applicants.

Application Process

The FAS administers various agricultural export assistance programs, including the MAP, the Foreign Market Development Cooperator (Cooperator) Program, Cochran Fellowships, the Emerging Markets Program, Section 108, and several Export Credit Guarantee programs. Until now, organizations interested in receiving assistance under any of these FAS-administered programs were asked to submit their requests at varying times throughout the year. In an effort to facilitate the strategic planning process of MAP applicant organizations, as well as that of the Federal government, FAS has unified and simplified the application process for its agricultural export assistance programs.

Beginning with this announcement, organizations which are interested in applying for MAP funds will have the opportunity to incorporate multiple requests for assistance into a single Unified Export Strategy (UES) proposal. The suggested UES format permits the submissions of a consolidated and strategically coordinated proposal including not only MAP applications, but also requests for assistance under virtually all other FAS marketing programs, financial assistance programs, and market access programs. The suggested UES framework encourages applicants to examine the constraints or barriers to trade they face, identify activities which would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals.

The UES handbook, including the suggested format, instructions, and a sample proposal, may be obtained in a paper copy or on a diskette by contacting the Marketing Operations Staff at (202) 720–4327, or it can be downloaded from the FAS Home Page at the following URL address: http://www.fas/usda/gov/agexport/ues/unified.html.

In order to be considered for the MAP, an application must contain the information required by the MAP regulations set forth in 7 CFR 1485. Incomplete applications and applications that do not otherwise conform to this announcement will not be accepted for review. Paper applications must be signed and submitted, via hand delivery or U.S. mail, in triplicate form (an original and two copies); electronic applications can be submitted via electronic mail, facsimile, or on a diskette. Anyone choosing to submit an application electronically must also submit, via hand delivery or U.S. mail, an original signed certification statement as included in the UES handbook. Any organization which is not interested in applying for the MAP but would like to request assistance through one of the other programs mentioned should contact the Marketing Operations Staff at (202) 720–4327.

Review Process and Allocation Criteria

FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) 1993. In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, FAS seeks to identify a clear, long-term agricultural trade strategy by market or product and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. These performance indicators are part of FAS' resource allocation strategy to fund applicants which can demonstrate performance based on a long-term strategic plan, consistent with the strategic objectives of the United States Department of Agriculture, and address the performance measurement objectives of the GPRA.

Following is a description of the CCC process for reviewing applications and the criteria for allocating available funds.

(1) Phase I—Sufficiency Committee Review

Applications received by the closing date will be reviewed by FAS to determine the eligibility of the applicants and the completeness of the applications. These requirements appear at § 1485.12 and § 1485.13 of the MAP regulations.

(2) Phase II—FAS Divisional Review

Applications which meet the application procedures will then be further evaluated by the applicable FAS Commodity Division. The Divisions will recommend funding levels for each applicant based on a review of the applications against the criteria listed in § 1485.14 of the MAP regulations. The purpose of this review is to identify meritorious proposals and to suggest an appropriate funding level for each application based upon these criteria.

(3) Phase III—Competitive Review

Meritorious applications will then be passed on to the office of the Deputy Administrator, Commodity and Marketing Programs, for the purpose of allocating available funds among the applicants. Applications which pass the Divisional Review will compete for funds on the basis of the following evaluation criteria (the number in parentheses represents a percentage weight factor):

(a) Applicant's Contribution Level (40)

- The applicant's 4-year average share (1995–98) of all contributions (cash and goods and services provided by U.S. entities in support of overseas marketing and promotion activities may be considered in the allocation process and therefore should be reported separately from the applicant's contributions) compared to
- The applicant's 4-year average share (1995–98) of the funding level for all MAP participants.

(b) Past Performance (30)

- The 3-year average share (1995–97) of the value of exports promoted by the applicant compared to
- The applicant's 2-year average share (1996–97) of the funding level for all MAP applicants plus, for those groups participating in the Cooperator program, the 2-year average share (1997–98) of

Cooperator marketing plan budgets and the 2-year share (1996–97) of foreign overhead provided for co-location within a U.S. agricultural office;

(c) Projected Export Goals (15)

• The total dollar value of projected exports promoted by the applicant for 1998 compared to

• The applicant's requested funding level;

(d) Accuracy of Past Projections (15)

• Actual exports for 1996 as reported in the 1998 MAP application compared to

• Past projections of exports for 1996 as specified in the 1996 MAP application.

The Commodity Divisions' recommended program levels for each applicant are converted to a percent of the total MAP funds available and multiplied by the total weight factor as described above to determine the amount of funds allocated to each applicant.

Closing Date for Applications

All applications must be received by 5:00 p.m. Eastern Daylight Savings Time, April 20, 1998, at the following addresses:

Hand Delivery (including FedEx, DHL, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, Room 4932–S, 14th and Independence Avenue, S.W., Washington, D.C. 20250–1042.

U.S. Postal Delivery: Marketing Operations Staff, STOP 1042, 1400 Independence Ave., SW, Washington, D.C. 20250–1042.

Electronic mail: mosadmin@fas.usda.gov.

Facsimile: (202) 720–9361.

Lon Hatamiya,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 98–3874 Filed 2–13–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent to Seek Approval to Collect Information

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub.L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's (ERS) intention to request approval for a new information collection on multifamily rental housing funded through USDA's Rural Rental Housing Program. This information will contribute to a better understanding of how USDA housing programs help to provide adequate and affordable rental housing for low-income residents in rural areas.

DATES: Comments on this notice must be received by April 23, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Leslie Whitener, Food Assistance, Poverty, and Well-Being Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, Room S2079, 1800 M. St., NW, Washington, DC. 20036–5831, 202–694–5444.

SUPPLEMENTARY INFORMATION:

Title: Application for ERS collection of information on multifamily rental housing funded through USDA's Rural Rental Housing Program.

Type of Request: Approval to collect information on multifamily rental housing funded through USDA's Rural Rental Housing Program.

Abstract: The Economic Research Service has the responsibility to provide social and economic intelligence on changing rural housing needs in the United States to help assess the relationship between Federal housing assistance policies and rural development. Research activities focus on three major objectives: (1) Identification of trends in rural housing availability, affordability, and adequacy which underlie an understanding of rural housing needs; (2) assessment of the use and effectiveness of Federal housing assistance programs in rural areas, particularly as they relate to low-income residents; and (3) investigation of the potential effects of Federal policy changes on rural housing programs and housing needs in rural communities. Housing has a major influence on the quality of life of rural residents, and is an important focus of the Department's rural development efforts. Research findings are provided to public and private decision-makers for use in developing and evaluating policies and programs to insure that adequate and affordable housing is available to low-income and other rural residents.

USDA's Rural Rental Housing Section 515 Program provides affordable rental housing to very low-, low-, and moderate-income rural families; elderly residents; and persons with disabilities. The Program employs a public-private partnership by providing loans to developers to construct or renovate modest-cost rental complexes and cooperative buildings in rural areas. These loans are direct, competitive mortgage loans made to individuals, partnerships, for-profit corporations, nonprofit organizations, public agencies, and others to provide affordable multifamily rental housing in rural areas. The long-term, low percentage loans provided by this Program allow the debt service on the property to be sufficiently low to support below market rents affordable to low-income tenants. Tenants pay basic rent or 30 percent of adjusted income, whichever is greater. Those living in substandard housing are given first priority for tenancy. Since 1963, the Program had funded construction of 515,000 units in 26,000 rental housing projects across the country. Appropriations for this Program total $150 million in fiscal year 1998.

While the Department maintains a national account tracking system and a local project information system, information on the impact of the Rural Rental Housing Program on the community and on the tenants served by the Program is difficult to obtain on a national basis. The data collection effort proposed here will provide a unique information base by soliciting information from a sample of property managers who oversee multifamily rental housing financed by USDA's Rural Rental Housing Program. The survey will interview property managers to ascertain general housing conditions within their projects, neighborhood quality, access to services, and demographic, employment, and income information on tenants. This information will help to fill a serious gap in our understanding of the effects of rental housing programs on low-income rural residents and their communities, and will provide USDA and other policy makers with sound information to help evaluate current programs and develop more effective rural housing policies.

The Economic Research Service, working with Washington State University's Social and Economic Sciences Research Center, will conduct a telephone survey of property managers overseeing multifamily rental housing funded through USDA's Section 515 Program. Property managers to be interviewed will be selected from a simple random national sample of current property managers, taken from USDA's Rural Development administrative records. Survey data will be collected using Computer-Assisted

Telephone Interviewing (CATI) techniques, which are more efficient and less time consuming than traditional written interview techniques. Responses are voluntary and confidential. Survey data will be used for statistical purposes and reported only in aggregate or statistical form.

Information to be obtained from property managers includes: rental property characteristics, general conditions within the properties, neighborhood quality, access to amenities and local services, property managers' experiences with USDA's Rural Development staff, demographic, employment, and income information on tenants, and tenant satisfaction. No existing data sources, including USDA administrative data, U.S. Department of Housing and Urban Development's Property Owners and Managers Survey, or the Bureau of the Census' American Housing Survey, provide the level of detail necessary to adequately explore these issues for USDA's Rural Rental Housing Program. These data and the research they will support are vital to the Department's ability to assess the impact of its rural housing programs on rural residents and their communities.

Estimate of Burden: Public reporting burden for this data collection is estimated to average 15 minutes per completed interview, including time for listening to instructions, gathering data needed, and responding to questionnaire items.

Respondents: Property managers who currently oversee multifamily rental housing funded under USDA's Rural Rental Housing Section 515 Program.

Estimated Number of Respondents: 1,000

Estimated Total Annual Burden on Respondents: 250 hours

Information concerning the data collection can be obtained from Leslie Whitener, Food Assistance, Poverty and Well-Being Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, Room S2079, 1800 M. St., NW, Washington, DC. 20036–5831, 202–694–5444.

Comments

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques. Comments may be sent to Leslie Whitener, Food Assistance, Poverty and Well-Being Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, Room S2079, 1800 M. St., NW, Washington, D.C. 20036–5831. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C.

Betsey Kuhn,

Director, Food and Rural Economics Division.

[FR Doc. 98–3870 Filed 2–13–98; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

Notice of Request for Information Collection

AGENCIES: The Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Utilities Service's (RUS) intention to request an extension for a currently approved information collection in support of the programs for 7 CFR Part 1780, Water and Waste Loans; 7 CFR Part 1823 Subpart N, Loans to Indian Tribes and Tribal Corporations; 7 CFR Part 1942 Subpart A, Community Facilities Loans; 7 CFR Part 1948 Subpart C, Intermediary Relending Program; and 7 CFR Part 1980 Subpart E, Business and Industry Loan Programs.

DATES: Comments on this notice must be received by April 20, 1998 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: H. Richard Kelly, Loan Specialist, Operations Branch, Water Programs Division, Rural Utilities Service, USDA, STOP 1570, 1400 Independence Avenue, SW, Washington, DC 20250–1570, telephone: (202) 720–9589.

SUPPLEMENTARY INFORMATION:

Title: Form RD 1910–11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts"

OMB Number: 0575–0127

Expiration Date of Approval: November 30, 1997.

Type of Request: Reinstate information collection

Abstract: The water and waste loans, community facilities loans, tribe and tribal corporation loans, intermediary relending program loans, and business and industry direct loans are authorized by various sections of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1921 *et seq.*), as amended. The water and waste program provides loan funds for water and waste projects serving rural communities. Community facilities loans assist rural communities to develop facilities that are essential for their communities. Loans to Indian tribes or tribal corporations are offered for the acquisition of land within tribal reservations and Alaskan communities. The intermediary relending program provides loans to intermediary organizations to establish revolving loan funds that assist with rural economic and community development. The direct business and industry direct loan program provides funds to rural businesses that cannot get adequate financing from other sources.

OMB Circular A–129, "Policies for Federal Credit Programs and Non-Tax Receivables" requires that an agency will inform its loan applicants of the Federal government's debt collection policies and procedures prior to extending credit. The Circular states that further information on the implementation of credit management and debt collection can be found in the Treasury Financial Manual. A supplement to the Treasury Financial Manual requires that the Agency will ask the applicant to sign a debt collection certification statement to certify knowledge of the Government's policies. This certification statement details the consequences of delinquency on Federal loans.

The Agencies will use Form RD 1910–11 to meet the requirements of OMB Circular A–129 and the supplement to the Treasury Financial Manual for the identified programs. This form will uniformly advise applicants of the debt collection methods that will be used in recovering delinquent or defaulted loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .167 hours per response.

Respondents: Business or other for profit organizations, not-for-profit

institutions, public organizations and local or tribal governments.

Estimated Number of Respondents: 135,000

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: $22,545

Copies of this information collection can be obtained from Sam Spencer, Regulations and Paperwork Management Branch, Support Services Division, at (202) 720–9588.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Sam Spencer, Regulations and Paperwork Management Bfanch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0743, 1400 Independence Avenue SW, Washington, DC 20250–0743. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: January 28, 1998.

Wally Beyer,

Administrator, Rural Utilities Service.

Dated: January 30, 1998.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

Dated: February 3, 1998.

Jan E. Shadburn,

Administrator, Rural Housing Service.

Dated: February 6, 1998.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 98–3872 Filed 2–13–98; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

RIN 0551–AA26

Announcement of the Foreign Market Development Cooperator Program for FY 1999

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the availability of funds for the Fiscal Year 1999 Foreign Market Development Cooperator (Cooperator) Program.

DATES: All applications must be received by 5:00 p.m. Eastern Daylight Savings Time, April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, STOP 1042, 1400 Independence Ave., S.W., Washington, D.C. 20250–1042, (202) 720–4327.

SUPPLEMENTARY INFORMATION:

Introduction

The Foreign Agricultural Service (FAS) announces that applications are being accepted for participation in the Fiscal Year 1999 Cooperator program. The program is intended to create, expand and maintain foreign markets for United States agricultural commodities and products. FAS administers the Cooperator program and provides cost share assistance to eligible trade organizations to implement approved market development activities. Financial assistance under this program will be made available on a competitive basis and applications will be reviewed against the evaluation criteria contained herein.

Background

Under the Cooperator program, FAS enters into Market Development Project Agreements with nonprofit U.S. trade organizations. FAS enters into these agreements with those nonprofit U.S. trade organizations that have the broadest possible producer representation of the commodity being promoted and gives priority to those organizations that are nationwide in membership and scope. Program participants may not, during the term of their agreement with FAS, make export sales of the agricultural commodity being promoted or charge fees for facilitating an export sale if promotional activities designed to result in that specific sale are supported by Cooperator program funds.

Market Development Project Agreements involve the promotion of agricultural commodities on a generic basis and, therefore, do not involve activities targeted directly toward individual consumers. Approved activities contribute to the maintenance or growth of demand for the agricultural commodities and generally address long-term foreign import constraints by focusing on matters such as:

- Reducing infra-structural or historical market impediments;
- Improving processing capabilities;
- Modifying codes and standards; and
- Identifying new markets or new applications or uses for the agricultural commodity or product in the foreign market.

Authority

The Cooperator program is authorized by Title VII of the Agricultural Trade Act of 1978, 7 U.S.C. 5721, *et seq.* Program regulations appear at 7 CFR part 1550.

Application Process

The FAS administers various agricultural export assistance programs, including the Cooperator program, the Market Access Program (MAP), Cochran Fellowships, the Emerging Markets Program, Section 108, and several Export Credit Guarantee programs. Until now, organizations interested in receiving assistance under any of these FAS-administered programs were asked to submit their requests at varying times throughout the year. In an effort to facilitate the strategic planning process of Cooperator program applicant organizations, as well as that of the Federal government, FAS has unified and simplified the application process for its agricultural export assistance programs.

Beginning with this announcement, organizations which are interested in applying for Cooperator program funds will have the opportunity to incorporate multiple requests for assistance into a single Unified Export Strategy (UES) proposal. The suggested UES format permits the submission of a consolidated and strategically coordinated proposal including not only Cooperator program applications, but also requests for assistance under virtually all other FAS marketing programs, financial assistance programs, and market access programs. The suggested UES framework encourages applicants to examine the constraints or barriers to trade they face, identify activities which would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals.

The UES handbook, including the suggested format, instructions, and a sample application, may be obtained in a paper copy or on a diskette by contacting the Marketing Operations Staff at (202) 720–4327, or it can be downloaded from the FAS Home Page at the following URL address: http://www.fas.usda.gov/agexport/ues/unified.html.

In order to be considered for the Cooperator program, an applicant must submit to FAS information related to the allocation criteria considered by FAS as described in this notice. Incomplete applications and applications that do not otherwise conform to this announcement will not be accepted for review. Paper applications must be signed and submitted, via hand delivery or U.S. mail, in triplicate form (an original and two copies); electronic applications can be submitted via electronic mail, facsimile, or on a diskette. Anyone choosing to submit an application electronically must also submit, via hand delivery or U.S. mail, an original signed certification statement as included in the UES handbook. Any organization which is not interested in applying for the Cooperator program but would like to request assistance through one of the other programs mentioned should contact the Marketing Operations Staff at (202) 720–4327.

Review Process and Allocation Criteria

FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993. In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, FAS seeks to identify a clear, long-term agricultural trade strategy by market or product and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. These performance indicators are part of FAS' resource allocation strategy to fund applicants which can demonstrate performance based on a long-term strategic plan, consistent with the strategic objectives of the United States Department of Agriculture, and address the performance measurement objectives of the GPRA.

FAS considers a number of factors when reviewing proposed projects. These factors include:

- The ability of the organization to provide an experienced U.S.-based staff with technical and international trade expertise to ensure adequate development, supervision, and execution of the proposed project;
- The organization's willingness to contribute resources, including cash and goods and services of the U.S. industry and foreign third parties;
- The conditions or constraints affecting the level of U.S. exports and market share for the agricultural commodities and products;
- The degree to which the proposed project is likely to contribute to the creation, expansion, or maintenance of foreign markets; and
- The degree to which the strategic plan is coordinated with other private or U.S. government-funded market development projects.

Following is a description of the FAS process for reviewing applications and the criteria for allocating available funds.

(1) Phase I—Sufficiency Committee Review

Applications received by the closing date will be reviewed by FAS to determine the eligibility of the applicants and the completeness of the applications.

(2) Phase 2—FAS Divisional Review

Applications which meet the application procedures will then be further evaluated by the applicable FAS Commodity Division. The Divisions will recommend funding levels for each applicant based on a review of the applications against the factors described above. The purpose of this review is to identify meritorious proposals and to suggest an appropriate funding level for each application based upon these factors.

(3) Phase 3—Competitive Review

Meritorious applications will then be passed on to the office of the Deputy Administrator, Commodity and Marketing Programs, for the purpose of allocating available funds among the applicants. Applications which pass the Divisional Review will compete for funds on the basis of the following allocation criteria (the number in parentheses represents a percentage weight factor). Data used in the calculations for contribution levels, past export performance and past demand expansion performance will cover not more than a 6-year period, to the extent such data is a available.

(a) Contribution Level (40)

- The applicant's 6-year average share (1994–99) of all contributions (contributions may include cash and goods and services provided by U.S. entities in support of foreign market development activities) compared to
- The applicant's 6-year average share (1994–99) of all Cooperator marketing plan budgets.

(b) Past Export Performance (20)

- The 6-year average share (1993–98) of the value of exports promoted by the applicant compared to
- The applicant's 6-year average share (1993–98) of all Cooperator marketing plan budgets plus a 6-year average share (1992–97) of MAP program ceiling levels and a 6-year average share (1992–97) of foreign overhead provided for co-location within a U.S. agricultural trade office.

(c) Past Demand Expansion Performance (20)

- The 6-year average share (1993–98) of the total value of world trade of the commodities promoted by the applicant compared to
- The applicant's 6-year average share (1993–98) of all Cooperator marketing plan budgets plus a 6-year average share (1992–97) of MAP program ceiling levels and a 6-year average share (1992–97) of foreign overhead provided for co-location within a U.S. agricultural trade office.

(d) Future Demand Expansion Goals (20)

(The criterion will receive a weight of 10 beginning with the year 2000 program.)

- The total dollar value of the applicant's projected increase in world trade of the commodities being promoted by the applicant for the year 2004 compared to
- The applicant's requested funding level.

(e) Accuracy of Past Demand Expansion Projections

(Since the information is not currently available, this criterion will be used beginning with the year 2000 program and will receive a weight of 10.)

- The actual dollar value share of world trade of the commodities being promoted by the applicant for the year 1998 compared to
- The applicant's past projected share of world trade of the commodities being promoted by the applicant for the year 1998, as specified in the 1998 Cooperator program application.

The Commodity Divisions' recommended program levels for each applicant are converted to a percent of the total Cooperator program funds available and multiplied by the total weight factor to determine the amount of funds allocated to each applicant.

Closing Date for Applications

Applications must be received by 5:00 p.m. Eastern Daylight Savings Time, April 20, 1998 at the following address:

Hand Delivery (including FedEx, DHL, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, Room 4932–S, 14th and Independence Ave., S.W., Washington, D.C. 20250–1042

U.S. Postal Delivery: Marketing Operations Staff, STOP 1042, 1400 Independence Ave., S.W., Washington, D.C. 20250–1042

Electronic mail: mosadmin@fas.usda.gov

Facsimile: (202) 720–9361

Lon Hatamiya,

Administrator, Foreign Agricultural Service.

[FR Doc. 98–3873 Filed 2–13–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

South Manti Timber Salvage; Manti-La Sal National Forest, Sanpete and Sevier Counties, Utah

AGENCY: Forest Service, Interior.

ACTION: Notice of intent to prepare Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of proposed actions to salvage harvest dead and dying timber, build roads, and restock some stands of trees in portions of the Muddy Creek, Twelvemile Creek, Sixmile Creek, and Ferron Creek Drainages. The project is located approximately 10 air miles southeast of Manti, Utah. This analysis is expected to coincide with Forest Service development of the interim rule "Administration of the Forest Development Transportation System: Temporary Suspension of Road Construction in Roadless Areas" (**Federal Register**, Vol. 63, No. 18, p. 4350–4351) and will consider effects on roadless and undeveloped character of areas involved and will comply with all policy in effect at the time of decision.

The need for the proposal is to: reduce the potential for large and intense wildfire across forested areas (with associated environmental effects), facilitate rapid reestablishment of Engelmann spruce through replanting of spruce in Timber Management Emphasis Units identified in the Manti-La Sal National Forest Land and Resource Plan, and recover some of the economic value of the dead and dying trees. The proposed action involves harvest of up to approximately 31 million board feet (MMBF) of dead and dying Engelmann spruce from approximately 6,600 acres within an analysis area of approximately 25,000 acres. Harvest with both ground based and aerial (helicopter) methods would be used. Within the analysis area, approximately 10 miles of new road would be constructed, 20 miles of existing road reconstructed, and 23 miles of existing road would be used with appropriate maintenance to complete this harvest. Approximately 8 miles of road used for harvest operations would be closed and reclaimed following harvest.

The analysis area includes approximately 10,000 acres of Engelmann spruce-Subalpine fir vegetation type. A spruce bark beetle epidemic has moved through the area infesting spruce trees. As a consequence, most spruce trees over eight inches in diameter are dead or dying within the analysis area. In response to this epidemic mortality, approximately 25 MMBF of Engelmann spruce have previously been sold from approximately 2,450 acres within the analysis area.

Five areas that were identified as roadless during the RARE II inventory process are adjacent to and partly within the analysis area. The proposal does not include construction or reconstruction of any permanent or temporary roads within the RARE II areas. The proposed action includes harvest of approximately 7 MMBF Engelmann spruce using ground based and helicopter methods from three of these roadless areas.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received on or before March 19, 1998.

ADDRESSES: Send written comments to Manti-La Sal National Forest, 599 West Price River Drive, Price, Utah 84501.

FOR FURTHER INFORMATION: Questions concerning the proposed action and EIS should be addressed to Don Fullmer, Ecosystems Staff, Manti-La Sal National Forest, phone (435) 637–2817.

SUPPLEMENTARY INFORMATION: This EIS will tier to the final EIS for the Manti-La Sal National Forest Land and Resource Management Plan (Forest Plan). The Manti-La Sal Forest Plan provides the overall guidance (Goals, Objectives, Standards, and Management Area Direction) to achieve the Desired Future Condition for the area being analyzed, and contains specific management area prescriptions for the entire Forest. An Environmental Assessment (EA) was prepared in 1996 for spruce timber sales in this analysis area. Six sales were offered and awarded in 1996 based on the analysis contained in the EA. In 1997 a decision was made to sell an additional 22 MMBF of dead, dying and at risk Engelmann spruce within the analysis area. That decision was not implemented. As a result of concerns raised and changes in condition (additional spruce mortality) which occurred after the EA was prepared, the decision was made to prepare an EIS for the project.

Scoping and issue development identified the following issues: land stability; soil erosion and productivity; air quality; water quality and quantity; riparian/wetlands; aquatic habitat; threatened, endangered and sensitive aquatic species; Forest health, diversity and productivity; rangeland vegetation; noxious weeds; threatened, endangered and sensitive terrestrial plant species; fuel loading and fire risk; transportation system, visitor safety, access and travel delays; range allotments and improvements; visual landscape; roadless character; cultural resources; economics; and energy.

The Forest Service is seeking information and comments from Federal, State, and local agencies as well as individuals and organizations who may be interested in, or affected by the proposed action. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS and Final EIS. For most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this notice in the **Federal Register**. Preparation of the EIS will include the following steps:

1. Define the purpose of and need for action.
2. Identify potential issues.
3. Eliminate issues of minor importance or those that were covered by previous, relevant environmental analysis.
4. Select issues to be analyzed in depth.
5. Identify reasonable alternatives to the proposed action.
6. Describe the affected environment.
7. Identify the potential environmental effects of the alternatives.

Steps 2, 3, and 4 will be completed through the scoping process.

Step 5 will consider a range of alternatives developed from the key issues. One of these will be the "No Action" alternative. Other alternatives

will consider various levels and locations of harvest, regeneration, and related road development/improvement in response to the purpose and need, issues, and other resource objectives.

Step 6 will describe the physical attributes of the area to be affected by this proposal, with special attention to the environmental factors that could be adversely affected.

Step 7 will analyze the environmental effects of each alternative. This analysis will be consistent with management direction outlined in the Forest Plan. The direct, indirect, and cumulative effects of each alternative will be analyzed and documented. In addition, the site specific mitigation measures for each alternative will be identified and the effectiveness of these mitigation measures will be disclosed.

The approximate boundary of the area covered for this analysis will be from the southern Forest boundary along White Mountain north along Skyline Drive to the Ferron and Sixmile drainages.

The proposed management activities would be administered by the Sanpete and Ferron/Price Ranger Districts of the Manti-La Sal National Forest in Sanpete and Sevier Counties, Utah.

Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods are, (1) during the scoping process, the next 30 days following publication of this notice in the **Federal Register**, and (2) during the formal review period of the Draft EIS.

The Draft EIS is estimated to be filed with the Environmental Protection Agency (EPA) and available for public review in May, 1998. At this time the EPA will publish an availability notice of the Draft EIS in the Federal Register.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* versus *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* versus *Hodel*, 803 F.2d 1016, 1022 (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* versus *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3, in addressing these points.)

The final EIS is expected to be released August 1998.

The Forest Supervisor for the Manti-La Sal National Forest, who is the responsible official for the EIS, will then make a decision regarding this proposal, after considering the comments, responses, and environmental consequences discussed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies. The reasons for the decision will be documented in a Record of Decision.

Dated: February 6, 1998.

Janette S. Kaiser,

Forest Supervisor, Manti-La Sal National Forest.

[FR Doc. 98–3817 Filed 2–13–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

PBA–12a Barataria Bay Waterway West Bank Protection Project, Jefferson Parish, Louisiana

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Barataria Bay Waterway West Bank Protection Project, Jefferson Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302; telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of the federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that preparation and review of an environmental impact statement is not needed for this project.

The project will evaluate potential impacts attributed to bank protection measures along the west bank of Barataria Bay Waterway. The project area encompasses approximately 2,200 acres of brackish marsh and open water habitat. Project features include the construction of approximately 9,400 linear feet of rock bankline protection and the installation of a set of two water control structures.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data collected during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be

taken until 30 days after the date of this publication in the Federal Register.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 98–3819 Filed 2–13–98; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Alabama

AGENCY: Natural Resource Conservation Service (NRCS) in Alabama, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Alabama for review and comment.

SUMMARY: It is the intention of NRCS in Alabama to issue conservation practice standards, Dry Hydrant (Code 712) and Manure Transfer (Code 634).

DATES: Comment will be received for a 30-day period commencing February 17, 1998.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Ronnie D. Murphy, State Conservationist, Natural Resources Conservation Service (NRCS), 665 Opelika Rd., P.O. Box 311, Auburn, AL 36830. Copies of the practice standards will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS in Alabama will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS in Alabama regarding disposition of those comments and a final determination of change will be made.

Robert N. Jones,

Deputy State Conservationist, Natural Resources Conservation Service, Auburn, Alabama.

[FR Doc. 98–3539 Filed 2–13–98; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1997 Survey of Minority-owned Business Enterprises (SMOBE) and 1997 Survey of Women-owned Business Enterprises (SWOBE).

Form Number(s): MB–1, MB–2.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 416,666 hours.

Number of Respondents: 2,500,000.

Avg Hours Per Response: 10 minutes.

Needs and Uses: The Census Bureau requests clearance for the 1997 Survey of Minority-Owned Business Enterprises (SMOBE) and the 1997 Survey of Women-Owned Business Enterprises (SWOBE). These surveys are the only comprehensive, regularly collected sources of information on businesses owned by minorities and women. They are conducted as part of the economic census program which is taken every 5 years.

A sample of U.S. Businesses will be asked questions about the gender, race, and ethnicity of the person(s) owning majority interest in the business. The data are needed to evaluate the extent and growth of business ownership by minorities and women in order to provide a framework for assessing and directing Federal, state and local government programs designed to promote the activities of disadvantaged groups.

The SMOBE/SWOBE surveys have been expanded to include all corporations in their sampling frame. In 1992, only subchapter S corporations in addition to partnerships and sole proprietorships were included for SMOBE. A small sample of "C" corporations was included in SWOBE to provide estimates at the industry division level only. A subchapter S corporation is a special IRS designation for a legally incorporated business with 35 or fewer shareholders who elect to be taxed as individual shareholders rather than as a corporation. Approximately 2.5 million "C" corporations, accounting for 75 percent of all U.S. business receipts, were not included in 1992. A "C" corporation is a legally incorporated business under state laws which, unlike a subchapter S corporation, has no restrictions on the number of shareholders required to qualify. While adding these corporations to the 1997 program will increase overall respondent burden, their inclusion will provide more complete coverage of women- and minority-owned businesses.

Affected Public: Businesses or other for-profit organizations.

Frequency: Every 5 years.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 131, 193, and 224.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 10, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–3775 Filed 2–13–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 980209032–8032–01]

Annual Surveys in Manufacturing Area

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In conformity with Title 13, United States Code (Sections 61, 131, 182, 224, and 225), I have determined that annual data to be derived from the surveys listed below are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Judy M. Dodds, Manufacturing and Construction Division, Bureau of the Census, Washington, DC 20233, telephone (301) 457–4587.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take

surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code. These surveys will provide continuing and timely national statistical data on manufacturing for the period between economic censuses. The latest economic censuses will be conducted for 1997. The data collected in these surveys will be within the general scope and nature of those inquiries covered in the economic censuses.

Annual Current Industrial Reports

Most of the following commodity or product surveys provide data on shipments or production; some provide data on stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all or a sample of establishments engaged in the production of the items covered by the following list of surveys.

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, these surveys have been approved by the Office of Management and Budget (OMB) under OMB Control Numbers 0607–0392, 0607–0395, 0607–0476, and 0607–0625.

MA20D—Confectionery
MA22F—Yarn Production
MA22K—Knit Fabric Production
MA22Q—Carpets and Rugs
MA23D—Gloves and Mittens
MA24T—Lumber Production and Mill Stocks
MA28A—Inorganic Chemicals
MA28B—Inorganic Fertilizer Materials and Related Products
MA28C—Industrial Gases
MA28F—Paint and Allied Products
MA28G—Pharmaceutical Preparations, except Biologicals
MA31A—Footwear
MA32C—Refractories
MA32E—Consumer, Scientific, Technical, and Industrial Glassware
MA33A—Ferrous Castings
MA33B—Steel Mill Products
MA33E—Nonferrous Castings
MA33L—Insulated Wire and Cable
MA34K—Steel Shipping Drums and Pails
MA35A—Farm Machinery and Lawn and Garden Equipment
MA35D—Construction Machinery
MA35F—Mining Machinery and Mineral Processing Equipment
MA35J—Selected Industrial Air Pollution Control Equipment
MA35L—Internal Combustion Engines
MA35M—Air-conditioning and Refrigeration Equipment
MA35N—Fluid Power Products
MA35P—Pumps and Compressors
MA35Q—Antifriction Bearings
MA35R—Computers and Office and Accounting Machines
MA35U—Coin-Operated Vending Machines
MA36A—Switchgear, Switchboard Apparatus, Relays, and Industrial Controls
MA36E—Electric Housewares and Fans
MA36F—Major Household Appliances
MA36H—Motors and Generators
MA36K—Wiring Devices and Supplies
MA36L—Electric Lighting Fixtures
MA36M—Consumer Electronics
MA36P—Communication Equipment
MA36Q—Semiconductors and Printed Circuit Boards
MA38B—Selected Instruments and Related Products
MA38R—Electromedical Equipment

The following list of surveys represents annual counterparts of monthly and quarterly surveys and will cover only those establishments that are not canvassed or do not report in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly and quarterly reports.

M20A—Flour Milling Products
M32G—Glass Containers
M33D—Aluminum Producers and Importers
M33J—Inventories of Steel Producing Mills
M37G/A—New Complete Aircraft and Aircraft Engines, Except Military
M37L—Truck Trailers
MQ22D—Consumption on the Woolen System and Worsted Combing
MQ23A—Apparel (short form)
MQ23X—Sheets, Pillowcases, and Towels
MQ32A—Flat Glass
MQ32D—Clay Construction Products
MQ34E—Plumbing Fixtures
MQ36C—Fluorescent Lamp Ballasts

Survey of Industrial Research and Development

The Survey of Industrial Research and Development (R&D) measures spending on research and development activities in private U.S. businesses. The Census Bureau collects and compiles this information with funding from the National Science Foundation (NSF). The NSF publishes the results in its publication series. Four data items in the survey provide interim statistics collected in the Census Bureau's economic censuses. These items (total company sales, total company employment, total expenditures, and federally-funded expenditures for research and development conducted within the company) are collected on a mandatory basis under the authority of Title 13. Response to all other data collected for the NSF is voluntary.

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, this survey has been approved by the OMB under OMB Control Number 3145–0027.

Survey of Plant Capacity Utilization

The Survey of Plant Capacity Utilization is designed to measure the use of industrial capacity. The survey collects information on actual output and estimates of potential output in terms of value of production. These data are the basis for calculating rates of utilization of full production capability and use of production capability under national emergency conditions.

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, this survey has been approved by the OMB under OMB Control Number 0607–0175.

Conclusion

I have, therefore, directed that these annual surveys be conducted for the purpose of collecting the data as described.

Dated: February 10, 1998.

James F. Holmes,

Acting Director, Bureau of the Census.

[FR Doc. 98–3852 Filed 2–13–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 7–98]

Foreign-Trade Zone 1, New York, New York; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the City of New York, grantee of FTZ 1, requesting authority to expand its zone in New York, New York, within the New York Seaport Area Customs port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 5, 1998.

FTZ 1 was approved on January 30, 1936 (Board Order 2) and expanded on June 27, 1974 (Board Order 99, 39 F.R. 24541, 7/3/74). The zone project currently consists of Site 1 (approx. 1 million sq. ft.)—Building 77, Brooklyn Navy Yard, Brooklyn.

The applicant now requests authority to expand the general-purpose zone to include an additional site (*Proposed Site 2*, 352 acres, 2 contiguous parcels), consisting of the Howland Hook Marine Terminal (HHMT) facility (227 acres), N. Washington and Western Avenues, Staten Island, and the adjacent Port Ivory facility (125 acres), Richmond Terrace and Western Avenue, Staten Island. The HHMT facility is owned by the City of New York and operated by the Port Authority of New York and New Jersey. The Port Ivory facility, a closed manufacturing complex owned by The Procter & Gamble Manufacturing Company, is available for multi-tenant

warehousing and light industrial activities. The proposed expansion site is located within the North Shore Economic Development Zone, established by the State of New York, and within the proposed New York City Waterfront Revitalization Program. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 20, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 4, 1998).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the New York City Economic, Development Corporation, 110 William Street, 5th Floor, New York, New York 10038.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: February 6, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–3909 Filed 2–13–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–803]

Industrial Nitrocellulose From the United Kingdom: Notice of Extension of Time Limits for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of antidumping duty administrative review.

EFFECTIVE DATE: February 17, 1998.

FOR FURTHER INFORMATION CONTACT: Gideon Katz or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone: (202) 482–5255 or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act and all citations to the regulations are to 19 CFR Part 351.

Extension of Time Limits for Preliminary Results

The Department of Commerce has received a request to conduct an administrative review of the antidumping duty order on industrial nitrocellulose from the United Kingdom. On August 28, 1997, the Department initiated this administrative review covering the period July 1, 1996 through June 30, 1997.

Because of the complexity of certain issues in this case, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act (see Memorandum from Joseph Spetrini to Robert LaRussa, Re: Extension of Time Limit for Administrative Review of Industrial Nitrocellulose from the United Kingdom). Therefore, in accordance with that section and 19 CFR 351.213(g)(2), the Department is extending the time limits for the preliminary results to June 1, 1998, and for the final results to 120 days after the publication of the preliminary results. These extensions of time limits are in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(g)(2).

Dated: February 5, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 98–3908 Filed 2–13–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 971029258–7258–01]

RIN: 0693–ZA17

Physics Laboratory 1998 Summer Undergraduate Research Fellowships (SURF)—Partnerships in Atomic, Molecular and Optical (AMO) Physics and Materials Science and Engineering Laboratory (MSEL) 1998 Summer Undergraduate Research Fellowships (SURF)

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: Through Summer Undergraduate Research Fellowships (SURF), the programs "SURFing the Physics Lab: A Partnership for AMO Physics" and "SURFing the Materials Science and Engineering Laboratory" will provide an opportunity for the Physics Laboratory (PL) and the Materials Science and Engineering Laboratory (MSEL) of the National Institute of Standards and Technology (NIST) and the National Science Foundation (NSF) to join in partnership with American colleges and universities to encourage outstanding undergraduate students to pursue careers in science and engineering. The MSEL program will function by providing research opportunities with internationally known NIST scientists in the fields of ceramics, solid state chemistry, metallurgy, polymers, neutron condensed matter science, and materials reliability. The PL program will function by exposing students to world class atomic, molecular, optical (AMO) and radiation physicists and facilities in the NIST Physics Laboratory, and by strengthening undergraduate AMO physics curricula by forming the basis for ongoing collaborations. The NIST Program Directors will work with physics and materials science department chairs and directors of multi-disciplinary centers of excellence to identify outstanding undergraduates (including graduating seniors) who would benefit from off-campus summer research in an honors academy environment. Each program recommends that a group of two candidates plus one alternate be nominated by each institution, although larger or smaller groups will be given equal consideration. For the PL program the selected group of about twenty-five (25) students will spend approximately twelve (12) weeks at the Physics

Laboratory's Gaithersburg, MD site, working one-on-one with NIST staff physicists, actively engaged in projects that combine the quest for fundamental knowledge and direct applications to problems of national importance. For the MSEL program the selected group of about eight (8) students will spend approximately twelve (12) weeks at the Materials Science and Engineering Laboratory's Gaithersburg, MD site, working one-on-one with NIST staff metallurgists, ceramists, polymer scientists, chemists, and physicists actively engaged in projects that combine the quest for fundamental knowledge and direct applications to problems of national importance. The 12-week stipend for the summer of 1998 will be $3,600. Students and NIST research advisors will be paired based on the student's background and interests soon after the application deadline to allow for adequate dialogue between the student, the student's undergraduate advisor, and the NIST advisor, to ensure that the student arrives at NIST ready to contribute and to prepare the student's undergraduate advisor for follow-up in the fall. Good overlap of research interests will facilitate collaborations between NIST and the participating academic partners. The students will live in a nearby furnished apartment complex and participate in the many NIST seminars and in a weekly SURFing the PL or MSEL Laboratory Summer Seminar Series. The students will all present a research seminar at NIST and will be encouraged to participate in a local or national scientific conference during the following academic year. Given the significant lack of diversity in the present physics and materials science work force, we encourage students from under-represented groups to apply. Costs for this program (stipend, travel, and housing) will be shared by NIST, NSF and the participating schools.

DATES: Proposals must be received no later than the close of business March 19, 1998.

ADDRESSES: Applicant institutions must submit one signed original plus one (1) copy of the proposal along with the Grant Application, Standard Form 424 (Rev. 4/97) to:

Physics Laboratory, Attn: Dr. Paul D. Lett, National Institute of Standards and Technology, Building 221, Room A–167, Gaithersburg, MD 20899–0001

or

Materials Science and Engineering Laboratory, Attn: Dr. Kenneth L. Jewett, National Institute of Standards and Technology, Building 223, Room B–309, Gaithersburg, MD 20899–0001.

FOR FURTHER INFORMATION CONTACT: For MSEL: Dr. Kenneth L. Jewett, (301) 975–2608; For PL: Dr. Paul D. Lett, (301) 975–6559.

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance Name and Number: 11.609—Measurement and Engineering Research and Standards.

Authority

The Act of March 3, 1901, as amended (15 USC 278g–1) authorizes the National Institute of Standards and Technology to expend up to 1 per centum of the funds appropriated for activities of NIST in any fiscal year, as the Director deems appropriate, for financial assistance awards in the form of cooperative agreements to students at institutions of higher learning within the United States. These students must show promise as present or future contributors to the missions of NIST. Cooperative Agreements are awarded to assure continued growth and progress of science and engineering in the United States, including the encouragement of women and minority students to continue their professional development.

Program Description

The objective of this partnership is to build a mutually beneficial relationship between the student, the institution of higher learning, and NIST. This is the fifth year of a program partially funded by the NSF Physics Division as a Research Experience for Undergraduates (REU) site. This is the first year of a proposed five year program funded by the NSF Materials Science Division as a Research Experience for Undergraduates (REU) site. Between ten and fifty percent of the associated student stipends, travel, and housing is provided in cost sharing by the individual participating institutions.

NIST is one of the nation's premiere research institutions for the physical sciences and, as the lead Federal agency for technology transfer, is providing a strong interface between government, industry, and academia. On-site researchers at NIST come from a broad range of institutions. Owing to its unique mission to support the U.S. economy by working with industry, NIST embodies a special science culture, developed from a large and well-equipped research staff that enthusiastically blends programs that address the immediate needs of industry with longer-term research that anticipates future needs. This occurs in few other places and enables the Physics Laboratory and the Materials Science and Engineering Laboratory to offer unique research and training opportunities for undergraduates, providing them a research-rich environment and exposure to state of the art equipment, to scientists at work, and to professional contacts that represent future employment possibilities.

Attending to the long term needs of many U.S. high-technology industries, NIST's Physics Laboratory conducts basic research in the areas of quantum, electron, optical, atomic, molecular, and radiation physics and NIST's Materials Science and Engineering Laboratory conducts basic research in the electronic, magnetic, optical, superconducting, mechanical, thermal, chemical, and structural properties of metals, ceramics polymers, and composites. Much of this applied research is devoted to overcoming barriers to the next technological revolution, in which individual atoms and molecules will serve as the fundamental building blocks of devices.

To achieve these goals, PL staff develop and utilize highly specialized equipment, such as polarized electron microscopes, scanning tunneling microscopes, lasers, and x-ray and synchrotron radiation sources. Research projects can be theoretical or experimental and will range in focus from computer modeling of fundamental processes through trapping atoms and choreographing molecular collisions, to standardization for radiation therapy.

Preparation of unique materials by atomic level tailoring of multi-layers, perfect single crystals, and nanocomposites are just some of the future technologies being developed and explored in NIST's MSEL. To achieve these goals, staff develop and utilize highly specialized equipment, such as high resolution electron microscopes, atomic force microscopes, a nuclear reactor, x-ray diffration sources, lasers, magnetometers, plasma furnaces, melt spinners, molecular beam epitaxy systems, and powder atomization chambers. Research projects can be theoretical or experimental and will range in focus from the structural, chemical, and morphological characterization of advanced materials made in the NIST laboratories to the accurate measurement of the unique properties possessed by these special materials.

SURF students will work one-on-one with our nation's top physical scientists both from NIST and from some of our nation's leading, high tech industries. It is anticipated that successful SURF students will move from a position of reliance on guidance from their research

advisors to one of research independence during the twelve-week period. One goal of this partnership is to provide opportunities for our nation's next generation of scientists and engineers to engage in world-class scientific research at NIST, especially in ground-breaking areas of emerging technologies. This carries with it the hope of motivating these individuals to pursue a Ph.D. in physics or materials science and to consider research careers. SURFing the Physics Lab and SURFing the Materials Science and Engineering Laboratory will help to forge partnerships with NSF and with post-secondary institutions that demonstrate strong, hands-on undergraduate science curricula, especially those with a demonstrated commitment to the education of women, minorities, and students with disabilities. This program will be open to all U.S. citizens or U.S. permanent residents interested in AMO physics or materials science.

Eligibility

Colleges and universities in the United States with degree granting programs in materials science, chemistry, or physics.

Funding Availability

The NIST Materials Science and Engineering Laboratory is anticipates receiving funding as a NSF REU Program at the level of $50,000 per year. It is anticipated that this funding would provide for the direct and indirect cost for stipends, travel and housing, and conference attendance for eight students. The actual number of awards made under this announcement will depend on the level of cost sharing by our academic partners. the issuance of awards is contingent upon the availability of funding.

The NIST Physics Laboratory will commit approximately $50,000 to support cooperative agreements under this program. The NIST Physics Laboratory's REU Program is anticipating renewal of funding by the NSF at the level of $70,000 per year. The anticipated direct and indirect cost for stipends, travel and housing and conference attendance for twenty-five students is about $150,000. The actual number of awards made under this announcement will depend on the level of cost sharing by our academic partners. The issuance of awards is contingent upon the availability of funding.

Proposal Review Process

All proposals will be reviewed by a panel of three NIST scientists appointed by the Program Directors. Proposals should include the following:

(A) Student Information:

(1) Official transcript for each student nominated with a recommended G.P.A. of 3.0 or better;

(2) A personal statement from each student and statement of commitment to participate in the 1998 SURF program, including a description of the student's prioritized research interests;

(3) A resume for each student; and

(4) Two letters of recommendations for each student.

All references to student include the proposed alternate.

(B) Information About the Applicant Institution:

(1) Description of the institution's education and research philosophy, faculty interests, on-campus research program(s) and opportunities, and overlapping research interests of NIST and the institution; and

(2) A statement addressing issues of academic credit and commitment to cost sharing.

Application Kit

An application kit, containing all required application forms and certifications is available by calling Erica Fosburg at (301) 975–5112, for the PL program; Susan Roth at (301) 975–5655, for the MSEL program. The application kit includes the following:

SF 424 (Rev 7/97)—APPLICATION FOR FEDERAL ASSISTANCE
SF 424A (Rev 7/97)—BUDGET INFORMATION—Non-Construction Programs
SF 424B (Rev 7/97)—ASSURANCES—Non-Construction Programs
CD 511 (7.91)—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS; DRUG-FREE WORKPLACE REQUIREMENTS AND LOBBYING
CD 512 (7/91)—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS AND LOBBYING
SF–LLL—DISCLOSURE OF LOBBYING ACTIVITIES

Evaluation Criteria

Evaluation of Student's Academic Ability and Commitment to Program Goals (35%): Includes, but is not limited to, evaluation of the following: Completed course work; expressed research interest; prior research experience; grade point average in courses relevant to program; career plans; honors and activities.

Evaluation of Applicant Institution's Commitment to Program Goals (35%): Includes, but is not limited to, evaluation of the following: Institution's focus on AMO physics or materials science; overlap between research interests of the institution and NIST; emphasis on undergraduate hands-on research; undergraduate participation in research conferences/programs; on-campus research facilities; past participation by students/institution in such programs; and commitment to educate women, minorities, and persons with disabilities.

Evaluation of Applicant Institution's Cost Sharing (30%): In the spirit of a true partnership, successful applicant institutions will be encourage to contribute matching funds. A suggested level of participation would be to directly cover student travel (one round trip by common carrier) or housing costs (approximately $1500); a higher level of participation, such as partial payment of the student's stipend, stated intent to support the participating students at a research conference, indirect costs, and/or awarding of academic credit, will be given extra merit in the evaluation process.

Award decisions shall be based upon total evaluation score.

Award Period

The 1998 Materials Science and Engineering Laboratory SURFing Partnership and the 1998 Physics Laboratory SURFing Partnership are anticipated to run between May 26 through August 14, 1998; adjustments may be made to accommodate specific academic schedules (e.g., a limited number of 10-week cooperative agreements).

Paperwork Reduction Act

The Standard Form 424 and other Standard Forms in the application kit are subject to the requirements of the Paperwork Reduction Act and have been approved by OMB under Control No. 0348–0043, 0348–0044, 0348–0040, and 0348–0046.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Additional Requirements

Primary Application Certifications: All primary applicant institutions must submit a completed form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace

Requirements and Lobbying," and the following explanations must be provided:

1. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

2. *Drug-Free Workplace.* Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. *Anti-Lobbying.* Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

4. *Anti-Lobbying Disclosure.* Any applicant institution that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

5. *Lower-Tier Certifications.* Recipients shall require applicant/bidder institutions for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to NIST. SF-LLL submitted by any tier recipient or subrecipient should be submitted to NIST in accordance with the instructions contained in the award document.

Name Check Reviews

All for-profit and non-profit applicants will be subject to a name check review process. Name checks are intended to reveal if any individuals associated with the applicant have been convicted or or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Preaward Activities

Applicants (or their institutions) who incur any costs prior to an award being made do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been provided, there is no obligation on the part of NIST to cover pre-award costs.

No Obligation for Future Funding

If an application is accepted for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST.

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

False Statements

A false statement on an application is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full.

2. A negotiated repayment schedule is established and at least one payment is received, or

3. Other arrangements satisfactory to DOC are made.

Indirect Costs

No Federal funds will be authorized for Indirect Costs (IDC); however, an applicant may provide for IDC under their portion of Cost Sharing. (For additional information refer to the "Evaluation of Applicant Institution's Cost Sharing (30%):" section of this notice under Evaluation Criteria.

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Purchase of American-Made Equipment and Products

Applicants are hereby notified that they are encouraged, to the greatest practicable extent, to purchase American-made equipment and products with funding provided under this program.

Federal Policies and Procedures

Recipients and subrecipients under the Materials Science and Engineering Laboratory Program and the Physics Laboratory Program shall be subject to all Federal laws and Federal and Departmental regulations, policies, and procedures, applicable to financial assistance awards. The SURF program does not directly affect any state or local government.

Applicants are reminded of the applicability of Executive Order 12372, "Intergovernmental Review of Federal Programs."

Executive Order Statement

This funding notice was determined to be "not significant" for purposes of Executive Order 12866.

Dated: February 10, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR. Doc. 98–3853 Filed 2–13–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Approval of the Georgia Coastal Management Program

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: Notice is hereby given that the National Oceanic and Atmospheric Administration (NOAA) approved the Georgia Coastal Management Program (GCMP) on January 26, 1998, pursuant to the provisions of section 306 of the Federal Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1455 (CZMA). The GCMP is prescribed in the Georgia Coastal Management Program and Final Environmental Impact Statement (P/FEIS) published on December 5, 1997.

Georgia is the 32nd state to receive Federal approval of its coastal management program. Georgia submitted a proposed coastal program to NOAA in April 1997. Upon reaching a preliminary decision that the program met the requirements of the CZMA, and

in order to meet its responsibilities under the National Environmental Policy Act, NOAA published the Georgia Coastal Management Program and Draft Environmental Impact Statement (P/DEIS) for public review on September 5, 1997. NOAA published the P/FEIS including public comments on the P/DEIS and responses to those comments on December 5, 1997. NOAA has also fulfilled the responsibilities under the Endangered Species Act through consultations with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

The GCMP is the culmination of several years of development by the State of Georgia, in consultation with interest groups, the general public, Federal agencies, and NOAA. The GCMP consists of numerous state policies on diverse coastal management issues which are prescribed by statute and other legal mechanisms and made enforceable under state law. The GCMP will improve the decision making process for determining appropriate coastal land and water uses in light of resource consideration and increase public awareness of coastal resources and processes. The GCMP will increase long term protection of the state's coastal resources, while providing for sustainable economic development.

NOAA approval of the GCMP makes the state eligible for federal financial assistance for program administration and enhancement under sections 306, 306A, 308 and 309 of the CZMA (16 U.S.C. Secs. 1455, 1455a, 1456a, and 1456b). Georgia has submitted an application for $731,250 in FY 1997 Federal CZMA funds which are available for Georgia. These funds will generally be used to assist the state in administering the various state authorities included in the GCMP, as well as be used to fund local management efforts.

NOAA approval of the GCMP also makes operational, as of the date of this Federal Register Notice, the CZMA federal consistency requirement with respect to the GCMP (16 U.S.C. 1456; 15 CFR Part 930). Therefore, as of today, direct federal activities occurring within or outside the Georgia coastal zone that are reasonably likely to affect any land or water use or natural resources of the Georgia coastal zone must be consistent to the maximum extent practicable with the enforceable policies of the GCMP. In addition, activities within or outside the Georgia coastal zone requiring a federal license or permit listed in the P/FEIS, and federal financial assistance to state agencies and local governments, that are reasonably likely to affect any land or water use or natural resource of the Georgia coastal zone must be consistent with the enforceable policies of the GCMP.

Chapter 5 of the P/FEIS identifies the enforceable policies of the Georgia program. Chapter 8 of the P/FEIS identifies federally licensed or permitted activities subject to the federal consistency requirements. Chapters 4 and 8 of the P/FEIS, as well as the CZMA regulations at 15 CFR Part 930, provide specific procedures to be used in the Federal/State coordination process.

ADDRESSES: For further information please contact Joshua Lott at (301) 713–3117, ext. 178; or via fax at (301) 713–4367; or via the Internet at josh.lott@noaa.gov.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: February 6, 1998.

Nancy Foster,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 98–3498 Filed 2–13–98; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 093097G]

Strategic Plan for Fisheries Research

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Availability.

SUMMARY: NMFS announces the availability of the Strategic Plan for Fisheries Research. Section 404(a) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires the Secretary of Commerce to develop, triennially, a strategic plan for fisheries research for the subsequent 5 years.

ADDRESSES: Requests for copies of the Plan should be directed to Mark Chandler, Research, Analysis, and Coordination Division, Office of Science and Technology, NMFS, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. Phone (301) 713–2363. FAX: (301) 713–1875

FOR FURTHER INFORMATION CONTACT: Mark Chandler or Carolyn Brown at (301) 713–2363.

SUPPLEMENTARY INFORMATION: Section 404(a) of the Magnuson-Stevens Act requires the Secretary of Commerce to publish in the **Federal Register** a strategic plan for fisheries research for the 5 years immediately following the plan's publication. Pursuant to Magnuson-Stevens Act requirements, the Plan addresses 4 major areas: (1) Research to support fishery conservation and management; (2) conservation engineering research; (3) research on the fisheries; and (4) information management research. Additionally, the Plan contains a limited number of priority objectives for each of these areas; indicates goals and timetables; provides a role for commercial fishermen in such research; and provides for collection and dissemination of complete and accurate information concerning fishing activities.

In 1997, NMFS published a *Strategic Plan for NOAA Fisheries.* The Plan was developed in a comprehensive manner, with substantial public involvement, including 16 public meetings. The present Strategic Plan for Fisheries Research is based upon and entirely consistent with the NMFS Strategic Plan. It is a subset of the all-encompassing NMFS Strategic Plan, focusing on science research activities. The objectives found under the *Major Fishery Research Goals and Objectives* section of the subject document can be matched with strategies in the NMFS Strategic Plan. In addition, the strategies, goals, and objectives of the Strategic Plan for Fisheries Research are wholly consistent with the 1993 *NOAA Strategic Plan: A Vision for 2005.*

The scope of the present document is solely fisheries research to support the Act. It does not include the regulatory or enforcement components of the NMFS mission. The document covers current fisheries research and how NMFS aims to improve its research under current and projected NMFS budgets.

Dated: January 23, 1998.

William W. Fox, Jr.

Director, Office of Science and Technology.

[FR Doc. 98–3887 Filed 2–13–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021098A]

Notice of Public Hearing on Individual Fishing Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: Notice is hereby given that NMFS will hold a public hearing in Hawaii on the island of Oahu to solicit comments on Individual Fishing Quotas (IFQs) in compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) as amended by the Sustainable Fisheries Act of 1996. The hearing supplements those held by the National Research Council (NRC) and/or the NMFS in the other Council regions.

DATES: The public hearing will be held on March 25, 1998 from 7:00 p.m. to 10:00 p.m.

ADDRESSES: The public hearing will be held at the Ala Moana Hotel, Ilima Conference Room, 410 Atkinson Dr., Honolulu, HI, 96815, telephone: 808–955–4811.

FOR FURTHER INFORMATION CONTACT: Charles Karnella, Administrator, Pacific Islands Area Office; telephone 808–973–2937.

SUPPLEMENTARY INFORMATION: Participants will be given five minutes each to provide a statement regarding any aspect of IFQ implementation identified in the study requirements of the Magnuson-Stevens Act. All input will be provided to the NRC to be used in the preparation of its study of a national policy with respect to IFQs.

Dated: February 11, 1998.

William W. Fox, Jr.

Director, Office of Science and Technology, National Marine Fisheries Service.

[FR Doc. 98–3889 Filed 2–13–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021098D]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a number of public meetings of its oversight committees and advisory panels in March, 1998 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between March 3 and March 31, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Meetings will be held in Peabody and Danvers, MA and Warwick, RI. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231-0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Tuesday, March 3, 1998, 9:30 a.m.—Groundfish Advisory Panel Meeting

Location: Holiday Inn, One Newbury Street, (Route 1) Peabody, MA 01960; telephone: (978) 535-4600.

Identification of issues and options, and a review of proposals to meet the stock rebuilding objectives necessary to bring the Northeast Multispecies Fishery Management Plan (FMP) into compliance with the requirements of the Sustainable Fisheries Act (SFA); development of comments on alternative measures to address the overfished condition of Gulf of Maine cod; discussion of other tasks as assigned by the Groundfish Oversight Committee.

Tuesday, March 10, 1998, 9:30 a.m.—Joint Habitat Committee and Advisory Panel Meeting

Location: Peabody Marriott Hotel, 8A Centennial Drive, Peabody, MA 01960; telephone: (978) 977-9700.

Review of progress on the development of essential fish habitat (EFH) designations for Council-managed species.

Wednesday, March 11, 1998 9:30 a.m.—Groundfish Committee Meeting

Location: Holiday Inn, One Newbury Street, (Route 1) Peabody, MA 01960; telephone: (978) 535-4600.

Review of Groundfish Advisory Panel and Plan Development Team (PDT) reports, including comments on alternative measures to address the overfished condition of Gulf of Maine cod and the identification of management options requiring PDT analysis; initial identification of management measures to be included in an FMP amendment that meets the SFA requirements; further development of action restricting the use of "streetsweeper" gear.

Thursday, March 12, 1998, 9:30 a.m.--Aquaculture Committee Meeting

Location: Peabody Marriott Hotel, 8A Centennial Drive, Peabody, MA 01960; telephone: (978) 977-9700.

Consideration of a request to extend the timing of the closure associated with the Westport Sea Scallop Project located south of Martha's Vineyard, MA; discussion of evaluation criteria for projects proposed for the EEZ; development of a framework adjustment process to facilitate Council project approval.

Monday, March 16, 1998, 10 a.m.—Joint Whiting Committee and Advisory Panel Meeting

Location: Tara Ferncroft Conference Resort, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777-2500.

Discussion of comments received at scoping hearings on whiting, offshore hake and red hake management and the development of a Draft Supplemental Environmental Impact Statement (DSEIS); consideration of spawning closures and management options for the Cultivator Shoal whiting fishery.

Tuesday, March 17, 1998, 8:30 a.m.—Whiting Committee Meeting

Location: Tara Ferncroft Conference Resort, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777-2500.

Discussion of comments received at scoping hearings on whiting, offshore hake and red hake management; initial development of a preferred management alternative; identification of analyses necessary to develop a DSEIS.

Tuesday, March 24, 1998, 9:30 a.m.—Groundfish Committee Meeting

Location: Holiday Inn, One Newbury Street, (Route 1) Peabody, MA 01960; telephone: (978) 535-4600.

Development of final recommendations on management alternatives to address overfishing and bring the Multispecies FMP into compliance with the SFA; further discussions of alternative measures to address the overfished condition of Gulf of Maine cod.

Wednesday, March 25, 1998, 10 a.m.—Monkfish Committee Meeting

Location: Holiday Inn, One Newbury Street, (Route 1) Peabody, MA 01960; telephone: (978) 535-4600.

Final review of the Monkfish FMP documents prior to Council approval at its next meeting.

Monday, March 30, 1998, 10 a.m. and Tuesday, March 31, 8:30 a.m.—Scallop Committee Meeting

Location: Radisson Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739-3000.

Approval of management measures to address the requirements of the SFA concerning overfishing for purposes of public hearings; further development of an open/closed area management program, including access to the Georges Bank areas closed for groundfish conservation; further

development of days-at-sea leasing and industry-funded vessel buyout programs.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097; telephone: (781) 231-0422. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting dates.

Dated: February 10, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–3793 Filed 2–13–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020998A]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's Bering Sea/Aleutian Island (BSAI) King and Tanner Crab Plan Team will meet in Anchorage, AK.

DATES: The meeting will be held on March 5–6, 1998.

ADDRESSES: The meeting will be held at the Historic Federal Building, 605 W. 4th Avenue, Room 229, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell: telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

The BSAI King and Tanner Crab fishery management plan team will meet to review an update of the plan and develop an analysis of overfishing definitions for BSAI king and Tanner crab.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: February 10, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–3888 Filed 2–13–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021098E]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Joint Habitat Committee and Habitat and Coral Advisory Panels; Habitat Committee; Atlantic Coastal Cooperative Statistics Program Scoping Meeting; Joint Snapper Grouper Committee and Wreckfish Advisory Panel; Snapper Grouper Committee; and Marine Reserves Committee. A Council Session will also be held.

DATES: The meetings will be held from March 2-6, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Jekyll Island Club, 371 Riverview Drive, Jekyll Island, GA; telephone: (912) 635-2600.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407-4699.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (803) 571-4366; fax: (803) 769-4520; email: susan.buchanan@noaa.gov

SUPPLEMENTARY INFORMATION:

Meeting Dates

March 2, 1998, 9:30 a.m. to 12:00 noon—Mackerel Committee; The Committee will review public hearing and NMFS comments on Amendment 9 to the Fishery Management Plan (FMP) for Coastal Migratory Pelagic Resources (Amendment 9), develop recommended action on measures in Amendment 9, hear the status of Amendment 8 to the FMP for Coastal Migratory Pelagic Resources (Amendment 8) and Mackerel Framework actions, and hear a status report on Atlantic king and Spanish mackerel quotas;

March 2, 1998, 1:30 p.m. to 6:00 p.m.—Joint Habitat Committee and Habitat and Coral Advisory Panels;

The Committee and Advisory Panels will review and provide comments on the draft Habitat FMP, hear a summary of the American Fisheries Society report on the impact of fishing gear on habitat, and review and provide comments on the draft Comprehensive Habitat Amendment;

March 3, 1998, 8:30 a.m. to 12:00 noon; 1:30 p.m. to 4:30 p.m.—Habitat Committee;

The Committee will develop Committee recommendations on the draft Habitat FMP and Comprehensive Habitat Amendment;

March 3, 1998, 5:00 p.m. until all business is complete— Atlantic Coastal Cooperative Statistics Program Scoping Meeting; The purpose of this scoping meeting is to provide the public an opportunity to express their views on ways to improve commercial and recreational fisheries data collection;

March 4, 1998, 8:30 a.m. to 11:00 a.m.—Joint Snapper Grouper Committee and Wreckfish Advisory Panel;

The Committee and Advisory Panel will review updated catch data and the Assessment Group report, develop Advisory Panel and Committee recommendations for setting Total Allowable Catch (TAC) and other framework measures;

March 4, 1998, 11:00 a.m. to 12:00 noon—Snapper Grouper Committee;

The Council will develop recommendations regarding approval or disapproval of the Special Management Zone (SMZ) requests; *March 4, 1998, 1:30 p.m. to 5:00 p.m.*—Snapper Grouper Committee;

The Committee will hear the scamp stock assessment report, hear the updated trends and spawning potential ratio analysis, review and take action on the Assessment Group report, and review the Florida Keys National Marine Sanctuary request; A closed session will also be held to develop recommendations for membership on

the Snapper Grouper Assessment Group;

March 5, 1998, 8:30 a.m. to 10:30 a.m.—Marine Reserves Committee;

The Committee will review Assessment Group and Law Enforcement Advisory Panel and Committee recommendations on criteria for establishing marine reserves, begin developing Council criteria for developing marine reserves, and discuss coordination with the NOAA Marine Sanctuary Program;

March 5, 1998, 11:00 a.m. to 12:00 noon—Council Session; *March 5, 1998, 11:15 a.m. to 12 noon*— the full Council will hear the Marine Reserves Committee Report;

March 5, 1998, 1:30 p.m. to 2:30 p.m.— Mackerel Committee Report;

The Council will take public comment on Amendment 9 at 1:30 p.m. and approve the Amendment for submission to the Secretary of Commerce;

March 5, 1998, 2:30 p.m. to 3:30 p.m.—Snapper Grouper Committee report;

The Council will take public comment on the SMZ requests and wreckfish framework measures at 2:30 p.m., approve or disapprove the SMZ requests and the wreckfish framework measures, take action on the Assessment Group report, and consider the Florida Keys National Marine Sanctuary request; A closed session will also be held to appoint members to the Assessment Group;

March 5, 1998, 3:30 p.m. to 4:30 p.m.—Development of Magnuson-Stevens Act Generic Amendment;

The Council will address all measures to be included in the Magnuson-Stevens Act Generic Amendment and approve the Amendment for public hearing;

March 5, 1998, 4:30 p.m. to 5:00 p.m.—Status of the Mid-Atlantic Fishery Management Council/Atlantic States Marine Fishery Commission Bluefish FMP Amendment;

The Council will develop comments on the Bluefish Amendment; *March 6, 1998, 8:30 a.m. to 10:30 a.m.*—Habitat Committee report;

The Council will approve the Habitat FMP and Comprehensive Amendment management options for public hearing;

March 6, 1998, 10:30 a.m. to 12:00 noon—The Council will develop recommendations on the Atlantic Coastal Cooperative Statistics Program;

March 6, 1998, 1:30 p.m. to 2:15 p.m.— The Council will hear Reports/ status of the Golden Crab framework, the status of the Council's request to manage dolphin-fish and wahoo throughout the Atlantic, Gulf of Mexico and Caribbean, the Highly Migratory Species and Billfish Advisory Panel meetings;

March 6, 1998, 2:15 p.m. to 2:45 p.m.—The Council will hear Agency and liaison reports;

March 6, 1998, 2:45 p.m. to 3:00 p.m.—The Council will address other business.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by February 23, 1998.

Dated: February 10, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–3792 Filed 2–13–98; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection: Comment Request

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3508(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Currently, the Corporation for National and Community Service is soliciting comments concerning its proposed renewal of its AmeriCorps*NCCC Applicant Medical Prescreening Form, OMB 3045–0025. This form is used to collect medical information from all NCCC applicants, to inform the NCCC of any accommodations that may be necessary for Corps Members with disabilities.

Copies of the information collection requests can be obtained by contacting the office listed below in the address section of this notice.

The Corporation for National and Community Service is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

DATES: Written comments must be submitted to the office listed in the addresses section on or before April 20, 1998.

ADDRESSES: Send comments to Heather Davenport, NCCC Selection and Placement Officer, Corporation for National and Community Service, 1201 New York Ave., N.W., Washington, D.C., 20525.

FOR FURTHER INFORMATION CONTACT: Heather Davenport (202) 606–5000, ext. 496.

SUPPLEMENTARY INFORMATION: Part I.

I. Background

The information in the Applicant Medical Prescreening Form is considered by the AmeriCorps*NCCC Medical Consultant in making decisions regarding the selection of participants and the planning of accommodations for participants with special needs.

II. Current Action

The Corporation for National and Community Service seeks to renew the revised Applicant Medical Prescreening Form. This information is used for program management, planning, and required record keeping. If renewal is approved, the title of the form will be changed to Applicant Medical Form.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Applicant Medical Prescreening Form.

OMB Number: 3045–0025.

Agency Number: None.

Affected Public: 18–24 year old AmeriCorps*NCCC applicants.

Total Respondents: Approximately 2,500.

Frequency: One time per selected applicant.

Average Time Per Response: .5 hours

Estimated Total Burden Hours: 1,250 hours.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): 0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 10, 1998.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 98–3891 Filed 2–13–98; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on March 3, 1998; March 10, 1998; March 17, 1998; March 24, 1998; and March 31, 1998, at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: February 10, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–3784 Filed 2–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare Environmental Impact Statement on the Proposal to Release Federal Funds to the University of New Mexico to Construct Enchanted Skies Park and Observatory, Near Grants, NM

The United States Air Force (Air Force) will prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts of the Air Force's decision to issue Department of Defense (DoD) grant funds to the University of New Mexico to construct an astronomical observatory on Horace Mesa, near Grants. The Air Force initiated an Environmental Assessment (EA) in May 1997 to analyze this proposal. Preliminary results from the EA indicated the potential for significant impacts to cultural resources. In accordance with the National Environmental Policy Act, the Air Force will continue the analysis of this proposal through the preparation of an EIS. The EIS will be used by the Air Force in considering whether, and under what conditions, to approve the release of federal funds to construct the observatory on Horace Mesa and to document the Air Force's decision in a Record of Decision.

The University of New Mexico has proposed to use the grant funds to build the Enchanted Skies Park and Observatory near Grants, NM. This proposal involves the construction and operation of an astronomical research site with a publicly accessible park that includes educational opportunities and amateur viewing facilities. The project would consist of a Visitor's Center, Technical Center and amateur viewing area. The building and structures would occupy approximately 250 acres of land on Horace Mesa with interconnected transportation corridors for hiking, walking, delivery/maintenance, and tram/trolley traffic. Improvements to state owned access roads would also be required.

The scoping period for the Enchanted Skies Park and Observatory will extend through March 20, 1998. Written and oral comments received from meetings and correspondence during the preparation of the EA will be considered in preparation of the EIS, as will comments received by the Air Force during this scoping period. To ensure the Air Force has sufficient time to consider public input in the preparation of the Draft EIS, comments should be submitted to the address below by March 20, 1998:

HQ AFCEE/ECR

ATTN: Ms. Julia Cantrell, 3207 North Road, Brooks Air Force Base, TX 78235–5363

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–3906 Filed 2–13–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Institute of Technology Subcommittee of the Air University Board of Visitors; Notice of Meeting

The Air Force Institute of Technology Subcommittee of the Air University Board of Visitors will hold an open meeting on March 15–17, 1998, with the first business session beginning at 8:30 a.m. in the Commandant's Conference Room, Building 125, Wright-Patterson Air Force Base (AFB), Ohio (5 seats available).

The purpose of the meeting is to give the board an opportunity to review Air Force Institute of Technology's educational programs and to present to the Commandant a report of their findings and recommendations concerning these programs.

For further information on this meeting, contact Ms. Beverly Houtz, Directorate of Plans and Operations, Air Force Institute of Technology, Wright-Patterson AFB, Ohio, 45433–7765 (937) 255–5760.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–3907 Filed 2–13–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Installation and Operation of a Relocatable Over the Horizon Radar (ROTHR) System in Puerto Rico

AGENCY: Department of the Navy, DoD.

ACTION: Notice of record of decision.

SUMMARY: The Department of the Navy announces its decision to install and operate a ROTHR System in Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Blount, Atlantic Division Naval Facilities Engineering Command (Code 2032LB), 1510 Gilbert Street, Norfolk, VA 23511–2699, telephone (757) 322–4892.

SUPPLEMENTARY INFORMATION: The text of the entire Record of Decision is provided as follows:

The Department of the Navy (Navy), pursuant to Section 102 (2) (c) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 *et seq.*, and the regulations of the Council on Environmental Quality (CEQ) that implement NEPA procedures, 40 CFR Parts 1500–1508, hereby announces its decision to install and operate a ROTHR System in Puerto Rico.

The ROTHR system is a high frequency radar that provides over-the-horizon detection and tracking of aircraft over a wide geographic area. Each complete ROTHR system is composed of three major subsystems: the transmitter, receiver, and operation control center (OCC). The transmitter will be installed at a site on the southwestern coast of Vieques, Puerto Rico, north of the Laguna Playa Grande. The receiver will be installed at a site on Fort Allen in Juana Diaz, Puerto Rico. Both sites are on existing Department of Defense property. The OCC functions will be accomplished at an existing facility in Chesapeake, Virginia.

Background

In accordance with the President's National Drug Control Strategy and in consonance with Presidential Decision Directive 14, the purpose and need of the project is the early detection and monitoring of illegal international drug activity by providing air surveillance of the South American source countries of Peru, Bolivia, and Colombia. The existing ROTHR systems in Virginia and Texas provide incomplete coverage of the source countries, resulting in gaps that are exploited by drug traffickers. Implementation of the ROTHR system in Puerto Rico will complement the two existing ROTHR systems, and, with existing surveillance strategies, will provide virtually complete coverage of this area. Early detection and tracking will improve reaction time for counter-narcotic forces.

Process:

In accordance with NEPA, a Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS) for Construction and Operation of a ROTHR, Puerto Rico was published in the **Federal Register** on May 25, 1994. That notice described briefly the proposed action, requirements for a transmitter site and a receiver site, and alternative site locations identified for the transmitter on Vieques (Playa Grande, Camp Garcia Airfield, and Camp Garcia East) and for the receiver in southwest Puerto Rico (Lajas A and Lajas B). Public scoping meetings were announced in English and Spanish in local newspapers and in direct mailouts. Following these notifications, two scoping meetings were held as follows:

- June 9, 1994 from 7:30 pm to 9:30 pm at the Community Center in La Parguera, Lajas, PR; and
- June 11, 1994 from 10:30 am to 1:00 pm at the Municipal Assembly Hall in Vieques, PR.

A total of ten individuals provided comments at the scoping meetings and three letters were received.

On July 18, 1995, the Draft Environmental Impact Statement (DEIS) for the ROTHR project was issued, and on July 24, 1995 a Notice of Availability was published in the **Federal Register**. The document was prepared in two versions, English and Spanish, and distributed to 118 parties including government agencies, groups, and individuals. Four public hearings were held to receive comments on the DEIS, with Héctor Russe Martinez, Esq., President of the Puerto Rico Environmental Quality Board (EQB), serving as Hearing Officer:

- November 27, 1995 hearing at the Multiple Services Center, Vieques, PR.
- November 29, 1995 at the Municipal Theater, Lajas.
- December 6, 1995 at the Municipal Theater, Lajas, PR.
- December 16, 1995 at the Municipal Theater, Lajas, PR.

The public comment period was open for the receipt of comments until December 31, 1995. During the public hearings, thirty-eight people spoke. Thirty-four letters from agencies, organizations, and individual concerned citizens were received by the Navy pertaining to the ROTHR project.

Concerns expressed during the public review of the DEIS prompted the Navy to re-evaluate potential receiver sites. A new preferred site at Fort Allen in Juana Diaz, Puerto Rico was identified, and on February 7, 1997, a Supplemental Draft Environmental Impact Statement (SDEIS) was filed with the Environmental Protection Agency (EPA) and a Notice of Availability was published in the **Federal Register** on February 14, 1997. The document was prepared in two versions, English and Spanish, and distributed to over 200 government agencies, groups, and individuals.

A public hearing was held on March 15, 1997 in Juana Diaz, with Héctor Russé Martinez, Esq., President of the Puerto Rico EQB, serving as Hearing Officer. During the public hearing forty people spoke. The public comment period was open for the receipt of comments until March 31, 1997. Forty-nine letters from agencies, organizations, and individual concerned citizens were received by the Navy pertaining to the ROTHR project.

Issues raised at the public hearings and submitted in writing were addressed in a Final EIS (FEIS). The FEIS was filed with EPA on September 19, 1997 and a Notice of Availability was published in the **Federal Register** on September 26, 1997. The document was prepared in two versions, English and Spanish, and distributed to over 200 government agencies, groups, and individuals. The public comment period was open for the receipt of new comments until October 27, 1997. A total of eight written comments were received on the FEIS.

Alternatives

NEPA requires the Navy to evaluate a reasonable range of alternatives. Determining an optimum location for the installation of the ROTHR involved several factors including adequate coverage of the intended surveillance area, potential locations for sites which would meet the siting criteria, and suitable existing infrastructure.

Puerto Rico presents the best possible siting alternative and meets all the significant criteria for coverage: look angle; target area coverage; suitable terrain; sufficient land area; infrastructure; supportability; cost; and constructability. Additionally, Puerto Rico shares with the U.S. mainland an urgent need to combat drug trafficking. A federal/local interagency task force on the island is actively cooperating in this task. The location of the third leg of the system in Puerto Rico (in conjunction with the Texas and Virginia systems) will provide mutual benefits to Puerto Rico and the mainland U.S. that are in keeping with their common interest.

During the NEPA process, the Navy analyzed the environmental impacts of siting the ROTHR system in different locations in Puerto Rico, including the island of Vieques. A preliminary assessment of potential locations for the transmitter and receiver subsystems was performed between May and November 1993 (Raytheon, October 1993). The following criteria must be met for the

ROTHR system to accomplish its mission:

- The transmitter and receiver sites must be separated by 50 to 100 miles (mi) (80 to 160 kilometers [km]) to permit bistatic operation;
- The sites must be generally level, for operational purposes of the antenna array; and
- The area to the south of the antennas must be clear of large or tall obstructions.

Five potential transmitter sites were identified during the preliminary assessment: four sites on Vieques Island and one site on Puerto Rico. Three of the five sites were determined to be feasible: Playa Grande (the selected site); Camp Garcia Airfield; and Camp Garcia East. All three feasible transmitter sites are located on Navy-owned property along the southern coast of Vieques Island.

The Playa Grande Site is located on the southwestern coast, north of the Laguna Playa Grande Conservation Zone. It is within the Naval Ammunition Storage Detachment (NASD). The vegetation on the site includes a mahogany plantation planted with saplings in 1991 and thorn/scrub lowland forest, mixed with dense grassland.

The Camp Garcia Airfield site is located just west of the existing Camp Garcia Headquarters and Repair Compound and is intermittently used as a drop zone during training exercises. The graded area is now a mixed thorn/scrub habitat with grassland, dominated by opportunistic and pioneer species.

The Camp Garcia East site is located immediately east of the existing Headquarters and Repair Compound at Camp Garcia and is surrounded by a fuel storage area, a sewage lagoon, equipment and machinery repair facilities, and a helicopter pad. This site is currently densely vegetated with thorn/scrub vegetation and mixed scrub.

Based on operational criteria, the Playa Grande Site has been selected because it avoids conflicts with Camp Garcia training exercises. Training exercises at Camp Garcia would not interfere with ROTHR operations at the Playa Grande Site, but would have resulted in periodic shutdowns of ROTHR operations at either of the two Camp Garcia Sites.

Seven potential receiver sites on Puerto Rico were initially evaluated. Based on operational, environmental, and cost criteria, three receiver sites (Lajas Site A, Lajas Site B, and Fort Allen) were identified as feasible alternatives. Although the Fort Allen Site was not initially identified as a feasible site, the development of an effective shortened receiver array has allowed it to be selected for the receiver site.

The Fort Allen Site is part of a 941 acre (381 hectare) facility located on the southern coast of Puerto Rico approximately 10 mi (16 km) east of Ponce within Juana Diaz. It is operated as a Puerto Rico Army National Guard (PRARNG) facility. Secondary successional vegetation dominates the receiver site. Use of this site for the receiver facility has been coordinated among the Navy, the PRARNG, and the US Army National Guard Bureau to ensure that there will be no incompatible uses at Fort Allen.

The use of a shorter receiver array at Fort Allen allows construction to remain entirely within the boundaries of existing federal property. Although the shorter receiver array will result in some minor loss of performance of the system, it will still be capable of performing its assigned mission. The ability to place the receiver entirely on government property is an important consideration. The Fort Allen Site would therefore, impact no private property, and would impact less wetland area than the two Lajas sites.

The no action alternative was also considered. Under the no action alternative the ROTHR system would not be constructed in Puerto Rico. While the construction and operational impacts associated with the ROTHR would be avoided, this option would preclude development of radar coverage beyond the range of the existing radar systems in Virginia and Texas. Without the Puerto Rico system, early warning of suspicious flights departing South America would not occur, thereby decreasing the opportunity for federal and commonwealth agencies to intercept and apprehend illegal air drug traffickers.

Environmental Impacts

The Navy analyzed the potential impacts of the transmitter and receiver alternatives for their effects on land use; socioeconomics; community facilities and services; transportation; air quality and noise; electromagnetic emissions; infrastructure; culture resources; biological resources; water resources; topography, geology, and soils; hazardous substances; and cumulative impacts. This Record of Decision focuses on the major impacts that will likely result from implementing the preferred alternative of installing and operating the transmitter at Playa Grande, Vieques, Puerto Rico and the receiver at Fort Allen, Juana Diaz, Puerto Rico.

Installation of a transmitter at the Playa Grande Site will be compatible with the mission of U.S. Naval Station, Roosevelt Roads and with the Navy's Memorandum of Understanding Regarding the Island Of Vieques (1983). About 22 acres (9 hectares) of an existing mahogany plantation consisting of about 1,650 trees will be cleared during construction of the transmitter facilities. The site will be compatible with existing land uses, will be located north of the environmental conservation zone, and will be away from public view. The towers and wires will be backdropped by hills and mountains, and, therefore, will not be readily seen from the sea.

Fort Allen is federally owned and operated as a Puerto Rico Army National Guard training facility. Installation of a receiver site at Fort Allen will be compatible with the facility's mission to provide training for the National Guard. The site will be away from public view because the receiver towers will project a maximum of 19 ft (6 m) above the ground surface, and are not expected to be visible beyond the immediate area.

While portions of the Fort Allen site are classified as prime farmland if irrigated, the construction site is within an existing military facility, and is not in agricultural use. Additionally, there is no existing irrigation. Constructing the receiver at the Fort Allen Site does not violate the objectives of the Federal Farmland Protection Act.

Temporary economic impacts on the area will result from the construction activities. Construction of the facility will be timed so that the facility can become operational in 1999. The estimated cost for site preparation and construction at the ROTHR transmitter site is approximately $5.5 million. The estimated cost for site preparation and construction at the receiver facility is approximately $4.5 million. It is expected that local construction workers will be employed by construction contractors. Some workers may reside in temporary housing during the construction period. They are not expected to remain in the area once construction is completed. Once operational, the facility will employ a total of 20 full-time persons at each site, who will, to the maximum extent practicable, be from the existing Puerto Rico labor force.

Air quality and noise impacts for the transmitter and receiver sites will be similar. There will be temporary minor increases in vehicle exhaust emissions (from construction-related vehicle combustion engines) and of direct emissions (from earth movement and

travel on unpaved roads) during construction of the transmitter and receiver facilities. These impacts will occur only during the construction process (short-term) and will not significantly degrade air quality in the area over the long term. No backup generators will be placed at the transmitter or receiver sites. There will be a permanent minor increase in motor vehicle emissions at the transmitter and receiver sites as a result of daily vehicular traffic of facility employees and dust from travel on unpaved roads. These emissions will be minor, however, as only a total of 20 people each will be working at the transmitter and receiver sites.

With respect to noise impacts, construction activity will result in temporary increases in noise levels at the transmitter and receiver sites and along adjacent roads. Vehicle and heavy equipment traffic will be the primary noise sources. Blasting is required at the transmitter site to remove approximately 2,000 cubic yards (cu yd) (1,529 cubic meters [cu m]) of rock. Noise levels will be within noise standards presented in the Puerto Rico Regulation of the Environmental Quality Board for the Control of Noise Pollution, Amended Version, dated February 25, 1987, pursuant to Law Number 9, of June 18, 1970. Once construction is completed, operation of the system will result in imperceptible increases in noise levels.

In performing its function, the transmitter system will emit Radio Frequency (RF) fields. The RF fields occur via directional Frequency Modulation Continuous Wave (FM/CW) High Frequency (HF) transmissions at assigned frequencies between 5 and 28 megahertz (MHZ, million cycles per second). Concerns dealing with biological hazards from exposure to ionizing radiation do not apply to the ROTHR transmitter system. Biological effects associated with the ROTHR transmitter will be in response to thermalizing absorption of RF fields, which are a portion of the non-ionizing electromagnetic spectrum.

Questions about possible "nonthermal" effects of RF fields have been examined by the World Health Organization (WHO) at an international seminar held in November 1996 on the biological effects of low-level radio frequency fields. Their report concluded that "while hazards from exposure to high-level (thermal) RF fields were established, no known health hazards were associated with exposure to RF sources emitting fields too low to cause a significant temperature rise in tissue."

The Department of Defense (DoD) criteria for protection of personnel from exposure to RF fields are set out in DoD instruction 6055.11. These criteria are based upon consensus derived voluntary standards developed by the Institute of Electrical and Electronics Engineers (IEEE), which is a Non-Governmental Standards Organization (NGSO). This standard was approved and adopted by the American National Standards Institute (ANSI). The RF field emitted by the ROTHR transmitter will not expose the public to levels greater than those given in the ANSI/IEEE (1992) standards, and will not cause any detrimental health effects. Because RF fields in the immediate area of the transmitter may be higher than permissible exposure limits, public access will not be allowed. A personnel exclusion fence will be constructed at the transmitter antenna site to limit access and control exposures. This fence will be posted with standard warning signs in both English and Spanish. The personnel exclusion fence will be located so that RF fields at ground level outside the exclusion fence will meet DoD and ANSI/IEEE standards for uncontrolled environments.

At the receiver facility, only the calibration antenna will produce RF fields and only when the receiver equipment is being tested (about two hours each week). The signals from the calibration antenna will have a field power level adjacent to the antenna 1/1,000 of the power level of a portable phone and 1/500 of the power level of a television.

The receiver facility is sensitive to electromagnetic interference (EMI) from sources in the vicinity of the receiver site. While no buffer area extending beyond the boundary of Fort Allen will be required, the Navy will coordinate with the PRARNG and US Army National Guard to ensure proposed activities in the vicinity of the receiver will not create interference.

The power required to operate the transmitter site is not expected to adversely impact the power supply of the island of Vieques. According to the Puerto Rico Electric Power Authority (PREPA), there is suitable capacity to meet this requirement. At the Playa Grande Site, electrical power will be supplied by a new line constructed within a 25 ft (8 m) right-of-way adjacent to Route 201, impacting about 7.4 acres (3 hectares) of thorn/scrub vegetation. Electrical power is currently available at the Fort Allen Site. The power required to operate the receiver site (500 kVA) is not expected to adversely impact the power supply of the island of Puerto Rico or the local area.

At the transmitter site during construction and operation of the facility, potable water needs will be met with bottled water. A non-potable well will be installed for sanitary use, cleaning, and showers. Impacts to local groundwater resources will be minimized by the proper construction, operation, and maintenance of the groundwater well system. The receiver facility at Fort Allen will use the existing adequate water supply system.

Sanitary sewer facilities are not currently available at the transmitter site. A "mound" type subsurface soil absorption and septic tank system will be installed. Sanitary sewer services at Fort Allen are supplied by the on-site wastewater treatment plant.

The wastes generated by the action are not expected to impact local solid waste disposal resources. The Vieques landfill in the Bastimento Ward is 10 acres (4 hectares) in size with an active life estimated at 17 to 20 years. Construction debris and rubble will be transported to this solid waste landfill. Minimal construction debris and rubble from the Fort Allen site will be transported by the construction contractor to a local solid waste landfill that has sufficient capacity.

An intensive archaeological survey was conducted in July 1996 at the Playa Grande site and no significant archaeological sites were located. An intensive archaeological survey was also conducted on 180 acres (73 hectares) at Fort Allen in July 1996. No significant archaeological sites were located. A preliminary disturbance study indicated that the majority of the area retained a low potential for intact cultural resources, due to landscape modification. Some isolated areas of moderate potential were located in the extreme western and southeastern portions of the testing area. These areas appeared to have been less affected by modern disturbances, but contained no pre-modern materials, features, or deposits. The Puerto Rico Historic Preservation Office has concurred with the Navy's finding that the installation and operation of the ROTHR will have no effect on historic resources.

No significant impacts to biological resources will occur at the transmitter site. Biological impacts to the Playa Grande Site will be the result of clearing vegetation and grading up to approximately 80 acres (32 hectares). The site occupies part of a mahogany plantation, a grass/low growing herbaceous community, and a lowland forest. The mahogany plantation was planted in 1991 from nursery stock.

These trees are still saplings and are not currently economically viable for wood product. Construction of the transmitter facility will require the clearing of approximately 22 acres (9 hectares) of the mahogany plantation (about 1,650 trees). As mitigation, mahogany saplings will be planted between and adjacent to the trees which will not be disturbed by the construction. The restriction area will be cleared of vegetation and graded above the 16 ft (5 m) contour and the Laguna Playa Grande Conservation Zone boundary. No construction will occur within the conservation zone. Additionally soil erosion control measures will ensure no indirect impacts occur to the conservation zone.

No significant impacts to biological resources will occur at the receiver site. A large majority of the Fort Allen Site is densely vegetated with thorn/scrub community. The 117 acre (47 hectare) site consists of approximately 110 acres (45 hectares) of secondary successional growth, approximately 4 acres (2 hectares) of secondary successional growth/grassland mix, and approximately 3 acres (1 hectare) of grassland which will be cleared.

The Navy's analysis in the FEIS indicated 0.95 acres (0.4 hectares) of wetlands would be impacted as a result of the construction of the receiver facility. Subsequent to issuance of the FEIS, the boundaries of the wetlands area were further defined, and design revisions were made. Consequently, the amount of wetlands which will be displaced is now estimated at less than 0.25 acres (0.12 hectares) of which only 0.08 acres (0.03 hectares) will be permanent wetlands loss. There is no practicable alternative to these wetlands impacts. The proposed action includes all practicable measures to minimize impacts to wetlands.

No threatened or endangered species will be impacted by construction or operation of the ROTHR in Puerto Rico.

Construction of the transmitter site will require leveling the ground surface supporting the transmitter antennas. In order to meet specific criteria for the designed system, approximately 10 acres (4 hectares) of the transmitter site must be permanently leveled. An additional 70 acres (28 hectares) will be smoothed, and sloped with the natural terrain toward the lagoon. This grading will result in a permanent change to topography in the area of the transmitter site. To meet specific criteria for the designed receiver system at the Fort Allen site, approximately 117 acres (47 hectares) will be permanently leveled and the soil will be redistributed. Best management practices, controls, and procedures will be utilized at the construction sites to reduce the potential for stormwater runoff.

Based on available information and limited field surveys, there is no evidence of hazardous waste contamination at the transmitter site. Based on environmental site investigations performed by the U.S. Army over the past three years, 3 potential areas of concern (AOCs) were found to be within the receiver site boundary. Additional site inspections and a geophysical survey performed by the U.S. Navy during the fall of 1996 revealed several suspect features at two of the AOCs. However, based on results of a human health risk evaluation, the site was determined to be a suitable location for the ROTHR receiver array.

The Puerto Rico Planning Board has concurred that the ROTHR project is consistent with the Puerto Rican Coastal Zone Management Plan.

The potential effects of the proposed construction of the ROTHR system have been evaluated in accordance with the requirements of Executive Order 12898, Environmental Justice. The direct and indirect effects of the proposed ROTHR system are not expected to significantly affect human health or the environment. The proposed action will not cause adverse environmental or economic impacts to the general population or, specifically, to any groups or individuals from minority or low-income populations. No residences will be directly impacted. In addition, publication of the newspaper notice announcing the availability of the environmental impact statement allowed the total public (including minority and low-income individuals and populations) the opportunity to comment on the proposed action. The EIS and all notices were published in both English and Spanish to maximize public awareness of the proposal.

The existing ROTHR systems in Virginia and Texas provide incomplete coverage of the South American source countries, Peru, Bolivia, and Colombia, resulting in gaps that are exploited by drug traffickers. Implementation of the ROTHR system in Puerto Rico, which will complement the two existing ROTHR systems, will provide virtually complete coverage of this area. The action can, therefore, be regarded as having a cumulatively positive effect, since the project will be an essential component in the curtailment of drug trafficking, which is a top priority of the U.S. Government and the Commonwealth of Puerto Rico.

No significant cumulative impacts to human health, land use, socioeconomic, community facilities and services, transportation, infrastructure, air quality, noise, and natural or cultural resources are anticipated.

Mitigation

To prevent potential adverse effects to human health at the transmitter site, a fence will surround the antennas and groundscreen area. The fence, demarking a "Personnel Exclusion Area," will be conspicuously marked with warning signs in both Spanish and English. The fence will be located at a safe distance from the transmitter antennas so that no harmful effects could occur to humans. The safe distance for setting the fence will be determined by measurement of the RF fields and reference to the maximal permissible exposure levels as defined in DoD instruction 6055.11 and ANSI/IEEE standards (1992). Measurements of electromagnetic fields and currents will be conducted by qualified engineers. In the unlikely event that the initial measurements indicate that the ANSI/IEEE standards are not being met, the Navy will adjust the fence location, as needed. If measurements taken at the southernmost position of the proposed fence exceed the standards, then the Navy will reduce power levels to achieve compliance. The Navy will reduce the power versus move the fence because of a Navy commitment to avoid any construction in the conservation zone, which lies to the south of the site. In the event the Navy must reduce the power level, the ROTHR will still be able to effectively accomplish its mission. The Navy will also work with the Puerto Rico EQB to ensure a suitable third party takes part in the initial system testing.

RF fields also generate potential hazards to Electro-Explosive Devices (EED) or Cartridge Actuated Devices (CAD) found in aircraft. An exclusion zone will extend to 700 ft (213 m) above ground level. This airspace should be avoided by all untested aircraft equipped with EED-or CAD-actuated systems that are exposed. The existence of this EED zone will be published as a Notice to Airmen (NOTAM) on aeronautical charts and contained in flight information publications handled by the FAA.

Some modern aircraft controls and navigation systems are comprised of electronic devices. The potential exists for induced currents from electromagnetic fields to cause these devices to malfunction or produce erroneous data. Transmitter electromagnetic emissions will not interfere with Instrument Landing Systems (ILS) or aircraft navigation and control systems that are beyond 700 ft (213 m) of the transmitter antennas. To

prevent the accidental disruption of aircraft controls and instruments in the airspace of the transmitter site, a NOTAM will be published through the FAA advising aircraft to stay clear of the affected airspace, so that safe separation distances will be maintained between all aircraft and the transmitter antennas (airspace restrictions for commercial EEDs, are actually larger than this area and therefore only one NOTAM will be published for the EED restricted airspace).

The high frequency (HF) radio spectrum is utilized by numerous licensed users in the Fixed and Broadcast Service frequency bands. To prevent ROTHR transmissions from interfering with other users of the HF spectrum, ROTHR will be licensed to transmit on a "not-to-interfere" basis. The ROTHR system will not transmit in the licensed frequency bands of the Broadcast Services (emergency, amateur, commercial, etc.) in the region of the transmitter site. These frequencies will be permanently blocked out within the ROTHR control system. In the available frequency bands, ROTHR will avoid interference by continually monitoring the HF spectrum for unused frequencies. Transmissions will only occur at frequencies that have been monitored and determined to be clear of activity. If an interference does occur between ROTHR and another HF user, a formal complaint can be filed through the FCC to resolve further conflicts.

The total wetlands impact of 0.25 acres will be offset by the construction of approximately 7618 linear feet of new ditch, approximately 4 feet deep and 6 feet wide. The area of ditch bottom (1.05 acres) will rapidly evolve to a state of equal wetland function-and-value to the displaced wetland. Therefore, in accordance with the Navy No-Net-Loss-of-Wetlands-Policy, an effective ratio of 4:1 compensatory mitigation will be achieved on site.

Relative to potential for bird strikes at the transmitter, along the antenna support wires, 3 in (7.6 cm) diameter white ceramic insulators will be placed at approximately 15 foot (4.6 m) intervals to break up the cable sections, making them less conductive for electricity. These ceramic insulators will make the wires more visible to birds than unmarked electrical wires. The support wires extend from the structures to the ground in a vast network and are more visible than electrical wires which are generally parallel with the horizon, and, therefore, should reduce potential effects from bird strikes.

The Laguna Playa Grande is located approximately 300 ft (91 m) south of the transmitter site. Laguna Playa Grande Conservation Zone is one of seven zones established by the Navy as a result of the 1983 MOU regarding the island of Vieques between the Navy and the Commonwealth of Puerto Rico. The cleared area outside the fenceline for construction of the transmitter facility will be located above the 16 ft (5 m) contour of the Laguna Playa Grande Conservation Zone boundary, and, therefore, the Conservation Zone will be avoided. In addition, best management practices for erosion control at the transmitter site will be implemented to avoid indirect impact. These will include the use of silt fences, diversion ditches, and sedimentation basins.

To diminish light potentially reaching the beach, the Navy, where possible, will orient outside lights away from the beach. Additionally, the Navy will use low-pressure sodium vapor luminaries (LPS) which emit only yellow light, and which have been demonstrated to have minimal effect on sea turtle adults or the ability of hatchlings to find the sea. These two measures in concert will mitigate potential effects on sea turtles.

About 22 acres (9 hectares) of the mahogany plantation will be impacted by construction of the transmitter facility at the Playa Grande Site. Planting of mahogany saplings in a suitable location will be conducted as mitigation. The mahogany trees will be planted between and adjacent to the trees which will not be disturbed by the construction. The replacement mahogany trees will be purchased under a guaranteed contract so that the supplier will be responsible for replacement of any trees that die.

During construction of the transmitter facility on Vieques, including roadway relocation and parking lot construction, soils will be exposed to rain and wind. Best management practices for sediment and erosion control will be used at the transmitter site to ensure that a majority of the eroded sediments are prevented from entering the Laguna Playa Grande. Details of the project specific soil erosion control plans are included in the FEIS.

The receiver site is in the 100-year floodplain. Design considerations to reduce obstructions to the water flow and to prevent damage to the receiver system are specified in the FEIS.

Measures to minimize the impact of construction of the receiver array, related support facilities, and clear zones will be taken in areas where contaminants have been detected at Fort Allen. These measures are outlined below and will be included in the project health and safety plan, and soil erosion control plan.

- Surface and subsurface debris encountered during construction will be removed and disposed of in an appropriate manner. The debris, such as old tent canvases and bags of refuse, will be collected and disposed offsite in landfills. The Navy will perform any testing required prior to landfill disposal.
- Debris removal will be limited to the intrusive ground activities required for the construction of the ROTHR antenna array and will be supervised by an environmental engineer.
- Construction activities will be conducted in a way to minimize windborne dust. Appropriate health and safety measures will be implemented to protect workers from inhalation or ingestion of dust.
- Appropriate measures will be taken to minimize the potential for overland flow of runoff and associated sediment from the site (*i.e.*, areas will not be flooded during construction, or if required temporary containment ponds will be built).
- The area will be revegetated as soon as feasible after construction to minimize soil erosion due to wind or precipitation. Native vegetation will be planted if the speed of natural revegetation processes allows excessive opportunities for soil erosion.

Comments Received on the FEIS

A total of eight comment letters were received on the FEIS. Two letters merely reiterated comments previously submitted on the DEIS and SDEIS and identified no new issues. The Environmental Protection Agency (EPA) submitted a letter stating that EPA did not anticipate that the project will cause any significant adverse environmental impacts, provided that the Navy follows the identified mitigation measures. EPA expressed no concerns with the project as proposed.

The U.S. Department of Interior (DOI) expressed continued concern over the potential for impacts to the Laguna Playa Grande and surrounding mangroves from increased sedimentation. They requested that best management practices for sediment and erosion control be incorporated into the project plans and specifications prior to request for bids. They also recommended that storm water management measures should be installed during and prior to completion of the construction process, with the purpose of reducing pollutants in storm water discharged after construction is completed. In addition to soil stabilization and structural practices, they recommended that a vegetated buffer be established adjacent to the

project boundary to further minimize runoff into the lagoon. As stated in the FEIS, the sedimentation and soil erosion control plan is the responsibility of the construction contractor, subject to Navy review and EQB approval. However, the Navy will encourage the contractor to use soil stabilization and structural practices, as appropriate. Additionally, the design includes erosion and sediment control measures, both during construction and as a permanent facility upon completion of the project. During construction, a series of silt dams will be provided to control the site runoff. A sediment basin will also be installed during the first phase of construction, before land clearing begins. All of the site drainage is directed toward this approximately 10 acre basin. The basin will remain in place after construction. A vegetated buffer was not included as part of the project since all site drainage will be directed toward the basin, and there will be no sheet flow into the lagoon. However, as previously stated, no clearing will occur below the 5 meter contour, therefore, existing vegetation adjacent to the lagoon will be maintained.

DOI also recommended that soil erosion control measures be implemented at the Fort Allen receiver site in order to restrict sediments and other contaminants from entering the on site wetlands and adjacent water bodies. A sedimentation and soil erosion control plan for the Fort Allen receiver site will be prepared by the construction contractor. As with the Playa Grande transmitter site, the plan will be subject to Navy review and EQB approval.

DOI also requested that the Navy consider using Swan Flight Diverters (spiral vibration dampers) or similar devices at the transmitter to minimize bird strikes, and requested an opportunity to review plans for their installation. The Navy will investigate the possibility of using these devices, and will coordinate with the U.S. Fish and Wildlife Service Caribbean Office. DOI also recommended that the Navy direct lights away from the beach and use low-pressure sodium vapor luminaries for all light sources that may affect sea turtles. As previously stated, the Navy will direct lights away from the beach, if possible, and will use low-pressure sodium vapor luminaries for all exterior lighting. DOI's additional comments on the mahogany forest mitigation were previously addressed in the FEIS.

Four letters were received from private citizens and citizen groups, and focused on issues related to the Navy's compliance with Article 4(C) of the Puerto Rico Public Policy Act (Act No. 9) and the Navy's adherence to direction provided by the Puerto Rico Environmental Quality Board (EQB) based on its review of the Navy's NEPA documentation. Article 4(C) of Act No. 9 and implementing regulations establish the environmental review requirements that Commonwealth government entities must follow when proposing a project or granting necessary approvals before a project may proceed. The Commonwealth process is comparable to that required of Federal government entities under NEPA.

The Navy voluntarily complied with Article 9 and solicited EQB review and comment on the project's NEPA documentation for two purposes. First, under NEPA, the Navy must solicit comments from appropriate State and local agencies that are authorized to develop and enforce environmental standards. Second, as recognized in the Navy's NEPA documentation, Commonwealth permits and other regulatory approvals will be required for the project. When issuing these permits and approvals, Commonwealth government entities must comply with Act No. 9 requirements. EQB regulations allow a Commonwealth government entity to comply with Act No. 9 by "adopting" a Federal EIS prepared for a project. In an effort to ensure that the adoption process could be utilized, the Navy has coordinated with EQB from the early stages of the EIS development to guarantee that the procedural requirements of Act No. 9 were followed.

EQB issued a resolution on September 16, 1997. The resolution offered EQB's comments on the project SDEIS and certified that the SDEIS complied with all requirements of Article 4(C) of Act No. 9. Motions for Reconsideration of this resolution were considered by the EQB, and on December 16, 1997 the Board determined that the Motions were "without cause" and reaffirmed its decision that the environmental document submitted by the Navy was in conformance with Article 4(C) of Act No. 9.

The four letters received from private citizens and citizen groups expressed concerns that the Navy prematurely issued the FEIS prior to completion of the administrative appeals process under Act. No. 9. Under NEPA, the Navy may publish a notice of availability of an FEIS once it receives and analyzes comments on a draft document and addresses in the FEIS those comments that are relevant. The FEIS prepared by the Navy addressed comments made by the public and agencies during the public participation process. For Act No. 9 compliance, EQB regulations require that an FEIS for a proposed project be made available for public review and that notice of the availability be published. This notice may be published upon receipt of EQB comments on the environmental documentation.

As noted above, the EQB resolution offering their comments was issued on September 16, 1997. Distribution of the FEIS to the public began on September 19, 1997; and the Notice of Availability of the FEIS was published in local newspapers on September 27, 1997. There is no Commonwealth statutory or regulatory requirement to delay issuance of the FEIS until completion of the administrative appeals process.

Accordingly, with respect to publication of the notice of availability of the FEIS, the Navy has complied with both NEPA and Act No. 9 requirements.

The letters also expressed concern that the Navy did not properly discuss the findings of EQB's consultant, Dr. Arthur Guy. The Navy did include in the FEIS a summary of Dr. Guy's recommendations (p. 10–77). Although Dr. Guy's calculations for Radio Frequency Radiation (RFR) levels exceed the ANSI/IEEE standards for some scenarios, he acknowledges in the report that the calculations are conservative and that the projections do not account for attenuation resulting from a variety of factors. Dr. Guy also acknowledges in the report that his theoretical analysis represents a worst case scenario. The Navy's analysis of anticipated field strength values indicates that the ANSI/IEEE standards will be met at the proposed fence location. Dr. Guy states that it will be necessary to conduct actual field measurements to determine if the facility is in compliance with ANSI/IEEE. As stated previously, in the unlikely event that the initial measurements indicate that the ANSI/IEEE standards are not being met, the Navy will adjust the fence location, as needed. If measurements taken at the southernmost portion of the proposed fence exceed the standards, the Navy will reduce power levels to achieve compliance. The Navy will reduce the power versus move the fence because of a Navy commitment to avoid any construction in the conservation zone, which lies to the south of the site. In the event the Navy must reduce the power level, the ROTHR will still be able to effectively accomplish its mission.

Finally, commenters questioned whether EPA's concerns about wetlands and impacts on the Playa Grande Conservation Zone in Vieques had been resolved. As previously indicated, the

EPA has concluded that the project will not cause any significant adverse environmental impacts.

The remaining issues identified in the comment letters dealing with the effectiveness of the system, use of ANSI/IEEE standards, compliance with the 1983 MOU, impacts to the mahogany trees, environmental justice and the potential for cumulative impacts have been previously addressed in the FEIS and require no further discussion.

Conclusion

Existing ROTHR systems in Virginia and Texas have already demonstrated the ability to reliably detect, track, and aid in the interception of light civil aircraft of the type used by drug traffickers. However, the Virginia and Texas ROTHR systems and other surveillance methods provide incomplete coverage of the South American source countries, resulting in gaps that are exploited by drug traffickers. Early detection and tracking provided by the Puerto Rico ROTHR will improve reaction time of counter-narcotic forces, increasing their efficiency and effectiveness.

Although the no action alternative would result in no environmental impacts, the minimal impacts associated with construction at the selected locations, as well as the benefits which will result from the ROTHR, make the selected alternative the environmentally preferred alternative.

Questions regarding the Environmental Impact Statement prepared for this action may be directed to: Commander, Atlantic Division Naval Facilities Engineering Command, 1510 Gilbert Street, Norfolk, VA 23511–2699 (Attention: Ms. Linda Blount, Code 2032LB), telephone (757) 322–4892, E-mail blountld@efdlant.navfac.navy.mil or fax (757) 322–4894.

Dated: February 11, 1998.

Duncan Holaday,

Deputy Assistant Secretary of the Navy (Installations and Facilities).

Dated: February 11, 1998.

Lou Rae Langevin,

Lt, JAGC, USN, Alternate Federal Register Liaison Officer.

[FR Doc. 98–3903 Filed 2–13–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 19, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 10, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.
Title: Field Test New Assessment Items for Third International Mathematics and Science Study Replication (TIMSS–R).
Frequency: Field test for new assessment items.
Affected Public: Individuals or households; Not-for-profit institutions.
Reporting Burden and Recordkeeping: Responses: 625. Burden Hours: 1,563.
Abstract: In order to provide international benchmarks against which to measure the mathematics performance of American students as part of the President's new voluntary test, and to measure progress toward the U.S. national goal of being first in the world in mathematics and science in the year 2000, the National Center for Education Statistics (NCES) desires to repeat TIMSS in the U.S. in 1999.

Office of the Under Secretary

Type of Review: Revision.
Title: Longitudinal Evaluation of School Change and Performance (LESCP).
Frequency: Annually.
Affected Public: State, local or Tribal Government, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden: Responses: 13,690. Burden Hours: 45,901.
Abstract: The LESCP is being conducted in response to the legislative requirement in P.L. 103–382, Section 1501 to assess the implementation of Title I and related education reforms. The information will be used to examine changes—over a 3-year period—that are occurring in schools and classrooms. Teachers and teacher aides will complete a mail survey, and district Title I administrators, principals, school-based staff, and parents will be interviewed during on-site field work.

[FR Doc. 98–3820 Filed 2–13–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Draft Programmatic Environmental Impact Statement for Alternative Strategies for the Long-Term Management and Use of Depleted Uranium Hexafluoride

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the draft "Programmatic Environmental Impact Statement for Alternative Strategies for the Long-Term Management and Use of Depleted Uranium Hexafluoride" for public review and comment. This draft programmatic environmental impact statement (PEIS), prepared pursuant to the National Environmental Policy Act (NEPA), assesses the potential environmental impacts of alternative strategies for long-term storage, use, and disposal of DOE's 560,000 metric tons of depleted uranium hexafluoride (UF_6) currently stored in steel cylinders at sites in Paducah, Kentucky; Portsmouth, Ohio; and Oak Ridge, Tennessee. Alternative management strategies evaluated in the draft PEIS include a no action alternative. DOE's preferred alternative for the long-term management of depleted UF_6 is to use its entire inventory as either uranium oxide, uranium metal, or a combination of both. DOE invites the general public, other government agencies, and all other interested parties to comment on this draft PEIS. The information obtained during the comment period will assist DOE in preparing the final PEIS.

DATES: To ensure consideration, comments should be transmitted or postmarked by April 23, 1998. Comments submitted after that date will be considered to the extent practicable.

DOE will hold public hearings near Paducah, Kentucky; Portsmouth, Ohio; Oak Ridge, Tennessee; and Washington, D.C., to discuss issues and to receive oral and written comments on the draft PEIS. The dates, times, and locations for these public hearings are listed below and will be announced in local media prior to the hearing dates.

February 19, 1998

5:00 p.m. to 9:00 p.m., Executive Inn and Conference Center, One Executive Boulevard, Paducah, Kentucky 42001

February 24, 1998

5:00 p.m. to 9:00 p.m., Ramada Inn and Suites, 420 South Illinois Avenue, Oak Ridge, Tennessee 37831

February 26, 1998

5:00 p.m. to 9:00 p.m., Vern Riffe Pike County Vocational School, 23365 State Route 124, Piketon, Ohio 45661

March 10, 1998

1:00 p.m. to 5:00 p.m., U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, S.W., Washington, D.C. 20585

ADDRESSES: Comments and requests for copies of this draft PEIS can be submitted by calling the toll-free number 1–800–517–3191, by faxing them to 301–428–0145, or by mailing them to: Charles E. Bradley, Jr., Program Manager, Depleted Uranium Hexafluoride Management Program, Office of Facilities (NE–40), Office of Nuclear Energy, Science and Technology, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

Comments and requests for copies of this draft PEIS may also be submitted electronically via the Depleted UF_6 World Wide Web site at http://www.ead.anl.gov/uranium.html or via electronic mail at depleted_uf6@ccmail.gmt.saic.com.

FOR FURTHER INFORMATION CONTACT: For general information on the DOE NEPA process, please contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance, Office of Environment, Safety and Health, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0119, 202–586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

On January 25, 1996, DOE issued a Notice of Intent (61 FR 2239) to prepare a programmatic environmental impact statement on alternative strategies for the long-term management and use of depleted UF_6. The unique properties and value of depleted UF_6, such as its high purity and density, as well as the large volume (about 560,000 metric tons) in storage, make it appropriate to evaluate, analyze, and decide the long-term management of this material separately from other DOE materials in storage or awaiting disposition.

The purpose of the PEIS is to assess and consider the potential environmental impacts of a range of reasonable alternative strategies for the long-term management of depleted UF_6 currently stored at DOE sites near Paducah, Kentucky; Portsmouth, Ohio; and Oak Ridge, Tennessee. A management strategy is a series of activities needed to achieve the safe long-term storage, use, or disposal of the depleted UF_6 inventory. The PEIS addresses the potential environmental impacts of the activities that make up each strategy. Following the issuance of the final PEIS and a Record of Decision, DOE will prepare additional project-specific NEPA documents as appropriate.

During February 1996, public scoping meetings were held in Paducah, Kentucky; Piketon, Ohio; and Oak Ridge, Tennessee. The draft PEIS incorporates the public comments received during scoping.

Copies of this PEIS and related documents prepared by DOE are available at the following locations:

Kentucky

U.S. Department of Energy, Environmental Information Center, 175 Freedom Boulevard, Kevil, Kentucky 42053, 502–462–2550

Ohio

U.S. Department of Energy, Environmental Information Center, 105 West Emmitt Avenue, Suite 3, Waverly, Ohio 45690, 614–947–5093

Tennessee

U.S. Department of Energy, Information Resource Center, 105 Broadway, Oak Ridge, Tennessee 37830, 423–241–4582

Tennessee

U.S. Department of Energy, Oak Ridge Operations Office, Public Reading Room, American Museum of Science and Energy, 300 South Tulane Avenue, Oak Ridge, Tennessee 37830, 423–241–4780

Washington, DC

U.S. Department of Energy, Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0117, 202–586–3142.

Alternatives Considered

The draft PEIS evaluates alternative management strategies for the depleted UF_6 inventory, including a no action alternative. These alternative management strategies are described briefly below:

- No Action Alternative:

—Continued storage as depleted UF_6 at the existing sites

- Long-Term Storage Alternatives:

1—Storage at a consolidated site as depleted UF_6

2—Storage at a consolidated site after conversion to uranium oxide

- Use Alternatives:

1—Use as radiation shielding after conversion to uranium metal

2—Use as radiation shielding after conversion to uranium oxide

- Disposal Alternative:

—Disposal after conversion to uranium oxide

- Preferred Alternative:

—Use the entire inventory as either uranium oxide, uranium metal, or a combination of both

Preferred Alternative

DOE has identified a preferred alternative in the draft PEIS. This preferred alternative does not represent a decision by DOE. The Record of Decision, when issued after completion of the final PEIS, will present DOE's decision for the long-term management of depleted UF_6.

DOE's preferred alternative for the long-term management of depleted UF_6 is to use its entire inventory of material. Some (potentially all) of the depleted UF_6 would be used as an oxide, some (potentially all) of it would be used as metal, and some of it might be used in other DOE programs pursuant to other NEPA reviews and decisions. This alternative would include continued storage and safe, effective management of the cylinders prior to conversion, conversion of the depleted UF_6 into depleted uranium oxide and/or depleted uranium metal, and fabrication of depleted uranium products for uses by government and/or industry. The fluorine in the UF_6 would also be used. Potential uses for the depleted uranium include radiation shielding in both the oxide and metal forms and as metal in specialty markets, including industrial counterweights. Current possibilities for use of fluorine include use in the nuclear fuel cycle. The schedule and rate of conversion of the depleted UF_6 inventory into the oxide and/or metal forms would be determined by market demand for the conversion products.

Subsequent Document Preparation

DOE intends to prepare a response to comments received during the review of the draft PEIS and to complete the final PEIS in 1998. The availability of the final PEIS will be announced in the **Federal Register**. Additional NEPA analyses, as appropriate, will be prepared once a long-term depleted UF_6 management strategy has been selected and announced in a Record of Decision.

Issued in Washington, D.C., February 6, 1998.

Terry R. Lash,

Director, Office of Nuclear Energy, Science and Technology.

[FR Doc. 98–3845 Filed 2–13–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Golden Field Office; Notice of Wetlands Involvement for the Kotzebue Wind Farm Project

AGENCY: Golden Field Office, DOE.

ACTION: Notice of wetlands involvement.

SUMMARY: The Department of Energy proposes to provide financial assistance to the Kotzebue Electric Association to expand its exiting wind farm site near Kotzebue, Alaska. In accordance with 10 CFR Part 1022, DOE will prepare an environmental assessment, to include a wetland assessment, and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected wetlands.

DATES: Comments are due to the address below no later than March 4, 1998.

ADDRESSES: Comments should be addressed to Deborah A. Turner, U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden CO, 80401, Phone (303) 275–4746, Fax (303) 275–4788.

FOR FURTHER INFORMATION ON THIS PROPOSED ACTION, CONTACT: Doug Hooker, U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden CO, 80401, Phone (303) 275–4780, Fax (303) 275–4753.

FOR FURTHER INFORMATION ON GENERAL DOE WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, Phone (202) 586–4600 or 1–800–472–2756, Fax (202) 586–7031.

SUPPLEMENTARY INFORMATION: The Kotzebue Wind Farm Project that DOE is considering funding will involve the installation, operation, and maintenance of up to 20 wind turbines and ancillary equipment necessary to maintain the site. The proposed project would be located on an existing 148-acre wind — farm site located near Kotzebue, Alaska. The entire 148-acre land parcel as well as the town of Kotzebue and the local airport are located on land that has been designated as wetlands.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), DOE will prepare an environmental assessment, to include a wetlands assessment, for this proposed DOE action.

Issued in Golden Colorado on February 16, 1998.

Frank M. Stewart,

Manager, Golden Field Office.

[FR Doc. 98–3844 Filed 2–13–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Financial Assistance Program Notice 98–10; Biological Research Program, Use of Model Organisms to Understand the Human Genome

AGENCY: Office of Energy Research, U.S. Department of Energy

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), hereby announces its interest in receiving peer-reviewable applications for research in support of the Biological Research Program. This Program is a coordinated multidisciplinary research effort to develop creative, innovative approaches, resources, and technologies that lead to a molecular understanding of the human genome. This solicitation is for research that capitalizes on our understanding and the manipulability of the genomes of model organisms, including yeast, nematode, fruitfly, Zebra fish, and mouse, to speed understanding of human genome organization, regulation, and function.

DATES: Potential applicants are encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 98–10, should be received by DOE by 4:30 P.M. E.S.T., March 26, 1998. A response to the preapplications discussing the potential program relevance of a formal application generally will be communicated within 7 days of receipt.

The deadline for receipt of formal applications is 4:30 P.M., E.D.T., May 7, 1998, in order to be accepted for merit review and to permit timely consideration for award in FY 1999.

ADDRESSES: Preapplications, referencing Program Notice 98–10, should be sent by E-mail to joanne.corcoran@oer.doe.gov, however, preapplications will also be accepted if mailed to the following address: Ms. Joanne Corcoran, Office of Biological and Environmental Research, ER–72, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

Formal applications, referencing Program Notice 98–10, should be sent to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 98–10, Ms. Debbie Greenawalt. This address must be used when submitting applications

by U.S. Postal Service Express, any commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Marvin Stodolsky, telephone: (301) 903–4475 or Dr. David G. Thomassen, telephone: (301) 903–9817, Office of Biological and Environmental Research, ER–72, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

SUPPLEMENTARY INFORMATION: In recent years, an astonishing conservation of gene structure and function across species has been revealed. Future biological understanding of the human will depend not only on understanding the structure and function of the encoded proteins and RNAs, but also on understanding the nature of the regulatory networks that control expression of batteries of genes in space and time. For example, we can more economically learn how genes and systems work in the genetically manipulable organisms such as bacteria, yeast, fruitfly, nematode, or Zebra fish. In addition, the mouse provides the opportunity to model and analyze many complex human conditions less suitably studied in invertebrates of lower vertebrates.

This solicitation is for research that capitalizes on our understanding and the manipulability of the genomes of model organisms, including yeast, nematode, fruitfly, Zebra fish, and mouse, to speed understanding of human genome organization, regulation, and function. The solicitation is for research at a genomic or near-genomic scale, i.e., not, for example, for studies of individual enzymes, that facilitates understanding of human genome organization, regulation, and function. It is not for basic research on model organisms that only has the promise of a long-term payoff for understanding the human genome. Research is encouraged in a number of areas including, but not limited to:

- Interspecies comparisons of the organization of functionally related genes and their regulatory elements including automated approaches for interspecies genic comparisons;
- Production and characterization of informative mutations or gene transfers in model systems to elucidate gene function in the human;
- Development and application of approaches to characterize developmental and regulatory pathways (these could include genetic approaches, *e.g.*, transgenics, knockouts, overexpression, antisense, etc.);
- Development and use of experimental systems to characterize or analyze human gene function that match the speed of new gene discovery on a genomic scale.

This solicitation is not intended to support the development of new model systems that do not demonstrate utility for gene functional analysis in the human. For that reason, we intend to focus on relatively well-established model organisms.

Program Funding

It is anticipated that up to $1.5 million will be available in FY 1999, contingent upon the availability of funds. Multiple year funding of grant awards is expected, and is also contingent upon the availability of funds. It is expected that most awards will be from one to three years and will range from $200,000 to $400,000 per year (total costs).

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and FFRDCs, including the DOE National Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible.

Collaborative research applications may be submitted in several ways:

(1) When multiple private sector or academic organizations intend to propose collaborative or joint research projects, the lead organization may submit a single application which includes another organization as a lower-tier participant (subaward) who will be responsible for a smaller portion of the overall project. If approved for funding, DOE may provide the total project funds to the lead organization who will provide funding to the other participant via a subcontract arrangement. The application should clearly describe the role to be played by each organization, specify the managerial arrangements and explain the advantages of the multi-organizational effort.

(2) Alternatively, multiple private sector or academic organizations who intend to propose collaborative or joint research projects may each prepare a portion of the application, then combine each portion into a single, integrated scientific application. A separate Face Page and Budget Pages must be included for each organization participating in the collaborative project. The joint application must be submitted to DOE as one package. If approved for funding, DOE will award a separate grant to each collaborating organization.

(3) Private sector or academic organizations who wish to form a collaborative project with a DOE FFRDC may *not* include the DOE FFRDC in their application as a lower-tier participant (subaward). Rather, each collaborator may prepare a portion of the proposal, then combine each portion into a single, integrated scientific proposal. The private sector or academic organization must include a Face Page and Budget Pages for its portion of the project. The FFRDC must include separate Budget Pages for its portion of the project. The joint proposal must be submitted to DOE as one package. If approved for funding, DOE will award a grant to the private sector or academic organization. The FFRDC will be funded, through existing DOE contracts, from funds specifically designated for new FFRDC projects. DOE FFRDCs will not compete for funding already designated for private sector or academic organizations. Other Federal laboratories who wish to form collaborative projects may also follow guidelines outlined in this section.

Preapplications

A brief preapplication may be submitted. The preapplication should identify on the cover sheet the institution, Principal Investigator name, address, telephone, fax and E-mail address, title of the project, and the field of scientific research. The preapplication should consist of a two to three page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the DOE Biological Research Program.

Preapplications are strongly encouraged but not required prior to submission of a full application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project
2. Appropriateness of the Proposed Method or Approach
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources
4. Reasonableness and Appropriateness of the Proposed Budget

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of

the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Energy Research Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html. The Project Description must be 25 pages or less, exclusive of attachments. The application must contain an abstract or project summary, letters of intent from collaborators, and short curriculum vitaes consistent with NIH guidelines.

Energy Research, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant to perform research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules", which is available via the world wide web at: http://www.niehs.nih.gov/odhsb/biosafe/nih/nih97-1.html, (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

(The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605)

Issued in Washington, D.C. February 6, 1998.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 98-3843 Filed 2-13-98; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Financial Assistance Program Notice 98-11; Cellular Biology Research Program—Mechanisms of Cellular Responses to Low Dose, Low Dose-Rate Exposures

AGENCY: Office of Energy Research, U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research for support of the Cellular Biology Research Program. This Program is a coordinated multidisciplinary research effort to develop creative, innovative approaches that will provide a better scientific basis for understanding exposures and risks to humans associated with low level exposures to radiation and chemicals. Using modern molecular tools, this research will provide information that will be used to decrease the uncertainty of risk at low levels, help determine the shape of the dose-response relationships after low level exposure, and achieve acceptable levels of human health protection at the lowest possible cost.

DATES: Potential applicants are encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 98-11, should be received by DOE by 4:30 P.M. E.S.T., March 26, 1998. A response to the preapplications discussing the potential program relevance of a formal application generally will be communicated within 7 days of receipt.

The deadline for receipt of formal applications is 4:30 P.M., E.D.T., May 7, 1998, in order to be accepted for merit review and to permit timely consideration for award in FY 1999.

ADDRESSES: Preapplications, referencing Program Notice 98-11, should be sent by E-mail to joanne.corcoran@oer.doe.gov, however, preapplications will also be accepted if mailed to the following address: Ms. Joanne Corcoran, Office of Biological and Environmental Research, ER-72, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874-1290.

Formal applications, referencing Program Notice 98-11, should be sent to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER-64, 19901 Germantown Road, Germantown, MD 20874-1290, ATTN: Program Notice 98-11, Ms. Debbie Greenawalt. This address must be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Rose, telephone: (301) 903-4731 or Dr. David Thomassen, telephone: (301) 903-9817, Office of Biological and Environmental Research, ER-72, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874-1290.

SUPPLEMENTARY INFORMATION: Current standards for occupational and residential exposures to radiation and chemicals are based on linear, no-threshold models of risk that drive regulatory decisions and estimations of cancer risk. Linear, no-threshold models assume that risk is always proportional to dose, that there is no risk only when there is no dose, and that even a single molecule or radiation induced ionization can cause cancer or disease. However, the scientific basis for these assumptions is limited and uncertain at very low doses and dose rates.

Much scientific evidence suggests that the risks from exposure to low doses or low dose-rates of radiation and chemicals may be better described by a non-linear, dose-response relationship. This evidence includes long term human and animal studies and research at the cellular and molecular level on the DNA repair capabilities of cells and tissues, "bystander" effects associated with low dose exposures, the effects of exposure-induced gene expression, the effects of a cell's micro environment on its response to low dose exposures, and studies of the multi-step nature of cancer development. A more definitive understanding of the biological responses induced by low dose, low dose-rate exposures is needed to clarify the role played by these and other cell responses and capabilities in determining risk.

This research program will focus on understanding the mechanisms of molecular and cellular responses to low dose, low dose-rate exposures to radiation and chemicals to improve the scientific underpinning for estimating risks from these exposures. The program will include research to identify and characterize: (1) The genes and gene products that determine and affect these cellular responses induced at low dose and dose-rates; (2) the role played by these genes and gene products in determining individual differences in susceptibility to low dose, low dose-rate exposures; and (3) methods to synthesize or model molecular level information on genes and gene products into overall health risk. The program will also communicate research results to regulators and legislators. The goal of this research program is the development of scientifically defensible tools and approaches for determining risk that are widely used, accepted, and understood.

Research is encouraged in a number of areas including, but not limited to:

- The effects of and reactions to reactive oxygen species at low doses and/or dose rates;
- The role of gene induction, DNA repair, apoptosis, and the immune system in mediating responses to low dose and/or low dose-rate exposures;
- The nature and significance of "bystander" effects in determining cell and tissue responses to low dose and/or low dose-rate exposures;
- The role of cell and tissue microenvironments in determining cell and tissue responses to low dose and/or low dose-rate exposures;
- Development of computational techniques, *e.g.*, algorithms and advanced mathematical approaches, for use in determining risk, that model new information from cellular and molecular studies together with available data from epidemiologic and animal studies.

A Lead Scientist will be selected from among all investigators who are successful in receiving research funds in this program. This research program will be directed by a program manager from OBER, who will be responsible for providing support and overall direction, including determining the relevance of the goals and objectives of the program. The Lead Scientist will provide scientific leadership to the community of the researchers in the research program. Applicants interested in being considered as a Lead Scientist for the low dose research program should indicate their interest in their research application. In addition to the information requested in the Application Guide, applicants should supplement their applications by describing their qualifications to serve as a Lead Scientist for this program. The supplemental information should be provided as a separate appendix not attached to the main application. Interested applicants should demonstrate their understanding of the needs for and the uses of the types of scientific information likely to be developed in this research program. They should demonstrate their understanding of previous epidemiologic and experimental studies involving low dose, low dose-rate exposures to radiation or chemicals. Finally, interested applicants should demonstrate their knowledgeability of research opportunities and capabilities at National Laboratories, universities, and industry in the area of molecular and cellular responses to low dose, low dose-rate exposures.

Program Funding

It is anticipated that up to $1.5 million will be available for grant awards during FY 1998, contingent upon the availability of funds. An additional $0.5 million may be available during FY 1999, contingent upon the availability of funds. Multiple year funding of grant awards is expected, and is also contingent upon the availability of funds. It is expected that most awards will be from one to three years and will range from $200,000 to $400,000 per year (total costs).

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and FFRDCs, including the DOE National Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible.

Collaborative research applications may be submitted in several ways:

(1) When multiple private sector or academic organizations intend to propose collaborative or joint research projects, the lead organization may submit a single application which includes another organization as a lower-tier participant (subaward) who will be responsible for a smaller portion of the overall project. If approved for funding, DOE may provide the total project funds to the lead organization who will provide funding to the other participant via a subcontract arrangement. The application should clearly describe the role to be played by each organization, specify the managerial arrangements and explain the advantages of the multi-organizational effort.

(2) Alternatively, multiple private sector or academic organizations who intend to propose collaborative or joint research projects may each prepare a portion of the application, then combine each portion into a single, integrated scientific application. A separate Face Page and Budget Pages must be included for each organization participating in the collaborative project. The joint application must be submitted to DOE as one package. If approved for funding, DOE will award a separate grant to each collaborating organization.

(3) Private sector or academic organizations who wish to form a collaborative project with a DOE FFRDC may *not* include the DOE FFRDC in their application as a lower-tier participant (subaward). Rather, each collaborator may prepare a portion of the proposal, then combine each portion into a single, integrated scientific proposal. The private sector or academic organization must include a Face Page and Budget Pages for its portion of the project. The FFRDC must include separate Budget Pages for its portion of the project. The joint proposal must be submitted to DOE as one package. If approved for funding, DOE will award a grant to the private sector or academic organization. The FFRDC will be funded, through existing DOE contracts, from funds specifically designated for new FFRDC projects. DOE FFRDCs will not compete for funding already designated for private sector or academic organizations. Other Federal laboratories who wish to form collaborative projects may also follow guidelines outlined in this section.

Preapplications

A brief preapplication may be submitted. The preapplication should identify on the cover sheet the institution, Principal Investigator name, address, telephone, fax and E-mail address, title of the project, and the field of scientific research. The preapplication should consist of a two to three page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the DOE Cellular Biology Research Program.

Preapplications are strongly encouraged but not required prior to submission of a full application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project
2. Appropriateness of the Proposed Method or Approach
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources
4. Reasonableness and Appropriateness of the Proposed Budget

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development and submission of applications,

eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Energy Research Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html. The Project Description must be 25 pages or less, exclusive of attachments. The application must contain an abstract or project summary, letters of intent from collaborators, and short curriculum vitaes consistent with NIH guidelines.

Energy Research, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant to perform research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules", which is available via the world wide web at: http://www.niehs.nih.gov/odhsb/biosafe/nih/nih97-1.html, (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

(The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605)

Issued in Washington, D.C. February 6, 1998.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 98-3842 Filed 2-13-98; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC98-001-000 FERC Form No. 1]

Proposed Information Collection and Request for Comments

February 10, 1998.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104-13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted within 60 days of the publication of the notice.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Information Services Division, ED-12.4, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208-1415, by fax at (202) 273-0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form 1 "Annual Report for Major Electric Utilities, Licensees and Others" (OMB No. 1902-0021) is used by the Commission to implement the statutory provisions of the Federal Power Act (FPA) 16 U.S.C 791a-825r. The Commission is authorized and empowered to make investigations, collect and record data, prescribe rules and regulations concerning accounts, records and memoranda as necessary or appropriate for administering the FPA. The Commission may prescribe a system of accounts for jurisdictional companies and, after notice and opportunity for hearing, may determine the accounts in which particular outlays and receipts will be entered, charged or credited. Commission staff use the data in the Commission's audit program and continuous review of the financial condition of regulated companies. The data is also used in various rate proceedings and supply programs. Data from certain schedules is used to compute annual charges which are then assessed against public utilities to recover the Commission's annual costs. The information filed with the Commission is a mandatory requirement contained in the format of a written form for providing annual financial data. This information is also submitted via electronic media consisting of two duplicate diskettes. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Parts 41, 101, 141.1 and 385.2011.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
193	1	1,217 hours	234,881 hours.

Estimated cost burden to respondents: 234,881 hours/2,088 hours per year × $109,889 per year = $12,361,513. The cost per respondent is equal to $64,049.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will

have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3839 Filed 2–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC98–01F–000 FERC Form No. 1–F]

Proposed Information Collection and Request for Comments

February 10, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted within 60 days of the publication of this notice.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e–mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form 1F "Annual Report for NonMajor Public Utilities, Licensees and Others" (OMB No. 1902–0029) is used by the Commission to implement the statutory provisions of the Federal Power Act (FPA) 16 U.S.C. 791a–825r. The Commission is authorized and empowered to make investigations, collect and record data, prescribe rules and regulations concerning accounts, records and memoranda as necessary or appropriate for administering the FPA. The Commission may prescribe a system of accounts for jurisdictional companies and, after notice and opportunity for hearing, may determine the accounts in which particular outlays and receipts will be entered, charged or credited. Commission staff use the data in the Commission's audit program and continuous review of the financial condition of regulated companies. The data is also used in various rate proceedings and supply programs. Data from certain schedules is used to compute annual charges which are then assessed against public utilities to recover the Commission's annual costs. The information filed with the Commission is a mandatory requirement contained in the format of a written form for providing annual financial data. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Parts 41, 101, 141.2.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
17	1	32 hours	544 hours.

Estimated cost burden to respondents: 544 hours/2,088 hours per year×$109,889 per year=$28,630. The cost per respondent is equal to $1,684.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3840 Filed 2–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1409–000]

Ameren Companies; Notice of Filing

February 10, 1998.

Take notice that on January 12, 1998, Ameren Companies tendered for filing a Notice of Cancellation in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 23, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3814 Filed 2–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Central Vermont Public Service Corporation; Notice of Filing

February 10, 1998.

Take notice that on January 12, 1998, Central Vermont Public Service Corporation, tendered for filing a supplement amending its Rate Schedule FERC No. 135 (RS–2 Rate Schedule) for wholesale electric service to Connecticut Valley Electric Company Inc. The supplement adds a stranded cost exit fire fee provision to the RS–2 Rate Schedule as contemplated by the Commission's order dated December 18, 1997 in Docket No. ER97–3435–000.

Central Vermont requests that the supplement to the RS-Rate Schedule be accepted for filing and made effective March 31, 1998, which is 60 days after filing. Central Vermont states that this filing has been posted and that copies have been served upon the affected customers and the regulatory commission of the States of New Hampshire and Vermont.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 20, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3811 Filed 2–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1364–000]

Cinergy Services, Inc.; Notice of Filing

February 10, 1998.

Take notice that on January 8, 1998, Cinergy on behalf of its operating company, PSI Energy, Inc., tendered for filing pursuant to the Service agreement between Jackson County REMC and PSI a revised Exhibit A (Service specification).

Said Exhibit A provides for revised service characteristics at the REMC's delivery point(s).

Copies of the filing were served on Jackson County REMC and the Indiana Utility Regulatory Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 20, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3810 Filed 2–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1694–000]

Colt Electric Power Corporation; Notice of Filing

February 10, 1998.

Take notice that on February 3, 1998, Colt Electric Power Corporation, tendered for filing a Notice of Cancellation of FERC Electric Rate Schedule No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3816 Filed 2–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–1631–000 and ER98–270–001]

Consolidated Edison Company of New York, Inc.; Notice of Filing

February 10, 1998.

Take notice that on January 20, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an application for an order approving (a) an ESCO Operating and Retail Transmission Service Agreement and (2) a Direct Customer Operating and retail Transmission Service Agreement, as Attachments K and L to Con Edison's

open access transmission tariff, FERC Electric Tariff, Original Volume No. 1.

Can Edison states that a copy of this filing has been served by mail upon the New York State Public Service Commission (PSCNY), the parties to Con Edison's Pending rate case in Docket No. OA96–138–000, and the parties to Con Edison's service restructuring proceeding before he PSCNY.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 23, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3812 Filed 2–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–214–000]

Eastern Shore Natural Gas Company; Notice of Application

February 10, 1998.

Take notice that on February 2, 1998, Eastern Shore Natural Gas Company (Eastern Shore) 417 Bank Lane, Dover, Delaware 19903 filed in Docket No. CP98–214–000 an application, pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing it to construct and operate 1.5 miles of 16-inch pipeline and to provide an additional 2,516 dekatherms per day of firm transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Eastern Shore states that it conducted an open season from August 25, 1997 to September 30, 1997, and in response received requests for 2,516 dekatherms per day of new service under Rate Schedule FT from three of its existing customers. Eastern Shore has included copies of the executed precedent agreements with the three customers as an exhibit to its application.

To provide the 2,516 dekatherms of additional firm daily capacity, Eastern proposes to construct 1.5 miles of 16-inch pipeline looping to be located in New Castle County, Delaware. Eastern Shore estimates that the cost of the proposed looping will be $845,000.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before March 3, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Eastern Shore to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3815 Filed 2–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3189–000]

Pennsylvania-New Jersey Maryland Interconnection, et al.; Notice of Filing

February 6, 1998.

Take notice that on January 26, 1998, PJM Interconnection, L.L.C. (PJM), as directed by Ordering Paragraph (M) of the Commission's order in Pennsylvania-New Jersey-Maryland, *et al.*, 81 FERC ¶ 61,257 (1997), tendered for filing (1) an explanation of the way in which the PJM Tariff provisions regarding ancillary services have been implemented, (2) revisions to the PJM Tariff to clearly and specifically set forth the rates, terms, and conditions for ancillary services, and (3) an explanation of deviations from the Commission's pro forma tariff provisions.

PJM requests an effective date of April 1, 1998, for the revised ancillary services schedules.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888

First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 20, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3809 Filed 2–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1643–000]

Portland General Electric Company; Notice of Filing

February 10, 1998.

Take notice that on January 30, 1998, Colt Portland General Electric Company (PGE), tendered for filing an Application for Order Accepting Initial Rate Schedule and Granting Waivers and Blanket Authority, to become effective March 31, 1998.

The proposed tariff (FERC Electric Service Tariff No. 10) Provides the terms and conditions pursuant to which PGE will sell electric capacity and energy transactions on the California Power Exchange (PX). In these transactions, PGE intends to charge market-based rates as determined by the auction settlement procedures prescribed by the PX Operating Agreement and Tariff of the California Power Exchange Corporation filed in FERC Docket No. ER96–1663.

Copies of this filing were served upon the Oregon Public Utility Commission and the California PX.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 23, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3816 Filed 2–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of December 29, 1997 Through January 2, 1998

During the week of December 29, 1997 through January 2, 1998, the decision and order summarized below was issued with respect to an appeal filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of the decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. It is also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: February 6, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 66: Week of December 29, 1997 Through January 2, 1998

Appeal

Dykema Gossett, PLLC, 12/29/97, VFA–0358

The DOE granted in part a Freedom of Information Act (FOIA) Appeal filed by Dykema Gossett, PLLC. In its decision, DOE found that Oak Ridge failed to adequately explain why it withheld a document under FOIA Exemption 4, and had not appropriately justified the adequacy of its search. Accordingly, the matter was remanded to Oak Ridge.

Dismissals

The following submissions were dismissed:

Name	Case No.
Advance Publications, Inc.	RD272–15364
Advance Publications, Inc.	RF272–15364
GOLD BOND GOOD HUMOR CORPORATION	RF272–95212

[FR Doc. 98–3846 Filed 2–13–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of January 5 Through January 9, 1998

During the week of January 5 through January 9, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between

the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: February 6, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 67: Week of January 5 Through January 9, 1998

Appeals

James R. Hutton, 1/5/98, VFA–0359,

The DOE's Office of Hearing and Appeals (OHA) issued a decision denying the Appellant's request that we reconsider our ruling that the names and position numbers of federal employees listed on a "retention register" are exempt from disclosure under Exemption 6 of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(6); 10 CFR § 1004.10(b)(6). After considering Appellant's arguments, we reaffirmed our previous ruling that an employee has a privacy interest in his or her name and position number in the context of a retention register because the disclosure of this information might suggest the employee's vulnerability to a reduction in force. We also reaffirmed that the public interest in the disclosure of the names and position numbers of the employees listed in the retention register was insubstantial or nonexistent.

K&M Plastics, Inc., 1/8/98, VFA–0356

K&M Plastics, Inc., (K&M) filed an Appeal of a Determination issued to it by the Department of Energy (DOE) in response to a request under the Freedom of Information Act (FOIA). In the request, the Appellant asked for a bid abstract relating to a subcontract at the Rocky Flats Environmental Technology Site (RFETS). In its Determination, the Rocky Flats Field Office (RFFO) found that all responsive documents were owned by RFETS's management and operating contractor, Kaiser-Hill Company (Kaiser Hill). On appeal, the K&M requested the bid abstract, arguing that all records not related to national security or public safety were subject to release under the FOIA, and that RFFO had released a bid abstract to K&M in the past. The Office of Hearings and Appeals (OHA) found that the documents in the current request were not agency records and not subject to release under DOE regulations. Accordingly, the Appeal was denied.

Patricia C. McCracken, VFA–0348

The Department of Energy (DOE) issued a Decision and Order denying a Freedom of Information Act (FOIA) Appeal that was filed by Patricia C. McCracken. In her Appeal, Ms. McCracken requested that we review a determination issued by the Richland Operations Office withholding the winning proposal submitted in a competitive bidding procedure under Exemption 3 of the FOIA. Ms. McCracken also attempted to expand the scope of her original FOIA request to include additional documents. In the Decision, the OHA found that the National Defense Authorization Act of 1997 is a statute of exemption for purposes of Exemption 3, and that the proposal was properly withheld. The OHA also concluded that a FOIA Appeal is not the appropriate venue for the consideration of an initial request for documents. The OHA therefore denied Ms. McCracken's Appeal.

Personnel Security Hearing

Personnel Security Hearing, 1/9/98, VSO–0174

An OHA Hearing Officer issued an Opinion concerning an individual whose access authorization was suspended under the regulations set forth at 10 C.F.R. Part 710 because the DOE obtained derogatory information that the individual was alcohol dependent. At a hearing convened at the individual's request, the individual maintained there are mitigating factors that alleviate the agency's security concerns and justify the restoration of his security clearance. In support of his position, the individual stated that he is participating in alcohol rehabilitation by attending AA, that he has totally abstained from alcohol, that he has no intention to resume drinking and that he has never consumed alcohol while working for the DOE. The Hearing Officer found that the individual had not demonstrated sufficient rehabilitation or reformation to mitigate the DOE's security concerns. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Personnel Security Hearing, 1/9/98, VSO–0177

An Office of Hearings and Appeals Hearing Officer issued an Opinion under 10 C.F.R. Part 710 concerning the continued eligibility of an individual to hold an access authorization. After considering the testimony at the hearing convened at the request of the individual and all other information in the records, the Hearing Officer found that, as duly determined by a DOE Psychiatrist, the individual was a user of alcohol habitually to excess. The Hearing Officer further found that the individual had failed to present sufficient evidence of rehabilitation and reformation to mitigate the legitimate security concerns of DOE relating to the individual's alcohol use. Accordingly, the Hearing Officer recommended that the individual's access authorization, which had been suspended, should not be restored.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

ATLANTIC RICHFIELD CO./CHUCK LORRAH'S ARCO #1	RF304–15512	1/5/98
CHUCK LORRAH'S ARCO #2	RF304–15513	
CRUDE OIL SUPPLEMENTAL REFUND DIST.	RB272–00128	1/8/98
CRUDE OIL SUPPLEMENTAL REFUND DIST.	RB272–00130	1/8/98
CRUDE OIL SUPPLEMENTAL REFUND DIST.	RB272–00131	1/8/98
LORRAINE FLORHAUG ET AL	RK272–01759	1/8/98
MCCONNELL CONSTRUCTION, INC. ET AL	RF272–94732	1/5/98
RGIS INVENTORY SPECIALISTS ET AL	RK272–04706	1/8/98

Dismissals

The following submissions were dismissed.

Name	Case No.
BERWIND RAILROAD SERVICE CO.	RF272–95292
DAVID R. KOUNS	VWA–0019

Name	Case No.
MID-AMERICAN PETROLEUM SUPPLY	RF315-06429

[FR Doc. 98-3848 Filed 2-13-98; 8:45 am]
BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of November 10 Through November 14, 1997

During the week of November 10 through November 14, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585-0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: February 6, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 59: Week of November 10 Through November 14, 1997

Appeals

F.A.C.T.S., 11/10/97, VFA-0339, VFA-0343

For A Clean Tonawanda Site (F.A.C.T.S.), the Appellant, filed Appeals from determinations issued to him by the Oak Ridge Operations Office (OR) and the Office of the Executive Secretariat (ES) of the Department of Energy (DOE). In its Appeal, the Appellant asserted that OR and ES had improperly withheld documents pertaining to a DOE FUSRAP site in Tonawanda, New York, pursuant to Exemption 5 of the FOIA and that OR and ES had conducted an inadequate search for documents responsive to three categories of requested documents. Additionally, the Appellant appealed OR's denial of a fee waiver in connection with its request. Upon review, the DOE determined that OR and ES had conducted an adequate search for responsive documents. With regard to the OR's fee waiver determination, the DOE determined that the Appellant had not supplied sufficient information upon which OR could grant a fee waiver. However, because OR and ES had failed to adequately describe each of the withheld documents, the DOE remanded the matter to OR for the issuance of another determination. Since each of the documents withheld by ES was included in the documents withheld by OR, ES was not required to issue another determination. Consequently, the Appeal pertaining to the ES determination (Case No. VFA-0339) was denied but the Appeal pertaining to the OR determination (Case No. VFA-0343) was granted in part.

James R. Hutton, 11/13/97, VFA-0341

The DOE's Office of Hearings and Appeals (OHA) issued a decision granting in part a Freedom of Information Act (FOIA) Appeal filed by James R. Hutton. Hutton sought the release of information withheld by the Oak Ridge Operations Office (Oak Ridge). In its decision, OHA found that Oak Ridge improperly withheld a retention register in its entirety, when instead it should have released this document with only that information which would reveal specific employees' identities removed. OHA also found that Oak Ridge had improperly used a Glomar declaration in response to the Appellant's request for another document. (A "Glomar" declaration neither confirms nor denies the existence of a document). Accordingly, the Appeal was remanded to Oak Ridge and denied in all other aspects.

Refund Applications

Belle Pass Towing Corp., 11/13/97, RF272-57009

The DOE issued a Decision and Order granting sixteen Applications for Refund in the crude oil refund proceeding. Eight of the cases involved a corporation that dissolved after it submitted its timely and accurate refund application. Because the DOE did not act on the application prior to the corporation's dissolution, the DOE allowed shareholders at the time of dissolution to file refund claims after the June 30, 1995 crude oil proceeding deadline.

Goodyear Tire & Rubber Company, 11/14/97, RR272-304

The Office of Hearings and Appeals granted a supplemental crude oil refund in the amount of $425,580 to the Goodyear Tire & Rubber Company in accordance with the Opinion issued by the United States Court of Appeals for the Federal Circuit on June 30, 1997. The supplemental refund pertained to Goodyear's butadiene and propylene purchases from two of its suppliers.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

CAVE CREEK UNIF. DIST. #93 ET AL.	RF272-95415	11/13/97
COLONY TRANSPORT ET AL.	RF272-76468	11/13/97
CRUDE OIL SUPPLE REF DIST	RB272-00125	11/13/97
GEORGE L. GEAR	RK272-04053	11/12/97
LYDA STOWE ET AL.	RK272-04598	11/12/97
THE ROBERT JURY TRUST ET AL.	RK272-01611	11/12/97

[FR Doc. 98–3849 Filed 2–13–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of October 27 Through October 31, 1997

During the week of October 27 through October 31, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: February 6, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 57: Week of October 27 Through October 31, 1997

Appeals

Chemdata, Inc., 10/31/97, VFA–0342

ChemData, Inc. appealed a Determination issued to it by the Department of Energy in response to a request under the Freedom of Information Act (FOIA) for information concerning bid prices for a subcontract. The Rocky Flats Field Office had found that all responsive documents were owned by the management and operating contractor, Kaiser-Hill Company. The DOE rejected the Appellant's argument that all "taxpayer-funded records" are subject to release under the FOIA and that all contracting records of a DOE contractor are DOE property. Accordingly, the Appeal was denied.

Natural Resources Defense Council, 10/31/97, VFA–0338

The Natural Resources Defense Council filed a Freedom of Information Act (FOIA) Appeal requesting a new search for responsive documents. In considering the Appeal, the DOE determined that additional responsive documents may exist and remanded the matter to the Albuquerque Operations Office.

Patricia C. McCracken, 10/30/97, VFA–0337

The Department of Energy denied a Freedom of Information Act (FOIA) Appeal that was filed by Patricia C. McCracken. In her Appeal, Ms. McCracken challenged both the finding of the Savannah River Operations Office that a contractor proposal was exempt from disclosure pursuant to Exemption 3 and the adequacy of the search for responsive documents. In the Decision, the DOE found that the search for responsive documents was adequate and that the proposal was properly withheld under Exemption 3, because release of the proposal under the FOIA is forbidden by Section 821(b) of the National Defense Authorization Act of 1997, P.L. 104–201.

Personnel Security Hearing

Personnel Security Hearing, 10/28/97, VSO–0163

An OHA Hearing Officer issued an opinion concerning an individual whose access authorization was suspended because of derogatory information that the individual was alcohol dependent and had violated a drug certification by illegal possession of amphetamines and drug paraphernalia. At a hearing, the individual maintained that he was rehabilitated from alcohol dependence. He also contended that he saw the amphetamines and drug paraphernalia lying in the street and picked them up to show to his friends as a joke, but did not purchase or intend to use them. The Hearing Officer found that the individual did not bring forth sufficient corroboration to support these assertions. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Implementation of Special Refund Procedures

Crude Oil Purchasing, Inc.; Gratex Corp./Compton Corp.; Jaguar Petroleum, Inc.; Westport Energy Corp. & Westport Petroleum, 10/29/97, LEF–0058, VEF–0012, LEF–0059, LEF–0113

This Implementation Order sets forth the procedures for disbursement of $2,451,396 (plus accrued interest) in alleged or adjudicated crude oil overcharges obtained by the DOE from Crude Oil Purchasing, Incorporated, Jaguar Petroleum, Incorporated, Westport Energy Corporation/Westport Petroleum Corporation, and Gratex Corporation/Compton Corporation. The DOE determined that the funds obtained from these firms, plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases.

Refund Application

Gulf Oil Corporation/Love Tractor Sales, et al., 10/28/97, RF300–14859, et al.

The DOE denied applications for refund submitted by five firms affiliated with the John D. Love Oil Company (LOC). When, for the purpose of applying the presumptions of injury established in the Gulf Oil Corp. overcharge refund proceeding, the gallonage of these applicants is combined with the gallonage of LOC, the principal refund for all affiliated firms is $5,000. Since LOC already received a refund of $5,000 for its own gallonage in a previous Decision and Order, the Applicants were not eligible to receive any additional refund for their gallonage.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

JAMES BROS. PARTNERSHIP, ET AL	RK272–04613	10/29/97
JERRY SETTLE, ET AL	RK272–01763	10/29/97

Dismissals

The following submissions were dismissed.

Name	Case No.
OCTANE PETROLEUM #1	RF300–15400

Name	Case No.
OCTANE PETROLEUM #2	RF300–15401
VANTAGE PETROLEUM #1	RF300–15402
VANTAGE PETROLEUM #2	RF300–15403

[FR Doc. 98–3850 Filed 2–13–98; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5948–3]

LCP Chemicals Georgia Site/ Brunswick, Georgia; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has proposed to settle claims for response costs at the LCP Chemicals Georgia Site (the "Site") located in Brunswick, Georgia, with AlliedSignal, Inc., Atlantic Richfield Company, and Georgia Power Company of Georgia. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Program Services Branch, Waste Management Division, 61 Forsyth Street, SW, Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Mrs. Ann Mayweather-Boyd at the above address within 30 days of the date of publication.

Dated: December 10, 1997.

Richard D. Green,

Acting Director, Waste Management Division.

[FR Doc. 98–3881 Filed 2–13–98; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by FCC for Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

February 4, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c)ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before April 20, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0286.

Title: Section 80.302, Notice of discontinuance, reduction, or impairment of service involving a distress watch.

Form No.: N/A.

Type of Review: Extension of existing collection.

Respondents: Business or other for-profit, individuals or households, non-profit institutions, state and local governments.

Number of Respondents: 160.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 160 hours.

Frequency of Response: On occassion.

Total Annual Cost: N/A.

Needs and Uses: The reporting requirement contained in Section 80.145 is necessary to ensure that the U.S. Coast Guard is timely notified when a coast station, which is responsible for maintaining a listening watch on a designated marine distress and safety frequency, discontinues, reduces or impairs its communications services. This notification allows the Coast Guard to seek an alternate means of providing radio coverage to protect the safety of life and property at sea or object to the planned diminution of service. The information is used by the U.S. Coast Guard district office nearest to the coast station. Once the Coast Guard is aware that such a situation exists, it is able to inform the maritime community that radio coverage has or will be affected and/or seek to provide coverage of the safety watch via alternate means. When appropriate the Coast Guard may file a petition to deny an application.

OMB Approval Number: 3060–0221.

Title: Section 90.155 Time in which station must be placed in operation.

Form No.: N/A.

Type of Review: Extension of existing collection.

Respondents: Businesses or other for-profit, state, local or tribal government, not-for-profit institutions.

Number of Respondents: 55.

Estimated Time Per Response: 1 hour per response.

Total Annual Burden: 55 hours.
Frequency of Response: On occassion.
Needs and Uses: The information collection requirement contained in Section 90.155 is needed to provide flexibility to state and local governments that would normally be unable to meet the requirement of placing their radio station in operation within 8 months. The information is used to evaluate if the exception to the 8 month requirement is warranted. If the information was not collected the Commission's information regarding actual loading of frequencies would be inaccurate.
OMB Number: 3060-0361.
Title: Section 80.29 Change during license term.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Individuals or households; Business or other for-profit; Not-for-Profit Institutions; State, Local or Tribal Government.
Number of Respondents: 250.
Estimated Time Per Response: 1 hour.
Total Annual Burden: 250 hours.
Frequency of Response: On occassion.
Needs and Uses: The information is used by the FCC to update the coast and ship station license files and data base concerning current name and address of licensees. Information concerning changes in the names of vessels is also used to update the ITU List of Ship Stations.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 98-3773 Filed 2-13-98; 8:45 am]
BILLING CODE 6712-01-F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

February 5, 1998.

SUMMARY: Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated information techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 20, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202-418-0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:
OMB Approval Number: 3060-0501.
Title: Section 76.206, Candidate rates.
Type of Review: Extension of a currently approved collection.
Respondents: Business and other for-profit entities.
Number of Respondents: 10,750
Estimated Time Per Response: .5-10 hours.
Total Annual Burden to Respondents: 139,750 hours, calculated as follows: There are approximately 10,750 cable systems in the nation. We estimate that in any given year, candidates for public office will be interested in seeking origination cablecast time from approximately half of these systems (5,375). We estimate that these cable systems will be required to make the various advertising rate disclosures set forth in Section 76.206 to an average of 4 candidates. The average burden on systems to disclose this information is estimated to be .5 hours per candidate. 5,375 systems x 4 candidates x .5 hours = 10,750 hours. We estimate that each cable system will calculate its lowest unit charge semi-annually with an average burden of 10 hours per station. 5,375 systems x 2 calculations x 10 hours = 107,500 hours. Systems are also required to periodically review their advertising records throughout the election period to determine whether compliance with Section 76.206 requires that candidates receive rebates or credits. We estimate that cable systems will review their records an average of 2 times throughout the election period, undergoing a burden of 2 hours per review. 5,375 systems x 2 reviews x 2 hours = 21,500 hours.
Total Annual Cost to Respondents: Postage and stationery costs associated with the various requirements contained in Section 76.206 are estimated to be $5 per system. 5,375 systems x $5 = $26,875.
Needs and Uses: On December 12, 1991, the Commission adopted Report and Order, FCC 91-403, MM Docket No. 91-168, in the matter of codification of the Commission's political programming policies. The Report and Order adopted affirmative disclosure requirements obliging cable television systems to disclose and make available to candidates all discount privileges available to commercial advertisers, including the lowest unit charge for the different classes of time sold. The Report and Order added Section 76.206 to the Commission's rules. Section 76.206 requires cable television systems to disclose any station practices offered to commercial advertisers that enhance the value of advertising spots and different classes of time (immediately preemptible, preemptible with notice, fixed, fire sale, and make good). It also requires cable systems to calculate the lowest unit charge. The disclosure requirements contained in Section 76.206 serve to ensure that cable system licensees provide timely, accurate and complete information on rates and sales practices to legally qualified candidates for public office who are interested in origination cablecasting.
OMB Approval Number: 3060-0313.
Title: Section 76.207, Political file.
Type of Review: Extension of a currently approved collection.
Respondents: Business and other for-profit entities.
Number of Respondents: 5,375.
Estimated Time Per Response: .5-10 hours.
Total Annual Burden to Respondents: 5,375 hours, calculated as follows: There are approximately 10,750 cable systems in the nation. We estimate that in any given year, candidates for public office will be interested in seeking origination cablecast time from approximately half of these systems (5,375). We estimate these systems will be required to keep a political file for an average of 4 candidates at an estimated recordkeeping burden of .25 hours per candidate. 5,375 systems x 4 candidates x .25 hours = 5,375 hours.

Total Annual Cost to Respondents: $10,750. The photocopying and stationery costs associated with this recordkeeping requirement are estimated to be $2 per system. 5,375 systems x $2 = $10,750.

Needs and Uses: Section 76.207 requires every cable television system to keep and permit public inspection of a complete record (political file) of all requests for cablecast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the system of such requests, and the charges made, if any, if the request is granted. The disposition includes the schedule of time purchased, when the spots actually aired, the rates charged, and the classes of time purchased. Also, when free time is provided for use by or on behalf of candidates, a record of the free time provided is to be placed in the political file. The data are used by the public in order to assess the amount of money expended and time allotted to a political candidate to ensure that equal access was afforded to other legally qualified candidates for public office.

OMB Approval Number: 3060–0595.

Title: FCC Form 1210 Updating Maximum Permitted Rates for Regulated Services and Equipment.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; State, local and tribal governments.

Number of Respondents: 6,000 (4,000 filings and 2,000 LFA reviews)

Estimated Time Per Response: 2-15 hours.

Total Annual Burden to Respondents: 54,000 hours, calculated as follows: We estimate that approximately 4,000 FCC Form 1210s will be filed in the next year, approximately 50% with the Commission and 50% with LFAs. The average burden for cable operators to complete FCC Form 1210 is estimated to be 15 hours. The average burden for local franchise authorities to review Form 1210 filings is estimated to be 10 hours per filing. Cable operators are estimated to use in-house staff to complete approximately 50% of the filings. When using outside assistance to complete to other 50%, we estimate operators undergo a burden of 2 hours per filing to coordinate information with the outside assistance. 2,000 (50% of 4,000) filings completed with in-house staff x 15 hours per filing = 30,000 hours. 2,000 (50% of 4,000) filings coordinated with outside assistance x 2 hours per filing = 4,000 hours. 2,000 filings reviewed by LFAs at an average burden of 10 hours per filing = 2,000 x 10 hours per filing = 20,000 hours.

Total Annual Cost to all Respondents: $3,008,000 calculated as follows: Printing, photocopying and postage costs incurred by respondents are estimated to be $2 per filing. 4,000 annual filings x $2 per filing = $8,000. We estimate cable operators that use legal and accounting contractors will pay for services at an average rate of $100/hour. 2,000 filings x 15 hours per filing x $100/hour = $3,000,000.

Needs and Uses: FCC Form 1210 is used by cable operators to file for adjustments in maximum permitted rates for regulated services to reflect external costs. Regulated cable operators submit this form to local franchising authorities or the Commission (in situations where the FCC has assumed jurisdiction). It is also filed with the Commission when responding to a complaint filed with the Commission concerning cable programming service rates and associated equipment. The filings are used by the Commission and local franchising authorities ("LFAs") to adjudicate permitted rates for regulated cable services and equipment, for the addition of new programming tiers and to account for the addition and deletion of channels, and for the allowance for pass throughs of external costs and costs due to inflation.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–3774 Filed 2–13–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 97–231; FCC 98–17]

Application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Memorandum Opinion and Order (Order) in CC Docket No. 97–231 concludes that BellSouth Corporation, *et al.* (BellSouth) has not satisfied the requirements of section 271(c)(1) of the Communications Act of 1934, as amended (Act). The Commission therefore denies, pursuant to section 271(d)(3), BellSouth's application to provide in-region interLATA services in Louisiana. The Order declines to grant BellSouth authority to provide in-region, interLATA services in Louisiana.

EFFECTIVE DATE: February 3, 1998.

FOR FURTHER INFORMATION CONTACT: Linda Kinney, Attorney, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted February 3, 1998, and released February 4, 1998. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW., Room 239, Washington, D.C. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc98–17.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., NW., Washington, D.C. 20036.

SYNOPSIS OF ORDER:

1. On November 6, 1997, BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. (collectively, BellSouth) filed an application for authorization under section 271 of the Act, to provide in-region interLATA services in the State of Louisiana. The Commission recently considered BellSouth's application for entry into the long distance market in South Carolina. Because BellSouth's Louisiana application is materially indistinguishable with respect to two of the checklist items that BellSouth failed to meet in its South Carolina application, the Commission denies BellSouth's application to provide interLATA services in Louisiana.

2. In this Order, the Commission concludes that BellSouth has not demonstrated that it has fully implemented the competitive checklist in section 271(c)(2)(B). In particular, the Commission finds that BellSouth has not met its burden of showing that it meets the competitive checklist with respect to: (1) access to its operations support systems, and (2) resale of contract service arrangements. The Commission therefore denies, pursuant to section 271(d)(3), BellSouth's application to provide in-region interLATA services in Louisiana.

3. *Compliance with the Competitive Checklist in Section 271(c)(2)(B).* For the reasons set forth below, the Commission concludes that BellSouth has not yet demonstrated by a preponderance of the evidence that it has fully implemented the competitive checklist.

4. *Operations Support Systems.* With respect to the first checklist item addressed, the Commission concludes,

as it did in its Order denying BellSouth's South Carolina application, that BellSouth has failed to demonstrate by a preponderance of the evidence that it provides nondiscriminatory access to all of the operations support systems (OSS) functions provided to competing carriers, as required by the competitive checklist. BellSouth has deployed the same operations support systems throughout its nine-state region, and, in its application, BellSouth relies on data from its entire region to support its assertion that it is in compliance with the requirements of section 271. The Commission reviewed BellSouth's OSS in when it reviewed BellSouth's South Carolina application and found that its OSS were deficient. The Commission uses the determinations it made about BellSouth's operations support systems in its *BellSouth South Carolina Order*, 63 FR 78 (January 2, 1998), as a starting point. In this Order, the Commission reviews the new information BellSouth has provided and finds that BellSouth has not remedied the deficiencies in its OSS that the Commission identified in its *BellSouth South Carolina Order*.

5. In this Order, the Commission finds that BellSouth fails to offer nondiscriminatory access to its OSS functions for the pre-ordering, ordering, and provisioning of resale services. Based on the evidence in the record, the Commission made the following conclusions. First, the Commission concludes that, as in its South Carolina application, BellSouth has failed to demonstrate that it is offering competing carriers the ability to order services for resale on a nondiscriminatory basis, *i.e.*, within substantially the same time and manner as BellSouth provides the service to itself. Second, the Commission finds that, as in its South Carolina application, BellSouth has failed to demonstrate that a competing carrier is able to provide service to its customers, using BellSouth's resold service, in substantially the same time and manner that BellSouth provides service to its own retail customers. Third, the Commission concludes that, as in its South Carolina application, BellSouth's pre-ordering system does not provide competing carriers with equivalent access to operational support systems for pre-ordering.

6. *Resale of Contract Service Arrangements.* The Commission also addresses the checklist item that requires incumbent LECs to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail, and not to prohibit, or to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service. As in its *BellSouth South Carolina Order*, the Commission concludes that BellSouth does not meet this checklist item because it refuses to offer contract service arrangements, which are contractual agreements made between a carrier and a specific, typically high-volume, customer, at a wholesale discount.

7. In this Order, the Commission affirms its conclusion in the *BellSouth South Carolina Order* that neither incumbent LECs nor states may create a general exemption from the requirement that incumbent LECs offer their promotional or discounted offerings, including contract service arrangements, at a wholesale discount. The Commission concludes that BellSouth's argument that contract service arrangements should not be further discounted because they have already been discounted from the tariff rate has been previously considered and rejected by the Commission. Finally, the Commission concludes that BellSouth's refusal to offer contract service arrangements at a wholesale discount is not a local pricing matter within the exclusive jurisdiction of the state commission.

8. *Compliance with Section 271(c)(1)(A).* The Commission also concludes that the Act excludes only cellular providers, not Personal Communications Services (PCS) providers, from being considered "facilities-based competitors" for purposes of satisfying section 271(c)(1)(A). Thus, the Commission finds that section 271 does not preclude the Commission from considering, in future applications, the presence of a PCS provider in a particular state as a "facilities-based competitor." The Commission does not address, however, whether the specific PCS carriers on which BellSouth relies in its Louisiana application satisfy section 271(c)(1)(A).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–3772 Filed 2–13–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Approved by Office of Management and Budget

February 10, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995, 44 USC 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Jerry Cowden, Federal Communications Commission, (202) 418–0447.

Federal Communications Commission

OMB Control No.: 3060–0291.
Expiration Date:
Title: 90.477 Interconnected systems.
Form Number: Not applicable.
Estimated annual burden: 1,000 hours; 1 hour per response; 1,000 respondents.
Description: This section allows private land mobile radio licensees to use common point telephone interconnection with telephone service costs distributed on a non-profit cost sharing basis. Records of such arrangements must be placed in the licensee's station records and made available to participants in the sharing arrangement and the Commission upon request.

OMB Control No.: 3060–0224.
Expiration Date:
Title: 90.151 Requests for waiver.
Form Number: Not applicable.
Estimated Annual Burden: 120 hours; 2 hours per respondent; 60 respondents.
Description: The Commission has the responsibility to establish and administer rules for the orderly and efficient use of the radio spectrum. Circumstances do arise, however, where general rules cannot properly address the needs of the public, and waiver of those rules is desirable. In order to enable the Commission to make an informed decision on the desirability of such waivers, applicants are required to submit information justifying why a waiver is needed.

OMB Control No.: 3060–0226.
Expiration Date:
Title: 90.135(d) & (e) Modification of license.
Form Number: Not applicable.
Estimated Annual Burden: 276 hours; 0.167 hour per respondent; 1,656 respondents.
Description: These rule paragraphs require licensees who have changed their name, address, number and location of station control points,

number of mobile units, interconnection status, and/or sharing status to notify the Commission. This information collection applies only to licensees who elect to inform the Commission by letter of these changes. Licensees may also use forms to notify us of these changes. Notification is necessary to maintain an accurate database that is used by both the Commission, frequency coordinators and the public in corresponding with licensees regarding interference resolution and licensing matters.

OMB Control No.: 3060–0281.
Expiration Date:
Title: 90.651 Supplemental reports required of licensees authorized under this subpart.
Form Number: Not applicable.
Estimated Annual Burden: 2,724 hours; 0.166 hour per respondent; 16,408 respondents.
Description: The radio facilities addressed in this subpart of the rules are allocated on and governed by regulations designed to award facilities on a need basis determined by the number of mobile units served by each base station. This is necessary to avoid frequency hoarding by applicants. This rule section requires licensees to report the actual number of mobile units served. The various subparagraphs of this rule apply to different categories of licensees and define exactly what reports are required of each category.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–3831 Filed 2–13–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

February 10, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0810.
Expiration Date: 05/31/98.
Title: Procedures for Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended.
Form No.: N/A.
Respondents: Business or other for-profit.
Estimated Annual Burden: 35 respondents; 47.14 hours per response (avg.); 1650 total annual burden hours for all collections.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: On occasion.
Description: The Communications Act of 1934, as amended (the Act), mandates that, after the date the Commission's rules implementing section 254 of the Act, only eligible telecommunications carriers may receive universal service support. The Commission's rules implementing section 254 of the Act take effect on January 1, 1998. Under the Act, state commissions must designate telecommunications carriers as eligible. On December 1, 1997 Public Law 105–125 added subsection (e)(6) to section 214(e) of the Act. New section 214(e)(6) states that a telecommunications carriers that is not subject to the jurisdiction of a state may request that the Commission determine whether it is eligible. Specifically, section 214(e)(6) states that "[i]n the case of a common carrier * * * that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission. * * *" The Commission must evaluate whether such telecommunications carriers, almost all of which are expected to be companies owned by Native American tribes, meet the eligibility criteria set forth in the Act. a. *Petition for Designation as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6).* Carriers seeking designation from the Commission pursuant to section 214(e)(6) must demonstrate that they fulfill the requirements of section 214(e)(1). Carriers seeking designation from the Commission early in 1998 are instructed to provide specific information. See Public Notice, FCC 97–219, released 12/29/97. (No. of respondents: 25; hours per response: 58; total annual hours: 1450 hours). b. *Submission of Written Comments by Interested Third Parties.* Oppositions or comments on petitions are due 10 days after a Public Notice announcing receipt of a petition is released. Reply comments are due 7 days after comments are due. (No. of respondents: 10; hours per response: 20 hours; total annual burden: 200 hours). The Commission will use the information collected to determine whether the telecommunications carriers providing the data are eligible to receive universal service support.
Obligation to respond: Mandatory.
OMB Control No.: 3060–0815.
Expiration Date: 07/31/98.
Title: North American Numbering Plan Funding Worksheet.
Form No.: FCC Form 496.
Respondents: Business or other for-profit.
Estimated Annual Burden: 3700 respondents; .50 hours per response (avg.); 1850 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: On occasion.
Description: Pursuant to Congress' directive in the Telecommunications Act of 1996 that the Commission establish an independent entity to administer telecommunications numbering, the Commission determined on July 13, 1995, that the costs associated with administering numbering duties should be based on each telecommunications carrier's gross revenues less payments made to other carriers. We authorize the North American Numbering Plan Administrator's (NANPA) billing and collections agent to send FCC Form 496 requesting that telecommunications carriers provide information regarding their yearly gross revenues less payments made to other telecommunications carriers. The Worksheet, FCC Form 496, seeks financial data, and payment from telecommunications carriers to fund NANPA. All common carriers providing telecommunications service between U.S. and foreign points must file this worksheet. The Commission and the NANPA will use the information collected in the worksheet to determine the total revenue received from telecommunications carriers in order to arrive at an amount that each carrier must pay to fund the NANPA.
OMB Control No.: 3060–0760.
Expiration Date: 07/31/98.
Title: Access Charge Reform, CC Docket No. 96–262 (First Report and Order); Second Order on Reconsideration and Memorandum Opinion and Order, and Third Report and Order.
Form No.: N/A.
Respondents: Business or other for-profit.
Estimated Annual Burden: 16 respondents; 112,945 hours per response (avg.); 1,807,120 total annual burden hours for all collections.

Incremental burdens associated with collections approved by OMB on 1/29/98 are listed below.

Estimated Annual Reporting and Recordkeeping Cost Burden: $33,000.

Frequency of Response: On occasion.

Description: In the Order Designating Issues for Investigation and Order on Reconsideration (Order), CC Docket No. 97–250, Tariffs Implementing Access Charge Reform, the FCC's Common Carrier Bureau adopts that the price cap incumbent local exchange carriers (LECs) must file supplementary information to support their tariff filings implementing access charge reform. In all instances described below, the price cap LEC has failed to provide adequate support for the position taken in its tariff filing. The information collections are as follows:

a. *Primary and Non-Primary Residential Line Definitions:* BellSouth, SNET, and SWBT must explain fully their definitions of primary and non-primary residential lines, including any assumptions that went into these definitions, and submit modified, expanded, or clarified definitions as necessary. These price cap LECs should make clear what lines these definitions include and the manner in which they would be identified, such as by account number(s), billing number(s), customer name, location, or by whatever sorting method the LEC chose to use. (No. of respondents: 3; hours per response (avg.): 2; total annual burden: 6 hours).

b. *Identification of Primary and Non-Primary lines:* The Bureau requires price cap LECs to identify the number of lines in each of the following categories: (1) primary residential lines; (2) single-line business lines; (3) non-primary residential lines; and (4) BRI ISDN lines. Each price cap LEC's direct case must delineate what, how, and in which order data were sorted and used in accordance with its definition to arrive at the primary and non-primary residential line count totals submitted pursuant to this order. The Bureau also directs each price cap LEC to include in its direct case an explanation of why its definition is reasonable. (No. of respondents: 16; hours per response (avg.): 16 hours; total annual burden: 256 hours).

c. *Inward-Only Line PICC Demand:* The Bureau requires Ameritech and CBT to include inward-only lines in their SLC and PICC counts. Ameritech and CBT must include in their direct cases an explanation as to why their practices with respect to determining PICC demand should be considered reasonable and consistent with the *First Report and Order*. U S West must include in its direct case its rationale as to why it is reasonable to exclude inward-only lines from the development of common line rates. Further, U S West must identify in its direct case the portion, if any, of the costs of these lines that is assigned to the interstate jurisdiction. If a portion of these costs is assigned to the interstate jurisdiction, U S West must include in its direct case an explanation of how these costs are recovered in interstate rates, and how U S West's treatment of these lines in computing common line rates is consistent with the Commission's Part 69 rules. If none of these costs is assigned to the interstate jurisdiction, U S West must explain how this is consistent with the Commission's Part 36 rules. The Bureau also directs Ameritech to include in its direct case an explanation as to why its practice of counting each PRI ISDN service application as five SLCs, but only one PICC is reasonable and consistent with the *First Report and Order*. In addition, the Bureau directs Ameritech, CBT, and U S West to submit with their direct cases their recalculated line counts. (No. of respondents: 3; hours per response (avg.): 2 hours; total annual burden: 6 hours).

d. *Maximum CCL Rate Reduction Calculation:* The Bureau directs Bell Atlantic, NYNEX, GTE, SWBT, the Sprint LTCs, and U S West to provide a recalculation of their maximum common line revenues. (No. of respondents: 6; hours per response (avg.): 24 hours; total annual burden: 144 hours).

e. *Method for Calculating Exogenous Cost Changes for Line Ports and End Office Trunk Ports:* Each LEC must list all exogenous adjustments it has made since it entered price cap regulation that had the purpose of reallocating costs among baskets, categories, rate elements, or between price cap and non price cap services. LECs should list the method used in each instance. (No. of respondents: 16; hours per response (avg.): 24 hours; total annual burden: 384 hours).

f. *Attribution of tandem switching revenue requirement to SS7 costs:* The Bureau requires Bell Atlantic and U S West to provide cost studies justifying the amount that was removed from the transport interconnection charge (TIC) as SS7 costs. The Bureau also requires detailed information regarding any additional SS7 costs that were incorporated into the TIC during the period January 1, 1994 to December 31, 1997. Furthermore, Bell Atlantic and U S West should provide detailed information regarding any true-up to SS7 costs due to exogenous cost adjustments in the trunking basket. (No. of respondents: 2; hours per response (avg.): 8 hours; total annual burden: 16 hours).

g. *Removal of COE maintenance and marketing expenses from the TIC:* Price cap LECs must provide supporting documentation justifying the amount that was removed from the TIC as COE maintenance and marketing expenses. In particular, the price cap LECs must provide detailed information substantiating the amount of COE maintenance and marketing costs that were removed from the trunking basket, and the portion of that amount that was removed from the TIC. Price cap LECs should explain their theory for determining the portion removed from the TIC. (No. of respondents: 16; hours per response (avg.): 8 hours; total annual burden: 128 hours).

h. *Recalculation of Removal of TIC:* PacBell and certain of the United, Frontier, and GTE operating companies must recalculate the removal of TIC costs and the facilities-based portion of the TIC. (No. of respondents: 4; hours per response (avg.): 6 hours; total annual burden: 24 hours).

i. *Universal Service Fund (USF) obligation allocation:* Price cap LECs must submit explanations detailing why the methodology each has used to allocate different amounts of the universal service fund obligation to individual price cap baskets more accurately reflects the distribution of interstate end-user revenues across baskets. As part of this explanation, each price cap LEC must explain in detail the methodology it uses and any assumptions it makes to determine these allocations. Price cap LECs must report the interstate end-user revenues they derived from each basket during the accounting period they used to calculate their universal service contribution. If the proportions of the USF contributions that LECs allocate for recovery from the common line, trunking, and interexchange baskets differ from the proportions of the total interstate end-user revenues they report for these baskets, they must explain the reason for this difference. Also, Citizens must justify allocating a portion of its USF contribution to the traffic sensitive basket, given the Commission's finding in the Access Reform Order that none of the service categories in this basket generate, interstate end-user revenues. (No. of respondents: 18; hours per response (avg.): 7.3 hours; total annual burden: 132 hours). Our authority to collect this information is provided under 47 U.S.C. 201–204 and 303(r). The information collected under this Order would be submitted to the FCC by incumbent LECs for use in determining

whether the incumbent LEC properly calculated its tariffed rates in its December 17, 1997 tariff filing. Obligation to comply: Mandatory.

OMB Control No.: 3060–0646.

Expiration Date: 01/31/2001.

Title: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers—CC Docket No. 94–129.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 500 respondents; 2 hours per response (avg.); 1000 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: In Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94–129, Report and Order, the Commission adopted consumer protection mechanisms that were designed to curb widespread instances of slamming and associated deceptive or misleading marketing practices by many long distance carriers. In response to six petitions for reconsideration of the 1995 Report and Order, the Commission amended its rules in three respects. First, Section 64.1150(g) was modified to clarify that interexchange carriers using letters of agency must fully translate their LOAs into the same language(s) as their associated promotional materials or oral descriptions and instructions. Second Section 1150(e)(4) was modified to incorporate the terms interLATA and intraLATA, as well as interstate and intrastate, in order to remove all possible confusion or uncertainty about the scope of our rules, which are generally relevant to all jurisdictions. Third, Section 64.1100(a) was modified to clarify that IXCs must confirm orders for long distance service generated by telemarketing using only one of the four verification options. This information will be used to inform long distance carriers of their additional and continuing obligations to verify all orders for long distance service generated by telemarketing in accordance with the Commission's verification rules. The information received from the current collection was used to identify and strengthen the areas in which increased protection and/or clarification of our verification rules were needed. Obligation to comply: mandatory.

OMB Control No.: 3060–0786.

Expiration Date: 01/31/2001.

Title: Petitions for LATA Association Changes by Independent Telephone Companies.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 20 respondents; 6 hours per response (avg.); 120 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: In the Memorandum Opinion and Order issued in CC Docket 97–158, the Commission pursuant to the provisions of the Communications Act of 1934, as amended requests that independent telephone companies (ITC) and Bell Operating Companies (BOC) provide certain information to the Commission regarding ITC requests for changes in local access and transport area (LATA) association and modification of LATA boundaries to permit the change in association. The Commission has provided voluntary guidelines to assist ITCs in filing petitions for changes in LATA association and connected modification of LATA boundaries. The guidelines ask that each LATA association change request include the following information: (1) type of request; (2) exchange information; (3) number of access lines or customers; (4) public interest statement; (5) a map showing exchanges and LATA boundaries involved; (6) a list of extended local calling service routes between the independent exchange and the LATA with which it is currently associated; and (7) a BOC supplement requesting a modification of the LATA boundary. The requested information is used by the Commission to determine whether the need for the proposed changes in LATA association outweighs the risk of potential anticompetitive effects, and thus whether requests for changes in LATA association and connected modifications of LATA boundaries should be granted

OMB Control No.: 3060–0808.

Expiration Date: 02/28/2001.

Title: Amendments to Uniform System of Accounts for Interconnection—CC Docket No. 97–212 (Proposed Rule).

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 68 respondents; 320 hours per response (avg.); 21,760 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: In the NPRM issued in CC Docket No. 97–212, the Commission proposed rules for the accounting treatment of transactions related to interconnection and shared infrastructure. Specifically, the Commission proposed new part 32 accounts and subsidiary recordkeeping requirements to record the revenues and expenses related to providing and obtaining interconnection. The following are the new proposed accounts: Account 5071, Interconnection and access to unbundled network elements; Account 6551, interconnection and access; Account 5072, Transport and termination revenue; Account 6552, transport and termination expense; and Account 6553, Purchased telecommunications service expense. (No. of respondents: 68; hours per response (avg.): 40 hours; total annual burden: 2720). The Commission also proposed several subsidiary account records: Subsidiary recordkeeping categories that will enable carriers to identify the revenue from and amounts paid for interconnection and each unbundled network element; Subsidiary records categories so that the amounts attributable to transport and termination may be separately recorded; Subsidiary record categories for carriers to report the amounts contained in existing part 32 revenue accounts that result from the wholesale of telecommunications service pursuant to Section 251(c)(4); Subsidiary accounting records to record the costs associated with providing interconnection. We propose that the total amount of costs to be recorded in the subsidiary records be based on the revenues received for providing interconnection and that the apportionment of the costs should be consistent with cost studies underlying the charges for these services and elements. (No. of respondents: 68; hours per response (avg.): 120 hours; total annual burden: 8160 hours). The Commission proposes to require ILEC to construct a cost study reflecting the agreement upon which to base its assignment of costs to the subsidiary records. Any action of the state that alters the underlying cost study should be reflected in the underlying cost study upon which the ILEC bases the reclassification of costs to the subsidiary records. ILECs must maintain a sufficiently detailed audit trial of the assignments of costs to permit audits of the method of assignment and amounts assigned to the subsidiary records. (No. of respondents: 68; hours per response (avg.): 160 hours; total annual burden:

10,880 hours). The proposed information collection requirements will provide the necessary information to enable this Commission to fulfill its regulatory responsibilities. Obligation to comply with the requirements, if adopted, is mandatory

OMB Control No.: 3060–0774.

Expiration Date: 08/31/98.

Title: Federal-State Joint Board on Universal Service, CC Docket No. 96–45 (47 CFR 36.611–36.612 and 47 CFR Part 54).

Form No.: N/A.

Respondents: Business or other for-profit entities; individuals or households, state.

Estimated Annual Burden: 5,565,451 respondents; .32 hours per response (avg.); 1,801,570 hours total annual burden for all collections. See estimates provided below for burden for requirements approved by OMB on 2/6/98.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: On December 30, 1997, the Commission released the *Fourth Order on Reconsideration* in Federal-Joint Board on Universal Service, CC Docket 96–45, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, CC Docket Nos. 96–262, 94–1, 91–213, 95–72 (Order). Following publication of the Commission's May 8th *Report and Order* on Universal Service, the Commission received significant comment from the public regarding universal service in the form of petitions for reconsideration, oppositions to those petitions, and comments on those petitions. In the Order, the Commission responded to various issues raised in the petitions for reconsideration and/or clarification of the Commission's May 8th *Report and Order* on Universal Service. Several of the rules adopted in the Order reduce existing reporting requirements or impose new reporting requirements.

a. *47 CFR §54.201(a)(2)—Submission of eligibility criteria.* Pursuant to section 214(e), a carrier must be designated an eligible telecommunications carrier by a state commission before receiving universal service support in accordance with section 254. A state commission that is unable to designate as an eligible telecommunications carrier, by January 1, 1998, a carrier that sought such designation before January 1, 1998, may, once it has designated such carrier, file with the Commission a petition for waiver of paragraph (a)(1) of this section requesting that the carrier receive universal service support retroactive to January 1, 1998. The state commission must demonstrate in its petition that exceptional circumstances prevented it from designating such carrier as an eligible telecommunications carrier by January 1, 1998. (No. of respondents: 100; avg. hours per response: 4 hours; total annual burden: 400 hours).

b. *Demonstration of Reasonable Steps.* Carriers also are encouraged to file with the Commission information demonstrating that they took reasonable steps to be designated as eligible telecommunications carriers by January 1, 1998. (No. of respondents: 50; avg. hours per response: 1 hour; total annual burden: 50 hours).

c. *47 CFR § 54.519—State telecommunications networks.* State telecommunications networks that secure discounts on eligible services on behalf of eligible schools and libraries must maintain records listing eligible schools and libraries, showing the basis on which eligibility determinations were made, and demonstrating the discount amount to which each eligible school and library is entitled. The state networks must direct the eligible schools and libraries to pay the discounted price for services and must comply with the competitive bid requirements established in 47 CFR § 54.504. (No. of respondents: 50; avg. hours per response: 4 hours; total annual burden: 200 hours).

d. *Streamlined application process for schools and libraries and for rural health care providers.* An eligible school or library will not be required to undergo the competitive bid process outlined in 47 CFR § 54.504(a) for a minor modification to a universal service contract as defined in 47 CFR § 54.500(h). An eligible school or library making a minor modification to a contract must submit an FCC Form 471 indicating the value of the proposed contract modification. An eligible school or library will not be required to undergo the competitive bid process outlined in 47 CFR § 54.504(a) if the eligible entity elects to order services from a master contract negotiated by a third party as defined in 47 CFR § 54.500(g). An eligible rural health care provider shall not be required to undergo the competitive bid process outlined in § 54.603 for a minor modification to a universal service contract. Such health care provider, however, shall be required to file an FCC Form 466 indicating the value of the proposed contract modification. An eligible rural health care provider shall not be required to undergo the competitive bid process outlined in 47 CFR § 54.603 if the eligible entity elects to order services from a master contract negotiated by a third party. (See Order, Section J, pps. 130–136). (No. of respondents: 16,000; avg. hours per response: 1 hour; total annual burden: 16,000 hours).

e. *47 CFR § 54.604—Existing contracts.* Rural health care providers bound by existing contracts for services shall not be required to comply with the competitive bid process outlined in 47 CFR § 54.603. (This rule reduces the total annual burden of Section 54.603(b)(1) by 1,000 burden hours).

f. *Obligation to notify underlying carrier.* Systems integrators that derive *de minimis* amounts of revenue from the resale of telecommunications and small entities that qualify for the *de minimis* exemption are not required to contribute to universal service. They must, however, notify their underlying carriers that they constitute end users for universal service purposes. (No. of respondents: 1700; avg. hours per response: 1 hour; total annual burden: 1,700 hours). All the requirements contained herein are necessary to implement the congressional mandate for universal service. These reporting requirements are necessary to calculate the contribution amount owed by each telecommunications carrier or to verify that particular carriers and other respondents are eligible to receive universal service support. Obligation to comply: Mandatory.

OMB Control No.: 3060–0785.

Expiration Date: 08/31/98.

Title: Changes to the Board of Directors of the National Exchange Carrier Association and the Federal-State Joint Board on Universal Service, CC Docket Nos. 97–21 and 96–45.

Form No.: FCC Form 457.

Respondents: Business or other for-profit entities.

Estimated Annual Burden: 5,000 respondents; 11.3 hours per response (avg.); 55,650 hours total annual burden all requirements.

Estimated Annual Reporting and Recordkeeping Cost Burden: $4,903,000.

Frequency of Response: On occasion.

Description: On December 30, 1997, the Commission released the *Fourth Order on Reconsideration* in Federal-Joint Board on Universal Service, CC Docket 96–45, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, CC Docket Nos. 96–262, 94–1, 91–213, 95–72 (Order). Following publication of the Commission's May 8th *Report and Order* on Universal Service, the Commission received significant

comment from the public regarding universal service in the form of petitions for reconsideration, oppositions to those petitions, and comments on those petitions. In the Order, the Commission responded to various issues raised in the petitions for reconsideration and/or clarification of the Commission's May 8th *Report and Order* on Universal Service. The Commission reconsidered certain aspects of the Universal Service Order and exempted additional entities from universal service contribution and reporting requirements. Broadcasters and schools, colleges, universities, rural health care providers, and systems integrators that derive *de minimis* amounts of revenue from the resale of telecommunications will not be required to contribute to universal service. See 47 CFR Section 54.703. Entities whose annual contribution would be less than $10,000 will not be required to contribute to universal service or comply with universal service reporting requirements. See 47 CFR Section 54.705. Obligation to comply: Mandatory.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–3989 Filed 2–13–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Draft American Indian and Alaska Native Policy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice, with request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has developed a draft American Indian and Alaska Native Policy that reflects the Agency's commitment to a government-to-government relationship. The draft policy reinforces the importance of partnership between and among all levels of government on issues related to disaster preparedness, mitigation, response and recovery. Contained within this draft policy are guiding principles for FEMA's interactions with Tribal governments.

DATES: We invite your comments on this policy and are extending the comment period to March 15, 1998.

ADDRESSES: Please send written comments to the Office of Policy and Regional Operations, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472. Comments may also be submitted via facsimile, (202) 646–4215, or by e-mail to Tribal.Liaison@fema.gov.

FOR FURTHER INFORMATION CONTACT: Rachael A. Rowland, Intergovernmental Affairs, Office of Policy and Regional Operations, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2889.

SUPPLEMENTARY INFORMATION: In order to provide more time for comments on this draft policy we are republishing this notice, which first appeared in the **Federal Register** on November 17, 1997, and we are extending the comment period to March 15, 1998. The draft FEMA American Indian and Alaska Native Policy follows:

The United States has historically bonded together during times of disaster to provide assistance to those who have suffered the losses of loved ones or personal belongings. The guiding principle of the Federal Emergency Management Agency is "people helping people." It is in this spirit that the Federal Emergency Management Agency declares its policy towards American Indians and Alaska Natives.

The American Indian and Alaska Native tribal governments hold a unique status in the United States with the rights and benefits of sovereign nations. This policy outlines the principles under which all employees of the Federal Emergency Management Agency are to operate with regard to American Indian and Alaska Native tribal governments. This policy is based on the United States Constitution, Federal treaties, policy, statutes, court decisions, and the ongoing political relationship between Indian tribes and the Federal Government.

In recognition of the historic relationship between the United States, the American Indians and Alaska Native tribal governments, the Federal Emergency Management Agency supports a government-to-government relationship between the Federal Government and American Indian and Alaska Native tribes.

This policy pertains to federally recognized tribes and provides guidance to employees of the Federal Emergency Management Agency for issues affecting American Indians and Alaska Natives. This policy does not apply to Federal Emergency Management Agency interactions with State-recognized tribes, Indians, or Alaska Natives who are not members of tribes with respect to matters provided for by Federal statute or regulation.

This partnership is intended to be flexible and dynamic to provide for the evolution of the partnerships between the Federal Emergency Management Agency and American Indian governments. Working relationships between the Federal Emergency Management Agency and the American Indian governments will be generally consistent nationwide; however, they will vary according to the legal basis and management requirements for each relationship.

This policy is adopted pursuant to and consistent with existing law and does not preempt or modify the authorities of the Federal Emergency Management Agency *or* other Federal departments and agencies. Nor does the policy suggest recognition of tribal authority that does not currently exist. However, the Federal Emergency Management Agency need not wait for judicial recognition over emergency management programs when such authority is already supported by law. This policy is for internal management only and shall not be construed to grant or vest any right to any party in respect to any Federal action not otherwise granted or vested by existing law or regulations.

Definitions

Indian Tribe: Any tribe, band, nation, Pueblo, or other organized group or community, including any Alaska Native Village (as defined in, or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)), that is acknowledged by the Federal Government to constitute a tribe with a government-to-government relationship with the United States and eligible for the programs, services, and other relationships established by the United States for Indians because of their status as Indians and tribes.

Tribal Government: The recognized government of an Indian tribe and any affiliated or component Band government of such tribe that has been determined eligible for specific services by Congress or officially recognized by inclusion in 61 Fed. Reg. 58211, November 13, 1996, "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs."

Policy Principles

The following policy statements provide general guidance to Federal Emergency Management Agency

employees for responsibilities associated with interactions with American Indian and Alaska Native governments.

1. The Federal Emergency Management Agency recognizes and commits to a government-to-government relationship with American Indian and Alaska Native tribal governments. The Federal Emergency Management Agency recognizes that the tribal right of self-government flows from the inherent sovereignty of Indian tribes and Indian nations and that Federally recognized tribes have a unique and direct relationship with the Federal Government. The Federal Emergency Management Agency further recognizes the rights of each tribal government to set its own priorities and goals for the welfare of its membership and that the Federal Emergency Management Agency will deal with each tribal government, when appropriate as determined by FEMA, to meet that tribe's needs.

2. The Federal Emergency Management Agency acknowledges the policy commitments of the U.S. Congress and the Chief Executive as precedents. The Federal Emergency Management Agency recognizes House Concurrent Resolution #331, passed in 1988, which declares the policy "To Acknowledge the Contribution of the Iroquois Confederacy of Nations to Reaffirm the Continuing Government-to-Government Relationship between Indian Tribes and the United States Established in the Constitution." In addition, the Federal Emergency Management Agency incorporates the Policy Memorandum of the White House, issued April 29, 1994, herein, as it guides the Executive Departments and Agencies in the "Government-to-Government Relations with Native American Tribal Governments."

3. The Federal Emergency Management Agency acknowledges the trust relationship between the Federal Government and American Indian and Alaska Native tribes as established by specific statutes, treaties, court decisions, executive orders, regulations, and policies. The Federal Emergency Management Agency recognizes its fiduciary relationship and recognizes its trust responsibility. Where appropriate as determined by FEMA, the Federal Emergency Management Agency will consult and work with tribal governments prior to implementing certain actions when developing legislation, regulations, or policies that will affect the sovereignty of tribal governments, their development efforts and their lands and resources.

4. The Federal Emergency Management Agency will, where appropriate as determined by FEMA, consult and work with tribal governments before making decisions or implementing policy, rules or programs that may affect tribes to ensure that tribal rights and concerns are addressed. The Federal Emergency Management Agency recognizes that, as a sovereign government, the tribe is responsible for the welfare and rights of its membership. FEMA will, where appropriate as determined by FEMA, involve Indian tribes and seek tribal input at the appropriate level on policies, rules, programs and issues that may affect a tribe's sovereignty.

5. The Federal Emergency Management Agency will encourage cooperation and partnership among Tribal, State, and local governments to resolve issues of mutual concern relating to emergency management. Effective emergency management requires the cooperation, partnership, and mutual consideration of neighboring governments, whether those governments are neighboring tribes, States, local governments, or Indian nations. Accordingly, the Federal Emergency Management Agency will encourage early communication and partnership among tribes, States, local governments, and Indian nations. This is not intended to lend Federal support to any one party to the jeopardy of the interests of the other. Instead, it recognizes that, in the field of emergency management, problems are often shared and the principle of partnership between equals and neighbors often serves the best interests of both.

6. The Federal Emergency Management Agency will identify and take appropriate steps to remove any impediments that diminish working directly and effectively with tribal governments. The Federal Emergency Management Agency recognizes that there may be legal, procedural, organizational or other impediments that affect its working relationships with Indian tribes. The Federal Emergency Management Agency will apply the requirements of Executive Order 12875 ("Enhancing the Intergovernmental Partnership") to design solutions and tailor Federal programs, when appropriate as determined by FEMA, to address specific or unique needs of tribal communities. The Federal Emergency Management Agency will also use the National Performance Review and government reorganization to implement effective means for direct cooperation with tribal governments on issues that directly affect them.

7. The Federal Emergency Management Agency will work cooperatively with other Federal Departments and agencies, where appropriate as determined by FEMA, to further the goals of this policy. The Federal Emergency Management Agency recognizes the importance of and is fully committed to the fulfillment of interagency partnership and will encourage communication, coordination and cooperation among all governmental agencies to ensure that the rights of tribal governments are fully represented and upheld.

8. The Federal Emergency Management Agency will internalize this policy to the extent possible so that it will be incorporated into ongoing and long-term planning and management processes, as well as day-to-day operations. The Federal Emergency Management Agency will to the extent possible effectively and fully incorporate all of the principles of this policy into all operations and basic tenets of its mission. The Agency will identify the office or individual to coordinate this policy and act as a liaison with American Indian and Alaska Native Tribes in implementing and working with the policy and principles.

9. The effective date of this policy is upon signature by the Federal Emergency Management Agency after coordination and consultation with tribal governments. As Director of the Federal Emergency Management Agency, I am designating Intergovernmental Affairs, Office of Policy and Regional Operations, as the focal point for coordination and implementation of this Interim Policy. I am further appointing a task force of representatives of the various program and support elements of the Federal Emergency Management Agency to define those ways in which the Agency can, when appropriate as determined by FEMA, fulfill the terms of this Interim Policy.

Therefore, as Director of the Federal Emergency Management Agency, I hereby direct all Agency components to implement this policy by incorporating all of the above principles in their planning and management activities, their legislative initiatives, as well as their policy development.

Dated: January 30, 1998.

James L. Witt,

Director.

[FR Doc. 98–3863 Filed 2–13–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1202–DR]

New Mexico; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Mexico, (FEMA–1202-DR), dated January 29, 1998, and related determinations.

EFFECTIVE DATE: February 5, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New Mexico, is hereby amended to include Hazard Mitigation in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 29, 1997:

All counties in the State of New Mexico are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers(CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–3862 Filed 2–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1200–DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA–1200–DR), dated January 15, 1998, and related determinations.

EFFECTIVE DATE: February 4, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Carolina, is hereby amended to include Public Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 15, 1998:

Ashe, Transylvania, and Watauga Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–3861 Filed 2–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

NAME: Board of Visitors for the National Fire Academy.

DATES OF MEETING: March 25–28, 1998.

PLACE: Building J, Room 103, National Emergency Training Center, Emmitsburg, Maryland.

TIME: March 25, 1998, 8:30 a.m.–5:00 p.m.; March 26, 1998, 8:30 a.m.–9:00 p.m.; March 27, 1998, 8:30 a.m.–5:00 p.m.; March 28, 1998, 8:30 a.m.–12 noon.

PROPOSED AGENDA: March 25, 27–28, 1998, Review National Fire Academy Programs. March 26, 1998, Travel to Washington, D.C., to meet with James L. Witt, Director, FEMA, and Carrye B. Brown, U.S. Fire Administrator.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before March 2, 1998.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: February 6, 1998.

Carrye B. Brown,

U.S. Fire Administrator.

[FR Doc. 98–3867 Filed 2–13–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Advisory Committee for the National Urban Search and Rescue Response System

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C. App.), announcement is made of the following committee meeting:

NAME: Advisory Committee for the National Urban Search and Rescue Response System.

DATE OF MEETING: February 27–28, 1998.

PLACE: The Eisenhower Inn and Conference Center, U.S. Business Route 15 South, Gettysburg, PA 17325.

TIME: February 27, 1998: 9:00 a.m.–5:00 p.m.; February 28, 1998: 9:00 a.m.–5:00 p.m.

PROPOSED AGENDA: The committee will be provided with a program update that will address the status of program reviews and ongoing projects, functional training and program support efforts, and budgets for the Urban Search and Rescue Program. The committee will review, discuss, and develop a work plan and establish the priorities for the newly established Working Group functions. Other items for discussion may include documentation, Task Force spending, functional training methodologies, and program strategic planning and budgeting.

The meeting will be open to the public, with approximately 20 seats available on a first-come, first-served basis. All members of the public interested in attending should contact Mark R. Russo, at 202–646–2701.

Minutes of the meeting will be prepared and will be available for public viewing at the Federal

Emergency Management Agency, Operations and Planning Division, Response and Recovery Directorate, 500 C Street, SW, Washington DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Lacy E. Suiter,

Executive Associate Director, Response & Recovery Directorate.

[FR Doc. 98–3866 Filed 2–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Policy Statement on External Auditing Programs of Banks and Savings Associations

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Proposed policy statement; Request for comment.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC) [1] is requesting comments on a proposed Policy Statement on External Auditing Programs of Banks and Savings Associations (Policy Statement) which is intended to provide uniform guidance regarding independent external auditing programs. Because institutions with $500 million or more in total assets must have an annual audit performed by an independent public accountant in accordance with section 36 of the Federal Deposit Insurance Act (FDI Act), as implemented by 12 CFR part 363, this policy would apply only to institutions below that threshold that are not otherwise subject to audit requirements.

The Policy Statement expresses the banking agencies' belief that a well-planned external audit program, combined with a strong internal audit function, increases the ability of an institution to detect and correct any serious problems that exist. In this regard, the proposed guidance encourages each institution to adopt an external auditing program that includes an annual audit of its financial statements by an independent public accountant. If an institution's board of directors or audit committee determines that an audit is not appropriate for the institution, the proposal provides two alternative approaches for consideration. The alternatives, which should also be performed by an independent public accountant, consist of a report on the institution's balance sheet or an attestation report on internal control over specified schedules of its regulatory reports.

The proposed Policy Statement also encourages institutions to establish an audit committee consisting entirely of outside directors, if practicable.

DATES: Comments must be received by April 20, 1998.

ADDRESSES: Comments should be directed to Joe M. Cleaver, Executive Secretary, Federal Financial Institutions Examination Council, 2100 Pennsylvania Avenue, NW, Suite 200, Washington, DC 20037 (Fax number: (202) 634–6556). Comments will be available for public inspection during regular business hours at the above address. Appointments to inspect comments are encouraged and can be arranged by calling the FFIEC at (202) 634–6526.

FOR FURTHER INFORMATION CONTACT:

FDIC: Doris L. Marsh, Examination Specialist, Division of Supervision, (202) 898–8905, or A. Ann Johnson, Counsel, Legal Division, (202) 898–3573, FDIC, 550 17th Street, N.W., Washington, DC 20429.

FRB: Charles H. Holm, Project Manager, (202) 452–3502, or Arthur Lindo, Supervisory Financial Analyst, (202) 452–2695, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

OCC: Thomas Rees, Senior Accountant, Chief Accountant's office, Core Policy Division, (202) 874–5411, or Bill Morris, National Bank Examiner, Core Policy Division, (202) 874–4915, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, DC 20219.

OTS: Timothy J. Stier, Chief Accountant, Accounting Policy Division, (202) 906–5699, or Christine A. Smith, Policy Analyst, Accounting Policy Division, (202) 906–5740, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

An institution's internal auditing and external auditing programs are critical to its safety and soundness. When an institution lacks an internal auditing program or has weaknesses in an existing program, examiners often encourage the institution to obtain an independent external audit. Accordingly, many institutions now supplement their internal auditing programs by obtaining independent external audits, either voluntarily or as a result of the requirements of section 36 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831m) and its implementing regulation, 12 CFR part 363, the Securities and Exchange Act of 1934 (15 U.S.C. 78a), or the Federal Reserve bank holding company reporting requirements in the FR-Y–6 Annual Report of Bank Holding Companies. However, a number of institutions, particularly smaller institutions, do not have an exter audit for various reasons.

Because the banking agencies believe that an independent external audit provides reasonable assurance that an institution's financial statements are prepared in accordance with generally accepted accounting principles (GAAP), the banking agencies encourage all institutions to obtain external audits. In an effort to provide more explicit guidance to institutions regarding external audits, the FFIEC is proposing to approve a uniform Policy Statement. Upon FFIEC approval, the FFIEC would recommend to the banking agencies that they individually adopt the policy. This proposal is generally consistent with the individual policies of the banking agencies.

Although some of the banking agencies have provided guidance on external audits to their supervised institutions, a uniform policy does not exist. For example, the OCC discusses its policies with regard to independent external audits for national banks in the Comptroller's Handbook for National Banks, Section 102, Internal and External Audits, and the Comptroller's Manual for Corporate Activities. The FDIC adopted similar guidance in its Policy Statement Regarding Independent External Auditing Programs of State Nonmember Banks on November 16, 1988, as published on November 28, 1988 (53 FR 47871), and amended on June 24, 1996, (61 FR 32438). The OTS's policy on independent external audits is discussed in the Thrift Activities Regulatory Handbook, Section 350, Independent Audits. The FRB sets forth its policy on external audits in the FR-Y–6'Annual Report of Bank Holding Companies and Section 1010, "External Audits," of the Commercial Bank Examination Manual.

II. The Policy Statement

The following paragraphs describe the principal provisions of the proposed Policy Statement.

[1] The FFIEC consists of representatives from the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS) (referred to as the "banking agencies"), and the National Credit Union Administration. However, this guidance is not directed to credit unions.

Board of Directors' Responsibilities

External Auditing Program

This section of the proposed Policy Statement expresses the banking agencies' belief that a well-planned external auditing program combined with a strong internal auditing function increases the ability of an institution to detect and correct any potentially serious problems. This section also emphasizes the importance to the institution's board of directors and management of establishing an effective internal control process to provide reasonable assurance that the institution achieves its objectives. The banking agencies believe that the board of directors should consider an external auditing program performed by an independent public accountant to be conducive to the safe and sound operation of the institution.

Audit Committee

This section encourages institutions to establish an audit committee consisting entirely of outside directors, if practicable. Among its duties, the audit committee should identify the areas of greatest risk affecting financial reporting in the institution's operations. In addition, this section states that an institution's board of directors or audit committee should consider the appropriateness of an external auditing program for the institution. This evaluation should address what form of external auditing program will best assist the board or audit committee in obtaining reasonable assurance that the institution's financial statements and regulatory reports are reliably prepared. The results of this evaluation should be documented.

Alternative External Auditing Programs

The proposal identifies the preferred external auditing program and two acceptable alternatives.[2]

Financial Statement Audit by an Independent Public Accountant

The proposal encourages each institution to adopt an external auditing program that includes an annual audit of its financial statements by an independent public accountant. The banking agencies believe that a financial statement audit benefits management in carrying out its control responsibilities.

[2] It is the understanding of the banking agencies that, under most state public accountancy laws, only an independent public accountant may perform a balance sheet audit or issue an attestation report on internal control.

Report on the Balance Sheet Audit

As an alternative to a financial statement audit, the proposed Policy Statement suggests that an institution consider engaging an independent public accountant to examine its assets, liabilities, and equity under generally accepted auditing standards (GAAS) and to opine on the fairness of the presentation on the balance sheet. Under this type of engagement, the accountant would not provide an opinion on the fairness of the presentation of the institution's income statement, statement of changes in equity capital, or statement of cash flows.

Attestation Report on Internal Control Assertion

Another alternative to a financial statement audit is to engage an independent public accountant to provide a report attesting to management's assertion concerning the effectiveness of internal control over financial reporting. The report would cover certain schedules of its regulatory reports, including those relating to loans and securities. Under this alternative, management would review its internal control over the preparation of these schedules and document this review. Management would then provide a written assertion stating whether it believes its internal control is effective. The independent public accountant would examine management's assertion and provide an appropriate attestation report.

The banking agencies believe that an institution's annual ongoing cost of an attestation report on internal control over certain schedules of its regulatory reports would be significantly less than the cost of an audit of its financial statements. However, the cost projections depend on the circumstances of each institution, and an institution may incur additional start-up costs to create the initial documentation of its internal control structure and procedures in the first year. This documentation is necessary to enable the independent public accountant to evaluate management's assertion on the effectiveness of internal control.

Holding Company Subsidiaries

The proposal describes the responsibilities of the board or audit committee of a subsidiary of a holding company with respect to the institution's external auditing program. Specifically, the proposal says that an institution which is a subsidiary of a holding company may find it appropriate to express the scope of its external auditing program in terms of its relationship to the consolidated group. However, the board or audit committee should determine whether the subsidiary's activities involve unusual risks that are not adequately covered within the scope of the audit of the consolidated financial statements. If so, the proposal suggests that the board or audit committee consider implementing an appropriate alternative external auditing program.

Other Matters Concerning an External Auditing Program

Timing and Experience

The proposed Policy Statement recommends that whatever external auditing program is adopted be performed at a quarter-end date that coincides with a regulatory report date. It states that the independent public accountant performing this program should be experienced in performing external auditing work for banks and savings associations.

Access to Regulatory Reports

The proposal explains that an independent public accountant should have access to examination reports, other documents, and reports of action related to the supervision of the institution by its appropriate federal or state banking agency.

Examiner Review of the External Auditing Program

The proposal explains that examiners should consider an institution's size, the nature and scope of its activities, and any compensating controls when determining the adequacy of the institution's external auditing program and making recommendations for improvement. Examiners should also consider whether the institution has undertaken a state-required auditing program (that differs from the programs set forth in this policy) when determining whether to make recommendations for improvements under this policy.

Notification and Submission of Reports

In general, each institution should furnish its appropriate supervisory office with a copy of external auditing reports issued by its independent public accountant. However, the proposal also addresses the submission of the independent public accountant's report by holding company subsidiaries. This guidance reflects the banking agencies' current approach to supervising banking organizations which own more than one depository institution. Because each banking agency designates one

supervisory office to manage the supervision of an entire banking organization, any reports from the independent public accountant should be sent to the appropriate supervisory office of each banking agency which supervises the entire banking organization.

Special Situations

Newly Insured Institutions

The proposed Policy Statement notes that the FDIC Statement of Policy on Applications for Deposit Insurance (57 FR 12822) requires newly insured institutions to adopt an appropriate external auditing program.

Institutions Presenting Supervisory Concerns

This section of the proposal lists some of the conditions in a problem institution which would warrant the inclusion of a requirement for a strong external auditing program.

Performance of Other Services

This section of the proposal explains that although each institution is encouraged to have an external auditing program performed by an independent public accountant, an institution may hire other firms for advisory and consulting services if it so desires.

Appendix A—Definitions

Appendix A defines the terms used throughout the proposed Policy Statement. The banking agencies have tried to achieve consistency in these definitions with current professional accounting and auditing literature. In addition, references are consistent with terminology in the report of the Committee of Sponsoring Organizations of the Treadway Commission (COSO Report), "Internal Control—Integrated Framework," which is the standard by which the vast majority of institutions evaluate internal control.

III. Comments

The banking agencies encourage each institution to consider engaging an independent public accountant to perform an audit of its financial statements. If an institution's board or audit committee determines that an audit is not appropriate for the institution, the banking agencies encourage each institution to consider having one of the alternatives recommended in this proposal performed. Comments on the proposed Policy Statement are especially encouraged from any institution which has had its independent public accountant perform one of the alternatives (a report on the institution's balance sheet or an attestation report on internal control over specified schedules of its regulatory reports).

Some states have state-required external auditing programs (e.g., directors' examinations) that differ from the external auditing programs set forth in this policy statement. Accordingly, comments are requested on the amount of time those states might need if they wish to modify their directors' examination requirements to be consistent with this Policy Statement.

IV. Paperwork Reduction Act

As part of their continuing effort to reduce paperwork and respondent burden, the banking agencies invite the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the banking agencies are soliciting comments concerning this proposed FFIEC policy statement, as there is a likelihood that each of the banking agencies will adopt it for their institutions. The banking agencies expect to submit the information collection to OMB for review in conjunction with FFIEC's approval of the final policy statement, and will invite public comment again in the **Federal Register** notice that publishes the final policy statement.

Written comments regarding the information collection aspects of the proposed policy statement should be submitted to any one or all of the addresses listed under the **ADDRESSES** section of this **Federal Register** notice. A copy of the comments may also be submitted to the OMB Desk Officer for the banking agencies: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

Requests for information regarding the collections of information contained in the proposed policy statement may be sent to:

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898–8766, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

FRB: Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

OCC: Jessie Gates, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

OTS: Christine Smith, Policy Analyst, (202) 906–5740, Timothy Stier, Chief Accountant, (202) 906–5699, Accounting Policy, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

Abstract

The title of this proposed information collection is "External Auditing Programs (<$500MM)." The information would be collected from all institutions with less than $500 million in total assets and consists of: (a) A recordkeeping requirement that institutions maintain management assertions regarding certain regulatory report schedules, and (b) reporting requirements that institutions submit to the appropriate supervisory office: (1) A notification when an independent public accountant is initially engaged to perform external auditing work and when a change in, or termination of, an independent public accountant occurs; and either (2) a copy of any reports by the independent public accountant pertaining to the external auditing program, including any management letters; or (3) when an institution's financial information is included in the audited consolidated financial statements of its parent company, a copy of the audited financial statements of the consolidated company, any other reports by the independent public accountant, and any notifications of changes in, or terminations of, the consolidated company's independent public accountant, with a transmittal letter identifying the institutions covered.

Type of Review: New collection.

Affected Public: Businesses or other for-profit.

Number of Respondents:

FDIC: 5,960.

FRB: 900.

OCC: 2,200.

OTS: 1,050.

Total Annual Respones: The banking agencies estimate 2 responses per respondent.

Frequency of Response: Annually and On occasion.

TOTAL ANNUAL BURDEN HOURS		
FDIC	Recordkeeping Burden.	1,490 hours.
	Reporting Burden.	2,980 hours.
	Total Burden ..	4,470 hours.
FRB	Recordkeeping Burden.	225 hours.
	Reporting Burden.	450 hours.
	Total Burden ..	675 hours.
OCC	Recordkeeping Burden.	550 hours.
	Reporting Burden.	1,100 hours.
	Total Burden ..	1,650 hours.
OTS	Recordkeeping Burden.	263 hours.
	Reporting Burden.	525 hours.
	Total Burden ..	788 hours.

Comments

Comments submitted in response to this notice will be summarized and/or included in each agency's request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide the required information.

The text of the proposed Policy Statement follows:

Federal Financial Institutions Examination Council

Policy Statement On External Auditing Programs of Banks and Savings Associations [1]

Introduction

The banking agencies [2] believe that a well-planned annual external auditing program [3] is an important component of a bank's or savings association's (hereafter referred to as "an institution") risk management process. Furthermore, an external auditing program complements the internal auditing function of an institution by providing management and the board of directors with an independent and objective view of the reliability of the institution's financial statements. Additionally, an effective external auditing program contributes to the efficiency of the banking agencies' risk-focused examination process. By emphasizing the financial reporting aspects of the significant risk areas of an institution, an effective external auditing program may also reduce the examination time spent in these areas.

This policy statement outlines key elements of an effective external auditing program and describes how an institution's external auditing program will be reviewed by examiners. Specifically, this policy encourages institutions to adopt an external auditing program and establish an audit committee, and it describes some acceptable external auditing programs that institutions may consider. In addition, this policy statement provides guidance on external auditing for institutions that are subsidiaries of a holding company, newly insured institutions, and institutions presenting supervisory concerns.

Board of Directors' Responsibilities

External Auditing Program. The banking agencies encourage the board of directors of each institution to adopt an external auditing program. The banking agencies believe that the board of directors should consider an external auditing program performed by an independent public accountant to be conducive to the safe and sound operation of the institution. The board of directors should evaluate whether its external auditing program adequately addresses the financial reporting aspects of the significant risk areas of the institution's business. The ability to detect and correct potentially serious problems in these areas substantially improves the safety and soundness of an institution's operations and thereby lessens the risk the institution poses to the FDIC-administered insurance funds.

An external auditing program also gives the institution's management and board of directors information about the reliability of its financial statements and often provides information useful to them in discharging their responsibilities for effective internal control, such as safeguarding assets and identifying weaknesses in the internal control structure. In addition, an external auditing program may help directors exercise reasonable care in protecting the assets of the institution.

Audit Committee. The banking agencies also encourage the board of directors of each institution to establish an audit committee. Ideally, the audit committee should consist entirely of outside directors. However, if this is impracticable, the banking agencies believe that at least a majority of the audit committee members should be outside directors.

An audit committee or board of directors should periodically (at least annually) identify the risk areas of the institution's activities and assess the extent of external auditing involvement needed over each area. The audit committee or board should determine whether the institution's needs will best be met by an audit of its financial statements in accordance with generally accepted auditing standards (GAAS) or by an alternative external auditing program. (Recommended alternatives are described below.)

When evaluating the alternatives for the institution's external auditing program, the committee or board should consider the cost and potential benefits of an annual financial statement audit and ensure that the selected program provides sufficient coverage of the financial reporting aspects of the institution's significant risk areas and any other areas of concern. The committee or board also should consider how to best obtain reasonable assurance that the institution's financial

[1] Insured depository institutions covered by Section 36 of the Federal Deposit Insurance Act, as implemented by 12 CFR part 363, are required to have an external audit and an audit committee. Therefore, this guidance only applies to banks and savings associations which are not subject to part 363 (i.e., institutions with less than $500 million in total assets at the beginning of their fiscal year) or are not otherwise subject to audit requirements by agreement, statute, or agency regulations. Such banks and savings associations are referred to in this policy statement as "institutions."

[2] References to the banking agencies throughout this document mean the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS).

[3] Terms defined in Appendix A are italicized the first time they appear in this policy statement.

statements and regulatory reports are reliably prepared.

If the audit committee or board of directors decides to engage an independent public accountant to conduct an alternative external auditing program rather than an audit of the institution's financial statements, the reasons for that decision should be documented in its minutes.

Alternative External Auditing Programs

Financial Statement Audit by an Independent Public Accountant. The banking agencies encourage each bank and savings association to have its financial statements audited by an independent public accountant. Although other alternatives are acceptable, a financial statement audit provides the most comprehensive assurance about the fair presentation of an institution's financial statements.

In addition, an external audit provides information that benefits management in carrying out its control responsibilities. For example, an external audit may provide management with guidance on establishing or improving accounting and operating policies, recommendations on internal control (including internal auditing programs), and evaluations of management information systems necessary to ensure the fair presentation of the financial statements.

Report on the Balance Sheet. An institution's audit committee or board of directors may determine, based on its assessment of the institution's risk areas and scope of operations during a particular year, that a financial statement audit is not the institution's best alternative. In such cases, the institution may prefer to engage an independent public accountant to examine and *report on the balance sheet.* If this alternative is chosen, the balance sheet on which the accountant will report should be prepared in conformity with generally accepted accounting principles (GAAP). Furthermore, the independent public accountant should perform the engagement in accordance with GAAS.

Attestation Report on Internal Control Assertion. [4] Another alternative to a financial statement audit is to engage an independent public accountant to examine and report on management's assertion concerning the effectiveness of the institution's internal control over financial reporting in all or specified schedules of the institution's regulatory reports. A board or audit committee that elects this alternative should review and assess the institution's activities and determine its high risk areas with respect to financial reporting. In addition, management should evaluate and provide a written assertion about the effectiveness of the institution's internal control over financial reporting in the identified risk areas as of one designated regulatory report date. This assertion should specify the criteria on which management based its evaluation of internal control. Furthermore, management's evaluation should be adequately documented.

In most institutions, the lending and investment securities activities present the most significant risks that affect financial reporting. Therefore, management's assertion should generally cover the following regulatory report schedules every year:

Area	Reports of condition and income schedules	Thrift financial report schedules
Loans and Lease Financing Receivables	RC–C, Part I	SC, CF
Past Due and Nonaccrual Loans, Leases, and Other Assets	RC–N	PD
Allowance for Credit Losses	RI–B	SC, VA
Securities	RC–B	SC, SI, CF

If the board or audit committee determines that trading or off-balance sheet activities present material financial reporting risks to the institution, the regulatory report schedules for one or both of these areas should also be covered by management's assertion and the accountant's attestation:

Area	Reports of condition and income schedules	Thrift financial report schedules
Trading Assets and Liabilities	RC–D	SO, SI.
Off-Balance Sheet Items	RC–L	SI, CMR.

The regulatory report schedules listed in this policy statement address the most common high risk areas for financial reporting in institutions. However, these schedules do not address all possible risks in an institution. Therefore, each institution should review the risks inherent in its particular activities annually to determine whether to expand the scope of its external auditing program to include other financial reporting risk areas. For example, if an institution or its subsidiaries has significant real estate investments, insurance underwriting or sales activities, securities broker-dealer or similar activities (including securities underwriting and investment advisory services), loan servicing activities, or fiduciary activities, the institution should consider whether its external auditing program should cover these areas.

Holding Company Subsidiaries. When the audit committee or board of directors of any institution owned by another company (such as a holding company) considers its external auditing program, it may find it appropriate to address the scope of its program in terms of the institution's relationship to the consolidated group. The banking agencies do not expect an institution owned by another company to obtain a separate audit of its financial statements if the group's consolidated financial statements for the same fiscal year are audited. Nevertheless, the board of directors or audit committee of the subsidiary may determine that it has activities that involve risks which were not within the procedural scope of the audit of the financial statements of the consolidated entity. For example, the risks arising from some of the subsidiary's activities may be immaterial to the financial statements of the consolidated entity. Under such circumstances, the audit committee or board of the subsidiary institution should consider strengthening its internal auditing procedures to cover these activities or implementing an appropriate alternative external auditing program.

[4] An attestation engagement is not an audit. It is performed under different professional standards than an audit of an institution's financial statements or its balance sheet.

Other Matters Concerning an External Auditing Program

Timing. Whatever external auditing program an institution decides to implement, it preferably should be performed as of the institution's fiscal year-end. However, using a quarter-end date that coincides with a regulatory report date is also acceptable. Such an approach would permit the institution to use the audited financial statements to verify and, if appropriate, amend the regulatory report. In this regard, an institution may also find it cost-effective to have its financial statements audited during the accounting firm's off-peak period.

Experience. The banking agencies generally believe that the independent public accountant that an institution selects to perform its financial statement audit or its alternative external auditing program should be experienced in auditing the financial statements of banks and savings associations and knowledgeable about relevant laws and regulations.

Access to Regulatory Reports. Regardless of the external auditing approach chosen, management should inform the independent public accountant of, and provide the independent public accountant with access to, all examination reports and written communication between the institution and the banking agencies or state banking authorities since the last external auditing activity. The independent public accountant also should be provided access to any supervisory memoranda of understanding, written agreements, administrative orders, reports of action initiated or taken by a federal or state banking agency under section 8 of the Federal Deposit Insurance Act (or a similar state law), or civil money penalties assessed against the institution or an institution-related party, and any associated correspondence. The independent public accountant must maintain the confidentiality of examination reports and other confidential supervisory information.

Examiner Review of the External Auditing Program

A review of an institution's external auditing program will continue to be part of the banking agencies' examination procedures. An examiner's evaluation of and any recommendations for improvements in an institution's external auditing program will consider the institution's size, the nature and complexity of its business activities, its risk profile, any actions taken or planned by the institution to minimize or eliminate identified weaknesses, and any compensating controls that are in place.

Notification and Submission of Reports

Regardless of the type of external auditing program chosen, the banking agencies request that each institution furnish a copy of any reports [5] by the independent public accountant pertaining to the external auditing program, including any management letters, to its appropriate supervisory office in a timely manner.

In addition, the banking agencies request each institution to promptly notify its appropriate supervisory office when an independent public accountant is initially engaged to perform external auditing work and when a change in, or termination of, its independent public accountant occurs.

When an institution's financial information is included in the audited consolidated financial statements of its parent company, the institution may send its appropriate supervisory office one copy of the audited financial statements of the consolidated company, any other reports by the independent public accountant, and any notifications of changes in, or terminations of, the consolidated company's independent public accountant. If several institutions are owned by one parent company, a single copy of the reports and any notifications applicable to the consolidated company may be submitted to the appropriate supervisory office of each banking agency supervising one or more of the affiliated institutions and the holding company. A transmittal letter should identify the institutions covered.

Special Situations

Newly Insured Institutions. The FDIC Statement of Policy on Applications for Deposit Insurance requires an applicant for deposit insurance coverage to obtain an audit of its financial statements by an independent public accountant.

Institutions Presenting Supervisory Concerns. An independent external auditing program complements the banking agencies' supervisory process and the institution's internal auditing program by identifying or further clarifying issues of potential concern or exposure. It can also greatly assist management in taking corrective action, particularly when weaknesses are detected in internal control or management information systems. For these reasons, the banking agencies may require an annual audit of an institution's financial statements by an independent public accountant for an institution presenting supervisory concerns. However, if it is more appropriate, either (1) a report on the balance sheet; (2) an attestation report on management's assertions concerning internal control over financial reporting; (3) procedures agreed upon by the institution, independent public accountant, and appropriate banking agency; or (4) other engagements may be required if any of the following conditions exist:

(a) Internal control, including the internal auditing program, is inadequate;

(b) The board of directors is generally uninformed in the area of internal control;

(c) There is evidence of insider abuse;

(d) There are known or suspected defalcations;

(e) There is known or suspected criminal activity;

(f) It is probable that director liability for losses exists;

(g) Direct verification of loans or deposits is warranted;

(h) Questionable transactions with affiliates have occurred; or

(i) Other conditions exist that warrant improvements in the external auditing program.

Such an action may also require, among other things, that the institution provide its banking agency's supervisory office a copy of any reports, including management letters, issued by the independent public accountant. In addition, it may require the institution to notify the supervisory office prior to any meeting with the independent public accountant at which auditing findings are to be presented.

Performance of Other Services

This policy statement does not preclude institutions from engaging entities other than independent public accountants to perform advisory and other services that do not require licensing under applicable state public accountancy statutes. For example, an institution may hire individuals or firms who are not independent public accountants to provide independent loan reviews, give advice on consumer compliance issues, suggest improvements to increase operational efficiency in specific departments (e.g., information processing), or assist in areas of taxation or management information systems. In addition, if acceptable under applicable state laws, these firms may perform state-required directors' examinations; however, such services may not constitute or replace

[5] The institution's engagement letter is not expected to be submitted as a "report."

an external auditing program performed by an independent public accountant.

Appendix A—Definitions

Appropriate supervisory office. The regional or district office of the institution's primary federal banking agency which is responsible for supervising the institution, or, in the case of an institution that is part of a group of related insured institutions, the regional or district office of the institution's federal banking agency which is responsible for monitoring the group. If the institution is a subsidiary of a holding company, the term "appropriate supervisory office" also includes the federal banking agency responsible for supervising the holding company. In addition, if the institution is state-chartered, the term "appropriate supervisory office" includes the appropriate state bank or savings association regulatory authority.

Audit. An examination of the financial statements, accounting records, and other supporting evidence of an institution performed by an independent certified or licensed public accountant in accordance with generally accepted auditing standards (GAAS) and of sufficient scope to enable the independent public accountant to express an opinion on the institution's financial statements as to their presentation in accordance with generally accepted accounting principles (GAAP).

Audit Committee. A committee of the board of directors whose members should, to the extent possible, be knowledgeable about accounting and auditing. The committee should be responsible for reviewing and approving the institution's internal and external auditing programs or recommending adoption of these programs to the full board. Both the internal auditor and the independent public accountant should have unrestricted access to the audit committee without the need for any prior management knowledge or approval. Other duties of the audit committee may include reviewing the independence of the independent public accountant annually, consulting with management when management seeks a second opinion on an accounting issue, and overseeing the quarterly regulatory reporting process. The audit committee should report its findings periodically to the full board of directors.

Directors' Examination. An engagement performed by an independent third party that has been authorized by the institution's board of directors and is required by state law. (A directors' examinations is called an "engagement audit" or "operational audit." Nevertheless, it is often not performed in accordance with GAAS nor do widely accepted national standards exist for its performance.)

External Auditing Program. The testing and evaluation of risk areas of an institution's business by an independent public accountant sufficient to enable the accountant to express an opinion on the financial statements or balance sheet. Under professional standards, this engagement should be performed in accordance with GAAS. Alternatively, an independent public accountant may attest to management's assertion concerning the effectiveness of the institution's internal control over financial reporting. Under professional standards, the independent public accountant is expected to perform this attestation engagement in accordance with the generally accepted standards for attestation engagements (GASAE).

Financial Statements. The statements of financial position (balance sheet), income, cash flows, and changes in equity together with related notes.

Independent Public Accountant. An accountant who is independent of the institution and registered or licensed to practice as a public accountant, and is in good standing, under the laws of the state or other political subdivision of the United States in which the home office of the institution is located. No certified public accountant or public accountant will be recognized as independent who is not in fact independent. The independent public accountant also should comply with the American Institute of Certified Public Accountants' (AICPA) *Code of Professional Conduct* and any related guidance adopted by the banking agencies.

Internal auditing. An independent assessment function established within an institution to examine and evaluate its system of internal control and the efficiency with which the various units of the institution are carrying out their assigned tasks. The objective of internal auditing is to assist the management and directors of the institution in the effective discharge of their responsibilities. To this end, internal auditing furnishes management with analyses, appraisals, recommendations, counsel, and information concerning the activities reviewed.

Outside Directors. Members of an institution's board of directors who are not officers, employees, or principal stockholders of the institution, its subsidiaries, or its affiliates, and do not have any material business dealings with the institution, its subsidiaries, or its affiliates.

Regulatory Reports. These reports are the Reports of Condition and Income (Call Reports) for banks and Thrift Financial Reports (TFRs) for savings associations.

Report on the Balance Sheet. An examination of an institution's balance sheet performed and reported on by an independent public accountant in accordance with GAAS and of sufficient scope to enable the independent public accountant to express an opinion on the fairness of the balance sheet presentation in accordance with GAAP.

Risk Areas. Those particular activities of an institution that expose it to greater potential losses if problems exist and go undetected. The areas with the highest financial reporting risk in most institutions generally are their lending and investment securities activities.

Dated: February 5, 1998.

Joe M. Cleaver,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 98–3374 Filed 2–13–98; 8:45 am]

BILLING CODE 6210–01–P, 6720–01–P, 6714–01–P, 4810–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Uniform Interagency Trust Rating System

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice and request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) (collectively referred to as the federal supervisory agencies), under the auspices of the Federal Financial Institutions Examination Council (FFIEC) request comment on proposed changes to the Uniform Interagency Trust Rating System (UITRS), commonly referred to as the trust rating system. The proposed revisions update the rating system to reflect changes that have occurred in the fiduciary services industry and in supervisory policies and procedures since the rating system was first adopted in 1978. The proposed changes revise the numerical ratings to conform to the language and tone of the Uniform Financial Institution Rating System (UFIRS) rating definitions, commonly referred to as the CAMELS rating system; reformat and clarify the component rating descriptions; reorganize the account administration and conflicts of interest components

into a new component addressing compliance; emphasize the quality of risk management processes in each of the rating components, particularly in the management component; add language in composite rating definitions to parallel the proposed changes in the component rating descriptions; and explicitly identify the risk types that are considered in assigning component ratings. After reviewing public comments, the FFIEC intends to make appropriate additional changes to the revised UITRS, if necessary, and adopt a final trust rating system.

The term "financial institution" refers to those FDIC insured depository institutions whose primary Federal supervisory agency is represented on the FFIEC. Uninsured trust companies that are chartered by the OCC, members of the Federal Reserve System, or subsidiaries of registered bank holding companies or insured depository institutions are also covered by this action.

DATES: Comments must be received by April 20, 1998.

ADDRESSES: Comments should be sent to Joe M. Cleaver, Executive Secretary, Federal Financial Institutions Examination Council, 2100 Pennsylvania Avenue, NW, Suite 200, Washington, D.C. 20037 (Fax number: (202) 634–6556). Comments will be available for public inspection during regular business hours at the above address. Appointments to inspect comments are encouraged and can be arranged by calling the FFIEC at (202) 634–6526.

FOR FURTHER INFORMATION CONTACT:

FRB: William R. Stanley, Supervisory Trust Analyst, Specialized Activities, (202) 452–2744, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Mail Stop 407, 20th and C Streets, NW, Washington, D.C. 20551.

FDIC: John F. Harvey, Trust Review Examiner, (202) 898–6762, Division of Supervision, Federal Deposit Insurance Corporation, Room F2078, 550 17th Street, NW, Washington, D.C. 20429.

OCC: Laurie A. Edlund, National Bank Examiner, (202) 874–3828, Division of Asset Management, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, D.C. 20219.

OTS: Larry A. Clark, Senior Manager, Compliance and Trust Programs, (202) 906–5628, Gary C. Jackson, Program Analyst, (202) 906–5653, Compliance Policy, Office of Thrift Supervision, 1700 G Street, NW, Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

Background Information

The UITRS is an internal supervisory examination rating system used by the Federal supervisory agencies for evaluating the administration of fiduciary activities of financial institutions and uninsured trust companies on a uniform basis and for identifying those institutions requiring special supervisory attention. The UITRS was adopted in 1978 by the OCC, FDIC and FRB, and in 1988 by the OTS, and is commonly referred to as the trust rating system. Under the current UITRS, each financial institution or trust company is assigned a composite rating based on an evaluation and rating of six essential components of an institution's fiduciary activities. These components address the following: the capability of management; the adequacy of operations, controls and audits; the management of fiduciary assets; the adequacy of account administration practices; the adequacy of practices relating to self dealing and conflicts of interest; and the quality and level of earnings. Both the composite and component ratings are assigned on a 1 to 5 numerical scale. A 1 indicates the strongest performance and management practices, and the least degree of supervisory concern, while a 5 indicates the weakest performance and management practices and, therefore, the highest degree of supervisory concern.

The composite rating reflects the overall condition of an institution's fiduciary activities. The composite ratings are used by the Federal supervisory agencies to monitor aggregate trends in the overall administration of fiduciary activities.

The UITRS has proven to be an effective means for the Federal supervisory agencies to determine the condition of an institution's fiduciary activities. A number of changes, however, have occurred in the fiduciary industry and in supervisory policies and procedures since the rating system was first adopted. The FFIEC's Task Force on Supervision has reviewed the existing rating system in light of these industry trends. The Task Force has concluded that the current UITRS framework continues to provide an effective vehicle for summarizing conclusions about the condition of an institution's fiduciary activities. As a result, the FFIEC proposes to retain the basic rating framework, and the revised rating system will continue to assign a composite rating based on an evaluation and rating of essential components of an institution's fiduciary activities. However, the FFIEC proposes certain enhancements to the rating system.

Discussion of Proposed Changes to the Rating System

1. Alignment of UITRS With UFIRS

The FFIEC is proposing changes to revise the definitions of the composite and component ratings to align the UITRS rating definitions with the language and tone of the UFIRS rating definitions. For example, under the current UITRS a composite 3 rated trust department is considered generally adequate, while under the UFIRS a composite 3 rated bank exhibits some degree of supervisory concern. The proposed revision brings the UITRS in line with the language and tone of the UFIRS.

2. Component Reorganization

The FFIEC is proposing the following changes to the UITRS components:

(A) The current Account Administration and Conflicts of Interest components will be eliminated. A new Compliance component will assess an institution's compliance with the terms of governing instruments, applicable laws and regulations, sound fiduciary principles, and internal policies and procedures. The new component will address all areas assessed in the current Account Administration and Conflicts of Interest components. In addition, the new component will address compliance with applicable laws, regulations, and internal policies and procedures on a broader, institution-wide basis.

(B) While fiduciary earnings will be evaluated at all institutions, a rating will only be required for those institutions which are required to file Schedule E of the FFIEC 001 (institutions with more than $100 million in total trust assets, and all non-deposit trust companies). An earnings rating may or may not be required for non-Schedule E filers, at the option of the Federal supervisory agency. With this proposed change, the FFIEC recognizes that many small institutions offer fiduciary services primarily as a service to their community, with profitability being a secondary consideration.

3. Structure and Format

The FFIEC is proposing to enhance and clarify the component rating descriptions by reformatting each component into three distinct sections: (a) An introductory paragraph discussing in general terms the areas to be considered when rating each component; (b) a bullet-style listing of the specific evaluation factors to be

considered when assigning the component rating; and, (c) a brief qualitative description of the five ratings grades that can be assigned to a particular component.

4. Composite Rating Definitions

The FFIEC is proposing changes in the composite rating definitions to parallel the changes in the component rating descriptions. Under the FFIEC's proposal, the revised composite rating definitions would contain an explicit reference to the quality of overall risk management practices. The basic context of the existing composite rating definitions is being retained. The composite rating would continue to be based on a careful evaluation of an institution's fiduciary management, operational and compliance performance.

5. Risk Management

The FFIEC is proposing that the revised rating system emphasize risk management processes. Changes in the fiduciary services industry have broadened the range of products and services offered and accelerated the pace of transactions. These trends reinforce the importance of institutions having sound risk management processes. Accordingly, the revised rating system would contain language in each of the components emphasizing the consideration of processes to identify, measure, monitor and control risks.

6. Identification of Risk Types

The FFIEC is proposing that the types of risks associated with each of the component ratings be explicitly identified. For example, the proposed rating description for the Operations, Internal Controls, and Audits notes that a primary consideration in assigning the component rating is an assessment of the transaction risk associated with the institution's fiduciary operating systems and internal controls. However, all of the risks affecting fiduciary operations and internal controls, including but not limited to reputation, strategic, and compliance risks would also be considered.

Request for Comments

The FFIEC requests comment on the proposed revisions to the trust rating system ("the proposal"). In addition, the FFIEC invites comments on the following questions:

1. Does the proposal capture the essential risk areas of the fiduciary services industry?

2. Does the proposed management component adequately assess the quality of the board of directors' and management's oversight regarding its fiduciary responsibility and its ability to identify and manage all areas of risk involved in the exercise of its fiduciary powers?

3. Are there any components which should be added to or deleted from the proposal?

4. Are the definitions for the individual components and the composite numerical ratings in the proposal consistent with the language and tone of the UFIRS definitions?

Text of the Revised Uniform Interagency Trust Rating System

Uniform Interagency Trust Rating System

Introduction

The Uniform Interagency Trust Rating System (UITRS) was adopted on September 21, 1978 by the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Federal Reserve Board (FRB), and in 1988 by the Federal Home Loan Bank Board, predecessor agency to the Office of Thrift Supervision (OTS). Over the years, the UITRS has proven to be an effective internal supervisory tool for evaluating the fiduciary activities of financial institutions on a uniform basis and for identifying those institutions requiring special attention or concern.

A number of changes have occurred in both the banking industry and the Federal supervisory agencies' policies and procedures which have prompted a review and revision of the 1978 rating system. The revisions to the UITRS:

- Realign the UITRS rating definitions to bring them in line with UFIRS;
- Reduce the component rating categories from six to five, combining the Account Administration and Conflicts of Interest components into a new Compliance component;
- Make the earnings rating optional, at the Federal supervisory agency's discretion, for institutions not required to file the FFIEC 001 Schedule E (institutions with total trust assets of more than $100 million, and all non-deposit trust companies are required to file Schedule E); and
- Explicitly refer to the quality of risk management processes in the management component, and the identification of risk elements within the composite and component rating definitions.

The revisions are intended to promote and complement efficient examination processes. The revisions update the rating system but retain the basic framework of the original rating system. Consequently, the revised rating system will not result in additional regulatory burden to institutions or require additional policies or processes.

The UITRS considers certain managerial, operational, financial and compliance factors that are common to all institutions with fiduciary activities. Under this system, the supervisory agencies endeavor to ensure that all institutions with fiduciary activities are evaluated in a comprehensive and uniform manner, and that supervisory attention is appropriately focused on those institutions exhibiting weaknesses in their fiduciary operations.

Overview

Under the proposed UITRS, the fiduciary activities of financial institutions are assigned a composite rating based on an evaluation and rating of five essential components of an institution's fiduciary activities. These component factors address the following: the capability of management; the adequacy of operations, controls and audits; the quality and level of earnings; compliance with governing instruments, applicable law, and sound fiduciary principles; and the management of fiduciary assets. Evaluation of the components considers the size and sophistication, the nature and complexity, and the risk profile of the institution's fiduciary activities.

Composite and component ratings are assigned based on a 1 to 5 numerical scale. A 1 is the highest rating and indicates the strongest performance and risk management practices and the least degree of supervisory concern. A 5 is the lowest rating and indicates the weakest performance and risk management practices and, therefore, the highest degree of supervisory concern.

The composite rating generally bears a close relationship to the component ratings assigned. However, the composite rating is not derived by computing an arithmetic average of the component ratings. Each component rating is based on a qualitative analysis of the factors comprising that component and its interrelationship with the other components. When assigning a composite rating, some components may be given more weight than others depending on the situation at the institution. In general, assignment of a composite rating may incorporate any factor that bears significantly on the overall administration of the financial institution's fiduciary activities. Assigned composite and component ratings are disclosed to the institution's

board of directors and senior management.

The ability of management to respond to changing circumstances and to address the risks that may arise from changing business conditions, or the initiation of new fiduciary activities or products, is an important factor in evaluating an institution's overall fiduciary risk profile and the level of supervisory attention warranted. For this reason, the management component is given special consideration when assigning a composite rating.

The ability of management to identify, measure, monitor, and control the risks of its fiduciary operations is also taken into account when assigning each component rating. It is recognized, however, that appropriate management practices may vary considerably among financial institutions, depending on the size, complexity and risk profiles of their fiduciary activities. For less complex institutions engaged solely in traditional fiduciary activities and whose directors and senior managers are actively involved in the oversight and management of day-to-day operations, relatively basic management systems and controls may be adequate. On the other hand, at more complex institutions, detailed and formal management systems and controls are needed to address a broader range of activities and to provide senior managers and directors with the information they need to supervise day-to-day activities.

All institutions are expected to properly manage their risks. For less complex institutions engaging in less risky activities, detailed or highly formalized management systems and controls are not required to receive strong or satisfactory component or composite ratings.

The following two sections contain the composite rating definitions, and the descriptions and definitions for the five component ratings.

Composite Ratings

Composite ratings are based on a careful evaluation of how an institution conducts its fiduciary activities. The review encompasses the capability of management, the soundness of policies and practices, the quality of service rendered to the public, and the effect of fiduciary activities upon the soundness of the institution. The five key components used to assess an institution's fiduciary activities are: the capability of management; the adequacy of operations, controls and audits; the quality and level of earnings; compliance with governing instruments, applicable law, and sound fiduciary principles; and the management of fiduciary assets. The rating scale ranges from 1 to 5, with a rating of 1 indicating the strongest performance and risk management practices relative to the size, complexity and risk profile of the institution's fiduciary activities, and the least supervisory concern. A 5 rating indicates the most critically deficient performance and risk management practices relative to the size, complexity, and risk profile of the institution's fiduciary activities, and the greatest supervisory concern. The composite ratings are defined as follows:

Composite 1. Administration of fiduciary activities is sound in every respect and generally all components are rated 1 or 2. Any weaknesses are minor and can be handled in a routine manner by management. The institution is in substantial compliance with fiduciary laws and regulations. Risk management practices are strong relative to the size, complexity, and risk profile of the institution's fiduciary activities. Fiduciary activities are conducted in accordance with sound fiduciary principles and give no cause for supervisory concern.

Composite 2. Administration of fiduciary activities is fundamentally sound. Generally no component rating should be more severe than 3. Only moderate weaknesses are present and are well within management's capabilities and willingness to correct. Fiduciary activities are conducted in substantial compliance with laws and regulations. Overall risk management practices are satisfactory relative to the institution's size, complexity, and risk profile. There are no material supervisory concerns and, as a result, the supervisory response is informal and limited.

Composite 3. Administration of fiduciary activities exhibits some degree of supervisory concern in one or more of the component areas. A combination of weaknesses exists that may range from moderate to severe; however, the magnitude of the deficiencies generally does not cause a component to be rated more severely than 4. Management may lack the ability or willingness to effectively address weaknesses within appropriate time frames. Additionally, fiduciary activities may be conducted in significant noncompliance with laws and regulations. Risk management practices may be less than satisfactory relative to the institution's size, complexity, and risk profile. While problems of relative significance may exist, they are not of such importance as to pose a threat to the trust beneficiaries generally, or to the soundness of the institution. The institution's fiduciary activities require more than normal supervision and may include formal or informal enforcement actions.

Composite 4. Fiduciary activities generally exhibit unsafe and unsound practices or conditions, resulting in unsatisfactory performance. The problems range from severe to critically deficient and may be centered around inexperienced or inattentive management, weak or dangerous operating practices, or an accumulation of unsatisfactory features of lesser importance. The weaknesses and problems are not being satisfactorily addressed or resolved by the board of directors and management. There may be significant noncompliance with laws and regulations. Risk management practices are generally unacceptable relative to the size, complexity, and risk profile of fiduciary activities. These problems pose a threat to the account beneficiaries generally and, if left unchecked, could evolve into conditions that could ultimately undermine the public confidence in the institution. Close supervisory attention is required, which means, in most cases, formal enforcement action is necessary to address the problems.

Composite 5. Fiduciary activities are conducted in an extremely unsafe and unsound manner. Administration of fiduciary activities is critically deficient in numerous major respects, with problems resulting from incompetent or neglectful administration, flagrant and/or repeated disregard for laws and regulations, or a willful departure from sound fiduciary principles and practices. The volume and severity of problems are beyond management's ability or willingness to control or correct. Such conditions evidence a flagrant disregard for the interests of the beneficiaries and may pose a serious threat to the soundness of the institution. Continuous close supervisory attention is warranted and may include termination of the institution's fiduciary activities.

Component Ratings

Each of the component rating descriptions is divided into three sections: a narrative description of the component; a list of the principal factors used to evaluate that component; and a description of each numerical rating for that component. Some of the evaluation factors are reiterated under one or more of the other components to reinforce the interrelationship among components. The listing of evaluation factors is in no particular order of importance.

Management. This rating reflects the capability of the board of directors and

management, in their respective roles, to identify, measure, monitor and control the risks of an institution's fiduciary activities. It also reflects their ability to ensure that the institution's fiduciary activities are conducted in a safe and sound manner, and in compliance with applicable laws and regulations. Directors should provide clear guidance regarding acceptable risk exposure levels and ensure that appropriate policies, procedures and practices are established and followed. Senior fiduciary management is responsible for developing and implementing policies, procedures and practices that translate the board's objectives and risk limits into prudent operating standards.

Depending on the nature and scope of an institution's fiduciary activities, management practices may need to address some or all of the following risks: reputation, operating or transaction, strategic, compliance, legal, credit, market, liquidity and other risks. Sound management practices are demonstrated by: active oversight by the board of directors and management; competent personnel; adequate policies, processes, and controls that consider the size and complexity of the institution's fiduciary activities; and effective risk monitoring and management information systems. This rating should reflect the board's and management's ability as it applies to all aspects of fiduciary activities in which the institution is involved.

The management rating is based upon an assessment of the capability and performance of management and the board of directors, including, but not limited to, the following evaluation factors:

- The level and quality of oversight and support of fiduciary activities by the board of directors and management, including committee structure and adequate documentation of committee actions.
- The ability of the board of directors and management, in their respective roles, to plan for, and respond to, risks that may arise from changing business conditions or the introduction of new activities or products.
- The adequacy of, and conformance with, appropriate internal policies, practices and controls addressing the operations and risks of significant fiduciary activities.
- The accuracy, timeliness, and effectiveness of management information and risk monitoring systems appropriate for the institution's size, complexity, and fiduciary risk profile.
- Overall level of compliance with laws, regulations, and sound fiduciary principles.
- Responsiveness to recommendations from auditors and regulatory authorities.
- Strategic planning for fiduciary products and services.
- The level of experience and competence of fiduciary management and staff, including issues relating to turnover and succession planning.
- The availability of adequate insurance coverage.
- The availability of competent legal counsel.
- Extent and nature of pending litigation associated with fiduciary activities, and its potential impact on earnings, capital, and the institution's reputation.
- Process for identifying and responding to fiduciary customer complaints.

Ratings.

1. A rating of 1 indicates strong performance by management and the board of directors and strong risk management practices relative to the size, complexity and risk profile of the institution's fiduciary activities. All significant risks are consistently and effectively identified, measured, monitored, and controlled. Management and the board have demonstrated the ability to promptly and successfully address existing and potential problems and risks.

2. A rating of 2 indicates satisfactory management and board performance and risk management practices relative to the size, complexity and risk profile of the institution's fiduciary activities. Minor weaknesses may exist, but are not material to the sound administration of fiduciary activities, and are being addressed. In general, significant risks and problems are effectively identified, measured, monitored, and controlled.

3. A rating of 3 indicates management and board performance that need improvement or risk management practices that are less than satisfactory given the nature of the institution's fiduciary activities. The capabilities of management or the board of directors may be insufficient for the size, complexity or risk profile of the institution's fiduciary activities. Problems and significant risks may be inadequately identified, measured, monitored, or controlled.

4. A rating of 4 indicates deficient management and board performance or risk management practices that are inadequate considering the nature of an institution's fiduciary activities. The level of problems and risk exposure is excessive. Problems and significant risks are inadequately identified, measured, monitored, or controlled and require immediate action by the board and management to protect the assets of account beneficiaries and to prevent erosion of public confidence in the institution. Replacing or strengthening management or the board may be necessary.

5. A rating of 5 indicates critically deficient management and board performance or risk management practices. Management and the board of directors have not demonstrated the ability to correct problems and implement appropriate risk management practices. Problems and significant risks are inadequately identified, measured, monitored, or controlled and now threaten the continued viability of the institution or its administration of fiduciary activities as well as posing a threat to the safety of the assets of account beneficiaries. Replacing or strengthening management or the board of directors is necessary.

Operations, Internal Controls & Auditing. This area encompasses the department's operating systems and internal controls in relation to the volume and character of business conducted. The adequacy of audit coverage must assure the integrity of the financial records, the sufficiency of internal controls, and the adequacy of the compliance process.

The institution's fiduciary operating systems, internal controls, and audit function subject it primarily to transaction and compliance risk; however, other risks including reputation, strategic, and financial may be present. The ability of management to identify, measure, monitor and control these risks is reflected in this rating.

The operations, internal controls and auditing rating is based upon, but not limited to, an assessment of the following evaluation factors:

Operations and Internal Controls, including adequacy of:

- Staff, facilities and operating systems;
- Records, accounting and data processing systems (including controls over systems access and such accounting procedures as aging, investigation and disposition of items in suspense accounts);
- Trading functions and securities lending activities;
- Vault controls and securities movement;
- Segregation of duties;
- Controls over disbursements (checks or electronic) and unissued securities;

• Controls over income processing activities;
• Reconciliation processes (depository, cash, vault, sub-custodians, suspense accounts, etc.);
• Disaster and/or business recovery programs;
• Hold-mail procedures and controls over returned mail; and
• Investigation and proper escheatment of funds in dormant accounts.

Auditing, including the:
• Independence, frequency, quality and scope of the internal and external fiduciary audit function relative to the volume, character and risk profile of the institution's fiduciary activities;
• Volume and/or severity of internal control and audit exceptions and the extent to which these issues are tracked and resolved; and
• Experience and competence of the audit staff.

Ratings.

1. A rating of 1 indicates that operations, internal controls, and audits are strong. All significant risks are consistently and effectively identified, measured, monitored, and controlled.

2. A rating of 2 indicates that while operations, internal controls and audits are satisfactory, modest weaknesses may exist. These weaknesses, however, are not material in nature and, in general, are effectively identified, measured, monitored, and controlled.

3. A rating of 3 indicates that operations, internal controls and/or auditing need improvement. One or more of these areas are less than satisfactory. Problems and significant risks may be inadequately identified, measured, monitored, or controlled.

4. A rating of 4 indicates deficient operations, internal controls and/or audits in which one or more of these areas are inadequate or the level of problems and risk exposure is excessive. Problems and significant risks are inadequately identified, measured, monitored, or controlled and require immediate action. Departments with this level of deficiencies may make little provision for audits of any kind or may evidence weak or potentially dangerous operating practices in combination with infrequent or inadequate audits.

5. A rating of 5 indicates critically deficient operations, internal controls and/or audits. Operating practices, with or without audits, pose a serious threat to the safety of assets of fiduciary accounts. Problems and significant risks are inadequately identified, measured, monitored, or controlled and now threaten the ability of the institution to continue engaging in fiduciary activities.

Earnings. This area includes an evaluation of the department's profitability and its effect on the financial condition of the institution. The use and adequacy of budgets and earnings projections by functions, product lines and clients are reviewed and evaluated. Risk exposure that may lead to negative earnings is also evaluated.

Earnings are evaluated at all fiduciary examinations. A rating for the earnings component is assigned as follows:

• *Mandatory Rating of Earnings.* Earnings are rated at every trust examination where the financial institution would, at the time of the examination, be required to file Schedule E (Trust Income Statement) of the FFIEC Annual Report of Trust Assets. Schedule E must be completed by (1) each financial institution with more than $100 million in Total Trust Assets as reported on Schedule A, and (2) by all non-deposit trust companies, whether or not they report any assets on Schedule A.

• *Optional Rating of Earnings.* If an institution is not required to file Schedule E of the FFIEC Annual Report of Trust Assets, this component may be rated at the option of the examining agency and in accordance with its implementing guidelines.

The earnings rating is based upon, but not limited to, an assessment of the following evaluation factors:

• The level and consistency of profitability, or the lack thereof, generated by the institution's fiduciary activities.
• Dependence upon non-recurring fees and commissions, such as those for court accounts.
• Unusual features regarding the composition of business, fee schedules and effects of charge-offs or compromise actions.
• Accounting practices which may contain unusual practices such as (1) unusual methods of allocating direct and indirect expenses and overhead and (2) methods of allocating fiduciary income and expense where two or more fiduciary institutions within the same holding company family share fiduciary services and/or processing functions.
• Extent of management's use of budgets, projections and other cost analysis procedures.
• Methods used for directors' approval of financial budgets and/or projections.
• Management's attitude toward growth and new business development.
• New business development efforts, including types of business solicited, market potential, advertising, competition, relationships with local organizations, and an evaluation by management of risk potential inherent in new business areas.

Ratings.

1. A rating of 1 indicates strong earnings. Strong earnings generally mean five consecutive years of profitable net trust operating income, in a volume reflecting the institution's size and type of fiduciary services offered, with indications of continued profitable operations. Earnings and future prospects are sufficient to support the continuation of fiduciary activities without engaging in activities that may result in risks or other factors that would affect the quality and quantity of earnings. In addition, management makes effective use of budgets and cost analysis procedures, such as earnings projections by functions, product lines and clients. Methods used for reporting such information to, as well as obtaining approvals from the board of directors, or a committee thereof, are adequate.

2. A rating of 2 indicates satisfactory earnings. Satisfactory earnings are generally indicated by profitable net trust operating income in three of the past five consecutive years, with indications of continued profitable operations. Management's use of budgets and projections, and other cost analysis procedures, as well as the methods used for directors' approvals of these financial reports, is generally satisfactory for the size and complexity of the institution.

A 2 rating may also be assigned where there are five years of profitable operations (which would normally warrant a 1 rating), if there are indications that management is entering activities with which it is not familiar, or where there may be inordinately high levels of risk present that have not been adequately evaluated. As a result, continuation of profitable operations is questionable.

Optional Rating of Earnings. In instances where the rating of trust earnings is optional under these guidelines and the institution is not generating positive earnings, or where information concerning this area may not be available in a formal manner, a 2 rating may be assigned if management has satisfactorily evaluated the positive effect of offering of fiduciary services to the continued growth of the institution and its overall earnings. However, management should, at a minimum, (a) have a reasonable method for measuring income and expense commensurate with the volume and nature of fiduciary services offered, (b) report the level of profitability or operating losses to the board of directors, or a committee thereof, at least annually, and (c) obtain

approval from the board of directors, or a committee thereof, for offering fiduciary services. In these instances, the board of directors may consider the lack of fiduciary profitability to be a cost of doing business as a full service institution and believe the negative effects of not offering fiduciary services are more significant than the expense of administering those services.

3. A rating of 3 indicates less than satisfactory earnings, which generally means inconsistent or marginally-profitable net trust operating income over the past five consecutive years. A 3 rating may also be assigned when operations are generally unprofitable, even if gross income permits recovery of salary expenses. Over a five year period, however, the department's earnings trend has shown less ability to recover salary expense and projections do not indicate a reversal of this trend. Management may not be making proper use of budgets and projections, and other cost analysis procedures. Earnings accorded this rating need to improve to fully support the institution's fiduciary activities and provide for the associated risks.

Optional Rating of Earnings. In instances where the rating of trust earnings is optional under these guidelines, this rating may be assigned if management has a reasonable method for measuring trust income and expense, but either fails to adequately (a) report the level of profitability or operating losses to the board of directors, or a committee thereof, at least annually, or (b) obtain approval from the board of directors, or a committee thereof, for the offering of the service. While management may have attempted to identify and quantify collateral revenue to be earned by offering fiduciary services, it has decided that these services should be offered as a community service, even if they cannot be operated profitably.

4. A rating of 4 indicates earnings that are deficient, and do not support fiduciary activities. Operating losses, when averaged over the previous five year period, do not generally cover salary or other direct expenses. In general, this would be indicated by unprofitable net trust operating income in the past three consecutive years, with indications of continued unprofitable operations. The five year trend may indicate erratic fluctuations in net income, the development of a significant negative trend, nominal earnings, unsustainable earnings, intermittent losses or a substantial drop in earnings from the previous year. Business volume and prospects suggest a continuation of this trend. Budgets are either not used or not followed, and there is no accountability for failing to adhere to financial targets. Reporting of earnings information to the board of directors, or a committee thereof, is inadequate, incomplete, or ineffective.

Optional Rating of Earnings. In instances where the rating of trust earnings is optional under these guidelines, this rating may be assigned if management has failed to adequately implement two of the three minimum standards cited under Rating No. 2 above. Management has undertaken little or no effort to identify or quantify the collateral advantages, if any, to the institution from offering fiduciary services.

5. A rating of 5 indicates critically deficient earnings. In general, this means unprofitable net trust operating income in the past five consecutive years, with indications of continued unprofitable operations. A trust department with this rating is experiencing losses that have a significant negative impact on the overall earnings of the institution and that may represent a distinct threat to its viability through the erosion of its capital. Budgeting is likely to be nonexistent and/or unrealistic and ineffective. The board of directors, or a committee thereof, may not be aware of the condition and/or there is no effective method to communicate such matters to the board on a regular basis.

Optional Rating of Earnings. In instances where the rating of trust earnings is optional under these guidelines, this rating may be assigned if management has failed to adequately implement any of the three minimum standards described under Rating No. 2 above.

Compliance. The compliance rating component covers an institution's overall compliance with applicable laws, regulations, accepted standards of fiduciary conduct, governing account instruments and internally established policies and procedures. This component specifically incorporates an assessment of a fiduciary's duty of undivided loyalty and duties associated with account administration.

Risks associated with account administration are virtually unlimited because each account is a separate contractual relationship that contains specific obligations. Risks associated with account administration include: failure to comply with applicable laws, regulations or terms of the governing instrument; inadequate account administration practices; and inexperienced management or inadequately trained staff. Risks associated with a fiduciary's duty of undivided loyalty generally stem from engaging in self-dealing or other conflict of interest transactions. An institution is subject to compliance risk and strategic risk related to account administration and conflicts of interest activities. The ability of management to identify, measure, monitor and control these risks is reflected in this rating. Policies, procedures and practices pertaining to account administration and conflicts of interest are evaluated in light of the size and character of an institution's fiduciary business.

The compliance rating is based upon, but not limited to, an assessment of the following evaluation factors:

- Applicable federal and state statutes and regulations, including, but not limited to, federal and state fiduciary laws, the Employee Retirement Income Security Act of 1974, federal and state securities laws, state investment standards, state principal and income acts, and state probate codes;
- Terms of governing instruments; and
- Internally established policies and procedures, including, but not limited to, those addressing self-dealing and other conflicts of interest, account administration, and asset (including cash) management.

Ratings.

1. A rating of 1 indicates strong compliance policies, procedures and practices. Policies and procedures covering conflicts of interest and account administration are appropriate for the size and complexity of the business. Accounts are administered in accordance with governing instruments, applicable laws and regulations, sound fiduciary principles, and internal policies and procedures. Any violations are isolated, technical in nature and easily correctable. All significant risks are consistently and effectively identified, measured, monitored and controlled.

2. A rating of 2 indicates fundamentally sound compliance policies, procedures and practices. Account administration may be flawed by modest weaknesses in policies, procedures or practices. Management's practices indicate a determination to minimize the instances of conflicts of interest. Fiduciary activities are conducted in substantial compliance with laws and regulations, and any violations are generally technical in nature. Management corrects violations in a timely manner and without loss to fiduciary accounts. Significant risks are effectively identified, measured, monitored, and controlled.

3. A rating of 3 indicates compliance practices that are less than satisfactory.

Policies, procedures and controls have not proven effective and may require strengthening. Fiduciary activities may be in substantial noncompliance with laws, regulations or governing instruments; however, losses are minimal. Management may have the ability to effect compliance; however, the number of violations that exist, or failure to correct prior violations, are indications that management has not devoted sufficient time and attention to its compliance responsibilities. Risk management practices generally need improvement.

4. A rating of 4 indicates institutions with deficient compliance practices. Account administration is notably deficient. The institution makes little or no effort to minimize potential conflicts or refrain from self dealing, and is confronted with a considerable number of potential or actual conflicts. Numerous substantive and technical violations of laws and regulations exist and many may remain uncorrected from previous examinations. Management has not exerted sufficient effort to effect compliance and may lack the ability to effectively administer fiduciary activities. The level of compliance problems is significant and, if left unchecked, may subject the institution to monetary losses or reputation risk. Risks are inadequately identified, measured, monitored and controlled.

5. A rating of 5 indicates critically deficient compliance practices. Account administration is critically deficient or incompetent and there is a flagrant disregard for the terms of the governing instruments and interests of account beneficiaries. The institution frequently engages in transactions that compromise its fundamental duty of undivided loyalty to account beneficiaries. There are flagrant or repeated violations of laws and regulations and significant departures from sound fiduciary principles. Management is unwilling or unable to operate within the scope of laws and regulations or within the terms of governing instruments and efforts to obtain voluntary compliance have been unsuccessful. The severity of noncompliance presents an imminent monetary threat to account beneficiaries and creates significant legal and financial exposure to the institution. Problems and significant risks are inadequately identified, measured, monitored, or controlled and now threaten the ability of management to continue engaging in fiduciary activities.

Asset Management. The asset management rating reflects the risks associated with managing the assets (including cash) of others. Prudent portfolio management is based on an assessment of the needs and objectives of each account or portfolio. An evaluation of asset management should consider the adequacy of processes related to the investment of all discretionary accounts and portfolios, including collective investment funds, proprietary mutual funds, and investment advisory arrangements.

The institution's asset management activities subject it to reputation, compliance and strategic risks. In addition, each individual account or portfolio managed by the institution is subject to financial risks such as market, credit, liquidity, and interest rate risk, as well as transaction and compliance risk. The ability of management to identify, measure, monitor and control these risks is reflected in this rating.

The asset management rating is based upon, but not limited to, an assessment of the following evaluation factors:

- The adequacy of overall policies, practices and procedures governing asset management, considering the size, complexity and risk profile of the institution's fiduciary activities.
- The decision making processes used for selection, retention and preservation of fiduciary assets including adequacy of documentation, committee review and approval, and a system to review and approve exceptions.
- The use of quantitative tools used to measure the various financial risks in investment accounts and portfolios.
- The existence of policies and procedures addressing the use of derivatives or other unusual investment products.
- The adequacy of procedures related to the purchase or retention of miscellaneous assets including real estate, notes, closely held companies, limited partnerships, mineral interests, insurance and other unique assets.
- The extent and adequacy of periodic reviews of investment performance, taking into consideration the needs and objectives of each account or portfolio.
- Monitoring of changes in the composition of fiduciary assets for trends and related risk exposure.
- Quality of investment research used in the decision-making process and documentation of the research.
- Due diligence process for evaluating investment advice received from vendors and/or brokers (including approved or focus lists of securities).
- Due diligence process for reviewing and approving brokers and/or counter parties used.

This rating may not be applicable for some institutions because their operations do not include activities involving the management of any fiduciary assets. Functions of this type would include, but not necessarily be limited to clearing corporations or depositories, directed agency relationships, security clearance, non-fiduciary custody relationships, transfer agent and registrar activities. In institutions of this type, the rating for Asset Management may be omitted by the examiner in accordance with the examining agency's implementing guidelines.

Ratings.

1. A rating of 1 indicates strong asset management practices. Identified weaknesses are minor in nature. Risk exposure is modest in relation to management's abilities and the size and complexity of the assets managed.

2. A rating of 2 indicates satisfactory asset management practices. Moderate weaknesses are present and are well within management's ability and willingness to correct. Risk exposure is commensurate with management's abilities and the size and complexity of the assets managed. Supervisory response is limited.

3. A rating of 3 indicates that asset management practices are less than satisfactory in relation to the size and complexity of the assets managed. Weaknesses may range from moderate to severe; however, they are not of such importance as to pose a threat to the interests of the account beneficiaries generally. Asset management and risk management practices generally need to be improved. An elevated level of supervision is normally required.

4. A rating of 4 indicates deficient asset management practices in relation to the size and complexity of the assets managed. The levels of risk are significant and inadequately controlled. The problems pose a threat to account beneficiaries generally, and if left unchecked, may subject the institution to losses and could undermine the reputation of the institution.

5. A rating of 5 represents critically deficient asset management practices and a flagrant disregard of fiduciary duties. A continuation of these practices jeopardizes the interests of the beneficiaries generally, and may pose a threat to the soundness of the institution.

[End of Proposed Text of Uniform Interagency Trust Rating System]

Dated: February 10, 1998.

Joe M. Cleaver,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 98–3802 Filed 2–13–98; 8:45 am]

BILLING CODE 6210–01–P, 6720–01–P, 6714–01–P, 4810–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, by February 27, 1998.

Agreement No.: 202–011375–037
Title: Trans-Atlantic Conference Agreement
Parties:
Atlantic Container Line AB
Cho Yang Shipping Co., Ltd.
Sea-Land Service, Inc.
A.P. Moller-Maersk Line
P&O Nedlloyd B.V.
Hapag-Lloyd Container Linie GmbH
Mediterranean Shipping Co., S.A.
DSR-Senator Lines
Pol-Atlantic
Orient Overseas Container Line (UK) Ltd.
Transportacion Maritima Mexicana, S.A. de C.V.
Neptune Orient Lines Ltd.
Hyundai Merchant Marine Co., Ltd.
P&O Nedlloyd Limited
Nippon Yusen Kaisha
Tecomar S.A. de C.V.
Synopsis: The proposed modification (1) deletes from Article 14(f)(ii), that otherwise requires all service contracts to provide for the application of standard assessorial charges, an exception for shipments to or from any place in the former Soviet Union (i.e., the Confederated Independent States or "CIS") and, (2) reinstates an inadvertently omitted note to the signature page stating that Tecomar S.A. de C.V. and Transportacion Maritima Mexicana, S.A. de C.V. will be limited to a single vote.

Agreement No.: 224–002758–016
Title: Oakland—APL Preferential Assignment Agreement
Parties:
City of Oakland
American President Lines, Ltd.
Synopsis: The proposed amendment reflects APL's relationship with the Global Alliance group of shipping lines and describes the conditions under which the alliance's vessels and cargoes may be handled at the assigned premises. The term of the agreement now runs through at least June 30, 2001.

Agreement No.: 224–003038–006
Title: Oakland—APL Middle Harbor Terminal Agreement
Parties:
City of Oakland
American President Lines, Ltd.
Synopsis: The proposed amendment reflects APL's relationship with the Global Alliance group of shipping lines and describes the conditions under which the alliance's vessels and cargoes may be handled at the assigned premises. The term of the agreement now runs through at least June 30, 2001.

Agreement No.: 224–200888–001
Title: Oakland—Marine Terminals Corporation Ninth Avenue Terminal Agreement
Parties:
City of Oakland
Marine Terminals Corporation.
Synopsis: The proposed amendment changes the basis for calculating the compensation due the port. The agreement remains in effect on a year-to-year basis.

Dated: February 10, 1998.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,
Assistant Secretary.

[FR Doc. 98–3808 Filed 2–13–98; 8:45 am]
BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention; Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Advisory Committee to the Director, Centers for Disease Control and Prevention, of the Department of Health and Human Services, has been renewed for a 2-year period beginning February 1, 1998, through February 2, 2000.

For further information, contact Linda Kay McGowan, Acting Executive Secretary, Advisory Committee to the Director, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, (D–23), Atlanta, GA 30333, telephone 404/639–7080 or fax 404/639–7181.

Dated: February 10,1998.

Carolyn J. Russell,
Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–3822 Filed 2–13–98; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthy People 2010 Planning Process

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following invitation for input into recommendations being developed for Healthy People Objectives in the area of prevention and early intervention of Birth Defects, Genetic Disorders, and Developmental Disabilities.

FOR FURTHER INFORMATION CONTACT: Mike Adams, M.D., Division of Birth Defects and Developmental Disabilities, CDC, NCEH, 4770 Buford Highway, NE, M/S F–34, Atlanta, Georgia 30341, e-mail (bdgddd@cdc.gov), telephone (770/488–7154) or fax (770/488–7156).

SUPPLEMENTARY INFORMATION: The "Birth Defects, Genetic Disorders, and Developmental Disabilities" (BDGDDD) Work Group—a part of the "Impairments and Disabilities" Group in the Healthy People 2010 Planning Process—has been convened to develop recommendations for Objectives to be achieved by the year 2010. The Healthy People 2010 Planning Process is described on the web site of the Department of Health and Human Services, Office of Disease Prevention and Health Promotion at http:web.health.gov/healthypeople/

The BDGDDD Work Group plans to develop a set of objectives related to the prevention and early intervention of birth defects, genetic disorders, and developmental disabilities. These objectives will be designed to serve to focus and inform the regular review by the U.S. Assistant Secretary of Health of public health programs in this area. The BDGDDD Work Group objectives process is described in the CDC web site at http://www.cdc.gov/nech/programs/hp2010/

The BDGDDD Work Group welcomes input from health professionals, persons with related health conditions and their family members, and others with an interest in this area. The BDGDDD Work Group will post the most recent revision of the "objectives-under-development" and briefly describe the "issues-of-interest" being discussed in the Work Group. Input is welcomed via e-mail (bdgddd@cdc.gov) or by fax (770/488–

7156). A ListServ is available to provide unmoderated discussion at bdgddd@listserv.cdc.gov

The BDGDDD Work Group will work to develop a set of objectives that represent a common ground for health professionals, persons with related health conditions and their family members, and interested others. "Issues-of-interest" will be identified that are barriers to common agreement and discussion is invited to help revise objectives to better reflect the common views of the Work Group.

Dated: February 10, 1998.

Joseph R. Carter,

Acting Associate Director for Management, and Operations Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–3824 Filed 2–13–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N–0396]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Reports of Corrections and Removals for Manufacturers, Importers, and Distributors of Medical Devices (21 CFR 806.10 and 806.20)" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 26, 1997 (62 FR 63182), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0359. The approval expires on January 31, 2001.

Dated: February 9, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–3777 Filed 2–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94P–0240]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Food Labeling; Serving Sizes; Reference Amount for Baking Powder, Baking Soda, Pectin" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 18, 1997 (62 FR 61476), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0357. The approval expires on January 31, 2001.

Dated: February 4, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–3901 Filed 2–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–108]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Criteria for Medicare Coverage of Liver Transplants; Form No.: HCFA-R–108 (OMB# 0938–0580); *Use:* Medicare participating hospitals must file an application to be approved for coverage and payment of liver transplants performed on Medicare beneficiaries; *Frequency:* Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 12; *Total Annual Responses:* 12; *Total Annual Hours:* 1,880.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive

Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 4, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–3818 Filed 2–13–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Correction

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice; correction.

SUMMARY: In the **Federal Register** issue of Thursday, October 9, 1997, make the following correction:

Correction

In FR Doc. 97–26645, on page 52908, in the third column under the heading "Sudden Infant Death Syndrome (SIDS)/ Other Infant Death (OID) Program," the program is being withdrawn from competition due to financial and programmatic concerns.

Dated: February 10, 1998.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 98–3832 Filed 2–13–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Practitioner Data Bank for Adverse Information on Physicians and other Health Care Practitioners: Availability of and Fee for Public Use Data File

The Health Resources and Services Administration (HRSA), Department of Health and Human Services (DHHS), is announcing a fee of $195 for the recently available public use data file which includes selected information from approximately 168,000 reports submitted to the National Practitioner Data Bank (Data Bank) between September 1, 1990 and December 31, 1997. HRSA plans to make updated versions of the complete file available every 4 months. A separate $195 fee will be charged for each updated copy of the file. The file contains information concerning: (1) Malpractice payments made for the benefit of physicians, dentists, and other health care practitioners; and (2) adverse licensure, clinical privileges, and professional society membership actions concerning physicians and dentists.

The file does not contain information which would allow identification of individual physicians, dentists, or other health care practitioners. It also does not contain information identifying either entities which filed reports with the Data Bank or patients. This information is being made available for research purposes in conformance with 42 USC 11137(b). Hospitals cannot fulfill their obligation under 42 USC 11135 to query the Data Bank by obtaining this data file. Other health care entities cannot fulfill obligations to query the Data Bank imposed by accreditation agencies by obtaining this file.

Information in the file includes type of practitioner, type of reporting entity, and the practitioner's State. For malpractice payment reports, information includes malpractice payment amount, reasons for malpractice payment, date of payment, and whether payment is a result of judgment or settlement. For adverse action reports, the file includes information on the reason for the licensure or clinical privileges adverse action, the type of action taken, and the duration of such action.

The public use file is in ASCII format and is approximately 20 megabytes in size. It is available in compressed form on IBM–PC compatible high density 3.5 inch diskettes and may also be made available in CD–ROM format. In addition to the data themselves, a complete file description in ASCII text format is included. For informaton on how to order the file, call Data Bank "Help Line" at 1–800–767–6732.

The Data Bank is authorized by the Health Care Quality Improvement Act of 1986 (the Act), title IV of Public Law 99–660, as amended (42 U.S.C. 11101 *et seq.*). Section 427(b)(4) of the Act authorizes the establishment of fees for the costs of processing requests for disclosure and of providing such information.

Final regulations at 45 CFR part 60 set forth the criteria and procedures for information to be reported to and disclosed by the Data Bank. Section 60.3 of these regulations defines the terms used in this announcement.

In determining any changes in the amount of the user fee, the Department uses the criteria set forth in § 60.12(b) of the regulations, as well as allowable costs pursuant to the DHHS Appropriations Act of 1998, Pub. L. 105–78, enacted November 13, 1997. This Act requires that the Department recover the full costs of operating the Data Bank through user fees. Section 60.12(b) of the regulations states:

"The amount of each fee will be determined based on the following criteria:

(1) Use of electronic data processing equipment to obtain information—the actual cost for the service, including computer search time, runs, printouts, and time of computer programmers and operators, or other employees,

(2) Photocopying or other forms of reproduction, such as magnetic tapes—actual cost of the operator's time, plus the cost of the machine time and the materials used,

(3) Postage—actual cost, and

(4) Sending information by special methods requested by the applicant, such as express mail or electronic transfer—the actual cost of the special service."

Additionally, in establishing this charge, the Agency used guidance issued in the Office of Management and Budget (OMB) Circular A–25, applicable to the imposition of user fees. This circular authorizes agencies to collect user fees for the "full cost" of providing a service. These allowable costs include research. All other Data Bank user fees remain the same.

The Department will review this charge periodically, and will revise it as necessary. Any changes in the fee and their effective dates will be announced in the **Federal Register**.

Dated: February 10, 1998.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 98–3833 Filed 2–13–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Human Genome Research Institute, Special Emphasis, Panel ZHG1 HGR P M1.

Agenda/Purpose: To review and evaluate grant applications and/or contract proposals.

Date: February 26, 1998.

Time: 8:30 am to 5 p.m.

Place: The Sheraton Washington Hotel, Washington, D.C.

Contact Person: Rudy Pozzatti, Ph.D., Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Building 38A, Room 604, Bethesda, Maryland 20892, (301) 402–0838.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The applications and/or contract proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Dated: February 9, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3878 Filed 2–13–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice if hereby given of the following National Institute on Drug Abuse (NIDA) Special Emphasis Panel meetings.

Purpose/Agenda: To review and evaluate grant applications and contract proposals.

Name of Committee: NIDA Special Emphasis Panel (SBIR Contract Review, "A New Experimental Chamber for the Long-term Study of Complex Behavior and Neurol Function in Rodents").

Date: February 25, 1998.

Time: 10 a.m.

Place: National Institute on Drug Abuse, NIH, 5600 Fishers Lane, Room 10–49, Rockville, MD 20857.

Contact Person: Mr. Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, Telephone (301) 443–1644.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of Committee: NIDA Special Emphasis Panel (Clinical Neuroscience and Imaging).

Date: March 12, 1998.

Time: 9:00 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Mark Swieter, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–2620.

The meetings will be closed in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Scientist Development, Research Scientist Development, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health)

Dated: February 9, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3875 Filed 2–13–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Virology Quality Assurance Program (Telephone Conference Call).

Date: February 25, 1998.

Time: 1:00 p.m. to Adjournment.

Place: Teleconference, 6003 Executive Blvd., Solar Building, Room 1A02, Bethesda, MD 20892, (301) 496–2500.

Contact Person: Dr. Dianne E. Tingley, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C07, Bethesda, MD 20892, (301) 496–2550.

Purpose/Agenda: To evaluate contract proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: February 9, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3876 Filed 2–13–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meetings:

Name of SEP: Mutagenic Effects of Airborne Toxicants in Human Lungs-Program Project.

Date: March 16–18, 1998.

Time: 7:00 p.m.

Place: Sage Howard Johnson, 777 Memorial Drive, Cambridge, MA 02139.

Contact Person: Mr. David Brown,, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Centers for Children's Environmental Health and Disease Prevention Research—Committee A.

Date: March 22–25, 1998.

Time: 7:00 p.m.

Place: Hawthorne Suites, 300 Meredith Drive, Durham, North Carolina 27713, and National Institute of Environmental Health Sciences, South Campus, Conference Room 101–B, Research Triangle Park, NC 27709.

Contact Person: Dr. Linda K. Bass, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–24, Research Triangle Park, NC 27709, (919) 541–1307.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Centers for Children's Environmental Health and Disease Prevention Research—Committee B.

Date: March 22–25, 1998.

Time: 7:00 p.m.

Place: Hawthorne Suites, 300 Meredith Drive, Durham, North Carolina 27713, and National Institute of Environmental Health Sciences, South Campus, Conference Room 101–C, Research Triangle Park, NC 27709.

Contact Person: Dr. Ethel B. Jackson, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–24, Research Triangle Park, NC 27709, (919) 541–7826 and Mr. Jorge Rangel, Environmental Protection Agency, 401 M. Street, S.W., Mailcode 8725R, Washington, DC 20460, (202) 564–2443.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Pfiesteria: Impact on Human Health and the Environment-Program Project.

Date: March 30–April 1, 1998.
Time: 7:00 p.m.
Place: Baltimore Marriott Inner Harbor, Pratt and Eutaw Streets, Baltimore, Maryland 77840.
Contact Person: Dr. Linda Bass, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1307.
Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Grant applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: February 10, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3677 Filed 2–13–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Refugee Resettlement Program; Proposed Availability of Formula Allocation Funding for FY 1998 Targeted Assistance Grants for Services to Refugees in Local Areas of High Need

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Notice of proposed availability of formula allocation funding for FY 1998 targeted assistance grants to States for services to refugees [1] in local areas of high need.

SUMMARY: This notice announces the proposed availability of funds and award procedures for FY 1998 targeted assistance grants for services to refugees under the Refugee Resettlement Program (RRP). These grants are for service provision in localities with large refugee populations, high refugee concentrations, and high use of public assistance, and where specific needs exist for supplementation of currently available resources.

DATES: Comments on this notice must be received by March 19, 1998.

ADDRESSES: Address written comments, in duplicate, to: Toyo Biddle, Director, Division of Refugee Self-Sufficiency, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW, Washington, DC 20447.

Application Deadline: The deadline for applications will be established by the final notice; applications should not be sent in response to this notice of proposed allocations.

FOR FURTHER INFORMATION CONTACT: Toyo Biddle (202) 401–9250.

SUPPLEMENTARY INFORMATION:

I. Purpose and Scope

This notice announces the proposed availability of funds for grants for targeted assistance for services to refugees in counties where, because of factors such as unusually large refugee populations, high refugee concentrations, and high use of public assistance, there exists and can be demonstrated a specific need for supplementation of resources for services to this population.

The Office of Refugee Resettlement (ORR) has available $49,477,000 in FY 1998 funds for the targeted assistance program (TAP) as part of the FY 1998 appropriation for the Department of Health and Human Services (Pub. L. No. 105–78).

The Director of the Office of Refugee Resettlement (ORR) proposes to use the $49,477,000 in targeted assistance funds as follows:

- $35,371,300 will be allocated to States under the 5-year population formula, as set forth in this notice.
- $14,105,700 will be used to award discretionary grants to States under separate grant announcements, including TAP 10% grants and as well as other discretionary grants.

In addition, the Office of Refugee Resettlement will have available an additional $5,000,000 in FY 1998 funds for the targeted assistance discretionary program through the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Pub. L. No. 105–118). These funds will augment the 10-percent of the targeted assistance program which is set-aside for grants to localities most heavily impacted by the influx of refugees such as Laotian Hmong, Cambodians and Soviet Pentecostals, including secondary migrants who entered the United States after October 1, 1979.

The purpose of targeted assistance grants is to provide, through a process of local planning and implementation, direct services intended to result in the economic self-sufficiency and reduced welfare dependency of refugees through job placements.

The targeted assistance program reflects the requirements of section 412(c)(2)(B) of the Immigration and Nationality Act (INA), which provides that targeted assistance grants shall be made available "(i) primarily for the purpose of facilitating refugee employment and achievement of self-sufficiency, (ii) in a manner that does not supplant other refugee program funds and that assures that not less than 95 percent of the amount of the grant award is made available to the county or other local entity."

II. Authorization

Targeted assistance projects are funded under the authority of section 412(c)(2) of the Immigration and Nationality Act (INA), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. No. 99–605), 8 U.S.C. 1522(c); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. No. 96–433), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above; section 584(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. No. 100–202), insofar as it incorporates by reference with respect to certain Amerasians from Vietnam the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above, including certain Amerasians from Vietnam who are U.S. citizens, as provided under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100–461), 1990 (Pub. L. No. 101–167), and 1991 (Pub. L. No. 101–513).

[1] In addition to persons who meet all requirements of 45 CFR 400.43, "Requirements for documentation of refugee status," eligibility for targeted assistance includes Cuban and Haitian entrants, certain Amerasians from Vietnam who are admitted to the U.S. as immigrants, and certain Amerasians from Vietnam who are U.S. citizens. (See section II of this notice on "Authorization.") The term "refugee", used in this notice for convenience, is intended to encompass such additional persons who are eligible to participate in refugee program services, including the targeted assistance program.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the targeted assistance program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival, or until the obtain permanent resident alien status, whichever comes first.

III. Client and Service Priorities

Targeted assistance funding must be used to assist refugee families to achieve economic independence. To this end, States and counties are required to ensure that a coherent family self-sufficiency plan is developed for each eligible family that addresses the family's needs from time of arrival until attainment of economic independence. (See 45 CFR 400.79 and 400.156(g).) Each family self-sufficiency plan should address a family's needs for both employment-related services and other needed social services. The family self-sufficiency plan must include: (1) A determination of the income level a family would have to earn to exceed its cash grant and move into self-support without suffering a monetary penalty; (2) a strategy and timetable for obtaining that level of family income through the placement in employment of sufficient numbers of employable family members at sufficient wage levels; and (3) employability plans for every employable member of the family. In local jurisdictions that have both targeted assistance and refugee social services programs, one family self-sufficiency plan may be developed for a family that incorporates both targeted assistance and refugee social services.

Services funded through the targeted assistance program are required to focus primarily on those refugees who, either because of their protracted use of public assistance or difficulty in securing employment, continue to need services beyond the initial years of resettlement. States may not provide services funded under this notice, except for referral and interpreter services, to refugees who have been in the United States for more than 60 months (5 years).

In accordance with 45 CFR 400.314, States are required to provide targeted assistance services to refugees in the following order of priority, except in certain individual extreme circumstances: (a) Refugees who are cash assistance recipients, particularly long-term recipients; (b) unemployed refugees who are not receiving cash assistance; and (c) employed refugees in need of services to retain employment or to attain economic independence.

In addition to the statutory requirement that TAP funds be used "primarily for the purpose of facilitating refugee employment" (section 412(c)(2)(B)(i)), funds awarded under this program are intended to help fulfill the Congressional intent that "employable refugees should be placed on jobs as soon as possible after their arrival in the United States" (section 412(a)(1)(B)(i) of the INA). Therefore, in accordance with 45 CFR 400.313, targeted assistance funds must be used primarily for employability services designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program in order to achieve economic self-sufficiency as soon as possible. Targeted assistance services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Targeted assistance funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

In accordance with § 400.317, if targeted assistance funds are used for the provision of English language training, such training must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related activities.

A portion of a local area's allocation may be used for services which are not directed toward the achievement of a specific employment objective in less than one year but which are essential to the adjustment of refugees in the community, provided such needs are clearly demonstrated and such use is approved by the State. Allowable services include those listed under § 400.316.

Reflecting section 412(a)(1)(A)(iv) of the INA, States must "insure that women have the same opportunities as men to participate in training and instruction." In addition, in accordance with § 400.317, services must be provided to the maximum extent feasible in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women. The Director also strongly encourages the inclusion of refugee women in management and board positions in agencies that serve refugees. In order to facilitate refugee self-support, the Director also expects States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit. States and counties are expected to make every effort to assure availability of day care services for children in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, day care may be treated as a priority employment-related service under the targeted assistance program. Refugees who are participating in TAP-funded or social services-funded employment services or have accepted employment are eligible for day care services for children. For an employed refugee, TAP-funded day care should be limited to one year after the refugee becomes employed. States and counties, however, are expected to use day care funding from other publicly funded mainstream programs as a prior resource and are encouraged to work with service providers to assure maximum access to other publicly funded resources for day care.

In accordance with § 400.317, targeted assistance services must be provided in a manner that is culturally and linguistically compatible with a refugee's language and cultural background, to the maximum extent feasible. In light of the increasingly diverse population of refugees who are resettling in this country, refugee service agencies will need to develop practical ways of providing culturally and linguistically appropriate services to a changing ethnic population. Services funded under this notice must be refugee-specific services which are designed specifically to meet refugee needs and are in keeping with the rules and objectives of the refugee program. Vocational or job-skills training, on-the-job training, or English language training, however, need not be refugee-specific.

When planning targeted assistance services, States must take into account the reception and placement (R&P) services provided by local resettlement agencies in order to utilize these resources in the overall program design and to ensure the provision of seamless, coordinated services to refugees that are not duplicative. See § 400.156(b).

ORR strongly encourages States and counties when contracting for targeted assistance services, including employment services, to give consideration to the special strengths of mutual assistance associations (MAAs), whenever contract bidders are otherwise equally qualified, provided that the MAA has the capability to deliver services in a manner that is culturally and linguistically compatible with the background of the target population to be served. ORR also strongly encourages MAAs to ensure that their management and board composition reflect the major target populations to be served.

ORR defines MAAs as organizations with the following qualifications:

a. The organization is legally incorporated as a nonprofit organization; and

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association is comprised of

refugees or former refugees, including both refugee men and women.

Finally, in order to provide culturally and linguistically compatible services in as cost-efficient a manner as possible in a time of limited resources, ORR strongly encourages States and counties to promote and give special consideration to the provision of services through coalitions of refugee service organizations, such as coalitions of MAAs, voluntary resettlement agencies, or a variety of service providers. ORR believes it is essential for refugee-serving organizations to form close partnerships in the provision of services to refugees in order to be able to respond adequately to a changing refugee picture. Coalition-building and consolidation of providers is particularly important in communities with multiple service providers in order to ensure better coordination of services and maximum use of funding for services by minimizing the funds used for multiple administrative overhead costs.

The award of funds to States under this notice will be contingent upon the completeness of a State's application as described in section IX, below.

IV. [Reserved for Discussion of Comments in the Final Notice]

V. Eligible Grantees

Eligible grantees are those agencies of State governments that are responsible for the refugee program under 45 CFR 400.5 in States containing counties which qualify for FY 1998 targeted assistance awards.

The use of targeted assistance funds for services to Cuban and Haitian entrants is limited to States which have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

The State agency will submit a single application on behalf of all county governments of the qualified counties in that State. Subsequent to the approval of the State's application by ORR, local targeted assistance plans will be developed by the county government or other designated entity and submitted to the State.

A State with more than one qualified county is permitted, but not required, to determine the allocation amount for each qualified county within the State. However, if a State chooses to determine county allocations differently from those set forth in this notice, in accordance with § 400.319, the FY 1998 allocations proposed by the State must be based on the State's population of refugees who arrived in the U.S. during the most recent 5-year period. A State may use welfare data as an additional factor in the allocation of its targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula. In addition, if a State chooses to allocate its FY 1998 targeted assistance funds in a manner different from the formula set forth in this notice, the FY 1998 allocations and methodology proposed by the State must be included in the State's application for ORR review and approval.

Applications submitted in response to the final notice are not subject to review by State and areawide clearinghouses under Executive Order 12372, "Intergovernmental Review of Federal Programs."

VI. Qualification and Allocation

A. Qualified Counties

The 47 counties listed as qualified for TAP funding in the FY 1997 final TAP notice will remain qualified for TAP funding in FY 1998. We do not plan to consider the eligibility of additional counties for FY 1998. In the FY 1996 targeted assistance final notice (61 FR 36739, July 12, 1996) the ORR Director indicated her intention to determine the qualification of counties for targeted assistance funds once every three years, beginning in FY 1996. Therefore, in FY 1999, ORR will again review data on all counties that could potentially qualify for TAP funds on the basis of the most current 5-year refugee/entrant population data available at that time.

B. Allocation Formula

Of the funds available for FY 1998 for targeted assistance, $35,317,300 is allocated by formula to States for qualified counties based on the initial placements of refugees, Amerasians, entrants, and Kurdish asylees in these counties during the 5-year period from FY 1993 through FY 1997 (October 1, 1992-September 30, 1997).

With regard to Havana parolees, in the absence of reliable data on the State-by-State resettlement of this population, we are crediting 5,992 Havana parolees who arrived in the U.S. in FY 1997 according to the Immigration and Naturalization Service (INS), to qualified targeted assistance counties based on the counties' proportion of the 5-year entrant arrival population. For FY 1995 and FY 1996, Florida's Havana parolees for each qualified county are based on actual data submitted by the State of Florida, while Havana parolees credited to counties in other States were prorated based on the counties' proportion of the 5-year entrant population in the U.S. The proposed allocations in this notice reflect these additional parolee numbers.

If a qualified county does not agree with ORR's population estimate and believes that its 5-year initial resettlement population from FY 1993–FY 1997 was undercounted and wishes ORR to reconsider its population estimate, the county must provide the following evidence: The county must submit to ORR a letter from each local voluntary agency that resettled refugees in the county that attests to the fact that the refugees/entrants listed in an attachment to the letter were resettled as initial placements during the 5-year period from FY 1993–FY 1997 in the county making the claim. Documentation must include the name, alien number, date of birth, and date of arrival in the U.S. for each refugee/entrant claimed. Listings of refugees who are not identified by their alien numbers will not be considered. Counties should submit such evidence separately from comments on the proposed allocation formula no later than 30 days from the date of publication of this notice and should be addressed to: Loren Bussert, Division of Refugee Self-Sufficiency, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone: (202) 401–4732. Failure to submit the required documentation within the required time period will result in forfeiture of consideration.

VII. Allocations

Table 1 lists the qualified counties, the number of refugee and entrant arrivals in those counties during the 5-year period from October 1, 1992–September 30, 1997, the prorated number of Havana parolees credited to each county based on the county's proportion of the 5-year entrant population in the U.S., the sum of the third, fourth, and fifth columns, and the proposed amount of each county's allocation based on its 5-year total population.

Table 2 provides proposed State totals for targeted assistance allocations.

TABLE 1.—PROPOSED ASSISTANCE ALLOCATIONS BY COUNTY: FY 1998

County	State	Refugees [1]	Entrants	Havana parolees [2]	Total arrivals FY 1993–1997	$35,371,300 Total FY 1997 proposed allocation
Maricopa County	Arizona	5,920	652	242	6,814	586,972
Alameda County	California	4,029	19	8	4,056	349,392
Fresno County	California	4,596	2	0	4,598	396,081
Los Angeles County	California	20,709	465	268	21,442	1,847,057
Merced County	California	1,067	0	0	1,067	91,914
Orange County	California	17,950	27	15	17,992	1,549,867
Sacramento County	California	11,463	4	2	11,469	987,963
San Diego County	California	10,780	517	205	11,502	990,806
SAN FRANCISCO AREA	California	9,706	85	73	9,864	849,705
San Joaquin County	California	1,708	7	3	1,718	147,992
Santa Clara County	California	13,706	50	15	13,771	1,186,262
Denver County	Colorado	3,384	3	1	3,388	291,849
District of Col.	District of Col.	3,859	14	7	3,880	334,231
Broward County	Florida	1,124	1,558	575	3,257	280,565
Dade County	Florida	9,486	34,623	17,902	62,011	5,341,754
Duval County	Florida	3,416	41	25	3,482	299,947
Palm Beach County	Florida	690	1,092	428	2,210	190,374
DeKalb County	Georgia	6,051	13	8	6,072	523,054
Fulton County	Georgia	5,866	210	89	6,165	531,066
CHICAGO AREA	Illinois	17,240	412	182	17,834	1,536,257
Polk County	Iowa	3,301	1	0	3,302	284,441
Jefferson County [3]	Kentucky	3,213	551	158	3,922	337,849
Baltimore City	Maryland	2,683	3	0	2,686	231,378
Suffolk County	Massachusetts	5,090	73	103	5,266	453,624
Ingham County	Michigan	1,715	319	102	2,136	183,999
Oakland County	Michigan	3,409	8	4	3,421	294,692
Hennepin County	Minnesota	5,490	3	0	5,493	473,178
Ramsey County	Minnesota	3,744	10	4	3,758	323,722
St. Louis City	Missouri	6,614	1	0	6,615	569,830
Lancaster County	Nebraska	2,218	36	10	2,264	195,026
Hudson County	New Jersey	1,910	827	362	3,099	266,954
Bernalillo County	New Mexico	1,322	1,228	517	3,067	264,198
Broome County	New York	1,336	16	11	1,363	117,412
Monroe County	New York	2,884	514	209	3,607	310,714
NEW YORK CITY AREA	New York	69,582	728	454	70,764	6,095,755
Oneida County	New York	3,470	1	0	3,471	298,999
Cass County	North Dakota	1,535	3	1	1,539	132,573
Cuyahoga County	Ohio	4,131	6	2	4,139	356,542
PORTLAND OREGON AREA	Oregon	10,451	549	209	11,209	965,566
Philadelphia County	Pennsylvania	6,756	55	30	6,841	589,298
Davidson County	Tennessee	3,243	54	14	3,311	285,216
DALLAS AREA	Texas	11,398	610	243	12,251	1,055,326
Harris County	Texas	9,645	169	64	9,878	850,911
FAIRFAX AREA	Virginia	4,337	8	3	4,348	374,546
Richmond City	Virginia	1,981	103	42	2,126	183,138
Pierce County	Washington	2,713	10	3	2,726	234,823
SEATTLE AREA	Washington	15,355	52	15	15,422	1,328,482
Total		342,276	45,732	22,608	410,616	$35,371,300

[1] Refugees include: refugees, Kurdish asylees, and Amerasian immigrants from Vietnam.

[2] For 1997, 5101 Havana Parolees (HP's) were prorated to the qualifying counties based on the counties' proportion of the five year (FY 1993–1997) entrant population in the U.S.

For FY 1996, HP arrivals to the qualifying Florida counties (6910) were based on actual data while HP's in the non-Florida qualifying counties (1415) were prorated based on the counties' proportion of the five year (FY 1992–1996) entrant population in the U.S.

For FY 1995, HP arrivals to the qualifying Florida counties (7855) were based on actual data while HP's in the non-Florida qualifying counties (1327) were prorated based on the counties' proportion of the five year (FY 1991–1995) entrant population in the U.S.

[3] The allocation for Jefferson, KY will be awarded to the Kentucky Wilson-Fish project.

TABLE 2.—PROPOSED TARGETED ASSISTANCE ALLOCATIONS BY STATE: FY 1998

State	$35,371,300 Total FY 1997 proposed allocation
Arizona	$586,972
California	8,397,039
Colorado	291,849
District of Columbia	334,231
Florida	6,112,640
Georgia	1,054,120
Illinois	1,536,257
Iowa	284,441
Kentucky	337,849
Maryland	231,378
Massachusetts	453,624
Michigan	478,691
Minnesota	796,900
Missouri	569,830
Nebraska	195,026
New Jersey	266,954
New Mexico	264,198
New York	6,822,880
North Dakota	132,573
Ohio	356,542
Oregon	965,566
Pennsylvania	589,298
Tennessee	285,216
Texas	1,906,237
Virginia	557,684
Washington	1,563,305
Total	35,371,300

VIII. Application and Implementation Process

Under the FY 1988 targeted assistance program, States may apply for and receive grant awards on behalf of qualified counties in the State. A single allocation will be made to each State by ORR on the basis of an approved State application. The State agency will, in turn, receive, review, and determine the acceptability of individual county targeted assistance plans.

Pursuant to § 400.210(b), FY 1998 targeted assistance funds must be obligated by the State agency no later than one year after the end of the Federal fiscal year in which the Department awarded the grant. Funds must be liquidated within two years after the end of the Federal fiscal year in which the Department awarded the grant. A State's final financial report on targeted assistance expenditures must be received no later than two years after the end of the Federal fiscal year in which the Department awarded the grant. If final reports are not received on time, the Department will deobligate any unexpended funds, including any unliquidated obligations, on the basis of the State's last filed report.

The requirements regarding the discretionary portions of the targeted assistance program will be addressed separately in the grant announcements for those funds. Applications for these funds are therefore not subject to provisions contained in this notice but to other requirements which will be conveyed separately.

IX. Application Requirements

The proposed State application requirements for grants for the FY 1998 targeted assistance formula allocation are as follows:

States that are currently operating under approved management plans for their FY 1996 or FY 1997 targeted assistance program and wish to continue to do so for their FY 1998 grants may provide the following in lieu of resubmitting the full currently approved plan:

The State's application for FY 1998 funding shall provide:

A. Assurance that the State's current management plan for the administration of the targeted assistance program, as approved by ORR, will continue to be in full force and effect for the FY 1998 targeted assistance program, subject to any additional assurances or revisions required by this notice which are not reflected in the current plan. Any proposed modifications to the approved plan will be identified in the application and are subject to ORR review and approval. Any proposed changes must address and reference all appropriate portions of the FY 1996 or FY 1997 application content requirements to ensure complete incorporation in the State's management plan.

B. Assurance that targeted assistance funds will be used in accordance with the requirements in 45 CFR 400.

C. Assurance that targeted assistance funds will be used primarily for the provision of services which are designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program. States must indicate what percentage of FY 1998 targeted assistance formula allocation funds that are used for services will be allocated for employment services.

D. Assurance that targeted assistance funds will not be used to offset funding otherwise available to counties or local jurisdictions from the State agency in its administration of other programs, e.g. social services, cash and medical assistance, etc.

E. The mount of funds to be awarded to the targeted county or counties. If a State with more than one qualifying targeted assistance county chooses to allocate its targeted assistance funds differently from the formula allocation for counties presented in the ORR targeted assistance notice in a fiscal year, its allocations must be based on the State's population of refugees who arrived in the U.S. during the most recent 5-year period. A State may use welfare data as an additional factor in the allocation of targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula. The application must provide a description of, and supporting data for, the State's proposed allocation plan, the data to be used, and the proposed allocation for each county.

F. Assurance that local administrative budgets will not exceed 15% of the lcoal allocation. Targeted assistance grants are cost-based awards. Neither a State nor a county is entitled to a certain amount for administrative costs. Rather, administrative cost requests should be based on projections of actual needs. States and counties are strongly encouraged to limit administative costs to the extent possible to maximize available funding for services to clients.

G. All applicants must establish targeted assistance proposed performance goals for each of the 6 ORR performance outcome measures for each targeted assistance county's proposed service contract(s) or sub-grants for the next contracting cycle. Proposed performance goals must be included in the application for each performance measure. The 6 ORR performance measures are: entered employments, cash assistance reductions due to employment, each assistance terminations due to employment, 90-day employment retentions, average wage at placement, and job placements with available health benefits. Targeted assistance program activity and progress achieved toward meeting performance outcome goals are to be reported quarterly on the ORR–6, the "Quarterly Performance Report."

States which are currently grantees for targeted assistance funds should base projected annual outcome goals on the past year's performance. Proposed targeted assistance outcome goals should reflect improvement over past performance and strive for continuous improvement during the project period from one year to another.

H. A line item budget and justification for State adminstrative costs limited to a maximum of 5% of the total award to the State. Each total budget period funding amount requested must be necessary, reasonable, and allocable to the project. States that administer the program locally in lieu of the county, through a mutual agreement with the qualifying county, may add up to, but

not exceed, 10% of the county's TAP allocation to the State's administrative budget.

I. A line item budget and justification for State administaratgve cost limited to a maximoum of 5% of the total award to the State. Each total budget period funding amount requested must be necessary, reasonable, and allocable to the project.

States administering the program locally: States that have administered the program locally or provide direct service to the refugee population (with the concurrence of the county) must submit a program summary to ORR for prior review and approval. The summary must include a description of the proposed services; a justification for the projected allocation for each component including relationship of funds allocated to numbers of clients served, characteristics of clients, duration of training and services, and cost per placement. In addition, the program component summary must describe any ancillary services or subcomponents such as day care, transportation, or language training.

X. Reporting Requirements

States are required to submit quarterly reports on the outcomes of the targeted assistance program, using Schedule A and Schedule C of the new ORR–6 Quarterly Performance Report form which was sent to States in ORR State Letter 95–35 on November 6, 1995.

Dated: Febuary 11, 1998.

Lavinia Limon,

Director, Office of Refuguee Resettlement.

[FR Doc. 98-3892 Filed 2-13-98; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Reopening of Public Comment Period for Status Review of the Northern Goshawk in the Contiguous United States West of the 100th Meridian

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice of the reopening of public comment period

SUMMARY: On September 29, 1997, the U.S. Fish and Wildlife Service (Service) announced a 90-day finding for a petition to list the northern goshawk (*Accipiter gentilis*) in the contiguous United States west of the 100th meridian under the Endangered Species Act (62 FR 50892). In that finding, the Service found that the petition presented substantial information indicating that the listing of the northern goshawk as a threatened or endangered species in the contiguous United States west of the 100th meridian may be warranted. At that time, the Service initiated a status review for the northern goshawk and announced that a 12-month finding will be prepared at the conclusion of the review. The previous comment period for this action closed on December 29, 1997.

DATES: Comments and materials related to this petition must be received on or before March 19, 1998.

ADDRESSES: Comments and materials concerning this petition finding and status review should be sent to U.S. Fish and Wildlife Service, Office of Technical Support, 333 S.W. 1st Avenue, Portland, Oregon 97204, ATTN: Goshawk Status Review Team. The petition, finding, supporting data and comments will be available for public inspection by appointment, during normal business hours at the following address: U.S. Fish and Wildlife Service, Office of Technical Support for Forest Resources, 333 S.W. 1st Avenue, 4th Floor, Portland, Oregon 97204, (503/808–2565).

FOR FURTHER INFORMATION CONTACT: Monty Knudsen, Office of Technical Support for Forest Resources, 333 S.W. 1st Avenue, Portland, Oregon 97232–4181, (503/808–2564).

SUPPLEMENTARY INFORMATION: Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act) requires that the Service make a finding on whether a petition to list, delist or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition (90-day finding), and notice of the finding is to be published promptly in the **Federal Register**. If a finding is made that substantial information was presented the Service is required to promptly commence a status review of the species and determine whether the petitioned action is warranted. The Act requires the Service to make this finding within 12-months of the receipt of the petition.

On September 29, 1997, the Service announced a 90-day finding for a petition to list the northern goshawk in the contiguous United States west of the 100th meridian under the Endangered Species Act (62 FR 50892). In that finding, the Service found that the petition presented substantial information indicating that the listing of the northern goshawk as a threatened or endangered species in the contiguous United States west of the 100th meridian may be warranted. At that time, the Service initiated a status review for the northern goshawk and announced that a 12-month finding will be prepared at the conclusion of the review.

At this time, the Service continues to seek additional data, information or comments from the public, other concerned government agencies, the scientific community, industry or any other interested party concerning the status of the northern goshawk in the western U.S. The Service is interested in information from throughout the species range in the U.S., Canada and Mexico.

Public Comments Solicited

The following issues are of particular interest to the Service:

1. Genetic, morphological and ecological differences, including variations or intergradation of the subspecies *Accipiter gentilis atricapillus* and *Accipiter gentilis apache* within their range;

2. Data on historic and current population trends and dynamics, and documented or suspected influencing factors that may affect these population trends, and may, therefore, assist in determining population trends;

3. Reproductive trends and documented or suspected influencing factors that may affect reproduction in goshawks;

4. Trends in loss, modification and recovery of the forested habitat occupied by the two subspecies, and the extent to which habitat conversion and fragmentation affects goshawks and their prey;

5. Taxonomic clarification of North American goshawk subspecies;

6. Information on migration and dispersal patterns; and

7. Information on the goshawk in Canada and Mexico; as well as information on management and relevant regulatory mechanisms in Canada and Mexico.

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: February 5, 1998.

Bill Shake,

Acting Regional Director, U.S. Fish and Wildlife Service Region 1, Portland, Oregon.

[FR Doc. 98–3411 Filed 2–13–98; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-030-1610]

Call for Information on the Grand Staircase-Escalante National Monument Management Plan Regarding Areas of Critical Environmental Concern (ACEC) and Wild & Scenic Rivers (W&SR)

AGENCY: Bureau of Land Management, Interior.

ACTION: The Grand Staircase-Escalante National Monument (GSENM) invites the public to nominate potential ACECs and river segments for W&SR consideration for inclusion into the GSENM planning process.

SUMMARY: This notice is to advise the public that the Bureau of Land Management is seeking additional public input regarding those potential areas considered for either ACEC and/or W&SR study and evaluation, as well as to seek additional public input on those areas that have already been nominated.

DATES: The comment period for the preliminary ACEC nominations or additional nominations will commence with publication of this notice. Comments must be submitted on or before March 19, 1998.

FOR FURTHER INFORMATION CONTACT: Pete Wilkins, Planning Chief—Grand Staircase-Escalante National Monument, 337 S. Main, Suite 010, Cedar City, UT 84720 Tel:435–865–5161, Fax:435–865–5170, e-mail: p1wilkin@ut.blm.gov.

Detailed information regarding those areas that have already been nominated is available at the above address. Comments on these potential designations should be sent to the address listed above.

SUPPLEMENTARY INFORMATION: As part of the land use planning process, the Federal Land Management Policy Act mandates that the Bureau of Land Management "give priority to the designation and protection of ACECs in the developing and revising land use plans." As part of the GSENM planning effort, the Bureau of Land Management will determine what areas, if any, should be designated as Areas of Critical Environmental Concern. To be considered as a potential ACEC, and analyzed in a management plan alternative, an area must meet the criteria of relevance and importance as established and defined in 43 CFR 1610.7–2, *Designations of areas of critical environmental concern.* An area meets the "relevance" criteria if it contains one of more of the following: (1) Significant historic, cultural, or scenic values, (2) a fish and wildlife resource (including sensitive species, relative habitat or habitat essential for maintaining species diversity), (3) natural processes or systems (including rare, endemic, relict plants or communities, and riparian areas), and (4) natural hazards such as severe avalanche, flooding, seismic activity, etc.

The "importance" criteria are used to insure that a specific resource or value, process or hazard has substantial significance and value. Importance can be characterized as follows: (1) Being more than locally significant, having special worth, (2) has qualities or circumstances that make it fragile, sensitive, rare, irreplaceable, unique, endangered or threatened, meaningful or distinctive, (3) has been recognized as warranting protection in order to satisfy national priorities or to carry out the mandates of the Federal Land Management Policy Act (FLPMA), and (4) has qualities which warrant concern to satisfy public/management concerns regarding public welfare and safety.

As a result of a previous planning effort for the Kanab/Escalante Resource Management Plan, several nominations have already been recorded. These nominations have been reviewed and are proposed to be brought forth into the draft GSENM Management Plan/Draft EIS. Potential "relevance" and "importance" values, and potential issues, associated with the nominated areas are as follows:

(1) No Man's Mesa Research Natural Area—Located in the center of Township 3 West, Range 40 South, east of Park Wash; 1,335 acres; relict plant communities.

(2) Paria-Hackberry Unit—Located north of Highway 89 east of Kanab, Utah and south of Henrieville on Highway 12; 158,000 acres; Grand Staircase geologic formations, Sheep Creek, Hackberry Canyon, Cottonwood Creek, relict plant community of pinyon-juniper and sagebrush-grass park vegetation on No Man's Mesa, cultural resources, Old Pahrea townsite.*

(3) Bryce Adjacent Units—Located below Bryce Canyon's cliffs, form part of the scenic foreground of views from the national park; 25,500 acres (East of Bryce—900 acres, Square and Willis Creeks—22,300 acres, Box Canyon—2,300 acres); Navajo Sandstone in Bull Valley Gorge, badlands' appearance, views outstanding, plant communities (Kodachrome Bladderpod, T&E species and a member of the Evening Primrose family), and black bear use for travel between the high plateau of Bryce to the warmer Paria River country below.*

(4) The Blues Unit—Located northeast of Bryce Canyon National Park and north of Highway 12; 18,700 acres; Cretaceous shale badlands in a "critical" erosion condition which contrasts with the pink cliff of Powell Point above, scenic attraction to travelers of Highway 12, significant vista from Bryce Canyon National Park, possible area for the rare aster (*Xylorhiza confertifolia*), diverse habitat conditions, known paleontological resources, and panoramic views.*

(5) Mud Spring Canyon Unit—Located between the Grand Staircase and Kaiparowits Plateau from Canaan Peak to the northern section of the Cockscomb; 55,100 acres; badlands of blue shale, spectacular cockscomb, transitional vegetation with pinyon-juniper forest grading into desert shrubs at lower elevations, Dry Valley relict plant community, among big game habitat.*

(6) The Cockscomb Unit—Located north of Highway 89 and southwest of the Cottonwood Wash road; 10,300 acres; Upthrust ridge of The Cockscomb, the milkvetch (*Astragalus ampullarius*, candidate for T&E list) may occur, varied wildlife habitat, critical antelope fawning areas, Hattie Green Mine.*

(7) Wahweap-Paradise Canyon Unit—Begins 10 miles south of the town of Escalante and continues across Paradise Bench to the Wahweap Creek drainage northwest of Lake Powell; 228,000 acres; long, winding canyons, far-ranging vistas and remote hiking, fossils in the Wahweap Formation, Four Mile Bench Old Tree Area (1,400-year-old pinyon and juniper trees), diverse wildlife habitat, numerous archaeology sites.*

(8) Nipple Bench Unit—Abuts Glen Canyon National Recreation Area just north and east of Big Water, Nipple Canyon forms the western boundary; 31,600 acres; scenic views overlooking Lake Powell, pedestals of mud and silt capped by isolated rocks, Evening Primrose (Camissonia atwoodii, T&E candidate), archaeology, paleontology.*

(9) Warm Creek Unit—Located in the heart of the Kaiparowits Plateau and surrounded by the Wahweap-Paradise Canyon, Squaw Canyon, and Nipple Bench units; 21,000 acres; benches and canyon rims offer views across the southern edge of the Plateau into Glen Canyon National Recreation area, fossil vertebrates and plants in the Wahweap Formation, springs, archaeology, opportunities for solitude.*

(10) Squaw Canyon Unit—Located west of Burning Hills and east of Warm Creek; 11,200 acres; Dramatic vistas of isolated rock pillars, barren cliffs, and fluted canyon cliffs, the most scenic

vistas on the Kaiparowits Plateau, populations of Kodachrome Bladderpod (T&E) and evening primrose (*Camissonia exilis*, candidate T&E), high archaeological site densities.*

(11) Burning Hills Unit—Located in the core of the Kaiparowits Plateau between the Wahweap-Paradise Canyon and Fiftymile Mountain units; 68,400 acres; Last Chance Creek (a twenty mile long canyon) offers solitude with a few watering places, natural underground coal fires, 15–20 foot tall mountain mahogany, the presence of two sensitive plant species (*Cymopterus higgsii* on Smoky Mountain and Penstemon atwoodii in the north end of Dry Wash), the sensitive Lewis's woodpecker and western and mountain bluebird, archaeology.*

(12) Fiftymile Mountain Unit—Includes 42 miles of the Straight Cliffs; 173,900 acres; spectacular viewpoints, sensitive species Atwood's beardtongue (*Penstemon atwoodii*), diverse wildlife (about 190 species), archaeology with a tremendous potential to provide information on local Fremont and Anasazi cultures, virtually unblemished area, solitude.*

(13) Fiftymile Bench and Cave Point Units—Located at the foot of the southern Straight Cliffs and above the lower Escalante Canyons; 11,100 acres in Fiftymile Bench Unit and 4,800 acres in Cave Point Unit; a 1000 foot-high cliff line of the Summerville, Morrison, and Dakota formations and the Tropic Shale on the Fiftymile Bench, transition zone for wildlife, vistas of the Escalante Canyons.*

(14) Scorpion Unit—Located 25 miles southeast of Escalante and borders the Glen Canyon National Recreation Area (NRA); 38,100 acres; nearly 60 miles of sinuous canyons carved into the Mesozoic rocks of the Glen Canyon Group, concentrations of deep slot canyons, diverse wildlife habitat (about 242 species), archaeology.*

(15) Horse Spring Canyon Unit—Located southwest of Escalante, west of Alvey Wash, and east of the Dixie National Forest; 27,900 acres; Mitchell, Willow Spring, and Horse Spring Canyons and tributaries cutting through alternating strata of the Straight Cliffs Formation, Atwood's beardtongue and the Sweetvetch (*Hedysarum boreale*, candidate T&E), Horizon Arch, archeology (rock art, granaries), and petrified wood and other fossils.*

(16) North Escalante Canyons Unit—144,000 acres including Little Egypt unit and Little Death Hollow; significant geological formations, miles of narrow, winding side Canyons, arches, natural bridges, alcoves, slickrock, scenic panoramas, diverse plant and animal life, riparian areas, bald eagle and peregrine falcon, golden eagle, Lewis's woodpecker, and western and mountain bluebirds, archeology (high concentration of rock art sites).*

(17) Carcass Canyon Unit -Located just south of the town of Escalante and west of the Hole-in-the-Rock Road; 72,600 acres; northernmost part of the Straight Cliffs featuring the 2000-foot-high Escalante Rim, nearly 50 miles of deeply entrenched canyons (some more than 700 feet deep), Atwood's beardtongue, eight raptor species, archaeology sites, opportunities for solitude and primitive recreation.*

(18) Phipps-Death Hollow Unit—Located north and east of the town of Escalante; 43,500 acres; expanses of slickrock and deep canyons in the Navajo Sandstone, 40 miles of perennial streams, hanging gardens, relict plant community, Atwood's Beardtongue (*Penstemon atwoodii*), winter range for mule deer and elk, also has mountain lions, golden eagles, American Kestrels, Lewis's woodpeckers, and western and mountain bluebirds, rainbow and brown trout in creeks, archaeology and history (Boulder Mail Trail).*

(19) Steep Creek Unit—Beginning about two miles east of the town of Boulder, extending north from the Burr Trail to the forested slopes of Boulder Mountain and east to the cliffs of Capital Reef National Park; 43,400 acres including 31,500 acres in Steep Creek and 2,900 acres around The Lampstand; spectacular Circle Cliffs, petrified wood, perennial streams flowing down from Boulder Mountain into entrenched canyons in the Navajo and Windgate sandstone, year-round flows of clear cold water, five springs, riparian habitat, critical deer and elk winter range, rainbow and brown trout, variety of waterfowl, archaeology.*

(20) Studhorse Peaks Unit—Located in the center of the scenic Circle Cliffs, just south of the Burr Trail; 19,500 acres; primarily red Moenkopi Formation, Studhorse Peaks (a series of flat-topped buttes) are capped by light-colored Shinarump Conglomerate, White Canyon cuts through the Kiabab Limestone to the Coconino Sandstone (Permian), top of the peaks have pockets of Gamble oak in protected sand hollows, critical elk calving habitat.*

(21) Colt Mesa Unit—Located west of Capitol Reef National Park and north of Glen Canyon NRA with Moody Canyon Road on the west side; 23,500 acres; outstanding vistas, spectacular monocline of the Waterpocket Fold tops out at Deer point in the southeast corner of the unit, northwest four-fifths of the unit is mostly red-brown ledges and slopes of the Moenkopi Formation, inner gorge of Moody Canyon is Kaibab Limestone and Coconino Sandstone, plant species Jones cycladenia (*Cycladenia humilis jonesii*) may be found in southern half, raptors including peregrine use area, bighorn sheep habitat.*

(22) Several Access Routes were nominated for "Scenic ACEC's": US–89, U–12, U–9, U–143, Cottonwood Wash Road from U–12 to US–89, the road to Old Pahreah Townsite from US–89, the Burr Trail from Boulder to Capitol Reef National Park, and the Hole in the Rock Trail from U–12 to the Glen Canyon NRA boundary.**

* Submitted by the Southern Utah Wilderness Alliance, January 14, 1994.

** Submitted by Owen Severance, December 22, 1993.

In addition to the above nominations, the BLM is requesting additional public input for other nominations that the public may see as being worthy as an ACEC. All such nominations will receive a preliminary evaluation by an interdisciplinary team to determine if the area meets the "relevance" and "importance" criteria. Nominations should include descriptive materials, detailed maps and evidence supporting the "relevance" and "importance" of the resource.

Wild and Scenic Rivers

Additionally, public nominations are also being sought for those rivers which may be eligible for inclusion into the National Wild & Scenic River System. In order to be considered, the body of water must be free flowing and contain outstandingly remarkable values. A river segment can be determined free flowing if it is a flowing body of water, estuary, or section, portion, or tributary thereof including, rivers, streams, creeks, runs, kills, rills, and small lakes. The river can be any size and must be existing or flowing in natural conditions without major modification. All nominations should be accompanied by detailed maps, descriptions of the river segment, and river related values.

Those values determined to be oustandingly remarkable are: scenic, recreational, geologic, fish, wildlife, cultural, historic, hydrologic, ecologic/biologic diversity, paleontologic, botanic, or scientific study opportunities. Rivers are also tentatively classified as wild, scenic or recreational.

The following are nominations that we have received from the public to date:

Escalante River Basin: Escalante River, 18 miles from Escalante to Hwy

12—Wild; 64 miles from Highway 12 to Lake Powell—Wild; Boulder Creek, 8 miles of East Boulder Creek from Elbow Lake to T32S, R4E, Sec. 3—Wild; 5 miles to confluence with West Fork—Scenic; 2 miles of West Fork Boulder Creek from T31S, R4E, Sec. 31 to T32S, R4E, Sec. 8—Wild; 1 mile to T32S, R4E, Sec. 17—Scenic; 2 miles to confluence with East Fork—Wild; 3 miles of Boulder Creek from confluence of East and West Forks to T33S, R4E, Sec. 3—Scenic; 4 miles to T33S, R4E, Sec.23—Wild; 5 miles to T34S, R4E, Sec. 12—Recreational; 12 miles to confluence with Escalante—Wild; East Fork Deer Creek, 9 miles from Hwy 12 to T33S, R5E, Sec.29—Wild; 5 miles to Burr Trail—Scenic; 6 miles to confluence with Boulder Creek—Wild; Sand Creek, 24 miles from T33S, R4E, Sec. 31 to confluence with Escalante River—Wild; Twenty-five Mile Wash, 6 miles from Hole-in-the-Rock-Road to T37S, R5E, Sec. 25—Wild; 14 miles to Escalante River confluence—Wild; Calf Creek, 7 miles from T34S, R4E, Sec. 9 to Calf Creek campground—Wild; 1 mile to Escalante River confluence—Recreational; The Gulch, 13 miles of The Gulch from confluence of Stair Canyon and the Gulch to Burr Trail—Wild; 12 miles to confluence with Escalante River—Wild; Steep Creek, 11 miles of Steep Creek from T32S, R5E, Sec. 26 to confluence with The Gulch—Wild; Coyote Gulch, 19 miles from springs at T39S, R7E, Sec 16 to Escalante River confluence—Wild; Moody Creek, 3 miles from T36S, R8E, Sec. 5 to Glen Canyon NRA boundary—Wild; 4 miles to T36S, R8E, Sec. 31—Scenic; 6 miles to confluence with Escalante River—Wild; Harris Wash, 11 miles from T36S, R4E, Sec 15 to T36S, R5E, Sec. 34—Wild; 12 miles to confluence Escalante River—Scenic; Death Hollow, 19 miles of Death Hollow from T33S, R3E, Sec. 6 to Mamie Creek confluence—Wild; Mamie Creek, 12 miles Mamie Creek from T34S, R3E, Sec 17 to Escalante River confluence—Wild;

Lower Colorado River Basin Last Chance Creek, 17 miles from T40S, R3E, Sec. 24 to road crossing at T42S, R5E, Sec. 4—Wild; 2 miles to Last Chance Bay—Wild; Warm Creek, 4 miles of Wesses Canyon from T40S, R3E, Sec. 19 to T41S, R3E, Sec. 5—Wild; 10 miles to confluence with John Henry Canyon—Wild; 12 miles to Warm Creek Bay—Recreational; 6 miles of Tibbet Canyon from T41S, R3E, Sec. 32 to Warm Creek—Recreational; 6 miles of Smokey Hollow from T41S, R4E, Sec. 7 to Warm Creek—Recreational; Wahweap Creek, 28 miles from T39S, R1E, Sec. 28 to T42S, R2E, Sec.33—Wild; Paria River, 21 miles from T38S, R2W, Sec 6 to Old Paria Townsite—Wild; 2 miles to confluence with Cottonwood Creek—Wild; 12 miles to Paria Campground—Recreational; 6 miles to Arizona border—Wild; Hackberry Creek, 17 miles from T38S, R1W, Sec. 29 to Cottonwood Creek—Wild; Bull Valley Gorge, 4 miles from T38S, R4W, Sec. 25 to T38S, R3W, Sec. 27—Wild; 6 miles to Sheep Creek—Wild; Cottonwood Creek, 18 miles from T39S, R1W, Sec. 12 to Paria River—Scenic.

The information provided with additional nominations will be carefully considered. Preliminary findings of river eligibility and tentative classification will be made available for public review and comment. Only then will the determination be made as to which rivers will be considered further in the GSENM plan.

G. William Lamb,

Utah State Director.

[FR Doc. 98–3826 Filed 2–13–98; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–1020–00]

Notice of Resource Advisory Council; Meeting and Comment Period Extension

AGENCY: Bureau of Land Management, Northwest California Resource Advisory Council Ukiah, California.

ACTION: Notice of meeting and comment period extension.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and the Federal Land Policy and Management Act (Pub. L. 94–579), the U.S. Bureau of Land Management's Northwest California Resource Advisory Council will meet Thursday and Friday, March 12 and 13, 1998, at the BLM's Clear Lake Field Office, 2550 North State Street, Ukiah. This meeting was originally scheduled for Thursday and Friday, Feb. 5 and 6, 1998, but was postponed due to bad weather and unsafe travel conditions. Additionally, the BLM is extending until April 3, 1998, the public comment period on a proposal to close Black Sands Beach to motor vehicle access. (62 FR 36301, July 7, 1998). The comment period had been scheduled to close on March 12, 1998. Comments on the proposal should be mailed or hand carried to the BLM's Arcata Field Office, 1695 Heindon Rd., Arcata, CA 95521.

SUPPLEMENTARY INFORMATION: The meeting begins at 10 a.m. March 12. Agenda items include discussion of a proposal to close Black Sands Beach to motor vehicle access, the status of an environmental impact statement on Healthy Rangeland Standards and Guidelines, discussion of recreation user fees, the status of planning in the Sacramento River Bend Area of Critical Environmental Concern, reports on the status of the plan amendment for South Cow Mountain, and reports from the managers of BLM's Arcata, Clear Lake and Redding field offices. Public comments will be taken at 1 p.m. Depending on the number of persons wishing to speak, a time limit could be established. On Friday, the council will convene at 7:30 a.m. at the Clear Lake Field Office and depart immediately for a field tour in the Cache Creek area. Members of the public are welcome, but they must provide their own transportation.

FOR FURTHER INFORMATION CONTACT: Joseph J. Fontana, Public Affairs Officer, at (530) 257–5381.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 98–3694 Filed 2–13–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–61–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting; notice of meeting.

SUMMARY: This notice announces a tour and meeting of the Arizona Resource Advisory Council to be held March 18–19, 1998, Page, Arizona. On March 18, the RAC will visit "signature Rock" to gain a historical prospective of the area. The tour also includes stops on the Vermillion Cliffs Highways initiative and comparative site visits to areas that do and do not meet Arizona's standards for rangeland health. The tour will depart from the Page Arizona Courtyard of Marriott at 8:00 a.m. and will conclude at 5:00 p.m. The Marriott Hotel is located at 600 Clubhouse Drive, Page, Arizona. On March 19, the RAC will conduct a one-day business meeting at the Marriott Hotel starting at 8:00 a.m. until approximately 2:00 p.m. Agenda items to be covered at the meeting include: Review of previous meeting minutes; BLM State Director's Update on legislation, regulations and other statewide issues; Report on the

Southwest Strategy; Report on the RAC Downlink with Secretary of the Interior Bruce Babbitt; Presentation by the Fish and Wildlife Service on the Endangered Species Act; Update on Gila Box Plan Management; and Reports by the Standards and Guidelines, Recreation and Public Relations Working Groups; Reports from RAC members; Discussion on future meetings. A public comment period will take place at 11:30 a.m. on March 19, 1998, for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Christine Tincher, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9216.

Denise P. Meridith,

State Director.

[FR Doc. 98–3825 Filed 2–13–98; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–030–08–1010–00–1784]

Colorado Resource Advisory Councils Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Resource Advisory Council Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C.), notice is hereby given that the Southwest, Northwest and Front Range Resource Advisory Councils (RAC) will hold a joint meeting in March in Montrose, Colorado.

DATES: The joint meeting will be held on Thursday, March 19, 1998.

ADDRESSES: For additional information on the joint meeting or the Southwest RAC, contact Roger Alexander, Bureau of Land Management (BLM), Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401; telephone 970–240–5335; TDD 970–240–5366; e-mail r2alexan@co.blm.gov. For information on the Northwest RAC, contact Joann Graham at (970) 244–3037. For information on the Front Range RAC, contact Ken Smith at (719) 269–8553.

SUPPLEMENTARY INFORMATION: The March 19, 1998, meeting will begin at 8:30 a.m. at The Pavilion, 1800 Pavilion Road, Montrose, Colorado. The agenda will focus on statewide recreation guidelines and includes a short presentation and discussion on implementation of BLM Colorado's standards for public land health and guidelines for livestock grazing. Time will be provided at approximately 1:00 p.m. for public comments.

Time will be made available for the RACs to meet individually, if needed, at the end of the joint meeting.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. If necessary, a per-person time limit may be established by the Designated Federal Officer(s).

Summary minutes for Council meetings are available for public inspection and reproduction within thirty (30) days following each meeting. Please contact one of the above RAC coordinators to obtain copies of the minutes.

Dated: February 10, 1998.

Jamie E. Connell,

Associate District Manager.

[FR Doc. 98–3829 Filed 2–13–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–66035]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (P.L. 97–451), a petition for reinstatement of oil and gas lease UTU–66035 for lands in San Juan County, Utah, was timely filed and required rentals accruing from October 1, 1997, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU–66035, effective October 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Robert Lopez,

Group Leader, Minerals Adjudication Group.

[FR Doc. 98–3828 Filed 2–13–98; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(AK–932–1410–00; AA–6676)

Public Land Order No. 7316; Withdrawal of Public Land for Koliganek Village Selection; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 1,920 acres of public land from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, pursuant to Section 22 (j)(2) of the Alaska Native Claims Settlement Act. This action also reserves the land for selection by the Koliganek Natives, Limited, the village corporation for Koliganek. This withdrawal is for a period of 120 days; however, any land selected shall remain withdrawn by the order until it is conveyed. Any land described herein that is not selected by the corporation will remain subject to the terms and conditions of any withdrawal or segregation of record.

EFFECTIVE DATE: February 17, 1998.

FOR FURTHER INFORMATION CONTACT: Shirley J. Macke, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and is hereby reserved for selection under Section 12 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 (1994), by the Koliganek Natives, Limited, the village corporation for Koliganek:

Seward Meridian

T. 5 S., R. 46 W.,
secs. 8, 16, and 17.

The area described contains 1,920 acres.

2. Prior to conveyance of any of the land withdrawn by this order, the land shall be subject to administration by the

Secretary of the Interior under applicable laws and regulations, and his authority to make contracts and to grant leases, permits, rights-of-way, or easements shall not be impaired by this withdrawal.

3. This order constitutes final withdrawal action by the Secretary of the Interior under Section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (1994), to make land available for selection by the Koliganek Natives, Limited, to fulfill the entitlement of the village of Koliganek under Section 12 and Section 14(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 and 1613 (1994).

4. This withdrawal will terminate 120 days from the effective date of this order; provided, any land selected shall remain withdrawn pursuant to this order until it is conveyed. Any land described in this order, not selected by the corporation, will be subject to the terms and conditions of any other withdrawal or segregation of record.

5. It has been determined that this action is not expected to have any significant effect on the subsistence uses and needs pursuant to Section 810(c) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3120(c) (1994), and this action is exempted from the National Environmental Policy Act of 1969, 42 U.S.C. 4321 note (1994), by Section 910 of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1638 (1994).

Dated: February 4, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–3857 Filed 2–13–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–930–1430–01; AZA 12958, AZA 18462]

Public Land Order No. 7318; Revocation of Secretarial Order dated November 27, 1908, and Partial Revocation of Secretarial Order Dated October 26, 1908; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes one Secretarial order in its entirety and partially revokes another Secretarial order insofar as they affect 198.65 acres withdrawn for the Forest Service's Willow Administrative Site. The land is within an overlapping withdrawal and consequently will remain closed to mining and to such forms of disposition as may by law be made of National Forest System land. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: February 17, 1998.

FOR FURTHER INFORMATION CONTACT: Cliff Yardley, BLM Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, 602–417–9437.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial order dated November 27, 1908, which withdrew the following described National Forest System land for the Forest Service's Willow Administrative Site, is hereby revoked in its entirety:

Gila and Salt River Meridian

Prescott National Forest
T. 14 N., R. 2 W.,
sec. 18, lot 4 (previously described as SW¼ SW¼).

The area described contains 39.61 acres in Yavapai County.

2. The Secretarial Order dated October 26, 1908, which withdrew National Forest System land for the Forest Service's Willow Administrative Site, is hereby revoked insofar as it affects the following described land:

Gila and Salt River Meridian

Prescott National Forest
T. 14 N., R. 2 W.,
sec. 18, lots 2 and 3, SE¼ NW¼, and NE¼ SW¼.

The area described contains 159.04 acres in Yavapai County.

Dated: February 4, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–3859 Filed 2–13–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–01; WYW 80966–01]

Public Land Order No. 7317; Partial Revocation of Executive Order Dated May 14, 1915; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order insofar as it affects 3.20 acres of National Forest System land withdrawn for the Bureau of Reclamation's Colorado River Storage Project, Flaming Gorge Unit. The land is no longer needed for the purpose for which it was withdrawn. The revocation is needed to permit disposal of the land through a Forest Service land exchange. This action will open the land to such forms of disposition as may by law be made of National Forest System land. The land will remain closed to mining by Public Law 90–540 and a Forest Service exchange proposal. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: March 19, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003–1828, 307–775–6124.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated May 14, 1915, which withdrew public land for the Bureau of Reclamation's Colorado River Storage Project, Flaming Gorge Unit, is hereby revoked insofar as it affects the following described land:

Sixth Principal Meridian

T. 13 N., R. 108 W.,
Tract 37A.

The area described contains 3.20 acres in Sweetwater County.

2. At 9 a.m. on March 19, 1998, the land described above shall be opened to such forms of disposition as may by law be made of National Forest System land subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: February 4, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–3858 Filed 2–13–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–98–040–1430–00]

Notice of Intent To Conduct a Plan Amendment Within the Dixie Resource Area, Washington County, Utah, and Call for Information

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Dixie Resource Area of the Cedar City Field Office, intends to initiate a plan amendment through a joint planning effort with Zion National Park. The purpose is to conduct wild and scenic river studies on five specific tracts of BLM-managed public land. The

tracts are all contiguous to the Park's northern boundary.

FOR FURTHER INFORMATION CONTACT: Lauren Mermejo, Natural Resource Specialist at (435) 688–3216.

DATES: Information regarding river values on the specific public land tracts identified in this notice should be submitted on or before March 19, 1998 and sent to Lauren Mermejo, Dixie Resource Area, 345 East Riverside Drive, St. George, Utah 84790.

SUPPLEMENTARY INFORMATION: Federal land management agencies are directed by Section 5(d)(1) of the Wild and Scenic Rivers Act of 1968 to consider the potential for national wild, scenic and recreational river areas in all planning for the use and development of water and related land resources. The Dixie Resource Area is in the final stages of completing a Resource Management Plan for public lands in Washington County. When river segments on three, small, isolated tracts of BLM-managed public land contiguous to Zion National Park were evaluated in the early 1990's as part of the Dixie planning effort, they were determined by BLM not be eligible for further study. These river segments are Willis Creek (T. 38 S., R. 11 W., Sec. 27: SWSW—40 acres affected), Beartrap Canyon (T. 39 S., R. 11 W., Sec. 3: SWNW—40 acres affected), and Goose Creek (T. 39 S., R. 10 W., Sec. 31: NESE, S2SE—120 acres affected). Contiguous river segments within the Park were not evaluated at that time.

Zion National Park is currently preparing a General Management Plan and as part of that effort is conducting a wild and scenic study of river segments within the Park. The Park's study provides a timely, efficient way for BLM and the National Park Service to evaluate the streams throughout their reaches across contiguous Federal lands.

Thus, for purposes of wild and scenic river study only, BLM will serve as a co-lead agency in the development of the General Management Plan for Zion National Park and in the preparation of any associated environmental document. BLM and Zion National Park will cooperate as partners and will strive to reach a joint conclusion as to eligibility, tentative classification, and suitability for each river segment where public lands are involved.

It is recognized that although the BLM-managed river segments identified above may not be eligible for further study when considered on their own, they may be eligible when considered in conjunction with contiguous segments in the Park. Two additional public land parcels at the head of the Middle Fork of Taylor Creek (T. 38 S., R. 11 W., Sec. 30: SWNW—40 acres), and at the head of Kolob Creek Narrows (T. 39 S., R. 10 W., Sec. 30: portions thereof—80 acres), may also be affected should the streams (that are within the Park) be determined suitable for Congressional designation into the National Wild and Scenic River System. Thus, any river values involving these parcels will also be addressed at this time.

The Dixie Resource Area and Zion National Park have prepared a Memorandum of Understanding regarding this joint planning effort. Wild and scenic evaluations will be made by Zion National Park, the BLM, and other experts in accordance with the interagency guidelines of July 1996 titled "Wild and Scenic River Review in the State of Utah, Process and Criteria for Interagency Use." BLM will prepare its own Record of Decision regarding stream segments that cross or otherwise affect BLM-managed public lands. Such decision will constitute a plan amendment for BLM's Virgin River Management Framework Plan or the Dixie Resource Management Plan, whichever is in effect at the time the decision is made.

Public input is being sought for information regarding river values within the five identified public land tracts. Provide river nominations and information about the existence or lack of free-flowing and outstandingly remarkable values. Information should include detailed maps and descriptions of the river and any significant river-related values.

G. William Lamb,

Utah State Director.

[FR Doc. 98–3827 Filed 2–13–98; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice and Request for Comments

AGENCY: National Park Service, Interior.

SUMMARY: The National Park Service (NPS) administers a number of concession contracts under which private parties are authorized to provide specified visitor service and facilities in areas of the national park system. Many such contracts contain provisions which grant the concessioner a "possessory interest" in authorized capital improvements that they make to park lands in furtherance of their authorized operations. Possessory interest in effect provides the concessioner with a compensable interest in such improvements in the event it ceases to be authorized to utilize the improvements pursuant to the terms of a concession contract. In such circumstances, concession contracts provide that specified compensation will be paid to the concessioner. Concession contracts vary with respect to the measure of this compensation. This notice describes an NPS proposal as to how it interprets "sound value" possessory interest, one such measure of possessory interest compensation.

In addition, this notice proposes an NPS method for implementation of this interpretation. Public comment is sought on these matters.

DATES: Comments on this notice must be received no later than thirty (30) days after the date of publication of this notice to be assured of consideration.

ADDRESSES: Comments should be sent to: Robert K. Yearout, Program Manager, Concessions Program, National Park Service, 1849 "C" Street, NW., Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: Public Law 89–249, 16 U.S.C. § 20 et seq. (the Act), prescribes policies under which NPS concession contracts are to be administered. Among other matters, the Act discusses possessory interest (16 U.S.C. § 20e) and states as follows in pertinent part as to compensation for possessory interest:

> Unless otherwise provided by agreement of the parties, just compensation [for possessory interest] shall be an amount equal to the sound value of such structure, fixture, or improvement [consessioner improvements] at the time of taking by the United States determined upon the basis of reconstruction cost less depreciation evidenced by its condition and prospective serviceability in comparison of a new unit of like kind, but not to exceed fair market value.

The statute does not define the term "reconstruction cost" as used in this section. However, the legislative history of the Act states as follows in pertinent part in this regard:

> The Department [of the Interior and the NPS] and the concessioners are agreed that the term reconstruction cost and reproduction cost are synonymous and that the terms have the meaning given on p. 188 of *The Appraisal of Real Estate* [Third Edition, 1960] prepared by the American Institute of Real Estate Appraisers; namely, reproduction cost is the present cost of replacing [the improvements] with as nearly an exact replica as modern materials and equipment will permit.

Many NPS concession contracts provide for "sound value" possessory interest compensation which is generally described as follows in such contracts:

The sound value of any structure, fixture or improvement shall be determined upon the basis of reconstruction cost less depreciation evidenced by its condition and prospective serviceability in comparison with a new unit of like kind, but not to exceed fair market value.

The terms "reconstruction cost" and "fair market value" are not defined in such concession contracts.

In consideration of these matters, NPS proposes to interpret these terms and implement such interpretation in the following manner.

Proposed Interpretation and Implementation

NPS will construe the term "reconstruction cost" as used in NPS concession contracts to be synonymous with the term "reproduction cost" which is defined as follows consistent with the legislative history of the Act:

Reproduction cost of improvements in which an NPS concessioner has a possessory interest is the present cost of replacing the improvements with as nearly an exact replica as modern materials and equipment will permit.

When Sound Value appraisals are prepared for determination of Possessory Interest, appraisers must chose from one or more of the following three methods:

(1) Quantity Survey
(2) Unit-in-place (Segregated)
(3) Comparative Unit

A description of each method may be found in The Appraisal of Real Estate [11th Edition] from the Appraisal Institute.

NPS will construe the term "fair market value" as follows and as based on *The Appraisal of Real Estate* [Third Edition, 1960] prepared by the American Institute of Real Estate Appraisers, as previously identified and cited from the legislative history of the Act:

The most probable price, as of a specific date, in cash, or in terms equivalent to cash, or in other precisely revealed terms for which the property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

In circumstances where NPS considers it necessary, it will undertake formal appraisals of improvements in which an NPS concessioner has a sound value possessory interest. In making such appraisals, it will utilize or cause its appraiser to utilize these preceding definitions in arriving at the appraised value of such possessory interest. NPS standard possessory interest appraisal instructions shall incorporate these definitions.

The NPS may choose to consider, based on professional and knowledgeable analysis, that in some circumstances a less than formal appraisal value may be needed for internal purposes. In those instances, NPS appraisers may provide estimates of value which will clearly disclose that said estimates do NOT conform to appraisal standards and are subject to change based on execution of a formal appraisal.

Dated: January 29, 1998.

Robert K. Yearout,

Concession Program Manager.

[FR Doc. 98–3801 Filed 2–13–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Supplement to the Final Environmental Impact Statement/ Resources Management Plan for Improvement of Water Quality and Conservation of Rare Species and Their Habitats on Santa Rosa Island, Channel Islands National Park

Notice of Availability

SUMMARY: Pursuant to § 102(2)(c) of the National Environmental Policy Act of 1969 (P.L. 91–190, as amended), the National Park Service, Department of the Interior, has prepared a Draft Supplement to the Final Environmental Impact Statement/Resources Management Plan for improving water quality and conserving rare species and their habitats on Santa Rosa Island. Upon completion of the current conservation planning and impact analysis process, a new Record of Decision will be prepared which will supercede the previous decision concerning this stewardship initiative.

Background

In August, 1995, the National Park Service (NPS) began developing a resources management plan for Santa Rosa Island, in order to address impacts from ongoing commercial ranching and hunt operations on water quality, riparian values, and rare plant species and their habitats ("rare" species includes those formally listed as threatened or endangered per the Endangered Species Act *and* those identified by NPS as species of concern). In May, 1996 the NPS completed and distributed for public review a draft environmental impact statement for this resources management plan (DEIS/RMP). During a 125-day public review period, the NPS received over 240 comments. The DEIS/RMP was subsequently revised to address all substantive comments, and a Final EIS/RMP (FEIS/RMP) was released in April, 1997. In a Record of Decision (ROD) signed June 9, 1997, the NPS stated that it would implement actions identified in the FEIS/RMP as the Proposed Action, Alternative D, Revised Conservation Strategy.

This Draft Supplement to the FEIS/RMP introduces a new alternative now being evaluated by the NPS for guiding future stewardship activities on Santa Rosa Island. This new alternative, Alternative F, Negotiated Settlement, is briefly described below and results from recent negotiations among Vail & Vickers, the National Parks and Conservation Association, and the NPS. These negotiations were convened to resolve two lawsuits which were filed against the NPS during the previous conservation planning and impact analysis process.

Although many elements of the negotiated Alternative F are similar to the previously selected Alternative D, there are some differences. This new alternative specifies actions to: (1) improve water quality in surface streams and protect riparian habitat areas, and (2) promote conservation and recovery of rare species of plants and animals, as well as habitats upon which they depend. The NPS encourages public review of Alternative F, and desires comment on any of the alternatives. Accordingly, NPS is distributing this Draft Supplement for consideration by all interested public agencies, organizations and groups, businesses, and individuals for a 60-day public comment period. After assessing all comments which may be received, the NPS will prepare and distribute a Final Supplement to the FEIS/RMP and subsequently prepare a new ROD.

New Proposed Action

Under Alternative F, Negotiated Settlement (the new proposed action), water quality and riparian values would be improved and rare plants and their habitats would be conserved by rapid removal of cattle and phased removal of deer and elk from Santa Rosa Island. With the exception of 12 head in Lobo Pasture, all cattle would be removed from the island by the end of 1998. Deer and elk would be removed by the end of 2011, although they could be removed earlier if necessary to achieve recovery goals for selected listed species and their habitats. After an initial reduction in deer and elk, an adaptive management program for deer and elk would be implemented. Under adaptive

management, deer and elk would be managed at levels allowing rare species and their habitats to recover. Provided recovery goals are met, Vail & Vickers would be permitted to conduct commercial hunting of deer and elk. After the adaptive management period, deer and elk populations would be eliminated during a final phaseout period. If for some reason an acceptable adaptive management program cannot be developed, deer and elk populations will be reduced at a pre-determined rate. As under Alternative D, the NPS would implement road management actions to reduce impacts to island streams, and would develop a comprehensive alien plant management plan to address problems caused by alien species. The NPS would develop monitoring programs for rare species, water quality, and riparian recovery. Visitor access to Santa Rosa Island would be increased beyond current levels.

Other Alternatives

Other alternatives subject to the current conservation planning and impact analysis process are the same as identified and described in the FEIS/RMP. In addition to the above, these include: Alternative A, No Action; Alternative B, Minimal Action; Alternative C, Targeted Management Action; and Alternative E, Immediate Removal of Ungulates.

Comments

Written comments on the Draft Supplement must be postmarked not later than 60-days after the Environmental Protection Agency's announcement in the **Federal Register** regarding the filing of this document. Comments, inquiries, and requests for copies should be directed to the Superintendent, Channel Islands National Park, 1901 Spinnaker Drive, Ventura, CA 93001, or by telephone at (805) 658–5776. Copies will also be available at area libraries.

Dated: February 3, 1998.

John J. Reynolds,

Regional Director, Pacific West.

[FR Doc. 98–3800 Filed 2–13–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 7, 1998. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by March 4, 1998.

Carol D. Shull,

Keeper of the National Register.

ARIZONA

Cochise County

Geronimo Surrender Site (Warfare between Indians and Americans in Arizona MPS), Bluff overlooking Skeleton Canyon, 45 mi. NE of Douglas, Douglas vicinity, 98000170

Graham County

Bonita Site (Warfare between Indians and Americans in Arizona MPS), 1 mi. NW of jct. of AZ 266 and Arizona Industrial School Rd., Bonita, 98000172

Pinal County

Camp Grant Massacre Site (Warfare between Indians and Americans in Arizona MPS), Address Restricted, Lookout Mountain vicinity, 98000171

COLORADO

Clear Creek County

Bryan Hose House, Jct. of Illinois and Virginia Sts., Idaho Springs, 98000174
Hose House No. 2, 600 Colorado Blvd., Idaho Springs, 98000173
Methodist Episcopal Church, 1414 Colorado Blvd., Idaho Springs, 98000176

FLORIDA

Marion County

Citra Methodist Episcopal Church—South, 2010 NE 180th St., Citra, 98000177

GEORGIA

Newton County

Salem Camp Ground, 3940 Salem Rd., Covington, 98000175

ILLINOIS

Cook County

Yale, The, 6565 S. Yale Ave., Chicago, 98000178

LOUISIANA

Caddo Parish

Crystal Grocery, 1124 Fairfield, Shreveport, 98000181

East Baton Rouge Parish

Kleinert Terrace Historic District, Roughly bounded by Myrtle Ave., Perkins Rd., Broussard Ave., and Eugene St., Baton Rouge, 98000180

St. Landry Parish

LaFleur House (Louisiana's French Creole Architecture MPS), 753 LA 748, Grand Prairie vicinity, 98000179

St. Tammany Parish

Bertus—Ducatel House (Louisiana's French Creole Architecture MPS), 1721 Lakeshore Dr., Mandeville, 98000182

MISSISSIPPI

Attala County

Kimbrough, John Hall, House, 5 mi. NNW of Ethel, Ethel vicinity, 98000184
Niles House, 401 N. Huntington St., Kosciusko, 98000186

De Soto County

Hernando Courthouse Square District, Roughly bounded by Caffey, W. Commerce, and Losher Sts., and MS 51, Hernando, 98000185

Rankin County

South College Street Historic District (Brandon MPS), 625–713 S. College St., Brandon, 98000183

NEBRASKA

Cass County

Snoke Farmstead, 23416 O St., NE 34, Eagle vicinity, 98000189

Custer County

Broken Bow Carnegie Library (Carnegie Libraries of Nebraska MPS), 255 S. 10th St., Broken Bow, 98000193

Douglas County

Notre Dame Academy and Convent, 3501 State St., Omaha, 98000192

Hall County

Townsley—Murdock Immigrant Trail Site, Approx. 1.5 mi. S of Alda, Alda vicinity, 98000194

Lancaster County

Brown, Guy A., House, 219–221 S 27th St., Lincoln, 98000195
First National Bank Building, 1001 O St., Lincoln, 98000190
Gillen, Frank E. and Emma A., House, 2245 A St., Lincoln, 98000188
Palisade and Regent Apartments, 1035 S. 17th St. and 1626 D St., Lincoln, 98000191

Scotts Bluff County

Lincoln Hotel, 1421 Broadway, Scottsbluff, 98000187

NEW HAMPSHIRE

Belknap County

New Hampton Town House, Jct. of Town House Rd. and Dana Hill Rd., New Hampton, 98000198
Smith Meeting House, Jct. of Smith Meetinghouse, Parsonage Hill, and Joe Jones Rds., Gilmanton, 98000196

NORTH CAROLINA

Jones County

Foscue and Simmons Plantations, US 17, from Trent R. and Banks Rd., Pollocksbille, 98000197

OKLAHOMA

Alfalfa County

Hotel Cherokee, 117 W. Main, Cherokee, 98000200

Oklahoma County

Milk Bottle Grocery, 2426 N. Classen Blvd., Oklahoma City, 98000199

OREGON

Deschutes County

Byberg, Peter, House, 153 NW Jefferson Pl., Bend, 98000204
Wilson, William T.E., Homestead, 70300 Camp Rock Rd., Sisters vicinity, 98000205

Lane County

Shinn, Horace J. and Ann S., Cottage, 1308 Ash Ave., Cottage Grove, 98000206

Linn County

Lebanon Pioneer Cemetery, 200 Dodge St., Lebanon, 98000208
Ralston, John and Lottie, Cottage, 481 Main St., Lebanon, 98000203
United Presbyterian Church of Shedd, 30045 OR 95 E, Shedd, 98000209

Multnomah County

Jeanne Manor Apartment Building, 1431 SW Park Ave., Portland, 98000201
Northwestern Electric Company—Alberta Substation, 2701–2717 NE Alberta St., Portland, 98000207
Pacific Coast Biscuit Company Building, 1101–1129 NW. Davis St., Portland, 98000212
Paterson, Thomas M. and Alla M., House, 7807 N. Denver Ave., Portland, 98000202
Roosevelt Hotel, 1005 SW. Park Ave., Portland, 98000211
Stevens Building, 812 SW. Washington St., Portland, 98000213

Polk County

Craven, Joseph and Priscilla, House, 858 E. Main St., Monmouth, 98000210

RHODE ISLAND

Providence County

Ontario Apartments, 25–31 and 37–41 Ontario St., Providence, 98000214
Rochambeau Branch—Providence Public Library (Branch Buildings of Providence Public Library MPS), 708 Hope St., Providence, 98000215
Smith Hill Branch—Providence Public Library (Branch Buildings of Providence Public Library MPS), 31 Candace St., Providence, 98000216
Wanskuck Branch—Providence Public Library (Branch Buildings of Providence Public Library MPS), 233 Veazie St., Providence, 98000217
South Providence Branch—Providence Public Library (Branch Buildings of Providence Public Library MPS), 455 Prairie Ave., Providence, 98000218

TEXAS

Harris County

Mraz, Bill, Dance Hall, 835 W. 34th St., Houston, 98000219

VERMONT

Orange County

Thetford Center Historic District, Roughly along VT 113, Tucker Hill Rd., and Buzzell Bridge Rd., Thetford, 98000220

WISCONSIN

Dane County

Northwest Side Historic District, Roughly bounded by Van Buren, Clyde, Grant, and Main Sts., Stoughton, 98000221
West Lawn Heights Historic District, Roughly bounded by Virginia Ter., Regent St., S. Spooner Ave., and Illinois Central Railroad, Madison, 98000223

[FR Doc. 98–3821 Filed 2–13–98; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–374 and 731–TA–780 (Preliminary)]

Butter Cookies in Tins From Denmark

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping and countervailing duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase countervailing duty investigation No. 701–TA–374 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Denmark of butter cookies in tins, provided for in subheading 1905.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Denmark. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B)), the Commission must reach a preliminary determination in countervailing duty investigations in 45 days, or in this case by March 23, 1998. The Commission's views are due at the Department of Commerce within five business days thereafter, or by March 30, 1998.

The Commission hereby also gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–780 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Denmark of butter cookies in tins, provided for in subheading 1905.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by March 23, 1998. The Commission's views are due at the Department of Commerce within five business days thereafter, or by March 30, 1998.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207), as amended in 61 FR 37818 (July 22, 1996).

EFFECTIVE DATE: February 6, 1998.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on February 6, 1998, by Hearthside Baking Company, Inc. (D/B/A Maurice Lenell Cooky Company), Chicago, IL.

Participation in the investigations and public service list.—Persons (other than petitioner) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in

Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on February 27, 1998, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Fischer (202–205–3179) not later than February 23, 1998, to arrange for their appearance. Parties in support of the imposition of antidumping or countervailing duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before March 4, 1998, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: February 10, 1998

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–3785 Filed 2–13–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP(NIJ)–1157]

RIN 1121–ZA94

National Institute of Justice Solicitation for Local Evaluations of the Residential Substance Abuse Treatment for State Prisoners Program

AGENCY: Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice solicitation "Local Evaluations of the Residential Substance Abuse Treatment for State Prisoners Program (1998)."

DATES: Due dates for receipt of proposals for Process Evaluations are close of business May 5, 1998; and September 15,1998. Due dates for receipt of proposals for Outcome Evaluations are April 14, 1998; August 19, 1998; and February 16, 1999.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice solicits proposals to perform local process and outcome evaluations for the Residential Substance Abuse Treatment (RSAT) for State Prisoners Program.

An anticipated 10 grants of up to $60,000 lasting up to 15 months will be awarded for local process evaluations of RSAT programs in individual States, in each of two cycles. Local process evaluations may focus on all participating programs in a State or a subset of those programs. These evaluations should be designed to examine the programs in more detail that the scope of the national evaluation or the standard State annual reports. They should also be designed to allow and prepare for subsequent outcome evaluation.

An anticipated five grants of up to $100,000 for a 24 month period will be awarded for local outcome evaluations, in each of three cycles. Only applicants who have previously been awarded RSAT local process evaluation grants are eligible for awards in this phase. It is expected that outcome evaluations will address the same programs included in the local process evaluations, and build upon those evaluations.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Local Evaluations of the Residential Substance Abuse Treatment for State Prisoners Program (1998)" (refer to document no. SL000252). For World Wide Web access, connect either to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 98–3790 Filed 2–13–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correctional Facility in the Northern Panhandle Region of West Virginia

AGENCY: Federal Bureau of Prisons, Department of Justice.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Action. The U. S. Department of Justice, Federal Bureau of Prisons has determined that, in order to meet increasing demands for additional inmate capacity, a new Federal correctional facility is needed in its system.

The Bureau of Prisons proposes to construct and operate either a high security United States Penitentiary or a medium security Federal Correctional Institution, both with an adjacent minimum security satellite camp, in the Northern Panhandle region of West Virginia. The high security facility would have a rated capacity of approximately 1,000 inmates. The medium security facility would be designed to have a rated capacity of approximately 1,200 inmates, and the minimum security component would house approximately 150–300. Sites currently under consideration are located in Ohio County and Tyler County, West Virginia. The potential site also would be used for road access, administration, programs and services, parking, and support facilities.

In the process of evaluating potential sites, several aspects will receive a detailed examination including utilities, traffic patterns, noise levels, visual intrusions, threatened and endangered species, cultural resources, and socio-economic impacts.

Alternatives. In developing the DEIS, the options of "no action" and "alternative sites" for the proposed facility will be fully and thoroughly examined.

Scoping Process. Informal discussions and meetings with local economic development staff have already been held on the proposed project, and during the preparation of the DEIS, there will be numerous other opportunities for public involvement. The public scoping meeting will begin at 7:00 p.m. on Tuesday, February 17, 1998, at the Northern West Virginia Community College (B & O Auditorium) located at 1704 Market Street, Wheeling, West Virginia. The meeting has been well publicized and is scheduled at a time that will make the meeting possible for the public and interested agencies or organizations to attend.

DEIS Preparation. Public notice will be given concerning the availability of the DEIS for public review and comment.

ADDRESSES: Questions concerning the proposed action and the DEIS can be answered by: David J. Dorworth, Chief, Site Selection & Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, N.W., Washington, D. C. 20534, Telephone: (202) 514–6470, Telefacsimile: (202) 616–6024, ddorworth@BOP.gov.

Dated: February 12, 1998.

David J. Derworth,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 98–3994 Filed 2–13–98; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correctional Facility in Northeastern West Virginia

AGENCY: Federal Bureau of Prisons, Department of Justice.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Action: The U. S. Department of Justice, Federal Bureau of Prisons has determined that, in order to meet increasing demands for additional inmate capacity, a new Federal correctional facility is needed in its system.

The Bureau of Prisons proposes to construct and operate either a high security United States Penitentiary or a medium security Federal Correctional Institution, both with an adjacent minimum security satellite camp, in Northeastern West Virginia. The high security facility would have a rated capacity of approximately 1,000 inmates. The medium security facility would be designed to have a rated capacity of approximately 1,200 inmates, and the minimum security component would house approximately 150–300. Sites currently under consideration are located in Preston County, West Virginia. The potential site also would be used for road access, administration, programs and services, parking, and support facilities.

In the process of evaluating potential sites, several aspects will receive a detailed examination including utilities, traffic patterns, noise levels, visual intrusions, threatened and endangered species, cultural resources, and socio-economic impacts.

Alternatives: In developing the DEIS, the options of "no action" and "alternative sites" for the proposed facility will be fully and thoroughly examined.

Scoping Process: Informal discussions and meetings with local economic development staff have already been held on the proposed project, and during the preparation of the DEIS, there will be numerous other opportunities for public involvement. The public scoping meeting will begin at 7:00 p.m. on Thursday, February 19, 1998, at the Masontown Volunteer Fire Department building located on West Virginia Route 7 in Masontown, West Virginia. The meeting has been well publicized and is scheduled at a time that will make the meeting possible for the public and interested agencies or organizations to attend.

DEIS Preparation: Public notice will be given concerning the availability of the DEIS for public review and comment.

ADDRESSES: Questions concerning the proposed action and the DEIS can be answered by: David J. Dorworth, Chief, Site Selection & Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, N.W., Washington, D. C. 20534, Telephone: (202) 514–6470, Telefacsimile: (202) 616–6024, ddorworth@BOP.gov.

Dated: February 12, 1998.

David J. Dorworth,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 98–3993 Filed 2–13–98; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional

statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Supersedeas Decisions to General Wage Determination Decisions

The number of the decisions being superseded and their date of notice in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of decisions being superseded.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage

determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, D.C. this 10th day of February 1998.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–3778 Filed 2–13–98; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–019]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATE: February 17, 1998.

FOR FURTHER INFORMATION CONTACT:

Ed Fein, Patent Counsel, Johnson Space Center, Mail Code HA, Houston, TX 77058; telephone (281) 483–0837, fax (281) 244–8452.

NASA Case No. MSC–22419–2: Porous Article with Surface Functionality and Method for Preparing Same;

NASA Case No. MSC–22864–1–CU: Compact Room Temperature Mid-Infrared Laser Sensor for Trace Gas Detection;

NASA Case No. MSC–22419–5: Distributed Pore Chemistry in Porous Organic Polymers;

NASA Case No. MSC–22419–4: Distributed Pore Chemistry in Porous Organic Polymers;

NASA Case No. MSC–22419–3: Distributed Pore Chemistry in Porous Organic Polymers;

NASA Case No. MSC–22569–2: Micromechanical Oscillating Mass Balance;

NASA Case No. MSC–22638–1: Method for Rapid Detection of GC Rich Nucleic Acid Polymers;

NASA Case No. MSC–22757–1: Automatic Propellant Blending;

NASA Case No. MSC–22743–1: Proximate Object Locating and Tracking System;

Dated: February 9, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–3893 Filed 2–13–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 133rd Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on February 27, 1998 from 9:00 a.m. to 4:15 p.m. in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506.

The meeting will be open to the public on a space available basis. Topics tentatively will include: Swearing in of new Council members, Congressional update, budget update, application review, Guidelines (FY 1999 Partnership Agreements, FY 2000 National Heritage and Jazz Masters Fellowships, and FY 1998 ArtsREACH: Expanding Cultural Opportunities through Community Planning), an update on Millennium Initiatives and general discussion.

If, in the course of discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, D.C. 202/682–5532, TTY-TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, D.C. 20506, at 202/682–5570.

Dated: February 10, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 98–3806 Filed 2–13–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board.

DATE AND TIME:

February 26, 1998, 9:00 a.m., Closed Session

February 26, 1998, 9:45 a.m., Open Session

February 27, 1998, 8:30 a.m., Closed Session

February 27, 1998, 9:00 a.m., Open Session

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1225, Arlington, VA 22230.

STATUS: Part of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, February 26, 1998

Closed Session (9:00 a.m.–9:45 a.m.)

—Minutes, November 1997 Meeting
—Vannevar Bush Award
—Alan T. Waterman Award
—Chairman's Items
—Director's Items
—Awards and Agreements

Thurday, February 26, 1998

Open Session (9:45 a.m.–6:30 p.m.)

—Minutes, October 1997
—Minutes, November 1997
—Closed Session Agenda Items for May 1998
—Chairman's Report
—Director's Report
—Director's Merit Review Report
—Reports from Committees
—NSB Report on Graduate Education
—NSB Occasional Paper: Industry Reliance on Publicly-Funded Research
—NSF Long Range Planning

Friday, February 27, 1998

Closed Session (8:30 a.m.–9:00 a.m.)

—NSF Budget and Planning

Friday, February 27, 1998

Open Session (9:00 a.m.–11:00 a.m.)

—NSF Long Range Planning (continued) Issues for Operating in Constrained Fiscal Environments
—Other Business

—Adjourn

Marta Cehelsky,

Executive Officer.

[FR Doc. 98–4091 Filed 2–12–98; 3:17 p.m.]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–247]

Consolidated Edison Company of New York, Inc., Indian Point Nuclear Generating Unit No. 2; Exemption

I

Consolidated Edison Company of New York, Inc. (Con Edison or the licensee) is the holder of Facility Operating License No. DPR–26, which authorizes operation of Indian Point Nuclear Generating Unit No. 2 (the facility or IP2), at a steady-state reactor power level not in excess of 3071.4 megawatts thermal. The facility is a pressurized-water reactor located at the licensee's site in Westchester County, New York. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

In its letter dated October 7, 1997, the licensee requested that NRC exempt the unit from the application of the 1989 Edition of the American Society for Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section XI, Appendix G (1989 methodology) as required by Title 10 of the Code of Federal Regulations, Part 50 Section 60 (50.60), and 10 CFR 50.55a. As an alternative, the licensee proposed to use the version of ASME Section XI, Appendix G found in the 1996 Addenda to the ASME Code (1996 methodology). The 1996 methodology is less conservative than the methodology in the 1989 Edition of the ASME Code. References in 10 CFR 50.60 and Appendix G require the use of a methodology at least as conservative as that found in Appendix G to the 1989 Edition of Section XI of the ASME Code. Therefore, the staff must review and approve the 1996 methodology prior to use. The staff has reviewed the licensee's request and approves the use of the 1996 methodology in lieu of the 1989 methodology for the construction of reactor vessel pressure-temperature (P–T) limits as described in 10 CFR Part 50, Appendix G. A methodology equivalent to the 1996 methodology was used in the licensee's P–T limits submittal dated October 2, 1996. The evaluation for the proposed P-T limits is issued as part of the amendment application.

III

The NRC has established requirements in 10 CFR Part 50 to protect the integrity of the reactor coolant system pressure boundary. As a part of these, 10 CFR Part 50, Appendix G requires that P–T limits be established for reactor pressure vessels (RPVs) during normal operation and vessel hydrostatic testing. In particular, 10 CFR Part 50, Appendix G.IV.2.b. requires that these limits must be "at least as conservative as limits obtained by following the methods of analysis and the margins of safety of Appendix G of Section XI of the ASME Code." 10 CFR 50.55(a) specifies that the applicable ASME Code is the 1989 Edition. 10 CFR 50.60, which broadly addresses the establishment of criteria for fracture prevention, states that "proposed alternatives to the described requirements in Appendices G and H of this part or portions thereof may be used when an exemption is granted by the Commission under § 50.12." The licensee used the methodology equivalent to the 1996 methodology for its P–T limits application in lieu of the 1989 methodology approved by the staff in the regulations. As part of this effort, the licensee has applied for an exemption to use the 1996 methodology.

IV

In the submittal, the exemption was requested under the special circumstances given in 10 CFR 50.12(a)(2)(ii). The provisions of this section state that special circumstances are present whenever "Application of the regulation in the particular circumstances * * * is not necessary to achieve the underlying purpose of the rule." The licensee explained that "With the 1996 Addenda, Article G–2000 was revised to incorporate the most recent elastic solutions * * * These new solutions better characterize the conditions for irradiated vessels in the low temperature region where the thermal stresses and allowable pressure are low." The licensee also indicated that the 1996 methodology contains the same ASME Section XI, Appendix G safety margin, which includes: (1) The 6:1 aspect ratio ¼ T flaw, (2) a factor of 2 on the membrane stress intensity factor, (3) the determination of material toughness from a reference curve based on dynamic and crack arrest data, and (4) margins on the materials' adjusted reference temperature based on Regulatory Guide 1.99, Revision 2. Therefore, the licensee concluded that application of the 1996 methodology would also meet the underlying intent of the regulations, namely to protect the integrity of the RPV from nonductile failure.

The staff examined the licensee's rationale in support of the exemption request. From the regulatory perspective, the staff concurred that a condition for an exemption exists under 10 CFR 50.12(a)(2)(ii) because the 1996 methodology, which is more appropriate than the 1989 methodology, became available recently and had been incorporated into the ASME Code. Consequently, application of the regulation in this particular instance is not necessary to achieve the underlying purpose of the rule.

From the technical perspective, the staff agrees that this alternative method meets the underlying intent of the regulations. The staff has completed its review of the technical basis of the P–T limits submittal dated October 2, 1996. The evaluation of that submittal is issued along with Amendment No. 195 to License No. DPR–26. In that review, the staff examined the application of the 1996 methodology in detail, including a comparison of critical features of the 1989 and 1996 methodologies using plant-specific data for the IP2 RPV, and confirmed the adequacy of the 1996 methodology. Hence, requesting the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) was found to be appropriate, and the application of the 1996 methodology, or its equivalent, would meet the underlying intent of the regulations.

On the basis of its review of the technical basis of the P–T limits submittal, the staff concludes that the use of a methodology equivalent to that contained in the 1996 Addenda of the ASME Code, which is less conservative than that specified in the regulation, meets the underlying intent of 10 CFR 50.60 and 10 CFR Part 50, Appendix G. The staff accepts that the explicit conservatism incorporated within the 1996 Appendix G methodology will ensure that the RPV will be protected from non-ductile failure.

V

For the foregoing reasons, the NRC staff has concluded that the licensee's proposed use of the alternative methodology in determining the P-T limits will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2)(ii), in that application of 10 CFR 50.60 is not

necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

Accordingly, the Commission hereby grants an exemption from 10 CFR 50.60 so that this exemption permits the use of the methodology, or its equivalent, specified in Appendix G in the 1996 Addenda to Section XI of the ASME Code for developing P–T limits for IP2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of the exemption will have no significant impact on the quality of the human environment (62 FR 6584).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 10th day of February, 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–3835 Filed 2–13–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–1029 (which should be mentioned in all correspondence concerning this draft guide), is titled "Guidelines for Evaluating Electromagnetic and Radio-Frequency Interference in Safety-Related Instrumentation and Control Systems." The guide is intended for Division 1, "Power Reactors." This draft guide is being developed to describe design, installation, and testing practices that are acceptable to the NRC staff for addressing the effects of electromagnetic and radio-frequency interference and power surges on safety-related instrumentation and control systems in a nuclear power plant environment. This guide will endorse, with certain stated exceptions, the Institute for Electrical and Electronics Engineers Std 1050–1996, "IEEE Guide for Instrumentation and Control Equipment Grounding in Generating Stations"; IEEE Std C62.41–1991, "IEEE Recommended Practice on Surge Voltages in Low-Voltage AC Power Circuits"; IEEE Std C62.45–1992, "IEEE Guide on Surge Testing for Equipment Connected to Low-Voltage AC Power Circuits"; and Military Standards MIL–STD 461, "Electromagnetic Emission and Susceptibility Requirements for the Control of Electromagnetic Interference" and MIL–STD 462, "Measurement of Electromagnetic Interference Characteristics."

The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on Draft Regulatory Guide DG–1029. Comments may be accompanied by additional relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by April 10, 1998.

You may also download a copy of the guide or provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Printing, Graphics and Distribution Branch; or by fax at (301) 415–5272. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 29th day of January 1998.

For the Nuclear Regulatory Commission.

M. Wayne Hodges,

Director, Division of Systems Technology, Office of Nuclear Regulatory Research.

[FR Doc. 98–3834 Filed 2–13–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39633; File No. SR–MBSCC–97–10]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Modifications to MBSCC's Liquidation Rules

February 9, 1998.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 13, 1997, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MBSCC–97–10) as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. MBSCC amended the proposed rule change on January 30, 1998.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify MBSCC's rules on liquidation of open trades.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A),

[1] 15 U.S.C. 78s(b)(1).

[2] Letter from Anthony H. Davidson, Vice President and Associate General Counsel, MBSCC (January 30, 1998).

(B),and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will modify MBSCC's rules governing the liquidation of open trades when MBSCC ceases to act for a participant. The modifications will affect Section 5 of Rule 3 of Article III of MBSCC's rules, which governs the disposition of a former participant's open commitments.

MBSCC's open commitment report is a daily report that show a participant's open compared trades and is used to identify a former participant's open commitments in a liquidation situation. MBSCC's rules will provide that participants authorize MBSCC to obtain, if necessary, immediate disclosure of the settlement status of any trade from depository institutions or clearing banks. This modification is intended to reduce MBSCC's reliance on independent contraside verification of trades reflected on the open commitment report and, therefore, the time required to identify a former participant's open trades.

MBSCC's rules will provide that the liquidation of a former participant's open trades will occur on a net basis as determined by MBSCC and as reflected on the open commitment report. However, transactions will be liquidated on a net basis only if the contraside participants and trade terms are eligible for netting. This modification is expected to reduce the number of trades requiring liquidation and, therefore, to reduce the time to liquidate the former participant's open trades.

The proposed rule change addresses the liquidation of trades with specified pools. MBSCC has determined that the liquidation of a former participants' open trades that contain specified pools could substantially delay the liquidation process. Pursuant to the proposed rule change, any open trade of the former participant that contains a specified pool will be disposed of as if it did not contain such specified pool (*i.e.*, the trade will be disposed of based on its generic trade terms such as agency, product, coupon rate, and maturity) unless otherwise determined by MBSCC.

The proposed rule change will modify payment of settlement balance order market differential ("SBOMD") credits in a liquidation situation. SBOMD represents the cash difference between the contract price of a transaction and the settlement price as a result of SBO netting. MBSCC typically pays SBOMD credits to participants on settlement date. MBSCC's rules will provide that in a liquidation situation MBSCC may temporarily delay SBOMD credits due to original contrasides of the former participant (*i.e.*, the participant with whom the former participant contracted) until the completion of the liquidation of the former participant's open trades. In addition, MBSCC will be able to apply SBOMD credits due to original contrasides of the former participant to offset any assessment against such original contraside pursuant to MBSCC's liquidation rules. This modification is intended to strengthen MBSCC's cash flow position during the extraordinary circumstances presented by a liquidation of a former participant's open trades.

The proposed rule change also will clarify the status of claims resulting from variance in the context of a liquidation of a former participant's open trades. Sellers in the mortgage-backed securities market are typically permitted to deliver securities that vary by a certain percentage from the originally traded face value pursuant to The Bond Market Association's guidelines for mortgage-backed securities (*i.e.*, a variance). MBSCC calculates a cash adjustment for its participants that includes variance only for trades that have gone through the netting process. Accordingly, the proposed rule change will make explicit that MBSCC will not allow claims for variance pursuant to The Bond Market Association's guidelines relating to a former participant's open trades that have not completed SBO netting or that have a trade-for-trade status. Claims will be allowed for cash adjustments relating to a former participant's open trades that have completed SBO netting if such claims are reasonable as determined solely by MBSCC. In addition, the proposed rule change will clarify that original contrasides will be responsible for prorated cash adjustments of the former participant if the amount available from the former participant is insufficient to cover its obligations.

The proposed rule change will address claims for losses associated with unmargined trades in a liquidation situation. Currently, MBSCC generally gives priority to claims by contrasides which were matched with the former participant through MBSCC's netting process provided that the contraside was not the original contraside to the trade ("SBO contrasides") before claims by original contrasides in the event that the amount available from the former participant is insufficient to cover its obligations. The proposed rule change will create an additional priority that gives claims for losses by original contrasides relating to unmargined trades a lesser priority than claims for losses by original contrasides relating to previously margined trades if the amount available from the former participant is insufficient to cover its obligations. As a result of this modification, MBSCC's priority structure will be (1) SBO contrasides, (2) original contrasides for previously margined trades,[4] and (3) original contrasides for unmargined trades.

The proposal will add a reference to SBO destined trade in Section 5(d)(i) of Rule 3 of Article III that was inadvertently omitted from such section. Such section provides that the original contract price will be used to determine the profit or loss arising from an SBO destined trade. The proposed rule change will modify MBSCC's liquidation rules to add the word "and" in the first sentence of Section 5 of Rule 3 of Article III, to correct cross-references in Sections 5(c) and 5(f) of Rule 3 of Article III, and to replace the reference to "new trade" with "liquidated trade" in the last paragraph of Section 5(f) of Rule 3 of Article III. The proposed rule change also will make a technical modification to MBSCC's rules to replace all references to the Public Securities Association with The Bond Market Association to reflect the recent name change of such organization.

MBSCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act[5] and the rules and regulations thereunder because it is designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of MBSCC or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

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[3] The Commission has modified the text of the summaries prepared by MBSCC.

[4] In this instance, original contrasides could include an original party to the trade which was again matched against the former participant through the netting process or an original contraside to a trade that has been margined but has not yet been through the netting process.

[5] 15 U.S.C. 78q–1(b)(3)(F).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

MBSCC advised participants of the proposed rule change by an administrative bulletin dated May 9, 1997. No written comments relating to the proposed rule change have been received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which MBSCC consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to the file number SR–MBSCC–97–10 and should be submitted by March 10, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

[6] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 98–3854 Filed 2–13–98; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39632; File No. SR–NASD–98–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Operation of the OTC Bulletin Board

February 9, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 3, 1998, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration or enforcement of an existing rule under § 19(b)(3)(A) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to effect the removal of quotations from the OTC Bulletin Board ("OTCBB") of certain American Depositary Receipts ("ADRs") representing underlying shares in Cifra, S.A. de D.V., a foreign private issuer organized under the laws of Mexico.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This rule change is being filed to effect the removal of quotations from the OTCBB of certain ADRs representing underlying shares in Cifra, S.A. de D.V. ADRs ("Cifra"). As the Commission is well aware, the OTCBB is a quotation medium used by NASD members to quote securities not listed on Nasdaq or a national securities exchange. As originally developed, the OTCBB sought to provide increased transparency through a centralized electronic quotation system for all such OTC equity securities, including foreign equities and ADRs. As the Commission also is aware, ADRs are negotiable receipts usually issued by U.S. banks, which certify that a stated number of shares of a foreign private issuer have been deposited in the bank or its foreign affiliate or correspondent. The depositary banks maintain a registry of ADR holders, and, usually for a fee, monitor dividend declarations, collect and convert dividends to U.S. currency, and remit the dividends to U.S. shareholders. Thus ADRs provide benefits to U.S. shareholders by simplifying the transfer of interests in the underlying foreign securities as well as information and dividends by these foreign companies.

For some time, National Association of Securities Dealers, Inc. ("NASD") members have displayed quotations for Cifra's ADRs in the OTCBB pursuant to applicable NASD and SEC rules governing the display of quotations in quotation media such as the OTCBB.[1] The particular security that is the subject of this filing, identified with ticker symbol CFRAY, has been described on the OTCBB display screen as an ADR representing underlying Series B securities in Cifra. It is the understanding of Nasdaq staff that these particular ADR securities exist in what is known as an "unsponsored" ADR environment. That is, the ADRs representing the underlying shares came about as the result of several bank depositaries who operate such unsponsored programs for the benefit of shareholders without the cooperation of

[1] As of this filing, approximately thirteen (13) market makers are displaying priced or unpriced quotations in the OTCBB for this security. It is the understanding of Nasdaq staff that these same securities have been quoted in NQB's Pink Sheets, a quotation medium not affiliated with the NASD or Nasdaq.

the underlying issuer company.[2] Further, it is understood that on December 17, 1997, the shareholders of Cifra acted to amend the by-laws of Cifra to cancel Series A and Series B shares, and create a new Series V share. Specifically, the Series A and Series B shares changed into Series V shares on a one-for-one basis. It is further understood that the new Series V shares became the subject of a sponsored ADR facility, which Cifra has agreed to sponsor. Nasdaq believes that as a result of this exchange, shareholders of unsponsored Series B ADRs now hold, in effect, ADRs that represent Series V securities of Cifra.

Although one depository bank has taken steps to terminate its unsponsored program in the Series B ADRs (apparently due to that bank's involvement as depositary for the new sponsored facility) Nasdaq is aware of several other banks issuing the unsponsored ADRs that intend to continue their unsponsored programs for Series B ADRs. On December 24, 1997, the NASD issued a Uniform Practice Code notice to notify broker-dealers and clearing entities of these events.

There are now two separate and identifiable ADR securities that, as Nasdaq understands, represent in fact the same Series V shares, albeit in different "multiples" or ratios.[3] While the unsponsored depositary banks and shareholders may nominally refer to these programs as Series B ADR facilities, it is Nasdaq's understanding that all underlying shares, including those on deposit with these banks, are now Series V shares, and that this fact is understood by the parties involved.

While Nasdaq is not aware of any SEC or NASD rules that explicitly prohibit the simultaneous operation of multiple unsponsored ADR facilities with the same shares underlying, it is Nasdaq's understanding that the SEC has discouraged the operation of multiple facilities where there is both a sponsored and unsponsored facility operating at the same time. Nasdaq believes that this has been based, in part, on the potential for market disorder or investor confusion, especially when the rights provided by the unsponsored ADRs are not equivalent to those of the sponsored ADRs or the securities are not otherwise deemed fungible. In addition, Nasdaq believes that technically, what has been referred to as a "Series B ADR" can no longer exist in its current form given that no Series B shares underlie it. Nasdaq also believes that there may be issues of confusion with respect to facilitating the quotation and/or trading of these two securities simultaneously.[4] Nasdaq notes that the removal of what were formerly Series B ADRs from the OTCBB does not necessarily prohibit any future transactions in these securities, nor will it affect the ability of these securities to be quoted in another quotation medium.[5]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) and (11) of the Act.[6] Section 15A(b)(6) requires, among other things, that the NASD's rules promote just and equitable principles of trade, facilities securities transactions, and protect public investors. Subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over the counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective on filing pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration or enforcement of an existing rule. The NASD will implement the rule on February 28, 1998.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–98–09 and should be submitted by March 10, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3855 Filed 2–13–98; 8:45 am]

BILLING CODE 8010–01–M

[2] Such unsponsored programs do not necessarily need the consent of the underlying issuer. *See e.g.*, Securities Act Release No. 6894; Exchange Act Release No. 29226 (May 23, 1991), at Section II.B.1. (Advance Notice of Possible Commission Action and Request for Information and Public Comment).

[3] The unsponsored ADRs had a ratio of 1:1, while the new sponsored facility has a ratio of 10 Series V shares for each ADR.

[4] To minimize confusion at the time of the exchange, Nasdaq amended the name of the security as it appears on the OTCBB display to delete reference to the Series "B" and to add the reference "UNSPON" to indicate that this security is the unsponsored form of the ADR.

[5] While it is the responsibility of the NASD to generally oversee and regulate members use and activity respecting quotations in any quotation medium, the NASD and Nasdaq cannot directly control the operation of quotation media other than the OTCBB. Unlike rules governing listings on Nasdaq, SEC and NASD rules governing the OTCBB do not currently provide the NASD or Nasdaq the authority to halt or prohibit trading of any non-Nasdaq security, with the limited exception of 10-day trading halts imposed by the SEC pursuant to Section 12(k) of the Act.

[6] 15 U.S.C. § 78*o*–3.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39630; File No. SR–SCCP–97–05]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Reducing Certain Trade Record Fees

February 9, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 22, 1997, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") and on January 13, 1998, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to reduce on a pilot basis for four months SCCP's fee schedule for trade recording fees for certain specialists.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Curently, SCCP charges a trade recording fee of $.47 per side for regular trades. The proposed rule change bifurcates the category of trade recording fees for regular trades into trades not matching with PACE orders and trades matching with PACE orders.[3] The trade recording fees for trades not matching with PACE orders remains $.47 per side. The proposed rule change reduces SCCP's trade recording fees for trades matching with PACE orders. For the trades, the trade recording fee is reduced to: (i) $.27 per side for the first 2,500 trades per month (a reduction of $.20 per trade) and (ii) $.10 per side for trades in excess of 2,500 per month (a reduction of $.37 per trade).

SCCP has been working closely with the Philadelphia Stock Exchange, Inc. ("PHLX") to reevaluate its fees. In connection with this effort, SCCP is reducing these trade recording fees on a temporary basis. These fees will be in effect for trades settling on January 2, 1998, through April 30, 1998.

SCCP believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act,[4] which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants.

(B) Self-Regulatory Organization's Statement on Burden on CompetitionSCCP does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(e)(2) thereunder.[6] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at SCCP. All submission should refer to the File No. SR–SCCP–97–05 and should be submitted by March 10, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3856 Filed 2–13–98; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] PACE, an acronym for the Philadelphia Stock Exchange Automated Communication and Execution System, is a real time order routing and execution system.

[4] 15 U.S.C. 78q–1(b)(3)(D).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending February 6, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–3425.
Date Filed: February 4, 1998.
Parties: Members of the International Air Transport Association.
Subject: Comp Telex Mail Vote 911, Standard Revalidation Reso 002, Intended effective date: April 1, 1998.

Docket Number: OST–98–3426.
Date Filed: February 4, 1997.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR–AFR 0040 dated February 3, 1998, PTC2 EUR–AFR 0041 dated February 3, 1998, Europe-Africa Expedited Resos r1–3 r1–002g r2–074q r3–002i, Intended effective date: March 15/April 1, 1998.

Docket Number: OST–98–3427.
Date Filed: February 4, 1998.
Parties: Members of the International Air Transport Association.
Subject: PTC12 NMS–AFR 0032 dated January 30, 1998 r1, PTC12 NMS–AFR

0033 dated January 30, 1998 r2, Mid/South Atlantic-Africa Expedited Resos r1–002s r2–002w, Intended effective date: April 1, 1998.

Docket Number: OST–98–3428.
Date Filed: February 4, 1998.
Parties: Members of the International Air Transport Association.
Subject: PTC12 NMS–AFR 0031 dated January 30, 1998, North Atlantic-Africa Expedited Reso 002q, Intended effective date: April 1, 1998.

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98–3787 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending February 6, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–3435.
Date Filed: February 5, 1998.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 5, 1998.

Description: Application of Federal Express Corporation, pursuant to 49 U.S.C. Section 41110 and Subpart Q of the Regulations, applies for an amendment of its existing certificate authority to provide scheduled foreign air transportation of property and mail between points in the United States, on the one hand, and points in Japan, on the other hand, as contained in Federal Express' certificate of public convenience and necessity for Route 205–F. The purpose of this application is to amend the route description in Federal Express' U.S.-Japan all-cargo certificate for Route 205–F to conform to the liberalized U.S.-flag all-cargo route authority for "incumbent" carriers designated pursuant to the August 11, 1952 Civil Air Transport Agreement between the U.S. and Japan, as amended (the 1952 Agreement), as provided for in the recently-signed January 30, 1998 Memorandum of Consultations between the U.S. and Japan (the 1998 MOC).

Docket Number: OST–98–1131.

Date Filed: February 6, 1998.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 6, 1998.

Description: Amendment No. 1 to Application of United Air Lines, Inc., pursuant to 49 U.S.C. Section 41101, and Subpart Q, requests that its certificate for Route 130 be amended to add a new segment authorizing United to offer scheduled foreign air transportation of persons, property and mail between any point or points behind the U.S., any point or points in the U.S., any intermediate point or points, any point or points in Japan, and any point or points beyond Japan. United also requests authority to integrate its new services described above with outstanding international agreements; and Motion for leave to amend.

Docket Number: OST–98–3441.

Date Filed: February 6, 1998.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 6, 1998.

Description: Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. Sections 41108 and 41102 and Subpart Q of the Regulations, requests issuance of a new certificate of public convenience and necessity, or an amended certificate of public convenience and necessity for Route 129, authorizing Northwest to provide scheduled foreign air transportation of: (a) persons, property and mail between a point or points in the United States, on the one hand, and a point or points in Japan, on the other, via a point or points in the countries listed in Attachment A hereto, and beyond Japan to a point or points in the countries listed in attachment A hereto; and (b) property and mail between a point or points in the United States, on the one hand, and points in Japan, on the other, via any intermediate point or points and beyond Japan to any point or points.

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98–3786 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 98–3321]

Notice of Request for Renewal of an Existing Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to renew the information collection identified below under supplementary information.

DATES: Comments must be submitted on or before April 20, 1998.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10:00 a.m. and 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) the necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB renewal of this information collection.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Erickson, Office of Highway Information Management, 202–366–0170, or Charles Medalen, Office of Chief Counsel, 202–366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Certification of Enforcement of the Heavy Vehicle Use Tax

OMB Number: 2125–0541.

Background: Title 23, United States Code, Section 141(d), provides that a State's apportionment of funds under 23 U.S.C. 104(b)(5) shall be reduced in an amount up to 25 percent of the amount to be apportioned during any fiscal year beginning after September 30, 1984, if vehicles subject to the Federal heavy vehicle use tax are lawfully registered in the State without having presented proof of payment of the tax. The annual certification of collection of the heavy vehicle use tax submitted by each State serves as the primary means of determining State compliance with 23 U.S.C. 141(d) by the FHWA. Under the rulemaking authority granted to the Secretary of Transportation by 23 U.S.C. 315, the FHWA has determined that an annual certification of compliance by each State is the least obtrusive means of administering the provisions of the legislative mandate.

Evidence of compliance with 23 U.S.C. 141(d) is comprised of two elements: reporting and recordkeeping. The reporting element consists of a simple certification submitted to FHWA on an annual basis by the State's Governor or designated official. The recordkeeping element consists of a one-year retention of Schedule 1, Form 2290, by the States (or other suitable alternative provided by regulation). Compliance reviews are periodically conducted by FHWA to determine if the certification is adequate to ensure effective administration of 23 U.S.C.141(d).

The certification requirement is the critical factor in establishing a manageable and reasonable procedure for determining State compliance with the statute. Without annual certification and supporting records, determinations of compliance would involve frequent reviews of State registration procedures and practices and would clearly be an obtrusive Federal presence in State programs.

Respondents: State highway agencies.

Estimated Annual Burden on Respondents: 12 hours per respondent.

Estimated Total Annual Burden: 624 hours.

Authority: 23 U.S.C. 141(d); 23 CFR 669.

Issued: February 6, 1998.

George Moore,

Associate Administrator for Administration.

[FR Doc. 98–3788 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Treasury, Chief Information Officer; Proposed Collection; Request for Voluntary Survey

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, Chief Information Officer, manages the Simplified Tax and Wage Reporting System (STAWRS) project. The mission of STAWRS is to "Reduce employer tax reporting burden, while gaining processing efficiencies for both Federal and state governments." STAWRS is a joint National Performance Review (NPR) project of the Department of Treasury, the Internal Revenue Service (IRS), Social Security Administration (SSA), the Department of Labor (DOL), the Office of Management and Budget (OMB), various state governments, and private organizations. The STAWRS project has three major areas of emphasis: 1— Single Point Filing; 2— Streamlined Customer Service; 3— Simplified Requirements. In order to assess the private sector's intensity of interest to utilize Electronic commerce (EC) for tax and wage submission, the *Tax and Wage Reporting Survey* has been developed.

DATES: Written comments should be received on or before April 15, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Kevin Gill, Program Manager STAWRS Project Office, Room 1400, 500 N. Capitol St. NW, Washington, DC 20001; (202) 874–0712; Internet Address Kevin.R.Gill@ccgate.hq.irs.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Kevin Gill, Program Manager STAWRS Project Office, Room 1400, 500 N. Capitol St. NW, Washington, DC 20001; (202) 874–0712; Internet Address Kevin.R.Gill@ccgate.hq.irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Tax and Wage Reporting Survey.

Abstract: This is a generic clearance for a level of customer interest survey and focus group interviews to reduce employer tax burden to be conducted over the next year.

Current Actions: We will be conducting one Tax and Wage Reporting Survey to determine the intensity of employer interest in Electronic Commerce. Focus Group interviews, with private sector employers, will take place during the next year.

Type of Review: New collection.

Affected Public: Private sector business employers; Federal, state, and local governments.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Burden Hours: 335 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 9, 1998.

Midori Morgan-Gaido,

STAWRS Executive-In-Charge.

[FR Doc. 98–3803 Filed 2–13–98; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

February 5, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0742.

Regulation Project Number: EE–111–80 (TD 8019) Final.

Type of Review: Extension.

Title: Public Inspection of Exempt Organization Returns.

Description: Section 6104(b) authorizes the Internal Revenue Service to make available to the public the returns required to be filed by exempt organizations. The information requested in Treasury Regulations § 301.6104(b)–1(b)(4) is necessary in order for the Service not to disclose confidential business information furnished by businesses which contribute to exempt black lung trusts.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 22.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 22 hours.

OMB Number: 1545–1459.

Form Number: IRS Form 8498.

Type of Review: Extension.

Title: Program Sponsor Agreement for Continuing Education for Enrolled Agents.

Description: This information relates to the approval of continuing professional education program individuals enrolled to practice before the Internal Revenue Service (enrolled agents).

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 36 minutes.

Frequency of Response: Other (one-time filing).

Estimated Total Reporting Burden: 300 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–3804 Filed 2–13–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

February 9, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0092.

Form Number: Form 1041 and Related Schedules D, J, and K–1.

Type of Review: Extension.

Title: U.S. Income Tax Return for Estates and Trusts, Capital Gains and Losses, Accumulation Distribution for a Complex Trust, Beneficiary's Share of Income, Deductions, Credits, etc.

Description: Internal Revenue Code (IRC) section 6012 requires than an annual income tax return to be filed for estates and trusts. Data is used to determine that the estates, trusts, and beneficiaries filed the proper returns and paid the correct tax. IRC section 59 requires the fiduciary to recompute the distributable net income on a minimum tax basis.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 3,242,585.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 1041	Schedule D	Schedule J	Schedule K–1
Recordkeeping	46 hr., 38 min	23 hr., 41 min	39 hr., 28 min	8 hr., 51 min.
Learning about the law or the form	18 hr., 54 min	2 hr., 5 min	1 hr., 12 min	1 hr., 17 min.
Preparing the form	35 hr., 23 min	2 hr., 34 min	1 hr., 53 min	1 hr., 29 min.
Copying, assembling, and sending the form to the IRS.	4 hr., 17 min.			

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 345,482,741 hours.

OMB Number: 1545–0429.

Form Number: IRS Form 4506.

Type of Review: Extension.

Title: Request for Copy of Transcript of Tax Form.

Description: 26 U.S.C. 7513 allows for taxpayers to request a copy of a tax return. Form 4506 is used by taxpayers to request a copy of a Federal tax form. The information provided will be used for research to locate the tax form and to ensure that the requestor is the taxpayer or someone authorized by the taxpayer.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 914,540.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	13 minutes.
Learning about the law or the form.	7 minutes.
Preparing the form	26 minutes.
Copying, assembling and sending the form to the IRS.	17 minutes.

Frequency of Response: Other.

Estimated Total Reporting/ Recordkeeping Burden: 969,412 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–3805 Filed 2–13–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–20

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent

burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–20, Certification for No Information Reporting on the Sale of a Principal Residence.

DATES: Written comments should be received on or before April 20, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certification for No Information Reporting on the Sale of a Principal Residence.

OMB Number: 1545–1592.

Revenue Procedure Number: Revenue Procedure 98–20.

Abstract: This revenue procedure sets forth the acceptable form of the written assurances (certification) that a real estate reporting person must obtain from the seller of a principal residence to except such sale or exchange from the information reporting requirements for real estate transactions under section 6045(e)(5) of the Internal Revenue Code.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 2,300,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours for Respondents: 383,000.

Estimated Number of Recordkeepers: 90,000.

Estimated Time Per Recordkeeeper: 25 minutes.

Estimated Total Annual Burden Hours for Recordkeepers: 37,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 9, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–3779 Filed 2–13–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–255–81]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–255–81 (TD 8002), Substantiation of Charitable Contributions (§ 1.170A–13).

DATES: Written comments should be received on or before April 20, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Substantiation of Charitable Contributions.

OMB Number: 1545–0754.

Regulation Project Number: LR–255–81.

Abstract: This regulation provides guidance relating to substantiation requirements for charitable contributions. Section 1.170A–13 of the regulation requires donors to maintain receipts and other written records to substantiate deductions for charitable contributions.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 26,000,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 2,158,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate

of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 9, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–3780 Filed 2–13–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 990–W

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 990–W, Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations.

DATES: Written comments should be received on or before April 20, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations.

OMB Number: 1545–0976

Form Number: 990–W

Abstract: Form 990–W is used by tax-exempt trusts and tax-exempt corporations to figure estimated tax liability on unrelated business income and on investment income for private foundations and the amount of each installment payment. Form 990–W is a worksheet only. It is not required to be filed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions and business or other for-profit organizations.

Estimated Number of Respondents: 27,265

Estimated Time Per Respondent: 14 hr., 37 min.

Estimated Total Annual Burden Hours: 398,273

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 29, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–3781 Filed 2–13–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 1023 and 872–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code and Form 872–C, Consent Fixing Period of Limitation Upon Assessment of Tax Under Section 4940 of the Internal Revenue Code.

DATES: Written comments should be received on or before April 20, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code (Form 1023), and Consent Fixing Period of Limitation Upon Assessment of Tax Under Section 4940 of the Internal Revenue Code (Form 872–C).

OMB Number: 1545–0056

Form Number: 1023 and 872–C

Abstract: Form 1023 is filed by applicants seeking Federal income tax exemption as organizations described in Internal Revenue Code section 501(c)(3). IRS uses the information to determine if the applicant is exempt and whether the applicant is a private foundation. Form 872-C extends the statute of limitations for assessing tax under Code section 4940.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 29,409

Estimated Time Per Respondent: 69 hr., 19 min.

Estimated Total Annual Burden Hours: 2,038,354

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 29, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–3782 Filed 2–13–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 973

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 973, Corporation Claim for Deduction for Consent Dividends.

DATES: Written comments should be received on or before April 20, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Corporation Claim for Deduction for Consent Dividends.

OMB Number: 1545–0044.

Form Number: 973.

Abstract: Corporations file Form 973 to claim a deduction for dividends paid. If shareholders consent and the IRS approves, the corporation may claim a deduction for dividends paid, which reduces the corporation's tax liability. IRS uses Form 973 to determine if shareholders have included the dividend in gross income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 4 hr., 57 min.

Estimated Total Annual Burden Hours: 2,475.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be 3 retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 27, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–3783 Filed 2–13–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of determination of necessity for renewal of the Art Advisory Panel.

SUMMARY: It is in the public interest to continue the existence of the Art Advisory Panel.

FOR FURTHER INFORMATION CONTACT: Karen E. Carolan, C:AP:AS, 901 D Street, SW, Room 224, Box 68 Washington, DC 20024, Telephone No. (202) 401–4128, (not a toll free number)

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. (1982), the Commissioner of Internal Revenue announces the renewal of the following advisory committee:

Title. The Art Advisory Panel of the Commissioner of Internal Revenue.

Purpose. The Panel assists the Internal Revenue Service by reviewing and evaluating the acceptability of property appraisals submitted by taxpayers in support of the fair market value claimed on works of art involved in Federal Income, Estate or Gift taxes in accordance with sections 170, 2031, and 2512 of the Internal Revenue Code of 1986.

In order for the Panel to perform this function, Panel records and discussions must include tax return information. Therefore, the Panel meetings will be closed to the public since all portions of the meetings will concern matters that are exempted from disclosure under the provisions of section 552b(c)(3), (4), (6) and (7) of Title 5 of the U.S. Code. This determination, which is in accordance with section 10(d) of the Federal Advisory Committee Act, is necessary to protect the confidentiality of tax returns and return information as required by section 6103 of the Internal Revenue code.

Statement of Public Interest

It is in the public interest to continue the existence of the Art Advisory Panel. The Secretary of Treasury, with the concurrence of the General Services Administration, has also approved renewal of the Panel. The membership of the Panel is balanced between museum directors and curators, art dealers and auction representatives to afford differing points of view in determining fair market value.

Authority for this Panel will expire two years from the date the Charter is approved by the Assistant Secretary for Management and Chief Financial Officer and filed with the appropriate congressional committees unless, prior to the expiration of its Charter, the Panel is renewed.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–3894 Filed 2–13–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TREASURY

Internal Revenue Service

Notice of Meeting With Current and Prospective Tax Software Developers

SUMMARY: This announcement serves as notice that the Internal Revenue Service plans to hold a meeting of current and prospective tax software developers to share the current thinking about the strategic direction of electronic tax administration, to obtain meaningful input to the IRS direction as it impacts software to be used by the public, and to get initial reactions from software developers to these strategies. The meeting will be held at the New Carrollton Federal Building from 8:00 a.m. Tuesday, March 3,1998 through 1:00 p.m. Wednesday, March 4, 1998.

SUPPLEMENTARY INFORMATION: Registered attendees will receive a package of material prior to the meeting in order to come prepared with comments and questions. To register to attend this meeting, please call Patti Washburn at (202) 283–6852.

ADDRESSES: Questions or concerns should be directed to Patti Washburn at IRS, lectronic Tax Administration, T:ETA:E:P, 5000 Ellin Road C4–332, Lanham, MD 20706.

FOR FURTHER INFORMATION CONTACT: Questions or concerns will also be taken over the telephone. Call Patti Washburn at (202) 283–6852 (not a toll-free number).

Larry Faulkner,

Alternative Payments Project Director, Electronic Tax Administration.

[FR Doc. 98–3895 Filed 2–13–98; 8:45 am]

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Tuesday
February 17, 1998

Part II

Environmental Protection Agency

Reissuance of NPDES General Permits for Storm Water Discharges From Construction Activities; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5965–9]

Reissuance of NPDES General Permits for Storm Water Discharges From Construction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final NPDES general permits.

SUMMARY: The Regional Administrators of Regions 1, 2, 3, 7, 8, 9 and 10 are today issuing final National Pollutant Discharge Elimination System (NPDES) general permits for storm water discharges associated with construction activity. EPA first issued permits for these activities in September 1992. These permits subsequently expired in September 1997. Today's permits, which replace the expired permits, authorize the discharge of pollutants in storm water runoff from construction activities in accordance with the terms and conditions of these permits. Hereinafter, the terms "permit" or "construction general permit" or "CGP" will replace "permits" for reasons of readability (the pluralized form is technically more proper, denoting the issuance of separate general permits in each of the Regions listed above).

DATES: This general permit shall be effective on February 17, 1998. This effective date is necessary to provide dischargers with the immediate opportunity to comply with CWA requirements in light of the recent expiration of the previous general permit for storm water discharges associated with construction activity. Deadlines for submittal of Notices of Intent (NOIs) are provided in section V, Part II.A, of the Fact Sheet and Part II.A of the general permit. Today's general permit also provides additional dates for compliance with the terms of the permit.

ADDRESSES: The index to the administrative record for this permit is available at the appropriate Regional Office or from the EPA Water Docket in Washington, DC. The complete administrative record is located at the Water Docket, MC–4101, U.S. EPA, 401 M Street SW, Washington, DC 20460. Copies of information in the record are available upon request. A reasonable fee may be charged for copying. Specific record information can also be made available at the appropriate Regional Office upon request.

NOTICE OF INTENT FORMS: A Notice of Intent (NOI) form must be submitted to obtain coverage for storm water discharges under this permit. Until the U.S. Office of Management and Budget (OMB) approves and the EPA publishes a revised NOI form designed specifically for this permit, operators of storm water discharges associated with construction activity must use the existing NOI form to obtain permit coverage. Upon publication of the revised NOI form in the **Federal Register**, operators must use the revised form to obtain coverage under the Construction General Permit.

FOR FURTHER INFORMATION CONTACT: For further information on the NPDES Construction General Permit, call the EPA Regions 6 and 2 Storm Water Hotline at 1–800–245–6510, or your EPA Regional storm water coordinator. Information is also available through the Internet on the EPA's Office of Wastewater Management web site at "http://www.epa.gov/owm/cgp.htm" and at the various EPA Regional Office Internet web sites.

SUPPLEMENTARY INFORMATION:

Contents

I. Introduction
II. Answers to Common Questions
III. Coverage Provided by General Permits
IV. Summary of Options for Controlling Pollutants
V. Summary of Permit Conditions
VI. Endangered Species Protection
VII. Historic Properties Protection
VIII. Summary of Responses to Comments on the Proposed Permit
IX. Cost Estimates
X. Regulatory Review (Executive Order 12866)
XI. Unfunded Mandates Reform Act
XII. Paperwork Reduction Act
XIII. Regulatory Flexibility Act
XIV. Official Signatures

I. Introduction

The United States Environmental Protection Agency (EPA) is reissuing the general permit which authorizes the discharge of pollutants in storm water associated with construction activity. As used in this permit, "storm water associated with construction activity" refers to category (x) of the definition of "discharge of storm water associated with industrial activity." Category (x) includes construction activity disturbing at least five acres, or construction activity disturbing less than five acres which is part of a larger common plan of development or sale with the potential to disturb cumulatively five or more acres (*See* 40 CFR 122.26(b)(14)).

This construction general permit is written as if it was a single permit rather than the 45 legally separate and individually numbered general permits it is comprised of. Unless otherwise noted, references to "the permit" apply to the common language of each of the 45 separate general permits. Any area-specific conditions that apply are found in Part X of the permit.

This permit replaces the previous Baseline Construction General Permit which was issued for a five-year term in September 1992. The most significant changes from the 1992 permit include:

- New conditions to protect listed endangered and threatened species and critical habitats;
- Expanded coverage to construction sites under five acres of disturbed land which are not part of a larger common plan of development or sale when an operator has been designated by the Director to obtain coverage pursuant to 40 CFR 122.26(a)(1)(v) or 122.26(a)(9) and 122.26(g)(1)(i);
- A requirement to post the confirmation of permit coverage (the permit number or copy of the Notice of Intent (NOI) if a permit number has not yet been assigned) including a brief description of the project;
- Terms applicable when transitioning from the previous permit;
- The requirement to submit a notice of permit termination when construction is completed;
- Automatic coverage under an expired, but administratively-continued permit;
- Capability to use this permit to acquire coverage for other construction-related industrial activities (*e.g.*, a concrete batch plant); and
- Storm water pollution prevention plan performance objectives.

This general permit for storm water discharges associated with construction activity was proposed on June 2, 1997 (62 FR 29786), and is hereby issued with individual permit numbers for the following areas:

Region 1: The Commonwealth of Massachusetts and the States of Maine and New Hampshire; Indian Country lands in the Commonwealth of Massachusetts and the States of Maine, Rhode Island and Connecticut; Federal facilities in Vermont.

Region 2: The Commonwealth of Puerto Rico and Indian Country lands in the State of New York.

Region 3: District of Columbia; Federal facilities in the State of Delaware.

Region 7: Indian Country lands in Iowa, Kansas and Nebraska (except Pine Ridge Reservation Lands [see Region 8]).

Region 8: Federal facilities in Colorado; Indian Country lands in Colorado (including the portion of the Ute Mountain Reservation located in New Mexico), Montana, North Dakota (including that portion of the Standing Rock Reservation located in South

Dakota and excluding the Lake Traverse Reservation which is covered under the permit for areas of South Dakota), South Dakota (including the portion of the Pine Ridge Reservation located in Nebraska and the portion of the Lake Traverse Reservation located in North Dakota and excluding the Standing Rock Reservation which is covered under the permit for areas of North Dakota), Utah (except Goshute and Navajo Reservation lands [see Region 9]) and Wyoming.

Region 9: The Islands of American Samoa and Guam, Johnston Atoll, Midway/Wake Islands and Commonwealth of the Northern Mariana Islands; the State of Arizona; Indian Country Lands in Arizona (including Navajo Reservation lands in New Mexico and Utah), California and Nevada (including the Duck Valley Reservation in Idaho, the Fort McDermitt Reservation in Oregon and the Goshute Reservation in Utah).

Region 10: The States of Alaska and Idaho; Indian Country lands in Alaska and Idaho (except Duck Valley Reservation [see Region 9]), Washington and Oregon (except for Fort McDermitt Reservation [see Region 9]); Federal facilities in Washington.

II. Answers to Common Questions

In this section, EPA provides answers to some of the more common questions on the construction storm water permitting program. It is intended to help you get started in understanding the permit. Be aware these answers are fairly broad and may not take into account all scenarios possible at construction sites. More details on these issues are provided later in this Fact Sheet, especially in section VIII, Summary of Responses to Comments on the Proposed Permit.

How Do I Know If I Need a Permit?

You need a storm water permit if you can be considered an "operator" of the construction activity that would result in the "discharge of storm water associated with construction activity." You must become a permittee if you meet either of the following two criteria:

- You have operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; or
- You have day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan (SWPPP) for the site or other permit conditions (*e.g.*, you are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions).

There may be more than one party at a site performing the tasks relating to "operational control" as defined above. Depending on the site and the relationship between the parties (*e.g.*, owner, developer), there can either be a single party acting as site operator and consequently be responsible for obtaining permit coverage, or there can be two or more operators with all needing permit coverage. The following are three general operator scenarios (variations on any of the three are possible as the number of "owners" and contractors increases):

- Owner as sole permittee. The property owner designs the structures for the site, develops and implements the SWPPP, and serves as general contractor (or has an on-site representative with full authority to direct day-to-day operations). He may be the only party that needs a permit, in which case everyone else on the site may be considered subcontractors and not need permit coverage.
- Contractor as sole permittee. The property owner hires a construction company to design the project, prepare the SWPPP, and supervise implementation of the plan and compliance with the permit (*e.g.*, a "turnkey" project). Here, the contractor would be the only party needing a permit. It is under this scenario that an individual having a personal residence built for his own use (*e.g.*, not those to be sold for profit or used as rental property) would not be considered an operator. EPA believes that the general contractor, being a professional in the building industry, should be the entity rather than the individual who is better equipped to meet the requirements of both applying for permit coverage and developing and properly implementing a SWPPP. However, individuals would meet the definition of "operator" and require permit coverage in instances where they perform general contracting duties for construction of their personal residences.
- Owner and contractor as co-permittees. The owner retains control over any changes to site plans, SWPPPs, or storm water conveyance or control designs; but the contractor is responsible for overseeing actual earth disturbing activities and daily implementation of SWPPP and other permit conditions. In this case, both parties may need coverage.

However, you are probably not an operator and subsequently do not need permit coverage if:

- You are a subcontractor hired by, and under the supervision of, the owner or a general contractor (*i.e.*, if the contractor directs your activities on-site, you probably are not an operator); or
- Your activities on site result in earth disturbance and you are not legally a subcontractor, but a SWPPP specifically identifies someone other than you (or your subcontractor) as the party having operational control to address the impacts your activities may have on storm water quality (i.e., another operator has assumed responsibility for the impacts of your construction activities). This particular provision will apply to most utility service line installations. For further information concerning whether utility service line installations meet the definition of operator and require permit coverage, see the discussion under "Installation of Utility Service Lines" in section VIII, Summary Response to Public Comments of the Fact Sheet.

In addition, for purposes of this permit and determining who is an operator, "owner" refers to the party that owns the structure being built. Ownership of the land where construction is occurring does not necessarily imply the property owner is an operator (*e.g.*, a landowner whose property is being disturbed by construction of a gas pipeline). Likewise, if the erection of a structure has been contracted for, but possession of the title or lease to the land or structure is not to occur until after construction, the would-be owner may not be considered an operator (*e.g.*, having a house built by a residential homebuilder).

My Project Will Disturb Less Than Five Acres, but It May Be Part of a "Larger Common Plan of Development or Sale." How Can I tell and What Must I Do?

If your smaller project is part of a larger common plan of development or sale that collectively will disturb five or more acres (*e.g.*, you are building on six half-acre residential lots in a 10-acre development or are putting in a parking lot in a large retail center) you need permit coverage. The "plan" in a common plan of development or sale is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. You must still meet the definition of operator in order to be required to get permit coverage, regardless of the acreage you personally

disturb. As a subcontractor, it is unlikely you would need a permit.

For some situations where less than five acres of the original common plan of development remain undeveloped, a permit may not be needed for the construction projects "filling in" the last parts of the common plan of development. A case in which a permit would not be needed is where several empty lots totaling less than five acres remain after the rest of the project had been completed, providing stabilization had also been completed for the entire project. However, if the total area of all the undeveloped lots in the original common plan of development was more than five acres, a permit would be needed.

When Can You Consider Future Construction on a Property To Be Part of a Separate Plan of Development or Sale?

In many cases, a common plan of development or sale consists of many small construction projects that collectively add up to five (5) or more acres of total disturbed land. For example, an original common plan of development for a residential subdivision might lay out the streets, house lots, and areas for parks, schools and commercial development that the developer plans to build or sell to others for development. All these areas would remain part of the common plan of development or sale until the intended construction occurs. After this initial plan is completed for a particular parcel, any subsequent development or redevelopment of that parcel would be regarded as a new plan of development, and would then be subject to the five-acre cutoff for storm water permitting purposes.

What Must I Do To Satisfy the Permit Eligibility Requirements Related to Endangered Species?

In order to be eligible for this permit, you must follow the procedures and examples found in Addendum A for the protection of endangered species. You cannot submit your NOI until you are able to certify your eligibility for the permit. Enough lead time should be built into your project schedule to accomplish these procedures. If another operator has certified eligibility for the project (or at least the portion of the project you will be working on) in his NOI, you will usually be able to rely on his certification of project eligibility and not have to repeat the process. EPA created this "coat tail" eligibility option for protection of endangered species to allow the site developer/owner to obtain up-front "clearance" for a project, thereby avoiding duplication of effort by his contractors and unnecessary delays in construction.

What Does the Permit Require Regarding Historic Preservation?

Today's permit does not currently impose requirements related to historic preservation, though EPA may modify the permit at a later date after further discussions with the Advisory Council on Historic Preservation. Therefore, under today's permit, EPA will conduct consultations as it did under the pre-existing Baseline Construction General Permit on a case-by-case basis as needed. Removal of the proposed permit provisions related to historic preservation in no way relieves applicants and permittees of their obligations to comply with applicable State, Tribal or local laws for the preservation of historic properties. EPA reminds permittees that according to section 110(k) of the National Historic Preservation Act (NHPA), an intentional action to significantly adversely affect historic resources with intent to avoid Federal historic preservation requirements may jeopardize future permit coverage for such a permittee.

How Many Notices of Intent (NOIs) Must I Submit? Where and When Are They Sent?

You only need to submit one NOI to cover all activities on any one common plan of development or sale. The site map you develop for the storm water pollution prevention plan identifies which parts of the overall project are under your control. For example, if you are a homebuilder in a residential development, you need submit only one NOI to cover all your lots, even if they are on opposite sides of the development.

The NOI must be postmarked two days before you begin work on site. The address for submitting NOIs is found in the instruction portion of the NOI form and in Part II.C. of the CGP. You must also look in Part X of the permit to determine if copies of the NOI form are to be sent to a State or Indian Tribe.

How Do I Know Which Permit Conditions Apply to Me?

You are responsible for complying with all parts of the permit that are applicable to the construction activities you perform. Part III.E. of the permit defines the roles of various operators at a site. In addition, several States and Indian Tribes require alternative or additional permit conditions, and these can be found in Part X of the permit.

Do I Have Flexibility in Preparing the Storm Water Pollution Prevention Plan (SWPPP) and Selecting Best Management Practices (BMPs) for My Site?

Storm water pollution prevention plan requirements were designed to allow maximum flexibility to develop the needed storm water controls based on the specifics of the site. Some of the factors you might consider include: more stringent local development requirements and/or building codes; precipitation patterns for the area at the time the project will be underway; soil types; slopes; layout of structures for the site; sensitivity of nearby water bodies; safety concerns of the storm water controls (*e.g.*, potential hazards of water in storm water retention ponds to the safety of children; the potential of drawing birds to retention ponds and the hazards they pose to aircraft); and coordination with other site operators.

Must Every Permittee Have His Own Separate SWPPP or Is a Joint Plan Allowed?

The only requirement is that there be at least one SWPPP for a site which incorporates the required elements for all operators, but there can be separate plans if individual permittees so desire. EPA encourages permittees to explore possible cost savings by having a joint SWPPP for several operators. For example, the prime developer could assume the inspection responsibilities for the entire site, while each homebuilder shares in the installation and maintenance of sediment traps serving common areas.

If a Project Will Not Be Completed Before This Permit Expires, How Can I Keep Permit Coverage?

If the permit is reissued or replaced with a new one before the current one expires, you will need to comply with whatever conditions the new permit requires in order to transition coverage from the old permit. This usually includes submitting a new NOI. If the permit expires before a replacement permit can be issued, the permit will be administratively "continued." You are automatically covered under the continued permit, without needing to submit anything to EPA, until the earliest of:

- The permit being reissued or replaced;
- Submittal of a Notice of Termination (NOT);
- Issuance of an individual permit for your activity; or
- The Director issues a formal decision not to reissue the permit, at

which time you must seek coverage under an alternative permit.

When Can I Terminate Permit Coverage? Can I Terminate Coverage (i.e., Liability for Permit Compliance) Before the Entire Project is Finished?

You can submit an NOT for your portion of a site providing: (1) You have achieved final stabilization of the portion of the site for which you are a permittee (including, if applicable, returning agricultural land to its pre-construction agricultural use); (2) another operator/permittee has assumed control according to Part VI.G.2.c. of the permit over all areas of the site that have not been finally stabilized which you were responsible for (for example, a developer can pass permit responsibility for lots in a subdivision to the homebuilder who purchases those lots, providing the homebuilder has filed his own NOI); or (3) for residential construction only, you have completed temporary stabilization and the residence has been transferred to the homeowner.

III. Coverage Provided by General Permits

Section 402(p) of the Clean Water Act (CWA) states that storm water discharges associated with industrial activity to waters of the United States must be authorized by an NPDES permit. The term "discharge" when used in the context of the NPDES program means the discharge of pollutants (40 CFR 122.2).

On November 16, 1990, EPA published regulations under the NPDES program which defined one facet of the phrase "storm water discharges associated with industrial activity" as being discharges from construction activities (including clearing, grading and excavation activities) that result in the disturbance of five or more acres of total land area, including smaller areas that are part of a larger common plan of development or sale (40 CFR 122.26(b)(14)(x)). These types of construction activity are commonly referred to as Phase I construction activities. "Storm water discharges associated with construction activities" will hereinafter refer to discharges from Phase I construction activities or support activities, including those that meet the larger definition of a storm water discharge associated with industrial activity or those that are designated under the provisions of 40 CFR 122.26.

Previously, there may have been some confusion as to permitting requirements for sites disturbing less than five acres but that are part of a larger common plan of development or sale. For clarification, all construction activity regulated under 40 CFR 122.26(b)(14)(x) is eligible for coverage under this permit including small construction sites disturbing less than five acres that are also a part of a larger common plan of development or sale which has the potential of disturbing five or more acres collectively. Examples of these would be lots in a subdivision or industrial park. These are also Phase I construction activities.

Single construction sites under five acres that are not part of a larger plan of development or sale with disturbances totaling at least five acres are not eligible for coverage under this permit unless they are specifically designated for coverage pursuant to 40 CFR 122.26 (a)(1)(v) or 122.26(a)(9) and 122.26(g)(1)(i). Under EPA's existing regulations, however, these smaller projects may be required to submit permit applications not later than August 7, 2001, unless an applicant is specifically required by the Director to submit an application before that time. Small (Phase II) construction sites will be addressed by EPA in the future pursuant to a Ninth Circuit Court mandate. EPA is employing the assistance of a Federal Advisory Committee to make recommendations on how best to treat small sites vis-a-vis the NPDES program, and will issue a proposed rule addressing Phase II construction activities in December 1997. Finalization of the rule is scheduled for March 1, 1999. If permitting is the approach adopted for these small sites, the permits will be issued at a future date.

EPA issued the first round of the Phase I construction general permit on two dates: September 9, 1992, for certain States and territories, and September 25, 1992, for other States and territories where EPA is the permitting authority. The Phase I permit was commonly referred to as the Baseline Construction General Permit. The new permit is the second-round permit (simply called the "construction general permit," "CGP," or "permit") for use in the States, territories and Indian Country lands where EPA is the NPDES permitting authority. The Agency is expanding permit coverage to certain Indian Country lands which were not covered under the 1992 permit. These new areas are listed in the areas of coverage section of the permit and this fact sheet.

Operators of construction projects in EPA Region 4 should note that unlike the Baseline Construction General Permit, this second-round permit no longer authorizes discharges from construction projects on Indian Country lands located in Florida, Mississippi or North Carolina. The Region 4 permit was public noticed in the **Federal Register** on April 16, 1997, (62 FR 18605–18628) for construction storm water discharges in Florida, and Indian Country lands in Florida, Mississippi and North Carolina. Similarly, operators of construction projects in EPA Region 6 are not covered under this permit. A separate Region 6 permit covering construction project discharges located in the following areas is currently under development: The States of New Mexico and Texas; Indian Country lands in Louisiana, Oklahoma, Texas and New Mexico (except Navajo Reservation Lands [see Region 9] and Ute Mountain Reservation Lands [see Region 8] which are covered by this permit); and oil, gas, and pipeline construction projects regulated by the Oklahoma Corporation Commission in the State of Oklahoma. Both permits should be issued in the near future.

IV. Summary of Options for Controlling Pollutants

EPA is providing the following information on controlling pollutants in storm water discharges to assist permittees in preparing storm water pollution prevention plans (SWPPPs). Most controls for construction activities can be categorized in either of two groups: sediment and erosion controls and storm water management measures.

Sediment and erosion controls ordinarily address pollutants in storm water generated from the site during active construction-related work. Storm water management measures are customarily installed before, and coincident with, completion of construction activities, but primarily result in reductions of pollutants in storm water discharged from the site after the construction has been completed. Additional measures that should be employed throughout a project include housekeeping best management practices, such as materials management and litter control.

A. Sediment and Erosion Controls

Erosion controls provide the first line of defense in preventing off-site sedimentation and are designed to prevent erosion through protection and preservation of soil. Sediment controls are designed to remove sediment from runoff before the runoff is discharged from the site. Sediment and erosion controls can be further divided into two major classes of controls: stabilization practices and structural practices. Major types of sediment and erosion practices are summarized below. A more

thorough description of these practices is given in "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices," U.S. EPA, 1992. Permittees should also consider the construction of new projects in phases to minimize the amount of bare soil which is exposed at one time and the amount of stabilization or structural controls which would be required.

1. Stabilization Practices

Stabilization refers to covering or maintaining an existing cover over soil. Vegetative cover includes grass, trees, vines, shrubs, etc. Stabilization measures can also include nonvegetative controls such as geotextiles, riprap or gabions (wire mesh boxes filled with rock). Mulches such as straw or bark can be somewhat effectual at stabilization in stand-alone fashion but are most effective when used in conjunction with vegetation.

Stabilization of exposed soil is one of the foremost means to minimize pollutant discharge during construction activities. Stabilization reduces erosion potential by absorbing the kinetic energy of raindrops that would otherwise mobilize unprotected soil; by intercepting water so that it infiltrates into the ground instead of running off the surface; and slowing the velocity of runoff, thereby promoting deposition of sediment already being carried. Stabilization provides large reductions in the levels of suspended sediment in discharges and receiving waters. Examples of stabilization measures are summarized below.

a. *Temporary Seeding.* Seeding of temporary vegetation provides stabilization by establishing vegetative cover at areas of the site where earth disturbing activities have temporarily ceased, but will resume later in the construction project. Without temporary stabilization, soil can be exposed to precipitation for an extended period leaving it vulnerable to erosion, even though earth-disturbing activities are not occurring on these areas. Temporary seeding practices have been found to be up to 95% effective in reducing erosion.[1]

b. *Permanent Seeding.* Establishing a permanent and sustainable ground cover at a site stabilizes the soil and hence reduces sediment in runoff. It is typically required at most sites for aesthetic reasons.

c. *Mulching.* Mulching is often done coupled with permanent and temporary seeding. Where temporary or permanent seeding is not feasible, exposed soil can be stabilized by spreading plant residues or other suitable materials on the soil surface. Although generally not as effective as vegetation, mulching by itself provides a measure of temporary erosion control. Mulching in conjunction with seeding provides erosion protection prior to the onset of plant growth. In addition, mulching protects newly-applied seeds, providing a higher likelihood of successful vegetation. To maintain its effectiveness, mulch should be anchored to resist wind displacement.

d. *Sod Stabilization.* Sod stabilization involves establishing long-term stands of grass by planting sod on exposed surfaces. When maintained properly, sod can be more than 99% effective in reducing erosion, and is the most immediately effective vegetation method available.[2] However, the cost of sod stabilization (relative to other vegetative controls) typically limits its use to situations where a quick vegetative cover is desired (*e.g.*, steep or erodible slopes) and sites which can be maintained with ground equipment. Sod is also sensitive to climate and may require intensive watering and fertilization.

e. *Vegetative Buffer Strips.* Vegetative buffer strips are indigenous or replanted strips of vegetation located at the top and bottom of a slope, outlining property boundaries or adjacent to receiving waters such as streams or wetlands. Vegetative buffer strips can slow runoff at critical locations, decreasing erosion and allowing sedimentation. They can be especially useful for very narrow linear construction projects such as underground utilities or pipelines.

f. *Preservation of Trees.* This practice involves preserving selected trees already on-site prior to development. Mature trees provide extensive canopy and root systems which protect and hold soil in place. Shade trees also keep soil from drying rapidly, decreasing the soil's susceptibility to erosion. Measures taken to protect trees can vary significantly, from simply installing tree armor and fences around the drip line, to more complex measures such as building retaining walls and tree wells. Along with the erosion benefits provided by trees, they can also add to the aesthetics and value of the property.

g. *Contouring and Protection of Sensitive Areas.* Contouring refers to the practice of building in harmony with the natural flow and contour of the land. By minimizing changes in the natural contour of the land, existing drainage patterns are preserved as much as possible, thereby reducing erosion. Minimizing the amount of regrading done will also reduce the amount of soil being disturbed.

The preservation of sensitive areas at a site such as steep slopes and wetlands should also be a priority. Disturbance of soil on steep slopes should be avoided due to vulnerability to erosion. Wetlands should be protected because they provide flood protection, pollution mitigation and an essential aquatic habitat.

2. Structural Practices

Structural practices involve the installation of devices to divert, store or limit runoff. Structural practices have several objectives. First, structural practices can be designed to prevent water from flowing on disturbed areas where erosion may occur. This involves diverting runoff from undisturbed, up-slope areas through use of earth dikes, temporary swales, perimeter dikes or other diversions to stable areas. Another objective of structural practices may be to cause sedimentation before the runoff leaves the site. Methods for removing sediment from runoff include diverting flows to a trapping or storage device or filtering diffuse flows through on-site silt fences. All structural practices require proper maintenance (*e.g.*, removal of collected sediment) to remain functional and should be designed to avoid presenting a safety hazard—especially in areas frequented by children.

a. *Earth Dike.* Earth dikes are temporary berms or ridges of compacted soil that channel water to a desired location. Earth dikes should be stabilized with vegetation or an equally efficacious method.

b. *Silt Fence.* Silt fences are a barrier of geotextile fabric (filter cloth) used to intercept sediment in diffuse runoff. They must be firmly anchored and may require additional support, such as reinforcing with wire mesh. Used alone, silt fences are usually inappropriate for flows of concentrated high volume or high velocity. They must be carefully maintained to ensure structural stability and be cleaned of excess sediment.

c. *Drainage Swales.* A drainage swale is a channel lined with grass, riprap, asphalt, concrete or other materials. They are installed to convey runoff without causing erosion.

d. *Sediment Traps.* Sediment traps are installed in drainage pathways, at storm drain inlets or other discharge points from disturbed areas.

e. *Check Dams.* Check dams are small temporary dams constructed across a

[1] Guidelines for Erosion and Sediment Control in California"; USDA, Soil Conservation Service, Davis, CA; revised 1985.

[2] Ibid.

swale or drainage ditch to reduce the velocity of runoff, thereby reducing erosion in the swale or ditch. They should not be used in a permanent stream. More elaborate erosion controls in a flow conduit may be unnecessary if check dams are installed due to the decrease in energy of the runoff.

f. *Level Spreader.* Level spreaders are outlets for dikes and flow channels consisting of an excavated depression constructed at zero grade across a slope. Level spreaders convert concentrated runoff into diffuse flow and release it onto areas stabilized by existing vegetation.

g. *Subsurface Drain.* Subsurface drains transport runoff to an area where the water can be managed effectively. Drains can be made of tile, pipe, or tubing.

h. *Pipe Slope Drain.* A pipe slope drain is a temporary runoff conveyance running down a slope to prevent erosion on the face of the slope.

i. *Temporary Storm Drain Diversion.* Temporary storm drain diversions are used to re-direct flow in a storm drain for capturing sediment in a trapping device.

j. *Storm Drain Inlet Protection.* Storm drain inlet protection reduces sediment entering storm drainage systems prior to permanent stabilization of disturbed areas. Examples include a sediment filter or an excavated detention area around a storm drain inlet.

k. *Rock Outlet Protection.* Rock protection placed at the outlet of conduits can reduce the depth and velocity of water so the flow will not cause downstream erosion.

l. *Other Controls.* Examples of other controls include temporary sedimentation basins, sump pits, entrance stabilization, waterway crossings and wind breaks.

B. Storm Water Management Measures

Storm water management measures are usually installed before, and coincident with, completion of construction activities. The measures primarily result in reductions of pollutants in storm water discharged from the site after cessation of construction activities. Storm water management may also be needed for compliance with local flood control requirements (which may be unrelated to NPDES requirements).

Construction frequently causes significant alterations in the characteristics of the affected land. One such change is an increase in the overall imperviousness of the site, which can dramatically affect the site's flow patterns. An increase in runoff may increase the amount of pollutants carried by the runoff. In addition, some activities (*e.g.*, automobile travel on newly-built roads) can result in higher pollutant concentrations in runoff compared to pre-construction levels. Traditional storm water management controls attempt to limit increases in the amount of runoff and pollution discharged from land impacted by construction.

Storm water management measures include on-site infiltration of runoff, flow attenuation by vegetation or natural depressions, outfall velocity dissipation devices, storm water retention basins and artificial wetlands, and storm water detention structures. For many sites, a combination of these controls may be appropriate. A summary of storm water management controls is provided below. A more complete description of storm water management controls is found in "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices," U.S. EPA, 1992, and "A Current Assessment of Urban Best Management Practices," Metropolitan Washington Council of Governments, March 1992. In designing storm water controls, features that would pose a safety hazard—especially for children—should be avoided and/or have limited public access.

a. *On-Site Infiltration.* Inducing infiltration, through infiltration trenches or basins, can reduce the volume and pollutant loadings of storm water discharges from a site. Infiltration measures tend to mitigate impacts to an area's natural hydrologic characteristics. Properly designed and installed infiltration constructs can reduce peak discharges, facilitate recharging of the groundwater, augment low flow conditions in receiving streams, reduce storm water discharge volumes and pollutant loads, and inhibit downstream erosion.

Infiltration measures are particularly effective in permeable soils and where the water table and bedrock are well below the surface. Infiltration basins can also double as sediment basins during construction. Infiltration trenches can be easily incorporated into less active areas of a development and are appropriate for small sites and in-fill developments. However, trenches may require regular maintenance to prevent clogging, particularly where grass inlets or other sedimentation measures are not used. In some situations, such as low density areas of parking lots, porous pavement can provide for infiltration.

b. *Flow Attenuation by Vegetation or Natural Depressions.* Flow attenuation caused by vegetation or natural depressions can facilitate pollutant removal and infiltration and can reduce the erosivity of runoff. Use of vegetative flow attenuation measures can protect habitats and enhance the appearance of a site. These measures include grass swales and filter strips as well as trees that are either preserved or planted during construction.

Incorporating check dams into flow paths can provide additional infiltration and flow attenuation. Given their limited capacity to accept large volumes of runoff (and the concomitant erosivity), vegetative controls should usually be used in combination with other storm water devices. Grass swales are typically used in areas such as low or medium density residential development and highway medians as an alternative to curb and gutter drainage system. In general, the costs of vegetative controls are less than for other storm water measures.

c. *Outfall Velocity Dissipation Devices.* Outfall velocity dissipation devices include riprap and stone or concrete flow spreaders. They slow the flow of water discharged from a site thereby reducing erosion.

d. *Retention Structures/Artificial Wetlands.* Retention structures are ponds and artificial wetlands that are designed to maintain a permanent pool of water. Properly installed and maintained retention structures (also known as wet ponds) and artificial wetlands can achieve a high removal rate of sediment, biochemical oxygen demand (BOD), organic nutrients and metals, and are most cost-effective when used to control runoff from larger, intensively developed site. These constructs rely on settling and biological processes to remove pollutants. Retention ponds and artificial wetlands can also become wildlife habitats, recreation, and landscape amenities, and increase local property values.

While the Agency believes artificial wetlands can be one of the most effective long-term storm water management measures, EPA also recognizes the potential problems to which wetlands may contribute at certain sites. This could be the case at airports where bird populations drawn to wetlands proximate to runways/taxiways may endanger moving aircraft. EPA recommends that structures which maintain continuous habitat for wildlife not be constructed within 10,000 feet of a public-use airport serving turbine-powered aircraft, or within 5,000 feet of a public-use airport serving piston-powered aircraft. EPA, as always, stresses public safety and sound engineering judgement in the implementation of any storm water

measure, control or best management practice.

e. *Water Quality Detention Structures.* Storm water detention structures, which include extended detention ponds, control the rate at which water drains after a storm event. Extended detention ponds are usually designed to completely drain in about 24 to 48 hours and to remain dry at other times. They can provide pollutant removal efficiencies similar to those of retention pond. Extended detention systems are typically designed to provide both water quality and water quantity (flood control) benefits.

C. Housekeeping Best Management Practices (BMPs)

Pollutants that could be discharged in storm water from construction sites because of poor housekeeping include oil, grease, paints, gasoline, concrete truck wash down, raw materials used in the manufacture of concrete (sand, aggregate, and cement), solvents, litter, debris and sanitary wastes. Construction site SWPPPs should address the following to prevent the discharge of pollutants:

- Designate and control areas for equipment maintenance and repair;
- Provide waste receptacles at convenient locations and regular collection of wastes;
- Locate equipment wash down areas on site, and provide appropriate control of washwater to prevent unauthorized dry weather discharges and avoid mixing with storm water;
- Provide protected storage areas for chemicals, paints, solvents, fertilizers, and other potentially toxic materials; and
- Provide adequately maintained sanitary facilities.

V. Summary of Permit Conditions

This section has been written in an informal style and follows the structure of the CGP, but it does not always reflect verbatim the actual language used in the permit. It is intended to help the regulated community and members of the public understand the intent and basis of the actual permit language. If any confusion or conflicts exist between this summary and the actual CGP language, the permittee must comply with the CGP as written. More detail on permit conditions is available in section VIII. Summary of Responses to Comments on the Proposed Permit.

Part I. Areas Covered by Each Permit, Eligibility for the Permit, Obtaining Coverage and Terminating Coverage

A. Permit Areas

Each separate general permit is individually numbered and only provides coverage to construction activities in the permit's designated area or category (*e.g.*, State, Federal facility within a State, Indian Country Land, etc.). Each permittee will be assigned a permit number when his Notice of Intent is processed.

B. Eligibility

1. Discharges and Operations Covered

These permits authorize all discharges of storm water from construction activities except those excluded under the Limitations on Coverage section (Part I.B.3) in the CGP. Any discharge authorized by a different NPDES permit may be commingled with discharges authorized by this permit. The permit also authorizes discharges from construction support activities (*e.g.*, concrete or asphalt batch plants, equipment staging yards, material storage areas, etc.) for local project(s) an operator is currently involved with (*e.g.*, a concrete batch plant providing concrete to several different highway projects in the same county). Authorization of this discharge is contingent upon (1) the support activity not being a commercial operation serving multiple, unrelated construction projects and not operating beyond the completion of the last related construction project it serves; and (2) appropriate controls are identified in the storm water pollution prevention plan (SWPPP) for the discharges from the support activity areas.

2. Limitations on Coverage

Not all storm water discharges from construction sites are authorized by this permit. Specifically excluded are:

1. Storm water discharges originating from a site after construction activities have ceased, the site has undergone final stabilization, and an NOT submitted. If there will be a discharge of storm water associated with industrial activity, or some other regulated discharge from the completed project (*e.g.*, wastewater from a newly-constructed chemical plant), coverage under another permit(s) must be obtained for these discharges.

2. Storm water discharges which are mixed with non-storm water sources, other than those identified in and complying with the permit. Non-storm water discharges which are authorized under a different NPDES permit may be commingled with discharges authorized under this permit.

3. Storm water discharges associated with construction activity that are covered under an individual permit or discharges required to be covered under an alternative general permit.

4. Storm water discharges which the Director (EPA) has determined, or thinks may reasonably be expected, to cause or contribute to a violation of water quality standards. The discharges may be authorized, however, if appropriate measures to assure compliance with water quality standards are included in the SWPPP. For example, the Director may determine that, in the absence of controls, a small construction site poses a threat to water quality. He may then allow coverage if control measures addressing the threat are included in the SWPPP and implemented.

5. Discharges which are not protective of endangered species. Before submitting an NOI, the operator should follow the procedures in Addendum A to determine his eligibility for permitting with regard to protection of endangered species. EPA envisions that the project "owner" or developer would likely do the endangered species analysis during the planning stages of a project (*i.e.*, before construction is scheduled to begin). By design, this effort should not have to be repeated by the contractors, homebuilders, utilities, etc., whose involvement in the project will not happen until later. (*See* section VIII. Summary of Responses to Comments on the Proposed Permit and Addendum A of the permit for further information.)

C. Obtaining Coverage

To obtain authorization to discharge under the general permit, an operator must develop a SWPPP or participate in a joint plan with others, in accordance with the requirements of the CGP. He must then submit a complete and accurate NOI form.

Storm water discharges are authorized two days after the date the NOI is postmarked, unless otherwise notified by EPA. Permittees must implement their SWPPP or their portion of the plan, as soon as they begin work on site. Coverage under the general permit cannot be directly transferred to a new operator; rather a new NOI must be filed by the operator wishing to assume responsibility for permit compliance.

During the first 90 days after the effective date of the CGP, an operator may use the SWPPP developed while he was covered under the previous permit. During the time the new general permit was not available, any operator who has

prepared a pollution prevention plan in accordance with the 1992 general permit may submit an NOI and use his existing SWPPP as an interim plan for 90 days from the effective date of the new permit.

EPA may deny coverage under this permit and require an operator to submit an individual NPDES permit application based on the completeness and/or content of his NOI, or other information such as water quality data, permittee compliance history, etc. If EPA requires a permittee to apply for an individual NPDES permit or an alternative general permit, he will be notified in writing. Coverage under this general permit will automatically terminate if the permittee so notified fails to submit any required individual or alternative permit applications in a timely manner. If an individual permit or alternative general permit was applied for, the date the new permit became effective or denied marks the termination date of this permit.

D. Terminating Coverage

To terminate coverage, a permittee must submit a Notice of Termination (NOT) form. The NOT must be filed within 30 days after cessation of construction activities and final stabilization of the permittee's portion of the site (or temporary stabilization for residential construction where a homeowner is assuming control of a property). An NOT must also be submitted by a permittee before another operator assumes the previous permittee's liabilities. NOT requirements are discussed later in this fact sheet.

Part II. Notice of Intent Requirements

All applicants for NPDES general permits for storm water discharges associated with industrial activity are required to submit Notices of Intent (NOI) to obtain permit coverage (40 CFR 122.28(b)(2)). Submission of a complete and accurate NOI eliminates the need to apply for an individual permit for a regulated discharge, unless the Director specifically notifies the discharger that an individual permit application must be submitted.

Only NOI forms provided by EPA (or photocopies thereof) are valid. A revised, simplified NOI form has been developed for the CGP but was not available as of the effective date of this permit (final approval had not yet been obtained from the U.S. Office of Management and Budget). As soon as the revised form is approved it will be published in the **Federal Register**. All applicants thereafter must use the revised NOI form. Until the revised NOI form is available, operators must continue to use the existing NOI. Though applicants are only required to complete information on the form related to the previous Baseline Construction General Permit, they must be aware that by signing and dating the form they certifying that they understand and are willing to comply with all terms and conditions of the NPDES permit they have applied for, namely the Construction General Permit. These conditions include those found in Part I.B (Permit Eligibility) of the permit.

It is acceptable to fill in information that will be the same for every project (e.g., a company's name, address) and make copies of the partially completed form for future use. An electronic version of the existing NOI form is currently available on EPA's Office of Wastewater Management web site on the Internet and various EPA Regional web pages. The revised NOI form will likewise be added when it becomes available for use.

Each entity meeting either of the two criteria for an operator must submit an NOI. For more details on who must file an NOI, see section V, Part III.E of this Fact Sheet. The proposed definition of "operator" has been clarified in the final permit and the existing regulatory definitions of "owner or operator" and "facility or activity" have also been included. Clarifications to the definition of "operator" were made because some of the regulated community felt the previous definition was nebulous. For further discussions on "operator" as related to construction activity, see section VIII, Summary of Responses to Comments, of this Fact Sheet.

EPA believes there exist situations where a utility company installing service lines meets the definition of operator and must get permit coverage, although most of the time a utility would be considered a "subcontractor" (*i.e.*, non-permittee). If a utility company is constructing a project for itself (*e.g.*, main transmission line, transformer station) it must obtain permit coverage. Otherwise, as a non-permittee working at construction site, EPA encourages utility companies (as it does any subcontractor) to abide by the site's SWPPP provisions and minimize its impacts on storm water controls.

A. Deadlines for Submitting NOIs

An operator's Notice of Intent must be postmarked at least two days prior to commencement of any work on site (if he has control over plans and specifications) or two days prior to commencement of his portion of the work (if he has only day-to-day operational control).

Permittees authorized to discharge under the previous 1992 general permit must submit a new NOI within 90 days of the effective date of this permit in order to continue authorization to discharge after 90 days. An NOI is not required if the permittee will be eligible to submit an NOT (*i.e.*, construction finished and final stabilization complete) before the 90th day.

Permittees authorized to discharge under the 1992 permit and those allowed to use a SWPPP developed in accordance with the 1992 permit, must continue to comply with that plan and update it as necessary, to comply with the requirements of the CGP within 90 days after the **Federal Register** publication date of the CGP.

EPA will accept a late NOI, but the authorization only covers discharges from two days after the postmark date. The authorization does not retroactively apply to any prior, unpermitted discharges. The Agency reserves the right to take enforcement action for any unpermitted discharges of pollutants to waters to the United States.

B. Contents of the New (Revised) NOI

The revised NOI form (available following OMB approval and publication in the **Federal Register**) requires the following information (instructions are on NOI form):

- The operator's (applicant's) name, address, telephone number and whether they are a Federal, State, Tribal, public or private entity (*e.g.*, "XYZ Construction, 123 South St., Anyburg, TX, 214–555–5555, P" [P for private company]);
- The street address (description of location if street address is unavailable), county, and the latitude and longitude of the approximate center of the construction site (*e.g.*, "123 South St., Anyburg, Our County, NH" or "1 mile south of Anyburg, NH, on County Road No. 1; Anyburg, Our County, NH") Help on finding your latitude and longitude is provided in the instructions to the NOI form. If you will be involved in many construction projects, you may wish to invest in a portable Global Positioning System (GPS) unit that provides read-outs of the latitude and longitude. Units designed for recreational use (*e.g.*, boating, hiking) can cost less than $200.
- Whether or not the construction project is located on an Indian Country land;
- The name of the receiving water(s), or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the

storm sewer and the receiving water(s) (*e.g.*, "Nimby Creek" or "Anyburg, NH" for municipal storm sewers);

• An estimate of project start date and completion date and an estimate of the number of acres of the site on which soil will be disturbed. Note that the project start and stop dates need not be exact. EPA recognizes that many factors, often beyond the permittee's control, contribute to whether a project will actually start or end on the estimated dates. Acreage may be determined by dividing square footage by 43,560, as demonstrated in the following example:

Convert 54,450 ft² to acres

• Divide 54,450 ft² by 43,560 square feet per acre:
• 54,450 ft² ÷ 43,560 ft²/acre = 1.25 acres

• Whether or not the SWPPP has been prepared and (optional) the location of where the plan can be viewed if different from the project address;

• Whether any endangered species identified in Addendum A of the permit are in proximity to the construction project and which of the listed options enables the operator to claim eligibility for permit coverage (see Addendum A for instructions);

• A signature block is provided following a certification statement that everything on the NOI form is correct. The proposed CGP contained multiple certifications but these were eliminated by incorporating an introductory statement into the NOI that submission of the NOI constitutes an agreement to comply with the permit and that the permittee is, in fact, eligible for permit coverage.

The NOI must be signed in accordance with the signatory requirements of 40 CFR 122.22. A complete description of these signatory requirements is provided in Part VI., Standard Permit Conditions, of the general permit.

C. Where To Submit the NOI

Completed NOI forms are to be sent to the NOI Processing Center at the address indicated in the permit, or as otherwise indicated on the latest approved revision to the NOI form. Copies of NOI forms must also be sent to certain States and Tribes as specified in Part X of the permit.

Part III. Special Conditions, Management Practices and Other Non-Numeric Limitations

A. Prohibition of Non-Storm Water Discharges

The CGP does not authorize discharge of unpermitted, non-storm water, either alone or mixed with storm water, except for the specific classes of non-storm water discharges described in the permit. Discharges of material other than storm water which are in compliance with another NPDES permit may be mixed with storm water discharges authorized by this permit. Authorized non-storm water discharges could include: [3]

• Firefighting activity runoff;
• Fire hydrant flushings;
• Vehicle washwater if detergents are not used;
• Dust control runoff in accordance with permit conditions;
• Potable water sources including waterline flushings;
• Routine external building wash-down that did not involve detergents;
• Non-detergent pavement washwater (where spills/leaks of toxic or hazardous materials have not occurred, unless all spilled material had been removed);
• Air conditioning condensate;
• Uncontaminated ground water or spring water;
• Foundation or footer drain-water (providing there was no contamination with process materials such as solvent).

To be authorized for discharge under the CGP, the above-listed sources of non-storm water (except firefighting runoff) must be specifically identified in the SWPPP prepared for the facility. Non-storm water flows from firefighting activities are exempt from control requirements due to the ephemeral and exigent nature of these activities. If practicable, however, the permittee must take action to mitigate the impacts of firefighting runoff on receiving water quality.

For discharges not covered by today's permit (*e.g.*, industrial process wastewater or process wastewater mixed with storm water), the discharger must submit the appropriate application forms (Forms 1 and 2C) to obtain permit coverage or discontinue the discharge. "Allowable" non-storm water discharges cannot be authorized under this permit, unless they are directly related to and originate from a construction site or dedicated support activity site (e.g., a pressure washing company cannot broadly use the CGP for their business operations, because general vehicle washing is not associated with a construction site).

B.&C. Releases of Reportable Quantities of Hazardous Substances or Oil

The CGP requires the permittee to prevent or minimize the discharge of hazardous substances or oil from a site in accordance with the his SWPPP. Furthermore, if a permitted discharge contains a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under 40 CFR 110, 40 CFR 117, or 40 CFR 302, during a 24-hour period, the National Response Center (NRC) must be notified (dial 800–424–8802 or 202–426–2675 in the Washington, DC area). Also, within 14 calendar days of knowledge of the release, the SWPPP must be modified to include the date and description of the release, the circumstances leading to the release, responses to be employed for such releases, and measures to prevent the reoccurrence of such releases.

Where a discharge of a hazardous substance or oil in excess of reportable quantities is associated with a non-storm water discharge (*e.g.*, a spill of oil into a separate storm sewer), the spill would not be authorized by this permit. Spills must still be reported as required under 40 CFR 110. Also applicable are Section 311 of the CWA and certain provisions of Sections 301 and 402 of the CWA. This approach is necessary because of statutory requirements that make a clear distinction between hazardous substances typically found in storm water discharges and spilled hazardous substances that are not (See 40 CFR 117.12(d)(2)(i)).

D. Compliance With Water Quality Standards

The previous permit did not specifically address water quality standards (WQS). The CGP contains an eligibility condition that does not authorize discharges from construction sites that the Director determines will cause, or have reasonable potential to cause or contribute to, violations of water quality standards. Where such determinations have been made, the Director may notify the operator(s) that an individual permit application is necessary. However, the Director may authorize coverage under the permit after appropriate controls and implementation procedures designed to bring the discharges into compliance with water quality standards have been included in the SWPPP.

If a discharge authorized under this permit is later discovered to cause, or have the reasonable potential to cause or contribute to the violation of a WQS, the permitting authority will inform the permittee of the violation. The permittee must then take all necessary actions to ensure future discharges do not cause or contribute to the violation of a WQS, and document these actions in the SWPPP. If violations remain or reoccur, coverage under this permit may be terminated by the permitting authority

[3] These discharges are consistent with the allowable classes of non-storm water discharges to municipal separate storm sewer systems (40 CFR 122.26(d)(2)(iv)(B)).

and an alternative permit issued. Compliance with this requirement does not preclude enforcement actions as provided by the Clean Water Act for the underlying violation.

E. Operator Responsibility

The proposed CGP attempted to outline the responsibilities expected of the variety of operators who may be working at a construction site. For the final permit, this section has been clarified and acknowledges it is possible for one operator to have operational control over all aspects of the project (and thus be the sole permittee), vice the situation where multiple entities meet the definition of operator and would otherwise all need permits. Permittees who intend to act as the sole "overall" operator need to comply with both the "plans and specifications" and "implementation" requirements of the SWPPP.

The permit also stipulates that an operator with control over only a portion of a project is only responsible for permit/SWPPP compliance as it relates to his activities. An operator must also ensure he does not impact another permittee's pollution controls (*e.g.*, if you knock down another operator's silt fence, you should repair it or at a minimum inform the operator). Permittees must either implement their portion of a joint SWPPP or develop and implement their own individual SWPPP.

Part IV. Storm Water Pollution Prevention Plan Requirements

The SWPPP focuses on two major requirements: (1) Providing a site description that identifies sources of pollution to storm water discharges associated with industrial activity on site; and

(2) Identifying and implementing appropriate measures to reduce pollutants in storm water discharges to ensure compliance with the terms and conditions of this permit. All SWPPPs must be developed in accordance with sound engineering practices.

In the development of this permit, the Agency used requirements similar to those found in numerous State and local sediment and erosion control and storm water management programs, covering a variety of climates and types of construction.

A. Deadlines for Plan Preparation

For coverage under this permit, the SWPPP must be prepared before submittal of an NOI and then updated as appropriate (except as allowed for interim plans during the first 90 days of this permit).

B. Signature, Plan Review and Making Plans Available

1. Signature

The SWPPP must be signed in accordance with the signatory requirements in the Standard Permit Conditions section of the CGP.

2. Plan Review

The Agency may notify the permittee at any time that his plan does not meet one or more of the requirements. The notification will identify which requirements of the permit are being unmet and which elements of the SWPPP require modification. Within seven calendar days of receipt of notification from EPA (or as otherwise requested by EPA), the required changes to the plan must be made and a certification submitted that the changes have, in fact, been made and implemented.

3. Making Plans Available

Permittees must make SWPPPs available, upon request, to EPA, State, Tribal or local agencies approving sediment and erosion plans, grading plans or storm water management plans. Plans may also have to be sent to local government officials or the operator of the municipal separate storm sewer which receives the discharge.

A notice about the permit and SWPPP must be conspicuously posted near the main entrance of the site. If displaying near the main entrance is infeasible, the notice can be posted in a local public building such as the town hall or public library. For linear projects, the notice must be posted at a publicly accessible location near the active part of the construction project (*e.g.*, where a pipeline project crosses a public road).

The permit notice must include the following information:

- The project's NPDES permit number;
- The name and phone number of a local contact;
- A brief project description; and
- The location of the SWPPP if not kept on site.

The permit does not require that the general public have access to the construction site nor does it require that copies of the plan be available or mailed to members of the public. However, EPA strongly encourages permittees to provide public access to SWPPPs at reasonable hours. Upon request, EPA intends to assist members of the public in obtaining access to permitting information, including SWPPPs. EPA believes this approach will create a balance between the public's need for information on projects potentially impacting their water bodies and the site operator's need for safe and unimpeded work conditions.

C. Keeping SWPPPs Current

Storm water pollution prevention plans must be revised whenever a change in design, construction method, operation, maintenance procedure, etc., may cause a significant effect on the discharge of pollutants to surface waters or municipal separate storm sewer systems. The plan must also be amended if inspections indicate the SWPPP is ineffective in eliminating or significantly reducing pollutants in the discharges from the construction site. In addition, the plan must be updated to identify any new operator who will implement a portion of the SWPPP.

D. Contents of the Plan

The storm water pollution prevention plan must include:

- A site description;
- A description of controls that will be used on site (*i.e.*, the erosion and sediment controls and storm water management measures);
- A description of maintenance and inspection procedures; and
- A description of pollution prevention measures for any non-storm water discharges present.

1. Site Description

The SWPPP must be based on an accurate assessment of the potential for generating and discharging pollutants from the site. Hence, the permit requires the identification of potential sources of pollution at a construction site that may reasonably be expected to impact the quality of the site's storm water discharges. There must also be a description of the site and anticipated construction activities in the SWPPP (to provide a better understanding of site runoff characteristics). At a minimum, SWPPPs must contain the following:

- A description of the nature of the construction activity including the function of the project (*e.g.*, low-density residential, shopping mall, highway, etc.);
- A description of the intended significant activities, presented sequentially, that disturb soil over major portions of the site (*e.g.*, grubbing, excavation, grading);
- Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading or other activities, including off-site borrow/fill areas. It may be preferable to separately describe portions of the site as they are disturbed at different stages of the construction process;

• Estimates of the site's runoff coefficient (used for calculating the volume of runoff) during and after construction as well as data describing the quality of any discharge from the site or the soil. The runoff coefficient is defined as the fraction of total precipitation that will appear at a conveyance as runoff (vs. infiltrated precipitation). Runoff coefficients can be estimated from site plan maps, which show where impervious surfaces, vegetation and permeable surfaces will be. These coefficients are used to help determine pollutant loadings, potential hydraulic impacts to receiving waters and flooding impacts. They are also used in the design of post-construction storm water management measures;

• A site map indicating: (1) Anticipated drainage patterns and slopes after major grading activities; (2) areas of soil disturbance and areas that will not be disturbed; (3) locations of major structural and nonstructural controls identified in the plan; (4) locations of planned stabilization measures; (5) locations of surface waters (including wetlands); (6) locations of discharge points to surface waters; (7) off-site locations of equipment storage, material storage, waste storage and borrow/fill areas. Site maps should also include other major features and potential pollutant sources, such as locations of impervious structures and soil storage piles;

• A description of any discharge associated with industrial activity other than construction (including storm water discharges from dedicated asphalt plants, concrete plants, etc.) and the location of that activity on the construction site;

• The name of receiving waters and the areal extent of wetlands at the site; and

• Information on endangered and threatened species including whether any endangered species are in proximity to the permit area as defined in Addendum A to the permit.

2. Controls to Reduce Pollutants

The SWPPP must describe the implementation of practices that will be used to reduce the pollutants in storm water discharges from the site and assure compliance with the terms and conditions of the permit. Four classes of controls must be developed and implemented: (1) Erosion and sediment; (2) storm water management; (3) a specified set of other controls; and (4) any applicable requirements of State, Tribal and local sediment and erosion plans or storm water management plans.

The SWPPP must describe the intended sequence of major storm water control activities and when, in relation to the construction process, they will be implemented. EPA recognizes that many factors can impact the actual construction schedule, so the permittee need not include specific dates (*e.g.*, plan could say install silt fence for area "A" before rough grading, rather than put up silt fences on August 15). Good site planning and preservation of mature vegetation are imperative for controlling pollution in storm water discharges both during and after construction activities. Properly staging major earth disturbing activities can also dramatically decrease the costs of sediment and erosion controls.

Permittees must develop and implement controls in the SWPPP for each of the four categories discussed below.

a. *Erosion and Sediment Controls.* Erosion and sediment controls include both stabilization practices and structural practices. The requirements for erosion and sediment controls for construction activities in this permit have the following goals and criteria:

• Construction phase erosion and sediment controls should be designed with the objective to retain sediment on site;

• Control measures must be properly selected and installed in accordance with sound engineering practices and manufacturers specifications;

• Off-site accumulations of sediment must be regularly removed to minimize impacts;

• Sediment should be removed from sediment traps when the design capacity has been reduced by 50%;

• Litter shall be prevented from entering a receiving water; and

• Off-site material storage areas must be addressed in the SWPPP.

b. *Stabilization Practices.* Stabilization practices are the first line of defense in preventing erosion. The SWPPP must include a description of interim and permanent stabilization practices, including a schedule of their implementation. The permittee should ensure that existing vegetation is preserved wherever possible and that disturbed portions of the site are stabilized as quickly as practicable. Stabilization practices include seeding of temporary vegetation, seeding of permanent vegetation, mulching, geotextiles, sod stabilization, vegetative buffer strips, preservation of trees and mature vegetative buffer strips, and other appropriate measures. Temporary stabilization can be the single-most important factor in reducing erosion at construction sites.

Stabilization also involves preserving and protecting selected trees on the site prior to development. Mature trees have extensive canopy and root systems, which help to hold soil in place. Shade trees also keep soil from drying rapidly and becoming susceptible to erosion. Measures taken to protect trees can vary significantly, from simple ones such as installing tree armoring and fencing around the drip line, to more complex measures such as building retaining walls and tree wells.

It is imperative that stabilization be employed as soon as possible in critical areas. The CGP requires that, except in three situations, stabilization measures must be instituted on disturbed areas as soon as practicable, but no more than 14 days after construction activity has temporarily or permanently ceased on any portion of the site. The three exceptions to this requirement are the following:

• When construction activities will resume on a portion of the site within 21 days from suspension of previous construction activities;

• When the initiation of stabilization measures is precluded by snow cover or frozen ground, in which case they must be initiated as soon as practicable; and

• In arid areas (areas with an average annual rainfall of 0 to 10 inches), semi-arid areas (10 to 20 inches) and areas experiencing droughts; where the initiation of stabilization measures is precluded by seasonal arid conditions. For the last case, stabilization measures must be initiated as soon as precipitation becomes possible.

c. *Structural Practices.* The SWPPP must include a description of structures built to divert flows from exposed soils, and store or otherwise limit runoff and the discharge of pollutants from exposed areas of the site. Structural controls are necessary because vegetative controls cannot be employed where soil is continually disturbed and because of the lag time before vegetation becomes effective. Options for such controls include silt fences, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, sediment traps, reinforced soil retaining systems, gabions and temporary or permanent sediment basins. Placement of structural controls in flood plains should be avoided, rather they should be located on upland soils to the degree possible.

For sites with more than 10 disturbed acres at a time, all of which are served by a common drainage location, a sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures (such as suitably-sized dry wells or infiltration structures), must be provided where

practicable until final stabilization of the site has been accomplished. In lieu of the default 3,600 cubic feet/acre, the permittee can calculate the basin size based on the expected runoff volume from the local two-year, 24-hour storm event and local runoff coefficient. Flows from off-site or on-site areas that are undisturbed or have undergone final stabilization, may be diverted around both the sediment basin and the disturbed area. These diverted flows can be ignored when designing the sediment basin.

For the drainage locations which serve more than 10 disturbed acres at a time and where a sediment basin designed according to the above guidelines is not feasible, smaller sediment basins or traps should be used. At a minimum, silt fences, vegetative buffer strips or equivalent sediment controls are required for all down-slope and appropriate mid-slope boundaries of the construction area. Diversion structures should be used on upland boundaries of disturbed areas to prevent run-on from impacting disturbed areas. EPA does not intend to imply that silt fences or vegetative buffer strips on down-slope boundaries are the only BMPs that need to be used to protect water quality. EPA encourages the use of a combination of sediment and erosion control measures in order to achieve maximum pollutant removal.

For drainage locations serving 10 or less acres, smaller sediment basins or sediment traps should be used and, at a minimum, silt fences or equivalent sediment controls are required for all down slope and appropriate mid-slope boundaries of the construction area. Alternatively, the permittee may install a sediment basin providing storage for 3,600 cubic feet (or the alternative calculated volume) of storage per acre drained. Diversion structures should be installed on upland boundaries of disturbed areas to prevent run-on. EPA does not intend to imply that silt fences or vegetative buffer strips on down-slope boundaries are the only BMPs that need to be used to protect water quality. EPA encourages the use of a combination of sediment and erosion control measures in order to achieve maximum pollutant removal.

d. *Storm Water Management.* The SWPPP must include a description of storm water management measure, however this permit addresses only the installation of these measures; not the ongoing operation and maintenance of them after cessation of construction activities and final stabilization. Permittees are responsible only for the installation and maintenance of storm water management measures prior to final stabilization of the site. However, when selecting storm water management measures, the amount of required maintenance should be considered and whether there will be adequate resources for maintaining them over the longer term.

Some discharges of pollutants from post-construction storm water management structures may need to be authorized under an NPDES permit (*e.g.*, the construction project was an industrial facility in a sector covered by the NPDES multi-sector general permit). The owner/operator of such discharges may inquire with EPA if this requirement applies to them.

Land development can significantly increase storm water runoff volume and peak velocity if appropriate storm water management measures are not implemented. In addition, post-development storm water discharges will typically contain higher levels of pollutants, including total suspended solids (TSS), heavy metals, nutrients and high oxygen-demand components.

Storm water management measures installed during the construction process can control the volume and velocity of runoff, as well as reduce the quantity of pollutants discharged post-construction. Reductions in peak discharge velocity and volume can reduce pollutant loads as well as diminish physical impacts such as stream bank erosion and stream bed scour. Storm water management measures that mitigate changes to pre-development runoff characteristics assist in protecting and maintaining the physical and biological characteristics of receiving streams and wetlands.

Structural measures should be installed on upland areas to the extent feasible. The installation of such measures may be subject to section 404 of the CWA if they will be located in wetlands (or other waters of the United States).

Options for storm water management measures that should be evaluated in the development of plans include:

- On-site infiltration of precipitation;
- Flow attenuation by use of open vegetated swales and natural depressions;
- Storm water retention/detention structures (including wet ponds); and
- Sequential systems using multiple methods.

The pollution prevention plan shall include an explanation of the technical basis used to select control measures, where flows exceed pre-development levels. This explanation should address how a number of factors were evaluated including the pollutant removal efficiencies of the measures, costs of the measures, site-specific factors that will affect the utility of the measures, whether the measure is economically achievable at a particular site and any other relevant factors.

Although not a limitation or performance standard in the permit, EPA anticipates that storm water management measures at many sites will be able to achieve removal of at least 80% of total suspended solids. A number of storm water management measures can be used to achieve this level of control, including:

- Properly designed and installed wet ponds;
- Infiltration trenches and basins;
- Sand filter systems;
- Manmade storm water wetlands; and
- Multiple pond systems.

The pollutant removal efficiencies of various storm water management measures can be estimated from a number of sources, including "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices," U.S. EPA, 1992, and "A Current Assessment of Urban Best Management Practices" prepared for U.S. EPA by Metropolitan Washington Council of Governments, March 1992.

In selecting storm water management measures, the permittee should consider the impacts of each method on other water resources, such as ground water. Although SWPPPs primarily focus on storm water management, EPA encourages facilities to avoid creating groundwater pollution problems. For example, if the water table is high in an area or soils are especially porous, an infiltration pond may contaminate the groundwater unless special preventive measures are taken. Per EPA's July 1991 Ground Water Protection Strategy, States are encouraged to develop Comprehensive State Ground Water Protection Programs (CSGWPP). Efforts to control storm water should be compatible with State or Tribal ground water objectives as reflected in CSGWPPs. Storm water controls, such as wet ponds, should also be designed to have minimal safety risks, especially to children.

The evaluation of whether the pollutant loadings and the hydrologic conditions (the volume of discharge) of flows exceed pre-development levels can be based on hydrologic models which consider conditions such as the natural vegetation endemic to the area.

Increased discharge velocities can greatly accelerate erosion near the outlet of structural measures. To mitigate these effects, velocity dissipation devices should be placed at discharge points

and along the length of a runoff conveyance, as necessary, to provide a non-erosive flow. Velocity dissipation devices help protect a water body's natural, pre-construction physical and biological uses and characteristics (*e.g.*, hydrologic conditions such as the hydro period and hydrodynamics).

e. *Other Controls.* Other controls to be addressed in SWPPPs for construction activities are for compliance with the requirement that nonsolid materials, including building material wastes, not be discharged at the site except as authorized by a section 404 permit.

This permit requires vehicular tracking of soil off-site and the generation of dust must be minimized. Dust and dirt-tracking can be minimized by measures such as providing gravel or paving at entrance/exit drive paths, parking areas and unpaved transit ways on the site carrying significant amounts of traffic (*i.e.*, more than 25 vehicles per day); providing entrance wash racks or stations for trucks; and performing street sweeping.

In addition, the SWPPP must clearly show compliance with applicable State/Tribal or local sanitary sewer, septic system and waste disposal regulations to the extent they apply to the permitted activity.[4] The plan must also contain a description of practices to reduce pollutants from construction-related materials which are stored on site, including a description of said construction materials (with updates as appropriate). The plan should include a description of pollutant sources from areas untouched by construction and a description of controls and measures which will be implemented in those areas.

The plan must also include measures to protect listed endangered and threatened species and/or critical habitat (if applicable), including any terms or conditions that are imposed pursuant to the eligibility requirements of Part I.B.3.e and Addendum A of this permit, from storm water discharges or BMPs to control storm water runoff. Failure to include these measures will result in the storm water discharges from the construction activities being ineligible for coverage under this permit. (*See* section VI. Endangered Species Protection and also section VIII, Summary of Responses to Comments for more discussion.)

f. State/Tribal and Local Controls. Many States, Tribes, municipalities and counties have developed sediment and erosion control requirements for construction activities. A significant number have also developed storm water management requirements. The CGP requires that SWPPPs for facilities that discharge storm water associated with industrial activity from construction activities be consistent with procedures and requirements of State/Tribal and local sediment and erosion control plans and storm water management plans. The proposed requirement to have permit applicants certify that their SWPPP incorporates requirements related to protecting water resources that are specified in State/Tribal or local sediment and erosion plans or storm water management plans has been eliminated.

g. Maintenance. Erosion and sediment controls can become ineffective if they are damaged or not properly maintained. The SWPPP requires all erosion and sediment control measures to be maintained in effective operating condition. If site inspections identify BMPs that are not operating effectively, maintenance must be performed before the next anticipated storm event. If maintenance before the next anticipated storm event is impracticable, maintenance must be completed as soon as practicable.

h. Inspections. Permittees must inspect designated areas on the site at least once every 14 calendar days, and within 24 hours after any storm event of 0.5 inches or greater. EPA also recommends that permittees perform a "walk through" inspection of the construction site before anticipated storm events (or series of events such as intermittent showers over a period of days) that could potentially yield a significant amount of runoff.

Visual inspections must comprise, at a minimum:

- Disturbed areas;
- Areas used for storage of exposed materials;
- Sediment and erosion control measures; and
- Locations where vehicles enter or exit the site.

For sites that have undergone stabilization (temporary or final) or experience seasonal aridity (average annual rainfall of 0 to 10 inches) or semi-aridity (annual rainfall of 10 to 20 inches), inspections must be conducted at least once a month. Where construction activity has been halted due to frozen conditions, inspections are not required until one month before thawing is expected (*i.e.*, snowmelt runoff would commence).

Where discharge points are accessible, they must be inspected to ascertain whether erosion control measures are effective in preventing impacts to receiving waters. This can be done by inspecting the waters for evidence of erosion or sediment introduction. If discharge points are inaccessible, the permit requires that nearby downstream locations be inspected, if practicable.

Were an inspection to reveal inadequacies, the site description and pollution prevention measures identified in the SWPPP must be revised. All necessary modifications to the SWPPP must be made within seven calendar days following the inspection. If existing BMPs need to be modified or if additional BMPs are necessary, implementation shall be completed before the next anticipated storm event. If implementation before the next storm event is impracticable, they shall be implemented as soon as practicable.

Once an inspection has been performed, a report containing the following must be retained with the SWPPP for up to three years after the site has been finally stabilized:

- Components and scope of the inspection;
- Names and qualifications of personnel conducting the inspection;
- Dates of the inspection;
- Observations relating to the implementation of the SWPP;
- Actions taken; and
- Incidents of non-compliance.

If no incidents of non-compliance were found, the report shall contain a certification that the facility is in compliance with the SWPPP and this permit. Finally, the report must be signed in accordance with the signatory requirements in Part VI. Standard Permit Conditions section of the CGP.

Diligent inspections are vital for ensuring effective implementation of sediment and erosion controls, particularly in the later stages of construction when the volume of runoff is greatest and storage capacity of sediment basins has been reduced.

i. Non-Storm Water Discharges. The SWPPP must identify and ensure the implementation of appropriate pollution prevention measures for each of the eligible non-storm water components of the discharge covered by this permit. The eligible non-storm water discharges

[4] In rural and suburban areas served by septic systems, malfunctioning septic systems can contribute pollutants to storm water discharges. Malfunctioning septic tanks may be a more significant surface runoff pollution problem than a groundwater problem. This is because a malfunctioning septic system is less likely to cause groundwater contamination where a bacterial mat in the soil retards the downward movement of wastewater. Surface contamination can be caused by clogged or impermeable soils, or when clogged or collapsed pipes force untreated wastewater to the surface. The extent of surface contamination can vary in degree from occasional damp patches to constant pooling or runoff of wastewater. These discharges have high bacteria, nitrate and nutrient levels and can contain a variety of household chemicals. This permit does not establish new criteria for septic systems, but rather requires addressing existing State or local criteria.

are discussed in section V: Part III. Special Conditions, Management Practices, and Other Non-Numeric Limitations in the Fact Sheet.

j. Additional Requirements. Storm water from a permitted industrial source other than construction activities is authorized for discharge when commingled with construction storm water only under the following conditions: (1) The other industrial source is located on the same site as the construction activity; and (2) storm water discharges from the permitted construction site are in compliance with the terms of this permit.

k. Contractors and Subcontractors. The SWPPP must identify who will be responsible for implementing each measure contained in the plan. It is the permittee's responsibility to provide necessary information on complying with their SWPPP and the permit to their contractors and subcontractors.

Part V. Retention of Records

The permittee must retain all records and reports required by this permit, including SWPPPs and information used to complete the NOI, for at least three years from the date of final stabilization. This period may be extended by request of the Director.

A copy of the SWPPP must be kept at the construction site from the date of project initiation to the date of final stabilization. Permittees with day-to-day operational control over the plan's implementation must keep a copy of the plan readily available whenever they are on site (a central location accessible by all on-site operators is sufficient). If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the plan's location must be conspicuously posted at the construction site. A copy of the SWPPP must be readily available to authorized inspectors during normal business hours.

Part VI. Standard Permit Conditions

This section of the permit contains the standard permit conditions required by 40 CFR 122.41. One condition is the procedure for continued coverage under a general permit if it expires prior to a replacement permit being issued. In short, the expired permit would remain in full force and effect in accordance with the Administrative Procedures Act. Any permittee granted coverage prior to the permit's expiration date will automatically remain covered by the continued permit until the earliest of:

- The permit being reissued or replaced;
- The permittee terminating coverage by submitting an NOT;
- Issuance of an individual permit for the permittee's discharges; or
- A formal decision by the Director not to reissue the general permit, at which time the permittee must seek coverage under an alternative general permit or an individual permit.

(For more information, see section VIII. Summary of Responses to Comments on the Proposed Permit.)

Part VII. Reopener Clause

The permit contains a reopener clause allowing the permit to be reopened and modified for cause during the term of the permit. Generally, this would be triggered by a water quality concern, a change in NPDES statutes, or to incorporate procedures developed by the EPA and the Advisory Council for Historic Preservation to provide for additional consideration of effects to properties either listed or eligible for listing in the National Register of Historic Places.

Part VIII. Notice of Termination Requirements

Permittees must submit a completed Notice of Termination (NOT) that is signed according to Part VI.G of the permit when one or more of the conditions contained in Part I.D.2 of the permit have been met. NOTs must be submitted using the form provided by the Director (*i.e.*, use the existing NOI form found in Appendix D of the permit until the revised version is published in its final form in the **Federal Register**), or a photocopy thereof. NOTs provide EPA with a useful mechanism to track the status of projects which are actively covered by the permit.

Significant parts of the NOT are:

- Permittee name and contact information, and site location information;
- The permit number which is being terminated;
- Permittee certification that he understands that submission of the NOT means he no longer will have authorization to discharge storm water associated with construction activity;
- Clarification that the authorization to discharge ends at midnight of the day the NOT is postmarked; and
- The conditions under which an NOT can be submitted.

Part IX. Definitions

The permit contains 21 definitions of statutory, regulatory and other terms important for understanding the permit and its requirements. See section VIII. Summary of Responses to Comments for discussions on the critical definitions of "operator" and "final stabilization."

Part X. Permit Conditions Applicable to Specific States, Indian Country Lands or Territories

Permit conditions that only apply to construction projects located in a specific State, Indian land or other area are in Part X of the permit. These conditions are modifications or additions to analogous conditions in Parts I through IX of the "generic" portion of the CGP, and reflect additional requirements arising from the State section 401 (Clean Water Act) or Coastal Zone Management Act (CZMA) certification processes or as otherwise established by the permitting authority. EPA must include any more stringent permit conditions required by a State or Tribe to get State/Tribal certifications of the permit under section 401 (*See* 40 CFR 122.44(d)(3)) or CZMA (*See* 40 CFR 122.49(d)).

Areas with special area-specific conditions are:

Region 1

- Commonwealth of Massachusetts, except Indian Country lands.
- State of Maine, except Indian Country lands.

Region 8

- Indian Country lands in the State of Montana.

Region 9

- State of Arizona, except Indian Country lands.
- Island of Guam.
- Commonwealth of Northern Mariana Islands.

Region 10

- State of Alaska, except Indian Country lands.
- State of Idaho, except Indian Country lands.
- Federal facilities in the State of Washington, except those located on Indian Country lands.
- Indian Country lands in the State of Washington.

VI. Endangered Species Protection

A. Background

The CGP also contains conditions to ensure the activities regulated by it are protective of species that are listed under the Endangered Species Act (ESA) as endangered or threatened (known as "listed species"), and listed species habitat that is designated under the ESA as critical ("critical habitat"). In addition, the permit's coverage does not extend to discharges and discharge-related activities likely to jeopardize the continued existence of species proposed but not yet listed as endangered or threatened or result in the adverse

modification of habitat proposed to be designated critical habitat.

The ESA places several different requirements on activities covered by the CGP. First, section 9 of the ESA and the ESA implementing regulations generally prohibit any person from "taking" a listed animal species (*e.g.*, harassing or harming it) unless the take is authorized under the ESA. This prohibition applies to all entities and includes EPA, permit applicants, permittees and the public at large. Second, section 7(a)(2) of the ESA requires that Federal agencies consult with the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) ("the Services") to insure that any action authorized, funded or carried out by them (also known as "agency actions") are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. Jeopardizing the continued existence of a listed species means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers or distribution of that species (*See* 40 CFR 402.02).

The ESA section 7 implementing regulations at 50 CFR 402 apply this consultation requirement to any action authorized by a Federal agency that may affect listed species or critical habitat, including permits. This effect, among other things, can be beneficial, detrimental, direct and indirect. The issuance of the CGP by EPA is thus subject to the ESA section 7(a)(2) consultation requirements. Finally, ESA section 7(a)(1) directs Federal agencies to use their authority to further the purposes of the ESA by carrying out programs for the conservation of listed species, and section 7(a)(4) directs Federal agencies to confer with the Services on Agency actions likely to jeopardize the existence of species proposed but not yet finally listed or result in the adverse modification of critical habitat proposed to be designated.

The ESA regulations provide for two types of consultation; formal and informal. Informal consultation is an optional process that includes discussions, correspondence, etc. between the Services and a Federal agency or a designated non-Federal representative (NFR) to determine whether a Federal action is likely to have an adverse effect on listed species or critical habitat. During informal consultation the Services may suggest modifications to the action that a Federal agency, permit applicant or non-Federal representative could implement to avoid likely adverse effects to listed species or critical habitat. If adverse effects are likely and those effects cannot be addressed through informal consultation, then formal consultation generally occurs.

Formal consultation is a 135-day process that results in issuance of a biological opinion by the Services in which they determine whether the Federal action is likely to jeopardize the existence of a listed species or result in adverse modification or destruction of critical habitat. Formal consultation can also provide authorization for anticipated incidental take of listed animal species, provided any such take is consistent with an incidental take statement contained in the biological opinion. While informal consultation is not a prerequisite to formal consultation, most section 7 consultations are carried out as informal consultations.

Federal permit applicants frequently play a key role in both formal and informal consultation. The ESA regulations provide for permit applicants, where designated, to carry out informal consultations as a NFR, which enables them to work directly with the Services (*See* 50 CFR 402.08). EPA has designated applicants for this storm water construction general permit as non-Federal representatives. The regulations also provide for the participation of permit applicants in formal consultation (*See* 50 CFR 402.14 and 51 FR 19939 [June 3, 1986]).

Also of relevance for the CGP are ESA section 10 incidental taking permits. Section 10 of the ESA allows persons, including non-Federal entities to incidentally take listed animal species, where otherwise prohibited, through the issuance of a permit after development of a habitat conservation plan (HCP). These procedures were developed to allow non-Federal entities such as developers to, among other things, alter habitat without incurring takings liability where take is minimized to the extent practicable.

B. Conditions in the June 2, 1997 Proposed Permit to Protect Species and Critical Habitat

The CGP was proposed with a number of conditions to ensure that storm water discharges and best management practices (BMPs) to control storm water run off were protective of listed species or critical habitat. Specifically, coverage under the proposed CGP would be granted only under the following circumstances:

1. An applicant's storm water discharges or BMPs to control storm water runoff were not likely to adversely affect listed species (identified in Addendum A of the permit) or critical habitat; or

2. The applicant's activity was previously authorized under section 7 or section 10 of the Endangered Species Act (ESA) and that authorization addressed storm water discharges and BMPs to control storm water runoff; or

3. The applicant's activity was considered as part of a larger, more comprehensive assessment of impacts on endangered and threatened species under section 7 or section 10 of the ESA which accounted for storm water discharges and BMPs to control storm water runoff; or

4. Consultation under section 7 of the ESA was conducted for the applicant's activity which resulted in either a no jeopardy opinion or a written concurrence on a finding of no likelihood of adverse effects; or

5. The applicant's activity was considered as part of a larger, more comprehensive site-specific assessment of impacts on endangered and threatened species by the owner or other operator of the site and that permittee certified eligibility under items 1., 2., 3. or 4. above.

The proposal required that applicants assess the impacts of their "storm water discharges" and "BMPs to control storm water run off" on listed species and critical habitat that are located "in proximity" to the those discharges and BMPs when developing Storm Water Pollution Prevention Plans (SWPPPs) as part of the application process. The proposed CGP also required applicants to include measures in SWPPPs to protect listed species and critical habitat. "In proximity" was defined in Addendum A to include species:

- Located in the path or immediate area through which or over which contaminated point source storm water flows from construction activities to the point of discharge into the receiving water;
- Located in the immediate vicinity of, or nearby, the point of discharge into receiving waters; or
- Located in the area of a site where storm water BMPs are planned or are to be constructed.

EPA also solicited comment on whether the area or scope of impacts to be considered by applicants should be broadened to encompass listed species found on the entire construction site and not just those species found "in

proximity" as currently defined in Addendum A.

Failure by permittees to abide by measures in their SWPPPs to protect species and critical habitat would invalidate permit coverage. Attached to the proposed permits were instructions (Addendum A) to assist permit applicants in making this inquiry. The proposal indicated that a county-by-county species list would be included in Addendum A of the final permit to assist applicants in determining if listed species might be "in proximity" to storm water discharges and BMPs. EPA did not provide a draft species list in proposed Addendum A. Instead, EPA referred commenters to a similar species list that was used for an earlier EPA-issued storm water permit, the Multisector Storm Water General Permit, that was issued on September 29, 1995 (*see* 62 FR 29792, note 12, June 2, 1997).

C. Final CGP Conditions To Protect Listed Species

On April 28, 1997, EPA entered into formal consultation with the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (the "Services") for issuance of the CGP. After discussions with the Services, EPA terminated formal consultation and entered into ESA section 7 informal consultation and conferencing with the Fish and Wildlife Service (FWS) and the National Fisheries Service Services (NMFS) on June 11, 1997. On November 4, and 26, 1997, EPA completed ESA informal consultation when NMFS and FWS provided their respective concurrences with EPA's finding that issuance of the CGP was not likely to adversely affect listed species or critical habitat. Based on that consultation and in consideration of comments received on the June 2, 1997, proposal, EPA has placed the following conditions in the permit to protect listed species and critical habitat (see Part I.B.3.e). Coverage under the CGP is available only if:

a. The storm water discharges and storm water discharge-related activities are not likely to adversely affect listed species or critical habitat (Part I.B.3.e.(2)(a)); or

b. Formal or informal consultation with the Services under section 7 of the Endangered Species Act (ESA) has been concluded which addresses the effects of the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat and the consultation results in either a no jeopardy opinion or a written concurrence by the Service(s) on a finding that the applicant's storm water discharges and storm water discharge-related activities are not likely to adversely affect listed species or critical habitat. A section 7 consultation may occur in the context of another Federal on (*e.g.*, an ESA section 7 consultation was performed for issuance of a wetlands dredge and fill permit for the project, or as part of a National Environmental Policy Act [NEPA] review); or

c. The applicant's construction activities are covered by a permit under section 10 of the ESA and that permit addresses the effects of the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat (Part I.B.3.e.(2)(c)); or

d. The applicant's storm water discharges and storm water discharge-related activities were already addressed in another operator's certification of eligibility under Part I.B.3.e.(2)(a), (b), or (c) which included the applicant's project area. By certifying eligibility under Part I.B.3.e.(2)(d), the applicant agrees to comply with any measures or controls upon which the other operator's certification under Part I.B.3.e.(2)(a), (b) or (c) was based.

The CGP requires that applicants consider effects to listed species and critical habitat when developing SWPPPs and require that those plans include measures, as appropriate, to protect those resources. Failure by permittees to abide by measures in the SWPPPs to protect species and critical habitat may invalidate permit coverage.

Addendum A contains instructions to assist permit applicants in making this inquiry. Those instructions require that applicants ascertain: (1) If their construction activities would occur in critical habitat; (2) whether listed species are in the project area; and (3) whether the applicant's storm water discharges and discharge-related activities are likely to adversely affect listed species or critical habitat. If adverse effects are likely, then applicants would have to meet one of the eligibility requirements of Part I.B.3.e.(2)(b)–(d) (paragraphs b., c., and d. above) to receive permit coverage. "Discharge-related activities" include activities which cause point source storm water pollutant discharges including but not limited to excavation, site development, and other surface disturbing activities, and measures to control, reduce or prevent storm water pollution including the siting, construction and operation of BMPs. The "project area" includes:

1. Area(s) on the construction site where storm water discharges originate and flow towards the point of discharge into the receiving waters (this includes the entire area or areas where excavation, site development, or other ground disturbance activities occur), and the immediate vicinity;

2. Area(s) where storm water discharges flow from the construction site to the point of discharge into receiving waters;

3. Area(s) where storm water from construction activities discharges into the receiving waters and the area(s) in the immediate vicinity of the point of discharge; and

4. Area(s) where storm water BMPs will be constructed and operated, including any area(s) where storm water flows to and from BMPs.

The project area will vary with the size and structure of the construction activity, the nature and quantity of the storm water discharges, the measures (including BMPs) to control storm water runoff, and the type of receiving waters.

Addendum A also contains a list of listed and proposed species organized by State and county to assist applicants in determining if further inquiry necessary as to whether listed species are present in the project area. This list is current as of September 1, 1997, and will be updated periodically and made available on the Office of Wastewater Management's website at "http://www.epa.gov/owm". CGP applicants can also get updated species information for their county by calling the appropriate FWS or NMFS office. EPA Region 2 applicants[3] can also contact the EPA Region 6 and Region 2 Storm Water Hotline (1–800–245–6510) for updated species information. Applicants from other EPA Regions can contact the appropriate EPA Regional storm water office for updated species information.

The CGP also requires that applicants comply with any conditions imposed under the eligibility requirements of Part I.B.3.e.(2)a., b., c., or d. above to remain eligible for coverage under this permit. Such conditions must be incorporated in the applicant's SWPPP. The CGP does not authorize any prohibited take (as defined under section 3 of the ESA and 50 CFR 17.3) of endangered or threatened species unless such takes are authorized under sections 7 or 10 of the ESA. The CGP does not authorize any storm water discharges or storm water discharge-related activities that are likely to jeopardize the continued existence of any species that are listed or proposed to be listed as endangered or threatened

[3] Region 2 permit areas include Indian Country lands in the State of New York and the Commonwealth of Puerto Rico.

under the ESA or result in the adverse modification or destruction of habitat that is designated or proposed to be designated as critical under the ESA.

It is EPA's intention to provide permit applicants with the greatest possible flexibility in meeting permit requirements for protecting listed species and critical habitat. Thus, EPA is allowing applicants to use either section 7 or section 10 ESA mechanisms to address situations where adverse effects are likely (see Part I.B.3.e.(2)(b) and (c)). Also, to give applicants additional flexibility in meeting the Part I.B.3.e. eligibility requirements and with the timing of informal consultations, the permit automatically designates CGP applicants as non-Federal representatives for the purpose of carrying out informal consultation. However, EPA notes that meeting ESA requirements raise difficult implementation issues on how to best ensure that the permits are protective of listed species and critical habitats without unduly burdening permit applicants, permittees, and State, local, and Federal governmental entities. Thus, EPA intends in the future to review those permit conditions and procedures that relate to the ESA and the protection of historic resources to see how well that goal has been achieved and may revise the permits if necessary to better achieve that goal.

VII. Historic Property Protection

A. Background

The National Historic Preservation Act of 1966, as amended, (NHPA) establishes a national historic preservation program for the identification and protection of historic properties and resources. Under the NHPA, identification of historic properties is coordinated by the State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs) or other Tribal Representatives (in the absence of a THPO). Section 106 of the NHPA requires Federal agencies to take into account the effects of their actions (also known as "Federal undertakings" in the NHPA regulations) on historic properties that are listed or eligible for listing on the National Register of Historic Places and to seek comments from an independent reviewing agency, the Advisory Council on Historic Preservation (ACHP). The permit was proposed with a number of conditions pertaining to the consideration of historic properties. EPA has decided to not include those conditions because the ACHP and the National Conference of State Historic Preservation Officers (NCSHPO) have requested that EPA not include such conditions in the final permit at this time. The ACHP and the NCSHPO have recommended that EPA issue the permit but recommend that EPA continue working with them and Tribes regarding the possible development of a more comprehensive and efficient approach to ensure that effects to historic properties are given appropriate consideration while ensuring undue burdens are not imposed on applicants and regulatory authorities. EPA plans to continue working with the ACHP, NCSHPO and Tribes on this effort and may modify the permit to incorporate procedures regarding the protection of historic resources at a later date.

B. Future CGP Conditions To Protect or Consider Effects to Historic Properties

In response to comments received on the proposal and because the Agency is still discussing historic preservation with the Advisory Council on Historic Preservation (ACHP), the final permit reserves permit requirements related to historic preservation. The permit does not currently include the eligibility restrictions and evaluation requirements from the proposed permit. After future discussions with the ACHP, EPA may modify the permit to reflect those discussions.

VIII. Summary of Responses to Comments on the Proposed Permit

The following is a summary of EPA's response to comments received on the proposed CGP which was published in the **Federal Register** on June 2, 1997 (62 FR 29786). Due to the large number of comments received, comments and responses have been categorized and placed into 10 major categories such as "Coverage of General Permits" and "Protection of Endangered Species."

Coverage of General Permits

Common Plan of Development or Sale

Many comments were received regarding permitting requirements for projects that are less than five acres but are part of a "larger common plan of development or sale ("Larger Common Plan") disturbing at least 5 acres." The volume and nature of the comments showed that the regulated community and the public needed additional guidance on this issue.

Under Phase I of the storm water program, an NPDES permit to discharge storm water associated with construction activity is only needed when a "common plan of development or sale" will disturb five or more acres. The simple case is when the "common plan" is to construct a single building, etc., for a single owner. The more complicated case needing clarification is when the common plan consists of several smaller construction projects that cumulatively will disturb five or more acres, but may or may not be under construction at the same time. Residential development with houses being built by several homebuilders in a master planned subdivision is an excellent example of this second case.

For illustration purposes, many examples in the explanation below assume a more complex residential development of single family homes with a developer putting in the infrastructure and common areas (*e.g.*, roads, sewers, parks, etc) and selling groups of lots to homebuilders and single lots to individuals. The same rationale used for these residential construction examples would apply to any project with multiple parts. For example, when building a new runway, the associated taxiways, and additional hangers, terminals, parking lots, etc., at an airport would be a common plan of development.

For sites disturbing less than five acres, the first steps in deciding if a permit is needed for storm water discharges associated with construction activity are determining:

1. Is there a "common plan of development or sale" tying individual sites together? (*e.g.*, Are the lots part of a subdivision plat filed with the local land use planning authority?) and
2. Will the total area disturbed by all of the individual sites add up to five or more acres? (*e.g.*, If you added up all of the acreage that will need to be disturbed to completely build out the subdivision as planned, would there be five or more acres disturbed?)

If the answer to both questions is no, a storm water discharge permit is not needed unless EPA determines that discharges contribute to a violation of water quality standards or are a significant contributor of pollutants to waters of the United States and specifically requests a permit application. This permit provides for coverage of such dischargers once designated.

Note: The disturbed acreage threshold may be less than five acres for Phase II of the storm water program. Proposed regulations for Phase II are expected December 1997 with final regulations due in March 1999.

The Larger Common Plan concept does have to be applied with some common sense and should not be taken to extremes. For example, every construction project within a city would not be considered part of a common plan of development just because the

city has a land use master plan or zoning map. EPA interprets the term more narrowly. Building a house on a vacant lot in a residential subdivision plat filed by a developer would be part of that subdivision's larger common plan of development or sale. Any earth disturbing activity necessary to complete the planned project (*e.g.*, grading lots, installation of utilities, building roads, preparing storm water control structures), plus various support activities such as exposed materials storage and equipment staging areas, are considered to be part of the construction activity that could result in a regulated discharge of storm water.

Once a residence has been completed and occupied by the homeowner (or tenant), future activities by the homeowner on their individual lot are not considered part of the original common plan of development (which was the industrial activity of building houses on each subdivided lot). After a home is occupied by the homeowner or a tenant, future construction activity on that particular lot is considered a new and distinct project and is compared to applicable disturbed acreage limits for permit applicability. For example, if homeowner decides to install a swimming pool after occupying the house, only the disturbed area on their lot—not the total acreage of the subdevelopment—is considered for determining whether a permit is needed. Likewise, demolition and reconstruction of individual houses originally built as part of a common plan of development, including those destroyed or damaged by fire or natural disasters, are also considered to be "new" plans of development/ redevelopment, and not part of Larger Common Plan.

Once the extent of the Larger Common Plan has been determined, the total acreage to be disturbed must be calculated. A single ¼ acre lot is not large enough by itself to require a permit, but since 100 such lots in a subdivision would disturb 25 acres (if the entire area of each lot was disturbed), permit coverage is needed. Please note, permit coverage under the general permit is for all of the permittee's activities on the Larger Common Plan. Site-by-site permitting (*i.e.*, submitting a separate NOI and preparing a separate storm water pollution prevention plan for each individual lot) would negate one of the principle advantages of the general permit and is not required by EPA.

Of particular concern to many homebuilders is the issue of lots left over when the original development is substantially complete. It is EPA's position that the unbuilt lots remain part of the Larger Common Plan, but total disturbed acreage can be recalculated if: (1) All areas of the site achieve final stabilization or are turned over to a homeowner, and permit coverage is or could be terminated; and (2) the total remaining area of the Larger Common Plan is less than five acres. A permit is not necessary if the total acreage remaining to be built upon out of the Large Common Plan is less than five acres. On the other hand, if there were 22¼-acre lots left unbuilt (total 5½ acres), permit coverage would have to be obtained to build on even one of the remaining lots since the "common plan" would still be capable of disturbing more than five acres. Once three of these last ¼-acre lots were completed and stabilized, the total area remaining out of the original common plan with the potential to be disturbed would be only 4¾ acres.

EPA believes this approach maintains the intent of regulating projects that disturb five or more acres while applying common sense in interpreting the regulation. A common plan of development must at least be theoretically capable of having five or more acres of land disturbed at one time in order to trigger the need for a permit. Requiring that all parts of the project, including unbuilt portions of the Larger Common Plan of development, have achieved final stabilization before total disturbed acreage can be "recalculated" insures that there is a period of time during which all discharges of storm water associated with construction activity from the common plan of development or sale have ceased. The requirement to compare disturbed acreage to the total remaining unbuilt acreage of the Larger Common Plan protects against attempts to artifically divide a project in such a way as to avoid providing environmental controls for construction activities.

Support Activities

EPA received several comments requesting clarification on support activities eligible for, or required to obtain, permit coverage. As noted by many of these commenters, off-site areas are commonly used for storage of fill material or soil excavated from the construction site, borrow areas to obtain fill material, storage of building materials, concrete batch plants, or storage of construction equipment. Several citizens expressed concern that erosion and sediment from off-site areas used for storage or disposal of fill material were not being adequately controlled. A State highway department questioned whether a support base used for several nearby roadway projects would be eligible for coverage.

EPA agrees that where activities at off-site locations would not exist without the construction project, discharges of pollutants in storm water from these areas must be controlled. Changes have been made to part I.B. of the permit to clarify the permit and allow coverage for sites used by an operator to support several nearby projects. It remains the responsibility of the operator of the support area to assure permit coverage is obtained.

Off-site storage areas, support bases, disposal areas and borrow areas used for a construction project are considered to be part of the Larger Common Plan and must be addressed by the pollution prevention plan in certain instances. The pollution prevention plan for the construction project must include controls for all off-site areas directly supporting the construction project, unless the offsite location is a fixed base of operations (*e.g.* construction company's home office, warehouse, commerical warehouse, landfill, equipment yard, etc. used for all construction projects) or can be considered a stand-alone industrial or commercial activity serving multiple customers. Allowing such off-site locations to be permitted under the construction permit for the construction site avoids the need for a separate permit for the remote location.

Where the same operator uses a temporary off-site location to support construction activities at several nearby locations, permit coverage may be obtained by identifying the site and including controls for this common site in at least one of the pollution prevention plans for the individual construction projects. For example, a common support area for three highway projects could be permitted by identifying the site, including appropriate controls in at least one of the three pollution prevention plans for the separate projects, and insuring that an NOT is not submitted until the support area is finally stabilized.

Non-Storm Water

Several comments were received about the permit's authorization of non-storm water discharges. In response, this permit only authorizes the discharge of non-storm waters listed in Part III.A.3, and only when such discharges are identified in the storm water pollution prevention plan and appropriate controls are included. During the construction process, non-storm waters listed in Part III.A.3 are authorized for discharge either alone or when commingled with storm water. The

Agency also notes that EPA can request individual permit applications for such discharges where appropriate. The Agency is not requiring that flows from fire-fighting activities be identified in plans because of the emergency nature of such discharges and because of the unpredictability of their occurrence.

EPA would also like to clarify certain questions which were raised regarding the list of non-storm water discharges that are authorized. For example, operators were unclear whether dewatering of trenches is authorized under the permit. In response, EPA believes that discharges associated with the dewatering of trenches is the same type of water contemplated by the term "ground water dewatering." As such, EPA believes that this discharge would be authorized by the permit. Operators also asked whether discharges associated with dust control are authorized. In response, EPA would note that this discharge is specifically authorized by the permit.

Several commenters asked whether detergents would be allowed in discharges resulting from washing vehicles. In response to this issue, EPA believes that detergents should not be necessary to remove sediment from trucks which would be the primary purpose for washing vehicles at the construction site. The final permit was clarified to specify that truck wash water would only be allowed if detergents were not included in the discharge.

Wetlands

One commenter requested clarification between the section 402 NPDES and section 404 Dredge and Fill permitting programs. The NPDES and section 404 programs are implemented by EPA and the Department of the Army, respectively. Activities which involve the discharge of dredged or fill material into wetlands are regulated under section 404 of the CWA, which requires a permit from the Corps. However, construction activities (*i.e.*, clearing grading, and excavation) that result in storm water discharge into wetlands are regulated under the NPDES program and require a permit from EPA.

Several commenters expressed concern over the loss or degradation of wetlands and how their protection could be addressed in the construction general permit. Another commenter raised concern regarding the draining of wetlands and its adverse effect on fisheries under statistically expected drought conditions. EPA recognizes the commenters' concerns about construction activity impacts to wetlands. Because impacts to wetlands from dredged and fill material are already established and enforced under section 404 of the CWA, EPA is not incorporating any further language in today's permit regarding such requirements.

One commenter raised concerns about wetlands in proximity to the construction activity, which may receive drainage from the site. The commenter was concerned that such areas be considered under the general permit requirements. In response, EPA agrees to change the wording in Part IV.D.1.g. of the permit language from "areal extent of wetlands acreage at the site" to "an areal extent and description of acreage of wetland or other special aquatic sites (*i.e.*, 40 CFR 230.3(q–1)) at or near the site which will be disturbed, or receive water discharged from the disturbed areas of the site." EPA believes this language will help clarify this requirement in the site description of the storm water pollution prevention plan.

One commenter noted that a certain amount of sediment may be necessary to maintain the natural functioning of a wetland. The commenter expressed concern that under some circumstances, a construction project may result in decreases in the sediment load to a wetland. In response, EPA would note that the NPDES program requires permits for the discharge of pollutants from any point source into waters of the United States. By definition, wetlands are waters of the United States. As such, EPA must ensure that the discharges authorized by this permit comply with applicable water quality standards for the wetland, including requirements for sediment.

One commenter requested clarification on jurisdictional wetland areas coverage under today's permits. For the purposes of the CWA, wetlands are defined as areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions (33 CFR 328.3(b)). EPA uses the 1987 Corps of Engineers Wetlands Delineation Manual to identify and delineate wetlands. This document establishes the specific technical criteria that must be satisfied for an area to be considered a jurisdictional wetland. Therefore, storm water discharges from a construction activity to jurisdictional wetlands (*i.e.*, waters of the U.S.) need permit authorization and may be covered under today's permit.

Other commenters expressed concern regarding the effects on wetlands of the development of land for agricultural purposes. EPA would first point out that agricultural runoff is exempt from the NPDES permit program (See 40 CFR 122.3, CWA section 502 (14)). In addition, the development of land for agriculture is not considered a construction project regulated by the NPDES permit program.

Residential Construction

Many contractors and developers involved in residential development felt that the permit was geared towards large industrial facilities, and therefore not well suited to address small residential construction. These commenters generally either requested that residential construction be exempt from permitting, or that special consideration of the nature of residential construction be given in the permit.

There is no regulatory provision to exempt any construction activities based solely on the nature of what is being built. The disturbance of five or more acres in a Larger Common Plan defines industrial activity that requires a storm water discharge permit. The impact on water quality is not necessarily reduced because the construction project is residential and may, in some instances, proceed in a more piecemeal fashion. However, the Agency recognizes that there are certain differences in how residential development occurs, particularly with regard to completion of individual homes and occupation by either a homeowner or tenant. EPA has made several changes and clarifications of permit requirements to address the concerns of the residential development industry.

The definition of final stabilization has been changed. "Final Stabilization" in the final permit means either: (1) All soil disturbing activities at the site have been completed, and that a uniform (*e.g.*, evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed. In some parts of the country, background native vegetation will cover less than 100% of the ground (*e.g.* arid areas). Establishing at least 70% of the natural cover of native vegetation meets the vegetative cover criteria for final stabilization. For example, if the native vegetation covers 50% of the ground,

70% of 50% would require 35% total cover for final stabilization; or (2) for individual lots in residential construction by either: (a) the homebuilder completing final stabilization as specified above, or (b) the homebuilder establishing temporary stabilization (including perimeter controls) for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for and benefits of final stabilization. EPA strongly recommends that homeowners stabilize as soon as practicable. (Homeowners have a personal incentive to put in landscaping functionally equivalent to final stabilization as quick as possible to keep mud out of their house and off their sidewalks and driveway.)

Installation of Utility Service Lines

The proposed permit attempted to more clearly define the role of utility companies whose sole involvement in a construction project was installation of utility service lines. Many utility companies challenged EPA's assertion that they represented a special class of operator at construction sites and pointed out potential financial and project delay impacts of requiring utility companies to obtain permit coverage before installing utility service lines at a project. Other commenters felt that utility companies should be held accountable for their actions on-site and for disturbing any storm water control measures installed by other site operators. In general, utility companies agreed that they are responsible for their actions on-site, but did not believe they should be considered "operators" and required to obtain permit coverage. Several commenters felt utility companies should be treated as subcontractors and the party requesting utility service should be the permittee.

In response, EPA agrees that in many areas utility companies will not meet the definition of operator while installing utility service lines (the draft permit implied that a utility company would always be an operator when installing utility service lines). As with any other party involved in a construction project, permit coverage will only be required for utility companies when they met the definition of "operator." The definition of operator in the final permit, though changed slightly from the proposed permit for better clarity, applies to parties at a construction project which meet either of the following two criteria: (1) A party with operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or (2) a party with day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan (SWPPP) for the site or other permit conditions (*e.g.*, they are authorized to direct workers at the site to carry out activities required by the storm water pollution prevention plan or comply with other permit conditions). To determine if a utility company meets either criterion, a review of the word "control" with regard to construction plans and specifications and day-to-day operations is needed.

In the definition of "operator," it is not EPA's intention to include those parties whose function is to assure that a project complies with previously established standards (*e.g.*, national, state or municipal). For example, design or installation standards set by municipalities or utilities which are based on national standards such as the National Electric Code does not give the municipality or utility "control" over a construction project's plans and specifications, but instead directs or limits a project operator's latitude when drafting or modifying a particular aspect of the project's plans and specifications. Furthermore, reviewing or applying such standards (*e.g.*, residential electric lines must be capable of carrying a specific voltage, made of certain materials, buried a certain depth) does not make a utility or municipality meet the first criterion of the definition of "operator." Also, utility companies will often not meet the second criterion of the definition because they are not responsible for overall SWPPP compliance at a project. Typically, a project's general contractor has overall responsibility for SWPPP implementation and compliance.

To the extent that a utility company needs to develop its own site-specific plans and specifications for a service installation at a project requiring storm water permit coverage, the utility will be considered to meet the definition of "operator" and must allow for appropriate storm water control measures either by designing and implementing controls themselves, or by assuring that another project operator has designed and will implement storm water controls for the area disturbed by the utility service installation. In all cases, to ensure effective implementation of storm water pollution control measures, EPA stresses the importance of cooperative efforts by all parties involved at a construction site, including those not meeting the definition of "operator," to understand and abide by SWPPP provisions which their activities will impact.

Other examples of where a service line installation would require construction storm water permit coverage would be if the activity disturbed five or more acres (40 CFR 122.26(b)(14)(x)), or was designated by the Director to obtain coverage for another reason (40 CFR 122.26(a)(1)(v), 122.26(a)(9) or 122.26(g)(1)(i)). See Part I.B.1. of the permit for further details on eligibility. Other utility company activities, such as the installation of main transmission lines, should likewise be reviewed to see if permit coverage is required.

After considering the comments from the utility companies, the proposed area-wide NOI option and SWPPP certification statement for utility companies in the proposed permit were deleted in the final permit. Utility companies were generally uncomfortable with even the limited requirements of the area-wide NOI since the actual construction projects where they would be working would not be known at the time of the NOI submittal. The certification statement is no longer necessary since measures to address utility service line installations no longer require the statement to assign responsibility from the utility company to another project operator. In addition, based on the comments from the utility companies, the frequency of the situations in which a utility would be considered an operator may be significantly less than EPA had thought. Hence, there may not be a pressing need for the proposed streamlined permitting option.

Construction in Cold Climates

Several comments were received suggesting changes to the construction general permit to accommodate cold weather oil and gas issues or questioning the effectiveness and requirement for storm water pollution prevention plans for North Slope oil and gas facilities in Alaska. Specifically, commenters were questioning the need for, and appropriateness of, the permit for gravel pad construction on the North Slope during frozen conditions. It was stated that construction activities only occur during the cold months because access is facilitated by frozen permafrost conditions. When the North Slope is in a thawing condition it is essentially a wetland, which makes overland access activities difficult as well as very disruptive to the ecology. Commenters expressed concern that gravel pads might be required to establish 70% vegetative cover prior to submitting the NOT.

With regards to the need for a storm water discharge permit, EPA points out that the definition of storm water at 40 CFR 122.26(b)(13) includes snow melt runoff. As such, EPA believes that construction which occurs during frozen conditions still needs a storm water permit since the snow will eventually melt and be discharged.

Construction activity which involves depositing gravel fill directly into wetlands is regulated under section 404 of the CWA which is administered by the US Army Corps of Engineers (COE). COE section 404 permits all require CWA section 401 certification providing assurance that if the construction activity is in compliance with the COE 404 permit, there will be no water quality standard violations.

Once the gravel pads are constructed, it is reasonable to consider them as permanent structures since their surface will be used to conduct oil and gas activities. Therefore remediation of the pad itself (70% restoration of vegetative cover) is not appropriate at the end of the construction sequence. Storm water permitting may be required, however, for the operational phase of the pad activities as well as gravel extraction activities.

Other comments regarding cold weather issues in Alaska pertained to the remoteness of sites that would need to be permitted and inspected. Commenters were concerned that accessing such remote sites is not easily accomplished, and overly burdensome. In response, EPA has included a special provision in Part IV.D.4 of the final permit to provide a waiver of the inspection requirements when the ground would be expected to be frozen for an extended period of time. Inspections would be required to begin one month prior to when thawing conditions are expected to begin.

Compliance With Water Quality Standards

Several comments objected to the inclusion of permit eligibility and discharge compliance requirements related to water quality standards (WQS). EPA is obligated under CWA section 402(p)(3) to ensure that all permits for discharges associated with industrial activity (which includes storm water discharges from construction sites of five acres or more) shall meet all applicable provisions of CWA section 301.

CWA section 301(a) states that discharges shall be unlawful unless in compliance with sections 301, 302, 306, 307, 318, 402, and 404 of the Act. Section 301 provides that discharge permits must include effluent limitations necessary to assure that discharges comply with State or Tribal WQS. Effluent limitations do not have to be numeric, especially in cases where numeric limitations are currently infeasible. In such cases, EPA may require the use of best mangement practices (BMPs) including more sophisticated forms of treatment in permits to satisfy the CWA's requirements for "any more stringent limitations as necessary to meet State WQS.'

If a discharge is found to be violating a water quality standard, EPA can require that the discharge be covered by an individual permit, which may include more stringent controls or numeric effluent limitations developed to ensure compliance with WQS. The development of the effluent limitations would be dependent upon adequate characterization of the discharges and the individual permit could also include monitoring requirements.

Some commenters were concerned that compliance with WQS is not possible in some situations and therefore WQS compliance should be waived. As stated above, compliance with water quality standards is a requirement of the CWA as implemented through the NPDES permitting program. EPA can not waive the requirements of the CWA. If the permittee feels that the WQS to which they must comply are too stringent or the cost of that compliance is too high, several avenues of relief can be sought. The permittee may seek changes of WQS through a use attainability analysis, the development of site specific criteria, or short term WQS variances. All of these avenues must be pursued through consultation with the applicable State or Tribal environmental agency and are subject to EPA review.

If the permittee is not able to comply with WQS as a result of the implementation of a certain set of BMPs, EPA recommends installing more effective BMPs or additional BMPs to assure compliance with WQS. If this effort results in discharges which continue to violate WQS, EPA recommends that the facility cease discharging, apply for an individual permit, or pursue one of the options listed above to change the WQS. (See also EPA's memorandum of August 1, 1996, entitled "Interim Permitting Approach for Water Quality-Based Effluent Limitations for Storm Water Discharges.")

EPA received several comments regarding salt intrusion to groundwater discharges that might exceed standards established by the State. One commenter suggested that the final permit include an affirmative statement to specify that, in developing and implementing storm water pollution prevention plans, permittees are not required to remove remove constituents that are not added by the construction project or related activities. In response, EPA notes that Clean Water Act section 301(b)(1)(C) requires that NPDES permits include any more stringent limitation including those necessary to meet water quality standards. The CWA does not, however, regulate releases of polluants to groundwater unless there is a direct hydrological connection between a point source and surface waters of the United States through such groundwater. Therefore, the commenter's recommendations were not included in the final permit.

The California Department of Transportation recommended that the general permit incorporate language similar to that developed by the State by California for its general industrial storm water permit. However, EPA has recently expressed concerns to the State regarding the language in question and is currently working with all stakeholders in California on alternative language. Since EPA believes that the language as written is not appropriate it was not incorporated into the final permit.

Another commenter contended that Part III.D of the draft permit (compliance with water quality standards) was too weak. The commenter recommended that the permit also require remedial actions by permittees to correct any damage that may result from the discharges not in compliance with the permit.

EPA disagrees with the commenter that the language addressing water quality standards compliance needs to be strengthened. A wide variety of enforcement responses are available to the Agency for discharges which violate the terms of the permit, including requirements for remediation of environmental damage caused by the discharges. As such, the requested modifications were not incorporated into the final permit.

Protection of Endangered Species

A large number of comments were received regarding provisions in the permit to protect listed species and critical habitats. For reading convenience, similar comments have been grouped together for response and are listed below in items A through V.

(A) A number of commenters have expressed the belief that the Clean Water Act (CWA) does not allow EPA to place conditions in National Pollutant Discharge Elimination System (NPDES)

permits to protect listed species and critical habitat. They believe that requirements to protect listed species have no relation to the CWA's goal of protecting water quality. These commenters have requested that EPA remove those permit conditions or provide a legal justification as to why they should be included.

EPA declines to remove these provisions because the Agency believes that conditions to protect listed species and critical habitat are appropriate for Federally-issued NPDES permits such as the CGP given the requirements placed on them by sections 7(a)(1), 7(a)(2), and 9 of the ESA. By placing ESA requirements on Federal agencies and their actions, Congress intended that Federal permits could contain conditions to protect listed species and critical habitat. ESA regulations at 50 CFR 402.02 define an "action" subject to section 7 to include "permits," and EPA first recognized the applicability of ESA section 7 to the Federal NPDES program in 1979, when it promulgated regulations listing the ESA as a Federal law which may apply to EPA-issued permits. *See* 44 CFR 32917 (June 7, 1979). EPA's current regulations at 40 CFR 122.49(c)[6] and 122.43(a)[7] require that EPA adopt or consider the adoption of permit conditions to comply with ESA requirements.

Finally, EPA notes that the primary goal of the CWA is the restoration and maintenance of the chemical, physical, and biological integrity of the Nation's waters. This includes the attainment of water quality that provides for the protection and propagation of fish, shellfish, wildlife. See 33 U.S.C. 1251. These goals include the protection of listed and other at-risk species.

(B) Other commenters have characterized the ESA as a new environmental law that permit applicants are being required to certify under. EPA does not believe that the ESA is a new environmental law because it has been listed in EPA's regulations since 1979 as a statute which may apply to the issuance of NPDES permits by EPA.

(C) Some commenters have objected to measures to protect species and critical habitat in the proposed permit as an impermissible delegation of EPA's section 7 consultation responsibilities to the permit applicant.

EPA recognizes that as the action Federal agency, it bears the ultimate responsibility for compliance with section 7 of the ESA for issuance of the CGP. It is not abrogating that responsibility. However, given the CGP's potential coverage of over 13,000 construction activities per year that are scattered across eight States and numerous other Federal permitting jurisdictions, it is essential that permit applicants and permittees consider the effects of their particular actions on listed species and critical habitat, and to take measures to protect those resources, if EPA is to ensure that issuance and operation of the CGP is not likely to adversely affect listed species and critical habitat.

As noted above, EPA believes that under the CWA and the ESA, it is appropriate for NPDES permits to require that applicants and permittees take measures to protect listed species. EPA also believes that such conditions should require that applicants consider the potential and actual effects of their actions on listed species and critical habitat. Storm water general permits place substantial responsibilities on permit applicants and permittees to ensure that their storm water discharges are protective of the environment. This includes the development of information (as part of the NOI and SWPPP development process) to ensure compliance with permit requirements. The ESA regulations clearly allow for permit applicants to develop and collect information on the effects of their proposed actions on listed species and critical habitat.[8] Those regulations also provide that applicants can conduct informal consultation as non-Federal Representatives (NFRs). *see* 50 CFR 402.08.

The conditions being established by EPA through ESA section 7 consultation to protect listed species and critical habitat are designed to focus EPA, Fish and Wildlife Service (FWS), and National Marine Fisheries Service (NMFS) resources on those permitted activities that merit a site-specific ESA section 7 consultation or section 10 permit. Where a site-specific section 7 consultation is appropriate, the CGP allows for either informal consultation (with the applicant having NFR status) or for formal consultation. EPA is prepared to conduct site-specific consultations where necessary to ensure that permitted activities are protective of listed species. However, given the large number of expected applicants and limits on EPA's resources, it is faster and more efficient for the bulk of these consultations to be carried out as informal consultations with permit applicants as non-Federal representatives.

Finally, EPA notes that it has completed section 7 consultation and conferencing for issuance and operation of the CGP and that the FWS and the NMFS (the "Services") have concurred with the approach taken in the permits and with EPA's finding that the issuance and operation of the CGP is not likely to result in adverse effects to listed species and critical habitat.

(D) Some commenters have also noted that shifting the burden for carrying out consultation will result in administrative difficulties for the Services. EPA coordinated development of the CGP with the Services and notes that the CGP conditions are designed to reduce the number of site specific consultations to those actions where adverse effects may be likely. However, it is possible that a large number of site-specific consultations will be performed for activities covered by the CGP.

(E) A number of commenters were concerned that these conditions will be difficult to comply with. Specifically, commenters were concerned that information on listed species and critical habitat will be hard to obtain. They have asked that EPA make species lists, critical habitat, and other information readily available to the public. Some commenters have asked that this information be placed in the permit or on the Internet. They have noted that many permit applicants will not know how to comply with these requirements. Some commenters have also requested that EPA ensure that any ESA guidance remain in the final permit document.

EPA has worked closely with the Services to give the greatest flexibility to permittees in complying with

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[6] The pertinent portions of 40 CFR 122.49 read as follows: Considerations under Federal law. The following is a list of Federal laws that may apply to the issuance of permits under these rules. When any of these laws is applicable, its procedures must be followed. *When the applicable law requires consideration or adoption of particular permit conditions or requires the denial of a permit, those requirements also must be followed.* * * * (c) The Endangered Species Act, 16 U.S.C. 1531 *et seq.* section 7 of the Act and implementing regulations (50 CFR part 402) require the Regional Administrator to ensure, in consultation with the Secretary of the Interior or Commerce, that any action authorized by EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat. (Emphasis added).

[7] 40 CFR 122.43(a) states: "In addition to conditions required in all permits (122.41 and 122.42), the Director shall establish *conditions*, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of CWA and regulations. These shall include conditions under 122.46 (duration of permits), 122.47(a) (schedules of compliance), 122.48 (monitoring), and for EPA permits only 122.47(b) (alternates schedule of compliance) and *122.49 (considerations under Federal law).*" (Emphasis added.)

[8] Applicants are listed throughout the ESA consultation regulations and preambles as involved parties in the consultation process.

requirements to protect listed species and critical habitat. While EPA realizes that fulfilling some CGP requirements to protect listed species and critical habitat may seem difficult to some applicants, the procedures to meet those requirements are similar to those already undertaken by many developers and contractors to obtain ESA section 10 permits for protection from incidental takes liability. As noted above, the CGP allows applicants to use section 10 permits to meet permit eligibility requirements.

There is much information on listed species and designated critical habitat that is publicly available. Lists of endangered and threatened species are published by the Fish and Wildlife Service and the National Marine Fisheries Service and can be found in 50 CFR 17 of the Code of Federal Regulations (CFRs). The CFRs are widely available and can be found in many libraries or law libraries. Copies of the CFRs can also be ordered from the Government Printing Office which maintains a number of book stores throughout the country [9] or they can be accessed for free at the GPO Website (http://www.access.gpo.gov/nara/cfr/index.htm).

The Services also maintain electronic copies of these lists at their respective World Wide Web sites. Lists of species under the FWS jurisdiction can be accessed at the Endangered Species Home Page (http://www.fws.gov/~r9endspp/endspp.html) (which is also attached to the FWS Home Page (http://www.fws.gov) in the "Nationwide Activities Category"). Lists of species under NMFS jurisdiction can be found on the NMFS Homepage (http://www.nmfs.gov) under the "Protected Resources Program." Lists and maps of critical habitat can be found in the Code of Federal Regulations at 50 CFR 17 and 226.

Also, information on listed species and critical habitat can also be obtained by contacting the FWS and NMFS offices or by contacting the Biodiversity Heritage Centers of the Natural Heritage Network. The FWS has offices in every State. NMFS has offices in certain States. A list of NMFS and FWS office addresses is provided in Addendum A of the permit. The Natural Heritage Network comprises 85 biodiversity data centers throughout the Western Hemisphere.

These centers collect, organize, and share data relating to endangered and threatened species and habitat. The network was developed to promote informed land-use decisions by developers, corporations, conservationists, and government agencies, and is also consulted for research and educational purposes. The centers maintain a Natural Heritage Network Control Server Website (http://www.heritage.tnc.org) which provides website and other access to a large number of specific biodiversity centers. A list of biodiversity center addresses is provided in Addendum A of the CGP.

Addendum A also contains a list by county of all species in areas covered by the CGP that are listed as endangered and threatened ("listed species") or proposed for listing as endangered and threatened ("proposed species'). This list is current as of September 1, 1997. Because the status of species and counties will change over time, EPA will periodically update the county list and make it electronically available on the EPA's website. CGP applicants can get updated species information for their county by calling the appropriate Fish and Wildlife Service office or National Marine Fisheries Service office. EPA Region 2 applicants [10] can also contact the EPA Region 6 and Region 2 Storm Water Hotline (1–800–245–6510) for updated species information. Applicants from other EPA Regions can contact the appropriate EPA Regional Office for updated species information.

Finally, EPA has worked with the Services to expand Addendum A to provide more guidance on how meet the permit eligibility requirements and to protect listed species. There are also a number of guidance documents produced by the Fish and Wildlife Service and the National Marine Fisheries Service to assist the public in meeting ESA requirements. Many of those documents are electronically available on the Services" Internet sites.

(F) Some commenters have requested that EPA publicly notice any species to be included in the final county species list that were not found in the Addendum H of the Multi-Sector General Permit issued on September 29, 1995 (60 FR 50804). EPA declines to take this action because it believes sufficient public notice was provided in the proposal when EPA referred reviewers to the Multi-Sector General Permit's Addendum H list (62 FR 29791, footnote #12 (June 2, 1997)), which contains similar species on a county basis to that contained in Addendum A of the CGP. Furthermore, EPA notes that all of the proposed and listed species found on both Addendum A of the CGP and Addendum H of the Multi-Sector General Permit already have undergone public notice as part of the ESA listing process.

(G) Some commenters have noted that the Addendum A species list may not remain current in light of new species listings. As noted above, EPA is planning to provide regular updates of the list and to make it available to permit applicants.

(H) Commenters have also expressed concerns with the timing of this process. They have noted that once a project has reached the construction stage, there is not enough time to take action to protect listed species. EPA encourages permit applicants to analyze effects to listed species and critical habitat at the earliest possible stage. EPA has required applicants to analyze impacts to species when developing storm water pollution prevention plans (SWPPPs) prior to submitting NOIs. However, applicants may choose to conduct this review at an even earlier time. Any conditions to protect species and critical habitat must be incorporated into the SWPPP.

(I) EPA solicited comments on whether the scope of effects to listed species and critical habitat to be considered by permit applicants should encompass the entire construction site. A number of commenters supported this expansion. Some commenters did not think there was anything to be gained by broadening the scope of the area to include the entire site. Other commenters did not believe that storm water regulation extended to land areas unaffected by either storm water discharges or best management practices (BMPs).

EPA has revised its permit conditions and Addendum A instructions to require that permit applicants consider the effects of "storm water discharges and storm water discharge-related activities" on listed endangered and threatened species and critical habitat within the "project area." The terms "storm water discharge and storm water discharge-related activities" replaces the terms "storm water discharges and construction and implementation of best management practices" used in the proposal. "Discharge-related activities" include (1) activities which cause point source storm water pollutant discharges including but not limited to excavation, site development, and other surface disturbing activities, and (2) measures to

[9] GPO bookstores are located in Atlanta, GA; Birmingham, AL; Boston, MA; Chicago IL; Cleveland, OH; Columbus, OH; Dallas, TX; Denver, CO; Detroit MI; Houston TX; Jacksonville, FL; Kansas City, MO; Laurel, MD; Los Angeles, CA; Milwaukee, WI; New York, NY; Philadelphia, PA; Pittsburgh, PA; Portland, OR; Pueblo, CO; San Francisco, CA; Seattle, WA; and Washington, DC.

[10] Region 2 permit areas include Indian Country lands in the State of New York and the Commonwealth of Puerto Rico.

control, reduce, or prevent storm water pollution including the siting, construction, and operation of BMPs. This revision expands the scope of effects that should be considered for listed species when compared to the proposed permit. The term "project area" now replaces the proposed term, "in proximity to." The "project area" includes: areas on the construction site where storm water discharges originate and flow towards the point of discharge into the receiving waters (this includes all areas where excavation, site development, or other ground disturbance activities occur), and the immediate vicinity; areas where storm water discharges flow from the construction site to the point of discharge into receiving waters; areas where storm water from construction activities discharges into the receiving waters; areas in the immediate vicinity of the point of discharge; and areas where storm water BMPs will be constructed and operated, including any areas where storm water flows to and from BMPs.

EPA anticipates that the project area will vary from site-to-site depending on the size and structure of the construction activity, the nature and quantity of the storm water discharges, the measures (including BMPs) to control storm water runoff, and the type of receiving waters. In many cases, the project area will encompass an entire construction site. However, there could be situations where project area may encompass a portion of the site (for example, where the actual construction disturbs only a portion of a land development project). EPA believes the revised scope of the permit is more consistent with the definitions of "effect" and "action area" found in the ESA regulations and affords better protection for listed species and critical habitat while ensuring that CGP storm water controls are not extended into areas that bear no relation to the discharge of polluted storm water.

Some commenters believe the scope of effects of the permit is too narrow. In particular, they believe that the scope should encompass areas farther downstream than what was proposed in the permit, which directed permit applicants to consider effects to listed species and critical habitat in the immediate vicinity or nearby the point of discharge. EPA declines to expand this scope beyond what was proposed because the proposed (defining "in proximity") and final permit language (defining "project area") allow for a flexible determination of effects which can extend further downstream depending on the circumstances surrounding each discharge. Those circumstances vary with the size and structure of the construction activity, the nature and quantity of the storm water discharges, the measures (including BMPs) to control storm water runoff, and the type of receiving waters. Also, the CGP does not authorize any discharges that would cause or contribute to a violation of water quality standards. Water quality standards are designed to be protective of use of the water, including aquatic life and consequently, listed species. Moreover, under the CWA, any discharge must not only ensure compliance with the water quality standards of the water where the discharge is located, but also any downstream water quality standards. Thus, the scope of the inquiry under this permit is not so narrow as this commenter suggests. EPA believes that any downstream water quality impacts associated with discharges of stormwater under this permit will be adequately accounted for.

Commenters have also requested that EPA consider or require that applicants consider effects to listed species from storm water contamination that enters into groundwater which then enters into surface waters where those species are found.

EPA believes it is providing for the consideration of effects from discharges to hydrologically connected groundwater. EPA interprets the CWA's NPDES permitting program to regulate discharges to surface water via groundwater where there is a direct and immediate hydrologic connection ("hydrologically connected") between the groundwater and the surface water. However, EPA also believes that this use of NPDES permits is highly dependent on the facts surrounding each permitting situation. CGP coverage can extend to discharges to surface water via hydrologically connected groundwater and CGP applicants, like any other NPDES applicant, should consider those types of discharges when applying for permit coverage. However, these discharges may at times be better suited for individual permits, and EPA may require that applicants obtain an individual permits as provided at Part VI.L. of the CGP and in 40 CFR 122.28(b)(3) of EPA's general permit regulations. Permit applicants and the interested people can also petition EPA under those provisions to require coverage by an individual permit.

(J) A number of commenters have questioned why there is a need to have specific conditions in the permit to protect listed species and critical habitat when there are other laws or procedures which accomplish the same goal. Some commenters have noted that ESA section 10 procedures are already used by developers and that requiring additional procedures in the CGP to protect species amounts to "double regulation."

EPA intends to provide applicants with the greatest degree of flexibility in meeting the Part I.B.3.e.(2) eligibility requirements for CGP coverage. The permit allows applicants to use section 10 procedures to meet the eligibility requirements of Part I.B.3.e.(2). As such, EPA is not imposing "double regulations" on permittees.

Other commenters have also questioned whether there is a need to have these procedures where a 404 permit is being issued or where a NEPA review is being conducted for the same site. EPA notes that a 404 permit or a NEPA review can suffice for CGP coverage under part I.B.3.(e)(2)(b), provided, a section 7 consultation has been performed as part of the NEPA review or 404 permit issuance and the consultation addresses effects from storm water discharges and storm water discharge-related activities.

One commenter noted that some States have protective and stringent environmental review laws which apply to NPDES permits and there is no reason for applicants in those States to undertake additional requirements to protect listed species and critical habitat. EPA notes that while the information developed for compliance with State environmental review statutes can be used to meet the eligibility requirements of Part I.B.3.e.(2)(a) for CGP coverage where there are no listed species present or where there is no likelihood of adverse effects to listed species, EPA does not believe that compliance with a State environmental review by itself is sufficient to substitute for section 7 consultation or a section 10 permit since State reviews may not take Federally listed species and critical habitat into account. However, information generated from a State environmental review can also serve as a basis for a section 7 consultation or applying for a section 10 permit for the purposes of meeting the eligibility requirements of Part I.B.3.e.(2)(b) or (c).

(K) Some commenters have asked for clarification on whether EPA is requiring permit applicants to address State and Federally listed endangered and threatened species or solely Federally listed species. One commenter recommended that applicants should be made aware that State laws and regulations involving endangered species may impact their projects. EPA is requiring that permit applicants

consider impacts to Federally listed species and designated critical habitat. However, EPA notes that States have the authority to impose their own requirements under State law to protect Federally or State protected species from construction activities, and that Part VI.M. of the CGP states that coverage by the permit does not release any permittee from meeting the responsibilities or requirements imposed under other environmental statutes or regulations. Those environmental statutes and regulations include State laws for the protection of imperiled wildlife and vegetation, and other natural resources.

(L) One commenter has characterized the CGP conditions as allowing any discharge unless it is likely to adversely affect a listed species of critical habitat. It expressed the belief that this is not the correct standard to use when determining coverage under a general permit which is meant for routine cases.

EPA notes, however, this standard will ensure that the operation of the permit is not likely to adversely affect listed species and critical habitat. This approach, which was subject to ESA section 7 consultation with the Services, will focus limited EPA and Service resources on those permitting situations where potential adverse effects are likely. This is important given the vast number of activities projected to be covered by the CGP. Thus, EPA believes this standard to be appropriate for the CGP.

(M) Some commenters have expressed the belief that hydrologically, geologically, or environmentally unique areas such as the Barton Springs watershed near Austin, Texas, require special protections for listed species and critical habitat. They have requested that either separate, more stringent general permits be developed for these areas or that EPA require individual permits for construction activities occurring there. One commenter has also requested that a separate consultation be conducted for the Barton Springs segment of the Edwards Aquifer.

EPA believes that the final CGP conditions provide stringent protection for the environment and listed species. EPA closely coordinated with the Services on which ESA section 7 approach was best suited for EPA's issuance of the CGP. EPA and the Services agreed that a national ESA section 7 consultation coupled with permit conditions to allow for individual site-specific consultations is the best mechanism to assure that the CGP is protective of listed species and the environment.

The Agency believes that the general permit as issued insures that any area with special site-specific circumstances will be protected. No discharge may be authorized under this permit that will adversely affect any listed species, unless those effects have been actually addressed through an ESA section 7 consultation process or section 10 permit issuance that takes into account the impact on the particular species of concern. Therefore, EPA believes that the process envisioned by this general permit effectively provides for consideration of site-specific issues that are of concern to this commenter.

(N) One commenter has questioned whether EPA complied with the ESA section 7 conferencing requirements to confer with the Services where an agency action is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat. In response, the CGP does not authorize any storm water discharges or storm water discharge-related activities that are likely to jeopardize the continued existence of any proposed species or result in the adverse modification or destruction of proposed critical habitat. Nonetheless, EPA entered into and completed ESA section 7 conferencing with the Services at the same time it undertook informal consultation.

(O) Several commenters have asked for clarification on the extent of their liability if they rely on another operator's certification with respect to effects to listed species and critical habitat if that certification proves to be inadequate or contains falsehoods. Also, utility operators have raised the issue as to the nature and extent of their liability where their certification is based on another operator's certification.

Applicants/permittees who rely on another operator's certification to meet the eligibility requirements of the permit may be liable for inadequacies or falsehoods in that certification. This potential liability is well described in the certification language of the NOI form which states:

> I [the applicant] certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage this system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Thus, it is important for those applicants who choose to rely on another operator's certification that they carefully review that certification and its SWPPP for accuracy and completeness. If the certification appears to be inadequate in any way, then EPA recommends that an applicant provide an independent basis for its certification in its SWPPP. EPA notes that as a matter of enforcement discretion it will consider the circumstances that are unique to each enforcement situation, and an applicant's good faith reliance on another operator's certification may be a mitigating factor in such situations. Utilities that fit the definition of operator and who choose to rely on another operator's certification are liable to the same extent as any other operator who relies on another operator's certification.

(P) One commenter asserted that the proposed permit is not in compliance with section 7(a)(1) of the ESA, which directs agencies to utilize their authorities in furtherance of the purposes of the ESA by carrying out programs for the conservation of listed species. The purposes of the ESA include recovering listed species so that they no longer need ESA protection, and conserving the ecosystems upon which listed species depend.

EPA believes that the protections built into this permit will not only avoid or minimize adverse effects to listed species, but also affirmatively benefit such species, the ecosystems upon which they currently depend, and the unoccupied habitat into which they may recover. These benefits are inherent in the fact that the function of this permit is to reduce discharges of pollutants into the aquatic environment. Reducing pollution from construction activities reduces stress on both the individuals of listed species and aquatic ecosystems. Moreover, the permit contemplates that case-by-case protection may be developed, as appropriate, when consultation with the Service(s) occurs prior to permit coverage. The involvement of the Service(s)' biologists in such cases ensures that site-specific conservation opportunities will be identified.

(Q) Some commenters have requested that residential construction that occurs on a fully developed site be exempt from the endangered species certification requirement.

EPA declines to provide that exemption. EPA notes that impacts to listed species and critical habitat can also occur from development and construction even on fully developed sites (for example, at the point of

discharge into surface waters) and thus, residential construction operators should not be exempted from the endangered species certification requirements.

(R) Some commenters are concerned that Fish and Wildlife Offices (FWS) may not have enough staff to respond to queries or consultation requests from CGP applicants regarding listed species and critical habitat.

EPA believes that the Services have the staffing levels to address queries from permit applicants and notes that the CGP was issued in close consultation with FWS. The CGP also provides flexiblity by allowing permit applicants to use sources other than FWS for obtaining information on listed species. Applicants can use the Natural Heritage Centers whose addresses are listed in listed in Addendum A of this permit. Therefore, EPA believes that the flexibilities built into the CGP will ensure that the FWS offices are not overburdened.

(S) One commenter expressed concern regarding the obligation of NPDES storm water permitted facilities in determining construction site compliance with the ESA and NHPA. The commenter requested a clarification that the role of an NPDES-permitted municipality is limited to verifying that the pertinent sections of the NOI have been completed and that municipality is not under an obligation of verify the accuracy of certifications under the ESA and NHPA.

The reference to "NPDES permitted municipality" was intended to refer to a Municipal Separate Storm Sewer System (MS4) with an NPDES permit. The CGP does not impose requirements on MS4s to evaluate or verify NOIs submitted by third parties. However, if a municipality were to receive CGP coverage as an operator (by itself engaging in construction activities or development) as defined in Part IX.N. of the CGP, its obligation to meet the eligibility requirements of Part I.B.3 would be the same as any other operator under the CGP.

(T) Some commenters have stated that the proper party to bear responsibility for impacts to listed species is the public owner or site developer.

It is not clear whether this commenter intends for the term "public owner" to refer to governmental entities. EPA notes that the CGP applies to anyone who fits the definition of "operator" in Part IX.N of the permit. The CGP does allow for an overall developer or public owner to provide for a comprehensive certification which can be adopted by other operators on the site. While allowing for a single comprehensive certification to cover for other operator certifications may be the most efficient way to meet the certification requirements in many cases, there will also be situations where it is better to allow site operators the option of providing an independent basis for their certifications. Some operators may be in a better position to accurately assess the effects of their actions on listed species and may not want to rely on another operator's certification. There could also be instances where a primary contractor, and not the developer or owner, is better situated to develop a comprehensive certification. For those reasons, EPA declines to impose certification requirements solely on the public owner or site developer.

(U) Some commenters have stated that complying with the ESA certification procedures will require a substantial increase in time and resources in many situations and may double the paperwork burden from that of the earlier, first round Baseline Construction General Permit (BCGP).

EPA acknowledges that the CGP will impose an increased burden on operators to meet the certification requirements as compared to that of the BCGP. However, the substantive requirements for the CGP are more flexible and allow for NPDES coverage in more situations than the BCGP which denied coverage to anyone whose discharges might adversely affect listed or proposed to be listed endangered and threatened species or critical habitat (57 FR 41218, September 9, 1992). EPA also notes that CGP eligibility requirements represent a substantial improvement over the baseline protections which were rudimentary with respect to protecting listed species.

EPA has worked closely with the Services and given great consideration of public comments to ensure that these procedures are as flexible and least burdensome as possible. By allowing operators to rely on another operator's certification, EPA believes any additional burden imposed by these requirements can be kept to a minimum. EPA also notes that many of the procedures established to meet the CGP eligibility requirements are the same as those that developers or contractors would have to undergo anyway in order to obtain a section 10 permit for protection from ESA section 9 liability for incidental takes. The permit does allow for the acquisition of a section 10 permit as a way to meet the eligibility conditions. EPA has also provided guidance, containing species lists and other information, to assist permittees in meeting the eligibility requirements. Therefore, EPA believes that an increase in burden will be minimized for most applicants and can be balanced against the greater availability of CGP coverage to applicants.

(V) Some commenters have stated that the ESA certification requirements violate the Paperwork Reduction Act (PRA). EPA has modified its Information Collection Request (ICR) to account for changes in the paperwork burden imposed by the certification requirements and has followed all other procedures to ensure that the PRA requirements are met. Therefore, EPA has issued the CGP in full compliance with the PRA. EPA will be analyzing future NOIs to adjust certification burden estimates appropriately in the renewal of this revised ICR.

Protection of Historic Properties

EPA received numerous comments concerning implementation of National Historic Preservation Act (NHPA) requirements in the CGP. To avoid any confusion or inconsistencies that may result after further discussions between EPA and the Advisory Council on Historic Preservation under the NHPA, this permit does not include eligibility restrictions or evaluation requirements related to historic preservation. EPA may modify the permit at a later date based on those discussions. In that modification action, EPA would respond to NHPA-related comments submitted when EPA proposed today's permit to the extent such comments remain relevant.

Notice of Intent and Notice of Termination Requirements

Notice of Intent (NOI)

Several of the comments received regarding proposed revisions to the Notice of Intent (NOI) form requested clarification and questioned the need for some of the information being requested. It is important to note that the revised NOI form is still undergoing development and may not be issued in its final form by the time the final CGP is published. Until the revised NOI form is finalized and published in the **Federal Register**, applicants must use the existing NOI form which does not contain the specific certification provisions relating to listed species, critical habitat or historic properties at construction projects. However, use of the existing NOI form does not relieve applicants of their obligation to follow the procedures listed below to determine if their construction storm water discharges or storm water discharge-related activities meet permit eligibility requirements for the protection of historic properties.

One commenter opposed the requirement for a separate NOI from the "owner/developer" and the "operator" stating that the terminology is not consistent with Part III.E, Responsibilities of Operators, of the proposed permit and that a single NOI from the owner or operator is sufficient. In response to this comment, when applying the two criteria found in the definition of "operator" (i.e., the party that has control over construction plans and specifications, and the party with control over implementing SWPPP or other permit conditions), two or more entities may be required to submit NOI forms for permit coverage. At a typical construction project, the owner will usually meet the first criterion while the site's general contractor will meet the second, thus requiring that both entities submit a NOI. Where the owner is also the project's general contractor, only one NOI form may need to be submitted. Since EPA believes the terminology used in Parts III.E.1 and III.E.2 of the proposed permit to be consistent with the definition of "operator," no changes were made in the final permit.

Two commenters favored the use of county information on the NOI form. Another recommended that the submission of latitude and longitude data for a site be optional since other legal descriptions are more readily available. In response, EPA has found that latitude and longitude are universally used to describe location on maps and are compatible with Geographic Information Systems (GIS). The use of latitude and longitude will also allow EPA to interface with State GIS systems, thus enhancing EPA's ability to deal with projects on a watershed basis. The NOI form instructions provide an Internet address which provides latitude and longitude information as well as a toll free phone number to obtain U.S. Geological Survey quadrangle maps. Consequently, requests for county and latitude/longitude information will remain on the NOI form.

Two commenters were concerned with the question regarding compliance of the Storm Water Pollution Prevention Plan (SWPPP) with applicable local sediment and erosion plans. One stated that a certification cannot be given by the general contractor who did not design the post-construction controls or the owner who has delegated the authority for the construction controls to the general contractor. The commenter suggested rewording Part II.B.1.h of the proposed permit. Upon further consideration, EPA found this question to be unnecessary and has deleted it from the NOI form.

One commenter recommended changing the term pollution prevention plan to storm water pollution prevention plan. EPA made this change to the NOI form.

One commenter believes it is sufficient that the SWPPP be completed prior to commencing construction activity and not before the NOI form is submitted. EPA has deleted the question regarding implementation of the SWPPP. However, before the NOI form can be submitted, the SWPPP must be completed to ensure that appropriate controls to meet ESA and NHPA certification requirements, if needed, are included to avoid or mitigate adverse effects to listed endangered or threatened species, critical habitat or historic properties. Since applicants do not have to submit their NOI's until 48 hours prior to the commencement of construction, this is not a significant period of time and should have no effect on construction activities.

One commenter recommended deleting the question regarding estimate of the likelihood of discharges or clarifying its purpose. In response, EPA believes that it is important to request such information because it requires applicants to consider the expected frequency of discharges from a site and anticipate the need for inspections and maintenance of storm water controls. In response to another comment that requested this question be deleted because the environmental risk between infrequent arid discharges and more common temperate discharges has not been established, EPA will not use responses to this question as an absolute measure of risk but only an indication of risk at that site.

One commenter requested that EPA expand the requirements of the NOI to provide better accountability to the public and government agencies and improved oversight of a project. The commenter noted that the Urban Wet Weather Flows Federal Advisory Committee (UWWFFAC) agreed upon an "expanded NOI" for industrial activities and agreed on this idea for construction activities as well. However, consensus on what the "expanded NOI" should consist of for construction activities was not reached. In addition, the commenter suggested the following items (which should be included in the SWPPP and known at the time of submittal of the NOI) be added to the form: a brief description of the project; the overall size of the project in addition to the number of acres that will be disturbed; if there are any permanent water bodies including wetlands on or near the site; how close the disturbed areas will be to the water body or wetland; predominant soil type (soil conservation service soil series, hydrological soil group and erosion factors); maximum slope in disturbed areas; a check-off section for identification of principal Best Management Practices to be used on-site; number of phases for the project (if 10 acres or above); number of acres per phase (if 10 acres or above) or for the whole project (for projects less than 10 acres; the schedule of construction activities; and for each phase the estimated time and number of acres that will be exposed to precipitation after removal of vegetative cover and before final stabilization. In response, since these additional questions were not proposed for public comment, will increase the regulated community's administrative and cost burdens associated with completing the form, and are subject to prior U.S. Office of Management and Budget review and approval, EPA is not including them on the NOI form at this time. EPA is, however, proceeding with an expanded revision to the NOI form for industrial storm water dischargers applying for coverage under EPA's Multi-Sector General Permit.

One commenter suggested that it would be more efficient to administer NOIs at the EPA Regional level and asked if this data can be accessed or used by the public or permit holders. EPA has found that having a central location for processing NOIs has been an efficient and effective method of managing the tremendous amount of data which the program has generated since its inception in 1992, and sees no reason to change at this time. Members of the public can request information contained in the NOI database by sending a signed letter to the US EPA (4203), Storm Water NOI Center, 401 M. Street, SW, Washington, D.C. 20460.

To streamline and clarify the NOI, EPA intends to make other changes to the proposed form. These changes are contingent upon EPA receiving approval from the US Office of Management and Budget. The terms located underneath the EPA logo on the form have been revised to state that: (1) Submission of the NOI constitutes notice that the eligibility requirements in Part I.B. of the general permit, including those related to protection of endangered species and critical habitat, are met; (2) the applicant understands that continued authorization to discharge is contingent on maintaining permit eligibility; and (3) implementation of the SWPPP will begin at the time the permittee begins work on the construction project. These clarifications were made to emphasize

the need to meet requirements pertaining to endangered or threatened species and critical habitat.

EPA has made information regarding the location for viewing site SWPPPs and contact information optional. EPA encourages applicants to provide this information to improve public access to view SWPPPs. Upon request, EPA intends to assist members of the public in obtaining access to permitting information, including SWPPPs.

For clarification, EPA has reworded the question regarding listed endangered or threatened species or designated critical habitat in the project area of this site. EPA has changed the proposed certification statement to be the same as that contained in Box 1 of the current NOI form. The proposed certification statement had included information regarding the Endangered Species Act and National Historic Preservation Act. This information has been moved to a different section of the form to appear as two separate questions where applicants can check under which provision of the permit they satisfy eligibility requirements with regard to protection of endangered or threatened species or their critical habitat. Applicants will not be required at this time to identify which provision of the permit they are certifying eligibility under for the protection of historic properties. The Agency intends on modifying the permit (if necessary) after completion of the Programmatic Agreement between EPA and the Advisory Council on Historic Preservation in order to provide the certification language.

EPA deleted the following questions because they were determined to be unnecessary: (1) "Will construction (land disturbing activities) be conducted for storm water controls?"; and (2) "Is application subject to a written historic preservation agreement?"

EPA requested comments on alternative time frames for NOI submittals. One option required a 30-day advance time frame in which to submit a NOI. The Agency received several comments encouraging EPA to adopt the 30-day time frame because it would provide the developer with a permit number at the commencement of construction. All other operators could then apply for coverage 48 hours before beginning work at the project. This would provide a consistent tracking mechanism for each project since the project name and contractors may change during the course of a project. It would also allow EPA sufficient time to verify that permittees are eligible for coverage under the ESA provisions. Another commenter suggested that the 30-day period would allow citizens more time to find out about a project, assess the storm water management plans, and discuss their concerns with the permittee if necessary. In this way, prior notice could actually reduce disputes and controversy. Under the 48 hour requirement contained in the BCGP, an NOI would probably not be received by EPA until construction had already started.

However, most commenters stated that the present requirement of filing a NOI 48 hours prior to the commencement of construction activities should remain in effect. They felt extending the deadline to 30 days would hinder construction efforts, bring about unnecessary delays, disrupt construction schedules, and place unnecessary additional burdens on permittees. One commenter from Alaska stated the Alaska construction season is short and in some cases a 30-day advance filing period would delay a project for an entire year. Another commenter stated any extension of the two day notification time frame would only serve to slow residential construction activities and add interests costs to the activities of small businesses and home buyers. The commenter also felt that requiring the 30-day advance notice on small, routine construction projects would force project teams and construction crews to be mobilized for at least one additional month, without much environmental benefit and at additional expense.

After considering all comments related to the 30-day NOI submission requirement, EPA has retained the permit requirement to submit an NOI at least 48 hours prior to the start of construction activities.

Many commenters expressed concern about having to submit up to three NOI forms for ongoing construction projects in order to maintain permit coverage. For instance, an initial NOI was required 48 hours prior to the commencement of construction activities under the BCGP. Then, a second NOI was required at least 48 hours prior to the permit's expiration date to continue coverage for ongoing projects. Finally, a third NOI must be submitted for the project if it was not completed prior to the effective date of the reissued general permit.

A number of applicants stated the process should be simplified. They noted that EPA should issue a blanket extension to cover all projects which continue after the expiration of the BCGP, and permittees should be allowed to submit an abbreviated form to receive continued permit coverage. One commenter suggested that permittees send in post cards requesting extended coverage under the expired permit, and file a new NOI when the permit is reissued. The post card would be a pre-printed form by EPA where the permittee fills in the blanks.

In response to the comments concerning the need to submit multiple NOIs in order to maintain permit coverage, EPA has simplified the process for dischargers covered by the permit prior to expiration. If EPA does not reissue this permit prior to expiration, EPA will presume that covered permittees seek continuing coverage unless and until EPA receives a Notice of Termination (NOT) (see Part VI.B, Continuation of the Expired General Permit). Commenters expressed serious concern about having to submit multiple NOIs based on the lapse between expiration of the previous permit and issuance of this permit. In order to maintain continuing authorization under the expired permit, permittees were required to reapply prior to expiration. Then, upon issuance of this permit, an additional "new" NOI for authorization under this permit is required. To avoid this double NOI submission near the time of permit expiration and reissuance, EPA would have needed to modify the earlier CGP prior to expiration to remove the requirement for resubmission of an NOI prior to expiration. As a result, EPA is making those changes in today's permit. For more information, see the section below titled "Continued Coverage Under the Permit if it Expires Prior to Reissuance or Replacement."

One utility group estimated that in Texas alone a total of 24,400 "requests for service" were received in 1996 where the requestor of service was impacting five (5) or more acres of land. If the proposed general permit were in effect, the utility group would have to submit 48,000 NOIs/NOTs to EPA at an additional annual cost as high as $75 to $100 million in order to comply with this general permit. The utility group stated that EPA's proposal encourages, if not requires, a fragmented approach to control over storm water pollution prevention activities. In response, EPA has re-evaluated the status of utility company service line installations and has found that these activities generally do not meet the definition of operator, thus do not require permit coverage. The final permit has been revised to eliminate the need for utility companies to submit NOIs for permit area-wide coverage.

One commenter stated there is a provision in the regulations that allows for a general permit to be issued without the submittal of a NOI. The commenter

urged EPA to consider the adoption of a general permit program that eliminates the need to submit a NOI, particularly in areas where State or local governments already have sediment and erosion control or storm water management requirements in place. In response to this suggestion, 40 CFR 122.28(b)(2)(v) excludes this option for entities seeking coverage under the general permits for discharges of storm water associated with industrial activity (which includes construction activity). Consequently, the requirement that operators seeking permit coverage submit a NOI will remain in the permit.

NOT (Notice of Termination)

The Agency received comments supporting the idea that permittees must submit a Notice of Termination (NOT) within 30 days after completion of their construction activities and final stabilization of their portion of the site. The commenters stated that it would improve permittees accountability. No change has been made to the permit.

Several commenters recommended that special provisions should be added to the Notice of Termination for projects which occur on agricultural lands. For projects such as an underground pipeline crossing agricultural land, the commenters argued that the conditions for meeting "final stabilization" should be modified. EPA agrees that in such a case where agriculture is final land use, the provisions of the NOT pertaining to final stabilization may not be appropriate. The definition of final stabilization in the final permit has been modified to include a provision which includes land that has been returned to its previous agricultural use.

The NOT requirements of the final permit have been modified to be consistent with the existing NOT form. However, the conditions under which the NOT can be submitted have been clarified to address concerns raised by commenters. The current NOT form expires on August 31, 1998. EPA is in the process of renewing the form before that date. For more information, refer to the responses to comments on residential construction, final stabilization, and the definition of operator.

Storm Water Pollution Prevention Plan Requirements

Deadlines for Compliance With the New SWPPP Requirements

Several commenters requested additional time to come into compliance with the new requirements of the SWPPP. EPA agrees that additional time may be necessary to review the requirements of the new permit and achieve compliance with these requirements. Accordingly, Part II.A.5 of the final permit was modified to provide 90 days to come into compliance with the new SWPPP requirements (rather than 30 days as proposed in the draft permit) for permittees with ongoing projects which are currently operating under the previous Baseline Construction General Permit (BCGP).

The final permit also provides (Part II.A.6) for permittees submitting NOIs for new projects during the 90 day period following the effective date of the permit. These permittees will also be provided 90 days after the effective date of the new permit to achieve compliance with the new SWPPP requirements provided that they have developed and are ready to implement a SWPPP based on the BCGP requirements at the time of NOI submittal. This provision rewards conscientious operators who made the effort to control their discharges and comply with the BCGP provisions even though the final version of the CGP was not legally available at the time they began construction. Requiring compliance with an "interim" SWPPP based on the BCGP for the first 90 days ensures a level of environmental protection during the time that the permittee is updating their plan to comply with the final CGP conditions.

Compliance with such an interim SWPPP represents limitations based on BAT because, as EPA explained when it issued the previous BCGP, in developing technology-based standards applicable to storm water permits for construction activity the time required to develop and implement a SWPPP is a necessary consideration in determining whether a requirement is economically and/or technologically achievable. Development and implementation of SWPPPs require time. To develop the SWPPP required by the CGP, EPA believes 90 days from the effective date of the permit represents a reasonable estimate of what is economically and technologically achievable. To implement such a SWPPP, EPA believes that 90 days from the effective date of the permit is economically and technologically achievable. In the interim period until development and implementation of the SWPPP required by today's permit, EPA believes that compliance with an interim SWPPP is economically and technologically achievable.

Operators who do not have an interim SWPPP at least as stringent as would have been required under the BCGP must prepare their SWPPP based on the final CGP prior to submitting an NOI. Given the short term of some construction projects, this procedure ensures that the Agency does not provide a loophole under which a permittee could receive authorization to discharge for 90 days without having to implement any storm water controls whatsoever.

Retention Ponds

Several comments were received regarding the section of the permit describing the use of Structural Practices (Part IV.D.2.a.(3)). The proposed permit describes the structural practice required for common drainage locations that serve an area with 10 or more acres disturbed at one time: * * * "a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site." One commenter referred to this section of the proposal as a "new" requirement. The requirement has in fact been in place since the 1992 general permit. Several commenters suggested that the permit allow that the volume requirements be adjusted in consideration of differences in meteorologic conditions and the runoff coefficient. The proposed retention requirements were based on containment of a 2-year, 24 hour storm which was assumed to be three inches, and also the assumption that the runoff coefficient would be 0.33. After consideration of these comments, EPA has modified the language in this section to read "A temporary (or permanent) sediment basin that provides storage for the volume of runoff calculated using the local 2-year, 24 hour storm and runoff coefficient from each disturbed acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. Where no such calculation has been performed, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site." Comments were also received on the inappropriateness of such a requirement for linear construction projects. In response, the requirement only applies to sites where 10 acres of disturbance share a common drainage location. This scenario is unlikely on a linear construction site, where runoff is typically served by several drainage locations. However, if it does occur, the permit requirements would apply.

Sod Stabilization

A few commenters noted that sod stabilization was listed as an erosion control method, but was not listed as a final stabilization method. In section III.A.1.d of the draft fact sheet, EPA lists sod stabilization as a stabilization practice for sediment and erosion control. Sod stabilization is again listed in Part IV.D.2.a.(2) of the draft permit, with other stabilization practices in the sentence: "Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures." The permit also notes that this list is intended to include interim and permanent stabilization measures. As such, EPA believes that sod stabilization was adequately indicated as a final stabilization option in the proposed permit.

Off-Site Vehicle Tracking of Sediments

Part IV.D.2.(c) of the draft permit required that off-site vehicle tracking of sediments be minimized. A commenter noted that the draft fact sheet had suggested that wash racks be provided to reduce off-site tracking of sediments from construction sites. The commenter was unclear whether or not this was considered a requirement of the permit. The commenter contended that wash racks may increase pollutant discharges in some circumstances and that wash racks should be optional. Other commenters noted that the time of arrival of delivery trucks varies, and concern was expressed that costs could be increased if the permit were to require power washing of trucks at all times of the day. Also, since there may be insufficient space for placement of stabilized construction entrances in some cases, it was suggested that shoveling of dirt from the street should be an acceptable alternative.

The draft fact sheet noted that there are a number of BMPs which may be implemented to comply with Part IV.D.2.c.(2) including gravel exits, wash racks or stations, and street sweeping. EPA's guidance manual entitled "Storm Water Management for Construction Activities, Developing Pollution Prevention Plans and Best Management Practices," EPA 832–R–92–005, also mentions the scheduling of deliveries at a time when personnel are available for cleanup (if needed) as another BMP to be considered.

However, the draft permit did not specify the precise BMPs to be implemented to comply with Part IV.D.2.c.(2), nor did the permit necessarily require all possible BMPs in every circumstance. Wash racks, for example, would be one of several control measures to be considered by permittees, but not necessarily required. EPA believes that the draft permit language provides the necessary flexibility to allow operators to select the most appropriate BMPs depending on individual conditions. As such, the proposed Part IV.D.2.c.(2) in the draft permit was retained in the final permit.

Another commenter approved of the requirement to remove off-site sediments, but also recommended that the permit should require removal within a specified time frame such as within 30 days. In addition, this commenter recommended that the permit should require sediment removal from streams, wetlands and other waters of the United States rather than just off-site areas.

With regard to the issue of the time frame for removal of off-site sediments, the draft permit had required that removal be conducted at a frequency necessary to minimize impacts. The final permit retains this requirement in consideration of the variety of construction projects which would be covered by the permit and the need for adequate flexibility.

With regard to the issue of sediment removal from streams and wetlands, we would point out that the purpose of the NPDES permit program is to control discharges of pollutants before they enter waters of the United States. The permit regulates discharges resulting from activities of permittees prior to outfalls discharging to waters of the United States to the extent necessary to ensure compliance with water quality standards in the receiving waters (including any requirements pertaining to sediment accumulations) and technology-based effluent limitations. As such, the final permit does not include the commenter's recommendation to include requirements for sediment removal in the receiving waters. Removal of sediments from the receiving waters would be addressed outside the realm of NPDES permit requirements such as through enforcement action against a permittee for noncompliance with the permit.

Avoiding Impervious Surfaces for Stabilization

A commenter objected to the statement in Part IV.D.2.a.(2) of the draft permit which reads: "Use of impervious surfaces for stabilization should be avoided." The commenter appears to be interpreting the statement as a prohibition or near prohibition of the use of impervious surfaces for stabilization. The following was suggested as an alternative: "Pervious surfaces for stabilization are preferable to impervious surfaces when the application is appropriate for the use."

The statement discouraging the use of impervious surfaces is included in the draft permit in consideration of the fact that impervious surfaces will increase runoff and may increase erosion and pollutant discharges. However, the statement does not prohibit the use of impervious surfaces for stabilization and EPA believes that the existing language does not need further clarification in this regard. As such, EPA has retained the proposed language in the final permit.

Flexibility in Choosing Controls

Some comments were received requesting more flexible permit conditions. In particular, one commenter stated that the permit requirements for erosion controls (*e.g.* sediment basins) and performance standards may not be appropriate to all sites throughout the nation. EPA's permit requirements for erosion control are intended to be flexible enough to allow the permittee to design site specific controls which are appropriate given the site topography, climate, and geographic location. The parts of a storm water pollution prevention plan (SWPPP) that require stabilization practices, structural practices, and storm water management all include the statement: "Such practices may include * * *" These parts of the SWPPP list some potential controls that should be considered by the permittee when designing a comprehensive plan to minimize erosion and sedimentation. The permit language for sediment basins serving common drainage locations with 10 or more acres of disturbed area, also includes the words "or equivalent control measures, shall be provided * * *" This language allows the permittee the flexibility to design and install appropriate site specific controls.

With regard to use of flexibility when choosing appropriate storm water controls for a construction project, comments were received concerning factors to consider such as public safety and proximity to airports. Commenters stated that storm water controls should be designed to reduce safety risks, especially to children. Also, structures which maintain a continuous habitat for wildlife, such as storm water retention ponds, should not be constructed within 10,000 feet of a public-use airport serving turbine powered aircraft or within 5,000 feet of a public-use airport serving piston powered aircraft due to

the potential hazards to aviation caused by birds. EPA agrees with both comments and has included language in the Part IV.B of the Fact Sheet to address them.

Implementation Schedules

Other commenters raised issue with Part IV.D.2.a.(2) of the proposed permit, which requires a record in the storm water pollution prevention plan (SWPPP) of the dates for implementation of stabilization practices for erosion control. Several commenters interpreted this as a requirement to predict in advance the specific dates when the stabilization practices would be implemented. The commenters argued that since the pace of a construction project cannot be known with certainty, it would not be possible to make such predictions. Concern was also expressed regarding Part IV.D.2 of the draft permit which requires that the SWPPP include the "timing" for the control measures which would accompany the construction project. Although the general timing may be reasonably predictable, the precise timing can not predicted.

With regard to Part IV.D.2.a.(2) of the draft permit, it is not EPA's intent that the dates for the implementation of the stabilization practices be included in the SWPPP which is prepared at the time a construction project begins. Rather, permittees would maintain and update a record of such dates when the dates for implementation are known. The record would be attached to the SWPPP. The final permit has been modified to clarify this matter.

The intent of Part IV.D.2 of the draft permit is to ensure an appropriate sequence of construction activities and accompanying BMPs to minimize erosion. It is not EPA's intent that the exact timing of the control measures be predicted in advance. For clarity, the final permit replaces the word "timing" with "general timing" as was suggested in the comments. The permit also provides an example of the type of sequencing of construction activities and BMPs which is intended by this permit requirement.

Local Requirements

Part IV D.2.c.(3) of the proposed permit includes the requirement to ensure and demonstrate compliance with applicable state, tribal and/or local waste disposal, sanitary sewer or septic system regulations to the extent that applicable requirements exist within the permitted area. One commenter requested that this language be deleted. The comment stated that these regulations apply regardless of the storm water permit. EPA agrees with this, however, EPA also believes that an explicit statement of one's responsibility to comply with state, tribal, and local regulations eliminates any doubt as to their applicability to a project. It is not EPA's intent to require permittees to reproduce pre-existing state, tribal, or local plans for the sole purpose of including them as part of the project SWPPP. Plans affecting the permitted activity, construction, may be referenced in the SWPPP. The location of the other plans/policies, etc., should also be clearly stated in the SWPPP. The provision for demonstration of compliance with state, tribal and/or local regulations remains in the permit.

Another commenter raised concerns over what they saw as overlapping and conflicting requirements between the proposed permit and existing State, Tribal, and local requirements in general. In response, EPA draws their attention to Part IV.D.2.d. of the proposed permit, which states that the permittee shall provide certification in their storm water pollution prevention plans that reflect appropriate State, Tribal and local regulations. Nothing in the permit is intended to relieve the permittee of his obligations to comply with appropriate State, Tribal, or local requirements. In a situation where there are similar requirements under different programs, a permittee should comply with the more stringent of the requirements. Permittees may also use existing plans or local approvals as part of their pollution prevention plans when such use is appropriate.

Signature, Plan Review and Making Plans Available

Several comments objected to the requirement that permittees provide public access to SWPPPs. Some questioned whether EPA has the authority to require permittees to provide such access. Others raised liability issues with regard to allowing the general public to enter construction sites. The proposed requirement was intended to provide the public with information concerning the project and the SWPPP. EPA does not intend to allow the public uncontrolled and unlimited access to construction sites or to cause hazards or disruptions at constructions sites. In response to the comments, Part II.C.2 has been deleted (62 FR 29809) and Part IV.B.2 has been rewritten. The changed language requires site operators to conspicuously post a notice near the main entrance of the site. For linear construction projects (*e.g.*, pipelines or highways) the notice must be placed in a publicly accessible location near where construction is actively underway and moved as necessary. If it is infeasible for the operator to post the notice at the main entrance of the site, the notice shall be posted in a local public building such as the town hall or the public library. The notice shall include the following information: the project's NPDES permit number; the local contact name and phone number; a description of the project; and location of the SWPPP if it isn't maintained on site. The permit does not require that the general public have access to the site, nor does it require that operators provide copies of the plan, or to mail copies of the plan, to members of the public. EPA strongly encourages permittees to provide the public with access to SWPPPs during reasonable hours. Upon request, EPA intends to assist members of the public in obtaining access to permitting information, including SWPPPs. EPA believes that this approach will create a balance between the public's need for involvement in projects potentially impacting water bodies and the operator's need for safe and unimpeded work conditions.

Site Inspections

The June 2, 1997 proposed permit required site inspections to be conducted once every fourteen calendar days. Several comments expressed positive feedback that the proposed permit decreased the frequency for inspections from once per seven calendar days, the requirement of the baseline general permit promulgated in 1992, to the fourteen day period now required. However, the feeling was that this was still too burdensome. The purpose of an inspection at construction sites/projects is to ensure that the pollution control measures described in a project's pollution prevention plan are operating in the manner which is described in the plan. The high level of activity which typically occurs at construction sites can increase the potential for control measures to be displaced or disrupted. Given the unpredictability of the weather, EPA believes that inspections at the proposed frequency will provide assurance that when a storm event occurs, control measures will be operating properly. An inspection frequency less than that which was proposed is not adequate to verify proper and continued operation of control measures. Therefore, the inspection frequency remains as proposed.

Another commenter raised issue with the frequency of inspections, in that too many would cause damage to restored areas of linear projects, such as pipeline

construction. They stated that alternative inspection schedules would be more appropriate for these types of projects. In reply, EPA reiterates that the purpose of inspections is to make sure that the storm water pollution prevention controls and measures are operating properly. When construction activities are occurring along various locations of the project, such as a pipeline, inspections should be conducted to ensure that control measures in that area are operating properly. EPA would also point out that Part IV.D.4 of the permit provides that inspections are only required once every 30 days for areas which are finally or temporarily stabilized. EPA concludes therefore, that no alternative inspection schedule should be included in the final permit for such projects.

One commenter expressed concern regarding inspections at airports and how they could be accomplished in compliance with FAA regulations, particularly with regard to aspects of safety and security. In response, EPA notes that the inspection provisions of the permit pertain to the operator of a construction project inspecting his storm water management systems and control measures. All EPA inspectors will produce official credentials upon request to satisfy security concerns, and will be able to accommodate reasonable safety procedures consistent with the purpose of verifying permit compliance. EPA does not believe that additional requirements need to be added to the permit.

Several comments were received on the difficulty in predicting storm events and the requirement for qualified personnel to inspect areas specified on the site "* * * before anticipated storm events (or series of storm events such as intermittent showers over a period of days) expected to cause a significant amount of runoff * * *" Part IV.D.4. After consideration of these comments, EPA has modified this section to read "Qualified personnel (provided by the permittee or cooperatively by multiple permittees) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater." The Agency will, however, retain the language in Part IV.D.3, which reads "* * * maintenance shall be performed before the next anticipated storm event, or as necessary to maintain the continues effectiveness of storm water controls." EPA also recommends that permittees perform a "walk through" inspection of the construction site before anticipated storm events (or series of storm events such as intermittent showers over a period of days) expected to cause a significant amount of runoff. The Agency believes this modification will relieve regulatory burden, while continuing to place sufficient emphasis on the importance pre-storm preparedness.

Another commenter supported the proposed requirement for inspections prior to anticipated storms. However, as noted above, this provision was removed from the final permit due to concerns regarding the predictability of the weather.

Contractor/Subcontractor Certification of the Storm Water Pollution Prevention Plan

Site operators indicated that they often had difficulty in getting contractors and subcontractors to sign the subcontractor certifications in the previous permit and repeated in the proposed permit. This was a problem for them since the permittee, and not the subcontractor, would be liable for violating the permit if these subcontractor certifications were not signed. Many also felt the certifications were unnecessary since the quality of the storm water and compliance with permit conditions was ultimately the permittee's responsibility anyway.

EPA has addressed the commenters' concern by eliminating the requirement for contractor/subcontractor certification of the pollution prevention plan. EPA also points out that the permittee is responsible for compliance with the terms and conditions of the permit, and that coordination with subcontractors will be necessary to ensure compliance.

Special Conditions, Management Practices, and Other Non-numeric Limitations

Releases in Excess of Reportable Quantities

One commenter requested more specific references to information regarding releases of reportable quantities (RQ) of hazardous substances or oil, and the National Response Center (NRC). All necessary information related to RQ releases and the NRC are contained in the permit, and in 40 CFR Parts 110, 117 and 302. The National Oil and Hazardous Substances Pollution Contingency Plan (also known as the National Contingency Plan (NCP)), found at 40 CFR 300, provides additional information about the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants. In addition to the NCP, Regional Contingency Plans (RCP) exist for every Region, and Area Contingency Plans (ACP) may also exist. EPA Regional offices should be contacted directly for copies of available materials. Additional information is available via the Internet at the following web sites for the U.S. National Response Team (NRT) and the NRC: www.nrt.org and www.dot.gov/dotinfo/uscg/hq/nrc.

Another comment was received requesting clarification on which party is responsible for reporting an RQ release where more than one operator (*e.g.* owner and contractor) has received coverage for the same project. The commenter questioned whether both permittees need to report an RQ release. Only one permittee for a project needs to report an RQ release. The permittee with the most direct authority over the spill should make the report. Generally, this will be the permittee with day to day operational control of the construction project (*e.g.* the general contractor).

A further comment requested a permit requirement that permittees report any RQ releases to the operator of the municipal separate storm sewer system in addition to the National Response Center (NRC). The NRC was created under the National Contingency Plan (NCP) and is charged with receiving reports of all chemical, radiological, oil and biological releases regulated by the Clean Water Act. The NRC immediately relays reports to the appropriate State and Federal on-scene coordinators. Depending on the type of release, severity, location and receiving system (soil, air or water), additional local contacts may be notified (*e.g.*, city fire departments or hazardous material teams). EPA believes that this notification process is efficient and effective. Individual municipalities should contact their State or local response departments to request that they be provided information when RQ releases occur to their storm sewer systems.

Standard Permit Conditions

Requiring an Individual Permit

Some commenters recommended that the construction general permit not cover all construction activities and that some activities should be publicly noticed prior to ground-breaking. These commenters were concerned that some construction activities may warrant individual permits.

According to Part VI.L of the proposed permit, "The Director may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the Director to take action under this paragraph * * *" However, it is a local land use decision on whether to allow a proposed development project. It is only after the decision to develop has been locally approved and the developer is ready to break ground would the operator(s) need to apply for a permit. Even then, EPA's authority is limited to placing conditions on the discharge of pollutants from the site. The requirement for a permit is therefore not triggered until long after the local land use decision has been made. The Agency encourages interested parties to participate in local public participation opportunities afforded by local land use authorities.

The draft fact sheet had noted in section IV.C that in some situations EPA may require dischargers authorized under the general permit to apply for an individual permit, and that the general permit would continue to apply until the individual permit becomes effective. A commenter argued that if the general permit is inappropriate for a particular project, construction should cease until the individual permit becomes effective. The commenter also objected to the provision allowing an unspecified amount of time to submit the individual application.

NPDES regulations at 40 CFR 122.28(b)(3)(iv) provide that when an individual permit is required for a facility covered by a general permit, the applicability of the general permit terminates upon the effective date of the individual permit. Since the commenter's recommendation is inconsistent with the regulations in this regard, the requested modification was not incorporated into the final permit. The reason for these procedures is to provide the opportunity for public comment on proposals to require individual permits which EPA believes is important in making sound environmental decisions.

With regards to the issue of a deadline for submittal of individual applications, we would again point out the NPDES regulations at 40 CFR 122.28(b)(3)(ii) do not specify such a deadline. A deadline was not included in the final permit due to the wide variety of projects which the general permit would cover, and uncertainties and variations in the amount of time which may be necessary to provide the necessary information. Any request by the director for an individual permit application will specify the deadline for submittal.

Penalties for Non-Compliance

Some commenters argued that the civil and criminal penalties listed in the permit are excessive for residential construction contractors and seemed to be more geared toward large project industrial construction activities. The penalties referenced in the permit are simply the statutory maximums for violations of NPDES permits as established by Congress and required to be included as a standard condition in all NPDES permits (see 40 CFR 122.41(a), as revised). Actual penalties assessed for permit violations in administrative enforcement actions take into account factors such as the economic benefit of avoiding permit compliance, gravity of the violation, and the compliance history of the permittee.

Continued Coverage Under the Permit if it Expires Prior to Reissuance or Replacement

Many parties were frustrated by the seeming unnecessary duplication of effort involved in submission of NOIs, especially because the previous CGP expired prior to reissuance. Permittees were frustrated over having to submit one NOI during the term of the permit (48 hours before construction), a second NOI to be covered by the expired but administratively continued permit (prior to expiration), and a third NOI to obtain coverage under the new permit once issued. To reduce the paperwork and administrative burden, the Agency has reevaluated the notification (reapplication) procedures for effective functioning of general permitting consistent with applicable provisions of the Administrative Procedure Act (APA), 5 U.S.C. 558(c).

Under the APA, if a permittee makes a timely and sufficient application for a renewal or a new permit (in accordance with agency rules), a permit for an activity of a continuing nature does not expire until the application has been finally determined by the agency. Enactment of the APA preceded the development of general or area wide permits to authorize a variety of similar sources. General permits are developed and issued prior to "application" for coverage from individual dischargers. The functional equivalent to an application for coverage under a general permit is the Notice of Intent (NOI). Therefore, EPA general permits have provided for continuing authorization to discharge under an expiring general permit by requiring resubmission of an NOI prior to expiration. The resubmission of the NOI indicated to the Agency that the discharger sought to renew its permit authorization. By operation of law, the authorization to discharge would continue until EPA "finally determined" the renewal application, for example, through affirmative Agency action to make a new general permit available or to require submission of an individual permit application. In reissuing a general permit, however, the Agency may revise permit requirements. Thus, the Agency required reapplication—submission of a new NOI—for dischargers who elect to abide by the terms of that new permit. If the new general permit differed from the previous general permit in important ways, a discharger may elect instead to apply for a individual permit.

For today's general permit, EPA has revised the notification (reapplication) procedures that would apply if the Agency fails to reissue a new general permit prior to expiration of this one. Permittees will no longer be required to file an NOI prior to expiration in order to maintain continuing authorization. Instead, EPA will presume that a permittee who does not file a Notice of Termination (NOT) or an individual permit application seeks continuing authorization to discharge under the expiring permit and intends to abide by the terms of the expiring permit until EPA reissues the permit (or makes an alternative general permit available). EPA believes this procedure is warranted under today's general permit because: (1) The permit requires submission of a NOT to terminate permit coverage; (2) construction activity (prior to final stabilization of land surfaces) lasts for a fixed interval that may extend beyond expiration of the permit; (3) EPA recognizes that circumstances beyond the control of the permittee may result in its failure to obtain "new" permit coverage prior to expiration of this general permit; and (4) the NOI requirements from today's general permit may differ from the general permit that would replace it. EPA notes that general permits for storm water discharges associated with construction activity differ from most all other EPA general permits because only construction general permits require NOTs. Given the finite and limited duration of construction activity which may straddle expiration of the general permit, combined with the requirement for submission of a NOT, EPA believes this procedure provides permittees with permit authorization with reduced paperwork burdens.

The revised notification/reapplication procedures are as follows. First, if the permit is reissued or replaced before the

expiration date, permittees will need to comply with whatever conditions are in the new permit for transitioning from this permit (usually submission of a new NOI). Second, if the permit is not reissued or replaced until after the permit expires, the permit will "continue" in force and effect for those permittees who have submitted an initial NOI but have not yet submitted an NOT or individual permit application. A permittee will remain subject to permit requirements until submission of an NOT. Such permittees remain automatically covered under the expired general permit (and do not need to resubmit an NOI to EPA prior to expiration) until the earliest of: (1) Permit reissuance or replacement; (2) submission of a NOT; (3) issuance of an individual permit for the activity; or (4) the Director issues a formal permit decision not to reissue the permit, at which time permittees must seek coverage under an alternative permit.

Definitions

"Operator"—the Party or Parties That Need To Apply for Permit Coverage

Several commenters requested clarification of the definition of "operator." Others felt that including the definition in the permit was an illegal attempt to make a new regulatory definition without going through the formal rulemaking process. The definition of "operator" is critical, since it is the operator of a discharge of storm water associated with construction activity that is required to obtain coverage under an NPDES permit. See 40 CFR 122.26(c)(1)(ii). The Agency agrees some clarification is appropriate as to how the term "operator" is applied to construction sites. The interpretation of "operator" as it applies to discharges of storm water associated with construction activity is consistent with the statutory and regulatory requirements for permitting of dischargers and does not expand the requirements of permits to anyone who is not already legally required to obtain permits in accordance with the Clean Water Act and existing regulations.

The definition of storm water associated with industrial activity was promulgated November 16, 1990 [55 FR 47990] and is found at 40 CFR 122.26(b)(14). Category (x) of the definition of storm water associated with industrial activity is "construction activity including clearing, grading, and excavation activities except: Operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale." In accordance with 40 CFR 122.21(b), "when a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit." Since the applicability of the "operator" is important to understanding a party's responsibilities under the permit, EPA believes it is critical to inform permittees of the Agency's interpretation of how the regulatory definitions of "owner or operator" and "facility or activity" apply to discharges of storm water associated with construction activity. The definition in the permit is not a formal regulatory definition in and of itself.

In the context of discharges of storm water associated with construction activity, EPA interprets "operator" to mean any party associated with a construction project that meets either of the following two criteria: (1) The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or (2) the party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions (*e.g.*, they are authorized to direct workers at a site to carry out activities required by the storm water pollution prevention plan or comply with other permit conditions). Further, an operator shall be considered to have operational control over all their subcontractors.

EPA wants to make it clear that it does not intend to include under the definition of "operator" individuals who hire a general contractor to construct a home for their personal use (*e.g.*, not those to be sold for profit or used as rental property). EPA believes that the general contractor, being a professional in the building industry, should be the entity rather than the individual who is better equipped to meet the requirements of both applying for permit coverage and developing and properly implementing a SWPPP. However, individuals would meet the definition of "operator" in instances where they performed the general contracting duties for construction of their personal residences.

Crosscutting Issues and Comments Not Directly Related to a Specific Permit Condition

Authority To Regulate Storm Water Discharges Associated With Construction Activity

Several commenters questioned EPA's legal authority to require permits for discharges of storm water associated with construction activity. Some of these commenters noted that EPA only has the authority to regulate the discharge of pollutants.

First, EPA would like to point out that while the proposed permit referred to "discharges," 40 CFR 122.2 defines "discharge" to mean "discharge of pollutants." The final permit has been modified in several places to more clearly reflect that it is the discharge of pollutants that is authorized and regulated by the permit. The regulatory definition of "discharge" has also been added to the permit.

Second, Clean Water Act section 301(a) states "except in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful." Section 402(a)(1) authorizes the Administrator to issue permits for the discharge of pollutants. Section 402(p)(2) specifically requires permits for the discharge of storm water associated with industrial activity. The definition of "storm water associated with industrial activity" was promulgated November 16, 1990 (55 FR 47990) and is found at 40 CFR 122.26(b)(14). Category (x) of the definition is "construction activity including clearing, grading, and excavation activities except operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale." Therefore, EPA is within its statutory and regulatory authority to require NPDES permits for anyone with operational control over a discharge of pollutants in storm water associated with construction activity.

Public Comment and Public Hearings

Several comments were received stating that EPA did not provide enough time for public comment, and should extend the public comment period to allow for more public input to the permit. In response, EPA notes that it has an obligation under 40 CFR 124.10 to give public notice that a draft permit has been prepared. These regulations require EPA to allow at least 30 days for public comment. EPA went beyond these requirements by allowing 60 days for public comment, due to the level of interest in this permit action. The Agency believes that 60 days was an ample amount of time for all interested parties to submit comments. In order to issue final permit by the time the existing general permit expires, or soon thereafter, EPA kept a restrictive schedule and could not extend the public comment period beyond the specified date of August 1, 1997.

One commenter requested a hearing in Austin, Texas to address issues related to that area of the State. EPA has an obligation under 40 CFR 124.12 to hold public hearings upon finding, on the basis of requests, that a significant public interest exists in a draft permit; or at the Director's discretion for instance, whenever such a hearing might clarify issues involved in the permit decision. Many EPA Regions scheduled public hearings in anticipation of significant public interest. A public hearing was held in Dallas, Texas, and public meetings were held in Houston and Dallas, Texas, and Albuquerque, New Mexico. The Agency believes that the public hearing and meetings in Texas provided ample opportunity for comment on issues related to all areas of Texas. EPA further notes that today's final permit does not include construction projects located in the State of Texas. These projects will be covered under a separate general permit which is currently under development.

Appropriateness of the Permit for Ensuring Protection of Environmental Resources

Several commenters recommended that various requirements of the permit should be strengthened to provide increased protection of environmental resources. Others commenters were unclear regarding certain requirements and requested clarification. Following below is a discussion of the issues and the Agency's responses:

Performance Standards for Post-Construction Storm Water Management

A commenter objected to the lack of more specific criteria in the permit related to post-construction storm water management. For example, it was recommended that post-construction pollutant loadings not exceed 120% of pre-construction loadings. Other recommendations included a requirement for 80% removal of total suspended solids or that post-development peak discharge flows not exceed pre-development peak flows. It was noted that such requirements already exist in some states. Another recommendation was for in-stream turbidity limits (or removal of fines less than 0.85 mm to the greatest extent possible).

These types of permit requirements were also considered when the Baseline Construction General Permit was originally issued in 1992. However, such conditions were not included in that permit to ensure that adequate flexibility was provided considering the large number of States and the variety of geographic areas covered by the permit. EPA continues to believe that adequate flexibility needs to be provided and has not included the types of conditions recommended by the commenter. With regards to the proposed turbidity limits, Part III.D of the permit requires compliance with State water quality standards which should ensure protection of receiving waters.

The commenter also recommended that Part IV.D.2.b.(2) of the draft permit be revised to require velocity dissipation devices at outfalls which genuinely provide non-erosive discharge velocities rather than devices which are ineffective and merely installed for this purpose. EPA agrees that the commenter's recommendation would strengthen and improve the clarity of the permit. The final permit was revised to require velocity dissipation devices which actually provide non-erosive discharge velocities rather than merely installing devices designed for that purpose but are ineffective.

Retaining Sediment and Implementing Permit Requirements to the Maximum Extent Practicable

A commenter noted that Part IV.D.2.a.(1)(a) of the draft permit had included as a goal the retention of sediment on-site to the maximum extent practicable. The commenter recommended that the permit should require that all components of the SWPPP to be implemented to the maximum extent practicable level. The commenter also argued that the objective of retaining sediment on-site is too weak. More specifics should be provided such as retention of sediment via site planning, phasing and other control measures.

EPA disagrees that the term "maximum extent practicable" is necessarily appropriate in conjunction with all other components of the SWPPP. The term was included in Part IV.D.2.a.(1)(a) of the draft permit to provide guidance regarding the overall goal of retention of sediments on the construction site. EPA believes that the existing language elsewhere in the permit appropriately describes the level of effort which is expected for other SWPPP components. EPA is also concerned that the use of the term "maximum extent practicable" in Part IV.D.2.a.(1)(a) of the construction permit may result in confusion since this is the technology-based level of control required by the Clean Water Act for pollutants discharged in storm water from municipal separate storm sewer systems. To avoid potential confusion, the final construction storm water permit uses the term "extent practicable" in Part IV.D.2.a.(1)(a).

EPA also disagrees that specific control measures need to be included in Part IV.D.2.a.(1)(a) of the permit. The purpose of this section of the permit is only to set forth the overall objectives for sediment and erosion control. The permit also includes more specific control measures which are found elsewhere in the permit.

Excluding Coverage Based on Water Quality Concerns of Local Officials

Part I.B.3.d of the draft general permit excludes from coverage discharges which the Director (EPA) determines will cause, or have the reasonable potential to cause excursions above water quality standards. A commenter recommended that the permit be modified to provide that this determination could also be made by local officials who might be more familiar with the discharges than EPA.

EPA believes that the concerns of the commenter can be adequately accommodated by the permit. In situations where a local official believes coverage under the general permit is inappropriate, the official may petition EPA to require an individual permit application. As such, the recommendation of the commenter was not included in the final permit.

Legal Action for Late NOIs

Part II.A.5 of the draft permit (Part II.A.4 of the final permit) notes that the Agency may take enforcement action for unpermitted activities for dischargers who submit late NOIs. A commenter recommended that this section mention that such actions may also be initiated by other parties such as States or private citizens.

While it is true that legal actions may be initiated by interested parties such as private citizens for unpermitted activities, EPA does not believe that this needs to be pointed out in the permit. As such, the final permit was not modified to include this recommendation.

Protection of Habitat for Species in the Receiving Waters

A commenter expressed concern regarding the potential of construction projects to alter existing flow characteristics of the receiving waters and degrade the habitat of aquatic species such as fish in the process. The commenter argued that such degradation is not allowed by antidegradation policy and should not be allowed by the permit.

In response to this concern, Part III.D of the draft general permit requires compliance with water quality standards. Also, an antidegradation policy consistent with 40 CFR 131.12 is required to be part of water quality standards. As such, the permit requires that any degradation of receiving waters caused by the discharges must be consistent with antidegradation requirements. Further, Part I.B.3.d of the general permit excludes from coverage discharges from construction sites with a reasonable potential to cause or contribute to violations of water quality standards. Coverage under an individual permit, or an alternate general permit would be required for discharges not authorized by the general permit in question here. The individual permit or alternate general permit could include specific requirements to address the concerns of the commenter regarding the implications of the discharge from a particular project for the receiving waters. EPA believes that these procedures and requirements appropriately address the concerns of the commenter and has not included additional conditions in response to the comment.

The commenter also recommended that the general permit application (i.e., the NOI form) should be modified to require the submittal of certain additional information and analyses for projects with the potential to degrade habitat as discussed above. EPA believes, however, for ease of use and the cost of information collection, the information requirements of the NOI form should be kept to a minimum and that the commenter's concern is best addressed through individual, or alternate general permitting. As such, the NOI form was not modified in response to this comment.

Site Data Requirements for the SWPPP

A commenter recommended that Part IV.D.1.d of the draft permit be modified to require certain additional site data for the SWPPP. The draft permit had only required existing soil data, which the commenter believed was inadequate because existing data may not be available in some cases. In addition, the commenter recommended that the permit require slope information and a comparison of pre-development and post-development runoff coefficients.

In response to the first comment, EPA has deleted the word "existing" from the final permit in relation to the soil data. Soil data will already exist for the vast majority of construction projects and lack of existing data will rarely be a problem. However, EPA agrees that soil data are important in developing an appropriate SWPPP and that if existing data are not available, the permittee must obtain sufficient data to develop an appropriate SWPPP by other means.

With regards to slope information at the construction site, EPA believes that the draft permit already requires adequate descriptive information. The final permit, though, does require an estimate of the pre-construction and post-construction runoff coefficients as recommended by the commenter. This information will help in assessing the potential hydrological impacts of a particular project.

Maintenance of Structural Storm Water Controls

A commenter expressed concern that the permit does not require maintenance for structural controls which may be included in a new development for storm water pollution control after the development has been completed. Another commenter recommended that the permit at least urge permittees to consider long term maintenance of the controls.

EPA believes that permittees operating under the general construction permit should not be responsible for the longer term maintenance of structural BMPs. The permit is intended to apply to discharges described at 40 CFR 122.26(b)(14)(x) which applies to discharges from construction activity only. However, the final fact sheet was modified to include in the discussion of structural controls a recommendation that permittees consider longer term maintenance in the selection of their controls. The permit itself also notes that discharges from the structural controls may be subject to other municipal or industrial storm water permits which could address the maintenance of the controls. EPA strongly recommends that arrangements be made for the long-term maintenance of BMPs to control storm water discharges.

Contouring and Sensitive Area Protection

A commenter recommended that more discussion be included in the fact sheet concerning contouring (matching a development to the lay of the land) and sensitive area protection. More discussion of these issues in the fact sheet would increase awareness among developers of these issues and their importance. EPA agrees that a discussion of these issues would be beneficial and has included such a discussion in the final fact sheet.

Phasing Activities at Construction Sites

A commenter contended that phasing of construction activities for a given project is a particularly important BMP which should be required by the permit (at least for sites greater than 10 acres in size) and discussed in more detail in the fact sheet to emphasize its importance.

While EPA agrees with the commenter on the importance of phasing, the Agency disagrees that it should necessarily be required for all projects. The general permit applies to a wide variety of projects in many different geographic locations, and specific requirements for phasing may not be appropriate or provide adequate flexibility in some cases. However, as recommended by the commenter, additional discussion of phasing was added to the final fact sheet. When individual SWPPPs are evaluated pursuant to Part IV.B of the permit, phasing could be required as appropriate for individual construction projects.

Requirements for Minimum Control Measures

A commenter recommended that the permit should include certain minimum requirements for controls. For example, in developing SWPPPs permittees should be required to select some minimum number of controls from a menu which would be provided.

EPA has provided a menu of potential control measures from which permittees may select appropriate controls for their projects. These controls (which are not necessarily an exhaustive list) are found in Parts IV.D.2 and 3 of the permit and are also elaborated on in the fact sheet. However, EPA disagrees that the permit should require some minimum number of controls for each project. As mentioned earlier, adequate flexibility must be provided given the wide variety of projects and geographic areas which are covered by the general permit. SWPPPs must nevertheless include an adequate number of BMPs to comply with the requirements of the permit.

Controls for Construction Debris and Chemicals

A commenter noted that Part IV.D.2.a(1)(e) of the draft permit requires control measures for litter, construction debris and chemicals at a site, but then suggests screening as a potential method for control. The commenter argued that screening would be inappropriate as a control measure for construction chemicals and that other measures should be required. In addition, the commenter recommended continuous litter removal rather than daily removal as suggested.

Part IV.D.2.a(1)(e) suggests control measures for these types of pollutants but does not indicate that the suggestions are the only measures which should be considered. In addition, Part IV.D.2.c of the permit requires a narrative description of practices to reduce pollutants from construction related materials. As such, EPA believes that the permit addresses the concerns of the commenter. Further, the suggestion in Part IV.D.2.a(1)(e) for daily pick-up of litter and debris is only a suggestion; if more frequent pick-up is needed for adequate control of pollutants, then it should be included in the SWPPP.

Another commenter objected to the requirement in Part IV.D.2.c for an inventory of construction materials noting that the materials may not be known at the time the initial SWPPP is prepared. EPA believes that this is a valid concern, and the final permit was modified to require a description of construction materials expected to be stored on-site with updates to the description as appropriate.

Inspection of Inaccessible Discharge Locations

A commenter objected to the provision in Part IV.D.4.a of the draft permit which only requires inspections of discharge locations which are accessible. If a discharge location is inaccessible, the commenter recommended that the nearest possible downstream location be inspected.

The provision exempting inspections of inaccessible discharge locations was included in the permit to ensure the safety of construction site personnel. However, in response to the commenter's concern, the final permit includes a requirement for downstream inspections to assess the impacts of the discharges to the extent that such inspections are practicable.

Miscellaneous Issues

Several miscellaneous comments were also received which relate to the issue of the level of environmental protection provided by the permit. For example, a commenter supported a strong enforcement program to accompany the permit and EPA would agree that enforcement is a critical element of the program which we are also implementing to the maximum extent which the Agency's resources allow. A commenter also supported Part IV.D.2 of the draft permit which requires that the SWPPP identify the permittees which are responsible for implementation of each control measure. In addition, this commenter supported the requirement in Part IV.D.4.b of the permit which requires revisions of SWPPPs within 7 days if an inspection indicates that the revisions are necessary. EPA agrees with the commenter on these issues and has retained the requirements in the final permit.

A commenter noted a discrepancy between Part IV.D.2.a.(3) of the draft permit and the corresponding discussion in section IV.G.5.b.(iii) of the draft fact sheet. Part IV.D.2.a.(3) of the permit requires controls to the degree attainable, while the fact sheet states and that controls are required to the degree economically attainable. The commenter objected to the inclusion of economic considerations. The commenter also recommended that "degree attainable" should be replaced by "greatest degree attainable." For consistency and in response to this comment, EPA has revised the final fact sheet by replacing the term "degree economically attainable" with "degree attainable." However, EPA believes the words "degree attainable" are suitable for describing the level of effort which is required and has not included the word "greatest" as recommended by the commenter.

This commenter also noted another apparent inconsistency between the draft fact sheet (section IV.G.5.b.(iii) and Part IV.D.2.a.(3)(a) of the draft permit). For drainage locations which serve 10 or more acres for which a sediment basin (providing 3,600 cubic feet per acre drained) is not available, the fact sheet indicates that at a minimum silt fences or the equivalent are required. The permit, however, indicates that silt fences, vegetative buffer strips or the equivalent are required. The commenter argued that silt fences are often ineffective and should not be cited as some sort of standard. In addition, the commenter recommended that any alternative to a sediment basin should genuinely be the equivalent of a sediment basin.

For consistency between the final fact sheet and permit, EPA has modified the final fact sheet to include vegetative buffer strips as well as silt fences. Reference to vegetative buffer strips was inadvertently omitted from the draft fact sheet. However, the permit does not require that the alternate controls necessarily be the equivalent of sediment basins since this may not be attainable. We would point out that the permit does require that smaller basins be used to extent that this is possible.

A commenter also recommended that structural controls should not be placed in wetlands. In response, EPA would note that the placement of structures in wetlands and other waters of the United States is regulated under section 404 of the CWA, rather than the NPDES permit program. However, the fact sheet does recommend that such controls be placed on upland soils to the degree attainable.

A commenter also recommended that emergency plans for erosion protection should be required in SWPPPs when especially heavy rainfall is predicted. EPA, however, believes that the various elements of the permit which address erosion protection already require an appropriate level of overall preparation for the storms which may occur in a given area. Therefore, special requirements for especially heavy rain (when predicted) were not included in the final permit.

A commenter recommended that for clarity, the definition of point source in Part IX of the draft permit should be modified to include swales as a type of discharge conveyance. In response to this comment, EPA would note that the definition of point source which is used in the permit was obtained from NPDES regulations at 40 CFR 122.2 and the Clean Water Act itself in section 502. EPA is not at liberty to modify such fundamental definitions of the NPDES permit program within the context of the issuance of a general permit. Moreover, EPA believes that the existing definition, and previous EPA guidance on this matter (see for example the discussion in the preamble to the storm water application regulations at 55 FR 47996) are sufficient to clearly indicate that swales could be considered point sources.

This commenter also recommended that Part VI.O (Inspection and Entry) of the draft permit be modified to allow entry by any local government official, not just those with responsibility for an MS4. In response to this issue, EPA would point out that Part VI.O originates from NPDES regulations at 40 CFR 122.41(i) which sets forth conditions which must included in all NPDES permits. The wording of the condition has been modified slightly to accommodate the storm water permit (*i.e.*, the M$4 operator would be acting as an authorized representative of the Director) while retaining the intent of the regulations. However, EPA has not modified the condition in accordance with the recommendation of the commenter since "any local government official" would not necessarily be considered a representative of the Director.

Municipal Role

Several comments and questions were received pertaining to the role of municipalities in implementing the requirements of the construction general

permit (CGP). In particular, questions were raised regarding municipal responsibilities to inform dischargers of the new permit and its requirements, and also whether municipalities would be responsible for checking off-site storage areas and spill reporting. A commenter also recommended permitting of municipal separate storm sewer systems (MS4s) on a watershed basis to provide better coordination among the various MS4 programs for construction sites within a watershed. Additional recommendations which were received included: (1) NOIs should not be required in MS4s serving a population of 100,000 or more where the equivalent of a storm water pollution prevention plan is already required by municipal ordinances; (2) construction should be exempt from permitting if the municipality requires 100% containment of post-development runoff; and (3) overall permitting should be simplified, and a municipality might serve as a suitable location where a builder could get all required local, State and Federal permits.

With regard to the questions concerning municipal responsibilities for construction projects, the operator of the construction project is primarily responsible for compliance with general permit requirements such as NOI submittal and spill reporting. However, MS4 operators may also have a role depending on the requirements of their MS4 permit. NPDES regulations at 40 CFR 122.26(d)(2)(iv)(D) require that MS4 operators develop a program for controlling pollutants in construction site runoff entering the MS4, including activities such as site inspections and educational activities. As such, MS4 operators may be required to implement the types of activities contemplated by the commenters. However, the specific requirements would be determined by the MS4 permits rather than the construction general permit. Therefore, no changes were made to the permit language regarding MS4 responsibilities.

With regard to the issue of watershed permitting, NPDES regulations already provide the necessary authority for such permitting. The definitions of the terms large MS4 and medium MS4 include any MS4s within a watershed which need to be permitted because of factors such as storm sewer interconnections within a watershed (40 CFR 122.26(b)(4) and (7)). EPA has also supported watershed permitting in a previous document entitled the Watershed Approach Framework (June 1996). In addition, the Urban Wet Weather Flows Federal Advisory Committee, which EPA convened in May 1995, has prepared a draft guidance document specifically for wet weather flows which also encourages permitting on watershed basis.

EPA also considered the three other recommendations related to the municipal role in the regulation of construction site runoff. EPA is considering how to deal with qualifying local programs in Phase II of the Agency's storm water permitting program. A few permitting authorities (*e.g.*, the State of Michigan) have developed programs in which most of the requirements consist of local requirements which are referenced by their permits. However, for the States in which the general permit was proposed, EPA does not have the necessary information at this time to determine whether such an arrangement would be appropriate. If the commenter wishes to explore this matter further, alternate general permits be pursued in particular States or municipalities.

In response to the second recommendation, the CGP is intended to regulate construction site runoff during construction rather than after final stabilization is achieved. As such, containment of post-construction runoff is irrelevant to the question of whether a construction storm water permit is needed.

With regard to the third recommendation, EPA concurs that regulatory agencies should try to simplify permitting whenever possible. Many counties have already developed programs whereby information and forms can be obtained at a single location. The Urban Wet Weather Flows Advisory Committee is also attempting to find practical ways of streamlining the storm water program. However, it is not possible to completely accommodate the recommendation since there are also certain legal constraints which must be observed concerning which agency must actually issue required permits. No changes to the permit were made in response to this issue.

Clarification of the Permit Language

Several commenters felt that it would be difficult for the average permittee to follow the terms of the SWPPP and the permit.

The proposed permit was structured after the 1992 permit (with modifications reflecting new concerns and laws), so there is five years of industry experience in implementing the general terms of the permit. The ease or difficulty of following an SWPPP is dependent on the complexity of the permittee's self-generated plan. However, EPA has revised various portions of the permit, including those related to permittee roles and responsibilities and the SWPPP to improve readability and clarity.

Cost Concerns

Many members of the regulated community (particularly the building industry and utility companies) were concerned with the costs of controlling the quality of storm water discharged from construction sites, and for certifying permit eligibility pursuant to the Endangered Species Act (ESA) and National Historic Preservation Act (NHPA). Residential builders were concerned with the impact permit compliance would have on new home prices. Others commented that EPA failed to recognize the additive nature of the costs of storm water sediment and erosion controls and storm water management measures, and the economic impact they have on small businesses. Permit compliance was quoted to add from $1,000 to over $1,850 to each home's price. A utility company estimated that their compliance cost would be approximately $1,000 per lot, which would need to be passed on to the developers.

EPA recognizes that an investment must be made to ensure erosion and sediment runoff are minimized at construction sites. As explained in the ESA section of this Summary of Response to Comments and Addendum A of the permit, the Agency included evaluation conditions and eligibility restrictions in the permit based on requirements imposed on the EPA under other Federal laws, specifically evaluation and consultation requirements related to the protection of endangered species. As discussed previously, EPA may modify the permit to reflect historic preservation concerns. Enough flexibility exists in the permit so that a permittee can design and implement a storm water pollution prevention plan in an efficient and cost effective manner which will meet the goals of the NPDES program and the Clean Water Act, as well as the eligibility restrictions derived from Agency consultations with other federal agencies pursuant to other federal laws. EPA has also significantly reduced the burden on utility company service line installations by limiting the situations when these activities would require permit coverage. EPA believes that the majority of these activities can be classified as subcontractor-type work which can be more efficiently covered under a site operator's previously prepared SWPPP.

EPA believes that in most cases there is not an onerous burden caused by

cumulative expenditures for storm water controls. Many best management practices are single-installation only and are nominal compared with the overall site-development costs. In addition, some measures such as sod stabilization, pond construction and tree protection add value to the development. While storm water control costs incurred by builders and developers may be passed onto consumers, the consequences of not providing storm water controls is the degradation of streams, lakes and wetlands for purposes such as recreation, fishing and sources of drinking water. This not only upsets an area's ecology and aesthetics, but also ultimately devalues the area and makes it less attractive to investors.

The per-lot cost figures cited by developers for permit compliance were not substantiated or correlated to a lot or development size. Assuming the storm water expenditures were accurate, EPA questions whether they would actually be prohibitive for builders or home purchasers. For instance, in the western United States the median new-home price for the first three quarters of 1997 was $159,500 according to information from the U.S. Census Bureau as supplied by the National Association of Homebuilders. The minimum-sized development triggering NPDES permitting, five acres, might realistically be divided into ten half-acre plots, making the development worth nearly $1.6 million. A $1000 surcharge assessed to a homeowner represents a 0.63% expenditure while $1,850 represents 1.16% expenditure. According to the Economic Analysis of the Proposed Storm Water Phase II Rule, a 5-acre site would require soil and erosion controls costing $8,382 (mean cost in 1997 dollars) and $885 in costs related to NOI submission and SWPPP generation/implementation. The combined total of $7,267 represents only 0.45% of the value of the development to the builder.

Several trade groups, utility companies, and individuals commented that the cumulative cost of permit compliance was high enough that constituted a "significant regulatory action" and should trigger review of the permit by the Office of Management and Budget (OMB) under Executive Order 12866. Commenters felt the goal of clean water could be attained with easier, less costly requirements and that more attention should be paid to a cost-benefit analysis.

According to Executive Order 12866, agencies must determine if a regulatory action is "significant" and consequently subject to the requirements of the Executive Order. Section 3(e) of the Executive Order defines "regulatory action" to mean "any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking." As explained in response to comments regarding the Regulatory Flexibility Act, EPA believes that today's general permit is not a "rule." Also noted in that discussion, however, EPA's conclusions on this issue have not been consistent over time. Notwithstanding any historical inconsistency on the legal identity of a general permit, OMB has waived review of general permits under Executive Order 12866 (and its predecessor, Executive Order 12291). OMB has reviewed some of the requirements under the general permit under its information collection review and approval role under the Paperwork Reduction Act.

Notwithstanding EPA's determination that the permits were not subject to formal OMB review, the Agency did evaluate the associated cost impacts. The major costs incurred by permittees are for sediment and erosion controls and for storm water management controls. Typical costs for these control measures are contained in the proposed permit (62 FR 29802-29803) where it is evident that they are nominal in relation to the costs associated with construction projects of five acres or more. It is important to point out that costs for any single project will depend on site-specific considerations and the expertise of permittees in preparing and implementing storm water pollution prevention plans. From some of the comments received it appeared that those commenters either did not fully understand the flexibility built into the permit for selecting the most cost-effective control measures or they simply overlooked opportunities for cost savings.

For example, one commenter estimated a cost based on the assumption that the permit required installation of silt fences on both sides of each residential lot, even though: (1) Silt fencing is but one acceptable perimeter control among a variety of options available under the CGP; (2) perimeter controls between lots may not be necessary when adjacent lots are under construction at the same time; and (3) if a silt fence is needed between adjacent lots, its cost could reasonably be split between the two lots. The commenter should also consider that if an adjoining lot was already stabilized, a vegetative buffer strip might already be in place for that side and could be considered an alternative control measure at no additional cost.

Another factor to be considered regarding the burden the NPDES program imposes is the time and cost savings attainable with a general permit. This is particularly relevant for the endangered species protection requirements which must be completed before a Notice of Intent can be submitted. While surveys and assessments may be necessary in order to certify compliance with the ESA-related eligibility restrictions, the CGP allows permittees to utilize the investigations (and certifications) made by other parties in lieu of performing their own for a particular project area. If the only other option available is an individually drafted, site-specific NPDES permit, endangered species and historic preservation assessments would still need to be completed and the permit application would have to be submitted at least 90 days prior to commencement of construction per 40 CFR 122.21(c). Following application completion and Agency review, the EPA may need to complete potentially time-consuming consultations on endangered species. After completion of such consultations, EPA would need to prepare a draft individual permit and make it available for public notice and comment. The Agency would need to conduct a public hearing if, based on public comments received, there was significant public interest. Finally, the Agency would need to respond to public comments and make a final determination on issuance of the permit. Given the activities listed above and the time associated to complete each one, the time and subsequent cost required to issue an individual permit for a construction project could be significantly greater than that required for obtaining general permit coverage.

IX. Cost Estimates

The major costs associated with pollution prevention plans for construction activities include the costs of sediment and erosion controls (see Table 1) and the costs of storm water management measures (see Table 2). The CGP provides flexibility in developing controls for construction activities. Typically, most construction sites will employ a variety of the listed sediment and erosion controls and storm water management controls. In general, the larger a site is, the lower the per-acre cost of pollution prevention will be.

TABLE 1.—SEDIMENT AND EROSION CONTROL COSTS

Temporary seeding	$1.00 per square foot
Permanent seeding	1.00 per square foot
Mulching	1.25 per square foot
Sod stabilization	4.00 per square foot
Vegetative buffer strips	1.00 per square foot
Protection of trees	30.00 to $200.00 per tree set
Earth dikes	5.50 per linear foot
Silt fences	6.00 per linear foot
Drainage swales—grass	3.00 per square yard
Drainage swales—sod	4.00 per square yard
Drainage swales—riprap	45.00 per square yard
Drainage swales—asphalt	35.00 per square yard
Drainage swales—concrete	65.00 per square yard
Check dams—rock	100 per dam
Check dams—covered straw bales	50 per dam
Level spreader—earthen	4.00 per square yard
Level spreader—concrete	65.00 per square yard
Subsurface drain	2.25 per linear foot
Pipe slope drain	5.00 per linear foot
Temporary storm drain diversion	variable
Storm drain inlet protection	300 per inlet
Rock outlet protection	45 per square yard
Sediment traps	500 to $7,000 per trap
Temporary sediment basins	5,000 to $50,000 per basin
Sump pit	500 to $7,000
Entrance stabilization	1,500 to $5,000 per entrance
Entrance wash rack	2,000 per rack
Temporary waterway crossing	500 to $1,500
Wind breaks	2.50 per linear foot

Practices such as sod stabilization and tree protection increase property values and satisfy consumer aesthetic needs.
Sources: "Means Site Work Cost Data," 9th edition, 1990, R.S. Means Company. "Sediment and Erosion Control, An Inventory of Current Practices," prepared by Kamber Engineering for U.S. EPA, April 1990.

TABLE 2.—ANNUALIZED COSTS OF SEVERAL STORM WATER MANAGEMENT OPTIONS FOR CONSTRUCTION SITES

	Annualized *	Annualized **
Wet Ponds	$5,872	$9,820
Dry Ponds	3,240	5,907
Dry Ponds with Extended Detention	3,110	5,413
Infiltration Trenches	4,134	6,359

* Cost for 9-acre developed area.
** Cost for 20-acre developed area.
Estimates based on methodology presented in "Cost of Urban Runoff Quality Controls," Wiegand, C., Schueler, T., Chittenden, W., and Jellick, D., Urban Runoff Quality—Impact and Quality Enhancement Technology, Proceedings of an Engineering Foundation Conference, ASCE, 1986, edited by B. Urbonas and L.A. Roesner.
Costs are presented in 1992 dollars. Annualized costs are based on a 10-year period and 10% discount rate. Estimates include a contingency cost of 25% of the construction cost and operation and maintenance costs of 5% of the construction cost. Land costs are not included.

X. Regulatory Review (Executive Order 12866)

Under Executive Order 12866, (58 FR 51735 [October 4, 1993]) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this re-issued general permit is not a "significant regulatory action" under the terms of Executive Order 12866. EPA has initiated informal OMB review of this general permit, specifically portions involving the information collection requirements under the Paperwork Reduction Act, and will complete a formal review for the Paperwork Reduction Act in the near future.

XI. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, UMRA section 205 generally requires EPA to identify and consider a

reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of UMRA section 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes an explanation with the final rule why the alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under UMRA section 203 a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating and advising small governments on compliance with the regulatory requirements.

A. UMRA Section 202 and the Construction General Permit

UMRA section 202 requires a written statement containing certain assessments, estimates and analyses prior to the promulgation of certain general notices of proposed rulemaking (2 U.S.C. 1532). UMRA section 421(10) defines "rule" based on the definition of rule in the Regulatory Flexibility Act. Section 601 of the Regulatory Flexibility Act defines "rule" to mean any rule for which an agency publishes a general notice of proposed rulemaking pursuant to section 553 of the Administrative Procedure Act. EPA does not propose to issue NPDES general permits based on APA section 553. Instead, EPA relies on publication of general permits in the **Federal Register** in order to provide "an opportunity for a hearing" under CWA section 402(a), 33 U.S.C. section 1342(a). Nonetheless, EPA has evaluated permitting alternatives for regulation of storm water discharges associated with construction activity. The general permit that EPA proposes to re-issue would be virtually the same NPDES general permit for construction that many construction operators have used over the past five years. Furthermore, general permits provide a more cost and time efficient alternative for the regulated community to obtain NPDES permit coverage than that provided through individually drafted permits.

B. UMRA Section 203 and the Construction General Permit

Agencies are required to prepare small government agency plans under UMRA section 203 prior to establishing any regulatory requirement that might significantly or uniquely affect small governments. "Regulatory requirements" might, for example, include the requirements of these NPDES general permits for discharges associated with construction activity, especially if a municipality sought coverage under one of the general permits. EPA envisions that some municipalities—those with municipal separate storm sewer systems serving a population over 100,000—may elect to seek coverage under these proposed general permits. For many municipalities, however, a permit application is not required until August 7, 2001, for a storm water discharge associated with construction activity where the construction site is owned or operated by a municipality with a population of less than 100,000. (See 40 CFR 122.26(e)(1)(ii)&(g)).

In any event, any such permit requirements would not significantly affect small governments because most State laws already provide for the control of sedimentation and erosion in a similar manner as today's general permit. Permit requirements also would not uniquely affect small governments because compliance with the permit's conditions affects small governments in the same manner as any other entity seeking coverage under the permit. Thus, UMRA section 203 would not apply.

XII. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* On June 2, 1997, EPA solicited comments on the proposed revision to the current Information Collection Request (ICR) document for this permit (ICR approved OMB; OMB No. 2040–0086, expiration, August 31, 1998) to accommodate the increased information requirements in the new NOI for the construction general permit (62 FR 29826). EPA estimates an increase in the burden associated with filling out the NOI form for the permit due to added requirements under the Endangered Species Act. EPA also anticipates a small increase in the time because of the requirement to submit an NOT upon completion of construction activities.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The permit explains that applicants must use the existing NOI form until EPA publishes a **Federal Register** notice announcing OMB approval of the revised NOI form. Applicants must use the revised NOI form after this notice is published.

XIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, a Federal agency must prepare an initial regulatory flexibility analysis "for any proposed rule" for which the agency "is required by section 553 of [the Administrative Procedure Act (APA)], or any other law, to publish general notice of proposed rulemaking." The RFA exempts from this requirement any rule that the issuing agency certifies "will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA did not prepare an initial regulatory flexibility analysis (IRFA) for the proposed CGP. (Note that in today's action, EPA is issuing a separate general permit for each jurisdiction where EPA issues permits; *i.e.*, in certain States, Indian Country lands and Federal facilities within certain States. However, for purposes of readability, reference is made to the permits in the singular form such as "permit" or "CGP" rather than in plural form.) In the notice of the proposed permit, EPA explained its view that issuance of an NPDES general permit is not subject to rulemaking requirements, including the requirement for a general notice of proposed rulemaking, under APA section 553 or any other law, and is thus not subject to the RFA requirement to prepare an IRFA. Nevertheless, in keeping with EPA's policy to consider the impact of its actions on small entities even when it is not legally required to do so, the Agency considered the potential impact of the permit on small entities that would be eligible for coverage under the permit. EPA concluded that the permit, if issued as drafted, would not have a significant impact on a substantial number of small entities. EPA based its conclusion on the fact that the draft permit was largely the same as the current permit and, to the extent it differed, provided dischargers with more flexibility than the current permit allowed.

Some commenters on the proposed CGP disagreed with EPA's conclusions

that NPDES general permits are not subject to rulemaking requirements and that the proposed permit would not have a significant impact on small entities. They asserted that the CGP is subject to rulemaking requirements and thus the RFA, and that the Agency should have prepared an IRFA for the permit.

In light of the comments received, EPA further considered whether NPDES general permits are subject to rulemaking requirements. The Agency reviewed its previous NPDES general permitting actions and related statements in the **Federal Register** or elsewhere. This review suggests that the Agency has generally treated NPDES general permits effectively as rules, though at times it has given contrary indications as to whether these actions are rules or permits. EPA also reviewed again the applicable law, including the CWA, relevant CWA case law and the APA, as well as the Attorney General's Manual on the APA (1947). On the basis of its review, EPA has concluded, as set forth in the proposal, that NPDES general permits are permits under the APA and thus not subject to APA rulemaking requirements or the RFA.

The APA defines two broad, mutually exclusive categories of agency action—"rules" and "orders." Its definition of "rule" encompasses "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency * * *" APA section 551(4). Its definition of "order" is residual: "a final disposition * * * of an agency in a matter other than rule making but including licensing." APA section 551(6) (emphasis added). The APA defines "license" to "include * * * an agency permit * * *" APA section 551(8). The APA thus categorizes a permit as an order, which by the APA's definition is not a rule.

Section 553 of the APA establishes "rule making" requirements. The APA defines "rule making" as "the agency process for formulating, amending, or repealing a rule." APA section 551(5). By its terms, then, section 553 applies only to "rules" and not also to "orders," which include permits. As the Attorney General's Manual on the APA explains, "the entire Act is based upon a dichotomy between rule making and adjudication [the agency process for formulation of an order]" (p. 14).

The CWA specifies the use of permits for authorizing the discharge of pollutants to waters of the United States. Section 301(a) of the CWA prohibits discharges of pollutants "[except as in compliance with" specified sections of the CWA, including section 402. 33 U.S.C. 1311(a). Section 402 of the CWA authorizes EPA "to issue a permit for the discharge of any pollutant * * *, notwithstanding section [301(a) of the CWA]." 33 U.S.C. 1342(a). Thus, the only circumstances in which a discharge of pollution may be authorized is where the Agency has issued a permit for the discharge. Courts, recognizing that a permit is the necessary condition-precedent to any lawful discharge, specifically suggested the use of area-wide and general permits as a mechanism for addressing the Agency's need to issue a substantial number of permits. See *NRDC* v. *Train*, 396 F.Supp. 1393, 1402 (D.D.C. 1975); *NRDC* v. *Costle*, 568 F.2d 1369, 1381. (D.C. Cir. 1977). Adopting the courts" suggestion, EPA has made increasing use of general permits in its CWA regulatory program, particularly for storm water discharges.

In the Agency's view, the fact that an NPDES general permit may apply to a large number of different dischargers does not convert it from a permit into a rule. As noted above, the courts which have faced the issue of how EPA can permit large numbers of discharges under the CWA have suggested use of a general permit, not a rule. Under the APA, the two terms are mutually exclusive. Moreover, an NPDES general permit retains unique characteristics that distinguish a permit from a rule. First, today's NPDES general permit for storm water discharges associated with construction activity is effective only with respect to those dischargers that choose to be bound by the permit. Thus, unlike the typical rule, this NPDES general permit does not impose immediately effective obligations of general applicability. A discharger must choose to be covered by this general permit and so notify EPA. A discharger always retains the option of obtaining its own individual permit. Relatedly, the terms of the NPDES general permit are enforceable only against dischargers that choose to make use of the permit. If a source discharges without authorization of a general or an individual permit, the discharger violates section 301 of the Act for discharging without a permit, not for violating the terms of an NPDES general permit.

Because the CWA and its case law make clear that NPDES permits are the congressionally chosen vehicle for authorizing discharges of pollutants to waters of the United States, the APA's rulemaking requirements are inapplicable to issuance of such permits, including today's general permit. Further, while the CWA requires that NPDES permits be issued only after an opportunity for a hearing, it does not require publication of a general notice of proposed rulemaking. Thus, NPDES permitting is not subject to the requirement to publish a general notice of proposed rulemaking under the APA or any other law. Accordingly, it is not subject to the RFA.

At the same time, the Agency recognizes that the question of the applicability of the APA, and thus the RFA, to the issuance of a general permit is a difficult one, given the fact that a large number of dischargers may choose to use the general permit. Indeed, the point of issuing a general permit is to provide a speedier means of permitting large number of sources and save dischargers and EPA time and effort. Since the Agency hopes that many dischargers will make use of a general permit and since the CWA requires EPA to provide an opportunity for "a hearing" prior to issuance of a permit, EPA provides the public with notice of a draft general permit and an opportunity to comment on it. From public comments, EPA learns how to better craft a general permit to make it appropriate for, and acceptable to, the largest number of potential permittees. This same process also provides an opportunity for EPA to consider the potential impact of general permit terms on small entities and how to craft the permit to avoid any undue burden on small entities. This process, however, is voluntary, and does not trigger rulemaking or RFA requirements.

In the case of the CGP being issued today, the Agency has considered and addressed the potential impact of the general permit on small entities in a manner that would meet the requirements of the RFA if it applied. Specifically, EPA has analyzed the potential impact of the general permit on small entities and found that it will not have a significant economic impact on a substantial number of small entities. Like the previous general permit that it replaces (the Baseline Construction General Permit), the permit will make available to many small entities, particularly operators of construction sites, a streamlined process for obtaining authorization to discharge. Of the possible permitting mechanisms available to dischargers subject to the CWA, NPDES general permits are designed to reduce the reporting and monitoring burden associated with NPDES permit authorization, especially for small entities with discharges having comparatively less potential for environmental degradation than

discharges typically regulated under individual NPDES permits. Thus, general permits like the permit at issue here provide small entities with a permitting application option that is much less burdensome than NPDES individual permit applications.

Furthermore, the general permit is virtually identical to its predecessor, the Baseline Construction General Permit, under which many construction operators have operated during the past five years. Moreover, the other new provisions of the permit have been designed to minimize burdens on small entities, including eliminating the requirement that construction site operators require that their contractors and subcontractors sign a standard certification statement agreeing to abide by storm water pollution prevention plan provisions developed for a project. In today's general permit, only the operator(s) of a construction site are required to satisfy certification requirements under the permit. EPA believes this modification from the prior permit should reduce any such adverse economic impacts on both operators and contractors/subcontractors who, in many instances, are small entities. In view of the foregoing, the Regional Administrators find that the final general permit, even if it were a rule, will not have a significant economic impact on a substantial number of small entities.

EPA is committed to issuing general permits that meet the substantive and procedural requirements of the statute authorizing the particular general permit and any other applicable law. The Agency intends to review its use of general permits across EPA programs to ensure that its general permits meet all applicable requirements.

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this permit will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: January 21, 1998.

John DeVillars,

Regional Administrator, Region I.

XIV. Official Signatures

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this permit will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: January 27, 1998.

Jeanne M. Fox,

Regional Administrator, Region 2.

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this permit will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

W. Michael McCabe,

Acting Regional Administrator, Region III.

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this permit will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: January 16, 1998.

William W. Rice,

Acting Regional Administrator, Region 7.

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this permit will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: January 15, 1998.

William P. Yellowtail,

Regional Administrator, Region VIII.

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this permit will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: January 29, 1998.

Felicia Marcus,

Regional Administrator, Region 9.

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this permit will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: January 20, 1998.

Chuck Clarke,

Regional Administrator, Region 10.

Storm Water General Permit for Construction Activities

Cover Page

Permit No. [See Part I.A.]

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq.), except as provided in Part I.B.3 of this permit, operators of construction activities located in an area specified in Part I.A. and who submit a Notice of Intent in accordance with Part II, are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit shall become effective on February 17, 1998.

This permit and the authorization to discharge shall expire at midnight, February 17, 2003.

Signed and issued this 20th day of January, 1998.

Linda M. Murphy,

Director, Office of Ecosystem Protection.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the corresponding State, Indian Country land, or other area in Region 1.

Storm Water General Permit for Construction Activities

Cover Page

Permit No. [See Part I.A.]

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq.), except as provided in Part I.B.3 of this permit, operators of construction activities located in an area specified in Part I.A. and who submit a Notice of Intent in accordance with Part II, are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit shall become effective on February 17, 1998.

This permit and the authorization to discharge shall expire at midnight, February 17, 2003.

Signed and issued this 22nd day of January, 1998.

Kathleen C. Callahan,

Division of Environmental Planning and Protection Director, Region 2.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the corresponding State, Indian Country land, or other area in Region 2.

Storm Water General Permit for Construction Activities

Cover Page

Permit No. [See Part I.A.]

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33

U.S.C. 1251 et. seq.), except as provided in Part I.B.3 of this permit, operators of construction activities located in an area specified in Part I.A. and who submit a Notice of Intent in accordance with Part II, are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit shall become effective on February 17, 1998.

This permit and the authorization to discharge shall expire at midnight, February 17, 2003.

Signed and issued this 22nd day of January, 1998.

Thomas Maslany,

Water Management Director.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the corresponding State, Indian Country land, or other area in Region 3.

Storm Water General Permit for Construction Activities

Cover Page

Permit No. [See Part I.A.]

Authorizatin To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq.), except as provided in Part I.B.3 of this permit, operators of construction activities located in an area specified in Part I.A. and who submit a Notice of Intent in accordance with Part II, are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit shall become effective on February 17, 1998.

This permit and the authorization to discharge shall expire at midnight, February 17, 2003.

Signed and issued this 16th day of January, 1998.

U. Gale Hutton,

Director, Water, Wetlands, and Pesticides Division, U.S. Environmental Protection Agency, Region 7.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the corresponding State, Indian Country land, or other area in Region 7.

Storm Water General Permit for Construction Activities

Cover Page

Permit No. [See Part I.A.]

Authorizatin To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq.), except as provided in Part I.B.3 of this permit, operators of construction activities located in an area specified in Part I.A. and who submit a Notice of Intent in accordance with Part II, are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit shall become effective on February 17, 1998.

This permit and the authorization to discharge shall expire at midnight, February 17, 2003.

Signed and issued this 15th day of January, 1998.

Kerrigan G. Clough,

Assistant Regional Administrator, Office of Pollution Prevention, State and Tribal Assistance.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the corresponding State, Indian Country land, or other area in Region 8.

Storm Water General Permit for Construction Activities

Cover Page

Permit No. [See Part I.A.]

Authorizatin To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq.), except as provided in Part I.B.3 of this permit, operators of construction activities located in an area specified in Part I.A. and who submit a Notice of Intent in accordance with Part II, are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit shall become effective on February 17, 1998.

This permit and the authorization to discharge shall expire at midnight, February 17, 2003.

Signed and issued this 29th day of January, 1998.

Alexis Strauss,

Acting Director, Water Division, Region 9.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the corresponding State, Indian Country land, or other area in Region 9.

Storm Water General Permit for Construction Activities

Cover Page

Permit No. [See part I.A.]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In accordance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et seq.), except as provided in Part I.B.3 of this permit, operators of construction activities located in an area specified in Part I.A. and who submit a Notice of Intent in accordance with Part II, are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit shall become effective on February 17, 1998.

This permit and the authorization to discharge shall expire at midnight, February 17, 2003.

Signed and issued this 20th day of January, 1998.

Philip G. Millam,

Director, Office of Water, Region 10.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the corresponding State, Indian Country land, or other area in Region 10.

NPDES General Permits for Storm Water Discharges From Construction Activities

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Part I. Coverage Under This Permit

A. Permit Area

The permit language is structured as if it were a single permit, with State, Indian Country land, or other area-specific conditions specified in Part X. Permit coverage is actually provided by legally separate and distinctly numbered permits covering each of the following areas:

Region 1

CTR10*##I: Indian Country lands in the State of Connecticut.

MAR10*###: Commonwealth of Massachusetts, except Indian Country lands.

MAR10*##I: Indian Country lands in the Commonwealth of Massachusetts.

MER10*###: State of Maine, except Indian Country lands.

MER10*##I: Indian Country lands in the State Maine.

NHR10*###: State of New Hampshire.

RIR10*##I: Indian Country lands in the State of Rhode Island.

VTR10*##F: Federal Facilities in the State of Vermont.

Region 2

NYR10*##I: Indian Country lands in the State of New York.

PRR10*###: The Commonwealth of Puerto Rico.

Region 3

DCR10*###: The District of Columbia.

DER10*##F: Federal Facilities in the State of Delaware.

Region 4

Coverate Not Available. Construction activities in Region 4 must obtain permit coverage under an alternative general permit.

Region 5

Coverage Not Available.

Region 6

Coverage Not Available.

Region 7

IAR10*##I: Indian Country lands in the State of Iowa.

KSR10*##I: Indian Country lands in the State of Kansas.

NER10*##I: Indian Country lands in the State of Nebraska, except Pine Ridge Reservation lands (see Region 8).

Region 8

COR10*##F: Federal Facilities in the State of Colorado, except those located on Indian Country lands.

COR10*##I: Indian Country lands in the State of Colorado, including the portion of the Ute Mountain Reservation located in New Mexico.

MTR10*##I: Indian Country lands in the State of Montana.

NDR10*##I: Indian Country lands in the State of North Dakota, including that portion of the Standing Rock Reservation located in South Dakota (except for the Lake Traverse Reservation which is covered under South Dakota permit SDR10*##I listed below).

SDR10*##I: Indian Country lands in the State of South Dakota, including the portion of the Pine Ridge Reservation located in Nebraska and the portion of the Lake Traverse Reservation located in North Dakota (except for the Standing Rock Reservation which is covered under North Dakota permit NDR10*##I listed above).

UTR10*##I: Indian Country lands in the State of Utah, except Goshute and Navajo Reservation lands (see Region 9).

WYR10*##I: Indian Country lands in the State of Wyoming.

Region 9

ASR10*###: The Island of American Samoa.

AZR10*###: The State of Arizona, except Indian Country lands.

AZR10*##I: Indian Country lands in the State of Arizona, including Navajo Reservation lands in New Mexico and Utah.

CAR10*##I: Indian Country lands in the State of California.

GUR10*###: The Island of Guam.

JAR10*###: Johnston Atoll.

MWR10*###: Midway Island and Wake Island.

NIR10*###: Commonwealth of the Northern Mariana Islands.

NVR10*##I: Indian Country lands in the State of Nevada, including the Duck Valley Reservation in Idaho, the Fort McDermitt Reservation in Oregon and the Goshute Reservation in Utah.

Region 10

AKR10*###: The State of Alaska, except Indian Country lands.

AKR10*##I: Indian Country lands in Alaska.

IDR10*###: The State of Idaho, except Indian Country lands.

IDR10*##I: Indian Country lands in the State of Idaho, except Duck Valley Reservation lands (see Region 9).

ORR10*##I: Indian Country lands in the State of Oregon except Fort McDermitt Reservation lands (see Region 9).

WAR10*##F: Federal Facilities in the State of Washington, except those located on Indian Country lands.

WAR10*##I: Indian Country lands in the State of Washington.

B. Eligibility

1. Permittees are authorized to discharge pollutants in storm water runoff associated with construction activities as defined in 40 CFR 122.26(b)(14)(x) and those construction site discharges designated by the Director as needing a storm water permit under 122.26(a)(1)(v) or under 122.26(a)(9) and 122.26(g)(1)(i). Discharges identified under Part I.B.3 are excluded from coverage. Any discharge authorized by a different NPDES permit may be commingled with discharges authorized by this permit.

2. This permit also authorizes storm water discharges from support activities (*e.g.*, concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided:

a. The support activity is directly related to a construction site that is required to have NPDES permit coverage for discharges of storm water associated with construction activity;

b. The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the

construction activity at the last construction project it supports; and

c. Appropriate controls and measures are identified in a storm water pollution prevention plan covering the discharges from the support activity areas.

3. Limitations on Coverage. A. *Post Construction Discharges.* This permit does not authorize storm water discharges that originate from the site after construction activities have been completed and the site, including any temporary support activity site, has undergone final stabilization. Industrial post-construction storm water discharges may need to be covered by a separate NPDES permit.

B. *Discharges Mixed With Non-Storm Water.* This permit does not authorize discharges that are mixed with sources of non-storm water, other than those discharges which are identified in Part II.A.2. or 3. (exceptions to prohibition on non-storm water discharges) and are in compliance with Part IV.D.5 (non-storm water discharges).

C. *Discharges Covered by Another Permit.* This permit does not authorize storm water discharges associated with construction activity that have been covered under an individual permit or required to obtain coverage under an alternative general permit in accordance with Part VI.L.

d. *Discharges Threatening Water Quality.* This permit does not authorize storm water discharges from construction sites that the Director (EPA) determines will cause, or have reasonable potential to cause or contribute to, violations of water quality standards. Where such determinations have been made, the Director may notify the operator(s) that an individual permit application is necessary in accordance with Part VI.L. However, the Director may authorize coverage under this permit after appropriate controls and implementation procedures designed to bring the discharges into compliance with water quality standards has been included in the storm water pollution prevention plan;

e. *Storm water discharges and storm water discharge-related activities that are not protective of Federally listed endangered and threatened ("listed") species or designated critical habitat ("critical habitat").*

(1) For the purposes of complying with the Part I.B.3.e. eligibility requirements, "storm water discharge-related activities" include:

(a) Activities which cause, contribute to, or result in point source storm water pollutant discharges, including but not limited to: excavation, site development, grading and other surface disturbance activities; and

(b) Measures to control storm water including the siting, construction and operation of best management practices (BMPs) to control, reduce or prevent storm water pollution.

(2) Coverage under this permit is available only if the applicant certifies that it meets at least one of the criteria in paragraphs (a)–(d) below. Failure to continue to meet one of these criteria during the term of the permit will render a permittee ineligible for coverage under this permit.

(a) The storm water discharges and storm water discharge-related activities are not likely to adversely affect listed species or critical habitat; or

(b) Formal or informal consultation with the Fish and Wildlife Service and/or the National Marine Fisheries Service (the "Services") under section 7 of the Endangered Species Act (ESA) has been concluded which addresses the effects of the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat and the consultation results in either a no jeopardy opinion or a written concurrence by the Service(s) on a finding that the applicant's storm water discharges and storm water discharge-related activities are not likely to adversely affect listed species or critical habitat. A section 7 consultation may occur in the context of another Federal action (*e.g.*, a ESA section 7 consultation was performed for issuance of a wetlands dredge and fill permit for the project, or as part of a National Environmental Policy Act (NEPA) review); or

(c) The applicant's construction activities are authorized under section 10 of the ESA and that authorization addresses the effects of the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat; or

(d) The applicant's storm water discharges and storm water discharge-related activities were already addressed in another operator's certification of eligibility under Part I.B.3.e.(2)(a), (b), or (c) which included the applicant's project area. By certifying eligibility under Part I.B.3.e.(2)(d), the applicant agrees to comply with any measures or controls upon which the other operator's certification under Part I.B.3.e.(2)(a), (b) or (c) was based.

(3) All applicants must follow the procedures provided at Addendum A of this permit when applying for permit coverage.

(4) The applicant must comply with any applicable terms, conditions or other requirements developed in the process of meeting eligibility requirements of Part I.B.3.e.(2)(a), (b), (c), or (d) above to remain eligible for coverage under this permit. Such terms and conditions must be incorporated in the applicant's storm water pollution prevention plan.

(5) Applicants who choose to conduct informal consultation to meet the eligibility requirements of Part I.B.3.e.(2)(b) are automatically designated as non-Federal representatives under this permit. *See* 50 CFR 402.08. Applicants who choose to conduct informal consultation as a non-Federal representatives must notify EPA and the appropriate Service office in writing of that decision.

(6) This permit does not authorize any storm water discharges where the discharges or storm water discharge-related activities cause prohibited "take" (as defined under section 3 of the Endangered Species Act and 50 CFR 17.3) of endangered or threatened species unless such takes are authorized under section 7 or 10 of the Endangered Species Act.

(7) This permit does not authorize any storm water discharges where the discharges or storm water discharge-related activities are likely to jeopardize the continued existence of any species that are listed or proposed to be listed as endangered or threatened under the ESA or result in the adverse modification or destruction of habitat that is designated or proposed to be designated as critical under the ESA.

f. *Storm Water Discharges and Storm Water Discharge-Related Activities with Unconsidered Adverse Effects on Historic Properties.* (Reserved)

C. Obtaining Authorization

1. In order for storm water discharges from construction activities to be authorized under this general permit, an operator must:

a. Meet the Part I.B. eligibility requirements;

b. Except as provided in Parts II.A.5 and II.A.6, develop a storm water pollution prevention plan (SWPPP) covering either the entire site or all portions of the site for which they are operators (see definition in Part IX.N) according to the requirements in Part IV. A "joint" SWPPP may be developed and implemented as a cooperative effort where there is more than one operator at a site; and

c. Submit a Notice of Intent (NOI) in accordance with the requirements of Part II, using an NOI form provided by the Director (or a photocopy thereof). Only one NOI need be submitted to cover all of the permittee's activities on the common plan of development or sale (*e.g.*, you do not need to submit a separate NOI for each separate lot in a

residential subdivision or for two separate buildings being constructed at a manufacturing facility, provided your SWPPP covers each area for which you are an operator). The SWPPP must be implemented upon commencement of construction activities.

2. Any new operator on site, including those who replace an operator who has previously obtained permit coverage, must submit an NOI to obtain permit coverage.

3. Unless notified by the Director to the contrary, operators who submit a correctly completed NOI in accordance with the requirements of this permit are authorized to discharge storm water from construction activities under the terms and conditions of this permit two (2) days after the date that the NOI is postmarked. The Director may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information (see Part VI.L).

D. Terminating Coverage

1. Permittees wishing to terminate coverage under this permit must submit a Notice of Termination (NOT) in accordance with part VIII of this permit. Compliance with this permit is required until an NOT is submitted. The permittee's authorization to discharge under this permit terminates at midnight of the day the NOT is signed.

2. All permittees must submit an NOT within thirty (30) days after one or more of the following conditions have been met:

a. Final stabilization (see definition Part IX.I) has been achieved on all portions of the site for which the permittee is responsible (including if applicable, returning agricultural land to its pre-construction agricultural use);

b. Another operator/permittee has assumed control according to Part VI.G.2.c. over all areas of the site that have not been finally stabilized; or

c. For residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.

Enforcement actions may be taken if a permittee submits an NOT without meeting one or more of these conditions.

Part II. Notice of Intent Requirements

A. Deadlines for Notification

1. Except as provided in Part II.A.3, II.A.4, II.A.5 or II.A.6 below, parties defined as operators (see definition in Part IX.N) due to their operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications, must submit a Notice of Intent (NOI) in accordance with the requirements of this Part at least two (2) days prior to the commencement of construction activities (*i.e.*, the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities).

2. Except as provided in parts II.A.3, II.A.4, II.A.5 of II.A.6 below, parties defined as operators (see definition in Part IX.N) due to their day-to-day operational control over activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan or other permit conditions (*e.g.*, general contractor, erosion control contractor) must submit an NOI at least two (2) days prior to commencing work on-site.

3. For storm water discharges from construction projects where the operator changes, including instances where an operator is added after an NOI has been submitted under Parts II.A.1 or II. A.2, the new operator must submit an NOI at least two (2) days before assuming operational control over site specifications or commencing work on-site.

4. Operators are not prohibited from submitting late NOIs. When a late NOI is submitted, authorization is only for discharges that occur after permit coverage is granted. The Agency reserves the right to take appropriate enforcement for any unpermitted activities that may have occurred between the time construction commenced and authorization of future discharges is granted (typically 2 days after a complete NOI is submitted).

5. Operators of on-going construction projects as of the effective date of this permit which received authorization to discharge for these projects under the 1992 baseline construction general permit must:

a. Submit a NOI according to Part II.B. within 90 days of the effective date of this permit. If the permittee is eligible to submit a Notice of Termination (*e.g.*, construction is finished and final stabilization has been achieved) before the 90th day, a new NOI is not required to be submitted;

b. For the first 90 days from the effective date of this permit, comply with the terms and conditions of the 1992 baseline construction general permit they were previously authorized under; and

c. Update their storm water pollution prevention plan to comply with the requirements of Part IV within 90 days after the effective date of this permit.

6. Operators of on-going construction projects as of the effective date of this permit which did *not* receive authorization to discharge for these projects under the 1992 baseline construction general permit must:

a. Prepare and comply with an interim storm water pollution prevention plan in accordance with the 1992 baseline construction general permit prior to submitting an NOI;

b. Submit a NOI according to Part II.B; and

c. Update their storm water pollution prevention plan to comply with the requirements of Part IV within 90 days after the effective date of this permit.

B. Contents of Notice of Intent (NOI)

1. Interim Use of Existing NOI Form

Until the revised NOI form is published as final in the **Federal Register**, operators must use EPA's existing NOI form [EPA Form 3510–6 (8–98)] to apply for permit coverage.

Note: The revised NOI form is pending approval by the U.S. Office of Management and Budget as of the effective date of this permit.

When using the existing NOI form, operators should only submit information that was required for parties under the baseline construction general permit. However, by completing and signing the existing NOI form to obtain permit coverage, operators are certifying that they meet all applicable eligibility requirements of Part I.B of today's permit and an informing the Director of their intent to be covered by, and comply with, the terms and conditions of this permit. When the revised NOI form is available (through final publication in the **Federal Register**), the existing NOI form will no longer be accepted for permit coverage.

2. Use of Revised NOI Form

The revised NOI form shall be signed in accordance with Part VI.G of this permit and shall include the following information:

a. The name, address, and telephone number of the operator filing the NOI for permit coverage;

b. An indication of whether the operator is a Federal, State, Tribal, private, or other public entity;

c. The name (or other identifier), address, county, and latitude/longitude of the construction project or site;

d. An indication of whether the project or site is located on Indian Country lands;

e. Confirmation that a storm water pollution prevention plan (SWPPP) has been developed or will be developed prior to commencing construction activities, and that the SWPPP will be compliant with any applicable local

sediment and erosion control plans. Copies of SWPPPs or permits should *not* be included with the NOI submission;

f. Optional information: the location where the SWPPP may be viewed and the name and telephone number of a contact person for scheduling viewing times;

g. The name of the receiving water(s);

h. Estimates of project start and completion dates, and estimates of the number of acres of the site on which soil will be distributed (if less than 1 acre, enter "1");

i. Based on the instructions in Addendum A, whether any listed or proposed threatened or endangered species, or designated critical habitat, are in proximity to the storm water discharges or storm water discharge-related activities to be covered by this permit;

j. Under which section(s) of Part I.B.3.e (Endangered Species) the applicant is certifying eligibility; and

Note that as of the effective date of this permit, reporting of information relating to the preservation of historic properties has been reserved and is not required at this time. Such reservation in no way relieves applicants or permittees from any otherwise applicable obligations or liabilities related to historic preservation under State, Tribal or local law. After further discussions between EPA and the Advisory Council on Historic Preservation, the Agency may modify the permit. Any such modification may affect future Notice of Intent reporting requirements.

C. Where To Submit

1. NOIs must be signed in accordance with Part VI.G. and sent to the following address: Storm Water Notice of Intent (4203), US EPA, 401 M. Street, SW, Washington, D.C. 20460.

Part III. Special Conditions, Management Practices, and Other Non-Numeric Limitations

A. Prohibition Non-Storm Water Discharges

1. Except as provided in Parts I.B.2 or 3 and III.A.2 or 3, all discharges covered by this permit shall be composed entirely of storm water associated with construction activity.

2. Discharges of material other than storm water that are in compliance with an NPDES permit (other than this permit) issued for that discharge may be discharged or mixed with discharges authorized by this permit.

3. The following non-storm water discharges from active construction sites are authorized by this permit provided the non-storm water component of the discharge is in compliance with Part IV.D.5 (non-storm water discharges): discharges from fire fighting activities; fire hydrant flushings; waters used to wash vehicles where detergents are not used; water used to control dust in accordance with Part IV.D.2.c.(2); potable water sources including waterline flushings; routine external building wash down which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning concentrate; uncontaminated ground water or spring water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

B. Releases in Excess of Reportable Quantities

The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. This permit does not relieve the permittee of the reporting requirements of 40 CFR 110, 40 CFR 117 and 40 CFR 302. Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quality established under either 40 CFR 110, 40 CFR 117 or 40 CFR 302, occurs during a 24 hour period.

1. The permittee is required to notify the National Response Center (NRC) (800–424–8802; in the Washington, DC, metropolitan area call 202–426–2675) in accordance with the requirements of 40 CFR 110, 40 CFR 117 and 40 CFR 302 as soon as he or she has knowledge of the discharge;

2. The storm water pollution prevention plan required under Part IV of this permit must be modified within 14 calendar days of knowledge of the release to: provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

C. Spills

This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

D. Discharge Compliance With Water Quality Standards

Operators seeking coverage under this permit shall not be causing or have the reasonable potential to cause or contribute to a violation of a water quality standard. Where a discharge is already authorized under this permit and is later determined to cause or have the reasonable potential to cause or contribute to the violation of an applicable water quality standard, the Director will notify the operator of such violation(s). The permittee shall take all necessary actions to ensure future discharges do not cause or contribute to the violation of a water quality standard and document these actions in the storm water pollution prevention plan. If violations remain or re-occur, then coverage under this permit may be terminated by the Director, and an alternative general permit or individual permit may be issued. Compliance with this requirement does not preclude any enforcement activity as provided by the Clean Water Act for the underlying violation.

E. Responsibilities of Operators

Permittees may meet one or both of the operational control components in the definition of "operator" found in Part IX.N. Either Parts III.E.1 or III.E.2 or both will apply depending on the type of operational control exerted by an individual permittee. Part III.E.3 applies to all permittees.

1. Permittees with operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications (*e.g.*, developer or owner), must:

a. Ensure the project specifications that they develop meet the minimum requirements of Part IV (Storm Water Pollution Prevention Plans (SWPPP)) and all other applicable conditions;

b. Ensure that the SWPPP indicates the areas of the project where they have operational control over project specifications (including the ability to make modifications in specifications), and ensure all other permittees implementing portions of the SWPPP impacted by any changes they make to the plan are notified of such modifications in a timely manner; and

c. Ensure that the SWPPP for portions of the project where they are operators indicates the name and NPDES permit number for parties with day-to-day operational control of those activities necessary to ensure compliance with the SWPPP or other permit conditions. If these parties have not been identified at the time the SWPPP is initially developed, the permittee with operational control over project specifications shall be considered to be the responsible party until such time as the authority is transferred to another party (*e.g.*, general contractor) and the plan updated.

2. Permittee(s) with day-to-day operational control of those activities at a project which are necessary to ensure compliance with a SWPPP for the site or other permit conditions (*e.g.* general contractor) must:

a. Ensure that the SWPPP for portions of the project where they are operators meets the minimum requirements of Part IV (Storm Water Pollution Plan) and identifies the parties responsible for implementation of control measures identified in the plan;

b. Ensure that the SWPPP indicates areas of the project where they have operational control over day-to-day activities;

c. Ensure that the SWPPP for portions of the project where they are operators indicates the name and NPDES permit number of the party(ies) with operational control over project specifications (including the ability to make modifications in specifications).

3. Permittees with operational control over only a portion of a larger construction project (*e.g.*, one of four homebuilders in a subdivision) are responsible for compliance with all applicable terms and conditions of this permit as it relates to their activities on their portion of the construction site, including protection of endangered species and implementation of BMPs and other controls required by the SWPPP. Permittees shall ensure either directly or through coordination with other permittees, that their activities do not render another party's pollution control ineffective. Permittees must either implement their portions of a common SWPPP or develop and implement their own SWPPP.

Part IV. Storm Water Pollution Prevention Plans

At least one storm water pollution prevention plan (SWPPP) shall be developed for each construction project or site covered by this permit. For more effective coordination of BMPs and opportunities for cost sharing, a cooperative effort by the different operators at a site to prepare and participate in a comprehensive SWPPP is encouraged. Individual operators at a site may, but are not required, to develop separate SWPPPs that cover only their portion of the project provided reference is made to other operators at the site. In instances where there is more than one SWPPP for a site, coordination must be conducted between the permittees to ensure the storm water discharge controls and other measures are consistent with one another (*e.g.*, provisions to protect listed species and critical habitat).

Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The SWPPP shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site. The SWPPP shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges associated with construction activity at the construction site and assure compliance with the terms and conditions of this permit.

When developing SWPPPs, applicants must follow the procedures in Addendum A of this permit to determine whether listed endangered or threatened species or critical habitat would be affected by the applicant's storm water discharges or storm water discharge-related activities. Any information on whether listed species or critical habitat are found in proximity to the construction site must be included in the SWPPP. Any terms or conditions that are imposed under the eligibility requirements of Part I.B.3.e and Addendum A of this permit to protect listed species or critical habitat from storm water discharges or storm water discharge-related activity must be incorporated into the SWPPP. Permittees must implement the applicable provisions of the SWPPP required under this part as a condition of this permit.

A. Deadlines for Pan Preparation and Compliance

The storm water pollution prevention plan shall:

1. Be completed prior to the submittal of an NOI to be covered under this permit (except as provided in Parts II.A.5 and II.A.6) updated as appropriate; and

2. Provide for compliance with the terms and schedule of the SWPPP beginning with the initiation of construction activities.

B. Signature, Plan Review and Making Plans Available

1. The SWPPP shall be signed in accordance with Part VI.G, and be retained on-site at the facility which generates the storm water discharge in accordance with Part V (Retention of Records) or this permit.

2. The permittee shall post a notice near the main entrance of the construction site with the following information:

a. The NPDES permit number for the project or a copy of the NOI if a permit number has not yet been assigned;

b. The name and telephone number of a local contact person;

c. A brief description of the project; and

d. The location of the SWPPP if the site is inactive or does not have an on-site location to store the plan.

If posting this information near a main entrance is infeasible due to safety concerns, the notice shall be posted in a local public building. If the construction project is a linear construction project (*e.g.*, pipeline, highway, etc.), the notice must be placed in a publicly accessible location near where construction is actively underway and moved as necessary. This permit does not provide the public with any right to trespass on a construction site for any reason, including inspection of a site; not does this permit require that permittees allow members of the public access to a construction site.

3. The permittee shall make SWPPPs available upon request to the Director, a State, Tribal or local agency approving sediment and erosion plans, grading plans, or storm water management plans, local government officials; or the operator of a municipal separate storm sewer receiving discharges from the site. The copy of the SWPPP that is required to be kept on-site or locally available must be made available to the Director for review at the time of an on-site inspection. Also, in the interest of public involvement, EPA encourages permittees to make their SWPPPs available to the public for viewing during normal business hours.

4. The Director may notify the permittee at any time that the SWPPP does not meet one or more of the minimum requirements of this Part. Such notification shall identify those provision of this permit which are not being met by the SWPPP as well as those requiring modification in order to meet the minimum requirements of this Part. Within seven (7) calendar days of receipt of such notification from the Director (or as otherwise provided by the Director), the permittee shall make the required changes to the SWPPP and shall submit to the Director a written certification that the requested changes have been made. The Director may take appropriate enforcement action for the period of time the permittee was operating under a plan that did not meet the minimum requirements of this permit.

C. Keeping Plans Current

The permittee must amend the storm water pollution prevention plan whenever:

1. There is a change in design, construction, operation, or maintenance

which has a significant effect on the discharge of pollutants to the waters of the United States which has not been addressed in the SWPPP; or

2. Inspections or investigations by site operators, local, State, Tribal or Federal officials indicate the SWPPP is proving ineffective in eliminating or significantly minimizing pollutants from sources identified under Part IV.D.1 of this permit, or is otherwise not achieving the general objectives of controlling pollutants in storm water discharges associated with construction activity.

D. Contents of Plan

The storm water pollution prevention plan (SWPPP) shall include the following items:

1. Site Description

Each SWPPP shall provide a description of potential pollutant sources and other information as indicated below:

a. A description of the nature of the construction activity;

b. A description of the intended sequence of major activities which disturb soils for major portions of the site (*e.g.*, grubbing, excavation, grading, utilities and infrastructure installation);

c. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities including off-site borrow and fill areas;

d. An estimate of the runoff coefficient of the site for both the pre-construction and post-construction conditions and data describing the soil or the quality of any discharge from the site;

e. A general location map (*e.g.*, a portion of a city or county map) and a site map indicating the following: Drainage patterns and approximate slopes anticipated after major grading activities; areas of soil disturbance; areas which will not be disturbed; locations of major structural and nonstructural controls identified in the SWPPP; locations where stabilization practices are expected to occur; locations of off-site material, waste, borrow or equipment storage areas; surface waters (including wetlands); and locations where storm water discharges to a surface water;

f. Location and description of any discharge associated with industrial activity other than construction, including storm water discharges from dedicated asphalt plants and dedicated concrete plants, which is covered by this permit;

g. The name of the receiving water(s) and the areal extent and description of wetlands or other special aquatic sites (as described under 40 CFR 230.3(q–1)) at or near the site which will be disturbed or which will receive discharges from disturbed areas of the project;

h. A copy of the permit requirements (attaching a copy of this permit is acceptable); and

i. Information on whether listed endangered or threatened species, or critical habitat, are found in proximity to the construction activity and whether such species may be affected by the applicant's storm water discharges or storm water discharge-related activities.

2. Controls

Each SWPPP shall include a description of appropriate control measures (*i.e.*, BMPs) that will be implemented as part of the construction activity to control pollutants in storm water discharges. The SWPPP must clearly describe for each major activity identified in Part IV.D.1.b: (a) Appropriate control measures and the general timing (or sequence) during the construction process that the measures will be implemented; and (b) which permittee is responsible for implementation (*e.g.*, perimeter controls for one portion of the site will be installed by Contractor A after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site; and perimeter controls will be actively maintained by Contractor B until final stabilization of those portions of the site up-gradient of the perimeter control; and temporary perimeter controls will be removed by the owner after final stabilization). The description and implementation of control measures shall address the following minimum components;

a. *Erosion and Sediment Controls.* (1) *Short and Long Term Goals and Criteria.* (a) The construction-phase erosion and sediment controls should be designed to retain sediment on site to the extent practicable.

(b) All control measures must be properly selected, installed, and maintained in accordance with the manufacturers specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the permittee must replace or modify the control for site situations.

(c) If sediment escapes the construction site, off-site accumulations of sediment must be removed at a frequency sufficient to minimize offsite (*e.g.*, fugitive sediment in street could be washed into storm sewers by the next rain and/or pose a safety hazard to users of public streets).

(d) Sediment must be removed from sediment traps or sedimentation ponds when design capacity has been reduced by 50%.

(e) Litter, construction debris, and construction chemicals exposed to storm water shall be prevented from becoming a pollutant source for storm water discharges (*e.g.*, screening outfalls, picked up daily).

(f) Offsite material storage areas (also including overburden and stockpiles of dirt, borrow areas, etc.) used solely by the permitted project are considered a part of the project and shall be addressed in the SWPPP.

(2) *Stabilization Practices.* The SWPPP must include a description of interim and permanent stabilization practices for the site, including a schedule of when the practices will be implemented. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include but are not limited to: establishment of temporary vegetation, establishment of permanent vegetation, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. Use of impervious surfaces for stabilization should be avoided.

The following records shall be maintained and attached to the SWPPP: the dates when major grading activities occur; the dates when construction activities temporarily or permanently cease on a portion of the site; and the dates when stabilization measures are initiated.

Except as provided in Parts IV.D.2.a.(2)(a), (b), and (c) below, stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased.

(a) Where the initiation of stabilization measures by the 14th day after construction activity temporary or permanently ceased is precluded by snow cover or frozen ground conditions, stabilization measures shall be initiated as soon as practicable.

(b) Where construction activity on a portion of the site is temporarily ceased, and earth disturbing activities will be resumed within 21 days, temporary stabilization measures do not have to be initiated on that portion of site.

(c) In arid areas (areas with an average rainfall of 0 to 10 inches), semiarid areas (areas with an average annual rainfall of 10 to 20 inches), and areas experiencing droughts where the initiation of stabilization measures by the 14th day after construction activity has temporarily or permanently ceased is precluded by seasonably arid conditions, stabilization measures shall be initiated as soon as practicable.

(3) *Structural Practices.* The SWPPP must include a description of structural practices to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable. Structural practices may include but are not limited to: silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Placement of structural practices in floodplains should be avoided to the degree attainable. The installation of these devices may be subject to section 404 of the CWA.

(a) For common drainage locations that serve an area with ten (10) or more acres disturbed at one time, a temporary (or permanent) sediment basin that provides storage for a calculated volume of runoff from a 2 year, 24 hour storm from each disturbed acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. Where no such calculation has been performed, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. When computing the number of acres draining into a common location it is not necessary to include flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin.

In determining whether installing a sediment basin is attainable, the permittee may consider factors such as site soils, slope, available area on site, etc. In any event, the permittee must consider public safety, especially as it relates to children, as a design factor for the sediment basin and alternative sediment controls shall be used where site limitations would preclude a safe design. For drainage locations which serve ten (10) or more disturbed acres at one time and where a temporary sediment basin or equivalent controls is not attainable, smaller sediment basins and/or sediment traps should be used. Where neither the sediment basin nor equivalent controls are attainable due to site limitations, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries of the construction area and for those side slope boundaries deemed appropriate as dictated by individual site conditions. EPA encourages the use of a combination of sediment and erosion control measures in order to achieve maximum pollutant removal.

(b) For drainage locations serving less than 10 acres, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of the construction area unless a sediment basin providing storage for a calculated volume of runoff from a 2 year, 24 hour storm or 3,600 cubic feet of storage per acre drained is provided. EPA encourages the use of a combination of sediment and erosion control measures in order to achieve maximum pollutant removal.

b. *Storm Water Management.* A description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed must be included in the SWPPP. Structural measures should be placed on upland soils to the degree attainable. The installation of these devices may also require a separate permit under section 404 of the CWA. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with construction activity have been eliminated from the site. However, post-construction storm water BMPs that discharge pollutants from point sources once construction is completed, may in themselves, need authorization under a separate NPDES permit.

(1) Such practices may include but are not limited to: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices). The SWPPP shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels.

(2) Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel to provide a non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (*e.g.* no significant changes in the hydrological regime of the receiving water).

c. *Other Controls.* (1) No solid materials, including building materials, shall be discharged to waters of the United States, except as authorized by a permit issued under section 404 of the CWA.

(2) Off-site vehicle tracking of sediments and the generation of dust shall be minimized.

(3) The SWPPP shall be consistent with applicable State, Tribal and/or local waste disposal, sanitary sewer or septic system regulations to the extent these are located within the permitted area.

(4) The SWAPPP shall include a description of construction and waste materials expected to be stored on-site with updates as appropriate. The SWPPP shall also include a description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to storm water, and spill prevention and response.

(5) The SWPPP shall include a description of pollutant sources from areas other than construction (including storm water discharges from dedicated asphalt plants and dedicated concrete plants), and a description of controls and measures that will be implemented at those sites to minimize pollutant discharges.

(6) The SWPPP shall include a description of measures necessary to protect listed endangered or threatened species, or critical habitat, including any terms or conditions that are imposed under the eligibility requirements of Part I.B.3.e.(4) of this permit. Failure to describe and implement such measures will result in storm water discharges from construction activities that are ineligible for coverage under this permit.

d. *Approved State, Tribal or Local Plans.* (1) Permittees which discharge storm water associated with construction activities must ensure their storm water pollution prevention plan is consistent with requirements specified in applicable sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State, Tribal, or local officials.

(2) Storm water pollution prevention plans must be updated as necessary to remain consistent with any changes applicable to protecting surface water resources in sediment erosion site plans or site permits, or storm water management site plans or site permits approved by State, Tribal or local officials for which the permittee receives written notice.

3. Maintenance

All erosion and sediment control measures and other protective measures identified in the SWPPP must be maintained in effective operating condition. If site inspections required by Part IV.D.4. identify BMPs that are not operating effectively, maintenance shall be performed before the next anticipated storm event, or as necessary to maintain the continued effectiveness of storm water controls. If maintenance prior to the next anticipated storm event is impracticable, maintenance must be scheduled and accomplished as soon as practicable.

4. Inspections

Qualified personnel (provided by the permittee or cooperatively by multiple permittees) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen (14) calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.

Where sites have been finally or temporarily stabilized, runoff is unlikely due to winter conditions (*e.g.*, site is covered with snow, ice, or frozen ground exists), or during seasonal arid periods in arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches) such inspections shall be conducted at least once every month.

Permittees are eligible for a waiver of monthly inspection requirements until one month before thawing conditions are expected to result in a discharge if all of the following requirements are met: (1) The project is located in an area where frozen conditions are anticipated to continue for extended periods of time (*i.e.*, more than one month); (2) land disturbance activities have been suspended; and (3) the beginning and ending dates of the waiver period are documented in the SWPPP.

a. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Sediment and erosion control measures identified in the SWPPP shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. Where discharge locations are inaccessible, nearby downstream locations shall be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

b. Based on the results of the inspection, the SWPPP shall be modified as necessary (*e.g.*, show additional controls on map required by Part IV.D.1; revise description of controls required by Part IV.D.2) to include additional or modified BMPs designed to correct problems identified. Revisions to the SWPPP shall be completed within 7 calendar days following the inspection. If existing BMPs need to be modified or if additional BMPs are necessary, implementation shall be completed before the next anticipated storm event. If implementation before the next anticipated storm event is impracticable, they shall be implemented as soon as practicable.

c. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, and major observations relating to the implementation of the SWPPP shall be made and retained as part of the SWPPP for at least three years from the date that the site is finally stabilized. Major observations should include: the location(s) of discharges of sediment or other pollutants from the site; location(s) of BMPs that need to be maintained; location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location; and location(s) where additional BMPs are needed that did not exist at the time of inspection. Actions taken in accordance with Part IV.D.4.b of this permit shall be made and retained as part of the storm water pollution prevention plan for at least three years from the date that the site is finally stabilized. Such reports shall identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VI.G of this permit.

5. Non-Storm Water Discharges

Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2 or 3 of this permit that are combined with storm water discharges associated with construction activity must be identified in the SWPPP. The SWPPP shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

Part V. Retention of Records

A. Documents

The permittee shall retain copies of storm water pollution prevention plans and all reports required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, for a period of at least three years from the date that the site is finally stabilized. This period may be extended by request of the Director at any time.

B. Accessibility

The permittee shall retain a copy of the storm water pollution prevention plan required by this permit (including a copy of the permit language) at the construction site (or other local location accessible to the Director, a State, Tribal or local agency approving sediment and erosion plans, grading plans, or storm water management plans; local government officials; or the operator of a municipal separate storm sewer receiving discharges from the site) from the date of project initiation to the date of final stabilization. Permittees with day-to-day operational control over SWPPP implementation shall have a copy of the SWPPP available at a central location on-site for the use of all operators and those identified as having responsibilities under the SWPPP whenever they are on the construction site.

C. Addresses

Except for the submittal of NOIs and NOTs (see Parts II.C and VIII.B, respectively), all written correspondence concerning discharges in any State, Indian Country land or from any Federal facility covered under this permit and directed to the EPA, including the submittal of individual permit applications, shall be sent to the address of the appropriate EPA Regional Office listed below:

Region 1: CT, MA, ME, NH, RI, VT
United States EPA, Region 1, Office of Ecosystem Protection, Municipal

Assistance Unit, John F. Kennedy Federal Building-CMU, Boston, MA 02203

Region 2: NJ, NY, PR, VI
United States EPA, Region 2, Division of Environmental Planning and Protection, (2DEPP–WPB), Water Programs Branch, 290 Broadway, New York, NY 10007–1866

Region 3: DE, DC, MD, PA, VA, WV
United States EPA, Region 3, Water Management Division, (3WM55), Storm Water Staff, 841 Chestnut Building, Philadelphia, PA 19107

Region 7: IA, KS, MO, NE (except see Region 8 for Pine Ridge Reservation Lands)
United States EPA, Region 7, Water, Wetlands, and Pesticides Division, NPDES and Facilities Management Branch, Storm Water Staff, 726 Minnesota Avenue, Kansas City, KS 66101

Region 8: CO, MT, ND, SD, WY, UT (except see Region 9 for Goshute Reservation and Navajo Reservation lands), the Ute Mountain Reservation in NM, and the Pine Ridge Reservation in NE
United States EPA, Region 8, Ecosystems Protection Program (8EPR–EP), Storm Water Staff, 999 18th Street, Suite 500, Denver, CO 80202–2466

Region 9: AZ, CA, HI, NV, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Goshute Reservation in UT and NV, the Navajo Reservation in UT, NM, and AZ, the Duck Valley Reservation in ID, Fort McDermitt Reservation in OR
United States EPA, Region 9, Water Management Division, WTR–5, Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105

Region 10: AK, WA, ID (except see Region 9 for Duck Valley Reservation lands), OR (except see Region 9 for Fort McDermitt Reservation)
United States EPA Region 10, Office of Water OW–130, Storm Water Staff, 1200 6th Avenue, Seattle, WA 98101

Part VI. Standard Permit Conditions

A. Duty to Comply

1. The Permittee Must Comply With All Conditions of This Permit

Any permit noncompliance constitutes a violation of CWA and is grounds for reinforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions

The Director will adjust the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule **Federal Register**: December 31, 1996, Volume 61, Number 252, pages 69359–69366, as corrected, March 20, 1997, Volume 62, Number 54, pages 13514–13517) as mandated by the Debt Collection Improvement Act of 1996 for inflation on a periodic basis. This rule allows EPA's penalties to keep pace with inflation. The Agency is required to review its penalties at least once every four years thereafter and to adjust them as necessary for inflation according to a specified formula. The civil and administrative penalties listed below were adjusted for inflation starting in 1996.

a. *Criminal.* (1) *Negligent Violations.* The CWA provides that any person who negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(2) *Knowing Violations.* The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3) *Knowing Endangerment.* The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

(4) *False Statement.* The CWA provides that nay person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or by both. (*See* section 309(c)(4) of the Clean Water Act).

b. *Civil Penalties.* The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $27,500 per day for each violation.

c. *Administrative Penalties.* The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

(1) *Class I Penalty.* Not to exceed $11,000 violation nor shall the maximum amount exceed $27,500.

(2) *Class II Penalty.* Not to exceed $11,000 per day for each day during which the violation continues nor shall the maximum amount exceed $137,500.

B. Continuation of the Expired General Permit

If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and remain in force and effect. Any permittee who was granted permit coverage prior to the expiration date will automatically remain covered by the continued permit until the earlier of:

1. Reissuance or replacement of this permit, at which time the permittee must comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or

2. The permittee's submittal of a Notice of Termination; or

3. Issuance of an individual permit for the permittee's discharges; or

4. A formal permit decision by the Director not to reissue this general permit, at which time the permittee must seek coverage under an alternative general permit or an individual permit.

C. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of

adversely affecting human health or the environment.

E. Duty to Provide Information

The permittee shall furnish to the Director or an authorized representative of the Director any information which is requested to determine compliance with this permit or other information.

F. Other Information

When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he or she shall promptly submit such facts or information.

G. Signatory Requirements

All Notices of Intent, Notices of Termination, storm water pollution prevention plans, reports, certifications or information either submitted to the Director or the operator of a large or medium municipal separate storm sewer system, or that this permit requires be maintained by the permittee, shall be signed as follows:

1. All Notices of Intent and Notices of Termination shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars) if authority to sign documents has been assigned to delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (*e.g.*, Regional Administrator of EPA).

2. All reports required by this permit and other information requested by the Director or authorized representative of the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specifies either an individual or position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

c. *Changes to Authorization.* If an authorization under Part II.B is no longer accurate because a different operator has responsibility for the overall operation of the construction site, a new Notice of Intent satisfying the requirements of Part II.B must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative. The change in authorization must be submitted within the time frame specified in Part II.A.3, and sent to the address specified in Part II.C.

d. *Certification.* Any person signing documents under Part VI.G shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

H. Penalties for Falsification of Reports

Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both.

I. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

J. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

K. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

L. Requiring an Individual Permit or an Alternative General Permit

1. The Director may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the Director to take action under this paragraph. Where the Director requires a permittee authorized to discharge under this permit to apply for an individual NPDES permit, the Director shall notify the permittee in writing that a permit application is required. This notification shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for the permittee to file the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Applications shall be submitted to the appropriate Regional Office indicated in Part V.C of this permit. The Director may grant additional time to submit the application upon request of the applicant. If a permittee fails to submit in a timely manner an individual NPDES permit application as required by the Director under this paragraph, then the applicability of this permit to the individual NPDES permittee is automatically terminated at the end of the day specified by the Director for application submittal.

2. Any permittee authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. In such cases, the permittee shall submit an individual application in accordance with the requirements of 40 CFR 122.26(c)(1)(ii), with reasons supporting the request, to the Director at the address for the appropriate Regional Office indicated in Part V.C of this permit. The request may be granted by issuance of any individual permit or an alternative general permit if the reasons cited by the permittee are adequate to support the request.

3. When an individual NPDES permit is issued to a permittee otherwise subject to this permit, or the permittee is authorized to discharge under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Director.

M. State/Tribal Environmental Laws

1. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State/Tribal law or regulation under authority preserved by section 510 of the Act.

2. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

N. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of this permit.

O. Inspection and Entry

The permittee shall allow the Director or an authorized representative of EPA, the State/Tribe, or, in the case of a construction site which discharges through a municipal separate storm sewer, an authorized representative of the municipal owner/operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and

3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

P. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Part VII. Reopener Clause

A. If there is evidence indicating that the storm water discharges authorized by this permit cause, have the reasonable potential to cause or contribute to, a violation of a water quality standard, the permittee may be required to obtain an individual permit or an alternative general permit in accordance with Part I.C of this permit, or the permit may be modified to include different limitations and/or requirements.

B. Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5.

C. EPA may propose a modification to this permit after further discussions between the Agency and the Advisory Council on Historic Preservation for the protection of historic properties.

Part VIII. Termination of Coverage

A. Notice of Termination

Permittees must submit a completed Notice of Termination (NOT) that is signed in accordance with Part VI.G of this permit when one or more of the conditions contained in Part I.D.2. (Terminating Coverage) have been met at a construction project. The NOT form found in Addendum D will be used unless it has been replaced by a revised version by the Director. The Notice of Termination shall include the following information:

1. The NPDES permit number for the storm water discharge identified by the Notice of Termination;

2. An indication of whether the storm water discharges associated with construction activity have been eliminated (*i.e.*, regulated discharges of storm water are being terminated) or the permittee is no longer an operator at the site;

3. The name, address and telephone number of the permittee submitting the Notice of Termination;

4. The name of the project and street address (or a description of location if no street address is available) of the construction site for which the notification is submitted;

5. The latitude and longitude of the construction site; and

6. The following certification,signed in accordance with Part VI.G (signatory requirements) of this permit. For construction projects with more than one permittee and/or operator, the permittee need only make this certification for those portions of the construction site where the permittee was authorized under this permit and not for areas where the permittee was not an operator:

"I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that authorized by a general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this notice of termination, I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this Notice of Termination does not release an operator from liability for any violations of this permit or the Clean Water Act."

For the purposes of this certification, elimination of storm water discharges associated with construction activity means that all disturbed soils at the portion of the construction site where the operator had control have been finally stabilized (as defined in Part IX.I) and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time to ensure final stabilization is maintained, or that all storm water discharges associated with construction activities from the identified site that

are authorized by a NPDES general permit have otherwise been eliminated from the portion of the construction site where the operator had control.

B. Addresses

1. All Notices of termination, signed in accordance with Part VI.G of this permit, are to be submitted using the form provided by the Director (or a photocopy thereof), to the address specified on the NOT form.

Part IX. Definitions

A. *Best Management Practices (BMPs)* means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operating procedures, and practice to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

B. *Control Measure* as used in this permit, refers to any Best Management Practice or other method used to prevent or reduce the discharge of pollutants to waters of the United States.

C. *Commencement of Construction* the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

D. *CWA* means the Clean Water Act or the Federal Water Pollution Control Act, 33 U.S.C. section 1251 *et seq.*

E. *Director* means the Regional Administrator of the Environmental Protection Agency or an authorized representative.

F. *Discharge* when used without qualification means the "discharge of a pollutant."

G. *Discharge of Storm Water Associated with Construction Activity* as used in this permit, refers to a discharge of pollutants in storm water runoff from areas where soil disturbing activities (*e.g.*, clearing, grading, or excavation), construction materials or equipment storage or maintenance (*e.g.*, fill piles, borrow area, concrete truck washout, fueling), or other industrial storm water directly related to the construction process (*e.g.*, concrete or asphalt batch plants) are located.

H. *Facility or Activity* means any NPDES "point source" or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

I. *Final Stabilization* means that either:

1. All soil disturbing activities at the site have been completed and a uniform (*e.g.*, evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed. In such parts of the country, background native vegetation will cover less than 100% of the ground (*e.g.*, arid areas, beaches). Establishing at least 70% of the natural cover of the native vegetation meets the vegetative cover criteria for final stabilization (*e.g.*, if the native vegetation covers 50% of the ground, 70% of 50% would require 35% total cover for final stabilization; on a beach with no natural vegetation, no stabilization is required); or

2. For individual lots in residential construction by either: (a) The homebuilder completing final stabilization as specified above, or (b) the homebuilder establishing temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for, and benefits of, final stabilization. (Homeowners typically have an incentive to put in the landscaping functionally equivalent to final stabilization as quick as possible to keep mud out of their homes and off sidewalks and driveways.); or

3. For construction projects on land used for agricultural purposes (*e.g.*, pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturb that were not previously used for agricultural activities, such as buffer strips immediately adjacent to "water of the United States," and area which are not being returned to their preconstruction agricultural use must meet the final stabilization criteria (1) or (2) above.

J. *Flow-Weighted Composite Sample* means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

K. *Large and Medium Municipal Separate Storm Sewer System* means all municipal separate storm sewers that are either:

1. Located in an incorporated place (city) with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census (these cities are listed in Appendices F and G of 40 CFR 122); or

2. Located in the countries with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties (these counties are listed in Appendices H and I of 40 CFR 122); or

3. Owned or operated by a municipality other than those described in paragraph (i) and (ii) and that are designated by the Director as part of the large or medium municipal separate storm sewer system.

L. *NOI* means Notice of Intent to be covered by this permit (see Part II of this permit.)

M. *NOT* means Notice of Termination (see Part VIII of this permit).

N. *Operator* for the purpose of this permit and in the context of storm water associated with construction activity, means any party associated with a construction project that meets either of the following two criteria:

1. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or

2. The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions (*e.g.*, they are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions).

This definition is provided to inform permittees of EPA's interpretation of how the regulatory definitions of "owner or operator" and "facility or activity" are applied to discharges of storm water associated with construction activity.

O. *Owner or operator* means the owner or operator of any "facility or activity" subject to regulation under the NPDES program.

P. *Point Source* means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

Q. *Pollutant* is defined at 40 CFR 122.2. A partial listing from this definition includes: dredged spoil, solid waste, sweage, garbage, sewage sludge, chemical wastes, biological materials,

heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial or municipal waste.

R. *Runoff coefficient* means the fraction of total rainfall that will appear at the conveyance as runoff.

S. *Storm Water* means storm water runoff, snow melt runoff, and surface runoff and drainage.

T. *Storm Water Associated with Industrial Activity* is defined at 40 CFR 122.26(b)(14) and incorporated here by reference. Most relevant to this permit is 40 CFR 122.26(b)(14)(x), which relates to construction activity including clearing, grading and excavation activities that result in the disturbance of five (5) or more acres of total land area, or are part of a larger common plan of development or sale.

U. *Waters of the United States* means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

2. All interstate waters, including interstate "wetland";

3. All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflat, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;

b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

c. Which are used or could be used for industrial purposes by industries in interstate, commerce;

4. All impoundments of waters otherwise defined as waters of the United States under this definition;

5. Tributaries of waters identified in paragraphs (a) through (d) of this definition;

6. The territorial sea; and

7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraph 1. through 6. of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirement of the CWA (other than cooling ponds for steam electric generation stations per 40 CFR 423) which also meet the criteria of this definition) are not waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Part X. Permit Conditions Applicable to Specific States, Indian Country Lands, or Territories

The provisions of this Part provide modifications or additions to the applicable conditions of Parts I through IX of this permit to reflect specific additional conditions required as part of the State or Tribal CWA Section 401 certification process, or Coastal Zone Management Act certification process, or as otherwise established by the permitting authority. The additional revisions and requirements listed below are set forth in connection with, and only apply to, the following States, Indian Country lands and Federal facilities.

A. Region 1

1. CTR10*##I: Indian Country Lands in the State of Connecticut

No additional requirements.

2. MAR10*###: Commonwealth of Massachusetts, Except Indian Country Lands

a. Part I.B.4 is added to the permit as follows:

Special Requirements for the State of Massachusetts

a. Discharges covered by the general permit must comply with the provisions of 314 CMR 3.00, 314 CMR 4.00, 314 CMR 9.00 and 310 CMR 10.00 and any related policies promulgated under the authority of the Massachusetts Clean Waters Act, M.G.L. c.21, ss.23–56, and Wetlands Protection Act, M.G.L. c.131 s.40. Specifically, construction activities subject to this permit must comply with applicable storm water performance standards prescribed by State regulation or policy. Construction activities subject to jurisdiction under 310 CMR 10.00 must comply with an Order or Superseding Order of Conditions. An application for a permit under 314 CMR 3.00 is required only when required by 314 CMR 3.04(2)(b) or is otherwise identified in 314 CMR 3.00 or Massachusetts Department of Environmental Protection policy as a discharge requiring a permit application.

b. The Massachusetts Department of Environmental Protection may request a copy of the storm water pollution prevention plan or conduct an inspection of any facility covered by this permit to ensure compliance with State law requirements. The Department may enforce its certification conditions.

3. MAR10*##I: Indian Country Lands in the Commonwealth of Massachusetts

No additional requirements.

4. MER10*###: State of Maine, Except Indian Country Lands

a. The following is added to the introductory section of Part IV:

The applicant for a project that does not require a permit pursuant to Maine's Storm Water Management Law, 38 MRSA 420–D due to the exemption at 38 MRSA 490–D(7)(D), must demonstrate to the satisfaction of the Maine Department of Environmental Protections (MDEP) prior to starting construction that the project meets the standards adopted pursuant to Maine's Storm Water Management Law, 38 MRSA 420–D.

b. The following is added to the introduction to Part IV. D:

For a project not requiring a permit pursuant to Maine's Storm Water Management Law, 38 MRSA 420–D, due to the exemption at 38 MRSA–D(7)(D),* the following information is provided: Maine's storm water permit application, as approved by MDEP, is considered to meet the requirements of the storm water pollution prevention plan as described in Part IV D.1, 2a, 2b, and 2c(1–5). Maine's storm water permit application is not considered to meet the requirements of Part IV D.2c(6) (threatened and endangered species and/or critical habitat), Part IV.D.3 (maintenance), Part IV.D.4. (inspection), or Part IV D.5. (non-storm water discharges).

For a project requiring a permit pursuant to Maine's Storm Water Management Law, 38 MRSA 420–D, or otherwise required to meet Maine's storm water standards adopted pursuant to 38 MRSA 420–D, the following information is provided: a permit or variance application addressing Storm water, as approved by MDEP, is considered to meet the requirements of the storm water pollution prevention plan as described in Part IV.D.1, 2a, 2b, 2c(1–5), 3 and 4. Maine's permit or variance application addressing storm water, as approved by MDEP, is not considered to meet the requirements in Part IV.D.2c(6) and (7) which address threatened and endangered species and/or critical habitat and historic sites, or Part IV.D.5 (non storm water discharges).–

*A project that is exempt form the Storm Water Management Law, due to the exemption at 38 MRSA 490–D(7)(D) and some other exemptions listed at 38 MRSA 490–D(7), is not required to complete a Maine storm water permit application.

5. MER10*##I: Indian Country Lands in the State of Maine.

No additional requirements.

6. NHR10*###: State of New Hampshire, Except Indian County Lands

No additional requirements.

7. RIR10*##I: Indian Country Lands in the State of Rhode Island

No additional requirements.

8. VTR10*##F: Federal Facilities in the State of Vermont, Except Those Located on Indian Country Lands

No additional requirements.

B. Region 2

1. NYR10*##I: Indian Country Lands in the State of New York

No additional requirements.

2. PRR10*###: The Commonwealth of Puerto Rico

No additional requirements.

C. Region 3

1. DCR10*###: The District of Columbia

No additional requirements.

2. DER10*##F: Federal Facilities in the State of Delaware

No additional requirements.

D. Region 7

1. IAR10*##I: Indian Country Lands in the State of Iowa

No additional requirements.

2. KSR10*##I: Indian Country Lands in the State of Kansas

No additional requirements.

3. NER10*##I: Indian Country Lands in the State of Nebraska, Except Pine Ridge Reservation Lands (see Region 8)

No additional requirements.

E. Region 8

1. COR10*##F: Federal Facilities in the State of Colorado, Except Those Located on Indian Country Lands

No additional requirements.

2. COR10*##I: Indian Country Lands in the State of Colorado, Including the Portion of the Ute Mountain Reservation Located in New Mexico

No additional requirements.

3. MTR10*##I: Indian Country Lands in the State of Montana

a. Confederated Salish & Kootenai Tribes of the Flathead Reservation. Copies of Notices of Intent (NOI), Notices of Termination (NOT), and Storm Water Pollution Prevention Plans (SWPPPs) must be submitted to the Confederated Salish and Kootenai Tribes' Natural Resources Department.

(1) Part II.C.2 is added to the permit as follows:

Special NOI Requirements for the Flathead Indian Reservation. NOIs shall also be submitted to the Confederated Salish and Kootenai Tribes at the same time they are submitted to EPA at the following address: Confederated Salish and Kootenai Tribes, Natural Resources Department, Department Head, P.O. Box 278, Pablo, MT 59855.

(2) Part VIII.B.2 is added to the permit as follows:

Special NOT Requirements for the Flathead Indian Reservation. NOTs shall also be submitted to the Confederated Salish and Kootenai Tribes at the same time they are submitted to EPA. NOTs are to be sent to the address given in Part II.C.2.

(3) Part IV.A.3 is added to the permit as follows:

Special Storm Water Pollution Prevention Plan Requirements for the Flathead Indian Reservation. Storm Water Pollution Prevention Plans (SWPPPs) must be submitted to the Confederated Salish and Kootenai Tribes' Natural Resources Department before a project on the Flathead Indian Reservation begins. SWPPPs are to be sent to the address given in Part II.C.2.

b. All Other Indian Country lands in Montana. No additional requirements.

4. NDR10*##I: Indian Country Lands in the State of North Dakota, Including That Portion of the Standing Rock Reservation Located in South Dakota (Except for the Lake Traverse Reservation Which is Covered Under South Dakota Permit SDR10*##I Listed Below)

No additional requirements.

5. SDR10*##I: Indian Country Lands in the State of South Dakota, Including the Portion of the Pine Ridge Reservation Located in Nebraska and the Portion of the Lake Traverse Reservation Located in North Dakota (Except for the Standing Rock Reservation Which is Covered Under North Dakota Permit NDR10*##I Listed Above)

No additional requirements.

6. UTR10*##I: Indian Country Lands in the State of Utah, Except Goshute and Navajo Reservation Lands (see Region 9)

No additional requirements.

7. WYR10*##I: Indian Country Lands in the State of Wyoming

No additional requirements.

F. Region 9

1. ASR10*###: The Island of American Samoa

No additional requirements.

2. AZR10*###: The State of Arizona, Except Indian Country Lands

a. Part II.C.2 is added to the permit as follows:

Special NOI Requirements for the State of Arizona. NOIs shall also be submitted to the State of Arizona Department of Environmental Quality at the following address: Storm Water Coordinator, Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, Arizona 85012.

NOIs submitted to the State of Arizona shall include the well registration number if storm water associated with industrial activity is discharged to a dry well or an injection well.

b. Part VIII.B.2 is added to the permit as follows:

Special Not Requirement for the State of Arizona. NOTs shall also be submitted to the State of Arizona Department of Environmental Quality at the following address: Storm Water Coordinator, Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, Arizona 85012.

3. AZR10*##I: Indian Country Lands in the State of Arizona, Including Navajo Reservation Lands in New Mexico and Utah

No additional requirements.

4. CAR10*##I: Indian Country Lands in the State of California

No additional requirements.

5. GUR10*###I: The Island of Guam

a. Part II.C.2 of the permit is added as follows:

Special NOI Requirement for Guam. NOIs shall also be submitted to the following address: Guam Environmental Protection Agency, P.O. Box 22439 GMF, Barrigada, Guam 96921.

b. Part VI.L.4 is added to the permit as follows: Special Requirement for Guam. Individual permit applications required under this section shall also be submitted to the following address: Guam Environmental Protection Agency, P.O. Box 22439 GMF, Barrigada, Guam 96921.

6. JAR10*###: Johnston Atoll

No additional requirements.

7. MWR10*###: Midway Island and Wake Island

No additional requirements.

8. NIR10*###: Commonwealth of the Northern Mariana Islands

a. Part II.A.8 of the permit is added as follows:

NOI Deadline for CNMI. The NOI submitted to the CNMI Department of Environmental Quality (DEQ) shall be postponed seven (7) calendar days prior to any storm water discharges.

b. Part II.B.4 of the permit is added as follows:

Additional Requirements for CNMI. The NOI submitted to CNMI and EPA Region 9 shall be accompanied by a letter from the CNMI DEQ approving the storm water pollution prevention plan required by Part IV of this permit.

c. Part II.C.2 of the permit is added as follows:

Special NOI Requirements for CNMI. NOIs shall also be submitted to the following addresses:

Commonwealth of the Northern Mariana Islands, Division of Environmental Quality, P.O. Box 1304, Saipan, MP 96950

EPA, Region 9, Section WTR–5, 75 Hawthorne Street, San Francisco, CA 94105

d. Part IV.A.3 of the permit is added as follows:

Special Requirements for CNMI. Storm water pollution prevention plans (SWPPPs) required by this permit shall be submitted to the CNMI DEQ for review and approval along with applicable fees associated with a 401 Water Quality Certification prior to submittal of an NOI to EPA and the CNMI DEQ. SWPPPs are to be sent to the address given in Part II.C.2.

9. NVR10*##: Indian Country Lands in the State of Nevada, including the Duck Valley Reservation in Idaho, the Fort McDermitt Reservation in Oregon and the Goshute Reservation in Utah

No additional requirements.

G. Region 10

1. AKR10*###: The State of Alaska, Except Indian Country Lands

a. Part II.C.2 is added to the permit as follows:

Special NOI Requirements for the State of Alaska. A copy of the Notice of Intent must be sent to the Department of Environmental Conservation offices as listed below:

For projects nearest to Anchorage or Fairbanks: Alaska Department of Environmental Conservation, Water Quality Permitting Section/Storm Water, 555 Cordova Street, Anchorage, AK 99501, (907) 563–6529, FAX (907) 562–4026.

For projects in southeast Alaska, nearest to Juneau: Alaska Department of Environmental Conservation, Water Quality Permitting Section/Storm Water, 410 Willoughby Avenue, Juneau, AK 99801.

b. Part IV.A.3 is added to the permit as follows:

Special Storm Water Pollution Prevention Plan Requirements for the State of Alaska. Permittees shall obtain DEC approval of the Storm Water Pollution Prevention Plan for the construction site pursuant to 18 AAC 72.600(a). Plans are to be approved and sealed by a Professional Engineer registered in the State of Alaska, shall be submitted to the same DEC office that the Notice of Intent is sent to, and shall be accompanied by any State-required fee. A failure to secure approval as provided in this paragraph shall be deemed a violation of this general permit, but shall not prevent storm water discharges from being authorized by this general permit. (18 AAC 72.600(a), 18 AAC 72.610(a)(8), and 18 AAC 72.990(32)).

c. Part IV. D.2.b.(3) is added to the permit as follows:

Special Storm Water Management Requirements for the State of Alaska. The permittee is responsible for any post-stabilization requirements, such as the removal of pollution control devices and the control of pollutant discharges at that time, if these devices are not a permanent part of the pollution prevention controls after final stabilization.

d. Part VIII.B.2 is added to the permit as follows:

Special NOT Requirements for the State of Alaska. NOTs shall also be submitted to the State of Alaska at the same time they are submitted to EPA. NOTs are to be sent to the address given in Part II.C.2.

s. AKR10*##I: Indian Country Lands in Alaska

No additional requirements.

3. IDR10*###: The State of Idaho, Except Indian Country lands

a. Part III.F is added to the permit as follows:

Special Water Quality Standard Requirements for the State of Idaho. In addition to the requirements for coverage identified in the subject permit, the Storm Water Pollution Prevention Plan (SWPPP) design and associated storm water discharge quality shall demonstrate compliance with applicable Idaho Water Quality Standards.

4. IDR10*##I: Indian Country Lands in the State of Idaho, Except Duck Valley Reservation Lands (see Region 9)

No additional requirements.

5. ORR10*##I: Indian Country Lands in the State of Oregon Except Fort McDermitt Reservation Lands (see Region 9)

No additional requirements.

6. WAR*##F: Federal Facilities in the State of Washington, Except Those Located on Indian Country Lands

The Washington Department of Ecology includes these conditions to ensure compliance with R.W. 90.48.080 and rules referenced in the conditions above established in accordance with R.W. 90.48.035.

a. Part III.F.1 is added to the permit as follows:

Special Requirements for Federal Facilities in the State of Washington. The permittee is responsible for achieving compliance with State of Washington surface water quality standards (Chapter 173–201A WAC), sediment management standards (Chapter 173–204 WAC), ground water quality standards (Chapter 173–200 WAC), and human health based criteria in the National Toxics Rule (**Federal Register**, Vol. 57, No. 246, Dec. 22, 1992, pages 60848–609233).

b. Part III.F.2 is added to the permit as follows:

Special Ground Water Protection Requirements for Federal Facilities in the State of Washington. Diversion of storm water discharges to ground water from existing discharges to surface water shall not be authorized by this permit if this causes a violation or the potential for violation of ground water standards (Chapter 173–200 WAC). Such discharges below the surface of the ground are also regulated by the Underground Injection Control Program (Chapter 173–218 WAC).

c. Part III.F.3 is added to the permit as follows:

Special Numeric Limitations for Federal Facilities in the State of Washington.

Discharges of storm water to surface water from concrete batch or hot mix asphalt plants covered by this permit shall have an average monthly or daily maximum pH between 6.0–9.0 and a turbidity of less than 50 NTUs.

Discharges of storm water to the ground from concrete batch or hot mix asphalt plants covered by this permit shall have an average monthly or daily maximum pH between 6.5–8.5.

It needs to be reiterated that this permit does not authorize the discharge

of process water from concrete batch or hot mix asphalt plants.

d. Part III.F.4 is added to the permit as follows:

Special Requirement for Federal Facilities in the State of Washington. "Comeback Asphalt" must be contained within a lined area so that no leaching to ground or surface water can occur.

7. WAR10*##I: Indian Country Lands in the State of Washington

a. Confederated Tribes of the Chehalis Reservation. Copies of Notices of Intent (NOI) and Storm Water Pollution Prevention Plans (SWPPPs) must be submitted to the Chehalis Tribal Department of Natural Resources.

(1) Part II.C.2 is added to the permit as follows:

Special NOI Requirements for the Confederated Tribes of the Chehalis Reservation.

NOI shall also be submitted to the Confederated Tribes of the Chehalis Reservation at the same time they are submitted to EPA at the following address: Confederated Tribes of Chehalis Reservation, Department of Natural Resources, 420 Howanut Road, Oakville, WA 98568.

(2) Part IV.A.3 is added to the permit as follows:

Special Storm Water Pollution Prevention Plan Requirements for the Confederated Tribes of the Chehalis Reservation. Storm Water Pollution Prevention Plans (SWPPPs) must be submitted to the Chehalis Tribal Department of Natural Resources for review and approval prior to the beginning of any discharge activities taking place. SWPPPs are to be sent to the address given in Part II.C.2.

(3) Part III.I is added to the permit as follows:

Special Water Quality Standard Requirements for the Confederated Tribes of the Chehalis Reservation. The permittee shall be responsible for achieving compliance with Confederated Tribes of Chehalis Reservation's Water Quality Standards.

b. Puyallup Tribe of Indians. Copies of Notices of Intent (NOI) and Storm Water Pollution Prevention Plans (SWPPPs) must be submitted to the Puyallup Tribe Environmental Department.

(1) Part II.C.2 of the permit is added as follows:

Special NOI Requirements for the Puyallup Tribe of Indians. NOIs shall also be submitted to the Puyallup Tribe Environmental Department at the same time they are submitted to EPA at the following address: Puyallup Tribe Environmental Department, 2002 E. 28th St., Tacoma, WA 98404.

(2) Part IV.A.3 is added to the permit as follows:

Special Storm Water Pollution Prevention Plan Requirements for the Puyallup Tribe of Indians. Storm Water Pollution Prevention Plans (SWPPPs) must be submitted to the Puyallup Tribe Environmental Department for review and approval prior to the beginning of any discharge activities taking place. SWPPPs are to be sent to the address given in Part II.C.2.

(3) Part III.F. is added to the permit as follows:

Special Water Quality Standard Requirements for the Puyallup Tribe of Indians. Each permittee shall be responsible for achieving compliance with the Puyallup Tribe's Water Quality Standards.

c. All Other Indian Country lands in Washington. No additional requirements.

Addendum A—Endangered Species

I. Instructions for Applicants

A. Background

To meet its obligations under the Clean Water Act and the Endangered Species Act (ESA) and to promote these Acts' goals, the Environmental Protection Agency (EPA) is seeking to ensure the activities regulated by the Construction General Permit (CGP) are protective of endangered and threatened species and critical habitat. To ensure that those goals are met, applicants for CGP coverage are required under Part I.B.3.e. to assess the impacts of their storm water discharges and storm water discharge-related activities on Federally listed endangered and threatened species ("listed species") and designated critical habitat ("critical habitat") by following Steps One through Six listed below. EPA strongly recommends that applicants follow these steps at the earliest possible stage to ensure that measures to protect listed species and critical habitat are incorporate early in the planning process. At minimum, the procedures should be followed when developing the storm water pollution prevention plan.

Permittees and applicants also have an independent ESA obligation to ensure that their activities do not result in any prohibited "takes" of listed species.[1] Many of the measures required in the CGP and in these instructions to protect species may also assist permittees in ensuring that their construction activities do not result in a prohibited take of species in violation of section 9 of the ESA. Applicants who plan construction activities in areas that harbor endangered and threatened species are advised to ensure that they are protected from potential takings liability under ESA section 9 by obtaining either an ESA section 10 permit or by requesting formal consultation under ESA section 7 (as described in more detail in Step Seven below). Applicants who seek protection from takings liability should be aware that it is possible that some specific construction activities may be too unrelated to storm water discharges to be afforded incidental take coverage through an ESA section 7 consultation that is performed to meet the eligibility requirements for CGP coverage. In such instances, applicants should apply for an ESA section 10 permit. Where applicants are not sure whether to pursue a section 10 permit or a section 7 consultation for takings protection, they should confer with the appropriate Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS) office.

This permit provides for the Possibility of multiple permittees at a construction site. Applicants should be aware that in many cases they can meet the permit eligibility requirements by relying on another operator's certification of eligibility under Part 1.B.3.e.(2)(a), (b), or (c). this is allowed under Part I.B.3.e.(2)(d) of the permit. However, the other operator's certification must apply to the applicant's project area and must address the effects from the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat. By certifying eligibility under Part I.B.3.e.(2)(d), the applicant agrees to comply with any measures or controls upon which the other operator's certification under Part I.B.3.e.(2)(a), (b) or (c) was based. This situation will typically occur where a developer or primary contractor, such as one for construction of a subdivision or industrial part, conducts a comprehensive assessment of effects on listed species and critical habitat for the entire construction project, certifies eligibility under Part I.B.3.e.(2)(a), (b) or (c), and that certification is relied upon by other operators (*i.e.*, contractors) at

[1] Section 9 of the ESA prohibits any person from "taking" a listed species (e.g., harassing or harming it) unless: (1) The taking is authorized through a "incidental take statement" as part of undergoing ESA § 7 formal consultation; (2) where an incidental take permit is obtained under ESA § 10 (which requires the development of a habitat conservation plan); or (3) where otherwise authorized or exempted under the ESA. This prohibition applies to all entities including private individuals, businesses, and governments.

the site. However, applicants that consider relying on another operator's certification should carefully review that certification along with any supporting information. If an applicant does not believe that the operator's certification provides adequate coverage for the applicant's storm water discharges and storm water discharge-related activities or for the applicant's particular project area, the applicant should provide its own independent certification under Part I.B.3.e.(2)(a), (b), or (c).

B. Procedures

To receive coverage under the Construction General Permit, applicants must assess the potential effects of their storm water discharges and storm water discharge-related activities on listed species and their critical habitat. To make this assessment, applicants must follow the steps outlined below prior to completing and submitting Notice of Intent (NOI) form. Applicants who are able to certify eligibility under Parts I.B.3.e.(2)(b), (c) or (d) because of a previously issued ESA section 10 permit, a previously completed ESA section 7 consultation, or because the applicant's activities were already addressed in another operator's certification of eligibility may proceed directly to Step Six.

Note—The revised NOI form which was included in the CGP (see 62 FR 29822–29823, June 2, 1997) requires that applicants provide detailed certification information on listed species. That form is still under development and is not expected to be finalized before this permit is issued. Until the revised NOI form is finalized, applicants must use the existing NOI form which does not contain the specific certification provisions relating to listed species and critical habitats at construction projects. However, use of the existing NOI form does not relieve applicants of their obligation to follow the procedures listed below to determine if their construction storm water discharges or storm water discharge-related activities meet permit eligibility requirements for the protection of listed species and critical habitat. By following these instructions, applicants will have sufficient information on listed species and critical habitat in order to complete either the existing or revised NOI form and sign the certification statement.

Step One: Determine if the Construction Site is Found Within Designated Critical Habitat for Listed Species

Some, but not all, listed species have designated critical habitat. Exact locations of such habitat is provided in the Service regulations at 50 CFR Parts 17 and 226. To determine if their construction site occurs within designated critical habitat, applicants should either:

- Contact the nearest Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) Office. A list of FWS and NMFS offices is found in Section II of this Addendum; or
- Contact the State or Tribal Natural Heritage Centers. These centers compile and disseminate information on Federally listed and other protected species. They frequently have the most current information on listed species and critical habitat. A list of these centers is provided in Section III of this Addendum; or
- Review those regulations (which can be found in many larger libraries).

If the construction site is not located in designated critical habitat, then the applicant does not need to consider impacts to critical habitat when following Steps Two through Six below. If the site is located within critical habitat, then the applicant must look at impacts to critical habitat when following Steps Two through Six. Note that many but not all measures imposed to protect listed species under these steps will also protect critical habitat. Thus, meeting the eligibility requirements of this permit may require measures to protect critical habitat that are separate from those to protect listed species.

Step Two: Determine if Listed Species are Located in the County(ies) Where the Construction Activity Will Occur

Section IV of the Addendum contains a county-by-county list of listed endangered and threatened species ("listed species"), and proposed endangered and threatened species ("proposed species"). Since the list was current as of September 1, 1997, applicants must also check with other sources for updated species and county information. These sources include: Sections II and III of this Addendum; EPA's Office of Wastewater Management's web page at "http://www.epa.gov/owm" where updates of the county-by-county list will be posted on a periodic basis; **Federal Register** Notices; State wildlife protection offices; a biologist or similar professional in the environmental field; or any other method which can be reasonably expected to provide this information. Applicants with construction projects located in EPA Region 2 can call the Storm Water General Permits Hotline at (800) 245–6510 for further assistance, while applicants with projects located in EPA Regions 1, 3, 7, 8, 9 and 10 may contact the appropriate EPA Regional Office.

Where a facility is located in more than one county, the lists for all counties should be reviewed. Where a facility discharges into a water body which serves as a border between counties or which crosses a county line which is in the immediate vicinity of the point of discharge, applicants should also review the species list for the county which lies immediately downstream or is across the water body from the point of discharge.

After a review of the available information from the sources mentioned above, if no listed species are located in a facility's county or if a facility's county is not listed, and the construction site is not located in critical habitat as described under Step One, an applicant is eligible for CGP coverage without further inquiry into the presence of, or effect to, listed species. The applicant must check the appropriate certification item on the revised NOI form (Part I.B.3.e.(2)(a)).

Once the applicant has determined which listed species are located in his or her facility's county, the applicant must follow Step Three.

Step Three: Determine if Any Federally Listed Endangered and Threatened Species May Be Present in the Project Area

The project area consists of:

- The areas on the construction site where storm water discharges originate and flow toward the point of discharge into the receiving waters (including areas where excavation, site development, or other ground disturbance activities occur) and the immediate vicinity.

Example(s)

1. Where bald eagles nest in a tree that is on or bordering a construction site and could be disturbed by the construction activity.

2. Where grading causes storm water to flow into a small wetland or other habitat that is on the site which contains listed species.

- The areas where storm water discharges flow from the construction site to the point of discharge into receiving waters.

Example(s)

1. Where storm water flows into a ditch, swale, or gully which leads to receiving waters and where listed species (such as amphibians) are found in the ditch, swale, or gully.

- The areas where storm water from construction activities discharge into receiving waters and the areas in the immediate vicinity of the point of discharge.

Example(s)

1. Where storm water from construction activities discharges into a

stream segment that is known to harbor listed aquatic species.

• The areas where storm water BMPs will be constructed and operated, including any areas where storm water flows to and from BMPs.

Example(s)

1. Where a storm water retention pond would be built.

The protect area will vary with the size and structure of the construction activity, the nature and quantity of the storm water discharges, the storm water discharge-related activities and the type of receiving water. Given the number of construction activities potentially covered by the CGP, no specific method to determine whether listed species may be located in the project area is required for coverage under the CGP. Instead, applicants should use the method which allows them to determine, to the best of their knowledge, whether listed species are located in their project area. These methods may include:

• Conducting visual inspections: This method may be particularly suitable for construction sites that are smaller in size or located in non-natural settings such as highly urbanized areas or industrial parks where there is little or no natural habitat, or for construction activities that discharge directly into municipal storm water collection systems.

• Contacting the nearest State or Tribal wildlife agency, the Fish and Wildlife Service (FWS), or the National Marine Fisheries Service (NMFS). Many endangered and threatened species are found in well-defined areas or habitats. Such information is frequently known to State, Tribal, or Federal wildlife agencies. A list of FWS and NMFS offices is provided in section II of this Addendum below.

• Contacting local/regional conservation groups or the State or Tribal Natural Heritage Centers (see section III of this Addendum). State and local conservation groups may have location specific listed species information. The Natural Heritage Centers inventory species and their locations and maintain lists of sightings and habitats.

• Submitting a data request to a Natural Heritage Center. Many of these centers will provide site specific information on the presence of listed species in a project area. Some of these centers will charge a fee for researching data requests.

• Conducting a formal biological survey. Larger construction sites with extensive storm water discharges may choose to conduct biological surveys as the most effective way to assess whether species are located in the project area and whether there are likely adverse effects. Biological surveys are frequently performed by environmental consulting firms. A biological survey can be used to follow Steps Four through Six of these instructions.

• Conducting an environmental assessment under the National Environmental Policy Act (NEPA). Some construction activities may require environmental assessments under NEPA. Such assessments may indicate if listed species are in the project area. Coverage under the CGP does not trigger such an assessment because the permit does not regulate any dischargers subject to New Source Performance Standards under section 306 of the Clean Water Act, and is thus statutorily exempted from NEPA. *See* CWA section 511(c). However, some construction activities might require review under NEPA because of Federal funding or other Federal involvement in the project.

If no species are found in the project area, an applicant is eligible for CGP coverage. Applicants must provide the necessary certification on the revised NOI form. If listed species are found in the project area, applicants must indicate the location and nature of this presence in the storm water pollution prevention plan and follow Step Four.

Step Four: Determine if Listed Species or Critical Habitat Are Likely To Be Adversely Affected by the Construction Activity's Storm Water Discharges or Storm Water Discharge-Related Activities

To receive CGP coverage, applicants must assess whether their storm water discharges or storm water discharge-related activities are likely to adversely affect listed species or critical habitat. "Storm water discharge-related activities" include:

• Activities which cause, contribute to, or result in point source storm water pollutant discharges, including but not limited to excavation, site development, grading, and other surface disturbance activities; and

• Measures to control storm water discharges including the siting, construction, operation of best management practices (BMPs) to control, reduce or prevent storm water pollution.

Potential adverse effects from storm water discharges and storm water discharge-related activities include:

• *Hydrological.* Storm water discharges may cause siltation, sedimentation or induce other changes in receiving waters such as temperature, salinity or pH. These effects will vary with the amount of storm water discharged and the volume and condition of the receiving water. Where a storm water discharge constitutes a minute portion of the total volume of the receiving water, adverse hydrological effects are less likely. Construction activity itself may also alter drainage patterns on a site where construction occurs which can impact listed species or critical habitat.

• *Habitat.* Excavation, site development, grading, and other surface disturbance activities from construction activities, including the installation or placement of storm water BMPs, may adversely affect listed species or their habitat. Storm water may drain or inundate listed species habitat.

• *Toxicity.* In some cases, pollutants in storm water may have toxic effects on listed species.

The scope of effects to consider will vary with each site. If the applicant is having difficulty in determining whether his or her project is likely to adversely affect a listed specie or critical habitat, then the appropriate office of the FWS, NMFS or Natural Heritage Center listed in sections II and III of this Addendum should be contacted for assistance. If adverse effects are not likely, then the applicant should make the appropriate certification on the revised NOI form and apply for coverage under the permit. If adverse effects are likely, applicants must follow Step Five.

Step Five: Determine if Measures Can Be Implemented to Avoid Any Adverse Effects

If an applicant makes a preliminary determination that adverse effects are likely, it can still receive coverage under Part I.B.3.e.(2)(a) of the CGP if appropriate measures are undertaken to avoid or eliminate the likelihood of adverse effects prior to applying for permit coverage. These measures may involve relatively simple changes to construction activities such as re-routing a storm water discharge to bypass an area where species are located, relocating BMPs, or by changing the "footprint" of the construction activity. Applicants may wish to contact the FWS and/or NMFS to see what appropriate measures might be suitable to avoid or eliminate the likelihood of adverse impacts to listed species and/or critical habitat. (See 50 CFR 402.13(b)). This can entail the initiation of informal consultation with the FWS and/or NMFS which is described in more detail in Step Six.

If applicants adopt measures to avoid or eliminate adverse affects, they must continue to abide by those measures during the course of permit coverage. These measures must be described in

the storm water pollution prevention plan and may be enforceable as permit conditions. If appropriate measures to avoid the likelihood of adverse effects are not available to the applicant, the applicant must follow Step Six.

Step Six: Determine if the Eligibility Requirements of Part I.B.3.e.(2)(b)–(d) Can Be Met

Where adverse effects are likely, the applicant must contact the EPA and FWS/NMFS. Applicants may still be eligible for CGP coverage if any likely adverse effects can be addressed through meeting the criteria of Part I.B.3.e.(2)(b)–(d) of the permit. These criteria are as follows:

1. *An ESA Section 7 Consultation Is Performed for the Applicant's Activity (See Part I.B.3.e.(2)(b).*

Formal or informal ESA section 7 consultation is performed with the FWS and/or NMFS which addresses the effects of the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat. The formal consultation must result in either a "no jeopardy opinion" or a "jeopardy opinion" that identifies reasonable and prudent alternatives to avoid jeopardy which are to be implemented by the applicant. The informal consultation must result in a written concurrence by the Service(s) on a finding that the applicant's storm water discharge(s) and storm water discharge-related activities are not likely to adversely affect listed species or critical habitat (for informal consultation, *see* 50 CFR 402.13).

Most consultations are accomplished through informal consultation. By the terms of this permit, EPA has automatically designated applicants as non-Federal representatives for the purpose of conducting informal consultations. *See* Part I.B.3.e.(5) and 50 CFR 402.08 and 402.13. When conducting informal ESA section 7 consultation as a non-Federal representative, applicants must follow the procedures found in 50 CFR 402 of the ESA regulations.

Applicants must also notify EPA and the Services of their intention and agreement to conduct consultation as a non-Federal representative. Consultation may occur in the context of another Federal action at the construction site (*e.g.*, where ESA section 7 consultation was performed for issuance of a wetlands dredge and fill permit for the project or where a NEPA review is performed for the project which incorporates a section 7 consultation). Any terms and conditions developed through consultations to protect listed species and critical habitat must be incorporated into the SWPPP. As noted above, applicants may, if they wish, initiate consultation with the Services at Step Five.

Whether ESA section 7 consultation must be performed with either the FWS, NMFS or both Services depends on the listed species which may be affected by the applicant's activity. In general, NMFS has jurisdiction over marine, estuarine, and anadromous species. Applicants should also be aware that while formal section 7 consultation provides protection from incidental takings liability, informal consultation does not.

2. *An Incidental Taking Permit Under Section 10 of the ESA is Issued for the Applicants Activity (See Part I.B.3.e.(2)(c)).*

The applicant's construction activities are authorized through the issuance of a permit under section 10 of the ESA and that authorization addresses the effects of the applicant's storm water discharge(s) and storm water discharge-related activities on listed species and critical habitat. Applicants must follow FWS and/or NMFS procedures when applying for an ESA Section 10 permit (see 50 CFR section 17.22(b)(1)(FWS) and section 222.22(NMFS)). Application instructions for section 10 permits for NMFS species can be obtained by (1) accessing the "Office of Protected Resources" sector of the NMFS Home Page at "http://www.nmfs.gov" or (2) by contacting the National Marine Fisheries Service, Office of Protected Resources, Endangered Species Division, F/PR3,1315 East-West Highway, Silver Spring, Maryland 20910, telephone (301) 713–1401, fax (301) 713–0376.

3. *The Applicant is Covered Under the Eligibility Certification of Another Operator for the Project Area (See Part I.B.3.e.(2)(d)).*

The applicant's storm water discharges and storm water discharge-related activities were already addressed in another operator's certification of eligibility under Part I.B.3.e.(2)(b), or (c) which also included the applicant's project area. By certifying eligibility under Part I.B.3.e.(2)(d), the applicant agrees to comply with any measures or controls upon which the other operator's certification under Part I.B.3.e.(2)(a), (b) or (c) was based. Certification under Part I.B.3.e.(2)(d) is discussed in more detail in section I.A. of this addendum.

The applicant must comply with any terms and conditions imposed under the eligibility requirements of paragraphs I.B.3.e(2)(a), (b), (c), (d) to ensure that its storm waters discharges and storm water discharge-related activities are protective of listed species and/or critical habitat. Such terms and conditions must be incorporated in the project's SWPPP. If the eligibility requirements of Part I.B.3.e.(2)(a)–(d) cannot be met, then the applicant may not receive coverage under the CGP. Applicants should then consider applying to EPA for an individual permit.

II. List of Fish and Wildlife Service and National Marine Fisheries Service Offices

A. U.S. Fish and Wildlife Service Offices

National Website for Endangered Species Information

Endangered Species Home page: http://www.fws.gov/~r9endspp/endspp.html.

Regional, State, Field and Project Offices

Region 1

Regional Office

Division Chief, Endangered Species, U.S. Fish and Wildlife Service, ARD Ecological Services, 911 NE 11 Avenue, Portland, OR 97232–4181, (503) 231–6121

State, Field and Project Offices

Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 50088, 300 Ala Moana Blvd., Rm 3108, Honolulu, HI 96850

Field Supervisor, U.S. Fish and Wildlife Service, Upper Columbia R. Basin F&W Office, 11103 East Montgomery Drive, Ste 2, Spokane, WA 99306

State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 S.E 98th Avenue, Suite 100, Portland, OR 97266

Field Supervisor, U.S. Fish and Wildlife Service, Snake River Basin F&W Office, 1387 South Vinnell Way, Room 368, Boise, ID 83709

State Supervisor, U.S. Fish and Wildlife Service, Nevada State Office, 4600 Kietzke Lane, Building C, Rm. 125, Reno, NV 89502–5093

State Supervisor, U.S. Fish and Wildlife Service, Western Washington F&W Office, 510 Desmond Dr., Suite 102, Lacey, WA 98503–1273

Field Supervisor, U.S. Fish and Wildlife Service, Klamath Falls F&W Office, 6600 Washburn Way, Klamath Falls, OR 97603

Field Supervisor, U.S. Fish and Wildlife Service, Klamath River F&W Office, 1215 South Main, Suite 212, Yreka, CA 96097–1006

Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, CA 92008

Field Supervisor, U.S. Fish and Wildlife Service, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, CA 93003

Project Leader, U.S. Fish and Wildlife Service, Coastal California Fish and

Wildlife Office, 1125 16th St., Rm. 209, Arcata, CA 95521–5582
Project Leader, U.S. Fish and Wildlife Service, Northern Central Valley F&W Office, 10959 Tyler Road, Red Bluff, CA 96080
State Supervisor, U.S. Fish and Wildlife Service, California State Office, 3310 El Camino Avenue, Suite 120, Sacramento, CA 95821–6340
Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish & Wildlife Office, 3310 El Camino Avenue, Suite 120, Sacramento, CA 95821–6340

Region 2

Regional Office

Division Chief, Endangered Species, U.S. Fish and Wildlife Service, ARD Ecological Services, P.O. Box 1306, Albuquerque, NM 87103

State, Field, and Project Offices

Field Supervisor, U.S. Fish and Wildlife Service, Corpus Christi Field Office, 6300 Ocean Dr., Campus Box 338, Corpus Christi, TX 78412
Field Supervisor, U.S. Fish and Wildlife Service, Arlington Field Office, 711 Stadium Dr., East, Suite 252, Arlington, TX 76011
Field Supervisor, U.S. Fish and Wildlife Service, Clear Lake Field Office, 17629 El Camino Real, Suite 211, Houston, TX 77058
Field Supervisor, U.S. Fish and Wildlife Service, Oklahoma Field Office, 222 S. Houston, Suite A, Tulsa, OK 74127
Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Field Office, 2105 Osuna, NE, Albuquerque, NM 87113
Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Serv. Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758
Field Supervisor, U.S. Fish and Wildlife Service, Arizona State Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021–4951

Region 3

Regional Office

Division Chief, Endangered Species, U.S. Fish and Wildlife Service, ARD Ecological Service, BHW Federal Bldg, 1 Federal Drive, Fort Snelling, MN 55111–4056

State, Field, and Project Offices

Field Supervisor, U.S. Fish and Wildlife Service, Chicago, Illinois Field Office, 1000 Hart Rd., Suite 180, Barrington, IL 60010
Field Supervisor, U.S. Fish and Wildlife Service, East Lansing Field Office, 2651 Coolidge Road, East Lansing, MI 48823
Field Supervisor, U.S. Fish and Wildlife Service, Reynoldsburg Field Office, 6950 Americana Parkway, Suite H, Reynoldsburg, OH 43068–4132
Field Supervisor, U.S. Fish and Wildlife Service, Bloomington Field Office, 620 South Walker Street, Bloomington, IN 47403–2121
Field Supervisor, U.S. Fish and Wildlife Service, Twin Cities E.S. Field Office, 4101 East 80th Street, Bloomington, MN 55425–1665
Field Supervisor, U.S. Fish and Wildlife Service, Columbia Field Office, 608 East Cherry Street, Room 200, Columbia, MO 65201–7712
Field Supervisor, U.S. Fish and Wildlife Service, Green Bay Field Office, 1015 Challenger Court, Green Bay, WI 54311–5331
Field Supervisor, U.S. Fish and Wildlife Service, Rock Island Field Office, 4469 48th Avenue Court, Rock Island, IL 61201
Field Supervisor, U.S. Fish and Wildlife Service, Marion Suboffice, Route 3, Box 328, Marion, IL 62959–4565

Region 4

Regional Office

Division Chief, Endangered Species, U.S. Fish and Wildlife Service, ARD Ecological Services, 1875 Century Blvd., Suite 200, Atlanta, GA 30345

State, Field, and Project Offices

Field Supervisor, U.S. Fish and Wildlife Service, Panama City Field Office, 1612 June Avenue, Panama City, FL 32405–3721
Field Supervisor, U.S. Fish and Wildlife Service, South Florida Ecosystem Field Office, 1360 U.S. Hwy 1, #5; P.O. Box 2676, Vero Beach, FL 32961–2676
Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Field Office, P.O. Box 491, Boqueron, PR 00622
Field Supervisor, U.S. Fish and Wildlife Service, Puerto Rican Parrot Field Office, P.O. Box 1600, Rio Grande, PR 00745
Field Supervisor, U.S. Fish and Wildlife Service, Brunswick Field Office, 4270 Norwich Street, Brunswick, GA 31520–2523
Field Supervisor, U.S. Fish and Wildlife Service, Jacksonville Field Office, 6620 Southpoint Drive S., Suite 310, Jacksonville, FL 32216–0912
Field Supervisor, U.S. Fish and Wildlife Service, Charleston Field Office, 217 Ft. Johnson Road, P.O. Box 12559, Charleston, SC 29422–2559
Field Supervisor, U.S. Fish and Wildlife Service, Clemson F.O., Dept. of Forest Resources, 261 Lehotsky Hall, Box 341003, Clemson, SC 29634–1003
Field Supervisor, U.S. Fish and Wildlife Service, Ralph Field Office, P.O. Box 33726, Raleigh, NC 27636–3726
Field Supervisor, U.S. Fish and Wildlife Service, Cookeville Field Office, 446 Neal Street, Cookeville, TN 38501
Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 160 Zillicoa Street, Ashevile, NC 28801
Field Supervisor, U.S. Fish and Wildlife Service, Daphne Field Office, P.O. Drawer 1190, Daphne, AL 36526
Field Supervisor, U.S. Fish and Wildlife Service, Vicksburg Field Office, 2524 S. Frontage Road, Suite B, Vicksburg, MS 39180–5269
Field Supervisor, U.S. Fish and Wildlife Service, Lafayette Field Office, Brandywine II, Suite 102, 825 Kaliste Saloom Road, Lafayette, LA 70508
Field Supervisor, U.S. Fish and Wildlife Service, Jackson Field Office, 6578 Dogwood View Pkwy, Suite A, Jackson, MS 39213

Region 5

Regional Office

Division Chief, Endangered Species, U.S. Fish and Wildlife Service, ARD Ecological Services, 300 Westgate Center Drive, Hadley, MA 01035–9589

State, Field and Project Offices

Project Leader, U.S. Fish and Wildlife Service, Delaware Bay Estuary Project, 2610 Whitehall Neck Road, Smyrna, DE 19977
Project Leader, U.S. Fish and Wildlife Service, Southern New England/NYBCE Program, Shoreline Plaza, Route 1A, P.O. Box 307, Charlestown, RI 02813
Project Leader, U.S. Fish and Wildlife Service, Gulf of Maine Project, 4 R Fundy Road, Falmouth, ME 04105
Project Leader, U.S. Fish and Wildlife Service, Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, Maryland 21401
Project Leader, U.S. Fish and Wildlife Service, Virginia Field Office, P.O. Box 99, 6669 Short Lane, Gloucester, VA 23061
Project Leader, U.S. Fish and Wildlife Service, Southwestern Virginia Field Office, P.O. Box 2345, Abingdon, VA 24212
Project Leader, U.S. Fish and Wildlife Service, New England Field Office, 22 Bridge St., Unit #1, Concord, New Hampshire 03301–4986
Project Leader, U.S. Fish and Wildlife Service, Main Field Office, 1033 South Main St., Old Town, Maine 04468
Project Leader, U.S. Fish and Wildlife Service, Rhode Island Field Office, Shoreline Plaza, Route 1A; P.O. Box 307, Charlestown, Rhode Island 02813
Project Leader, U.S. Fish and Wildlife Service, Vermont Field Office, 11 Lincoln Street, Winston Prouty Federal Building, Essex Junction, VT 05452
Project Leader, U.S. Fish and Wildlife Service, New Jersey Field Office, 927 North Main St., Bldg. D1, Pleasantville, New Jersey 08232
Project Leader, U.S. Fish and Wildlife Service, New York Field Office, 3817 Luker Road, Cortland, New York 13045
Project Leader, U.S. Fish and Wildlife Service, Long Island Field Office, P.O. Box 608, Islip, New York 11751–0608
Project Leader, U.S. Fish and Wildlife Service, Pennsylvania Field Office, 315 S. Allen St., Suite 322, State College, Pennsylvania 16801
Project Leader, U.S. Fish and Wildlife Service, Eastern Pennsylvania Field Office, 11 Hap Arnold Boulevard, Box H, Tobyhanna, Pennsylvania 18466–0080
Project Leader, U.S. Fish and Wildlife Service, West Virginia Field Office, Route 250, S—Elkins Shopping Plaza, Elkins, West Virginia 26241

Region 6

Regional Office

Division Chief, Endangered Species, U.S. Fish and Wildlife Service, ARD Ecological Services, P.O. Box 25486, DFC, Denver, CO 80225

State, Field, and Project Offices

Field Supervisor, U.S. Fish and Wildlife Service, Montana Field Office, 100 N. Park, Suite 320, Helena, MT 59601
Sub-Office Supervisor, U.S. Fish and Wildlife Service, Billings Sub-Office, 2900 4th Ave., North, Rm 301, Billings, MT 59101
Sub-Office Supervisor, U.S. Fish and Wildlife Service, Kalispell Sub-Office, 780 Creston Hatchery Road, Kalispell, MT 59901
Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, Forestry Sciences Lab, University of Montana, Missoula, MT 59812
Field Supervisor, U.S. Fish and Wildlife Service, North Dakota Field Office, 1500 Capitol Avenue, Bismarck, ND 58501
Field Supervisor, U.S. Fish and Wildlife Service, Nebraska Field Office, 203 W. 2nd Street, Federal Bldg., 2nd Floor, Grand Island, NE 68801
Field Supervisor, U.S. Fish and Wildlife Service, Kansas Field Office, 315 Houston, Suite E, Manhattan, KS 66502
Field Supervisor, U.S. Fish and Wildlife Service, South Dakota Field Office, 420 S. Garfield Ave., Suite 400, Pierre, SD 57501–5408
Field Supervisor, U.S. Fish and Wildlife Service, Salt Lake City Field Office, Lincoln Plaza, 145 East 1300 South, Suite 404, Salt Lake City, UT 84115
Field Supervisor, U.S. Fish and Wildlife Service, Colorado Field Office, 730 Simms, Suite 290, Golden, CO 80401–4798
Field Supervisor, U.S. Fish and Wildlife Service, Western Colorado Field Office, 764 Horizon Drive South, Annex A, Grand Junction, CO 81506–3946
Field Supervisor, U.S. Fish and Wildlife Service, Wyoming Field Office, 4000 Morrie Avenue, Cheyenne, WY 82001
E.S. Coordinator, U.S. Fish and Wildlife Service, Rocky Mountain Arsenal, National Wildlife Area, Building 111, Commerce City, CO 80022–1748
Colorado River Recovery Coordinator, U.S. Fish and Wildlife Service, P.O. Box 25486, DFC, Denver, CO 80225
U.S. Fish and Wildlife Service, Laramie Black Footed Ferret Office, 410 Grand Ave., Suite 315, Laramie, WY 80270

Region 7

Regional Office

Division Chief, Endangered Species, U.S. Fish and Wildlife Service, ARD Ecological Services, 1011 E. Tudor Road, Anchorage, AK 99503

State, Field, and Project Offices

Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services, 605 West 4th Avenue, Room G–62, Anchorage, AK 99501
Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services, 101 12th Avenue, Box 19 (Room 232), Fairbanks, AK 99701
Field Supervisor, U.S. Fish and Wildlife Service, Ketchikan Sub-office, 103 Main Street, P.O. Box 3193, Ketchikan, AK 99901
Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services, 300 Vintage Blvd., Suite 201, Juneau, AK 99801

Region 8

Has not yet been created out of the other U.S. Fish and Wildlife Service Regions at the time of this posting.

Region 9

Janet Ady—Outreach, U.S. Fish and Wildlife Service, National Conservation Training Center, Route 3, Box 49, Kearneysville, WV 25430
Dan Benfield—Training, U.S. Fish and Wildlife Service, National Conservation Training Center, Route 3, Box 49, Kearneysville, WV 25430

B. National Marine Fisheries Service Offices

The National Marine Fisheries Service is a developing a database to provide county and territorial water (up to three miles offshore) information on the presence of endangered and threatened species and critical habitat. the database is projected to be available to the public early 1998. The database should be found at the "Office of Protected Resources" site on the NMFS homepage at "http://www.nmfs.gov".

Regional and Field Offices

Northeast Region

Protected Resources Program, National Marine Fisheries Service, Northeast Region, One Blackburn Drive, Gloucester, Massachusetts 01930
Milford Field Office, National Marine Fisheries Service, 212 Rogers Avenue, Milford, Connecticut 06460
Oxford Field Office, National Marine Fisheries Service, 904 So. Morris Street, Oxford, Maryland 21654
Sandy Hook Field Office, James J. Howard Marine Sciences, Laboratory, National Marine Fisheries Service, 74 Magruder Road, Highlands, New Jersey 07732
Protected Species Branch, National Marine Fisheries Service, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, Massachusetts 02543

Southeast Region

Protective Species Management Branch, National Marine Fisheries Service, Southeast Region, 9721 Executive Center Drive, St. Petersburg, Florida 33702–2432

Northwest Region

Protected Species Division, National Marine Fisheries Service, Northwest Region, 525 NE Oregon, Suite 500, Portland, Oregon 97232–2737
Boise Field Office, National Marine Fisheries Service, 1387 S. Vinnel Way, Suite 377, Boise, Idaho 83709
Olympia Field Office, National Marine Fisheries Service, 510 Desmond Drive, SE, Suite 103, Lacey, Washington 98503
Roseburg Field Office, National Marine Fisheries Service, 2900 Stewart Parkway, NW., Roseburg, Oregon 97470
Rufus Field Office, National Marine Fisheries Service, P.O. Box 67, 704 "E" 1st, Rufus, Oregon 97050

Southwest Region

Protected Species Management Division, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, California 90802–4213
Arcata Field Office, National Marine Fisheries Service, 1125 16th Street, Room 209, Arcata, California 95521
Eureka Field Office, National Marine Fisheries Service, 1330 Bayshore Way, Eureka, California 95501
Pacific Island Area Field Office, National Marine Fisheries Service, 2570 Dole Street, Room 106, Honolulu, Hawaii 96822–2396
Santa Rosa Field Office, Protected Resources Program, National Marine Fisheries Service, 777 Sonoma Avenue, Room 325, Santa Rosa, California 95404

Alaska Region

Protected Resources Management Division, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building 461, P.O. Box 21767, Juneau, Alaska 99802
Anchorage Office, 222 West 7th Avenue, Box 10, Anchorage, Alaska 99513–7577

III. Natural Heritage Centers

The Natural Heritage Network comprises 85 biodiversity data centers throughout the Western Hemisphere. These centers collect, organize, and share data relating to endangered and threatened species and habitat. The network was developed to inform land-use decisions for developers, corporations, conservationists, and government agencies and is also consulted for research and educational purposes. The centers maintain a Natural Heritage Network Control Server Website (http://www.heritage.tnc.org) which provides website and other access to a large number of specific biodiversity centers. Some of these centers are listed below:

Alabama Natural Heritage Program

Huntingdon College, Massey Hall, 1500 East Fairview Avenue, Montgomery, AL 36106–2148, (334) 834–4519, Fax: (334) 834–5439, Internet: alnhp@wsnet, com

Alaska Natural Heritage Program

University of Alaska Anchorage, 707 A Street, Anchorage, AK 99501, 907/257–2702, Fax: 907/258–9139, Program Director: David Duffy, 257–2707, Internet: afdcd1@orion.alaska.edu

Arizona Heritage Data Management System

Arizona Game & Fish Department, WM–H, 2221 W. Greenway Road, Phoenix, AZ 85023, 602/789–3612, Fax: 602/789–3928, Internet: hdms@gf.state.az.us, Internet: hdms1@gf.state.az.us

Arkansas Natural Heritage Commission

Suite 1500 Tower Building, 323 Center Street, Little Rock, AR 72201, 501/324–9150, Fax: 501/324–9618,
Director: Harold K. Grimmett, –9614

California Natural Heritage Division

Department of Fish & Game, 1220 S Street, Sacramento, CA 95814, 5916/322–2493, Fax: 916/324–0475

Colorado Natural Heritage Program

Colorado State University, 254 General Services Building, Fort Collins, CO 80523, 970/491–1309, Fax: 970/491–3349

Connecticut Natural Diversity Database

Natural Resources Center, Department of Environmental Protection, 579 Elm Street, Store Level, Hartford, CT 06106–5127, 860/424–3540, Fax: 860/424–4058

Delaware Natural Heritage Program

Division of Fish & Wildlife, Department of Natural Resources & Environmental Control, 4876 Hay Point Landing Road, Smyrna, DE 19977, 302/653–2880, Fax: 302/653–3431

District of Columbia Natural Heritage Program

13025 Riley's Lock Road, Poolesville, MD 20837, 301/427–1320, Fax: 301/427–1355

Florida Natural Areas Inventory

1018 Thomasville Road, Suite 200–C, Tallahassee, FL 32303, 904/224–8207, Fax: 904/681–9364

Florida Natural Areas Inventory

Eglin Air Force Base, P.O. Box 1150, Niceville, FL 32588, 904/883–6451, Fax: 904/682–8381

Georgia Natural Heritage Program

Wildlife Resources Division, Georgia Department of Natural Resources, 2117 U.S. Highway 278 S.E., Social Circle, GA 30279, 706/557–3032 or 770/918–6411, Fax: 706/557–3033 or 706/557–3040, Internet: natural_heritage@mail.dnr.state.ga.us

Hawaii Natural Heritage Program

The Nature Conservancy of Hawaii, 1116 Smith Street, Suite 201, Honolulu, HI 96817, 808/537–4508, Fax: 808/545–2019

Idaho Conservation Data Center

Department of Fish & Game, 600 South Walnut Street, Box 25, Boise, ID 83707–0025, 208/334–3402, Fax: 208/334–2114

Illinois Natural Heritage Division

Department of Natural Resources, Division of Natural Heritage, 524 South Second Street, Springfield, IL 62701–1787, 217/785–8774, Fax: 217/785–8277

Illinois Nature Preserves Commission

Director: Carolyn Grosboll, Deputy Dir/Steward: Randy Heidorn, Deputy Dir/Protect: Don McFall, Office Specialist: Karen Tish, 217/785–8774, Fax: 217/785–8277

Indiana Natural Heritage Data Center

Division of Nature Preserves, Department of Natural Resources, 402 West Washington Street, Room W267, Indianapolis, IN 46204, 317/232–4052, Fax: 317/233–0133

Iowa Natural Areas Inventory

Department of Natural Resources, Wallace State Office Building, Des Moines, IA 50319–0034, Fax: 515/281–6794, Coordinator/Zoologist: Daryl Howell, 515/281–8524

Kansas Natural Heritage Inventory

Kansas Biological Survey, 2041 Constant Avenue, Lawrence, KS 66047–2906, 913/864–3453, Fax: 913/864–5093

Kentucky Natural Heritage Program

Kentucky State Nature Preserves, Commission, 801 Schenkel Lane, Frankfort, KY 40601, 502/573–2886, Fax: 502/573–2355

Louisiana Natural Heritage Program

Department of Wildlife & Fisheries, P.O. Box 98000, Baton Rouge, LA 70898–9000, 504/765–2821, Fax: 504/765–2607

Maine Natural Areas Program

Department of Conservation, (FedEx/UPS: 159 Hospital Street), 93 State House Station, Augusta, ME 04333–0093, 207/287–8044, Fax: 207/287–8040, Internet: mnap@state.me.us, Web site: http://www.state.me.us/doc/mnap/home.htm

Maryland Heritage & Biodiversity Conservation Programs

Department of Natural Resources, Tawes State Office Building, E–1, Annapolis, MD 21401, 410/260–8540, Fax: 410/260–8595, Web site: http://www.heritage.tnc.org/nhp/us/md/

Massachusetts Natural Heritage & Endangered Species Program

Division of Fisheries & Wildlife, Route 135, Westborough, MA 01581, 508/792–7270 ext. 200, Fax: 508/792–7275

Michigan Natural Features Inventory

Mason Building, 5th floor, (FedEx/UPS: 530 W. Allegan, 48933), Box 30444, Lansing, MI 48909–7944, 517/373–1552, Fax: 517/373–6705, Director: Leni Wilsmann, 373–7565, Internet: wilsmanl@wildlife.dnr.state.mi.us

Minnesota Natural Heritage & Nongame Research

Department of Natural Resources, 500 Lafayette Road, Box 7, St Paul, MN 55155, 612/297–4964, Fax: 612/297–4961

Mississippi Natural Heritage Program

Museum of Natural Science, 111 North Jefferson Street, Jackson, MS 39201–2897, 601/354–7303, Fax: 601/354–7227

Missouri Natural Heritage Database

Missouri Department of Conservation, P.O. Box 180, (FedEx: 2901 West Truman Blvd), Jefferson City, MO 65102–0180, 573/751–4115, Fax: 573/526–5582

Montana Natural Heritage Program

State Library Building, 1515 E. 6th Avenue, Helena, MT 59620, 406/444–3009, Fax: 406/444–0581, Internet: mtnhp@nris.msl.mt.gov, Homepage/World Wide Web: http://nris.msl.mt.gov/mtnhp/nhp-dir.html

Navajo Natural Heritage Program

P.O. Box 1480, Window Rock, Navajo Nation, AZ 86515, (520) 871–7603, (520) 871–7069 (Fax)

Nebraska Natural Heritage Program

Game and Parks Commission, 2200 North 33rd Street, P.O. Box 30370, Lincoln, NE 68503, 402/471–5421, Fax: 402/471–5528

Nevada Natural Heritage Program

Department of Conservation & Natural Resources, 1550 E. College Parkway, Suite 145, Carson City, NV 89706–7921, 702/687–4245, Fax: 702/885–0868

New Hampshire Natural Heritage Inventory

Department of Resources & Economic Development, 172 Pembroke Street, P.O. Box 1856, Concord, NH 03302, 603/271–3623, Fax: 603/271–2629

New York Natural Heritage Program

Department of Environmental Conservation, 700 Troy-Schenectady Road, Latham, NY 12110–2400, 518/783–3932, Fax: 518/783–3916, Computer: 518/783–3946

North Carolina Heritage Program

NC Department of Environment, Health & Natural Resources, Division of Parks & Recreation, P.O. Box 27687, Raleigh, NC 27611–7687, 919–733–4181, Fax: 919/715–3085

North Dakota Natural Heritage Inventory

North Dakota Parks & Recreation Department, 1835 Bismarck Expressway, Bismarck, ND 58504, 701/328–5357, Fax: 701/328–5363

Ohio Natural Heritage Data Base

Division of Natural Areas & Preserves, Department of Natural Resources, 1889 Fountain Square, Building F–1, Columbus, OH 43224, 614/265–6453, Fax: 614/267–3096

Oklahoma Natural Heritage Inventory

Oklahoma Biological Survey, 111 East Chesapeake Street, University of Oklahoma, Norman, OK 73019–0575, 405/325–1985, Fax: 405/325–7702, Web site: http://obssun02.uoknor.edu/biosurvey/onhi/home.html

Oregon Natural Heritage Program

Oregon Field Office, 821 SE 14th Avenue, Portland, OR 97214, 503/731–3070; 230–1221, Fax: 503/230–9639

Pennsylvania Natural Diversity Inventory (East, West, Central)

**Pennsylvania Natural Diversity Inventory—East*

The Nature Conservancy, 34 Airport Drive, Middletown, PA 17057, 717/948–3962, Fax: 717/948–3957

**Pennsylvania Natural Diversity Inventory—West*

Western Pennsylvania Conservancy, Natural Areas Program, 316 Fourth Avenue, Pittsburgh, PA 15222, 412/288–2777, Fax: 412/281–1792

Pennsylvania Natural Diversity Inventory—Central

Bureau of Forestry, P.O. Box 8552, Harrisburg, PA 17105–8552, 717/783–0388, Fax: 717/783–5109

Puerto Rico Natural Heritage Program

Division de Patrimonio Natural, Area de Planificacion Integral, Departamento de Recursos Naturales y Ambientales de Puerto Rico, P.O. Box 5887, Puerta de Tierra, Puerto Rico 00906, Tel: 787–722–1726, Fax: 787–725–9526

Rhode Island Natural Heritage Program

Department of Environmental Management, Division of Planning & Development, 83 Park Street, Providence, RI 02903, 401/277–2776, x4308, Fax: 401/277–2069

South Carolina Heritage Trust

SC Department of Natural Resources, P.O. Box 167, Columbia, SC 29202, 803/734–3893, Fax: 803/734–6310 (Call first)

South Dakota Natural Heritage Data Base

SD Department of Game, Fish & Parks, Wildlife Division, 523 E. Capitol Avenue, Pierre, SD 57501–3182, 605/773–4227, Fax: 605/773–6224

Tennessee Division of Natural Heritage

Department of Environment & Conservation, 401 Church Street, Life and Casualty Tower, 8th Floor, Nashville, TN 37243–0447, 615/532–0431, Fax: 615/532–0614

Texas Biological and Conservation Data System

3000 South IH–35, Suite 100, Austin, TX 78704, 512/912–7011, Fax: 512/912–7058

U.S. Virgin Islands Conservation Data Center

Eastern Caribbean Center, University of the Virgin Islands, No. 2 John Brewers Bay, St. Thomas, VI 00802, (809) 693–1030 [Voice], (809) 693–1025 [Fax], Home Page: cdc.uvi.edu, E-Mail: dbarry@uvi.edu

Utah Natural Heritage Program

Division of Wildlife Resources, 1596 West North Temple, Salt Lake City, UT 84116, 801/538–4761, Fax: 801/538–4709

Vermont Nongame & Natural Heritage Program

Vermont Fish & Wildlife Department, 103 S. Main Street, 10 South, Waterbury, VT 05671–0501, 802/241–3700, Fax: 802/241–3295

Virginia Division of Natural Heritage

Department of Conservation & Recreation, Main Street Station, 1500 E. Main Street, Suite 312, Richmond, VA 23219, 804/786–7951, Fax: 804/371–2674

Washington Natural Heritage Program

Department of Natural Resources, (FedEx: 1111 Washington Street, SE), P.O. Box 47016, Olympia, WA 98504–7016, 360/902–1340, Fax: 360/902–1783

West Virginia Natural Heritage Program

Department of Natural Resources, Operations Center, Ward Road, P.O. Box 67, Elkins, WV 26241, 304/637–0245, Fax: 304/637–0250

Wisconsin Natural Heritage Program

Endangered Resources, Department of Natural Resources, 101 S. Webster Street, Box 7921, Madison, WI 53707, 608/266–7012, Fax: 608/266–2925

Wyoming Natural Diversity Database

1604 Grand Avenue, Suite 2, Laramie, WY 82070, 307/745–5026, Fax: 307/745–5026 (Call first), Internet: "wyndd@lariat.org"

IV. County/Species List

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. **Note:** Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
ALASKA				
ALEUTIAN ISLANDS	BIRDS	GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
ALEUTIAN ISLANDS	PLANTS	FERN, ALEUTIAN SHIELD	Polystichum aleuticum	L, E
ALEUTIANS, EAST	BIRDS	EIDER, STELLER'S	Polysticta stelleri	L, T
ALEUTIANS, WEST	BIRDS	EIDER, STELLER'S	Polysticta stelleri	L, T
ANCHORAGE AREA	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
FAIRBANKS AREA	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
KENAI PENINSULA	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
MATANUSKA SUSITNA	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
NORTH SLOPE	BIRDS	CURLEW, ESKIMO	Numenius borealis	L, E
		EIDER, SPECTACLED	Somateria fischeri	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
NORTHWEST ARCTIC	BIRDS	EIDER, SPECTACLED	Somateria fischeri	L, T
UNORGANIZED BOROUGH	BIRDS	EIDER, SPECTACLED	Somateria fischeri	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
AMERICAN SAMOA				
AMERICAN SAMOA	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
ARIZONA				
APACHE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	MINNOW, LOACH	Tiaroga cobitis	L, T, CH
		SPINEDACE, LITTLE COLORADO	Lepidomeda vittata	L, T, CH
		TROUT, APACHE	Salmo apache	L, T
	PLANTS	FLEABANE, ZUNI	Erigeron rhizomatus	L, T
		SEDGE, NAVAJO	Carex specuicola	L, T, CH
COCHISE	AMPHIBIANS	SALAMANDER, SONORA TIGER	Ambystoma tigrinum	L, E
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
		FLYCATCHER, SOUTHWESTERN WILLOW	Empidonax traillii extimus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	CATFISH, YAQUI	Ictalurus pricei	L, T, CH
		CHUB, YAQUI	Gila purpurea	L, E, CH
		PUPFISH, DESERT	Cyprinodon macularius	L, E, CH
		SHINER, BEAUTIFUL	Notropis formosus	L, T, CH
		TOPMINNOW, GILA (YAQUI)	Poeciliopsis occidentalis	L, E

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. Note: Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
	MAMMALS	BAT, LESSER (=SANBORN'S) LONG-NOSED.	Leptonycteris sanborni	L, E
		JAGUARUNDI	Felis yagouaroundi tolteca	L, E
		OCELOT	Felis pardalis	L, E
		WOLF, GRAY	Canis lupus	L, E, T, CH
	PLANTS	CACTUS, COCHISE PINCUSHION	Coryphantha robbinsorum (=Cochiseia r., Escobaria r.).	L, T
		LADIES'-TRESSES, CANELO HILLS	Spiranthes delitescens	P, E
	REPTILES	RATTLESNAKE, NEW MEXICAN RIDGE-NOSED.	Crotalus willardi obscurus	L, T, CH
COCONINO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	CHUB, HUMPBACK	Gila cypha	L, E, CH
		SPINEDACE, LITTLE COLORADO	Lepidomeda vittata	L, T
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
	MAMMALS	VOLE, HUALAPAI MEXICAN	Microtus mexicanus hualpaiensis	L, E
	PLANTS	CACTUS, BRADY PINCUSHION	Pediocactus bradyi	L, E
		CACTUS, SILER PINCUSHION	Pediocactus sileri	L, T
		GROUNDSEL, SAN FRANCISCO PEAKS	Senecio franciscanus	L, T, CH
		MILK-VETCH, SENTRY	Astragalus cremnophylax var cremnophylax	L, E
		MILKWEED, WELSH'S	Asclepias welshii	L, T, CH
		SEDGE, NAVAJO	Carex specuicola	L, T, CH
GILA	SNAILS	AMBERSNAIL, KANAB	Oxyloma haydeni kanabensis	L, E
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		FLYCATCHER, SOUTHWESTERN WILLOW	Empidonax traillii extimus	L, E
	FISHES	MINNOW, LOACH	Tiaroga cobitis	L, T, CH
		SQUAWFISH, COLORADO	Ptychocheilus lucius	L, E, CH
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
		TOPMINNOW, GILA (YAQUI)	Poeciliopsis occidentalis	L, E
	PLANTS	AGAVE, ARIZONA	Agave arizonica	L, E
		CACTUS, ARIZONA HEDGEHOG	Echinocereus triglochidiatus var arizonicus	L, E
GRAHAM	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
		PYGMY-OWL, CACTUS FERRUGINOUS	Glaucidiumbrasilianum cactorum	L, E
	FISHES	MINNOW, LOACH	Tiaroga cobitis	L, T, CH
		PUPFISH, DESERT	Cyprinodon macularius	L, E, CH
		SPIKEDACE	Meda fulgida	L, T, CH
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
		TOPMINNOW, GILA (YAQUI)	Poeciliopsis occidentalis	L, E
		TROUT, APACHE	Salmo apache	L, T
	MAMMALS	BAT, LESSER (=SANBORN'S) LONG-NOSED.	Leptonycteris sanborni	L, E
		JAGUARUNDI	Felis yagouaroundi tolteca	L, E
		OCELOT	Felis pardalis	L, E
		SQUIRREL, MOUNT GRAHAM RED	Tamiasciurus hudsonicus grahamensis	L, E, CH
	PLANTS	CLIFFROSE, ARIZONA	Cowania subintegra	L, E
GREENLEE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	MINNOW, LOACH	Tiaroga cobitis	L, T, CH
		SPIKEDACE	Meda fulgida	L, T, CH
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
		TROUT, APACHE	Salmo apache	L, T
LA PAZ	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		RAIL, YUMA CLAPPER	Rallus longirostris yumanensis	L, E
	FISHES	CHUB, BONYTAIL	Gila elegans	L, E, CH
		PUPFISH, DESERT	Cyprinodon macularius	L, E, CH
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
MARICOPA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
		PYGMY-OWL, CACTUS FERRUGINOUS	Glaucidiumbrasilianum cactorum	L, E
		RAIL, YUMA CLAPPER	Rallus longirostris yumanensis	L, E
	FISHES	PUPFISH, DESERT	Cyprinodon macularius	L, E, CH
		TOPMINNOW, GILA (YAQUI)	Poeciliopsis occidentalis	L, E
	MAMMALS	BAT, LESSER (=SANBORN'S) LONG-NOSED.	Leptonycteris sanborni	L, E
		PRONGHORN, SONORAN	Antilocapra americana sonoriensis	L, E
	PLANTS	AGAVE, ARIZONA	Agave arizonica	L, E
		CACTUS, ARIZONA HEDGEHOG	Echinocereus triglochidiatus var arizonicus	L, E
		CLIFFROSE, ARIZONA	Cowania subintegra	L, E

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. **Note:** Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
MOHAVE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
		RAIL, YUMA CLAPPER	Rallus longirostris yumanensis	L, E
	FISHES	CHUB, BONYTAIL	Gila elegans	L, E, CH
		CHUB, HUMPBACK	Gila cypha	L, E, CH
		CHUB, VIRGIN RIVER	Gila robusta seminuda	L, E
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
	MAMMALS	VOLE, HUALAPAI MEXICAN	Microtus mexicanus hualpaiensis	L, E
	PLANTS	CACTUS, SILER PINCUSHION	Pediocactus sileri	L, T
		CLIFFROSE, ARIZONA	Cowania subintegra	L, E
		CYCLADENIA, JONES	Cycladenia humilis var jonesii	L, T
	REPTILES	TORTOISE, DESERT	Gopherus (=Xerobates, =Scaptochelys) agassizii.	L, T, CH
	SNAILS	AMBERSNAIL, KANAB	Oxyloma haydeni kanabensis	L, E
NAVAJO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	CHUB, HUMPBACK	Gila cypha	L, E, CH
		MINNOW, LOACH	Tiaroga cobitis	L, T, CH
		SPINEDACE, LITTLE COLORADO	Lepidomeda vittata	L, T
		TROUT, APACHE	Salmo apache	L, T
	MAMMALS	JAGUAR	Panthera onca	L, E
	PLANTS	CACTUS, PEEBLES NAVAJO	Pediocactus peeblesianus var peeblesianus	L, E
		GRASS, PARISH'S ALKALI	Puccinellia parishii	P, E
		SEDGE, NAVAJO	Carex specuicola	L, T, CH
PIMA	BIRDS	BOBWHITE, MASKED	Colinus virginianus ridgwayi	L, E
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
		PYGMY-OWL, CACTUS FERRUGINOUS	Glaucidiumbrasilianum cactorum	L, E
	FISHES	PUPFISH, DESERT	Cyprinodon macularius	L, E, CH
		TOPMINNOW, GILA (YAQUI)	Poeciliopsis occidentalis	L, E
	MAMMALS	BAT, LESSER (=SANBORN'S) LONG-NOSED.	Leptonycteris sanborni	L, E
		PRONGHORN, SONORAN	Antilocapra americana sonoriensis	L, E
	PLANTS	BLUE-STAR, KEARNEY'S	Amsonia kearneyana	L, E
		CACTUS, NICHOL'S TURK'S HEAD	Echinocactus horizonthalonius var nicholii	L, E
		CACTUS, PIMA PINEAPPLE	Coryphantha scheeri var robustispina	L, E
	SNAILS	TALUSSNAIL, SAN XAVIER	Sonorella eremita	L, E
PINAL	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PYGMY-OWL, CACTUS FERRUGINOUS	Glaucidiumbrasilianum cactorum	L, E
		RAIL, YUMA CLAPPER	Rallus longirostris yumanensis	L, E
	FISHES	MINNOW, LOACH	Tiaroga cobitis	L, T, CH
		PUPFISH, DESERT	Cyprinodon macularius	L, E, CH
		SPIKEDACE	Meda fulgida	L, T, CH
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
		TOPMINNOW, GILA (YAQUI)	Poeciliopsis occidentalis	L, E
	MAMMALS	BAT, LESSER (=SANBORN'S) LONG-NOSED.	Leptonycteris sanborni	L, E
	PLANTS	CACTUS, ARIZONA HEDGEHOG	Echinocereus triglochidiatus var arizonicus	L, E
		CACTUS, NICHOL'S TURK'S HEAD	Echinocactus horizonthalonius var nicholii	L, E
SANTA CRUZ	AMPHIBIANS	SALAMANDER, SONORA TIGER	Ambystoma tigrinum	L, E
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
		FLYCATCHER, SOUTHWESTERN WILLOW	Empidonax traillii extimus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
		PYGMY-OWL, CACTUS FERRUGINOUS	Glaucidiumbrasilianum cactorum	L, E
	FISHES	CHUB, SONORA	Gila ditaenia	L, T, CH
		TOPMINNOW, GILA (YAQUI)	Poeciliopsis occidentalis	L, E
	MAMMALS	BAT, LESSER (=SANBORN'S) LONG-NOSED.	Leptonycteris sanborni	L, E
		OCELOT	Felis pardalis	L, E
	PLANTS	CACTUS, PIMA PINEAPPLE	Coryphantha scheeri var robustispina	L, E
		LADIES'-TRESSES, CANELO HILLS	Spiranthes delitescens	P, E
		UMBEL, HUACHUCA WATER	Lilaeopsis schaffneriana spp recuva	L, E
YAVAPAI	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	PUPFISH, DESERT	Cyprinodon macularius	L, E, CH
		SPIKEDACE	Meda fulgida	L, T, CH
		SQUAWFISH, COLORADO	Ptychocheilus lucius	L, E, CH

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. **Note:** Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
		TOPMINNOW, GILA (YAQUI)	Poeciliopsis occidentalis	L, E
		TROUT, GILA	Salmo gilae	L, E
	PLANTS	AGAVE, ARIZONA	Agave arizonica	L, E
		CLIFFROSE, ARIZONA	Cowania subintegra	L, E
YUMA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		RAIL, YUMA CLAPPER	Rallus longirostris yumanensis	L, E
	FISHES	SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
	MAMMALS	BAT, LESSER (=SANBORN'S) LONG-NOSED.	Leptonycteris sanborni	L, E
		PRONGHORN, SONORAN	Antilocapra americana sonoriensis	L, E
	REPTILES	LIZARD, FLAT-TAILED HORNED	Phrynosoma mcallii	P, T
CALIFORNIA				
ALAMEDA	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
		RAIL, CALIFORNIA CLAPPER	Rallus longirostris obsoletus	L, E
		TERN, CALIFORNIA LEAST	Sterna antillarum browni	L, E
	CRUSTACEAN	LINDERIELLA, CALIFORNIA	Linderiella occidentalis	P, E
		SHRIMP, LONGHORN FAIRY	Branchinecta longiantenna	L, E
		SHRIMP, VERNAL POOL FAIRY	Branchinecta lynchi	L, T
	FISHES	GOBY, TIDEWATER	Eucyclogobius newberryi	L, E
	INSECTS	BUTTERFLY, BAY CHECKERSPOT	Euphydryas editha bayensis	L, T
	MAMMALS	FOX, SAN JOAQUIN KIT	Vulpes macrotis mutica	L, E
		MOUSE, SALT MARSH HARVEST	Reithrodontomys raviventris	L, E
	PLANTS	BIRD'S-BEAK, PALMATE-BRACTED	Cordylanthes palmatus	L, E
		CLARKIA, PRESIDIO	Clarkia franciscana	L, E
		DUDLEYA, SANTA CLARA VALLEY	Dudleya setchellii	L, E
		FIDDLENECK, LARGE-FLOWERED	Amsinckia grandiflora	L, E, CH
		GOLDFIELDS, CONTRA COSTA	Lasthenia conjugens	L, E
		MANZANITA, PALLID	Arctostaphylos pallida	P, T
		MANZANITA, PALLID	Arctostaphylos pallida	P, T
		NAVARRETIA, FEW-FLOWERED	Navarretia leucocephala ssp. pauciflora	L, E
		NAVARRETIA, MANY-FLOWERED	Navarretia leucocephala ssp. plieantha	L, E
		STONECROP, LAKE COUNTY	Parvisedum leiocarpum	L, E
	REPTILES	WHIPSNAKE, ALAMEDA	Masticophis lateralis euryxanthus	P, E
ALPINE	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	TROUT, LAHONTAN CUTTHROAT	Salmo clarki henshawi	L, T
		TROUT, PAIUTE CUTTHROAT	Salmo clarki seleniris	L, T
AMADOR	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	BUCKWHEAT, IONE	Eriogonum apricum	P, E
		BUCKWHEAT, IONE	Eriogonum apricum	P, E
		MANZANITA, IONE	Arctostaphylos myrtifolia	P, T
		MANZANITA, IONE	Arctostaphylos myrtifolia	P, T
BUTTE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
	CRUSTACEAN	SHRIMP, CONSERVANCY FAIRY	Brancinecta conservatio	L, E
		SHRIMP, VERNAL POOL TADPOLE	Lepidurus packardi	L, E
	FISHES	SALMON, CHINOOK (SACRAMENTO RIVER WINTER RUN).	Oncorhynchus tshawytscha	L, E, CH
		STEELHEAD, CALIFORNIA CENTRAL VALLEY POP.	Oncorhynchus mykiss, (Central Valley ESU)	P, E
	INSECTS	BEETLE, VALLEY ELDERBERRY LONGHORN.	Desmocerus californicus dimorphus	L, T, CH
	PLANTS	MEADOWFOAM, BUTTE COUNTY	Limnanthes floccosa ssp. californica	L, E
		SPURGE, HOOVER'S	Chamaesyce hooveri	L, T
		TUCTORIA, GREEN'S	Tuctoria greenei	L, E
	REPTILES	SNAKE, GIANT GARTER	Thamnophis gigas	L, T
CALAVERAS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	CRUSTACEAN	SHRIMP, VERNAL POOL TADPOLE	Lepidurus packardi	L, E
	PLANTS	MANZANITA, IONE	Arctostaphylos myrtifolia	P, T
		MANZANITA, IONE	Arctostaphylos myrtifolia	P, T
COLUSA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	CRUSTACEAN	SHRIMP, VERNAL POOL TADPOLE	Lepidurus packardi	L, E
	FISHES	STEELHEAD, CALIFORNIA CENTRAL VALLEY POP.	Oncorhynchus mykiss, (Central Valley ESU)	P, E

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. **Note:** Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
	INSECTS	BEETLE, VALLEY ELDERBERRY LONGHORN.	Desmocerus californicus dimorphus	L, T, CH
	PLANTS	BIRD'S-BEAK, PALMATE-BRACTED	Cordylanthes palmatus	L, E
	REPTILES	SNAKE, GIANT GARTER	Thamnophis gigas	L, T
CONTRA COSTA	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		RAIL, CALIFORNIA CLAPPER	Rallus longirostris obsoletus	L, E
		TERN, CALIFORNIA LEAST	Sterna antillarum browni	L, E
	CRUSTACEAN	LINDERIELLA, CALIFORNIA	Linderiella occidentalis	P, E
		SHRIMP, LONGHORN FAIRY	Branchinecta longiantenna	L, E
		SHRIMP, VERNAL POOL FAIRY	Branchinecta lynchi	L, T
	FISHES	GOBY, TIDEWATER	Eucyclogobius newberryi	L, E
		SALMON, CHINOOK (SACRAMENTO RIVER WINTER RUN).	Oncorhynchus tshawytscha	L, E, CH
		STEELHEAD, CALIFORNIA CENTRAL VALLEY POP.	Oncorhynchus mykiss, (Central Valley ESU)	P, E
	INSECTS	BUTTERFLY, BAY CHECKERSPOT	Euphydryas editha bayensis	L, T
		BUTTERFLY, LANGE'S METALMARK	Apodemia mormo langei	L, E
	MAMMALS	FOX, SAN JOAQUIN KIT	Vulpes macrotis mutica	L, E
		MOUSE, SALT MARSH HARVEST	Reithrodontomys raviventris	L, E
	PLANTS	DUDLEYA, SANTA CLARA VALLEY	Dudleya setchellii	L, E
		EVENING-PRIMROSE, ANTIOCH DUNES	Oenothera deltoides ssp. howellii	L, E, CH
		FIDDLENECK, LARGE-FLOWERED	Amsinckia grandiflora	L, E, CH
		GOLDFIELDS, CONTRA COSTA	Lasthenia conjugens	L, E
		MANZANITA, PALLID	Arctostaphylos pallida	P, T
		MANZANITA, PALLID	Arctostaphylos pallida	P, T
		NAVARRETIA, FEW-FLOWERED	Navarretia leucocephala ssp. pauciflora	L, E
		NAVARRETIA, MANY-FLOWERED	Navarretia leucocephala ssp. pleiantha	L, E
		STONECROP, LAKE COUNTY	Parvisedum leiocarpum	L, E
		WALLFLOWER, CONTRA COSTA	Erysimum capitatum var angustatum	L, E, CH
	REPTILES	WHIPSNAKE, ALAMEDA	Masticophis lateralis euryxanthus	P, E
COWLITZ	FISHES	STEELHEAD, LOWER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Lower Columbia ESU).	P, T
		STEELHEAD, LOWER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Lower Columbia ESU).	P, T
DEL NORTE	AMPHIBIANS	FROG, CALIFORNIA RED-LEGGED	Rana Aurora Draytonii	L, T
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
	FISHES	GOBY, TIDEWATER	Eucyclogobius newberryi	L, E
		SALMON, COHO (SOUTHERN OR/NORTHERN CA COAST).	Oncorhynchus kisutch	L, T
	INSECTS	BUTTERFLY, OREGON SILVERSPOT	Speyeria zerene hippolyta	L, T, CH
	PLANTS	WALLFLOWER, MENZIE'S	Erysimum menziesii	L, E
EL DORADO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	CRUSTACEAN	SHRIMP, VERNAL POOL TADPOLE	Lepidurus packardi	L, E
	FISHES	TROUT, LAHONTAN CUTTHROAT	Salmo clarki henshawi	L, T
	INSECTS	BEETLE, VALLEY ELDERBERRY LONGHORN.	Desmocerus californicus dimorphus	L, T, CH
	PLANTS	BEDSTRAW, EL DORADO	Galium californicum ssp. Sierrae	L, E
		BUTTERWEED, LAYNE'S	Senecio layneae	L, T
		CEANOTHUS, PINE HILL	Ceanothus roderickii	L, E
		FLANNELBUSH, PINE HILL	Fremontodendron californicum ssp. decumbens.	L, E
		MORNING-GLORY, STEBBINS	Calystegia stebbinsii	L, E
FRESNO	PLANTS	ADOBE SUNBURST, SAN JOAQUIN	Pseudobahia peirsonii	L, T
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	TROUT, LITTLE KERN GOLDEN	Salmo aguabonita whitei	L, T, CH
		TROUT, PAIUTE CUTTHROAT	Salmo clarki seleniris	L, T
	INSECTS	BEETLE, VALLEY ELDERBERRY LONGHORN.	Desmocerus californicus dimorphus	L, T, CH
	MAMMALS	FOX, SAN JOAQUIN KIT	Vulpes macrotis mutica	L, E
		KANGAROO RAT, FRESNO	Dipodomys nitratoides exilis	L, E, CH
		KANGAROO RAT, GIANT	Dipodomys ingens	L, E
		RAT, FRESNO KANGAROO	Dipodomys nitratoides exilis	L, E, CH
		RAT, GIANT KANGAROO	Dipodomys ingens	L, E
	PLANTS	BIRD'S-BEAK, PALMATE-BRACTED	Cordylanthes palmatus	L, E

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. **Note:** Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
		CARPENTERIA	Carpenteria californica	P, T
		DUDLEYA, SANTA CLARA VALLEY	Dudleya setchellii	L, E
		GOLDEN SUNBURST, HARTWEG'S	Pseudobahia bahiifolia	L, E
		JEWELFLOWER, CALIFORNIA	Caulanthus californicus	L, E
		OWL'S-CLOVER, FLESHY	Castilleja campestris ssp. succulenta	L, E
		PUSSYPAWS, MARIPOSA	Calyptridium pulchellum	P, E
		WOOLLY-STAR, HOOVER'S	Eriastrum hooveri	L, T
		WOOLLY-THREADS, SAN JOAQUIN	Lembertia congdonii	L, E
	REPTILES	LIZARD, BLUNT-NOSED LEOPARD	Gambelia (crotaphytus) silus	L, E
		SNAKE, GIANT GARTER	Thamnophis gigas	L, T
GLENN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	CRUSTACEAN	SHRIMP, VERNAL POOL TADPOLE	Lepidurus packardi	L, E
	FISHES	SALMON, CHINOOK (SACRAMENTO RIVER WINTER RUN).	Oncorhynchus tshawytscha	L, E, CH
		STEELHEAD, CALIFORNIA CENTRAL VALLEY POP.	Oncorhynchus mykiss, (Central Valley ESU)	P, E
	INSECTS	BEETLE, VALLEY ELDERBERRY LONGHORN.	Desmocerus californicus dimorphus	L, T, CH
	PLANTS	GRASS, HAIRY ORCUTT	Orcuttia pilosa	L, E
		SPURGE, HOOVER'S	Chamaesyce hooveri	L, T
	REPTILES	SNAKE, GIANT GARTER	Thamnophis gigas	L, T
HOKE	PLANTS	ADOBE SUNBURST, SAN JOAQUIN	Pseudobahia peirsonii	L, T
HUMBOLDT	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
	FISHES	GOBY, TIDEWATER	Eucyclogobius newberryi	L, E
		SALMON, COHO (CENTRAL CALIFORNIA COAST POP).	Oncorhynchus kisutch	L, E
		SALMON, COHO (SOUTHERN OR/NORTHERN CA COAST).	Oncorhynchus kisutch	L, T
		STEELHEAD, NORTHERN CALIFORNIA POPULATION.	Oncorhynchus mykiss, (Northern California ESU).	P, T
	PLANTS	LAYIA, BEACH	Layia carnosa	L, E
		LILY, WESTERN	Lilium occidentale	L, E
		WALLFLOWER, MENZIE'S	Erysimum menziesii	L, E
	REPTILES	TURTLE, OLIVE (PACIFIC) RIDLEY SEA	Lepidochelys olivacea	L, E, T
IMPERIAL	AMPHIBIANS	TOAD, ARROYO SOUTHWESTERN	Bufo microscaphus californicus	L, E
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		RAIL, YUMA CLAPPER	Rallus longirostris yumanensis	L, E
	FISHES	CHUB, BONYTAIL	Gila elegans	L, E, CH
		PUPFISH, DESERT	Cyprinodon macularius	L, E, CH
		SQUAWFISH, COLORADO	Ptychocheilus lucius	L, E, CH
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
	PLANTS	MILK-VETCH, PIERSON'S	Astragalus magdalenae var. piersonii	P, E
	REPTILES	LIZARD, FLAT-TAILED HORNED	Phrynosoma mcallii	P, T
	REPTILES	TORTOISE, DESERT	Gopherus (=Xerobates, =Scaptochelys) agassizii.	L, T, CH
INYO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		TOWHEE, INYO BROWN	Pipilo fuscus eremophilus	L, T, CH
		VIREO, LEAST BELL'S	Vireo bellii pusillus	L, E, CH
	FISHES	CHUB, OWENS TUI	Gila bicolor snyderi	L, E, CH
		DACE, ASH MEADOWS SPECKLED	Rhinichthys osculus nevadensis	L, E, CH
		PUPFISH, OWENS	Cyprinodon radiosus	L, E
		TROUT, LAHONTAN CUTTHROAT	Salmo clarki henshawi	L, T
	MAMMALS	VOLE, AMARGOSA	Microtus californicus scirpensis	L, E, CH
	PLANTS	CENTAURY, SPRING-LOVING	Centaurium namophilum var. namophilum	L, T, CH
		EVENING-PRIMROSE, EUREKA VALLEY	Oenothera avita ssp. eurekensis	L, E
		GRASS, EUREKA DUNE	Swallenia alexandrae	L, E
		GUMPLANT, ASH MEADOWS	Grindelia fraxino-pratensis	L, T, CH
		IVESIA, ASH MEADOWS	Ivesia eremica	L, T, CH
		MILK-VETCH, FISH SLOUGH	Astragalus lentiginosus var. Piscinensis	P, E

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		MILK-VETCH, SHINING	Astragalus lentiginosus var. micans	P, T
		MILK-VETCH, SODAVILLE	Astragalus lentiginosus var. sesquimetralis	P, T
		NITERWORT, AMARGOSA	Nitrophila mohavensis	L, E, CH
	REPTILES	TORTOISE, DESERT	Gopherus (=Xerobates, =Scaptochelys) agassizii.	L, T, CH
KERN	BIRDS	CONDOR, CALIFORNIA	Gymnogyps californianus	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		FLYCATCHER, SOUTHWESTERN WILLOW	Empidonax traillii extimus	L, E
		VIREO, LEAST BELL'S	Vireo bellii pusillus	L, E, CH
	INSECTS	MOTH, KERN PRIMROSE SPHINX	Euproserpinus euterpe	L, T
	MAMMALS	FOX, SAN JOAQUIN KIT	Vulpes macrotis mutica	L, E
		KANGAROO RAT, GIANT	Dipodomys ingens	L, E
		KANGAROO RAT, TIPTON	Dipodomys nitratoides	L, E
		RAT, GIANT KANGAROO	Dipodomys ingens	L, E
		RAT, TIPTON KANGAROO	Dipodomys nitratoides	L, E
	PLANTS	CACTUS, BAKERSFIELD	Opuntia treleasei	L, E
		GRASS, PARISH'S ALKALI	Puccinellia parishii	P, E
		JEWELFLOWER, CALIFORNIA	Caulanthus californicus	L, E
		LILY, GREENHORN ADOBE	Fritillaria striata	P, T
		MALLOW, KERN	Eremalche kernensis	L, E
		MONKEY-FLOWER, KELSO CREEK	Mimulus shevockii	P, E
		NAVARRETIA, PIUTE MOUNTAINS	Navarretia setiloba	P, T
		WOOLLY-STAR, HOOVER'S	Eriastrum hooveri	L, T
		WOOLLY-THREADS, SAN JOAQUIN	Lembertia congdonii	L, E
	REPTILES	LIZARD, BLUNT-NOSED LEOPARD	Gambelia (Crotaphytus) silus	L, E
		TORTOISE, DESERT	Gopherus (=Xerobates, =Scaptochelys) agassizii.	L, T, CH
KINGS	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
	MAMMALS	FOX, SAN JOAQUIN KIT	Vulpes macrotis mutica	L, E
		KANGAROO RAT, FRESNO	Dipodomys nitratoides exilis	L, E, CH
		KANGAROO RAT, GIANT	Dipodomys ingens	L, E
		KANGAROO RAT, TIPTON	Dipodomys nitratoides	L, E
		RAT, FRESNO KANGAROO	Dipodomys nitratoides exilis	L, E, CH
		RAT, GIANT KANGAROO	Dipodomys ingens	L, E
		RAT, TIPTON KANGAROO	Dipodomys nitratoides	L, E
	PLANTS	JEWELFLOWER, CALIFORNIA	Caulanthus californicus	L, E
		WOOLLY-STAR, HOOVER'S	Eriastrum hooveri	L, T
		WOOLLY-THREADS, SAN JOAQUIN	Lembertia congdonii	L, E
	REPTILES	LIZARD, BLUNT-NOSED LEOPARD	Gambelia (Crotaphytus) silus	L, E
LAKE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	SPLITTAIL, SACRAMENTO	Pogonichthys macrolepidotus	P, T
	PLANTS	COYOTE-THISTLE, LOCH LOMOND	Eryngium constancei	L, T
		GOLDFIELDS, BURKE'S	Lasthenia burkei	L, E
		GRASS, SLENDER ORCUTT	Orcuttia tenuis	L, T
LASSEN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	SUCKER, MODOC	Catostomus microps	L, E, CH
LOS ANGELELS	PLANTS	CEANOTHUS, VAIL LAKE	Ceanothus ophiochilus	P, T
	BIRDS	MOUNTAIN-MAHOGANY, CATALINA ISLAND.	Cercocarpus traskiae	L, E
		MOUNTAIN-MAHOGANY, CATALINA ISLAND.	Cercocarpus traskiae	L, E
		RUSH-ROSE, ISLAND	Helianthemum greenei	L, T
		RUSH-ROSE, ISLAND	Helianthemum greenei	L, T
	PLANTS	SANDWORT, MARSH	Arenaria paludicola	L, E
	BIRDS	WOODLAND-STAR, SAN CLEMENTE ISLAND.	Lithophragma maximum	L, E
		WOODLAND-STAR, SAN CLEMENTE ISLAND.	Lithophragma maximum	L, E
	AMPHIBIANS	TOAD, ARROYO SOUTHWESTERN	Bufo microscaphus californicus	L, E
	BIRDS	CONDOR, CALIFORNIA	Gymnogyps californianus	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		FLYCATCHER, SOUTHWESTERN WILLOW	Empidonax traillii extimus	L, E
		GNATCATCHER, COASTAL CALIFORNIA	Polioptila californica californica	L, T
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		RAIL, LIGHT-FOOTED CLAPPER	Rallus longirostris levipes	L, E
		SHRIKE, SAN CLEMENTE LOGGERHEAD	Lanius ludovicianus meamsi	L, E
		SPARROW, SAN CLEMENTE SAGE	Amphispiza belli clementeae	L, T
		TERN, CALIFORNIA LEAST	Sterna antillarum browni	L, E
		VIREO, LEAST BELL'S	Vireo bellii pusillus	L, E, CH
	FISHES	CHUB, MOHAVE TUI	Gila bicolor mohavensis	L, E
		GOBY, TIDEWATER	Eucyclogobius newberryi	L, E
		STEELHEAD, SOUTHERN CALIFORNIA POPULATION.	Oncorhynchus mykiss, (Southern California ESU).	L, E
		STEELHEAD, SOUTHERN CALIFORNIA POPULATION.	Oncorhynchus mykiss, (Southern California ESU).	L, E
		STICKLEBACK, UNARMORED THREE-SPINE.	Gasterosteus aculeatus williamsoni	L, E
	INSECTS	BUTTERFLY, EL SEGUNDO BLUE	Euphilotes (=Shijimiaeoides) battoides allyni	L, E
		BUTTERFLY, PALOS VERDES BLUE	Glaucopsyche lygdamus palosverdesensis	L, E, CH
	MAMMALS	FOX, SAN JOAQUIN KIT	Vulpes macrotis mutica	L, E
		MOUSE, PACIFIC POCKET	Perognathus longimembris pacificus	L, E
	PLANTS	BARBERRY, NEVIN'S	Berberis nevinii	P, T
		BARBERRY, NEVIN'S	Berberis nevinii	P, T
		BEARGRASS, DEHESA	Nolina interrata	P, T
		BEARGRASS, DEHESA	Nolina interrata	P, T
		BIRD'S-BEAK, SALT MARSH	Cordylanthus maritimus sep. maritimus	L, E
		BRODIAEA, THREAD-LEAVED	Brodiaea filifolia	P, T
		BROOM, SAN CLEMENTE ISLAND	Lotus dendroideus ssp. traskiae	L, E
		BUSH-MALLOW, SAN CLEMENTE ISLAND	Malacothamnus clementinus	L, E
		CEANOTHUS, VAIL LAKE	Ceanothus ophi0chilus	P, T
		CROWNSCALE, SAN JACINTO VALLEY	Atriplex coronata var. notatior	P, E
		DUDLEYA, MARCESCENT	Dudleya cymosa ssp. marcescens	L, T
		DUDLEYA, SANTA MONICA MOUNTAINS	Dudleya cymosa ssp. ovatifolia	L, T
		FLANNELBUSH, MEXICAN	Fremontodendron mexicanum	P, T
		LARKSPUR, SAN CLEMENTE ISLAND	Delphinium kinkiense	L, E
		MILK-VETCH, BRAUNTON'S	Astragalus brauntonii	L, E
		NAVARRETIA, SPREADING	Navarretia fossalis	P, T
		ONION, MUNZ'S	Allium munzii	P, E
		PAINTBRUSH, SAN CLEMENTE ISLAND INDIAN.	Castilleja grisea	L, E
		PENTACHAETA, LYON'S	Pentachaeta lyonii	P, E
		SPINEFLOWER, SLENDER-HORNED	Centrostegia leptoceras	L, E
		WATERCRESS, GAMBEL'S	Rorippa gambellii	L, E
	REPTILES	LIZARD, BLUNT-NOSED LEOPARD	Gambelia (Crotaphytus) silus	L, E
		LIZARD, ISLAND NIGHT	Xantusia (Klauberina) riversiana	L, T
		TORTOISE, DESERT	Gopherus (=Xerobates, =Scaptochelys) agassizii.	L, T, CH
MADERA	PLANTS	ADOBE SUNBURST, SAN JOAQUIN	Pseudobahia peirsonii	L, T
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	TROUT, LAHONTAN CUTTHROAT	Salmo clarki henshawi	L, T
		TROUT, PAIUTE CUTTHROAT	Salmo clarki seleniris	L, T
	INSECTS	BEETLE, VALLEY ELDERBERRY LONG-HORN.	Desmocerus californicus dimorphus	L, T, CH
	MAMMALS	FOX, SAN JOAQUIN KIT	Vulpes macrotis mutica	L, E
		RAT, FRESNO KANGAROO	Dipodomys nitratoides exilis	L, E, CH
	PLANTS	BIRD'S-BEAK, PALMATE-BRACTED	Cordylanthes palmatus	L, E
		GOLDEN SUNBURST, HARTWEG'S	Pseudobahia bahiifolia	L, E
		GRASS, HAIRY ORCUTT	Orcuttia pilosa	L, E
		LUPINE, CLOVER	Lupinus tidestromii	L, E
		OWL'S-CLOVER, FLESHY	Castilleja campestris ssp. succulenta	L, E
		PUSSYPAWS, MARIPOSA	Calyptridium pulchellum	P, E
	REPTILES	LIZARD, BLUNT-NOSED LEOPARD	Gambelia (Crotaphytus) silus	L, E
MARIN	AMPHIBIANS	FROG, CALIFORNIA RED-LEGGED	Rana Aurora Draytonii	L, T
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
		RAIL, CALIFORNIA CLAPPER	Rallus longirostris obsoletus	L, E
	CRUSTACEAN	SHRIMP, CALIFORNIA FRESHWATER	Syncaris pacifica	L, E
	FISHES	GOBY, TIDEWATER	Eucyclogobius newberryi	L, E
		SALMON, CHINOOK (SACRAMENTO RIVER WINTER RUN).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, COHO (CENTRAL CALIFORNIA COAST POP).	Oncorhynchus kisutch	L, E
		STEELHEAD, CENTRAL CALIFORNIA POPULATION.	Oncorhynchus mykiss, (Central California Coast ESU).	L, T

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		STEELHEAD, CENTRAL CALIFORNIA POPULATION.	Oncorhynchus mykiss, (Central California Coast ESU).	L, T
	INSECTS	BUTTERFLY, MISSION BLUE	Icaricia icarioides missionensis	L, E
		BUTTERFLY, MYRTLE'S SILVERSPOT	Speyeria zerene myrtleae	L, E
	MAMMALS	MOUSE, SALT MARSH HARVEST	Reithrodontomys raviventris	L, E
	PLANTS	ALLOCARYA, CALISTOGA	Plagiobothrys strictus	P, E
		ALOPECURUS, SONOMA	Alopecurus aequalis var. sonomensis	P, E
		BLUEGRASS, NAPA	Poa napensis	P, E
		CHECKER-MALLOW, KENWOOD MARSH	Sidalcea oregana ssp. valida	P, E
		CLARKIA, VINE HILL	Clarkia imbricata	P, E
		CLOVER, SHOWY INDIAN	Trifolum amoenum	P, E
		CLOVER, SHOWY INDIAN	Trifolum amoenum	P, E
		DWARF-FLAX, MARIN	Hesperolinon congestum	L, T
		JEWELFLOWER, TIBURON	Streptanthus niger	P, E
		LARKSPUR, BAKER'S	Delphinium bakeri	P, E
		LARKSPUR, BAKER'S	Delphinium bakeri	P, E
		LAYIA, BEACH	Layia carnosa	L, E
		LILY, PITKIN MARSH	Lilium pitkinense	P, E
		LUPINE, CLOVER	Lupinus tidestromii	L, E
		MILK-VETCH, CLARA HUNT'S	Astragalus clarianus	P, E
		PAINTBRUSH, TIBURON	Castilleja affinis ssp. neglecta	L, E
		PAINTBRUSH, TIBURON	Castilleja affinis ssp. neglecta	L, E
		PENTACHAETA, WHITE-RAYED	Pentachaeta bellidiflora	L, E
		SEDGE, WHITE	Carex albida	P, E
		SPINEFLOWER, SONOMA	Chorizanthe valida	L, E
MARIPOSA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	INSECTS	BEETLE, VALLEY ELDERBERRY LONGHORN.	Desmocerus californicus dimorphus	L, T, CH
	PLANTS	LUPINE, MARIPOSA	Lupinus citrinus var. deflexus	P, E
		PUSSYPAWS, MARIPOSA	Calyptridium pulchellum	P, E
MENDOCINO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
	FISHES	GOBY, TIDEWATER	Eucyclogobius newberryi	L, E
		STEELHEAD, NORTHERN CALIFORNIA POPULATION.	Oncorhynchus mykiss, (Northern California ESU).	P, T
	INSECTS	BUTTERFLY, BEHREN'S SILVERSPOT	Speyeria zerene behrensii	P, E
		BUTTERFLY, LOTIS BLUE	Lycaeides argyrognomon lotis	L, E
	MAMMALS	BEAVER, POINT ARENA MOUNTAIN	Aplodontia rufa nigra	L, E
	PLANTS	GOLDFIELDS, BURKE'S	Lasthenia burkei	L, E
		GOLDFIELDS, CONTRA COSTA	Lasthenia conjugens	L, E
		NAVARRETIA, FEW-FLOWERED	Navarretia leucocephala ssp. pauciflora	L, E
		NAVARRETIA, MANY-FLOWERED	Navarretia leucocephala ssp. pleiantha	L, E
		ROCK-CRESS, MCDONALD'S	Arabis mcdonaldiana	L, E
		SPINEFLOWER, HOWELL'S	Chorizanthe howellii	L, E
		STONECROP, LAKE COUNTY	Parvisedum leiocarpum	L, E
		WALLFLOWER, MENZIE'S	Erysimum menziesii	L, E
	REPTILES	TURTLE, OLIVE (PACIFIC) RIDLEY SEA	Lepidochelys olivacea	L, E, T
MERCED	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
	CRUSTACEAN	LINDERIELLA, CALIFORNIA	Linderiella occidentalis	P, E
		SHRIMP, CONSERVANCY FAIRY	Brancinecta conservatio	L, E
		SHRIMP, VERNAL POOL FAIRY	Branchinecta lynchi	L, T
	FISHES	STEELHEAD, CALIFORNIA CENTRAL VALLEY POP.	Oncorhynchus mykiss, (Central Valley ESU)	P, E
	INSECTS	BEETLE, VALLEY ELDERBERRY LONGHORN.	Desmocerus californicus dimorphus	L, T, CH
	MAMMALS	FOX, SAN JOAQUIN KIT	Vulpes macrotis mutica	L, E
		KANGAROO RAT, FRESNO	Dipodomys nitratoides exilis	L, E, CH
		KANGAROO RAT, GIANT	Dipodomys ingens	L, E
		RAT, FRESNO KANGAROO	Dipodomys nitratoides exilis	L, E, CH
		RAT, GIANT KANGAROO	Dipodomys ingens	L, E
	PLANTS	GRASS, COLUSA	Neostapfia colusana	L, T
		GRASS, HAIRY ORCUTT	Orcuttia pilosa	L, E
		OWL'S-CLOVER, FLESHY	Castilleja campestris ssp. succulenta	L, E
		TUCTORIA, GREEN'S	Tuctoria greenei	L, E
	REPTILES	LIZARD, BLUNT-NOSED LEOPARD	Gambelia (Crotaphytus) silus	L, E
		SNAKE, GIANT GARTER	Thamnophis gigas	L, T

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. **Note:** Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
MODOC	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	SUCKER, LOST RIVER	Deltistes luxatus	L, E
		SUCKER, MODOC	Catostomus microps	L, E, CH
		SUCKER, SHORTNOSE	Chasmistes brevirostris	L, E
	PLANTS	BARBERRY, TRUCKEE	Berberis (=Mahonia) sonnei	L, E
MONO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
	FISHES	CHUB, OWENS TUI	Gila bicolor snyderi	L, E, CH
		PUPFISH, OWENS	Cyprinodon radiosus	L, E
		TROUT, LAHONTAN CUTTHROAT	Salmo clarki henshawi	L, T
		TROUT, PAIUTE CUTTHROAT	Salmo clarki seleniris	L, T
	PLANTS	MILK-VETCH, FISH SLOUGH	Astragalus lentiginosus var. piscinensis	P, E
MONTEREY	BIRDS	POTENTILLA, HICKMANN'S	Potentilla hickmanii	P, E
	AMPHIBIANS	FROG, CALIFORNIA RED-LEGGED	Rana Aurora Draytonii	L, T
		SALAMANDER, SANTA CRUZ LONG-TOED	Ambystoma macrodactylum croceum	L, E
	BIRDS	CONDOR, CALIFORNIA	Gymnogyps californianus	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
		RAIL, CALIFORNIA CLAPPER	Rallus longirostris obsoletus	L, E
		TERN, CALIFORNIA LEAST	Sterna antillarum browni	L, E
		VIREO, LEAST BELL'S	Vireo bellii pusillus	L, E, CH
	CRUSTACEAN	LINDERIELLA, CALIFORNIA	Linderiella occidentalis	P, E
		SHRIMP, VERNAL POOL FAIRY	Branchinecta lynchi	L, T
	FISHES	GOBY, TIDEWATER	Eucyclogobius newberryi	L, E
		STEELHEAD, SOUTH-CENTRAL CALIFORNIA POP.	Oncorhynchus mykiss, (South-Central Calif. ESU).	L, T
		STEELHEAD, SOUTH-CENTRAL CALIFORNIA POP.	Oncorhynchus mykiss, (South-Central Calif. ESU).	L, T
	INSECTS	BUTTERFLY, SMITH'S BLUE	Euphilotes (=Shijimiaeoides) enoptes smithi	L, E
	MAMMALS	FOX, SAN JOAQUIN KIT	Vulpes macrotis mutica	L, E
		KANGAROO RAT, GIANT	Dipodomys ingens	L, E
		OTTER, SOUTHERN SEA	Enhydra lutris nereis	L, T
		RAT, GIANT KANGAROO	Dipodomys ingens	L, E
	PLANTS	CINQUEFOIL, HICKMAN'S	Potentilla hickmanii	P, E
		CLOVER, MONTEREY	Trifolium trichocalyx	P, E
		CYPRESS, GOWEN	Cupressus goveniana ssp. goveniana	P, T
		DUDLEYA, SANTA CLARA VALLEY	Dudleya setchellii	L, E
		GILIA, MONTEREY	Gilia tenuiflora ssp. arenaria	L, E
		LAYIA, BEACH	Layia carnosa	L, E
		LUPINE, CLOVER	Lupinus tidestromii	L, E
		MILK-VETCH, COASTAL DUNES	Astragalus tener var. titi	P, E
		PIPERIA, YADON'S	Piperia yadonii	P, E
		SPINEFLOWER, MONTEREY	Chorizanthe pungens var. pungens	L, T
		SPINEFLOWER, ROBUST	Chorizanthe robusta var. robusta	L, E
		WALLFLOWER, MENZIE'S	Erysimum menziesii	L, E
	REPTILES	LIZARD, BLACK LEGLESS	Anniella pulchra nigra	P, E
		TURTLE, OLIVE (PACIFIC) RIDLEY SEA	Lepidochelys olivacea	L, E, T
NAPA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
		RAIL, CALIFORNIA CLAPPER	Rallus longirostris obsoletus	L, E
	CRUSTACEAN	LINDERIELLA, CALIFORNIA	Linderiella occidentalis	P, E
		SHRIMP, CALIFORNIA FRESHWATER	Syncaris pacifica	L, E
	FISHES	SALMON, CHINOOK (SACRAMENTO RIVER WINTER RUN).	Oncorhynchus tshawytscha	L, E, CH
		STEELHEAD, CALIFORNIA CENTRAL VALLEY POP.	Oncorhynchus mykiss, (Central Valley ESU)	P, E
		STEELHEAD, CENTRAL CALIFORNIA POPULATION.	Oncorhynchus mykiss, (Central California Coast ESU).	L, T
		STEELHEAD, CENTRAL CALIFORNIA POPULATION.	Oncorhynchus mykiss, (Central California Coast ESU).	L, T
	MAMMALS	FOX, SAN JOAQUIN KIT	Vulpes macrotis mutica	L, E
		MOUSE, SALT MARSH HARVEST	Reithrodontomys raviventris	L, E
	PLANTS	ALLOCARYA, CALISTOGA	Plagiobothrys strictus	P, E
		ALOPECURUS, SONOMA	Alopecurus aequalis var. sonomensis	P, E
		BLUEGRASS, NAPA	Poa napensis	P, E
		CHECKER-MALLOW, KENWOOD MARSH	Sidalcea oregana ssp. valida	P, E

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. **Note:** Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
		CLARKIA, VINE HILL	Clarkia imbricata	P, E
		CLOVER, SHOWY INDIAN	Trifolum amoenum	P, E
		GOLDFIELDS, CONTRA COSTA	Lasthenia conjugens	L, E
		LILY, PITKIN MARSH	Lilium pitkinense	P, E
		MILK-VETCH, CLARA HUNT'S	Astragalus clarianus	P, E
		NAVARRETIA, FEW-FLOWERED	Navarretia leucocephala ssp. pauciflora	L, E
		NAVARRETIA, MANY-FLOWERED	Navarretia leucocephala ssp. pliecantha	L, E
		PAINTBRUSH, TIBURON	Castilleja affinis ssp. neglecta	L, E
		PAINTBRUSH, TIBURON	Castilleja affinis ssp. neglecta	L, E
		SEDGE, WHITE	Carex albida	P, E
		STONECROP, LAKE COUNTY	Parvisedum leiocarpem	L, E
DNEVADA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	TROUT, LAHONTAN CUTTHROAT	Salmo clarki henshawi	L, T
	PLANTS	BARBERRY, TRUCKEE	Berberis (=Mahonia) sonnei	L, E
DORANGE	AMPHIBIANS	TOAD, ARROYO SOUTHWESTERN	Bufo microscaphus californicus	L, E
	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
		GNATCATCHER, COASTAL CALIFORNIA	Polioptila californica californica	L, T
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivoeus	L, T
		RAIL, LIGHT-FOOTED CLAPPER	Rallus longirostris levipes	L, E
		TERN, CALIFORNIA LEAST	Sterna antillarum browni	L, E
		VIREO, LEAST BELL'S	Vireo bellii pusillus	L, E, CH
	CRUSTACEAN	SHRIMP, RIVERSIDE FAIRY	Streptocephalus woottoni	L, E
	FISHES	GOBY, TIDEWATER	Eucyclogobius newberryi	L, E
	MAMMALS	MOUSE, PACIFIC POCKET	Perognathus longimembris pacificus	L, E
	PLANTS	ASTER, DEL MAR SAND	Corethrogyne filaginifolia var. linifolia	P, E
		BACCHARIS, ENCINITAS	Baccharis vanessae	L, T
		BIRD'S-BEAK, SALT MARSH	Cordylanthus maritimus ssp. maritimus	L, E
		BRODIAEA, THREAD-LEAVED	Brodiaea filifolia	P, T
		CROWN-BEARD, BIG-LEAVED	Verbesina dissita	L, T
		CROWNSCALE, SAN JACINTO VALLEY	Atriplex coronata var. notatior	P, E
		DUDLEYA, MARCESCENT	Dudleya cymosa ssp. marcescens	L, T
		DUDLEYA, SANTA MONICA MOUNTAINS	Dudleya cymosa ssp. ovatifolia	L, T
		LIVEFOREVER, LAGUNA BEACH	Dudleya stolonifera	P, E
		MANZANITA, DEL MAR	Arctostaphylos glandulosa ssp. crassifolia	L, E
		MILK-VETCH, BRAUNTON'S	Astragalus brauntonii	L, E
		MONARDELLA, WILLOWY	Monardella linoides ssp. viminea	P, E
		NAVARRETIA, SPREADING	Navarretia fossalis	P, T
		ONION, MUNZ'S	Allium munzii	P, E
		SPINEFLOWER, ORCUTT'S	Chorizanthe orcuttiana	L, E
		TARWEED, OTAY	Hemizonia conjugens	P, E
		THORNMINT, SAN DIEGO	Acanthomintha ilicifolia	P, E
		WOOLLY-STAR, SANTA ANA RIVER	Eriastrum densifolium ssp. santorum	L, E
PIMA	BIRDS	FLYCATCHER, SOUTHWESTERN WILLOW	Empidonax traillii extimus	L, E
PLACER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
	CRUSTACEAN	LINDERIELLA, CALIFORNIA	Linderiella occidentalis	P, E
		SHRIMP, VERNAL POOL FAIRY	Branchinecta lynchi	L, T
		SHRIMP, VERNAL POOL TADPOLE	Lepidurus packardi	L, E
	FISHES	TROUT, LAHONTAN CUTTHROAT	Salmo clarki henshawi	L, T
	INSECTS	BEETLE, VALLEY ELDERBERRY LONGHORN.	Desmocerus californicus dimorphus	L, T, CH
	PLANTS	BARBERRY, TRUCKEE	Berberis (=Mohonia) sonnei	L, E
PLUMAS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	GRASS, SLENDER ORCUTT	Orcuttia tenuis	L, T
RIVERSIDE	AMPHIBIANS	SALAMANDER, DESERT SLENDER	Batrachoseps aridus	L, E
		TOAD, ARROYO SOUTHWESTERN	Bufo microscaphus californicus	L, E
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		FLYCATCHER, SOUTHWESTERN WILLOW	Empidonax traillii extimus	L, E
		FLYCATCHER, SOUTHWESTERN WILLOW	Empidonax traillii extimus	L, E
		GNATCATCHER, COASTAL CALIFORNIA	Polioptila californica californica	L, T
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		RAIL, YUMA CLAPPER	Rallus longirostris yumanensis	L, E
		VIREO, LEAST BELL'S	Vireo bellii pusillus	L, E, CH
	CRUSTACEAN	LINDERIELLA, CALIFORNIA	Linderiella occidentalis	P, E
		SHRIMP, RIVERSIDE FAIRY	Streptocephalus woottoni	L, E
		SHRIMP, VERNAL POOL FAIRY	Branchinecta lynchi	L, T
	FISHES	CHUB, BONYTAIL	Gila elegans	L, E, CH
		PUPFISH, DESERT	Cyprinodon macularius	L, E, CH

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. **Note:** Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
		SQUAWFISH, COLORADO	Ptychocheilus lucius	L, E, CH
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
	INSECTS	BUTTERFLY, QUINO CHECKERSPOT	Euphydryas editha quino	L, E
		FLY, DELHI SANDS FLOWER-LOVING	Rhophiamidas terminatus abdominalis	L, E
	MAMMALS	KANGAROO RAT, STEPHENS'	Dipodomys stephensi	L, T
		RAT, STEPHENS' KANGAROO	Dipodomys stephensi	L, T
	PLANTS	BARBERRY, NEVIN'S	Berberis nevinii	P, T
		BARBERRY, NEVIN'S	Berberis nevinii	P, T
		BEARGRASS, DEHESA	Nolina interrata	P, T
		BEARGRASS, DEHESA	Nolina interrata	P, T
		BRODIAEA, THREAD-LEAVED	Brodiaea filifolia	P, T
		BUTTON-CELERY, SAN DIEGO	Eryngium aristulatum var. parishii	L, E
		CEANOTHUS, VAIL LAKE	Ceanothus ophiOchilus	P, T
		CEANOTHUS, VAIL LAKE	Ceanothus ophiOchilus	P, T
		CROWNSCALE, SAN JACINTO VALLEY	Atriplex coronata var. notatior	P, E
		DAISY, PARISH'S	Erigeron parishii	L, T
		DOWNINGIA, CUYAMACA LAKE	Downingia concolor var. brevior	P, E
		FLANNELBUSH, MEXICAN	Fremontodendron mexicanum	P, T
		GRASS, CALIFORNIA ORCUTT	Orcuttia californica	L, E
		MILK-VETCH, COACHELLA VALLEY	Astragalus lentiginosus var. coachellae	P, E
		MILK-VETCH, TRIPLE-RIBBED	Astragalus tricarinatus	P, E
		MINT, OTAY MESA	Pogogyne nudiuscula	L, E
		NAVARRETIA, SPREADING	Navarretia fossalis	P, T
		ONION, MUNZ'S	Allium munzii	P, E
		SPINEFLOWER, SLENDER-HORNED	Centrostegia leptoceras	L, E
		WOOLLY-STAR, SANTA ANA RIVER	Eriastrum densifolium ssp. santorum	L, E
	REPTILES	LIZARD, COACHELLA VALLEY FRINGE-TOED.	Uma inornata	L, T, CH
		LIZARD, FLAT-TAILED HORNED	Phrynosoma mcallii	P, T
		TORTOISE, DESERT	Gopherus (=Xerobates,=Scaptochelys) agassizii.	L, T, CH
SACRAMENTO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
	CRUSTACEAN	LINDERIELLA, CALIFORNIA	Linderiella occidentalis	P, E
		SHRIMP, VERNAL POOL FAIRY	Branchinecta lynchi	L, T
		SHRIMP, VERNAL POOL TADPOLE	Lepidurus packardi	L, E
	FISHES	SALMON, CHINOOK (SACRAMENTO RIVER WINTER RUN).	Oncorhynchus tshawytscha	L, E, CH
		SMELT, DELTA	Hypomesus transpacificus	L, T, CH
		STEELHEAD, CALIFORNIA CENTRAL VALLEY POP.	Oncorhynchus mykiss, (Central Valley ESU)	P, E
	INSECTS	BEETLE, VALLEY ELDERBERRY LONGHORN.	Desmocerus californicus dimorphus	L, T, CH
	PLANTS	EVENING-PRIMROSE, ANTIOCH DUNES	Oenothera deltoides ssp. howellii	L, E, CH
		GRASS, SACRAMENTO ORCUTT	Orcuttia viscida	L, E
		GRASS, SLENDER ORCUTT	Orcuttia tenuis	L, T
	REPTILES	SNAKE, GIANT GARTER	Thamnophis gigas	L, T
SAN BENITO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	INSECTS	FLY, DELHI SANDS FLOWER-LOVING	Rhophiamidas terminatus abdominalis	L, E
	MAMMALS	FOX, SAN JOAQUIN KIT	Vulpes macrotis mutica	L, E
		KANGAROO RAT, GIANT	Dipodomys ingens	L, E
		RAT, GIANT KANGAROO	Dipodomys ingens	L, E
	PLANTS	DUDLEYA, SANTA CLARA VALLEY	Dudleya setchellii	L, E
		EVENING-PRIMROSE, SAN BENITO	Camissonia benitensis	L, T
		WOOLLY-THREADS, SAN JOAQUIN	Lembertia congdonii	L, E
	REPTILES	LIZARD, BLUNT-NOSED LEOPARD	Gambelia (Crotaphytus) silus	L, E
SAN BERNADINO	BIRDS	FLYCATCHER, SOUTHWESTERN WILLOW	Empidonax traillii extimus	L, E
	PLANTS	ONION, MUNZ'S	Allium munzii	P, E
		SANDWORT, MARSH	Arenaria paludicola	L, E
	AMPHIBIANS	TOAD, ARROYO SOUTHWESTERN	Bufo microscaphus californicus	L, E
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		FLYCATCHER, SOUTHWESTERN WILLOW	Empidonax traillii extimus	L, E
		GNATCATCHER, COASTAL CALIFORNIA	Polioptila californica californica	L, T
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
		RAIL, YUMA CLAPPER	Rallus longirostris yumanensis	L, E
		VIREO, LEAST BELL'S	Vireo bellii pusillus	L, E, CH
	FISHES	CHUB, BONYTAIL	Gila elegans	L, E, CH
		CHUB, MOHAVE TUI	Gila bicolor mohavensis	L, E
		PUPFISH, DESERT	Cyprinodon macularius	L, E, CH
		SQUAWFISH, COLORADO	Ptychocheilus lucius	L, E, CH
		STICKLEBACK, UNARMORED THREESPINE.	Gasterosteus aculeatus williamsoni	L, E

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
	INSECTS	FLY, DELHI SANDS FLOWER-LOVING	Rhophiamidas terminatus abdominalis	L, E
	MAMMALS	KANGAROO RAT, STEPHENS'	Dipodomys stephensi	L, T
		RAT, STEPHENS' KANGAROO	Dipodomys stephensi	L, T
		VOLE, AMARGOSA	Microtus californicus scirpensis	L, E, CH
	PLANTS	BARBERRY, NEVIN'S	Berberis nevinii	P, T
		BARBERRY, NEVIN'S	Berberis nevinii	P, T
		BEARGRASS, DEHESA	Nolina interrata	P, T
		BLADDERPOD, SAN BERNARDINO MOUNTAINS.	Lesquerella kingii ssp. bernardina	L, E
		BLUECURLS, HIDDEN LAKE	Trichostema austromontanum ssp. compactum.	P, T
		BLUEGRASS, SAN BERNARDINO	Poa atropurpurea	P, E
		BRODIAEA, THREAD-LEAVED	Brodiaea filifolia	P, T
		BUCKWHEAT, CUSHENBURY	Eriogonum ovalifolium var. vineum	L, E
		BUCKWHEAT, SOUTHERN MOUNTAIN WILD.	Eriogonum kennedyi var. austromontanum	P, T
		CEANOTHUS, VAIL LAKE	Ceanothus ophiochilus	P, T
		CEANOTHUS, VAIL LAKE	ceanothus ophiochilus	P, T
		CHECKER-MALLOW, PEDATE	Sidalcea pedata	L, E
		CROWNSCALE, SAN JACINTO VALLEY	Atriplex coronata var. notatior	P, E
		DAISY, PARISH'S	Erigeron parishii	L, T
		DANDELION, CALIFORNIA	Taraxacum californicum	P, E
		FLANNELBUSH, MEXICAN	Fremontodendron mexicanum	P, T
		GRASS, PARISH'S ALKALI	Puccinellia parishii	P, E
		MILK-VETCH, CUSHENBURY	Astragalus albens	L, E
		MILK-VETCH, LANE MOUNTAIN	Astragalus jaegerianus	P, E
		MILK-VETCH, TRIPLE-RIBBED	Astragalus tricarinatus	P, E
		MUSTARD, SLENDER-PETALED	Thelypodium stenopetalum	L, E
		NAVARRETIA, SPREADING	Navarretia fossalis	P, T
		OXYTHECA, CUSHENBURY	Oxytheca parishii var. goodmaniana	L, E
		PAINTBRUSH, ASH-GREY INDIAN	Castilleja cinerea	P, T
		ROCK-CRESS, JOHNSTON'S	Arabis johnstonii	P, T
		SANDWORT, BEAR VALLEY	Arenaria ursina	P, T
		SPINEFLOWER, SLENDER-HORNED	Centrostegia leptoceras	L, E
		WATERCRESS, GAMBEL'S	Rorippa gambellii	L, E
		WOOLLY-STAR, SANTA ANA RIVER	Eriastrum densifolium ssp. santorum	L, E
	REPTILES	TORTOISE, DESERT	Gopherus (=Xerobates,=Scaptochelys) agassizii.	L, T, CH
SAN DIEGO	AMPHIBIANS	TOAD, ARROYO SOUTHWESTERN	Bufo microscaphus californicus	L, E
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		FLYCATCHER, SOUTHWESTERN WILLOW	Empidonax traillii extimus	L, E
		GNATCATCHER, COASTAL CALIFORNIA	Polioptila californica californica	L, T
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
		RAIL, LIGHT-FOOTED CLAPPER	Rallus longirostris levipes	L, E
		TERN, CALIFORNIA LEAST	Sterna antillarum browni	L, E
		VIREO, LEAST BELL'S	Vireo bellii pusillus	L, E, CH
	CRUSTACEAN	SHRIMP, RIVERSIDE FAIRY	Streptocephalus woottoni	L, E
		SHRIMP, SAN DIEGO FAIRY	Branchinecta sandiegoensis	P, E
	FISHES	CHUB, MOHAVE TUI	Gila bicolor mohavensis	L, E
		GOBY, TIDEWATER	Eucyclogobius newberryi	L, E
		PUPFISH, DESERT	Cyprinodon macularius	L, E, CH
		STICKLEBACK, UNARMORED THREESPINE.	Gasterosteus aculeatus williamsoni	L, E
	INSECTS	SKIPPER, LAGUNA MOUNTAIN	Pyrgus ruralis lagunae	L, E
	MAMMALS	KANGAROO RAT, STEPHENS'	Dipodomys stephensi	L, T
		MOUSE, PACIFIC POCKET	Perognathus longimembris pacificus	L, E
		RAT, STEPHENS' KANGAROO	Dipodomys stephensi	L, T
	PLANTS	ASTER, DEL MAR SAND	Corethrogyne filaginifolia var. linifolia	P, E
		BACCHARIS, ENCINITAS	Baccharis vanessae	L, T
		BARBERRY, NEVIN'S	Berberis nevinii	P, T
		BARBERRY, NEVIN'S	Berberis nevinii	P, T
		BEARGRASS, DEHESA	Nolina interrata	P, T
		BEARGRASS, DEHESA	Nolina interrata	P, T
		BIRD'S-BEAK, SALT MARSH	Cordylanthus maritimus ssp. maritimus	L, E
		BRODIAEA, THREAD-LEAVED	Brodiaea filifolia	P, T
		BUTTON-CELERY, SAN DIEGO	Eryngium aristulatum var. parishii	L, E
		CEANOTHUS, VAIL LAKE	Ceanothus ophiochilus	P, T
		CEANOTHUS, VAIL LAKE	Ceanothus ophiOchilus	P, T
		CROWN-BEARD, BIG-LEAVED	Verbesina dissita	L, T

IV. COUNTY/SPECIES LIST—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. **Note:** Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
		CROWNSCALE, SAN JACINTO VALLEY	Atriplex coronata var. notatior	P, E
		DOWNINGIA, CUYAMACA LAKE	Downingia concolor var. brevior	P, E
		FLANNELBUSH, MEXICAN	Fremontodendron mexicanum	P, T
		GRASS, CALIFORNIA ORCUTT	Orcuttia californica	L, E
		LIVEFOREVER, LAGUNA BEACH	Dudleya stolonifera	P, E
		MANZANITA, DEL MAR	Arctostaphylos glandulosa ssp. crassifolia	L, E
		MEADOWFOAM, PARISH'S	Limnanthes gracilis ssp. parishii	P, T
		MILK-VETCH, PIERSON'S	Astragalus magdalenae var. piersonii	P, E
		MINT, OTAY MESA	Pogogyne nudiuscula	L, E
		MINT, SAN DIEGO MESA	Pogogyne abramsii	L, E
		MONARDELLA, WILLOWY	Monardella linoides ssp. viminea	P, E
		NAVARRETIA, SPREADING	Navarretia fossalis	P, T
		ONION, MUNZ'S	Allium munzii	P, E
		SPINEFLOWER, ORCUTT'S	Chorizanthe orcuttiana	L, E
		SPINEFLOWER, SLENDER-HORNED	Centrostegia leptoceras	L, E
		TARWEED, OTAY	Hemizonia conjugens	P, E
		THORNMINT, SAN DIEGO	Acanthomintha ilicifolia	P, E
		WATERCRESS, GAMBEL'S	Rorippa gambellii	L, E
	REPTILES	LIZARD, FLAT-TAILED HORNED	Phrynosoma mcallii	P, T
		TURTLE, GREEN SEA	Chelonia mydas	L, E, T
SAN FRANCISCO		TURTLE, OLIVE (PACIFIC) RIDLEY SEA	Lepidochelys olivacea	L, E, T
	PLANTS	SANDWORT, MARSH	Arenaria paludicola	L, E
	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
	FISHES	GOBY, TIDEWATER	Eucyclogobius newberryi	L, E
		STEELHEAD, CENTRAL CALIFORNIA POPULATION.	Oncorhynchus mykiss, (Central California Coast ESU).	L, T
		STEELHEAD, CENTRAL CALIFORNIA POPULATION.	Oncorhynchus mykiss, (Central California Coast ESU).	L, T
	INSECTS	BUTTERFLY, BAY CHECKERSPOT	Euphydryas editha bayensis	L, T
		BUTTERFLY, CALLIPPE SILVERSPOT	Speyeria callippe callippe	P, E
		BUTTERFLY, MISSION BLUE	Icaricia icarioides missionensis	L, E
		BUTTERFLY, MYRTLE'S SILVERSPOT	Speyeria zerene myrtleae	L, E
	PLANTS	CLARKIA, PRESIDIO	Clarkia franciscana	L, E
		DWARF-FLAX, MARIN	Hesperolinon congestum	L, T
		JEWELFLOWER, METCALF CANYON	Streptanthus albidus ssp. albidus	P, E
		LAYIA, BEACH	Layia carnosa	L, E
		LESSINGIA, SAN FRANCISCO	Lessingia germanorum	L, E
		LILY, TIBURON MARIPOSA	Calochortus tiburonensis	L, T
		MANZANITA, PRESIDIO (=RAVEN'S)	Arctostaphylos pungens ssp. ravenii	L, E
		MANZANITA, SAN BRUNO MOUNTAIN	Arctostaphylos imbricata	P, E
DSAN JOAQUIN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
	CRUSTACEAN	LINDERIELLA, CALIFORNIA	Linderiella occidentalis	P, E
		SHRIMP, VERNAL POOL FAIRY	Branchinecta lynchi	L, T
		SHRIMP, VERNAL POOL TADPOLE	Lepidurus packardi	L, E
	FISHES	SALMON, CHINOOK (SACRAMENTO RIVER WINTER RUN).	Oncorhynchus tshawytscha	L, E, CH
		SMELT, DELTA	Hypomesus transpacificus	L, T, CH
		STEELHEAD, CALIFORNIA CENTRAL VALLEY POP.	Oncorhynchus mykiss, (Central Valley ESU)	P, E
	INSECTS	BEETLE, VALLEY ELDERBERRY LONGHORN.	Desmocerus californicus dimorphus	L, T, CH
	MAMMALS	FOX, SAN JOAQUIN KIT	Vulpes macrotis mutica	L, E
	PLANTS	BIRD'S-BEAK, PALMATE-BRACTED	Cordylanthes palmatus	L, E
		FIDDLENECK, LARGE-FLOWERED	Amsinckia grandiflora	L, E, CH
	REPTILES	SNAKE, GIANT GARTER	Thamnophis gigas	L, T
DSAN LUIS OBISPO	PLANTS	SANDWORT, MARSH	Arenaria paludicola	L, E
	BIRDS	CONDOR, CALIFORNIA	Gymnogyps californianus	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
		RAIL, CALIFORNIA CLAPPER	Rallus longirostris obsoletus	L, E
		TERN, CALIFORNIA LEAST	Sterna antillarum browni	L, E
		VIREO, LEAST BELL'S	Vireo bellii pusillus	L, E, CH
	CRUSTACEAN	LINDERIELLA, CALIFORNIA	Linderiella occidentalis	P, E
		SHRIMP, LONGHORN FAIRY	Branchinecta longiantenna	L, E
	FISHES	GOBY, TIDEWATER	Eucyclogobius newberryi	L, E

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. Note: Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
		STEELHEAD, SOUTH-CENTRAL CALIFORNIA POP.	Oncorhynchus mykiss, (South-Central Calif. ESU).	L, T
		STEELHEAD, SOUTH-CENTRAL CALIFORNIA POP.	Oncorhynchus mykiss, (South-Central Calif. ESU).	L, T
		STEELHEAD, SOUTHERN CALIFORNIA POPULATION.	Oncorhynchus mykiss, (Southern California ESU).	L, E
		STEELHEAD, SOUTHERN CALIFORNIA POPULATION.	Oncorhynchus mykiss, (Southern California ESU).	L, E
	MAMMALS	FOX, SAN JOAQUIN KIT	Vulpes macrotis mutica	L, E
		OTTER, SOUTHERN SEA	Enhydra lutris nereis	L, T
		RAT, GIANT KANGAROO	Dipodomys ingens	L, E
		RAT, MORRO BAY KANGAROO	Dipodomys heermanni morroensis	L, E, CH
	PLANTS	BIRD'S-BEAK, SALT MARSH	Cordylanthus maritimus ssp. maritimus	L, E
		CLARKIA, PISMO	Clarkia speciosa ssp. immaculata	L, E
		JEWELFLOWER, CALIFORNIA	Caulanthus californicus	L, E
		MANZANITA, MORRO	Arctostaphylos morroensis	L, T
		MOUNTAINBALM, INDIAN KNOB	Eriodictyon altissimum	L, E
		SANDWORT, MARSH	Arenaria paludicola	L, E
		SEA-BLITE, CALIFORNIA	Suaeda californica	L, E
		THISTLE, CHORRO CREEK BOG	Cirsium fontinale var. obispoense	L, E
		WATERCRESS, GAMBEL'S	Rorippa gambelii	L, E
		WOOLLY-STAR, HOOVER'S	Eriastrum hooveri	L, T
		WOOLLY-THREADS, SAN JOAQUIN	Lembertia congdonii	L, E
	REPTILES	LIZARD, BLUNT-NOSED LEOPARD	Gambelia (Crotaphytus) silus	L, E
	SNAILS	SNAIL, MORRO SHOULDERBAND	Helminthoglypta walteriana	L, E
SAN MATEO	AMPHIBIANS	FROG, CALIFORNIA RED-LEGGED	Rana Aurora Draytonii	L, T
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
		RAIL, CALIFORNIA CLAPPER	Rallus longirostris obsoletus	L, E
		TERN, CALIFORNIA LEAST	Sterna antillarum browni	L, E
	CRUSTACEAN	LINDERIELLA, CALIFORNIA	Linderiella occidentalis	P, E
	FISHES	GOBY, TIDEWATER	Eucyclogobius newberryi	L, E
		SALMON, COHO (CENTRAL CALIFORNIA COAST POP).	Oncorhynchus kisutch	L, E
		STEELHEAD, CENTRAL CALIFORNIA POPULATION.	Oncorhynchus mykiss, (Central California Coast ESU).	L, T
		STEELHEAD, CENTRAL CALIFORNIA POPULATION.	Oncorhynchus mykiss, (Central California Coast ESU).	L, T
	INSECTS	BUTTERFLY, BAY CHECKERSPOT	Euphydryas editha bayensis	L, T
		BUTTERFLY, MISSION BLUE	Icaricia icarioides missionensis	L, E
		BUTTERFLY, SAN BRUNO ELFIN	Callophrys mossii bayensis	L, E
	MAMMALS	MOUSE, SALT MARSH HARVEST	Reithrodontomys raviventris	L, E
	PLANTS	CYPRESS, SANTA CRUZ	Cupressus abramsiana	L, E
		LESSINGIA, SAN FRANCISCO	Lessingia germanorum	L, E
		MANZANITA, SAN BRUNO MOUNTAIN	Arctostaphylos imbricata	P, E
		PENTACHAETA, WHITE-RAYED	Pentachaeta bellidiflora	L, E
		SUNFLOWER, SAN MATEO WOOLLY	Eriophyllum latilobum	L, E
		THISTLE, FOUNTAIN	Cirsium fontinale var. fontinale	L, E
		THISTLE, FOUNTAIN	Cirsium fontinale var. fontinale	L, E
		THORNMINT, SAN MATEO	Acanthomintha obovata ssp. duttonii	L, E
	REPTILES	SNAKE, SAN FRANCISCO GARTER	Thamnophis sirtalis tetrataenia	L, E
SANTA BARBARA		BARBERRY, ISLAND	Berberis pinnata ssp. insularis	L, E
		BARBERRY, ISLAND	Berberis pinnata ssp. insularis	L, E
		BEDSTRAW, ISLAND	Galium buxifolium	L, E
		BEDSTRAW, ISLAND	Galium buxifolium	L, E
		BUSHMALLOW, SANTA CRUZ ISLAND	Malacothamnus fasciculatus nesioticus	L, E
		BUSHMALLOW, SANTA CRUZ ISLAND	Malacothamnus fasciculatus nesioticus	L, E
	BIRDS	FRINGEPOD, SANTA CRUZ ISLAND	Thysanocarpus conchuliferus	L, E
		FRINGEPOD, SANTA CRUZ ISLAND	Thysanocarpus conchuliferus	L, E
		GILIA, HOFFMAN'S SLENDER-FLOWERED	Gilia tenuiflora ssp. hoffmannii	L, E
		GILIA, HOFFMAN'S SLENDER-FLOWERED	Gilia tenuiflora ssp. hoffmannii	L, E
		MALACOTHRIX, ISLAND	Malacothrix squalida	L, E
		MALACOTHRIX, ISLAND	Malacothrix squalida	L, E
		MALACOTHRIX, SANTA CRUZ ISLAND	Malacothrix indecora	L, E
		MALACOTHRIX, SANTA CRUZ ISLAND	Malacothrix indecora	L, E
		MANZANITA, SANTA ROSA ISLAND	Arctostaphylos confertiflora	L, E
		MANZANITA, SANTA ROSA ISLAND	Arctostaphylos confertiflora	L, E
		PAINTBRUSH, SOFT-LEAVED	Castilleja mollis	L, E
		PAINTBRUSH, SOFT-LEAVED	Castilleja mollis	L, E
		PHACELIA, ISLAND	Phacelia insularis ssp. insularis	L, E
		PHACELIA, ISLAND	Phacelia insularis ssp. insularis	L, E

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. **Note:** Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
		ROCK-CRESS, HOFFMAN'S	Arabis hoffmannii	L, E
		ROCK-CRESS, HOFFMAN'S	Arabis hoffmannii	L, E
	AMPHIBIANS	TOAD, ARROYO SOUTHWESTERN	Bufo microscaphus californicus	L, E
	BIRDS	CONDOR, CALIFORNIA	Gymnogyps californianus	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
		RAIL, LIGHT-FOOTED CLAPPER	Rallus longirostris levipes	L, E
		TERN, CALIFORNIA LEAST	Sterna antillarum browni	L, E
		VIREO, LEAST BELL'S	Vireo bellii pusillus	L, E, CH
	CRUSTACEAN	LINDERIELLA, CALIFORNIA	Linderiella occidentalis	P, E
	FISHES	GOBY, TIDEWATER	Eucyclogobius newberryi	L, E
		STEELHEAD, SOUTH-CENTRAL CALIFORNIA POP.	Oncorhynchus mykiss, (South-Central Calif. ESU).	L, T
		STEELHEAD, SOUTH-CENTRAL CALIFORNIA POP.	Oncorhynchus mykiss, (South-Central Calif. ESU).	L, T
		STEELHEAD, SOUTHERN CALIFORNIA POPULATION.	Oncorhynchus mykiss, (Southern California ESU).	L, E
		STEELHEAD, SOUTHERN CALIFORNIA POPULATION.	Oncorhynchus mykiss, (Southern California ESU).	L, E
		STICKLEBACK, UNARMORED THREESPINE.	Gasterosteus aculeatus williamsoni	L, E
	MAMMALS	FOX, SAN JOAQUIN KIT	Vulpes macrotis mutica	L, E
		KANGAROO RAT, GIANT	Dipodomys ingens	L, E
		RAT, GIANT KANGAROO	Dipodomys ingens	L, E
		SEAL, GUADALUPE FUR	Arctocephalus townsendi	L, T
	PLANTS	BIRD'S-BEAK, SALT MARSH	Cordylanthus maritimus ssp. maritimus	L, E
		BRODIAEA, CHINESE CAMP	Brodiaea pallida	P, E
		CLARKIA, SPRINGVILLE	Clarkia springvillensis	P, T
		DUDLEYA, MARCESCENT	Dudleya cymosa ssp. marcescens	L, T
	BIRDS	DUDLEYA, SANTA CRUZ ISLAND	Dudleya nesiotica	L, T
		DUDLEYA, SANTA CRUZ ISLAND	Dudleya nesiotica	L, T
	PLANTS	GOLDFIELDS, CONTRA COSTA	Lasthenia conjugens	L, E
		JEWELFLOWER, CALIFORNIA	Caulanthus californicus	L, E
		LAYIA, BEACH	Layia carnosa	L, E
		LIVEFOREVER, SANTA BARBARA ISLAND	Dudleya traskiae	L, E
		LUPINE; MARIPOSA	Lupinus citrinus var. deflexus	P, E
		MONKEY-FLOWER, KELSO CREEK	Mimulus shevockii	P, E
		NAVARRETIA, FEW-FLOWERED	Navarretia leucocephala ssp. pauciflora	L, E
		NAVARRETIA, MANY-FLOWERED	Navarretia leucocephala ssp. plieantha	L, E
		NAVARRETIA, PIUTE MOUNTAINS	Navarretia setiloba	P, T
		ONION, RAWHIDE HILL	Allium tuolumnense	P, T
		PUSSYPAWS, MARIPOSA	Calyptridium pulchellum	P, E
		STONECROP, LAKE COUNTY	Parvisedum leiocarpum	L, E
		THISTLE, FOUNTAIN	Cirsium fontinale var. fontinale	L, E
		VERVAIN, RED HILLS	Verbena californica	P, T
		WOOLLY-STAR, HOOVER'S	Eriastrum hooveri	L, T
		WOOLLY-THREADS, SAN JOAQUIN	Lembertia congdonii	L, E
	REPTILES	LIZARD, BLUNT-NOSED LEOPARD	Gambelia (Crotaphytus) silus	L, E
		LIZARD, ISLAND NIGHT	Xantusia (Klauberina) riversiana	L, T
SANTA CLARA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
		RAIL, CALIFORNIA CLAPPER	Rallus longirostris obsoletus	L, E
		TERN, CALIFORNIA LEAST	Sterna antillarum browni	L, E
	FISHES	GOBY, TIDEWATER	Eucyclogobius newberryi	L, E
	INSECTS	BUTTERFLY, BAY CHECKERSPOT	Euphydryas editha bayensis	L, T
	MAMMALS	FOX, SAN JOAQUIN KIT	Vulpes macrotis mutica	L, E
		MOUSE, SALT MARSH HARVEST	Reithrodontomys raviventris	L, E
	PLANTS	CEANOTHUS, COYOTE	Ceanothus ferrisae	L, E
		DUDLEYA, SANTA CLARA VALLEY	Dudleya setchellii	L, E
		GOLDFIELDS, CONTRA COSTA	Lasthenia conjugens	L, E
		NAVARRETIA, FEW-FLOWERED	Navarretia leucocephala ssp. pauciflora	L, E
		NAVARRETIA, MANY-FLOWERED	Navarretia leucocephala ssp. plieantha	L, E
		PAINTBRUSH, TIBURON	Castilleja affinis ssp. neglecta	L, E
		PAINTBRUSH, TIBURON	Castilleja affinis ssp. neglecta	L, E
		STONECROP, LAKE COUNTY	Parvisedum leiocarpum	L, E
		THISTLE, FOUNTAIN	Cirsium fontinale var. fontinale	L, E
SANTA CRUZ	PLANTS	SANDWORT, MARSH	Arenaria paludicola	L, E
	AMPHIBIANS	SALAMANDER, SANTA CRUZ LONG-TOED	Ambystoma macrodactylum croceum	L, E

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. **Note:** Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
	BIRDS	MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
	FISHES	GOBY, TIDEWATER	Eucyclogobius newberryi	L, E
		SALMON, COHO (CENTRAL CALIFORNIA COAST POP).	Oncorhynchus kisutch	L, E
		STEELHEAD, CENTRAL CALIFORNIA POPULATION.	Oncorhynchus mykiss, (Central California Coast ESU).	L, T
		STEELHEAD, CENTRAL CALIFORNIA POPULATION.	Oncorhynchus mykiss, (Central California Coast ESU).	L, T
		STEELHEAD, SOUTH-CENTRAL CALIFORNIA POP.	Oncorhynchus mykiss, (South-Central Calif. ESU).	L, T
		STEELHEAD, SOUTH-CENTRAL CALIFORNIA POP.	Oncorhynchus mykiss, (South-Central Calif. ESU).	L, T
	INSECTS	BEETLE, MOUNT HERMON JUNE	Polyphylla barbata	L, E
		BEETLE, SANTA CRUZ RAIN	Pleocoma conjugens conjugens	P, E
		GRASSHOPPER, ZAYANTE BAND-WINGED.	Trimerotropis infantilis	L, E
	MAMMALS	OTTER, SOUTHERN SEA	Enhydra lutris nereis	L, T
	PLANTS	CYPRESS, SANTA CRUZ	Cupressus abramsiana	L, E
		PENTACHAETA, WHITE-RAYED	Pentachaeta bellidiflora	L, E
		SPINEFLOWER, BEN LOMOND	Chorizanthe pungens var. hartwegiana	L, E
		SPINEFLOWER, MONTEREY	Chorizanthe pungens var. pungens	L, T
		SPINEFLOWER, ROBUST	Chorizanthe robusta var. robusta	L, E
		SPINEFLOWER, SCOTTS VALLEY	Chorizanthe robusta var. hartwegii	L, E
		WALLFLOWER, BEN LOMOND	Erysimum teretifolium	L, E
	REPTILES	SNAKE, SAN FRANCISCO GARTER	Thamnophis sirtalis tetrataenia	L, E
SHASTA	AMPHIBIANS	FROG, CALIFORNIA RED-LEGGED	Rana Aurora Draytonii	L, T
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	CRUSTACEAN	CRAYFISH, SHASTA	Pacifasticus fortis	L, E
		SHRIMP, VERNAL POOL TADPOLE	Lepidurus packardi	L, E
	FISHES	SALMON, CHINOOK (SACRAMENTO RIVER WINTER RUN).	Oncorhynchus tshawytscha	L, E, CH
		STEELHEAD, CALIFORNIA CENTRAL VALLEY POP.	Oncorhynchus mykiss, (Central Valley ESU)	P, E
	PLANTS	GRASS, SLENDER ORCUTT	Orcuttia tenuis	L, T
		TUCTORIA, GREEN'S	Tuctoria greenei	L, E
SIERRA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	TROUT, LAHONTAN CUTTHROAT	Salmo clarki henshawi	L, T
SISKIYOU	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	SUCKER, LOST RIVER	Deltistes luxatus	L, E
	PLANTS	GRASS, SLENDER ORCUTT	Orcuttia tenuis	L, T
SOLANO	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		RAIL, CALIFORNIA CLAPPER	Rallus longirostris obsoletus	L, E
	CRUSTACEAN	LINDERIELLA, CALIFORNIA	Linderiella occidentalis	P, E
		SHRIMP, VERNAL POOL FAIRY	Branchinecta lynchi	L, T
		SHRIMP, VERNAL POOL TADPOLE	Lepidurus packardi	L, E
	FISHES	SALMON, CHINOOK (SACRAMENTO RIVER WINTER RUN).	Oncorhynchus tshawytscha	L, E, CH
		SMELT, DELTA	Hypomesus transpacificus	L, T, CH
		STEELHEAD, CALIFORNIA CENTRAL VALLEY POP.	Oncorhynchus mykiss, (Central Valley ESU)	P, E
	INSECTS	BEETLE, DELTA GREEN GROUND	Elaphrus viridis	L, T, CH
		BEETLE, VALLEY ELDERBERRY LONGHORN.	Desmocerus californicus dimorphus	L, T, CH
	MAMMALS	MOUSE, SALT MARSH HARVEST	Reithrodontomys raviventris	L, E
	PLANTS	GOLDFIELDS, CONTRA COSTA	Lasthenia conjugens	L, E
		GRASS, COLUSA	Neostapfia colusana	L, T
		GRASS, SOLANO	Tuctoria mucronata (=Orcuttia m)	L, E
		NAVARRETIA, FEW-FLOWERED	Navarretia leucocephala ssp. pauciflora	L, E
		NAVARRETIA, MANY-FLOWERED	Navarretia leucocephala ssp. plieantha	L, E
		STONECROP, LAKE COUNTY	Parvisedum leiocarpum	L, E
SONAMA	FISHES	STEELHEAD, CENTRAL CALIFORNIA POPULATION.	Oncorhynchus mykiss, (central california coast es.	L, T
		STEELHEAD, CENTRAL CALIFORNIA POPULATION.	Oncorhynchus mykiss, (central california coast es.	L, T

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. Note: Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
		RAIL, CALIFORNIA CLAPPER	Rallus longirostris obsoletus	L, E
	CRUSTACEAN	LINDERIELLA, CALIFORNIA	Linderiella occidentalis	P, E
		SHRIMP, CALIFORNIA FRESHWATER	Syncaris pacifica	L, E
	FISHES	GOBY, TIDEWATER	Eucyclogobius newberryi	L, E
		SALMON, CHINOOK (SACRAMENTO RIVER WINTER RUN).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, COHO (CENTRAL CALIFORNIA COAST POP).	Oncorhyncgus kisutch	L, E
		STEELHEAD, CALIFORNIA CENTRAL VALLEY POP.	Oncorhynchus mykiss, (central valley esu)	P, E
	INSECTS	BUTTERFLY, BEHREN'S SILVERSPOT	Speyeria zerene behrensii	P, E
		BUTTERFLY, MYRTLE'S SILVERSPOT	Speyeria zerene myrtleae	L, E
	MAMMALS	MOUSE, SALT MARSH HARVEST	Reithrodontomys raviventris	L, E
	PLANTS	ALLOCARYA, CALISTOGA	Plagiobothrys strictus	P, E
		ALOPECURUS, SONOMA	Alopecurus aequalis var. sonomensis	P, E
		BIRD'S-BEAK, PENNELL'S	Cordylanthus tenuis ssp. capillari	L, E
		BIRD'S-BEAK, PENNELL'S	Cordylanthus tenuis ssp. capillari	L, E
		BLUEGRASS, NAPA	Poa napensis	P, E
		CHECKER-MALLOW, KENWOOD MARSH	Sidalcea oregana ssp. valida	P, E
		CHECKER-MALLOW, KENWOOD MARSH	Sidalcea oregana ssp. valida	P, E
		CLARKIA, VINE HILL	Clarkia imbricata	P, E
		CLOVER, SHOWY INDIAN	Trifolum amoenum	P, E
		GOLDFIELDS, BURKE'S	Lasthenia burkei	L, E
		LARKSPUR, YELLOW	Delphinium luteum	P, E
		LARKSPUR, YELLOW	Delphinium luteum	P, E
		LILY, PITKIN MARSH	Lilium pitkinense	P, E
		LUPINE, CLOVER	Lupinus tidestromii	L, E
		MEADOWFOAM, SEBASTOPOL	Limnanthes vinculans	L, E
		MILK-VETCH, CLARA HUNT'S	Astragalus clarianus	P, E
		SEDGE, WHITE	Carex albida	P, E
		SPINEFLOWER, SONOMA	Chorizanthe valida	L, E
		STICKYSEED, BAKER'S	Blennosperma bakeri	L, E
STANISLAUS	PLANTS	ADOBE SUNBURST, SAN JOAQUIN	Pseudobahia peirsonii	L, T
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
	CRUSTACEAN	SHRIMP, VERNAL POOL TADPOLE	Lepidurus packardi	L, E
	FISHES	STEELHEAD, CALIFORNIA CENTRAL VALLEY POP.	Oncorhynchus mykiss, (Central Valley ESU)	P, E
	INSECTS	BEETLE, VALLEY ELDERBERRY LONGHORN.	Desmocerus californicus dimorphus	L, T, CH
	MAMMALS	FOX, SAN JOAQUIN KIT	Vulpes macrotis mutica	L, E
	PLANTS	GOLDEN SUNBURST, HARTWEG'S	Pseudobahia bahiifolia	L, E
		GRASS, COLUSA	Neostapfia colusana	L, T
		GRASS, HAIRY ORCUTT	Orcuttia pilosa	L, E
		OWL'S-CLOVER, FLESHY	Castilleja campestris ssp. succulenta	L, E
		SPURGE, HOOVER'S	Chamaesyce hooveri	L, T
SUTTER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
	CRUSTACEAN	SHRIMP, VERNAL POOL TADPOLE	Lepidurus packardi	L, E
	FISHES	SALMON, CHINOOK (SACRAMENTO RIVER WINTER RUN).	Oncorhynchus tshawytscha	L, E, CH
		STEELHEAD, CALIFORNIA CENTRAL VALLEY POP.	Oncorhynchus mykiss, (Central Valley ESU)	P, E
	INSECTS	BEETLE, VALLEY ELDERBERRY LONGHORN.	Desmocerus californicus dimorphus	L, T, CH
TEHAMA	REPTILES	SNAKE, GIANT GARTER	Thamnophis gigas	L, T
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	CRUSTACEAN	SHRIMP, VERNAL POOL TADPOLE	Lepidurus packardi	L, E
	FISHES	SALMON, CHINOOK (SACRAMENTO RIVER WINTER RUN).	Oncorhynchus tshawytscha	L, E, CH
		STEELHEAD, CALIFORNIA CENTRAL VALLEY POP.	Oncorhynchus mykiss, (Central Valley ESU)	P, E
	INSECTS	BEETLE, VALLEY ELDERBERRY LONGHORN.	Desmocerus californicus dimorphus	L, T, CH

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State/County	Group name	Inverse name	Scientific name	Action/ Status
	PLANTS	GRASS, HAIRY ORCUTT	Orcuttia pilosa	L, E
		GRASS, SLENDER ORCUTT	Orcuttia tenuis	L, T
		MEADOWFOAM, BUTTE COUNTY	Limnanthes floccosa ssp. californica	L, E
		SPURGE, HOOVER'S	Chamaesyce hooveri	L, T
		TUCTORIA, GREEN'S	Tuctoria greenei	L, E
TRINITY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
TULARE	BIRDS	CONDOR, CALIFORNIA	Gymnogyps californianus	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	TROUT, LITTLE KERN GOLDEN	Salmo aguabonita whitei	L, T, CH
	MAMMALS	FOX, SAN JOAQUIN KIT	Vulpes macrotis mutica	L, E
		KANGAROO RAT, GIANT	Dipodomys ingens	L, E
		KANGAROO RAT, TIPTON	Dipodomys nitratoides	L, E
		RAT, GIANT KANGAROO	Dipodomys ingens	L, E
		RAT, TIPTON KANGAROO	Dipodomys nitratoides	L, E
	PLANTS	CHECKER-MALLOW, KECK'S	Sidalcea keckii	P, E
		CHECKER-MALLOW, KECK'S	Sidalcea keckii	P, E
		CLARKIA, SPRINGVILLE	Clarkia springvillensis	P, T
		JEWELFLOWER, CALIFORNIA	Caulanthus californicus	L, E
		LILY, GREENHORN ADOBE	Fritillaria striata	P, T
		SPURGE, HOOVER'S	Chamaesyce hooveri	L, T
		WOOLLY-THREADS, SAN JOAQUIN	Lembertia congdonii	L, E
	REPTILES	LIZARD, BLUNT-NOSED LEOPARD	Gambelia (Crotaphytus) silus	L, E
TUOLUMNE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	TROUT, LAHONTAN CUTTHROAT	Salmo clarki henshawi	L, T
	PLANTS	BRODIAEA, CHINESE CAMP	Brodiaea pallida	P, E
		BUTTERWEED, LAYNE'S	Senecio layneae	L, T
		CLARKIA, SPRINGVILLE	Clarkia springvillensis	P, T
		LILY, GREENHORN ADOBE	Fritillaria striata	P, T
		LUPINE, MARIPOSA	Lupinus citrinus var. deflexus	P, E
		MONKEY-FLOWER, KELSO CREEK	Mimulus shevockii	P, E
		NAVARRETIA, PIUTE MOUNTAINS	Navarretia setiloba	P, T
		ONION, RAWHIDE HILL	Allium tuolumnense	P, T
		PUSSYPAWS, MARIPOSA	Calyptridium pulchellum	P, E
		VERVAIN, RED HILLS	Verbena californica	P, T
VENTURA	AMPHIBIANS	TOAD, ARROYO SOUTHWESTERN	Bufo microscaphus californicus	L, E
	BIRDS	CONDOR, CALIFORNIA	Gymnogyps californianus	L, E, CH
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
		RAIL, LIGHT-FOOTED CLAPPER	Rallus longirostris levipes	L, E
		TERN, CALIFORNIA LEAST	Sterna antillarum browni	L, E
		VIREO, LEAST BELL'S	Vireo bellii pusillus	L, E, CH
	CRUSTACEAN	LINDERIELLA, CALIFORNIA	Linderiella occidentalis	P, E
		SHRIMP, CONSERVANCY FAIRY	Brancinecta conservatio	L, E
	FISHES	GOBY, TIDEWATER	Eucyclogobius newberryi	L, E
		STEELHEAD, SOUTHERN CALIFORNIA POPULATION.	Oncorhynchus mykiss, (Southern California ESU).	L, E
		STEELHEAD, SOUTHERN CALIFORNIA POPULATION.	Oncorhynchus mykiss, (Southern California ESU).	L, E
	MAMMALS	FOX, SAN JOAQUIN KIT	Vulpes macrotis mutica	L, E
	PLANTS	BIRD'S-BEAK, SALT MARSH	Cordylanthus maritimus ssp. maritimus	L, E
		DUDLEYA, CONEJO	Dudleya abramsii ssp. parva	L, T
		DUDLEYA, SANTA MONICA MOUNTAINS	Dudleya cymosa ssp. ovatifolia	L, T
		DUDLEYA, VERITY'S	Dudleya verityi	L, T
		GRASS, CALIFORNIA ORCUTT	Orcuttia californica	L, E
		MILK-VETCH, BRAUNTON'S	Astragalus brauntonii	L, E
		PENTACHAETA, LYON'S	Pentachaeta lyonii	P, E
		WATERCRESS, GAMBEL'S	Rorippa gambellii	L, E
	REPTILES	LIZARD, BLUNT-NOSED LEOPARD	Gambelia (Crotaphytus) silus	L, E
		LIZARD, ISLAND NIGHT	Xantusia (Klauberina) riversiana	L, T
YOLO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
	CRUSTACEAN	SHRIMP, VERNAL POOL TADPOLE	Lepidurus packardi	L, E
	FISHES	SALMON, CHINOOK (SACRAMENTO RIVER WINTER RUN).	Oncorhynchus tshawytscha	L, E, CH
		SMELT, DELTA	Hypomesus transpacificus	L, T, CH
		STEELHEAD, CALIFORNIA CENTRAL VALLEY POP.	Oncorhynchus mykiss, (Central Valley ESU)	P, E
	INSECTS	BEETLE, VALLEY ELDERBERRY LONGHORN.	Desmocerus californicus dimorphus	L, T, CH

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
	PLANTS	BIRD'S-BEAK, PALMATE-BRACTED	Cordylanthes palmatus	L, E
		GRASS, COLUSA	Neostapfia colusana	L, T
	REPTILES	SNAKE, GIANT GARTER	Thamnophis gigas	L, T
YUBA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PELICAN, BROWN	Pelicanus occidentalis	L, E
	CRUSTACEAN	LINDERIELLA, CALIFORNIA	Linderiella occidentalis	P, E
		SHRIMP, VERNAL POOL FAIRY	Branchinecta lynchi	L, T
		SHRIMP, VERNAL POOL TADPOLE	Lepidurus packardi	L, E
	INSECTS	BEETLE, VALLEY ELDERBERRY LONGHORN.	Desmocerus californicus dimorphus	L, T, CH
COLORADO				
ADAMS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
ALAMOSA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
ARCHULETA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
BACA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
BENT	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
BOULDER	FISHES	TROUT, GREENBACK CUTTHROAT	Salmo clarki stomias	L, T
	PLANTS	LADIES'-TRESSES, UTE	Spiranthes diluvialis	L, T
CHAFFEE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	INSECTS	BUTTERFLY, UNCOMPAHGRE FRITILLARY.	Boloria acrocnema	L, E
CHEYENNE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
CLEAR CREEK	FISHES	TROUT, GREENBACK CUTTHROAT	Salmo clarki stomias	L, T
CONEJOS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
COSTILLA	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
CUSTER	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	TROUT, GREENBACK CUTTHROAT	Salmo clarki stomias	L, T
DELTA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	SQUAWFISH, COLORADO	Ptychocheilus lucius	L, CH
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	CACTUS, SPINELESS HEDGEHOG	Echinocereus triglochidiatus var. inermis	L, E
		CACTUS, UINTA BASIN HOOKLESS	Sclerocactus glaucus (=Echinocactus g. S. whipplei).	L, T
		WILD-BUCKWHEAT, CLAY-LOVING	Eriogonum pelinophilum	L, E, CH
DOLORES	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
DOUGLAS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	TROUT, GREENBACK CUTTHROAT	Salmo clarki stomias	L, T
	INSECTS	SKIPPER, PAWNEE MONTANE	Hesperia leonardus (=pawnee) montana	L, T
EAGLE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	INSECTS	BUTTERFLY, UNCOMPAHGRE FRITILLARY.	Boloria acrocnema	L, E
EL PASO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	TROUT, GREENBACK CUTTHROAT	Salmo clarki stomias	L, T
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
FREMONT	BIRDS	OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
GARFIELD	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	SQUAWFISH, COLORADO	Ptychocheilus lucius	L, CH
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	CACTUS, UINTA BASIN HOOKLESS	Sclerocactus glaucus (=Echinocactus g. S. whipplei).	L, T
GRAND	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	PLANTS	BEARDTONGUE, PENLAND	Penstemon penlandii	L, E
		MILK-VETCH, OSTERHOUT	Astragalus osterhoutii	L, E

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
GUNNISON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	INSECTS	BUTTERFLY, UNCOMPAHGRE FRITILLARY.	Boloria acrocnema	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
HINSDALE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	INSECTS	BUTTERFLY, UNCOMPAHGRE FRITILLARY.	Boloria acrocnema	L, E
HUERFANO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	TROUT, GREENBACK CUTTHROAT	Salmo clarki stomias	L, T
JACKSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	PHACELIA, NORTH PARK	Phacelia formosula	L, E
JEFFERSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	INSECTS	SKIPPER, PAWNEE MONTANE	Hesperia leonardus (=pawnee) montana	L, T
	PLANTS	LADIES'-TRESSES, UTE	Spiranthes diluvialis	L, T
KIOWA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
LA PLATA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	CACTUS, KNOWLTON	Pediocactus knowltonii	L, E
LAKE	BIRDS	OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	TROUT, GREENBACK CUTTHROAT	Salmo clarki stomias	L, T
	INSECTS	BUTTERFLY, UNCOMPAHGRE FRITILLARY.	Boloria acrocnema	L, E
LARIMER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	TROUT, GREENBACK CUTTHROAT	Salmo clarki stomias	L, T
LAS ANIMAS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
LINCOLN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
LOGAN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
MESA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	CHUB, BONYTAIL	Gila elegans	L, E, CH
		CHUB, HUMPBACK	Gila cypha	L, E, CH
		SQUAWFISH, COLORADO	Ptychocheilus lucius	L, CH
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	CACTUS, SPINELESS HEDGEHOG	Echinocereus triglochidiatus var. inermis	L, E
		CACTUS, UINTA BASIN HOOKLESS	Sclerocactus glaucus (=Echinocactus g. S. whipplei).	L, T
MOFFAT	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	CHUB, BONYTAIL	Gila elegans	L, E, CH
		CHUB, HUMPBACK	Gila cypha	L, E, CH
		SQUAWFISH, COLORADO	Ptychocheilus lucius	L, CH
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
MONTEZUMA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	SQUAWFISH, COLORADO	Ptychocheilus lucius	L, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	CACTUS, MESA VERDE	Sclerocactus mesae-verdae (=Pediocactus m).	L, T
		MILK-VETCH, MANCOS	Astragalus humillimus	L, E
MONTROSE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	CACTUS, SPINELESS HEDGEHOG	Echinocereus triglochidiatus var. inermis	L, E
		CACTUS, UINTA BASIN HOOKLESS	Sclerocactus glaucus (=Echinocactus g. S. whipplei).	L, T
		WILD-BUCKWHEAT, CLAY-LOVING	Eriogonum pelinophilum	L, E, CH
MORGAN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	PLANTS	LADIES'-TRESSES, UTE	Spiranthes diluvialis	L, T
OTERO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
OURAY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	INSECTS	BUTTERFLY, UNCOMPAHGRE FRITILLARY.	Boloria acrocnema	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
PARK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	TROUT, GREENBACK CUTTHROAT	Salmo clarki stomias	L, T
	INSECTS	SKIPPER, PAWNEE MONTANE	Hesperia leonardus (=pawnee) montana	L, T
	PLANTS	MUSTARD, PENLAND ALPINE FEN	Eutrema penlandii	L, T
PITKIN	INSECTS	BUTTERFLY, UNCOMPAHGRE FRITILLARY.	Boloria acrocnema	L, E
PROWERS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
PUEBLO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
RIO BLANCO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	SQUAWFISH, COLORADO	Ptychocheilus lucius	L, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	BLADDERPOD, DUDLEY BLUFFS	Lesquerella congesta	L, T
		TWINPOD, DUDLEY BLUFFS	Physaria obcordata	L, T
RIO GRANDE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
ROUTT	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
SAGUACHE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	INSECTS	BUTTERFLY, UNCOMPAHGRE FRITILLARY.	Boloria acrocnema	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
SAN JUAN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
SAN MIGUEL	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	INSECTS	BUTTERFLY, UNCOMPAHGRE FRITILLARY.	Boloria acrocnema	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	CACTUS, SPINELESS HEDGEHOG	Echinocereus triglochidiatus var. inermis	L, E
SEDGWICK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
SUMMIT	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	PLANTS	MUSTARD, PENLAND ALPINE FEN	Eutrema penlandii	L, T
TELLER	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	INSECTS	SKIPPER, PAWNEE MONTANE	Hesperia leonardus (=pawnee) montana	L, T
WASHINGTON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
WELD	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
	PLANTS	LADIES'-TRESSES, UTE	Spiranthes diluvialis	L, T
YUMA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
CONNECTICUT				
FAIRFIELD	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
HARTFORD	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
LITCHFIELD	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	POGONIA, SMALL WHORLED	Isotria medeoloides	L, T
MIDDLESEX	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
	INSECTS	BEETLE, PURITAN TIGER	Cicindela puritana	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
NEW HAVEN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, ROSEATE	Sterna dougallii dougallii	L, E, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
NEW LONDON	BIRDS	PLOVER, PIPING	Charadrius melodus	L, E, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
TOLLAND	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	POGONIA, SMALL WHORLED	Isotria medeoloides	L, T

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
WINDHAM	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
DISTRICT OF COLUMBIA				
DISTRICT OF COLUMBIA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	CRUSTACEAN	AMPHIPOD, HAY'S SPRING	Stygobromus hayi	L, E
DELAWARE				
KENT	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
	PLANTS	PINK, SWAMP	Helonias bullata	L, T
	REPTILES	TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
		TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
NEW CASTLE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
	PLANTS	PINK, SWAMP	Helonias bullata	L, T
		POGONIA, SMALL WHORLED	Isotria medeoloides	L, T
SUSSEX	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
	MAMMALS	SQUIRREL, DELMARVA PENINSULA FOX	Sciurus niger cinereus	L, E
	PLANTS	PINK, SWAMP	Helonias bullata	L, T
	REPTILES	TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
GUAM				
GUAM	BIRDS	BROADBILL, GUAM	Myiagra freycineti	L, E
		CROW, MARIANA	Corvus kubaryi	L, E
		KINGFISHER, GUAM MICRONESIAN	Halcyon cinnamomina cinnamomina	L, E
		MOORHEN, MARIANA COMMON	Gallinula chloropus guami	L, E
		RAIL, GUAM	Rallus owstoni	L, E
		SWIFTLET, MARIANA GRAY (=VANIKORO)	Aerodramus vanikorensis bartschi	L, E
		WHITE-EYE, BRIDLED (NOSSA)	Zosterops conspicillata conspicillata	L, E
		WHITE-EYE, BRIDLED (NOSSA)	Zosterops conspicillata conspicillata	L, E
	MAMMALS	BAT, LITTLE MARIANA FRUIT	Pteropus tokudae	L, E
		BAT, MARIANA FRUIT	Pteropus mariannus mariannus	L, E
		DUGONG	Dugong dugon	L, E
	PLANTS	HAYUN LAGU (TRONKON GUAFI)	Serianthes nelsonii	L, E
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
IOWA				
ADAIR	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		MILKWEED, MEAD'S	Asclepias meadii	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
ADAMS	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
ALLAMAKEE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	CLAMS	PEARLYMUSSEL, HIGGINS' EYE	Lampsilis higginsi	L, E
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		MONKSHOOD, NORTHERN WILD	Aconitum noveboracense	L, T
APPANOOSE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, EASTERN PRAIRIE FRINGED	Platanthera leucophaea	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
AUDUBON	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
BENTON	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
BLACK HAWK	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
BOONE	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
BREMER	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
BUCHANAN	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
BUENA VISTA	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
BUTLER	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T

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State/County	Group name	Invarse name	Scientific name	Action/ Status
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
CALHOUN	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
CARROLL	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
CASS	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
CEDAR	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, EASTERN PRAIRIE FRINGED	Platanthera leucophaea	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
CERRO GORDO	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		FERN, AMERICAN HART'S-TONGUE	Phyllitis scolopendrium var. americana	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
CHEROKEE	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
CHICKASAW	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
CLARKE	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		MILKWEED, MEAD'S	Asclepias meadii	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
CLAY	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
CLAYTON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	CLAMS	PEARLYMUSSEL, HIGGINS' EYE	Lampsilis higginsi	L, E
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		MONKSHOOD, NORTHERN WILD	Aconitum noveboracense	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
	SNAILS	SNAIL, IOWA PLEISTOCENE	Discus macclintocki	L, E
CLINTON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	CLAMS	PEARLYMUSSEL, HIGGINS' EYE	Lampsilis higginsi	L, E
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
	SNAILS	SNAIL, IOWA PLEISTOCENE	Discus macclintocki	L, E
CRAWFORD	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
DALLAS	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
DAVIS	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, EASTERN PRAIRIE FRINGED	Platanthera leucophaea	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
DECATUR	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		MILKWEED, MEAD'S	Asclepias meadii	L, T
		ORCHID, EASTERN PRAIRIE FRINGED	Platanthera leucophaea	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
DELAWARE	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		MONKSHOOD, NORTHERN WILD	Aconitum noveboracense	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
DES MOINES	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	CLAMS	PEARLYMUSSEL, HIGGINS' EYE	Lampsilis higginsi	L, E
		POCKETBOOK, FAT	Potamilus (=Proptera) capax	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, EASTERN PRAIRIE FRINGED	Platanthera leucophaea	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
DICKINSON	FISHES	SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
DUBUQUE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	CLAMS	PEARLYMUSSEL, HIGGINS' EYE	Lampsilis higginsi	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		MONKSHOOD, NORTHERN WILD	Aconitum noveboracense	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
	SNAILS	SNAIL, IOWA PLEISTOCENE	Discus macclintocki	L, E
EMMET	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
FAYETTE	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
	SNAILS	SNAIL, IOWA PLEISTOCENE	Discus macclintocki	L, E

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. **Note:** Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
FLOYD	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
FRANKLIN	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
FREMONT	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
GREENE	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
GRUNDY	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
GUTHRIE	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
HAMILTON	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
HANCOCK	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
HARDIN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
HARRISON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albes	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
HENRY	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, EASTERN PRAIRIE FRINGED	Platanthera leucophaea	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
HOWARD	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
HUMBOLDT	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
IDA	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
IOWA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, EASTERN PRAIRIE FRINGED	Platanthera leucophaea	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
JACKSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	CLAMS	PEARLYMUSSEL, HIGGINS' EYE	Lampsilis higginsi	L, E
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		MONKSHOOD, NORTHERN WILD	Aconitum noveboracense	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
	SNAILS	SNAIL, IOWA PLEISTOCENE	Discus macclintocki	L, E
JASPER	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
JEFFERSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, EASTERN PRAIRIE FRINGED	Platanthera leucophaea	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
JOHNSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	CLAMS	POCKETBOOK, FAT	Potamilus (=Proptera) capax	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, EASTERN PRAIRIE FRINGED	Platanthera leucophaea	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
JONES	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
KEOKUK	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, EASTERN PRAIRIE FRINGED	Platanthera leucophaea	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
KOSSUTH	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
LEE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	CLAMS	PEARLYMUSSEL, HIGGINS' EYE	Lampsilis higginsi	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. **Note:** Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, EASTERN PRAIRIE FRINGED	Platanthera leucophaea	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
LINN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
LOUISA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	CLAMS	PEARLYMUSSEL, HIGGINS' EYE	Lampsilis higginsi	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, EASTERN PRAIRIE FRINGED	Platanthera leucophaea	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
LUCAS	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		MILKWEED, MEAD'S	Asclepias meadii	L, T
		ORCHID, EASTERN PRAIRIE FRINGED	Platanthera leucophaea	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
LYON	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
MADISON	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		MILKWEED, MEAD'S	Asclepias meadii	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
MAHASKA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
MARION	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
MARSHALL	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
MILLS	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
MITCHELL	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
MONONA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
MONROE	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, EASTERN PRAIRIE FRINGED	Platanthera leucophaea	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
MONTGOMERY	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
MUSCATINE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
	CLAMS	PEARLYMUSSEL, HIGGINS' EYE	Lampsilis higginsi	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, EASTERN PRAIRIE FRINGED	Platanthera leucophaea	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
OBRIEN	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
OSCEOLA	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
OTHER—999	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
PAGE	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
PALO ALTO	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
PLYMOUTH	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
POCAHONTAS	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
POLK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
POTTAWATTAMIE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
POWESHIEK	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
RINGGOLD	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		MILKWEED, MEAD'S	Asclepias meadii	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
SAC	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
SCOTT	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	CLAMS	PEARLYMUSSEL, HIGGINS' EYE	Lampsilis higginsi	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, EASTERN PRAIRIE FRINGED	Platanthera leucophaea	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
SHELBY	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
SIOUX	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
STORY	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
TAMA	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
TAYLOR	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
UNION	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		MILKWEED, MEAD'S	Asclepias meadii	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
VAN BUREN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, EASTERN PRAIRIE FRINGED	Platanthera leucophaea	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
WAPELLO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, EASTERN PRAIRIE FRINGED	Platanthera leucophaea	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
WARREN	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		MILKWEED, MEAD'S	Asclepias meadii	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
WASHINGTON	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, EASTERN PRAIRIE FRINGED	Platanthera leucophaea	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
WAYNE	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		MILKWEED, MEAD'S	Asclepias meadii	L, T
		ORCHID, EASTERN PRAIRIE FRINGED	Platanthera leucophaea	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
WEBSTER	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
WINNEBAGO	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
WINNESHIEK	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
	SNAILS	SNAIL, IOWA PLEISTOCENE	Discus macclintocki	L, E
WOODBURY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
WORTH	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
WRIGHT	PLANTS	BUSH-CLOVER, PRAIRIE	Lespedeza leptostachya	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
IDAHO				
ADA	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
ADAMS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	SALMON, CHINOOK (SNAKE RIVER FALL RUN).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, CHINOOK (SNAKE RIVER SPRING/SUMMER).	Oncorhynchus tshawytscha	L, E, CH
		STEELHEAD, SNAKE RIVER BASIN POPULATION.	Oncorhynchus mykiss, (Snake River Basin ESU).	L, T
		STEELHEAD, SNAKE RIVER BASIN POPULATION.	Oncorhynchus mykiss, (Snake River Basin ESU).	L, T
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	WOLF, GRAY	Canis lupus	L, E, T, CH
BANNOCK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
BEAR LAKE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
BENEWAH	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	WOLF, GRAY	Canis lupus	L, E, T, CH
BINGHAM	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
BLAINE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	SALMON, CHINOOK (SNAKE RIVER SPRING/SUMMER).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
	MAMMALS	WOLF, GRAY	Canis lupus	L, E, T, CH
BOISE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	WOLF, GRAY	Canis lupus	L, E, T, CH
BONNER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=Ua horribilis)	L, T
		CARIBOU, WOODLAND	Rangifer tarandus caribou	D, E
		WOLF, GRAY	Canis lupus	L, E, T, CH
BONNEVILLE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	WOLF, GRAY	Canis lupus	L, E, T, CH
BOUNDARY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	STURGEON, WHITE (KOOTENAI RIVER POP).	Acipenser transmontanus	L, E
		STURGEON, WHITE (KOOTENAI RIVER POP).	Acipenser transmontanus	L, E
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=Ua horribilis)	L, T
		CARIBOU, WOODLAND	Rangifer tarandus caribou	L, E
		WOLF, GRAY	Canis lupus	L, E, T, CH
BUTTE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
CAMAS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
CANYON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
CARIBOU	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
CASSIA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
CLARK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	WOLF, GRAY	Canis lupus	L, E, T, CH
CLEARWATER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
	FISHES	SALMON, CHINOOK (SNAKE RIVER FALL RUN).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, CHINOOK (SNAKE RIVER SPRING/SUMMER).	Oncorhynchus tshawytscha	L, E, CH
		STEELHEAD, SNAKE RIVER BASIN POPULATION.	Oncorhynchus mykiss, (Snake River Basin ESU).	L, T
		STEELHEAD, SNAKE RIVER BASIN POPULATION.	Oncorhynchus mykiss, (Snake River Basin ESU).	L, T
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=Ua horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
CUSTER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	SALMON, CHINOOK (SNAKE RIVER SPRING/SUMMER).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
		STEELHEAD, SNAKE RIVER BASIN POPULATION.	Oncorhynchus mykiss, (Snake River Basin ESU).	L, T
		STEELHEAD, SNAKE RIVER BASIN POPULATION.	Oncorhynchus mykiss, (Snake River Basin ESU).	L, T
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	WOLF, GRAY	Canis lupus	L, E, T, CH
ELMORE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	SNAILS	LIMPET, BANBURY SPRINGS	Lanx n sp	L, E
		SNAIL, BLISS RAPIDS	Family Hydrobiidae n sp	L, T
		SNAIL, SNAKE RIVER PHYSA	Physa natricina	L, E
		SNAIL, UTAH VALVATA	Valvata utahensis	L, E
		SPRINGSNAIL, IDAHO	Fontelicella idahoensis	L, E
FRANKLIN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
FREMONT	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=Ua horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
GEM	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
GOODING	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	SNAILS	LIMPET, BANBURY SPRINGS	Lanx n sp	L, E
		SNAIL, BLISS RAPIDS	Family Hydrobiidae n sp	L, T
		SNAIL, SNAKE RIVER PHYSA	Physa natricina	L, E
		SNAIL, UTAH VALVATA	Valvata utahensis	L, E
IDAHO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	SALMON, CHINOOK (SNAKE RIVER FALL RUN).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, CHINOOK (SNAKE RIVER SPRING/SUMMER).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
		STEELHEAD, SNAKE RIVER BASIN POPULATION.	Oncorhynchus mykiss, (Snake River Basin ESU).	L, T
		STEELHEAD, SNAKE RIVER BASIN POPULATION.	Oncorhynchus mykiss, (Snake River Basin ESU).	L, T
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=Ua horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
	PLANTS	FOUR-O'CLOCK, MACFARLANE'S	Mirabilis macfarlanei	L, T
JEFFERSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
JEROME	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
KOOTENAI	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	WOLF, GRAY	Canis lupus	L, E, T, CH
	PLANTS	HOWELLIA, WATER	Howellia aquatilis	L, T
LATAH	PLANTS	HOWELLIA, WATER	Howellia aquatilis	L, T
LEMHI	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	SALMON, CHINOOK (SNAKE RIVER SPRING/SUMMER).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
		STEELHEAD, SNAKE RIVER BASIN POPULATION.	Oncorhynchus mykiss, (Snake River Basin ESU).	L, T

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		STEELHEAD, SNAKE RIVER BASIN POPULATION.	Oncorhynchus mykiss, (Snake River Basin ESU).	L, T
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	WOLF, GRAY	Canis lupus	L, E, T, CH
LEWIS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	SALMON, CHINOOK (SNAKE RIVER SPRING/SUMMER).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
		STEELHEAD, SNAKE RIVER BASIN POPULATION.	Oncorhynchus mykiss, (Snake River Basin ESU).	L, T
		STEELHEAD, SNAKE RIVER BASIN POPULATION.	Oncorhynchus mykiss, (Snake River Basin ESU).	L, T
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
MADISON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
MINIDOKA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
NEZ PERCE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	SALMON, CHINOOK (SNAKE RIVER FALL RUN).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, CHINOOK (SNAKE RIVER SPRING/SUMMER).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
OWYHEE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	SNAILS	SNAIL, SNAKE RIVER PHYSA	Physa natricina	L, E
		SPRINGSNAIL, BRUNEAU HOT	Pyrgulopsis bruneauensis	L, E
		SPRINGSNAIL, IDAHO	Fontelicella idahoensis	L, E
PAYETTE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	SALMON, CHINOOK (SNAKE RIVER SPRING/SUMMER).	Oncorhynchus tshawytscha	L, E, CH
POWER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	SNAILS	SNAIL, UTAH VALVATA	Valvata utahensis	L, E
SHOSHONE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=Ua horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
TETON	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=Ua horribilis)	L, T
TWIN FALLS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	SNAILS	SNAIL, BLISS RAPIDS	Family Hydrobiidae n. sp.	L, T
		SNAIL, SNAKE RIVER PHYSA	Physa natricina	L, E
VALLEY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	SALMON, CHINOOK	Oncorhynchus tshawytscha	L, E, CH
		SALMON, CHINOOK (SNAKE RIVER SPRING/SUMMER).	Oncorhynchus tshawytscha	L, E, CH
		STEELHEAD, SNAKE RIVER BASIN POPULATION.	Oncorhynchus mykiss, (Snake River Basin ESU).	L, T
		STEELHEAD, SNAKE RIVER BASIN POPULATION.	Oncorhynchus mykiss, (Snake River Basin ESU).	L, T
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	WOLF, GRAY	Canis lupus	L, E, T, CH
WASHINGTON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
JOHNSON ATOLL				
KANSAS				
ALLEN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	MADTOM, NEOSHO	Noturus placidus	L, T
	PLANTS	MILKWEED, MEAD'S	Asclepias meadii	L, T
ANDERSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	MILKWEED, MEAD'S	Asclepias meadii	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
ATCHISON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
BARBER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
BARTON	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
		CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
BOURBON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	BAT, GRAY	Myotis grisescens	L, E
	PLANTS	MILKWEED, MEAD'S	Asclepias meadii	L, T
BROWN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
BUTLER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
CHASE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	MADTOM, NEOSHO	Noturus placidus	L, T
CHAUTAUQUA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
CHEROKEE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	MADTOM, NEOSHO	Noturus placidus	L, T
	MAMMALS	BAT, GRAY	Myotis grisescens	L, E
CHEYENNE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
CLARK	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
CLAY	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
CLOUD	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
COFFEY	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	MADTOM, NEOSHO	Noturus placidus	L, T
	PLANTS	MILKWEED, MEAD'S	Asclepias meadii	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
COMANCHE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
COWLEY	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
CRAWFORD	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	BAT, GRAY	Myotis grisescens	L, E
	PLANTS	MILKWEED, MEAD'S	Asclepias meadii	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
DECATUR	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
DICKINSON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
DONIPHAN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	INSECTS	BEETLE, AMERICAN BURYING	Nicrophorus americanus	L, E
DOUGLAS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	INSECTS	BEETLE, AMERICAN BURYING	Nicrophorus americanus	L, E
	PLANTS	MILKWEED, MEAD'S	Asclepias meadii	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
EDWARDS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
ELK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
ELLIS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
ELLSWORTH	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
FINNEY	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
FORD	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
FRANKLIN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	MILKWEED, MEAD'S	Asclepias meadii	L, T
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
GEARY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
GOVE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
GRAHAM	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
GRANT	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
GRAY	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
GREELEY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
GREENWOOD	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
HAMILTON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
HARPER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
HARVEY	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
HASKELL	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
HODGEMAN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
JACKSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
JEFFERSON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	MILKWEED, MEAD'S	Asclepias meadii	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
JEWELL	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
JOHNSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	PLANTS	MILKWEED, MEAD'S	Asclepias meadii	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
KEARNY	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
KINGMAN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
KIOWA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
LABETTE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	MADTOM, NEOSHO	Noturus placidus	L, T
	MAMMALS	BAT, GRAY	Myotis grisescens	L, E
LANE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
LEAVENWORTH	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albes	L, E
	PLANTS	MILKWEED, MEAD'S	Asclepias meadii	L, T
		ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
LINCOLN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
LINN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	MILKWEED, MEAD'S	Asclepias meadii	L, T
LOGAN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
LYON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	MADTOM, NEOSHO	Noturus placidus	L, T
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
MARION	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	MADTOM, NEOSHO	Noturus placidus	L, T
MARSHALL	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
MCPHERSON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
MEADE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
MIAMI	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	MILKWEED, MEAD'S	Asclepias meadii	L, T
MITCHELL	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
MONTGOMERY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	INSECTS	BEETLE, AMERICAN BURYING	Nicrophorus americanus	L, E
MORRIS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	MADTOM, NEOSHO	Noturus placidus	L, T
MORTON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
NEMAHA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
NEOSHO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	MADTOM, NEOSHO	Noturus placidus	L, T
	PLANTS	MILKWEED, MEAD'S	Asclepias meadii	L, T
NESS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
NORTON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
OSAGE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
OSBORNE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
OTTAWA	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
PAWNEE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
PHILLIPS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
POTTAWATOMIE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	INSECTS	BEETLE, AMERICAN BURYING	Nicrophorus americanus	L, E
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
PRATT	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
RAWLINS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
RENO	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
REPUBLIC	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
RICE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
RILEY	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	INSECTS	BEETLE, AMERICAN BURYING	Nicrophorus americanus	L, E
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
ROOKS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
RUSH	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
RUSSELL	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
SALINE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	INSECTS	BEETLE, AMERICAN BURYING	Nicrophorus americanus	L, E
SCOTT	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
SEDGWICK	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
SEWARD	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
SHAWNEE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
SHERIDAN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
SHERMAN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
SMITH	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
STAFFORD	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
STANTON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
STEVENS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
SUMNER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
THOMAS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
TREGO	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
WABAUNSEE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
WALLACE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
WASHINGTON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
WICHITA	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
WILSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
WOODSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	MADTOM, NEOSHO	Noturus placidus	L, T
WYANDOTTE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
LOUISIANA				
ACADIA	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
ALLEN	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
ASCENSION	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
	CLAMS	HEELSPLITTER, INFLATED	Potamilus inflatus	L, T
	FISHES	STURGEON, GULF	Acipenser oxyrhynchus (=oxyrhynchus desotoi).	L, T
		STURGEON, PALLID	Scaphirhynchus albus	L, E
ASSUMPTION	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
AVOYELLES	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
BEAUREGARD	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
BIENVILLE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
BOSSIER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
CADDO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
CALCASIEU	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
CALDWELL	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
CAMERON	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
	REPTILES	TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
CATAHOULA	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
CLAIBORNE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
CONCORDIA	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	BEAR, AMERICAN BLACK	Ursus americanus	L, T
		BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
DE SOTO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
EAST BATON ROUGE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
	CLAMS	HEELSPLITTER, INFLATED	Potamilus inflatus	L, T
	FISHES	STURGEON, GULF	Acipenser oxyrhynchus (=oxyrhynchus desotoi).	L, T
		STURGEON, PALLID	Scaphirhynchus albus	L, E
EAST CARROLL	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
EAST FELICIANA	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
EVANGELINE	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
FRANKLIN	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
GRANT	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	CLAMS	PEARLSHELL, LOUISIANA	Margaritifera hembeli	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
IBERIA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
IBERVILLE	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
JACKSON	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
JEFFERSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	REPTILES	TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
JEFFERSON DAVIS	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
LA SALLE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
LAFAYETTE	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
LAFOURCHE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
	REPTILES	TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
LINCOLN	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
LIVINGSTON	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	CLAMS	HEELSPLITTER, INFLATED	Potamilus inflatus	L, T
	FISHES	STURGEON, GULF	Acipenser oxyrhynchus (=oxyrhynchus desotoi).	L, T
MADISON	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		TERN, CALIFORNIA LEAST	Sterna antillarum browni	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
MOREHOUSE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
NATCHITOCHES	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
ORLEANS	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		PELICAN, BROWN	Pelicanus occidentalis	L, E
	FISHES	STURGEON, GULF	Acipenser oxyrhynchus (=oxyrhynchus desotoi).	L, T
		STURGEON, PALLID	Scaphirhynchus albus	L, E
OUACHITA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
PLAQUEMINES	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
POINTE COUPEE	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
RAPIDES	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	CLAMS	PEARLSHELL, LOUISIANA	Margaritifera hembeli	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
RED RIVER	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
RICHLAND	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
SABINE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
ST BERNARD	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
	FISHES	STURGEON, GULF	Acipenser oxyrhynchus (=oxyrhynchus desotoi).	L, T
		STURGEON, PALLID	Scaphirhynchus albus	L, E
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
ST CHARLES	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
	FISHES	STURGEON, GULF	Acipenser oxyrhynchus (=oxyrhynchus desotoi).	L, T
		STURGEON, PALLID	Scaphirhynchus albus	L, E
ST HELENA	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
ST JAMES	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
ST JOHN THE BAPTIST	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
	FISHES	STURGEON, GULF	Acipenser oxyrhynchus (=oxyrhynchus desotoi).	L, T
		STURGEON, PALLID	Scaphirhynchus albus	L, E
ST LANDRY	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
ST MARTIN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
ST MARY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
	REPTILES	TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
ST TAMMANY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	FISHES	STURGEON, GULF	Acipenser oxyrhynchus (=oxyrhynchus desotoi).	L, T
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
	PLANTS	QUILLWORT, LOUISIANA	Isoetes louisianensis	L, E
	REPTILES	TORTOISE, GOPHER	Gopherus polyphemus	L, T
		TURTLE, RINGED SAWBACK	Graptemys oculifera	L, T
TANGIPAHOA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	FISHES	STURGEON, GULF	Acipenser oxyrhynchus (=oxyrhynchus desotoi).	L, T
	REPTILES	TORTOISE, GOPHER	Gopherus polyphemus	L, T
TENSAS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
TERREBONNE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		PELICAN, BROWN	Pelecanus occidentalis	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
	REPTILES	TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
UNION	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
VERMILION	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		PELICAN, BROWN	Pelecanus occidentalis	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
	REPTILES	TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
VERNON	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
WASHINGTON	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
	FISHES	STURGEON, GULF	Acipenser oxyrhynchus (=oxyrhynchus desotoi).	L, T
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
	PLANTS	QUILLWORT, LOUISIANA	Isoetes louisianensis	L, E
	REPTILES	TORTOISE, GOPHER	Gopherus polyphemus	L, T
		TURTLE, RINGED SAWBACK	Graptemys oculifera	L, T
WEBSTER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
WEST BATON ROUGE	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
WEST CARROLL	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
WEST FELICIANA	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
WINN	BIRDS	FALCON, ARCTIC PEREGRINE	Falco peregrinus tundrius	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	PLANTS	GEOCARPON MINIMUM	Geocarpon minimum	L, E
MASSACHUSETTS				
BARNSTABLE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, ROSEATE	Sterna dougallii dougallii	L, E, T
	PLANTS	GERARDIA, SANDPLAIN	Agalinus acuta	L, E
	REPTILES	TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
BERKSHIRE	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
		COUGAR, EASTERN	Felis concolor couguar	L, E
BRISTOL	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
	REPTILES	TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
DUKES	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
	INSECTS	BEETLE, NORTHEASTERN BEACH TIGER	Cicindela dorsalis dorsalis	L, T
	REPTILES	TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
ESSEX	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
	PLANTS	POGONIA, SMALL WHORLED	Isotria medeoloides	L, T
	REPTILES	TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
FRANKLIN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BULRUSH, NORTHEASTERN (=BARBED BRISTLE).	Scirpus ancistrochaetus	L, E
HAMPDEN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	POGONIA, SMALL WHORLED	Isotria medeoloides	L, T
HAMPSHIRE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
	INSECTS	BEETLE, PURITAN TIGER	Cicindela puritana	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
		COUGAR, EASTERN	Felis concolor couguar	L, E
	PLANTS	POGONIA, SMALL WHORLED	Isotria medeoloides	L, T
MIDDLESEX	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
NANTUCKET	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
	REPTILES	TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
NORFOLK	REPTILES	TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
PLYMOUTH	BIRDS	CURLEW, ESKIMO	Numenius borealis	L, E
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, ROSEATE	Sterna dougallii dougallii	L, E, T
	REPTILES	TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
		TURTLE, PLYMOUTH RED-BELLIED	Pseudemys (Chrysemys) rubriventris bangsi	L, E, CH
SUFFOLK	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
	REPTILES	TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
SUFFOLK	REPTILES	TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
WORCESTER	BIRDS	CROW, MARIANA	Corvus kubaryi	L, E
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		MALLARD, MARIANA	Anas oustaleti	L, E
		MEGAPODE, MICRONESIAN (LA PEROUSE'S).	Megapodius laperouse	L, E
		MONARCH, TINIAN	Monarcha takatsukasae	L, T
		MOORHEN, MARIANA COMMON	Gallinula chloropus guami	L, E
		STARLING, PONAPE MOUNTAIN	Aplonis pelzelni	L, E
		SWIFTLET, MARIANA GRAY (=VANIKORO)	Aerodramus vanikorensis bartschi	L, E
		WARBLER (OLD WORLD), NIGHTINGALE REED.	Acrocephalus luscinia	L, E
		WARBLER (OLD WORLD), NIGHTINGALE REED.	Acrocephalus luscinia	L, E
		WHITE-EYE, PONAPE GREATER	Rukia longirostra (=sanfordi)	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
		BAT, LITTLE MARIANA FRUIT	Pteropus tokudae	L, E
		BAT, MARIANA FRUIT	Pteropus mariannus mariannus	L, E
		COUGAR, EASTERN	Felis concolor couguar	L, E
		DUGONG	Dugong dugon	L, E
	PLANTS	HAYUN LAGU (TRONKON GUAFI)	Serianthes nelsonii	L, E
		POGONIA, SMALL WHORLED	Isotria medeoloides	L, T
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
MAINE				
ANDROSCOGGIN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
AROOSTOOK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		LOUSEWORT, FURBISH	Pedicularis furbishiae	L, E
		ORCHID, EASTERN PRAIRIE FRINGED	Platanthera leucophaea	L, T
CUMBERLAND	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
	PLANTS	POGONIA, SMALL WHORLED	Isotria medeoloides	L, T
FRANKLIN	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
HANCOCK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
KENNEBEC	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	PLANTS	POGONIA, SMALL WHORLED	Isotria medeoloides	L, T
KNOX	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	COUGAR, EASTERN	Felis concolor couguar	L, E
LINCOLN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	COUGAR, EASTERN	Felis concolor couguar	L, E
OXFORD	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	POGONIA, SMALL WHORLED	Isotria medeoloides	L, T

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
PENOBSCOT	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
PISCATAQUIS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
SAGADAHOC	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
SOMERSET	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	COUGAR, EASTERN	Felis concolor couguar	L, E
WALDO	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
WASHINGTON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		TERN, ROSEATE	Sterna dougalli dougalli	L, E, T
YORK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
	PLANTS	POGONIA, SMALL WHORLED	Isotria medeoloides	L, T
MONTANA				
BEAVERHEAD	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	WOLF, GRAY	Canis lupus	L, E, T, CH
BIG HORN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
BLAINE	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
BROADWATER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
CARBON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=Ua horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
CARTER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
CASCADE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
CHOUTEAU	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
CUSTER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
DANIELS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
DAWSON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
FALLON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
FERGUS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
FLATHEAD	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=Ua horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
GALLATIN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=Ua horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
GARFIELD	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
GLACIER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=Ua horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
GOLDEN VALLEY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
GRANITE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
HILL	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
JEFFERSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
JUDITH BASIN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
LAKE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. **Note:** Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
	PLANTS	HOWELLIA, WATER	Howellia aquatilis	L, T
LEWIS AND CLARK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T
LIBERTY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
LINCOLN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	STURGEON, WHITE (KOOTENAI RIVER POP).	Acipenser transmontanus	L, E
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
MADISON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
MCCONE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
MEAGHER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
MINERAL	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
MISSOULA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
	PLANTS	HOWELLIA, WATER	Howellia aquatilis	L, T
MUSSELSHELL	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
PARK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
PETROLEUM	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
PHILLIPS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
PONDERA	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
POWDER RIVER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
POWELL	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
PRAIRIE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
RAVALLI	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
RICHLAND	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
ROOSEVELT	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
ROSEBUD	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
SANDERS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T

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State/County	Group name	Inverse name	Scientific name	Action/ Status
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
SHERIDAN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
SILVER BOW	MAMMALS	WOLF, GRAY	Canis lupus	L, E, T, CH
STILLWATER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T
SWEET GRASS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
TETON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
TOOLE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
TREASURE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
VALLEY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
WHEATLAND	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
WIBAUX	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
YELLOWSTONE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
MIDWAY ISLAND				
NORTH DAKOTA				
ADAMS	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
BARNES	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
BENSON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
BILLINGS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
BOTTINEAU	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
BOWMAN	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
BURKE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
BURLEIGH	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
CASS	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
CAVALIER	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
DICKEY	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		FALCON, PEREGRINE	Falco peregrinus	L, E
DIVIDE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
DUNN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
EDDY	BIRDS	CRANE, WHOOPING***	Grus americana	L, E, CH
		FALCON, PEREGRINE	Falco peregrinus	L, E
EMMONS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
FOSTER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		FALCON, PEREGRINE	Falco peregrinus	L, E
GOLDEN VALLEY	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		FALCON, PEREGRINE	Falco peregrinus	L, E
GRAND FORKS	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
GRANT	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
GRIGGS	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
HETTINGER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
KIDDER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
LA MOURE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		FALCON, PEREGRINE	Falco peregrinus	L, E
LOGAN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
MCHENRY	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
MCINTOSH	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
MCKENZIE	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
MCLEAN	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
MERCER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
MORTON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
MOUNTRAIL	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
NELSON	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
OLIVER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
PEMBINA	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
PIERCE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
RAMSEY	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
RANSOM	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
RENVILLE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
RICHLAND	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
ROLETTE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		FALCON, PEREGRINE	Falco peregrinus	L, E
SARGENT	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
SHERIDAN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		FALCON, PEREGRINE	Falco peregrinus	L, E

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		PLOVER, PIPING	Charadrius melodus	L, E, T
SIOUX	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
SLOPE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
STARK	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		FALCON, PEREGRINE	Falco peregrinus	L, E
STEELE	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
STUTSMAN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
TOWNER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		FALCON, PEREGRINE	Falco peregrinus	L, E
TRAILL	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
WALSH	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
WARD	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
WELLS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		FALCON, PEREGRINE	Falco peregrinus	L, E
WILLIAMS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
NEBRASKA				
ADAMS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
ARTHUR	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
BLAINE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
BOX BUTTE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	PENSTEMON, BLOWOUT	Penstemon haydenii	L, E
BOYD	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	CLAMS	CLUBSHELL, SOUTHERN	Pleurobema decisum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
BROWN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
BUFFALO	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
BURT	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
BUTLER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
CASS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
CEDAR	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
CHASE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
CHERRY	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		PLOVER, PIPING	Charadrius melodus	L, E, T
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
		PENSTEMON, BLOWOUT	Penstemon haydenii	L, E
CLAY	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
COLFAX	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
CUMING	BIRDS	PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
CUSTER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
DAKOTA	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
DAWES	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
DAWSON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
DEUEL	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
DIXON	BIRDS	PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
DODGE	BIRDS	PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
DOUGLAS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
DUNDY	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
FRANKLIN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
FRONTIER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
FURNAS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
GAGE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
GARDEN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
	PLANTS	PENSTEMON, BLOWOUT	Penstemon haydenii	L, E
GARFIELD	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
GOSPER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
GRANT	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
GREELEY	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
HALL	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
HAMILTON	BIRDS	PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
HARLAN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
HITCHCOCK	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
HOLT	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
HOOKER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
	PLANTS	PENSTEMON, BLOWOUT	Penstemon haydenii	L, E
HOWARD	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
KEARNEY	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
KEITH	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
KEYA PAHA	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
KNOX	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
LANCASTER	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
LINCOLN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
LOGAN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
LOUP	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
MADISON	BIRDS	PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
MERRICK	BIRDS	PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
MORRILL	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	PLANTS	PENSTEMON, BLOWOUT	Penstemon haydenii	L, E
NANCE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
NEMAHA	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
NUCKOLLS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
OTOE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
PERKINS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
PHELPS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
PHELPS	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
PLATTE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
POLK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
RED WILLOW	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
RICHARDSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
ROCK	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
SARPY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
SAUNDERS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
SCOTT BLUFF	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
SEWARD	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
SHERIDAN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	PENSTEMON, BLOWOUT	Penstemon haydenii	L, E
SHERMAN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. **Note:** Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
SIOUX	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
STANTON	BIRDS	PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
THOMAS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
THURSTON	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
VALLEY	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
WASHINGTON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
WEBSTER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
WHEELER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
NEW HAMPSHIRE				
BELKNAP	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	POGONIA, SMALL WHORLED	Isotria medeoloides	L, T
CARROLL	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	POGONIA, SMALL WHORLED	Isotria medeoloides	L, T
CHESHIRE	CLAMS	MUSSEL, DWARF WEDGE	Alasmidonta heterodon	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
COOS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	CINQUEFOIL, ROBBINS'	Potentilla robbinsiana	L, E, CH
GRAFTON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	CINQUEFOIL, ROBBINS'	Potentilla robbinsiana	L, E, CH
HILLSBOROUGH	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	POGONIA, SMALL WHORLED	Isotria medeoloides	L, T
MERRIMACK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	INSECTS	BUTTERFLY, KARNER BLUE	Lycaeides melissa samuelis	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	POGONIA, SMALL WHORLED	Isotria medeoloides	L, T
ROCKINGHAM	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	PLANTS	POGONIA, SMALL WHORLED	Isotria medeoloides	L, T
STRAFFORD	PLANTS	POGONIA, SMALL WHORLED	Isotria medeoloides	L, T
SULLIVAN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	CLAMS	MUSSEL, DWARF WEDGE	Alasmidonta heterodon	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	MILK-VETCH, JESUP'S	Astragalus robbinsii var. jesupi	L, E
NEW MEXICO				
BERNALILLO	BIRDS	FLYCATCHER, SOUTHWESTERN WILLOW	Empidonax traillii extimus	L, E
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	MINNOW, RIO GRANDE SILVERY	Hybognathus amarus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
CATRON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		FLYCATCHER, SOUTHWESTERN WILLOW	Empidonax traillii extimus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	MINNOW, LOACH	Tiaroga cobitis	L, T, CH
		SPIKEDACE	Meda fulgida	L, T, CH
		TROUT, GILA	Salmo gilae	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	FLEABANE, ZUNI	Erigeron rhizomatus	L, T
CHAVES	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. Note: Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
	FISHES	GAMBUSIA, PECOS	Gambusia nobilis	L, E
		SHINER, PECOS BLUNTNOSE	Notropis simus pecosensis	L, T, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	CACTUS, KUENZLER HEDGEHOG	Echinocereus fendleri var. kuenzleri	L, E
CIBOLA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
COLFAX	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
CURRY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
DE BACA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	SHINER, PECOS BLUNTNOSE	Notropis simus pecosensis	L, T, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
DONA ANA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	CACTUS, SNEED PINCUSHION	Coryphantha sneedii var. sneedii	L, E
EDDY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	GAMBUSIA, PECOS	Gambusia nobilis	L, E
		SHINER, PECOS BLUNTNOSE	Notropis simus pecosensis	L, T, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	CACTUS, LEE PINCUSHION	Coryphantha sneedii var. leei	L, T
		CACTUS, LLOYD'S HEDGEHOG	Echinocereus lloydii	L, E
		WILD-BUCKWHEAT, GYPSUM	Eriogonum gypsophilum	L, T, CH
GRANT	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
		FLYCATCHER, SOUTHWESTERN WILLOW	Empidonax traillii extimus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	CHUB, CHIHUAHUA	Gila nigrescens	L, T
		MINNOW, LOACH	Tiaroga cobitis	L, T, CH
		SHINER, BEAUTIFUL	Notropis formosus	L, T, CH
		SPIKEDACE	Meda fulgida	L, T, CH
		TOPMINNOW, GILA (YAQUI)	Poeciliopsis occidentalis	L, E
		TROUT, GILA	Salmo gilae	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
		WOLF, GRAY	Canis lupus	L, E, T, CH
GUADALUPE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
HARDING	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
HIDALGO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
		FLYCATCHER, SOUTHWESTERN WILLOW	Empidonax traillii extimus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	SPIKEDACE	Meda fulgida	L, T, CH
	MAMMALS	BAT, LESSER (=SANBORN'S) LONG-NOSED.	Leptonycteris sanborni	L, E
		BAT, MEXICAN LONG-NOSED	Leptonycteris nivalis	L, E
		FERRET, BLACK-FOOTED	Mustela nigripes	L, E
		WOLF, GRAY	Canis lupus	L, E, T, CH
	REPTILES	RATTLESNAKE, NEW MEXICAN RIDGE-NOSED.	Crotalus willardi obscurus	L, T, CH
LEA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
LINCOLN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
LOS ALAMOS	PLANTS	CACTUS, KUENZLER HEDGEHOG	Echinocereus fendleri var. kuenzleri	L, E
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
LUNA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	SHINER, BEAUTIFUL	Notropis formosus	L, T, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
		WOLF, GRAY	Canis lupus	L, E, T, CH
MCKINLEY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	FLEABANE, ZUNI	Erigeron rhizomatus	L, T
MORA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
OTERO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	CACTUS, KUENZLER HEDGEHOG	Echinocereus fendleri var. kuenzleri	L, E
		PENNYROYAL, TODSEN'S	Hedeoma todsenii	L, E, CH
		POPPY, SACRAMENTO PRICKLY	Argemone pleiacantha ssp. pinnatisecta	L, E
		THISTLE, SACRAMENTO MOUNTAINS	Cirsium vinaceum	L, T
QUAY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
RIO ARRIBA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
ROOSEVELT	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
SAN JUAN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	SQUAWFISH, COLORADO	Ptychocheilus lucius	L, CH
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	CACTUS, KNOWLTON	Pediocactus knowltonii	L, E
		CACTUS, MESA VERDE	Sclerocactus mesae-verdae (=Pediocactus m).	L, T
		MILK-VETCH, MANCOS	Astragalus humillimus	L, E
SAN MIGUEL	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	IPOMOPSIS, HOLY GHOST	Ipomopsis sancti-spiritus	L, E
SANDOVAL	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	MINNOW, RIO GRANDE SILVERY	Hybognathus amarus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
SANTA FE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
SIERRA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	TROUT, GILA	Salmo gilae	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	PENNYROYAL, TODSEN'S	Hedeoma todsenii	L, E, CH
SOCORRO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	CRUSTACEAN	ISOPOD, SOCORRO	Thermosphaeroma (=Exosphaeroma) thermophilus.	L, E

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
	FISHES	MINNOW, RIO GRANDE SILVERY	Hybognathus amarus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	SNAILS	SPRINGSNAIL, ALAMOSA	Tryonia alamosae	L, E
		SPRINGSNAIL, SOCORRO	Pyrgulopsis neomexicana	L, E
TAOS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
TORRANCE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
UNION	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
VALENCIA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	MINNOW, RIO GRANDE SILVERY	Hybognathus amarus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
NORTHERN MARIANAS				
NEVADA				
CARSON CITY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
CHURCHILL	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
CLARK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		RAIL, YUMA CLAPPER	Rallus longirostris yumanensis	L, E
	FISHES	CHUB, BONYTAIL	Gila elegans	L, E, CH
		CHUB, VIRGIN RIVER	Gila robusta seminuda	L, E
		DACE, MOAPA	Moapa coriacea	L, E
		POOLFISH, PAHRUMP (=PAHRUMP KILLIFISH).	Empetrichythys latos	L, E
		PUPFISH, DEVILS HOLE	Cyprinodon diabolis	L, E
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
		WOUNDFIN	Plagopterus argentissimus	L, E
	REPTILES	TORTOISE, DESERT	Gopherus (=Xerobates, =Scaptochelys) agassizii.	L, T, CH
DOUGLAS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
ELKO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	DACE, CLOVER VALLEY SPECKLED	Rhinichthys osculus oligoporous	L, E
		DACE, INDEPENDENCE VALLEY SPECKLED.	Rhinichthys osculus lethoporous	L, E
		TROUT, LAHONTAN CUTTHROAT	Salmo clarki henshawi	L, T
ESMERALDA	REPTILES	TORTOISE, DESERT	Gopherus (=Xerobates, =Scaptochelys) agassizii.	L, T, CH
EUREKA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	TROUT, LAHONTAN CUTTHROAT	Salmo clarki henshawi	L, T
HUMBOLDT	FISHES	DACE, DESERT	Eremichthys acros	L, T, CH
		TROUT, LAHONTAN CUTTHROAT	Salmo clarki henshawi	L, T
LANDER	FISHES	TROUT, LAHONTAN CUTTHROAT	Salmo clarki henshawi	L, T
LINCOLN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	CHUB, PAHRANAGAT ROUNDTAIL	Gila robusta jordani	L, E
		DACE, MOAPA	Moapa coriacea	L, E
		SPINEDACE, BIG SPRING	Lepidomeda mollispinis pratensis	L, T, CH
		SPRINGFISH, HIKO WHITE RIVER	Crenichthys baileyi grandis	L, E, CH
		SPRINGFISH, WHITE RIVER	Crenichthys baileyi baileyi	L, E, CH
	PLANTS	LADIES'-TRESSES, UTE	Spiranthes diluvialis	L, T
	REPTILES	TORTOISE, DESERT	Gopherus (=Xerobates, =Scaptochelys) agassizii.	L, T, CH
LYON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
MINERAL	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	SPRINGFISH, HIKO WHITE RIVER	Crenichthys baileyi grandis	L, E, CH
		SPRINGFISH, RAILROAD VALLEY	Crenichthys nevadae	L, T, CH
		TROUT, LAHONTAN CUTTHROAT	Salmo clarki henshawi	L, T
	PLANTS	MILK-VETCH, SODAVILLE	Astragalus lentiginosus var. Sesquimetralis	P, T
NYE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	DACE, ASH MEADOWS SPECKLED	Rhinichthys osculus nevadensis	L, E, CH
		POOLFISH, PAHRUMP (=PAHRUMP KILLIFISH).	Empetrichythys latos	L, E
		PUPFISH, ASH MEADOWS AMARGOSA	Cyprinodon nevadensis mionectes	L, E, CH
		PUPFISH, DEVILS HOLE	Cyprinodon diabolis	L, E
		PUPFISH, WARM SPRINGS	Cyprinodon nevadensis pectoralis	L, E

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. **Note:** Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Invense name	Scientific name	Action/ Status
		SPINEDACE, WHITE RIVER	Lepidomeda albivallis	L, E, CH
		SPRINGFISH, RAILROAD VALLEY	Crenichthys nevadae	L, T, CH
		TROUT, LAHONTAN CUTTHROAT	Salmo clarki henshawi	L, T
	INSECTS	NAUCORID, ASH MEADOWS	Ambrysus amargosus	L, T, CH
	PLANTS	BLAZING STAR, ASH MEADOWS	Mentzelia leucophylla	L, T, CH
		CENTAURY, SPRING-LOVING	Centaurium namophilum var. namophilum	L, T, CH
		GUMPLANT, ASH MEADOWS	Grindelia fraxino-pratensis	L, T, CH
		IVESIA, ASH MEADOWS	Ivesia eremica	L, T, CH
		MILK-VETCH, ASH MEADOWS	Astragalus phoenix	L, T, CH
		NITERWORT, AMARGOSA	Nitrophila mohavensis	L, E, CH
		SUNRAY, ASH MEADOWS	Enceliopsis nudicaulis var. corrugata	L, T, CH
	REPTILES	TORTOISE, DESERT	Gopherus (=Xerobates, =Scaptochelys) agassizii.	L, T, CH
PERSHING	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
STOREY	FISHES	TROUT, LAHONTAN CUTTHROAT	Salmo clarki henshawi	L, T
WASHOE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	CUI-UI	Chasmistes cujus	L, E
		SUCKER, WARNER	Catostomus warnerensis	L, T, CH
		TROUT, LAHONTAN CUTTHROAT	Salmo clarki henshawi	L, T
	PLANTS	BUCKWHEAT, STEAMBOAT	Eriogonum ovalifolium var. williamsiae	L, E
WHITE PINE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	POOLFISH, PAHRUMP (=PAHRUMP KILLIFISH).	Empetrichythys latos	L, E
		SPINEDACE, WHITE RIVER	Lepidomeda albivallis	L, E, CH
ALBANY	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
	INSECTS	BUTTERFLY, KARNER BLUE	Lycaeides melissa samuelis	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
ALLEGANY	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
BRONX	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
BROOME	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
CATTARAUGUS	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
CAYUGA	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	ROSEROOT, LEEDY'S	Sedum integrifolium ssp. Leedyi	L, T
CHAUTAUQUA	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
CHEMUNG	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
CHENANGO	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
CLINTON	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
COLUMBIA	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
CORTLAND	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
DELAWARE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	MONKSHOOD, NORTHERN WILD	Aconitum noveboracense	L, T
DUTCHESS	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
ERIE	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
ESSEX	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
FRANKLIN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
FULTON	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
GENESEE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
GREENE	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
HAMILTON	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
HERKIMER	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
JEFFERSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
KINGS	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	AMARANTH, SEABEACH	Amaranthus pumilus	L, T
LEWIS	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
LIVINGSTON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
MADISON	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	FERN, AMERICAN HART'S-TONGUE	Phyllitis scolopendrium var. americana	L, T
	SNAILS	SNAIL, CHITTENANGO OVATE AMBER	Succinea chittenangoensis	L, T
MONROE	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
MONTGOMERY	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
NASSAU	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
	PLANTS	AMARANTH, SEABEACH	Amaranthus pumilus	L, T
		GERARDIA, SANDPLAIN	Agalinus acuta	L, E
	REPTILES	TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
NEW YORK	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
NIAGARA	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
ONEIDA	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
ONONDAGA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	FERN, AMERICAN HART'S-TONGUE	Phyllitis scolopendrium var. americana	L, T
		POGONIA, SMALL WHORLED	Isotria medeoloides	L, T
ONTARIO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
ORANGE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	CLAMS	MUSSEL, DWARF WEDGE	Alasmidonta heterodon	L, E
	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
ORLEANS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E
OSWEGO	BIRDS	PLOVER, PIPING	Charadrius melodus	L, E, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
		BAT, INDIANA	Myotis sodalis	L, E, CH
PUTNAM	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
QUEENS	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
RENSSELAER	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
RICHMOND	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
ROCKLAND	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
SARATOGA	INSECTS	BUTTERFLY, KARNER BLUE	Lycaeides melissa samuelis	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
SCHENECTADY	INSECTS	BUTTERFLY, KARNER BLUE	LYCAEIDES MELISSA SAMUELIS	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
SCHOHARIE	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
SCHUYLER	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	ROSEROOT, LEEDY'S	SEDUM INTEGRIFOLIUM SSP. LEEDYI	L, T
SENECA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
ST LAWRENCE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
STEUBEN	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
SUFFOLK	BIRDS	PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, ROSEATE	Sterna dougalli dougalli	L, E, T
	PLANTS	AMARANTH, SEABEACH	Amaranthus pumilus	L, T
		GERARDIA, SANDPLAIN	Agalinus acuta	L, E
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
	REPTILES	TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
SULLIVAN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	MONKSHOOD, NORTHERN WILD	Aconitum noveboracense	L, T
TIOGA	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
TOMPKINS	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
ULSTER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	MONKSHOOD, NORTHERN WILD	Aconitum noveboracense	L, T
WARREN	INSECTS	BUTTERFLY, KARNER BLUE	Lycaeides melissa samuelis	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E
WASHINGTON	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
WAYNE	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
WESTCHESTER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
WYOMING	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
YATES	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	ROSEROOT, LEEDY'S	Sedum integrifolium ssp. Leedyi	L, T
OKLAHOMA				
ADAIR	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, GRAY	Myotis grisescens	L, E
		BAT, INDIANA	Myotis sodalis	L, E, CH
		BAT, OZARK BIG-EARED	Plecotus townsendii ingens	L, E
ALFALFA	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
ATOKA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
BEAVER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
BECKHAM	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
BLAINE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
BRYAN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	INSECTS	BEETLE, AMERICAN BURYING	Nicrophorus americanus	L, E
	REPTILES	ALLIGATOR, AMERICAN	Alligator mississippiensis	L, T
CADDO	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
CANADIAN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
CARTER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
CHEROKEE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	INSECTS	BEETLE, AMERICAN BURYING	Nicrophorus americanus	L, E
	MAMMALS	BAT, GRAY	Myotis grisescens	L, E
		BAT, INDIANA	Myotis sodalis	L, E, CH
		BAT, OZARK BIG-EARED	Plecotus townsendii ingens	L, E
CHOCTAW	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	ORCHID, EASTERN PRAIRIE FRINGED	Platanthera leucophaea	L, T
CIMARRON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	SHINER, ARKANSAS RIVER	NOTROPIS GIRARDI	P, E
CLEVELAND	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
COMANCHE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
COTTON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
CRAIG	FISHES	CAVEFISH, OZARK	Amblyopsis rosae	L, T
		MADTOM, NEOSHO	Noturus placidus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
CREEK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
CUSTER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
DELAWARE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	CAVEFISH, OZARK	Amblyopsis rosae	L, T
	MAMMALS	BAT, GRAY	Myotis grisescens	L, E
		BAT, INDIANA	Myotis sodalis	L, E, CH
		BAT, OZARK BIG-EARED	Plecotus townsendii ingens	L, E
DEWEY	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
ELLIS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
GARFIELD	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
GARVIN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
GRADY	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
GRANT	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
GREER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
HARMON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
HARPER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
HASKELL	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	INSECTS	BEETLE, AMERICAN BURYING	Nicrophorus americanus	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
HUGHES	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
JACKSON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
JEFFERSON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
JOHNSTON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
KAY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
KINGFISHER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
KIOWA	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
LATIMER	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	INSECTS	BEETLE, AMERICAN BURYING	Nicrophorus americanus	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
LE FLORE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	CLAMS	ROCK-POCKETBOOK, OUACHITA	Arkansia (=Arcidens) wheeleri	L, E
		ROCK-POCKETBOOK, OUACHITA (=WHEELER'S PM).	Arkansia (=Arcidens) wheeleri	L, E
	FISHES	DARTER, LEOPARD	Percina pantherina	L, T, CH
	INSECTS	BEETLE, AMERICAN BURYING	Nicrophorus americanus	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
LINCOLN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
LOGAN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
LOVE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
MAJOR	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
MARSHALL	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
MAYES	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	CAVEFISH, OZARK	Amblyopsis rosae	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
MCCLAIN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
MCCURTAIN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	FISHES	DARTER, LEOPARD	Percina pantherina	L, T, CH
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	REPTILES	ALLIGATOR, AMERICAN	Alligator mississippiensis	L, T
MCINTOSH	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
MURRAY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
MUSKOGEE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	INSECTS	BEETLE, AMERICAN BURYING	Nicrophorus americanus	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
NOBLE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
NOWATA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
OKLAHOMA	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
OSAGE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		CURLEW, ESKIMO	Numenius borealis	L, E
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
OTTAWA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	CAVEFISH, OZARK	Amblyopsis rosae	L, T
		MADTOM, NEOSHO	Noturus placidus	L, T
	MAMMALS	BAT, GRAY	Myotis grisescens	L, E
		BAT, INDIANA	Myotis sodalis	L, E, CH
		BAT, OZARK BIG-EARED	Plecotus townsendii ingens	L, E

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
PAWNEE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
PAYNE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
PITTSBURG	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
PONTOTOC	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
POTTAWATOMIE	BIRDS	TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
PUSHMATAHA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	CLAMS	ROCK-POCKETBOOK, OUACHITA	Arkansia (=Arcidens) wheeleri	L, E
		ROCK-POCKETBOOK, OUACHITA (=WHEELER'S PM).	Arkansia (=Arcidens) wheeleri	L, E
	FISHES	DARTER, LEOPARD	Percina pantherina	L, T, CH
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
ROGER MILLS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
ROGERS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
SEMINOLE	BIRDS	TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
SEQUOYAH	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	INSECTS	BEETLE, AMERICAN BURYING	Nicrophorus americanus	L, E
		BAT, INDIANA	Myotis sodalis	L, E, CH
		BAT, OZARK BIG-EARED	Plecotus townsendii ingens	L, E
STEPHENS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
TEXAS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
TILLMAN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
TULSA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	INSECTS	BEETLE, AMERICAN BURYING	Nicrophorus americanus	L, E
WAGONER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
WASHINGTON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
WASHITA	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
WOODS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		CURLEW, ESKIMO	Numenius borealis	L, E
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
WOODWARD	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
OREGON				
BAKER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
	FISHES	SALMON, CHINOOK (SNAKE RIVER SPRING/SUMMER).	Oncorhynchus tshawytscha	L, E, CH
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
BENTON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
	FISHES	CHUB, OREGON	Oregonichthys crameri	L, E
		STEELHEAD, KLAMATH MOUNTAINS PROVINCE.	Oncorhynchus mykiss	P, T
		STEELHEAD, OREGON COAST POPULATION.	Oncorhynchus mykiss, (Oregon Coast ESU)	P, T
	PLANTS	CHECKER-MALLOW, NELSON'S	SIDALCEA NELSONIANA	L, T
		LOMATIUM, BRADSHAW'S	Lomatium bradshawii	L, E
CLACKAMAS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	CHUB, OREGON	Oregonichthys crameri	L, E
		STEELHEAD, KLAMATH MOUNTAINS PROVINCE.	Oncorhynchus mykiss	P, T
		STEELHEAD, LOWER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Lower Columbia ESU).	P, T
		STEELHEAD, LOWER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Lower Columbia ESU).	P, T
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	PLANTS	CHECKER-MALLOW, NELSON'S	Sidalcea nelsoniana	L, T
CLATSOP	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
	FISHES	SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
		STEELHEAD, KLAMATH MOUNTAINS PROVINCE.	Oncorhynchus mykiss	P, T
		STEELHEAD, OREGON COAST POPULATION.	Oncorhynchus mykiss, (Oregon Coast ESU)	P, T
	INSECTS	BUTTERFLY, OREGON SILVERSPOT	Speyeria zerene hippolyta	L, T, CH
	MAMMALS	DEER, COLUMBIAN WHITE-TAILED	Odocoileus virginianus leucurus	L, E
COLUMBIA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
		STEELHEAD, KLAMATH MOUNTAINS PROVINCE.	Oncorhynchus mykiss	P, T
	MAMMALS	DEER, COLUMBIAN WHITE-TAILED	Odocoileus virginianus leucurus	L, E
COOS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
	FISHES	STEELHEAD, KLAMATH MOUNTAINS PROVINCE.	Oncorhynchus mykiss	P, T
		STEELHEAD, OREGON COAST POPULATION.	Oncorhynchus mykiss, (Oregon Coast ESU)	P, T
	PLANTS	LILY, WESTERN	Lilium occidentale	L, E
CROOK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
CURRY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
	FISHES	SALMON, COHO (SOUTHERN OR/NORTHERN CA COAST).	Oncorhynchus kisutch	L, T

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. **Note:** Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
		STEELHEAD, KLAMATH MOUNTAINS PROVINCE.	Oncorhynchus mykiss	P, T
		STEELHEAD, OREGON COAST POPULATION.	Oncorhynchus mykiss, (Oregon Coast ESU)	P, T
DESCHUTES	PLANTS	ROCK-CRESS, RED MT	Arabis mcdonaldiana	L, E
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
DOUGLAS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
	FISHES	STEELHEAD, KLAMATH MOUNTAINS PROVINCE.	Oncorhynchus mykiss	P, T
		STEELHEAD, OREGON COAST POPULATION.	Oncorhynchus mykiss, (Oregon Coast ESU)	P, T
		TROUT, CUTTHROAT (UMPQUA RIVER POPULATION).	Oncorhynchus clarki clarki	L, E
		TROUT, CUTTHROAT (UMPQUA RIVER POPULATION).	Oncorhynchus clarki clarki	L, E
		TROUT, CUTTHROAT (UMPQUA RIVER POPULATION).	Oncorhynchus clarki clarki	L, E
GILLIAM	MAMMALS	DEER, COLUMBIAN WHITE-TAILED	Odocoileus virginianus leucurus	L, E
	FISHES	SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
GRANT	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
FALCON, PEREGRINE	Falco peregrinus ..	L, E.		
	FISHES	TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
HARNEY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	CHUB, BORAX LAKE	Gila boraxobius	L, E, CH
		TROUT, LAHONTAN CUTTHROAT	Salmo clarki henshawi	L, T
	PLANTS	WIRE-LETTUCE, MALHEUR	Stephanomeria malheurensis	L, E, CH
HOOD RIVER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
		STEELHEAD, LOWER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Lower Columbia ESU).	P, T
		STEELHEAD, LOWER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Lower Columbia ESU).	P, T
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
JACKSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	STEELHEAD, KLAMATH MOUNTAINS PROVINCE.	Oncorhynchus mykiss	P, T
JEFFERSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
JOSEPHINE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	STEELHEAD, KLAMATH MOUNTAINS PROVINCE.	Oncorhynchus mykiss	P, T
		STEELHEAD, OREGON COAST POPULATION.	Oncorhynchus mykiss, (Oregon Coast ESU)	P, T
KLAMATH	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	STEELHEAD, KLAMATH MOUNTAINS PROVINCE.	Oncorhynchus mykiss	P, T
		SUCKER, LOST RIVER	Deltistes luxatus	L, E
		SUCKER, SHORTNOSE	Chasmistes brevirostris	L, E
		TROUT, BULL (KLAMATH RIVER POPULATION).	Salvelinus confluentus	P, E
	PLANTS	MILK-VETCH, APPLEGATE'S	Astragalus applegatei	L, E

IV. COUNTY/SPECIES LIST—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. **Note:** Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
LAKE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	CHUB, HUTTON TUI	Gila bicolor ssp.	L, T
		DACE, FOSKETT SPECKLED	Rhinichthys osculus ssp.	L, T
		SUCKER, WARNER	Catostomus warnerensis	L, T, CH
		TROUT, BULL (KLAMATH RIVER POPULATION).	Salvelinus confluentus	P, E
LANE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
	FISHES	CHUB, OREGON	Oregonichthys crameri	L, E
		STEELHEAD, KLAMATH MOUNTAINS PROVINCE.	Oncorhynchus mykiss	P, T
		STEELHEAD, OREGON COAST POPULATION.	Oncorhynchus mykiss, (Oregon Coast ESU)	P, T
	INSECTS	BUTTERFLY, OREGON SILVERSPOT	Speyeria zerene hippolyta	L, T, CH
	MAMMALS	DEER, COLUMBIAN WHITE-TAILED	Odocoileus virginianus leucurus	L, E
	PLANTS	LOMATIUM, BRADSHAW'S	Lomatium bradshawii	L, E
LINCOLN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
	FISHES	STEELHEAD, KLAMATH MOUNTAINS PROVINCE.	Oncorhynchus mykiss	P, T
		STEELHEAD, OREGON COAST POPULATION.	Oncorhynchus mykiss, (Oregon Coast ESU)	P, T
	INSECTS	BUTTERFLY, OREGON SILVERSPOT	Speyeria zerene hippolyta	L, T, CH
LINN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	CHUB, OREGON	Oregonichthys crameri	L, E
		STEELHEAD, KLAMATH MOUNTAINS PROVINCE.	Oncorhynchus mykiss	P, T
	PLANTS	CHECKER-MALLOW, NELSON'S	Sidalcea nelsoniana	L, T
		LOMATIUM, BRADSHAW'S	Lomatium bradshawii	L, E
MALHEUR	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	SALMON, CHINOOK (SNAKE RIVER SPRING/SUMMER).	Oncorhynchus tshawytscha	L, E, CH
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
MARION	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
	FISHES	CHUB, OREGON	Oregonichthys crameri	L, E
		STEELHEAD, KLAMATH MOUNTAINS PROVINCE.	Oncorhynchus mykiss	P, T
	PLANTS	CHECKER-MALLOW, NELSON'S	Sidalcea nelsoniana	L, T
		LOMATIUM, BRADSHAW'S	Lomatium bradshawii	L, E
MORROW	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
MULTNOMAH	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
		STEELHEAD, KLAMATH MOUNTAINS PROVINCE.	Oncorhynchus mykiss	P, T
		STEELHEAD, LOWER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Lower Columbia ESU).	P, T
		STEELHEAD, LOWER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Lower Columbia ESU).	P, T
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	DEER, COLUMBIAN WHITE-TAILED	Odocoileus virginianus leucurus	L, E
POLK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
	FISHES	OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
		CHUB, OREGON	Oregonichthys crameri	L, E
		STEELHEAD, KLAMATH MOUNTAINS PROVINCE.	Oncorhynchus mykiss	P, T
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	PLANTS	CHECKER-MALLOW, NELSON'S	Sidalcea nelsoniana	L, T
		LOMATIUM, BRADSHAW'S	Lomatium bradshawii	L, E
SHERMAN	FISHES	SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
TILLAMOOK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
	FISHES	STEELHEAD, KLAMATH MOUNTAINS PROVINCE.	Oncorhynchus mykiss	P, T
		STEELHEAD, OREGON COAST POPULATION.	Oncorhynchus mykiss, (Oregon Coast ESU)	P, T
	INSECTS	BUTTERFLY, OREGON SILVERSPOT	Speyeria zerene hippolyta	L, T, CH
	PLANTS	CHECKER-MALLOW, NELSON'S	Sidalcea nelsoniana	L, T
UMATILLA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
UNION	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	SALMON, CHINOOK (SNAKE RIVER FALL RUN).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, CHINOOK (SNAKE RIVER SPRING/SUMMER).	Oncorhynchus tshawytscha	L, E, CH
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
WALLOWA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	SALMON, CHINOOK (SNAKE RIVER FALL RUN).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, CHINOOK (SNAKE RIVER SPRING/SUMMER).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	PLANTS	FOUR-O'CLOCK, MACFARLANE'S	Mirabilis macfarlanei	L, T
WASCO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus Confluentus	P, T
WASHINGTON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	STEELHEAD, KLAMATH MOUNTAINS PROVINCE.	Oncorhynchus mykiss	P, T
	PLANTS	CHECKER-MALLOW, NELSON'S	Sidalcea nelsoniana	L, T
WHEELER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
YAMHILL	BIRDS	OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	STEELHEAD, KLAMATH MOUNTAINS PROVINCE.	Oncorhynchus mykiss	P, T
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	INSECTS	BUTTERFLY, OREGON SILVERSPOT	Speyeria zerene hippolyta	L, T, CH
	PLANTS	CHECKER-MALLOW, NELSON'S	Sidalcea nelsoniana	L, T
PUERTO RICO				
ADJUNTAS	AMPHIBIANS	COQUI, GOLDEN	Eleutherodactylus jasperi	L, T, CH
	PLANTS	ERUBIA	Solanum drymophilum	L, E
		WALNUT, NOGAL	Juglans jamaicensis	L,L
	REPTILES	BOA, PUERTO RICAN	Epicrates inornatus	L, E

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
AGUADA	BIRDS	PELICAN, BROWN	Pelicanus occidentalis	L, E
	PLANTS	BOXWOOD, VAHL'S	Buxus vahlii	L, E
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
AGUADILLA	BIRDS	PELICAN, BROWN	Pelicanus occidentalis	L, E
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
ANASCO	BIRDS	PELICAN, BROWN	Pelicanus occidentalis	L, E
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
ARECIBO	BIRDS	FALCON, AMERICAN PEREGRINE	Falco peregrinus anatum	L, E, CH
	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	PLANTS	CHUPACALLOS	Pleodendron macranthum	L, E
		MYRCIA PAGANII	Myrcia paganii	L, E
		PALMA DE MANACA	Calyptronoma rivalis	L, T
		PALO DE NIGUA	Comutia obovata	L, E
		TECTARIA ESTREMERANA	Tectaria estremerana	L, E
	REPTILES	BOA, PUERTO RICAN	Epicrates inornatus	L, E
		TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
ARROYA	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
BARCELONETA	REPTILES	BOA, PUERTO RICAN	Epicrates inornatus	L, E
		TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
BARRANQUITAS	BIRDS	BLACKBIRD, YELLOW-SHOULDERED	Agelaius xanthomus	L, E, CH
	PLANTS	PALO DE NIGUA	Comutia obovata	L, E
BAYAMON	PLANTS	BOXWOOD, VAHL'S	Buxus vahlii	L, E
	REPTILES	BOA, PUERTO RICAN	Epicrates inornatus	L, E
CABO ROJO	BIRDS	BLACKBIRD, YELLOW-SHOULDERED	Agelaius xanthomus	L, E, CH
		FALCON, PEREGRINE	Falco peregrinus	L, E
		NIGHTJAR, PUERTO RICO	Caprimulgus noctitherus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	PLANTS	ARISTIDA CHASEAE	Aristida chaseae	L, E
		BARIACO	Trichilia triacantha	L, E
		COBANA NEGRA	Stahlia monosperma	L, T
		EUGENIA WOODBURYANA	Eugenia woodburyana	L, E
		LYONIA TRUNCATA VAR. PROCTORII	Lyonia truncata var. proctorii	L, E
		MITRACARPUS MAXWELLIAE	Mitracarpus maxwelliae	L, E
		MITRACARPUS POLYCLADUS	Mitracarpus polycladus	L, E
		PELOS DEL DIABLO	Aristida portoricensis	L, E
		VERNONIA PROCTORII	Vernonia proctorii	L, E
	REPTILES	BOA, PUERTO RICAN	Epicrates inornatus	L, E
		TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
CAMUY	PLANTS	PALMA DE MANACA	Calyptronoma rivalis	L, T
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
CAROLINA	BIRDS	BLACKBIRD, YELLOW-SHOULDERED	Agelaius xanthomus	L, E, CH
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	REPTILES	BOA, PUERTO RICAN	Epicrates inornatus	L, E
		TURTLE, GREEN SEA	Chelonia mydas	L, E, T
CARTAGENA LAGOON	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
CATANO	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
CAYEY	BIRDS	PIGEON, PUERTO RICAN PLAIN	Columbia inornata wetmorei	L, E
	PLANTS	UVILLO	Eugenia haematocarpa	L, E
	REPTILES	BOA, PUERTO RICAN	Epicrates inornatus	L, E
CEIBA	BIRDS	BLACKBIRD, YELLOW-SHOULDERED	Agelaius xanthomus	L, E, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus	L, E, CH
	PLANTS	ILEX SINTENISII	Ilex sintenisii	L, E
	REPTILES	BOA, PUERTO RICAN	Epicrates inornatus	L, E
		TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
CIALES	PLANTS	FERN, THELYPTERIS INABONENSIS	Fern, thelypteris inabonensis	L, E
		FERN, THELYPTERIS YAUCOENSIS	Fern, thelypteris yaucoensis	L, E
CIDRA	BIRDS	PIGEON, PUERTO RICAN PLAIN	Columbia inornata wetmorei	L, E
COAMO	AMPHIBIANS	TOAD, PUERTO RICAN CRESTED	Peltophryne lemur	L, T

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. **Note:** Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
COMERIO	PLANTS	PRICKLY-ASH, ST THOMAS	Zanthoxylum thomasianum	L, E
	BIRDS	PIGEON, PUERTO RICAN PLAIN	Columbia inornata wetmorei	L, E
CULEBRA	BIRDS	PELICAN, BROWN	Pelicanus occidentalis	L, E
		TERN, ROSEATE	Sterna dougalli dougalli	L, E, T
	PLANTS	LEPTOCEREUS GRANTIANUS	Leptocereus grantianus	L, E
		PEPEROMIA, WHEELER'S	Peperomia wheeleri	L, E
	REPTILES	ANOLE, CULEBRA ISLAND GIANT	Anolis roosevelti	L, E, CH
		TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
DORADO	AMPHIBIANS	TOAD, PUERTO RICAN CRESTED	Peltophryne lemur	L, T
	BIRDS	PELICAN, BROWN	Pelicanus occidentalis	L, E
	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	PLANTS	CASSIA MIRABILIS	Cassia mirabilis	L, E
		DAPHNOPSIS HELLERANA	Daphnopsis hellerana	L, E
		PALO DE RAMON	Banara vanderbiltii	L, E
	REPTILES	BOA, PUERTO RICAN	Epicrates inornatus	L, E
FAJARDO	BIRDS	BLACKBIRD, YELLOW-SHOULDERED	Agelaius xanthomus	L, E, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	PLANTS	ORTEGON	Coccolobra rugosa	P, T
		SCHOEPFIA ARENARIA	Schoepfia arenaria	L, T
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
GUANICA	AMPHIBIANS	TOAD, PUERTO RICAN CRESTED	Peltophryne lemur	L, T
	BIRDS	NIGHTJAR, PUERTO RICO	Caprimulgus noctitherus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	PLANTS	BARIACO	Trichilia triacantha	L, E
		EUGENIA WOODBURYANA	Eugenia woodburyana	L, E
		MITRACARPUS MAXWELLIAE	Mitracarpus maxwelliae	L, E
		MITRACARPUS POLYCLADUS	Mitracarpus polycladus	L, E
		PALO DE ROSA	Ottoschulzia rhodoxylon	L, E
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
GUAYAMA	BIRDS	BLACKBIRD, YELLOW-SHOULDERED	Agelaius xanthomus	L, E, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
GUAYANILLA	BIRDS	NIGHTJAR, PUERTO RICO	Caprimulgus noctitherus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	PLANTS	BARIACO	Trichilia triacantha	L, E
GURABO	PLANTS	ORTEGON	Coccolobra rugosa	P, T
HATILLO	PLANTS	FERN, THELYPTERIS VERECUNDA	Fern, thelypteris verecunda	L, E
		PALMA DE MANACA	Calyptronoma rivalis	L, T
		PALO DE NIGUA	Cornutia obovata	L, E
HORMIGUEROS	PLANTS	PELOS DEL DIABLO	Aristida portoricensis	L, E
HUMACAO	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
	PLANTS	ORTEGON	Coccolobra rugosa	P, T
	REPTILES	TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
ISABELA	AMPHIBIANS	TOAD, PUERTO RICAN CRESTED	Peltophryne lemur	L, T
	PLANTS	AUERODENDRON PAUCIFLORUM (NCN) ..	Auerodendron pauciflorum	L, E
		AUERODENDRON PAUCIFLORUM (NCN) ..	Auerodendron pauciflorum	L, E
		DAPHNOPSIS HELLERANA	Daphnopsis hellerana	L, E
		GOETZEA, BEAUTIFUL (MATABUEY)	Goetzea elegans	L, E
		PEPEROMIA, WHEELER'S	Peperomia wheeleri	L, E
		PRICKLY-ASH, ST THOMAS	Zanthoxylum thomasianum	L, E
		SCHOEPFIA ARENARIA	Schoepfia arenaria	L, T
	REPTILES	BOA, PUERTO RICAN	Epicrates inornatus	L, E
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
JAYUYA	PLANTS	FERN, ELAPHOGLOSSUM SERPENS	Fern, elaphoglossum serpens	L, E
		HOLLY, COOK'S	Ilex cookii	L, E
		TREE FERN, ELFIN	Cyathea dryopteroides	L, E
JUANA DIAZ	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
LAJAS	BIRDS	BLACKBIRD, YELLOW-SHOULDERED	Agelaius xanthomus	L, E, CH
		FALCON, AMERICAN PEREGRINE	Falco peregrinus anatum	L, E, CH
		NIGHTJAR, PUERTO RICO	Caprimulgus noctitherus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		TERN, ROSEATE	Sterna dougalli dougalli	L, E, T
	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	PLANTS	ARISTIDA CHASEAE	Aristida chaseae	L, E

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. Note: Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
		COBANA NEGRA	Stahlia monosperma	L, T
		EUGENIA WOODBURYANA	Eugenia woodburyana	L, E
		LYONIA TRUNCATA VAR. PROCTORII	Lyonia truncata var. proctorii	L, E
		MITRACARPUS MAXWELLIAE	Mitracarpus maxwelliae	L, E
		MITRACARPUS POLYCLADUS	Mitracarpus polycladus	L, E
		PELOS DEL DIABLO	Aristida portoricensis	L, E
		VERNONIA PROCTORII	Vernonia proctorii	L, E
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
LARES	PLANTS	PALO DE NIGUA	Cornutia obovata	L, E
LOIZA	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	PLANTS	SCHOEPFIA ARENARIA	Schoepfia arenaria	L, T
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
LUQUILLO	BIRDS	HAWK, PUERTO RICAN BROAD-WINGED	Buteo platypterus brunnescens	L, E
		HAWK, PUERTO RICAN SHARP-SHINNED	Accipiter striatus venator	L, E
	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	PLANTS	COBANA NEGRA	Stahlia monosperma	L, T
		ORTEGON	Coccoloba rugosa	P, T
		PALO COLORADO (TERNSTROEMIA LUQUILLENSIS).	Ternstroemia luquillensis	L, E
	REPTILES	BOA, PUERTO RICAN	Epicrates inornatus	L, E
		TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
MANATI	PLANTS	CASSIA MIRABILIS	Cassia mirabilis	L, E
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
MARICAO	BIRDS	HAWK, PUERTO RICAN BROAD-WINGED	Buteo platypterus brunnescens	L, E
		HAWK, PUERTO RICAN SHARP-SHINNED	Accipiter striatus venator	L, E
	PLANTS	CORDIA BELLONIS (NCN)	Cordia bellonis (ncn)	L, E
		CRANICHIS RICARTII	Cranichis ricartii	L, E
		GESNERIA PAUCIFLORA	Gesneria pauciflora	L, T
		HIGUERO DE SIERRA	Crecentia portoricensis	L, E
		PALO DE ROSA	Ottoschulzia rhodoxylon	L, E
MAUNABO	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
MAYAGUEZ	BIRDS	BLACKBIRD, YELLOW-SHOULDERED	Agelaius xanthomus	L, E, CH
		FALCON, AMERICAN PEREGRINE	Falco peregrinus anatum	L, E, CH
	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	PLANTS	CHUMBO, HIGO	Harrisia (=Cereus) portoricensis	L, T
		PELOS DEL DIABLO	Aristida portoricensis	L, E
	REPTILES	BOA, MONA	Epicrates monensis monensis	L, T, CH
		BOA, PUERTO RICAN	Epicrates inornatus	L, E
		GECKO, MONITO	Sphaerodactylus micropithecus	L, E, CH
		IGUANA, MONA GROUND	Cyclura stejnegeri	L, T, CH
		TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
NAGUABO	BIRDS	PELICAN, BROWN	Pelicanus occidentalis	L, E
	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	PLANTS	CAPA ROSA	Callicarpa ampla	L, E
		CHUPACALLOS	Pleodendron macranthum	L, E
		LEPANTHES ELTORENSIS	Lepanthes eltorensis	L, E
		ORTEGON	Coccoloba rugosa	P, T
		TERNSTROEMIA SUBSESSILIS	Ternstroemia subsessilis	L, E
		UVILLO	Eugenia haematocarpa	L, E
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
PATILLAS	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
PENUELAS	BIRDS	NIGHTJAR, PUERTO RICO	Caprimulgus noctitherus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	PLANTS	POLYSTICHUM CALDERONENSE (NCN)	Polystichum calderonense	L, E
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
PONCE	BIRDS	NIGHTJAR, PUERTO RICO	Caprimulgus noctitherus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	PLANTS	FERN, THELYPTERIS INABONENSIS	Fern, thelypteris inabonensis	L, E
		HOLLY, COOK'S	Ilex cookii	L, E
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
QUEBRADILLAS	AMPHIBIANS	TOAD, PUERTO RICAN CRESTED	Peltophryne lemur	L, T
	PLANTS	ADIANTUM VIVESII (NCN)	Adiantum vivesii	L, E
		FERN, ADIANTUM VIVESII	Fern, adiantum vivesii	L, E
		FERN, THELYPTERIS VERECUNDA	Fern, thelypteris verecunda	L, E

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		GOETZEA, BEAUTIFUL (MATABUEY)	Goetzea elegans	L, E
		MYRCIA PAGANII	Myrcia paganii	L, E
		PALMA DE MANACA	Calyptronoma rivalis	L, T
RINCON	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	PLANTS	BOXWOOD, VAHL'S	Buxus vahlii	L, E
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
RIO GRANDE	BIRDS	BLACKBIRD, YELLOW-SHOULDERED	Agelaius xanthomus	L, E, CH
		FALCON, AMERICAN PEREGRINE	Falco peregrinus anatum	L, E, CH
		PARROT, PUERTO RICAN	Amazona vittata	L, E
	PLANTS	CAPA ROSA	Callicarpa ampla	L, E
		CHUPACALLOS	Pleodendron macranthum	L, E
		COBANA NEGRA	Stahlia monosperma	L, T
		ILEX SINTENISII	Ilex sintenisii	L, E
		LEPANTHES ELTORENSIS	Lepanthes eltorensis	L, E
		ORTEGON	Coccolobra rugosa	P, T
		PALO COLORADO (TERNSTROEMIA LUQUILLENSIS).	Ternstroemia luquillensis	L, E
		PALO DE JAZMIN	Styrax portoricensis	L, E
		PALO DE NIGUA	Cornutia obovata	L, E
		UVILLO	Eugenia haematocarpa	L, E
	REPTILES	BOA, PUERTO RICAN	Epicrates inornatus	L, E
		TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
SABANA GRANDE	PLANTS	GESNERIA PAUCIFLORA	Gesneria pauciflora	L, T
		HIGUERO DE SIERRA	Crecentia portoricensis	L, E
		PALO DE ROSA	Ottoschulzia rhodoxylon	L, E
SALINAS	BIRDS	BLACKBIRD, YELLOW-SHOULDERED	Agelaius xanthomus	L, E, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PIGEON, PUERTO RICAN PLAIN	Columbia inornata wetmorei	L, E
	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
SAN GERMAN	BIRDS	BLACKBIRD, YELLOW-SHOULDERED	Agelaius xanthomus	L, E, CH
	PLANTS	CRANICHIS RICARTII	Cranichis ricartii	L, E
		HIGUERO DE SIERRA	Crecentia portoricensis	L, E
	REPTILES	BOA, PUERTO RICAN	Epicrates inornatus	L, E
SAN JUAN	BIRDS	BLACKBIRD, YELLOW-SHOULDERED	Agelaius xanthomus	L, E, CH
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
SAN LORENZO	AMPHIBIANS	GUAJON (ELEUTHERODACTYLUS COOKI)	Eleutherodactylus cooki	P, T
SAN SEBASTIAN	PLANTS	FERN, THELYPTERIS VERECUNDA	Fern, thelypteris verecunda	L, E
		PALMA DE MANACA	Calyptronoma rivalis	L, T
SANTA ISABEL	BIRDS	PELICAN, BROWN	Pelicanus occidentalis	L, E
	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
TOA BAJA	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	PLANTS	DAPHNOPSIS HELLERANA	Daphnopsis hellerana	L, E
		ORTEGON	Coccolobra rugosa	P, T
		PALO DE ROSA	Ottoschulzia rhodoxylon	L, E
	REPTILES	BOA, PUERTO RICAN	Epicrates inornatus	L, E
		TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
UTUADO	BIRDS	HAWK, PUERTO RICAN BROAD-WINGED	Buteo platypterus brunnescens	L, E
		HAWK, PUERTO RICAN SHARP-SHINNED	Accipiter striatus venator	L, E
		PIGEON, PUERTO RICAN PLAIN	Columbia inornata wetmorei	L, E
	PLANTS	PALMA DE MANACA	Calyptronoma rivalis	L, T
		PALO DE NIGUA	Cornutia obovata	L, E
	REPTILES	BOA, PUERTO RICAN	Epicrates inornatus	L, E
VEGA ALTA	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	PLANTS	CASSIA MIRABILIS	Cassia mirabilis	L, E
	REPTILES	BOA, PUERTO RICAN	Epicrates inornatus	L, E
		TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
VEGA BAJA	PLANTS	CASSIA MIRABILIS	Cassia mirabilis	L, E
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
VIEQUES	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	PLANTS	CALYPTRANTHES THOMASIANA	Calyptranthes thomasiana	L, E
		COBANA NEGRA	Stahlia monosperma	L, T

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		MYRCIA PAGANII	Myrcia paganii	L, E
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
YABUCOA	AMPHIBIANS	GUAJON (ELEUTHERODACTYLUS COOKI)	Eleutherodactylus cooki	P, T
	MAMMALS	MANATEE, WEST INDIAN (FLORIDA)	Trichechus manatus	L, E, CH
	PLANTS	ORTEGON	Coccoloba rugosa	P, T
	REPTILES	BOA, PUERTO RICAN	Epicrates inornatus	L, E
YAUCO	BIRDS	NIGHTJAR, PUERTO RICO	Caprimulgus noctitherus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
	PLANTS	BARIACO	Trichilia triacantha	L, E
		FERN, THELYPTERIS YAUCOENSIS	Fern, thelypteris yaucoensis	L, E
		HIGUERO DE SIERRA	Crecentia portoricensis	L, E
		PALO DE ROSA	Ottoschulzia rhodoxylon	L, E
	REPTILES	TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
RHODE ISLAND				
KENT	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
NEWPORT	BIRDS	PLOVER, PIPING	Charadrius melodus	L, E, T
	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
PROVIDENCE	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	POGONIA, SMALL WHORLED	Isotria medeoloides	L, T
WASHINGTON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
	FISHES	STURGEON, SHORTNOSE	Acipenser brevirostrum	L, E
	INSECTS	BEETLE, AMERICAN BURYING	Nicrophorus americanus	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	GERARDIA, SANDPLAIN	Agalinus acuta	L, E
SOUTH DAKOTA				
AURORA	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
BEADLE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
BENNETT	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
BON HOMME	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
BROOKINGS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	INSECTS	BEETLE, AMERICAN BURYING	Nicrophorus americanus	L, E
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
BROWN	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
BRULE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
BUFFALO	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
BUTTE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
CAMPBELL	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
CHARLES MIX	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
CLARK	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
CLAY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
CODINGTON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
CORSON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
CUSTER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
DAVISON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
DAY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
DEUEL	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
DEWEY	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
DOUGLAS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
EDMUNDS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
FALL RIVER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
FAULK	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
GRANT	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
GREGORY	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
HAAKON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	INSECTS	BEETLE, AMERICAN BURYING	Nicrophorus americanus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
HAMLIN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
HAND	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
HARDING	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
HUGHES	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
HUTCHINSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
HYDE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
JACKSON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
JERAULD	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
JONES	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
KINGSBURY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
LAWRENCE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
LINCOLN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
LYMAN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
MARSHALL	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
MC PHERSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
MEADE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
MELLETTE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
MINER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
MINNEHAHA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
MOODY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
PENNINGTON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
PERKINS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
POTTER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
ROBERTS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
SANBORN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
SPINK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
STANLEY	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
SULLY	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
TODD	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
TRIPP	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
TURNER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T

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State/County	Group name	Inverse name	Scientific name	Action/ Status
UNION	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	INSECTS	BEETLE, AMERICAN BURYING	Nicrophorus americanus	L, E
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
WALWORTH	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
YANKTON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	FISHES	STURGEON, PALLID	Scaphirhynchus albus	L, E
	PLANTS	ORCHID, WESTERN PRAIRIE FRINGED	Platanthera praeclara	L, T
ZIEBACH	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
TEXAS				
ANDERSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
ANGELINA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
ARANSAS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		CURLEW, ESKIMO	Numenius borealis	L, E
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		PRAIRIE-CHICKEN, ATTWATER'S GREATER.	Tympanuchus cupido attwateri	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
		JAGUARUNDI	Felis yagouaroundi tolteca	L, E
		OCELOT	Felis pardalis	L, E
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
		TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
ARCHER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
ATASCOSA	MAMMALS	OCELOT	Felis pardalis	L, E
AUSTIN	AMPHIBIANS	TOAD, HOUSTON	Bufo houstonensis	L, E, CH
	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PRAIRIE-CHICKEN, ATTWATER'S GREATER.	Tympanuchus cupido attwateri	L, E
BAILEY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
BANDERA	BIRDS	VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
	PLANTS	CACTUS, TOBUSCH FISHHOOK	Ancistrocactus tobuschii (=Echinocactus t, Mammila.	L, E
BASTROP	AMPHIBIANS	TOAD, HOUSTON	Bufo houstonensis	L, E, CH
	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
BAYLOR	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
BEE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
BELL	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
BEXAR	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
BLANCO	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
BOSQUE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. **Note:** Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
BOWIE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
BRAZORIA	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
BRAZOS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
	PLANTS	LADIES'-TRESSES, NAVASOTA	Spiranthes parksii	L, E
BREWSTER	BIRDS	FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
		FLYCATCHER, SOUTHWESTERN WILLOW	Empidonax traillii extimus	L, E
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
	FISHES	GAMBUSIA, BIG BEND	Gambusia gaigei	L, E
	MAMMALS	BAT, MEXICAN LONG-NOSED	Leptonycteris nivalis	L, E
	PLANTS	CACTUS, BUNCHED CORY	Coryphantha ramillosa	L, T
		CACTUS, CHISOS MOUNTAIN HEDGEHOG.	Echinocereus reichenbachii var. chisoensis	L, T
		CACTUS, LLOYD'S HEDGEHOG	Echinocereus lloydii	L, E
		CACTUS, LLOYD'S MARIPOSA	Neolloydia mariposensis	L, T
		CACTUS, NELLIE CORY	Coryphantha minima	L, E
		CAT'S-EYE, TERLINGUA CREEK	Cryptantha crassipes	L, E
		PITAYA, DAVIS' GREEN	Echinocereus viridiflorus var. davisii	L, E
BROOKS	BIRDS	FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		PYGMY-OWL, CACTUS FERRUGINOUS	Glaucidiumbrasilianum cactorum	L, E
	MAMMALS	JAGUARUNDI	Felis yagouaroundi tolteca	L, E
		OCELOT	Felis pardalis	L, E
BROWN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
	BIRDS	VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
	REPTILES	SNAKE, CONCHO WATER	Nerodia harteri paucimaculata	L, T, CH
BURLESON	AMPHIBIANS	TOAD, HOUSTON	Bufo houstonensis	L, E, CH
	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
	PLANTS	LADIES'-TRESSES, NAVASOTA	Spiranthes parksii	L, E
BURNET	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
CALDWELL	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
	FISHES	DARTER, FOUNTAIN	Etheostoma fonticola	L, E, CH
CALHOUN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
		TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
CAMERON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		PYGMY-OWL, CACTUS FERRUGINOUS	Glaucidiumbrasilianum cactorum	L, E
	FISHES	MINNOW, RIO GRANDE SILVERY	Hybognathus amarus	L, E
	MAMMALS	JAGUARUNDI	Felis yagouaroundi tolteca	L, E
		OCELOT	Felis pardalis	L, E
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
		TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. Note: Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
CASS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
CHAMBERS	BIRDS	CURLEW, ESKIMO	Numenius borealis	L, E
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
		TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
CHEROKEE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
CHILDRESS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
CLAY	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
COKE	BIRDS	VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
	PLANTS	POPPY-MALLOW, TEXAS	Callirhoe scabriuscula	L, E
	REPTILES	SNAKE, CONCHO WATER	Nerodia harteri paucimaculata	L, T, CH
COLEMAN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
	BIRDS	VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
	REPTILES	SNAKE, CONCHO WATER	Nerodia harteri paucimaculata	L, T, CH
COLLINGSWORTH	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
COLORADO	AMPHIBIANS	TOAD, HOUSTON	Bufo houstonensis	L, E, CH
	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PRAIRIE-CHICKEN, ATTWATER'S GREATER.	Tympanuchus cupido attwateri	L, E
COMAL	AMPHIBIANS	SALAMANDER, SAN MARCOS	Eurycea nana	L, T, CH
	BIRDS	WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
	CRUSTACEAN	AMPHIPOD, PECK'S CAVE	Stygobromus pecki	P, E
		AMPHIPOD, PECK'S CAVE	Stygobromus pecki	P, E
	FISHES	DARTER, FOUNTAIN	Etheostoma fonticola	L, E, CH
	INSECTS	BEETLE, COMAL SPRINGS DRYOPID	Stygoparnus comalensis	P, E
		BEETLE, COMAL SPRINGS RIFFLE	Heterelmis comalensis	P, E
	REPTILES	TURTLE, CAGLE'S MAP	Graptemys caglei	L, T
COMANCHE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
CONCHO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	REPTILES	SNAKE, CONCHO WATER	Nerodia harteri paucimaculata	L, T, CH
COOKE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
CORYELL	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
CROCKETT	BIRDS	VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
CULBERSON	BIRDS	FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	CACTUS, LLOYD'S HEDGEHOG	Echinocereus lloydii	L, E
		CACTUS, SNEED PINCUSHION	Coryphantha sneedii var. sneedii	L, E
DALLAS	BIRDS	VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
DE WITT	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
	REPTILES	TURTLE, CAGLE'S MAP	Graptemys caglei	L, T
DIMMIT	BIRDS	FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
	MAMMALS	OCELOT	Felis pardalis	L, E
DUVAL	MAMMALS	OCELOT	Felis pardalis	L, E
ECTOR	BIRDS	FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
EDWARDS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
	PLANTS	CACTUS, TOBUSCH FISHHOOK	Ancistrocactus tobuschii (=Echinocactus t., Mammila.	L, E

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
EL PASO	BIRDS	SNOWBELLS, TEXAS	Styrax texana	L, E
		FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
	PLANTS	CACTUS, SNEED PINCUSHION	Coryphantha sneedii var. sneedii	L, E
ELLIS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
ERATH	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
FALLS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
FANNIN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
FAYETTE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
FORT BEND	AMPHIBIANS	TOAD, HOUSTON	Bufo houstonensis	L, E, CH
	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	DAWN-FLOWER, TEXAS PRAIRIE (=TEXAS BITTERWEED.	Hymenoxys texana	L, E
		FLOWER, TEXAS PRAIRIE DAWN	Hymenoxys texana	L, E
FREESTONE	AMPHIBIANS	TOAD, HOUSTON	Bufo houstonensis	L, E, CH
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	PLANTS	LADIES'-TRESSES, NAVASOTA	Spiranthes parksii	L, E
		SAND-VERBENA, LARGE-FRUITED	Abronia macrocarpa	L, E
FRIO	BIRDS	FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
GALVESTON	BIRDS	CURLEW, ESKIMO	Numenius borealis	L, E
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		PRAIRIE-CHICKEN, ATTWATER'S GREATER.	Tympanuchus cupido attwateri	L, E
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
		TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
GILLESPIE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
GOLIAD	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PRAIRIE-CHICKEN, ATTWATER'S GREATER.	Tympanuchus cupido attwateri	L, E
GONZALES	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
	REPTILES	TURTLE, CAGLE'S MAP	Graptemys caglei	L, T
GRAYSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PLOVER, PIPING	Charadrius melodus	L, E, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
GREGG	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
GRIMES	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	PLANTS	LADIES'-TRESSES, NAVASOTA	Spiranthes parksii	L, E
GUADALUPE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
	REPTILES	TURTLE, CAGLE'S MAP	Graptemys caglei	L, T
HALL	BIRDS	TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
HAMILTON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
HARDEMAN	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
HARDIN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	PLANTS	PHLOX, TEXAS TRAILING	Phlox nivalis ssp. texensis	L, E
HARRIS	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	DAWN-FLOWER, TEXAS PRAIRIE (=TEXAS BITTERWEED.	Hymenoxys texana	L, E
		FLOWER, TEXAS PRAIRIE DAWN	Hymenoxys texana	L, E
HARRISON	AMPHIBIANS	TOAD, HOUSTON	Bufo houstonensis	L, E, CH
	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
	PLANTS	DAWN-FLOWER, TEXAS PRAIRIE (=TEXAS BITTERWEED.	Hymenoxys texana	L, E
		FLOWER, TEXAS PRAIRIE DAWN	Hymenoxys texana	L, E

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
HASKELL	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
HAYS	AMPHIBIANS	SALAMANDER, SAN MARCOS	Eurycea nana	L, T, CH
		SALAMANDER, TEXAS BLIND	Typhlomolge rathbuni	L, E
	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
	CRUSTACEAN	AMPHIPOD, PECK'S CAVE	Stygobromus pecki	P, E
		AMPHIPOD, PECK'S CAVE	Stygobromus pecki	P, E
	FISHES	DARTER, FOUNTAIN	Etheostoma fonticola	L, E, CH
		GAMBUSIA, SAN MARCOS	Gambusia georgei	L, E, CH
	INSECTS	BEETLE, COMAL SPRINGS DRYOPID	Stygopamus comalensis	P, E
		BEETLE, COMAL SPRINGS RIFFLE	Heterelmis comalensis	P, E
		BEETLE, COMAL SPRINGS RIFFLE	Heterelmis comalensis	P, E
	PLANTS	WILD-RICE, TEXAS	Zizania texana	L, E, CH
HEMPHILL	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
HENDERSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
HIDALGO	BIRDS	FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PYGMY-OWL, CACTUS FERRUGINOUS	Glaucidium brasilianum cactorum	L, E
	MAMMALS	JAGUARUNDI	Felis yagouaroundi tolteca	L, E
		OCELOT	Felis pardalis	L, E
	PLANTS	AYENIA, TEXAS	Ayenia limitaris	L, E
		MANIOC, WALKER'S	Manihot walkerae	L, E
HILL	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
HOOD	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
HOUSTON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
HUDSPETH	BIRDS	FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	CACTUS, LLOYD'S HEDGEHOG	Echinocereus lloydii	L, E
		CACTUS, SNEED PINCUSHION	Coryphantha sneedii var. sneedii	L, E
HUNT	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
HUTCHINSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
IRION	BIRDS	VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
	REPTILES	SNAKE, CONCHO WATER	Nerodia harteri paucimaculata	L, T, CH
JACKSON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PELICAN, BROWN	Pelicanus occidentalis	L, E
JASPER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	PLANTS	LADIES'-TRESSES, NAVASOTA	Spiranthes parksii	L, E
JEFF DAVIS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	GAMBUSIA, PECOS	Gambusia nobilis	L, E
		PUPFISH, COMANCHE SPRINGS	Cyprinodon elegans	L, E
	PLANTS	PONDWEED, LITTLE AGUJA CREEK	Potamogeton clystocarpus	L, E
JEFFERSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
		TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
JIM HOGG	MAMMALS	OCELOT	Felis pardalis	L, E
JIM WELLS	MAMMALS	JAGUARUNDI	Felis yagouaroundi tolteca	L, E
		OCELOT	Felis pardalis	L, E
	PLANTS	CACTUS, BLACK LACE	Echinocereus reichenbachii var. albertii	L, E
JOHNSON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
JONES	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
KARNES	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
KENDALL	REPTILES	TURTLE, CAGLE'S MAP	Graptemys caglei	L, T
KENEDY	BIRDS	CURLEW, ESKIMO	Numenius borealis	L, E
		FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. Note: Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
		PLOVER, PIPING	Charadrius melodus	L, E, T
		PYGMY-OWL, CACTUS FERRUGINOUS	Glaucidiumbrasilianum cactorum	L, E
	MAMMALS	JAGUARUNDI	Felis yagouaroundi tolteca	L, E
		OCELOT	Felis pardalis	L, E
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
		TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
KERR	BIRDS	VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
	PLANTS	CACTUS, TOBUSCH FISHHOOK	Ancistrocactus tobuschii =Echinocactus l, Mammila.	L, E
	REPTILES	TURTLE, CAGLE'S MAP	Graptemys caglei	L, T
KIMBLE	BIRDS	VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
	PLANTS	CACTUS, TOBUSCH FISHHOOK	Ancistrocactus tobuschii =Echinocactus l, Mammila.	L, E
		SNOWBELLS, TEXAS	Styrax texana	L, E
KING	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
KINNEY	BIRDS	FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
	PLANTS	CACTUS, TOBUSCH FISHHOOK	Ancistrocactus tobuschii =Echinocactus l, Mammila.	L, E
KLEBERG	BIRDS	CURLEW, ESKIMO	Numenius borealis	L, E
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
	MAMMALS	JAGUARUNDI	Felis yagouaroundi tolteca	L, E
		OCELOT	Felis pardalis	L, E
	PLANTS	AMBROSIA, SOUTH TEXAS	Ambrosia cheiranthifolia	L, E
		AYENIA, TEXAS	Ayenia limitarie	L, E
		CACTUS, BLACK LACE	Echinocereus reichenbachii var. albertii	L, E
		RUSH-PEA, SLENDER	Hoffmannseggia tenella	L, E
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
		TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
KNOX	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
LAMAR	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
LAMPASAS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
	REPTILES	SNAKE, CONCHO WATER	Nerodia harteri paucimaculata	L, T, CH
LAVACA	AMPHIBIANS	TOAD, HOUSTON	Bufo houstonensis	L, E, CH
	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
LEE	AMPHIBIANS	TOAD, HOUSTON	Bufo houstonensis	L, E, CH
	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
LEON	AMPHIBIANS	TOAD, HOUSTON	Bufo houstonensis	L, E, CH
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
	PLANTS	LADIES'-TRESSES, NAVASOTA	Spiranthes parksii	L, E
		SAND-VERBENA, LARGE-FRUITED	Abronia macrocarpa	L, E
LIBERTY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
LIMESTONE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
LIPSCOMB	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
LIVE OAK	MAMMALS	JAGUARUNDI	Felis yagouaroundi tolteca	L, E
		OCELOT	Felis pardalis	L, E
	PLANTS	SPIDERLING, MATHIS	Boerhavia mathisiana	P, E
LLANO	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
LOVING	BIRDS	FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
MADISON	PLANTS	LADIES'-TRESSES, NAVASOTA	Spiranthes parksii	L, E
MARION	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
MASON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
MATAGORDA	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
		TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
MAVERICK	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
	MAMMALS	OCELOT	Felis pardalis	L, E
	REPTILES	SNAKE, CONCHO WATER	Nerodia harteri paucimaculata	L, T, CH
MC LENNAN	BIRDS	VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
MC MULLEN	MAMMALS	OCELOT	Felis pardalis	L, E
MEDINA	BIRDS	VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
MENARD	BIRDS	VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
MENARD	FISHES	GAMBUSIA, CLEAR CREEK	Gambusia heterochir	L, E
MIDLAND	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
MILAM	AMPHIBIANS	TOAD, HOUSTON	Bufo houstonensis	L, E, CH
MILLS	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
	REPTILES	SNAKE, CONCHO WATER	Nerodia harteri paucimaculata	L, T, CH
MITCHELL	PLANTS	POPPY-MALLOW, TEXAS	Callirhoe scabriuscula	L, E
MONTAGUE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
MONTGOMERY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
MOORE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
MORRIS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
NACOGDOCHES	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
NEWTON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
NUECES	BIRDS	FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
	MAMMALS	JAGUARUNDI	Felis yagouaroundi tolteca	L, E
		OCELOT	Felis pardalis	L, E
	PLANTS	AMBROSIA, SOUTH TEXAS	Ambrosia cheiranthifolia	L, E
		AYENIA, TEXAS	Ayenia limitaris	L, E
		RUSH-PEA, SLENDER	Hoffmanseggia tenella	L, E
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
		TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
OCHILTREE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
ORANGE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
PALO PINTO	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
PANOLA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
PARKER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
PECOS	BIRDS	FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		FALCON, PEREGRINE	Falco peregrinus	L, E
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
	FISHES	GAMBUSIA, PECOS	Gambusia nobilis	L, E
		PUPFISH, LEON SPRINGS	Cyprinodon bovinus	L, E, CH
	PLANTS	CACTUS, LLOYD'S HEDGEHOG	Echinocereus lloydii	L, E
POLK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	PLANTS	PHLOX, TEXAS TRAILING	Phlox nivalis ssp. Texensis	L, E
POTTER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
PRESIDIO	BIRDS	FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	CACTUS, LLOYD'S HEDGEHOG	Echinocereus lloydii	L, E
		CACTUS, LLOYD'S MARIPOSA	Neolloydia mariposensis	L, T
		OAK, HINCKLEY	Quercus hinckleyi	L, T
RANDALL	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
REAL	BIRDS	VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
	PLANTS	CACTUS, TOBUSCH FISHHOOK	Ancistrocactus tobuschii =Echinocactus t., Mammilla.	L, E
		SNOWBELLS, TEXAS	Styrax texana	L, E
RED RIVER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
REEVES	BIRDS	FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	GAMBUSIA, PECOS	Gambusia nobilis	L, E
		PUPFISH, COMANCHE SPRINGS	Cyprinodon elegans	L, E
REFUGIO	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
		PRAIRIE-CHICKEN, ATTWATER'S GREATER.	Tympanuchus cupido attwateri	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
	PLANTS	CACTUS, BLACK LACE	Echinocereus reichenbachii var. albertii	L, E
ROBERTS	BIRDS	TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
ROBERTSON	AMPHIBIANS	TOAD, HOUSTON	Bufo houstonensis	L, E, CH
	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
	PLANTS	LADIES'-TRESSES, NAVASOTA	Spiranthes parksii	L, E
		SAND-VERBENA, LARGE-FRUITED	Abronia macrocarpa	L, E
RUNNELS	BIRDS	VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
	PLANTS	POPPY-MALLOW, TEXAS	Callirhoe scabriuscula	L, E
	REPTILES	SNAKE, CONCHO WATER	Nerodia harteri paucimaculata	L, T, CH
RUSK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
SABINE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
SAN AUGUSTINE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	PLANTS	BLADDERPOD, WHITE	Lesquerella pallida	L, E
SAN JACINTO	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
SAN PATRICIO	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
	MAMMALS	JAGUARUNDI	Felis yagouaroundi tolteca	L, E
		OCELOT	Felis pardalis	L, E
	PLANTS	SPIDERLING, MATHIS	Boerhavia mathisiana	P, E
SAN SABA	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
	REPTILES	SNAKE, CONCHO WATER	Nerodia harteri paucimaculata	L, T, CH
SHACKELFORD	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
SHELBY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
SOMERVELL	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH

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State/County	Group name	Inverse name	Scientific name	Action/ Status
STARR	BIRDS	VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
		PYGMY-OWL, CACTUS FERRUGINOUS	Glaucidium brasilianum cactorum	L, E
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	MAMMALS	JAGUARUNDI	Felis yagouaroundi tolteca	L, E
		OCELOT	Felis pardalis	L, E
	PLANTS	CACTUS, STAR	Astrophytum asterias (=echino-cactus asterias).	L, E
		DOGWEED, ASHY	Dyssodia tephroleuca	L, E
		FRANKENIA, JOHNSTON'S	Frankenia johnstonii	L, E
		MANIOC, WALKER'S	Manihot walkerae	L, E
STEPHENS	BIRDS	WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
		CRANE, WHOOPING	Grus americana	L, E, CH
TARRANT	BIRDS	PLOVER, PIPING	Charadrius melodus	L, E, T
TAYLOR	BIRDS	VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
TERRELL	BIRDS	FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
	PLANTS	CACTUS, BUNCHED CORY	Coryphantha ramillosa	L, T
THROCKMORTON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
TOM GREEN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
TRAVIS	REPTILES	SNAKE, CONCHO WATER	Nerodia harteri paucimaculata	L, T, CH
	AMPHIBIANS	SALAMANDER, BARTON SPRINGS	Eurycea sosorum	L, E
	ARACHNIDS	HARVESTMAN, BEE CREEK CAVE	Texella reddelli	L, E
		HARVESTMAN, BONE CAVE	Texella reyesi	L, E
		PSEUDOSCORPION, TOOTH CAVE	Microcreagris texana	L, E
		SPIDER, TOOTH CAVE	Leptoneta myopica	L, E
	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
	INSECTS	BEETLE, COFFIN CAVE MOLD	Batrisodes texanus	L, E
		BEETLE, KRETSCHMARR CAVE MOLD	Texamaurops reddelli	L, E
		BEETLE, TOOTH CAVE GROUND	Rhadine persephone	L, E
TRINITY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
TYLER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
	PLANTS	PHLOX, TEXAS TRAILING	Phlox nivalis ssp. Texensis	L, E
UPSHUR	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
UVALDE	BIRDS	VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
		WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
	PLANTS	CACTUS, BLACK LACE	Echinocereus reichenbachii var. albertii	L, E
		CACTUS, TOBUSCH FISHHOOK	Ancistrocactus tobuschii (=Echinocactus t., Mammilla).	L, E
		SNOWBELLS, TEXAS	Styrax texana	L, E
VAL VERDE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
	PLANTS	CACTUS, TOBUSCH FISHHOOK	Ancistrocactus tobuschii (=Echinocactus t., Mammilla).	L, E
		SNOWBELLS, TEXAS	Styrax texana	L, E
VICTORIA	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PELICAN, BROWN	Pelicanus occidentalis	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
	REPTILES	TURTLE, CAGLE'S MAP	Graptemys caglei	L, T
WALKER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		WOODPECKER, RED-COCKADED	Picoides borealis	L, E
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
WARD	BIRDS	FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
WASHINGTON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		PRAIRIE-CHICKEN, ATTWATER'S GREATER.	Tympanuchus cupido attwateri	L, E
	MAMMALS	BEAR, LOUISIANA BLACK	Ursus americanus luteolus	L, T
	PLANTS	LADIES'-TRESSES, NAVASOTA	Spiranthes parksii	L, E
WEBB	BIRDS	FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	MAMMALS	OCELOT	Felis pardalis	L, E
	PLANTS	DOGWEED, ASHY	Dyssodia tephroleuca	L, E

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
WHARTON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
WHEELER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
WICHITA	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
WILBARGER	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
WILLACY	BIRDS	CURLEW, ESKIMO	Numenius borealis	L, E
		FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		FALCON, PEREGRINE	Falco peregrinus	L, E
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, PIPING	Charadrius melodus	L, E, T
	MAMMALS	PYGMY-OWL, CACTUS FERRUGINOUS	Glaucidiumbrasilianum cactorum	L, E
		JAGUARUNDI	Felis yagouaroundi tolteca	L, E
		OCELOT	Felis pardalis	L, E
	REPTILES	TURTLE, GREEN SEA	Chelonia mydas	L, E, T
		TURTLE, HAWKSBILL SEA	Eretmochelys imbricata	L, E, CH
		TURTLE, KEMP'S (ATLANTIC) RIDLEY SEA.	Lepidochelys kempii	L, E
		TURTLE, LEATHERBACK SEA	Dermochelys coriacea	L, E, CH
		TURTLE, LOGGERHEAD SEA	Caretta caretta	L, T
WILLIAMSON	ARACHNIDS	HARVESTMAN, BEE CREEK CAVE	Texella reddelli	L, E
		HARVESTMAN, BONE CAVE	Texella reyesi	L, E
		PSEUDOSCORPION, TOOTH CAVE	Microcreagris texana	L, E
		SPIDER, TOOTH CAVE	Leptoneta myopica	L, E
	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
		VIREO, BLACK-CAPPED	Vireo atricapillus	L, E
	INSECTS	WARBLER (WOOD), GOLDEN-CHEEKED	Dendroica chrysoparia	L, E
		BEETLE, COFFIN CAVE MOLD	Bastrisodes texanus	L, E
		BEETLE, KRETSCHMARR CAVE MOLD	Texamaurops reddelli	L, E
		BEETLE, TOOTH CAVE GROUND	Rhadine persephone	L, E
WILSON	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
WINKLER	BIRDS	FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
WISE	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
YOUNG	BIRDS	CRANE, WHOOPING	Grus americana	L, E, CH
ZAPATA	BIRDS	FALCON, NORTHERN APLOMADO	Falco femoralis septentrionalis	L, E
		TERN, INTERIOR (POPULATION) LEAST	Sterna antillarum	L, E
	MAMMALS	JAGUARUNDI	Felis yagouaroundi tolteca	L, E
		OCELOT	Felis pardalis	L, E
	PLANTS	DOGWEED, ASHY	Dyssodia tephroleuca	L, E
		FRANKENIA, JOHNSTON'S	Frankenia johnstonii	L, E
UTAH				
BEAVER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	PRAIRIE DOG, UTAH	Cynomys parvidens	L, T
BOX ELDER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	TROUT, LAHONTAN CUTTHROAT	Salmo clarki henshawi	L, T
CACHE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	PRIMROSE, MAGUIRE	Primula maguirei	L, T
CARBON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	CHUB, BONYTAIL	Gila elegans	L, E, CH
		CHUB, HUMPBACK	Gila cypha	L, E, CH
		SQUAWFISH, COLORADO	Ptychocheilus lucius	L, CH
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
	PLANTS	CACTUS, UINTA BASIN HOOKLESS	Sclerocactus glaucus (=Echinocactus g., s. whipplei).	L, T
DAGGETT	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	SQUAWFISH, COLORADO	Ptychocheilus lucius	L, E, CH
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
	PLANTS	LADIES'-TRESSES, UTE	Spiranthes diluvialis	L, T
DAVIS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
DUCHESNE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	CACTUS, UINTA BASIN HOOKLESS	Sclerocactus glaucus (=Echinocactus g., s. whipplei).	L, T
		CRESS, TOAD-FLAX	Glaucocarpum suffrutescens	L, E
		CRESS, TOAD-FLAX	Glaucocarpum suffrutescens	L, E
		LADIES'-TRESSES, UTE	Spiranthes diluvialis	L, T

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		REED-MUSTARD, SHRUBBY	Schoenocrambe suffrutescens	L, E
		RIDGE-CRESS (=PEPPER-CRESS), BARNEBY,	Lepidium barnebyanum	L, E
EMERY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	CHUB, BONYTAIL	Gila elegans	L, E, CH
		CHUB, HUMPBACK	Gila cypha	L, E, CH
		SQUAWFISH, COLORADO	Ptychocheilus lucius	L, E, CH
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	CACTUS, SAN RAFAEL	Pediocactus despainii	L, E
		CACTUS, WRIGHT FISHHOOK	Sclerocactus wrightiae (=Pediocactus w.)	L, E
		CYCLADENIA, JONES	Cycladenia humilis var. jonesii	L, T
		DAISY, MAGUIRE	Erigeron maguirei var. maguirei	L, T
		REED-MUSTARD, BARNEBY	Schoenocrambe barnebyi	L, E
		TOWNSENDIA, LAST CHANCE	Townsendia aprica	L, T
GARFIELD	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	CHUB, BONYTAIL	Gila elegans	L, E, CH
		CHUB, HUMPBACK	Gila cypha	L, E, CH
		SQUAWFISH, COLORADO	Ptychocheilus lucius	L, E, CH
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
		PRAIRIE DOG, UTAH	Cynomys parvidens	L, T
	PLANTS	BUTTERCUP, AUTUMN	Ranunculus acriformis var. aestivalis	L, E
		CYCLADENIA, JONES	Cycladenia humilis var. jonesii	L, T
		LADIES'-TRESSES, UTE	Spiranthes diluvialis	L, T
GRAND	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	CHUB, BONYTAIL	Gila elegans	L, E, CH
		CHUB, HUMPBACK	Gila cypha	L, E, CH
		SQUAWFISH, COLORADO	Ptychocheilus lucius	L, E, CH
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	CYCLADENIA, JONES	Cycladenia humilis var. jonesii	L, T
IRON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	MAMMALS	PRAIRIE DOG, UTAH	Cynomys parvidens	L, T
	REPTILES	TORTOISE, DESERT	Gopherus (=Xerobates, =Scaptochelys) agassizii.	L, T, CH
JUAB	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	FISHES	CHUB, LEAST	Lotichthys phlegethontis	P, E
KANE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	CHUB, BONYTAIL	Gila elegans	L, E, CH
		SQUAWFISH, COLORADO	Ptychocheilus lucius	L, E, CH
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
	PLANTS	BLADDERPOD, KODACHROME	Lesquerella tumulosa	L, E
		BLADDERPOD, KODACHROME	Lesquerella tumulosa	L, E
		CACTUS, SILER PINCUSHION	Pediocactus sileri	L, T
		CYCLADENIA, JONES	Cycladenia humilis var. jonesii	L, T
		MILKWEED, WELSH'S	Asclepias welshii	L, T, CH
		PEPPER-GRASS, KODACHROME	Lepidium montanum var. stellae	P, E
	SNAILS	AMBERSNAIL, KANAB	Oxyloma haydeni kanabensis	L, E
MILLARD	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
MORGAN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
PIUTE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	PRAIRIE DOG, UTAH	Cynomys parvidens	L, T
RICH	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
SALT LAKE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	LADIES'-TRESSES, UTE	Spiranthes diluvialis	L, T
SAN JUAN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	CHUB, BONYTAIL	Gila elegans	L, E, CH
		CHUB, HUMPBACK	Gila cypha	L, E, CH
		SQUAWFISH, COLORADO	Ptychocheilus lucius	L, E, CH
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	CACTUS, SPINELESS HEDGEHOG	Echinocereus triglochidiatus var. inermis	L, E
		SEDGE, NAVAJO	Carex specuicola	L, T, CH
		WILD-BUCKWHEAT, SPREADING	Eriogonum humivagans	W, E
SANPETE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	PLANTS	MILK-VETCH, HELIOTROPE	Astragalus limnocharis var. montii	L, E, CH
SEVIER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	PRAIRIE DOG, UTAH	Cynomys parvidens	L, T
	PLANTS	CACTUS, WRIGHT FISHHOOK	Sclerocactus wrightiae (=Pediocactus w)	L, E
		MILK-VETCH, HELIOTROPE	Astragalus limnocharis var. montii	L, E, CH
		TOWNSENDIA, LAST CHANCE	Townsendia aprica	L, T
SUMMIT	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
TOOELE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	LADIES'-TRESSES, UTE	Spiranthes diluvialis	L, T
UINTAH	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	CHUB, BONYTAIL	Gila elegans	L, E, CH
		CHUB, HUMPBACK	Gila cypha	L, E, CH
		SQUAWFISH, COLORADO	Ptychocheilus lucius	L, E, CH
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
	PLANTS	CACTUS, UINTA BASIN HOOKLESS	Sclerocactus glaucus (=Echinocactus g. s whipplei).	L, T
		CRESS, TOAD-FLAX	Glaucocarpum suffrutescens	L, E
		CRESS, TOAD-FLAX	Glaucocarpum suffrutescens	L, E
		LADIES'-TRESSES, UTE	Spiranthes diluvialis	L, T
		REED-MUSTARD, CLAY	Schoenocrambe argillacea	L, E
		REED-MUSTARD, SHRUBBY	Schoenocrambe suffrutescens	L, E
UTAH	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	SUCKER, JUNE	Chasmistes liorus	L, E, CH
	PLANTS	LADIES'-TRESSES, UTE	Spiranthes diluvialis	L, T
		PHACELIA, CLAY	Phacelia argillacea	L, E
WASATCH	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
WASHINGTON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	CHUB, VIRGIN RIVER	Gila robusta seminuda	L, E
		WOUNDFIN	Plagopterus argentissimus	L, E
	MAMMALS	PRAIRIE DOG, UTAH	Cynomys parvidens	L, T
	PLANTS	BEAR-POPPY, DWARF	Arctomecon humilis	L, E
		CACTUS, PURPLE-SPINED HEDGEHOG	Echinocereus engelmannii var. Purpureus	L, E
		CACTUS, SILER PINCUSHION	Pediocactus sileri	L, T
	REPTILES	TORTOISE, DESERT	Gopherus (=Xerobates, =Scaptochelys) agassizii.	L, T, CH
WAYNE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, MEXICAN SPOTTED	Strix occidentalis lucida	L, T, CH
	FISHES	CHUB, BONYTAIL	Gila elegans	L, E, CH
		CHUB, HUMPBACK	Gila cypha	L, E, CH
		SQUAWFISH, COLORADO	Ptychocheilus lucius	L, E, CH
		SUCKER, RAZORBACK	Xyrauchen texanus	L, E, CH
	MAMMALS	PRAIRIE DOG, UTAH	Cynomys parvidens	L, T
	PLANTS	CACTUS, WRIGHT FISHHOOK	Sclerocactus wrightiae (=Pediocactus w)	L, E
		DAISY, MAGUIRE	Erigeron maguirei var. maguirei	L, T
		LADIES'-TRESSES, UTE	Spiranthes diluvialis	L, T
		REED-MUSTARD, BARNEBY	Schoenocrambe barnebyi	L, E
		TOWNSENDIA, LAST CHANCE	Townsendia aprica	L, T
WEBER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	LADIES'-TRESSES, UTE	Spiranthes diluvialis	L, T
VERMONT				
ADDISON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
BENNINGTON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
CALEDONIA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
CHITTENDEN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. Note: Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
ESSEX	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
FRANKLIN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
GRAND ISLE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
LAMOILLE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
ORANGE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
ORLEANS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
RUTLAND	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
WASHINGTON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
WINDHAM	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	BULRUSH, NORTHEASTERN (=BARBED BRISTLE).	Scirpus ancistrochaetus	L, E
WINDSOR	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	CLAMS	MUSSEL, DWARF WEDGE	Alasmidonta heterodon	L, E
	MAMMALS	BAT, INDIANA	Myotis sodalis	L, E, CH
	PLANTS	MILK-VETCH, JESUP'S	Astragalus robbinsii var. jesupi	L, E
WASHINGTON				
ADAMS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
ASOTIN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	SALMON, CHINOOK (SNAKE RIVER FALL RUN).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, CHINOOK (SNAKE RIVER SPRING/SUMMER).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
		STEELHEAD, SNAKE RIVER BASIN POPULATION.	Oncorhynchus mykiss, (Snake River Basin ESU).	L, T
		STEELHEAD, SNAKE RIVER BASIN POPULATION.	Oncorhynchus mykiss, (Snake River Basin ESU).	L, T
BENTON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
		STEELHEAD, UPPER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Upper Columbia ESU).	L, E
		STEELHEAD, UPPER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Upper Columbia ESU).	L, E
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
CHELAN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	STEELHEAD, UPPER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Upper Columbia ESU).	L, E
		STEELHEAD, UPPER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Upper Columbia ESU).	L, E
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.s. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
		CHECKER-MALLOW, WENATCHEE MOUNTAINS.	Sidalcea oregona ssp. calva	P, E
		CHECKER-MALLOW, WENATCHEE MOUNTAINS.	Sidalcea oregona ssp. calva	P, E
CLALLAM	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
CLARK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
	BIRDS	OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
COLUMBIA	FISHES	SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
	FISHES	STEELHEAD, LOWER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Lower Columbia ESU).	P, T
	FISHES	STEELHEAD, LOWER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Lower Columbia ESU).	P, T
	FISHES	TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	WOLF, GRAY	Canis lupus	L, E, T, CH
	PLANTS	HOWELLIA, WATER	Howellia aquatilis	L, T
	FISHES	SALMON, CHINOOK (SNAKE RIVER FALL RUN).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, CHINOOK (SNAKE RIVER SPRING/SUMMER).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
COWLITZ	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
DOUGLAS	MAMMALS	WOLF, GRAY	Canis lupus	L, E, T, CH
	PLANTS	CHECKER-MALLOW, NELSON'S	Sidalcea nelsoniana	L, T
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	STEELHEAD, UPPER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Upper Columbia ESU).	L, E
		STEELHEAD, UPPER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Upper Columbia ESU).	L, E
FERRY	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	STEELHEAD, UPPER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Upper Columbia ESU).	L, E
		STEELHEAD, UPPER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Upper Columbia ESU).	L, E
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
FRANKLIN	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	SALMON, CHINOOK (SNAKE RIVER FALL RUN).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, CHINOOK (SNAKE RIVER SPRING/SUMMER).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
GARFIELD	FISHES	SALMON, CHINOOK (SNAKE RIVER FALL RUN).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, CHINOOK (SNAKE RIVER SPRING/SUMMER).	Oncorhynchus tshawytscha	L, E, CH
GRANT	BIRDS	SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
		EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	STEELHEAD, UPPER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Upper Columbia ESU).	L, E
		STEELHEAD, UPPER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Upper Columbia ESU).	L, E
GRAYS HARBOR	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
ISLAND	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	PLANTS	PAINTBRUSH, GOLDEN	Castilleja levisecta	L, T
		PAINTBRUSH, GOLDEN	Castilleja levisecta	L, T
		PAINTBRUSH, GOLDEN	Castilleja levisecta	L, T

IV. County/Species List—Continued

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State/County	Group name	Inverse name	Scientific name	Action/ Status
JEFFERSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
KING	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
KITSAP	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
KITTITAS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	STEELHEAD, UPPER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Upper Columbia ESU).	L, E
		STEELHEAD, UPPER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Upper Columbia ESU).	L, E
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
KLICKITAT	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
	MAMMALS	WOLF, GRAY	Canis lupus	L, E, T, CH
LEWIS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	STEELHEAD, LOWER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Lower Columbia ESU).	P, T
		STEELHEAD, LOWER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Lower Columbia ESU).	P, T
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
LINCOLN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	STEELHEAD, UPPER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Upper Columbia ESU).	L, E
		STEELHEAD, UPPER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Upper Columbia ESU).	L, E
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
MASON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	PLANTS	HOWELLIA, WATER	Howellia aquatilis	L, T
NEZ PERCE	FISHES	STEELHEAD, SNAKE RIVER BASIN POPULATION.	Oncorhynchus mykiss, (Snake River Basin ESU).	L, T
		STEELHEAD, SNAKE RIVER BASIN POPULATION.	Oncorhynchus mykiss, (Snake River Basin ESU).	L, T
OKANOGAN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	STEELHEAD, UPPER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Upper Columbia ESU).	L, E
		STEELHEAD, UPPER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Upper Columbia ESU).	L, E
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
PACIFIC	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		GOOSE, ALEUTIAN CANADA	Branta canadensis leucopareia	L, T
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH

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State/County	Group name	Inverse name	Scientific name	Action/ Status
		PELICAN, BROWN	Pelicanus occidentalis	L, E
		PLOVER, WESTERN SNOWY	Charadrius alexandrinus nivosus	L, T
	FISHES	SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
	INSECTS	BUTTERFLY, OREGON SILVERSPOT	Speyeria zerene hippolyta	L, T, CH
	MAMMALS	DEER, COLUMBIAN WHITE-TAILED	Odocoileus virginianus leucurus	L, E
PEND OREILLE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	STEELHEAD, UPPER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Upper Columbia ESU).	L, E
		STEELHEAD, UPPER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Upper Columbia ESU).	L, E
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		CARIBOU, WOODLAND	Rangifer tarandus caribou	L, E
		WOLF, GRAY	Canis lupus	L, E, T, CH
PIERCE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
SAN JUAN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	PLANTS	PAINTBRUSH, GOLDEN	Castilleja levisecta	L, T
		PAINTBRUSH, GOLDEN	Castilleja levisecta	L, T
		PAINTBRUSH, GOLDEN	Castilleja levisecta	L, T
SKAGIT	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
SKAMANIA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
		STEELHEAD, LOWER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Lower Columbia ESU).	P, T
		STEELHEAD, LOWER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Lower Columbia ESU).	P, T
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	WOLF, GRAY	Canis lupus	L, E, T, CH
SNOHOMISH	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
SPOKANE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	PLANTS	HOWELLIA, WATER	Howellia aquatilis	L, T
STEVENS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	STEELHEAD, UPPER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Upper Columbia ESU).	L, E
		STEELHEAD, UPPER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Upper Columbia ESU).	L, E
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
THURSTON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	PLANTS	HOWELLIA, WATER	Howellia aquatilis	L, T
		PAINTBRUSH, GOLDEN	Castilleja levisecta	L, T
		PAINTBRUSH, GOLDEN	Castilleja levisecta	L, T
		PAINTBRUSH, GOLDEN	Castilleja levisecta	L, T
WAHKIAKUM	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. **Note:** Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
		FALCON, PEREGRINE	Falco peregrinus	L, E
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
		PELICAN, BROWN	Pelicanus occidentalis	L, E
	MAMMALS	DEER, COLUMBIAN WHITE-TAILED	Odocoileus virginianus leucurus	L, E
WALLA WALLA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	SALMON, CHINOOK (SNAKE RIVER FALL RUN).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, CHINOOK (SNAKE RIVER SPRING/SUMMER).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
WHATCOM	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		MURRELET, MARBLED	Brachyramphus marmoratus	L, T, CH
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
WHITMAN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	SALMON, CHINOOK (SNAKE RIVER FALL RUN).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, CHINOOK (SNAKE RIVER SPRING/SUMMER).	Oncorhynchus tshawytscha	L, E, CH
		SALMON, SNAKE RIVER SOCKEYE	Oncorhynchus nerka	L, E, CH
YAKIMA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
		OWL, NORTHERN SPOTTED	Strix occidentalis caurina	L, T, CH
	FISHES	STEELHEAD, UPPER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Upper Columbia ESU).	L, E
		STEELHEAD, UPPER COLUMBIA RIVER POPULATION.	Oncorhynchus mykiss, (Upper Columbia ESU).	L, E
		TROUT, BULL (COLUMBIA RIVER POPULATION).	Salvelinus confluentus	P, T
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
WAKE ISLAND				
WYOMING				
ALBANY	AMPHIBIANS	TOAD, WYOMING	Bufo hemiophrys baxteri	L, E
	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
BIG HORN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
CAMPBELL	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
CARBON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
CONVERSE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
CROOK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
FREMONT	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		FERRET, BLACK-FOOTED	Mustela nigripes	L, E
		WOLF, GRAY	Canis lupus	L, E, T, CH
GOSHEN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
HOT SPRINGS	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
JOHNSON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E

IV. County/Species List—Continued

[The following list identifies federally listed or proposed U.S. species by State and County. It has been updated through September 1, 1997. **Note:** Species listed below with a status of both E and T are generally either endangered or threatened within the specified county. The assignment of two status designations for a species in a specific county is a function of the data set used to develop this list. For purposes of this permit, however, the obligation to assess the impact of storm water discharges on listed species does not vary based on which of the two statuses (e.g., endangered threatened) is assigned (see Addendum A Instructions). Designation of critical habitat (CH) does not mean that the county constitutes critical habitat, only that critical habitat has been designated for that species (see Addendum A Instructions).]

State/County	Group name	Inverse name	Scientific name	Action/ Status
LARAMIE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
LINCOLN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
		WOLF, GRAY	Canis lupus	L, E, T, CH
NATRONA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
NIOBRARA	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
PARK	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		FERRET, BLACK-FOOTED	Mustela nigripes	L, E
		WOLF, GRAY	Canis lupus	L, E, T, CH
PLATTE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
SHERIDAN	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
SUBLETTE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	FISHES	DACE, KENDALL WARM SPRINGS	Rhinichthys osculus thermalis	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
SWEETWATER	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
TETON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	BEAR, GRIZZLY	Ursus arctos (=U.a. horribilis)	L, T
		WOLF, GRAY	Canis lupus	L, E, T, CH
UINTA	BIRDS	FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
WASHAKIE	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E
WESTON	BIRDS	EAGLE, BALD	Haliaeetus leucocephalus	L, T
		FALCON, PEREGRINE	Falco peregrinus	L, E
	MAMMALS	FERRET, BLACK-FOOTED	Mustela nigripes	L, E

Key: L—Listed, P—Proposed, E—Endangered, T—Threatened, CH—Critical Habitat

Addendum B—Historic Properties (Reserved)

Instructions related to historic preservation have not been included in the permit at this time. EPA may modify the permit to include such provisions at a later date. This does not relieve applicants or permittees of their responsibility to comply with applicable State, Tribal or local laws for the protection of historic properties.

Addendum C—Existing Notice of Intent Form

From the effective date of this permit, applicants are to use the existing Notice of Intent form (EPA 3510–6 (8–98)) contained in this Addendum to obtain permit coverage until the revised NOI form is published as final in the **Federal Register** and replaces it. According to the provisions in Part II.B.1 of this permit, applicants are reminded that although they are completing information on the existing form related to the expired Baseline Construction General Permit, they are also certifying that they meet all eligibility requirements of Part I.B. of this permit and are informing the Director of their intent to be covered by, and comply with, those terms and conditions. These conditions include certifications that the applicant's storm water discharges and storm water-related discharge activities will not adversely affect listed endangered or threatened species, or their critical habitat. EPA may modify this permit to include provisions relating to historic preservation.

BILLING CODE 6560–50–P

THIS FORM REPLACES PREVIOUS FORM 3510-6 (9-92) See Reverse for Instructions

Form Approved. OMB No. 2040-0086 Approval expires: 5-31-00

NPDES FORM

United States Environmental Protection Agency
Washington, DC 20460

Notice of Intent (NOI) for Storm Water Discharges Associated with Industrial Activity Under a NPDES General Permit

Submission of this Notice of Intent constitutes notice that the party identified in Section II of this form intends to be authorized by a NPDES permit issued for storm water discharges associated with industrial activity in the State identified in Section III of this form. Becoming a permittee obligates such discharger to comply with the terms and conditions of the permit. ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM.

I. Permit Selection: You must indicate the NPDES Storm Water general permit under which you are applying for coverage. Check one of these.

Baseline Industrial ☐ Baseline Construction ☐ Multi-Sector (Group Permit) ☐

II. Facility Operator Information

Name: Phone:

Address: Status of Owner/Operator:

City: State: ZIP Code:

III. Facility/Site Location Information

Name: Is the facility located on Indian Lands? (Y or N) ☐

Address:

City: State: ZIP Code:

Latitude: Longitude: Quarter: Section: Township: Range:

IV. Site Activity Information

MS4 Operator Name:

Receiving Water Body:

If you are filing as a co-permittee, enter storm water general permit number:

SIC or Designated Activity Code: Primary: 2nd:

Is the facility required to submit monitoring data? (1, 2, 3, or 4) ☐

If You Have Another Existing NPDES Permit, Enter Permit Number:

Multi-Sector Permit Applicants Only:

Based on the instructions provided in Addendum H of the Multi-Sector permit, are species identified in Addendum H in proximity to the storm water discharges to be covered under this permit, or the areas of BMP construction to control those storm water discharges? (Y or N) ☐

Will construction (land disturbing activities) be conducted for storm water controls? (Y or N) ☐

Is applicant subject to and in compliance with a written historic preservation agreement? (Y or N) ☐

V. Additional Information Required for Construction Activities Only

Project Start Date: Completion Date: Estimated Area to be Disturbed (in Acres): Is the Storm Water Pollution Prevention Plan in compliance with State and/or Local sediment and erosion plans? (Y or N) ☐

VI. Certification: The certification statement in Box 1 applies to all applicants. The certification statement in Box 2 applies only to facilities applying for the Multi-Sector storm water general permit.

BOX 1

ALL APPLICANTS:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

BOX 2

MULTI-SECTOR STORM WATER GENERAL PERMIT APPLICANTS ONLY:

I certify under penalty of law that I have read and understand the Part I.B. eligibility requirements for coverage under the Multi-Sector storm water general permit, including those requirements relating to the protection of species identified in Addendum H.

To the best of my knowledge, the discharges covered under this permit, and construction of BMPs to control storm water run-off, are not likely to and will not likely adversely affect any species identified in Addendum H of the Multi-Sector storm water general permit or are otherwise eligible for coverage due to previous authorization under the Endangered Species Act.

To the best of my knowledge, I further certify that such discharges, and construction of BMPs to control storm water run-off, do not have an effect on properties listed or eligible for listing on the National Register of Historic Places under the National Historic Preservation Act, or are otherwise eligible for coverage due to a previous agreement under the National Historic Preservation Act.

I understand that continued coverage under the Multi-Sector general permit is contingent upon maintaining eligibility as provided for in Part I.B.

Print Name: Date:

Signature:

EPA Form 3510-6 (9-98)

Instructions - EPA Form 3510-6
Notice Of Intent (NOI) For Storm Water Discharges Associated With Industrial Activity
To Be Covered Under a NPDES General Permit

Who Must File A Notice Of Intent (NOI) Form

Federal law at 40 CFR Part 122 prohibits point source discharges of storm water associated with industrial activity to a water body(ies) of the U.S. without a National Pollutant Discharge Elimination System (NPDES) permit. The operator of an industrial activity that has such a storm water discharge must submit a NOI to obtain coverage under a NPDES Storm Water General Permit. If you have questions about whether you need a permit under the NPDES Storm Water program, or if you need information as to whether a particular program is administered by EPA or a state agency, telephone or write to the Notice of Intent Processing Center at (703) 931-3230.

Where To File NOI Form

NOIs must be sent to the following address: Storm Water Notice of Intent (4203)
401 M Street, S.W.
Washington, DC 20460

Completing The Form

You must type or print, using upper-case letters, in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. If you have any questions on this form, call the Notice of Intent Processing Center at (703) 931-3230.

Section I Permit Selection

You must indicate the NPDES storm water general permit under which you are applying for coverage. Check one box only. The Baseline Industrial and Baseline Construction permits were issued in September 1992. The Multi-Sector Permit became effective October 1, 1995.

Section II Facility Operator Information

Provide the legal name of the person, firm, public organization, or any other entity that operates the facility or site described in this application. The name of the operator may or may not be the same as the name of the facility. The responsible party is the legal entity that controls the facility's operation, rather than the plant or site manager. Do not use a colloquial name. Enter the complete address and telephone number of the operator.

Enter the appropriate letter to indicate the legal status of the operator of the facility: F = Federal; S = State; M = Public (other than federal or state); P = Private.

Section III Facility/Site Location Information

Enter the facility's or site's official or legal name and complete street address, including city, state, and ZIP code. Do not provide a P.O. Box number as the street address. If applying for a Baseline Permit and the facility or site lacks a street address, indicate the state and either the latitude and longitude of the facility to the nearest 15 seconds or the quarter, section, township, and range (to the nearest quarter section) of the approximate center of the site. If applying for the Multi-Sector Permit indicate the complete street address and either the latitude and longitude of the facility to the nearest 15 seconds or the quarter, section, township, and range (to the nearest quarter section) of the approximate center of the site.

All applicants must indicate whether the facility is located on Indian lands.

Section IV Site Activity Information

If the storm water discharges to a municipal separate storm sewer system (MS4), enter the name of the operator of the MS4 (e.g., municipality name, county name) and the receiving water of the discharge from the MS4. (A MS4 is defined as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that is owned or operated by a state, city, town, borough, county, parish, district, association, or other public body which is designed or used for collecting or conveying storm water.)

If the facility discharges storm water directly to receiving water(s), enter the name of the receiving water(s).

If you are filing as a co-permittee and a storm water general permit number has been issued, enter that number in the space provided.

Indicate the monitoring status of the facility. Refer to the permit for information on monitoring requirements. Indicate the monitoring status by entering one of the following:

1 = Not subject to monitoring requirements under the conditions of the permit.
2 = Subject to monitoring requirements and required to submit data.
3 = Subject to monitoring requirements but not required to submit data.
4 = Subject to monitoring requirements but submitting certification for monitoring exclusion.

List, in descending order of significance, up to two 4-digit standard industrial classification (SIC) codes that best describe the principal products or services provided at the facility or site identified in Section III of this application. If you are applying for coverage under the construction general permit, enter "CO" (which represents SIC codes 1500 - 1799).

For industrial activities defined in 40 CFR 122.26(b)(14)(i)-(xi) that do not have SIC codes that accurately describe the principal products produced or services provided, use the following 2-character codes.

HZ = Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA [40 CFR 122.26 (b)(14)(iv)];
LF = Landfills, land application sites, and open dumps that receive or have received any industrial wastes, including those that are subject to regulation under subtitle D of RCRA [40 CFR 122.26 (b)(14)(v)];
SE = Steam electric power generating facilities, including coal handling sites [40 CFR 122.26 (b)(14)(vii)];
TW = Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage [40 CFR 122.26 (b)(14)(ix)]; or,
CO = Construction activities [40 CFR 122.26 (b)(14)(x)].

If there is another NPDES permit presently issued for the facility or site listed in Section III, enter the permit number. If an application for the facility has been submitted but no permit number has been assigned, enter the application number.

Facilities applying for coverage under the Multi-Sector storm water general permit must answer the last three questions in Section IV. Refer to Addendum H of the Multi-Sector general permit for a list of species that are either proposed or listed as threatened or endangered. "BMP" means "Best Management Practices" that are used to control storm water discharges.

Indicate whether any construction will be conducted to install or develop storm water runoff controls.

Section V Additional Information Required for Construction Activities Only

Construction activities must complete Section V in addition to Sections I through IV. Only construction activities need to complete Section V.

Enter the project start date and the estimated completion date for the entire development plan.

Provide an estimate of the total number of acres of the site on which soil will be disturbed (round to the nearest acre).

Indicate whether the storm water pollution prevention plan for the site is in compliance with approved state and/or local sediment and erosion plans, permits, or storm water management plans.

Section VI Certification

Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means: (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner or the proprietor; or

For a municipality, state, Federal, or other public facility: by either a principal executive officer or ranking elected official.

Paperwork Reduction Act Notice

Public reporting burden for this application is estimated to average 0.5 hours per application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Chief, Information Policy Branch, 2136, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

BILLING CODE 6560-50-C

Addendum D—Notice of Termination Form

From the effective date of this permit, permittees are to use the existing Notice of Termination form (EPA Form 3510–7) contained in this Addendum until they are instructed by the Director (EPA) to use a revised version. Permittees are to complete, sign and submit the form in accordance with Part VIII of the permit when terminating permit coverage at a construction project when one or more or the conditions contained in Part 1.D.2 have been met.

BILLING CODE [illegible]

THIS FORM REPLACES PREVIOUS FORM 3510-7 (9-92) Form Approved. OMB No. 2040-0086
Please See Instructions Before Completing This Form Approval expires: 8-31-98

NPDES FORM

EPA

United States Environmental Protection Agency
Washington, DC 20460

Notice of Termination (NOT) of Coverage Under a NPDES General Permit for Storm Water Discharges Associated with Industrial Activity

Submission of this Notice of Termination constitutes notice that the party identified in Section II of this form is no longer authorized to discharge storm water associated with industrial activity under the NPDES program. ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM.

I. Permit Information

NPDES Storm Water General Permit Number: _____ Check Here If You are No Longer the Operator of the Facility: ☐ Check Here If the Storm Water Discharge is Being Terminated: ☐

II. Facility Operator Information

Name: _____ Phone: _____

Address: _____

City: _____ State: ____ ZIP Code: _____

III. Facility/Site Location Information

Name: _____

Address: _____

City: _____ State: ____ ZIP Code: _____

Latitude: _____ Longitude: _____ Quarter: ____ Section: ____ Township: _____ Range: _____

IV. Certification

I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by a NPDES general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this Notice of Termination, I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this Notice of Termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

Print Name: _____ Date: _____

Signature: _____

Instructions for Completing Notice of Termination (NOT) Form

Who May File a Notice of Termination (NOT) Form

Permittees who are presently covered under an EPA-issued National Pollutant Discharge Elimination System (NPDES) General Permit (including the 1995 Multi-Sector Permit) for Storm Water Discharges Associated with Industrial Activity may submit a Notice of Termination (NOT) form when their facilities no longer have any storm water discharges associated with industrial activity as defined in the storm water regulations at 40 CFR 122.26(b)(14), or when they are no longer the operator of the facilities.

For construction activities, elimination of all storm water discharges associated with industrial activity occurs when disturbed soils at the construction site have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with industrial activity from the construction site that are authorized by a NPDES general permit have otherwise been eliminated. Final stabilization means that all soil-disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

Where to File NOT Form

Send this form to the the following address:

Storm Water Notice of Termination (4203)
401 M Street, S.W.
Washington, DC 20460

Completing the Form

Type or print, using upper-case letters, in the appropriate areas only. Please place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use only one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. If you have any questions about this form, telephone or write the Notice of Intent Processing Center at (703) 821-4823.

EPA Form 3510-7 (8-96)

Instructions - EPA Form 3510-7
Notice of Termination (NOT) of Coverage Under The NPDES General Permit for Storm Water Discharges Associated With Industrial Activity

Section I Permit Information

Enter the existing NPDES Storm Water General Permit number assigned to the facility or site identified in Section III. If you do not know the permit number, telephone or write your EPA Regional storm water contact person.

Indicate your reason for submitting this Notice of Termination by checking the appropriate box:

If there has been a change of operator and you are no longer the operator of the facility or site identified in Section III, check the corresponding box.

If all storm water discharges at the facility or site identified in Section III have been terminated, check the corresponding box.

Section II Facility Operator Information

Give the legal name of the person, firm, public organization, or any other entity that operates the facility or site described in this application. The name of the operator may or may not be the same name as the facility. The operator of the facility is the legal entity which controls the facility's operation, rather than the plant or site manager. Do not use a colloquial name. Enter the complete address and telephone number of the operator.

Section III Facility/Site Location Information

Enter the facility's or site's official or legal name and complete address, including city, state and ZIP code. If the facility lacks a street address, indicate the state, the latitude and longitude of the facility to the nearest 15 seconds, or the quarter, section, township, and range (to the nearest quarter section) of the approximate center of the site.

Section IV Certification

Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means: (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner or the proprietor; or

For a municipality, State, Federal, or other public facility: by either a principal executive officer or ranking elected official.

Paperwork Reduction Act Notice

Public reporting burden for this application is estimated to average 0.5 hours per application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Chief, Information Policy Branch, 2136, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

[FR Doc. 98–3600 Filed 2–13–98; 8:45 am]
BILLING CODE 6560–50–C

federal register

Tuesday
February 17, 1998

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Prohibition Against Certain Flights Within the Flight Information Region of the Democratic People's Republic of Korea; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 28831; Special Federal Aviation Regulation (SFAR) No. 79]

RIN 2120–AG48

Prohibition against certain flights within the Flight Information Region of the Democratic People's Republic of Korea

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends SFAR 79, issued on April 18, 1997, to permit certain flight operations within the international airspace controlled by the Democratic People's Republic of Korea (DPRK) by any United States air carrier or commercial operator; by any person exercising the privileges of an airman certificate issued by the FAA; and by any operator using an aircraft registered in the United States. Due to the lack of certain information from the DPRK necessary to the safety of flight operations in the area, the FAA issued SFAR 79, which prohibits certain flight operations within the Pyongyang Flight Information Region (FIR), pending resolution of outstanding questions related to safety of flight operations in the area. The FAA recently completed a review of safety information from the DPRK, and has determined that an acceptable level of safety exists in the Pyongyang FIR east of 132 degrees east longitude. The FAA therefore amends SFAR 79 to remove the prohibition on flight operations in that area.

DATES: This amendment to SFAR 79 is effective February 17, 1998.

FOR FURTHER INFORMATION CONTACT: Mark W. Bury, International Affairs and Legal Policy Staff, AGC–7, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3515.

SUPPLEMENTARY INFORMATION:

Availability of Document

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the Federal Register's electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 800–FAA–ARAC).

Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Register's webpage at http://www.access.gpo.gov/su_docs for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the SFAR number or docket number of this document.

Persons interested in being placed on the mailing list for future rules should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

On April 18, 1997, the FAA issued SFAR 79 prohibiting certain flight operations within the Pyongyang FIR (62 FR 20076; April 24, 1997). In the exercise of its statutory responsibility for the safety of U.S.-registered aircraft and U.S. operators, the FAA determined a flight prohibition was justified by a combination of factors in the DPRK that posed a potential threat to civil aircraft flying through the area of the Pyongyang FIR west of 132 degrees east longitude, and by the lack of information from the DPRK indicating that flight safety could be assured for civil aircraft operating in the Pyongyang FIR east of 132 degrees east longitude.

The DPRK subsequently sent the FAA a copy of their new Aeronautical Information Publication (AIP). Following a review of this material, the FAA now has determined that the proper level of flight safety can be assured for overflights occurring in the international airspace of the FIR east of 132 degrees east longitude. In particular, the FAA is satisfied with the information in the AIP concerning search and rescue capabilities, civil aircraft intercept procedures, and communication links other than air-to-ground communication. Therefore, the FAA is amending this SFAR to remove the prohibition on flights by U.S.-registered aircraft and U.S. operators in that airspace. Because the Office of Foreign Assets Control of the U.S. Department of Treasury lifted its prohibition on the payment of overflight fees to the DPRK on April 7, 1997, this portion of the Pyongyang FIR is now available to U.S. operators.

The circumstances supporting the FAA's earlier determination that a potential threat to civil aircraft operations exists in the area of the Pyongyang FIR west of 132 degrees east longitude have not changed. Specifically, the FAA stands by its conclusion that the combination of the DPRK's military capabilities and it's rules of engagement poses a potential threat to civil aircraft in the area west of 132 degrees east longitude, which includes the DPRK's territorial airspace. Therefore, in the exercise of its statutory responsibility for the safety of U.S.-registered aircraft and U.S. operators, the FAA will continue its flight prohibition for the area of the Pyongyang FIR west of 132 degrees east longitude.

Amendment of Prohibition Against Certain Flights Within the Flight Information Region of the Democratic People's Republic of Korea (DPRK)

On the basis of the information above, and in furtherance of my responsibilities to promote the safety of flight of civil aircraft in air commerce, I have determined that SFAR 79 should be amended to permit flight operations by U.S.-registered aircraft and U.S. operators in the area of the Pyongyang FIR east of 132 degrees east longitude. I also have determined that circumstances justify the continued prohibition of flight operations within the Pyongyang FIR west of 132 degrees east longitude by any U.S. carrier or commercial operator; by any person exercising the privileges of an airman certificate issued by the FAA, except persons operating U.S.-registered aircraft for a foreign air carrier, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier.

In order to make pilots aware immediately of the lifting of certain restrictions affecting flight operations within international airspace controlled by the DPRK and to avoid any confusion by the pilots concerning areas safe for flight, I find that notice and public comment under 5 USC 553(b) are impracticable and contrary to the public interest. Further, I find that good cause exists for making this rule effective immediately upon issuance. I also find that this action is fully consistent with my obligations under 49 USC 40105(b)(1)(A) to ensure that I exercise my duties consistently with the obligations of the United States under international agreements. The Department of State has been advised of, and has not objection to, the action taken herein.

This rule shall remain effective until further notice.

Regulatory Evaluation Summary

In accordance with SFAR 79, United States air carriers and commercial operators currently use alternate routes to avoid the Democratic People's Republic of Korea's (DPRK) territory and airspace. Navigating around DPRK territory and airspace results in increased variable operation costs, primarily for any United States air carriers operating in the region. However, based on information in the original SFAR, there were no U.S. air carriers or commercial operators conducting revenue flights within the DPRK airspace, and as such, would not be adversely affected by the requirements of the original SFAR.

There are no costs, only cost savings, associated with this amendment to SFAR 79, because now flights by United States air carriers will be allowed through DPRK airspace east of 132 degrees east longitude. Costs savings are associated with the elimination of the alternate routes, and subsequent reduced flying time, to circumnavigate the Pyongyang FIR east of 132 degrees east longitude, as required by the original SFAR. The cost savings are represented by a decrease in variable operating costs, which the FAA estimates to be approximately $3,200 per hour for a wide-body aircraft. Additionally, there is no undue hazard to persons and aircraft, because the FAA has reviewed all applicable safety information provided by DPRK and has determined that DPRK's regulations, procedures and capabilities conform to international safety standards.

Therefore, because there are some cost savings associated with this action, along with no reduction in aviation safety, the FAA has determined that the amendment to SFAR 79 is cost beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have "significant economic impact on a substantial number of small entities." FAA Order No. 2100.14A outlines the FAA's procedures and criteria for implementing the RFA. The FAA has determined that none of the United States air carriers or commercial operators that operate in the region are "small entities" as defined under FAA Order No. 2100.14A. Therefore, the FAA certifies that this SFAR would not impose a "significant economic impact on a substantial number of small entities."

International Trade Impact Assessment

When the FAA promulgated SFAR 79, the FAA found that the SFAR could have an adverse impact on the international flights of United States air carriers and commercial operators because it could marginally increase their operating costs and flight times relative to foreign carriers who overfly the Pyongyang FIR. This action lifts some of the restrictions on United States air carriers or commercial operators originally imposed by SFAR 79. Therefore, the FAA believes that the amended SFAR would reduce the competitive disadvantage placed upon United States air carriers, and would have a positive effect on the sale of United States aviation products and services in foreign countries.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing nay regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 USC 3507 *et seq.*)

Federalism Determination

The SFAR set forth herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), it is determined that this regulation does not have federalism implications warranting the preparation of a Federal Assessment.

List of Subjects in 14 CFR Part 91

Aircraft, Airmen, Airports, Air traffic control, Aviation safety, Democratic People's Republic of Korea, Freight.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 USC 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. Paragraphs 2 and 3 of SFAR 79 are revised to read as follows:

Special Federal Aviation Regulation (SFAR) No. 79—Prohibition Against Certain Flights within the Flight Information Region (FIR) of the Democratic People's Republic of Korea (DPRK)

* * * * *

2. *Flight Prohibition.* Except as provided in paragraphs 3 and 4 of this SFAR, no person described in paragraph 1 may conduct flight through the Pyongyang FIR west of 132 degrees east longitude.

3. *Permitted Operations.* This SFAR does not prohibit persons described in paragraph 1 from conducting flight operations within the Pyongyang FIR west of 132 degrees east longitude where such operations are authorized either by exemption issued by the Administrator or by another agency of the United States Government with FAA approval.

* * * * *

Issued in Washington, DC on February 10, 1998.

Jane F. Garvey,

Administrator.

[FR Doc. 98–3837 Filed 2–11–98; 12:27 pm]

BILLING CODE 4910–13–M

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federal register

Tuesday
February 17, 1998

Part IV

Department of Education

34 CFR Part 280

Magnet Schools Assistance Program and Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998; Final Rule and Notice

DEPARTMENT OF EDUCATION

34 CFR Part 280

RIN 1810–AA88

Magnet Schools Assistance Program

AGENCY: Department of Education.

ACTION: Final rule.

SUMMARY: The Secretary amends the regulations governing the Magnet Schools Assistance Program (MSAP). This amendment makes a technical change to conform the existing regulations to the other amendments to the regulations made on March 20, 1995.

EFFECTIVE DATE: These regulations take effect March 19, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Steven L. Brockhouse, U.S. Department of Education, 600 Independence Ave., SW., Room 4500, Portals Building, Washington, D.C. 20202–6140. Telephone: (202) 260–2476. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: On March 20, 1995, the Assistant Secretary for Elementary and Secondary Education amended the MSAP regulation at § 280.32 by revising the heading, removing paragraph (b), redesignating paragraph (d) as paragraph (b), removing the parenthetical reference to "15 points" from the redesignated paragraph (b), adding a new paragraph (d), and revising paragraphs (a), (c), (e), (f). At that time redesignated subparagraph (b)(2), which provides—The applicant receives up to 15 points, depending on the extent of its need for assistance—was inadvertently not eliminated. In order to conform with the purpose of the 1995 amendment eliminating the 15 points reference for this priority factor, this regulation eliminates § 280.32(b)(2). Under § 280.32(a) of the regulations, the Secretary will announce, in an application notice published in the **Federal Register**, how these points will be distributed.

FOR FURTHER INFORMATION CONTACT: Mr. Steven L. Brockhouse, U.S. Department of Education, 600 Independence Ave., SW., Room 4500, Portals building, Washington, D.C. 20202–6140. Telephone: (202) 260–2476. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Intergovernmental Review

The program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Secretary's specific plans and actions for this program.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with the Administrative Procedure Act (5 U.S.C. 553). However, since this change does not affect substantive policy, public comment could have no effect. Therefore, the Secretary has determined pursuant to 5 U.S.C. 553(b)(B) that public comment on these regulations is unnecessary and contrary to the public interest.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–3339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

List of Subjects in 34 CFR Part 280

Civil rights, Desegregation, Education, Elementary and secondary education, Grant programs—education, magnet schools, Reporting and record keeping requirements.

(Catalog of Federal Domestic Assistance Number 84.165A—Magnet Schools Assistance Program)

Dated: February 11, 1998.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

The Secretary amends part 280 of title 34 of the Code of Federal Regulations as follows:

PART 280—MAGNET SCHOOLS ASSISTANCE PROGRAM

1. The authority citation for Part 280 continues to read as follows:

Authority: 20 U.S.C. 7201–7213, unless otherwise noted.

§ 208.32 [Amended]

2. Section 280.32 is amended by removing paragraph (b)(2); and redesignating paragraphs (b)(1)(i) through (iv) as paragraphs (b)(1) through (4), respectively.

[FR Doc. 98–3830 Filed 2–13–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.165A]

Magnet Schools Assistance Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Purpose of Program: Provides grants to eligible local educational agencies and consortia of those agencies to support magnet schools that are part of approved desegregation plans.

Eligible Applicants: Local educational agencies (LEAs) and consortia of those agencies.

Deadline for Transmittal of Applications: April 9, 1998.

Deadline for Intergovernmental Review: June 8, 1998.

Applications Available: February 17, 1998.

Available Funds: $96,500,000.

Estimated Range of Awards: $200,000–$3,000,000 per year.

Estimated Average Size of Awards: $1,608,000 per year.

Estimated Number of Awards: 60.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85 and 86; and (b) the regulations in 34 CFR Part 280.

Priorities

Background

The Magnet Schools Assistance Program (MSAP) makes grants to eligible LEAs and consortia of LEAs for programs that are designed to support—

- The elimination, reduction, or prevention of minority group isolation in public elementary and secondary schools with substantial proportions of minority group children;
- The development and implementation of magnet school projects that will assist in achieving systemic reform and providing all children the opportunity to meet challenging State content standards and challenging student performance standards;
- The development and design of innovative educational methods and practices; and
- Courses of instruction within magnet schools that will substantially strengthen the knowledge of academic subjects and the grasp of tangible and marketable vocational skills of students attending those magnet schools.

Competitive Priorities

Under 34 CFR 75.105(c)(2)(i) and 34 CFR 280.32(b)–(f), the Secretary gives preference to applications that meet competitive priorities. Depending upon how well an application meets each priority, the Secretary awards additional points to the application for each priority up to the maximum number of points available for that priority. These points are in addition to any points the applicant earns under the selection criteria in 34 CFR 280.31.

The Secretary will award up to a total of 45 points for the following competitive priorities:

- *Need for assistance.* (5 points) The Secretary evaluates the applicant's need for assistance under this part, by considering—

(a) The costs of fully implementing the magnet schools project as proposed;

(b) The resources available to the applicant to carry out the project if funds under the program were not provided;

(c) The extent to which the costs of the project exceed the applicant's resources; and

(d) The difficulty of effectively carrying out the approved plan and the project for which assistance is sought, including consideration of how the design of the magnet school project—*e.g.*, the type of program proposed, the location of the magnet school within the LEA—impacts on the applicant's ability to successfully carry out the approved plan.

- *New or revised magnet schools projects.* (10 points) The Secretary determines the extent to which the applicant proposes to carry out new magnet schools projects or significantly revise existing magnet schools projects.
- *Selection of students.* (15 points) The Secretary determines the extent to which the applicant proposes to select students to attend magnet schools by methods such as lottery, rather that through academic examination.
- *Innovative approaches and systemic reform.* (10 points) The Secretary determines the extent to which the project for which assistance is sought proposes to implement innovative educational approaches that are consistent with the State's and LEA's systemic reform plans, if any, under Title III of Goals 2000: Educate America Act.
- *Collaborative efforts.* (5 points) The Secretary determines the extent to which the project for which assistance is sought proposes to draw on comprehensive community involvement plans.

Additionally, the Secretary gives preference to applications that use a significant portion of the program funds to address substantial problems in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture. Under 34 CFR 75.105(c)(2)(ii), the Secretary selects an application that meets this competitive priority over an application of comparable merit that does not meet this competitive priority.

Note: A list of areas that have been designated as Empowerment Zones and Enterprise Communities is published as an appendix to this notice.

SUPPLEMENTARY INFORMATION:

Applicants must submit with their applications one of the following types of plans to establish eligibility to receive MSAP assistance: (1) A desegregation plan required by a court order; (2) a plan required by a State agency or official of competent jurisdiction; (3) a plan required by the Office for Civil Rights (OCR), United States Department of Education (ED), under Title VI of the Civil Rights Act of 1964 (Title VI plan); or (4) a voluntary plan adopted by the applicant.

Under the regulations, applicants are required to provide all of the information required at § 280.20(a)–(g) in order to satisfy the civil rights eligibility requirements found in § 280.2(a)(2) and (b) of the regulations. Prior to 1995, if necessary, ED requested enrollment data or other information from applicants after their applications were submitted utilizing the procedures set forth in § 280.20(h). However, that follow-up process delayed awards under the program. In order to respond to requests from applicants and grantees that the Department announce MSAP awards earlier in the year, when conducting eligibility reviews of plans under § 280.2, the Department may not follow up with applicants to obtain additional information or clarification. Accordingly, in order to satisfy the civil rights eligibility requirements found in § 280.2(a)(2) and (b) of the regulations, it is very important that an applicant provide all of the information required under the regulations at § 280.20(a)–(g). This notice describes that information.

In addition to the particular data and other items for required and voluntary plans, described separately in the information that follows, an application must include:

- Signed civil rights assurances (included in the application package);
- A copy of the applicant's plan; and
- An assurance that the plan is being implemented or will be implemented if the application is funded.

Required Plans

1. Plans Required by a Court Order

An applicant that submits a plan required by a court must submit complete and signed copies of all court or State documents demonstrating that the magnet schools are a part of the approved plan. Examples of the types of documents that would meet this requirement include—.

- A Federal or State court order that establishes or amends a previous order or orders by establishing additional or different specific magnet schools;
- A Federal or State court order that requires or approves the establishment of one or more unspecified magnet schools or that authorizes the inclusion of magnet schools at the discretion of the applicant.

2. Plans Required by a State Agency or Official of Competent Jurisdiction

An applicant submitting a plan ordered by a State agency or official of competent jurisdiction must provide documentation that shows that the plan was ordered based upon a determination that State law was violated. In the absence of this documentation, the applicant should consider its plan to be a voluntary plan and submit the data and information necessary for voluntary plans.

3. Title VI Required Plans

An applicant that submits a plan required by OCR under Title VI must submit a complete copy of the plan demonstrating that magnet schools are part of the approved plan.

4. Modifications to Required Plans

A previously approved desegregation plan that does not include the magnet school or program for which the applicant is now seeking assistance must be modified to include the magnet school component. The modification to the plan must be approved by the court, agency or official, that originally approved the plan. An applicant that wishes to modify a previously approved OCR Title VI plan to include different or additional magnet schools must submit the proposed modification for review and approval to the OCR Regional Office that approved its original plan.

An applicant should indicate in its application if it is seeking to modify its previously approved plan. However, all applicants must submit proof to ED of approval of all modifications to their plans by May 7, 1998.

Voluntary Plans

A voluntary plan must be approved each time an application is submitted for funding. Even if ED has approved a voluntary plan in an LEA in the past, the plan must be resubmitted to ED for approval as part of the application.

An applicant submitting a voluntary plan must include in its application:

- A copy of a school board resolution or other evidence of final official action adopting and implementing the plan, or agreeing to adopt and implement the plan upon the award of assistance.
- Enrollment and other information as required by the regulations at § 280.20(f) and (g) for applicants with voluntary plans. Enrollment data and information are critical to ED's determination of an applicant's eligibility under a voluntary plan.

Narrow Tailoring

The purposes of the MSAP include the reduction, elimination or prevention of minority group isolation. In many instances, in order to carry out these purposes, districts take race into account in assigning students to magnet schools. In order to meet the requirements of Title VI of the Civil Rights Act of 1964 and the Fourteenth Amendment to the United States Constitution, applicants submitting voluntary plans that involve the use of race in decisionmaking must ensure that the use of race satisfies strict scrutiny. That is, the use of race must be narrowly tailored to achieve the compelling interest in reducing, eliminating or preventing minority group isolation.

In order for the Department to make a determination that a voluntary plan involving a racial classification is adequate under Title VI the plan must be narrowly tailored. Among the considerations that affect a determination of whether the use of race in a voluntary plan is narrowly tailored are (1) whether the district tried or seriously considered race-neutral alternatives and determined that those measures have not been or would not be similarly effective, before resorting to race-conscious action; (2) the scope and flexibility of the use of race, including whether it is subject to a waiver; (3) the manner in which race is used, that is, whether race determines eligibility for a program or whether race is just one factor in the decision making process; (4) the duration of the use of race and whether it is subject to periodic review; and (5) the degree and type of burden imposed on students of other races.

Each of these considerations should be specifically considered in framing a district's strategy. Some examples follow, although it must be recognized that the legal standards in this area are developing.

Race-Neutral Means

Before resorting to race-conscious action, school districts must try or seriously consider race-neutral alternatives and determine that they have not been or would not be similarly effective. One example of a race-neutral approach for applicants proposing to conduct a lottery for student admission to a magnet school would be to strengthen efforts to recruit a large pool of eligible students for the lottery that reflects the diverse racial and ethnic composition of the students in the applicant's district. If recruitment efforts are successful, the lottery should result in a racially and ethnically diverse student body.

It may be possible to broaden the appeal of a given magnet school by aggressively publicizing it, making application to it as easy as possible, and broadening the geographic area from which the school is intended to draw.

Use of Racial Criteria in Admissions

It may be permissible to establish a procedure whereby race is taken into account in admissions only if race-neutral steps are considered and a determination is made that they would not prove similarly effective. Racial caps are the most difficult use of race to justify under a narrow tailoring analysis.

The decision to consider race in admission decisions should be made on a school-by-school basis.

Scope and Flexibility

Over time, the enrollment at a magnet school may become stable and the school may attract a diverse group of students. At this point, use of race as a factor in admissions may no longer be necessary.

In some instances, exceptions to the use of race in admissions—where a relatively small number of students are adversely affected and their admission will not substantially affect the racial composition of the program—should be available.

Duration of the Program and Reexamination of the Use of Criteria

The school or school district should formally review the steps it has taken which involve the use of race on a regular basis, such as on an annual basis, to determine whether the use of race is still needed, or should be modified.

Effect on Students of Other Races

Where there are a number of magnet schools, it may also be possible to assign students to a comparable magnet school, if they are unable to gain admission to their first preference.

Enrollment and Other Information

A voluntary plan is a plan to reduce, eliminate, or prevent minority group isolation (MGI), either at a magnet school or at a feeder school—a school from which students are drawn to attend the magnet school. Under § 280.2, the establishment of the magnet school cannot result in an increase in MGI at a magnet school or any feeder school above the districtwide percentage of minority group students at the grade levels served by the magnet school.

The following example and those in subsequent sections of this notice are designed to assist applicants in the preparation of their application. The examples illustrate the types of data and information that have proven successful in the past for satisfying the voluntary plan regulation requirements.

District A has a districtwide percentage of 65.5 percent for its minority student population in elementary schools. District A has six elementary schools with the following minority student populations:

1. School A—67 percent
2. School B—58 percent
3. School C—64 percent
4. School D—76 percent
5. School E—47 percent
6. School F—81 percent

District A has five minority group isolated schools, *i.e.*, five schools with minority student enrollment of over 50 percent. District A seeks funding to establish a magnet program at School F to reduce MGI at that school. For District A to be eligible for a grant, the establishment of the magnet program at School F should not increase the minority student enrollment at feeder school C to more than 65.5 percent (the districtwide percentage). Also, the establishment of the magnet program should not increase the minority student enrollment at feeder schools A or D at all because those schools are already above the districtwide percentage for minority students. If projected enrollments at a magnet or feeder school indicate that there will be an increase in MGI, District A should provide an explanation in its application for the increase that shows it is not caused by the establishment of the magnet program. See the following discussion.

An applicant that proposes to establish new magnet schools must submit projected data for each magnet and feeder school that show that the magnet schools and all feeders will maintain eligibility for the entire three-year period of the grant.

Projected data are included in the following examples.

Objective: Reduction of Minority Group Isolation in Existing Magnet Schools

In situations where the applicant intends to reduce minority isolation in an existing magnet program, whether in the magnet school or in one or more of the feeder schools, and minority isolation has increased, the applicant must provide data and information to demonstrate that the increase was not due to the applicant's magnet program, in accordance with § 280.20(g). See the following examples.

Options for Demonstrating Reduction

1. Magnet School Analysis

District Z has two existing magnet elementary schools. All of the other schools in the district are feeder schools to one or both of the magnet schools. District Z has six feeder schools and a districtwide minority enrollment of 60.0 percent at the elementary school level.

DISTRICT Z BASE YEAR DATA FOR MAGNET SCHOOLS

Magnet school (base year)	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Adams (1996)	449	382	85.1	67	14.9
Edison (1996)	387	306	79.1	81	20.9

Note: "Base Year" is the year prior to the year each school became a magnet.

DISTRICT Z CURRENT YEAR DATA FOR MAGNET SCHOOLS

Magnet school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Adams	459	365	79.5	94	20.5
Edison	400	326	81.5	74	18.5

Since becoming a magnet school last year, Adams has decreased in MGI from 85.1 percent to 79.5 percent and the district projects that through operation as a magnet school MGI will continue to be reduced over the next three years. At Edison, the district projects that MGI will be reduced over the next three years through its operation as a magnet even though MGI increased 2.4 percent, from 79.1 percent to 81.5 percent since the school first became a magnet. Because of the increase, this school would be found ineligible unless the increase in MGI in the current year was not caused by the magnet school. This may be shown through data indicating an increase either in minority enrollment districtwide or in the area served by the magnet school.

If District Z's districtwide elementary school enrollment has become more minority isolated due to districtwide demographic changes in the student population and if a magnet or a feeder school's increase in MGI is *less* than the districtwide increase in MGI, ED will conclude that the school's increase in MGI was not the result of the magnet programs, but due to the overall effect of demographic changes in the district as a whole at the elementary level.

DISTRICT Z BASE YEAR DATA FOR FEEDER SCHOOLS

Feeder school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Rose	398	301	75.6	97	24.4
Rocky Mount	289	199	68.9	90	31.1
Wheeler	239	144	60.3	95	39.7
King	289	144	49.8	145	50.2
Tinker	429	173	40.3	256	59.7
Holly	481	122	25.4	359	74.6
Districtwide	2,961	1,771	59.8	1,190	40.2

DISTRICT Z CURRENT YEAR DATA FOR FEEDER SCHOOLS

Feeder school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Rose	401	278	69.3	123	30.7
Rocky Mount	291	211	72.5	80	27.5
Wheeler	251	153	61.0	98	39.0
King	277	149	53.8	128	46.2
Tinker	424	198	46.7	226	53.3
Holly	475	130	27.4	345	72.6
Districtwide	2,978	1,810	60.8	1,168	39.2

DISTRICT Z PROJECTED 1998–1999 DATA FOR MAGNET SCHOOLS

Magnet school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Adams	469	349	74.4	120	25.6
Edison	410	312	76.1	98	23.9

DISTRICT Z PROJECTED 1999–2000 DATA FOR MAGNET SCHOOLS

Magnet school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Adams	483	331	68.5	152	31.5
Edison	407	289	71.0	118	29.0

DISTRICT Z PROJECTED 2000–2001 DATA FOR MAGNET SCHOOLS

Magnet school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Adams	489	307	62.8	182	37.2
Edison	409	266	65.0	143	35.0

DISTRICT Z PROJECTED 1998–1999 DATA FOR FEEDER SCHOOLS

Feeder school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Rose	400	272	68.0	128	32.0
Rocky Mount	306	216	70.6	90	29.4
Wheeler	250	148	59.2	102	40.8
King	280	151	53.9	129	46.1
Tinker	417	232	55.6	185	44.4
Holly	447	170	38.0	277	62.0
Districtwide	2,979	1,850	62.1	1,129	37.9

DISTRICT Z PROJECTED 1999–2000 DATA FOR FEEDER SCHOOLS

Feeder school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Rose	396	265	66.9	131	33.1
Rocky Mount	293	202	68.9	91	31.1
Wheeler	259	153	59.1	105	40.9

DISTRICT Z PROJECTED 1999–2000 DATA FOR FEEDER SCHOOLS—Continued

Feeder school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
King	291	169	58.1	122	41.9
Tinker	418	242	57.9	176	42.1
Holly	451	216	47.9	235	52.1
Districtwide	2,998	1,867	62.3	1,131	37.7

DISTRICT Z PROJECTED 2000–2001 DATA FOR FEEDER SCHOOLS

Feeder school	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Rose	400	267	66.8	133	33.2
Rocky Mount	299	204	68.2	95	31.8
Wheeler	262	154	58.8	108	41.2
King	302	181	59.9	121	40.1
Tinker	419	244	58.2	175	41.8
Holly	441	227	51.5	214	48.5
Districtwide	3,021	1,850	61.2	1,171	38.8

However, as with the Edison magnet, if the MGI in a magnet increases above the districtwide increase between the base year and the current year, an applicant must demonstrate that the magnet is not causing the problem. In order to show that the increase in MGI at a particular school is not the result of the operation of a magnet, a district should provide student transfer data on the number of minority and non-minority students that attend the magnet program from the other feeder schools in the district for the current year. If, by subtracting from the magnet enrollment those students that came from other schools, the MGI is higher than the actual MGI for the current year, it can be concluded that the increase in MGI was not caused by the magnet school.

CURRENT YEAR STUDENT TRANSFER DATA FOR MAGNET SCHOOLS THAT INCREASE IN MINORITY GROUP ISOLATION ABOVE THE DISTRICTWIDE AVERAGE

	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Edison (1997)	400	326	81.5	74	18.5
Students who transferred from feeder schools to Edison in order to attend magnet	50	31	.....	19	
Edison enrollment with transfer students "returned" to feeder schools	350	295	84.3	55	15.7

CURRENT YEAR STUDENT TRANSFER DATA FOR FEEDER SCHOOLS THAT INCREASE IN MINORITY GROUP ISOLATION ABOVE THE DISTRICTWIDE AVERAGE

	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Rocky Mount (1997)	291	211	72.5	80	27.5
Students who transferred to Edison to attend magnet	10	8	.....	2	
Students who transferred to Adams to attend magnet	6	6	.....	0	
Rocky Mount enrollment if transfer students were "returned"	307	225	73.3	82	26.7

2. Feeder School Analysis

In District Z, two feeder schools whose MGI was greater than the districtwide average, Rocky Mount and Wheeler, increased in MGI by 3.7 percent and 0.7 percent respectively between the base year and the current year. Since Wheeler's MGI increase of 0.7 percent is less than the districtwide MGI increase of 1.0 percent for the same time period, Wheeler's MGI increase would be considered to be due to the demographic changes in the district and further scrutiny of Wheeler is not required.

Because Rocky Mount, a feeder school to magnet programs at Adams and Edison, increased in MGI over the districtwide average from 68.9 percent to 72.5 percent, this would make both Adams and Edison ineligible unless the district demonstrates that the increase was not because of the magnet programs. The clearest way for an applicant to show this is to provide student transfer data on the number of minority and non-minority students that left Rocky Mount to attend magnet programs at Adams and Edison. (See previous student transfer data.) By adding the number of students that transferred to the magnet programs to Rocky Mount's total enrollment, ED can determine whether the increase was due to the magnet program. If it can be demonstrated that without the magnet

program, the MGI at the feeder school would be even higher, these magnet schools would be found eligible.

Some applicants may find that they are unable to provide the type of student transfer data referred to previously. In some cases, these applicants may be able to present demographic or other statistical data and information that would satisfy the requirements of the statute and regulations. This demographic data must persuasively demonstrate that the operation of a proposed magnet school would reduce, eliminate, or prevent minority group isolation in the applicant's magnet schools and would not result in an increase of MGI at one of the applicant's feeder schools above the districtwide percentage for minority students at the same grade levels as those served in the magnet school. (34 CFR § 280.20(g)). For example, an applicant might include data provided to it by a local social service agency about the numbers and concentration of families in a recent influx of immigrants into the neighborhood or attendance zone of the feeder school.

3. Additional Base-Year Data

If an applicant believes that comparing a magnet program's current-year enrollment data with its base year enrollment data—*i.e.*, data from the year prior to the year each school became a magnet or a feeder—is misleading due to significant changes that have occurred in attendance zones or other factors affecting the magnet school or in the closing and combining of other schools with the magnet school, additional and more recent enrollment data for an alternative to the base year may be submitted along with a justification for its submission.

Objective: Conversion of an Existing School to a New Magnet Program

District X will convert Williams, an existing elementary school, to a new elementary magnet program. Currently, Williams has a minority enrollment of 94.67 percent. The district projects that the magnet program will reduce minority group isolation at Williams to 89 percent in the first year of the project. The projection of enrollment should be based upon reasonable assumptions and should clearly state the basis for these assumptions, *e.g.*, parent or student interest surveys, or other objective indicators, such as waiting lists for other magnet schools in the district.

DISTRICT X CURRENT YEAR DATA FOR MAGNET & FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Hill (Magnet)	450	426	94.7	24	5.3
Shaw (Feeder)	398	179	44.9	219	55.1
Smith (Feeder)	477	186	39.0	291	61.0
Districtwide	4,704	2,598	55.2	2,106	44.8

DISTRICT X PROJECTED 1998–1999 DATA FOR MAGNET & FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Hill (Magnet)	450	400	89.0	50	11.0
Shaw (Feeder)	404	195	48.3	209	51.7
Smith (Feeder)	471	191	40.5	280	59.5
Districtwide	4,712	2,622	55.6	2,090	44.4

DISTRICT X PROJECTED 1999–2000 DATA FOR MAGNET & FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Hill (Magnet)	500	415	83.0	85	17.0
Shaw (Feeder)	406	203	50.0	203	50.0
Smith (Feeder)	482	205	42.5	277	57.5
Districtwide	4,794	2,683	55.9	2,111	44.1

DISTRICT X PROJECTED 2000–2001 DATA FOR MAGNET & FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Hill (Magnet)	600	450	75.0	150	25.0
Shaw (Feeder)	410	2 15	52.4	195	47.6
Smith (Feeder)	477	229	48.0	248	52.0
Districtwide	4,815	2,690	55.9	2,125	44.1

Objective: Construction of New Magnet School/Reopening Closed School

District Y will construct a new school, Ashe, and open its magnet program in 1999. There is no pre-existing school, and consequently, it appears that no enrollment data are readily available to use as a comparison. However, the district estimates that if the proposed magnet school had opened as a "neighborhood school," without a magnet program designed to attract students from outside the "neighborhood" or attendance zone, it would have a minority enrollment of 67 percent. This estimate was based on national census tract data,

supplemented by more current data on the neighborhood provided by the local county government. The district further reasonably anticipates, based on surveys and other indicators, that when the new school opens as a magnet school in 1999, it will have a minority enrollment of 58 percent.

Note that in this example, since the school will not open until the second year of the project (the 1999–2000 school year), data is needed only for the current year and each of the two years of the project during which the magnet at Ashe will be implemented.

DISTRICT Y CURRENT YEAR DATA FOR MAGNET & FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Ashe (Magnet)	600	400	66.7	200	33.3
Mason (Feeder)	298	101	33.9	197	66.1
Vine (Feeder)	324	111	34.2	213	65.8
Districtwide	2,511	1,339	53.3	1,172	46.7

DISTRICT Y PROJECTED 1999–2000 DATA FOR MAGNET & FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Ashe (Magnet)	600	348	58.0	252	42.0
Mason (Feeder)	290	133	45.8	157	54.2
Vine (Feeder)	332	144	43.4	188	56.6
Districtwide	2,559	1,352	52.8	1,207	47.2

DISTRICT Y PROJECTED 2000–2001 DATA FOR MAGNET & FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Ashe (Magnet)	600	300	50.0	300	50.0
Mason (Feeder)	300	145	48.3	155	52.7
Vine (Feeder)	336	170	50.6	166	49.4
Districtwide	2,604	1,383	56.2	1,221	43.8

Objective: Reduction, Elimination, or Prevention of MGI at Targeted Feeder Schools

Many applicants apply for MSAP funding to reduce, eliminate, or prevent minority group isolation at a magnet school. However, some applicants have established magnet programs at schools that are not minority-isolated for the purpose of reducing, eliminating, or preventing minority isolation at one or more targeted feeder schools. The data requirements and analysis for this type of magnet program are the same as described for "Existing Magnet Schools." In this example, MGI is being reduced in each of the targeted feeder schools.

BASE YEAR DATA FOR MAGNET & FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Grant (Magnet)	505	62	12.3	443	87.7
North (Feeder)	449	347	77.3	102	22.7
Lewis (Feeder)	404	355	87.9	49	12.1
Clark (Feeder)	471	459	97.5	12	2.5
Districtwide	1,829	1,223	66.9	606	33.1

CURRENT YEAR DATA FOR MAGNET & FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Grant (Magnet)	520	105	20.2	415	79.8
North (Feeder)	453	338	74.6	115	25.4
Lewis (Feeder)	398	335	84.1	63	15.9
Clark (Feeder)	477	443	92.9	34	7.1
Districtwide	1,848	1,221	66.1	627	33.9

PROJECTED 1998–1999 DATA FOR MAGNET & FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Grant (Magnet)	526	139	26.5	387	73.5
North (Feeder)	461	331	71.9	130	28.1
Lewis (Feeder)	424	347	81.8	77	18.2
Clark (Feeder)	499	427	85.5	72	14.5
Districtwide	1,910	1,244	65.1	664	34.9

PROJECTED 1999–2000 DATA FOR MAGNET & FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Grant (Magnet)	532	200	37.5	332	62.5
North (Feeder)	470	329	70.0	141	30.0
Lewis (Feeder)	445	344	77.2	101	22.8
Clark (Feeder)	528	425	80.4	103	19.6
Districtwide	1,975	1,298	65.7	677	34.3

PROJECTED 2000–2001 DATA FOR MAGNET & FEEDER SCHOOLS

School	Total enrollment	Minority number	Minority percentage	Non-minority number	Non-minority percentage
Grant (Magnet)	548	263	48.0	285	52.0
North (Feeder)	475	316	66.5	159	33.5
Lewis (Feeder)	460	342	74.4	118	25.6
Clark (Feeder)	536	402	75.0	134	25.0
Districtwide	2,019	1,323	65.5	696	44.1

Objective: Prevention of Minority Group Isolation

An applicant that applies for MSAP funding for the purposes of preventing minority isolation must demonstrate that without the intervention of the magnet program, the magnet school or targeted feeder school will become minority-isolated within the project period. Generally this may be documented by showing a trend in the enrollment data for the proposed school. For example, if a neighborhood school currently has a 45 percent minority enrollment and, for the last three years, minority enrollment has increased an average of three percent each year (36 percent, 39 percent, and 42 percent), it is reasonable to expect that, in three years, the school would exceed 50 percent thereby becoming minority-isolated during the project period without the intervention of a magnet. The applicant in this example should submit this enrollment data in its application.

The preceding examples are not intended to be an exhaustive set of examples. Applicants with questions about their desegregation plans and the information required in support of those desegregation plans (including applicants that find that these examples do not fit their circumstances and applicants who find that the enrollment data requested is unavailable or do not reflect accurately the effectiveness of their proposed magnet program) are encouraged to contact ED for technical assistance, prior to submitting their application by calling the contact person listed under the **FOR APPLICATIONS OR INFORMATION** heading.

FOR APPLICATIONS OR INFORMATION CONTACT: Steven L. Brockhouse, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Room 4509, Washington, D.C. 20202–6140. Telephone (202) 260–2476. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request of the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 3021–3032.

Dated: February 10, 1998.

Gerald N. Tirozzi,

Assistant Secretary, Elementary and Secondary Education.

Appendix—Empowerment Zones and Enterprise Communities

Empowerment Zones and Enterprise Communities

Empowerment Zones

California: Los Angeles
California: Oakland
Georgia: Atlanta
Illinois: Chicago
Kentucky: Kentucky Highlands*
Maryland: Baltimore
Massachusetts: Boston
Michigan: Detroit
Mississippi: Mid Delta*
Missouri/Kansas: Kansas City, Kansas City
New York: Harlem, Bronx
Ohio: Cleveland
Pennsylvania/New Jersey: Philadelphia, Camden
Texas: Houston
Texas: Rio Grande Valley*

Enterprise Communities

Alabama: Birmingham
Alabama: Chambers County*
Alabama: Greene, Sumter Counties*
Arizona: Phoenix
Arizona: Arizona Border*
Arkansas: East Central*
Arkansas: Mississippi County*
Arkansas: Pulaski County
California: Imperial County*
California: L.A., Huntington Park
California: San Diego
California: San Francisco, Bayview, Hunter's Point
California: Watsonville*
Colorado: Denver
Connecticut: Bridgeport
Connecticut: New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County*
Florida: Tampa
Florida: Miami, Dade County
Georgia: Albany
Georgia: Central Savannah*
Georgia: Crisp, Dooley Counties*
Illinois: East St. Louis
Illinois: Springfield
Indiana: Indianapolis
Iowa: Des Moines
Kentucky: Louisville
Louisiana: Northeast Delta*
Louisiana: Macon Ridge*
Louisiana: New Orleans
Louisiana: Ouachita Parish
Massachusetts: Lowell
Massachusetts: Springfield
Michigan: Five Cap*
Michigan: Flint
Michigan: Muskegon
Minnesota: Minneapolis
Minnesota: St. Paul
Mississippi: Jackson
Mississippi: North Delta*
Missouri: East Prairie*
Missouri: St. Louis
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque
New Mexico: Mora, Rio Arriba, Taos Counties*
New York: Albany, Schenectady, Troy
New York: Buffalo
New York: Newburgh, Kingston
New York: Rochester
North Carolina: Charlotte
North Carolina: Halifax, Edgecombe, Wilson Counties*
North Carolina: Robeson County*
Ohio: Akron
Ohio: Columbus
Ohio: Greater Portsmouth*
Oklahoma: Choctaw, McCurtain Counties*
Oklahoma: Oklahoma City
Oregon: Josephine*
Oregon: Portland
Pennsylvania: Harrisburg
Pennsylvania: Lock Haven*
Pennsylvania: Pittsburgh
Rhode Island: Providence
South Dakota: Deadle, Spink Counties*
South Carolina: Charleston
South Carolina: Williamsburg County*
Tennessee: Fayette, Haywood Counties*
Tennessee: Memphis
Tennessee: Nashville
Tennessee/Kentucky: Scott, McCreary Counties*
Texas: Dallas
Texas: El Paso
Texas: San Antonio
Texas: Waco
Utah: Ogden
Vermont: Burlington
Virginia: Accomack*
Virginia: Norfolk
Washington: Lower Yakima*
Washington: Seattle
Washington: Tacoma
West Virginia: West Central*
West Virginia: Huntington
West Virginia: McDowell*
Wisconsin: Milwaukee

*Denotes rural designee.

[FR Doc. 98–3765 Filed 2–13–98; 8:45 am]
BILLING CODE 4000–01–P

VOL
6 3
ISS
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998
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federal register

Tuesday
February 17, 1998

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25 and 121

Revised Standards for Cargo or Baggage Compartments in Transport Category Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25 and 121

[Docket No. 28937, Amdt Nos. 25–93 and 121–269]

RIN 2120–AG42

Revised Standards for Cargo or Baggage Compartments in Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: These amendments upgrade the fire safety standards for cargo or baggage compartments in certain transport category airplanes by eliminating Class D compartments as an option for future type certification. Compartments that can no longer be designated as Class D must meet the standards for Class C or Class E compartments, as applicable. The Class D compartments in certain transport category airplanes manufactured under existing type certificates and used in passenger service must meet the fire or smoke detection and fire suppression standards for Class C compartments by early 2001 for use in air carrier, or most other commercial service. The Class D compartments in certain transport category airplanes manufactured under existing type certificates and used only for the carriage of cargo must also meet such standards or the corresponding standards for Class E compartments by that date for such service. These improved standards are adopted to increase protection from possible in-flight fires.

The FAA also requests additional comments concerning specific issues related to transport category airplanes used by part 135 operators. Those issues are enumerated under the section entitled REQUEST FOR COMMENTS.

DATES: *Effective* March 19, 1998. Additional comments, as requested in the section entitled REQUEST FOR COMMENT, must be received on or before June 17, 1998.

ADDRESSES: Additional comments on the specific issues identified under the section entitled REQUEST FOR COMMENTS may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28937, 800 Independence Avenue, SW, Washington, DC 20591, or delivered in person to Room 915G at the same address. Comments delivered must be marked: Docket 28937. Comments may also be submitted electronically to 9-nprm-cmts@faa.dot.gov. Comments may be inspected in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Transport Airplane Directorate (ANM–100), Federal Aviation Administration, 1601 Lind Avenue, SW, Renton, Washington 98055–4056. Comments in the information docket may be inspected in the Transport Airplane Directorate weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gary L. Killion, Manager, Regulations Branch, ANM–114, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Ave., SW, Renton, Washington 98055–4056; telephone (425) 227–2114.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

This document may be downloaded from the FAA regulations section of the FedWorld electronic bulletin board (telephone: 703–321–3339) or the **Federal Register's** electronic bulletin board (telephone: 202–512–1661). Internet users may access the FAA's web page at http://www.faa.gov or the **Federal Register's** web page at http://www.access.gpo.gov/su_docs to download recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must reference the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking and Final Rules should request a copy of Advisory Circular (AC) No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

The FAA's definitions of small entities may be accessed through the FAA's web page htt//www/faa.gov/avr/arm/sbrefa.htm, by contacting a local FAA official, or by contacting the FAA's Small Entity Contact listed below.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.dot.gov.

Background

These amendments are based on Notice of Proposed Rulemaking No. 97–10 (62 FR 32412, June 13, 1997). As discussed in Notice 97–10, there have been a number of fires in the cargo or baggage compartments of transport category airplanes in recent years, some of which have resulted in accidents and loss of life. Although the FAA had already taken action to improve the safety of these compartments by improving the fire-resistance of liners, the continuing occurrence of fires and the seriousness of the consequences of an uncontrolled fire resulted in a review of the entire cargo compartment classification system.

During the early post-World War II period, it was recognized that timely detection of a fire by a crewmember of the airplane while at his or her station and prompt control of the fire when detected were necessary for protection of the airplane from a fire originating in a cargo or baggage compartment. Because the requirements for detection and extinguishment varied depending on the type and location of the compartment, a classification system was established. Three classes of cargo or baggage compartments were initially established and defined in 1946 (Amendment 04–1 to part 04 of the Civil Air Regulations (CAR) effective November 1, 1946) as follows:

Class A

A compartment in which the presence of a fire would be easily discovered by a crewmember while at his or her station, and of which all parts are easily accessible in flight. This is typically a small compartment used for crew luggage, and located in the cockpit where a fire would be readily detected and extinguished by a crewmember. Due to the small size and location of the

compartment, and the relatively brief time needed to detect and extinguish a fire, a liner is not required to prevent the fire from spreading to other parts of the airplane or protect adjacent structure.

Class B

A compartment with a separate, approved smoke or fire detection system to give warning at the pilot or flight engineer station and with sufficient access in flight to enable a crewmember to effectively reach any part of the compartment with a hand fire extinguisher. Smoke or fire detection systems must provide indication of a fire to the flightcrew. Because it has a smoke or fire detection system, a Class B compartment may be located in an area remote from any crewmember's station. Due to the potentially larger size of the compartment and the greater time interval likely to occur before a fire would be extinguished, a liner meeting the flame penetration standards of § 25.855 and Part I of Appendix F of part 25 must be provided to prevent the fire from spreading to other areas of the airplane and to protect adjacent structure. Although Class B compartments are typically the large cargo portions of the cabins of airplanes carrying a combination of passengers and cargo (frequently referred to as "combi" airplanes), there are also Class B compartments that are relatively small baggage compartments located within the pressurized portions of airplanes designed for executive transportation.

Class C

As defined at the time of initial classification in 1946, any compartment that did not fall into either Class A or B was a Class C compartment. Class C compartments differ from Class B compartments primarily in that built-in extinguishing systems are required for control of fires in lieu of crewmember accessibility. As with Class B compartments, smoke or fire detection systems must be provided. Due to the use of a built-in extinguishing system and closer control of ventilating airflow, the distribution of extinguishing agent in a Class C compartment is considerably more uniform than in a Class B compartment. The volumes of Class C compartments in transport category airplanes currently used in domestic service range from approximately 700 to 3,000 cubic feet.

Later, two additional classes of cargo or baggage compartments were established and defined as follows:

Class D

A compartment in which a fire would be completely contained without endangering the safety of the airplane or the occupants (Amendment 4b–6 to part 4b of the CAR effective March 5, 1952). A Class D compartment is similar to a Class C compartment in that both may be located in areas that are not readily accessible to a crewmember. As originally defined in 1952, Class D compartments were required to have smoke or fire detection systems; however, that requirement was deleted shortly thereafter. In lieu of providing smoke or fire detection and extinguishment, Class D compartments are designed to control a fire by severely restricting the supply of available oxygen. Because an oxygen-deprived fire might continue to smolder for the duration of a flight, the capability of the liner to resist flame penetration is especially important. A note following the definition of a Class D compartment stated, "For compartments having a volume not in excess of 500 cubic feet, an airflow of not more than 1,500 cubic feet per hour is considered acceptable. For larger compartments, lesser airflow may be applicable." That note was interpreted to mean that a Class D compartment could not exceed 2,000 cubic feet in volume even if the leakage of air into the compartment was zero. The standards for Class D compartments were later amended (Amendment 25–60, 51 FR 18236, May 16, 1986) to specifically limit the volume of those compartments to 1,000 cubic feet; however, some previously-approved airplanes in air carrier service have Class D compartments as large as 1,630 cubic feet. Other airplanes designed for executive transportation, and also used in on-demand service, have relatively small Class D compartments located outside the pressurized portions of the cabin.

Class E

A cargo compartment of an airplane used only for the carriage of cargo (Amendment 4b–10 to part 4b of the CAR, adopted in 1959). A smoke or fire detection system is required. In lieu of providing extinguishment, means must be provided to shut off the flow of ventilating air to or within a Class E compartment. In addition, procedures, such as depressurizing a pressurized airplane, are stipulated to minimize the amount of oxygen available in the event a fire occurs in a Class E compartment. Typically, a Class E compartment is the entire cabin of an all-cargo airplane; however, Class E compartments may be located in other portions of the airplane. This, of course, does not preclude the installation of compartments of other classes in all-cargo airplanes.

Prior to the adoption of § 25.858 in 1980, fire or smoke detection systems that provided indication within five minutes were considered acceptable. In order to ensure that a fire would be detected in time to permit effective use of the means provided to control it, § 25.858 was adopted at that time (Amendment 25–54, 45 FR 60173, September 11, 1980) to require the detection systems of Class B, C and E compartments to provide visual indication to the flightcrew within one minute of the start of the fire.

It should be noted that the overhead storage areas and certain other areas in the cabins of passenger-carrying airplanes are considered "stowage" compartments rather than cargo or baggage compartments. They are therefore not required to meet these standards.

Although the standards for Class A, B, C, or D compartments make no distinction between compartments used for the carriage of passengers' baggage and those used for cargo, most of the industry experience at the time they were classified was limited to the carriage of passengers' baggage. Furthermore, compartments seldom, if ever, exceeded 200 cubic feet in volume at that time.

When first defined, Class D compartments were envisioned to be small compartments, although not as small as Class A compartments, and were to suppress a fire by severely restricting the amount of available oxygen. Later, however, larger Class D compartments were installed in transport category airplanes, increasing both the amount of potentially combustible material and the available oxygen. Although there is little or no flow of air into a Class D compartment at the time a fire occurs, there is oxygen available from the air already contained in the compartment. In some instances, particularly when the compartment is larger or only partially filled, the oxygen already present in the compartment may be sufficient to support an intense fire long enough for it to penetrate the liner. Once the integrity of the liner is compromised, there is an unlimited flow of air into the compartment, resulting in an uncontrollable fire that can quickly spread throughout the rest of the airplane.

An uncontrollable fire of this nature did occur in 1980 when a Saudi Arabian Airlines Lockheed L–1011 was destroyed shortly after landing. The fire, which resulted in a loss of 301 lives, was reported to have started in a Class

D compartment. (The compartment in that airplane is sometimes described erroneously as a Class C compartment because it has smoke detection. During normal operation, the compartment has ventilating airflow greater than that generally acceptable for a Class D compartment in order to facilitate the carriage of live animals. When a fire is detected, the ventilating airflow is shut off to restrict the supply of oxygen. That compartment, therefore, functioned as a Class D compartment insofar as that fire is concerned.)

The growing concern over this and other reports of cargo or baggage compartment fires led to the adoption of Amendment 25–60. In addition to establishing a maximum volume of 1,000 cubic feet for Class D compartments, Amendment 25–60 also established new standards for liners with greater resistance to flame penetration for use in Class C and D compartments. That amendment applies to transport category airplanes for which an application for type certificate is made on or after June 16, 1985. Similar, but not identical, standards were also established for the liners of other transport category airplanes operated under the provisions of parts 121 or 135 (Amendments 121–202 and 135–31, 54 FR 7384, February 17, 1989). Operators of those airplanes were required to install liners that meet the new standards by March 20, 1991. Unlike Amendment 25–60, Amendments 121–202 and 135–31 do not establish a maximum volume for Class D compartments. Also Amendment 25–60 applies to all Class C or D compartments regardless of size, while Amendments 121–202 and 135–31 apply only to compartments greater than 200 cubic feet. The safety benefits that could be gained at that time by replacing existing liners in compartments smaller than 200 cubic feet were not considered sufficient to justify the cost of doing so. As discussed in greater detail below, the subsequent introduction of consumer aerosol cans with highly flammable propellants has introduced a hazard that did not exist at that time.

A Boeing 737 operated by Gulf Air was destroyed in September 1983 as a result of an inflight fire in a Class D compartment. The fire, which resulted in 112 casualties, was attributed to an incendiary device.

In February 1988, a fire occurred in the Class D compartment of an American Airlines McDonnell Douglas MD–83. Although there was no loss of life, the fire severely damaged the cabin floor above the compartment. As a result, the FAA initiated a review of service experience and existing regulations, policies and procedures pertaining to the certification of airplanes with Class D compartments. From this review, it was determined that a dozen fires had occurred in Class D Compartments over the past two decades. The consequences of those fires ranged from no airplane damage and no occupant injury to complete destruction of the Saudi Arabian Airlines Lockheed L–1011, as discussed above.

Since the time the review of Class D compartments was completed there have also been seven additional known instances of fires occurring in those compartments. Most resulted in no injuries and little or no damage to the airplane. The exception, insofar as injuries and damage are concerned, was the fire that occurred in May of 1996 in the Class D compartment of a McDonnell Douglas DC–9 operated by Valujet Airlines. Like the American Airlines MD–83 fire noted above, that fire involved the carriage of undeclared hazardous materials; however, unlike the MD–83 fire, it resulted in the destruction of the airplane with a loss of 110 lives. It must be noted that this undeclared shipment occurred in spite of existing prohibitions concerning such shipments.

In the meantime, an additional potential hazard in the cargo or baggage compartments of passenger-carrying airplanes has been brought to light. Due to environmental concerns, the aerosol cans now manufactured for consumer use utilize a mixture of propane, butane and isobutane for propellants in lieu of the non-flammable gases previously used. Passengers are not prohibited from transporting such aerosol cans by the applicable hazardous materials rules, and they have become so widely used by the general public that a high percentage of the pieces of checked baggage contain at least one aerosol can. Tests conducted by the FAA Technical Center show that they can burst if they are in a burning suitcase. The tests further show that if the burst occurs in a non-inert atmosphere, such as that of a Class D compartment, there is immediate auto-ignition of the propellant. The accompanying explosion is of such force and intensity that the liner could be rendered ineffective in limiting the supply of oxygen to the fire. Because the liner would be damaged by the explosion rather than by flame penetration, the use of a liner meeting the newer standards of Amendment 25–60 would not provide protection from this hazard. With an unlimited supply of oxygen and the integrity of the liner compromised, there is no longer any effective means to prevent an uncontrollable fire from spreading to other parts of the airplane. If, on the other hand, the burst occurs in an inert atmosphere, such as that of a Class C compartment in which the extinguishing agent has been discharged, the propellant does not ignite and poses no further hazard. (As noted above, smoke or fire detectors are required to provide indication to the flightcrew within one minute after the start of a fire, allowing sufficient time in which to inert the compartment before aerosol cans would burst.) The results of these tests are contained in Report No. DOT/FAA/CT–89/32 entitled "Fire Hazards of Aerosol Cans in Aircraft Cargo Compartments." A copy of that report was placed in the docket for examination by interested persons.

In at least one instance, a cargo or baggage compartment fire resulted in the plastic cap being melted from an aerosol can. Fortuitously, however, none of the fires experienced since the time aerosol cans with flammable propellants were introduced were of such intensity or proximity to result in an aerosol can being ruptured.

It must be noted that the probability that an ignition will occur is primarily a function of the flammability of the material being carried in the compartment and the sources of ignition; however, the consequences of a fire, once ignition has occurred, depend greatly on the fire-protection features of the compartment in which it occurs. The FAA is aware of at least four fires that have occurred in Class C compartments during the past decade—a rate of occurrence somewhat commensurate with that of fires occurring in Class D compartments. (Three of those fires involved U.S. air carriers.) In marked contrast to the fatalities that have occurred as a result of fires originating in Class D compartments, the FAA is not aware of any fatality that has occurred as a result of a fire originating in a Class C compartment.

Discussion

As noted above, some Class D compartments are much larger than envisioned at the time they were originally defined. As a result, they typically contain considerably more combustible material than anticipated. Although there is little or no airflow into a Class D compartment at the time a fire occurs, there is oxygen available from the air already contained in the compartment. In some instances, particularly in the larger compartments or those that are only partially filled, this quantity of oxygen may be sufficient to support an intense fire long

enough for it to burn through the liner. If the integrity of the liner is compromised, there is an unlimited flow of oxygen into the compartment. With the liner no longer intact and an unlimited flow of oxygen supporting the fire, there is no means to prevent it from spreading rapidly throughout the airplane. Due to the widespread use of aerosol cans with highly flammable propellants, there is now a possibility that an explosion will destroy the liner integrity. A fire originating in a Class D compartment could, therefore, become uncontrollable very quickly. In view of these possibly catastrophic results, the FAA proposed in Notice 97–10 to amend past 25 to eliminate Class D compartments altogether. Compartments in passenger-carrying airplanes that could no longer be approved as Class D compartments would have to meet the standards of Class C compartments.

Due to uncertainties concerning the availability of suitable suppression agents, as discussed in greater detail under Halon Considerations below, the FAA also considered the possibility of requiring only the installation of detection systems. Having a detection system would enable the flightcrew to abort a takeoff if an ignition occurred during the brief period before the airplane became airborne. If, on the other hand, the fire occurred after the airplane became airborne, which is more likely, the fire could burn out of control before a safe landing could be made. (This, of course, refers to compartments other than Class E. As discussed below, Class E compartments are required to have means other than extinguishing systems to control any fire that may occur.) In that regard, it should be noted that 301 lives were lost in the Saudi Arabian Lockheed L–1011 fire described above even though the compartment did, in fact, have a detection system. Since the installation of detection systems alone would provide only a small incremental increase in safety, it is essential that both detection and suppression systems be provided for these compartments.

As discussed above, Class E compartments may be installed in airplanes used only for the carriage of cargo. As in the case of a Class C compartment, a smoke or fire detection system is required for a Class E compartment. In lieu of providing an extinguishing system, as required for a Class C compartment, means must be provided to shut off the flow of ventilating air to or within a Class E compartment. In addition, procedures, such as depressurizing the airplane, are stipulated to further minimize the amount of oxygen available in the event a fire occurs in a Class E compartments could be shown to meet the standards of Class E compartments in lieu of those for Class C compartments. The installation of smoke r fire detection systems and the means provided to minimize the amount of oxygen in Class E compartments would provide an improvement in safety for compartments presently designated as Class D and installed in all-cargo airplanes. The benefit from that improvement in the safety of operation of all-cargo airplanes would be commensurate with the cost of converting Class D compartments to Class E compartments.

Part 25 contains an inconsistency between the terminology used in § 25.857 and that of § 25.858. The former refers to a "smoke detector or fire detector system" for Class B, C or E compartments while the latter refers to compartments with "fire detection provisions." Smoke detectors are, of course, a form of fire detectors since the purpose of installing a smoke detection system is to detect a fire. Nevertheless, the use of different terminology in the two sections may cause confusion. For consistency with § 25.857, the FAA proposed that § 25.858 would be amended to refer to "smoke or fire detection provisions." That would place no additional burden on any person since the intent of § 25.858 would remain unchanged.

It was also noted that the term "fire extinguishing system" appearing in § 25.857(c) in regard to Class C compartments is actually a misnomer in that the system is not required to extinguish a fire in its entirety, but rather to suppress it until it can be completely extinguished by ground personnel following a safe landing. Although the intent of the term is well-understood, consideration was given to replacing it with "fire suppression system" for technical accuracy. While the latter would be more accurate, it appeared that changing the terminology at this time could actually create confusion and, therefore, be counterproductive. The FAA, therefore, did not propose any change to § 25.857(c) in that regard.

Although the amendment to part 25 proposed in Notice 97–10 would provide new standards for future transport category airplanes, it would not affect airplanes currently in service nor the airplanes that will be produced under type certificates for which application was made prior to the effective date of the amendment. The FAA, therefore, proposed that parts 121 and 135 would be amended as well to require the Class D compartments of transport category airplanes type-certificated after January 1, 1958, to meet the standards for Class C or Class E compartments, as applicable, when they are used in air carrier or commercial operations. Although those compartments need not be reidentified as such, they would become the equivalent of Class C (in regard to detection and suppression) or Class E compartments (in regard to detection and means to limit ventilating air flow).

The date January 1, 1958, was chosen so that all turbine-powered transport category airplanes, except for a few 1947 vintage Grumman Mallard amphibians and 1953–1958 vintage Convair 340s and 440s converted from reciprocating power, would be included. No reciprocating-powered transport category airplanes are known to be used currently in passenger service, and the few remaining in cargo service would be excluded. Compliance was not proposed for those older airplanes because their advanced age and small numbers would make compliance impractical from an economic standpoint. This is consistent with similar exclusions made for those airplanes from other retroactive requirements adopted for flammability of seat cushions (49 FR 43188, October 24, 1984), flammability of cabin interior components (51 FR 26206, July 21, 1986), cargo or baggage compartments liners (54 FR 7384, February 17, 1989) and access to passenger emergency exits (57 FR 19244, May 4, 1992). Nevertheless, the FAA specifically requested comments as to the feasibility of requiring those older airplanes to comply and the safety benefits likely to be realized. The FAA noted that it retained the option of including applicability in the final rule to transport category airplanes type-certificated prior to January 1, 1958, in the event comments indicate that a significant safety benefit could be realized.

As proposed in Notice 97–10, the changes to parts 121 and 135 concerning Class D compartments would require compliance within three years after the effective date of the amendment. It was noted that Class D compartment in passenger-carrying airplanes would be required to comply with existing standards for Class C compartments. Since the rulemaking would not involve any new technology and installation components are readily available, compliance within three years was considered feasible. A three-year compliance period would also allow sufficient time for the necessary modifications to be performed while each airplane is out of service for scheduled maintenance activity.

As noted above, the compartments in all-cargo airplanes could be shown to meet the standards of Class E compartments in lieu of those for Class C compartments. The proposed three-year compliance period was also considered appropriate for operators that elect to meet the standards for Class E compartments. As in the case of Class C compartment standards, the standards for Class E compartments do not involve any new technology and installation components are readily available.

Although the FAA considered that a three-year compliance period would not impose an unreasonable burden on any operator, based on available information, the FAA specifically requested comments as to whether a longer compliance period would be needed for particular operators (for example, small carriers) due to their particular circumstances. The FAA noted that it would retain the option of adopting a longer compliance period in the final rule based on such comments.

The FAA also noted that it intends to monitor operators' compliance. Such monitoring would serve two purposes. First, it would help to ensure that the carriers are converting affected compartments on a regular basis, so as to avoid disruptions in service, and to avoid requests for extensions near the end of the compliance period. Second, the FAA could inform the public of the operators' progress in achieving compliance. The FAA, therefore, proposed specific reporting requirements for affected operators under parts 121 and 135. As proposed, a new paragraph would be added to §§ 121.314 and 135.169 to require each certificate holder to report, on a quarterly basis, the serial numbers of the airplanes in that holder's fleet in which all Class D compartments have been retrofitted to meet Class C or E requirements, and the serial numbers of airplanes that have Class D compartments yet to be retrofitted.

The FAA intends to make the reported information publicly available, thus allowing the public to monitor the carriers' compliance progress. As required by the Paperwork Reduction Act, the Office of Management and Budget (OMB) has granted approval for the proposed reporting requirements. The assigned information collection control number, 2120–0614 will be listed in part 11, subpart F, of Title 14. This OMB approval expires August 31, 2000.

The FAA also requested comments on what effects, if any, mandatory public disclosure requirements would have on the behavior of operators and others, given that the FAA intends to collect and make the information publicly available. For example would disclosure of the reported information result in compliance with retrofit requirements sooner than would otherwise be the case? If so, what effect would this have on the total amount and timing of benefits and costs of the rule? Also, what would be the best way to collect and make the information available, in order to enhance its usefulness to the public?

As noted above, the new standards adopted in parts 121 and 135 for liners in Class C and D compartments are similar, but not identical, to those adopted for part 25. Section 25.855(c), as amended by Amendment 25–60, states that ceiling and sidewall liner panels in such compartments must meet the test requirements of Part III of Appendix F of part 25. At the time the corresponding standards of parts 121 and 135 were adopted, it was found that panels of glass fiber reinforced resin consistently meet or come very close to meeting the test requirements of Part III of Appendix F. As a result, the cost of replacing them with panels meeting Part III of Appendix F would not have been commensurate with the negligible improvement in safety that could be realized. Section 121.314(a) therefore permits the ceiling and sidewall panels to be constructed of materials that meet the test requirements of Part III of Appendix F or, alternatively, of glass fiber reinforced resin. Similarly, it was also found that panels of aluminum construction came close to meeting the test requirements of Part III of Appendix F, although not as close as those constructed of glass fiber reinforced resin. Section 121.314(a) therefore permits continued use of ceiling and sidewall panels constructed of aluminum provided they were approved prior to March 20, 1989. Since the FAA did not propose any change in this regard, Class D compartments that are reconfigured to the equivalent of Class C compartments could continue to utilize glass fiber reinforced resin panels or, if they were approved prior to March 20, 1989, aluminum panels in lieu of those meeting the test requirements of Part III of Appendix F.

Due to the recent adoption of part 119 and related amendments to part 121 (60 FR 65832, December 29, 1995), scheduled operations of propeller-driven transport category airplanes with ten to thirty passenger seats and all turbojet-powered airplanes, regardless of their seating capacity, must be conducted under the provisions of part 121 rather than part 135. Nevertheless, changes to part 135 were proposed because non-scheduled operations of transport category airplanes with ten or thirty passenger seats may still be conducted under part 135. Scheduled, as well as non-scheduled, operations of propeller-driven airplanes with fewer than ten passenger seats may also remain under part 135; however, none of these are transport category.

Halon Considerations

As proposed in Notice 97–10, most Class D compartments would, in essence, become Class C compartments. Operators of all-cargo airplanes would have the option of converting their Class D compartments to Class E compartments; however, operators of passenger airplanes would have to convert their Class D compartments to meet the requirements of Class C. Although they were not previously required to have any means of fire extinguishment, the Class D compartments in passenger airplanes would have to have approved built-in fire extinguishing (or suppression) systems installed as required by § 25.857(c)(2). Currently the most effective and most commonly used suppression agent is a halogenated hydrocarbon known as halon.

Although reserve supplies of halon are currently available, the manufacture of additional halon is restricted under the Montreal Protocol, an international agreement to phase out production of ozone-depleting substances, including halon. The Montreal Protocol, in existence since 1987, prohibits the manufacture or import of new halon in all developed countries (including the United States) as of January 1, 1994, and will extend this prohibition to developing countries in the future. At this time, there is no restriction on the use of existing supplies of halon manufactured prior to 1994.

Prior to the issuance of Notice 97–10, some operators expressed concern that they would be required to install suppression systems which would, as a matter of practicality, utilize halon, then be required by the FAA or another government agency to replace those suppression systems with systems that do not utilize halon. The FAA would not do so for two reasons. First, halon has been shown to be an effective suppression agent. The FAA would, therefore, not require its replacement due to safety considerations. Second, the FAA would not require its replacement due to environmental considerations because the FAA lacks the statutory authority to do so in any event. The federal agency that would have that authority is the Environmental Protection Agency (EPA).

The EPA is responsible for the regulation of halons in accordance with the Montreal Protocol and the requirements and authority of Sections 602 and 604 of Title VI of the Clean Air Act. The EPA has advised in its letter of May 8, 1997, that it does not intend to ban the use of halon in installed fire suppression systems for the life of the airplanes, that it can support the use of stockpiled halons to retrofit aircraft cargo holds, and that it can support these policies in international negotiations related to aircraft or environmental matters. A copy of this letter was placed in the docket for examination by interested persons. Nevertheless, the EPA support for this rulemaking program is conditional on airline and aircraft industry support of on-going efforts to develop suitable alternatives for use in future aircraft, and on FAA's accelerated efforts to develop criteria for certification of alternatives, as described more fully below.

In this regard, the FAA has participated in an extensive program to develop criteria on which to evaluate possible alternatives. Although initially proposed by the FAA, this is an international program with active participation by the aviation industry and the regulatory authorities in Europe and Canada. It must be emphasized that the work of this group, which is known as the International Halon Replacement Working Group, is to participate in the research and development of alternative agents and systems—not to select specific agents to replace halons. The FAA has accelerated development of criteria for certification of alternatives and is committed to expeditious review and certification of alternatives as they are developed.

The objective of this program is to develop certification criteria for approval of alternative agents and systems. Such alternatives must, of course, have satisfactory environmental characteristics, such as reduced ozone depletion potential, global warming potential and atmospheric lifetime. In order to maintain the excellent record of in-flight fire safety that exists today, new agents and systems must provide extinguishing and suppression performance equal to or better than the halons. In this regard, the development of minimum performance standards for alternative agents and systems in cargo or baggage compartments has focused on four critical threats—cargo container fires, bulk-loaded luggage fires, surface-burning fires and fires in luggage containing aerosol cans.

In addition to performing their intended function of suppressing or extinguishing fires and having satisfactory environmental characteristics, alternative agents and systems used in airplanes must have certain other characteristics that may not be significant for non-aircraft usage. They, of course, must not present a health hazard during normal operations to persons working within the compartments or animals being shipped in the compartments. Due to the proximity of the occupants of airplanes to the cargo or baggage compartments, the cumulative toxicology effect of the agents, their pyrolytic breakdown products and the by-products of combustion must not pose an unacceptable health hazard if a fire does occur. They must be non-corrosive and otherwise compatible with aircraft materials. Discharge of the agent must leave a minimum of residue that can be safely cleaned up. Finally, such alternative agents and systems must be relatively low in weight for economical use in airplanes.

One very promising alternative is the use of a waterspray system. The FAA has conducted a very comprehensive program to develop cabin waterspray systems as a means of affording occupants more time to escape a post-crash cabin fire. Although a waterspray system serving only the cabin has not been found to be cost-effective, it appears that benefits of a waterspray system that could also serve as the extinguishing agent in a cargo or baggage compartment fire may outweigh the costs of the system.

Since the future availability of halon is uncertain, the FAA specifically invited comments concerning the following:

1. The cost, feasibility and availability of halon for use as the suppression agent in former Class D compartments that would be reconfigured to meet the requirements of Class C as a result of this proposed rulemaking;

2. The cost, feasibility and availability of waterspray systems that could provide protection from fires occurring in cargo or baggage compartments as well as in the cabin, and;

3. The cost, feasibility and availability of other possible alternative agents.

Discussion of Comments

More than 100 commenters responded to the invitation extended in Notice 97–10. The commenters included individuals, operators and manufacturers of affected airplanes, foreign airworthiness authorities, labor organizations, organizations representing aircraft manufacturers and operators, and the National Transportation Safety Board (NTSB).

The NTSB strongly supports the proposal to convert Class D compartments to Class C in passenger airplanes and to convert Class D compartments to Class E compartments in all-cargo airplanes and believes that the FAA should expedite final rulemaking in that regard.

Transport Canada also concurs with and fully supports the proposed rulemaking. The Civil Aviation Authority (CAA) of Great Britain fully supports the proposed rulemaking and proposes that parallel action be taken for equivalent airplanes registered in Joint Aviation Authorities (JAA) member countries. Although none are mentioned specifically, the CAA comment suggests that its data base may include relevant occurrences in addition to those mentioned in the preamble to Notice 97–10.

The National Association of Fire Marshals supports increased fire detection and suppression aboard airplanes and concurs with the FAA's assessment that detection alone does little to increase passenger safety when the airplane is airborne. The commenter opposes the introduction of halon suppression systems in airplanes, and recommends that the next 18 months be used to dramatically accelerate the process of approving halon alternatives. While the FAA fully supports the development of halon alternatives, that process is already being pursued as expeditiously as possible.

The FAA noted in the preamble to Notice 97–10 that one promising alternative to halon is the use of a waterspray system. Several commenters express strong support for the further development of waterspray systems, while others adamantly oppose even mentioning it. As suggested by the latter, further research is needed before it can be verified that waterspray systems are indeed viable means of suppressing cargo compartment fires. Also, their cost effectiveness has not been fully established. Nevertheless, waterspray systems are promising. Consistent with their promising—but not yet proven—status, the final rule neither requires nor prohibits the use of waterspray systems as a means of compliance.

One commenter submitted a videotape of testing conducted by a manufacturer of a combined halon and dry powder extinguishing agent. While interesting, the videotape promotes the manufacturer's product for home, stable and office use and did not directly address aircraft requirements. It, therefore, is not directly relevant to Notice 97–10.

The FAA also invited comments concerning the cost, feasibility and availability of halon or possible alternative agents. Except for the comments noted above concerning waterspray systems, none of the commenters provided any specific information in those regards.

Environment Australia expresses an understanding that the rulemaking proposed in Notice 97–10 would require the installation of halon 1301 suppression systems and draws the FAA's attention to four specific issues: the impact of increased emissions of halon 1301 from the installation of additional halon systems, the need to investigate and evaluate alternative agents for protection of unoccupied baggage compartments, potential problems in obtaining a supply of halon 1301, and possible ramifications of inconsistent national approaches. The commenter makes no specific recommendation concerning any of the above issues.

Contrary to the commenter's understanding, the current standards for Class C compartments, which would be applicable to compartments presently classed as D compartments, are written in an objective sense, without specifying the means of obtaining the objective, so that suitable replacement agents could be used in lieu of halon. Nevertheless, each issue raised by the commenter was carefully considered in the preparation of Notice 97–10 and discussed in the preamble to that document.

As discussed in the preamble to Notice 97–10, the Environmental Protection Agency (EPA) advised in its letter of May 8, 1997, that it does not intend to ban the use of halon in installed fire suppression systems for the life of the airplanes, that it can support the use of stockpiled halons to retrofit cargo compartments, and that it can support these policies in international negotiations related to aircraft or environmental matters. One commenter requested that EPA's commitment in this regard be incorporated in the final rule. The final rule is consistent with the EPA's commitment; however, it would be inappropriate and of doubtful legal effect for the FAA to commit another regulatory agency to any course of regulatory action in FAA rulemaking.

One commenter recommends that the final rule be harmonized with the corresponding regulations of the European Joint Airworthiness Authorities (JAA). The JAA is an organization whose membership consists of the airworthiness authorities of various European countries. In order to standardize and greatly simplify type certification of aircraft, JAA has adopted a common code for type certification of transport category airplanes known as Joint Aviation Requirements-25 (JAR–25). JAR-25 is patterned on, and is generally similar to, 14 CFR part 25. The JAA has also adopted other codes corresponding to other parts of the FAR. Although the JAA and FAA counterparts are generally similar, there are differences in certain areas. (The JAR-25 provisions relating to Class C, D and E compartments are the same as the part 25 provisions as they existed prior to this amendment.) The FAA and the European airworthiness authorities are working together to minimize those differences to the greatest extent possible. This includes adopting new standards that are common to both FAA and JAA codes as well as harmonizing existing differences. In this particular instance, however, the FAA considered that the importance of obtaining the safety benefits of this rule outweighed the general policy in favor of harmonization. Nevertheless, as noted above, both the Civil Aviation Authority (CAA) of Great Britain, a prominent member of the JAA, and Transport Canada fully support the rulemaking proposed in Notice 97–10 and suggest that they may pursue similar changes to their respective airworthiness codes.

In a somewhat similar vein, one commenter notes that the proposed rulemaking would apply only to part 121 and 135 operators and requests that FAA make the proposed rules equally applicable to foreign as well as domestic operators. While the FAA appreciates the competitive considerations involved, any requirement for foreign airlines to meet these standards would be dealt with more appropriately by the airworthiness authorities of their country of registry. In any event, the imposition of such requirements on foreign airlines would be beyond the scope of Notice 97–10.

The Regional Airline Association (RAA) concurs with the proposed requirement for retroactive installation of fire or smoke detection systems, but believes that extinguishing (or suppression) systems should be required only in compartments with volumes greater than 325 cubic feet. In support of that position, the RAA expresses an assumption that, in referring to "ATA (Air Transport Association of America) airplanes" and "non-ATA airplanes," the FAA is making a distinction between the larger transport category airplanes that ATA members typically operate and the small transport-category airplanes that RAA members typically operate. As discussed in Notice 97–10, ATA members agreed to install detection and suppression equipment voluntarily. The reference to non-ATA airplanes simply identifies those airplanes which are not subject to the ATA agreement. It is not related to the size of the airplane involved.

In support of its belief that suppression systems are not needed, RAA makes the erroneous assertion that most fires have occurred during takeoff when certain articles in a cargo or baggage compartment have become dislodged. Contrary to the RAA's assertion, most of the fires or cargo or baggage compartments occurred after the airplane became airborne.

The RAA also questions why the cost-benefit analysis would include Class C compartment fires when the proposed rule affects only Class D compartment fires. As noted in the preamble to Notice 97–10, the consequences of a fire depend greatly on the fire-protection features of the compartment in which it occurs. The probability that an ignition will occur, however, is primarily a function of the flammability of the material being carried in the compartment and the sources of ignition. Service experience with Class C compartments is, therefore, equally relevant insofar as the probability that a fire will occur is concerned. The RAA is correct in noting that the adverse experience with Class D compartments to date has been with larger compartments; however, the recent substitution of highly flammable propellants in consumer aerosol cans has introduced a new hazard that did not exist previously.

The RAA believes that the tests conducted by the FAA with aerosol cans were not representative of conditions that could be encountered in a small Class D compartment. In that regard the RAA does not believe that a fire of sufficient intensity to cause an aerosol can to explode could occur in smaller Class D compartments. Contrary to the RAA's understanding of the mechanism of the explosion, the fire only has to be of sufficient intensity to cause the aerosol can to burst from over pressure. When an aerosol can bursts in a non-inert atmosphere, such as that in a Class D compartment, it is likely to explode.

The RAA also believes that it is unrealistic to imagine that the resulting explosion could rupture not only the compartment liner, but also the surrounding aircraft structure. As discussed in Notice 97–10, tests have shown that an explosion of an aerosol can is of such force and intensity that the liner could be rendered ineffective in limiting the supply of oxygen to the fire. With an unlimited supply of

oxygen and the integrity of the liner compromised, there is no longer an effective means to prevent an uncontrollable fire from spreading to other parts of the airplane regardless of whether the surrounding structure of the airplane is ruptured. Notice 97–10 was intended to address this risk of uncontrollable fire rather than problems resulting from damage to surrounding structure. Regarding such damage, however, the FAA did conduct additional testing subsequent to the issuance of the notice, using a simulated aerosol can and a portion of the fuselage of a Boeing Model 727. The explosion experience in that test was of sufficient force to rupture not only the liner, but the end of the compartment and the cabin floor structure above the compartment as well. The structure of airplanes used by regional airlines would be no more resistant to such damage than 727 structure. A copy of Technical Note No. AR–TN97/103, entitled "Development of an Exploding Aerosol Can Simulator," describing that test and a videotape of the test have been added to the docket for this final rule.

The RAA notes that the FAA requires the retroactive installation of improved cargo compartment liners (Amendments 121–202 and 135–31, 54 FR 7384, February 17, 1989) only on Class C and D compartments larger than 200 cubic feet and believes that is inconsistent with the proposed requirement to install detection and suppression in all Class D compartments regardless of size. As discussed earlier, part 25 was amended to require all new installations of Class C or Class D compartments to meet the new liner standards regardless of size. Parts 121 and 135, on the other hand, require only compartments greater than 200 cubic feet to have liners that meet the new liner standards.

As discussed in Notice 97–10, the primary purpose of the liners is to withstand penetration by flames and thereby prevent the fire from spreading from the cargo or baggage compartment to other parts of the airplane. Retroactive compliance with the newer liner standards of Amendments 121–202 and 135–31 is not required for smaller compartments because the safety benefits that could be realized were not considered sufficient to justify the costs of replacing their liners. This conclusion was based on the fact that the effect of the newer liner standards was to provide an incremental increase in the ability of cargo compartments to contain fires. Because compartments smaller than 200 cubic feet contain relatively less oxygen to sustain a fire, the improvement in containment for these compartments was not considered sufficient to warrant their replacement.

In addition to its argument that no suppression is required for compartments smaller than 325 cubic feet, the RAA suggests that it may not be necessary, in relatively small airplane compartments, to provide both an initial "knockdown" discharge and the capability to maintain a 3 percent halon concentration for one hour. In RAA's view, a suppression system that simply knocks down the fire should be considered adequate for certain compartments that do not contain sufficient oxygen for a fire to continue.

The reference to a 3 percent concentration quoted by the RAA is actually contained in the Regulatory Evaluation Summary of Notice 97–10 and is the amount of halon that is typically used, not an amount that is required. The standards for Class C compartments, which the current Class D compartments in passenger-carrying airplanes would have to meet, neither specify the agent that must be used nor the specific concentration of agent that must be maintained. The agent, typically halon, and the concentrations expended must simply be sufficient to extinguish the fire altogether or suppress it until a safe landing can be made. It must be recognized, however, that a system that could not prevent a fire from growing back after initially suppressing it would not be acceptable.

In contrast, this final rule has the effect of changing, from containment to suppression, the primary means of preventing uncontrolled fires in Class D compartments in passenger-carrying operations. Rather than resulting in an incremental improvement, this change is expected to make a decisive difference in preventing uncontrolled fires, particularly under two scenarios. First, when a fire is initiated as a result of improper carriage of hazardous materials, suppression is much more likely to be successful than containment alone. Second, with the widespread use of consumer aerosol cans with highly flammable propellants, containment is no longer the primary consideration. Although still extremely important in the overall fire safety of the compartment, the capability of the liners to withstand the penetration of flames is a secondary concern because the integrity of a liner can be destroyed by the force of an exploding aerosol can regardless of its capability to resist flame penetration. Apart from its erroneous beliefs that the proposed rulemaking is inconsistent with the earlier rulemaking and that most cargo or baggage compartment fires occurred during takeoff, the RAA offered no technical justification for excluding compartments smaller than 325 cubic feet.

The FAA does acknowledge RAA's assertion that inadvertent carriage of oxygen generators aboard airplanes flown by RAA members is unlikely because their fleets typically consist of airplanes with oxygen-containing cylinders rather than oxygen generators. It must be recognized, however, that oxygen generators are only one example of hazardous flammable materials that may be loaded in compartments inadvertently or surreptitiously. Also, patrons of regional airlines would be no less likely to have aerosol cans in their checked baggage than the patrons of major airlines.

In view of the above, the FAA does not concur with the RAA's belief that compartments smaller than 325 cubic feet need not have fire suppression.

At the time Notice 97–10 was drafted, it was believed that most smaller transport category airplanes designed for business use incorporate Class B compartments that are accessible in flight and that relatively few have Class D compartments. It was also believed that most of those airplanes are used for personal or executive use under the provisions of 14 CFR part 91. Since that time it has become apparent that a significant number do have Class D compartments located in the nose or tail section outside the cabin pressure vessel and that many are, in fact, used for on-demand service under the provisions of 14 CFR part 135. Some airplanes originally designed for executive use have also been converted for all-cargo operations conducted under part 135. Consequently many more of those airplanes would be affected by the proposed rulemaking than originally anticipated.

As noted above, scheduled common-carriage operations of propeller-driven airplanes with ten to thirty passenger seats and all turbojet-powered airplanes, regardless of their seating capacity, must now be conducted under the provisions of part 121 rather than part 135. Scheduled common-carriage operations with propeller-driven airplanes having fewer than ten passenger seats may still be conducted under part 135, but none of those airplanes are transport category. Accordingly, the proposed changes to part 135 would not apply to any airplane likely to be used in scheduled passenger operations.

In regard to operations that may still be conducted under part 135, airplanes with 30 or fewer passenger seats and 7,500 pounds or less maximum payload may be used for non-scheduled, i.e. on-demand, common-carriage operations.

Typically, such operations involve charter flights for transportation of company executives, entertainment groups, etc. The transport category turbojet-powered airplanes designed for business travel (as opposed to the few larger airliners flying as executive airplanes) fall within these seating and weight limits. As discussed above some of these airplanes are used for such operations, and some do have Class D compartments. Because of the seating and payload limits, the only extant propeller-driven transport-category airplanes with Class D compartments that would be eligible for such operations are CASA C.212's or Jetstream 4101's. No airplanes of either model are known to be so used.

With passenger seats removed, transport category airplanes with 7,500 pounds or less maximum payload are also eligible for all-cargo service.

In addition to non-scheduled common carriage, airplanes with fewer than 20 passenger seats and 6,000 pounds or less payload are eligible for non-common or private carriage operations.

The National Air Transportation Association (NATA), which represents operators of airplanes utilized for on-demand flights, recommends that airplanes operated under part 135 be excluded from the proposed rulemaking. The NATA asserts that on-demand carriers maintain close control of the contents of baggage placed in their Class D compartments. In that regard, the NATA believes that the carriage of consumer aerosol cans should be prohibited. The NATA notes that part 135 operators do not transport other types of cargo, such as parcels being transported on behalf of customers other than those chartering the airplanes, tires and other aircraft parts.

The NATA states that the Class D compartments in the airplanes used in part 135 service are no larger than 25 cubic feet and, like the RAA, believes that the FAA set a precedent in that regard by requiring the retroactive installation of improved cargo compartment liners only on Class C and D compartments larger than 200 cubic feet. Raytheon, a manufacturer of such airplanes, also recommends that compartments less than 200 cubic feet not be required to comply. As discussed above, the earlier exclusion of compartments smaller than 200 cubic feet is not relevant to the hazards addressed by this rulemaking.

Approximately one dozen commenters, who identified themselves as part 135 operators, provided comments similar in nature to those of the NATA. The General Aviation Manufacturers Association (GAMA), which represents manufacturers of airplanes intended for business use, provides similar comments and suggests that such airplanes with maximum takeoff weights less than 75,000 pounds operated in non-scheduled flight under part 91 or part 135 be excluded from the rulemaking. (The FAA did not propose that any airplanes operated only under part 91 would have to comply.) GAMA also notes that no uncontrolled fire has ever occurred in a Class D compartment in a business airplane.

An operator engaged in all-cargo operations under the provisions of part 135 notes that it does not face the problem of flammables in passenger baggage (presumably referring to aerosol cans) and that the majority of cargo carried in such operations is bank documents. Bank documents are shipped in tightly compressed bundles which, according to the commenter, are not capable of spontaneous combustion.

The commenter also notes that the airflow in Learjets, which are typically used for such service, is from the main cargo bay forward, so that the flightcrew would detect any unusual fumes or odors from the cargo in time to effectively fight with on board halon or make an emergency landing. The commenter is undoubtedly referring to airplanes in which the main cabin has been converted to a cargo compartment. While the comment may be correct, it is not relevant because the main cabins of those airplanes would not be Class D compartments. The Class D compartments of Learjets and other airplanes used for such service are the small isolated compartments located in the nose or tail of the airplanes.

The FAA does not concur with the NATA suggestion that the carriage of aerosol cans should be prohibited in lieu of the proposed rulemaking. The use of consumer aerosol cans with highly flammable propellants is so widespread that it would be impossible to enforce a prohibition of this nature in any type of aircraft operation regardless of how well an operator could maintain control of the contents of its customers' baggage.

While no conclusive evidence has been presented, the commenters have raised issues worthy of further study to determine whether a significant safety benefit could be realized by requiring all transport category airplanes operated under part 135 to comply. In order to preclude delaying compliance of the airplanes flown by the mainstream part 121 operators, the FAA has elected to delay rulemaking pertaining to part 135 operators for further study. In order to assess the possible safety benefits and costs more accurately, the FAA is requesting further comments concerning the types of operations conducted under part 135. (See Request for Comments below.) Following completion of the further study, the FAA will take one of the following three actions: (1) If the FAA determines that the proposed requirements are necessary for safety and cost effective for all part 135 operators, part 135 will be amended as proposed in Notice 97–10 to require all operators of transport category airplanes with Class D compartments to comply. (2) If the FAA determines that the proposed requirements are necessary for safety and cost effective only for some types of part 135 operators, part 135 will be amended to require compliance by those operators. (3) If the FAA concludes that the proposed requirements are not necessary for safety and cost effective for part 135 operators generally, the proposal to amend part 135 will be withdrawn.

Forty-eight individuals, most of whom identified themselves as pilots for a major all-cargo airline, and a labor organization representing those pilots submitted similarly-worded comments opposing the continued use of Class E compartments. The commenters quote the statement, "In the case of all-cargo airplanes, the expected life saving benefit is assumed to be zero," and construe it to mean that the FAA does not value the lives of crew members of all-cargo airplanes. On the contrary, that statement, which appeared in the Benefits Estimates section of the preamble to Notice 97–10, merely reflects a conservative assumption made in calculating the estimated total benefits that would likely result for all airplanes, passenger and cargo, from the proposed rulemaking. It is not the basis for any action taken or not taken, and it does not, in any way, reflect a lack of concern for the safety of occupants of all-cargo airplanes. In that regard, it must be recognized that this final rule requires a higher level of safety for all-cargo airplanes by requiring the Class D compartments in those airplanes to meet the superior standards for either Class C or Class E compartments.

Those commenters, and three other labor organizations, assert that the rulemaking must eliminate Class E as well as Class D compartments as an option. Some cite a recent accident in which an all-cargo Douglas DC–10 was destroyed by a fire originating in a Class E compartment. As discussed above, Class E compartments are, like Class C compartments, required to have smoke or fire detection systems; however, means must be provided to shut off the flow of ventilating air to or within a

Class E compartment, in lieu of providing extinguishment. In addition, procedures, such as depressurizing a pressurized airplane, are specified in order to minimize the amount of oxygen available in the event a fire occurs in a Class E compartment. Class E compartments can be installed only in all-cargo airplanes since these procedures are generally not feasible in passenger-carrying airplanes.

The accident to which the commenters refer is undoubtedly that which occurred on September 5, 1996. According to the National Transportation Safety Board (NTSB), the crew made an emergency landing at New Windsor, New York, following activation of the cargo compartment smoke detectors. Although cited by the commenters as an indication that Class E compartments are unsafe, the smoke detectors provided warning that a fire had occurred; and the crew was able to land and safely evacuate the airplane approximately one hour before it was destroyed by the fire. The NTSB did not issue any safety recommendations as a result of this accident.

Adopting a final rule that would eliminate Class E compartments as well as Class D compartments would be beyond the scope of Notice 97–10, in any event, but service experience does not show that Class E compartments are unsafe as claimed by the commenters.

As proposed in Notice 97–10, part 121 would be amended to require the Class D compartments of transport category airplanes type-certificated after January 1, 1958, to meet the standards for Class C or Class E compartments, as applicable. That date was chosen so that all turbine-powered transport category airplanes, except for a few 1947 vintage Grumman Mallards and 1953–1958 vintage Convair 340s and 440s converted from reciprocating power, would be included, Compliance was not proposed for the older airplanes because their advanced age and small number would make compliance impractical from an economic standpoint. Nevertheless, the FAA specifically invited comments in that regard and retained the option of including applicability to the older transport category airplanes in the final rule if comments indicate a significant safety benefit could be realized thereby. Several commenters support the exclusion of those older airplanes. No comments were received opposing the exclusion; however, two commenters request that the date be adjusted to exclude Lockheed 188 Electras, which were type-certificated on August 2, 1958—seven months later than the proposed date.

One commenter uses its three Electras for service to certain remote Aleutian points that cannot be served safely with jet aircraft. Those airplanes plus one Electra flown by the other commenter on military contract flights are the only passenger-configured Electras in service in this country. Because of their small numbers, the manufacturer of those airplanes has chosen not to provide engineering support for the installation of detection and suppression systems. The commenter states that installing fire suppression systems on its three Electras would, therefore, present an excessive economic burden. Apart from the four passenger-configured Electras, there are approximately two dozen all-cargo configured Electras in service in the U.S.

In addition to the passenger-configured Electra flown on military contract flights and an all-cargo Electra, the other commenter also operates ten Convair 340s and 440s. That operator requests that an exclusion be made for the Convairs as well as Electras. Since the Convair airplanes were type-certificated well before January 1, 1958, that comment is interpreted to be support for the exclusion already proposed in Notice 97–10 for the older airplanes.

The FAA does not consider the information presented by the commenters sufficient to warrant a general exclusion of Electras from compliance—particularly in the absence of comments from other Electra operators opposing the January 1, 1958, date. Because the two commenters' concerns relate to circumstances peculiar to their operations, the appropriate process for considering those circumstances is a petition for exemption filed under the provisions of 14 CFR part 11. That process would entail a showing by the petitioner that the requested relief is in the public interest. The date January 1, 1958, is, therefore, adopted as proposed.

Three commenters, the RAA, a manufacturer of airline airplanes and an all-cargo airline, oppose the reporting provisions proposed in Notice 97–10. The RAA quotes the probable event rate of 0.085 cargo compartment fires per million departures stated in the Benefits Estimates section of the preamble to Notice 97–10 and characterizes the probability of one becoming injured as a result of a fire in an airplane operated by a regional carrier as an extremely remote event. The RAA believes that the reporting requirement would mislead the public into believing that airplanes that do not have detection and suppression systems installed pose a safety risk unwarranted by the probable event rate.

The manufacturer characterizes the proposed quarterly reporting requirement as unnecessary bureaucracy. That commenter further states that it is the FAA's responsibility to regulate operators and characterizes publishing information concerning persons that have not met the rule before being required to do so as invidious and of doubtful legality.

Two commenters do not particularly oppose the proposed reporting requirement, but nevertheless offer constructive suggestions. One suggests that care must be taken to present the information to the public in such a manner that it is not misleading. For example, one carrier's entire fleet may have Class D compartments while another's fleet might consist largely of airplanes that have no such compartments. The latter's progress (or lack of progress) in fleet compliance would be much less significant in terms of overall fleet safety than the former's progress. The other commenter suggests that § 121.314 specifically state that the reporting requirement is discontinued once the carrier has completed the conversion of its entire fleet.

The FAA does not consider that the dissenting commenters have provided persuasive reasons to delete the proposed reporting requirement from the final rule. In that regard, the FAA considers that the public has a strong interest in knowing how aggressively operators are acting to provide the safety benefits of compliance with this rule. Concurrence with this position is reflected in approval for the reporting requirement granted by the Office of Management and Budget. The FAA does, however, concur that the results of the required reporting must be presented to the public in a manner that is not misleading. It was understood, but not specifically stated in proposed § 121.314(d), that the reporting requirement would apply only until the carrier's entire fleet is converted. In order to preclude any confusion in that regard, the second sentence of paragraph (d) is changed to read, "Until such time as the certificate holder's entire fleet is in compliance, each certificate holder must * * *."

In addition, the reporting requirement has been revised to refer to airplanes in which all Class D compartments have been converted to Class C or Class E (i.e., those reidentified as such), or retrofitted to meet the applicable requirements of Class C or Class E. As explained elsewhere in this preamble, a Class D compartment that is converted to a Class C compartment (and

reidentified as a Class C compartment) prior to the three-year compliance date is, literally, not a Class D on that date; the airplane with that compartment would not be reported under the literal language of the proposal. However, the agency is clarifying that each airplane that has Class D compartments converted in such a manner should be reported in the same manner as an airplane on which all class D compartments have been retrofitted with the requisite detection or detection and suppression systems. This clarification is consistent with the commenters' apparent understanding of the proposal.

Several commenters express their belief that compliance should be required in less than three years, as proposed. A three-year compliance period was proposed because, according to information available to the FAA, a shorter period would not enable operators to perform the necessary modifications while their airplanes are undergoing other scheduled maintenance. Having to remove airplanes from service earlier specifically to perform the modifications required by this final rule would increase the cost of compliance to the point that the final rule would no longer be cost effective. In addition, it appears doubtful whether parts and materials would be available to enable compliance of all affected airplanes within a shorter compliance period. The FAA, therefore, does not concur that a compliance period shorter than three years would be appropriate. In any event, commenters have not been specifically asked to focus on the effects of imposing a shorter compliance period. In fact, as discussed below, most operators appear to believe that a compliance period longer than three years is warranted. Under the current circumstances, therefore, the FAA would not want to adopt a shorter compliance period without publishing a notice for additional comments. The additional notice, in turn, would result in a delay that would be counterproductive.

In contrast to the commenters that believe a compliance period earlier than three years should be adopted, several commenters believe that a longer period should be adopted. The Air Transport Association of America (ATA) and the Aerospace Industries Association (AIA), which represent airlines and manufacturers of airline airplanes, respectively, request that the compliance period should be five years. This request is based primarily on the commenters' assertions that a compliance period of less than five years would not enable compliance while the airplanes are undergoing other scheduled maintenance. The RAA requests that it be four years, but provides no specific justification for its request. The FAA has carefully evaluated the assertions made by the ATA and AIA and other available information concerning compliance. In that regard, it must be noted that the changes proposed in Notice 97–10 do not require the use of new technology. Future compartments that could no longer be Class D, and existing Class D compartments, must meet the standards for either Class C or Class E, as applicable. Those standards have been in existence for 51 and 38 years, respectively; and many of the airplanes currently in the U.S. air carrier fleet already meet them. It is also noted that approval has already been granted for the installation of detection and suppression systems in some of the models that comprise most of the affected airplanes in the U.S. air carrier fleet. The FAA recognizes that a three-year compliance period, as proposed in Notice 97–10, would be aggressive and would require careful planning; however, none of the commenters have provided credible reasons suggesting that detection and suppression systems cannot be installed in all affected airplanes within three years while the airplanes are undergoing other scheduled maintenance. A three year compliance period is, therefore, adopted as proposed.

The FAA noted in the preamble to Notice 97–10 that the term "fire extinguishing system" appearing in § 25.857(c) in regard to Class C compartments is actually a misnomer in that the system is not required to extinguish a fire in its entirely. The system is intended, instead, to suppress a fire until it can be completely extinguished by ground personnel following a safe landing. The FAA also noted that consideration was given to replacing the term with "fire suppression system" for technical accuracy, but that no change was proposed because it appeared that changing the terminology at this time could actually create confusion and, therefore, be counter-productive. Several commenters suggest the term "fire suppression system" should indeed be used in order to preclude any misunderstanding. In light of the comments received, § 25.857(c)(2) is changed to read "fire extinguishing or suppression system." This is a nonsubstantive change that places no additional burden on any person.

One commenter states that § 121.314(c) should clearly state that an existing approved Class C compartment detection system meeting the earlier five-minute detection standard remains acceptable for conversion of existing Class D compartments. The suggested change to that section is unnecessary. As discussed under Background above, § 25.858 was adopted in 1980 to require the detection systems of Class B, C and E compartments to provide visual indication to the flightcrew within one minute of the start of the fire. Prior to that time, systems that provided indication within five minutes were considered acceptable. This final rule does not require any changes to Class C compartments, including those that were approved previously when five-minute detection time was considered acceptable. In some instances, for example, a manufacturer offered a specific compartment in a specific airplane model as either a Class C or Class D compartment can convert that compartment to the previously-approved Class C compartment. By virtue of having been converted to a Class C compartment (and no longer a Class D compartment), § 121.314(c) would no longer be applicable to the compartment.

Therefore, whether it meets the older five-minute standard or the current one-minute standard would not be an issue in determining compliance with this section.

There may be instances in which a specific airplane model incorporates one or more Class C compartments with detection systems meeting only the older five minute standard and one or more Class D compartments. The existence of a previously-approved detection system in another compartment would not be relevant to whether the system for a Class D compartment in that airplane had to meet the new one-minute standard.

There may also be instances in which detection systems were installed in Class D compartments and not shown to meet any particular standard for detection (i.e., approved on the basis that they did not detract from the performance of the compartments as Class D compartments.) Those systems would have to be demonstrated to meet the current one-minute standard or replaced with systems that do.

Similarly, there are instances in which the means of fire suppression in Class D compartments were approved on the basis that the systems did not detract from the performance of the compartments as Class D compartments. Such previously-approved systems must also meet the standards for fire suppression systems in Class C

compartments or be replaced with systems that do.

The RAA, in its comments, references a system for inserting hand fire extinguishers into the compartments of Shorts SD3–60 and Jetstream 4104 airplanes. The RAA states that the compartments with the hand fire extinguishing systems were originally approved as Class C compartments, but later reidentified as Class D compartments to accommodate dispatch reliability requirements. However, these compartments are not certificated as Class C compartments. Moreover, the certification of these compartments as Class D was not centered on the need to facilitate dispatch. Therefore, for these compartments to be certificated as Class C, the applicant must demonstrate that the built-in suppression systems meet Class C requirements.

Alternatively, an RAA member always has the option of petitioning for an exemption under the provisions of 14 CFR part 11. Under part 11, an interested person may petition the Administrator for a temporary or permanent exemption from any FAA rule. In a petition for exemption, the person seeking relief must include: (1) the text or substance of the rule from which the exemption is sought; (2) a statement of the petitioner's interest; specifically, the nature and extent of the relief sought and a description of the aircraft or person(s) to be covered by the exemption; and (3) arguments for granting such an exemption, focusing on the reasons why the proposed exemption is in the public interest and would not adversely affect, or would provide an equivalent level of, safety akin to the rule from which the exemption is being sought.

In consideration a petition for exemption from the fire detection and suppression requirements, the FAA will evaluate whether the petitioner has demonstrated unique circumstances that make granting the proposed exemption in the public interest. Under 49 USC 40101(d), Congress requires the Agency, in making a public interest funding, to consider that "assigning, maintaining and enhancing safety and security are the highest priorities in air commerce." Therefore, an RAA member would have an opportunity, for example, to demonstrate that the continued use of a hand extinguisher is functionally equivalent to an approved built-in fire extinguishing system or that some other unique circumstances justifies an exemption while avoiding an adverse effect on safety.

Two commenters offer comments concerning dispatch reliability requirements. Others offer comments that actually deal with acceptable means of compliance rather than the rulemaking per se. Since the Class D compartments will become the equivalent of Class C or Class E compartments, they will be treated as such insofar as dispatch requirements are concerned. For the same reason, means that are presently acceptable for compliance with the standards for Class C or Class E compartments will remain applicable.

One commenter expresses the concern that the chemical to suppress a fire could also deplete the amount of oxygen needed to support human life. While valid, that concern is addressed by the standards already contained in § 25.851(a)(8) and (b)(1)(i).

Other commenters suggest changes that would be beyond the scope of Notice 97–10, including such diverse subjects as incorporation of extinguishment systems in containers containing hazardous materials, access to and positioning of such containers, the use of detection systems that sense both heat and smoke, improved crew training procedures, increased crew oxygen supplies, and a re-evaluation of existing Class C compartments. While some of those suggestions might have merit, they would require considerable further study and could not be adopted at this time. Several commenters provide information of an economic nature which has been considered in the preparation of the regulatory evaluation for this final rule. Although one commenter expressed a concern related to a particular Alaskan intrastate operation involving Lockheed Electras, no commenters responded to the FAA's request for comments on whether there is sufficient justification for applying the proposed rule differently to intrastate operations in Alaska.

Except as discussed above, parts 25 and 121 are amended as proposed in Notice 97–10. As also discussed above, no amendment is made to part 135 pending receipt of additional information as requested below.

Request for Comments

As a result of comments received, it appears that the impact of the proposed rulemaking on part 135 operators may be much greater than anticipated at the time Notice 97–10 was drafted. Also, it is not clear whether the proposed rulemaking would be cost beneficial for all such operators. In order to not delay the applicability of the proposed rulemaking to manufacturers and the other operators for which it has been found cost-beneficial, the FAA has elected to adopt this final rule amending parts 25 and 121 and defer the proposed changes to part 135 pending receipt of additional information. The FAA, therefore, requests additional comments addressing the following specific questions:

1. Which airplane models operated under part 135 have Class D compartments that were installed at the time of manufacture? Of these, which are used in all-cargo operations?

2. Which airplane models operated under part 135 have been subsequently modified to incorporate Class D compartments? Of those, which are used in all-cargo operations?

3. What are the sizes (by model) of the Class D compartments of airplanes operated under part 135?

4. In the case of on-demand passenger flights, are Class D compartments ever used to transport items other than the baggage of the persons chartering the airplane? If so, what types of cargo or baggage are carried in these compartments, and how frequently are they carried?

5. In the case of all-cargo flights, are the Class D compartments utilized? If so, what types of cargo or baggage are carried, and how frequently are they carried?

6. In the case of operators that have approval to transport hazardous materials, are Class D compartments ever use to transport those materials?

7. Do you have any knowledge of a fire occurring in a Class D compartment of an airplane operated under part 135? Was the fire safely contained in the compartment?

8. Are there any existing FAA-approved installations of detection and suppression systems meeting the standards for Class C compartments in these compartments?

9. For those Class D compartments for which there are no existing FAA-approved installations of detection and suppression systems, what would be the costs of designing and obtaining FAA approval of such systems?

10. How much labor would be required to retrofit the Class D compartments with detection and suppression systems? Could these modifications be accomplished during regularly scheduled maintenance, or would the airplanes need to be taken out of service specifically for this purpose? If so, for how long?

11. What would be the costs of materials and compartments needed to retrofit the Class D compartments with detection and suppression systems?

12. If the FAA required part 135 operators to install detection and suppression systems in Class D compartments, would those operators modify those compartments

accordingly, or would they comply by simply deactivating those compartments and utilizing other compartments? Be model-specific for both passenger and cargo airplanes, if possible.

13. What would be the economic consequences of deactivating a Class D compartment? Could operators utilize other compartments to continue to carry the same payloads if the Class D compartments are deactivated?

Comments submitted to Docket Number 28937 no later than May 18, 1998 will be considered. The FAA will review all additional comments relevant to the above questions and publish either a supplemental final rule presenting FAA findings and adopting any necessary changes to part 135 or a notice stating the basis for its conclusion that no further changes are warranted.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon reasoned determination that the benefits of the intended regulation justify its costs.

Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) will generate benefits that justify its costs and is a "significant regulatory action" as defined by Executive Order 12866; (2) will have a significant impact on a substantial number of small entities; and (3) will not constitute a barrier to international trade. The FAA has also determined that this rule is "significant" according to DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) because there has been considerable public interest in this subject. These analyses, available in the docket, are summarized below.

Discussion of Comments Related to the Economic Analysis

Comments related to the economic analysis can be grouped as follows: (1) comments addressing specific benefit or cost assumptions, (2) comments recommending a reduction in the compliance time, (3) comments requesting an increase in the compliance time, (4) comments calling for the expansion of detection and suppression requirements, (5) comments requesting that some operations be excepted from detection and suppression requirements. The last four groups of comments are addressed elsewhere in the preamble. What follows is a discussion of comments specifically addressing the economic assumptions.

At least one commenter raised questions regarding the inclusion of non-domestic aviation incidents, such as the Gulf Air and Saudi Arabian incidents, for purposes of developing a quantified estimate of the benefits of the rule. The FAA believes that it is reasonable to include the Gulf Air and Saudi Arabian incidents in the calculation of quantified benefits. Some may argue that these incidents are not pertinent. However, a careful examination of these accidents by FAA security and other safety experts concluded that nothing about the causes of those accidents could be classified as risks that are inherently different from U.S. risks. Thus, the FAA believes that the circumstances that caused both the fires and the deaths could occur in U.S. operations. Another alternative analysis just relying on domestic incidents could also have been done. If the two foreign accidents were not counted, of course, the total benefits quantified in the Regulatory Evaluation for this rule might be lower. However, the FAA believes that, even without considering the foreign accidents, the quantified and non-quantifiable benefits (such as the potential for increased future risk resulting from the proliferation of aerosol cans using flammable propellants) are sufficient to justify the costs of this rule. Moreover, there are other potential benefits that the FAA did not quantify, such as those fortuitous domestic cases in which the passengers and crew just barely escaped with their lives from fires initiated in Class D compartments.

Detection and Suppression Unit Cost Estimates

Few comenters provided cost estimates; most referred to cost figures from the preliminary regulatory evaluation. One major carrier, however, provided detailed detection and suppression cost estimates (for two affected airplane models) that were substantially lower than FAA estimates. Even after including out-of-service costs (which the FAA estimates do not include for reasons discussed elsewhere in the preamble) the commenter's unit cost estimates were approximately equal to—and in one case lower than—those calculated by the FAA. This is consistent with anecdotal evidence gathered by the FAA since the publication of Notice 97–10: competitive forces have in many cases significantly bid down retrofit costs. From this evidence, the FAA concludes that the original cost assumptions (which are maintained in the final regulatory analysis) and benefit-cost findings are conservative.

The Cost of Diversions

One commenter interpreted the economic analysis to imply that the FAA believes the costs associated with a false alarm are approximately $60 to $2,800 per event. "Assuming that each of our fleet types would incur one additional diversion per year," this commenter writes, "the cost is estimated to be $30,000 for a 727 and $50,000 for a DC–10." "Consequently," the commenter concludes, "the costs per diversion of $60 to $2,800 are not valid estimates."

The FAA agrees that the cost per division is in the range suggested by the commenter—in fact, this is consistent with the diversion cost assumptions used in the preliminary regulatory evaluation. In any given year, however, most airplanes will not experience a diversion. The $60 to $2,800 range is a calculation of the annualized false alarm costs per airplane—that is, the cost of a diversion weighted by the annual probability of a diversion.

It is also worth noting that the regulatory evaluation accounts for the fact that the false alarm rate exhibited by detectors installed as result of this rule will be lower than the historical false alarm rate. Current-generation detectors, for example, make use of microprocessor technology that permits the system to discriminate between fire-generated smoke and other non-hazardous particulates (water vapor, for example).

Downtime Costs

Several commenters contend that the rule will require significant downtime, and, concomitantly, result in substantial lost revenue. The Air Transport Association estimates that "it will cost $22,400 per airplane more to complete the program on a 3-year schedule compared to a 5-year schedule. For a fleet of 2,994 passenger airplanes and 321 all-cargo airplanes [figures contained in Notice 97–10], the excess cost would be over $74 million." "We do not think," ATA concludes, "that the marginal added benefits resulting from a 3-year schedule justifies the extra cost." The comment does not include specific details as to how the per-airplane cost estimate was derived.

As noted earlier, the FAA has given considerable thought to the option of

extending the compliance deadline. Based on the information received in the comments, however, the FAA still believes that a three-year compliance schedule is the optimal compromise between cost and safety considerations. First, as noted earlier, design approval has already been granted for the installation of detection and suppression systems in some of the more numerous airplane models in service with Class D compartments. The comments provide no additional information that causes the FAA to alter its conclusion that fleetwide compliance can be achieved without additional downtime.

Second, the FAA believes that revenue loss estimates provided by the airline industry are overstated. This follows since total industry losses cannot be calculated by multiplying net revenue loss (revenue minus variable operating costs) per airplane-day by the total number of down-days (the methodology apparently used in the ATA comment). While it is true that at different times during the compliance perid individual airlines will be affected to varying degrees, overall airline competition is approximately a constant-sum contest for passengers. That is, most passengers unable to book a flight of first preference (assuming aircraft unavailability as a result of this rule) will book another flight on the same or a competing airline. The fact that competition in many markets encourages airlines to increase schedule frequencies, even if available seats are plentiful, further mitigates the possible impact to the industry as a whole.[1]

Installation Labor Costs

One foreign air carrier stated that C-check work for its fleet is broken down into a number of smaller units and accomplished over a longer period of time; therefore, it is likely that some airplanes will not have a 5-day downtime period for scheduled maintenance. (The proposed rulemaking would not be directly applicable to the foreign carrier; however, the comment is noted for illustrative purposes.)

[1] It should be noted that this observation is not inconsistent with the "overbooking" phenomenon. See, for example, Crandall, Robert L., "The Unique U.S. Airline Industry," in the *Handbook of Airline Economics*, McGraw-Hill, 1995, p. 4. "The influence of even small differences in departure time on customer buying behavior creates a powerful incentive for carriers to increase frequency, even when there are plenty of seats available on existing flights . . . [T]he fact that more capacity represents more frequency—and thus a more desirable product—gives every airline an incentive to use every airplane as intensively as possible. While this strategy makes sense for each individual carrier, it produces a tendency toward perpetual oversupply."

According to the commenter, this is likely to lead to unscheduled downtime. In addition, the commenter notes "the estimated 30% reduction in labor hours, allowed in Notice 97–10 due to 'existing' access," does not apply.

Comments relating to additional downtime costs are addressed above. The FAA did note in the notice that scheduling the cargo compartment retrofit to coincide with scheduled maintenance could lower work hours by approximately 30%. The actual retrofit cost estimates, however, were not adjusted to account for this savings—this observation was made only to show that installation costs were conservatively estimated.

Summary of Final Analysis

This analysis separately considers newly-manufactured airplanes and in-service airplanes. There are 21 transport-category airplane models operating under 14 CFR part 121 that have Class D compartments. Airplanes that are expected to be permanently retired from service before the year 2001 (the assumed compliance deadline), are omitted from the analysis. Based on changes proposed in this rule, the FAA now estimates that 2,991 passenger airplanes and 313 all-cargo airplanes will be affected by the rule. These estimates are based on an inventory compiled by the FAA's National Aviation Safety Data Analysis Center (NASDAC) from airplane-specific registry and insurance records.

Cost Estimates

Cost estimates consider: (1) the costs associated with submitting compliance reports, (2) certfication expenses including one-time equipment and tooling costs, (3) fire detection and suppression equipment and installation costs, and (4) variable operating costs (fuel costs, maintenance and inspection costs, weight off-load costs, and the costs associated with unnecessary diversions initiated because of false alarms). In addition, it is assumed that Class D compartments in all-cargo airplanes will be converted to E compartments which do not require the installation of active suppression systems.

The proposal will require each affected operator to submit a quarterly report listing the serial numbers of those airplanes in its fleet that are in compliance with the provisions of the rule and those that are not in compliance. One major carrier stated that, since records of modifications of this scale are computerized, the reporting requirement will involve less than one-half of one work hour. Initially, however, reports may take additional time to generate as carriers establish procedures, forms, etc. Also, records may not be computerized for smaller carriers. Thus, FAA conservatively estimates that, on average, the rule will require two additional work hours per quarter for each of the approximately 130 affected carriers. Assuming that each carrier will file 11 reports during the three year compliance period and that the fully burdened hourly compensation rate is $65, the estimated nominal cost of this provision to the entire industry is approximately $186,000 or $151,000 at present value (printing, postage, and other miscellaneous costs are assumed negligible).

The FAA will also incur additional costs as a result of this reporting requirement. This analysis conservatively assumes that each of approximately 90 Flight Standards District Offices (FSDO) will, on average, spend approximately one-half of one work hour per quarter processing air carrier reports (some will spend no time, some considerably more than one-half hour). Also, approximately 20 hours per quarter will be required at FAA headquarters to tabulate these reports. Assuming the fully burdened hourly compensation rate is $38, the estimated nominal cost of this provision to FAA is approximately $27,000 or $22,000 at present value (data transmission costs between FAA headquarters and each of the FSDO's is assumed negligible).

Type design approval of the detection and suppression systems will be required for most airplane models affected by the proposal. Type design approval will be in the form of a supplemental type certificate (STC) issued to an applicant other than the manufacturer; or, in the case of the manufacturer, either an STC or an FAA-approved type-design change. (The requirements for obtaining FAA approval are the same in either case.) The FAA assumes that type-design approval will be required for all airplane models affected by the proposed rule. Certain models will require a separate type-certification program for each different variant, while in other cases, all variants will be sufficiently similar that type-design approval could be granted for all variants following only one type-certification program. In some instances, an alternate Class C compartment configuration has already been FAA-approved. For those models or variants, no further type-certification effort will be required.

The cost of a type-certification program of this nature ranges from $315,000 to $1.8 million depending on the airplane model. In principle, no more than one type-certification program will be needed per model or variant; since operators could elect to utilize the same detection and suppression system installations on all affected airplanes of that particular type. If additional entities obtain separate type-design approvals for a given model or variant, they will do so for economic gain, not as a result of an FAA requirement to do so. Therefore, the analysis assumes the minimum number of type-certification programs theoretically necessary to accomplish the conversions.

Detection-suppression system and installation cost estimates postulate that compartments will be fitted with a system of optical smoke detectors (configured to give indication of a fire within one minute) and a halon suppression system. The analysis further assumes a quantity of halon that will provide: (1) an initial "knockdown" discharge, and (2) the capability subsequently to maintain a 3 percent halon concentration for one hour. This is consistent with the standards currently in effect for Class C compartments.

Although the U.S. bans the import of newly-produced halon, sufficient quantities of recycled halon are known to be available to meet the additional demand generated by this rule. The cost of halon has risen from approximately $2 per pound before production was banned to $20 per pound currently. This analysis assumes that halon used in a retrofit will be available at $20 per pound. Nominal equipment and installation unit (i.e. each airplane) costs range from $13,000 to $101,000 depending on the airplane model.

Although the time to retrofit could be substantial, especially for airplanes with three Class D compartments, industry representatives state that conversions could be accomplished during a C-check, a scheduled maintenance check that occurs about once a year. C-checks are typically accomplished over a four- to five-day period. Conversions conducted concurrent with a C-check could reduce labor hours by as much as 30 percent, because many areas of the airplane are easily accessible. As noted previously, the comments received by the FAA do not provide any credible reasons that detection and suppression systems cannot be installed in all affected airplanes within three years while the airplanes are undergoing other scheduled maintenance. Therefore, this analysis attributes no foregone revenues due to downtime (i.e., time out-of-service) associated with these conversions.

Depending on the airplane model and its configuration, installing fire suppression and detection systems will add between 7 and 300 pounds to the empty weight of an airplane. This weight, in turn, will affect fuel consumption. Incremental fuel consumption costs were estimated for each airplane model based on the weight of additional equipment and suppression agent required, statistical estimates of the change in fuel consumption as a function of incremental weight by airplane type, and estimates of annual flight hours by airplane model. Annual per-airplane incremental fuel consumption estimates range from $50 to $4,900 depending on the airplane model.

Inspection and maintenance of fire detection and suppression systems will include: (1) a leak check; (2) a visual inspection of the system; (3) a sensor test; and (4) a hydrostatic check of the fire bottles. The first three checks could be accomplished at each C-check, i.e., about once per year. A hydrostatic check will involve removing and replacing the fire bottle and will occur approximately once every five years. The bottle would be returned to the halon provider where it would be recharged and checked for leaks.

Six work-hours at a burdened hourly rate of $60 will be required to conduct a leak check of the system of each compartment. A visual inspection of the system will require 1.5 hours per compartment at $60 per hour. Checking the sensors will require about one hour per compartment. It will take two mechanics one hour at a burdened hourly rate of $60 to remove and replace a fire bottle. Fire-bottle vendors typically charge between $600 and $1,000, including shipping, to perform a hydrostatic test and recharge the bottles, irrespective of the size of the bottle. Annual unit maintenance and inspection costs, therefore, range from $700 to $2,100 depending on the airplane model.

Under certain combinations, some departures might be weight-constrained. In those cases, the additional weight of the fire detection and suppressions system will require an operator to off-load passengers or cargo. The cost of his off-load penalty is measured by estimating the number of displaced passengers or the amount of displaced cargo that cannot be accommodated. (On the basis of a statistical analysis of load factors and unaccommodated demand, the FAA estimates that 5 percent of the departures will be fully booked. Generally, most of these flights are not weight constrained, but this figure is a conservative assumption.) The cost of unaccommodated off-load—approximately $0.30 per pound—is a weighted average of passenger and cargo revenue derived from revenue enplanement, and freight data collected by the Bureau of Transportation Statistics, Office of Airline Information. Annual unit off-load penalties range from $30 to $800 depending on the airplane model.

Operators will also incur costs associated with flight diversions caused the false fire warnings. Costs include incremental airplane operating costs incurred during the diversion and passenger costs. Based on a recent FAA study of Service Difficulty Reports (SDR), proprietary aircraft operating data, and information from airborne fire detection equipment manufacturers, the FAA estimates that the frequency of false alarms is approximately 44 per million departures. In the absence of more detailed information, this analysis makes the conservative assumption that all false alarms result in a diversion. Annual diversion costs per airplane range from $60 to $2,800 depending on airplane type.

Based on the above, the FAA estimates total life-cycle costs for the retrofitted fleet in nominal terms are approximately $294 million, or $193 million at present value. For a newly-manufactured airplane delivered to an ATA carrier, the rule will increase life-cycle costs for an average affected airplane by approximately $110,000 in nominal terms, or $60,000 at present value. Unit lifecycle costs for a newly-manufactured airplane delivered to a non-ATA carrier will increase by approximately $179,000, or $100,000 at present value. (Per-airplane life cycle costs for ATA carriers are lower than for non-ATA carries since they are adjusted to account for voluntary installations of detection equipment. Similarly, estimated benefits for ATA carriers are adjusted—that is, reduced—to account for this voluntary action.)

Unfunded Mandates Reform Act Analysis

Title II of the Unfunded Mandates Reform Act of 1995 requires Federal agencies to assess the effects of any Federal mandate in a proposal or final rule that may result in the expenditure by State, local, or tribal governments, or by the private sector of $100 million or more in any one year. This rule does not contain a Federal mandate meeting that criterion, therefore the requirements of the Act do not apply.

Benefits Estimates

The benefits of detection and suppression systems depend on the degree to which the systems enable an airplane to avert a catastrophic accident in the event a fire occurs in a cargo or baggage compartment. Measuring this benefit, however, is problematic since it is determined not only by the relative fire-protection capabilities of Class C and Class D compartments, but on the probability that a fire will occur. Amendments to regulations—e.g. restrictions on the transportation of hazardous materials and more stringent burn—through requirements for compartment liners-also impinge on this analysis. (It should be noted, however, that the improvement standards for liners apply equally to both Class C and Class D compartments.)

The expected (future) rate of fires occurring in cargo or baggage compartments estimated using historical accident and incident data from the National Transportation Safety Board (NTSB), FAA, insurance underwriters, and foreign aviation authorities. These records show that during the 20-year period between 1977 and 1996, there were 19 fires reported as having occurred worldwide in Class D and Class C compartments involving transport category airplanes while used in commercial service. During this period, air-carriers worldwide (excluding domestic operations within the former Soviet Union, the Russian Federation, and the Commonwealth of Independent States) accumulated approximately 224.5 million departures in transport category airplanes having Class C or Class D compartments. The event rate for fires occurring in Class D and Class C compartments is, therefore, approximately 0.085 per million departures.

It must be noted that the event rate of 0.085 per million departures is based, for the most part, on service experience that occurred when consumer aerosol cans contained inert propellants. As described above under Background, the current use of highly-flammable propellants in consumer aerosol cans presents an additional hazard.

The available evidence shows that in the majority of incidents, Class D compartments successfully contain fires. Of the 16 inflight fires occurring in Class D compartments, only four were reported to have resulted in casualties or substantial damage to the airplane. A precise estimate of the likelihood of injury or airplane damage in the event a fire occurs in a Class D compartment is difficult to compute, however, owing to the limitations of accident and incident information. In many cases, necessary details had to be estimated. Where the post-event condition of the airplane is unknown, it is assumed that there was no damage. Where fatalities and injuries are unreported, it is assumed that there were no casualties. Where necessary, the number of occupants is estimated by applying the average load factor for that year by the average passenger capacity for a given airplane model.

The expected reduction in the proportion of occupants fatally injured in an accident resulting from a fire occurring in a Class D compartment is estimated as the ratio of fatalities to total occupants. Of the 1,411 individuals involved in the accidents cited above, 523 were fatally injured, representing approximately 37% of occupants.

Applying the risk reduction estimate above to airplane-specific departure, capacity, and load factor information (and using the statistical value of $2.7 million to represent the economic benefit associated with each fatality averted), FAA estimates that the rule will yield benefits of approximately $461 million over the life of the affected in-service fleet, or approximately $230 million at present value.

For a representative newly-manufactured airplane delivered to an ATA carrier, the FAA estimates that the rule will yield a life-cycle benefit of $280,000, or $94,000 at present value. For a newly-manufactured airplane delivered to a non-ATA carrier, FAA estimates that the rule will yield a life-cycle benefit of $340,000, or $115,000 at present value.

In view of the above, the FAA finds that the benefits of the rule justify its costs. Specifically, for the affected in-service fleet, discounted benefits will exceed costs by a factor of approximately 1.19. For affected newly-manufactured airplanes delivered to ATA carriers, discounted benefits will exceed costs by a factor of 1.57. For newly-manufactured airplanes delivered to non-ATA carriers, discounted benefits will exceed costs by a factor of 1.15.

The FAA believes there are also non-quantifiable benefits contained in this proposal, including increased consumer confidence in the aviation industry due to the installation of detection and suppression systems. The White House Commission on Aviation Safety and Security recommended that the FAA include these non-quantifiable benefits in evaluating safety proposals. The FAA took these non-quantifiable benefits into consideration while formulating the proposal.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Specifically, the RFA requires federal agencies to prepare a regulatory flexibility analysis for any rule that will have a "significant economic impact on a substantial number of small entities." The purpose of this analysis is to ensure that the agency has considered all reasonable regulatory alternatives that would minimize the rule's economic burdens for affected small entities, while achieving its safety objectives.

Based on the initial Regulatory Flexibility Analysis and information received during the comment period, the FAA certifies that a significant number of small entities would be substantially affected by the proposed rule. In its preliminary analysis, the FAA concluded that there were no alternatives for small entities that could provide an equivalent level of safety at reduced cost. This conclusion was based on an exhaustive study of options that ranged from relatively low-cost, purely preventive approaches (e.g., banning certain types of material from air transport) to mitigative approaches such as: (1) retrofit of detection systems only, (2) a requirement for detection systems on newly manufactured aircraft only, (3) a requirement for detection and/or suppression systems for extended overwater operations only, (4) retrofit of detection and suppression systems, (5) a requirement for detection and suppression systems on newly manufactured aircraft only, (6) logical combinations of the above.

Based on information received during the comment period, the FAA determines that this conclusion is correct with respect to 14 CFR part 121 operations. There were no comments indicating that: (1) the rule would place small part 121 operators at a competitive disadvantage relative to large part 121 operators, or (2) that there were alternatives that could provide the same level of safety benefit at reduced cost to small operators. Significantly, no analysis was submitted indicating that fire safety risks for small part 121 carriers were different than for large part 121 carriers.

As noted earlier, however, the FAA is reconsidering the options for part 135 operators (most of which are small). Several commenters note that the FAA's economic analysis did not consider smaller turbojet airplanes operated in nonscheduled service under part 135. These commenters also observe that

there are significant differences between nonscheduled part 135 operations and operations conducted under 14 CFR part 121. These differences, they claim, render the likelihood of an inflight cargo fire extremely remote.

The FAA agrees that further research is needed to evaluate the costs and benefits of detection and suppression systems for part 135 operators—in particular, those engaged in nonscheduled operations involving turbojet airplanes originally designed for business travel.

A copy of the regulatory evaluation prepared for this project may be examined in the Rules Docket or obtained from the person identified under the caption FOR FURTHER INFORMATION CONTACT.

International Trade impact Assessment

Recognizing that regulations that are nominally domestic in nature often affect international trade, the Office of Management and Budget directs Federal Agencies to assess whether or not a rule or regulation would affect any trade-sensitive activity.

This final rule could potentially affect international trade by burdening domestic manufacturers and air carriers with requirements that are not applicable to their foreign competitors, and thereby increase the relative price of domestically-produced goods and air travel provided by domestic operators.

The FAA holds, however, that this final rule will have a negligible impact on international trade. First, the rule will not establish either a competitive advantage or disadvantage for domestic airframe manufacturers—both domestic and foreign firms will be unable to sell newly-manufactured transport category airplanes with Class D cargo or baggage compartments in the U.S. since they will be ineligible for air carrier service in this country after December 31, 2000. Second, as noted above, several major U.S. Air carriers have already voluntarily installed detection or detection and suppression systems in airplanes for which there is no existing requirement to do so. This is also true for at least one major foreign airline. Third, the proposed rule will primarily affect smaller narrow-body airplanes that are used on domestic routes. Foreign carriers, of course, are not permitted to compete on domestic routes. Most airplanes used in international service are larger models which are already equipped with cargo of baggage compartment fire-detection and suppression systems. Finally, foreign civil aviation authorities have indicated to the FAA that they expect to adopt similar fire-detection and suppression requirements.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power or responsibilities among the various levels of government. In accordance with Executive Order 12612, it is, therefore, determined that this final rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

International Compatibility

The FAA has reviewed the corresponding international Civil Aviation Organization regulations, where they exist, and has identified no differences in these amendments and existing ICAO standards. The FAA has also reviewed the regulations of the Joint Aviation Authorities and has discussed similarities and differences in these proposed amendments and the foreign regulations.

Paperwork Reduction Act

The Office of Management and Budget (OMB) has granted approval (control number 2120–0614, expiring August 31,2000) for the reporting required by this final rule. The costs and benefits of these proposed collection requirements are set forth in the section entitled "Cost Estimates," Above.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. The FAA, therefore, specifically requested comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska. Although one commenter expressed a concern related to a particular Alaskan intrastate operation involving Lockheed Electras, no comments were received concerning such justification in general. Since no comments in that regard were received and the FAA is not aware of any justification for such regulatory distinction, the final rule is not applied differently to intrastate operations in Alaska.

List of Subjects

14 CFR Part 25

Aircraft, Aviation safety.

14 CFR Part 121

Aviation safety, Air carriers, Air transportation, Aircraft, Airplanes, Transportation.

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR parts 25 and 121 of the Federal Aviation Regulations (FAR) as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

2. Section 25.855(c) is revised to read as follows:

§ 25.855 Cargo or baggage compartments.

* * * * *

(c) Ceiling and sidewall liner panels of Class C compartments must meet the test requirements of part III of appendix F of this part or other approved equivalent methods.

* * * * *

3. Section 25.857 is amended by revising paragraph (c)(2) to read as follows and by removing and reserving paragraph (d):

§ 25.857 Cargo compartment classification

* * * * *

(c) * * *

(2) There is an approved built-in fire extinguishing or suppression system controllable from the cockpit.

* * * * *

(d) [Reserved]

* * * * *

4. Section 25.858 is amended by revising the section heading and introductory paragraph to read as follows:

§ 25.858 Cargo or baggage compartment smoke or fire detection systems.

If certification with cargo or baggage compartment smoke or fire detection provisions is requested, the following must be met for each cargo or baggage compartment with those provisions:

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG AND SUPPLEMENTAL OPERATIONS

5. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

6. Section 121.314 is revised to read as follows:

§ 121.314 Cargo and baggage compartments.

For each transport category airplane type certificated after January 1, 1958:

(a) Each Class C or Class D compartment, as defined in § 25.857 of this Chapter in effect on June 16, 1986 (see Appendix L to this part), that is greater than 200 cubic feet in volume must have ceiling and sidewall liner panels which are constructed of:

(1) Glass fiber reinforced resin;

(2) Materials which meet the test requirements of part 25, appendix F, part III of this chapter; or

(3) In the case of liner installations approved prior to March 20, 1989, aluminum.

(b) For compliance with paragraph (a) of this section, the term "liner" includes any design feature, such as a joint or fastener, which would affect the capability of the liner to safely contain a fire.

(c) After March 19, 2001, each Class D compartment, regardless of volume, must meet the standards of §§ 25.857(c) and 25.858 of this Chapter for a Class C compartment unless the operation is an all-cargo operation in which case each Class D compartment may meet the standards in § 25.857(e) for a Class E compartment.

(d) *Reports of conversions and retrofits.* (1) Until such time as all Class D compartments in aircraft operated under this part by the certificate have been converted or retrofitted with appropriate detection and suppression systems, each certificate holder must submit written progress reports to the FAA that contain the information specified below.

(i) The serial number of each airplane listed in the operations specifications issued to the certificate holder for operation under this part in which all Class D compartments have been converted to Class C or Class E compartments;

(ii) The serial number of each airplane listed in the operations specification issued to the certificate holder for operation under this part, in which all Class D compartments have been retrofitted to meet the fire detection and suppression requirements for Class C or the fire detection requirements for Class E; and

(iii) The serial number of each airplane listed in the operations specifications issued to the certificate holder for operation under this part that has at least one Class D compartment that has not been converted or retrofitted.

(2) The written report must be submitted to the Certificate Holding District Office by July 1, 1998, and at each three-month interval thereafter.

7. Appendix L to part 121 is amended by adding to the table an entry for § 121.314(a) to read as follows:

Appendix L to Part 121—Type Certification Regulations Made Previously Effective

* * * * *

Part 121 section	Applicable aircraft	Provisions: CFR/FR references
* * * * *		
§ 121.314(a)	Transport category airplanes type certificated after January 1, 1958.	Class C or D cargo or baggage compartment definition, 14 CFR 25.857 in effect on June 16, 1986, 14 CFR parts 1 to 59, Revised 1/1/97, and amended by Amendment 25–60, 51 FR 18243, May 16, 1986.

Issued in Washington, D.C. on February 10, 1998.

Jane F. Garvey,

Administrator.

[FR Doc. 98–3838 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–13–M

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federal register

Tuesday
February 17, 1998

Part VI

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research: Actions Under the Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Actions Under the Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines).

SUMMARY: This notice sets forth actions to be taken by the Director, National Institutes of Health (NIH), under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496, amended 59 FR 40170, 60 FR 20726, 61 FR 1482, 61 FR 10004, 62 FR 4782, 62 FR 53335, 62 FR 56196, 62 FR 59032).

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities (ORDA), National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839. The ORDA web site is located at http://www.nih.gov/od/orda/ for further information about the office.

SUPPLEMENTARY INFORMATION: Today's actions are being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines). The proposed actions were published for comment in the **Federal Register** on October 16, 1997 (62 FR 53908) and November 19, 1997 (62 FR 61862), and reviewed by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on December 16, 1997.

I. Amendments to Institutional Biosafety Committee (IBC) Approvals of Experiments Involving Transgenic Rodents Under Section III of the NIH Guidelines

I–A. Background Information and Decisions on Actions Under the NIH Guidelines

Section III–D–4, Experiments Involving Whole Animals, of the NIH Guidelines requires that all transgenic animal experiments obtain IBC approval before initiation. In a correspondence dated April 22, 1997, Dr. George Gutman, an IBC representative of the University of California, Irvine, California, inquired whether experiments involving production or use of transgenic mice under Biosafety Level 1 containment could be initiated simultaneous with IBC notification.

The RAC discussed this issue during its June 1997 meeting, recommending that this requirement be changed to initiation simultaneous with IBC notification. The RAC agreed that the requirement for IBC approval prior to initiation is unnecessary and recommended that the NIH Guidelines should be amended so that: (1) The generation of transgenic rodents under Biosafety Level 1 containment (not all animals) can be initiated simultaneous with IBC notification, and (2) the purchase and use of transgenic rodents should be exempt from the NIH Guidelines. A motion was made that these proposed changes to the NIH Guidelines should be published in the **Federal Register** for consideration at the September 12, 1997, RAC meeting. The proposed action would allow: (1) The generation of transgenic rodents that require Biosafety Level 1 containment to be included under Section III–E, Experiments that Require IBC Notice Simultaneous with Initiation; and (2) the purchase and use of transgenic rodents should be exempt from the NIH Guidelines. The motion passed by a vote of 9 in favor, 0 opposed, and no abstentions.

On September 10, 1997, a letter was received from the American Biological Safety Association requesting that the public comment period for the proposed actions under the NIH Guidelines published in the **Federal Register** on August 20, 1997 (62 FR 44387) be extended for an additional 60 days.

At its September 12, 1997 meeting, the RAC was scheduled to vote on the issues surrounding the amendments to IBC approvals of experiments involving transgenic rodents. Considering the American Biological Safety Association's request to extend the public comment period, the RAC decided to modify the language of the proposed actions and publish the revised version in the **Federal Register** for additional public comment as requested by the American Biological Safety Association. The RAC accepted the proposed actions with the deletion of two words "and use" from the language, "the purchase and use of transgenic rodent * * *" A motion was made by the RAC to accept the amendments to the NIH Guidelines with regard to: (1) The generation of transgenic rodents under Biosafety Level 1 containment (not all animals) can be initiated simultaneously with IBC notification, and (2) the purchase of transgenic rodents should be exempt from the NIH Guidelines. The motion passed by a vote of 11 in favor, 0 opposed, and no abstentions.

The proposed actions were published in the **Federal Register** on October 16, 1997 (62 FR 53908). On December 2, 1997, a letter was received from C. Geoffrey Davis, Ph.D., Vice President, Research, Abgenix, Inc., Freemont, California, requesting to add two words, "or transfer," to the language of the proposed action published in the **Federal Register** regarding the purchase or transfer of transgenic rodents to be exempt from the NIH Guidelines. In a letter dated December 5, 1997, Richard C. Knudsen, President, American Biological Safety Association, endorsed the proposed action and requested insertion of a statement, "(See Appendix G–III–M, Footnotes and References of Appendix G)," to aid individuals in determining the suitability of Biosafety Level 1 containment for their constructs. Appendix C–VI, The Purchase of Transgenic Rodents, is proposed to read:

"The purchase of transgenic rodents for experiments that require BL1 containment (See Appendix G–III–M, Footnotes and References of Appendix G) are exempt from the NIH Guidelines."

During the December 16, 1997, RAC meeting, the RAC accepted the proposed actions with the amendments requested by Abgenix, Inc. and American Biological Safety Association. The motion passed by a vote of 13 in favor, 0 opposed, and no abstentions.

The actions are detailed in Section I–B—Summary of Actions. I accept the RAC recommendations, and the NIH Guidelines will be amended accordingly.

I–B. Summary of Actions

I–B–1. Amendments to Section III–D–4. Experiments Involving Whole Animals

[Section III–D are experiments that require Institutional Biosafety Committee approval before initiation.]

Section III–D–4–c is added to read:

Section III–D–4–c. Exceptions under Section III–D–4.

Section III–D–4–c–(1). Experiments involving the generation of transgenic rodents that require BL1 containment are described under Section III–E–3, Experiments Involving Transgenic Rodents.

Section III–D–4–c–(2). The purchase or transfer of transgenic rodents is exempt from the NIH Guidelines under Section III–F, Exempt Experiments (see Appendix C–VI, The Purchase or Transfer of Transgenic Rodents)."

I–B–2. Amendments to Section III–E. Experiments that Require Institutional Biosafety Committee Notice Simultaneous with Initiation

Section III–E–3 is added to read:

Section III–E–3. Experiments Involving Transgenic Rodents.

This section covers experiments involving the generation of rodents in which the animal's genome has been altered by stable introduction of recombinant DNA, or DNA derived therefrom, into the germ-line (transgenic rodents). Only experiments that require BL1 containment are covered under this section; experiments that require BL2, BL3, or BL4 containment are covered under Section III–D–4, Experiments Involving Whole Animals."

I–B–3. Amendments to Appendix C, Exemptions Under Section III–F–6.

A new section, Appendix C–VI, is added to read:

Appendix C–VI. The Purchase or Transfer of Transgenic Rodents.

The purchase or transfer of transgenic rodents for experiments that require BL1 containment (See Appendix G–III–M, Footnotes and References of Appendix G) are exempt from the NIH Guidelines."

[Appendix C–VI, Footnotes and References of Appendix C, will be renumbered to Appendix C–VII through Appendix C–VII–E.]

II. Amendment to Appendix K, Physical Containment for Large Scale Uses of Organisms Containing Recombinant DNA Molecules, of the NIH Guidelines

II–A. Background Information and Decisions on Actions Under the NIH Guidelines

In a letter dated November 5, 1997, Gerard J. McGarrity, Ph.D., Senior Vice President for Development, Genetic Therapy, Inc., Gaithersburg, Maryland, requested amendments to Appendix K, Physical Containment for Large Scale Uses of Organisms Containing Recombinant DNA Molecules, of the NIH Guidelines to clarify the containment requirements for large scale production of viral vectors for gene therapy. The letter states that:

The purpose of this correspondence is to point out a section of Appendix K of the NIH Guidelines (January 1997) that requires clarification for large scale production of viral vectors for gene therapy.

"Appendix K specifies containment guidelines for research or production material that exceed 10 liters in volume. Each of the large scale (LS) biosafety levels (BL): Good Large Scale Production (GLSP), BL1/LS (Appendix K–III–C), BL2/LS (Appendix K–IV–C) and BL3/LS (Appendix K–V–C) specify the requirements that:

'Culture fluids (except as allowed by Appendix K–III–D, K–IV–D, K–V–D) shall not be removed from a closed system or other primary containment equipment unless the viable organisms containing recombinant DNA molecules have been inactivated by a validated inactivation procedure.'

"Related language addresses the primary containment equipment:

'A closed system or other primary containment equipment that has contained viable organisms containing recombinant DNA molecules shall not be opened for maintenance or other purposes unless it has been sterilized by a validated sterilization procedure.' (Sections K–III–F, K–IV–F and K–V–F)

"As its title (Physical Containment for Large Scale Uses of Organisms Containing Recombinant DNA Molecules) indicates, Appendix K was written to deal with prokaryotic and eukaryotic cells that elaborate proteins expressed by recombinant DNA molecules. It was not intended for the production of viral vectors used in gene therapy. In fact, adherence to sections K–III–C, K–IV–C, or K–V–C is incompatible with the production and harvest of viral vectors in volumes larger than 10 liters as active viral vectors must be removed from the equipment. Clearly, this was not the purpose of Appendix K.

"Several possible solutions exist. First, Section III–D–6 of the Guidelines, "Experiments Involving More Than 10 Liters Of Culture,' states:

'The appropriate containment will be decided by the Institutional Biosafety Committee. Where appropriate, Appendix K, Physical Containment for Large Scale Uses of Organisms Containing Recombinant DNA Molecules, shall be used.'

"We interpret this to mean that for production of viral vectors, the IBC has the authority to establish the specifics of large scale containment, using the principles described in Appendix K. For harvesting of supernatant fluids that contain the viral vector product, the IBC can establish practices and facilities which are consistent with the objectives and spirit of the NIH Guidelines.

"In this regard, Genetic Therapy, Inc., has adhered to Section III–D–6 in the establishment of facilities and practices for large scale production of retroviral vectors to the extent that Sections can be applied to viral vectors. These have included the practices for the appropriate large scale biosafety level except for the requirement to inactivate the culture fluids and to sterilize the primary containment equipment prior to opening the primary containment equipment and removing the culture fluids. These practices have been approved by our IBC.

"A second possible solution is to limit volumes to less than 10 liters. However, this will be impractical for commercial purposes. Third, the Guidelines can be modified to address the requirements for large scale production of viral vectors for gene therapy.

"For the longer term, we believe it is most appropriate to revise the relevant portions of Appendix K to enable application of large scale to viral vectors. We request that RAC address this issue and propose the following language be added to the end of Sections K–III–C, K–IV–C and K–V–C of Appendix K:

'Culture fluids that contain viable organisms or viral vectors intended as final product may be removed from the primary containment equipment by way of closed systems for sample analysis, further processing or final fill.'

"We propose the following language be added to the end of the first sentence of Sections K–III–F, K–IV–F and K–V–F:

'. . . except when the culture fluids contain viable organisms or vectors intended as final product as described in Section K–III–C (or K–IV–C or K–V–C respectively) above.'

"We believe these additions maintain the original concept of Appendix K while addressing the needs of specific product types."

During the December 16, 1997, RAC meeting, the RAC deliberated and accepted Dr. McGarrity's request. A motion was made to accept the language of the proposed action published in the **Federal Register** on November 19, 1997 (62 FR 61862) for the amendments to Appendix K. The amendments will allow production and harvest of biologically active viral vectors in volumes larger than 10 liters. The motion passed by a vote of 13 in favor, 0 opposed, and no abstentions.

The actions are detailed in Section II–B—Summary of Actions. I accept the RAC recommendations, and the NIH Guidelines will be amended accordingly.

II–B. Summary of Actions

Appendix K–III–C is amended to read:

"Appendix K–III. Biosafety Level 1 (BL1)—Large Scale.

"Appendix K–III–C. Culture fluids (except as allowed in Appendix K–III–D) shall not be removed from a closed system or other primary containment equipment unless the viable organisms containing recombinant DNA molecules have been inactivated by a validated

inactivation procedure. A validated inactivation procedure is one which has been demonstrated to be effective using the organism that will serve as the host for propagating the recombinant DNA molecules. Culture fluids that contain viable organisms or viral vectors intended as final product may be removed from the primary containment equipment by way of closed systems for sample analysis, further processing or final fill."

Appendix K–III–F is amended to read:

"Appendix K–III–F. A closed system or other primary containment equipment that has contained viable organisms containing recombinant DNA molecules shall not be opened for maintenance or other purposes unless it has been sterilized by a validated sterilization procedure except when the culture fluids contain viable organisms or vectors intended as final product as described in Section K–III–C above. A validated sterilization procedure is one which has been demonstrated to be effective using the organism that will serve as the host for propagating the recombinant DNA molecules."

Appendix K–IV–C is amended to read:

"Appendix K–IV. Biosafety Level 2 (BL2)—Large Scale.

"Appendix K–IV–C. Culture fluids (except as allowed in Appendix K–IV–D) shall not be removed from a closed system or other primary containment equipment unless the viable organisms containing recombinant DNA molecules have been inactivated by a validated inactivation procedure. A validated inactivation procedure is one which has been demonstrated to be effective using the organism that will serve as the host for propagating the recombinant DNA molecules. Culture fluids that contain viable organisms or viral vectors intended as final product may be removed from the primary containment equipment by way of closed systems for sample analysis, further processing or final fill."

Appendix K–IV–F is amended to read:

"Appendix K–IV–F. A closed system or other primary containment equipment that has contained viable organisms containing recombinant DNA molecules shall not be opened for maintenance or other purposes unless it has been sterilized by a validated sterilization procedure except when the culture fluids contain viable organisms or vectors intended as final product as described in Section K–IV–C above. A validated sterilization procedure is one which has been demonstrated to be effective using the organisms that will serve as the host for propagating the recombinant DNA molecules."

Appendix K–V–C is amended to read:

"Appendix K–V. Biosafety Level 3 (BL3)—Large Scale.

"Appendix K–V–C. Culture fluids (except as allowed in Appendix K–V–D) shall not be removed from a closed system or other primary containment equipment unless the viable organisms containing recombinant DNA molecules have been inactivated by a validated inactivation procedure. A validated inactivation procedure is one which has been demonstrated to be effective using the organisms that will serve as the host for propagating the recombinant DNA molecules. Culture fluids that contain viable organisms or viral vectors intended as final product may be removed from the primary containment equipment by way of closed systems for sample analysis, further processing or final fill."

Appendix K–V–F is amended to read:

"Appendix K–V–F. A closed system or other primary containment equipment that has contained viable organisms containing recombinant DNA molecules shall not be opened for maintenance or other purposes unless it has been sterilized by a validated sterilization procedure except when the culture fluids contain viable organisms or vectors intended as final product as described in Section K–V–C above. A validated sterilization procedure is one which has been demonstrated to be effective using the organisms that will serve as the host for propagating the recombinant DNA molecules."

III. Amendment to Appendix M–I, Submission Requirements—Human Gene Transfer Experiments, Regarding Deadline Submission for RAC Review

III–A. Background Information and Decisions on Actions Under the NIH Guidelines

On November 12, 1997, Dr. Scott McIvor, a member of the Recombinant DNA Advisory Committee (RAC), requested a proposed action regarding the deadline for submission of human gene transfer protocols that will require public discussion at regularly scheduled RAC meetings.

To give the RAC sufficient time to review protocols, and to allow the investigators to respond to comments of the primary reviewer, an action is proposed to amend the NIH Guidelines, Appendix M–I, Submission Requirements—Human Gene Transfer Experiments, to include a submission deadline. Submission material will be accepted by NIH/ORDA at any time. However, if a protocol is recommended for full RAC review, the submission material must be received in NIH/ORDA a minimum of eight weeks prior to the next scheduled RAC meeting.

During the December 16, 1997, RAC meeting, a motion was made to accept the proposed action regarding deadline submission for RAC review, which was published in the **Federal Register** on November 19, 1997 (62 FR 61862). A note to Appendix M–I, Submission Requirements—Human Gene Transfer Experiments, was amended to read:

"**Note:** Submission material will be accepted by NIH/ORDA at any time. However, if a protocol is recommended for full RAC review, the submission material must be received in NIH/ORDA a minimum of eight weeks prior to the next scheduled RAC meeting."

The motion passed by a vote of 6 in favor, 0 opposed, and 2 abstentions. To clarify the meaning of this note, NIH/ORDA later modified the amended note to Appendix M–I to read:

"**Note:** NIH/ORDA will accept submission material at any time. However, if a protocol is submitted less than eight weeks before a scheduled RAC meeting and subsequently is recommended for public discussion by the full RAC, the public discussion of that protocol will be deferred until the next scheduled RAC meeting. This eight-week period is needed to ensure adequate time for review by the committee members."

III–B. Summary of Actions

Appendix M–I. Submission Requirements—Human Gene Transfer Experiments, is amended to read:

"Appendix M–I. Submission Requirements—Human Gene Transfer Experiments.

"Investigators must submit the following material to the Office of Recombinant DNA Activities, National Institutes of Health/MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, (301) 496–9838 (see exemption in Appendix M–VIII–A, Footnotes of Appendix M). Proposals shall be submitted to NIH/ORDA in the following order: (1) Scientific abstract; (2) non-technical abstract; (3) Institutional Biosafety Committee and Institutional Review Board approvals and their deliberations pertaining to your protocol (Institutional Biosafety Committee approval must be obtained from each institution at which recombinant DNA material will be administered to human subjects (as opposed to each institution involved in the production of vectors for human application and each institution at which there is ex vivo transduction of recombinant DNA material into target cells for human application)); (4) Responses to Appendix M–II through M–V, Description of the Proposal, Informed Consent, Privacy and

Confidentiality, and Special Issues (the pertinent responses can be provided in the protocol or as an appendix to the protocol); (5) clinical protocol (as approved by the local Institutional Biosafety Committee and Institutional Review Board); (6) Informed Consent document—approved by the Institutional Review Board (see Appendix M–III, Informed Consent); (7) appendices (including tables, figures, and manuscripts); and (8) curricula vitae—2 pages for each key professional person in biographical sketch format. Investigational New Drug (IND) applications shall be submitted to FDA in the format described in 21 CFR, Chapter I, Subchapter D, Part 312, Subpart B, Section 23, IND Content and Format. Submissions to FDA should be sent to the Division of Congressional and Public Affairs, Document Control Center, HFM–99, Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, Maryland 20852–1448.

"**Note:** NIH/ORDA will accept submission material at any time. However, if a protocol is submitted less than eight weeks before a scheduled RAC meeting and subsequently is recommended for public discussion by the full RAC, the public discussion of that protocol will be deferred until the next scheduled RAC meeting. This eight-week period is needed to ensure adequate time for review by the committee members."

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: February 4, 1998.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 98–3879 Filed 2–13–98; 8:45 am]

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H.R. 1271/P.L. 105–155

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S. 1348/P.L. 105–157

To authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel PRINCE NOVA, and for other purposes. (Feb. 11, 1998; 112 Stat. 13)

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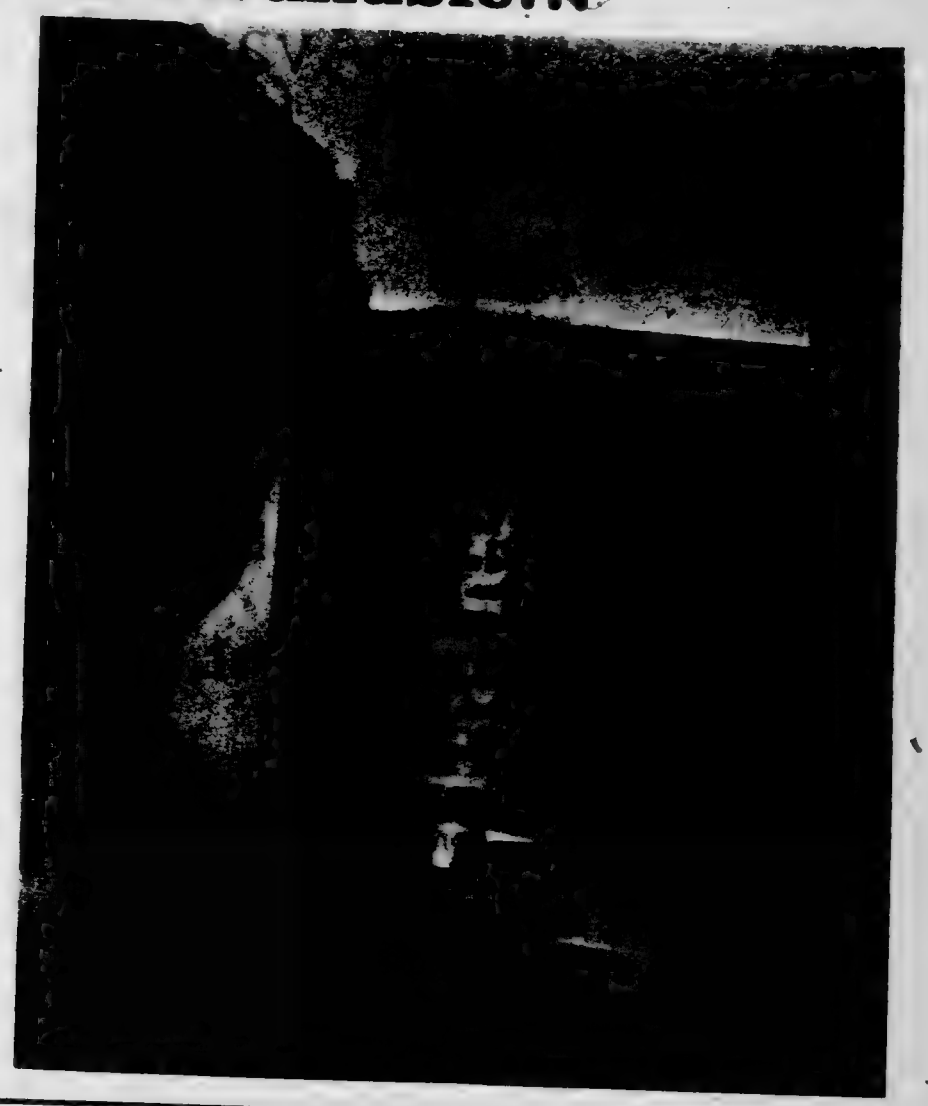

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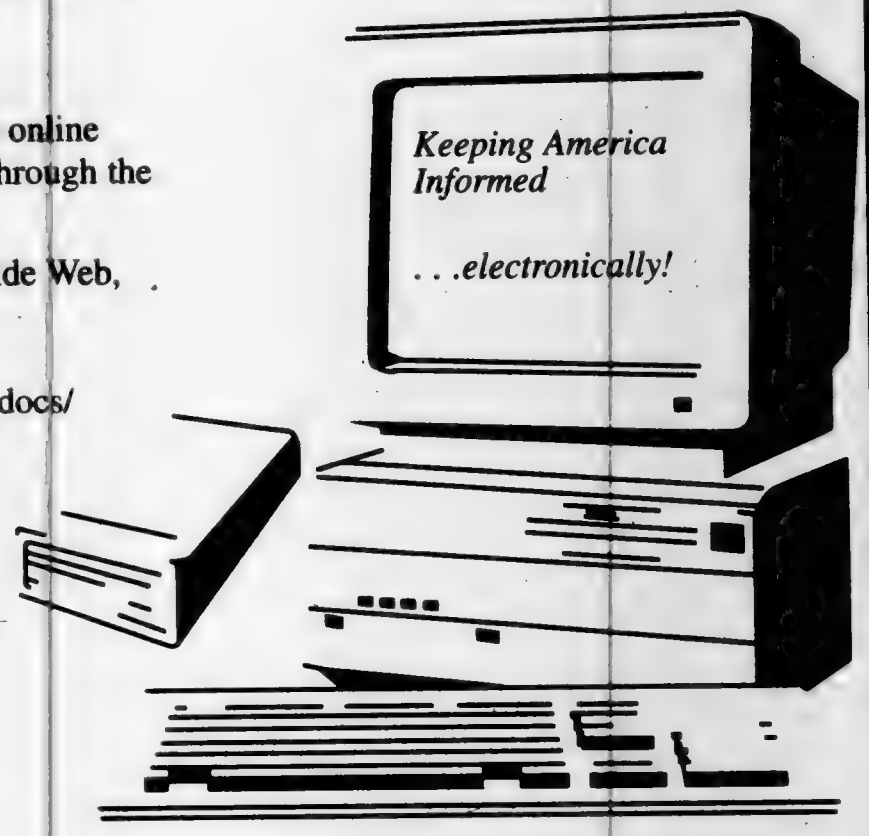

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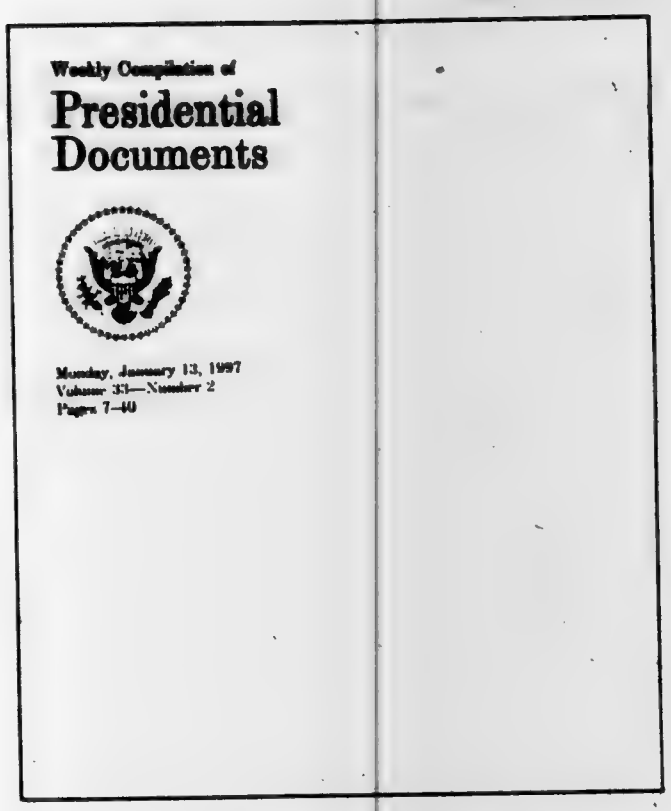

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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12 CFR P

[No. 98–03

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AGENCY:
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Rules and Regulations

Federal Register
Vol. 63, No. 32
Wednesday, February 18, 1998.

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 910 and 912

[No. 98–03]

RIN 3069–AA54

Regulations Governing Book-Entry Federal Home Loan Bank Securities

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board is adopting a final rule amending its regulations governing procedures for maintaining book-entry (uncertificated) Federal Home Loan Bank securities within the Federal Reserve Banks' system of accounts to eliminate the need to treat such securities as if they were certificated securities and to conform more closely to the manner in which book-entry securities are treated under the laws of the majority of states (as set forth in Article 8 of the Uniform Commercial Code, as revised in 1994).

DATES: This final rule is effective on March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Eric M. Raudenbush, Attorney-Advisor, Office of General Counsel, 202/408–2932, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Background

On December 3, 1996, the Federal Housing Finance Board (Finance Board) published, and requested public comments on, an interim rule that amended part 912 of the Finance Board's regulations, which governs Federal Home Loan Bank (FHLBank) securities maintained in book-entry (uncertificated) form. 61 FR 64021 (Dec. 3, 1996). The interim final rule was intended to update part 912 to reflect new developments in commercial law regarding ownership and other rights in uncertificated securities and, especially, to parallel the treatment of such securities under Article 8 of the Uniform Commercial Code (UCC), as amended in 1994.

Paragraphs (b) and (c) of section 11 of the Federal Home Loan Bank Act (Bank Act) authorize the Finance Board to issue, upon such terms and conditions as it may establish, consolidated Federal Home Loan Bank (FHLBank) debentures or bonds (collectively, "FHLBank securities"), which are the joint and several obligations of the twelve regional FHLBanks. *See* 12 U.S.C. 1431(b), (c). The Finance Board has set forth the terms and conditions regarding the issuance of FHLBank securities in part 910 of its regulations. 12 CFR part 910. Although, under the Bank Act, the Finance Board is designated as the "issuer" of FHLBank securities, it has delegated this issuance function, along with such other ministerial functions as the servicing of the FHLBank securities, to the Office of Finance (OF) (a joint office of the FHLBanks) pursuant to section 2B(b)(1) of the Bank Act, 12 U.S.C. 1422b(b)(1), part 941 of the Finance Board's regulations, 12 CFR part 941, and periodic resolutions of the Board of Directors of the Finance Board.

Since 1977, the OF has issued domestic FHLBank securities exclusively in "book-entry" form; that is, as uncertificated securities recorded as entries on the computerized system of accounts maintained by the Federal Reserve Banks (Reserve Banks). Under this arrangement, the Reserves Banks, acting as fiscal agents of the Finance Board, the FHLBanks and the OF: issue book-entry FHLBank securities; maintain related book-entry accounts; pay principal and interest due on book-entry FHLBank securities; and otherwise service such FHLBank securities.

Prior to the adoption of the interim final rule in 1996, the rights and obligations of the FHLBanks, the Reserve Banks, and other persons with respect to the issuance and servicing of book-entry FHLBank securities, and the operation of the associated FHLBank book-entry system, were governed by regulatory text that had been promulgated by the former Federal Home Loan Bank Board (FHLBB)—the Finance Board's predecessor as regulator of the FHLBanks in 1973. *See* 12 CFR 506a (1974); 38 FR 10969 (May 3, 1973) (proposed rule); 38 FR 26355 (Sept. 20, 1973) (final rule). These regulations, and those of other government sponsored enterprises (GSEs) having similar book-entry arrangements with the Reserve Banks, were patterned after former part 306 of the regulations of the Department of Treasury, 31 CFR part 306 (1996), which governed Reserve Bank book-entry procedures for Treasury securities.

By 1996, the legal concepts upon which former part 912 were based, like those underlying the analogous Department of Treasury regulations, had become outdated. In the early 1970s, when these regulations were developed, the United States government securities market was in a state of transition between one in which most securities existed in definitive form (that is, the traditional certificate) to one in which securities are maintained almost exclusively within computerized book-entry systems. Corresponding law (including state laws based on the UCC) at the time former part 912 was promulgated assumed that possession and delivery of physical certificates were the key elements in the securities holding system. This led the Department of Treasury, the FHLBB, and other GSE regulators to premise their regulations upon the "bearer-definitive security fiction," which deemed each book-entry security to be the equivalent of a bearer-definitive security. The shortcomings of the bearer-definitive security fiction became increasingly apparent over the years, as the rules based on this fiction were found to leave many unanswered questions regarding transactions and rights in book-entry securities.

In addition, the rules proved inadequate to deal with the tiered system of accounts in which book-entry securities are held. Each interest in a book-entry security must be credited to the account of a Reserve Bank "participant"—that is, an entity having an account with a Reserve Bank. Persons or entities, including securities broker-dealers, who wish to acquire an interest in book-entry securities, but who do not have an account with a Reserve Bank, must do so through a Reserve Bank participant. Non-participant broker-dealers who deal in book-entry securities through a participant may, in turn, hold these

securities for other persons or entities who otherwise lack access to the securities markets. Accordingly, a Reserve Bank most likely will have no information regarding the beneficial owners of interests in book-entry securities, but, instead, will consider the participants in whose Reserve Bank accounts the book-entry securities are held to be the "owners" of the interests therein.

In 1994, the American Law Institute and the National Conference of Commissioners on Uniform State Laws ratified a revised version of Article 8 of the UCC (Revised Article 8), which addresses investment securities. Thereafter, in 1996, the Department of Treasury amended its regulations governing the book-entry system for Treasury securities (called "Treasury/Reserve Automated Debt Entry System" or "TRADES") to incorporate many of the concepts regarding transactions and rights in book-entry securities set forth in Revised Article 8 and to defer to state law modeled after Revised Article 8 in many circumstances. *See* 61 FR 43626 (Aug. 23, 1996) (final rule); 61 FR 8420 (Mar. 4, 1996) (proposed rule). Shortly thereafter, in order to ensure uniformity in the treatment of book-entry government securities, the regulators of GSEs that maintain book-entry securities at Reserve Banks also promulgated new regulations to govern their respective book-entry systems. These regulations parallel the new TRADES regulation, with modifications appropriate to the particular GSE and government securities to which such regulations apply.

As part of this effort, the Finance Board adopted an interim final rule amending part 912 of its regulations, governing book-entry FHLBank securities, in December 1996. The Finance Board chose to act through an interim final rule so that new part 912 would become effective simultaneously with the new TRADES regulation on January 1, 1997, while also giving the agency an opportunity to solicit comments from the public and to give further consideration to some minor issues relating to various aspects of the rule.

II. Analysis of the Final Rule

The Finance Board received no comments on the interim final rule and, therefore, has made no changes thereto in response to public comment. However, pursuant to its own review, the Finance Board has incorporated some minor clarifications into the final rule without altering the substance of the regulation. In the final rule, § 910.3, which cross-references part 912, has been modified to replace the commas surrounding the phrase "regarding book-entry procedure" with parentheses. This change has been made in order to make clear that all Department of Treasury regulations governing transactions in United States securities except those governing book-entry securities shall apply to FHLBank securities. As this section appeared in the interim final rule, it was possible to read the first sentence as providing that the Department of Treasury's regulations governing book-entry securities were to be incorporated into part 910.

In the final rule, the definition of "Entitlement Holder" and "Participant," which are set forth in § 912.1(c) and § 912.1(j) (designated as § 912.1(h) in the interim final rule), respectively, have been amended to include FHLBanks, which are permitted by statute both to hold FHLBank securities and to maintain accounts with a reserve Bank. *See* 12 U.S.C. 1431(h), 1435. In the interim final rule, these definitions encompassed only entities meeting the definition of a "Person," from which the FHLBanks are expressly excluded.

The majority of changes made have been incorporated in order to reflect more expressly in the regulation the rights and obligations of the Finance Board as statutory issuer of FHLBank securities and of the OF as agent for the Finance Board or the FHLBanks with respect to the securities. In this vein, § 912.1(d) has been amended to make clear that, under section 11 of the Bank Act, the Finance Board is considered to be the issuer of FHLBank securities. *See* 12 U.S.C. 1431. Section 912.1(e) has been amended to refer to the OF, instead of the FHLBanks, in order make clear that, in issuing and maintaining FHLBank securities in its book-entry system, a Federal Reserve Bank acts as agent of the OF which, in turn, acts as agent for the Finance Board or the FHLBanks. In addition, definitions of "Finance Board" and "Office of Finance" have been added to § 912.1 to permit the use of these terms within the substantive portion of the regulation. The definition of "Office of Finance" set forth in § 912.1(i) makes clear that the OF acts as agent of the Finance Board when it issues book-entry FHLBank securities, but as agent of the FHLBanks when it performs any functions relating to the maintenance and servicing of these securities.

Given the complex nature of the statutorily-mandated system under which FHLBank securities are issued and serviced, the rights and obligations of the Finance Board, the FHLBanks and the OF may overlap, or may be at times ambiguous, depending on the function at issue. Accordingly, all references to rights, obligations, or liabilities arising in connection with book-entry FHLBank securities which in the interim final rule referred only to the FHLBanks and the Reserve Banks have been amended in the final rule to refer to the FHLBanks, the Finance Board, the OF and the United States, in addition to the Reserve Banks. These changes affect § 912.1(l) (which was designated as § 912.1(j) in the interim final rule, defining the term "person" to exclude the foregoing entities), § 912.2(a) (specifying the law governing rights and obligations regarding book-entry FHLBank securities), § 912.5(a) (addressing obligations arising from the transfer of interests in book-entry FHLBank securities), and § 912.7 (addressing liabilities arising from transactions in book-entry FHLBank securities).

In addition, in order to more accurately reflect the fact that the Reserve Banks deal with the OF—and not directly with the FHLBanks or the Finance Board (for whom the OF acts as agent)—in matters concerning the book-entry system, references to dealings with the Reserve Banks have been amended to refer to the OF, instead of to the FHLBanks. This change affects § 912.2(a) (addressing procedures established to govern book-entry transactions) and § 912.6(a) (addressing the authority of the Reserve Banks as fiscal agents).

Finally, the Finance Board has amended the interim final rule by adding a new paragraph (a) to § 912.8 and designating the existing text as § 912.8(b). New § 912.8(a) has been added in order to conform to common practice among private parties and other GSEs by authorizing the OF to require an indemnity bond of a party if, in its judgment, or in the judgment of the Finance Board or FHLBanks, such action is necessary to protect the interests of any of these entities.

In summary, although the final rule is intended to provide a legal framework for all book-entry FHLBank securities, it is not a codification of all laws that could affect interests in book-entry FHLBank securities. In general, the regulation provides that (with some exceptions regarding security interests) Federal law will govern the rights and obligations of the FHLBanks, the Finance Board, the OF, the United States and the Reserve Banks arising from book-entry FHLBank securities and the book-entry system, and that state law (to the extent that states have adopted Revised Article 8) will govern all other rights and obligations. The regulation also sets forth the substantive

Federal law that applies to the rights and obligations of the FHLBanks, the Finance Board, the OF, the United States and the Reserve Banks arising from book-entry FHLBank securities and the book-entry system. The most prominent aspect of the substantive law set forth therein is that none of the aforementioned entities is liable to persons having or claiming interests in book-entry securities that are below the participant level in the tiered system of ownership; that is, the FHLBanks, the Finance Board, the OF, the United States and the Reserve Banks need only recognize Reserve Bank participants as holders of interests in book-entry FHLBank securities.

III. Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action" under Executive Order 12866.

Because the Finance Board adopted the changes to § 910.3 and part 912 in the form of an interim final rule and not as a proposed rule, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, do not apply.

There are no collections of information contained in this final rule. Therefore, the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, does not apply.

List of Subjects

12 CFR Part 910

Federal home loan banks, Government securities.

12 CFR Part 912

Federal home loan banks, Federal Reserve System, Government securities, electronic funds transfer.

Accordingly, the Federal Housing Finance Board hereby amends title 12, chapter IX of the Code of Federal Regulations, as follows:

PART 910—CONSOLIDATED BONDS AND DEBENTURES

1. The authority citation for part 910 continues to read as follows:

Authority: 12 U.S.C. 1422b, 1431.

2. Section 910.3 is revised to read as follows:

§ 910.3 Transactions in consolidated bonds.

The general regulations of the Department of Treasury now or hereafter in force governing transactions in United States securities, except 31 CFR part 357 (regarding book-entry procedure), are hereby incorporated into this part, so far as applicable and as necessarily modified to relate to consolidated Federal Home Loan Bank bonds, as the regulations of the Board for similar transactions in consolidated Federal Home Loan Bank bonds. The book-entry procedure for consolidated Federal Home Loan Bank bonds is contained in part 912 of this subchapter.

3. Part 912 is revised to read as follows:

PART 912—BOOK-ENTRY PROCEDURE FOR FEDERAL HOME LOAN BANK SECURITIES

Sec.

912.1 Definitions.
912.2 Law governing rights and obligations of Federal Home Loan Banks, Finance Board, Office of Finance, United States and Federal Reserve Banks; rights of any Person against Federal Home Loan Banks, Finance Board, Office of Finance, United States and Federal Reserve Banks.
912.3 Law governing other interests.
912.4 Creation of Participant's Security Entitlement; security interests.
912.5 Obligations of Federal Home Loan Banks and the Office of Finance; no Adverse Claims.
912.6 Authority of Federal Reserve Banks.
912.7 Liability of Federal Home Loan Banks, Finance Board, Office of Finance and Federal Reserve Banks.
912.8 Additional requirements; notice of attachment for Book-entry Federal Home Loan Bank Securities.
912.9 Reference to certain Department of Treasury commentary and determinations.
912.10 Obligations of United States with respect to Federal Home Loan Bank Securities.

Authority: 12 U.S.C. 1422a, 1422b, 1431, 1435.

§ 912.1 Definitions.

For purposes of this part, unless the context otherwise requires or indicates:

(a) *Adverse Claim* means a claim that a claimant has a property interest in a Book-entry Federal Home Loan Bank Security and that it is a violation of the rights of the claimant for another Person to hold, transfer, or deal with the Security.

(b) *Book-entry Federal Home Loan Bank Security* means a Federal Home Loan Bank Security maintained in the book-entry system of the Federal Reserve Banks.

(c) *Entitlement Holder* means a Person or a Federal Home Loan Bank to whose account an interest in a Book-entry Federal Home Loan Bank Security is credited on the records of a Securities Intermediary.

(d) *Federal Home Loan Bank Security* means a consolidated bond, debenture, note, or other obligation of the Federal Home Loan Bank issued by the Finance Board under authority of section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431).

(e) *Federal Reserve Bank* means a Federal Reserve Bank or branch, acting as fiscal agent for the Office of Finance, unless otherwise indicated.

(f) *Federal Reserve Bank Operating Circular* means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Federal Reserve Bank maintains Book-entry Securities accounts and transfers Book-entry Securities.

(g) *Finance Board* means the Federal Housing Finance Board.

(h) *Funds account* means a reserve and/or clearing account at a Federal Reserve Bank to which debits or credits are posted for transfers against payment, Book-entry Securities transaction fees, or principal and interest payments.

(i) *Office of Finance* means the Office of Finance established under part 941 of this chapter, acting as agent of the Finance Board in all matters relating to the issuance of Book-entry Federal Home Loan Bank Securities, or as agent of the Federal Home Loan Banks in the performance of all other necessary and proper functions relating to Book-entry Federal Home Loan Bank Securities, including the payment of principal and interest due thereon.

(j) *Participant* means a Person or a Federal Home Loan Bank that maintains a Participant's Securities Account with a Federal Reserve Bank.

(k) *Participant's Securities Account* means an account in the name of a Participant at a Federal Reserve Bank to which Book-entry Federal Home Loan Bank Securities held for a Participant are or may be credited.

(l) *Person* means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but does not mean or include a Federal Home Loan Bank, the Finance Board, the Office of Finance, the United States, or a Federal Reserve Bank.

(m) *Revised Article 8* means Uniform Commercial Code, Revised Article 8, Investment Securities (with Conforming and Miscellaneous Amendments to Articles 1, 3, 4, 5, 9, and 10) 1994 Official Text. Copies of this publication are available from the Executive Office of the American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104, and the National Conference of Commissioners on Uniform State Laws, 676 North St. Clair Street, Suite 1700, Chicago, IL 60611.

(n) *Securities Intermediary* means:

(1) A Person that is registered as a "clearing agency" under the federal

securities laws; a Federal Reserve Bank; any other person that provides clearance or settlement services with respect to a Book-entry Federal Home Loan Bank Security that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, it its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority; or

(2) A Person (other than an individual, unless such individual is registered as a broker or dealer under the federal securities laws) including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(o) *Security Entitlement* means the rights and property interest of an Entitlement Holder with respect to a Book-entry Federal Home Loan Bank Security.

(p) *State* means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(q) *Transfer Message* means an instruction of a Participant to a Federal Reserve Bank to effect a transfer of a Book-entry Federal Home Loan Bank Security, as set forth in Federal Reserve Bank Operating Circulars.

§ 912.2 Law governing rights and obligations of Federal Home Loan Banks, Finance Board, Office of Finance, United States and Federal Reserve Banks; rights of any Person against Federal Home Loan Banks, Finance Board, Office of Finance, United States and Federal Reserve Banks.

(a) Except as provided in paragraph (b) of this section, the rights and obligations of the Federal Home Loan Banks, the Finance Board, the Office of Finance, the United States and the Federal Reserve Banks with respect to: A Book-entry Federal Home Loan Bank Security or Security Entitlement and the operation of the Book-entry system, as it applies to Federal Home Loan Bank Securities; and the rights of any Person, including a Participant, against the Federal Home Loan Banks, the Finance Board, the Office of Finance, the United States and the Federal Reserve Banks with respect to: A Book-entry Federal Home Loan Bank Security or Security Entitlement and the operation of the Book-entry system, as it applies to Federal Home Loan Bank Securities; are governed solely by regulations of the Finance Board, including the regulations of this part 912, the applicable offering notice, applicable procedures established by the Office of Finance, and Federal Reserve Bank Operating Circulars.

(b) A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Participant and that is not recorded on the books of a Federal Reserve Bank pursuant to § 912.4(c)(1), is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Federal Reserve Bank maintaining the Participant's Securities Account is located. A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Person that is not a Participant, and that is not recorded on the books of a Federal Reserve Bank pursuant to § 912.4(c)(1), is governed by the law determined in the manner specified in § 912.3.

(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted Revised Article 8, then the law specified in the first sentence of paragraph (b) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State.

§ 912.3 Law governing other interests.

(a) To the extent not inconsistent with this part 912, the law (not including the conflict-of-law rules) of a Securities Intermediary's jurisdiction governs:

(1) The acquisition of a Security Entitlement from the Securities Intermediary;

(2) The rights and duties of the Securities Intermediary and Entitlement Holder arising out of a Security Entitlement;

(3) Whether the Securities Intermediary owes any duties to an adverse claimant to a Security Entitlement;

(4) Whether an Adverse Claim can be asserted against a Person who acquires a Security Entitlement from the Securities Intermediary or a Person who purchases a Security Entitlement or interest therein from an Entitlement Holder; and

(5) Except as otherwise provided in paragraph (c) of this section, the perfection, effect of perfection or non-perfection, and priority of a security interest in a Security Entitlement.

(b) The following rules determine a "Securities Intermediary's jurisdiction" for purposes of this section:

(1) If an agreement between the Securities Intermediary and its Entitlement Holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(2) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify the governing law as provided in paragraph (b)(1) of this section, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(3) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section, the Securities Intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the Entitlement Holder's account.

(4) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section and an account statement does not identify an office serving the Entitlement Holder's account as provided in paragraph (b)(3) of this section, the Securities Intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the Securities Intermediary.

(c) Notwithstanding the general rule in paragraph (a)(5) of this section, the law (but not the conflict-of-law rules) of the jurisdiction in which the Person creating a security interest is located governs whether and how the security interest may be perfected automatically or by filing a financing statement.

(d) If the jurisdiction specified in paragraph (b) of this section is a State that has not adopted Revised Article 8, then the law for the matters specified in paragraph (a) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State. For purposes of the application of the matters specified in paragraph (a) of this section, the Federal Reserve Bank maintaining the Securities Account is a clearing corporation, and the Participant's interest in a Federal Home Loan Bank Book-entry Security is a Security Entitlement.

§ 912.4 Creation of Participant's Security Entitlement; security interests.

(a) A Participant's Security Entitlement is created when a Federal Reserve Bank indicates by book entry that a Book-entry Federal Home Loan Bank Security has been credited to a Participant's Securities Account.

(b) A security interest in a Security Entitlement of a Participant in favor of the United States to secure deposits of public money, including, without limitation, deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that

is required by Federal statute, regulation, or agreement, and that is marked on the books of a Federal Reserve Bank is thereby effected and perfected, and has priority over any other interest in the Securities. Where a security interest in favor of the United States in a Security Entitlement of a Participant is marked on the books of a Federal Reserve Bank, such Federal Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the Security. For purposes of this paragraph (b), an "authorized representative of the United States" is the official designated in the applicable regulations or agreement to which a Federal Reserve Bank is a party, governing the security interest.

(c)(1) The Federal Home Loan Banks, the Finance Board, the Office of Finance, the United States and the Federal Reserve Banks have no obligation to agree to act on behalf of any Person or to recognize the interest of any transferee of a security interest or other limited interest in a Security Entitlement in favor of any Person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the Participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a Security Entitlement that is in favor of a Federal Reserve Bank or a Person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a Security Entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the Securities.

(2) In addition to the method provided in paragraph (c)(1) of this section, a security interest in a Security Entitlement, including a security interest in favor of a Federal Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in § 912.2(b) or § 912.3. The perfection, effect of perfection or non-perfection, and priority of a security interest are governed by that applicable law. A security interest in favor of a Federal Reserve Bank shall be treated as a security interest in favor of a clearing corporation in all respects under that law, including with respect to the effect of perfection and priority of the security interest. A Federal Reserve Bank Operating Circular shall be treated as a rule adopted by a clearing corporation for such purposes.

§ 912.5 Obligations of the Federal Home Loan Banks and the Office of Finance; no Adverse Claims.

(a) Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in § 912.4(c)(1), for the purposes of this part 912, the Federal Home Loan Banks, the Office of Finance and the Federal Reserve Banks shall treat the Participant to whose Securities Account an interest in a Book-entry Federal Home Loan Bank Security has been credited as the person exclusively entitled to issue a Transfer Message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to the Security, notwithstanding any information or notice to the contrary. Neither the Federal Home Loan Banks, the Finance Board, the Office of Finance, the United States, nor the Federal Reserve Banks are liable to a Person asserting or having an Adverse Claim to a Security Entitlement or to a Book-entry Federal Home Loan Bank Security in a Participant's Securities Account, including any such claim arising as a result of the transfer or disposition of a Book-entry Federal Home Loan Bank Security by a Federal Reserve Bank pursuant to a Transfer Message that the Federal Reserve Bank reasonably believes to be genuine.

(b) The obligation of the Federal Home Loan Banks and the Office of Finance to make payments of interest and principal with respect to Book-entry Federal Home Loan Bank Securities is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest on Book-entry Federal Home Loan Bank Securities is either credited by a Federal Reserve Bank to a Funds Account maintained at the Federal Reserve Bank or otherwise paid as directed by the Participant.

(2) Book-entry Federal Home Loan Bank Securities are paid, either at maturity or upon redemption, in accordance with their terms by a Federal Reserve Bank withdrawing the securities from the Participant's Securities Account in which they are maintained and by either crediting the amount of the proceeds, including both principal and interest, where applicable, to a Funds Account at the Federal Reserve Bank or otherwise paying such principal and interest as directed by the Participant. No action by the Participant is required in connection with the payment of a Book-entry Federal Home Loan Bank Security, unless otherwise expressly required.

§ 912.6 Authority of Federal Reserve Banks.

(a) Each Federal Reserve Bank is hereby authorized as fiscal agent of the Office of Finance: to perform functions with respect to the issuance of Book-entry Federal Home Loan Bank Securities, in accordance with the terms of the applicable offering notice and with procedures established by the Office of Finance; to service and maintain Book-entry Federal Home Loan Bank Securities in accounts established for such purposes; to make payments of principal, interest and redemption premium (if any), as directed by the Office of Finance; to effect transfer of Book-entry Federal Home Loan Bank Securities between Participants' Securities Accounts as directed by the Participants; and to perform such other duties as fiscal agent as may be requested by the Office of Finance.

(b) Each Federal Reserve Bank may issue Operating Circulars not inconsistent with this part 912, governing the details of its handling of Book-entry Federal Home Loan Bank Securities, Security Entitlements, and the operation of the Book-entry system under this part 912.

§ 912.7 Liability of Federal Home Loan Banks, Finance Board, Office of Finance and Federal Reserve Banks.

The Federal Home Loan Banks, the Finance Board, the Office of Finance and the Federal Reserve Banks may rely on the information provided in a tender, transaction request form, other transaction documentation, or Transfer Message, and are not required to verify the information. Neither the Federal Home Loan Banks, the Finance Board, the Office of Finance, the United States, nor the Federal Reserve Banks shall be liable for any action taken in accordance with the information set out in a tender, transaction request form, other transaction documentation, or Transfer Message, or evidence submitted in support thereof.

§ 912.8 Additional requirements; notice of attachment for Book-entry Federal Home Loan Bank Securities.

(a) *Additional requirements.* In any case or any class of cases arising under the regulations in this part 912, the Office of Finance may require such additional evidence and a bond of indemnity, with or without surety, as may in its judgment, or in the judgment of the Federal Home Loan Banks or the Finance Board, be necessary for the protection of the interests of the Federal

Home Loan Banks, the Finance Board, the Office of Finance or the United States.

(b) *Notice of attachment.* The interest of a debtor in a Security Entitlement may be reached by a creditor only by legal process upon the Securities Intermediary with whom the debtor's securities account is maintained, except where a Security Entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. The regulations in this part 912 do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.

§ 912.9 Reference to certain Department of Treasury commentary and determinations.

(a) The Department of Treasury TRADES Commentary (31 CFR part 357, appendix B) addressing the Department of Treasury regulations governing book-entry procedure for Treasury Securities is hereby referenced, so far as applicable and as necessarily modified to relate to Book-entry Federal Home Loan Bank Securities, as an interpretive aid to this part 912.

(b) Determinations of the Department of Treasury regarding whether a State shall be considered to have adopted Revised Article 8 for purposes of 31 CFR part 357, as published in the **Federal Register** or otherwise, shall also apply to this part 912.

§ 912.10 Obligations of United States with respect to Federal Home Loan Bank Securities.

Federal Home Loan Bank Securities are not obligations of the United States and are not guaranteed by the United States.

By the Board of Directors of the Federal Housing Finance Board

Dated: January 21, 1998.

Bruce A. Morrison,

Chairman.

[FR Doc. 98–4070 Filed 2–17–98; 8:45 am]

BILLING CODE 8725–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–177–AD; Amendment 39–10343; AD 98–04–31]

RIN 2120–AA64

Airworthiness Directives; Fairchild Model F27 and FH227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fairchild Model F27 and FH227 series airplanes, that requires revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: March 25, 1998.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581–1200; telephone (516) 256–7520; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fairchild Model F27 and FH227 series airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48574). That action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Since the Issuance of the Proposal

The FAA has received information verifying that propeller spinners on Fairchild Model F27 and FH227 series airplanes will not accumulate ice because the propeller spinners are heated. Consequently, the FAA has determined that it is unnecessary to include the propeller spinners as part of the visual cues specified in paragraph (a) of the proposal that addresses "accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed." Therefore, the FAA has removed reference to the propeller spinners as a visual cue from the final rule, and has retained reference to the "accumulation of ice on the engine nacelles" in the final rule.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the following comments received.

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24

proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–49–AD	Aerospace Technologies of Australia, Models N22B and N24A	62 FR 48520
97–CE–50–AD	Harbin Aircraft Mfg. Corporation, Model Y12 IV	62 FR 48513
97–CE–51–AD	Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	62–FR 48524
97–CE–52–AD	Industrie Aeronautiche Meccaniche Rinaldo Piaggio S.p.A., Model P–180	62 FR 48502
97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499
97–CE–54–AD	Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538
97–CE–55–AD	SOCATA—Groupe Aerospatia le, Model TBM–700	62 FR 48506
97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	62 FR 48481
97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549
97–CE–58–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517
97–CE–59–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Model 2000	62 FR 48531
97–CE–60–AD	The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	62 FR 48542
97–CE–61–AD	The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	62 FR 52294
97–CE–62–AD	Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	62 FR 48535
97–CE–63–AD	Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	62 FR 48528
97–CE–64–AD	SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	62 FR 48510
97–NM–170–AD	Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	62 FR 48560
97–NM–171–AD	Sabreliner Corporation, Models 40, 60, 70, and 80 series	62 FR 48556
97–NM–172–AD	Gulfstream Aerospace, Model G–159 series	62 FR 48563
97–NM–173–AD	McDonnell Douglas, Models DC–3 and DC–4 series	62 FR 48553
97–NM–174–AD	Mitsubishi Heavy Industries, Models YS–11 and YS–11A series	62 FR 48567
97–NM–175–AD	Frakes Aviation, Models G–73 (Mallard) and G–73T series	62 FR 48577
97–NM–176–AD	Lockheed, Models L–14 and L–18 series	62 FR 48574
97–NM–177–AD	Fairchild, Models F27 and FH227 series	62 FR 48570

Comment 1. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified in the Federal Aviation Regulations (14 CFR part 39).

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those

airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

Comment 2. AD Is Inappropriate To Address Improper Operation of the Airplane

One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C., formerly the Federal Aviation Act), justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless of whether the unsafe condition results from maintenance, design defect, or any other reason.

This same commenter considers that part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) is the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that are outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenter's request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues, (such as accumulation of ice aft of the protected area) under those conditions. Other than the previously discussed removal of a visual cue that referenced ice on the propeller spinners, the FAA considers that no other changes regarding visual cues are necessary to the final rule. However, for those operators that elect to identify airplane-specific visual cures, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 426 Fairchild Model F27 and FH227 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 47 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,820, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98-04-31 Fairchild: Amendment 39-10343. Docket 97-NM-177-AD.

Applicability: All Model F27 and FH227 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.
—Accumulation of ice on the lower surface of the wing aft of the protected area.
—Unusual accumulation of ice on the engine nacelles.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

"PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as -18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface farther aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 25, 1998.

Issued in Renton, Washington, on February 6, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3698 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–176–AD; Amendment 39–10344; AD 98–04–32]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–14 and L–18 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Lockheed Model L–14 and L–18 Series Airplanes, that requires revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: March 25, 1998.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Tom Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Lockheed Modle L–14 and L–18 series airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48570). That action proposed to require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

• Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);

• Prohibit flight in severe icing conditions (as determined by certain visual cues);

• Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and

• Require that all wing icing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

• Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and

• Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the following comments received.

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all revelant public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–49–AD	Aerospace Technologies of Australia, Models N22B and N24A	62 FR 48520
97–CE–50–AD	Harbin Aircraft Mfg., Corporation Model Y12 IV	62 FR 48513
97–CE–51–AD	Partenavia Costruzioni Aeronauticas, S.p.A., Models	62 FR 48524
97–CE–52–AD	Industrie Aeronautiche Meccaniche Rinaldo Piaggio S.p.A., Model P–180	62 FR 48502

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499
97–CE–54–AD	Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538
97–CE–55–AD	SOCATA—Groupe Aerospatia le, Model TBM–700	62 FR 48506
97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P,and –700P	62 FR 48481
97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B,–500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681,–685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549
97–CE–58–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation) Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517
97–CE–59–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Model 2000.	62 FR 48531
97–CE–60–AD	The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	62 FR 48542
97–CE–61–AD	The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	62 FR 52294
97–CE–62–AD	Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	62 FR 48535
97–CE–63–AD	Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	62 FR 48528
97–CE–64–AD	SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	62 FR 48510
97–NM–170–AD	Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	62 FR 48560
97–NM–171–AD	Sabreliner Corporation, Models 40, 60, 70, and 80 series	62 FR 48556
97–NM–172–AD	Gulfstream Aerospace, Model G–159 series	62 FR 48563
97–NM–173–AD	McDonnell Douglas, Models DC–3 and DC–4 series	62 FR 48553
97–NM–174–AD	Mitsubishi Heavy Industries, Models YS–11 and YS–11A series	62 FR 48567
97–NM–175–AD	Frakes Aviation, Models G–73 (Mallard) and G–73T series	62 FR 48577
97–NM–176–AD	Lockheed, Models L–14 and L–18 series	62 FR 48574
97–NM–177–AD	Fairchild, Models F27 and FH227 series	62 FR 48570

Comment 1. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified in the Federal Aviation Regulations (14 CFR part 39).

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

Comment 2. AD is Inappropriate to Address Improper Operation of the Airplane

One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C., formerly the Federal Aviation Act), justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless of whether the unsafe condition results from maintenance, design defect, or any other reason.

This same commenter considers that part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) is the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that are outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenters' request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues, (such as accumulation of ice aft of the protected area) under those conditions. For these reasons, the FAA considers that no changes regarding visual cues are necessary to the final rule. However, for those operators that elect to identify airplane-specific visual cues, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 120 Lockheed Model L–14 and L–18 series

airplanes of the affected design in the worldwide fleet. The FAA estimates that 109 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,540, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–04–32 Lockheed: Amendment 39–10344. Docket 97–NM–176–AD.

Applicability: All Model L–14 and L–18 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.
—Accumulation of ice on the upper surface of the wing aft of the protected area.
—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing

than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 25, 1998.

Issued in Renton, Washington, on February 6, 1998.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3697 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–175–AD; Amendment 39–10345; AD 98–04–33]

RIN 2120–AA64

Airworthiness Directives; Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Gulfstream American (Frakes Aviation) Model G–73 (Mallard) and G–73T series airplanes, that requires revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: March 25, 1998.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Rotorcraft Directorate, Airplane Certification Office, 1601 Meacham Boulevard, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Efrain Esparza, Aerospace Engineer, Airplane Certification Office, ASW–150, FAA, Rotorcraft Directorate, 1601 Meacham Boulevard, Fort Worth, Texas 76137–4298; telephone (817) 222–5130; fax (817) 222–5960.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Gulfstream American Model G–73 (Mallard) and G–73T series airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48577). That action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

• Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);

• Prohibit flight in severe icing conditions (as determined by certain visual cues);

• Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and

• Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

• Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and

• Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the following comments received.

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all revelant public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–49–AD	Aerospace Technologies of Australia, Models N22B and N24A	62 FR 48520
97–CE–50–AD	Harbin Aircraft Mfg. Corporation, Model Y12 IV	62 FR 48513
97–CE–51–AD	Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600.	62–FR 48524
97–CE–52–AD	Industrie Aeronautiche Meccaniche Rinaldo Piaggio S.p.A., Model P–180	62 FR 48502
97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499
97–CE–54–AD	Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538
97–CE–55–AD	SOCATA—Groupe Aerospatia le, Model TBM–700	62 FR 48506
97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P.	62 FR 48481

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B,–500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549
97–CE–58–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517
97–CE–59–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Model 2000.	62 FR 48531
97–CE–60–AD	The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	62 FR 48542
97–CE–61–AD	The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	62 FR 52294
97–CE–62–AD	Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	62 FR 48535
97–CE–63–AD	Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	62 FR 48528
97–CE–64–AD	SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	62 FR 48510
97–NM–170–AD	Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	62 FR 48560
97–NM–171–AD	Sabreliner Corporation, Models 40, 60, 70, and 80 series	62 FR 48556
97–NM–172–AD	Gulfstream Aerospace, Model G–159 series	62 FR 48563
97–NM–173–AD	McDonnell Douglas, Models DC–3 and DC–4 series	62 FR 48553
97–NM–174–AD	Mitsubishi Heavy Industries, Models YS–11 and YS–11A series	62 FR 48567
97–NM–175–AD	Frakes Aviation, Models G–73 (Mallard) and G–73T series	62 FR 48577
97–NM–176–AD	Lockheed, Models L–14 and L–18 series	62 FR 48574
97–NM–177–AD	Fairchild, Models F27 and FH227 series	62 FR 48570

Comment 1. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified in the Federal Aviation Regulations (14 CFR part 39).

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

Comment 2. AD Is Inappropriate To Address Improper Operation of the Airplane

One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed

notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C., formerly the Federal Aviation Act), justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless of whether the unsafe condition results from maintenance, design defect, or any other reason.

This same commenter considers that part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) is the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that are outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenters' request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues, (such as accumulation of ice aft of the protected area) under those conditions. For these reasons, the FAA considers that no changes regarding visual cues are necessary to the final rule. However, for those operators that elect to identify airplane-specific visual cures, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 8 Gulfstream America (Frakes Aviation) Model G–73 (Mallard) and G–73T series airplanes of the affected design in the worldwide fleet. The FAA estimates that 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $300, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and

that no operator would accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–04–33 Gulfstream American (Frakes Aviation): Amendment 39–10345. Docket 97–NM–175–AD.

Applicability: All Model G–73 (Mallard) and G–73T series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING .

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the lower surface of the wing aft of the protected area.

—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Airplane Certification Office (ACO), ASW–150, FAA,

Rotorcraft Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, ACO, ASW–150.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the ACO, ASW–150.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 25, 1998.

Issued in Renton, Washington, on February 6, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3696 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–174–AD; Amendment 39–10346; AD 98–04–34]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Model YS–11 and YS–11A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Mitsubishi Model YS–11 and YS–11A series airplanes, that requires revising the Airplane Flight Manual (AFM) to specify procedures that will prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: March 25, 1998.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5338; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Mitsubishi Model YS–11 and YS–11A series airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48567). That action proposed to require the Limitations Section of the FAA-approved AFM to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the following comments received.

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

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97–CE–50–AD	Harbin Aircraft Mfg. Corporation, Model Y12 IV	62 FR 48513
97–CE–51–AD	Partenavia Costruzioni Aeronautics, S.p.A., Models P68, AP68TP 300, AP68TP 600	62 FR 48524
97–CE–52–AD	Industrie Aeronautiche Meccaniche Rinaldo Piaggio S.p.A., Model P–180	62 FR 48502
97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499
97–CE–54–AD	Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538
97–CE–55–AD	SOCATA—Groupe Aerospatiale, Model TBM–700	62 FR 48506
97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	62 FR 48481
97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B,–500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549
97–CE–58–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517
97–CE–59–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Model 2000	62 FR 48531
97–CE–60–AD	The New Piper Aircraft, Inc., Models PA–46–310P and PA–46–350P	62 FR 48542

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–61–AD	The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	62 FR 52294
97–CE–62–AD	Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	62 FR 48535
97–CE–63–AD	Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	62 FR 48528
97–CE–64–AD	SIAI–Marchetti S.r.l. (Augusta), Models SF600 and SF600A	62 FR 48510
97–NM–170–AD	Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	62 FR 48560
97–NM–171–AD	Sabreliner Corporation, Models 40, 60, 70, and 80 series	62 FR 48556
97–NM–172–AD	Gulfstream Aerospace, Model G–159 series	62 FR 48563
97–NM–173–AD	McDonnell Douglas, Models DC–3 and DC–4 series	62 FR 48553
97–NM–174–AD	Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	62 FR 48567
97–NM–175–AD	Frakes Aviation, Model G–73 (Mallard) and G–73T series	62 FR 48577
97–NM–176–AD	Lockheed, Model L–14 and L–18 series	62 FR 48574
97–NM–177–AD	Fairchild, Models F27 and FH227 series	62 FR 48570

Comment 1. Removal of Certain Visual Cues

One commenter, the manufacturer, requests that the sentence describing visual cues of "Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed" in paragraph (a) of the proposal be deleted. The manufacturer bases this request on the fact that ice will not accrete to the propeller spinner because the heater element for anti-icing is installed in the spinner. Further, the manufacturer points out that it is impossible to see the engine nacelle from the cockpit.

The FAA concurs, and has revised the final rule by removing that specific visual cue from the visual cue requirements specified in the final rule.

Comment 2. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design specified in the proposal. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified in the Federal Aviation Regulations (14 CFR part 39).

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because, without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and that provide procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies and explained that the investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

Comment 3. AD Is Inappropriate To Address Improper Operation of the Airplane

One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C., formerly the Federal Aviation Act), justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless of

whether the unsafe condition results from maintenance, design defect, or any other reason.

This same commenter considers that part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) is the appropriate regulation to address the problems of icing encountered outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that are outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require revision of the AFM to provide this information.

One commenter asserts that, while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 4. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenters' request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues (such as accumulation of ice aft of the protected area) under those conditions. Other than the previously discussed removal of a visual cue that referenced ice on the engine nacelles and propeller spinners, the FAA considers that no other changes regarding visual cues are necessary to the final rule. However, for those operators that elect to identify airplane-specific visual cues, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 5. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 6. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flight crew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 76 Mitsubishi Model YS–11 and YS–11A–200, –300, –500, and –600 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 38 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,280, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and

that no operator would accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that the required actions may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–04–34 Mitsubishi Heavy Industries, Ltd. [Formerly Nihon Aeroplane Manufacturing Company (NMAC)]: Amendment 39–10346. Docket 97–NM–174–AD.

Applicability: All Model YS–11 and YS–11A–200, –300, –500, and –600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"Warning

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exist, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing aft of the protected area.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night.

[**Note:** This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD into the AFM.

"May Be Conducive to Severe In-Flight Icing

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

Procedures for Exiting the Severe Icing Environment

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as –18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The

request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 25, 1998.

Issued in Renton, Washington, on February 6, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3695 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–173–AD; Amendment 39–10347; AD 98–04–35]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–3 and DC–4 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–3 and DC–4 series airplanes, that requires revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: March 25, 1998.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Albert Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5346 fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all McDonnel Douglas Model DC–3 and DC–4 series airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48553). That action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

- require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- prohibit flight in severe icing conditions (as determined by certain visual cues);
- prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the following comments received.

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–49–AD	Aerospace Technologies of Australia, Models N22B and N24A	62 FR 48520
97–CE–50–AD	Harbin Aircraft Mfg., Corporation Model Y12IV	62 FR 48513
97–CE–51–AD	Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600.	62 FR 48524
97–CE–52–AD	Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A., Model P–180.	62 FR 48502
97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499
97–CE–54–AD	Pilatus Britten-Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538
97–CE–55–AD	SOCATA–Groupe Aerospatia le, Model TBM–700	62 FR 48506
97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601,–601P, –602P, and –700P.	62 FR 48481
97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B,–500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681,–685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–58–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517
97–CE–59–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Model 2000.	62 FR 48531
97–CE–60–AD	The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	62 FR 48542
97–CE–61–AD	The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	62 FR 52294
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One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified in the Federal Aviation Regulations (14 CFR part 39).

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

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One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenters' request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues, (such as accumulation of ice aft of the protected area) under those conditions. For these reasons, the FAA considers that no changes regarding visual cues are necessary to the final rule. However, for those operators that elect to identify airplane-specific visual cures, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 300 McDonnell Douglas Model DC–3 and DC–4 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 166 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $9,960, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that

continued operational safety necessitates the imposition of the costs.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–04–35 McDonnell Douglas: Amendment 39–10347. Docket 97–NM–173–AD.

Applicability: All Model DC–3 and DC–4 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

Warning

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.
—Accumulation of ice on the upper surface of the wing aft of the protected area.
—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

The Following Weather Conditions May Be Conducive to Severe In-Flight Icing

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

"Procedures for Exiting the Severe Icing Environment

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 25, 1998.

Issued in Renton, Washington, on February 6, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3923 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–172–AD; Amendment 39–10348; AD 98–04–36]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Model G–159 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Gulfstream Model G–159 series airplanes, that requires revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: March 25, 1998.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: John W. McGraw, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (707) 703–6098; fax (707) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Gulfstream Model G–159 series airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48563). That action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Since the Issuance of the Proposal

The FAA has received information verifying that propeller spinners on Gulfstream Model B–159 series airplanes will not accumulate ice because the propeller spinners are heated. Consequently, the FAA has determined that it is unnecessary to include the propeller spinners as part of the visual cues specified in paragraph (a) of the proposal that addresses "accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed." Therefore, the FAA has removed reference to the propeller spinners as a visual cue from the final rule, and has retained reference to the "accumulation of ice on the engine nacelles" in the final rule.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the following comments received.

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–49–AD	Aerospace Technologies of Australia Models N22B and N24A	62 FR 48520
97–CE–50–AD	Harbin Aircraft Mfg. Corporation Model, Y12 IV	62 FR 48513
97–CE–51–AD	Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	62–FR 48524
97–CE–52–AD	Industrie Aeronautiche Meccaniche Rinaldo Piaggio S.p.A., Model P–180	62 FR 48502
97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499
97–CE–54–AD	Pilatus Britten–Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538
97–CE–55–AD	SOCATA—Groupe Aerospatia le, Model TBM–700	62 FR 48506
97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	62 FR 48481
97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681,–685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–58–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517
97–CE–59–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Model 2000	62 FR 48531
97–CE–60–AD	The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	62 FR 48542
97–CE–61–AD	The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	62 FR 52294
97–CE–62–AD	Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	62 FR 48535
97–CE–63–AD	Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	62 FR 48528
97–CE–64–AD	SIAI-Marchetti S.r.l. (Augusta), Models SF600 and SF600A	62 FR 48510
97–NM–170–AD	Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	62 FR 48560
97–NM–171–AD	Sabreliner Corporation, Models 40, 60, 70, and 80 series	62 FR 48556
97–NM–172–AD	Gulfstream Aerospace, Model G–159 series	62 FR 48563
97–NM–173–AD	McDonnell Douglas, Models DC–3 and DC–4 series	62 FR 48553
97–NM–174–AD	Mitsubishi Heavy Industries, Models YS–11 and YS–11A series	62 FR 48567
97–NM–175–AD	Frakes Aviation, Models G–73 (Mallard) and G–73T series	62 FR 48577
97–NM–176–AD	Lockheed, Models L–14 and L–18 series	62 FR 48574
97–NM–177–AD	Fairchild, Models F27 and FH227 series	62 FR 48570

Comment 1. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified in the Federal Aviation Regulations (14 CFR part 39).

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

Comment 2. AD Is Inappropriate To Address Improper Operation of the Airplane

One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C., formerly the Federal Aviation Act), justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless of whether the unsafe condition results

from maintenance, design defect, or any other reason.

This same commenter considers that part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) is the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that are outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenters' request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues, (such as accumulation of ice aft of the protected area) under those conditions. Other than the previously discussed removal of a visual cue that referenced ice on the propeller spinners, the FAA considers that no other changes regarding visual cues are necessary to the final rule. However, for those operators that elect to identify airplane-specific visual cues, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 141 Gulfstream Model G–159 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 72 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,320, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98-04-36 Gulfstream Aerospace Corporation (Formerly Grumman): Amendment 39-10348. Docket 97-NM-172-AD.

Applicability: All Model G-159 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

Warning

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.
—Accumulation of ice on the upper surface of the wing aft of the protected area.
—Unusual accumulation of ice on the engine nacelles.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All icing wing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"The Following Weather Conditions May Be Conducive to Severe In-Flight Icing

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

Procedures for Exiting the Severe Icing Environment

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add

comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 25, 1998.

Issued in Renton, Washington, on February 6, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3922 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–171–AD; Amendment 39–10349; AD 98–04–37]

RIN 2120–AA64

Airworthiness Directives; Sabreliner Model 40, 60, 70, and 80 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Sabreliner Model 40, 60, 70, and 80 series airplanes, that requires revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: March 25, 1998.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Charles Riddle, Program Manager, Flight Test and Program Management, ACE–117W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4144; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Sabreliner Model 40, 60, 70, and 80 series airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48556). That action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–49–AD	Aerospace Technologies of Australia, Models N22B and N24A	62 FR 48520
97–CE–50–AD	Harbin Aircraft Mfg. Corporation, Model Y12 IV	62 FR 48513
97–CE–51–AD	Partenavia Costruzioni Aeronauticas, S.p.A., Models P68, AP68TP 300, AP68TP 600	62–FR 48524
97–CE–52–AD	Industrie Aeronautiche Meccaniche Rinaldo Piaggio S.p.A., Model P–180	62 FR 48502
97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499
97–CE–54–AD	Pilatus Britten–Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538
97–CE–55–AD	SOCATA—Groupe Aerospatiale Model TBM–700	62 FR 48506
97–CE–56–AD	Aerostar Aircraft Corporation Models PA–60–500, –601, –601P, –602P, and –700P	62 FR 48481
97–CE–57–AD	Twin Commander Aircraft Corporation Models 500, –500–A, –500–B,–500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681,–685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549
97–CE–58–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation) Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517
97–CE–59–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation) Model 2000	62 FR 48531
97–CE–60–AD	The New Piper Aircraft, Inc. Models PA–46 –310P and PA–46–350P	62 FR 48542

Docket No.	Manufacturer/airplane model	Federal Register citation
97–CE–61–AD	The New Piper Aircraft, Inc. Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	62 FR 52294
97–CE–62–AD	Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	62 FR 48535
97–CE–63–AD	Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	62 FR 48528
97–CE–64–AD	SIAI–Marchetti S.r.l. (Augusta), Models SF600 and SF600A	62 FR 48510
97–NM–170–AD	Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	62 FR 48560
97–NM–171–AD	Sabreliner Corporation, Models 40, 60, 70, and 80 series	62 FR 48556
97–NM–172–AD	Gulfstream Aerospace, Model G–159 series	62 FR 48563
97–NM–173–AD	McDonnell Douglas, Models DC–3 and DC–4 series	62 FR 48553
97–NM–174–AD	Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	62 FR 48567
97–NM–175–AD	Frakes Aviation, Model G–73 (Mallard) and G–73T series	62 FR 48577
97–NM–176–AD	Lockheed, Models L–14 and L–18 series	62 FR 48574
97–NM–177–AD	Fairchild, Models F27 and FH227 series	62 FR 48570

Comment 1. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified in the Federal Aviation Regulations (14 CFR part 39).

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

Comment 2. AD Is Inappropriate To Address Improper Operation of the Airplane

One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C., formerly the Federal Aviation Act), justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless of whether the unsafe condition results from maintenance, design defect, or any other reason.

This same commenter considers that part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) is the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that are outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing

certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenters' request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues, (such as accumulation of ice aft of the protected area) under those conditions. For these reasons, the FAA considers that no changes regarding visual cues are necessary to the final rule. However, for those operators that elect to identify airplane-specific visual cures, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 283 Sabreliner Model 40, 60, 70, and 80 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 176 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $10,560, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a

"significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–04–37 Sabreliner: Amendment 39–10349. Docket 97–NM–171–AD.

Applicability: Model 40, 60, 70, and 80 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing aft of the protected area.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"The Following Weather Conditions may be Conducive to Severe In-Flight Icing

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

Procedures for Exiting the Severe Icing Environment

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as -18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 25, 1998.

Issued in Renton, Washington, on February 6, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3921 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–170–AD; Amendment 39–10350; AD 98–04–38]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 500, 501, 550, 551, and 560 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Cessna Model 500, 501, 550, 551, and 560 series airplanes, that requires revising the Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: March 25, 1998.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Carlos L. Blacklock, Program Manager, Flight Test and Program Management, ACE–117W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4166; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Cessna Model 500, 501, 550, 551, and 560 series airplanes was published in the **Federal Register** on September 16, 1997 (62 FR 48560). The action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all relevant public comments received for each of these proposed rules.

Docket No.	Manufacturer/airplane model	Federal Register citation
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97–CE–50–AD	Harbin Aircraft Mfg. Corporation, Model Y12 IV	62 FR 48513
97–CE–51–AD	Partenavia Costruzioni Aeronautcas, S.p.A., Models P68, AP68TP 300, AP68TP 600	62 FR 48524
97–CE–52–AD	Industrie Aeronautiche Meccaniche Rinaldo Piaggio S.p.A., Model P–180	62 FR 48502
97–CE–53–AD	Pilatus Aircraft Ltd., Models PC–12 and PC–12/45	62 FR 48499
97–CE–54–AD	Pilatus Britten–Norman Ltd., Models BN–2A, BN–2B, and BN–2T	62 FR 48538
97–CE–55–AD	SOCATA—Groupe Aerospatiale, Model TBM–700	62 FR 48506
97–CE–56–AD	Aerostar Aircraft Corporation, Models PA–60–600, –601, –601P, –602P, and –700P	62 FR 48481
97–CE–57–AD	Twin Commander Aircraft Corporation, Models 500, –500–A, –500–B, –500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681, –685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549
97–CE–58–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation), Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517
97–CE–59–AD	Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation) Model 2000	62 FR 48531
97–CE–60–AD	The New Piper Aircraft, Inc. Models PA–46 –310P and PA–46–350P	62 FR 48542
97–CE–61–AD	The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	62 FR 52294
97–CE–62–AD	Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	62 FR 48535
97–CE–63–AD	Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414 414A, 421B, 421C, 425, and 441.	62 FR 48528
97–CE–64–AD	SIAI–Marchetti S.r.l. (Augusta), Models SF600 and SF600A	62 FR 48510
97–NM–170–AD	Cessna Aircraft Company, Models 500, 501, 550, 551, and 560 series	62 FR 48560
97–NM–171–AD	Sabreliner Corporation, Models 40, 60, 70, and 80 series	62 FR 48556
97–NM–172–AD	Gulfstream Aerospace, Model G–159 series	62 FR 48563
97–NM–173–AD	McDonnell Douglas, Models DC–3 and DC–4 series	62 FR 48553
97–NM–174–AD	Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	62 FR 48567
97–NM–175–AD	Frakes Aviation, Model G–73 (Mallard) and G–73T series	62 FR 48577
97–NM–176–AD	Lockheed, Models L–14 and L–18 series	62 FR 48574

Docket No.	Manufacturer/airplane model	Federal Register citation
97–NM–177–AD	Fairchild, Models F27 and FH227 series	62 FR 48570

Comment 1. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified in the Federal Aviation Regulations (14 CFR part 39).

The FAA does not concur. As stated in the Notice of Proposed Rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

Comment 2. AD Is Inappropriate To Address Improper Operation of the Airplane

One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C. 40101, formerly the Federal Aviation Act) justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless of whether the unsafe condition results from maintenance, design defect, or any other reason.

This same commenter considers that part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) is the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in icing conditions that are outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such a revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenters' request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues, (such as accumulation of ice aft of the protected area) under those conditions. For these reasons, the FAA considers that no changes regarding visual cues are necessary to the final rule. However, for those operators that elect to identify airplane-specific visual cues, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 1,710 Cessna Model 500, 501, 550, 551,and 560 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,427 airplanes of U.S. registry will be affected by this proposed AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $85,620, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–04–38 Cessna Aircraft Company: Amendment 39–10350. Docket 97–NM–170–AD.

Applicability: Model 500, 501, 550, 551, and 560 series airplanes equipped with pneumatic deicing boots, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing aft of the protected area.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 25, 1998.

Issued in Renton, Washington, on February 6, 1998.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3920 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–4]

Amendment to Class D and Class E Airspace; Joplin, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class D and Class E airspace areas at Joplin Regional Airport, Joplin, MO. A review of the Class E airspace for Joplin Regional Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The area has been enlarged to conform to the criteria of FAA Order 7400.2D. A minor revision to the Airport Reference Point (ARP) coordinates is included in this document. The intended effect of this rule is to revise the ARP coordinates, comply with the criteria of FAA Order 7400.2D, and to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR).

DATES: *Effective date:* 0901 UTC, June 18, 1998.

Comment date: Comments for inclusion in the Rules Docket must be received on or before March 20, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–4, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class D and Class E airspace at Joplin, MO. A review of the Class E airspace for Joplin Regional Airport, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL, is based on a standard climb gradient of 200 feet per mile, plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The Class D and Class E surface areas are amended to indicate the new ARP coordinates. The amendment at Joplin Regional Airport will meet the criteria of FAA Order 7400.2D, revise the ARP coordinates, provide additional controlled airspace at and above 700 feet AGL, and thereby facilitate separation of aircraft operating under Instrument Flight Rules.

The areas will be depicted on appropriate aeronautical charts. Class D airspace areas designated for an airport containing at least one primary airport around which the airspace is designated are published in paragraph 5000; Class E airspace areas designated as a surface area for an airport are published in paragraph 6002; and Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made "Comments to Docket No. 98–ACE–4". The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866, (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ACE MO D Joplin, MO [Revised]

Joplin Regional Airport, MO
(lat. 37°09'05"N., long. 94°29'54"W.)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4.2-mile radius of the Joplin Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ACE MO E2 Joplin, MO [Revised]

Joplin Regional Airport, MO
(Lat. 37°09'05"N., long. 94°29'54"W.)

Within a 4.2-mile radius of the Joplin Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Joplin, MO [Revised]

Joplin Regional Airport, MO
(Lat. 37°09'05"N., long. 94°29'54"W.)
LUNNS LOM
(Lat. 37°12'11"N., long. 94°33'31"W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Joplin Regional Airport and within 2.6 miles each side of the Joplin Regional ILS localizer course extending from the 6.8-mile radius 7.4 miles northwest of LUNNS LOM and within 2.6 miles each side of the Joplin Regional ILS localizer course extending from the 6.8-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on January 12, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98-3964 Filed 2-17-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ACE-2]

Amendment to Class D and Class E Airspace; Cape Girardeau, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class D and Class E airspace areas at Cape Girardeau Municipal Airport, Cape Girardeau, MO. A review of the Class E airspace for Cape Girardeau Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The area has been enlarged to conform to the criteria of FAA Order 7400.2D. The current airspace description in FAA Order 7400.9E indicates part-time operation for the Class E airspace area. The actual hours of operation for the Class E airspace area are continuous. A minor revision to the Airport Reference Point (ARP) coordinates is included in this document. The intended effect of this rule is to revise the ARP coordinates, indicate the Class E airspace area is in effect continuously, comply with the criteria of FAA Order 7400.2D, and to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR).

DATES: *Effective date:* 0901 UTC, June 18, 1998.

Comment date: Comments for inclusion in the Rules Docket must be received on or before March 20, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE-520, Federal Aviation Administration, Docket Number 98-ACE-2, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE-520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426-3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class D and Class E airspace at Cape Girardeau, MO. A review of the Class E airspace for Cape Girardeau Municipal Airport, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL, is based on a standard climb gradient of 200 feet per mile, plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The airspace description of Class E airspace area at Cape Girardeau Municipal Airport is revised to indicate full-time status by removing the statement which indicates part-time status. The Class E surface airspace area is in effect continuously. The Class D and Class E areas are amended to indicate the new ARP coordinates. The amendment at Cape Girardeau Municipal Airport will meet the criteria of FAA Order 7400.2D, indicate the Class E airspace area status is continuous, revise the ARP coordinates, provide additional controlled airspace at and above 700 feet AGL, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The areas will be depicted on appropriate aeronautical charts. Class D airspace areas designated for an airport containing at least one primary airport around which the airspace is designated are published in paragraph 5000; Class E airspace areas designated as a surface area for an airport are published in paragraph 6002; Class E airspace areas designated as an extension to a Class D or Class E surface area are published in paragraph 6004; and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designation listed in this document will be published subsequently in the Order

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of

the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–ACE–2". The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ACE MO D Cape Girardeau, MO [Revised]

Cape Girardeau Municipal Airport, MO
(Lat. 37°13'31" N., long. 89°34'15" W.)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 4.1-mile radius of the Cape Girardeau Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface areaa for an airport.

* * * * *

ACE MO E2 Cape Girardeau, MO [Revised]

Cape Girardeau Municipal Airport, MO
(Lat. 37°13'31"N., long. 89°34'15"W.)

Within a 4.1-mile radius of the Cape Girardeau Municipal Airport.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area.

* * * * *

ACE MO E4 Cape Girardeau, MO [Revised]

Cape Girardeau Municipal Airport, MO
(Lat. 37°13'31"N., long. 89°34'15"W.)
Cape Girardeau VOR/DME
(Lat. 37°13'39"N., long. 89°34'21"W.)

That airspace extending upward from the surface within 2.6 miles each side of the 108° radial of the Cape Girardeau VOR/DME extending from the 4.1-mile radius of Cape Girardeau Municipal Airport to 4.4 miles east of the VOR/DME and within 2.2 miles each side of the 194° radial of the Cape Girardeau VOR/DME extending from the 4.1-mile radius of the airport to 5.7 miles south of the VOR/DME and within 2.6 miles each side of the 279° radial of the Cape Girardeau VOR/DME extending from the 4.1-mile radius of the Airport to 7.4 miles west of the VOR/DME.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Cape Girardeau, MO [Revised]

Cape Girardeau Municipal Airport, MO
(Lat. 37°13'31"N., long. 89°34'15"W.)
Cape Girardeau VOR/DME
(Lat. 37°13'39"N., long. 89°34'21"W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Cape Girardeau Municipal Airport and within 2.5 miles each side of the 108° radial of the Cape Girardeau VOR/DME extending from the 6.6-mile radius to 8.7 miles east of the VOR/DME and within 3 miles each side of the 194° radial of the Cape Girardeau VOR/DME extending from the 6.6-mile radius to 10 miles south of the VOR/DME and within 3 miles each side of the 279° radial of the Cape Girardeau VOR/DME extending from the 6.6-mile radius to 8.7 miles west of the VOR/DME.

* * * * *

Issued in Kansas City, MO, on January 9, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–3963 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–3]

Amendment to Class E Airspace; Columbia, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Columbia, MO. A review of the Class E airspace for Columbia Regional Airport indicates it does not meet the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The area has been enlarged to conform to the criteria of FAA Order 7400.2D. The intended effect of this rule is to comply with criteria of FAA Order 7400.2D and to provide controlled Class E airspace for aircraft operating under Instrument Flight Rules.

DATES: *Effective date:* 0901 UTC, June 18, 1998.

Comment date: Comments for inclusion in the Rules Docket must be received on or before March 20, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–3, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106, telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Columbia, MO. A review of the Class E airspace for Columbia Regional Airport, Columbia, MO, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL, is based on a standard climb gradient of 200 feet per mile, plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment to Class E airspace at Columbia Regional Airport, Columbia, MO, will meet the criteria of FAA Order 7400.2D, provide additional controlled airspace at and above 700 feet AGL, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–ACE–3". The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * * * *

ACE MO E5 Columbia, MO [Revised]

Columbia Regional Airport, MO
(Lat. 38°49'05"N., long. 92°13'11"W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Columbia Regional Airport and within 2.5 miles each side of the Columbia Regional ILS localizer course extending from the 6.8-mile radius to 7.4 miles north of the airport and within 2.5 miles each side of the Columbia Regional ILS localizer course extending from the 6.8-mile radius to 7.4 miles south of the airport.

* * * * * * *

Issued in Kansas City, MO, on January 12, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–3962 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–14]

Revocation of Class E Airspace; Minneapolis, KS

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This amendment removes the Class E airspace area at Minneapolis, KS. The VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Runway (RWY) 34 Standard Instrument Approach Procedure (SIAP) was the only SIAP serving the Minneapolis City County Airport, and was canceled on August 14, 1997. The Director, Division of Aviation for Kansas concurred with canceling the SIAP. This action will remove the Class E airspace for Minneapolis City County Airport, Minneapolis, KS.

EFFECTIVE DATE: 0901 UTC April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 E. 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On December 3, 1997, the FAA proposed to amend 14 CFR part 71 by removing the Class E airspace area at Minneapolis, KS (62 FR 63916).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be removed subsequently from the Order.

The Rule

This amendment to 14 CFR part 71 removes the Class E airspace area at Minneapolis, KS.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS, ROUTES AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Minneapolis, KS [Removed]

* * * * *

Issued in Kansas City, MO, on January 16, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 98–3959 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–7]

Admendment to Class E Airspace, Belleville, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Belleville, KS.

EFFECTIVE DATE: The direct final rule published at 62 FR 53943 is effective on 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on October 17, 1997 (62 FR 53943). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 26, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on December 23, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–3969 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–27]

Amendment to Class E Airspace; Lexington, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The document confirms the effective date of a direct final rule which revises Class E airspace at Lexington, NE.

EFFECTIVE DATE: The direct final rule published at 62 FR 64152 is effective on 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106, telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on December 4, 1997 (62 FR 64152). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on January 16, 1998.

Jack L. Skelton,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–3970 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–17]

Amendment to Class E Airspace; Jefferson City, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Jefferson City, MO.

EFFECTIVE DATE: The direct final rule published at 62 FR 60778 is effective on 0901 UTC April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on November 13, 1997 (62 FR 60778). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on January 21, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–3971 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–19]

Amendment to Class E Airspace; Eagle Grove, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Eagle Grove, IA.

EFFECTIVE DATE: The direct final rule published at 62 FR 60779 is effective on 0901 UTC April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on November 13, 1997 (62 FR 60779). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on January 21, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–3972 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–25]

Amendment to Class E Airspace; Pella, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Pella, IA.

EFFECTIVE DATE: The direct final rule published at 62 FR 58645 is effective on 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT:

Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on October 30, 1997 (62 FR 58645). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on January 16, 1998.

Jack L. Skelton,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–3973 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–26]

Amendment to Class E Airspace; Atchison, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Atchison, KS.

DATES: The direct final rule published at 62 FR 64151 is effective on 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on December 4, 1997 (62 FR 64151). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on January 28, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 98–3975 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–23]

Amendment to Class E Airspace; Crete, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Crete, NE.

DATES: The direct final rule published at 62 FR 64150 is effective on 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on December 4, 1997 (62 FR 64150). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on January 28, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region

[FR Doc. 98–3976 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Rel. No. 34–39627]

Delegation of Authority to the Director of the Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending its Rules of Practice to delegate its authority to the Director of the Division of Market Regulation to grant or deny exemptions from Section 11(d)(1) of the Securities Exchange Act of 1934 pursuant to Section 36 of the Exchange Act. The delegation of authority is intended to conserve Commission resources by permitting the staff to review and act on

exemptive applications under Section 36 when appropriate.

EFFECTIVE DATE: February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel, or Paul P. Andrews, Special Counsel at (202) 942–0073, Office of Chief Counsel, Division of Market Regulation, Mail Stop 7–11, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Amendment To Rules of Practice

The Securities and Exchange Commission ("Commission") today announces an amendment to its Rules of Practice governing Delegations of Authority to the Director of the Division of Market Regulation ("Director").[1] The amendment adds to Rule 30–3 a new paragraph (a)(63) authorizing the Director to grant or deny exemptions from Section 11(d)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), where appropriate, under Section 36 of the Exchange Act.[2]

Section 36(a) provides that:

> Except as provided in subsection (b) [not applicable here], but notwithstanding any other provision of this title, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulations thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

The delegation of authority to the Director is intended to conserve Commission resources by permitting the staff to review and act on exemptive applications under Section 36(a) when appropriate. Nevertheless, the staff may submit matters to the Commission for consideration as it deems appropriate. In addition, under Section 4A(b) of the Exchange Act, the Commission retains discretionary authority to review, upon its own initiative or upon application by a party adversely affected, any exemption granted or denied by the Division pursuant to delegated authority. Information concerning the filing of exemptive relief applications can be found in Release No. 34–39624; Rule 240.0–12, 17 CFR 240.0–12.

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedure Act, 5 U.S.C. § 553(b)(3)(A), that this amendment relates to agency organization, procedure, or practice. Accordingly, notice, opportunity for public comment, and publication of the amendment prior to its effective date are unnecessary.

II. List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

III. Text of Amendment

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The general authority citation for Part 200 is revised to read as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–3 is amended by adding paragraph (a)(63) to read as follows:

200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(63) Pursuant to section 36 of the Act (15 U.S.C. 78mm) to review and, either unconditionally or on specified terms and conditions, grant or deny exemptions from section 11(d)(1) of the Act (15 U.S.C. 78k(d)(1)).

* * * * *

By the Commission.

Dated: February 9, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3932 Filed 2–17–98; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Rel. No. 34–39624]

Commission Procedures for Filing Applications for Orders for Exemptive Relief Pursuant to Section 36 of the Exchange Act

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending its Rules of General Application to set forth procedures to be followed by the Divisions of Market Regulation and Corporation Finance in assessing and processing applications for exemptive relief pursuant to Section 36 of the Securities Exchange Act of 1934. Section 36 requires the Commission to determine the procedures under which an exemptive order under that section may be granted.

EFFECTIVE DATE: February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel, or Paul P. Andrews, Special Counsel at (202) 942–0073, Office of Chief Counsel, Division of Market Regulation, Mail Stop 7–11; or Anita Klein, Special Counsel at (202) 942–2900, Office of Chief Counsel, Division of Corporation Finance, Mail Stop 3–3, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background

The National Securities Markets Improvement Act of 1996 ("NSMIA") added Section 36 to the Securities Exchange Act of 1934 ("Exchange Act").[1] This section gives the Securities and Exchange Commission ("Commission") the authority to exempt any person, security, or transaction from the provisions of the Exchange Act. The Commission has similar authority under the Trust Indenture Act of 1939 (15 U.S.C. 77ddd(d)), the Investment Company Act of 1940 (15 U.S.C. 80a–6(c)), and the Investment Advisers Act of 1940 (15 U.S.C. 80b–6(a)). In particular, Section 36(a)(1) provides that "the Commission by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of [the Exchange Act] or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." 15 U.S.C. 78mm(a).[2]

Before the Commission may begin using its new order authority, it must develop procedures that applicants must follow in seeking such an exemption from provisions of the Exchange Act. Accordingly, the Commission is amending its Rules of General Application to set forth the following procedures pursuant to which

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[1] 17 CFR 200.30–3.

[2] 15 U.S.C. 78k(d)(1) and 78mm.

[1] Pub. L. No. 104–290, 110 Stat. 3442.

[2] The Commission also has authority to issue exemptive orders that grant relief from specific provisions of the Exchange Act as well as from specific Commission rules promulgated thereunder. For example, either by rule or by order, the Commission may, pursuant to Section 15(a)(2) of the Exchange Act, conditionally or unconditionally exempt any broker or dealer from the registration provisions of Section 15(a)(1).

it will consider applications for these exemptive orders. These procedures are similar to those now used by the Commission in considering exemptive order applications under the Trust Indenture Act (*see* 17 CFR 260.4d–7; 260.4d–8), the Investment Company Act (*see* 17 CFR 270.0–2; Investment Company Act Release No. 14492 (April 30, 1985)); and the Investment Advisers Act (*see* 17 CFR 275.0–5). Applicants should also be aware, however, that under Section 36(a)(2), the Commission has sole discretion to decline to consider any application.

Some provisions under the Exchange Act give the Commission specific authority to provide exemptions.[3] In those areas, the Commission intends to continue to consider exemptive requests under the specific exemptive provisions. Under general exemptive authority, the Division of Corporation Finance will evaluate on a case-by-case basis any requests for exemptive relief it receives. With respect to areas of the Exchange Act administered by the Division of Market Regulation [4] where the Exchange Act does not provide specific exemptive authority, the Commission currently views two areas as appropriate for requests for exemptive relief under Section 36: (1) Requests made under Section 11(d)(1) of the Exchange Act, which prohibits broker-dealers from extending, arranging, or maintaining credit on a new issue the broker-dealer is distributing and for thirty days thereafter; and (2) requests made under the various statutory and regulatory requirements otherwise imposed on a broker or dealer by Sections 15 and 17 of the Exchange Act, if such broker or dealer has received an exemption from the Commission from the registration provisions of Section 15.[5]

II. Amendment to Rules of General Application

The Commission today announces an amendment to its Rules of General Application governing procedures to be followed for filing application for exemptive orders pursuant to Section 36 of the Exchange Act. The amendment adds new Rule 240.0–12 which sets forth the general procedures.

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A), that these rules relate to agency organization, procedure, or practice, an agency interpretation, and a general statement of policy. Accordingly, notice, opportunity for public comment, and publication of these procedures and guidelines prior to their effective date are unnecessary.

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II, Part 240 of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The general authority citation for Part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.0–12 is added to read as follows:

§ 240.0–12 Commission procedures for filing applications for orders for exemptive relief under Section 36 of the Exchange Act.

(a) The application shall be in writing in the form of a letter, must include any supporting documents necessary to make the application complete, and otherwise must comply with § 240.0–3. All applications must be submitted to the Office of the Secretary of the Commission. Requestors may seek confidential treatment of their applications to the extent provided under § 200.81 of this chapter. If an application is incomplete, the Commission, through the Division handling the application, may request that the application be withdrawn unless the applicant can justify, based on all the facts and circumstances, why supporting materials have not been submitted and undertakes to submit the omitted materials promptly.

(b) An applicant may submit a request electronically in standard electronic mail text or ASCII format. The electronic mailbox to use for these applications is described on the Commission's website at www.sec.gov in the "Exchange Act Exemptive Applications" subsection located under the "Current SEC Rulemaking" section. In the event electronic mailboxes are revised in the future, applicants can find the appropriate mailbox by accessing the Commission's website directory of electronic mailboxes at http://www.sec.gov/asec/mailboxs.htm.

(c) An applicant also may submit a request in paper format. Five copies of every paper application and every amendment to such an application must be submitted to the Office of the Secretary at 450 Fifth Street, N.W., Washington, D.C. 20549. Applications must be on white paper no larger than 8½ by 11 inches in size. The left margin of applications must be at least 1½ inches wide, and if the application is bound, it must be bound on the left side. All typewritten or printed material must be on one side of the paper only and must be set forth in black ink so as to permit photocopying.

(d) Every application (electronic or paper) must contain the name, address and telephone number of each applicant and the name, address, and telephone number of a person to whom any questions regarding the application should be directed. The Commission will not consider hypothetical or anonymous requests for exemptive relief. Each applicant shall state the basis for the relief sought, and identify the anticipated benefits for investors and any conditions or limitations the applicant believes would be appropriate for the protection of investors. Applicants should also cite to and discuss applicable precedent.

(e) Amendments to the application should be prepared and submitted as set forth in these procedures and should be marked to show what changes have been made.

(f) After the filing is complete, the applicable Division will review the application. Once all questions and issues have been answered to the satisfaction of the Division, the staff will make an appropriate recommendation to the Commission. After consideration of the recommendation by the Commission, the Commission's Office of the Secretary will issue an appropriate response and will notify the applicant. If the application pertains to a section of the Exchange Act pursuant to which the Commission has delegated its authority to the appropriate Division, the Division Director or his or her designee will issue an appropriate response and notify the applicant.

(g) The Commission, in its sole discretion, may choose to publish in the **Federal Register** a notice that the application has been submitted. The

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[3] For example, Section 12(h) of the Exchange Act permits the Commission to exempt certain persons, or classes of persons, from the provisions of Sections 12(g), 13, 14, 15(d), and 16.

[4] The Division of Corporation Finance is responsible for administering various sections of the Exchange Act, including provisions of Sections 10A, 12, 13, 14, 15(d), 16, and 21E. The Division of Market Regulation administers other provisions of the Exchange Act, including Sections 6, 11, 15, 17 and 19. The Division of Investment Management administers Section 13(f) of the Exchange Act and that Division follows certain other procedures in considering exemptive applications.

[5] *See, e.g.*, Exchange Act Section 15(c)(3) and the rules thereunder.

notice would provide that any person may, within the period specified therein, submit to the Commission any information that relates to the Commission action requested in the application. The notice also would indicate the earliest date on which the Commission would take final action on the application, but in no event would such action be taken earlier than 25 days following publication of the notice in the **Federal Register**.

(h) The Commission may, in its sole discretion, schedule a hearing on the matter addressed by the application.

By the Commission.

Dated: February 5, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3931 Filed 2–17–98; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 96P–0338]

Food Labeling: Health Claims; Soluble Fiber From Certain Foods and Coronary Heart Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing its decision to authorize the use, on food labels and in food labeling, of health claims on the association between soluble fiber from psyllium seed husk and reduced risk of coronary heart disease (CHD). Based on its review of evidence submitted with comments to the proposal, as well as evidence described in the proposal, the agency has concluded that soluble fiber from psyllium seed husk, similar to beta (β)-glucan soluble fiber from whole oats, when included as part of a diet low in saturated fat and cholesterol, may reduce the risk of CHD by lowering blood cholesterol levels. The agency has concluded, based on the totality of publicly available scientific evidence, that there is significant scientific agreement among qualified experts to support the relationship between soluble fiber in psyllium seed husk and CHD. Therefore, the agency has decided to amend the regulation that authorized a health claim on soluble fiber from whole oats and the risk of CHD to include soluble fiber from psyllium seed husk. FDA has determined that label statements alerting consumers to the need to consume adequate amounts of liquids with products containing dry or incompletely hydrated psyllium will be required on products bearing the health claim. FDA is announcing this action in response to a petition filed by the Kellogg Co. (the petitioner).

DATES: This regulation is effective February 18, 1998. The Director of the Office of the Federal Register approves of the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in 21 CFR 101.81(c)(2)(ii)(B), effective February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Virginia L. Wilkening, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5483.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 1990, the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535) was signed into law. This new law amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. One of the most notable aspects of the 1990 amendments was that they confirmed FDA's authority to regulate health claims on food labels and in food labeling. FDA published final rules implementing the 1990 amendments on January 6, 1993 (58 FR 2478). In those final rules, FDA adopted § 101.14 (21 CFR 101.14), which sets out the rules for the authorization and use of health claims. The agency also adopted § 101.70 (21 CFR 101.70), which establishes a process for petitioning the agency to authorize health claims about a substance-disease relationship and sets out the types of information that any such petition must include.

In addition, FDA conducted an extensive review of the evidence on the 10 substance disease relationships listed in the 1990 amendments. As a result of its review, FDA authorized a health claim in § 101.77 (21 CFR 101.77) on the association between diets low in saturated fat and cholesterol and high in vegetables, fruits, and grain products that contain soluble fiber and a reduced risk of heart disease (58 FR 2552, January 6, 1993). In that rulemaking, FDA reviewed the evidence relating dietary fiber to heart disease and concluded that it was difficult to determine the relationship because dietary fiber comprises a diverse group of chemical substances that may be associated with different physiological functions (58 FR 2552 at 2572). Chemically and physiologically, cellulose, lignin, hemicellulose, pectin, and alginate (all relatively purified fiber types) behave differently from one another. Likewise, wheat bran, oat bran, and rice bran are not similar in composition. The agency noted that the available evidence made it difficult to correlate the role of specific fiber components to health effects.

However, in its final rule, FDA noted that hypocholesterolemic properties may be documented for specific food fibers (58 FR 2552 at 2567). Further, the agency stated that if manufacturers could document, through appropriate studies, that dietary consumption of the soluble fiber in their particular food has the effect of lowering low density lipoprotein (LDL)-cholesterol, and has no adverse effects on other heart disease risk factors (e.g., high density lipoprotein (HDL)-cholesterol), they should petition for a health claim for their particular product.

In accordance with the petition procedure in § 101.70, FDA published a final rule on the relationship between soluble fiber from whole oats and reduced risk of heart disease (the soluble fiber from whole oats final rule), § 101.81 (21 CFR 101.81) (62 FR 3584, January 23, 1997 and modified at 62 FR 15343, March 31, 1997). In that document, the agency concluded that, based on the totality of publicly available scientific evidence, there is significant scientific agreement among qualified experts to support the relationship between soluble fiber in whole oats and reduced risk of CHD. FDA also concluded that the type of soluble fiber in whole oats, β-glucan soluble fiber, is the primary component responsible for the lowering of blood total- and LDL-cholesterol associated with consumption of whole oat products when part of a diet low in saturated fat and cholesterol. The rule specified the chemical nature of the specific fiber and methods for measuring its presence in foods.

In the soluble fiber from whole oats final rule, the agency acknowledged the likelihood that consumption of β-glucan soluble fiber from sources other than whole oats, as well as soluble fiber from other sources, will affect blood lipid levels and thus the risk of heart disease (62 FR 3584 at 3587). At that time, FDA considered structuring the final rule as an umbrella regulation authorizing the use of a claim for "soluble fiber from certain foods" and risk of CHD. Such action would have allowed flexibility in expanding the claim to other specific food sources of soluble fiber when

consumption of those foods has been demonstrated to help reduce risk of heart disease. However, the agency concluded that it was premature to do so inasmuch as FDA had not reviewed the totality of evidence on other, nonwhole oat sources of soluble fiber (62 FR 3584 at 3588). Instead, the agency stated that because soluble fiber is a family of very heterogeneous substances that vary greatly in their effect on risk of CHD, a case-by-case approach is necessary as documentation is developed through appropriate studies that a soluble fiber product has an effect on blood total- and LDL-cholesterol levels and can therefore be useful in reducing risk of CHD. To this end, FDA structured § 101.81 in such a way that, while the regulation covered β-glucan soluble fiber from whole oats, it could easily be amended as evidence becomes available to support the use of the claim for other sources of soluble fiber.

In the soluble fiber from whole oats final rule, FDA emphasized the importance of the dietary component of the health claim, i.e., the necessity for the whole oat product to be consumed as part of a low saturated fat, low cholesterol diet, for a complete understanding of the claim (62 FR 3684 at 3594). FDA stated that diets low in saturated fat and cholesterol are considered by expert groups to be the most effective dietary means of reducing heart disease risk, and that, while soluble fiber from whole oats could contribute to this effect, its role is generally recognized as being of smaller magnitude.

In the **Federal Register** of May 22, 1997 (62 FR 28234), and in response to a petition filed under § 101.70, the agency proposed to amend § 101.81 by adding psyllium seed husk as an additional source of soluble fiber, thereby providing for health claims on the association between soluble fiber from psyllium seed husk and reduced risk of CHD (the psyllium husk proposed rule). In this proposed rule, FDA considered the relevant scientific studies and data presented in the petition as part of its review of the scientific literature on soluble fiber from psyllium seed husk and heart disease. The agency summarized this evidence in the proposed rule (62 FR 28234).

The psyllium husk proposed rule included qualifying criteria for the purpose of identifying psyllium-containing foods eligible to bear the proposed health claim. The proposal also specified mandatory content and label information for health claim statements and provided model health claims.

Section 101.81(c)(2)(ii) of the soluble fiber from whole oats health claim regulation lists the sources of β-glucan soluble fiber for which FDA has evaluated data pertaining to effects on blood cholesterol levels and has concluded that significant scientific agreement exists regarding a relationship between soluble fiber in whole oats and the risk of CHD. In the psyllium husk proposed rule, FDA proposed to add new § 101.81(c)(2)(ii)(B) to specify psyllium husk as a source of soluble fiber eligible to be the subject of this claim. Proposed § 101.81(c)(2)(ii)(B)(*1*) identifies psyllium husk as the dried seed coat (epidermis) of the seed of *Plantago ovata*, known as blond or Indian *psyllium*, *P. indica*, or *P. psyllium*, and specifies that the purity of the psyllium husk shall be no less than 95 percent, such that it has 3 percent or less protein content, 4.5 percent or less of light extraneous matter, and 0.5 percent or less of heavy extraneous matter, but in no case may the combined extraneous matter exceed 4.9 percent, as determined by U.S. Pharmacopeia (USP) methods.

In its evaluation of the scientific evidence for a relationship between consumption of soluble fiber from psyllium seed husk and blood total- and LDL-cholesterol levels, the agency found no reliable data to establish a dose-response for this relationship. However, the agency did find that in placebo-controlled studies that tested an intake of 10.2 grams (g) of psyllium seed husk per day as a part of a diet low in saturated fat and cholesterol, there were consistently significant effects of psyllium husk on blood total- and LDL-cholesterol levels. Therefore, the agency proposed to base the qualifying level of soluble fiber from psyllium seed husk on a total daily intake of 10.2 g husk (about 7 g of soluble fiber), as suggested by the petitioner. Therefore, the proposed qualifying criterion in § 101.81(c)(2)(iii)(A)(*2*) was that the food provide at least 1.7 g of soluble fiber from psyllium seed husk per reference amount customarily consumed (RACC) (i.e., 7 g divided by 4 eating occasions per day). The psyllium husk proposed rule also stated that if a manufacturer can demonstrate that a diet low in saturated fat and cholesterol that includes a blend of the eligible sources of soluble fiber listed in § 101.81(c)(2)(ii) has an effect on the risk of heart disease, the manufacturer should petition to amend § 101.81 further.

To reflect the agency's tentative decision to broaden § 101.81 to include soluble fiber from psyllium seed husk, the agency proposed to modify the section heading in § 101.81 from "Soluble fiber from whole oats and risk of coronary heart disease" to "Soluble fiber from certain foods and risk of coronary heart disease." Accordingly, the agency also proposed to revise the statement "soluble fiber from whole oats" to either "soluble fiber from certain foods" or "soluble fiber from the eligible food sources from paragraph (c)(2)(ii) of this section" where appropriate in § 101.81. The agency did not propose to modify the model claims.

II. Summary of Comments and the Agency's Responses

In response to the psyllium husk proposed rule, the agency received 19 letters, each containing one or more comments, from professional organizations, industry, consumer groups, health care professionals, and research scientists.

Approximately one-half of the comments that the agency received agreed with one or more provisions of the psyllium husk proposed rule without providing grounds for this support other than those provided by FDA in the preamble to the psyllium husk proposed rule. A few of these comments also requested modification of one or more provisions of the proposed rule. Some comments provided additional data on the relationship between psyllium husk soluble fiber and CHD. Some of the comments that disagreed with the proposed rule provided specific support for their positions. The agency has summarized and addressed the relevant issues raised in all comments in the sections of this document that follow.

A. Food Substance Associated With Reduced Risk of CHD

Health claims have two essential elements: A food substance and a disease or health-related condition (§ 101.14). The agency proposed to authorize a health claim on the relationship between consumption of soluble fiber from psyllium husk, as part of a diet low in saturated fat and cholesterol, and reduced risk of CHD. Further, the agency proposed to amend the authorized claim for soluble fiber from whole oats and CHD (§ 101.81) to include soluble fiber from psyllium husk and to broaden the subject of the claim to "soluble fiber from certain foods" and risk of CHD (62 FR 28234 at 28239).

1. Terminology

(Comment 1)

Comments received in response to the proposed rule used the term "psyllium"

interchangeably with the terms "psyllium seed husk" and "psyllium husk." The agency also noticed that a few comments used the term "psyllium" when referring to the soluble fiber component of the psyllium husk. Therefore, the agency finds it important to clarify the terms that may be used in referring to the substance that is the subject of this claim as well as the common or usual name of the product that should be used in ingredient statements.

The substance that is the subject of this claim is soluble fiber of the psyllium husk, i.e., the seed coat that has been removed from the psyllium seed. It is the seed husk, rather than the seed, that is the source of soluble dietary fiber. The purity specifications suggested by the petitioner and adopted in proposed § 101.81(c)(2)(ii)(B)(*1*) refer to the extent to which psyllium husk has been separated from residual seed components.

The agency notes that in the ingredient list of the petitioner's psyllium husk-containing cereal the substance is declared as "psyllium seed husk" (Ref. 1). The agency also notes that in the USP National Formulary this substance is referred to as "psyllium husk" (Ref. 2). The agency therefore considers both "psyllium seed husk" and "psyllium husk" to be common or usual names for the soluble dietary fiber source that is the subject of this rule. In the psyllium husk proposed rule, the agency used the term "psyllium" synonymously with the term "psyllium husk" (62 FR 28234 at 28237). Upon further consideration, the agency concludes that the term "psyllium" is not sufficiently descriptive of the substance of this claim because this term is likely to be construed as inclusive of the psyllium seed. The psyllium seed includes nutrients and allergenic proteins that are not components of psyllium husk. The psyllium husk purity specifications of § 101.81(c)(2)(ii)(B)(*1*) make the presence of psyllium seed in a food a disqualifying criterion for foods eligible to bear the claim.

In this final rule, the agency is clarifying under § 101.81(c)(2) that the proper terms for the soluble fiber source which is the substance of this rule are "psyllium husk" or "psyllium seed husk." Therefore, § 101.81 (c)(2)(ii)(B)(*1*) is revised to read "psyllium seed husk, also known as psyllium husk, shall have a purity of * * *." Section 101.81 (c)(2)(ii)(B)(*1*), (c)(2)(ii)(B)(*2*), and (c)(2)(iii)(A)(*2*) are revised to read "psyllium husk" where the term "psyllium" had been used in the proposed rule.

2. Eligibility of Psyllium Seed Husk

(Comment 2)

Some comments stated that psyllium husk is not a food and is not consumed by itself. The comments stated that psyllium husk is an ingredient or additive and, therefore, should not be eligible for a health claim. One comment expressed concern that a health claim on a food additive will put more reliance on food fortification or supplementation as a strategy to improve health. The comment asserted that the psyllium proposal represents a public policy shift that may result in diverting attention from the importance of a varied selection of foods.

FDA disagrees with comments that psyllium husk, as a food ingredient, is not an appropriate substance for consideration of a health claim. As discussed in the final rule implementing the 1990 amendments on the use of health claims (58 FR 2478 at 2480, January 6, 1993), a broad range of substances are potentially subject to regulation under section 403 (r)(1)(B) of the act (21 U.S.C. 343(r)(1)(B)). Section 101.14(a)(2) was written to reflect this broad coverage. Under the general requirements for health claims, the substance that is the subject of the health claim can be either a specific food or a component of food (§ 101.14(a)(2)). Moreover, the fact that a substance may be a "food additive," within the meaning of that term in 21 CFR 170.3(g), does not preclude it from also being a "substance" under § 101.14(a)(2). Although psyllium seed husk is not consumed as a single food, it is a consumable portion of a seed grain that is, or could be, used as a component of foods (e.g., cereal, pasta, cookies, breakfast bars) and is a rich source of soluble fiber. As such, psyllium seed husk is a "substance" within the meaning of § 101.14(a)(2) and thus eligible for consideration of a health claim.

The agency also disagrees with the comment that the proposed health claim represents a public policy shift in diverting attention from the importance of a varied selection of foods by placing more reliance on food fortification or supplementation to achieve public health goals. The establishment of a health claim for soluble fiber from psyllium husk and CHD, when viewed in conjunction with existing health claims for fruits, vegetables, and grain products and CHD and for soluble fiber from whole oats and CHD, emphasizes an important role (i.e., possible reduced risk of CHD) of an even wider variety of food selections. It is important to note that the concept of formulating a food product with psyllium seed husk is no different than formulating a product with oat bran (another food ingredient supplying soluble fiber that is the subject of an authorized health claim). As with oat bran, the inclusion of psyllium husk in a food would be based on its basic functional properties in addition to its nutritional contribution or potential health benefit. The decision to include such an ingredient in a food would be considered food product development, not fortification. Therefore, the agency disagrees that the approval of this health claim represents a public policy shift on food fortification.

B. Updated Review of Scientific Evidence and Issues Related to the Evidence

Under § 101.14(c), FDA will issue a regulation authorizing a health claim only when it determines, based on the totality of publicly available scientific evidence, that there is significant scientific agreement that the claim is supported by such evidence. In its review of the psyllium petition, the agency completed a comprehensive review (see Ref. 7) of 21 human studies (Refs. 8 through 28) (62 FR 28234 at 28237). Of these, it gave particular weight to 7 studies (Refs. 13, 14, 15, 18, 22, 23, and 28) that were well designed and controlled and that reported intakes of dietary saturated fat and cholesterol.

1. Data Submitted With Comments

(Comment 3)

One comment to the psyllium husk proposed rule noted that FDA excluded from comprehensive review three studies (Ref. 12, 17, and 25) because they lacked evidence that the study subjects were compliant with a low saturated fat and cholesterol diet (i.e., the American Heart Association "Step 1" diet). This comment submitted reports of subsequent diet analyses of these studies indicating that study subjects were compliant with the Step 1 diet (see Docket 96P–0338, C8). This comment also noted that two unpublished studies included in the psyllium petition have since been published or submitted for publication (Refs. 12 and 25).

Another comment submitted five recently published studies for consideration (Refs. 29 through 33) and three studies for reconsideration (Refs. 14, 28, and 34). The latter were recently published revisions of material submitted in the psyllium petition. The comment stated that the published report by Jenkins et al. (Ref. 28) contains additional data not presented in the

unpublished report submitted with the petition.

FDA, in reviewing the supplemental data for Refs. 12, 17, and 25, concluded that this information shows the subjects of these three studies were compliant with the dietary protocol and made no significant changes to their diets throughout the duration of the treatment period. Therefore, these studies have been added to the seven studies to which the agency gave particular weight in evaluating the relationship of soluble fiber from psyllium husk and CHD risk in the psyllium husk proposed rule. These studies are summarized in Table 1 of this document. The results of these three additional studies support the relationship between consumption of soluble fiber from psyllium seed husk and reduced risk of heart disease.

The agency also reviewed the published version of the study by Jenkins et al. (Ref. 28) that was submitted in comments and has summarized this study accordingly in Table 1 of this document. The investigators evaluated the effect on serum lipid levels of two Step 2 metabolic diets that provided either 6 or 12 percent of energy from monounsaturated fat (MUFA), approximately 60 g per day (/d) total dietary fiber, and psyllium seed husk-containing cereal (mean intake of 11 g/d of psyllium seed husk) or wheat bran. The results showed significantly lower total- and LDL-cholesterol levels in the psyllium husk-supplemented groups compared to the control group at both MUFA levels. The saturated fat intake during the two study periods was very low (less than 6 percent of energy).

The agency did not conduct an in-depth review of five of the studies submitted with comments. The study by Jensen and co-workers (Ref. 33) does not meet the agency's criteria for study selection (62 FR 28234 at 28237) because the authors evaluated the usefulness of a soluble fiber mixture (containing psyllium, pectin, guar gum, and locust bean gum) in the long-term management of hypercholesterolemia. The results of this study do not allow an evaluation of the effects of soluble fiber from psyllium seed husk alone.

The experimental design of the study by Ganji and Kies (Ref. 32) did not meet the agency's criteria for comprehensive review. In the psyllium proposal, the agency stated that in evaluating a study, it considered whether the intervention studies had been of long enough duration to reasonably ensure stabilization of blood lipid levels (i.e., greater than or equal to 3 weeks duration) (62 FR 28234 at 28237). In this study, diets were varied in four 7-day treatment periods with no time between treatment periods. With this study design, it cannot be determined whether the subjects' blood lipids had stabilized to each diet or that there were no carryover effects from one treatment period to another. Neither did the study design have an adequate pre-intervention baseline period to ensure blood lipids had stabilized to the base diet.

The other three studies submitted in comments that were not reviewed indepth were animal studies (Refs. 29 through 31). Animal studies are useful in studying mechanisms of action. However, the agency relied primarily on the clinical studies in this rule. Such an approach is consistent with that taken by the agency in its evaluation of the relationship between soluble fiber from whole oats and risk of CHD.

A meta-analysis (Ref. 34) was conducted to determine the effect of psyllium seed husk-containing cereal products on serum lipid levels in hypercholesterolemic subjects and to estimate the magnitude of the effect among 404 subjects with mild to moderate hypercholesterolemia (total-cholesterol of about 200 to 300 milligrams per deciliter (mg/dL) who followed a low fat diet. In its review of the evidence submitted in the psyllium petition, the agency reviewed 6 of the 11 studies (Refs. 11, 13, 22 through 24, and 28) included in the meta-analysis (see tables in Ref. 7). The remaining studies used in the meta-analysis did not meet the agency's criteria for study selection (62 FR 28234 at 28237). The conclusion of the meta-analysis report was that hypercholesterolemic subjects who consumed the psyllium seed husk-containing cereal had significantly lower total-cholesterol (about 5 percent) and LDL-cholesterol (about 9 percent) compared with those subjects who consumed the control cereal (Ref. 34).

2. Totality of the Data on Soluble Fiber from Psyllium Seed Husk and CHD

(Comment 4)

One comment stated that there was considerably more scientific data on psyllium seed husk presented in the petition than that reviewed by the agency. The comment noted that results of 56 studies were included in the psyllium petition. The comment expressed concern that the agency failed to consider studies published prior to 1988 and some additional evidence made available since 1988, noting that studies with soluble fiber mixtures, studies with treatment periods that were less than 3 weeks in duration, and abstracts were not selected for comprehensive review. The comment stated that the agency began its review of the scientific evidence by first considering the conclusions of the Surgeon General's report and the Food and Nutrition Board/National Academy of Sciences (FNB/NAS) report (Refs. 3 and 4) and then considered the evidence that was made available since 1988. The comment explained that neither the Surgeon General's report nor the FNB/NAS report reviewed the evidence on psyllium up to 1988; therefore, the agency improperly ignored a significant portion of the scientific evidence provided in the petition (see Ref. 35, Table 3, pages 30 and 31). Another comment noted that among the 56 studies submitted in the psyllium petition (see Ref. 35), the results of only three failed to demonstrate that consumption of psyllium-containing foods was associated with risk of CHD through a reduction in serum cholesterol. The comment stated that the totality of evidence on psyllium husk that was submitted in the petition includes data on children and the elderly.

Some comments stated that it is premature to authorize a claim on psyllium seed husk and risk of CHD because of a lack of significant scientific agreement on this nutrient/disease relationship. Some of these comments stated that the decision to propose this health claim is based on evidence from a limited number of studies that overall covered a small number of subjects, of which women were underrepresented, and on the absence of data on certain subpopulations (children and the elderly).

The agency agrees with the comment that the Surgeon General's report (Ref. 3) and the FNB/NAS report (Ref. 4) did not review of all of the psyllium studies that were publicly available prior to 1988 and identified in the petition (Ref. 35). The petition identified 16 clinical studies, published prior to 1989, of the effect of psyllium seed husk on blood cholesterol levels (see Ref. 35, Table 3). The agency had not reviewed these studies in the psyllium husk proposed rule, but in response to the comment, has subsequently considered them. Half of these studies did not meet the agency's stated criteria for selection of human studies (62 FR 28234 at 28237) in that they were conducted in special populations, were published as abstracts only, or the psyllium dose was unreported. Studies that used special population groups were excluded from review because, as explained in the psyllium husk proposed rule (62 FR 28234 at 28237), the results from such groups may not be relevant to the general healthy U.S. population. The

agency's rationale for excluding from review studies presented only in abstracts was also presented in the proposal. Abstracts do not provide sufficient detail regarding the methodology and results to allow a detailed assessment of the merits of the study. Likewise, information regarding actual amounts of psyllium administered is a key detail of the study design, without which an adequate assessment of the study cannot be made.

In each of the pre-1989 clinical studies meeting the selection criteria, there were aspects of the study design (e.g., lack of dietary data, lack of a control group) that would have precluded the results of these studies from having a major influence on the agency's conclusions. Among the pre-1989 clinical studies was one double-blind placebo-controlled psyllium husk study with dietary data (Ref. 36). However, the report contained no evidence that the study subjects were compliant with a low saturated fat and cholesterol diet. Thus, a review by FDA of pre-1989 data would not have altered the conclusions reached by the agency in the psyllium husk proposed rule nor contribute to issuing the final rule.

The agency disagrees with the comments that there is not significant scientific agreement that soluble fiber from psyllium husk may help reduce the risk of CHD through its action on blood total- and LDL-cholesterol levels. Some of the comments incorrectly suggested that the agency's decision on this nutrient/disease relationship was based solely on the results of the seven studies in Table 1 of the psyllium husk proposed rule (62 FR 28234 at 28244). As stated previously, the agency reviewed 21 human studies on psyllium (Refs. 8 through 28) that were submitted with the petition and met the agency's criteria for consideration (Ref. 7). Of these, the agency gave particular weight to seven studies. As stated in the psyllium husk proposed rule, the results of the seven studies (Refs. 13 through 15, 18, 22, 23, and 28), and now three additional studies (Refs. 12, 17, and 25) (see comment 3 in section II.B.1 of this document), strongly support the relationship between soluble fiber from psyllium husk and risk of CHD in mild to moderate hypercholesterolemic adults (62 FR 28234 at 28238). Moreover, the results of the remaining clinical studies (Refs. 8 through 11, 16, 19 through 21, 24, and 26) that were given less weight in the psyllium husk proposed rule were consistent in showing an effect of soluble fiber from psyllium husk on serum lipid levels. These studies included both men and women subjects and adults of all ages, including the elderly. It is on the totality of this evidence and conclusions from the 1989 Life Sciences Research Office (LSRO) report on health consequences of dietary fiber (Ref. 5) that the agency is basing its conclusion to authorize a health claim on psyllium seed husk.

3. Psyllium Consumed as a Bulk Laxative

In the psyllium husk proposed rule, the agency included in its evaluation the results of studies of this nutrient/disease relationship in which psyllium was administered as a product marketed as a bulk-forming fiber laxative. (Comment 5)

Some comments were opposed to the consideration of studies in which psyllium husk was supplied as a bulk-forming fiber laxative. One comment stated that the use of studies in which psyllium seed husk was consumed in different forms makes meaningful comparisons difficult. Other comments had no objection to the agency's use of this evidence. One comment stated that consuming psyllium husk as a bulk-forming fiber laxative at mealtime is functionally equivalent to consuming a psyllium husk-enriched food at mealtime. Another comment stated that clinical studies evaluating psyllium seed husk administered as a bulk-forming fiber laxative were conducted in a fashion similar to studies conducted with food products, including consuming the substance at mealtime, dietary counseling, and patient selection criteria. The comment stated that both compliance with the regimen and efficacy were comparable for food and laxative studies.

In the psyllium husk proposed rule, the agency tentatively decided that including, in its comprehensive review, the three studies in which psyllium seed husk was administered in the form used as a laxative (Refs. 13, 15, and 18) was appropriate. In these studies, the psyllium seed husk was consumed in concentrations similar to those at which psyllium husk was incorporated into conventional foods in the other studies selected for comprehensive review (Refs. 14, 22, 23, and 28) (62 FR 28234 at 28238). The agency further noted that the magnitude of the effect of soluble fiber from psyllium husk on the change in serum lipid levels reported in the studies in which this substance was consumed in conventional foods (Refs. 14, 22, 23, and 28) was similar to that observed in the studies (Refs. 13, 15, and 18) in which it was consumed as a bulk laxative. Therefore, the agency stated that the results of the studies suggest that the form in which psyllium husk is consumed is not significant when evaluating the effect of psyllium husk on serum lipid levels (62 FR 28234 at 28238). Comments that were opposed to reliance on studies which used a psyllium husk bulk-forming laxative provided no new data to support their position. Therefore, the agency is not persuaded that it is inappropriate to rely on this evidence and concludes that studies that used a psyllium husk bulk-forming laxative are appropriate in the evaluation of this nutrient/disease relationship.

4. Studies in Subjects With Borderline to High Blood Cholesterol Levels

The subject populations in the studies reviewed in the psyllium proposed rule (see Table 1, 62 FR 28234 at 28244) had borderline to high blood total-cholesterol levels (i.e., average baseline cholesterol values in the studies were between 225 and 275 mg/dL). The agency tentatively concluded in the psyllium proposed rule that the studies with hypercholesterolemic subjects are relevant to the general U.S. population (62 FR 28234 at 28238) and requested comments on this issue. (Comment 6)

Some comments agreed with the agency's view that studies of populations with elevated blood cholesterol are relevant to the general population. These comments cited current statistics of the incidence of elevated blood cholesterol in the U.S. population, and noted that the CHD risk factor that is the target of the proposed health claim is elevated blood cholesterol. Other comments disagreed with the view that the results of studies in hypercholesterolemics can be generalized to the general population. One comment stated that because hypercholesterolemic individuals are generally more responsive to dietary intervention that normocholesterolemic individuals, it is questionable whether normocholesterolemic persons would respond to psyllium at all.

As the leading cause of death in this country, CHD is a disease for which the general U.S. population is at risk. The risk of dying from CHD is related to serum cholesterol levels in a continuous and positive manner, increasing slowly for levels between 150 mg/dl and 200 mg/dl and more rapidly when the cholesterol level exceeds 200 mg/dl (Ref. 37). The public health policy elucidated by the National Cholesterol Education Program (NCEP), National Heart, Lung, and Blood Institute, is to extend the benefits of cholesterol lowering to the population as a whole by promoting adoption of eating patterns that can help lower the blood cholesterol levels of most Americans

(Ref. 37). A dietary intervention that lowers blood cholesterol levels only in persons with high levels would, like an intervention that lowers cholesterol levels across the entire population range, cause a shift in the population distribution of blood cholesterol levels resulting in a decrease in the mean value for the blood cholesterol level in the general population (Ref. 37). The anticipated effect of such a shift would be to reduce the morbidity from CHD and to produce a continued or accelerated decline in the CHD mortality rate in the United States. The agency is persuaded by the evidence it has reviewed in this rulemaking that the consumption of psyllium seed husk, as part of a low saturated fat and cholesterol diet, can be a prudent public health measure to assist in the national policy of promoting eating patterns that will help in achieving or maintaining desirable blood cholesterol levels in the general population. Therefore, it concludes that the health claim is relevant to the general population and should not be limited to a subpopulation of hypercholesterolemic individuals. In addition, consistent with the agency's conclusions in rulemaking on the dietary saturated fat and cholesterol/CHD claim (58 FR 2739 at 2745, January 6, 1993), the wording of the health claim as "may' or might' reduce the risk of heart disease" adequately represents the fact that not all persons will realize the same magnitude of benefit from adopting the dietary change.

C. Issues Relative to Amending § 101.81 to Include Soluble Fiber From Psyllium Seed Husk

In the psyllium husk proposed rule, the agency tentatively concluded that the soluble fiber in psyllium husk, like β-glucan soluble fiber from whole oats, when consumed as part of a diet low in saturated fat and cholesterol, may help reduce the risk of heart disease. Therefore, the agency proposed to amend the authorized claim for β-glucan soluble fiber from whole oats and risk of CHD (§ 101.81) to include soluble fiber from psyllium husk and to broaden the subject of the claim to "soluble fiber from certain foods" and risk of CHD. (Comment 7)

One comment stated that § 101.81 should not be expanded to include soluble fiber from psyllium husk because the eligible sources of β-glucan soluble fiber are whole grain foods that provide nutrients in addition to soluble fiber, whereas psyllium seed husk, which offers only soluble fiber, is neither a food nor a whole grain. The comment also stated that psyllium seed husk should not be added to § 101.81 because the husk soluble fiber is separated from the whole seed, whereas β-glucan soluble fiber extracted from the whole oat grain is not eligible for a claim. Two comments suggested that if the claim must be structured as a soluble fiber claim, then only those soluble fiber sources that elicit clinically significant reductions in serum cholesterol via the same mechanism should be eligible to be included in the claim.

FDA disagrees with the comment that substances qualifying for a health claim under § 101.81 must be whole grains similar to the whole oats that are listed under § 101.81(c)(2)(ii)(A). The subject of the claim is soluble fiber and the food source of β-glucan soluble fiber is whole oats. There is no scientific basis to require that only soluble fiber from whole grain foods can qualify for a claim. The soluble fiber in psyllium seed is concentrated in the outer husk. This is the opposite from whole oats where the soluble fiber is concentrated in the inner portion of the oat groat. Moreover, purified β-glucan soluble fiber was not included as a substance eligible to bear the claim because, as discussed in the whole oat final rule, the hypocholesterolemic properties of β-glucan fiber extracts are affected by processing. Therefore, before an extract of β-glucan fiber could qualify for the claim, it would have to be characterized so as to identify the processed form of the soluble fiber that maintains its hypocholesterolemic properties. The data on psyllium husk soluble fiber are associated with reduced risk of CHD via its documented hypocholesterolemic properties. As discussed previously (see comment 2 in section II.A.2 of this document), psyllium seed husk is a "substance" eligible for consideration of a health claim within the meaning of that term in § 101.14(a)(2). Therefore, the agency finds it appropriate to consider soluble fiber from psyllium seed husk as a source of soluble fiber that is eligible to be included in § 101.81.

The agency also disagrees with the comment that a soluble fiber source should not be included in § 101.81 unless it elicits reductions in serum cholesterol via the same mechanism as the β-glucan soluble fiber in whole oats. There is no scientific basis to require soluble fibers to have the same mechanism of action for lowering serum cholesterol in order to be eligible for a health claim under § 101.81, nor did the comments provide such a basis. In the whole oat final rule, the agency stated that if a manufacturer can document that a soluble fiber product has an effect on blood lipid levels, and thereby can be useful in reducing the risk of CHD, the manufacturer may petition to amend § 101.81 to include that type of soluble fiber-containing product as an eligible food source (62 FR 3584 at 3588). In this rulemaking, the agency has concluded that consumption of soluble fiber from psyllium seed husk has an effect of lowering blood total- and LDL-cholesterol levels, and therefore an amendment to § 101.81 to include psyllium seed husk as a soluble fiber source is eligible for a health claim under § 101.81.

D. Specifications for Psyllium Seed Husk

Based upon information provided by the petitioner, the agency proposed a minimum psyllium husk purity specification as a qualifying criterion for eligible sources of soluble fiber from psyllium. Proposed § 101.81(c)(2)(ii)(B)(1) stated that psyllium husk shall have a purity of:

> no less than 95 percent, such that it contains 3 percent or less protein, 4.5 percent or less of light extraneous matter, and 0.5 percent or less of heavy extraneous matter, but in no case may the combined extraneous matter exceed 4.9 percent * * *.

(62 FR 28234 at 28243).

1. Issues Relative to Psyllium Seed Husk Specifications

(Comment 8)

One comment noted that there are no assurances that food manufacturers other than the petitioner will be able to meet the petitioner's product specifications and therefore a compliance monitoring program needs to be developed prior to authorization of the health claim. A comment noted that due to natural variability in psyllium seed husk and analytical variation, a "94 percent purity" specification would better represent the practical limit of commercially-available "95 percent purity" psyllium. Accordingly, this comment urged FDA to adopt a minimum psyllium husk purity of 94 percent with 5.0 percent or less of light extraneous matter and 1.0 percent or less of heavy extraneous matter. One comment expressed concern that the purification of psyllium husk may render psyllium inactive as a hypocholesterolemic agent. This comment also urged FDA to determine whether the purification process described by the petitioner should serve as the approved purification technique for psyllium.

The agency disagrees with the comment that a specific compliance monitoring system is needed for psyllium seed husk. The monitoring and

verification of compliance with current good manufacturing practice in the manufacture of human food is a routine FDA activity. The comment urging the agency to change the psyllium husk purity specification to "no less than 94 percent" provided no data to substantiate that commercial supplies of psyllium seed husk do not routinely meet the 95 percent purity specification and the agency sees no compelling reason to revise the proposed purity specifications. Accordingly, the agency is adopting the specifications proposed in § 101.81(c)(2)(ii)(B)(*1*).

The agency notes that evidence provided in the petition and in comments indicates that the psyllium seed husk in the food and bulk laxative products used in the clinical studies, which were discussed in the psyllium husk proposed rule, had a purity of at least 95 percent. The blood cholesterol lowering effect of psyllium seed husk is attributed to the soluble fiber content of the husk and not to the seed components. As such, the concern that the process of separating the psyllium husk from residual seed components would alter the effectiveness of psyllium husk in lowering blood cholesterol level is unfounded. The agency further notes that it has proposed to adopt a psyllium husk purity specification only, and not a purification process.

E. Nature of the Food Eligible to Bear the Claim

In the proposal, the agency determined a qualifying level of psyllium husk for foods eligible to bear a soluble fiber and CHD claim based on a daily intake of approximately 7 g of soluble fiber from psyllium seed husk (62 FR 28234 at 28240). The agency stated that the level of daily intake of soluble fiber from psyllium seed husk (7 g/d was not based on the results of data from a dose-response study, but was the amount shown in clinical studies to be consistently associated with significant reductions in serum lipids in conjunction with a diet low in saturated fat and cholesterol. Therefore, the agency proposed that the qualifying level of soluble fiber for foods to bear a soluble fiber and CHD claim be 1.7 g of soluble fiber from psyllium seed husk per RACC (7 g divided by 4 eating occasions per day) (62 FR 28234 at 28240). The agency asked for comments on whether this approach for establishing a qualifying soluble fiber level for psyllium husk-containing products is appropriate or for data to support another qualifying level for psyllium husk.

1. Qualifying Criteria for Psyllium Seed Husks

(Comment 9)

Some comments stated that it is premature to authorize this health claim because of the limited data regarding an appropriate dose-response curve. One comment stated that the qualifying level for psyllium should be based on an intake level that will elicit a clinically significant 5 percent reduction in blood cholesterol. The comment stated that results from dose-response and meta-analysis studies would assuage concerns that the proposed qualifying level of soluble fiber from psyllium seed husk may not be an effective cholesterol-lowering dose. Other comments agreed with the proposed qualifying level for psyllium-containing foods. One comment stated that the revised report of the dose-response study by Davidson et al. (Ref. 14), that was submitted with the comment, supports the effectiveness of 10.2 g psyllium husk daily intake in significantly lowering cholesterol levels. In an analysis of data from subjects who completed the protocol (197 of 286 subjects), LDL-cholesterol levels of the group with 10.2 g psyllium husk daily intake was reported to be 5 percent lower than the control group after 24 weeks. The comment also stated that the data from the meta-analysis by Olson et al. (Ref. 34), which was submitted with the comment, lends additional support to the conclusion that 10.2 g/d of psyllium is an appropriate level on which to base the qualifying criteria for this claim. One comment stated that the maximum level of daily psyllium husk consumption should be determined as part of the generally recognized as safe (GRAS) process.

FDA notes that dose-response data are not a requirement to establish the qualifying criteria for a substance that is the subject of a health claim. Under § 101.70, which describes the requirements for health claim petitions, the petition must address whether there is an optimum level of the particular substance to be consumed beyond which no benefit would be expected (§ 101.70(f)B.1.). This information may or may not be based on dose-response data. Even though the optimal or lowest effective cholesterol lowering doses can not be determined from the available data, the qualifying level (10.2 g/d of psyllium husk) has been demonstrated to be effective. The results of studies that evaluated the effect of psyllium husk intakes above 10.2 g/d showed no additional benefit on serum lipid levels (Ref. 7). Therefore, the agency disagrees with the comments stating that dose-response data are needed before the agency can authorize a health claim. The totality of scientific data, which establish a significant reduction in blood cholesterol based on an intake of 10.2 g/d of psyllium seed husk, provides an adequate basis for establishing a qualifying soluble fiber level for psyllium seed husk-containing products.

Similarly, there is no basis to require that the qualifying criteria for a substance associated with risk of CHD be based on the amount of that substance to elicit a 5 percent reduction in blood total- and LDL-cholesterol levels. The data on psyllium seed husk suggests that the magnitude of the effect on blood lipids for intakes of about 10 g/d of psyllium seed husk ranges from 4 to 6 percent for blood total-cholesterol and about 4 to 8 percent for LDL-cholesterol levels in conjunction with diets low in saturated fat and cholesterol (Ref. 7). Although modest in size, these are clinically significant reductions in blood lipids that translate to a reduced risk of CHD for individuals with hypercholesterolemia and serve as a useful adjunct to a diet already low in saturated fat and cholesterol.

In the absence of data to the contrary, the agency concludes that based on the evidence submitted in comments and on the totality of scientific data considered in its review of the petition, a daily intake of 7 g of soluble fiber from psyllium seed husk (10.2 g of psyllium seed husk) as part of a diet low in saturated fat and cholesterol may reduce the risk of CHD by lowering blood total- and LDL-cholesterol levels in individuals with mild to moderate hypercholesterolemia.

FDA finds that the comment that a maximum level of daily consumption of psyllium husk should be determined as part of the psyllium husk GRAS status is not relevant to this rulemaking.

2. Issues Relative to Four Eating Occasions Per Day

(Comment 10)

The proposed qualifying level of soluble fiber from psyllium husk was based on the assumption that individuals will consume four servings of psyllium husk-containing foods a day. Some comments questioned whether it is realistic to assume that consumers will consume four servings per day of psyllium husk-containing foods. One comment stated that the majority of Americans never consume any psyllium husk-containing foods and that there is no evidence that a health claim would convince them to consume up to four servings of these foods daily. Other comments stated that the proposed rule would provide consumers

with an increased selection of foods containing soluble fiber in sufficient quantities to have a potentially beneficial influence on CHD risk and thus have a positive public health impact.

FDA acknowledges that foods containing psyllium seed husk are not widely available; e.g., the petitioner currently produces only one product, a breakfast cereal, containing psyllium. However, the agency disagrees with the comments that it is unrealistic to consider that consumers could consume psyllium-containing foods four times a day. Two studies (Refs. 8 and 14) that were reviewed by the agency tested psyllium seed husk incorporated into a variety of foods that were consumed during the day. These products included cereal, fruit drinks, peanut butter, cookies, muffins, bread, pasta, and snack bars. In addition to these products, the petitioner identified other food products in which psyllium could be used, such as toaster pastries, rolls, biscuits, tortillas, waffles, pancakes, pizza crust, stuffing, breakfast bars, and a variety of ready-to-eat cereals (Ref. 35, pp. 90 and 91). Authorization of a claim on soluble fiber from psyllium seed husk will be an incentive for manufacturers to expand product lines to provide consumers with additional soluble fiber-containing products that can be part of a heart healthy diet. Based on these facts, the agency finds that a factual predicate exists to support the contention that psyllium husk-containing foods could be consumed at four eating occasions a day and, therefore, finds that the comments that questioned whether such consumption was realistic are without support.

The agency notes that the approach used to determine the qualifying level of soluble fiber from psyllium husk (i.e., dividing the amount shown to provide a significant reduction in blood lipid levels by 4 eating occasions per day) is consistent with that used to determine the qualifying level of β-glucan soluble fiber from whole oats in the soluble fiber from whole oats final rule. In that document, the agency pointed out that the approach used to derive the qualifying level of soluble fiber from whole oats is somewhat different from that used in authorizing other health claims. It stated:

> Specifically, the guiding principle for other health claims is to use the established definition for "good source" or "high" which characterizes the amount of a nutrient, based on a percentage of the Daily Value (DV) for the nutrient, in a serving of food. In this way, products that qualify to bear the claim contain a meaningful level of the substance per serving compared to the recommended intake of the substance from all food sources. In the case of this final rule, there is no DV for β-glucan soluble fiber or soluble fiber. (62 FR 3584 at 3592).

The agency had also indicated in the soluble fiber from whole oat final rule that it intends to propose to establish a Daily Reference Value (DRV) for soluble fiber (62 FR 3584 at 3588). The establishment of a DRV for soluble fiber would not only permit claims for "good source" and "high" in soluble fiber, but would allow the agency to consider amendments to § 101.81 to establish a single qualifying level for soluble fiber from all eligible soluble fiber sources that would be effective in lowering cholesterol. Available scientific evidence suggests that there are a variety of soluble fibers in foods that may demonstrate the benefit. Thus, smaller dietary contributions from any one source could be appropriate given the potential for multiple sources of such fibers.

A DRV for soluble fiber would establish a qualifying level for soluble fiber blends in a food that would be effective in lowering cholesterol in hypercholesterolemic individuals. However, in the absence of a DRV for soluble fiber, the qualifying criteria for the eligible sources of soluble fiber in this health claim must be based on the scientific evidence specific for each soluble fiber source. The agency intends to amend § 101.81 to revise the qualifying levels of soluble fibers when a DRV for soluble dietary fiber has been established.

The agency notes that existing § 101.81(d)(6) provides for an optional statement informing consumers of the level of daily intake of β-glucan from whole oats that may help reduce the risk of CHD and the contribution that one serving of the product makes to this specified intake level. However, when issuing the soluble fiber from whole oats and reduced risk of CHD health claim, FDA inadvertently overlooked the requirement in § 101.14(d)(2)(vii) of the general requirements for health claims. That section states that if the claim is about the effects of consuming the substance at other than decreased levels, and if no definition for "high" has been established (e.g., where the claim pertains to a food either as a whole food or as an ingredient in another food), the claim must specify the daily dietary intake necessary to achieve the claimed effect, as established in the regulation authorizing the claim.

As stated, FDA has not established a DRV for soluble fiber. As a result, the term "high" is not defined for soluble fiber. Therefore, consistent with § 101.14(d)(2)(vii), a claim for soluble fiber from whole oats requires specification of the daily dietary intake from whole oats (3 g or more per day of β-glucan soluble fiber from whole oats) necessary to achieve a reduction in the risk of CHD. This requirement is independent of the optional statement provided in § 101.81(d)(6).

When discussing the optional statement under § 101.81(d)(6) in the soluble fiber from whole oats final rule, FDA stated that when the amount of soluble fiber to be consumed per day is stated, the amount per serving is also needed so that consumers would not be misled to believe that a serving of the food contributes the full daily amount (62 FR 3584 at 3596). Therefore, to be consistent with the current regulation in § 101.14(d)(2)(vii) and with the need to specify the amount of soluble fiber that a serving of food contributes when the daily dietary intake is specified in the claim, the agency is requiring, under § 101.81(c)(2)(i)(G), that this information be included in a health claim for both whole oats and psyllium husk soluble fiber claims. However, because FDA did not note this requirement in the soluble fiber from whole oats final rule, firms currently marketing foods that bear the health claim for whole oats may wait until the next printing of their food labels and labeling for such foods to incorporate this added information.

Therefore, the agency is adding § 101.81(c)(2)(i)(G) in this final rule to clarify current regulatory requirements. Existing § 101.81(d)(6), which provides for the same information for whole oats as an optional statement, is being removed. Accordingly, § 101.81(c)(2)(i)(G) states that the claim shall specify that an intake of 7 g or more per day of soluble fiber from psyllium seed husk, or an intake of 3 g or more per day of β-glucan soluble fiber from whole oats may help reduce the risk of CHD. Such a claim must be accompanied by information on the contribution that one serving of the product makes to the specified daily dietary intake level. Any foods containing psyllium seed husk, or whole oats, and bearing the health claim are required to include this information as part of the claim.

3. Blends of Eligible Soluble Fibers

In the psyllium husk proposed rule, the agency noted that foods might be produced with a blend of the eligible soluble fibers listed in § 101.81(c)(2)(ii) and stated that it would be willing to consider whether such foods should be eligible to bear the health claim (62 FR 28234 at 28240). However, the agency stated that it does not have the data from which to evaluate the relationship between consumption of foods

containing both psyllium and whole oats and risk of heart disease, and cannot assume that foods containing a blend of these grains would have the same ability to affect blood total- and LDL-cholesterol levels when compared to a product containing either whole oats or psyllium. In the proposal, the agency encouraged manufacturers to petition to amend § 101.81 further if it can be demonstrated that a diet that is low in saturated fat and cholesterol that includes a blend of the eligible soluble fibers listed in § 101.81(c)(2)(ii) has an effect on the risk of heart disease.

(Comment 11)

One comment agreed with the agency's tentative conclusion not to include blends of the eligible soluble fibers at this time. The comment stated that data should be submitted to verify the effectiveness of any soluble fiber blend.

The agency agrees that data are needed to verify the effectiveness of blends of soluble fiber. In the absence of a review of such data, FDA is not including the option of a blend of the eligible soluble fibers listed in § 101.81(c)(2)(ii) in this final rule. While some studies submitted to the agency did evaluate the usefulness of soluble fiber mixtures in lowering blood cholesterol levels, they were outside the scope of this rulemaking, which pertains to the effects of soluble fiber from psyllium alone. As a result, time and resource constraints did not allow for an indepth review of how blends of eligible soluble fibers might work in synergy with one another. Such a task would better be addressed as a part of rulemaking to establish a DRV for soluble fiber and a review of qualifying levels.

F. Soluble Fiber From Certain Foods and From Eligible Food Sources

In the psyllium husk proposed rule, the agency proposed to modify the section heading of § 101.81 from "Soluble fiber from whole oats and risk of coronary heart disease" to "Soluble fiber from certain foods and risk of coronary heart disease" (62 FR 28234 at 28241). The agency stated that:

> "soluble fiber from certain foods" reflects the fact that the subject of the claim is no longer a specific source of soluble fiber, i.e., beta-glucan from whole oats, but rather a broader class of substances that includes those sources of soluble fiber for which there is significant scientific agreement that they may help to reduce the risk of heart disease. (62 FR 28234 at 28241).

The agency also proposed to revise the statement "soluble fiber from whole oats" in § 101.81(a), (a)(3), (b), (b)(2), (c)(2)(i), (c)(2)(i)(A), (d)(3), and (e) to state "soluble fiber from certain foods," and in § 101.81(c)(2)(i)(E), (c)(2)(i)(F), and (d)(2) to read "soluble fiber from the eligible food sources from paragraph (c)(2)(ii) of this section" (62 FR 28234 at 28241).

(Comment 12)

The agency received one comment that raised issues relative to the agency's decision to modify the soluble fiber from whole oats and CHD rule to a claim on soluble fiber from certain foods. This comment argued that the final rule for § 101.81 inappropriately refocused this claim from "whole oats" to "soluble fiber from whole oats" and heart disease. The comment asserted that β-glucan was included in the whole oats proposed rule only as a quantitative measure of whole oats for compliance purposes. This comment further argued that because the eligible source of β-glucan soluble fiber is whole oat products whereas the eligible source of psyllium soluble fiber is an isolated fiber-rich fraction (e.g., husk) separated from the whole psyllium seed, these substances should not be combined in one regulation.

The agency disagrees that the focus of § 101.81 should be whole oats. The rationale for positioning this claim as a soluble fiber claim was explained in the soluble fiber from whole oats final rule (62 FR 3584 at 3585).

G. Issues Relative to the Safety of Psyllium Seed Husk

Prior to submitting the health claim petition, the petitioner had petitioned FDA to affirm that the use of psyllium seed husk in grain-based foods is GRAS (55 FR 4481, February 8, 1990). In the psyllium husk proposed rule, the agency noted that although FDA has reached no decision on the GRAS affirmation for the use of this substance, the petition appears to contain evidence that the use of psyllium seed husk at levels necessary to justify a claim is safe and lawful, as required by § 101.14(b)(3)(ii) (62 FR 28234 at 28236). However, the agency indicated that there are some public safety concerns with the consumption of psyllium seed husk (e.g., colonic epithelial cell proliferation, allergenicity, and gastrointestinal obstruction). The agency asked for comments on whether these concerns would be a basis for not authorizing the proposed health claim. The agency also recognized that an increase in psyllium consumption is likely if the proposed health claim is authorized (62 FR 28234 at 28236). Therefore, the agency asked for comments on what type of actions may be necessary to ensure that long-term consumption of psyllium seed husk will be at safe levels, e.g., limiting psyllium husk content of foods or the kinds of foods that can bear a claim.

1. Restrictions on Psyllium Husk Content of Foods or on Types of Foods That Can Bear a Claim.

(Comment 13)

FDA received several comments regarding the safety of psyllium husk-containing foods. Some comments stated that psyllium husk has a long history of safe human consumption as a laxative product at the intake level upon which the qualifying food level of psyllium husk is based. Furthermore, the comments noted that prior authoritative reviews of the safety of psyllium husk in food, such as the 1993 LSRO evaluation of the safety of psyllium seed husk as a food ingredient (Ref. 39), concluded that there were no grounds to suggest that consumption of as much as 25 g/d of psyllium husk would be a hazard to the public. These comments argued that therefore it is unnecessary for FDA to restrict the types of psyllium husk-containing food products, the amount of psyllium husk that may be in a food product, or the amount of psyllium husk that should be consumed per day as conditions for use of the soluble fiber from psyllium husk health claim. Other comments asserted that there is inadequate information about limits of how much psyllium husk can be incorporated into foods, or about safe levels of intake for long-term consumption. These comments argued that there should be limits placed on permissible levels of psyllium husk in foods and types of foods to which psyllium husk may be added. One comment suggested that psyllium husk-containing foods be required to bear a label statement warning consumers of the maximum amount of psyllium husk that should be consumed per day.

FDA agrees that there is a history of human oral consumption of psyllium husk, both in food and over-the-counter (OTC) products, at the daily intake level contemplated for this health claim. The daily intake of psyllium husk that FDA has concluded is effective in reducing CHD risk (10.2 g psyllium husk, which is the amount of psyllium husk that is necessary to provide 7 g of soluble fiber) is well below the daily intake level that the 1993 LSRO psyllium husk report (Ref. 39) concluded was safe (i.e., 25 g psyllium husk). FDA does not expect authorization of the health claim to result in potential psyllium husk consumption exceeding this safe level.

The 1993 LSRO report based its calculation of the potential daily intake of psyllium husk, for a consumer preferentially selecting products containing psyllium husk, on the

selection of four servings of psyllium husk-containing foods per day. FDA considers four servings per day to be a reasonable estimate of consumption for several reasons.

First, consumers who are looking for foods that are identified as useful in reducing risk of CHD need not seek only psyllium-husk containing foods. They will also be able to select from foods that use the health claims approved for foods low in saturated fat and cholesterol (§ 101.75 (21 CFR 101.75)); for fruits, vegetables, and grain products that contain fiber, particularly soluble fiber (§ 101.77); and for foods containing soluble fiber from whole oats (§ 101.81).

Second, many types of frequently-consumed foods will not offer psyllium husk-containing alternatives. For example, foods such as raw meat, fish, and poultry; eggs; fats and oils; nuts and seeds; and raw fruits and vegetables are not suitable candidates for the addition of psyllium husk. In addition, technological or organoleptic effects of the use of psyllium husk at levels needed to make a health claim will limit its use in other categories of foods.

Third, because the subject health claim is only allowed on foods that are low in fat, saturated fat, and cholesterol, not all foods to which psyllium husk could be feasibly be added would be eligible to bear a health claim. Thus, there would be no incentive for a manufacturer to add psyllium husk to such foods, other than at the small amounts that may be used for technological purposes (e.g., emulsifiers or binders).

Lastly, most of the new psyllium husk-containing foods that are expected to be developed are grain-based and as such are often used as alternates for one another in usual dietary patterns (e.g., cereals, breakfast bars, toaster pastries, rolls, biscuits, pancakes, or waffles served at breakfast).

For the mentioned reasons, FDA, in evaluating this health claim, considers the selection of four servings of psyllium husk-containing foods per day to be a reasonable expectation of consumption when considering the possible use of psyllium husk in all food categories.

Estimation of the potential daily intake of psyllium husk is also dependent upon the amount of the ingredient in each food. In the 1993 LSRO report, maximum levels of use were reported as designated by the Kellogg Co. at 7.5 percent by weight for bread-based products (e.g., bread, rolls, muffins, doughnuts, biscuits, tortillas, waffles, pancakes, pizza crust and stuffing), pasta, and toaster pastries. In addition, the maximum levels of use were reported to be 10 percent by weight for breakfast bars, and 15 percent by weight for ready-to-eat cereals (Ref. 39). Assuming the highest maximum level of use, 15 percent in ready-to-eat cereals, the consumption of four 30 g servings (i.e., the reference amount customarily consumed for high fiber cereals (§ 101.12(b) Table 2)) would result in a daily intake of 18 g (30 g multiplied by 15 percent = 4.5 g/serving, multiply by 4 servings = 18 g/d). Moreover, any technological uses of psyllium husk in foods are at such low levels (e.g., 0.5 percent in frozen desserts) that they are not likely to have a notable impact on total daily intake.

A total daily intake of 18 g is within the range of intakes considered safe in the 1993 LSRO report (i.e., up to 25 g/d) (Ref. 39). However, FDA expects that actual consumption will be less than this amount because the maximum use levels were designated prior to the agency's establishment of the health claim qualifying level. FDA expects that manufacturers who develop new psyllium husk-containing foods would do so to make use of the health claim. As such, the health claim qualifying level (i.e., 2.6 g per reference amount) would be a major factor in determining the amount of psyllium husk to include in new psyllium husk-containing foods.

Based on these considerations, the agency disagrees with the comments that argued that limits should be placed on permissible levels of psyllium husk in foods or on the types of foods to which psyllium husk may be added. Therefore, no changes are being made to § 101.81(c)(iii)(A)(*2*) that describes the nature of the food.

As noted in the psyllium husk proposed rule (62 FR 28234 at 28235), a preliminary review of the petitioner's GRAS affirmation petition revealed that it contains significant evidence supporting the safety of the consumption of up to 25 g/d of psyllium husk in a variety of food categories (i.e., types of foods). This amount is well in excess of the levels necessary to justify a health claim (i.e., 10.2 g/d) and the amounts that would reasonably be expected to be consumed in a day. Accordingly, based on the totality of the evidence, FDA is not at this time taking issue with the petitioner's view that the use of psyllium husk is safe and lawful. Therefore, the agency concludes that the petitioner has provided evidence that satisfies the requirements in § 101.14(b)(3)(ii) that psyllium seed husk at the levels necessary to justify a claim is safe and lawful.

(Comment 14)

Several comments discussed evidence from animal studies suggesting that the relationship between effects of dietary fiber on rodent colonic mucosal proliferation and the development of neoplasia is unclear. These comments stated that colonic epithelial cell proliferation is not a significant issue relative to the safety of psyllium seed husk as there is no consensus as to whether epithelial cell proliferation in rodent colonic mucosa is relevant to risk of colon cancer. Some comments noted that colonic epithelial cell proliferation is an issue of concern that needs additional research.

The agency agrees that colonic epithelial proliferation is not sufficiently validated as a reliable endpoint for prediction of colon tumorigenesis. While the rate of epithelial cell proliferation in the rodent gastrointestinal tract has been reported to be increased by some soluble dietary fibers and decreased by some insoluble dietary fibers, there is no evidence upon which to conclude that the influence of dietary fiber on the rate of epithelial proliferation is either adverse or beneficial. Whether psyllium husk influences colonic epithelial cell proliferation in humans as it does in rodents is unknown. Although enhanced cellular proliferation is associated with the neoplastic process, proliferation rates have been reported to be variably influenced by a number of dietary constituents and other exogenous and endogenous factors, and a significant overlap in proliferation rates between subjects at high and low risk of colon cancer has been observed (Ref. 40). Therefore, the agency concludes that the issue of epithelial cell proliferation is not a basis on which to deny this health claim.

2. Allergic Potential of Psyllium Husk

In the psyllium husk proposed rule, the agency acknowledged reports of allergic reactions from consumption of psyllium husk-containing food. The majority of these reports involved ingestion of a cereal made with psyllium husk of less than 95 percent

purity. Because information provided by the petitioner suggested that the purity of the psyllium husk is inversely related to its allergenicity, FDA proposed a purity criterion for psyllium husk to be eligible for the claim. Under comment 8 in section II.D.1 of this document, the agency stated that psyllium husk purity specifications of proposed § 101.81(c)(2)(ii)(B)(*1*) are being adopted in the final rule.

(Comment 15)

Two comments stated that the declaration of an ingredient in the ingredient list of the food label is sufficient labeling to alert consumers to the presence of allergenic components in foods and that additional labeling is unnecessary. Other comments stated that in consideration of the allergic potential of psyllium, the presence of psyllium husk in a food should be declared on the principal display panel in addition to the ingredient declaration.

Some comments agreed with the proposed husk purity specifications as an adequate means of reducing the potential for allergic responses. One comment explained that the major source of allergenic proteins in psyllium seed husk is from residual portions of the whole seed. The comment stated that the removal of the inner seed portions leaves a very low level of residual protein in 95 percent purity psyllium husk and thus, the potential for serious allergic reactions would be rare. However, the comment also suggested that a label statement with an appropriate caution as to the risk for allergic reactions would provide added assurances for consumers. Still other comments argued that the proposed purity standards for psyllium seed husk will not eliminate the risk for allergic reactions to psyllium husk-containing foods and as such, a cautionary statement alerting consumers to the risk of allergic reactions should be required labeling. None of the comments provided data.

The agency is not convinced by these comments that labeling, other than declaration in the ingredient statement when psyllium husk is added as a food ingredient, is necessary because of psyllium's allergic potential. The agency recognizes the possibility of isolated cases of allergic reactions to ingested allergenic substances in foods or food components, including psyllium seed husk. However, the agency believes that the declaration of the allergenic substance in the ingredient list on the food label provides adequate information for consumers regarding the presence of allergenic ingredients in food products. Psyllium seed husk is required to be declared in the ingredient statement of a food to which it is added. The agency has no basis for concluding that additional labeling requirements for the use of this health claim would have an impact on reducing the potential for allergic reactions from consumption of psyllium husk-containing foods. The agency would not object to any additional truthful, nonmisleading information regarding allergenicity that a manufacturer may wish to include on the food label.

3. Gastrointestinal Obstruction

In the psyllium proposed rule, the agency discussed the potential for esophageal and gastrointestinal obstructions to occur following consumption of psyllium seed husk when not consumed with sufficient liquid (62 FR 28234 at 28236). The agency noted that the LSRO expert panel (Ref. 39) reported that esophageal and gastrointestinal obstruction due to psyllium seed husk was associated almost exclusively with consumption without proper hydration of bulk-forming fiber laxatives and not with consumption of psyllium-containing cereal consumed with milk (62 FR 28234 at 28236). Comments were requested on whether psyllium husk-containing foods should carry a statement advising that the product be consumed with liquids, or whether the potential for blockage is not an issue of concern for psyllium husk-containing food (62 FR 28234 at 28236).

(Comment 16)

Several comments discussed the potential for esophageal and gastrointestinal obstructions from consumption of psyllium husk without sufficient liquid. These comments recommended that the agency adopt labeling requirements for psyllium husk-containing foods advising consumers to drink adequate fluids when consuming such foods. Some of these comments suggested that such statements be similar to those required under § 201.319 (21 CFR 201.319) (Warning Statements Required for Over-the-Counter Drugs Containing Water-Soluble Gums as Active Ingredients (58 FR 45194, August 26, 1993)) for OTC products to ensure consumers are aware of the consequences of inadequate hydration. In general, these comments justified their recommendations on the basis that authorization of the proposed health claim would encourage incorporation of psyllium seed husk into additional types of foods, and that these new food products containing significant amounts of psyllium seed husk will not necessarily be intended to be consumed with liquids. One comment asserted that a label statement advising the consumption of the psyllium husk-containing food with liquids is unnecessary because psyllium husk-containing foods would be consumed at meals when it is likely that sufficient liquid would also be consumed. The comment argued that the soluble fiber in psyllium husk-containing foods is already hydrated, which would reduce its ability to swell in the gastrointestinal tract. This comment further noted that the 1993 LSRO report on the safety of using psyllium seed husk as a food ingredient (Ref. 39) found no safety issues in this regard. None of the comments provided data.

The agency agrees with comments suggesting that authorization of a claim for soluble fiber from psyllium husk and risk of CHD may lead to an increase in the number and type of foods containing psyllium husk. Moreover, the agency agrees that there are no assurances that new psyllium husk-containing foods are likely to be consumed at meals or with liquids. Foods such as cookies, breakfast bars, and toaster pastries may be consumed as snacks at times when a liquid is not consumed. Psyllium husk could also be incorporated into dietary supplement products that may be consumed apart from meals. The comment that stated that the psyllium seed husk in foods is already hydrated, which would affect its ability to swell in the gastrointestinal tract, provided no data to document or with which to evaluate differences in the swell volume and rate of swelling of different psyllium husk-containing foods.

The LSRO expert panel that considered the safety of psyllium seed husk used as a food ingredient (Ref. 39) concluded that the moderate amounts of psyllium seed husk that are likely to be used in toaster pastries, bread-based products, breakfast bars, pasta, and cereals would not be expected to cause gastrointestinal obstruction. However, this panel further concluded that the possibility of obstruction would be reduced by suitable suggestions that these products be consumed with fluids.

The agency addressed the risk of esophageal obstruction by water soluble gums (including psyllium husk) in an advance notice of proposed rulemaking to establish a monograph for OTC laxative, antidiarrheal, emetic, and antiemetic drug products (40 FR 12902, March 21, 1975). The agency discussed in the final rule the evidence of at least 191 cases of esophageal obstruction and 8 cases of asphyxia, resulting in 18 deaths, associated with orally-administered OTC laxative and weight control products containing a variety of

water soluble gums (58 FR 45194 at 45195). The agency concluded that there is a risk that these types of products will swell to form a viscous adhesive mass (i.e., viscous gel) that can block the throat or esophagus. Because of this risk, the agency requires warning and direction statements for OTC drug products containing water soluble gums, including psyllium husk, as active ingredients when these products are marketed in a dry or partially hydrated form (§ 201.319). Fully hydrated water soluble gums were acknowledged to not pose any significant risk of causing esophageal obstruction (58 FR 45194 at 45196).

In the final rule on "Warning Statements Required for OTC Products Containing Water-Soluble Gums as Active Ingredients," the agency stated that it will continue to evaluate the use of water-soluble gums in any product marketed for human consumption, food or drug, and appropriate warnings will be proposed if a need to do so is found (58 FR 45194 at 45196).

The agency anticipates that authorization of a health claim for soluble fiber from psyllium husk may result in an increase of both the type and number of foods containing psyllium husk, and that foods eligible to bear the psyllium husk health claim will contain amounts of psyllium husk comparable to that commonly found in OTC laxative drugs. However, the agency recognizes that there are inherent differences between foods in conventional food form, which contain other food ingredients such as salt, sugar, and flour in addition to psyllium husk, and OTC drug products that would influence the likelihood of esophageal obstruction occurring from the ingestion of psyllium husk-containing foods. For example, drug products are formulated in tablets, capsules, and powders that are usually intended to be ingested and swallowed as a single bolus, whereas a serving of food is not swallowed as a single bolus, but eaten in several bites, chewed, and swallowed over a period of time. Psyllium husk-containing conventional foods also differ from drug products in that the psyllium husk in a food in conventional food form is dispersed within a larger volume of other food components (e.g., sugars, salt, wheat flour, egg). Dispersion in other ingredients prevents the soluble fiber of psyllium husk from physically associating to form a gel network (i.e., a viscous adhesive mass) (Refs. 41 and 42). Because a strong gel network is not formed due to the presence of these other ingredients, the food product will swell and thicken in a similar fashion to other high fiber foods (e.g., ready-to-eat cereals), without forming a viscous mass capable of causing obstruction (Ref. 42). The agency believes that, because the composition and manner of consumption of psyllium husk-containing conventional foods, unlike OTC products, inhibit the formation of a viscous gel in the esophagus, the label requirements for OTC drug products may not be applicable to certain foods containing psyllium husk that bear a health claim.

Section 201(n) of the act (21 U.S.C. 321(n)) states that, in determining whether labeling is misleading, the agency shall take into account not only representations made about the product, but also the extent to which the labeling fails to reveal facts material in light of such representations made or suggested in the labeling or material with respect to consequences which may result from use of the article to which the labeling relates under the conditions of use as are customary or usual (see 21 CFR 1.21). Thus, the omission of certain material facts from the label or labeling on a food causes the product to be misbranded within the meaning of sections 403(a)(1) and 201(m) of the act (21 U.S.C. 343(a)(1)).

As discussed out in the final rule on warning statements for OTC products (58 FR 45194), esophageal obstruction and asphyxiation are potential health risks associated with the oral consumption of dry or incompletely hydrated psyllium husk when these products are ingested without adequate fluid or when they are used by individuals with esophageal narrowing or dysfunction, or with difficulty swallowing. There is the possibility that esophageal obstruction and choking from ingestion of psyllium husk-containing food would be a consequence of extending the food use of psyllium husk to certain types of food products, such as those that are predominately composed of psyllium husk. Therefore, FDA has determined that the potential for esophageal blockage from not consuming adequate amounts of fluids when consuming certain types of dry or incompletely hydrated psyllium husk-containing food is a material fact.

The agency concludes that it would be misleading under section 201(n) of the act for certain foods to contain dry or incompletely hydrated psyllium husk without a label statement relative to potential risks and concerns for adequate fluid intake. Therefore, in this final rule FDA is amending its regulations to require a statement (hereinafter "label statement") to inform consumers of the potential consequence if the psyllium husk-containing food is not consumed appropriately, to inform consumers of the action necessary to avoid the consequence, and to advise persons with swallowing difficulties to avoid consumption of the product.

Because the concern for esophageal obstruction exists whether or not the food bears a health claim, FDA is codifying the need for the required label statement in § 101.17 *Food labeling warning and notice statements* (21 CFR 101.17) rather than in the health claim regulation. The required label statement is also reflected in § 101.81(c)(1). Accordingly, FDA is adding paragraph (f)(1) to § 101.17 to specify that when dry or incompletely hydrated psyllium husk is present in a food and the food bears a health claim, the label must include a statement such as:

> The food should be eaten with at least a full glass of liquid. Eating this product without enough liquid may cause choking. Do not eat this product if you have difficulty swallowing.

In the psyllium proposed rule, the agency had specifically requested comments on whether psyllium husk-containing foods should carry a statement advising that the product be consumed with liquids. However, the agency had not suggested that it was considering requiring labeling for all psyllium husk-containing foods regardless of whether the food label bears a health claim statement. Therefore, FDA is not attempting, in this final rule, to extend the required statement to psyllium husk-containing foods not subject to this rulemaking, i.e., foods not bearing a health claim. Instead, the agency plans to propose, in a separate rulemaking, that the required label statement be extended to other psyllium husk-containing foods that do not bear a health claim.

However, as discussed previously, the agency recognizes that there are factors that suggest that the formation of a viscous adhesive mass, which is associated with a risk of choking, does not result from consumption of certain psyllium husk-containing foods that are in a conventional food form. Therefore, the agency believes that certain dry or incompletely hydrated conventional food products, i.e., those that do not form a viscous adhesive mass under usual conditions of use, would not require the label statement. The agency believes that an exemption from the label statement should be available to firms when a viscous adhesive mass is not formed when the product is exposed to fluids so that the product poses no greater risk to the consumer than a comparable product without psyllium husk. The agency does not currently

have data or information on which it could base such an exemption for specific conventional food products. Moreover, because FDA, under § 101.70(j)(4)(i), is obligated to publish this final rule within the time limitation established for issuing final rules for health claim proceedings, the agency is unable, in this final rule, to specify the conditions under which exemptions to the label statement for certain conventional food products are warranted. Consequently, the agency will provide firms that seek such an exemption with guidance as to what would be necessary to demonstrate that such an exemption to the label statement is warranted. The agency will further evaluate the need for the label statement on specific types of psyllium husk-containing foods that bear a health claim in the separate rulemaking that will address the extension of the label statement to psyllium husk-containing foods that do not bear a health claim. If the agency challenges a firm's determination that its conventional food product is entitled to the exemption in § 101.17(f)(1), and as a result is not misbranded within the meaning of section 201(n) of the act without such label statement, the agency will evaluate the basis for the firm's exemption on a case-by-case basis.

Section 403(f) of the act requires that mandatory label information be prominently placed on the label with such conspicuousness (compared with other words, statements, designs, or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of use. FDA has generally considered the label information panel to be the appropriate location for notice and warning statements. As discussed in the agency's rulemaking requiring warning statements on iron-containing dietary supplements (62 FR 2218, January 15, 1997), consumer focus group studies establish that a warning statement need not be placed on the principal display panel (PDP) to be effective in informing consumers of the hazard. Participants in the focus groups reasoned that the front of the product package was used for marketing purposes and stated that they were accustomed to looking at the "back of products" for nutrition and factual information, including warning statements (Ref. 43). Consequently, in the case of iron-containing dietary supplements, the agency required that the warning statement appear on the information panel.

The agency believes that for the required label statements on psyllium husk-containing products, the requirement for prominence and conspicuousness would similarly be met if the statements appeared on the information panel. However, the agency would not object to firms placing the required statement on the PDP, because the PDP would provide even greater prominence. Accordingly, FDA is requiring in § 101.17(f)(2) that the required statement for psyllium husk-containing foods appear either on the product information panel or on the PDP.

The requirement in the act for prominent display means that the required label statement must appear in a manner that makes it readily observable and likely to be read. The agency notes that 21 CFR 101.2(c) requires that mandatory information appearing on the PDP and information panel, including information required by § 101.17, appear prominently and conspicuously in a type size no less than one-sixteenth inch.

In addition, current agency regulations that require a "warning" statement on the product label or in labeling (e.g., the statement required by § 101.17(e) on iron-containing dietary supplements in solid oral dosage form) or a label "notice" statement (e.g., the statement required by § 101.17(d)(3) on protein products that are not covered by the requirements of § 101.17(d)(1) and (d)(2)) require that the identifying term "WARNING" or "NOTICE" be capitalized and immediately precede the language of the applicable labeling statement. Based on FDA's experience in rulemaking pertaining to warning statements on protein products (47 FR 25379, June 11, 1982), as the severity of the consequences lessens, the severity of the warning may also lessen. Therefore, the agency considers the term "NOTICE" to be appropriate to alert consumers to the label statement. Accordingly, the agency is requiring in § 101.17(f)(2) that the capitalized word "NOTICE" immediately precede the required elements of the label statement.

4. Laxative effects

(Comment 17)

One comment noted that psyllium husk is primarily consumed for its laxative effect. This comment asserted that the label and labeling of psyllium husk-containing foods should inform consumers about the adverse effects of consuming excess amounts of psyllium by including a disclosure statement such as "Consumption of psyllium in excess of —— mg may cause diarrhea." Other comments noted that intake of psyllium-containing foods is self-limiting due to satiety and laxative effects.

FDA disagrees that the possible effects on bowel function of consuming 10 g/d of psyllium seed husk in foods would be considered as causing diarrhea or an adverse health consequence. Diarrhea is characterized by loose, watery bowel movements. The water-holding capacity and bulking effect of undigested soluble fiber from psyllium husk softens colonic contents and stimulates peristalsis, both of which facilitate movement of the colonic contents. Ingestion of psyllium husk does not lead to diarrhea. The expected effect of the use of bulk-forming fiber laxatives is an increase in stool volume and frequency of bowel movements. There is no reason to consider that a daily intake of 10 g of psyllium seed husk as a component of food would have any effect on the bowel other than to promote normal functioning by softening fecal contents and increasing fecal volume. Because the daily intake of psyllium seed husk that is approved for this health claim is the same customary daily intake when used as a laxative, amounts in excess of that required for laxation are not needed to obtain potential benefits, in reduced risk of CHD, from consumption of psyllium seed husk. Moreover, consumption in excess of 10.2 g/d of psyllium seed husk would not be expected to result in diarrhea because intake of psyllium husk increases stool volume and frequency of bowel movements. Softening of fecal contents is not diarrhea and does not represent an adverse health effect as suggested by the comment. Therefore, the agency finds that there is no basis on which to require, as suggested by the comment, a warning statement to alert consumers about possible adverse effects from consuming psyllium husk-containing foods.

H. General Health Claim Issues

1. Health claims for substances with OTC drug uses.

(Comment 18)

One comment stated that approving a claim on a product that incorporates an OTC drug into a food would set a precedent for allowing claims on "functional foods," foods consumed primarily for their purported ability to prevent or treat disease. The comment stated that this was not the intent of Congress when it passed the 1990 amendments.

FDA notes that bran, as well as psyllium husk, are listed as effective bulk-forming laxative active ingredients in the tentative final monograph on laxative drug products for OTC human use (50 FR 2124, January 15, 1985) and that oat bran is also an eligible source of soluble fiber from whole oats for this

health claim. The fact that a substance also has uses as an OTC drug does not bear on its recognized status as a food. FDA notes that psyllium seed husk is a recognized source of dietary fiber and an established food ingredient. Therefore, the comment is not relevant to this rulemaking.

2. Food-Specific Health Claims

(Comment 19)

Some comments stated that the proposed claim for a specific soluble fiber should not be authorized because claims for specific foods create the false impression that consumption of those foods is a more important factor than is the overall diet in reduction of risk of CHD. Other comments asserted that allowing health claims for individual substances portrays specific foods as panaceas or functional foods and undermines the purpose of the 1990 amendments. One comment expressed concern that claims about individual sources of dietary fiber are inconsistent with the important dietary guidance of choosing diets high in fruits, vegetables, whole grain foods, and other good sources of fiber. One comment stated that the proposed claim does not inform the consumer that frequent, long-term consumption of soluble fiber from psyllium husk is necessary to lower cholesterol levels.

FDA addressed the issue of the appropriate subject of health claims in rulemaking leading to, and including, the January 6, 1993, final rule on general requirements for health claims (see 56 FR 60537 at 60542, November 27, 1991; 58 FR 2478 at 2479, January 6, 1993). While some comments to proposed rulemaking maintained that health claims should only be permitted for nutrients listed in nutrition labeling, others argued that Congress intended claims to be authorized for foods as well as nutrients. Comments quoted private and public health organizations' testimony before Congress that health claims should reflect dietary recommendations about foods and "should assist the public to integrate specific food products into a well balanced diet" (58 FR 2478 at 2479). After extensive discussion, final rules implementing the 1990 amendments defined health claims as claims characterizing the relationship of any substance to a disease or health-related condition, and defined "substance" as a specific food or component of food (§ 101.14(a)(1) and (a)(2)). This permitted health claims to be established for both nutrients and foods.

In the soluble fiber from whole oats final rule, the agency addressed comments that expressed concern that a claim on whole oat foods would portray the specific food as a "magic bullet" in reducing heart disease risk. This concern was ameliorated when the scientific evidence supported changing the subject of the claim to soluble fiber from whole oats. In addition, the importance of a total diet low in saturated fat and cholesterol to the nutrient/disease relationship was emphasized (62 FR 3584 at 3585 and 3590). FDA noted that diets low in saturated fat and cholesterol are considered by expert groups to be the most effective dietary means of reducing heart disease risk. The agency stated that while soluble fiber from whole oats contributes to this effect, its role is generally recognized as being of smaller magnitude (62 FR 3584 at 3590 and 3594).

Likewise, the agency concludes that the concerns described previously that were raised in comments to the psyllium husk proposed rule are adequately addressed by the fact that a health claim on psyllium-containing foods will be required to state the subject of the claim as "soluble fiber from psyllium husk" and to describe the nutrient/disease relationship in the context of a diet low in saturated fat and cholesterol. The comment provided no evidence to suggest that health claims about specific foods or food ingredients will not encourage consumers to follow dietary recommendations to eat a varied diet containing other foods that are also good sources of fiber.

FDA notes that the subject health claim, as is the case for all authorized health claims, requires that the claim be stated in the context of a daily diet. This is accomplished through specific requirements describing the nature of the claim, i.e., the relationship of the substance to the disease or health-related condition in paragraph (c)(2)(i) of each health claim regulation. These requirements are intended to show the nature of the relationship between the subject of the claim and the disease or health condition and to prevent any misunderstanding that health benefits will accrue from single or infrequent consumption of the subject nutrient or adherence to the suggested dietary regimen. Examples of such wording include "throughout life" in the calcium/osteoporosis claim (21 CFR 101.72), "daily" in the folate/neural tube defect claim (21 CFR 101.79), "diets low in fat * * *" in health claims pertaining to cancer (21 CFR 101.73, 101.76, and 101.78) and "diets low in saturated fat and cholesterol * * *" in health claims pertaining to heart disease (§§ 101.75, 101.77, and 101.81). Therefore, the agency is making no changes in response to this comment.

The preamble of the soluble fiber from whole oats health claim final rule considered the impact of the health claim on consumer perception of food label references to oats (62 FR 3584 at 3596). A comment had suggested that as consumers become aware of the relationship between soluble fiber from whole oats and reduced risk of CHD, statements such as "made with oat bran" would be an implied nutrient content or health claim. In response to this comment, FDA stated that it did not have information from which to conclude that terms such as "oat bran," "rolled oats," or "whole oat flour" are always in a context that constitutes an implied nutrient content or health claim, and as such FDA would continue its policy to evaluate the context of label statements on a case-by-case basis (62 FR 3584 at 3597). The agency further noted that if experience with label statements about oat ingredients or other information persuades FDA that additional regulatory controls are needed, the agency can take action to establish appropriate regulations. The agency does not have reason at this time to change this policy.

III. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the psyllium husk proposed rule (62 FR 28234). The proposed rule incorrectly cited a claim of categorical exclusion under previous 21 CFR 25.24(a)(11). The agency has determined, based on information contained in an environmental assessment prepared under previous 21 CFR 25.31a(b)(5), that this action has no significant impact on the environment and that an environmental impact statement is not required. No new information or comments have been received that would affect this determination. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

IV. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of the final rule under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approach that maximizes net benefits (including potential

economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a rule is significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million, adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. FDA finds that this rule is not a significant rule as defined by Executive Order 12866.

In addition, FDA has determined that this rule does not constitute a significant rule under the Unfunded Mandates Reform Act of 1995 requiring cost-benefit and other analyses. A significant rule is defined in section 1531(a) as "a Federal mandate that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation) in any 1 year * * *."

Finally, in accordance with the Small Business Regulatory Enforcement Fairness Act, the administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget has determined that this final rule is not a major rule for the purpose of Congressional review.

The authorization of health claims about the relationship between soluble fiber from psyllium seed husk and CHD results in either costs or benefits only to the extent that food manufacturers elect to take advantage of the opportunity to use the claim. The authorization of the health claim will not require that any labels be redesigned, or that any product be reformulated. However, the labels of foods containing whole oats and bearing the health claim will require revision to specify the daily dietary intake of β-glucan soluble fiber from whole oats necessary to achieve the claim effect. Because FDA is allowing firms to wait to incorporate this change with other regularly scheduled changes, this provision will not result in additional costs.

This final health claim will allow manufacturers to highlight the benefits of soluble fiber from psyllium seed husk in addition to other eligible food sources of soluble fiber for which FDA has already approved a health claim. The benefit of establishing this health claim is to provide for new information in the market regarding the relationship between soluble fiber from psyllium seed husk and risk of heart disease and to provide consumers with the assurance that this information is truthful, not misleading, and scientifically valid.

B. Small Entity Analysis

FDA has examined the impacts of the final rule under the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize the economic impact of that rule on small entities.

Small entities will incur costs only if they opt to take advantage of the marketing opportunity presented by this regulation. FDA cannot predict the number of small entities that will choose to use the claim. However, no firm, including small entities, will choose to bear the cost of redesigning labels unless they believe that the claim will result in increased sales of their product. Therefore, this rule will not result in either a decrease in revenues or a significant increase in costs to any small entity. Accordingly, under the Regulatory Flexibility Act, 5 U.S.C. 605(b), the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act

In the psyllium proposal, FDA stated its tentative conclusion that the proposed rule contained no information collection provisions necessitating clearance by the Office of Management and Budget (OMB) and asked for comments on whether the proposed rule imposed any paperwork burden. No comments addressing the question of paperwork burden were received. FDA has evaluated the final rule and concludes that it contains no information collection provisions. Although the final rule would amend § 101.17 to require a label statement on foods containing psyllium husk and bearing a health claim, FDA is supplying the information that must be disclosed in the label statement. Therefore, the label statement is a "public disclosure of information originally supplied by the Federal government to the recipient for purpose of disclosure to the public" (5 CFR 1320(c)(2)); as such, it is not a "collection of information" subject to OMB review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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43. Memorandum from A. S. Levy, FDA, to K. Falci, FDA, June 26, 1997.

List of Subjects in 21 CFR Part 101

Food labeling, Incorporation by reference, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Section 101.17 is amended by adding paragraph (f) to read as follows:

§ 101.17 Food labeling warning and notice statements.

* * * * *

(f) *Foods containing psyllium husk.* (1) Foods containing dry or incompletely hydrated psyllium husk, also known as psyllium seed husk, and bearing a health claim on the association between soluble fiber from psyllium husk and reduced risk of coronary heart disease, shall bear a label statement informing consumers that the appropriate use of such foods requires consumption with adequate amounts of fluids, alerting them of potential consequences of failing to follow usage recommendations, and informing persons with swallowing difficulties to avoid consumption of the product (e.g., "NOTICE: This food should be eaten with at least a full glass of liquid. Eating this product without enough liquid may cause choking. Do not eat this product if you have difficulty in swallowing."). However, a product in conventional food form may be exempt from this requirement if a viscous adhesive mass

is not formed when the food is exposed to fluids.

(2) The statement shall appear prominently and conspicuously on the information panel or principal display panel of the package label and any other labeling to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. The statement shall be preceded by the word "NOTICE" in capital letters.

3. Section 101.81 is amended by revising the section heading, the heading for paragraphs (a) and (b), and paragraphs (a)(3), (b)(2), (c)(1), (c)(2)(i) introductory text, (c)(2)(i)(A), (c)(2)(i)(E), (c)(2)(i)(F), (c)(2)(iii)(A), (d)(2), (d)(3), and (e); by adding paragraphs (c)(2)(i)(G) and (c)(2)(ii)(B); and by removing paragraph (d)(6) and redsignating paragraph (d)(7) as (d)(6) and paragraph (d)(8) as (d)(7) to read as follows:

§ 101.81 Health claims: Soluble fiber from certain foods and risk of coronary heart disease (CHD).

(a) *Relationship between diets that are low in saturated fat and cholesterol and that include soluble fiber from certain foods and the risk of CHD.* * * *

* * * * *

(3) Scientific evidence demonstrates that diets low in saturated fat and cholesterol may reduce the risk of CHD. Other evidence demonstrates that the addition of soluble fiber from certain foods to a diet that is low in saturated fat and cholesterol may also help to reduce the risk of CHD.

(b) *Significance of the relationship between diets that are low in saturated fat and cholesterol and that include soluble fiber from certain foods and the risk of CHD.* * * *

* * * * *

(2) Intakes of saturated fat exceed recommended levels in the diets of many people in the United States. One of the major public health recommendations relative to CHD risk is to consume less than 10 percent of calories from saturated fat and an average of 30 percent or less of total calories from all fat. Recommended daily cholesterol intakes are 300 milligrams (mg) or less per day. Scientific evidence demonstrates that diets low in saturated fat and cholesterol are associated with lower blood total- and LDL-cholesterol levels. Soluble fiber from certain foods, when included in a low saturated fat and cholesterol diet, also helps to lower blood total- and LDL-cholesterol levels.

(c) *Requirements.* (1) All requirements set forth in § 101.14 shall be met. The label and labeling of foods containing psyllium husk shall be consistent with the provisions of § 101.17(f).

(2) *Specific requirements.* (i) Nature of the claim. A health claim associating diets that are low in saturated fat and cholesterol and that include soluble fiber from certain foods with reduced risk of heart disease may be made on the label or labeling of a food described in paragraph (c)(2)(iii) of this section, provided that:

(A) The claim states that diets that are low in saturated fat and cholesterol and that include soluble fiber from certain foods "may" or "might" reduce the risk of heart disease.

* * * * *

(E) The claim does not attribute any degree of risk reduction for CHD to diets that are low in saturated fat and cholesterol and that include soluble fiber from the eligible food sources from paragraph (c)(2)(ii) of this section; and

(F) The claim does not imply that consumption of diets that are low in saturated fat and cholesterol and that include soluble fiber from the eligible food sources from paragraph (c)(2)(ii) of this section is the only recognized means of achieving a reduced risk of CHD.

(G) The claim specifies the daily dietary intake of the soluble fiber source that is necessary to reduce the risk of coronary heart disease and the contribution one serving of the product makes to the specified daily dietary intake level. Daily dietary intake levels of soluble fiber sources listed in paragraph (c)(2)(ii) of this section that have been associated with reduced risk coronary heart disease are :

(*1*) 3 g or more per day of B-glucan soluble fiber from whole oats.

(*2*) 7 g or more per day of soluble fiber from psyllium seed husk.

(ii) * * *

(B)(*1*) Psyllium husk from the dried seed coat (epidermis) of the seed of *Plantago* (*P.*) ovata, known as blond psyllium or Indian psyllium, *P. indica*, or *P. psyllium*. To qualify for this claim, psyllium seed husk, also known as psyllium husk, shall have a purity of no less than 95 percent, such that it contains 3 percent or less protein, 4.5 percent or less of light extraneous matter, and 0.5 percent or less of heavy extraneous matter, but in no case may the combined extraneous matter exceed 4.9 percent, as determined by U.S. Pharmacopeia (USP) methods described in USP's "The National Formulary," USP 23, NF 18, p. 1341, (1995), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the U.S. Pharmacopeial Convention, Inc., 12601 Twinbrook Pkwy., Rockville, MD 20852, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC;

(*2*) FDA will determine the amount of soluble fiber that is provided by psyllium husk by using a modification of the Association of Official Analytical Chemists' (AOAC's) method for soluble dietary fiber (991.43) described by Lee et al., "Determination of Soluble and Insoluble Dietary Fiber in Psyllium-containing Cereal Products," *Journal of the AOAC International*, 78 (No. 3):724–729, 1995, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Association of Official Analytical Chemists International, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877–2504, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC;

(iii) * * *

(A) The food product shall include:

(*1*) One or more of the whole oat foods from paragraph (c)(2)(ii)(A) of this section, and the whole oat foods shall contain at least 0.75 gram (g) of soluble fiber per reference amount customarily consumed of the food product; or

(*2*) Psyllium husk that complies with paragraph (c)(2)(ii)(B) of this section, and the psyllium food shall contain at least 1.7 g of soluble fiber per reference amount customarily consumed of the food product;

* * * * *

(d) * * *

(2) The claim may state that the relationship between intake of diets that are low in saturated fat and cholesterol and that include soluble fiber from the eligible food sources from paragraph (c)(2)(ii) of this section and reduced risk of heart disease is through the intermediate link of "blood cholesterol" or "blood total- and LDL-cholesterol;"

(3) The claim may include information from paragraphs (a) and (b) of this section, which summarize the relationship between diets that are low in saturated fat and cholesterol and that include soluble fiber from certain foods and coronary heart disease and the significance of the relationship;

* * * * *

(e) *Model health claim.* The following model health claims may be used in food labeling to describe the

relationship between diets that are low in saturated fat and cholesterol and that include soluble fiber from certain foods and reduced risk of heart disease:

(1) Soluble fiber from foods such as [name of soluble fiber source from paragraph (c)(2)(ii) of this section and, if desired, the name of food product], as part of a diet low in saturated fat and cholesterol, may reduce the risk of heart disease. A serving of [name of food] supplies _____ grams of the [grams of soluble fiber specified in paragraph (c)(2)(i)(G) of this section] soluble fiber from [name of the soluble fiber source from paragraph (c)(2)(ii) of this section] necessary per day to have this effect.

(2) Diets low in saturated fat and cholesterol that include [_____ grams of soluble fiber specified in paragraph (c)(2)(i)(G) of this section] of soluble fiber per day from [name of soluble fiber source from paragraph (c)(2)(ii) of this section and, if desired, the name of the food product] may reduce the risk of heart disease. One serving of [name of food] provides _____ grams of this soluble fiber.

Dated: February 10, 1998

William B. Schultz,

Deputy Commissioner for Policy.

Note: The following table will not appear in the Code of Federal Regulations.

TABLE 1.—SUMMARY OF CLINICAL TRIALS WITH HYPERCHOLESTEROLEMICS: PSYLLIUM AND CORONARY HEART DISEASE

Study	Duration Treatment	Number of Subjects	Supplements (Psyllium, Placebo) Soluble Fiber g/d	Diet Intake of groups: Sat fat % E; CHOL mg/d	Magnitude of PSY Effect[1]	Magnitude of Placebo Effect
Anderson et al. (Ref. 13)	Base: 8 wk Step 1; Tx: 26 wk Step 1+supplement	PSY: 131 C: 28	10.2 g/d bulk laxative, cellulose PSY: ~7 g SF	*Sat fat*: PSY- 8.3%; C- 7.7% *CHOL*: PSY- 164 mg; C- 146 mg	*CHOL*: -5 mg/dL (2.1%)[1] *LDL-C*: -5 mg/dL (2.9%)[1]	*CHOL*: +5 (2.6%) *LDL-C*: +6 (3.9%) *HDL-C*: no sig dif (grps)
Bell et al. (Ref. 14)	Base: 12-wk Step 1; Tx: 8-wk Step 1+supplement	PSY: 40 (20 men) Pla: 35 (18 men)	10.2 g/d bulk laxative, cellulose PSY: ~7 g SF	*Sat fat*: PSY- 8–10%; C- 7.7–8.6% *CHOL*: PSY- 168 mg; C- 206 mg	*CHOL*: -9 mg/dL (4.2%) *LDL-C*: -12 mg/dL (7.7%)	*CHOL*: 0 *LDL-C*: -0.2% *HDL-C*: no sig dif (grps)
Davidson et al. (Ref. 15)	Base: 8-wk Step 1; Tx: 24-wk Step 1 + PSY or control food (3 servings/d)	PSY 1 56 (31 men) PSY 2 40 (24 men) PSY 3 43 (28 men) C 59	3.4 g, 6.8 g, 10.2 g/d; incorporated into foods: C foods: no PSY PSY 1: ~2.3 g SF, PSY 2: ~4.6 g; PSY 3: ~7 g	*SAT fat*: PSY- 7–8.6%; C- 7–8.6% *CHOL*: PSY 1- 151 mg; PSY 2- 181; PSY 3- 169 C- 145 mg	*CHOL*: ~3% (PSY 3) *LDL-C*: ~5% (PSY 3)	*CHOL*: +1.7%; LDL-C: +3% *HDL-C*: No sig dif (grps)
Everson et al. (Ref. 16)	Regular diet; 5-d Base; 2 40-d periods; 11-d washout; crossover	20 men	15.3 g/d bulk laxative, cellulose PSY: ~10 g SF	*SAT fat*: PSY- 12%; C- 13.2 % *CHOL*: PSY- 296 mg; C- 274 mg	*CHOL*: -14 mg/dL (-5%) *LDL-C*: -15 mg/dL (8%)	*CHOL*: -1.9%; LDL-C: -2.7% *HDL-C*: No sig dif (grps)
Keane et al. (Ref. 18)	Base: 12 wk Step 1; Tx: 26 wk Step 1+supplement	PSY: 40 (18m, 24f) C: 39 (7m, 32f)	10.2 g/d bulk laxative, cellulose PSY: ~7 g SF	*SAT fat*: PSY- 5%; C- 5.3% *CHOL*: PSY- 145.2 mg; C- 151.1 mg	*CHOL*: -8.7 mg/dL (3%) *LDL-C*: -11.5 mg/dL (5.9%)[1]	*CHOL*: +2 (1%) *LDL-C*: 0 *HDL-C*: no sig dif (grps)
Levin et al. (Ref. 19)	Base: 8-wk Step 1; Tx: 16-wk Step 1+supplement	PSY: 30 (26 men) Pla: 28 (23 men)	10.2 g/d bulk laxative, cellulose PSY: ~7 g SF	*SAT fat*: PSY- 6.7%; C- 6.3% *CHOL*: PSY- 166 mg; C- 135 mg	*CHOL*: -13 mg/dL (5.6%) *LDL-C*: -13 mg/dL (8.6%)	*CHOL*: 0; LDL-C -2.2%; HDL-C: ~+6% (sig from PSY)
Stoy et al. (Ref. 23)	4-wk Step 1; Step 1 + (8x5x5 wks): Grp 1: PSY-Pla-PSY; Grp 2: Pla-PSY-Pla	23 men	Estimated 11.6 g/d PSY from cereal: ~8 g SF; Wheat cereal: ~3 g SF	*SAT fat*: PSY: 5.1% (Grp 1) and 5.1% (Grp 2) Wheat: 4.5% (Grp 1) and 5.0% (Grp 2) *CHOL*: PSY 141–165 mg Wheat: 164 mg (Grp 1), 117–170 (Grp 2)	*CHOL*: -10 mg/dL (4%) *LDL-C*: -11 mg/dL (6%)	*HDL-C*: No sig dif (grps)
Stoy et al. (Ref. 24)	4-wk Step 1; Step 1 + (8x5x5 wks): Grp 1: PSY-Pla-PSY; Grp 2: Pla-PSY-Pla	22 men	Estimated 11.6 g/d PSY from cereal: ~8 g SF; Wheat cereal: ~3 g SF	*SAT fat*: PSY: 4.8 (Grp 1) and 5.2% (Grp 2) Wheat: 4.7% (Grp 1) and 5.6% (Grp 2) *CHOL*: PSY 155–163 mg Wheat: 133 mg (Grp 1), 169–172 (Grp 2)	*CHOL*: -10 mg/dL (4%) *LDL-C*: -11 mg/dL (6%)	*HDL-C*: No sig dif (grps)

TABLE 1.—SUMMARY OF CLINICAL TRIALS WITH HYPERCHOLESTEROLEMICS: PSYLLIUM AND CORONARY HEART DISEASE—Continued

Study	Duration Treatment	Number of Subjects	Supplements (Psyllium, Placebo) Soluble Fiber g/d	Diet Intake of groups: Sat fat % E; CHOL mg/d	Magnitude of PSY Effect[1]	Magnitude of Placebo Effect
Weingand et al. (Ref. 26)	Base: 12 wk Step 1; Tx: 8 wk Step 1+supplement, crossover	23 (16m, 7f)	10.2 g/d bulk laxative, cellulose PSY: ~7 g SF	*SAT fat*: PSY- 8.7%; C- 9% *CHOL*: PSY- 162 mg; C- 203–261 mg	*CHOL*: -9 mg/dL (3.8%) *LDL-C*: -11 mg/dL (6.2%)[1]	*HDL-C*: sig higher in PSY group
Jenkins et al. (Ref. 30)	Base: 2 mo controlled Step 2 diets; Tx: 2- 1 mo Step 2 diets+ cereal, crossover	Study 1: 32 (15m, 17f)	Study 1: 11.4 g/d PSY in cereal (~7.8 g SF), wheat bran	Study 1: *SAT fat*: PSY- 4.6%; C -4.6% *CHOL*: PSY- 31 mg; C- 29 mg *MUFA*: PSY- 6%; C- 6%	Study 1: *CHOL*: -27 mg/dL[1] (9.8%) *LDL-C*: -24 mg/dL[1] (12.6%) *HDL-C*: -6.6 mg/dL (11.3%)[1]	Study 1: *CHOL*: -13.6 (5%)[2] *LDL-C*: -10 (5.5%) *HDL-C*: -2 (3.3%)
		Study 2: 27 (12m, 15f)	Study 2: 12.4 g/d PSY in cereal (~8.4 g SF), wheat bran	Study 2: *SAT fat*: PSY- 6%; C- 6% *CHOL*: PSY- 22 mg; C-22 mg *MUFA*: PSY- 12%; C- 12%	Study 2: *CHOL*: -34 mg/dL[1] (12.6%) *LDL-C*: -27.9 mg/dL[1] (14.9%) *HDL-C*: -4.3 mg/dL[1] (8%)	Study 2: *CHOL*: -29.5 (10.7%)[2] *LDL-C*: -17 (9%)[2] *HDL-C*: -1.4 (2.6%)

[1] Significant differences between treatment and placebo groups unless otherwise indicated.
[2] Significant change across the diet phase.

Abbreviations Used in Table 1

C	Control
CHOL	Blood total cholesterol
d	Day
E	Energy
g	Gram
grp	Group
HDL-C	High density lipoprotein cholesterol
LDL-C	Low density lipoprotein cholesterol
m/f	Number of males, number of females
mg/dL	Milligrams per deciliter
Pla	Placebo
PSY	Psyllium
Sat fat	Saturated fat
SF	Soluble fiber
Sig Dif	Statistically significant difference
Step 1	≤ 30% kcals fat, < 10% kcals sat fat, < 300 mg cholesterol
TDF	Total dietary fiber
Tx	Treatment
wk	Week
~	Approximately
%	Percent

[FR Doc. 98–4074 Filed 2–12–98; 4:18 pm]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 529

Certain Other Dosage Form New Animal Drugs; Isoflurane

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Rhone-Poulenc Chemicals, Ltd. The ANADA provides for use of isoflurane, USP, as an inhalant for induction and maintenance of general anesthesia in horses and dogs.

EFFECTIVE DATE: February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center For Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Rhone-Poulenc Chemicals, Ltd., P.O. Box 46, St. Andrew's Rd., Avonmouth, Bristol BS11 9YF, England, UK, filed ANADA 200–237 that provides for inhalant use of isoflurane, USP, for induction and maintenance of general anesthesia in horses and dogs. The drug is limited to use by or on the order of a licensed veterinarian.

Approval of ANADA 200–237 for Rhone-Poulenc Chemicals, Ltd.'s isoflurane is as a generic copy of Ohmeda Pharmaceutical Products Division, Inc.'s NADA 135–773 AErrane® (isoflurane, USP). The ANADA is approved as of December 19, 1997, and the regulations are amended in 21 CFR 529.1186(b) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Also, the sponsor has not been previously included in the list of sponsors of approved applications in § 510.600 (21 CFR 510.600). The regulations are amended in § 510.600(c)(1) and (c)(2) to reflect the the new sponsor.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20855, between 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 529 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding an entry for "Rhone-Poulenc Chemicals, Ltd.," and in the table in paragraph (c)(2) by numerically adding an entry for "059258" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* * * *
Rhone-Poulenc Chemicals, Ltd., P.O. Box 46, St. Andrews Rd., Avonmouth, Bristol BS11 9YF, England, UK	059258
* * *	* * * *

(2) * * *

Drug labeler code	Firm name and address
* * *	* * * *
059258	Rhone-Poulenc Chemicals, Ltd., P.O. Box 46, St. Andrews Rd., Avonmouth, Bristol BS11 9YF, England, UK.
* * *	* * * *

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

4. Section 529.1186 is amended by revising paragraph (b) to read as follows:

§ 529.1186 Isoflurane.

* * * * *

(b) *Sponsors.* See Nos. 000074, 010019, 012164, and 059258 in § 510.600(c) of this chapter.

* * * * *

Dated: January 30, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–3983 Filed 2–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Difloxacin Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Fort Dodge Animal Health. The NADA provides for oral use of difloxacin tablets for management of diseases in dogs associated with bacteria susceptible to difloxacin.

EFFECTIVE DATE: February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Tania D. Woerner, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1617.

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Division of American Home Products, 800 Fifth St. NW., P.O. Box 518, Fort Dodge, IA 50501, filed NADA 141–096 that provides for oral use of Dicural® (difloxacin) tablets for management of diseases in dogs associated with bacteria susceptible to difloxacin. The drug is limited to use by or on the order of a licensed veterinarian. The NADA is approved as of November 20, 1997, and the regulations are amended by adding new § 520.645 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iv) of the Federal Food, Drug, and Cosmetic Act

(the act), this approval, which is solely for nonfood-producing animals qualifies for 3 years of marketing exclusivity beginning November 20, 1997, because the applicant has elected to waive section 512(c)(2)(F)(i) of the act.

FDA has determined under 21 CFR 25.33(d) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.645 is added to read as follows:

§ 520.645 Difloxacin.

(a) *Specifications.* Each tablet contains 11.4, 45.4, or 136 milligrams (mg) of difloxacin hydrochloride.

(b) *Sponsor.* See No. 000856 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use*—(1) *Dogs*—(i) *Amount.* 5 to 10 mg per kilogram (2.3 to 4.6 mg/pound) of body weight.

(ii) *Indications for use.* For management of diseases in dogs associated with bacteria susceptible to difloxacin.

(iii) *Limitations.* Use once a day for 2 to 3 days beyond cessation of clinical signs of disease up to a maximum of 30 days. Federal law prohibits the extra-label use of this drug in food-producing animals. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

Dated: January 21, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–3984 Filed 2–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–023–FOR]

Oklahoma Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Oklahoma abandoned mine land reclamation plan (hereinafter referred to as the "Oklahoma plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to revise the Oklahoma plan to allow the State to assume responsibility for administering an emergency response reclamation program in Oklahoma on behalf of OSM.

EFFECTIVE DATE: February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Plan
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Oklahoma Plan

On January 21, 1982, the Secretary of the Interior approved the Oklahoma plan. Background information on the Oklahoma plan, including the Secretary's findings, the disposition of comments, and the approval of the plan can be found in the January 21, 1982, **Federal Register** (46 FR 2989). Subsequent actions concerning the Oklahoma plan and amendments to the plan can be found at 30 CFR 936.25.

II. Submission of the Proposed Amendment

Section 410 of SMCRA authorizes the Secretary to use funds under the abandoned mine land reclamation (AMLR) program to abate or control emergency situations in which adverse effects of past coal mining pose an immediate danger to the public health, safety, or general welfare. On September 29, 1982, (47 FR 42729) OSM invited States to amend their AMLR plans for the purpose of undertaking emergency reclamation programs on behalf of OSM. States would have to demonstrate that they have the statutory authority to undertake emergencies, the technical capability to design and supervise the emergency work, and the administrative mechanisms to quickly respond to emergencies either directly or through contracts.

Under the provisions of 30 CFR 884.15, any State may submit proposed amendments to its approved AMLR plan. If the proposed amendments change the scope or major policies followed by the State in the conduct of its AMLR program, OSM must follow the procedures set out in 30 CFR 884.14 in reviewing and approving or disapproving the proposed amendments.

The proposed assumption of the AMLR emergency program on behalf of OSM is a major addition to the Oklahoma AMLR plan. Therefore, to assume the emergency program, Oklahoma must either revise the Oklahoma plan to include conducting the AMLR emergency program, or demonstrate that its plan currently includes provisions for assuming and conducting the emergency program.

By letter dated November 3, 1997 (Administrative Record No. OAML–77), Oklahoma submitted a proposed amendment to its plan pursuant to SMCRA. Oklahoma submitted the proposed amendment on its own initiative. The amendment was intended to demonstrate Oklahoma's capability to effectively perform the AMLR emergency program on behalf of OSM. A brief description of the amendment is presented below.

A. The proposed amendment would allow Oklahoma to assume the administration of the AMLR emergency program in Oklahoma on behalf of OSM. In its formal submittal, Oklahoma stated that in 1982, as part of its approved State Abandoned Mine Land Program, the Oklahoma Conservation Commission (OCC) incorporated the necessary language to assume responsibility of the AMLR emergency program at a later date. The following information, taken from the approved Oklahoma plan, was included in Oklahoma's formal submission to OSM to verify that the authority already exists for the OCC to assume AMLR emergency program responsibilities:

1. A letter from the Governor that designates the OCC as the agency responsible for the Abandoned Mine Land Reclamation Program in Oklahoma.

2. A legal opinion from the Attorney General that the OCC has the power to

administer the Abandoned Mine Land Reclamation Program in Oklahoma.

3. A copy of the Oklahoma Abandoned Mine Reclamation Act (45 O.S., sections 740.1 through 740.7).

Section 740.7(A) authorizes OCC to spend monies from the State Abandoned Mine Reclamation Fund for emergency restoration, reclamation, abatement, control or prevention of adverse effects of coal mining practices on eligible land if it finds that an emergency exists constituting a danger to the public health, safety or general welfare and no other person or agency will act expeditiously to restore, reclaim, abate, control or prevent the adverse effects of coal mining practices. Section 740.7(B) authorizes the OCC to enter on any land where an emergency exists and any other necessary access land to restore, reclaim, abate, control or prevent the adverse effects of coal mining practices and do all things necessary or expedient to protect the public health, safety or general welfare.

4. A copy of the Oklahoma Abandoned Mine Land Reclamation Program (Oklahoma Administrative Code (OAC) 155:15–1–1 through 155:15–1–16).

Oklahoma's regulations at OAC 155:15–1–8(e) provide procedures for emergency studies or reclamation.

5. A copy of section 884.13(c)(6) of the Oklahoma plan concerning entry for emergency study and reclamation.

6. A copy of section 884.13(e) of the Oklahoma plan concerning public participation in Oklahoma's AMLR program.

B. After assuming the emergency program, Oklahoma would conduct investigations of potential emergency sites, and following OSM concurrence that emergency situations exist, perform remedial reclamation.

OSM announced receipt of the proposed amendment in the December 15, 1997, **Federal Register** (62 FR 65632), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on January 14, 1998.

During its review of the amendment, OSM identified concerns relating to emergency contracting procedures, statutory authority and administrative procedures. OSM notified Oklahoma of these concerns by telefax dated December 19, 1997 (Administrative Record No. OAML–77.06). By letter dated December 19, 1997 (Administrative Record No. OAML–77.05), Oklahoma responded to OSM's concerns by submitting additional explanatory information regarding its proposed plan amendment. Because the additional information merely clarified certain provisions of Oklahoma's approved reclamation plan and program, OSM did not reopen the public comment period.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15, are the Director's findings concerning the proposed amendment.

OSM's guidelines, published in the September 29, 1982, **Federal Register** (47 FR 42729), outline three requirements for state assumption of the AMLR emergency program. To be granted emergency authority by OSM, the State agency must demonstrate that it has the (1) Statutory authority to undertake emergencies, (2) technical capability to design and supervise the emergency work, and (3) administrative mechanisms to respond quickly to emergencies either directly or through contractors.

A. Statutory Authority

The OCC has had statutory authority to administer an emergency response program since approval of the original reclamation plan. In a letter dated September 25, 1978 (Administrative Record No. OAML–77), the Governor of Oklahoma designated the Oklahoma Conservation Commission (OCC) as the agency responsible for the Abandoned Mine Land Reclamation Program under Title IV, Pub. L. 95–87. Title IV of Pub. L. 95–87 covers both the regular AML program and the emergency reclamation program. The Oklahoma Attorney General issued an official opinion (78–267) on November 16, 1978 (Administrative Record No. OAML–77), which states that the "OCC and the Conservation Districts have the power to administer the state program aspects of Title IV of the Federal Surface Mining Control and Reclamation Act of 1977." A subsequent official opinion by the Oklahoma Attorney General (81–211) issued on August 13, 1981 (Administrative Record No. OAML–77.05), states that (1) "The OCC has express statutory authority to administer an abandoned mine land reclamation program within the contemplation of Title IV of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95–87," and (2) "The Conservation Districts are not authorized to administer the state program aspects of SMCRA pertaining to abandoned mine reclamation."

B. Technical Capability

The OCC has demonstrated through past performance that it has the technical capability to implement an AMLR emergency program. Oklahoma asserted in its November 3, 1997, submission of the formal amendment that, "For the last 4 years, the OCC AML Program has concentrated on the elimination of underground mine openings and subsidence problems (non emergency) in LeFlore County. With this work in LeFlore County and the close working relationship with OSM on past AML emergencies, the OCC AML staff believes it is time to assume responsibility for the AML Emergency Program."

Oklahoma has conducted an AMLR Program since 1982. Technical capabilities utilized for emergency reclamation projects are the same as those used for normal, high priority reclamation projects; usually, only the project schedule is different. OSM annual oversight reports for evaluation years 1991 to 1996 indicate that Oklahoma successfully implements the high priority AMLR program. The oversight reports indicate that closure of mine portals and shafts, and treament of subsidenace areas have been part of the high priority AMLIR program since at least 1991. As of the end of evaluation year 1996, OCC had closed 89 vertical openings and 140 open mine portals, and stabilized 8.1 acres of mine subsidence. These are the same types of abandoned mine land features that are likely to be encountered in the AMLR emergency program.

C. Administrative Mechanisms

On December 19, 1997, OSM requested by telephone and followed up by telefax, a description of the emergency response contracting procedures available to the OCC to respond to contract needs. OCC replied to OSM by letter dated December 19, 1997, outlining the emergency response contracting procedures. In summary, the OCC Executive Director has the authority to issue contracts for emergency work in amounts up to $25,000, the same day as an emergency problem is identified. Contracts larger than $25,000 may be issued after an emergency Board Meeting of the OCC Commissioners. OSM finds that the $25,000 limit is similar to the small purchase threshold for Federal agencies and will allow the OCC adequate flexibility to address emergency conditions. Other administrative processes required to implement the emergency program are the same as

those already in place for the Oklahoma AML Program.

OSM's review of Oklahoma's AMLR plan, Oklahoma's emergency response contracting procedures, and OSM's annual oversight reports for 1991 through 1996, found that OCC has developed and refined the in-house investigation, design and project administration abilities necessary to administer an AML program and an emergency response program.

In accordance with section 405 of SMCRA, the Director finds that Oklahoma has submitted an amendment to its AMLR plan and has determined, pursuant to 30 CFR 884.15, that:

1. The public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.

2. Views of other Federal agencies have been solicited and considered.

3. The State has the legal authority, policies and administrative structure necessary to implement the amendment.

4. The proposed plan amendment meets all requirements of the OSM AMLR program provisions.

5. The State has an approved Surface Mining Regulatory Program.

6. The amendment is in compliance with all applicable State and Federal laws and regulations.

Therefore, the Director finds that the proposed Oklahoma plan amendment allowing the State to assume responsibility for an emergency response reclamation program on behalf of OSM is in compliance with SMCRA and meets the requirements of the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

OSM solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 884.14(a)(2) and 884.15(a), the Director solicited comments on the proposed amendment from various other Federal agencies with an actual or potential interest in the Oklahoma plan. The U.S. Army Corps of Engineers responded by letter dated December 24, 1997 (Administrative Record No. OAML–77.07), stating it had no comments. No other comments were received.

V. Director's Decision

Based on the above findings, the Director is approving Oklahoma's request to assume the AMLR emergency program as submitted by Oklahoma on November 3, 1997.

The Federal Regulations at 30 CFR Part 936, codifying decisions concerning the Oklahoma plan, are being amended to implement this decision. The final rule is being made effective February 18, 1998.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 884.15(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. In the oversight of the Oklahoma program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Oklahoma of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Part 884.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented.

In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 10, 1998.

Kathy Karpan,

Director, Office of Surface Mining.

For the reasons set out in the preamble, 30 CFR Part 936 is amended as set forth below:

PART 936—OKLAHOMA

1. The authority citation for Part 936 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 936.25 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 936.25 Approval of Oklahoma abandoned mine land reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * *	* * *	*
November 3, 1997	February 18, 1998	Emergency response reclamation program.

[FR Doc. 98–3915 Filed 2–17–98; 8:45 am]

BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 946

Reimbursement for Sale of Abandoned Property

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Postal Service's disposition of evidence and abandoned property regulations to provide that a person submitting a valid claim for reimbursement of funds from the sale of such property must be reimbursed the last appraised value of the property prior to its sale.

EFFECTIVE DATE: This rule is effective February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Walter E. Ladick, Program Manager, Forfeiture Group, Postal Inspection Service, (202) 268–5475.

SUPPLEMENTARY INFORMATION: Postal Service regulations concerning the disposition of property acquired by the Postal Inspection Service for possible use as evidence are codified at 39 CFR part 946. Once the evidentiary need to retain the property no longer exists, the Postal Service returns the property to its rightful owner, unless the property is contraband or subject to a court order. If no one submits a timely claim for the property, it is considered abandoned and becomes the property of the Postal Service, which may retain or sell it. Such property, however, must be returned to the rightful owner if he or she files a valid claim within three years from the date the property became abandoned.

Under the current rule, a person filing a valid claim for property that has been sold must be reimbursed the amount of the proceeds realized from the sale of such property, less costs incurred by the Postal Service in selling the property and in returning or attempting to return such property to the owner. Experience has demonstrated, however, that efforts to valuate and dispose of low-value evidentiary and abandoned properties vested to the Postal Service are inefficient and not cost effective.

In the future, such property will be included in sales of unclaimed items that are held regularly at Postal Service mail recovery centers. Since many like items are sold in lots at these sales, it would present a problem to account for the sale price of each item. Therefore, this new rule provides that the person submitting a valid claim for the property that has been sold will be reimbursed the same amount as the last appraised value of the property prior to its sale.

List of Subjects in 39 CFR Part 946

Claims, Law enforcement, Postal Service.

Accordingly, 39 CFR part 946 is amended as set forth below.

PART 946—RULES OF PROCEDURE RELATING TO THE DISPOSITION OF STOLEN MAIL MATTER AND PROPERTY ACQUIRED BY THE POSTAL INSPECTION SERVICE FOR USE AS EVIDENCE

1. The authority citation for part 946 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401(2), [5), (8), 404(a)(7), 2003, 3001.

2. Section 946.6(a)(2) is revised to read as follows:

(a) * * *

(2) Where property has been sold, a person submitting a valid claim under this section must be reimbursed the same amount as the last appraised value of the property prior to the sale of such property.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–3951 Filed 2–17–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 179–0066; FRL–5963–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of a revision to the California State Implementation Plan (SIP) proposed in the **Federal Register** on December 8, 1997. The revision concerns a rule from the Bay Area Air Quality Management District (BAAQMD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rule controls VOC emissions from architectural coatings. Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, EPA's general rulemaking authority, plan submissions, and enforceability guidelines.

EFFECTIVE DATE: This action is effective on March 20, 1998.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for this rule is available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.
Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, 94109.

FOR FURTHER INFORMATION CONTACT:
Yvonne Fong, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California SIP is BAAQMD Rule 8–3, Architectural Coatings. This rule was submitted by the California Air Resources Board to EPA on July 23, 1996.

II. Background

On December 8, 1997 in 62 FR 64543, EPA proposed to approve the BAAQMD's Rule 8–3, Architectural Coatings into the California SIP. Rule 8–3 was adopted by the BAAQMD on December 20, 1995 and was submitted by the California Air Resources Board to EPA on July 23, 1996. A detailed discussion of the background for this rule is provided in the proposed rulemaking cited above.

EPA has evaluated the above rule for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the proposed rulemaking cited above. EPA has found that the rule meets the applicable EPA requirements. A detailed discussion of the rule provisions and evaluation has been provided in 62 FR 64543 and in a technical support document (TSD) available at EPA's Region IX office (TSD dated November 10, 1997).

III. Response to Public Comments

A 30-day public comment period was provided in 62 FR 64543. EPA received no comments on the proposed rulemaking prior to the closing of the comment period on January 7, 1998.

IV. EPA Action

EPA is finalizing action to approve the above rule for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) of the CAA. This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of VOCs in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 20, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 23, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(239)(i)(E)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(239) * * *

(i) * * *

(E) * * *

(*3*) Rule 8–3, adopted on March 1, 1978, revised on December 20, 1995.

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[FR Doc. 98–4011 Filed 2–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[TX89–1–7370; FRL–5967–4]

Clean Air Act Reclassification; Texas-Dallas/Fort Worth Nonattainment Area; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finding that the Dallas/Fort Worth (DFW) nonattainment area (Dallas, Tarrant, Collin, Denton Counties, Texas) has not attained the 1-hour ozone national ambient air quality standard (NAAQS) by the applicable attainment date in the Clean Air Act (Act) for moderate ozone nonattainment areas, November 15, 1996. The finding is based on EPA's review of monitored air quality data from 1994 through 1996 for compliance with the 1-hour ozone NAAQS. As a result of this finding, the DFW ozone nonattainment area will be reclassified by operation of law as a serious ozone nonattainment area on the effective date of this action. This **Federal Register** reclassification final rule does not subject the State to sanctions under section 110(m) of the Act. The effect of the reclassification will be to continue progress toward attainment of the 1-hour ozone NAAQS through the development of a new State Implementation Plan (SIP), due 12 months from the effective date of this action, addressing attainment of that standard by November 15, 1999.

EFFECTIVE DATE: March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Diggs or James F. Davis, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas, 75202, (214) 665–7214.

SUPPLEMENTARY INFORMATION:

I. Background

Under sections 107(d)(1)(C) and 181(a) of the Act, the DFW area was designated nonattainment for the 1-hour ozone NAAQS and classified as "moderate." *See* 56 FR 56694 (November 6, 1991). Moderate nonattainment areas were required to show attainment by November 15, 1996 (section 181(a)(1)).

Pursuant to section 181(b)(2)(A) of the Act, EPA has the responsibility for determining, within six months of an area's applicable attainment date, whether the area has attained the 1-hour ozone NAAQS.[1] Under section 181(b)(2)(A), if EPA finds that an area has not attained the 1-hour ozone NAAQS, it is reclassified by operation of law to the next higher classification or to the classification applicable to the area's design value at the time of the finding. Section 181(b)(2)(B) of the Act requires EPA to publish a notice in the **Federal Register** identifying areas which failed to attain the standard and therefore must be reclassified by operation of law.

If a state does not have the data necessary to show attainment of the NAAQS, it may apply, under section 181(a)(5) of the Act, for a one-year attainment date extension. Issuance of an extension is discretionary, but EPA can exercise that discretion only if the state has: (1) complied with the requirements and commitments pertaining to the applicable implementation plan for the area, and (2) the area has measured no more than one exceedance of the ozone NAAQS at any monitoring site in the nonattainment area in the year preceding the extension year.

A complete discussion of the statutory provisions and EPA policies governing findings of whether an area failed to attain the ozone NAAQS and extensions of the attainment date can be found in the proposal for this action at 62 FR 46238 (September 2, 1997).

II. Proposed Action

On September 2, 1997, EPA proposed to find that the DFW ozone nonattainment area failed to attain the 1-hour ozone NAAQS by the applicable attainment date (62 FR 46238). The proposed finding was based upon ambient air quality data from the years 1994, 1995, and 1996. These data showed that the 1-hour ozone NAAQS of 0.12 parts per million (ppm) had been exceeded on average more than one day per year over this three-year period. Attainment of the 1-hour NAAQS is demonstrated when an area averages one or less days per year over the standard during a three-year period (40 CFR 50.9 and Appendix H). The EPA also proposed that the appropriate reclassification of the area was too serious, based on the area's 1994–1996 design value of 0.139 ppm. This **Federal Register** reclassification final rule is not an action subjecting the State to sanctions described in section 110(m) of the Act. The sanctions provisions of the Act would only apply if the State failed to submit a revised DFW SIP or submitted a revised DFW SIP that was disapproved by the EPA. For a complete discussion of the DFW ozone data and method of calculating both the average number of days over the ozone standard and the design value, see 62 FR 46238.

Finally, EPA proposed to require submittal of the serious area SIP revisions no later than 12 months from the effective date of the area's reclassification. The requirements for serious ozone nonattainment areas are outlined in section 182(c) of the Act.

III. Response to Comments

The EPA received 156 comment letters in response to its September 2, 1997 proposal. The EPA wishes to express its appreciation to each of these individuals and organizations for taking the time to comment on the proposal. Each raised important issues to which EPA welcomes the opportunity to respond.

As described above, EPA's proposal was composed of two elements: (1) a finding of failure to attain by the statutory deadline of November 15, 1996, (2) a 12-month schedule for submittal of the revised SIP.

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[1] On July 18, 1997 (62 FR 38856), EPA revised the ozone NAAQS to establish an 8-hour standard; however, in order to ensure an effective transition to the new 8-hour standard, EPA also retained the 1-hour NAAQS for an area until such time as it determines that the area meets the 1-hour standard. *See* revised 40 CFR 50.9 at 62 FR 38894. As a result of retaining the 1-hour standard, the Act part D, subpart 2, *Additional Provisions for Ozone Nonattainment Areas*, including the reclassification provisions of section 181(b), remain applicable to areas that are not attaining the 1-hour standard. Unless otherwise indicated, all references in this document are to the 1-hour ozone NAAQS.

The EPA received comment letters from 147 citizens supporting the reclassification action and/or requiring further improvements in air quality. One additional citizen commented that EPA should focus on sources of pollution other than motor vehicles such as aircraft, power plants and diesel engines. The Environmental Defense Fund commented in support of requiring further improvements in air quality. The Lone Star Chapter of the Sierra Club sent in a letter supporting EPA's proposal for reclassification of the DFW area to facilitate improvements in air quality. Two citizen commenters expressed some qualified concerns about the proposed action. The Greater Dallas Chamber requested EPA to reconsider the action in view of improvements in air quality, and the City of Plano requested a cost/benefit analysis and assessment on whether new control standards are achievable. The City of Dallas commented that programs should be required to be implemented across the entire nonattainment area, and that the nonattainment area should be expanded to the entire metropolitan statistical area (MSA) or consolidated metropolitan statistical area (CMSA). The City of Dallas also commented on flexible implementation times, on compliance with the Unfunded Mandates Reform Act, Regulatory Flexibility Act, and on Executive Order 12866. The Mayor of Fort Worth, the Honorable Kenneth Barr, expressed concern that counties adjacent to the metroplex are not being required to participate in the overall abatement program and urged EPA to expand the program to all areas contributing to the ozone problem. The City of Grand Prairie commented that the 1999 attainment date is virtually unattainable, that the nonattainment area should include the entire urbanized region, with control strategies applied fairly throughout the entire area, and the EPA ensure sufficient resources are available for technical assistance and public outreach. The Texas Natural Resource Conservation Commission (TNRCC) commented that it will continue to work in a results oriented way to improve air quality in the DFW area, but expressed procedural and legal concerns with the action. The EPA also received comments and questions from U.S. Representative Martin Frost and from Texas State Representative Lon Burnam regarding the timeframes associated with the reclassification SIP due date in view of the extension of the comment period. Specific comments along with EPA's responses are described below.

A. Comments on Air Quality Data

Comments: The Greater Dallas Chamber commented that while the area has not met the air quality standards specified by EPA, since 1990 emissions have been reduced 15 percent while population has increased 13 percent. The City of Plano also made the comment that significant progress has been made. The Environmental Defense Fund concurred with EPA's assessment of the air quality data that the area did not attain the ozone NAAQS by November 1996 and commented that little if any progress has been made since 1994.

Response: The EPA recognizes that over the very long term some improvements in the DFW air quality have been made and that programs have been put in place to improve air quality at a Federal, State, and local level. However, these programs have not been adequate to meet the health-based ozone standard or make the area eligible for an extension of the 1996 attainment date. Between 1994 and 1996, based on the number of exceedance days DFW had the eighth worst air quality in the nation (28 days). In the same time period based on air quality design value, DFW had the tenth worst air quality in the nation (0.139 ppm). In 1990, twenty-two areas had worse air quality than DFW based on air quality design value (DFW design value in 1990 was 0.140 ppm). Over a ten year period the area's design value has not shown a downward trend, and continues to remain at unacceptable levels above the health-based standards.

B. Comments Related to the Area of Coverage and Regional Approach to Controls

Comments: The EPA received 11 comments from citizens supporting the inclusion of surrounding counties to the DFW nonattainment area, particularly Ellis County. Several commenters expressed specific concerns about air pollutants coming from large stationary point sources in Ellis County. Some of the comments were specifically directed towards the burning of hazardous waste.

Response: The EPA agrees that sources of pollution outside the four county nonattainment area must be taken into consideration in air quality planning. We anticipate that the revised air quality attainment modeling demonstration will include large stationary sources of pollution from an area beyond the four county nonattainment area. The control strategy included in the revised SIP may require emission reductions from sources outside the nonattainment area if the State determines they would be effective in achieving attainment for the DFW area. The EPA has not included additional counties in the nonattainment area at this time, since there has not been any air quality monitoring data showing exceedances of the ozone standard in these counties. Part of the additional monitoring requirements resulting from this action will be a monitor located south of the DFW nonattainment area. In addition, the EPA will be reevaluating the nonattainment area of coverage again when designations are made for the revised 8-hour ozone standard. Also, if the area does not meet its 1999 attainment deadline, EPA will consider expanding the nonattainment area to additional counties in the CMSA or the entire CMSA in a reclassification of the area to severe ozone nonattainment. Regarding the burning of hazardous waste, EPA's proposal for reclassification was strictly an action that applied to the ozone standard and not related to this issue.

Comments: The Greater Dallas Chamber stated that it is important to equally apply all standards and regulations among all four counties in the nonattainment area and that a truly Regional approach to improve air quality should be taken. The Greater Dallas Chamber also requested EPA reconsider the proposed reclassification and work with all parts of the nonattainment area to expand air quality control efforts. The City of Dallas and City of Grand Prairie similarly commented that emission control requirements should apply to all segments of the nonattainment area. The City of Dallas specifically pointed to the growth in Collin and Denton County, and the air quality exceedances in these counties as reasons to include these counties in the emission control programs especially those directed towards mobile sources such as the vehicle inspection and maintenance program. They pointed to the inequity of the situation in which the commuter to Dallas from the northern two counties may drive 25 miles each way and not be subject to enhanced testing, while the commuter to Dallas from Oak Cliff may drive only 5 miles each way and be subject to enhanced I/M testing. The City commented that EPA should not accept any implementation plan which omits enhanced I/M in Denton and Collin Counties. The Mayor of Fort Worth expressed concern that counties adjacent to the metroplex are not being required to participate in the overall abatement program. The City of Dallas felt the current imbalance in application

of control programs raised questions of environmental justice.

Response: The EPA concurs that strategies that apply equally across the nonattainment area are normally in the best interest in air quality improvement efforts. The EPA has listed expansion of the vehicle inspection and maintenance program to Collin and Denton counties as a cost effective measure which the State should consider in its revised SIP. However, EPA cannot require I/M programs to be placed in areas outside the 1990 urbanized area. The State is planning to implement remote sensing testing for vehicles commuting into Dallas and Tarrant counties. The EPA will be evaluating the program to determine whether sufficient numbers of failing vehicles are being repaired to make up urbanized area coverage shortages stemming from the State decision to implement its core I/M program in only Dallas and Tarrant counties. The EPA's action to finalize the DFW reclassification is based upon the area's monitored air quality and will help to focus efforts on needed air quality improvements. Therefore, EPA does not believe it is in the best interest of air quality to reconsider its proposed reclassification. Furthermore, section 181(b)(2) of the Act mandates that the Administrator redesignate an area that has not attained the standard by the applicable attainment date.

Comments: The City of Dallas commented that EPA is required by operation of law, 42 U.S.C. section 7407(d)(4)(iv), to designate the entire MSA or CMSA as nonattainment with the serious classification. The CMSA includes Collin, Dallas, Denton, Ellis, Henderson, Hunt, Kaufman, Rockwall, Hood, Johnson, Parker and Tarrant counties. The City of Dallas also cited 57 FR 13514–13515 (April 16, 1992) which stated that when a moderate area is bumped up to serious this section of the Act requires that the boundaries reflect the MSA/CMSA unless the State notifies EPA of its intent to study the appropriate boundaries. In addition, the City commented that for the policy reason of addressing all emissions in the area the entire CMSA should be included.

Response: The City has correctly read EPA's interpretation cited in the 1992 proposed General Preamble for Implementation of Title 1 of the Clean Air Act (57 FR 13514–13515). However, since 1992 EPA has interpreted and implemented section 107(d)(4)(A)(iv) of the Act in a more flexible manner regarding reclassifications. This section of the Act can also be interpreted only to be required to apply to areas when they are initially classified and not necessarily when they are reclassified. This latter interpretation was applied in the Phoenix nonattainment area in its carbon monoxide reclassification (61 FR 39343–39347 (July 29, 1996)) and more recently in the moderate ozone area reclassification to serious (62 FR 60001–60013 (November 6, 1997)). However, if the DFW area does not meet its 1999 attainment deadline, EPA will consider expanding the nonattainment area to additional counties in the CMSA or the entire CMSA in a reclassification of the area to severe ozone nonattainment.

Comments: The EDF also commented that EPA should require Texas to consider the finding of the Ozone Transport Assessment Group (OTAG) and other studies which show ozone pollution is transported long distances and to consider the likely impact on the DFW nonattainment area from large point sources in Central and Northeast Texas.

Response: This comment is not relevant to the issues presented in this rulemaking. The EPA anticipates that the revised air quality modeling attainment demonstration will include emissions from large stationary sources of pollution long distances from the nonattainment area. The EPA agrees that looking at sources located at greater distances is an appropriate approach. This was the conclusion of the OTAG study. Although the OTAG results did not find that Texas was contributing to transport to the eastern United States, the results did conclude that transport is a factor in ozone formation.

C. Comments Related to the Timing of the Submission of the Revised SIP

Comments: U.S. Representative Martin Frost commented that he had been contacted by groups that the implementation plan stay on the original schedule in view of the 60-day extension of the comment period. Texas State Representative Lon Burnam also commented regarding the timeframes associated with the reclassification SIP due date in view of the extension of the comment period. Representative Burnam requested that the EPA stay on the original time frame for the final reclassification and SIP due date and was concerned about the impact of the 60-day time extension.

The EDF expressed concern that the proposed SIP submittal timing will pass before new actions to improve air quality are taken. One citizen also commented that a one-year SIP submittal window is too long, in view of the serious attainment deadline of November 1999, and requested EPA finalize a 6-month SIP submittal deadline. The citizen also requested that EPA require the State to have some control measures in place at May 1, 1998, and a second tier of measures in place by May 1, 1999. The TNRCC commented that if DFW is reclassified, the TNRCC should be given a minimum of one year from the effective date prior to the final reclassification action. The City of Dallas commented that assuming EPA approval of the SIP, the nonattainment area will have approximately one year from the time of SIP approval to achieve attainment and that this time period will likely not be sufficient to put in place many requirements to achieve meaningful results. The City urged EPA to exercise all discretion to extend timetables so the region has a reasonable chance to achieve compliance.

Response: The EPA believes that a 12-month schedule for submittal of the revised plan is appropriate because of the time needed for the State to develop and submit the revised SIP. This 12-month timeframe is consistent with actions EPA has taken with the ozone reclassifications of Phoenix and Santa Barbara. The 12-month timeframe will begin upon the effective date of this action. Since the attainment date for serious areas, November 15, 1999, is less than 2 years away, the State will need to expedite adoption and implementation of controls to meet that deadline. The EPA believes the two-tiered approach for the revised air quality improvement plan has merit, but it will be up to the State to determine when to implement the additional controls with the desired result of meeting the 1999 attainment date. The EPA does not have discretion to extend the attainment date, under section 182(I) of the Act. However, the Act does allow for extensions of the attainment date under section 182(a)(5), if in the attainment year the area has sufficiently improved air quality and has met its SIP requirements.

D. Comments on Future Control Requirements

Comments: One citizen commented that EPA should make it clear that the TNRCC has the "powers" to go beyond the required measures to come up with an appropriate compliance plan for DFW. The citizen also commented that EPA list the possible control options it has developed in the final reclassification. Another citizen commented that EPA should focus on sources of pollution other than motor vehicles such as aircraft, power plants and diesel engines.

Response: The State has always had the ability to implement air quality improvement programs that exceed the

Federal requirements. The control options the EPA is recommending for consideration in the revised SIP include: 1) expansion of the I/M program into Collin and Denton or additional counties, 2) enhancements to the I/M program such as loaded mode testing, 3) cleaner gasolines such as Phase II of the reformulated gasoline program, 4) adoption of Reasonably Available Control Technology for offset lithographers, 5) additional transportation control measures, 6) an effective clean fuel fleet program, 7) nitrogen oxide (NO_x) controls on utility sources, and 8) opting into the California Low Emitting Vehicle program. The EPA agrees that all sources of pollution have to be considered for additional controls. However, in the DFW area on-road mobile sources comprise about 41 percent of the emissions inventory with off-road mobile sources comprising about 18 percent. Stationary point sources account for about 12 percent of the area's volatile organic compound air pollution.

Comments: The City of Grand Prairie commented that the attainment date of 1999 is virtually unattainable due to the lateness of EPA's action. The TNRCC also commented that it will be all but impossible for the DFW area to implement controls in time prior to the proposed new attainment deadline of November 15, 1999, and that another reclassification would be likely in the same timeframe as EPA's new ozone NAAQS. The TNRCC recommended that if the DFW area is reclassified, EPA allow a three-year assessment period beyond the new attainment date prior to any other action and that the TNRCC be given a minimum of one year from the effective date for submittal of the revised SIP.

Response: The EPA believes the State needs to take a proactive approach in implementing measures to improve air quality, but agrees it will be a challenge to achieve all the reductions needed by the summer of 1999. The State has the option of extending the 1-hour ozone attainment date out to 2005 if it requests a voluntary reclassification to a severe ozone nonattainment area. If such an approach was taken, requirements in the Act for a severe area would apply. Another reclassification will not occur if the area has improved air quality by November 1999 such that it is eligible for an extension based on the monitored data, under section 182(a)(5) of the Act. The EPA does not have the discretion in the Act to allow the three year assessment period contemplated by the TNRCC. If the area is not eligible for the extension, the Act would require another reclassification six months after the November 15, 1999, attainment date. As stated earlier, the EPA is allowing the State up to one year from the effective date to submit its revised SIP.

E. Comments on Cost and Benefits

Comments: The City of Plano expressed concern about the costs related to the new standards and that the cost may surpass public health benefits. The City of Plano recommended that EPA perform a full cost-benefit analysis of its action to the DFW area, investigate whether new control standards are realistically achievable, and further test the health benefits of stricter air control standards for DFW before finalizing its proposed action.

Response: The EPA may not consider cost in the setting of air quality standards or reclassification of areas that fail to attain the standard. The decision whether or not to reclassify an area is solely based on air quality monitoring data compared with the national ambient air quality standard. The standards are required by the Act to be set at levels that protect public health without consideration of costs. However, we anticipate cost effectiveness will be considered by the State in the development of the revised SIP in the selection of what measures are best suited in achieving the standards.

Comments: The City of Grand Prairie commented that the EPA should ensure sufficient State resources are available since the State has failed in the past to provide sufficient or timely monitoring, modeling and technical assistance to the area due to a stated lack of funding. The City of Grand Prairie also requested a greater partnership with EPA in public outreach to persuade public opinion concerning participation in ozone reduction strategies since local entities do not have sufficient resources to undertake these efforts independently.

Response: The EPA can only require that the State meet the requirements of the serious areas which will include an attainment modeling demonstration, enhanced monitoring and control strategy to meet attainment. The financial and personnel resources needed to meet these requirements can only be determined by the State. Regarding partnership on public outreach, EPA agrees more can and should be done in communicating the need for improved air quality in the DFW area and the steps needed to achieve clean air. The EPA has been and is available for public outreach events and welcomes opportunities to participate. As part of this rulemaking action, EPA designed and implemented a communication plan which is intended to develop support for efforts to improve air quality.

F. Comments Related to the Promulgation of the New Ozone NAAQS

Comments: The TNRCC commented that it is inappropriate to maintain the current 1-hour standard when the 8-hour standard is considered by EPA to be more protective to human health and that this continued imposition of the 1-hour standard is diametrically different than what was originally proposed by EPA. The TNRCC recommended that EPA move now to impose the 8-hour standard so that DFW and the TNRCC will no longer be required to dedicate resources to the 1-hour standard. The TNRCC questioned the legal authority of how the EPA can hold an area such as DFW for two separate standards for the same criteria pollutant. The TNRCC also commented that in the Presidential Directive, the President stated he wanted to ensure that the new standards be implemented in a common sense, cost effective manner; that they be implemented in the most flexible, reasonable, and least burdensome manner; and that the Federal government work with the State and local governments towards this end. The TNRCC requested that EPA address each of these concepts and explain how the DFW reclassification meets this directive.

Response: The continued applicability of the 1-hour standard is not the subject of this rulemaking. The 8-hour ozone standard is likewise not the subject of this action. This rulemaking only concerns the finding that the DFW area failed to attain the 1-hour standard by the attainment deadline and the consequences of that failure. The issue of the continued applicability of the 1-hour standard was part of the rulemaking in which EPA promulgated an 8-hour ozone standard (62 FR 38856 (July 18, 1997)). In that rulemaking, EPA made it clear that the Act did not preclude EPA from simultaneously implementing both standards. Also, historically EPA has had more than one primary standard for criteria pollutants (e.g., annual and 24-hour PM10 and sulfur dioxide standards, and 8-hour and 1-hour CO standards)(62 FR 38885). That rulemaking, not this one concerning DFW, was the appropriate forum in which to raise issues concerning the continued applicability of the 1-hour standard.

The EPA concurs that the Presidential Directive does direct EPA to ensure that the new standards be implemented in a

common sense, cost effective manner and they be implemented in the most flexible, reasonable, and least burdensome manner. The EPA believes it has been working with the State and local governments towards this end. The EPA has participated and will continue to participate in numerous briefings at the request of local governments to discuss the reason for and implementation of the reclassification. The EPA will work with the State in meetings and by giving guidance on and commenting on the revised SIP as it proceeds through the State process. The Presidential Directive also directs EPA to continue the implementation of the 1-hour requirements until the 1-hour standard is achieved. The EPA believes it is reasonable and makes sense to implement measures to improve air quality prior to the 8-hour ozone SIPs due in 2003. The EPA allows a good deal of flexibility in the measures that are chosen for the revised SIP since the State may choose the measures it thinks are the least burdensome and most cost effective.

G. Comments Related to Consistency of EPA's Action With Other Marginal and Moderate Areas

Comments: The TNRCC questioned what it described as EPA's inconsistency with areas similar to DFW noting that to date only three moderate areas have been proposed for reclassification to serious (DFW, Phoenix, and Santa Barbara). The TNRCC stated that it was encouraged by recent news that St. Louis was not going to be reclassified to serious nonattainment if the area made significant progress in reducing emissions, and the TNRCC was interested in discussing a similar approach with respect to DFW. The TNRCC specifically questioned why other marginal and moderate areas have not been acted on for not meeting their attainment deadlines.

Response: In contrast with DFW, most marginal and moderate areas have either attained their air quality standards and been redesignated to attainment, or have been eligible for an extension under section 182(a)(5) of the Act. The EPA is proceeding with implementing the 1-hour standard for areas not falling into these categories and which were required to meet the ozone standard at the end of 1996. Both the Phoenix and Santa Barbara reclassifications to serious have been finalized. The EPA is intending to propose reclassification of the Beaumont/Port Arthur area to serious nonattainment in the absence of a convincing demonstration that the area is subject to overwhelming transport. The Manitowoc area was eligible for EPA's overwhelming transport policy, which recognizes that most of their air pollution is coming in from outside the area. In St. Louis, EPA is continuing to review the appropriate information, but the lack of final action with respect to St. Louis does not imply that EPA should determine that DFW should not be reclassified.

H. Comments Related to the Unfunded Mandates Reform Act, Regulatory Flexibility Act, and on Executive Order 12866

Comments: The City of Dallas commented that EPA is disregarding the requirements of the Unfunded Mandates Reform Act (UMRA), Executive Order 12866, and the Regulatory Flexibility Act in conducting the rulemaking. The City noted EPA's position that since the proposed reclassification is ordained by operation of law, no new requirements are placed on the parties which these laws and the Executive order seek to protect. The City argued that in reality new requirements, not currently in the SIP, will be imposed on the community.

Response: The EPA position regarding compliance of this action with the Regulatory Flexibility Act, Executive Order 12866, and the Unfunded Mandates Act is described in the Administrative Requirements section of this notice.

VI. Final Action

The EPA is finding that the DFW ozone nonattainment area did not attain the ozone NAAQS by November 15, 1996, the Act's attainment date for moderate ozone nonattainment areas. The submittal of the serious area SIP revision will be due no later than 12 months from the effective date of this action. The requirements for this SIP submittal are established in section 182 of the Act and applicable EPA guidance.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future action. Each finding of failure to attain, request for an extension of an attainment date, and establishment of a SIP submittal date shall be considered separately and shall be based on the factual situation of the area under consideration and in relation to relevant statutory and regulatory requirements.

VI. Administrative Requirements

A. Executive Order (E.O.) 12866

Under E.O. 12866, (58 FR 51735, October 4, 1993), EPA is required to determine whether today's action is a "significant regulatory action" within the meaning of the E.O., and therefore should be subject to Office of Management and Budget review, economic analysis, and the requirements of the E.O. *See* E.O. 12866, section 6(a)(3). The E.O. defines, in section 3(f), a "significant regulatory action" as a regulatory action that is likely to result in a rule that may meet at least one of four criteria identified in section 3(f), including, (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The EPA has determined that neither the finding of failure to attain the ozone standard, nor the establishment of a SIP submittal schedule would result in any of the effects identified in E.O. 12866 section 3(f). As discussed in the response to comments above, findings of failure to attain under section 181(b)(2) of the Act are based upon air quality considerations, and reclassifications must occur by operation of law in light of certain air quality conditions. These findings do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities. Similarly, the establishment of new SIP submittal schedules merely establishes the dates by which SIPs must be submitted, and does not adversely affect entities.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. *See* 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

A finding of failure to attain (and the consequent reclassification of the nonattainment area by operation of law under section 181(b)(2) of the Act) and the establishment of a SIP submittal schedule for a reclassified area, do not, in-and-of-themselves, directly impose any new requirements on small entities. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Instead, this rulemaking simply makes a factual determination and establishes a schedule to require the State to submit SIP revisions, and does not directly regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), EPA reaffirms its certification made in the proposal (62 FR 46233 (September 2, 1997)) that today's final action will not have a significant impact on a substantial number of small entities within the meaning of those terms for Regulatory Flexibility Act purposes.

C. Unfunded Mandates Reform Act

Title II of the UMRA, (Pub. L. 104–4), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, when EPA promulgates "any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more" in any one year. A "Federal mandate" is defined, under section 101 of UMRA, as a provision that "would impose an enforceable duty" upon the private sector or State, local, or Tribal governments," with certain exceptions not here relevant. Under section 203 of UMRA, EPA must develop a small government agency plan before EPA "establish[es] any regulatory requirements that might significantly or uniquely affect small governments." Under section 204 of UMRA, EPA is required to develop a process to facilitate input by elected officers of State, local, and Tribal governments for EPA's "regulatory proposals" that contain significant Federal intergovernmental mandates. Under section 205 of UMRA, before EPA promulgates "any rule for which a written statement is required under" (UMRA section 202), EPA must identify and consider a reasonable number of regulatory alternatives and either adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, or explain why a different alternative was selected.

Generally, EPA has determined that the provisions of sections 202 and 205 of UMRA do not apply to this decision. Under section 202, EPA is to prepare a written statement that is to contain assessments and estimates of the costs and benefits of a rule containing a Federal Mandate "unless otherwise prohibited by law." Congress clarified that "unless otherwise prohibited by law" referred to whether an agency was prohibited from considering the information in the rulemaking process, not to whether an agency was prohibited from collecting the information. The Conference Report on UMRA states, "This section [202] does not require the preparation of any estimate or analysis if the agency is prohibited by law from considering the estimate or analysis in adopting the rule." *See* 141 Cong. Rec. H3063 (Daily ed. March 13, 1995). Because the Clean Air Act prohibits the Agency from considering the types of estimates and assessments described in section 202 when determining whether an area attained the ozone standard or met the criteria for an extension, UMRA does not require EPA to prepare a written statement under section 202. Although the establishment of a SIP submission schedule may impose a federal mandate, this mandate would not create costs of $100 million or more, and therefore, no analysis is required under section 202. The requirements in section 205 do not apply because those requirements are for rules "for which a written statement is required under section 202.* * *"

Finally, section 203 of UMRA does not apply to today's action because the regulatory requirements finalized today—the SIP submittal schedule—affect only the State of Texas, which is not a small government under UMRA.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 20, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

Dated: February 4, 1998.

Lynda F. Carroll,

Acting Regional Administrator.

Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 81.344 the table for Texas—Ozone is amended by revising the entry for the Dallas-Fort Worth area to read as follows:

§ 81.344 Texas.

* * * * *

TEXAS—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type

TEXAS—OZONE—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Dallas-Fort Worth Area:				
Collin County		Nonattainment	3/20/98	Serious
Dallas County		Nonattainment	3/20/98	Serious
Denton County		Nonattainment	3/20/98	Serious
Tarrant County		Nonattainment	3/20/98	Serious

[1] This date is November 15, 1990, unless otherwise noted.

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[FR Doc. 98–4005 Filed 2–17–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300609; FRL–5767–8]

RIN 2070–AB78

Dimethomorph; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerances for residues of dimethomorph in or on squash, cantaloupe, watermelon, and cucumber. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), authorizing use of the pesticide on squash, cantaloupe, watermelon, and cucumber. This regulation establishes a maximum permissible level for residues of dimethomorph in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. These tolerances will expire and are revoked on March 31, 2000.

DATES: This regulation is effective February 18, 1998. Objections and requests for hearings must be received by EPA on or before April 20, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300609], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300609], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300609]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9364, e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the fungicide dimethomorph, in or on squash, cantaloupe, watermelon, and cucumber at 1.0 part per million (ppm). These tolerances will expire and are revoked on March 31, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104—170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (November 13, 1996; 61 FR 58135) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and

to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemptions for Dimethomorph on Squash, Cantaloupe, Watermelon, and Cucumber and FFDCA Tolerances

The effects of *Phytophthora capisci* range from reduced fruit size to totally rotted/blemished fruit which is unmarketable. Frequently large portions of infested fields are not harvestable even when only a small percentage of the fruits contain symptoms because of postharvest rot concerns. EPA has authorized under FIFRA section 18 the use of dimethomorph on squash, cantaloupe, watermelon, and cucumber for control of crown rot (*Phytophthora capsici*) in Georgia. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of dimethomorph in or on squash, cantaloupe, watermelon, and cucumber. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on March 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on squash, cantaloupe, watermelon, and cucumber after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether dimethomorph meets EPA's registration requirements for use on squash, cantaloupe, watermelon, and cucumber or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of dimethomorph by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Georgia to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for dimethomorph, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration*. The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (children 7-12 years old) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of dimethomorph and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of dimethomorph on squash, cantaloupe, watermelon, and cucumber at 1.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by dimethomorph are discussed below.

1. *Acute toxicity*. An acute dietary risk endpoint was not identified and an acute dietary risk assessment is not required.

2. *Short - and intermediate - term toxicity*. OPP recommends use of the developmental toxicity study in rats for short-term, non-dietary risk calculations. The maternal NOEL was 60.0 mg/kg/day. At the LOEL of 160 mg/kg/day there was reduced food commodity consumption, body weights, and weight gain. Intermediate-term risk endpoints have also been identified. The NOEL of 15 mg/kg/day in the 90-day dog feeding study has been chosen as the intermediate-term toxicity endpoint. At the LOEL of 43 mg/kg/day, there were decreases in the absolute and relative weights of the prostrate and possible threshold liver effects.

3. *Chronic toxicity*. EPA has selected the RfD for dimethomorph of 0.01 milligrams/kilogram/day (mg/kg/day). This RfD is based on a NOEL of 10 mg/kg/day in a 2-year chronic rat study, using an uncertainty factor of 1,000. The

lowest-observed-effect level (LOEL) of 57.7 mg/kg/day was based on decreased body weight and increased incidence of liver "ground glass" foci in females. The additional 10-fold uncertainty factor was used to protect infants and children, since data gaps consisted of rat and rabbit developmental studies and the rat reproduction study.

4. *Carcinogenicity.* Dimethomorph has not been classified as to carcinogenic potential. No cancer risks have been identified in the available dimthomorph data evaluation records.

B. Exposures and Risks

1. *From food and feed uses.* Time-limited tolerances have been established (40 CFR 180.493) for the residues of dimethomorph, in or on potatoes and tomatoes. Risk assessments were conducted by EPA to assess dietary exposures and risks from dimethomorph as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure.

ii. *Chronic exposure and risk.* For the purpose of assessing chronic dietary exposure from dimethomorph, EPA assumed tolerance level residues and 100% of crop treated for published, pending, and this proposed use of dimethomorph. These conservative assumptions result in overestimation of human dietary exposures.

2. *From drinking water.* There is no entry for dimethomorph in the "Pesticides in Groundwater Data Base" (9/92). There is no established Maximum Concentration Level (MCL) for residues of dimethomorph in drinking water. No drinking water health advisory levels have been established for dimethomorph.

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause dimethomorph to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with dimethomorph in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether dimethomorph has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, dimethomorph does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that dimethomorph has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

Chronic risk. Using the conservative TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to dimethomorph from food will utilize 34% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children 1-6 years old "discussed below." EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to dimethomorph in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to dimethomorph residues.

Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of dimethomorph, EPA considered data from developmental toxicity studies in

the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies—Rats.* In the developmental study in rats, the maternal (systemic) NOEL was 60 mg/kg/day, based on decreased food consumption, decreased body weight and decreased weight gain at the LOEL of 160 mg/kg/day. The developmental (fetal) NOEL was not determined.

Rabbits. In the developmental toxicity study in rabbits, the maternal (systemic) NOEL was 300 mg/kg/day, based on increased abortions at the LOEL of 650 mg/kg/day. The developmental (pup) NOEL was not determined.

iii. *Reproductive toxicity study—Rats.* In the 2-generation reproductive toxicity study in rats, the maternal (systemic) NOEL was 15 mg/kg/day, based on decreased body weight and weight gain at the LOEL of 50 mg/kg/day. The reproductive/developmental (pup) NOEL was 15 mg/kg/day, based.

iv. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating pre- and post-natal toxicity for dimethomorph is not complete with respect to current data requirements. It can not be established whether dimethomorph does or does not demonstrate extra pre- or post-natal sensitivity for infants and children based on the results of the rat and rabbit developmental studies and the rat reproduction study. To compensate for the lack of acceptable studies, the RfD of 0.01 mg/kg/day was calculated using an uncertainty factor of 1,000. The additional 10-fold uncertainty factor was added because of the data gaps and in order to protect infants and children from possible pre- and post-natal, toxic risks from dietary exposure to dimethomorph.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to dimethomorph from food will utilize from 7% of the RfD for nursing infants less than one year old, up to 71% for children 1-6 years old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to dimethomorph in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to dimethomorph residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of dimethomorph in squash, cantaloupes, watermelons, and cucumbers is adequately understood for the purposes of these tolerances. The residue of concern, for the purposes of these tolerances, is dimethomorph. The nature of the residue in ruminants is not adequately understood. However, there are no feed items associated with these uses.

B. Analytical Enforcement Methodology

An adequate method is available for detection of the residues of concern for the purpose of this FIFRA section 18 use. High Performance Liquid Chromotography/Ultra Violet (HPLC/UV) analytical method FAMS 002-02 is adequate for detecting residues of dimethomorph in/on these commodities. This method has undergone a successful Agency validation. This method is available to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Information and Records Integrity Branch, Information Resources and Services Division (7502), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm. 119FF, 1921 Jefferson Davis Hwy., Arlington, VA, 703–305–5229.

C. Magnitude of Residues

Residues of dimethomorph are not expected to exceed 1.0 ppm in/on squash, cantaloupe, watermelon, or cucumber as a result of this proposed use. Secondary residues are not expected in animal commodities as no feed items are associated with these uses.

D. International Residue Limits

No CODEX, Canadian or Mexican maximum residue levels (MRLs) have been established for residues of dimethomorph in/on squash, cantaloupes, watermelons, or cucumbers.

VI. Conclusion

Therefore, the tolerance is established for residues of dimethomorph in squash, cantaloupe, watermelon, and cucumber at 1.0 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by April 20, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's

contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300609] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance acations published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 3, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.493, in paragraph (b) in the table, by alphabetically adding the following commodities to read as follows:

§ 180.493 Dimethomorph; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/Revocation Date
Cantaloupe	1.0	3/31/00
Cucumber	1.0	3/31/00
* * *	* *	* *
Squash	1.0	3/31/00

Commodity	Parts per million	Expiration/Revocation Date
* * *	* *	* *
Watermelon	1.0	3/31/00

* * * * *

[FR Doc. 98–3883 Filed 2–17–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATION COMMISSION

47 CFR PART 0

[DA 98–53]

Freedom of Information Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission is modifying a section of the Commission's Rules that implements the Freedom of Information Act (FOIA) fee schedule. This modification pertains to the charge for recovery of the full, allowable direct costs of searching for and reviewing records requested under the FOIA and § 0.460(e) or § 0.461 of the Commission's rules, unless such fees are restricted or waived in accordance with § 0.470. The fees are being revised to correspond to modifications in the rate of pay approved by Congress.

EFFECTIVE DATE: March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Judy Boley, Freedom of Information Act Officer, Office of Performance Evaluation and Records Management, Room 234, Federal Communications Commission, 1919 M Street, N. W., Washington, D.C. 20554, (202) 418–0210 or via Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: The FCC is modifying § 0.467(a) of the Commission's Rules. This rule pertains to the charges for searching and reviewing records requested under the FOIA. The FOIA requires federal agencies to establish a schedule of fees for the processing of requests for agency records in accordance with fee guidelines issued by the Office of Management and Budget (OMB). In 1987, OMB issued its Uniform Freedom of Information Act Fee Schedule and Guidelines. However, because the FOIA requires that each agency's fees be based upon its direct costs of providing FOIA services, OMB did not provide a unitary, government-wide schedule of fees. The Commission based its FOIA fee schedule on the grade level of the employee who processes the request. Thus, the fee schedule was computed at a Step 5 of each grade level based on the General Schedule effected January 1987. The instant revisions correspond to modifications in the rate of pay recently approved by Congress.

Regulatory Procedures

This rule has been reviewed under Executive Order No. 12866 and has been determined not to be a "significant rule" since it will not have an annual effect on the economy of $100 million or more.

In addition, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 47 CFR Part 0

Freedom of information.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Part 0 of title 47 of the Code of Federal Regulations is amended as follows:

Part 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 155, unless otherwise noted.

2. Section 0.467 is amended by revising the table in paragraph (a)(1) and its note, and paragraph (a)(2) to read as follows:

§ 0.467 Search and review fees.

(a)(1) * * *

Grade	Hourly fee
GS–1	$9.06
GS–2	9.86
GS–3	11.11
GS–4	12.48
GS–5	13.96
GS–6	15.56
GS–7	17.29
GS–8	19.15
GS–9	21.16
GS–10	23.29
GS–11	25.58
GS–12	30.67
GS–13	36.47
GS–14	43.10
GS–15	50.70

Note: These fees will be modified periodically to correspond with modifications in the rate of pay approved by Congress.

(2) The fees in paragraph (a) (1) of this section were computed at step 5 of each grade level based on the General Schedule effective January 1998 and include 20 percent for personnel benefits.

* * * * *

[FR Doc. 98–3926 Filed 2–17–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket HM–200; Amdt. No. 173–259]

RIN 2137–AE37

Hazardous Materials in Intrastate Commerce; Technical Amendments

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; technical amendments.

SUMMARY: On January 8, 1997, RSPA published a final rule which amended the Hazardous Materials Regulations (HMR) to expand the scope of the regulations to all intrastate transportation of hazardous materials. The intended effect of the January 8, 1997 rule was to raise the level of safety in the transportation of hazardous materials by applying a uniform system of safety regulations to all hazardous materials transported in commerce throughout the United States. In this final rule, RSPA is: Correcting a date for States to develop legislation authorizing certain exceptions recognized in the HMR; clarifying packaging requirements for hazardous materials transported for agricultural operations; correcting size requirements for identification number markings; and clarifying that the provisions for use of non-specification cargo tanks apply to transportation of gasoline. The minor technical amendments made by this final rule will

not impose any new requirements on persons subject to the HMR.

DATES: *Effective dates:* This final rule is effective February 18, 1998. The effective date for the final rules published under Docket HM–200 on January 8, 1997 (62 FR 1208) and September 22, 1997 (62 FR 49560) remains October 1, 1997.

Compliance dates: Voluntary compliance with the January 8, 1997 final rule has been authorized since April 8, 1997.

Mandatory compliance with the HMR by intrastate motor carriers of hazardous materials is required beginning October 1, 1998, except that the HMR already apply to intrastate motor carriers of hazardous waste, hazardous substances, marine pollutants, and flammable cryogenic liquids in portable tanks and cargo tanks.

FOR FURTHER INFORMATION CONTACT: Diane LaValle, (202) 366–8553, Office of Hazardous Materials Standards, RSPA, 400 Seventh Street, SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

In 1990, the Federal hazardous material transportation law was amended to require the Secretary to regulate hazardous materials transportation in intrastate commerce. (49 U.S.C. 5103(b)(1)) On January 8, 1997, RSPA issued a final rule under Docket HM–200 (62 FR 1208). The final rule amended the HMR by expanding the scope of the regulations to all intrastate transportation of hazardous materials in commerce. In the final rule, RSPA provided exceptions for agricultural operations (§ 173.5), materials of trade (§ 173.6), non-specification packagings used in intrastate transportation (§ 173.8) and for registered inspectors of small cargo tanks used exclusively for flammable liquid petroleum fuels (§ 180.409).

In a correction document published on September 22, 1997 (62 FR 49560), RSPA changed from July 1, 1998 to October 1, 1998 the deadline in §§ 173.5(a)(2) and 173.8(d)(3) for States to enact legislation that authorizes exceptions for agricultural operations and non-specification cargo tanks, for consistency with the mandatory compliance date of the final rule. This eliminated a potential problem of requiring compliance before a State has the opportunity to enact legislation to allow carriers in that state to take advantage of the exceptions. However, the date referenced in § 173.5(b)(3) was inadvertently missed when these changes were made. Therefore, this final rule revises the July 1, 1998 date referenced in § 173.5(b)(3) to October 1, 1998.

A possible misunderstanding has been brought to RSPA's attention by a State enforcement officer regarding the packaging authorizations adopted in § 173.5(b)(3) for agricultural products transported by farmers who are intrastate private motor carriers. To clarify RSPA's intention, this final rule amends the language in § 173.5(b) and (b)(3) to make it clear that agricultural products transported under the exception provided in § 173.5(b) are excepted from the packaging requirements of the HMR when the movement and packaging of the agricultural product conform to the requirements of the State in which it is transported and are specifically authorized by a State statute or regulation in effect prior to October 1, 1998.

In § 173.6, paragraph (c)(2) references identification number marking requirements for bulk packagings. The size requirements for each digit in these markings were incorrectly specified to be at least 25 mm (one inch) high and 6 mm (0.24 inch) wide. This paragraph is revised to provide that the size of the identification number markings must be as required by § 172.332(b)(1) or (c)(1), which state the identification number must be displayed in 100 mm (3.9 inches) black Helvetica Medium, Alpine Gothic or Alternate Gothic No. 3 numerals. RSPA is also clarifying that the identification number may be displayed on Class 9 placards.

In § 173.8, paragraph (b) authorizes non-specification cargo tanks for the transportation of flammable liquid petroleum products that are not hazardous wastes, hazardous substances or marine pollutants (when specifically authorized in State statute or regulation). RSPA overlooked the fact that leaded gasoline is a marine pollutant when transported in a bulk packaging by highway. Because RSPA intended that the provisions of this exception apply to the transportation of gasoline, RSPA is revising § 173.8(d)(5) to allow for the transportation of all gasoline, including leaded gasoline which is a marine pollutant.

This will eliminate any confusion regarding the type of petroleum product that is authorized for transportation in a non-specification cargo tank.

II. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This final rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation was prepared for the January 8, 1997 final rule and is available for review in the Docket. The regulatory evaluation was reviewed and determined not to require updating.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous materials transportation law (49 U.S.C. 5101–5127) contains an express preemption provision that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) The designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

This rule concerns the packaging, marking, labeling, placarding and description of hazardous materials on shipping papers. This rule preempts State, local, or Indian tribe requirements in accordance with the standards set forth above. RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

Title 49 U.S.C. 5125(b)(2) provides that if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA determined that the effective date of Federal preemption for the requirements in this rule concerning covered subjects is October 1, 1998.

C. Regulatory Flexibility Act

The regulatory evaluation developed in support of the January 8, 1997 final rule includes a benefit-cost analysis that justifies its adoption, primarily due to the positive net benefits that may be realized by small entities under the materials of trade exception. RSPA has reviewed this regulatory evaluation and determined it was not necessary to update it.

D. Paperwork Reduction Act

There are no information collection requirements in this final rule.

E. Regulations Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, 49 CFR part 173 is amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 173.5, the introductory text of paragraph (b) and paragraph (b)(3) are revised to read as follows:

§ 173.5 Agricultural operations.

* * * * *

(b) The transportation of an agricultural product to or from a farm, within 150 miles of the farm, is excepted from the requirements in subparts G and H of part 172 of this subchapter and from the specific packaging requirements of this subchapter when:

* * * * *

(3) The movement and packaging of the agricultural product conform to the requirements of the State in which it is transported and are specifically authorized by a State statute or regulation in effect before October 1, 1998; and

* * * * *

3. In § 173.6, paragraph (c)(2) is revised to read as follows:

§ 173.6 Materials of trade exceptions.

* * * * *

(c) * * *

(2) A bulk packaging containing a diluted mixture of a Class 9 material must be marked on two opposing sides with the four-digit identification number of the material. The identification number must be displayed on placards, orange panels or, alternatively, a white square-on-point configuration having the same outside dimensions as a placard (at least 273 mm (10.8 inches) on a side), in the manner specified in § 172.332 (b) and (c) of this subchapter. Each digit in the identification number marking must be displayed in 100 mm (3.9 inches) black Helvetica Medium, Alpine Gothic or Alternate Gothic No. 3 numerals.

* * * * *

§ 173.8 [Amended]

4. In § 173.8, paragraph (d)(1) is amended by revising the date "July 1, 1998" to read "October 1, 1998".

5. In addition, in § 173.8, paragraph (d)(5) is revised to read as follows:

§ 173.8 Exceptions for non-specification packagings used in intrastate transportation.

* * * * *

(d) * * *

(5) Not be used to transport a flammable cryogenic liquid, hazardous substance, hazardous waste, or a marine pollutant (except for gasoline); and

* * * * *

Issued in Washington, DC on February 9, 1998, under authority delegated in 49 CFR, part 1.

Kelley S. Coyner,

Acting Administrator.

[FR Doc. 98–3789 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. RSOR–6; Notice No. 46]

RIN 2130–AA81

Random Drug and Alcohol Testing: Determination of 1998 Minimum Testing Rate

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of determination.

SUMMARY: Under §§ 219.602 and 219.608 of FRA's regulations on drug and alcohol testing (49 CFR Part 219), each year the Federal Railroad Administrator (Administrator) determines the minimum annual percentage rate for random drug and alcohol testing for the rail industry. Currently, the minimum rates for both drug and alcohol random testing are set at 25 percent.

After reviewing the rail industry drug and alcohol management information system (MIS) data for 1995 and 1996, as well as data from compliance reviews of rail industry drug and alcohol testing programs, the Administrator has determined that the minimum annual random drug and alcohol testing rates for the period January 1, 1998 through December 31, 1998 will remain at 25 percent of covered railroad employees.

DATES: This notice of determination is effective February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Operating Practices Division, Federal Railroad Administration, 400 7th Street, S.W., Room 8314, Washington, D.C. 20590, (Telephone: (202) 632–3378) or Patricia V. Sun, Trial Attorney (RCC–11), Office of Chief Counsel, FRA, Washington, D.C. 20590 (Telephone: (202) 632–3183).

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 1998 Random Drug Testing Rate

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug and alcohol testing rates according to the rail industry's overall violation rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Based on this and other program data, the Administrator publishes a **Federal Register** notice each year, announcing the minimum random drug and alcohol testing rates for the following year (see 49 CFR §§ 219.602 and 219.608, respectively).

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at 50 percent. (For both drugs and alcohol, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program and the findings from program compliance reviews, before deciding whether to lower annual minimum random testing rates). FRA will return the rate to 50 percent if the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year.

In 1994, FRA set the 1995 minimum random drug testing rate at 25 percent

because 1992 and 1993 industry drug testing data indicated a random drug positive rate below 1.0 percent. In this notice, FRA announces that the minimum random drug testing rate will continue to be 25 percent of covered railroad employees for the period January 1, 1998 through December 31, 1998, since the industry random positive rate for 1996 was 0.85 percent.

Administrator's Determination of 1998 Random Alcohol Testing Rate

FRA implemented a parallel performance-based system for random alcohol testing. Under this system, FRA may lower the minimum random alcohol testing rate to 10 percent whenever the industry-wide violation rate is less than 0.5 percent for two calendar years while testing at 25 percent. FRA will raise the rate to 50 percent if the industry-wide violation rate is 1.0 percent or higher in any subsequent calendar year. If the industry-wide violation rate is less than 1.0 percent but greater than 0.5 percent, the rate will remain at 25 percent.

Although the 1995 MIS report indicated an industry-wide positive rate of 0.29 percent and the 1996 MIS report indicates a positive rate of 0.24 percent, recent FRA audits of railroad programs revealed significant random testing program problems which may have skewed the data. The most critical deficiency uncovered in these audits was the failure to distribute testing throughout the duty day (e.g., testing only during a four hour period in the middle of the day or only on Thursdays, and/or never testing at night or on weekends), thus making the timing of random alcohol testing too predictable. FRA has alerted railroads to the need to conduct random alcohol tests at all times to achieve deterrence and more accurately capture the prevalence of alcohol abuse throughout the duty period.

Because of these systemic program deficiencies, FRA will not lower the minimum random alcohol testing rate further at this time. Instead, FRA will obtain at least one additional year of data and continue to audit industry testing programs. When FRA has confidence that rail industry data is derived from programs fully in compliance with random testing requirements, FRA will reevaluate whether to lower the minimum random alcohol testing rate to 10 percent.

Issued in Washington, D.C. on February 11, 1998.

Jolene M. Molitoris,

Administrator, Federal Railroad Administration.

[FR Doc. 98–4068 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–98–3452]

RIN 2127–AG47

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the Federal motor vehicle safety standard on lighting to permit white reflex reflectors designed to be mounted horizontally in trailer and truck tractor conspicuity treatments to be mounted vertically in upper rear corner locations if they comply with appropriate photometric requirements for off-axis light entrance angles. This action simplifies compliance with the standard.

DATES: The amendments are effective February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Safety Performance Standards, NHTSA (Phone 202–366–5265; fax 202–366–4329).

SUPPLEMENTARY INFORMATION: Paragraph S5.7 of Motor Vehicle Safety Standard No. 108 specifies conspicuity system requirements for truck tractors, and trailers of 80 or more inches overall width and a gross vehicle weight rating of more than 10,000 pounds. Part of the conspicuity treatment consists of two pairs of items of white material applied horizontally and vertically to the right and left upper contours of the rear of the body. This material may be either white retroreflective sheeting or white reflex reflectors.

NHTSA received a petition for rulemaking concerning white reflectors. Paragraph S5.7.2.1(c) requires white reflex reflectors to

> provide at an observation angle of 0.2 degree, not less than 1250 millicandelas/lux at any light entrance angle between 30 degrees left and 30 degrees right, including an entrance angle of 0 degree, and not less than 300 millicandelas/lux at any light entrance angle between 45 degrees left and 45 degrees right.

James King & Co wrote to NHTSA saying that white reflectors designed to give the required performance at 30 and 45 degrees right and left entrance angles when mounted horizontally cannot do so in the right and left directions when tested in the vertical position, i.e., when those reflectors are rotated 90 degrees. Consequently, when white reflex reflectors are molded in bars of multiple reflectors, the reflector bars required for the two upper rear vertical position must be different from the reflector bars that are used in horizontal positions to fulfill conspicuity requirements. King petitioned for rulemaking to allow use of horizontal bars meeting S5.7.2.1(c) in vertical directions.

NHTSA tentatively agreed with the petitioner, granted the petition, and published a notice of proposed rulemaking on May 14, 1997 (62 FR 26466) as Docket No. 97–30; Notice 1. As published, Standard No. 108 would be amended by adding a new paragraph "S7.5.2.2(c)" to read:

> (c) If white reflex reflectors comply with paragraph S7.5.2.1(c) when installed horizontally, they may be installed in all orientations specified for rear upper locations in paragraph S5.7.4.1(b) or paragraph SS5.7.1.4.3(b).

Some numerals were transposed in the proposed amendment. In actuality, NHTSA meant to propose adding a new paragraph S5.7.2.2(c). Further, the initial reference in this new paragraph should have been to S5.7.2.1(c). However, these transpositions did not create any conflict as there are no existing paragraphs S7.5.2.1(c) and S7.5.2.2(c). The proposal was justified on the basis that the upper rear conspicuity treatment, unlike the lower treatment, does not need to reflect light at large horizontal entrance angles to achieve its intended purpose, and that it is desirable for conspicuity reflectors to be interchangeable and simple to use. For further information, the reader is referred to the notice of May 14.

Ford Motor Company ("Ford"), Advocates for Highway and Auto Safety ("Advocates"), 3M Traffic Control Materials Division ("3M"), and Mr. G.J.M. Meekel commented on the proposed amendment. Ford concurred with the proposal because its adoption would remove a design restriction without compromising the need to improve the nighttime conspicuity of large vehicles. However, Advocates and 3M opposed the proposal because they believed it would reduce the effectiveness of the conspicuity material. Advocates also opposed the use of any reflex reflectors in conspicuity treatments, citing the

possibility of damage and the lack of interchangeability of vertical and horizontal reflectors.

NHTSA believes that this concern is unfounded. The upper and lower treatments have different relationships to conspicuity. The side of a trailer turning or backing across a road is often angled to the lane it blocks. Therefore, reflectors for trailer conspicuity are required to have very high reflective performance for light entrance angles up to 30 degrees and a lower level of performance up to 45 degrees. The red/white color scheme on the side identifies the single line of retroreflective material as the nighttime reflective image of the side of a trailer. Drivers approaching the long line of alternating red and white reflectors visible on the side of a trailer can presume their road speed to be their closing speed with the trailer.

However, drivers overtaking a moving trailer from the rear cannot make the same presumption. The white material for the upper conspicuity treatment provides a two-dimensional reflective image to improve the perception of closing speed. As the preamble for the final rule on truck tractor conspicuity stated (60 FR 413255),

> * * * The purpose of the upper material is to improve the distance perception of a driver of a faster vehicle approaching in the same lane. In this circumstance, the usual view of the truck tractor [or trailer] is close to orthogonal.

NHTSA emphasizes that, even when mounted vertically, a horizontal conspicuity reflex reflector retains excellent performance over the 20 degrees right to 20 degrees left range of horizontal light entrance angles, as required for the conventional reflex reflectors meeting SAE J594f that are used on trucks and cars. Advocates commented that NHTSA has no measurement of actual millicandela readings for upper rear corner treatments executed with horizontal bars for the vertical portions of the reflectorized right angle. In fact, NHTSA had reviewed a manufacturer's test data of a horizontal DOT–C reflex reflector bar used in a vertical position which showed that it greatly exceeded the performance specified by SAE J594f (at an observation angle of 0.2 degree) for conventional truck reflex reflectors which is limited to horizontal light entrance angles of 20 degrees. Performance at greater light entrance angles is necessary to highlight the side of a trailer blocking the road at an angle to the observer but not for the rear of a tractor or trailer being overtaken by an observer directly behind it. Thus, to assure that all horizontal conspicuity reflectors that could be mounted vertically achieve the necessary performance, the agency will require that the devices comply with SAE J594f when tested in the vertical position.

3M also commented that an amendment is unnecessary because there is no technological barrier to the design of reflex reflectors capable of meeting the DOT–C specification in both orientations.

NHTSA concurs that large reflex reflectors could be made incorporating facets for both orientations. However, this would negate the advantage of using existing reflectors and the new reflectors would be less cost competitive with retroreflective tape. NHTSA does not wish to place unnecessary burdens on either of the competing conspicuity material industries inasmuch as the product of each offers distinct advantages to users. Retroreflective tape is less likely to be compromised by harsh docking impacts, while the compactness of reflex reflector bars may be important to the practicability of the upper treatment on some truck tractors.

Mr. G.J.M. Meekel is the chairman of ECE–WP29–GRE (Economic Commission for Europe, Working Party 29 on the construction of vehicles, Groupe de Rapporteurs sur Eclairage), a United Nations committee that has facilitated a large degree of lighting device harmonization between European countries regarding safety standards for new vehicles. The Committee has discussed amending ECE–Regulation 48 in order to create a sufficiently broad "window of harmonization" so that vehicles manufactured in compliance with it can be sold worldwide. Mr. Meekel commented that the use of white reflex reflectors as conspicuity treatment is "not in line with the harmonization activities in GRE." NHTSA believes that the explanation for his remark lies in an artificial distinction that European regulations make between reflex reflectors, which are considered "lighting devices", and retroreflective sheeting, which is not. The only white "lighting devices" allowed on the rear of vehicles in Europe are backup and license plate lamps, thereby excluding white reflex reflectors. But white elements of retroreflective sheeting are allowed on the rear of vehicles because they are not considered to be "lighting devices." Standard No. 108, the U.S. conspicuity regulation, makes no distinction between types of retroreflective material because it requires the minimum retroreflective performance of both sheeting material and reflex reflectors to be identical. Both U.S. and European manufacturers are free to choose sheeting material rather than reflex reflectors. Mr. Meekel's general opposition to the use of reflex reflectors in conspicuity treatments is not relevant to the rulemaking action at hand because the NPRM dealt only with the interchangeability of horizontal and vertical reflectors.

In sum, the agency does not consider the arguments against the proposal to be compelling. However, the rule as amended will specify that the reflectors satisfy the test points of SAE J594f for other truck reflectors at an observation angle in the vertical position to guarantee continued satisfactory performance of future reflectors in the rotated position.

Thus, adopted paragraph S5.7.2.1(d) reads:

> A white reflex reflector complying with S5.7.2.1(a) and (c) when tested in a horizontal orientation may be installed in all orientations specified for rear upper locations in S5.7.1.4.1(b) or S5.7.1.4.3(b) if, when tested in a vertical orientation, it provides an observation angle of 0.2 degree not less than 1680 millicandelas/lux at a light entrance angle of 0 degree, not less than 1120 millicandelas/lux at any light entrance angle from 10 degrees down to 10 degrees up, and not less than 560 millicandelas/lux at any light entrance angle from 20 degrees right to 20 degrees left.

Effective Date

Because the amendment relieves a cost and testing burden and affords an optional means of complying with conspicuity requirements of 49 CFR 571.108, it is hereby found that an effective date earlier than 180 days after issuance of the final rule is in the public interest. Accordingly, the amendment effected by this notice is effective upon publication in the **Federal Register**.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under Executive Order 12866. Further, it has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The final rule does not impose any additional burden upon any person. It will slightly reduce costs to both manufacturers and consumers. NHTSA believes that all horizontal reflex reflectors currently installed on trailers pursuant to S5.7 conform to SAE J594f. The effect of the final rule is to allow the same white reflex reflector bars to be used for vertical and horizontal locations on the rear of truck tractors

and trailers, rather than two different types of bars. Accordingly, NHTSA anticipates that the costs of the final rule will be so minimal as not to warrant preparation of a full regulatory evaluation.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.* I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The final rule does not have a mandatory effect upon any person. It provides manufacturers of truck tractors and large trailers an optional means of compliance with an optional requirement already in effect. If such manufacturers are installing white reflex reflectors in horizontal and vertical segments on the upper corners of these vehicles instead of retroreflective sheeting as a means of complying with paragraph S5.7, the final rule allows these manufacturers to use in vertical positions reflex reflectors designed to be mounted horizontally that meet horizontal photometric requirements. Before the final rule, manufacturers of vehicles covered by the requirements could not use horizontal reflex reflectors in vertical positions unless they also met the photometric requirements for reflex reflectors mounted vertically. The effect of the final rule, therefore, is to simplify compliance. The cost of white reflex reflectors and the costs of truck tractors and trailers on which they are installed should not be affected. Since there is no economic impact, let alone one that is significant, it is not necessary to determine formally whether the entities affected by the rules are "small businesses" within the meaning of the Regulatory Flexibility Act. In NHTSA's experience, manufacturers of truck tractors, trailers, and reflex reflectors are generally not "small businesses." Accordingly, no regulatory flexibility analysis has been prepared.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The final rule will not have a significant effect upon the environment as it does not affect the present method of manufacturing reflex reflectors.

Executive Order 12612 (Federalism)

This rulemaking action has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice

The final rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C.30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Section 571.108 is amended by adding new paragraph S5.7.2.1(d) to read as set forth below:

S5.7.2.1 * * *

(d) A white reflex reflector complying with S5.7.2.1(a) and (c) when tested in a horizontal orientation may be installed in all orientations specified for rear upper locations in S5.7.1.4.1(b) or S5.7.1.4.3(b) if, when tested in a vertical orientation, it provides an observation angle of 0.2 degree not less than 1680 millicandelas/lux at a light entrance angle of 0 degree, not less than 1120 millicandelas/lux at any light entrance angle from 10 degrees down to 10 degrees up, and not less than 560 millicandelas/lux at any light entrance angle from 20 degrees right to 20 degrees left.

Issued on: February 10, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98–3904 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1002

[STB Ex Parte No. 542 (Sub–No. 2)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—1998 Update

AGENCY: Surface Transportation Board.

ACTION: Final rules.

SUMMARY: The Board adopts its 1998 User Fee Update and revises its fee schedule at this time to recover the cost associated with the January 1998 Government salary increases.

EFFECTIVE DATE: These rules are effective March 20, 1998.

FOR FURTHER INFORMATION CONTACT: David T. Groves, (202) 565–1551, or Anne Quinlan, (202) 565–1652. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: The Board's regulations in 49 CFR 1002.3 require the Board's user fee schedule to be updated annually. The Board's regulations in 49 CFR 1002.3(a) provide that the entire fee schedule or selected fees can be modified more than once a year, if necessary. The Board's fees are revised based on the cost study formula set forth at 49 CFR 1002.3(d). Also, in some previous years, selected fees were modified to reflect new cost study data or changes in Board or Interstate Commerce Commission fee policy.

Because Board employees received a salary increase of 2.45% in January 1998, we are updating our user fees to recover our increased personnel cost. With certain exceptions, all fees will be updated based on our cost formula contained in 49 CFR 1002.3(d).

The fee increases involved here result only from the mechanical application of the update formula in 49 CFR 1002.3(d), which was adopted through notice and comment procedures in *Regulations Governing Fees for Services-1987 Update*, 4 I.C.C.2d 137 (1987). Therefore, we believe that notice and comment is unnecessary for this proceeding. *See Regulations Governing Fees For Services-1990 Update*, 7 I.C.C.2d 3 (1990), *Regulations Governing Fees For Services-1991 Update*, 8 I.C.C.2d 13 (1991), and *Regulations Governing Fees For Services-1993 Update*, 9 I.C.C.2d 855 (1993).

We conclude that the fee changes, which are being adopted here, will not have a significant economic impact on a substantial number of small entities

because the Board's regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

Additional information is contained in the Board's decision. To obtain a copy of the full decision, write, call, or pick up in person from DC News & Data, Inc., Suite 210, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: February 9, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701 and 49 U.S.C. 721(a).

2. Section 1002.1 is amended by revising paragraphs (a) and (e)(1) and the chart in paragraph (f)(6) to read as follows:

§ 1002.1 Fees for record search, review, copying, certification, and related services.

* * * * *

(a) Certificate of the Secretary, $11.00.

* * * * *

(e) * * *

(1) A fee of $45.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

* * * * *

(f) * * *

(6) * * *

Type of proceeding	Fee
PART I: Non-Rail Applications or Proceedings to Enter Upon a Particular Financial Transaction or Joint Arrangement:	
(1) An application for the pooling or division of traffic	$2,800
(2) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor carrier of passengers under 49 U.S.C. 14303.	1,300
(3) An application for approval of a non-rail rate association agreement. 49 U.S.C. 13706	17,900
(4) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant amendment	3,000
(ii) Minor amendment	60
(5) An application for temporary authority to operate a motor carrier of passengers. 49 U.S.C. 14303(i)	300
(6)–(10) [Reserved]	
PART II: Rail Licensing Proceedings other than Abandonment or Discontinuance Proceedings:	
(11) (i) An application for a certificate authorizing the extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901.	4,700
(ii) Notice of exemption under 49 CFR 1150.31–1150.35	1,200
(iii) Petition for exemption under 49 U.S.C. 10502	8,100
(12) (i) An application involving the construction of a rail line	48,300
(ii) A notice of exemption involving construction of a rail line under 49 CFR 1150.36	1,200
(iii) A petition for exemption under 49 U.S.C. 10502 involving construction of a rail line	48,300
(13) A Feeder Line Development Program application filed under 49 U.S.C. 10907(b)(1)(A)(i) or 10907(b)(1)(A)(ii)	2,600
(14) (i) An application of a class II or class III carrier to acquire an extended or additional rail line under 49 U.S.C. 10902	4,000
(ii) Notice of exemption under 49 CFR 1150.41–1150.45	1,200
(iii) Petition for exemption under 49 U.S.C. 10502 relating to an exemption from the provisions of 49 U.S.C. 10902	4,300
(15) A notice of a modified certificate of public convenience and necessity under 49 CFR 1150.21–1150.24	1,100
(16)–(20) [Reserved]	
PART III: Rail Abandonment or Discontinuance of Transportation Services Proceedings:	
(21) (i) An application for authority to abandon all or a portion of a line of railroad or discontinue operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the Northeast Rail Service Act [Subtitle E of Title XI of Pub. L. 97–35], bankrupt railroads, or exempt abandonments.	14,300
(ii) Notice of an exempt abandonment or discontinuance under 49 CFR 1152.50	2,400
(iii) A petition for exemption under 49 U.S.C. 10502	4,100
(22) An application for authority to abandon all or a portion of a line of a railroad or operation thereof filed by Consolidated Rail Corporation pursuant to Northeast Rail Service Act.	300
(23) Abandonments filed by bankrupt railroads	1,200
(24) A request for waiver of filing requirements for abandonment application proceedings	1,100
(25) An offer of financial assistance under 49 U.S.C. 10904 relating to the purchase of or subsidy for a rail line proposed for abandonment.	1,000
(26) A request to set terms and conditions for the sale of or subsidy for a rail line proposed to be abandoned	14,600
(27) A request for a trail use condition in an abandonment proceeding under 16 U.S.C. 1247(d)	150
(28)–(35) [Reserved]	
PART IV: Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement:	
(36) An application for use of terminal facilities or other applications under 49 U.S.C. 11102	12,300
(37) An application for the pooling or division of traffic. 49 U.S.C. 11322	6,600

Grade	Rate	Grade	Rate
GS–1	$7.55	GS–9	$17.63
GS–2	8.22	GS–10	19.41
GS–3	9.26	GS–11	21.32
GS–4	10.40	GS–12	25.56
GS–5	11.63	GS–13	30.39
GS–6	12.97	GS–14	35.92
GS–7	14.41	GS–15 and over.	42.25
GS–8	15.96		

* * * * *

2. In § 1002.2 paragraph (f) is revised to read as follows:

§ 1002.2 Filing fees.

(a) * * *

(f) *Schedule of filing fees.*

Type of proceeding	Fee
(38) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11324:	
(i) Major transaction	966,700
(ii) Significant transaction	193,300
(iii) Minor transaction	5,000
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	1,100
(v) Responsive application	5,000
(vi) Petition for exemption under 49 U.S.C. 10502	6,100
(39) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	966,700
(ii) Significant transaction	193,300
(iii) Minor transaction	5,000
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	900
(v) Responsive application	5,000
(vi) Petition for exemption under 49 U.S.C. 10502	6,100
(40) An application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11324:	
(i) Major transaction	966,700
(ii) Significant transaction	193,300
(iii) Minor transaction	5,000
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	800
(v) Responsive application	5,000
(vi) Petition for exemption under 49 U.S.C. 10502	6,100
(41) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	966,700
(ii) Significant transaction	193,300
(iii) Minor transaction	5,000
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	950
(v) Responsive application	5,000
(vi) Petition for exemption under 49 U.S.C. 10502	4,300
(42) Notice of a joint project involving relocation of a rail line under 49 CFR 1180.2(d)(5)	1,600
(43) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	45,200
(44) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:	
(i) Significant amendment	8,400
(ii) Minor amendment	60
(45) An application for authority to hold a position as officer or director under 49 U.S.C. 11328	500
(46) A petition for exemption under 49 U.S.C. 10502 (other than a rulemaking) filed by rail carrier not otherwise covered	5,200
(47) National Railroad Passenger Corporation (Amtrak) conveyance proceeding under 45 U.S.C. 562	150
(48) National Railroad Passenger Corporation (Amtrak) compensation proceeding under Section 402(a) of the Rail Passenger Service Act.	150
(49)–(55) [Reserved]	
PART V: Formal Proceedings:	
(56) A formal complaint alleging unlawful rates or practices of carriers:	
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1) except a complaint filed by small shipper.	27,000
(ii) A formal complaint involving rail maximum rates filed by a small shipper	1,000
(iii) All other formal complaints (except competitive access complaints)	2,600
(iv) Competitive access complaints	150
(57) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates or charges. 49 U.S.C. 10705.	5,700
(58) A petition for declaratory order:	
(i) A petition for declaratory order involving a dispute over an existing rate or practice which is comparable to a complaint proceeding.	1,000
(ii) All other petitions for declaratory order	1,400
(59) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	4,500
(60) Labor arbitration proceedings	150
(61) Appeals to a Surface Transportation Board decision and petitions to revoke an exemption pursuant to 49 U.S.C. 10502(d).	150
(62) Motor carrier undercharge proceedings	150
(63)–(75) [Reserved]	
PART VI: Informal Proceedings:	
(76) An application for authority to establish released value rates or ratings for motor carriers and freight forwarders of household goods under 49 U.S.C. 14706.	800
(77) An application for special permission for short notice or the waiver of other tariff publishing requirements	80
(78) (i) The filing of tariffs, including supplements, or contract summaries	$1 per page ($16 minimum charge.)
(ii) Tariffs transmitted by fax	$1 per page

Type of proceeding	Fee
(79) Special docket applications from rail and water carriers:	
(i) Applications involving $25,000 or less	50
(ii) Applications involving over $25,000	100
(80) Informal complaint about rail rate applications	350
(81) Tariff reconciliation petitions from motor common carriers:	
(i) Petitions involving $25,000 or less	50
(ii) Petitions involving over $25,000	100
(82) Request for a determination of the applicability or reasonableness of motor carrier rates under 49 U.S.C. 13710(a) (2) and (3).	150
(83) Filing of documents for recordation. 49 U.S.C. 11301 and 49 CFR 1177.3(c)	26 per document
(84) Informal opinions about rate applications (all modes)	150
(85) A railroad accounting interpretation	700
(86) An operational interpretation	950
(87) Arbitration of Certain Disputes Subject to the Statutory Jurisdiction of the Surface Transportation Board under 49 CFR 1108:	
(i) Complaint	75
(ii) Answer (per defendant), Unless Declining to Submit to Any Arbitration	75
(iii) Third Party Complaint	75
(iv) Third Party Answer (per defendant), Unless Declining to Submit to Any Arbitration	75
(v) Appeals of Arbitration Decisions or Petitions to Modify or Vacate an Arbitration Award	150
(88)–(95) [Reserved]	
PART VII: Services:	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent	20 per delivery
(97) Request for service or pleading list for proceedings	15 per list
(98) (i) Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Surface Transportation Board or State proceeding that does not require a **Federal Register** notice.	200
(ii) Processing the paperwork related to a request for Carload Waybill Sample to be used for reasons other than a Surface Transportation Board or State proceeding that requires a FEDERAL REGISTER notice.	400
(99) (i) Application fee for the Surface Transportation Board's Practitioners' Exam	100
(ii) Practitioners' Exam Information Package	25
(100) Uniform Railroad Costing System (URCS) software and information:	
(i) Initial PC version URCS Phase III software program and manual	50
(ii) Updated URCS PC version Phase III cost file, if computer disk provided by requestor	10
(iii) Updated URCS PC version Phase III cost file, if computer disk provided by the Board	20
(iv) Public requests for *Source Codes* to the PC version URCS Phase III	500
(v) PC version or mainframe version URCS Phase II	400
(vi) PC version or mainframe version Updated Phase II databases	50
(vii) Public requests for *Source Codes* to PC version URCS Phase II	1,500
(101) Carload Waybill Sample data on recordable compact disk (R–CD):	
(i) Requests for Public Use File on R–CD—First Year	450
(ii) Requests for Public Use File on R–CD Each Additional Year	150
(iii) Waybill—Surface Transportation Board or State proceedings on R–CD—First Year	650
(iv) Waybill—Surface Transportation Board or State proceedings on R–CD—Second Year on same R–CD	450
(v) Waybill—Surface Transportation Board or State proceeding on R–CD—Second Year on different R–CD	500
(vi) User Guide for latest available Carload Waybill Sample	50

[FR Doc. 98–3807 Filed 2–17–98; 8:45 am]
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DEPART

Federal

14 CFR

[Docket

RIN 212

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Parts, I
Textron
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AGENCY:
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ACTION:
(NPRM)

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Proposed Rules

Federal Register
Vol. 63, No. 32
Wednesday, February 18, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–42–AD]

RIN 2120–AA64

Airworthiness Directives; Superior Air Parts, Inc., Piston Pins Installed on Textron Lycoming Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Superior Air Parts, Inc., piston pins installed on Textron Lycoming reciprocating engines. This proposal would require removal from service of defective piston pins, and replacement with serviceable parts. This proposal is prompted by reports of numerous piston pin fractures. The actions specified by the proposed AD are intended to prevent the piston pin from puncturing the engine crankcase by the connecting rod, resulting in the loss of oil leading to total power failure and possible fire, or freeing the connecting rod, possibly puncturing the cylinder or jamming the engine crankshaft, resulting in catastrophic engine failure.

DATES: Comments must be received by March 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–42–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9–ad–engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paul Madej, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Ft. Worth, TX 76137–4298; telephone (817) 222–4635, fax (817) 222–5785.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–42–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–42–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) received numerous reports of fractured Parts Manufacturer Approval (PMA) Superior Air Parts, Inc. piston pins, Part Number (P/N) 13444–1, installed on Textron Lycoming IO–540, O–320, IO–720, LTIO–540, IGSO–540, IO–360, LO–360, and O–360 series reciprocating engines. The investigation reveals that some of these piston pins shipped from Superior Air Parts, Inc. between August 24, 1993, through April 22, 1996, may contain subsurface manufacturing imperfections, such as higher impurity levels, retained austenite, and grind burns. The higher impurity levels may provide a stress riser and grind burns or retained austenite may cause weaker material to give way to fatigue cracks, which may propagate to failure. Failure of the piston pin may cause puncturing of the engine crankcase by the connecting rod resulting in the loss of oil leading to total power failure and possible fire. Failure of the piston pin may free the connecting rod, possibly puncturing the cylinder or cause jamming of the engine crankshaft resulting in catastrophic engine failure.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require within 20 hours time in service after the effective date of this AD, removal from service of defective piston pins, and replacement with serviceable parts.

The FAA estimates that 19,000 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $200 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $10,640,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action"

under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Superior Air Parts, Inc., Piston Pins Installed on Textron Lycoming Reciprocating Engines: Docket No. 97–ANE–42–AD.

Superior Air Parts, Inc. Parts Manufacturer Approval (PMA) piston pins, Part Number (P/N) 13444–1, installed on Textron Lycoming O–320–B1A, B1B, B2C, B2A, B2B, B3A, B3B, B3C, D1A, D1B, D1C, D2A, D2B, D2C, D1D, D1F, D2G, D2J, D3G, E2A, D2F, D2H, H1AD, H2AD, H1BD, H2BD, H3BD;
LIO–320–B1A, B2A
IO–320–B1A, B2A, C1A, B1C, D1A, B1B, D1B, D1AD, C1B, D2A, D2B, A2C, E2A;
AIO–320–B1B, C1B;
O–340–A
O–360–B2A, C1A, C1C, C1F, C2A, C2C, C2E, D2A, F1A6, A1A, A2A, A3A, A1C, A1D, A2D, A2E, C2D, D2B, A1AD, A1F6, A1F6D, A1G6, A1G6D, A1LD, A2F, A2G, A3AD, A4A, A4G, A4J, A4K, A4M, A3AD, C1G, A5AD, E1A6D, F1A6;
LO–360–A1C6D, C1A6D, E1AD, E1A6D, E2A6D, E1BD, E2BD;
IVO–360–A1A, VO–360–A1A, A1B, B1A, B1B;
LTO–360–E1A6D;
C1E6
TO–360–A1G6D, E1A6D, C1A6D;
HO–360–B1A, B1B, A1A;
HIO–360–A1A, A1B, B1A, C1A, C1B, D1A, E1AD, E1BD, F1AD;
IO–360–C1A, C1B, C1C, C1C6, C1D6, C1E6, C1E6D, C1F, A1A, A1B, A1B6, A1B6D, A1C, A1D6, A1D6D, A2A, A2B, A2C, A3B6D, A3D6D, B1A, B1B, B1C, B1D, B1E, B1F, B1F6, B2E, B2F, B2F6, B4A, D1A, E1A, F1A, J1AD, J1A6D, K2A, A1D;
AIO–360–A1A, A1B, A2A, A2B, B1B;
LHIO–360–C1A, C1B, F1AD;
LIO–360–C1E6;
TIO–360–A1B, C1A6D;
AEIO–360–A1E, B1G6, H1A, A1A, A1B, A1B6, A1C, A1D, A1E, A2A, A2B, A2C, B1B, B1D, B1F, B1F6, B2F, B2F6, B4A;
GO–480–B, B1A6, B1B, B1C, B1D, D1A, F6, F1A6, F2A6, F4A6, C1B6, C1D6;
G1A6, G1D6, G1H6, G1J6, G2D6, G2F6,G1B6, C2, G1E6, G1F6, G1G6, D1A, E1A6, F2D6, F3A6, F3B6, F4B6, C2C6, C2D6, C2E6, G1J6;
GSO–480–A1A6, A1C6, A2A6, B1A6, B1B6, B1C6, B1E6, B1F6, B1G6, B1J6, B2C6, B2D6, B2G6, B2H6 B1B3;
IGSO–480–A1A6, A1B6, A1C6, A1D6, A1E6, A1F6, A1G6;
IGO–480–A1B6, A1A6;
O–540–B2B5, B2C5, B4B5, E4A5, E4B5, E4C5, G1A5, H1A5D, H1A5, H2A5, H1B5D, H2B5D, A1A, A1A5, A1B5, A1C5, A1D, A1D5, A2B, A3D5, A4A5, A4B5, A4C5, A4D5, B4A5, A1D5, A2B, A3D5, B1A5, B2A5, E4B5, E4C5, F1A5, F1B5, B2B5, G2A5, B1B5, D1A5, L3C5D;
IO–540–A1A5, B1A5, B1B5, B1C5, C2C, C1B5, C1C5, C4B5, C4C5, D4A5, D4B5, D4C5, E1A5, E1B5, E1C5, G1A5, G1B5, G1C5, G1D5, G1E5, G1F5, J4A5, K1A5, K1B5, K1C5, K1D5, K1E5, M1A5, M1A5D, N1A5, P1A5, R1A5, K1E5D, D4A5, K1A5D, K1B5D, K1F5, K1F5D, K1G5, K1G5D, K1H5, K1J5, K1J5D, L1A5, S1A5, T4A5D, T4B5D, L1C5, C4D5D, U4A5D, T4C5D, U1A5D, U1B5D;
TIO–540–A1A, A1B, A2A, A2B, A2C, C1A, E1A, G1A, H1A, J2B, F2BD, J2BD, N2BD, R2AD, S1AD, AA1AD, AB1AD, U2A, C1AD, AF1A, AE2A;
LTIO–540–J2B, F2BD, J2BD, N2BD, R2AD, U2A;
IGO–540–A1A, A1C, B1A, B1C, A1B, B1B;
IGSO–540–A1A, A1C, A1D, A1E, A1H, B1A, B1C, A1H;
AEIO–540–L1B5, L1B5D, D4B5, D4A5, D4C5;
VO–540–A1A, A2A, B1A, B2A, B1B3, B1C, B2C, D1D, B2D, B2G, B1F, B1B, B1E, B2E, C1A, C2A, C1B, C1C3, B1H3, C2C;
TIVO–540–A2A;
TIO–541–A1A, E1A4, E1B4, E1C4, E1D4;
TIGO–541–E1A, B1A, C1A, D1A, D1B, G1AD; and
IO–720–A1A, A1B, B1B, C1B, D1B, B1BD, D1CD series reciprocating engines, and which were overhauled or had cylinder head maintenance performed by a repair facility other than Textron Lycoming after August 24, 1993. These engines are installed on but not limited to the following aircraft: Aero Bero AB–180;
Aero Commander;
Aero Lark 100;
Aero Victa R–2;
Aromot P–56;
Aviolight P66D;
Beagle A–109, Airedale D5–160, Husky D5–180, J1–U;
Raytheon Beech 76, 95, B–95, M–23;
Bellanca 8GCBC FP;
Bolkow 207, K1–107C;
C.A.A.R.P. S.A.N. M–23III;
Center Regente DR–253;
Cessna 172, 172RG, 177;
Champion Citabria;
Christen Husky A–1;
Daetwyler MD3–160;
DeHavilland DHA–3MK3;
Dinfia (1A–51);
Doyn-Cessna (170, 170A, 170B, 172, 172A, 172B);
Earl Horton Pawnee (Piper PA–25);
FFA Bravo AS–202/15;
Fuji F–200;
General Aviation Pinguino;
Grob G115;
Grumman AA–5;
GY–100–135;
Gyroflug Speed Canard;
Hi Sheer Wing;
Hughes 269A;
Hughes Tool YH–2HU;
InterMntn. Call Air A–6;
Kingsford-Smith J5–6;
Lake C–2, LA–4, 4A, 4P;
Malmo MF, –10, –10B;
Maule MX–7–180;
MBB BO–209C;
Mooney 20B (M20B, M20D, M20E);
Nash Petrel;
Neifa 1PD–5901;
Norman Aeroplace NAC–1 Freelance;
The New Piper, Inc. PA–44; PA–23, PA–22, PA–22S, PA–24, PA–28, PA–28S, PA–30, PA–30T, PA–39;
Partenavia (P–66) P–66, P–66B, P–66C, 131APM;
Pezetel 150;
Procaer F–15–A;
Regente N–591;
Robin DR400–140B, DR400–180, –180R, DR–340, DR–360, R–1180T, R–3140, R–3170;
Robinson R–22;
SAAB 91–D;
SOCATA. TB9, TB10, MS–886, MS–892, MS–893, Rallye 180Gt, RS–180;
Siai-Marchetti S, –202, –205;
Slingsby T67, T67C, T67M;
Societe Aero. Normande Mousquetaire (D–140), Jodel D–140C;
Std. Helicopter;
Sud Gardan GY–180, GY80–160;
Teal III TSC 1A3;
Uirapuru Aerotec 122;
Valmet PIK–23;
Wassmer WA–50A, –40, 52;

Note 1: Shipping records, engine logbooks, work orders, and parts invoices check may allow an owner or operator to determine if this AD applies.

Note 2: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the

request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the piston pin from puncturing the engine crankcase by the connecting rod, resulting in the loss of oil leading to total power failure and possible fire, or freeing the connecting rod, possibly puncturing the cylinder or jamming the engine crankshaft, resulting in catastrophic engine failure, accomplish the following:

(a) If an engine has not had a piston pin installed after August 23, 1993, or if an engine has had a piston pin installed after August 23, 1993, but it was installed by Textron Lycoming, then no action is required.

(b) For engines that had a piston pin installed after August 23, 1993, by an entity other than Textron Lycoming, within 20 hours time in service (TIS) after the effective date of this AD, determine if a suspect PMA Superior Air Parts, Inc. piston pin, P/N 13444–1, could have been installed. If unable to verify that a suspect piston pin was not installed using a records check, disassemble the engine in accordance with the applicable Maintenance Manual or Overhaul Manual, visually inspect or verify for suspect piston pins, and accomplish the following:

(1) If it is determined that suspect PMA Superior Air Parts, Inc. piston pins, P/N 13444–1, could have been installed, remove from service defective piston pins and replace with serviceable piston pins.

(2) If it is determined that suspect PMA Superior Air Parts, Inc. piston pins, P/N 13444–1, could not have been installed, no further action is required.

(c) For the purpose of this AD, a serviceable piston pin is any piston pin that has been verified not to be a PMA Superior Air Parts, Inc. piston pin, P/N 13444–1, shipped from Superior Air Parts, Inc., from August 24, 1993, through April 22, 1996. Installation of a PMA Superior Air Parts Inc. piston pin, P/N 13444–1, that cannot be verified to be outside of the suspect shipping period range, is prohibited after the effective date of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Special Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Special Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Special Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection may be performed.

Issued in Burlington, Massachusetts, on February 6, 1998.

James C. Jones,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–3797 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–5]

Proposed Establishment of Class E Airspace; Delano, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish a Class E airspace area at Delano, CA. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing departure procedures at Delano Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Delano Municipal Airport, Delano, CA.

DATES: Comments must be received on or before March 31, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 98–AWP–5, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, 90261.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AWP–5." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish a Class E airspace area at Delano, CA. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing departures procedures at Delano Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing IFR operations at Delano Municipal Airport, Delano, CA. Class E airspace

designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significantly regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragaph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 DeLANO, CA [NEW]

Tracy Municipal Airport, CA

(Lat. 35°44'44"N, long. 119°14'11" W)

That airspace extending upward from 700 feet above the surface with a 6.5-mile radius of Delano Municipal Airport, excluding the Bakersfield, CA, Class E airspace area.

* * * * *

Issued in Los Angeles, California, on January 21, 1998.

George D. Williams,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–3956 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–8]

Proposed Modification of Class E Airspace; Globe, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify the Class E airspace area at Globe, AZ. Additional controlled airspace extending upward from 700 feet or more above the surface of the Earth is needed to contain aircraft executing the Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 27 at Globe-San Carlos Regional Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Globe-San Carlos Regional Airport, Globe, AZ.

DATES: Comments must be received on or before March 31, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 98–AWP–8, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261 telephone (310) 725–6531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AWP–8." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify the Class E airspace area at Globe, AZ. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft

executing the GPS RWY 27 SIAP at Globe-San Carlos Regional Airport. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Globe-San Carlos Regional Airport, Globe, AZ. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the Earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.09E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Globe, AZ [Revised]

Globe-San Carlos Regional Airport, AZ
(Lat. 32°21'10" N. long. 110°39'51" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Globe-San Carlos Regional airport and that airspace bounded by a line beginning at lat. 33°25'00" N, long. 110°34'30" W; to lat. 33°25'00" N, long. 110°09'00" W; to lat. 33°09'00" N, long. 110°20'00" W; to lat. 33°15'30" N, long. 110°35'00" W, thence clockwise along the 6.5-mile radius of the Globe-San Carlos Regional airport, to the point of beginning.

* * * * *

Issued in Los Angeles, California, on January 26, 1998.

Alton D. Scott,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–3957 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–2]

Proposed Modification of Class E Airspace; Porterville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify the Class E airspace area at Porterville, CA. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 12 and a GPS SIAP to RWY 30 at Porterville Municipal Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the Earth is needed to contain aircraft executing the GPS RWY 12 SIAP and GPS RWY 30 SIAP to Porterville Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Porterville Municipal Airport, Porterville, CA.

DATES: Comments must be received on or before March 31, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 98–AWP–2, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, 90261.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AWP–2." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal

Aviation Administration, Airspace Branch, 1500 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify the Class E airspace area at Porterville, CA. The establishment of a GPS RWY 12 SIAP and GPS RWY 30 SIAP at Porterville Municipal Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the approach and departure procedures at Porterville Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS RWY 12 SIAP and GPS RWY 30 SIAP at Porterville Municipal Airport, Porterville, CA. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the Earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., P. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Porterville, CA [Revised]

Porterville Municipal Airport, CA
(Lat. 36°01'48" N., long. 119°03'46" W.)

That airspace extending upward from 700 feet above the surface with a 6.5-mile radius of the Porterville Municipal Airport and within an area bounded by a line beginning at lat. 35°58'00" N., long. 118°57'30" W.; to lat 35°48'30" N. long. 118°51'00" W.; to lat. 35°47'30" N., long. 119°01'00" W.; to lat. 35°55'30" W., long. 119°02'00" W., thence counterclockwise along the 6.5-miles radius of the Porterville Municipal Airport to the point of beginning.

* * * * *

Issued in Los Angeles, California, on January 22, 1998.

John G. Clancy,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–3958 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209476–82]

RIN 1545–AE41

Loans to Plan Participants; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (REG–209476–82), which was published in the **Federal Register** Friday, January 2, 1998 (63 FR 42), relating to loans made from a qualified employer plan to plan participants or beneficiaries.

FOR FURTHER INFORMATION CONTACT: Vernon Carter (202) 622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections is under sections 72(p) of the Internal Revenue Code.

Need for Correction

As published, REG–209476–82 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–209476–82), which was the subject of FR Doc. 97–33983, is corrected as follows:

1. On page 43, column 2, in the preamble under the paragraph heading "*Explanation of Provisions*", the first full paragraph in the column, line 18, the language "However, a special rule applies if a plan" is corrected to read "In addition, a special rule applies if a plan".

2. On page 43, column 2, in the preamble under the paragraph heading "*Explanation of Provisions*", the first full paragraph in the column, line 26, the language "increase in basis thereafter is less than" is corrected to read "increase in basis thereafter (e.g., from after-tax contribution) is less than".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–3927 Filed 2–17–98; 8:45 am]

BILLING CODE 4830–01–U

POSTAL SERVICE

39 CFR Part 111

Elimination of Mixed BMC/ADC Pallets of Packages of Flats

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This notice presents proposed revisions to Domestic Mail Manual (DMM) sections M041 and M045 to eliminate the options for mailers to

place packages and bundles of Periodicals Mail on mixed ADC pallets and to place packages and bundles of Standard Mail (A) and Standard Mail (B) on mixed BMC pallets. Mailers will continue to have the options to place sacks, trays, or parcels on mixed ADC or mixed BMC pallets, as appropriate for the class of mail.

DATES: Comments must be received on or before April 6, 1998.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Business Mail Acceptance, 475 L'Enfant Plaza SW, Room 6801, Washington, DC 20260–6808. Copies of all written comments will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Cheryl Beller, (202) 268–5166.

SUPPLEMENTARY INFORMATION: Since the implementation of Classification Reform in July 1996, mailers have had the options to prepare mixed ADC pallets of Periodicals and mixed BMC pallets of Standard Mail. Although these options offer some benefits in the manufacturing and distribution handling processes of mailers by reducing sack usage, they have had a negative impact on service and mailpiece integrity for packages and bundles of flats placed on mixed ADC/BMC pallets.

Mixed pallets of packages and bundles are labeled to the origin BMC or ADC serving the 3-digit prefix of the entry office for processing. These pallets may consist of carrier route, 5-digit, 3-digit, ADC, or mixed ADC packages. Studies indicate that more than 90 percent of the packages on mixed pallets are prepared to the carrier route, 5-digit, and 3-digit levels. When the mixed pallets are worked at origin, each package that is for delivery outside the service area of that facility must be handled and sorted individually to the appropriate downstream ADC or BMC facility for further processing and distribution. In many cases, the packages on these pallets could have been placed, by the mailer, in sacks containing multiple packages sorted to the carrier route(s), 5-digit, or 3-digit level. The sacks could have been processed at the origin facility, generally on a sack sorter, to the appropriate downstream facility avoiding the individual package handlings at origin, thus providing greater opportunities to improve service and maintain piece integrity for the mail contained in those packages. Pieces in mixed ADC packages are distributed at an origin ADC or concentration center.

Packages of Standard Mail that are placed on mixed BMC pallets are required to meet BMC machinability standards to facilitate processing on BMC parcel sorters. However, in many instances, packages of flat-size mail on these pallets are being handled manually at origin and downstream BMCs and ADCs because they do not maintain their integrity on the parcel sorting equipment. This manual sortation drives more costs and processing time into the system.

For the past year, the Postal Service has been advising the mailing industry that the delays in delivery, damage to mailpieces, and additional processing costs to the Postal Service that may result from preparation of these optional mixed pallet levels outweigh the mail production benefits to mailers. The Postal Service was planning to eliminate this option in the future once it expected that a sufficient quantity of sacks would be available on a regular basis to handle any volume that would shift from mixed pallets to sacks. Through the purchase of additional plastic sacks, we are confident that we will have a sufficient quantity of sacks available to handle all volume shifts that are likely to result from this change. Moreover, the implementation of the Mail Transport Equipment Service Centers (MTESC) over the next 24 months will ensure the continued availability of sacks.

It should be noted that there are several other efforts under way, including the work being conducted by the Mailers' Technical Advisory Committee (MTAC) Presort Optimization Workgroup, to explore opportunities for reducing the need for mixed pallets without necessarily moving all the mail on these pallets back into sacks. However, for the reasons described above, the Postal Service has decided to go forward at this time with its proposal to eliminate the mixed pallets for packages and bundles.

Discussions with many mailers have revealed that concerns about delivery times have caused them to voluntarily eliminate the preparation of optional mixed BMC and mixed ADC pallets. They were able to do so because most software used by mailers to palletize mail already allows them to turn off the optional mixed BMC/ADC sorts and to sack the packages that would have been placed on these pallets. Accordingly, in most instances, software will not require modification to accommodate the proposed changes.

The Postal Service proposes that the revised standards become effective 45 days from the date that the final rule is published.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)), regarding proposed rulemaking by 39 U.S.C. 401(a), the Postal Service invites comments on the following proposed revisions of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Amend the Domestic Mail Manual as set forth below:

M Mail Preparation and Sortation

M000 General Preparation Standards

* * * * *

M020 Packages and Bundles

* * * * *

1.0 BASIC STANDARDS

[Amend the third sentence in 1.4 by removing the reference to mixed BMC pallets to read as follows:]

1.4 Palletization

* * * Packages and bundles on BMC pallets must be shrinkwrapped and machinable on BMC parcel sorters; machinability is determined by the USPS * * *.

M040 Pallets

M041 General Standards

* * * * *

5.0 PREPARATION

5.1 Presort

[Amend 5.1 by revising the last sentence and adding new sentences to read as follows:]

For sacks, trays, or machinable parcels on pallets, the mailer must prepare all required pallet levels before any mixed ADC or mixed BMC pallets are prepared for a mailing or job. Packages and bundles prepared under M045 must not be placed on mixed ADC or mixed BMC pallets. Packages and bundles that cannot be placed on pallets must be prepared in sacks under the standards for the rate claimed.

5.2 Required Preparation

[Amend 5.2 by removing the second and third sentences and revising the fourth sentence to read as follows:]

Mixed pallets of sacks, trays, or machinable parcels must be labeled to the BMC or ADC (as appropriate) serving the post office where mailings are entered into the mailstream. The processing and distribution manager
* * *

* * * * *

5.6 Sacked Mail

[Amend 5.6 by revising the first sentence to read as follows:]

Mail that is not palletized (e.g., the mailer chooses not to prepare BMC pallets, or the packages do not meet the machinability standards in M020) must be prepared under the standards for the rate claimed.

* * * * *

M045 Palletized Mailings

* * * * *

2.0 PACKAGES OF FLATS

2.1 Standards

[Amend 2.1 by revising the second sentence to read as follows:]

The palletized portion of a mailing may not include packages sorted to mixed ADC or to foreign destinations.

* * * * *

2.4 Size—Standard Mail (B)

* * * * *

[Amend 2.4c by revising the second sentence to read as follows:]

Packages at other rates must be sorted to 5-digit, 3-digit, optional SCF, and ADC destinations, as appropriate.

* * * * *

3.0 OPTIONAL BUNDLES—PERIODICALS AND STANDARD MAIL (A)

3.1 Standards

[Amend 3.1 by revising the second sentence to read as follows:]

The palletized portion of a mailing may not include bundles sorted to mixed ADC or to foreign destinations.

* * * * *

4.0 PALLET PRESORT AND LABELING

4.1 Packages, Bundles, Sacks, or Trays

* * * * *

e. As appropriate:

[Amend the beginning of (1) by adding "(sacks and trays only)" to read as follows:]

(1) Periodicals (sacks and trays only): mixed ADC: optional; * * *

[Amend the beginning of (2) by adding "(sacks and trays only)" to read as follows:]

(2) Standard Mail (sacks and trays only): mixed BMC: optional; * * *

* * * * *

5.0 PALLETS OF PACKAGES, BUNDLES, AND TRAYS

* * * * *

[Amend 5.3 to eliminate references to mixed BMC pallets to read as follows:]

5.3 BMC and Mixed BMC Pallets

Packages and bundles placed on BMC pallets must be machinable on BMC parcel sorting equipment. Line 2 on pallet labels must reflect the processing category of the pieces. A BMC or mixed BMC (trays only) pallet may include pieces that are eligible for the DBMC rate and others that are ineligible if the mailer provides documentation showing the pieces that qualify for the DBMC rate.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–3952 Filed 2–17–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–35–1–6659b; A–1-FRL–5968–4]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Reasonably Available Control Technology for Major Stationary Sources of Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval/limited disapproval of a State Implementation Plan (SIP) revision and full approval of two other SIP revisions submitted by Massachusetts. This revision establishes and requires the implementation of reasonably available control technology (RACT) for major stationary sources of nitrogen oxides (NOx). The intended effect of this action is to propose a limited approval/limited disapproval of a regulation and the full approval of two source-specific NOx RACT determinations. This action is being taken under the Clean Air Act (CAA). Public comments on this document are requested and will be considered before taking final action on this SIP revision.

DATES: Comments must be received on or before March 20, 1998.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment, at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Division of Air Quality Control, Massachusetts Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, at (617) 565–2773, or by e-mail at: Rapp.Steve@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION: On July 15, 1994, October 4, 1996, and December 2, 1996, the Massachusetts Department of Environmental Protection (Massachusetts or MA DEP) submitted revisions to its SIP. The revisions added 310 CMR 7.19, "Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NOx)," as well as source-specific NOx RACT determinations for Specialty Minerals, Incorporated in Adams and Monsanto Company's Indian Orchard facility in Springfield on the above dates, respectively.

I. Background

The CAA requires States to develop RACT regulations for all major stationary sources of NOx in areas which have been classified as "moderate," "serious," "severe," and "extreme" ozone nonattainment areas, and in all areas of the Ozone Transport Region (OTR). EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762; September 17, 1979). This requirement is established by sections 182(b)(2), 182(f), and 184(b) of the CAA. These sections, taken together, establish the requirements for Massachusetts to submit a NOx RACT regulation for all major stationary sources of NOx statewide.

These CAA NOx RACT requirements are further described by EPA in a document entitled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," published November 25, 1992 (57 FR 55620). The November 25, 1992 document, also known as the NOx Supplement, should be referred to for

more detailed information on NOx requirements. Additional EPA guidance memoranda, such as those included in the "NOx Policy Document for the Clean Air Act of 1990," (EPA–452/R–96–005, March 1996), should also be referred to for more information on NOx requirements.

Section 182(b)(2) requires States located in areas classified as moderate ozone nonattainment areas to require implementation of RACT with respect to all major sources of volatile organic compounds (VOC). Additionally, section 182(f) states that, "The plan provisions required under this subpart for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in section 302 and subsections (c), (d), and (e) of the section) of oxides of nitrogen." This RACT requirement also applies to all major sources in ozone nonattainment areas with higher than moderate nonattainment classifications.

Section 302 of the CAA generally defines "major stationary source" as a facility or source of air pollution which has the potential to emit 100 tons per year or more of air pollution. This definition applies unless another provision of the CAA explicitly defines major source differently. Therefore, for NOx, a major source is one with the potential to emit 100 tons per year or more in marginal and moderate areas, as well as in attainment areas in the OTR. However, for serious nonattainment areas, a major source is defined by section 182(c) as a source that has the potential to emit 50 tons per year or more. The entire Commonwealth of Massachusetts is classified as a serious nonattainment area for ozone. Thus, in Massachusetts, NOx RACT is required from all sources with the potential to emit 50 tons per year or more of NOx.

A. Regulatory Background

Massachusetts was notified in a January 23, 1991 letter from Region I that "The CAAAs mandate that within 2 years of enactment, states submit a SIP revision which requires the implementation of RACT and NSR requirements with respect to oxides of nitrogen (NOx) for all major stationary sources * * *"

On August 10, 1992, Massachusetts submitted a draft of 310 CMR 7.19 to EPA for comment. Region I met with MA DEP on August 26, 1992 and provided informal oral comments on the draft. On January 5, 1993, EPA Region I received proposed revisions to the Massachusetts SIP, including 310 CMR 7.19. On February 8, 9, 10, and 12, 1993, Massachusetts held public hearings on these proposed SIP changes. Region I provided formal comments to Massachusetts on February 19, 1993.

In April 1994, Massachusetts proposed a number of minor changes to 310 CMR 7.19 and held a public hearing on those changes on May 6, 1994. EPA submitted written comments on these changes on May 19, 1994. The regulations were signed by the Secretary of State on July 1, 1994, and became effective on that date. MA DEP submitted its adopted regulation as a formal SIP submittal to EPA on July 15, 1994. After reviewing the regulation for completeness, EPA sent a letter on July 15, 1995 stating that Massachusetts' rule had been found to be administratively and technically complete.

Additionally, in April 1994, Massachusetts proposed a number of amendments to 310 CMR 7.19 and 310 CMR 7.00 Appendix B(4) concerning emissions averaging. Public hearings were held on May 6 and 10, 1994. EPA provided written comments to Massachusetts on May 19, 1994. These changes were signed by the Secretary of State on January 11, 1995 and became effective on January 27, 1995. These adopted changes were received by EPA on April 14, 1995. On September 11, 1995, EPA sent a letter to Massachusetts deeming the submittal of these changes administratively and technically complete. On August 8, 1996, EPA approved these changes as part of the emissions averaging, banking, and trading program (see 61 FR 41371).

On February 7, 1995, MA DEP proposed approval of the NOx RACT emission control plan which defined NOx RACT for two lime kilns at Specialty Minerals, Inc., in Adams, Massachusetts. The two kilns are subject to the miscellaneous RACT provisions of 310 CMR 7.19(12). On March 9, 1995, a public hearing was held on the proposed approval. EPA submitted written comments to the public record on March 3, 1995 concerning this proposal. On June 16, 1995, MA DEP issued a final approval of the NOx RACT emission control plan (transmittal t65843). On October 4, 1996, the final approval of the plan was submitted to EPA for approval into the Massachusetts SIP. On February 6, 1997, EPA deemed the submittal administratively and technically complete.

Similarly, on May 19, 1995, MA DEP proposed approval of the NOx RACT emission control plan for Monsanto Company's Indian Orchard facility in Springfield, Massachusetts. On June 16, 1995, a public hearing was held concerning the proposed approval. The proposed plan approval defined NOx RACT for the stoker fired coal burning boiler at Monsanto which is subject to the miscellaneous NOx RACT provisions of 310 CMR 7.19(12). EPA submitted written comments to the public record on June 9, 1995. MA DEP proposed a final approval on September 12, 1996, and held a second hearing on the proposal on October 4, 1996. MA DEP issued a final NOx RACT plan approval on October 28, 1996 and submitted the final plan approval to EPA on December 2, 1996 for approval into the Massachusetts SIP. On February 6, 1997, EPA deemed the submittal administratively and technically complete.

B. Description of Submittal

Massachusetts' Regulation 310 CMR 7.19, "Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NOx)," is divided into fifteen sections. Section (1) defines the applicability of the overall rule to a NOx emitting facility, although the applicability of the rule to an individual emission unit is further determined in each section, based on a unit's type and size. Basically, an emissions unit is subject to the rule if it exceeds a minimum capacity rating and is located at a major source.

Section (2) describes the general provisions of the regulation, including the general criteria for source specific alternative RACT limits, as well as general requirements for seasonal fuel-switching.

Section (3) describes the general applicability, notification, elements, prohibitions, and approval of emission control plans for certain types of RACT subject sources.

Section (4) describes the NOx RACT requirements for large boilers. Large boilers are defined as having an energy input capacity of 100 million British thermal units (Btu) per hour or greater. This section further defines NOx RACT emission limitations for the following types of large boilers: dry bottom boilers burning coal, both tangentially and face-fired; stoker fired boilers burning other solid fuels; boilers burning either oil or oil and gas; and boilers burning only gas. Section (4) also sets out the requirements for any large boiler owners choosing to repower, as well as the emission rate limitations that the repowered units must meet. Additionally, section (4) includes the requirements for large boilers seeking alternative NOx RACT determinations, procedures for determining the NOx standard when multiple fuels are burned, and testing, monitoring, record keeping, reporting, and emission control plan requirements. Also, section (4) sets a carbon monoxide emission limitation for large boilers.

Section (5) describes the requirements for medium boilers. Medium boilers are defined as boilers with energy input capacities of greater than 50 million Btu per hour but less than 100 million Btu per hour. This section sets NOx standards for the following types of boilers: tangential, face fired, or stoker fired boilers burning solid fuels; tangential or face fired boilers burning gas only, distillate oil or distillate oil and gas, and residual oil or residual oil and gas; and boilers which cofire multiple fuels. Additionally, section (5) sets a carbon monoxide emission limitation for medium boilers.

Section (6) describes the NOx RACT requirements for boilers with energy input capacities of less than 50 million Btu per hour and greater than or equal to 20 million Btu per hour, i.e., small boilers. Basically, this section describes the tune-up procedures which must be followed for these boilers, as well as the applicable emissions record keeping and reporting requirements.

Section (7) of the rule deals with stationary combustion turbines having energy input capacities of 25 million Btu per hour or greater. This section sets NOx emission standards for simple and combined cycle stationary combustion turbines burning gas, oil, or gas and oil.

Section (8) of the rule describes the requirements for stationary reciprocating internal combustion (IC) engines with energy input capacities greater than or equal to 3 million Btu per hour. This section exempts engines which do not operate for more than 300 hours per year and are not operated as load-shaving units, peak power units, or standby engines in an energy assistance program. This section sets emission standards for reciprocating internal combustion engines which have operated for 1000 hours or more during a 12 month period since 1990. The specific standards apply to the following engine types: rich burn, gas-fired; lean burn, gas-fired; and lean burn, oil-fired or dual fueled. Section (8) requires ignition timing retard to be performed on engines which have not operated more than 1000 hours per year since 1990.

Section (9) is reserved for NOx RACT requirements for incinerators. Section (10) is also reserved.

Section (11) describes the requirements for glass melting furnaces that have maximum production rates of 14 tons or greater of glass removed per day.

Section (12) describes NOx RACT requirements for miscellaneous emission units, i.e., emissions units with potential emissions of NOx greater than or equal to 25 tons per year, before the application of control equipment, at facilities having potential emissions greater than or equal to 50 tons per year of NOx, for which 310 CMR 7.19 does not set specific NOx emission standards. This section exempts emissions units already subject to BACT or LAER. Section (12) requires that the emission control plans for these miscellaneous NOx RACT sources be approved by EPA as well as the State.

Section (13) establishes testing, monitoring, record keeping, and reporting requirements for sources subject to sections 7.19(2)(b), (4), (5), (7), (8), (9), (10), (11), (12), or (14). This section requires certain sources to demonstrate compliance with NOx emission standards by using continuous emission monitoring systems (CEMS). These sources include: boilers with energy input capacities greater than 250 million Btu per hour, units involved in emissions averaging, combined cycle combustion turbines with energy input capacities of greater than or equal to 100 million Btu per hour, sources currently using CEMS, and sources determined to need a CEMS as part of a miscellaneous or alternative RACT plan. Section (13) also describes the specific CEMS requirements. For other types of sources, section (13) describes the stack-testing and record keeping requirements which must be met.

Section (14) deals with the averaging of emissions from multiple units to achieve compliance. Massachusetts previously submitted this section as part of the regulations concerning emissions averaging as specified in 310 CMR 7.00 Appendix B(4). These regulations were approved in a separate rulemaking action.

Section (15) specifies the proration formula for determining the applicable emission limitation when different fuels are burned either simultaneously or during the same hour or same day if a 24 hour averaging time is used (i.e., cofiring).

Additionally, Massachusetts submitted two case specific RACT determinations for facilities with NOx emitting units that are subject to the miscellaneous RACT provisions of 310 CMR 7.19(12). First, the NOx RACT emission control plan for Specialty Minerals, Inc. specifically defines NOx RACT for two lime kilns at the facility located in Adams, Massachusetts. Similarly, the NOx RACT emission control plan for Monsanto Company's Indian Orchard facility in Springfield, Massachusetts specifically defines NOx RACT for the facility's stoker fired coal burning boiler.

EPA's evaluation of the submitted regulations and source specific RACT determinations is detailed in a memorandum, dated May 13, 1997, entitled "Technical Support Document for Massachusetts' Regulation 310 CMR 7.19, Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NOx), and Case-Specific NOx RACT for Monsanto Company's Indian Orchard Plant in Springfield, and Specialty Minerals, Inc. in Adams." Copies of the document are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this document. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the ADDRESSES section of this document.

II. Issues

There are two issues associated with this rulemaking action. The first issue is related to the miscellaneous RACT provisions of 310 CMR 7.19(12). Massachusetts proposed NOx RACT emission control plans for four sources with processes subject to the miscellaneous NOx RACT provisions of the rule: Lee Lime Corporation in Lee; Specialty Minerals, Inc., in Adams; Indeck Energy Services of Turners Falls, Inc. in Turners Falls; and, Monsanto Company, in Springfield. To date, however, EPA has only received SIP submittals for Specialty Minerals, Inc. and Monsanto Company. Therefore, Massachusetts must still submit final NOx RACT emission control plans for the units subject to miscellaneous NOx RACT provisions at Lee Lime and Indeck Energy.

Second, the July 15, 1994 SIP submittal for 310 CMR 7.19 did not contain any emission limitations for incinerators with the potential to emit greater than 50 tons of NOx per year, including municipal waste combustors. According to the Massachusetts emissions inventory and EPA's database in the Aerometric Information Retrieval System (AIRS), however, there are a number of incinerators of this size currently operating in Massachusetts. Therefore, Massachusetts must either revise section 7.19(9) to include a NOx emission limit for these categories of units, or consider these units as subject to the miscellaneous RACT section (i.e., 310 CMR 7.19(12)) of the rule and define source-specific NOx limits for them. As miscellaneous RACT units, 310 CMR 7.19(12) requires sources to submit emission control plans to MA DEP; subsequently, the plan approvals must be submitted to and approved by EPA as source-specific SIP revisions.

III. EPA Proposed Action

EPA's review of this material indicates that Massachusetts has defined NOx RACT emission limitations or technology standards for a number of source categories and individual sources. However, not all major stationary sources of NOx have been covered by the regulations and case specific determinations. Thus, by incorporating 310 CMR 7.19 and the submitted RACT determinations into the Massachusetts SIP, the SIP is strengthened but does not meet the requirements of sections 182(b)(2) and 182(f) of the CAA.

Therefore, EPA is proposing a limited approval/limited disapproval of the Massachusetts SIP revision for 310 CMR 7.19, which was submitted on July 15, 1994. In light of the deficiencies discussed in the issues section above, EPA cannot grant full approval of this rule under section 110(k)(3) and part D of the CAA. However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) and EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also includes a limited disapproval. EPA is also proposing full approval of the source specific RACT determinations for Monsanto Company in Springfield, and Specialty Minerals, Inc. in Adams, Massachusetts.

To receive full approval of 310 CMR 7.19, Massachusetts must submit final emission control plans for Lee Lime Corporation in Lee and Indeck Energy Services in Turners Falls, Massachusetts. Additionally, Massachusetts must either revise section 7.19(9) to include NOx emission limits for incinerators, or consider these units as subject to the miscellaneous RACT section (i.e., 310 CMR 7.19(12)) of the rule and define source-specific NOx limits for them. For full approval of 310 CMR 7.19, all of these limits must be approved by EPA.

As stated, EPA is also proposing a limited disapproval of this rule under sections 110(k)(3) and 301(a) of the CAA because the rule does not meet the requirements of sections 182(b) and 182(f) of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency is corrected within 18 months of the disapproval. Section 179(b) makes two sanctions available to the Administrator: highway funding and offsets. The 18-month period referred to in section 179(a) will begin at the effective date established in this limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Limited SIP approvals and disapprovals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP limited approval/limited disapproval does not impose any new requirements, it does not have a significant impact on any affected small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed limited approval/limited disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 4, 1998.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 98–4004 Filed 2–17–98; 8:45 am]

BILLING CODE 6560–60–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 414

Notice of Public Hearing on Proposed Rule and Draft Programmatic Environmental Assessment for Offstream Storage of Colorado River Water and Interstate Redemption of Storage Credits in the Lower Division States

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public hearing.

SUMMARY: The Bureau of Reclamation (Reclamation) published a notice of proposed rulemaking on December 31, 1997 (62 FR 68491), which included the text of a proposed rule titled, "Offstream Storage of Colorado River Water and Interstate Redemption of Storage Credits in the Lower Division States." Reclamation also published a notice of availability of a draft programmatic environmental assessment on December 31, 1997 (62 FR 68465). The notice of proposed rulemaking stated that Reclamation would hold public hearings upon request made no later than 4 p.m. Pacific time on January 30, 1998. In response to that notice, Reclamation received one request for a public hearing in Ontario, California and has scheduled a public hearing.

DATES: The public hearing will be held on February 23, 1998, at 1 p.m., Ontario, California.

ADDRESSES: The public hearing will be held at the Doubletree Hotel Ontario, 222 North Vineyard, Ontario, California. Address comments/requests to testify to Mr. Dale Ensminger, Boulder Canyon Operations Office, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89006–1470.

FOR FURTHER INFORMATION CONTACT: Any person wishing to testify at this public hearing can also contact Mr. Dale Ensminger at telephone (702) 293–8659 or fax (702) 293–8402.

SUPPLEMENTARY INFORMATION: The hearing will commence at 1 p.m. and will continue until all persons wishing to testify have had an opportunity to do so. In order to allow an opportunity to everyone who wishes to testify, initial oral statements will be limited to 10 minutes. After all persons wishing to testify have had a chance to be heard, Reclamation will consider allowing additional time to those who request it.

In order to assist the transcriber and to ensure an accurate record, Reclamation requests that each person who testifies at the hearing give the transcriber a copy of that oral testimony.

Any person, whether or not that individual attends the public hearing or submits oral testimony at the hearing, may submit written comments on the proposed rule and the draft programmatic environmental assessment. There is no limit to the length of written comments. However, written comments should be specific, confined to the issues pertinent to the proposed rule or the draft programmatic environmental assessment, and should explain the reason for any recommended change. Reclamation will accept written comments through March 2, 1998, in accordance with the criteria set forth in the notice of proposed rulemaking published in the **Federal Register** on December 31, 1997 (62 FR 68491).

Dated: February 11, 1998.

John E. Redlinger,

Deputy Area Manager, Boulder Canyon Operations Office.

[FR Doc. 98–3979 Filed 2–17–98; 8:45 am]

BILLING CODE 4310–94–P

Notices

Federal Register
Vol. 63, No. 32
Wednesday, February 18, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–009–1]

Pioneer Hi-Bred International, Inc.; Receipt of Petition for Determination of Nonregulated Status for Corn Genetically Engineered for Male Sterility and Glufosinate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Pioneer Hi-Bred International, Inc., seeking a determination of nonregulated status for corn lines designated as 676, 678, and 680, which have been genetically engineered for male sterility and tolerance to the herbicide glufosinate as a marker. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this corn presents a plant pest risk.

DATES: Written comments must be received on or before April 20, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–009–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–009–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Subhash Gupta, Biotechnology and Biological Analysis, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–8761. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–4885; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On December 8, 1997, APHIS received a petition (APHIS Petition No. 97–342–01p) from Pioneer Hi-Bred International, Inc. (Pioneer), of Johnston, IA, requesting a determination of nonregulated status under 7 CFR part 340 for male sterile, glufosinate-tolerant corn lines designated as 676, 678, and 680 (lines 676, 678, and 680). The Pioneer petition states that the subject corn lines should not be regulated by APHIS because they do not present a plant pest risk.

As described in the petition, corn lines 676, 678, and 680, have been genetically engineered to contain an adenine methylase, or *dam* gene derived from *Escherichia coli*. The *dam* gene expresses a DNA adenine methylase enzyme in specific plant tissue, which results in the inability of the transformed plants to produce anthers or pollen. The subject corn lines also contain the *pat* selectable marker gene isolated from the bacterium *Streptomyces viridochromogenes*. The *pat* gene encodes a phosphinothricin acetyltransferase (PAT) enzyme, which, when introduced into a plant cell, confers tolerance to the herbicide glufosinate. Linkage of the *dam* gene, which induces male sterility, with the *pat* gene, a glufosinate tolerance gene used as a marker, enables identification of the male sterile line for use in the production of hybrid seed. The subject corn lines were transformed by the particle gun process, and expression of the introduced genes is controlled in part by gene sequences derived from the plant pathogen cauliflower mosaic virus (CaMV).

Corn lines 676, 678, and 680 are currently considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences derived from the plant pathogen CaMV. The subject corn lines have been evaluated in field trials conducted since 1995 under APHIS notifications. In the process of reviewing the permit applications for the U.S. field trials of these corn lines, APHIS determined that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the

regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which the genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, the EPA must approve the new or different use. In conducting such an approval, the EPA considers the possibility of adverse effects to human health and the environment from the use of this herbicide. The herbicide glufosinate is registered for use on corn in the United States. When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by the EPA under the Federal Food, Drug and Cosmetic Act (FFDCA) as amended (21 U.S.C. 301 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by the EPA under the FFDCA. The EPA has granted an exemption from the requirement of a tolerance for phosphinothricin acetyltransferase and the genetic material necessary for its production in corn and on all raw agricultural commodities.

The FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of the FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. Pioneer has begun consultation with FDA on the subject corn lines.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of the Pioneer's male sterile and glufosinate-tolerant corn lines 676, 678, and 680, and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 12th day of February 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–4037 Filed 2–17–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on March 3 at the Riverside Motel at 971 SE Sixth St. Grants Pass, Oregon. The meeting will begin at 9 a.m. and continue until 5 p.m. Agenda items to be covered include: (1) Coordinated watershed restoration between federal and non-federal land managers; (2) Province monitoring priorities; (3) Forest health issues; (4) Report from local BLM and Forest Service on local issues; and (5) public comment. All Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Chuck Anderson, Province Advisory Committee staff, USDA, Forest Service, Rogue River National Forest, 333 W. 8th Street, Medford, Oregon 97501, phone 541–858–2322.

Dated: February 9, 1998.

James T. Gladen,

Forest Supervisor, Designated Federal Official.

[FR Doc. 98–3924 Filed 2–17–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Conduct an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request approval for a new information collection, the Beef Cattle Pesticide Use Survey.

DATES: Comments on this notice must be received by April 24, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Beef Cattle Pesticide Use Survey.

Type of Request: Intent to seek approval to conduct an information collection.

Abstract: Producers of beef cattle in 12 Western States will be surveyed. The survey asks for information about pesticides used to treat beef cattle to control external parasites, pesticides used in and around beef cattle facilities, and beef cattle pest management practices. Data collected will help provide quality information to fulfill certain requirements of the Food Quality Protection Act of 1996. The Environmental Protection Agency (EPA) must make regulatory decisions affecting many pesticide products. In order to do an effective risk assessment, accurate pesticide use information is essential. A Pesticide Benefit Assessments report will be produced by the United States Department of Agriculture (USDA). With the information, EPA and USDA together can evaluate the risks and the benefits of pesticide use. Presently, there is very little information on pesticides used on beef cattle.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by

Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Beef cattle producers in 12 Western States.

Estimated Number of Respondents: 2,000.

Estimated Total Annual Burden on Respondents: 1,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 4162 South Building, Washington, D.C. 20250–2000.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, D.C., January 22, 1998.

Rich Allen,

Acting Administrator, National Agricultural Statistics Service.

[FR Doc. 98–4035 Filed 2–17–98; 8:45 am]

BILLING CODE 3510–20–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Secretary's 2000 Census Advisory Committee

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), we are giving notice of a meeting of the Commerce Secretary's 2000 Census Advisory Committee. The meeting will convene on March 19–20, 1998, at the Inn and Conference Center, University of Maryland University College, University Boulevard and Adelphi Road, College Park, MD 20742. The Committee will discuss Census 2000 issues including address lists, methodology, plans for Census 2000 Dress Rehearsal data, and other related topics.

The Committee is composed of a Chair, Vice Chair, and up to thirty-five member organizations, all appointed by the Secretary of Commerce. The Committee will consider the goals of Census 2000 and user needs for information provided by that census. The Committee will provide a perspective from the standpoint of the outside user community about how operational planning and implementation methods proposed for Census 2000 will realize those goals and satisfy those needs. The Committee shall consider all aspects of the conduct of the 2000 census of population and housing and shall make recommendations for improving that census.

DATES: On Thursday, March 19, 1998, the meeting will begin at 8:30 a.m. and adjourn for the day at 4:30 p.m. On Friday, March 20, 1998, the meeting will begin at 8:30 a.m. and adjourn at 4 p.m.

ADDRESSES: The meeting will take place at the Inn and Conference Center, University of Maryland University College, University Boulevard and Adelphi Road, College Park, MD 20742.

FOR FURTHER INFORMATION CONTACT: Anyone wishing additional information about this meeting, or who wishes to submit written statements or questions, may contact Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, Bureau of the Census, Room 3039, Federal Building 3, Washington, DC 20233, telephone: 301–457–2308, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: A brief period will be set aside on Friday afternoon for public comment and questions. However, individuals with extensive questions or statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Maney; her telephone number is 301–357–2308, TDD 301–457–2540.

Dated: February 10, 1998.

Lee Price,

Acting Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 98–3928 Filed 2–17–98; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF COMMERCE

International Trade Administration

Centers for Disease Control Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–094. *Applicant:* Centers for Disease Control, Morgantown, WV 26505–5288. *Instrument:* Electron Microscope, Model JEM–1220. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 62 FR 62288, November 21, 1997. *Order Date:* September 11, 1997.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. Reasons: The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, which was being manufactured in the United States at the time of order of the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–4071 Filed 2–17–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 98–001. *Applicant:* University of Texas at Austin, Materials Science & Engineering Center, MS&E—Building, ETC. Room 9.102, M/C C2201, 26th & Dean Keaton Streets, Austin, TX 78712. *Instrument:* IR Image Furnace, Model SC–M35HD. *Manufacturer:* NEC Nichiden Machinery Ltd., Japan. *Intended Use:* The instrument will be used in an ongoing research project that includes growth of transition-metal oxide crystals with the objectives of providing highly reliable data to study the electronic behavior at the crossover from itinerant to localized electrons in transition-metal oxides. Application accepted by Commissioner of Customs: January 12, 1998.

Docket Number: 98–002. *Applicant:* University of Vermont, Burlington, VT 05405. *Instrument:* HD Collector Upgrade for Mass Spectrometer. *Manufacturer:* Pro-Vac Services, United Kingdom. *Intended Use:* The instrument is an accessory which will upgrade the analytical capabilities of an existing mass spectrometer to analyze stable isotope abundance of H in natural materials for a variety of environmental, biological and ecological research projects. In addition, the instrument will be used for educational purposes in the course Environmental Isotope Geochemistry for student practice of what is learned during the lecture part of the course. Application accepted by Commissioner of Customs: January 21, 1998.

Docket Number: 98–003. *Applicant:* University of Vermont, Department of Medicine, Given Building C–247, Burlington, VT 05405. *Instrument:* (40 each) HV Stopcock (Laboratory Glassware). *Manufacturer:* Louwers Hapert Glasstechnics BV, The Netherlands. *Intended Use:* The instruments are components assembled from tubes that will be used in the reduction of water to hydrogen by the zinc reduction method. Experiments will be conducted involving the use of double labeled water to determine metabolic rates of research subjects. Application accepted by Commissioner of Customs: January 21, 1998.

Docket Number: 98–004. *Applicant:* University of California at Los Angeles, Plasma Physics Laboratory, 405 Hilgard Avenue, P.O. Box 951547, Los Angeles, CA 90095–1547. *Instrument:* YAG Pumped Dye Laser. *Manufacturer:* Spectron Laser Systems, United Kingdom. *Intended Use:* The instrument will be used as the illuminator on a resonant lidar system. It will be used to excite sodium at 90 km altitude for the purposes of monitoring density during auroral conditions. The density will be monitored by tuning the dye laser to the sodium resonance wave length at 590 nm and measuring the strength of the return. Application accepted by Commissioner of Customs: January 26, 1998.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–4072 Filed 2–17–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021098F]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Dogfish Technical Committee will hold a public meeting.

DATES: The meeting will be held on Thursday, March 5, 1998, from 10:00 a.m. until 5:00 p.m.

ADDRESSES: This meeting will be held at the Days Inn, 4101 Island Avenue, Philadelphia, PA; telephone: 215–492–0400.

Council Address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331

SUPPLEMENTARY INFORMATION: Agenda items include overview of current stock status, definition of overfishing, discussion of possible management actions necessary including reductions in F and possible rebuilding schedule, and discard issues and required analyses.

Although other issues not contained in this agenda may come before this Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 11, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–4045 Filed 2–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021098C]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council will hold a meeting of its Bottomfish Task Force.

DATES: The meeting will be held on March 5, 1998, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Western Pacific Regional Fishery Management Council, Conference Room, 1164 Bishop Street, Suite 1400, Honolulu, HI; telephone: (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The Bottomfish Task Force will review a draft amendment for the Mau Zone bottomfish fishery limited entry program in the Northwestern Hawaiian Islands. The Task Force will discuss new entry criteria for the limited entry program and consider other business as needed.

Although other issues not contained in this agenda may come before this Task Force for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: February 11, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–4044 Filed 2–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021198A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that on February 10, 1998, Permit No. 827 (P278D), issued to Dr. Brent Stewart, Hubbs-Sea World Research Institute, 1700 South Shores Road, San Diego, California 92109, was amended.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802–4213.

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson (301/713–2289).

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the regulations of the governing the taking and importing (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The amendment authorizes the continuation of research under Permit No. 827 (P278D) for an additional year. The permit will now expire March 31, 1999.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 11, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–4043 Filed 2–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.# 021098H]

Marine Mammals; File No. P771#74

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that the Alaska Fisheries Science Center, National Marine Mammal Laboratory, NMFS, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115–0070, has requested an amendment to scientific research Permit No. 977.

DATES: Written or telefaxed comments must be received on or before March 20,1998.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4001); and

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115–0070 (206/526–6150).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 977, issued on September 14, 1995 (60 FR 49260) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 977 authorizes the permit holder to: take up to 250,410 California sea lions, 9,275 Northern fur seals and 21,650 Northern elephant seals in the course of conducting four research projects over a 3 to 5-year period which will focus on several aspects of California sea lion biology: 1) annual at-sea distribution, foraging behavior, and food habits of adult females, mother-pup activity patterns and weaning behavior; 2) identification of diseases in the population and the effects of diseases on survival of individuals and weaning parameters of pups; 3) assessment of vital parameters; and 4) assessment of population trends and pup mortality: live and dead pup

counts. Research will take place on San Miguel Island, the Channel Islands and haul-out sites along the entire coast of California. Research will be initiated in September 1995.

The permit holder requests authorization to: extend the 3-year project to 5 years; extend the duration of the permit to December 31, 2000; and increase the number of pups by 1500 over the next three field seasons.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 11, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–4049 Filed 2–17–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

February 11, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In exchange of notes, the Governments of the United States and Indonesia agreed to further revise the 1998 Group II and Wool Subgroup limits for integration.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67625, published on December 29, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 11, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on February 18, 1998, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing and exchange of notes between the Governments of the United States and Indonesia:

Category	Twelve-month limit [1]
Group II 201, 218, 220, 222–224, 226, 227, 237, 239pt. [2], 332, 333, 352, 359–O [3], 362, 363, 369–O [4], 400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt. [5], 464, 469pt. [6], 603, 604–O [7], 606, 607, 621, 622, 624, 633, 649, 652, 659–O [8], 666, 669–O [9], 670–O [10], 831, 833–836, 838, 840, 842–846, 850–852, 858 and 859pt. [11], as a group.	90,410,650 square meters equivalent.
Subgroup in Group II 400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt., 464 and 469pt., as a group.	3,010,294 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[3] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020 (Category 359–S) and 6406.99.1550 (Category 359pt.).

[4] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[5] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[6] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[7] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[8] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[9] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[10] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

[11] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–4012 Filed 2–17–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.
TIME AND DATE: 10:00 a.m., Tuesday, February 24, 1998.
PLACE: 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Rule Enforcement review.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 98–4216 Filed 2–13–98; 2:38 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.
TIME AND DATE: 2:00 p.m., Thursday, February 26, 1998.
PLACE: 1155 21st St., N.W., Washington, D.C., 9th Fl. Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Enforcement Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 98–4217 Filed 2–13–98; 2:38 pm]
BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Acquisition and Technology), Defense Information Systems Agency, Defense Technical Information Center.
ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Acquisition and Technology), Defense Information Systems Agency, Defense Technical Information Center (DTIC) announces the proposed extension of a currently approved collection and seeks public comment on the provisions thereof. Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 20, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to: ATTN: DTIC–BCS, Defense Technical Information Center, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22060–6218.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to the above address or call Ms. Diana Roane at (703) 767—8238 or DSN 427–8238.

TITLE, ASSOCIATED FORM, AND OMB NUMBER: Registration for Scientific and Technical Information Services, DD Form 1540, OMB Number 0704–0264.

NEEDS AND USES: The data that the Defense Technical Information Center (DTIC) handles is controlled, either because of distribution limitations or security classification. For this reason, all potential users are required to register for service. The registration procedure is mandated by DOD Directive 5200.21, Dissemination of DOD Technical Information. Federal Government agencies and their contractors are required to complete the DoD Form 1540, Registration for Scientific and Technical Information Services (OMB Number 0704–0264). The contractor community completes a separate DD Form 1540 for each contract or grant and registration is valid until the contract expires.

Affected Public: Businesses or other for-profit, Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Annual Burden Hours: 208.

Number of Respondents: 500.

Responses Per Respondent: 1.

Average Burden Per Response: 25 Minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The DoD Scientific and Technical Information Program (STIP) requires the exchange of scientific and technical information within and among Federal Government agencies and their contractors. The DD Form 1540 serves as a registration tool for Federal Government agencies and their contractors to access DTIC services. The contractors, subcontractors, and potential contractors are required to obtain certification from designated approving officials. Federal Government agencies need certification from approving officials and security offices only when requesting access to classified data. All collected information is verified by DTIC's Registration Branch.

Dated: February 11, 1998.

Patricia L. Toppings,
Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 98–3916 Filed 2–17–98; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Historical Records Declassification Advisory Panel

AGENCY: Department of Defense, Historical Advisory Committee.
ACTION: Notice.

SUMMARY: Notice is hereby given of the upcoming meeting of the Historical Records Declassification Advisory Panel. The purpose of this meeting is to discuss recommendations to the Department of Defense on topical areas of interest that, from a historical perspective, would be of the greatest benefit if declassified. The OSD Historian will chair this meeting.
DATES: Friday, March 6, 1998.
TIME: The HRDAP morning session will be closed to the public from 9 a.m. until 12 p.m. due to the necessity to hear classified and sensitive reports in accordance with 5 U.S.C., Sec 552(c)(1) (1982). The afternoon session will be open to the public from 1 p.m. to 3:30 p.m.
ADDRESSES: The National Archives Building, Room 105, 7th and Pennsylvania Avenue, NW., Washington, DC 20408.
FOR FURTHER INFORMATION CONTACT: Cynthia Kloss, Room 3C281, Office of the Deputy Assistant Secretary of Defense (Intelligence & Security), Office of the Assistant Secretary of Defense (Command, Control, Communications

and Intelligence), 6000 Defense Pentagon, Washington, DC 20301–6000, telephone (703) 695–2289/2686.

Dated: February 11, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–3917 Filed 2–17–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Coalition Warfare

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Coalition Warfare will meet in closed session on March 3–4, 1998 at the US Army War College, Carlisle, Pennsylvania; and on March 24–26, 1998 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will address how best to make future U.S. military capabilities, embodied by JV2010, coalition compatible.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II (1994)) it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: February 11, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–3918 Filed 2–17–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee Notice

AGENCY: I Corps, Fort Lewis, WA.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463) announcement is made of the following committee meeting:

Name of Committee: Yakima Training Center Cultural and Natural Resources Committee—Policy Committee.

Date of Meeting: March 12, 1998.

Place of Meeting: Yakima Training Center Headquarters, New Conference Room, Yakima, Washington.

Time: 1:30 p.m.

Proposed Agenda: Cultural and Natural Resources Management Plan; Post-Implementation Progress Report; Overview of training and land management activities. All proceedings are open.

FOR FURTHER INFORMATION CONTACT: Stephen Hart, Chief, Civil Law, (253) 967–0793.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–4002 Filed 2–17–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Storm Damage Reduction and Beach Erosion Control Project at Fenwick Island, Sussex County, DE

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The action being taken is an evaluation of the alternatives for storm damage reduction and the control of further erosion at Fenwick Island, Delaware. The purpose of any consequent work would be to provide shore property protection and to stabilize the shoreline at a predetermined width.

FOR FURTHER INFORMATION CONTACT: Questions regarding the DEIS should be addressed to Mr. Steve Allen, (215) 656–6559, U.S. Army Corps of Engineers, CENAP–PL–E, Wanamaker Building, 100 Penn Square East, Pennsylvania, PA 19107–3390.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

a. The proposed document evaluates a study area approximately 1.5 miles in length and includes nearshore and offshore areas along the Fenwick Island coastline. This area is subject to daily and storm wave action, which creates severe beach erosion problems.

b. The authority for the proposed project is the resolution adopted by the U.S. Senate Committee on Environment and Public Works dated 23 June 1988.

2. Alternatives

In addition to the no action alternative, the alternatives considered for storm damage reduction and erosion control will fall into structural and non-structural categories. The structural measures being considered for beach erosion control and storm damage reduction include, but will not be limited to bulkheads, seawalls, revetments, offshore breakwaters, groins, beach (berm and dune) restoration/nourishment, beach sills, or combinations thereof. Non-structural measures being considered are development regulations, and land acquisition.

3. Scoping

a. This study is the third of three interim feasibility studies addressing long-term storm damage reduction along the Atlantic Ocean Coast of Delaware from Cape Henlopen to Fenwick Island. The Fenwick Island area was identified in the Reconnaissance Report: Delaware Coast From Cape Henlopen to Fenwick Island (September 1991), as one of the primary areas to be recommended for further study in the feasibility phase.

b. The scoping process is on-going and has involved preliminary coordination with Federal, State, and local agencies. Participation of the general public and other interested parties and organizations will be invited by means of a public notice. Based on the input of these agencies and the interested public, a decision to have a formal scoping meeting will be made.

c. The significant issues and concerns that have been identified include the impacts of the project on aquatic biota, water quality, intertidal habitat, shallow water habitat, cultural resources, and socio-economics.

4. Availability

It is estimated the DEIS will be made available to the public in August 1999.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–4001 Filed 2–17–98; 8:45 am]

BILLING CODE 3710–GR–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Whitney Point Lake Reallocation, Susquehanna River Basin Water Management Feasibility Study and Integrated Environmental Impact Statement

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Baltimore District, U.S. Army Corps of Engineers is initiating the Whitney Point Lake Reallocation, Susquehanna River Basin Water Management Feasibility Study and Integrated Environmental Impact Statement. The purpose of the study is to develop a low flow augmentation plan for the Eastern New York sub-basin (below Whitney Point Lake) in Broome, Cortland, and Tioga Counties, New York. This study will determine the feasibility of reallocating reservoir storage at the U.S. Army Corps of Engineers' Whitney Point Lake for the purpose of aquatic habitat restoration. Specifically, the study will evaluate the aquatic habitat benefits to stream reaches below the reservoir as a result of various low flow augmentation releases. The feasibility study will involve the collection of existing conditions data; identification of problems, needs and opportunities; development and evaluation of plan alternatives; documentation of potential effects; comparison of plan alternatives; and selection of a recommended plan for implementation that is environmentally, economically, and engineeringly sound.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be addressed to Mr. Richard R. Starr, Study Team Leader, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB–PL–P, P.O. Box 1715, Baltimore, Maryland 21203–1715, telephone (410) 962–4633. E-mail address: richard.r.starr@nab02.usace.army.mil.

SUPPLEMENTARY INFORMATION:

1. The Whitney Point Lake Reallocation Study was authorized in Section 721(a) of the Water Resources Development Act (WRDA) of 1986.

2. The study area is located in the Eastern New York sub-basin and is the headwaters to the Susquehanna River. The study will focus on the area around the U.S. Army Corps of Engineers' Whitney Point Lake and approximately 60 miles downstream to Waverly, New York, along the Otselic, Tioughnioga, Chennago, and Susquehanna Rivers. The study area has experienced continued impacts to aquatic habitat during low flow periods. Specifically, the physical aquatic habitat within the study area's riverine channels fluctuates throughout the river from deep, free flowing conditions during high and normal flow periods, to much shallower, restricted conditions during low-flow conditions or times of dewatering. It is the dewatered habitats, specifically riffles and back water areas, for which this study will be addressing. Aquatic habitat, under extended periods of these conditions, have been stressed, and established benthic and other small fish species populations have been impacted. Consequently, this condition has resulted in an impact on other riverine species populations higher in the food chain. In addition, riverine water quality problems have been exacerbated by low-flow conditions, further stressing the fishery resource.

3. In July 1997, the U.S. Army Corps of Engineers, Baltimore District and the Susquehanna River Basin Commission (SRBC) executed a feasibility cost-sharing agreement for the Whitney Point Lake Reallocation, Susquehanna River Basin Water Management Feasibility Study. The planning goals of this study are to restore and protect water flows that can support healthy aquatic and riparian ecosystems and to promote environmental awareness and values necessary for the continual restoration of a stressed ecosystem. To achieve these goals the Corps and SRBC will: (1) conduct hydraulic, hydrologic, economic, cultural, and environmental analyses of the study area; (2) identify low flow conditions and available water storage in Whitney Point Lake; (3) select a range of low flow conditions that can be enhanced by the available reservoir storage; (4) prioritize low flow release scenarios for each reallocation alternative; (5) evaluate low flow augmentation release scenarios for each reallocation alternative; (6) identify which low flow release scenario, for each reallocation alternative, that has the greatest potential for increased habitat benefits; (7) conduct trade-off analysis; and (8) select the recommended plan. Three products will be produced upon completion of this study: (1) a feasibility report with an integrated environmental impact statement; (2) 65-percent complete designs; and (3) a Instream Flow Incremental Methodology model.

4. The feasibility study is in line with the Susquehanna River Basin Commission's ultimate goal of developing a Susquehanna River basinwide water management plan under the "pooled water" concept. The "pooled water" concept is based on the development of a reservoir water release system with water storage located in various reservoirs throughout the entire Susquehanna basin. The intent is to release small amounts of water from more than one reservoir to meet water use needs (environmental and human) while minimizing potential impact to reservoir resources. As each individual sub-basin water management plan is developed and implemented, the management plan becomes more effective in meeting basinwide water use needs.

5. The decision to implement these actions will be based on an evaluation of the probable impact of the proposed activities on the public. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal will be balanced against its reasonably foreseeable costs. The Baltimore District is preparing a DEIS that will describe the impacts of the proposed reallocation on environmental and cultural resources in the study area and the overall interest's of the public. The DEIS will be in accordance with NEPA and will document all factors that may be relevant to the proposal, including the cumulative effects thereof. Among these factors are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, recreation, water supply and conservation, water quality, energy needs, safety, and the general needs and welfare of the people. If applicable, the DEIS will also apply guidelines issued by the U.S. Environmental Protection Agency, under the authority of Section 404(b)(1) of the Clean Water Act of 1977 (Public Law 95–217).

6. The public involvement program will include workshops, meetings, and other coordination with interested private individuals and organizations, as well as with concerned Federal, state, and local agencies. Coordination letters and newsletters have been sent to appropriate agencies, organizations, and individuals on an extensive mailing list. Additional public information will be provided through print media, mailings, and radio and television announcements.

7. In addition to the Corps of Engineers and the Susquehanna River

Basin Commission, other participants that will be involved in the study and DEIS process includes the following: U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service; U.S. Forest Service; U.S. Geological Survey; Natural Resource Conservation Service; and New York Department of Environmental Conservation. The Baltimore District invites potentially affected Federal, state, and local agencies, and other organizations and entities to participate in this study.

8. The DEIS is tentatively scheduled to be available for public review in April of 2000.

Dr. James F. Johnson,

Chief, Planning Division.

[FR Doc. 98–4000 Filed 2–17–98; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 20, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Title I State Plan for Vocational Rehabilitation Services and Title VI-Part C Supplemental for Supported Employment Services.

Frequency: Annually.

Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden: Responses: 82; Burden Hours: 1,002,050.

Abstract: The Rehabilitation Act of 1973, as amended, and its implementing regulations at 34 CFR parts 361 and 363 require each of the 82 State vocational rehabilitation agencies to submit a three-year State plan for vocational rehabilitation services and a supplement to the plan for supported employment services. Program funding is contingent on Departmental approval of the plan and its supplement.

Dated: February 11, 1998.

Linda Tague,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

[FR Doc. 98–3953 Filed 2–17–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Public Hearings on a Comprehensive National Energy Strategy

AGENCY: Office of Policy and International Affairs, U.S. Department of Energy.

ACTION: Notice of public hearing.

SUMMARY: On January 15, 1998 the Department of Energy published **Federal Register** Notice: 63 FR 2371 announcing a series of public hearings to solicit input from state and local officials, utility representatives, industry representatives, public interest groups and other interested parties in the development of a statutorily required national energy policy plan, hereinafter referred to as the "Comprehensive National Energy Strategy" or "CNES." This is a *supplemental notice* to provide additional information on the hearing locations, mechanisms, (i.e. website address and fax numbers), for obtaining a copy of the draft Comprehensive National Energy Strategy and deadline for public comments. The CNES is based on a framework of goals, objectives, and strategies that will enable the Nation to sustain an economically competitive, environmentally responsible, and secure energy sector into the next century. The Department also invites interested parties to submit written comments for use in developing the CNES.

DATES AND LOCATIONS:

Houston, Texas. February 12, 1998. 1:00 p.m. to 5:00 p.m., George Brown Convention Center, 1001 Avenida de las Americas, Hearing Chair—Elizabeth A. Moler, Deputy Secretary of Energy

Davis, California. February 13, 1998. 8:30 a.m. to 12:30 p.m., University of California at Davis, University Club Building, Club Room One, Hearing Chair—Ernest J. Moniz, Under Secretary of Energy

Washington, D.C. February 19, 1998. 1:00 p.m. to 5:00 p.m., U.S. Department of Energy—Main Auditorium, 1000 Independence Ave. SW., Hearing Chair—Federico F. Peña, Secretary of Energy

ADDRESSES: Written comments may be sent to the U.S. Department of Energy,

ATTN: CNES-Hearings (PO–4), 1000 Independence Avenue SW, Room 7B–044, Washington, D.C. 20585 or by fax to 202–737–0219 or 202–586–4025 or via the INTERNET at http://www.eren.doe.gov. COMMENTS MUST BE SUBMITTED NO LATER THAN FEBRUARY 27, 1998.

FOR FURTHER INFORMATION CONTACT: For questions regarding the public hearings, participation or written submissions, please visit the website at http://www.eren.doe.gov/nes.html or send fax inquiries to CNES-HEARINGS at 202–737–0219 or 202–586–4025.

SUPPLEMENTARY INFORMATION: Section 801 of the Department of Energy Organization Act of 1977 requires the President to submit a National Energy Policy Plan to Congress. The President plans to submit a National Energy Policy Plan to Congress in 1998. Section 801 also states that the President shall "seek the active participation by regional, State, and local agencies and instrumentalities and the private sector through public hearings in cities and rural communities and other appropriate means to insure that the views and proposals of all segments of the economy are taken into account in the formulation and review of such proposed Plan."

A copy of the proposed Comprehensive National Energy Strategy follows this notice.

The hearings are expected to elicit public input on any aspect of the framework, including suggestions for additional detail to accompany the strategies. The five basic goals in the proposed CNES are:

- Goal I. Improve the efficiency of the energy system—making more productive use of energy resources to enhance overall economic performance while protecting the environment and advancing national security.
- Goal II. Ensure against energy disruptions—protecting our economy from external threat of interrupted supplies or infrastructure failure.
- Goal III. Promote energy production and use in ways that reflect human health and environmental values—improving our health and local, regional, and global environmental quality.
- Goal IV. Expand future energy choices—pursuing continued progress in science and technology to provide future generations with a robust portfolio of clean and inexpensive energy sources.
- Goal V. Cooperate internationally on global issues—developing the means to address global economic, security, and environmental concerns.

Participants wishing to speak at the hearings must register on-site. The speaker registry will open one-half hour before each hearing. Although it is not necessary to confirm your attendance in advance, you may notify the Department of your intention to participate by fax or by mail at the address printed above.

Issued in Washington D.C. on February 9, 1998.

Robert W. Gee,

Assistant Secretary for Policy and International Affairs, U.S. Department of Energy.

[FR Doc. 98–3992 Filed 2–17–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation.

DATES: Wednesday, March 4, 1998, 6:00 p.m.–9:30 p.m.

ADDRESSES: Ramada Inn, 420 South Illinois Avenue, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Marianne Heiskell, Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–0314.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

A business meeting will be conducted with no technical presentation provided.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Marianne Heiskell at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments near the beginning of the meeting.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and 9:00 am and 1:00 pm on Saturday, or by writing to Marianne Heiskell, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–0314.

Issued at Washington, DC on February 11, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–3991 Filed 2–17–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1677–000]

Arizona Public Service Company, Notice of Filing

February 11, 1998.

Take notice that on February 2, 1998, Arizona Public Service Company (APS), tendered for filing revised Service Agreements providing Network Integration Transmission Service under APS' Open Access Transmission Tariff to the Arizona Public Service Company—Merchant Group and Ajo Improvement Company.

A copy of this filing has been served on APS' Merchant Group, AJO Improvement Company and the Arizona Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18

CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4024 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1678–000]

Black Hills Corporation; Notice of Filing

February 11, 1998.

Take notice that on February 2, 1998, Black Hills Corporation, which operates its electric utility business under the assumed name of Black Hills Power and Light Company (Black Hills), tendered for filing an executed Form Service Agreement with Colorado Springs utilities.

Copies of the filing were provided to the regulatory commission of each of the states of Montana, South Dakota, and Wyoming.

Black Hills has requested that further notice requirement be waived and the tariff and executed service agreements be allowed to become effective January 12, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4025 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1675–000]

Cinergy Services, Inc.; Notice of Filing

February 11, 1998.

Take notice that on January 30, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff entered into between Cincergy and MidAmerican Energy Company (MidAmerican).

Cincergy and MidAmerican are requesting an effective date of one day after the filing of this Power Sales Service Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4022 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–2–000]

CLX Energy, Inc.; Notice of Petition for Adjustment

February 12, 1998.

Take notice that on February 9, 1998, CLX Energy, Inc. (CLX), successor in interest to Calvin Exploration, Inc. (Calvin), filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting to be relieved of its obligation to refund to Panhandle Eastern Pipe Line Company (Panhandle) the Kansas ad valorem tax refunds owed by CLX's royalty interest, overriding royalty interest, and other working interest owners, otherwise required by the Commission's September 10, 1997 order in Docket Nos. GP97–3–000, GP97–4–000, GP97–5–000, and RP97–369–000.[2] CLX also requests Commission authorization to amortize its own refund obligtion over a 5-year period. CLX's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission's September 10 order also provided that first sellers could, with the Commission's prior approval, amortize their Kansas ad valorem tax refunds over a 5-year period, although interest would continue to accrue on any outstanding balance.

CLX states that it became successor in interest to Calvin as a result of a March, 1993 merger with Calvin. CLX further states that Panhandle made a total of $57,731.80 in Kansas ad valorem tax distributions to Calvin, of which $12,956.03 was distributed to Calvin and $38,868.10 to the other working interest owners. Royalty owners received $5,503.83, and overriding royalty owners received $403.84.

CLX states that it notified the various interest owners of their respective refund obligations, but doubts that anyone will pay the specified amount by the March 9, 1998 deadline for making refunds. CLX also asserts that it is not in a financial position to pursue litigation against the other interest owners, and that paying the entire refund (which is approaching $200,000) would be financially devastating to CLX.

CLX's petition includes a copy of Securities and Exchange Commission Form 10–Q for the quarter ending December 31, 1997. CLX argues that it would not be fair, equitable, or reasonable to require CLX to pay the entire refund amount when it only received the benefit of a small portion

[1] 15 U.S.C. § 3142(c) (1982)

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 94–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

of the total Kansas ad valorem tax reimbursements that were paid to Calvin by Panhandle. Therefore CLX requests: (1) to be relieved of its obligation to refund the Kansas ad valorem tax refunds owned by CLX's royalty interest, overriding royalty interest, and other working interest owners; and (2) Commission authorization to amortize its own refund obligation over a 5-year period.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rule of Practice and Procedure (18 CFR 394.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participant as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4017 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL94–10–000 and QF86–177–001; Docket Nos. EL94–62–000 and QF85–102–005; Docket Nos. EL96–1–000 and QF86–722–003]

Order Granting Requests for Declaratory Order in Part and Denying Requests for Declaratory Order in Part, Denying Requests for Revocation of QF Status, and Announcing Policy Concerning the Regulatory Consequences and Remedies for Sales in Excess of Net Output

Issued February 11, 1998.

Connecticut Valley Electric Company, Inc. v. Wheelabrator Claremont Company, L.P., Wheelabrator Environmental Systems Inc., Signal Environmental Systems, Inc., SES Claremont Company L.P., NH/VT Energy Corp., and Wheelabrator New Hampshire Inc., Carolina Power & Light Company v. Stone Container Corporation; Niagara Mohawk Power Corporation v. Penntech Papers, Inc.

I. Introduction

This order addresses three cases currently before the Commission: *Connecticut Valley Electric Company, Inc.* v. *Wheelabrator Claremont Company, L.P., et al.*, Docket Nos. EL94–10–000 and QF86–177–001; *Carolina Power & Light Company* v. *Stone Container Corp.*, Docket Nos. EL94–62–000 and QF85–102–005; and *Niagara Mohawk Power Corporation* v. *Penntech Papers, Inc.*, Docket Nos. EL96–1–000 and QF86–722–003. The three cases raise the following issues: (1) Whether a qualifying facility (QF), under the Public Utility Regulatory Policies Act of 1979 (PURPA) and the Commission's PURPA regulations, may sell its gross output, as opposed to its net output (gross output less station power needs and line loses to the point of interconnection), to the utility-purchaser; and (2) if not, what are the regulatory consequences and remedies if a facility sells more output than is permissible?

In this order the Commission:

(1) Reiterates its 1991 determination that a QF may not sell in excess of its net output;

(2) Announces a Commission policy regarding the regulatory consequences of past and future sales by QFs in excess of net output; and

(3) Finds that revocation of QF status is not warranted in the three cases addressed in this order.

II. Summary

The three cases arise because of a seeming conflict between a Commission regulation implementing PURPA and Commission precedent under PURPA. The Commission has a regulation called the "simultaneous buy-sell" rule (18 C.F.R. § 292.303(a)-(b) (1997)), which, the QFs argue, entities QF facilities to sell their gross output, and simultaneously buy station power needs from the utility-purchasers of QF power. A number of State regulatory authorities have drafted standard QF power sales contracts based on the apparent belief that the simultaneous buy-sell rule permits QFs to sell gross output to utilities and purchase back station power needs (often at a lower rate).

The utility-purchasers of QF power point to Commission precedent in stating that QFs may only sell net output. They argue that under the Commission precedent, a QF may only sell its net output; a facility that sells more than its net output cannot satisfy the ownership requirements for QF status under sections 3(17) and (18) of the Federal Power Act (FPA) and section 292.206 of the Commission's regulations unless the incremental capacity is *solely* from cogeneration or small power production facilities. *See Turners Falls Limited Partnership,*, 55 FERC ¶ 61,487 at 62,668 & n. 24 (1991) (*Turners Falls*).

The initial issue raised by the three cases is whether the QFs and the State regulatory authorities correctly have interpreted the simultaneous buy-sell rule in light of Commission precedent. In addressing this initial issue one of the questions that arises is the period of time over which a facility's output should be calculated. This question arises because a generation facility's actual output varies over time due to a number of external factors including temperature, humidity, and fuel quality. The QFs have argued that the Commission should not measure actual net output on a continuous basis but should allow QF facilities to sell up to their net capacity at any time.[1] This is because, if a QF buys back its station power needs, it is possible for the QF at times to sell more than its actual net output but still sell less than its certified net capacity. As a result, the period over which net output is measured will affect how much energy a QF may sell.

The second issue raised is what are the regulatory consequences and remedies if the Commission finds that a facility has sold more output than is permissible. This issue involves whether such a facility should be decertified as a PURPA QF. In addition, it presents how the Commission should calculate the rate under the FPA during any period of non-compliance and whether such rates should be applicable to all of the facility's sales during the period of non-compliance or just the incremental amount of the sale above the permissible level. Finally, we must consider whether, and if so under what circumstances, to revoke or permit the continuing applicability of PURPA regulatory exemptions (*see* 18 CFR §§ 292.601, .692 (1997)) during the period of noncompliance. A related question is whether to reform QF contracts with utilities for the sale of output above permissible levels.

Finally, there is an issue as to the effective date of any decision, first with respect to the three case-specific disputes before the Commission, and then with respect to any other QFs that may be selling in excess of permissible levels.

In this order, we announce that, as a legal matter, a QF may not sell in excess

[1] A QF's certified net capacity is the maximum net output of the facility which can be achieved safely and reliably under the most favorable conditions likely to occur over a period of several years.

of its net output. However, because of a lack of clarity in the Commission's simultaneous buy-sell rule, the Commission will not revoke the QF status of any facility which made sales in excess of net output pursuant to a contract entered into on or before the date of issuance of *Turner Falls*. We pick this date because that decision removed any ambiguity concerning the effect of such sales on a facility's QF status. We also find that a facility's net output should be measured on an hour-by-hour basis. We announce a policy regarding the regulatory consequences of past and future sales in excess of net output. Finally, in applying the legal and policy determinations announced in this order to the three cases pending before the Commission, we find that QF revocation is not warranted in any of the pending cases.

III. Background of Pending Cases

The three cases now before the Commission all involve allegations by a purchasing electric utility that a Commission-certified QF has made sales in excess of its net output and that, therefore, the QF no longer meets the ownership requirements for QF status contained in FPA section 3(17) (C) (ii) (for a qualifying small power production facility) and FPA section 3(18) (B) (ii) (for a qualifying cogeneration facility). Those sections of the FPA were added by PURPA. They provide that QFs must be owned "by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities)." [2]

The three QFs with cases now before us claim, notwithstanding Commission precedent on the subject discussed below, that the Commission's rules permit the sale of gross output. They cite to the "simultaneous buy-sell" rule. Subsections 292.303(a) and (b) of our regulations provide as follows:

> Electric utility obligations under this subpart.
>
> (a) *Obligation to purchase from qualifying facilities.* Each electric utility shall purchase, in accordance with § 292.304 [3], any energy and capacity which is made available from a qualifying facility:
>
> (1) Directly to the electric utility; or
>
> (2) Indirectly to the electric utility in accordance with paragraph (d) of this section.
>
> (b) *Obligation to sell to qualifying facilities.* Each electric utility shall sell to any qualifying facility, in accordance with § 292.305 [4], any energy and capacity requested by the qualifying facility.

Below we discuss the particular facts and arguments raised in each of the cases.

A. Connecticut Valley Electric Company, Inc. v. *Wheelabrator Claremont Company, L.P., et al. (Docket Nos. EL94–10–000 and QF86–177–001)*

Connecticut Valley Electric Company, Inc. (Connecticut Valley) filed a complaint against Wheelabrator Claremont Company, L.P. (Claremont).[5] Claremont owns and operates a biomass-fueled small power production facility in Claremont, New Hampshire. The order granting certification of the facility as a QF noted that it had an electric power production capacity of 4.5 MW. *See Signal Environmental Systems, Inc.—Claremont*, 34 FERC ¶ 62,212 (1986). Claremont's partners are all wholly-owned subsidiaries of Wheelabrator Environmental Systems, Inc., the successor in interest to Signal Environmental Systems, Inc.

The Claremont facility produces power for sale to Connecticut Valley using solid waste as an energy source. The facility began commercial operation in March 1987 and, pursuant to a Power Purchase Agreement approved by the New Hampshire Public Utilities Commission (New Hampshire Commission), has sold its entire output to Connecticut Valley. In addition, the Claremont facility has purchased sufficient electric energy from Connecticut Valley to serve its station power needs.

In its complaint, Connecticut Valley alleges that Claremont has been selling its entire gross output to Connecticut Valley, while purchasing back station power needs. Connecticut Valley claims that Claremont cannot operate as a QF in the manner specified in the Power Purchase Agreement. Connecticut Valley claims that it became aware in May 1993, that Claremont's sale of the facility's gross output of 4.5 MW to Connecticut Valley, rather than its net output of 3.9 MW, violated Commission precedent. For this reason, Connecticut Valley seeks revocation of the qualifying status of the Claremont facility, recision or reformation of the Power Purchase Agreement, a determination of the just and reasonable rates for what it claims is a wholesale power sale subject to this Commission's jurisdiction under the FPA, and refunds with interest. In the alternative, Connecticut Valley asks the Commission to reform the power sales contract to allow Claremont to sell only the net electrical output of the facility, and asks that Claremont be ordered to refund with interest all revenues it received for the sale of the incremental output between its net and gross output.[6]

Notice of Connecticut Valley's complaint was published in the **Federal Register**, 58 Fed. Reg. 64,301 (1993), with comments, protests, or motions to intervene due on or before January 5, 1994. Timely motions to intervene and notices of intervention were filed by Granite State Hydropower Association, Sullivan County Regional Refuse Disposal District and the Southern Windsor/Windham Counties Solid Waste Management District (collectively, the Districts), the New Hampshire Commission, National Independent Energy Producers, Southern California Edison Company, the Public Utilities Commission of the State of California, and the Center for Energy Efficiency and Renewable Technologies. An untimely motion to intervene was filed by the City of Vernon, California.

In its answer, Claremont admits that it sells its entire (gross) output to Connecticut Valley. It states that this arrangement is required by the terms of the Power Purchase Agreement and was approved by the New Hampshire Commission in settlement of litigation.[7] Claremont states that the simultaneous purchase and sale arrangement is fully consistent with this Commission's "simultaneous buy-sell" rule. Claremont points to the preamble to the Commission's rules implementing PURPA for the proposition that the

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[2] These sections are the basis of the Commission's QF ownership criteria codified in section 292.206 of the Commission's regulations. Section 292.206(a) specifies the Commission's general QF ownership rule:

> A cogeneration facility or small power production facility may not be owned by a person primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities).

18 CFR § 292.206(a) (1997).

[3] 18 CFR § 292.304 (1997) provides for rates for QF sales to utilities.

[4] 18 CFR § 292.305 (1997) provides for rates for utility sales to QFs.

[5] The complaint was also filed against affiliates of Claremont, as well as against Signal Environmental Systems, Inc. (the original applicant for QF status for the facility) and its affiliates.

[6] Specifically, Connecticut Valley states that for the sale of the incremental output, Claremont should refund the difference between the avoided cost rate at which Claremont makes sales to Connecticut Valley, and the retail rate at which Claremont purchases station power.

[7] On February 23, 1983, Claremont's predecessor in interest, Connecticut Valley and the staff of the New Hampshire Commission entered into a settlement agreement which in part provided that Connecticut Valley would "purchase for twenty (20) years *all* energy and capacity of the [Facility] at a price of 9¢ per kilowatt hour. * * *" (emphasis added). The settlement agreement (attached as Appendix 3 to the complaint) was approved by the New Hampshire Commission on March 2, 1983. The Power Purchase Agreement (attached as Appendix 4 to the complaint) subsequently was executed by the parties on December 12, 1984.

Commission intended to allow the sale of a QF's gross output when it promulgated the simultaneous buy-sell rule. Claremont claims that it is entitled to rely on the simultaneous buy-sell rule until it is amended or rescinded by the Commission. Claremont further claims that amendments to Commission regulations may not be retroactive.

Claremont also claims that the arrangement is fully consistent with the New Hampshire Limited Electrical Energy Producers Act (LEEPA), which implements PURPA in New Hampshire, as well as the New Hampshire Commission's orders implementing PURPA and LEEPA.

Claremont claims that it, as well as many other developers, relied on the Commission's simultaneous buy-sell rule in developing QF projects. Claremont states that substantial inequities would result if the Commission were to require Claremont to operate in a manner different from what had been planned when it contracted with Connecticut Valley. It notes that revocation of its QF status would harm the sanitary districts which supply fuel (solid waste) to the facility. It also notes that Connecticut Valley's petition, if granted, would have the effect of jeopardizing the QF status of other facilities in New Hampshire that, pursuant to other power sales contracts approved by the New Hampshire Commission, sell their gross output pursuant to simultaneous buy/sell provisions.

B. Carolina Power & Light Company v. *Stone Container Corporation (Docket Nos. EL94–62–000 and OF85–102–005)*

Carolina Power & Light Company (CP&L) filed a complaint and motion for revocation of QF status against Stone Container Corporation (Stone Container). Stone Container owns and operates a topping-cycle cogeneration facility located at Stone Container's linerboard mill and manufacturing plant in Florence, South Carolina. The facility contains one steam generator and one extraction/condensing steam turbine-generator. The extracted steam is used in the linerboard manufacturing process. The primary fuel for the facility is pulverized coal, supplemented with wood waste.

In its initial application for certification, Stone Container identified its net power capacity as 64.5 MW. Stone Container stated that the gross power production capacity of the facility was 68 MW and the auxiliary power requirements would be 3.5 MW. The Commission granted Stone Container's application for QF status. *See Stone Container Corporation*, 31 FERC ¶ 62,036 (1985). Subsequently, Stone Container sought recertification for a QF with an amended capacity (74.8 MW net capacity, 79 MW gross capacity, 4.2 MW auxiliary load). The Commission granted recertification. *See Stone Container Corporation*, 55 FERC ¶ 62,205 (1991).

The electricity generated by the Stone Container facility is sold to CP&L pursuant to a 20-year "Electric Power Purchase Agreement" that was executed on December 17, 1984, and was subsequently amended on March 9, 1989, and on October 14, 1992. (The Power Purchase Agreement and the amendments are attached to the complaint as Attachment 1.)

Paragraph 10(b) of the original agreement gave Stone Container the option to switch to a "buy-all/sell-all" mode of operation. In the second amendment to the agreement, Stone Container exercised its option to switch to the buy-all/sell-all mode of operation.[8]

CP&L claims that the switch to the buy-all/sell-all mode of operation, "[b]ecause of the configuration of the interconnection between CP&L and the Stone Container facility" (Complaint at 4), has resulted in Stone Container's selling CP&L its gross output from the facility. CP&L states that the switch to the buy-all/sell-all operation has resulted in Stone Container's losing its QF status and becoming a public utility subject to this Commission's rate regulation under the FPA.

Notice of CP&L's complaint and motion for revocation was published in the Federal Register, 59 Fed. Reg. 24,491 (1994), with comments, protests or motions to intervene due on or before June 2, 1994. Timely motions to intervene were filed by Westinghouse Electric Corporation, Gelco Corporation, Granite State Hydropower Association, and Claremont. Additionally, a number of late-filed letters containing additional comments were filed. Motions to strike some of the motions to intervene were filed, and answers to those motions were filed. Finally, motions to hold the matter in abeyance, as well as a motion to expedite, were filed.

In its answer to CP&L's complaint and motion for revocation, Stone Container states that it *never* has sold power to CP&L in excess of the certified qualifying capacity of the facility. Stone Container states that it has thus always been in compliance with the requirements for QF status, as interpreted by the Commission in *Turners Falls* and related PURPA cases. Stone Container states that the essence of CP&L's complaint is that Stone Container has sold in excess of what Stone Container refers to as its "actual net output." Stone Container urges that CP&L's interpretation of *Turners Falls* is illogical because it would attribute no meaning to the certified qualifying capacity of a facility.

Stone Container further urges that its mode of operation since 1991 has been consistent with this Commission's "simultaneous buy-sell" rule. It also states that CP&L's reference to the configuration of the interconnection is misguided, because CP&L is contractually entitled to control the configuration of the interconnection.

Finally, Stone Container argues that if it has not complied with the Commission's QF regulations in any respect, the Commission should exercise its equitable powers to grant waiver of any such violation. In this regard, Stone Container points out that any waiver would be for a limited time (beginning with the date of commencement of the buy-all/sell-all mode of operation). Stone Container alleges that CP&L should be equitably estopped from asserting that the facility has lost its QF status because CP&L proposed the simultaneously "buy-all/sell-all" provision in the contract (which Stone Container exercised) and understood what the mode of operation entailed. Stone Container further argues that any non-compliance with the Commission's regulations is the result of the Commission's departure from its PURPA regulations and precedents on which Stone Container reasonably relied.

C. Niagara Mohawk Power Corporation versus Penntech Papers, Inc. (Docket Nos. EL96–1–000 and OF86–722–003)

Niagara Mohawk Power Corporation (Niagara Mohawk) filed a petition for declaratory order revoking the QF status of the cogeneration facility operated by Penntech Papers, Inc. (Penntech Papers).[9] The Penntech Papers' facility is located in Johnsonburg, Pennsylvania. Extraction steam from the facility is used to supply the pulp and paper mill process requirements of Penntech Papers. The facility originally was certified as having 33.433 MW (net) capacity. *See Penntech Papers, Inc.*, 36

[8] Regardless of the mode of operation, paragraph 33(e) provides that the maximum amount which can be sold to CP&L is 68 MW.

[9] The Penntech Papers facility is now owned by Williamette Industries, Inc. (Willamette), which purchased the Penntech Papers plant and assumed the rights and obligations under the Power Purchase Agreement with Niagara Mohawk. While Penntech Papers is now an operating division of Williamette, we will refer to Penntech Papers as the facility owner in this order.

FERC ¶ 62,073 (1986). Subsequently, Penntech Papers sought recertification to reflect, among other things, an increase in generating capacity. The Commission granted recertification to reflect the increase in capacity, except to the extent that Penntech Papers proposed to sell its entire capacity (52 MW) to Niagara Mohawk and purchase its entire auxiliary load (5.1 MW) from West Penn Power Company. *See Penntech Papers, Inc.*, 48 FERC ¶ 61,120 (1989).[10]

Power from the Penntech Papers facility is transmitted over a 7-mile 115 kV line to the Ridgeway substation of Pennsylvania Electric Company (Penelec). The power is then wheeled by Penelec to Niagara Mohawk. Because Niagara Mohawk informed Penntech Papers that it would not "dynamically" schedule deliveries from Penntech Paper's facility,[11] but would require that actual deliveries from the facility equal Penntech Papers' previously scheduled deliveries with Niagara Mohawk on an hour-by-hour basis, the transmission agreement provides that Penelec will purchase from Penntech Papers inadvertent excess generation produced by the facility. The transmission agreement also provides that Penelec will sell Penntech Papers "make-up" power for delivery to Niagara Mohawk at times of inadvertent shortfalls or reductions in facility output.

According to Niagara Mohawk, this provision for the purchase and resale of make-up power by Penntech Papers means that Penntech Papers is selling Niagara Mohawk power from sources other than cogeneration or small power production facilities, and thus cannot satisfy the ownership requirements for QF status under the holding of *Turners Falls*.

[10] On February 8, 1993, Penntech Papers filed a notice of self-recertification to reflect its "as built" description of the facility. In its notice of self-recertification, Penntech Papers stated that the maximum rated output of the facility would be 57,800 kW/hr. and that average power generation, net of station power needs was expected to be 45,000 kW/hr. (or 394,200 MWH per year).

[11] Dynamic scheduling provides the metering, telemetering, computer software, hardware, communications, engineering and administration required to allow remote generators to follow closely the moment-to-moment variations of a local load. In effect, dynamic scheduling electronically moves load out of the control area in which it is physically located and into another control area. *See* Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 at 31,709–10 (1996), *order on reh'g*, Order No. 888–A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 at 30,235–36 (1997), *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997) (Open Access Rule).

Notice of Niagara Mohawk's petition for declaratory order revoking QF status was published in the **Federal Register**, 60 Fed. Reg. 53,917 (1995), with comments, protests or motions to intervene due on or before November 17, 1995.

A notice of intervention was filed by the New York Public Service Commission. Timely motions to intervene were filed by Penelec and by Willamette, on behalf of Penntech Papers.

In its answer to Niagara Mohawk's petition,[12] Penntech Papers states that Niagara Mohawk's petition rests on significant mistakes of fact. Penntech Papers argues that Niagara Mohawk's petition represents an effort to abrogate its contract with Penntech Papers as part of its ongoing effort to renegotiate contracts with the many QFs from which it purchases.

Penntech Papers states that it has adhered to the Commission's directive in its recertification order (48 FERC at 61,424) that it may not sell the gross output of its facility. Penntech Papers states that the cogeneration facility is an integral part of its paper mill, and not a "PURPA machine." Penntech Papers states that it uses a portion of the output from its generating turbine to serve auxiliary loads (station power), uses another portion to serve loads associated with its paper mill, and sells the remainder to Niagara Mohawk at a rate of 6 cents per kilowatt hour. Penntech Papers states (at 8) that "[f] or [Niagara Mohawk's] convenience, the portion of the net cogeneration output that is sold to [Niagara Mohawk] is 'scheduled' through Penelec, the transmitting utility." In addition, under the terms of the transmission and scheduling agreement with Penelec, Penntech Papers is required to pay Penelec, as line losses, three percent of the power it delivers to Penelec.

Penntech Papers states that although its net output undeniably exceeds the amount of power sold to Niagara Mohawk, the *de minimis* amount of "inadvertent" power advanced by Penelec to Penntech Papers (amounting to less than 1.96 percent of the scheduled sales to Niagara Mohawk in 1993 and 0.69 percent of the scheduled sales to Niagara Mohawk in 1994) is done to balance the power output schedule with the amount of power wheeled and is advanced at the insistence, and for the benefit, of Niagara Mohawk. Penntech Papers argues that the inadvertent power sales to Niagara Mohawk should not be a basis to decertify Penntech Papers' QF status. Penntech Papers states that this Commission has approved the transmission agreement under which Penelec advances power to Penntech Papers for inadvertent energy differentials. Penntech Papers further states that there would be no inadvertent energy differentials had Niagara Mohawk accepted dynamic scheduling.[13]

Penntech Papers further states that the power purchase agreement between Penntech Papers and Niagara Mohawk specifically recognizes that Penntech Papers' deliveries to Penelec would not exactly match the scheduled deliveries, and that Penelec would provide make-up power. Penntech Papers argues that it receives no benefit, and indeed loses money, from the make-up arrangement. Penntech Papers further argues that the provision for the sale of inadvertent excess generation and purchase of make-up power tends to even out over time, so that there is no continuing sale of power produced by a facility other than a QF.

[12] The answer was filed by Willamette on behalf of Penntech Papers.

[13] There is no requirement in our PURPA or open access regulations that an electric utility purchasing a QF's power do so under a dynamic scheduling arrangement.

IV. Discussion

A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR § 385.214 (1997), the notices of intervention and the timely, unopposed motions to intervene serve to make the entities which filed them parties to the proceedings in which they intervened. Further, we find good cause to grant all of the untimely or opposed motions to intervene, and will consider all supplemental pleadings, in light of the interests they raise and in order to complete all of the arguments of the parties.

B. Statutory and Regulatory Framework

1. Statute and Regulations

As noted above, in FPA sections 3(17)(C)(ii) and 3(18)(b)(ii) Congress provided that QFs must be:

> [O]wned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities) * * *.

16 U.S.C. §§ 796(17)(C)(ii) and (18)(B)(ii) (1994). Section 292.206(a) of the Commission's regulations, 18 CFR § 292.206(a) (1997), tracks the statutory language almost verbatim. The current cases present the question of whether the sale of more than net output violates

the statutory and regulatory criteria for QF status.

2. Commission Precedent Concerning OF Output

In 1981, the year after the Commission promulgated its QF regulations, the Commission, in *Occidental Geothermal, Inc.*, 17 FERC ¶ 61,231 (1981) (*Occidental*), first addressed an issue relevant to the one now before us when it was required to address the "power production capacity" of a facility. The Commission determined that the power production capacity of a facility is:

> [T]he maximum net output of the facility which can be safely and reliably achieved under the most favorable operating conditions likely to occur over a period of years. The net output of the facility is its send out after subtraction of power used to operate auxiliary equipment in the facility necessary for power generation (such as pumps, blowers, fuel preparation machinery, and exciters) and for other essential electricity uses in the facility from the gross generator output.

17 FERC at 61,445.[14]

While, in hindsight, it seems clear that the Commission in *Occidental* did not intend to permit a QF to sell in excess of its net output (*i.e.* its power production capacity), the issue in that case was more limited; whether the proposed facility would exceed the 80 MW limit for qualifying small power production facilities set forth in section 292.204(a).[15]

Four years later, in 1985, the Commission again had occasion to address qualifying facility output issues. In *Power Developers, Inc.*, 32 FERC ¶ 61,101 at 61,276 (1985), *reh'g denied*, 34 FERC ¶ 61,136 (1986) (*Power Developers*),[16] the application raised the issue of whether "the qualifying capacity of the facility [is] gross or net electric power production capability?" 32 FERC at 61,275.

The Commission answered net. The Commission stated that were a QF to sell its gross output to a utility at the utility's avoided cost and purchase power for internal use from the utility, it would, in essence, be selling more power than the facility, standing alone, is capable of delivering. In other words, the QF would be receiving avoided cost prices for an amount of power that it does not enable the purchasing utility to avoid generating. 32 FERC at 61,276. The Commission stated that such a result would be inconsistent with the requirement of PURPA and the Commission's implementing regulations that utilities (and their ratepayers) be in the same financial position as if they had not purchased QF power. *Id.* (citing Order No. 69, FERC Stats. & Regs., Regulations Preambles 1977–1981 ¶ 30,128 at 30,871). However, even though the Commission in *Power Developers* found implicit in its *Occidental* discussion that QF sales are limited to net output, the Commission still did not reach the specific question of whether a QF that sold in excess of net output would be found to violate the "primarily engaged" ownership limitation in the statute and our regulations.

Finally, in 1991, the Commission addressed this issue in its order in *Turners Falls*. In that order, the Commission stated, for the first time, that the prohibition against a QF's selling in excess of its net output was based not only on policy considerations, but also on the statutory requirement that a QF be "owned by a person not a primarily engaged in the sale of electric power (other that electric power solely from cogeneration facilities or small power production facilities)." 16 U.S.C. §§ 796(17)(C)(ii)–(18)(B)(ii) (1994). In *Turners Falls*, the Commission found, based on its review of the language and legislative history of PURPA and the policies underlying enactment of PURPA and issuance of the Commission's implementing regulations, that a QF which sought to sell the incremental power in excess of its net output as non-qualifying power, would cease to be a QF, because it no longer would meet the statutory and regulatory restriction regarding utility ownership of QFs. 55 FERC at 62,667.

Before addressing the merits of the individual petitions filed with the Commission in the above-referenced proceedings, we will address the general legal and policy issues raised by these "net/gross" cases.

C. QF Output Issues

1. Can a QF Sell in Excess of Net Output?

We agree with the parties that it is not clear, on the face of the "simultaneous buy-sell" rule, that a QF is limited to selling its net output. Section 292.303(a) provides that "[e]ach electric utility shall purchase * * * *any* energy and capacity which is made available from a qualifying facility." (emphasis added). Similarly, section 292.303(b) provides that "[e]ach electric utility shall sell to any qualifying facility * * * *any* energy and capacity requested by the qualifying facility." (emphasis added). In addition, the Commission's statements leading up to its promulgation of the "simultaneous buy-sell rule also were not absolutely clear as to whether the Commission intended that a QF be able to sell gross output at avoided cost while purchasing station power at the purchasing utility's retail

The Commission first addressed the "simultaneous buy-sell" rule in its PURPA notice of proposed rulemaking. In the NOPR, the Commission discussed the situation "in which a cogenerator or small power producer desires to sell all of its output to a utility and purchase all of its needs from the utility simultaneously." Small Power Production and Cogeneration Rates and Exemptions, FERC Stats. & Regs., Proposed Regulations 1977–81 ¶ 32,039 at 32,466 (1979). The Commission stated that this rule was necessary to encourage QFs only to the extent it applies to "new" Capacity. However, because the discussion applied to both small power production facilities (which normally have no ongoing need to purchase from a utility other than station power) and to cogenerators (which often have a need to purchase power for industrial purposes other than generation), the discussion was ambiguous about the permissibility of selling all output and simultaneously buying back station power. *See also* Staff Paper Discussing Responsibilities to Establish Rules Regarding Rates, and Exemptions for Qualifying Cogeneration and Small Power Production Facilities Pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978, 44 Fed. Reg. 38863, 38870 (July 3, 1979).

In Order No. 69, adopting regulations for the implementation of PURPA, the Commission indicated that the "simultaneous buy-sell" rule would be applicable to both qualifying small power production facilities and qualifying cogenerators, and again noted that avoided cost rates would normally only be available for new capacity. FERC Stats. & Regs., Regulations Preambles 1977–1981 ¶ 30,128 at 30,877. As with its NOPR statements, the Commission's discussion was not clear about the permissibility of selling "all" output and buying back station power needs.

Moreover, it appears that several State regulatory authorities implemented PURPA based on a plausible interpretation that the "simultaneous buy-sell" rule permitted the sale of a

[14] In Malacha Power Project, Inc., 41 FERC ¶ 61,350 (1987), the Commission clarified that line losses to the point of interconnection with the grid also are subtracted from gross generator output to determine the power production capacity.

[15] The current version of the regulation was amended to reflect the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990. Those changes are not relevant to the issues before us in these proceedings.

[16] *See also* Penntech Papers, Inc., 48 FERC ¶ 61,120 (1989).

QF's gross output. For example, the New Hampshire Commission's standard QF sales contract contains a provision that allows for the sale of gross output and the buy back of auxiliary (station) power. From the QF filings we have received, it is apparent that there are other QF sales contracts, approved by other State regulatory authorities, that contain similar provisions.

However, as discussed above, this ambiguity was clarified to a significant degree in 1985 in *Power Developers*. There, the Commission made clear that a QF may not sell more than its net output at avoided cost rates. Finally, in 1991, in *Turner Falls*, the Commission removed any remaining ambiguity about whether the "simultaneous buy-sell" rule permitted a sale in excess of net output. The Commission clearly stated that a sale in excess of net output would deprive a facility of its QF status, unless the incremental sale was of power solely from cogeneration or small power production facilities.[17] *See supra* 13–14 (discussing orders). Accordingly, in these cases, the Commission removed any ambiguity and all industry participants were put on notice that the "simultaneous buy-sell" rule was not intended to permit a QF to sell its gross output to a utility at avoided cost rates, while buying back station power at a lower retail rate.

As a result, we disagree with the QFs' reading of the "simultaneous buy-sell" rule. It is clear to us that a QF facility can only sell energy and capacity from its facility which is actually available, and that, given our interpretation of what a QF is able to sell from its facility, this capacity is limited to the net output of the QF. Thus, the requirement of section 292.303(a), that an electric utility purchase any energy and capacity made available from a QF, is limited to the energy and capacity a QF actually has available, which is its net energy and capacity.

The Commission, in promulgating the simultaneous buy-sell rule, did not indicate otherwise. Indeed, the rationale behind the rule, as indicated in the preamble to Order No. 69, was as follows:

> The effect of this proposed rule was to separate the production aspect *of a qualifying facility* from its consumption function. Under this approach, the electrical output of a facility is viewed independently of its electrical needs. Thus, if a cogeneration facility produces five megawatts, and consumes three megawatts, it is treated the same as another qualifying facility that produces five megawatts, and that is located next to a factory that uses three megawatts.[18]

In this example, the Commission clearly was considering the case of a cogeneration facility where the factory associated with the cogeneration facility consumed power generated by the facility for industrial purposes. That the example was a cogeneration facility is meaningful because a cogeneration facility, unlike a small power producer, can have electric power needs other than for station power. When a cogeneration QF supplies its industrial host's electrical needs itself, it displaces power on the system that otherwise would have been supplied by the purchasing utility. This is not true when a cogenerator or small power producer supplies its own station power; the supplying of station power by a QF does not displace power which would have otherwise been supplied by the purchasing utility.[19] While a qualifying cogeneration facility may sell its entire net output and buy back power from its purchasing utility for non-electric generation uses (for example, manufacturing uses) by the thermal host,[20] a QF, whether a cogeneration facility or small power production facility, may not sell its gross output to its purchasing utility and buy back auxiliary (internal station) power.

Indeed, while the Commission did not address whether a QF would lose its qualifying status if it sold in excess of net output in *Power Developers*, the Commission in 1985 did address the meaning of section 292.303(a) (part of the simultaneous buy-sell rule). The Commission stated:

> Our regulations do not contemplate a qualifying facility selling its gross output to a utility.

> Although section 292.303(a) states that electric utilities are required to purchase "any" energy and capacity which is made available from a qualifying facility, the Commission has interpreted the capacity of a qualifying facility for purposes of obtaining qualifying status to be its net power production output, rather than its gross output.

32 FERC at 61,276.

Accordingly, we reiterate our earlier findings that a QF can only sell its net output, and that the sale of any other power will result in the loss of QF status, unless that power is "solely from cogeneration or small power production facilities."

2. What Date is Appropriate for Applying the Net Output Rule for Purposes of QF Status?

As noted above, we understand that many QFs and purchasing utilities have entered into contracts which require, or permit, the simultaneous sale of gross output and the purchase back of auxiliary (internal station) power. While there may have been some ambiguity when our PURPA regulations became effective, with the issuance of *Turners Falls*, the Commission clearly enunciated that a sale of a QF's output in excess of net output would result in the loss of a facility's QF status.[21] Our interpretation of the statutory ownership requirements in *Turners Falls* represented "an issue of first impression."[22] Moreover, the decision in *Turners Falls* rested not on the plain meaning of the statutory language involved,[23] but on an interpretation of the statute based on policy grounds. For these reasons, we believe that it would be unfair to revoke the QF certification of any facility which is selling its gross output to a utility-purchaser, and buying back auxiliary power and/or line losses to the point of interconnection, based on a QF contract entered into on or before the date of issuance of *Turners Falls*, that is on or before June 25, 1991.

We believe that this policy is consistent with our policy against invalidating contracts for which a PURPA-based challenge was not timely raised—that is, before the contracts were executed.[24] In our judgment, it would

[17] The Commission in *Turners Falls* was not faced with a factual situation where a QF sought to sell more than its net output *and* the additional power was "solely from cogeneration or small power production facilities." Neither is the Commission faced with that situation in the instant cases.

[18] Order No. 69, Small Power Production and Cogeneration Facilities, Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978, FERC Stats. & Regs., Regulations Preambles, 1977–1981, ¶ 30,128 at 30,877 (1980) (emphasis added).

[19] The Commission, in its brief to the United States Court of Appeals for the District of Columbia Circuit defending Order No. 69, also illustrated the validity of its simultaneous buy-sell rule with reference to a cogeneration example. *American Electric Power Service Corporation, et al.* v. *FERC*, Docket No. 80–1789, May 15, 1981 brief at 52. The Commission, in its brief, also recognized the significance of displacement. Brief at 58. The court, in upholding the simultaneous buy-sell rule, likewise pointed to the cogeneration example as justifying the simultaneous buy-sell rule. *See American Electric Power Service Corporation* v. *FERC*, 675 F. 2d. 1226, 1237 (D.C. Cir. 1982), *rev'd on other grounds sub nom. American Paper Institute* v. *American Electric Power Service Corporation*, 461 U.S. 402 (1983).

[20] *See* Union Carbide Corporation, 48 FERC ¶ 61,130, *reh'g denied*, 49 FERC ¶ 61,209 (1989).

[21] As noted, the exception is if the incremental output sold, *i.e.*, above net output, is solely from cogeneration or small power production facilities.

[22] 55 FERC at 62,667; *see also id.* at 62,672.

[23] The Commission stated in *Turners Falls* that "because both the statute and the legislative history are unclear, we find it appropriate to consider the policy reasons of interpreting the statute as requested by Turners Falls." *Id.* at 62,669.

[24] *See* New York State Electric & Gas Corporation, 71 FERC ¶ 61,027 at 61,117, *order denying reconsideration*, 72 FERC ¶ 61,067 (1995), *appeal dismissed*, New York State Electric & Gas

not be consistent with Congress' directive to encourage cogeneration and small power production to upset the settled expectations of parties to, and to invalidate any of their obligations and responsibilities under, such executed PURPA sales contracts.

However, we see no legitimate basis to excuse a facility that, subsequent to the date of issuance of *Turners Falls*, either entered into a contract to sell more than its net output, or executed an amendment to a pre-*Turners Falls* contract that increased output, unless that amendment was pursuant to a provision in the pre-*Turners Falls* contract that specifically authorized such amendment. We will, therefore, revoke the QF status of any facility which sells in excess of its net output pursuant to a contract entered into after the date of issuance of *Turners Falls*, unless the additional amount sold is solely from cogeneration or small power production facilities.

3. How Is Net Output To Be Calculated?

In order to determine if a facility has sold in excess of its net output, it is necessary to define how to measure net output. The utility-purchasers in the instant proceedings urge that net output be calculated as actual net *production* on an hour-by-basis. On the other hand, the QFs urge that net *capacity* be the measure of the limitation on a QF's sale. They argue that while QFs may not sell in excess of their certified net capacity, they should be able to sell in excess of actual net production at any moment in time. The QFs state that this is what the *Turners Falls* decision requires.

The QFs are only partially correct. *Turners Falls* does stand for the proposition that the Commission will not certify a QF to sell in excess of its net capacity and that the sale above net capacity would result in the loss of QF status. *Turners Falls*, however, also contains additional language concerning "the sale of incremental output." 55 FERC at 62,672. While *Turners Falls* clearly states that QFs are limited to selling net capacity, the order does not directly address the sale of what has been referred to in the instant proceedings as "actual net production." We understand that purchasing utilities could reasonably read *Turners Falls* and its reference to "the sale of incremental output" to limit the sales by QFs to actual net production.

We find that the utilities' interpretation of the calculations more closely comports with Commission precedent and policy. In *Turners Falls*, the Commission interpreted PURPA to limit the certification of a QF to its net capacity. In interpreting PURPA, the Commission found that the plain language of the statute was not clear, and that the statutory history on the language involved was not clear, but that the policy underlying PURPA was dispositive. The policy which the Commission looked to was that PURPA was intended to be a "program providing for increased efficiency in the use of facilities and resources." (55 FERC at 62,670, quoting section 2 of PURPA). The Commission found that the economic distortion inherent in the sale of the incremental output, *i.e.*, the difference between a facility's net and gross output, would be inconsistent with the intent of PURPA. The Commission further found that if it were to permit Turners Falls to sell the incremental output, Turners Falls would derive an undue benefit from its qualifying status. *Id.* As a result, while the Commission in *Turners Falls* was directly addressing how much capacity it would certify (net capacity), it based the certification decision on its finding that PURPA does not permit a sale in excess of net output. The utilities' proposal that compliance with the net/gross rule be measured by monitoring actual net output on an hour-by-hour basis more accurately measures compliance with this PURPA limitation than the QFs' proposal that compliance be measured on an annual basis.

Moreover, measuring compliance with the net/gross rule on an hour-by-hour basis is consistent with Commission precedent on measurement of a facility's net capacity. In *American Ref-Fuel of Bergen County*, 54 FERC ¶ 61,287 (1991) (*Ref-Fuel*), the Commission used a "rolling one-hour period" for measuring the size limitation (80 MW) applicable to qualifying small power production facilities. In that case, Ref-Fuel argued that because of the substantial variation in the heat content of solid waste, the net output of the facility would often exceed 80 MW, but that it would be able to compensate for the substantial variation in the heat content of the fuel source with an automatic control system to restore net generation to 80 MW when it exceeded 80 MW. Ref-Fuel stated it could maintain the 80 MW net output level on average over a 60 minute time span measured at any point in time—the "rolling one-hour period." The Commission agreed to the rolling one-hour period, stating that:

> Generation output fluctuates instantaneously and accordingly must be adjusted many times each hour to follow system load changes. System load or consumer demand typically is determined by averaging energy use over a period of time of 15 to 60 minutes.

54 FERC at 61,817. The Commission noted that Form No. 1 requires utilities to compute the net peak demand (output) on generating units by using a 60-minute measurement period and that customer demand meters typically employ measurement periods of 15, 30, or 60 minutes. *Id.* at 61,817 n.5. The Commission further noted that a 60-minute time interval for measuring power output or peak load is common in the industry. 54 FERC at 61,817. The Commission recognized that a facility's generation output varies constantly and that net output in excess of 80 MW does not automatically violate the size limitation requirement of the statute (*citing Occidental Geothermal, Inc.*, 17 FERC ¶ 61,231 at 61,445 (1981)).

Finally the Commission recognized that use of a rolling one-hour period does not offer any potential for manipulation of the maximum size limitation. This is because the facility, if it exceeds the 80 MW net production limitation at one moment, would have to adjust net production below 80 MW during part of the hour to account for the excess generation.

We believe that the rationale for using a rolling one-hour period for measuring the net production of a facility for size limitation purposes is equally applicable to measuring net production for compliance with the net/gross output rule. Contrary to the QFs' arguments, use of a one-hour period does not make the certified capacity of a facility meaningless,[25] and indeed is consistent with this Commission's measurement of certified capacity. We conclude that a facility's net output should be measured on a rolling-one hour period for purposes of determining whether the facility makes sales in excess of its net output. In other words, a facility cannot sell each hour more than its net output for the hour.

Corporation v. FERC, 117 F.3d 1473 (D.C. Cir. 1997); Connecticut Light & Power Company, 70 FERC ¶ 61,012, *order denying reconsideration*, 71 FERC ¶ 61,035 at 61,153–54 (1995) (confusion regarding meaning of Commission's regulations made application of new policy to preexisting QF contracts inappropriate), *appeal dismissed sub nom.* Niagara Mohawk Power Corporation v. FERC, 117 F.3d 1485 (D.C. Cir. 1997); Southern California Edison Company and San Diego Gas & Electric Company, 70 FERC ¶ 61,215 at 61,178, *reconsideration denied*, 71 FERC ¶ 61,269 at 62,079 (1995).

[25] The certified capacity of a QF, *i.e.*, its net capacity, is the maximum net output that the facility can safely and reliably achieve at the point of interconnection under the most favorable operating conditions likely to occur over a period of several years.

4. How Does Transmission of QF Power by a Third Party Utility Affect Net Output?

The Penntech Papers case raises an issue concerning the measurement of net output in situations where QF power is transmitted by a third party to the purchasing utility. We have addressed this matter in our Open Access Rule. In Order No. 888–A, the Commission explained that:

> A QF arrangement for the receipt of Real Power Loss Service or ancillary services from the transmission provider or a third party for the purpose of completing a transmission transaction is not a sale-for-resale of power by a QF transmission customer that would violate our QF rules.[26]

In Order No. 888–B, the Commission recently clarified the matter as follows:

> [W]hile a QF can never sell more power than its net output at its point of interconnection with the grid, its location in relation to its purchaser (and thus its losses) may be relevant in the calculation of the avoided cost which it is entitled for the power it does deliver to its electric utility purchaser. However * * * the receipt of Real Power Loss Service or ancillary services is not a sale-for-resale of power. Rather, they are part of the costs of transmission which the QF must bear, in the absence of an agreement to share such costs with the transmitting utility.[27]

In conclusion, the purchase of line loss service for losses beyond the point of interconnection or an ancillary service by a QF from a third party does not result in the QF's engaging in a sale-for-resale of power produced by a facility other than a QF, which would result in loss of QF status.

D. Regulatory Consequences and Remedies for Sales in Excess of Net Output

Any facility which has sold in excess of its net output, pursuant to a contract entered into after the date of issuance of *Turners Falls*, unless the incremental output is solely from cogeneration or small power production facilities, must file rates pursuant to section 205 of the FPA within 60 days of the date of publication of this order in the **Federal Register**. In that filing, the facility must indicate whether it intends to continue to make sales in excess of net output.[28] For facilities which state that they will discontinue the sale of output in excess of net output as of the date of their filing, the rate for the prior sale of any output above net output will be determined using the methodology announced in *LG&E-Westmoreland Southhampton*, 76 FERC ¶ 61,116 (1996) (*LG&E*), *reh'g pending*.[29] The rate for all amounts sold up to the facility's net output should be the contract rate reflected in the parties' agreement, assuming such rate is no higher than the applicable avoided cost rate established by the State regulatory authority or nonregulated electric utility. Facilities making section 205 filings that reflect the cessation of power sales in excess of net output may ask for all other exemptions granted QFs, and we will grant such exemptions pursuant to the policy announced in *LG&E*.

For any facility that indicates in its section 205 filing that it will continue to sell power in excess of its net output, pursuant to its current contract, we will not differentiate between past and future sales, or allow different rates for sales up to or in excess of net output. Rather, the former QF will be required to cost justify its rates for past and future periods.[30]

E. Application of Policy to Pending Cases

1. Connecticut Valley Electric Company, Inc. v. Wheelabrator Claremont Company, L.P., et al.

Claremont, a small power production facility, is selling its gross capacity to Connecticut Valley and buying back auxiliary power, This sale clearly violates the prohibition on the QF sale of amounts in excess of net output enunciated in *Turner Falls* and earlier cases, and would result in the loss of QF status were it taking place pursuant to a sales contract entered into after the date (June 25, 1991) of issuance of *Turner Falls*. Here, however, the sale takes place pursuant to a contract, executed on December 12, 1984.

Pursuant to the policy articulated above in this order, we will not enforce the net/gross policy against Claremont during the term of its power purchase agreement with Connecticut Valley, assuming the contract has not been amended to increase output after the date (June 25, 1991) of issuance of *Turners Falls*, unless that amendment was pursuant to a provision in the pre-*Turners Falls* contract that specifically authorized such amendment. Based upon this assumption, we will, therefore, not revoke the QF status of the Claremont facility or take other remedial action.

2. Carolina Power & Light Company v. Stone Container Corporation

The sale of QF power by Stone Container is not as clear. Stone Container represents that it has at all times limited its sale to no more than its "actual net output." The allegation by CP&L is that Stone Container, pursuant to a contract option contained in a contract entered into prior to the date of issuance of *Turners Falls*, but exercised after the date of issuance of *Turners Falls*, is at times selling in excess of actual net output.

Because Stone Container is operating pursuant to a contract executed prior to the date of issuance of *Turners Falls*, its sales will not result in the loss of QF status, even if it at times has sold in excess of its net output. While its contract was amended, after the date of issuance of *Turners Falls*, to take advantage of the option to switch to the "buy-all/sell-all" mode of operation, the exercise of the option took place pursuant to the original contract. The right to the "buy-all/sell-all" mode of operation was contained in the original, pre-*Turners Falls* contract. Depriving Stone Container of QF status in these circumstances would not be consistent with maintaining the parties' expectations when the contract was signed. Moreover, CP&L, to the extent it encouraged the switch (as represented by Stone Container), should not now be heard to claim that the mode of operation which it encouraged deprives the facility of its QF status. The time for CP&L to have objected to the "buy-all/sell-all" contractual provision was prior to its execution, and not long after its implementation.[31]

We therefore conclude that under the policy announced in this order, this sale does not result in the loss of Stone Container's QF status, and we will not revoke the QF status of the Stone Container facility or take other remedial action, assuming that the contract has not been further amended to increase output after the date (June 25, 1991) of issuance of *Turners Falls*, unless that amendment was pursuant to a provision in the pre-*Turners Falls* contract that specifically authorized such amendment.

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[26] FERC Stats. & Regs. ¶ 31,048 at 30,237.

[27] Order 888–B, slip op. at 43–44.

[28] If the facility decides to sell only its net output, it could regain QF status on a prospective basis from the date it begins to sell only net output. However, whether its temporary loss of QF status would jeopardize its power sales arrangement is a matter of contract that may vary depending on the particulars of the power sales agreement.

[29] In *LG&E*, the Commission ordered a QF which failed to satisfy the Commission's technical requirements for QF status during a past period of non-compliance to file rates pursuant to section 205 of the FPA at a rate no higher than what the utility-purchaser would have paid for energy had it made an economic decision to purchase from the non-complying QF. In the case of a first-time failure to maintain QF status, the Commission explained that it would grant all other exemptions from regulation otherwise available to QFs.

[30] Of course, the former QF could seek market-based rate authority for sales pursuant to new, non-QF contracts.

[31] *See supra* note 24 and cases cited therein.

3. Niagara Mohawk Power Corporation v. Penntech Papers, Inc.

Niagara Mohawk argues that the Penntech Papers' purchase of power from Penelec, both of "make-up" power under a provision of Penntech Papers' transmission contract which Penelec, and line losses during transmission pursuant to the same contract, causes Penntech Papers to sell to Niagara Mohawk power from a facility other than a QF.

In Order No. 888, the Commission determined that "energy imbalance service" is one of six ancillary services which with must be provided under an open access transmission tariff.[32] The description of "energy imbalance service" and the service provided by Penelec to Penntech Papers to correct inadvertent imbalances indicate that they are the same service. As this is an ancillary service as defined in Order Nos. 888 and 888–A, it does not constitute a sale-for-resale and does not affect Penntech Papers' QF status. Likewise, the purchase of line loss service by Penntech Papers for transmission service provided past the point of interconnection with Penelec does not affect its QF status. We will, therefore, not revoke Penntech Papers' QF status or take other remedial action.

The Commission orders:

(A) The petitions for declaratory order are hereby granted in part and denied in part, as discussed in the body of this order.

(B) The motion of Connecticut Valley filed in Docket Nos. EL94–10–000 and QF86–177–001 to revoke the QF status of Claremont is hereby denied.

(C) The motion of CP&L filed in Docket Nos. EL94–62–000 and QF85–102–005 to revoke the QF status of Stone Container is hereby denied.

(D) The motion of Niagara Mohawk filed in Docket Nos. EL96–1–000 and QF86–722–003 to revoke the QF status of Penntech Papers is hereby denied.

(E) Any facility which by virtue of this order is required to file rates pursuant to section 205 of the FPA shall make such a filing within 60 days of the date of publication of this order in the **Federal Register**, as discussed in the body of this order.

(F) The Secretary is hereby directed to arrange for publication of this order in the **Federal Register** as soon as possible.

[32] FERC Stats. & Regs. ¶31,036 at 31, 703–04; *see also* Order No. 888–A, FERC Stats. & Regs ¶31,048 at 30,229–34.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4014 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES97–7–002]

Consumers Energy Company; Notice of Amendment of Application

February 11, 1998.

Take notice that on January 27, 1998, Consumers Energy Company (Consumers), filed an amendment to its original application in this proceeding. The amendment seeks an increase of $500 million in Consumers' current authorization to issue long-term securities for refunding and refinancing purposes. Consumers also requests waiver of the Commission's competitive bid/negotiated placement requirements for certain securities to be issued pursuant to the authorization requested in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 358.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4033 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1681–000]

GPU Advanced Resources, Inc., Notice of Filing

February 11, 1998.

Take notice that on January 30, 1998, GPU Advanced Resources, Inc., tendered for filing proposed changes in the Code of Conduct to which it has agreed to adhere in connection with its sales of electric energy and capacity at market-based rates.

The proposed changes would, among other things, extend the application of the Code of Conduct to all power marketing affiliates of GPU, Inc., and would narrow certain limitations on transactions and information sharing to transactions and sharing among such power marketing affiliates and their public utility affiliates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4028 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1672–000]

Kentucky Utilities Company, Notice of Filing

February 11, 1998.

Take notice that on January 30, 1998, Kentucky Utilities Company (KU), tendered for filing a series of supplemental contracts between KU and its wholesale requirements customers. KU requests an effective date of January 1, 1998, for these contracts.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4019 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1673–000]

Kentucky Utilities Company; Notice of Filing

February 11, 1998.

Take notice that on January 30, 1998, Kentucky Utilities Company (KU), tendered for filing information on transactions that occurred during October 1, 1997 through December 31, 1997, pursuant to the Power Services Tariff accepted by the Commission in Docket No. ER95–854–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4020 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1683–000]

Mid-Continent Area Power Pool; Notice of Filing

February 11, 1998.

Take notice that on January 29, 1998, Mid-Continent Area Power Pool (MAPP), tendered for filing Information Filing, New Members of MAPP.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4030 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1680–000]

New England Power Company; Notice of Filing

February 11, 1998.

Take notice that on January 30, 1998, New England Power Company, tendered an amendment to Supplement No. 12 to Service Agreement No. 16 under its FERC Electric Tariff, Original Volume No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4027 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–217–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

February 11, 1998.

Take notice that on February 4, 1998, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP98–217–000 a request pursuant to Sections 157.205, and 157.216, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon 17 small volume measuring stations under Northern's blanket certificate issued in Docket No. CP82–401 000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that it requests authority to abandon 17 small volume measuring stations located in Minnesota. Northern further asserts that end-users have requested the removal of these measuring stations from their property.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3939 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–218–000]

Northern Natural Gas Company; Notice of Application To Abandon

February 11, 1998.

Take notice that on February 6, 1998, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed under Section 7(b) of the Natural Gas Act, for authority to abandon by sale to Transok, Inc. (Transok) 37 miles of 8 and 16-inch pipeline and dehydration facilities in Custer and Roger Mills Counties, Oklahoma. Northern proposes to sell the facilities to Transok for $3,000,000. Northern's request is more fully set forth in the application on file with the Commission and open to public inspection.

Specifically Natural proposes to sell:

1. 14 miles of Northern's 8-inch line extending from the outlet of the Diamond Shamrock Plant located in Section 5, Township 15N, Range 21W, Roger Mills County, Oklahoma to, and including the Redmoon Dehy yard located in Section 27, Township 14N, Range 20W, in Custer County, Oklahoma.

2. 23 miles of Northern's 16-inch line extending from the Northern/Transok interconnect in Section 33, Township 13N, Range 17W, to a point in Section 14, Township 12N, Range 14W all in Custer County, Oklahoma.

3. All farm taps, interconnecting points, delivery points and appurtenant facilities located on the subject facilities. All receipt points and delivery points located along the length of the facilities.

Northern states that after abandonment Northern's "Point Catalog" will be revised to reflect the elimination of the points associated with the facilities being sold. Northern states further, that its transportation customers will then nominate transportation service at the interconnect points between Transok's newly acquired facilities and Northern's transmission facilities.

Any person desiring to be heard or make any protest with reference to said application should on or before March 4, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protesters parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held wihtout further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3940 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–14–001]

Northern Natural Gas Company; Notice of Amendment

February 12, 1998.

Take notice that on February 6, 1998, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP98–14–001 an amendment to the pending application filed on October 9, 1997, in Docket No. CP98–14–000, pursuant to Section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon service to Southern Union Gas Company (Southern Union), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

By the pending application in Docket No. CP98–14–000, Northern proposes to abandon by sale to PG&E–TEX, L.P. (PG&E), facilities located in the Permian Area of West Texas, consisting of 250 miles of pipeline ranging from 6-inch to 24-inch in diameter, nine compressor units located at two compressor stations, treating and dehydration facilities, all delivery points located along the length of the pipelines to be abandoned, and all appurtenant facilities.

In the subject amendment, Northern states that the individually certificated services with Southern Union, authorized by order issued September 20, 1989, in Docket No. CP89–14–000 (48 FERC ¶ 61,325 (1989)), was inadvertently omitted from Northern's request for abandonment of service in the original application. Northern states that the July 14, 1988, agreement between Northern and Southern Union provides for the sale of up to 1,100 Mcf per day of natural gas to Southern Union for resale to the City of McCamey, Texas; however, no service has been provided to Southern Union under this agreement since Northern's implementation of Order No. 636 on November 1, 1993.

In addition, subject to the terms of a third amendment to the Purchase and Sale Agreement of the facilities, the price of the facilities to be sold to PG&E is reduced from $19,250,000 to $18,250,000.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before March 5, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's

Rules. All persons who have heretofore filed need not file again.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4016 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ97–13–000]

Orlando Public Utilities Company; Notice of Filing

February 11, 1998.

Take notice that on January 26, 1998, Orlando Public Utilities Company, tendered for filing its revised open access transmission tariff in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 23, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4034 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–167–001]

PG&E Gas Transmission, Northwest Corporation; Notice of Amendment

February 11, 1998.

Take notice that on February 4, 1998, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) (formerly Pacific Gas Transmission Company), located at 2100 Southwest River Parkway, Portland, Oregon 97201, filed in Docket No. CP98–167–001, pursuant to section 7 of the Natural Gas Act (NGA), to amend its application which was filed on December 30, 1997.

PG&E GT–NW states that the purpose of this amendment is to reflect the termination of a firm transportation agreement with El Paso Energy Marketing Canada, Inc. involving deliveries of 17,702 Dth/day over a three year period. Accordingly, PG&E GT–NW filed a revised Exhibit I and a revised Exhibit N. PG&E GT–NW states that in all other aspects, the December 30 application remains unchanged.

PG&E GT–NW further states that even with the elimination of this service agreement, the remaining executed contracts will generate revenues on a cumulative basis over the next ten years that will be in excess of the cost of service associated with the proposed facilities for the same ten year period.

Any person desiring to participate in the hearing process or to make any protest with reference to said petition to amend should on or before February 23, 1998, file with the Federal Energy Regulatory Commission, 888 First St., N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3936 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–010]

Power Authority of the State of New York; Correction to Notice of 1998 Schedule of Meetings To Discuss Settlement for Relicensing of the St. Lawrence-FDR Power Project

February 11, 1998.

On November 25, 1997, [FR Doc. 97–31481 (62 FR 63702, December 2, 1997)] a notice of a list of 1998 schedule of meetings for the Cooperative Consultation Process (CCP) Team and Subcommittees to continue settlement negotiations for the St. Lawrence-FDR Power Project, located on the St. Lawrence River, St. Lawrence County, New York, was issued. The following revisions should be made.

For the CCP Team meetings, delete "April 21, 1998" and "May 28–29, 1998".

For the Ecological Subcommittee meeting, delete "April 20, 1998", and replace with "April 21, 1998 (afternoon meeting)".

For the Land Management and Recreation Subcommittee meetings, add "April 20, 1998; April 21, 1998 (morning meeting)"; and "May 28, 1998". Also, add "A tentative meeting is scheduled for May 14, 1998".

For the Socioeconomic Subcommittee meeting, add "May 29, 1998".

For the Engineering Subcommittee meeting, add "May 13, 1998".

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3942 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1686–000]

Public Service Company of New Mexico; Notice of Filing

February 11, 1998.

Take notice that on January 30, 1998, Public Service Company of New Mexico, submitted a notice of termination of the 1997 Wholesale Power Agreement between Public Service Company of New Mexico (PNM), and Texas-New Mexico Power Company (PNM FERC Rate Schedule No. 119 and Supplement No. 1) pursuant to § 35.15(c) of the Rules and Regulations of the Federal Energy Regulatory Commission. By the express terms of Section 5 of the contract, it was in effect for the period January 1, 1997 through December 31, 1997. PNM's filing also is available for public inspection at its offices in Albuquerque, New Mexico.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4032 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–215–000]

Questar Pipeline Company; Notice of Application

February 11, 1998.

Take notice that on February 2, 1998, Questar Pipeline Company (Questar), 180 East 100 South, Salt Lake City, Utah 84111, filed in Docket No. CP98–215–000, an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, for a certificate of public convenience and necessity authorizing Questar to replace approximately 16.4 miles of Main Line (M.L.) No. 43 pipeline and to abandon in place the existing pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Questar proposes to replace the entire 16.4 miles of 16-inch diameter M.L. No. 43 pipeline with a new 20-inch pipeline to be known as M.L. No. 103 in Uintah County, Utah. Questar states that the proposed new 20-inch diameter replacement pipeline will parallel the existing M.L. No. 43 pipeline right-of-way. Questar requests authorization to replace the existing 16-inch M.L. No. 43 pipeline because the protective coating on M.L. No. 43 is deteriorating. Questar also proposes to install pig launching and pig receiving facilities on either end of the proposed M.L. No. 103 project. The total cost associated with the installation of M.L. No. 103, as well as the installation of pig launcher and receiver facilities, valves, auxiliary pipeline and other appurtenances, is approximately $6,559,000.

Questar states that, following installation of the M.L. No. 103 pipeline, the existing 16.4 mile, 16-inch diameter M.L. No. 43 pipeline will be capped on both ends, purged with an inert gas and retired in place at an approximate cost of $40,700.

Any person desiring to be heard or making any protest with reference to said application should on or before March 4, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Questar to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3938 Filed 2–17–98; 8:45 a.m.]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1682–000]

San Diego Gas & Electric Company; Notice of Filing

February 11, 1998.

Take notice that on January 30, 1998, San Diego Gas and Electric Company (SDG&E), tendered for filing certain tariff sheets in its Transmission Owner Tariff (TO Tariff), to supersede certain TO Tariff sheets filed by SDG&E on March 31, 1997. The revised tariff sheets are as follows:

Revised Original Sheet Nos. 53–58

SDG&E states that it has ascertained that certain of the originally filed rates for retail transmission were based on computational errors and that the revised sheets are based on corrected calculations. SDF&E further states that the errors affected only the allocation of costs as among classes of retail transmission customers and do not affect either overall transmission revenue requirements or rates for wholesale transmission customers.

In addition to the revised tariff sheets, SDG&E has also tendered revised Statements BB, BG, and BL for Period 2.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4029 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1674–000]

South Carolina Electric & Gas Company; Notice of Filing

February 11, 1998.

Take notice that on January 30, 1998, South Carolina Electric & Gas Company (SCE&G), submitted a service agreement establishing Northern Indiana Public Service Company (NIPSC), as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon NIPSC and the South Carolina Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4021 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–153–004]

Southern Natural Gas Company; Notice of Petition To Amend

February 11, 1998.

Take notice that on February 4, 1998, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP96–153–004 a petition to amend the authorization issued on May 30, 1997 in Docket No. CP96–153–000, *et al.* pursuant to Section 7(c) of the Natural Gas Act, as amended, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern seeks authorization to modify the route of the northernmost segment of the North Alabama Pipeline to conform to the policy of the U.S. Fish and Wildlife Service for crossing the Wheeler National Wildlife Refuge (Refuge).

Southern states that commencing at M.P. 91.35 of the route approved in the certificate order, the modified route would proceed in a generally northern direction parallel to Interstate Highway 65 (I–65). It is said that where I–65 crosses the Refuge, the pipeline right-of-way would be immediately adjacent to the I–65 right-of-way, following this existing corridor through the Refuge. It is further said that a short distance thereafter, the new route would turn in a northeasterly direction to a point of termination at the new location for the Huntsville Meter Station.

Any person desiring to be heard or any person desiring to make any protest with reference to said application should on or before March 4, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3935 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–1670–000]

State Line Energy, L.L.C.; Notice of Filing

February 11, 1998.

Take notice that on January 30, 1998, State Line Energy, L.L.C., submitted for filing in the above-referenced docket its Quarterly Report regarding transactions that occurred during the period September 30, 1997 through December 31, 1997, pursuant to its Market-Based Rate Sales Tariff accepted by the Commission in Docket No. ER96–2869–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20246, in accordance with Rules 211 and 214 of the Commission Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4018 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–220–000]

Tennessee Gas Pipeline Company; Notice of Application

February 11, 1998.

Take notice that on February 6, 1998, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana, Houston, Texas 77002, filed in Docket No. CP98–220–000, an application pursuant to Section 7(c) of Natural Gas Act and Federal Energy Regulatory Commission's regulations for a certificate of public convenience and necessity authorizing Tennessee to construct and operate facilities and to increase the certificated design capacity of portions of its system in order to provide existing customers with increased access to offshore gas supplies, all as more fully described in the application which is on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 4, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in the subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the Tennessee to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3941 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–07–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–212–000]

Texas Eastern Transmission Corporation; Notice of Application

February 11, 1998.

Take notice that on January 30, 1998, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77251–1642, filed in Docket No. CP98–212–000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for authorization to abandon and to construct and operate certain facilities located in Orange County, Indiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern proposes to replace approximately 2,473 feet of 24-inch pipeline, in three discrete segments, abandon the existing pipeline being replaced and to utilize temporary work space during the construction of such facilities.

It is said that the estimated cost of construction is $2,145,000. It is further said that the replacement pipeline would have a design delivery capacity equivalent to the facilities being replaced, thus there would be no change in Texas Eastern's system maximum daily design capacity.

Any person desiring to be heard or any person desiring to make any protest with reference to said application should on or before March 4, 1998, file with the Federal Energy Regulatory Commission Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this

application if no motion to intervene is filed with the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3931 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1684–000]

Tucson Electric Power Company; Notice of Filing

February 11, 1998.

Take notice that on January 29, 1998, Tucson Electric Power Company (Tucson), tendered for filing a Transaction Report for quarter ended December 31, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4031 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1676–000]

The Washington Water Power Company; Notice of Filing

February 11, 1998.

Take notice that on January 30, 1998, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement for Long-Term Firm Point-To-Point Transmission Service under WWP's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8, with Idaho Power Company. WWP requests that the Service Agreement be given an affective date of January 1, 1998.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4023 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1679–000]

Wisconsin Electric Power Company; Notice of Filing

February 11, 1998.

Take notice that on February 2, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2). Wisconsin Electric respectfully requests an effective date February 2, 1998. Wisconsin Electric is authorized to state that North American Energy Conservation, Inc., joins in the requested effective date.

Copies of the filing have been served on North American Energy Conservation, Inc., the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4026 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–14–000, et al.]

Encogen Hawaii, L.P., et al.; Electric Rate and Corporate Regulation Filings

February 9, 1998.

Take notice that the following filings have been made with the Commission:

1. Encogen Hawaii, L.P.

[Docket No. EG98–14–000]

Take notice that on February 6, 1998, Encogen Hawaii, L.P., having its principal office at 1817 Wood Street, Suite #550, West, Dallas, TX 75201, filed with the Commission an amendment to its application for a Commission Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its concerns to those that concern the adequacy or accuracy of the application.

2. Ohio Edison Company; Pennsylvania Power Company

[Docket No. ER98–426–000]

Take notice that on January 23, 1998, Ohio Edison Company, on behalf of itself and Pennsylvania Power Company, tendered for filing an amendment in the above-referenced docket.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. FirstEnergy System

[Docket No. ER98–1600–000]

Take notice that on January 28, 1998, FirstEnergy System, filed Service Agreements to provide Non-Firm Point-to-Point Transmission Service for Louisville Gas and Electric Company and Morgan Stanley Capital Group, Incorporated, the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000. The proposed effective dates under the Service Agreements is January 1, 1998.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power Corporation

[Docket No. ER98–1601–000]

Take notice that on January 28, 1998, Florida Power Corporation submitted a report of short-term transactions that occurred under its Market-based Rate Wholesale Power Sales Tariff (FERC Electric Tariff, Original Volume No. 8) during the quarter ending December 31, 1997.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Virginia Electric and Power Company

[Docket No. ER98–1602–000]

Take notice that on January 28, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a summary of short-term transactions made during the fourth quarter of calendar year 1997 under Virginia Power's market rate sales tariff, FERC Electric Power Sales Tariff, Original Volume No. 4, filed by Virginia Power in Docket No. ER97–3561–000.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. American Electric Power Service Corporation

[Docket No. ER98–1603–000]

Take notice that on January 27, 1998, American Electric Power Service Corporation, tendered for filing a Transaction Report for Quarter Ended December 31, 1997.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Texas-New Mexico Power Company

[Docket No. ER98–1604–000]

Take notice that on January 27, 1998, Texas-New Mexico Power Company (TNMP), tendered for filing a quarterly report ended December 31, 1997.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Rochester Gas and Electric Corporation

[Docket No. ER98–1605–000]

Take notice that on January 28, 1998, Rochester Gas and Electric Corporation (RG&E), filed a Request for Approval of: (1) A Form Transmission Service Agreement for service under RG&E's open access transmission tariff; and (2) a Form Power Sales Agreement for service under RG&E's market-based power sales tariff (FERC Electric Tariff No. 3).

These service agreements are for use in a retail access pilot program that was approved by the New York State Public Service Commission in Case Nos. 96–E–0898 and 94–E–0952.

A copy of this filing has been served on the New York State Public Service Commission and on each person listed on the Official Service List compiled by the Secretary in Docket No. OA96–141.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER98–1606–000]

Take notice that on January 28, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Long-Term Market Rate (Schedule SP), Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Alabama Electric Power Cooperative, Inc., for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Commonwealth Edison Company

[Docket No. ER98–1607–000]

Take notice that on January 28, 1998, Commonwealth Edison Company (ComEd), submitted for filing three Service Agreements, establishing Avista Energy (Avista), Edgar Electric Co-Op Association (Edgar), and Griffin Energy Marketing, L.L.C. (Griffin), as customers under the terms of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1 (PSRT–1 Tariff). The Commission has previously designated the PSRT–1 Tariff as FERC Electric Tariff, First Revised Volume No. 2.

ComEd requests an effective date of January 28, 1998, and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Avista, Edgar, Griffin, and the Illinois Commerce Commission.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER98–1610–000]

Take notice that on January 28, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and PacifiCorp Power Marketing, Inc.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER98–1611–000]

Take notice that on January 28, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and The Cincinnati Gas & Electric Company, PSI Energy, Inc., and Cinergy Services, Inc., for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Northern States Power Company (Minnesota Company)

[Docket No. ER98–1612–000]

Take notice that on January 28, 1997, Northern States Power Company (Minnesota)(NSP), tendered for filing the Firm Point-to-Point Transmission Service Agreement between NSP and Wisconsin Power and Light Company (Bulk Power Marketing).

NSP requests that the Commission accept the agreement effective January 1, 1998, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Central Vermont Public Service Corporation

[Docket No. ER98–1613–000]

Take notice that on January 27, 1998, Central Vermont Public Service Corporation (Central Vermont), filed (1) amendments to its Open Access Tariff No. 7 to provide for transmission service over the 225 MW AC/DC Converter at Highgate, Vermont, and (2) unexecuted service agreements with New England Power Pool and Citizens Utilities. Central Vermont requests waiver of the 60-day notice requirement in order to permit the amendments and service agreements to become effective as of January 16, 1998.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Minnesota Power & Light Company

[Docket No. ER98–1615–000]

Take notice that on January 28, 1998, Minnesota Power & Light Company (MP), tendered for filing a report of short-term transactions that occurred during the quarter ending December 31, 1997, under MP's WCS–2 Tariff which was accepted for filing by the Commission in Docket No. ER96–1823–000].

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Midwest Energy, Inc.

[Docket No. ER98–1616–000]

Take notice that on January 29, 1998, Midwest Energy, Inc. (Midwest), tendered for filing with the Federal Energy Regulatory Commission the Service Agreement for Non-Firm Point-to-Point Transmission Service entered into between Midwest and Tenaska Power Services Co.

Midwest states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Northern States Power Company (Minnesota Company)

[Docket No. ER98–1617–000]

Take notice that on January 29, 1997, Northern States Power Company (Minnesota)(NSP), tendered for filing the Firm Point-to-Point Transmission Service Agreement between NSP and NSP Wholesale (POD: City of Melrose, MN).

NSP requests that the Commission accept the agreement effective January 1, 1998, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Northern States Power Company (Minnesota Company)

[Docket No. ER98–1618–000]

Take notice that on January 29, 1998, Northern States Power Company (Minnesota)(NSP), tendered for filing the Firm Point-to-Point Transmission Service Agreement between NSP and NSP Wholesale (POD: City of Fairfax, MN).

NSP requests that the Commission accept the agreement effective January 1, 1998, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. The Dayton Power and Light Company

[Docket No. ER98–1619–000]

Take notice that on January 29, 1998, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Tenaska Power Services Co., as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the filing were served upon Tenaska Power Services Co., and the Public Utilities Commission of Ohio.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Energy Masters International, Inc.

[Docket No. ER98–1620–000]

Take notice that on January 28, 1998, Energy Masters International, Inc. (formerly Cenerprise, Inc., who's name was changed by Notice of Succession on December 9, 1997), tendered for filing a summary of activity for the fourth quarter of 1997, covering October 1 through December 31, 1997, inclusive.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Energy Unlimited, Inc.

[Docket No. ER98–1622–000]

Take notice that on January 29, 1998, Energy Unlimited, Inc. (Energy Unlimited), tendered for filing pursuant to § 205, 18 CFR 385.205), a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective no later than sixty (60) days from the date of its filing.

Energy Unlimited intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Energy Unlimited sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither Energy Unlimited nor any of its affiliates are in the business of generating or transmitting electric power, or are engaged in any form of franchised electricity distribution.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that no sales may be made to affiliates.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. State Line Energy, L.L.C.

[Docket No. ER98–1623–000]

Take notice that on January 29, 1998, State Line Energy, L.L.C. (State Line), tendered for filing the following agreement concerning the provision of electrical service to Commonwealth Edison Company (ComEd).

1. Power Purchase Agreement (State Line Generating Station) dated April 17, 1996, between Commonwealth Edison Company and State Line Energy, L.L.C.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Dayton Power and Light Company

[Docket No. ER98–1624–000]

Take notice that on January 28, 1998, Dayton Power and Light Company (Dayton), tendered for filing a summary of 4th quarter market based sales.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. PJM Interconnection, L.L.C.

[Docket No. ER98–1625–000]

Take notice that on January 29, 1998, the PJM Interconnection, L.L.C. (PJM), filed, on behalf of the Members of the LLC, membership applications of Old Dominion Electric Cooperative, Panda Power Corporation and TriStar Ventures Corporation. PJM requests an effective date on the day after this Notice of Filing is received by FERC.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. The Alternative Current Power Group d/b/a The AC Power Group

[Docket No. ER98–1626–000]

Take notice that on January 29, 1998, The Alternative Current Power Group d/b/a The AC Power Group filed a supplement to its application for market-based rates as power marketer. The supplemental information pertains to a company name change, business type status and address change. Effective January 1, 1998, The Alternative Current Power Group d/b/a The AC Power Group changed its name to AC Power Corporation, a Texas corporation, located at 17601 Preston Rd. Suite 191, Dallas, TX. 75252. New business office telephone number is 972–818–0328. New fax number is 972–818–0329.

All other information as filed in the original petition for power marketer remains unchanged.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Duquesne Light Company

[Docket No. ER98–1627–000]

Take notice that on January 30, 1998, Duquesne Light Company (DLC), filed a Service Agreement dated January 20, 1998, with Tenaska Power Services Co., under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds Tenaska Power Services Co., as a customer under the Tariff. DLC requests an effective date of January 20, 1998, for the Service Agreement.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Duquesne Light Company

[Docket No. ER98–1628–000]

Take notice that on January 30, 1998, Duquesne Light Company (DLC), filed a Service Agreement dated January 20, 1998, with DTE Energy Trading, Inc., under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds DTE Energy Trading, Inc., as a customer under the Tariff. DLC requests an effective date of January 20, 1998, for the Service Agreement.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. South Carolina Electric & Gas Company

[Docket No. ER98–1629–000]

Take notice that on January 29, 1998, South Carolina Electric & Gas Company, tendered for filing a report that summarizes transactions that occurred October 1, 1997 through December 31, 1997, pursuant to the Market-Based Tariff accepted by the Commission in Docket Nos. ER96–1085–000 and ER96–3073–000].

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Southwestern Public Service Company

[Docket No. ER98–1630–000]

Take notice that on January 29, 1998, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), submitted a Quarterly Report under Southwestern's market-based sales tariff. The report is for the period of October 1, 1997 through December 31, 1997.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Northern Indiana Public Service Company

[Docket No. ER98–1632–000]

Take notice that on January 30, 1998, Northern Indiana Public Service Company (Northern), filed a Network Integration Transmission Service Agreement pursuant to its Open Access Transmission Tariff and a Service Agreement pursuant to its Power Sales Tariff with the Town of Etna Green, Indiana. Northern Indiana has requested an effective date of February 1, 1998.

Copies of this filing have been sent to the Town of Etna Green, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Bangor Hydro-Electric Company

[Docket No. ER98–1633–000]

Take notice that on January 30, 1998, Bangor Hydro-Electric Company (Bangor Hydro), filed a form of service agreement for the provision of short term power between Bangor Hydro and PacifiCorp Power Marketing, Inc., under Bangor Hydro's FERC Rate Schedule Original Volume No. 1.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Southern Company Services, Inc.

[Docket No. ER98–1634–000]

Take notice that on January 30, 1998, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies), submitted a report of short-term transactions that occurred under the Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) during the period October 1, 1997 through December 31, 1997.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. New England Power Company

[Docket No. ER98–1636–000]

Take notice that on January 30, 1998, New England Power Company (NEP), tendered for filing with the Federal Energy Regulatory Commission a tariff for capacity and capacity related products, NEP Electric Tariff No. 10. Under the tariff, NEP may enter into service agreements for the sale at wholesale of electric capacity, capacity related products, or a combination of such products, at negotiated rates subject to a cost-based ceiling and may conduct transactions pursuant to such service agreements. NEP requested an effective date of April 1, 1998.

NEP has served its filing on the Massachusetts Department of Telecommunication and Energy, the Rhode Island Public Utilities Commission, the Vermont Department of Public Service, and the New Hampshire Public Utilities Commission. It has also been served on the Attorneys General for Massachusetts and Rhode Island.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Wisconsin Power and Light Co.

[Docket No. ER98–1637–000]

Take notice that on January 30, 1998, Wisconsin Power and Light Company (WP&L), tendered for filing executed Form Of Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service, establishing Columbia Power Marketing Corporation as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of January 12, 1998, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. Tucson Electric Power Company

[Docket No. ER98–1639–000]

Take notice that on January 30, 1998, Tucson Electric Power Company (TEP), tendered for filing one (1) service agreement for firm point-to-point transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requested waiver of the 60-day prior notice requirement to allow the service agreement to become effective as of the earliest date service commenced under the agreement, January 1, 1998. The details of the service agreement are as follows:

Service Agreement for Firm Point-to-Point Transmission Service with Tucson Electric Power Company, Contracts & Wholesale Marketing dated January 1, 1998. Service under this agreement commenced on January 1, 1998.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–1640–000]

Take notice that on January 30, 1998, Consolidated Edison Company of New York, Inc., tendered for filing a summary of the electric exchanges, electric capacity, and electric other energy trading activities under its FERC Electric Tariff Rate Schedule No. 2, for the quarter ending December 31, 1997.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. The Washington Water Power Company

[Docket No. ER98–1641–000]

Take notice that on January 30, 1998, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission an executed Firm Point to Point Firm Service Agreement under WWP's Open Access Transmission Tariff, FERC Electric Tariff, Volume No. 8. WWP requests an effective date of January 1, 1998.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. Southern California Edison Company

[Docket No. ER98–1685–000]

Take notice that on January 29, 1998, Southern California Edison Company (Edison), tendered for filing a revised Appendix III (Appendix III) which contains retail transmission rates included as part of Edison's Transmission Owners Tariff (TO Tariff), and various documents supporting the revisions to Appendix III.

Edison is requesting an effective date concurrent with the date the California Independent System Operator begins operations.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. Colorado Springs Utilities

[Docket No. NJ97–9–001]

Take notice that on January 28, 1998, Colorado Springs Utilities, tendered for filing its revised open access standards of conduct in the above-referenced docket.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4015 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10847–001]

Creamer and Noble; Notice of Intent To Prepare an Environmental Impact Statement (EIS) and Conduct Public Scoping Meetings and a Site Visit

February 11, 1998.

The Federal Energy Regulatory Commission (Commission) is reviewing an application for an original license for the proposed 500-megawatt Crystal Creek Hydropower Project, No. 10847–001. The pumped-storage project, proposed by Creamer and Noble Energy, Inc., would be located about 26 miles northeast of San Bernardino, California. About 237 acres of the project would be on lands within the San Bernardino National Forest, administered by the U.S. Forest Service (FS) and about 270 project acres would transect private property and lands administered by the U.S. Bureau of Land Management (BLM), Barstow Resource Area.

The Commission intends to prepare an Environmental Impact Statement (EIS) for the Project in accordance with the National Environmental Policy Act. In the EIS, we will consider reasonable alternatives to Creamer and Noble's proposed project, and analyze both site-specific and cumulative environmental impacts of the project, including an economic and engineering analysis.

The EIS will be issued and circulated to those on the mailing list for this project. All comments filed on the draft EIS will be analyzed by the staff and considered in a final EIS. The staff's conclusions and recommendations presented in the final EIS will then be presented to the Commission to assist in making a licensing decision.

Scoping

We are asking agencies, Indian Tribes, non-governmental organizations, and individuals to help us identify the scope of environmental issues that should be analyzed in the EIS, and to provide us with information that may be useful in preparing the EIS.

To help focus comments on the environmental issues, a scoping document outlining subject areas to be addressed in the EIS will be mailed to those on the mailing list for the project. Those not on the mailing list may request a copy of the scoping document from the project coordinator, whose telephone number is listed below.

Those with comments or information pertaining to this project should file it with the Commission at the following address: David P. Boergers, Acting Secretary, Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The comments and information are due to the Commission by April 10, 1998. All filings should clearly show the following on the first page: Crystal Creek Hydroelectric Project, FERC No. 10847–001.

In addition to written comments, we're holding two scoping meetings to solicit any verbal input and comments you may wish to offer on the scope of the EIS. An agency scoping meeting will begin at 8:30 a.m. on Wednesday, March 11, 1998, at the San Bernardino Valley Municipal Water District, 1350 South "E" Street, San Bernardino, California. A public scoping meeting will begin at 6:30 p.m. on Wednesday, March 11, 1998, at the Lucerne Valley Community Center, 33187 Highway 247, Lucerne Valley, California. The public and agencies may attend either or both meetings, and we'll treat written and verbal responses equally. There will also be a visit to the proposed project site on March 10, 1998, to become more familiar with the proposed project. More information about these meetings and site visit is available in the scoping document.

Any questions may be directed to Mr. Carl Keller, project coordinator, at (202) 219–2831, Federal Energy Regulatory Commission, Office of Hydropower Licensing, 888 First Street, NE, Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3945 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

February 11, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of license for the construction and operation of water intakes and associated facilities on project lands, and the withdrawal of approximately 12 million gallons per day from the project reservoir for irrigation.

b. *Project No:* 2149–068.

c. *Date Filed:* January 26, 1998.

d. *Applicant:* Public Utility District No. 1 of Douglas County, Washington.

e. *Name of Project:* Wells Hydroelectric Project.

f. *Location:* Okanogan County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C., 791(a)–825(r).

h. *Applicant Contact:* Mr. Gordon Brett, Property Supervisor, Public Utility District No. 1 of Douglas County, 1151 Valley Mall Parkway, East Wenatchee, WA 98802–4497, (509) 884–7191.

i. *FERC Contact:* Jim Haimes, (202) 219–2780.

j. *Comment Date:* April 6, 1998.

k. *Description of Project:* The licensee is requesting the Commission's authorization to issue a permit to Dan Pariseau Orchards for the installation and operation of water intakes and associated facilities on lands of the Wells Project. The facilities would include 12 water intakes on the Columbia River, each having a capacity to withdraw approximately 1.0 million gallons per day from the project reservoir, and associated buried pipelines to transport water for the irrigation of adjacent apple orchards.

1. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2.. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3943 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

February 11, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of license that would allow the Clayton-Rabun County Water Authority (Authority) to increase its water withdrawal from Lake Rabun reservoir for municipal water supply from 806,000 gallons per day (gpd) currently to 2,000,000 gpd (that is, from approximately 1.5 to 3.0 cubic feet per second).

b. *Project No:* 2354–018.

c. *Date Filed:* January 29, 1998.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* North Georgia Project.

f. *Location:* Rabun County, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C., 791(a)–825(r).

h. *Applicant Contact:* Mr. Larry J. Wall, Georgia Power Company, 241 Ralph McGill Blvd. NE, Atlanta, GA 30308–2054, (404) 506–2054.

i. *FERC Contact:* Jim Haimes, (202) 219–2780.

j. *Comment Date:* April 6, 1998.

k. *Description of Project:* The licensee requests Commission authorization to permit the Authority to increase its water withdrawal from Lake Rabun reservoir from 806,000 gpd currently to 2,000,000 gpd. Existing pumps and water treatment facilities at the site are able to accommodate the increased water withdrawal; consequently, the proposed action would not involve any new construction activity.

1. *This notice also consists of the following standard paragraph:* B, C1, and D2.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 3385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3944 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Conduit Exemption

February 11, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No:* 11468–001.

c. *Date filed:* January 28, 1998.

d. *Applicant:* North Side Canal Company.

e. *Name of Project:* Crossroads Conduit Project.

f. *Location:* On the North Side canal system in Jerome County, Idaho (T. 7S. R. 16E., Sections 23, 24, and 25).

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:*

Randolph J. Hill, Ida-West Energy Company, P.O. Box 7867, Boise, ID 83707, (208) 395–8930

or

John Rosholt, Rosholt, Robertson & Tucker, P.O. Box 1906, Twin Falls, ID 83301, (208) 734–0700.

i. *FERC Contact:* Héctor M. Pérez at (202) 219-2843.

j. *Description of Project:* The proposed project would consist of: (1) A 900-foot-long, 150-foot-wide forebay with a normal water surface elevation of 3,773.5 feet formed by two dikes with a maximum height above existing ground surface of 9 feet; (2) a primary overflow bypass channel with a top elevation of 3,774 feet and a secondary overflow bypass channel with a top elevation of 3,774.75 feet, both at the forebay; (3) a reinforced concrete intake structure; (4) a 10-foot-diameter, 1,750-foot-long steel penstock; and (5) a reinforced concrete powerhouse with a 3,200-kilowatt turbine-generator unit.

k. Under Section 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3946 Filed 2–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Acceptance and Notice Requesting Interventions and Protests

February 11, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Original License for a Major Water Power Project—5 Megawatts or Less.

b. Project No.: 11480.

c. Date filed: November 25, 1997.

d. Applicant: Haida Corporation.

e. Name of Project: Reynolds Creek Hydroelectric Project.

f. Location: On Reynolds Creek, Prince of Wales Island, Alaska.

g. Filed Pursuant to: Federal Power Act and Public Utility Regulatory Policies Act.

h. Applicant Contact: Michael V. Stimac, HDR Engineering, Inc., 500-108th Avenue NE, Suite 1200, Bellevue, Washington 98004–5538, (425) 453–1523.

i. FERC Contact: Carl J. Keller, (202) 219–2831.

j. Deadline for filing interventions and protests: April 15, 1998.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions—see attached paragraph D7.

l. Brief Description of Project: The proposed modified run-of-river hydroelectric project would consist of: (1) A 20-foot-long, concrete weir, diversion dam and intake at the outlet of Rich's Pond; (2) a 3,200-foot-long, 42-inch diameter, steel penstock, (3) a metal powerhouse initially containing a 1,500 kilowatt (kW) horizontal impulse turbine/generator for Phase 1; Phase II would add a second 3,500 kW turbine/generator, (4) about 500 feet of new access road, and (5) a 10.9-mile-long, 34.5 kilovolt overhead transmission line.

m. This notice also consists of the following standard paragraphs: A2, A–9, B1, and D7.

n. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, Room 2A, 888 First Street, N.E., Washington, D.C. 20426 or by calling (202) 208–1659. A copy is also available

for inspection and reproduction by contacting Mr. Michael Stimac at HDR Engineering, Inc. at (425) 453–1523 in Bellevue, Washington or Mr. Charles Skultka, Sr., Haida Corporation, at (907) 966–2574 in Hydaburg, Alaska.

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

D7. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Lindwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–3947 Filed 2–19–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5968–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; General Conformity of Federal Actions to State Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Determining Conformity of General Federal Actions to State Implementation Plans, OMB Control Number 2060–0279, ICR number 1637.03, expiration date: April 30, 1998. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 20, 1998.

ADDRESSES: A copy of the supporting statement may be obtained from the Ozone Policy and Strategy Group, Air Quality Strategies and Standards Division, Office of Air Quality Planning and Standards, MD–15, Research Triangle Park, NC 27711 or is available at http://www.epa.gov/ttn/oarpg/meta.19078.1.General.Doc, 19078.2.Gencon.Log, and 19078.3.Gencon.xls.

Comments must be mailed to David H. Stonefield, Ozone Policy and Strategies Group, Air Quality Strategies and Standards Division, MD–15, Environmental Protection Agency, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: David Stonefield, telephone: 919–541–5350, Facsimile: 919–541–0824, E–MAIL: stonefield.dave@epamail.epa.gov

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which take Federal actions, or are subject to Federal actions, and emit pollutants above de minimis levels.

Title: Determining Conformity of General Federal Actions to State Implementation Plans, OMB Control Number 2060–0279, ICR number 1637.03, expiration date: April 30, 1998.

Abstract: Before any agency, department, or instrumentality of the Federal government engages in, supports in any way, provides financial assistance for, licenses, permits, approves any activity, that agency has the affirmative responsibility to ensure that such action conforms to the State implementation plan (SIP) for the attainment and maintenance of the national ambient air quality standards (NAAQS). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. Section 176(c) of the Clean Air Act (42 U.S.C. 7401 *et seq.*) requires that all Federal actions conform with the SIPs to attain and maintain the NAAQS. The EPA's implementing regulations require Federal entities to make a conformity determination for all actions which will impact areas designated as nonattainment or maintenance for the NAAQS and which will result in total direct and indirect emissions in excess of de minimis levels. The Federal entities must collect information on the SIP requirements and the pollution sources to make the conformity determination. Depending on the type of action, the Federal entities either collect the information themselves, hire consultants to collect the information or require applicants/sponsors of the Federal action to provide the information.

The type and quantity of information required will depend on the

circumstances surrounding the action. First, the entity must make an applicability determination. If the net total direct and indirect emissions do not exceed de minimis levels established in the regulations or if the action meets certain criteria for an exemption, a conformity determination is not required. Actions requiring conformity determinations vary from straightforward, requiring minimal information, to complex, requiring significant amounts of information. The Federal entity must determine the type and quantity of information on a case-by-case basis. State and local air pollution control agencies are usually requested to provide information to the Federal entities making a conformity determination and are provided opportunities to comment on the proposed determinations. The public is also provided an opportunity to comment on the proposed determinations.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The estimated annual projected hour burden and cost for the respondents (generally Federal agencies) are 32,560 hours and $1,118,119. The estimated annual projected hour burden and cost for the State and local agencies are 1,156 hours and $323,354. The estimated annual projected hour burden and cost for the EPA are 1,846 hours and $51,173. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: February 6, 1998.

John Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 98–4006 Filed 2–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5955–2]

Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} National Ambient Air Quality Standards (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the EPA has issued guidance for continuing the implementation of the Clean Air Act requirements for the 1-hour ozone and pre-existing PM_{10} (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) NAAQS following EPA's promulgation of the new 8-hour ozone (62 FR 38856, July 18, 1997) and PM (62 FR 38652, July 18, 1997) NAAQS. The EPA has issued the guidance to ensure that momentum is maintained by the States in their current programs while moving toward developing their plans for implementing the new NAAQS, and it applies to all areas now subject to the 1-hour ozone standard and the pre-existing PM_{10} standard regardless of attainment status. On July 16, 1997 (62 FR 38421, July 18, 1997), President Clinton issued a directive to EPA Administrator Browner on implementation of the new standards for ozone and PM. In that directive, the President laid out a plan on how these new standards, as well as the current 1-hour ozone and pre-existing PM standards, are to be implemented. The guidance reflects the Presidential Directive.

ADDRESSES: Copies of the guidance are available from the World Wide Web site listed in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For specific questions and comments on the ozone portion of this guidance, contact Ms. Sharon Reinders, U.S. EPA, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5284; for specific questions and comments on the PM portion of this guidance, contact Ms. Robin Dunkins, U.S. EPA, MD–15, Research Triangle Park NC 27711, telephone (919) 541–5335.

SUPPLEMENTARY INFORMATION: The purpose of this guidance is to set forth EPA's current views on key issues regarding the ongoing programs implemented by State, local and tribal air pollution control agencies to attain the 1-hour ozone and pre-existing PM_{10} NAAQS. These issues will be addressed in future rulemakings as appropriate. The EPA will propose to take a particular action based in whole or in part on its views of the relevant issues, and the public will have an opportunity to comment on EPA's interpretations during the rulemakings. When EPA issues final rules based on its reviews, those views will be binding on the States, the public, and EPA as a matter of law.

Electronic Availability

A World Wide Web (WWW) site has been developed for overview information on the NAAQS and the ozone, PM, and regional haze (RH) implementation process. The Uniform Resource Location (URL) for the home page of the web site is *http://ttnwww.rtpnc.epa.gov/implement*. For assistance, the TTN Helpline is (919) 541–5384. For those persons without electronic capability, a copy may be obtained from Ms. Tricia Crabtree, MD–15, Air Quality Strategies and Standards Division, RTP NC 27711, telephone (919) 541–5688).

Dated: February 6, 1998.

Henry C. Thomas,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 98–3882 Filed 2–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5967–9]

Open Meeting of the Industrial Non-Hazardous Waste Stakeholders Focus Group

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting of the Industrial Non-Hazardous Waste Stakeholders Focus Group.

SUMMARY: As required by section 10 (a)(2) of the Federal Advisory

Committee Act (Pub. L. 92–463), the EPA is giving notice of the sixth meeting of the Industrial Non-Hazardous Waste Policy Dialogue Committee, also known as the Industrial Non-Hazardous Waste Stakeholders Focus Group. The purpose of this committee is to advise EPA and ASTSWMO (the Association of State and Territorial Solid Waste Management Officials) in developing voluntary guidance for the management of industrial waste in landfills, waste piles, surface impoundments, and land application units. The Focus Group will facilitate the exchange of information and ideas among the interested parties relating to the development of such guidance. The purpose of the sixth meeting will be to continue discussion of issues related to the development of such guidance. Issues to be discussed will include ground-water modeling/risk results (i.e., leachate concentration threshold values for the Tier I national approach for the four types of management units), development of a screening tool to evaluate the need for air emission controls, and waste characterization. In addition, presentations will be made to the Focus Group concerning the development of the landfill neural net software (i.e., the tool to be used by facility managers for the Tier II site-specific adjustments) and the latest draft of the CD–ROM being developed for this project. There will be an opportunity for limited public comment at the end of each day of the meeting.

DATES: The committee will meet on March 18 and 19, 1998, from 9:00 a.m. to 5:00 p.m. on March 18, and from 8:30 a.m. to 3:00 p.m. on March 19.

ADDRESSES: The location of the meeting is the Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Avenue, NW, Washington, D.C. 20008. The phone number is 202–328-2000. The seating capacity of the room is approximately 60 people, and seating will be on a first-come basis. Supporting materials are available for viewing at Docket F–96–INHA–FFFFF in the RCRA Information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The material to be discussed at the March Focus Group meeting will be available for viewing in the above docket on and after March 4, 1998. For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington metropolitan area, call 703–412–9810 or TDD 703–412–3323.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the committee should contact Paul Cassidy, Municipal and Industrial Solid Waste Division, Office of Solid Waste, at (703) 308–7281 or e-mail at cassidy.paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice is available on the Internet. Follow these instructions to access electronically:

WWW: http://www.epa.gov/fedrgstr/
FTP: ftp.epa.gov
Login: anonymous
Password: your Internet address
File is located in /pub/epaoswer

Background

EPA and ASTSWMO have formed a State/EPA Steering Committee to jointly develop voluntary facility guidance for the management of industrial nonhazardous waste in land-based disposal units. The purpose of the guidance document is to provide a guide to facility managers so that they can provide safe industrial waste management. The guidance document will address such topics as appropriate controls for ground-water, surface-water, and air protection, liner designs, public participation, waste reduction, daily operating practices, monitoring and corrective action, and closure and post-closure considerations.

The State/EPA Steering Committee has convened this Stakeholders Focus Group to obtain recommendations from individuals who are members of a broad spectrum of public interest groups and affected industries. All recommendations from Focus Group participants will be forwarded to the State/EPA Steering Committee for consideration, as the Stakeholders' Focus Group will not strive for consensus. The State/EPA Steering Committee will also provide an opportunity for public comment on the draft guidance document.

Copies of the minutes of all Stakeholder Focus Group meetings have been made available through the docket at the RCRA Information Center, including minutes of the previous 5 Focus Group meetings, which were held on April 11–12, 1996, September 11–12, 1996, February 19–20, 1997, May 20–21, 1997, and October 8–9, 1997.

Dated: February 6, 1998.

Matthew Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 98–4009 Filed 2–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5967–6]

Announcement and Publication of the Policy for Municipality and Municipal Solid Waste; CERCLA Settlements at NPL Co-Disposal Sites

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This policy supplements the "Interim Policy on CERCLA Settlements Involving Municipalities and Municipal Wastes" (1989 Policy) that was issued by the U.S. Environmental Protection Agency (EPA) on September 30, 1989. This policy states that EPA will continue its policy of not generally identifying generators and transporters of municipal solid waste (MSW) as potentially responsible parties at NPL sites. In recognition of the strong public interest in reducing contribution litigation, however, EPA identifies in the policy a settlement methodology for making available settlements to MSW generators and transporters who seek to resolve their liability. In addition, the policy identifies a presumptive settlement range for municipal owners and operators of co-disposal sites on the NPL who desire to settlement their Superfund liability.

FOR FURTHER INFORMATION CONTACT: Leslie Jones (202–564–5123) or Doug Dixon (202–564–4232), Office of Site Remediation Enforcement, 401 M. St, S.W., 2273A, Washington, D.C. 20460. This policy is available electronically at http://www.epa.gov/oeca//osre.html. Copies of this policy can be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Each order must reference the NTIS item number PB98–118003. For telephone orders or further information on placing an order, call NTIS at (703) 487–4650 or (800) 553–NTIS. For orders via E-mail/Internet, send to the following address: orders@ntis.fedworld.gov.

Dated: February 5, 1998.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

Policy for Municipality and Municipal Solid Waste CERCLA Settlements at NPL Co-Disposal Sites

I. Purpose

The purpose of this policy is to provide a fair, consistent, and efficient settlement methodology for resolving the potential liability under CERCLA [1] of generators and transporters of municipal sewage sludge and/or municipal solid waste at co-disposal landfills on the National Priorities List (NPL), and municipal owners and operators of such sites. This policy is intended to reduce transaction costs, including those associated with third-party litigation, and to encourage global settlements at sites.

II. Background

Currently, there are approximately 250 landfills on the NPL that accepted both municipal sewage sludge and/or municipal solid waste (collectively referred to as "MSW") and other wastes, such as industrial wastes, containing hazardous substances. These landfills, which are commonly referred to as "co-disposal" landfills, comprise approximately 23% of the sites on the NPL. Many of these landfills were or are owned or operated by municipalities in connection with their governmental function of providing necessary sanitation and trash disposal services to residents and businesses.

EPA recognizes the differences between MSW and the types of wastes that usually give rise to the environmental problems at NPL sites. Although MSW may contain hazardous substances, such substances are generally present in only small concentrations. Landfills at which MSW alone was disposed of do not typically pose environmental problems of sufficient magnitude to merit designation as NPL sites. In the Agency's experience, and with only rare exceptions do MSW-only landfills become Superfund sites, unless other types of wastes containing hazardous substances, such as industrial wastes, are co-disposed at the facility. Moreover, the cost of remediating MSW is typically lower than the cost of remediating hazardous waste, as evidenced by the difference between closure/post-closure requirements and corrective action costs incurred at facilities regulated under Subtitles D and C of the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.* (RCRA).

On December 12, 1989, EPA issued the "Interim Policy on CERCLA Settlements Involving Municipalities and Municipal Wastes" (the 1989 Policy) to establish a consistent approach to certain issues facing municipalities and MSW generators/transporters. The 1989 Policy sets forth the criteria by which EPA generally determines whether to exercise enforcement discretion to pursue MSW generators/transporters as potentially responsible parties (PRPs) under § 107(a) of CERCLA. The 1989 Policy provides that EPA will not generally identify an MSW generator/transporter as a PRP for the disposal of MSW at a site unless there is site-specific evidence that the MSW that party disposed of contained hazardous substances derived from a commercial, institutional or industrial process or activity. Despite the 1989 Policy, the potential presence of small concentrations of hazardous substances in MSW has resulted in contribution claims by private parties against MSW generators/transporters.

Additionally, the 1989 Policy recognizes that municipal owners/operators, like private parties, may be PRPs at Superfund sites. The 1989 Policy identifies several settlement provisions that may be particularly suitable for settlements with municipal owners/operators in light of their status as governmental entities.

Consistent with the 1989 Policy, the Agency will continue its policy to not generally identify MSW generators/transporters as PRPs at NPL sites, and to consider the performance of in-kind services by a municipal owner/operator as part of that party's cost share settlement. In recognition of the strong public interest in reducing the burden of contribution litigation, however, this policy supplements the 1989 Policy by providing for settlements with MSW generators/transporters and municipal owners/operators that wish to resolve their potential Superfund liability and obtain contribution protection pursuant to Section 113(f) of CERCLA.

III. Definitions

For purposes of this policy, EPA defines municipal solid waste as household waste and solid waste collected from non-residential sources that is essentially the same as household waste. While the composition of such wastes may vary considerably, municipal solid waste generally is composed of large volumes of non-hazardous substances (e.g., yard waste, food waste, glass, and aluminum) and can contain small amounts of other wastes as typically may be accepted in RCRA Subtitle D landfills. A contributor of municipal solid waste containing such other wastes may not be eligible for a settlement pursuant to this policy if EPA determines, based upon the total volume or toxicity of such other wastes, that application of this policy would be inequitable.[2]

For purposes of this policy, municipal solid waste and municipal sewage sludge are collectively referred to as MSW; all other wastes and materials containing hazardous substances are referred to as non-MSW. Municipal sewage sludge means any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage sludge, but does not include sewage sludge containing residue removed during the treatment of wastewater from manufacturing or processing operations.

The term municipality refers to any political subdivision of a state and may include a city, county, town, township, local public school district or other local government entity.

IV. Policy Statement

EPA intends to exercise its enforcement discretion to offer settlements to eligible parties that wish to resolve their CERCLA liability based on a unit cost formula for contributions by MSW generators/transporters and a presumptive settlement percentage and range for municipal owners/operators of co-disposal sites.

MSW Generator/Transporter Settlements

For settlement purposes, EPA calculates an MSW generator/transporter's share of response costs by multiplying the known or estimated quantity of MSW contributed by the generator/transporter by an estimated unit cost of remediating MSW at a representative RCRA Subtitle D landfill. This method provides a fair and efficient means by which EPA may settle with MSW generators/transporters that reflect a reasonable approximation of the cost of remediating MSW.

This policy's unit cost methodology is based on the costs of closure/post-closure activities at a representative RCRA Subtitle D landfill. EPA's estimate of the cost per unit of remediating MSW at a representative

[1] The Comprehensive Environmental Response, Compensation and Liability, 42 U.S.C. 9601, *et seq.*

[2] For example, such other wastes may not constitute municipal solid waste where the cumulative amount of such other wastes disposed of by a single generator or transporter is larger than the amount that would be eligible for a de micromis settlement.

Subtitle D landfill is $5.30 per ton.[3] That unit cost is derived from the cost model used in EPA's "Regulatory Impact Analysis for the Final Criteria for Municipal Solid Waste Landfills," (RIA).[4]

To calculate the unit cost, the Subtitle D landfill cost model was applied to account for the costs associated with the closure/post-closure criteria of part 258[5] (excluding non-remedial costs, such as siting and operational activities) for two types of cost scenarios: basic closure cover requirements at a Subtitle D landfill; and closure requirements supplemented by a typical corrective action response at a Subtitle D landfill. Based on the costs associated with those activities, EPA developed a cost per ton for each scenario. In recognition of EPA's estimate that approximately 30–35% of existing unlined MSW landfills will trigger corrective action under part 258,[6] EPA used a weighted average of both unit costs to develop a final unit cost. Specifically, EPA averaged the unit costs giving a 67.5% weight to the basic closure cover unit cost and a 32.5% weight to the multilayer cover and corrective action scenario. The resulting unit cost, $5.30 per ton reflects (as stated in the Subtitle D RIA) is the likelihood that unlined MSW landfills, such as those typically found on the NPL, would trigger corrective action under part 258.

In applying the RIA model to develop unit costs, EPA used the average size of co-disposal sites on the NPL, 69 acres. Other landfill assumptions from the RIA that EPA used in running the model include the following: a 20-year operating life (also consistent with the average NPL co-disposal site operating life); 260 operating days per year; a below-grade thickness of 15 feet with 50 percent of waste below grade; a compacted waste density of 1,200 lb/cy;[7] and a landfill input of 289.3 tons per day.[8] The present value cost is calculated assuming a 7 percent discount rate.

When seeking to apply the unit cost to parties' MSW contributions, in some cases a party's contribution is quantified by volume (cubic yards) rather than weight (pounds). Absent site-specific contemporaneous density conversion factors, Regions may use the following presumptive conversion factors that are representative of MSW. MSW at the time of collection from places of generation (*i.e.*, "loose" or "curbside" refuse) has a density conversion factor of 100 lbs./cu. yd.[9] MSW at the time of transport in or disposed by a compactor truck has a density conversion factor of 600 lbs./cu. yd.[10] In cases involving municipal sewage sludge, a party's contribution may first be converted from a volumetric value to a wet weight value using a water density of 8.33 lbs./gallon [11] and the specific gravity of the municipal sewage sludge.[12] The wet weight may then be converted to a dry weight using an appropriate value for the percentage of solids in the municipal sewage sludge. These conversion factors, in conjunction with the unit cost, can be used to develop a total settlement amount for the MSW attributable to an individual party.

In order to be eligible for a settlement under this policy, an MSW generator/transporter must provide all information requested by EPA to estimate the quantity of MSW contributed by such party. EPA may solicit information from other parties where appropriate to estimate the quantity of a particular generator's/transporter's contribution of MSW. Where the party has been forthcoming with requested information, but the information is nonetheless imperfect or incomplete, EPA will construct an estimate of the party's quantity incorporating reasonable assumptions based on relevant information, such as census data and national per capita solid waste generation information.

MSW generators/transporters settling pursuant to this policy will be required to waive their contribution claims against other parties at the site. In the situation where there is more than one generator or transporter associated with the same MSW, EPA will not seek multiple recovery of the unit cost rate from different generators or transporters with respect to the same units of MSW. EPA will settle with one or all such parties for the total amount of costs associated with the same waste based on the unit cost rate. Notwithstanding the general requirement that settlors under this policy must waive their contribution claims, a settlor will not be required to waive its contribution claims against any nonsettling non-de micromis generators or transporters associated with the same waste. However, in regards to these individual payments for the same MSW, EPA will not become involved in determining the respective shares for the parties.

It is an MSW generator's or transporter's responsibility to notify EPA of its desire to enter into settlement negotiations pursuant to this proposal. Absent the initiation of settlement discussions by an MSW G/T, EPA may not take steps to pursue settlements with such parties.

Municipal Owner/Operator Settlements

Pursuant to this policy, the U.S. will offer settlements to municipal owners/operators of co-disposal facilities who wish to settle; those municipal owners/operators who do not settle with EPA will remain subject to site claims by EPA consistent with the principles of joint and several liability, and claims by other parties.

EPA recognizes that some of the co-disposal landfills listed on the NPL are or were owned or operated by municipalities in connection with their governmental function to provide necessary sanitation and trash disposal services to residents and businesses. EPA believes that those factors, along with the nonprofit status of municipalities and the unique fiscal planning considerations that they face, warrant a national settlement policy that provides municipal owners/operators with settlements that are fair, reasonable, and in the public interest. As discussed below, EPA has based the policy on what municipalities have historically paid in settlements at such sites.

This policy establishes 20% of total estimated response costs for the site as a presumptive baseline settlement amount for an individual municipality to resolve its owner/operator liability at the site. Regions may offer settlements varying from this presumption consistent with this policy, generally not to exceed 35%, based on a number of site-specific factors. The 20% baseline is an individual cost share and pertains solely to a municipal owner/operator's liability as an owner/operator. EPA recognizes that, at some

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[3] This rate will be adjusted over time to reflect inflation.

[4] PB–92–100–841 (EPA's Office of Solid Waste and Emergency Response); see also RIA Addendum, PB–92–100–858.

[5] Part 258 is the set of regulations that establish landfill operation and closure requirements for RCRA Subtitle D landfills.

[6] See Addendum to RIA at II–12 n. 13.

[7] September 22, 1997 memo to the file by Leslie Jones (conversation with Dr. Robert Kerner, Drexell University, head and founder of the Geosynthetic Institute).

[8] The RIA model calculates a ton per day input of 289.3 based on the 69-acre size, the waste density factor of 1200 lb.cy, and a total of 5200 operating days during the life of the landfill.

[9] "Estimates of the Volume of MSW and Selected Components in Trash Cans and Landfills" (Feb. 1990), prepared for the Council for Solid Waste Solutions by Franklin Associates, Ltd.; "Basic Data: Solid Waste Amounts, Composition and Management Systems" (Oct. 1985—Technical Bulletin #85–6), National Solid Waste Management Association.

[10] Id.

[11] "Final Guidance on Preparing Waste-in Lists and Volumetric Rankings for Release to Potentially Responsible Parties (PRPs) Under CERCLA" (Feb. 22, 1991), OSWER Directive No. 9835.16.

[12] Specific density is determined by dividing the density of a material by the density of water.

sites, there may be multiple liable municipal owners/operators and EPA may determine that it is appropriate to settle for less than the presumption for an individual owner/operator. A group or coalition of two or more municipalities with the same nexus (i.e., basis for liability) to a site, operating at the same time or during continuous operations under municipal control, should be considered a single owner/operator for purposes of developing a cost share (e.g., two or more cities operated together in joint operations; in cost sharing agreements; or continuously where such a group's membership may have changed in part). In cases where a municipal owner/operator is also liable as an MSW generator/transporter, EPA may offer to resolve the latter liability for an additional payment amount developed pursuant to the MSW generator/transporter settlement methodology.

Under this policy, EPA may adjust the settlement in a particular case upward from the presumptive percentage (generally not to exceed a 35% share) based on consideration of the following factors:

(1) Whether the municipality or an officer or employee of the municipality exacerbated environmental contamination or exposure (e.g., the municipality permitted the installation of drinking water wells in known areas of contamination); and

(2) Whether the owner/operator received operating revenues net of waste system operating costs during ownership or operation of the site that are substantially higher than the owner/operator's presumptive settlement amount pursuant to this policy.

The Regions may adjust the presumptive percentage downward based on whether the municipality, of its own volition (i.e., not pursuant to a judicial or administrative order) made specific efforts to mitigate environmental harm once that harm was evident (e.g., the municipality installed environmental control systems, such as gas control and leachate collection systems, where appropriate; the municipality discontinued accepting hazardous waste once groundwater contamination was discovered; etc.). The Regions may also consider other relevant equitable factors at the site.

The 20% baseline amount is based on several considerations. EPA examined the data from past settlements of CERCLA liability between the United States, or private parties, and municipal owners/operators at co-disposal sites on the NPL where there were also PRPs who were potentially liable for the disposal of non-MSW, such as industrial waste. EPA excluded from analysis sites where the municipal owner/operator was the only identified PRP because those are not the types of situations that this policy is intended to address. Thus, settlements under this policy are appropriate only at sites where there are multiple, viable non-*de minimis* non-MSW generators/transporters. EPA's analysis of past settlements indicated an average municipality settlement amount of 29% of site costs.

In reducing the 29% settlement average to a 20% presumptive settlement amount, EPA considered two primary factors. First, in examining the historical settlement data, EPA considered that the relevant historical settlements typically reflected resolution of the municipality's liability not only as an owner/operator, but also as a generator or transporter of MSW. Under this policy, a municipality's generator/transporter liability will be resolved through payment of an additional amount, calculated pursuant to the MSW generator/transporter methodology.

Second, the owner/operator settlement amounts under this policy also reflect the requirement that municipal owners/operators that settle under this policy will be required to waive all contribution rights against other parties as a condition of settlement. By contrast, in many historical settlements, municipal owners/operators retained their contribution rights and hence were potentially able to seek recovery of part of the cost of their settlements from other parties.

V. Application

This policy applies to co-disposal sites on the NPL. This policy is intended for settlement purposes only and, therefore, the formulas contained in this policy are relevant only where settlement occurs. In addition, this policy does not address claims for natural resource damages.

This policy does not apply to MSW generators/transporters who also generated or transported any non-MSW containing a hazardous substance, except to the extent that a party can demonstrate to EPA's satisfaction the relative amounts of MSW and non-MSW it disposed of at the site and the composition of the non-MSW. In such cases, EPA may offer to resolve the party's liability with respect to MSW as provided in this policy at such time as the party also agrees to an appropriate settlement relating to its non-MSW on terms and conditions acceptable to EPA.

EPA does not intend to reopen settlements with the U.S., nor does this policy have any effect on unilateral administrative orders (UAOs) issued prior to issuance of the policy. At sites for which prior settlements have been reached but where MSW parties are subject to third party litigation, the U.S. may settle with eligible parties based on the formulas established in this policy and may place those settlement funds in a site-specific special account. At sites where no parties have settled to perform work, where the U.S. is seeking to recover costs from private parties, and where the private parties have initiated contribution actions against municipalities and other MSW generators/transporters, the U.S. will seek to apply the most expeditious methods available to resolve liability for those parties pursued in third-party litigation, including, in appropriate circumstances, application of this policy. EPA may require settling parties to perform work under appropriate circumstances, in a manner consistent with the settlement amounts provided in this policy.

Because one of the goals of this policy is to settle for a fair share from MSW generators/transporters and municipal owners/operators, EPA will consider in determining a settlement amount under this policy any claims, settlements or judgments for contribution by a party seeking settlement pursuant to this policy. In no circumstances should a party that receives monies from contribution settlements in excess of its actual cleanup costs receive a benefit from this policy.

The United States will not apply this policy where, under the circumstances of the case, the resulting settlement would not be fair, reasonable, or in the public interest. Regions should carefully consider and address any public comments on a proposed settlement that questions the settlement's fairness, reasonableness, or consistency with the statute.

VI. Financial Considerations in Settlements

In cases under this policy, EPA will consider all claims of limited ability to pay. EPA intends in the future to develop guidelines regarding analysis of municipal ability to pay. Parties making such claims are required to provide EPA with documentation deemed necessary by EPA relating to the claim, including potential or actual recovery of insurance proceeds. Recognizing that municipal owners/operators often are uniquely situated to perform in-kind services at a site (e.g., mowing, road maintenance, structural maintenance), EPA will carefully consider any forms of in-kind services that a municipal owner/

operator may offer as partial settlement of its cost share.

VII. Use with Other Policies

This policy is intended to be used in concert with EPA's existing guidance documents and policies (e.g., orphan share, de micromis, residential homeowner, etc.), and so other EPA settlement policies may also apply to these sites. For example, those parties eligible for orphan share compensation under EPA's orphan share policy will continue to be eligible for such compensation.[13]

VIII. Consultation Requirement

The first two settlements in each Region reached pursuant to this policy require the concurrence of the Director of the Office of Site Remediation Enforcement (OSRE). All subsequent settlements with municipal owners/operators at co-disposal sites require the concurrence of the Director of OSRE. If you have any questions regarding this policy please call Leslie Jones (202) 564–5123 or Doug Dixon (202) 564–4232.

Notice: This guidance and any internal procedures adopted for its implementation are intended exclusively as guidance for employees of the U.S. Government. This guidance is not a rule and does not create any legal obligations. Whether and how the United States applies the guidance to any particular site will depend on the facts at the site.

[FR Doc. 98–4007 Filed 2–17–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5967–7]

Notice of Proposed Administrative De Micromis Settlement Pursuant to Section 122(g)(4) of the Comprehensive Environmental Response,Compensation, and Liability Act, Regarding the Pollution Abatement Services Superfund Site, Oswego, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency (EPA), Region II, announces a proposed administrative "de micromis" settlement pursuant to section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4), relating to the Pollution Abatement Services Superfund Site (Site). The Site is located near the eastern boundary of the City of Oswego, New York. The Site is included on the National Priorities List established pursuant to section 105(a) of CERCLA, 42 U.S.C. 9605(a). This document is being published pursuant to section 122(i) of CERCLA to inform the public of the proposed settlement and of the opportunity to comment.

The proposed administrative settlement has been memorialized in an Administrative Order on Consent (Order) between EPA and Oneida, Ltd. (Respondent). Respondent contributed a minimal amount of hazardous substances to the Site and is eligible for a de micromis settlement under EPA's policies and section 122(g) of CERCLA. This Order will become effective after the close of the public comment period, unless comments received disclose facts or considerations which indicate that this Order is inappropriate, improper or inadequate, and EPA, in accordance with section 122(i)(3) of CERCLA, modifies or withdraws its consent to this agreement.

DATES: Comments must be provided on or before March 20, 1998.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, 17th Floor, 290 Broadway, New York, New York 10007 and should refer to: "Pollution Abatement Services Superfund Site, U.S. EPA Index No. II–CERCLA–97–0210". For a copy of the settlement document, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Carol Y. Berns, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007. Telephone: (212) 637–3177.

Dated: January 29, 1998.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 98–4008 Filed 2–17–98; 8:45 am]
BILLING CODE 6560–50–P

[13] The orphan share policy will continue, however, to apply towards total site costs and not an individual settlor's settlement share.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 63 Fed. Reg. 7170.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Tuesday, February 24th, 1998.

CHANGE IN THE MEETING: The Meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: February 13, 1998.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 98–4242 Filed 2–13–98; 3:35 pm]
BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

February 11, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 20, 1998.

If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0454.

Title: Regulation of International Accounting Rates.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 800.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 1,600 hours.

Frequency of Response: On occasion reporting requirement.

Estimated Cost Per Respondent: $28,000.

Needs and Uses: The Commission requests this collection of information as a method to monitor the international accounting rates to ensure that the public interest is being served and also to enforce Commission policies. By requiring a U.S. carrier to make an equivalency showing and to file other documents for end users interconnected international private lines, the Commission will be able to preclude one-way bypass and safeguard its international settlements policy.

The data collected is required by Section 43.51(d) of the Commission's rules.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–3988 Filed 2–17–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

Open Commission Meeting, Thursday, February 19, 1998

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, February 19, 1998, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No.	Bureau	Subject
1	Wireless Telecommunications.	TITLE: Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services and Biennial Review of Commission Regulations Pursuant to Section 11 of the Communications Act of 1934. SUMMARY: The Commission will consider consolidating, revising and streamlining its rules governing application procedures for radio services licensed by the Wireless Telecommunications Bureau.
2	Mass Media	TITLE: 1998 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996. SUMMARY: The Commission will review its broadcast ownership rules as part of the regulatory reform review adopted by the Telecommunications Act of 1996.
3	International	TITLE: Policies and Rules for the Direct Broadcast Satellite Service. SUMMARY: The Commission will consider action concerning the rules governing the direct broadcast satellite service.
4	Common Carrier	TITLE: Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information (CC Docket No. 96–115); Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934 (CC Docket No. 96–149). SUMMARY: The Commission will consider action concerning the use and protection of customer proprietary network information under Section 222 of the Telecommunications Act.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800 or fax (202) 857–3805 and 857–3184. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its_inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the Washington, D.C. metropolitan area), telephone 1–800–962–0044. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–4231 Filed 2–13–98; 3:16 pm]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Harvest International Co., 5441 Festival Circle, La Palma, CA 90623, Gilbert J. JI, Sole Proprietor

ASECOMER International Corporation d/b/a/ Interworld Freight, Inc. d/b/a Junior Cargo Inc., 8610 NW 72nd Street, Miami, FL 33166, Officer: John O. Crespo, Chairman

Intermodel Terminal Inc., 2160 East Dominguez Street, Long Beach, CA 90810, Officers: Isao Ueda, President, Yoichiro Kasai, Vice President

HAG International, L.L.C., 148 Deer Trail North, Ramsey, NJ 07446, Officers: Hartmut Thiele, President, Cynthia Thiele, Vice President

Dated: February 11, 1998.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 98–3990 Filed 2–17–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 3, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Kevin Roger Hammer, Hoffman, Minnesota; to acquire voting shares of Hoffman Bancshares, Inc., Hoffman, Minneosta, and thereby indirectly acquire Farmers State Bank of Hoffman, Hoffman, Minneosta.

Board of Governors of the Federal Reserve System, February 11, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3948 Filed 2–17–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 13, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Union Planters Corporation, Memphis, Tennessee; to acquire 100 percent of the voting shares of Merchants Bancshares, Inc., Houston, Texas, and thereby indirectly acquire Gulf Southwest Nevada Bancorp, Inc., Houston, Texas, and Merchants Bank, Houston, Texas.

In connection with this application, Applicant also has applied to acquire Funds Management Group, Inc., Houston, Texas, and thereby engage in financial and investment advisory activities, pursuant to § 225.28(b)(6) of the Board's Regulation Y, and to engage in agency transactional services for customer investments, pursuant to § 225.28(b)(7) of the Board's Regulation Y. These activities will be conducted throughout the State of Texas.

2. Union Planters Corporation, Memphis, Tennessee; to acquire 100 percent of the voting shares of Peoples First Corporation, Paducah, Kentucky, and thereby indirectly acquire Peoples National Bank & Trust Company, Paducah, Kentucky.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Morrill Bancshares, Inc., Sabetha, Kansas; to acquire 47.71 percent of the voting shares of Century Acquisition Corporation, Hurst, Texas, and thereby indirectly acquire City National Bank, Kilgore, Texas.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Zions Bancorporation, Salt Lake City, Utah, and Val Cor Bancorporation, Inc., Cortez, Colorado; to merge with SBT Bancshares, Inc., Colorado Springs, Colorado, and thereby indirectly acquire State Bank and Trust of Colorado Springs, Colorado Springs, Colorado.

In connection with this application, Applicants have also applied to acquire SBT Mortgage, LLC, Colorado Springs, Colorado, and thereby engage in mortgage lending activities, pursuant to § 225.28(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 11, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3950 Filed 2–17–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for

inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 3, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Morrill Bancshares, Inc., Sebetha, Kansas, and Morrill & Janes Bancshares, Inc., Hiawatha, Kansas, First Centralia Bancshares, Inc., Centralia, Kansas, Davis Bancorporation, Inc., Davis, Oklahoma, Onaga Bancshares, Onaga, Kansas; to acquire FBC Financial Corporation, Claremore, Oklahoma, and thereby indirectly acquire 1st Bank Oklahoma, Claremore, Oklahoma, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 11, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3949 Filed 2–17–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 814]

Applied Research in Emerging Infections; Hepatitis C Virus Infection—Sexual Transmission

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for competitive cooperative agreements and/or grants to support applied research on emerging infections—epidemiologic studies of sexual transmission of hepatitis C virus (HCV) infection.

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section **Where to Obtain Additional Information.**)

Authority

This program is authorized under Sections 301 and 317 of the Public Health Service Act, as amended (42 U.S.C. 241 and 247b).

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Pub. L. 103–227, the Pro-Children's Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private non-profit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private non-profit organizations, State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority-and/or women-owned non-profit businesses are eligible to apply.

Availability of Funds

Approximately $500,000 is available in FY 1998 to fund one or two awards. It is expected the awards will begin on or about August 10, 1998 and will be made for a 12-month budget period within a project period of up to three years. The funding estimate is subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Determination of Which Instrument To Use

Applicants must specify the type of award for which they are applying, either grant or cooperative agreement. CDC will review the applications in accordance with the evaluation criteria. Before issuing awards, CDC will determine whether a grant or cooperative agreement is the appropriate instrument based upon the need for substantial CDC involvement in the project.

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352, recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1998 Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Pub. L. 105–78) states in Section 503 (a) and (b) that no part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself.

No part of any appropriation shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Background

Once expected to be eliminated as a public health problem, infectious diseases remain the leading cause of death worldwide. In the United States and elsewhere, infectious diseases increasingly threaten public health and contribute significantly to the escalating costs of health care.

In partnership with other Federal agencies, State and local health departments, academic institutions, and others, CDC has developed a plan for revitalizing the nation's ability to identify, contain, and prevent illness from emerging infectious diseases. The plan, Addressing Emerging Infectious Disease Threats; A Prevention Strategy for the United States, identifies objectives in four major areas: surveillance; applied research; prevention and control; and infrastructure.

Under the objective for applied research, the plan proposes to integrate laboratory science and epidemiology to optimize public health practice in the United States. In FY 1996, CDC initiated the Extramural Applied Research Program in Emerging Infections (EARP).

This grant/cooperative agreement announcement specifically addresses the area of hepatitis c virus (HCV) infection.

In the United States, an estimated 3.9 million persons are chronically infected with HCV and are a potential source of transmission to others. In the absence of pre- or post-exposure prophylaxis, preventing infection is dependent on providing infected persons with specific information about the risk of transmission in different settings. This announcement addresses the sexual transmission of HCV infection.

Case-control studies have demonstrated an independent association between acquiring acute non-A, non-B hepatitis and a history of exposure to an infected sex partner or to multiple heterosexual partners. HCV seroprevalence studies of STD populations have generally demonstrated an increased risk associated with high-risk sexual behaviors, including multiple partners and failure to use a condom. In contrast, HCV seroprevalance studies of long-term partners of patients with chronic HCV infection have generally shown either very low or absent risk, but these studies had inadequate sample sizes to address the issue, most were not conducted in the United States, and in several of the studies in which transmission between long term sex partners was reported, a common parenteral exposure in the past could not be ruled out. Because of the limited and inconsistent data available, there are currently no specific recommendations for changes in sexual practices for infected persons and their steady partners. Definitive studies in this area are needed to determine if such recommendations need to be developed.

Purpose

The purpose of this grant/cooperative agreement program is to provide assistance for projects addressing the sexual transmission of HCV infection between steady partners. Specifically, applications are solicited for projects aimed at determining if there is an increased risk of HCV infection among steady sexual partners of HCV infected persons and identifying potential risk factors responsible for transmission.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for conducting activities for a cooperative agreement under B. (CDC Activities):

Research Project Grants

A research project grant is one in which substantial programmatic involvement by CDC is not anticipated by the recipient. Applicants for grants must demonstrate an ability to conduct the proposed research with minimal assistance, other than financial support, from CDC. This would include possessing sufficient resources for clinical, laboratory, and data management services and a level of scientific expertise to achieve the objectives described in their research proposal without substantial technical assistance from CDC.

Cooperative Agreements

A cooperative agreement implies that CDC will assist recipients in conducting the proposed research. The application should be presented in a manner that demonstrates the applicant's ability to address the research problem in a collaborative manner with CDC.

A. Recipient Activities

Determine if there is an increased risk of HCV infection among steady sexual partners of HCV infected persons and identify potential risk factors responsible for transmission.

1. Enroll a sufficient number of anti-HCV positive persons and their steady sexual partners (estimated at ≥1000 participants each) to evaluate low frequency events. A steady sexual partner is defined as one whose only partner was the index case during the previous 3 or more years.

a. Index cases should represent a broad spectrum of infection (e.g., asymptomatic persons identified through routine screening, symptomatic persons with various stages of chronic liver disease, etc.), a broad range of duration of infection (when it can be determined), and as broad an age range as possible.

2. Conduct an anti-HCV seroprevalence study of the sexual partners and a complete risk behavior history on cases and partners. All samples with anti-HCV repeatedly reactive results using enzyme immuno-assay should be tested using a supplemental anti-HCV assay.

3. Use nucleic acid detection methods to identify virus-specific factors in either the index case or the partner that may be responsible for transmission and to confirm the identity of virus strains in partner-pairs when both are infected.

4. Publish results.

B. CDC Activities (Cooperative Agreement)

1. Provide technical assistance in the design and conduct of the research.

2. Perform selected laboratory tests as appropriate and necessary.

3. Participate in data management, the analysis of research data, and the interpretation and presentation of research findings.

4. Provide biological materials as necessary for studies, etc.

Technical Reporting Requirements

An original and two copies of a narrative progress report are required semiannually. The first semiannual report is required with each year's non-competing continuation application and should cover program activities from date of the previous report (or date of award for reporting in the first year of the project).

The second semiannual report and Financial Status Report (FSR) are due 90 days after the end of each budget period and should cover activities from the date of previous report. Progress reports should address the status of progress toward specific project objectives and should include copies of any publications resulting from the project. The final performance report and FSR are required no later than 90 days after the end of the project period.

All reports should be directed to the CDC Grants Management Officer at the address referenced in the following section.

Application Process

Notification of Intent To Apply

In order to assist CDC in planning and executing the evaluation of applications submitted under this Program Announcement, all parties intending to submit an application are requested to inform CDC of their intention to do so as soon as possible prior to the application due date but not later than 10 business days prior to the application due date. Notification should cite this Announcement number 814 and include: (1) Name and address of institution and (2) name, address, and phone number of contact person. Notification can be provided by facsimile, postal mail, or electronic mail (E-mail) to Sharron P. Orum, Grants Management Officer, Attn: Gladys T. Gissentanna, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–18, Atlanta, Georgia 30305, facsimile (404) 842–6513 or E-mail gcg4@cdc.gov.

Application Content

All applicants must develop their application in accordance with the PHS Form 398, information contained in this

grant/cooperative agreement announcement, and the instructions outlined below.

General Instructions

Due to the need to reproduce copies of the applications for the reviewers, ALL pages of the application must be in the following format:

1. The original and five (5) copies must be unstapled and unbound.
2. All pages must be clearly numbered, and a complete index to the application and its appendices must be included.
3. All materials must be typewritten, single-spaced, using a font no smaller than size 12, and on 8½" by 11" white paper.
4. Any reprints, brochures, or other enclosures must be copied onto 8½" by 11" white paper by the applicant. No bound materials will be accepted.
5. All pages must be printed on one side only, with at least 1" margins, headers, and footers.

Special Instruction

The application narrative must not exceed 10 pages (excluding budget and appendices). Unless indicated otherwise, all information requested below must appear in the narrative. Materials or information that should be part of the narrative will not be accepted if placed in the appendices. The application narrative must contain the following sections in the order presented below.

1. Abstract

Provide a brief (two pages maximum) abstract of the project. Clearly identify the type of award that is being applied for: grant or cooperative agreement.

2. Background and Need

Discuss the background and need for the proposed project. Demonstrate a clear understanding of the purpose and objectives of this program.

3. Capacity and Personnel

Describe applicant's past experience in conducting projects/studies similar to that being proposed. Describe applicant's resources, facilities, and professional personnel that will be involved in conducting the project. Describe plans for administration of the project and identify administrative resources/personnel that will be assigned to the project. Provide *in an appendix* letters of support from all key participating non-applicant organizations, individuals, etc., which clearly indicate their commitment to participate as described in the operational plan. Do not include letters of support from CDC personnel. Letters of support from CDC will not be accepted. Award of a cooperative agreement implies CDC participation as outlined in the Program Requirements section of this announcement.

4. Objectives and Technical Approach

Present specific objectives for the proposed project which are measurable and time-phased and are consistent with the Purpose and Recipient Activities of this Program Announcement. Present a detailed operational plan for initiating and conducting the project which clearly and appropriately addresses these objectives (if proposing a multi-year project, provide a detailed description of first-year activities and a brief overview of subsequent-year activities). Clearly identify specific assigned responsibilities for all key professional personnel. Include a clear description of applicant's technical approach/methods which are directly relevant to the above objectives. Describe specific study protocols or plans for the development of study protocols. Describe the nature and extent of collaboration with CDC (if applying for a cooperative agreement) and/or others during various phases of the project. Describe in detail a plan for evaluating study results and for evaluating progress toward achieving project objectives.

5. Budget

Provide a line-item budget and accompanying detailed, line-by-line justification that demonstrates the request is consistent with the purpose and objectives of this program. If requesting funds for contracts, provide the following information for each proposed contract: (a) Name of proposed contractor, (b) breakdown and justification for estimated costs, (c) description and scope of activities to be performed by contractor, (d) period of performance, and (e) method of contractor selection (e.g., sole-source or competitive solicitation).

Note: If indirect costs are requested from CDC, a copy of the organization's current negotiated Federal indirect cost rate agreement or cost allocation plan must be provided.

6. Human Subjects

Whether or not exempt from DHHS regulations, if the proposed project involves human subjects, describe adequate procedures for the protection of human subjects. Also, ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects.

Evaluation Criteria

The applications will be reviewed and evaluated according to the following criteria:

1. Background and Need (10 Points)

Extent to which applicant demonstrates a clear understanding of the subject area and of the purpose and objectives of this grant/cooperative agreement program.

2. Capacity (45 Points)

Extent to which applicant describes adequate resources and facilities (both technical and administrative) for conducting the project. Extent to which applicant documents that professional personnel involved in the project are qualified and have past experience and achievements in research related to that proposed as evidenced by curriculum vitae, publications, etc. If applicable, extent to which applicant includes letters of support from non-applicant organizations, individuals, etc., and the extent to which such letters clearly indicate the author's commitment to participate as described in the operational plan.

3. Objectives and Technical Approach (45 Points Total)

a. Extent to which applicant describes objectives of the proposed project which are consistent with the purpose and goals of this grant/cooperative agreement program and which are measurable and time-phased. (10 points)

b. Extent to which applicant presents a detailed operational plan for initiating and conducting the project, which clearly and appropriately addresses all "Recipient Activities." Extent to which applicant clearly identifies specific assigned responsibilities of all key professional personnel. Extent to which the plan clearly describes applicant's technical approach/methods for conducting the proposed studies and extent to which the approach/methods are appropriate and adequate to accomplish the objectives. Extent to which applicant describes specific study protocols or plans for the development of study protocols that are appropriate for achieving project objectives. Extent to which applicant describes adequate and appropriate collaboration with CDC (if applying for a cooperative agreement). Extent to which women, racial and ethnic minority populations are appropriately represented in applications involving human research. (30 points)

c. Extent to which applicant provides a detailed and adequate plan for evaluating progress toward achieving project process and outcome objectives.

If the proposed project involves notifiable conditions, the degree to which applicant describes an adequate process for providing necessary information to appropriate State and/or local health departments. (5 points)

4. Budget (Not Scored)

Extent to which the proposed budget is reasonable, clearly justifiable, and consistent with the intended use of grant/cooperative agreement funds.

5. Human Subjects (Not Scored)

If the proposed project involves human subjects, whether or not exempt from the Department of Health and Human Services (DHHS) regulations, the extent to which adequate procedures are described for the protection of human subjects. Note: Objective Review Group (ORG) recommendations on the adequacy of protections include: (1) Protections appear adequate and there are no comments to make or concerns to raise, or (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the ORG has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

Executive Order 12372 Review

This program is not subject to Executive Order 12372 Review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from ten or more individuals and funded by the grant/cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If an American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

Women, Racial and Ethnic Minorities

It is the policy of the CDC and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, Hispanic or Latino and White. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, dated Friday, September 15, 1995.

Application Submission and Deadline

The original and two copies of each application PHS Form 398 should be submitted to Sharron Orum, Grants Management Officer, Attn: Gladys T. Gissentanna, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–18, Atlanta, Georgia 30305, on or before May 15, 1998.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement 814. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Gladys T. Gissentanna, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, Georgia 30305, telephone (404) 842–6801, facsimile (404) 842-6513, E-mail gcg4cdc.gov.

Programmatic technical assistance may be obtained from Miriam J. Alter, Ph.D., National Center for Infectious Diseases, Division of Viral and Rickettsial Diseases, Hepatitis Branch, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop G–37, Atlanta, Georgia 30333, telephone (404) 639–2709, E-mail address: mja2@cdc.gov.

Please refer to Announcement 814 when requesting information regarding this program.

You may also obtain this and other CDC announcements from one of two Internet sites on the actual publication date: CDC's homepage at http://www.cdc.gov, or at the Government Printing Office homepage (including free on-line access to the **Federal Register** at http://www.access.gpo.gov).

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the **Introduction** through the Superintendent of Documents, Government Printing Office,

Washington, D.C. 20402–9325, telephone (202) 512–1800.

Dated: February 11, 1998.

Joseph R. Carter

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC)

[FR Doc. 98–3981 Filed 2–17–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93P–0448]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Food Labeling; Serving Sizes; Reference Amount for Salt, Salt Substitutes, Seasoning Salts (e.g., Garlic Salt)" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 2, 1997 (62 FR 63647), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0362. The approval expires on January 31, 2001.

Dated: February 4, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–3985 Filed 2–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0077]

Draft Guidance for Industry: Clinical Development Programs for Drugs, Devices, and Biological Products Intended for the Treatment of Osteoarthritis (OA); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of, and requesting comment on a draft guidance for industry entitled "Clinical Development Programs for Drugs, Devices, and Biological Products Intended for the Treatment of Osteoarthritis (OA)." The purpose of the draft guidance and the discussion questions appended to the draft guidance is to stimulate discussion and seek input about designing clinical programs for the development of drugs, devices, and biological products intended for the treatment of OA. The draft guidance and appended questions will be the topics of discussion at the Arthritis Advisory Committee meeting to be held on February 20, 1998.

DATES: Written comments may be submitted on the draft guidance document by April 20, 1998. General comments on the agency guidance documents are welcome at any time.

ADDRESSES: Copies of the draft guidance and appended questions are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm" or "http://www.fda.gov/cber/guidelines.htm." Written requests for single copies of the draft guidance and appended questions should be submitted to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFD–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. The February 20, 1998, meeting of the Arthritis Advisory Committee will be held at the Holiday Inn Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Chin C. Koerner, Center for Drug Evaluation and Research (HFD–550), Food and Drug Administration, 9201 Corporate Blvd., Rockville, MD 20850, 301–827–2090.

SUPPLEMENTARY INFORMATION: Currently, treatment for OA is fundamentally symptomatic, with no data available on the impact on long-term outcomes. Clinical trial experience with OA has been limited to short-term studies in patients with knee or hip OA and generalized OA normally has not been appropriate for assessing OA agents. A number of novel approaches are under study for the treatment of OA, as companies, clinicians, and patients search for more effective therapeutics. The focus of the discussion during the February 20, 1998, Arthritis Advisory Committee Meeting will be: (1) The appropriateness of the proposed claims for improvement of pain, function, structure, and durability, as well as delay in new OA and delay in joint replacement; and (2) trial designs and analyses to support those claims. Notice of the meeting of the Arthritis Advisory Committee appeared in the **Federal Register** of January 16, 1998 (63 FR 2682).

The purpose of the draft guidance and the appended questions is to stimulate discussion and seek input regarding the design of clinical programs for developing drugs, devices, or biological products intended for the treatment of OA. Discussion during the meeting will enable public participation and the exchange of ideas on developing and assessing new treatment modalities for OA, types of claims that might be reasonably pursued, and data necessary to support such claims. The discussions are not intended to result in consensus among participants; they are intended to contribute to the formulation of suggestions to drug, device, and biological product sponsors for designing appropriate study protocols and expediting product development.

Interested persons may submit written comments on the draft document to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft document, appended questions, and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 11, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–3982 Filed 2–12–98; 1:39pm]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–190–98–1220–24–1A]

Emergency Closure of Public Lands in San Benito and Fresno Counties, California

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of emergency closure and restrictions on use of public lands in the Clear Creek Management Area, located in San Benito and Fresno Counties, California.

SUMMARY: This notification serves to document an emergency closure order which went into effect on February 10, 1998 for all public lands (approximately 50,000 acres) within the Clear Creek Management Area. This notice supercedes and replaces a 1995 emergency closure order (§ 5–00161–GP5–010–004) for this area. The authorized officer has determined that the flooding, slides and road washouts resulting from recent severe rainstorms, have made this area unsafe for recreational use, and that additionally, recreational use could result in serious damage to natural resources. Public lands in this area are therefore temporarily closed to public recreational use, although some exemptions apply, as described below. The closure will be lifted as soon as County Roads and internal access roads can be repaired and maintained to meet a minimum of public safety and access needs. Notice is also served that because of environmental sensitivity, the area known as "Upper Hillclimb Canyon", which is within the Clear Creek Management Area, will remain closed to vehicle use until such time as manageable routes through this area may be determined. Finally, notice is served that because of environmental hazards, several abandoned mine sites commonly known as the "Alpine", "Archer", "Aurora", "Larious Canyon", and "Molina" will also remain closed to all public entry, with the exception of access routes through these mined areas as demarcated by BLM signs. Additional abandoned mines may additionally be closed under subsequent **Federal Register** notices, pending review of water quality sampling results.

The purpose of this closure is to protect human life and safety, to protect sensitive resources, including threatened plants and their habitat, water quality and aquatic species, and wildlife habitat, and to prevent human contact with known hazardous substances.

A map of the areas affected by these closures is on file and may be viewed at the Hollister Field Office of the Bureau of Land Management. The area known as "Upper Hillclimb Canyon" is further described as all areas encompassed by Clear Creek Canyon Road, East Clear Creek Ridge Route, South Clear Creek Road, and Reservoir Road except for the included portions of Sections 5 and 6 of T.18 S., R.12 E. A map showing the Hillclimb Canyon closure is also available for viewing at the Hollister Field Office. A map showing the mine site closures is also available at the Hollister Field Office.

The above closures and restrictions are temporary and are intended to prevent further resource damage, and/or adverse impacts to public health and safety. The following persons are exempt from this closure order:

(1) Federal, State, or Local Law Enforcement Officers, while engaged in the execution of their official duties.

(2) BLM personnel or their representatives while engaged in the execution of their official duties.

(3) Any member of an organized rescue, fire-fighting force, Emergency Medical Services organization while in the performance and execution of an official duty.

(4) Any member of a federal, state or local public works department while in the performance of an official duty.

(5) Any person in receipt of a written authorization of exemption obtained from the Hollister Field Office.

(6) Local landowners, persons with valid existing rights or lease operations, or representatives thereof, who have a responsibility or need to access their property or to continue their operations on public land.

EFFECTIVE DATE: The overall closure became effective on February 10, 1998, and shall remain in effect until rescinded or modified by the Authorized Officer after consideration of current weather conditions. Emergency closures of Upper Hillclimb Canyon and the above-listed mines will remain in effect until further notice.

SUPPLEMENTARY INFORMATION: These closures and restrictions are under the authority of 43 CFR 8364.1 and 43 CFR 8341.2. Persons violating this closure shall be subject to the penalties provided in 43 CFR 8360.0–7 and 8340.0–7, including a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Area Manager, Hollister Field Office, 20 Hamilton Court, Hollister, CA 95024, (408) 630–5000.

Dated: February 10, 1998.

Robert E. Beehler,

Hollister Field Manager.

[FR Doc. 98–3980 Filed 2–17–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

REVISION—Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of Tonto National Forest, United States Forest Service, Phoenix, AZ

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of Tonto National Forest, United States Forest Service, Phoenix, AZ. **This notice was originally published September 26, 1996.**

A detailed assessment of the human remains was made by U.S. Forest Service professional staff, American Museum of Natural History professional staff, Arizona State Museum professional staff, Arizona State University professional staff, Museum of Northern Arizona professional staff, and the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Ak-Chin Indian Community, the Gila River Indian Community, the Hopi Tribe, the Pueblo of Zuni, the Salt River Pima-Maricopa Indian Community, the Tohono O'odham Nation, and the Yavapai-Prescott Indian Tribe. **Since publication of the original notice, consultation has also been conducted with the San Carlos Apache Tribe, the Yavapai-Apache Tribe, and the White Mountain Apache Tribe. Copies of the original notice were also sent to these Indian tribes.**

Continuities of ethnographic materials, technology, and architecture indicate affiliation of the above mentioned sites with historic and present-day Piman and O'odham cultures. Oral traditions presented by representatives of the Ak-Chin Indian Community, the Gila River Indian Community, the Salt River Pima-Maricopa Indian Community, and the Tohono O'odham Nation support affiliation with the Salado and Hohokam sites in this area of central Arizona. **Based upon further oral**

tradition evidence provided by representatives of the Hopi Tribe and Pueblo of Zuni since publication of the original notice, the USDA Forest Service has revised its determinations of cultural affiliation for the Hohokam and Salado human remains and associated funerary objects. The USDA Forest Service has determined, based on the preponderance of the additional evidence presented, that the Hopi Tribe and the Pueblo of Zuni are culturally affiliated with the Hohokam and Salado human remains and associated funerary objects, although to a lesser extent than the Ak-Chin Indian Community, the Gila River Indian Community, the Salt River Pima-Maricopa Indian Community, and the Tohono O'odham Nation.

Based on the above mentioned information, officials of the USDA National Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 1,376 individuals of Native American ancestry. Officials of the USDA Forest Service have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 5,326 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

Officials of the USDA National Forest Service have determined that, pursuant to 25 U.S.C. 3003 (d)(2)(B), there is a relationship of shared group identity which can be reasonably traced between these 1,376 Native American human remains and 5,326 associated funerary objects and the Ak-Chin Indian Community, the Gila River Indian Community, the Salt River Pima-Maricopa Indian Community, the Tohono O'odham Nation. **While not clearly culturally affiliated, officials of the USDA National Forest Service have further determined that, pursuant to 25 U.S.C. 3003 (d)(2)(C), there is a reasonable belief of shared group identity given the totality of the circumstances surrounding the acquisition of these 1,376 Native American human remains and 5,326 associated funerary objects with the Hopi Tribe and Pueblo of Zuni.**

This notice has been sent to officials of the Ak-Chin Indian Community, the Gila River Indian Community, the Hopi Tribe, the Pueblo of Zuni, the Salt River Pima-Maricopa Indian Community, the Tohono O'odham Nation, the Yavapai-Prescott Indian Tribe, the **San Carlos Apache Tribe, the Yavapai-Apache Tribe, and the White Mountain Apache Tribe.** Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 517 Gold Ave. SW, Albuquerque, NM 87102; telephone: (505) 842–3238, fax (505) 842–3800, before [*thirty days after publication in the* **Federal Register**]. Repatriation of the human remains and associated funerary objects to the Ak-Chin Indian Community, the Gila River Indian Community, the Salt River Pima-Maricopa Indian Community, the Tohono O'odham Nation, the Hopi Tribe and the Pueblo of Zuni, as indicated above, may begin after that date if no additional claimants come forward.

Dated: February 10, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–4013 Filed 2–17–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF LABOR

Bureau of International Labor Affairs; U.S. National Administrative Office; National Advisory Committee for the North American Agreement on Labor Cooperation; Notice of Two Open Meetings by Teleconference

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of open meeting by teleconference on March 5, 1998 and notice of open meeting by teleconference on April 9, 1998.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 94–463), the U.S. National Administrative Office (NAO) gives notice of two meetings of the National Advisory Committee for the North American Agreement on Labor Cooperation (NAALC), which was established by the Secretary of Labor. The meetings will take place on March 5, 1998 and April 9, 1998. Due to scheduling difficulties and the need for immediate action, we are unable to give the full 15 days advance notice for the March 5, 1998 meeting.

The Committee was established to provide advice to the U.S. Department of Labor on matters pertaining to the implementation and further elaboration of the NAALC, the labor side accord to the North American Free Trade Agreement (NAFTA). The Committee is authorized under Article 17 of the NAALC. The Committee consists of 12 independent representatives drawn from among labor organizations, business and industry, and educational institutions.

DATES: The Committee will meet on March 5, 1998 from 4:00 p.m. to 5:00 p.m. and on April 9, 1998 from 4:00 p.m. to 5:00 p.m. The meetings will be by teleconference.

ADDRESSES: U.S. Department of Labor, 200 Constitution Avenue N.W., Room C–5515 (Executive Conference Room), Washington, D.C. 20210. The meetings are open to the public on a first-come, first served basis.

FOR FURTHER INFORMATION CONTACT: Irasema Garza, Designated Federal Officer, U.S. NAO, U.S. Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room C–4327, Washington, D.C. 20210. Telephone 202–501–6653 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Please refer to the notice published in the **Federal Register** on December 15, 1994 (59 FR 64713) for supplementary information.

Signed at Washington, DC, on February 13, 1998.

Irasema T. Garza,

Secretary, U.S. National Administrative Office.

[FR Doc. 98–4193 Filed 2–17–98; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of January, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–34,100; L.A. Manufacturing, Inc., Livingston, TN
TA–W–33,902; Lehigh Furniture Co., Marianna, FL
TA–W–33,828; Dana Corp., Parish Heavy Truck, Structural Components Div., Reading, PA
TA–W–34,040; Butler Design Service, Aurora, CO
TA–W–34,051; Franke Contract Group, Div. Of Franke, Inc., North Wales, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–34,075; Sutersville Lumber Co., Inc., Sutersville, PA
TA–W–34,04; Brown Shoe Co., Fredericktown, MO

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974

TA–W–34,078; Johns Manville, Roofing Div., Wauhegan, IL
TA–W–34,114; Burlington Industries, Burlington House Decorative Fabrics Div., Smithfield Sprinning Plant, Smithfield, NC
TA–W–34,022; National Seating Co., Horse Cave, KY
TA–W–34,037; Barry Callebaut USA, Inc., Pennsauken, NJ
TA–W–34,031; MKE-Quantum Components, Recording Heads Group, Louisville, CO

Increased imports did not contribute importantly to worker separations at the firms.

TA–W–34,066; Johnstown Wire Technologies, Great Lakes Div., Buffalo, NY

Production of steel wire was transferred from Buffalo, NY to another domestic plant.

TA–W–33,729; Schmid Laboratories, Anderson, SC

Subject firm phased out automobile operations at its Anderson, SC plant and transferred production to another affiliated domestic plant

TA–W–33,878; Cabot Oil and Gas Corp., The Carlton District, Carlton, PA

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–34,079; Littonian Shoe Co., Littlestown, PA: November 28, 1996.
TA–W–34,063; Georgio Foods, Inc., Temple, PA: November 1, 1996.
TA–W–33,881; Corning, Inc., Erwin, NY: September 1, 1996.
TA–W–33,941; Maine Yankee Atomic Power Co., Wiscasset, ME: October 21, 1996.
TA–W–34,159; Chester Clothes, Inc., Philipsburg, PA: January 6, 1997.
TA–W–34,122; Diversified Plastics, Inc., Elk Grove Village, IL: December 10, 1996.
TA–W–34,046 & A; Manchester Knitted Fashon, Manchester, NH and Whitefield, NH: November 20, 1996.
TA–W–34,062; Can Corp of America, Inc., Blandon, PA: November 1, 1996.
TA–W–33,912; Fiskars, Inc., Power Sentry Div., Fergus Falls, MN: October 3, 1996.
TA–W–34,112 & A; Sportswear, Inc., d/b/a American Athletic Apparel, Puxico, MO and Sikeston, MO: December 10, 1996.
TA–W–34,099; Century Products, Inc., Cheboygan, MI: December 2, 1996.
TA–W–34,158; Eugene F. Burrill, Lumber Co., White City, OR: December 8, 1996.
TA–W–33,907; Textron Automotive Co., Inc., Textron Automotive Interiors, Dover, NH: October 2, 1996.

All workers of Textron Automotive Co., Inc., Textron Automotive Interiors, Dover, NH excluding workers in the KO7 paint line are eligible to apply for trade adjustments assistance.

TA–W–33,697; Employee Service, Inc., Rush City, MN: May 9, 1996.
TA–W–33,758; Guess, Inc., Los Angeles, CA: July 24, 1996.
TA–W–34,008; J & L Specialty Steel, Inc., Detroit, MI: November 3, 1996.
TA–W–33,768; Mr. Casuals, a/k/a/ Rives Casuals, Inc., Independence, VA: August 12, 1996.
TA–W–34,041; Jam Enterprises, El Paso, TX: November 4, 1996.
TA–W–34,048; Dresser Rand Co., Painted Post, NY: November 18, 1996.
TA–W–34,009; Morganton Dyeing & Finishing, Morganton, NC: October 31, 1996.
TA–W–33,991; Jetricks Corp., Selmer, TN: October 21, 1996.
TA–W–33,926; Robinson Manufacturing Co., Inc., Parsons, TN: October 9, 1996.
TA–W–33,895; Donnkenny Apparel, Inc., Haysi, VA: September 30, 1996.

All workers of Dolnnkenny Apparel, Inc., Haysi, VA engaged in employment related to the production of ladies' apparel produced by the Haysi plant are eligible to apply for trade adjustment assistance.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of January, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in ports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivisions.

Negative Determinations NAFTA-TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA-TAA-02056; Johnstown Wire Technologies, Great Lakes Div., Buffalo, NY
NAFTA-TAA-02078; Trelleburg YSH, Inc., South Haven, MI
NAFTA-TAA-02063; Burlington Industries, Burlington House Decorative Fabrics Div., Smithfield Spinning Plant, Smithfield, NC
NAFTA-TAA-01785; Gulfstream Tomato Packers, LTD, Perrine, FL
NAFTA-TAA-01927; Dana Corp., Parish Heavy Truck Structural Components Div. Reading, PA
NAFTA-TAA-02049; J&L Specialty Steel, Inc., Detroit, MI
NAFTA-TAA-01909; Union City Body Co., LP, Union City Body Company, Union City Div., Union City, IN
NAFTA-TAA-02109; Century Products, Inc., Cheboygan, MI
NAFTA-TAA-02043; Franke Contract Group, Franke, Inc., North Wales, PA
NAFTA-TAA-01812; Excel of Battle Creek, Battle Creek, MI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA-TAA-02057; Sutersville Lumber Co., Inc., Sutersville, PA
NAFTA-TAA-02093; Brown Shoe Co., Fredericktown, MO

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-02087; Diversified Plastics, Inc., Elk Grove Village, IL: December 10, 1996.
NAFTA-TAA-01974; Dana Corp., Parish Light Vehicle Structures Div., Reading, PA: October 3, 1996.
NAFTA-TAA-02115; Chester Clothes, Inc., Philipsburg, PA: January 6, 1997.
NAFTA-TAA-02084; Eugene F. Burrill Lumber Co., White City, OR: December 11, 1996.
NAFTA-TAA-01950; Fiskars, Inc., Power Sentry Div., Fergus Falls, MN; October 3, 1996.
NAFTA-TAA-01987; Maine Yankee Atomic Power Co., Wiscasset, ME: October 21, 1996.
NAFTA-TAA-02072 & A; Sportswear, Inc., d/b/a American Athletic Apparel, Puxico, MO & Sikeston, MO; December 15, 1996.
NAFTA-TAA-02099; RMP, Div., of Holman Enterprises, Pennsaukee, NJ & Cinnaminson, NJ: December 2, 1996.
NAFTA-TAA-01966; Hamburg Shirt Co., Hamburg, AR: September 15, 1996.
NAFTA-TAA-02098; Guess, Inc., Los Angeles, CA: July 24, 1996.
NAFTA-TAA-01997; Hamilton Beach Proctor-Silex, Inc., Electrical Toaster Div., Mt. Airy, NC: October 28, 1996.
NAFTA-TAA-02113; Tultex Corp., Chilhowie, VA: January 9, 1997.
NAFTA-TAA-02064; Morgan Products LTD, Oshkosh, WI: December 10, 1996.
NAFTA-TAA-02074; Dal-Tile Corp., Mt. Gilead, NC: December 11, 1996.

I hereby certify that the aforementioned determinations were issued during the month of January 1998. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 30, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-4064 Filed 2-17-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than March 2, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 2, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 20th day of January, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 01/20/98]

TA-W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,153	Delbar Products (IAMAW)	Perkasie, PA	12/29/97	Rear View Mirrors—Trucks, Vans.
34,154	American Metal Products (Wkrs)	LaFollette, TN	12/15/97	Grills & Registers.
34,155	Arjo Manufacturing Co (Co.)	Aurora, NE	12/15/97	Bathing Equip.—Hospital & Nursing Home.
34,156	Pinnacle Micro, Inc (Wkrs)	Colorado Springs, CO	01/05/98	Rewritable Optical Storage Products.

APPENDIX—Continued
[Petitions Instituted On 01/20/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,157	Ebo Cedar Products (Co.)	Bonners Farry, ID	01/05/98	Cedar Post and Rail Fencing.
34,158	Eugene F. Burrill Lumber (Co.)	White City, OR	12/18/97	Framing Lumber.
34,159	Chester Clothes, Inc (Co.)	Philipsburg, PA	01/06/98	Men's Suits.
34,160	Renfro Corporation (Wkrs)	Pulaski, VA	01/06/98	Men's & Ladies' Socks.
34,161	ABB Power T & D Co., Inc (Wkrs)	Muncie, IN	01/08/98	Medium & Large Power Transformers.
34,162	Thomas and Betts (Wkrs)	Horsehead, NY	01/09/98	Cables and Computer Connectors.
34,163	Coast Converters, Inc (Wkrs)	Los Angeles, CA	01/02/98	Polyethelene Bags.
34,164	Sara Lee Casual Wear (Wkrs)	Hillsville, VA	01/10/98	T-Shirts, Sweatshirts.
34,165	Mitsubishi Consumer (Co.)	Braselton, GA	01/09/98	Direct View Televisions.
34,166	Mitsubishi Consumer (Co.)	Costa Mesa, CA	01/09/98	Direct View Televisions.
34,168	Chrysler Corp (Wkrs)	Belvidere, IL	01/20/98	Sub-Compact Automobiles.

[FR Doc. 98–4062 Filed 2–17–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,095]

Eastman Kodak Company, Kodak Colorado Division, Windsor, CO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 15, 1997 in response to a worker petition which was filed on December 15, 1997 on behalf of workers at Eastman Kodak Company, Kodak Colorado Division, Windsor, Colorado.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 30th day of January, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4066 Filed 2–17–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,096]

Florence Dye and Textile, Incorporated, Woonsocket, RI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 15, 1997 in response to a worker petition which was filed on behalf of workers at Florence Dye and Textile, Inc. of Woonsocket, Rhode Island.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 30th day of January 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4065 Filed 2–17–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,061; TA–W–34,061A; TA–W–34,061B]

Oxford Industries, Incorporated; Oxford Women's Catalog and Special Markets Division, Alma, GA; Oxford of Giles, Pearisburg, VA; Oxford of Gaffney, Gaffney, SC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on December 21, 1997, applicable to workers of Oxford Women's Catalog and Special Markets Division of Oxford Industries, Incorporated located in Alma, Georgia. The notice was published in the **Federal Register** on January 22, 1998 (63 FR 3352).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that layoffs will occur at Oxford Industries, Incorporated locations in Pearisburg, Virginia where the workers produce ladies knit apparel, and in Gaffney, South Carolina where the workers produce jackets and outerwear.

The intent of the Department's certification is to include all workers of Oxford Industries, Incorporated adversely affected by increased imports. Accordingly, the Department is amending the certification to include workers of Oxford Industries, Incorporated locations in Pearisburg, Virginia and Gaffney, South Carolina.

The amended notice applicable to TA–W–34,061 is hereby issued as follows:

All workers of Oxford Industries, Incorporated, Oxford Women's Catalog and Special Markets Division, Alma, Georgia (TA–W–34,061), Oxford of Giles, Pearisburg, Virginia (TA–W–34,061A), Oxford of Gaffney, Gaffney, South Carolina (TA–W–34,061B) who became totally or partially separated from employment on or after November 19, 1996 through December 21, 1999, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C. this 6th day of February 1998.

Grant D. Beale,

Acting Director, Officer of Trade Adjustment Assistance.

[FR Doc. 98–4053 Filed 2–17–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,128]

Romia Ventilator Company, Gardena, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 5, 1998, in response to a worker petition which was filed on

January 5, 1998, on behalf of workers at Romla Ventilator Company, Gardena, California.

Petitioning workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 6th day of February, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4056 Filed 2–17–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,837; TA–W–33,737A]

Russell Corporation, Cummings, GA; Montgomery Sewing Plant, Montgomery, AL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 5, 1998, applicable to all workers of Russell Corporation, located in Cummings, Georgia. The notice will be published soon in the **Federal Register**.

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations occurred at the Montgomery Sewing Plant from August, 1997 until its' closing, January, 1998. The workers sewed T-shirts and tank tops for Russell Corporation.

The intent of the Department's certification is to include all workers of Russell Corporation who were adversely affected by increased imports of T-shirts and tank tops.

Accordingly, the Department is amending the certification to cover the workers of Russell Corporation, Montgomery Sewing Plant, Montgomery Alabama.

The amended notice applicable to TA–W–33,837 is hereby issued as follows:

All workers of Russell Corporation, Cummings, Georgia (TA–W–33,837), and the Montgomery Sewing Plant, Montgomery, Alabama (TA–W–33,837A) who became totally or partially separated from employment on or after August 15, 1996, through January 5, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of February, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4055 Filed 2–17–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,132]

Snap-Tite, Incorporated, Quick Disconnect Division, Union City, PA; Notice of Termination of Certification

This notice terminates the Certification Regarding Eligibility to Apply For Worker Adjustment Assistance issued by the Department on March 25, 1997, for all workers of Snap-Tite, Incorporated, Quick Disconnect Division, Union City, Pennsylvania. Workers at the subject firm produce quick disconnect couplings. The notice was published in the **Federal Register** on May 2, 1997 (62 FR 24135).

In response to a request for reconsideration, filed by company representatives, on January 11, 1998, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration. The notice will soon be published in the **Federal Register**.

The Department requested company data for sales, employment and imports through June 1997, which were not available at the time of the initial investigation. In accordance with data submitted by company officials in the initial determination, updated information shows that during the time period relevant to the investigation, sales and employment at the subject firm declined. Findings on reconsideration show that employment declines in 1996 were the result of a work stoppage. Other findings show that Snap-Tite increased import purchases of quick disconnect couplings from January–June 1995 through the January–June time periods of 1996 and 1997. The increase in import purchases, however, represented a negligible amount (less than one percent) of company sales in each year.

New findings on reconsideration of the certification shows that criterion (3) of Section 222 of the worker group eligibility requirements is not met. Increased company imports of quick disconnect couplings did not contribute importantly to worker separations.

Since new findings on reconsideration show that the criteria of the Trade Act are not met, the certification has been terminated.

Signed at Washington, DC, this 5th day of February 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4061 Filed 2–17–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,903; TA–W–33,903A; TA–W–33,903B]

Taylor Togs, Incorporated Micaville, NC; Green Mountain, NC; and Taylorsville, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 23, 1997, applicable to all workers of Taylor Togs, Incorporated, Micaville and Green Mountain, North Carolina. The notice was published in the **Federal Register** on November 7, 1997 (62 FR 60280).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred in December, 1997 at Taylor Togs, Incorporated, Taylorsville, North Carolina. The workers are engaged in employment related to the production of blue jeans.

The intent of the Department's certification is to include all workers at Taylor Togs, Incorporated adversely affected by increased imports.

Accordingly, the Department is amending the certification to cover workers of the subject firm's Taylorville, North Carolina location. The Department is also amending the number to correctly identify the Green Mountain, North Carolina location to specify TA–W–33,903A instead of TA–W–33,903.

The amended notice applicable to TA–W–33, 903 is hereby issued as follows:

All workers of Taylor Togs, Incorporated, Micaville and Green Mountain, North Carolina (TA–W–33, 903) and Taylorville, North Carolina (TA–W–33, 903A) engaged in employment related to the production of blue jeans who became totally or partially separated from employment on or after October 2, 1996 through October 23, 1999 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of February, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4054 Filed 2–17–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigation Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 2, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 2, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 2nd day of February, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 02/02/98

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,189	VF Knitwear (Co.)	Chatham, VA	01/12/98	Tee and Fleece Shirts.
34,190	Lovingston (Wkrs)	Staunton, VA	01/19/98	Girl's Shorts and Stretch Pants.
34,191	Calgon Carbon (Co.)	Tucson, AZ	01/19/98	Equipment for Water Purification.
34,192	Handy Girl (Wkrs)	Deer Park, MD	01/20/98	Crop Tops, Biker Shorts, Pant Sets.
34,193	Kat-Em International (Co.)	Los Angeles, CA	01/26/98	Yarn Dyed and Printed Fabrics.
34,194	Otis Elevator (Wkrs)	Tucson, AZ	01/15/98	Elevators.
34,195	Morrison Enterprises (Wkrs)	Redmond, RA	01/02/98	Cut Stock Wood and Finger Joit Wood.
34,196	Graham-Field/Temco (Co.)	Passaic, NJ	01/13/98	Bed Rails, IV Poles, Bath Safety Prod.
34,197	Imaging Supplies (Wkrs)	Jefferson City, TN	01/13/98	Ribbon Cartridges.
34,198	Cindy Lee, Inc (Wkrs)	Pen Argyl, PA	01/17/98	Blouses, Skirts, Pants.
34,199	Sangamon, Inc (UPWU)	Taylorville, IL	01/22/98	Greeting Cards.
34,200	Getinge Castle, Inc (Co.)	Lakewood, NJ	01/15/98	Sterilizer Equipment.
34,201	Sunrise Medical PEP (Co.)	Simi Vally, CA	01/12/98	Walkers and Canes.
34,202	Tennessee River Mill (Wkrs)	Lawrenceburg, TN	01/21/98	Knit T-Shirts.
34,203	American Olean Tile (Wkrs)	Lansdale, PA	01/20/98	Ceramic Wall Tile and Trim.
34,204	Pride Refining (Wkrs)	Abilene, TX	01/24/98	Finished Hydrocarbon Products.
34,205	Bucilla Corp. (Wkrs)	Hazleton, PA	01/19/98	Needlework Applique.
34,206	U.S. Steel Mining Co, LLC (Co.)	Pineville, WV	01/20/98	Coal.
34,207	Tenneco Packaging (Wkrs)	Clayton, NJ	01/12/98	Disposable Foil and Plastic Containers.
34,208	Oxford of Giles (Co.)	Pearisburg, VA	01/20/98	Ladies' Knit Apparel.
34,209	Dexter Sportswear (Co.)	Dexter, GA	01/23/98	Men's and Boys' Slacks.
34,210	Delta Flag Co (Wkrs)	Oaks, PA	01/24/98	Printed, Dyed and Sewn Flags.
34,211	Alta Genetics, USA (Co.)	Hughson, CA	01/15/98	Frozen Bull Semen.
34,212	Bakery Salvage (Wkrs)	Buffalo, NY	01/22/98	Animal Feed.
34,213	U.S. Kids Apparel Group (Wkrs)	Canton, GA	01/14/98	Girl's Dresses and Nightowns.
34,214	Fort James Corp. (UPWU)	Ashland, WI	01/22/98	Napkins.

[FR Doc. 98–4063 Filed 2–17–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 2, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 2, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 26th day of January, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 01/26/98

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,169	VF Knitwear, Inc (Comp)	Stoneville, NC	01/12/98	Tee and Fleece Shirts.
34,170	Scientific Atlanta (Comp)	Tempe, AZ	01/16/98	Cable Boxes.
34,171	Key Tronic Corp (Comp)	Las Cruces, NM	12/29/97	Personal Computer Keyboards.
34,172	Lone Pine Forest Products (Wrks)	Bend, OR	12/29/97	Grape Box Ends, Pine Furniture Parts.
34,173	Quiltex Co (UNITE)	Brooklyn, NY	12/31/97	Infant Crib Sets.
34,174	United Technologies Auto (Comp)	Columbus, MS	01/09/98	Fractional Horse Power Electric Motors.
34,175	Great Connections (Wrks)	Lititz, PA	01/12/98	Home and Office Furniture.
34,176	Hewlett Packard (Wrks)	Vancouver, WA	01/06/98	Printed Circuit Assemblies for Printers.
34,177	Paul-Bruce/L.V. Myles (Wrks)	Scotland Neck, NC	01/08/98	Children's and Ladies' Sleepwear.
34,178	Allied Signal Aerospace (USW)	Stratford, CT	01/13/98	Assemblies and Components for Engines.
34,179	Proam Corp (Wrks)	Long Island Cty, NY	01/12/98	Ladies' Jackets.
34,180	Comac (Wrks)	Columbia, TN	01/08/98	Sand/Prepared Saturn Autos for Paint.
34,181	Specialty Manufacturers (Wrks)	Bristol, TN	01/05/98	T-Shirts, Boby Bibs and Visors.
34,182	Mountainsmith (Wrks)	Cotter, AR	01/09/98	Backpacks.
34,183	Ashmore Sportswear (Wrks)	Womelsdorf, PA	01/12/98	T-Shirts.
34,184	Forsyth Industries, Inc (Comp)	East Aurora, NY	01/15/98	Metal Stampings and Wire Forms.
34,185	Oryx Energy Co (Comp)	Dallas, TX	01/16/98	Oil and Gas.
34,186	Billo, Inc (Comp)	Dublin, GA	01/14/98	Men's and Boys' Slacks.
34,187	Overly Door Co (USWA)	Greensburg, PA	01/16/98	Hollow Metal Doors.
34,188	Badger Paper Mill (UPIU)	Peshtigo, WI	01/19/98	Bond, Twisting, Dry, Wax Gum, Candy Wrap.

[FR Doc. 98–4057 Filed 2–17–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Migrant and Seasonal Farmworker Programs Under Title IV–A Proposed Collection; Comment Request

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation process to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This process helps to ensure that requested data can be provided in the desired format, reporting burdens are minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed reinstatement of the previously-approved planning and reporting system for Job Training Partnership Act (JTPA) title IV–A, section 402 Migrant and Seasonal Farmworker programs for three more program years (July 1, 1997 to June 30, 2000). A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before April 20, 1998.

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

• Evaluate the accuracy of the agency's burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Thomas M. Dowd, Acting Chief, Division of Migrant and Seasonal Farmworker Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–8502 ext 119 (VOICE) or (202) 219–6338 (FAX) (these are not toll-free numbers) or INTERNET: DOWDT@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Employment and Training Administration of the Department of Labor is requesting reinstatement of its previously-approved planning and reporting system for Job Training Partnership Act (JTPA) title IV–A, section 402 Migrant and Seasonal Farmworker grantees for three more program years (July 1, 1997 to June 30, 2000). In evaluating the last two years' planning and reporting experience of the grantees who receive funding under section 402, the Department has decided that the system does not require any major changes beyond those instituted for PY 1995 when the Standardized Participant Information Report (SPIR) was adopted to replace the Farmworker Annual Status Report [FASR—ETA 8599]. This position is reached in part because of pending new workforce legislation, which would possibly require extensive revisions to the current planning and reporting system.

II. Current Actions

The proposed ICR will be a reinstatement of a previously approved system that will be used by approximately 34 section 402 grantees as the primary planning and reporting vehicle for enrolled individuals, their characteristics, training and services provided, outcomes, including job placement and employability enhancements, as well as detailed financial data on program expenditures. Section 402 grantees are currently required to submit annual participant data on the SPIR, which will not be affected by this continuation. SPIR burdens are covered separately under OMB Clearance No. 1205–0350 (expiration date 6/30/98), and have not been included in the following burden estimates. For ease of analysis, the following burden estimate is broken down into the three main components of section 402 program operation: (1) planning; (2) recordkeeping; and (3) reporting.

Type of Review: REINSTATEMENT.

AGENCY: Employment and Training Administration.

Title: Planning and reporting system for JTPA title IV–A, section 402 Migrant and Seasonal Farmworker grantees.

OMB Number: 1205–0215.

Catalog of Federal Domestic Assistance Number: 17.252.

Recordkeeping Requirements: Grantees shall retain supporting and other documents necessary for the compilation and submission of the subject reports for three years after submission of the final financial report for the grant in question [29 CFR 97.42 and/or 29 CFR 95.53].

Affected Public: Private non-profit organizations; State agencies; consortia of any of the above.

Total Estimated Burden: 65,152 hours.

Detailed breakdown of the above-estimated burden hour requirements for the JTPA section 402 program:

Required activity	MSFW form Nos.	Number of respondents	Responses per year	Total responses	Hours per response	Total burden hrs.
(Plan.) Master Agreement		34	1	34	0.5	17
(Plan.) Narrative		34	1	34	22	748
Budget Information Sum	ETA 8595	34	1	34	15	510
Program Planning Sum	ETA 8596	34	1	34	16	544
Recordkeeping		34		35,224	1.75	61,667
(Reporting) FSR	ETA 8597	34	4	102	7	952
Program Status Summary	ETA 8598	34	3	102	7	714
Totals		34	11	35,564	69.25	65,152

Note: Recordkeeping estimates are based on the actual number of terminees reported on the SPIR for PY 1995 (35,224) times an estimated average of 1.75 hours per participant record.

The individual time per response (whether plan, record, or report) varies widely depending on the degree of automation attained by individual grantees. Grantees also vary according to the numbers of individuals served in each program year. If the grantee has a fully-developed and automated MIS, the response time is limited to one-time programming plus processing time for each response. It is the Department's desire to see as many section 402 grantees as possible become computerized, so that response time for planning and reporting will eventually sift down to an irreducible minimum with an absolute minimum of human intervention.

Estimated Grantee Burden Costs: (There are no capital/start-up costs involved in any section 402 activities).

Planning: 1,819 hours times an estimated cost per grantee hour of $20.00 (including fringes) = $36,380 per year.

Recordkeeping: 61,667 hours times the same $20.00 per hour = $1,233,340.

Reporting: 1,666 hours times $20.00 = $33,320 per year.

Total estimated burden costs: $1,303,040 (nationwide).

As noted, these costs will vary widely among grantees, from nearly no additional cost to some higher figure, depending on the state of automation attained by each grantee and the wages paid to the staff actually completing the various forms.

All costs associated with the required submissions outlined above, whether for planning, recordkeeping, or reporting purposes, are allowable grant expenses.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, this 11th day of February, 1998.

Anna W. Goddard,

Director, Office of Special Targeted Programs.

[FR Doc. 98–4050 Filed 2–17–98; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States: 1998 Adverse Effect Wage Rates, Allowable Charges for Agricultural and Logging Workers' Meals, and Maximum Travel Subsistence Reimbursement

AGENCY: U.S. Employment Service, Employment and Training Administration, Labor.

ACTION: Notice of adverse effect wage rates (AEWRs), allowable charges for meals, and maximum travel subsistence reimbursement for 1998.

SUMMARY: The Director, U.S. Employment Service, announces 1998 adverse effect wage rates (AEWRs) for employers seeking nonimmigrant alien (H–2A) workers for temporary or seasonal agricultural labor or services, the allowable charges employers seeking nonimmigrant alien workers for temporary or seasonal agricultural labor or services or logging work may levy upon their workers when they provide three meals per day, and the maximum travel subsistence reimbursement which a worker with receipts may claim in 1998.

AEWRs are the minimum wage rates which the Department of Labor has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant alien agricultural workers (H–2A visaholders). AEWRs are established to prevent the employment of these aliens from adversely affecting wages of similarly employed U.S. workers.

The Director also announces the new rates which covered agricultural and logging employers may charge their workers for three daily meals.

Under specified conditions, workers are entitled to reimbursement for travel subsistence expense. The minimum reimbursement is the charge for three daily meals as discussed above. The Director here announces the current maximum reimbursement for workers with receipts.

EFFECTIVE DATE: February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Beverly, III, Director, U.S. Employment Service, U.S. Department of Labor, Room N–4700, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone: 202–219–5257 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Attorney General may not approve an employer's petition for admission of temporary alien agricultural (H–2A) workers to perform agricultural labor or services of a temporary or seasonal nature in the United States unless the petitioner has applied to the Department of Labor (DOL) for an H–2A labor certification. The labor certification must show that: (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188.

DOL's regulations for the H–2A program require that covered employers offer and pay their U.S. and H–2A workers no less than the applicable hourly adverse effect wage rate (AEWR). 20 CFR 655.102(b)(9); see also 20 CFR 655.107. Reference should be made to the preamble to the July 5, 1989, final rule (54 FR 28037), which explains in great depth the purpose and history of AEWRs, DOL's discretion in setting AEWRs, and the AEWR computation methodology at 20 CFR 655.107(a). See also 52 FR 20496, 20502–20505 (June 1, 1987).

A. Adverse Effect Wage Rates (AEWRs) for 1998

Adverse effect wage rates (AEWRs) are the minimum wage rates which DOL has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant (H–2A) agricultural workers. DOL emphasizes, however, that such employers must pay the highest of the AEWR, the applicable prevailing wage or the statutory minimum wage, as specified in the regulations. 20 CFR 655.102(b)(9). Except as otherwise provided in 20 CFR Part 655, Subpart B, the regionwide AEWR for all agricultural employment (except those occupations deemed inappropriate under the special circumstances provisions of 20 CFR 655.93) for which temporary alien agricultural labor (H–2A) certification is being sought, is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA does not provide data on Alaska). 20 CFR 655.107(a).

The regulation at 20 CFR 655.107(a) requires the Director, U.S. Employment Service, to publish USDA field and livestock worker (combined) wage data as AEWRs in a **Federal Register** notice. Accordingly, the 1998 AEWRs for work performed on or after the effective date of this notice, are set forth in the table below:

TABLE—1998 ADVERSE EFFECT WAGE RATES (AEWRS)

State	1998 AEWR
Alabama	$6.30
Arizona	6.08
Arkansas	5.98
California	6.87
Colorado	6.39
Connecticut	6.84
Delaware	6.33
Florida	6.77
Georgia	6.30
Hawaii	8.83
Idaho	6.54
Illinois	7.18
Indiana	7.18
Iowa	6.86
Kansas	7.01
Kentucky	5.92
Louisiana	5.98
Maine	6.84
Maryland	6.33
Massachusetts	6.84
Michigan	6.85
Minnesota	6.85
Mississippi	5.98
Missouri	6.86
Montana	6.54
Nebraska	7.01
Nevada	6.39
New Hampshire	6.84
New Jersey	6.33
New Mexico	6.08
New York	6.84
North Carolina	6.16
North Dakota	7.01
Ohio	7.18
Oklahoma	5.92
Oregon	7.08
Pennsylvania	6.33
Rhode Island	6.84
South Carolina	6.30
South Dakota	7.01
Tennessee	5.92
Texas	5.92
Utah	6.39
Vermont	6.84
Virginia	6.16
Washington	7.08
West Virginia	5.92
Wisconsin	6.85
Wyoming	6.54

B. Allowable Meal Charges

Among the minimum benefits and working conditions which DOL requires

employers to offer their alien and U.S. workers in their applications for temporary logging and H–2A agricultural labor certification is the provision of three meals per day or free and convenient cooking and kitchen facilities. 20 CFR 655.102(b)(4) and 655.202(b)(4). Where the employer provides meals, the job offer must state the charge, if any, to the worker for meals.

DOL has published at 20 CFR 655.102(b)(4) and 655.111(a) the methodology for determining the maximum amounts covered H–2A agricultural employers may charge their U.S. and foreign workers for meals. The same methodology is applied at 20 CFR 655.202(b)(4) and 655.211(a) to covered H–2B logging employers. These rules provide for annual adjustments of the previous year's allowable charges based upon Consumer Price Index (CPI) data.

Each year the maximum charges allowed by 20 CFR 655.102(b)(4) and 655.202(b)(4) are changed in the CPI for all Urban Consumers for Food (CPI–U for Food) between December of the year just past and December of the year prior to that. Those regulations and 20 CFR 655.111(a) and 655.211(a) provided that the appropriate Regional Administrator (RA), Employment and Training Administration, may permit an employer to charge workers no more than a higher maximum amount for providing them with three meals a day, if justified and sufficiently document. Each year, the higher maximum amounts permitted by 20 CFR 655.111(a) and 655.211(a) are changed by the same percentage as the twelve-month percent change in the CPI–U for Food between December of the year just past and December of the year prior to that. The regulations require the director, U.S. Employment Service, to make the annual adjustments and to cause a notice to be published in the **Federal Register** each calendar year, announcing annual adjustments in allowable charges that may be made by covered agricultural and logging employers for providing three meals daily to their U.S. and alien workers. The 1997 rates were published in a notice on February 7, 1997 at 62 FR 5853.

DOL has determined the percentage change between December of 1996 and December of 1997 for the CIP–U for Food was 2.6 percent.

Accordingly, the maximum allowable charges under 20 CFR 655.102(b)(4), 655.202(b)(4), 655.111, and 655.211 were adjusted using this percentage change, and the new permissible charges for 1998 are as follows: (1) for 20 CFR 655.102(b)(4) and 655.202(b)(4), the charge, if any, shall be no more than $7.60 per day, unless the RA has approved a higher charge pursuant to 20 CFR 655.111 or 655.211(b); for 20 CFR 655.111 and 655.211, the RA may permit an employer to charge workers up to $9.49 per day for providing them with three meals per day, if the employer justifies the charge and submits to the RA the documentation required to support higher charge.

C. Maximum Travel Subsistence Expense

The regulations at 20 CFR 655.102(b)(5) establish that the minimum daily subsistence expense related to travel expenses, for which a worker is entitle to reimbursement, is the employer's daily charge for three meals or, if the employer makes no charge, the amount permitted under 20 CFR 655.104(b)(4). The regulation is silent about the maximum amount to which a qualifying worker is entitled.

The Department, in Field Memorandum 42–94, established that the maximum is the meals component of the standard CONUS (continental United States) per diem rate established by the General Services Administration (GSA) and published at 41 CFR Ch. 301. The CONUS meal component is now $30.00 per day.

Workers who qualify for travel reimbursement are entitled to reimbursement up to the CONUS meal rate for related subsistence when they provide receipts. In determining the appropriate amount of subsistence reimbursement, the employer may use the GSA system under which a traveler qualifies for meal expense reimbursement per quarter of a day. Thus, a worker whose travel occurred during two quarters of a day is entitled, with receipts, to a maximum reimbursement of $15.00.

If a worker has no receipts, the employer is not obligated to reimburse above the minimum stated at 20 CFR 655.102(b)(4) as specified above.

Signed at Washington, DC, this 11th day of February, 1998.

John R. Beverly, III,

Director, U.S. Employment Service.

[FR Doc. 98–4051 Filed 2–17–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02048; NAFTA–02048A; NAFTA–02048B]

Oxford Industries, Incorporated; Oxford Women's Catalog and Special Markets Division, Alma, GA; Oxford of Giles, Pearisburg, VA; Oxford of Gaffney, Gaffney, SC; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on December 21, 1997, applicable to workers of Oxford Women's Catalog and Special Markets' Division of Oxford Industries, Incorporated located in Alma, Georgia. The notice was published in the **Federal Register** on January 22, 1998 (63 FR 3352).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that layoffs will occur at Oxford Industries, Incorporated locations in Pearisburg, Virginia where the workers produce ladies knit apparel, and in Gaffney, South Carolina where the workers produce jackets and outerwear.

The intent of the Department's certification is to include all workers of Oxford Industries, Incorporated adversely affected by increased imports from Mexico. Accordingly, the Department is amending the certification to include workers of Oxford Industries, Incorporated locations in Pearisburg, Virginia and Gaffney, South Carolina.

The amended notice applicable to NAFTA–02048 is hereby issued as follows:

All workers of Oxford Industries, Incorporated, Oxford Women's Catalog and Special Markets Division, Alma, Georgia (NAFTA–02048), Oxford of Giles, Pearisburg, Virginia (NAFTA–02048A), Oxford of Gaffney, Gaffney, South Carolina (NAFTA–02048B) who became totally or partially separated from employment on or after November 24, 1996 through December 21, 1999, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C. this 6th day of February 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4058 Filed 2–17–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02158]

Oxford Industries, Incorporated Oxford of Giles, Pearisburg, VA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on January 27, 1998, in response to a petition filed on behalf of workers at Oxford Industries, Incorporated, Oxford of Giles located in Pearisburg, Virginia.

The petitioning group of workers are covered under an existing NAFTA certification (NAFTA–02048A). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 6th day of February 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4059 Filed 2–17–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02096]

Romla Ventilator Company, Gardena, California; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on December 23, 1997, on behalf of workers at Romla Ventilator Company, Gardena, California.

This case is being terminated because the workers were separated from the subject firm more than one year prior to the date of the petition. The NAFTA Implementation Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 6th day of February, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4060 Filed 2–17–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Acting Director of the Office Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment of after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) Washington, D.C. provided such request is filed in writing with the Acting Director of OTAA not later than March 2, 1998.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than March 2, 1998.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W. Washington, D.C. 20210.

Signed at Washington, D.C. this 6th day of February, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Tultex Corporation (Co.)	Chilhowie, VA	01/09/1998	NAFTA–2,113	Fleece tops, shirts and blouse parts.
Allied Signal (IUE)	Eatentown, NJ	12/21/1997	NAFTA–2,114	Power generators.
Chester Clothes (UNITE)	Philipsburg, PA	01/09/1998	NAFTA–2,115	Men's and boys' suits.
Viti Fashion (Wkrs)	Hialeah, FL	12/12/1997	NAFTA–2,116	Children's apparel.
Shelby Die Casting (Co.)	Fayette, AL	01/12/1998	NAFTA–2,117	Aluminum castings.
Sara Lee Hosiery (Co.)	Marion, SC	01/13/1998	NAFTA–2,118	Sewing of hosiery.
L.V. Myles—Paul Bruce (Wkrs)	Scotland Neck, NC	01/12/1998	NAFTA–2,119	Womens and childrens clothes.
Mitsubishi Consumer Electronics America (Co.).	Costa Mesa, CA	01/12/1998	NAFTA–2,120	Televisions.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Mitsubishi Consumer Electronics America (Co.).	Braselton, GA	01/12/1998	NAFTA–2,121	Televisions.
Gentex Printing (Co.)	Rocky Mount, NC	01/12/1998	NAFTA–2,122	Fabric printing and finishing.
W.R. Grace and Company-Conn. (Co.)	Beltsville, MD	12/14/1997	NAFTA–2,123	fireproofing power products.
Specialty—Chaise Mate (Wkrs)	Bristol, TN	01/14/1998	NAFTA–2,124	T-shirts, baby bibs.
Ebo Cedar Products (Co.)	Bonners Ferry, ID	01/14/1998	NAFTA–2,125	Cedar post and rail fencing.
Mark Eby Cedar Products (Co.)	Bonners Ferry, ID	01/07/1998	NAFTA–2,126	Cedar post and rail fencing.
Omak Wood Products (IBCJ)	Omak, WA	01/14/1998	NAFTA–2,127	Ponderosa pine.
Abb Power T and D Company (IUE)	Muncie, IN	01/12/1998	NAFTA–2,128	Transformers.
Hewlett Packard (Wkrs)	Vancouver, WA	01/14/1998	NAFTA–2,129	Computer printers.
Trendline Home Fashions—Great Connect. (Wkrs).	Lititz, PA	01/15/1998	NAFTA–2,130	Home office furniture.
Hamilton Sportswear (Wkrs)	Hamilton, AL	01/15/1998	NAFTA–2,131	T-shirts, tank tops, sweatshirts.
VF Knitwear (Co.)	Chatham, VA	01/20/1998	NAFTA–2,132	T-shirts and fleece.
VF Knitwear (Co.)	Stoneville, NC	01/14/1998	NAFTA–2,133	T-shirts and fleece.
VF Knitwear (Co.)	Franklin, NC	01/14/1998	NAFTA–2,134	T-shirts and fleece.
Color Box (Wkrs)	Buffalo, NY	01/16/1998	NAFTA–2,135	Boxes.
Biljo (Co.)	Dublin, GA	01/16/1998	NAFTA–2,136	Men's and boy's slacks.
Cocoa Barry US (FSU)	Pennsauken, NJ	01/17/1998	NAFTA–2,137	Cocoa and chocolate.
Otis Elevator (Wkrs)	Tucson, AZ	01/16/1998	NAFTA–2,138	Electronics assemblies.
Scientific Atlanta (Wkrs)	Tempe, AZ	01/16/1998	NAFTA–2,139	Cable boxes.
Badger Paper Mill (Wkrs)	Peshtigo, WI	01/16/1998	NAFTA–2,140	Bond paper.
Kered Clothing (Co.)	Manchester, NH	01/20/1998	NAFTA–2,141	Ladies sportwear.
Computech Data Entry (Wkrs)	Orlando, FL	01/20/1998	NAFTA–2,142	Data entry for UPS.
Shin Etsu Polymer America (Co.)	Union City, CA	01/20/1998	NAFTA–2,143	Rubber key boards for cellular phones.
Power Holding (Wkrs)	Milwaukee, WI	01/21/1998	NAFTA–2,144	Electrical components.
Coast Converters (Wkrs)	Los Angeles, CA	01/20/1998	NAFTA–2,145	Poly bags.
Alta Genetics (Co.)	Hughson, CA	01/21/1998	NAFTA–2,146	Frozen bull semen.
Overly Door (Wkrs)	Greensburg, PA	01/22/1998	NAFTA–2,147	Hollow metal doors.
Sangamon (UPW)	Taylorville, IL	01/22/1998	NAFTA–2,148	Greeting cards, table stationary.
Lone Pine Forest (Wkrs)	Bend, OR	01/26/1998	NAFTA–2,149	Fruit boxes.
Dexter Sportwear (Co.)	Dexter, GA	01/27/1998	NAFTA–2,150	Men's and boys' slacks.
Fluor Daniel (Co.)	Casper, WY	01/22/1998	NAFTA–2,151	Crude oil.
American Home Products (Co.)	Bound Brook, NJ	01/26/1998	NAFTA–2,152	Methasolamide bulk.
Biscayne Apparel (Wkrs)	Arlington, GA	01/27/1998	NAFTA–2,153	Undergarments.
Calgon Carbon (Co.)	Tucson, AZ	01/26/1998	NAFTA–2,154	Equipment for water purification.
Dettra Flag (Wrks)	Oaks, PA	01/27/1998	NAFTA–2,155	Printed dyed flags and banners.
Allied Signal Aerospace (UAW)	Stratford, CT	01/14/1998	NAFTA–2,156	Gas tubine engines.
Fort James (UPWU)	Ashland, WI	01/26/1998	NAFTA–2,157	Napkins.
Lovingston (Wrks)	Stauntan, VA	01/27/1998	NAFTA–2,158	Girls knit pants and shorts.
Oxford of Giles (Co.)	Pearisburg, VA	01/27/1998	NAFTA–2,159	Ladies knit apparel.
Sunrise Medical (Co.)	Simi Valley, CA	01/27/1998	NAFTA–2,160	Walkers, canes, shower care.
Glit Gemtex (Co.)	Buffalo, NY	01/29/1998	NAFTA–2,161	Vulcanized fibre discs.
Seattle Gear (Wrks)	Seattle, WA	01/28/1998	NAFTA–2,162	Designer gear.
Jantzen (Co.)	Seneca, SC	01/28/1998	NAFTA–2,163	Women's apparel.
Tennessee Woolen Mills (UNITE)	Lebanon, TN	01/27/1998	NAFTA–2,164	Blankets.
Advanced Organics (Wrks)	Upper Sandusky, OH	01/20/1998	NAFTA–2,165	Trucking.
SPM Denver a Dynacast (Wrks)	Denver, CO	01/28/1998	NAFTA–2,166	Plastic injection molded.
Metor Plastic Technologies (Co.)	Columbus, IN	01/30/1998	NAFTA–2,167	Plastic components for televisions.
Proam (Wrks)	Long Island City, NY	01/20/1998	NAFTA–2,168	Women's jacket.
BTR Automotive Sealing Systems (Wrks).	West Unity, OH	01/30/1998	NAFTA–2,169	Rubber decklid and door weatherseals.
I-State (Co.)	Plainsboro, NJ	02/02/1998	NAFTA–2,170	Disposable cartridges.
Avery Dennison (Wrks)	Chicopee, MA	02/02/1998	NAFTA–2,171	Vinyl ring binders.
Flavor Fresh—Unimark (Wrks)	Lawrence, MA	02/02/1998	NAFTA–2,172	Canned fruit.
VIZ Manufacturing (Co.)	Philadelphia, PA	02/03/1998	NAFTA–2,173	Meteorological instruments.
Commercial Fishing Vessel (Co.)	Bodega Bay, CA	02/02/1998	NAFTA–2,174	Swordfish.
Glenbrook Nickel (Co.)	Riddle, OR	02/03/1998	NAFTA–2,175	Ferronickel.
Pecos Valley Field Service (Wrks)	Pecos, TX	02/03/1998	NAFTA–2,176	Sulphur.

[FR Doc. 98–4052 Filed 2–17–98; 8:45 am]
BILLING CODE 4510–35–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

February 12, 1998.

TIME AND DATE: 10:00 a.m., Thursday, February 19, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Secretary of Labor* v. *Consolidation Coal Co.*, Docket Nos. WEVA 93–146A and 93–81–R (Issues include whether substantial evidence supports the judge's determination that Consol did not violate section 103(j) of the Mine Act, which requires operators to take appropriate measures to prevent the destruction of evidence which would assist in investigating the cause of an accident).

TIME AND DATE: 2:00 p.m. Thursday, February 19, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of a quorum of the Commission that the Commission consider and act upon the following in a closed session:

1. *Secretary of Labor* v. *Consolidation Coal Co.*, Docket Nos. WEVA 93–146A and 93–81–R (See oral argument listing, *supra*, for issues).

TIME AND DATE: 10:00 a.m., Thursday, March 5, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission shall consider and act upon the following:

1. *Secretary of Labor* v. *Wayne R. Steen*, employed by Ambrosia Coal & Construction Co., Docket No. PENN 94–15 (Issues include whether on second remand the judge properly assessed a $2,000 penalty against Wayne R. Steen under sections 110(c) and 110(i) of the Mine Act for violating 30 C.F.R. § 77.404(a)).

TIME AND DATE: 10:00 a.m., Thursday, March 19, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *United Mine Workers of America o.b.o. Burgess* v. *Secretary of Labor*, Docket Nos. SE 96–367–D and SE 97–18–D (Issues include whether the judge properly dismissed discrimination complaints filed against the Mine Safety and Health Administration ("MSHA") and named MSHA officials).

TIME AND DATE: 2:00 p.m. Thursday, March 19, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commission that the Commission consider and act upon the following in closed session:

1. *United Mine Workers of America o.b.o. Burgess* v. *Secretary of Labor*, Docket Nos. SE 96–367–D and SE 97–18–D (See oral argument listing, *supra*, for issues).

Any person attending oral argument or an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629 / (202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

Jean H. Ellen,
Chief Docket Clerk.

[FR Doc. 98–4262 Filed 2–13–98; 3:57 pm]
BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–02]

NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Rotorcraft Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Rotorcraft Subcommittee meeting.

DATES: Tuesday, March 17, 1998, 1:00 p.m. to 5:00 p.m.; Wednesday, March 18, 1998, 8:00 a.m. to 5:00 p.m.; and Thursday, March 19, 1998, 8:00 a.m. to 12:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Ames Research Center, Building 241, Room B2, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Hartle-Giffin, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/604–2752.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

—Review of Rotorcraft Subcommittee Recommendations
—Review of Rotorcraft Base Program
—Short Haul & Civil Tiltrotor Planning
—Briefing on Rotorcraft Safety Study

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: February 10, 1998.

Matthew M. Crouch,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–4047 Filed 2–17–98; 8:45 am]
BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review and approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: "An Approach for Using Probabilistic Risk Assessment in Risk-informed Decisions on Plant-Specific Changes to the Current Licensing Basis," Regulatory Guides RG–1.174 through RG–1.178

2. Current OMB approval number: 3150–0011

3. How often the collection is required: Use of the new risk-informed

methodology for making changes in the licensing basis of operating plants in the areas of inservice inspection (ISI), inservice testing (IST), graded quality assurance (GQA), and technical specifications (TS), is available to all licensees but is not required. Licensees may make voluntary submittals when, and if, in their judgment, it is to their advantage to do so (for example, to improve plant safety, reduce costs, gain operating flexibility).

4. Who is required or asked to report: Licensees of nuclear power plants may report when, and if, in their judgment, it is to their advantage to do so.

5. The number of annual respondents: ISI: 6, IST: 3, QA: 1, TS: 20

6. The number of hours needed annually to complete the requirement or request (per respondent): ISI: 6,200, IST: 5,200, QA: 4,000, TS: 1,060

7. Abstract: In the specific areas of ISI, IST, GQA, and TS, a new series of Regulatory Guides provides a risk-informed method for licensees to use in requesting changes to their current licensing bases (CLB). No changes or additions have been made to any rules or regulations in conjunction with the issuance of this series of guides. The new method will be a voluntary alternative to the deterministically-based CLB change method previously used (which will remain acceptable as an alternative to the new risk-informed method).

The new risk-informed alternative method will allow licensees to concentrate on plant equipment and operations that are most critically important to plant safety so as to achieve a savings in total effort and greater operating flexibility with an insignificant change in overall safety. The guides specify the records, analyses, and documents that licensees are expected to prepare in support of risk-informed changes to their CLB in the specified areas.

Submit, by April 20, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 11th day of February, 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–3978 Filed 2–17–98; 8:45 am]

BILLING CODE 8190–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7002]

Amendment to Certificate of Compliance GDP–2 for the U.S. Enrichment Corporation Portsmouth Gaseous Diffusion Plant; Portsmouth, OH

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) There is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards, or security programs. The basis for this determination for the amendment request is described below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Portsmouth Gaseous Diffusion Plant (PORTS). The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

For further details with respect to the action see: (1) The application for

amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room.

Date of amendment request: October 21, 1997.

Brief description of amendment: On October 21, 1997, United States Enrichment Corporation (USEC) submitted a certificate amendment request for the Portsmouth Gaseous Diffusion Plant (PORTS) to extend a completion date and to clarify commitments related to Measuring and Test Equipment (M&TE) made in Issue 24 entitled "Maintenance Program" of the "Plan for Achieving Compliance with Nuclear Regulatory Commission Regulations at the Portsmouth Gaseous Diffusion Plant" DOE/ORO–2027/R3 (Compliance Plan).

The PORTS Quality Assurance Program (QAP) requires safety related structures, systems and components (SSCs) to be designated as Q, AQ and AQ–NCS according to their area of application and degree of importance to safety. The PORTS QAP and the Safety Analysis Report designate those SSCs as Q and AQ, and AQ–NCS, which are relied upon for non-criticality safety and criticality safety, respectively. The PORTS QAP requires USEC to apply quality assurance (QA) requirements contained in ASME NQA–1–1989 entitled "Quality Assurance Program Requirements for Nuclear Facilities" to Q and AQ–NCS SSCs. For AQ SSCs, which in comparison to Q and AQ–NCS SSCs are less important from a safety standpoint, only a portion of the ASME NQA–1–1989 requirements are applicable.

Currently, the Plan of Action and Schedule (POAS) section of Issue 24 of the PORTS Compliance Plan implies that M&TE used for Q, AQ and AQ-NCS SSCs are also designated as Q, AQ and AQ-NCS, respectively. The clarification contained in USEC's amendment request, deletes this implication. In addition to the clarification, USEC has also included a request to extend the completion date for revising the calibration program to meet the more formal requirements for AQ SSCs from December 31, 1997, to June 30, 1998. According to USEC, the existing December 31, 1997, date in the POAS of the PORTS Compliance Plan Issue 24 is inconsistent with two other actions contained elsewhere in the same POAS. In addition, according to USEC, Issue 22 entitled "Maintenance Program" of the Paducah Gaseous Diffusion Plant (PGDP) Compliance Plan identifies June 30, 1998, as the date for completing similar corrective actions which address similar noncompliances.

Basis for finding of no significance:

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

This amendment deletes the implication that M&TE are designated as Q, AQ, and AQ-NCS SSCs. It also corrects an inconsistency related to the completion date for revising the calibration program to meet more formal requirements for AQ SSCs by extending the completion date from December 31, 1997, to June 30, 1998. This amendment does not constitute a change to the QA requirements applicable to M&TE. Per the PORTS QAP, which was reviewed and approved by the NRC as part of the initial certification, QA requirements contained in ASME NQA–1 1989 will continue to be applied to M&TE used for Q, AQ-NCS and AQ SSCs. In addition, the interim safety requirements contained in the Justification for Continued Operation (JCO) section of Issue 24 of the PORTS Compliance Plan, which was developed by DOE and approved by DOE and NRC, pertaining to AQ SSCs and the associated M&TE, would continue to be applied until June 30, 1998. As such, this amendment will not result in a significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposures.

3. The proposed amendment will not result in a significant construction impact.

The proposed amendment does not involve any construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not result in new or different kinds of accidents.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not result in a significant reduction in any margin of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards, or security programs.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety program.

The staff has not identified any safeguards or security related implications from the proposed amendment. Therefore, the proposed amendment will not result in an overall decrease in the effectiveness of the plant's safeguards or security programs.

Effective date: The amendment to GDP–2 will become effective immediately after issuance by NRC.

Certificate of Compliance No. GDP–2: Amendment will revise the Compliance Plan.

Local Public Document Room location: Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 4th day of 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–3977 Filed 2–17–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of February 16, 23, March 2, and 9, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 16

Wednesday, February 18

2:00 p.m.—Briefing on Investigative Matters (Closed—Ex. 5 & 7).

Thursday, February 19

9:30 a.m.—Meeting with Northeast Nuclear on Millstone (Public Meeting) (Contact: Bill Travers, 301–415–1200).

12:00 p.m.—Affirmation Session (Public Meeting) (if needed).

Week of February 23—Tentative

There are no meetings the week of February 23.

Week of March 2—Tentative

There are no meetings the week of March 2.

Week of March 9—Tentative

Wednesday, March 11

9:00 a.m.—Briefing by Executive Branch (Closed—Ex. 1).

2:00 p.m.—Briefing on MOX Fuel Fabrication Facility Licensing (Public Meeting) (Contact: Ted Sherr. 301–415–7218).

Thursday, March 12

2:00 p.m.—Briefing on Fire Protection (Public Meeting).

3:30 p.m.—Affirmation Session (Public Meeting) (if needed).

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292. Contact Person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be bound on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

William M. Hill, Jr.,

Secy, Tracking Officer, Office of the Secretary.

[FR Doc. 98–4218 Filed 2–13–98; 2:39 pm]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of Expiring Information Collection Form RI 25–14

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget a request for reclearance of an information collection. RI 25–14, Self-Certification of Full-Time School Attendance, is used to survey survivor annuitants who are between the ages of 18 and 22 to determine if they meet the requirement of Section 8341(a)(C), and Section 8441, title 5, U.S. Code, to receive benefits as a student.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 14,000 Self-Certification and Full-Time School Attendance forms are completed annually; each requires approximately 12 minutes to complete, for a total public burden of 2,800 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received on or before April 19, 1998.

ADDRESSES: Send or deliver comments to—Lorraine E. Dettman, Chief Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–4196 Filed 2–17–98; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Reclearance of Form RI 30–1

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for reclearance of an information collection. RI 30–1, Request to Disability Annuitant for Information on Physical Condition and Employment, is used by persons who are not yet age 60 and who are receiving disability annuity and are subject to inquiry as to their medical condition as OPM deems reasonably necessary. RI 30–1 collects information as to whether the disabling condition has changed.

Approximately 8,000 RI 30–1 forms will be completed annually. We estimate it takes approximately 60 minutes to complete the form. The annual burden is 8,000 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Retirement and Insurance Service, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.
Janice R. Lachance,
Director.
[FR Doc. 98–4195 Filed 2–17–98; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: Form RI 94–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. RI 94–7, Death Benefit Payment Rollover Election for Federal Employees Retirement System (FERS), provides FERS surviving spouses and former spouses with the means to elect payment of the FERS rollover-eligible benefits directly or to an Individual Retirement Account.

Approximately 700 RI 94–7 forms will be completed annually. We estimate it takes approximately 60 minutes to complete the form. The annual burden is 700 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received on or before March 20, 1998.

ADDRESSES: Send or deliver comments to—

John C. Crawford, Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3313, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.
Janice R. Lachance,
Director,
[FR Doc. 98–4197 Filed 2–17–98; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: Form RI 38–115

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. RI 38–115, Representative Payee Survey, is designed to collect information about how the benefits paid to a representative payee have been used or conserved for the benefit of the incompetent annuitant.

Approximately 4,067 RI 38–115 forms will be completed annually. This form takes approximately 20 minutes to complete. The annual burden is 1,356 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received on or before March 20, 1998.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.
Janice R. Lachance,
Director.
[FR Doc. 98–4198 Filed 2–17–98; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: Form RI 98–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. RI 98–7, We Need Important Information About Your Eligibility for Social Security Administration (SSA) Disability Benefits, is used to verify receipt of SSA disability benefits, make necessary adjustments to the Federal Employees Retirement System (FERS) disability benefit, and to notify the retiree of any overpayment amount payable to OPM. It also specifically notifies the retiree of his or her responsibility to notify OPM of his or her Social Security status and the consequences of non-notification.

Approximately 2200 RI 98–7 forms will be completed annually. We estimate it takes approximately 5 minutes to complete the form. The annual burden is 183 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received on or before March 20, 1998.

ADDRESSES: Send or deliver comments to—

John C. Crawford, Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3313, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Budget &

Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–4199 Filed 2–17–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (London Insurance Group, Inc., 6⅞% Notes Due September 15, 2005, Issued Pursuant to the Indenture Dated September 25, 1995) File No. 1–13938

February 10, 1998.

London Insurance Group, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the New York Stock Exchange Inc. ("NYSE" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

On December 12, 1997, the Company completed a tender offer for the issued and outstanding Security. Through the tender offer, the Company purchased $142,543,000 of the $150,000,000 aggregate principal amount of the Security then outstanding.

The Company believes that its application to withdraw the Security from listing and registration on the NYSE should be granted for the following reasons:

(1) The aggregate principal amount of the Security that remains issued and outstanding is small. Of the original issuance of $150,000,000, only $7,457,000 of that aggregate principal amount of the Security remains issued and outstanding.

(2) The Security is held by a small number of holders. As of January 14, 1998, the Depositary Trust Company ("DTC") was the only holder of record. Through DTC, there are approximately 6 beneficial holders of the Security. $7,000,000 of the remaining principal amount of the Security is beneficially held by one institution.

(3) The Security is the Company's only listed security in the United States.

(4) The costs of satisfying the Company's reporting obligations under the Act do not justify the continued listing of the Security. The Company is not subject to the reporting requirements of the Act for any of its equity securities and is not obligated under the terms of the Indenture to file any reports with the Commission. As a consequence of the continued listing of the Security, the Company will be required to incur the costs of preparing annual and periodic reports to comply with the reporting requirements of the Act for the benefit of a limited number of Security holders. In addition, the Company is not obligated under the Indenture or any other document to maintain the listing or registration of the Security on the NYSE or any other national securities exchange.

On January 8, 1998, an authorized representative of the NYSE advised the Company that the Exchange would not object to the voluntary removal of the Security from listing and registration on the Exchange.

Any interested person may, on or before March 4, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–3934 Filed 2–17–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23024; 812–10928]

Nationwide Investing Foundation III, et al.; Notice of Application

February 10, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Order requested to allow certain series of a registered open-end management investment company to acquire all of the assets of certain series of three registered open-end management investment companies. Because of certain affiliations, applicants may not rely on Rule 17a–8 under the Act.

APPLICANTS: Nationwide Investing Foundation III ("NIF III"), Nationwide Investing Foundation ("NIF"), Nationwide Investing Foundation II ("NIF II"), Financial Horizons Investment Trust ("FHIT"), and Nationwide Advisory Services, Inc. ("NAS").

FILING DATES: The application was filed on December 24, 1997, and amended on February 6, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application persons will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 5, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, Three Nationwide Plaza, Columbus, OH 43215.

FOR FURTHER INFORMATION CONTACT: Lisa McCrea, Attorney Adviser, at (202) 942–0562, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street NW., Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. NIF III, an Ohio business trust, is an open-end management investment company registered under the Act. NIF III consists of nine series: Nationwide Growth Fund, Nationwide Fund, Nationwide Bond Fund, Nationwide Money Market Fund, Nationwide Intermediate U.S. Government Bond Fund, Nationwide Mid Cap Growth Fund, (the "NIF III Acquiring Series"), Nationwide Tax-Free Income Fund, Nationwide Long-Term U.S.

Government Bond Fund, and Nationwide S&P 500 Index Fund.[1] NIF III plans to offer initially one class of shares, class D that carries a front-end sales charge, for each of its series, other than the Nationwide Money Market Fund, which will issue shares without class designation or sales charge.

2. NIF, a Michigan business trust, is an open-end management investment company registered under the Act. NIF currently offers four series: Nationwide Growth Fund, Nationwide Fund, Nationwide Bond Fund, and Nationwide Money Market Fund (the "NIF Acquired Series"). Shares of Nationwide Growth Fund, Nationwide Fund, and Nationwide Bond Fund are subject to a front-end sales charge. NIF II, a Massachusetts business trust, is an open-end management investment company registered under the Act, and currently offers two series, Nationwide U.S. Government Income Fund (the "NIF II Acquired Series"), and Nationwide Tax-Free Income Fund.[2] Shares of the Nationwide U.S. Government Income Fund are subject to a contingent deferred sales charge. FHIT, a Massachusetts business trust, is an open-end management investment company registered under the Act. FHIT currently offers four series: Growth Fund, Cash Reserve Fund (the "FHIT Acquired Series"), Municipal Bond Fund, and Government Bond Fund.[3] Shares of the Growth Fund are subject to a contingent deferred sales charge. The NIF Acquired Series, NIF II Acquired Series, and FHIT Acquired Series together are the "Acquired Series".

3. NAS is registered as an investment adviser under the Investment Advisers Act of 1940. NAS serves as investment adviser for NIF III and the Acquiring Series, and for NIF, NIF II, FHIT, and the Acquired Series. NAS is a wholly-owned subsidiary of Nationwide Life Insurance Company, which, in turn, is wholly-owned by Nationwide Financial Services, Inc. ("NFS"). NFS is controlled by the Nationwide Corporation, which is controlled by Nationwide Mutual Insurance Company.

4. As of December 18, 1997, Nationwide Life Insurance Company, directly or indirectly owned, controlled or held the power to vote 31% of the outstanding shares of NIF's Nationwide Growth Fund, 24.1% of NIF's Nationwide Fund, 16.8% of NIF's Nationwide Bond Fund, 54.4% of NIF's Nationwide Money Market Fund, 15.8% of NIF II's Nationwide U.S. Government Income Fund, and 5.3% of FHIT's Growth Fund, and 73.5% of FHIT's Cash Reserve Fund. These shares of NIF, NIF II, and FHIT are owned by separate accounts of Nationwide Life Insurance Company, which vote these shares in accordance with instructions received from the underlying variable annuity contract owners. If no instructions are received from the underlying variable annuity contract owners, the separate accounts vote the shares in the same proportion as the votes cast on behalf of variable annuity contract owners who submit timely instructions.

5. On November 7, 1997, the boards of trustees of NIF III, NIF, NIF II and FHIT (the "Boards"), including the disinterested trustees, considered and unanimously approved Agreements and Plans of Reorganization between NIF III, NIF, NIF II and FHIT (the "Reorganization"). In the Reorganization, each of NIF, NIF II, and FHIT has agreed to sell all of its assets to the Acquiring Series, in exchange for assumption of the Acquired Series' liabilities and the issuance and delivery of class D shares of the corresponding Acquiring Series of NIF III (the NIF III Money Market Fund will issue and deliver shares without any class designation) equal in net asset value at the close of business at the Valuation Time (defined below) to the value of the shares of the corresponding Acquired Series. The Valuation Time is intended to be 4:00 p.m., Eastern Standard Time, on the day before the assets and liabilities of the Acquired Series are transferred to the corresponding Acquired Series.

6. No sales charge will be incurred by shareholders of the Acquired Series in connection with their acquisition of corresponding Acquiring Series shares. Applicants state that the investment objectives, policies and restrictions of the Acquiring Series are substantially similar to those of the corresponding Acquired Series.

7. The Boards determined that the Reorganization is in the best interests of NIF III, NIF, NIF II, and FHIT, and of the shareholders of the Acquired Series and the corresponding Acquiring Series, and that the interests of shareholders would not be diluted as a result of the Reorganization. In assessing the Reorganization, the factors considered by the Boards included: (a) The business objectives and purposes of the Reorganization, namely, becoming three separate business entities of NIF, NIF II, and FHIT into one business entity, NIF III; (b) the compatibility of the investment objectives, polices and restrictions between the respective Acquired Series and the corresponding Acquiring Series; (c) the terms and conditions, including the allocation of expenses of the Reorganization; (d) the tax-free nature of the Reorganization; and (e) the expense ratios of the Acquiring Series and the corresponding Acquired Series.

8. NAS has agreed to pay for 50% of the Reorganization fees and expenses of NIF III, NIF, NIF II, and FHIT. NAS also has agreed to pay for 50% of proxy solicitation and other costs associated with the special meeting of shareholders of NIF, NIF II, and FHIT. NIF III bears its own organizational costs.

9. On November 26, 1997, NIF III filed with the SEC its registration statement on Form N–14, containing a preliminary combined prospectus/proxy statement, which became effective on January 8, 1998. Applicants sent the prospectus/proxy statement to Acquired Series shareholders on or about January 12, 1998, for their approval at a special shareholder meeting to be held on February 16, 1988.

10. The Reorganization is subject to the following conditions precedent: (a) That the shareholders of the Acquired Series approve the Agreement; (b) that the Acquired Series and the Acquiring Series receive opinions of counsel to the effect that the Reorganization will be tax-free for the Acquiring Series, the Acquired Series, and their shareholders; and (c) that applicants will receive from the SEC and exemption from section 17(a) of the Act for the Reorganization. Applicants agree not to make any material changes to the Agreement without prior SEC approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling any security or other property to the company, or purchasing from the company and security or other property.

2. Section 2(a)(3) of the Act defines the term "affiliated person of another person" to include, in pertinent part, any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such other person, and any person directly or indirectly controlling, controlled by, or under common control with such other person, and if such other person is an

[1] NIF III's Nationwide Tax-Free Income Fund, Nationwide Long-Term U.S. Government Bond Fund, and Nationwide S&P 500 Index Fund are not applicants for the relief requested.

[2] NIF II's Nationwide Tax-Free Income Fund is not an applicant for the relief requested.

[3] FHIT's Municipal Bond Fund and Government Bond Fund are not applicants for the relief requested.

investment company, any investment adviser thereof.

3. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions are satisfied.

4. Applicants believe that they may not rely on rule 17a–8 in connection with the Reorganization, because an affiliate of NAS, Nationwide Life Insurance Company, directly or through its separate accounts, owns, controls or holds the power to vote 5% or more of the outstanding voting securities of each of NIF's Nationwide Growth Fund, Nationwide Fund, Nationwide Bond Fund, Nationwide Money Market Fund, and NIF II's Nationwide U.S. Government Income Fund, and FHIT's Growth fund and Cash Reserve Fund. Applicants assert that NIF, NIF II, FHIT and each of the respective Acquired Series may be an affiliated person of Nationwide Life Insurance Company under section 2(a((3)(B) of the Act.

5. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of each registered investment company concerned; and the proposed transaction is consistent with the general purposes of the Act.

6. Applicants submit that the Reorganization satisfies the standards of section 17(b). Applicants believe the terms of the Reorganization are fair and reasonable and do not involve overreaching. Applicants state that the exchange is based on the relative net asset values of the relevant Funds' shares, and no sales charge will be incurred by shareholders of the Acquired Series in connection with their acquisition of corresponding Acquiring Series Shares. Applicants assert that the Reorganization is consistent with the investment objectives of the Acquired Series and the corresponding Acquiring Series.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3929 Filed 2–17–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23014A; 812–10908]

The Sessions Group, et al., Notice of Application

January 30, 1998.

Correction

In FR Document No. 98–2883 beginning on page 5976 for Thursday, February 5, 1998, the date of the release was incorrectly stated. The correct date should be as set forth above.

Dated; February 11, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3933 Filed 2–17–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39631; File No. SR–AMEX–97–37]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change Relating to Expansion of Designated Options Areas

February 9, 1998.

I. Introduction

On October 14, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to expand the locations where options on Amex-listed stocks may trade at the Exchange. The proposed rule change was published for comment in the **Federal Register**.[3] No comments were received on the proposal. On January 14, 1998, the Amex filed an amendment to the proposed rule change ("Amendment No. 1"),[4] The Commission hereby approves the proposal. In addition, the Commission is publishing this notice to solicit comments from interested persons on Amendment No. 1 to the proposal and hereby approves that amendment on an accelerated basis.

II. Description of the Proposal

In 1988, the Commission approved an Amex proposal to permit options trading on Amex-listed stocks ("1988 Approval Order").[5] In that order, the Commission noted that: "[W]ith the expansion of its trading facility, specifically the addition of a separate trading room, the Amex is in a position to trade stocks and options thereon in physically separated locations. The proposed rule change specifies that such trading shall take place at different trading locations and provides the safeguards necessary to prevent abuses which could result from the trading of stocks and related options in physical proximity to each other."[6]

More recently, in 1994, the Commission approved an Amex proposal to provide greater flexibility in the design and development of new stock index option products which can be listed and traded on Amex.[7] In that approval order, the Commission based its approval in part on the fact that Amex imposed a number of restrictions on trading in options on indexes. For instance, where Amex-listed stocks comprise more than 10% of the value of a particular index, options on that index must be traded in a *room physically separated from* the Equity Floor.[8]

Now, Amex, as a result of increases in trading volume in options on the Exchange,[9] has proposed to relax the requirement that Amex-listed stocks and options on Amex-listed stocks be traded in a room physically separated from the Main Trading Floor

Background

Amex currently has three trading locations: (1) the Main Trading Floor; (2) the mezzanine trading level, which is located above the Exchange's main trading floor ("Mezzanine"),[10] and (3) a separate room connected by a hallway to the Main Trading Floor (the "Red Room" or "Designated Options Area").

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 39306 (November 6, 1997), 62 FR 61154 (November 14, 1997).

[4] Letter from Scott G. VanHatten, Legal Counsel, Derivative Securities, Amex, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, Commission, dated January 13, 1998.

[5] Securities Exchange Act Release No. 26147 (October 3, 1988), 53 FR 39556 (October 7, 1988) (File No. SR–AMEX–88–16).

[6] *Id.*

[7] Securities Exchange Act Release No. 34359 (July 12, 1994), 59 FR 36799 (July 19, 1994).

[8] *Id.* (emphasis added).

[9] The Amex noted in its filing that the number of options on Amex-listed stocks has increased slowly, to 45 classes since 1988, while the overall number of options classes traded on the Exchange has increased over 350% since that time.

[10] The Mezzanine abuts and overlooks the Exchange's equity trading floor. *See* Release No. 34–34359 at n. 8.

On the Main Trading Floor, Amex currently permits trading in:

(1) Amex-listed stocks,

(2) Options on non-Amex-listed stocks, and

(3) Options on indexes (excluding options on indexes where Amex-listed stocks comprise more than 10% of the index value, by weight).[11]

In the Red Room, Amex currently permits trading in:

(1) Options on Amex-listed stocks,

(2) Options on non-Amex-listed stocks, and

(3) Options on indexes where Amex-listed stocks comprise more than 10% of the index value, by weight.

On the Mezzanine, Amex currently permits trading in:

(1) Options on indexes where Amex-listed stocks comprise more than 10% of the index value by weight, and

(2) Options on non-Amex-listed stocks.

Consistent with the 1988 Approval Order, as described above, trading of Amex-listed stocks occurs on the Main Trading Floor, while trading of options on Amex-listed stocks is permitted only in the Red Room. The Exchange states that the capacity of the Red Room is no longer sufficient to accommodate all trading in options on Amex-listed stocks. The Exchange represented in its filing that while the number of options on Amex-listed stocks has increased slowly, to approximately 45 classes since 1988, the overall number of option classes traded on the Exchange has increased over 350% since that time. As a result of this increase in classes of options traded at the Amex, the Exchange states that it currently lacks flexibility in moving trading units around its trading floors. Those specialist units currently trading options on Amex-listed stocks are forced to remain in the Red Room, even though they have outgrown their space, or face giving up those classes to move to larger quarters. Moreover, the Exchange represented that specialist units that currently do not trade any options on Amex-listed stocks are unable to do so because there is no room left in the Red Room. The increase in classes of options traded on the Exchange and the Exchange's need for flexibility in moving the various trading units around the Exchange's trading floors has made it necessary for the Exchange to find additional physically separate locations for trading options on Amex-listed stocks.

Accordingly, the Exchange has proposed to permit options trading on Amex-listed stocks in two locations of the Exchange in addition to the Red Room: (1) The Mezzanine and (2) the back row of the west side of the Exchange's Main Trading Floor, also referred to as the west side of Exchange Posts 12, 13 and 15 ("Back Row").

The Exchange represented in its filing that the two locations selected would keep options and equity trading sufficiently separate such that there can be no time and place advantage derived from the proximity of the equity and options trading areas.[12] The Exchange contends that permitting the trading of options on Amex-listed stocks on the Mezzanine is consistent with the Commission's approval of the Mezzanine as a physically separate trading location with respect to trading in stock index options. For options on Amex-listed stocks traded on the Mezzanine, the Exchange represents that: (1) Options on Amex-listed stocks shall not be traded in the portion of the Mezzanine that is visible from the Main Trading Floor; (2) members will be prohibited from using hand signals or other like means of communication to communicate between the Mezzanine and the Main Trading Floor; and (3) members will be notified in writing by the Exchange of the new prohibitions on the use of hand signals or other like means of communication.

With respect to the Back Row trading location, the Exchange contends that it will be able to keep options and equity trading sufficiently separate to avoid the time and place advantage that could result from the proximity of the equity and options trading area. Specifically, the Exchange represents that no option on an Amex-listed equity will trade at any post on the Exchange's Main Trading Floor where there exists a direct line of sight between the posts of the option and its corresponding underlying equity. In addition, for options on Amex-listed stocks traded at the Back Row of the Main Trading Floor: (1) Those options shall remain separate from their corresponding underlying equities by no less than one row of posts on the Main Trading Floor; (2) members will be prohibited from using hand signals or other like means of communication to communicate between the Back Row and the Main Trading Floor; and (3) members will be notified in writing by the Exchange of the new prohibitions on the use of hand signals or other like means of communications.

The Exchange believes that the proposed rule change will not increase the potential for trading abuse and manipulation as there is no line of sight between the Mezzanine and the Back Row and the Designated Stock Area, which will now constitute those areas of the Main Trading Floor other than the Back Row. Thus, no time or place advantage should result from the proposed rule change.

In addition to the above representations, the Exchange states that it has in place various safeguards to detect and prevent any such abuse or manipulation. For instance, the Exchange notes that options on Amex-listed stocks and the underlying Amex-listed stocks will continue to be deemed "paired securities," (as that term is used in the Exchange's Series 900 rules).[13] This designation invokes additional safeguards designed to prevent the misuse of market information and market manipulation by Amex members. These safeguards include Amex Rule 175, which generally prohibits someone from acting as a specialist in an equity and in the option on the equity.

In addition, Amex Rule 958(e) prohibits any equity specialist, odd-lot dealer or Nasdaq market maker from acting as a registered trader in a class of stock options on a stock in which he is registered in the primary market place. Moreover, Rule 958(f) prohibits any member, while acting as a Registered Options Trader ("ROT"), who is also registered as a Registered Equity Trader or Registered Equity Marketmaker, from executing a proprietary Exchange option transaction on a paired security if he has been in the Designated Stock Area (*i.e.*, the Main Trading Floor) where the related security is traded during the preceding 60 minutes.

To ensure compliance with the above safeguards, the Exchange states that it has in place various surveillance procedures. The Exchange's surveillance procedures, which are set forth at Section XI, C of the Amex Trading Analysis Options Surveillance Manual concerning Paired Security Review, include, among other items, the preparation of daily activity reports on ROTs' trading activity in Amex-listed stocks and options. These reports are

[11] An index can be valued using a number of different methods. For example, an index can be valued by determining: the price of the components of the index (price-weighting); the number of shares of each component that could be purchased by spending equal dollar amounts (equal dollar-weighting); and the market capitalizations of the components of the index (capitalization-weighting). *Cf.* Release No. 34–34359 at n. 7 and accompanying text.

[12] Securities Exchange Act Release No. 39306 (November 6, 1997), 62 FR 61154 (November 14, 1997).

[13] The term *paired security* means a security which is the subject of securities trading on the Exchange and Exchange option trading. Amex Rule 900(b)(38).

used to analyze ROT trading activity to ensure compliance with Amex Rule 958.

Lastly, the Exchange states that it will continue to follow the restrictions the Exchange imposed in its proposal regarding trade in index options as discussed in Securities Exchange Act Release No. 34359,[14] which addresses, among other items, the locations where it is permissible to trade options on indexes where Amex-listed stocks comprise more than 10% of the index value by weight.[15]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and with the requirements of Section 6 of the Act.[16] In particular, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act in that it should remove impediments to and perfect the mechanism of a free and open market, promote just and equitable principles of trade, and protect investors and the public.[17] The Commission believes that the Amex has provided adequate safeguards to protect against market manipulation and abuse of market information in this context. The Commission also believes that the proposal will allow the Exchange flexibility in moving trading posts while minimizing the potential for abuse by ensuring that Amex traders will not be able to obtain unfair informational advantages.

In considering this filing, the Commission notes that floor traders and market makers, by virtue of their close proximity to the trading crowds and access to market information, may have a time and place advantage over other market participants. For example, floor traders in the crowd may be able to gain an insight into the future direction of the market on the basis of, among other things, the other traders in the crowd and their bidding/offering patterns. Likewise, market makers have an informational advantage about order flow and quote changes. For the reasons stated below, however, the Commission believes that the restrictions contained in the Amex proposal adequately minimize any potential for misuse of information or market manipulation. The Commission concurs with the Exchange's view that the trading locations for equities and options on equities are sufficiently separated in a manner that will minimize the time and place advantage that can be derived from the proximity of the equity and options trading areas. Specifically, for options on Amex-listed stocks traded on the Mezzanine, the Exchange has represented that: (1) Those options shall not be traded in the portion of the Mezzanine that is visible from the Main Trading Floor, and (2) members will be prohibited from using hand signals or other like means of communication to communicate between the Mezzanine and the Main Trading Floor. For options on Amex-listed stocks traded at the Back Row of the Main Trading Floor: (1) Those options shall remain separate from their corresponding underlying equities by no less than one row of posts on the Main Trading Floor, and (2) members will be prohibited from using hand signals or other like means of communication to communicate between the Back Row and the Main Trading Floor. Members will be notified in writing by the Exchange of the new prohibitions on the use of hand signals or other like means of communications.

By restricting the trading of options to areas outside the visibility of trading of the underlying securities, the Commission believes the proposal adequately limits the ability of Amex members to unfairly use any material, nonpublic information they might possess. Moreover, the Commission believes that current surveillance procedures are adequate to identify and deter potential manipulations and other trading abuses. Finally, by prohibiting hand signals and other forms of communication between options and equity trading posts on the Main Trading Floor, the Mezzanine, and the Back Row, the Exchange should be able to significantly restrict abuses.

The Commission's approval of the proposed rule change is premised on the belief that the Amex's proposed trading locations for equities and options are sufficiently separated such that there is no time and place advantage derived from the physical proximity of the two trading locations which could be exploited by Amex members. Accordingly, any decision by the Amex to change the location of the designated options area relative to the designated stock area, or to modify the means of access between them, would require submission of a proposed rule change under Section 19(b) of the Act.

Based on the foregoing, the Commission believes that the proposal will allow the Exchange to expand the trading locations for options on Amex-listed stocks while providing adequate protections against market participants that might attempt to manipulate the market or misuse any market information, which results from the trading of options and the stocks underlying those options in physical proximity to each other.

The Commission finds good cause consistent with the Act for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 simply provides additional details regarding, among other things, where options and stocks are currently traded at the Amex and does not substantively change the proposal as originally filed. Accordingly, the Commission approves Amendment No. 1 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments, including whether the submission is consistent with the Act, concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–AMEX–97–37 and should be submitted by March 11, 1998.

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[14] *Id.*

[15] *Id.* Among other items, the Exchange represented that: First, index options trading shall not be located on the Exchange's Main Trading Floor; and second, for index options traded on the Mezzanine where Amex-listed stocks comprise more than 10% of the value of the index, by weight: (1) Those options shall not be traded in the portion of the Mezzanine that is visible from the Main Trading Floor, and (2) members will be prohibited from using hand signals or other forms of communication to communicate between the Mezzanine and the Main Trading Floor. Securities Exchange Act Release No. 34359 (July 12, 1994), 59 FR 36799 (July 19, 1994).

[16] 15 U.S.C. 78f(b).

[17] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act.[18] that the proposed rule change (SR–AMEX–97–37), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3996 Filed 2–17–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39643; International Series Release No. 1114; File No. 601–01]

Self-Regulatory Organizations; Morgan Guaranty Trust Company of New York, Brussels Office, as Operator of the Euroclear System; Order Approving Application for Exemption From Registration as a Clearing Agency

February 11, 1998.

I. Introduction

On March 5, 1997, Morgan Guaranty Trust Company of New York ("MGT"), Brussels office ("MGT-Brussels"), as operator of the Euroclear System [1] pursuant to a contract with Euroclear Clearance System Société Coopérative, a Belgian cooperative ("Belgian Cooperative"),[2] filled with the Securities and Exchange Commission ("Commission") an application on Form CA–1 [3] for exemption from registration as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934 ("Exchange Act") [4] and Rule 17ab2–1 thereunder.[5] Notice of MGT–Brussels' application was published in the **Federal Register** on May 15, 1997.[6] Six comment letters were received in response to the notice of filing of the Euroclear application.[7] This order grants the application of MGT–Brussels, as operator of the Euroclear System, for exemption from registration as a clearing agency to the extent the Euroclear System performs the functions of a clearing agency with respect to transactions involving U.S. government and agency securities for its U.S. participants subject to the conditions and limitations that are set forth below.

II. Description of Euroclear System Operations [8]

Euroclear provides several services to its participants, including securities clearance and settlement, securities lending and borrowing, and securities custody.[9]

A. Securities Clearance and Settlement

The Euroclear System functions as a clearance and settlement system for internationally traded securities. Securities settlement through the Euroclear System can occur with other participants in the Euroclear System ("internal settlement"), with members of Cedel Bank, société anonyme, Luxembourg ("Cedel"), the operator of the Cedel system ("Bridge settlement"), or with counterparties in certain local markets that are not members of either the Euroclear System or Cedel ("external settlement").

The annual volume of transactions settled in the Euroclear System has grown from about US$3 trillion in 1987 to over US$34.6 trillion in 1996. The fastest growing segments of this activity have been repurchase and reverse repurchase agreements ("repos"), book-entry pledging arrangements, securities lending, and other collateral transactions [10] involving non-U.S. government securities.[11] Although the individual certificated or uncertificated government securities of these countries are immobilized or dematerialized with the central banks or central securities depositories ("CSDs") in their home markets, book-entry positions with respect to such securities can be acquired, held, transferred, and pledged by book-entry on the records of Euroclear in any of the 35 currencies available in the Euroclear System because of the links to local custodian banks, central banks, CSDs, and national payment systems around the world.

1. Internal Settlement: Clearance and Settlement of Trades Between Euroclear System Participants

Transactions between Euroclear System participants in the Euroclear System can be settled either against payment or free of payment.[12] Upon

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[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] For purposes of this order, the term "Euroclear" refers to MGT-Brussels in its capacity as operator of the Euroclear System. MGT-Brussels is the Brussels branch of MGT that has acted as the operator of the Euroclear System through its Euroclear Operations Centre since the creation of the Euroclear System in 1968. The Euroclear Operations Centre is a separate, independent operational unit established within MGT-Brussels to operate the Euroclear System.

In 1972, a package of rights described as the Euroclear System was sold to Euroclear Clearance System Public Limited Company, and English limited liability company ("ECS–PLC"). ECS–PLC purchased the rights to receive the revenues generated by the Euroclear System services, to approve participants, to determine eligible securities, to establish fees, and to make other similar decisions. MGT-Brussels retained all of the assets and means necessary to operate the Euroclear System and granted a license to ECS–PLC to use the Euroclear System trademarks.

[2] the Belgian Cooperative was established in 1987 to further facilitate communication between Euroclear and the international securities industry and to encourage participation in the Euroclear System. It received a license from ECS–PLC to exercise some of ECS–PLC's rights as owner of the Euroclear System. Neither ECS–PLC nor the Belgian Cooperative is an operating company. Among other thins, MGT-Brussels maintains all Euroclear System participant accounts on its own books, maintains all of the contractual relationships with Euroclear System participants and Euroclear System depositories in its own name, and provides all of the personnel, systems, trademarks, and operational capability used to deliver the Euroclear System services to Euroclear System participants. For a more complete description of the structure of the Euroclear System, refer to Section II of the Euroclear notice, *Infra* note 6.

[3] Copies of MGT-Brussels' application for exemption ("Euroclear application") are available for inspection and copying at the Commission's Public Reference Room (File No. 601–01).

[4] 15 U.S.C. 78q–1.

[5] 17 CFR 240.17Ab2–1.

[6] Securities Exchange Act Release No. 38589 (May 9, 1997), 62 FR 26833 (notice of filing of application for exemption from registration as a clearing agency) ("Euroclear notice").

[7] Letters from C.R. Trusler, Director, Nomura International plc (June 5, 1997); S. Guenzi, Senior Products Manager Custody H.O.–Financial Institutions, Credito Italiano (June 12, 1997); Harvé Pennanec'h, Head of Back-Office, Capital Markets Divison, Société Générale (June 16, 1997); D.G. Pritchard, Director, Global Collateral Support Unit, NatWest Markets (June 16, 1997); Preben Borup, Senior Vice President, BG Operations, and Tom Jensen, First Vice President, Head of Custody and Settlement, BG Operations, Bikuben Girobank A/S (June 17, 1997); and S.L. Richardson, Executive Manager, Operations, ANZ Bank (June 18, 1997). The comment letters for File No. 601–01 are available for inspection and copying in the Commission's Public Reference Room.

[8] A more complete description of Euroclear System operations is contained in the Euroclear notice, *supra* note 6.

[9] The contractual relationship between Euroclear and its participants is defined by the Terms and Conditions Governing the Use of Euroclear ("Terms and Conditions") as supplemented by Supplementary Terms and Conditions Governing the Lending and Borrowing of Securities through Euroclear ("Supplementary Terms and Conditions"), the Operating Procedures of the Euroclear System ("Operating Procedures"), and various other documents, all of which are governed by Belgian law. Among other things, the Terms and Conditions provide that Euroclear participants agree that their rights to securities held through the Euroclear System will be defined and governed by Belgian law.

[10] Collateral transactions are designed to enable Euroclear System participants to reduce their financing costs, increase their yields on securities, reduce their credit and liquidity exposures, and to manage market and operational risks.

[11] Government securities of the following countries are currently eligible for clearance and settlement in the Euroclear System: Argentina, Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Hong Kong, Ireland, Italy, Malaysia, Mexico, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden, Switzerland, Thailand, and the United Kingdom.

[12] When a securities transaction is settled "against payment," movement of the securities is made in return for a corresponding payment, usually cash. When a securities transaction is settled "free of payment," movement of the securities is made

receipt of valid instructions for a settlement between participants, the Euroclear System's computer system attempts to match instructions between corresponding counterparties on a continuous basis according to a defined set of matching criteria. Matching generally is required in order for the instructions to be settled except for certain actions specifically taken by participants (*e.g.*, transfers between accounts maintained by the same participant). Matching of an instruction is attempted until it is either matched or cancelled.

Internal settlement of transactions is accomplished by book-entry transfer and provides for simultaneous exchange of cash and securities. Settlement is final (*i.e.*, irrevocable and unconditional) at the end of each of the securities settlement processing cycles of which there are currently three per day.[13]

The overnight securities settlement process is completed early in the morning of the business day in Brussels for which settlement is intended. Daylight securities settlement processing is completed in the afternoon of each business day with settlement dated for that day. The daylight settlement cycle, which is restricted to internal settlements, permits participants to resubmit previously unmatched instructions or unsettled transactions and permits the processing of new instructions for same day settlement. All daylight instructions not settled are automatically recycled for settlement in the next overnight securities settlement cycle.

2. Bridge Settlement: Clearance and Settlement of Trades Between a Euroclear System Participant and a Cedel Member

Participants can also send instructions authorizing receipt and delivery of securities between the Euroclear System and the Cedel system, both free of payment and against payment. Simultaneous delivery versus payment ("DVP") is possible for settlement of trades between a participant in the Euroclear System and a Cedel member because of the electronic bridge established between the two organizations.

For settlement of trades between a Euroclear System participant and a Cedel member, matching of instructions consists of nine daily comparisons of delivery and receipt instructions. During these comparisons, each clearance system electronically transmits a file of proposed deliveries and expected receipts to the other clearance system. This exchange of information allows each clearance system to report matching results to its participants.[14]

3. External Settlement: Clearance and Settlement of Trades Between a Euroclear System Participant and a Local Market Counterparty

Participants can also send instruction authorizing receipt and delivery of securities free of payment and against payment between the Euroclear System and certain domestic markets' clearance and settlement structures. Euroclear has two types of relationships, direct and indirect links, with local market clearance systems. A direct link is where Euroclear has its own account with the local clearance system and holds securities and sends instructions directly in that clearance system. With an indirect link, an intermediary (*i.e.*, a depository) is used to perform Euroclear System settlement activities in the local market.[15] In certain markets, Euroclear may have both direct and indirect links for different instruments.

B. Securities Lending and Borrowing

Securities lending and borrowing is utilized to increase settlement efficiency for the borrower and to allow lenders to generate income on securities held in the Euroclear System. Lenders receive a fee for securities lending and do not incur safekeeping fees for securities lent. With standard lending and borrowing, there is no linkage between a particular borrower and a particular lender. In effect, participants borrow securities from the lending pools.[16] With reserved lending and borrowing, there is a linkage between the borrower and the lender, but the counterparty's identities are not disclosed.[17] Consequently with both standard and reserved lending and borrowing, borrowers' names and lenders' names are never revealed to one another.

Securities lending and borrowing is an integral part of the overnight securities settlement process. This integration permits Euroclear to determine borrowing requirements and the supply of lendable securities on a trade-by-trade basis throughout each overnight securities settlement processing. Generally, securities lending and borrowing is available only through the overnight securities settlement process.

C. Custody

Securitiess held by Euroclear System participants are held through a network of depositories. Depositories may hold securities on their premises or hold securities with subcustodians or with local clearance systems. Depositories of the Euroclear System may include custodian banks, including some MGT branches, central banks, local clearance systems, and Cedel. Depositories are

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without any corresponding payment, such as when securities are pledged as collateral.

[13] Euroclear's internal securities processing consists of two overnight settlement cycles and one daylight settlement cycle.

[14] Bridge settlement was enhanced in September 1993 to allow for multiple overnight transmissions of instructions between Cedel and the Euroclear System. The bridge provides finality for DVP cross-system trades when the receiving clearance system confirms acceptance of a proposed delivery and that confirmation is received by the delivery clearance system.

[15] Securities held by participants in the Euroclear System are held by custodian banks or local clearing systems. Except where required by local law, Euroclear will not permit bank subsidiaries to serve as depositories. All securities held by a depository on its books for the Euroclear System are credited to a segregated custody account in the name of MGT-Brussels, as operator of the Euroclear System. Depositories receive instructions regarding the movement of Euroclear System securities directly from Euroclear. Euroclear participants do not directly deal with depositories regarding the settlement of securities transactions within the Euroclear System or the custody of securities. *See* Section II.C. *infra*.

[16] A participant that is an "automatic standard borrower" is eligible to borrow securities to execute delivery instructions when there are insufficient eligible securities available in its securities clearance accounts to effect a settlement in the overnight securities settlement process. A participant that is an "opportunity standard borrower" sends standard borrowing requests to Euroclear on a case-by-case basis according to expected borrowing needs.

A participant that is an "automatic standard lender" makes securities available to the lending pool during each overnight securities settlement cycle. Subsequent to each overnight securities settlement cycle, securities borrowed from the lending pool are allocated back to the lenders according to a given set of priorities. If the lendable position from automatic standard lenders for a given issue is expected to be insufficient to meet estimated borrowing demand in the next overnight securities settlement cycle, "opportunity standard lenders" may be contacted by Euroclear to make additional securities available for borrowing.

[17] A participant that wishes to reserve securities for future borrowing can do so by submitting a reserved borrowing request to Euroclear. Reserved borrowing differs from standard borrowing in that once a reserve borrower's request matches a lendable supply, the lender is committed to lend the securities, and the borrower is obligated to borrow them. Reserved borrowing minimizes the risk of settlement failure resulting from an inability to obtain a standard borrowing in the overnight securities settlement process due to a lack of supply in the lending pool.

An "automatic reserved lender" makes securities in its securities clearance accounts available on demand for reserved lending subject to the lender's selected options. When a reserved borrowing request is matched to securities automatically available for reserved lending, a reservation is initiated and the securities are blocked in the reserved lender's securities clearance account from the reservation date to the loan start date. "Opportunity reserved lenders" are contacted by Euroclear when the supply of lendable securities from automatic reserved lenders is not sufficient to cover reserved borrowing requests in a given issue.

selected based upon their custody capabilities, financial stability, and reputation in the financial community. All depositories and subdepositories are appointed with the approval of the Belgium Cooperative's board of directors and are reapproved on an annual basis. This network of depositories allows linkages with domestic markets to effect external deliveries and receipts of securities thereby facilitating cross-border securities movements.

Chase Manhattan Bank currently acts as the Euroclear System's depository in the United States for the limited purpose of holding positions in certain foreign and internationally-traded securities (*e.g.*, such as the Regulation S portion of certain global bonds issued by foreign private issuers, Yankee bonds, and book-entry debt securities issued by the World Bank) which are represented by certificates immobilized in The Depository Trust Company or by electronic book-entries on the records of a Federal Reserve Bank.

Securities deposited in the Euroclear System may be in either physical form (*e.g.*, bearer or registered) or in dematerialized form. Securities are held on the books of a depository in an account in the name of MGT-Brussels as operator of the Euroclear System. Where the depository is not also the local clearing system, securities may be deposited in the local clearance system where the depository is located.[18]

Each Euroclear System participant has one or more securities clearance account(s) with associated transit accounts. Securities held by participants in the Euroclear System are credited to the participants' securities clearance accounts or transit accounts. Euroclear System participants have the option to request the segregation of their own and client securities in separate securities clearance accounts.

Securities in the Euroclear System are held in fungible bulk. Under Belgian law and pursuant to the Terms and Conditions,[19] each participant is entitled to a notional portion, represented by the amounts credited to its securities clearance account(s) and transit account(s), of the pool of securities of the same type held in the Euroclear System.[20]

[18] All securities accepted by a depository are credited to a segregated custody account in the name of MGT-Brussels as operator of the Euroclear System at the depository or local clearance system or are credited to the depository's account at the local clearance system.

[19] *Supra* note 9.

[20] Under Belgian law, Euroclear is required to hold interests in the same amount of any securities that may from time to time be credited to the accounts of Euroclear System participants and is prohibited from pledging or otherwise using any such securities for its own benefit without the consent of the relevant account holder.

D. Liens, Rights, and Obligations

In addition to any pledge of specific accounts agreed to by a participant due to extensions of credit by MGT-Brussels[21] all assets held in the Euroclear System are subject to rights of set-off and retention.[22] Furthermore, participants' assets held in the Euroclear System (except for assets held for customers and identified as such pursuant to the Operating Procedures or by agreement with Euroclear) are subject to a statutory lien in favor of MGT-Brussels, as operator of the Euroclear System, pursuant to Belgian law.[23] Participants are also obligated to cover any cash or securities debit balances that they may incur.

E. MGT-Brussels Banking Services

MGT-Brussels, acting in its separate banking capacity and not as operator of the Euroclear System, provides certain banking services to Euroclear System participants. Banking services provided include the provision of credit to Euroclear System participants, triparty repo[24] and collateral monitoring services, and a securities lending guarantee.

1. Provision of Credit to Euroclear Participants

MGT-Brussels offers credit facilities to Euroclear participants on an uncommitted basis under limits periodically determined by MGT. Credit decisions are made according to MGT credit guidelines. Credit facilities are generally required to be secured and are normally collateralized by participant assets within the Euroclear System. In order to secure credit, participants affirm to MGT-Brussels that they are not pledging client securities and that no other liens have been granted to third parties on pledged securities.[25]

Securities that participants pledge to secure credit extensions from MGT-Brussels are valued at their market price which is adjusted according to the type of instrument, underlying currency, rating of the issue, the issuer, and the country of the issuer. For debt securities, accrued interest is added to market price for the purpose of calculating collateral value.

2. Triparty Repo and Collateral Monitoring

MGT-Brussels also offers monitoring services whereby participants can use the Euroclear System to facilitate repo settlement/collateral posting, substitution of securities, and margin monitoring.

3. Securities Lending Guarantee

As part of the Euroclear securities lending and borrowing program, MGT guarantees securities lenders the return of securities lent or the cash equivalent if the borrower defaults on its obligation to return such securities.

[21] *See* Section II.E. *infra*.

[22] When assets are held subject to the right of set-off, the holder of the assets may apply the assets to satisfy debts owned to the holder by the actual owner of the assets. When assets are held subject to the right of retention, the holder of the assets may refuse to return the assets to their owner if the owner is indebted to the holder.

[23] Article 41 of the Belgian Law of April 6, 1995.

[24] A triparty repo arrangement generally consists of three parties, the borrower, the lender, and a collateral agent (*i.e.*, MGT-Brussels). In this arrangement, the borrower initiates a repo by "selling" securities to the lender in exchange for cash from the lender. Simultaneously with this transaction, the borrower agrees to repurchase these securities on a specified or undetermined future date. The collateral agent maintains custody of the securities for the duration of the repo and handles all operation aspects of the transaction including distribution of income, substitutions, and mark to market securities valuations.

III. Comment Letters

The Commission received six comment letters in response to the notice of filing of the Euroclear application.[26] All were in favor of the Commission granting Euroclear an exemption from registration as a clearing agency. Many of the commenters noted there would be a reduction in risks and an increase in liquidity as a result of permitting transactions involving U.S. government and agency securities to be processed by the Euroclear System. Specifically, several commenters believed that under an exemption from clearing agency registration Euroclear could facilitate the use of U.S. government and agency securities as collateral thereby reducing the risks to credit providers and the costs to credit seekers. Commenters also believed that permitting Euroclear to clear and settle U.S. government and agency securities would increase liquidity and further deepen the market for these securities which would benefit the U.S. government and its taxpayers by keeping the costs of borrowing low.

Commenters also cited Euroclear's operating record and financial condition in support of the exemption. Commenters articulated their belief that

[25] In a limited number of circumstances, MGT-Brussels may agree to permit pledging of client securities or the securities of the related parties where the participant's legal and regulatory regime permits, appropriate legal opinions are delivered, and certain other conditions are met.

[26] *Supra* note 7.

MGT-Brussels' financial resources and its regulation by the Board of Governors of the Federal Reserve System ("Federal Reserve Board") are sufficient to ensure the safety and soundness of the Euroclear System.[27]

IV. Discussion

A. Statutory Standards

Section 17A of the Exchange Act directs the Commission, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and the maintenance of fair competition, to use its authority to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions.[28] Registration of clearing agencies is a key element of the statutory objectives set forth in Section 17A.[29] Before granting registration to a clearing agency, Section 17A(b)(3) of the Exchange Act requires that the Commission make a number of determinations with respect to, among other things, a clearing agency's organization, rules, and ability to provide safe and accurate clearance and settlement.[30] Additionally, the Division of Market Regulation ("Division") has published the standards it applies in evaluating applications for clearing agency registration.[31] These standards are designed to help assure the safety and soundness of the clearance and settlement system.

Section 17A(b)(1), moreover, provides that the Commission:

> May conditionally or unconditionally exempt any clearing agency or security or any class of clearing agencies or securities from any provisions of [Section 17A] or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of [Section 17A], including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.[32]

As a result, in granting either exemptions from portions of Section 17A or from registration, the Commission requires substantial compliance with Section 17A and the rules and regulations thereunder based on a review of the standards.[33]

B. Evaluation of Euroclear's Application for Exemption

In the Commission's evaluation of Euroclear's application and the comments received, the Commission recognized that certain organizational, operational, and jurisdictional differences would prevent MGT-Brussels, as operator of the Euroclear System, from complying fully with all of the registration provisions set forth in Sections 17A and 19 of the Exchange Act and from meeting all the requirements set forth in the Standards Release. The evaluation was also made in the context of the limitations and conditions that the Commission is including in the exemption granted pursuant to this order. As discussed more fully below, Euroclear's exemption from clearing agency registration is subject to limitations on the type and volume of securities that it may process for its U.S. participants and requirements to submit certain information to the Commission on a periodic basis and at the Commission's request. In addition, MGT-Brussels is subject to regulatory oversight by the Federal Reserve Board.

1. Safeguarding of Securities and Funds

Sections 17A(b)(3) (A) and (F) of the Exchange Act require that a clearing agency be organized and its rules be designed to safeguard securities and funds in its custody or control or for which it is responsible.[34] The Commission believes that Euroclear substantially satisfies this standard. Among other things, the financial condition of, operational safeguards employed by, and the scheme of U.S. federal banking oversight of MGT-Brussels, as operator of the Euroclear System, should help to provide U.S. investors and the U.S. national clearance and settlement system with a level of protection in the areas of custody, clearance, and settlement risks that is comparable to those achieved with full clearing agency registration.

a. Organization and Processing Capacity. A clearing agency must be organized in a manner that effectively establishes operational and audit controls while fostering director independence.[35] The independent audit committee of MGT's board of directors is kept apprised of Euroclear's operations by MGT's regional and functional audit management. The head of MGT audit management has direct reporting lines to the audit committee of MGT's board of directors and to the Vice Chairman of MGT. MGT's audit management receives reports through Euroclear's separate audit division that is responsible for the internal audit process. In addition, the audit division has a direct reporting line to the general manager of Euroclear.

The internal audit process for Euroclear is based on a risk assessment methodology. Review of the participant, product, market, and service dimensions of Euroclear's business, including technology infrastructure, are considered in this risk based approach. The internal audit procedures include tests that are designed to independently assess the strengths and weaknesses of Euroclear's control environment.

Price Waterhouse currently acts as the independent auditors of MGT and MGT-Brussels, including Euroclear. Price Waterhouse conducts an annual audit of MGT's financial statements, which are included in the annual report of J.P. Morgan & Co. Incorporated on Form 10–

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[27] Two commenters believed that due to MGT-Brussels's financial posture, operational history, and present monitoring by the Federal Reserve Board, Euroclear should not be subject to any volume limitations with regard to the amount of U.S. government and agency securities Euroclear may process. Letters from C.R. Trusler, Director, Normura International plc (June 5, 1997) and S. Guenzi, Senior Products Manager Custody H.O.-Financial Institutions, Credito Italiano (June 12, 1997). A third commenter believed that any volume limitation should be only temporary. Letter from D.G. Pritchard, Director, Global Collateral Support Unit, NatWest Markets (June 16, 1997).

[28] 15 U.S.C. 78q–1.

[29] "Clearing agency" is defined in Section 3(a)(23) of the Exchange Act. 15 U.S.C. 78c(a)(23).

[30] 15 U.S.C. 78q–1(b)(3). *See also* Section 19 of the Exchange Act, 15 U.S.C. 78s, and Rule 19b–4, 17 CFR 240.19b–4, setting forth procedural requirements for registration and continuing Commission oversight of clearing agencies and other self-regulatory organizations.

[31] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 ("Standards Release"). *See also*, Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (omnibus order granting registration as clearing agencies to The Depository Trust Company, Stock Clearing Corporation of Philadelphia, Midwest Securities Trust Company. The Options Clearing Corporation, Midwest Clearing Corporation, Pacific Securities Depository, National Securities Clearing Corporation, and Philadelphia Depository Trust Company).

[32] 15 U.S.C. 78q–1(b)(1).

[33] The Commission has previously granted exemptions from clearing agency registration, subject to certain volume limits, reporting requirements, and other conditions, to the Clearing Corporation for Options and Securities ("CCOS") and to Cedel. Securities Exchange Act Release Nos. 36573 (December 12, 1995), 60 FR 65076 ("CCOS exemptive order") and 38328 (February 24, 1997), 62 FR 9225 ("Cedel exemptive order").

The Commission also has granted temporary registrations that included exemptions from specific statutory requirements of Section 17A. In granting these temporary registrations, it was expected that the subject clearing agencies would eventually apply for permanent clearing agency registration. *See e.g.*, Secrities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19839 (order approving Government Securities Clearing with a temporary exemption from compliance with Section 17A(b)(3)(C)).

[34] 15 U.S.C. 78q–1(b)(3) (A) and (F). Euroclear's relationship with its participants is governed by various operating agreements, including the Terms and Conditions, the Supplementary Terms and Conditions, and the Operating Procedures which define the rights and responsibilities of Euroclear and its participants. *Supra* note 9 and *infra* Section IV.B.6.

[35] Standards Release, *supra* note 31, 45 FR at 41925–26.

K, in accordance with generally accepted auditing standards. It also conducts an annual review of Euroclear's internal controls, policies, and procedures in accordance with SAS–70 guidelines.[36] Both reports are made available to Euroclear participants. Price Waterhouse also reports to the Belgian Banking and Finance Commission and to MGT's audit committee.

Based upon the foregoing, the Commission is satisfied that Euroclear's organizational and processing capacity substantially satisfies the requirements of the Exchange Act as elaborated on in the Standards Release because Euroclear's internal organizational structure, including its system of internal and external audit, is reasonably designed to provide the necessary flow of information to MGT's board of directors which should allow the necessary monitoring of Euroclear's operations and management's performance to assure the operational capability and integrity of Euroclear.

b. Financial Risk Management. The Standards Release states that a clearing agency should establish a clearing fund and promulgate rules to assure an appropriate level of contributions in accordance with, among other things, the risks to which the clearing agency is subject for the protection of clearing agency participants and for the national system for clearance and settlement.[37]

As discussed in Section II.A. above, Euroclear provides DVP settlement for securities transactions which are then batched for processing in one of two overnight cycles or in the daylight cycle depending upon when the transactions are received. Euroclear itself does not directly extend credit to its participants. Instead, as discussed in Section II.E. above, MGT-Brussels, in its banking capacity, offers credit facilities to Euroclear participants on an uncommitted basis under limits established and in accordance with guidelines set by MGT. Such credit facilities are utilized to avoid transaction failures.

Euroclear does not maintain a clearing fund. However, Euroclear employs various financial and operational risk management mechanisms, including its organization, financial condition, insurance, information technology and systems security, and other operational safeguards to substantially reduce the risk of financial loss by Euroclear and its participants. Therefore, the Commission believes that Euroclear's rules and procedures and the methods by which Euroclear safeguards the financial security of its clearing facilities substantially satisfies the requirements of the Exchange Act.

(i) Risk Management Division and Committee

Euroclear has a separate risk management division that is responsible for risk policy. The risk management division focuses on identifying, analyzing, and managing the risks of operating a multicurrency, cross-border clearance and settlement system. It has developed various risk management tools for identifying and managing the risks of clearance and settlement and other market activities. In addition, Euroclear also employs a Risk Advisory Committee ("RAC") to review all aspects of risk prior to approval of new and existing markets, products, and services. The RAC is chaired by the head of Euroclear's risk management division and includes senior management from other divisions and reports directly to the Euroclear management team.

(ii) Financial Condition

MGT, which is the entity with ultimate fiscal responsibility for operations of the Euroclear System, is a U.S. bank that is "well-capitalized" and "well-managed" as those terms are defined under applicable U.S. Federal banking regulations.[38] MGT has over $13.5 billion in total capital and a total capital ratio of more than 11 percent[39] and access to billions of dollars of additional liquidity in the capital markets. Its senior debt is rated AAA by Standard & Poor's[40] and its long-term debt is rated Aa–1 by Moody's Investors Services.[41]

(iii) Insurance

Euroclear maintains certain insurance coverage against risk of physical loss or damage for securities in its custody, on the premises of its depositories, or in transit. Euroclear also maintains insurance to cover losses arising from forged securities.[42] Typically, Euroclear depositories are required to maintain insurance coverage with respect to securities that they hold on behalf of Euroclear in the same amounts and covering the same risks as they maintain with respect to securities they hold for their own account or for the account of other customers. This insurance coverage must be at least as comprehensive as the coverage customarily carried by banks in that local market acting as custodians.

(iv) Information Technology

Euroclear has an information technology division that is charged with the development and maintenance of its information technology infrastructure. This division is responsible for software engineering, application system development, and technical support for both systems software and the telecommunications networks. It provides communications help-desk facilities and conducts the day to day operation of Euroclear's data centers and contingency facilities.

Computer equipment utilized in the operation of the Euroclear System is located at two data centers and a business recovery facility. All significant systems include full back-up within Euroclear's computer center.[43] Emergency back-up power sources are provided through an independently sourced and routed main power supply, backed up by on-site diesel generators and batteries. A contingency center with a capacity of over 300 critical personnel and a back-up computer center each located at a different site provides the continuity of operations in the event of serious malfunctions at Euroclear's computer center.[44]

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[36] Statement on Accounting Standards No. 70 ("SAS–70") issued by the American Institute of Certified Public Accounts sets forth the guidelines for examination of the internal controls established for computerized information systems and manual procedures relating to (i) securities clearance and settlement; (ii) securities lending and borrowing; (iii) money transfer; and (iv) custody. *See* Section IV.C.3. *infra*. The most recent SAS–70 report was issued on March 31, 1997 and covers the period from January 1, 1996 to December 31, 1996.

[37] *Supra* note 31, 45 FR at 41929.

[38] 12 CFR 208.33(b)(1) (definition of "well-capitalized") and 12 CFR 225.2(s) (definition of "well-managed"). *See also* 12 CFR 211.2(u) (definition of "strongly capitalized") and (x) (definition of "well managed").

[39] 12 CFR Part 208, Appendix A (defining total capital ratio).

[40] Standard & Poor's, "Morgan (J.P.) & Company Inc.," *Bank Ratings Analysis*, April 1997, at 1.

[41] Moody's Investor Service, "Opinion Update: Morgan Guaranty Trust Company of New York," *Global Credit Research*, February 7, 1997, at 2.

[42] Euroclear maintains a Financial Institution Bond ("FIB") in an amount of $155,000,000 per loss up to an annual aggregate maximum of $310,000,000 to cover losses of securities on premises or in transit. A separate companion policy written concurrently with the FIB covering electronic and computer crime ("crime policy") is subject to the same per loss and aggregate coverage. For losses exceeding the FIB and the crime policy, Euroclear maintains an exceed J-Form Bond in an amount of $340,000,000. For physical loss or forgery of securities on premises or in transit, Euroclear maintains coverage in an amount of $500,000,000 per occurrence. Euroclear also maintains various mail, air courier, and messenger insurance policies.

[43] Euroclear has provided the Commission with a written copy of its back-up recovery plan.

[44] In 1995, contingency procedures were further enhanced by the implementation of a remote dual copy facility that provides for immediate update of data at both the production and contingency computer centers.

(v) Other Operational Safeguards

Euroclear has substantially similar subcustodian, recordkeeping, and auditing policies and procedures as those utilized by registered clearing agencies.[45] Regarding the safekeeping of securities, Euroclear deposits all securities deposited in the Euroclear System with a network of depositories (subcustodians), which consists of major banks, CSDs and central banks, and some MGT branches.[46] The depositories either maintain actual possession of security certificates or with the prior consent of Euroclear deposit them in local CSDs or central banks. The standard Euroclear depository agreement requires the subcustodians to physically segregate any securities certificates held for Euroclear from any securities certificates held for their own account or for other customers.[47]

c. *U.S. and Other Regulatory Oversight.* In its capacity as operator of the Euroclear System, MGT-Brussels is a division of the foreign branch of a U.S. bank and accordingly is subject to the comprehensive supervision and regulation of the Federal Reserve Board. The Federal Reserve Bank of New York conducts annual on-site examinations in Brussels and otherwise regulates MGT-Brussels' operations, including its operation of the Euroclear System. MGT-Brussels also is subject to the comprehensive supervision of the New York State Banking Department and the Belgian Banking and Finance Commission and is authorized as a Service Company by the Securities and Investments Board under the U.K. Financial Services Act, 1986.

2. Fair Representation

Section 17A(b)(3)(C) of the Exchange Act requires that the rules of a clearing agency provide for fair representation of the clearing agency's shareholders or members and participants in the selection of the clearing agency's directors and administration of the clearing agency's affairs.[48] This section contemplates that users of a clearing agency have a significant voice in the direction of the affairs of the clearing agency.

Although Euroclear participants do not have the right to appoint MGT directors or members of Euroclear management, they have the right to become members of the Belgian Cooperative and can use this membership to influence the range of Euroclear services and the level of fees charged to them by Euroclear. The board of directors of the Belgian Cooperative consists of 23 voting members which are nominated from Euroclear participant organizations representing various financial sectors and geographical regions. Euroclear's goal was to fashion a board with a cross-functional composition in order to ensure that important strategic and policy issues are viewed with a broad market perspective.

The board meets four times a year with Euroclear management to discuss major policy and operational issues regarding the Euroclear System, including new product development and the level of fees. Moreover, Euroclear's participants are some of the world's leading banks, brokers, central banks, and other professional investors which are able to analyze the risks and benefits of clearing and settling transactions in the Euroclear System. Accordingly, the Commission believes that the method in which the Belgian Cooperative's directors are selected and interact with Euroclear's management adequately addresses the requirements of fair representation under Section 17A(b)(3)(C) of the Exchange Act.

3. Participation Standards

Section 17A(b)(3)(B) of the Exchange Act enumerates certain categories of persons that a clearing agency's rules must authorize as potentially eligible for access to clearing agency membership and services.[49] Section 17A(b)(4)(B) of the Exchange Act states that a registered clearing agency may deny participation to or condition the participation of any entity that does not meet the financial responsibility, operational capability, experience, and competency standards set forth in the clearing agency's rules.[50] These criteria may not be used to discriminate unfairly among entities.[51]

Any organization that demonstrates it meets Euroclear's financial and operational criteria is eligible to become a Euroclear System participant. A prospective participant must demonstrate that it has adequate financial resources for its intended use of the Euroclear System and the ability to maintain this financial adequacy on an ongoing basis. It also must demonstrate that it has both the personnel and technological infrastructure to meet the operational requirements of the Euroclear System. Furthermore, it must show that it expects to derive material benefit from direct access to Euroclear and that it is a reputable firm. However, Euroclear does not require that a prospective applicant possess a particular regulatory status to become a Euroclear participant.[52]

Although Euroclear's admissions policy does not require regulatory status for its participants, entities enumerated in Section 17A(b)(3)(B) of the Exchange Act[53] may become Euroclear System participant if they meet Euroclear's operational and financial criteria. The Commission recognize that there is a wide variance in the level of regulatory control exerted upon Euroclear System participant by the various participants' home jurisdiction. Accordingly, even if Euroclear required a particular regulatory status as a condition to becoming a Euroclear System participant, there would be no assurances that this would provide more uniform admission or reliable protection for the Euroclear System, its participants, or investors because of the disparate levels of oversight. Because each of the enumerated categories of participants is eligible for Euroclear System membership and because Euroclear has accepted a wide range of participants based upon its standards of financial responsibility, operational capability, experience, and competence, the Commission is satisfied that

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[45] For example, Euroclear is generally liable to Euroclear participants for its own negligent or willful misconduct.

[46] Generally, Euroclear depositories are liable to Euroclear for their negligent or willful misconduct and indemnify Euroclear for such liability. Euroclear is obligated to take steps that it reasonably deems appropriate to recover any loss to participants caused by the negligent or willful misconduct of any depository and pass on any recovery to the affected participants. But Euroclear does not warrant the performance of its network of depositories.

[47] In its application for exemption from clearing agency registration, Euroclear stated that in the nearly thirty years since Euroclear was established, there has not been a material loss or theft of securities from the Euroclear System. Euroclear also advised the Commission in its application that for its proposed activities involving U.S. government and agency securities, Euroclear will select a U.S. depository bank for such securities that is an adequately capitalized and well-managed clearing bank. The U.S. depository bank in turn would hold its positions through the Federal Reserve Bank of New York or a U.S. registered clearing agency.

[48] 15 U.S.C. 78q–1(b)(3)(C).

[49] 15 U.S.C. 78q–1(b)(3)(B). Section 17A(b)(3)(B) requires that the rules of a clearing agency provide that any (i) registered broker or dealer, (ii) other registered clearing agency, (iii) registered investment company, or (iv) other entities designated by the Commission may become participants in such clearing agency.

[50] 15 U.S.C. 78q–1(b)(4)(B).

[51] 15 U.S.C. 78q–1(b)(3)(H).

[52] As an exhibit to its application for exemption from clearing agency registration, Euroclear submitted a "Participant Admissions Newsletter" dated February 11, 1994 which stated that Euroclear has revised its admission criteria so as to not require that an applicant be regulated by a government securities for banking regulatory authority in order to become a Euroclear System participant. However, Euroclear also stated that it did not believe that the types of firms utilizing the Euroclear System would change significantly due to this revision.

[53] 15 U.S.C. 78q–1(b)(3)(B).

Euroclear's participants standards adequately address the requirements of Section 17A of the Exchange Act.

4. Dues, Fees, and Charges

Sections 17A(b)(3) (D) and (E) of the Exchange Act provide for the equitable allocation of reasonable dues, fees, and other charges among clearing agency participants and prohibits a clearing agency from imposing or fixing prices for services rendered by its participants.[54] Fees charged by Euroclear are generally usage-based, calculated on a sliding scale (where applicable), and are priced in a competitive environment with other entities that offer international clearance and settlement services. Euroclear does not fix any prices, rates, or fees for services rendered by its participants. Accordingly, the Commission is satisfied that the method by which Euroclear provides for the equitable allocation of reasonable dues, fees, and other charges among its participants and the fact that it does not fix the prices of the services rendered by its participants adequately addresses the Exchange Act requirements.

5. Capacity To Enforce Rules and To Discipline Participants

Section 17A(b)(3)(A) of the Exchange Act requires a registered clearing agency to have the capacity to enforce compliance by its participants with its rules.[55] Furthermore, Sections 17A(b)(3) (G) and (H) require a registered clearing agency to have in place a system to discipline its participants for violations of its rules and that the procedures for applying such rules be fair and equitable.[56]

MGT-Brussels, as the operator of the Euroclear System, bilaterally contracts with each of Euroclear's participants to provide clearance and settlement and other securities services. Neither MGT nor MGT-Brussels is a self-regulatory organization ("SRO") as the term is defined in Section 3(a)(26) of the Exchange Act.[57] In particular, MGT-Brussels does not have any disciplinary authority over Euroclear participants other than the commercial discipline of refusing to provide services to those participants that fail to satisfy the terms of their contractual arrangements with MGT-Brussels regarding the use of the Euroclear System.

MGT-Brussels contends that the burdens associated with operating as a clearing agency through an SRO structure as envisioned under the Exchange Act would outweigh the benefits of such structure to the U.S. investing public. MGT-Brussels argues that it is already subject to significant regulatory oversight by the Federal Reserve Board as a foreign branch of a U.S. bank and that additional regulation as a U.S. registered clearing agency would be unnecessarily duplicative without adding any meaningful investor protection. MGT-Brussels maintains that it would be extremely difficult for it, as a foreign branch of a U.s. bank to act as a U.S. SRO and to impose meaningful oversight of Euroclear's U.S. broker-dealer participants. Moreover, MGT-Brussels notes that it functions in a multi-currency, cross-border regulatory environment, with an emphasis on international rather than U.S. markets which decreases the utility of U.S. regulatory oversight for its operations.

The Commission is sensitive to the myriad of issues which could arise in connection with requiring MGT-Brussels, in its capacity as operator of the Euroclear System, to register as a clearing agency and to be an SRO. Although Euroclear does not have formal disciplinary authority over its participants, it can influence its participants' activities by its admissions and termination policies, as well as through the credit extension by MGT-Brussels, acting in its separate banking capacity. Furthermore, if Euroclear fails to assure adequate compliance by its participants with Euroclear's financial and operational requirements or if Euroclear or its participants operate in a way that endangers the safety and soundness of U.S. markets of U.S. market participants, the Commission can alter or withdraw Euroclear's exemption.

Therefore, the Commission is satisfied that the goals of Sections 17A(b)(3) (G) and (H) requiring registered clearing agencies to have in place systems to enforce their rules and to discipline their participants for violations of their rules are substantially fulfilled under Euroclear's current structure and by the grant of an exemption.

6. Filing of Proposed Rule Changes

Section 19(b) of the Exchange Act requires registered clearing agencies to file with the Commission copies of all proposed amendments or additions to the clearing agencies' rules prior to implementation of such rule changes.[58] The Commission is vested with the authority to approve or disapprove such rule proposals in accordance with Section 19(b) of the Exchange Act, which includes a procedure to solicit public comment on proposed rule changes. Because Euroclear will not be a registered clearing agency, it will not be subject to the Section 19(b) rule change process.

As discussed earlier, the relationship between Euroclear and each of its participants is governed by the Terms and Conditions, the Supplementary Terms and Conditions, and the Operating Procedures.[59] Participants agree to be bound by the provisions of these documents as a condition of their participation agreement with MGT-Brussels.

Euroclear may amend the Terms and Conditions and the Operating Procedures at any time upon notice to its participants. In the case of amendments that do no adversely affect participants, Euroclear participants are deemed to have agreed to such amendments effective immediately. All amendments that adversely affect participants are binding on participants ten business days after dispatch of the notice.[60] Euroclear also may amend the Supplementary Terms and Conditions at any time upon notice to participants. However, all amendments to the Supplementary Terms and Conditions, regardless of whether they adversely affect Euroclear's participants, are deemed effective ten days after notice is given to the Euroclear participants in accordance with the Terms and Conditions.

While these procedures are not the substantive equivalent of the rule filing procedures of the Exchange Act to which registered clearing agencies are subject, the Commission believes that it is important that Euroclear's participants receive notice of changes to the Terms and Conditions, the Supplementary Terms and Conditions, and the Operating Procedures. Also, as discussed below in Section IV.C. of this order, Euroclear will be required to provide the Commission with current copies of the Terms and Conditions, the Supplementary Terms and Conditions, and the Operating Procedures and notices of any changes thereto.

C. Scope of Exemption

This order exempts Euroclear from registration as a clearing agency under Section 17A of the Exchange Act subject to conditions that the Commission

[54] 15 U.S.C. 78q–1(b)(3) (D) and (E).
[55] 15 U.S.C. 78q–1(b)(3)(A).
[56] 15 U.S.C. 78q–1(b)(3) (G) and (H).
[57] 15 U.S.C. 78c(a)(26).
[58] 15 U.S.C. 78s(b).
[59] *Supra* note 9.
[60] This delay in effectiveness does not apply to Section 22 of the Operating Procedures, governing Euroclear's Securities Lending and Borrowing Program. All amendments to Section 22, whether or not they adversely affect participants, are deemed to have taken effect ten days after notice of the amendments is given to participants.

believes are necessary and appropriate in light of the statutory requirements of the Section 17A objective of promoting a safe and efficient national clearance and settlement system and in light of Euroclear's structure and operation. The limitations set forth below reflect the Commission's determination to take a gradual approach toward permitting an international, unregistered clearing organization, such as Euroclear, to perform clearing agency functions for transactions involving U.S. government and agency securities for U.S. participants. This exemptive order and the conditions and limitations contained within are consistent with the Commission's recent order granting Cedel a conditional exemption from clearing agency registration.[61]

1. Securities Covered by the Exemption

This order grants Euroclear the authority to provide clearance, settlement, and collateral management services for U.S. participants'[62] transactions in (i) Fedwire-eligible[63] U.S. government securities,[64] (ii) mortgage-backed pass through securities that are guaranteed by the Government National Mortgage Association ("GNMAs"),[65] and (iii) any collateralized mortgage obligation whose underlying securities are Fedwire-eligible U.S. government securities or GNMA guaranteed mortgage-backed pass through securities and which are depository eligible securities (collectively, "eligible U.S. government securities").[66] The Commission believes that this limitation is necessary and appropriate because it will allow Euroclear to remain an unregistered clearing agency but will allow it to process its U.S. participants' transactions in U.S. government and agency securities, which are extremely liquid and are the most desirable securities to be utilized as collateral to reduce credit and liquidity risks of international transactions. In addition, Euroclear may request that the exemption be broadened to provide securities processing services for securities other than eligible U.S. government securities.

2. Volume Limits

The Commission is placing a limit on the volume of transactions in eligible U.S. government securities conducted by U.S. participants that can be settled through the Euroclear System. Specifically, the average daily volume of eligible U.S. government securities settled through the Euroclear system for U.S. participants may not exceed five percent of the total average daily dollar value of the aggregate volume in eligible U.S. government securities.[67] For purposes of this order, eligible U.S. government securities transactions settled through the Euroclear System will include (i) internal settlements[68] of transactions involving eligible U.S. government securities if a U.S. participant is on at least one side of the transaction; (ii) Bridge settlements[69] with Cedel where a U.S. participant is on the Euroclear side of the transaction; and (iii) external settlements where a U.S. participation is on the Euroclear side of the transaction.[70] Transactions involving the return of securities collateral, securities substitutions in triparty repo or other collateral or financing arrangements, and securities realignments where the same U.S. participant is on both sides of the transaction will not be considered to be transactions settled through the Euroclear System and consequently will not be subject to the volume limit.[71]

The total average daily dollar value of eligible U.S. government securities volume will be determined semiannually as the sum of (1) the average daily transaction value of all Fedwire eligible book-entry transfers originated on Fedwire as provided to the Commission by the Federal Reserve Board, (2) the average daily value of all compared trades in eligible U.S. government securities as provided to the Commission by the Government Securities Clearing Corporation ("GSCC"),[72] (3) the average daily value

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[61] *Supra* note 33.

[62] For purposes of this order, "U.S. participant" means any Euroclear System participation having a U.S. residence, based upon the location of its executive office or principal place of business, including, without limitation, (i) a U.S. bank (as defined by Section 3(a)(6) of the Exchange Act), (ii) a foreign branch of a U.S. bank or U.S. registered broker-dealer, and (iii) any broker-dealer registered as such with the commission even if such broker-dealer does not have a U.S. residence.

In the Euroclear notice, the Commission proposed that transactions of eligible U.S. government securities involving "affiliates" of U.S. participants be counted towards the volume limit. For this purpose, an affiliate was deemed to be any Euroclear System participant having an arrangement with a U.S. entity that is known to Euroclear which will prevent a settlement or credit default with respect to the Euroclear System participant. This provision was intended to parallel the Cedel exemptive order. But because Euroclear's operational structure makes it unlikely that Euroclear System participants would utilize such arrangements, the Commission believes that it is not necessary to employ the affiliate concept in the context of this order.

[63] Fedwire is a large-value transfer system operated by the Federal Reserve Board that supports the electronic transfer of funds and of book-entry securities.

[64] For purposes of this order, "U.S. government securities" shall include all "government securities" as defined in Section 3(a)(42) of the Exchange Act, 15 U.S.C. 78c(a)(42), except that it shall not include any (i) foreign-targeted U.S. government or agency securities or (ii) securities issued or guaranteed by the International Bank for Reconstruction and Development (*i.e.*, the "World Bank") or any other similar international organization.

[65] GNMAs, unlike the mortgage-backed securities guaranteed by the Federal National Mortgage Association ("Fannie Maes") and by the Federal Home Loan Mortgage Association ("Freddie Macs"), are issued in certificated form and therefore cannot be transferred over Fedwire.

[66] The definition of "eligible government securities" as set forth in this order is intended to parallel the definition of that term as used in the Cedel exemptive order. The definition as set forth here is also intended to clarify that, for purposes of both the Cedel and Euroclear exemptions from clearing agency registration, the Commission does not intend to capture those transactions involving securities that technically may fall within the definition of eligible U.S. government securities, but are securities which trade principally in non-U.S. markets, such as foreign-targeted government and agency securities and securities issued by organizations such as the World Bank.

[67] In the orders granting Cedel and CCOS exemptions from clearing agency registration, the Commission imposed volume limits on those entities. The CCOS exemptive order contained volume limitations of US $6 billion average net daily settlement for U.S. government securities and US $24 billion average net daily settlements for repurchase agreements in U.S. government securities. At that time, the CCOS volume limits were designed to limit CCOS's activity to approximately five percent of the average daily dollar value of transactions in U.S. government securities and in repurchase agreements involving U.S. government securities. In the Cedel exemptive order, the Commission determined that a percentage-based formula was more appropriate. Consequently, Cedel's volume limitation is 5% of the total average daily dollar value of the aggregate volume in eligible U.S. government securities.

[68] *Supra* Section II.A.

[69] *Id.*

[70] Pursuant to the reporting requirements described below, the Commission expects to receive, among other things, gross transactional volumes regarding all transactions in eligible U.S. government securities processed by the Euroclear System (*i.e.*, whether or not a U.S. participant is involved). In addition, the Commission expects to monitor the effects such transactions may have on U.S. markets and U.S. market participants.

[71] The delivery of eligible U.S. government securities in either a new or an open triparty repo, collateral, or financing transaction (collectively, "repo transactions"), will be treated as a "substitution" and therefore will not be subject to the volume limit unless it is the first delivery of such securities. Accordingly, if eligible U.S. government securities are delivered at the opening of any repo transaction, the initial delivery will count towards the volume limit but subsequent substitutions of eligible U.S. government securities will not. Similarly, if other securities are delivered at the opening of a repo transaction and eligible U.S. government securities are later substituted for such securities, the initial delivery of such eligible U.S. government securities will count towards the volume limit, but subsequent substitutions of eligible U.S. government securities will not.

[72] In the Cedel exemptive order, the Commission determined that the portion of the volume limit applicable to Cedel that is derived from GSCC's trade comparison data should be the average daily value of all compared trades less the netted value of such trades. This was done to avoid double-counting the netted transactions with those already accounted for in the reported Fedwire volume. After further study and discussions with industry

Continued

of all compared trades less the netted value of all such compared trades plus the average daily volume of all trade-for-trade transactions (*i.e.*, trades not included in the netting system) in eligible government securities as provided by MBS Clearing Corporation, (4) the average daily gross settlement value in eligible U.S. government securities as provided to the Commission by the Participants Trust Company, and (5) the average daily dollar value of compared trades in eligible U.S. government securities from any other source that the Division deems appropriate to reflect the aggregate volume in eligible U.S. government securities.

The Commission believes that the volume limit is appropriate in that it is large enough to allow Euroclear to commence operations in clearing and settling eligible U.S. government securities transactions involving U.S. participants and to allow the Commission to observe the effects of Euroclear's activities on the U.S. government securities market. Likewise, the Commission believes that the volume limit is sufficiently small in scope so that the safety and soundness of the U.S. government securities markets should not be compromised if Euroclear, MGT-Brussels, or any Euroclear participant experiences financial or operational difficulties.

3. Commission Access to Information

To facilitate the monitoring of compliance with the volume limit and the impact of Euroclear's operations on the U.S. government securities market under this order, Euroclear will be required to provide certain information to the Commission as a continuing condition of its exemption.[73] Specifically, Euroclear will be required to provide the Commission with quarterly reports, calculated on a twelve-month rolling basis, of (1) the average daily volume of transactions in eligible U.S. government securities for U.S. participants that are subject to the volume limit as described in Section IV.C.2. above and (2) the average daily volume of transactions in eligible U.S. government securities for all Euroclear System participants, whether or not subject to the volume limit.[74]

Furthermore, Euroclear is required to promptly provide to the Commission the following documents ("disclosure documents") when made available to Euroclear System participants:

(1) any amendments to or revised editions of (a) the Terms and Conditions, (b) the Supplementary Terms and Conditions Governing the Lending and Borrowing of Securities through Euroclear, and (c) the Operating Procedures of the Euroclear System;

(2) the annual report to shareholders of the Belgian Cooperative; and

(3) the annual report on the internal controls, policies and procedures of the Euroclear System ("SAS–70 Report").[75]

In addition, Euroclear will be required to file with the Commission amendments to its application for exemption on Form CA–1 if it makes any fundamental change affecting its clearance and settlement business with respect to eligible U.S. government securities as summarized in this order and in its Form CA–1 dated March 4, 1997, or in any subsequently filed amended Form CA–1, which would make the information in this order or in its Form CA–1 incomplete or inaccurate.[76] This method of notifying the Commission of proposed changes at Euroclear will assist the Commission in its overall review of Euroclear and its operations.[77]

As a continuing condition to the exemption, Euroclear is also required to notify the Commission regarding material adverse changes in any account maintained by Euroclear for its U.S. participants.[78] In addition, Euroclear will be required to respond to a Commission request for information about any U.S. participant about whom the Commission has financial solvency concerns, including, for example, a settlement default by a U.S. participant.[79]

4. Modification of Exemption

The Commission may modify by order the terms, scope, or conditions of Euroclear's exemption from registration as a clearing agency if the Commission determines that such modification is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.[80] Furthermore, the Commission may limit, suspend, or revoke this exemption if the Commission finds that Euroclear has violated or is unable to comply with any of the provisions set forth in this order if such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the

representatives, the Commission has found that a significant number of the GSCC netted transactions do not pass across Fedwire but rather are processed internally through clearing banks such as the Bank of New York and the Chase Manhattan Bank. Consequently, the Commission now believes that because the risk of double-counting is small, it is more appropriate to utilize GSCC's gross average daily value of all compared trades to calculate the volume limit for eligible U.S. government securities applicable to Euroclear. The Commission will amend the Cedel exemptive order in the near future to permit Cedel to calculate its volume limit in accordance with the method set forth in the order that is applicable to Euroclear.

[73] The Division also will have available to it the annual reports on Form 10–K and the quarterly reports on Form 10–Q filed with the Commission by J.P. Morgan & Co. Incorporated, MGT's parent. Furthermore, Euroclear has represented that the Commission will be permitted to observe Euroclear System operations and to talk to Euroclear personnel on-site if the Commission so requests.

[74] In the Euroclear notice, the Commission proposed that Euroclear provide monthly the aggregate volume of all transactions in eligible U.S. government securities. Under the terms of the Cedel exemptive order, the Commission also required Cedel to provide this information on a monthly basis. After reviewing Cedel's monthly reports, the Commission has determined that the average daily volume of eligible U.S. government securities, reported quarterly, would be a more useful reporting format and will provide the Commission with adequate information regarding transaction volumes for monitoring purposes. The Commission will amend the Cedel exemptive order in the near future to permit Cedel to provide average daily volume of transactions in eligible U.S. government securities on a quarterly basis in accordance with the reporting requirements set forth in this order that are applicable to Euroclear.

[75] Euroclear must amend its Form CA–1 with respect to any changes to the information reported at items 1, 2, and 3 of its Form CA–1 to the extent that such changes are not reported in the disclosure documents.

[76] Only that portion of the Euroclear application on Form CA–1 affected by any such change must be filed with the Commission as an amendment. A resubmission of the entire Form CA–1 is not required.

[77] Neither the requirement to submit the disclosure documents nor the requirement to amend its Form CA–1 will be applicable to MGT-Brussels in its separate banking capacity and not as operator of the Euroclear System.

[78] For purposes of this order, the term "material adverse changes" will include (i) the termination of any U.S. participant; (ii) the liquidation of any securities collateral pledged by a U.S. participant to secure an extension of credit made through the Euroclear System; (iii) the institution of any proceedings to have a U.S. participant declared insolvent or bankrupt; or (iv) the disruption or failure in whole or in part in the operations of the Euroclear System either at its regular operating location or at its contingency center.

[79] If an information request relates to a U.S. participant that is a "bank," as such term is defined in Section 3(a)(6) of the Exchange Act, 15 U.S.C. 78c(a)(6), the Commission will, if necessary, coordinate with the "appropriate regulatory agency," as such term is defined in Section 3(a)(34) of the Exchange Act, 15 U.S.C. 78c(a)(34).

[80] The exemption provided by this order is based upon representations by Euroclear, its officers and attorneys, facts contained in the Euroclear application, and other information known to the Commission regarding the substantive aspects of Euroclear's proposal (collectively, "representations and facts"). Any changes in the representations or facts as presented to the Commission may require a modification of this order. Responsibility for compliance with all applicable U.S. securities laws rests with Euroclear and its U.S. participants, as appropriate. Euroclear also is advised that this order does not exempt Euroclear from the anti-fraud or anti-manipulation provisions of the Exchange Act or any of the rules promulgated thereunder.

Exchange Act for the protection of investors and the public interest.

V. Conclusion

The Commission finds that Euroclear's application for exemption from registration as a clearing agency meets the standards and requirements deemed appropriate for such an exemption.

It is therefore ordered, pursuant to Section 19(a)(1) of the Exchange Act, that the application for exemption from registration as a clearing agency filed by Morgan Guaranty Trust Company of New York, Brussels Office, as operator of the Euroclear System (File No. 601–01) be, and hereby is, approved subject to the conditions contained in this order.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3997 Filed 2–17–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39641; File No. SR–NASD–98–06]

Self-Regulatory Organizations; Notice and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to SelectNet Fees

February 10, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 30, 1998, the National Association of Securities Dealers, Inc. ("NASD") or "Association") through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is herewith filing a proposed rule change to lower the fees charged under NASD Rule 7010(l) for the execution of transactions in SelectNet.[2] Under the proposed new SelectNet fee structure, fees would be assessed in the following manner: (1) $1.00 will be charged for each SelectNet order entered and directed to one particular market participant that is subsequently executed in whole or in part; (2) no fee will be charged to a member who receives and executes a directed SelectNet order; (3) the existing $2.50 fee will remain in effect for both sides of executed SelectNet orders that result from broadcast messages; and (4) a $0.25 fee will remain in effect for any member who cancels a SelectNet order. The new fees are effective February 1, 1998, and continue through a 90-day trial period commencing the day Nasdaq's SelectNet fee filing is published in the **Federal Register.**

Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

7010. System Service

(a)–(k) No Change.

(l) SelectNet Service.

Effective February 1, 1998, [T]the following charges shall apply to the use of SelectNet:

Transaction Charge $2.50/side

Directed Order Charge $1.00 (per execution, entering party only)

Cancellation Fee $.25/per order

(m)–(n) No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq is proposing to lower its SelectNet fees. Currently, both sides of a transaction executed in SelectNet are assessed $2.50 each.[3] Nasdaq, recognizing recent significant changes in SelectNet usage, is proposing a new fee structure that responds to this new trading environment and more closely aligns SelectNet fees with current market activity.

SelectNet transaction volume is at historic highs. In August 1997, more than 75,000 daily executions took place in SelectNet. This represented an almost fourfold increase in volume from average daily activity recorded in 1996. Since then, SelectNet volumes have remained at significantly increased levels, with more than 79,000 average daily transactions in November 1997 and over 88,000 in December 1997.

The growth in SelectNet usage can be attributed to a number of factors, most notably the introduction of the SEC Order Execution Rules ("Order Execution Rules") in January of 1997[4] and market maker decisions to electronically communicate with each other, in lieu of the telephone. Nasdaq also used the SelectNet system to create the access linkage with each electronic communication network ("ECN") that sought to display its prices in Nasdaq consistent with the requirements of the Order Execution Rules. Accordingly, SelectNet is the only means of accessing orders displayed in the Nasdaq quote montage by broker-dealers that are not subscribers to the ECN's own network. As such, growth in SelectNet utilization closely tracked the expansion in the number of Nasdaq stocks covered by the Order Execution Rules and the increased use of ECNs to display orders.

Responding to increased SelectNet activity, Nasdaq's new fees reduce SelectNet cost burdens on all users. For example, a directed, and subsequently executed, order under the new fee structure for directed orders will cost only $1.00, payable by the entering party. In contrast, the present SelectNet fee is $5.00 with $2.50 being assessed on both sides of the trade. The proposed $1.00 fee on the party entering a directed SelectNet order represents a 60% reduction in the fee charged only five months ago, and is 20% less than the current temporarily-reduced fee of $1.25.

Nasdaq has eliminated any execution fees for directed SelectNet orders

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[1] 15 U.S.C. 78s(b)(1).

[2] This filing complements SR–NASD–97–98, which extended Nasdaq's temporary fee reduction to $1.25 per side for all SelectNet transactions until January 31, 1998. Due to an error in the computer disk version of the filing sent to the SEC, the extension of the temporary fee reduction was incorrectly reported in the **Federal Register** as continuing until March 31, 1998. *See* Securities Exchange Act Release No. 39555 (January 15, 1998), 63 FR 3595 (January 23, 1998). Thus, as of February 1, 1998, the temporary SelectNet fee reduction extended by SR–NASD–97–98 will lapse, and new and lower SelectNet fees will be assessed as described in this filing.

[3] This fee has been temporarily reduced to $1.25 per side since October 1, 1997. *See* Securities Exchange Act Release No. 39248 (October 16, 1997), 62 FR 55296 (October 23, 1997). The fee will revert to $2.50 per side on February 1, 1998, for any orders not covered by the fee reduction (*i.e.*, execution of broadcast orders will continue to be charged at $2.50 per side).

[4] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

because Nasdaq recognizes that executing parties provide significant liquidity to the market on a regular and continuous basis. This liquidity, represented by the maintenance of executable quotes accessible through directed SelectNet orders, is of substantial benefit to all market participants. Nasdaq strongly believes that the continued provision of such liquidity should be encouraged and that the elimination of charges on directed order executions obtained through SelectNet is a way to help achieve that goal.

Nasdaq notes that under the Order Execution Rules, any party may have its trading interest reflected in a quotation displayed for possible execution by an incoming directed order. For example, a customer's limit order that improves a market maker's price must now be displayed in that market maker's quote. Under Nasdaq's proposal, it is conceivable that customer limit orders, and the market liquidity they represent, may be handled by market makers at a lower cost than was the case under the old fee structure. Likewise, Nasdaq market makers who maintain executable quotes will also incur no fees when providing liquidity by having their quotes accessed for execution by others through directed SelectNet orders. Moreover, broker-dealers that enter directed orders seeking to access liquidity will also have their fees significantly reduced for any executions they obtain through SelectNet. These fees are also equally applied, with all market participants being charged the same $1.00 directed order entry fee. In sum, these fee reductions should result in lower overall transaction costs for all SelectNet system users.

While the new fees start February 1, 1998, Nasdaq believes that a 90-day trial period, commencing the date Nasdaq's new SelectNet fees are published in the **Federal Register**, is appropriate due to uncertainty regarding SelectNet usage levels as a result of the fee changes. Nasdaq will continue to monitor usage levels and trading behavior with a view to future modification of SelectNet charges if warranted.

For the reason set forth above, Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act, which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This filing applies to the assessment of SelectNet fees to NASD members, and thus the proposed rule change is effective immediately upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (e)(2) of Securities Exchange Act Rule 19b–4 thereunder [5] because the proposal is establishing or changing a due, fee or other charge. At any time within 60 days of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–06 and should be submitted by March 11, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3995 Filed 2–17–98; 8:45 am]

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[5] 15 U.S.C. § 78(b)(3)(A)(ii).

[6] In reviewing the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39637; File No. SR–NASD–98–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Modifications to the Small Order Execution System

February 10, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 28, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") through its wholly owned subsidiary, Nadsaq Stock Market, Inc. ("Nasdaq"), the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one that effects a change in an existing order-entry or trading system of a self-regulatory organization under Section 19(b)(3(A) of the Act and Rule 19b–4(e)(5) thereunder, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend Rule 4730(b)(10) to address problems associated with the rejection of orders in the Small Order Execution System ("SOES") when there is no market maker at the inside quote. Below is the text of the proposed rule change. Proposed new language is in italics; there are no deletions.

4730. Participant Obligations is SOES

(a) No Change.

[1] 15 U.S.C. 78s(b)(1).

(b) Market Makers.

(1)–(9) No Change.

(10) In the event that there are no SOES market makers at the best bid (offer) disseminated by Nasdaq, market orders to sell (buy) entered into SOES will be *held in queue until executable, or until 90 seconds has elapsed, after which such orders will be* rejected and returned to their respective order entry firms.

(c) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

When the SEC Order Handling Rules were implemented in January of 1997, Nasdaq modified the SOES execution process to reject orders back to the entering firm when an electronic communications network ("ECN") or an unlisted trading privilege ("UTP") participant was alone creating the Nasdaq inside quote in a Nasdaq National Market security.[2] This was necessary because ECNs were unable, at the time, to participate in an automatic execution system such as SOES. ECNs asserted that to do so might expose them to the risk of double executions, because if an order available through an ECN is also accessible through SOES, it may be subject to two executions: one from within the ECN and another from market participants using SOES. This in turn could cause the ECN to take a principal position, which is inconsistent with the ECN's role of acting solely as agent on behalf of its customers.

This has resulted in an unintended consequence, however, which has caused significant concern. Specifically, an ECN quote that effectively halts executions in SOES for a security also allows the ECN customer entering that order to essentially control the inside price and potentially create an advantage in SOES for this customer (or other customers using SOES) by jumping ahead of other SOES orders that might have executed first in that issue if they had not been rejected. This has become problematic because instances have been observed where the ECN changes its quote almost immediately, before it can be assessed through either SelectNet or its own internal system. Once this quote disappears and a new dealer inside has been established, new SOES orders enter the system which then execute as the first order against the first market maker at the new inside price.

Nasdaq plans to implement the following solutions to this potential problem. When an ECN or UTP participant is alone at the inside in a Nasdaq National Market security, executable SOES orders that are in queue or received at that moment will be held for a specified period of time. This "hold time," initially set at 90 seconds, is the maximum life of an order. Holding the queued orders for 90 seconds will give other market makers time to adjust their quotes to create a new inside, join the ECN at their price, or allow the ECN to move away from the inside. If one of these conditions is met and the order is still executable, it will execute. If any of these conditions do not occur, however, the order will time out, under normal time-out processing, and be returned to the entering firm at the end of the 90-second maximum life of the order. Nasdaq SmallCap securities will continue to execute against the next available SOES market maker at the ECN price.

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) and 15A(b)(11) of the Act[3] in that it would facilitate the more orderly and equitable processing of customer orders entered into SOES, and eliminates the potential for participants to intentionally or unintentionally create an advantage among participants who access SOES.

Section 15A(b)(6) requires that the rules of a registered national securities association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Section 15A(b)(1) requires that the rules of a registered national securities association be designed to produce fair and informative quotations, prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing, and publishing quotations.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(5) thereunder,[4] because the foregoing proposed rule change effects a change in an existing order-entry or trading system of a self-regulatory organization that:

(1) does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) does not have the effect of limiting the access to or availability of the order-entry or trading system. In particular, investors and the public should benefit as the appropriate priority of SOES orders will be preserved, placing competitors on a more level playing field and protecting their access to the order-entry system.[5] Notwithstanding that this rule change is effective immediately upon filing, Nasdaq will nonetheless delay implementation of the proposed rule change until at least February 23, 1998, and at least 7 days after notice of such rule change on the Nasdaq Trader Web Site.[6] Nasdaq will provide notice to market participants of the exact date of implementation prior to the effective date. At any time within 60 days of the filing of such rule change, the Commission may summarily

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[2] *See* Exchange Act Release No. 38156 (January 10, 1997) 62 FR 2415 (January 16, 1997) (order partially approving File No. SR–NASD–96–43).

[3] 15 U.S.C. 78o–3(b)(6) and (b)(11).

[4] 17 CFR 240.19b–4(e)(5).

[5] In reviewing this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] http://www.nasdaqtrader.com.

abrogate such rule change if it appears to the Commission that such action in necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the forgoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASDAQ. All submissions should refer to File No. SR–NASD–98–05 and should be submitted by March 11, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3998 Filed 2–17–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39634; File No. SR–NYSE–94–34]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 4 to Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Exchange Rule 92, "Limitations on Members' Trading Because of Customers' Orders"

February 9, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 15, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its original form, the proposed rule change extended the applicability of Exchange Rule 92 to trades by a member or member organization on any market center and provided a limited exemption to permit member organizations to trade along with their customers when liquidating a block facilitation position or engaging in bona fide or risk arbitrage. Amendment No. 4 provides an additional limited exemption for hedging a facilitation position, as well as explanations of the manner in which the amended rule will operate.

The following is the text of the proposed rule change marked to reflect all of the proposed changes.[2] Additions to the current text of Exchange Rule 92 appear in italics while deletions appear in brackets.

Rule 92: Limitations on Members' Trading Because of Customers' Orders

[(a) No member shall (1) personally buy or initiate the purchase of any security on the Exchange for his own account or for any account in which he, his member organization or any other member, allied member or approved person, in such organization or officer thereof, is directly or indirectly interested, while such member personally holds or has knowledge that his member organization holds an unexecuted market order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account, while he personally holds or has knowledge that his member organization holds an unexecuted market order to sell such security in the unit of trading for a customer.

(b) No member shall (1) personally buy or initiate the purchase of any security on the Exchange for any such account, at or below the price at which he personally holds or has knowledge that his member organization holds an unexecuted limited price order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account at or above the price at which he personally holds or has knowledge that his member organization holds an unexecuted limited price order to sell such security in the unit of trading for a customer.]

(a) Except as provided in this Rule, no member or member organization shall cause the entry of an order to buy (sell) any Exchange-listed security on the Exchange or any other market center for any account in which such member or member organization or any approved person thereof is directly or indirectly interested (a "proprietary order"), if the person responsible for the entry of such order has knowledge of any particular unexecuted customer's order to buy (sell) such security which could be executed at the same price.

(b) A member or member organization may enter an proprietary order while representing a customer order which could be executed at the same price, provided the customer's order is not for the account of an individual investor, and the customer has given express permission, including and understanding of the relative price and sized of allocated execution reports, under the following conditions:

(1) the member or member organization is liquidating a position held in a proprietary facilitation account, and the customer's order is for 10,000 shares or more; or

(2) the member or member organization is creating a bona fide hedge and (i) the risk to be hedged is the result of a previously-established position, recorded as acquired in the course of facilitating a customer's order; (ii) the size of the offsetting hedging order is commensurate with such risk; and (iii) the customer's order is for 10,000 shares or more; or

(3) the member or member organization is engaging in bona fide arbitrage or risk arbitrage transactions, and recording such transactions in an account used solely to record arbitrage transactions (an "arbitrage account").

(c) The provisions of this Rule shall not apply to:

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The text of the proposed rule change incorporates all of the proposed changes made to the original rule proposal by Amendment Nos. 1, 2, 3, and 4. *See* Securities Exchange Act Release Nos. 35139 (Dec. 22, 1994), 60 FR 156 (Jan. 3, 1995) (notice of filing of proposed rule change, including Amendment No. 1); 36015 (July 21, 1995), 60 FR 38875 (July 28, 1995) (notice of filing of Amendment No. 2); 37428 (July 11, 1996), 61 FR 37523 (July 18, 1996) (notice of filing of Amendment No. 3). On January 20, 1998, the Exchange submitted a technical correction to Amendment No. 4 to better identify the cumulative proposed changes to Exchange Rule 92. *See* Letter from Betsy Lampert Minkin, Regulatory Development Project Manager, Exchange, to Michael Loftus, Attorney, Division of Market Regulation, Commission, dated January 12, 1998.

(1) [to] any purchase or sale of any security in an amount of less than the unit of trading made by an odd-lot dealer to offset odd-lot orders for customers; [or]

(2) [to] any purchase or sale of any security upon terms for delivery other than those specified in such unexecuted market or limited price order[.];

(3) transactions by a member or member organization acting in the capacity of a market maker pursuant to Securities and Exchange Commission Rule 19c–3 in a security listed on the Exchange; and

(4) transactions by a member or member organization acting in the capacity of a specialist or market maker on another national securities exchange.

Supplementary Material

.10 A member or employee of a member or member organization responsible for entering proprietary orders shall be presumed to have knowledge of a particular customer order unless the member organization has implemented a reasonable system of internal policies and procedures to prevent the misuse of information about customer orders by those responsible for entering such proprietary orders.

.20 If both the propriety and customer orders which are the subject of the transaction under review were executed in another market center, the Exchange would refer the trading to that market's regulatory staff, unless that market center does not have a substantially similar rule relating to "trading along" activity executed in that market center. If the market does not have a substantially similar rule, Exchange Rules would govern the analysis.

If either the proprietary or customer order was executed on the Exchange and the other market center has a rule which is not substantially similar, the Exchange would pursue the matter under its Rules. However, if the rules are substantially similar, the rule of the market center where the proprietary trading occurred would govern the analysis of that trading. In any case, all investigations would be coordinated through existing Intermarket Surveillance Group procedures.

To be substantially similar, the difference in application of the rules to the transaction must be minor and technical in nature, and not materially different such as would be the case if the other rule contained an additional broad exemptive clause under which the proprietary trading is exempted.

.30 This Rule shall also apply to a member organization's member on the Floor, who may not execute a proprietary order at the same price, or at a better price, as an unexecuted customer order that he or she is representing, except to the extent the member organization itself could do so under this Rule.

.40 For purpose of paragraph (b) above, the term "account of an individual investor" shall have the same meaning as the meaning ascribed to that term in Exchange Rule 80A. For purposes of paragraph (b)(1) above, the term "proprietary facilitation account" shall mean an account in which a member organization has a direct interest and which is used to record transactions whereby the member organization acquires positions in the course of facilitating customer orders. Only those positions which are recorded in a proprietary facilitation account may be liquidated as provided in paragraph (b)(1). For purposes of paragraph (b)(3) above, the terms "bona fide arbitrage" and "risk arbitrage" shall have the meaning ascribed to such terms in Securities Exchange Act Release 15533, January 26, 1979. All transactions effected pursuant to paragraph (b)(3) above must be recorded in an arbitrage account.

[.10].*50* A member who issues a commitment or obligation to trade from the Exchange through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or a sale of a security on the Exchange as referred to in this Rule.

[.20].*60* See paragraph (c)(i) of Rule 900 (Basket Trading: Applicability and Definitions) and Rule 900 (Off-Hours Trading: Applicability and Definitions) in respect of the ability to initiate basket transactions and transactions through the "Off-Hours Trading Facility" (as Rule 900 defines that term), respectively, notwithstanding the limitations of this Rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As previously amended, the proposed rule change would extend the applicability of Exchange rule 92 to trades by a member or member organization in NYSE-listed securities on any market center and provide limited exemptions to permit member organizations to trade along with their customers when liquidating a block facilitation position or engaging in bona fide arbitrage or risk arbitrage. The Exchange seeks to further revise the application of Exchange Rule 92 as set forth below.

(a) *Hedge Exemption.* The Exchange proposes to add to Exchange Rule 92 and exemption to permit member organizations to trade along with their customers when creating a bona fide hedge. The member or member organization would be allowed to trade along with a customer order of 10,000 shares or more where the customer is not an individual investor and has given express permission to allow the member organization to trade along, provided the hedging activity meets certain conditions. The member or member organization must be trading to hedge the risk of a previously-established position, recorded as acquired in the course of facilitating a customer order, and the size of the offsetting hedging order must be commensurate with such risk. this means that a member organization's proprietary hedging order that meets the above criteria could be represented along with a working order of a customer who had granted consent to do so.

The determination of what constitutes an offset or reduction of risk may be made by using any responsible method of calculating the size of the risk and type of securities which would appropriately hedge that risk.

(b) *Application to Other Market Centers.* The previously proposed amendments to Exchange Rule 92 contain prohibitions against a member or member organization entering an order for its own or a related account if the person entering the order has knowledge of a customer order capable of execution at the same price. This prohibition is proposed to apply whether the trade for the customer or the member or member organization in a NYSE-listed security occurs on the Exchange or on "any other market center." The Exchange now proposes to incorporate into paragraph .20 of the proposed rule's Supplementary Material

the manner in which this provision concerning "any other market center" would be applied, as described below.

If both the proprietary and agency trading which are under review were executed in another market center, the Exchange would refer the matter to that market's regulatory staff, unless that market center does not have a substantially similar rule relating to "trading along" activity executed in that market center. If the market does not have a substantially similar rule, Exchange rules would govern the analysis.

If either the proprietary or agency trading were executed on the Exchange and the other market center has a rule which is not substantially similar, the Exchange would pursue the matter under Exchange rules. However, if the rules are substantially similar, the rule of the market center where the proprietary trading occurred would govern the analysis of that trading. All investigations would be coordinated through existing Intermarket Surveillance Groups procedures.

To be "substantially similar," the difference in application of the rules to the transaction must be minor and technical in nature, and not materially different such as would be the case if the other rule contained an additional broad exemptive clause under which the proprietary trading is exempted.

2. Statutory Basis

The statutory basis for the proposed rule change is the requirement under Section 6(b)(5) of the Act [3] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change will enable member organizations to add depth and liquidity to the Exchange's market, while continuing to provide customer protection through the requirement of customer approval for trading along situations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Inerested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–94–34 and should be submitted by March 11, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3930 Filed 2–17–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39635; File No. SR–PCX–97–21]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Suspension of its Automatic Execution System ("Auto-Ex") During Unusual Market Conditions

On June 4, 1997, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder.[2] The filing was thereafter amended on August 8, 1997.[3] In this filing, as amended, the Exchange proposed amendments permitting suspension of its Automatic Execution System ("Auto-Ex") during unusual market conditions, and related actions. Notice of this proposed rule filing was published in the **Federal Register** On August 19, 1997 ("Notice").[4] The Commission did not receive comment letters on the filing.

I. Description of Proposal

The Exchange is proposing to modify its Rule 6.28 ("Unusual Market Conditions") to address situations involving system failures, ranging from "frozen screens" in an issue (where quote changes are entered into the system, but such changes are not reflected in the market being disseminated) to a floor-wide system malfunction of the POETS system (where all screen displays on the floor fail).[5] Rule 6.28 currently provides that whenever an Options Floor Official determines that "an unusual condition or circumstance" exists, because of an influx of orders or other unusual conditions or circumstances, and the interests of maintaining a fair and orderly market so require, such official may declare a "fast market" in one or more classes of option contracts.[6] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Michael D. Pierson, Office of Regulatory Policy, Exchange to Mandy S. Cohen, Division of Market Regulation, Commission dated August 7, 1997. A further technical amendment was filed on February 9, 1998. *See* Letter from Michael D. Pierson, Office of Regulatory Policy, Exchange to Mandy S. Cohen, Division of Market Regulation, Commission dated February 9, 1998.

[4] *See* Securities Exchange Act Release No. 38927 (August 12, 1997), 62 FR 44159 (August 19, 1997) (File No. SR–PCX–97–21).

[5] "POETS" is an acronym for the Pacific Options Exchange Trading System.

[6] *See also* PCX Options Floor Procedure Advice G–9 ("Fast Market Procedures").

proposed amendments are designed to provide additional safeguards and procedures to deal with such situations.

First, the Exchange is proposing to modify subsection (a) of Rule 6.28 to require the agreement of two Options Floor Officials before a "fast market" can be declared. Second, the Exchange is proposing to add a new subsection (b)(7), to allow the Options Floor Officials who have declared a fast market to suspend Auto-Ex if, because of an influx of orders or other unusual market conditions or circumstances, they determine that such action is appropriate in maintaining a fair and orderly market. The initial suspension of Auto-Ex is limited to five minutes and a Floor Governor must be notified immediately. Suspension of Auto-Ex may be continued for a longer period following determination by two Options Floor Officials and one Floor Governor (or a senior operations officer if no Floor Governor is available) that such action is appropriate. In the event that the three officials do not agree, a two-thirds majority prevails.[7] Upon suspension of Auto-Ex, all market and marketable limit orders thereafter entered through the Exchange's Member Firm Interface will be routed to a booth on the Exchange floor designated by the firm that entered the order. The order can then be taken to the crowd manually and represented by a floor broker.

The Exchange is also proposing to amend its Rule 6.87 ("Automatic Execution System"), by adding three new subsections relating to suspensions of Auto-Ex. Whenever a POETS system or vendor quote feed malfunction affects the Exchange's ability to disseminate or update market quotes on a floor-wide basis, the senior person then in charge of the Exchange's Control Room will be able to halt Auto-Ex on a floor-wide basis, upon declaration of a "fast market" by two Floor Officials.[8]

Similarly, if a POETS malfunction occurs and market markers are physically unable to update their quotations in an issue or issues at the same trading post or trading quad, two Floor Officials may declare a "fast market" and direct the order book official ("OBO") to turn off Auto-Ex in only the affected issue or issues.[9] Under either scenario, once the system malfunction has been corrected and the market quotes have been updated, two Floor Officials (or the senior person then in charge of the Control Room in the event of a floor-wide malfunction) may re-start Auto-Ex.[10]

Finally, the Exchange is also proposing to amend Rule 6.37 ("Obligations of Market Makers") by adding a new subsection (b)(4), which provides that if the interest of maintaining a fair and orderly market so requires, two Floor Officials may declare a fast market and allow market makers in an issue to make bids and offers with spread differentials of up to two times, or in exceptional circumstances, up to three times, the legal limits permitted under Rule 6.37(b)(1). The rule further directs such Floor Officials to consider the following factors in making the determination to allow wider markets: (A) whether there is an extreme influx of option orders due to pending news, a news announcement of other special events; (B) whether there is an imbalance of option orders in one series or on one side of the market; (C) whether the underlying security is trading outside the bid or offer in such security then being disseminated; (D) whether PCX floor members receive no response to orders placed to buy or sell the underlying security; and (E) whether a vendor quote feed for POETS is clearly stale or unreliable.

II. Discussion

The Commission has determined at this time to approve the Exchange's proposal. The standard by which the Commission must evaluate a proposed rule change is set forth in Section 19(b) of the Act. The Commission must approve a proposed PCX rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the PCX.[11] In evaluating a given proposal, the Commission examines the record before it and all relevant factors and necessary information. In addition, Section 6 of the Act establishes specific standards for PCX rules against which the Commission must measure the Proposal.[12]

The Commission has evaluated the PCX's proposed rule change in light of the standards and objectives set forth in the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[13] Specifically, the Commission finds that the proposed rule change provides a reasonable mechanism for the Exchange to respond to system malfunctions that impact the integrity of Auto-Ex.

The Commission notes that this proposal only authorizes senior Exchange floor personnel to suspend Auto-Ex in circumstances that involve technical system malfunctions affecting the accuracy of Auto-Ex, and is limited to five minutes, unless extension is approved by additional Exchange officials. The Exchange indicates in its filing that the proposed rule change is similar to certain procedures followed by the Chicago Board Options Exchange ("CBOE") with regard to its automated system, the change to which were approved in 1995.[14] The Commission further notes that the proposed rule change is more restrictive than the CBOE procedures and provides greater safeguards, in that it does now allow control room personnel to unilaterally disengage Auto-Ex prior to approval of Exchange floor officials.

Moreover, the Commission believes that the Exchange has provided adequate procedures for use in the event of Auto-Ex suspension. In the event that the system is shut down, all limit orders entered through the Exchange's Member Firm Interface will be forwarded to a booth on the Exchange floor designated by the firm that entered the order and then taken to the crowd manually and represented by a floor broker.

Finally, the Commission believes that the allowing market makers to increase the spread differentials on particular issues in the event of a fast market by Exchange Officials and with such officials specific approval appropriately balances the interests of the various participants while allowing the Exchange and its market makers to respond to rapid changes in market conditions.

III. Conclusion

The Commission believes that the proposed rule change is consistent with Act, and, particularly, with Section 6 thereof.[15] Specifically, the changes contained in this rule filing are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the

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[7] *Cf.* CBOE Rule 6.6(e).

[8] Proposed subsection (d)(1), *Floor-Wide POETS System Malfunction*.

[9] Proposed subsection (d)(2), *Non-Floor-Wide POETS System Malfunction*. Proposed subsection (d)(3) ("Other Unusual Conditions") further provides that if there are other unusual market conditions not involving a POETS System malfunction, two Floor Officials may suspend Auto-Ex in accordance with Rule 6.28(b).

[10] *Cf.* CBOE Rule 6.8, Interpretation and Policy .03.

[11] 15 U.S.C. 78s(b).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] Securities Exchange Act Release No. 35695 (May 9, 1995), 60 FR 26058 (May 16, 1995).

[15] 15 U.S.C. 78f.

public interest.[16] In addition, the Commission believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate to the purposes of Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–PCX–97–21), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret M. McFarland,

Deputy Secretary.

[FR Doc. 98–3999 Filed 2–17–98; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–100]

Determinations Under Section 304 of the Trade Act of 1974: European Communities' Banana Regime

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determinations, termination and monitoring.

SUMMARY: The United States Trade Representative (USTR) has determined that certain acts, policies and practices of the European Communities ("EC") that discriminate against U.S. banana marketing companies and distort international banana trade violate, or otherwise deny benefits to which the United States is entitled under, the General Agreement on Tariffs and Trade (GATT) 1994 and the General Agreement on Trade in Services (GATS). This determination is based on the report of a dispute settlement panel convened under the auspices of the World Trade Organization (WTO) at the request of the United States, Ecuador, Guatemala, Honduras, and Mexico and the report of the WTO Appellate Body reviewing the panel report. The Appellate Body report and the panel report, as modified by the Appellate Body report, ("the WTO reports") were adopted by the WTO Dispute Settlement Body (DSB) on September 25, 1997. Following the adoption of the reports by the DSB and during a WTO arbitration hearing convened on December 17, 1997 to establish "the reasonable period of time" for the EC to implement the WTO reports, the EC stated its intention to comply with its international obligations and to implement all the rulings and recommendations in the WTO reports within a "reasonable period of time," that is, by January 1, 1999. In light of the foregoing, the USTR will not take action under section 301 of the Trade Act of 1974 ("the Trade Act") at this time and has terminated this investigation. However, the USTR will monitor the EC's implementation of the WTO reports, and will take action under section 301(a) of the Trade Act if the EC does not come into compliance.

EFFECTIVE DATE: February 10, 1998.

ADDRESSES: 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Rachel Shub, Associate General Counsel (202) 395–7305; William Kane, Associate General Counsel (202) 395–6800; or Ralph Ives, Deputy Assistant U.S. Trade Representative, (202) 395–3320.

SUPPLEMENTARY INFORMATION: On September 27, 1995, the USTR initiated an investigation under section 302(b) of the Trade Act (19 U.S.C. 2412(b)) regarding the EC's regime for the importation, sale and distribution of bananas and requested public comment on the issues raised in the investigation and the determinations to be made under section 304 of the Trade Act. 60 FR 52026 of October 4, 1995. This investigation specially concerned EC Council Regulation No. 404/93 and related measures distorting international banana trade and discriminating against U.S. marketing companies importing bananas from Latin America, including a restrictive and discriminatory licensing scheme designed to transfer market share in the wholesale distribution sector from U.S. banana marketing firms to firms of EC or African, Caribbean and Pacific ("ACP") nationality.

As required under section 303(a) of the Trade Act, the United States held consultations with the EC under the procedures of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). After holding a first set of consultations with the EC on October 26, 1995, the United States and the governments of Guatemala, Honduras and Mexico decided to delay the request for a dispute settlement panel until Ecuador, the world's largest banana exporter, had completed its accession and could join the dispute settlement proceeding. Pursuant to a new request filed jointly by the governments of Ecuador, Guatemala, Honduras, Mexico and the United States ("Complaining parties"), a second set of WTO consultations with the EC was held on March 14, 1996. A dispute settlement panel was established on May 8, 1996.

Pursuant to Section 304(a)(1)(A) of the Trade Act (19 U.S.C. 2414(a)(1)(A)), the USTR must determine in this case whether any act, policy or practice of the EC violates, or otherwise denies benefits to which the United States is entitled under, any trade agreement. If that determination is affirmative, the USTR must take action under section 301 of the Trade Act (19 USC 2411), subject to the specific direction of the President, if any, unless the USTR finds that one of the circumstances set forth in section 301(a)(2)(B) exists.

Reasons for Determinations

(1) EU Acts, Policies and Practices

The WTO panel in this case circulated its report on May 22, 1997. It included numerous findings that the EC banana regime is inconsistent with the EC's WTO obligations. The EC appealed all of the panel's adverse findings, and the Complaining Parties cross-appealed three. On September 9, 1997, the Appellate Body issued its report confirming all the major panel findings against the EC regime, and reversing the panel report on two issues that had been decided in the EC's favor (agreeing with the Complaining parties). On September 25, 1997, the DSB adopted the Appellate Body and the panel report (as modified by the Appellate Body report). The WTO reports include findings that the following EC measures violate the EC's obligations under various provisions of the GATT 1994 and/or the GATS: The EC's discriminatory allocation of shares of its market to certain ACP countries and to certain countries signatory to the Banana Framework Agreement; (2) the EC's discriminatory rules for reallocating annual country shares in the event of a country's shortfall; (3) the EC's discriminatory distribution to EC and ACP banana distribution companies of "Category B" licenses to import bananas from non-EC, non-ACP countries (mainly Latin America); (4) the EC's requirements for obtaining licenses to import from Latin America, which impose burdens not imposed on imports from ACP counties; (5) the EC's distribution of licenses to ripeners in the EC, which discriminates against U.S. and Latin America firms in favor of EC firms; (6) the EC's discriminatory export certificate requirements; and (7) the EC's distribution to EC and ACP banana distribution companies of additional licenses, so-called "hurricane licenses," to import from Latin America. (The Complaining parties did not challenge

[16] In approving these rules, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

the EC's preferential tariffs for "traditional" ACP bananas.)

Thus, based on the results of the WTO dispute settlement proceedings, the public comments received and appropriate consultations, the USTR has determined that certain acts, policies and practices of the EC violate, or otherwise deny benefits to which the United States is entitled under, GATT 1994 and the GATS.

(2) U.S. Action

At a meeting of the DSB on October 16, 1997, the EC stated that it would "fully respect its international obligations with regard to this matter" and would require a "reasonable period of time to do so." On December 17, 1997, at a WTO arbitration hearing requested by the Complaining parties to determine the "reasonable period of time" pursuant to Article 21.3 of the DSU, the EC made it clear that the "reasonable period of time" it requested, i.e., until January 1, 1999, is for the purpose of implementing all the recommendations and ruling of the DSB adopted on September 25. On January 7, 1998, the WTO-appointed arbitrator circulated his determination that the period until January 1, 1999, would be the "reasonable period of time" for the EC to implement the DSB rulings and recommendations.

On the basis of the foregoing, the USTR finds that the EC's undertaking to implement all of the rulings and recommendations of the WTO reports within the established reasonable period of time pursuant to Article 21.3 of the DSU constitute for the purposes of section 301(a)(2)(B)(i) the taking of satisfactory measures to grant the rights of the United States under the GATT 1994 and GATS. Therefore, pursuant to section 301(a)(2) the USTR will not take action under section 301 of the Trade Act at this time and has terminated this investigation. However, pursuant to section 306 of the Trade Act, the USTR will monitor the EC's implementation of the WTO reports and will take action under section 301(a) of the Trade Act if the EC does not come into compliance.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 98–3919 Filed 2–17–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describe the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on July 24, 1997 [62 FR 39886].

DATES: Comments must be submitted on or before March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Edward Kosek, NHTSA Information Collection Clearance Officer at (202) 366–2589.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration (NHTSA)

Title: Surveys and Analysis of Consumer Information on the Domestic Content of New Cars and Light Trucks.

OMB No.: 2127–NEW.

Type of Request: Approval of a New Information Collection.

Affected Public: Consumers, vehicle dealers and manufacturers.

Abstract: NHTSA will conduct three surveys to collect information from potential and actual purchasers of new passenger cars, light trucks, and multipurpose passenger vehicles; new vehicle dealers; and domestic and foreign-based manufacturers of these vehicles.

Estimated Annual Burden Hours: 200 hours.

Estimated Number of Respondents: 925.

Need: Use of the information—under Executive Order 12866, "Regulatory Planning and Review" NHTSA is required to conduct periodic evaluations to assess the effectiveness of its existing regulations and programs. Since this regulation has been in effect for at least a full year, NHTSA intends to collect data through the administration of three surveys, to evaluate the effectiveness of the American Automobile Labeling Act.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on February 11, 1998.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–4039 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 30, 1997, [62 FR 51175–51176].

DATES: Comments must be submitted on or before March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, SW., Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Notice of Landing Area Proposal.

OMB Control Number: 2120–0036.

Type of Request: Extension of currently approved collection.

Affected Public: Individuals.

Abstract: 14 CFR Part 157 requires that each person who intends to construct, activate, deactivate, or change the status of an airport, runway, or taxiway shall notify the FAA.

Form Number: FAA Form 7480–1.

Annual Estimated Burden Hours: 2570 hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on February 11, 1998.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–4040 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Nantucket Memorial Airport, Nantucket, MA; Noise Exposure Map Notice

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Nantucket Memorial Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is February 2, 1998.

FOR FURTHER INFORMATION CONTACT: John Silva, FAA New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Nantucket Memorial Airport are in compliance with applicable requirements of Part 150, effective February 2, 1998.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Nantucket Memorial Airport. The specific maps under consideration are Noise Exposure Map Base Case and Noise Exposure Map Future Case, each of which is published in Nantucket Memorial Airport; Noise Abatement Study Update, dated January, 1998. FAA has determined that these maps for Nantucket Memorial Airport are in compliance with applicable requirements. This determination is effective on February 2, 1998. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, New England Region, Airports Division, 16 New England Executive Park, Burlington, Massachusetts 01803

Nantucket Memorial Airport, 30 Macy Lane, Nantucket Island, Massachusetts 02554

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts, February 2, 1998.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 98–3955 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Aviation Rulemaking Advisory Committee renewal.

SUMMARY: Notice is hereby given of the renewal of the Aviation Rulemaking Advisory Committee. The Administrator

is the sponsor of the committee, which consists of members appointed by the Administrator as representatives of a broad spectrum of the aviation community. The committee provides the aviation public a means by which to have its interests in aviation safety rulemaking taken into consideration in the development of regulatory actions. The committee provides the FAA with the benefit of obtaining the input of affected parties before a proposal is ever issued, thus enabling the agency to produce better documents. The functions of the committee are solely advisory.

The Secretary of Transportation has determined that the formation and use of the committee are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the committee and executive committee will be open to the public.

FOR FURTHER INFORMATION CONTACT: Office of Rulemaking (ARM–1), 800 Independent Avenue, SW., Washington, DC 20591, Telephone: 202–267–9677.

Issued in Washington, DC, on February 11, 1998.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–3965 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3454]

Receipt of Petition for Decision That Nonconforming 1989–1991 Chevrolet Suburban Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1989–1991 Chevrolet Suburban multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1989–1991 Chevrolet Suburbans that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 20, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether nonconforming 1989–1991 Chevrolet Suburban MPVs are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1989–1991 Chevrolet Suburbans that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1989–1991 Chevrolet Suburbans to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1989–1991 Chevrolet Suburbans, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1989–1991 Chevrolet Suburbans are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 119, *New Pneumatic Tires for Vehicles other than Passenger Cars,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion, and* 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1989–1991 Chevrolet Suburbans comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side

rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems*: rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars*: installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection*: (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 11, 1988.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–4041 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3453]

Receipt of Petition for Decision That Nonconforming 1993 Audi 100 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993 Audi 100 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1993 Audi 100 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into an sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 20, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 10 am to 5 pm.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTS (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Kingsville, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether 1993 Audi 100 passenger cars are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1993 Audi 100 that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1993 Audi 100 to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1993 Audi 100, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1993 Audi 100 is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly*

Anchorages, 212 *Windsheld Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner contends that the vehicle complies with the Bumper Standard found in 49 Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with noncomplying symbol on the brake failure indicator lamp; (b) replacement of the speedometer/odometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lights; (c) installation of a U.S.-model high-mounted stop light assembly.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a key microswitch and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport mechanism is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning buzzer, wired to the driver's seat belt latch. The petitioner states that the vehicle is equipped with driver's and passenger's side air bags in the front outboard seating positions and with seatbelts in all seating positions that are identical to those found on the vehicle's U.S. certified counterpart. As described by the petitioner, the vehicle is equipped with shoulder belts in the rear outboard seating positions and with a lap belt in the rear center seating position.

Additionally, the petitioner states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 11, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–4042 Filed 2–17–98; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33547]

IMC Global Inc.—Acquisition of Control Exemption—Trona Railway Company and Hutchinson & Northern Railway Company

IMC Global Inc. (IMC),[1] a publicly-held company headquartered in Illinois, has filed a notice of exemption to acquire control of Trona Railway Company (Trona), a Class III rail carrier operating in California, and Hutchinson & Northern Railway Company (H&N), a Class III rail carrier, operating in Kansas, as part of its acquisition of Harris Chemical Group, Inc. (Harris), a privately-owned Delaware corporation headquartered in New York, which is the corporate parent of Trona and H&N.

IMC's acquisition of Harris will be accomplished through a merger of IMC's subsidiary, IMC Merger Sub Inc. (Newco), with and into Harris, which controls, among other companies, the North American Chemical Company (NACC), which holds all of the outstanding shares of Trona, and the North American Salt Company (NASC), which holds all of the outstanding shares of N&H. Harris will continue, under the name IMC Inorganic Chemicals Inc., as the surviving corporation and wholly owned subsidiary of IMC, and the corporate existence of Newco will cease.

IMC intends to consummate this transaction within 60 days of the February 4, 1998 filing date of this notice of exemption, but not earlier than the February 11, 1998 effective date of the exemption.

IMC states that: (1) These railroads do not connect with each other; (2) the acquisition of control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in its corporate family; and (3) the transaction does not involve a Class I rail carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C.10502(g), the board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III railroad carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33547, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Donald H. Smith, Sidley & Austin, 1722 Eye Street, N.W., Washington, DC 20006.

Decided: February 10, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–4048 Filed 2–17–98; 8:45 am]

BILLING CODE 4915-00-P

[1] IMC states that it is a noncarrier and that it controls no railroads operating in the United States.

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Advisory Council on Transportation Statistics

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice; correction.

SUMMARY: The Department of Transportation published a document in the **Federal Register** of February 11, 1998, concerning the meeting date and

closing date for building admittance to the Advisory Council on Transportation Statistics. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Carolee Bush, (202) 366–6946.

Correction

In the **Federal Register** issue of February 11, 1998, in FR Doc. 98–3427, on page 7049, second column, first paragraph under the DOT notice, correct the meeting date to read: Friday, March 6, 1998 (rather than Wednesday, November 12, 1997).

Also in the same issue and same document, on page 7049, third column, second paragraph, persons who planned to attend the meeting were told to contact Carolee Bush prior to November 10. That date should be corrected to read March 4.

Dated: February 12, 1998.

Robert A. Knisely,

Executive Director, Advisory Council on Transportation Statistics.

[FR Doc. 98–4067 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–FE–P

Corrections

Federal Register

Vol. 63, No. 32

Wednesday, February 18, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Extension of Currently Approved Information Collection

Correction

In notice document 98–3089 appearing on page 6511, in the issue of Monday, February 9, 1998, make the following corrections:

1. On page 6511, in the first column, the heading should read as set forth above.

2. On the same page, in the same column, in the 3rd line from the bottom, "confessional" should read "concessional".

3. On the same page, in the second column, in the *Request for Comments:* paragraph, in the 12th line, "equality" should read "quality".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-ACE-21]

Amendment to Class D and Class E Airspace Areas; Manhattan, KS

Correction

In rule document 98–1229 beginning on page 2884, in the issue of Tuesday, January 20, 1998, make the following correction:

§ 71.1 [Corrected]

On page 2885, in the second column, in the tenth line, "(Lat. 30°08′27″N," should read "(Lat. 39°08′27″N,".

BILLING CODE 1505-01-D

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February 18, 1998

Part II

Department of Transportation

Office of the Secretary

14 CFR Part 243
Passenger Manifest Information; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 243

[Docket No. OST–95–950]

RIN 2105–AB78

Passenger Manifest Information

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule requires that certificated air carriers and large foreign air carriers collect the full name of each U.S.-citizen traveling on flight segments to or from the United States and solicit a contact name and telephone number. In case of an aviation disaster, airlines would be required to provide the information to the Department of State and, in certain instances, to the National Transportation Safety Board. Each carrier would develop its own collection system. The rule is adopted pursuant to the Aviation Security Improvement Act of 1990.

DATES: This rule is effective March 20, 1998. Compliance with this rule is not required until October 1, 1998, except with respect to the plans in § 243.13, which must be filed by July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis Marvich, Office of International Transportation and Trade, DOT, (202) 366–4398; or, for legal questions, Joanne Petrie, Office of the General Counsel, DOT, (202) 366–9306.

SUPPLEMENTARY INFORMATION:

Background

During the immediate aftermath of the tragic bombing of Pan American Flight 103 over Lockerbie, Scotland on December 21, 1988, the Department of State experienced difficulties in securing complete and accurate passenger manifest information and in notifying the families of the Pan American 103 victims. The Department of State did not receive the information for "more than seven hours after the tragedy" (Report of the President's Commission on Aviation Security and Terrorism, p. 100). When the Department of State did acquire the passenger manifest information from Pan American, in accordance with airline practice, it included only the passengers' surnames and first initials, which did not permit the Department of State to carry out their legal responsibility of notifying the family members in a timely fashion.

Statutory Requirements

In response to the Report of the President's Commission on Aviation Security and Terrorism, Congress and the Administration acted swiftly to amend Section 410 of the Federal Aviation Act. P.L. 101–604 (entitled the Aviation Security Improvement Act of 1990, or "ASIA 90," and which was later codified as 49 U.S.C. 44909), which was signed by President Bush on November 16, 1990, states:

SEC. 410. PASSENGER MANIFEST

(a) REQUIREMENT.—Not later than 120 days after the date of enactment of this section, the Secretary of Transportation shall require all United States air carriers to provide a passenger manifest for any flight to appropriate representatives of the United States Department of State: (1) not later than 1 hour after any such carrier is notified of an aviation disaster outside the United States which involves such flight; or (2) if it is not technologically feasible or reasonable to fulfill the requirement of this subsection within 1 hour, then as expeditiously as possible, but not later than 3 hours after such notification.

(b) CONTENTS.—For the purposes of this section, a passenger manifest should include the following information:

(1) The full name of each passenger.

(2) The passport number of each passenger, if required for travel.

(3) The name and telephone number of a contact for each passenger.

In implementing the requirement pursuant to the amendment made by subsection (a) of this section, the Secretary of Transportation shall consider the necessity and feasibility of requiring United States carriers to collect passenger manifest information as a condition for passenger boarding of any flight subject to such requirement.

(c) FOREIGN AIR CARRIERS.—The Secretary of Transportation shall consider a requirement for foreign air carriers comparable to that imposed pursuant to the amendment made by subsection (a).

The ANPRM and Subsequent DOT Activity Leading to the NPRM

In order to implement the statutory requirements, the Department of Transportation first published an advance notice of proposed rulemaking (ANPRM) on January 31, 1991 (56 FR 3810). The ANPRM requested comments on how best to implement the statutory requirements. Among possible approaches, the ANPRM noted that the Department might require airlines to collect the data at the time of reservation and maintain it in computer reservations systems. Alternatively, the ANPRM noted that the Department might require each airline to develop its own data collection system, which would be approved by the Department. The ANPRM posed a series of questions about privacy concerns, current practices in the industry and potential impacts on day-to-day operations.

Twenty six comments were received in response to the ANPRM. Commenters included the Air Transport Association of America (ATA), the National Air Carrier Association (NACA), the Regional Airline Association (RAA), Alaska Airlines, American Trans Air, the American Society of Travel Agents (ASTA), the group "Victims of Pan Am Flight 103," the Asociacion Internacional de Transporte Aereo Latinoamericano (AITAL), a combined comment filed by four foreign air carriers and one association of foreign air carriers (Air Canada, Air Jamaica, Balair, Condor Flugdienst GmbH, and the Orient Airlines Association), Aerocancun, Air-India, British Airways, Japan Airlines, Lineas Aereas Paraguayas, Nigeria Airways, Royal Air Maroc, Swissair, the Embassy of Switzerland, the Embassy of the Philippines, the United States Department of State (Assistant Secretary for Consular Affairs), the U.S. Department of the Treasury (U.S. Customs Service), the Commissioner of Customs, the United States Government Interagency Border Inspection System (IBIS), System One Corporation, and two individuals, Ms. Edwina M. Caldwell and Ms. Kathleen R. Flynn. In addition, the views of Meetings and Incentives in Latin America, an Illinois travel and tour company, were included in the docket because of a communication to a Department official after the ANPRM was issued. The comments were summarized in the notice of proposed rulemaking published in 61 FR 47692, September 10, 1996.

In January 1992, President Bush announced a "Regulatory Moratorium and Review" during which federal agencies were instructed to issue only rules that addressed a pressing health or public safety concern. During the course of the moratorium, the Department asked for comments on its regulatory program. Comments that addressed the passenger manifest information statutory requirement were filed by ATA, Northwest Airlines, American Airlines, Air Canada, and Japan Airlines. ATA included the passenger manifest proposal among ten DOT and FAA regulatory initiatives that, if implemented, would be the most onerous for the airline industry. ATA (supported by Northwest) recommended that if additional passenger manifest information were to be required, it

should be limited to the information that is required by the U.S. Customs Service's APIS program. American Airlines listed the passenger manifest rulemaking in its top five (out of over 100) pending aviation rulemakings that should be eliminated/substantially revised. Air Canada said that if air carriers were required to adopt the APIS standard advocated by ATA, its costs (and those of other foreign air carriers) would be unnecessarily raised. Japan Airlines said that any requirement to collect personal data from air passengers would conflict with the Constitution of Japan, would be costly, and, to the extent that it was anticipated that such data would be shared with the APIS program, should be the subject of prior public discussion.

In the FY 1993 DOT Appropriations Act, Congress provided that none of the FY 1993 appropriation could be used for a passenger manifest requirement that only applies to U.S.-flag carriers. This provision was repeated in the five subsequent DOT Appropriations through FY 1997. The provision stated:

> None of the funds provided in this Act shall be made available for planning and executing a passenger manifest program by the Department of Transportation that only applies to United States flag carriers.

In light of the totality of comments and the fact that aviation disasters occur so rarely, DOT continued to examine whether there was a low-cost way to implement a passenger manifest requirement. In 1995, DOT considered seeking legislative repeal or modification of the statutory requirements. In the November 28, 1995, Unified Agenda of Federal Regulations, the passenger manifest entry stated that DOT "is recommending legislation to repeal the requirement [of passenger manifests] because of the high costs and small benefits that would result."

The Cali Crash

On December 20, 1995, American Airlines Flight 965, which was flying from Miami to Cali, Colombia, crashed near Cali. There were significant delays in providing the State Department with a complete passenger manifest. Even when it was provided, the manifest was of limited utility to State because it lacked sufficient data. Department of Transportation staff met with American Airlines to explore the logistical, practical and legal problems that the airline encountered in the aftermath of the crash, and ways these problems could be ameliorated in the future. We also met with high level representatives of the State Department to discuss State's needs and concerns on this matter. The events surrounding this crash led DOT to reconsider its view that the passenger manifest requirements under ASIA 90 were unnecessary.

Public Meeting

On March 29, 1996, DOT held a public meeting on implementing a passenger manifest requirement. The notice announcing the public meeting (61 FR 10706, March 15, 1996) noted that a long period of time had passed since the 1991 advance notice of proposed rulemaking, and that a public meeting during which stakeholders could exchange views and update knowledge on implementing such a requirement was necessary as a prelude to DOT proposing a passenger manifest information requirement. The notice enumerated ten questions concerning information availability and current notification practices, privacy considerations, similar information requirements, information collection techniques, and costs of collecting passenger manifest information.

The meeting was attended by approximately 80 people. To facilitate discussion, representatives of three family survivor groups (The American Association for Families of KAL 007 Victims, Families of Pan Am 103/ Lockerbie, and Justice for Pan Am 103), the Air Transport Association, the Regional Airlines Association, the National Air Carrier Association, the International Air Transport Association, the American Society of Travel Agents, U.S. Department of State, U.S. Customs Service, and DOT formed a panel. Members of the audience, who included representatives of foreign governments, were invited to participate in the discussion and did so. The discussion lasted nearly 5 hours and covered a wide variety of topics. At the end of the meeting, it was the consensus that one or more working groups headed by the Air Transport Association would be formed to further explore some of the issues raised.

Memorandum of Understanding

ATA convened an initial working group that consisted of representatives of Families of Pan Am 103/Lockerbie, the American Association for Families of KAL 007 Victims, the National Air Disaster Alliance (a group representing families of victims of several aviation disasters), the Department of State, and several U.S. airlines, with IATA in attendance. DOT was not a participant in the group. The working group made progress in facilitating communication among divergent interests and in creating a workable system that should reduce confusion and improve the efficiency of the efforts of both the airline and the Federal Government following an airline crash.

As a result of the working group, the Department of State has entered into Memoranda of Understanding (MOU) Reflecting Best Practices and Procedures with 14 U.S. air carriers since November 1996. These carriers are American, Continental, Delta, Northwest, Trans World, United, US Airways, American Trans Air, Miami Air International, Southern Air Transport, Tower Air, World Airways, North American and Midwest Express. The MOUs provide a basis for cooperation and mutual assistance in reacting to aviation disasters occurring outside the United States with the goal of improving the treatment of victims' families. The MOUs contain provisions relating to passenger manifests, the exchange of liaison officers between the Department of State and the air carrier, and crisis management training in which personnel are exchanged between the parties so as to become more familiar with each other's internal procedures. The Department of State regards the MOUs as a cooperative effort that includes the issue of passenger manifests. The Department of State does not regard the MOUs as a substitute for the rulemaking process concerning passenger manifests because the MOUs do not address collection of emergency contact name and phone number. In addition, participation in the MOUs is voluntary and not every airline will enter into an agreement. The MOU envisions that the airlines are in the best position to provide initial notification to family members of passengers who were involved in aviation disasters, and that the airlines should provide the initial notification. The Department of State is still responsible for providing notification, even if the family has already been provided notification by the airline.

TWA Flight 800

On July 17, 1996, TWA Flight 800, which was flying from New York to Paris, crashed off Long Island, New York. Local government officials publicly commented on difficulties in determining exactly who was on board the flight and in compiling a complete, verified manifest. TWA caregivers were generally praised for their efforts in the crash aftermath. Although this was an international flight, the crash occurred in U.S. territorial waters and, therefore, the Department of State had no specific role in family notification and facilitation for U.S. citizens. The

Department of State received inquiries from foreign governments regarding the fate of their citizens, and worked closely with foreign governments and foreign citizens in the aftermath of the crash. Family notification was a problem following the disaster; indeed, some family members stated that they never received notification from TWA that a loved one was on board the aircraft, even after repeated phone calls to the airline.

The Notice of Proposed Rulemaking

Taking into account the experiences of the airlines, family members, and the government following American Airlines 965, TWA 800, and the process leading to the MOU, the Department of Transportation published a Notice of Proposed Rulemaking (NPRM) in 61 FR 47692, September 10, 1996. This notice proposed to require that each air carrier and foreign air carrier collect basic information from specified passengers traveling on flight segments to or from the United States ("covered flights"). U.S. carriers would collect the information from all passengers, and foreign air carriers would only be required to collect the information for U.S. citizens and lawful permanent residents of the United States. The information would include the passenger's full name and passport number and issuing country code, if a passport were required for travel. Carriers would be required to deny boarding to passengers who did not provide this information. In addition, airlines would be required to solicit the name and telephone number of a person or entity to be contacted in case of an aviation disaster. Airlines would be required to make a record of passengers who declined to provide an emergency contact. Passengers who declined to provide emergency contact information would not, however, be denied boarding. In the event of an aviation disaster, the information would be provided to DOT and the Department of State to be used for notification. DOT proposed to allow each airline to develop its own procedures for soliciting, collecting, maintaining and transmitting the information. The notice requested comment on whether passenger date of birth should be collected, either as additional information or as a substitute for required information (e.g. passport number).

Presidential Directive and Inter-Federal Government Memorandums of Understanding for Domestic Aviation Disasters

On September 9, 1996, President Clinton issued a Presidential Directive designating the National Transportation Safety Board (NTSB) as the agency to coordinate the provision of federal services to the families of victims following an aviation disaster in the United States. Following issuance of the Presidential directive, the NTSB entered into memorandums of understanding (MOUs) with the Departments of Justice, Defense, Transportation, State, Health and Human Services and the Federal Emergency Management Agency. In general, the MOUs commit the agencies to provide the NTSB with whatever logistical and personnel support is needed to fulfill the Board's newly-acquired family support role. The MOU between the NTSB and DOS requires each to maintain close liaison and coordination, including exchange of information. Neither the Presidential Directive nor the above-referenced MOUs alter State's role as the Federal Government's notifier of the families of the U.S. citizens who are killed in aviation disasters outside the United States.

The Aviation Disaster Family Assistance Act of 1996

On October 9, 1996, President Clinton signed Pub. L. 104–264. Title VII, the "Aviation Disaster Family Assistance Act of 1996" (ADFAA), was later codified as 49 U.S.C. 40101 note. The ADFAA pertains to aviation disasters occurring within the United States and its territories. It provides, in part:

Sec. 1136. Assistance to Families of Passengers Involved in Aircraft Accidents

(a) In General.—As soon as practicable after being notified of an aircraft accident within the United States involving an air carrier or foreign air carrier and resulting in a major loss of life the Chairman of the National Transportation Safety Board shall—

(1) designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the federal government for the families of the passengers involved in the accident and a liaison between the air carrier or foreign air carrier and the families;

(2) designate an independent nonprofit organization, with experience in disasters and post trauma communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident.

(b) Responsibilities of the Board.—The Board shall have primary Federal responsibility for facilitating the recovery and identification of fatally injured passengers involved in an accident described in subsection (a).

* * * * *

(d) Passenger lists.

(1) Requests for passenger lists.—

(A) Requests by director of family support services.—It shall be the responsibility of the director of family support services designated for an accident under subsection (a)(1) to request, as soon as practicable, from the air carrier or foreign air carrier involved in the accident a list, which is based on the best available information at the time of the request, of the names of the passengers that were aboard the aircraft involved in the accident.

(B) Requests by designated organization.—The organization designated for an accident under subsection (a)(2) may request from the air carrier or foreign air carrier involved in the accident a list described in subparagraph (A).

(2) Use of information.—The director of family support services and the organizations may not release to any person information on a list obtained under paragraph (1) but may provide information on the list about a passenger to the family of the passenger to the extent that the director of family support services or the organization considers appropriate.

Section 703 of the Act (§ 41113) further requires each certificated U.S. air carrier to file a plan to address the needs of families of passengers involved in aircraft accidents. Among other things, the plan must include "[a] process for notifying the families, before providing any public notice of the names of the passengers," "[a]n assurance that the notice * * * will be provided to the family of a passenger as soon as the air carrier has verified that the passenger was aboard the aircraft (whether or not the names of all of the passengers have been verified)", and "[a]n assurance that the air carrier will provide to the director of family support services * * * immediately, upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the aircraft (whether or not such names have been verified), and will periodically update the list.

Finally, section 704 of the Act instructs the Secretary of Transportation to appoint a Task Force comprised of the Federal Government, the industry, as well as individuals representing the families of the victims of aviation disasters to review how to improve the assistance provided to families following an aviation disaster. Section 704(b)(6) instructs the task force to develop:

[R]ecommendations on methods to improve the timeliness of the notification provided by air carriers to the families of

passengers involved in an aircraft accident, including—

(A) An analysis of the steps that air carriers would have to take to ensure that an accurate list of passengers on board the aircraft would be available within 1 hour of the accident and an analysis of such steps to ensure that such list would be available within 3 hours of the accident;

(B) An analysis of the added costs to air carriers and travel agents that would result if air carriers were required to take the steps described in subparagraph (A);

(C) An analysis of any inconvenience to passengers, including flight delays, that would result if air carriers were required to take the steps described in subparagraph (A); and

(D) An analysis of the implications for personal privacy that would result if air carriers were required to take the steps described in subparagraph (A).

The Domestic Passenger Manifest ANPRM

On March 13, 1997, DOT published an advance notice of proposed rulemaking (62 FR 11789) on a potential passenger manifest requirement for domestic air travel. The ANPRM was designed to solicit information which could be used by the Task Force in assessing the costs and benefits of a requirement for enhanced domestic passenger manifests. The ANPRM requested information on operational and cost issues related to U.S. air carriers collecting basic information (e.g., full name, date of birth and/or social security number, emergency contact and telephone number) from passengers traveling on flights within the United States. The ANPRM discussed the problems experienced in the aftermath of a crash, statutory authority for requiring passenger manifest and emergency contact information, regulatory history, past domestic aviation disasters, and economic considerations. It asked commenters to respond to thirteen detailed questions on the following topics: (1) Basic approach; (2) information requirements and the capacity of computer reservations systems; (3) frequent flyer information; (4) privacy considerations and fraud issues; (5) coverage of potential domestic passenger manifest information requirements and the differing implications, if any, for different types of air carriers that might be covered; (6) sharing of domestic passenger manifest information within and among air carriers; (7) implications for different types of air carrier operations (point-to-point) and the current frequency of flights; (8) interactions between domestic positive baggage matches and a domestic passenger manifest information requirement; (9) domestic passenger manifests and electronic tickets; (10) implications for high frequency corridors, high frequency facilities and peak load capacity; (11) recurring costs of such a system; (12) fixed costs of such a system; and (13) integration of manifest requirements with processes for expedited positive identification and notification. Fifty-seven comments were filed in response to the ANPRM from a wide variety of interests. We are currently reviewing the comments. We will review the implementation of the international passenger manifest requirements as we determine how to proceed with this rulemaking.

The Task Force on Assistance to Families of Aviation Disasters

In March 1997, as requested in the ADFAA, Secretary Slater appointed 22 people to serve on the Task Force on Assistance to Families of Aviation Disasters. The Task Force, which was co-chaired by DOT Secretary Slater and NTSB Chairman Jim Hall, issued 61 recommendations to the Congress on October 29, 1997. Four of those recommendations concerned how to improve the passenger manifests used by the airlines to establish points of contact with the families of passengers. Pursuant to the ADFAA, the Task Force also issued findings on the cost of implementing a passenger manifest system. These recommendations and findings were based, in part, on the comments to the ANPRM.

The Task Force recommended that airlines have readily available for every flight, either in a passenger manifest or through some other system, the following data: the full name for each passenger; a contact phone number for each passenger; and a contact name for each passenger. The Task Force recommended that while each passenger should be encouraged to provide the information, furnishing contact name and phone number would not be a prerequisite to boarding the flight. Further, the Task Force recommended that all information provided by a passenger for passenger manifest reasons must only be used in the case of an emergency. DOT abstained from voting on these recommendations due to the ongoing rulemakings.

All members of the Task Force, including the Air Transport Association (ATA), found that the full name of every passenger should be included on the manifest. The Task Force as a whole also agreed that, in conjunction with the passenger's name, a contact phone number is the second most important data element in the notification process. It was also recognized that a contact name would aid the notification process. Task Force members representing the ATA, the Regional Airline Association (RAA) and the National Air Carrier Association (NACA), which represents charter carriers, stated that the increased costs of obtaining the contact name data element were not justified by the benefit this data element provided. The remainder of the Task Force disagreed, finding that with only a contact phone number, awkward situations could result, thereby making the notification process more difficult and time-consuming.

The Task Force reviewed the costs of implementing a system requiring full name, contact name and phone number. First, the Task Force found that an air carrier should be able to "verify" a passenger manifest within three hours of beginning the verification process. The Task Force did not find it possible or beneficial, however, to require an airline to have a manifest "verified" within one hour. The Task Force deliberations did not find significant costs to air carriers to "verify" a manifest within three hours. Second, the Task Force found that the annual cost of implementing a passenger manifest as outlined in the recommendation would be between $32 and $64 million for both air carriers and travel agents if it took 40 seconds to collect the additional data elements, and between $48 and $96 million if it took an additional 60 seconds. The Task Force did not address the issue of passengers who booked reservations and then, subsequently, did not board the flight.

Korean Air Flight 801

On August 6, 1997, Korean Air Flight 801, a flight between Seoul, Korea and Guam, a territory of the United States, crashed about 5 miles southwest of the Guam International Airport. There were 231 passengers, 20 flight attendants and 3 flight deck crew members on board. Twenty-nine people survived the crash. There were many problems encountered by anxious and worried family members because Korean Air did not have prompt, complete and accurate flight manifest information and procedures to notify the families. For example, there were significant delays in providing information to concerned families at Seoul's Kimpo Airport, in both responding to callers and notifying the families.

The Foreign Air Carrier Family Support Act

The Foreign Air Carrier Family Support Act (Pun. L. 105–148,111 Stat.

2681) was signed into law by President Clinton on December 16, 1997. The legislation was prompted by the Korean Air Flight 801 disaster. The Act requires foreign air carriers to develop family assistance plans comparable to that required by the Aviation Disaster Family Assistance Act for U.S. air carriers. The new requirements have been carefully drafted to apply to accidents that occur within the United States jurisdiction. The existing requirements for U.S. air carriers were adjusted for the foreign air carriers to be consistent with our international obligations. For example, foreign air carriers may provide substitute measures for certain provisions of the Act, such as compensation to an organization designated by the NTSB for services and direct assistance provided to families as a result of the aviation disaster.

Comments to the International NPRM

Forty six comments were received in response to the NPRM. Commenters included the Air Transport Association of America (ATA); the National Air Transportation Association (NATA); American Airlines; Northwest Airlines; Trans World Airlines; United Air Lines; North American Airlines; Carnival Air Lines; Gran-Aire; Hawaiian Airlines; the Air Line Pilots Association (ALPA); the American Society of Travel Agents (ASTA); Passages: A Travel Company; American Express Travel Related Services; the American Association for Families of KAL 007 Victims; the U.S. Department of Justice (Immigration and Naturalization Service); ; Mr. Richard P. Kessler, Jr.; Ms. Brenda Sheer; Ms. Liana Ycikson; a group of three individual citizens (Cayetano Alfonso; Nora Ramos; and Victoria Mendizabel); and a group of four students from Florida International University (My Trinh; Chau Trinh; Walter Hernandez; and Joanne Flores); the International Air Transport Association (IATA); the Arab Air Carriers Organization; the Orient Airlines Association; the European Civil Aviation Conference (ECAC); Air Canada; Aerolineas Argentinas; Qantas Airways; Scandinavian Airlines System; All Nippon Airways; Air New Zealand; Varig; Lauda Air; British Airways; Turkish Airlines; Swiss Air; Lufthansa; Japan Airlines; Cathay Pacific Airways; Laker Airways; Air Pacific; the Embassy of Belgium; a combined comment from the Embassies of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom and the European Commission; the Embassy of the United Kingdom (Britannic Majesty's); the British Airports Authority; and the International Civil Aviation Organization (ICAO).

In addition, as noted above, the Department received valuable testimony and advice from the Family Assistance Task Force meetings. Although their focus was on the passenger manifest issue on domestic flights, many of the issues and persons affected by this international rule are identical. The meetings of the Task Force were tape recorded and several written comments were filed.

Summary of Comments

The Air Transport Association of America (ATA) filed comments on behalf of its members (Alaska Airlines, Aloha Airlines, America West Airlines, American Airlines, American Trans Air, Continental Airlines, Delta Air Lines, DHL Airways, Emery Worldwide Airlines, Evergreen International Airlines, Federal Express, Hawaiian Airlines, KIWI International Air Lines, Midwest Express, Northwest Airlines, Polar Air Cargo, Reeve Aleutian Airways, Southwest Airlines, Trans World Airlines, United Airlines, United Parcel Service, and US Air [now US Airways]). American Airlines, Northwest Airlines, Trans World Airlines, and United Air Lines filed individual comments, as well.

ATA stated that its members stood ready to fulfill their responsibilities to collect and transmit passenger manifest information. ATA said that based on lessons learned during recent negotiations of a voluntary Memorandum of Understanding (MOU) between U.S. air carriers and the Department of State on cooperation and mutual assistance following air disasters outside the United States, any passenger manifest information requirement must: (1) apply to all carriers on all flights to and from the United States, and (2) delineate clearly U.S. Government agency responsibilities in handling passenger manifest information.

ATA stated that for legal and practical reasons passenger manifest information requirements must apply to all passengers on all flights, and not just to U.S. citizens and permanent legal residents on foreign air carrier flights. First, there will be no public tolerance for a post-aviation-disaster scenario in which more information is available to family members inquiring about passengers with a U.S. tie, either due to travel on a U.S. airline or U.S. citizenship or permanent residency, as compared to family members whose loved ones have no such tie.

Second, such a distinction contradicts the equality-of-treatment policy that the Department has expressed in *Agreements Relating to Liability Limitations of the Warsaw Convention Show-Cause Order* (Order 96–10–7 (Oct. 7, 1996)). Third, the proposed rule's U.S. and foreign carrier provisions are not "comparable," the standard found in the underlying statutory language. Fourth, uniformity will result in properly assigning information collection responsibilities for code-share flights that foreign-flag carriers operate to and from the U.S. On these points, American Airlines said that: whereas the proposed rule omits coverage of some foreign passengers on the basis of privacy considerations, there is no citizenry to whom privacy is more sacred than U.S. citizens; the Department is legally able under the International Security and Development Cooperation Act of 1985 (Pub. L. 99–83) to impose a passenger manifest information requirement covering all carriers and all passengers; and while the nationality of passengers is not always clear due to dual citizenship and mixed-nationality families, in the event of an aviation disaster the Department of State would want to know about all U.S. citizens aboard the flight, including those with multiple passports and nationalities.

ATA further stated that disparate U.S. Government information requirements impose unnecessary compliance costs on air carriers (and thereby passengers), and there is thus a need for U.S. Government agencies to coordinate current and contemplated information requirements with customer convenience and carrier operational practices. ATA stated that first and last name should be acceptable in any passenger manifest information requirement, as they are in the U.S. Customs Service's Advance Passenger Information System (APIS). ATA noted that international travelers, in particular, could have long last names or multiple middle names. Northwest noted that the advantages of collecting only first and last names would be reduced collection times and minimized demands on computer data fields. ATA said that date of birth should be able to be used as a substitute for passport number. Northwest said that date-of-birth digits are easier to comprehend and are fewer in number than passport number digits and recording them would therefore be less tedious, time-consuming and prone to error; that collecting date of birth when booking a seat would be easier than collecting passport number because passengers

know their dates of birth, whereas most do not know their passport numbers and rarely have their passports with them when they book a flight; and that unless date of birth is sufficient compliance, passengers and carriers will be greatly inconvenienced by the need to have a second conversation, whether over the telephone or at the airport, to provide passport information. United said that the use of date-of-birth information, rather than passport number information, would avoid the problem of collecting identification data from passengers on international flights to points where passports were not required; would facilitate the identification of passengers on such flights; and would simplify the development of programs and personnel training for collection of data by assuring that all international flights are subject to the same passenger manifest information requirement.

ATA stated that the treatment of two related areas of passenger response to requests for information should be reworked. First, ATA was very concerned that the proposed rule would deny boarding to passengers who do not provide name and passport number. ATA said that the proposed rule did not justify such an action, and the underlying statute did not mandate it. ATA alternatively suggested that the passenger should be allowed to decide whether or not to provide this information. That is, passengers would be given the option of providing all categories of passenger manifest information. No passenger manifest information would be mandated, although air carriers would be obligated to solicit all categories of passenger manifest information. On this point, United stated that if the purpose of collecting passenger manifest information was to enhance notification, then the passenger should be allowed to opt out. United posed a situation where an air carrier was collecting passenger manifest information by having passengers fill out boarding pass stubs, which the airline would then collect at the gate, and asked if a flight should have to be delayed for a passenger that refused to submit some of the required information or to give up his place on the flight. United pointed to the privacy rights of the passenger refusing to provide some of the passenger manifest information, and to the fact that many tickets would be non-refundable at that point, a fact potentially contributing to a disruption in the boarding process. Second, ATA thought that air carriers should not be required to record those passengers who did not provide contact information. United said that the carrier's responsibility should be met by offering the passenger the opportunity to participate, and that the absence of contact information would be sufficient evidence that the passenger has declined to provide it.

ATA then stated that the information requirements in the proposed rule raised two other significant issues that were unrelated to the content of the categories of data to be collected. First, ATA said that there is a clear difference between collecting information from passengers and verifying the information that passengers provided; that verification would be intrusive and time-consuming; and that carriers should not have to "police" the collection of information from passengers. Second, ATA said that the fact that the proposed rule would have passenger manifest information go to State and DOT raised important questions about the roles of government entities and the appropriate use of such information. On the latter point, ATA said that ASIA 90 is structured such that section 203 passenger manifest information requirements (49 U.S.C. 44909) support Department of State family-assistance responsibilities elsewhere in Title II (22 U.S.C. 5503–04). ATA said that there is no provision in the law for DOT to get manifest information and DOT has no manifest-handling functions under the law. ATA added that there now exists a series of Memoranda of Understanding between the National Transportation Safety Board (NTSB) and seven Executive Branch agencies regarding post-aviation disaster procedures and that, moreover, under the Aviation Disaster Family Assistance Act of 1996, air carriers must submit to NTSB and DOT aviation disaster plans to address the needs of families of passengers involved in aviation disasters. ATA said that what is needed in the aftermath of an aviation accident are clear, predictable lines of authority. ATA said that a clearer definition is needed of the Government's role in notification and the purpose for which DOT would use passenger manifest information. ATA stated that a related concern is the need to safeguard passenger manifest information, and that multiple recipients of this information created the very real possibility of its unauthorized or uncoordinated release, which could create confusion and be especially harmful to family members. American stated that it strongly believes that the information should only be provided to State, and that it was deeply concerned that broadly disseminating (to State, to DOT, and, per recent legislative and regulatory decisions, perhaps to the NTSB) passenger manifest data that is sensitive, and may change repeatedly as information is updated from the site of an incident, could only consume valuable time and might well lead to inconsistent and confusing communications to the next of kin and the public. ATA said that another issue requiring attention is that of how an air carrier is to respond to demands for passenger manifest information from other Federal Government agencies or other levels of government. ATA said that a final rule should provide thoughtful and clear guidance regarding such requests.

ATA said that the triggering event for transmission of a passenger manifest needed to be clarified. ATA noted that section 44909 was traceable to recommendations related to acts of terrorism and not to isolated on-board accidents, and suggested redefining "aviation disaster" as: "loss of life due to crash, fire, collision, or sabotage/missing aircraft/air piracy." TWA said that the proposed rule covers incidents in which there appears to be no need to contact the U.S. Government, and suggested that the definition of an aviation disaster be changed to cover only those instances where the death or serious injury of a passenger occurs. TWA said that the proposed rule triggers the passenger manifest production process too early. TWA said that DOT must realize that the manifest is created as passengers turn in their boarding passes and their baggage is confirmed for boarding on the aircraft. TWA said that the airline cannot thus have a complete manifest in the instance of "an emergency in which all passengers might not have boarded the aircraft" that is mentioned in the proposed rule since those passengers that have not yet boarded the aircraft will not be on the manifest. TWA suggested that DOT limit the definition of incident to one that occurs after the door is closed and the manifest created.

ATA said that additional counter space at foreign airports would be the biggest implementation problem. ATA said that while the Preliminary Regulatory Evaluation gave an indication of the cost implications of the proposed rule, the costs there were understated because the estimate for the time needed at check-in (40 seconds) was very optimistic and the estimate of the time needed at reservation (40 seconds) was too low because passengers would pause to find their passports or would have to call back with passport numbers. ATA said that passengers would be further delayed by

passenger manifest information processing problems at airports, especially overseas, where no additional counter space was available.

ATA said that the detailed enforcement and penalty provisions in the proposed rule were extraordinary for a rulemaking under DOT's economic regulations, especially since the aviation industry had been developing an MOU with State in this area. ATA asked DOT to take into account the fact that carriers would, in many cases, be relying on third parties to collect manifest information, and said it believed that any passenger manifest final rule should be implemented cooperatively. ATA said that, alternatively, if the detailed enforcement and penalty provisions were kept in a final rule, then DOT needed to make clear that it would apply a "reasonable person" standard in enforcing the rule. TWA objected to specific references in the proposed rule to civil and criminal penalties. TWA noted the ambitious notification periods in the underlying statute, advocated industry and government cooperation in developing procedures that will result in expedited notification of the relatives of crash victims, said that the last thing the airline needs is for DOT to bring an enforcement proceeding in the aftermath of an aviation accident when the carrier may already be receiving adverse publicity that threatens its existence, and also said that there would be no deterrent effect from an after-the-fact enforcement proceeding because airline crashes occur so rarely. United also mentioned the detailed enforcement and penalty provisions in the proposed rule as a specific, particular concern and urged the Department to emphasize cooperation between air carriers and the U.S. Government in fulfilling the requirements of the underlying legislation.

ATA urged that any final rule be implemented in 180 days (rather than the 90 days in the proposed rule) primarily because third parties would be involved and depended upon to handle booking and airport processing duties that encompass passenger manifest information collection. ATA noted that airlines would have to work with the travel agent community to develop procedures, create interline procedures to handle passengers connecting from other carriers (which could be especially demanding on commuter air carriers), and develop new procedures for air carrier CRSs. United noted that while a passenger manifest requirement had been under consideration for some time, each air carrier would need to develop its own compliance program. United said that this work could not begin until a final rule was issued, and that it could not be fully accomplished (including training passenger service personnel) in 90 days.

Northwest said that military air charters should be specifically excluded from any passenger manifest requirements in a final rule because in these so-called "MAC charters," which involve essentially a wetlease of aircraft and crew to the U.S. Government, the U.S. Government alone handles passengers and is solely in possession and control of all passenger and manifest information. Northwest stated that one interpretation of the phrase in the proposed rule, "information on individual passenger shall be collected before each passenger boards the aircraft on a covered flight segment" was that the proposed rule would require collection of manifest information separately for each covered flight segment, and asked for clarification in the final rule that passengers may provide manifest information at the time of booking for their entire one-way or round-trip itinerary, with updates made when checking in at the airport.

In response to a DOT request for comment regarding the collection of citizenship data for passengers aboard U.S. air carriers traveling to destinations that did not require a passport, TWA said that the collection of citizenship information on such flights would seem to be of marginal utility in the notification process, and that DOT has neither explained what benefit the citizenship information would provide when the airline does not have the full name and passport number of the passenger, nor why it proposed to impose this obligation only on U.S. airlines. TWA noted that if DOT decided to require citizenship information, it should be collected by both U.S. and foreign carriers.

Finally, American stated that since the traveling public is sensitive to any changes that affect air travel, public awareness of any new passenger manifest procedures adopted as part of a final rule would be critical to their successful implementation. American said it believes that DOT, together with the airline industry, would need to undertake a wide-ranging education campaign on a final passenger manifest rule.

American said that there are two levels of notification: (1) Notification as to whether a passenger was on board a flight involved in an incident, and (2) notification as to whether a passenger is alive, injured, deceased or unaccounted for. American contended that the second level is particularly subject to change as updated information is received from the site of the incident. While American listed reasons why it thought that the air carrier was in the best position to perform both levels of notification, it said that, at the same time, it understood why some feel that the carrier is an inappropriate party to have contact with families, given its involvement in the incident, and that American would not, therefore, fight for a role in the notification process if its presence is not welcome. In that case, however, American said that DOT must clarify whether it wants the carriers to cede the notification duty to a third party, and, if so, identify that third party. American said that it is imperative that there be no confusion as to where the notification duty lies; that otherwise the task of notification—difficult under the best of circumstances—will be confused and mishandled; that the confusion will only inflict more pain on loved ones; and that without a clearly delineated duty, the notification process will not be accomplished with the compassion that it deserves.

TWA said charters and code-share flights both present complex problems regarding passenger manifest information. TWA said that while in the proposed rule DOT would make all direct and indirect air carriers involved in either such arrangement responsible for providing the manifest, and threatened that the carriers will have to be vigilant because they would be jointly and individually responsible for compliance, DOT cannot wash its hands of the matter in this way.

Regarding charters, TWA said that the charter operator may provide the carrier with a manifest, but the airline has no way of checking its accuracy; that for many charter flights, airlines allow open seating for anyone who has documentation from the charterer; and that the airline does not have the names of the charter passengers in its computers, and would be most unlikely to meet the 1-hour deadline for providing the list to the government. TWA said there would be special problems with military charters, where the military undoubtedly want to control the notification process.

TWA said that code-share flights present more pervasive problems. TWA said that while DOT seems to believe that both code-share carriers would be responsible for the flight, the language of the proposed rule applies only to "covered flights operated by air carriers and foreign air carriers."

TWA identified two types of code-shares. The first is a marketing code-share agreement, under which a U.S.

carrier code is placed on a foreign flag flight, only the foreign air carrier is the operator. The U.S. carrier has sold seats as agent (and receives a commission for doing so) for the other airline, and, with respect to those sales, it is neither the direct air carrier, nor an indirect air carrier. (Example provided: Lufthansa flight from New York to Frankfurt, United is acting as agent for Lufthansa, receiving a commission on every UA-code ticket it sells. Lufthansa, as operator, has the passenger name records (PNRs) for all passengers, including those traveling on United's code. Both carriers cannot be responsible. United would have no records of passenger booked through Lufthansa and cannot be responsible for those it [United] booked either, since it may not know if they showed up and boarded the Lufthansa flight.) TWA concludes from this that Lufthansa alone, as operator of the flight, should be responsible for the manifest.

The second type of code-share is a blocked-space flight, such as operated by Delta and Swissair. In that case, Delta may have blocked 100 seats on a Swissair flight, and may be an indirect air carrier with regard to those seats. Delta would have PNRs for passengers it places in those seats, but it may not have operational control of the check-in process, and, just like United, may not know if its passengers actually traveled. Under these circumstances, it would be unfair to impose the passenger manifest obligations on the code-share carrier that is not operating the aircraft.

Two smaller air carriers that fly large jets, North American Airlines (North American) and Carnival Air Lines, filed comments. North American, a charter airline with 3 large aircraft and about 150 employees, said that charter carriers will be hardest hit by the proposed rule because a greater proportion of their flights are to international destinations. Carnival said that carriers that operate in limited international service, such as itself, would be disproportionately affected by a passenger manifest information requirement because it would require more extensive information and changes in procedures to accommodate only a small number of international passengers.

North American said that full name, phone number (including area code), and home city is all the data needed for notification, and that air carriers should not be forced to collect more information, such as APIS data. North American said that the proposed collection of passport numbers is a waste of time since a passport is valid for ten years and the information on the passport application often quickly becomes out of date. North American saw no need for collecting date of birth information. The carrier was skeptical that people would provide date-of-birth information, and believed that many people would view a request for it as an invasion of privacy, that asking for it would invite lawsuits based on age discrimination (e.g., in the case of people bumped from flights), and that collecting it would unduly slow down the airline ticketing and information gathering processes.

Carnival said that many passengers do not have passports available when booking a trip or may not have yet obtained a passport. Carnival estimated that collecting the information in the proposed rule at time of check-in would increase its current check-in time of 4 minutes per passenger by 25 percent, or 60 seconds, to 5 minutes. Carnival said that its associated check-in personnel costs would increase by a like percentage and that Carnival could not sustain such an increase in its low-fare international operations.

North American said that charter airlines doing business with tour operators are aware that a travel agent selling a ticket for a tour operator will likely refuse to reveal information about the passenger for fear that the tour operator will try to sell direct to the passenger in the future. North American said that the result of this dynamic, in the case of a disaster, is that notification can take longer, because the travel agency that has the passenger information may be closed for the evening or weekend.

North American said that the best way across all types of air carriers to collect information would be along the lines of the Pan Am 103 family suggestion (i.e., perforated stub on the boarding card that could be torn off upon boarding the flight and kept by the airline). However, North American noted that this process would be cumbersome and require more time than the 40 seconds per passenger at check-in found in the NPRM. (North American estimated at least a minute in check-in processing, in addition to any time earlier that passengers needed to check in.)

North American said that all the extra boarding time needed to implement a passenger manifest information requirement would eat into aircraft utilization, and noted that while DOT had in the NPRM calculated the costs, in terms of manpower, for a passenger manifest system, the greatest cost, that of tying up an expensive asset like a $60 million Boeing 757 jet due to the extra time involved to collect passenger manifest information, had been ignored.

North American said that charter air carriers were very concerned about a possible perception by passengers that manual collection of passenger manifest information (that is, non-CRS collection of this information) by a carrier could somehow indicate that such a carrier was unsafe. To allay such unfounded fears on the part of the public, North American said that only bare bones absolute minimum essential information should be gathered and that passenger manifest information requirements should be widely publicized so that it would not appear that one class of air carrier was being singled out over any other.

Both North American and Carnival suggested that implementation of a passenger manifest information requirement should be delayed or precluded based on the fact that they are not large air carriers. North American suggested delaying implementation of a passenger manifest information requirement for an airline flying 10 or fewer large aircraft, regardless of the airline's revenues. Carnival said that DOT should consider entirely exempting smaller carriers, which it defined as those transporting less than 250,000 international passengers annually, from the proposed requirements. Carnival said that, at the very least, such smaller carriers should be given an implementation date of not less than one year later than the effective date of any final rule.

North American also said that the phrase "best efforts" should be defined in advance of a final rule because of the enforcement penalties contemplated in the NPRM (i.e., airlines must exercise best efforts to get emergency contact information); that it makes sense to keep passenger manifest information for 24 hours after a covered flight, but not if the flight was canceled or if boarded passengers are deplaned without incident; that providing data within one hour to the Department of State is simply not practical in the event of an aviation disaster aboard a small carrier, particularly if the disaster happened during a holiday or off hours; that small carriers should not be required to provide a 24-hour phone number to the DOT, only a phone number that is operative when the carrier has aircraft airborne; that DOT should provide a list of the foreign countries exempted under any passenger manifest information requirement; and that the final rule should be drafted to state clearly that none of the passenger manifest information collected by airlines should be provided to any government agency except in the case of a disaster.

Finally, North American said that it would be wise for telephone companies to have a standby 800 number assigned to each airline that could be activated instantly in the case of an air disaster. North American also said that changes to the law were needed to require telephone companies to waive the privacy of unlisted phone numbers in the case of an airline or government agency trying to locate next-of-kin in the aftermath of an aviation disaster.

Gran-Aire, an individual air carrier, and the National Air Transportation Association (NATA), a trade association, filed comments regarding the proposed rule and Part 135 on-demand air charter operators (Part 135 operators). Both said that the proposed rule should not apply to Part 135 operators.

NATA maintained that there was no justification in the NPRM for including Part 135 operators, that the Preliminary Regulatory Evaluation that accompanied the NPRM had not included the costs of Part 135 operators, and that such operators had been excluded from DOT's ANPRM. NATA urged DOT to reconsider the negative effects of including nearly 3,000 Part 135 operators, who typically carry less than 9 passengers per flight and use turbine-powered aircraft that are less likely to be involved in fatal accidents. NATA said that Part 135 operators know their passengers, who must arrange travel privately (Part 135 operators do not publish schedules). NATA said that Part 135 operators already have notification and reporting mechanisms in place in the unlikely event of an accident or incident with the aircraft or passengers, and that compliance with the proposed rule would do nothing to enhance these mechanisms. NATA stated that Part 135 operators currently are exempt from the need to have DOT economic authority and asserted that imposing passenger manifest requirements on them would fly in the face of sound rulemaking.

Regarding the specifics of the proposed rule, NATA said that forcing a Part 135 operator to ask a business traveler to give the name of an emergency contact at the beginning of a Part 135 flight (perhaps to the person who would eventually pilot the flight) would create an extremely uncomfortable situation; requiring air carriers to make and keep records of those passengers unwilling to list an emergency contact was unnecessary, especially because Part 135 operators know their customers; soliciting date of birth would be just another reporting burden and invasion of privacy that would serve no purpose in aiding notifying families of passengers in the event of a disaster on a Part 135 flight; and requiring Part 135 operators to provide the U.S. State Department with a list of passengers within one hour of an aviation disaster would be impractical and unattainable since when an accident occurs on a Part 135 on-demand air charter flight, all carrier resources are usually needed for urgent lifesaving measures.

Finally, NATA said that none of the four ways to ameliorate the costs and potential burdens of the proposed rule on small air carriers that are listed in the NPRM apply to small, Part 135 operators; that filing a MOU with the Department of State amounted to asking carriers to comply with the requirements of the proposed rule, but through a different U.S. Government agency; and that extending the effective date for compliance of Part 135 operators with a final rule was the only means by which DOT suggested addressing the huge costs on small operators.

The Air Line Pilots Association (ALPA), representing 44,000 pilots who fly for 37 U.S. airlines, said that it had reviewed the NPRM and concurred with it as written.

The American Society of Travel Agents (ASTA), representing about 16,000 U.S. agency locations and members in about 168 foreign countries, and American Express Travel Related Services Company (American Express), one of the largest U.S. travel agencies also with hundreds of travel locations outside the United States, favored DOT imposing a single system for collecting passenger manifest information that would rely on a form for such information being made available at the gate areas of airports. A passenger would fill out a form as he or she waited for a flight, airlines would collect the forms, and gate attendants (who, according to ASTA, are typically engaged, anyway, in compiling ticket coupons and boarding passes) would put them into an envelope labeled with the flight number and turn the envelope into a central airport depository. ASTA said that in the event of a disaster, the envelope for the flight could be quickly retrieved and the needed information copied and supplied to the U.S. Government. Passages, a travel agency based in Los Angeles, said that given the rarity of air crashes it appeared to be a waste of time and computer space to collect the additional passenger manifest information for every flight.

ASTA and American Express said that employing a single system: was the only way to assure that the passenger manifest information collected would be complete and would match the actual persons on a flight (American Express noted that a travel agent has no way of knowing if a passenger that it books actually boards a flight since passengers routinely change travel plans at the last minute directly with the carrier); would avoid the need to reprogram computers or establish hundreds of varying and confusing procedures to collect, centralize and reproduce the few pieces of passenger manifest information; would avoid the alternative of dozens of different airline systems, many of them requiring some degree of involvement from travel agencies, and resultant chaos; would result in one, simple rule that the public could easily understand; and would make enforcement easier. ASTA said that if, alternatively, there was an attempt to gather the information using airline CRSs, some passengers could not provide it because they would not have their passports with them, or would not yet have obtained passports. ASTA said it believed that if passengers had to be asked to provide passenger manifest information at airport check-in, some would object on privacy grounds and that conflict, confusion and delay at the gate area would result.

Passages said that the assumption of 45 to 60 seconds to collect the additional passenger information in DOT's NPRM was in error. Passages said about 70 percent of its reservations were made by secretaries of businessmen who call back several times because they lack complete information and their bosses are "on the fly" and unavailable, and said these secretaries would have no idea of the particulars requested in the proposed rule. Passages anticipated also that requests for the additional passenger manifest information in the NPRM would be met with the response, "none of your business." ASTA said that 40 seconds was a gross underestimate of the average time that would be required to solicit, explain, answer questions about, and collect the additional passenger manifest information in the NPRM. American Express gave a figure of $1 million annually as the cost of the proposed rule for its U.S. locations alone, and said that this was an unacceptably large amount given the erosion in travel agent margins that have occurred since imposition of airlines commission cap in 1995. American Express said that it was safe to assume that if airlines were allowed to shift the burden of collecting the mandated passenger manifest information to travel agents, they would not offer to cover the additional travel agent costs. Regarding travel agent wages, Passages said its principals earn $28,000 per year and ASTA mentioned, as a source for such data, the results of

a survey of travel agency compensation that appears annually in *Travel Counselor* magazine, a publication of the Institute of Certified Travel Agents.

The American Association of Families of KAL 007 Victims supported the proposed rule with two further explanations. First, it said that in the face of world wide deregulation and privatization of the air carrier industry, uniform standards on information gathering should be developed either by DOT or by the air carrier associations. Second, it said that information gathering enforcement provisions that would apply to air carriers that did not adhere to the standards, rules and regulations of the national or international air carrier trade associations should be included in a final rule.

Richard P. Kessler, whose wife, Kathleen, died on ValuJet Flight 592 on May 11, 1996, supported the proposed rule and said that it should be implemented for the good of the flying public and their families. He said that his understandings were that passenger manifest information was needed by the Department of State since it was to become the official point of contact for families in the aftermath of an aviation disaster that occurred outside the United States, and for aviation security, national security, and border control purposes. He noted that while section 204 of P.L. 101–604 required the Department of State to "directly and promptly notify families of victims of aviation disasters * * * including timely written notice" and tasked the Secretary of State with this responsibility, families of victims of the December 1995 American Airlines' crash outside of Cali, Colombia, were forced to make first contact with the Department of State. Mr. Kessler said he found economic arguments in opposition to the proposed rule to be incredible and asked how one could place a dollar figure on the proposed rule.

Ms. Brenda Sheer stated that in light of the experience following past aviation disasters, it was of the utmost importance that airlines collect basic information on all passengers. She proposed that airlines distribute information cards to all passengers at the time of check-in (parents and guardians would be responsible for filling out cards for children under 13 years of age) that would request full name; passport number and issuing country code, if a passport is required for travel; either drivers license number or social security number; and emergency contact number of a person or entity. She said that the cards would be collected by airlines at the time of boarding and the agent collecting them would be responsible for verifying the name on the card using a passenger's picture identification. She noted that this verification procedure would prevent any passengers attempting to fly under transferred tickets or false names from boarding the flight. She said the cards would be put into a box and kept confidential for 24 hours unless an aviation disaster occurred. Ms. Sheer said the benefit of such a plan for passengers was that they could feel secure that their families and loved ones would not have to experience additional suffering in the event of a disaster; the benefits of such a plan for airlines were that additional staff would not be needed and additional training would not be required to implement it. Ms. Sheer said that passengers would need to have their information cards filled out and identification ready at the time of boarding, and that passenger and airline efforts would have to be coordinated, in order for the plan to succeed.

Ms. Liana Ycikson supported collecting passenger manifest information consisting of full name, date of birth, address, and emergency contact telephone number. She said there needed to be an efficient way to contact family members of the victims of an aviation disaster before their names were announced by the media. She suggested not affiliating the collection of passenger manifest information with the U.S. Customs Service because some people are uncomfortable dealing with the U.S. Customs Service. She suggested that passenger manifest information be kept as part of frequent flyer information and a passenger's frequent flyer number be printed on boarding passes (the pulled boarding passes from a flight could then serve as a record of who boarded the flight). Alternatively, she suggested that an automated flight activation system—a system for flights designed to work in a fashion similar to automated credit card activation systems—could be set up to collect passenger manifest information. She envisioned that under such a system, each flight would have a unique number attached to it. A passenger would have to call a toll-free telephone number prior to the flight and, in response to electronic voice prompts, give passenger manifest information in order to "activate" himself for the flight. To safeguard the personal nature of the passenger manifest information, Ms. Ycikson said that only a check mark should show up on airlines' information screens to indicate those passengers that had provided the necessary information: that is, the information itself should not appear.

Caytano Alfonso, Norma Ramos, and Victoria Mendizabel filed comments as a group. They said that air carriers were in the best position to meet the goals and objectives of the NPRM and should be responsible for collecting passenger manifest information. Because of their concerns about the invasion of individual passenger privacy, however, they said that passenger manifest information should be used only in the event of an aviation disaster and that in no instance should it be kept for more than 24 hours or to create an ongoing data base. They said that the basis for their concerns about personal privacy was the fact that regulations for passenger manifest information fall under 49 CFR 449 (Security), and that elsewhere in 49 CFR 449 provision is made for the sharing of information among 10 separate intelligence units of the U.S. Government, DOT, and the FAA. They believed that U.S. air carriers as well as foreign air carriers should be equally burdened and be responsible for collecting passenger manifest information from all passengers. Finally, they said that DOB should not be substituted for passport number and should not be required as an additional data element because DOB can be obtained from the Department of State through passport-number-accessed records, and air carriers should not be further burdened by having to collect both types of information.

Four students from Florida International University (My Trinh, Chau Trinh, Walter Hernandez, and Joanne Flores), who are frequent air travelers, said that they submitted comments because of their concerns that the proposed rule would potentially raise airline ticket prices substantially and cause passenger delays. They said that passengers should not have to be at the airport hours before they depart to stand in lines to provide passenger manifest information and thus delay vacations and business trips, and that the costs of the proposed rule outweighed its benefits. They said that airlines should be required to collect only passenger name and passport number, and should be held responsible for quickly compiling a list of passengers in the aftermath of aviation disaster so that they could respond to families that "called-in" to the airline. They stated that they did not believe that airlines should be held responsible for "calling-out" to a person listed on an emergency contact form. They believed that if the proposed rule were

implemented, the U.S. Federal Aviation Administration would need to assist airports through increased expenditures from the Airport Improvement Program (AIP) to accommodate the increased passenger congestion at airports that would result. They pointed out that the additional time of 40 seconds per passenger at check-in that is postulated in the proposed rule to provide passenger manifest information does not take into account delays for passengers that need extra assistance, such as disabled passengers, small children flying alone, passengers who need language translation services, and pets traveling unaccompanied by a passenger.

The U.S. Department of Justice, Immigration and Naturalization Service (INS), pointed out that DOT's proposed rule imposed one passenger data collection standard on U.S. carriers (collection/solicitation of information from all passengers), and another passenger data collection standard on foreign carriers (collection/solicitation of information from U.S. citizens). INS noted that nonimmigrant aliens were excluded completely from information collection under this approach. INS proposed, instead, that a single standard, based on the Advance Passenger Information System (APIS), be established for satisfying Pub. L. 101–604 passenger manifest requirements. INS noted that were this to be done, the U.S. Department of State could access within seconds passenger manifest information for passengers on a flight to or from the United States that ended in disaster.

As part of this approach, INS proposed that both U.S. and foreign air carriers be required to collect basic information for all passengers consisting of: (1) full name, (2) passport number and issuing country code (if a passport is required for travel), (3) date of birth, and (4) gender. INS noted that the additional required data elements would further enable the law enforcement and intelligence communities to perform database checks in support of any investigation in the event of an aviation disaster. Regarding optional emergency contact information, INS proposed that the optional emergency contact information be limited to a U.S.-located emergency contact in order to conform with the preexisting INS requirement to collect the U.S. destination address for nonimmigrant aliens at entry.

INS noted that: the APIS system provides enforcement, facilitation, and automation benefits to the Federal Government, the air carriers and traveling public; the Federal Inspection System (FIS) had since 1990 been actively utilizing APIS, a subsystem of the mainframe-based Interagency Border Inspection System (IBIS); APIS had been designed to support the overlapping information requirements of over twenty government agencies; and stand-alone, PC-based software [PCAPIS] was available so that less-automated air carriers could participate in APIS. INS said, furthermore, it foresaw that future developments in automating arrival and departure data collection at U.S. ports-of-entry would involve electronic transmittal of manifest information processed through APIS. INS pointed out that the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) tasked INS with undertaking a study and developing a plan for further automating arrival and departure data collection at U.S. ports-of-entry and with developing an automated entry-exit control system.

Associations of foreign air carriers, individual foreign air carriers, and foreign countries filed comments in which they objected to the United States imposing a passenger manifest requirement on foreign air carriers. Commenters included the International Air Transport Association (IATA); the Arab Air Carriers Organization (AACO); the Orient Airlines Association (OAA); Air Canada; Aerolineas Argentinas; Qantas Airways; Scandinavian Airlines System; All Nippon Airways; Air New Zealand; Varig; Lauda Air; British Airways; Turkish Airlines; Swiss Air; Lufthansa; Japan Airlines; Cathay Pacific Airways; Laker Airways; Air Pacific; the Embassy of Belgium; a combined comment from the Embassies of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom and the European Commission; and the Embassy of the United Kingdom (Britannic Majesty's). In general, these commenters shared similar views and, therefore, to prevent duplication, we have summarized the foreign comments as a whole.

The foreign commenters said that foreign airlines have demonstrated historically their concern regarding notification by constantly updating and strengthening their own internal emergency response guidelines, that the proposed rule was not achievable, and that it would disrupt and delay airport operations worldwide. They said that passenger manifest requirements of any sort must be negotiated directly with foreign governments bilaterally or through ICAO and noted that section 201 of the Aviation Security Improvement Act of 1990 directed the Secretary of State to make improved availability of passenger manifest information a principal objective of bilateral and multilateral negotiations with foreign governments and ICAO.

They said, in particular, that the proposed rule raised major issues with respect to inappropriate unilateral regulatory action on the part of the United States because it: (1) Mandated a legally enforceable obligation, collection of manifest data, be imposed on airlines at points outside the United States; (2) mandated that carriers (of any flag) refuse boarding to passengers of certain nationalities who refuse to provide certain information at points outside the United States; (3) obligated carriers (of any flag) to transmit and disclose to U.S. authorities data held outside the United States; (4) mandated that carriers (of any flag) be able to produce a passenger manifest on demand by U.S. authorities at points outside the United States; (5) would impose civil and criminal penalties on carriers of any flag, whose conduct at points outside the United States failed to comply with U.S. law; and (6) would prohibit carriers from providing data collected under the U.S. mandate to anyone other than U.S. authorities, including the government of the country where a flight originates, without consent by DOT.

They said that the prohibition on supplying collected passenger manifest information to anyone other than the U.S. Government in the aftermath of an aviation disaster is contrary to certain provisions of ICAO Annex 17—Aviation Security (RP 9.14 and the introductory paragraph of Standard 9.1), which call on States to cooperate with local authorities. They also said that the European Union Common Data Privacy Directive of 24 October 1995, which is to be adopted and implemented in EU Member States' national legislation by October 1998, provides:

> The Member States shall provide that the transfer to a 3rd country of personal data which is undergoing processing or are intended for processing after transfer may take place only if, without prejudice or compliance with the national provision adopted pursuant to the other provisions of this Directive, the 3rd country in question ensures an adequate level of protection. [Article 25]

They said that the United States is likely to be included on the EU's list of countries without adequate levels of protection, and, therefore, transfer of data to the U.S. would violate the EU's Common Privacy Directive. In addition, they said that the proposed rule was inconsistent with the U.S.-Austria Air

Services Agreement, Article 5, which provides that the law of each country shall be applied to aircraft of either country when in that country's territory; contrary to the U.S.-Turkey bilateral agreement; potentially conflicted with the German Data Protection Act (Bundesdatenschutzgesetz—BDSG); would conflict with the laws of Denmark, Norway, and Sweden, which would prohibit furnishing collected information to the U.S. Government; conflicted with U.K. law, which prohibits the different treatment of U.S. citizens from other nationalities; conflicts with the Constitution of Japan, which guarantees the right of privacy and protects from mandatory disclosure exactly the type of personal information that would be collected under the proposed rule; conflicts with Article 21 of the Swiss Criminal Code, which would prohibit any carrier (Swiss or other) from complying with any manifest rules that might be adopted with respect to flights whose last point of departure to the United States is Switzerland; and ignores the fact that foreign laws apply to foreign carriers in the event of an aviation catastrophe (i.e., foreign laws may not authorize a foreign carrier to release any information on its passengers until it has coordinated with the regulatory bodies of its own country or of those in whose territory the event has occurred). They said that if victims' families are unable to get accurate and prompt information because of the vagaries of the proposed rule's application, families will be disappointed, and carriers and the U.S. authorities will be subject to renewed criticism.

The commenters said that compliance with a passenger manifest information requirement would have the following negative impacts: measurable delays for the traveling public; a loss of confidence in the safety of international civil aviation precipitated by collecting next of kin information from passengers as they boarded their flight; slower passenger processing times at reservation and check-in; higher levels of congestion at already overtaxed airport terminals (where additional check-in desks are needed and space is available, they will be created, but where space is not available, airport operators will be forced to seek ways to expand terminal capacity to deal with the increased congestion); and diversion of check-in agents' attention away from security concerns due to additional demands to collect passenger manifest information. They said, in particular, that the proposed rule was incompatible with through check-in procedures worldwide (e.g., because the present system at many of the locations where the passenger will initially board an aircraft do not have the data fields necessary for emergency contact parties and telephone numbers).

The foreign commenters said that they objected to any effort to expand the proposed rule beyond DOT and the Department of State to suit the purposes of other, non-associated programs such as the Advance Passenger Information System (APIS) of the U.S. Customs Service.

They also said that the proposed rule contravenes several Standards contained within Annex 9—Facilitation of the Chicago Convention: (1) Standard 2.1—Governmental regulations and procedures applicable to the clearance of aircraft shall be no less favorable than those applied to other forms of transportation; (2) Standard 2.6—Contracting States shall not normally require the presentation of a Passenger Manifest, but when this type of information is required it may also be provided in an alternative and acceptable manner (IATA said that if the type of information referred to in 2.6 is required, it should be limited to the items shown in the format of a Passenger Manifest set forth in Appendix 2, which limits Passenger Manifests to specific flight information: Operator, Marks of Nationality, Flight Number, Date of Flight, Point of Embarkation and Disembarkation, and to the Surname and Initials of individual passengers); and (3) Standard 3.1—Regulations and procedures applied to persons traveling by air shall be no less favorable than those applied to persons traveling by other means of transport. IATA said that it has no records that the United States has filed differences to Standards 2.1, 2.6, and 3.1.

The foreign commenters said they anticipated that legal actions (individual or group) would be brought against carriers by passengers who had been denied boarding for refusing to allow mandated information to be collected and that defending against such suits would be time consuming and unnecessarily burdensome on the aviation industry. They said that DOT should indemnify airlines that are found liable for damages to a passenger that has been queried and/or denied boarding in accordance with any Passenger Manifest Information final rule.

They offered several points as just-cause to delete the requirement in the proposed rule that airlines deny boarding to a passenger who refuses to provide full name and passport number and country of issue: (1) The Data Protection laws of many States, while not expressly prohibiting collection or transmission of personal data, offer the individual the right to control how the data can or will be used; (2) airline tickets represent a contract between the traveler and the transportation provider that guarantees carriage, provided the traveler complies with the rules and regulations of the carrier as filed in its tariff documents and, thus, denial of boarding due to the passenger's refusal to comply with a law not recognized in the country of boarding cannot be justified, and would likely result in breach of contract lawsuits; (3) many airlines believe that a traveler's decision to allow personal data and emergency data to be collected and forwarded to any government agency is a personal choice made after a careful consideration of the potential impact on self and family and thus, instead of coercing compliance through threats of denial of boarding, the proposed rule should, instead, focus on methods to encourage systems by which passengers can voluntarily submit data prior to boarding any international flight, regardless of origin or destination; and (4) the rule, if implemented as currently drafted, would have significant operational impact on both airline and the traveling public, due to other related requirements imposed under ICAO Annex 17—Security (any individuals denied boarding would require that any baggage checked by that individual be removed from the aircraft as well, and doing so would involve significant flight delays since most baggage on international flights is placed in containers and loaded well before the passenger boarding process commences).

The commenters were critical of the fact that a description of the Memorandum of Understanding (MOU) that was mentioned in the NPRM was not included as part of the NPRM, and said also that non-U.S. air carriers did not participate in the Working Group that developed the MOU. They said that specific MOU language was needed so that it could be evaluated.

They said that it was in recognition of the difficulties of implementing a passenger manifest requirement that Congress decided in section 704 of the Aviation Disaster Family Assistance Act of 1996 to create a task force to examine such issues, and DOT should await the work of the task force before adopting any rules in this area.

One small foreign air carrier said that the administrative burden of a passenger manifest requirement would be too great and, therefore, small air carriers should

be exempted from any final rule. It suggested doing so by exempting air carriers that meet the definition of "small business" in 13 CFR 121.201.

Air Canada recommended that U.S.-Canada flights be exempt from any passenger manifest information requirement. Air Canada said that the U.S.-Canada aviation market was more like the intra-U.S. aviation market than other U.S.-foreign country aviation markets: the U.S.-Canada market is characterized by many transborder short-haul flights (often employing commuter aircraft) whereas other U.S.-foreign country markets are characterized by long-haul flights. It said that imposing a passenger manifest information requirement on shuttle-type U.S.-Canada transborder operations would be overly burdensome because compliance could mean that pre-flight check-in times would be extended to the point that they would be longer than the duration of the flight itself. Air Canada also pointed out that 96 percent of its U.S.-Canada passenger traffic was subject to INS and Customs preclearance, whereby passengers submit Customs and INS documents to the U.S. Federal Inspection Services prior to a flight's departure for the United States. Air Canada said that while this process requires it to ensure the collection of information similar to the information in the proposed rule, it does not require Air Canada to collect and maintain the information internally, as the proposed rule would. Air Canada said that it would be costly to develop and maintain such a system for collection and storage of passenger manifest information, and that doing so would be superfluous to the extent that similar passenger information is already supplied as part of the pre-clearance program.

On the details of the proposed rule, the foreign commenters said that the reporting obligation should apply only in instances that occur as part of the airlines' flight operation phase, which commences when the aircraft door closes upon completion of the boarding process and ends when the aircraft is fully stopped at the flight segment's destination, and the cabin door opened prior to passenger disembarkation. Loosening the definition to when "any" passengers have been boarded or who still remain on the aircraft would potentially lead to reporting requirements for incidents that occur on the ground in airport terminal environments. Such incidents should remain under the control of airport operators and local authorities.

In terms of recordkeeping, the foreign comments stated that carriers who opt to store in CRS/automated formats should not be required to maintain the information beyond the normal purging cycle. In addition, these commenters stated that requiring carriers who might be collecting manually to hold beyond completion of flight would be impractical.

The International Civil Aviation Organization (ICAO) provided information on the applicability of articles of the Convention on International Aviation (Chicago Convention) to the proposed rule. ICAO said that Article 29 of the Chicago Convention required every aircraft engaged in international navigation to carry certain documents, including, for passengers, "a list of their names and places of embarkation and destination," and that Annex 9 to the Convention stipulated, in Standard 2.6, that presentation of the passenger manifest document shall not normally be required, and if passenger manifest information is required, it should be limited to the data elements included in the format prescribed in Appendix 2 of Annex 9, i.e., names, places of embarkation and destination, and flight details. ICAO said that implied in Article 29 and Standard 2.6 are both the requirement to collect passenger manifest information prior to the flight and a limitation on the amount of information collected. ICAO noted that the adoption of Standard 2.6 contemplated a paper document that would have to be delivered by hand. ICAO stated that the concept of a limitation on the amount of information to that which is essential to meet the basic objectives of safety, efficiency, and regularity in international civil aviation is also applicable to electronic data interchange systems such as Advance Passenger Manifest Information (API), in which additional (but not unlimited) data may be transmitted to the authorities in exchange for a more efficient inbound clearance operation. ICAO stated that it is widely recognized that in any system involving the exchange of information (automated or not), it is the collection of data that is the major expense, and that additional data collection requirements should, therefore, result in benefits that exceed costs. ICAO stated that a "benefits exceeds costs" principle was inherent in the adoption, by the Eleventh Session of the Facilitation Division of ICAO, of API systems as a Recommended Practice. ICAO noted that the information collected from inbound flights under the API system consists of (and is limited to) the data in machine readable lines of the passport plus flight information, and that carriers that transmit this information to U.S. Customs in advance of the flight have enjoyed large reductions in inspection delays at major ports of entry.

ICAO noted furthermore that under Article 22 of the Chicago Convention, contracting States are obligated to adopt all measures to facilitate international air navigation and prevent unnecessary delays, and that Article 13 requires compliance with a State's laws and regulations" * * * related to entry, clearance, immigration, passports, customs, and quarantine * * * upon entrance into or departure from, or while within the territory of that State." ICAO said that in operational terms, a new procedure connected with arrival or departure of a flight can be justified if it serves to improve productivity of operations and if it improves compliance with the above-mentioned laws and/or enhances aviation security.

ICAO noted that the new collection requirements in the proposed rule—collecting the name and telephone number of an emergency contact for each passenger, and API and emergency data for outbound flights—are not designed to meet any of the objectives of the Chicago Convention. Rather, ICAO noted that the stated purpose of the proposed rule is to enable the U.S. Government to notify families or foreign governments more quickly in the event of an aviation disaster. ICAO noted also that the United States has not filed a difference to Standard 2.6 for the additional passenger information in the proposed rule.

ICAO also stated that Article 37 of the Chicago Convention recognizes that standardization of regulations and procedures is vital to international civil aviation and obligates contracting States to comply to the extent possible with ICAO standards and recommended practices. Specifically, ICAO stated that facilitation standards have been developed because standardized aircraft departure and arrival routines are considered essential to the efficiency of aviation operations worldwide. ICAO said that implementation of the passenger manifest requirement as described in the proposed rule would represent a radical departure from internationally accepted procedures for departing flights and would set a precedent that could inspire similar variances in many other States, to the detriment of the international aviation system.

The European Civil Aviation Conference (ECAC) submitted the text of a message from the President of ECAC that had been adopted by the ninety-eighth meeting of the Directors General

of Civil Aviation of the European Civil Aviation Conference. In the message, ECAC formally requested that the proposed rule be withdrawn for legal reasons (the proposed rule represents an extraterritorial application of U.S. law; breaks the Chicago Convention, in particular Articles 22 and 23, and Annex 9—Chapters 2 and 3; and is not compatible with legislation of Member States in the field of data protection) and practical reasons (the proposed rule is contrary to ECAC goals of facilitating and expediting the passenger flow at airports; creates a discrimination between air carriers since some might be exempted based on national laws prohibiting them from collecting the required data; will not produce reliably accurate data; and will result in time-consuming and inconvenient procedures causing extended check-in times and a need for additional check-in counters and staff).

British Airports Authority (BAA), the owner and operator of seven airports in the United Kingdom (Heathrow, Gatwick, Stansted, Glasgow, Edinburgh, Aberdeen, and Southampton) said that it had strong reservations about the practicality of the proposed rule and opposed it in its current form. BAA said that it was wholly impractical to require carriers either to obtain or verify passenger manifest information at airport check-in areas. BAA said that the average check-in time at present for passengers on U.S. services at its airports was 2.5 to 3.3 minutes, depending on the air carrier concerned. BAA said that it could not provide the additional check-in capacity that would be required by the increased check-in times needed under the proposed rule (40 seconds or more) even if airlines were prepared to pay for the extra costs of additional check-in capacity. BAA said that another means for collecting passenger manifest data needed to be found, perhaps one that would involve collecting the information at the point of sale and then verifying it at the departure gate immediately before passengers board the aircraft.

The Final Rule

In response to the comments, this final rule adopts the proposal with a number of significant changes. In addition, we have made a number of clarifications and minor changes throughout the rule. In almost all cases, the changes reduce the regulatory burden. The most important changes are the exemption of most small U.S. and foreign air carriers from the coverage of the rule, the simplification and equalization of what information must be collected or solicited, and the elimination of a MOU with the State Department as an alternative means of compliance. For clarity, we will discuss the rule section-by-section and then address issues that do not fit into this framework.

List of Subjects

Because of the concerns of some commenters, we have eliminated the reference to security. This rule is a part of the aviation economic regulations and is not a Federal Aviation Administration operational regulation. The rule has no direct bearing on security.

Authority

We have added two statutes (Title VII of Pub. L. 104–264 and Pub. L. 105–148) to the authority section to reflect recent Congressional enactments in this area. The primary authority for this rule, however, remains Pub. L. 101–604, which was codified as 49 U.S.C. 44909. During the 1993 recodification of the Transportation laws, there was some reorganization and rewording of the requirements. As noted by the introductory material in the recodification, the rewording was not intended to make any substantive change. To avoid confusion and most closely represent the drafters' intent, we have chosen to use the Public Law version in our analysis and cite both the Public Law and codified version in our authority citation.

Purpose

In response to the comments, this section has been streamlined and the references to DOT, DOS and the statutory authority have been removed. The change acknowledges that federal agencies have a responsibility to communicate among themselves, and to try to reduce the burden on the air carrier, at an exceptionally stressful time, of communicating simultaneously with multiple federal agencies. While there are ancillary benefits, the purpose of the rule is to provide DOS with information which will enable them to notify the families of the U.S. citizens killed overseas. The section now provides, "[T]he purpose of this part is to ensure that the U.S. government receives prompt and adequate information in case of an aviation disaster on specified international flight segments." The rule does not prohibit airlines from providing initial notification to family members following an aviation disaster. The rule itself is silent on the subject. The Department of State and Transportation have advocated in various fora that airlines should provide the initial notification to the families of the victims of aviation disasters. Similarly, the Task Force found that the airlines are in the best position to notify families in the immediate aftermath of an aviation disaster. The purpose of the rule is to allow the Department of State to carry forward its legal obligation of notifying, in a timely fashion, families of U.S. citizens who die outside the United States. The Department of State is required to do this regardless of any previous notification received by a family.

Definitions

In the definition of "air piracy," we made a minor grammatical correction for clarification. The term is now defined as, "any seizure of or exercise of control over an aircraft, by force or violence or threat of force or violence, or by any other form of intimidation, and with wrongful intent."

Several commenters asked us to modify the definition of "aviation disaster." Several airlines commented that the rule should be triggered only after the plane's doors have closed. Although this makes sense from an operational point of view, we are concerned about the possibility of some terrorist act, that by design or mistake, takes place during boarding or disembarkation. If an aviation disaster occurs during boarding, the airline would only be responsible for a manifest listing the passengers that have boarded, which would presumably be created from the boarding passes or tickets lifted at the gateway. We do not agree with IATA's comments that the airport operator is responsible in such a case. An airport operator would have no way of knowing the names of passengers who had boarded.

ATA objected to the inclusion of on-board accidents and TWA objected to situations only involving substantial damage to the aircraft. We have changed the rule accordingly. The definition of "aviation disaster," is now, " (1) An occurrence associated with the operation of an aircraft that takes place between the time any passengers have boarded the aircraft with the intention of flight and the time all such persons have disembarked or have been removed from the aircraft, and in which any person suffers death or serious injury, and in which the death or injury was caused by a crash, fire, collision, sabotage or accident; (2) A missing aircraft; or (3) An act of air piracy.

A new definition, "covered airline," was added in the final rule in order to simplify references in the rule. A "covered airline" is defined as, "(a) certificated air carriers, and (b) foreign

air carriers, except those that hold Department of Transportation authority to conduct operations in foreign air transportation using only small aircraft (i.e., aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds)." This new definition exempts the smallest airlines that operate aircraft with 60 or fewer seats or have a maximum payload capacity of 18,000 pounds or less from the rule. If an airline operates both large and small aircraft—that is, aircraft more than 60 seats and aircraft with 60 or fewer seats—all covered flight segments of the airline are covered regardless of the size of the aircraft used on a particular flight segment.

By definition, a certificated air carrier does not include air taxi operators or commuter air carriers operating under 14 CFR Part 298. Some air taxis and commuters have voluntarily chosen to become certificated for a variety of reasons. In some cases, the certification was at the urging of larger, code-sharing airline partners. In others, certification confers some operational, legal or public relations advantage. If an air taxi operator or commuter air carrier is certificated, it is covered by the rule.

Our definition of foreign air carriers that are covered by the rule mirrors the U.S. definition as closely as possible considering the different legal authority applicable to foreign operators. The rule exempts the smallest foreign air carriers who are operating *only* small aircraft. These airlines are primarily trans-border air taxis operating between the U.S. and Canada, and to a lesser extent between the U.S. and Mexico and the U.S. and the Caribbean. If an airline, such as Air Canada, operates both large and small planes, the flights on the small planes would still be covered because the airline holds authority to fly large airplanes.

There have been a number of clarifications in the definition of "covered flight" in the final rule. The definition now reads: "[c]overed flight segment means a passenger-carrying flight segment operating to or from the United States (i.e., the flight segment where the last point of departure or the first point of arrival is in the United States). A covered flight segment does not include a flight segment in which both the point of departure and point of arrival are in the United States." We have added the term "segment" because some flight numbers cover multiple flight segments. The rule only applies to the segment to or from the U.S. We have also added the qualifier "passenger-carrying" to make clear that the rule does not apply to cargo or ferry flights.

The rule does not apply to flight segments between two foreign points. As a practical matter, carriers may voluntarily collect or maintain the information collected from covered flights for these foreign-to-foreign segments, consistent with local law, in order to have the same rule apply to all their operations.

We have changed the term "emergency contact" to "contact" at the request of a number of commenters. Some airlines believe that passengers will be anxious if they are asked for an emergency contact, and that the airline will need to engage in a dialogue regarding whether there is a problem involving the flight and the nature of the emergency. Comments and discussion of the Task Force indicate that use of the term "contact name and phone number" (as opposed to "emergency contact name and phone number") could make the collection of the information less burdensome but still provide the Department of State with information that will allow it to carry out its responsibilities. The air carrier must, however, make clear that the contact should be someone not traveling with the passenger who can be reached in the event of an emergency. If an airline prefers to use the term "emergency contact" it is free to do so.

In addition, we have added a statement clarifying that the contact should be a person not on the covered flight. The definition of "contact" now reads, "a person not on the covered flight or an entity that should be contacted in case of an aviation disaster. The contact need not have any particular relationship to a passenger." If an airline chooses to meet the requirements of this part by referencing on-going databases, such as frequent flyer accounts or an in-house frequent traveler computer profile, the airline needs to confirm that the listed contact is not a current traveling companion.

In response to the many comments on requirements connected to collecting the full name of the passenger, we have made an important modification to the definition of "full name." The term is now defined as, "the given name, middle initial or middle name, if any, and family name or surname *as provided by the passenger.*" (emphasis added) This change lessens the burden on the airlines by making it clear that the airline need not verify that the name provided by the passenger is the legal name of the passenger. For the purposes of the regulatory evaluation, we assumed that most airlines will choose to record names consisting of first name, middle initial and last name.

In the past, many, if not most, airline manifests included only the passenger's first-name initial and last name. In addition, there was often not much emphasis placed on accurately spelling the passenger's name. There have been many operational changes in airline systems over the last decade that all contribute to the collection of a full, and accurate, name of the passenger. Between new federal security requirements and voluntary airline security procedures, most airlines require a passenger to show photo identification while checking in. On many international flights, this is accomplished by requiring a passenger to show a valid passport before he or she is allowed to board. For travel to countries not requiring a passport, many passengers show a driver's license or other government identification. Similarly, in an effort to stem unauthorized transfer of airline tickets, airlines have become much more careful about listing the full name of a passenger, including an appellation such as Mr. or Ms. Because of notification problems experienced by various airlines in the aftermath of aviation disasters, most airlines have paid much more attention to gathering the full name of the passenger. Finally, many airlines are now using electronic ticketing on some or all of their flights and, as a result, are paying close attention to collecting the correctly-spelled, full name of the passenger.

We are aware that a dogmatic insistence that an airline collect the full legal name of a passenger, and to deny boarding to the passenger if the airline is unable to obtain it, would lead to unnecessary mischief and operational confusion. As noted by some commenters, some passengers have multi-part names, such as Mary Jo Smith-Jones. Others might have a legal name, but are known by a different name such as a nickname or a combination of initial of the first name and full middle name. The possibilities seem as endless as the number of passengers. The purpose of this definition is to obtain as full a name as the passenger will voluntarily provide. We have, therefore, added the qualifier to the definition, "as provided by the passenger." Based on the absence of comments, we believe that all, or virtually all, airlines currently collect first and last name. As a practical matter, the rule merely requires airlines to collect, if provided, a middle initial or middle name. In addition, the airline must provide the full name collected to the Department of State.

We made only minor editorial changes to the definition of "passenger." The primary change is to revise "person not occupying a seat" to "person occupying a jumpseat." The definition now reads, "every person aboard a covered flight segment regardless of whether he or she paid for the transportation, had a reservation, or occupied a seat, except the crew. For the purposes of this part, passenger includes, but is not limited to, a revenue and non-revenue passenger, a person holding a confirmed reservation, a standby or walkup, a person rerouted from another flight or airline, an infant held upon a person's lap and a person occupying a jump seat. Airline personnel who are on board but not working on that particular flight segment would be considered passengers for the purpose of this part."

We removed the definition of "passport issuing country code" because passport information is no longer required to be collected. We made no change to the definition of "United States."

In response to the comments and in consultation with the State Department, we changed the definition of "U.S. citizen" to eliminate application of the rule to lawful U.S. permanent residents. The rule envisions that it is up to passengers to identify whether they are U.S. citizens, either by presenting a U.S. passport when travel documents are required or used for travel, or in response to the solicitation for information. Airlines have no duty to inquire beyond this self-identification.

Applicability

This section was streamlined to incorporate the new definitions. It provides, "[t]his part applies to covered flight segments operated by covered airlines. (See § 243.3 of this part)." The Aviation Disaster Family Assistance Act of 1996 exempted air taxis from having to file family assistance plans. We follow that Congressional lead in this rule. Small airlines that code-share with large airlines, in general, have voluntarily obtained DOT certification and, thus, will be covered by the rule. Air taxi operators that operate independently usually operate very locally and often only on demand. In case of an aviation disaster, they carry few passengers and would find it less of a burden to identify who is on board and notify the families than a carrier operating a large jet. Because of this and because applying the rule to these very small carriers would result in relatively significant cost and operational burdens with fewer benefits, we are not covering either U.S. or foreign air carriers operating only small aircraft.

Information Collection Requirements

We have substantially reduced the information collection requirements and equalized the treatment of U.S. and foreign air carriers in the final rule. In the NPRM, U.S. air carriers would have been required to collect the full name, passport number and issuing country code for each passenger. Foreign air carriers, on the other hand, would have been required to collect only the full name and passport number for U.S. citizens and lawful permanent residents of the United States. In the final rule, both U.S. and foreign airlines are only required to collect the full name (no passport number or issuing country code) for U.S. citizens. We eliminated the proposed coverage of other passengers because the purpose of the rule is to provide the Department of State with information to notify the families of U.S. citizens that die outside the United States.

If the passenger provides a contact name and phone number, the passport number is not needed because the passport number was only being used to get a contact name and phone number. In addition, obtaining the passport number is unlikely to be effective in obtaining contact information. Most passports are good for ten years, so that any information that is voluntarily provided on the application may not be current. The passport contact may also be a traveling companion of the passenger. The elimination of this data element will save time and money. With our more liberal definition of full name, as a matter of practice all carriers should already be in compliance, or close to compliance, with this requirement.

The final rule provides that if a covered airline does not obtain the full name of the passenger, the passenger should not be boarded. Some commenters were very concerned about this provision in the NPRM, particularly when it applied to the additional data elements. The airlines were concerned about angry passengers and unseemly and unnecessary delays at the boarding gate by requiring passport number as a prerequisite for boarding. Our changes have addressed these concerns.

Commenters stated that there will be no public tolerance for a post-aviation-disaster scenario in which there is more information available for the families of U.S. citizen victims. The purpose of this rule is to provide the Department of State with information which enables it to meet its statutory responsibility of notifying the families of U.S. citizens who die outside the United States. The U.S. government is not responsible for notifying the families of the citizens of foreign countries upon the death of a foreign citizen. (In practice, the airline involved in the aviation disaster notifies the families of all passengers.) Accordingly, the rule does not require either U.S. or foreign air carriers to provide information on non-U.S. citizens to the U.S. government for purposes of notifying the families of those foreign nationals of the death of a loved one.

If a U.S. or foreign air carrier believes that the public will not tolerate faster notification by the air carrier about U.S. citizen passengers than non-U.S. citizen passengers, the air carrier may extend the practice required by this rule to all of their passengers. Likewise, if a foreign government wants to require air carriers flying to or from their country to collect such information for its citizens, the Department would fully support such a requirement.

The rule also requires covered airlines to solicit a contact name and telephone number. It is up to the passenger whether or not to provide it. Airlines should not pressure the passenger; the government requirement is only to ask for the information. Airlines should not state or imply that it is a government requirement. Similarly, an airline cannot deny boarding under the authority of this rule if a passenger chooses not to provide a contact. As noted in the definition section, a contact can be whoever or whatever the passenger wants it to be. There is no requirement that it be a family member, next-of-kin, a friend or a business or social group.

The requirement to solicit prior to boarding does not necessarily mean that the airline needs to solicit before every covered flight segment. For example, the airline could solicit prior to the first covered flight segment, or through its frequent flyer program. For multiple segments, if each passenger is given the opportunity to provide contact information prior to the first flight segment, and it is clear to the passenger that the contact should not be traveling with the passenger on any flight segment, then the burden is upon the passenger to provide a contact not traveling with the passenger for any of those flight segments. The air carrier is then not responsible for soliciting this information prior to each flight segment.

The rule requires covered airlines to maintain a record of the information collected pursuant to this section. We have deleted the specific requirement that an airline maintain a record of those who decline to provide contact information. A covered airline is still

required to provide the Department with evidence, upon request, that all passengers were solicited for contact information and that the airline collects and maintains the information provided by its passengers.

The most dramatic change in this section is the addition of a new paragraph dealing with code-share operations. The provision provides, "[t]he covered airline operating the flight segment shall be responsible for ensuring compliance with paragraph (a) of this section." We have placed the responsibility on the operating air carrier because the ticketing air carrier would not know if a passenger actually boarded the plane. We leave it up to the code-share partners, however, to work out a system that is most convenient and operationally effective for them in the markets served. If the flight segment is not operated by a covered airline, even though the ticketing carrier is a covered airline, there is no duty to collect the information or meet the other requirements of the new Part 243.

Procedures for Collecting and Maintaining the Information

Consistent with the proposal, the final rule continues to permit covered airlines to use any method or procedure to collect, store and transmit the required information, subject to several listed conditions. We anticipate that most scheduled airlines will use their computer reservation systems. Others may use a "shoebox" approach in which passengers fill out a simple form that is handed in at check-in or before boarding. As the rule is implemented, we expect other, creative solutions to be developed, including reference to an external database such as expanded frequent flyer records. Thus, we disagree with the comments from ASTA and American Express Travel Related Services Company that the rule should require a single system for collecting passenger manifest information. We are trying to use as light a hand as possible by setting a performance standard rather than mandating how very different types of airlines conducting very different types of operations must comply.

As in the NPRM, the final rule provides that the information on individual passengers must be collected before each passenger boards the aircraft on a covered flight segment. We anticipate that the information will be collected by whoever sells the ticket. In response to the comments, we have eliminated the requirement that the information be kept for at least 24 hours after the completion or cancellation of the covered flight segment. Instead, the information need only be kept until all passengers have disembarked from the plane. Airlines are, however, free to keep the information longer. At least one airline asked whether it might retain the information for the return flight on a round-trip ticket. The answer is "yes," given that the passenger understands at the time of the solicitation that the request covers the return portion of the trip.

The final rule also clarifies who may receive the contact information under the rule. The final rule provides, "the contact information collected pursuant to section 243.7(a)(2) of this part shall be kept confidential and released only to the U.S. Department of State, the National Transportation Safety Board (upon NTSB's request), and the U.S. Department of Transportation pursuant to oversight of this part. This paragraph does not preempt other government or governmental agencies that have an independent, legal right to obtain this information." The purpose of this rewording is to clarify the roles of the various federal agencies under this part. Under the ADFAA, NTSB will only request the information when the aviation disaster occurs within the United States. In addition, we want to make it explicit that this rule does not prevent other governments, whether foreign, state or local, or governmental agencies, such as law enforcement, from obtaining this information under their own independent legal authority.

After further consideration, we decided to add an additional, explicit provision banning covered airlines from using the contact information for any commercial or marketing purpose. Contact information is personal and is provided by passengers with the expectation that it will not be used for other purposes The new paragraph provides, "[t]he contact information collected pursuant to section 243.7(a)(2) of this part shall only be used by covered airlines for notification of family members or listed contacts following an aviation disaster. The information shall not be used for commercial or marketing purposes."

Transmission of Information After an Aviation Disaster

In response to the comments, the rule now provides that air carriers must provide passenger manifest only to the State Department and, upon request, to the NTSB. For airline convenience, we have provided the full title of the State Department contact (the Managing Director of Overseas Citizen Services, Bureau of Consular Affairs) as well as a telephone number that is staffed 24 hours a day at which he or she can be reached. We have eliminated the proposed requirement for routine transmission of the information to DOT. DOT's role is now limited to enforcement oversight of the rule. To ensure that airlines are in compliance with the rule, DOT may request a manifest for a given flight, or check to see if the contact information is being solicited.

Because of the statutory responsibilities of the NTSB for aviation disasters occurring in the United States, the section provides that the Director of Family Support Services at NTSB must be given a copy of the manifest upon request. If the aviation disaster is clearly one in which the State Department will not have the lead responsibility (such as KAL Flight 801), the State Department may inform the airline to provide ongoing updates to NTSB rather than to the State Department. In rare circumstances, there may be duplicate transmission responsibilities, at least for a period of time. The purpose of this section is to provide, to the maximum extent possible, a single Federal Government contact point.

Finally, the rule simplifies the NPRM requirement concerning the speed with which the information has to be transmitted. The statutory language provides that, "[i]f it is not technologically feasible or reasonable to fulfill the [1-hour requirement,] then [the information shall be transmitted] as expeditiously as possible, but not later than 3 hours after [the airline learns of the disaster]." The final rule requires transmission of the information, "as quickly as possible, but not later than 3 hours after the carrier learns of an aviation disaster involving a covered flight segment operated by that carrier." This has the same effect as the Congressional standard: to get the information out as quickly as possible. When the Family Assistance Task Force considered this issue, it concluded that transmission of a complete manifest within three hours would provide for as prompt notification of families as would transmission within 1-hour. In addition, we have made a number of editorial clarifications throughout the section.

Filing Requirements

This section requires a covered airline to file with DOT a brief statement summarizing how it will collect the passenger manifest information required by this part and transmit the information to the Department of State following an aviation disaster. The description must include a contact at the covered airline, available at any time the covered airline is operating a covered flight segment, who can be

consulted concerning information gathered pursuant to this part. Each covered airline must file any contact change as well as a description of any significant change in its means of collecting or transmitting manifest information on or before the date the change is made. This brief statement and the requirement to notify DOT of significant changes is designed to assist DOT oversight of this part, as well as allow DOS to anticipate how the information will be collected and how it will be transmitted.

We have made several substantive changes to the language in the NPRM. In response to comments, we eliminated the requirement for a 24-hour contact at the airline. Instead, the contact must be available at any time the covered airline is operating a flight. Many charter operators and airlines operating only a few airplanes do not have personnel on duty 24 hours a day. An aviation disaster can only happen during the operation of the flight. The modification meets the regulatory purpose while avoiding undue burdens on these carriers.

The filings must be submitted to OST Docket 98–3305 at the Department of Transportation. All of the information relating to this rule will be maintained in the docket and be available for public inspection. (The Department retains the right to redact non-procedural information such as phone numbers of carrier contacts.) The summary statement must be filed by July 1, 1998. We have chosen this date so that we can ensure airline compliance and work with those who need additional guidance well in advance of the effective date of the rule. New carriers must file this information before beginning operations. Finally, there were a number of editorial and conforming changes throughout this section.

Conflict With Foreign Laws

As is apparent by the number of comments on this issue, this topic generated intense controversy. We believe that we have addressed virtually all of these concerns with the changes in the regulatory requirements and the exemption provisions for instances in which our rule would conflict with foreign law. In terms of flexibility for foreign air carriers, we note that we have exempted carriers operating small aircraft and maintained the applicability only to flight segments to or from the United States. As noted previously, we believe most carriers are already collecting full names. The additional burden is simply soliciting (but not requiring) contact information, filing a brief statement with DOT summarizing the airline's program with a contact phone number at the airline, and transmitting the manifest information to the State Department following an aviation disaster on a covered flight.

Several foreign carriers alleged that the proposal was inconsistent with certain standards and recommended practices of Annex 9, the facilitation annex. Specifically, they alleged that the rules are inconsistent with Annex 9, Standards 2.1 (regulations applicable to clearance of aircraft shall be no less favorable than (applicable to other forms of transportation), 3.1 (regulations applied to persons traveling by air shall be no less favorable than applicable to other forms of transportation), and 2.6 (States should not normally require a passenger manifest, but may require such information in an alternative and acceptable manner).

We do not believe that these rules are inconsistent with the provisions of Annex 9. No specific documentation is required, absent an aviation disaster. In such a case, the required information is consistent with Article 26 of the Convention relating to aircraft accident investigation and notification of next of kin. The information required to be collected or solicited by the rule is not materially different from other requirements applicable to customs, immigration and health on entry into the United States. To the extent that the solicitation of information may differ from that applicable to other forms of transportation, e.g., international passenger ships, the requirements apply specifically to situations peculiar to international aviation, and are more favorable, rather than less favorable, at least in terms of notification of next of kin in the event of an aviation disaster.

The final rule provides a specific exemption process so that covered airlines will not be required to solicit, collect or transmit information under this part in countries where such solicitation, collection, or transmission would violate applicable foreign law. In order to meet our statutory responsibilities, the carrier must file a petition requesting a waiver on or before the effective date of this rule, or on or before beginning service between that country and the United States. These issues will be decided by the DOT decisionmaker (see 14 CFR 302.22a) and an order will be issued memorializing that decision, just like any other exemption application under 49 USC Subtitle VII. To expedite our review and to ensure that we have a complete understanding of the request, the rule requires that the airline's petition include copies of the pertinent foreign law (including a certified translation) and opinions of appropriate legal experts setting forth the basis for the conclusion that collection would violate such foreign law. (If several carriers are serving the same place, they are, of course, free to file a single, joint waiver application.) The Department will also accept statements from foreign governments on the application of their laws.

The final rule provides that DOT will notify the covered airline of the extent to which it has been satisfactorily established that compliance with all or part of the data collection requirements of this part would constitute a violation of foreign law. The Department will maintain an up-to-date listing in OST Docket 98–3305 of countries where adherence to all or a portion of this part is not required because of a conflict with applicable foreign law. Carriers need not apply for a waiver to serve a country on this list.

In response to the comments, DOT is exploring whether to take the issue of passenger manifests to ICAO to allow for international deliberation on this issue. That decision does not, however, effect the provisions of this rulemaking.

Enforcement

The final rule provides that DOT "may at any time require a covered airline to produce a passenger manifest including contacts and phone numbers for a specified covered flight segment to ascertain the effectiveness of the carrier's system. In addition, it may require from any covered airline further information about collection, storage and transmission procedures at any time. If the Department finds a covered airline's system to be deficient, it will require appropriate modifications, which must be implemented within the period specified by the Department. In addition, a covered airline not in compliance with this part may be subject to enforcement action by the Department." The changes in this section are merely editorial.

A number of carriers were offended by the section in the NPRM concerning civil and criminal penalties. The section merely restates potential statutory penalties for violation of any of the aviation economic regulations. It is completely within DOT's prosecutorial discretion whether to take enforcement action in a given case, and what type, and amount, of penalty to seek. Our objective is compliance, not enforcement. It is the Department's intention to help the industry to come into compliance with this part and to work with airlines that are trying to comply. Because restating the penalty

provision added no legal authority and caused confusion about our intention, we have eliminated it from the final rule. Our underlying statutory authority remains the same.

Waivers

The NPRM included a provision that if an airline entered into an acceptable Memorandum of Understanding with the Department of State concerning cooperation and mutual assistance following an aviation disaster, DOT would waive compliance with certain parts of this rule. At the time we issued the NPRM, the MOU working group was still negotiating the terms of the MOU and, therefore, we did not include the specific terms of the MOU. As noted earlier, fourteen airlines to date have entered into a MOU with State. Contrary to our hopes at the time of the NPRM, the MOU does not cover all the statutory requirements and is viewed by the State Department and DOT as a supplement to, rather than a replacement for, this rule. We have, therefore, dropped this section from the rule. We believe that the MOU process has been very helpful in focusing attention on many of these issues, facilitating communications between the different parties, and ensuring that a process is in place so that all sides can respond quickly and effectively after an aviation disaster.

Effective Date

The final rule provides two effective dates for different parts of the rule. As noted above, a covered airline must file a summary in the DOT docket by July 1, 1998, describing how it will collect and transmit the required information. We are providing a very long leadtime (October 1, 1998) before carriers are required to solicit and collect the information and meet the other requirements of the rule. Earlier compliance is, however, authorized. Although the final rule is not complex, it will require training of many airline industry personnel, changes to computer reservation systems, and/or printing and distribution of "shoebox" cards, depending on the method selected by each airline to comply with the rule. In addition, we want to provide adequate time for airlines to develop and implement innovative approaches to compliance. The airlines asked for 180 days to implement the rule. We are reluctant to have the rule go into effect in the summer, which is the busiest travel time. We have, therefore, decided to provide more time than the airlines requested, so that the rule can be implemented at a quieter travel time at the beginning of the month, rather than on a date calculated from publication in the **Federal Register**.

Advance Passenger Information System

When we issued the NPRM, we were exploring whether it would be appropriate to piggyback the passenger manifest requirements onto existing federal systems. It was our hope to avoid duplication of information and to contribute to the efficient movement of air passengers on flights to or from the United States. In particular, we were exploring whether the Advance Passenger Information System (APIS) of the U.S. Customs Service could be used in conjunction with, or in place of, the requirements of this rule. After exploring the issue thoroughly, we concluded that it could not for a number of reasons. APIS is used to expedite clearance of low risk passengers entering the United States and is, therefore, only directly applicable to inbound flights to the U.S. Participation is voluntary. APIS uses both full name and date of birth, which is more than our rule requires.

Economic Considerations

(**Note:** This section relies heavily upon the Final Regulatory Evaluation that accompanies this final rule; a copy of the Final Regulatory Evaluation is available in the Docket.)

In fashioning the final rule, the Department has adopted an approach that should result in the effective transmission, by U.S. and foreign carriers alike, of information after an aviation disaster in the least costly manner. This final rule is significant under the Department of Transportation's regulatory policies and procedures because of the public and Congressional interest associated with the rulemaking action. The final rule was submitted to the Office of Management and Budget for review under E.O. 12866.

The final rule takes the form of a performance specification, that is, it is structured to give those affected by it the flexibility to minimize any necessary costs of soliciting and collecting passenger manifest information. In the final rule, the Department has attempted to accommodate the major (sometimes conflicting) concerns voiced by air carriers, travel agents, and others in their comments to the ANPRM and NPRM regarding the ease and costs of implementing a passenger manifest information requirement. First, the final rule should eliminate barriers to soliciting and collecting passenger manifest information at the time of reservation, the method that has been recognized by most as being best because it lessens the possibility of congestion at the airport. Moreover, the final rule applies only to certificated U.S. air carriers and their foreign air carrier counterparts and these air carriers and their travel agents are most likely to employ sophisticated electronic systems for handling passenger information. The final rule eliminates passenger passport number as a required element of passenger manifest information and puts nothing in its place. Passport number was cited above all else by air carriers and travel agents alike as making collecting passenger manifest information at the time of reservation impossible to achieve in a cost-effective manner. Commenters said that individuals might not have their passport with them or might not yet have procured a passport when reserving. Commenters also said that the individual reserving might not be the passenger and thus would not know the passenger's passport number. Commenters said that all of these situations would lead to call-backs. The final rule also allows passenger manifest information to be solicited and collected once from a passenger and held for the passenger's entire round trip.

Second, as in the proposed rule, the final rule stipulates that passenger contact name and telephone number must be solicited, but not necessarily collected. While we would expect that most passengers would choose to provide passenger contact information because they would realize that, in the event of an aviation disaster, their family members might be spared some pain and suffering because they would be notified more quickly, passengers are not required to provide this information. It is ultimately left up to the passenger to decide whether to provide the contact information. Since the passenger manifest information requirement is structured in this fashion, so long as an air carrier can be assured that passenger contact information has been solicited at the time of reservation, we would not expect that air carriers would need to verify this information at the airport. Since the need to verify passenger manifest information at the airport is minimized, the likelihood that the final rule will contribute to increased airport congestion is greatly reduced.

Third, the final rule would accommodate a system whereby passengers that join international flights at an international gateway airport gate could be confronted with a sign or notice at the gate informing them that, if they are a U.S. citizen, they may wish to complete a form available at the desk that could be useful in case of an

emergency. The fact that transit and interline transfer passengers (or any other passengers, for that matter) were provided such a notice would constitute compliance with the final rule.

Fourth, the requirement that U.S. air carriers solicit or collect passenger manifest information from all passengers has been modified to a requirement that U.S. air carriers solicit or collect passenger manifest from only U.S. citizens. The effect of this modification is to substantially reduce the number of passengers from whom information is required to be collected by U.S. air carriers. Moreover, in the final rule, both U.S. and foreign air carriers must collect passenger manifest information from only U.S. citizens, and not (as in the proposed rule) from permanent legal residents of the United States, as well. The effect of this change is to spare U.S. and foreign air carriers alike the uncertainties and difficulties surrounding trying to identify U.S. legal permanent residents, who, as pointed out by many commenters, may not be traveling on U.S. passports.

Even with these cost saving features, we estimate (see below) that the annual recurring costs of implementing section 203 of Pub. Law 101–604 will be $22.1 million. In calculating the costs of the final rule, the Department has made a major methodological improvement to the simple economic model used in the NPRM and has made more realistic the parameters used in the model. The parameter changes often reflect comments received in response to the NPRM. As result of the methodological improvement, the model now represents more accurately the changing costs of air carriers and travel agents as assumptions are changed regarding whether passenger manifest information is collected once or twice per round trip journey. In the NPRM, air carrier and travel agent costs did not change as assumptions were changed regarding whether passenger manifest information was collected once or twice per round trip journey. The model used in the NPRM did, however, take into account changes in the value of time forgone by passengers depending on whether passenger manifest information was collected once or twice per round trip journey. Air carrier and travel agent costs were constrained in this fashion in the NPRM to accommodate the statement in British Airways' comments to the ANPRM that the costs found in its comments were the minimum needed to implement any passenger manifest information requirement. But constraining costs in this fashion is obviously unrealistic. If passenger manifest information is collected once on each leg of a round trip, it is obviously going to cost more than if passenger manifest information is collected only once per round trip journey. It is probably going to cost twice as much in the former, as compared to the latter, case.

The parameters used in the economic model are: passengers taking round trips on scheduled air service for whom passenger manifest information needs to only be collected one time per round trip (85 percent); the number of reservations made per passenger boarded (1.75:1); additional time to collect passenger contact name (20 seconds); additional time to collect passenger contact telephone number (20 seconds); additional time to collect passenger middle initial (2 seconds)—it is assumed that, by and large, air carriers are currently collecting passengers first and last names; additional time to collect passenger first name (9 seconds)—assumed to be collected only from those few passengers from whom first and last names are not currently collected. Following comments received to the NPRM and a presentation that took place last summer before the DOT/NTSB Task Force on Assistance to Families of Aviation Disasters, in the model all charter air service passengers provide passenger manifest information by filling out a form at the airport at each end of their round-trip journeys. It is estimated that it will take a charter passenger 30 seconds to fill out a form at the airport that would request the scaled-back information found in the final rule.

The model parameters described above have been chosen to depict as realistically as possible how passenger manifest information will likely be solicited and collected under the passenger manifest information requirement in the final rule. They have important implications for the estimated costs of the final rule as does the amount of additional information required in the final rule. The estimates of the costs of the final rule are based on an additional information requirement in the final rule consisting of: (1) Passenger middle initial for most passengers (passenger first name for some passengers), (2) contact name, and (3) contact telephone number. Estimates of the costs of the NPRM were based on an additional information requirement in the proposed rule of: (1) Passenger first name, (2) passenger passport number, (3) contact name, and (4) contact telephone number. The differences in the information requirements for cost estimate purposes derive from the facts that, subsequent to the NPRM, it was determined that air carriers and travel agents, by and large, today collect passengers first and last names and passenger passport number was dropped.

The amount of time that it is assumed to take to solicit and collect passenger manifest information (it is assumed that all passengers provide voluntary contact information in the Final Regulatory Evaluation) was discussed at length in the NPRM. The Department used a total of 40 seconds in the NPRM as an estimate of the amount of time it would take to solicit and collect all four elements of passenger manifest information or, roughly, about 10 seconds per element. A sensitivity analysis of the time to collect passenger manifest information was also performed that used a total of 60 seconds to collect all four elements of passenger manifest information, or roughly about 15 seconds per element.

In the Final Regulatory Evaluation, it is estimated to take a total of 40 seconds to solicit and collect the two voluntary elements of passenger manifest information. Thus, the Department has, based on comments received to the NPRM and other information, increased its estimates (to 20 seconds each for these two elements) of the amount of time it would take to collect passenger manifest information. It is estimated to take two additional seconds to collect middle initials from most passengers who now give their first and last names when they reserve, and 9 additional seconds to collect first names from the small number of passengers who now give their last names and first initials when they reserve. The Department, moreover, believes that the time needed to solicit and collect the voluntary elements of passenger manifest information, passenger contact name and passenger contact telephone number, likely will decrease over time as passengers become accustomed to providing the information.

In developing the estimates for the amount of time it would take to solicit and collect the information in the final rule, the Department examined the results of a survey of seven air carriers that was included in the comments of the Air Transport Association of America to the Department's advance notice of proposed rulemaking (ANPRM) on Domestic Passenger Manifest Information. In the ANPRM, a domestic passenger manifest information requirement that paralleled the passenger manifest information requirement found in the NPRM that preceded this final rule was postulated. The Department found it necessary to modify the ATA survey results to adjust

them for, among other things, duplicate information collections, unjustifiably high-end results, passenger information that is already today collected, and the fact that passport number has been dropped from the final rule (the domestic counterpart to passport number was social security number/date of birth). As modified by the Department, the ATA survey results are not significantly different from the estimates outlined above for the time needed to solicit and collect the elements of passenger manifest information in the final rule.

The estimate used in the Final Regulatory Evaluation for the total hourly compensation (wage plus fringe) of air carrier reservation agents and travel agents is $15.07, which is taken from a Bureau of Labor Statistics proxy occupational category for these workers. It is an update to 1996 of the $14.66 figure used in the NPRM. The estimate used for the value of an hour of time forgone by passengers while they are being solicited for and providing passenger manifest information is $26.70. This figure is taken from recent Departmental guidance on the valuation of travel time in economic analysis. It supplants a much-higher $48.00 per hour figure for the valuation of passenger time that was used in the NPRM.

The Department estimates that the annual recurring costs of the final rule, which would be borne by covered air carriers, travel agents, and U.S.-citizen passengers (who forego time while being asked for and providing the information) would be about $22.1 million per year. These costs would break out as follows: air carriers $1.9 million (U.S. air carriers $1.1 million and foreign air carriers $0.8 million); travel agents $5.8 million; and U.S. citizen passengers on covered air carriers ($14.3 million). The one-time cost of the rule (primarily computer reservations systems modification costs that would be borne by air carriers and also training costs) is estimated to be about $15.0 million. The present value of the total costs of the final rule over ten years is estimated to be about $175.4 million.

There is one direct notification benefit of the final rule: more prompt and accurate initial notification to the families of U.S.-citizen victims of an aviation disaster that occurs on a covered flight to or from the United States (on a U.S. or foreign air carrier) and outside the United States. This benefit is available to the families of those passengers that chose to provide passenger manifest information. Based on the recent fatal accident history on the types of air carriers that would be covered by the final rule (and assuming that all passengers provide passenger manifest information) the Department estimates that, were the final rule in effect over a recent ten-year period, a total of 239 families of U.S. citizens would have received such direct notification benefits. Compared to the present value of the total costs of the proposed rule over ten years, the cost of the more prompt and accurate initial notification to these direct beneficiaries, on a per victim basis, is $734,000.

No accounting is made in these calculations for more prompt and accurate initial notification of families of U.S.-citizen victims of aviation disasters that occur on covered flights to and from the United States, and for which the disaster occurs within the United States (e.g., TWA flight 800 or Korean Air flight 801). None was made because the Department of State has no responsibilities regarding the notification of families of U.S.-citizen victims of an aviation disaster that occurs within the United States, even if the flight involved is an international flight. The primary focus of the statute is to provide information to the Department of State. However, since under the final rule, passenger manifest information would have to be collected for all flights to and from the United States for transmission to the Department of State in the event of an aviation disaster that occurred outside of the United States, it is quite possible that having it on-hand would also lead to more prompt and accurate initial notification of the families of U.S.-citizen victims (assuming, again, that all passengers provide passenger manifest information) of an aviation disaster on such a flight that occurs within the territory of the United States. Such families are considered to receive indirect notification benefits from the rule. If these families of U.S. citizens are accounted for, in addition to the families of U.S. citizens counted above, then, were the rule in effect for a recent ten-year period, the Department estimates that more prompt and accurate notification of the families of a total of 443 U.S.-citizen victims of aviation disasters would have taken place. The cost of the more prompt and accurate initial notification to these direct and indirect beneficiaries, on a per victim basis, now is about $396,000.

A different perspective on the cost of the final rule can be gained from assuming that the recurring annual costs of the final rule to travel agents, air carriers, and U.S.-citizen passengers on covered trips are all paid by the U.S.-citizen passengers, and then asking what do they pay per trip. Employing this line of reasoning (this is an "as if" analysis since who will be able, or not be able, to pass along the costs of imposing a passenger manifest information requirement is not calculated in the Final Regulatory Evaluation) for the final rule requires us to also identify and subtract from total annual recurring costs of the final rule those additional time costs that the final rule imposes on passengers that make, and then cancel, reservations (the additional costs to travel agents and air carriers from these individuals stay in the calculation). Since the calculation is based on cost per trip, we must also identify the mix of passenger one-way and round trips. The result of this calculation is that for each of the 31.2 million passenger trips taken (where a passenger trip is either a round trip or a one-way trip), the U.S.-citizen passengers that travel pay about $0.50 extra per trip because of the passenger manifest information requirement in the final rule.

The direct and indirect benefits of the final rule regarding more prompt and accurate initial notification of the families of U.S.-citizen victims of an aviation disaster on a flight to and from the United States that occurs outside the United States (direct) and within the territory of the United States (indirect) were outlined above. An idea of the magnitude of the reduction in initial notification time of families of U.S.-citizen victims of aviation disasters that occur outside the United States that might occur under the rule may be gained from examining the notification experience in the Pan Am Flight 103 aviation disaster. There, according to the Report of the President's Commission on Aviation Security and Terrorism, some families of victims were notified by Pan American within about nine hours or less after the disaster occurred, and all families were notified by Pan American within about 43 hours or less after the disaster occurred. Compliance with the final rule in the case of Pan Am Flight 103 should have reduced notification times (to the extent that passengers chose to provide passenger contact information) by a maximum of about six hours for the first group of families of victims, and by a maximum of about 40 hours for the remainder of the families of victims.

A third direct benefit of the rule lies outside the realm of notification benefits and was not mentioned above. The third direct benefit of the rule is an expected general increase in the disaster response capability of the Department of State following an aviation disaster. According to the Report of the

President's Commission on Aviation Security and Terrorism:

> Failure to secure the [passenger] manifest quickly had a negative ripple effect on the State Department's image in subsequent activities.
>
> Thereafter, the Department appeared to lack control over who should notify next of kin, an accurate list of next of kin, and communications with the families. (p. 101)

The final rule should provide the Department of State with information on the families of victims of an aviation disaster soon after it occurs, so that the Department of State can establish an early link with the families.

Some idea of how much more quickly the Department of State might, under the rule, receive passenger manifest information following an aviation disaster may be gained from examining the Pan Am Flight 103 aviation disaster experience. There, the Department of State was given by Pan American an initial passenger manifest, consisting of surnames and first initials, about 7 hours after the disaster occurred. A passenger manifest containing more complete passenger information together with contact information was provided to the Department of State about 43 hours after the disaster occurred, and, at that time, Pan American also notified the Department of State that all families of victims had been notified. The results of compliance with the rule in the case of Pan Am Flight 103 should have resulted in the provision of a passenger manifest together with passenger contact information (to the extent that passengers chose to provide passenger contact information) to the Department of State three hours after the disaster occurred.

Finally, while the Department believes that the simple economic model and parameters used above resulted in reasonable estimates of the costs of the final rule, the Department has, as part of its examination of the cost of the final rule, relaxed several of the assumptions used in the model in order to obtain "outer bound" estimates of the costs of the final rule. These outer bound estimates are provided for information purposes only. For purposes of deriving the outer bound estimates: (1) The ratio of reservations made to passengers that actually board the aircraft is 2:1 (instead of 1.75:1 above), (2) passenger manifest information not kept as part of frequent traveler information by travel agents or frequent flyer information by air carriers (instead of passenger manifest information being kept for 25 percent of passengers above), (3) fixed costs are assumed to be $30 million (instead of $15 million above), (4) the value of the time that passengers forego while being solicited for and providing passenger manifest information is valued at $32.90 per hour (instead of $26.70 above), (5) the time to collect passenger contact information is 26 seconds each for contact name and contact telephone number (instead of 20 seconds each above) and other times to solicit and collect passenger manifest information (e.g., the time needed to solicit and collect contact passenger middle initial for most passengers and the time needed to solicit and collect passenger first name for some passengers) increase by a factor of 1.3, and (6) the time it takes charter passengers to provide passenger manifest information on a form at the airport is 39 seconds (instead of 30 seconds above)—this is also an increase by a factor of 1.3.

The effect of these new assumptions is to a little more than double the Department's estimates of the costs of the final rule. The annual recurring costs of the rule now become $45.4 million (instead of $22.1 million above) and break out as follows: air carriers ($3.5 million—instead of $1.9 million above)—split between U.S. air carriers ($2.0 million—instead of $1.1 million above) and foreign air carriers ($1.5 million—instead of $0.8 million above); travel agents ($10.5 million—instead of $5.8 million above); and passengers' time forgone ($31.3 million—instead of $14.3 million above). The present discounted value of the future cost stream for these outer bound estimates over ten-years is now $359.7 million (instead of $175.4 million above). The associated outer bound cost per enhanced notification of the direct notification benefits of the final rule now becomes, on a per victim basis, about $1.5 million (instead of $734,000 above) and the outer bound cost per enhanced notification of the final rule that takes into account both direct and indirect notification benefits is now, on a per victim basis, about $812,000 (instead of $396,000 above). The cost per passenger per trip now becomes about $0.94 (instead of $0.50 above).

Regulatory Flexibility Act

The Regulatory Flexibility Act was enacted by the United States Congress to ensure that small entities are not disproportionately burdened by rules and regulations promulgated by the Government. At the same time, P.L. 101–604 mandates that "the Secretary of Transportation shall require all United States air carriers to provide a passenger manifest for any flight to appropriate representatives of the United States Department of State." After notice and comment, and with the concurrence of the Small Business Administration (SBA), DOT's predecessor in the area of aviation economic regulation, the Civil Aeronautics Board, defined small entity for the purpose of the aviation economic regulations in 14 CFR § 399.73. The definition states, in part, "a direct air carrier * * * is a small business if it provides air transportation only with small aircraft * * * (up to 60 seats/18,000 pound payload capacity)." Under 14 CFR Part 298, air taxi operators and commuter air carriers are defined, among other things, as air carriers operating only small aircraft.

In its efforts both to comply with both Pub. L. 101–604 and not to disproportionately burden the smaller air carriers and travel agencies, the Department is: first, exempting non-certificated U.S. air carriers, which consist of 909 air taxi operators and 22 commuter carriers from the rule's requirements; second, it is allowing those carriers subject to the rule the flexibility to develop their own passenger manifest data collection systems. This will allow them to choose the most efficient process suitable to their operations.

Some air carriers that operate only aircraft with up to 60 seats/18,000 pound payload capacity have voluntarily chosen to obtain a DOT certificate; if an air carrier is certificated, it will need to comply with the rule. We estimate that 49 air taxis and commuter carriers have voluntarily obtained a certificate.

Since many commenters said that the optimal time to collect the passenger manifest information is at the time of reservation, and travel agents account for most reservations on flights to and from the United States, we expect that this rule will also indirectly affect travel agencies. In order to estimate this impact, the Department requested data on the number of small travel agencies from the U.S. Small Business Administration (SBA). SBA's Office of the Chief Counsel for Advocacy, with the assistance of the SBA economic research office, kindly provided us with estimates that showed that there were 22,672 travel agencies in 1994 and that, of this total, 21,873 were considered small agencies. For this analysis, the SBA used its own data and Census data to extrapolate the estimates with small travel agencies defined as those with annual revenues of $1 million or less and with fewer than 25 employees. Annual receipts for these small agencies were estimated at $4.3 billion (or 49 percent) out of a total of $8.7 billion for all travel agencies. Thus, even though the small agencies account for 96

percent of the total agencies on the basis of number of agencies, they account for a much smaller proportion of the receipts. Since receipts is a better measure of the market share of the smaller agencies, it is not unreasonable to assume that the small travel agencies will incur a proportion of the recurring annual cost of this passenger manifest requirement that is similar to their share of receipts.

In the regulatory evaluation, the Department has calculated the total annual recurring cost of the rule for the travel agency industry at $5.8 million. This estimate was based on several factors and assumptions. In 1996, there were approximately 54.6 million (one-way) trips by U.S. citizens on covered flight segments, with 52.5 million trips on scheduled flights and 2.1 million on charter flights. We estimate that about 85 percent of the passenger itineraries on scheduled flights are roundtrip and, therefore, involve only one interaction between a travel agent or an airline. We estimate that 25 percent of trips are by frequent flyers, and for these trips, we assume that the information is already stored and requires less time for collection since it needs only to be confirmed. Based on comments, various trade publications, and surveys, we estimate that about 75 percent of all airline tickets on the types of flights covered by this rule are issued by travel agents and that 95 percent of all travel agency locations use computer reservations systems. Also, for purposes of this analysis, we assume that 1.75 reservations are made for each passenger that eventually boards, thus allowing for cancellations of reservations. As shown in more detail in the Final Regulatory Evaluation, we estimate that the average time to solicit/collect/confirm the passenger manifest information is 35 seconds for all scheduled trips.

Using these factors, we calculate that the travel agency industry will solicit/collect/confirm passenger manifest information for 39.6 million scheduled passengers annually. This represents collections of 29.3 million for roundtrip flights and 10.3 million for one-way trips. From another perspective, it includes 22.6 million collections from those who actually complete their journeys and 17.0 million trips that are canceled following a reservation. Based on 39.6 million collections and 35 seconds per average collection, we calculate the annual hourly burden for the travel agency industry at approximately 385,000 hours. Multiplying these hours by an average salary per hour of $15.07, we estimate a total annual recurring cost $5.8 million for the travel agency industry. Alternatively, the average cost to a travel agent for collecting the information per reservation would be about $0.15.

The Department estimates that the small U.S. travel agencies will incur a portion of total recurring costs similar to their proportion of receipts. Applying this factor to the total costs for travel agents, we calculate that these agencies will incur approximately 49 percent of the total cost . We have calculated that it will cost travel agents worldwide $5.8 million, but we do not know how much of this is attributable to foreign travel agents. Assuming that no cost is attributable to foreign travel agencies, the maximum impact on small U.S. travel agencies would be $2.8 million annually. Therefore, for each of the 21,873 small U.S. agencies, the maximum average burden per U.S. travel agency would be approximately $128 annually.

The rule will affect a substantial number of small entities. Based on the previous information, however, we believe that there will not be a significant economic impact on any of them. We, therefore, certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

This regulation applies to both U.S. air carriers and foreign air carriers that choose to serve the United States. The rule should not affect either a U.S. air carrier's ability to compete in international markets or a foreign air carrier's efforts to compete in the United States. Neither should the overall level of travel to and from the United States be affected.

Unfunded Mandates Act

This rule does not impose any unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

This final rule contains information collections that were subject to review by OMB under the Paperwork Reduction Act of 1995 (Public Law 104–13). The title, description, and respondent description of the information collections are shown below as well as an estimate of the annual recordkeeping and periodic reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Passenger Manifest Information;

Need for Information: The information is required by Pub. L. 101–604 (49 U.S.C. 44909) for use by the State Department;

Use of Information: The State Department would use the information to inform passenger-designated contacts about aviation disasters;

Frequency: The manifests would be collected and maintained for each covered flight;

Burden Estimate: 1.05 million hours and $22.1 million per annum for air carriers, foreign air carriers, travel agents, and passengers;

Respondents: Approximately 144 U.S. air carriers, 318 foreign air carriers, and 22,672 U.S. travel agencies collecting information from 53.8 million annual respondents. We are unable to quantify the number of non-U.S. travel agents that will be affected by this rule;

Form(s): No particular format or form would be required;

Average burden hours per respondent: An average of about 35 seconds per collection across travel agents and air carriers.

The information collection and recordkeeping requirements contained in this final rule are approved under OMB Control Number 2105–0534, expiration 2/2001. Requests for a copy of this information collection should be directed to John Schmidt, DOT/OST (X–10), 400 Seventh St., SW., Washington, DC 20590: (202) 366–1053. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB number.

Federalism Implications

The regulation has no direct impact on the individual states, on the balance of power in their respective governments, or on the burden of responsibilities assigned them by the national government. In accordance with Executive Order 12612, preparation of a Federalism Assessment is, therefore, not required.

List of Subjects in 14 CFR Part 243

Air carriers, Aircraft, Air taxis, Air transportation, Charter flights, Foreign air carriers, Foreign relations, Reporting and recordkeeping requirements.

Accordingly, the Department is adding a new part 243, in chapter II of title 14 of the Code of Federal Regulations that reads as follows:

PART 243—PASSENGER MANIFEST INFORMATION

Secs.

243.1 Purpose.
243.3 Definitions.

243.5 Applicability.
243.7 Information collection requirements.
243.9 Procedures for collecting and maintaining the information.
243.11 Transmission of information after an aviation disaster.
243.13 Filing requirements.
243.15 Conflicts with foreign law.
243.17 Enforcement.

Authority: 49 U.S.C. 40101, 40101nt., 40105, 40113, 40114, 41708, 41709, 41711, 41501, 41702, 41712, 44909, 46301, 46310, 46316; section 203 of Pub. L. 101–604, 104 Stat. 3066 (22 U.S.C. 5501–5513), Title VII of Pub. L. 104–264, 110 Stat. 3213 (22 U.S.C. 5501–5513) and Pub. L. 105–148, 111 Stat. 2681 (49 U.S.C. 41313.)

§ 243.1 Purpose.

The purpose of this part is to ensure that the U.S. government has prompt and adequate information in case of an aviation disaster on covered flight segments.

§ 243.3 Definitions.

Air piracy means any seizure of or exercise of control over an aircraft, by force or violence or threat of force or violence, or by any other form of intimidation, and with wrongful intent.

Aviation disaster means:

(1) An occurrence associated with the operation of an aircraft that takes place between the time any passengers have boarded the aircraft with the intention of flight and the time all such persons have disembarked or have been removed from the aircraft, and in which any person suffers death or serious injury, and in which the death or injury was caused by a crash, fire, collision, sabotage or accident;

(2) A missing aircraft; or

(3) An act of air piracy.

Contact means a person not on the covered flight or an entity that should be contacted in case of an aviation disaster. The contact need not have any particular relationship to a passenger.

Covered airline means:

(1) certificated air carriers, and

(2) foreign air carriers, except those that hold Department of Transportation authority to conduct operations in foreign air transportation using only small aircraft (i.e., aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds).

Covered flight segment means a passenger-carrying flight segment operating to or from the United States (i.e., the flight segment where the last point of departure or the first point of arrival is in the United States). A covered flight segment does not include a flight segment in which both the point of departure and point of arrival are in the United States.

Full name means the given name, middle initial or middle name, if any, and family name or surname as provided by the passenger.

Passenger means every person aboard a covered flight segment regardless of whether he or she paid for the transportation, had a reservation, or occupied a seat, except the crew. For the purposes of this part, passenger includes, but is not limited to, a revenue and non-revenue passenger, a person holding a confirmed reservation, a standby or walkup, a person rerouted from another flight or airline, an infant held upon a person's lap and a person occupying a jump seat. Airline personnel who are on board but not working on that particular flight segment would be considered passengers for the purpose of this part.

United States means the States comprising the United States of America, the District of Columbia, and the territories and possessions of the United States, including the territorial sea and the overlying airspace.

U.S. citizen means United States nationals as defined in 8 U.S.C. 1101(a)(22).

§ 243.5 Applicability.

This part applies to covered flight segments operated by covered airlines. (See § 243.3 of this part)

§ 243.7 Information collection requirements.

(a) For covered flight segments, each covered airline shall:

(1) Collect, or cause to be collected, the full name for each passenger who is a U.S. citizen. U.S.-citizen passengers for whom this information is not obtained shall not be boarded;

(2) Solicit, or cause to be solicited, a name and telephone number of a contact from each passenger who is a U.S. citizen; and

(3) Maintain a record of the information collected pursuant to this section.

(b) The covered airline operating the flight segment shall be responsible for ensuring compliance with paragraph (a) of this section.

§ 243.9 Procedures for collecting and maintaining the information.

Covered airlines may use any method or procedure to collect, store and transmit the required information, subject to the following conditions:

(a) Information on individual passengers shall be collected before each passenger boards the aircraft on a covered flight segment.

(b) The information shall be kept until all passengers have disembarked from the covered flight segment.

(c) The contact information collected pursuant to section 243.7(a)(2) of this part shall be kept confidential and released only to the U.S. Department of State, the National Transportation Safety Board (upon NTSB's request), and the U.S. Department of Transportation pursuant to oversight of this part. This paragraph does not preempt other governments or governmental agencies that have an independent, legal right to obtain this information.

(d) The contact information collected pursuant to section 243.7(a)(2) of this part shall only be used by covered airlines for notification of family members or listed contacts following an aviation disaster. The information shall not be used for commercial or marketing purposes.

§ 243.11 Transmission of information after an aviation disaster.

(a) Each covered airline shall inform the Managing Director of Overseas Citizen Services, Bureau of Consular Affairs, U.S. Department of State immediately upon learning of an aviation disaster involving a covered flight segment operated by that carrier. The Managing Director may be reached 24 hours a day through the Department of State Operations Center at (202) 647–1512.

(b) Each covered airline shall transmit a complete and accurate compilation of the information collected pursuant to § 243.7 of this part to the U.S. Department of State as quickly as possible, but not later than 3 hours, after the carrier learns of an aviation disaster involving a covered flight segment operated by that carrier.

(c) Upon request, a covered airline shall transmit a complete and accurate compilation of the information collected pursuant to § 243.7 of this part to the Director, Family Support Services, National Transportation Safety Board.

§ 243.13 Filing requirements.

(a) Each covered airline that operates one or more covered flight segments shall file with the U.S. Department of Transportation a brief statement summarizing how it will collect the passenger manifest information required by this part and transmit the information to the Department of State following an aviation disaster. This description shall include a contact at the covered airline, available at any time the covered airline is operating a covered flight segment, who can be consulted concerning information gathered pursuant to this part.

(b) Each covered airline shall file any contact change as well as a description

of any significant change in its means of collecting or transmitting manifest information on or before the date the change is made.

(c) All filings under this section should be submitted to OST Docket 98–3305, Dockets Facility (SVC–121.30), U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. The statement shall be filed by July 1, 1998, or, for covered airlines beginning operations after July 1, 1998, prior to the date a covered airline operates a covered flight segment.

§ 243.15 Conflict with foreign laws.

(a) If a covered airline obtains a waiver in the manner described in this section, it will not be required to solicit, collect or transmit information under this part in countries where such solicitation or collection would violate applicable foreign law, but only to the extent it is established by the carrier that such solicitation or collection would violate applicable foreign law.

(b) Covered airlines that claim that such solicitation, collection or transmission would violate applicable foreign law in certain foreign countries shall file a petition requesting a waiver in the Docket Facility, on or before the effective date of this rule, or on or before beginning service between that country and United States. Such petition shall include copies of the pertinent foreign law, as well as a certified translation, and shall include opinions of appropriate legal experts setting forth the basis for the conclusion that collection would violate such foreign law. Statements from foreign governments on the application of their laws will also be accepted.

(c) The U.S. Department of Transportation will notify the covered airline of the extent to which it has been satisfactorily established that compliance with all or part of the data collection requirements of this part would constitute a violation of foreign law.

(d) The U.S. Department of Transportation will maintain an up-to-date listing in OST Docket 98–3305 of countries where adherence to all or a portion of this part is not required because of a conflict with applicable foreign law.

§ 243.17 Enforcement.

The U.S. Department of Transportation may at any time require a covered airline to produce a passenger manifest including emergency contacts and phone numbers for a specified covered flight segment to ascertain the effectiveness of the carrier's system. In addition, it may require from any covered airline further information about collection, storage and transmission procedures at any time. If the Department finds a covered airline's system to be deficient, it will require appropriate modifications, which must be implemented within the period specified by the Department. In addition, a covered airline not in compliance with this part may be subject to enforcement action by the Department.

Issued in Washington, DC, on February 10, 1998.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 98–3769 Filed 2–12–98; 10:46 am]

BILLING CODE 4910–62–P

federal register

Wednesday
February 18, 1998

Part III

Environmental Protection Agency

40 CFR Part 310

Reimbursement to Local Governments for Emergency Responses to Hazardous Substances Releases; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 310

[FR–5958–1]

RIN 2060–AE36

Reimbursement to Local Governments for Emergency Responses to Hazardous Substance Releases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: In response to President Clinton's regulatory reform initiative to reduce the burden on small entities, and eliminate, streamline, and rewrite regulations in plain English, the Environmental Protection Agency ("we" or EPA) is issuing this interim final rule (regulation). Through this regulation, EPA will streamline procedures used to reimburse local governments for emergency response costs. Local governments may be reimbursed for certain costs they incur in taking temporary emergency measures related to releases of hazardous substances, pollutants and contaminants. Through this regulation, we are: Easing program and reporting requirements to make reimbursement more accessible; Simplifying the application process; Streamlining EPA's evaluation process to speed up reviewing applications and paying eligible applicants; and, Reorganizing the entire part 310 to make it clearer and easier to use.

Reimbursement through this program will help lighten financial burdens placed on local governments that respond to hazardous releases or threats. Reimbursement will also help strengthen effective emergency response at the local level.

DATES: The effective date for this interim final rule is February 18, 1998. The Director of the **Federal Register** has approved the incorporation by reference of certain publications listed in this regulation as of February 18, 1998. Comments must be received on or before April 20, 1998.

ADDRESSES: Mail comments on specific aspects of this rulemaking and the information collection to Local Governments Reimbursement Program, Office of Emergency and Remedial Response (5204–G), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. You may review information collection materials from 8:30 a.m. to 5:30 p.m., Monday through Friday, by visiting Public Docket No. LGR–xx, located at 1235 Jefferson Davis Highway (ground floor), Arlington, Virginia. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: For information on specific aspects of this final rule for reimbursement to local governments, contact: Lisa Boynton, (703) 603–9052, Local Governments Reimbursement Project Officer, Office of Emergency and Remedial Response (5204–G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: We have included a summary of the changes in today's Register. If you would like to see a detailed description of the changes and the rationale for them, contact Lisa Boynton at the address provided under "For Further Information." If you would like to skip the discussion of the changes and refer directly to the requirements for reimbursement, turn to § 310.1.

I. What Is the Statutory Authority for This Program?

Section 123 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9623, authorizes EPA to reimburse local governments for expenses incurred in carrying out temporary emergency measures. These measures must be necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance, or pollutant or contaminant. Additionally, Section 123(d) of CERCLA, 42 U.S.C. 9623(d), directs the EPA Administrator to issue regulations to implement this program.

The authority to receive, evaluate, and make determinations regarding requests for reimbursement and to issue payments to qualified applicants is delegated to the Director of the State and Site Identification Center within the Office of Emergency and Remedial Response. This rulemaking discusses changes designed to streamline the Agency's current procedures for reimbursing local governments and clarifies how the reimbursement program works.

II. What Else Do I Need to Know About CERCLA?

CERCLA provides broad federal authority to respond directly to releases or threatened releases of hazardous substances and pollutants or contaminants that may endanger human health or welfare or the environment. CERCLA responses usually are joint efforts by federal, state and local agencies. As local public safety and health organizations are normally the first government representatives at the scene of a hazardous substance release, they play a critical role in providing temporary emergency measures.

III. Did Congress Specify What Was to be Reimbursed Under This Program?

Reimbursement under this program can provide some financial relief (limited to $25,000 per single response) to local governments most seriously affected by costs above and beyond those incurred routinely and traditionally. Congress made it clear in the Conference Report for the Superfund Amendments and Reauthorization Act of 1986 that "reimbursement under this provision shall not include reimbursement for normal expenditures that are incurred in the course of providing what are traditionally local services and responsibilities, such as routine emergency firefighting." With the specific requirement in section 123 that reimbursement not supplant local funds normally provided for response, Congress intends that local governments continue to bear some share of expenses for providing temporary emergency measures. However, Congress recognized that in the past, conducting such response activities has placed a significant financial burden on some local governments.

IV. Why Is EPA Amending This Regulation?

EPA believes that the regulations must be amended to: (1) make funds that are available under this program more accessible to local governments; (2) reduce the reporting burden on local governments that apply for reimbursement; and (3) speed up the review and payment of funds to eligible applicants. Therefore, EPA is revising this regulation to ease several program and reporting requirements and to simplify the procedures that local governments follow when applying for reimbursement.

V. Did EPA Get Input From Local Governments in Making Changes to This Regulation?

Yes. Through consultation, training and outreach, EPA obtained input from local government officials who have participated in the reimbursement process. This input has given EPA a greater understanding of the difficulties that local governments encounter when seeking reimbursement which may discourage overall participation in the reimbursement program.

VI. Why Is EPA Issuing an Interim Final Rule for These Changes?

Because this rule falls under the grants, benefits, and contracts exemption of Section 553 of the Administrative Procedures Act (5 U.S.C. 553(a)(2)), the Agency is not required to solicit public comment before this rule becomes effective. In addition, the Agency may make the rule effective immediately upon publication.

The interim final approach is designed to allow EPA to implement these changes and to make the reimbursement money available quickly, while continuing to solicit public comments. Public comments are invited and should be sent to the address listed in the **ADDRESSES** section above. Comments received by April 20, 1998 will be considered in the final rule.

VII. What Is EPA Changing in This Regulation?

Based on the Agency's experience in overseeing the reimbursement program and its ongoing consultation with local governments, EPA is making the following substantive changes to the 1993 Final Rule:

(1) Section 310.5 has been modified to clarify the purpose of the regulations and the possibility that funds may not be available in a particular year;

(2) Section 310.10 has been modified to include several abbreviations;

(3) Section 310.11 has been modified to include definitions of the terms application, Federally-recognized Indian tribes, and potentially responsible parties;

(4) Section 310.25(a) has been added to specify remedies EPA may rely on if incorrect, false or misleading information is submitted with an application for reimbursement;

(5) Section 310.20 has been modified for clarification purposes;

(6) Section 310.30 has been changed to ease the program and reporting requirements for requesting reimbursement;

(7) Section 310.40 has been changed to clarify allowable costs and to streamline the cost documentation requirements;

(8) Section 310.50 has been changed to reduce the reporting requirements and to clarify the application signature authority;

(9) Section 310.60 has been changed to:

(a) streamline and clarify the application evaluation process (including the Agency's approach when there are competing demands on available reimbursement funds);

(b) extend the time periods for applicants to provide additional information to EPA to support their applications; and

(c) give applicants an opportunity to request exceptions to the requirements when there is good cause;

(10) Section 310.70 has been changed to reduce applicant record keeping requirements from ten years to three;

(11) Section 310.80 has been incorporated into Section 310.60 for organizational purposes; and

(12) Section 310.90 has been renumbered and modified to clarify the disputes resolution process.

VIII. What Else Is Different?

EPA reorganized the entire Part 310 to make it clearer and easier to use. The conversion table below will allow you to determine where the various sections of the old regulation are now located:

Existing section	Action	New section(s)
310.5	Revise	310.1, 310.5, 310.6.
310.10	Revise	310.4.
310.11	Revise	310.3.
310.12	Revise	310.24.
310.20	No change	310.5, 310.6.
310.30	Revise	310.11, 310.13, 310.14, 310.17.
310.40	Revise	310.11, 310.12, 310.16.
310.50	Revise	310.7, 310.8, 310.9, 310.10, 310.15, 310.17.
310.60	Revise	310.18, 310.19, 310.20, 310.23, 310.24.
310.70	Revise	310.22.
310.80	Revise	310.23.
310.90	Revise	310.65.

IX. Regulatory Analyses

A. Executive Order No. 12866

Under Executive Order No. 12866, EPA must judge whether a regulation is "major" and thus would be subject to the requirement of a Regulatory Impact Analysis. The Agency believes that the notice published today does not meet the definition of a significant regulation because it does not have an annual effect on the economy of $100 million or more; nor does the rule fall within the other definitional criteria for a significant regulatory action because the rule eases program and reporting requirements. Therefore, EPA has not prepared a Regulatory Impact Analysis under the Executive Order. OMB did not review this rule because it is not significant.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant adverse impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination.

This regulation involves reimbursement to local governments for the costs of responding to a hazardous substance release. This is a benefit authorized by CERCLA and does not adversely affect the private sector economy or small entities, which may include local governments. In fact, this rule provides a benefit to local governments in the form of reimbursement to offset financial hardship incurred from responses to hazardous substances, pollutants or contaminants. The revisions to this regulation are intended to minimize the burden imposed on local governments in seeking this benefit. EPA, therefore, certifies that this regulation will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

OMB has approved the original information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned control number 2050–0077.

The revised information collection requirements in this rule was submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq*. An Information Collection Request (ICR) document has been prepared by EPA (ICR No.1425.04) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. The information

requirements are not effective until OMB approves them.

The Agency requires applicants for reimbursement to submit an application package that demonstrates consistency with program eligibility criteria and certifies compliance with the reimbursement requirements. This information collection is necessary to ensure proper use of the Superfund and appropriate distribution of reimbursement awards among applicants. EPA will receive and closely evaluate reimbursement requests in accordance with the promulgated final rule to ensure that the most deserving cases receive awards. We estimate the public reporting burden for this collection of information to average 9 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. We estimate we will receive 36 responses per year for an annual burden estimate of 324 hours per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Comments are requested by March 20, 1998. Include the ICR number in any correspondence.

D. Small Business Regulatory Enforcement Fairness Act

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register** . This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Unfunded Mandates Reform Act

"Today's rule is not subject to the requirements of sections 202, 203 and 205 of the UMRA. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. On the contrary, the Agency expects that today's rule will ease program and reporting requirements for local governments so that reimbursement is more accessible.

In addition, the Agency does not believe that today's rule is subject to section 203 of the UMRA to the extent that today's rule simplifies the application process for local governments and does not impose additional regulatory requirements. Indeed, today's rule is being promulgated in response to a long standing request by local governments after substantial input from such local governments into the rule's development."

List of Subjects in 40 CFR Part 310

Environmental protection, Administrative practice and procedure, Hazardous substances, Incorporation by reference, Intergovernmental relations, Local governments, Reporting and recordkeeping requirements, Superfund.

Dated: January 27, 1998.

Carol Browner,

Administrator.

For the reasons set out in the preamble, EPA amends title 40, chapter I of the Code of Federal Regulations by revising part 310 to read as follows:

PART 310—REIMBURSEMENT TO LOCAL GOVERNMENTS FOR EMERGENCY RESPONSE TO HAZARDOUS SUBSTANCE RELEASES

Subpart A—General Information

Sec.

310.1 What is the purpose of this part?
310.2 What is the statutory authority for this part?
310.3 What terms have specific definitions?
310.4 What abbreviations should I know?

Subpart B—Provisions

Who Can Be Reimbursed

310.5 Am I eligible for reimbursement?
310.6 Are states eligible?
310.7 Can more than one local agency or government be reimbursed for response to the same emergency?

What Can Be Reimbursed

310.8 Can EPA reimburse the entire cost of my response?
310.9 If more than one local agency or government is involved, can each receive up to $25,000?
310.10 What are temporary emergency measures?
310.11 What costs are allowable?
310.12 What costs are NOT allowable?

How to Get Reimbursed

310.13 Do I need to notify anyone while the response is underway?
310.14 Must I try to recover my costs from those potentially responsible for the emergency?
310.15 How do I apply for reimbursement?
310.16 What kind of cost documentation is necessary?
310.17 Are there any other requirements?
310.18 How will EPA evaluate my application?
310.19 Under what conditions would EPA deny my request?
310.20 What are my options if EPA denies my request?
310.21 How does EPA resolve disputes?

Other Things You Need to Know

310.22 What records must I keep?
310.23 How will EPA rank approved requests?
310.24 What happens if I provide incorrect or false information?

Appendices to Part 310

Appendix I to Part 310—FREQUENTLY ASKED QUESTIONS
Appendix II to Part 310—EPA Regions and NRC Telephone Lines
Appendix III to Part 310—FORM: Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Release Under CERCLA Sec. 123

Authority: 42 U.S.C. 9611(c)(11), 9623.

Subpart A—General Information

§ 310.1 What is the purpose of this part?

This part sets up procedures for EPA to reimburse local governments for certain emergency response costs. Local

governments may receive up to $25,000 to help lighten financial burdens related to emergency response to hazardous substance releases. This reimbursement does NOT replace funding that local governments normally provide for emergency response.

§ 310.2 What is the statutory authority for this part?

This part is authorized under section 123 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Pub. L. 96–510, 42 U.S.C. 9601–9675), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499, 42 U.S.C. 9601).

§ 310.3 What terms have specific definitions?

For purposes of this part except when otherwise specified:

(a) *Application* means Form 9310–1, shown in Appendix III of this part, including all documentation and additional information you submit to support a request for reimbursement.

(b) *Date of completion* means the date when you have completed all field work and you have received all deliverables (such as lab results, technical expert reports, or invoices) due under a contract or other agreement.

(c) *Emergency Planning and Community Right-to-Know Act of 1986* means Title III—Emergency Planning and Community Right-to-Know Act of the Superfund Amendments and Reauthorization Act of 1986 (EPCRA) (Pub. L. 99–499, 42 U.S.C. 11000–11050).

(d) *Federally-recognized Indian Tribe,* as defined by section 101(36) of CERCLA, means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(e) *General purpose unit of local government* means the governing body of a county, parish, municipality, city, town, township, Federally-recognized Indian tribe or similar governing body. This term does not include special purpose districts.

(f) *Hazardous substance.* (1) *Hazardous substance,* as defined by section 101(14) of CERCLA, means:

(i) Any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act (Pub. L. 101–380, 33 U.S.C. 1251 *et seq.*);

(ii) Any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA;

(iii) Any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (Pub. L. 89–272, 42 U.S.C. 3259 *et seq.*) (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress);

(iv) Any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act (Pub. L. 101–380, 33 U.S.C. 1251 *et seq.*);

(v) Any hazardous air pollutant listed under section 112 of the Clean Air Act (42 U.S.C. 7401–7642); and

(vi) Any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act (Pub. L. 94–469, 15 U.S.C. 2601–2629).

(2) The term does not include petroleum, including crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under paragraphs (f)(1)(i) through (f)(1)(vi) of this section, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

(g) *Local emergency response plan* means the emergency plan prepared by the Local Emergency Planning Committee (LEPC) as required by section 303 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA or SARA Title III).

(h) *National Contingency Plan* means the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300).

(i) *National Response Center* means the national communications center located in Washington, DC, that receives and relays notice of oil discharge or releases of hazardous substances to appropriate Federal officials.

(j) *Pollutant or contaminant,* as defined by section 104(a)(2) of CERCLA, includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under section 101(14)(A) through (F) of CERCLA, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

(k) *Potentially responsible party* (PRP) means any person who may be liable under section 107 of CERCLA for a release or threatened release of hazardous substances or pollutants or contaminants.

(l) *Release,* as defined by section 101(22) of CERCLA, means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping, or disposing into the environment, but excludes: any release that results in exposure to persons solely within a workplace, with respect to a claim that such persons may assert against the employer of such persons; emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; release of source, by-product or special nuclear materials from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such act, or, for the purpose of section 104 of CERCLA or any other response action, any release of source, by-product, or special nuclear material from any processing site designated under section 122(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95–604, 42 U.S.C. 2014 et seq.); and the normal application of fertilizer. For purposes of this part, release also means the threat of release.

(m) *Single response* means all of the concerted activities conducted in response to a single episode, incident, or threat causing or contributing to a release or threatened release of hazardous substances, or pollutants or contaminants.

§ 310.4 What abbreviations should I know?

The following abbreviations appear in this part:

CERCLA—The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Pub. L. 96–510, 42 U.S.C. 9601–9675), as amended by the Superfund Amendments and Reauthorization Act of 1986, also known as Superfund.

EPA or the Agency—Environmental Protection Agency.
EPCRA—Emergency Planning and Community Right-to-Know Act of 1986 (Pub. L. 99–499, 42 U.S.C. 11000–11050).
LEPC—Local Emergency Planning Committee.
NCP—National Oil and Hazardous Substances Pollution Contingency Plan also known as the National Contingency Plan (40 CFR part 300).
NRC—National Response Center.
OMB—Office of Management and Budget.
PRP—Potentially Responsible Party.
SARA—The Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499, 42 U.S.C. 9601).
SERC—State Emergency Response Commission.
USCG—U.S. Coast Guard.

Subpart B—Provisions

Who Can Be Reimbursed?

§ 310.5 Am I eligible for reimbursement?

If you are the governing body of a county, parish, municipality, city, town, township, federally-recognized Indian tribe or general purpose unit of local government, you are eligible for reimbursement. This does not include special purpose districts.

§ 310.6 Are states eligible?

States are NOT eligible for reimbursement under this part, and states may NOT request reimbursement on behalf of their local governments.

§ 310.7 Can more than one local agency or government be reimbursed for response to the same incident?

No. EPA will accept only one reimbursement request for a single response. A single response includes all of the temporary emergency measures that ALL local governments or agencies conduct in response to a single hazardous substance release. If more than one local government or agency responds, you must decide among yourselves who will request reimbursement on behalf of all.

What Can Be Reimbursed?

§ 310.8 Can EPA reimburse the entire cost of my response?

Possibly not. EPA can only reimburse you for temporary emergency measures you take in response to releases of hazardous substances, pollutants, or contaminants. The statute allows reimbursement for only certain costs, and by statute, the total amount of the reimbursement may not exceed $25,000 for a single response.

§ 310.9 If more than one local agency or government is involved, can each receive up to $25,000?

No. The maximum amount EPA can reimburse is $25,000 for a single response, which includes all activities by ALL local responders. If the costs incurred by multiple local governments or agencies exceed $25,000, you must decide among yourselves how the total reimbursement will be divided.

§ 310.10 What are temporary emergency measures?

(a) Temporary emergency measures are actions taken to control or eliminate immediate threats to human health and the environment.

(b) Examples of temporary emergency measures are:

(1) Site security;

(2) Controlling the source of contamination;

(3) Containing the release to prevent spreading;

(4) Neutralizing or treating pollutants released; and

(5) Controlling contaminated runoff.

§ 310.11 What costs are allowable?

(a) Reimbursement under this part does NOT supplant funds you normally provide for emergency response. Allowable costs are only those necessary for you to respond effectively to a specific incident that is beyond what you might normally respond to.

(b) Examples of allowable costs are:

(1) Disposable materials and supplies you acquired and used to respond to the specific incident;

(2) Payment of unbudgeted wages for employees responding to the specific incident (for example, overtime pay for response personnel);

(3) Rental or leasing of equipment you used to respond to the specific incident (for example, protective equipment or clothing, scientific and technical equipment) (Note: rental costs are only allowable for the duration of your response; once you complete the response to the specific incident, further rental costs are NOT allowable);

(4) Replacement costs for equipment you own that is contaminated or damaged beyond reuse or repair, if you can demonstrate that the equipment is a total loss and that the loss occurred during the response (for example, self-contained breathing apparatus irretrievably contaminated during the response);

(5) Decontamination of equipment contaminated during the response;

(6) Special technical services specifically required for the response (for example, costs associated with the time and efforts of technical experts/specialists that are not on your staff);

(7) Other special services specifically required for the response (for example, utilities);

(8) Laboratory costs of analyzing samples that you took during the response;

(9) Evacuation costs associated with the services, supplies, and equipment that you procured for a specific evacuation; and

(10) Containerization or packaging cost and transportation and disposal of hazardous wastes.

(c) To be allowable, costs must:

(1) NOT be higher than what a careful person would spend for similar products or services in your area; and

(2) Be consistent with CERCLA and the federal cost principles outlined in OMB Circular A–87, "Cost Principles for State and Local Governments." (Copies of the circular are available from the Office of Administration, Publications Office, New Executive Office Building, 725 17th Street, NW., Room 2200, Washington, DC 20503.)

(d) EPA will make final determinations on whether your costs are reasonable.

§ 310.12 What costs are NOT allowable?

(a) Costs that are NOT allowable are expenditures you incur in providing what are traditionally local services and responsibilities. Examples include:

(1) Routine firefighting;

(2) Preparing contingency plans;

(3) Training; and

(4) Response drills and exercises.

(b) Costs that are NOT allowable also include items such as supplies, equipment, and services that you routinely purchase to maintain your ability to respond effectively to hazardous releases when they occur. Examples of other costs that are NOT allowable are:

(1) Purchase or routine maintenance of durable equipment expected to last one year or more, except when contaminated or damaged as described in § 310.11(b)(4) and (b)(5);

(2) Materials and supplies you did NOT purchase specifically for the response;

(3) Rental costs for equipment that you own or that another unit of local government owns;

(4) Employee fringe benefits;

(5) Administrative costs for filing reimbursement applications;

(6) Employee out-of-pocket expenses normally provided for in your operating budget (for example, meals or fuel);

(7) Legal expenses you may incur due to response activities, including efforts to recover costs from PRPs; and

(8) Medical expenses you incur due to response activities.

How to get Reimbursed

§ 310.13 Do I need to notify anyone while the response is underway?

No. You should notify EPA, the National Response Center, or use another established response communication channel, but it is not a requirement for reimbursement. Telephone numbers for EPA regional offices and the NRC are in Appendix II to this part.

§ 310.14 Must I try to recover my costs from those potentially responsible for the emergency?

Yes. Before applying for reimbursement from EPA, you must try to recover your costs from all known potentially responsible parties (PRPs). After you ask them for payment, you should give PRPs 60 days either to pay you, express their intent to pay you, or indicate willingness to negotiate. You must also try to get reimbursed by other sources (for example, your insurance company or your state). If you are not successful, you must certify on your reimbursement application that you made a good-faith, reasonable effort to recover your costs from other sources before applying to EPA. If you recover any portion of the costs from these sources after you receive reimbursement from us, you must return the recovered amount to EPA.

§ 310.15 How do I apply for reimbursement?

(a) You must apply for reimbursement on EPA Form 9310–1, shown in Appendix III to this part.

(b) You must submit your request within one year of the date you complete the response for which you request reimbursement. If you submit your application late, you must include an explanation for the delay. We will consider late applications on a case-by-case basis.

(c) Your application must be signed by the highest ranking official of your local government (for example, mayor or county executive), or you must include a letter of delegation authorizing a delegate to act on his or her behalf.

(d) Mail your completed application and supporting data to the LGR Project Officer, (5204–G), Office of Emergency and Remedial Response, Environmental Protection Agency, 401 M Street SW, Washington DC 20460.

§ 310.16 What kind of cost documentation is necessary?

Cost documentation must be adequate for an audit. At a minimum, you must:

(a) Include a description of the temporary emergency measures for which you request reimbursement;

(b) Specify the local agency that incurred the cost, (such as, the Town Fire Department, the County Health Department, or the City Department of Public Works);

(c) Include invoices, sales receipts, rental or leasing agreements, or other proof of costs you incurred; and

(d) Certify that all costs are accurate and that you incurred them specifically for the response for which you are requesting reimbursement.

§ 310.17 Are there any other requirements?

(a) You must certify that reimbursement under this regulation does not supplant local funds that you normally provide for emergency response. This means that the reimbursement you request is for costs you would not normally incur; rather, they are for significant, unanticipated costs related to a specific incident beyond what you normally respond to.

(b) You must also certify that your response actions are not in conflict with CERCLA, the National Contingency Plan (NCP), and the local emergency response plan prepared by your Local Emergency Planning Committee, if there is one. If you need help with this requirement, contact the LGR Help line (800–431–9209) or your EPA regional office.

(c) You, as a local government, should be included in the local emergency response plan completed by your LEPC, as section 303(a) of EPCRA requires. This does not apply if your State Emergency Response Commission (SERC) has not established an LEPC responsible for the emergency planning district(s) that encompasses your geographic boundaries.

§ 310.18 How will EPA evaluate my application?

(a) When we receive your application, we will make sure it meets all requirements of this section. If your request is incomplete or has significant defects, we will contact you for additional information. You should provide any additional information within 90 days. If you don't provide requested information within a year, we may deny your application.

(b) If your application meets all requirements, we will consider whether the costs claimed are allowable and reasonable. We will then send you written notification of our decision to award or deny reimbursement in full or in part.

§ 310.19 Under what conditions would EPA deny my request?

We may deny your reimbursement request in full or in part if:

(a) Your records, documents, or other evidence are not maintained according to generally accepted accounting principles and practices consistently applied;

(b) The costs you claim are NOT reasonable or allowable, that is, they are higher than what a careful person would spend for similar products or services in your area; or

(c) You do not supply additional information within one year from when we request it; and

(d) Reimbursement would be inconsistent with CERCLA section 123, or the regulations in this part.

§ 310.20 What are my options if EPA denies my request?

If we deny your request because you failed to meet a requirement in this regulation, you may request, in writing, that EPA grant an exception. You may also file a request for an exception with your initial application. In your request for an exception, you must state the requirement you cannot comply with and the reasons why EPA should grant an exception. We will grant exceptions only if you establish good cause for the exception and if granting the exception would be consistent with section 123 of CERCLA.

§ 310.21 How does EPA resolve disputes?

(a) The EPA reimbursement official's decision is final EPA action unless you file a request for review by registered or certified mail within 60 calendar days of the date you receive our decision. Send your request for review to the address given in § 310.15(d).

(b) You must file your request for review with the disputes decision official identified in the final written decision.

(c) Your request for review must include:

(1) A statement of the amount you dispute;

(2) A description of the issues involved;

(3) A statement of your objection to the final decision; and

(4) Any additional information relevant to your objection to EPA's decision.

(d) After filing for review:

(1) You may request an informal conference with the EPA disputes decision official;

(2) You may be represented by counsel and may submit documentary evidence and briefs to be included in a written record; and

(3) You will receive a written decision by the disputes decision official within 45 days after we receive your final submission of information unless the

official extends this period for good cause.

Other Things You Need To Know

§ 310.22 What records must I keep?

(a) If you receive reimbursement under the regulations in this part, for three years you must keep all cost documentation and any other records related to your application. You must also provide EPA access to those records if we need them.

(b) After three years from the date of your reimbursement, if we have NOT begun a cost recovery action against a potentially responsible party, you may dispose of the records. You must notify EPA of your intent to dispose of the records 60 days before you do so, and allow us to take possession of these records beforehand.

§ 310.23 How will EPA rank approved requests?

(a) If necessary, EPA will rank approved reimbursement requests according to the financial burden the response costs impose on the local governments. We will estimate your financial burden by calculating the ratio of your allowable response costs to your annual per capita income adjusted for population. We will make adjustments for population so that a large city with a low per capita income will not necessarily receive a higher rank than a small town with a slightly higher per capita income. We will also consider other relevant financial information you may supply.

(b) We will use the per capita income and population statistics published by the U.S. Department of Commerce, Bureau of the Census, in Current Population Reports, Local Population Estimates, Series P–26, "1988 Population and 1987 Per Capita Income Estimates for Counties and Incorporated Places," Vols. 88–S–SC, 88–ENC–SC, 88–NE–SC, 88–W–SC, 88–WNC–SC, March 1990. The Director of the Federal Register has approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies are available from the Bureau of the Census, Office of Public Affairs, Department of Commerce, Constitution Avenue, NE., Washington, DC 20230 (1–202–763–4040). You may review a copy at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or at the Office of the Federal Register, 800 N. Capitol Street, NW., 7th Floor, Suite 700, Washington, DC.

(c) Larger ratios receive a higher rank. We will reimburse requests with the highest ranks first. Once we rank your request, we will either:

(1) Reimburse the request; or

(2) Hold the request for reconsideration once additional funding is available.

(d) The EPA reimbursement official will give you a written decision on whether the request will be reimbursed or held for future reconsideration.

§ 310.24 What happens if I provide incorrect or false information?

(a) You must not knowingly or recklessly make any statement or provide any information in your reimbursement application that is false, misleading, misrepresented, or misstated. If you do provide incorrect or false information, and EPA relies on that information in making a reimbursement decision, we may deny your application and withdraw or recover the full amount of your award. In such a case, we would give you written notice of our intentions.

(b) If you, as a reimbursement applicant or someone providing information to the applicant, knowingly give any false statement or claim as part of any application for reimbursement under section 123 of CERCLA, you may be subject to criminal, civil, or administrative liability under the False Statement Act (Pub. L. 97–398, 18 U.S.C. 1001) the False Claims Act (Pub. L. 99–562, 31 U.S.C. 3729), and the Program Fraud and Civil Remedies Act (Pub. L. 99–509, 31 U.S.C. 3801).

Appendices to Part 310

Appendix I to Part 310—Frequently Asked Questions

(1) Can I be reimbursed for hazmat team salaries?

Generally, no; only unbudgeted overtime and/or extra time can be considered for reimbursement. (§ 310.11(b)(2))

(2) Will I be reimbursed for the cost of a destroyed fire truck?

Up to $25,000 of the cost of a lost fire truck can be considered an allowable cost and therefore, reimbursable. However, if the local government has insurance covering such losses, then we would not reimburse you for a destroyed fire truck. (§§ 310.11(b)(4) and 310.14)

(3) If I have a release in an elementary school, can the school district apply for reimbursement?

No, for purposes of the regulation in this part, a school district is considered a special purpose district of local government and therefore not eligible for reimbursement. The county or city where the incident happened may apply for reimbursement on behalf of the school district. (§§ 310.03(e) and 310.05)

(4) Why are incidents that involve a release of petroleum not eligible?

Because this program is authorized under CERCLA, and petroleum is excluded under CERCLA, we can't reimburse you for response to releases involving only petroleum. If, however, some hazardous substances are also involved, your incident may be reimbursed. (§ 310.03(f))

(5) Can I be reimbursed for laying water lines to a community whose drinking water is affected by a release?

No, laying water lines doesn't fall within the definition of temporary emergency measures. Providing bottled water on a temporary emergency basis is reimbursable. (§ 310.10(a))

(6) What if EPA gets too many applications in one year?

In the beginning of the program, there was a statutory limitation on the amount of the Superfund that could be used for reimbursements. That limitation was approximately $1,000,000. The limitation has expired, and EPA has only reimbursed slightly over $1,000,000 in ten years. There has not been a year where we received too many applications.

(7) If I incur significant costs trying to recover from the PRP, can I be reimbursed by EPA for those costs?

No, legal expenses are not allowable costs. (§ 310.12(b)(7)).

(8) Can I add attachments to the Application Form?

Yes, attach any additional information that you feel is necessary. EPA will review all the information that you send.

(9) Do I have to notify EPA before I send an application in, or before I take a response action?

No, you aren't required to notify EPA in either case. We do suggest that you call the National Response Center to report the hazardous substance release, or if you use other response reporting channels, use them. If you need some help before submitting your application, we do suggest you call the LGR Help line (800–431–9209).

(10) If two incidents happen in my town, within hours of each other, do I have to submit two separate applications?

You aren't required to submit separate applications in this case, but if your total response costs are more than $25,000, it may be in your interest to submit separate applications for each single response. (§ 310.9)

Appendix—II to Part 310—EPA Regions and NRC Telephone Lines

National Response Center	(800) 424–8802
EPA Regional Phone Numbers:	
Region I (ME, NH, VT, MA, RI, CT)	(617) 223–7265
Region II (NJ, NY, PR, VI)	(908) 548–8730
Region III (PA, DE, MD, DC, VA, WV)	(215) 597–9898
Region IV (NC, SC, TN, MS, AL, GA, FL, KY)	(404) 347–4062
Region V (OH, IN, IL, WI, MN, MI)	(312) 353–2318
Region VI (AR, LA, TX, OK, NM)	(215) 655–2222
Region VII (IA, MO, KS, NE)	(913) 236–3778
Region VIII (CO, UT, WY, MT, ND, SD)	(303) 293–1788

Region IX (AZ, CA, NV, AS, HI, GU, TT)	(415) 744–2000
Region X (ID, OR, WA, AK)	(206) 553–1263

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Appendix—III to Part 310—Form: Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Release Under CERCLA Sec. 123

EPA Form 9310-1, Application for Reimbursement to Local Governments

Please type or print all information

EPA United States Environmental Protection Agency Washington, D.C. 20460 **Application for Reimbursement to Local Government for Emergency Response to Hazardous Substance Releases Under CERCLA Sec. 123**	Form Approved OMB No 2050-0077 Approved expires

1. Local government Identification

a. Name of Local government	b. Contact Name and Telephone Number
c. Official Address	d. Date of Application

2. Release Description

a. Date and Time of Occurrence or Discovery	b. Location
c. Source or Cause of Release	
d. Hazardous Substances Released and Quantity (Petroleum, crude oil, or any unspecified fractions thereof are excluded)	
e. Threats to human health and Environmental	
f. Attach any additional material pertinent to the release	

3.Response Description

a. Date and Time of HazMat Response Initiation	b. Was anyone notified of the response? ☐ EPA ☐ NRC ☐ OTHER	
c. EPA Region	d. Date and Time Contact Made	e. Date of Response completion (Local government has received all data, reports, and charges for response)
f. Jurisdiction in Which Response Occurred	g. Is your local government a participant in the Title III Emergency Response Plan? (Check one) ☐ Yes ☐ No	
h. Responding Agencies and Jurisdictions		

EPA Form 9310-1

i. Summary of Response Actions

j. Temporary Measures for Which Reimbursement is Sought

4. Cost Information

a. Total Response Cost	b. Total Reimbursement Requested
$	$

c. Complete and Attach Table 1, "Detailed Cost Breakdown"

d. Complete and Attach Table 2, "Cost Recovery Summary"

e. Attach Other Pertinent Financial Information

5. Certification and Authorization (To be completed by highest ranking official of applying local government.)

I hereby certify that:

1) All costs are accurate and were incurred specifically for the response for which reimbursement is being requested.
2) Reimbursement for costs incurred for response activities does not supplant local funds normally provided for response
3) Cost recovery was pursued as presented in the attached Table 2; and
4) Reimbursement funds for which costs are later recovered will be returned to EPA

I further certify that I am authorized to request this reimbursement and to receive funds from the Federal Government.

Printed or Typed Name of Highest Ranking Local Government Official or Authorized Representative	Signature of Highest Ranking Local Government Official or Authorized Representative
Title	Date

Burden Statement:

The Agency requires applicants for reimbursement to submit an application package that demonstrates consistency with program eligibility criteria and certifies compliance with the reimbursement requirements. This information collection is necessary to ensure proper use of the Superfund and appropriate distribution of reimbursement awards among applicants. EPA will receive and closely evaluate reimbursement requests in accordance with 40 CFR 310 to ensure that the most deserving cases receive awards.

The public reporting and recordkeeping burden for this collection of information is estimated to average 9 hours per response annually. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M St., S.W., Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

EPA Form 9310-1

* Form 9310-1 is not considered complete unless it is signed by the highest ranking official of the local government requesting reimbursement, or signed by the authorized representative indicated in an enclosed letter delegating signature authority for this application process.

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ATTACHMENT 1 TO FORM 9310–1 COST ELEMENT CODES AND COMMENTS

[Cost Element Codes for use in Table 1]

Code	Cost category	Cost element	Comments
PC	Personnel Compensation.	PC1: Overtime—for services excess of the local agency's standard work day or work week.	Compensation of overtime costs incurred specifically for a response will be considered only if overtime is not otherwise provided for in the applicant's operating budget.
		PC2: Experts and consultants—for services rendered on a per diem or fee basis or for services of an intermittent, advisory nature.	
TR	Transportation	TR1: Passenger vehicle rental—for transportation of persons during evacuation.	Passenger and nonpassenger vehicle rental costs will be considered for private vehicles not owned or operated by the applicant or other unit of local government.
		TR2: Nonpassenger vehicle rental—for transportation of equipment or supplies.	
RC	Utilities	RC1: Utilities—for power, water, electricity and other services exclusive of transportation and communications.	Utility costs will be considered for private utilities not owned or operated by the applicant or other unit of local government.
OS	Other Contractual Services.	OS1: Contracts for technical or scientific analysis—for tasks requiring specialized hazardous sustance response expertise.	May include such items as specialized laboratory analyses and sampling.
		OS2: Decontamination services—for specialized cleaning or decontamination procedures and supplies to restore clothing, equipment or other serviceable gear to normal functioning.	
SM	Supplies and Materials.	SM1: Commodities—for protective gear and clothing, cleanup tools and supplies and similar materials purchased specifically for, and expended during, the response.	May include such items as chemical foam to suppress a fire; food purchased specifically for an evacuation; air purifying canisters for breathing apparatus; disposable, protective suits and gloves; and sampling supplies.
EQ	Equipment	EQ1: Replacement—for durable equipment declared a total loss as a result of contamination during the response.	Equipment replacement costs will be considered if applicant can demonstrate total loss and proper disposal of contaminated equipment.
		EQ2: Rents—for use of equipment owned by others	Equipment rental costs will be considered for privately owned equipment not owned or operated by the applicant or other unit of local government.

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Table 1

Table 1
Detailed Cost Breakdown

Temporary Emergency Measure	Cost Incurred By	Cost Element (See Attachment 1)	Amount

EPA Form 9310-1

Attach supporting documentation, e.g., invoices, sales receipts, rental agreements

Table 2
Cost Recovery Summary

Note: This "Cost Recovery Summary" must accompany each request for reimbursement.
You Must Fill Out Each Section Of This Form.

Name and Title of Source Contacted	Date(s) Contacted	Brief Summary of Response	Details Attached
Attempts to Recover Costs from Potentially Responsible Parties (Including PRP Insurance)			
Attempts to Recover Costs from State Funding Sources			
Attempts to Recover Costs from Local Government Insurance			

EPA Form 9310-1

[FR Doc. 98-2716 Filed 2-17-98; 8:45 am]
BILLING CODE 000-00-C

federal register

Wednesday
February 18, 1998

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1 et al.

Improved Standards for Determining Rejected Takeoff and Landing Performance; Final Rule Proposed Revisions to Advisory Circular—Flight Test Guide for Certification of Transport Category Airplanes; Notice

EPA Form 9310-1

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 25, 91, 121, and 135

[Docket No. 25471; Amendment Nos. 1–48, 25–92, 91–256, 121–268, 135–71]

RIN 2120–AB17

Improved Standards for Determining Rejected Takeoff and Landing Performance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the airworthiness standards for transport category airplanes to: revise the method for taking into account the time needed for the pilot to accomplish the procedures for a rejected takeoff; require that takeoff performance be determined for wet runways; and require that rejected takeoff and landing stopping distances be based on worn brakes. The FAA is taking this action to improve the airworthiness standards, reduce the impact of the standards on the competitiveness of new versus derivative airplanes without adversely affecting safety, and harmonize with revised standards of the European Joint Aviation Requirements-25 (JAR–25). These standards, which affect manufacturers and operators of transport category airplanes, are not being applied retroactively to either airplanes currently in use or airplanes of existing approved designs that will be manufactured in the future.

EFFECTIVE DATE: March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Donald K. Stimson, FAA, Airplane & Flightcrew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–1129, facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION: An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: 202–512–1661) or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 800–FAA–ARAC).

Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Register's webpage at http://www.access.gpo.gov/su_docs for access to recently published rulemaking documents.

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Background

These amendments are based on notice of proposed rulemaking (NPRM) 93–8, which was published in the **Federal Register** on July 8, 1993 (58 FR 36738). In that notice, the FAA proposed amendments to 14 CFR parts 1, 25, 91, 121, and 135 to improve the standards for determining the accelerate-stop and landing distances for transport category airplanes. The FAA received over 100 comments from 22 different commenters on the proposals contained in NPRM 93–8. As a result of these comments, the FAA has modified some of the original proposals.

As explained in NPRM 93–8, the operator of a turbine-powered category airplane must determine that the runway being used, plus any available stopway or clearway, is long enough to either safely continue or reject the takeoff from a defined go/no-go point. The go/no-go point occurs while the airplane is accelerating down the runway for takeoff when the airplane reaches a speed known as V_1.

The assure that the takeoff can be safely continued from the go/no-go point, the length of the runway plus any clearway must be long enough for the airplane to reach a height of 35 feet by the end of that distance, even if a total loss of power from the most critical engine occurs just before reaching the V_1 speed. This distance is commonly referred to as the accelerate-go distance.

In case the pilot finds it necessary to reject the takeoff, the runway plus any stopway must be long enough for the airplane to be accelerated to the V_1 speed and then brought to a complete stop. This distance is known as the accelerate-stop distance.

The choice of V_1 speed affects the accelerate-go and accelerate-stop distances. A lower V_1 speed, corresponding to an engine failure early in the takeoff roll, increases the accelerate-go distance and decreases the accelerate-stop distance. Conversely, a higher V_1 speed decreases the accelerate-go distance and increases the accelerate-stop distance. When V_1 is selected such that the accelerate-stop distance is equal to the accelerate-go distance, this distance is known as the balanced field length. In general, the balanced field length represents the minimum runway length that can be used for takeoff.

The V_1 speed selected for any takeoff depends on several variables, including the airplane's takeoff weight and configuration (flap setting), the runway length, the air temperature, and the runway surface elevation (airport altitude). The takeoff performance and limitation charts in the Airplane Flight Manual (AFM) are developed in accordance with the FAA airworthiness standards in subpart B of the Federal Aviation Regulations (FAR), part 25—"Airworthiness Standards: Transport Category Airplanes," using data gathered during comprehensive flight tests completed as a part of the FAA's approval of the airplane's type design.

Part 25, subpart B, also prescribes the FAA airworthiness standards for determining the length of runway required for safe landing under various airplane and atmospheric conditions. Landing performance charts must be published in the AFM, and are used by

the operator to determine whether a particular runway is long enough for landing.

The FAA, through the general operating rules contained in parts 91, 121, and 135, requires operators to use the appropriate performance and limitation charts published in the AFM to plan their takeoffs and landings.

In NPRM 93–8, the FAA proposed amendments to several sections of parts 25, 91, 121, and 135 concerning the methods for determining and applying the takeoff and landing performance standards for turbine-powered transport category airplanes. Also, the FAA proposed to amend part 1, which contains terms and abbreviations used in the FAR, to add a definition of the term "takeoff decision speed" and an explanation for the abbreviation "V_{EF}."

The proposed amendments retained the fundamental principle that the pilot should be able to either safety complete a takeoff or bring the airplane to a complete stop, even if power is lost from the most critical engine just before the airplane reaches a defined go/no-go point. This principle has formed the basis of the takeoff performance standards required for the type certification of turbine-powered transport category airplanes since Special Civil Air Regulation No. SR–422, effective August 27, 1957. The amendments proposed in NPRM 93–8 were intended to provide a more rational method to take into account the various operational aspects affecting the takeoff distance. By the phrase "more rational method," the FAA means a method that explicitly addresses the specific elements affecting the takeoff distance, rather than providing for critical conditions by applying more restrictive standards to all takeoffs.

If the takeoff performance standards are made more restrictive, longer distances are needed for takeoff. However, the operator cannot change the length of the runway (although a longer runway, if available, could be used). Instead, the operator must usually reduce the airplane's takeoff weight in order to shorten the distance needed for takeoff. The more restrictive the takeoff performance standards are, the more takeoff weight may have to be reduced to be able to operate from a particular runway.

To reduce the airplane's takeoff weight, the operator must either reduce the amount of fuel to be carried, or reduce the number of passengers or amount of cargo to be transported. Since the amount of fuel to be carried is dictated primarily by the route being flown, the operator's only option may be to reduce the number of passengers or amount of cargo to be transported. When the number of passengers or amount of cargo must be reduced for a given flight, the airplane operator can suffer a loss of revenue.

Amendment 25–42, which became effective on March 1, 1978, revised the takeoff performance standards to make them more restrictive. Prior to Amendment 25–42, variations in pilot reaction time were provided for in the AFM accelerate-stop distances by adding one second to the flight test demonstrated time interval between each of the pilot actions necessary to stop the airplane. Typically, there are three such actions. The pilot reduces the power, applies the brakes, and raises the spoilers. Adding one second between each of these actions results in a total of two seconds being added to the time taken by the flight test pilots to accomplish the procedures for stopping the airplane. In calculating the resulting accelerate-stop distances for the AFM, no credit was allowed for any deceleration during this two-second time period.

The revised standards of Amendment 25–42 required the accelerate-stop distance to include two seconds of continued acceleration beyond V_1 speed before the pilot takes any action to stop the airplane. This revision resulted in longer accelerate-stop distances for airplanes whose application for a type certificate was made after Amendment 25–42 became effective. Consequently, turbine-powered transport category airplanes that are currently being manufactured under a type certificate that was applied for prior to March 1, 1978, have a significant operational economic advantage over airplanes whose type certificate was applied for after that date. This competitive disparity resulting from applying different performance standards created a compelling need to amend the takeoff performance standards of part 25 without adversely affecting safety. In addition, operational experience indicated a need to specifically address the detrimental effects of worn brakes and wet runways on airplane stopping performance.

Amendment 25–42 was a broad brush approach, applying to all takeoffs, to increase the required accelerate-stop distance. This broad brush approach did not explicitly account for many of the important operational factors that may affect takeoff performance. For example, the standards did not distinguish between dry and wet runways, nor were the effects of worn brakes taken into account. Wet runways and worn brakes typically result in longer accelerate-stop distances than with new brakes on a dry runway. By requiring wet runway performance to be determined and included in the AFM, and by requiring the use of worn brakes to determine the airplane's stopping capability, the proposed amendments would provide additional accelerate-stop distance for the conditions in which it is specifically needed in operational service.

Because wet runways and worn brakes would be specifically addressed in the revised standards proposed in NPRM 93–8, the FAA also proposed to replace the two seconds of continued acceleration beyond V_1 with a distance equal to two seconds at the V_1 speed. The distance equal to two seconds at constant V_1, while shorter than that resulting from the continued acceleration beyond V_1 required by Amendment 25–42, is a distance margin that must be added to the accelerate-stop distance demonstrated during flight testing for type certification. The FAA intends for this distance margin to take into account the variability in the time it takes for pilots, in actual operations, to accomplish the procedures for stopping the airplane.

Amendment 25–42 required the two seconds of time delay to be applied prior to the pilot taking any action to stop the airplane. This more restrictive approach assumes that the airplane reaches a higher speed during the accelerate-stop maneuver and, therefore, results in a longer distance than the distance equal to two seconds at constant V_1 speed. Inserting the time delay before the pilot takes any action to stop the airplane, however, does not accurately reflect the procedures that pilots are trained to use in operational service. V_1 is intended to be the speed by which the pilot has already made the decision to rejected the takeoff and has begun taking action to stop the airplane. The time it takes for the pilot to recognize the need for a rejected takeoff, which occurs before V_1 is reached, is considered separately within the airworthiness standards. Therefore, the amendments proposed in NPRM 93–8 were intended to more accurately reflect the rejected takeoff procedures taught in training and the intended use of the V_1 speed.

In summary, the purpose of the amendments to the takeoff performance standards of parts 25, 91, 121, and 135, as proposed in NPRM 93–8, was to more rationally reflect the operational factors involved and reduce the impact of the standards on the competitiveness of new versus derivative airplanes. More restrictive standards were proposed for takeoffs from wet runways. In addition, the proposed standards would require accelerate-stop distances to be

determined with brakes that are worn to their overhaul limit. Lastly, the two seconds of continued acceleration beyond V_1 speed would be replaced by a distance equal to two seconds at V_1 speed.

In NPRM 93–8, the FAA also proposed to amend the landing distance standards of part 25 to account for worn brakes. The FAA proposed this change to be consistent with the proposal for taking worn brakes into account for the takeoff accelerate-stop distances. Because airplanes generally require more distance to take off than to land, the allowable landing weight is rarely limited by the available runway length. Therefore, the proposed landing distance rule change was not expected to have a significant effect on the number of passengers or amount of cargo that can be carried.

International Harmonization of Airworthiness Standards

For more than ten years, the FAA has been cooperating with the Joint Aviation Authorities (JAA) of Europe to promote harmonization between the FAR, particularly the airworthiness standards, and the European Joint Aviation Requirements (JAR). The aircraft certification authorities of 23 European countries are members of JAA. An annual meeting is held between FAA senior management officials and senior management officials of the JAA member authorities to identify technical subject areas where cooperation is needed to promote greater harmonization between the FAR of the United States and the European JAR. A large portion of these meetings have been open to the public. A comprehensive study of this activity was completed by Professor George A. Bermann, Columbia University School of Law, in May 1991 as a consultant to the Administrative Conference of the United States (ACUS). A copy of Professor Bermann's final report to ACUS, titled: "Regulatory Cooperation with Counterpart Agencies Abroad: The FAA's Aircraft Certification Experience," dated May 1991, is included in the docket. Based on Professor Bermann's report. ACUS has confirmed the administrative appropriateness of this effort and has indicated strong support for this activity in their Recommendation 91–1, titled "Federal Agency Cooperation with Foreign Government Regulators," adopted June 13, 1991.

At the annual FAA/JAA meeting in June 1989, the FAA and JAA discussed the competitive disparity caused by the differences between the takeoff performance standards applied to airplanes that met the later standards of Amendment 25–42, as compared with airplanes that were only required to meet the takeoff performance standards that preceded Amendment 25–42. Even though the airplane types were originally type certificated at different times, thus allowing the use of different amendments, both groups of airplanes are continuing in production and both are competing for sales and for use over some common routes. Airplanes whose designs were type certificated to the standards introduced by Amendment 25–42 could be penalized in terms of the number of passengers or amount of cargo they can carry over a common route, even though the airplane's takeoff performance might be better from a safety perspective than a competing airplane design that was not required to meet the later standards. Currently, most of the transport category airplane types that have been required to meet the later standards of Amendment 25–42 were designed and manufactured outside the U.S. (mostly in Europe). These airplanes are competing for sales against airplanes that were designed and manufactured in the U.S. that were not required to meet the standards of Amendment 25–42. This situation has led to claims by a major European manufacturer of transport category airplanes that this disparity in the airworthiness standards has created an unfair international trade situation affecting the competitiveness of their airplane types of a later design.

At the June 1990 annual meeting, the FAA and JAA agreed to jointly review the current takeoff performance standards and their applicability with respect to airplanes currently in use and airplanes produced in the future under existing approved designs. The goal was to reduce the inequities described above without adversely affecting safety. The study consisted of two parts: First, the current takeoff performance standards were reviewed to determine if they were too restrictive; and second, the merits of making the resulting standards apply retroactively were considered for both airplanes currently in use and airplanes produced in the future under existing approved designs. The FAA and JAA also agreed to initiate substantively the same rulemaking within their respective systems to harmonize the European and U.S. takeoff performance standards for transport category airplanes.

The FAA concluded that the takeoff performance standards of part 25 could be made more rational, and thus less restrictive overall, without adversely affecting safety and proposed to amend the standards accordingly. However, considering the safety benefits and available economic impact information, the FAA could not support a recommendation to make the standards proposed by NPRM 93–8 retroactive to either airplanes currently in use or future production airplanes of designs that have already been type certificated. If additional information to support making these proposed standards retroactive became available at a later date, the FAA proposed to review such information and determine if further rulemaking would be appropriate.

In March 1992, the JAA issued its Notice of Proposed Amendment (NPA) 25B, D, G–244: "Accelerate-Stop Distances and Related Performance Matters" to amend the takeoff performance standards of JAR–25. The amendments proposed in NPRM 93–8 were substantively the same as the amendments proposed by the JAA NPA for JAR–25.

Discussion of the Proposals

In NPRM 93–8, the FAA proposed the following rule changes:

1. Replace the two seconds of continued acceleration beyond V_1 (mandated by Amendment 25–42) with a distance margin equal to two seconds at V_1 speed;

2. Require that the runway surface condition (dry or wet) be taken into account when determining the runway length that must be available for takeoff; and

3. Require that the capability of the brakes to absorb energy and stop the airplane during landings and rejected takeoffs be based on brakes that are worn to their overhaul limit.

Proposal 1

The FAA proposed to amend the method of determining the accelerate-stop distance prescribed in § 25.109 by replacing the two seconds of continued acceleration after reaching V_1 with a distance equal to two seconds at V_1 speed. This proposal would reduce the accelerate-stop distance that must be available for a rejected takeoff because the airplane would be assumed to begin stopping from a lower speed (from V_1, rather than from the speed reached after two seconds of acceleration beyond V_1). The FAA's intent was to replace the most costly aspect of Amendment 25–42 with a requirement that closely represents the pre-Amendment 25–42 criteria of § 25.109, as applied to the certification of recent U.S.-manufactured airplanes.

Proposal 2

The FAA proposed to amend § 25.105 to require that airplane takeoff performance data be based on wet, in

addition to dry, runways. Section 25.1587(b) would be amended to require that performance information for wet runways be included in the Airplane Flight Manual (AFM). Sections 91.605, 121.189, and 135.379 of the operating rules would be amended to require that wet runways be taken into account when determining the runway length that must be available for takeoff, if wet runway performance information exists in the AFM. Thus, this rule would apply only to airplane designs for which the application for type certification occurs after the amendment becomes effective, and to those previously certificated airplane designs for which the manufacturer chooses to re-certify to the amended standards.

Section 25.109 would be revised to provide the details of how the accelerate-stop distance would be calculated for a wet runway. The FAA proposed the following approach to determining the wet runway takeoff performance: (1) Take into account the reduced braking force due to the wet surface; (2) permit performance credit for using available reverse thrust as an additional stopping force; and (3) permit the minimum airplane height over the end of the runway after takeoff to be reduced from 35 feet to 15 feet. This approach would reduce the risk of overruns during rejected takeoffs on wet runways while retaining safety margins for continued takeoffs similar to those required for dry runways.

The reduced braking force available is the most significant variable affecting the stopping performance on a wet runway. The FAA proposed to revise § 25.109 to specify that the wet runway braking force would be one-half the dry runway braking force, unless the applicant demonstrated a higher wet runway braking force. Under this proposal, the one-half of the dry braking force level would apply regardless of whether the dry runway braking force is limited by the torque capability of the brake (which is the friction force generated within the brake) or the friction capability of the runway surface. Although it can be argued that the torque capability of a brake is independent of the runway surface condition, the proposed use of this simple relationship between wet and dry runway braking capability would depend on using the one-half dry relationship throughout the braking phase.

Data published in Engineering Science Data Unit (ESDU) 71026, entitled "Frictional and Retarding Forces on Aircraft Types—Part II: Estimation of Braking Force," shows that the relationship between wet and dry braking coefficient varies significantly with speed. At high speeds, the wet runway braking coefficient is typically less than one-half the dry runway braking coefficient. At low speeds, the wet runway braking coefficient is typically more than one-half the dry runway braking coefficient. Used over the entire speed range for the stopping portion of a rejected takeoff, however, the wet runway braking coefficient can justifiably be approximated as one-half the dry braking coefficient. The ESDU report is included in the docket.

Under this proposal, § 25.109 would also be revised to permit the use of available reverse thrust when determining the accelerate-stop distance for a wet runway. "Available" reverse thrust was interpreted as meaning the thrust from engines with thrust reversers that are operating during the stopping portion of the rejected takeoff. Credit for reverse thrust was included in the proposal because the most significant variable that affects the stopping performance on a wet runway, reduced braking friction, was also included as part of the rational approach to wet runway rejected takeoff.

On dry runways, the FAA proposed to explicitly deny credit for reverse thrust when calculating the accelerate-stop distance. This proposal would codify current FAA policy. Although reverse thrust should and probably would be used during most rejected takeoffs, the FAA believes that the additional safety provided by not accounting for reverse thrust in calculating the accelerate-stop distance on a dry runway is necessary to offset other variables that can significantly affect the dry runway accelerate-stop performance determined under the current standards. For wet runways, credit for reverse thrust would be permitted because taking into account the reduced braking force available on the wet surface, as proposed in this notice, greatly outweighs the effects of these other variables. Examples of variables that can significantly affect the dry runway accelerate-stop performance include: runway surfaces that provide poorer friction characteristics than the runway used during flight tests to determine stopping performance, dragging brakes, brakes whose stopping capability is reduced because of heat retained from previous braking efforts, etc.

The FAA proposed to revise § 25.113 to allow the distance required for a continued takeoff from a wet runway to include taking off and climbing to a height of 15 feet, rather than the height of 35 feet required on a dry runway. This lower screen height (which is the height of an imaginary screen that the airplane would just clear with the wings in a level attitude when taking off or landing) would reduce the balanced field length V_1 speed, thereby reducing the number of high-speed rejected takeoffs on wet runways. The FAA considers lowering the screen height to 15 feet to be an acceptable method of reducing the risk of overruns on wet runways because of the similarity to current rules when operating from dry runways that have a clearway. The minimum height permitted over the end of the runway for current dry runway takeoffs may be 13 to 17 feet, depending on the airplane, when a clearway is present. In addition, a 15-foot minimum screen height and vertical obstacle clearance distance has been allowed for many years by the United Kingdom Civil Aviation Authority for wet runway operations without any problems being reported.

The combination of a clearway with the proposed 15-foot screen height for wet runways could result in a minimum height over the end of the runway of near zero (i.e., liftoff very near the end of the runway), if clearway credit were to be permitted for wet runways in the same manner that it is currently permitted for dry runways. The FAA considers this situation to be unacceptable. The possible presence of standing water or other types of precipitation (e.g., slush or snow) and numerous operational factors (e.g., late or slow rotation to liftoff attitude) emphasize the need to provide more of a safety margin than would be present if liftoff were permitted so near the end of the runway. Therefore, the proposed § 25.113 would not permit the combination of clearway credit and a 15-foot screen height. The FAA proposed to modify § 25.113, however, to ensure that the presence of a clearway does not result in requiring longer runway lengths than if there were no clearway.

In addition to the reduced screen height for wet runways, the minimum vertical distance required between the takeoff flight path defined in § 25.115 and obstacles (e.g., trees, hills, buildings, etc.) would be reduced by a corresponding amount. To accomplish this, the FAA proposed to revise § 25.115 to state that the takeoff flight path shall be considered to begin at a height of 35 feet at the end of the takeoff distance.

This revised definition of the takeoff flight path would apply equally to dry and wet runways, even though the height of the airplane at the end of the takeoff distance (i.e., the screen height)

for wet runways is proposed to be only 15 feet. The effect of this proposal would be to make it possible to use the flight path information currently contained in the AFM even if the runway is wet. Because the screen height would be reduced from 35 feet to 15 feet for a wet runway, the height of an airplane at any point in the flight path will therefore be approximately 20 feet lower from a wet runway than from a dry runway. Under this proposal. the airplane's actual height over obstacles would be reduced by approximately 20 feet when taking off from a wet runway.

Under the current regulations, the airplane's flight path must be higher than any obstacles by a combination of an increment of height and an increment of gradient (i.e., the slope of the flight path). Although this proposal would reduce the height increment by approximately 20 feet, the gradient increment would be unchanged. As the distance from the end of the takeoff distance increases, the gradient increment provides an increasingly greater portion of the total height difference between the airplane and the obstacle. Therefore, the effect of reducing the height increment over obstacles by 20 feet diminishes as the distance from the end of the takeoff distance increases.

Proposal 3

The FAA proposed to amend § 25.101(i) to require that accelerate-stop and landing distances must be determined with all the airplane brakes at the fully worn limit of their allowable wear range. Section 25.735 would be revised to require that the maximum brake energy capacity rating must be determined with each brake at the fully worn limit of the allowable wear range. In addition § 25.735 would be amended to add a requirement for a flight test demonstration of the maximum kinetic energy rejected takeoff with not more than 10 percent of the allowable brake wear range remaining.

Miscellaneous

Additionally, the FAA proposed to add one new definition and one new abbreviation to part 1, Definitions and Abbreviations.

As a result of their special investigation of rejected takeoff accidents, the National Transportation Safety Board (NTSB) recommended that the FAA clearly define the term "takeoff decision speed" (V_1) in part 1. This recommendation is contained in the NTSB's Special Investigative Report, "Runway Overruns Following High Speed Rejected Takeoffs," published on February 27, 1990.

Concurring with the NTSB recommendation, the FAA proposed to add a definition of takeoff decision speed to § 1.1 in order to remove apparent confusion over the meaning of this term. The FAA's proposed definition was intended to make it clear that the decision to reject the takeoff, indicated by the pilot activating the first deceleration device, must be made no later than V_1 for the airplane to be stopped within the accelerate-stop distance.

The abbreviation V_{EF} is used in several places within part 25. The FAA proposed to amend § 1.2 to add the definition of V_{EF}, which currently appears in § 25.107(a)(1). V_{EF} is the speed at which the critical engine is assumed to fail during takeoff.

As stated previously, the FAA did not intend to apply these proposed amendments retroactively to either airplanes currently in use or future production airplanes of designs that have already been approved. However, manufacturers or operators of these airplanes may elect to comply with these proposed amendments by a change to the type design. The benefits of the revision to the time delay criteria of § 25.109 would then be available to relieve the economic burden imposed by Amendment 25–42. The proposed amendments to take into account the effects of wet runways and worn brakes must also be included in such a recertification. The FAA expects that, for airplanes whose certification basis includes Amendment 25–42, most applicants will elect to comply with this proposal because it will be economically beneficial for them to do so.

Discussion of the Comments

The FAA received over 100 comments from 22 different commenters regarding the proposals presented in NPRM 93–8. The commenters include airplane pilots, manufacturers, operators, and the associations representing them, foreign airworthiness authorities, and another agency of the U.S. government. Because of the increasing emphasis placed on international harmonization of the airworthiness standards, and because the JAA issued substantively the same proposals to amend JAR–25, the FAA also received many comments from foreign and international sources.

In general, the pilots, and the airworthiness authorities of Canada and the Netherlands oppose the proposed amendments unless the FAA imposes the new standards retroactively. Conversely, the airplane manufacturers and operators generally support the proposals as long as they are not imposed retroactively. The JAA strongly supports the proposals, but also believes that these requirements should be imposed retroactively. The association representing European manufacturers supports applying the proposed standards to new derivatives of existing approved designs as well as to completely new airplane designs.

Another issue that generated strong contrasting views concerns the distance needed to align an airplane on the runway for takeoff. Typically, airplanes enter the takeoff runway from an intersecting taxiway. The airplane must then be turned so that it is pointed down the runway in the direction for takeoff. FAA regulations do not explicitly require airplane operators to take into account the runway distance used to align the airplane on the runway for takeoff. The commenters who support retroactivity also support amending the regulations to require operators to take this runway alignment distance into account. Those who oppose retroactivity also oppose proposals to require taking into account the runway alignment distance.

In NPRM 93–8, the FAA stated that "with the safety benefits and economic impact information available at this time, the FAA cannot support a recommendation to make the standards proposed by this notice retroactive to either airplanes currently in use or future production airplanes of designs that have already been type certificated." This conclusion was reached after a review of the estimated costs and the potential benefits that would result from applying the proposed standards retroactively and mandating that operators take into account the runway alignment distance.

It should be noted, however, that one part of the proposed standards has effectively already been imposed retroactively. The FAA has issued airworthiness directives (AD's) concerning brake wear limits for every FAA-certificated transport category airplane with a maximum takeoff weight of over 75,000 pounds. These AD's ensure that the brakes on these airplanes, even when fully worn, can absorb the energy from a maximum energy rejected takeoff.

In addition to the economic impact of retroactively applying the proposed standards, the FAA was influenced by the increasing emphasis on international harmonization of the airworthiness standards. Retroactivity of the proposed standards and the requirement to take runway alignment distance into account, had the FAA decided to proceed with these provisions, would have been

accomplished through revisions to the operating rules of the FAR. At the time NPRM 93–8 was being developed, the JAA lacked operating rules with which to impose these requirements. Although the introduction and justification sections of JAA NPA 25B, D, G–244 discussed an intent to apply the standards retroactively, and to require that runway alignment distance be taken into account, the JAA lacked a regulatory mechanism for doing so. Therefore, the proposed standards would not have been harmonized had the FAA proposed such amendments to the part 91, 121, and 135 operating rules.

Shortly thereafter, the JAA published NPA OPS–2, containing proposed JAR operating rules for commercial air transportation (JAR–OPS 1). In this NPA, the JAA proposed to retroactively require operators to take into account the performance effects of wet runways and runways contaminated by slush, snow, ice or standing water, and to require operators to apply adjustments for runway alignment distance. NPA OPS–2 did not address retroactive application of the proposed requirements related to worn brakes. The JAR–OPS 1 final rule, which retained the proposals noted above, was issued by the JAA on May 22, 1995. It becomes effective on April 1, 1998, for operators of airplanes with a maximum takeoff weight of over 10,000 pounds or a maximum approved seating capacity of 20 or more passengers.

Due to the controversial nature of the issues of retroactivity and runway alignment distance, the FAA has decided to: (1) Proceed with the proposed rules without requiring retroactive application of these standards or adding a new requirement concerning runway alignment distance, and (2) recommend that the issues of retroactive application of these standards and runway alignment distance be added to the FAA/JAA harmonization work program. Except in the treatment of these two issues, the final rule adopted by this amendment is completely harmonized with the applicable JAA standards. These two issues reflect differences between the FAA and JAA operating rules; the applicable airworthiness standards of part 25 and JAR–25 are completely harmonized by this amendment and a corresponding amendment to JAR–25.

The harmonization work program is the formal method developed by the FAA and the JAA to harmonize relations and policies. Tasks on the harmonization work program are assigned to FAR/JAR harmonization working groups in accordance with the respective rulemaking procedures of the FAA and the JAA. For the FAA, these tasks are assigned to the Aviation Rulemaking Advisory Committee (ARAC).

The ARAC was established to provide advice and recommendations to the FAA on all rulemaking activity. There are over 60 member organizations on the committee, representing a wide range of interest within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. For issues on the harmonization work program, the ARAC assigns members, who work on behalf of the FAA, to the FAR/JAR harmonization working group. Although working group meetings are generally not open to the public, working group task assignments are published in the **Federal Register**, and all interested parties are invited to participate as working group members. Working groups report directly to the ARAC, and the ARAC must concur with a working group proposal before that proposal can be presented to the FAA as an advisory committee recommendation. After an ARAC recommendation is received and found acceptable by the FAA, the agency proceeds with the normal public rulemaking procedures.

Most of the commenters who oppose the proposed rulemaking also claim that the proposals would degrade the level of safety provided by the current standards. Specifically, these commenters oppose the proposal to replace the two seconds of continued acceleration beyond V_1 with a distance margin equal to two seconds at V_1 speed (Proposal 1), because it would allow an increase in the maximum allowable takeoff weight when that weight is limited by the length of the runway. Although the FAA agrees with the commenters on the effect of this particular proposal on takeoff weight limits, and discussed this effect in NPRM 93–8, the FAA disagree that safety is degraded when this proposal is considered in combination with the other proposals presented in NPRM 93–8.

In addition to Proposal 1, the FAA proposed other amendments that would make the current standards more stringent. As explained in NPRM 93–8, the purpose of the FAA proposals was to present a more rational approach of explicitly providing for the specific elements affecting takeoff performance, rather than the broad brush approach represented by the two seconds of acceleration beyond V_1. The FAA considers the proposed standards for worn brakes and wet runways, which the current standards do not explicitly address, to significantly improve takeoff safety. Combined with Proposal 1, the proposed amendments provide an equivalent or higher level of safety than the current standards.

Depending on whether the runway is wet or dry and on the particular airplane's stopping capability with worn brakes, the maximum allowable takeoff weight for a given runway length could end up being either increased or decreased under the proposed standards. Although its effects are variable, the FAA estimates that Proposal 1 would reduce, on average, the runway length needed for takeoff by 150 feet. For airplanes equipped with typical steel brakes, the proposed worn brake requirements would add an average of 150 feet to the runway length needed for takeoff. The FAA estimates that the proposed wet runway requirements would result in an average increase of 220 feet in the runway length required for takeoff when the runway is wet. It should be emphasized that these estimates are average effects that can vary considerably depending on the airplane type and the specific takeoff conditions. For example, airplanes equipped with carbon brakes or certain heavy-duty steel brakes, usually will be uaffected by the worn brake requirements because these brakes provide the same stopping capability in the worn condition as the new condition. (The proposed worn brake requirement represent an important safety improvement, however, regardless of whether this improvement comes from taking into account a loss in brake capability, or because the requirements act as an incentive to provide brakes that do not suffer this loss in capability.)

Along with this rulemaking effort, the FAA also participated in a joint FAA/industry team to produce the Takeoff Safety Training Aid. This training aid, first made available in August 1992, represents the findings of the team relative to training and procedural actions that could be taken to increase takeoff safety. The goal of the training aid is to minimize the probability of rejected takeoff accidents and incidents by: (1) Improving the ability of pilots to take advantage of opportunities to maximize takeoff performance margins; (2) improving the ability of pilots to make appropriate go/no-go decisions; and (3) improving the ability of crews to effectively accomplish the rejected takeoff procedures. Simulation trials and in-depth analyses of takeoff accidents and incidents were used to develop the training aid material. The FAA urges operators to use the Takeoff

Safety Training Aid in their qualification and recurrent aircrew training programs. The FAA is convinced that adoption of this material will further improve safety during the critical takeoff phase of flight.

The FAA received a large number of comments on the proposed definition of takeoff decision speed (V_1), including its relationship to the broader subject of the process by which the pilot recognizes a failure, decides to reject the takeoff, and acts on that decision. One commenter submitted several documents as additional supporting material, including a detailed study of pilot reaction times during rejected takeoff accidents. This commenter, accompanied by several others, believes that the proposed standards inadequately provide for the time it takes the average pilot to complete the recognition, decision, and reaction process. Other commenters support the FAA proposal, and some of these commenters also offered suggestions to further clarify the purpose of the V_1 speed.

The diversity displayed in the comments illustrates a great deal of misunderstanding and disagreement regarding the definition and use of the V_1 speed. In general, inconsistent terminology used over the years in reference to V_1 has probably contributed to this confusion. As noted by the commenters, V_1 has been referred to at various times as the critical engine failure speed, the engine failure recognition speed, and the takeoff decision speed.

Special Civil Air Regulation No. SR–422, effective August 27, 1957, originally referred to V_1 as "the critical engine failure speed." These same standards, which were later recodified into part 25, defined the accelerate-stop distance as the distance to accelerate to V_1, and then to stop from that speed. Although an allowance was required for any time delays that may reasonably be expected in service, SR–422 did not explicitly state where or how the time delays should be introduced relative to V_1. For certification purposes, the FAA considered V_1 to be the speed at which the pilot took the first action to stop the airplane. Time delays for recognition and reaction to that failure were applied prior to V_1, and delays in accomplishing each subsequent action for stopping the airplane were applied after V_1. Allowing for the time delays, the actual engine failure was therefore assumed to occur prior to V_1.

With Amendment 25–42, effective March 1, 1978, the FAA amended the airworthiness standards to clarify and standardize the method of applying these time delays. V_1 was referred to as the "takeoff decision speed," which turned out to be ambiguous in that it could be interpreted to mean either the beginning or the end of the pilot's decision process. The preamble to Amendment 25–42, however, states that "V_1 is determined by adding to V_{EF} [the speed at which the critical engine is assumed to fail] the speed gained with the critical engine inoperative during the time interval between the instant at which the critical engine is failed and the instant at which the test pilot recognizes and reacts to the engine failure, as indicated by the pilot's application of the first retarding means during accelerate-stop tests." This same definition was codified as § 25.107(a)(2). Not only is V_1 intended to occur at the end of the decision process, but it also includes the time it takes for the pilot to perform the first action to stop the airplane.

The FAA requires applicants to demonstrate, by flight test, the time intervals between V_{EF} and V_1, and between each subsequent action taken by the pilot to stop the airplane. FAA pilots and engineers witness and participate in these tests, which must include at least six rejected takeoffs. Because the test pilots know that they are going to reject the takeoff, human factors literature refers to this process as a simple task. In actual operations, the rejected takeoff maneuver is unexpected, and is referred to as a complex task. In consideration of this complex task, the time intervals measured during certification flight tests are increased when the accelerate-stop distances published in the AFM are calculated. These additional time increments are not intended to allow extra time for making a decision to stop after passing through V_1. Their purpose is to allow sufficient time (and distance) for a pilot, in actual operations, to accomplish the procedures for stopping the airplane.

The first adjustment is made to the time interval between V_{EF} and V_1. During the certification flight tests, the pilot expects to reject the takeoff and reacts very quickly. To take this into account, the time interval used to calculate the AFM accelerate-stop distances must be the longer of either the demonstrated time or one second. This standard has been applied to the certification of every turbine-powered transport category airplane since the late 1960's, and the FAA has not proposed to change it.

The second adjustment concerns the time increment applied after V_1. The method of determining this adjustment has varied, but the objective has always been the same—to provide enough time and distance for a pilot to accomplish the procedures for stopping the airplane. Prior to Amendment 25–42, a one-second increment was added to the time interval between each pilot action occurring after V_1. For most transport category airplanes, the rejected takeoff involves three separate pilot actions. The pilot applies the brakes, reduces the thrust or power, and raises the spoilers. The applicant defines the order in which the actions occur, but must demonstrate that the resulting procedures do not require exceptional skill to perform. Since the test pilot's first action determines V_1, there are typically two pilot actions occurring after V_1. Therefore, two seconds of additional time (and the resulting distance) were added to the time intervals determined by the certification flight tests.

Amendment 25–42 changed the method of applying these time increments. The provisions added by Amendment 25–42 require the AFM accelerate-stop distance to be calculated by inserting a two-second time increment after V_1, but before the pilot takes the first action to stop the airplane. During this two-second time increment, the airplane continues to accelerate. No further time increments are added to the time intervals between the actions taken by the pilot to stop the airplane.

It is important to note that Amendment 25–42 did not change the certification flight test procedures. The two-second time increment is applied analytically during the calculation of the AFM accelerate-stop distances, not by directing the pilot to delay action for two seconds after V_1 during the rejected takeoff flight tests.

The proposal presented in NPRM 93–8 would change the method of applying this two second time increment to a method similar to that existing prior to Amendment 25–42. However, the proposed method uses a distance increment rather than a time increment, to ensure that no credit is taken during this time period for system transient effects (e.g., engine spindown, brake pressure ramp-up, etc.). The distance increment is equal to the distance traversed in two seconds at the V_1 speed. Unlike the pre-Amendment 25–42 method, this distance increment cannot be reduced when fewer than three pilot actions are used in the rejected takeoff procedures (e.g., for airplanes using automated systems that take the place of one or more of the usual pilot actions). The FAA considers the distance traveled in two seconds at V_1 speed to be the minimum acceptable

distance allowance needed to provide for the element of surprise and other operational factors missing from the certification flight test demonstrations.

As long as there are no more than three pilot actions needed to accomplish a rejected takeoff, the accelerate-stop distance is determined using the demonstrated time intervals between pilot actions with no additional time or distance increments applied. For each additional pilot action beyond the first three actions, however, a one-second time (and distance) increment must be added to the demonstrated time interval for that action.

The FAA disagrees with those commenters who believe that the proposed standards inadequately provide for the time it takes the average pilot to complete the recognition, decision, and reaction process. Not only does the FAA require applicants to determine by flight test the length of time needed for the pilot to complete this process, but this demonstrated time interval is also increased to take into account the element of surprise and other operational factors missing from the certification flight test demonstrations.

Operationally, V_1 represents the minimum speed from which the takeoff can be safely continued within the takeoff distance shown in the AFM, and the maximum speed from which the airplane can be stopped within the accelerate-stop distance shown in the AFM. Typically, the pilot not flying the airplane will call out V_1 as the airplane accelerates through this speed. If the pilot flying the airplane has not taken action to stop the airplane before this callout is made, the takeoff should be continued unless the airplane is unsafe to fly.

One commenter states that airplane manufacturers produce performance data for use by the U.S. military that provides the engine failure speed, rather than the speed at which the pilot must respond to the failure. This commenter believes that the military airworthiness rejected takeoff standards, which provide the crew with the engine failure speed, are safer than the civil airworthiness standards, which provide the crew with the V_1 speed. The commenter further notes that many commercial pilots with a military background operate under the belief that the civil airworthiness standards provide equivalent safety to the military standards. In the commenter's opinion, the civil standards provide a lower level of safety, and these pilots have been given a false sense of security.

The FAA is aware of many differences between the civil and military takeoff requirements. These differences are indicative of the different operating needs and environments between civil and military flight operations. For example, the military standards allow liftoff to occur at the very end of the runway and obstacles to be cleared with no safety margin in the event of the failure of the critical engine at the designated "go" speed. In contrast, part 25 requires the airplane to be at a height of 35 feet at the end of the takeoff distance (on a dry runway), and obstacles must be cleared by 35 feet plus an additional safety margin related to the flight path gradient. In summary, the civil and military airworthiness standards provide for safe operations within their respective operating environments. It would be inappropriate, however, to apply unique procedures and techniques from one operating environment to the other.

One commenter noted that the proposed definition for takeoff decision speed tends to perpetuate the confusion over the meaning and use of the V_1 speed. The commenter points out that V_1 is really a "pilot action speed" that occurs immediately after the pilot makes the decision to reject the takeoff. Another commenter suggests that the proposed definition is technically inaccurate because reducing thrust during a rejected takeoff would not normally be construed as activating a deceleration device. Hence, the commenter suggested alternative wording for the words "the pilot activates the first deceleration device."

The FAA agrees with these commenters and has revised the proposal accordingly. The term "takeoff decision speed" has been deleted both from the proposed definition and from § 25.107(a)(2). The proposal to define takeoff decision speed in § 1.1 is also withdrawn. The adopted definition represents a change to the definition of V_1 in § 1.2, rather than an addition to § 1.1. This revised definition clarifies that V_1 represents the minimum speed from which the takeoff can be safely continued within the takeoff distance shown in the AFM and the maximum speed from which the airplane can be stopped within the accelerate-stop distance shown in the AFM. In addition, the preamble discussion of the proposals has been edited for additional clarity to present a consistent description of the V_1 concept.

The proposed addition of the definition for V_{EF} to § 1.2 is adopted as proposed. One commenter misunderstood this proposal as representing the first time the FAA has sought to define V_{EF}. For clarification, the term V_{EF} and its definition were originally added to § 25.107(a)(1) by Amendment 25–42. The amendment adopted in this rule adds the existing definition for V_{EF} to the list of abbreviations and symbols in § 1.2.

In addition to the definitions proposed in NPRM 93–8, one commenter suggests revising the definition of rated takeoff thrust to allow its use for up to ten minutes of operation. The current definition in § 1.1 limits the use of takeoff thrust to five minutes or less. The FAA is currently considering the change proposed by this commenter as part of a harmonization effort with the European JAA. In the interim, the FAA has developed a procedure to review and approve specific requests for the use of takeoff thrust for up to ten minutes duration on transport category airplanes in the event of an engine failure or shutdown.

One commenter recommended adding "wet and dry runway conditions" to the variables listed in § 25.101(e) for which the airplane configuration may vary. The rationale the commenter provides for this recommendation is to encourage optimization of the airplane configuration. The FAA does not believe that the suggested change will accomplish the commenter's goal. Section 25.101(e) does not require applicants to establish an optimum configuration to meet the applicable requirements. Instead, § 25.101(e) allows applicants to establish different configurations (e.g., flap settings) to obtain better performance at different weight, altitude, and temperature conditions.

The same commenter recommends revising § 25.105(a)(2) to require the takeoff data to be determined in the optimum configuration for the takeoff conditions specified in § 25.105(c). The commenter believes that this change would require operators to use the optimum flap setting for takeoff, rather than allow the use of any flap setting that meets the applicable regulations. The FAA does not concur with this recommendations for the following reasons. First, the commenter's recommendation should be directed at the airplane operating requirements, rather than the part 25 airworthiness standards. The effect of the recommended revision to part 25 would be to prohibit takeoff data from being provided for configurations that were not deemed to be the optimum configuration. Second, the commenter does not define how to determine the optimum configuration. The commenter appears to support using the configuration that would provide the shortest takeoff and accelerate-stop

distances. However, this configuration also typically results in the poorest climb capability after takeoff, and may not be the optimum configuration from the standpoint of obstacle clearance, noise, standardization of crew procedures, or fuel use.

The FAA received several comments regarding the proposed change to § 25.101(i). One commenter recommends deletion of the proposed requirement to determine the landing distances with worn brakes. This commenter claims that the effects of worn brakes on landing is insignificant, and notes that the FAA does not expect this requirement to reduce the amount of payload that can be carried. The commenter also notes that there has never been a landing incident or accident in which a deficiency in brake energy due to wear was a factor, nor is there any reasonable likelihood that there would ever be one. The commenter goes on to say that the proposed requirement would result in additional certification test and flight manual development costs with no resultant safety benefit to the public.

Although the FAA agrees that the proposed requirement is not likely to reduce the amount of payload that can be carried for most landings, the FAA disagrees that the effects of worn brakes on landing will always be insignificant. The effect of brake wear at the braking energy levels associated with a landing stop depends on the particular brake design. To provide for those cases in which the landing distance is critical, the AFM landing distance data must be based on fully worn brakes. The proposed requirement only specifies the wear condition of the brakes for determining the landing distances. No additional AFM information, and, therefore, no additional flight manual development costs would be required. The proposed requirement also would not necessarily result in additional certification testing. The only flight test that must be performed with worn brakes is the maximum energy rejected takeoff condition, in which the brakes must be worn to within 10 percent of the fully worn condition. All other data must only meet the condition that sufficient data be available from airplane flight tests or wheel-brake dynamometer tests to enable adjustment of all of the takeoff and landing flight test results to the fully worn level. For example, the testing performed to determine the effect of worn brakes on accelerate-stop distances may also be used to determine the effect of worn brakes on landing distances, if it can be shown to be applicable.

Another commenter suggests adding the stipulation that the determination of the accelerate-stop and landing distances must be based on the demonstrated results obtained by flight test in accordance with the proposed § 25.735(g). The FAA concurs with the intent of this suggestion. Instead of modifying the proposed § 25.101(i), however, the FAA is revising the proposed § 25.735(g) and relocating it as a new § 25.109(i). The adopted wording clarifies that the applicant must conduct a flight test demonstration of the maximum brake kinetic energy accelerate-stop distance with no more than 10 percent of the allowable wear range remaining on each of the airplane wheel brakes. This change to the original proposal is also discussed later relative to the comments received on the proposed § 25.735(g).

A commenter proposes a wording change to § 25.101(i) to anticipate possible future brake materials that might show an improving brake performance as the brake wears. This commenter suggests that the proposed requirement should reference the wear condition that dynamometer testing indicates as producing the least effective braking performance. The FAA agrees that the most critical wear condition should be used to determine the stopping distances and energy capacity of the brakes. In practice, however, the FAA believes this condition will always be the fully worn brake. The FAA does not believe that an extensive dynamometer survey of different wear states is warranted.

One commenter suggests that stopping distances be based on brakes that are worn to 90 percent of the allowable wear level instead of the proposed level of fully worn. This commenter states that, in actual operations, it would be virtually impossible for all the airplane's brake assemblies to simultaneously be at the fully worn limit of their allowable wear range. In addition, this commenter believes that such conservatism in determining the stopping distances to be unwarranted when combined with the worn brake requirements relating to brake energy absorption capability. As an alternative, this commenter, joined by a second commenter, proposes that § 25.101(i) optionally allow stopping performance to be based on the actual amount of brake wear existing at the time of each flight. The two commenters state that it is unnecessary and inappropriate for the regulations to assume the worst case capability when satisfactory means to determine the actual capability can be provided. They believe that the proposed regulation would inhibit the development of technical and procedural advances that would take into account the actual wear condition of the brakes.

The FAA does not concur with the recommendation to base the stopping distances on brakes worn to 90 percent of the allowable wear level. Although operators may typically overhaul brakes before they are fully worn, and the brakes on different wheels are usually at different levels of wear, airplanes may legally be operated with all of the brake assemblies in their fully worn condition. The FAA agrees that it would be inappropriate for the regulations to assume the worst case capability when satisfactory means exist to determine the true capability; however, the operational aspects must also be satisfactorily addressed.

Regarding the commenters' proposal to allow stopping distances to be based on the actual brake wear level, the FAA has significant concerns over the operational aspects. Although it may be possible to determine the accelerate-stop and landing distances as a function of brake wear, the FAA considers it unacceptable to use, on a flight-by-flight basis, the brake wear level as an additional takeoff performance variable. The added complexity caused by this additional variable would increase the chances of error in determining the allowable takeoff weight and the takeoff speeds. Also, the FAA questions whether an acceptable means can be developed to accurately and reliably determine the actual wear state of the brake under all operational and environmental conditions. Finally, extensive certification testing would be required to determine the stopping distances as a function of the brake wear level. A linear relationship between these variables cannot be assumed. Therefore, § 25.101(i) is adopted as proposed, except for a minor editorial revision for clarification purposes.

Since the certified accelerate-stop and landing distances will correspond to brakes that are at the fully worn limit of their allowable wear range, the allowable brake wear range must be specified as part of the approved type design for the airplane. This information should be provided on the type certificate data sheet. The allowable wear range should be defined in terms of a linear dimension in the axial direction, which is typically determined by measuring the extension of a pin used to indicate the amount of wear. At the fully worn limit of the allowable brake wear range, the brake must be removed from the airplane for overhaul.

Both favorable and adverse comments were received on the FAA's proposal to

amend § 25.109 to replace two seconds of acceleration beyond V_1 speed with the distance traversed in two seconds at V_1 speed. The commenters who objected to the proposed amendments believe the proposal would reduce safety. One commenter who disagrees with the proposed amendment also states that the comparison between the one-engine-inoperative and all-engines-operating accelerate-stop distances, as required by the proposed § 25.109(a), would become almost meaningless. This commenter claims that "test pilot response in the order of milliseconds preempts any significant difference in acceleration distance between engine out and all engine acceleration before V_1." Also, the proposed distance traversed during two seconds at V_1 speed is the same for both cases, as is the deceleration distance from V_1 until the airplane is stopped.

As discussed previously, the FAA considers the proposed additions of worn brake and wet runway requirements to significantly improve takeoff safety. These additional requirements, along with the proposal to replace the two seconds of acceleration with a distance equal to two seconds at V_1 speed, would provide more rational takeoff airworthiness standards and an equivalent or higher level of safety than the current standards. Regarding the comparison of one-engine-inoperative and all-engines-operating distances, the minimum time between the critical engine failure speed (V_{EF}) and V_1, as discussed earlier, is one second. During the period after V_1, unless reducing thrust is the first pilot action following the engine failure, there will be another time interval before thrust is reduced on the remaining operating engine(s). Since thrust reversers may not be used in determining the dry runway accelerate-stop distances, the operating engines (on a turbojet powered airplane) will continue to produce forward thrust. Therefore (for turbojet airplanes), the distance to stop from V_1 will usually be longer for all-engines-operating case than for the one-engine-inoperative case. Whether the sum of the accelerate and stop distances is greater for the all-engines-operating case as opposed to the one-engine-inoperative case depends on the time intervals between V_{EF} and V_1, V_1 and the pilot action to reduce thrust, and on the engine transient response (spindown) characteristics. For wet runways, in which the effect of reverse thrust would be included, the stopping distance with one-engine-inoperative will usually be longer than that with all-engines-operating. In general, the FAA expects the dry runway accelerate-stop distances to be based on the all-engines-operating case, and the wet runway accelerate-stop distances to be based on the one-engine-inoperative case.

One commenter suggests that the FAA should provide a statement proclaiming that the standards proposed in NPRM 93–8 "reflect the full intent of the accelerate-stop transition segment AFM distance construction" and that "additional time delays are not envisioned." This commenter states that FAA advisory material imposed an additional two-second time delay beyond that prescribed by Amendment 25–42, and the commenter desires a clarification that such a situation will not recur. The FAA intends to revise Advisory Circular (AC) 25–7, "Flight Test Guide for Certification of Transport Category Airplanes," to be consistent with this adopted rule and the description of the time delays provided in this preamble discussion regarding the definition of V_1.

In reviewing the comments, the FAA discovered that the proposed wording for § 25.109(a) could be interpreted such that speeds greater than V_1 need not be considered in determining the accelerate-stop distances. However, the airplane will typically exceed V_1 speed during the stop, particularly with all-engines-operating, even when the pilot applies the brakes at V_1. The proposed amendments to § 25.109(a) have been modified to clarify that the accelerate-stop distances must include the highest speed reached during the rejected takeoff maneuver. As modified, these proposed amendments to § 25.109(a) are adopted.

The FAA received a large number of comments regarding the proposed method for determining takeoff performance on wet runways. One of the provisions of the proposed method would allow applicants to use a simplified approach to determine the braking capability on a wet runway without the need for specific wet runway flight testing. Based on the extensive wet runway testing conducted over the past 30 years by the National Aeronautics and Space Administration (NASA), the FAA, the aerospace industry, and other organizations around the world (a compilation of which appears in the docket in ESDU item number 71026), the FAA proposed using a braking coefficient of one-half the demonstrated dry braking coefficient. The FAA intended for this one-half factor to be applied even if the dry runway braking coefficient is limited by the maximum torque capability of the brake, rather than the maximum friction capability available from the runway surface.

Several commenters disagree with using a simple one-half factor to determine the wet runway braking coefficient. One commenter feels the factor is arbitrary and that using a simple factor is inappropriate. Another commenter claims that other easily applied methods exist and should be used to provide a wet runway braking coefficient. This commenter believes that the proposed method effectively makes the low speed accelerate-stop data more conservative than the high speed data, which would be the opposite of what the commenter feels should be done to increase safety. These commenters did not propose any alternative methods for determining the wet runway braking coefficient.

Several commenters object to the specific aspect of applying the one-half factor when the dry runway braking coefficient corresponds to the maximum torque capability of the brake. In spite of the explanation provided in the preamble discussion in NPRM 93–8, these commenters oppose this provision on the basis that the maximum torque capability of the brake is independent of the runway surface condition. One commenter conducted laboratory tests of a simulated wet runway to show that the stopping ability of an airplane on a wet runway is not a function of the size or torque limit of the brakes. Another commenter claims that this provision appears to prohibit the effective and safe use of braking capacity up to the limit of the wet runway braking coefficient. This commenter points out that an airplane with brakes that have a low maximum torque capability would be unfairly penalized relative to an airplane equipped with brakes of a higher maximum torque capability. Another commenter questions whether the proposed requirement is a conservative approach resulting from a lack of appropriate test data.

The FAA agrees that the torque capability of the brake is usually not a limiting factor on a smooth wet runway. The FAA proposed applying a factor to the torque limited braking coefficient to represent the varying relationship between the wet and dry runway braking coefficients as a function of ground speed. At higher ground speeds, the wet runway braking coefficient is typically less than one-half the dry runway braking coefficient. At these higher speeds, the dry runway braking coefficient is usually limited by the brake's maximum torque capability. For the typical airplane/brake combination, factoring the torque limited braking coefficient obtained on a dry runway by one-half provides a reasonable approximation to the significantly

reduced braking coefficients observed at high speeds on wet runways. Because the total stopping distance for a high speed stop is affected more by the stopping capability at high speeds than at low speeds, applying the one-half factor only to the non-torque limited braking coefficient would be inadequate for determining the total distance needed to stop on a wet runway.

The FAA does not concur with the comment that this proposal would prohibit the safe and effective use of braking capability on a wet runway. This proposal only addressed the method for determining the wet runway accelerate-stop distances presented in the AFM. It would not affect the manner in which the pilot uses the brakes. The FAA recognizes, however, that not all airplanes share the same relationship between V_1 speeds and maximum brake torque capability, and that some airplane types could be affected more than others by this provision. In recognition of this potential disparity, the proposed § 25.109(b)(2) would have allowed applicants the option of demonstrating a higher wet runway braking coefficient.

One commenter suggested that an advisory circular may be necessary to provide guidance regarding an acceptable method for demonstrating a wet runway braking coefficient higher than one-half the dry runway value. Another commenter noted that one flight test, for example, performed on a damp grooved runway with excellent friction capability would be an insufficient basis for developing the AFM information applicable to all wet runways. Another commenter recommended a change to the FAA proposal to allow the use of methods other than flight testing to demonstrate a higher wet runway braking coefficient. This commenter believes that in the near future it may become feasible to use data obtained from either an analysis, a simulation of the airplane's braking system, or other sources.

One of the commenters who opposed portions of the FAA proposal submitted an alternative proposal based on the same ESDU 71026 data source used to develop the FAA proposal. The commenter proposes an alternative method to replace the option for demonstrating a braking coefficient higher than one-half the dry runway braking coefficient. The following summary represents a brief synopsis of the commenter's detailed proposal:

a. Derive a standard wet runway braking coefficient versus speed curve from the ESDU 71026 data. This curve, representing the maximum braking coefficient available from the runway surface, would be used for all transport category airplanes as the basis for developing airplane type specific curves.

b. Apply adjustments to this curve to reflect the capability of an individual airplane type's anti-skid system on a wet runway. The anti-skid system capability would be determined either directly from wet runway testing, or a conservative capability (i.e., somewhat worse than would be expected if testing were performed) would be assumed, based on the capability of existing comparable anti-skid systems.

c. Allow higher braking coefficients for suitably maintained grooved or porous friction course runways.

d. Use the brake torque limitations (i.e., the amount of torque the brake is capable of producing) that are determined on a dry runway for both wet and dry runways.

The FAA considers the commenter's proposal to have considerable merit, not just as a replacement for the demonstration option as the commenter proposes, but also as a replacement for the one-half the dry braking coefficient methodology. The commenter's proposal addresses the shortcomings inherent in the NPRM 93–8 methodology of determining the wet runway braking coefficient by applying a single adjustment factor to the dry runway braking coefficient. Under the commenter's proposal, the wet runway braking capability would more accurately reflect the significant variation in braking capability with speed that occurs on a wet runway. Properly reflecting this variation with speed would remove the need to apply a factor to the dry runway brake torque capability.

As adopted, § 25.109(b) has been revised and new §§ 25.109 (c) and (d) have been added to prescribe wet runway accelerate-stop distance standards in a manner consistent with the commenter's proposal. This final rule is based on the same information as the original FAA proposal; however, the methodology for determining wet runway accelerate-stop distances has been changed to more rationally reflect the various factors affecting wet runway braking. The methodology adopted by this amendment provides a more accurate portrayal of wet runway stopping performance than had been proposed in NPRM 93–8.

Significant issues related to the commenter's proposal, which had to be addressed prior to preparing this final rule, included:

a. Defining the standard wet runway braking coefficient versus speed curve, considering the various parameters that affect wet runway stopping performance.

b. Defining a method for determining the capability of an airplane's anti-skid system on a wet runway.

c. Establishing conservative levels of anti-skid capability that could be used in lieu of determining this capability directly from test data.

d. Determining whether a higher braking capability is appropriate for use with grooved or porous friction course runways. (This issue is discussed later along with other comments received on this topic).

ESDU 71026 contains curves of wet runway braking coefficients versus speed for smooth and treaded tires at varying inflation pressures. These data are presented for runways of various surface roughness, including grooved and porous friction course runways. Included in the data presentation are bands about each of the curves, which represent variations in: water depths from damp to flooded, runway surface texture within the defined texture levels, tire characteristics, and experimental methods. From these data, it is readily apparent that wet runway stopping performance is significantly affected by many more variables than dry runway stopping performance. In order to determine the wet runway stopping distance, a value must be specified (or assumed) for each of these variables. Since it would be impractical to try to measure or evaluate each of these variables for every takeoff, the takeoff data must take into account the conditions likely to occur in operational service.

It was the FAA's intent with the proposals of NPRM 93–8 to define a wet runway performance level that would ensure safe operation for the vast majority of wet runway rejected takeoffs likely to occur. This same principle was used in specifying values for each of the variables considered by the adopted wet runway methodology. The resulting accelerate-stop distances, coupled with information provided to operators and pilots concerning the use of these data, should greatly reduce the risk of runway overruns during wet runway operations.

In defining the standard curves of wet runway braking coefficient versus speed that are prescribed by the equations in § 25.109(c)(1), the effects of the following variables were considered: Tire pressure, tire tread depth, runway surface texture, and the depth of the water on the runway.

Tire Pressure

The effect of tire pressure is taken into account by providing separate curves (i.e., equations) in § 25.109(c)(1) for

several tire pressures. As stated in the adopted rule, linear interpolation may be used for tire pressures other than those listed. To provide additional safety, § 25.109(c)(1) requires applicants to base the accelerate-stop distances on the maximum tire pressure approved for operation. Operating at a tire pressure that is lower than the maximum tire pressure approved for that airplane will tend to improve the airplane's stopping capability on a wet runway. Typically, manufacturer recommended tire pressures are a function of airplane weight; for operations at less than the maximum approved weight, the recommended tire pressure would be less than the maximum approved tire pressure.

Tire Tread Depth

The degree to which water can be channeled out from under the tires significantly affects wet runway stopping capability. Airplane tires have ribbed grooves around the circumference of the tire for this purpose. The texture of the runway surface plays an equally important role. ESDU 71026 provides braking data for both ribbed and smooth tires on runways of different surface textures. A method is also provided in ESDU 71026 for assessing the effects of tire wear. As ribbed tires wear, the depth of the ribbed grooves decreases, impairing their ability to channel water out from under the tire.

Surveys conducted by U.S. airplane and tire manufacturers, and information from major tire retreaders, indicate that the typical groove depth remaining at the time of tire removal can vary from about 1.5 to 5 mm. Airplane manufacturers' maintenance manuals usually recommend removal when the tread depth is less than 1/32 inch (1.2 mm), although operation with zero tread depth is not prohibited. Loss of tread depth is not the sole criterion for tire removal, however. Tires with significant tread depth remaining may be removed for other reasons. Also, it is unlikely that all the tires on a particular airplane would be worn to the same extent.

The standard curves (i.e., equations) of braking coefficient versus speed prescribed in § 25.109(c)(1) are based on a tire tread depth of 2 mm. Since the tread depth of new tires is usually 10–12 mm, 2 mm represents no more than 20 percent of the original tread depth. FAA Advisory Circular 121.195(d)–1A, which provides guidance for determining operational landing distances on wet runways, specifies that the tires used in flight tests to determine wet runway landing distances should be worn to a point where no more than 20 percent of the original tread depth remains. Therefore, the adopted rule, which reflects industry practice, is also consistent with existing FAA guidance in this area.

Runway Surface Texture

ESDU 71026 groups runways into five categories. These categories are labeled "A" through "E," with "A" being the smoothest and "C" the most heavily textured ungrooved runways. Categories "D" and "E" represent grooved and other open textured surfaces. Category A represents a very smooth texture (an average texture depth of less than 0.004 inches), and is not very prevalent in runways used by transport category airplanes. The majority of ungrooved runways fall into the category C grouping. The curves represented in § 25.109(c)(1), as adopted, represent a texture midway between categories B and C.

Depth of Water on the Runway

Obviously, the greater the water depth, the greater the degradation in braking capability. The curves prescribed in § 25.109(c)(1) represent a well-soaked runway, but with no significant areas of standing water.

In summary, the curves prescribed in § 25.109(c)(1) represent the maximum tire-to-ground braking coefficient likely to be available from a wet runway during a rejected takeoff. They were derived by interpolating between the curves presented in ESDU 71026 for runway surface categories B and C, adjusted to represent tires with 2 mm tread depth remaining, and extrapolated to cover the range of V_1 speeds to be expected. The resulting curves were then smoothed and reduced to a mathematical form for inclusion in the rule. The capability for a particular airplane type to achieve this braking coefficient depends on: (1) The amount of torque its brakes are capable of producing, and (2) the performance of its anti-skid system. How the revised regulation addresses these two components is discussed in the ensuring paragraphs.

The torque capability of the brakes is evaluated during the flight testing that applicants conduct to determine the dry runway accelerate-stop distance. Since the torque capability is independent of the runway surface condition, the torque capability demonstrated by the dry runway flight tests also represents the maximum torque available during a wet runway stop. As adopted, § 25.109(b)(2)(i) limits the stopping force from the wheel brakes used to determine the wet runway accelerate-stop distance to the stopping force determined in meeting the requirements of § 25.101(i) (worn brakes) and § 25.109(a) (the dry runway accelerate-stop distance). This provision prohibits applicants from using a brake torque that exceeds the dry runway torque limits when determining the wet runway accelerate-stop distance.

An airplane's anti-skid system varies the braking action to prevent locked wheel skids and to maximize stopping performance to the extent possible. How close the anti-skid system comes to obtaining the maximum braking friction available between the tires and the runway is referred to as the anti-skid system efficiency.

As adopted, § 25.109(c)(2) requires applicants to adjust the maximum tire-to-ground wet runway braking coefficient determined in § 25.109(c)(1) for the efficiency of the anti-skid system. Applicants will have the option of either determining the anti-skid system efficiency directly from flight tests on a wet runway, or using one of the anti-skid efficiency values specified in § 25.109(c)(2). Regardless of which method is used, an appropriate level of flight testing must be performed to verify that the anti-skid system operates in a manner consistent with the efficiency value used, and that the system has been properly tuned for operation on wet runways.

For applicants using the anti-skid efficiency values specified in § 25.109(c)(2), a minimum of one complete wet runway stop, or equivalent segmented stops, should be conducted at an appropriate speed and energy to cover the critical operating mode of the anti-skid system. This testing can be performed as part of the anti-skid compatibility testing on a wet runway that is already required for brake and anti-skid system approval under § 25.735. Therefore, for applicants using the anti-skid efficiency values specified in § 25.109(c)(2), no additional flight tests need actually be performed. Existing flight test may need to be modified somewhat to ensure that appropriate data are obtained to verify that the anti-skid system operates in a manner consistent with the efficiency value used, and that the system has been properly tuned for operation on wet runways.

As revised, § 25.109(c)(2) identifies three different classes of anti-skid systems, and specifies a unique efficiency value associated with each one. This classification of anti-skid system types and the assigned efficiency values are based on information contained in Society of Automotive Engineers (SAE) Aerospace Information Report (AIR) 1739, title "Information on

Anti-Skid Systems." The efficiency values prescribed in § 25.109(c)(2) represent the worst system performance expected for each type of system after being properly tuned for operation on wet runways. The SAE document is available in the public docket for this rulemaking.

The three classes of anti-skid systems represent evolving levels of technology and differing performance capabilities on dry and wet runways. On/off systems are the simplest of the three types of anti-skid systems. For these systems, full metered brake pressure (as commanded by the pilot) is applied until wheel locking is sensed. Brake pressure is then released to allow the wheel to spin back up. When the system senses that the wheel is accelerating back to synchronous speed (i.e., ground speed), full metered pressure is again applied. The cycle of full pressure application/complete pressure release is repeated throughout the stop (or until the wheel ceases to skid with pressure applied).

Quasi-modulating systems, the second type of anti-skid system, attempt to continuously regulate brake pressure as a function of wheel speed. Typically, brake pressure is released when the wheel deceleration rate exceeds a preselected value. Brake pressure is re-applied at a lower level after a length of time appropriate to the depth of the skid. Brake pressure is then gradually increased until another incipient skid condition is sensed. In general, the corrective actions taken by these systems to exit the skid condition are based on a pre-programmed sequence rather than the wheel speed time history.

Fully modulating systems, the third type of anti-skid system, are a further refinement of the quasi-modulating systems. The major difference between these two types of anti-skid systems is in the implementation of the skid control logic. During a skid, corrective action is based on the sensed wheel speed signal, rather than a pre-programmed response. Specifically, the amount of pressure reduction or reapplication is based on the rate at which the wheel is going into or recovering from a skid. Also, higher fidelity transducers and upgraded control systems are used, which respond more quickly.

For applicants who elect to determine the anti-skid efficiency directly from flight tests, sufficient flight testing, with adequate instrumentation, must be conducted to ensure confidence in the efficiency obtained. Although additional flight testing will be necessary, the FAA does not expect applicants to use this method for determining the anti-skid efficiency unless proportionate benefits (i.e., an increase in takeoff weight) are obtained. A minimum of three complete stops, or equivalent segmented stops, should be conducted on a wet runway at appropriate speeds and energies to cover the critical operating modes of the anti-skid system.

As adopted, § 25.109(b)(2)(ii) also requires applicants to adjust the wheel brakes stopping force to take into account the effect of the distribution of the normal load between braked and unbraked wheels at the most adverse center-of-gravity position approved for takeoff. The stopping force due to braking is equal to the braking coefficient multiplied by the normal load (i.e., the effective weight) on the braked wheels. The location of the airplane's center-of-gravity, which is a function of the airplane's configuration and how it is loaded (i.e., the position of passengers, baggage, cargo, etc.), affects how the load is distributed between braked and unbraked wheels. Typically, the nose wheels of transport category airplanes are unbraked, although some airplanes also have some of the main gear wheels unbraked). This effect must be taken into account for the most adverse center-of-gravity position approved for takeoff. The most adverse center-of-gravity position is that which results in the least load on the braked wheels.

For the following reasons, the FAA regards the wet runway methodology issued in this final rule to be a logical outgrowth of the proposal published in NPRM 93–8. First, the final rule methodology relies on the same technical basis as the original proposal. Second, it responds to a comment raised during the NPRM 93–8 public comment process. And third, it is consistent with the overall intent of this rulemaking, which is to more rationally address relevant operational factors rather than applying more restrictive standards to all operating conditions. This methodology also provides applicants with the ability to better control any increased costs resulting from the addition of wet runway accelerate-stop requirements to part 25, while ensuring safer wet runway operations. Depending on the desired balance between manufacturing costs (including design and flight testing) and operational capabilities, an applicant can make informed choices regarding design characteristics (e.g., type of anti-skid system, takeoff speeds) and the level of wet runway testing to perform (i.e., use of the anti-skid efficiency values provided in the rule versus determining the efficiency directly from flight tests).

The FAA recognizes that extensive guidance material will be necessary to assist applicants in complying with the wet runway accelerate-stop distance requirements incorporated in this amendment. Published elsewhere in this issue of the **Federal Register** is a notice of availability for a proposed revision to AC 25–7, "Flight Test Guide for Certification of Transport Category Airplanes." A request for comments is included in that notice of availability. The proposed revision includes detailed guidance for:

a. Using reverse thrust in determining wet runway accelerate-stop distances;

b. classifying the types of anti-skid systems;

c. Verifying the type of anti-skid system installed on the airplane and that it is properly tuned for operation on wet and slippery runways;

d. Determining the anti-skid efficiency value; and

e. Developing an analytical model of wet runway braking performance in accordance with § 25.109(c).

One commenter points out that many operators already use a form of wet runway takeoff performance data, which is provided to them by the airplane manufacturers as unapproved guidance information. These data, used on a voluntary basis to provide additional safety on wet runways, are typically developed using criteria similar to those proposed in NPRM 93–8. Another commenter believes that the proposed wording for §§ 91.605(b)(3), 121.189(e), and 135.379(e) would result in retroactive changes to those airplanes for which the AFMs contain wet runway information carried over from previous foreign certifications. (Some foreign certification authorities, notably the United Kingdom Civil Aviation Authority, have required wet runway performance information to be included in the AFM.) This commenter notes that use of such data has not been required in the past in U.S. operations and does not necessarily reflect the standards proposed in NPRM 93–8. Although the commenter supports the proposal in general, it is suggested that the wording be changed to specify that the wet runway requirements apply only to airplanes certificated after the proposed amendment becomes effective.

The FAA acknowledges that airplane manufacturers have for many years produced guidance information, including takeoff performance data, for wet runway operations. In general, the FAA supports the voluntary use of these available data to provide additional safety on wet runways for existing transport category airplanes, as long as compliance with the applicable

airworthiness and operating rules is maintained.

The FAA did not intend, by the proposed wording §§ 91.605(b)(3), 121.189(e), and 135.379(e), to effectively apply the proposed wet runway standards retroactively. Operators should be aware that the approved portion of the AFM (containing the operating limitations) for a U.S. operator should only reflect the FAR and should not contain extraneous information carried over from a foreign certification. Such information may, however, appear in an unapproved portion of the AFM as supplementary guidance information. Operators may use this information (as long as it does not conflict with the FAR), but are not required to abide by it.

The FAA does not agree with the comment to limit application of the proposed operating rules only to those airplanes certificated after this amendment becomes effective. Some manufacturers have elected to comply with the standards proposed in NPRM 93–8 prior to the adoption of this final rule. The AFMs for the affected airplane types contain takeoff and accelerate-stop distance limitations for takeoffs on wet runways, and operators must comply with these limitations, regardless of the date the airplane was certificated. Therefore, these amendments to §§ 91.605(b)(3), 121.189(e), and 135.379(e) are adopted essentially as proposed, but with a clarification that this provision applies to operating limitations, if they exist, associated with the minimum distances required for takeoff from wet runways. As discussed earlier, further consideration of retroactive application of the requirements adopted by this final rule will be added to the FAA/JAA harmonization work program.

Several commenters recommend that the proposed standards be revised to allow a higher wet runway braking coefficient to be used for grooved runways or runways treated with a porous friction course (PFC) overlay, without the need for additional flight testing. These commenters point out that runway friction measurement tests show that a wet runway with grooves or a PFC surface overlay has much better friction characteristics than a smooth surface. According to these commenters, providing credit for the improved stopping capability on these surfaces will result in significant public safety benefits by helping to expedite future runway improvements and by providing a strong incentive to properly maintain these surfaces. The commenters believe it is neither necessary nor in the public interest to avoid or defer this issue, considering the significant effort that has already been made by airport operators, both domestic and foreign, to improve runway surfaces.

To facilitate timely action on this issue, these commenters propose that the FAA initially adopt a value that the commenters consider to be very conservative (i.e., a much lower wet runway braking coefficient than would be expected). Most of these commenters propose using a wet runway braking coefficient for grooved and PFC runways equal to 70 percent of the dry runway braking coefficient, although one commenter proposed a factor of 80 percent. For comparison purposes, one commenter reports that tests conducted using a Boeing 737–300 airplane showed wet grooved runway braking capability that was equal to, or in some cases greater than, 95 percent of that obtained on a dry runway. The commenters note that a longer term rulemaking activity could be undertaken in the future to establish a higher factor, if warranted.

One of these commenters provided information relative to grooved and PFC runway credit in Japan. This commenter states that the Japanese Civil Aviation Bureau allows a wet runway braking coefficient of 70 to 80 percent of the dry runway value to be used for grooved or PFC runways. In Japan, Most of the runways at civil airports are grooved, and periodic friction surveys are conducted to assure that the surfaces are properly maintained. These surveys are done by using a combination of visual inspections and friction measuring devices.

The FAA agrees that grooved and PFC runways can offer substantial safety benefits in wet conditions. The FAA has taken an active role since the late 1960's in evaluating the benefits of these runway surface treatments and supports their use throughout the U.S. Tests conducted by the FAA, NASA, and others confirm that applying a factor of 70 percent to the dry runway braking coefficient, as proposed by the commenters, would conservatively represent the stopping performance on properly designed, constructed, and maintained grooved and PFC runways. A summary of these test data has been placed in the docket. The actual friction capability of grooved and PFC runways varies, however, depending on variables such as groove shape, depth, and spacing, method used to construct the grooves, type of pavement surface, volume and type of airplane traffic, frequency of pavement evaluations, and maintenance. The FAR currently do not contain mandatory standards regarding the design, construction, and maintenance of grooved or PFC runways, but AC 150/5320–12B, "Measurement, Construction, and Maintenance of Skid-Resistant Airport Pavement Surfaces," provides relevant guidelines and procedures.

The FAA concurs with the commenters' proposal and agrees that it presents an opportunity to provide an additional incentive for airport operators to install and maintain grooved and PFC runways. The FAA agrees that 70 percent of the dry runway braking coefficient conservatively represents the stopping performance on properly designed, constructed, and maintained grooved or PFC runways. Using a simple factor applied to the dry runway braking coefficient is appropriate for grooved and PFC runways because the braking coefficient's variation with speed is much lower on these types of runways.

As noted in the earlier discussion of the parameters affecting wet runway stopping performance, ESDU 71026 contains data corresponding to grooved and PFC surfaces. An evaluation of the ESDU data reveals that using a surface texture mid-way between surfaces D and E in combination with typical anti-skid efficiencies provides approximately the same airplane stopping performance as using 70 percent of the dry runway braking capability.

In response to the comments regarding grooved and PFC runways, a new § 25.109(d) is adopted to establish an optional wet runway braking coefficient for grooved or PFC runways. The braking coefficient for determining the accelerate-stop distance on grooved and PFC runways is defined in § 25.109(d) as either 70 percent of the value used to determine the dry runway accelerate-stop distances, or a value based on the ESDU data and derived in a manner consistent with that used for ungrooved runways. Section 25.105(c)(1) is revised to allow applicants, at their option, to provide data for grooved and PFC runways, in addition to the smooth surface runway data that is currently required. In addition, the existing § 25.109(d) is revised to remove the words "smooth" and "hard-surfaced" and redesignated as § 25.109(h).

Section 25.1533(a)(3) is amended to allow wet runway takeoff distances on grooved and PFC runways to be established as additional operating limitations, but approval to use these distances is limited to runways that have been designed, constructed, and maintained in a manner acceptable to the FAA Administrator. In conjunction, §§ 91.605(b)(3), 121.189(e), and 135.379(e) of the operating rules are

amended to limit the use of the grooved and PFC wet runway accelerate-stop distances to runways that the operator has determined have been designed, constructed, and maintained in a manner acceptable to the FAA Administrator. The page(s) in the AFM containing the wet runway accelerate-stop distances for grooved and PFC runways should contain a note equivalent to the following: "These accelerate-stop distances apply only to runways that are grooved or treated with a porous friction course (PFC) overlay that the operator has determined have been designed, constructed, and maintained in a manner acceptable to the FAA Administrator."

Airplane operators who wish to use the grooved or PFC runway accelerate-stop distances must determine that the design, construction, and maintenance aspects are acceptable for each runway for which such credit is sought. In making these determinations, operators may rely on certifications from airport operators or independent evaluations of runways. In either case, it is expected that operators will be able to demonstrate that their determinations are well founded. Acceptable runways should be listed in Part C of the operator's approved operations specifications (for those operators required to have operations specifications).

FAA AC 150/5320–12B provides guidance regarding grooved and PFC runway construction and maintenance techniques that are considered acceptable to the Administrator. These criteria for obtaining operational approval to use the grooved and PFC wet runway accelerate-stop distances are consistent with the guidance provided in AC 121.195(d)–1A for approval to use operational landing distance for wet runways. After adoption of this final rule, the FAA also intends to include this information in an update to AC 91–6A, "Water, Slush, and Snow on the Runway."

Under the proposals for §§ 25.109 (c) and (d) in NPRM 93–8, wet runway accelerate-stop distances may include the additional stopping force provided by reverse thrust; however, including this stopping force would be prohibited when determining the dry runway accelerate-stop distances. Most of the commenters supported the proposal for wet runways, although several commenters noted that several important aspects were not addressed. These aspects include issues such as reliability of the trust reversers, piloting procedures, controllability in crosswinds, flight test methods, etc.

The FAA agrees that detailed guidance material is needed, relative to thrust reversers, to define an acceptable means to comply with the proposed requirements of § 25.109(c). As mentioned earlier, the FAA intends to propose specific guidance material soon as part of a revision to AC 25–7. In general, the FAA intends to propose that: (1) Acceptable procedures should be developed and demonstrated, including the time needed to accomplish these procedures; (2) the responses and interactions of airplane systems should be taken into account; (3) the recommended level of reverse thrust should be easily obtainable under in-service conditions (e.g., by providing a detent or other tactile method of thrust selection); (4) directional control should be demonstrated with maximum braking on a wet runway with a ten-knot crosswind from the most adverse direction; (5) the probability of failure should be no more than 1 per 1000 selections; (6) inoperative thrust reversers at dispatch should be taken into account; (7) satisfactory engine operating characteristics should be demonstrated; and (8) appropriate flight tests should be conducted to determine the effective stopping force provided by reverse thrust, and to validate the total stopping force provided by all of the decelerating means.

One commenter proposed an amendment to the existing § 25.109(c) to clarify that a finding of "safe and reliable" for any deceleration means other than wheel brakes must take into account the interactions and interdependencies of the various systems involved, and that consistent results must be expected under all conditions covered by the AFM. This comment is directed primarily at a landing situation in which slippery runways and higher than normal approach speeds could thwart or delay sensing logic for determining whether the airplane is on the ground. Consequently, the operation of any deceleration means that can only be activated on the ground (e.g., ground spoilers and thrust reversers) would also be delayed.

Under the existing §§ 25.109(c) and 25.1309, the FAA already reviews the system operation and inter-compatibility issues that would be addressed by the commenter's proposed changes to § 25.109(c). Therefore, the FAA considers these proposed changes to be unnecessary.

One commenter noted that the same reasons in the FAA's proposal for denying accelerate-stop distance credit for the use of reverse thrust on dry runways also apply to wet runways. Therefore, if dry runway accelerate-stop distances need the safety margin provided by not including the effects of reverse thrust, then so do the wet runway accelerate-stop distances. The FAA does not concur. As stated in the discussion of the proposal, the FAA believes that the additional safety provided by not accounting for reverse thrust in calculating the accelerate-stop distance on a dry runway is necessary to offset other variables that can significantly affect the dry runway accelerate-stop performance. Examples of variables that can significantly affect the dry runway accelerate-stop performance include: runway surfaces that provide poorer friction characteristics than the runway used during flight tests to determine stopping performance, dragging brakes, brakes whose stopping capability is reduced because of heat retained from previous braking efforts, etc. Although these variables may also be present for wet runways, their effects are adequately covered by the adopted method of determining the stopping capability on a wet runway. This method provides a margin of safety by using conservative assumptions regarding runway surface texture, tire tread depth, tire inflation pressure, anti-skid efficiency, etc.

Despite the reasons the FAA presented in NPRM 93–8 for denying accelerate-stop distance credit for the use of reverse thrust on dry runways, several commenters propose that reverse thrust credit be permitted, at least to the extent that it offsets any performance degradation due to worn brakes. These commenters claim that the majority of the factors degrading accelerate-stop performance have been taken into account; therefore, it would be appropriate to include the positive effect of reverse thrust. These commenters also note that reverse thrust capability is provided on nearly all commercial jet transport airplanes, current thrust reversers are reliable, flightcrews are trained to use reverse thrust, and its use is a normal part of operational stopping procedures. Also, the probability of a thrust reverser failing to operate, combined with the probability of all brakes being at the fully worn limit, is very low, and there would be an even lower probability of these factors occurring in combination with a takeoff rejected from a critically high speed. Under the proposal offered by most of these commenters, the dry runway accelerate-stop distance would be required to be the greater of either: (1) The distance determined using new brakes without reverse thrust, or (2) the distance determined using worn brakes

with reverse thrust. Since item (1) corresponds to the current standards, this proposal would not reduce the accelerate-stop distance to less than what is currently required. The effect of the commenters' proposal would be to offset any loss in stopping capability associated with worn brakes.

As stated previously, the FAA considers that the additional safety provided by not including the effect of reverse thrust for the accelerate-stop distance on a dry runway is necessary to offset other variables that can significantly affect the dry runway accelerate-stop performance. The effect of these other variables on the dry runway accelerate-stop distance are unchanged by this rulemaking. Although the part 25 airworthiness standards are being made more stringent by adding requirements related to worn brakes and wet runways, the overall effect of these additions are partially offset by the change in the method used to account for the time it takes the pilot to perform the procedures for rejecting the takeoff. Further alleviating provisions are inappropriate because they would unacceptably reduce the level of safety. Therefore, §§ 25.109(c) and (d) are amended as proposed in NPRM 93–8, except that they have been re-designated as paragraphs (e) and (f), respectively.

As part of the proposed wet runway standards, §§ 25.13 (a) and (b) would allow the airplane's height over the end of the runway (known as the screen height) to be reduced from 35 feet on dry runways to 15 feet on wet runways. Some commenters object to reducing the screen height for wet runways, stating that safety margins would be reduced for takeoffs that are continued following an engine failure. One commenter would accept a reduced screen height only if operators are first required to use the configuration that provides the best short field performance. The FAA response to the latter comment was provided in the discussion of the commenter's proposed change to §25.105(a)(2).

The FAA proposed reducing the required screen height for wet runways to re-balance the available safety margins, in a manner that does not impose significant costs on airplane operators, when taking off from a wet runway. On a wet runway, the distance needed to stop the airplane increases significantly due to the reduced braking effectiveness. On the other hand, the distance needed to complete a continued takeoff is generally unchanged from that needed for a dry runway. By reducing the required screen height on a wet runway, a lower V_1 speed can be used. The effect of lower V_1 speeds will be to reduce the number of rejected takeoffs that occur on wet runways, and to reduce the speed from which these takeoffs are rejected. The latter effect is considered especially important because the braking capability on a wet runway is significantly poorer at higher speeds.

As noted by one of the commenters, any reduction in the number of takeoffs that are rejected will produce an equal number of additional continued takeoffs. Because of the lower V_1 speed, the airplane's height over the end of the runway for these takeoffs, as well as the ensuring flight path, will be lower than would normally be achieved on a dry runway. If a clearway area is available, however, the minimum height of the airplane over the end of a dry runway may, under the current standards, be as low as 13 to 17 feet. On this basis, the FAA considers a minimum screen height of 15 feet to be acceptable when the runway is wet.

Allowing the screen height to be reduced on wet runways also reduces the cost burden imposed on airplane operators by the wet runway standards. By taking into account the degraded braking capability on wet runways, these standards may reduce the maximum weight at which the airplane would be allowed to take off from a given runway. If a screen height of 35 feet were retained for wet runways, an even greater reduction in takeoff weight capability could be necessary.

In the proposed §25.113(c), the FAA intended to require that the minimum screen height on a wet runway with a clearway would not be lower than either: (1) 15 feet, or (2) the screen height that could be achieved if the runway were dry. A clearway is an area at least 500 feet wide beyond the departure end of the runway that has not obstacles protruding above a 1.25 percent upward sloping gradient. On a dry runway, up to one-half of the distance traversed between liftoff and a height of 35 feet may be over the clearway. As noted earlier, the screen height (i.e., the height at the end of the runway) achieved on a dry runway with clearway may end up being as low as 13 feet. Accordingly, a higher takeoff weight is possible when a clearway is present. The words "but not beyond the end of the runway" included in the proposal for § 25.113(b)(2) would effectively require the wet runway screen height to be not less than 15 feet. Under the proposed wording, therefore, the presence of clearway could not be used to increase the takeoff weight on a wet runway. Also, in some instances, the minimum screen height on a wet runway would be higher than that for a dry runway.

Several commenters expressed confusion over the discrepancy between the FAA's intent, as expressed in the preamble to NPRM 93–8, and the proposed wording for §§ 25.113(b) (2) and (c). One commenter noted that the words "but not beyond the end of the runway" appear to inappropriately introduce an operating rule into the type design standards. This commenter also notes that the quoted phrase does not appear in the JAA's equivalent NPA. This commenter further suggests that removing the quoted phrase would accomplish the FAA's stated intent of allowing a very limited takeoff weight increase on wet runways when clearway is present.

Another commenter recommends that maximum clearway credit be permitted in combination with the 15-foot screen height on a wet runway. The commenter notes that V_1 speed could then be reduced even further, thus providing additional safety in the event of a rejected takeoff on a wet runway. The FAA infers that this commenter is proposing that half of the distance traversed between liftoff and a height of 15 feet be permitted to occur over the clearway. Because of the parabolic shape of the flight path, the airplane may end up being only five to eight feet high at the end of the runway. The point at which the airplane lifts off would thus be very near the end of the runway. As discussed in NPRM 93–8, the FAA considers such a situation to be unacceptable. The possibility of standing water on the wet runway, or operational considerations such as a late or slow rotation to the liftoff attitude, emphasize the need to require liftoff to occur well before the end of the runway.

Other commenters, including an international association representing airplane operators, suggest that the potential benefit provided by the FAA's intended proposal regarding clearway on a wet runway is so small that it is insignificant. These commenters are willing to accept the slight conservatism associated with prohibiting credit for clearway in conjunction with the 15-foot screen height on wet runways in favor of simplifying and clarifying the rule language. The FAA concurs with this comment and is amending § 25.113 accordingly. The phrase "but not beyond the end of the runway," contained in the proposed § 25.113(b)(2), is removed. The proposed § 25.113(c) is clarified to prohibit a screen height of less than 15 feet on a wet runway. If the limiting takeoff distance is determined by the all-engines-operating condition, where

the minimum height at the end of the takeoff distance remains 35 feet, clearway credit is allowed on a wet runway in the same manner as it is allowed on a dry runway. Also, § 25.113 is amended to add the provision that in the absence of clearway, the takeoff run is equal to the takeoff distance. This provision is added only to ensure completeness of the definition of takeoff run within the airworthiness standards and is in accordance with standard industry practice. The current requirement does not define the takeoff run when clearway is not present.

Some commenters apparently misunderstand some aspects of the wet runway standards, especially the effect of §§ 25.109(b)(1) and 25.113(b)(1). These sections require the accelerate-stop and takeoff distances on a wet runway (at the wet runway V_1 speed) to be at least as long as the corresponding distances on a dry runway (at the dry runway V_1 speed). These requirements therefore ensure that the maximum takeoff weight for a wet runway can never be higher than that allowed when the runway is dry. In practice, applicants should use the following procedure to determine takeoff performance when the runway is wet. First, conduct the takeoff performance analysis assuming the runway is dry. Then, repeat the analysis using wet runway data, including the wet runway V_1 speed. The lowest takeoff weight from these analyses is the maximum takeoff weight that can be used when the runway is wet. For this takeoff weight, determine and compare the accelerate-stop and takeoff distances applicable to both dry and wet conditions. The longer of each of these accelerate-stop and takeoff distances apply when the runway is wet.

The FAA received only one comment related to the proposed change to § 25.115(a). This proposed change would allow the airplane's height over any obstacles to be reduced by an amount corresponding to the reduced screen height allowed when taking off from a wet runway. The commenter suggested that the current obstacle clearance criteria should be updated to represent more realistic operational conditions. The commenter is referring to the criteria used to evaluate whether the obstacle must be cleared vertically, or whether an operator can consider the obstacle to be laterally outside of the airplane's path. The FAA is currently developing an advisory circular that will address this issue in detail. Therefore, § 25.115(a) is amended as proposed.

The FAA received several comments on the proposed changes to § 25.735. One commenter proposed that § 25.735(f) refer to the wear condition that provides the least effective braking performance. This comment is related to a similar comment regarding § 25.101(i). As discussed in response to the earlier comment, the FAA believes that the fully worn condition will always provide the least effective braking performance.

This commenter also suggests that the flight test proposed under § 25.735(g) is unnecessary. The commenter proposes that a flight test should be required only if poor correlation exists between dynamometer test results and flight test results. The commenter also believes that a rejected takeoff may not represent the most severe stopping condition. For example, landing at the maximum landing weight with the flaps retracted may involve higher stopping energies. For this reason, the commenter suggests that § 25.735(g) refer to the most severe stop rather than a rejected takeoff.

The flight test proposed in § 25.735(g) is the only flight test that would be required to be conducted at a specific brake wear level. The FAA considers this test to be a necessary demonstration of the airplane's ability to safely stop under the most critical rejected takeoff condition. For the remainder of the flight testing to determine the rejected takeoff and landing stopping distances, the brakes may be at any wear level desired by the applicant (including new brakes). Dynamometer testing could be used to determine the difference in stopping capability between fully worn brakes and the brake wear level used in the flight tests. This difference would be applied to the flight test results to determine the stopping distances for fully worn brakes.

For the purposes of this demonstration, the FAA considers the maximum kinetic energy rejected takeoff to be the most critical stopping condition. Therefore, the FAA does not concur with the commenter's suggestion to replace the reference to rejected takeoff in the flight test demonstration with a reference to the most severe stop. However, from a brake approval standpoint, the FAA agrees that the brakes, in the fully worn condition, should be capable of absorbing the energy produced during the most severe stopping condition. The FAA has tasked a harmonization working group with recommending new or revised requirements for approval of brakes installed on transport category airplanes, and this working group is expected to recommend proposed standards addressing this issue.

Another commenter suggests that the flight test demonstration referenced by the proposed § 25.735(g) should include a two-second overshoot of V_1, before applying the brakes, to allow for the average pilot response time. The FAA does not concur with this comment because V_1 represents the highest speed at which the pilot should take the first action to reject the takeoff. Also, the procedures used during the flight test demonstration, including the time at which the pilot applies the brakes, should be consistent with the rejected takeoff procedures provided by the applicant in the AFM.

One commenter proposed that § 25.735(f) be clarified to allow for other devices inherent in a particular airplane design that may be used to dissipate energy. Failure to allow such credit, claims the commenter, will diminish the value of technological improvements in energy dissipation devices that are likely to be introduced to improve airplane stopping performance under wet runway conditions.

The current § 25.735(f) allows for the use of the same decelerating means to determine the brake kinetic energy capacity rating as are used to determine the dry runway accelerate-stop distances. The energy absorption capability of the brake is generally more of a concern on a dry runway than on a wet runway because of the difference in deceleration capability. To receive credit for energy dissipation devices that are likely to be introduced to improve airplane stopping performance under wet runway conditions, these devices must also provide proportionate benefits when the runway is dry, as well as meet the safety and reliability criteria of the amended § 25.109(e). Within these constraints, the FAA will consider any technological improvements in energy deceleration devices at the time such devices are proposed for evaluation.

Two commenters suggest that the proposed amendment to associate the brake energy rating of § 25.735(f) with brakes in the fully worn condition is inappropriate and could lead to confusion during the brake approval process. These commenters concur with the intent that each wheel-brake assembly, when fully worn, be capable of absorbing the maximum kinetic energy for which it is approved. However, these commenters note that the kinetic energy level defined in § 25.735(f) is the same energy level used in Technical Standard Order (TSO)–C26c for demonstrating the capability of the brake to successfully complete 100 landing stops with no refurbishment or other changes made to brake system components (except for one change in

brake lining material). (TSO–C26c contains minimum performance standards for aircraft landing wheels and wheel-brake assemblies and specifies the brake dynamometer tests to demonstrate compliance with these standard.) Because of the relationship between § 25.735(f) and the TSO, any change to the definition of the energy level in § 25.735(f) would presumably also apply to the TSO. Since the TSO 100-stop test is intended to verify that the brake has acceptable structural durability, rather than to demonstrate the capability to successfully complete a high energy stop in the fully worn condition, the combination of the worn condition with the TSO energy level would be inappropriate. A brake that is fully worn at the beginning of the 100-stop test would be unable to successfully complete the test.

One of the commenters notes that the TSO also requires a test involving one stop at the maximum rejected takeoff kinetic energy. According to the commenter, it is this test that should be conducted with a fully worn brake. The energy rating demonstrated by this test is not explicitly referenced in part 25, but is contained in JAR–25 as JAR 25.735(h). The commenter proposes adding JAR 25.735(h) to part 25 to harmonize the two standards and to help clarify the application of the worn brake requirements. This commenter also suggests adding references to the applicable TSO and clarifying that the formula provided in § 25.735(f)(2) need only be modified in cases of designed unequal braking distributions. Uneven braking distributions can unintentionally occur during flight tests, but this characteristic cannot be predicted during the design or qualification stages for which § 25.735(f)(2) is relevant.

The FAA concurs with these proposals. As amended, § 25.735(f) defines the landing kinetic energy rating to be used during qualification testing per the applicable TSO or other qualification testing used to show an equivalent level of safety, as necessary to obtain the approval required by § 25.735(a). The proposed reference to a fully worn brake is inappropriate in this section and has been removed. In the proposed revision to AC 25–7, for which the notice of availability is published elsewhere in this issue of the **Federal Register**, the FAA proposes to clarify that the relevant TSO 100-stop test may begin with a brake in any condition representative of service use, including new. In addition, a new § 25.735(h), based on JAR 25.735(h), has been added. This section is similar to § 25.735(f), but defines the rejected takeoff, rather than the landing kinetic energy rating used in the applicable TSO. Unlike the landing brake kinetic energy rating, the rejected takeoff brake kinetic energy rating must be demonstrated with a fully worn brake. Finally, both the revised § 25.735(f)(2) and the new § 25.735(h)(2) require the referenced formulae for determining the brake energy capacity rating to be modified only in the case of designed unequal braking distributions. The format of the existing § 25.735(f)(2), with respect to this provision, has been adjusted to conform to **Federal Register** formatting guidelines, and the new § 25.735(h)(2) has been formatted similarly. With these changes, the final rule better matches the intent of the NPRM 93–8 proposals, and also harmonizes these sections with JAR–25.

The FAA intends to revise TSO–C26c to be consistent with these amendments to § 25.735. The Aviation Rulemaking Advisory Committee (ARAC) has been chartered with recommending appropriate changes to the TSO. Currently, the FAA envisions issuing the revised TSO, applicable to transport category airplanes, under a new designation, TSO–C135.

One commenter suggests that the proposed § 25.735(g) should be deleted. This commenter believes that this proposed flight test requirement is misplaced in the brake design and construction section of part 25. The commenter suggests that this issue should be addressed in the flight test guidance provided in AC 25–7.

The FAA concurs that the proposed flight test requirement would be better placed elsewhere, but does not concur with completely removing it from part 25. As stated previously, the FAA considers this test to be a necessary demonstration of the airplane's ability to safely stop under the most critical rejected takeoff condition. In addition, the FAA intends for this test to determine or validate the AFM accelerate-stop distance for this condition. Therefore, the proposed § 25.735(g) has been reworded to clarify that the airplane must stop within the accelerate-stop distance and is adopted as § 25.109(i). Existing § 25.735(g), which would have been redesignated as § 25.735(h), remains as § 25.735(g) in the adopted rule.

The FAA received one comment regarding the proposed amendment to § 25.1587(b). The objective of this proposal is to require that takeoff performance information for wet runways be included in the AFM. The commenter agrees with this objective, but notes that § 25.1587(b) addresses performance information other than that which would be affected by the surface condition of the takeoff runway. The commenter suggests that the proposed amendment instead be placed in § 25.1533(a)(3), which addresses operating limitations based on the minimum takeoff distances. The FAA concurs with this comment. Therefore, the proposed change to § 25.1587(b) has been removed, and § 25.1533(a)(3) is revised accordingly. The adopted amendment also corrects a typographical error in existing § 25.1533(a), identified by this commenter, by replacing the reference to § 25.103 with a reference to § 25.109.

One commenter strongly endorses a requirement to add a takeoff performance monitor to the flight deck of all airplanes to help pilots determine whether a takeoff should be rejected or continued. The commenter notes that modern transport category airplanes already contain most of the necessary instrumentation. According to the commenter, all that would be needed would be a display and a dedicated processor to compute the data to be displayed.

The FAA has participated in past evaluations of systems designed to monitor the performance of the airplane during the takeoff. Such systems typically compare the airplane's actual performance, as determined by airplane instrumentation, with the performance predicted by the AFM. If the airplane's performance is less than predicted, the performance shortfall would be indicated by the monitor. In addition, the takeoff speeds, V_1 and V_R, could be correlated with the point on the runway at which they should be reached. This information could assist pilots in determining whether it is safer to reject or to continue the takeoff.

The FAA supports efforts at improving the go/no-go decision process. Advisory Circular 25–15, "Approval of Flight Management Systems in Transport Category Airplanes," provides a means to obtain FAA approval of a takeoff performance monitor function as part of a flight management system. However, takeoff performance monitors are not yet sufficiently reliable nor are they sophisticated enough to warrant requiring their addition to the flight deck of transport category airplanes. Varying winds during the takeoff or a runway with a variable slope may cause the monitor to provide a false indication. The FAA is also concerned that the number of high speed rejected takeoffs could increase as pilots delay action to determine, for example, if an initially sub-par acceleration is corrected. Also, unnecessary rejected takeoffs could occur as a result of small

differences between the predicted airplane acceleration and the actual airplane's acceleration as determined by the onboard instrumentation. A takeoff performance monitor would need to consider all of the variables reflected in the takeoff performance data, such as atmospheric conditions, airplane flap setting, thrust level (including reduced and derated takeoff thrust), runway length, slope, and surface condition, etc. It is possible to design such a system, but current systems have not demonstrated a safety benefit over the information currently available to the pilot.

The same commenter recommends that the FAA undertake a study using research simulators to validate airplane/pilot performance in obstacle limited takeoffs with engine failures. The objective of this study would be to determine if there is a high degree of reliability that the combined airplane/pilot performance is acceptable. The commenter feels that such a study is essential to considerations of lower screen heights, tailwind takeoffs, and pilot decision making when the takeoff weight is limited by obstacle clearance considerations. In the interim, the commenter suggests that the FAA adopt more stringent obstacle clearance criteria, such as those contained in the International Civil Aviation Organization's (ICAO) Annex 6, Attachment C, Paragraph 3—Takeoff Obstacle Clearance Limitations.

Section 25.111 currently requires applicants to determine the airplane's takeoff path, which begins with the start of the takeoff roll and ends approximately 1,500 feet above the takeoff surface. Under § 25.111(d), applicants must conduct flight tests to ensure that the airplane can achieve the takeoff path presented in the AFM. The takeoff path data, and the flight test demonstrations, must be based on the procedures established by the applicant for operation in service, and assume that one engine fails at V_{EF}. Except for automatic propeller feathering and retraction of the landing gear, the airplane configuration must remain constant, and changes in power or thrust that require action by a pilot may not be made until the airplane reaches a height of 400 feet above the takeoff surface.

In addition to the takeoff path determined under § 25.111, § 25.115 requires applicants to determine the net takeoff flight path. The net takeoff flight path begins at the end of the takeoff distance and is equal to the takeoff flight path with the gradient of climb reduced by: 0.8 percent for two-engine airplanes; 0.9 percent for three-engine airplanes; and 1.0 percent for four-engine airplanes. These adjustments to the airplane's demonstrated climb gradient capability represent a safety margin for use in complying with the obstacle clearance requirements prescribed by the applicable operating rules. For airplanes operated under parts 121 or 135, the net takeoff flight path not only must clear all applicable obstacles, but must clear them by a height of at least 35 feet.

The current airworthiness standards already address the issues the commenter proposes for further study. For each part 25 airplane type design, applicants must conduct flight tests to validate the capability of the airplane, using normal piloting actions, to achieve the published flight path. Safety margins are then added to ensure that this flight path adequately clears all applicable obstacles.

The obstacle clearance criteria recommended by ICAO would require airplane operators to consider a larger ground area to be under the takeoff flight path when determining which obstacles must be cleared vertically. An obstacle that can be considered to be cleared laterally under current FAA practices may have to be cleared vertically under the ICAO recommendations. This change could result in restricting the amount of cargo or passengers to be carried because the airplane's vertical flight path capability is directly related to its takeoff weight. The FAA is currently drafting an advisory circular to provide standardized guidelines regarding the extent of the ground area that must be considered when determining which obstacles must be cleared vertically.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) Will generate benefits that justify its costs as defined in the Executive Order; (2) will not have a significant impact on a substantial number of small entities; and (3) will not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

In order to analyze the potential net costs of the rule, this evaluation considers a hypothetical production program for a representative new type certification. This example assumes that: (1) Incremental certification costs are incurred in year "0", (2) production starts in year "4", (3) the first airplane enters service in year "5", (4) 50 airplanes are produced per year for ten years so that total production equals 500, (5) each airplane is retired at the end of its 25 year design service goal, and (6) the discount rate is 7 percent.

The analysis of incremental costs is divided into two cases: one which assumes a brake design that exhibits little decline in brake performance with wear, and another which assumes a brake design that exhibits a decline in brake performance with wear.

In the former case, the average reduction in dry runway accelerate-stop distance associated with the revised 2-second-at-V_1 requirement is greater than the average increase in accelerate-stop distance associated with the worn brake requirement. This will result in a reduction in operating costs of approximately $5,105 per airplane per year, or $128,000 per airplane over its service life (in nominal terms). However, approximately one third of takeoffs would be conducted using the wet runway accelerate-stop distance. Under the production run and cost assumptions enumerated above, the wet runway amendments will add approximately $2,700 to operating costs per airplane per year, or $68,000 per airplane over its service life. Therefore, net operating costs under this design assumption will decline by approximately $2,400 per airplane per year, or $59,400 per airplane over its service life. Total costs (including consideration of incremental certification and development costs), then, will be reduced by approximately $28.9 million for the 500 airplane fleet over its 34 year service life. On a discounted basis, total fleet costs will be reduced by approximately $7.5 million.

In the case where brake performance is assumed to decline with wear, the average reduction in dry runway accelerate-stop distance associated with the revised 2-second-at-V_1 requirement is offset by the average increase in dry runway accelerate-stop distance associated with the worn brake requirement. Again, however, the wet runway requirements will add approximately $2,700 (in nominal terms) per year per airplane to operating costs. Therefore, lifetime incremental costs (again including consideration of

incremental certification and development costs) for the 500 airplane fleet are approximately $34.9 million, or $9.6 million on a discounted basis. It should be emphasized, however, that FAA anticipates that future airplane models will incorporate brake designs that exhibit little reduction in braking force with wear.

The rule will have significant safety implications owing to the fact that it creates economic incentives for manufacturers, operators, and airports to adopt procedures which reduce takeoff hazards. While these ancillary safety benefits are not directly valued in this economic analysis, they are discussed in a qualitative way below.

The rule's worn-brake provisions will have important safety impacts. For airplanes that continue to make use of brake designs in which braking capacity declines with wear, the rule provides an incentive to reduce the specified level of allowable wear in return for some reduction in accelerate-stop distances. In this way, accelerate-stop distances are more closely related to actual brake performance.

Existing regulations do not distinguish between dry and wet runway surface conditions. The accident history, however, shows that wet runway rejected takeoff overrun accidents account for a disproportionate share of the total. In fact, the wet runway rejected takeoff accident rate (involving substantial damage or hull loss) is seven times greater than the dry runway accident rate. The rule enhances safety by taking into account this hazardous takeoff condition. First, it directly increases accelerate-stop margins for wet runway conditions. Second, it creates an economic incentive to develop more stringent maintenance programs for skid-resistant runway surfaces.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities." FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, specifies small entity size and cost thresholds by Standard Industrial Classification (SIC). Entities potentially affected by the rule include manufacturers of transport category airplanes (SIC 3721) and operators of aircraft for hire (SIC 4511).

There are no manufacturers of transport category airplanes that meet the SIC 3721 size threshold for small entities (75 employees). However, small air carriers operating transport category airplanes could be affected by the rule. Order 2100.14A defines a small carrier as one owning 9 or fewer aircraft. The definition of "significant economic impact" varies by air carrier type: for operators whose fleets consist entirely of aircraft having a seating capacity of more than 60 passengers the threshold is $123,445, for other operators the threshold is $69,005.

Under the most conservative (that is, most costly) compliance assumptions, the rule will increase operating costs by approximately $2,700 per airplane per year; or $24,300 per year for a nine-airplane fleet. Assuming that all incremental certification costs are passed on to the operator, the rule would increase the price of an airplane by $1,570. When this is amortized over the 25-year life of the airplane (assuming a 7% discount rate), the incremental cost per airplane is approximately $126 per year or $1,134 per year for a nine-airplane fleet. An upper-bound estimate of the annual impact of the proposed rule to small operators, then, is approximately $24,300+$1,134=$25,434. FAA holds, therefore, that the rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

The rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Trade Impact Assessment

Recognizing that nominally domestic regulations often affect international trade, the Office of Management and Budget directs Federal agencies to assess whether or not a rule or regulation will have the effect of lessening the restraints of any trade-sensitive actively. The FAA determines that the subject rule will reduce barriers to international trade.

The rule collectively places U.S. and foreign transport airplanes on a more equitable basis regarding their marketability. The standardization of certification criteria between the FAA and the Joint Aviation Authorities (JAA) of Europe, and the equalization of safety levels for pre- and post-Amendment 25–42 airplanes eliminates the slight comparative disadvantage experienced by certain foreign airplanes. The requirement regarding the two-second margin allows European-produced airplanes certified under Amendment 25–42 to become slightly more competitive against current production U.S. airplanes that were not certified under Amendment 25–42 by marginally expanding their takeoff envelope.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this rule does not

conflict with any international agreement of the United States.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1990 (44 U.S.C. 3501 *et seq.*). there are not reporting or recordkeeping requirements associated with this rule.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this final rule applies to the certification of future designs of transport category airplane and their subsequent operation, it could affect interstate aviation in Alaska. The Administrator has considered the extent to which Alaska is not served by transportation modes other than a aviation, and how the final rule could have been applied differently to intrastate operations in Alaska. However, the Administrator has determined that airplanes operated solely in Alaska would present the same safety concerns as all other affected airplanes; therefore, it would be inappropriate to establish a regulatory distinction for the intrastate operation of affected airplanes in Alaska.

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 91

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 135

Aircraft, Airplane, Airworthiness, Air transportation.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR parts 1, 25, 91, 121, and 135 of the Federal Aviation Regulations (FAR) as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

2. Section 1.2 is amended by adding a new abbreviation "V_{EF}" and revising the description for the abbreviation "V_1" to read as follows:

§ 1.2 Abbreviations and symbols.

* * * * *

V_{EF} means the speed at which the critical engine is assumed to fail during takeoff.

* * * * *

V_1 means the maximum speed in the takeoff at which the pilot must take the first action (e.g., apply brakes, reduce thrust, deploy speed brakes) to stop the airplane within the accelerate-stop distance. V_1 also means the minimum speed in the takeoff, following a failure of the critical engine at V_{EF}, at which the pilot can continue the takeoff and achieve the required height above the takeoff surface within the takeoff distance.

* * * * *

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

3. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

4. Section 25.101 is amended by adding a new paragraph (i) to read as follows:

§ 25.101 General.

* * * * *

(i) The accelerate-stop and landing distances prescribed in §§ 25.109 and 25.125, respectively, must be determined with all the airplane wheel brake assemblies at the fully worn limit of their allowable wear range.

5. Section § 25.105 is amended by revising paragraph (c)(1) to read as follows:

§ 25.105 Takeoff.

* * * * *

(c) * * *

(1) In the case of land planes and amphibians:

(i) Smooth, dry and wet, hard-surfaced runways; and

(ii) At the option of the applicant, grooved or porous friction course wet, hard-surfaced runways.

* * * * *

6. Section § 25.107 is amended by revising paragraph (a)(2) to read as follows:

§ 25.107 Takeoff speeds.

(a) * * *

(2) V_1, in terms of calibrated airspeed, is selected by the applicant; however, V_1 may not be less than V_{EF} plus the speed gained with critical engine inoperative during the time interval between the instant at which the critical engine is failed, and the instant at which the pilot recognizes and reacts to the engine failure, as indicated by the pilot's initiation of the first action (e.g., applying brakes, reducing thrust, deploying speed brakes) to stop the airplane during accelerate-stop tests.

* * * * *

7. Section 25.109 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (e) and revising the introductory text, redesignating paragraph (c) as paragraph (g) redesignating paragraph (d) as paragraph (h) and revising the first sentence, and adding new paragraphs (b), (c), (d), (f), and (i) to read as follows:

§ 25.109 Accelerate-stop distance.

(a) The accelerate-stop distance on a dry runway is the greater of the following distances:

(1) The sum of the distances necessary to—

(i) Accelerate the airplane from a standing start with all engines operating to V_{EF} for takeoff from a dry runway;

(ii) Allow the airplane to accelerate from V_{EF} to the highest speed reached during the rejected takeoff, assuming the critical engine fails at V_{EF} and the pilot takes the first action to reject the takeoff at the V_1 for takeoff from a dry runway; and

(iii) Come to a full stop on a dry runway from the speed reached as prescribed in paragraph (a)(1)(ii) of this section; plus

(iv) A distance equivalent to 2 seconds at the V_1 for takeoff from a dry runway.

(2) The sum of the distances necessary to—

(i) Accelerate the airplane from a standing start with all engines operating to the highest speed reached during the rejected takeoff, assuming the pilot takes the first action to reject the takeoff at the V_1 for takeoff from a dry runway; and

(ii) With all engines still operating, come to a full stop on dry runway from the speed reached as prescribed in paragraph (a)(2)(i) of this section; plus

(iii) A distance equivalent to 2 seconds at the V_1 for takeoff from a dry runway.

(b) The accelerate-stop distance on a wet runway is the greater of the following distances:

(1) The accelerate-stop distance on a dry runway determined in accordance with paragraph (a) of this section; or

(2) The accelerate-stop distance determined in accordance with paragraph (a) of this section, except that the runway is wet and the corresponding wet runway values of V_{EF} and V_1 are used. In determining the wet runway accelerate-stop distance, the stopping force from the wheel brakes may never exceed:

(i) The wheel brakes stopping force determined in meeting the requirements of § 25.101(i) and paragraph (a) of this section; and

(ii) The force resulting from the wet runway braking coefficient of friction determined in accordance with paragraphs (c) or (d) of this section, as applicable, taking into account the distribution of the normal load between braked and unbraked wheels at the most adverse center-of-gravity position approved for takeoff.

(c) The wet runway braking coefficient of friction for a smooth wet runway is defined as a curve of friction coefficient versus ground speed and must be computed as follows:

(1) The maximum tire-to-ground wet runway braking coefficient of friction is defined as:

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Tire Pressure (psi)	Maximum Braking Coefficient (tire-to-ground)
50	$\mu_{t/g_{MAX}} = -0.0350\left(\frac{V}{100}\right)^3 + 0.306\left(\frac{V}{100}\right)^2 - 0.851\left(\frac{V}{100}\right) + 0.883$
100	$\mu_{t/g_{MAX}} = -0.0437\left(\frac{V}{100}\right)^3 + 0.320\left(\frac{V}{100}\right)^2 - 0.805\left(\frac{V}{100}\right) + 0.804$
200	$\mu_{t/g_{MAX}} = -0.0331\left(\frac{V}{100}\right)^3 + 0.252\left(\frac{V}{100}\right)^2 - 0.658\left(\frac{V}{100}\right) + 0.692$
300	$\mu_{t/g_{MAX}} = -0.0401\left(\frac{V}{100}\right)^3 + 0.263\left(\frac{V}{100}\right)^2 - 0.611\left(\frac{V}{100}\right) + 0.614$

BILLING CODE 4910-13-C

Where—

Tire Pressure=maximum airplane operating tire pressure (psi);

$\mu_{t/gMAX}$=maximum tire-to-ground braking coefficient;

V=airplane true ground speed (knots); and

Linear interpolation may be used for tire pressures other than those listed.

(2) The maximum tire-to-ground wet runway braking coefficient of friction must be adjusted to take into account the efficiency of the anti-skid system on a wet runway. Anti-skid system operation must be demonstrated by flight testing on a smooth wet runway, and its efficiency must be determined. Unless a specific anti-skid system efficiency is determined from a quantitative analysis of the flight testing on a smooth wet runway, the maximum tire-to-ground wet runway braking coefficient of friction determined in paragraph (c)(1) of this section must be multiplied by the efficiency value associated with the type of anti-skid system installed on the airplane:

Type of anti-skid system	Efficiency value
On-Off	0.30
Quasi-Modulating	0.50
Fully Modulating	0.80

(d) At the option of the applicant, a higher wet runway braking coefficient of friction may be used for runway surfaces that have been grooved or treated with a porous friction course material. For grooved and porous friction course runways, the wet runway braking coefficent of friction is defined as either:

(1) 70 percent of the dry runway braking coefficient of friction used to determine the dry runway accelerate-stop distance; or

(2) The wet runway braking coefficient defined in paragraph (c) of this section, except that a specific anti-skid system efficiency, if determined, is appropriate for a grooved or porous friction course wet runway, and the maximum tire-to-ground wet runway braking coefficient of friction is defined as:

BILLING CODE 4910-13-M

Tire Pressure (psi)	Maximum Braking Coefficient (tire-to-ground)
50	$\mu_{1/g_{MAX}} = 0.1470\left(\frac{V}{100}\right)^5 - 1.050\left(\frac{V}{100}\right)^4 + 2.673\left(\frac{V}{100}\right)^3 - 2.683\left(\frac{V}{100}\right)^2 + 0.403\left(\frac{V}{100}\right) + 0.859$
100	$\mu_{1/g_{MAX}} = 0.1106\left(\frac{V}{100}\right)^5 - 0.813\left(\frac{V}{100}\right)^4 + 2.130\left(\frac{V}{100}\right)^3 - 2.200\left(\frac{V}{100}\right)^2 + 0.317\left(\frac{V}{100}\right) + 0.807$
200	$\mu_{1/g_{MAX}} = 0.0498\left(\frac{V}{100}\right)^5 - 0.398\left(\frac{V}{100}\right)^4 + 1.140\left(\frac{V}{100}\right)^3 - 1.285\left(\frac{V}{100}\right)^2 + 0.140\left(\frac{V}{100}\right) + 0.701$
300	$\mu_{1/g_{MAX}} = 0.0314\left(\frac{V}{100}\right)^5 - 0.247\left(\frac{V}{100}\right)^4 + 0.703\left(\frac{V}{100}\right)^3 - 0.779\left(\frac{V}{100}\right)^2 - 0.00954\left(\frac{V}{100}\right) + 0.614$

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Where—

Tire Pressure=maximum airplane operating tire pressure (psi);

$\mu_{1/gMAX}$=maximum tire-to-ground braking coefficient;

V=airplane true ground speed (knots); and

Linear interpolation may be used for tire pressures other than those listed.

(e) Except as provided in paragraph (f)(1) of this section, means other than wheel brakes may be used to determine the accelerate-stop distance if that means—

* * * * *

(f) The effects of available reverse thrust—

(1) Shall not be included as an additional means of deceleration when determining the accelerate-stop distance on a dry runway; and

(2) May be included as an additional means of deceleration using recommended reverse thrust procedures when determining the accelerate-stop distance on a wet runway, provided the requirements of paragraph (e) of this section are met.

* * * * *

(h) If the accelerate-stop distance includes a stopway with surface characteristics substantially different from those of the runway, the takeoff data must include operational correction factors for the accelerate-stop distance. * * *

(i) A flight test demonstration of the maximum brake kinetic energy accelerate-stop distance must be conducted with not more than 10 percent of the allowable brake wear range remaining on each of the airplane wheel brakes.

8. Section 25.113 is amended by revising the introductory text of paragraph (a) and revising paragraph (a)(1), redesignating paragraph (b) as paragraph (c) and revising it, and adding a new paragraph (b) to read as follows:

§ 25.113 Takeoff distance and takeoff run.

(a) Takeoff distance on a dry runway is the greater of—

(1) The horizontal distance along the takeoff path from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface, determined under § 25.111 for a dry runway; or

* * * * *

(b) Takeoff distance on a wet runway is the greater of—

(1) The takeoff distance on a dry runway determined in accordance with paragraph (a) of this section; or

(2) The horizontal distance along the takeoff path from the start of the takeoff to the point at which the airplane is 15 feet above the takeoff surface, achieved in a manner consistent with the achievement of V_2 before reaching 35 feet above the takeoff surface, determined under § 25.111 for a wet runway.

(c) If the takeoff distance does not include a clearway, the takeoff run is equal to the takeoff distance. If the takeoff distance includes a clearway—

(1) The takeoff run on a dry runway is the greater of—

(i) The horizontal distance along the takeoff path from the start of the takeoff to a point equidistant between the point at which V_{LOF} is reached and the point at which the airplane is 35 feet above the takeoff surface, as determined under § 25.111 for a dry runway; or

(ii) 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to a point equidistant between the point at which V_{LOF} is reached and the point at which the airplane is 35 feet above the takeoff surface, determined by a procedure consistent with § 25.111.

(2) The takeoff run on a wet runway is the greater of—

(i) The horizontal distance along the takeoff path from the start of the takeoff to the point at which the airplane is 15 feet above the takeoff surface, achieved in a manner consistent with the achievement of V_2 before reaching 35 feet above the takeoff surface, as determined under § 25.111 for a wet runway; or

(ii) 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to a point equidistant between the point at which V_{LOF} is reached and the point at which the airplane is 35 feet above the takeoff surface, determined by a procedure consistent with § 25.111.

9. Section 25.115 is amended by revising paragraph (a) to read as follows:

§ 25.115 Takeoff flight path.

(a) The takeoff flight path shall be considered to begin 35 feet above the takeoff surface at the end of the takeoff distance determined in accordance with § 25.113(a) or (b), as appropriate for the runway surface condition.

* * * * *

10. Section 25.735 is amended by revising paragraphs (f) introductory text and (f)(2) and adding a new paragraph (h) to read as follows:

§ 25.735 Brakes

* * * * *

(f) The design landing brake kinetic energy capacity rating of each main wheel-brake assembly shall be used during qualification testing of the brake to the applicable Technical Standard Order (TSO) or an acceptable equivalent. This kinetic energy rating may not be less than the kinetic energy absorption requirements determined under either of the following methods:

(1) * * *

(2) Instead of a rational analysis, the kinetic energy absorption requirements for each main wheel-brake assembly may be derived from the following formula, which must be modified in cases of designed unequal braking distributions.

$$KE = \frac{0.0443WV^2}{N}$$

Where—
KE=Kinetic energy per wheel (ft.-lb.);
W=Design landing weight (lb.);
V=Airplane speed in knots. V must not be less than V_{so}, the power off stalling speed of the airplane at sea level, at the design landing weight, and in the landing configuration; and
N=Number of main wheels with brakes.

* * * * *

(h) The rejected takeoff brake kinetic energy capacity rating of each main wheel-brake assembly that is at the fully worn limit of its allowable wear range shall be used during qualification testing of the brake to the applicable Technical Standard Order (TSO) or an acceptable equivalent. This kinetic energy rating may not be less than the kinetic energy absorption requirements determined under either of the following methods:

(1) The brake kinetic energy absorption requirements must be based on a rational analysis of the sequence of events expected during an accelerate-stop maneuver. This analysis must include conservative values of airplane speed at which the brakes are applied, braking coefficient of friction between tires and runway, aerodynamic drag, propeller drag or powerplant forward thrust, and (if more critical) the most adverse single engine or propeller malfunction.

(2) Instead of a rational analysis, the kinetic energy absorption requirements for each main wheel brake assembly may be derived from the following formula, which must be modified in cases of designed unequal braking distributions:

$$KE = \frac{0.0443WV^2}{N}$$

Where—
KE=Kinetic energy per wheel (ft.-lb.);
W=Airplane weight (lb.);
V=Airplane speed (knots);
N=Number of main wheels with brakes; and
W and V are the most critical combination of takeoff weight and ground speed obtained in a rejected takeoff.

11. Section 25.1533 is amended by revising paragraph (a)(3) to read as follows:

§ 25.1533 Additional operating limitations.

(a) * * *

(3) The minimum takeoff distances must be established as the distances at which compliance is shown with the applicable provisions of this part (including the provisions of §§ 25.109 and 25.113, for weights, altitudes, temperatures, wind components, runway surface conditions (dry and wet), and runway gradients) for smooth, hard-surfaced runways. Additionally, at the option of the applicant, wet runway takeoff distances may be established for runway surfaces that have been grooved or treated with a porous friction course, and may be approved for use on runways where such surfaces have been designed constructed, and maintained in a manner acceptable to the Administrator.

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

12. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531; Articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), 902.

13. Section 91.605 is amended by revising paragraph (b)(3) to read as follows:

§ 91.605 Transport category civil airplane weight limitations.

* * * * *

(b) * * *

(3) The takeoff weight does not exceed the weight shown in the Airplane Flight Manual to correspond with the minimum distances required for takeoff, considering the elevation of the airport, the runway to be used, the effective runway gradient, the ambient temperature and wind component at the time of takeoff, and, if operating limitations exist for the minimum distances required for takeoff from wet runways, the runway surface condition (dry or wet). Wet runway distances associated with grooved or porous friction course runways, if provided in the Airplane Flight Manual, may be used only for runways that are grooved or treated with a porous friction course (PFC) overlay, and that the operator determines are designed, constructed, and maintained in a manner acceptable to the Administrator.

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

14. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

15. Section 121.189 is amended by revising paragraph (e) to read as follows:

§ 121.189 Airplanes: Turbine engine powered: Takeoff limitations.

* * * * *

(e) In determining maximum weights, minimum distances, and flight paths under paragraphs (a) through (d) of this section, correction must be made for the runway to be used, the elevation of the airport, the effective runway gradient, the ambient temperature and wind component at the time of takeoff, and, if operating limitations exist for the minimum distances required for takeoff from wet runways, the runway surface condition (dry or wet). Wet runway distances associated with grooved or porous friction course runways, if provided in the Airplane Flight Manual, may be used only for runways that are grooved or treated with a porous friction course (PFC) overlay, and that the operator determines are designed, constructed, and maintained in a manner acceptable to the Administrator.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

16. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

17. Section 135.379 is amended by revising paragraph (e) to read as follows:

§ 135.379 Large transport category airplanes: Turbine engine powered: Takeoff limitations.

* * * * *

(e) In determining maximum weights, minimum distances, and flight paths under paragraphs (a) through (d) of this section, correction must be made for the runway to be used, the elevation of the airport, the effective runway gradient, the ambient temperature and wind component at the time of takeoff, and, if operating limitations exist for the minimum distances required for takeoff from wet runways, the runway surface condition (dry or wet). Wet runway distances associated with grooved or porous friction course runways, if provided in the Airplane Flight Manual, may be used only for runways that are grooved or treated with a porous friction course (PFC) overlay, and that the operator determines are designed, constructed, and maintained in a manner acceptable to the Administrator.

* * * * *

Issued in Washington, DC on February 10, 1998.

Jane F. Garvey,

Administrator.

[FR Doc. 98–3898 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Revisions to Advisory Circular—Flight Test Guide for Certification of Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed advisory circular revisions and request for comments.

SUMMARY: This notice announces the availability of and request comments regarding proposed revisions to Advisory Circular (AC) 25–7, "Flight Test Guide for Certification of Transport Category Airplanes." Advisory Circular 25–7 provides guidance on acceptable means, but not the only means, of demonstrating compliance with the airworthiness standards for transport category airplanes. The proposed revisions to AC 25–7 complement the revisions to the airworthiness standards adopted by the final rule, "Improved Standards for Determining Rejected Takeoff and Landing Performance," located elsewhere in this issue of the **Federal Register**. This notice provides interested persons an opportunity to comment on the proposed revisions to the AC.

DATES: Comments must be received on or before May 19, 1998.

ADDRESSES: Send all comments on the proposed AC revisions to the Federal Aviation Administration, Attention: Don Stimson, Airplane and Flightcrew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave SW., Renton, WA 98055–4056. Comments may be examined at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Katherine Burks, Regulations Branch, ANM–114, at the above address, telephone (425) 227–2114, facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comment Invited

A copy of the subject AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.** Interested persons are invited to comment on the proposed revisions to the AC by submitting such written data, views, or arguments as they may desire. Commenters must identify the title of the AC and submit comments in duplicate to the address specified above. All comments received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final revised AC.

Discussion

The final rule, "Improved Standards for Determining Rejected Takeoff and Landing Performance," is published elsewhere in this issue of the **Federal Register.** In that final rule, the Federal Aviation Administration (FAA) amended the airworthiness standards for transport category airplanes to: (1) Revise the method for taking into account the time needed for the pilot to accomplish the procedures for rejected takeoff; (2) require that takeoff performance be determined for wet runways; and (3) require that rejected takeoff and landing stopping distances be based on worn brakes. The FAA took this action to improve the airworthiness standards, reduce the impact of the standards on the competitiveness of new versus derivative airplanes without adversely affecting safety, and harmonize with revised standards of the European Joint Aviation Requirements–25 (JAR–25).

The FAA recognizes that extensive guidance material will be necessary to assist applicants in complying with the revised standards promulgated by the final rule. Therefore, the FAA proposes revising AC 25–7 to be consistent with the revised standards and to add new material regarding an acceptable means of complying with the wet runway and worn brake requirements. The added material includes detailed guidance for:

a. Using reverse thrust in determining wet runway accelerate-stop distances;

b. Classifying the types of anti-skid systems;

c. Verifying the type of anti-skid system installed on the airplane and that it is properly tuned for operation on wet and slippery runways;

d. Determining the anti-skid efficiency on a wet runway;

e. Developing an analytical model of wet runway braking performance; and

f. Acceptable means for demonstrating braking performance and energy capacity in the fully worn condition.

This proposed revision to AC 25–7 should not be confused with the more extensive AC 25–7 revision proposed by the FAA and made available through notice in the **Federal Register** on April 3, 1996 (61 FR 14847). Commenters should consider the revisions accompanying this notice independently, with the exception of paragraph 55, which does not appear in the original AC 25–7 and is revised from the notice published on April 3. Depending on the comments received and the time needed to review them and incorporate any changes to the proposed material, the FAA may either combine the two proposals into one revision of AC 25–7, or issue two separate revisions. Issued in Renton, Washington, on January 15, 1998.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 98–3899 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday
February 18, 1998

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 et al.
Child Restraint Systems; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91, 121, 125, and 135

[Docket No. 29145; Notice No. 98–2]

RIN 2120–AG43

Child Restraint Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The FAA seeks public comment on issues relating to the use of child restraint systems (CRS's) in aircraft during all phases of flight (i.e., taxi, takeoff, landing, or any other time the seat belt sign is illuminated). Specifically, the agency seeks crash performance and ease-of-use information about existing and new automotive CRS's, when used in aircraft, as well as the development of any other new or improved CRS's designed exclusively for aircraft use.

This advance notice of proposed rulemaking (ANPRM) responds to a recommendation made by the White House Commission on Aviation Safety and Security and is intended to gather information about the technical practicality and cost feasibility of requiring small children and infants to be restrained in CRS in aircraft. This information is needed so that the FAA can determine the best way to address the safety of children while on board aircraft. After reviewing the comments, the FAA may issue a Notice of Proposed Rulemaking with specific regulatory proposals that respond to the Commission's recommendations regarding the use of CRS's.

DATES: Comments must be received on or before June 18, 1998.

ADDRESSES: Comments on this notice may be delivered or mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rules Docket (AGC–200), Docket No. 29145, room 915G, 800 Independence Avenue, SW., Washington, DC 20591. Comments submitted must be marked: "Docket No. 29145." Comments may also be sent electronically to the following Internet address: 9–NPRM–CMTS@faa.dot.gov. Comments may be examined in Room 915G on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Donell Pollard, Air Transportation Division, AFS–203, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3735.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the ANPRM by submitting such written data, views, or arguments as they may desire. Comments must identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator in determining whether to go forward with a proposed rulemaking. Late-filed comments will be considered to the extent practicable. Commenters wishing the FAA to acknowledge receipt of the comments submitted in response to this ANPRM must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. [29145]." The postcard will be date stamped and mailed to the commenter.

Availability of ANPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661), or the FAA Aviation Rulemaking Advisory Committee bulletin board service (telephone: 800–FAA–ARAC).

Internet users may reach the FAA's Web page at http://www.faa.gov or the **Federal Register**'s Web page at http://www.access.gpo.gov/su_docs for access to recently published rulemaking documents.

Any person may obtain a copy of this ANPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this ANPRM.

Persons interested in being placed on the mailing list for future ANPRM's and Notices of Proposed Rulemaking (NPRM's) should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

On February 12, 1997, the White House Commission on Aviation Safety and Security (the Commission) issued a final report to President Clinton which included a recommendation on CRS use during flight. The following is an excerpt from the final report as it relates to CRS's:

"The FAA should revise its regulations to require that all occupants be restrained during takeoff, landing, and turbulent conditions, and that all infants and small children below the weight of 40 pounds and under the height of 40 inches be restrained in an appropriate child restraint system, such as child safety seats, appropriate to their height and weight."

The Federal Aviation Administration (FAA) is issuing this ANPRM to gather information to enable the agency to act upon the Commission's recommendations. This ANPRM does not propose specific regulatory changes. Rather, it requests comments, data and analyses to determine the best approach to maintaining and enhancing safety of children who are passengers in aircraft. After reviewing the comments received, the FAA may issue an NPRM proposing specific regulations. Interested persons will have the opportunity to comment on those proposed changes before a final rule is adopted.

Terminology

For the purpose of this ANPRM, the various child restraint devices are described as follows:

Booster seats: Designed for children who weigh between 30 and 60 pounds. These seats have a raised platform base on which the child sits. Some booster seats have a front shield, over which the lap belts are routed, which covers the child's abdominal area. Shield-type booster seats typically do not have a back or side shell. Depending on the model, some booster seats can be used without the front shield if a shoulder strap is available.

Forward-facing child restraint devices: Designed for children who weigh between 20 and 40 pounds. These seats have a side and back shell and shoulder straps. The seats are installed by routing the vehicle lap belt through a path provided in the back.

Aft-facing child restraint devices: Designed for children who weigh less than 20 pounds. These seats have adjustable shoulder straps but do not have a shield over the chest or abdomen of the child. The seats typically are

installed by tightening the vehicle lap belt through slots on the top side.

Vest- and harness-type child restraint devices: Designed for children who weigh between 20 and 40 pounds. These seats consist of forward-facing restraints fabricated with webbing. There is no rigid shell or platform. This type of seat attaches to the vehicle's lap belts by passing through a loop sewn on the back side of the harness.

Lap-held child restraint devices: Designed to restrain children less than two years old on the lap of an adult. These devices are commonly referred to as belly belts.

Child restraint system: The term "child restraint system" is used when referring to the child restraint device as installed in a passenger seat and secured with lap belts.

Current Regulations for Child Restraint Systems on Board Aircraft

Section 91.107 of the Code of Federal Regulations (14 CFR) stipulates that CRS's must meet certain operational requirements, while § § 121.311, 125.211, and 135.128 set forth how these systems may be used on board aircraft. Under current regulations, children two years old and under may be held in an adult's lap throughout the flight. Alternately, parents may opt to use an approved CRS—specifically, one certified to meet the requirements of Federal Motor Vehicle Safety Standards (FMVSS) 213, to restrain children of this age group when they travel in commercial aircraft. If parents want to ensure that their child has a seat in which to use a CRS, they typically pay a separate fare for that child. Children who are lap held are typically not charged fares by airlines.

Whether or not an air carrier charges a fee for the small child, a separate passenger seat is required for CRS use and installation. Airlines are required to accommodate the use of approved CRS's by ticket-holding small children.

The provisions for the labeling and use of CRS's in aircraft were set forth in the September 15, 1992, Miscellaneous Operations Final Rule Amendments [57 FR 42662]. These amendments were based on years of work by both the FAA and the National Highway Traffic Safety Administration (NHTSA). NHTSA'S FMVSS 213, as revised under 49 CFR 571.213, contains the performance and labeling requirements for CRS's sold for use in the United States for both aircraft and automotive applications. Hundreds of models of CRS's have been manufactured and certified to this standard. Certain CRS's that meet the performance and labeling requirements of FMVSS 213 for automobile use, such as booster seats, and vest- and harness-type child restraint devices, are nonetheless prohibited for use in aircraft. Under current FAA regulations, children two years old or older are required to have a separate passenger seat on board aircraft.

General Discussion of Issues Regarding Child Restraint Systems

The 1994 "CAMI" Study

In September 1994, the FAA issued a report entitled, "The Performance of Child Restraint Devices in Transport Airplane Passenger Seats" (commonly referred to as the CAMI study [1]). The research for the CAMI study involved dynamic impact tests with a variety of CRS's installed in transport airline passenger seats and subjected to the force of 16g peak longitudinal declaration loads required under 14 CFR 25.562(b)(2).

Some of the tests were configured to represent a typical multi-row seat installation and included testing the effects of an adult occupant impact against the back of a seat in which a CRS was installed. The tests also investigated other aspects of child restraint device use in aircraft, including dimensional compatibility of CRS's with transport category aircraft passenger seats and ease of installation.

Some findings of the CAMI study are as follows:

1. As a class of child restraint devices, shield-type booster seats, in combination with factors associated with airplane passenger seats, contributed to an abdominal pressure measurement higher than in other child restraint devices and did not prevent a head impact.

2. Fundamental design characteristics of shield-type booster seats made their belt paths incompatible with aircraft seat belts.

3. Vest- and harness-type devices allowed excessive forward body excursion, resulting in the test dummy sliding off the front of the seat. Therefore, a high likelihood exists that a child's entire body could impact a seat back directly in front of it.

4. Lap-held child restraint devices (belly belts) allowed the test dummy to make severe contact with the seat back directly in front of it, resulting in a severe head impact. There were also high abdominal loads from a combination of the forward bending motion of the adult upper torso to whom the child is attached and the aft row occupant's impact on the breakover seat back.

Based on the results of the CAMI study, the FAA and NHTSA issued a final rule on June 4, 1996, that withdrew approval for the use of booster seats and vest- and harness-type child restraint devices in aircraft during takeoff, landing, movement on the surface [61 FR 28416]. In addition, the rule emphasized the existing prohibition against the use, in all aircraft, of lap-held child restraint devices (including belly belts). The FAA supplemented this rule with a major public education campaign that promotes the use of CRS's on board aircraft at all times. The campaign also reinforces the FAA's recommendation that small children weighing under 40 pounds are safest when in an approved CRS. The campaign includes a series of video, radio, and print public service announcements.

The 1995 Report to Congress

In addition to the CAMI study, in May 1995, the FAA submitted a final Report to Congress on CRS performance and cost effectiveness. The primary issues analyzed in this report included CRS crash performance effectiveness in otherwise survivable air carrier crashes and the possible economic impacts of requiring CRS use. As to the CRS crash performance effectiveness, further findings from the CAMI study were reported. These findings include the following:

1. Aft-facing CRS's performed well, protected the child, and could be adequately restrained with existing aircraft seat belts.

2. Booster seats performed poorly, did not prevent head impact, and could not be properly attached to the aircraft seat.

3. Six of eight forward-facing CRS's tested, when restrained with aircraft seat belts and subjected to the 16g longitudinal aircraft deceleration, failed to prevent head impact criteria (HIC) values of more than 1,000. (HIC of 1,000 is considered the threshold for serious head impact injury in adults.) Routing the aircraft seat belt through a forward-facing CRS and buckling and unbuckling it was difficult, leading to the conclusion that some CRS's might not be easily and adequately secured to aircraft seats.

4. Changing the aircraft seat belt anchor points, i.e., moving them rearward, resulted in satisfactory performance of many forward-facing CRS's. However, changing the anchor points might be problematic with some aircraft seating configurations.

[1] CAMI is the FAA's Civil Aeromedical Institute. The CAMI study is assigned report number DOT/FAA/AAM–94–19 and is available through the National Technical Information Service, Springfield, VA 22161.

When forward-facing CRS's are subjected to a longitudinal deceleration, FAA tests have shown that they move forward before the aircraft seat belt can properly react to restrain them. There are some airplane passenger seat models that have lap-belt anchor locations that satisfactorily inhibit the forward excursion of forward-facing CRS's. However, a survey of major airlines, compiled by the FAA as part of a cooperative project with the Society of Automotive Engineers, indicates that fewer than 20 percent of passenger seats currently in service have seat belt anchor geometry that would adequately restrain forward-facing CRS's.

Additionally, under 16g dynamic impact test conditions, the typical economy airplane passenger seating configuration affords approximately 26 inches of free space forward of the seat back before head contact will occur. This distance includes the forward elastic deflection of a nonbreakover forward row seat back. If the longitudinal excursion of a child seated in a forward-facing child restraint device exceeds this distance, it is likely the child's head would strike the forward row seat back. Comparable FMVSS 213 test requirements specify 32 inches of free space ahead.

Under FMVSS 213, the aircraft test is essentially an inversion test. The performance requirement is that the child test dummy not slip out of the restraining harness in the child seat when the seat is inverted. This test is adequate for gauging automotive CRS performance in air turbulence situations, but may not be adequate for gauging whether the CRS will move relative to the aircraft seat in a forward deceleration crash mode. This finding leads to the question of whether further tests, similar to those FAA has performed, are necessary to assess the longitudinal excursion of child test dummies on forward-facing CRS's.

Although the 1995 Report contains an economic analysis, the focus of this ANPRM is on the technical aspects of CRS design and usage.

Federal Motor Vehicle Safety Standard No. 213

Prior to 1984, when the FAA Technical Standard Order (TSO) C–100 requirements were combined into FMVSS 213, there was a disparity between the number of child restraint models available for motor vehicle use and the number available for aircraft use. The lack of child restraints for aircraft use aroused several safety concerns. One was that some families traveling by air were discouraged from taking unapproved child restraints with them, and thus did not have them available for use at their destination to protect their children while the family was driving. The other concern was that those families who nevertheless took their unapproved child restraint devices on trips had to stow the restraints in the aircraft cargo compartment, and thus were not able to use them to protect their children during the flight.

In 1984, FAA and NHTSA amended the FMVSS and TSO requirements to permit manufacturers to "self-certify" their restraints for aircraft use, provided that they meet the FMVSS 213 requirements and an additional requirement, an inversion test. (49 FR 34357; August 30, 1984). The effect of the 1984 rulemaking was to speed certification of child restraints for aircraft use, and thereby increase the availability of aircraft-certified child restraints.

However, the CAMI test results indicate that it may be prudent to assess whether the current FMVSS 213 test requirements adequately address aircraft crash conditions. Under FMVSS 213, the aircraft test is essentially an inversion test for turbulence. The performance requirement is that the child test dummy not slip out of the restraining harness in the child seat. This is not a test to ensure that the child restraint system does not move relative to the aircraft seat.

In addition, the seat belt anchor locations and seat cushions specified in the FMVSS 213 test fixture are not representative of airplane seats. Tests of CRS's in airplane passenger seats conducted by both the FAA and NHTSA have confirmed that the longitudinal excursion of forward-facing CRS's is much greater in airplane passenger seats than when tested in the FMVSS 213 fixture. Thus, an adequate assessment of forward-facing CRS's may necessitate the use of aircraft-specific tests in addition to those required by FMVSS 213.

FAA Efforts To Develop Child Restraint Systems for Use On Board Aircraft

The FAA is investigating potential solutions to performance problems with CRS's. First, CAMI has developed and fully tested a prototype aircraft seat insert platform. The platform is inserted under the child restraint device and secured to the aircraft seat using the aircraft passenger seat belt. A different set of belts, which is part of the platform, is used to secure the child restraint device to the platform. The platform makes the child restraint device easier to install in the airplane seat and reduces the likelihood of improper installation. The platform's design goal is to provide a better interface between a child restraint device and an aircraft passenger seat.

A second alternative is to develop an aircraft-only child restraint device that could be used in either a forward- or aft-facing configuration. Prototype models have been successfully designed, developed, and tested independently in the United States and Canada as part of a cooperative project with Transport Canada.

A third alternative is to modify a certain number of passenger seats on each airplane and install seat belts with relocated anchorage points. This could serve to improve the performance of existing child restraint devices. However, relocating anchorage points may prove impractical because: (1) Structural locations at which to attach new anchorage points may not exist; and (2) passenger seat recertification may be necessary.

NHTSA NPRM: "Federal Motor Vehicle Safety Standards; Child Restraint Systems; Tether Anchorages for Child Restraint Systems; Child Restraint Anchorage System"

NHTSA has proposed revisions to FMVSS 213 to upgrade CRS performance in automotive applications (62 FR 7857; February 29, 1997). The NHTSA proposal considered two new methods of securing child restraints in vehicles, in addition to the current method of securing the restraints by using seat belts. Both methods require the motor vehicle to have a dedicated anchorage system for child restraints. The first method consists of two latchplates positioned at the seat bight (the intersection of the seat cushion and the seat back), which would connect to two buckle mechanisms affixed to the child seat. The second method consists of rigid or semi-rigid D-rings installed at the vehicle seat bight, and matching hardware on the child seat to attach to those D-rings. Such hardware could include latches similar to those used for vehicle door and truck latches, which are attached to rigid prongs on the child seat. The FAA has expressed a concern that the rigid prongs on this type of child seat may not be compatible with aircraft seat cushions or suited for narrow aircraft seat usage.

Both methods under consideration by NHTSA would include a top tether anchorage strap. The tether is designed to be attached to a ring installed on either the car's backlight deck under the rear window or on the rear-seat's underside to keep the back support of the child restraint device from rotating forward on impact. The tether strap

installation is not currently compatible with aircraft passenger seats.

Request for Information

The FAA is issuing this ANPRM to gather operational and technical data from air carriers, the public, manufacturers, and other interested parties to determine the best way to ensure the safety of small children in CRS's during takeoff, landing, and in turbulent conditions while on board the aircraft. The FAA requests comments and suggestions on all issues related to the use of CRS's. The FAA will consider all comments and suggestions. The following are issues of particular concern:

(1) General

The FAA requests comments regarding problems with fit, function, and performance that have been encountered with existing child restraint devices, especially installation problems in general aviation and commuter aircraft. For example, some child restraint device designs are simply too big to fit on some narrow aircraft seats, with or without an interfacing platform. FAA's finding that these dimensional mismatches can occur is based on a limited survey of larger commercial aircraft seats. Smaller, commuter aircraft seats are not included in this survey. Mismatches with the commuter and general aviation fleet of aircraft could be more prevalent.

Accordiingly, FAA seeks detailed information about the dimensions of existing or possible future CRS designs regarding their ability to fit into the range of airline passenger seat sizes that are installed in commercial aircraft. The FAA also seeks information from airlines about how frequently passengers attempt to use CRS's that are too large for the aircraft seat. Airlines are asked to comment on how they handle such situations now, and how they would envision addressing such situations if CRS use was mandatory. Finally, the FAA queries whether it would be appropriate or practical, under FMVSS 213, to establish dimensional limits for CRS's that are dual-use certified for both automotive and aircraft use.

(2) Forward-Facing CRS's

The FAA requests comments regarding the safety of forward-facing CRS's especially in air carrier aircraft, including any current research data regarding forward-facing child restraint devices.

In particular, should airplane-specific tests be required, in addition to those conducted under FMVSS 213, to adequately assess the longitudinal excursion of child test dummies in forward-facing CRS's? Should child seats certified for aircraft use undergo testing in conditions representative of those found in a commercial transport airplane accident? For example, should there be a requirement for dynamic testing of a child restraint device to 16 g's when attached to an airplane seat using lap- and seat-belt anchorages representative of the belt assemblies and anchorages found in commercial transport airplanes?

(3) Aft-Facing CRS's

The FAA request comments regarding problems that may be associated with aft-facing child restraint devices, including any current research data regarding aft-facing child restrain devices. Should the current dual-use certification policy continue for both aft-facing and forward-facing CRS's, or should the policy be limited to only aft-facing seats?

(4) Approval of CRS's

The FAA requests comments about the advisability of having child restraint devices certified under FMVSS 213 for aircraft use. Should a separate aviation standard be developed for aircraft use ? In particular, CRS manufacturers are invited to comment on whether, under a mandatory CRS-use regulation, they would choose to dual-certify their products, if (1) additional aircraft-specific tests were required, and (2) it was optional for CRS manufacturers to dual-certify their product.

(5) Research on Child Restraint Systems

The FAA requests comments about new CRS's that are being developed, relative to their appropriateness for use in both automobiles and aircraft. In addition, the FAA requests comments on devices that are being developed or that are already available that are similar to the prototype seat insert platform previously described in this notice. Specifically, the FAA would like to know if there are any problems that will preclude manufacturers from developing such devices.

Similarly, comments are sought on the potential availability, performance capabilities, and ease-of use of aircraft-only CRS designs. Further, the FAA also queries whether any design limitations and/or labeling requirements should be placed on aircraft-only CRS's

(6) Changing Anchor Point Locations for Aircraft Passenger Seat Belts

CAMI data indicate that changes to the location of the anchor points for passenger seat belts would greatly enhance the performance of existing child restraint devices. The FAA requests information on the technical and operational feasibility of changing these anchor points on a few passenger seats on existing aircraft as well as on aircraft seats manufactured in the future. Information is also requested on the feasibility of equipping some aircraft seats with a top tether anchorage, such as on the underside of the seat.

(7) Evacuation of Aircraft With Children in Child Restraint Systems

The FAA requests data on the effect of child restraint systems on passenger egress times.

(8) Mandatory Use of Child Restraint Systems for Children Under 40 Inches and Under 40 Pounds

The FAA requests comments regarding the safety consequences of requiring all children under 40 inches and under 40 pounds to be in an appropriate CRS. What effect would such a requirement likely have relative to injuries sustained in both aircraft crashes and air turbulence conditions? Also, the FAA requests data on the effect of height and weight on the efficacy of both current and future automotive CRS's, as well as aircraft-only CRS's. In particular, the FAA would like to know whether CRS's should be mandatory where the passenger is: (1) Both under 40 inches *and* under 40 pounds; or (2) either under 40 inches *or* under 40 pounds. Current FAA regulations do not require the use of restraint systems designed specifically for children; for example, a two-year-old, regardless of size and weight may be restrained in either a CRS or a passenger seat belt, and a child under two years of age may be lap held. In addition, the FAA is seeking data regarding how many children travel by aircraft that are under: (1) Two years of age; or (2) 40 inches and 40 pounds. The FAA is seeking comment regarding an air carrier's ability to enforce the weight and height requirements for CRS usage.

(9) Providing Child Restraint Systems on Aircraft

The FAA requests comments regarding the effects of requiring air carriers to supply appropriate CRS's. For example, how would air carriers ensure that appropriate CRS's were available for flights?

(10) Impacts on Small Businesses

The FAA requests comments regarding the effects of mandatory CRS use, including supplying CRS's, on small air carriers.

(11) Using a Dedicated Method for Aircraft Applications

The FAA requests comments about the appropriateness of incorporating a dedicated child restraint anchorage system, such as those being considered by NHTSA (62 FR 7857), into current aircraft fleets.

(12) Current Practices

The FAA requests data and comments on the current practice of allowing an adult to hold a child two years of age or younger on his or her lap while seated in a forward or rear-facing seat. Estimates of the number of small children and infants that travel in this manner are especially sought.

(13) Additional Rear Facing Seats

The FAA is requesting data and comments regarding the impact of requiring air carriers to supply rear-facing seats on aircraft. Some have suggested that requiring a limited number of rear-facing seats would enhance the safety of child passengers.

(14) Children Per Flight Requiring Child Restraint Seats

The FAA requests comment on the number of children that require CRS's, both on an average and on a peak basis.

(15) Other Solutions

The FAA requests comments about other possible solutions to ensure that small children are properly restrained while on board aircraft.

Regulatory Process Matters

Economic Impact

The Regulatory Flexibility Act of 1980 requires Federal agencies to consider the extent that proposed rules may have "a significant economic impact on a substantial number of small entities." Although the FAA is unable, at this time, to determine the likely costs of imposing regulations requiring small children to be restrained in CRS's in aircraft, following a review of the comments submitted to this ANPRM, the FAA will determine what the potential costs and benefits of the various rulemaking options are.

Likewise, at this preliminary stage, it is not yet possible to determine whether there will be a significant economic impact to a substantial number of small entities or what the paperwork burden, if any, might be. These regulatory matters will be addressed at the time of publication of any NPRM on the subject.

Significance

This preliminary rulemaking is considered a "significant regulatory action" under Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. This preliminary rulemaking is also considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 2, 1979) because of considerable public interest. In addition, any NPRM subsequently developed based on comments to this ANPRM may be considered significant.

Issued in Washington, DC, on February 11, 1998.

Ava L. Mims,

Acting Deputy Director, Flight Standards Service.

[FR Doc. 98–3954 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday
February 18, 1998

Part VI

Department of Transportation

Federal Highway Administration

49 CFR Part 393

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3280

Manufactured Home Tires, Parts and Accessories Necessary for Safe Operation, and Manufactured Home Construction and Safety Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC–95–1; FHWA–97–2341]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3280

[Docket No. FR–3943–F–02]

FHWA RIN 2125–AD41; HUD RIN 2502–AG54

Manufactured Home Tires, Parts and Accessories Necessary for Safe Operation; and Manufactured Home Construction and Safety Standards

AGENCIES: Federal Highway Administration (FHWA), DOT; Office of the Assistant Secretary for Housing, Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Final rule and HUD interpretative bulletin.

SUMMARY: The FHWA and HUD are amending the Federal Motor Carrier Safety Regulations and an interpretation of the Manufactured Home Construction and Safety Standards concerning the transportation of manufactured homes. The FHWA and HUD are reducing the amount of tire overloading allowed (currently up to 50 percent above the tire manufacturer's load rating) on tires used to transport manufactured homes. As a result of this rulemaking the amount of the load on a manufactured home tire will be reduced so that it cannot exceed the tire manufacturer's load rating by more than 18 percent. Manufactured homes transported on tires overloaded by 9 percent or more may not be operated at speeds exceeding 80 km/hr (50 mph). Eighteen-percent tire overloading will be allowed for a two-year period. The two-year period will begin on November 16, 1998, effective date of this final rule. Because the agencies have sufficient data indicating that overloading is potentially unsafe, unless both agencies are persuaded that 18 percent overloading does not pose a risk to the traveling public, or have an adverse impact on safety or the ability of motor carriers to transport manufactured homes, any overloading of tires beyond their design capacity will be prohibited at the end of this two-year period.

EFFECTIVE DATE: The effective date for this rule is November 16, 1998.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HCS–10, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., (eastern time), Monday through Friday, except Federal holidays.

For HUD: Mr. David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9158, Washington, DC 20410–8000. Telephones: (voice) (202) 708–6401; (TTY) (202) 708–4594. Alternately, Mr. Richard A. Mendlen, Office of Consumer and Regulatory Affairs, Manufactured Housing and Standards Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9152, Washington, DC 20410–8000. Telephones: (voice) (202) 708–6423; (TTY) (202) 708–4594.

The phone numbers provided for further information are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

On March 4, 1995, the President directed all agencies to remove obsolete and unnecessary regulations, and to revise and improve the remaining regulations. As part of HUD's and FHWA's review of their respective regulations, each agency identified its regulations applicable to the transportation of manufactured homes as inconsistent with one another. In accordance with the President's directive to improve regulations and the principles of Executive Order 12866 (which directs agencies to avoid regulations that are inconsistent with regulations of other agencies), HUD and the FHWA published a notice of proposed rulemaking (NPRM) to eliminate inconsistencies between their regulations concerning the transportation of manufactured homes (61 FR 18014; April 23, 1996).

A. HUD Manufactured Home Construction and Safety Standards

The National Manufactured Housing Construction and Safety Standards Act of 1974 (Act), 42 U.S.C. 5401 *et seq.*, authorizes the Secretary of Housing and Urban Development (HUD) to establish and amend the Federal Manufactured Home Construction and Safety Standards (the FMHCSS or the Standards), 24 CFR Part 3280. Subpart J of the Standards covers the general requirements for designing the manufactured home to fully withstand the adverse effects of transportation shock and vibration without damaging the integrated structure or its components.

One of its components is the running gear assembly which is defined in 24 CFR 3280.902 to include the subsystem consisting of suspension springs, axles, bearings, wheels, hubs, tires, and brakes, with their related hardware. On December 7, 1976 (41 FR 53626), the Department of Housing and Urban Development issued Interpretative Bulletin J–1–76 which permits the overloading of manufactured home tires by up to 50 percent.

B. FHWA Federal Motor Carrier Safety Regulations

The FHWA's Federal Motor Carrier Safety Regulations (FMCSRs) are based on a series of statutes starting with the Motor Carrier Act of 1935 and are codified at Subchapter B of Chapter III, Title 49 of the Code of Federal Regulations. The FMCSRs provide requirements for the operation of commercial motor vehicles in interstate commerce. The FMCSRs define a commercial motor vehicle, in part, as any self-propelled or towed vehicle used on public highways in interstate commerce to transport passengers or property when the vehicle has a gross vehicle weight rating or gross combination weight rating of 4,536 or more kilograms (10,001 or more pounds) (49 CFR 390.5). Under this definition, a manufactured home transported in interstate commerce is considered a commercial motor vehicle and is subject to the FMCSRs.

Section 393.75(f) of the FMCSRs prohibits the operation of commercial motor vehicles on tires that carry a weight greater than that specified in publications of certain standard-setting organizations listed by the National Highway Traffic Safety Administration in 49 CFR 571.119 (S5.1(b)) unless:

(1) The vehicle is being operated under the terms of a special permit issued by the State, and

(2) The vehicle is being operated at a reduced speed that is appropriate to compensate for tire loading in excess of the manufacturer's normal rated capacity.

Under the Motor Carrier Safety Assistance Program (MCSAP), the FHWA provides financial assistance to States to enforce the FMCSRs or compatible State regulations pertaining to commercial motor vehicle safety (see 49 CFR part 350). State enforcement

officials have expressed concerns about the safety of certain practices of carriers transporting manufactured homes. Their principal concern is the movement of manufactured homes on overloaded tires. In certain cases, vehicles with tires loaded 50 percent above their load ratings are operated at highway speeds. These practices are inconsistent with the FMCSRs.

II. Publication of the Proposed Rule

On April 23, 1996, the FHWA and HUD jointly published a notice of proposed rulemaking to amend § 393.75(f) and HUD's interpretative bulletin concerning tire overloading (61 FR 18014). Because the agencies have sufficient data indicating that overloading is potentially unsafe, the agencies proposed limiting the overloading of manufactured home tires to 18 percent now and phasing out the overloading of manufactured home tires up to 18 percent within two years. It was proposed that during the two-year period, both agencies would review test and other technical data concerning the relative performance of tires which are overloaded by 18 percent versus no tire overloading. Any overloading of tires beyond their design capacity would be prohibited after two years from the effective date of the final rule unless both agencies are persuaded that 18 percent overloading at a reduced speed of 80 kilometers per hour (km/hour) (50 miles per hour (mph)) does not pose a risk to the traveling public or have an adverse impact on the safety or the ability of motor carriers to transport manufactured homes.

III. Analysis of Comments Received

The FHWA and HUD received 14 comments from a variety of organizations and individuals. The commenters were: Advocates for Highway and Auto Safety (Advocates); the Alabama Public Service Commission (Alabama PSC); Association for Regulatory Reform (ARR); Dilo, Inc.; Mr. Kevin Edens, a port-of-entry officer with the Colorado Department of Revenue; Mr. Robert S. Evans, a truck driver; The Goodyear Tire & Rubber Company (Goodyear); Home Builders Company, Titan Homes Division (Titan Homes); Jim Tim, Inc.; the Manufactured Housing Institute (MHI); the New York Department of Transportation (New York DOT); the North Carolina Manufactured Housing Institute (the North Carolina MHI); Utah Department of Transportation (Utah DOT); and, the Wisconsin Department of Transportation (Wisconsin DOT).

Eight commenters either supported the proposal as published, supported the proposal with certain suggested changes, or offered general comments about common industry practices for transporting manufactured housing units. The remaining commenters opposed the rulemaking. The issues raised by the commenters have been organized into two general categories: comments in support of the proposed changes; and, comments in opposition to the proposed changes.

A. Comments in Support of the Proposed Changes

The Alabama PSC, Dilo, Inc., Goodyear, Jim Tim, Inc., the MHI, New York DOT, North Carolina MHI, and Utah DOT supported the proposal to reduce the amount of tire overloading. Some of these commenters also suggested certain changes to the proposal. The suggested changes to the language to be used in the interpretative bulletin and 49 CFR 393.75 are discussed in a separate section in this notice.

The Alabama PSC stated that "the safety of mobile home transportation is poor and is getting worse." The Alabama PSC believes regulations on mobile home transportation are necessary, and are in need of revisions and improvements. The Alabama PSC supports the reduction in the amount of overloading and "the expansion of this proceeding to include improvements in brake performance and enforcement of standards on used tire conditions." The Alabama PSC stated:

Mobile home transportation is now a common experience, but the safety of these movements is worsening. Improvements in the regulations to stop excessive overloading of tires, to improve braking performance, and to improve enforcement are even more critical with the recent increase of the speed of the vehicles sharing the road with mobile homes.

The Utah DOT stated:

We have long felt that the allowance for overloading of mobile/manufactured home tires by 50% and up to 3,000 pounds was unsafe and unwise. Our agents, at eight fixed facilities throughouf the state have diligently enforced the requirement, but have for years expressed safety and operability concerns about the too liberal tire, axle and braking system requirements for these behemoth loads. We do see a large number of roadside tire changing which impede traffic flow and create safety hazards and we wonder why more accidents and incidents have not resulted.

The Utah DOT believes that allowing 18 percent overloading for a two-year period is a good compromise and that the plan to study the issue is reasonable.

The MHI, North Carolina MHI, and Jim Tim, Inc. were among industry supporters of the proposed standards. The MHI stated that "[i]t is the consensus of MHI members that the proposed regulatory revisions should be implemented, with key revisions recommended * * *." The MHI also discussed its willingness to work with the FHWA and HUD during the two-year period during which 18 percent overloading would be allowed. The MHI stated:

Regarding the number of reported tire failures, discussed on page 18018 [61 FR 18018], industry believes that less than 25 percent of reported tire failures can be attributed to tire overloading. Therefore, during the two-year trial period for the 18-percent overload rule, industry intends to gather data on the causes of tire failures, to be shared with HUD and FHWA. Industry intends to provide test and other technical data, in response to the request for information on page 18021 [61 FR 18021], regarding the absence of information on this subject. In this regard, MHI will explore with HUD officials the possibility of conducting joint transportation studies under the current partnership agreement for Action Item No. 25 of the National Homeownership Strategy. Part of such studies should be the establishment of a protocol to measure the level of safety on the highways.

The MHI expressed concerns about the automatic expiration of the two-year period for 18 percent tire overloading. The MHI stated:

It is generally conceded that current data pertinent to the performance of manufactured home tires under varying conditions is limited, outdated, and subject to a broad range of variables insufficiently documented in a controlled environment. For this reason, the industry supports the proposed two-year trial period, but the industry further asserts that upon the submission of any tests and other technical data by the industry and tire manufacturers during this term, the term should be automatically extended beyond the two-year expiration date now proposed while the agencies are reviewing them. In other words, the industry submits that the proposed rule allowing for the overloading of tires should not automatically expire at the end of two years, provided tests and other technical data has been submitted during such term for review by both agencies.

The North Carolina MHI stated:

We believe that these new regulations will mean that homes will be moving slower, with reduced stress on larger,

stronger tires. Consequently, we believe that these new regulations will mean safer highway driving conditions for other motorists, and ensure more reliable delivery of our products to customers. That's a win, win for everyone involved.

Jim Tim, Inc., a transporter of manufactured housing units, believes that the proposed standards will "create a safer situation, due to the fact that this will make it mandatory for the factories to increase the number of axles they install on a manufactured home."

B. FHWA and HUD Response to Commenters Supporting the Rulemaking

In response to comments requesting that the FHWA and HUD expand the scope of the rulemaking to address issues such as axle and braking requirements, the agencies will work together to determine whether there is a need for a rulemaking(s) on these issues.

Currently Subpart J of the Manufactured Home Construction and Safety Standards requires that the braking systems on the manufactured home and the towing vehicle must be capable of stopping the home traveling at 32.2 km/hour (20 mph) in a distance of 12.2 meters (40 feet). The number of braking axles necessary to meet this performance standard must be documented by engineering analysis, transportation tests, or by acceptable documented transportation experience.

The HUD-approved Design Approval Primary Inspection Agencies (DAPIAs) make the final determination of the adequacy of the manufacturer's compliance with these sections of the HUD standards. After discussion with the DAPIAs and other interested parties, HUD will assess if further changes are needed to address the percentage of axles that must be equipped with brakes.

With regard to the MHI's request that the agencies allow 18 percent overloading of tires to continue beyond the proposed two-year period, the FHWA and HUD believe the proposed automatic expiration date is appropriate. The automatic expiration date will impose upon the regulated industry and both Federal agencies a deadline that will force all parties to move quickly toward the collection and analysis of relevant data. The FHWA and HUD will work closely with the MHI and, if warranted by technical data submitted well in advance of the expiration date, consider publishing in the **Federal Register** a notice proposing the extension of the current expiration date.

C. Comments in Opposition to the Proposed Changes

The Advocates for Highway and Auto Safety (Advocates), Association for Regulatory Reform (ARR), Kevin Edens, Robert Evans, Titan Homes, and Wisconsin DOT opposed the proposed changes to the FMCSRs and the interpretative bulletin. The opposition was divided among those who supported the continuation of 50 percent tire overloading and those who advocated no tire overloading.

Advocates expressed concern that the FHWA and HUD do not have sufficient data to support allowing 18 percent overloading of the tires. The AHAS stated:

Although Advocates recognizes that the goals of this rulemaking are well-intentioned, the amendments as proposed fail to meet minimum informal rulemaking burdens pursuant to the Administrative Procedure Act and prevailing case law. Neither the FHWA nor HUD has marshalled adequate evidence in the rulemaking record to justify the proposed amendments and, further, they have argued a two-year trial period for the use of overloaded manufactured home tires that unwarrantedly experiments with the safety of the travelling public.

The agencies have not carried their burdens of supplying an administrative record which properly ventilates the prime issue behind their joint action, *viz.*, whether overinflated tires on manufactured homes present an unacceptable accident risk, whether in the past they have resulted in untoward frequencies and numbers of crashes, and whether both the operators of commercial vehicles transporting manufactured homes as well as other members of the travelling public, have been injured or killed by unacceptable industry practices.

[T]he FHWA/HUD proposal of an 18 percent overload ceiling is also not supported by any data or information on what the expected rate of failures may be despite the fact that this level of overloading is lower than many of the excessive levels prevalent in the manufactured home industry. Given the advent of increasingly higher speed limits posted on both Interstate and other state arterial and collector highways, it is evident that the agencies really have no capability of accurately predicting the failure rates and the associated increased probability of accidents of an 18 percent overload ceiling. Indeed nothing in the preamble of this proposed rule nor in the docket file in the offices of the FHWA indicate why the FHWA and HUD have selected 18 percent as a tolerable overloading level or, in fact, why any overloading is acceptable. This need to justify why an 18 percent figure was arrived at is especially acute given the assertion of the preamble that because of concerns about the safety of the travelling public on increasingly crowded highways, HUD has concluded that the current overloading of manufactured home tires is no long[er] defensible. *Id.* 18020 [61 FR 18020]. Yet, the preoccupation of the agencies is not with the projected failure rates and consequent accident risks of an 18 percent tire overload threshold, but with the cost burdens to the industry that result from changing tire types and axles in order to avoid the acute problem of excessive overloading, sometimes 50 to 60 percent.

The ARR also expressed concerns that the FHWA and HUD do not have sufficient data to support the proposed revisions to the FMCSRs and the interpretative bulletin. However, the ARR opposed lowering the present 50-percent limit on tire overloading.

The ARR expressed concern about the economic impacts that the rulemaking would have on consumers and small businesses. The ARR stated:

ARR's members are primarily small to medium-sized manufacturers. Due to their smaller size and correspondingly lower levels of capitalization, such businesses are disproportionately affected by excessive and/or inappropriate regulation and related compliance costs. Indeed, in a federally-regulated industry such as manufactured housing, the financial health of producers and other industry participants is directly dependent upon sensible, practical and cost-effective administrative standards.

Cost-effective regulation is also important for consumers. Although manufactured housing now accounts for more than 30% of all new single-family home starts, and the industry generates some $23 billion in economic activity annually, manufactured home-buyers tend to be either lower or middle-income families or persons living on a fixed income. For such purchasers, the difference of only a few dollars in the final sale price of a home (especially when compounded by higher taxes and higher fees) could spell the difference between obtaining a mortgage and not qualifying for financing. Accordingly, it is particularly important, in the case of manufactured homes, for proposed rules to be both objectively justifiable, in terms of their substance, and cost-justifiable, in the sense that the rule returns more in benefits than it costs, and does not unduly burden manufactured home purchasers.

[T]he rule change contemplated by the Joint Docket does not appear to be justified by the minimal available data regarding the failures. Moreover, the proposed change is substantive, rather than interpretative, and would, in effect, convert the relevant portion of the HUD Code from a performance standard to a prescriptive standard. In addition, there is no concrete evidence to support the change sought by the issuing agencies, and inadequate consideration has been given by HUD to the cost impact of the rule upon manufactured home purchasers—particularly when combined with the effects of other recent changes to the standards.

Titan Homes opposed the rulemaking because it believes "there is no objective, empirical reason to make a change." Titan Homes stated:

The 50% rule has been in effect since 1976 and has worked to reduce costs while not compromising the safety of the toter [towing unit] with the manufactured home, or the other vehicles they interface on the road. It has been my experience that the transporters of manufactured housing have an exemplary safety record when compared with other types of transporters and/or four wheeled vehicles. Your [FHWA and HUD's] own statistics should verify these facts quite easily.

The Wisconsin DOT also opposed the proposed changes to the FMCSRs and the interpretative bulletin. The Wisconsin DOT stated:

Although it is a two year study the major concern remains the safe operation of the manufactured homes. Every effort should be made to use tires whose manufactured weight rating is not exceeded. Although the proposed weight limit increase does not seem to be large (18%), when operated at reduced speeds, there is really no justification other than the cost factor per unit.

Wisconsin oversize permits do not require reduced speeds to transport manufactured homes; therefore, there is no real way to assure operation at a reduced speed as proposed. Recent changes to federal and state laws have increased speed limits; therefore creating the possibility of these units being operated at higher speeds rather than the lower speed, putting more stress on the tires.

The Wisconsin Department of Transportation has some real safety concerns about the operation of these units on tires that are rated at less than the weight of the unit.

D. FHWA and HUD Response to Commenters Opposed to the Rulemaking

In response to concerns expressed by AHAS and ARR regarding a lack of data to support this rulemaking, the FHWA and HUD emphasize that this more stringent standard, reducing the amount of permissible overloading from 50 percent to 18 percent and establishing a speed restriction of 80 km/hour (50 mph) when the tires are overloaded, was developed based on technical data reviewed by the FHWA and HUD and information provided by commenters which suggest that most tire failures attributable, in whole or in part, to tire overloading are associated with overloading in excess of 18 percent. Consequently, the FHWA and HUD have concluded that tire failures attributed to overloading will be substantially reduced when transporters of manufactured homes are required to comply with the new restrictions.

As part of the effort to gather data on the number of reported failures of new and used tires during the transportation of manufactured homes, HUD obtained information from three companies which transport large numbers of manufactured homes. The three companies collectively transport more than 30 percent of the manufactured homes produced in the United States and in the case of the largest transporter, nearly 50,000 manufactured homes per year.

The three companies differed in the reported overall rate of tire failure for shipment of manufactured homes. The failure rate for new tires ranged from 4 percent to 7 percent. The used tire failure rate was 9 percent. According to the MHI, roughly 55 percent of the tires sold to manufactured housing producers in 1994 were used tires.

Since the data from one company represented a large share of the market and transportation experience in a large number of States, HUD believes that the company's failure rate of 7 percent is the most representative of actual conditions. Therefore, the FHWA and HUD used a failure rate of 7 percent for new tires and 9 percent for used tires with an overall average failure rate of 8 percent in the notice of proposed rulemaking. Since each section of a manufactured home usually contains 6 tires, a tire will fail on about 40 percent of the sections shipped each year. Multiple failures of tires are less common but are known to occur.

There was also substantial variability among these three companies concerning the causes of tire failure. One company indicated that foreign objects were the cause of 99 percent of tire failures, while the other companies indicated that substandard tires and tire overloading were the chief causes of tire failure. The other companies also noted that operating at excessive speed and other causes were less significant factors in tire failure.

There are no separate data as to the rate of failure due to tire overloading in relation to other factors, such as substandard tires, improper inflation, excessive heat, etc. The risk of tire failure due to overloading can be increased by operating the tire at reduced inflation, the heat of the pavement, high speeds, mounting procedures and other practices which, if combined, may virtually assure tire failure. Hence, determining the percentage of failures attributable solely to tire overloading is difficult.

Data from one tire recycler, however, indicated that up to 70 percent of tires which are damaged can be recycled and reused after repair. This would suggest that foreign objects may have been the principal cause of tire failure rather than blow-outs due to overloading or other causes. The damage associated with blow-outs or causes other than foreign objects is generally too extensive to be repaired.

Based on the available information, the FHWA and HUD estimate that 25 percent of reported failures can be attributed partly to tire overloading. The FHWA and HUD reduced this estimate by half to account for failures due in part to aggravating factors, such as improper inflation or mounting. At the time the NPRM was published, the agencies assumed that 450,000 sections of manufactured homes would be shipped in 1996 and that the tire overloading would be responsible for at least 22,500 blowouts (450,000 shipments × 0.40 (factor for shipments with at least one tire failure) × 0.125 (percentage attributable to tire overloading)). The FHWA and HUD have increased the estimate of the number of manufactured home shipments to 500,000 per year. As a result, tire overloading is now believed to be responsible for at least 25,000 blow-outs.

The estimate of 500,000 shipments was derived by assuming an annual estimate of 340,000 manufactured homes produced, with a 53 percent distribution, or 180,200 shipments, of single sections and a 47 percent distribution, or 319,600 shipments, of multiple sections. The total number of shipments calculated in this manner is 499,800, or about 500,000. The actual 1997 projections are expected to be somewhat higher.

The conflicting claims from State governments and manufacturers concerning the incidence of tire failure varied from a conclusion that it is a relatively uncommon occurrence (1–2 percent of trips) to an estimate by one State official that many transporters are suffering tire failures on most trips. None of the State agencies contacted while the FHWA and HUD were developing the NPRM, and none of the commenters responding to the NPRM, provided information indicating that tire failures during the transportation of manufactured homes have resulted in collisions between the transported unit and other vehicles, or collisions between the manufactured housing unit and fixed objects. However, the FHWA and HUD believe that the current level of tire failures must be substantially reduced to prevent potential accidents.

With regard to Advocates' uncertainty about how the FHWA and HUD selected the 18-percent overloading limit, this decision making process was explained in the April 23, 1996, NPRM. Pages 18018 through 18020 discuss the regulatory options that the FHWA and HUD considered.

The FHWA and HUD examined the cost-effectiveness of four alternatives in the NPRM that would substantially alleviate or eliminate the problem of tire overloading. All of the alternatives used the 3,000-pound-per-tire load limit in HUD's Interpretative Bulletin J–1–76. The first two options involved limiting the amount of tire overloading and would have the net effect of requiring the use of specific upgraded tires corresponding to the amount of overloading. The other options involved prohibiting tire overloading. Compliance with the prohibition on overloading would have required the use of either upgraded tires, or upgraded tires and an additional axle(s).

The first option involved limiting the amount of overloading to 18 percent which corresponds to the amount of overloading that would occur if manufactured home transporters switched from 7–14.5, 8 ply tires (Series D) to 8–14.5, 10 ply tires (Series E). The 8–14.5, 10 ply tires have a load rating of 1,152 kg (2,540 pounds). The notice indicated that this option would have resulted in an average wholesale cost increase of approximately $60 per manufactured home.

The second option the agencies considered was to reduce the amount of overloading to 8 percent which corresponds to the amount of overloading if 8–14.5, 12 ply tires (Series F) are used. The 8–14.5, 12 ply tires have a load rating of 1,266 kg (2,790 pounds). This option would have resulted in an average wholesale cost increase of $84 per manufactured home transported.

The third option was the elimination of tire overloading. Manufacturers could accomplish this by adding an axle and using 8–14.5, 10 ply tires (Series E). The average wholesale cost increase for this option would have been $287 per manufactured home transported.

The fourth option was to eliminate overloading through the use of 9–14.5, 12 ply tires (Series E or F). These tires have a load rating of 1,334 kg and 1,465 kg (2,940 pounds and 3,230 pounds), respectively. The average wholesale cost increase for this option was estimated to be $265 per manufactured home transported.

The FHWA and HUD proposed using the first option because, based upon the available information, it appeared to be the most cost effective way to substantially reduce the number of tire failures. After reviewing the public comments received in response to the NPRM, the FHWA and HUD have concluded that the first option continues to represent the most cost effective approach.

The FHWA and HUD disagree with Advocates' assertion that the agencies have not fulfilled the requirements of the Administrative Procedure Act. The agencies have reviewed information and data currently available and comments from all interested parties. Because FHWA and HUD have sufficient data indicating that overloading is potentially unsafe, they are reducing the amount of tire overloading allowed to 18 percent and phasing out overloading up to 18 percent within two years unless both agencies are persuaded that the 18 percent overloading is safe. The information contained in the rulemaking docket supports the actions taken by the agencies. The interim 18-percent tire overloading established through this process represents a reasonable compromise among the possible alternatives. Furthermore, the period during which 18 percent overloading will be permitted is limited to 2 years. Unless both agencies are persuaded that 18 percent overloading does not pose a risk to the traveling public or adversely impact the safe transportation of manufactured homes, overloading of tires would be prohibited.

In response to the ARR's comments about the economic impact of this rulemaking, HUD obtained its cost information directly from tire suppliers and from the MHI Transportation Task Force which includes transporters, manufacturers, and tire suppliers. The cost information obtained from all sources was very similar and the FHWA and HUD believe the cost information is reasonably accurate.

The number of additional tires and/or axles required to satisfy this rule is a function of the size and weight of the home. Because of this, manufacturers will have differing cost impacts. Also, some manufacturers may already be using additional axles or upgraded tires, so the cost impact may be negligible.

In order to obtain current information and to fully evaluate the economic impact of this rule, HUD has examined a number of current manufactured housing designs. The financial impact of the final rule has been determined to be approximately $17 million per year. This amounts to $50 for each of the approximately 340,000 manufactured homes shipped each year. The FHWA and HUD do not consider this cost to be unreasonable or to adversely affect low and moderate-income consumers' ability to purchase manufactured homes.

The MHI provided HUD and the FHWA with a copy of a report on the life-cycle costs and benefits of various manufactured home transportation systems. The report included an analysis of the benefits and costs of upgrading the tires used in the transportation of manufactured homes. A copy of the report, "Manufactured Home Transportation Systems Research," prepared by the Trucking Research Institute under contract to the MHI, is included in the docket. The report indicates that $3,207,634 in "accident costs" per year could be saved by upgrading tires. The authors believe that tire failure costs (e.g., repairing the flat tire and repairing other components damaged as a result of the flat tire) would be reduced by $21,447,115 per year. Complications experienced by site installers would be reduced and result in an additional savings of $2,866,500 per year. The total benefits of upgrading tires were estimated to be $27,521,249.

The FHWA and HUD consider the estimates in the MHI's report to be reasonable. The information was gathered from producers of manufactured homes, transporters, axle manufacturers, axle and tire recyclers, manufactured home retailers and site installers. The MHI estimates that the rulemaking will save the industry and consumers more than $2.5 million per year while improving highway safety. A more detailed discussion of the economic impact of this rulemaking is provided in section VI of this document.

In response to the ARR's argument that the changes to Interpretative Bulletin J–1–76 would convert the relevant portion of HUD's regulations

from a performance-based standard to a prescriptive requirement, both agencies disagree. The new requirements are performance-based in that transporters of manufactured homes may use any type of manufactured home tire as long as the amount of overloading does not exceed 18 percent. If the tires are loaded in excess of the manufacturers' load ratings by 9 percent or more, the speed at which the manufactured home may be transported is limited to 80 km/hour (50 mph). The FHWA and HUD have established safety performance criteria and left to the discretion of the manufacturers and transporters of manufactured homes the choice of tire types and sizes, and the number of axles needed to meet the performance criteria.

IV. Discussion of Additional Issues Raised by Commenters

A. Speed Restriction

The New York DOT expressed concerns about the proposed speed restrictions for manufactured homes transported on tires overloaded by 9 percent or more of the load rating. The New York DOT stated:

Enforcement of a speed restriction on any vehicle with overloaded tires would be difficult. Most law enforcement agencies have dedicated staff for weight enforcement. This staff is a minor part of agency manpower and is usually not involved in speed enforcement. The standard officer on road patrol would not stop a manufactured home if it was within the speed limit. If a manufactured home did reduce its speed to less than 50 MPH, it would create a speed differential hazard, especially on interstate highways. It is the speed differential, not just the pure speed, which creates unsafe conditions.

Given the two above observations about speeds, please consider them. That is, speed restrictions that are just set to be cautious may be counter productive. Speed restrictions should be made only where there is good data indicating real safety benefits outweighing their costs.

The FHWA and HUD have concluded that the 80 km/hour (50 mph) speed restriction proposed for 49 CFR 393.75 is necessary for cases in which the amount of overloading is 9 percent or more of the load rating for the tire. The FHWA and HUD have reviewed the Tire and Rim Association, Inc., Year Book, an authoritative source concerning tire loading. The Year Book indicates that the speed at which a tire is operated should not exceed 80 km/hour (50 mph) for tires overloaded by up to 9 percent.

The Tire and Rim Year Book does not encourage the overloading of tires but the recommended limitation of the speed to 80 km/hour (50 mph) suggests that the operation of the manufactured home at the reduced speed will improve the safety of operation of manufactured homes transported on overloaded tires. Based upon the agencies' experience with the transportation of manufactured homes, the FHWA and HUD have concluded that the 80 km/hour (50 mph) speed restriction is necessary.

The FHWA and HUD are aware that many States have increased the speed limits on their highways and that traffic may move at speeds up to 120 km/hour (75 mph). Transporters of manufactured homes that operate on such high-speed routes are strongly encouraged to select tires and axles so that overloading is not necessary. The speed restriction does not apply to the movement of all manufactured homes, only those that are operated on tires overloaded by 9 percent or more.

B. Availability of 8–14.5 Tires

Only one tire manufacturer provided comments in response to the NPRM. Goodyear stated:

The NPRM notes a 1994 letter from Goodyear to the Florida Manufactured Housing Association which stated that for an expected demand at that time of 2.4 million tires, Goodyear could only supply 20 % of that demand in the 8–14.5MH LR–E size. That situation has changed. There is or will be enough capacity in the industry to supply the 8–14.5MH LR–E [tires] by the time this rulemaking is issued as a final rule with an effective date set for nine months thereafter.

Based upon the information provided by Goodyear, the FHWA and HUD believe the supply of tires necessary to comply with the requirements of this rule is presently, or soon will be, sufficient to meet the needs of manufactured home producers and transporters. The agencies do not expect that motor carriers will have difficulty obtaining the 8–14.5 MH tires or that cost for such tires will escalate as a result of the increased demand. However, the agencies believe that the 9-month delay in the effective date will minimize the short-term economic impact on the affected parties.

V. Discussion of Implementation Schedule and Final Rule

After reviewing all of the comments received in response to the NPRM, the FHWA and HUD have determined that limiting the overloading of manufactured home tires to 18 percent is the most cost-effective approach to substantially reduce the number of tire failures attributed to tire overloading. Shipments of manufactured homes continue to increase and both agencies will work together to ensure highway safety and prevent disruptions of the delivery of manufactured homes, and adverse economic impacts on consumers and producers of manufactured homes.

A. Implementation Schedule

Based upon the public comments and other information, the FHWA and HUD are following the proposed phase-in schedule which will result in the final rule and interpretative bulletin taking effect 9 months after publication in the **Federal Register**. The purpose of the 9-month period is to minimize the possibility of tire shortages and cost distortions due to the changeover to higher load rated tires.

For the purposes of HUD requirements, the revised interpretative bulletin is applicable to manufactured homes which are labeled on or after the effective date. HUD's authority to prescribe construction standards is limited to the first sale of the manufactured home. HUD does not have the authority to prescribe how homes previously built and certified to the HUD standards should be retrofitted with tires and axles if they are subsequently moved after the first sale of the unit. Also, since there is no current mechanism for the purchaser to complete an engineering analysis or other acceptable method of complying with the law, the FHWA and HUD believe that this final rule should be mandatory only for homes manufactured on or after the effective date of the final rule.

For the purposes of the FHWA's regulations, the tires on any manufactured home, new or used, transported in interstate commerce on or after the effective date of this rule must meet the requirements of 49 CFR 393.75.

B. Revisions to the Wording of the Final Rule and Interpretative Bulletin

In response to the public comments, the FHWA and HUD are using information from the latest edition (1997) of the Tire and Rim Association, Inc. Year Book—the tire load limits for manufactured (mobile) homes have not been changed from the 1994 Year Book used in developing the proposed rule. The Year Book also provides that the load and cold inflation pressure on the wheels and rims should not exceed the manufacturer's recommendation even if the tire has been approved for a higher loading. The FHWA and HUD agree with this recommendation and this requirement has been included in the

amended Interpretative Bulletin and in 49 CFR 393.75.

The FHWA and HUD note that the MHI recommended that the FHWA include in its regulations a definition of the term "special permit." However, the FHWA and HUD have concluded that there is no readily apparent need to define the term. The term is not used with regard to the transportation of manufactured homes, and is only used in relation to allowing overloading of tires on commercial motor vehicles other than manufactured housing units. In addition, the States are responsible for issuing permits for oversize and overweight vehicles. The States have the latitude to establish permitting and other requirements appropriate for the traffic conditions present in their State. If the meaning of the term special permit becomes a significant issue in the future, the FHWA will consider proposing a definition at that time.

Both the interpretative bulletin and 49 CFR 393.75 reference 49 CFR 571.119, paragraph S5.1(b), which lists the Tire and Rim Association, Inc., Year Book along with several technical references recognized in other countries. Given the production of tires in other countries, FHWA/HUD have concluded that the final rule should be consistent with this section.

Finally, the FHWA has revised the regulatory language that is to be included in 49 CFR 393.75(g). Section 393.75(g) now includes a clause indicating that the FHWA and HUD will review industry and other data submitted concerning this matter.

C. Changes to Interpretative Bulletin J–1–76 of the Manufactured Housing Standards

The Department of Housing and Urban Development's authority to issue interpretative bulletins is provided by 42 U.S.C. 3535(d) and 5424. HUD has determined that the following changes should be made to Interpretative Bulletin J–1–76:

1. Section C—"Axles" is deleted in its entirety.

2. Section D—"Tires, Wheels, and Rims" is revised in its entirety to reflect the preceding discussions in the preamble.

D. Amendments to the FMCSRs

The FHWA is amending 49 CFR 393.75 to make the FMCSRs consistent with HUD's amendments to Interpretative Bulletin J–1–76. Section 393.75(f)(1)(i) and (ii) have been redesignated as § 393.75(f)(1) and (2), respectively. The redesignated paragraphs would address all commercial motor vehicles with the exception of manufactured homes. Section 393.75(f)(2) establishes a speed restriction of 80 km/hour (50 mph) on commercial motor vehicles operated on overloaded tires.

Section 393.75(g) allows 18 percent overloading of manufactured home tires for a period of two years after the effective date of the final rule. Manufactured homes operating on tires overloaded by 9 percent or more would be restricted to a maximum speed of 80 km/hr (50 mph).

Tire pressure and inflation requirements currently found at § 393.75(f)(2) and (3), are included in a new paragraph, § 393.75(h).

VI. Cost Analysis of Regulation

The Administration's policy in Executive Order 12866, Regulatory Planning and Review, provides that "Agencies should assess costs and benefits, both quantifiable and non-quantifiable and choose the approach with the maximum net benefits." As discussed in the NPRM (pages 18018 through 18020, and repeated, in part, in Section III, D of this document), the FHWA and HUD estimated the costs of various alternatives, ranging from 18 percent overloading to no tire overloading, and estimated the cost per manufactured home transported for each of the alternatives.

A. Examination of the "Cost Impact" of Upgraded Tires and Axles

HUD has obtained updated cost information for the various types of tires used on manufactured homes. The cost estimates assume that each transportable section uses 6 tires; the cost information is shown in Table A:

TABLE A

Type of tire	Wholesale cost of 8–14.5 10 ply (Series E)	Wholesale cost of 7–14.5 8 ply (Series D)	Increase in wholesale cost	Total incremental cost per section
NEW	$43	$35	$8	$48
USED	30	26	4	24

As shown in Table A, the cost for upgraded tires is relatively modest. It results in an average wholesale cost increase of approximately $50 per manufactured home shipped. The determination of the average cost per home is based on the usage patterns of new versus used tires (45 percent new, 55 percent used); the relative percentage of single section (53 percent) and multi-section (47 percent) homes; and the use of 6 tires per section; and is calculated as follows:

(0.45)[$8×6×(.53)+2×$8×6(.47)]+

(0.55)[$6×6×(.53)+2×$6×6×(.47)]=$51.15

or about $50.

B. Examination of Manufacturer Approved Designs

Manufactured home designs have substantially changed in the last several years due to consumer demand, changes in the HUD construction standards and the evolution of manufactured housing. For manufacturers already using additional axles or upgraded tires, the cost impact of this final rule would be reduced.

The information gathered at the time of preparation of the proposed rule did not reflect these new designs. Accordingly, HUD has undertaken a technical review of manufacturer design packages to see the changes in weight due to heavier exterior coverings, additional framing and shear wall requirement, and other changes.

Based upon a review of design packages, HUD has estimated that approximately 25 percent of all homes produced were affected by the 1994 standards changes and that the increase in weight for those homes was estimated at 5 percent. Therefore, there will be some manufacturers which have already upgraded their transportation systems through the addition of axles, upgraded tires or both.

Also, in reviewing the design packages, HUD has determined that many manufacturers design their axles for weights substantially greater than the actual gross weight of the home. For example, a manufacturer may be using

4 axles when an engineering analysis of the design indicates that only 3 axles are actually needed. Engineering review of several packages indicated that the decrease in the permissible level of tire overloading would not necessarily require an additional axle, since the number of axles is already in excess of what is required to handle the dead load.

Furthermore, the use of 8–14.5 Series E tires with a load rating of 2,540 lbs. could even reduce manufacturer costs as the upgraded load capacity of the tires may reduce the number of axles needed. In several cases, the reduction in the number of axles would more than offset the differential cost for upgraded tires, thus reducing the manufacturer's overall cost. Manufacturers have indicated that they expect that the use of upgraded tires would reduce the number of blowouts and the expenses and damage to the home that might result.

The financial impact of the final rule has been determined to be approximately $17 million per year. This amounts to $50 for each of the approximately 340,000 manufactured homes shipped each year.

C. Examination of the Costs of Service Calls and Tire Failure

The research report submitted by the MHI indicates that transporters reported an average of one tire failure for every 2.038 sections moved from the home manufacturer to the retailer. Site installers reported an average of one tire failure for every 11.182 sections moved from retailer to home site. Using these tire failure rates, and HUD's revised estimate of 500,000 shipments per year, there are approximately 245,338 tire failures per year for movements between the manufacturer and the retailer and 44,714 tire failures per year for movements between the retailer and the home site. The authors of the report believe that the tire failure rate could be reduced by ⅔ (193,174) if the 8–14.5 MH tires are used. This does not, however, mean that there are 193,174 failures caused by tire overloading.

A cost of $123.36 per failure was calculated. The decrease in the transporters' costs could be more than $23 million per year based upon the estimates in the MHI's report. Preventing tire blowouts would also reduce site installation problems associated with damage to the running gear and chassis. The benefits for reducing site installation problems are estimated by the MHI to be $2.8 million.

The MHI also estimates that using upgraded tires would result in a reduction in damage claims (i.e., transportation shock and vibration damage to the manufactured home structure caused by tire failures) and traffic congestion caused when manufactured homes break down. Those benefits are estimated to be approximately $4.3 million and $5.2 million, respectively.

In the FHWA and HUD's joint NPRM the agencies estimated (based upon 450,000 shipments per year) the number of tire failures caused by tire overloading is at least 22,500. The agencies used a failure rate of 7 percent for new tires and 9 percent for used tires with an overall average failure rate of 8 percent. The agencies estimated that a tire will fail on about 40 percent of the sections shipped each year. Using current figures on the number of manufactured home shipments, the FHWA and HUD estimate that tire overloading causes approximately 25,000 tire blowouts per year. This represents a conservative estimate.

In a number of cases, the tire failure is corrected by the transporter and therefore, the associated costs are included in the per mile cost or other charges assessed by the transporters. Where the manufacturer has to send service personnel, the data obtained from manufactured home service managers indicates that the average repair cost is $180.

If 25 percent of the tire blowouts require road site service, the costs to manufacturers would be approximately $1.1 million to 1.3 million per year. Therefore, the total estimated costs of tire failures caused by overloading is more than $36 million per year and it is likely that much of this cost, disruption of transportation and even damage to the home can be abated through the use of upgraded tires.

Other potential benefits from the adoption of this final rule include increased safety on the nation's highways and a decreased likelihood of accidents, injuries, and property damage losses resulting from tire failures. In addition, the FHWA and HUD expect benefits in the form of reduced insurance costs, more on-time deliveries and reduced likelihood of injuries that can occur because of changing blown tires.

In summary, it is expected that there will be substantial cost savings by reducing the number of tire failures through the use of upgraded tires and axles. While there are some manufacturers that may have to increase the number of axles, a review of manufactured home designs indicates that existing number of axles in the approved designs may be adequate, despite the reduction in tire overloading.

Other manufacturers may actually reduce their overall costs by using upgraded tires in conjunction with fewer axles. Finally, this reduction in tire overloading will increase highway safety, and the final rule provides the maximum benefits at the least additional cost of all of the alternatives included in the proposed rule.

VII. Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA and HUD have determined that this action is a significant regulatory action within the meaning of Executive Order 12866 because it involves a significant amount of public interest. In addition, the FHWA has determined that this action is significant within the meaning of Department of Transportation regulatory policies and procedures. This action has undergone a formal review by the Office of Management and Budget. Any changes to the rule resulting from this review are available for public inspection in the docket referenced at the beginning of this document.

This rule establishes tire loading limitations for manufactured homes transported in interstate commerce and eliminates the inconsistency between the FHWA and HUD requirements for manufactured homes. The FHWA and HUD have evaluated the economic impact of the changes to the regulatory requirements concerning the safe transportation of manufactured homes and determined that the standard is reasonable, appropriate, and the least costly and intrusive approach for the resolution of this issue (see section VII of this notice). The financial impact of the final rule has been determined to be approximately $17 million per year. This amounts to $50 for each of the approximately 340,000 manufactured homes shipped each year. The total economic benefits are estimated to be more than $36 million per year. Therefore, the FHWA and HUD estimate that the final rule has a net benefit of approximately $19 million per year. Other options examined by the FHWA would have significant increases in the costs while providing only a marginal increase in the estimated benefits.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA and HUD have evaluated the potential effects of this final rule on small entities and determined that the proposed standard is reasonable, appropriate, and the least costly and

intrusive approach for the resolution of this issue. The FHWA and HUD certify that this rulemaking does not have a significant economic impact on a substantial number of small entities.

The FHWA and HUD obtained cost information directly from tire suppliers and from the MHI Task Force which includes transporters, manufacturers, and tire suppliers. The cost information obtained from all sources was very similar and the FHWA and HUD believe the data are reasonably accurate.

The number of additional tires and/or axles required to satisfy this rule is a function of the size and weight of the manufactured home. Because of this, manufacturers will have differing cost impacts. Also, some manufacturers may already be using additional axles or upgraded tires thereby greatly reducing the costs.

Based upon the information reviewed by the FHWA and HUD, and the information provided by commenters, the agencies do not believe the costs per manufactured home for small entities to comply with this rule will be significantly greater than the costs per manufactured home for larger manufacturers and transporters. Therefore, the costs per manufactured home for small entities to comply with this rule are not expected to exceed $50.

A small manufacturer, for example, producing 5 manufactured homes per week, would have to spend approximately $250 per week or $13,000 annually. However, most, if not all, of the costs would be factored into the prices of the manufactured homes produced. If all of the costs are factored into the manufactured homes produced, the price for a new manufactured home would increase by approximately $50, plus any additional mark-up by the manufacturers and retailers.

The FHWA and HUD note that the AAR stated that it believes "the action contemplated by the NPRM could cost consumers $600 per home or more." The FHWA and HUD have carefully reviewed the estimates of the economic impact of this rulemaking and the information provided by other commenters to the docket and believe the AAR's estimate of the impact on small entities and consumers is far in excess of the cost estimates presented by the MHI. According to the MHI, its members produce 65 percent of the manufactured homes built each year in the United States. The MHI indicated that approximately 339,601 manufactured homes were produced by 92 member companies in 285 plants. The FHWA and HUD believe the experiences of the MHI's members provide a sound basis for estimating the costs for small entities and consumers and consider the estimates presented by the FHWA and HUD in the final rule to be consistent with the MHI's.

Executive Order 12612 (Federalism Assessment)

The FHWA has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, Federalism, and determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Under this rule, certain commercial motor vehicles will be prohibited from traveling at speeds exceeding 80 km/hour (50 mph), but the FHWA does not believe this requirement preempts State law nor does the agency believe this requirement will significantly affect the States' ability to discharge traditional State governmental functions. The FHWA also notes that several State agencies commented to the docket in support of this rulemaking.

The General Counsel of HUD, as the Designated Official under Section 6(a) of Executive Order 12612, has determined that the policies contained in this final rule are covered by section 604(d) of the National Manufactured Housing Construction and Safety Standards Act of 1974, which provides: "Whenever a Federal manufactured home construction and safety standard established under this title is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard."

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This rule will not pose an environmental health risk or safety risk to children.

Unfunded Mandates Reform Act

This rule does not impose a Federal mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

Paperwork Reduction Act

The proposal in this document does not contain information collection requirements [44 U.S.C. 3501 *et seq.*].

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined that this action would not have any effect on the quality of the environment.

A Finding of No Significant Impact with respect to the environment was prepared for the proposed rule in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. Because the proposed rule is adopted by this final rule without significant change, the initial Finding of No Significant Impact remains applicable, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

Regulation Identification Numbers

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RINs contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

24 CFR Part 3280

Fire prevention, Housing standards, Manufactured homes.

49 CFR Part 393

Highway safety, Highways and roads, Motor carriers, Motor vehicle safety.

In consideration of the foregoing, the Department of Housing and Urban Development, under 42 U.S.C. 3535(d), is amending Interpretative Bulletin J–1–76, and the Department of Transportation, Federal Highway Administration is amending title 49, Code of Federal Regulations, Chapter III, part 393 as follows:

Department of Housing and Urban Development

Note: HUD Interpretative Bulletin J–1–76 does not and the amendments to it will not appear in the Code of Federal Regulations.

1. HUD Interpretative Bulletin J–1–76 is amended by removing and reserving Section C and by revising Section D, as follows:

Interpretative Bulletin J–1–76, Transportation—Subpart J of Part 3280

* * * * *

C. [Reserved]

D. Section 3280.904(b)(8)—Tires, Wheels, and Rims

[This Section D is effective November 16, 1998.] Manufactured homes that are labeled on or after the effective date must comply with this Section D. This provision will expire November 20, 2000, unless extended by mutual consent of the Federal Highway Administration and HUD during any subsequent rulemaking.]

Tires and rims shall be sized and fitted to axles in accordance with the gross axle weight rating determined by the manufactured home manufacturer. The permissible tire loading may be increased up to a maximum of 18 percent over the rated load capacity of the manufactured home tire marked on the sidewall of the tire or increased up to a maximum of 18 percent over the rated load capacity specified for the tire in any of the publications of any of the organizations listed in Federal Motor Vehicle Safety Standard (FMVSS) No. 119 (49 CFR 571.119, S5.1(b)).

Used tires may also be sized in accordance with the above criteria whenever the tread depth is at least 2/32 of an inch as determined by a tread wear indicator. The determination as to whether a particular used tire is acceptable shall also include a visual inspection of thermal and structural defects (e.g., dry rotting, excessive tire sidewall splitting, etc.). Wheels and rims shall be sized in accordance with the tire manufacturer's recommendations as suitable for use with the tires selected.

The load and cold inflation pressure imposed on the rim or wheel must not exceed the rim and wheel manufacturer's instructions even if the tire has been approved for a higher load or inflation. Tire cold inflation pressure limitations and the inflation pressure measurement correction for heat shall be as specified in 49 CFR 393.75(h).

* * * * *

Federal Highway Administration

49 CFR CHAPTER III

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

2. The authority citation at the end of § 393.75 is removed and the authority citation for 49 CFR Part 393 continues to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991), 49 U.S.C. 31136 and 31502; 49 CFR 1.48.

3. Section 393.5 is amended by adding the definitions of "manufactured home," "length of a manufactured home," and "width of a manufactured home," placing them in alphabetical order, to read as follows:

§ 393.5 Definitions.

* * * * *

Length of a manufactured home. The largest exterior length in the traveling mode, including any projections which contain interior space. Length does not include bay windows, roof projections, overhangs, or eaves under which there is no interior space, nor does it include drawbars, couplings or hitches.

* * * * *

Manufactured home means a structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. Calculations used to determine the number of square feet in a structure will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions will include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows. This term includes all structures which meet the *above* requirements except the size requirements and with respect to which the manufacturer voluntarily files a certification pursuant to 24 CFR 3282.13 and complies with the standards set forth in 24 CFR part 3280.

* * * * *

Width of a manufactured home. The largest exterior width in the traveling mode, including any projections which contain interior space. Width does not include bay windows, roof projections, overhangs, or eaves under which there is no interior space.

4. Section 393.75 is amended by revising paragraph (f), and by adding paragraphs (g) and (h) to read as follows:

§ 393.75 Tires.

* * * * *

(f) *Tire loading restrictions.* With the exception of manufactured homes, no motor vehicle shall be operated with tires that carry a weight greater than that marked on the sidewall of the tire or, in the absence of such a marking, a weight greater than that specified for the tires in any of the publications of any of the organizations listed in Federal Motor Vehicle Safety Standard No. 119 (49 CFR 571.119, S5.1(b)) unless:

(1) The vehicle is being operated under the terms of a special permit issued by the State; and

(2) The vehicle is being operated at a reduced speed to compensate for the tire loading in excess of the manufacturer's rated capacity for the tire. In no case shall the speed exceed 80 km/hr (50 mph).

(g) *Tire loading restrictions for manufactured homes.* Effective November 16, 1998, tires used for the transportation of manufactured homes (i.e., tires marked or labeled 7–14.5MH and 8–14.5MH) may be loaded up to 18 percent over the load rating marked on the sidewall of the tire or, in the absence of such a marking, 18 percent over the load rating specified in any of the publications of any of the organizations listed in FMVSS No. 119 (49 CFR 571.119, S5.1(b)). Manufactured homes which are labeled (24 CFR 3282.7(r)) on or after November 16, 1998 shall comply with this section. Manufactured homes transported on tires overloaded by 9 percent or more must not be operated at speeds exceeding 80 km/hr (50 mph). This provision will expire November 20, 2000 unless extended by mutual consent of the FHWA and the Department of Housing and Urban Development after review of appropriate tests or other data submitted by the industry or other interested parties.

(h) *Tire inflation pressure.* (1) No motor vehicle shall be operated on a tire which has a cold inflation pressure less than that specified for the load being carried.

(2) If the inflation pressure of the tire has been increased by heat because of the recent operation of the vehicle, the cold inflation pressure shall be estimated by subtracting the inflation buildup factor shown in Table 1 from the measured inflation pressure.

TABLE 1.—INFLATION PRESSURE MEASUREMENT CORRECTION FOR HEAT

Average speed of vehicle in the previous hour	Minimum inflation pressure buildup	
	Tires with 1,814 kg (4,000 lbs.) maximum load rating or less	Tires with over 1,814 kg (4,000 lbs.) load rating
66–88.5 km/hr (41–55 mph)	34.5 kPa (5 psi)	103.4 kPa (15 psi).

Issued on: February 11, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 98–4038 Filed 2–17–98; 8:45 am]

BILLING CODE 4910–22–P

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To authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel PRINCE NOVA, and for other purposes. (Feb. 11, 1998; 112 Stat. 13)

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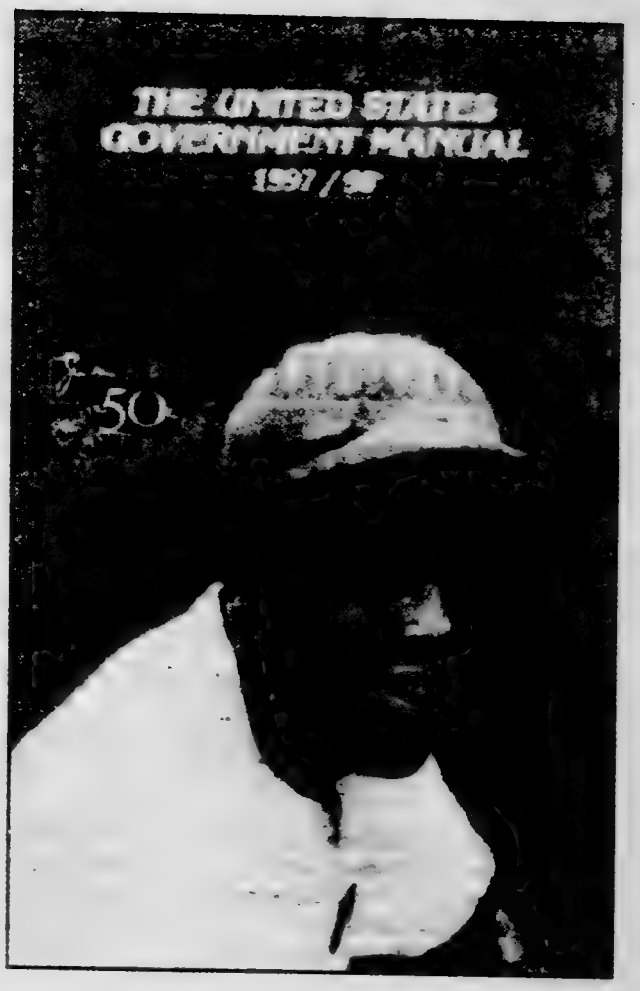

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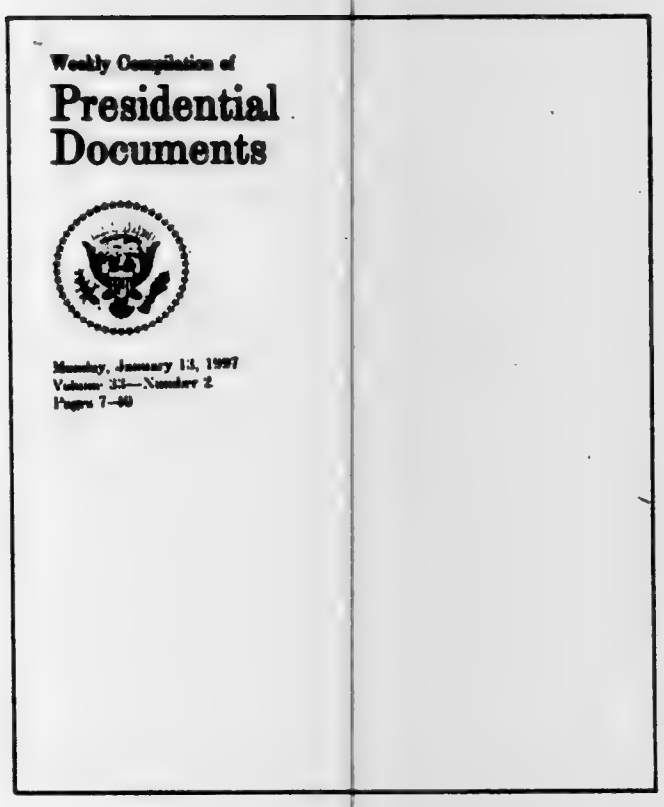

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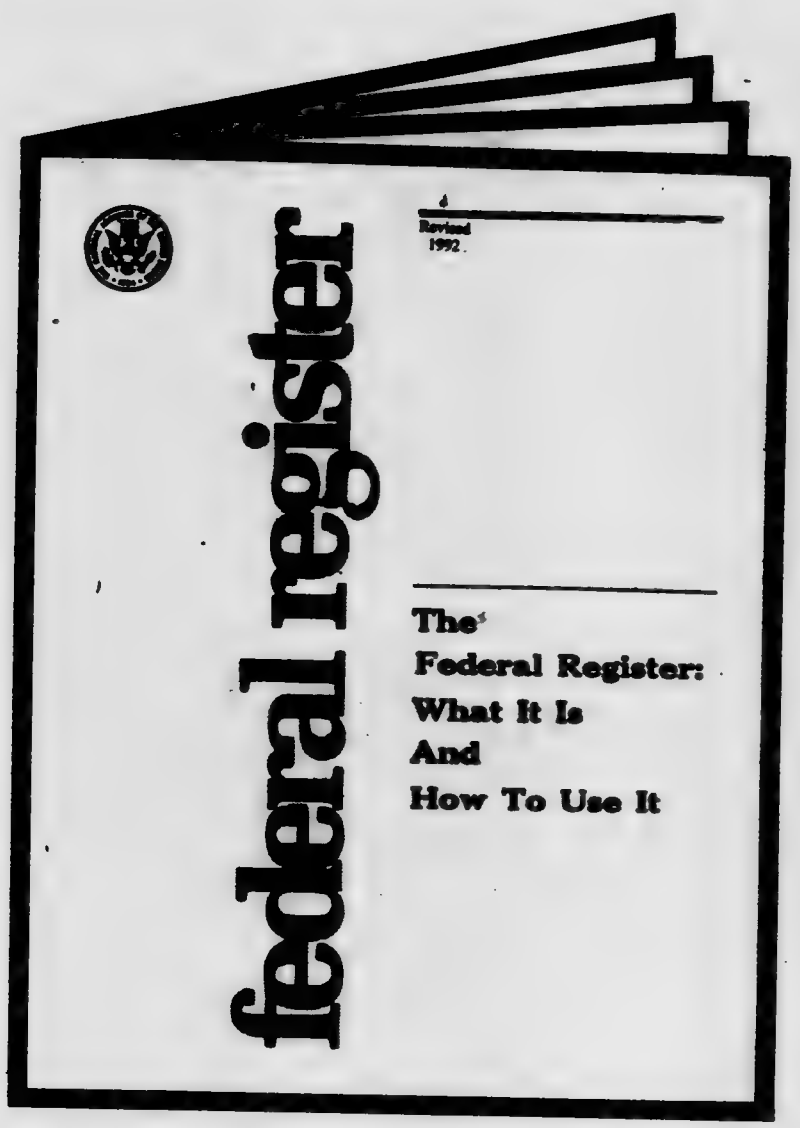

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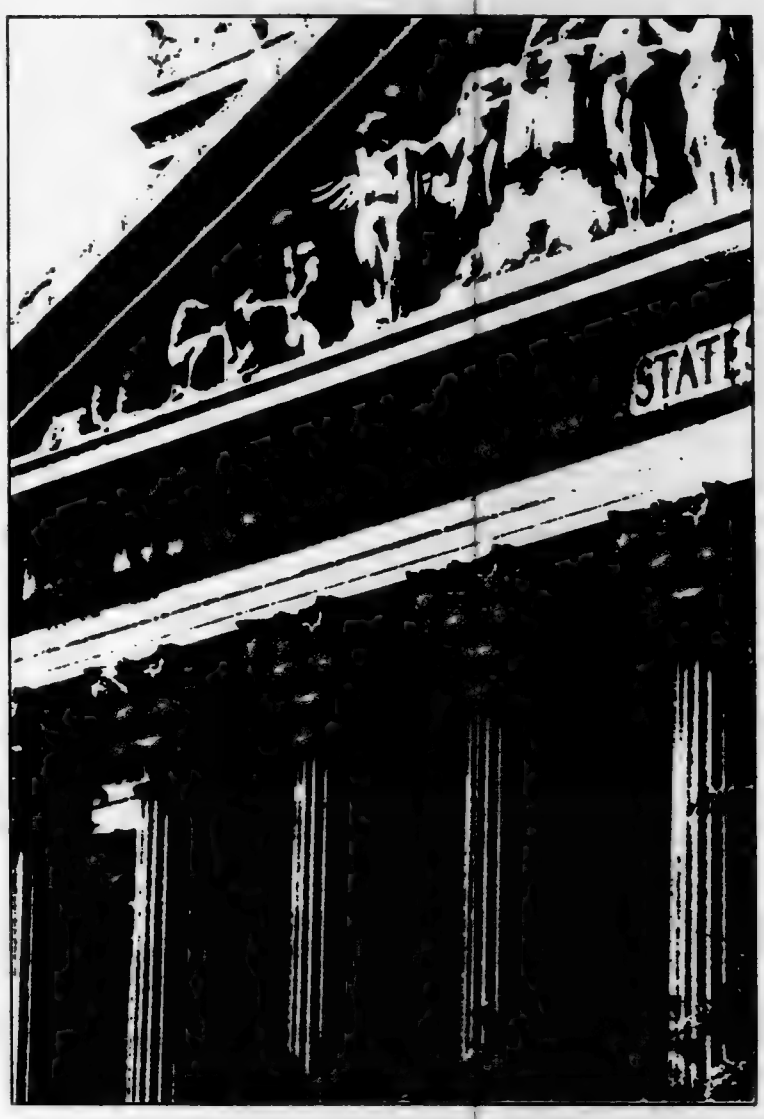

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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12 CFR P

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Rules and Regulations

Federal Register
Vol. 63, No. 33
Thursday, February 19, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 329

RIN 3064–AC13

Interest on Deposits

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending its regulation entitled "Interest on Deposits." Section 18(g) of the Federal Deposit Insurance Act (FDI Act) requires that the FDIC by regulation prohibit the payment of interest or dividends on demand deposits in insured nonmember banks and in insured branches of foreign banks. The interest on deposits regulation implements this prohibition. The amendment provides as an exception to the prohibition, the payment of interest or other remuneration on any deposit which, if held by a member bank, would be allowable under 12 U.S.C. 371a and 461, or by regulation of the Board of Governors of the Federal Reserve System (FRB). This amendment is in accordance with the FDIC's review of its regulations under section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.

EFFECTIVE DATE: April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Marc Goldstrom, Counsel, Regulation and Legislation Section, Legal Division, (202–898–8807); or Louise Kotoshirodo, Review Examiner, Division of Compliance and Consumer Affairs, (202–942–3599).

SUPPLEMENTARY INFORMATION:

Background

Section 18(g) of the FDI Act provides that the Board of Directors of the FDIC shall by regulation prohibit the payment of interest or dividends on demand deposits in insured nonmember banks and in insured branches of foreign banks. (12 U.S.C. 1828(g)). Accordingly, the FDIC promulgated regulations prohibiting the payment of interest or dividends on demand deposits at 12 CFR part 329. Section 11 of the Banking Act of 1933 (12 U.S.C. 371a) prohibits member banks from paying interest on demand deposits and is implemented by Regulation Q, (12 CFR part 217) of the FRB.

Section 18(g) of the FDI Act also provides that the FDIC shall make such exceptions to this prohibition as are prescribed with respect to demand deposits in member banks by section 19 of the Federal Reserve Act, as amended, or by regulation of the FRB (12 U.S.C. 1828(g)). Generally, member banks, state nonmember banks and insured branches of foreign banks are subject to the same prohibition and exceptions to such prohibition, albeit under different statutes and regulations.

From time to time the FRB issues or authorizes a new exception to the prohibition applicable to member banks, and the FDIC later issues or authorizes a similar exception affecting state nonmember banks and insured branches of foreign banks. In situations when the FRB issued or authorized an exception to the prohibition, but the FDIC had yet to act, state nonmember banks and insured branches of foreign banks faced a possible competitive disadvantage with respect to member banks.

In order to eliminate the potential for any such competitive disadvantage in the future and in light of the FDIC's statutory mandate to make such exceptions to this prohibition as are prescribed with respect to demand deposits in member banks, the FDIC published a notice of proposed rulemaking in the **Federal Register** on October 16, 1997 (62 FR 53769). The proposed amendment would allow for the payment of interest or other remuneration on any deposit which, if held by a member bank, would be allowable under 12 U.S.C. 371a and 461, or by regulation of the FRB. The effect of the amendment is that state nonmember banks and insured branches of foreign banks would become subject to the same exceptions to the prohibition that member banks are subject to, regardless of whether the FDIC had issued or authorized the specific exception.

The FDIC received a total of 19 comments on the proposal. Comments were received from eleven banks, one bank holding company, one individual, and six trade associations. Twelve commenters expressed support for the proposal and two expressed disagreements. However, one of those disagreeing with the proposal appeared to have misunderstood its effects. That commenter seemed to believe that the proposed rule would eliminate the prohibition entirely.

The other commenter expressing disapproval claimed that it would be detrimental to smaller independent banks and their customers, without explaining why he believed this to be the case. For the reasons stated in the notice of proposed rulemaking, the FDIC has decided to issue a final rule that is the same as the proposed rule.

Of the comments received, seven believed that the prohibition should be removed altogether. The FDIC may not at this time consider such action because section 18(g) of the FDI Act requires the FDIC to impose the prohibition by regulation. Thus, until such time as Congress repeals or amends section 18(g) of the FDI Act, the prohibition against paying interest on demand deposits must be maintained.

One regional trade association asked the FDIC to support the American Bankers Association (ABA) initiatives to develop new money market deposit accounts for commercial entities. The ABA recently asked the FRB to amend its regulations to create a money market deposit account (MMDA) that would allow up to twenty-four transactions a month for commercial entities not eligible for NOW accounts. The FRB declined, claiming that an MMDA that provided for twenty-four transactions instead of the current limit of six transactions would effectively circumvent the statutory prohibition against the payment of interest on demand deposits.

The regional trade association has now asked the FDIC to authorize an MMDA that allows twenty-four transactions per month and to encourage the FRB to do the same. The regional trade association argues that such an MMDA is necessary because banks are at a competitive disadvantage with brokerage firms and credit unions,

which are able to offer their business customers interest-bearing accounts with unlimited checking.

The FDIC is aware that the prohibition on the payment of interest on demand deposits puts banks at a competitive disadvantage and may encourage an otherwise unnecessary use of resources to avoid the prohibition. Nonetheless, the FDIC agrees with the FRB that authorizing such an MMDA would effectively circumvent the statutory prohibition. The FDIC also believes that the most appropriate way to address this issue is through a statutory change. Accordingly, organizations interested in pursuing this matter may wish to urge Congress to remove the prohibition.

Final Rule

The FDIC is adopting its proposed rule without change.

Regulatory Flexibility Act

The Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The effect of this rule is that state nonmember banks and insured branches of foreign banks will become subject to the same exceptions to the prohibition that member banks are subject to, regardless of whether the FDIC has issued or authorized the specific exception.

Paperwork Reduction Act

The final rule will not constitute a "collection of information" within the meaning of section 3502(3) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Consequently, no material has been submitted to the Office of Management and Budget for review.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) provides generally for agencies to report rules to Congress and for Congress to review rules. The reporting requirement is triggered when agencies issue a final rule as defined by the Administrative Procedure Act (APA) at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA.

The Office of Management and Budget (OMB) has determined that this final revision to part 329 does not constitute a "major rule" as defined by SBREFA.

List of Subjects in 12 CFR Part 329

Banks, banking, interest rates.

For the reasons set forth in the preamble, the Board of Directors of the FDIC hereby amends part 329 of title 12 of the Code of Federal Register as follows:

PART 329—INTEREST ON DEPOSITS

1. The authority citation for part 329 continues to read as follows:

Authority: 12 U.S.C. 1819, 1828(g) and 1832(a).

2. Section 329.3 is added to read as follows:

§ 329.3 Exception to prohibition on payment of interest.

Section 329.2 shall not apply to the payment of interest or other remuneration on any deposit which, if held by a member bank, would be allowable under 12 U.S.C. 371a and 461, or by regulation of the Board of Governors of the Federal Reserve System.

By order of the Board of Directors.

Dated at Washington, D.C., this 10th day of February, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–4142 Filed 2–18–98: 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–1]

Amendment to Class E Airspace; Topeka, Forbes Field, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Topeka, Forbes Field, KS. A review of the Class E airspace for Forbes Field indicates it does not meet the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The area has been enlarged to conform to the criteria of FAA Oder 7400.2D. The intended effect on this rule is to comply with the criteria of FAA Order 7400.2D and to provide controlled Class E airspace for aircraft operating under Instrument Flight Rules.

DATES: *Effective date:* 0901 UTC, June 18, 1998.

Comment date: Comments for inclusion in the Rules Docket must be received on or before March 23, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–1, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic, Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Topeka, Forbes Field, KS. A review of the Class E airspace for Topeka, Forbes Field indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL, is based on a standard climb gradient of 200 feet per mile, plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment to Class E airspace at Topeka, Forbes Field, KS, will meet the criteria of FAA Order 7400.2D, provide additional controlled airspace at and above 700 feet AGL, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is

issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–ACE–1". The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Topeka, Forbes Field, KS [Revised]

Topeka, Forbes Field, KS
(Lat. 38°57′01″N., long. 95°39′51″W.)
Topeka VORTAC
(Lat. 39°08′14″N., long. 95°32′57″W.)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of Forbes Field Airport and within 3.1 miles each side of the Forbes Field ILS localizer course extending from the 7.2-mile radius to 13 miles southeast of the airport and within 3.5 miles each side of the Forbes Field ILS localizer course extending from the 7.2-mile radius to 13 miles northwest of the airport and within 3 miles each side of the 206° radial of the Topeka VORTAC extending from the 7.2-mile radius to 7.4 miles southwest of the airport.

* * * * *

Issued in Kansas City, MO, on January 9, 1998.

Christopher R. Blum,
Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–3968 Filed 2–18–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–38]

Amendment to Class E Airspace; Chadron, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Chadron Municipal Airport, Chadron, NE. The FAA has developed Global Positioning System (GPS) Runway (RWY) 20, GPS RWY 2, Nondirectional Radio Beacon (NDB) RWY 20, NDB RWY 2, VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) RWY 20, and VOR/DME RWY 2, Standard Instrument Approach Procedures (SIAPs) to serve the Chadron Municipal Airport. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs. The enlarged area will contain the GPS RWY 20, GPS RWY 2, NDB RWY 20, NDB RWY 2, VOR/DME RWY 20, and VOR/DME RWY 2 SIAPs in controlled airspace. The intended effect of this rule is to provide Class E airspace for aircraft executing these SIAPs and segregation

of aircraft using instrument approach procedures in instrument conditions.

DATES: *Effective date:* 0901 UTC, June 18, 1998.

Comment date: Comments must be received on or before March 23, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–38, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 20, GPS RWY 2, NDB RWY 20, NDB RWY 2, VOR/DME RWY 20, and VOR/DME RWY 2 SIAPs at Chadron, NE. The amendment to the Class E airspace at Chadron, NE, is necessary to provide additional controlled airspace extending upward from 700 feet AGL in order to contain the SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous action of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comment Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by the submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ACE–38." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designation and Reporting Point, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Chadron, NE [Revised]

Chadron Municipal Airport, NE
(Lat. 42°50′15″ N., long. 103°05′43″ W.)

Chadron VOR/DME
(Lat. 42°33′32″ N., long. 103°18′44″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Chadron Municipal Airport and within 5 miles each side the 028° radial of the Chadron VOR/DME extending from the 7.4-mile radius to 12 miles northeast of the Chadron Municipal Airport.

* * * * *

Issued in Kansas City, MO, on December 30, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–3967 Filed 2–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–39]

Amendment to Class E Airspace; Valentine, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Miller Field, Valentine, NE. The FAA has developed a Global Positioning System (GPS) Runway 32 Standard Instrument Approach Procedure (SIAP) to serve Miller Field, Valentine, NE. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate this SIAP. The enlarged area will contain the new GPS RWY 32 SIAP in controlled airspace. The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the GPS RWY 32 SIAP and segregation of aircraft using instrument approach procedures in instrument conditions.

DATES: *Effective date:* 0901 UTC, June 18, 1998.

Comment date: Comments for inclusion in the Rules Docket must be received on or before March 23, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–39, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed a GPS RWY 32 SIAP to serve Miller Field, Valentine, NE. The amendment to the Class E airspace at Valentine, NE, is necessary to provide additional controlled airspace extending upward from 700 feet AGL in order to contain the new SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ACE–39." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory

Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Valentine, Miller Field, NE [Revised]

Miller Field, NE

(Lat. 42°51′28″ N., long. 100°32′50″ W.)

Valentine NDB

(Lat. 42°51′42″ N., long. 100°32′59″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Miller Field and within 2.6 miles each side of the 149° bearing from the Valentine NDB extending from the 6.5-mile radius to 7.9 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on December 30, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–3966 Filed 2–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–12]

Amendment to Class E Airspace; Topeka, Philip Billard Municipal Airport, KS; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Topeka, Philip Billard Municipal Airport, KS, and corrects an error in the airspace designation as published in the direct final rule.

DATES: The direct final rule published at 62 FR 53743 is effective on 0901 UTC February 26, 1998.

The correction is effective on 0901 UTC February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: On October 16, 1997, the FAA published in the **Federal Register** a direct final rule and request for comments which modified the Class E airspace at Topeka, Philip Billard Municipal Airport, KS (FR Document 97–27382, 62 FR 53743, Airspace Docket No. 97–ACE–12). An error was subsequently discovered in the Class E airspace designation. This action corrects that error and confirms the effective date of the direct final rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received with the comment period, the regulation would become effective on February 26, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Correction

In rule FR Doc. 97–27382 published in the **Federal Register** on October 16, 1997, 62 FR 53743, make the following correction to the Topeka, Philip Billard Municipal Airport, KS, Class airspace designation incorporated by reference in 14 CFR 71.1:

§ 71.1 [Corrected]

On page 53744, in the second column, in the airspace designation, line 12, correct "025°" to read "030°".

Issued in Kansas City, MO, on January 28, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–3974 Filed 2–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–16]

Amendment to Class E Airspace, Keokuk, IA; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Keokuk, IA, and corrects an error in the airspace designation as published in the direct final rule.

DATES: The direct final rule published at 62 FR 58644 is effective on 0901 UTC April 23, 1998.

The correction is effective on 0901 UTC April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64016; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: On October 30, 1997, the FAA published in the **Federal Register** a direct final rule and request for comments which modified the Class E airspace at Keokuk, IA (FR Document 97–28750, 62 FR 58644, Airspace Docket No. 97–ACE–16). An error was subsequently discovered in the Class E airspace designation. This action corrects that error and confirms the effective date of the direct final rule.

The FAA used the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a

written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Correction

In rule FR Doc. 97–28750 published in the **Federal Register** on October 30, 1997, 62 FR 58644, make the following correction to the Keokuk, IA, Class E airspace designation incorporated by reference in 14 CFR 71.1:

§ 71.1 [Corrected]

On page 58645, in the third column, in the airspace designation, line 5, correct "(Lat. 40°27'45"N., long. 91°26'01" W.)" to read "(Lat. 40°27'53" N., long. 91°26'01" W.)".

Issued in Kansas City, MO on January 27, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–3961 Filed 2–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–22]

Amendment to Class E Airspace; St. Louis, MO; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at St. Louis, MO, and corrects an error in the airspace designation as published in the direct final rule.

DATES: The direct final rule published at 62 FR 64148 is effective on 0901 UTC April 23, 1998.

The correction is effective on 0901 UTC April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: On December 4, 1997, the FAA published in the **Federal Register** a direct final rule and request for comments which modified the Class E airspace at St. Louis, MO (FR Document 97–31704, 62 FR 64148, Airspace Docket No. 97–ACE–22). An error was subsequently discovered in the Class E airspace designation. This action corrects that error and confirms the effective date of the direct final rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Correction

In rule FR Doc. 97–31704 published in the **Federal Register** on December 4, 1997, 62 FR 64148, make the following correction to the St. Louis, MO, Class E airspace designation incorporated by reference in 14 CFR 71.1:

§ 71.1 [Corrected]

On page 64149, in the third column, in the airspace designation, line 5, correct "(Lat. 38°39'43"N., long. 90°39'00"W.)" to read "(Lat. 38°39'43"N., long. 90°39'04"W.)".

Issued in Kansas City, MO on January 27, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–3960 Filed 2–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from PM Resources, Inc., to Akzo Nobel Surface Chemistry AB.

EFFECTIVE DATE: February 19, 1998

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: PM Resources, Inc., 13001 St. Charles Rock Rd., Bridgeton, MO 63044, has informed FDA that it has transferred ownership of, and all rights and interests in approved NADA 10–886 (Piperazine Monohydrochloride liquid) to Akzo Nobel Surface Chemistry AB, Box 851, S–44485 Stenungsund, Sweden. Accordingly, the agency is amending the regulations in 21 CFR 520.1806 to reflect the change of sponsor. The agency is also amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) by alphabetically adding a new listing for Akzo Nobel Surface Chemistry AB.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR Parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "Akzo Nobel Surface Chemistry AB" and in the table in paragraph (c)(2) by numerically adding a new entry for "063765" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
Akzo Nobel Surface Chemistry AB, Box 851, S–44485 Stenungsund, Sweden	063765

(2) * * *

Drug labeler code	Firm name and address
063765	Akzo Nobel Surface Chemistry AB, Box 851, S–44485 Stenungsund, Sweden.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1806 [Amended]

4. Section 520.1806 *Piperazine monohydrochloride liquid* is amended in paragraph (b) by removing "See 017135 and 060594" and adding in its place "See Nos. 017135 and 063765".

Dated: January 21, 1998.

Andrew J. Beaulieau,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–4076 Filed 2–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

Animal Drugs, Feeds, and Related Products; Doxycycline Hyclate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Heska Corp. The NADA provides for use of doxycycline hyclate solution for treatment and control of periodontal disease in dogs by application subgingivally to the periodontal pocket(s) of affected teeth.

EFFECTIVE DATE: February 19, 1998.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20857, 301–594–1612.

SUPPLEMENTARY INFORMATION: Heska Corp., 1825 Sharp Point Dr., Fort Collins, CO 80525, filed NADA 141–082, which provides for use of doxycycline hyclate solution for treatment and control of periodontal disease in dogs by application subgingivally to the periodontal pocket(s) of affected teeth. The NADA is approved as of November 19, 1997, and the regulations are amended by adding new 21 CFR 522.778 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Also, the regulations are amended in § 510.600(c) to add the new sponsor to the list of sponsors of approved applications.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning November 19, 1997, because no active ingredient, including any ester or salt of the active ingredient, has been previously approved in any other application filed under section 512(b)(1) of the act.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in paragraph (c)(1) by alphabetically adding a new entry for "Heska Corp." and in paragraph (c)(2) by numerically

adding a new entry for "063604" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* * * *
Heska Corp., 1825 Sharp Point Dr., Fort Collins, CO 80525	063804
* * *	* * * *

(2) * * *

Drug labeler code	Firm name and address
* * *	* * * *
063604	Heska Corp., 1825 Sharp Point Dr., Fort Collins, CO 80525.
* * *	* * * *

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

4. Section 522.778 is added to read as follows:

§ 522.778 Doxycycline hyclate.

(a) *Specifications.* Doxycycline hyclate solution contains 8.5 percent doxycycline activity. A syringe of *N*-methyl-2-pyrrolidone and poly (DL-lactide) mixed with a syringe of doxycycline produces 0.5 milliliter of solution.

(b) *Sponsor.* See 063604 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use*—(1) *Dogs*—(i) *Amount.* Apply subgingivally to periodontal pocket(s) of affected teeth.

(ii) *Indications for use.* For treatment and control of periodontal disease.

(iii) *Limitations.* Do not use in dogs less than 1-year old. Use of tetracyclines during tooth development has been associated with permanent discoloration of teeth. Do not use in pregnant bitches. Use in breeding dogs has not been evaluated. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: January 21, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–4077 Filed 2–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 526 and 529

Animal Drugs, Feeds, and Related Products; Cephapirin Sodium for Intramammary Infusion; Redesignation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to redesignate a section of those regulations. A section reflecting approval of an intramammary product is redesignated from certain other dosage form new animal drugs to intramammary dosage forms to reflect the correct designation of the product.

EFFECTIVE DATE: February 19, 1998.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1739.

SUPPLEMENTARY INFORMATION: The animal drug regulations in part 529 (21 CFR part 529) provide for codification of certain other dosage form new animal drugs. The regulations in part 526 (21 CFR part 526) provide for codification of intramammary dosage forms. Cephapirin sodium for intramammary infusion was inadvertently codified as § 529.365. At this time, the animal drug regulations are amended to redesignate § 529.365 as § 526.365.

List of Subjects

21 CFR Parts 526 and 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 526 and 529 are amended as follows:

PART 526—INTRAMAMMARY DOSAGE FORMS

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citations for 21 CFR parts 526 and 529 continue to read as follows:

Authority: 21 U.S.C. 360b.

§ 529.365 [Redesignated as § 526.365]

2. Section 529.365 is redesignated as § 526.365.

Dated: February 5, 1998.

Andrew J. Beaulieau,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–4081 Filed 2–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–97–2314]

RIN 2125–AD45

National Standards for Traffic Control Devices; Revision of the Manual on Uniform Traffic Control Devices; Temporary Traffic Signals

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final amendment to Part VI of the Manual on Uniform Traffic Control Devices (MUTCD).

SUMMARY: This document contains an amendment to Part VI of the Manual on Uniform Traffic Control Devices (MUTCD) which has been adopted by the FHWA. The amendment revises the section of the MUTCD concerning temporary traffic signals in order to permit the use of certain temporary signaling devices that were inadvertently excluded by an earlier revision to Part VI. The MUTCD is recognized as the national standard for traffic control on all public roads.

DATES: The final rule is effective February 19, 1998. Incorporation by reference of this amendment is approved by the Director of the Federal Register as of February 19, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Michael E. Robinson, Office of Highway Safety (HHS–10), (202) 366–2193, or Mr. Wilbert Baccus, Office of the Chief Counsel, (202) 366–0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The MUTCD is available for inspection and copying as prescribed in 49 CFR part 7, appendix D. The MUTCD (1988 Edition) which includes Part VI (Revision 3, dated 1993) may be purchased for $44 (Domestic) or $55 (Foreign) from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0.

The FHWA both receives and initiates requests for amendments to the MUTCD. Each request is assigned an identification number which indicates, by Roman numeral, the organizational part of the MUTCD affected and, by Arabic numeral, the order in which the request was received (*e.g.*, REQUEST VI–82(C)).

This amendment contains a revision to Part VI of the MUTCD, Standards and Guides for Traffic Control for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations. Part VI sets forth principles and prescribes standards for temporary traffic control zone operations on streets and highways in the United States.

Also, Part VI addresses the design, administration, and operation of street and highway temporary traffic control plans and projects. Previous **Federal Register** actions regarding changes to Part VI are contained in FHWA docket number 89–1, Notice No. 7, published at 58 FR 65084 on December 10, 1993.

The text change resulting from this amendment to the MUTCD has been titled "1988 MUTCD Revision 4a (modified)." It will be available from the Government Printing Office (GPO), Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Everyone currently appearing on the FHWA, Office of Highway Safety, **Federal Register** mailing list will be sent a copy. Those who want to be added to this mailing list should write to FHWA, Office of Highway Safety, HHS–10, 400 Seventh Street, SW., Washington, DC. 20590.

Summary of Comments

Part VI of the MUTCD was revised on September 3, 1993, and incorporated by reference in 23 CFR part 655 on December 10, 1993 (58 FR 64085). As revised, the last paragraph in section 6F–8C read:

> One-way traffic flow requires an all-red interval of sufficient duration for traffic to clear the portion of the temporary traffic control zone controlled by the traffic signals. To avoid the display of conflicting signals at each end of the temporary traffic control zone, traffic signals shall be either hard-wired or controlled by radio signals.

On January 4, 1995, the FHWA published an interim final rule and request for comments that allowed the use of temporary traffic signals that employ new technology that will guard against conflicting GREEN indications at each end of the temporary traffic control zone.

The FHWA received a total of seven comments pertaining to this amendment. Four of the comments were in favor of the amendment. The major concerns of the three opposing comments relate to the following:

1. Proper signal operation during power failure;
2. Proper signal operation during possible equipment malfunction;
3. Proper signal operation at construction sites where serious vandalism occurred at one end of a two-lane, two-way traffic operation;
4. The extent of a State's obligation to determine if safeguards are in place to avoid the display of conflicting signals at each end of the temporary traffic control zone; and
5. The need to avoid the possibility of green/green conflict.

The FHWA agrees with the concerns of the opposing comments. To address the concerns of the opposing comments, FHWA will revise section 6F–8C to allow new traffic signal technology, to require traffic signals to guard against conflicting GREEN indications, and to use conflict monitors or other similar technology to guard against signal malfunctions whenever the distance between traffic signals is long or restricted. Based on the comments, the last paragraph in section 6F–8C, as revised and adopted by the FHWA in this final rule, reads as follows:

> One-way traffic flow requires an all-red interval of sufficient duration for traffic to clear the portion of the temporary traffic control zone controlled by the traffic signals. To avoid the possibility of GREEN/GREEN conflict at each end of the temporary traffic control zone, the traffic signal shall be either hard-wired, controlled by radio signals, operated manually, or designed to employ other technology that will not allow conflicting signal displays. Whenever the distance between traffic signals is long or restricted, the use of conflict monitors or similar electronic technology that is typically used in traditional traffic signal operations should be considered.

This revised language in section 6F–8C allows the use of new and innovative technology to coordinate signal displays and does not endorse a particular product. It ensures, however, that the concerns of the three opposing individuals must be addressed by all traffic signal manufacturers, regardless of methods used to coordinate signal displays.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The changes proposed in this notice provide additional guidance, clarification, and optional applications for traffic control devices. The FHWA expects that application uniformity will improve at little additional expense to public

agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities, including small governments. This final amendment allows the use of some alternative traffic control devices and the changes adopted here merely provide expanded guidance and clarification on the selection of appropriate traffic control devices. Based on this evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action will not have sufficient federalism implications to warrant the preparation of a federalism assessment. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within two years of issuance. These amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. To the extent that these amendments override any existing State requirements regarding traffic control devices, they do so in the interests of national uniformity.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action does not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

Issued on: February 11, 1998.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

The FHWA hereby amends Chapter I of title 23, Code of Federal Regulations, part 655, as set forth below:

PART 655—TRAFFIC OPERATIONS

1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

Subpart F—Traffic Control Devices on Federal-Aid and Other Streets and Highways [Amended]

§ 655.601 [Amended]

2. Section 655.601 is amended by revising paragraph (a) to read as follows:

* * * * *

(a) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), FHWA, 1988, including Revision No. 1 dated January 17, 1990, Revision No. 2 dated March 17, 1992, Revision No. 3 dated September 3, 1993, "Errata No. 1 to the 1988 MUTCD, Revision No. 3," Revision No. 4 dated November 1, 1994, Revision No. 4a (modified) dated February 19, 1998, and Revision No. 5 dated December 24, 1996. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, DC. The 1988 MUTCD, including Revision No. 3 dated September 3, 1993, may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), P.O. Box 371954, Pittsburgh, PA 15250–7954 and has Stock No. 650–001–00001–0. The amendments to the MUTCD, titled "1988 MUTCD Revision 1," dated January 17, 1990, "1988 MUTCD Revision 2," dated March 17, 1992, "1988 MUTCD Revision No. 3," dated September 3, 1993, "1988 MUTCD Errata No. 1 to Revision No. 3," dated November 1, 1994, "1988 MUTCD Revision No. 4," dated November 1, 1994, "Revision No. 4a (modified)," dated February 19, 1998, and "1988 MUTCD Revision No. 5," dated December 24, 1996, are available from the Federal Highway Administration, Office of Highway Safety, HHS–10, 400 Seventh Street, SW., Washington, DC 20590. These documents are available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

* * * * *

[FR Doc. 98–4171 Filed 2–18–98; 8:45 am]

BILLING CODE 4910–22–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–44

[FPMR Temp. Reg. H–30]

RIN 3090–AG63

Donation of Federal Surplus Personal Property to Nonprofit Providers of Assistance to Impoverished Families and Individuals

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation establishes policies and procedures for donating Federal surplus personal property to providers of assistance to impoverished families and individuals. It is issued to comply with section 1 of Public Law 105–50, which adds nonprofit providers to the list of organizations authorized to acquire property for educational or public health purposes.

DATES: Effective date: February 19, 1998.

Expiration date: February 21, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Martha Caswell, Director, Personal Property Management Policy Division (202–501–3846).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this is not a significant rule for the purposes of Executive Order 12866.

Regulatory Flexibility Act

This rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501–3520. This rule also is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 101–44

Government property management, Reporting requirements, Surplus government property.

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter H to read as follows:

General Services Administration

Washington, DC 20405

Federal Property Management Regulations, Temporary Regulation H–30

To: Heads of Federal agencies

Subject: Donation of Federal surplus personal property to nonprofit providers of assistance to impoverished families and individuals

1. *Purpose.* This regulation expands eligibility for the Federal surplus personal property donation program to include nonprofit organizations that provide food, clothing, housing, or other assistance to families or individuals with incomes below the poverty line.

2. *Effective date.* This regulation is effective upon publication in the **Federal Register**.

3. *Expiration date.* This regulation expires 2 years from the effective date. Prior to the expiration date, this regulation will be codified in a new regulation named the Federal Property and Administrative Services Regulation (FPASR). The FPASR will replace the Federal Property Management Regulations and appear in 41 CFR Chapter 102.

4. *Applicability.* The provisions of this regulation apply to all State agencies as defined in FPMR 101–44.001–14. Such agencies must follow this regulation and other guidelines in FPMR 101–44.207 when determining an applicant's eligibility as a nonprofit provider.

5. *Background.* Section 1 of Public Law 105–50, signed by the President on October 6, 1997, amended section 203(j)(3)(B) of the Federal Property and Administrative Services Act of 1949, as amended, to add nonprofit organizations that provide assistance to the impoverished to the list of organizations eligible to acquire surplus personal property for educational or public health purposes. Legislative history indicates the intent of this section was to provide surplus property eligibility to charitable organizations such as food banks, Habitat for Humanity, and the Salvation Army. See 143 Cong. Rec. H1941 (daily ed. April 29, 1997) (statement of Rep. Horn). These groups provide goods and services that contribute to the educational growth or general health and well-being of individuals and families below the poverty line. FPMR 101–44.207 is amended to make such providers eligible for Federal surplus personal property donations.

6. *Explanation of changes.* Section 101–44.207 is amended by adding paragraph (a)(18.2) and revising paragraph (c) to read as follows:

§ 101–44.207 Eligibility.

* * * * *

(a) * * *

(18.2) *Provider of assistance to impoverished families and individuals* means a public or private, nonprofit tax-exempt organization whose primary function is to provide money, goods, or services to families or individuals whose annual incomes are below the poverty line (as defined in section 673 of the Community Services Block Grant Act) (42 U.S.C. 9902). Providers include food banks, self-help housing groups, and organizations providing services such as the following: Health care; medical transportation; scholarships and tuition assistance; tutoring and literacy instruction; job training and placement; employment counseling; child care assistance; meals or other nutritional support; clothing distribution; home construction or repairs; utility or rental assistance; and legal counsel.

* * * * *

(c) *Eligibility of nonprofit tax-exempt activities.* Surplus personal property may be donated through the State agency to nonprofit tax-exempt activities, as defined in this section, within the State, such as:

(1) Medical institutions;

(2) Hospitals;

(3) Clinics;

(4) Health centers;

(5) Providers of assistance to homeless individuals;

(6) Providers of assistance to impoverished families and individuals;

(7) Schools;

(8) Colleges;

(9) Universities;

(10) Schools for the mentally retarded;

(11) Schools for the physically handicapped;

(12) Child care centers;

(13) Radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations;

(14) Museums attended by the public;

(15) Libraries, serving free all residents of a community, district, State or region; or

(16) Organizations or institutions that receive funds appropriated for programs for older individuals under the Older Americans Act of 1965, as amended, under title IV and title XX of the Social Security Act, or under titles VIII and X of the Economic Opportunity Act of 1964 and the Community Services Block Grant Act. Programs for older individuals include services that are necessary for the general welfare of older individuals, such as social services, transportation services, nutrition services, legal services, and multipurpose senior centers.

7. *Effect on other directives.* This regulation modifies the regulations appearing in paragraphs (a) and (c) of FPMR 101–44.207.

Dated: February 5, 1998.

Thurman M. Davis, Sr.,

Acting Administrator of General Services.

[FR Doc. 98–4149 Filed 2–18–98; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

41 CFR CHAPTER 301

[FTR Amendment 68]

RIN 3090–AG43

Federal Travel Regulation; Maximum Per Diem Rates

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule; correction.

SUMMARY: This document corrects entries listed in the prescribed maximum per diem rates for locations within the continental United States (CONUS) contained in a final rule appearing in the **Federal Register** of Tuesday, December 2, 1997 (62 FR 63798). The rule increased/decreased the maximum lodging amounts in certain existing per diem localities, added new per diem localities, deleted a number of previously designated per diem localities, and added information to encourage employees to stay in fire-safe approved accomodations.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Joddy P. Garner, Office of Governmentwide Policy, (MTT), Washington, DC 20405, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION: In rule document 31590 beginning on page 63798 in the issue of Tuesday, December 2, 1997, make the following corrections:

Appendix A to Chapter 301 [Corrected]

1. On page 63800, under the State of Connecticut, in the 28th line from the bottom under the entry New London/Groton, November 1–May 31, revise the numbers "50, 34, and 84" to read "67, 34, and 101" in columns three, four, and five, respectively.

2. On page 63804, under the State of Minnesota, in the 32nd line from the top under the entry Minneapolis/St. Paul, column two is revised to add Dakota County.

3. On page 63805, under the State of New Jersey, in the 29th line from the top, under the entry Cherry Hill/Camden/Moorestown, column two is revised to add Burlington County.

The corrected text should read as follows:

APPENDIX—A TO CHAPTER 301—PRESCRIBED MAXIMUM PER DIEM RATES FOR CONUS

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate 4 (c)
Key city [1]	County and/or other defined location [2,3]					
CONNECTICUT						
New London/Groton, New London						
(June 1–October 31)		87		34		121
(November 1–May 31)		67		34		101
MINNESOTA						
Minneapolis/St. Paul, Anoka, Hennepin, Dakota, and Ramsey Counties; Fort Snelling Military Reservation and Navy Astronautics Group (Detachment BRAVO), Rosemount		91		38		129
NEW JERSEY						
Cherry Hill/Camden/Moorestown,	Camden/Burlington.	74		38		112

Dated: February 10, 1998.

William T. Rivers,

Acting Director, Travel and Transportation Management Policy Division.

[FR Doc. 98–4150 Filed 2–18–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970930235–8028–02; I.D. 090397A]

RIN 0648–AJ12

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Catch Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS increases the total allowable catch (TAC) for Atlantic group Spanish mackerel and Gulf group king mackerel, revises the commercial trip limits off the Florida east coast for the Gulf and Atlantic groups of king mackerel, and allows the operator and crew on for-hire vessels to take the bag limit of Gulf group king mackerel. The intended effects of this rule are to protect king and Spanish mackerel from overfishing and to maintain healthy stocks while still allowing catches by important commercial and recreational fisheries.

DATES: Effective February 19, 1998, except for the revision of § 622.44(a)(2)(i) which is effective February 24, 1998, and for the addition of introductory text at § 622.44(a)(1) and the revision of § 622.44(a)(1)(iii) which are effective March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are regulated under the FMP. The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

In accordance with the framework procedures of the FMP, the Councils recommended, and NMFS published, a proposed rule (62 FR 53278, October 14, 1997) to: (1) For Atlantic migratory groups, increase the commercial quota and recreational allocation for Spanish mackerel and modify the commercial

trip limits off Florida for king mackerel; and (2) for Gulf migratory group king mackerel, increase the commercial quota and recreational allocation, revise the commercial trip limit off the Florida east coast, and restore the bag limit applicable to the operator (captain) and crew of for-hire vessels. That proposed rule described the FMP's framework procedures through which the Councils recommended the changes and explained the need and rationale for them. Those descriptions are not repeated here.

The changes in commercial quotas and recreational allocations are effective commencing with the 1997/98 fishing years, which began for Gulf migratory group king mackerel on July 1, 1997, and for all other groups of Spanish and king mackerel on April 1, 1997.

Comments and Responses

Comments were received during the public comment period from the Florida Marine Fisheries Commission (Commission), the South Atlantic Fishery Management Council (SA Council), and a Florida commercial fisherman. A summary of the comments and NMFS' responses follow.

Increases in TAC

Comment: The Commission supported the TAC increases for both Gulf group king mackerel and Atlantic group Spanish mackerel. The SA Council reiterated its support for increasing the TAC from 7.0 to 8.0 million lb (3.18 to 3.63 million kg) for Atlantic group Spanish mackerel. The SA Council believes that the increase is a prudent decision that will provide sufficient opportunity for recreational and commercial fishery sectors to maximize the socioeconomic benefits of the resource, despite the inability of the recreational sector to take its allocation in recent years. The SA Council also believes that the TAC increase will not jeopardize the continued progress of the stocks toward the Councils' optimum yield goal of a 40–percent spawning potential ratio.

Response: NMFS concurs. As stated in the preamble to the proposed rule, NMFS preliminarily found the Councils' proposed TACs to be consistent with the FMP and the Magnuson-Stevens Act. Final review of the proposed TACs and the comments received have not altered that determination.

Bag Limit for Operator and Crew on For-Hire Vessels

Comment: The Commission supported allowing the operator and crew on for-hire vessels to take the bag limit of Gulf group king mackerel. With the increase in TAC, the Commission believes that a bag limit of zero for such captains and crews is no longer necessary.

Response: NMFS concurs.

Commercial King Mackerel Trip Limits

Comment: The SA Council supported all of its trip limit recommendations for commercial vessels harvesting Atlantic group king mackerel off Florida's east and south coasts. It also supported the changes in trip limits proposed for the Gulf group king mackerel in the Florida east coast subzone.

The Commission supported all of the changes in trip limits except the one proposed for Atlantic group king mackerel off Monroe County, FL (including the Florida Keys). The Commission did not support changing the trip limit in that area from 1,250 lb (567 kg) to 125 fish per day. The Commission preferred the status quo (retention of the 1,250–lb (567 kg) trip limit) to simplify the regulations and facilitate law enforcement in that area. The status quo would maintain a year-round 1,250–lb (567 kg) king mackerel trip limit in both state and Federal waters off Monroe County. A 1,250–lb (567 kg) trip limit was established there earlier this year for the hook-and-line fishery for Gulf group king mackerel in the Florida west coast subzone that includes Monroe County from November through March.

Response: NMFS concurs with the Commission. Accordingly, NMFS approves the Councils' trip limit recommendations except the change from pounds to number of fish proposed for Atlantic group king mackerel off Monroe County. The status quo provides a year-round 1,250–lb (567 kg) king mackerel trip limit in both state and Federal waters in that area. This is consistent with the other trip limit approvals in this action and with the trip limits implemented by Florida on January 1, 1998, that provide a year-round 50–fish king mackerel trip limit off southeast Florida for the Atlantic and Gulf groups in both state and Federal waters. The approved trip limits in concert will simplify the regulations in those areas, thus facilitating compliance and enforceability.

Comment: A Florida commercial fisherman expressed his overall disappointment with the current trip limit regime for the hook-and-line fishery for Gulf group king mackerel in the Florida west coast subzone. He also expressed concern that trip limits will continue as a permanent fixture in the FMP.

His comments focused on the efficacy of the trip limit. He believes that the present trip limits fail to meet their stated goals of forestalling early closures and protecting traditional fishermen. Alternatively, he suggested that lengthening the fishing season would be more effectively achieved by addressing the problems of an over-capitalized fleet having to share a restricted quota. Also, he believes that the trip limits unfairly and disproportionately impact the highest producers who are historically the most dependent on the resource.

In addition, he believes that the trip limits are determined in a too arbitrary manner. He preferred that the Councils better define the goals and parameters for setting trip limits to determine more accurately the economic impacts on fishing vessels and businesses.

Finally, he commented that the trip limits compromise the safety of his vessel because they provide insufficient revenue to offset the costs of hiring a crew member. He believes that operating alone is less safe than operating with two persons on board, particularly for vessels that fish far from home port and make return trips under extremely fatiguing conditions to offload daily landings.

Response: These comments all address issues beyond the scope of this action. Trip limits for commercial vessels harvesting Gulf group king mackerel off Florida have been a component of the FMP for almost five years. The Councils proposed, and NMFS approved, the trip limits currently in place for Florida's hook-and-line and run-around gillnet fisheries. Some trip limits were initially implemented under emergency actions (58 FR 10990, February 23, 1993, and 60 FR 7134, February 7, 1995) and others under the annual framework regulatory actions changing catch specifications (58 FR 58509, November 2, 1993; 59 FR 53120, October 21, 1994; and 60 FR 57686, November 17, 1995). The rationale for implementing the trip limits is contained in those actions.

Changes From the Proposed Rule

As discussed above, conversion of the daily commercial trip limit for Atlantic group king mackerel off Monroe County (including the Florida Keys) from 1,250 lb (567 kg) to 125 fish was disapproved. Accordingly, the change in the proposed rule to § 622.44(a)(1)(iv) is not included in this final rule.

Language is added at § 622.44(a)(1) to clarify that the trip limits for king mackerel from the Atlantic group apply to vessels for which commercial permits have been issued.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The SA Council determined that the regulatory changes affecting Atlantic groups of king and Spanish mackerel in the framework regulatory action would not have a significant impact on a substantial number of small entities, but the Gulf of Mexico Fishery Management Council (Gulf Council) determined that regulatory changes affecting the Gulf group of king mackerel in that action would have a significant impact on a substantial number of small entities. Accordingly, the SA Council did not prepare an initial regulatory flexibility analysis (IRFA), but the Gulf Council did. NMFS considered all the changes in aggregate and concluded that they would have a positive, significant impact on a substantial number of the small entities in the Atlantic and Gulf areas affected by the changes. Public comments were invited on the framework regulatory action, the proposed rule, the IRFA, and other supporting documents through October 29, 1997. NMFS partially approved the framework action and developed a final regulatory flexibility analysis (FRFA). None of the changes to the proposed rule in this final rule were the result of comments on the IRFA. A summary of the FRFA follows.

Actions proposed in the framework adjustment are designed to stabilize yield at the maximum sustainable yield, maintain adequate recruitment, provide flexible management, and optimize social and economic benefits. During the public comment period, one commercial fisherman commented that trip limits of any sort for Gulf group king mackerel create economic inefficiencies and incentives for fishing during unsafe weather conditions. This comment addresses issues beyond the scope of this year's framework changes. NMFS disapproved the proposed trip limit change for Atlantic group king mackerel off Monroe County (including the Florida Keys) but that disapproval was not the result of comment on the IRFA.

The framework adjustments will affect most of the 3,819 vessels that have permits to harvest king and Spanish mackerel. No recent data are available that describe the precise average or range of vessel-operating costs or annual gross revenues. The framework changes do not alter the compliance costs related to reporting or recordkeeping.

Significant alternatives were identified for the five proposed changes to the framework measures. The alternative to maintain the Gulf group king mackerel TAC at 7.8 million lb (3.54 million kg) was rejected because it would not provide the level of benefits associated with increasing the TAC to 10.6 million lb (4.81 million kg). The Gulf Council also rejected the status quo alternative to maintain the daily trip limit for Gulf group king mackerel in the Florida east coast subzone at the current level, i.e., 750 lb (340 kg) reducing to 500 lb (227 kg) when 75 percent of the quota is taken. The RIR/IRFA indicated that the status quo would provide for an increase in economic benefits relative to the proposed alternative of reducing the trip limit to 50 fish. Nevertheless, the status quo was rejected because the preferred alternative might forestall an early closure of the commercial fishery in the Florida east coast subzone, even though this outcome was unlikely. Also, the preferred alternative would be consistent with the 50–fish trip limit that the SA Council proposed for Atlantic group king mackerel for that same area for the April through October period. Another alternative similar to the preferred alternative was rejected because it would provide slightly less benefits than the preferred alternative.

The Gulf Council rejected the status quo alternative that would have continued the bag limit of zero for Gulf group king mackerel for captains and crews of for-hire vessels. The Gulf Council determined that continuation of the status quo was unnecessary to protect the stocks because the increased TAC was sufficient to allow reinstatement of the 2–fish bag limit to captains and crews without incurring an overrun of the recreational allocation. Also, the Gulf Council preferred the proposed alternative because it provided a greater level of economic benefit than the status quo.

Before making the decision to increase the TAC for Atlantic group Spanish mackerel from 7.0 to 8.0 million lb (3.18 to 3.63 million kg), the SA Council considered and rejected several alternatives. Alternatives for lower TACs were rejected on the basis that they would have provided less economic benefits, whereas alternatives for higher TACs were rejected on the basis that those higher levels would not be reached and, thus, were unrealistic.

The SA Council also proposed changing the trip limits from pounds to number of fish for Atlantic group king mackerel off southeast (Brevard/Volusia to Dade/Monroe Counties) and south (Monroe County) Florida to induce a lower level of catch and to facilitate at-sea enforcement. The SA Council also expected Florida to change its regulations similarly to provide compatible regulations in state waters, thereby enhancing compliance and enforceability. NMFS did not approve the trip limit change for off Monroe County because the proposed trip limit of 125 fish would be inconsistent with the 1,250–lb (567–kg) Gulf group king mackerel trip limit for that area for November through March. For the same reason, Florida decided to reject that change for state waters off Monroe County. Given the small portion of Atlantic group king mackerel taken off Monroe County, NMFS considered that the other socioeconomic benefits offered by the SA Council in support of the proposal would be nominal.

The revisions in this final rule to the bag and possession limits for Gulf migratory group king mackerel at § 622.39(c)(1)(ii) and to the quotas for king and Spanish mackerel at § 622.42(c) relieve restrictions and, pursuant to 5 U.S.C. 553(d)(1), are not subject to a 30-day delay in effective date. Accordingly, these measures are effective February 19, 1998.

The reduction of the commercial trip limit for Gulf migratory group king mackerel in the Florida east coast subzone to 50 fish per day is designed to prevent an early closure of the fishery. The current trip limit, 750 lb (340 kg) per day, allows a higher rate of harvest that could result in the quota being taken and in that sector of the fishery being closed before the Lenten season that is often the most profitable part of the fishing season. Delay in such closure is also expected to contribute to more stable markets by providing fresh fish over a longer period. To obtain the intended benefit of this change during the current fishing year, the reduction should be effective as soon as possible. Accordingly, under 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, finds for good cause that it is contrary to the public interest to delay for the full 30 days the effective date of the reduction of the commercial trip limit for Gulf migratory group king mackerel in the Florida east coast subzone. However, to allow time for this change to be communicated to fishermen, the effective date of this change is delayed to February 24, 1998.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: February 12, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Effective February 19, 1998, in § 622.39, paragraph (c)(1)(ii) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(c) * * *

(1) * * *

(ii) Gulf migratory group king mackerel—2.

* * * * *

3. Effective February 19, 1998, in § 622.42, paragraphs (c)(1)(i) and (c)(2)(ii) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(c) * * *

(1) * * *

(i) *Gulf migratory group.* The quota for the Gulf migratory group of king mackerel is 3.39 million lb (1.54 million kg). The Gulf migratory group is divided into eastern and western zones separated by 87°31'06" W. long., which is a line directly south from the Alabama/Florida boundary. Quotas for the eastern and western zones are as follows:

(*A*) *Eastern zone*—2.34 million lb (1.06 million kg), which is further divided into quotas as follows:

(*1*) *Florida east coast subzone*—1.17 million lb (0.53 million kg).

(*2*) *Florida west coast subzone*—1.17 million lb (0.53 million kg), which is further divided into quotas by gear types as follows:

(*i*) 585,000 lb (265,352 kg) for vessels fishing with hook-and-line gear.

(*ii*) 585,000 lb (265,352 kg) for vessels fishing with run-around gillnets.

(*3*) The Florida east coast subzone is that part of the eastern zone north of 25°20.4' N. lat., which is a line directly east from the Dade/Monroe County, FL, boundary, and the Florida west coast subzone is that part of the eastern zone south and west of 25°20.4' N. lat.

(*B*) *Western zone*—1.05 million lb (0.48 million kg).

* * * * *

(2) * * *

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of Spanish mackerel is 4.00 million lb (1.81 million kg).

* * * * *

4. Effective March 23, 1998, in § 622.44, paragraph (a)(1) introductory text is added and paragraph (a)(1)(iii) is revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(a) * * *

(1) *Atlantic group.* The following trip limits apply to vessels for which commercial permits for king mackerel have been issued, as required under § 622.4(a)(2)(iii):

* * * * *

(iii) In the area between 28°47.8' N. lat. and 25°20.4' N. lat., which is a line directly east from the Dade/Monroe County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 50 fish from April 1 through October 31.

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5. Effective February 24, 1998, in § 622.44, paragraph (a)(2)(i) is revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(a) * * *

(2) * * *

(i) *Florida east coast subzone.* In the Florida east coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king mackerel has been issued, as required under § 622.4(a)(2)(iii), from November 1 each fishing year until the subzone's fishing year quota of king mackerel has been harvested or until March 31, whichever occurs first, in amounts not exceeding 50 fish per day.

* * * * *

6. Effective February 24, 1998, in § 622.44, the first sentence of paragraph (b)(2) is revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(b) * * *

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 3.75 million lb (1.70 million kg). * * *

* * * * *

[FR Doc. 98–4093 Filed 2–18–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970703186–8021–02; I.D. 060697A]

RIN 0648–AH65

Fisheries of the Exclusive Economic Zone Off Alaska; Multispecies Community Development Quota Program; Eastern Gulf of Alaska No Trawl Zone

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement part of Amendment 5 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands (BS/AI), part of Amendment 39 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI), and part of Amendment 41 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA). In implementing part of Amendment 5, this rule establishes a BS/AI crab Community Development Quota (CDQ) program. In implementing part of Amendment 39 this rule establishes CDQ reserves for the Multispecies CDQ (MS CDQ) program. In implementing part of this rule, Amendment 41 establishes a no-trawl zone in the eastern GOA. These measures are necessary to implement the amendments submitted by the North Pacific Fishery Management Council (Council) and approved by NMFS. They are intended to accomplish the objectives of these Fishery Management Plans (FMPs) with respect to the management of the BSAI and GOA groundfish fisheries and the BS/AI crab fisheries.

DATES: Sections 679.20(b)(1)(iii)(A), (B), and (C), 679.20(c)(1)(iii) and (c)(3)(iii), 679.21(e)(3) and (e)(7)(i), and 679.31(c) are effective February 13, 1998; all other sections of this final rule will be effective March 23, 1998.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for the amendments may be obtained from the North Pacific Fishery Management Council, Suite 306, 605 West 4th Avenue, Anchorage, AK 99501–2252; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: David C. Ham, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The U.S. groundfish fisheries of the GOA and the BSAI in the Exclusive Economic Zone (EEZ) are managed by NMFS pursuant to the FMPs for groundfish in the respective management areas. The BS/AI commercial king crab and Tanner crab fisheries are managed by the State of Alaska with Federal oversight, pursuant to the FMP for those fisheries. The FMPs were prepared by the Council, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.*, and are implemented by regulations for U.S. fisheries at 50 CFR part 679. General regulations at 50 CFR part 600 also apply.

NMFS published a proposed rule to implement Amendments 39, 41, and 5 on August 15, 1997 (62 FR 43866). The proposed rule provided background for and described the MS CDQ Program and the License Limitation Program (LLP). NMFS approved these amendments on September 12, 1997. Comments on the proposed rule were invited through September 29, 1997. NMFS received numerous comments on the MS CDQ and LLP programs and anticipates that final rules for all the components of these programs will be published by April 1998.

Because of the size and complexity of the final rule to implement the MS CDQ and LLP programs, the need to respond to the large number of public comments received, and the need to respond to time critical events in the fishery, the LLP and MS CDQ programs will be implemented by means of three separate final rule documents. This final rule is the first of those documents, implementing the time critical components of the MS CDQ and LLP programs. The second and third final rule documents will implement the remaining portions of the LLP and the MS CDQ programs respectively. For the following reasons, three components of the MS CDQ and LLP programs—the crab CDQ program, the groundfish CDQ reserves, and the eastern GOA no-trawl zone—must be in place prior to April 1998 and are implemented under this final rule.

First, CDQ crab fishing is likely to occur in March 1998. In order for communities to realize the benefits of the CDQ crab program, authorizing regulations must be in place prior to March 1998. Second, NMFS must establish the groundfish CDQ reserves during the annual specification process to allow groundfish CDQ fishing to occur later in 1998. By implementing the authority to establish groundfish CDQ reserves before the final annual specifications for 1998 are published, the groundfish CDQ reserves can be included in the final harvest specifications (§ 679.20(c)). With the groundfish CDQ reserves established at the beginning of the fishing year, non-CDQ groundfish fisheries can be conducted with little disruption later in the year when the full MS CDQ program is implemented. Third, the closure of the GOA east of 140° W. long. to vessels fishing for groundfish with gear other than non-trawl gear is implemented at this time because this measure is considered a separate, albeit related, action to the LLP and no reason exists to delay its implementation until the final rule for the LLP program is published.

Implementation of the Crab CDQ Program

The purpose and goals for expansion of the CDQ program are set forth in the preamble of the proposed rule. This final rule implements the crab CDQ program by establishing the crab CDQ reserve and authorizing the State of Alaska to allocate the crab CDQ reserve among CDQ groups and to manage crab harvesting activity of the BS/AI CDQ groups. As required by the Magnuson-Stevens Act, 3.5 percent of the guideline harvest level (GHL) specified by the State for BS/AI king and Tanner crab will be apportioned to the crab CDQ reserve in 1998. In 1999, the crab CDQ reserve percentage will change to 5.0 percent of the GHL, and, for the year 2000 and each year thereafter, the crab CDQ reserve will be 7.5 percent of the GHL.

Under this final rule, the State of Alaska will submit to NMFS its recommendations for approval of Community Development Plans (CDPs) and allocation of the crab CDQ reserve among CDQ groups. Because the current CDQ halibut and fixed-gear sablefish CDPs expired at the end of 1997, NMFS anticipates that, soon after the effective date of this final rule, the State of Alaska will forward its recommendations for approval of CDPs and allocations of the CDQ reserve established for fixed-gear sablefish, halibut, and crab. Assuming NMFS approves these CDPs, NMFS will publish a notice in the **Federal Register** announcing the approval and allocation percentages of the CDQ reserves as required by 50 CFR § 679.30(c). CDQ fishing for fixed-gear sablefish, halibut, and crab may begin at that time.

Creation of the Groundfish CDQ Reserves

In implementing the MS CDQ program, this rule requires 7.5 percent of all BSAI total allowable catch (TAC) amounts not already covered by the CDQ program (pollock and fixed gear sablefish) plus 7.5 percent of each prohibited species catch (PSC) limit to be placed in separate CDQ and Prohibited Species Quota (PSQ) reserves. Under the existing fixed-gear sablefish CDQ program, 20 percent of the fixed-gear allocation of sablefish is placed in a fixed-gear sablefish CDQ reserve (§ 679.31(c)). With this rule, the MS CDQ program allocates an additional 7.5 percent of the trawl gear allocation of sablefish to a separate sablefish CDQ reserve. This final rule establishes these groundfish CDQ reserves so that they can be included in the 1998 BSAI groundfish harvest specifications (§ 679.20(c)). After publication of the final specifications, groundfish CDQ fishing in 1998 would be possible, pending timely publication of a final rule for the MS CDQ program.

GOA No-Trawl Zone

Amendment 41 restricts the type of gear that may be used in Federal waters of the GOA east of 140° W. long. (Southeast Outside District) to non-trawl gear. This management measure is intended to eliminate preemption conflicts between gear types, to prevent fixed gear loss, and to assist fishing communities dependent on the local fisheries in the Southeast Outside District by providing for their sustained participation and by minimizing the adverse impacts on them. Nontrawl gear is defined at 679.2 as hook and line gear, jig gear, longline gear and pot and line gear.

Three types of preemption can occur among competing gear types. First, direct preemption occurs when competing gear types target the same species. Examples of species that could be targeted by trawl gear and fixed gear fisheries in the Southeast Outside District are rockfish species, such as rougheye, other slope rockfish, and thornyhead rockfish. Second, indirect preemption can occur when one gear type, by incidentally catching a species, precludes or diminishes a target fishery of that species by another gear type. Incidental catches of species made by trawl gear can severely limit or preclude fixed gear target fisheries that are critical to the socio-economic viability of small communities in Southeast Alaska. Third, grounds preemption can occur when the operator of a vessel using one type of gear chooses not to

fish in an area because of the gear type being used by the operator of another vessel in the same area. For example, an operator of a vessel using longline gear may be hesitant to deploy gear in an area in which trawl gear will be used because of the possibility of the longline gear being lost or damaged by the trawl gear. Finally, gear loss can occur when different gear types are used in the same area. Losing gear is costly to fishermen and can contribute to higher fishing mortality due to "ghost fishing." Ghost fishing is the term used to describe what occurs when fish are caught by gear that will remain unretrieved because it cannot be located by the operator who deployed it. Fixed gear can become unretrievable when trawl gear is towed over fixed gear sets and moves the sets to a different location or shears buoys from groundlines. Authorizing only non-trawl fishing gear in the Southeast Outside District eliminates direct, indirect, and grounds preemption and reduces the potential for gear loss and ghost fishing.

Small vessel fishermen from communities in Southeast Alaska depend on rockfish species, such as rougheye, other slope rockfish, and thornyhead rockfish, to supplement their incomes, derived mainly from the salmon, sablefish, and halibut fisheries. These small vessel fishermen use primarily fixed gear to catch rockfish species and experience economic hardship when they are deprived of these supplemental fisheries through preemption by trawl gear. The Magnuson-Stevens Act's national standard 8 requires that management measures take into account the importance of fishery resources to fishing communities by providing for the sustained participation of fishing communities and, to the extent practicable, by minimizing adverse economic impacts on fishing communities. Authorizing only non-trawl gear in the Southeast Outside District is intended to meet these requirements.

Changes From the Proposed Rule

NMFS is making five changes from the proposed rule in the final rule. First, the final rule references the *C. opilio* PSQ and the *C. Opilio* Bycatch Limitation Zone. The final rule implementing Amendment 40 to the FMP for the Groundfish Fishery of the BSAI established *C. opilio* bycatch management measures (62 FR 66829, December 22, 1997).

Second, the final rule authorizes the Regional Administrator to reallocate any amount of the 1998 groundfish CDQ or PSQ reserve back to the non-Individual Fishing Quota (IFQ) fisheries based on a determination that the reallocated amount will not be used by the 1998 CDQ program. For additional information on the rationale for this authorization, please refer to the response to comment 3.

Third, the regulations governing PSQ reserves are clarified including changing the salmon PSQ reserves from numbers to percentages to ensure consistency with the rest of that section.

Fourth, introductory text is added to § 679.31 for explanatory purposes. Because this final rule implements only the most time critical elements of the LLP/CDQ program, this rule does not include provisions for the non-specific CDQ reserve because it is not part of the specifications process. The non-specific CDQ reserve will be established in the final rule that implements the remainder of the MS CDQ program.

Fifth, § 679.7(j)(2) is redesignated as § 679.7(b) and clarified. Because the LLP will not be implemented prior to the effective date of the prohibition on use of gear other than nontrawl gear in the Southeast Outside District, the statement "regardless of the gear used to qualify for the license" is confusing and unnecessary to the management measure. Also, the phrase "any gear other than legal fixed gear" has been changed to "any gear other than non-trawl gear" for clarity.

Sixth, a technical correction is made in a final rule that was published on February 4, 1998 (63 FR 5836). The appendix heading, "Appendix A to Subpart F of Part 679." is changed to read, "Appendix A to Part 679."

Comments on the Proposed Rule

The comments below are those comments received by NMFS relating to the crab CDQ program, the 1998 groundfish CDQ reserves, and the eastern GOA trawl closure. All other comments received by NMFS on the proposed rule will be addressed in future final rule documents that will implement the remaining components of the MS CDQ program and LLP.

Comment 1: The analysis of the proposal to expand the CDQ program to include 7.5 percent of the groundfish TACs and crab harvests is inadequate. Specifically, it does not analyze the impact of the re-allocation of prohibited species bycatch from the groundfish fleet to the CDQ fleet nor does it analyze the economic impact of the CDQ program allocation on the non-CDQ fleet. In addition, the analysis makes incorrect statements and draws incorrect conclusions about the impact of the MS CDQ program on small entities.

Response: NMFS disagrees. The administrative record for this final rule contains adequate information concerning the economic impacts of expanding the CDQ program and the resulting reduction of the amount of groundfish, crab and PSC available to the non-CDQ fleet. Those economic impacts were considered by NMFS during the approval process. The analysis recognizes that the non-CDQ fleet will experience a reduction in the amount of groundfish available for harvest. However, the record also reflects the fact that CDQ communities work with harvesting partners. NMFS recognized that, based on historical performance in the CDQ fisheries, most, if not all, MS CDQ fisheries would be prosecuted by most of the same vessels currently in the fisheries. Under contract to the CDQ groups, owners and operators of those vessels will be required to pay the CDQ groups a fee for the privilege of harvesting the CDQ fish. In turn, the participating vessels will obtain the advantage of longer fishing seasons and possibly improved marketing possibilities. Although no significant dislocations are anticipated for the affected fleets, it is expected that their operations will be modified by the MS CDQ program. For example, the economics of the affected fisheries will be changed due to the royalties paid to the CDQ groups by vessels for the privilege of harvesting CDQ fish. Also, those vessels that are not harvesting for CDQ groups will experience a loss due to the allocation of 7.5 percent of the crab, groundfish, and PSC to the MS CDQ program. While these negative economic impacts were identified, net economic benefits will be derived from implementation of the MS CDQ program.

NMFS also disagrees with Comment 1 concerning the statements and conclusions on the impacts of the MS CDQ program on small entities. The Small Business Administration has defined all independently owned and operated fish-harvesting or hatchery businesses that are not dominant in their field of operation and whose annual receipts are not in excess of $3,000,000 as small businesses. Additionally, seafood processors with 500 or fewer employees, wholesale industry members with 100 or fewer employees, not-for-profit enterprises, and government jurisdictions with a population of 50,000 of less are considered small entities. NMFS generally considers 20 percent of the total universe of small entities affected by a regulation to constitute a "substantial number." A regulation

would have a "significant economic impact" on these small entities if it reduced annual gross revenues by more than 5 percent, increased total costs of production by more than 5 percent, resulted in compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities, or caused approximately 2 percent of the affected small businesses to go out of business. NMFS assumes that catcher vessels participating in the Alaska groundfish fisheries are "small entities" for purposes of the Regulatory Flexibility Act.

In the preamble to the proposed rule, NMFS concluded that the six CDQ organizations likely would not be classified as "small entities" under the guidelines outlined above and that they would not comprise a substantial number of entities operating in the fisheries off Alaska. NMFS recognized that the non-CDQ fleet in the BSAI contains a substantial number of small entities that will be affected by implementation of the MS CDQ program. However, NMFS determined that the 7.5 percent reduction in overall quota available to the non-CDQ fleet would not likely result in a direct 7.5 percent reduction in catch by a small individual fishing operation. This conclusion was based in part on the fact that the 7.5 percent CDQ allocation is taken from the amount of TAC set aside as reserve. Prior to the CDQ program, amounts within this reserve could be allocated to the groundfish fisheries during the fishing year; however, there was and continues to be no guarantee that the reserve will be reallocated later in the season. Further, because the reserve is not species-specific, any amount of the reserve may be apportioned to a target species with exceptions for fixed gear sablefish and the "other species" category. For example, if the reserve originally consisted of 100 mt of species A, 100 mt of species B, and 100 mt of species C, the Regional Administrator could allocate up to 300 mt of species A and allocate no additional species B or C provided that such apportionments were consistent with 50 CFR 679.20(a)(3) and do not result in overfishing of a target species or the "other species" category.

In additions the benefits of separate management measures that mandate retention and utilization of some groundfish species were also considered and estimated to compensate for the 7.5 percent quota reduction. Also, as stated above, CDQ organizations work with harvesting partners and, based on historical performance in the CDQ fisheries, most, if not all, MS CDQ fisheries would be prosecuted by most of the same vessels currently in the fisheries. While owners and operators of those vessels would be required to pay the CDQ groups a fee for the privilege of harvesting the CDQ fish, the participating vessels will realize some economic benefit from their contractual arrangement with the CDQ organization, lessening any negative economic impact from the reduced overall groundfish quota.

Without more specific references to incorrect information, NMFS concludes that this final rule will not have significant negative economic impacts on those small entities affected by this final rule.

Comment 2: A cap should be placed on the 7.5 percent crab allocation to the CDQ fleet, so that the percentage can never be increased.

Response: The Magnuson-Stevens Act currently limits the amount of crab that can be allocated to the CDQ program at 7.5 percent. The Magnuson-Stevens Act requires that 3.5 percent of the crab available for commercial harvest in the BS/AI be made available to the CDQ program for 1998. For 1999, the percentage will change to 5.0 percent, and, for each year thereafter, the percentage would be 7.5 percent. Unless the Magnuson-Stevens Act is amended, the 7.5 percent cap cannot be increased.

Comment 3: NMFS should adopt regulations that return to the moratorium groundfish fisheries the CDQ reserves that the CDQ fleet will not be able to harvest during the first year of the program.

Response: NMFS concurs and has added regulatory language to authorize the Regional Administrator to reallocate any amount of a CDQ reserve back to the non-CDQ fisheries if the Regional Administrator determines that a certain amount will not be used during the remainder of the 1998 fishing year. NMFS anticipates that CDQ reserves in subsequent years will be fully harvested or that only small amounts will remain unharvested. Therefore, provisions to reallocate CDQ reserves past the 1998 fishing year are unnecessary.

Comment 4: It is unfair for CDQ groups to have an IFQ-type program that will allow for a rational fishery where rents are captured, while the moratorium groundfish fisheries must continue the race for fish with an ever growing fleet and watch as all rents dissipate and safety deteriorates. The moratorium groundfish fisheries should have an IFQ-type system also.

Response: The Council continues to explore management measures to address the over capitalized nature of the moratorium fisheries. The management experience gained through the MS CDQ fisheries can be used to develop and assess future limited access programs for the moratorium fisheries.

Comment 5: The action to prohibit the use of trawl gear in the Southeast Outside District is an example of the lack of consideration of reasonable alternatives. The analysis did not provide evidence of a problem with using trawl gear in that area. Also, other alternatives, such as prohibiting only bottom trawl gear as opposed to all trawl gear, should have been considered.

Response: The analysis for the LLP did address the use of non-trawl gear only in the Southeast Outside District, although the use of non-trawl gear only in the Southeast Outside District was characterized primarily as an allocation issue. However, in 1992, another analysis was performed on the biological and socio-economic impacts of prohibiting trawl gear in the Southeast Outside District. This analysis addressed such issues as gear conflicts, bycatch problems, localized depletion of non-migratory species and issues of habitat concerns, including trawl gear impacts on deep water corals and benthic habitat. Although the Council chose not to implement a trawl ban in 1992, that decision did not preclude the Council from deciding to implement a trawl ban at this time.

The 1992 analysis contained several alternatives, including an alternative banning only bottom trawl gear. The 1992 analysis was cited in the License Limitation analysis, and the Council was cognizant of these alternatives when it decided to authorize only non-trawl gear in the Southeast Outside District.

The record in support of License Limitation indicated that preemption problems were caused by conflicts between trawl and fixed gear. These conflicts are ameliorated by the trawl ban in the Southeast Outside District (see discussion in this preamble).

Comment 6: The prohibition of trawling in the Southeast Outside District provides the Southeast Alaska fishing industry and coastal communities with stability and is consistent with the provisions in the Magnuson-Stevens Act concerning essential fish habitat, fishery dependent communities, and bycatch reduction.

Response: NMFS concurs. As stated in the preamble, NMFS is aware that small vessel fishermen from communities in Southeast Alaska depend on rockfish species to supplement their incomes. Without this supplemental income, many of these

small vessel fishermen would experience economic hardship. National standard 8 requires that management measures take into account the importance of fishery resources to fishing communities by providing for the sustained participation of fishing communities and, to the extent practicable, by minimizing adverse economic impacts on fishing communities. NMFS also realizes that, under some circumstances, trawl gear can produce a larger volume of bycatch than fixed gear. National standard 9 requires that management measures, to the extent practicable, minimize bycatch. Finally, NMFS is aware that certain trawl gear can be detrimental to deep water corals and benthic habitats. Section 303(a)(7) of the Magnuson-Stevens Act requires that management measures minimize to the extent practicable adverse effects on fish habitat caused by fishing. National standard 8, national standard 9, and section 303(a)(7) were carefully considered by NMFS when the trawl ban in the Southeast Outside District was approved.

Classification

The Administrator, Alaska region, NMFS, determined that Amendment 39 to the BSAI FMP, Amendment 41 to the GOA FMP, and Amendment 5 to the FMP for the Commercial King and Tanner Crab Fisheries of the BS/AI are necessary for the conservation and management of these fisheries and that they are consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the measures this rule would implement would not have a significant economic impact on a substantial number of small entities. NMFS received one comment stating that the analysis made incorrect statements and drew incorrect conclusions about the impacts of the MS CDQ program on small entities. For the reasons stated in the response to comment 1 above, this comment did not cause the Assistant General Counsel for Legislation and Regulation to change his determination regarding the certification. As a result, a regulatory flexibility analysis was not prepared.

The Administrator, Alaska Region, finds, under 5 U.S.C. 553(d)(3), that good cause exists not to delay for 30 days the effective date of the provisions of this final rule that establish and apportion CDQ and PSQ reserves. These provisions will not require affected fishermen to change any of their current fishing practices. Accordingly, it is unnecessary to delay the effective date of these provisions. Therefore, the provisions of this rule that establish and apportion the CDQ and PSQ reserves are effective February 13, 1998.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: February 12, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definition of "Prohibited Species Quota" is added to read as follows:

§ 679.2 Definitions.

* * * * *

Prohibited species quota (PSQ) means the amount of a prohibited species catch limit established under § 679.21(e)(1) and (2) that is allocated to the groundfish CDQ program under § 679.21(e)(3).

* * * * *

3. In § 679.7, paragraph (b) is added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(b) *Prohibitions specific to GOA.* Use any gear other than non-trawl gear in the GOA east of 140° W. long. (Southeast Outside District).

* * * * *

4. In § 679.20, paragraphs (b)(1)(iii) and (b)(1)(iv) are redesignated as paragraphs (b) (1) (iv) and (b)(1)(v), new paragraph (b)(1)(iii) is added, and paragraphs (c)(1)(iii), (c)(2)(ii), (c)(3)(iii) and (f)(2) are revised to read as follows:

§ 679.20 General limitations.

* * * * *

(b) * * *

(1) * * *

(iii) *CDQ reserve*—(A) *Groundfish CDQ reserve.* Except as limited by § 679.31(a) of this part, one half of the nonspecified reserve established by paragraph (b)(1)(i) of this section is apportioned to the groundfish CDQ reserve.

(B) *Fixed gear sablefish CDQ reserves.* Twenty percent of the fixed gear allocation of sablefish established by paragraph (a)(4)(iii) of this section for each subarea or district of the BSAI is apportioned to a CDQ reserve for each subarea or district.

(C) *Apportionment of groundfish CDQ reserve by TAC category.* (*1*) Except for the fixed gear sablefish CDQ reserves, the groundfish CDQ reserve is apportioned among TAC categories in amounts equal to 7.5 percent of each TAC category for which a reserve is established.

(*2*) If the final harvest specifications required by paragraph (c) of this section change the groundfish species comprising a species category or change a TAC by combining management areas or splitting a TAC into two or more TACs by management area, then any CDQ allocations based on those TACs change proportionally.

* * * * *

(c) * * *

(1) * * *

(iii) *BSAI.* The BSAI proposed specifications will specify the annual TAC and initial TAC amounts for each target species and the "other species" category and apportionments thereof established by paragraph (a)(2) of this section, PSQ reserves and prohibited species catch allowances established by § 679.21, seasonal allowances of pollock TAC (including pollock CDQ), and CDQ reserve amounts established by paragraph (b)(1)(iii) of this section.

(2) * * *

(ii) *BSAI.* Except for pollock and the hook and line and pot gear allocation of sablefish, one quarter of each proposed initial TAC and apportionment thereof, one quarter of each CDQ reserve established by paragraph (b)(1)(iii) of this section, and one quarter of the proposed PSQ reserve and prohibited species catch allowances established by § 679.21.

(A) The interim specifications for pollock will be equal to the first seasonal allowance under paragraph (a)(5)(i)(A) of this section that is published in the proposed specifications under paragraph (c)(1) of this section.

(B) The interim specifications for CDQ pollock will be equal to the first seasonal allowance that is published in the proposed specifications under paragraph (c)(1) of this section.

(3) * * *

(iii) *BSAI.* The final specifications will specify the annual TAC for each target species and the "other species"

category and apportionments thereof, PSQ reserves and prohibited species catch allowances, seasonal allowances of the pollock TAC (including pollock CDQ), and CDQ reserve amounts.

* * * * *

(f) * * *

(2) *Retainable amounts.* Except as provided in Table 10 to this part, arrowtooth flounder, retained CDQ species, or any groundfish species for which directed fishing is closed may not be used to calculate retainable amounts of other groundfish species.

* * * * *

5. In § 679.21, paragraphs (e)(3) through (e)(8) are redesignated as paragraphs (e)(4) through (e)(9), respectively, a new paragraph (e)(3) is added and newly designated paragraph (e)(7)(i) is revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *

(3) *PSC apportionment to PSQ.* 7.5 percent of each PSC limit established by paragraphs (e)(1) and (e)(2) of this section is allocated to the groundfish CDQ program as PSQ reserve.

* * * * *

(7) * * *

(i) *General.* NMFS will publish annually in the **Federal Register** the annual red king crab PSC limit, and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual *C. bairdi* PSC limit, the annual *C. opilio* PSC limit, the proposed and final PSQ reserve amounts, the proposed and final bycatch allowances, the seasonal apportionments thereof and the manner in which seasonal apportionments of non-trawl fishery bycatch allowances will be managed as required by paragraph (e) of this section.

* * * * *

6. Section 679.31 is revised to read as follows:

§ 679.31 CDQ and PSQ reserves.

Portions of the CDQ and PSQ reserves for each subarea or district may be allocated for the exclusive use of CDQ applicants in accordance with CDPs approved by the Governor in consultation with the Council and approved by NMFS. NMFS will allocate no more than 33 percent of the total CDQ for all subareas and districts combined to any one applicant with an approved CDP application.

(a) *Pollock CDQ reserve (applicable through December 31, 1998).* In the proposed and final harvest specifications required by § 679.20(c), one-half of the pollock TAC placed in the reserve for each subarea or district of the BSAI will be apportioned to a CDQ reserve for each subarea or district.

(b) *Halibut CDQ reserve.* (1) NMFS will annually withhold from IFQ allocation the proportions of the halibut catch limit that are specified in paragraph (b) of this section for use as a CDQ reserve.

(2) Portions of the CDQ for each specified IPHC regulatory area may be allocated for the exclusive use of an eligible Western Alaska community or group of communities in accordance with a CDP approved by the Governor in consultation with the Council and approved by NMFS.

(3) The proportions of the halibut catch limit annually withheld for the halibut CDQ program, exclusive of issued QS, and the eligible communities for which they shall be made available are as follows for each IPHC regulatory area:

(i) *Area 4B.* In IPHC regulatory area 4B, 20 percent of the annual halibut quota shall be made available to eligible communities physically located in, or proximate to, this regulatory area.

(ii) *Area 4C.* In IPHC regulatory area 4C, 50 percent of the halibut quota shall be made available to eligible communities physically located in IPHC regulatory area 4C.

(iii) *Area 4D.* In IPHC regulatory area 4D, 30 percent of the annual halibut quota shall be made available to eligible communities located in, or proximate to, IPHC regulatory areas 4D and 4E.

(iv) *Area 4E.* In IPHC regulatory area 4E, 100 percent of the halibut quota shall be made available to eligible communities located in, or proximate to, IPHC regulatory area 4E. A fishing trip limit of 6,000 lb (2.7 mt) applies to halibut CDQ harvesting in IPHC regulatory area 4E.

(4) For the purposes of this section, "proximate to" an IPHC regulatory area means within 10 nm from the point where the boundary of the IPHC regulatory area intersects land.

(c) *Groundfish CDQ reserves.* (See § 679.20(b)(1)(iii))

(d) *Crab CDQ reserves.* King and Tanner crab species in the Bering Sea and Aleutian Islands Area that have a guideline harvest level specified by the State of Alaska that is available for commercial harvest are apportioned to a crab CDQ reserve as follows:

(1) For calendar year 2000, and thereafter, 7.5 percent;

(2) For calendar year 1999 (applicable through December 31, 1999), 5 percent; and

(3) For calendar year 1998 (applicable through December 31, 1998), 3.5 percent.

(e) *PSQ reserve.* (See § 679.21(e)(3)).

(f) *Reallocation of CDQ or PSQ reserves* (Applicable through December 31, 1998). If the Regional Administrator determines that any amount of a CDQ or PSQ reserve will not be used during the remainder of the 1998 fishing year, the Regional Administrator may reallocate any unused amount of the CDQ reserve back to the non-specified reserve established by § 679.20(b)(1)(ii) and may reallocate any unused amount of a PSQ reserve back to non-CDQ fisheries in proportion to those fisheries' 1998 apportionment of PSC limits established by § 679.21.

Technical Correction--Appendix A to Part 679 [Corrected]

7. In FR Doc. 98–2244 published on February 4, 1998 (63 FR 5836), make the following correction. On page 5845, in the second column, seventh line, correct the first line of the Appendix heading now reading, "Appendix A to Subpart F of Part 679" to read "Appendix A to Part 679".

[FR Doc. 98–4092 Filed 2–13–98; 9:05 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 33
Thursday, February 19, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

[Docket No. PRM–71–12]

International Energy Consultants, Inc.; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the International Energy Consultants, Inc. The petition has been docketed by the Commission and has been assigned Docket No. PRM–71–12. The petitioner requests that the NRC amend its regulations that govern packaging and transportation of radioactive material. The petitioner believes that special requirements for plutonium shipments should be eliminated.

DATES: Submit comments by May 5, 1998. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Carol Gallagher, 301–415–5905 (e-mail: CAG@nrc.gov).

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: 301–415–7162 or Toll Free: 800–368–5642 or e-mail: DLM1@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission received a petition for rulemaking submitted by Frank P. Falci on behalf of the International Energy Consultants, Inc. in the form of a letter addressed to the Secretary of the Commission, dated September 25, 1997. The petitioner believes that 10 CFR 71.63(b) should be eliminated. As an option, the petitioner believes that 10 CFR 71.63(a) should also be eliminated. This option would totally eliminate 10 CFR 71.63. The petitioner made the same recommendation in a letter dated July 22, 1997, which he provided as a comment in the Commission's proposed rulemaking amending 10 CFR 71.63(b) to remove canisters containing vitrified high-level waste from the packaging requirement for double containment.

The petition was docketed as PRM–71–12 on October 22, 1997. The NRC is soliciting public comment on the petition. Public comment is requested on both the petition to eliminate 10 CFR 71.63(b), as well as the option to eliminate 10 CFR 71.63 totally, as discussed below.

Discussion of the Petition

NRC's regulations in 10 CFR Part 71, entitled "Packaging and Transportation of Radioactive Material," include, in § 71.63, special requirements for plutonium shipments: § 71.63 Special requirements for plutonium shipments.

(a) Plutonium in excess of 20 Ci (0.74 TBq) per package must be shipped as a solid.

(b) Plutonium in excess of 20 Ci (0.74 TBq) per package must be packaged in a separate inner container placed within outer packaging that meets the requirements of subparts E and F of this part for packaging of material in normal form. If the entire package is subjected to the tests specified in § 71.71 ("Normal conditions of transport"), the separate inner container must not release plutonium as demonstrated to a sensitivity of 10^{-6} A_2/h. If the entire package is subjected to the tests specified in § 71.73 ("Hypothetical accident conditions"), the separate inner container must restrict the loss of plutonium to not more than A_2 in 1 week. Solid plutonium in the following forms is exempt from the requirements of this paragraph:

(1) Reactor fuel elements;

(2) Metal or metal alloy; and

(3) Other plutonium bearing solids that the Commission determines should be exempt from the requirements of this section.

The petitioner requests that § 71.63(b) be deleted. The petitioner believes that provisions stated in this regulation cannot be supported technically or logically. The petitioner states that based on the "Q-System for the Calculation of A_1 and A_2 Values," an A_2 quantity of any radionuclide has the same potential for damaging the environment and the human species as an A_2 quantity of any other radionuclide. The petitioner further states that the requirement that a Type B package must be used whenever package content exceeds an A_2 quantity should be applied consistently for any radionuclide. The petitioner believes that if a Type B package is sufficient for a quantity of a radionuclide X which exceeds A_2, then a Type B package should be sufficient for a quantity of radionuclide Y which exceeds A_2, and this should be similarly so for every other radionuclide.

The petitioner states that while, for the most part, the regulations embrace this simple logical congruence, the congruence fails under § 71.63(b) because packages containing plutonium must include a separate inner container for quantities of plutonium having an activity exceeding 20 curies (0.74 TBq). The petitioner believes that if the NRC allows this failure of congruence to persist, the regulations will be vulnerable to the following challenges:

(1) The logical foundation of the adequacy of A_2 values as a proper measure of the potential for damaging the environment and the human species, as set forth under the Q-System, is compromised;

(2) The absence of a radioactivity limit for every radionuclide which, if

exceeded, would require a separate inner container, is an inherently inconsistent safety practice; and

(3) The performance requirements for Type B packages as called for by 10 CFR Part 71 establish containment conditions under different levels of package trauma. The satisfaction of these requirements should be a matter of proper design work by the package designer and proper evaluation of the design through regulatory review. The imposition of any specific package design feature such as that contained in 10 CFR 71.63(b) is gratuitous. The regulations are not formulated as package design specifications, nor should they be.

The petitioner believes that the continuing presence of § 71.63(b) engenders excessively high costs in the transport of some radioactive materials without a clearly measurable net safety benefit. The petitioner states that this is so in part because the ultimate release limits allowed under Part 71 package performance requirements are identical with or without a "separate inner container," and because the presence of a "separate inner container" promotes additional exposures to radiation through the additional handling required for the "separate inner container." The petitioner further states that "* * * excessively high costs occur in some transport campaigns," and that one example "* * * of damage to our national budget is in the transport of transuranic wastes." Because large numbers of transuranic waste drums must be shipped in packages that have a "separate inner container" to comply with the existing rule, the petitioner believes that large savings would accrue without this rule. Therefore, the petitioner believes that elimination of § 71.63(b) would resolve these regulatory "defects."

As a corollary to the primary petition, the petitioner believes that an option to eliminate § 71.63(a) as well as § 71.63(b) should also be considered. This option would have the effect of totally eliminating § 71.63. The petitioner believes that the arguments propounded to support the elimination § 71.63(b) also support the elimination of § 71.63(a).

The Petitioner's Conclusions

The petitioner has concluded that NRC regulations in 10 CFR Part 71 which govern packaging and transportation of radioactive material must be amended to delete the provision regarding special requirements for plutonium shipments. The petitioner believes that a Type B package should be sufficient for a quantity of radionuclide Y which exceeds the A_2 limit if such a package is sufficient for a quantity of radionuclide X which exceeds the A_2 limit. It is the petitioner's view that this should be true for every other radionuclide including plutonium.

Dated at Rockville, Maryland, this 11th day of February 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–4146 Filed 2–18–98; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 100

[Notice 1998–6]

Definition of "Express Advocacy"

AGENCY: Federal Election Commission.

ACTION: Notice of disposition of petition for rulemaking.

SUMMARY: The Commission announces its disposition of a Petition for Rulemaking filed on October 20, 1997 by James Bopp, Jr., on behalf of the James Madison Center for Free Speech. The petition urged the Commission to revise its definition of "express advocacy" to reflect a recent U.S. Circuit Court of Appeals Decision. The Commission has decided not to initiate a rulemaking in response to this Petition.

DATES: February 12, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On October 20, 1997, the Commission received a Petition for Rulemaking from James Bopp, Jr., on behalf of the James Madison Center for Free Speech. The Petition urged the Commission to revise the definition of "express advocacy" set forth at 11 CFR 100.22 to reflect the decision in *Maine Right to Life Committee* v. *FEC*, 914 F.Supp. 8 (D.Me. 1995), *aff'd per curiam*, 98 F.3d 1 (1st Cir. 1996), *cert. denied*, 118 S.Ct. 52 (1997). Specifically, the Petition urges repeal of 11 CFR 100.22(b), which was held invalid in that case. The challenged paragraph defines "express advocacy" to include communications in which the electoral portion is "unmistakable, unambiguous, and suggestive of only one meaning, and reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action."

The Fourth Circuit reached a similar conclusion in *FEC* v. *Christian Action Network ("CAN")*, 92 F.3d 1178 (4th Cir. 1997). However, the Ninth Circuit earlier reached a contrary result in *FEC* v. *Furgatch*, 807 F.2d 857 (9th Cir.), *cert. denied*, 484 U.S. 850 (1987), the decision on which 11 CFR 100.22(b) is largely based. Thus there is a conflict among the circuits on this issue.

The Commission published a Notice of Availability on the Petition on November 6, 1997, 62 FR 60047. In response, the Commission received comments from American Target Advertising, Inc.; the Brennan Center for Justice; Common Cause; Alan Dye, of Webster, Chamberlain & Bean; the Attorney General for the State of Hawaii; the Attorney General for the State of Iowa; the Attorney General for the Commonwealth of Kentucky; U.S. Senator Carl Levin; the National Voting Rights Institute; the Attorney General for the State of New Mexico; the Attorney General for the State of Oklahoma; the Republican National Committee; and the State of Vermont. After reviewing these comments and other information, the Commission has decided not to open a rulemaking in response to this Petition.

First, the Supreme Court has repeatedly admonished "that denial of a petition for certiorari imports nothing as to the merits of a lower court decision." *Griffin* v. *United States*, 336 U.S. 704, 716 (1949), *reh. denied*, 337 U.S. 921. This is especially true where, as here, the Court has declined to review decisions from different circuits that reach different results on the same question.

Consistent with this reasoning, while Supreme Court decisions are binding nationwide, the rule of *stare decisis* requires only that a decision by a circuit court of appeals be followed within the circuit in which it is issued. Since government agencies typically operate nationwide, it is not unusual for an agency to find that different courts have interpreted its statutes or rules in different ways.

The Supreme Court has recognized that, when confronted with this situation, an agency is free to adhere to its preferred interpretation in all circuits that have not rejected that interpretation. It is collaterally estopped only from raising the same claim against the same party in any location, or from continuing to pursue the issue against any party in a circuit that has already rejected the agency's interpretation.

United States v. *Mendoza*, 464 U.S. 154 (1984). Indeed, the *Mendoza* Court encouraged agencies to seek reviews in other circuits if they disagree with one circuit's view of the law, since to allow "only one final adjudication would deprive this Court of the benefit it receives from permitting several courts of appeals to explore a difficult question before this Court grants *certiorari*." *Id.* at 160 (citations omitted). Thus, Petitioner's assertion that the Commission's action in declining to follow one Circuit Court's decision nationwide is "unprecedented" is incorrect. Rather, it is the norm.

However, the primary reason for the Commission's decision not to open a rulemaking in response to this Petition is its continued belief that the definition of "express advocacy" found at 11 CFR 100.22(b) is constitutional. A communication that is "unmistakable, unambiguous, and suggestive of only one meaning," where "reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action" can be read consistently with both *Buckley* v. *Valeo*, 424 U.S. 1 (1976), and *FEC* v. *Massachusetts Citizens for Life*, 238, 249 (1986) ("*MCFL*").

While the *Buckley* Court gave specific examples of words it found to convey express advocacy, it made clear that the list was not exhaustive. *Buckley*, 424 U.S. at 44 n.52. Further, in discussing the reporting requirements triggered by independent expenditures made to fund "express advocacy" communications, the Court noted that this portion of the Federal Election Campaign Act, 2 U.S.C. 434(c), reaches "only funds that expressly advocate the election or defeat of a clearly identified candidate," adding that "[t]his reading is directed precisely to that spending that is unambiguously related to the campaign of a particular federal candidate." *Id.* at 80 (footnote omitted). In *MCFL*, the Court held that materials that were "marginally less direct than 'Vote for Smith'" were, nevertheless, express candidate advocacy, even though the materials themselves stated that they were not endorsing particular candidates. *MCFL*, 479 U.S. at 249. One commenter, who believes that *Furgatch* correctly held that a "short list of words * * * does not exhaust the capacity of the English language" to advocate the election or defeat of a candidate, 807 F.2d at 863, noted that, under the change proposed by the Petitioner, "only those who lacked the minimal wherewithal to choose some words other than 'vote for' or the like would be subject to the regulation."

In sum, both because it is well settled that a decision by one Circuit Court of Appeals is not binding in other circuits, and because the Commission believes the challenged regulation is constitutional, the Commission has decided not to open a rulemaking in response to this Petition.

Therefore, at its open meeting of February 12, 1998, the Commission voted not to initiate a rulemaking to revise the Commission's definition of express advocacy found at 11 CFR 100.22. Copies of the General Counsel's recommendation on which the Commission's decision is based are available for public inspection and copying in the Commission's Public Records Office, 999 E Street, N.W., Washington, D.C. 20463, (202) 219–4140 or toll-free (800) 424–9530. Interested persons may also obtain a copy by dialing the Commission's FAXLINE service at (202) 501–3413 and following its instructions. Request document # 232.

Dated: February 13, 1998.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 98–4166 Filed 2–18–98; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 933

[No. 98–05]

RIN 3069–AA67

Membership Approval

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulation on membership in the Federal Home Loan Banks (Banks) (Membership Regulation) to make certain technical and substantive revisions to the regulation that would improve the operation of the membership application process, as well as further streamline application processing for certain types of applicants for Bank membership.

DATES: Comments on this proposed rule must be received in writing on or before March 23, 1998.

ADDRESSES: Comments should be mailed to: Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Richard Tucker, Deputy Director, Compliance Assistance Division, Office of Policy, (202) 408–2848, or Sharon B. Like, Senior Attorney-Adviser, Office of General Counsel, (202) 408–2930, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Under the Federal Home Loan Bank Act (Act), the Finance Board is responsible for the supervision and regulation of the 12 Banks, which provide advances and other financial services to their member institutions. See 12 U.S.C. 1422a(a). Institutions may become members of a Bank if they meet certain membership eligibility and minimum stock purchase criteria set forth in the Act and the Finance Board's implementing Membership Regulation. See *id.* sections 1424, 1426, 1430(e)(3); 12 CFR part 933.

On August 16, 1996, the Finance Board published a final rule amending the Membership Regulation to authorize the 12 Banks, rather than the Finance Board, to approve or deny all applications for Bank membership, subject to certain criteria for determining compliance with the statutory eligibility requirements for Bank membership formerly contained in policy guidelines used by the Finance Board in approving membership applications. See 61 FR 42531 (Aug. 16, 1996) (codified at 12 CFR part 933); Federal Home Loan Bank System Membership Application Guidelines, Finance Board Res. No. 93–88 (Nov. 17, 1993) (Guidelines). The final rule also provided for streamlined application processing for certain types of membership applications. See 12 CFR part 933.

In the course of processing and approving membership applications under the Membership Regulation, the Banks have raised a number of technical and substantive issues with the Regulation whose resolution would improve operation of the membership application process and streamline membership application processing for certain types of institutions. These issues and proposed amendments for addressing these issues are discussed below in the **ANALYSIS OF PROPOSED RULE** section. The Finance Board requests comment on all aspects of the proposed amendments.

II. Analysis of Proposed Rule

A. Definitions Section 933.1

1. Definition of "Primary Regulator"—Section 933.1(y)

Section 933.1(y) of the current Membership Regulation defines the term "primary regulator" as the chartering authority for federally-chartered applicants, the insuring authority for federally-insured applicants that are not federally-chartered, or the appropriate state regulator for all other applicants. See *id.* § 933.1(y). This definition does not include the Federal Reserve Board (FRB) for state-chartered applicants that are members of the Federal Reserve System (FRS). Under § 933.11(a)(3), a Bank is required to obtain as part of the membership application the applicant's most recent available regulatory examination report prepared by its primary regulator or appropriate state regulator. See *id.* § 933.11(a)(3). Section 933.11(b)(1) provides that an applicant must have received a composite regulatory examination rating from its primary regulator or appropriate state regulator within two years preceding the date the Bank receives the application for membership. See *id.* § 933.11(b)(1).

One Bank has identified a potential problem with meeting these financial condition requirements where the FRB and a state financial institution regulator alternate examinations of a state-chartered applicant that is an FRS member. When the state financial institution regulator performs the examination, it provides a copy of the regulatory examination report to the FRB. According to the Bank, certain state financial institution regulators in its district cannot or will not release to the Bank copies of the regulatory examination reports they have prepared, nor will the FRB release to the Bank copies of the state regulatory examination reports. Thus, regulatory examination reports prepared under such circumstances are not available in order for the Bank to obtain a regulatory examination rating for the applicant. Nor may the Bank obtain and rely on a copy of the regulatory examination report and rating of the FRB when the FRB has examined the applicant, because the definition of "primary regulator" in § 933.1(y) does not include the FRB. Thus, in such situations, the Bank may not be able to obtain any examination report and rating for the applicant and, therefore, the applicant cannot be deemed to satisfy the financial condition requirements of §§ 933.11(a)(3) and (b)(1). The presumption of noncompliance with the financial condition requirements would have to be rebutted under § 933.17(d)(1) by preparing a written justification providing substantial evidence acceptable to the Bank that the applicant is in the financial condition required by § 933.6(a)(4), notwithstanding the lack of a regulatory examination rating. See *id.* § 933.17(d)(1).

The exclusion of the FRB from the definition of "primary regulator" in § 933.1(y) was an oversight. The Banks should be able to rely on regulatory examination reports and examination ratings from the FRB to determine an applicant's financial condition under § 933.11. An applicant should not have to go through the additional burden of establishing its satisfactory financial condition through the rebuttal process if an FRB regulatory examination report and rating are available. Accordingly, the proposed rule revises the definition of "primary regulator" in § 933.1(y), as further described below, to include the FRB.

Another limitation of the current definition of *primary regulator* in § 933.1(y) is that it requires a Bank to obtain the regulatory examination report and rating only from the "primary" regulator listed, even though a regulatory examination report and rating from an alternate regulator also may be available. For example, many potential members are examined by more than one regulator. However, under the regulation, the Bank is required to obtain the regulatory examination report and rating prepared by the Federal Deposit Insurance Corporation (FDIC) for a state-chartered, FDIC-insured institution, even though there may be a more recent state regulatory examination report and rating available for such institution. A Bank should not be limited to using only the "primary" regulator's regulatory examination report and rating when more current information is available.

Accordingly, the proposed rule amends § 933.1(y) by changing the term "primary regulator" to the broader term "appropriate regulator," and defining it to mean a regulatory entity listed in § 933.8, as applicable. The regulatory entities listed in § 933.8 are: for depository institution applicants, the FDIC, FRB, National Credit Union Administration, Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), or other appropriate state regulator; and for insurance company applicants, an appropriate state regulator accredited by the National Association of Insurance Commissioners. See *id.* § 933.8. The proposed rule replaces the terms "primary regulator" and "primary regulator or appropriate state regulator" wherever they appear throughout the Membership Regulation with the term "appropriate regulator."

2. Nonperforming Assets Performance Trend Criterion; Definitions of "Nonperforming Loans, Leases and Securities;" "Performing Loans, Leases and Securities"—Sections 933.11(b)(3)(i)(B); 933.1 (u), (x).

Section 933.11(b)(3)(i)(B) of the current Membership Regulation provides that if an applicant's most recent composite regulatory examination rating within the past two years was "2" or "3," the applicant's nonperforming loans, leases and securities plus foreclosed and repossessed real estate may not have exceeded 10 percent of its performing loans, leases and securities plus foreclosed and repossessed real estate, in the most recent calendar quarter. See *id.* § 933.11(b)(3)(i)(B). This nonperforming assets performance trend criterion was intended to be the same criterion as that required in the former Finance Board Guidelines, but was described incorrectly in the Membership Regulation.

The proposed rule revises § 933.11(b)(3)(i)(B) to state the criterion correctly, as follows: the applicant's nonperforming loans and leases plus other real estate owned, did not exceed 10 percent of its total loans and leases plus other real estate owned, in the most recent calendar quarter. The proposed rule makes a conforming change to the definition of "nonperforming loans, leases and securities" in § 933.1(u) by deleting the references to securities. The proposed rule also makes a conforming change to § 933.1(x) by replacing the definition of "performing loans, leases and securities" with a new definition of "other real estate owned."

3. Definition of "Consolidation"—Section 933.1(ee)

Sections 933.24 and 933.25 of the current Membership Regulation set forth certain requirements and procedures in the event of the "consolidation" of members with other members or members with nonmembers. See *id.* §§ 933.24, 933.25. Questions have been raised as to whether the term "consolidation" applies only to transactions falling within the narrow meaning of the term, *i.e.*, combinations where a new company is formed to acquire the net assets of the combining companies. The term "consolidation" was not intended to apply solely to such combinations of entities. Accordingly, the proposed rule clarifies this issue by

adding a new definition of "consolidation" in § 933.1(ee) to include a consolidation, a merger, or a purchase of all of the assets and assumption of all of the liabilities of an entity by another entity.

B. Action on Applications—Section 933.3(c)

Section 933.3(c) of the current Membership Regulation requires a Bank to notify an applicant when its application is deemed by the Bank to be complete. See *id.* § 933.3(c). Section 933.3(c) also requires a Bank to notify an applicant if the 60-day period for acting on a membership application is stopped, and when the period for acting on the application is resumed. See id. The proposed rule requires the Bank to provide such notices to the applicant in writing. This will ensure that there is a written record of the Banks' actions during the application processing period, which may be relevant in the event of an appeal of a Bank's denial of an application for membership.

C. Automatic Membership for Certain Consolidations—Section 933.4(d)

Sections 933.4 (a) and (b) of the current Membership Regulation provide for automatic Bank membership only for institutions required by law to become Bank members, and for institutions that have undergone certain charter conversions, respectively. See *id.* § § 933.4 (a), (b). Several Banks have suggested that the regulation also should allow for automatic Bank membership where a member consolidates with a nonmember, the nonmember is the surviving entity, and a significant percentage of the surviving entity's total assets are derived from the assets of the disappearing member. Where the surviving entity has substantially the same assets as the disappearing member, the surviving entity arguably should not have to go through the membership application process. The Finance Board believes this argument has merit where 90 percent or more of the total assets of the surviving entity are derived from the assets of the disappearing member, and where the surviving entity provides written notice to the Bank that it desires to be a member of the Bank. These proposed requirements are set forth in proposed new § 933.4(d).

The Finance Board specifically requests comment on the arguments for or against this proposal, including whether the 90 percent calculation or some other number or approach is an appropriate method for determining the similarity of the disappearing and surviving entities. One Bank has suggested that the chief executive officer (CEO) of the surviving entity should be required to submit a letter stating that the surviving entity continues to meet the membership eligibility requirements. The Finance Board specifically requests comment on whether such a letter, or a certification from the CEO, should be required.

D. Allowance for Loan and Lease Losses Performance Trend Criterion—Section 933.11(b)(3)(i)(C)

Section 933.11(b)(3)(i)(C) of the current Membership Regulation provides that if an applicant's most recent composite regulatory examination rating within the past two years was "2" or "3," the applicant's ratio of its allowance for loan and lease losses to nonperforming loans, leases and securities must have been 60 percent or greater during 4 of the 6 most recent calendar quarters. This allowance for loan and lease losses performance trend criterion was intended to be the same criterion as that required in the former Finance Board Guidelines, but was described incorrectly in the Membership Regulation. The proposed rule revises this section to state the criterion correctly, as follows: The applicant's ratio of its allowance for loan and lease losses plus the allocated transfer risk reserve to nonperforming loans and leases was 60 percent or greater during 4 of the 6 most recent calendar quarters.

E. De Novo Insured Depository Institution Applicants—Section 933.14

Section 933.14 of the current Membership Regulation sets forth the requirements for processing and approving membership applications from de novo insured depository institution applicants. See *id.* § 933.14. Section 933.14(a) provides for streamlined processing for newly-chartered applicants that have not yet commenced operations, which are deemed to meet the duly organized, inspection and regulation, financial condition, and character of management eligibility requirements. See id. § 933.14(a)(1). Section 933.14(b) requires newly-chartered applicants that have commenced operations to meet all of the eligibility requirements, subject to certain exceptions provided in paragraph (b). In particular, if such applicants have not yet filed regulatory financial reports for the last six calendar quarters preceding the date the Bank receives the membership application, the applicant need not meet the performance trend criteria in § 933.11(b)(3)(i) (A) through (C) if the applicant has filed regulatory financial reports for at least three calendar quarters of operation. See *id.* § 933.14(b)(2)(iii)(A).

A number of Banks have stated that the requirement for having filed three calendar quarters of regulatory financial reports should not be necessary for institutions that have recently commenced operations. The financial condition and character of management of such institutions already will have been recently reviewed and approved by their chartering and insuring regulators (see, *e.g.*, 12 U.S.C. 1816, 12 CFR 303.7(d)(ii) (FDIC); 12 U.S.C. 26, 12 CFR 5.20 (OCC)), will have been based on a forward looking business plan, and should not have changed significantly since the commencement of operations. The Banks should not have to duplicate the review performed by the prospective member's appropriate regulator. Further, de novo insured depository institution applicants should be treated similarly to mandatory de novo thrift institutions, which do not have to satisfy any specific Bank membership eligibility requirements since they are required by law to be Bank members.

The Finance Board believes there is merit in these arguments. Accordingly, proposed § 933.14(a)(1) extends the streamlined application processing currently applicable to newly-chartered insured depository institutions that have not yet commenced operations to newly-chartered insured depository institutions that have commenced operations. Such applicants would be deemed to meet the duly organized, inspection and regulation, financial condition, and character of management eligibility requirements. In order to be considered newly-chartered and subject to the streamlined application processing procedures of § 933.14(a)(1), applicants would have to have been chartered within three years prior to the date the Bank receives the application for membership. Three years is consistent with the time period for de novo treatment applied by other financial institution regulators. See, *e.g.*, 12 CFR 543.3(a) (OTS).

The Finance Board specifically requests comment on the arguments for or against this proposal.

F. Recent Merger or Acquisition Applicants—Section 933.15

Sections 933.9 and 933.10 of the current Membership Regulation require applicants to show satisfaction of the "makes long-term home mortgage loans" and "10 percent residential mortgage loans" requirements, respectively, based on the applicant's most recent regulatory financial report. See *id.* §§ 933.9, 933.10. An applicant

that recently has merged with or acquired another institution prior to applying for Bank membership must show satisfaction of these eligibility requirements based on the most recent regulatory financial report filed by the consolidated entity. See *id.* However, a newly consolidated entity may not be able to show compliance with these requirements as it may be several months before the next quarterly regulatory financial report is due to be filed with the appropriate regulator.

One Bank has suggested that in order to allow the applicant to be approved for membership immediately, the applicant should be allowed to provide the most recent regulatory financial report filed prior to the merger or acquisition by each of the institutions that entered into the merger or acquisition. The Bank then would consolidate the relevant data from both reports for purposes of determining compliance with §§ 933.9 and 933.10. The Finance Board believes this suggestion has merit, provided that in the case of showing satisfaction of the 10 percent residential mortgage loans requirement, the Bank obtains a certification from the applicant that there has been no material decrease in the ratio of consolidated residential mortgage loans to consolidated total assets derived from the reports since the reports were filed with the appropriate regulator. These proposed requirements are set forth in proposed new §§ 933.15 (a) and (b).

III. Regulatory Flexibility Act

The proposed rule implements statutory requirements binding on all Banks and on all applicants for Bank membership, regardless of their size. The Finance Board is not at liberty to make adjustments to those requirements to accommodate small entities. The proposed rule does not impose any additional regulatory requirements that will have a disproportionate impact on small entities. Therefore, in accordance with section 605(b) of the Regulatory Flexibility Act, see 5 U.S.C. 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The current information collection has been approved by the Office of Management and Budget (OMB) and assigned OMB control number 3069–0004. The Finance Board has submitted to the OMB an analysis of the proposed changes to the collection of information contained in §§ 933.15 (a) and (b) of the proposed rule, described more fully in part II. of the **SUPPLEMENTARY INFORMATION.** The Banks and, where appropriate, the Finance Board, will use the proposed changes to the information collection to determine whether a recent merger or acquisition applicant meets certain membership eligibility requirements. See 12 U.S.C. 1424(a)(1)(C), (a)(2)(A); 12 CFR 933.9, 933.10. Only applicants meeting such requirements may become Bank members. See *id.*; *id.* Responses are required to obtain or retain a benefit. See 12 U.S.C. 1424. The Finance Board and the Banks will maintain the confidentiality of information obtained from respondents pursuant to the proposed changes to the collection of information as required by applicable statute, regulation, and agency policy. Books or records relating to this proposed collection of information must be retained as provided in the regulation.

Likely respondents and/or recordkeepers will be the Finance Board, Banks, and financial institutions that have recently undergone a merger or acquisition and are eligible to become Bank members under the Act, see *id.* section 1424(a)(1), including any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or insured depository institution. Potential respondents are not required to respond to the proposed changes to the collection of information unless the regulation collecting the information displays a currently valid control number assigned by the OMB. See 44 U.S.C. 3512(a).

The proposed changes to the information collection will not impose any additional costs on the Finance Board or the Banks. The estimated annual reporting and recordkeeping hour burden on respondents is:

a. Number of respondents—15.

b. Total annual responses—15; Percentage of these responses collected electronically—0%.

c. Total annual hours requested—60.

d. Current OMB inventory—59,152.

e. Difference—(59,092).

The estimated annual reporting and recordkeeping cost burden on respondents is:

a. Total annualized capital/startup costs—$0.

b. Total annual costs (O&M)—$0.

c. Total annualized cost requested—$1,800.

d. Current OMB inventory—$1,684,000.

e. Difference—($1,682,200).

Comments concerning the accuracy of the burden estimates and suggestions for reducing the burden may be submitted to the Finance Board in writing at the address listed above.

The Finance Board has submitted the proposed collection of information to the OMB for review in accordance with the Paperwork Reduction Act of 1995. See *id.* section 3501 *et seq.* Comments regarding the proposed changes to the collection of information may be submitted in writing to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Federal Housing Finance Board, Washington, D.C. 20503, by April 20, 1998.

List of Subjects in 12 CFR Part 933

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby proposes to amend title 12, chapter IX, part 933, Code of Federal Regulations, as follows:

PART 933—MEMBERS OF THE BANKS

1. The authority citation for part 933 continues to read as follows:

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, 1442.

2. Part 933 is amended by removing the term "primary regulator or appropriate state regulator" wherever it appears and adding the term "appropriate regulator" in its place in the following locations:

a. § 933.1(l);
b. § 933.1(z);
c. § 933.2(c)(2);
d. § 933.11(a)(3);
e. § 933.11(a)(4);
f. § 933.11(b)(1);
g. § 933.12(a);
h. § 933.17(e)(1) introductory text;
i. § 933.17(e)(1)(i);
j. § 933.17(e)(2)(i); and
k. § 933.17(e)(3)(i).

§ 933.11 [Amended]

3. Section 933.11(b)(3)(i) introductory text is amended by removing the term "primary regulatory or appropriate state regulator" and adding the term "appropriate regulator" in its place.

§§ 933.11 and 933.17 [Amended]

4. Sections 933.11(a)(4) and 933.17(e)(1)(i) are amended by removing the phrase ", whichever is applicable," wherever it appears.

5. Part 933 is amended by removing the term "primary regulator" wherever it appears and adding the term "appropriate regulator" in its place in the following locations:

a. § 933.1(aa);
b. § 933.9;
c. § 933.10;
d. § 933.11(a)(1);
e. § 933.11(b)(2);
f. § 933.11(b)(3)(i) introductory text;
g. § 933.16; and
h. § 933.17(f)(1).

6. Section 933.1 is amended by revising paragraphs (u), (x), and (y), and adding paragraph (ee) to read as follows:

§ 933.1 Definitions.

* * * * *

(u) *Nonperforming loans and leases* means the sum of the following, reported on a regulatory financial report: Loans and leases that have been past due for 90 days (60 days in the case of credit union applicants) or longer but are still accruing; loans and leases on a nonaccrual basis; and restructured loans and leases (not already reported as nonperforming).

* * * * *

(x) *Other real estate owned* means all other real estate owned (*i.e.*, foreclosed and repossessed real estate), reported on a regulatory financial report, and does not include direct and indirect investments in real estate ventures.

(y) *Appropriate regulator* means a regulatory entity listed in § 933.8, as applicable.

* * * * *

(ee) *Consolidation* includes a consolidation, a merger, or a purchase of all of the assets and assumption of all of the liabilities of an entity by another entity.

7. Section 933.3 is amended by revising the fourth and fifth sentences of paragraph (c) to read as follows:

§ 933.3 Decision on application.

* * * * *

(c) * * * The Bank shall notify an applicant in writing when its application is deemed by the Bank to be complete. The Bank also shall notify an applicant in writing if the 60-day clock is stopped, and when the clock is resumed. * * *

* * * * *

8. Section 933.4 is amended by adding paragraph (d) to read as follows:

§ 933.4 Automatic membership.

* * * * *

(d) *Automatic membership for certain consolidations.* If a member institution and nonmember institution are consolidated and the consolidated institution will operate under the charter of the nonmember institution, on the effective date of the consolidation, the consolidated institution automatically shall become a member of the Bank of which the disappearing institution was a member immediately prior to the effective date of the consolidation, provided that:

(1) 90 percent or more of the total assets of the consolidated institution are derived from the assets of the disappearing member institution; and

(2) The consolidated institution provides written notice to such Bank that it desires to be a member of the Bank.

9. Section 933.11 is amended by revising paragraphs (b)(3)(i)(B) and (b)(3)(i)(C) to read as follows:

§ 933.11 Financial condition requirement for applicants other than insurance companies.

* * * * *

(b) * * *
(3) * * *
(i) * * *

(B) *Nonperforming assets.* The applicant's nonperforming loans and leases plus other real estate owned, did not exceed 10 percent of its total loans and leases plus other real estate owned, in the most recent calendar quarter; and

(C) *Allowance for loan and lease losses.* The applicant's ratio of its allowance for loan and lease losses plus the allocated transfer risk reserve to nonperforming loans and leases was 60 percent or greater during 4 of the 6 most recent calendar quarters.

* * * * *

10. Section 933.14 is amended by removing the heading for paragraph (a), revising paragraph (a)(1), and removing and reserving paragraph (b), to read as follows:

§ 933.14 De novo insured depository institution applicants.

(a)(1) *Duly organized, subject to inspection and regulation, financial condition and character of management requirements.* An insured depository institution applicant that is chartered within three years prior to the date the Bank receives the applicant's application for membership in the Bank, is deemed to meet the requirements of §§ 933.7, 933.8, 933.11 and 933.12.

* * * * *

11. Section 933.15 is amended by redesignating paragraphs (a) and (b) as paragraphs (c) and (d), respectively, further redesignating newly designated paragraphs (c)(i) and (c)(ii) as paragraphs (c)(1) and (c)(2), respectively, revising "primary regulator" to read "appropriate regulator" in newly designated paragraphs (c)(1) and (c)(2), and adding new paragraphs (a) and (b), to read as follows:

§ 933.15 Recent merger or acquisition applicants.

* * * * *

(a) *Makes long-term home mortgage loans requirement—Regulatory financial reports.* For purposes of § 933.9, an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not yet filed a regulatory financial report for the combined entity with its appropriate regulator, shall provide the most recent regulatory financial report filed with the appropriate regulator prior to the merger or acquisition by each of the institutions that entered into the merger or acquisition, and the Bank shall consolidate the long-term home mortgage loans data in such reports for purposes of determining the applicant's compliance with § 933.9.

(b) *10 percent requirement for insured depository institution applicants—Regulatory financial reports.* For purposes of § 933.10, an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not yet filed a regulatory financial report for the combined entity with its appropriate regulator, shall provide the most recent regulatory financial report filed with the appropriate regulator prior to the merger or acquisition by each of the institutions that entered into the merger or acquisition, and the Bank shall consolidate the residential mortgage loans and total assets data in such reports for purposes of determining the applicant's compliance with § 933.10, provided the Bank obtains a certification from the applicant that there has been no material decrease in the ratio of consolidated residential mortgage loans to consolidated total assets derived from such reports since the reports were filed with the appropriate regulator.

* * * * *

12. Section 933.25 is amended by revising paragraph (a) to read as follows:

§ 933.25 Consolidations involving nonmembers.

(a) *Termination of membership.* Except as provided in § 933.4(d), if a member is consolidated into an institution that is not a member, its membership in the Bank terminates upon cancellation of its charter.

* * * * *

Dated: February 12, 1998. *

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 98–4069 Filed 2–18–98; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–133–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, that currently requires an inspection of reworked aileron/elevator power control units (PCU's) and rudder PCU's to determine if reworked PCU manifold cylinder bores containing chrome plating are installed, and replacement of the cylinder bores with bores that have been reworked using the oversize method or the steel sleeve method, if necessary. That AD was prompted by a review of the design of the flight control systems on Model 737 series airplanes. The actions specified by that AD are intended to prevent a reduced rate of movement of the elevator, aileron, or rudder due to contamination of hydraulic fluid from chrome plating chips; such reduced rate of movement, if not corrected, could result in reduced controllability of the airplane. This action would expand the applicability of the existing AD to include airplanes equipped with certain rudder PCU's.

DATES: Comments must be received by April 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–133–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Don Kurle, Senior Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2798; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–133–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–133–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 24, 1997, the FAA issued AD 97–09–14, amendment 39–10010 (62 FR 24008, May 2, 1997), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, to require an inspection of reworked aileron/elevator power control units (PCU's) and rudder PCU's to determine if reworked PCU manifold cylinder bores containing chrome plating are installed, and replacement of the cylinder bores with bores that have been reworked using the oversize method or the steel sleeve method, if necessary. That action was prompted by a review of the design of the flight control systems on Model 737 series airplanes. The requirements of that AD are intended to prevent a reduced rate of movement of the elevator, aileron, or rudder due to contamination of hydraulic fluid from chrome plating chips; such reduced rate of movement, if not corrected, could result in reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the manufacturer has requested that the applicability of the existing AD be revised to include airplanes equipped with a rudder power control unit (PCU) having part number 65C37052–( ). The manufacturer points out that AD 94–01–07, amendment 39–8789 (59 FR 4570, February 1, 1994), currently requires certain modifications to the rudder PCU having part number 65–44861. This modification involves replacing the existing dual servo valve in the rudder PCU with an improved servo valve, which revises the existing part number of the rudder PCU to part number 65C37052–( ). However, AD 94–01–07 does not require an inspection of rudder PCU's to determine if reworked PCU manifold cylinder bores containing chrome plating are installed. Upon examination of the request, the FAA finds that Model 737–100, –200, –300, –400, and –500 series airplanes equipped with a rudder PCU having part number 65C37052–( ) are also subject to the addressed unsafe condition of AD 97–09–14 and has included this part number in the applicability of this proposed AD.

In addition, the manufacturer pointed out that it erroneously indicated in comments submitted to the notice of proposed rulemaking (NPRM) for AD 97–09–14 that only aileron/elevator actuators having a part number that includes "ss" could be eliminated from the applicability of that rule. (Based on these comments, the FAA revised the final rule of that AD accordingly.) However, the "ss" is in the serial number, not the part number. The manufacturer also pointed out that it indicated that the "ss" only applied to the aileron and elevator PCU's, when it also applies to the rudder PCU's. The FAA has specified this information in the applicability and paragraph (a) of the proposed AD.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 97–09–14 to continue to require an inspection of reworked aileron/elevator power control units (PCU's) and rudder PCU's to determine if reworked PCU manifold cylinder bores containing chrome plating are installed, and replacement of the cylinder bores with bores that have been reworked using the oversize method or the steel sleeve method, if necessary. The proposed AD would expand the applicability of the existing AD to include airplanes equipped with rudder PCU's having part number 65C37052–( ). The proposed AD also revises the existing AD to exclude rudder PCU's (in addition to aileron/elevator actuators) having serial numbers that contain "ss" from the requirements of this proposed AD.

Cost Impact

There are approximately 2,675 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,091 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 97–09–14, and retained in this proposed AD, take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $327,300, or $300 per airplane.

The new actions that are proposed in this AD action would take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $300 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10010 (62 FR 24008, May 2, 1997), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 97–NM–133–AD. Supersedes AD 97–09–14, Amendment 39–10010.

Applicability: Model 737–100, –200, –300, –400, and –500 series airplanes equipped with a rudder power control unit (PCU), having part number (P/N) 65–44861–( ) or P/N 65/C37052–( ) (except those having serial numbers that contain "ss"), and a serial number less than 1252A; or an aileron or elevator PCU having P/N 65–44761–( ) (except those having serial numbers that contain an "ss") and a serial number less than 5360A; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a reduced rate of movement of the elevator, aileron, or rudder, which, if not corrected, could result in reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 97–09–14, Amendment 39–10010

(a) Perform an inspection of reworked or overhauled aileron and elevator PCU's having P/N 65–44761–( ) (except those having serial numbers that contain an "ss"), and a serial number less than 5360A; and rudder PCU's having P/N 65–44861–( ) and a serial number less than 1252A (except those having serial numbers that contain "ss"); to determine if reworked PCU manifold cylinder bores containing chrome plating are installed, in accordance with Boeing Service Letter 737–SL–27–30, dated April 1, 1985. Accomplish the inspection at the earlier of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Within 5 years or 15,000 flight hours after June 6, 1997 (the effective date of AD 97–09–14, amendment 39–10010), whichever occurs first.

(2) At the next time the PCU is sent to a repair facility.

(b) If any reworked PCU mainfold cylinder bores containing chrome plating are found to be installed during the inspection required by paragraph (a) of this AD: Prior to further flight, replace the cylinder bores with bores that have been reworked using the oversize method or the steel sleeve method specified in Boeing Service Letter 737–SL–27–30, dated April 1, 1985. Accomplish the replacement in accordance with the service letter.

(c) As of June 6, 1997, no person shall install a reworked PCU manifold cylinder bore containing chrome plating on an aileron or elevator PCU having P/N 65–44761–( ), or on a rudder PCU having P/N 65–44861–( ), of any airplane unless the cylinder bore has been reworked using the oversize method or the steel sleeve method specified in Boeing Service Letter 737–SL–27–30, dated April 1, 1985.

New Requirement of This AD

(d) Perform an inspection of reworked or overhauled rudder PCU's having P/N 65C37052–( ) and a serial number less than 1252A (except those having serial numbers that contain "ss"); to determine if reworked PCU manifold cylinder bores containing chrome plating are installed, in accordance with Boeing Service Letter 737–SL–27–30, dated April 1, 1985. Accomplish the inspection at the earlier of the times specified in paragraphs (d)(1) and (d)(2) of this AD.

(1) Within 5 years or 15,000 flight hours after the effective date of this AD, whichever occurs first.

(2) At the next time the PCU is sent to a repair facility.

(e) If any reworked PCU mainfold cylinder bores containing chrome plating are found to be installed during the inspection required by paragraph (d) of this AD: Prior to further flight, replace the cylinder bores with bores that have been reworked using the oversize method or the steel sleeve method specified in Boeing Service Letter 737–SL–27–30, dated April 1, 1985. Accomplish the replacement in accordance with the service letter.

(f) As of the effective date of this AD, no person shall install a reworked PCU manifold cylinder bore containing chrome plating on a rudder PCU having P/N 65C37052–( ), on any airplane unless the cylinder bore has been reworked using the oversize method or the steel sleeve method specified in Boeing Service Letter 737–SL–27–30, dated April 1, 1985.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 11, 1998.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–4112 Filed 2–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–251–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9 and DC–9–80 Series Airplanes, Model MD–88 Airplanes, and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes. This proposal would require an inspection to determine if the latching lever pin of the speed brake passes an axial force check, and a visual inspection to determine if the staking of the latching lever pin is acceptable; and follow-on corrective action, if necessary. This proposal is prompted by reports that the speed brake handle jammed in the ground spoiler position. The actions specified by the proposed AD are intended to prevent the retraction of the spoilers and the full advancement of the left throttle during a go-around, as the result of a jammed speed brake handle pin.

DATES: Comments must be received by April 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 597–NM–251–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5336; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–251–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–251–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports that the speed brake handle jammed in the ground spoiler position on McDonnell Douglas Model DC–9–80 series airplanes. These airplanes had accumulated as low as 547 total flight hours or 299 total flight cycles. Investigation revealed that the cause of such jamming was attributed to an oversize pin hole and improper staking of the pin hole, which caused migration of the pin. A jammed speed brake handle pin, if not corrected, could prevent the retraction of the spoilers and the full advancement of the left throttle during a go-around.

The subject part on certain McDonnell Douglas Model DC–9 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes is identical to that on the affected Model DC–9–80 series airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC–9–27–346, Revision 01, dated July 29, 1997. The service bulletin describes procedures for performing an inspection to determine if the latching lever pin of

the speed brake passes an axial force check, and a visual inspection to determine if the staking of the latching lever pin is acceptable; and follow-on corrective action, if necessary. (The follow-on corrective actions include repetitive inspections, replacement of the speed brake latching lever, and temporary repair of the latching lever pin.)

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require an inspection to determine if the latching lever pin of the speed brake passes an axial force check, and a visual inspection to determine if the staking of the latching lever pin is acceptable; and follow-on corrective action, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 2,050 McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,250 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $375,000, or $300 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 97–NM–251–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50, and DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes; Model MD–88 airplanes; and C–9 (military) series airplanes; as listed in McDonnell Douglas Service Bulletin DC9–27–346, Revision 1, dated July 29, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the retraction of the spoilers and the full advancement of the left throttle during a go-around, as the result of a jammed speed brake handle pin, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform an inspection to determine if the latching lever pin of the speed brake passes an axial force check, and a visual inspection to determine if the staking of the latching lever pin is "acceptable", in accordance with McDonnell Douglas DC9–27–346, Revision 01, dated July 29, 1997.

Note 2: The criteria for determining whether the staking is "acceptable" are defined in Figure 1 of the service bulletin.

(1) Condition 1. If the pin passes the axial force check and the staking is found to be acceptable, no further action is required by this AD.

(2) Condition 2. If the pin passes the axial force check and the staking is found to be unacceptable, accomplish the actions specified in Condition 2, Option 1, or Condition 2, Option 2 of the Accomplishment Instructions of the service bulletin. These actions shall be accomplished at the times specified in paragraph E. "Compliance" of the service bulletin. Accomplishment of the replacement of the speed brake latching lever constitutes terminating action for the repetitive inspection requirements of this AD.

(3) Condition 3. If the pin fails the axial force check and the staking is found to be unacceptable, accomplish the actions specified in Condition 3, Option 1, or Condition 3, Option 2 of the Accomplishment Instructions of the service bulletin. These actions shall be accomplished at the times specified in paragraph E. "Compliance" of the service bulletin. Accomplishment of the replacement of the speed brake latching lever constitutes terminating action for the repetitive inspection requirements of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 11, 1998.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–4111 Filed 2–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–303–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–200, –300, and –320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–200, –300, and –320 series airplanes. This proposal would require an inspection to detect fatigue cracking of the windshield frame structure, and modification of the windshield frame structure. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the airplane resulting from fatigue cracking of the windshield frame structure.

DATES: Comments must be received by March 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–303–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–303–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–303–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42–200, –300, and –320 series airplanes. The DGAC advises that it has received reports of fatigue cracking on in-service airplanes. The cracking began at the lower end of the center post of the windshield frame structure. Such fatigue cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Aerospatiale has issued Service Bulletins ATR42–53–0093, Revision 1, and ATR42–53–0094, Revision 2, both dated February 19, 1996. These service bulletins describe procedures for an inspection to detect fatigue cracking of the windshield frame structure, and modification of the windshield frame structure. Accomplishment of the modification involves installation of new supports and nut plates. Accomplishment of these actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 95–126–061(B), dated June 21, 1995, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between the Proposed Rule and the Service Information

Whereas Aerospatiale Service Bulletin ATR42–53–0094 requires that operators contact the manufacturer for repair instructions for any crack exceeding a specified length, this proposed AD would require that repair of such cracking be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 106 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 19 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $120,840, or $1,140 per airplane.

It would take approximately 191 work hours per airplane to accomplish the proposed modification specified in

Aerospatiale Service Bulletin ATR42–53–0093, Revision 1, dated February 19, 1996, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of this proposed modification on U.S. operators is estimated to be $11,460 per airplane.

It would take approximately 281 work hours per airplane to accomplish the proposed modification specified in Aerospatiale Service Bulletin ATR42–53–0094, Revision 2, dated February 19, 1996, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of this proposed modification on U.S. operators is estimated to be $16,860 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 97–NM–303–AD.

Applicability: Model ATR42–200, –300, and –320 series airplanes, on which Aerospatiale Modification 01392 has not been installed, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the airplane resulting from fatigue cracking of the windshield frame structure, accomplish the following:

(a) Prior to the accumulation of 24,000 total flight cycles, or within 60 days after the effective date of this AD, whichever occurs later: Inspect to detect cracking of the windshield frame structure in accordance with Operation Description (B—Inspection) of the Accomplishment Instructions of Aerospatiale Service Bulletin ATR42–53–0093, Revision 1, or ATR42–53–0094, Revision 2, both dated February 19, 1996.

(1) If the inspection reveals no crack, or reveals cracking that does not exceed the specifications listed in Figure 6, Sheet 1, of Service Bulletin ATR42–53–0093, Revision 1, dated February 19, 1996: Prior to further flight, modify the windshield frame structure in accordance with either service bulletin.

(2) If the inspection reveals any crack that exceeds the specifications in Figure 6, Sheet 1, of Service Bulletin ATR42–53–0093, Revision 1, dated February 19, 1996, but does not exceed the cut-out areas specified in Figure 7, Sheet 1, of Service Bulletin ATR42–53–0094, Revision 2, dated February 19, 1996: Prior to further flight, modify the windshield frame structure in accordance with Service Bulletin 42–53–0094, Revision 2, dated February 19, 1996.

(3) If the inspection reveals any crack that exceeds the cut-out areas specified in Figure 7, Sheet 1, of Service Bulletin ATR42–53–0094, Revision 2, dated February 19, 1996: Prior to further flight, modify the windshield frame structure in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

Note 2: Accomplishment of the modifications specified in ATR Service Bulletin ATR42–53–0093, Revision 1, or ATR42–53–0094, Revision 2, both dated February 19, 1996, is not equivalent to accomplishment of Aerospatiale Modification 01392. Therefore the ATR42 Time Limits Document inspection items with "PRE MOD 1392" effectivity are still applicable for airplanes modified by either of the previously described service bulletins.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 95–126–061(B), dated June 21, 1995.

Issued in Renton, Washington, on February 11, 1998.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–4110 Filed 2–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–163–AD]

RIN 2120–AA64

Airworthiness Directives; Transport Category Airplanes Equipped With Day-Ray Products, Inc., Fluorescent Light Ballasts

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to any transport

category airplane that is equipped with certain Day-Ray fluorescent light ballasts installed in the upper and/or lower cabin sidewall, that would have required a visual inspection to determine the type of fluorescent light ballasts installed in the cabin sidewall, and either the replacement of suspect ballasts or the installation of a protective cover over the ballast. That proposal was prompted by reports of smoke, fumes, and/or electrical fire emitting from the baggage bin of the aft passenger compartment due to the failure of the fluorescent light ballasts. This new action revises the proposed rule by removing the option to install a protective cover over the ballast. The actions specified by this new proposed AD are intended to prevent the potential for a fire in the passenger compartment resulting from failure of the fluorescent light ballast of the cabin sidewall.

DATES: Comments must be received by March 16, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 96–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: J. Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5345; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–163–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 96–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to any transport category airplane that is equipped with certain Day-Ray fluorescent light ballasts installed in the upper and/or lower cabin sidewall, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 7, 1996 (61 FR 52394). That NPRM would have required a visual inspection to determine the type of fluorescent light ballasts installed in the cabin sidewall, and either the replacement of suspect ballasts or the installation of a protective cover over the ballast. That NPRM was prompted by reports of smoke, fumes, and/or electrical fire emitting from the baggage bin of the aft passenger compartment due to the failure of the fluorescent light ballasts. That condition, if not corrected, could result in the potential for a fire in the passenger compartment resulting from failure of the fluorescent light ballast of the cabin sidewall.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the FAA has received a report of smoke and fire emitting from the overhead ceiling panel in the passenger cabin on a McDonnell Douglas Model DC–9–80 series airplane. Investigation revealed that a fluorescent light ballast failed and produced electrical arcing, which caused fire damage to the upper insulation blanket and outboard ceiling panel at station 1022. The fluorescent light ballast had been modified, as required by AD 96–11–13, amendment 39–9638 (61 FR 27251, May 31, 1996).

The modification specified in AD 96–11–13 includes installation of a protective aluminum cover that was designed to prevent the interior of the airplane from exposure to flame. However, the aluminum cover of the fluorescent light ballast involved in the incident had two holes burnt through it. The FAA has determined that installation of a protective cover over the light ballast [as required by paragraph (a)(2) of the originally proposed NPRM] does not adequately preclude smoke/fire in the passenger compartment. Therefore, the FAA has removed that requirement [paragraph (a)(2) of the originally proposed NPRM] from this supplemental NPRM. The FAA also has removed reference to the protective cover from paragraph (b) of this supplemental NPRM.

Comments Received

Due consideration has been given to the comments received in response to the NPRM.

Request To Revise Descriptive Language

One commenter requests that the fourth sentence of the first paragraph of the Discussion section of the NPRM be revised to read as follows: "Investigation revealed that the design of certain fluorescent light ballast assemblies, as installed on the incident airplanes, allows moisture condensation to enter into the ballast case during altitude changes. The effects of such moisture subsequently contaminate the printed circuit card, which can result in a short circuit. This failure mode in the subject Day-Ray Products ballasts may result in the rupture of the ballast phenolic case and emit fire." The commenter states that immersion testing conducted by McDonnell Douglas on ballast designs of different manufacturers (in addition to Day-Ray Products) has demonstrated that a fluorescent light ballast, when subject to ingestion of moisture as a result of

changes in altitude, is susceptible to failure. The critical issue is whether the ballast case design will contain the failure and allow for a fail-safe mode.

The commenter also requests that the first sentence of the second paragraph of the Discussion section of the NPRM be deleted, and that the phrase "suspect light ballasts" in the beginning of the second sentence be changed to "subject light ballasts." The commenter states that the subject ballasts are the same as those addressed in AD 96–11–13.

In addition, the commenter requests that the phrase "installing improved ballasts" be removed from the first sentence of the first paragraph of the Explanation of Relevant Service Information section of the NPRM, and that the phrase "or installing protective covers that are manufactured by Day-Ray Products" be added to the end of that sentence.

Further, the commenter requests that the phrase "any Day-Ray Products light ballast" be revised to "the subject light ballast" in the first sentence in paragraph one of the Explanation of Requirements of Proposed Rule section of the preamble of the NPRM.

The FAA acknowledges that the commenter's suggested wording is more accurate. However, since the Discussion, Explanation of Relevant Service Information, and Explanation of Requirements of Proposed Rule sections are not restated in this supplemental NPRM, no change to the supplemental NPRM is necessary.

Request To Revise Cost Estimate

One commenter notes that the work hours for the proposed inspection and replacement presented in the Cost Impact section of the preamble of the NPRM is too low. The commenter states that the proposed inspection will require 25 work hours per airplane, and that the replacement will require 50 work hours per airplane. The FAA concurs that the number of work hours required is higher than previously approximated; the economic impact information, below, has been revised to specify the higher amount.

Request To Delete Installation of Protective Cover Requirement

One commenter requests that the FAA remove the option of installing a protective cover over the light ballast, as required by paragraph (a)(2) of the originally proposed NPRM. The commenter contends that the protective cover will cause the ballast to overheat and shorten life expectancy of the ballast. The FAA concurs. As discussed previously, the FAA has removed paragraph (a)(2) of the originally proposed NPRM from this supplemental NPRM.

Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 2,500 transport category airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,800 airplanes of U.S. registry would be affected by this proposed AD.

To accomplish the proposed inspection, it would take approximately 25 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $1,500 per airplane.

To replace the light ballasts would require approximately 50 work hours per airplane, at an average labor rate of $60 per work hour. Required parts would average approximately $8,550 per airplane, which represents a cost of $150 per ballast and an average of 57 ballasts per airplane. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $11,550 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Transport Category Airplanes: Docket 96–NM–163–AD.

Applicability: Airplanes equipped with Day-Ray Products, Inc., cabin sidewall fluorescent light ballasts having part numbers listed in Table 1 of this AD; including, but not limited to, McDonnell Douglas Model DC–9, DC–9–80, MD–88, DC–10, and C–9 (military) series airplanes, and Boeing Model 707, 727, and 737 series airplanes; certificated in any category.

TABLE 1.—FLUORESCENT LIGHT BALLASTS SUBJECT TO THIS AD

Name	Part No.
Day Ray	69–10, 69–10–1, 69–68, 69–68–1, 69–69, 69–69–1, 70–94, 70–94–1, 83–12, 83–12–1

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the potential for a fire in the passenger compartment resulting from failure of the fluorescent light ballast of the cabin sidewall, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform a one-time visual inspection to determine the type of fluorescent light ballasts installed in the upper and lower cabin sidewall. If any ballast installed has a part number that is listed in Table 1 of this AD, prior to further flight, remove the Day-Ray light ballast and replace it with a light ballast manufactured by Bruce Industries, in accordance with the applicable service bulletin(s) listed in Table 2 of this AD.

TABLE 2.—SERVICE BULLETINS CONTAINING INSTRUCTIONS FOR ACCOMPLISHING THE REQUIREMENTS OF THIS AD

Service bulletin No. and date	Affected airplanes
McDonnell Douglas, DC–9 Service Bulletin DC9–33–103, May 30, 1996.	Model DC–9–30, –40, and –50 series airplanes listed in effectivity of service bulletin.
McDonnell Douglas, MD–80 Service Bulletin MD80–33A107, Revision R01, August 30, 1996.	Model DC–9–80 series and Model MD–88 airplanes listed in effectivity of service bulletin.
McDonnell Douglas, DC–10 Service Bulletin DC10–33–073, June 18, 1996.	Model DC–10–10, –15, –30, and –40 series and KC–10A airplanes listed in effectivity of service bulletin.
Heath Tecna, Alert Service Bulletin ESCI–33–A2, Revision 1, July 24, 1996.	McDonnell Douglas Model DC–9–80 (MD–80) series airplanes retrofitted with Heath Tecna Contemporary Deep Rack Interior (CDRI) and Heath Tecna Extended Special Concept Interior (ESCI or ESCI III).
Heath Tecna, Alert Service Bulletin MarkI–33–A2, Revision 1, July 24, 1996.	McDonnell Douglas Model DC–8 series airplanes retrofitted with Heath Tecna Mark I interior.
Heath Tecna, Alert Service Bulletin MarkI–33–A3, Revision 1, July 24, 1996.	Boeing Model 707 series airplanes retrofitted with the Heath Tecna Mark I interior.
Heath Tecna, Alert Service Bulletin MarkI–33–A4, Revision 1, July 24, 1996.	Boeing Model 727 series airplanes retrofitted with the Heath Tecna Mark I interior.
Heath Tecna, Alert Service Bulletin MarkI–33–A5, Revision 1, July 24, 1996.	Boeing Model 737 series airplanes retrofitted with the Heath Tecna Mark I interior.
Heath Tecna, Service Bulletin Spmk–33–A1, Revision 1, July 24, 1996.	Boeing Model 727 series airplanes retrofitted with the Heath Tecna Spacemaker II or Spacemaker IIa interior.
Heath Tecna, Service Bulletin Spmk–33–A2, Revision 1, July 24, 1996.	Boeing Model 737 series airplanes retrofitted with the Heath Tecna Spacemaker II or Spacemaker IIa interior.

(b) As of the effective date of this AD, no person shall install in the upper or lower cabin sidewall of any airplane a Day-Ray fluorescent light ballast having a part number listed in Table 1 of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 11, 1998.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–4109 Filed 2–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 668

[FHWA Docket No. FHWA 97–3105]

RIN 2125–AE27

Emergency Relief (ER) Program—$500,000 Disaster Eligibility Threshold

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: The FHWA is initiating this rulemaking to evaluate the need to revise the FHWA's regulation (23 CFR 668.105(j)) that now provides for a $500,000 threshold to distinguish between heavy maintenance or routine emergency repair and serious damage. This threshold is used as one of the criteria to qualify a disaster under the FHWA's Emergency Relief (ER) program for repair of Federal-aid highways. The FHWA is publishing this ANPRM to generate discussion and comments on the appropriateness of the current threshold value as well as any additional options/concepts regarding establishment of a disaster eligibility threshold. Once information from this ANPRM has been reviewed, if appropriate, specific proposals for revision of the threshold will be published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM).

DATES: Comments must be received on or before April 20, 1998.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL 401, 400 Seventh Street, SW., Washington, D.C. 20590–0001. All comments received will be available for examination at the above address between 10:00 a.m. and 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mohan P. Pillay, Office of Engineering, 202–366–4655, or Wilbert Baccus, Office of the Chief Counsel, 202–366–0780, FHWA, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m, e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

1. Purpose of This Rulemaking

The regulations governing the ER program for repair of Federal-aid highways (23 CFR 668, subpart A) were revised in 1987 to establish, for the first time, dollar guidelines for consideration of whether a disaster would be

categorized as "serious " from the perspective of 23 U.S.C. 125. The requirement pertaining to dollar guidelines is contained in 23 CFR 668.105(j). It states: "ER program funding is only to be used to repair highways which have been seriously damaged and is not intended to fund heavy maintenance or routine emergency repair activities which should be normally funded as contingency items in the State and local road programs. An application for ER funds in the range of $500,000 or less must be accompanied by a showing as to why the damage repair involved is considered to be beyond the scope of heavy maintenance or routine emergency repair. As a general rule, widespread nominal road damages in this range would not be considered to be of a significant nature justifying approval by the FHWA Administrator for ER funding."

For the purposes of this ANPRM, the term disaster referred to throughout this document means a natural disaster or catastrophic failure. As indicated in the regulation, the ER program is not intended to fund heavy maintenance or routine emergency repair activities, which should be normally funded as contingency items in the State and local road programs. In essence, the regulation says that if a disaster event does not require more than $500,000 in ER funding to repair seriously damaged highways, it falls under the category of heavy maintenance and, therefore, normally does not qualify under the FHWA ER program for funding. In exceptional circumstances, such as in the case of Territories and in States with limited highway funding resources, a disaster with damage in the range of $500,000 or less may be considered eligible for ER funding.

The FHWA is considering modification of the $500,000 threshold for the following reasons:

(1) The current $500,000 threshold, established 10 years ago, needs to be routinely reviewed for appropriateness.

(2) Several FHWA field offices have indicated that the $500,000 threshold is too low, considering the overall highway program size in some States.

(3) The number of disasters per year has increased considerably in the recent past, and as a result, there is a higher demand for ER funds, thus placing more financial burden on the already strapped ER program.

The FHWA believes that setting up a higher threshold may eliminate funding less "serious" disasters which would currently be eligible for ER funding. For example, 47 disasters were funded in FY 1996. Nearly 20 percent of the funded disasters had an initial estimate under $1,000,000. Elevating the disaster threshold to $1,000,000, thus, could have eliminated nearly 20 percent of the funded disasters in FY 1996 from emergency relief funding, representing nearly $5.2 million in damage. This $5.2 million, in turn, would have been available for disasters which individually resulted in more than $1,000,000 in damage.

The FHWA is initiating this rulemaking process to generate discussion and proposals for revising the current regulation pertaining to the $500,000 threshold.

2. Rulemaking Process

This document is first in a series of actions to address the issue of the $500,000 threshold established to distinguish heavy maintenance from "serious" damage. Based upon the comments to this ANPRM, the FHWA will consider formulating specific proposals and publishing a NPRM. The NPRM would also provide a comment period for additional public response to specific proposals. The FHWA now anticipates that a final rule may be developed and published in 1998. The following options are provided with the intent to generate discussion and comments which may help in formulating specific proposals for the NPRM. Additional options and concepts are welcome.

Option 1—Continue to have a single threshold applied to all States, but increase the threshold.

Under this option, the existing threshold would be increased to a higher value—for example, $1,000,000. The advantages are:

(1) The program would better serve as intended—to fund unusually heavy expenses of repairing "serious" damage from natural disasters or catastrophic failures, and to eliminate funding low-cost disasters;

(2) The overall cost to the ER program would be reduced, as those disasters with an initial estimate under $1,000,000 normally would not qualify for funding; and

(3) The administrative costs at all levels would be reduced as time involved in disaster surveys, documentation, and processing would be reduced.

A disadvantage is that a higher threshold would place a greater funding burden on the States with smaller highway programs. They may be adversely affected as resources may not be readily available to respond to disasters under the minimum $1,000,000 disaster eligibility threshold. Additionally, the application of the same threshold value to all States would be administratively simple; however, it does not equitably reflect the financial impact of a disaster based on the size of a State's program.

Option 2—Formulate more than one minimum disaster eligibility threshold, using a tiered approach based on the size of a State's highway program.

Under this option the States would be grouped into tiers based on the size of their Federal-aid program—i.e, Federal-aid apportionments received in the prior fiscal year. A minimum disaster eligibility threshold would be formulated for each tier beginning from a base threshold. This concept is illustrated using a three tier approach in the following example:

Tier 1 would be those States that received Federal-aid highway apportionments under $100 million for the previous fiscal year. Tier 1 States would be subject to a minimum threshold of $500,000;

Tier 2 would be those States that received Federal-aid highway apportionments of at least $100 million and not exceeding $500 million for the previous fiscal year. Tier 2 States would use a minimum threshold of $1,000,000; and

Tier 3 would be those States which received Federal-aid highway apportionments over $500 million for the previous fiscal year. Tier 3 States would use a minimum threshold of $2,000,000.

Based on the FY 1997 Federal-aid highway apportionments, the number of States including the District of Columbia and Puerto Rico, in each tier in the above illustration would be as follows: Tier 1 States—7; Tier 2 States—33; and Tier 3 States—12. Other scenarios, as appropriate may be developed.

The advantages are:

(1) This approach would not place a disproportionate burden on States with smaller highway programs; rather it treats States more or less in an equitable fashion;

(2) The program would better serve as intended—to fund unusually heavy expenses of repairing "serious" damage from natural disasters or catastrophic failures. New higher thresholds on disaster eligibility would eliminate funding low-cost disasters for States with larger programs;

(3) The overall cost to the ER program would be reduced as certain disasters might not meet the new disaster eligibility thresholds and therefore might not qualify for funding; and

(4) The administrative costs would be reduced at all levels, as time involved

in disaster surveys, documentation, and processing would be reduced.

The disadvantages are:

(1) States with larger highway programs could lose some ER funding as the higher disaster eligibility threshold in these States might eliminate some disasters which would have qualified for funding under the current threshold; and

(2) The FHWA would be required to track States with different disaster eligibility thresholds, resulting in more review time and paperwork.

Commenters are invited to present their views on the options discussed above. In addition, the FHWA welcomes other suggestions concerning the current dollar threshold and appropriate methods to update this threshold.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that any action taken regarding the disaster eligibility threshold will not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. It is anticipated that the economic impact of any action taken in this rulemaking will be minimal. Any changes are not anticipated to adversely affect, in a material way, any sector of the economy. In addition, any changes are not likely to interfere with any action taken or planned by another agency or materially alter the budgetary impact of any entitlement, grants, user fees, or loan programs.

The FHWA emphasizes, however, that this document is published to generate discussion and comments which may be used in formulating specific proposals for the revision of a section of the current regulation dealing with disaster eligibility determinations for ER funding. It is not anticipated that these changes will affect the total Federal funding available under the ER program. Consequently, a full regulatory evaluation is not required. In any event, we strongly encourage and will actively consider comments on this matter, as well as other issues relating to the projected impact of actions contemplated in this ANPRM.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA will evaluate the effects of any action proposed on small entities. This ANPRM will only generate comments and discussions on one of the disaster eligibility criteria used for providing emergency relief assistance to States in accordance with the existing laws, regulations and guidance. Thus, it would be premature to assess the economic impact of any action that might be contemplated. Because the States are not included in the definition of "small entity" set forth in 5 U.S.C. 601, we do not anticipate that any adjustment to the disaster eligibility threshold that might be considered would have a substantial economic impact on small entities within the meaning of the Regulatory Flexibility Act. We encourage commenters to evaluate any options addressed here with regard to their potential for impact, however, and to formulate their comments accordingly.

Executive Order 12612 (Federalism Assessment)

Any action that might be proposed in subsequent stages of this proceeding will be analyzed in accordance with the principles and criteria contained in Executive Order 12612. Given the nature of the issues involved in this proceeding, the FHWA anticipates that any action contemplated will not have sufficient federalism implications to warrant the preparation of a federalism assessment. Nor does the FHWA anticipate that any action taken would preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. We encourage commenters to consider these issues, however, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Any action that might be contemplated in subsequent phases of this proceeding is not likely to involve a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3500, or information collection requirements not already approved for the ER program. The FHWA, however, will evaluate any actions that might be considered in accordance with the terms of the Paperwork Reduction Act.

National Environmental Policy Act

The agency also will analyze any action that might be proposed for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) to assess whether there would be any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 668

Emergency relief program, Grant programs-transportation, Highways and roads.

Authority: 23 U.S.C. 315; 23 U.S.C. 101; 23 U.S.C. 120(e); 23 U.S.C. 125; 49 CFR 1.48(6).

Issued on: February 11, 1998.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

[FR Doc. 98–4172 Filed 2–18–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 178 and 179

[Notice No. 857]

RIN: 1512–AB57

Implementation of Public Law 103–159, Relating to the Permanent Provisions of the Brady Handgun Violence Prevention Act (93F–057P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend the regulations to implement the provisions of Public Law 103–159, relating to the permanent provisions of the Brady Handgun Violence Prevention Act. These proposed regulations implement the law by requiring, with some exceptions, a licensed firearms importer, manufacturer, or dealer to contact the

national instant criminal background check system (NICS) before transferring any firearm to an unlicensed individual. NICS will advise the licensee whether the system contains any information that the prospective purchaser is prohibited by law from possessing or receiving a firearm.

DATES: Written comments must be received on or before May 20, 1998.

ADDRESSES: Send written comments to: Chief, Regulations Division; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; ATTN: Notice No. 857.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On November 30, 1993, Public Law 103–159 (107 Stat. 1536) was enacted, amending the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44). Title I of Pub. L. 103–159, the Brady Handgun Violence Prevention Act (the "Brady law"), imposed as an interim measure a waiting period of 5 days before a licensed importer, manufacturer, or dealer may sell, deliver, or transfer a handgun to an unlicensed individual. The waiting period applies only in States without an acceptable alternate system of conducting background checks on handgun purchasers. The interim provisions of the Brady law, 18 U.S.C. 922(s), became effective on February 28, 1994, and cease to apply on November 30, 1998.

Permanent Provisions of the Brady Law

The permanent provisions of the Brady law provide for the establishment of a national instant criminal background check system ("NICS") that a firearms licensee must contact before transferring any firearm to unlicensed individuals. The law requires that the permanent system be established not later than November 30, 1998. While the interim provisions apply only to handguns, the permanent provisions of the Brady law will apply to all firearms. Furthermore, while there is no five-day waiting period under the permanent provisions, the system may take up to three business days to notify the licensee whether receipt of a firearm by the prospective purchaser would be in violation of law.

National Instant Criminal Background Check System

The Brady law requires that the Attorney General establish a permanent national instant criminal background check system that any licensee may contact, by telephone or by other electronic means in addition to the telephone, for information on whether receipt of a firearm by a prospective transferee would violate Federal or State law. The law requires that the permanent system be established not later than November 30, 1998.

Upon establishment of the system, the Attorney General is required to notify each firearms licensee and the chief law enforcement officer of each State of the existence and purpose of NICS and the means to be used to contact NICS. Beginning on the date that is 30 days after the Attorney General notifies firearms licensees that NICS is established, the permanent provisions of Brady, 18 U.S.C. 922(t), become effective.

Statutory Requirements

Section 922(t) generally makes it unlawful for any licensed firearms importer, manufacturer, or dealer to sell, deliver, or transfer a firearm to an unlicensed individual (transferee), unless—

1. Before the completion of the transfer, the licensee contacts the national instant background check system;

2. The system provides the licensee with a unique identification number signifying that transfer of the firearm would not be in violation of law OR 3 business days (meaning a day on which State offices are open) have elapsed from the date the licensee contacted the system and the system has not notified the licensee that receipt of the firearm by the transferee would be in violation of law; and

3. The licensee verifies the identity of the transferee by examining a valid identification document containing a photograph of the transferee.

Penalties for Noncompliance

Section 922(t) provides that a firearms licensee who transfers a firearm and knowingly fails to comply with the requirements of the law, in a case where compliance would have revealed that the transfer was unlawful, may be subject to license suspension or revocation and fined not more than $5,000.

Proposed Regulations

ATF is proposing regulations to implement the requirements placed on firearms licensees by section 922(t). The Department of Justice will be promulgating regulations establishing the methods of operation for NICS, including policies and procedures for ensuring the privacy and security of the system, and appeal procedures for individuals who are determined by NICS to be ineligible to purchase a firearm. Accordingly, these issues are not addressed in the ATF regulations.

Time of NICS Check

The Brady law generally provides that a licensed importer, manufacturer or dealer may not transfer a firearm to an unlicensed individual unless, before the completion of the transfer, the licensee contacts NICS. It is clear that the law contemplates that the licensee should contact NICS immediately prior to the transfer of a firearm. ATF recognizes that there may be circumstances in which there is an unavoidable delay between the NICS check and the transfer of the firearm. For example, many States have waiting periods for the sale of certain types of firearms. Nonetheless, ATF believes that the regulations should impose a time frame beyond which a licensee can no longer rely upon a "stale" NICS check in transferring a firearm.

In accordance with the above, ATF is proposing to amend § 178.124(c) to require licensees to contact NICS after the transferee has executed the firearms transaction record, Form 4473. ATF is also proposing to amend § 178.102(c) to provide that a licensee may not rely upon a NICS check that was conducted more than 30 calendar days prior to the transfer of the firearm. This will ensure that licensees are not relying upon "stale" NICS checks. Finally, the proposed regulations clarify that a separate NICS check must be conducted for each separate transaction. While an individual may purchase several firearms in one transaction, a licensee must initiate a separate NICS check for each separate transaction. Examples are provided in section 178.102(c) of the proposed regulations.

Section 922(t)(2) provides that if NICS notifies the licensee that the information available to the system does not indicate that the prospective purchaser's receipt or possession of the firearm would violate the law, the system will assign a unique identification number to the transfer and provide the licensee with the number. The Department of Justice has advised ATF that NICS will also provide licensees with a unique identification number in the event that the transfer is denied or delayed by NICS. Accordingly, the proposed regulations require that licensees record any responses received from the system,

in addition to the unique identification number (if any) provided by the system, on the firearms transaction record (ATF Form 4473). The proposed regulations also require that licensees maintain a copy of each Form 4473 for which a NICS transaction number has been received, regardless of whether the transfer of the firearm was completed. This will enable ATF to determine compliance with the law by licensees and purchasers.

Exceptions to NICS

The statute provides the following exceptions to the national instant background check system:

1. The transferee presents to the licensee a permit which was issued not more than 5 years earlier by the State in which the transfer is to take place and which allows the transferee to possess or acquire a firearm, and the law of the State provides that such a permit is to be issued only after an authorized government official has verified that available information does not indicate that possession of a firearm by the transferee would be in violation of the law;

2. Purchases of firearms which are subject to the National Firearms Act and which have been approved for transfer under 27 CFR Part 179 (Machine Guns, Destructive Devices, and Certain Other Firearms); or

3. Purchases of firearms for which the Secretary has certified that compliance with NICS is impracticable because the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025 (i.e., 25 officers per 10,000 square miles), the premises of the licensee are remote in relation to the chief law enforcement officer of the area, and there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

Proposed regulations which implement these provisions of the law are set forth in §§ 178.102(d), 178.131, and 178.150.

It should be noted that State "instant check" and "point of sale check" systems will not qualify as alternatives to the NICS check required by the permanent provisions of the Brady law. Therefore, NICS checks must be conducted on firearms purchasers in those States.

With respect to purchases of firearms which are subject to the National Firearms Act, ATF is proposing to amend § 179.86 to provide that in addition to any other records checks that may be conducted to determine whether the transfer, receipt, or possession of a firearm would place the transferee in violation of law, the Director must contact NICS.

Permits

The Brady law provides that a licensee is not required to initiate a NICS check where the purchaser presents a permit that allows the purchaser to "possess or acquire a firearm." The proposed regulations clarify that this exception includes permits to carry concealed weapons as well as permits specifically authorizing the purchase of a firearm.

For purposes of the permanent provisions of the Brady law, it is irrelevant whether the permit covers the type of firearm that is being purchased. For example, a licensee need not initiate a NICS check where an individual who wishes to purchase a rifle presents a handgun permit, as long as that permit meets all the requirements of the Brady law. The critical issue is not the type of firearm for which the permit was issued, but whether the State has conducted a background check on that individual to ensure that the individual is not prohibited from possessing a firearm. Of course, all such transactions must still comply with State law.

NICS Checks in Conjunction With the Issuance of Permits

The law provides that the permit must have been issued not more than 5 years earlier by the State in which the transfer is to take place. Furthermore, the permit is a valid alternative under the Brady law only if the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law.

In construing the language of the statute, it is ATF's position that as of November 30, 1998, "the information available to" State officials will include the NICS database. Accordingly, the proposed regulations provide that permits issued on or after November 30, 1998, will be valid alternatives under the permanent provisions of the Brady law only if the State officials conduct a NICS check on all permit applicants. It should be noted that the NICS database will provide a more extensive background check of the purchaser than other record systems containing only criminal records. NICS will include records from the Defense Department concerning dishonorable discharges, records from the State Department regarding individuals who have renounced United States citizenship, and other information not available in criminal records.

Permits Issued to Persons Prohibited Under Federal Law

The proposed regulations provide that a permit would be a valid alternative only if the issuing State verifies that possession of a firearm by the permittee would not be in violation of Federal, State, or local law. There may be States that would issue a permit to individuals (such as persons who have renounced United States citizenship or persons convicted of a misdemeanor crime of domestic violence) even though these individuals are subject to Federal firearms disabilities. If a State does not disqualify all individuals prohibited under Federal law, the permits issued by that State would not be accepted as alternatives under the permanent provisions of the Brady law. Prior to the effective date of the permanent provisions of the Brady law, ATF will notify licensees in each State whether or not permits issued by that State will suffice as alternatives under the Brady law.

Pawn Transactions

The permanent provisions of the Brady law apply to any transfer of a firearm by a licensed importer, manufacturer, or dealer to a nonlicensee. This includes the redemption of a pawned firearm. It should be noted that the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322, amended § 922(s) of the GCA to exempt transactions involving the return of a handgun to the person from whom it was received. Thus, the redemption of a pawned handgun by the person from whom it was received is not subject to the waiting period and background check requirements imposed by the interim provisions of the Brady law. However, no such exemption appears in § 922(t). Thus, the proposed regulations would apply the permanent provisions of the Brady law to pawn transactions.

Firearms Transaction Record (Form 4473)

In general, the regulations provide that prior to the transfer of a firearm to a prospective purchaser, the buyer must complete, sign, and date a firearms transaction record, Form 4473. The form requests certain information, including the transferee's name, sex, height, weight, race, residence address, date of birth, and place of birth. ATF is proposing to amend the regulations to solicit additional optional information about the purchaser, such as the

transferee's social security number and alien registration number (if applicable), to facilitate the transfer of a firearm.

ATF believes this additional information will help minimize the misidentification of firearms purchasers as felons or other prohibited persons whose receipt and possession would violate the law. For example, by providing a social security number, the transferee might avoid confusion with a prohibited buyer who has the same name and date of birth as the transferee. This would clearly help expedite the transfer. ATF would note that ATF Form 5300.35, Statement of Intent to Obtain a Handgun (Brady form), currently requests the purchaser's social security number and alien registration number as optional information. Because the NICS check will be based upon information from the Form 4473, the proposed regulations would not require firearms purchasers to fill out a separate Brady form.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Regulatory Flexibility Act

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury/Bureau of Alcohol, Tobacco and Firearms (ATF), Office of Information and Regulatory Affairs, Washington, D.C., 20503, with copies to the Chief, Document Services Branch, Room 3450, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of ATF, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced; and

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

The collections of information in this proposed regulation are in §§ 178.102, 178.124(c), 178.125(e), 178.129(b), 178.131, and 178.150. This information is required to implement the provisions of Public Law 103–159, relating to the permanent provisions of the Brady Handgun Violence Prevention Act. The collections of information are required to ensure compliance with the law. The likely respondents and/or recordkeepers are individuals and businesses.

Estimated number of respondents: 10,273,851.

Estimated total annual reporting and/or recordkeeping burden: 199,357 hours.

Estimated average annual burden per respondent and/or recordkeeper: 1.16 minutes.

Section 178.102 requires, with some exceptions, licensees to contact NICS before transferring any firearm to an unlicensed individual. The estimated total annual reporting and/or recordkeeping burden associated with this requirement is 112,978 hours. Section 178.124(c) requires licensees to record on Form 4473 the date the licensee contacts NICS and any identification number provided by NICS. The licensee must also verify the identity of the person acquiring the firearm by examining an identification document presented by the transferee. Form 4473 will include certain optional information about the purchaser, such as the person's social security number and alien registration number. The estimated total annual reporting and/or recordkeeping burden associated with this requirement is 53,549 hours. Section 178.125(e) requires licensees to include in their records of disposition the identification number provided by NICS. The estimated total annual reporting and/or recordkeeping burden associated with this requirement is 18,444 hours. Section 178.129(b) requires licensees to retain a completed Form 4473 for a period of not less than 5 years where the transfer of a firearm is not made. The estimated total annual recordkeeping burden associated with this requirement is 553 hours. Section 178.131 requires licensees to maintain certain records for firearms transactions not subject to a NICS check. The estimated annual recordkeeping burden associated with this requirement is 13,833 hours. Section 178.150 provides for an alternative to NICS in certain geographical locations. Licensees must submit a written application to the Director containing certain information. The same requirement currently applies to the waiting period provision of the Brady law for transfers of handguns. Since this requirement was established in 1994, no licensee has qualified for an exception from the provisions of Brady based on geographical location. As such, ATF does not believe that there is any reporting and/or recordkeeping burden associated with the requirements of § 178.150 with regard to NICS.

Certain collections of information contained in § 178.129(b), previously approved under control numbers 1512–0520, 1512–0006, and 1512–0524, are merely being redesignated as § 178.129(c) in this notice of proposed rulemaking. Similarly, the collections of information in § 178.129(c), (d), and (e), previously approved under control numbers 1512–0129 and 1512–0526, are being redesignated as § 178.129(d), (e), and (f) in the proposed regulation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Public Participation

ATF requests comments on the proposed regulations from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to

determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of this notice and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

Drafting Information: The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Parts 178 and 179

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting and recordkeeping requirements, Research, Seizures and forfeitures, Transportation.

Authority and Issuance

Accordingly, 27 CFR Parts 178 and 179 are amended as follows:

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

1. The authority citation for 27 CFR Part 178 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

2. Section 178.11 is amended by adding a definition for "NICS" to read as follows:

§ 178.11 Meaning of terms.

* * * * *

NICS. The National Instant Criminal Background Check System established by the Attorney General pursuant to 18 U.S.C. 922(t).

* * * * *

3. Section 178.96 is amended by revising the first sentence in paragraph (b), and by revising paragraph (c) to read as follows:

§ 178.96 Out-of-State and mail order sales.

* * * * *

(b) A licensed importer, licensed manufacturer, or licensed dealer may sell a firearm that is not subject to the provisions of § 178.102(a) to a nonlicensee who does not appear in person at the licensee's business premises if the nonlicensee is a resident of the same State in which the licensee's business premises are located, and the nonlicensee furnishes to the licensee the firearms transaction record, Form 4473, required by § 178.124. * * *

(c)(1) A licensed importer, licensed manufacturer, or licensed dealer may sell or deliver a rifle or shotgun, and a licensed collector may sell or deliver a rifle or shotgun that is a curio or relic, to a nonlicensed resident of a State other than the State in which the licensee's place of business is located if—

(i) The purchaser meets with the licensee in person at the licensee's premises to accomplish the transfer, sale, and delivery of the rifle or shotgun;

(ii) The licensed importer, licensed manufacturer, or licensed dealer complies with the provisions of § 178.102;

(iii) The purchaser furnishes to the licensed importer, licensed manufacturer, or licensed dealer the firearms transaction record, Form 4473, required by § 178.124; and

(iv) The sale, delivery, and receipt of the rifle or shotgun fully comply with the legal conditions of sale in both such States.

(2) For purposes of paragraph (c) of this section, any licensed manufacturer, licensed importer, or licensed dealer is presumed, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both such States.

4. Section 178.97 is revised to read as follows:

§ 178.97 Loan or rental of firearms.

(a) A licensee may lend or rent a firearm to any person for temporary use off the premises of the licensee for lawful sporting purposes: *Provided,* That the delivery of the firearm to such person is not prohibited by § 178.99(b) or § 178.99(c), the licensee complies with the requirements of § 178.102, and the licensee records such loan or rental in the records required to be kept by him under Subpart H of this part.

(b) A club, association, or similar organization temporarily furnishing firearms (whether by loan, rental, or otherwise) to participants in a skeet, trap, target, or similar shooting activity for use at the time and place such activity is held does not, unattended by other circumstances, cause such club, association, or similar organization to be engaged in the business of a dealer in firearms or as engaging in firearms transactions. Therefore, the licensing and recordkeeping requirements contained in this part pertaining to firearms transactions would not apply to this temporary furnishing of firearms for use on premises on which such an activity is conducted.

5. Section 178.102 is revised to read as follows:

§ 178.102 Sales or deliveries of firearms on and after November 30, 1998.

(a) *Background check.* Except as provided in paragraph (d) of this section, a licensed importer, licensed manufacturer, or licensed dealer shall not sell, deliver, or transfer a firearm to any other person who is not licensed under this part unless—

(1) Before the completion of the transfer, the licensee has contacted NICS;

(2)(i) NICS informs the licensee that it has no information that receipt of the firearm by the transferee would be in violation of Federal or State law and provides the licensee with a unique identification number; or

(ii) Three business days (meaning days on which State offices are open) have elapsed from the date the licensee contacted NICS and NICS has not notified the licensee that receipt of the firearm by the transferee would be in violation of law; and

(3) The licensee verifies the identity of the transferee by examining the identification document presented in accordance with the provisions of § 178.124(c).

(b) *Unique identification number.* In any transaction for which a licensee receives a unique identification number from NICS, such number shall be recorded on a firearms transaction record, Form 4473, which shall be retained in the records of the licensee in accordance with the provisions of § 178.129. This applies regardless of whether the transaction is approved or denied by NICS, and regardless of whether the firearm is actually transferred.

(c) *Time limitation on NICS checks.* A NICS check conducted in accordance with paragraph (a) of this section may be relied upon by the licensee only for use in a single transaction, and for a period not to exceed 30 calendar days. If the transaction is not completed within the 30-day period, the licensee shall initiate a new NICS check prior to completion of the transfer.

Example 1. A purchaser completes the Form 4473 on December 15, 1998, and a NICS check is initiated by the licensee on that date. The licensee is informed by NICS that the information available to the system does not indicate that receipt of the firearm by the transferee would be in violation of law, and a unique identification number is provided. However, the State imposes a 7-day waiting period on all firearms transactions, and the purchaser does not return to pick up the firearm until January 22, 1999. The licensee must conduct another NICS check before transferring the firearm to the purchaser.

Example 2. A purchaser completes the Form 4473 on January 25, 1999, and arranges

for the purchase of a single firearm. A NICS check is initiated by the licensee on that date. The licensee is informed by NICS that the information available to the system does not indicate that receipt of the firearm by the transferee would be in violation of law, and a unique identification number is provided. The State imposes a 7-day waiting period on all firearms transactions, and the purchaser returns to pick up the firearm on February 15, 1999. Before the licensee completes Section B of the Form 4473, the purchaser decides to purchase an additional firearm. The transfer of these two firearms is considered a single transaction; accordingly, the licensee may add the second firearm to the Form 4473, and transfer that firearm without conducting another NICS check.

Example 3. A purchaser completes a Form 4473 on February 15, 1999. The licensee receives a unique identification number from NICS on that date. Section B of the Form 4473 is completed by the licensee, and the firearm is transferred. On February 20, 1999, the purchaser returns to the licensee's premises and wishes to purchase a second firearm. The purchase of the second firearm is a separate transaction; thus, a new NICS check must be initiated by the licensee.

(d) *Exceptions to NICS check.* The provisions of paragraph (a) of this section shall not apply if—

(1) The transferee has presented to the licensee a permit or license that—

(i) Allows the transferee to possess, acquire, or carry a firearm;

(ii) Was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(iii) The law of the State provides that such a permit or license is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by the transferee would be in violation of Federal, State, or local law: *Provided,* That on and after November 30, 1998, the information available to such official includes the NICS;

(2) The firearm is subject to the provisions of the National Firearms Act and has been approved for transfer under 27 CFR Part 179; or

(3) On application of the licensee, in accordance with the provisions of § 178.150, the Director has certified that compliance with paragraph (a)(1) of this section is impracticable.

(e) The document referred to in paragraph (d)(1) of this section (or a copy thereof) shall be retained or the required information from the document shall be recorded on the firearms transaction record in accordance with the provisions of § 178.131.

6. Section 178.124 is amended by revising paragraph (c), by removing "paragraph (c)(1)(ii)" in paragraphs (d) and (e) and adding in its place "paragraph (c)(3)(iii)", and by revising the first sentence in paragraph (f) to read as follows:

§ 178.124 Firearms transaction record.

* * * * *

(c)(1) Prior to making an over-the-counter transfer of a firearm to a nonlicensee who is a resident of the State in which the licensee's business premises is located, the licensed importer, licensed manufacturer, or licensed dealer so transferring the firearm shall obtain a Form 4473 from the transferee showing the transferee's name, sex, residence address (including county or similar political subdivision), date and place of birth; height, weight and race of the transferee; whether the transferee is a citizen of the United States; the transferee's State of residence; and certification by the transferee that the transferee is not prohibited by the Act from transporting or shipping a firearm in interstate or foreign commerce or receiving a firearm which has been shipped or transported in interstate or foreign commerce or possessing a firearm in or affecting commerce.

(2) In order to facilitate the transfer of a firearm and enable NICS to verify the identity of the person acquiring the firearm, ATF Form 4473 also requests certain optional information. This information includes the transferee's social security number and alien registration number (if applicable). Such information may help avoid the possibility of the transferee being misidentified as a felon or other prohibited person.

(3) The licensee shall identify the firearm to be transferred by listing on the Form 4473 the name of the manufacturer, the name of the importer (if any), the type, model, caliber or gauge, and the serial number of the firearm. After the transferee has executed the Form 4473, but before transferring the firearm described on the Form 4473, the licensee:

(i) Shall comply with the requirements of § 178.102 and record on the form the date on which the licensee contacted the NICS, as well as any response provided by the system, including any identification number provided by the system;

(ii) Shall verify the identity of the transferee by examining the identification document (as defined in § 178.11) presented, and shall note on the Form 4473 the type of identification used;

(iii) Shall, in the case of a transferee who is an alien legally in the United States, cause the transferee to present documentation establishing that the transferee is a resident of the State (as defined in § 178.11) in which the licensee's business premises is located, and shall note on the form the documentation used. Examples of acceptable documentation include utility bills or a lease agreement which show that the transferee has resided in the State continuously for at least 90 days prior to the transfer of the firearm; and

(iv) Shall sign and date the form if the licensee does not know or have reasonable cause to believe that the transferee is disqualified by law from receiving the firearm.

* * * * *

(f) Form 4473 shall be submitted, in duplicate, to a licensed importer, licensed manufacturer, or licensed dealer by a transferee who is purchasing or otherwise acquiring a firearm by other than an over-the-counter transaction, who is not subject to the provisions of § 178.102(a), and who is a resident of the State in which the licensee's business premises are located.

* * *

* * * * *

7. Section 178.124a is amended by removing the period at the end of the introductory text of paragraph (e) and adding in its place a colon.

8. Section 178.125(e) is amended by revising the text following the eighth sentence to read as follows:

§ 178.125 Record of receipt and disposition.

* * * * *

(e) *Firearms receipt and disposition by dealers.* * * * The record shall show the date of the sale or other disposition of each firearm, the name and address of the person to whom the firearm is transferred, or the name and license number of the person to whom transferred if such person is a licensee, or the firearms transaction record, Form 4473, serial number if the licensed dealer transferring the firearm serially numbers the Forms 4473 and files them numerically, and the identification number (if any) provided by the NICS. The format required for the record of receipt and disposition of firearms is as follows:

FIREARMS ACQUISITION AND DISPOSITION RECORD

Description of firearm					Receipt		Disposition			
Manufacturer and/or Importer	Model	Serial No.	Type	Caliber or gauge	Date	Name and address or name and license No.	Date	Name	Address or license No. if licensee, or Form 4473 Serial No. if forms 4473 filed numerically	Identification No. provided by NICS (if any)

* * * * *

9. Section 178.129 is amended by revising paragraph (b), by redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), by adding new paragraph (c), and by revising the parenthetical text at the end of the section to read as follows:

§ 178.129 Record retention.

* * * * *

(b) *Firearms transaction record.* Licensees shall retain each Form 4473 and Form 4473(LV) for a period of not less than 20 years after the date of sale or disposition. Where a licensee has received a transaction number from NICS for a proposed firearms transaction, but the sale, delivery, or transfer of the firearm is not made, the licensee shall record the transaction number on the Form 4473, and retain the Form 4473 for a period of not less than 5 years after the date of the NICS inquiry. Forms 4473 shall be retained in the licensee's records as provided in § 178.124(b): *Provided,* That Forms 4473 with respect to which a sale, delivery or transfer did not take place shall be separately retained in alphabetical (by name of transferee) or chronological (by date of transferee's certification) order.

(c) *Statement of intent to obtain a handgun, reports of multiple sales or other disposition of pistols and revolvers, and reports of theft or loss of firearms.* Licensees shall retain each Form 5300.35 (Statement of Intent to Obtain a Handgun(s)) for a period of not less than 5 years after notice of the intent to obtain the handgun was forwarded to the chief law enforcement officer, as defined in § 178.150(c). Licensees shall retain each copy of Form 3310.4 (Report of Multiple Sale or Other Disposition of Pistols and Revolvers) for a period of not less than 5 years after the date of sale or other disposition. Licensees shall retain each copy of Form 3310.11 (Federal Firearms Licensee Theft/Loss Report) for a period of not less than 5 years after the date the theft or loss was reported to ATF.

* * * * *

(Paragraph (c) approved by the Office of Management and Budget under control numbers 1512–0520, 1512–0006, and 1512–0524; Paragraph (f) approved by the Office of Management and Budget under control number 1512–0526; all other recordkeeping approved by the Office of Management and Budget under control number 1512–0129)

§ 178.130 [Removed]

10. Section 178.130 is removed.

11. Section 178.131 is revised to read as follows:

§ 178.131 Firearms transactions not subject to a NICS check.

(a)(1) A licensed importer, licensed manufacturer, or licensed dealer whose sale, delivery, or transfer of a firearm is made pursuant to the alternative provisions of § 178.102(d) and is not subject to the NICS check prescribed by § 178.102(a) shall maintain the records required by paragraph (a) of this section.

(2) If the transfer is pursuant to a permit or license in accordance with § 178.102(d)(1), the licensee shall either retain a copy of the purchaser's permit or license and attach it to the firearms transaction record, Form 4473, or record on the firearms transaction record, Form 4473, any identifying number, the date of issuance, and the expiration date (if provided) from the permit or license.

(3) If the transfer is pursuant to a certification by ATF in accordance with §§ 178.102(d)(3) and 178.150, the licensee shall maintain the certification as part of the records required to be kept under this subpart and for the period prescribed for the retention of Form 5300.35 in § 178.129(c).

(b) The requirements of this section shall be in addition to any other recordkeeping requirements contained in this part.

12. Section 178.150 is revised to read as follows:

§ 178.150 Alternative to NICS in certain geographical locations.

(a) The provisions of § 178.102(d)(3) shall be applicable when the Director has certified that compliance with the provisions of § 178.102(a)(1) is impracticable because:

(1) The ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(2) The business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

(3) There is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(b) A licensee who desires to obtain a certification under this section shall submit a written request to the Director. Each request shall be executed under the penalties of perjury and contain information sufficient for the Director to make such certification. Such information shall include statistical data, official reports, or other statements of government agencies pertaining to the ratio of law enforcement officers to the number of square miles of land area of a State and statements of government agencies and private utility companies regarding the absence of telecommunications facilities in the geographical area in which the licensee's business premises are located.

(c) For purposes of this section and § 178.129(c), the "chief law enforcement officer" means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

PART 179—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

13. The authority citation for 27 CFR Part 179 continues to read as follows:

Authority: 26 U.S.C. 7805.

14. Section 179.86 is amended by adding a sentence at the end of the section to read as follows:

§ 179.86 Action on application.

* * * In addition to any other records checks that may be conducted to determine whether the transfer, receipt, or possession of a firearm would place the transferee in violation of law, the Director shall contact the National

Instant Criminal Background Check System.

Signed: December 31, 1997.

John W. Magaw,

Director.

Approved: January 16, 1998.

John P. Simpson,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 98–4215 Filed 2–18–98; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL–5967–8]

Control of Air Pollution From Motor Vehicles and New Motor Vehicle Engines; Modification of Federal On-Board Diagnostic Regulations for Light-Duty Vehicles and Light-Duty Trucks; Notice of Document Availability

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; document availability.

SUMMARY: On May 28, 1997, the U.S. Environmental Protection Agency (EPA or Agency) published a Notice of Proposed Rulemaking (see 62 FR 28932) proposing changes to the federal on-board diagnostics program. One of the proposed changes to the federal OBD program was to indefinitely allow manufacturers to comply with EPA's regulations by demonstrating compliance with the exception of the CARB OBDII anti-tampering provisions and certain evaporative emission monitoring requirements. In that NPRM, the Agency also proposed to update the version of the California OBDII regulations which with manufacturers must comply to a more recently revised version. The NPRM noted that the current version of CARB's regulations were contained in Mail-Out #96–34. However, CARB Mail-Out #96–34 was intended primarily for public comment purposes. In the May 28, 1997 NPRM, the Agency went on to state that, after CARB finalized their regulatory revisions being developed via Mail-Out #96–34, the Agency would, in its final rule, allow compliance with that revised final version provided that relevant portions of that version were acceptable for federal OBD compliance demonstration. The Agency received comments during the public comment period following publication of the NPRM that this approach of incorporating CARB OBDII regulations would not allow EPA enough time to analyze the final revised version of the CARB OBDII changes for appropriateness and applicability to the federal OBD program. The Agency is in the process of developing the final rulemaking. CARB recently finalized its OBDII changes in CARB Mail-Out #97–24. The Agency has analyzed CARB Mail-Out #97–24 and has determined that it is appropriate for federal OBD compliance and its use for federal OBD presents no regulatory process concerns. This analysis, as well as CARB Mail-Out #97–24 is available in EPA Air Docket A–96–32 (see **ADDRESSES**).

DATES: The Docket will remain open until March 23, 1998 for any parties wishing to submit comment on CARB Mail-Out #97–24.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–96–32. The docket is located at The Air Docket, 401 M. Street, SW., Washington, DC 20460, and may be viewed in room M1500 between 8:00 a.m. and 5:30 p.m., Monday through Friday. The telephone number is (202) 260–7548 and the facsimile number is (202) 260–4400. A reasonable fee may be charged by EPA for copying docket material.

Comments must be submitted to Holly Pugliese, Vehicle Programs and Compliance Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, or Internet e-mail at "pugliese.holly@epamail.epa.gov."

FOR FURTHER INFORMATION CONTACT: Holly Pugliese, Telephone 313–668–4288.

Dated: February 9, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–4010 Filed 2–18–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 444

[FRL–5968–5]

RIN 2040–AD03

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Industrial Waste Combustor Subcategory of the Waste Combustors Point Source Category; Correction, Announcement of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction, Announcement of Meeting.

SUMMARY: In proposed rule 63 FR 6391, in the **Federal Register** issue of February 6, 1998, make the following correction for the date of the workshop and public hearing. EPA will conduct a workshop and public hearing on the pretreatment standards of the rule on April 1, 1998, from 9:00 a.m. to 10:30 a.m.

The Office of Science and Technology within EPA's Office of Water is announcing the workshop and public hearing to elicit comments on the proposed pretreatment standards for the Industrial Waste Combustor Subcategory of the Waste Combustors Point Source Category (63 FR 6391, February 6, 1998). The meeting will be held in Washington, D.C. on April 1, 1998 at the EPA Headquarters Auditorium. Persons wishing to present formal comments at the public hearing should have a written copy for submittal. All testimony presented or submitted in writing to the designated EPA representative at the public hearing will be considered formal comments on the proposal. In addition, written comments regarding the Industrial Waste Combustors proposal will be accepted until May 7, 1998. Both formal comments from the public hearing and written comments received by EPA will be addressed in the Agency's response to comments and will be part of the public docket for the final rule.

DATES: EPA will conduct a workshop and public hearing for the Industrial Waste Combustors Subcategory of the Waste Combustors Point Source Category on April 1, 1998. The Industrial Waste Combustors meeting will be held from 9:00 a.m. to 10:30 a.m.

ADDRESSES: The Industrial Waste Combustors meeting will be held in the EPA Headquarters Auditorium, Waterside Mall, 401 M St. SW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice can be directed to Samantha Hopkins at (202) 260–7149 or by facsimile at (202) 260–7185.

SUPPLEMENTARY INFORMATION: The workshop will provide a brief overview of the proposed rule including the scope of the proposed regulations, the technology basis for developing the limitations, and a discussion of the costs and environmental benefits of the rules. The public hearing will provide those attending with the opportunity to comment on the proposed pretreatment standards. The Agency will continue to accept written comments until May 7, 1998. To review the proposed rules and for more information on the submission of comments please refer to the February 6, 1998 **Federal Register**.

Dated: February 11, 1998.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 98–4182 Filed 2–18–98; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 445

[FRL–5968–6]

RIN 2040–AC23

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Landfills Point Source Category; Correction, Announcement of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction, Announcement of Meeting.

SUMMARY: In proposed rule 63 FR 6425 in the **Federal Register** issue of February 6, 1998, make the following correction for the date of the workshop and public hearing. EPA will conduct a workshop and public hearing on the pretreatment standards of the rule on April 1, 1998, from 10:30 a.m. to 12:30 p.m.

The Office of Science and Technology within EPA's Office of Water is announcing the workshop and public hearing to elicit comments on the proposed pretreatment standards for the Landfills Point Source Category (63 FR 6425, February 6, 1998). The meeting will be held in Washington, D.C. on April 1, 1998 at the EPA Headquarters Auditorium. Persons wishing to present formal comments at the public hearing should have a written copy for submittal. All testimony presented or submitted in writing to the designated EPA representative at the public hearing will be considered formal comments on the proposal. In addition, written comments regarding the Landfills proposal will be accepted until May 7, 1998. Both formal comments from the public hearing and written comments received by EPA will be addressed in the Agency's response to comments and will be part of the public docket for the final rule.

DATES: EPA will conduct a workshop and public hearing for the Landfills Point Source Category on April 1, 1998. The Landfills meeting will be held from 10:30 a.m. to 12:30 p.m.

ADDRESSES: The Landfills meeting will be held in the EPA Headquarters Auditorium, Waterside Mall, 401 M St. SW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice can be directed to Mr. Michael Ebner at (202) 260–5397 or by facsimile at (202) 260–7185.

SUPPLEMENTARY INFORMATION: The workshop will provide a brief overview of the proposed rule including the scope of the proposed regulations, the technology basis for developing the limitations, and a discussion of the economic and environmental impacts projected as a result of the proposed rule. The public hearing will provide those attending with the opportunity to comment on the proposed pretreatment standards. The Agency will continue to accept written comments until May 7, 1998. To review the proposed rule and for more information on the submission of comments please refer to the February 6, 1998 **Federal Register**.

Dated: February 11, 1998.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 98–4181 Filed 2–18–98; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1644

Disclosure of Case Information

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule is a new rule intended to implement a provision in the Legal Services Corporation's (LSC or Corporation) FY 1998 appropriations act which requires basic field recipients to disclose certain information to the public and to the Corporation regarding cases their attorneys file in court. The case information that is provided to the Corporation will be subject to disclosure under the Freedom of Information Act.

DATES: Comments should be received on or before March 23, 1998.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St. NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, (202–336–8817.

SUPPLEMENTARY INFORMATION: This proposed new rule is intended to implement Section 505 of the Corporation's FY 1998 appropriations act, which requires basic field recipients to disclose certain information to the public and to the Corporation regarding cases filed in court by any attorney employed by a recipient. See Public Law 105–119, 111 Stat. 2440. The Corporation issued a program letter on December 9, 1997, providing recipients with guidance on compliance with Section 505 until such time as a rule could be promulgated by the Corporation. On February 6, 1998, the Corporation's Operations and Regulations Committee (Committee) of the Corporation's Board of Directors (Board) met to consider a draft proposed rule to implement the case disclosure requirement. After making some changes to the draft rule, the Committee adopted this proposed rule for publication for public comment. A section-by-section analysis follows.

Section-by-Section Analysis

Section 1644.1 Purpose

The purpose section states that the rule is intended to ensure that recipients disclose to the public and to the Corporation information required by the case disclosure requirement on cases filed in court by their attorneys.

Section 1644.2 Definitions

The case disclosure provision requires that recipients disclose certain information, including the cause of action, for each case filed in court by a recipient attorney. To clarify this requirement, this proposed rule includes three definitions.

First, paragraph (a) of § 1644.2 defines to disclose the cause of action. To disclose the cause of action means to provide a sufficient description of a particular case to indicate the principal nature of the case. Examples would include: "breach of warranty," "bankruptcy," "divorce," "domestic violence," "petition to quiet title," "action to recover property," and "employment discrimination action."

Paragraph (b) clarifies the type of recipient subject to the case disclosure requirement. Recipient is defined as a grantee which receives funds under Section 1006(a)(1)(A) of the LSC Act, 42 U.S.C. 2996e(a)(1)(A), that is, a basic field recipient which provides direct legal assistance to the poor. Section 505 does not specifically apply to subrecipients. However, as a matter of policy, this proposed rule extends the case disclosure requirement of Section 505 to subrecipients that provide direct legal representation to eligible clients.

Paragraph (c) clarifies that the term attorney, as used in this part, means any attorney who is employed by a recipient. This would include attorneys employed as regular or contract employees, regardless of whether such attorneys are employed full-time or part-time. This definition is not intended to mean that cases filed by part-time attorneys outside of their employment with the recipient are subject to this rule's case disclosure requirement. They are not. However, all cases filed by a recipient's part-time attorneys under their employment with the recipient must be reported.

Finally, the definition of attorney does not include private attorneys providing legal assistance under a recipient's private attorney involvement (PAI) program, because such attorneys are not employed by a recipient. Another section in this rule expressly provides that the case disclosure requirement does not apply to cases filed under a recipient's PAI program.

Section 1644.3 Case Disclosure Requirement

This section sets out the basic requirements of the case disclosure provision. Paragraph (a) lists the information a recipient must disclose about applicable cases. First, the name and full address of each party to a case must be disclosed unless one of two statutory protections apply. The term "full address" means an address sufficient to contact a party to the case, such as a street address or post office box number with the city, state and zip code.

This provision is not intended to require recipients to provide a name and address of a party when they have no knowledge of and no access to such information. This could occur, for example, when the information is not a matter of public record, the party is not a client of the recipient, and the private attorney for that party refuses to provide the information. However, the recipient must be able to document its inability to provide the information and satisfy the Corporation that a reasonable effort was made to obtain the information.

A name or address need not be disclosed if (1) The name or address is protected by an order or rule of court or by State or Federal law, or (2) the recipient's attorney reasonably believes that revealing the information would put the client of the recipient at risk of physical harm. These protections are consistent with the express legislative intent of the purpose and scope of the requirement. The legislative history indicates that Congress intends that the disclosure requirement apply to "the most basic information" about a case which is already public and on file in court records, but does not apply to information, for example, that would risk harm to a person or that is protected by the attorney-client privilege. See 143 Cong. Rec. H 8004–8008 (Sept. 26, 1997).

The case disclosure requirement also requires disclosure of the cause of action for any applicable case. This requirement is intended to provide the public and the Corporation with information regarding the nature or types of cases filed in court by legal services attorneys, so that there is a public awareness of how legal services funds are being expended.

Finally, the case disclosure provision requires disclosure of the name and full address of the court where a case is filed and the case number assigned to the case. "Full address" means an address sufficient to contact the court.

Paragraph (b) of this section requires recipients to provide their case information to the Corporation in semiannual reports, as specified by the Corporation. The Corporation will provide guidance to recipients on how and when to provide the information. This paragraph also clarifies that reports submitted to the Corporation are subject to disclosure under the Freedom of Information Act.

Paragraph (c) provides that a recipient must make the case information described in paragraph (a) available in written form to any person who requests such information. This rule does not mandate how recipients must maintain the case information for disclosure to the public, except that it must be provided in written form. Recipients may choose to maintain an up-to-date central file containing the case information for each case filed after January 1, 1998. Alternatively, recipients may choose to compile such information centrally only at the time of receipt of a public request or in preparation of the semiannual report to the Corporation. In either event, the case information must be made available within a reasonable time after a request is made by any member of the public. Recipients may charge reasonable mailing and document copying fees.

Section 1644.4 Applicability

This section clarifies the scope of the case disclosure requirement. First, it states that only actions filed on behalf of plaintiffs and petitioners must be disclosed. This is consistent with the language of Section 505, which requires case information about "each case filed by its [a recipient's] attorneys." This language clearly applies to "each case" filed, not to individual filings in a particular case. Thus, the case disclosure requirement does not require updates on the status of cases for which information has already been filed. In addition, the language of Section 505 refers to cases filed by a recipient attorney. The general understanding of the meaning of filing a case is that it refers to the initiation of a case, such as the filing of a complaint by a plaintiff. Accordingly, submissions of pleadings such as an answer or a cross claim on behalf of a defendant in a case that was not initiated by a recipient are not covered by the case disclosure requirement.

Although the case disclosure requirement normally applies only to the original filing of a case, subparagraph (a)(2) of this section applies the requirement when there is an appeal filed in court by a recipient and the recipient was not the attorney of record in the case below. Likewise, subparagraph (a)(3) applies the requirement to any judicial appeal of an administrative action when the appeal is first filed in court.

Finally, paragraph (b) clarifies that this rule does not apply to private attorney involvement (PAI) programs under 45 CFR Part 1614. PAI attorneys are not attorneys employed by recipients; rather, they are generally private attorneys with their own private practices who have been recruited by recipients to provide some pro bono or reduced fee legal assistance to eligible clients. Besides, it has long been the policy of the Corporation not to place discretionary burdens on PAI programs that would greatly hamper the recruitment of PAI attorneys.

Section 1644.5 Recipient Policies and Procedures

This section requires the recipient to establish written policies and procedures to guide the recipient's staff to ensure compliance with this rule. Such procedures could include information regarding how any person may be given access to or be provided

with copies of a recipient's case disclosure information. The procedures could also set out the costs for copying or mailing such information.

List of Subjects in 45 CFR Part 1644

Grant programs, Legal services, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, LSC proposes to amend Chapter XVI of Title 45 by adding part 1644 as follows:

PART 1644—DISCLOSURE OF CASE INFORMATION

Sec.
1644.1 Purpose.
1644.2 Definitions.
1644.3 Case disclosure requirement.
1644.4 Applicability.
1644.5 Recipient policies and procedures.

Authority: Pub. L. 105–119, 111 Stat. 2440, Sec. 505; Pub. L. 104–134, 110 Stat. 1321; 42 U.S.C. 2996g(a).

§ 1644.1 Purpose.

The purpose of this rule is to ensure that recipients disclose to the public and to the Corporation certain information on cases filed in court by their attorneys.

§ 1644.2 Definitions.

For the purposes of this part:

(a) *To disclose the cause of action* means to provide a sufficient description of the case to indicate the type or principal nature of the case.

(b) *Recipient* means any grantee or contractor receiving funds from the Corporation under section 1006(a)(1) of the Act and includes any subrecipient which receives LSC funds from a recipient for direct representation of eligible clients.

(c) *Attorney* means any attorney employed by the recipient, as a regular or contract employee, and regardless of whether the attorney is employed full-time or part time.

§ 1644.3 Case disclosure requirement.

(a) For each case filed in court by its attorneys after January 1, 1998, a recipient shall disclose, in accordance with the requirements of this part, the following information:

(1) The name and full address of each party to a case, unless:

(A) the information is protected by an order or rule of court or by State or Federal law; or

(B) the recipient's attorney reasonably believes that revealing such information would put the client of the recipient at risk of physical harm;

(2) The cause of action;

(3) The name and full address of the court where the case is filed; and

(4) The case number assigned to the case by the court.

(b) Recipients shall provide the information required in paragraph (a) of this section to the Corporation in semiannual reports in the manner specified by the Corporation. Recipients may file such reports on behalf of their subrecipients for cases filed by subrecipients covered by this part. Such reports will be made available to the public by the Corporation upon request pursuant to the Freedom of Information Act, 5 U.S.C. 552.

(c) Upon request, a recipient shall make the information required in paragraph (a) of this section available in written form to any person. Recipients may charge reasonable mailing and document copying fees.

§ 1644.4 Applicability.

(a) The case disclosure requirements of this part apply:

(1) Only to actions filed on behalf of plaintiffs or petitioners;

(2) Only to the original filing of a case, except for appeals filed in appellate courts by a recipient if the recipient was not the attorney of record in the case below; or

(3) To judicial appeals of administrative actions when such appeals are first filed in court.

(b) This part does not apply to cases filed by private attorneys as part of a recipient's private attorney involvement activities pursuant to part 1614 of this chapter.

§ 1644.5 Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to implement the requirements of this part.

Dated: February 13, 1998.

Suzanne B. Glasow,

Senior Assistant General Counsel.

[FR Doc. 98–4157 Filed 2–18–98; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 980112009–8009–01; I.D. 110697B]

RIN 0648–AK36

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Recordkeeping and Reporting Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing revisions to several sections of regulations that pertain to permits, recordkeeping and reporting requirements for fisheries of the Exclusive Economic Zone (EEZ) off Alaska. The changes made by this rule are necessary to clarify and simplify existing text, facilitate management of the fisheries, promote compliance with regulations, and facilitate enforcement efforts. This action is intended to further the goals and objectives of the fishery management plans (FMPs) for the fisheries of the EEZ off Alaska.

DATES: Comments must be received by March 6, 1998.

ADDRESSES: Comments must be sent to Assistant Administrator, Sustainable Fisheries Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to Federal Building, Fourth Floor, 709 West 9th Street, Juneau, AK, and marked Attn: Lori Gravel. Send comments on collection-of-information requirements to the above address and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the groundfish fisheries in the EEZ off Alaska under authority of the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA) and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI) Area. These FMPs are implemented by regulations at 50 CFR part 679. General regulations that also pertain to these fisheries appear in subpart H to 50 CFR part 600. The FMPs were prepared by the North Pacific Fishery Management Council under the authority of the Magnuson-Stevens Fishery Conservation and Management Act.

NMFS is proposing revisions to several sections of the implementing regulations for these FMPs that pertain to permits, recordkeeping, and reporting. The proposed changes would clarify existing regulatory text, facilitate management of the fisheries, promote compliance with regulations, and facilitate enforcement efforts.

Definitions

Revisions. The following revisions to definitions in § 679.2 are proposed:

Manager. The current definition of "manager" includes reference to a buying station; however, only land-based buying stations have a manager. The proposed revision corrects the definition to refer specifically to land-based buying stations.

Reporting area. The term "reporting area" in past years included reference to Alaska State waters. In that context a reporting area consisted of an EEZ portion and a State portion. NMFS then expanded the term "reporting area" to include areas like the Donut Hole that did not contain either EEZ or State waters. Also, a reporting area could consist entirely of State waters. The proposed revision amends the definition of "reporting area" to include all three possible meanings.

Transfer. A revision of the definition of "transfer" is proposed to clarify that a transfer occurs after initial delivery from a catcher vessel.

Additions. The following additions to the definitions in § 679.2 are proposed:

Ancillary product. The term "ancillary product" is used extensively in § 679.5 and is defined at § 679.20(g)(2)(iii). To clarify the regulations, the text defining "ancillary product" would be removed from § 679.20 and inserted into the definitions section at § 679.2.

Groundfish product or fish product. The term "groundfish product or fish product" would be added to § 679.2 and would be defined to mean any product for which a code is listed in Table 1 to part 679, and for any species for which a code is listed in Table 2 to part 679, except the prohibited species codes in Table 2 to part 679.

Individual Fishing Quota (IFQ) Regulatory Areas, sablefish. The terms "Central Gulf or GOA Central Regulatory Area," "Eastern Gulf or GOA Eastern Regulatory Area," and "Western Gulf or GOA Regulatory Area" would be added to § 679.2 because they are used in the regulatory text at various locations.

Cross References

NMFS proposes to add the following cross references:

To § 679.2, the terms "catch," "discard," and "retain on board" at § 600.10 and § 679.27.

To § 679.4, the terms "Experimental fisheries permits" and "Salmon donation program permits" at § 679.6 and § 679.26(a)(3), respectively.

To § 679.2, the terms "other flatfish," "shallow water flatfish," "deep water flatfish," "other rockfish," and "other red rockfish" at § 679.20(c).

To § 679.5(c)(3)(iv), the topic regarding submittal of a blue Daily Fishing Logbook (DFL) logsheet at § 679.5(a)(10)(ii)(B).

To § 679.25, the topic regarding inseason adjustments at § 679.20(d)(1)(ii)(A).

To § 679.21(b), the topic regarding sablefish at § 679.23(g)(3).

NMFS proposes to revise the following cross references:

Revise § 679.20 to § 679.20(d), regarding closures at § 679.22(a)(7)(ii), § 679.22(a)(8)(ii), and § 679.22(b)(2)(ii).

Figures

Gear test areas. NMFS proposes to correct the gear test areas shown in Figure 7 to part 679.

Chinook salmon savings areas. NMFS proposes to remove the coordinates of the chinook salmon savings area from regulatory text at § 679.21(e)(7)(vii)(B), present the coordinates in a new Figure 8 to part 679, and place a cross reference in this paragraph to Figure 8 to part 679.

Chum salmon savings areas. NMFS proposes to remove the coordinates of the chum salmon savings area from regulatory text at § 679.21(e)(7)(vi)(B), present the coordinates in a new Figure 9 to part 679, and place a cross reference in this paragraph to Figure 9 to part 679.

Pribilof Islands Area Habitat Conservation Zone. NMFS proposes to remove the coordinates of the Pribilof Islands Area Habitat Conservation Zone from regulatory text at § 679.22(a)(6), present the coordinates in a new Figure 10 to part 679, and place a cross reference in this paragraph to Figure 10 to part 679.

Red King Crab Savings Area (RKCSA). NMFS proposes to remove the coordinates of the RKCSA from regulatory text at § 679.22(a)(3), present the coordinates in a new Figure 11 to part 679, and place a cross reference in this paragraph to Figure 11 to part 679.

Nearshore Bristol Bay trawl closure area. NMFS proposes to remove the coordinates of the Nearshore Bristol Bay trawl closure area from regulatory text at § 679.22(a)(9), present the coordinates in a new Figure 12 to part 679, and place a cross reference in this paragraph to Figure 12 to part 679.

C. opilio Crab Bycatch Limitation Zone (COBLZ). NMFS proposes to remove the coordinates of the COBLZ from regulatory text at § 679.21(e)(7)(iv)(B), to present the coordinates in a new Figure 13 to part 679, and to place a cross reference in this paragraph to Figure 13 to part 679.

Scallop registration areas. NMFS proposes to remove the coordinates of the scallop registration areas and districts from regulatory text at § 679.61 (a) through (i), present the coordinates in a new Figure 14 to part 679, and place a cross reference in this paragraph to Figure 14 to part 679.

Sablefish regulatory areas. NMFS proposes to add a new Figure 15 to part 679 to describe the sablefish IFQ regulatory areas referenced at § 679.41(e).

Pacific halibut regulatory areas. NMFS proposes to add a new Figure 16 to part 679 to describe the IFQ regulatory areas for the Pacific halibut fishery that are referenced at § 679.2 and § 679.41(e).

Tables

NMFS proposes to amend Table 1 to part 679 by revising the title of discard code M99 to read, "Discard, off-site meal."

NMFS proposes to amend Table 2 to part 679 to accommodate the Council's recommendation for BSAI and GOA FMP amendments to add new species categories of forage fish.

NMFS proposes to amend Table 3 to part 679 by:

a. Revising the title to read: Table 3—Product Recovery Rates (PRR) for Groundfish Species and Conversion Rates for Pacific halibut.

b. Moving the halibut conversion factors presented in regulatory text at § 679.42(c)(2)(iii) to Table 3 to part 679 and placing a cross reference in that paragraph to Table 3 to part 679.

Reformat and Clarify Regulatory Text

NMFS proposes to alter the format of the regulatory text in several places to provide a more logical flow of information, to clarify text, to add paragraph titles where needed, and to correct spelling errors as follows:

Remove from § 679.5(d)(1)(i) the words "subject to this part," as outdated language.

Add § 679.5(a)(3)(iii) to indicate signature is acceptance of responsibility.

Remove the words "if applicable" from § 679.5(a)(5)(ii).

Add Alaska Department of Fish & Game (ADF&G) processor code and Federal fisheries permit number to § 679.5(a)(5)(vii).

Add signature to § 679.5(a)(5)(viii).

Establish a single source of information in regulatory text for participant identification information (§ 679.5(a)(5)), maintenance of records (§ 679.5(a)(6)), active and inactive periods (§ 679.5(a)(7)), and discarded/donated species information (§ 679.5(a)(10)) by removing text that

duplicates that information from § 679.5(a)(10)(ii) through (v), (c)(3), (d)(2), (e)(2), (f)(2), (g)(3), (h)(3), (i)(3), (j)(4), and (k)(2).

Add the words "in the logbook" after "fishing year" in § 679.5(a)(6)(ii).

Revise "date" description under § 679.5(a)(6)(iii)(B) for catcher vessel DFL and shoreside processor daily cumulative production logbook (DCPL).

Revise "page" description under § 679.5(a)(7)(ii).

Remove the words "or catch receipts" in § 679.5(a)(16)(ii).

Present as separate paragraphs the catcher vessel and catcher/processor requirements at § 679.5(c)(2).

Correct the words "vessel registration number" to read "vessel number" in § 679.5(d)(2)(ii)(D), (e)(2)(ii), and (f)(2)(i)(D).

Revise paragraph § 679.5(f)(2)(i)(E) from "nearest 0.001 mt" to read "in pounds or to the nearest mt."

Change time limit submittal requirement at § 679.5(g)(2)(ii) for product transfer reports (PTRs) from "within 24 hr of completion of transfer" to read "by 1200 hours A.l.t. on the Tuesday following the end of the applicable weekly reporting period."

Remove a duplicate but partial list of pollock PRRs from § 679.20(g)(3) and place a cross reference in that paragraph to Table 3 to part 679.

Add paragraph titles to § 679.41(e)(1), (2), and (3).

Remove the requirement to record Federal or Alaska State areas within a reporting area.

Add the requirement to record information regarding COBLZ or RKCSA within a reporting area.

NMFS proposes to revise the requirement for recording haul or set numbers at § 679.5(c)(3)(i) to use consecutive numbers by year to identify each haul or set; each haul or set would be unique within a given year. This proposed change would allow better coordination between industry and observer records by establishing a standard method of accounting for haul and set numbers.

NMFS proposes to remove the requirements to record "balance forward" information in the shoreside processor DCPL landings discard/donation, and production at § 679.5(a)(8), (9), and (10). The shoreside processor DCPL is designed to accommodate 1 week's data on one page; therefore, there is no balance forward from a previous page.

Non-Alaska Fish Tickets

NMFS proposes to clarify the requirements for fish tickets from shoreside processors located in a state other than Alaska at § 679.5(f)(2)(i)(G).

Recordkeeping and Reporting

ADF&G Fish Tickets

Currently, when a mothership receives groundfish from a catcher vessel, the operator of the mothership issues a catch receipt or voluntarily issues an ADF&G fish ticket to the catcher vessel. If a fish ticket is issued, the fish ticket number is reported by the mothership on a weekly production report (WPR). NMFS proposes to add a requirement at § 679.5(m) that would remove the option from motherships to issue a catch receipt to catcher vessels and would require all motherships to weekly aggregate groundfish harvest information on an ADF&G fish ticket by species for each catcher vessel delivering groundfish to the mothership and to submit each fish ticket monthly to ADF&G. This change would provide a more complete record of catcher vessel participation in the groundfish fisheries. Information collected on fish tickets is needed to assess alternative fisheries management programs that may be considered by the Council in the future.

Groundfish as Bait

No Federal or Alaska State mechanism exists for reporting the amounts of groundfish retained as bait by catcher vessels in the crab fishery because the fish are not landed or delivered to a processor. NMFS has determined that the quantities of groundfish involved are relatively small and can be sufficiently estimated for purposes of management of the groundfish resource. NMFS proposes to add § 679.5(a)(1)(iv) to exempt such catcher vessels from groundfish recordkeeping and reporting requirements.

NMFS proposes to revise regulatory text to clarify the recording of aggregated bait sales on a product transfer report (PTR) at § 679.5(g)(1)(iii).

Fishing Trip

NMFS proposes to remove the requirement to record the start date, end date, and trip number of a fishing trip by catcher vessels and catcher/processors at § 679.5(c)(3)(i)(B). NMFS determined that documentation of fishing activity within a trip can be obtained from other logbook data.

Recording Retained Pacific Cod and Rockfish

NMFS proposes to reformat the DFL and catcher/processor DCPL and revise the regulatory text at § 679.5(c)(3). These changes would complement prior revisions in the regulations at § 679.7(f)(8) concerning retention of Pacific cod and rockfish caught incidentally while fishing in an IFQ fishery.

"Required" vs "Issued"

NMFS proposes to clarify the regulatory text at § 679.5(a)(1)(ii) to read "issued a permit" to replace "required to have a permit." This change would clarify that processors that receive groundfish from a vessel that has been issued a Federal fisheries permit are required to comply with all the applicable recordkeeping and reporting requirements for the remainder of the year, regardless of where the fish were caught.

Reprocessed Product

NMFS proposes to add the words, "PTR TRANSFER," as an option under the category "gear type" in the regulatory text at § 679.5(a)(7)(v)(A) and on the DFL, mothership and shoreside processor DCPL, daily cumulative logbook (DCL), WPR, and PTR to document the removal (or receipt) of groundfish for reprocessing. Each processor records fish products in the DCPL and reports these products to NMFS on a WPR. Through the use of this new option, when groundfish are shipped from one processor to another processor for reprocessing, the product would be identified as reprocessed and would ensure that the groundfish quantity is not deducted from the quota twice.

Gear Type

NMFS proposes to add the word, "OTHER," as an option under the category "gear type" in the regulatory text at § 679.5(a)(7)(v)(A) and on the DFL, DCL, DCPL, WPR to indicate groundfish product received from catcher vessels using gear other than federally authorized gear types in Alaska State waters. This situation occurs when a vessel is fishing in a non-groundfish fishery with a gear other than the authorized gear defined at § 679.2 and that vessel retains the groundfish.

Active Status

NMFS proposes to describe "active status" in the regulations at § 679.5(a)(7)(vi) through (ix) and the logbooks in consistent terms. In the DFL and catcher/processor DCPL, the wording for active/inactive status is "Active, Not Fishing"; in the regulations, the wording "No Fishing Activity" would be changed to read "Active, Not Fishing." When referring to a mothership or shoreside processor, the regulatory text would be changed to read "No Receiving or processing activity." When referring to a buying

station, the regulatory text would be changed to read "No receiving or delivery activity."

Summarize by Weekly Reporting Period

NMFS proposes to reinsert language in regulatory text at § 679.5(a)(8)(ii)(D) and (a)(9) (iii) and (iv) requiring that all landings, discards, and production records be summarized at the end of the weekly reporting period. Through previous consolidation of regulations, some of this language was lost.

Discards or Donations

NMFS proposes to change the regulatory text from "discards and donations" to read "discards or donations" wherever it appears.

Procedure for Recording Discards or Donations

In § 679.5(a), the text regarding discards or donations is duplicated several times. To remove this duplication, NMFS proposes to describe the procedure to record discards or donations at § 679.5(a)(10)(i)(C), remove the duplicate text from § 679.5(a)(10)(ii)(A), (iii)(A), (iv)(B) and (C), and (v)(B), and place a cross reference in those paragraphs to § 679.5(a)(10)(i)(C).

Discard, Off-Site Meal

NMFS proposes to clarify regulatory text concerning an off-site transfer of discard at § 679.5(g)(1)(ii) and to identify such a transfer as discard code M99 in Table 1 to Part 679.

Logsheet Maintenance and Storage

NMFS proposes to revise the submittal instructions in the regulations, logbooks, and instructions in response to the move of NMFS logbook file storage from the Observer Program in Seattle, WA, to NOAA Enforcement Division in Juneau, AK.

Delivery Information

NMFS proposes to revise paragraph headings at § 679.5(d)(2)(ii), (e)(2), and (f)(2)(i) to read "delivery information" for consistency with the logsheet text.

Time Limits

NMFS proposes to change the regulatory text regarding recordkeeping and reporting time limits. The proposed changes would clarify existing text and add specific reference to recording of discard or donation information in the DFL, DCL, and DCPL at § 679.5(d)(1) (i) and (ii), (e)(1) (i) and (ii), and (f)(1) (i) and (ii). The proposed changes would not alter the time limits in which the information must be recorded.

NMFS proposes to revise some regulatory text that causes a conflict in recordkeeping and reporting submittal times at § 679.5(c)(2)(i)(B), (c)(2)(ii)(B), (d)(1)(ii), (e)(1)(ii), and (f)(1)(ii).

PTR Fax to Enforcement

NMFS proposes to revise the regulatory text at § 679.5(g)(2)(ii) from "Regional Administrator" to read "NMFS Enforcement" because a PTR would no longer be sent to the Regional Administrator but to NMFS Enforcement at the fax number printed on the PTR.

Shoreside Processor Check-out Report

NMFS proposes to clarify regulatory text at § 679.5(h)(2)(ii)(C) and the shoreside processor check-in/check-out report to allow a shoreside processor the option of submitting a check-out report when receipt or processing of groundfish is temporarily halted during the fishing year for a period greater than 2 weeks.

Shoreside Processor Product Held at Plant

NMFS proposes to clarify regulatory text at § 679.5(h)(3)(iii) to require that all fish product held at a shoreside facility be reported on each check-in/check-out report.

Procedure for Recording Blue Discard DFL

NMFS proposes to clarify the recordkeeping procedure at § 679.5(d)(2)(ii)(B), (e)(2)(vi), and (f)(2)(i)(C) for the operator or manager of a buying station, mothership, or shoreside processor that does not receive a blue discard DFL logsheet with groundfish catch from a catcher vessel. If a blue discard logsheet is not received, currently the operator or manager records "NO" in the RECEIVE DISCARD REPORT column. NMFS proposes to require the operator or manager to also indicate, after the response "NO," either "P" to indicate the catcher vessel does not have a Federal fisheries permit; "L" to indicate the catcher vessel is under 60 ft (18.3 m) length overall (LOA); or "U" to indicate the catcher vessel delivered an unsorted codend. If a catcher vessel is under 60 ft (18.3 m) LOA and also does not have a Federal fisheries permit, the operator or manager would record "P."

Prohibitions

NMFS proposes to add two new prohibitions at § 679.7 that are supported by current regulations: (1) To receive or process groundfish without a Federal processor permit and (2) to exceed a maximum retainable groundfish bycatch amount.

Classification

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). OMB approval for the majority of this information has been obtained under OMB control numbers 0648–0206 and –0213; additions and revisions to the collection have been submitted to OMB for approval of additions and revisions.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

Approved Under 0648–0206—Alaska Permits

No new forms or revisions to forms.

Approved Under 0648–0213—Alaska Region Logbook Family of Forms

Revisions to existing logbooks and forms have the following effects: Estimated time for an operator of a catcher vessel with fixed gear to complete a DFL decreases from 0.38 hour per response to 0.30 hour per response; estimated time for an operator of a catcher vessel with gear other than fixed gear to complete a DFL decreases from 0.37 hour per response to 0.30 hour per response; estimated time for an operator of a catcher/processor with fixed gear to complete a catcher/processor DCPL decreases from 0.58 hour per response to 0.50 hour per response; estimated time for an operator of a catcher/processor with gear other than fixed gear to complete a catcher/processor DCPL decreases from 0.56 hour per response to 0.50 hour per response; estimated time for an operator of a mothership to complete a mothership DCPL decreases from 0.55 hour per response to 0.52 hour per response; estimated time for a manager of a shoreside processor to complete a shoreside processor DCPL decreases from 0.45 hour per response to 0.40 hour per response; estimated time for a manager or operator of a buying station to complete a buying station DCL decreases from 0.42 hour per response to 0.38 hour per response; estimated time for a manager or operator of a processor to complete a WPR decreases from 0.30 hour per response to 0.28 hour per response; estimated time for a manager or operator of a processor to complete a daily production report (DPR) increases from 0.17 hour per response to 0.18 hour per response;

estimated time for a manager or operator of a processor to complete a check-in/check-out report decreases from 0.13 hour per response to 0.12 hour per response for vessel processors and remains constant at 0.13 hour per response for shoreside processors; estimated time for a manager or operator of a buying station to complete a check-in/check-out report decreases from 0.10 hour per response to 0.08 hour per response; estimated time for an operator of a vessel to complete a Vessel Activity Report (VAR) decreases from 0.25 hour per response to 0.23 hour per response; removal of voluntary submittal of an ADF&G Alaska Commercial Operator's Annual Report results in a decrease of 6 hours per response; addition of the requirement for motherships to submit ADF&G fish tickets results in an increase of 0.58 hour per response. The estimated response times shown include the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the function of the agency, including rather the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection, including through the use of automated collection techniques or other forms of information technology.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS and to OIRA, OMB (see **ADDRESSES**).

This action has been determined to be not significant for purposes of E.O. 12866. This determination is based on the information gathered within the Regulatory Impact Review (RIR) prepared for regulatory amendments to recordkeeping and reporting requirements (June 1995) and a finding of non-significance made for the 1994 rulemaking. No substantive recordkeeping or reporting changes are made with this proposed rule.

The Assistant General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows.

Recordkeeping and reporting applies to almost all of the vessels currently participating in Alaska groundfish fisheries. This is a "substantial number" of small entities, as NMFS has interpreted this term to mean 20 percent of the total universe of small entities affected by the regulation. However the proposed action would not impose any additional compliance costs on small entities. It would impose minor changes and in many instances reduce the time needed to complete the recordkeeping and reporting documents. Therefore, this action would not have a "significant impact," as NMFS has interpreted that term to mean: a reduction in annual gross revenues by more than 5 percent, an increase in total costs of production by more than 5 percent, or compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities.

Therefore, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: February 5, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definitions for "C. Opilio Crab Bycatch Limitation Zone (COBLZ)," "Manager," "Reporting area," and "Transfer" are revised; and definitions for "Ancillary product," "Bled codend," "Catch," "Central Gulf or GOA Central Regulatory Area," "Deep water flatfish," "Discard," "Eastern Gulf or GOA Eastern Regulatory Area," "Groundfish product or fish product," "Other flatfish," "Other red rockfish," "Other rockfish," "Retain on board," "Shallow water flatfish," and "Western Gulf or GOA Western Regulatory Area" are added, in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Ancillary product means a product, such as meal, heads, internal organs, pectoral girdles, or any other product that may be made from the same fish as the primary product.

* * * * *

Bled codend means a form of discard by vessels using trawl gear wherein some or all of the fish are emptied into the sea from the net before fish are brought fully on board.

* * * * *

C. Opilio Crab Bycatch Limitation Zone (COBLZ) (see Figure 13 of this part and § 679.21(e)).

Catch (See § 600.10.)

* * * * *

Central Gulf or GOA Central Regulatory Area means that portion of the GOA EEZ that is contained in Statistical Areas 620 and 630 (see Figure 3 of this part).

* * * * *

Deep water flatfish (See annual final specifications published in the **Federal Register** pursuant to § 679.20(c)).

* * * * *

Discard (See § 600.10.)

* * * * *

Eastern Gulf or GOA Eastern Regulatory Area means the Reporting Areas 649 and 659 and that portion of the GOA EEZ that is contained in Statistical Areas 640 and 650 (see Figure 3 of this part).

* * * * *

Groundfish product or fish product means any species product listed in Tables 1 and 2 of this part, excluding the prohibited species listed in Table 2 of this part.

* * * * *

Manager, with respect to any shoreside processor or land-based buying station, means the individual responsible for the operation of the shoreside processor or land-based buying station.

* * * * *

Other flatfish (See annual final specifications published in the **Federal Register** pursuant to § 679.20(c).)

Other red rockfish (See annual final specifications published in the **Federal Register** pursuant to § 679.20(c).)

Other rockfish (See annual final specifications published in the **Federal Register** pursuant to § 679.20(c).)

* * * * *

Reporting area (see Figures 1 and 3 of this part) means: (1) An area that includes a statistical area of the EEZ off Alaska and any adjacent waters of the State of Alaska ; (2) the reporting areas 300, 400, 550, and 690, which do not contain EEZ waters off Alaska or Alaska state waters; or (3) reporting areas 649 and 659, which contain only waters of the State of Alaska.

* * * * *

Retain on board (See §§ 600.10 and 679.27.)

* * * * *

Shallow water flatfish (See annual final specifications published in the

Federal Register pursuant to § 679.20(c).)

* * * * *

Transfer includes any loading, offloading, shipment or receipt of any groundfish product after initial delivery from a catcher vessel, including quantities transferred inside or outside the EEZ, within any state's territorial waters, within the internal waters of any state, at any shoreside processor, or any offsite meal reduction plant.

* * * * *

Western Gulf or GOA Western Regulatory Area means that portion of the GOA EEZ that is contained in Statistical Area 610 (see Figure 3 of this part).

* * * * *

3. In § 679.3, paragraph (b) is revised to read as follows:

§ 679.3 Relation to other laws.

* * * * *

(b) *Domestic fishing for groundfish.* (1) The conservation and management of groundfish in waters of the territorial sea and internal waters of the State of Alaska are governed by the Alaska Administrative Code at 5 AAC Chapter 28 and the Alaska Statutes at Title 16.

(2) Alaska Administrative Code (5 AAC 39.130) governs reporting and permitting requirements using ADF&G "Intent to Operate" and "Fish Tickets."

* * * * *

4. In § 679.4, paragraph (f)(1) is amended by removing the "s" from the word "States" that follows the word "Alaska;" and paragraphs (i) and (j) are added to read as follows:

§ 679.4 Permits.

* * * * *

(i) *Experimental fisheries permits.* (See § 679.6.)

(j) *Salmon donation program permits.* (See § 679.26(a)(3).)

5. Section 679.5 is amended to read as follows by:

(a) Revising paragraph (a)(1) introductory text and the first sentence of paragraph (a)(1)(ii); and by adding paragraph (a)(1)(iv).

(b) Revising paragraph (a)(3).

(c) Revising paragraph (a)(5)(ii) and by adding paragraphs (a)(5) (vii) and (viii).

(d) Revising paragraphs (a)(6)(ii) and (a)(6)(iii)(B); and by adding paragraph (a)(6)(iii)(I).

(e) Adding paragraphs (a)(7)(vii) through (ix); and by revising paragraphs (a)(7)(ii), (a)(7)(v) (A) through (D), (a)(7)(v)(F), and (a)(7)(vi).

(f) Revising paragraphs (a)(8)(i) and (a)(8)(ii)(B); and by removing paragraph (a)(8)(iii).

(g) Revising paragraph (a)(9)(i); redesignating paragraph (a)(9)(iii) as (a)(9)(v) and revising it; and by adding paragraphs (a)(9) (iii) and (iv).

(h) Revising paragraphs (a)(10)(i) introductory text, (a)(10)(i)(A), (a)(10)(ii), (a)(10)(iii)(B), (a)(10)(iv), (a)(10)(v)(A) and by adding paragraphs (a)(10)(i)(C).

(i) Revising paragraph (a)(14)(i)(A).

(j) Revising paragraph (a)(15)(i) heading.

(k) Revising paragraph (a)(16)(ii).

(l) Revising paragraphs (c)(2) (i) and (ii); and by removing paragraphs (c)(2) (iii) through (vi).

(m) Revising paragraph (c)(3); and by adding paragraphs (c)(4) and (c)(5).

(n) Removing paragraphs (d)(2)(i) (A) through (G) and (d)(2)(iii); revising paragraph (d)(1), (d)(2)(i), (d)(2)(ii) heading, (d)(2)(ii) (A), (B), (D), and (E).

(o) Removing paragraphs (e)(2) (i), (iii), and (iv); by redesignating paragraphs (e)(2)(ii) introductory text and (e)(2)(ii)(A) through (e)(2)(ii)(E) as paragraphs (e)(2) introductory text, and (e)(2)(i) through (e)(2)(v), respectively; by revising paragraphs (e)(1), newly redesignated paragraph (e)(2) introductory text; and by adding paragraph (e)(2)(vi).

(p) Removing paragraphs (f)(2) (i), (iii), (iv), and (v), by redesignating paragraphs (f)(2)(ii) introductory text as paragraph (f)(2)(i) introductory text; by revising paragraphs (f)(i) and newly redesignated (f)(2)(i); and by adding paragraphs (f)(2)(i)(G) and (f)(2)(ii).

(q) Revising paragraph (g)(1)(ii), adding a sentence to the end of paragraph (g)(1)(iii), revising paragraph (g)(2)(ii), adding headings to paragraphs (g)(3)(ii) (A), (B), and (C), revising paragraph (g)(3)(ii)(E)(*1*), revising the heading to paragraph (g)(3)(ii)(E)(*2*); and revising paragraphs (g)(3)(ii)(E)(*2*) (*ii*), and (*iii*).

(r) Revising paragraphs (h)(2)(i) (A) and (B), and (h)(2)(ii) (A) through (D); redesignating paragraph (h)(3)(iv) as (h)(3)(iii) and revising it; and adding paragraph (h)(3) introductory text; and revising paragraphs (h)(3)(i) and (h)(3)(ii).

(s) Revising paragraphs (i)(3) (i), (ii) and (v).

(t) Adding paragraph (j)(4) introductory text; by removing paragraph (j)(4)(i); and by redesignating paragraphs (j)(4) (ii) through (iv) as paragraphs (j)(4)(i) through (j)(4)(iii) and revising them.

(u) Adding a new paragraph (m).

§ 679.5 Recordkeeping and reporting.

(a) * * *

(1) * * * Except as provided in paragraphs (a)(1) (iii) and (iv) of this section, the following participants must comply with the recordkeeping and reporting requirements of this section:

* * * * *

(ii) Any shoreside processor, mothership, or buying station that receives groundfish from vessels issued a Federal fisheries permit under § 679.4.

* * *

* * * * *

(iv) *Exemption for groundfish used as crab bait.* (A) Owners or operators of catcher vessels who take groundfish in crab pot gear for use as crab bait on board their vessels while participating in an open season for crab, and the bait is neither transferred nor sold, are exempt from Federal recordkeeping and reporting requirements contained in paragraphs (a) through (j) of this section.

(B) This exemption does not apply to fishermen who:

(*1*) Catch groundfish for bait during an open crab season and sell that groundfish or transfer it to another vessel, or

(*2*) Participate in a directed fishery for groundfish using any gear type during periods that are outside an open crab season for use as crab bait on board their vessel.

(C) No groundfish species listed by NMFS as "prohibited" in a management or regulatory area may be taken in that area for use as bait.

(D) Any fishing with pot gear in the crab fisheries is subject to restrictions under Alaska State regulations.

* * * * *

(3) *Responsibility.* (i) The operator of a catcher vessel, catcher/processor, mothership, or buying station receiving from a catcher vessel and delivering to a mothership (hereafter referred to as the operator) and the manager of a shoreside processor or buying station receiving from a catcher vessel and delivering to a shoreside processor (hereafter referred to as the manager) are each responsible for complying with the applicable recordkeeping and reporting requirements of this section.

(ii) The owner of a vessel, shoreside processor, or buying station must ensure that the operator, manager, or representative (see paragraph (b) of this section) complies with these requirements and is responsible for compliance.

(iii) The signature of the owner, operator, or manager on the DFL, DCL, or DCPL is verification of acceptance of this responsibility.

* * * * *

(5) * * *

(ii) If a catcher vessel, the Federal fisheries permit number and ADF&G vessel number.

* * * * *

(vii) If a mothership or catcher/processor, the ADF&G processor code and Federal fisheries permit number.

(viii) Signature of owner, operator, or manager.

(6) * * *

(ii) The operator or manager must account for each day of the fishing year in the logbook, starting with January 1 and ending with December 31. Time periods must be consecutive in the logbook.

(iii) * * *

(B) *Date,* presented as month-day-year. (*1*) If a catcher vessel, and the logsheet contains more than one day in the "catch" section, enter date of first day recorded on logsheet.

(*2*) If a catcher vessel, enter date of each day in the discard/donate section of the DFL.

(*3*) If a shoreside processor, enter the week-ending date for the page.

(*4*) If a shoreside processor, enter date of each day of the week in the landings and discard/donate sections of the DCPL.

* * * * *

(I) *Processor type.* If a mothership or catcher/processor, enter processor type.

(7) * * *

(ii) (A) If a mothership, catcher/processor, or buying station, use a separate logbook page for each day of an active period.

(B) If a catcher vessel, use a separate logbook page for each day or use one logbook page for up to 7 days.

(C) If a shoreside processor, use a separate logbook page for each day or use one logbook page for up to 7 days.

* * * * *

(v) * * *

(A) The gear type used to harvest the groundfish.

(*1*) If a catcher vessel or catcher/processor and using hook-and-line gear, the average number of hooks per skate.

(*2*) If shipment is received by a mothership or shoreside processor from a different processor through the use of a PTR, circle PTR TRANSFER.

(*3*) If gear type is not an authorized fishing gear, circle OTHER.

(*4*) If groundfish are received by a mothership in the same reporting area from more than one gear type, the operator must use a separate page in the DCPL for each gear type and must submit a separate check-in/check-out report, DPR (if required), and WPR for each gear type.

(*5*) If groundfish are caught by a catcher/processor in the same reporting area using more than one gear type, the operator must use a separate page in the DCPL for each gear type and must submit a separate check-in/check-out report, DPR (if required), and WPR for each gear type.

(B) The reporting area code where gear retrieval was completed.

(*1*) If a catcher vessel or catcher/processor using trawl gear, record whether catch was harvested in the COBLZ or RKCSA. Use a separate page in the DFL or DCPL for the COBLZ or RKCSA area.

(*2*) If a catcher/processor using trawl gear, the operator must submit a separate check-in/check-out report for the COBLZ or RKCSA area.

(C) The number of observers aboard or on site.

(D) Except for a shoreside processor, the number of crew, excluding certified observer(s), on the last day of the reporting week.

* * * * *

(F) If a catcher vessel or buying station, the name and ADF&G processor code of the mothership or shoreside processor to which groundfish deliveries were made.

(vi) If a catcher vessel, in an active period, and not harvesting or discarding groundfish, the operator must record "ACTIVE, NOT FISHING" and briefly describe the reason.

(vii) If a catcher/processor, in an active period, and not harvesting, discarding, or processing groundfish, the operator must record "ACTIVE, NOT FISHING" and briefly describe the reason.

(viii) If a mothership or shoreside processor, in an active period, and not receiving, discarding, or processing groundfish, the operator or manager must record "NO RECEIVING OR PROCESSING ACTIVITY" and briefly describe the reason.

(ix) If a buying station, in an active period, and not receiving, discarding, or delivering groundfish, the operator or manager must record "NO RECEIVING OR DELIVERING ACTIVITY" and briefly describe the reason.

(8) * * *

(i) Record and report groundfish landings by species codes and product codes as defined in Tables 1 and 2 of this part for each reporting area, gear type, and CDQ number. If caught with trawl gear, record whether catch was harvested in the COBLZ or RKCSA.

(ii) * * *

(B) At the end of each weekly reporting period, enter for each species/product code, the cumulative total scale weight of landings for that week.

(9) * * *

(i) Record and report groundfish products by species codes, product codes, and product designations as defined in Tables 1 and 2 of this part for each reporting area, gear type, and CDQ number. If caught with trawl gear, record whether catch was harvested in the COBLZ or RKCSA.

* * * * *

(iii) At the end of each weekly reporting period, the cumulative total weight, calculated by adding the daily totals and total carried forward (except for a Shoreside Processor DCPL) for that week.

(iv) At the beginning of each weekly reporting period, the amount is zero, and nothing shall be carried forward from the previous weekly reporting period.

(v) If no production occurred, record "NO PRODUCTION" for that day.

(10) *Discarded or donated species information*—(i) *General.*

(A) The operator or manager must record and report discards or donations by species codes and discard product codes as defined in Tables 1 and 2 of this part for each gear type, CDQ number, and reporting area. If caught with trawl gear, record whether catch was harvested in the COBLZ or RKCSA.

* * * * *

(C) The operator or manager must record and report discards or donations as follows:

(*1*) The date of discard, estimated daily total, balance brought forward (except for a Shoreside Processor DCPL), and cumulative total estimated round fish weight for each discard or donation of groundfish species, groundfish species groups, and Pacific herring in lb, or to at least the nearest 0.001 mt.

(*2*) The date of discard, estimated daily total, balance brought forward (except for a Shoreside Processor DCPL), and cumulative total estimated numbers for each discard or donation of Pacific salmon, steelhead trout, halibut, king crab, and Tanner crab.

(*3*) At the end of each weekly reporting period, the cumulative total weight, calculated by adding the daily totals and total carried forward (except for a Shoreside Processor DCPL) for that week.

(*4*) At the beginning of each weekly reporting period, the amount is zero, and nothing shall be carried forward from the previous weekly reporting period.

(ii) *Catcher vessel discards or donations.* (A) The operator must record in the DFL discards or donations as described in paragraph (a)(10)(i) of this section.

(B) If deliveries to a mothership or shoreside processor are unsorted codends, the catcher vessel is exempt from recording discards in the DFL and from submittal of the blue logsheet

(discards copy) for that delivery. The operator must check the box entitled "unsorted codend," and the blue DFL logsheet (discards copy) may remain in the DFL.

(C) Except as provided at § 679.27(d), in the event a catcher vessel has "bled" a codend prior to delivery to a processor or buying station or if the deliveries of a catcher vessel to a processor or buying station are presorted at sea, the operator must check the "presorted delivery" box, enter the estimated amount of discards or donations by species, and submit with each harvest delivery the blue DFL logsheet (discards copy) to the mothership, buying station, or shoreside processor.

(iii) *Buying station discards or donations.* * * *

(B) The operator or manager must record in the DCL discards or donations as described in paragraph (a)(10)(i) of this section.

(C) * * *

(iv) *Catcher/processor discards or donations.* The operator of a catcher/processor must record in the DCPL all discards or donations as described in paragraph (a)(10)(i) of this section.

(v) *Mothership or shoreside processor discards or donations.*

(A) The operator of a mothership or manager of a shoreside processor must record in the DCPL discards or donations as described in paragraph (a)(10)(i) of this section that:

* * * * *

(14) * * *

(i) * * *

(A) The operator of a catcher vessel, catcher/processor, or mothership, or the manager of a shoreside processor must submit the yellow logsheets on a quarterly basis to the NMFS Office of Enforcement, Alaska Region Logbook Program, P.O. Box 21767, Juneau, AK 99802–1767, as follows: First quarter, by May 1 of that fishing year; second quarter, by August 1 of that fishing year; third quarter, by November 1 of that fishing year; and fourth quarter, by February 1 of the following fishing year.

* * * * *

(15) * * *

(i) *Logbooks and forms.*

* * * * *

(16) * * *

(ii) The operator or manager of a buying station must submit upon delivery of catch the yellow DCL logsheets to the shoreside processor or mothership to which it delivers groundfish, along with the blue DFL logsheets and ADF&G fish tickets for that delivery.

* * * * *

(c) * * *

(2) * * *

(i) *Catcher vessel.* The operator of a catcher vessel must record in the DFL:

(A) The time, position, and estimated groundfish catch weight within 2 hours after gear retrieval.

(B) Discard or donation information as described at paragraph (a)(10) of this section each day on the day they occur; all other information required in the DFL by noon of the day following gear retrieval.

(C) Notwithstanding other time limits, record all information required in the DFL within 2 hours after the vessel's catch is offloaded.

(D) Except as provided at paragraph (a)(10)(ii)(B) of this section, within 2 hours of completion of catch delivery information, submit the blue DFL logsheets with delivery of the harvest to the operator of a mothership or a buying station delivering to a mothership, or to the manager of a shoreside processor or buying station delivering to a shoreside processor.

(ii) *Catcher/processor.* The operator of a catcher/processor must record in the DCPL, for each haul or set:

(A) The time, position, and estimated groundfish catch weight within 2 hours after gear retrieval.

(B) Product and discard or donation information as described at paragraphs (a)(9) and (a)(10) of this section each day on the day they occur; all other information required in the DCPL by noon of the day following completion of production.

(C) Notwithstanding other time limits, record all information required in the DCPL within 2 hours after the vessel's catch is offloaded.

(3) *Haul/set information.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a catcher vessel or catcher/processor must record the following information for each haul or set:

(i) The number of haul or set, by sequence by year;

(ii) If the vessel is using hook-and-line gear, the number of skates set. If the vessel is using longline pot or single pot gear, the total number of pots set;

(iii) The date (month-day-year), begin time (to the nearest hour) and position coordinates (to the nearest minute) of gear deployment;

(iv) The date (month-day-year), end time (to the nearest hour), and position coordinates (to the nearest minute) of gear retrieval;

(v) The average sea depth and average gear depth, recorded to the nearest meter or fathom;

(vi) The estimated total round catch weight of the groundfish catch in pounds or to the nearest mt. If fishing in IFQ halibut fishery, enter the estimated total weight of groundfish bycatch;

(vii) The round catch weight of pollock and Pacific cod;

(viii) If fishing in an IFQ fishery, the estimated round catch weight of IFQ sablefish;

(ix) If fishing in an IFQ fishery, the round catch weight of rockfish and Pacific cod; and

(x) When fishing in an IFQ fishery and the fishery for Pacific cod or rockfish is closed to directed fishing in that reporting area as described in § 679.20, the operator must record up to and including the maximum retainable bycatch amount for Pacific cod or rockfish as defined in Table 10 or 11 of this part; quantities over this amount must be recorded in the discard or donation section.

(4) *Catcher vessel delivery information.* The operator of a catcher vessel must record:

(i) The date of delivery.

(ii) The name, ADF&G processor code, and ADF&G fish ticket number(s) provided by the operator of the mothership or buying station delivering to a mothership, or the manager of a shoreside processor or buying station delivering to a shoreside processor.

(5) *IFQ data.* The operator of a catcher vessel or catcher/processor must record IFQ information as follows:

(i) Check YES or NO to record if persons aboard have authorized IFQ permits.

(ii) If YES, record the following:

(A) Vessel operator's (captain's) name and IFQ permit number, if any.

(B) The name of each IFQ holder aboard the vessel and each holder's IFQ permit number.

(C) Month and day of landing.

(D) Name of registered buyer.

(E) Name of unloading port.

(d) * * *

(1) *Time limits.* The operator or manager of the buying station must:

(i) Record entries in the DCL as to catcher vessel delivery information within 2 hours after completion of receipt of each groundfish delivery.

(ii) Record discard or donation information required in the DCL as described at paragraph (a)(10) of this section each day on the day they occur; and all other information required in the DCL by noon of the day following the day the receipt of groundfish was completed.

(2) * * *

(i) *General.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator or manager of a buying station must record on each page the name and

ADF&G processor code of the mothership or shoreside processor to which groundfish deliveries were made.

(ii) *Delivery information.* * * *

(A) The ADF&G fish ticket number issued to each catcher vessel delivering groundfish.

(B) Whether blue DFL logsheets were submitted by catcher vessel. If not received, record after the response "NO" either "P" to indicate the catcher vessel does not have a Federal fisheries permit; "L" to indicate the catcher vessel is under 60 ft length overall; or "U" to indicate the catcher vessel delivered an unsorted codend. If a catcher vessel is under 60 ft LOA and also does not have a Federal fisheries permit, record "P".

* * * * *

(D) The name and ADF&G vessel number of the catcher vessel delivering the groundfish.

(E) The estimated total groundfish delivery weight.

(e) * * *

(1) *Time limits.* The operator of a mothership must record:

(i) "Delivery information" in the DCPL within 2 hours after receipt of each groundfish delivery.

(ii) Product and discard or donation information as described at paragraphs (a)(9) and (a)(10) of this section each day on the day they occur; all other information required in the DCPL by noon of the day following the day of production completion.

(2) *Delivery information.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a mothership must record for each delivery:

* * * * *

(v) The ADF&G fish ticket number issued to each catcher vessel delivering groundfish.

(vi) Whether blue DFL logsheets were submitted by catcher vessel. If not received, record after the response "NO" either "P" to indicate the catcher vessel does not have a Federal fisheries permit; "L" to indicate the catcher vessel is under 60 ft length overall; or "U" to indicate the catcher vessel delivered an unsorted codend. If a catcher vessel is under 60 ft LOA and also does not have a Federal fisheries permit, record "P".

(f) * * *

(1) *Time limits.* The manager of each shoreside processor must record in the DCPL:

(i) All catcher vessel or buying station delivery information within 2 hours after completion of receipt of each groundfish delivery.

(ii) Landings, product, and discard or donation information as described at paragraphs (a)(8), (a)(9), and (a)(10) of this section each day on the day they occur; all other information required in the DCPL by noon of the day following the day of production completion.

(2) * * *

(i) *Delivery information, Part IB.* In addition to requirements described in paragraphs (a) and (b) of this section, the manager of a shoreside processor must record the following information for each delivery:

(A) Date and time when receipt of groundfish catch was completed.

(B) Whether delivery is from a catcher vessel or buying station.

(C) Whether blue DFL logsheets were submitted by a catcher vessel. If not received, record after the response "NO" either "P" to indicate the catcher vessel does not have a Federal fisheries permit; "L" to indicate the catcher vessel is under 60 ft length overall; or "U" to indicate the catcher vessel delivered an unsorted codend. If a catcher vessel is under 60 ft LOA and also does not have a Federal fisheries permit, record "P."

(D) The name and ADF&G vessel number (if applicable) of the catcher vessel or buying station delivering the groundfish.

(E) The estimated total catch receipt weight in pounds or to the nearest mt.

(F) The ADF&G fish ticket number issued to the catcher vessel delivering groundfish.

(G) If Shoreside Processor is located in a state other than Alaska, the manager must record the fish ticket number issued through that state. If a state fish ticket system is unavailable, the manager must record the catch receipt number.

(ii) *Production information, Part II.* The manager of a shoreside processor must comply with requirements described in paragraphs (a) and (b) of this section and also enter the management area (BSAI or GOA) on each section of the Part II logsheet.

(g) * * *

(1) * * *

(ii) The manager of a shoreside processor must report on a PTR those fish products that are subsequently transferred to any offsite facility for reduction to fish meal, fish oil, and/or discard at sea.

(iii) * * * If bait sales are aggregated for a given day, the transfer start time is the time of the first bait sale; the transfer finish time is the time of the last bait sale.

(2) * * *

(ii) Submit by fax a copy of each PTR to the NMFS Alaska Enforcement Division by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period.

(3) * * *

(ii) * * *

(A) *Other vessel.* * * *

(B) *Port.* * * *

(C) *Agent.* * * *

* * * * *

(E) * * *

(*1*) *Start.* The date and time, as described in paragraph (a)(6)(iii) of this section, the transfer starts.

(*2*) *Finish.* * * *

(*ii*) If shipment involves multiple vans or trucks, the date and time when the last van or truck leaves the plant.

(*iii*) If shipment involves airline flights, record date and time, as described in paragraph (a)(6)(iii) of this section, when the last airline flight shipment of the day leaves the plant.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(A) * * *

(*1*) *Using hook-and-line or pot gear.*

(*i*) Before the operator of a catcher/processor using hook-and-line or pot gear sets gear for groundfish in any reporting area except 300, 400, 550, or 690, the operator must submit by fax a check-in report (BEGIN message) to the Regional Administrator.

(*ii*) The operator of a catcher/processor using hook-and-line or pot gear may be checked-in to more than one area simultaneously.

(*2*) *Using other than hook-and-line or pot gear.*

(*i*) Before the operator of a catcher/processor using other than hook-and-line or pot gear commences fishing for groundfish in any reporting area except 300, 400, 550, or 690, the operator must submit by fax a check-in report (BEGIN message) to the Regional Administrator.

(*ii*) The operator of a catcher/processor using other than hook-and-line or pot gear may be checked-in to only one area at a time.

(B) *Mothership, shoreside processor, buying station*—(i) Before a mothership, shoreside processor, or buying station commences receipt of groundfish from any reporting area except 300, 400, 550, or 690, the operator or manager must submit by fax a check-in report (BEGIN message) to the Regional Administrator.

(ii) The operator of a mothership may be checked into more than one area simultaneously.

* * * * *

(ii) * * *

(A) *Catcher/processor.*

(*1*) *Using hook-and-line or pot gear.*

(*i*) If a catcher/processor using hook-and-line or pot gear departs a reporting area and gear retrieval is complete from that area, the operator must submit by

fax a check-out report to the Regional Administrator within 24 hours after departing a reporting area.

(*ii*) If a catcher/processor using hook-and-line or pot gear is checked-in to multiple reporting areas, the operator must submit by fax a check-out report for each reporting area.

(*2*) *Using other than hook-and-line or pot gear.* If a catcher/processor using other than hook-and-line or pot gear departs a reporting area, the operator must submit by fax a check-out report to the Regional Administrator within 24 hours after departing a reporting area but prior to checking-in another reporting area.

(B) *Mothership or buying station delivering to a mothership*—(i) If a mothership or buying station delivering to a mothership completes receipt of groundfish, the operator must submit by fax a check-out report to the Regional Administrator within 24 hours after departing a reporting area.

(ii) If a mothership is checked-in to multiple reporting areas, the operator must submit by fax a check-out report for each reporting area.

(C) *Shoreside processor.* If a shoreside processor, the manager:

(*1*) Must submit by fax a check-out report to the Regional Administrator within 48 hours after the end of the applicable weekly reporting period that a shoreside processor ceases to process groundfish for the fishing year.

(*2*) May submit by fax a check-out report to the Regional Administrator when receipt or processing of groundfish is temporarily halted during the fishing year for a period of at least two weekly reporting periods.

(D) *Buying station delivering to a shoreside processor.*

(*1*) If a land-based buying station delivering to a shoreside processor, the manager:

(*i*) Must submit by fax a check-out report to the Regional Administrator within 24 hours after delivery of groundfish ceases for the fishing year.

(*ii*) May submit by fax a check-out report to the Regional Administrator when receipt of groundfish is temporarily halted during the fishing year for a period of at least two weekly reporting periods.

* * * * *

(3) *General information.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a catcher/processor, mothership, or buying station delivering to a mothership or the manager of a shoreside processor or buying station delivering to a shoreside processor must record:

(i) *BEGIN message*—(A) *Mothership.*

(*1*) Date and time that receipt of groundfish begins.

(*2*) Position coordinates where groundfish receipt begins.

(*3*) Reporting area code where groundfish receipt begins and whether mothership is receiving groundfish in the COBLZ or RKCSA area.

(*4*) Primary and secondary species expected to be received next week. A change in intended target species within the same reporting area does not require a new BEGIN message.

(B) *Catcher/processor.* (*1*) Date and time that gear is deployed.

(*2*) Position coordinates where gear is set.

(*3*) Reporting area code of gear deployment begins and whether catcher/processor is located in the COBLZ or RKCSA area.

(*4*) Primary and secondary species expected to be harvested next week. A change in intended target species within the same reporting area does not require a new BEGIN message.

(C) *Shoreside processor.* (*1*) Date the facility will begin to receive groundfish.

(*2*) Whether checking in for the first time at the beginning of the fishing year or checking in to restart receipt and processing of groundfish after filing a check-out report.

(D) *Buying station.* (*1*) If delivering to a mothership, reporting area code where groundfish receipt begins.

(*2*) Date facility will begin to receive groundfish.

(*3*) Whether checking in at the beginning of the fishing year or checking in to restart after filing a check-out report.

(*4*) Intended primary target species expected to be received next week. A change in intended target species within the same reporting area does not require a new BEGIN message.

(ii) *CEASE message*—(A) *Mothership.* Date, time and position coordinates where the last receipt of groundfish was made.

(B) *Catcher/processor.* Date, time and position coordinates where the vessel departed the reporting area.

(C) *Shoreside processor.* Date that receipt of groundfish ceased.

(D) *Buying station.* (*1*) If delivering to a mothership, date, time and position coordinates where the vessel departed the reporting area.

(*2*) If delivering to a shoreside processor, date that receipt of groundfish ceased.

(iii) *Fish or fish product held at plant.* The manager of a shoreside processor must report the weight of all fish or fish products held at the plant in pounds or to the nearest 0.001 mt by species and product codes on each check-in report and on each check-out report.

(i) * * *

(3) * * *

(i) *General.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a catcher/processor or mothership, or manager of a shoreside processor must record the date the WPR was completed and the primary and secondary target codes for next week.

(ii) *Landings information.* The manager of a shoreside processor must report landings information as described in paragraph (a)(8) of this section, except that each groundfish landing must be reported only in metric tons to at least the nearest 0.001 mt.

* * * * *

(v) *Catcher vessel delivery information.* The operator of a mothership or manager of a shoreside processor must list the ADF&G fish ticket numbers issued to catcher vessels for the weekly reporting period, including the fish ticket numbers issued by an associated buying station.

(j) * * *

(4) *Information required.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a catcher/processor or mothership, or manager of a shoreside processor must record on each page:

(i) *Landings information.* The manager of a shoreside processor must report landings information as described in paragraph (a)(8) of this section, except that each groundfish landing must be reported only in metric tons to at least the nearest 0.001 mt.

(ii) *Product information.* The operator of a mothership or catcher/processor must report product information as described in paragraph (a)(9) of this section, except that each groundfish product must be reported only in metric tons to at least the nearest 0.001 mt.

(iii) *Discard or donation information.* The operator of a mothership or catcher/processor or the manager of a shoreside processor must report discarded or donated species information as described in paragraph (a)(10) of this section, except that each groundfish or herring discard or donation must be reported only in metric tons to at least the nearest 0.001 mt.

* * * * *

(m) *Consolidated weekly ADF&G fish tickets from motherships.*

(1) *Requirement.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a mothership must ensure that the combined catch for each catcher vessel is summarized at the end of each weekly

reporting period by species on a minimum of one ADF&G groundfish fish ticket when the mothership receives any groundfish from a catcher vessel which is issued a Federal fisheries permit under § 679.4. (An ADF&G fish ticket is further described at Alaska Administrative Code, 5 AAC Chapter 39.130) (see § 679.3).

(2) *Information required.*

(i) The operator of a mothership must ensure that the following information is imprinted or written legibly on the consolidated weekly ADF&G fish ticket from the catcher vessel operator's CFEC permit card in order to describe the CFEC permit holder:

(A) *Vessel name.* Name of the catcher vessel delivering the groundfish.

(B) *Name.* Name of permit holder.

(C) *Permit number.* CFEC permit number.

(D) *ADF&G No.* ADF&G catcher vessel number.

(ii) The operator of a mothership must ensure that the following information is imprinted or written legibly on the consolidated weekly ADF&G fish ticket from the mothership's CFEC processor plate card in order to describe the mothership:

(A) *Proc. Code.* ADF&G processor code of mothership.

(B) *Company.* Identification of mothership.

(iii) The operator of a mothership must record on the consolidated weekly ADF&G groundfish fish ticket the following information obtained from the catcher vessel operator:

(A) *ADF&G No.* The ADF&G number of the catcher vessel delivering fish to the mothership, if the catcher vessel is different from the vessel identified in the CFEC permit card.

(B) *Date landed.* The week-ending date of the week during which the mothership received the groundfish from the catcher vessel.

(D) *Port of landing or vessel transshipped to.* "FLD," a code which means floating processor.

(E) *Type of gear used.* Write in one of the following gear types used by the catcher vessel to harvest groundfish received:

(*1*) Hook and line.

(*2*) Pot.

(*3*) Nonpelagic trawl.

(*4*) Pelagic trawl.

(*5*) Jig/troll.

(*6*) Other.

(iv) The operator of a mothership is responsible for ensuring that the following information is recorded on an ADF&G fish ticket for each catcher vessel:

(A) *Code.* Species code for each species from Table 2 to this part, except do not use species codes 144, 168, 169, or 171.

(C) *Stat Area.* ADF&G 6-digit statistical area in which groundfish were harvested. These statistical areas are defined in a set of charts which may be obtained at no charge from Alaska Commercial Fisheries Management & Development Division, Department of Fish and Game, 211 Mission Road, Kodiak, Alaska 99615–6399.

(D) *Condition Code.* The product code from Table 1 to this part which describes the condition of the fish received by the mothership from the catcher vessel. In most cases, this will be product code 1, whole fish.

(E) *Pounds.* The landed weight of each species to the nearest pound.

(F) *Permit holder's signature.* The signature of the catcher vessel permit holder.

(G) *Fish received by.* The signature of the mothership operator.

(3) *Time limit and submittal.*

(i) The operator of a mothership must complete the consolidated weekly ADF&G groundfish fish ticket for each catcher vessel by 1200 hours, A.l.t., on Tuesday following the end of the applicable weekly reporting period.

(ii) The operator of a mothership must submit the consolidated weekly ADF&G groundfish fish tickets to Alaska Commercial Fisheries Management & Development Division, Department of Fish and Game, 211 Mission Road, Kodiak, Alaska 99615–6399, within 30 days after landings are received.

6. In § 679.7, paragraphs (a)(1) and (a)(2) are revised; the heading of paragraph (a)(5) is revised; and paragraphs (a)(15) and (a)(16) are added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(1) *Federal fisheries permit.* Fish for groundfish in the GOA or BSAI with a vessel of the United States that does not have on board a valid Federal fisheries permit issued pursuant to § 679.4.

(2) *Inseason action or adjustment.* Conduct any fishing contrary to notification of inseason action or adjustment issued under § 679.20, § 679.21, or § 679.25.

* * * * *

(5) *Prohibited species bycatch rate standard.* * * *

* * * * *

(15) *Federal Processor Permit.* Receive or process groundfish harvested in the GOA or BSAI by a shoreside processor or vessel of the United States operating solely as a mothership in Alaska State waters that does not have on site a valid Federal processor permit issued pursuant to § 679.4(f).

(16) *Retention of groundfish bycatch species.* Exceed the maximum retainable groundfish bycatch amount established under § 679.20(e).

* * * * *

7. In § 679.20, paragraphs (d)(1)(ii)(A), (g)(2)(iii), and (g)(3) introductory text are revised to read as follows:

§ 679.20 General limitations.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(A) *Inseason adjustments.* The category allocations or apportionments established under paragraph (c) of this section may be revised by inseason adjustments, as defined at § 679.25, for a given species or species group or pollock allowance, as identified by regulatory area, subarea, or district, and, if applicable, as further identified by gear type.

* * * * *

(g) * * *

(2) * * *

(iii) The primary pollock product must be distinguished from ancillary pollock products in the DCPL required under § 679.5(a)(9).

(3) *Pollock product recovery rates (PRRs).* Use the product types and standard PRRs for pollock found in Table 3 of this part to calculate round-weight equivalents for pollock for purposes of this paragraph (g).

* * * * *

8. In § 679.21, as proposed to be amended at 62 FR 43307, (August 13, 1997) paragraphs (e)(7)(iv)(B), (e)(7)(vii)(B), and (e)(7)(viii)(B) are removed; and paragraphs (e)(7)(iv)(A), (e)(7)(vii)(A) and, (e)(7)(viii)(A) are redesignated as paragraph (e)(7)(iv), (e)(7)(vii) and (e)(7)(viii) respectively, and revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * * *

(e) * * *

(7) * * *

(iv) *COBLZ.* Except as provided in paragraph (e)(7)(i) of this section, if, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the trawl fishery categories listed in paragraphs (e)(3)(iv)(B) through (F) of this section will catch the COBLZ bycatch allowance, or seasonal apportionment thereof, of *C. Opilio* specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the **Federal Register** the closure of the COBLZ, as defined in

Figure 13 of this part, to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

* * * * *

(vii) *Chum salmon.* If the Regional Administrator determines that 42,000 non-chinook salmon have been caught by vessels using trawl gear during August 15 through October 14 in the CVOA defined under § 679.22(a)(5) and in Figure 2 of this part, NMFS will prohibit fishing with trawl gear for the remainder of the period September 1 through October 14 in the Chum Salmon Savings Area as defined in Figure 9 of this part.

(viii) *Chinook salmon.* When the Regional Administrator determines that 48,000 chinook salmon have been caught by vessels using trawl gear in the BSAI during the time period from January 1 through April 15, NMFS will prohibit fishing with trawl gear for the remainder of that period within the Chinook Salmon Savings Area defined in Figure 8 of this part.

* * * * *

9. Section 679.22 is amended to read as follows by: Revising paragraphs (a)(3), (a)(6), and (a)(9); by amending the cross-reference in paragraphs (a)(7)(ii), (a)(8)(ii), and (b)(2)(ii) from "§ 679.20" to read "§ 679.20(d)"; and by adding a heading to paragraph (a)(10).

§ 679.22 Closures.

(a) * * *

(3) *Red King Crab Savings Area (RKCSA).* Directed fishing for groundfish by vessels using trawl gear other than pelagic trawl gear is prohibited at all times, except as provided at § 679.21(e)(3)(ii)(B), in that part of the Bering Sea subarea defined as RKCSA in Figure 11 of this part.

* * * * *

(6) *Pribilof Island Area Habitat Conservation Zone.* Trawling is prohibited at all times in the area defined in Figure 10 of this part as Pribilof Island Area Habitat Conservation Zone.

* * * * *

(9) *Nearshore Bristol Bay Trawl Closure.* Directed fishing for groundfish by vessels using trawl gear in Bristol Bay, as described in the current edition of NOAA chart 16006, is closed at all times in the area east of 162°00′ W. long., except that the Nearshore Bristol Bay Trawl Area defined in Figure 12 is open to trawling from 1200 hours A.l.t., April 1 to 1200 hours A.l.t., June 15 of each year.

(10) *Chum Salmon Savings Area.*

* * *

* * * * *

10. Section 679.23 is amended to read as follows by: Revising the headings of paragraphs (a), (d), and (e), and by revising the term "Western Alaska Community Development Quota" and replacing it with "CDQ" in paragraphs (e)(2)(ii)(C) and (D).

§ 679.23 Seasons.

(a) *Groundfish, general.* * * *

* * * * *

(d) *GOA groundfish seasons.* * * *

(e) *BSAI groundfish seasons.* * * *

* * * * *

(g) * * *

(3) Catches of sablefish in excess of the maximum retainable bycatch amounts and catches made without IFQ must be treated in the same manner as prohibited species as defined at § 679.21(b).

11. Section 679.41 is amended by adding headings to paragraphs (e)(1) through (3) to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

* * * * *

(e) * * *

(1) *General.* * * *

(2) *Sablefish.* * * *

(3) *Halibut.* * * *

12. Section 679.42, is amended by adding a new heading to paragraph (c)(2)(i); by revising paragraph (c)(2)(ii); and by adding headings to paragraphs (c)(2)(i) and (c)(2)(ii) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(c) * * *

(2) * * *

(i) *Sablefish product.* * * *

(ii) *Halibut product.* For halibut product, multiplying the scale weight actually reported at the time of landing by the conversion factor found in Table 3 of this part that corresponds to the product code reported in the IFQ landing report.

13. In § 679.61, the introductory paragraph is revised to read as follows:

§ 679.61 Registration areas.

For the purpose of managing the scallop fishery, the Federal waters off Alaska and adjacent State waters are divided into nine scallop registration areas. Three scallop registration areas are further subdivided into districts. The scallop registration areas and districts are defined in Figure 14 of this part.

* * * * *

14. Part 679 is amended by revising Tables 1, 2, and 3 to this part and Figures 2 and 7 to this part and by adding Figures 8 through 16 to this part to read as follows:

TABLE 1.—PRODUCT CODES

Fish product code/description
1. Whole fish/food fish.
2. Whole fish/bait. Processed for bait.
3. Bled only. Throat, or isthmus, slit to allow blood to drain.
4. Gutted, head on. Belly slit and viscera removed.
5. Gutted, head off. IFQ Pacific halibut only.
6. Head and gutted, with roe.
7. Headed and gutted, Western cut. Head removed just in front of the collar bone, and viscera removed.
8. Headed and gutted, Eastern cut. Head removed just behind the collar bone, and viscera removed.
10. Headed and gutted, tail removed. Head removed usually in front of collar bone, and viscera and tail removed.
11. Kirimi. Head removed either in front or behind the collar bone, viscera removed, and tail removed by cuts perpendicular to the spine, resulting in a steak.
12. Salted and split. Head removed, belly slit, viscera removed, fillets cut from head to tail but remaining attached near tail. Product salted.
13. Wings. On skates, side fins are cut off next to body.
14. Roe. Eggs, either loose or in sacs, or skeins.
15. Pectoral girdle. Collar bone and associated bones, cartilage and flesh.
16. Heads. Heads only, regardless where severed from body.
17. Cheeks. Muscles on sides of head.
18. Chins. Lower jaw (mandible), muscles, and flesh.
19. Belly. Flesh in region of pelvic and pectoral fins and behind head.

TABLE 1.—PRODUCT CODES—Continued

Fish product code/description
20. Fillets with skin and ribs. Meat and skin with ribs attached, from sides of body behind head and in front of tail.
21. Fillets with skin, no ribs. Meat and skin with ribs removed, from sides of body behind head and in front of tail.
22. Fillets with ribs and no skin. Meat with ribs with skin removed, from sides of body behind head and in front of tail.
23. Fillets, skinless/boneless. Meat with both skin and ribs removed, from sides of body behind head and in front of tail.
24. Deep-skin fillet. Meat with skin, adjacent meat with silver lining, and ribs removed from sides of body behind head and in front of tail, resulting in thin fillets.
30. Surimi. Paste from fish flesh and additives.
31. Minced. Ground flesh.
32. Fish meal. Meal from fish and fish parts, including bone meal.
33. Fish oil. Rendered oil.
34. Milt. (in sacs, or testes).
35. Stomachs. Includes all internal organs.
36. Octopus/squid mantles. Flesh after removal of viscera and arms.
37. Butterfly, no backbone. Head removed, belly slit, viscera and most of backbone removed; fillets attached.
39. Bones (if meal, report as 32).
51. Whole fish/food fish with ice and slime. IFQ sablefish only.
54. Gutted, head on, with ice and slime. Belly slit and visera removed. IFQ Pacific halibut and sablefish only.
55. Gutted, head off, with ice and slime. IFQ Pacific halibut only.
57. Headed and gutted, Western cut, with ice and slime. IFQ sablefish only.
58. Headed and gutted, Eastern cut, with ice and slime. IFQ sablefish only.
86. Donated Salmon. Includes salmon retained and donated under Salmon Donation Program.
97. Other retained product
DISCARD PRODUCT CODES
92. Discard, bait. Whole fish used as bait on board vessel.
94. Discard, consumption. Fish or fish products eaten on board or taken off the vessel for personal use.
96. Previously discarded fish (decomposed) taken with trawl gear in current fishing efforts. Discarded.
98. Discard, at sea. Whole groundfish and prohibited species discarded by catcher vessels, Catcher/Processors, Motherships, or Buying Stations delivering to Motherships.
99. Discard, dockside. Discard after delivery and before processing; Discard, at plant. In-plant discard of whole groundfish and prohibited species by Shoreside Processors and Buying Stations delivering to Shoreside Processors before and during processing.
M99 Discard, off site transfer. Discarded fish that are transferred to any off site facility for reduction to fish meal, fish oil and/or discard at sea.
PRODUCT DESIGNATION
A Ancillary. Product made in addition to a primary product from the same fish.
P Primary. Product made from each fish with the highest recovery rate.
R Reprocessed. Product that results from processing a previously reported product.

TABLE 2.—SPECIES CODES

Code/Species
110. Pacific cod.
120. Miscellaneous flatfish (all flatfish without separate codes).
121. Arrowtooth flounder and/or Kamchatka flounder.
122. Flathead sole.
123. Rock sole.
124. Dover sole.
125. Rex sole.
126. Butter sole.
127. Yellowfin sole.
128. English sole.
129. Starry flounder.
131. Petrale sole.
132. Sand sole.
133. Alaska Plaice flounder.
134. Greenland turbot.
135. Greenstripe rockfish.
136. Northern rockfish.
137. Bocaccio rockfish.
138. Copper rockfish.
141. Pacific ocean perch (S. alutus only) .
142. Black rockfish.
143. Thornyhead rockfish (all Sebastolobus species) .
145. Yelloweye rockfish.
146. Canary rockfish.
147. Quillback rockfish.
148. Tiger rockfish.
149. China rockfish.
150. Rosethorn rockfish.
151. Rougheye rockfish.
152. Shortraker rockfish.

TABLE 2.—SPECIES CODES—Continued

Code/Species
153. Redbanded rockfish.
154. Dusky rockfish.
155. Yellowtail rockfish.
156. Widow rockfish.
157. Silvergray rockfish.
158. Redstripe rockfish.
159. Darkblotched rockfish.
160. Sculpins.
166. Sharpchin rockfish.
167. Blue rockfish.
175. Yellowmouth rockfish.
176. Harlequin rockfish.
177. Blackgill rockfish.
178. Chilipepper rockfish.
179. Pygmy rockfish.
181. Shortbelly rockfish.
182. Splitnose rockfish.
183. Stripetail rockfish.
184. Vermilion rockfish.
185. Aurora rockfish.
193. Atka mackerel.
207. Gunnels.
208. Pricklebacks.
209. Bristlemouths, lightfishes, and anglemouths (Gonostomatidae).
210. Pacific Sand fish.
270. Pollock.
510. Smelt.
511. Eulachon.
516. Capelin.
689. Sharks.
700. Skates.
710. Sablefish.
772. Laternfishes.
773. Deep-sea smelts (Bathylagidae).
774. Pacific Sand lance.
800. Krill.
870. Octopus.
875. Squid.
888. Mixed species tote (for use on Product Transfer Report only).
GROUP CODES. These group codes may be used if individual species cannot be identified.
144. Slope rockfish (aurora, blackgill, Bocaccio, redstripe, silvergray, chilipepper, darkblotched, greenstriped, harlequin, pygmy, shortbelly, splitnose, stripetail, vermillion, yellowmouth, sharpchin).
168. Demersal shelf rockfish (china, copper, quillback, rosethorn, tiger, yelloweye, canary).
169. Pelagic shelf rockfish (dusky, yellowtail, widow).
171. Shortraker/rougheye rockfish.
PROHIBITED SPECIES CODES
000. Unspecified salmon.
200. Pacific halibut.
235. Pacific herring (Family of Clupeidae).
410. Salmon, Chinook.
420. Salmon, Sockeye.
430. Salmon, Coho.
440. Salmon, Pink.
450. Salmon, Chum.
540. Steelhead trout.
920. Unspecified king crab.
921. Red king crab.
922. Blue king crab.
923. Gold/brown king crab.
930. Unspecified tanner crab.
931. Bairdi tanner crab.
932. Opilio tanner crab.

TABLE 3.—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES AND CONVERSION RATES FOR PACIFIC HALIBUT

FMP species	Product code												
Wings	Species code	Whole food fish	Whole bait fish	Bled	Gutted head on	Gutted head off	H&G with roe	H&G western cut	H&G eastern cut	H&G w/o tail	Kirimi	Salted and split	
		1	2	3	4	5	6	7	8	10	11	12	13
PACIFIC COD	110	1.00	1.00	0.98	0.85		0.63	0.57	0.47	0.44		0.45	
ARROWTOOTH FLOUNDER	121	1.00	1.00	0.98	0.90		0.80	0.72	0.65	0.62	0.48		
ROCKFISH [1]		1.00	1.00	0.98	0.88			0.60	0.50				
SCULPINS	160	1.00	1.00	0.98	0.87			0.50	0.40				
ATKA MACKEREL	193	1.00	1.00	0.98	0.87		0.67	0.64	0.61				
POLLOCK	270	1.00	1.00	0.98	0.80		0.70	0.65	0.56	0.50			
SMELTS	510	1.00	1.00	0.98	0.82			0.71					
EULACHON	511	1.00	1.00	0.98	0.82			0.71					
CAPELIN	516	1.00	1.00	0.98	0.89			0.78					
SHARKS	689	1.00	1.00	0.98	0.83			0.72					
SKATES	700	1.00	1.00	0.98	0.90			0.32				0.32	
SABLEFISH	710	1.00	1.00	0.98	0.89			0.68	0.63	0.50			
IFQ SABLEFISH	710	1.00	1.00	0.98	0.89			0.68	0.63	0.50			
OCTOPUS	870	1.00	1.00	0.98	0.69								
Target species categories GOA only:													
DEEP WATER FLATFISH	118	1.00	1.00	0.98	0.90		0.80	0.72	0.65	0.62	0.48		
FLATHEAD SOLE	122	1.00	1.00	0.98	0.90		0.80	0.72	0.65	0.62	0.48		
REX SOLE	125	1.00	1.00	0.98	0.90		0.80	0.72	0.65	0.62	0.48		
SHALLOW WATER FLATFISH	119	1.00	1.00	0.98	0.90		0.80	0.72	0.65	0.62	0.48		
THORNYHEAD ROCKFISH	143	1.00	1.00	0.98	0.88		0.55	0.60	0.50				
Target species categories BSAI only:													
OTHER FLATFISH	120	1.00	1.00	0.98	0.90		0.80	0.72	0.65	0.62	0.48		
ROCK SOLE	123	1.00	1.00	0.98	0.90		0.80	0.72	0.65	0.62	0.48		
YELLOWFIN SOLE	127	1.00	1.00	0.98	0.90		0.80	0.72	0.65	0.62	0.48		
GREENLAND TURBOT		134	1.00	1.00	0.98	0.90		0.80	0.72	0.65	0.62	0.48	
SQUID	875	1.00	1.00	0.98	0.69								
Conversion rates for Pacific halibut:													
PACIFIC HALIBUT	200				0.90	1.0							

TABLE 3.—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES AND CONVERSION RATES FOR PACIFIC HALIBUT

FMP species	Product code													
Wings	Species code	Roe	Pectoral girdle	Heads	Cheeks	Chins	Belly	Fillets w/skin and ribs	Fillets skin on no ribs	Fillets w/nbs no skin	Fillets skinless/ boneless	Fillets deep skin	Surimi	Mince
		14	15	16	17	18	19	20	21	22	23	24	30	31
PACIFIC COD	110	0.05	0.05		0.05		0.01	0.45	0.35	0.25	0.25		0.15	0.5
ARROWTOOTH FLOUNDER	121	0.08						0.32	0.27	0.27	0.22			
ROCKFISH [1]				0.15	0.05	0.05	0.10	0.40	0.30	0.33	0.25			
SCULPINS	160													
ATKA MACKEREL	193												0.15	
POLLOCK	270	0.07		0.15				0.35	0.30	0.30	0.21	0.16	[2]0.16	0.22
SMELTS	510								0.38				[3]0.17	
EULACHON	511								0.38					
CAPELIN	516													
SHARKS	689								0.30	0.30	0.25			
SKATES	700													
SABLEFISH	710				0.05			0.35	0.30	0.30	0.25			
IFQ SABLEFISH	710				0.05			0.35	0.30	0.30	0.25			
OCTOPUS	870													
Target species categories at GOA only:														
DEEP WATER FLATFISH	118							0.32	0.27	0.27	0.22			
FLATHEAD SOLE	122							0.32	0.27	0.27	0.22			
REX SOLE	125							0.32	0.27	0.27	0.22			
SHALLOW WATER FLATFISH	119							0.32	0.27	0.27	0.22			
THORNYHEAD ROCKFISH	143			0.20	0.05	0.05	0.05	0.40	0.30	0.35	0.25			
Target species categories at BSAI only:														
OTHER FLATFISH	120							0.32	0.27	0.27	0.22			
ROCK SOLE	123							0.32	0.27	0.27	0.22			
YELLOWFIN SOLE	127								0.32	0.27	0.27	0.22		0.18
GREENLAND TURBOT	134							0.32	0.27	0.27	0.22			
SQUID	875													
Conversion rates for Pacific halibut:														

TABLE 3.—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES AND CONVERSION RATES FOR PACIFIC HALIBUT—Continued

FMP species	Product code													
Wings	Species code	Roe	Pectoral girdle	Heads	Cheeks	Chins	Belly	Fillets w/skin and ribs	Fillets skin on no ribs	Fillets w/ribs no skin	Fillets skinless/ boneless	Fillets deep skin	Surimi	Mince
		14	15	16	17	18	19	20	21	22	23	24	30	31
PACIFIC HALIBUT	200													

TABLE 3.—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES AND CONVERSION RATES FOR PACIFIC HALIBUT

FMP species	Product code													
Wings	Species code	Meal	Oil	Mill	Stomachs	Mantles	Butterfly backbone removed	Whole fish w/ I&S	Gutted head on W/ I&S	Gutted head off w/ I&S	H&G western w/ I&S	H&G eastern w/I&S	Decomposed fish	Discards
		32	33	34	35	36	37	51	54	55	57	58	96	92, 94, 98, 99, M99
PACIFIC COD	110	0.17					0.43						0.00	1.00
ARROWTOOTH FLOUNDER	121	0.17											0.00	1.00
ROCKFISH[1]													0.00	1.00
SCULPINS	160	0.17											0.00	1.00
ATKA MACKEREL	193	0.17											0.00	1.00
POLLOCK	270	0.17					0.43						0.00	1.00
SMELTS	510	0.17											0.00	1.00
EULACHON	511	0.17											0.00	1.00
CAPELIN	516	0.17											0.00	1.00
SHARKS	689	0.17											0.00	1.00
SKATES	700	0.17											0.00	1.00
SABLEFISH	710	0.17											0.00	1.00
IFQ SABLEFISH	710	0.17						1.02	0.91		0.70	0.65	0.00	1.00
OCTOPUS	870	0.17				0.85	1.00						0.00	1.00
Target species categories at GOA only:														
DEEP WATER FLATFISH	118	0.17											0.00	1.00
FLATHEAD SOLE	122	0.17											0.00	1.00
REX SOLE	125	0.17											0.00	1.00
SHALLOW WATER FLATFISH	119	0.17											0.00	1.00
THORNYHEAD ROCKFISH	143	0.17											0.00	1.00
Target species categories at BSAI only:														
OTHER FLATFISH	120	0.17											0.00	1.00
ROCK SOLE	123	0.17											0.00	1.00
YELLOWFIN SOLE	127	0.17											0.00	1.00
GREENLAND TURBOT	134	0.17											0.00	1.00
SQUID	875	0.17				0.75	1.00						0.00	1.00
Conversion rates for Pacific halibut:														
PACIFIC HALIBUT	200								0.88	0.98				

[1] Rockfish means all species of *Sebastes* and *Sebastolobus*.
[2] Standard pollock surimi rate during January through June.
[3] Standard pollock surimi rate during July through December.

TABLE 4.—BERING SEA SUBAREA STELLER SEA LION PROTECTION AREAS

[3-nm NO TRANSIT ZONES described at § 227.12(a)(2) of this title]

Island	From		To	
	Latitude	Longitude	Latitude	Longitude
a. Year-round Trawl Closures (Trawling Prohibited Within 10 nm):				
Sea Lion Rocks	55°28.0′ N	163°12.0′ W		
Ugamak Island	54°14.0′ N	164°48.0′ W	54°13.0′ N	164°48.0′ W
Akun Island	54°18.0′ N	165°32.5′ W	54°18.0′ N	165°31.5′ W
Akutan Island	54°03.5′ N	166°00.0′ W	54°05.5′ N	166°05.0′ W
Bogoslof Island	53°56.0′ N	168°02.0′ W		
Ogchul Island	53°00.0′ N	168°24.0′ W		
Adugak Island	52°55.0′ N	169°10.5′ W		

TABLE 4.—BERING SEA SUBAREA STELLER SEA LION PROTECTION AREAS—Continued

[3-nm NO TRANSIT ZONES described at § 227.12(a)(2) of this title]

Island	From		To	
	Latitude	Longitude	Latitude	Longitude
Walrus Island	57°11.0′ N	169°56.0′ W		
b. Seasonal Trawl Closures (During January 1 through April 15, or a date earlier than April 15, if adjusted under part 679, Trawling Prohibited Within 20 nm):				
Sea Lion Rocks	55°28.0′ N	163°12.0′ W		
Akun Island	54°18.0′ N	165°32.5′ W	54°18.0′ N	165°31.5′ W
Akutan Island	54°03.5′ N	166°00.0′ W	54°05.5′ N	166°05.0′ W
Ugamak Island	54°14.0′ N	164°48.0′ W	54°13.0′ N	164°48.0′ W
Seguam Island	52°21.0′ N	172°35.0′ W	52°21.0′ N	172°33.0′ W
Agligadak Island	52°06.5′ N	172°54.0′ W		

Note: The bounds of each rookery extend in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

TABLE 5.—ALEUTIAN ISLANDS SUBAREA STELLER SEA LION PROTECTION AREAS

[3-nm NO TRANSIT ZONES described at § 227.12(a)(2) of this title]

Island	From		To	
	Latitude	Longitude	Latitude	Longitude
a. Year-round Trawl Closures (Trawling Prohibited Within 10 nm):				
Yunaska Island	52°42.0′ N	170°38.5′ W	52°41.0′ N	170°34.5′ W
Seguam Island	52°21.0′ N	172°35.0′ W	52°21.0′ N	172°33.0′ W
Agligadak Island	52°06.5′ N	172°54.0′ W		
Kasatochi Island	52°10.0′ N	175°31.0′ W	52°10.5′ N	175°29.0′ W
Adak Island	51°36.5′ N	176°59.0′ W	51°38.0′ N	176°59.5′ W
Gramp Rock	51°29.0′ N	178°20.5′ W		
Tag Island	51°33.5′ N	178°34.5′ W		
Ulak Island	51°20.0′ N	178°57.0′ W	51°18.5′ N	178°59.5′ W
Semisopochnoi	51°58.5′ N	179°45.5′ E	51°57.0′ N	179°46.0′ E
Semisopochnoi	52°01.5′ N	179°37.5′ E	52°01.5′ N	179°39.0′ E
Amchitka Island	51°22.5′ N	179°28.0′ E	51°21.5′ N	179°25.0′ E
Amchitka Is/Column Rocks	51°32.5′ N	178°49.5′ E		
Ayugadak Point	51°45.5′ N	178°24.5′ E		
Kiska Island	51°57.5′ N	177°21.0′ E	51°56.5′ N	177°20.0′ E
Kiska Island	51°52.5′ N	177°13.0′ E	51°53.5′ N	177°12.0′ E
Buldir Island	52°20.5′ N	175°57.0′ E	52°23.5′ N	175°51.0′ E
Agattu Is./Gillion Pt	52°24.0′ N	173°21.5′ E		
Agattu Island	52°23.5′ N	173°43.5′ E	52°22.0′ N	173°41.0′ E
Attu Island	52°54.5′ N	172°28.5′ E	52°57.5′ N	172°31.5′ E
b. Seasonal Trawl Closures (During January 1 through April 15, or a date earlier than April 15, if adjusted under part 679.20. Trawling Prohibited Within 20 nm):				
Seguam Island	52°21.0′ N	172°35.0′ W	52°21.0′ N	172°33.0′ W
Agligadak Island	52°06.5′ N	172°54.0′ W		

Note: Each rookery extends in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

TABLE 6.—GULF OF ALASKA STELLER SEA LION PROTECTION AREAS

[3-nm NO TRANSIT ZONES described at § 227.12(a)(2) of this title]

Island	From		To	
	Latitude	Longitude	Latitude	Longitude
a. Year-round Trawl Closures (Trawling Prohibited Within 10 nm):				
Outer Island	59°20.5′ N	150°23.0′ W	59°21.0′ N	150°24.5′ W
Sugarloaf Island	58°53.0′ N	152°02.0′ W		
Marmot Island	58°14.5′ N	151°47.5′ W	58°10.0′ N	151°51.0′ W
Chirikof Island	55°46.5′ N	155°39.5′ W	55°46.5′ W	155°43.0′ W
Chowiet Island	56°00.5′ N	156°41.5′ W	56°00.5′ N	156°42.0′ W
Atkins Island	55°03.5′ N	159°18.5′ W		
Chernabura Island	54°47.5′ N	159°31.0′ W	54°45.5′ N	159°33.5′ W
Pinnacle Rock	54°46.0′ N	161°46.0′ W		
Clubbing Rocks-N	54°43.0′ N	162°26.5′ W		

TABLE 6.—GULF OF ALASKA STELLER SEA LION PROTECTION AREAS—Continued

[3-nm NO TRANSIT ZONES described at §227.12(a)(2) of this title]

Island	From		To	
	Latitude	Longitude	Latitude	Longitude
Clubbing Rocks-S	54°42.0′ N	162°26.5′ W		
Ugamak Island	54°14.0′ N	164°48.0′ W	54°13.0′ N	164°48.0′ W
Akun Island	54°18.0′ N	165°32.5′ W	54°18.0′ N	165°31.5′ W
Akutan Island	54°03.5′ N	166°00.0′ W	54°05.5′ N	166°05.0′ W
Ogchul Island	53°00.0′ N	168°24.0′ W		
b. Seasonal Trawl Closures (During January 1 through April 15, or a date earlier than April 15, if adjusted under part 679.20. Trawling Prohibited Within 20 nm):				
Akun I	54°18.0′ N	165°32.5′ W	54°18.0′ N	165°31.5′ W
Akutan I	54°03.5′ N	166°00.0′ W	54°05.5′ N	166°05.0′ W
Ugamak I	54°14.0′ N	164°48.0′ W	54°13.0′ N	164°48.0′ W

Note: The bounds of each rookery extend in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

TABLE 7.—COMMUNITIES DETERMINED TO BE ELIGIBLE TO APPLY FOR COMMUNITY DEVELOPMENT QUOTAS

[Other communities may also be eligible, but do not appear on this table]

Aleutian Region:
1. Akutan
2. Atka
3. False Pass
4. Nelson Lagoon
5. Nikolski
6. St. George
7. St. Paul

Bering Strait:
1. Brevig Mission
2. Diomede/Inalik
3. Elim
4. Gambell
5. Golovin
6. Koyuk
7. Nome
8. Savoonga
9. Shaktoolik
10. St. Michael
11. Stebbins
12. Teller
13. Unalakleet
14. Wales
15. White Mountain

Bristol Bay:
1. Alegnagik
2. Clark's Point
3. Dillingham
4. Egegik

TABLE 7.—COMMUNITIES DETERMINED TO BE ELIGIBLE TO APPLY FOR COMMUNITY DEVELOPMENT QUOTAS—Continued

[Other communities may also be eligible, but do not appear on this table]

5. Ekuk
6. Manokotak
7. Naknek
8. Pilot Point/Ugashi
9. Port Heiden/Meschick
10. South Naknek
11. Sovonoski/King Salmon
12. Togiak
13. Twin Hills

Southwest Coastal Lowlands:
1. Alakanuk
2. Chefornak
3. Chevak
4. Eek
5. Emmonak
6. Goodnews Bay
7. Hooper Bay
8. Kipnuk
9. Kongiganak
10. Kotlik
11. Kwigillingok
12. Mekoryuk
13. Newtok
14. Nightmute
15. Platinum
16. Quinhagak
17. Scammon Bay
18. Sheldon's Point

TABLE 7.—COMMUNITIES DETERMINED TO BE ELIGIBLE TO APPLY FOR COMMUNITY DEVELOPMENT QUOTAS—Continued

[Other communities may also be eligible, but do not appear on this table]

19. Toksook Bay
20. Tununak
21. Tuntutuliak

TABLE 8.—HARVEST ZONE CODES FOR USE WITH PRODUCT TRANSFER REPORTS AND VESSEL ACTIVITY REPORTS

Harvest zone	Description
A	EEZ off Alaska.
D	Donut Hole.
F	Foreign Waters other than Russia.
I	International waters other than Donut Hole and Seamounts.
R	Russian waters.
S	Seamounts in international waters.
U	U.S. EEZ other than Alaska.

TABLE 9.—REQUIRED LOGBOOKS, REPORTS AND FORMS FROM PARTICIPANTS IN THE FEDERAL GROUNDFISH FISHERIES

Name of logbook/form	Catcher-vessel	Catcher-processor	Mothership	Shoreside processor	Buying station
Daily Fishing Logbook (DFL)	YES	NO	NO	NO	NO
Daily Cumulative Production Logbook (DCPL)	NO	YES	YES	YES	NO
Daily Cumulative Logbook (DCL)	NO	NO	NO	NO	YES
Check-in/Check-out Report	NO	YES	YES	YES	YES
U.S. Vessel Activity Report (VAR)	YES	YES	YES	NO	NO
Weekly Production Report (WPR)	NO	YES	YES	YES	NO
Daily Production Report (DPR) [1]	NO	YES	YES	YES	NO
Product Transfer Report (PTR)	NO	YES	YES	YES	NO

[1] When required by Regional Administrator.

TABLE 10.—CURRENT GULF OF ALASKA RETAINABLE PERCENTAGES

	Bycatch Species[1]											
	Pollock	Pacific Cod	Deep flatfish	Rex Sole	Flathead Sole	Shallow flatfish	Arrowtooth	Sablefish	Aggregated rockfish[2]	DSR SEEO[4]	Atka mackerel	Other species
Basis Species[1]												
Pollock	[3]NA	20	20	20	20	20	35	1	5	10	20	20
Pacific cod	20	[3]NA	20	20	20	20	35	1	5	10	20	20
Deep flatfish	20	20	[3]NA	20	20	20	35	7	15	1	20	20
Rex sole	20	20	20	[3]NA	20	20	35	7	15	1	20	20
Flathead sole	20	20	20	20	[3]NA	20	35	7	15	1	20	20
Shallow flatfish	20	20	20	20	20	[3]NA	35	1	5	10	20	20
Arrowtooth	5	5	0	0	0	0	[3]NA	0	0	0	0	0
Sablefish	20	20	20	20	20	20	35	[3]NA	15	1	20	20
Pacific Ocean perch	20	20	20	20	20	20	35	7	15	1	20	20
Shortraker/rougheye	20	20	20	20	20	20	35	7	15	1	20	20
Other rockfish	20	20	20	20	20	20	35	7	15	1	20	20
Northern rockfish	20	20	20	20	20	20	35	7	15	1	20	20
Pelagic rockfish	20	20	20	20	20	20	35	7	15	1	20	20
DSR-SEEO	20	20	20	20	20	20	35	7	15	[3]NA	20	20
Thornyhead	20	20	20	20	20	20	35	7	15	1	20	20
Atka mackerel	20	20	20	20	20	20	35	1	5	10	[3]NA	20
Other species	20	20	20	20	20	20	35	1	5	10	20	[3]NA
Aggregated amount non-groundfish species	20	20	20	20	20	20	35	1	5	10	20	20

[1] For definition of species, see Table 1 of the Gulf of Alaska groundfish specifications.
[2] Aggregated rockfish means rockfish of the genera Sebastes and Sebastolobus except in the southeast Outside District where demersal shelf rockfish (DSR) is a separate category.
[3] NA = not applicable.
[4] SEEO = Southeast Outside District.

TABLE 11.—BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA RETAINABLE PERCENTAGES

	Bycatch species[1]												
Species	Pollock	Pacific cod	Atka mackerel	Arrowtooth	Yellowfin sole	Other flatfish	Rocksole	Flathead sole	Greenland turbot	Sablefish	Aggregated rockfish[2]	Squid	Other
BASIS SPECIES[1]													
Pollock	[3]NA	20	20	35	20	20	20	20	1	1	5	20	20
Pacific cod	20	[3]NA	20	35	20	20	20	20	1	1	5	20	20
Atka mackerel	20	20	[3]NA	35	20	20	20	20	1	1	5	20	20
Arrowtooth	0	0	0	[3]NA	0	0	0	0	0	0	0	0	0
Yellowfin sole	20	20	20	35	[3]NA	35	35	35	1	1	5	20	20
Other flatfish	20	20	20	35	35	[3]NA	35	35	1	1	5	20	20
Rocksole	20	20	20	35	35	35	[3]NA	35	1	1	5	20	20
Flathead sole	20	20	20	35	35	35	35	[3]NA	35	15	15	20	20
Greenland turbot	20	20	20	35	20	20	20	20	[3]NA	15	15	20	20
Sablefish	20	20	20	35	20	20	20	20	35	[3]NA	15	20	20
Other rockfish	20	20	20	35	20	20	20	20	35	15	15	20	20
Other red rockfish-BS	20	20	20	35	20	20	20	20	35	15	15	20	20
Pacific Ocean perch	20	20	20	35	20	20	20	20	35	15	15	20	20
Sharpchin/Northern-AI	20	20	20	35	20	20	20	20	35	15	15	20	20
Shortraker/Rougheye-AI	20	20	20	35	20	20	20	20	35	15	15	20	20
Squid	20	20	20	35	20	20	20	20	1	1	5	[3]NA	20
Other species	20	20	20	35	20	20	20	20	1	1	5	20	[3]NA
Aggregated amount non-groundfish species	20	20	20	35	20	20	20	20	1	1	5	20	20

[1] For definition of species, see Table 1 of the Bering Sea and Aleutian Islands groundfish specifications.
[2] Aggregated rockfish of the genera Sebastes and Sebastolobus.
[3] NA = not applicable.

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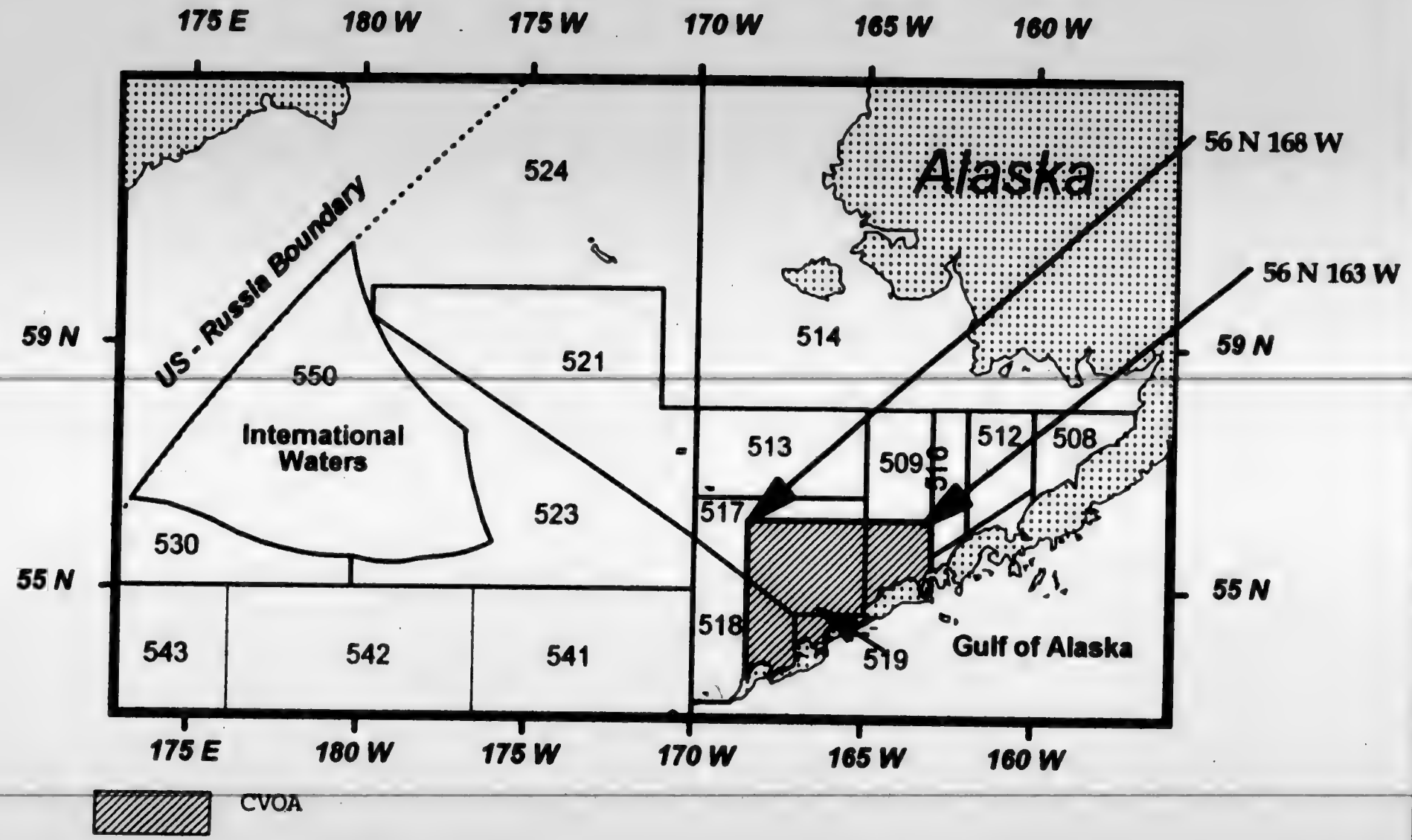

Figure 2. BSAI Catcher Vessel Operational Area (CVOA) (South of 56 00 N lat between 163 00 W and 168 00 W long)

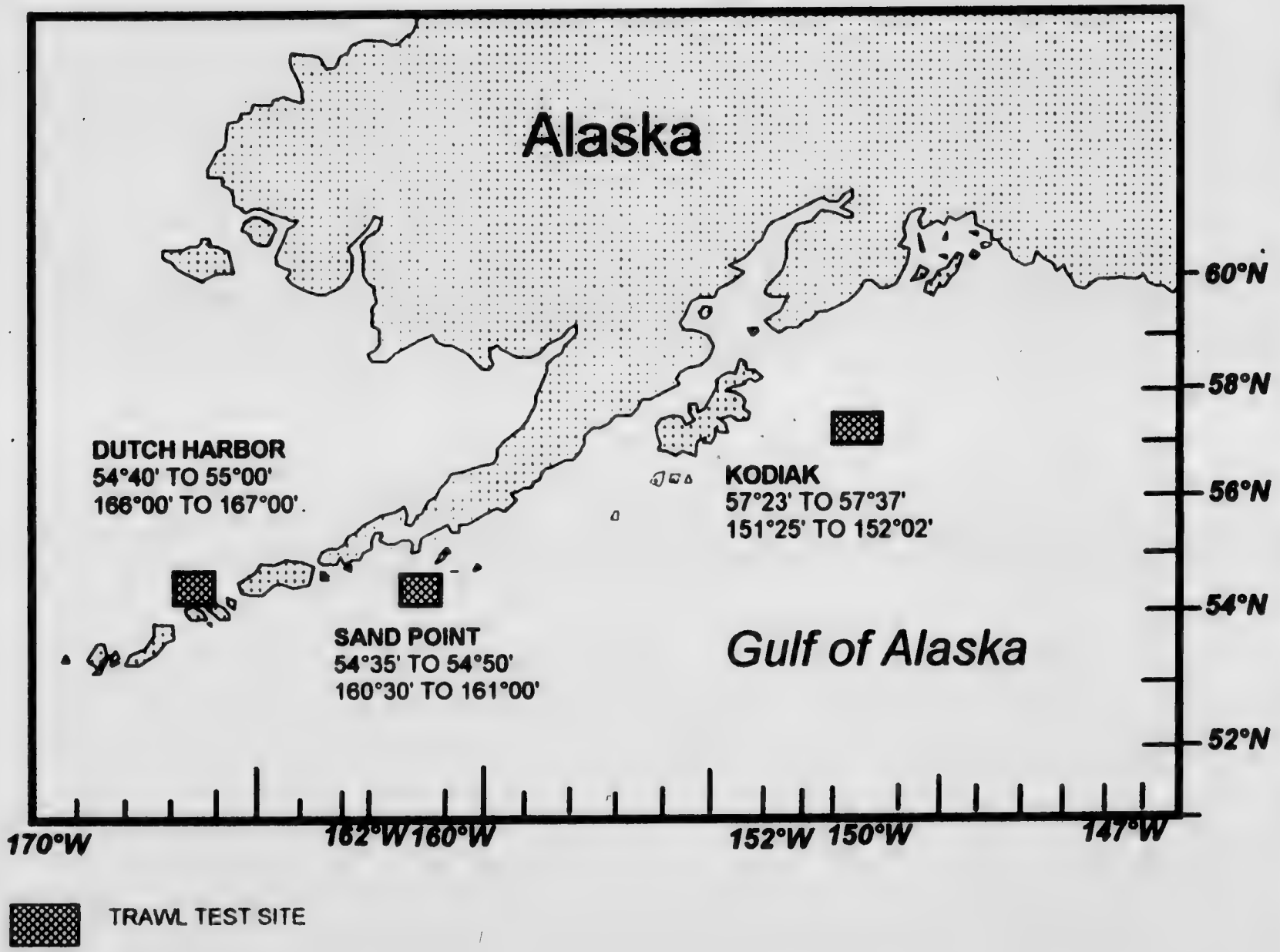

Figure 7. Location of Trawl Gear Test Areas in the GOA and the BSAI

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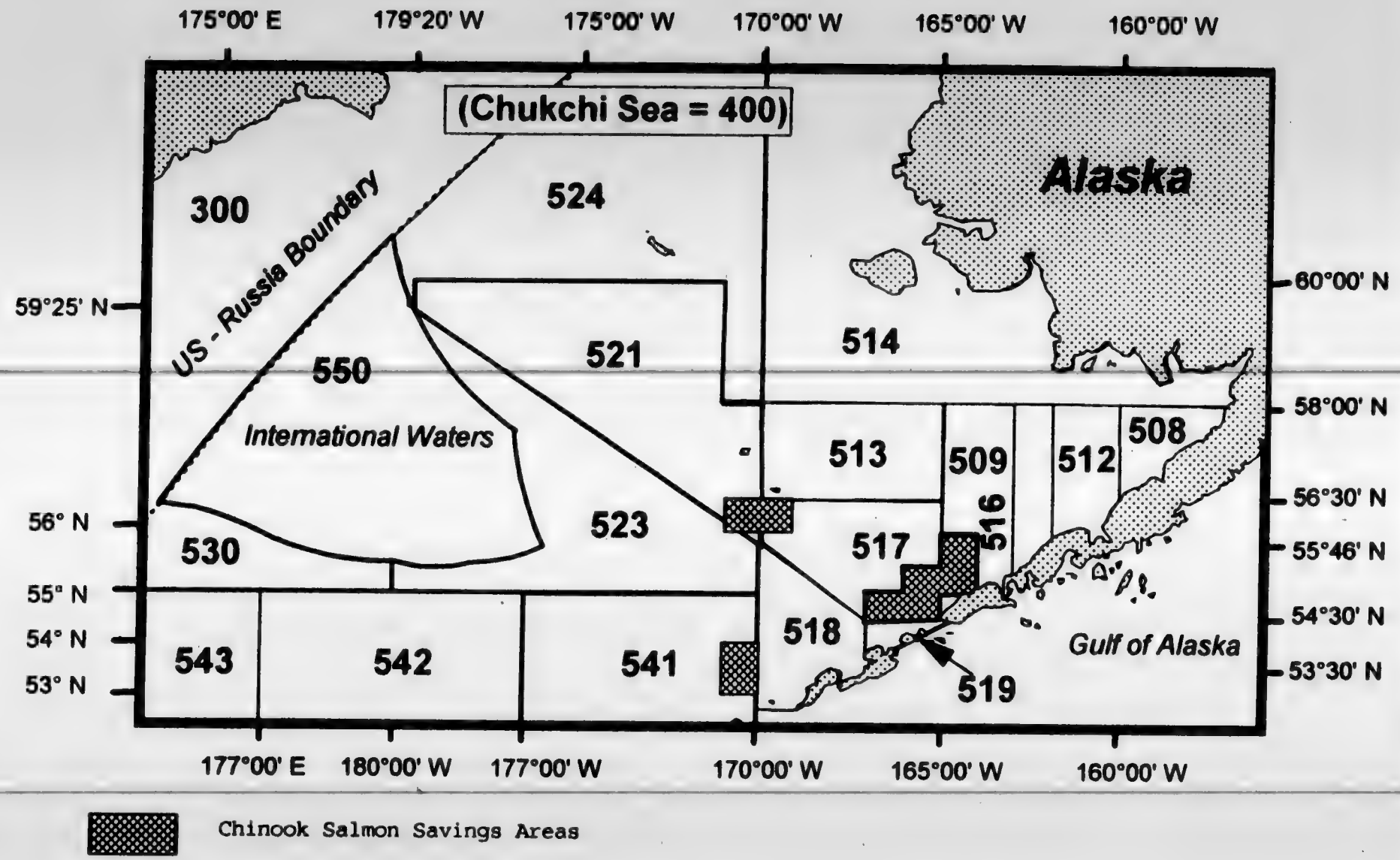

Figure 8. Chinook Salmon Savings Areas of the BSAI
a. Map

BILLING CODE 3510-22-P

The Chinook Salmon Savings Areas are:
(1) The area enclosed by the following coordinates:
(2) The area enclosed by the following coordinates:
(3) The area enclosed by the following coordinates:

FIGURE 8.—CHINOOK SALMON SAVINGS AREAS OF THE BSAI
[b. Coordinates]

The Chinook Salmon Savings Area is defined in the following three areas of the BSAI:

(*1*) The area defined by straight lines connecting the following coordinates in the order listed:

56°30′ N. lat., 171°00′ W. long.
56°30′ N. lat., 169°00′ W. long.
56°00′ N. lat., 169°00′ W. long.
56°00′ N. lat., 171°00′ W. long.
56°30′ N. lat., 171°00′ W. long.

(*2*) The area defined by straight lines connecting the following coordinates in the order listed:

54°00′ N. lat., 171°00′ W. long.
54°00′ N. lat., 170°00′ W. long.
53°00′ N. lat., 170°00′ W. long.
53°00′ N. lat., 171°00′ W. long.
54°00′ N. lat., 171°00′ W. long.

(*3*) The area defined by straight lines connecting the following coordinates in the order listed:

56°00′ N. lat., 165°00′ W. long.
56°00′ N. lat., 164°00′ W. long.
55°00′ N. lat., 164°00′ W. long.
55°00′ N. lat., 165°00′ W. long.
54°30′ N. lat., 165°00′ W. long.
54°30′ N. lat., 167°00′ W. long.
55°00′ N. lat., 167°00′ W. long.
55°00′ N. lat., 166°00′ W. long.
55°30′ N. lat., 166°00′ W. long.
55°30′ N. lat., 165°00′ W. long.
56°00′ N. lat., 165°00′ W. long.

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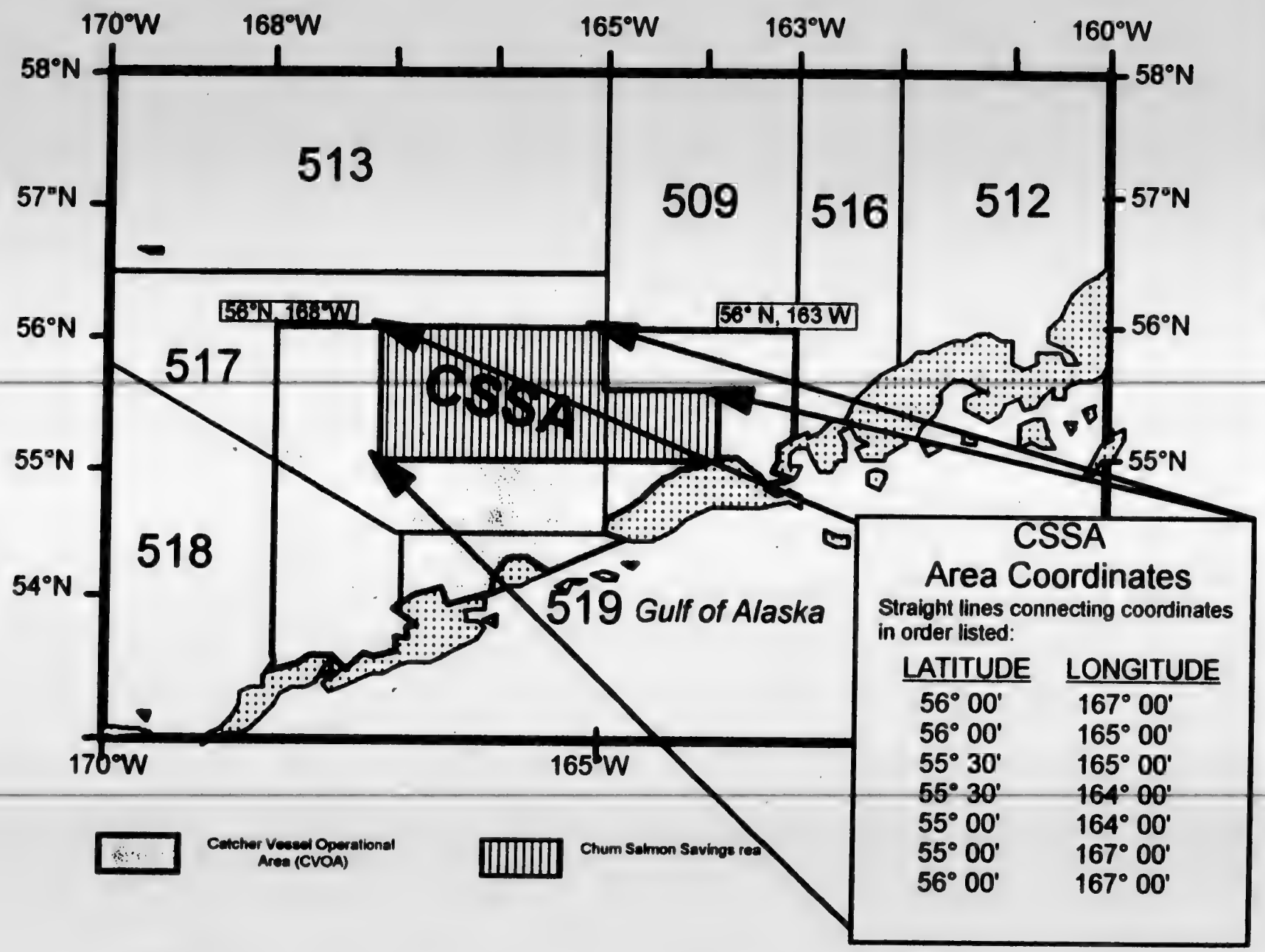

Figure 9. Chum Salmon Savings Area (CSSA) of the CVOA

Figure 9. Chum Salmon Savings Area (CSSA) of the CVOA

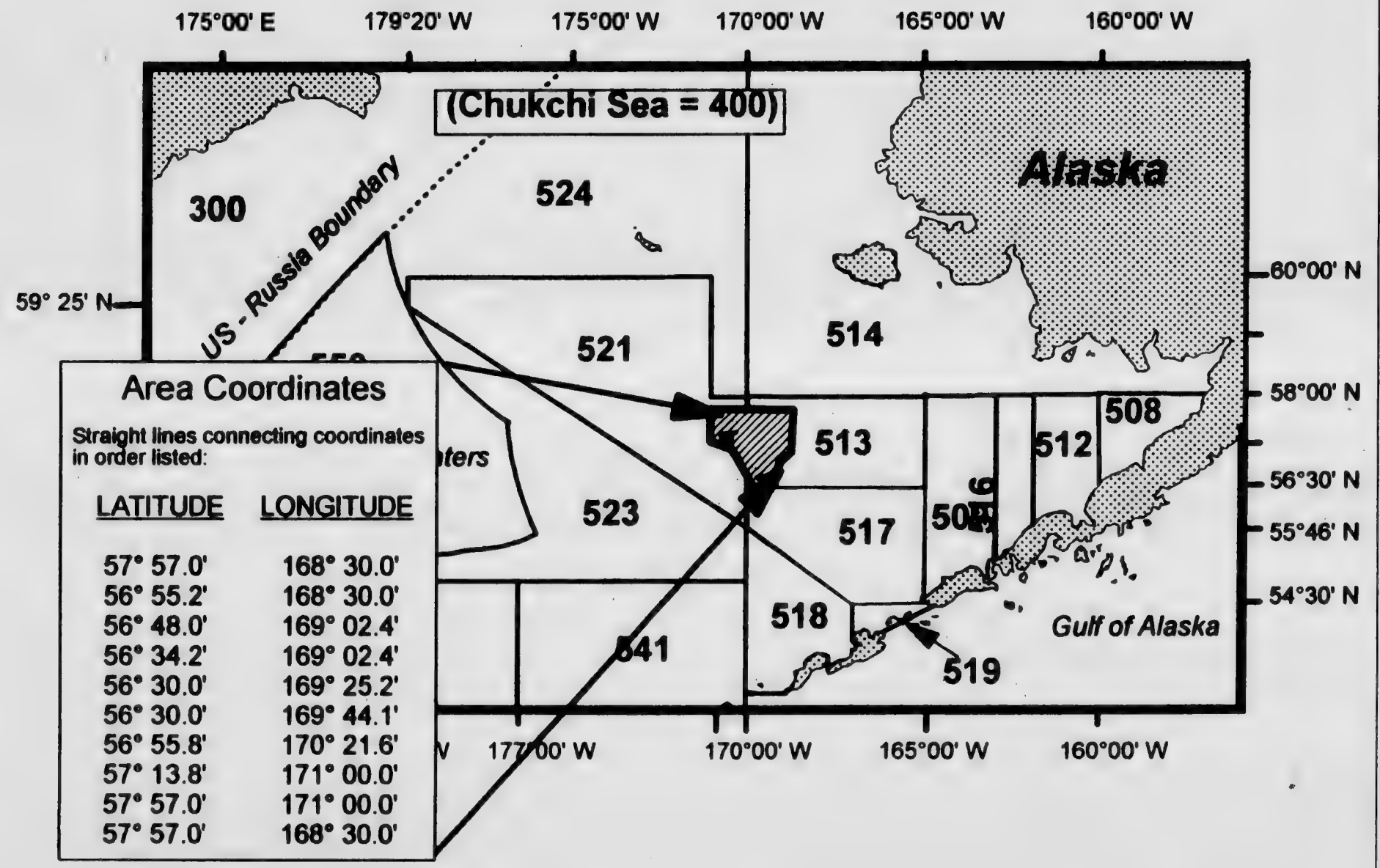

Figure 10. Pribilof Islands Area Habitat Conservation Zone

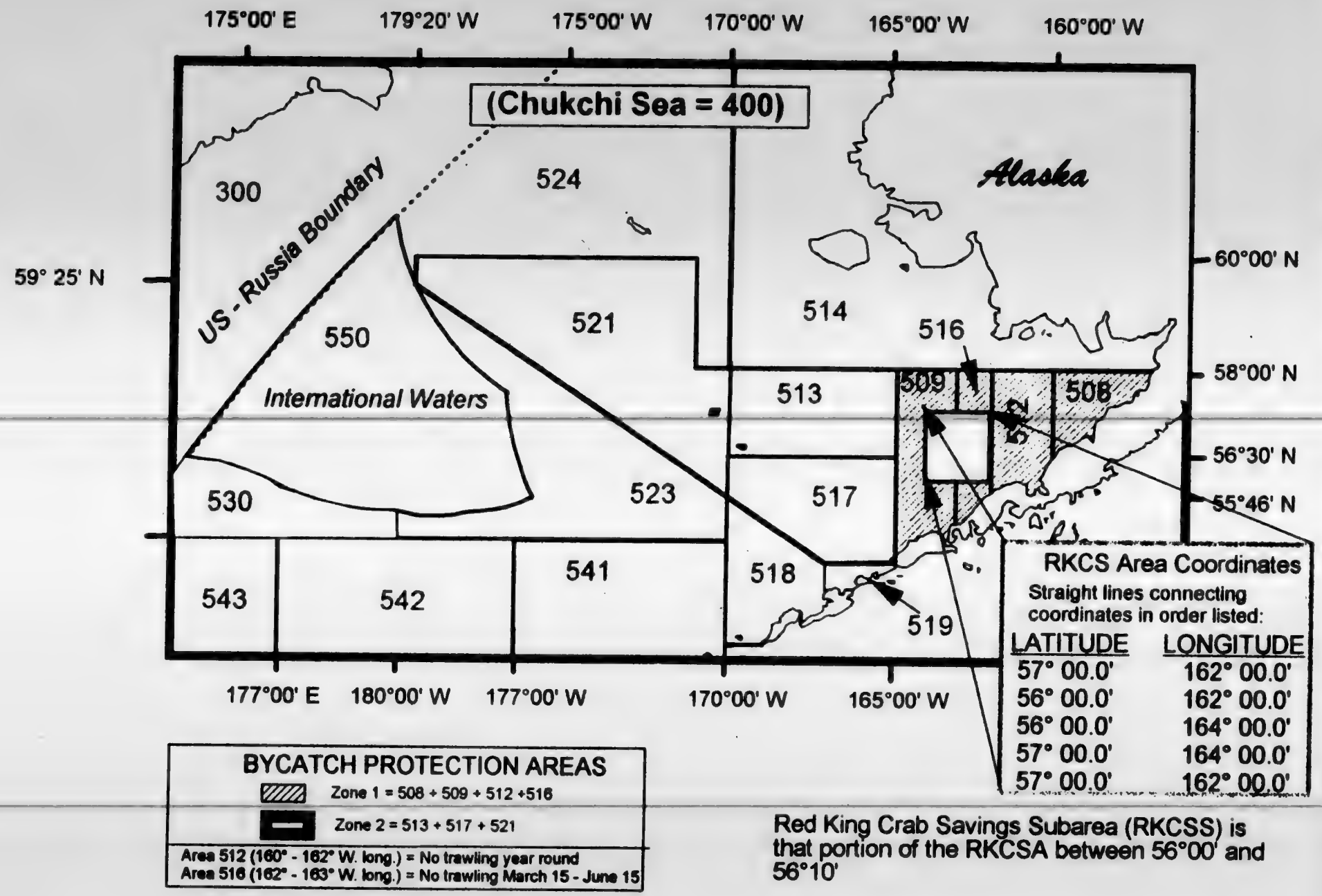

Figure 11. Red King Crab Savings Area (RKCSA)

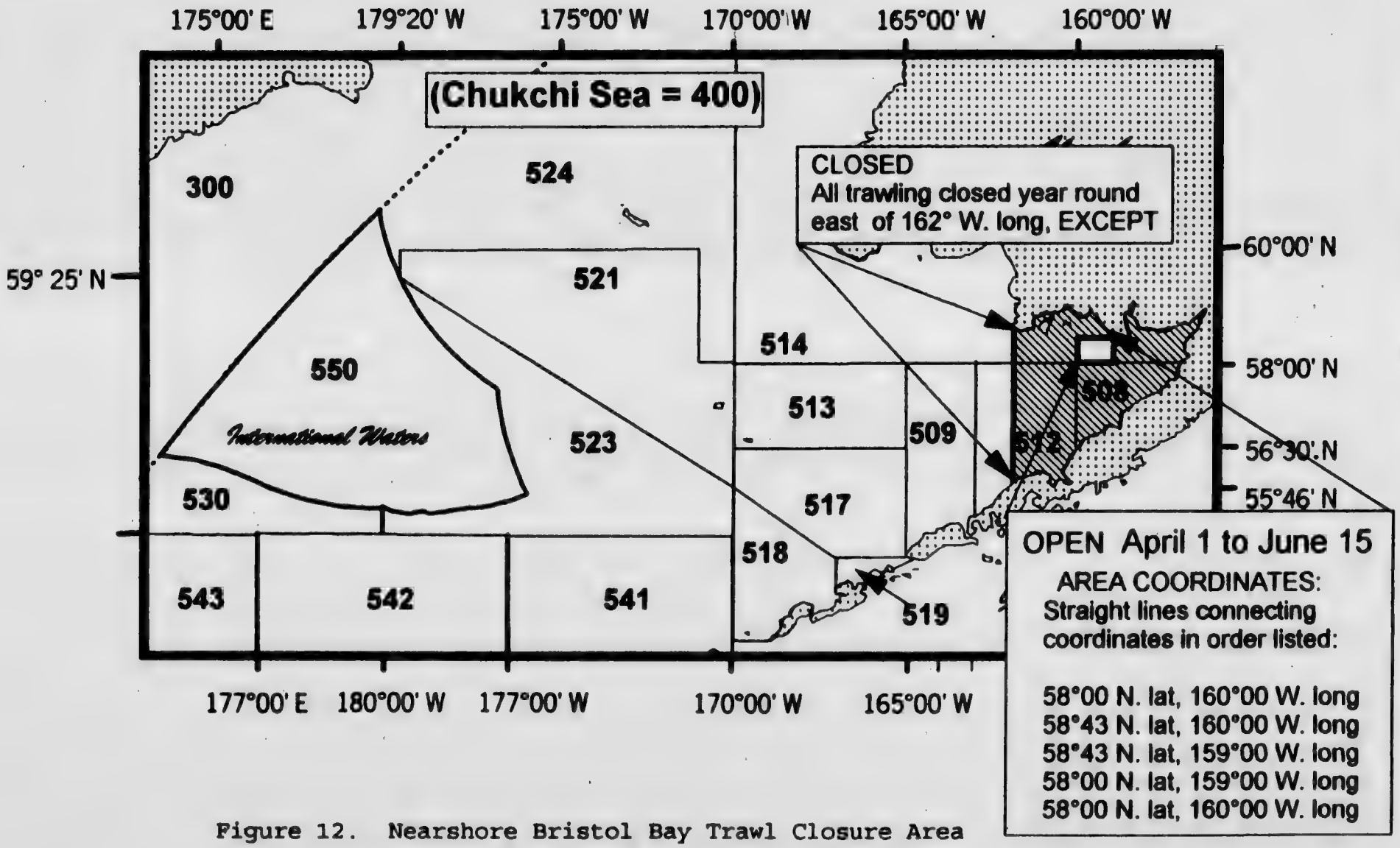

Figure 12. Nearshore Bristol Bay Trawl Closure Area

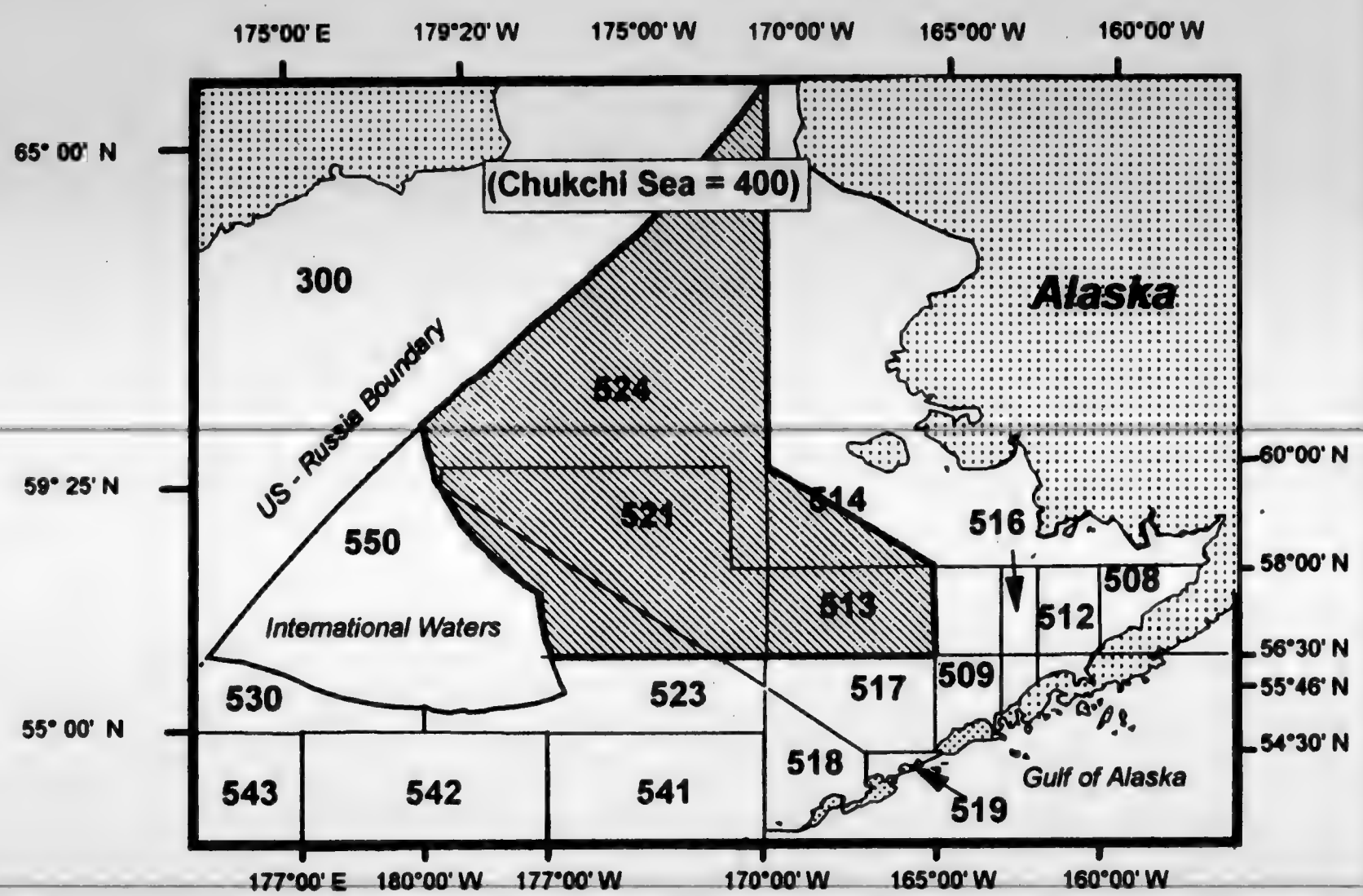

Figure 13. BSAI C. Opilio Crab Bycatch Limitation Zone (COBLZ)
a. Map

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FIGURE 13.—BSAI C. OPILIO TANNER CRAB BYCATCH LIMITATION ZONE (COBLZ)

[(b). Coordinates]

The COBLZ is an area defined as that portion of the Bering Sea Subarea north of 56° 30′ N. lat. that is west of a line connecting the following coordinates in the order listed:

56° 30′ N. lat.	165° 00′ W. long.
58° 00′ N. lat.	165° 00′ W. long.
59° 30′ N. lat.	170° 00′ W. long.

and north along 170° 00′ W. long. to its intersection with the U.S.-Russia Boundary.

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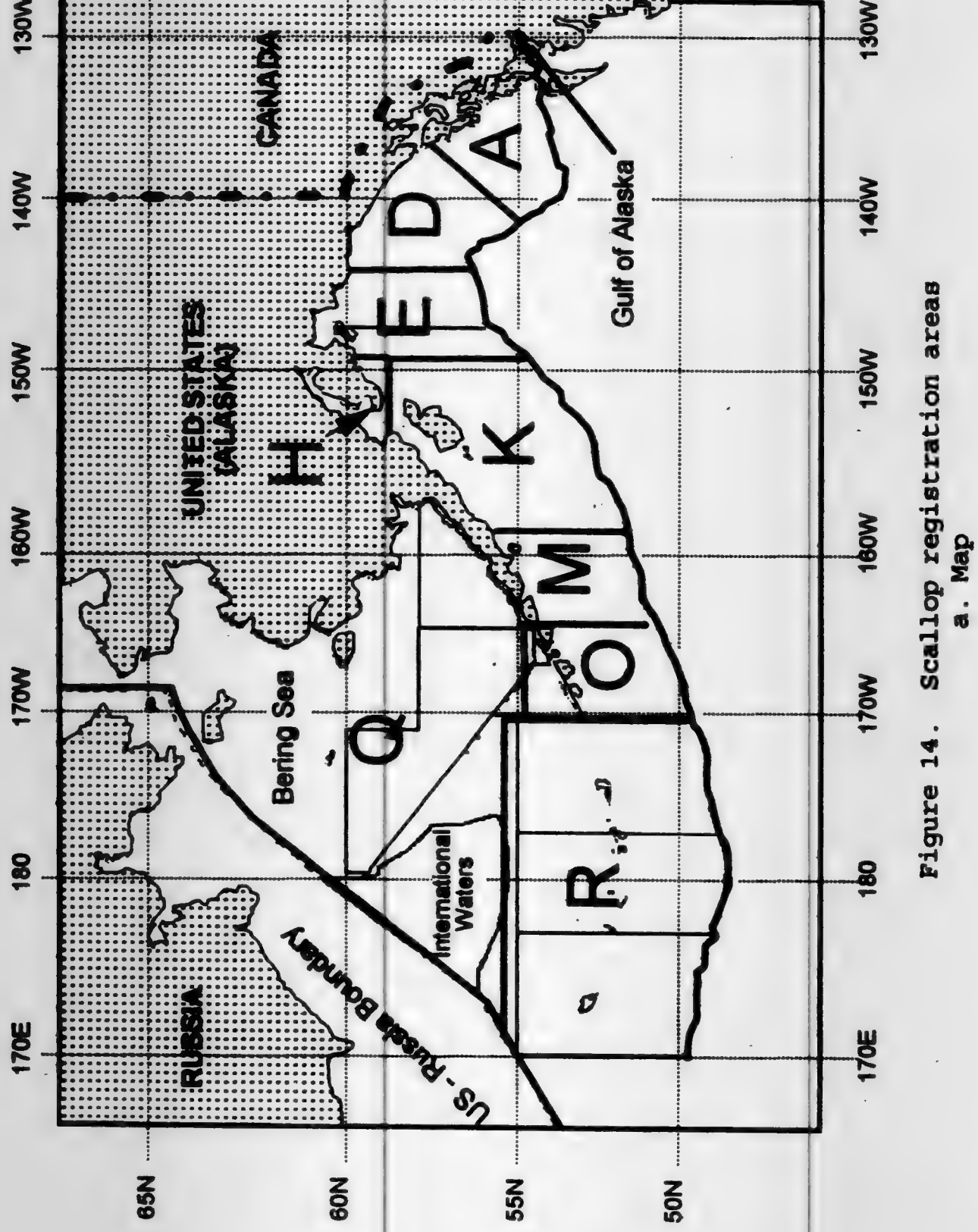

Figure 14. Scallop registration areas
a. Map

FIGURE 14.—SCALLOP REGISTRATION AREAS
[b. Coordinates]

Registration Area A (Southeastern) has as its southern boundary, the international boundary at Dixon Entrance, and as its northern boundary Loran-C line 7960–Y–29590, which intersects the western tip of Cape Fairweather at 58°47′58″ N. lat., 137°56′30″ W. long., except for ADF&G District 16 defined within Registration Area D (Yakutat).

Registration Area D (Yakutat) has as its western boundary the longitude of Cape Suckling (143°53′ W. long.), and as its southern boundary Loran-C line 7960–Y–29590, which intersects the western tip of Cape Fairweather at 58°47′58″ N. lat., 137°56′30″ W. long., and ADF&G District 16 defined as all waters all waters north of a line projecting west from the southernmost tip of Cape Spencer and south of a line projecting southwest from the westernmost tip of Cape Fairweather.

FIGURE 14.—SCALLOP REGISTRATION AREAS—Continued

[b. Coordinates]

Registration Area E (Prince William Sound) has as its western boundary the longitude of Cape Fairfield (148°50′ W. long.), and its eastern boundary the longitude of Cape Suckling (143°53′ W. long.).

Registration Area H (Cook Inlet) has as its eastern boundary the longitude of Cape Fairfield (148°50′ W. long.) and its southern boundary the latitude of Cape Douglas (58°52′ N. lat.).

(1) *Northern District.* North of a line extending from Boulder Point at 60°46′23″ N. lat., to Shell Platform C, then to a point on the west shore at 60°46′23″ N. lat.

(2) *Central District.* All waters between a line extending from Boulder Point at 60°46′23″ N. lat., to Shell Platform C, to a point on the west shore at 60°46′23″ N. lat., and the latitude of Anchor Point Light (59°46′12″ N. lat.).

(3) *Southern District.* All waters enclosed by a line from Anchor Point Light west to 59°46′12″ N. lat., 152°20′ W. long., then south to 59°03′25″ N. lat., 152°20′ W. long., then in a northeasterly direction to the tip of Cape Elizabeth at 59°09′30″ N. lat., 151°53′ W. long., then from the tip of Cape Elizabeth to the tip of Point Adam at 59°15′20″ N. lat., 151°58′30″ W. long.

(4) *Kamishak Bay District.* All waters enclosed by a line from 59°46′12″ N. lat., 153°00′30″ W. long., then east to 59°46′12″ N. lat., 152°20′ W. long., then south to 59°03′25″ N. lat., 152°20′ W. long., then southwesterly to Cape Douglas (58°52′ N. lat.). The seaward boundary of the Kamishak Bay District is 3 nautical miles seaward from the shoreline between a point on the west shore of Cook Inlet at 59°46′12″ N. lat., 153°00′30″ W. long., and Cape Douglas at 58°52′ N. lat., 153°15′ W. long., including a line three nautical miles seaward from the shorelines of Augustine Island and Shaw Island, and including the line demarking all state waters shown on NOAA chart 16640, 21st Ed., May 5, 1990 (available from the Alaska Region).

(5) *Barren Island District.* All waters enclosed by a line from Cape Douglas (58°52′ N. lat.) to the tip of Cape Elizabeth at 59°09′30″ N. lat., 151°53′ W. long., then south to 58°52′ N. lat., 151°53′ W. long., then west to Cape Douglas.

(6) *Outer District.* All waters enclosed by a line from the tip of Point Adam to the tip of Cape Elizabeth, then south to 58°52′ N. lat., 151°53′ W. long., then east to the longitude of Aligo Point (149°44′33″ W. long.), then north to the tip of Aligo Point.

(7) *Eastern District.* All waters east of the longitude of Aligo Point (149°44′33″ W. long.), west of the longitude of Cape Fairfield (148°50′ W. long.), and north of 58°52′ N. lat.

Registration Area K (Kodiak) has as its northern boundary the latitude of Cape Douglas (58°52′ N. lat.), and as its western boundary the longitude of Cape Kumlik (157°27′ W. long.).

(1) *Northeast District.* All waters northeast of a line extending 168° from the easternmost tip of Cape Barnabas, east of a line from the northernmost tip of Inner Point to the southernmost tip of Afognak Point, east of 152°30′ W. long. in Shuyak Strait, and east of the longitude of the northernmost tip of Shuyak Island (152°20′ W. long.).

(2) *Southeast District.* All waters southwest of a line extending 168° from the easternmost tip of Cape Barnabas and east of a line extending 222° from the southernmost tip of Cape Trinity.

(3) *Southwest District.* All waters west of a line extending 222° from the southernmost tip of Cape Trinity, south of a line from the westernmost tip of Cape Ikolik to the southernmost tip of Cape Kilokak and east of the longitude of Cape Kilokak (156°19′ W. long.).

(4) *Semidi Island District.* All waters west of the longitude of Cape Kilokak at 156°19′ W. long. and east of the longitude of Cape Kumlik at 157°27′ W. long.

(5) *Shelikof District.* All waters north of a line from the westernmost tip of Cape Ikolik to the southernmost tip of Cape Kilokak, west of a line from the northernmost tip of Inner Point to the southernmost tip of Afognak Point, west of 152°30′ W. long., in Shuyak Strait, and west of the longitude of the northernmost tip of Shuyak Island (152°20′ W. long.).

Registration Area M (Alaska Peninsula) has as its eastern boundary the longitude of Cape Kumlik (157°27′ W. long.), and its western boundary the longitude of Scotch Cap Light. The registration area also includes all waters of Bechevin Bay and Isanotski Strait south of a line from the easternmost tip of Chunak Point to the westernmost tip of Cape Krenitzen.

Registration Area O (Dutch Harbor) has as its northern boundary the latitude of Cape Sarichef (54°36′ N. lat.), as its eastern boundary the longitude of Scotch Cap Light, and as its western boundary 171° W. long., excluding the waters of Statistical Area Q.

Registration Area Q (Bering Sea) has as its southern boundary a line from Cape Sarichef (54°36′ N. lat.), to 54°36′ N. lat., 171° W. long., to 55°30′ N. lat., 171° W. long., to 55°30′ N. lat., 173°30′ long., as its northern boundary the latitude of Point Hope 68°21′ N. lat.).

Registration Area R (Adak) has as its eastern boundary 171° W. long., and as its northern boundary 55°30′ N. lat.

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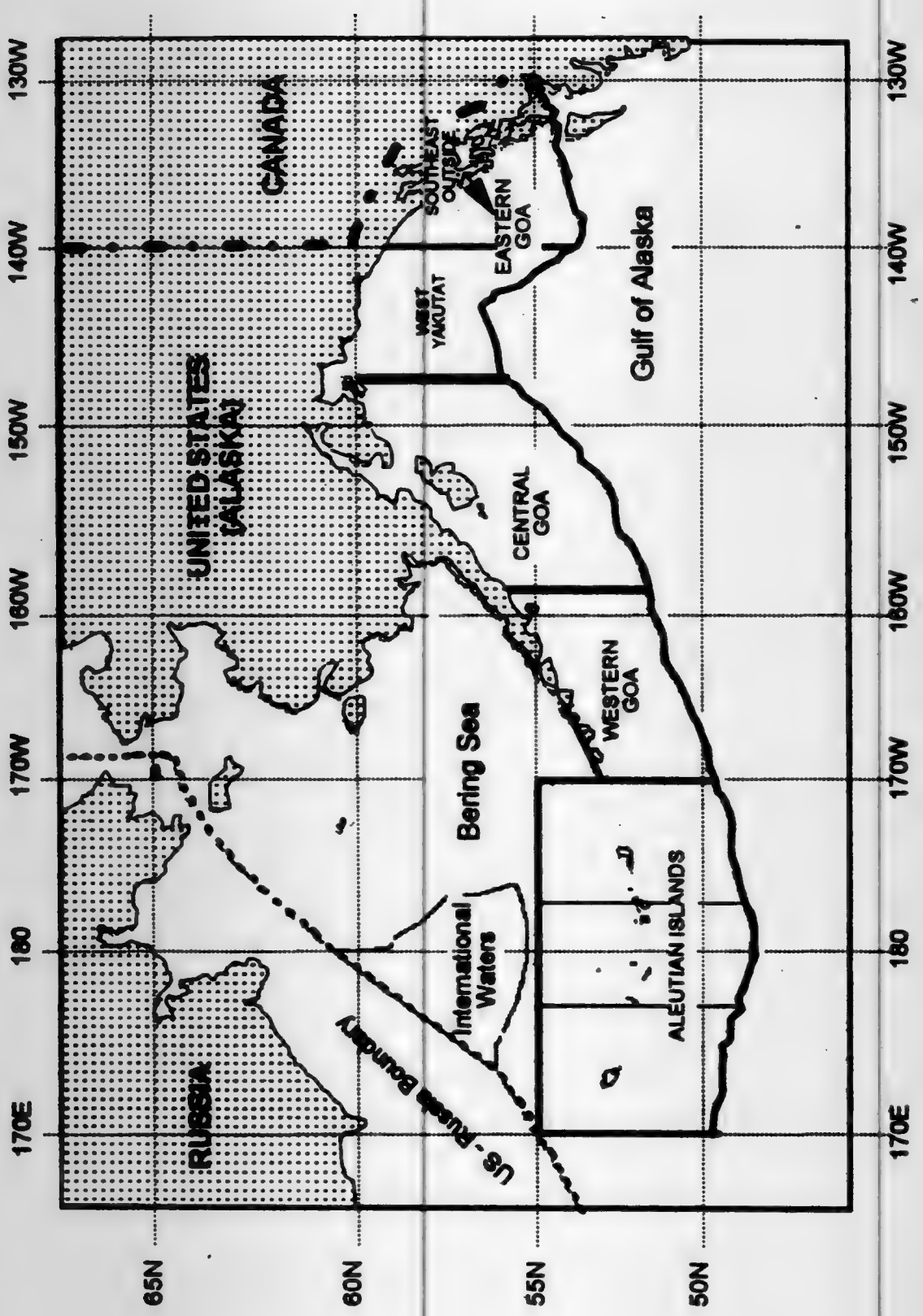

Figure 15. Sablefish Regulatory Areas
a. Map

NOTE: Refer to Figures 1 and 3 for coordinates.

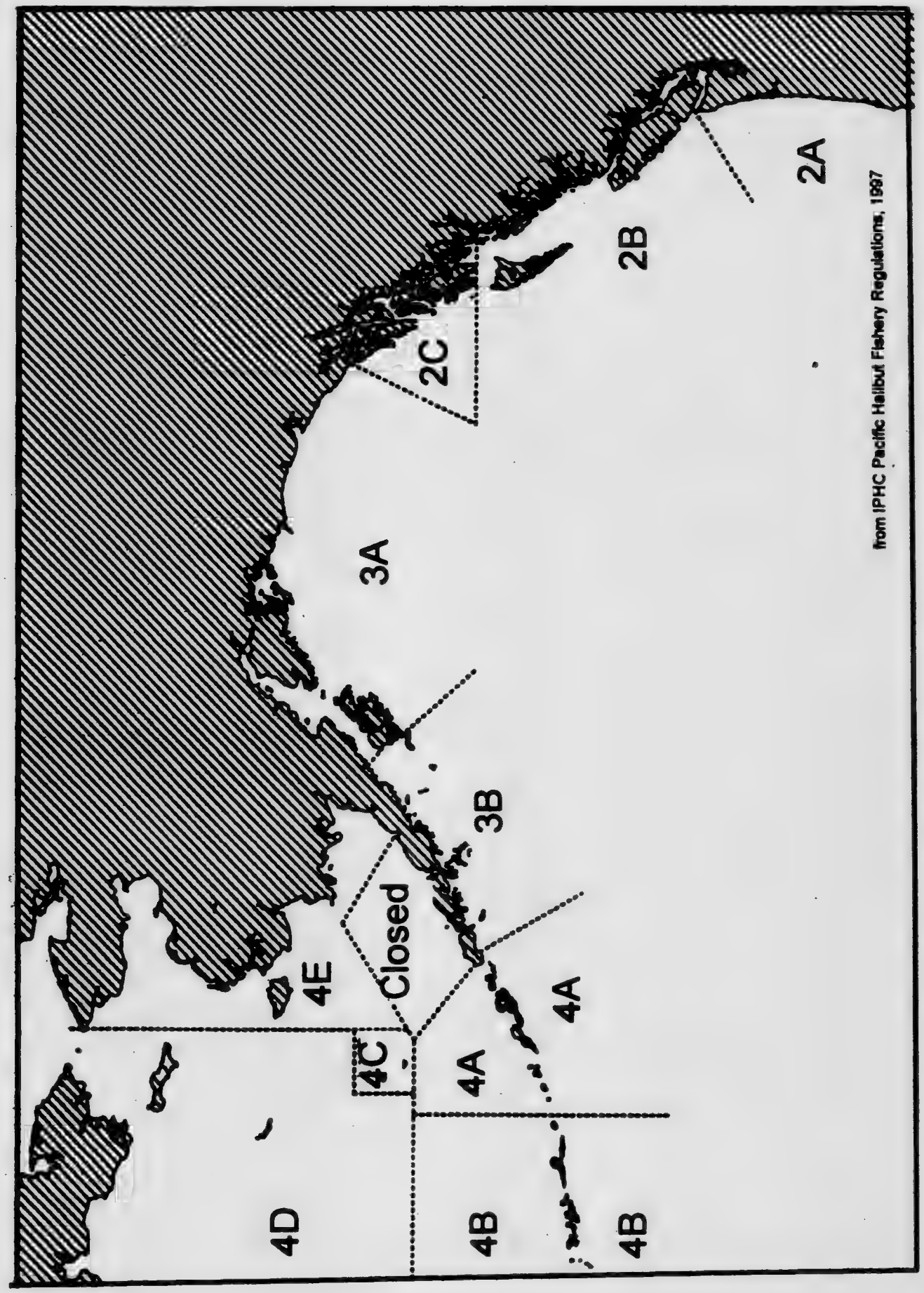

Figure 16. Regulatory Areas for the Pacific Halibut Fishery
a. Map

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FIGURE 16.—REGULATORY AREAS FOR THE PACIFIC HALIBUT FISHERY

[b. Coordinates]

Area 2A includes all waters off the states of California, Oregon, and Washington;
Area 2B includes all waters off British Columbia;
Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (58°11′57″ N. lat., 136°38′18″ W. long.) and south and east of a line running 205° true from said light;
Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (57°41′15″ N. lat., 155°35′00″ W. long.) to Cape Ikolik (57°17′17″ N. lat., 154°47′18″ W. long.), then along the Kodiak Island coastline to Cape Trinity (56°44′50″ N. lat., 154°08′44″ W. long.), then 140° true;
Area 3B includes all waters between Area 3A and a line extending 150° true from Cape Lutke (54°29′00″ N. lat., 164°20′00″ W. long.) and south of 54°49′00″ N. lat. in Isanotski Strait;
Area 4A includes all waters in the GOA west of Area 3B and in the Bering Sea west of the closed area defined below that are east of 172°00′00″ W. long. and south of 56°20′00″ N. lat.;
Area 4B includes all waters in the Bering Sea and the GOA west of Area 4A and south of 56°20′00″ N. lat.;
Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined below which are east of 171°00′00″ W. long., south of 58°00′00″ N. lat., and west of 168°00′00″ W. long.;
Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of 168°00′00″ W. long.;
Area 4E includes all waters in the Bering Sea north and east of the closed area defined below, east of 168°00′00″ W. long., and south of 65°34′00″ N. lat.
Closed areas
All waters in the Bering Sea north of 54°49′00″ N. lat. in Isanotski Strait that are enclosed by a line from Cape Sarichef Light (54°36′00″ N. lat., 164°55′42″ W. long.) to a point at 56°20′00″ N. lat., 168°30′00″ W. long.; thence to a point at 58°21′25″ N. lat., 163°00′00″ W. long.; thence to Strogonof Point (56°53′18″ N. lat., 158°50′37″ W. long.); and then along the northern coasts of the Alaska Peninsula and Unimak Island to the point of origin at Cape Sarichef Light.
In Area 2A, all waters north of Point Chehalis, WA (46°53′18″ N. lat.).

[FR Doc. 98–3454 Filed 2–18–98; 8:45 am]
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Notices

Federal Register
Vol. 63, No. 33
Thursday, February 19, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98–001N]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget regulations, this notice announces the Food Safety and Inspection Service's (FSIS) intention to request an extension of a currently approved information collection package regarding the regulatory requirements of FSIS's "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems," final rule.

DATES: Comments on this notice must be received on or before April 20, 1998.

ADDITIONAL INFORMATION OR COMMENTS: Contact Lee Puricelli, Paperwork Specialist; (202) 720–0346.

SUPPLEMENTARY INFORMATION:

Title: Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems.

OMB Number: 0583–0103.

Expiration Date of Approval: April 30, 1997.

Type of Request: Extension of a currently approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting an extension of the information collection package addressing meat and poultry paperwork and recordkeeping requirements related to FSIS's final rule "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems" (61 FR 38806, July 25, 1996). In the final rule, FSIS established requirements applicable to meat and poultry establishments designed to reduce the occurrence and numbers of pathogenic microorganisms on meat and poultry products, reduce the incidence of foodborne illness associated with the consumption of those products and provide a new framework for modernization of the current system of meat and poultry inspection.

The regulations require that each establishment develop and implement written sanitation standard operating procedures (Sanitation SOP's); require regular microbial testing by slaughter establishments to verify the adequacy of the establishments' process controls for the prevention and removal of fecal contamination and associated bacteria; and require that all meat and poultry establishments develop and implement a system of preventive controls, known as HACCP, designed to improve the safety of their products.

Standard Operating Procedures (SOP) for Sanitation

Establishments must develop and maintain an SOP for sanitation that will be used by inspection personnel in performing monitoring verification tasks. The establishment must detail in a written plan how they will meet the basic sanitation requirements. The SOP's specify the cleaning and sanitizing procedures for all equipment and facilities involved in the production of every product.

FSIS does not review or approve the plans. However, plans must be on file and available to FSIS program employees upon request. Based on current regulatory standards, inspectors review the plans and if an establishment's sanitation activities are determined to be insufficient, then inspectors may suggest modifications.

Each official establishment maintains daily records sufficient to document the implementation and monitoring of the Sanitation SOP's. In most cases, inspectors review the records once a day.

Microbiological Testing

As part of *E. coli* verification testing, each slaughter establishment must develop written procedures outlining specimen collection and handling. The slaughter establishments are responsible for entering the results into a statistical process control chart. The data and chart must be available for review by the Inspector-in-Charge, upon request.

HACCP

Establishments must develop written HACCP plans that include: Identification of the processing steps which present hazards; identification and description of the critical control point (CCP) for each identified hazard; specification of the critical limit which may not be exceeded at the CCP, and if appropriate a target limit; description of the monitoring procedure or device to be used; description of the corrective action to be taken if the limit is exceeded; description of the records which will be generated and maintained regarding this CCP; and description of the establishment verification activities and the frequency at which they are to be conducted. Critical limits which are currently a part of FSIS regulations or other requirements must be addressed.

FSIS does not review or approve the plans. However, plans must be on file and available to FSIS program employees upon request. Inspectors will review the plans and if an establishment's HACCP operations are determined to be insufficient by inspectors, then they may suggest modifications.

Establishments keep records for monitoring activities during slaughter and processing, corrective actions, verification check results, and related activities that contain the identity of the product, the product code or slaughter production lot, and the date the record was made. The information is recorded at the time that it is observed, and the record is signed by the operator or observer.

Lastly, HACCP records generated by the processor are retained on site for at least one year for slaughter and refrigerated products and two years for shelf-stable products. Off-site storage of records is permitted after six months, if such records can be retrieved and provided, on-site, within 24 hours of an FSIS employee's request. Records must be available to FSIS program employees

upon request for verification of the HACCP system. However, it is the Agency's intent to generate its own records of its verification tasks and results rather than duplicate the records of the establishment.

The paperwork requirements of these regulations, records and plans, represent an alternative to the previous process of inspection. The industry's documentation of its processes, first in a plan and thereafter in a continuous record of process performance, is a more effective food safety approach than the less systematic generation of information by plant employees and inspectors. It gives inspectors a much broader picture of production than they can generate on their own and gives them time to perform higher priority tasks. At the same time, it gives the managers a better view of their own process and more opportunity to adjust it to prevent safety defects. As a result, managers and inspectors will use their time more effectively. Moreover, any increased paperwork burden will be offset by a reduction in the number of face-to-face contacts between management and the inspectors.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .1126685 hours per response.

Respondents: Meat and poultry establishments.

Estimated Number of Respondents: 7,374.

Estimated Number of Responses per Respondent: 9513.7803.

Estimated Total Annual Burden on Respondents: 7,904,222 hours.

(Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

Copies of this information collection assessment and comments can be obtained from Lee Puricelli, Paperwork Specialist, Food Safety and Inspection Service, USDA, 300 12th Street SW, Room 109, Washington, DC 20250–3700, (202) 720–0346.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 12, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–4158 Filed 2–18–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of FY 1998 Emerging Markets Program and Solicitation of Private Sector Proposals

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of FY 1998 emerging markets program and solicitation of private sector proposals.

SUMMARY: The Foreign Agricultural Service (FAS) invites proposals for using technical assistance to promote the export of, and improve the market access for, U.S. agricultural products to emerging markets in fiscal year (FY) 1998 under the Emerging Markets Program (the Program). The Program is authorized by the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (the Act). Proposals will be considered under this announcement from any private agricultural or agribusiness organization, with certain restrictions as indicated below. Program funds available for FY 1998 under this notice are approximately $5 million. All agricultural products except tobacco are eligible for consideration.

FOR FURTHER INFORMATION: It is strongly recommended that any organization considering applying to the Program for FY 1998 funding assistance obtain a copy of the 1998 Program Guidelines. The Guidelines contain additional information, including details of project budgets and certain funding limitations that must be taken into account in the preparation of proposals. Requests for Program Guidelines and additional information may be obtained from and applications submitted to: Emerging Markets Office, Foreign Agricultural Service, Room 6506 South Building, U.S. Department of Agriculture, Washington, DC 20250–1032, Fax: (202) 690–4369. The Guidelines are also available on the FAS Home Page on the Internet: http:/www.fas.usda.gov/excredits/em-markets/em-markets.html.

Program Definitions

The purpose of Program is to assist U.S. organizations, public and private, to improve market access, development and promotion of U.S. agricultural products in low to middle income countries that offer promise of emerging market opportunities in the near- to medium-term. This is to be accomplished by providing U.S. technical assistance through projects and activities in those emerging markets.

The Act defines an emerging market as any country that the Secretary of Agriculture determines:

(1) Is taking steps toward a market-oriented economy through the food, agriculture, or rural business sectors of the economy of the country; and

(2) has the potential to provide a significant market for United States agricultural commodities or products of United States agricultural commodities.

Because funds are limited and the range of potential emerging market countries is world wide, priority is given to proposals which focus on those countries with (1) per capita income less than $8,355 (the food aid per capital income cut-off figure of OECD's Development Assistance Committee); and (2) population greater than 1 million.

Priorities and Determining Factors

The underlying premise of the Emerging Markets Program is that there are distinctive characteristics of emerging agricultural markets that necessitate or benefit significantly from U.S. governmental assistance before the private sector moves to develop these markets through normal corporate or trade promotional activities. The emphasis is on market access opportunities, with funding provided for successful activities on a project-by-project basis. The Program complements the efforts of other FAS marketing programs. Once a market access issue has been addressed by this Program, further market development activities may be considered under other programs such as GSM–102 or GSM–103 credit guarantee programs, the Market Access Program (MAP), or the Foreign Market Development Program (FMD). Ineligible activities include in-store promotions, restaurant promotions, advertising, and branded promotions.

For countries deemed "emerging markets," the following criteria will be used to determine the suitability of projects for funding by the Emerging Markets Program:

1. Low U.S. market share *and* significant market potential.

• Is there a significant lag in U.S. market share of a specific commodity in a given country or countries?

• Is there an identifiable obstacle or competitive disadvantage facing U.S. exporters (e.g., competitor financing, subsidy, competitor market development activity) or systemic obstacle to imports of U.S. products (e.g., inadequate distribution, infrastructure impediments, insufficient information, lack of financing options or resources)?

• What is the potential of a project to generate a significant increase in U.S. agricultural exports in the near- to medium-term? (Estimates or projections of trade benefits to commodity exports, and the basis for evaluating such, must be included in proposals submitted to the Program.)

2. Recent change in a market.

• Is there, for example, a change in a sanitary or phytosanitary trade barrier; a change in an import regime or the lifting of a trade embargo; a shift in the political or financial situation in a country?

In order to qualify for Emerging Markets Program funding, proposals must also include *cost-sharing:* the willingness of private agribusiness to commit its own funds along with those of the Program to seek export business in an emerging market. No proposal will be considered without the element of cost-sharing. The Emerging Markets Program is intended to complement, not supplant, the efforts of the U.S. private sector. The percentage of private funding proposed for a project will therefore be a critical factor in determining which proposals are funded under the Program. While no minimum or maximum is specified, the absolute amount of private sector funding proposed may also affect the decision to fund a proposal. The type of cost-sharing provided by private industry is also not specified; it may be professional time of staff assigned to the project or actual cash invested in the proposed project. However, proposals in which private industry is willing to commit actual funds, rather than contributing such in-kind items as staff resources, will be given priority consideration.

Additional criteria to be considered in approving projects are outlines under "Applications" below.

Funding of Proposals

Funding for technical assistance projects is made on the basis of proposals to the Emerging Markets Office. In general, each proposal submitted in response to this announcement will compete against all such proposals received under the same announcement. Proposals will be judged not only on their ability to provide benefits to the organization receiving Emerging Markets Program funds, but which also represent the broader interests of the industry which that organization represents.

The limited funds of the Emerging Markets Program and the range of emerging markets world wide in which the funds may be used preclude EMO from approving large budgets for single projects. The Program is intended to provide appropriate USDA assistance to projects which also have a significant amount of financial contributions from other sources, especially U.S. private industry. There is no minimum or maximum amount set for EMO-funded projects; however, most are funded at the level of less than $500,000 and for a duration on one year or less. Funding is normally made available on a cost-reimbursable basis.

Multi-year Proposals. These may be considered in the context of a strategic plan and detailed plan of implementation. Funding in such cases is normally provided one year at a time, with commitments beyond the first year subject to interim evaluation.

Projects Already in Progress. Funding may be considered for technical assistance projects that have already begun with the support and financial assistance of a private entity, and for which government funding for continuation of the project is requested. Such proposals must meet the criteria of the Emerging Markets Program, including cost-sharing for the portion of the project for which government funding is requested.

(Exception. In addition to the approximately $5 million made available through this announcement for competitive proposals, some project activities may qualify for funding under one of two separate funds administered by the Emerging Markets Office: the Technical Issues Resolution Fund, and the Quick Response Market Fund. Because of the time-sensitive nature of these funds, proposals funded from these sources may be approved and funded at any time, provided the basic requirements of the Emerging Markets program and the specific prerequisites of the funds are met in each case. For details concerning these funds, see the Program Guidelines.)

Project Reports

Results of all projects supported financially by the Program must be reported in a performance report to the Emerging Markets Office. Because public funds are used to support the project, these reports will be made available to the public by the Emerging Markets Office.

Eligible Organizations, Activities

Any United States agricultural and/or agribusiness organization, university, or state department of agriculture, is eligible to participate in the Program, with certain limitations. Priority will be given to those proposals that include significant support and involvement by private industry.

Proposals from research and consulting organizations will be considered if they provide evidence of substantial participation by U.S. industry.

Under the Program, U.S. organizations may seek funding to address market-specific issues and undertake activities not suitable for funding under FAS market promotion programs, e.g., the Foreign Market Development (FMD) Program and the Market Access Program (MAP), including the following:

• Responding to new or changed market opportunities requiring a rapid response (through the Quick Response Marketing Fund);

• Addressing food safety and regulation issues (through the Technical Issues Resolution Fund);

• Conducting sectorial assessments for trade and investment, orientation visits, feasibility studies, or market research for markets not already serviced by other FAS marketing programs, or for products for niche markets even though serviced by other FAS marketing programs;

• Undertaking cross-commodity activities focusing on problems, e.g., distribution, which affect more than one industry.

DATES: Proposals for FY 1998 funding must be received in the Emerging Markets Office not later than Monday, April 20, 1998. Funding decisions are anticipated within approximately 90 days of this deadline. No proposal received after the April 20 deadline will be considered, regardless of the circumstances.

Applications

To assist FAS in making determinations under the Program, FAS recommends that all applications contain complete information about the proposed project and that the applications not be longer than ten (10) pages. The recommended information includes: name of person/organization submitting proposal; date of proposal; organization affiliation and address; telephone and fax numbers; full title of proposal; precis of the proposal,

including objectives, proposed activities, benefits to U.S. agricultural exports, target country/countries for proposed activities, projected starting date for project, and funding amount requested; summary and detailed description of proposed project; statement of problem (specific trade constraint) to be addressed through the proposed project; benefits to U.S. agricultural exports; agricultural trade data for target country/countries, including existing percentage of U.S. export market share; information on whether similar activities are or have previously been funded in target country/countries (e.g., under MAP and/or FMD programs); a clearly stated explanation as to why participating organization(s) are unlikely to carry out activities without Federal financial assistance; time line(s) for project implementation; detailed project budget, including other sources of funding for the project and contributions from participating organizations (additional requirements are contained in the Program Guidelines); Federal tax ID number of the responsible organization. Qualifications of applicant(s) should be included, as an attachment.

Signed at Washington, D.C., on February 11, 1998.

Lon Hatamiya,

Administrator, Foreign Agricultural Service.

[FR Doc. 98–4169 Filed 2–18–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Cottonwood Coal Lease Tract, UTU–68012; Manti-La Sal National Forest, Emery County, Utah

ACTION: Notice of intent to prepare a third-party Environmental Impact Statement.

SUMMARY: The Forest Service and Bureau of Land Management will direct preparation of a Third-Party Environmental Impact Statement (EIS) to document the analysis and disclose the environmental and human effects of proposed actions to offer the Cottonwood Coal Lease Tract for competitive bidding in accordance with 43 CFR part 3425. As the surface management agency, the Forest Service will be the lead agency for preparation of the EIS and the Bureau of Land Management will be a joint lead agency. The Office of Surface Mining and Bureau of Reclamation will also participate as cooperating agencies.

The coal lease tract, as delineated by the Tract Delineation Team, encompasses 9,243.87 acres of Federal coal lands on the Manti-La Sal National Forest as follows:

T. 17 S., R. 6 E., SLM,
Section 2, SW4;
Section 3, lots 1–12, SE4;
Section 4, lots 1–2, S2NE4, SE4;
Section 9, E2, E2W2;
Section 10, lots 1–8, E2;
Section 11, All;
Section 12, W2W2;
Section 13, W2W2;
Section 14, lots 1–4, E2, NW4;
Section 15, lots 1–12, NE4;
Section 16, NE4NW4;
Section 20, E2E2;
Section 21, All;
Section 22, All;
Section 23; lots 1–12, NE4;
Section 24, W2W2;
Section 25, N2NW4;
Section 26, N2NE4, W2SW4NE4, NW4, N2SW4, W2NW4SE4;
Section 27, N2, N2S2;
Section 28, All;
Section 29, E2;
Section 32, E2;
Section 33; All.

(Additions and/or deletions to the delineated tract may be considered as alternatives to the proposed action, to be developed and analyzed based on issues and management needs.)

PacifiCorp applied to the Bureau of Land Management for the lease to obtain additional coal reserves to increase the production life of their Cottonwood/Wilberg/Trail Mountain mine complex. The tract lies west and north of the boundary of the existing approved permit area for the Trail Mountain Mine. If PacifiCorp obtains the tract, it would be mined by longwall and room-and-pillar methods through underground workings in the existing permit area. Existing portal facilities in Cottonwood/Wilberg/Trail Mountain mine comples would be used. If another company obtains the tract, it is most likely that new portal facilities would be required in Cottonwood Canyon, north of the existing Trail Mountain Mine facility. The underground mining methods and layout would be similar. The EIS would consider the effects of both scenarios, the No Action Alternative, and other alternatives to be developed after completion of project scoping.

AGENCY DECISIONS: In accordance with the Coal Leasing Amendments Act of 1975, which amended the Mineral Leasing Act of 1920, the Forest Supervisor, Manti-La Sal National forest, must decide whether or not to consent to leasing by the Bureau of Land Management and identify special coal lease stipulations needed to protect non-mineral resources.

In accordance with the Mineral Leasing Act of 1920, as amended, the Utah State Director of the Bureau of Land Management must decide whether or not to offer the tract for competitive leasing and under what terms, conditions, and stipulations.

DATES: Written comments concerning the scope of the analysis described in this notice should be received on or before March 23, 1998.

ADDRESSES: Send written comments to Manti-La Sal National Forest, 599 West Price River Drive, Price, Utah 84501.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be addressed to Dale Harber or Aaron Howe, Manti-La Sal National Forest, phone (435) 637–2817.

SUPPLEMENTARY INFORMATION: This EIS will tier to the Final EIS and Record of Decision for the Manti-La Sal National Forest Land and Resource Management Plan (Forest Plan). The Manti-La Sal Forest Plan provides the overall guidance (Goals, Objectives, Standards, and Management Area Direction) to achieve the Desired Future Condition for the area being analyzed, and contains specific management area prescriptions for the entire Forest. The proposed lease tract is available for further consideration for coal leasing. The Forest Service and Bureau of Land Management have determined that data are available to meet the Data Adequacy Standards for Federal Coal Leasing, Uinta-Southwestern Utah Coal Region.

Issues and alternatives to be evaluated in the analysis will be determined through public scoping. The major issues are expected to include the socioeconomic benefits of mining; the potential impacts of underground mining and mining-induced subsidence to surface and ground water, vegetation, wildlife, cultural/paleontological resources, range improvements, and other land uses; the potential for impacts on the Joes Valley Dam; and the potential impacts of any new surface facilities to the Forest and human environments.

The Forest Service is seeking information and comments from Federal, State, and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS and Final

EIS. For most effective use, comments would be submitted to the Forest Service within 30 days from the date of publication of this notice in the **Federal Register**. Preparation of the EIS will include the following steps:

1. Define the purpose of and need for action.
2. Identify potential issues.
3. Eliminate issues of minor importance or those that have been covered by previous and relevant environmental analysis.
4. Select issues to be analyzed in depth.
5. Identify reasonable alternatives to the proposed action.
6. Describe the affected environment.
7. Identify the potential environmental effects of the alternatives.

Steps 2, 3, and 4 will be completed through the scoping process.

Step 5 will consider a range of alternatives developed from the key issues and management needs. At a minimum, the "No Action" and "Propose Action" Alternatives will be analyzed. Other alternatives could involve modified tract boundaries (additions and/or reductions) and different sets of special lease stipulations for the protection of non-mineral resources. Alternatives may also be developed to include analysis of mining in the existing adjacent lease area and a potential modification of adjacent existing leases to add up to 160 acres/lease to prevent bypassing minable reserves.

Step 6 will describe the physical attributes of the area to be affected by this proposal, with special attention to the environmental factors that could be adversely affected.

Step 7 will analyze the environmental effects of each alternative. This analysis will be consistent with management direction outlined in the Forest plan. The direct, indirect, and cumulative effects of each alternative will be analyzed and documented. In addition, the site specific mitigation measures for each alternative will be identified and the effectiveness of these mitigation measures will be disclosed.

Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods are, (1) during the scoping process, the next 30 days following publication of this Notice in the **Federal Register**, and (2) during the formal review period of the Draft EIS.

The Draft EIS is estimated to be filed with the Environmental Protection Agency (EPA) and available for public review in September, 1998. At this time the EPA will publish an availability notice of the Draft EIS in the **Federal Register**.

The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the Draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (See The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel, (9th Circuit, 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final document.

To assist the Forest Service in identifying and considering issues and concerns related to the proposed action, comments on the Draft EIS should be as specific as possible. Referring to specific pages or chapters of the Draft EIS is most helpful. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3, in addressing these points.)

The final EIS is expected to be released in December, 1998.

The Forest Supervisor for the Manti-La Sal National Forest and Utah State Director of the Bureau of Land Management, who are the responsible officials for the EIS, will then make their respective decisions regarding this proposal, after considering the comments, responses, and environmental consequences discussed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies. The rationale for the respective agency decisions will be documented in the Record(s) of Decisions.

Dated: February 11, 1998.

Janette S. Kaiser,

Forest Supervisor, Manti-La Sal National Forest.

[FR Doc. 98–4168 Filed 2–18–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business—Cooperative Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Rural Business-Cooperative Service (RBS) to request an extension for a currently approved information collection in support of the Cooperative Development Division (CDD), Cooperative Development Program.

DATES: Comments on this notice must be received by April 20, 1998 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: John Wells, Director, Cooperative Development Division, Rural Business-Cooperative Service, USDA, STOP 3254, 1400 Independence Avenue, SW., Washington, DC 20250–3254, Telephone: (202) 720–3350.

SUPPLEMENTARY INFORMATION:

Title: Cooperative Services Questionnaire:

New Cooperative Volume and Structure, Producer Survey for New Cooperative Activity.

OMB Number: 0570–0008.

Expiration Date of Approval: May 31, 1998.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Business-Cooperative Service (RBS) Cooperative Services Programs conducts feasibility studies to assist in the development of new cooperatives. The Cooperative Development Division (CDD) specializes

in technical assistance to agricultural and rural producer groups interested in organizing a cooperative, and to emerging or developing co-ops, so they can: (a) Use sensible economic judgment, (b) determine co-op feasibility, (c) meet an economic need, (d) successfully operate on sound business principles and, (e) increase member income. In order to carry out the Agency's mission, RBS needs to collect information from the cooperative community.

The authority to carry out RBS mission is defined in the Cooperative Marketing Act of 1926 (44 Stat. 802–1926), and other regulations listed below.

Authority and Duties of Division (7 U.S.C. & 453)

(a) The division shall render service to associations of producers of agricultural products, and federations and subsidiaries thereof, engaged in the cooperative marketing of agricultural products, including processing, warehousing, manufacturing, storage, the cooperative purchasing of farm supplies, credit, financing, insurance, and other cooperative activities.

(b) The division is authorized:

(1) To acquire, analyze and disseminate economic, statistical, and historical information regarding the progress, organization, and business methods of cooperative associations in the United States and foreign countries.

(2) To conduct studies of the economic, legal, financial, social, and other phases of cooperation, and publish the results thereof. Such studies shall include the analyses of the organization, operation, financial, and merchandising problems of cooperative associations.

(3) To make surveys and analyses if deemed advisable of the accounts and business practices of representative cooperative associations upon their request; to report to the association so surveyed to results thereof, and with the consent of the association so surveyed to publish summaries of the results of such surveys, together with similar facts, for the guidance of cooperative associations and for the purpose of assisting cooperative associations in developing methods of business and market analysis.

(4) To confer and advise with committees or groups of producers, if deemed advisable, that may be desirous of forming a cooperative association and to make an economic survey and analysis of the facts surrounding the production and marketing of the agricultural product or products which the association, if formed, would handle or market.

(5) To acquire from all available sources information concerning crop prospects, supply, demand, current receipts, exports, imports, and prices of the agricultural products handled or marketed by cooperative associations, and to employ qualified commodity marketing specialists to summarize and analyze this information and disseminate the same among cooperative associations, and others.

(6) To promote the knowledge of cooperative principles and practices and to cooperate, in promoting such knowledge, with educational and marketing agencies, cooperative associations, and others.

(7) To make such special studies, in the United States and foreign countries, and to acquire and disseminate such information and findings as may be useful in the development and practice of cooperation.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Mainly producers of agricultural products in domestic market areas in which proposed cooperatives would be expected to market their member's products.

Estimated Number of Respondents: 245.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 245 hours per year.

Copies of this information collection can be obtained from Diana Wareham, Regulations and Paperwork Management Branch, at (202) 720–1975.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection techniques or other forms of information technology. Comments may be sent to Diana Wareham, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0743, 1400 Independence Avenue, SW., Washington, DC 20250–0743. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: February 11, 1998.

Dayton J. Watkins,

Administrator, Rural Business—Cooperative Service.

[FR Doc. 98–4170 Filed 2–18–98; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on Tuesday, March 24, 1998, at the Christian Tutwiler Hotel, 2021 Park Place North, Birmingham, Alabama 32503. The purpose of the meeting is to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 6, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–4119 Filed 2–18–98; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nebraska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Nebraska Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on March 5, 1998, at the Double Tree Hotel, 1616 Dodge Street, Omaha, Nebraska 68102. The purpose of the meeting is to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact

Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 4, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–4117 Filed 2–18–98; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Hampshire Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:30 p.m. on Tuesday, March 3, 1998, at the Rivier College, Dion Center, Conference Room, 420 Main Street, Nashua, New Hampshire 03060. The purpose of the meeting is to discuss ideas for future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Acting Chairperson Andrew Stewart, 603–632–7543, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 6, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–4120 Filed 2–18–98; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn at 4:00 p.m. on Wednesday, March 4, 1998, at the North Carolina A & T University, Hodgin Hall, Greensboro, North Carolina 27411. The purpose of the meeting is to review the status of the Commission and its advisory committees; discuss the status of the report on racial tension in North Carolina; discuss future projects; and discuss civil rights progress/problems in North Carolina and the Nation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 4, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–4118 Filed 2–18–98; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Hearing on Police—Community Relations—Sonoma County

AGENCY: Commission on Civil Rights.

ACTION: Notice of hearing cancellation.

SUMMARY: Notice is hereby given pursuant to the provisions of the Civil Rights Commission Amendments Act of 1994, Section 3, Public Law 103–419, 108 Stat. 4338, as amended, and 45 CFR 702.3, that a public hearing before a Subcommittee of the U.S. Commission on Civil Rights which was to have commenced on Friday, February 20, 1998, beginning at 8:30 a.m., in the Justice Joseph A. Rattigan Building, in Conference Room 410, located at 50 D Street, Santa Rosa, CA 95404, has been cancelled, Notice of said hearing was published in the **Federal Register** on January 28, 1998, FR Doc. 98–2113, 63 FR 4218, No. 18.

FOR FURTHER INFORMATION CONTACT: Barbara Brooks, Press and Communications (202) 367–8312.

Dated: February 12, 1998.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 98–4094 Filed 2–18–98; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Construction Progress Reporting Surveys:

0607–0153 Construction Project Report (Private Construction Projects, C–700)

0607–0163 Construction Project Report (Multifamily Residential, C–700(R))

0607–0171 Construction Project Report (State & Local Government, C–700(SL))

Type of Request: Extension of currently approved collections.

Burden: 0607–0153—18,000 hours; 0607–0163—4,320 hours; 0607–0171—18,000 hours.

Number of Respondents: 0607–0153—6,000; 0607–0163—1,440; 0607–0171—6,000.

Avg. Hours Per Response: 15 minutes.

Needs and Uses: The Census Bureau conducts the Construction Project Reporting Surveys (CPRS) to provide the dollar value of construction put in place by private companies, individuals, private multifamily residential buildings, and state and local government sectors. The C–700 form (Private Construction Projects) collects construction put in place data for nonresidential projects owned by private companies or individuals. The C–700(R) (Multifamily Residential Projects) form collects construction put in place data for private multifamily residential buildings. Form C–700(SL) (State and Local Government Projects) collects construction put in place data for state and local government projects.

The Census Bureau uses the information from the CPRS to publish the value of construction put in place series. Published estimates are used by a variety of private business and trade

associations to estimate the demand for building materials and to schedule production, distribution, and sales efforts. They also provide various governmental agencies with a tool to evaluate economic policy and to measure progress towards established goals. For example, Bureau of Economic Analysis staff use data to develop the construction components of gross private domestic investment in the gross domestic product. The Federal Reserve Board and the Department of Treasury use the value in place data to predict the gross domestic product, which is presented to the Board of Governors and has an impact on monetary policy.

Affected Public: Individuals or households, Businesses or other for-profit organizations, not-for-profit institutions, and State, local or tribal government.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: 13 USC, Section 182.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 11, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4099 Filed 2–18–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This collection has been submitted under the emergency Paperwork Reduction Act procedures.

Agency: National Institute of Standards and Technology (NIST).

Title: Provisional Listing of Facilities and Registrars.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: New Collection—Emergency Review.

Burden: 200 reporting/recordkeeping hours.

Number of Respondents: 50.

Avg. Hours Per Response: 3 hours for reporting requirements; one hour for recordkeeping.

Needs and Uses: NIST has determined that the implementation of the Fastener Quality Act (FQA) may cause undue burden on the industry or force NIST to postpone the implementation date. The fastener industry affected by this collection of information uses a quality assurance system of manufacturing that has to be registered through NIST-approved accreditors for FQA.

Because the registration cannot be accomplished before the implementation date, NIST has developed an alternative approach. NIST will be collecting information from persons seeking provisional listing. The information obtained will provide assurance that applicant organizations comply with the Act during the one-year provisional listing period.

Affected Public: Businesses or other for-profit organizations.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk Officer: Maya Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maya Bernstein, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503. A clearance has been requested by Tuesday, February 24, 1998.

Dated: February 12, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4161; Filed 2–18–98; 8:45 am]

BILLING CODE: 3510–13–P

DEPARTMENT OF COMMERCE

Bureau of the Census

The American Community Survey (ACS)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(C)(2)(A)).

DATES: Written comments must be submitted on or before April 20, 1998.

ADDRESSES: Direct all written comments to Linda Englemeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Cynthia Taeuber, Bureau of the Census, Demographic Statistical Methods Division, Washington, DC 20233. Her telephone number is (301) 457–2899.

SUPPLEMENTARY INFORMATION:

I. Abstract

The American Community Survey (ACS), which the Census Bureau initiated in November 1995 with the demonstration phase, is a continuing full-scale operation of a continuous measurement system. Continuous measurement is a reengineering of the method for collecting the housing and socio-economic data traditionally collected in the decennial census. It provides data every year instead of once in ten years. It blends the strength of small-area estimation from the census with the quality and timeliness of the continuing surveys through a large monthly survey.

The Census Bureau began the ACS in four sites, added new sites each of the last two years, and now presently conducts the ACS in ten sites.

Starting in November 1998, the Census Bureau plans to introduce the comparison phase of the continuous measurement system. The Census Bureau plans to conduct the ACS in 37 sites, which include 46 counties or county equivalents, across the country. This three-year period of data collection will allow the Census Bureau to make direct comparisons between the ACS and the Census 2000 long form. In November 1998, the Census Bureau also plans to add eight additional sites (ten counties or county equivalents) to balance the workload among the regional offices, and to give field staff experience in preparation for an

expanded ACS starting in November 1999. The 45 sites provide a broad mix of geographic and demographic areas, ranging from counties with large, central cities to sparsely populated rural areas.

In addition to selecting a sample of residential addresses, the Census Bureau will select a sample of group quarters and conduct the ACS with a sample of persons within the group quarters. The Census Bureau is also developing and will implement procedures for a reinterview operation to monitor the quality of data collected during Computer Assisted Personal Interviewing.

This phase of the American Community Survey is designed primarily to collect information necessary to understand differences between estimates derived from the ACS and the Census 2000 long form. This phase will help the Census Bureau and the Federal government better understand the costs and benefits of a continuous measurement system.

The content of the ACS will be basically the same as the content in the Census 2000 long form. There are some differences to reflect the fact that ACS will be in place every month.

II. Method of Collection

The Census Bureau will mail questionnaires to households selected for the ACS. For households that do not return questionnaires, Census Bureau staff will attempt to conduct interviews via Computer Assisted Telephone Interviewing and Computer Assisted Personal Interviewing.

III. Data

OMB Number: 0607–0810.

Form Number: ACS–1, ACS–10, ACS–12(L), ACS–13(L), ACS–14(L), ACS–16(L), ACS–20, ACS–30.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 425,000 households, 30,000 persons in group quarters, 5,000 households in reinterview.

Estimated Time Per Response: 38 minutes per household, 15 minutes per person in group quarters, 10 minutes per household in the reinterview sample.

Estimated Total Annual Burden Hours: 277,500.

Estimated Total Annual Cost: Except for a few minutes of their time, there is no cost to respondents.

Respondent Obligation: Mandatory.

Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collections techniques or others forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 11, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4097 Filed 2–18–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Statement of Ultimate Consignee and Purchaser

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 20, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawnielle Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The form is required in support of an export license application where the country of ultimate destination is in Country Group Q, S, V, W, Y or Z. It is used by licensing officers in determining the validity of the end-use. A primary benefit of having the form completed is to put the importer on notice of the special nature of the goods and receive a commitment against illegal disposition.

II. Method of Collection

Submitted to BXA on form BXA–711P or company letterhead.

III. Data

OMB Number: 0694–0021.

Form Number: Form BXA–711.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 8,350.

Estimated Time Per Response: 31 minutes per response.

Estimated Total Annual Burden Hours: 4,289.

Estimated Total Annual Cost: $126,585.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 11, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4101 Filed 2–18–98; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

U.S. Industry Reporting Requirements for Compliance With the Chemical Weapons Treaty

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 20, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawn Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Chemical Weapons Convention (CWC) will ban the development, production, acquisition, stockpiling, retention and direct or indirect transfer of chemical weapons. Under the CWC, companies that produce, process, consume or utilize certain chemicals must file initial and annual declarations. This information will be submitted to the Organization for the Prohibition of Chemical Weapons (OPCW), the treaty's international body. The collection of this information is required to comply with the treaty.

II. Method of Collection

Submitted on BXA Declaration forms.

III. Data

OMB Number: 0694–0091.
Form Number: None.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 2,199.
Estimated Time Per Response: 5 hours per response.
Estimated Total Annual Burden Hours: 11,301.
Estimated Total Annual Cost: $46,240.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 11, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4102 Filed 2–18–98; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Annual Report From Foreign-Trade Zone Grantee to the Foreign-Trade Zones Board

International Trade Administration

AGENCY: International Trade Administration, Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 20, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th & Constitution Avenue, NW, Washington, DC 20230. Phone number: (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instructions should be directed to: Claudia Hausler, Foreign Trade Zones Staff, Room 3716, 14th & Constitution Avenue, NW, Washington, DC 20230; Phone number: (202) 482–2862, and fax number: (202) 482–0002. The FTZ Annual Report Form and Guidelines, as well as the Regulations, are available on-line at http://www.ita.doc.gov/import_admin/records/ftzpage/ftzhome.htm.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Foreign-Trade Zone Annual Report is the vehicle by which Foreign Trade Zone (FTZ) grantees report annually to the Foreign Trade Zones Board, pursuant to the requirements of the Foreign Trade Zones Act (19 U.S.C. 81a–81u). The annual reports submitted by grantees are the only complete source of compiled information on FTZ's. The data and information contained in the reports relates to international trade activity in FTZ's. The reports are used by the Congress and the Department to determine the economic effect of the FTZ program. The reports are also used by the FTZ Board and other trade policy officials to determine whether zone activity is consistent with U.S. international trade policy, and whether it is in the public interest. The public uses the information regarding activities carried on in FTZ's to evaluate their effect on industry sectors. The information contained in annual reports also helps zone grantees in their marketing efforts.

II. Method of Collection

FTZ grantees submit annual reports to the Foreign-Trade Zones Board.

III. Data

OMB Number: 0625–0109.
Form Number: ITA–359P.
Type of Review: Regular Submission.
Affected Public: State, local, or tribal governments or not-for-profit institutions which are FTZ grantees.
Estimated Number of Respondents: 150.
Estimated Time Per Response: 37 to 180 hours (depending on the size and structure of the FTZ).
Estimated Total Annual Burden Hours: 11,881 hours.
Estmated Total Annual Costs: The estimated annual cost for this collection is $471,906.00 ($401,002.00 for submitters and $70,904.00 for federal government).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 11, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4098 Filed 2–18–98; 8:45 a.m]

BILLING CODE 3510–DS

DEPARTMENT OF COMMERCE

International Trade Administration

Foreign Trade Zone Application

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2) (A)).

DATES: Written comments must be submitted on or before April 20, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th & Constitution Avenue, NW, Washington, DC 20230. Phone number: (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instructions should be directed to: Kathleen A. Boyce, Foreign Trade Zones Staff, Room 3716, 14th & Constitution Avenue, NW, Washington, DC 20230; Phone number: (202) 482–2862, and fax number: (202) 482–0002. The FTZ Application Guidelines, as well as the Regulations, are available on-line at http://www.ita.doc.gov/import_admin/records/ftzpage/ftzhome.htm.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Foreign Trade Zones Application is the vehicle by which individual firms or organizations apply for foreign-trade zone (FTZ) status, for subzone status, or for expansion of an existing zone. The FTZ Act and Regulations require that an application with a description of the proposed project be made to the FTZ Board (19 U.S.C. 81b and 81f; 15 CFR 400.24–26) before a license can be issued or a zone can be expanded. The Act and Regulations require that applications contain detailed information on facilities, financing, operational plans, proposed manufacturing operations, need, and economic impact. Manufacturing activity in zones, which is primarily conducted in subzones can involve issues related to domestic industry and trade policy impact. Such applications must include specific information on the Customs-tariff related savings that result from zone procedures and the economic consequences of permitting such savings. The FTZ Board needs complete and accurate information on the proposed operation and its economic effects because the Act and Regulations authorize the Board to restrict or prohibit operations that are detrimental to the public interest.

II. Method of Collection

U.S. firms or organizations submit applications to the Foreign-Trade Zones Board.

III. Data

OMB Number: 0625–0139.
Form Number: N/A.
Type of Review: Regular Submission.
Affected Public: State, local, or tribal governments or not-for-profit institutions applying for foreign trade zone status, for subzone status, or for modification of existing status.
Estimated Number of Respondents: 100.
Estimated Time Per Response: 20 to 120 hours (depending on type of application).
Estimated Total Annual Burden Hours: 9,314 hours.
Estimated Total Annual Costs: The estimated annual cost for this collection is $864,442.00 ($249,402.00 for applicants and $615,040.00 for federal government).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c)ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 11, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization

[FR Doc. 98–4100 Filed 2–18–98; 8:45 a.m]

BILLING CODE: 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–823]

Professional Electrical Cutting Tools From Japan: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of the review of professional electrical cutting tools from Japan. This review covers the period July 1, 1996 through June 30, 1997.

EFFECTIVE DATE: February 19, 1998.

FOR FURTHER INFORMATION CONTACT: Lyn Baranowski or Stephen Jacques at (202) 482–1385 or 482–1391, respectively; Office of AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act.

Postponement of Preliminary Results

The Department has determined that it is not practicable to issue its preliminary results within the original time limit. (See Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III to Robert LaRussa, Assistant Secretary for Import Administration, February 11, 1998). The Department is extending the time limit for completion of the preliminary results until June 1, 1998 in accordance with Section 751(a)(3)(A) of the Act. The Department is also extending the time limit for submission of factual information up to an additional 60 days.

The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

Dated: February 12, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for Enforcement Group III.

[FR Doc. 98–4212 Filed 2–18–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–040]

Stainless Steel Plate From Sweden: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review.

SUMMARY: On January 12, 1998, the Department of Commerce (the Department) published the final results of the review of the antidumping duty finding on stainless steel plate from Sweden. The review covered two manufacturers/exporters of the subject merchandise to the United States and the period June 1, 1995 through May 31, 1996. On January 14, 1998, Avesta Sheffield (Avesta) filed ministerial error comments with regard to these final results of review. Based on our correction of a ministerial error, we are amending our final results for Avesta.

EFFECTIVE DATE: February 19, 1998.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Linda Ludwig, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4475/3833.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR Part 353 (1997).

SUPPLEMENTARY INFORMATION:

Background

On January 12, 1998 the Department published the final results of the administrative review covering the period June 1, 1995 through May 31, 1996. On January 14, 1998, Avesta filed an allegation that the Department made a ministerial error in the final results.

Scope of the Review

Imports covered by this review are shipments of stainless steel plate which is commonly used in scientific and industrial equipment because of its resistance to staining, rusting and pitting. Stainless steel plate is classified under Harmonized Tariff schedule of the United States (HTSUS) item numbers 7219.11.00.00, 7219.12.00.05, 7219.12.00.15, 7219.12.00.45, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.21.00.05, 7219.21.00.50, 7219.22.00.05, 7219.22.00.10, 7219.22.00.30, 7219.22.00.60, 7219.31.00.10, 7219.31.00.50, 7220.11.00.00, 7222.30.00.00, and 7228.40.00.00. Although the subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

On July 11, 1995, the Department determined that Stavax ESR (Stavax), UHB Ramax (Ramax), and UHB 904L (904L) when flat-rolled are within the scope of the antidumping finding.

On November 3, 1995, the Department determined that stainless steel plate products Stavax, Ramax, and 904L when forged, are within the scope of the antidumping finding.

The review covers the period June 1, 1995 through May 31, 1996. The Department has now completed this review in accordance with section 751 of the Act, as amended.

Ministerial Error

On January 12, 1998 Avesta filed an allegation of ministerial error. Avesta submitted revised model match and difference of merchandise (difmer) information on April 24, 1997. In reviewing the Department's preliminary results (July 8, 1997, 62 FR 36495), Avesta noted that the Department occasionally matched US product months with home market product months that differed from those in Avesta's April 24, 1997 submission. The Department corrected this error in its final results. In correcting this error, however, Avesta notes that the Department incorrectly applied difmer information from Avesta's January 27, 1997 submission.

We agree with Avesta that we incorrectly calculated difmer in our final results, and that this constitutes a ministerial error pursuant to 19 CFR 351.28(d). We have corrected this ministerial error in these amended final results, and have based our calculation of difmer on the data provided by Avesta in its April 24, 1997 submission.

Amended Final Results of Review

As a result of our correction of a ministerial error, we determine that the weighted average margin for Avesta is 24.67 percent for the period June 1, 1995 through May 31, 1996.

The U.S. Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between U.S. price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of stainless steel plate from Sweden entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The amended cash deposit rate for Avesta will be the rate stated above, (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company specific rate published for the most recent period, (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews, or the LTFV investigation; and (4) if neither

the exporter nor the manufacturer is a firm covered in this or any previous reviews or the original fair value investigation, the cash deposit rate will be 4.46%.

We will calculate importer-specific duty assessment rates on a unit value per pound basis. To calculate the per pound unit value for assessment, we summed the margins on U.S. sales with positive margins, and then divided this sum by the entered pounds of all U.S. sales.

These amended final results of administrative review and notice are in accordance with section 751(a)(1) and (h) of the Act (19 U.S.C. 1675(a)(1) and (h)) and 19 CFR 353.28.

Dated: February 11, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–4211 Filed 2–18–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021098G]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for scientific research permits (1120, 1123, 1124, 1126, and 1127) and modification 1 to permit 998. Issuance of scientific research permits (1094, 1106, 1107) and amendments to permits 822, 847, and 848.

SUMMARY: Notice is hereby given that the following have applied in due form for permits that would authorize takes or possession of ESA-listed species for the purpose of scientific research and/or enhancement: the Idaho Department of Fish and Game at Boise, ID (IDFG) (1120); Mr. Edgard O. Espinoza, Deputy Laboratory Director of the National Fish and Wildlife Forensic Laboratory (1123); the Idaho Department of Fish and Game at Boise, ID (IDFG) (1124); the Washington Department of Fish and Wildlife at Olympia, WA (WDFW) (1126); and the Shoshone-Bannock Tribes at Fort Hall, ID (SBT) (1127). Notice is also given that NMFS has issued permits to: the Washington Department of Fish and Wildlife at Olympia, WA (WDFW) (1094); David Wm. Owens, of Texas A&M University (1106); and Dr. Issac Wirgin, of Institute of Environmental Medicine - New York University Medical Center (1107). Notice is further given that NMFS has issued amendments to permits to the Fish Passage Center at Portland, OR (FPC) (822); the Oregon Department of Fish and Wildlife at La Grande, OR (ODFW) (847); and WDFW at Olympia, WA (848).

DATES: Written comments or requests for a public hearing on these requests must be received on or before March 23, 1998.

ADDRESSES: The application, permit, and related documents are available for review by appointment in the following offices:

Applications for permits 1106 and 1107: Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141). The application for permit 1107 may also be reviewed at: Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298 (508–281–9250)

Applications for permits 822, 847, 848, 1094, 1120, 1124, 1126, and 1127, and modification request for permits 998: Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Application for permit 1123: Office of Protected Resources, F/PR3, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401).

All documents may also be reviewed by appointment in the Office of Protected Resources, Endangered Species Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permits 822, 847, 848, 998, 1094, 1120, 1124, 1126, and 1127: Robert Koch, Protected Resources Division, 503–230–5424.

For permits 1107 and 1123: Terri Jordan, Endangered Species Division, 301–713–1401.

For permit 1106: Michelle Rogers, Endangered Species Division, 301–713–1401.

SUPPLEMENTARY INFORMATION: Permits are requested under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

Those individuals requesting a hearing on these requests for permits should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the above application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Issuance of these permits, modifications, and amendments, as required by the ESA, was based on a finding that such permits, modifications, and amendments: (1) Were applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. These permits, modifications, and amendments were also issued in accordance with and are subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

To date, protective regulations for threatened Snake River steelhead under section 4(d) of the ESA have not been promulgated by NMFS. This notice of receipt of applications requesting a take of this species is issued as a precaution in the event that NMFS issues protective regulations that prohibit takes of Snake River steelhead. The initiation of a 30-day public comment period on the application, including its proposed take of Snake River steelhead, does not presuppose the contents of the eventual protective regulations.

Applications Received

IDFG (1120) requests a five-year permit that would authorize takes of adult and juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) associated with the continuation of a captive broodstock program, currently provided by permit 795. Permit 795 is due to expire on May 31, 1998. The captive broodstock program will help to preserve and perpetuate the species and provide Snake River sockeye salmon for future recovery actions. The captive broodstock program is a cooperative effort among IDFG, NMFS, SBT, the University of Idaho, the Idaho Department of Environmental Quality, and the Bonneville Power Administration (BPA). Funding is provided by BPA. ESA-listed adult and juvenile fish are proposed to be trapped annually by IDFG to obtain individuals for propagating the species in captivity. The resulting progeny are proposed to be reared in IDFG hatcheries and/or transported to NMFS hatcheries for rearing. ESA-listed juvenile fish generated from the captive broodstock program are proposed to be transported from the hatcheries and released into Stanley Basin lakes (Redfish, Pettit, and Alturas Lakes) and outlet streams

annually. ESA-listed juvenile fish are proposed to be observed by snorkeling or captured and tagged with passive integrated transponders for scientific monitoring and evaluation purposes. ESA-listed adult fish are proposed to be observed during redd counts or captured, tagged with radiotransmitters, and tracked electronically. ESA-listed juvenile fish indirect mortalities associated with scientific research and transportation activities are also requested.

Mr. Edgard O. Espinoza, Deputy Laboratory Director of the National Fish and Wildlife Forensic Laboratory (1123) requests authorization to possess and conduct research on listed, non-marine mammal, non-reptilian species using tissue samples (fin clips, barbels, blood, muscle, skin) to provide technical support that is responsive to FWS goals involving protected and endangered species, via law enforcement. The application requests the ability to maintain samples of non-marine mammal, or reptile listed species obtained from permitted individuals and by Federal, state or local law enforcement agents for the purposes of archival.

IDFG (1124) requests a 5-year permit that would authorize takes of adult and juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*); adult and juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*); adult and juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*); and adult and juvenile, threatened, Snake River steelhead (*Oncorhynchus mykiss*) associated with scientific research conducted throughout the state of ID. IDFG proposes to conduct seven research tasks: (1) General fish population inventories; (2) spring/summer chinook salmon natural production monitoring and evaluation; (3) spring/summer chinook salmon supplementation research; (4) Redfish Lake, Pettit Lake, and Alturas Lake kokanee/sockeye salmon research; (5) salmon and steelhead fish health monitoring; (6) steelhead natural production monitoring and evaluation; and (7) steelhead supplementation research. IDFG proposes to observe/harass ESA-listed species during surveys and redd counts and to employ seines, traps, and electrofishing to capture ESA-listed fish to apply passive integrated transponder (PIT) tags, radio tags, and other marks for migration studies. ESA-listed juvenile fish lethal takes are requested. ESA-listed fish indirect mortalities and incidental takes associated with scientific research activities are also requested.

WDFW (1126) requests a 5-year permit that would authorize takes of adult and juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon; juvenile, threatened, Snake River fall chinook salmon; and adult and juvenile, threatened, Snake River steelhead associated with scientific research conducted in the Snake River Basin in WA. The new permit is proposed to replace the take authorization currently provided in permit 848, which is due to expire on March 31, 1998. WDFW proposes to conduct three classes of research activities: (1) Summer juvenile fish monitoring using snorkeling and electrofishing, (2) juvenile fish migrant monitoring using smolt traps and PIT tags, and (3) adult fish monitoring using spawning ground surveys and the application of radio tags. ESA-listed fish indirect mortalities associated with scientific research activities are also requested.

SBT (1127) requests a 5-year permit that would authorize takes of adult and juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon and adult and juvenile, threatened, Snake River steelhead associated with scientific research conducted throughout the Salmon River Basin in the state of ID. SBT proposes to conduct six research tasks: (1) Snorkel surveys; (2) spawning ground surveys; (3) juvenile chinook salmon migrant monitoring using a rotary screw trap and PIT tags; (4) juvenile fish migration timing and movement at the Yankee Fork using fyke nets; (5) juvenile chinook salmon and steelhead abundance and condition factor estimates at the Yankee Fork using electrofishing and seines; and (6) juvenile chinook salmon PIT-tagging using electrofishing, seines, hook and line, and other methods to capture fish. ESA-listed juvenile fish indirect mortalities associated with the research are also requested.

SBT requests modification 1 to permit 998. Permit 998 authorizes SBT a take of juvenile, endangered, Snake River sockeye salmon associated with scientific research designed to enumerate the annual smolt outmigration at Pettit Lake in ID for the purpose of evaluating overwinter survival, monitoring downstream migration, and calculating smolt-to-adult return ratios. For modification 1, SBT requests an increase in the take of ESA-listed juvenile sockeye salmon and a take of juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and juvenile, threatened, Snake River steelhead (*Oncorhynchus mykiss*) associated with a similar study at Alturas lake in ID. ESA-listed juvenile fish are proposed to be captured using a screw trap, handled, and released. A portion of the ESA-listed juvenile sockeye salmon to be handled are proposed to be anesthetized, marked with a small cut on the caudal fin, allowed to recover from the anesthetic, and released upstream of the trap. Sockeye salmon smolts captured at the trap following upstream release are proposed to be anesthetized, inspected for the caudal fin mark, allowed to recover from the anesthetic, and released as a means of determining trap efficiency. ESA-listed juvenile fish indirect mortalities associated with the research are also requested.

Permits Issued

Notice was published on October 14, 1997 (62 FR 53319) that an application had been filed by WDFW (1094) for a scientific research/enhancement permit. Permit 1094 was issued to WDFW on February 4, 1998. Permit 1094 authorizes WDFW annual direct takes of adult and juvenile, endangered, naturally-produced and artificially-propagated, upper Columbia River steelhead (*Oncorhynchus mykiss*) associated with a hatchery supplementation program in the mid- to upper Columbia River Basin. An incidental take of ESA-listed fish associated with releases from WDFW's hatchery supplementation program is also authorized. Permit 1094 will expire on May 31, 2003.

Notice was published on November 17, 1997 (62 FR 61296) that an application had been filed by David Wm. Owens, Texas A&M University, (1106) to take listed sea turtles as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222). Dr. Owens requested a scientific research permit to weigh, measure, blood sample, and satellite, PIT and flipper tag up to 15 loggerhead (*Caretta caretta*), 5 hawksbill (*Eretmochelys imbricata*), and 10 Kemp's ridley (*Lepidochelys kempii*) turtles at the Flower Garden Banks National Marine Sanctuary, Gulf of Mexico. Additionally, the applicant requested authorization to use ultrasonography, a non-invasive technique that allows imaging of a female turtle's ovaries, on captured turtles. The turtles are to be captured by

hand using SCUBA and a catch bag. The purpose of the research is to collect information on habitat utilization, migration, and reproductive biology. On January 15, 1998, NMFS issued Permit 1106 authorizing the above activities.

Notice was published on December 17, 1997 (62 FR 66053) that an application had been filed by Dr. Issac Wirgin, of Institute of Environmental Medicine - New York University Medical Center (1107) , to possess tissue samples of listed shortnose sturgeon (*Acipenser brevirostrum)* as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222). The purpose of the research is to determine if shortnose sturgeon exhibit genetic variation throughout their Atlantic coast range. The permit holder is not authorized to conduct any field collection exercises to obtain the samples. All of the samples must be obtained from previously authorized sources (permitted researchers, law enforcement authorities). All tissue samples will be maintained in a laboratory at the Institute of Environmental Medicine, New York University Medical Center.

An amendment to FPC's scientific research permit 822 was issued on February 10, 1998. Permit 822 authorizes FPC takes of endangered and threatened Snake River salmon associated with the Smolt Monitoring Program (SMP), conducted in part at the dams on the Snake and Columbia Rivers. The amendment provides an extension of the permit through December 31, 1998. On December 29, 1997, the permit was extended to expire on May 31, 1998 (63 FR 2364). An additional extension of permit 822 is necessary to synchronize the duration of the permit with permit 895, the permit that authorizes the U.S. Army Corps of Engineers (Corps) takes of ESA-listed species associated with the Federal Columbia River Power System (FCRPS) juvenile fish transportation program (Permit 895 expires on December 31, 1998). Since the SMP is integral to the implementation of the FCRPS biological opinion, the coordination of these two permits will allow NMFS to better monitor the cumulative impacts to ESA-listed species as a consequence of activities conducted by both FPC and the Corps.

Amendments to scientific research/ enhancement permits 847 and 848 were issued on February 6, 1998. The amendments provide an extension of the duration of each permit through June 30, 1998. The permits were due to expire on March 31, 1998. Permits 847 and 848 authorize ODFW and WDFW respectively takes of adult and juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with hatchery supplementation programs. Extensions of the permits are necessary to allow ODFW and WDFW to continue enhancement activities while NMFS processes applications for new permits.

Dated: February 10, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–4213 Filed 2–18–98; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 98–C0007]

In the Matter of Binky-Griptight, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Binky-Griptight, Inc., a corporation, containing a civil penalty of $150,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by March 6, 1998.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 98–C0007, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT:

Traci J. Williams, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: February 12, 1998.

Sadye E. Dunn,

Secretary.

In the Matter of Binky-Griptight, Inc. a Corporation; Settlement Agreement and Order

1. Binky-Griptight, Inc. ("Binky-Griptight"). a corporation, enters into this Settlement Agreement and Order with the staff of the Consumer Product Safety Commission ("Commission" or CPSC") under the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2051–2084. The Settlement Agreement and Order comply with the procedures set forth in the Commission's Procedures for Consent Order Agreements. 16 CFR 1118.20.

I. The Parties

2. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States of America, established pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

3. Binky-Griptight, Inc. is a corporation organized and existing under the laws of the State of New Jersey, with its principal corporate offices located at 519–523 Paterson Avenue, P.O. Box 3307, Wallington, New Jersey 07057.

II. Allegations of the Staff

4. Between April 1994 and August 1995, Binky-Griptight imported defective Binky Soft Latex Nipple Newborn Orthodontic pacifiers ("Li'l Binks"). Consequently, Binky-Griptight is a "manufacturer" as the term is defined in section 3(a)(4) of the CPSA, 15 U.S.C. 2052(a)(4).

5. The Li'l Binks were sold in retail stores throughout the United States. They were used by infants in their homes. As a result, the Li'l Binks are "consumer products" which were "distributed in commerce" as those terms are defined in section 3(a) (1) and (11) of the CPSA, 15 U.S.C. 2052(a) (1) and (11).

6. The handle of the Li'l Bink, which held the plug and the nipple, could crack and, if the cracking were severe, could cause the nipple and the plug to separate from the handle. If they separated from the handle, a child could choke on either the nipple or the plug. In May 1995, Binky-Griptight learned that the handle could crack. Also, Binky-Griptight received complaints about the cracked handles and detached plugs and nipples of the Li'l Bink. In September 1995, Binky-Griptight recalled the Li'l Binks from its customers.

7. Binky-Griptight obtained information which reasonably supported the conclusion that the Li'l Binks contained defects which could create a substantial product hazard or an unreasonable risk of serious injury or death, but failed to report that information to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

III. Response of Binky Griptight, Inc.

8. Binky-Griptight, Inc. denies the allegations of the staff that the Li'l Binks contained any defects which could create a substantial product hazard or an unreasonable risk of serious injury or death, pursuant to section 15(a) of the CPSA, 15 U.S.C. 2064(a); it denies that it violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b).

9. Binky-Griptight further states that after it identified and corrected the cracking problem and conducted a further recall with the oversight of Commission staff, it also ceased distribution of the affected style of pecifier in 1996. To date, Binky-Griptight has not received any claims or allegation of injury from the Li'l Binks covered by this settlement.

IV. Agreement of the Parties

10. The Commission has jurisdiction over this matter under the CPSA, 15 U.S.C. 2051–2084.

11. Binky-Griptight agrees to pay the Commission one hundred and fifty thousand and 00/100 dollars ($150,000.00), payable as follows: $50,000 twenty days after final acceptance of the Order, $50,000 on the one-year anniversary date of the final acceptance of the Order, and $50,000 on the two-year anniversary date of the final acceptance of the Order.

2. Binky-Griptight knowingly, voluntarily, and completely waives any rights it may have to an administrative or judicial hearing with respect to the staff allegations cited herein, to judicial review or other challenge or contest of the validity of the Commission's Order, to a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), occurred, and to a statement of findings of fact and conclusion of law with regard to the staff allegations.

13. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with 16 CFR § 1118.20(e).

14. The Settlement Agreement and Order take effect upon final acceptance by the Commission and their service upon Binky-Griptight.

15. Upon final acceptance of this Settlement Agreement by the Commission, the Commission will issue a press release to advise the public of the civil penalty Settlement Agreement and Order.

16. Binky-Griptight agrees to entry of the attached Order, which is incorporated herein by reference, and agrees to be bound by its terms.

17. This Settlement Agreement and Order are binding upon Binky-Griptight and its assigns and successors.

18. Agreements, understandings, representations, or interpretations made outside this Settlement Agreement and Order may not be used to vary or contradict its terms.

Dated: January 12, 1998.

Binky-Griptight, Inc.

Kurt Jetta,

Binky-Griptight, Inc.

The Consumer Product Safety Commission.

Alan H. Schoem,

Assistant Executive Director, Office of Compliance.

Eric L. Stone, Director,

Division of Administrative Litigation, Office of Compliance.

Dated: January 21, 1998.

Traci J. Williams, Trial Attorney,

Division of Administrative Litigation, Office of Compliance.

Order

Having considered the terms and conditions of the Settlement Agreement entered into between Respondent, Binky-Griptight, Inc., a corporation, and the staff of the Consumer Product Safety Commission, having recognized the Commission's jurisdiction over the subject matter and Binky-Griptight, Inc., and having concluded that the Settlement Agreement and Order are in the public interest, it is *ordered* that the Settlement Agreement be and hereby is accepted. And it is *further ordered* that Binky-Griptight, Inc. shall pay the Commission a civil penalty in the amount of one hundred and fifty thousand and 00/100 dollars ($150,000.00), payable as follows: $50,000 twenty days after final acceptance of the Order, $50,000 on the one-year anniversary date of the final acceptance of the Order, and $50,000 on the two-year anniversary date of the final acceptance of the Order.

Upon Failing to make a payment or upon making a late payment, the outstanding balance of the civil penalty is due and payable by Binky-Griptight, Inc., and the interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961 (a) and (b).

Provisionally accepted and Provisional Order issued on the 12th day of February, 1998.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–4088 Filed 2–18–98; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 98–C0006]

In the Matter of The Limited, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of a Settlement Agreement under the Flammable Fabrics Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Flammable Fabrics Act in the **Federal Register** in accordance with the terms of 16 CFR 1605.13(d). Published below is a provisionally-accepted Settlement Agreement with The Limited, Inc., a corporation, containing a civil penalty of $200,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by March 6, 1998.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 98–C0006, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Howard Tarnoff, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: February 11, 1998.

Sadye E. Dunn,

Secretary.

In the Matter of The Limited, Inc, a Corporation; Settlement Agreement

1. The Limited, Inc. and its subsidiary and/or affiliated companies (hereinafter, "The Limited" or "Respondent") enters

into this Settlement Agreement (hereinafter, "Agreement") with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order incorporated herein. This Agreement and Order are for the sole purpose of settling allegations of the staff that respondent knowingly sold or offered for sale, in commerce, certain sherpa fleece tops and pants, certain cropped-look sweaters, certain pullover chenille sweaters, and certain peloush sweaters that failed to comply with the Standard for the Flammability of Clothing Textiles (hereinafter, "Clothing Standard"), 16 CFR 1610.

I. The Parties

2. The "staff " is the staff of the Consumer Product Safety Commission (hereinafter, "Commission"), an independent regulatory agency of the United States government established pursuant to section 4 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2053.

3. Respondent The Limited is a corporation organized and existing under the laws of the State of Delaware with principal corporate offices at Three Limited Parkway, P.O. Box 16000, Columbus, OH 43216.

II. Allegations of the Staff

A. Sherpa Fleece Tops and Pants

4. Between June 1994 and December 1994, Respondent sold or offered for sale, in commerce, 409 style 1760 sherpa fleece tops, 394 style 1762 sherpa fleece tops, and 370 style 1018 sherpa fleece pants.

5. The garments identified in paragraph 4 above are subject to the Clothing Standard, 16 CFR 1610, issued under section 4 of the Flammable Fabrics Act (FFA), 15 U.S.C. 1193.

6. On December 9, 1994 and December 19, 1994, Respondent tested the garments identified in paragraph 4 above for compliance with the requirements of the Clothing Standard. On January 4, 1995, the staff tested the garments identified in paragraph 4 above for compliance with the requirements of the Clothing Standard. See 16 CFR §§ 1610.3 and 1610.4. The test results showed that the garments violated the requirements of the Clothing Standard and, therefore, were dangerously flammable and unsuitable for clothing because of rapid and intense burning.

7. Respondent knowingly sold or offered for sale, in commerce, the garments identified in paragraph 4 above, in violation of section 3 of the FFA, 15 U.S.C. 1192, for which a civil penalty may be imposed pursuant to section 5(e)(1) of the FFA, 15 U.S.C. 1194(e)(1).

B. Cropped-look Sweaters

8. Between December 1994 and March 1995, Respondent sold or offered for sale, in commerce, 3 rayon/nylon blend cropped-look sweaters.

9. The sweaters identified in paragraph 8 above are subject to the Clothing Standard, 16 CFR § 1610, issued under section 4 of the FFA, 15 U.S.C. 1193.

10. On December 11, 1995, the importer of the sweaters identified in paragraph 8 tested the sweaters for compliance with the requirements of the Clothing Standard. The test results showed that the sweaters violated the requirements of the Clothing Standard, and, therefore, were dangerously flammable and unsuitable for clothing because of rapid and intense burning.

11. Respondent knowingly sold or offered for sale, in commerce, the sweaters identified in paragraph 8 above, in violation of section 3 of the FFA, 15 U.S.C. 1192, for which a civil penalty may be imposed pursuant to section 5(e)(1) of the FFA, 15 U.S.C. 1194(e)(1).

C. Pullover Chenille Sweaters

12. In May 1996, Respondent imported 19,024 style 0124 rayon/nylon blend pullover chenille sweaters.

13. Between October 14, 1996 and October 24, 1996, Respondent sold or offered for sale, in commerce, the sweaters identified in paragraph 12 above.

14. The sweaters identified in paragraph 12 above are subject to the Clothing Standard, 16 CFR § 1610, issued under section 4 of the FAA, 15 U.S.C. 1193.

15. On October 23, 1996, the staff tested the sweaters identified in paragraph 12 above for compliance with the requirements of the Clothing Standard. The test results showed that the sweaters violated the requirements of the Clothing Standard, and, therefore, were dangerously flammable and unsuitable for clothing because of rapid and intense burning.

16. On November 4, 1996, the staff informed Respondent that the sweaters identified in paragraph 12 above failed to comply with the Clothing Standard and requested that The Limited review the rest of its product line for other potential violations.

17. Respondent knowingly imported, sold, or offered for sale, in commerce, the sweaters identified in paragraph 12 above, in violation of section 3 of the FAA, 15 U.S.C. 1192, for which a civil penalty may be imposed pursuant to section 5(e)(1) of the FFA, 15 U.S.C. 1194(e)(1).

D. Peloush Sweaters

18. In March 1996, Respondent imported 7,000 style 4431 rayon/nylon blend peloush sweaters.

19. Between March 1996 and November 1996, Respondent sold or offered for sale, in commerce, the sweaters identified in paragraph 18 above.

20. The sweaters identified in paragraph 18 above are subject to the Clothing Standard, CFR § 1610, issued under section 4 of the FAA, 15 U.S.C. 1193.

21. On November 8, 1996 and November 11, 1996, Respondent tested the sweaters identified in paragraph 18 above for compliance with the requirements of the Clothing Standard. The test results showed that the sweaters violated the requirements of the Clothing Standard, and, therefore, were dangerously flammable and unsuitable for clothing because of rapid and intense burning.

22. Respondent knowingly sold or offered for sale, in commerce, the sweaters identified in paragraph 18 above, in violation of section 3 of the FFA, 15 U.S.C. 1192, for which a civil penalty may be imposed pursuant to section 5(e)(1) of the FFA, 15 U.S.C. 1194(e)(1).

III. Response of The Limited

23. The Limited denies the allegations of the staff set forth in paragraphs 4 through 22 above that it knowingly sold or offered for sale, in commerce, the garments identified in paragraph 4, 8, 12, and 18 above, in violation of section 3 of the FFA, 15 U.S.C. 1192. When these allegations became known to The Limited it promptly removed the garments from its inventory, even in instances where the flammability test results were acceptable or inconclusive.

IV. Agreement of the Parties

24. The Commission has jurisdiction over this matter under the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051 *et seq.*, the Flammable Fabrics Act (FFA), 15 U.S.C. 1191 *et seq.*, and the Federal Trade Commission Act (FTCA), 15 U.S.C. 41 *et seq.*

25. This Agreement is entered into for settlement purposes only and does not constitute an admission by Respondent or a determination by the Commission that Respondent knowingly violated the FFA or the Clothing Standard. This Agreement becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent.

26. The parties agree that this Agreement resolves the allegations of the staff enumerated in Section II above, and the Commission will not initiate any other criminal, civil, or administrative action against Respondent or Respondent's officers or directors for those alleged violations, based upon information currently known to the staff.

27. Upon final acceptance of this Agreement by the Commission and issuance of the Order, Respondent knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with the FFA as alleged, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

28. The Commission may disclose the terms of this Agreement and Order to the public consistent with Section 6(b) of the CPSA, 15 U.S.C. 2055(b).

29. Upon provisional acceptance of this Agreement and Order by the Commission, this Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1605.13(d). If the Commission does not receive any written request not to accept this Agreement and Order within 15 days, this Agreement and Order shall be deemed finally accepted on the 20th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1605.13(e).

30. Upon final acceptance by the Commission of this Agreement and Order, the Commission shall issue the attached Order, incorporated herein by reference. This Agreement becomes effective after service of the incorporated Order upon Respondent.

31. A violation of the attached Order shall subject Respondent to appropriate legal action.

32. This Agreement may be used in interpreting the incorporated Order, Agreements, understanding, representations, or interpretations made outside of this Agreement may not be used to vary or contradict its terms.

33. The provisions of this Agreement and Order shall apply to Respondent, it successors an assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality.

Dated: January 15, 1998.

Philip S. Renaud, II,

Vice President of Insurance, The Limited, Inc. Three Limited Parkway, Columbus, OH 43230.

Dated: January 20, 1998.

Howard N. Tarnoff,

Trial Attorney, Division of Administrative Litigation, Office of Compliance.

Eric L. Stone,

Director, Division of Administrative Litigation, Office of Compliance.

Alan H. Schoem,

Assistant Executive Director, Office of Compliance U.S. Consumer Product Safety Commission, Washington, DC 20207.

In the Matter of The Limited, Inc. a Corporation; Order

Upon consideration of the Settlement Agreement entered into between Respondent The Limited, Inc., and its subsidiary and/or affiliated companies, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Respondent; and it appearing that the Settlement Agreement and Order is in the public interest.

I

It is ordered That the Settlement Agreement and Order be and hereby is accepted.

II

It is further ordered That Respondent pay to the United States Treasury a civil penalty of two hundred thousand dollars ($200,000) within twenty (20) days after service upon Respondent of the Final Order.

Provisionally accepted and Provisional Order issued on the 11th day of February, 1998.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–4087 Filed 2–18–98; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0253]

Information Collection Requirements; Subcontracting Policies and Procedures

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. This information collection requirement is currently approved by the Office of Management and Budget (OMB) for use through July 31, 1998, under OMB Control Number 0704–0253. DoD proposes that OMB extend its approval for use through July 31, 2001.

DATES: Consideration will be given to all comments received by April 20, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to: Defense Acquisition Regulations Council, Attn: Mr. R.G. Layser, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, D.C. 20301–3062. Telefax number (703) 602–0350. E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil. Please cite OMB Control Number 0704–0253 in all correspondence related to this issue. E-mail comments should cite OMB Control Number 0704–0253 in the subject line.

FOR FURTHER INFORMATION CONTACT: Rick Layser, (703) 602–0131. A copy of the information collection requirement is available electronically via the Internet at: http://www.dtic.mil/dfars/. Paper copies of the information collection requirement may be obtained from Mr. R.G. Layser, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, D.C. 20301–3062.

SUPPLEMENTARY INFORMATION:

Title, Associated Forms, And Associated OMB Control Number: Defense Federal Acquisition Regulation Supplement (DFARS); OMB Control Number 0704–0253, Subcontracting Policies and Procedures—DFARS Part 244.

Needs and uses: The collection of this information is considered by the administrative contracting officer before making a decision on granting, withholding, or withdrawing

purchasing system approval at the conclusion of a contractor purchasing system review. Withdrawal of purchasing system approval would necessitate Government consent to individual subcontracts in accordance with section 44.102 of the Federal Acquisition Regulation.

Affected Public: Businesses or other for-profit organizations; and not-for-profit institutions.

Annual Burden Hours: 1,440.

Number of Respondents: 90.

Responses per respondent: 1.

Annual Responses: 1,440.

Average Burden per Response: 16 hours per response.

Frequency: On occasion.

Summary of Information Collection: The information collection includes the requirements of DFARS 244.305–70, Granting, withholding, or withdrawing approval, which requires the administrative contracting officer, at the completion of the in-plant portion of the contractor purchasing system review, to request the contractor to submit within 15 days its plan for correcting deficiencies or making improvements to its purchasing system.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 98–4152 Filed 2–18–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0363]

Information Collection Requirements; Reporting, Redistribution, and Disposal of Contractor Inventory

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. This information collection requirement is currency approved by the Office of Management and Budget (OMB) for use through June 30, 1998, under OMB Control Number 0704–0363. DoD proposes that OMB extend its approval for use through June 30, 2001.

DATES: Consideration will be given to all comments received by April 20, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to: Defense Acquisition Regulations Council, Attn: Mr. R.G. Layser, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, D.C. 20301–3062. Telefax number (703) 602–0350. E-mail comments submitted over the Internet should be addressed to: dfarsacq.osd.mil. Please cite OMB Control Number 0704–0363 in all correspondence related to this issue. E-mail comments should cite OMB Control Number 0704—373 on the subject line.

FOR FURTHER INFORMATION CONTACT: Rick Layser, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

Title, Associated Forms, and Associated OMB Control Number: Defense Federal Acquisition Regulation Supplement (DFARS); OMB Control Number 0704–0363. Reporting, Redistribution, and Disposal of Contractor Inventory—245.73; Sale of Surplus Contractor Inventory and Related Clause at 252.245–7XXX, Demilitarization and Trade Security Controls.

Needs and Uses: The collection of this information is necessary to help eliminate the flow of DoD hardware and technology to prohibited overseas destinations and persons. The information is used by inventory managers, plant clearance officers, contracting officers, law enforcement agencies, and contractors to ensure that military property is demilitarized to preclude its use for its originally intended military or lethal purpose.

Affected Public: Businesses or other for-profit organizations; and not-for-profit institutions.

Annual Burden Hours: 56,250 (Including 33,750 recordkeeping hours).

Number of Respondents: 1,125.

Responses Per Respondent: 10.

Annual Responses: 11,250.

Average Burden Per Response: 5 hours per response.

Frequency: On occasion.

Summary of Information Collection: The information collection includes the requirements of DFARS Subpart 245.73; Sale of Surplus Contractor Inventory, and the related clause proposed for inclusion in the DFARS at 252.245–7XXX, Demilitarization and Trade Security Controls (62 FR 30832, June 5, 1997). The proposed clause requires the contractor, for items that were furnished to the contractor by the Government, to enter demilitarization codes in the item description on inventory schedules that report excess Government property requiring demilitarization and/or trade security controls; and for other excess Government property, requires the contractor to assign and enter demilitarization codes in the item description on inventory schedules that report excess Government property requiring demilitarization and/or trade security controls.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 98–4153 Filed 2–18–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Forms, and OMB Number: Department of Defense Dependents Schools Overseas Employment Opportunities for Employment; DS Form 5010, DS Form 5011, DS Form 5012, DS Form 5012; OMB Number 0704–0370.

Type of Request: Reinstatement.

Number of Respondents: 24,000.

Responses per Respondent: 1.

Annual Responses: 24,000.

Average Burden per Response: 11.75 minutes.

Annual Burden Hours: 4,700.

Needs and Uses: Titles 42 U.S.C. 2000e–2 and 20 U.S.C. 902 and 903 requires the Department to ensure that both equal employment opportunity and employment and salary practices applicable to teachers and teaching positions overseas are in compliance with Federal laws. This information collection is used to obtain information on prospective applicants for educator positions within the Department of Defense Dependents Schools. The information is used to verify experience, employment history, personal and

professional traits, suitability for employment within DoDDS, ensure that DoDDS is in compliance with equal employment practices, and to determine the effectiveness of DoDDS advertising efforts.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: February 12, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–4085 Filed 2–18–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0102]

Proposed Collection; Comment Request Entitled Prompt Payment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding a revision to an existing OMB clearance (9000–0102).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submiting to the Office of Management and Budget (OMB) a request to review and approve a revision to a currently approved information collection requirement concerning Prompt Payment. The clearance currently expires on May 31, 1998.

DATES: Comments may be submitted on or before April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Jerry Olson, Federal Acquisition Policy Division, GSA (202) 501–3221.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0102, Prompt Payment, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

Part 32 of the Federal Acquisition Regulation (FAR) and the clause at FAR 52.232–5, Payments Under Fixed-Price Construction Contracts, require that contractors under fixed-price construction contracts certify, for every progress payment request, that payments to subcontractors/suppliers have been made from previous payments received under the contract and timely payments will be made from the proceeds of the payment covered by the certification, and that this payment request does not include any amount which the contractor intends to withhold from a subcontractor/supplier. Part 32 of the FAR and the clause at 52.232–27, Prompt Payment for Construction Contracts, further require that contractors on construction contracts:

(a) Notify subcontractors/suppliers of any amounts to be withheld and furnish a copy of the notification to the contracting officer;

(b) Pay interest to subcontractors/suppliers if payment is not made by 7 days after receipt of payment from the Government, or within 7 days after correction of previously identified deficiencies;

(c) Pay interest to the Government if amounts are withheld from subcontractors/suppliers after the Government has paid the contractor the amounts subsequently withheld, or if the Government has inadvertently paid the contractor for nonconforming performance; and

(d) Include a payment clause in each subcontract which obligates the contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days after such amounts are paid to the contractor, include an interest penalty clause which obligates the contractor to pay the subcontractor an interest penalty if payments are not made in a timely manner, and include a clause requiring each subcontractor to include these clauses in each of its subcontractors and to require each of its subcontractors to include similar clauses in their subcontracts.

These requirements are imposed by Pub. L. 100–496, the Prompt Payment Act Amendments of 1988.

Contracting officers will be notified if the contractor withholds amounts from subcontractors/suppliers after the Government has already paid the contractor the amounts withheld. The contracting officer must then charge the contractor interest on the amounts withheld from subcontractors/suppliers. Federal agencies could not comply with the requirements of the law if this information were not collected.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.11* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *38,194*; responses per respondent, *11*; total annual responses, *420,136*; preparation hours per response, *.11*; and total response burden hours, *46,215*.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *34,722*; hours per recordkeeper, *18*; and total recordkeeping burden hours, *624,996*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0102, Prompt Payment, in all correspondence.

Dated: February 13, 1998.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 98–4151 Filed 2–18–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Presidential Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the next meeting of the Presidential Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet. The meeting will be open to the public. Notice of this meeting is required under the Federal Advisory Committee Act, (Pub. L. 92–463).

DATES: March 11, 1998.

ADDRESSES: NSF Board Room (Room 1235), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

PROPOSED SCHEDULE AND AGENDA: The Presidential Advisory Committee will meet in open session from approximately 8:30 a.m. to noon and 1:00 p.m. to 5:00 p.m. on March 11, 1998. This meeting will include briefings from the Highend Subcommittee and the Broadbased Subcommittee, and update on the activities of the Next Generation Internet initiative, and an interim status report on the past and future activities of this Committee. Time will also be allocated during the meeting for public comments by individuals and organizations.

FOR FURTHER INFORMATION CONTACT: The National Coordination Office for Computing, Information, and Communications provides information about this Committee on its web site at: http://www.ccic.gov; it can also be reached at (703) 306–4722. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: February 12, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–4086 Filed 2–18–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 23, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 13, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.
Title: Local Implementation of Federal Programs.
Frequency: One time.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 3,236.
Burden Hours: 3,329.

Abstract: The Department of Education is charged with evaluating Title I of ESEA and other elementary and secondary education legislation enacted by the 103rd Congress. This study will collect information on the operations and effects at the district level of legislative provisions and federal assistance, in the context of state education reform efforts. Findings will be used in reporting to Congress and improving information dissemination. Respondents are local superintendents, directors of federal programs, directors of research and assessment, and school principals.

[FR Doc. 98–4205 Filed 2–18–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: March 5–7, 1998.

TIME: March 5, Achievement Levels Committee, 2:00–4:00 p.m. (open); Subject Area Committee #1, 2:00–3:00 p.m. (open), 3:00–4:00 p.m. (closed); Executive Committee, 5:00–6:00 p.m. (open), 6:00–7:00 p.m. (closed). March 6, Full Board, 8:30–10:00 a.m. (open); Design and Methodology Committee 9:30–11:30 a.m. (open); Reporting and Dissemination Committee, 9:30–11:30 a.m. (open); Joint Meeting Subject Area Committee #1 and #2, 9:30–11:30 a.m. (open); Full Board 11:30–4:45 p.m. (open). March 7, Nominations Committee, 7:30–9:00 a.m. (open); Full Board 9:00 a.m.–adjournment, approximately 12:00 noon, (open).

LOCATION: Four Seasons Olympic Hotel, 411 University Street, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board,

Suite 825, 800 North Capitol Street, N.W., Washington, D.C. 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994), (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons. Under Public Law 105–78, the National Assessment Governing Board is also granted exclusive authority over developing Voluntary National Tests pursuant to contract number RJ97153001 and is required to review and modify the contract to the extent the Board determines necessary, if the contract cannot be modified to the extent the Board determines necessary, the contract shall be terminated and a new contract negotiated.

On March 5, there will be an open meeting of the Achievement Levels Committee from 2:00–4:00 p.m. The Committee will be reviewing the proposed final achievement level descriptions for the 1998 civics and writing assessments. On the Voluntary National Tests, the Committee will examine some of the policy issues related to achievement levels in math and reading.

Also on March 5, there will be two partially closed meetings: Subject Area Committee #1, and the Executive Committee. The Subject Area Committee will meet in open session, 2:00–3:00 p.m., to finalize plans for the report to the Full Board on the Voluntary National Tests specifications in 4th grade reading. In closed session, 3:00–4:00 p.m., the Committee will review the RFP for a NAEP Foreign Language Assessment. This portion of the meeting must be conducted in closed session because premature disclosure of the information presented for review might significantly frustrate a proposed agency action. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

During the open portion of the Executive Committee, 5:00–6:00 p.m., there will be presentations on the following activities: Voluntary National Tests; Reauthorization; Secondary Analysis Grants; and NAEP Redesign. The Committee will then meet in closed session from 6:00–7:00 p.m., to continue discussion of cost estimates for NAEP and future contract initiatives. This portion of the meeting must be closed because public disclosure of this information would likely have an adverse financial effect on the NAEP program. The discussion of this information would likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption (9)(B) of section 552b(c) of Title 5 U.S.C.

In addition, during the closed portion the Committee will be taking action on personnel appointments for the positions for Assistant Director of Test Development, and Assistant Director for Reporting and Dissemination. The Committee will discuss the qualifications of the individuals recommended for appointment. These discussions will relate solely to the internal personnel rules and practices of an agency and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b (c) of Title 5 U.S.C.

On March 6, the full Board will convene in open session at 8:30 a.m. The agenda for this session of the meeting includes remarks from the Washington State Superintendent of Schools, and an update on NAEP activities.

The Design and Methodology Committee, and the Reporting and Dissemination Committee will each meet in open session from 9:30–11:30 a.m. The Design and Methodology Committee will be reviewing the grant applications for the NAEP cycles 2000–2003, and a proposal for a NAEP 12th grade longitudinal study. On the Voluntary National Tests, the Committee will be focusing on the contractors linking proposal, and the pilot and field test design. The Reporting and Dissemination Committee will review plans for the schedule and release of upcoming NAEP reports, and the contractors proposed plan for reporting and utilizing the results of the Voluntary National Tests.

Subject Area Committees #1 and #2 will meet jointly from 9:30–11:30 a.m. The Committees will hear an update of the plans for the next NAEP assessments, as well as, schedule information on the current NAEP assessments in 1998.

The full Board will reconvene beginning at 11:30 a.m.–12:00 noon to hear a briefing on the features of the redesign that have been detailed in the NCES grant applications for the next two cooperative agreements for conducting NAEP. These cooperative agreements will cover two operational aspects of NAEP: (1) Data collection, 2000–2003; and (2) development, scoring, analysis, and reporting. The Board will also consider matters related to the Voluntary National Tests which include hearing an overview of activities under the AIR contract through September, and a report, recommendations, and discussions on the math and reading specifications.

On March 7, the Nominations Committee will meet in open session from 7:30–9:00 a.m. The Committee will discuss modification of the calendar for the 1998 nominations process; prepare for the review of resumes; and set a date for finalizing committee recommendations.

Also on March 7, the full Board will meet from 9:00 a.m.–12:00 noon. The Board will hear comments regarding the Voluntary National Tests from the Executive Director of the Council of Great City Schools, and the Superintendent of the Seattle School District. Also, the Board will receive the reports of its committees.

Summaries of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of Section 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., from 8:30 a.m. to 5:00 p.m.

Dated: February 13, 1998.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 98–4154 Filed 2–18–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of meeting (teleconference).

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting (teleconference) of the Executive Committee of the National Educational Research Policy and

Priorities Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the public of their opportunity to attend the meeting. The public is being given less than 15 days' notice because of the need to accommodate the schedules of the members.

DATES: February 26, 1998.

TIME: 10 a.m. to 11 a.m., EST.

LOCATION: Room 100, 80 F St., N.W., Washington, D.C. 20208–7564.

FOR FURTHER INFORMATION CONTACT:

Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, 80 F St., N.W., Washington, D.C. 20208–7564. Telephone: (202) 219–2065; fax: (202) 219–1528; e-mail: Thelma__Leenhouts@ed. gov. The main telephone number for the Board is (202) 208–0692.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The Executive Committee teleconference will consist of a review of the agenda for the next quarterly meeting of the Board on March 19 and 20, 1998, and related matters. A final agenda will be available from the Board's office on February 19. Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 80 F St., N.W., Washington, D.C. 20208–7564.

Dated: February 12, 1998.

Eve M. Bither,

Executive Director.

[FR Doc. 98–4090 Filed 2–18–98; 8:45 am]

BILLING CODE 4000–01–M

Federal Energy Regulatory Commission

[Docket No. ER98–1642–000, et al.]

Puget Sound Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

February 10, 1998.

Take notice that the following filings have been made with the Commission:

1. Puget Sound Energy, Inc.

[Docket No. ER98–1642–000]

Take notice that on January 30, 1998, Puget Sound Energy, Inc. (PSE), tendered for filing the Agreement Regarding Canadian Entitlement between PSE and Public Utility District No. 1 of Chelan County (Chelan). A copy of the filing was served upon Chelan.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. The Cleveland Electric Illuminating Company

[Docket No. ER98–1644–000]

Take notice that on January 30, 1998, The Cleveland Electric Illuminating Company (CEI), submitted an Electric Power Service Agreement establishing Wellsboro Electric Company (Wellsboro), as a customer under the terms of CEI's market-based power sales tariff, FERC Electric Tariff Original Volume No. 4, and a Transaction Agreement governing a specific sale agreed upon by CEI and Wellsboro.

CEI requests an effective date of January 1, 1998, for the Electric Power Service Agreement and Transaction Agreement. To the extent necessary to permit this requested effective date, CEI requests waiver of the Commission's notice requirements. CEI states that copies of the filing were served upon Wellsboro and the public utilities commissions of Ohio and Pennsylvania.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. PJM Interconnection, L.L.C.

[Docket No. ER98–1645–000]

Take notice that on January 30, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing 3 executed service agreements for point-to-point service under the PJM Open Access Tariff.

Copies of this filing were served upon the parties to the service agreements.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Northern Indiana Public Service Company

[Docket No. ER98–1646–000]

Take notice that on January 30, 1998, Northern Indiana Public Services Company (Northern), filed a Network Integration Transmission Service Agreement pursuant to its Open Access Transmission Tariff and a Service Agreement pursuant to its Power Sales Tariff with the Town of Brookston, Indiana. Northern Indiana has requested an effective date of February 1, 1998.

Copies of this filing have been sent to the Town of Brookston, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Northern Indiana Public Service Company

[Docket No. ER98–1647–000]

Take notice that on January 30, 1998, Northern Indiana Public Services Company (Northern), filed a Network Integration Transmission Service Agreement pursuant to its Open Access Transmission Tariff and a Service Agreement pursuant to its Power Sales Tariff with the Town of Walkerton, Indiana. Northern Indiana has requested an effective date of February 1, 1998.

Copies of this filing have been sent to the Town of Walkerton, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Energy, Inc.

[Docket No. ER98–1648–000]

Take notice that on January 30, 1998, Puget Sound Energy, Inc. (PSE), tendered for filing the Agreement Regarding Canadian Entitlement between PSE and Public Utility District No. 1 of Chelan County (Chelan). A copy of the filing was served upon Chelan.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. El Paso Electric Company

[Docket No. ER98–1650–000]

Take notice that on January 30, 1998, El Paso Electric Company (El Paso), tendered for filing a Firm Point-to-Point Transmission Service Agreement under its Open Access Transmission Tariff for delivery of up to 200 MW of electricity to Commission Federal de Electricidad during 1998. EPE has asked for a waiver

of the FERC's notice requirements in order to make the Service Agreement effective as of January 1, 1998.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Deseret Generation & Transmission Co-operative

[Docket No. ER98–1651–000]

Take notice that on January 30, 1998, Deseret Generation & Transmission Co-operative, tendered for filing an executed umbrella non-firm point-to-point service agreement with Idaho Power company under its open access transmission tariff. Deseret requests a waiver of the Commission's notice requirements for an effective date of January 8, 1998. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000. Idaho Power Company has been provided a copy of this filing.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Northern Indiana Public Service Company

[Docket No. ER98–1652–000]

Take notice that on January 30, 1998, Northern Indiana Public Services Company (Northern), filed a Network Integration Transmission Service Agreement pursuant to its Open Access Transmission Tariff and a Service Agreement pursuant to its Power Sales Tariff with the Town of Kingsford Heights, Indiana. Northern Indiana has requested an effective date of February 1, 1998.

Copies of this filing have been sent to the Town of Kingsford Heights, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Northern Indiana Public Service Company

[Docket No. ER98–1653–000]

Take notice that on January 30, 1998, Northern Indiana Public Services Company (Northern), filed a Network Integration Transmission Service Agreement pursuant to its Open Access Transmission Tariff and a Service Agreement pursuant to its Power Sales Tariff with the Town of Bremen, Indiana. Northern Indiana has requested an effective date of February 1, 1998.

Copies of this filing have been sent to the Town of Bremen, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Northern Indiana Public Service Company

[Docket No. ER98–1654–000]

Take notice that on January 30, 1998, Northern Indiana Public Services Company (Northern), filed a Network Integration Transmission Service Agreement pursuant to its Open Access Transmission Tariff and a Service Agreement pursuant to its Power Sales Tariff with the Town of Winamac, Indiana. Northern Indiana has requested an effective date of February 1, 1998.

Copies of this filing have been sent to the Town of Winamac, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Northern Indiana Public Service Company

[Docket No. ER98–1655–000]

Take notice that on January 30, 1998, Northern Indiana Public Services Company (Northern), filed a Network Integration Transmission Service Agreement pursuant to its Open Access Transmission Tariff and a Service Agreement pursuant to its Power Sales Tariff with the Town of Chalmers, Indiana. Northern Indiana has requested an effective date of February 1, 1998.

Copies of this filing have been sent to the Town of Chalmers, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Northern States Power Company (Minnesota Company)

[Docket No. ER98–1656–000]

Take notice that on January 30, 1998, Northern States Power Company (Minnesota) (NSP) tendered for filing the Firm Point-to-Point Transmission Service Agreement between NSP and NSP Wholesale (POD: City of Kasson, MN).

NSP requests that the Commission accept the agreement effective January 1, 1998, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Northern States Power Company (Minnesota Company)

[Docket No. ER98–1657–000]

Take notice that on January 30, 1998, Northern States Power Company (Minnesota) (NSP) tendered for filing the Firm Point-to-Point Transmission Service Agreement between NSP and NSP Wholesale (POD: City of Kasota, MN).

NSP requests that the Commission accept the agreement effective January 1, 1998, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Northern States Power Company (Minnesota Company)

[Docket No. ER98–1658–000]

Take notice that on January 30, 1998, Northern States Power Company (Minnesota) (NSP) tendered for filing the Firm Point-to-Point Transmission Service Agreement between NSP and NSP Wholesale (POD: City of Madelia, MN).

NSP requests that the Commission accept the agreement effective January 1, 1998, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Northern States Power Company (Minnesota Company)

[Docket No. ER98–1659–000]

Take notice that on January 30, 1998, Northern States Power Company (Minnesota) (NSP) tendered for filing the Firm Point-to-Point Transmission Service Agreement between NSP and NSP Wholesale (POD: City of Buffalo, MN).

NSP requests that the Commission accept the agreement effective January 1, 1998, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Northern States Power Company (Minnesota Company)

[Docket No. ER98–1660–000]

Take notice that on January 30, 1998, Northern States Power Company (Minnesota) (NSP) tendered for filing the Firm Point-to-Point Transmission Service Agreement between NSP and

NSP Wholesale (POD: City of Sioux Falls, SD).

NSP requests that the Commission accept the agreement effective January 1, 1998, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Southwestern Public Service Company

[Docket No. ER98–1661–000]

Take notice that on January 30, 1998, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), submitted an executed umbrella service agreement under Southwestern's market-based sales tariff with Aquila power Corporation (Aquila). This umbrella service agreement provides for Southwestern's sale and Aquila's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. The Washington Water Power Company

[Docket No. ER98–1662–000]

Take notice that on January 30, 1998, The Washington Water Power Company (WWP) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an executed Interconnection and Operating Agreement between WWP and Kootenai Electric Cooperative. WWP requests an effective date of January 1, 1998.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. PP&L, Inc.

[Docket No. ER98–1663–000]

Take notice that on January 30, 1998, PP&L, Inc. filed a summary of activity conducted under its market-based rates tariff, FERC Electric Tariff, Original Volume No. 5, during the quarter ending December 31, 1997.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company

[Docket No. ER98–1664–000]

Take notice that on January 30, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 38 to add three (3) new customers to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny power requests a waiver of notice requirements to make service available as of January 29, 1998, to CMS Marketing, Services and Trading Company, Columbia Power Marketing Corporation, and Tenaska Power Services Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Co.

[Docket No. ER98–1665–000]

Take notice that on January 30, 1998, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (collectively, the "CSW Operating Companies") submitted for filing service agreements under which the CSW Operating Companies will provide transmission service to Tex-La Electric Cooperative of Texas, Inc. (Tex-La).

The CSW Operating Companies state that a copy of the filing has been served on Tex-La.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Union Electric Company

[Docket No. ER98–1666–000]

Take notice that on January 30, 1998, Union Electric Company tendered for filing its quarterly report detailing sale transactions undertaken for the quarter of October 1, 1997–December 31, 1997.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Northeast Utilities Service Company

[Docket No. ER98–1667–000]

Take notice that on January 30, 1998, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire (collectively, the NU System Companies), tendered for filing NUSCO's activity under the NU System Companies' Tariff No. 7 (market-based rates) for the quarter ending December 31, 1997.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Atlantic City Electric Company

[Docket No. ER98–1668–000]

Take notice that on January 30, 1998, Atlantic City Electric Company (AE) tendered for filing its 4th Quarter 1997 Summary Report.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Duke Power, a division of Duke Energy Corporation

[Docket No. ER98–1669–000]

Take notice that on January 30, 1998, Duke Power (Duke), a division of Duke Energy Corporation, tendered for filing Schedule MR quarterly transaction summaries for service under Duke's FERC Electric tariff, Original Volume No. 3 for the quarter ended December 31, 1997.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Texas-New Mexico Power Company

[Docket No. ER98–1687–000]

Take notice that on January 30, 1998, Texas-New Mexico Power Company (TNMP) tendered for filing a service agreement and an operating agreement pursuant to which TNMP will provide a network integration transmission service to Southwestern Public Service Company pursuant to TNMP's FERC Open Access Transmission Tariff.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Texas-New Mexico Power Company

[Docket No. ER98–1688–000]

Take notice that on January 30, 1998, Texas-New Mexico Power Company (TNMP) tendered for filing First Revised Sheet No. 138, Replacing Original Sheet No. 138, of TNMP's FERC Open Access Transmission Tariff. The revised sheet updates the list of Network Integration Transmission Service customers of TNMP.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Louisville Gas and Electric Company

[Docket No. ER98–1689–000]

Take notice that on January 30, 1998, Louisville Gas and Electric Company (LG&E) tendered for filing an executed Purchase and Sales Agreement between LG&E and Sonat Power Marketing L.P. under LG&E's Rate Schedule GSS.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Allegheny Power Service Corp. on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power Company)

[Docket No. ER98–1690–000]

Take notice that on January 30, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 27 to add Columbia Power Marketing Corporation, e prime, inc., and Tenaska Power Services Co., to Allegheny Power's Open Access Transmission Service Tariff which has been submitted for filing in Docket No. OA96–18–000. The proposed effective date under the Service Agreements is January 29, 1998.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Kentucky Utilities Company

[Docket No. ER98–1691–000]

Take notice that on January 30, 1998, Kentucky Utilities Company (KU) tendered for filing service agreements between KU and Columbia Power Marketing Corporation, Tenaska Power Services Co., and Avista Energy, Inc., for service under Kentucky Utilities Company's (KU), Transmission Services Tariff and Columbia Power Marketing Corporation, Tenaska Power Services Co., Carolina Power & Light Company, and NESI Power Marketing Inc., for service under KU's Power Services (PS), Tariff. KU also tendered for filing a termination of its PS and TS service agreements with Delhi Energy Services, Inc.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Ameren Services Company

[Docket No. ER98–1692–000]

Take notice that on February 2, 1998, Ameren Services Company (Ameren Services) tendered for filing a Network Operating Agreement and a Service Agreement for Network Integration Transmission Service between Ameren Services and Edgar Electric Cooperative Association (EEC). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to EEC pursuant to Ameren's Open Access Transmission Tariff.

Comment date: February 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Ameren Services Company

[Docket No. ER98–1693–000]

Take notice that on February 2, 1998, Ameren Services Company (AS) tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service between AS and Electric Clearinghouse, Inc. (ECI). AS asserts that the purpose of the Agreement is to permit AS to provide transmission service to ECI pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. EC96–7–000, et al.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Colt Electric Power Corporation

[Docket No. ER98–1694–000]

Take notice that on February 3, 1998, Colt Electric Power Corporation tendered for filing a Notice of Cancellation of FERC Electric Rate Schedule No. 1.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. Ameren Services Company

[Docket No. ER98–1695–000]

Take notice that on February 2, 1998, Ameren Services Company (Ameren Services) tendered for filing Network Operating Agreements and Service Agreements for Network Integration Transmission Service between Ameren Services, the City of Hannibal, Missouri and the City of Kirkwood, Missouri (the Cities). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to the Cities pursuant to Ameren's Open Access Transmission Tariff.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. Union Electric Company

[Docket No. ER98–1696–000]

Take notice that on February 2, 1998, Union Electric Company (UE) tendered for filing a Service Agreement for Market Based Rate Power Sales between UE and the City of Hannibal, Missouri and the City of Kirkwood, Missouri (the Cities). UE asserts that the purpose of the Agreement is to permit UE to make sales of capacity and energy at market based rates to the Cities pursuant to UE's Market Based Rate Power Sales Tariff filed in Docket No. ER97–3664–000.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. Long Island Lighting Company

[Docket No. ER98–1697–000]

Take notice that on February 2, 1998, Long Island Lighting Company (LILCO) filed a Service Agreement for Firm Point-to-Point Transmission Service between LILCO and New York Power Authority (Transmission Customer).

The Service Agreement specifies that the Transmission Customer has agreed to the rates, terms and conditions of LILCO's open access transmission tariff filed on July 9, 1996, in Docket No. OA96–38–000.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of February 1, 1998, for the Service Agreement. LILCO has served copies of the filing on the New York State Public Service Commission and on the Transmission Customer.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. PacifiCorp

[Docket No. ER98–1698–000]

Take notice that PacifiCorp on February 2, 1998, tendered for filing in accordance with the Commission's June 26, 1997 Order under FERC Docket No. ER97–2801–000, a Report showing PacifiCorp's transactions under PacifiCorp's FERC Electric Tariff, Original Volume No. 12 for the quarter ending on December 31, 1997.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. Florida Power & Light Company

[Docket No. ER98–1699–000]

On February 2, 1998 Florida Power & Light Company (FPL) filed Service Agreements with the City of Gainesville, Florida, Columbia Power Marketing Corporation and the City of Tallahassee, Florida for service pursuant to Tariff No. 1 for Sales of Power and Energy by Florida Power & Light. In addition, FPL filed a Service Agreement with the City of Tallahassee, Florida for service pursuant to FPL's Market Based Rates Tariff. FPL requests that the Service Agreements be made effective on January 15, 1998.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

40. Washington Water Power Company

[Docket No. ER98–1700–000]

Take notice that on February 2, 1998, Washington Water Power Company tendered for filing Agreements regarding Canadian Entitlement between Washington Water Power and Public Utility District No. 1 of Chelan County and Public Utility District No. 2 of Grant County.

A copy of this filing was served upon Chelan and Grant.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4167 Filed 2–18–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5969–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Underground Injection Control (UIC) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Underground Injection Control Program, EPA ICR No. 0370.13, OMB No 2040–0042 which expires 6/30/98. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collection as described below.

DATES: Comments must be submitted on or before April 20, 1998.

ADDRESSES: Information requests or comments regarding this ICR should be directed to Denny Cruz, Office of Ground Water and Drinking Water, Mail Code 4606, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Denny Cruz, Office of Ground Water and Drinking Water at 202–260–7776, or through E-mail: Cruz.Denny@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are owners and operators of underground injection wells and their State Agencies including Puerto Rico, the U.S. Trust Territories, Indian Tribes, and Alaska Natives and in some instances, U.S. EPA Regional Administrators and staff.

Title: Information Collection Request for the Underground Injection Control Program (OMB Control No. 2040–0042; EPA ICR No. 0370.13.), expiring June 30, 1998.

Abstract: The Underground Injection Control (UIC) Program under the Safe Drinking Water Act established a Federal and State regulatory system to protect underground sources of drinking water from contamination by injected fluids. Owners and operators of underground injection wells must obtain permits, conduct environmental monitoring, maintain records, and report results to EPA or the State primacy agency. States must report to EPA on permittee compliance and related information. The information is reported using standardized forms and the regulations are codified at 40 CFR parts 144 through 148. The data are used to ensure the safety of underground sources of drinking water. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. In the ICR for 1995–1997, the total burden associated with this ICR was estimated to be 361,741 hours per year and the total cost was estimated to be $ 14 million per year. We expect that the burden for the continuing ICR for 1998–2000 will exceed the burden reported in the three previous years because of significant changes to the methodology used to calculate operator burden. Some changes reflect new requirements for burden estimation resulting from the

Paper Work Reduction Act of 1995. Others represent an update to the methodologies used to estimate burden in the ICR. EPA intends to examine how the UIC program could assist in reducing the burden on the States for reporting requirements and will be working with selected State officials as we work on this renewal. Any recommendations from the underground injection control community and the general public on this issue will be given consideration by the Agency.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency.

[FR Doc. 98–4184 Filed 2–18–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5969–2]

Underground Injection Control Program Hazardous Waste Land Disposal Restrictions; Petition for Reissuance of an Exemption—Class I Hazardous Waste Injection Wells, E.I. du Pont de Nemours & Co., Inc. (DuPont)

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on the exemption reissuance.

SUMMARY: Notice is hereby given that a petition for the reissuance of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to DuPont, for the Class I injection wells located at the Victoria, Texas facility. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by DuPont, of the specific restricted hazardous waste identified in the petition, into the Class I hazardous waste injection wells at the Victoria, Texas facility until December 31, 2000, unless EPA moves to terminate the exemption under provisions of 40 CFR 148.24. As required by 40 CFR 148.22(b) and 124.10, a public notice was issued on December 1, 1997. The public comment period closed on January 15, 1998. All comments have been addressed and have been considered in the final decision. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of February 11, 1998.

ADDRESSES: Copies of the exemption reissuance and all pertinent information relating thereto (including EPA's response to public comments on the exemption reissuance proposal) are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief, Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–7165.

William B. Hathaway,

Director, Water Quality Protection Division (6WQ).

[FR Doc. 98–4185 Filed 2–18–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00234; FRL–5771–4]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held on March 10–12, 1998, in Washington, DC. At this meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity and the development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: acrolein, bromine, chloromethyl methyl ether, epichlorohydrin, methyl trichlorosilane, nickel carbonyl, nitric oxide, trimethyl chlorosilane, and literature review on jet fuel (JP–4, 5, 7 and 8).

DATES: A meeting of the NAC/AEGL Committee will be held from 10 a.m. to 5 p.m. on Tuesday, March 10; from 8:30 a.m. to 5 p.m. on Wednesday, March 11; and from 8:30 a.m. to 1 p.m. on Thursday, March 12, 1998.

ADDRESSES: The meeting will be held in the Old Post Office, Room M09, 1100 Pennsylvania Ave., NW., Washington, DC (Federal Triangle Metro Stop).

FOR FURTHER INFORMATION CONTACT: Paul S. Tobin, Designated Federal Officer (DFO), Office of Prevention, Pesticides and Toxic Substances (7406), 401 M St., SW., Washington, DC 20460, (202) 260–1736, e-mail: tobin.paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Internet

Electronic copies of this notice and various support documents are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

Fax-On-Demand

Using a faxphone call (202) 401–0527 and select item 4800 for an index of items in this category.

II. Meeting Procedures

For further information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission or presentation of information on chemicals to be discussed at the meeting, contact the DFO.

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations or the submission of written statements or chemical-specific information should be directed to the DFO.

Another meeting of the NAC/AEGL Committee is expected to be held on June 15, 16, and 17, 1998 [currently planned to be held at Oak Ridge National Laboratory, 1060 Commerce Park, Oak Ridge, TN]. It is anticipated that chemicals to be addressed at the Oak Ridge, TN meeting will include, but not necessarily be limited to the following: chloroform, crotonaldehyde (E), HFC–134a, HCFC–141b, methyl isocyanate, peracetic acid, piperidine, sulfur dioxide, sulfur trioxide, and sulfuric acid. Inquiries regarding the submission of data, written statements, or chemical-specific information on these chemicals should be directed to the DFO at the earliest possible date to

allow for consideration of this information in the preparation of NAC/AEGL Committee materials.

List of Subjects

Environmental protection, Hazardous substances, Health.

Dated: February 11, 1998.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 98–4188 Filed 2–18–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5968–7]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the second meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held March 4–6, 1998, in Washington, D.C. The CHPAC was created to advise the Environmental Protection Agency in the development of regulations, guidance and policies to address children's environmental health.

DATES: Wednesday, March 4, 1998, from 12:00 p.m. to 5:00 p.m. (Work Group meetings only); Plenary session begins on Thursday, March 5, 1998, from 10:00 a.m. to 5:30 p.m. and continues on Friday, March 6, 1998, from 9:00 a.m. to 1:00 p.m.

ADDRESSES: Washington Plaza Hotel, 10 Thomas Circle, NW (at Massachusetts Avenue and 14th Street, NW), Washington, D.C. 20005.

Agenda Items

The meetings of the CHPAC are open to the public. The Regulatory Re-evaluation Work Group will meet from 12:00 p.m. to 5:00 p.m. on Wednesday, March 4, 1998 and the Outreach and Communications Work Group will meet from 2:00 p.m. to 5:00 p.m. on Wednesday, March 4, 1998. The plenary session will begin on Thursday, March 5, 1998, from 10:00 a.m. to 5:30 p.m. and continue on Friday, March 6, 1998, from 9:30 a.m. to 1:00 p.m. The plenary session will open with introductions, a review of the agenda and objectives for the meeting. Some tentative agenda items include reports from the Work Groups, discussion on the selection of five standards for review with regards to children's environmental health, and discussion about the formation of a Cost/Benefit Work Group. There will be a public comment period on Friday, March 6, 1998.

FOR FURTHER INFORMATION CONTACT: Persons needing further information should contact Paula R. Goode, Office of Children's Health Protection, USEPA, MC 1107, 401 M Street, SW, Washington, D.C. 20460, (202) 260–7778, goode.paula@epamail.epa.gov.

Dated: February 10, 1998.

E. Ramona Trovato,

Director, Office of Children's Health Protection.

[FR Doc. 98–4180 Filed 2–18–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5968–6]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Drinking Water Committee (DWC) of the Science Advisory Board (SAB) will hold a public meeting beginning at 9:00 a.m. Thursday, March 12, 1998 and ending not later than 3:00 p.m. Friday, March 13, 1998 (Eastern). The meeting will be held in Room 2103—Mall of the EPA Headquarters Building, 401 M Street, S.W., Washington, DC 20460.

The purpose of the meeting is for the Committee to receive a series of informational briefings on the status of a number of scientific topics of relevance to Safe Drinking Water Act (SDWA) implementation. Documents discussing some or all of these topics may be the subject of future formal reviews by the Science Advisory Board/Drinking Water Committee. Topics that the Committee will be briefed on include: (a) Complex mixtures and their implications to safe drinking water, (b) microbial/disinfection byproduct research and the Agency's plans for tracking research progress, (c) the EPA drinking water contaminant occurrence data base, and (d) the results of new drinking water epidemiology studies conducted in California.

For Further Information: Single copies of the background information for this review, or the meeting agenda, can be obtained by contacting Mr. Thomas O. Miller, Designated Federal Officer for the Drinking Water Committee, Science Advisory Board (1400), U.S. EPA, 401 M Street, SW, Washington, DC 20460; by telephone at (202) 260–5886; by fax at (202) 260–7118 or via the INTERNET at: miller.tom@epamail.epa.gov, or by contacting Ms. Mary Winston at (202) 260–8414, by fax at (202) 260–7118, and by INTERNET at: winston.mary@epamail.epa.gov.

Providing Oral or Written Comments at SAB Meetings

Anyone wishing to make an oral presentation to the Committee must contact Mr. Miller, in writing (by letter, fax, or INTERNET—at the INTERNET address) no later than 12 noon (Eastern Standard Time) Friday, March 6, 1998, in order to be included on the Agenda. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Miller no later than the time of the presentation for distribution to the Committee and the interested public.

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Written comments received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: February 13, 1998.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 98–4183 Filed 2–18–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–280]

Commission to Hold En Banc February 19, 1998 in Connection With Report to Congress on Universal Service

February 13, 1998.

The Federal Communications Commission will hold an En Banc on Thursday, February 19, 1998, from 2:00 p.m. to 4:00 pm, in Room 856 at 1919 M. Street, N.W., Washington, D.C. The En Banc is in connection with the

Report to Congress on Universal Service required by statute.

The 1998 appropriations legislation for the Departments of Commerce, Justice, and State, Public Law 105–119, directs the Commission to undertake a review of the implementation of the provisions of the Telecommunications Act of 1996 (1996 Act) relating to universal service, and to submit a report to Congress no later than April 10, 1998.

At the En Banc, the Commission will hear from panels of experts addressing issues regarding various definitions in the 1996 Act, as well as the payment and receipt of Universal Service contributions by information service providers and telecommunications carriers.

The En Banc is open to the public, and seating will be available on a first come, first served basis. A transcript of the En Banc will be available 10 days after the event on the FCC's Internet site. The URL address for the FCC's Internet Home Page is <http://www.fcc.gov>.

The En Banc will also be carried live on the Internet. Internet users may listen to the real-time audio feed of the En Banc by accessing the FCC Internet Audio Broadcast Home Page. Step-by-step instructions on how to listen to the audio broadcast, as well as information regarding the equipment and software needed, are available on the FCC Internet Audio Broadcast Home Page. The URL address for this home page is http://www.fcc.gov/realaudio/.

News Media Contact: Rochelle Cohen (202) 418–0253.

Report Working Group Contacts: Melissa Waksman (202) 418–1580, Marcelino Ford-Livene (202) 418–2030.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–4328 Filed 2–17–98; 12:21 pm]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, February 24, 1998, at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, February 25, 1998, at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This hearing will be open to the public.

MATTER BEFORE THE COMMISSION: Pete Wilson for President Committee, Inc.

DATE AND TIME: Thursday, February 26, 1998, at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1997–24: The Corporation for the Advancement of Psychiatry and CAP Political Action Committee, by the CAPPAC treasurer, Gerald H. Flamm, M.D.

Advisory Opinion 1998–01: Congressman Earl F. Hilliard, Hilliard for Congress Campaign, by counsel Ralph L. Lotkin.

Audit: San Diego Host Committee/Sail to Victory '96 (continued from meeting of February 12, 1998).

Audit: Committee on Arrangements for the 1996 Republican National Convention (continued from meeting of February 12, 1998).

Legislative Recommendations—1998.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Signed:

Mary W. Dove,

Administrative Assistant.

[FR Doc. 98–4379 Filed 2–17–98; 3:28 pm]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1197–DR]

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA–1197–DR), dated January 13, 1998, and related determinations.

EFFECTIVE DATE: February 5, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster which was closed effective January 21, 1998, is now reopened to allow for additional damage resulting from continuing severe storms. The incident period for this declared disaster is January 6, 1998, and continuing.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–4175 Filed 2–18–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1197–DR]

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1197–DR), dated January 13, 1998, and related determinations.

EFFECTIVE DATE: February 5, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 13, 1998:

Cocke, Greene, Hawkins, Sevier, Sullivan, Unicoi, and Washington Counties for Public Assistance.

Unicoi County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–4176 Filed 2–18–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

Name: Technical Mapping Advisory Council.

Dates of Meeting: March 2 and 3, 1998.

Place: The meeting will be held at the Baltimore Marriott Inner Harbor Hotel, Pratt and Eutaw Streets, Baltimore, Maryland.

Times: 8:30 a.m. to 6:00 p.m. on Monday and 8:00 a.m. to 3:00 p.m. Tuesday.

Proposed Agenda: The proposed agenda is as follows:

1. Call to order.
2. Announcements.
3. Action on minutes of previous meeting.
4. Clarification and discussion of the purpose of the meeting.
5. Revisions/additions to meeting agenda.
6. Committee reports.
7. Old business.
8. New business.
9. Adjournment.

Status: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., Room 421, Washington, DC 20472; telephone (202) 646–2756 or by fax as noted above.

Dated: February 11, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–4174 Filed 2–18–98; 8:45 am]

BILLING CODE 6718–04–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 4, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. William Harvey May, Nelsonville, Ohio; to retain voting shares of First National Bancshares of Nelsonville, Inc., Nelsonville, Ohio, and thereby indirectly retain voting shares of First National Bank of Nelsonville, Nelsonville, Ohio.

Board of Governors of the Federal Reserve System, February 12, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4106 Filed 2–18–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 5, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. James A. Taylor, and James A. Taylor, Jr., both of Warrior, Alabama; to collectively acquire additional voting shares of Warrior Capital Corporation, Warrior, Alabama, and thereby acquire Warrior Savings Bank, Warrior, Alabama.

2. Kennon R. Patterson, Sr., Carolyn Patterson, and Kennon R. Patterson, Jr., as a group, all of Boaz, Alabama; to acquire additional voting shares of Community Bancshares, Inc., Blountsville, Alabama, and thereby indirectly acquire Community Bank, Blountsville, Alabama.

Board of Governors of the Federal Reserve System, February 13, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4192 Filed 2–18–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the

standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 16, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Traditional Bancorporation, Inc., Mt. Sterling, Kentucky; to acquire 100 percent of the voting shares of Traditional Bank of Kentucky, Inc., Lexington, Kentucky, which is a state-chartered bank that results from the proposed conversion of Traditional Bank, FSB, which is currently owned by Traditional Bancorporation, Inc.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Community Banks of Florida, Inc., Naples, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Naples, N.A., Naples, Florida.

Board of Governors of the Federal Reserve System, February 13, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4191 Filed 2–18–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of December 16, 1997

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on December 16, 1997.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity continued to grow rapidly in recent months. Nonfarm payroll employment increased sharply in October and November; the civilian unemployment rate fell to 4.6 percent in November, its low for the current economic expansion. Industrial production continued to advance at a brisk pace in October and November. Retail sales were unchanged on balance over the two months after rising sharply in the third quarter. Housing starts increased slightly further in October and November. Available information suggests on balance that business fixed investment will slow from the exceptionally strong increases of the second and third quarters. The nominal deficit on U.S. trade in goods and services widened significantly in the third quarter from its rate in the second quarter. Price inflation has remained subdued, despite some increase in the pace of advance in wages.

Short-term interest rates have registered small mixed changes since the day before the Committee meeting on November 12, 1997, while bond yields have fallen somewhat. Share prices in U.S. equity markets recorded mixed changes over the period; equity markets in other countries, notably in Asia, have remained volatile. In foreign exchange markets, the value of the dollar has risen over the intermeeting period in terms of both the trade-weighted index of the other G-10 countries and the currencies of a number of Asian countries.

M2 and M3 grew rapidly in November. For the year through November, M2 expanded at a rate slightly above the upper bound of its range for the year and M3 at a rate substantially above the upper bound of its range. Total domestic nonfinancial debt has expanded in recent months at a pace somewhat below the middle of its range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in July reaffirmed the ranges it had established in February for growth of M2 and M3 of 1 to 5 percent and 2 to 6 percent respectively, measured from the fourth quarter of 1996 to the fourth quarter of 1997. The range for growth of total domestic nonfinancial debt was maintained at 3 to 7 percent for the year. For 1998, the Committee agreed on a tentative basis to set the same ranges as in 1997 for growth of the monetary aggregates and debt, measured from the fourth quarter of 1997 to the fourth quarter of 1998. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 5-1/2 percent. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments; a slightly higher federal funds rate or a slightly lower federal funds rate might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with some moderation in the growth in M2 and M3 over coming months.

By order of the Federal Open Market Committee, February 9, 1998.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 98–4105 Filed 2–18–98; 8:45 am]

BILLING CODE 6210–01–F

[1] Copies of the Minutes of the Federal Open Market Committee meeting of December 16, 1997, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, February 23, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 13, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4284 Filed 2–13–98; 4:24 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0243]

Proposed Collection; Comment Request Entitled Fixed Price Contracts

AGENCY: Office of GSA Acquisition Policy, GSA.

ACTION: Notice of request for public comments regarding reinstatement to a previously approved OMB clearance (3090–0243).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Fixed Price Contracts.

DATES: Comment Due Date: April 20, 1998.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street, NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0243, concerning Fixed Price Contracts. This information collection prescribes an economic price adjustment clause in Federal Supply Service multiple award service (MAS) contracts. This clause is used to adjust MAS contract price and requires a MAS contractor to furnish certain pricing information when the MAS contractor requests a price adjustment under the MAS contract.

B. Annual Reporting Burden

Respondents: 2914; *annual responses:* 4,371; *average hours per response:* .5; *burden hours:* 2,186.

Copy of proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street, NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: February 10, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–4132 Filed 2–18–98; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Advisory Committee on HIV and STD Prevention and Hospital Infection Control Practices Advisory Committee Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meetings.

Name: CDC Advisory Committee on HIV and STD Prevention (CDC ACHSP).

Time and Date: 8:30 a.m.–5 p.m., March 11, 1998.

Place: Corporate Square Office Park, Corporate Square Boulevard, Building 11, Conference Room 1413A, Atlanta, Georgia 30329, telephone 404/639–8008.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with advising the Director, CDC, regarding objectives, strategies, and priorities for HIV and STD prevention efforts including maintaining surveillance of HIV infection, AIDS, and STDs, the epidemiologic and laboratory study of HIV/AIDS and STDs, information/education and risk reduction activities designed to prevent the spread of HIV and STDs, and other preventive measures that become available.

Matters to be Discussed: Agenda items will include discussions regarding building HIV prevention capacity in racial/ethnic minority communities; issues pertaining to integration of HIV/STD prevention efforts; and enhancing communication strategies between CDC and its partners.

Contact Person for More Information: Beth Wolfe, Committee Management Specialist, National Center for HIV, STD, and TB Prevention, CDC, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8008.

Name: CDC Advisory Committee on HIV and STD Prevention (CDC ACHSP) and Hospital Infection Control Practices Advisory Committee (HICPAC).

Time and Date: 8:30 a.m.–5 p.m., March 12, 1998.

Place: CDC, Building 1, Auditorium A, 1600 Clifton Road, E, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people. Envision capability will be available at Corporate Square Office Park, Corporate Square Boulevard, Building 11, Conference Room 1413A, Atlanta, Georgia 30329.

Purpose: The joint CDC ACHSP/HICPAC committees will discuss CDC recommendations relevant to health care workers (HCW) infected with HIV or other bloodborne pathogens. A working group report, from the February 11, 1998 meeting, will be presented that will include a list of options, with the "pros" and "cons" for each option, regarding recommendations for existing infected HCW guidelines.

Matters to be Discussed: The Committees will review relevant scientific information gathered since the implementation of the 1991 CDC recommendations; discuss the implications of this updated information vis-a-vis the potential revision of the 1991 recommendations; and advise CDC regarding current HIV-infected HCW recommendations.

Contact Persons for More Information: Adelisa Panlilio, M.D., Medical Epidemiologist, HIV Infections Branch, Hospital Infections Program, National Center for Infectious Diseases, CDC, 1600 Clifton Road, NE, M/S E–68, Atlanta, Georgia 30333, telephone 404/639–6425, or Beth Wolfe, Committee Management Specialist, National Center for HIV, STD, and TB Prevention, CDC, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8008.

Name: Hospital Infection Control Practices Advisory Committee (HICPAC).

Time and Date: 8:30 a.m.–4:30 p.m., March 13, 1998.

Place: Corporate Square Office Park, Corporate Square Boulevard, Building 11, Conference Room 1413, Atlanta, Georgia 30329, telephone.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: The Committee is charged with providing advice and guidance to the Secretary; the Assistant Secretary for Health; the Director, CDC; and the Director, NCID, CDC, regarding the practice of hospital infection control and strategies for surveillance, prevention, and control of nosocomial infections in U.S. hospitals; and updating guidelines and other policy statements regarding prevention of nosocomial infections.

Matters to be Discussed: Agenda items will include a review of the strategic direction of HICPAC; the third draft of the Guideline for Prevention of Surgical Site Infections; priority areas for HICPAC/CDC guideline development; and CDC activities of interest to the Committee.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Michele L. Pearson, M.D., Medical Epidemiologist, Investigation and Prevention Branch, Hospital Infections Program, NCID, CDC, 1600 Clifton Road, NE, M/S E–69, Atlanta, Georgia 30333, telephone 404/639–6413.

Dated: February 12, 1998.

Julia M. Fuller

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–4141 Filed 2–18–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Intent To Reallot Part C—Protection and Advocacy Funds to States for Developmental Disabilities Expenditures

AGENCY: Administration on Developmental Disabilities, ACF, DHHS.

ACTION: Notice of intent to reallot Fiscal Year 1998 funds, pursuant to Section 125 and Section 142 of the Developmental Disabilities Assistance and Bill of Rights Act, as amended (Act).

SUMMARY: The Administration on Developmental Disabilities herein gives notice of intent to reallot funds which were set aside in accordance with Section 142(c)(5) of the Act. Of the $806,682 which was set aside for technical assistance and Indian Consortiums, $534,360 will be utilized for technical assistance and $136,161 was awarded to an Indian Consortium. Therefore, the balance of $136,161 has been released for reallotment.

Any State or Territory which wishes to release funds or cannot use the additional funds under Part C—Protection and Advocacy program for Fiscal Year 1998 should notify Joseph Lonergan, Director, Division of Formula, Entitlement and Block Grants, Office of Administration, Office of Financial Services, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, in writing within thirty (30) days of the date of this promulgation. Reallotment awards are anticipated to be dated 30 days from the date of this notice. This notice is hereby given in accordance with Sections 125 and 142 of the Act.

FOR FURTHER INFORMATION CONTACT: Joanne Moore on (202) 205–4792.

The proposed reallotment for part C—Protection and Advocacy program are set forth below:

ADMINISTRATION ON DEVELOPMENTAL DISABILITIES FISCAL YEAR 1998 REALLOTMENT

	Protection and advocacy	Reallotment	Revised allotment
Alabama	437,281	2,289	439,570
Alaska	254,508	1,332	255,840
Arizona	349,299	1,828	351,127
Arkansas	261,832	1,371	263,203
California	2,222,446	11,636	2,234,082
Colorado	279,637	1,464	281,101
Connecticut	263,419	1,379	264,798
Delaware	254,508	1,332	255,840
Dist. of Columbia	254,508	1,332	255,840
Florida	1,075,064	5,627	1,080,691
Georgia	604,625	3,165	607,790
Hawaii	254,508	1,332	255,804
Idaho	254,508	1,332	255,804
Illinois	909,119	4,759	913,878
Indiana	504,066	2,638	506,704
Iowa	261,300	1,368	262,668
Kansas	254,508	1,332	255,840
Kentucky	407,287	2,132	409,419
Louisiana	465,824	2,438	468,262
Maine.	254,508	1,332	255,840
Maryland	341,616	1,788	343,404
Massachusetts	449,198	2,351	451,549
Michigan	823,575	4,311	827,886
Minnesota	356,141	1,864	358,005
Mississippi	314,173	1,644	315,817
Missouri	459,932	2,407	462,339
Montana	254,508	1,332	255,840
Nebraska	254,508	1,332	255,840
Nevada	254,508	1,332	255,840
New Hampshire	254,508	1,332	255,840
New Jersey	521,394	2,729	524,123
New Mexico	254,508	1,332	255,840
New York	1,391,017	7,281	1,398,298
North Carolina	640,299	3,352	643,651

ADMINISTRATION ON DEVELOPMENTAL DISABILITIES FISCAL YEAR 1998 REALLOTMENT—Continued

	Protection and advocacy	Reallotment	Revised allotment
North Dakota	254,508	1,332	255,840
Ohio	988,431	5,174	993,605
Oklahoma	308,297	1,614	309,911
Oregon	264,661	1,385	266,046
Pennsylvania	1,048,495	5,488	1,053,983
Rhode Island	254,508	1,332	255,840
South Carolina	363,846	1,904	365,750
South Dakota	254,508	1,332	255,840
Tennessee	493,564	2,583	496,147
Texas	1,523,272	7,973	1,531,245
Utah	254,508	1,332	255,840
Vermont	254,508	1,332	255,840
Virginia	509,109	2,665	511,774
Washington	390,561	2,044	392,605
West Virginia	275,079	1,440	276,519
Wisconsin	446,639	2,338	448,977
Wyoming	254,508	1,332	255,840
American Samoa	136,161	713	136,874
Guam	136,161	713	136,874
Puerto Rico	800,657	4,191	804,848
Virgin Islands	136,161	713	136,874
Northern Mariana Islands	136,161	713	136,874
Palau**	34,375	0	34,375
AZ DNA People's Legal Services	136,161	713	136,874
Total	*$26,047,479	$136,161	$26,183,640

* Includes the award of $136,161 to an Indian Consortium (AZ DNA People's Legal Services) in accordance with Section 142(b).
** Palau's allotment was reduced to 25% of its Fiscal Year 1995 allotment, in accordance with the Compact of Free Association with the Republic of Palau.

Dated: January 27, 1998.

Reginald F. Wells,

Acting Commissioner, Administration on Developmental Disabilities.

[FR Doc. 98–4114 Filed 2–18–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Federal Allotments to State Developmental Disabilities Councils (DDCs) and Protection and Advocacy (P&A) Formula Grant Programs for Fiscal Year 1999

AGENCY: Administration on Developmental Disabilities, ACF, DHHS.

ACTION: Notification of Fiscal Year 1999 federal allotments to State Developmental Disabilities Councils and Protection and Advocacy Formula Grant Programs.

SUMMARY: This notice sets forth Fiscal Year 1999 individual allotments and percentages to States administering the State Developmental Disabilities Councils and Protection and Advocacy programs, pursuant to Section 125 and Section 142 of the Developmental Disabilities Assistance and Bill of Rights Act (Act). The allotment amounts are based on the 1999 Budget Request and are contingent upon Congressional appropriations for Fiscal Year 1999. If Congress enacts and the President approves a different appropriation amount, the allotments will be adjusted accordingly.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Joanne Moore, Grants Fiscal Management Specialist, Family Support Branch, Division of Formula, Entitlement and Block Grants, Office of Financial Operations, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Telephone (202) 205–4792.

SUPPLEMENTARY INFORMATION: Section 125(a)(2) of the Act requires that adjustments in the amounts of State allotments may be made not more often than annually and that States are to be notified not less than six (6) months before the beginning of any fiscal year of any adjustments to take effect in that fiscal year. It should be noted that, as required by the Compact of Free Association, Palau is no longer eligible to receive funds. Also, in relation to the State DDC allotments, the description of service needs were reviewed in the State plans and are consistent with the results obtained from the data elements and projected formula amounts for each State (Section 125(a)(5)).

The Administration on Developmental Disabilities has updated the data elements for issuance of Fiscal Year 1999 allotments for the Developmental Disabilities formula grant programs. The data elements used in the update are:

A. The number of beneficiaries in each State and Territory under the Childhood Disabilities Beneficiary Program, December 1996, are from Table 5.J10 of the "Social Security Bulletin: Annual Statistical Supplement 1997" issued by the Social Security Administration. The numbers for the Northern Mariana Islands and the Republic of Palau, were obtained from the Social Security Administration;

B. State data on Average Per Capita Income are from Table SA05 of the "Survey of Current Business," September 1997, issued by the Bureau of Economic Analysis, U.S. Department of Commerce; comparable data for the Territories also were obtained from that Bureau; and

C. State data on Total Population and Working Population (ages 18–64) as of

July 1, 1996, are from the "Estimates of Resident Population of the U.S. by Selected Age Groups and Sex," issued by the Bureau of the Census, U.S. Department of Commerce. Estimates for the Territories are no longer available, therefore, the Territories population data are from the 1990 Census Population Counts. The Territories' working populations were issued in the Bureau of Census report, "General Characteristics Report: 1980," which is the most recent data available from the Bureau.

TABLE 1.—FY 1999 ALLOTMENT—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

	State developmental disabilities councils	Percentage
Alabama	1,262,259	1.947840
Alaska	403,093	.622028
Arizona	852,423	1.315407
Arkansas	736,837	1.137041
California	5,577,046	8.606154
Colorado	702,518	1.084083
Connecticut	636,591	.982348
Delaware	403,093	.622028
District of Columbia	403,093	.622028
Florida	2,738,070	4.225221
Georgia	1,588,851	2.451817
Hawaii	403,093	.622028
Idaho	403,093	.622028
Illinois	2,546,854	3.930148
Indiana	1,405,035	2.168164
Iowa	763,028	1.177458
Kansas	585,695	.903808
Kentucky	1,167,867	1.802180
Louisiana	1,355,910	2.092357
Maine	403,093	.622028
Maryland	888,141	1.370525
Massachusetts	1,232,510	1.901934
Michigan	2,260,430	3.488156
Minnesota	965,203	1.490985
Mississippi	899,332	1.387794
Missouri	1,271,439	1.962006
Montana	403,093	.622028
Nebraska	408,345	.630133
Nevada	403,093	.622028
New Hampshire	403,093	.622028
New Jersey	1,431,868	2.209571
New Mexico	443,040	.683672
New York	3,978,100	6.138759
North Carolina	1,742,318	2.688638
North Dakota	403,093	.622028
Ohio	2,751,462	4.245887
Oklahoma	875,044	1.350314
Oregon	674,085	1.040206
Pennsylvania	2,982,934	4.603080
Rhode Island	403,093	.622028
South Carolina	1,015,658	1.567301
South Dakota	403,093	.622028
Tennessee	1,384,131	2.135906
Texas	4,113,194	6.347228
Utah	500,192	.771866
Vermont	403,093	.622028
Virginia	1,317,943	2.033768
Washington	1,022,075	1.577203
West Virginia	728,694	1.124476
Wisconsin	1,231,659	1.900620
Wyoming	403,093	.622028
American Samoa	211,624	.326565
Guam	211,624	.326565
Northern Mariana Islands	211,624	.326565
Puerto Rico	2,275,421	3.511290
Virgin Islands	211,624	.326565
Total	[1] $64,803,000	100.000000

[1] Allocations are computed based on the requirements of Section 125(a)(3)(B)—Reduction of Allotment of the Act.

TABLE 2.—FY 1999 ALLOTMENT—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

	Protection and Advocacy	Percentage
Alabama	436,987	1.686472
Alaska	254,508	.982227
Arizona	360,189	1.390084
Arkansas	263,883	1.018408
California	2,234,168	8.622363
Colorado	281,009	1.084503
Connecticut	263,430	1.016660
Delaware	254,508	.982227
District of Columbia	254,508	.982227
Florida	1,086,982	4.195009
Georgia	608,862	2.349792
Hawaii	254,508	.982227
Idaho	254,508	.982227
Illinois	901,195	3.477998
Indiana	504,189	1.945825
Iowa	259,794	1.002628
Kansas	254,508	.982227
Kentucky	408,553	1.576736
Louisiana	467,174	1.802973
Maine	254,508	.982227
Maryland	343,626	1.326162
Massachusetts	446,073	1.721537
Michigan	819,631	3.163216
Minnesota	355,911	1.373574
Mississippi	311,898	1.203713
Missouri	461,835	1.782368
Montana	254,508	.982227
Nebraska	254,508	.982227
Nevada	254,508	.982227
New Hampshire	254,508	.982227
New Jersey	522,698	2.017257
New Mexico	254,508	.982227
New York	1,391,367	5.369727
North Carolina	643,130	2.482043
North Dakota	254,508	.982227
Ohio	982,375	3.791297
Oklahoma	310,137	1.196917
Oregon	266,483	1.028442
Pennsylvania	1,046,311	4.038048
Rhode Island	254,508	.982227
South Carolina	364,853	1.408084
South Dakota	254,508	.982227
Tennessee	494,739	1.909355
Texas	1,542,970	5.954811
Utah	254,508	.982227
Vermont	254,508	.982227
Virginia	510,974	1.972011
Washington	395,431	1.526094
West Virginia	275,882	1.064716
Wisconsin	444,310	1.714733
Wyoming	254,508	.982227
American Samoa	136,161	.525489
Guam	136,161	.525489
Northern Mariana Islands	136,161	.525489
Puerto Rico	778,481	3.004405
Virgin Islands	136,161	.525489
Total	[1] $25,911,318	100.000000

[1] In accordance with Public Law 104–183, Section 142(c)(5), $806,682 has been withheld for funding technical assistance and American Indian Consortiums. The statute provides for spending up to two percent (2%) of the amount appropriated under Section 143 to fund technical assistance. American Indian Consortiums are eligible to receive an allotment under Section 142(c)(1)(A)(i). Unused funds will be reallotted in accordance with Section 142(c)(1) of the Act.

Dated: February 11, 1998.

Reginald F. Wells,

Acting Commissioner, Administration on Developmental Disabilities.

[FR Doc. 98–4115 Filed 2–18–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Fiscal Year 1998 Discretionary Announcement for University-Head Start Partnerships Research Projects and Head Start Research Scholars; Availability of Funds and Request for Proposals

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Notice.

SUMMARY: The Administration for Children and Families, Administration on Children, Youth and Families announces the availability of funds for two Priority Areas; University-Head Start Partnerships (1.01) and Head Start Research Scholars (1.02) to support research activities in the areas of infant and toddler development within the cultural context, the promotion of mental health in Head Start and Early Head Start, or field-initiated research areas which will increase our knowledge of low-income children's development for the purpose of improving services or have significant policy implications.

DATES: The closing date for receipt of applications is 5:00 EST May 5, 1998.

ADDRESSES: Applications, including all necessary forms can be downloaded from the Head Start web site at www.acf.dhhs.gov/programs/hsb. The web site also contains a listing of all Head Start and Early Head Start programs.

Hard copies of the application may be obtained by writing, calling or sending an e-mail to the E-mail hsresearch@dakota-tech.com

FOR FURTHER INFORMATION CONTACT: Head Start Research Support Center at: 11320 Random Hills Road, Suite 105, Fairfax, Virginia 22030, Phone: (703) 218–2480.

SUPPLEMENTARY INFORMATION:

Priority Areas

Priority Area 1.01 University-Head Start Partnerships

Eligible Applicants: Universities and four-year colleges on behalf of a faculty member who holds a doctorate degree or equivalent in their respectivie field.

Project Duration: The announcement for priority area 1.01 is soliciting applications for project periods of three years with the first year as a planning year. However, requests for project periods of four or five years will be considered if the applicant can make a strong justification for the need for the longer project period in order to complete the research. It should be noted that the requests for longer project periods will be granted in only rare instances. Awards, on a competitive basis, will be for the first one-year planning budget period. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the established project period, will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Federal Share of Project Costs: The maximum Federal share is $75,000 for the first 12-month budget period. The Federal share for subsequent years shall be approximately $150,000 per year for each year of the project period. The Federal share is inclusive of indirect costs.

Anticipated Number of Projects to be Funded: It is anticipated that 6–8 projects will be funded.

Priority Area 1.02 Head Start Research Scholars

Eligible Applicants: Institutions of higher education on behalf of qualified doctoral candidates who have completed their masters degree or equivalent and are enrolled in the sponsoring institution. To be eligible to administer the grant on behalf of the student, the institution must be fully accredited by one of the regional accrediting commissions recognized by the Department of Education and the Council on Post-Secondary Accreditation. In addition, the specific graduate student on whose behalf the application is made must be identified and any resultant grant award is not transferable to another student. Funds from this grant may not be used to make any payments to other students at the university.

Project Duration: The announcement for priority area 1.02 is soliciting applications for project periods up to two years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for two years. It should be noted, that if the graduate student, on whose behalf the University is applying, expects to receive a doctorate by the end of the first one-year budget period, the applicant should request a one-year project period only. A second year budget-period will not be granted if the student has graduated by the end of the first year. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the two-year project period, will be entertained in the subsequent year on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Federal Share of Project Costs: The maximum Federal share is not to exceed $15,000 for the first 12-month budget period or a maximum of $30,000 for a 2-year project period.

Anticipated Number of Projects to be Funded: It is anticipated that 10 projects will be funded. No individual university will be funded for more than one candidate unless 10 applications from different institutions do not qualify for support.

Statutory Authority: The Head Start Act, as amended 42 U.S.C. 9801 *et seq.*

Dated: February 11, 1998.

James A. Harrell,

Deputy Commissioner, Administration on Children, Youth, and Families.

[FR Doc. 98–4113 Filed 2–18–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Anti-Infective Drugs Advisory Committee meeting. This meeting was announced in the **Federal Register** of February 3, 1998 (63 FR 5562). The amendment is being made to reflect a change in the agenda for the February 19, 1998, meeting day. An additional indication for use in the treatment of infections caused by *Staphylococcus aureus* will also be discussed. There are no other changes. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Ermona B. McGoodwin or Danyiel A. D'Antonio, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 3, 1998 (63 FR 5562), FDA announced that a meeting of the Anti-Infective Drugs Advisory Committee would be held on February 19 and 20, 1998. This amendment is to provide an update to the information provided earlier pertaining to the February 19, 1998, meeting day. There are no changes for the February 20, 1998, meeting day. On page 5562, in the second column, the "*Agenda*" portion is amended to read as follows:

Agenda: On February 19, 1998, the committee will discuss new drug applications 50–747 and 50–748 quinupristin/dalfopristin (Synercid®, Rhone-Poulenc Rorer Pharmaceuticals, Inc.) for use in the treatment of vancomycin-resistant *Enterococcus faecium* (VREF) infections, complicated skin and skin structure infections, community-acquired pneumonia, hospital-acquired (nosocomial) pneumonia, and infections caused by *Staphylococcus aureus*.

Dated: February 11, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–4078 Filed 2–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on March 19, 1998, 8 a.m. to 6 p.m., and March 20, 1998, 8 a.m. to 3:30 p.m.

Location: DoubleTree Hotel, Plaza I, II and III, 1750 Rockville Pike, Rockville, MD.

Contact Person: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3514, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 19516. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 19, 1998, the Committee will hear an informational summary of the emerging infections plan of action and discuss and provide recommendations on the issue of the FDA proposal on plasma inventory hold. The committee will also discuss the comparison of infectious disease marker rates in paid versus volunteer donors. On March 20, 1998, the Committee will discuss and make recommendations on the issue of classification of blood bank software and the relative safety of solvent detergent-treated pooled plasma and single-donor plasma, donor retested. The meeting will conclude with an informational presentation on the FDA proposal for donor deferrals related to xenotransplantation.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 9, 1998. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11 a.m. and 4 p.m. and 5 p.m on March 19, 1998, and between approximately 9:30 a.m. and 10 a.m. and 1 p.m. and 1:30 p.m. on March 20, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 9, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C., app. 2).

Dated: February 11, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–4075 Filed 2–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on March 19 and 20, 1998, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Karen M. Templeton-Somers or Adele S. Seifried, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 19, 1998, the committee will discuss: (1) New drug application (NDA) supplement 20–509/S–005 Gemzar® (gemcitabine HCl), Eli Lilly and Co., indicated as a single agent or in combination with cisplatin for the first-line treatment of patients with locally advanced (Stage IIIA or IIIB) or metastatic (Stage IV) non-small cell lung cancer; and (2) NDA 20–896 Xeloda™ (capecitabine) tablets, Hoffman-La Roche Inc., indicated for the treatment of patients with locally advanced or metastatic breast cancer after failure of paclitaxel and an anthracycline-containing chemotherapy. On March 20, 1998, the committee will discuss: (1) NDA supplement 20–262/S–026 Taxol® (pacletaxel) injection, Bristol-Myers Squibb Pharmaceutical Research Institute, indicated as first-line therapy for the treatment of advanced carcinoma of the ovary; and (2) NDA supplement 20–262/S–024 Taxol® (pacletaxel) injection, Bristol-Myers Squibb Pharmaceutical Research Institute, indicated for the treatment of non-small cell lung cancer in patients who are not candidates for potentially curative and/or radiation therapy.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 26, 1998. Oral presentations from the public will be scheduled between approximately 8 a.m. and 9 a.m., on March 19, 1998, and 8 a.m. and 8:30 a.m. on March 20, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 26, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C., app. 2).

Dated: February 11, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–4079 Filed 2–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0082]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Medical Devices; Classification/Reclassification; Restricted Devices; Analyte Specific Reagents" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 21, 1997 (62 FR 62243), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0361. The approval expires on January 31, 2001.

Dated: February 9, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–4080 Filed 2–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1897–N]

Medicare Program; Update of Ambulatory Surgical Center Payment Rates Effective for Services on or After October 1, 1997

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the update of Ambulatory Surgical Center payment rates effective for services on or after October 1, 1997. It implements section 1833(i)(2)(C) of the Social Security Act, which mandates an inflation adjustment to Medicare payment amounts for ambulatory surgical center (ASC) facility services during the years when the payment amounts are not updated based on a survey of the actual audited costs incurred by ASCs.

EFFECTIVE DATE: The payment rates contained in this notice are effective for services furnished on or after October 1, 1997.

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FOR FURTHER INFORMATION CONTACT: Joan Haile Sanow, (410) 786–5723.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) provides that benefits under the Medicare Supplementary Medical Insurance (Part B) program include services furnished in connection with those surgical procedures that, under section 1833(i)(1)(A) of the Act, are specified by the Secretary and are performed on an inpatient basis in a hospital but that also can be performed safely on an ambulatory basis in an ambulatory surgical center (ASC), in a rural primary care hospital, or in a hospital outpatient department. To participate in the Medicare program as an ASC, a facility must meet the standards specified under section 1832(a)(2)(F)(i) of the Act and the basic requirements for ASCs set forth in our regulations at 42 CFR 416.25.

Generally, there are two elements in the total charge for a surgical procedure: A charge for the physician's professional services for performing the procedure, and a charge for the facility's services (for example, use of an operating room). Section 1833(i)(2)(A) of the Act authorizes the Secretary to pay ASCs a prospectively determined rate for facility services associated with covered surgical procedures. ASC facility services are subject to the usual Medicare Part B deductible and coinsurance requirements. Therefore, Medicare pays participating ASCs 80 percent of the prospectively determined rate for facility services, adjusted for regional wage variations. This rate is intended to represent our estimate of a fair payment that takes into account the costs incurred by ASCs generally in providing the services that are furnished

in connection with performing the procedure. Currently, this rate is a standard overhead amount that does not include physician fees and other medical items and services (for example, durable medical equipment for use in the patient's home) for which separate payment may be authorized under other provisions of the Medicare program.

We have grouped procedures into nine groups for purposes of ASC payment rates. The ASC facility payment for all procedures in each group is established at a single rate adjusted for geographic variation. The rate is a standard overhead amount that covers the cost of services such as nursing, supplies, equipment, and use of the facility. (For an in-depth discussion of the methodology and rate-setting procedures, see our **Federal Register** notice published on February 8, 1990, entitled "Medicare Program; Revision of Ambulatory Surgical Center Payment Rate Methodology" (55 FR 4526).)

Statutory Provisions

Section 1833(i)(2)(A) of the Act requires the Secretary to review and update standard overhead amounts annually. Section 1833(i)(2)(A)(ii) requires that the ASC facility payment rates result in substantially lower Medicare expenditures than would have been paid if the same procedure had been performed on an inpatient basis in a hospital. Section 1833(i)(2)(A)(iii) requires that payment for insertion of an intraocular lens (IOL) include an allowance for the IOL that is reasonable and related to the cost of acquiring the class of lens involved.

Under section 1833(i)(3)(A), the aggregate payment to hospital outpatient departments for covered ASC procedures is equal to the lesser of the following two amounts:

- The amount paid for the same services that would be paid to the hospital under section 1833(a)(2)(B) (that is, the lower of the hospital's reasonable costs or customary charges less deductibles and coinsurance).
- The amount determined under section 1833(i)(3)(B)(i) based on a blend of the lower of the hospital's reasonable costs or customary charges, less deductibles and coinsurance, and the amount that would be paid to a free-standing ASC in the same area for the same procedures.

Under section 1833(i)(3)(B)(i), the blend amount for a cost reporting period is the sum of the hospital cost proportion and the ASC cost proportion. Under section 1833(i)(3)(B)(ii), the hospital cost proportion and the ASC cost proportion for portions of cost reporting periods beginning on or after January 1, 1991 are 42 and 58 percent, respectively.

Section 13531 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) (Public Law 103–66), enacted on August 10, 1993, prohibited the Secretary from providing for any inflation update in the payment amounts for ASCs determined under section 1833(i)(2) (A) and (B) of the Act for fiscal years (FYs) 1994 and 1995. Section 13533 of OBRA 1993 reduced the amount of payment for an IOL inserted during or subsequent to cataract surgery in an ASC on or after January 1, 1994, and before January 1, 1999, to $150.

Section 141(a)(1) of the Social Security Act Amendments of 1994 (SSAA 1994) (Pub. L. 103–432), enacted on October 31, 1994, amended section 1833(i)(2)(A)(i) of the Act to require that, for the purpose of estimating ASC payment amounts, the Secretary survey not later than January 1, 1995, and every 5 years thereafter, the actual audited costs incurred by ASCs, based upon a representative sample of procedures and facilities.

Section 141(a)(2) of SSAA 1994 added section 1833(i)(2)(C) to the Act to provide that, beginning with FY 1996, there be an application of an inflation adjustment during a fiscal year in which the Secretary does not update ASC rates based on survey data of actual audited costs. Section 1833(i)(2)(C) of the Act provides that ASC payment rates be increased by the percentage increase in the consumer price index for urban consumers (CPI–U), as estimated by the Secretary for the 12-month period ending with the midpoint of the year involved, if the Secretary has not updated rates during a fiscal year, beginning with FY 1996.

Section 141(a)(3) of SSAA 1994 amended section 1833(i)(1) of the Act to require the Secretary to consult with appropriate trade and professional organizations in reviewing and updating the list of Medicare-covered ASC procedures.

Section 141(b) of SSAA 1994 requires the Secretary to establish a process for reviewing the appropriateness of the payment amount provided under section 1833(i)(2)(A)(iii) of the Act for IOLs with respect to a class of new technology IOLs. A proposed rule entitled "Adjustment in Payment Amounts for New Technology Intraocular Lenses" (BPD–831–P) was published in the **Federal Register** on September 4, 1997 at 62 FR 46698.

Section 4555 of the Balanced Budget Act of 1997 (Pub. L. 105–33) (BBA) amends section 1833(i)(2)(C) of the Act to require, in each of the FYs 1998 through 2002, that the CPI–U factor by which ASC rates are to be adjusted be reduced (but not below zero) by 2.0 percentage points.

ASC Survey

Regulations set forth at § 416.140 ("Surveys") require us to survey a randomly selected sample of participating ASCs no more often than once a year to collect data for analysis or reevaluation of payment rates. In addition, section 1833(i)(2)(A)(i) of the Act requires that, for the purpose of estimating ASC payment amounts, the Secretary survey not later than January 1, 1995, and every 5 years thereafter, the actual audited costs incurred by ASCs, based upon a representative sample of procedures and facilities.

In July 1992, we mailed Form HCFA–452A, Medicare Ambulatory Surgical Center Payment Rate Survey (Part I), to the nearly 1,400 ASCs that were on file as being certified by Medicare at the end of 1991. Part I data provided baseline information for selecting a sample of 320 ASCs to complete Form HCFA–452B, Medicare Ambulatory Surgical Center Payment Rate Survey (Part II). The sample was randomly selected and is representative of ASCs nationally in terms of facility age, utilization, and surgical specialty.

Part II of the ASC survey was mailed to the sample of ASCs in March 1994. Part II of the ASC survey asked for data on costs incurred by the facility that are directly related to performing certain surgical procedures, such as cataract extraction with IOL insertion, as well as information on facility overhead and personnel costs. We asked facilities to report total volume, Medicare volume, operating room time, and their average billed charge for the Medicare covered procedures that were performed at the facility during the survey year. We audited 100 randomly selected Part II surveys between November 1994 and February 1995. We plan to use the 1994 survey data to rebase ASC payment rates. In accordance with rulemaking procedures, we will publish the rebased rate in the **Federal Register** and solicit public comments.

We published our last ASC payment rate update notice on October 1, 1996 (61 FR 51295).

II. Provisions of This Notice

During years in which the Secretary has not otherwise updated ASC rates based on a survey of actual audited costs, section 1833(i)(2)(C) of the Act, as amended by BBA, requires application of an inflation adjustment. That inflation adjustment must be the

percentage increase in the CPI–U as estimated by the Secretary for the 12-month period ending with the midpoint of the year involved, reduced (but not below zero) by 2.0 percentage points in each of the fiscal years 1998 through 2002. (The CPI–U is a general index that reflects prices paid by urban consumers for a representative market basket of goods and services.)

Based on estimates prepared by Data Resources, Inc./McGraw Hill, the forecast rate of increase in the CPI–U for the FY that ends March 31, 1998 is 2.6 percent. Reducing the CPI–U factor by 2.0 percent results in an adjustment factor of 0.6 percent. Increasing the ASC payment rates currently in effect by 0.6 percent results in the following schedule of rates that are payable for facility services furnished on or after October 1, 1997:

Group 1—$314
Group 2—$422
Group 3—$482
Group 4—$595
Group 5—$678
Group 6—$789 (639+150)
Group 7—$941
Group 8—$928 (778+150)

ASC facility fees are subject to the usual Medicare deductible and copayment requirements. Under section 13531 of OBRA 1993, the allowance for an IOL that is part of the payment rates for group 6 and group 8 is $150.

A ninth payment group allotted exclusively to extracorporeal shockwave lithotripsy (ESWL) services was established in the notice with comment period published December 31, 1991 (56 FR 67666). The decision in *American Lithotripsy Society* v. *Sullivan*, 785 F. Supp. 1034 (D.D.C. 1992), prohibits payment for these services under the ASC benefit at this time. ESWL payment rates were the subject of a separate **Federal Register** proposed notice, which was published October 1, 1993 (58 FR 51355).

We will continue to use the inpatient hospital prospective payment system (PPS) wage index to standardize ASC payment rates for variation due to geographic wage differences in accordance with the ASC payment rate methodology published in the February 8, 1990 notice. The PPS wage index final rule published on August 29, 1997 (62 FR 45965), for implementation on October 1, 1997, will be used to adjust the ASC payment rates announced in this notice for facility services furnished on or after October 1, 1997.

III. Regulatory Impact Analysis

A. Introduction

This notice implements section 1833(i)(2) of the Act, which mandates an automatic inflation adjustment to Medicare payment amounts for ASC facility services during the years in which the payment amounts are not updated based on a survey of the actual audited costs incurred by ASCs.

Actuarial estimates of the cost of updating the ASC rates by 0.6 percent are as follows:

PROJECTED ADDITIONAL MEDICARE COSTS

Fiscal year	In millions*
1998	15
1999	15
2000	15
2001	15
2002	15
2003	15

* Rounded to the nearest $10 million.

The BBA is considered in the estimate, including the prospective payment system for hospital outpatient services to be implemented on January 1, 1999, and the formula-driven overpayment elimination effective October 1, 1997.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless we certify that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, most ASCs and hospitals are considered to be small entities either by non-profit status or by having resources of $5 million or less annually.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Although we believe that this notice will not have a significant impact on a substantial number of small rural hospitals, it may have a significant impact on a substantial number of ASCs. Therefore, we believe that a regulatory flexibility analysis is required for ASCs. In addition, we are voluntarily providing a brief discussion of the impact this notice may have on hospitals.

1. Impact on ASCs

Section 1833(i)(2)(C) of the Act requires that for FYs 1998 through 2002, we automatically adjust ASC rates for inflation during an FY in which we do not update ASC payment rates based on survey data by a CPI–U factor reduced (but not below zero) by 2.0 percent. Therefore, we are updating the current ASC payment rates, which were published in our October 1, 1996 **Federal Register** notice (61 FR 51295), by incorporating the projected rate of change in the CPI–U for the 12-month period ending March 31, 1998 minus 2.0 percentage points, a net 0.6 percent increase. There are other factors, however, that affect the actual payments to an individual ASC.

First, variations in an ASC's Medicare case mix affect the size of the ASC's aggregate payment increase. Although we uniformly adjusted ASC payment rates by the CPI–U forecast for the 12-month period ending March 31, 1998, we did not adjust the IOL payment allowance that is included in the payment rate for group 6 and group 8 because OBRA 1993 froze the amount of payment for an IOL furnished by an ASC at $150 for the period beginning January 1, 1994 through December 31, 1998. Therefore, because the net adjustment for inflation for procedures in group 6 is 0.51 percent and for group 8 is 0.54 percent, ASCs that perform a high percentage of the IOL insertion procedures that comprise these groups may expect a somewhat lower increase in their aggregate payments than ASCs that perform fewer IOL insertion procedures.

A second factor determining the effect of the change in payment rates is the percentage of total revenue an ASC receives from Medicare. The larger the proportion of revenue an ASC receives from the Medicare program, the greater the impact of the updated rates in this notice. The percentage of revenue derived from the Medicare program depends on the volume and types of services furnished. Since Medicare patients account for as much as 80 percent of all IOL insertion procedures performed in ASCs, an ASC that performs a high percentage of IOL insertion procedures will probably receive a higher percentage of its revenue from Medicare than would an ASC with a case mix comprised largely of procedures that do not involve insertion of an IOL. For an ASC that receives a large portion of its revenue from the Medicare program, the changes in this notice will likely have a greater influence on the ASC's operations and management decisions than they will

have on an ASC that receives a large portion of revenue from other sources.

In general, we expect the rate changes in this notice to affect ASCs positively by increasing the rates upon which payments are based.

2. Impact on Hospitals and Small Rural Hospitals

Section 1833(i)(3)(A) of the Act mandates the method of determining payments to hospitals for ASC-approved procedures performed in an outpatient setting. The Congress believed some comparability should exist in the amount of payment to hospitals and ASCs for similar procedures. The Congress recognized, however, that hospitals have certain overhead costs that ASCs do not and allowed for those costs by establishing a blended payment methodology. For ASC procedures performed in an outpatient setting, hospitals are paid based on the lower of their aggregate costs, aggregate charges, or a blend of 58 percent of the applicable wage-adjusted ASC rate and 42 percent of the lower of the hospital's aggregate costs or charges. According to statistics from the Office of Strategic Planning within HCFA, 12 percent of Medicare payments to hospitals by intermediaries is attributable to services furnished in conjunction with ASC-covered procedures.

We would not expect an ASC rate increase in every instance to keep pace with actual hospital cost increases, although we would fully recognize cost increases resulting from inflation alone in the portion of the blended payment that includes aggregate hospital costs. The weight of the ASC portion of the blended payment amount, which would reflect the ASC rate increase, is offset to a degree when hospital costs significantly exceed the ASC rate. Another element that would eliminate the effect of the ASC rate increase on hospital outpatient payments is the application of the lowest payment screen in determining payments. Applying the lowest of costs, charges, or a blend can result in some hospitals being paid entirely on the basis of a hospital's costs or charges. In those instances, the increase in the ASC rates will have no effect on hospital payments. The number of Medicare beneficiaries a hospital serves and its case-mix variation would also influence the total impact of the new ASC rates on Medicare payments to hospitals. Based on these factors, we have determined, and we certify that this notice will not have a significant impact on a substantial number of small rural hospitals. Therefore, we have not prepared a small rural hospital impact analysis.

IV. Waiver of 30-Day Delay in the Effective Date

We ordinarily publish notices, such as this, subject to a 30-day delay in the effective date. However, if adherence to this procedure would be impractical, unnecessary, or contrary to the public interest, we may waive the delay in the effective date. The provisions of this notice are effective for services furnished on or after October 1, 1997. These provisions will increase payment to ASCs by 0.6 percent (as modified by any change to the wage index), in accordance with section 1833(i)(2)(C) of the Act, as amended by the BBA. As a practical matter, if we allowed a 30-day delay in the effective date of this notice, ASCs would be unable to take timely advantage of the increase in payment rates contained in this notice. Moreover, we believe a delay is impractical and unnecessary because the statute, as explained earlier, provides that ASC payment rates be increased by the percentage increase in the CPI–U if the Secretary has not updated rates during an FY, beginning with FY 1996. Therefore, we find good cause to waive the delay in the effective date.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Sections 1832(a)(2)(F) and 1833(i) (1) and (2) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F) and 1395l(i) (1) and (2)); 42 CFR 416.120, 416.125, and 416.130)

(Catalog of Federal Domestic Assistance Programs No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 9, 1997.

Nancy-Ann Min DeParle,

Deputy Administrator, Health Care Financing Administration.

Dated: October 30, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 98–4227 Filed 2–18–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4193–N–03]

Announcement of Funding Awards Fair Housing Initiatives Program FY 1997

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of the FY 1997 funding awards made under the Fair Housing Initiatives Program (FHIP). The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing.

FOR FURTHER INFORMATION CONTACT: Ivy Davis, Director, FHIP/FHAP Support Division, Room 5234, 451 Seventh Street, S.W., Washington, D.C. 20410–2000. Telephone number (202) 708–0800 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (The Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established the FHIP to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR Part 125.

The FHIP has four funding categories: The Administrative Enforcement Initiative, the Education and Outreach Initiative, the Private Enforcement Initiative, and the Fair Housing Organizations Initiative. This notice announces awards made under the Fair Housing Organizations Initiative, Education and Outreach Initiative, and the Private Enforcement Initiative.

The Department announced in the **Federal Register** on June 26, 1997 (62

FR 34562) the availability of $15,000,000 to be utilized for the Fair Housing Initiatives Program. This Notice announces awards to 67 organizations that submitted applications under the FY 1997 FHIP NOFA.

The Catalog of Federal Domestic Assistance numbers for the Fair Housing Initiative Program are 14.409, 14.410 and 14.413.

The Department reviewed, evaluated and scored the applications received based on the criteria in the FY 1997 FHIP NOFA. As a result, HUD has funded the applications announced in Appendix A, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is hereby publishing details concerning the recipients of funding awards in Appendix A of this document.

Dated: February 10, 1998.

Eva M. Plaza,

Assistant Secretary for Fair Housing and Equal Opportunity.

APPENDIX A—FY 97 FHIP AWARDS

Applicant name	Contact person	HUD region	Award amount
EDUCATION AND OUTREACH INITIATIVE—NATIONAL PROGRAM COMPONENT			
Tennessee Fair Housing Council, 719 Thompson Lane, Suite 324, 100 Oak Office Tower, Nashville, TN 37204.	Joel Emerson, 615–383–6155	4	$149,949
National Association of Homebuilders Research Center, Inc., 400 Prince Georges Boulevard, Upper Marlboro, MD 20774.	Liza Bowles, 301–249–4000	3	103,746
Access Living of Metropolitan Chicago, 310 South Peoria, Suite 201, Chicago, IL 60607.	Rosa Villarreal, 312–226–5900	5	*46,254
EDUCATION AND OUTREACH INITIATIVE—REGIONAL/LOCAL/COMMUNITY-BASED COMPONENT			
Housing Discrimination Project, Inc., 57 Suffolk Street, Holyoke, MA 01040	Erin Kemple, 413–539–9796	1	98,450
City of Savannah, P.O. Box 1027, Savannah, GA 31402	Michael Brown, 912–651–6415	4	78,010
Elizabeth City State University, 1704 Weeksville Road, Elizabeth City, NC 27909.	Mickey Burnim, 919–335–3220	4	100,000
Kentucky Commission on Human Rights, 332 W. Broadway, 7th Floor, Heyburn Building, Louisville, KY 40202.	Beverly Watts, 502–595–4024	4	82,308
City of Memphis—Division of Housing, 701 North Main Street, Memphis, TN 38107.	W.W. Herenton, 901–576–6009	4	100,000
Metro Milwaukee Fair Housing Council, 600 East Mason Street, Ste 401, Milwaukee, WI 53202.	William Tisdale, 414–278–1240	5	*45,274
The Housing Advocates, 3214 Prospect Avenue, Cleveland, OH 44115	Edward Kramer, 216–391–5444	5	100,000
Illinois Department of Human Rights, 100 West Randolph Street, Ste 10–100, Chicago, IL 60601.	Rose Mary Bombela, 312–814–6245	5	99,669
Montana Fair Housing, Inc., 904A Kensington Avenue, Missoula, MT 59801	Susan K. Fifield, 406–542–2611	8	100,000
Seattle Office of Civil Rights, 700 Third Avenue, Suite 250, Seattle, WA 98104.	Germaine Covington, 206–684–4513	10	96,305
Eugene, Springfield Community Housing Resource Board, P.O. Box 10934, Eugene, OR 97440.	Charles Ellis, 541–343–1271	10	99,984
EDUCATION AND OUTREACH INITIATIVE—COMMUNITY TENSIONS COMPONENT			
West Tennessee Legal Services, Inc., 210 W. Main Street, Jackson, TN 38302.	J. Steven Xanthopolous, 901–426–1311.	4	100,000
City of Parma, 6611 Ridge Road, Parma, OH 44129	Michael O'Malley, 440–885–8132	5	80,331
Chicago Lawyers Committee for Civil Rights Under Law, Inc., 100 N. La Salle Street, Suite 600, Chicago, IL 60602.	Clyde Murphy, 312–630–9744	5	98,230
Metro Interfaith Council on Affordable Housing, 122 W. Franklin Avenue, #320, Minneapolis, MN 55404.	Joy Navarre, 612–871–8980	5	99,846
Arkansas ACORN Fair Housing, 523 West 15th Street, Little Rock, AR 72202.	Lorraine Johnson, 501–374–2114	6	100,000
PRIVATE ENFORCEMENT INITIATIVE—MULTI YEAR COMPONENT			
New Hampshire Legal Assistance, 1361 Elm Street, Suite 307, Manchester, NH 03101.	John Tobin, 603–644–5393	1	256,492
Connecticut Fair Housing Center, Inc., 221 Main Street, 2nd Floor, Hartford, CT 06106.	Denise Viera, 860–247–4400	1	350,000
Housing Opportunities Made Equal, Inc., 700 Main Street, Buffalo, NY 14202.	Scott Gehl, 716–854–1400	2	216,712
Fair Housing Council of Central New York, Inc., 327 W. Fayette Street, Syracuse, NY 13202.	Merrilee Witherell, 315–471–0420	2	154,659
Long Island Housing Services, 1747 Veterans Memorial Hwy, Ste 42A, Islandia, NY 11722.	Samuel Miller, 516–582–2727	2	350,000
Fair Housing Council of Suburban Philadelphia, 225 S. Chester Road, Suite 1, Swarthmore, PA 19081.	William Henderson, 610–623–3164	3	349,999
Fair Housing Partnership of Greater Pittsburgh, 7 Wood Street, Suite 402, Pittsburgh, PA 15222.	Robert Pitts, 412–371–4528	3	349,328

APPENDIX A—FY 97 FHIP AWARDS—Continued

Applicant name	Contact person	HUD region	Award amount
Housing Opportunities of Northern Delaware, Inc., 1800 N. Broom Street, Suite 105, Electra Arms Apartment Building, Wilmington, DE 19801.	Gladys Spikes, 302–429–0794	3	50,427
Baltimore Neighborhoods, Inc., 2217 St. Paul Street, Baltimore, MD 21218	Joseph Cofley, 410–243–4468	3	262,178
The Fair Housing Continuum, Inc., 840 N. Cocoa Blvd., Suite C, Cocoa, FL 32922.	Fairbanks Berry, 407–633–4551	4	350,000
Fair Housing Council, 835 W. Jefferson Street, Room 100, Louisville, KY 40202.	Galen Martin, 502–583–3247	4	349,997
H.O.P.E., Inc., 3000 Biscayne Blvd., Suite 102, Miami, FL 33137	William Thompson, 305–571–8522	4	350,000
Greater Birmingham Fair Housing Center, 2000 1st Avenue North, Suite 529, Birmingham, AL 35203.	Lila Hackett, 205–324–0111	4	350,000
Central Alabama Fair Housing Center, 207 Montgomery Street, Suite 725, Montgomery, AL 36104.	Faith Cooper, 334–263–4663	4	350,000
Legal Aid Society of Minneapolis, 430 1st Avenue North, Suite 300, Minneapolis, MN 55401.	Jeremy Lane, 612–334–5785	5	349,997
The Cuyahoga Plan of Ohio, Inc., 812 Huron Road, The Caxton Building, Suite 750, Cleveland, OH 44115.	Michael Roche, 216–621–4525	5	350,000
North East Wisconsin Fair Housing Council, Inc., 911 N. Lynndale Drive, Ste 2A, Appleton, WI 54914.	Paul Zilles, 920–734–9641	5	297,305
Housing Opportunities Made Equal of Cincinnati, Inc., 2400 Reading Road, Room 109, Cincinnati, OH 45202.	Karla Irvine, 513–721–4663	5	305,171
Interfaith Housing Center of the Northern Suburbs, 620 Lincoln Avenue, Winnetka, IL 60093.	Gail Schechter, 847–501–5760	5	350,000
Louisiana Fair Housing Organization, 1024 Elysian Fields Avenue, New Orleans, LA 70117.	Beulah Labostrie, 504–943–0044	6	350,000
The Arkansas Fair Housing Council, 901 Carpenter Street, Arkadelphia, AR 71923.	Dan Pless, 870–245–3855	6	340,503
Metro. St. Louis Equal Housing Opportunity Council, 200 S. Hanley, Ste 613, St. Louis, MO 63105.	Bronwen Zwirner, 314–725–5900	7	349,604
Family Housing Advisory Services, Inc., 2416 Lake Street, Omaha, NE 68111.	Kevin Danler, 402–444–6675	7	350,000
North Dakota Fair Housing Council, Inc., 533 Airport Road, Bismarck, ND 58504.	Lynda Johnson, 701–221–2530	8	349,879
Housing For All, The Metro Denver Fair Housing Center, 2855 Tremont Place, Suite 205, Denver, CO 80205.	Eleanor Crow, 303–443–4836	8	339,474
Truckee Meadows Fair Housing, Inc., P.O. Box 3935, Reno, NV 89505	Katherine Copeland, 702–324–0990	9	350,000
Fair Housing Council of Fresno County, 2014 Tulare Street, Ste 413, Fresno, CA 93721.	Dinorah Olmos, 209–498–6174	9	349,702
Inland Mediation Board, 1005 Begonia Avenue, Ontario, CA 91762	Betty Davidow, 909–984–2254	9	306,541
Greater Nevada Fair Housing Council, Inc., 430 Jeanell Drive, Suite 2, Carson City, NV 89703.	Marcia McCormick, 702–883–0888	9	258,510
Southern Arizona Housing Center, 1525 N. Oracle, #111, Tucson, AZ 85705.	Richard Rhey, 520–798–1568	9	349,710
Fair Housing Council of Oregon, 310 S.W. Fourth Avenue, Suite 430, Portland, OR 97204.	Cynthia Ingebretson, 503–223–8295	10	350,000
Fair Housing Center of Puget Sound, 8815 South Tacoma Way, Suite 119, Lakewood, WA 98499.	Lauren Walker, 253–589–6955	10	350,000
Idaho Fair Housing Council, 310 N. 5th, Boise, ID 83702	Richard Mabbutt, 208–383–0695	10	349,780
FAIR HOUSING ORGANIZATIONS INITIATIVE—CONTINUED DEVELOPMENT COMPONENT			
Champlain Valley Office of Economic Opportunity, P.O. Box 1603, Burlington, VT 05402.	Robert Kiss, 802–862–2771	1	181,665
Queens Legal Services Corporation, 89–02 Sutphin Boulevard, Jamaica, NY 11435.	Arnold Cohen, 718–657–8611	2	100,000
National Community Reinvestment Coalition, 733 15th Street, NW, Suite 540, Washington, DC 20005.	John Taylor, 202–628–8866	3	200,000
Fair Housing Council of Greater Washington, 1212 New York Avenue, Suite 500, Washington, DC 20005.	David Berenbaum, 202–289–5360	3	200,000
North Carolina Fair Housing Center, P.O. Box 28958, 224 S. Dawson Street, Raleigh, NC 27611.	Stella Adams, 919–856–2166	4	200,000
Toledo Fair Housing Center, 2116 Madison Avenue, Toledo, OH 43624	Lisa Rice, 419–243–6163	5	200,000
Kansas City Fair Housing Center, 3033 Prospect Avenue, Kansas City, MO 64128.	Thomas Randolph, 816–923–3247	7	*69,609
Newsed Community Development Corp., 1029 Santa Fe Drive, Denver, CO 80204.	Veronica Barela, 303–534–8342	8	198,726
FAIR HOUSING ORGANIZATIONS INITIATIVE—CONTINUED DEVELOPMENT COMPONENT (DISABILITY SET-ASIDE)			
Stavros Center for Independent Living, 691 South East Street, Amherst, MA 10002.	James Kruidenier, 413–256–0473	1	200,000

APPENDIX A—FY 97 FHIP AWARDS—Continued

Applicant name	Contact person	HUD region	Award amount
Monroe Co. Legal Assistance Corporation, 80 St. Paul Street, Suite 700, Rochester, NY 14604.	Leanna Gibson Hart, 716–325–2520	2	182,274
Disability Rights Education Defense Fund, 2212 Sixth Street, Alton, IL 62002.	Susan R. Henderson, 510–644–2555	5	199,811
Albuquerque Protection and Advocacy Systems, Inc., 1720 Louisiana Blvd., N.E., Ste 204, Albuquerque, NM 87110.	James Jackson, 505–256–3100	6	199,635
Legal Aid of Western Missouri, 1005 Grand Boulevard, Suite 600, Kansas City, MO 64106.	Richard Halliburton, 816–474–6750 ..	7	*169,780
Disability Law Center, 455 East 400 South #410, Salt Lake City, UT 84111	Fraser Nelson, 801–363–1347	8	200,000
Idaho Legal Aid Services, Inc., 310 North 5th, P.O. Box 913, Boise, ID 83701.	Ernesto Sanchez, 208–336–8980	10	198,500

*Partial funding amounts reflect an amount less than applicant requested. If additional funds become available, award amount may be increased.

[FR Doc. 98–4178 Filed 2–18–98; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–02]

Privacy Act of 1974: Proposed Amendment to Two Systems of Records

AGENCY: Office of Administration, HUD.

ACTION: Notification of a proposed amendment to two existing systems of records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), HUD is issuing notice of the Department's intention to amend the following Privacy Act systems of records: HUD/Dept–28, Property Improvement and Manufactured (Mobile) Home Loans–Default and HUD/DEPT–2, Accounting Records. A new routine use disclosure will be added to both systems of records. The new routine use disclosure is necessary to accommodate the Department of Treasury cross servicing or for some other Federal agency designated by Treasury to perform the necessary routine debt collection tasks.

DATES: *Comments Due Date:* Persons wishing to comment on the proposed routine use must do so by March 23, 1998.

EFFECTIVE DATE: These amendments will be effective March 23, 1998, unless comments are received that would result in a contrary determination.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanette Smith, Privacy Act Officer, Telephone Number (202) 708–2374 [This is not a toll-free number] or Fax Number (202) 708–3577.

SUPPLEMENTARY INFORMATION: HUD/Dept–2 and HUD/Dept–28 are being amended to allow for the release of information pertaining to delinquent accounts to the Department of Treasury or to other Federal agencies designated by the Department of Treasury for the purpose of debt collection. The new routine use will read as follows: To other Federal agencies for the purpose of debt collection.

Accordingly, HUD/Dept–28 and HUD/Dept–2 system notices originally published in the "Federal Register Privacy Act Issuances," 1995/compilation are further amended by the addition of the new routine use disclosure below.

A report of HUD's intention to add a new routine use disclosure has been submitted to the Office of Management and Budget (OMB), The Senate Committee on Governmental Affairs, and the House Committee on Government and Oversight pursuant to paragraph 4 of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," February 8, 1996.

Authority: 5 U.S.C. 552a, 88 Stat. 1896; (42 U.S.C. 3535(d)).

Dated: February 12, 1998.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

HUD/DEPT–28

SYSTEM NAME: Property Improvement and Manufactured (Mobile) Home Loans–Default.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, other routine uses are as follows:

(a) To the Department of Justice for prosecution of fraud in the course of claims collection efforts and for the institution of suit or other proceedings to effect collection of claims.

(b) To the FBI to investigate possible fraud revealed in the course of claims collection efforts.

(c) General Accounting Office for audit purposes.

(d) Private employers and Federal agencies to facilitate collection of claims against employees.

(e) Office of Personnel Management for offsetting retirement payments.

(f) Consumer reporting and commercial credit agencies to facilitate claims collection consistent with Federal Claims Collection Standards, 4 CFR 102.4.

(g) To financial institutions that originated or serviced loans to give notice of disposition of claims.

(h) To title insurance companies for payment of liens.

(i) To local recording offices for filing assignments of legal documents, satisfactions, etc.

(j) To bankruptcy courts for filing of proofs of claim.

(k) To HUD contractors for debt servicing.

(l) To state motor vehicle agencies and Internal Revenue Service to obtain current addresses of debtors.

(m) To prospective purchasers—for sale of mortgages, loans, or insurance premiums or charges.

(n) To other Federal agencies—for the purpose of debt collection.

HUD/DEPT–2

SYSTEM NAME:

Accounting Records.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, other routine uses are as follows:

(a) To the U.S. Treasury—for disbursements and adjustments thereof.

(b) To the Internal Revenue Service—for reporting of sales commissions and for reporting of discharge indebtedness.

(c) To the General Accounting Office, General Services Administration, Department of Labor, Labor housing authorities, and taxing authorities—for audit, accounting and financial reference purposes.

(d) To mortgage lenders—for accounting and financial reference purposes, for verifying information provided by new loan applicants and evaluating creditworthiness.

(e) To HUD contractors—for debt and/or mortgage note servicing.

(f) To financial institutions that originated or serviced loans—to give notice of disposition of claims.

(g) To title insurance companies—for payment of liens.

(h) To local recording offices—for filing assignments of legal documents, satisfactions, etc.

(i) To the Defense Manpower Data Center (DMDC) of the Department of Defense and the U.S. Postal Service to conduct computer matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or benefit payments and are delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by HUD in order to collect the debts under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365) by voluntary repayment, or by administrative or salary offset procedures.

(j) To any other Federal agency for the purpose of effecting administrative or salary offset procedures against a person employed by the agency or receiving or eligible to receive some benefit payments from the agency when HUD as a creditor has a claim against that person.

(k) With other agencies; such as, Departments of Agriculture, Education, Justice and Veteran Affairs, and the Small Business Administration—for use of HUD's Credit Alert Interactive Voice Response System (CAIVRS) to prescreen applicants for loans or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government.

(l) To the Internal Revenue Service by computer matching to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by HUD against the taxpayer pursuant to 26 U.S.C. 6103(m)(2) and in accordance with 31 U.S.C. 3711, 3217, and 3718.

(m) To a credit reporting agency for the purpose of either adding to a credit history file or obtaining a credit history file on an individual for use in the administration of debt collection.

(n) To the U.S. General Accounting Office (GAO), Department of Justice, United States Attorney, or other Federal agencies for further collection action on any delinquent account when circumstances warrant.

(o) To a debt collection agency for the purpose of collection services to recover monies owned to the U.S. Government under certain programs or services administered by HUD.

(p) To any other Federal agency including, but not limited to the Internal Revenue Service (IRS) pursuant to 31 U.S.C. 3720A, for the purpose of effecting an administrative offset against the debtor for a delinquent debt owned to the U.S. Government by the debtor.

(q) To the Resolution Trust Corporation—to prescreen potential contractors for bad debts prior to acquiring their services.

(r) To other Federal Agencies—for the purpose of debt collection.

[FR Doc. 98–4179 Filed 2–18–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Availability of the Revised Draft Environmental Impact Statement for Development of the Palau Compact Road, Babeldaob Island, Republic of Palau

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior Announces that the revised Draft Environmental Impact Statement (EIS) for development of the Palau Compact Road, Babeldaob, Island, Republic of Palau is available for public review and comment.

DATES: The Office of the Secretary will consider written information and commments on the Draft Environmental Impact Statement received by [April 6, 1998].

ADDRESSES: Comments on the Draft EIS should be submitted to Mr. Allen Chin, CEPOH–ED–E, U.S. Army Engineer District, Honolulu, Fort Shafter, HI 96858–5440. A limited number of copies of the document may be obtained by writing to the above address or by calling 808–438–6974.

FOR FURTHER INFORMATION CONTACT: Mr. Allen Chin, CEPOH–ED–E, U.S. Army Engineer District, Honolulu, Fort Shafter, HI 96858–5440, telephone (808) 438–6974.

SUPPLEMENTARY INFORMATION: The proponent for the Proposed Action is the United States Department of the Interior as program manager and on behalf of the United States of America.

The Compact of Free Association (Compact) with the Republic of Palau (ROP), which became effective on October 1, 1994, requires the United States Government (USG) to provide a road system to the people of Palau in order to assist the ROP to advance the economic development and self-sufficiency of the Palau people. To fulfill this statutory and treaty requirement, the USG and the ROP are cooperating to construct a major road system on the island of Babeldaob in accordance with Section 212(a) of the Compact of Free Association and as implemented by certain nation-to-nation agreements.

The Department of the Interior published a Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS) in the **Federal Register** on March 7, 1996. Scoping meetings were held for governmental agencies and the public on April 24, 1996. The Notice of Availability of the DEIS was announced in the Federal Register in May 1997. A public hearing to present the DEIS was held on May 21, 1997 in Palau. Subsequent to the preparation of the DEIS, additional studies were conducted on impacts of quarrying for the project as well as dredging plans by the local states. The DEIS was revised to incorporate the results of these studies and to address public and agency comments on the original DEIS. After receipt of comments on the revised DEIS, a Final EIS will be prepared.

The Proposed Action calls for construction of a safe, high-quality, all-weather, two-lane vehicular road system on the island of Babeldaob. This roadway has been configured as a loop system with a northern spur to serve as a direct transportation and communication link between the 10 states on Babeldaob Island. Additionally, the road would provide access through, or be near known areas having potential for agriculture, forestry, mining and quarrying, industry and tourism, and water resource and port development. It would also provide a land-based transportation corridor to and from the proposed site of the Republic of Palau's new capital in Melekeok State.

The selection of a Proposed Action in this revised DEIS does not constitute a final decision. The Final EIS, as modified by all previous comments, will be used by the Department of the Interior in reaching a final decision and developing a final array of measures to avoid, reduce, or mitigate adverse impacts. The Record of Decision will be approved at least 30 days after publication of the Final EIS to allow for public review and comment.

Copies of the revised DEIS are also available for inspection at the following locations: Republic of Palau Ministry of Resources and Development, Palau Environmental Quality Protection Board, and the U.S. Army Corps of Engineers Palau Compact Road Field Office, on the third floor of the WCTC Building in Koror.

Dated: February 12, 1998.

Willie R. Taylor,

Director, Office of Environmental Police and Compliance, Department of the Interior.

[FR Doc. 98–4190 Filed 2–18–98; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of proposed Cooperative Research and Development Agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with Sedona GeoServices, Inc., Limerick, Pennsylvania. The purpose of the CRADA is to jointly research and develop new algorithms and advanced methods of automatic contour vectorization. Any other organization interested in pursuing the possibility of a CRADA for similar kinds of activities should contact the USGS.

ADDRESSES: Inquiries may be addressed to the Acting Chief of Research, U.S. Geological Survey, National Mapping Division, 500 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; Telephone (703) 648–4643, facsimile (703) 648–4706; Internet "ebrunson@usgs.gov".

FOR FURTHER INFORMATION CONTACT: Ernest B. Brunson, address above.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: February 3, 1998.

Richard E. Witmer,

Chief, National Mapping Division.

[FR Doc. 98–4122 Filed 2–18–98; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclamation of Certain Lands as Part of the Reservation of the Pueblo of Acoma (Los Cerritos Tracts); Correction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation proclamation; correction.

SUMMARY: This notice corrects **Federal Register** Notice, 53 FR 37357–37358, "Proclamation of Certain Lands as Part of the Reservation of the Pueblo of Acoma," published on September 1, 1988. Parcels A, C, and E are corrected.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner, Bureau of Indian Affairs, Division of Real Estate Services, MS–4510/MIB/Code 220, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: On September 1, 1988, by proclamation issued pursuant to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), land was proclaimed to be an addition to and made a part of the reservation of the Pueblo of Acoma Indian Reservation for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership. A notice of reservation proclamation was published in the **Federal Register** on September 26, 1988 (53 FR 37357–37358). The following descriptions correct Parcels A, C, and E of said notice:

Cibola County, New Mexico

Parcel A

A tract of land situated in Section 22, T. 10 N., R. 7 W., N.M.P.M., within the Cubero Land Grant, Cibola County, New Mexico, more particularly described as follows:

From the point of beginning, being the northeast corner of said tract, the northeast corner of Section 22, a marked stone, bears N. 39°26′53″ E. and is 898.76 feet distant; then from said point of beginning, S. 4°10′04″ E. and 2,345.20 feet along the westerly right-of-way of Road #32 of Acomita; then N. 88°15′15″ W. and 208.69 feet; then S. 4°25′33″ E. and 205.78 feet; then S. 88°03′59″ E. and 207.83 feet to a point on said westerly right-of-way; then S. 4°10′04″ E. and 267.96 feet along said right of way; then along a curve of radius 1,481.49 feet and to the left, an arc distance of 357.66 feet, along said right-of-way; then S. 18°00′00″ E. and 19.72 feet along said right-of-way; then along a curve of radius 1,360.58 feet and to the right, an arc distance of 484.64 feet along said right-of-way; then S. 2°24′32″ W. and 276.69 feet along said right-of-way and to a point on the northerly right-of-way of Interstate 40; then S. 85°49′34″ W. and 505.09 feet along said northerly right-of-way of I–40; then N. 20°14′18″ E. and 99.53 feet; then N. 76°34′51″ W. and 602.94 feet; then N. 0°26′22″ E. and 429.94 feet; then N. 76°28′46″ W. and 1,912.87 feet; then N. 0°33′10″ E. and 2,723.09 feet to a point on the southerly right-of-way of U.S. Highway 66; then N. 86°53′51″ E. and 2,556.47 feet to the point and place of beginning, and containing an area of 203.6223 acres more or less.

Parcel C

A tract of land situated within the northeast quarter of Section 27, T. 10 N., R. 7 W., N.M.P.M., Cibola County, New Mexico, and being more particularly described as follows:

From the point of beginning, being the southwest corner of said tract, the one mile post on the North boundary of the Acoma Pueblo Grant bears N. 84°41′41″ W., and is 1,258.48 feet distant. Then from the above said point of beginning, N. 00°10′19″ E., 635.28 feet; then S. 89°55′29″ E., 439.48 feet; then along the westerly right-of-way line of Road #32 to Acomita, along a curve of radius 2,823.99 feet an arc length of 702.18 feet; then N. 84°41′41″ W. a distance of 185.37 feet to the point and place of beginning, and containing an area of 4.6909 acres, more or less.

Parcel E

A tract of land situated in the Southeast quarter of Section 22 and the Southwest quarter of Section 23, T. 10 N., R. 7 W., N.M.P.M., within the Cubero Land Grant, Cibola County, New Mexico, and being more particularly described as follows:

From the point of beginning, the Northwest corner of Section 23, a marked stone, bears

N. 8° 36'21" W. and is 3,707.25 feet distant; then from said point of beginning S. 0°20'23" W. and 1,065.78 feet to a point on the northerly right-of-way of Interstate 40; then N. 82°00'23" W. and 713.10 feet along said right-of-way to a point on the easterly right-of-way of Road #32 to Acomita; then N. 2°24'32" E. and 276.36 feet along said easterly right-of-way; then along a curve of radius 1,440.58 feet and to the left, an arc distance of 513.14 feet, along said right-of-way; then N. 18° 00' 00" W. and 19.72 feet along said right-of-way; then along a curve of radius 1,401.49 feet and to the right, an arc distance of 173.84 feet, along said right-of-way; then S. 89° 50' 39" E. and 819.55 feet to the point and place of beginning, and containing an area of 16.9816 acres, more or less.

Title to the land described above is conveyed subject to any valid existing easements for public roads and highways, for public utilities and for railroads and pipelines and any other right-of-way or reservation of record.

Dated: February 11, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–4103 Filed 2–18–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1210–00]

Emergency Closure of Vehicle Trails In and Near the Robledo Mountains Wilderness Study Area (WSA), Robledo Mountains Area of Critical Environmental Concern (ACEC), and the Paleozoic Trackways Research Natural Area (RNA) in Dona Ana County, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Emergency closure of vehicle trails.

SUMMARY: Notice is hereby given that effective immediately, the Las Cruces District is implementing emergency closure of existing vehicle trails to use by any motorized vehicle or equipment. The closures are implemented in order to prevent further resource degradation and protect the values of the Robledo Mountains WSA and ACEC, and the Paleozoic Trackways RNA. The authority for this emergency closure is 43 CFR 8364.1: Closure and Restriction Orders. The vehicle trails are located within the following public land:

Robledo Mountains WSA and ACEC

T. 22 S., R. 1 E., NMPM
Secs. 6, 7, 8, 17, and 18.
T. 22 S., R. 1 W.,
Secs. 3, 9, 10, 11, 12, 13, and 14.

Paleozoic Trackways RNA

T. 22 S., R. 1 E., NMPM
Sec. 19, All.
T. 22 S., R. 1 E., NMPM
Sec. 20, All.

The subject vehicle trails are further described as follows:

1. Trails, including branches and side trails, known as the Wolf Trail and the Guardian Trail, beginning at a common point in S½SW¼, Sec. 20, T. 22 S., R. 1 E., NMPM, and traversing northwest to a common exit point in SE¼SE¼, Sec. 14, T. 22 S., R. 1 W., NMPM. These routes total approximately 6 miles.

2. Trails in the upper Indian Springs Canyon drainage in the western portion of the Robledo Mountains WSA/ACEC. One of these trails begins in SE¼, Sec. 10, T. 22 S., R. 1 W., NMPM, near the WSA boundary and runs north through Sec. 10 to SE¼, Sec. 3 on the Skyline Trail. The other trail begins on the west side of the Skyline Trail in SE¼, Sec. 3, T. 22 S., R. 1 W., NMPM, and south through Secs. 3 and 10, and west through Secs. 9 and 10 to the WSA boundary in the bottom of Indian Springs Canyon. These trails total approximately 3 miles.

DATES: This closure is effective February 18, 1998 and shall remain in effect until rescinded or modified by the Authorized Officer.

FOR FURTHER INFORMATION CONTACT: Stephanie Hargrove, Mimbres Resource Area Manager, or Mark Hakkila, Outdoor Recreation Planner, 1800 Marquess, Las Cruces, NM 88005; or call (505) 525–4300.

SUPPLEMENTARY INFORMATION: Violations of this closure are punishable by fines not to exceed $1,000 and/or imprisonment not to exceed 1 year. The action taken is to prevent impacts to wilderness values, soils, native vegetative resources, wildlife habitat, cultural resources, and scenic values.

Copies of the closure order and maps showing the location of the routes are available from the Las Cruces District Office, Mimbres Resource Area, 1800 Marquess, Las Cruces NM 88005.

Dated: February 12, 1998.

Linda S. C. Rundell,

District Manager.

[FR Doc. 98–4139 Filed 2–18–98; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1430–10]

Notice of Availability of Plan Amendment and Public Meetings; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management, Winnemucca Field Office, has completed an Environmental Assessment/Proposed Plan Amendment to the Paradise-Denio and Sonoma-Gerlach Management Framework Plans (MFPs). The proposed plan amendments reflect changes in management policy and guidelines, over the past 16 years. Public meetings to comment on the document will be held on March 3, 1998 from 7:00PM to 9:00PM at the Airport Plaza Hotel, 1981 Terminal Way, Reno, Nevada, and on March 4, 1998 from 7:00PM to 9:00PM at the Bureau of Land Management, Winnemucca Field Office, 5100 E. Winnemucca Blvd., Winnemucca, Nevada.

DATES: The comment period for the Environmental Assessment/Proposed Plan Amendments will begin with the date of publication of this notice and last 30 days.

ADDRESSES: Written comments must be submitted to the District Manager, Bureau of Land Management, Winnemucca Field Office, 5100 E. Winnemucca Blvd., Winnemucca, Nevada 89445, within 30 days after the date of publication of this Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Mary Figarelle, Realty Specialist, Winnemucca District Office, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445, (702) 623–1500.

Copies of the Environmental Assessment and Proposed Plan Amendments are available for review at the Winnemucca District Office.

Dated: February 11, 1998.

Michael R. Holbert,

Associate District Manager.

[FR Doc. 98–4189 Filed 2–18–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-958-0777-63; GP7-0017; OR-19637 (WA)]

Public Land Order No. 7311; Revocation of Secretarial Order Dated June 5, 1924; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety a Secretarial order which withdrew 4,800 acres of National Forest System lands for the Bureau of Land Management's Powersite Classification No. 77. The lands are no longer needed for the purpose for which they were withdrawn. This action will open the lands to surface entry. The lands have been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated June 5, 1924, which established Powersite Classification No. 77, is hereby revoked in its entirety:

Willamette Meridian

Snoqualmie National Forest

T. 18 N., R. 9 E., unsurveyed
Secs. 3, 4, 5, 8, 9, secs. 16 to 21, inclusive, and secs. 29 to 32, inclusive, every smallest legal subdivision any portion of which, when surveyed, will be within ½ mile of West Fork White River.

The areas described aggregate approximately 4,800 acres in Pierce County.

2. At 8:30 a.m. on March 23, 1998, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: February 4, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–4121 Filed 2–18–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF JUSTICE

International Competition Policy Advisory Committee (ICPAC); Notice of Meeting

AGENCY: Department of Justice.

SUMMARY: The International Competition Policy Advisory Committee (the "Committee") will hold its first meeting on February 26, 1998. The Committee was established by the Department of Justice to provide advice regarding issues relating to international trade and competition policy. Specifically, the Committee will provide advice regarding how best to cooperate with foreign authorities to eliminate international anticompetitive cartel agreements, how best to coordinate United States' and foreign antitrust enforcement efforts in the review of multinational mergers, and how best to coordinate United States' trade and competition policy to achieve their common objectives. The meeting will be held at The Carlton Hotel, 16th & K Streets, N.W., Washington, DC 20006, and will begin at 9:00 a.m. EST and end at approximately 3:45 p.m. The agenda for the meeting will be as follows:

1. Overview of International Involvement
2. Enforcement Against International Cartels
3. International Merger Review
4. Trade and Competition Interface
5. Work Program: Next Steps

The public is being given less than 15 days notice of this meeting because of exceptional difficulties encountered in finding a meeting date mutually acceptable to all members of the Committee.

Attendance is open to the interested public, limited by the availability of space. Persons needing special assistance, such as sign language interpretation or other special accommodations, should notify the contact person listed below as soon as possible. Members of the public may submit written statements by mail, electronic mail, or facsimile at any time before or after the meeting to the contact person listed below for consideration by the Committee. All written submissions will be included in the public record of the Committee. Oral statements from the public will not be solicited or accepted at this meeting. For further information contact: Merit Janow, c/o Gerald M. DiGiusto, U.S. Department of Justice, Antitrust Division—Foreign Commerce Section, 601 D Street, N.W., Room 10024, Washington, DC 20530, Telephone: (202) 514–2439, Facsimile: (202) 514–4508, Electronic mail: icpac@usdoj.gov.

Merit E. Janow,

Executive Director, International Competition Policy Advisory Committee.

[FR Doc. 98–4338 Filed 2–17–98; 12:21 pm]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Notice of Consent Judgments Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that a proposed Consent Decree *United States* v. *Agway, Inc., et al.*, DOJ #90–11–2–2A, was lodged in the United States District Court for the Northern District of New York on January 22, 1998. The Consent Decree resolves the liability of eighty parties ("Settling Defendants") and the United States (on behalf of the U.S. Air Force and the Veterans Administration) under Sections 106(a) and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606(a) and 9607(a), relating to the Pollution Abatement Services Superfund Site in Oswego, New York (the "Site").

Under the proposed Consent Decree, the Settling Defendants agree to reimburse the United States $1,050,261.97 in past response costs incurred from April 2, 1987 to May 6, 1997, to perform future work at the Site under the 1993 Record of Decision ("1993 ROD") at an estimated cost of $5 million, and to reimburse the United States for its first $500,000 in future response costs. Approximately 68 of the Settling Defendants, along with the settling federal agencies, will receive *de minimis* settlements under this Decree in exchange for payments toward Site costs. The remaining Settling Defendants will perform the future work under the 1993 ROD and will partially reimburse the United States' past and future costs. The United States has reserved its rights against certain parties who sent polychlorinated bi-phenols ("PCBs") to the Site in the event that a PCB related remedy is necessary.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C.

20530, and should refer to *United States* v. *Agway, Inc. et al.*, Civ. No. 98–CV–0112 (N.P.M), DOJ #90–11–2–2A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of New York, James Foley U.S. Courthouse, 45 Broadway, room 231, Albany, New York 12207; at the Region II Office of the U.S. Environmental Protection Agency, 290 Broadway, New York, New York 10278; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. Copies of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $71.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–4130 Filed 2–18–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Consent Decrees Under the Clean Water Act and Resource Conservation and Recovery Act

Notice is hereby given that a consent decree in *United States* v. *ASARCO, Inc.*, Civil Action No. CV–98–3–H–CCL (D. Mont.) and a consent decree in *United States* v. *ASARCO, Inc.*, Civil Action No. CV–98–0137–PHX–ROS (D. Ariz.) were lodged with the United States District Courts for the District of Montana and District of Arizona respectively on January 23, 1998.

In these actions the United States sought injunctive relief and civil penalties under Section 309 (b) and (d) of the Clean Water Act ("CWA"), 33 U.S.C. 1319 (b) and (d), and Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6928(a). The consent decree lodged in the District of Montana ("Montana decree") resolves civil penalty claims of the United States against ASARCO, Inc. ("ASARCO") under the CWA for alleged unpermitted discharges at ASARCO's smelter facility in East Helena, Montana. The Montana decree also resolves civil penalty and injunctive relief claims of the United States against ASARCO under RCRA for alleged violations of hazardous waste regulations associated with materials acceptance and management practices at ASARCO's East Helena smelter facility. The decree lodged in the District of Arizona ("Arizona decree") resolves injunctive relief and civil penalty claims of the United States against ASARCO under the CWA for alleged permit violations and unpermitted discharges at ASARCO's Ray Mine complex located near Kearny, Arizona.

The Montana decree requires ASARCO to: institute improved materials screening and management procedures at each of its four smelters nationwide; perform a comprehensive RCRA corrective action investigation and, as appropriate, remediation at ASARCO's East Helena smelter facility; implement an improved environmental management system nationwide; and, pay a civil penalty to the United States of $3,386,100 and perform a wetlands restoration project at ASARCO's East Helena smelter facility for alleged past violations of the CWA and RCRA at that facility.

The Arizona decree requires ASARCO to: Perform construction projects to address alleged permit violations and unpermitted discharges at ASARCO's Ray Mine complex; and, pay civil penalties to the United States and State of Arizona totaling $3 million for alleged past violations of the CWA at ASARCO's Ray Mine complex.

The Department of Justice will accept written comments relating to the proposed consent decrees for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States* v. *ASARCO, Inc.* (D.Mt.), DJ Ref. #s: 90–5–1–1–4323, 90–7–1–890 and 90–7–1–886, and/or, *United States* v *ASARCO, Inc.* (D. Az.), DJ Ref. #s: 90–5–1–1–3822 and 90–7–1–886.

Copies of the proposed Montana decree may be examined at the Office of the United States Attorney, Suite 400, 2929 3rd Avenue, N., Billings, Montana, 59103; at the U.S. Environmental Protection Agency, Montana Operations Office, Federal Building, 301 South Park Street, Helena, Montana 59626; and, at the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado 80202. Copies of the proposed Arizona decree may be examined at the Office of the United States Attorney, 1275 West Washington, Phoenix, Arizona 85007; and, at the U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California, 94105.

Copies of both proposed consent decrees may be examined at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the consent decrees may also be obtained in person or by mail at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. When requesting a copy of the Montana decree by mail, please enclose a check in the amount of $44.75 for a copy including exhibits, or $28.00 for a copy excluding exhibits (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library." When requesting a copy of the Arizona decree by mail, please enclose a check in the amount of $29.00 for a copy including exhibits, or $9.00 for a copy excluding exhibits (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 98–4209 Filed 2–18–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Block Island Power Company, Inc.*, Civil Action No. 98–045–ML was lodged on January 28, 1998, in the United States District Court for the District of Rhode Island. The consent decree settles an action commenced in a complaint filed January 28, 1998, under the Clean Air Act, 42 U.S.C. 7401 *et seq.*, arising out of operations at the Block Island Power Company, Inc. ("BIPCO") facility on Block Island in the State of Rhode Island. BIPCO generates and sells electricity to the residents of Block Island through the use of diesel generators. The air pollutants emitted by the diesel generators include nitrogen oxides ("NO_x"). NO_x is an ozone precursor which means that, once emitted, it is transformed in the atmosphere through reaction with volatile organic compounds into ground-level ozone or "smog."

The complaint alleges that BIPCO failed to obtain a permit prior to installation of eight diesel generators as required by Prevention of Significant Deterioration and Non-Attainment New Source Review requirements of the Clean Air Act, EPA regulations, and the State of Rhode Island State Implementation Plan. The complaint also alleges violations of the acid rain provisions of the Clean Air Act.

Under the consent decree, BIPCO will pay a civil penalty to the United States of $90,000. BIPCO will also install an underwater cable to supply electricity to Block Island residents in lieu of operating the company's diesel generators. This will have the effect of eliminating emissions from BIPCO's facility. Installation of the cable was approved by the State of Rhode Island Public Utility Commission, after a public hearing, in a written order issued on August 22, 1997. BIPCO will permit any remaining generators as emergency back-up engines which will not require New Source Review permits. If BIPCO fails to install the cable in accordance with the consent decree, BIPCO will be required to comply with the New Source Review requirements including installation of pollution control equipment reducing emissions from the diesel generators to the Lowest Achievable Emission Rate and obtaining any necessary offsetting emission reductions. The consent decree also requires BIPCO to comply with the acid rain provisions of the Clean Air Act by either obtaining a regulatory exemption or installing, certifying, and operating monitoring systems as required by 40 CFR parts 72 and 75.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Block Island Power Company, Inc.*, DOJ Ref #90–5–1–2021.

The proposed consent decree may be examined at the office of the United States Attorney, Westminster Square Building, 10 Dorrance Street, 10th Floor, Providence, Rhode Island, 02903; the Region I Office of the Environmental Protection Agency, J.F. Kennedy Federal Building, Boston, Massachusetts, 02203–2211; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check made payable to the Consent Decree Library in the amount of $9.50 (25 cents per page reproduction costs).

Joel M. Gross,

Section Chief Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–4128 Filed 2–18–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Department of Justice policy, notice is hereby given that on January 29, 1998, a proposed Consent Decree in *United States* v. *Cowles Media Company et al,*, Civil No. 4–96–958, was lodged in the United States District Court for the District of Minnesota. The Complaint filed by the United States sought to recover costs incurred by the United States pursuant to CERCLA, 42 U.S.C. 9601 *et seq.* The Consent Decree requires Defendants Northern States Power Company and Cowles Media Company to reimburse the United States in the amount of $450.000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States* v. *Cowles Media Company, et al.*, D.J. Ref. No. 90–11–2–1099.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the District of Minnesota, 234 United States Courthouse, 110 S. 4th Street, Minneapolis, MN 55401 (contact Assistant United States Attorney Friedrich Siekert); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Assistant Regional Counsel Elizabeth Murphy); and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, telephone (202) 624–0892. For a copy of the Consent Decree please enclose a check in the amount of $5.25 (25 cents per page reproduction costs) payable to Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–4127 Filed 2–18–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

In accordance with Departmental policy, notice is hereby given that a proposed consent decree in *United States* v. *FAG Bearings Corp.*, Civil Action No. 98–5003–CV–SW–1, was lodged on January 21, 1998, with the United States District Court for the Western District of Missouri. The consent decree resolves the claims for relief under Section 107 of CERCLA, 42 U.S.C. 9607, filed in a complaint against FAG Bearings Corporation ("FAG Bearings") on behalf of the United States Environmental Protection Agency ("EPA"). EPA is seeking payment of costs incurred in performing response activities at the Newton County TCE Site ("Site").

Defendant FAG Bearings owns and operates a facility from which there has been a release of TCE. From about 1970 to 1983, FAG Bearings manufactured roller ball bearings assemblies such as wheel bearing assemblies for the automotive industry. The Site is located in the southwestern part of Missouri, just south of Joplin, Missouri and contains the FAG Bearings facility. A plume of groundwater contaminated with TCE extends south of the FAG Bearings facility and into the nearby Villages of Silver Creek and Saginaw, Missouri. This action is based on costs totaling $266,280.56 incurred for a removal action to provide bottled water to residents at the Site with TCE contamination in their private drinking water wells.

Under the proposed consent decree, FAG Bearings will reimburse the EPA Hazardous Substance Superfund $266,280.56—100% of EPA's past costs—plus an additional sum for Interest. In exchange, FAG Bearings will receive a covenant not to sue pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), for response costs incurred by EPA at the Site. In addition, FAG Bearings will receive contribution protection under Section

113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2).

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and refer to *United States* v. *FAG Bearings Corp.*, DOJ Ref. 90–11–3–1760.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, 1201 Walnut Street, Suite 2300, Kansas City, Missouri; and the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the proposed Consent Decree, please enclose a check in the amount of $4.75 (25 cents per page reproduction costs) payable to the "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–4208 Filed 2–18–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive, Environmental Response, Compensation and Liability Act ("CERCLA")

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Hillsborough County, Florida, et al.* (M.D. Fl.) Civil Action No. 98–239–CIV–T–25F, was lodged on February 4, 1998, with the United States District Court for the Middle District of Florida.

In this action the United States sought injunctive relief and recovery of response costs under Sections 106(a) and 107 of CERCLA, 42 U.S.C. 9606(a) and 9607, with respect to the Taylor Road Landfill Superfund Site in Hillsborough County, Florida ("the Site") which is the location of a solid waste landfill utilized from May 1976 until February 1980.

Under a proposed Consent Decree, Hillsborough County, the past and present owner and operator of the Site, and a group of settlors which arranged for the disposal of hazardous substances at the site, have agreed to perform the remedy chosen by EPA to clean up the Site, pay all of the government's future response costs, and pay over 75 percent of the government's remaining past response costs, incurred or to be incurred for response activities at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Hillsborough County, Florida, et al.* (M.D. Fl.) and DOJ #90–11–3–1614.

The proposed consent decree may be examined at the office of the United States Attorney, 500 Zack Street, Room 400, Tampa, Florida 33602; the Region 4 Office of the Environmental Protection Agency, 61 Forsythe Street, Atlanta, Georgia 30303, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $54.75 (25 cents per page reproduction costs), payable to the Consent Decree Library. In requesting a copy exclusive of exhibits, please enclose a check for $31.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–4210 Filed 2–18–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on February 5, 1998, a proposed *De Minimis* Consent Decree in *United States* v. *Imlay City, et al.*, Civil Action No. 98–70520, was lodged with the United States District Court for the Eastern District of Michigan, Southern Division. This consent decree represents a settlement of claims of the United States against Imlay City, Lapeer County Road Commission, Oxford Township, Village of Dryden, Village of Leonard, Addison Township, Village of Oxford, Village of Metamora, Lapeer Intermediate School District, a/k/a Lapeer Vocational Technical Institute, for reimbursement of response costs and injunctive relief in connection with the Metamora Landfill Superfund Site ("Site") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*

Under this settlement with the United States, Imlay City, Lapeer County Road Commission, Oxford Township, Village of Dryden, Village of Leonard, Addison Township, and Village of Oxford, will pay $2,616, the Village of Metamora will pay $7,358, and Lapeer Intermediate School, a/k/a Lapeer Vocational Technical Institute will pay $1,219, in reimbursement of response costs incurred by the Environmental Protection Agency at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Imlay City, et al.*, D.J. Ref. 90–11–3–289M.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Michigan, Southern Division, 211 West Fort Street, Suite 2300, Detroit, MI 48226, at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $7.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–4123 Filed 2–18–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement

Notice is hereby given that on February 2, 1998, a proposed Settlement

Agreement in *In re: McLouth Steel Products Corporation*, was lodged with the United States District Court for the Eastern District of Michigan. This Settlement Agreement resolves the United States' proof of claim filed against McLouth Steel Products Corporation ("McLouth Steel"), for its liabilities pursuant to several environmental statutes, and regulations enacted pursuant thereto, including the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.*, the Clean Air Act (CAA), 42 U.S.C. 7401 *et seq.*, the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.*, the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.*, and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.* McLouth Steel owned and operated two steel manufacturing and processing plants that are located in the cities of Trenton and Gibraltar in Wayne County, Michigan.

Pursuant to the Settlement Agreement, McLouth Steel consents and stipulates to U.S. EPA having allowed general unsecured claims in the following amounts: CWA—$1,124,000, CAA—$45,303, TSCA—$183,000. In the Agreement, McLouth Steel also stipulates to reserving an amount for U.S. EPA's RCRA and CERCLA claims filed against McLouth Steel pending the completion of certain response actions currently underway at McLouth Steel's facility. The amount of the reserve will be based on an allowed administrative expense claim of $2.8 million and an allowed general unsecured claim of $2.8 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer in *In re: McLouth Steel Products Corporation*, D.J. Ref. 90–5–1–1–4144A. Commenters may request an opportunity for public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Settlement Agreement may be examined at the Office of the United States Attorney, District of Michigan, 211 West Fort Street, Suite 2300, Detroit, MI 48226–3211, at the Region V Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Settlement Aereement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting copy, please enclose a check in the amount of $26.75 (25 cents per page production cost) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environmental Natural Resources Division.

[FR Doc. 98–4131 Filed 2–18–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department of Justice policy and 28 CFR 50.7, notice is hereby given that on January 28, 1998, a proposed Consent Decree in *United States and The State of Indiana* v. *City of North Vernon*, Cause No. NA 96–34–C (D/H), was lodged in the United States District Court for the Southern District of Indiana. The Complaint filed by the United States and the State of Indiana alleged claims under Section 309(b) and (d) of the Clean Water Act ("the Act"), 33 U.S.C. 1319(b) and (d), against the City of North Vernon, Indiana ("North Vernon"), for violations of the terms and conditions of North Vernon's National Pollutant Discharge Elimination System ("NPDES") permit, and for failing to comply with the terms of two Administrative Orders issued by U.S. EPA. The Consent Decree requires Defendant North Vernon to: (1) Comply with the Act and the terms of its current NPDES permit; (2) implement a Corrective Action Plan designed to assure that North Vernon will achieve and maintain compliance with the Act and the permit; (3) pay the United States $30,000.00 and the State of Indiana $20,000.00 in civil penalties; and (4) implement a Supplemental Environmental Project, with estimated costs to North Vernon of approximately $110,000.00.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States and State of Indiana* v. *City of North Vernon*, D.J. Ref. No. 90–5–1–1–4142.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Southern District of Indiana, 5th Floor, United States Courthouse, 46 East Ohio Street, Indianapolis, IN 46204–1986 (contact Assistant United States Attorney Thomas Kieper); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Assistant Regional Counsel Timothy Chapman); and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, telephone (202) 624–0892. For a copy of the Consent Decree please enclose a check in the amount of $21.50 (25 cents per page reproduction costs) payable to Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–4129 Filed 2–18–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the Asymmetrical Digital Subscriber Line Forum

Notice is hereby given that, on August 12, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Asymmetrical Digital Subscriber Line Forum ("ADSL") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies have joined ADSL: Microcom, Norwood, MA; Telstra, Melbourne, Victoria, AUSTRALIA; Cayman Systems, Stoneham, MA; Fujitsu Network Communications, Inc., Richardson, TX; IMB–T.J. Watson Research lab, Hawthorne, NY; Newbridge Networks, Kanata, Ontario, CANADA; Rad Data Communications, Ltd., Tel Aviv, ISRAEL; SMC, Irvine, CA; Xyplex Networks, Santa Clara, CA; and Ascend Communications, Westford, MA.

US West and Cascade Communications have canceled their membership in ADSL.

No other changes have been made in the membership, nature or objectives of ADSL. Membership remains open, and ADSL intends to file additional written notifications disclosing all changes in membership.

On May 15, 1995, ADSL filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 25, 1995 (60 Fed. Reg. 38058).

The last notification was filed with the Department on May 15, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 10, 1997 (62 FR 47690).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–4124 Filed 2–18–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Healthcare Information Technology Enabling Community Care (HITECC)

Notice is hereby given that, on November 14, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Healthcare Information Technology Enabling Community Care (HITECC) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes to the parties to the venture. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following has become a member of HITECC: Lockheed Martin Energy Systems, Oak Ridge, TN.

Membership in HITECC remains open, and HITECC intends to file additional written notification disclosing all changes in membership, if any occur.

On November 27, 1995, HITECC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 8, 1996 (61 FR 15521).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–4126 Filed 2–18–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–134A (IPACT–I)

Notice is hereby given that, on December 3, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–134a ("IPACT–I") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following has become a new member to the IPACT–I: Aeropharm Technology, Inc., Edison, NJ, a subsidiary of Kos Pharmaceuticals, Inc.

No other changes have been made in either the membership or planned activity of IPACT–I. Membership in this group research project remains open, and IPACT–I intends to file additional written notification disclosing all changes in membership.

On August 7, 1990, IPACT–I filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 6, 1990 (55 FR 36710).

The last notification was filed with the Department on March 6, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 3, 1997 (62 FR 15939).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–4125 Filed 2–18–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Alliance Agreement for the Conduct of Research Relating to Oxygen Transport Membranes for the Production of Hydrogen and Synthesis Gas

Notice is hereby given that, on November 13, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Praxair, Inc. filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties; and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Praxair, Inc., Danbury, CT; BP Chemicals, Inc., Cleveland, OH; Sasol Technology (Pty), Ltd., Johannesburg, REPUBLIC OF SOUTH AFRICA; Den norske stats oljeselskap a.s., Stavanger, NORWAY; and Amoco Production Company, Houston, TX.

The objective of the venture is to develop a new process for converting natural gas to synthesis gas using ceramic membrane technology.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–4207 Filed 2–18–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–5]

Townwood Pharmacy; Revocation of Registration

On October 31, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Townwood Pharmacy (Respondent) of Houston, Texas, notifying the pharmacy of an opportunity to show cause as to why DEA should not revoke its DEA Certificate of Registration, AT8866468, and deny any pending applications for renewal of such registration as a retail pharmacy under 21 U.S.C. 823(f), for reason that the pharmacy's continued registration would be inconsistent with

the public interest pursuant to 21 U.S.C. 824(a)(4).

By letter dated November 15, 1995, Respondent, through counsel, timely filed a request for a hearing, and following prehearing procedures, a hearing was held in San Antonio, Texas on October 16, 1996, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, Government counsel submitted proposed findings of fact, conclusions of law and argument. Respondent did not submit any posthearing filing. On November 10, 1997, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her decision, and on December 12, 1997, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Respondent is a retail pharmacy located in Houston, Texas. A.B. Hurd, has been a licensed pharmacist for 25 years and has been Respondent's owner and operator for 17 years. In late 1992, DEA received information from the Houston Police Department that Respondent pharmacy had a reputation for diverting controlled substances.

As a result of this information, DEA initiated an investigation of Respondent, which included five undercover visits between December 17, 1992 and July 9, 1993. The purpose of these visits was to determine whether Respondent would dispense controlled substances for no legitimate medical purpose. DEA obtained a total of nine controlled substance prescriptions written by a local Houston orthopedic physician for a Symone Williams to be used in the undercover investigation. Five of these prescriptions were for various quantities of Tylenol #4 with codeine, a Schedule III controlled substance, and four were for various quantities of Valium 10 mg., a Schedule IV controlled substance. However, none of the prescriptions were for an excessive quantity of either drug, given that each undercover visit was made more than a month after the previous visit. The prescriptions did not contain the patient's address or the date of issuance. Four out of the five visits were conducted by an undercover agent posing as Symone Williams and the fifth visit was conducted by an undercover agent posing as Ms. Williams' boyfriend.

On each occasion, the undercover agent had a conversation with Mr. Hurd while he was filling the prescriptions. At least four of these visits were tape recorded and transcripts of these recordings are in evidence in this proceeding. During the course of these visits, the undercover agents made a number of statements to Mr. Hurd in an attempt to indicate to him that the controlled substances were not going to be used for a legitimate medical purpose. For instance, during the first visit, the undercover agent told Mr. Hurd, "I just tell my doctor to write 'em, I don't tell him anything"; "I like the brand, 'cause that's what my boyfriend likes"; and "He's gonna have some alcohol with it anyway." During the second visit, the undercover agent told Mr. Hurd, "Me and my boyfriend used [the controlled substances,] they worked good"; and "take that with a little bit of Crown," referring to alcohol. On another occasion, the agent made the following comments to Mr. Hurd: "I go back to my doctor and * * * I told him I'm feeling bad, and he just give it to me"; and "[Y]ep, we'll get high. That's right, some Crown and some Tylenol." During several of these visits, the undercover agent posing as Symone Williams kept talking about "partying" with Mr. Hurd. Throughout the transcripts of these visits, almost all of Mr. Hurd's comments, especially those in response to the above statements, were unintelligible. Mr. Hurd filled all of the prescriptions presented to him by the undercover agents. The prescriptions for Valium were filled with its generic equivalent diazepam.

Following the undercover visits, the undercover agent telephoned Mr. Hurd on September 27, and October 12, 1993, in an attempt to obtain controlled substances without presenting a prescription. Mr. Hurd did not agree to dispense any more controlled substances to the undercover agent. At the hearing, Mr. Hurd testified that he denied the undercover agent's telephone requests because there were no refills listed on the previously presented prescriptions and the agent had not authorized Mr. Hurd to contact the doctor to request a refill.

Mr. Hurd testified at the hearing before Judge Bittner that he did not recall any of the undercover agent's comments about using the controlled substances with alcohol or sharing them with her boyfriend. In addition, there was testimony that there was music or a television playing in the background during these visits: that the undercover agent and Mr. Hurd were approximately two arms' length apart during the transactions; that the undercover agent was also having conversations with the pharmacy's clerk; and that the undercover agent was not standing directly in front of Mr. Hurd when she was making conversation with him.

In addition, Mr. Hurd testified that he was familiar with the doctor who purportedly issued the prescriptions; that the doctor has a good reputation in the Houston area; and that Respondent pharmacy had never had any problems with the doctor's prescriptions in the past. Mr. Hurd further testified that the prescriptions appeared to be facially valid to him; that the quantities prescribed and the frequency of the prescriptions did not raise suspicions; and that Tylenol # 4 with codeine and Valium are commonly prescribed by orthopedic physicians. He also testified that he cannot determine whether or not a customer has pain and/or anxiety simply from looking at the individual. Mr. Hurd testified that he observed the undercover agent and that she had a professional appearance, her eyes were not red, and her speech was not slurred.

Mr. Hurd testified that he concluded that the prescriptions were valid, and that had he suspected that the prescriptions were invalid, he would not have filled them. Instead, he would have reported the prescriptions to the appropriate authorities and/or called the prescribing physician for verification.

Another area pharmacist testified at the hearing before Judge Bittner on behalf of Respondent. He stated that he has worked as a retail pharmacist in Houston for 27 years and has known Mr. Hurd since 1967. Like Mr. Hurd, this pharmacist testified that he is familiar with the physician who issued the prescriptions used in the undercover operation; that the physician has a good reputation; and that so long as the physician's prescriptions met the legal requirements, he would fill them. This pharmacist also testified that his practice is similar to that of Respondent and that it is not at all unusual for customers to strike up a conversation with him while he is filling a prescription, but that he does not pay too much attention to what a customer

says because his main objective is to fill the prescription. However, the pharmacist conceded on cross-examination that he would be concerned if a customer represented that he was going to take the prescribed controlled substance with alcohol.

After the completion of the undercover investigation, DEA conducted an accountability audit of ten controlled substances at Respondent. The audit covered the period February 26, 1993 to January 25, 1994, and revealed discrepancies for nine of the audited substances. Of particular note, Respondent could not account for 5,363 dosage units of diazepam 10 mg., 1,077 dosage units of hydrocodone 7.5/500, and 6,207 dosage units of APAP with codeine 60 mg. During the course of conducting the audit, it was discovered that Respondent did not maintain copies of 12 prescriptions and 6 purchase invoices. Respondent was nonetheless given credit for these dispensations and purchases by the investigators conducting the audit. Following the audit, the results were discussed with Mr. Hurd and he was given the opportunity to provide any additional records. Mr. Hurd subsequently provided the investigators with copies of additional prescriptions, however the prescriptions did not change the audit results because they were either not for the audited substances or were outside of the audit period. In addition, Mr. Hurd subsequently informed the investigators that he had discovered another bottle of diazepam, which the investigators counted and included in the audit calculations.

At the hearing in this matter, Mr. Hurd indicated that when conducting Respondent's yearly inventory to satisfy state requirements, he estimates the number of Schedule III through V controlled substances on hand. Respondent's February 26, 1993 inventory was used as the initial inventory for DEA's accountability audit.

Following the audit of Respondent, DEA was contacted by an individual who stated that her daughter had a drug problem, was currently in drug rehabilitation, and previously had overdosed approximately four to five times on prescription drugs that she had been getting from an employee of Respondent. DEA investigators later spoke to the daughter who confirmed that she had been getting her supply of controlled substances from Respondent's employee. Both of these individuals provided DEA investigators with a bag of drugs. A DEA investigator testified at the hearing that there were in fact some valid prescriptions for the individual on file at Respondent, but that the individual claimed that she also obtained controlled substances from Respondent without a prescription. The investigator further testified however that the drugs the individual actually presented to DEA had another pharmacy's label on the bottles.

DEA investigators never spoke to Respondent's employee about the individual, however Mr. Hurd testified that he spoke with the employee and the employee never admitted to giving the individual any drugs without a prescription. Mr. Hurd nonetheless instructed the employee not to fill any more prescriptions for the individual.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State law relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors any may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16,422 (1989).

Regarding factor one, there is no evidence that any action has been taken against Respondent's state license. As Judge Bittner notes however, since "state licensure is a necessary but not sufficient condition for DEA registration, * * * this factor is not dispositive."

The Acting Deputy Administrator finds that factors two and four, Respondent's experience in dispensing controlled substances and its compliance with applicable laws relating to controlled substances, are extremely relevant in determining the public interest in this matter. Under the Controlled Substances Act and its implementing regulations, pharmacists have a corresponding responsibility to ensure that controlled substances are prescribed and dispensed for a legitimate medical purpose. 21 CFR 1306.04(a). The Government contends that Respondent dispensed controlled substances to the undercover agents knowing that the drugs were not for a legitimate medical purpose. However, the Acting Deputy Administrator agrees with Judge Bittner's conclusion that, "[i]t is not clear from the record whether or not Mr. Hurd filled the prescriptions knowing that [the undercover agent] intended to use the drugs for no medical purposes." While the undercover agents' statements indicating a nonmedical purpose for the drugs are clearly reflected in the transcripts of the visits, Mr. Hurd's responses are unintelligible and Mr. Hurd testified that he did not hear the undercover agents make these statements. In addition, no testimony was elicited from either the undercover agent or the investigator who was monitoring the undercover visits as to what Mr. Hurd's responses were to the undercover agents' statements.

Judge Bittner does point out however, that on one occasion, the transcript indicates that Mr. Hurd asked the undercover agent when she was going to "party" with him, and therefore, Mr. Hurd was somewhat aware of the undercover agent's statements. Also at the hearing, Mr. Hurd testified that he dismissed the undercover agent's comment that "My doctor writes anything I want," because he was familiar with the prescribing doctor and felt that the doctor would not prescribe improperly. This testimony by Mr. Hurd indicates that he in fact heard the undercover agent's statement.

The Acting Deputy Administrator finds that the record does not clearly establish whether Respondent dispensed controlled substances to the undercover agent for no legitimate medical purpose. But, like Judge Bittner, the Acting Deputy Administrator concludes that "in light of the discussion below,* * * it [is] unnecessary to decide whether the record establishes that Mr. Hurd's filling of the prescriptions for Symone Williams would, standing alone, warrant revocation of Respondent's registration."

The Acting Deputy Administrator finds that the record is clear that Respondent has failed, at the very least, to comply with the recordkeeping requirements of both Federal and state law as evidenced by the violations revealed by the accountability audit. Respondent failed to maintain complete

and accurate records of controlled substances in violation of 21 U.S.C. 827 and 21 CFR 1304.21, as evidenced by the audit discrepancies. For less than a one year period of time, Respondent could not account for over 13,500 dosage units of controlled substances. Respondent did not actually offer any explanation for its failure to account for these drugs. Instead, Mr. Hurd seemed to suggest that the discrepancies were caused by the compounding over time of his estimates of Schedule III through V drugs on hand when conducting his yearly inventory. The Acting Deputy Administrator recognizes that it is permissible to estimate Schedule III through V controlled substances when-conducting controlled substance inventories. See 21 CFR 1304.11(e)(3). However, such estimations would not compound over time. Instead, for each inventory, Respondent would estimate what it had on hand on that date. It was Respondent's estimated inventory taken on February 26, 1993, that was used as the initial inventory for DEA's accountability audit. It is inconceivable that Respondent's estimations on that date were off by over 13,500 dosage units. Therefore, the Acting Deputy Administrator concludes that Respondent did not offer any plausible explanation whatsoever for the tremendous shortages revealed during the audit.

Respondent's failure to maintain 6 purchase invoices and 12 prescriptions is further evidence of its failure to maintain complete and accurate records of controlled substances as required by 21 U.S.C. 827. This failure to keep accurate records also violated the Texas Controlled Substances Act, title 6 Tex. Health & Safety Code §§ 13.6(d) & 13.64(b).

While the Acting Deputy Administrator has concluded that it is unnecessary to determine whether or not Respondent dispensed controlled substances to the undercover agents for no legitimate medical purpose, its dispensing of controlled substances pursuant to the prescriptions presented nonetheless violated 21 CFR 1306.05(a). This regulation imposes a "corresponding liability [on] the pharmacist who fills a prescription not prepared in the form prescribed by these regulations." Pursuant to 21 CFR 1306.05(a), a prescription must contain, among other things, the date of issuance and the address of the patient. The prescriptions filled for the undercover agents did not contain this information. Additionally, Respondent's filling of these prescriptions violated the Texas Controlled Substances Act, Title 6, Tex. Health & Safety Code § 481.074(k)(2) & (3).

Regarding factor three, as Judge Bittner found, "[t]here is no evidence that Mr. Hurd or any other officer or agent of Respondent has ever been convicted under State or Federal laws relating to controlled substances." As to factor five, the Acting Deputy Administrator agrees with Judge Bittner's assessment that the allegation that Respondent dispensed controlled substances without a prescription to the individual who overdosed is entitled to little weight. No corroborating evidence was presented to support the allegation.

Judge Bittner concluded that "Respondent offers little in the way of an explanation for the serious shortages in inventory and there is no suggestion in this record that Respondent is likely to be more responsible in the future." Consequently, Judge Bittner found that Respondent's continued registration would be inconsistent with the public interest, and therefore recommended that its registration be revoked. The Acting Deputy Administrator agrees with Judge Bittner. Respondent's failure to account for over 13,500 dosage units of controlled substances over an approximately one year period of time, is extremely troublesome. At the very least, the shortages indicate that respondent has failed miserably in complying with the requirement that it maintain complete and accurate records of its controlled substance handling. These requirements are in place in order to prevent and detect the diversion of these potentially dangerous substances. Respondent's failure to recognize the seriousness of the shortages, does not bode well for its future compliance with the laws and regulations relating to controlled substances. See Rocco's Pharmacy, 62 FR 3056 (1997). Therefore, the Acting Deputy Administrator concludes that Respondent's continued registration would be inconsistent with the public interest.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AT8866468, previously issued to Townwood Pharmacy, be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective March 23, 1998.

Dated: February 12, 1998.

Peter F. Gruden,

Acting Deputy Administrator.

[FR Doc. 98–4201 Filed 2–18–98; 8:45 am]

BILLING CODE 4401–09–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the Employment, Wages, and Contributions Report (ES–202 Program).

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before April 20, 1998.

The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Kairn G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, D.C. 20212. Ms. Kurz can be reached on 202–606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The ES–202 program, a Federal/State cooperative effort, produces monthly employment and quarterly wage information. It is a by-product of quarterly reports submitted to State Employment Security Agencies (SESAs) by employers subject to State Unemployment Insurance (UI) laws. The collection of these data is authorized by 29 U.S.C. 1, 2. The ES–202 data, which are compiled for each calendar quarter, provide a comprehensive business name and address file with employment and wage information for employers subject to State UI laws. Similar data for Federal Government employees covered by the Unemployment Compensation for Federal Employees program are also included. These data are submitted to the Bureau of Labor Statistics (BLS) by all 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. BLS summarizes these data to produce totals for all counties, Metropolitan Statistical Areas, the States, and the nation. The ES–202 program provides a virtual census of nonagricultural employees and their wages, with about 47 percent of the workers in agriculture covered as well.

The ES–202 program is a comprehensive and accurate source of data on the number of establishments, monthly employment, and quarterly wages, by industry, at the four-digit Standard Industrial Classification (SIC) level, and the national, State, Metropolitan Statistical Area, and county levels. The North American Industry Classification System (NAICS), which will replace the SIC coding system, is scheduled to be implemented in the ES–202 program with data for the first quarter of 2000. The ES–202 series has broad economic significance in measuring labor trends and major industry developments, in time series analyses and industry comparisons, and in special studies such as analyses of establishments, employment, and wages by size of establishment.

II. Current Actions

BLS is requesting a revision of the current Office of Management and Budget (OMB) approval of the Employment, Wages, and Contributions Report (ES–202 Program).

Type of Review: Revision.

Agency: Bureau of Labor Statistics.

Title: Employment, Wages, and Contributions Report (ES–202 Program).

OMB Number: 1220–0012.

Affected Public: State, Local, or Tribal Government.

Total Respondents: 53.

Frequency: Quarterly.

Total Responses: 212.

Average Time Per Response: 4,464 hours.

Estimated Total Burden Hours: 846,400 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, D.C., this 12th day of February, 1998.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 98–4194 Filed 2–18–98; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10213, et al.]

Proposed Exemptions; Bankers Trust Company

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete

statement of the facts and representations.

Bankers Trust Company (Bankers Trust) Located in New York, New York

[Application No. D–10213]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective February 16, 1996, to the: (1) lending of certain securities to BT Securities Corporation, Bankers Trust International PLC, and Bankers Trust (Australia) Limited, which are affiliates of Bankers Trust, (collectively; the Affiliated Borrowers), by certain employee benefit plans (including commingled investment funds holding plan assets) (the Client Plans), for which Bankers Trust and certain other affiliates (the BT Group) act as the directed trustee or custodian and securities lending agent or sub-agent; [1] and (2) receipt of compensation by the BT Group in connection with these transactions; provided that the following conditions are satisfied:

1. Neither the Affiliated Borrowers nor the BT Group has or exercises discretionary authority or control with respect to the investment of the assets of the Client Plans involved in the transaction (other than with respect to the investment of cash collateral after securities have been loaned and collateral received), or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, including decisions concerning a Client Plan's acquisition and disposition of securities available for loan.

2. Before a Client Plan participates in a securities lending program and before any loan of securities to the Affiliated Borrowers is affected, a Client Plan fiduciary who is independent of the BT Group and the Affiliated Borrowers must have:

(a) Authorized and approved a securities lending authorization agreement with the BT Group (the Lending Authorization), where the BT Group is acting as the securities lending agent;

(b) Authorized and approved the primary securities lending authorization agreement (the Primary Lending Agreement) with the primary lending agent, where BT Group is lending securities under a sub-agency arrangement with the primary lending agent [2];

(c) Approved the general terms of the securities loan agreement (the Loan Agreement) between such Client Plan and the Affiliated Borrowers, the specific terms of which are negotiated and entered into by BT Group.

3. The Client Plan may terminate the agency or sub-agency agreement at any time without penalty to such plan on five (5) business days notice, whereupon the Affiliated Borrowers shall deliver certificates for securities identical to the borrowed securities (or the equivalent in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the plan within (a) the customary delivery period for such securities, (b) five business days, or (c) the time negotiated for such delivery by the Client Plan and the Affiliated Borrowers, whichever is less.

4. The Client Plan will receive from the Affiliated Borrowers (either by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means) by the close of business on or before the day on which the loaned securities are delivered to the Affiliated Borrowers, collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or an irrevocable bank letter of credit issued by a U.S. bank, which is a person other than the Affiliated Borrowers or an affiliate thereof, or any combination thereof, or other collateral permitted under Prohibited Transaction Exemption (PTE) 81–6 (as amended from time to time or, alternatively, any additional or superceding class exemption that may be issued to cover securities lending by employee benefit plans), having, as of the close of business on the preceding business day, a market value (or, in the case of a letter of credit, a stated amount) initially equal to at least 102 percent of the market value of the loaned securities.

If the market value of the collateral on the close of trading on a business day is less than 100 percent of the market value of the borrowed securities at the close of business on that day, the Affiliated Borrowers will deliver additional collateral on the following day such that the market value of the collateral in the aggregate will again equal 102 percent. The Loan Agreement will give the Client Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral. The BT Group will monitor the level of the collateral daily.

5. When the BT Group lends securities to the Affiliated Borrowers, the following conditions must be met:

(a) The collateral will be maintained in U.S. dollars, U.S. dollar-denominated securities or letters of credit of U.S. Banks;

(b) all collateral will be held in the United States;

(c) the situs of the loan agreement will be maintained in the United States; (d) the lending Client Plans will be indemnified by Bankers Trust in the United States for any transactions covered by this exemption with the foreign Affiliated Borrowers so that the Client Plans will not have to litigate in a foreign jurisdiction nor sue the foreign Affiliated Borrowers to realize on the indemnification; (e) prior to the transaction, the foreign Affiliated Borrowers will enter into a written agreement with the Client Plan whereby the Affiliated Borrowers consent to the service of process in the United States and to the jurisdiction of the courts of the United States with respect to the transactions described herein; and (f)(1) Bankers Trust International PLC is a deposit taking institution supervised by the Bank of England; and (2) Bankers Trust (Australia) Limited is a merchant bank which is under the jurisdiction of the Federal Reserve Bank of Australia.

6. Before entering into the Loan Agreement and before a Client Plan lends any securities to the Affiliated Borrowers, the Affiliated Borrowers shall have furnished the following items to the Client Plan fiduciary: (a) the most recent available audited and unaudited statement of the Affiliated Borrowers' financial condition, (b) at the time of the loan, the Affiliated Borrowers must give prompt notice to the Client Plan fiduciary of any material adverse changes in the Affiliated Borrowers' financial condition since the date of the

[1] The applicant represents that because Bankers Trust may add new affiliates, the entities comprising the BT Group may change. However, the Affiliated Borrowers will always be BT Securities Corporation, Bankers Trust International PLC and Bankers Trust (Australia) Limited for purposes of this exemption, if granted.

[2] When the BT Group acts as sub-agent, rather than the primary lending agent, the primary lending agent is receiving no section 406(b) of the Act relief herein. In such situations, the primary lending agent may be provided relief by Prohibited Transaction Class Exemption (PTE) 81–6 and PTE 82–63. PTE 81–6 was published at 46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987, and PTE 82–63 was published at 47 FR 14804, April 6, 1982.

most recently financial statement furnished to the Client Plan, and (c) in the event of any such changes, the BT Group will request approval of the Client Plan to continue lending to the Affiliated Borrowers before making any such additional loans. No such new loans will be made until approval is received. Each loan shall constitute a representation by the Affiliated Borrower that there has been no such material adverse change.

7. The Client Plan: (a) Receives a reasonable fee that is related to the value of the borrowed securities and the duration of the loan, or (b) has the opportunity to derive compensation through the investment of cash collateral. In the case of cash collateral, the Client Plan may pay a loan rebate or similar fee to the Affiliated Borrower, if such fee is not greater than the fee Client Plan would pay an unrelated party in an arm's length transaction.

8. All procedures regarding the securities lending activities will at a minimum conform to the applicable provisions of Prohibited Transaction Exemptions (PTEs) 81–6 and 82–63.

9. In the event Bankers Trust International PLC and/or Bankers Trust (Australia) Limited default on a loan, Bankers Trust will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, Bankers Trust will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to properly indemnify under this provision). Alternatively, if such identical securities are not available on the market, Bankers Trust will pay the Client Plan cash equal to the market value of the borrowed securities as of the date they should have been returned to the Client Plan plus all the accrued financial benefits derived from the beneficial ownership of such loaned securities. The lending Client Plans will be indemnified by Bankers Trust in the United States for any loans to the foreign Affiliated Borrowers.

10. In the event BT Securities Corporation, a U.S. registered broker-dealer, defaults on a loan, Bankers Trust will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, BT Securities Corporation will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to properly indemnify under this provision).

11. If the Affiliated Borrowers' default on the securities loan or enter bankruptcy, the collateral will not be available to the Affiliated Borrowers or their creditors, but is used to make the Client Plan whole.

12. The Client Plans will be entitled to the equivalent of all distributions made to holders of the borrowed securities, including all interest, dividends and distributions on the loaned securities during the loan period.

13. Only Client Plans with total assets having an aggregate market value of at least $50 million will be permitted to lend securities to the Affiliated Borrowers.

14. For purposes of this proposed exemption, the Affiliated Borrowers will consist only of BT Securities Corporation, Bankers Trust International PLC and Bankers Trust (Australia) Limited.

15. In any calendar quarter, on average 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of the Client Plans by the BT Group in the aggregate will be to borrowers who are not affiliated with the BT Group.

16. The terms of each loan of securities by the Client Plans to any of the Affiliated Borrowers will be at market rates and at terms as favorable to such plans as if made at the same time and under the same circumstances to an unaffiliated party.

17. Each Client Plan will receive a monthly transaction report, including but not limited to the information described in paragraph 24 of the summary of facts and representations below, so that the independent fiduciary of such plan may monitor the securities lending transactions with the Affiliated Borrowers.

18. During the notification of interested persons period, all current Client Plans will receive a copy of the notice of pendency. If the Department grants the final exemption, current Client Plans will receive a copy of the final exemption. Also, Bankers Trust is prepared to provide a copy of the final exemption to any new Client Plans.

19. Bankers Trust or the Affiliated Borrowers maintain or cause to be maintained within the United States for a period of six years from the date of such transaction such records as are necessary to enable the persons described in paragraph (20) below to determine whether the conditions of this exemption have been met; except that a party in interest with respect to an employee benefit plan, other than Bankers Trust or the Affiliated Borrowers, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975 (a) or (b) of the Code, if such records are not maintained, or are not available for examination as required by this section, and a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of Bankers Trust or the Affiliated Borrowers, such records are lost or destroyed prior to the end of such six year period.

(20)(i) Except as provided in subparagraph (ii) of this paragraph (20) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (19) are unconditionally available at their customary location for examination during normal business hours by—

(a) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission,

(b) Any fiduciary of a Client Plan or any duly authorized representative of such fiduciary,

(c) Any contributing employer to any Client Plan, or any duly authorized employee or representative of such employer, and

(d) Any participant or beneficiary of any Client Plan, or any duly authorized representative of such participant or beneficiary.

(ii) None of the persons described in subparagraphs (b)–(d) of this paragraph (20) shall be authorized to examine trade secrets of Bankers Trust or the Affiliated Borrowers, or commercial or financial information which is privileged or confidential.

EFFECTIVE DATE: If granted this exemption will be effective as of February 16, 1996.

Summary of Facts and Representations

1. Bankers Trust is a New York banking corporation and a leading commercial bank. Bankers Trust is wholly owned by Bankers Trust New York Corporation (BTNY), a bank holding company established in 1965 under the laws of the State of New York. As of December 31, 1995, BTNY and its affiliates had consolidated assets of $104,002,000,000 and total stockholders equity of $4,984,000,000.

The BT Group consists of Bankers Trust and certain of its affiliates who act as a directed trustee, custodian and securities lending agent or sub-agent for clients. The BT Group engages in securities lending activities for its own accounts and as an agent for Bankers

Trust Company of California and for Bankers Trust Company of the Southwest. The BT Group also provides a wide range of banking, fiduciary, recordkeeping, custodial, brokerage and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans and private investors.

2. The Affiliated Borrowers consist of BT Securities Corporation, Bankers Trust International PLC and Bankers Trust (Australia) Limited. The exemption, if granted, will be limited to these three entities as the Affiliated Borrowers. BT Securities Corporation is a U.S. broker-dealer affiliated with Bankers Trust with $834 million in capital as of December 31, 1995. BT Securities Corporation is registered under the 1934 Act and its activities are under the jurisdiction of the Federal Reserve Board, the Securities and Exchange Commission and the National Association of Securities Dealers.

Bankers Trust International PLC is a wholly owned subsidiary of Bankers Trust established under English law and located in England. Bankers Trust International PLC is a deposit taking institution supervised by the Bank of England.

Bankers Trust (Australia) Limited is a merchant bank which conducts commercial banking business in Australia and is under the jurisdiction of the Federal Reserve Bank of Australia. Bankers Trust (Australia) Limited is an indirect subsidiary of Bankers Trust.

3. The Affiliated Borrowers will borrow securities from institutions to satisfy their own needs, or they may re-lend these securities to brokerage firms and other entities which need a particular security for a certain period of time. Bankers Trust requests an exemption for the lending of securities owned by the Client Plans, for which the BT Group serves as the directed trustee or custodian and securities lending agent or sub-agent,[3] to the Affiliated Borrowers, following disclosure of its affiliation with the Affiliated Borrowers to the Independent Fiduciaries of the Client Plans, and for the receipt of compensation by the BT Group in connection with such transactions.

Because the BT Group, under the securities lending program, would have discretion to lend plan securities to the Affiliated Borrowers, and because the Affiliated Borrowers are affiliates of the BT Group, the lending of securities to the Affiliated Borrowers by the Client Plans for which the BT Group serves as directed trustee or custodian and securities lending agent (or sub-agent) may be outside the scope of relief provided by Prohibited Transaction Exemption (PTE) 81–6 and PTE 82–63.[4]

Several safeguards, described more fully below, are incorporated into the application to ensure the protection of the Client Plans' assets involved in the transactions. In addition, the applicants represent that the lending program described herein incorporates the relevant conditions contained in PTE 81–6 and PTE 82–63.

4. BT Securities Corporation, a U.S. registered broker-dealer, will comply with Federal Reserve Board's Regulation T in its securities lending activities. Pursuant to Regulation T, permitted borrowing purposes include making delivery of securities in the case of short sales, failures of a broker to receive securities it is required to deliver or similar situations.

The Client Plans will also lend securities to the foreign Affiliated Borrowers (Foreign Lending) which are Bankers Trust International PLC and Bankers Trust (Australia) Limited. The applicant represents that Foreign Lending will not expose the Client Plans to greater risk. In Foreign Lending, Bankers Trust will comply with the following safeguards: (a) The collateral will be maintained in U.S. dollars, U.S. dollar-denominated securities or letters of credit of U.S. Banks; (b) all collateral will be held in the United States;[5] (c) the situs of the loan agreement will be maintained in the United States; (d) Bankers Trust will indemnify the lending Client Plans in the United States for any loans to the foreign Affiliated Borrowers so that the Client Plans will not have to litigate in a foreign jurisdiction nor sue the foreign Affiliated Borrowers to realize on the indemnification; (e) prior to the transaction, the foreign Affiliated Borrowers enter into a written agreement with the Client Plan whereby the Affiliated Borrowers consent to the jurisdiction of the courts of the United States with respect to the transactions described herein; and (f)(1) Bankers Trust International PLC is a deposit taking institution supervised by the Bank of England; and (2) Bankers Trust (Australia) Limited is a merchant bank which is under the jurisdiction of the Federal Reserve Bank of Australia.

5. Where the BT Group acts as a securities lending agent for the Client Plans its essential functions are identifying appropriate borrowers of securities and negotiating the terms of the loans to these borrowers. As a securities lending agent for the Client Plans, the BT Group also provides ancillary services such as monitoring the level of collateral and the value of the loaned securities and, when directed by a Client Plan, investing the cash collateral received with respect to such loans. To protect the Client Plans' assets in these transactions, the BT Group's procedures for lending securities comply with the applicable conditions of PTE 81–6 and PTE 82–63 (including with respect to any commingled funds that may participate in the securities lending program).

6. Under the BT Group's lending program, when a loan is collateralized with cash, the BT Group will transfer such cash to a trust or other investment vehicle selected by the Client Plan in

[3] For the sake of simplicity, future references to the BT Group's performance of services as securities lending agent should be deemed to include its parallel performance as securities lending sub-agent and references to the Client Plans should be deemed to refer to plans for which the BT Group is acting as sub-agent with respect to securities lending activities, unless otherwise indicated specifically or by the context of the reference.

[4] PTE 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties in interest.

Condition 1 of PTE 81–6 requires, in part, that neither the borrower nor an affiliate of the borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction.

PTE 82–63 (47 FR 14804, April 6, 1982) provides an exemption under specified conditions from section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities. PTE 82–63 permits the payment of compensation to a plan fiduciary for the provision of securities lending services only if the loan of securities itself is not prohibited under section 406(a) of the Act.

[5] Under U.K. law, the securities lending agreement between Bankers Trust and Bankers Trust International PLC provides, among other things, that all rights, title and interest in the loaned securities passes to the borrower, and all rights, title and interest in the collateral passes to the lending Client Plan.

The Australian securities lending agreement contains, among other things, the following provisions. Specifically, clause 3.4 of such agreement states: "Property in and title to the securities delivered under clause 3.1, passes absolutely to the borrower free from all liens and encumbrances, and the borrower is not obligated to re-deliver the same securities to the lender." Clause 3.5 of this agreement states: "Property in and title to all the collateral delivered under clause 3.2, passes absolutely to the lender free from all liens and encumbrances, and the lender is not obligated under the loan to re-deliver the same cash, bonds or securities to the borrower (all or part) of the collateral." However, as a condition of this exemption if granted, and by agreement of the parties, the Client Plans will be entitled to the equivalent of all interest, dividends and distributions on the loaned securities during the loan period.

advance.[6] The BT Group will rebate a portion of the earnings on the cash collateral to the Affiliated Borrowers as agreed to in the loan agreement between the BT Group and the Affiliated Borrowers (the Loan Agreement). The applicant represents that through its authorization of the lending program, the independent fiduciary of the Client Plan will approve the terms of the Loan Agreement. The Affiliated Borrowers will pay a fee to the Client Plans based on the value of the loaned securities where the collateral consists of obligations other than cash.

The fee arrangements between the Client Plan and the BT Group with respect to the securities lending program are approved in advance by the independent fiduciary of the Client Plan. This fee is calculated as a percentage of the income earned on the investment of the cash collateral, and will compensate the BT Group for providing lending services to the Client Plans. This fee will reduce the income earned by the Client Plans from the lending of the securities.

7. Where BT Group is the securities lending agent, an independent fiduciary of the Client Plan who is independent of the BT Group and the Affiliated Borrowers, will authorize securities lending (the Lending Authorization) before the Client Plan participates in the BT Group's securities lending program. The Lending Authorization will include the authorization to lend securities, including lending to the Affiliated Borrowers, investment direction by the Client Plans of cash collateral, and fee arrangements. The Lending Authorization and the enclosed additional explanatory materials will describe, among other things, the operation of the securities lending program and allow the BT Group to lend securities held by the Client Plan to borrowers, including the Affiliated Borrowers, as selected by the BT Group, subject to any specific restrictions imposed by the Client Plan. The Lending Authorization and the explanatory materials also describe the securities available for lending, minimum required margin, daily marking to market procedures, a list of the affiliates who are permissible borrowers under the securities lending program, and the basis of the BT Group's compensation for performing the securities lending services.

8. The Lending Authorization and the explanatory materials will provide that if one of the Affiliated Borrower's is an approved borrower, the BT Group, as agent of the Client Plan, will represent to the Client Plan that each loan made to its affiliate on behalf of the Client Plan will be at market rates and at terms as favorable to the Client Plan as if made at the same time and under the same circumstances, to an unaffiliated borrower.

9. The Lending Authorization will set forth a fee arrangement agreed upon by the Client Plan and the BT Group, whereby the BT Group will be compensated for its services as the lending agent prior to the commencement of any lending activity. The Client Plan will be provided with any reasonably available information necessary for the independent fiduciary of the Client Plan to determine whether to enter into, or continue to participate under the Lending Authorization (or the Primary Lending Agreement) and other reasonably available information which the independent fiduciary may reasonably request. A Client Plan may terminate either the Lending Authorization or the Primary Lending Agreement at any time, without penalty, on five business days notice.

10. Where the BT Group is the securities lending agent, the BT Group will enter into the Loan Agreement with the Affiliated Borrower on behalf of the Client Plans. The form of the Loan Agreement will be substantially similar to loan agreements negotiated with other similarly situated borrowers.[7] The form of the Loan Agreement will also be the industry or the market standard for loans to the borrowers in the country (U.S., U.K. and Australia) where the borrower is domiciled. It will describe the lenders's rights against the borrower in the country of the borrower's domicile (U.S., U.K., and Australia), and represent that these rights will be equivalent to those under U.S. law. The independent fiduciary for each Client Plan will approve the terms of the Loan Agreement through its authorization of the lending program, and such fiduciary will be provided a copy of the applicable Loan Agreement from the BT Group upon request. The Loan Agreement will specify, among other things, the right of the BT Group as the lending agent on behalf of the Client Plan to terminate a loan at any time on not more than five business days notice, and the lending agent's rights in the event of any default by the borrower. The Loan Agreement will also require that the Affiliated Borrowers pay all transfer fees and transfer taxes related to the security loans. The Loan Agreement will describe the basis for compensation to the Client Plan for lending securities to the Affiliated Borrowers under each category of collateral.

11. The BT group may also be retained by independent primary securities lending agents to render securities lending services in a sub-agent capacity. Under these circumstances, the primary lending agent, an entity independent of the BT Group and the Affiliated Borrower, will enter into a securities lending agency agreement (the Primary Lending Agreement) with an independent fiduciary of the Client Plan who is independent of the primary lending agent, the BT Group and the Affiliated Borrowers, before the Client Plan participates in the securities lending program. The BT Group will not enter into a sub-agent arrangement unless the Primary Lending Agreement contains provisions which correspond to those in the Loan Agreement where the BT Group is the primary securities lending agent, including a description of the lending program's operation, the use of an approved form of the loan agreement, the specification of securities which are available to be lent, the required margin and daily marking to market, and a list of the approved borrowers (including the Affiliated Borrowers). The Primary Lending Agreement will authorize the primary lending agent to appoint sub-agents in order to facilitate its performance of securities lending agency functions.

The Primary Lending Agreement will expressly disclose where the BT Group will be acting as the securities lending sub-agent. The Primary Lending Agreement will also set forth the basis and rate for the primary lending agent's compensation from the Client Plan for performing securities lending services, and will authorize the primary lending agent to pay a portion of its fee, as

[6] When the Client Plan approves securities lending, it is required to designate a short-term investment fund for the investment of cash collateral it receives in connection with the loaned securities. For example, when the Client Plan selects BT Pyramid Funds, which are bank collective funds under IRS Revenue Ruling 81–100, as a vehicle for investment of cash collateral, the fees for investment management are embedded in that fund. However, the applicant represents that selecting a vehicle managed by Bankers Trust is strictly optional and within the total discretion of the Client Plan. Alternatively, the independent fiduciary of the Client Plan may select his own manager, an unrelated mutual or collective fund, or another vehicle of his choice. The selected investment vehicle must be acceptable to Bankers Trust. Bankers Trust neither selects the collateral investment vehicle, nor has any authority or responsibility to do so.

[7] The form of the Loan Agreement between a securities lending agent and a foreign Affiliated Borrower differs from the standard U.S. loan agreement. Under the U.K. and Australian Loan Agreements, the Client Plan receives title to (rather than a pledge of, or a security interest in) the collateral.

Furthermore, the Loan Agreement with the Client plans will include specific indemnification provisions as described herein.

determined by the primary lending agent in its sole discretion, to any sub-agent(s) it retains pursuant to the authority granted under such Primary Lending Agreement.[8]

Pursuant to its authority to appoint sub-agents, the primary lending agent will enter into a securities lending sub-agency agreement (the Sub-Agency Agreement) with the BT Group, under which the primary lending agent will retain and authorize the BT Group, as the sub-agent, to lend securities of the primary lending agent's Client Plans, subject to the same terms and conditions of the Primary Lending Agreement. Thus, the form of the Loan Agreement will be the same as that approved by the independent fiduciary in the Primary Lending Agreement, and the list of permissible borrowers under the Sub-Agency Agreement (including the Affiliated Borrowers), will be limited to those approved borrowers listed as such under the Primary Lending Agreement. The Sub-Agency Agreement will also contain provisions comparable to those in a Loan Agreement where the BT Group is the primary lending agent. The Sub-Agency Agreement will provide that the BT Group comply with the same standard regarding arms-length dealing with the Affiliated Borrowers, as when the BT Group is the primary lending agent. The Sub-Agency Agreement will also set forth the basis and the rate for the BT Group's compensation to be paid by the primary lending agent.

12. In all cases, the BT Group will maintain transactional and market records sufficient to assure compliance with its representations that all loans to the Affiliated Borrowers are at arm's-length terms. Information will be provided to the independent fiduciary of the Client Plan in the manner and format agreed to with the lending agent, without charge to the Client Plan.

13. Before entering into the Loan Agreement, the Affiliated Borrowers will furnish its most recent available audited and unaudited financial statements to the Client Plan Fiduciary, and each Client Plan will be advised in the Lending Authorization that it will be provided copies of such statements upon request, and before the Client Plan is asked to authorize such lending. The Loan Agreement will contain a requirement that the Affiliated Borrowers must give prompt notice at the time of the loan, of any material adverse changes in their financial condition since the date of the most recently furnished financial statements. In the event of any such changes, the BT Group will request approval of the Client Plan to continue lending to the Affiliated Borrowers before making any such additional loans. No such new loans will be made until approval is received. Each loan shall constitute a representation by the Affiliated Borrower that there has been no such material adverse change.

14. Each time that a Client Plan loans securities to the Affiliated Borrower pursuant to the Loan Agreement, the BT Group will reflect in its records the material terms of the loan, including the securities loaned, the required level of the collateral, and the fee or rebate payable. The terms of each loan will be at least as favorable to the Client Plan as those of a comparable arm's-length transaction between unrelated parties.

15. The Loan Agreement will provide that the lending agent may terminate any loan at any time. Upon a termination, the Affiliated Borrowers will be contractually obligated to return the loaned securities to the lending agent within the lesser of: (a) The customary delivery period for such securities; (b) five business days of notification (or such longer period of time permitted pursuant to a class exemption); or (c) the time negotiated for such delivery by the lending agent and the borrower. If the Affiliated Borrowers fail to return the securities within the designated time, the lending agent will have the right under the Loan Agreement to purchase securities identical to the borrowed securities, and apply the collateral to the payment of the purchase price and any other costs and expenses reasonably incurred as a result of such sale and/or purchase.

16. Further, the Client Plans will be indemnified by Bankers Trust or BT Securities Corporation in the event the Affiliated Borrowers fail to return the borrowed securities. In the event Bankers Trust International PLC and/or Bankers Trust (Australia) Limited default on a loan Bankers Trust will liquidate the loan collateral to purchase identical securities for the Client Plan. In the event the collateral is insufficient to accomplish such purchase, Bankers Trust will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to properly indemnify under this provision). Alternatively, if such identical securities are not available on the market, Bankers Trust will pay the Client Plan cash equal to the market value of the borrowed securities as of the date they should have been returned to the Client Plan plus all the accrued financial benefits derived from the beneficial ownership of such loaned securities. The lending Client Plans will be indemnified by Bankers Trust in the United States for any loans to the foreign Affiliated Borrowers.

When the Affiliated Borrower is BT Securities Corporation, a U.S. registered broker-dealer, BT Securities Corporation will indemnify the Client Plan against losses.[9] Bankers Trust will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, BT Securities Corporation will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to properly indemnify under this provision).

17. The BT Group will establish each day a written schedule of lending fees and rebate rates in order to assure uniformity of treatment among borrowing brokers and to limit the discretion the BT Group would have in negotiating securities loans to the Affiliated Borrowers. Loans to the Affiliated Borrowers on any day will be made at rates on the daily schedule or at rates which may be more advantageous to the Client Plans. In no case will loans be made to the Affiliated Borrowers at rates below those on the schedule. The rebate rates which are established with respect to cash-collateralized loans, will take into account the potential demand for loaned securities, the applicable bench-mark cost of funds indices (typically, Federal Funds, overnight repo rate or the like) and anticipated investment return on investments of cash collateral. The lending fees (in respect of loans made by Client Plans collateralized by other than cash) which are established will be set daily to reflect conditions as influenced by potential market demand.

18. BT Group will adopt maximum daily rebate rates for cash collateral payable to the Affiliated Borrowers on behalf of a lending Client Plan. Separate

[8] The foregoing provisions describe arrangements comparable to conditions (c) and (d) of PTE 82-63 which require that the payment of compensation to a "lending fiduciary" is made under a written instrument and is subject to prior written authorization of an independent "authorizing fiduciary." In the event that a commingled investment fund will participate in the securities lending program, the special rule applicable to such funds concerning the authorization of the compensation arrangement set forth in paragraph (f) of PTE 82-63 will be satisfied.

[9] It is represented that under applicable banking laws BT Securities Corporation may not be indemnified by Bankers Trust.

maximum daily rebate rates will be established with respect to loans of designated classes of securities such as U.S. government securities, U.S. equities and corporate bonds, international fixed income securities, and international equities. The BT Group will submit the terms for determining the maximum daily rebate rates to an independent fiduciary of the Client Plan for approval before lending any securities to the Affiliated Borrowers on behalf of such plan. With respect to each designated class of securities, the maximum daily rebate rate will generally be the lower of: (i) The overnight repo rate or Federal Funds rate, minus a stated percentage, and (ii) the actual investment rate for the relevant cash collateral, minus a stated percentage. Thus, when cash is used as collateral, the daily rebate rate should always be lower than the rate of return to the Client Plans from authorized investments of cash collateral.

19. BT Group will also adopt minimum daily lending fees for non-cash collateral payable by the Affiliated Borrowers to the BT Group on behalf of the Client Plan. Separate minimum daily lending fees will be established with respect to loans of designated classes of securities, such as U.S. government securities, U.S. equities and corporate bonds, international fixed income securities, and international equities. The BT Group will submit the terms for determining such fees to an independent fiduciary of the Client Plan for approval before lending securities to the Affiliated Borrowers on behalf of such plan. With respect to each designated class of securities, the minimum lending fee will be a percentage of the principal value of the loaned securities.

20. For collateral other than cash, the lending fees charged the previous day will be reviewed by the BT Group for competitiveness. Because 50 percent (50%) or more of securities loans by Client Plans will be to unrelated parties, regardless of the type of collateral used to secure the loans, the competitiveness of the BT Group's fee schedule will be continuously tested in the marketplace. Accordingly, loans to the Affiliated Borrowers should result in a competitive rate of income to the lending Client Plans. At all times, the BT Group will effect loans in a prudent and diversified manner.

21. Should the BT Group recognize prior to the end of a business day that, with respect to new and/or existing loans, it must change the rebate rate or lending fee formula in the best interest of Client Plans, it may do so with respect to the Affiliated Borrowers.

If the BT Group reduces the lending fee or increases the rebate rate on any outstanding loan to the Affiliated Borrower (except for any change resulting from a change in the value of any third party independent index with respect to which the fee or rebate is calculated), the BT Group, by the close of business on the date of such adjustment, shall provide to the independent fiduciary of the Client Plan with notice that it has reduced such fee or increased the rebate rate to such Affiliated Borrower and that the Client Plan may terminate such loan at any time. The BT Group shall provide the independent fiduciary with such information as the independent fiduciary may reasonably request regarding the adjustment.

22. BT Group will usually lend securities to requesting borrowers on a "first come, first served" basis, as a means of assuring uniformity of treatment among borrowers. However, in some instances, the borrower's credit limit may be reached, and the first in line borrower will not be approved as a borrower by the Client Plan. In other instances, there may be more than one prospective borrower that seeks to borrow a particular security at approximately the same time. In these situations, the BT Group will either lend to the next in line approved borrower, or allocate the loan equitably among competing borrowers, as applicable.

23. The Client Plan will receive collateral from the Affiliated Borrowers by physical delivery, book entry in a securities depository, wire transfer or similar means, by the close of business on or before the day the loaned securities are delivered to the Affiliated Borrowers. The collateral will consist of cash, securities issued or guaranteed by the U.S. Government or its agencies or irrevocable bank letters of credit issued by a U.S. bank, which is a person other than the Affiliated Borrowers or an affiliate thereof. The market value of the collateral on the close of business on the day of, or the business day preceding the day of the loan, will be at least 102 percent of the market value of the loaned securities. The Loan Agreement involving BT Securities Corporation will give the Client Plan a continuing security interest in and a lien on the collateral or the equivalent under local law. However, under the U.K. and Australian Loan Agreements, the Client Plan receives title to (rather than a pledge of, or security interest in) the collateral from Bankers Trust International PLC and Bankers Trust (Australia) Limited. The BT Group will monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent (or such greater percentage as agreed to by the parties) of the loaned securities, the BT Group will require the Affiliated Borrowers to deliver by the close of business the next business day sufficient additional collateral to bring the level back to at least 102 percent.

Bankers Trust represents that in the event of the Affiliated Borrowers' default or bankruptcy, the collateral is used to make the Client Plan whole, and is not available to the Affiliated Borrowers or their creditors. The collateral is held for the benefit of the Client Plan and is not available to the Affiliated Borrowers until the securities loan is terminated, and the loaned securities plus any income thereon are returned to the Client Plan. When the Client Plans lend securities to foreign Affiliated Borrowers, collateral will be maintained pursuant to the relevant conditions contained in paragraph 4 above.

24. Each Client Plan participating in the lending program will be sent a monthly [10] transaction report. This monthly report will provide a list of all securities loans outstanding and closed for a specified period. The report will identify for each open loan position, the securities involved, the value of the securities for collateralization purposes, the current value of the collateral, the rebate or the loan fee at which the securities are loaned, and the number of days the securities have been on loan.

In order to provide the means for monitoring lending activity, rates on loans to the Affiliated Borrowers compared with loans to other borrowers, and the level of collateral on the loans, it is represented that the monthly report will show, on a daily basis, the market value of all outstanding security loans to the Affiliated Borrowers and to other borrowers. Further, the BT Group will advise the Client Plans that upon request, the monthly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. The monthly report also will state, on a daily basis, the rates at which securities are loaned to the Affiliated Borrowers and those at which securities are loaned to other borrowers.

25. Only Client Plans with total assets having an aggregate market value of at least $50 million will be permitted to lend securities to the Affiliated Borrowers. This restriction is intended

[10] More frequent reports will be made available at the Client Plan's request.

to assure that any lending to the Affiliated Borrowers will be monitored by an independent fiduciary who is experienced and sophisticated in matters of this kind.

26. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

A. Neither the Affiliated Borrowers nor the BT Group has or exercises discretionary authority or control with respect to the investment of the assets of the Client Plans involved in the transaction (other than with respect to the investment of cash collateral after securities have been loaned and collateral received), or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, including decisions concerning a Client Plan's acquisition and disposition of securities available for loan.

B. Before a Client Plan participates in a securities lending program and before any loan of securities to the Affiliated Borrowers is affected, a Client Plan fiduciary who is independent of the BT Group and the Affiliated Borrowers must have:

(1) Authorized and approved the Lending Authorization with the BT Group, where the BT Group is acting as the securities lending agent;

(2) Authorized and approved the Primary Lending Agreement with the primary lending agent, where BT Group is lending securities under a sub-agency arrangement with the primary lending agent; [11]

(3) Approved the general terms of the Loan Agreement between such Client Plan and the Affiliated Borrowers, the specific terms of which are negotiated and entered into by BT Group.

C. The Client Plan may terminate the agency or sub-agency agreement at any time without penalty to such plan on five (5) business days notice, whereupon the Affiliated Borrowers shall deliver certificates for securities identical to the borrowed securities (or the equivalent in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the plan within (1) the customary delivery period for such securities, (2) five business days, or (3) the time negotiated for such delivery by the Client Plan and the Affiliated Borrowers, whichever is less.

D. The Client Plan will receive from the Affiliated Borrowers (either by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means) by the close of business on or before the day on which the loaned securities are delivered to the Affiliated Borrowers, collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or an irrevocable bank letter of credit issued by a U.S. bank, which is a person other than the Affiliated Borrowers or an affiliate thereof, or any combination thereof, or other collateral permitted under Prohibited Transaction Exemption (PTE) 81–6 (as amended from time to time or, alternatively, any additional or superceding class exemption that may be issued to cover securities lending by employee benefit plans), having, as of the close of business on the preceding business day, a market value (or, in the case of a letter of credit, a stated amount) initially equal to at least 102 percent of the market value of the loaned securities.

If the market value of the collateral on the close of trading on a business day is less than 100 percent of the market value of the borrowed securities at the close of business on that day, the Affiliated Borrowers will deliver additional collateral on the following day such that the market value of the collateral in the aggregate will again equal 102 percent. The Loan Agreement will give the Client Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral. The BT Group will monitor the level of the collateral daily.

E. When the BT Group lends securities to the Affiliated Borrowers, the following conditions must be met: (1) The collateral will be maintained in U.S. dollars, U.S. dollar-denominated securities or letters of credit of U.S. Banks; (2) all collateral will be held in the United States; (3) the situs of the loan agreement will be maintained in the United States; (4) the lending Client Plans will be indemnified by Bankers Trust in the United States for any transactions covered by this exemption with the foreign Affiliated Borrowers so that the Client Plans will not have to litigate in a foreign jurisdiction nor sue the foreign Affiliated Borrowers to realize on the indemnification; (5) prior to the transaction, the foreign Affiliated Borrowers will enter into a written agreement with the Client Plan whereby the Affiliated Borrowers consent to the service of process in the United States and to the jurisdiction of the courts of the United States with respect to the transactions described herein; and (6)(a) Bankers Trust International PLC is a deposit taking institution supervised by the Bank of England; and (b) Bankers Trust (Australia) Limited is a merchant bank which is under the jurisdiction of the Federal Reserve Bank of Australia.

F. Before entering into the Loan Agreement and before a Client Plan lends any securities to an Affiliated Borrower, the Affiliated Borrower shall have furnished the following items to the Client Plan fiduciary: (1) The most recent available audited and unaudited statement of the Affiliated Borrowers' financial condition, (2) at the time of the loan, the Affiliated Borrowers must give prompt notice to the Client Plan fiduciary of any material adverse changes in the Affiliated Borrowers' financial condition since the date of the most recently financial statement furnished to the Client Plan, and (3) in the event of any such changes, the BT Group will request approval of the Client Plan to continue lending to the Affiliated Borrowers before making any such additional loans. No such new loans will be made until approval is received. Each loan shall constitute a representation by the Affiliated Borrower that there has been no such material adverse change.

G. The Client Plan: (1) Receives a reasonable fee that is related to the value of the borrowed securities and the duration of the loan, or (2) has the opportunity to derive compensation through the investment of cash collateral. In the case of cash collateral, the Client Plan may pay a loan rebate or similar fee to the Affiliated Borrower, if such fee is not greater than the fee Client Plan would pay an unrelated party in an arm's length transaction.

H. All procedures regarding the securities lending activities will at a minimum conform to the applicable provisions of Prohibited Transaction Exemptions (PTEs) 81–6 and 82–63.

I. In the event Bankers Trust International PLC and/or Bankers Trust (Australia) Limited default on a loan, Bankers Trust will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, Bankers Trust will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to properly indemnify under this provision). Alternatively, if such identical securities are not available on the market, Bankers Trust will pay the Client Plan cash equal to the market value of the borrowed securities as of the date they should have been returned to the Client Plan plus all the accrued

[11] See Footnote 2, *supra*.

financial benefits derived from the beneficial ownership of such loaned securities. The lending Client Plans will be indemnified by Bankers Trust in the United States for any loans to the foreign Affiliated Borrowers.

J. In the event BT Securities Corporation, a U.S. registered broker-dealer, defaults on a loan, Bankers Trust will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, BT Securities Corporation will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to properly indemnify under this provision).

K. If the Affiliated Borrowers' default on the securities loan or enter bankruptcy, the collateral will not be available to the Affiliated Borrowers or their creditors, but is used to make the Client Plan whole.

L. The Client Plans will be entitled to the equivalent of all distributions made to the holders of the borrowed securities, including all interest, dividends and distributions on the loaned securities during the loan period.

M. Only Client Plans with total assets having an aggregate market value of at least $50 million will be permitted to lend securities to the Affiliated Borrowers.

N. For purposes of this proposed exemption, the Affiliated Borrowers will consist only of BT Securities Corporation, Bankers Trust International PLC and Bankers Trust (Australia) Limited.

O. In any calendar quarter, on average 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of the Client Plans by the BT Group in the aggregate will be to borrowers who are not affiliated with the BT Group.

P. The terms of each loan of securities by the Client Plans to any of the Affiliated Borrowers will be at market rates and at terms as favorable to such plans as if made at the same time and under the same circumstances to an unaffiliated party.

Q. Each Client Plan will receive monthly transaction report, including but not limited to the information described in paragraph 24 of the summary of facts and representations above, so that the independent fiduciary of such plan may monitor the securities lending transactions with the Affiliated Borrowers.

R. During the notification of interested persons period, all current Client Plans will receive a copy of the notice of pendency. If the Department grants the final exemption, current Client Plans will receive a copy of the final exemption. Also, Bankers Trust is prepared to provide a copy of the final exemption to any new Client Plans.

Notice to Interested Persons

Those persons who may be interested in the pendency of this exemption include the named fiduciaries of any affected Client Plan for which the BT Group serves as the lending agent. The applicant represents that it proposes to notify the interested persons within fifteen (15) days of the publication of the notice of the proposed exemption in the **Federal Register**. Such notice will contain a copy of the notice of the proposed exemption published in the **Federal Register** and a supplemental statement described at 29 CFR 2570.43 (b)(2) advising interested persons of their right to comment and to request a hearing on the proposed exemption. Accordingly, comments and hearing requests on the proposed exemption are due forty five (45) days after the date of publication of this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan, U.S. Department of Labor, telephone (202) 219–8883. (This is not a toll-free number.)

Goldman Sachs & Co. (Goldman Sachs) and The Goldman Sachs Trust Company (GSTC) Located in New York, NY

[Application No. D–10306]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective July 31, 1996, to the past and continued lending of securities to Goldman Sachs International or any other Goldman Sachs affiliate based in the United Kingdom (together, GSI), Goldman Sachs, affiliated U.S. registered broker-dealers of Goldman Sachs, or Goldman Sachs (Japan), Ltd., including any of its affiliates (together, Goldman Sachs (Japan),[12] by employee benefit plans (the Client Plans), including commingled investment funds holding Plan assets, for which Goldman Sachs Trust Company (GSTC), an affiliate of Goldman Sachs, acts as securities lending agent (or sub-agent) and to the receipt of compensation by GSTC in connection with these transactions, provided that the following conditions are met:

(a) For each Client Plan, neither GSTC, Goldman Sachs nor an affiliate of either has or exercises discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

(b) Any arrangement for GSTC to lend Plan securities to Goldman Sachs in either an agency or sub-agency capacity is approved in advance by a Plan fiduciary who is independent of Goldman Sachs and GSTC.[13] In this regard, the independent Plan fiduciary also approves the general terms of the securities loan agreement (the Loan Agreement) between the Client Plan and Goldman Sachs, although the specific terms of the Loan Agreement are negotiated and entered into by GSTC and GSTC acts as a liaison between the lender and the borrower to facilitate the lending transaction.

(c) The terms of each loan of securities by a Client Plan to Goldman Sachs is at least as favorable to such Plans as those of a comparable arm's length transaction between unrelated parties.

(d) A Client Plan may terminate the agency or sub-agency arrangement at any time without penalty to such Plan on five business days notice.

(e) The Client Plan receives from Goldman Sachs (either by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to Goldman Sachs, collateral consisting of cash, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or

[12] Unless otherwise noted, for purposes of this proposed exemption, Goldman Sachs, the affiliated U.S. registered broker-dealers of Goldman Sachs, GSI and Goldman Sachs (Japan) are collectively referred to herein as Goldman Sachs.

[13] The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than GSTC, beyond that provided pursuant to Prohibited Transaction Exemption (PTE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) and PTE 82–63 (47 FR 14804, April 6, 1982).

irrevocable United States bank letters of credit issued by a person other than Goldman Sachs or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81–6, as it may be amended or superseded.

(f) As of the close of business on the preceding business day, the fair market value of the collateral initially equals at least 102 percent of the market value of the loaned securities and, if the market value of the collateral falls below 100 percent, Goldman Sachs delivers additional collateral on the following day such that the market value of the collateral again equals 102 percent.

(g) Prior to entering into the Loan Agreement, Goldman Sachs furnishes GSTC its most recently available audited and unaudited statements, which is, in turn, provided to a Client Plan, as well as a representation by Goldman Sachs, that as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently-furnished statement that has not been disclosed to such Client Plan; provided, however, that in the event of a material adverse change, GSTC does not make any further loans to Goldman Sachs unless an independent fiduciary of the Client Plan is provided notice of any material adverse change and approves the loan in view of the changed financial condition.

(h) In return for lending securities, the Client Plan either—

(1) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan; or

(2) Has the opportunity to derive compensation through the investment of cash collateral. (Under such circumstances, the Client Plan may pay a loan rebate or similar fee to Goldman Sachs, if such fee is not greater than the fee the Client Plan would pay in a comparable arm's length transaction with an unrelated party.)

(i) All procedures regarding the securities lending activities conform to the applicable provisions of Prohibited Transaction Exemptions PTE 81–6 and PTE 82–63 as well as to applicable securities laws of the United States, the United Kingdom or Japan.

(j) Each Goldman Sachs entity indemnifies and holds harmless each lending Client Plan in the United States against any and all losses, damages, liabilities, costs and expenses (including attorney's fees) which the Client Plan may incur or suffer directly arising out of the lending of securities of such Client Plan to such Goldman Sachs entity. In the event that GSI or Goldman Sachs (Japan) defaults on a loan, GSTC will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, GSTC will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred. Alternatively, if such identical securities are not available on the market, GSTC will pay the Client Plan cash equal to (1) The market value of the borrowed securities as of the date they should have been returned to the Client Plan, plus (2) all the accrued financial benefits derived from the beneficial ownership of such loaned securities as of such date, plus (3) interest from such date to the date of payment.

(k) The Client Plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions.

(l) Prior to any Client Plan's approval of the lending of its securities to Goldman Sachs, a copy of this exemption, if granted, (and the notice of pendency) are provided to the Client Plan.

(m) Each Client Plan receives monthly reports with respect to its securities lending transactions, including, but not limited to the information described in Representation 31, so that an independent fiduciary of the Client Plan may monitor such transactions with Goldman Sachs.

(n) Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to Goldman Sachs; provided, however, that—

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with Goldman Sachs, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with Goldman Sachs, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Is neither the sponsoring employer, a member of the controlled group of corporations, the employee organization nor an affiliate;

(ii) Has full investment responsibility with respect to plan assets invested therein; and

(iii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

(o) With respect to any calendar quarter, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers.

(p) In addition to the above, all loans involving GSI and Goldman Sachs (Japan), have the following supplemental requirements:

(1) Such broker-dealer is registered as a broker-dealer with the Securities and Futures Authority of the United Kingdom (the SFA) or with the Ministry of Finance (the MOF) and the Tokyo Stock Exchange;

(2) Such broker-dealer is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the Securities Exchange Act of 1934 (the 1934 Act) which provides for foreign broker-dealers a limited exemption from United States registration requirements;

(3) All collateral is maintained in United States dollars or dollar-denominated securities or letters of credit;

(4) All collateral is held in the United States and GSTC maintains the situs of

the securities Loan Agreements in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1; and

(5) GSI or Goldman Sachs (Japan) provides Goldman Sachs a written consent to service of process in the United States for any civil action or proceeding brought in respect of the securities lending transaction, which consent provides that process may be served on such borrower by service on Goldman Sachs.

(q) Goldman Sachs and its affiliates maintain, or cause to maintain within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (r)(1) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Goldman Sachs and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than Goldman Sachs shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (r)(1).

(r)(1) Except as provided in subparagraph (r)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (q) are unconditionally available at their customary location during normal business hours by:

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (the SEC);

(ii) Any fiduciary of a participating Client Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Client Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Client Plan, or any duly authorized representative of such participant or beneficiary.

(r)(2) None of the persons described above in paragraphs (r)(1)(ii)–(r)(1)(iv) of this paragraph (r)(1) are authorized to examine the trade secrets of Goldman Sachs or commercial or financial information which is privileged or confidential.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of July 31, 1996.

Summary of Facts and Representations

1. *Goldman Sachs*, a New York limited partnership, is the principal operating subsidiary of The Goldman Sachs Group, L.P. (the Goldman Sachs Group), a Delaware limited partnership. Goldman Sachs is currently owned by the Goldman Sachs Group, the individual general partners of the Goldman Sachs Group and two institutional limited partners. Goldman Sachs is one of the largest full-line investment service firms in the United States. It is registered with and regulated by the SEC as a broker-dealer, is registered with and regulated by the Commodities Futures Trading Commission as a futures commission merchant, is a member of the New York Stock Exchange and other principal securities exchanges in the United States and is also a member of the National Association of Securities Dealers, Inc. As of May 30, 1997, Goldman Sachs had approximately $125.2 billion in assets and approximately $5.9 billion in consolidated capital (partners' capital and subordinated liabilities).

2. Acting as principal, Goldman Sachs actively engages in the borrowing and lending of securities, with daily outstanding loan volume averaging several billion dollars. Goldman Sachs utilizes borrowed securities to satisfy its trading requirements or to re-lend to other broker-dealers and others who need a particular security for various periods of time. All borrowings by Goldman Sachs conform to the Federal Reserve Board's Regulation T. Pursuant to Regulation T, permitted borrowing purposes include making delivery of securities in the case of short sales, failures of a broker to receive securities it is required to deliver or other similar situations.

3. *GSTC* is a wholly owned subsidiary of the Goldman Sachs Group and an affiliate of Goldman Sachs. GSTC is organized as a limited purpose trust company licensed by the New York State Banking Department in New York. GSTC provides a variety of services to its clients, including serving as a custodian, clearing agent, corporate trustee and (following the acquisition of substantially all of the assets of Boston Global Advisors, Inc. on July 31, 1996) a securities lending agent to Plans and other entities. As of December 31, 1996, GSTC had total assets of approximately $21 million.

4. *GSI*, an indirect subsidiary of the Goldman Sachs Group, is an English company registered with the Registrar of Companies for England and Wales. GSI is also an international investment banking organization. As of November 30, 1996, GSI had approximately $44 billion in total assets.

5. *Goldman Sachs (Japan)*, another indirect subsidiary of the Goldman Sachs Group, is a Japanese company that is subject to regulation by the MOF and the Tokyo Stock Exchange. As of May 31, 1997, Goldman Sachs (Japan) had total assets of approximately $7.5 billion.

6. GSI is authorized to conduct an investment business in and from the United Kingdom as a broker-dealer regulated by the SFA. Similarly, Goldman Sachs (Japan) is authorized to conduct an investment business in Japan as a broker-dealer regulated by the MOF and the Tokyo Stock Exchange. Although not registered with the United States SEC, GSI is governed by the rules, regulations and membership requirements of the SFA whereas Goldman Sachs (Japan) is governed by the rules, regulations and membership requirements of the MOF and the Tokyo Stock Exchange. In this regard, GSI and Goldman Sachs (Japan) are subject to rules relating to minimum capitalization, reporting requirements, periodic examinations, client money and safe custody rules and books and records requirements with respect to client accounts. These rules and regulations set forth by the SFA, the MOF, the Tokyo Stock Exchange and the SEC share a common objective: the protection of the investor by the regulation of the securities industry. The SFA, MOF and the Tokyo Stock Exchange rules require each firm which employs registered representatives or registered traders to have a positive tangible net worth and be able to meet its obligations as they may fall due. In addition, the SFA, MOF and the Tokyo Stock Exchange rules set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. Further, to demonstrate capital adequacy, the SFA rules impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and transaction reporting and recordkeeping requirements to the effect that required records must be produced at the request of the SFA, the MOF and the Tokyo Stock Exchange at any time. Finally, the rules and regulations of the SFA, the MOF and the Tokyo Stock Exchange for broker-dealers impose

potential fines and penalties which establish a comprehensive disciplinary system.

7. Aside from the protections afforded by SFA, MOF and Tokyo Stock Exchange regulations, Goldman Sachs represents that GSI and Goldman Sachs (Japan) will comply with all applicable provisions of Rule 15a–6 of the 1934 Act. Rule 15a–6 provides foreign broker-dealers with a limited exemption from SEC registration requirements and, as described below, offers additional protections. Specifically, Rule 15a–6 provides an exemption from U.S. broker-dealer registration for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a "U.S. institutional investor" or a "U.S. major institutional investor," provided that the foreign broker-dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary. The term "U.S. institutional investor," as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 (the Act) if (a) the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment adviser, or (b) the employee benefit plan has total assets in excess of $5 million, or (c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are "accredited investors" as defined in Rule 501(a)(1) of Regulation D of the Securities Exchange Act of 1933, as amended. The term "U.S. major institutional investor" is defined in Rule 15a–6(b)(4) as a person that is a U.S. institutional investor that has total assets in excess of $100 million or an investment adviser registered under Section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of $100 million.

8. Goldman Sachs represents that under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major institutional investor must, among other things—

(a) Consent to service of process for any civil action brought by, or proceeding before, the SEC or any self-regulatory organization;

(b) Provide the SEC (upon request or pursuant to agreements reached between any foreign securities authority, including any foreign government, and the SEC or the U.S. Government) with any information or documents within the possession, custody or control of the foreign broker-dealer, any testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker-dealer [14] through which the transactions with the U.S. institutional and major institutional investors are effected to (among other things):

(1) Effect the transactions, other than negotiating their terms;

(2) Issue all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions;

(4) Maintain required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

(5) Receive, deliver and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or U.S. major institutional investor in compliance with Rule 15c3–3 of the 1934 Act (Customer Protection—Reserves and Custody of Securities); and

(6) Participate in all oral communications (e.g., telephone calls) between the foreign associated person and the U.S. institutional investor (not the U.S. major institutional investor), and accompany the foreign associated person on all visits with both U.S. institutional and major institutional investors. By virtue of this participation, the U.S. registered broker-dealer would become responsible for the content of all these communications.

9. Since July 31, 1996, GSTC has been providing securities lending services, as agent, to institutional clients. GSTC, pursuant to authorization from its client, will negotiate the terms of loans with borrowers pursuant to a client-approved form of Loan Agreement and will act as a liaison between the lender (and its custodian) and the borrower to facilitate the lending transaction. No loans of futures contracts will be involved. GSTC will have responsibility for monitoring receipt of all required collateral and marking such collateral to market daily so that adequate levels of collateral are maintained. GSTC also will monitor and evaluate on a continuing basis the performance and creditworthiness of the borrowers. GSTC may act as a custodian with respect to the client's portfolio of securities being loaned.[15] GSTC may be authorized from time to time by a client to receive and hold pledged collateral and invest cash collateral pursuant to guidelines established by the client. All of GSTC's procedures for lending securities will be designed to comply with the applicable conditions of PTEs 81–6 and PTE 82–63.[16]

10. GSTC may be retained occasionally by primary securities lending agents to provide securities lending services in a sub-agent capacity with respect to portfolio securities of clients of such primary lending agents. As securities lending sub-agent, GSTC's role under the lending transactions (i.e., negotiating the terms of loans with borrowers pursuant to a client-approved form of Loan Agreement and monitoring receipt of, and marking to market, required collateral) parallels those under lending transactions for which GSTC acts as primary lending agent on behalf of its clients.[17]

11. When a loan is collateralized with cash, the cash will be invested for the benefit and at the risk of the client, and resulting earnings (net of a rebate to the borrower) comprise the compensation to the Plan in respect of such loan. Where collateral consists of obligations other than cash, the borrower pays a fee (loan premium) directly to the lending Plan.

12. Accordingly, Goldman Sachs and GSTC request an exemption that would be effective July 31, 1996 (a) for the lending of securities owned by certain pension plans for which GSTC will serve as securities lending agent or sub-agent (referred to hereinafter as the Client Plans) [18] to Goldman Sachs,

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[14] GSI and Goldman Sachs (Japan), in lieu of relying on a U.S. broker-dealer and to the extent permitted by applicable U.S. securities law, may rely on a U.S. bank or trust company, including GSTC, to perform this role.

[15] Goldman Sachs wishes to clarify the fact that an independent fiduciary of a Client Plan may appoint GSTC or an affiliate of GSTC to manage cash collateral and to receive a reasonable and customary investment management fee, provided that the Client Plan fiduciary, after receiving full disclosure, approves the compensation arrangement, the terms of which will be described in a written agreement.

[16] PTE 81–6 provides an exemption under certain conditions from section 406(a)(1) (A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties in interest.

PTE 82–63 provides an exemption under specified conditions from section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities.

[17] As noted previously, the Department is not providing exemptive relief herein for securities lending transactions that are engaged in by primary lending agents, other than GSTC, beyond that provided by PTEs 81–6 and 82–63.

[18] For the sake of simplicity, future references to GSTC's performance of services as securities lending agent should be deemed to include its parallel performance as securities lending sub-agent and references to Client Plans should be deemed to refer to plans for which GSTC is acting as sub-agent with respect to securities lending activities, unless

affiliated U.S. registered broker-dealers of Goldman Sachs, GSI and Goldman Sachs (Japan), following disclosure of its affiliation with Goldman Sachs, and (b) for the receipt of compensation by GSTC in connection with such transactions. For each Plan, neither GSTC, Goldman Sachs nor any affiliate will have no discretionary authority or control or render investment advice over Client Plans' decisions concerning the acquisition or disposition of securities available for loan. GSTC's discretion will be limited to activities such as negotiating the terms of the securities loans with Goldman Sachs and (to the extent granted by the Client Plan fiduciary) investing any cash collateral received in respect of the loans. Because GSTC, under the proposed arrangement, would have discretion to lend Client Plan securities to Goldman Sachs, and because Goldman Sachs is an affiliate of GSTC, the lending of securities to Goldman Sachs by Client Plans for which GSTC serves as securities lending agent (or sub-agent) may be outside the scope of relief provided by PTE 81–6 and PTE 82–63. Further, loans to GSI and Goldman Sachs (Japan), affiliated foreign broker-dealers of Goldman Sachs, would be outside of the relief granted in PTE 81–6. Therefore, several safeguards, described more fully below, are incorporated in the application in order to ensure the protection of the Plan assets involved in the transactions. In addition, the applicants represent that the proposed lending program incorporates the conditions contained in PTE 81–6 and PTE 82–63 and will be in compliance with all applicable securities laws of the United States.

13. Where GSTC is the direct securities lending agent, a fiduciary of a Client Plan who is independent of GSTC and Goldman Sachs will sign a securities lending agency agreement with GSTC (the Agency Agreement) before the Client Plan participates in a securities lending program. The Agency Agreement will, among other things, describe the operation of the lending program, prescribe the form of securities Loan Agreement to be entered into on behalf of the Client Plan with borrowers, specify the securities which are available to be lent, required margin and daily marking-to-market, and provide a list of permissible borrowers, including Goldman Sachs. The Agency Agreement will also set forth the basis and rate for GSTC's compensation from the Client Plan for the performance of securities lending services.

14. The Agency Agreement will contain provisions to the effect that if Goldman Sachs is designated by the Client Plan as an approved borrower (a) the Client Plan will acknowledge that Goldman Sachs is an affiliate of GSTC and (b) GSTC will represent to the Client Plan that each and every loan made to Goldman Sachs on behalf of the Client Plan will be at market rates which are no less favorable to the Client Plan than a loan of such securities, made at the same time and under the same circumstances, to an unaffiliated borrower.

15. When GSTC is lending securities under a sub-agency arrangement, the primary lending agent will enter into a securities lending agency agreement (the Primary Lending Agreement) with a fiduciary of a Client Plan who is independent of such primary lending agent, GSTC or Goldman Sachs, before the Plan participates in the securities lending program. The primary lending agent will be unaffiliated with GSTC or Goldman Sachs. GSTC will not enter into a sub-agent arrangement unless the Primary Lending Agreement contains substantive provisions akin to those in the Agency Agreement relating to the description of the operation of the lending program, use of an approved form of Loan Agreement, specification of securities which are available to be lent, required margin and daily marking-to-market, and provision of a list of approved borrowers (which will include Goldman Sachs). The Primary Lending Agreement will specifically authorize the primary lending agent to appoint sub-agents, to facilitate its performance of securities lending agency functions. Where GSTC is to act as such a sub-agent, the Primary Lending Agreement will expressly disclose that GSTC is to so act. The Primary Lending Agreement will also set forth the basis and rate for the primary lending agent's compensation from the Client Plan for the performance of securities lending services and will authorize the primary lending agent to pay a portion of its fee, as the primary lending agent determines in its sole discretion, to any sub-agent(s) it retains pursuant to the authority granted under such agreement.

Pursuant to its authority to appoint sub-agents, the primary lending agent will enter into a securities lending sub-agency agreement (the Sub-Agency Agreement) with GSTC under which the primary lending agent will retain and authorize GSTC, as sub-agent, to lend securities of the primary lending agent's Client Plans, subject to the same terms and conditions as are specified in the Primary Lending Agreement. Thus, for example, the form of Loan Agreement will be the same as that approved by the Client Plan fiduciary in the Primary Lending Agreement and the list of permissible borrowers under the Sub-Agency Agreement (which will include Goldman Sachs) will be limited to those approved borrowers listed as such under the Primary Lending Agreement.

GSTC states that the Sub-Agency Agreement will contain provisions which are in substance comparable to those described in Representations 13 and 14 above, which would appear in an Agency Agreement in situations where GSTC is the primary lending agent. In this regard, GSTC will make the same representation in the Sub-Agency Agreement as described in Representation 9 above with respect to arm's length dealing with Goldman Sachs. The Sub-Agency Agreement will also set forth the basis and rate for GSTC's compensation to be paid by the primary lending agent.

16. In all cases, GSTC will maintain transactional and market records sufficient to assure compliance with its representation that all loans to Goldman Sachs are effectively at arm's length terms. Such records will be provided to the appropriate Client Plan fiduciary in the manner and format agreed to with the lending fiduciary, without charge to the Client Plan. A Client Plan may terminate the Agency Agreement (or the Primary Lending Agreement) at any time, without penalty to the Plan, on five business days notice. In addition, GSTC shall make and retain for six months, tape recordings evidencing all securities loan transactions with Goldman Sachs.

17. GSTC will negotiate the Loan Agreement with Goldman Sachs on behalf of Client Plans as it does with all other borrowers. An independent fiduciary of the Client Plan will approve the terms of the Loan Agreement. The Loan Agreement will specify, among other things, the right of the Client Plan to terminate a loan at any time and the Plan's rights in the event of any default by Goldman Sachs. The Loan Agreement will explain the basis for compensation to the Client Plan for lending securities to Goldman Sachs under each category of collateral. The Loan Agreement also will contain a requirement that Goldman Sachs must pay all transfer fees and transfer taxes related to the security loans.

18. Before entering into the Loan Agreement, Goldman Sachs will furnish its most recently available audited and unaudited financial statements to GSTC, and in turn, such statements will be provided to a Client Plan before the Plan is asked to approve the terms of the

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otherwise indicated specifically or by the context of the reference.

Loan Agreement. The Loan Agreement will contain a requirement that Goldman Sachs must give prompt notice at the time of a loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements.[19] If any such changes have taken place, GSTC will not make any further loans to Goldman Sachs unless an independent fiduciary of the Plan has approved the loan in view of the changed financial condition. Conversely, if Goldman Sachs fails to provide notice of such a change in its financial condition, such failure will trigger an event of default under the Loan Agreement.

19. As noted above, the agreement by GSTC to provide securities lending services, as agent, to a Client Plan will be embodied in the Agency Agreement. The Client Plan and GSTC will agree to the arrangement under which GSTC will be compensated for its services as lending agent, including services as custodian and manager of the cash collateral received, prior to the commencement of any lending activity. Such agreed upon fee arrangement will be set forth in the Agency Agreement and thereby will be subject to the prior written approval of a fiduciary of the Client Plan who is independent of Goldman Sachs and GSTC. Similarly, with respect to arrangements under which GSTC is acting as securities lending sub-agent, the agreed upon fee arrangement of the primary lending agent will be set forth in the Primary Lending Agreement, and such agreement will specifically authorize the primary lending agent to pay a portion of such fee, as the primary lending agent determines in its sole discretion, to any sub-agent, including GSTC, which is to provide securities lending services to the Plan.[20] The Client Plan will be provided with any reasonably available information which is necessary for the Plan fiduciary to make a determination whether to enter into or continue to participate under the Agency Agreement (or the Primary Lending Agreement) and any other reasonably available information which the Plan fiduciary may reasonably request.

20. Each time a Plan lends securities to Goldman Sachs pursuant to the Loan Agreement, GSTC will reflect in its records the material terms of the loan, including the securities to be loaned, the required level of collateral, and the fee or rebate payable. The terms of the fee or rebate payable for each loan will be at least as favorable to the Client Plan as those of a comparable arm's length transaction between unrelated parties.

21. The Client Plan will be entitled to the equivalent of all interest, dividends and distributions on the loaned securities during the loan period. The Loan Agreement will provide that the Client Plan may terminate any loan at any time. Upon a termination, Goldman Sachs will be contractually obligated to return the loaned securities to the Client Plan within five business days of notification (or such longer period of time permitted pursuant to a class exemption). If Goldman Sachs fails to return the securities within the designated time, the Client Plan will have the right under the Loan Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price and any other expenses of the Plan associated with the sale and/or purchase.

22. GSTC will establish each day a written schedule of lending fees[21] and rebate rates[22] in order to assure uniformity of treatment among borrowing brokers and to limit the discretion GSTC would have in negotiating securities loans to Goldman Sachs. Loans to all borrowers of a given security on that day will be made at rates or lending fees on the relevant daily schedules or at rates or lending fees which may be more advantageous to the Client Plans It is represented that in no case will loans be made to Goldman Sachs at rates or lending fees that are less advantageous to the Client Plans than those on the schedule. The daily schedule of rebate rates will be based on the current value of the clients' reinvestment vehicles and on market conditions, as reflected by demand for securities by borrowers other than Goldman Sachs. As with rebate rates, the daily schedule of lending fees will also be based on market conditions, as reflected by demand for securities by borrowers other than Goldman Sachs, and will generally track the rebate rates with respect to the same security or class of security.

23. The rebate rates (in respect of cash-collateralized loans made by Client Plans) which are established will also take into account the potential demand for loaned securities, the applicable benchmark cost of funds indices (typically, Federal Funds, overnight repo rate or the like) and anticipated investment return on overnight investments which are permitted by the relevant Client Plan fiduciary. Further, the lending fees (in respect of loans made by Client Plans collateralized by other than cash) which are established will be set daily to reflect conditions as influenced by potential market demand.

24. GSTC will negotiate rebate rates for cash collateral payable to each borrower, including Goldman Sachs, on behalf of a Client Plan. Where, for example, cash collateral derived from an overnight loan is intended to be invested in a generic repurchase

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19 With respect to capital adequacy rules for brokerage firms domiciled in the United States, including Goldman Sachs, it is represented that such firms are subject to the capital adequacy rules of their respective regulatory agencies, i.e., the SEC, the New York Stock Exchange, the National Association of Securities Dealers and other self-regulatory authorities. If these brokerage firms fail to meet such requirements, they are subject to fines, penalties and possibly more stringent sanctions.

As for GSI and Goldman Sachs (Japan), which are subject to the capital adequacy provisions of their respective regulatory authorities, it is represented that such rules require GSI and Goldman Sachs (Japan) to maintain, at all times, financial resources in excess of its financial resources requirement (the Financial Resources Requirement). For this purpose, financial resources include equity capital, approved subordinated debt and retained earnings, less deductions for illiquid assets. The Financial Resources Requirement includes capital requirements for market risk, credit risk, foreign exchange risk and large exposures. SFA, MOF and Tokyo Stock Exchange rules require that if a firm's financial resources fall below 120 percent with respect to the SFA and 150 percent with respect to the MOF and the Tokyo Stock Exchange, of its Financial Resources Requirement, the SFA, the MOF or the Tokyo Stock Exchange must be notified so that it can examine the terms of the firm's financial position and require an infusion of more capital, if needed. In addition, a breach of the requirement to maintain financial resources in excess of the Financial Resources Requirement may lead to sanctions by the SFA, the MOF or the Tokyo Stock Exchange. If the breach is not promptly resolved, the SFA, the MOF or the Tokyo Stock Exchange may restrict the firm's activities.

20 The foregoing provisions describe arrangements comparable to conditions (c) and (d) of PTE 82–63 which require that the payment of compensation to a "lending fiduciary" is made under a written instrument and is subject to prior written authorization of an independent "authorizing fiduciary." In the event that a commingled investment fund will participate in the securities lending program, the special rule applicable to such funds concerning the authorization of the compensation arrangement set forth in condition (f) of PTE 82–63 will be satisfied.

21 GSTC will adopt minimum daily lending fees for non-cash collateral payable by Goldman Sachs to GSTC on behalf of a Client Plan. GSTC will submit the method for determining such minimum daily lending fees to an independent fiduciary of the Client Plan for approval before initially lending any securities to Goldman Sachs on behalf of such Client Plan.

22 GSTC will adopt separate maximum daily rebate rates with respect to securities loans collateralized with cash collateral. Such rebate rates will be based upon an objective methodology which takes into account several factors, including potential demand for loaned securities, the applicable benchmark cost of fund indices, and anticipated investment return on overnight investments permitted by the Client Plan's independent fiduciary. GSTC will submit the method for determining such maximum daily rebate rates to such fiduciary before initially lending any securities to Goldman Sachs on behalf of the Client Plan.

agreement, any rebate fee determined with respect to an overnight repurchase agreement benchmark will be set below the applicable "ask" quotation therefor. Where cash collateral is derived from a loan with an expected maturity date (term loan) and is intended to be invested in instruments with similar maturities, the maximum rebate fee will be less than the expected investment return (assuming no investment default). With respect to any loan to Goldman Sachs, GSTC will never negotiate a rebate rate with respect to such loan which would be expected to produce a zero or negative return to the Client Plan (assuming no default on the investments related to the cash collateral from such loan where GSTC has investment discretion over the cash collateral). GSTC represents that the written rebate rate established daily for cash collateral under loans negotiated with Goldman Sachs will not exceed the rebate rate which would be paid to a similarly situated unrelated borrower with respect to a comparable securities lending transaction. GSTC will disclose the method for determining the maximum daily rebate rate as described above to an independent fiduciary of a Client Plan for approval before lending any securities to Goldman Sachs on behalf of the Plan.

25. For collateral other than cash, the applicable loan fee in respect of any outstanding loan is reviewed daily for competitiveness and adjusted, where necessary, to reflect market terms and conditions (see Representation 27). With respect to any calendar quarter, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers so the competitiveness of the loan fee will be tested in the marketplace. Accordingly, loans to Goldman Sachs should result in competitive rate income to the lending Client Plan. At all times, GSTC will effect loans in a prudent and diversified manner. While GSTC will normally lend securities to requesting borrowers on a "first come, first served" basis, as a means of assuring uniformity of treatment among borrowers, it should be recognized that in some cases it may not be possible to adhere to a "first come, first served" allocation. This can occur, for instance where (a) the credit limit established for such borrower by GSTC and/or the Client Plan has already been satisfied; (b) the "first in line" borrower is not approved as a borrower by the particular Client Plan whose securities are sought to be borrowed; and (c) the "first in line" borrower cannot be ascertained, as an operational matter, because several borrowers spoke to different GSTC representatives at or about the same time with respect to the same security.[23] In situations (a) and (b), loans would normally be effected with the "second in line." In situation (c), securities would be allocated equitably among all eligible borrowers.

26. The method of determining the daily securities lending rates (fees and rebates), the minimum lending fees payable by Goldman Sachs and the maximum rebate payable to Goldman Sachs will be specified in an exhibit attached to the Agency Agreement to be executed between the independent fiduciary of the Client Plan and GSTC in cases where GSTC is the direct securities lending agent.

27. If GSTC reduces the lending fee or increases the rebate rate on any outstanding loan to an affiliated borrower (except for any change resulting from a change in the value of any third party independent index with respect to which the fee or rebate is calculated), GSTC, by the close of business on the date of such adjustment, will provide the independent fiduciary of the Client Plan with notice that it has reduced such fee or increased the rebate rate to such affiliated borrower and that the Client Plan may terminate such loan at any time. In addition, GSTC will provide the independent fiduciary of the Client Plan with such information as the fiduciary may reasonably request regarding such adjustment.

28. Under the Loan Agreement, Goldman Sachs, as borrower, will agree to indemnify and hold harmless the applicable Client Plan (including the sponsor and fiduciaries of such Client Plan) from any and all reasonably foreseeable damages, losses, liabilities, costs and expenses (including attorney's fees) which the Client Plan may incur or suffer arising in any way from the use by Goldman Sachs of the loaned securities or any failure of Goldman Sachs to deliver loaned securities in accordance with the provisions of the Loan Agreement or to otherwise comply with the terms of the Loan Agreement except to the extent that such losses or damages are caused by the Client Plan's negligence. Under certain circumstances, GSTC, as lending agent, also may provide customary indemnities to lending Plans respecting loans made by it as the securities lending agent or, alternatively, procure such an indemnity from another Goldman Sachs affiliate. Further, under certain circumstances, a Goldman Sachs affiliate may guarantee the obligations of GSTC.

In the event GSI or Goldman Sachs (Japan) defaults on a loan, GSTC will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, GSTC will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred. Alternatively, if such identical securities are not available on the market, GSTC will pay the Client Plan cash equal to the market value[24] of the borrowed securities as of the date they should have been returned to the Client Plan plus all interest and accrued financial benefits derived from the beneficial ownership of such loaned securities. Under such circumstances, GSTC will pay the Client Plan an amount equal to (a) the value of the securities as of the date such securities should have been returned to the Client Plan plus (b) all of the accrued financial benefits derived from the beneficial ownership of such loan securities as of such date, plus (c) interest from such date through the date of payment.

29. The Client Plan will receive collateral from Goldman Sachs by physical delivery, book entry in a U.S. securities depository, wire transfer or similar means by the close of business on or before the day the loaned securities are delivered to Goldman Sachs. The collateral will consist of cash, securities issued or guaranteed by the U.S. Government or its agencies or irrevocable U.S. bank letters of credit (issued by a person other than Goldman Sachs or its affiliates) or such other types of collateral which might be permitted by the Department under a class exemption. The market value of the collateral on the close of business on the day preceding the day of the loan will be at least 102 percent of the market value of the loaned securities. The Loan Agreement will give the Client Plan a

[23] It is represented that the "first come, first served" allocation would not apply where GSTC is not acting as a securities lending agent, but rather is acting as, for example, a custodian to a Client Plan that has entered into an exclusive arrangement with the borrower. See PTE 92–78 (57 FR 45837, October 5, 1992) issued to Goldman Sachs and GSTC. In that circumstance, Goldman Sachs as borrower is choosing from whom to borrow and GSTC has no right or obligation to lend Goldman Sachs the securities from other clients or lend the securities subject to such exclusive arrangement to other borrowers.

[24] For purposes of this proposed exemption, the "market value" of securities, as of any date, shall be determined on the basis of the closing prices therefor as of the trading date (for the principal market in which the securities are traded) immediately preceding the day of valuation, such determination to be made by the independent pricing source identified to Goldman Sachs by the Client Plan upon the request of Goldman Sachs. Market value shall include accrued interest in the case of debt securities.

continuing security interest in and a lien on the collateral. GSTC will monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent (or such greater percentage as agreed to by the parties) of that of the loaned securities, GSTC will require Goldman Sachs to deliver by the close of business the next day sufficient additional collateral to bring the level back to at least 102 percent.

30. With respect to loans involving GSI and Goldman Sachs (Japan), the following additional conditions will be applicable: (a) all collateral will be maintained in United States dollars or dollar-denominated securities or letters of credit; (b) all collateral is held in the United States and GSTC maintains the situs of the securities loan agreements in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1; and (c) GSI or Goldman Sachs (Japan) provides Goldman Sachs a written consent to service of process in the United States for any civil action or proceeding brought in respect of the securities lending transaction, which consent provides that process may be served on such borrower by service on Goldman Sachs.

31. Each Client Plan participating in the lending program will be sent a monthly transaction report. The monthly report will provide a list of all security loans outstanding and closed for a specified period. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or loan premium (as the case may be) at which the security is loaned, and the number of days the security has been on loan. In addition, if requested by the lending customer, GSTC will provide daily confirmations of securities lending transactions, and, with respect to monthly reports, if requested by the customer, GSTC will provide weekly or daily reports, setting forth for each transaction made or outstanding during the relevant reporting period, the loaned securities, the related collateral, rebates and loan premiums and such other information in such format as shall be agreed to by the parties. Further, prior to a Client Plan's approval of a securities lending program, Goldman Sachs will provide a Plan fiduciary with copies of the proposed exemption and notice granting the exemption.

32. In order to provide the means for monitoring lending activity, the monthly report will compare rates on loans by the Client Plans to Goldman Sachs with loans to other brokers as well as the level of collateral on the loans. In this regard, the monthly report will show, on a daily basis, the market value of all outstanding security loans to Goldman Sachs and to other borrowers. In addition, the monthly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. The monthly report also will state, on a daily basis, the rates at which securities are loaned to Goldman Sachs compared with those at which securities are loaned to other brokers. This statement will give an independent fiduciary information which can be compared to that contained in the daily rate schedule.

33. Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to Goldman Sachs. In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (i.e., the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under the Plan Asset Regulation), which entity is engaged in securities lending arrangements with Goldman Sachs, the foregoing $50 million requirement will be satisfied if such trust or other entity has aggregate assets which are in excess of $50 million. However, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary must have total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (i.e., the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with Goldman Sachs, the foregoing $50 million requirement will be satisfied if such trust or other entity has aggregate assets which are in excess of $50 million. However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity (a) Must not be the sponsoring employer, a member of the controlled group of corporations, the employee organization or an affiliate; (b) must have full investment responsibility with respect to plan assets invested therein;[25] and (c) must have total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

In addition, none of the entities described above must be formed for the sole purpose of making loans of securities.

34. In summary, the applicants represent that the described transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The form of the Loan Agreement pursuant to which any loan is effected has been or will be approved by a fiduciary of the Client Plan who is independent of Goldman Sachs and GSTC before a Client Plan lends any securities to Goldman Sachs.

(b) The lending arrangements (1) have permitted or will permit the Client Plans to lend to Goldman Sachs, (2) have enabled or will enable the Plans to diversify the list of eligible borrowers and earn additional income from the loaned securities on a secured basis, while continuing to receive any dividends, interest payments and other distributions due on those securities.

(c) The Client Plan have received or will receive sufficient information concerning Goldman Sachs's financial condition before the Plan lends any securities to Goldman Sachs.

(d) The collateral on each loan to Goldman Sachs initially has been and will be at least 102 percent of the market value of the loaned securities, which is in excess of the 100 percent collateral required under PTE 81–6, and has been and will be monitored daily by GSTC.

(e) The Client Plans have received and will receive a monthly report which provides an independent fiduciary of the Client Plans with information on loan activity, fees, loan return/yield and the rates on loans to Goldman Sachs as compared with loans to other brokers and the level of collateral on the loans.

(f) GSTC, Goldman Sachs nor any affiliate has or will have discretionary authority or control over the Plan's acquisition or disposition of securities available for loan.

[25] For purposes of this proposed exemption, the term "full investment responsibility" means that the fiduciary responsible for making investment decisions on behalf of the group trust or other form of entity, has and exercises discretionary management authority over all of the assets of the group trust or other plan assets entity.

(g) The terms of the fee or rebate payable for each loan has been and will be at least as favorable to the Plans as those of a comparable arm's length transaction between unrelated parties.

(h) All of the procedures under the transactions have conformed or will conform to the applicable provisions of PTE 81–6 and PTE 82–63 and also have been and will be in compliance with the applicable securities laws of the United States, the United Kingdom and Japan.

Notice To Interested Persons

Notice of the proposed exemption will be provided to interested persons within 5 days of the publication of the notice of proposed exemption in the **Federal Register**. Such notice will be given to Plans that have outstanding securities loans with Goldman Sachs. The notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Written comments and hearing requests are due within 35 days of the publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of February, 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration U.S. Department of Labor.

[FR Doc. 98–3987 Filed 2–18–98; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Prohibited Transaction Exemption 98–07; Exemption Application No. D–10236, et al.; Grant of Individual Exemptions; Equitable Life Assurance Society

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

The Equitable Life Assurance Society of the United States (Equitable), Located in New York, New York

[Prohibited Transaction Exemption 98–07; Exemption Application No. D–10236]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to: (1) The leasing of 13,086 square feet of office space and 6,650 square feet of parking space by Equitable Real Estate Investment Management, Inc. (ERE) until June 30, 2002 (the Tower 1 Lease); and (2) the leasing of 5,821 square feet of office space and 3584 square feet of parking space by ERE's subsidiary, Compass Management and Leasing, Inc. (Compass) until August 31, 1999 (the Tower 2 Leases), in office buildings located in Orange County, California, that will be held by the Equitable Separate Account No. 8, also known as

the Prime Property Fund (the PPF) and to the 1996 renewal of the original leases provided that the following conditions are met: (a) the renewal of the leases and the terms of the leases were reviewed, negotiated and approved by a qualified independent fiduciary to PPF; (b) the qualified independent fiduciary determined that the terms of the transactions reflect fair market value and are at least as favorable to PPF as the terms would have been in arm's length transactions between unrelated parties; and (c) the independent fiduciary will continue to monitor the leases on behalf of the PPF.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 19, 1997 at 62 FR 66669.

EFFECTIVE DATE OF EXEMPTION: This exemption has an effective date of March 15, 1996. This exemption will expire for the Tower 2 Leases, on August 31, 1999 and for the Tower 1 Lease, on June 30, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy McColough of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

PNC Capital Markets, Inc. (PNC), Located in Pittsburgh, Pennsylvania

[Prohibited Transaction Exemption 98–08; Exemption Application No. D–10521]

Exemption

I. Transactions

A. Effective October 21, 1997, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan. [1]

B. Effective October 21, 1997, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) the plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity. [2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective October 21, 1997, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) the pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust. [3]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective October 21, 1997, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

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[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating from a rating agency (as defined in section III.W.) at the time of such acquisition that is in one of the three highest generic rating categories;

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund a trust have not all been transferred to the trust on the closing date, additional obligations as specified in subsection III.B(1) may be transferred to the trust during the pre-funding period (as defined in section III.BB.) in exchange for amounts credited to the pre-funding account (as defined in section III.Z.), provided that:

(a) The pre-funding limit (as defined in section III.AA.) is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as those of the original obligations used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a rating agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority of the outstanding certificateholders or by a rating agency;

(c) The transfer of such additional obligations to the trust during the pre-funding period does not result in the certificates receiving a lower credit rating from a rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to those which were acquired as of the closing date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the sponsor, or an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the rating agency, the underwriter and the trustees) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date;

(f) The pre-funding period shall be described in the prospectus or private placement memorandum provided to investing plans;

(g) The trustee of the trust (or any agent with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. *Certificate* means:

(1) a certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) a certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code; and

(b) that is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) above for which PNC or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include

certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) (a) secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T); and/or

(c) obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property); and/or

(d) obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U); and/or

(e) "guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2); and/or

(f) fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) property which had secured any of the obligations described in subsection B.(1);

(3) (a) undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and/or

(b) cash or investments made therewith which are credited to an account to provide payments to certificateholders pursuant to any yield supplement agreement or similar yield maintenance arrangement to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1) held in the trust, provided that such arrangements do not involve swap agreements or other notional principal contracts; and/or

(c) cash transferred to the trust on the closing date and permitted investments made therewith which:

(i) are credited to a pre-funding account established to purchase additional obligations with respect to which the conditions set forth in clauses (a)–(g) of subsection II.A.(7) are met and/or;

(ii) are credited to a capitalized interest account (as defined in section III.X.); and

(iii) are held in the trust for a period ending no later than the first distribution date to certificateholders occurring after the end of the pre-funding period,

For purposes of this clause (c) of subsection III.B.(3), the term *permitted investments* means investments which are either: (i) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by the United States, or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency; are described in the pooling and servicing agreement; and are permitted by the rating agency.

(4) rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, yield supplement agreements described in clause (b) of subsection III.B.(3) and other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term *trust* does not include any investment pool unless: (i) The investment pool consists only of assets of the type described in clauses (a) through (f) of subsection III.B.(1) which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by a rating agency for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means:

(1) PNC;

(2) any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with PNC; or

(3) any member of an underwriting syndicate or selling group of which PNC or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *Master Servicer* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) each underwriter;

(2) each insurer;

(3) the sponsor;

(4) the trustee;

(5) each servicer;

(6) any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)–(6) above.

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section

3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) such person is not an affiliate of that other person; and

(2) the other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) the fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) the servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) the ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) the amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified Equipment Note Secured By A Lease* means an equipment note:

(1) which is secured by equipment which is leased;

(2) which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) with respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(1) the trust owns or holds a security interest in the lease;

(2) the trust holds a security interest in the leased motor vehicle; and

(3) the trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. *Rating Agency* means Standard & Poor's Structured Rating Group, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co. or Fitch Investors Service, L.P.;

X. *Capitalized Interest Account* means a trust account: (i) which is established to compensate certificateholders for shortfalls, if any, between investment earnings on the pre-funding account and the pass-through rate payable under the certificates; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Y. *Closing Date* means the date the trust is formed, the certificates are first issued and the trust's assets (other than those additional obligations which are to be funded from the pre-funding account pursuant to subsection II.A.(7)) are transferred to the trust.

Z. *Pre-Funding Account* means a trust account: (i) which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

AA. *Pre-Funding Limit* means a percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered which is less than or equal to 25 percent.

BB. *Pre-Funding Period* means the period commencing on the closing date and ending no later than the earliest to occur of: (i) The date the amount on deposit in the pre-funding account is less than the minimum dollar amount specified in the pooling and servicing agreement; (ii) the date on which an event of default occurs under the pooling and servicing agreement; or (iii) the date which is the later of three months or 90 days after the closing date.

CC. *PNC* means PNC Capital Markets, Inc. and its affiliates.

The Department notes that this exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in section V(h) of Prohibited Transaction Exemption 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, at 35932.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 19, 1997 at 62 FR 66672.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Jeffrey R. Light, M.D., Inc. Profit Sharing Plan (the Plan), Located in Garden Grove, CA;

[Prohibited Transaction Exemption No. 98–09; Application No. D–10530]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) by the individual, self-directed account of Jeffrey R. Light, M.D. within the Plan (the Account) of two parcels of real property (the Property) to Jeffrey R. Light, M.D. (Dr. Light), a party in interest with respect to the Plan; provided the following conditions are satisfied:

(A) The terms and conditions of the transaction are no less favorable to the Plan than those which the Plan would receive in an arm's-length transaction with an unrelated party;

(B) The Sale is a one-time transaction for cash;

(C) The Plan does not incur any expenses from the Sale; and

(D) The Plan receives as consideration from the Sale no less than the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on December 19, 1997, at 62 FR 66684.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 11th day of February, 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 98–3986 Filed 2–18–98; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection used to evaluate requests for access to records whose use has been restricted because they contain highly personal information. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before April 20, 1998 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 3200, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or electronically mailed to tamee.fechhelm@arch2.nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–713–6730, or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Statistical Research in Archival Records Containing Personal Information.

OMB number: 3095–0002.
Agency form number: None.
Type of review: Regular.
Affected public: Individuals.
Estimated number of respondents: 1.
Estimated time per response: 7 hours.
Frequency of response: On occasion.
Estimated total annual burden hours: 7 hours.

Abstract: The information collection is prescribed by 36 CFR 1256.16 and 36 CFR 1256.4. Respondents are researchers who wish to do biomedical statistical research in archival records containing highly personal information. NARA needs the information to evaluate requests for access to ensure that the requester meets the criteria in 36 CFR 1256.4 and that the proper safeguards will be made to protect the information.

Dated: February 11, 1998.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 98–4116 Filed 2–18–98; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Boston Edison Company (Pilgrim Nuclear Power Station); Order Approving Application Regarding the Corporate Restructuring of Boston Edison Company by Establishment of a Holding Company

I

Boston Edison Company (BECo) is sole owner of the Pilgrim Nuclear Power Station (Pilgrim). BECo holds Facility Operating License No. DPR–35 issued by the U.S. Atomic Energy Commission pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR part 50) on June 8, 1972. Under this license, BECo has the authority to own and operate Pilgrim. Pilgrim is located in Plymouth County, Massachusetts.

II

By an application dated June 9, 1997, BECo requested that the Commission approve under 10 CFR 50.80 the transfer of control of the license that would result from a proposed corporate restructuring of BECo. Under the restructuring, a holding company under the name "BEC Energy" will be created of which BECo would become a wholly owned subsidiary. The holders of BECo common stock would automatically become holders of common stock of the

new parent company on a share-for-share basis, according to the application. Notice of this application for consent was published in the **Federal Register** on December 12, 1997 (62 FR 65448); and an Environmental Assessment and a Finding of No Significant Impact was published in the **Federal Register** on December 15, 1997 (62 FR 65716).

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license unless the Commission shall give its consent in writing. Upon review of the information submitted in the application dated June 9, 1997, the staff of the U.S. Nuclear Regulatory Commission has determined that the proposed restructuring of BECo will not affect the qualifications of BECo as holder of the license for Pilgrim and that the transfer of control of the license, to the extent effected by the restructuring of BECo, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a safety evaluation dated February 11, 1998.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended; 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* That the Commission approves the application regarding the proposed restructuring of BECo subject to the following: (1) BECo shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from BECo to its proposed parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of BECo's consolidated net utility plant, as recorded on BECo's books of account, and (2) should the restructuring of BECo not be completed by December 31, 1998, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

IV

By March 23, 1998, any person adversely affected by this Order may file a request for a hearing with respect to issuance of the Order. Any person requesting a hearing shall set forth with particularity how that interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is to be held, the Commission will issue an order designating the time and place of such hearing.

The issue to be considered at any such hearing shall be whether this Order should be sustained.

Any request for a hearing must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, D.C. by the above date. Copies should be also sent to the Office of the General Counsel and to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to William S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, Boston, MA 02199, Assistant General Counsel for BECo.

For further details with respect to this action, see the application for approval regarding the corporate restructuring dated June 9, 1997, and the safety evaluation dated February 11, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts.

Dated at Rockville, Maryland, this 11th day of February 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–4148 Filed 2–18–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50–269, 50–270, AND 50–287

Duke Energy Corporation; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Duke Energy Corporation (the licensee) to withdraw its September 4, 1997, application for proposed amendments to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55 for the Oconee Nuclear Station Units 1, 2, and 3, respectively, located in Seneca, South Carolina.

The proposed amendments would have revised the Technical Specifications (TS) pertaining to the justification of the acceptability of the current TS for the High Pressure Injection (HPI) System and allowing operation at reduced power levels with two HPI pumps. The submittal was made because of the potential for an extended shutdown to repair the 3B HPI pump that existed at the time the amendments were proposed. The 3B pump has been repaired.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on September 24, 1997 (62 FR 50003). However, by letter dated February 9, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendments dated September 4, 1997, and the licensee's letter dated February 9, 1998, which withdrew the application for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Dated at Rockville, Maryland, this 12th day of February 1998.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–4147 Filed 2–18–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on March 2, 1998, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would

constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Monday, March 2, 1998—12:00 Noon Until 1:00 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the qualifications of candidates for appointment to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: February 12, 1998.

Medhat M. El-Zeftawy,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 98–4144 Filed 2–18–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on March 5–6, 1998, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, November 20, 1997 (62 FR 62079).

Thursday, March 5, 1998

8:30 A.M.—8:45 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:45 A.M.—10:30 A.M.: Strategy for the Development of the NRC Research Program (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff, Office of Nuclear Regulatory Research (RES), concerning the systematic research process, methods used to identify research topics and agency goals and programs that require support.

10:50 A.M.—12:00 Noon: Prioritization of Research Needs (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC RES staff regarding the methods used to prioritize research needs. Validation and justification of the prioritization methods should be provided.

1:00 P.M.—2:00 P.M.: Core Capabilities (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC RES staff regarding the expertise and core capabilities needed to respond to future needs; explain how these needs were identified and how they affect the research program.

2:00 P.M.—3:00 P.M.: Confirmatory Research Activities (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC RES staff regarding the processing of user need requests and identification of the research activities that are confirmatory in nature.

3:15 P.M.—5:00 P.M.: Anticipatory Activities and Severe Accident Research (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC RES staff regarding the identification of each research activity that is anticipatory in nature. The Committee will also discuss the current activities and remaining needs especially in light of the drive toward risk-informed regulation and the estimation of LERF.

5:00 P.M.—5:30 P.M.: Committee Discussion Period (Open)—The Committee will discuss significant observations, questions and topics needing further exploration.

Friday, March 6, 1998

8:30 A.M.—8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 A.M.—9:30 A.M.: IPE and IPEEE Projects (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC RES staff regarding what utility can be made of the IPE and IPEEE results.

9:30 A.M.—10:30 A.M.: Meeting with Commissioner Nils J. Diaz (Open)—The Committee will discuss items of mutual interests with Commissioner Nils J. Diaz.

10:50 A.M.—12:00 Noon: Deferred Research (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC RES staff regarding the risk significant and vulnerabilities of agencies programs and goals and research that is needed but is not being done.

1:00 P.M.—7:00 P.M.: Discussion of Research needs by the appropriate Subcommittee Chairmen.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 4, 1997 (62 FR 46782). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Dr. Medhat M. El-Zeftawy, Acting Chief of the Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Acting Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Acting Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the

Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Dr. Medhat M. El-Zeftawy, Acting Chief of the Nuclear Reactors Branch (telephone 301/415–6889), between 7:30 A.M. and 4:15 P.M. EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Dated: February 12, 1998.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 98–4145 Filed 2–18–98; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

United States Postal Service Board of Governors; Sunshine Act Meeting

TIMES AND DATES: 1:00 p.m., Monday, March 2, 1998; 8:30 a.m., Tuesday, March 3, 1998.

PLACE: Washington, D.C., at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W. in the Benjamin Franklin Room.

STATUS: March 2 (Closed); March 3 (Open).

MATTERS TO BE CONSIDERED:

Monday, March 2—1:00 p.m. (Closed)

1. Compensation issues.
2. Status Report on Rate Case R97–1.
3. Report on the Tray Management System.
4. Personnel issues.

Tuesday, March 3—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, February 2–3, 1998.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Alternative Dispute Resolution.
4. Tentative Agenda for the April 6–7, 1998, meeting in Washington, D.C.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 98–4381 Filed 2–17–98; 3:28 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26825]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 12, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 9, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Corporation, et al. (70–9123)

Entergy Corporation ("Entergy"),[1] of 639 Loyola Avenue, New Orleans, Louisiana 70113, a registered holding company, and its wholly owned nonutility subsidiary companies, Entergy Enterprises, Inc.,[2] Entergy Global Power Operations Corporation and Entergy Power Operations U.S., Inc.,[3] each of 4 Park Plaza, Irvine, California 92614, Entergy Power, Inc.[4] and Entergy Power Marketing Corp.,[5] each of 10055 Grogan's Mill Road, The Woodlands, Texas 77380, Entergy Integrated Solutions, Inc.,[6] 4740 Shelby Drive, Memphis, Tennessee 38118, Entergy Nuclear, Inc.,[7] 1340 Echelon

[1] Through its five domestic retail public utility companies, Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc. and Entergy New Orleans, Inc. (collectively, "System Operating Companies"), Entergy provides electric service to approximately 2.4 million customers located in the states of Arkansas, Louisiana, Mississippi, Tennessee and Texas, and retail gas service in portions of Louisiana.

[2] By Commission order dated June 30, 1995, Holding Co. Act Release No. 26322 ("June 1995 Order") Entergy Enterprises, Inc. ("EEI") is authorized, among other things, to engage in development activities with respect to potential investments by Entergy in various energy, energy-related and other nonutility businesses. The June 1995 Order also authorized EEI to provide various management, administrative and support services to certain of its associate companies, other than Excepted Companies, as defined below, to provide consulting services to associate and nonassociates companies and to provide operations and maintenance services ("O&M Services") directly, or indirectly, through other subsidiaries of Entergy ("O&M Subs"), to nonassociate companies and to certain of its associate companies, using the skills and resources of other Entergy system companies.

[3] Entergy Global Power Operations Corporation and its wholly owned subsidiary, Entergy Power Operations U.S., Inc., were recently organized by Entergy as O&M Subs under the June 1995 Order. Applicants represent that to date, neither company has entered into any agreements for the provision of O&M services.

[4] Since 1990, Entergy Power, Inc. ("EPI") has been engaged in the business of marketing and selling its capacity and related energy at wholesale to nonassociate bulk power purchasers on market based terms and conditions. EPI currently owns a 21.5% undivided ownership interest in Unit No. 2 of the Independence Steam Electric Generating Station ("Independence 2") and a 100% ownership interest in Unit No. 2 of the Ritchie Steam Electric Generating Station ("Ritchie 2"), at 544 megawatt ("MW") oil- and gas-fired generating facility. Together, EPI's interest in Independence 2 and Ritchie 2 represents an aggregate of 809 MW of generating capacity. EPI is presently authorized by the Federal Energy Regulatory Commission ("FERC") to sell, at market based rates, up to an aggregate of 1,500 MW of capacity and energy. To facilitate these sales, EPI receives electric transmission service under the Entergy system's open access transmission tariff.

[5] Entergy Power Marketing Corp. ("EPMC") was originally organized in 1995 as an EWG, defined below, to engage in the marketing and brokering of electric power at wholesale. Coincident with Commission order dated January 6, 1998, Holding Co. Act Release No. 26812, EPMC relinquished its EWG status. EPMC currently engages in the brokering and marketing of energy commodities in wholesale and retail markets in the United States, and risk management and other activities related to its energy commodities business. Applicants assert that EPMC does not own or operate any facility that would cause it to fall within the definition of an "electric utility company" or a "gas utility company" under the Act.

[6] By Commission order dated December 28, 1992, Holding Co. Act Release No. 25718, Entergy Integrated Solutions, Inc. ("EIS") was formed as a wholly owned subsidiary of EEI to engage in, among other things, the energy management services business and the provision of related consulting services. EIS's primary business is the installation and maintenance of high efficiency lighting equipment through multiyear sales contracts for small to medium size commercial customers. Under Commission order dated July 27, 1995, Holding Co. Act Release No. 26342, EIS recently broadened its product offerings to include the design, installation, operation and maintenance of high efficiency air conditioning, refrigeration and energy management systems for commercial, institutional and government customers.

[7] Entergy Nuclear, Inc. ("ENI"), a wholly owned subsidiary of EEI, was formed as an O&M Sub to

Continued

Parkway, Jackson, Mississippi 39213 and Entergy Operations Services, Inc.,[8] 110 James Parkway West, St. Rose, Louisiana 70087 (collectively, "Applicants"), have filed an application-declaration ("Application") under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 12(f), 13(b), 32 and 33 of the Act and rules 42, 45, 46, 53, 54, 58, 83, 87, 90 and 91 under the Act requesting authorization to engage in various financing and related transactions involving Entergy and/or certain of its nonutility subsidiaries.

New Subsidiaries

Entergy proposes to acquire, directly or indirectly, the securities of one or more companies ("New Subsidiaries") organized for the purposes of (a) performing service and development activities currently authorized by the Commission[9] and/or (b) acquiring, owning and holding the securities of one or more associate companies. These associate companies would include exempt wholesale generators ("EWGs"),[10] foreign utility companies ("FUCOs"),[11] exempt telecommunications companies ("ETCs"),[12] energy-related companies ("ERCs"),[13] O&M Subs, other New Subsidiaries and certain subsidiaries of Entergy ("Authorized Subsidiary Companies").[14] EWGs, FUCOs, ETCs, ERCs, O&M Subs, New Subsidiaries and Authorized Subsidiary Companies are referred to in this Application collectively as "Nonutility Companies".

New Subsidiaries may be direct or indirect subsidiaries of Entergy, and may perform development activities and administrative services and/or consulting services, as described below. Investments by Entergy in New Subsidiaries may take the form of any combination of: (i) purchases of capital shares, partnership interests, member interests in limited liability companies, trust certificates or other forms of equity interests (collectively, "Capital Stock"); (ii) capital contributions; (iii) open account advances without interest; (iv) loans; and (v) Guarantees, as defined below, issued in support of securities or other obligations of New Subsidiaries. The source of funds for direct or indirect investments by Entergy in any New Subsidiary include (a) borrowings authorized by Commission orders dated February 26, 1997 (HCAR No. 26674); (b) proceeds from the sale of Entergy common stock authorized by Commission order dated March 25, 1997 (HCAR No. 26693) and June 6, 1996 (HCAR No. 26528); (c) proceeds derived from securities issuances authorized by the Commission in future orders; and (d) other available cash resources. Loans by Entergy to a New Subsidiary will have interest rates and maturity dates that are designed to provide a return to Entergy of not less than Entergy's effective cost of capital. To the extent not exempt or otherwise authorized by the Commission, initial investments in the Capital Stock of New Subsidiaries will be included in the Aggregate Authorization, as described below.

To the extent that Entergy provides funds to a New Subsidiary which are used to invest in any EWG or FUCO, the amount of the investment will be included in the calculation of "aggregate investment" required under rule 53. Moreover, to the extent that Entergy provides funds to a New Subsidiary which are used to invest in an ERC, the amount of the investment will be included in the calculation of "aggregate investment" required under rule 58.

From time to time, Entergy proposes to consolidate or reorganize all or any part of its ownership interests in Nonutility Companies and/or New Subsidiaries to the extent these restructuring activities are not exempt or otherwise authorized by the Commission.

Guarantees

Entergy and Nonutility Companies also propose to issue guarantees or provide other forms of credit support or enhancements (collectively, "Guarantees") to or for the benefit of Nonutility Companies in an aggregate amount not to exceed $750 million ("Aggregate Authorization"), through December 31, 2002. Guarantees may take the form of Entergy or a Nonutility Company agreeing to guarantee, undertake reimbursement obligations, assume liabilities or other obligations with respect to or act as surety on, bonds, letters of credit, evidences of indebtedness, equity commitments, performance and other obligations undertaken by Entergy or its associate Nonutility Companies. Entergy represents that the terms and conditions of Guarantees will be established through arm's length negotiations based upon current market conditions. Entergy further undertakes that any Guarantee it or any Nonutility Company issues will be without recourse to any System Operating Company.

In determining what portion of the Aggregate Authorization is available for use, the amount of any guarantee previously issued and outstanding under the June 1995 Order will reduce Aggregate Authorization by an equal amount.[15] However, the amount of any Guarantee exempt from the Act or otherwise authorized by the Commission would not reduce the Aggregate Authorization.

To the extent that Entergy provides Guarantees in support of its investment in any EWG or FUCO, the amount of the investment will be included in the calculation of "aggregate investment" required under rule 53. Moreover, to the extent that Entergy provides Guarantees in support of its investment in an ERC, the amount of the investment will be included in the calculation of "aggregate investment" required under rule 58.

O&M Subs

Entergy also proposes to organize and acquire the Capital Stock of O&M Subs through December 31, 2002. O&M Subs will be formed as domestic or foreign corporations, partnership or other entities. Following the organization of an O&M Sub, investments in O&M Subs may take the form of (i) Additional purchases of Capital Stock; (ii) capital contributions or open account advances without interest; (iii) loans; (iv) Guarantees of the securities or other obligations of an O&M Sub; or (v) any combination of (i) to (iv) above. Loans by Entergy to O&M Subs will have

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engage in the business of operating and managing nuclear power facilities under the June 1995 Order. ENI has entered into a contract to provide services to Maine Yankee Atomic Power Company through September 30, 1998 in connection with the decommissioning of the Maine Yankee Nuclear Plant. ENI may enter into agreements with other utility systems to provide O&M Services.

[8] Entergy Operations Services, Inc. ("EOSI"), a wholly owned subsidiary of EEI was formed as an O&M Sub under the June 1995 Order to engage in the business of operating and maintaining fossil-fueled generation, transmission and distribution assets of utility companies, municipalities and large commercial and industrial customers, primarily in the United States. EOSI's current business activities include the sale to nonaffiliates of various O&M Services, including services related to the design and construction of fossil-fueled generating facilities and other power projects. EOSI currently provides services to, or on behalf of, the City of Austin and ESKOM, a South African utility, with respect to the management and operations of certain coal-fired generating units and nuclear generating units owned and/or operated by these customers. Recently, EOSI has performed substation maintenance and construction work for several industrial customers.

[9] See note 15 below.

[10] EWGs are defined in section 32 of the Act.

[11] FUCOs are defined in section 33 of the Act.

[12] ETCs are defined in section 34 of the Act.

[13] ERCs are defined in rule 58 under the Act.

[14] The Authorized Subsidiary Companies are the Applicants, other than Entergy.

[15] The June 1995 Order authorizes Entergy to finance the performance of certain services and the organization of O&M Subs through purchases of common stock, capital contributions, open account advances, loans and guarantees provided by EWGs, FUCOs and other Nonutility Companies in an aggregate amount not to exceed $350 million. This authorization expired on December 31, 1997.

interest rates and maturity dates that are designed to provide a return to Entergy of not less than Entergy's effective cost of capital. To the extent not exempt or otherwise authorized by the Commission, initial investments in the Capital Stock of O&M Subs will be included in the Aggregate Authorization.

Entergy proposes to continue to provide O&M Services,[16] indirectly through one or more O&M Subs, to or for the benefit of associate and nonassociate developers, owners and operators of domestic and foreign power projects and other electric utility systems or facilities, including projects that Entergy may develop on its own, through an associate Nonutility Company, or in collaboration with third parties. O&M Subs proposes to charge fair market value for O&M Services performed. To the extent not exempt or otherwise authorized by the Commission, Entergy requests an exemption from the "at-cost" requirements of rules 90 and 91 for services rendered to associate companies, other than an Excepted Company,[17] provided that no O&M Services will be rendered to an associate power project unless the project (i) Is a FUCO or an EWG that derives no part of its income, directly or indirectly, from the generation and sale of electric energy within the United States; (ii) is an EWG that sells electricity at market-based rates which have been approved by the FERC or the relevant state public utility commission, provided that the purchaser is not an Excepted Company; (iii) is a "qualifying facility" ("QF") under the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), that sells electricity exclusively at rates negotiated at arm's length to one or more industrial or commercial customers purchasing the electricity for their own use and not for resale, or to an electric utility company (other than an Excepted Company) at the purchaser's "avoided cost" as determined under the regulations under PURPA; or (iv) is an EWG or QF that sells electricity at rates based upon its cost of services, as approved by the FERC or any state public utility commission having jurisdiction, provided that the purchaser of the electricity is not an Excepted Company.

Securities Issuances by Nonutility Companies

Entergy requests authorization for Nonutility Companies to issue and/or sell securities of any type, including the issuance of Guarantees (collectively, "Securities"), to Entergy, to other Nonutility Companies or to nonassociate companies, including banks, insurance companies and other financial institutions from time to time through the earlier to occur of December 31, 2002 or the effective date of any rule adopted by the Commission exempting the proposed sale and issuance of Securities from the requirements of prior approval under sections 6(a) and 7 of the Act.

Equity Securities issued by a Nonutility Company may include capital shares, partnership interests, member interests in limited liability companies, trust certificates or the equivalent security under applicable foreign law. Equity Securities may be denominated in either U.S. dollars of foreign currencies. Entergy requests that the Commission reserve jurisdiction over the modification by Nonutility Companies of the terms of their charters or other governing documents to effect the issuance of equity Securities, pending completion of the record. Entergy undertakes that it will file a post-effective amendment in this proceeding describing the proposed charter modification and obtain a supplemental order of the Commission authorizing the charter modifications.

Entergy also requests that the Commission reserve jurisdiction over the issuance of any equity Securities not currently exempt under rule 52(b) or otherwise authorized by the Commission ("Other Securities"). Entergy undertakes that it will file a post-effective amendment in this proceeding describing the general terms of the proposed Other Securities and obtain a supplemental order of the Commission authorizing the issuances of Other Securities.

In connection with the issuance of debt Securities by Nonutility Companies, Entergy requests authorization for Nonutility Companies to enter into interest rate swaps, options and similar products to mitigate interest rate risk associated with debt Securities.

Net proceeds from the issuance and sale of Securities will be used for general corporate purposes, including (1) loans to and/or equity investments in Nonutility Companies; (2) for the repayment, refinancing or redemption of outstanding securities of Entergy or Nonutility Companies originally issued for purposes of acquiring interests in Nonutility Companies or providing funds for the authorized business activities of these companies; and (3) for working capital or other cash requirements of Nonutility Companies. Entergy states that net proceeds will only be applied to finance activities that are exempt under the Act or otherwise authorized by the Commission.

Entergy undertakes that no System Operating Company will incur any indebtedness, extend any credit, or sell or pledge its assets, directly or indirectly, to or for the benefit of any Nonutility Company. Entergy further undertakes that any Securities issued by a Nonutility Company will be nonrecourse to any System Operating Company.

Services by Nonutility Companies

To the extent not exempt or otherwise authorized by the Commission, Entergy requests authorization for Nonutility Companies to provide other Nonutility Companies with administrative services ("Administrative Services"),[18] to provide consulting services ("Consulting Services")[19] to other Nonutility Companies and to nonassociate companies, and to engage in development activities ("Development Activities"),[20] all on a world-wide basis.

The Applicants state that Administrative Services, Consulting Services and Development Activities

[16] O&M Services would include, but not be limited to, development, engineering, design, construction and construction management, pre-operational start-up, testing and commissioning, long-term operations and maintenance, fuel procurement, management and supervision, technical and training, administrative support, market analysis, consulting, coordination and any other managerial, technical, administrative or consulting required in connection with the business of owning or operating facilities used for the generation, transmission or distribution of electric energy (including related facilities for the production, conversion, sale or distribution of thermal energy) or coordinating their operations in the power market.

[17] Excepted Companies include the System Operating Companies, System Energy Resources, Inc., System Fuels, Inc., Entergy Services, Inc., Entergy Operations, Inc. or any other subsidiary Entergy may create whose activities and operations are primarily related to the domestic sale of electric energy at retail or at wholesale or the provision of related goods or services to Entergy's affiliates.

[18] Administrative Services would include, without limitation, corporate and project development and planning, management, administrative, employment, tax, legal, accounting, engineering, consulting, marketing, utility performance and electric data processing services, and intellectual property development, marketing and other support services.

[19] Consulting Services would include, without limitation, providing technical capabilities and expertise primarily in the areas of electric power generation, transmission and distribution and ancillary operations.

[20] Development Activities would include, without limitation, investigating sites, research, engineering and licensing activities, acquiring options and rights, contract drafting and negotiation, legal, accounting and financial analysis, preparing and submitting bids and proposals, and other activities necessary to identify and analyze investment opportunities on behalf of companies in the Entergy system, excluding Excepted Companies.

would generally be performed at cost. The Applicants further state that to the extent that any Nonutility Company uses the expertise or resources of an Excepted Company in connection with the performance of Administrative Services, Consulting Services or Development Activities, such expertise or resources shall be provided in a manner consistent with the terms and conditions contained in the June 1995 Order.

To the extent not exempt or otherwise authorized by the Commission, Entergy requests an exemption from the "at cost" requirements of rules 90 and 91 for the performance of Administrative Services, Consulting Services and Development Activities by Nonutility Companies for associate Nonutility Companies, provided that no Excepted Company shall be engaged or otherwise involved, directly or indirectly, in the performance of Administrative Services, Consulting Services or Development Activities that are provided to Nonutility Companies at a price other than at cost. Nonutility Companies would continue to provide Consulting Services to nonassociate companies at market rates.

Payment of Dividends

To the extent not exempt from the Act or otherwise authorized by the Commission, Entergy requests authorization for Nonutility Companies to declare and pay dividends out of capital or unearned surplus to their immediate parent companies through December 31, 2002, subject to applicable corporate law and any applicable financing agreement which restricts distributions to shareholders.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4204 Filed 2–18–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39647; File No. SR–DTC–97–12]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of Proposed Rule Change to Establish a Voluntary Redemption and Sales Service for Depository Eligible Units of Unit Investment Trusts

February 11, 1998.

Pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 27, 1997, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on January 22, 1998, amended the proposed rule change as described in Items I, II, and III below; which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow DTC to establish procedures for a redemption and sales service for depository eligible unit investment trusts ("UITs") to be called the investor's voluntary redemptions and sales service ("IVORS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC is establishing IVORS to provide its participants with a secure and efficient redemption and sales service for DTC-eligible units in UITs. IVORS will offer two basic UIT services: (1) Redemption of units with the UIT transfer agent for cash payment and (2) sale of units to the UIT sponsor for cash payment. IVORS initially will be available to eligible DTC participants by way of DTC's participant terminal system ("PTS").

IVORS will be available only if (1) the UIT units are DTC-eligible and are held in DTC's fast automated securities transfer ("FAST") system;[3] (2) the FAST transfer agent currently is or agrees to become a full service DTC participant; and (3) the UIT's lead sponsor or its clearing agent agrees to participate in IVORS as a DTC participant. When a specific UIT becomes eligible for IVORS, its FAST transfer agent will submit initial standing instructions for the UIT to an IVORS data base on PTS regarding participants' ability to redeem or to sell units through IVORS. The UIT sponsor will be able to make daily changes to those standing instructions by way of PTS. When a participant holding units in its DTC account submits a request through IVORS to surrender the units for their value, IVORS will determine which of the two basic services (*i.e.*, redemption or sale) is available for the units based on the standing instructions for the particular UIT CUSIP number in the IVORS database.

After the determination of whether to surrender the units through a redemption or sale has been made, IVORS will then process the transaction. On the date of the participant's request to surrender the units (*i.e.*, trade date or "T"), IVORS will move the surrendered units from the participant's free position to its "IVORs pending surrender segregation account." Before the end of the day on T+2, either the FAST transfer agent or the UIT sponsor will enter into IVORS the redemption price (if the units are to be redeemed) or the purchase price (if the units are to be sold) plus the accrued dividend per unit. Both redemptions and sales of units through IVORS will be settled on T+3.

IVORS automatically will calculate the settlement value of the redemption or sale and will generate a deliver order ("DO") to move the units versus payment of the settlement value from the redeeming participant's IVORS pending surrender segregation account either to the FAST transfer agent's DTC participant account (in the case of a redemption) or to the UIT sponsor's DTC participant account (in the case of a sale). If the units are being redeemed, IVORS automatically will generate a second DO to remove the units from the FAST transfer agent's DTC participant account. If the units are being sold, the units will remain in the UIT sponsor's DTC account until the UIT sponsor later delivers them to a secondary-market purchaser or redeems them by way of IVORS.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act[4] and the rules and regulations thereunder because it will promote efficiencies in the clearance and settlement of securities transactions.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] DTC has informed the Commission that DTC-eligible UIT units usually are held in the FAST system.

[4] 15 U.S.C. 78q–1(b)(3)(A).

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, in the public interest, or for the protection of investors.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has solicited participant comments on the proposed rule change. It has taken into account participant input in the development of this proposal.

DTC's planning department with several UIT sponsors and trustee/transfer agents in the process of developing the IVORS service. The proposal for IVORS was distributed to the executive committee of the Reorganization Division Inc. of the Securities Industry Association ("SIA"). Slides of the proposed service were also presented during annual meetings of the SIA Reorganization Division.

In response to DTC newsletter articles regarding the IVORS proposal and discussions with participant service representatives on their field trips, over a dozen participants requested copies of the IVORS proposal and offered to participate in a pilot of the new service.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–97–12 and should be submitted by March 12, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4095 Filed 2–18–98 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39648; File No. SR–OCC–97–12]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Regarding Initial and Minimum Net Capital Requirements for Futures Commission Merchants

February 11, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 15, 1997, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–OCC–97–12) as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend OCC's rules regarding its initial and minimum net capital requirements for clearing members that are also registered futures commission merchants ("FCMs").

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Propose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend OCC's rules regarding its members that are also FCMs. Under the proposed rule change, the initial and minimum net capital [3] of these members must exceed the greater of the following standards: OCC's current initial and minimum net capital requirements or that required by the clearing organization of the FCM member's designated self-regulatory organization ("DSRO").[4]

The proposed rule change also will modify OCC's early warning notice provisions to require OCC members that are also FCMs to notify OCC if the member's capital falls below OCC's net capital requirements or if the member's capital falls below OCC's net capital requirements or if the member's capital falls below the minimum net capital requirements set by the clearing organization of the member's designated DSRO.[5]

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] OCC Rules 301 and 302 require initial and minimum net capital requirements of $1,000,000 and $750,000, respectively.

[4] According to OCC, the terms clearing organization and DSRO shall have the meanings ascribed to them in the General Regulation of the Commodity Exchange Act, 17 CFR 1.3(d) and 17 CFR 1.3(ff)(1)(2), respectively. Letter from Robert C. Rubenstein, OCC (September 3, 1997).

[5] This rule change assumes the prior effectiveness of OCC's proposed rule change File No. SR–OCC–97–05, which will amend OCC's by-laws and rules to provide for early warning notice of noncompliance with the financial requirements of a regulatory organization. Securities Exchange Act Release No. 38948 (August 19, 1997) 62 FR 44998 [File No. SR–OCC–97–05] (filing of a proposed rule change relating to early warning notices). In the event that the filing is not approved prior to the approval of this rule change, then Rule 303 will read as follows:

(a) A clearing member other than an exempt Non-U.S. clearing member shall notify the Corporation promptly, and in any event prior to 3:00 P.M. Central Time (4:00 P.M. Eastern Time) of the following business day if:

Continued

OCC believes that the proposed rule change will increase its financial surveillance of its clearing members in situations where the clearing member's net capital falls below that level required by its futures clearing organization. OCC believes that this additional standard will enhance its membership criteria and afford OCC with greater protection without being unduly burdensome. This proposed additional standard will incorporate financial criteria within OCC's rules that are already applicable to clearing members registered as FCMs.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations promulgated thereunder because the proposed rule change is consistent with assuring the safeguarding of securities and funds which are in the custody and control of OCC and for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–97–12 and should be submitted by March 12, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4203 Filed 2–18–98; 8:45 am]

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(1) Such clearing member's net capital shall become less than the greater of $1,000,000 or (in the case of a clearing member not electing to operate pursuant to the alternative net capital requirements) *ten percent* of its aggregate indebtedness, or (in the case of a clearing member electing to operate pursuant to the alternative net capital requirements) *five percent* of its aggregate debit items, or *(in the case of a clearing member that also registered as a futures commission merchant) the minimum net capital required by the clearing organization of the clearing member's designated self regulatory organization;* or

(2)–(6) [no change.]

(b) [No changes from changes proposed in SR–OCC–97–05.]

(Deleted text is bracketed and additions are in italics.)

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39640; File No. SR–PHLX–98–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Regarding Automatic Price Improvement

February 10, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that January 27, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On February 3, 1998, and February 6, 1998, respectively, the Exchange filed amendments 1 and 2 to the proposal with the Commission.[2] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b–4 of the Act, proposes to amend Rule 229, the Phlx Automated Communications and Execution ("PACE") System, Supplementary Material .07(c)(i), Automatic Double-up/Double-down Price Improvement, to clarify and correct three aspects of this new provision.[3] First. the Exchange proposes to add into the text of Rule 229.07(c) that the Public Order Exposure ("POES") window does not apply where automatic price improvement or manual price protection are in place. Second, the Exchange proposes to expand upon the provision stating that member organizations entering orders may elect to have such orders executed in accordance with paragraph (c), or not to participate in either double-up/double-down feature. Specifically, the Exchange proposes to add that failure to elect will result in the activation of the double-up/double-down feature for that User, but specialists determine whether to provide automatic price improvement in a particular security. Third, the Exchange proposes to clarify that in situations where automatic pride improvement would result in an execution at a price better than the last sale price, the order would be stopped at the PACE Quote[4] when received, meaning that the order is guaranteed to

[1] 15 U.S.C. 78s(b)(1).

[2] See Letter from Edith Hallahan, Associate General Counsel, Phlx to Michael Walinskas, Senior Special Counsel, SEC dated February 2, 1998 ("Amendment No. 1") and letter from Edith Hallahan, Associate General Counsel, Phlx to Michael Walinskas, Senior Special Counsel, SEC dated February 6, 1998 ("Amendment No. 2"). Amendment No. 1 makes several substantive change to the originally proposed filing. Amendment No. 2 makes a non-substantive change to correct an internal cross-reference in Rule 229.07(c)(i)(D).

[3] See Securities Exchange Act Release No. 39548 (January 13, 1998), 63 FR 3596 (January 23, 1998).

[4] The PACE Quote consists of the best bid/offer among the American, Boston, Cincinnati, Chicago, New York, Pacific and Philadelphia, Stock Exchanges as well as the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES"). See Phlx Rule 229.

receive at least that price by the end of the trading day. The text of the proposed rule change is available at the Office of the Secretary, the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PACE is the Exchange's automated order routing and execution system on the equity trading floor. PACE accepts orders for automatic or manual execution in accordance with the provisions of Rule 229, which governs the PACE System and defines its objectives and parameters. The PACE Rule establishes execution parameters for orders depending on type (market or limit), size and the guarantees offered by specialists.

Recently, the Commission approved Rule 229.07(c), providing either automatic price improvement or manual price protection in double-up/double-down situations.[5] A "double-up/double-down" situation is defined as a trade that would be at least: (i) ¼ (up or down) from the last regular way sale on the primary market; or (ii) ¼ from the regular way sale that was the previous intraday change on the primary market.[6] The term "double" originated with two ⅛ ticks, meaning ¼. A down tick of 1/16 followed by a down tick of 3/16 would be a double-down situation, because it equals ¼.

During the approval process for Rule 229.07(c), two potential clarifications were identified. First, the POES window does not apply where automatic price improvement or manual price protection are in place.[7] The POES window, contained in Rule 229.05, currently provides that round-lot market orders up to 500 shares and partial round-lot ("PRL" which combines a round-lot with an odd-lot) market orders up to 599 shares are stopped at the PACE Quote at the time of entry into PACE ("Stop Price") for a 30 second delay to provide the Phlx specialist with the opportunity to effect price improvement when the spread between the PACE Quote exceeds ⅛ point If such order is not executed with the POES window, the order is automatically executed at the Stop Price. The representation that the POES window does not apply when automatic price improvement or manual price protection are in place was made by the Exchange in the original proposal to adopt Rule 229.07(c),[8] and is now being added to the actual text of that provision.

Second, the Exchange proposes to expand upon the provision stating that member organizations entering orders may elect to have such orders executed in accordance with paragraph (c), or not to participate in either double-up/double-down feature. The Exchange proposes to add that failure to elect will result in the activation of the double-up/double-down feature for that User, noting that specialists determine whether to provide automatic price improvement in a particular security.[9] This change is intended to clarify that enabling the features is the default setting; thus, PACE users may choose not to participate, but failure to choose results in enabling the features.

Third, following approval, but prior to implementation of the proposal, a situation was identified whereby certain orders would automatically receive price improvement resulting in an execution better than the last sale. Specifically, "better than the last sale" means a buy order at a price less than the last sale or a sell order at a price higher than the last sale. This was not the intent of the original proposal, and, in fact, may create a potential violation of the short sale rule,[10] which prohibits certain short sales of a security on a down tick. For example, where the PACE Quote is 22¼–¾, the last sale was at ¾ and the previous sale was at ½, the provision would apply to a sell order, because selling at ¼ creates a double-down tick (½ away from ¾), as well as a buy order, because buying at ¾ is, although not an up or down tick from the last sale of ¾, ¼ away from the last change, even though the last sale at ¾ (which was a zero tick) created the double-up tick from the previous sale at ½. The buy order would automatically be improved to ⅝, which would result in an execution at a price better than the last sale and, possibly, in violation of the short sale rule; if the specialist selling at ⅝ was short that security, a short sale on a down tick has occurred automatically. The sell order is currently eligible to be improved to ⅜, without a potential short sale rule violation.[11]

Instead, the Exchange proposes that in any situation where an improved price would be better than the last sale, the order be stopped at the PACE Quote when received. As stated in the proposal adopting this provision, stopped orders are subject to Equity Floor Procedure Advice A–2, such that specialists must display stopped orders at the improved price[12] and any contra-side orders received by the specialist will be taken into account for purposes of determining when to execute a stopped order and at what price. Thus, this change is intended to eliminate potential short sale violations respecting PACE orders to buy, and to correct the result that any order may receive price improvement over the last sale. The Exchange does not believe it is customary or appropriate to provide price improvement over the last sale price. Price improvement generally takes the form of stopping orders, where the next sale price can benefit the stopped order; the last sale price also serves as a measure against the stop price. In this regard, the Exchange notes that automatic price improvement on the Chicago Stock Exchange ("CHX") does not consist of price improvement over the last sale.[13] The proposal at hand is intended to create an exception to providing automatic double-up/double-down price improvement to eligible orders pursuant to rule 229.07(c)(i). As stated above, this exception was omitted from the original proposal and serves to complete that initiative for quick implementation of automatic price improvement on the Phlx. Despite this exception, the essence of the provision—to automatically improve eligible orders in double-up/double-down situations—remains fundamentally preserved.

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[5] See supra note 3.

[6] Hereinafter, all references to the last sale price are to the last regular way sale.

[7] See Securities Exchange Act Release No. 39225 (October 8, 1997), 62 FR 54147 (October 17, 1997).

[8] See Securities Exchange Act Release No. 39548 (January 13, 1998), 63 FR 3596 (January 23, 1998), at note 10.

[9] See Securities Exchange Act Release NO. 39548 (January 13, 1998), 63 FR 3596 (January 23, 1998), at note 22.

[10] See Phlx Rule 455 and Section 10(a) of the Act.

[11] The specialist would be the buyer in this case, and the sell order could not be a sell short order, as such orders are not accepted over the PACE System.

[12] The order would be incorporated into the determination of the Specialist's best bid and offer

[13] See CHX Rules Article XX, Rule 37.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6 of the Act,[14] in general, and furthers the objectives of Section 6(b)(5)[15] in particular, in that it is designed to promote just and equitable principles of trade and perfect the mechanism of a free and open market and a national market system, by correcting and clarifying the Phlx's double-up/double-down rule to more accurately and fairly provide price improvement to PACE orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(e)(6)[17] thereunder, the proposed rule change has become effective upon filing as it effects a change that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has provided written notice of its intent to replace the original filing with this filing (Amendment No. 1). The Exchange has requested that the Commission accelerate the operative date of the proposal in order for the automatic double-up/double-down price improvement provision, as amended, to become operative promptly.

The Commission finds good cause for accelerating the operative date of the proposal as of the date of this notice. Accelerating the operative date of the proposal will enable the Exchange to begin using its automatic double-up/double-down price improvement provision without the possibility of violating the short sale rule. In addition, the Exchange's representation that the POES window does not apply when automatic price improvement or manual price protection are in place was made in the original proposal; the current filing merely codifies this treatment in Phlx's rule book.[18] Finally, the Commission believes that the proposed refinement to the automatic double-up/double-down feature that stops certain orders at the PACE quote rather than providing an immediate execution better than the last sale price is consistent with the double-up/double-down protection program that is employed by CHX.[19] Although customers may not benefit from the automatic double-up/double-down program to the extent the original filing (Phlx 97–23) allowed, the revised program should still enhance the quality of stock executions on Phlx. The Commission notes that the original proposal was published for the full comment period during which no comments were received.[20] The Commission believes that the proposal does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate for the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–PHLX–98–05 and should be submitted by March 12, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4096 Filed 2–18–98; 8:45 am]

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[14] 15 U.S.C. 78f.

[15] U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(e).

[18] See Securities Exchange Act Release No. 39548 (January 13, 1998), 63 FR 3596 (January 23, 1998).

[19] See CHX Rules Article XX, Rule 37(b)(6).

[20] See Securities Exchange Act Release No. 39548 (January 13, 1998), 63 FR 3596 (January 23, 1998) (order approving SR–Phlx–97–23).

[21] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: "Financing Eligibility Statement for Demonstration of Social or Economic Disadvantage."

Type of Request: Extension of a currently approved collection.

Form No's: 1941A, 1941B, 1941C.

Description of Respondents: SBA Businesses Seeking Financing from Specialized Small Business Investment Companies (SBIC).

Annual Responses: 1,000.

Annual Burden: 2,000.

Comments: Send all comments regarding this information collection to Cathy Fields, Program Analyst, Office of Investment Division, Small Business Administration, 409 3rd Street, S.W., Suite 6300, Washington, D.C. 20416. Phone No: 202–205–6512.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "Notice of Award, Grant/ Cooperative Agreement Cost Sharing Proposal."

Type of Request: Extension of a currently approved collection.

Form No's: 1222 and 1224.

Description of Respondents: SBA Grant Applicants and Recipients.

Annual Responses: 1,480.

Annual Burden: 118,920.

Comments: Send all comments regarding this information collection to Doris Copeland, Grants Specialist, Office of Procurement & Grants Management, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone No: 202–205–6621.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "Settlement Sheet."

Type of Request: Extension of a currently approved collection.

Form No: 1050.

Description of Respondents: SBA Borrowers.

Annual Responses: 17,000.

Annual Burden: 12,750.

Comments: Send all comments regarding this information collection to Harry Kempler, Chief Counsel for Business Loans, Office of General Counsel, Small Business Administration, 409 3rd Street, S.W., Suite 7200, Washington, D.C. 20416.

Phone No: 202–205–6642.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "Application for Certificate of Competency."

Type of Request: Extension of a currently approved collection.

Form No's: 74, 74A, 74B, 183.

Description of Respondents: Small Businesses.

Annual Responses: 1,088.

Annual Burden: 11,769.

Comments: Send all comments regarding this information collection to Rita Bailey, Program Assistant, Office of Prime Contracts, Small Business Administration, 409 3rd Street, S.W., Suite 8800, Washington, D.C. 20416. Phone No: 202–205–6471.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "Application for Section 504/ 502 Loan."

Type of Request: Extension of a currently approved collection.

Form No: 1244.

Description of Respondents: Small Business Applying for Financial Assistance."

Annual Responses: 4,000.

Annual Burden: 9,000.

Comments: Send all comments regarding this information collection to Keith Lucas, Program Assistant, Office of Loan Programs, Small Business Administration, 409 3rd Street, S.W., Suite 8300, Washington, D.C. 20416. Phone No: 202–205–6570.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "The Impact of Environmental Liability on Access to Capitol for Small Business."

Type of Request: Extension of a currently approved collection.

Form No: SBA–8144–OA- 94.

Description of Respondents: Small Business Investment Capital Companies.

Annual Responses: 1,000.

Annual Burden: 160.

Comments: Send all comments regarding this information collection to Charles Ou, Office of Economic Research, Small Business Administration, 409 3rd Street, S.W., Suite 7800, Washington, D.C. 20416. Phone No: 202–205–6530.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "SBA Participating Lender EDI Participant Profile."

Type of Request: Extension of a currently approved collection.

Form No: 1944.

Description of Respondents: Small Participating Lenders.

Annual Responses: 8,337.

Annual Burden: 2,779.

Comments: Send all comments regarding this information collection to George Price, Director, Market Research, Small Business Administration, 409 3rd Street, S.W., Suite 7600, Washington, D.C. 20416. Phone No: 202–205–6744.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98–4108 Filed 2–18–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before March 23, 1998. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Jacqueline White, Small Business Administration, 409 3RD Street, S.W., 5th Floor, Washington, D.C. 20416, Telephone: (202) 205–6629.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

Title: Application forms for the 8(a) Program.

Form No: 1010A, 1010B, 1010C.

Frequency: On Occasion.

Description of Respondents: 8(a) Companies.

Annual Responses: 33,000.

Annual Burden: 177,000.

Dated: February 11, 1998.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98–4107 Filed 2–18–98; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Finding Regarding the Social Insurance System of Albania

AGENCY: Social Security Administration.

ACTION: Notice of finding regarding the Social Insurance System of Albania.

Finding

Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to any individual who is not a United States citizen or national for any month after he or she has been outside the United States for 6 consecutive months, and prior to the first month thereafter for all of which, the individual has been in the United States. This prohibition does not apply to such an individual where one of the exceptions described in sections 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2)–(5)) affects his or her case.

Section 202(t)(2) of the Social Security Act provides that, subject to certain residency requirements of section 202(t)(11), the prohibition against payment shall not apply to any individual who is a citizen of a country which the Commissioner of Social Security finds has in effect a social insurance system which is of general application in such country and which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits individuals who are United States citizens but not citizens of that country and who qualify for such benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

The Commissioner of Social Security has delegated the authority to make such a finding to the Associate Commissioner for International Policy. Under that authority, the Associate Commissioner for International Policy has approved a finding that Albania, as of October 1, 1993, has a social insurance system of general application which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits United States citizens who are not citizens of Albania and who qualify for the relevant benefits to receive those benefits, or their actuarial equivalent, while outside of Albania, regardless of the duration of the absence of these individuals from Albania.

Accordingly, it is hereby determined and found that Albania has in effect, as of October 1, 1993, a social insurance system which meets the requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)).

This is our first finding under section 202(t) of the Social Security Act for Albania. For the period September 7, 1948 through September 29, 1992, U.S. Treasury Department regulations prohibited sending U.S. Government checks (including U.S. Social Security checks) to, or on behalf of, individuals in Albania. These restrictions were lifted on September 30, 1992.

However, prior to October 1, 1993, the date that the People's Assembly Law on Social Insurance in the Albanian Republic, Act No. 7703, entered into force, there was no provision for the payment of benefits to U.S. citizens residing outside Albania as required under section 202(t)(2)(B) of the Social Security Act. Consequently, payment of benefits to Albanian citizens under the social insurance exception was not possible until the new law went into effect.

FOR FURTHER INFORMATION CONTACT: Donna Powers, Room 1104, West High Rise Building, P.O. Box 17741, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3568.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

Dated: February 5, 1998

James A. Kissko,

Associate Commissioner for International Policy.

[FR Doc. 98–4160 Filed 2–18–98; 8:45 am]

BILLING CODE 4190–29–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1501).

TIME AND DATE: 9 a.m. (CST), February 20, 1998.

PLACE: Winston County Courthouse, 2d Floor Courtroom, 113 Main Street, Louisville, Mississippi.

STATUS: Open.

Agenda

Approval of minutes of meeting held on January 28, 1998.

New Business

C—Energy

C1. Delegation of authority to the Vice President of Fuel Supply and Engineering to award a contract for the sale of up to 100,000 tons per year of fly ash from Bull Run Fossil Plant to Babb Cellular Concrete (BBC), LLC, and approval of a grant of an industrial term easement to BBC affecting approximately 10 acres of the Bull Run site for construction and operation of an autoclaved cellular concrete plant (Tract No. XBRSP–3IE).

E—Real Property Transactions

E1. Sale of a permanent easement to the Town of Smyrna, Tennessee, affecting approximately 0.08 acre of the Smyrna 161–kV Substation property (Tract No. XSMNSS–1H).

E2. Abandonment of easement rights affecting approximately 3.01 acres of the Gallatin-Portland-Franklin transmission line in Sumner County, Tennessee (Tract Nos. GPF–46–47–48, and GFI–1).

E3. Sale of a permanent industrial easement and four 30-year gas supply line easements to the United States Gypsum Company affecting approximately 5 acres of Guntersville Lake in Jackson County, Alabama, and Marion County, Tennessee (Tract Nos. XGR–7411E,–742P,–744P, and –745P).

E4. Nineteen-year commercial recreation lease to Randy C. Allen affecting 39.5 acres of TVA's Goat Island Recreation Area on Pickwick Lake in Tishomingo County, Mississippi (Tract No. XPR–458L).

Information Items

1. Approval for the sale of Tennessee Valley Authority Power Bonds.

2. Approval of new investment managers and proposed new Investment Management Agreements between the TVA Retirement System and MacKay-Shields Financial Corporation and CastleInternational Asset Management Limited.

3. Approval to file condemnation cases affecting Tract Nos. OM–1000TE and –10001TE in McCreary County, Kentucky.

4. Approval of back-up generation services for East Mississippi EPA to supply the Meridian Naval Air Station.

5. Approval of variable time of use rates for use in telecommunications pilot programs.

6. Approval to modify and extend coal Contract No. P–95P–07–148296 with Leslie Resources, Inc.

7. Grant of easement to the City of Benton, Kentucky, for a 6-inch natural gas pipeline in Marshall County, Kentucky.

8. Approval of decision denying Carolina Trout Corporation's request for a trout-rearing net-pen facility on Fontana Lake.

9. Approval of recommendations resulting from the 62nd Annual Wage Conference, 1997—Annual Trades and Labor Agreement wage rates.

10. Approval to enter into a contract with the City of New Albany, Mississippi, to provide natural gas management services.

FOR MORE INFORMATION CONTACT: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: February 13, 1998.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 98–4285 Filed 2–17–98; 10:31 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meetings.

SUMMARY: The FAA is issuing this notice to advise the public of dates for special meetings of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meetings will be held on March 6, April 9, June 12, July 15, and July 21, 1998, beginning at 1 p.m.

ADDRESSES: The March 6 meeting will be held at the U.S. Department of Transportation, 400 Seventh Street, SW., Room 6246–6248, Washington, DC. All other meetings will be held in Washington, DC, at locations to be determined.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075; e-mail Jean.Casciano@faa.dot.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of special meetings of the Executive Committee to be held on March 6, April 9, June 12, July 15, and July 21, 1998. The sole agenda item for these meetings will be a status report from the Fuel Tank Harmonization Working Group.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements no later than 10 calendar days in advance to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on February 13, 1998.

Jean Casciano,

Acting Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–4309 Filed 2–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Joint RTCA Special Committee 180 and EUROCAE Working Group 46 Meeting; Design Assurance Guidance for Airborne Electronic Hardware

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a joint RTCA Special Committee 180 and EUROCAE Working Group 46 meeting to be held March 24–26, 1998, starting at 8:30 a.m. on March 24. The meeting will be held at EUROCAE Headquarters, 17 rue Hamelin, Paris, France.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Review and Approval of Minutes of Previous Joint Meeting; (4) Leadership Team Meeting Report; (5) Review Action Items; (6) Review Issue Logs; (7) Issue Team Status; (8) Plenary Disposition of Document Comments; (9) New Items for Consensus; (10) Special Committee 190 Committee Activity Report; (11) Other Business; (12) Establish Agenda for Next Meeting; (13) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 11, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–4163 Filed 2–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (97–03–000–RDG) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Reading Regional Airport, Reading, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invite public comment on the application to impose and use the revenue from a PFC at the Reading Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 23, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Daboin, Manager, Harrisburg Airports District Office, 3911 Hartzdale Dr., suite 1, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Rick Sokol, Executive Director of the Reading Regional Airport Authority at the following address: Reading Regional Airport, 2501 Bernville Road, Reading, Pennsylvania 19605.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Reading Regional Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Sharon Daboin, Manager, Harrisburg Airports District Office, 3911 Hartzdale Dr., suite 1, Camp Hill, PA 17011. 717–782–4548. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Reading Regional Airport under the provisions of the Aviation Safety and

Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 7, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Reading Regional Airport Authority was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 7, 1998.

The following is a brief overview of the application.

Application number: 97–03–C–00–RDG.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 1998.

Proposed charge expiration date: February 1, 2008.

Total estimated PFC revenue: $1,300,000.

Brief description of proposed project:

—Terminal Building Renovation
—Land Acquisition for Runway Protection Zone

Class or classes of air carriers which the pubic agency has requested not be required to collect PFCs: Part 135 on-demand Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Reading Regional Airport Authority.

Issued in Jamaica, New York, on January 29, 1998.

Thomas Felix,

Planning & Programming Branch, Airports Division, Eastern Region.

[FR Doc. 98–4164 Filed 2–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. MC–89–10; FHWA–97–2195]

Inspection, Repair, and Maintenance; Periodic Inspection of Commercial Motor Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to motor carriers on State periodic inspection programs; closing of public docket.

SUMMARY: This notice adds the State of Ohio's periodic inspection (PI) program for church buses to the list of programs which are comparable to, or as effective as, the Federal PI requirements contained in the Federal Motor Carrier Safety Regulations (FMCSRs). The FHWA has published a list of such programs in the **Federal Register** previously, and this list has been revised occasionally. Including Ohio, there are 23 States, the Alabama Liquefied Petroleum Gas Board, the District of Columbia, 10 Canadian Provinces, and one Canadian Territory that have PI programs which the FHWA has determined to be comparable to, or as effective as, the Federal PI requirements. In addition, the FHWA is closing FHWA Docket No. MC–89–10, FHWA–97–2195 because interested parties know how to contact the FHWA by means other than the formal docket system to request that an inspection program be added to the list.

DATES: This action is effective on February 19, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Standards, HCS–10, (202) 366–4009; or Mr. Charles Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/nara/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/su__docs.

Background

Section 210 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 31142) (the Act) requires the Secretary of Transportation (the Secretary) to prescribe standards for annual, or more frequent, inspection of commercial motor vehicles (CMVs), unless the Secretary finds that another inspection system is as effective as an annual, or more frequent, inspection. On December 7, 1988, in response to the Act, the FHWA published a final rule amending 49 CFR part 396, Inspection, Repair, and Maintenance (53 FR 49402). The final rule requires CMVs operated in interstate commerce to be inspected at least once a year. The inspection is to be based on Federal inspection standards, or a State inspection program determined by the FHWA to be comparable to, or as effective as, the Federal standards. Accordingly, if the FHWA determines a State's PI program is comparable to, or as effective as, the requirements of part 396, then a motor carrier must ensure that all of its CMVs which are required by that State to be inspected through the State's inspection program are so inspected. If a State does not have such a program, the motor carrier is responsible for ensuring that its CMVs are inspected using one of the alternatives included in the final rule.

On March 16, 1989, the FHWA published a notice in the **Federal Register** which requested States and other interested parties to identify and provide information on the CMV inspection programs in their respective jurisdictions (54 FR 11020). Upon review of the information submitted, the FHWA published a list of State inspection programs which were determined to be comparable to the Federal PI requirements (54 FR 50726, December 8, 1989). This initial list included 15 States and the District of Columbia. That list was revised on September 23, 1991, to include the inspection programs of the Alabama Liquefied Petroleum Gas (LPG) Board, California, Hawaii, Louisiana, Minnesota, all of the Canadian Provinces, and the Yukon Territory (56 FR 47983). On November 27, 1992, the list was revised to include the Wisconsin bus inspection program (57 FR 56400). On April 14, 1994, the list was revised to include the Texas CMV inspection program (59 FR 17829). The list was most recently revised on November 7, 1995, to include the Connecticut bus inspection program (60 FR 56183).

Determination: State of Ohio Church Bus Inspection Program

The State of Ohio (the State) has implemented mandatory annual inspection requirements for church buses as part of its program to improve the safety of operation of private motor carriers of passengers. Church groups that operate buses which qualify as commercial motor vehicles (as defined in 49 CFR 390.5) are considered private motor carriers of passengers and are subject to certain Federal safety regulations, including the periodic inspection requirements found in 49 CFR part 396. The State requires churches using buses registered as a

"church bus" in accordance with Ohio Revised Code 4503.07, and used to transport members to and from church services or functions, to submit an application for the registration of such buses to the Bureau of Motor Vehicles. As part of the annual registration application, the church must include a certificate from the State Highway Patrol as proof that the bus has been inspected and is safe for operation in accordance with the standards prescribed by the Superintendent of the State Highway Patrol. The inspections are performed by the State Highway Patrol at State facilities or the bus owner's garage.

The FHWA has determined that the Ohio church bus inspection program in effect as of March 31, 1997, is comparable to, or as effective as, the Federal PI requirements. Therefore, private motor carriers of passengers operating buses which are subject to the State's program and which are subject to the FMCSRs must use the State's program to satisfy the Federal PI requirements.

It should be noted that in accepting the State's PI program, the FHWA also accepts the recordkeeping requirements associated with the inspection program. The inspection report used to record the inspection is a two-part form. If the vehicle passes the inspection, the bottom portion of the form is given to the bus operator to submit to the Bureau of Motor Vehicles as part of the application for vehicle registration (e.g., purchasing the annual church bus license plate). The top portion of the inspection report is maintained by the State Highway Patrol. The State church bus license plate (with a current validation sticker) is considered by the FHWA as satisfying the Federal requirement for proof of inspection on the CMV.

States With Equivalent Periodic Inspection Programs

The following is a complete list of States with inspection programs which the FHWA has determined are comparable to, or as effective as, the Federal PI requirements:

Alabama (LPG Board)
Arkansas
California
Connecticut
District of Columbia
Hawaii
Illinois
Louisiana
Maine
Maryland
Michigan
Minnesota
New Hampshire
New Jersey
New York
Ohio
Oklahoma
Pennsylvania
Rhode Island
Texas
Utah
Vermont
Virginia
West Virginia
Wisconsin

In addition to the States listed above, the FHWA has determined that the inspection programs of the 10 Canadian Provinces and the Yukon Territory are comparable to, or as effective as, the Federal PI requirements. All other States either have no PI programs for CMVs, or their PI programs have not been determined by the FHWA to be comparable to, or as effective as, the Federal PI requirements. Should any of these States wish to establish a program or modify their programs in order to make them comparable to the Federal requirements, the State should contact the appropriate FHWA regional office listed in 49 CFR 390.27.

Closing of FHWA Docket MC–89–10, FHWA–97–2195

This notice officially closes FHWA Docket MC–89–10, FHWA–97–2195. The docket was opened on March 16, 1989, to solicit information and public comment on State inspection programs. Since the original list of State programs was published on December 8, 1989, information concerning additions to the list, including information about Canadian inspection programs, has been submitted directly to the Office of Motor Carriers by those jurisdictions. The agency believes interested parties know how to contact the FHWA by means other than the formal docket system and it is no longer necessary to keep the docket open.

Authority: 49 U.S.C. 31136, 31142, 31502, and 31504; 49 CFR 1.48.

Issued on: February 11, 1998.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

[FR Doc. 98–4173 Filed 2–18–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3465; Not. 1]

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) will submit the following emergency processing public information collection requests (ICRS) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The NHTSA is publishing a notice in the **Federal Register**, informing the public of NHTSA's plan to submit to OMB Information collections for reinstatement, some with changes of previously approved collections for which approval has expired, under the emergency processing procedures, 5 CFR 1320.13. The titles descriptions, affected public, with burden estimates are shown below. Because OMB approval is valid for 180 days, NHTSA is taking appropriate steps to obtain a regular approval.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; the accuracy of the Agency's estimate of the burden of proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Comments on this notice must be received on or before April 20, 1998.

ADDRESSES: Comments on this notice must refer to the docket number and notice number in the heading of this notice and be submitted, preferably in two copies, to: US Department of Transportation Docket Management, PL–401, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 10:00 a.m. to 5:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Michael A. Robinson, NHTSA, Information Specialist, Office of Technical Information Services, Room

5110, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202)366–9456.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration (NHTSA)

(1) *Title:* 49 CFR Part 571.116, Motor Vehicle Brake Fluids.

OMB Control Number: 2127–0521.

Affected Public: Individuals or households.

Abstract: 49 U.S.C. 309111, 30112 and 30117 of the National Traffic and Motor Vehicle Safety Act of 1966, authorize the issuance of Federal Motor Vehicle Safety Standards (FMVSS). The agency in prescribing a FMVSS is to consider available relevant motor vehicle safety data and to consult with appropriate agencies and obtain safety comments/ suggestions from the responsible counties, States, agencies, safety commissions, public and other safety related authorities. Further the Act mandates that in issuing any FMVSS the agency consider whether the standards will contribute to carry out the purpose of the Act. The Secretary is authorized to revoke such rules and regulations as he/she deems necessary to carry out this Act.

FMVSS No. 116 *Motor Vehicle Brake Fluids,* specific performance and design requirements for motor vehicle brake fluids and hydraulic system mineral oils. Section 5.2.2 specific labeling requirements for manufacturers and packagers of brake fluids as well as packagers of hydraulic system mineral oils. The information on the label of a container of motor vehicle brake fluid or hydraulic system mineral oil is necessary to insure the following: the contents of the container are clearly stated; these fluids are used for their intended purpose only; and the containers are properly disposed of when empty. Improper use or storage of these fluids could have dire consequences for the operations of vehicles or equipment in which they area used. This labeling information is used by motor vehicle owners, operators, and vehicle service facilities to aid in the proper selection of brake fluids and hydraulic system mineral oils for use in motor vehicles and hydraulic equipment, respectively.

Estimated Annual Burden: 7,680 hours.

Number of Respondents: 200.

(2) *Title:* 49 CAR Part 537—Automotive Fuel Economy Reports.

OMB Control Number: 2127–0019.

Affected Public: Business, Federal Government or other for-profit.

Abstract: 49 United States Code (U.S.C.)32907(a) requires a manufacturer report to the Secretary of Transportation on whether the manufacturer will comply with an applicable average fuel economy standard under 49 U.S.C. 32902 of this title for the model year for which the report is made; the actions the manufacturer has taken or intends to take to comply with the standard; and other information the Secretary requires by regulation. To start this statutory requirement, the agency issued a regulation specifying the required content of the Automotive Fuel Economy Reports.

Estimated Annual Burden: 3,300 hours.

Number of Respondents: 20.

(3) *Title:* 49 CAR Section 571, 125-Warning Devices.

OMB Control Number: 2127–0506.

Affected Public: Business or other for-profit.

Abstract: 49 U.S.C. 30111, 30112 and 30117 (Appendix 1) of the National Traffic and Motor Vehicle Safety Act of 1966, authorizes the issuance of Federal Motor Vehicle Safety Standards (FMVSS). The Secretary is authorized to issue, amend, and revoke such rules and regulations as she/he deems necessary. Using this authority, the agency issued FMVSS No. 125, Warning Devices which applies to devices, without self contained energy sources, that are designed to be carried mandatorily in buses and trucks that have a gross vehicle weight rating (GVWR) greater than 10,000 pounds and voluntarily in other vehicles. These devices designed to be permanently affixed to the vehicle.

Estimated Annual Burden: 5.7 hours.

Number of Respondents: 3.

(4) *Title:* Replaceable Light Source Dimensional Information Collection, 49 CFR 54.

OMB Control Number: 2127–0563.

Affected Public: Business or other for-profit.

Abstract: Title 49 U.S.C. 322, 30111, 30115, 30117 and 30166, with delegation of authority at 49 CFR, 49 CFR 1.50, authorize the issuance of Federal Motor Vehicle Safety Standards (FMVSS) and the collection of data which supports their implementation. The agency, in prescribing an FMVSS, is to consider available relevant motor vehicle safety data, and to consult with other agencies as it deems appropriate. Further, the Title 49 U.S.C. mandates, that in issuing any FMVSS, the agency consider whether the standard is reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed, and whether such standards will contribute to carrying out the purpose of Title 49 U.S.C. The Secretary is authorized to revoke such rules and regulations as deemed necessary to carry out this subchapter. Using this authority, the agency issued the initial FMVSS No. 108, Lamps, Reflective Devices, and Associated Equipment, specifying requirements for vehicle lighting for the purposes of reducing traffic accidents and their tragic result by providing adequate roadway illumination, improved a vehicle conspicuity, appropriate information transmission through signal lamps, in both day, night, and other conditions of reduced visibility. The standard has been amended numerous times in order to permit new headlighting designs. In recent years, the standard had become burdensome to bother regulators and regulated parties in the standard has not been able to fully accommodate the styling needs of motor vehicle designers, while at the same time assuring the safety on the highways. This resulted in numerous burdensome petitions for rulemaking to be submitted by the vehicle and lighting manufacturers to change the design restrictive language. The reason for this burden was that as originally adopted the standard was more equipment design oriented, rather than performance oriented. Recent amendments have helped to rectify this situation. The requirement for replaceable light source dimensional information has resulted in a further extension of that effort to make the standard more performance oriented, and reduce the burden of petitioning for amendments to the Standard. The standard now allows headlamp light sources (bulbs) that are specified in the standard as well as those listed in Part 564, to assure proper photometric performance upon replacement of the light sources upon failure of the original. The original manufacturer may be the same as that of the aftermarket replacement, consequently, headlamp bulbs regardless of where they are listed, are required to be standardized by inclusion of their interchangeability dimensions and other fit and photometric aspects, thus requiring all identical type bulbs to be manufactured to those pertinent interchangeability specifications. Implementation of Part 564 reduces the burden to manufacturers and user of new light sources by eliminating the 18 month petitioning process and substituting a 1 month agency review. Upon completion of the review, the new bulb's interchangeability information is listed in Part 564 and the new bulbs may be used 1 month later on new vehicles.

Estimated Annual Burden: 20.
Number of Respondents: 7.
(5) *Title:* Assigning DOT code Numbers to Glazing Material Manufacturers.
OMB Control Number: 2127–0038.
Affected Public: Business or other for-profit.
Abstract: Title 49, Chapter 30115 of the U.S. Code specifies that the Secretary of Transportation shall require every manufacturer or distributor of a motor vehicle or motor vehicle equipment to furnish the distributor or dealer at the time of delivery certification that each item of motor vehicle equipment conforms to all applicable Federal Motor Vehicle Safety Standards (FMVSS). Using this authority, the agency issued FMVSS No. 571.205, Glazing Materials. This standard specifies requirements for glazing materials for use in passengers cars, multipurpose passenger vehicle, trucks, buses, motorcycle, slide-in campers, and pickup covers designed to carry persons while in motion. Also, this standard specifies certification and marking of each piece of glazing materials. Certification for the items listed comes in the form of a label, tag or marking on the outside of the motor vehicle equipment and is permanently affixed and visible for the life of the motor vehicle equipment. The purpose of this standard is to aid in reducing injuries resulting from impact to glazing surfaces, and to ensure a necessary degree of transparency for driver visibility. Both glass and plastics are considered to be glazing materials which provide safety and minimize the possibility of occupants being thrown through the vehicle window in the event of an accident.
Estimated Annual Burden: 10.5 hours.
Number of Respondents: 21.
(6) *Title:* 49 CFR 571.218, Motorcycle Helmets (Labeling).
OMB Control Number: 2127–0518.
Affected Public: Federal, Local, State or Tribal Government, Business or other for-profit.
Abstract: The National Traffic and Motor Vehicle Safety statute at 49 U.S.C. Subchapter II Standards and Compliance, Sections 30111 and 30117 authorizes the issuance of Federal motor vehicle safety standards (FMVSS). The Secretary is authorized to issue, amend, and revoke such rules and regulations as he/she deems necessary. The Secretary is also authorized to require manufacturers to provide information to first purchasers of motor vehicles or motor vehicle equipment when the vehicle or equipment is purchased, in a printed matter placed in the vehicle or attached to or accompanying the equipment. Using this authority, the agency issued the initial FMVSS No. 218, Motorcycle Helmets, in 1974. Motorcycle helmets are the devices used for protecting motorcyclists and other motor vehicle users in motor vehicle accidents. Federal Motor Vehicle Safety Standard No. 218 requires that each helmet shall be labeled permanently and legibly (S5.6), in a manner such that the label(s) can be read easily without removing padding or any other permanent part.
Estimated Annual Burden: 4,000 hours.
Number of Respondents: 24.
(7) *Title:* Consumer Complaint/Recall Audit Information.
OMB Control Number: 2127–0008.
Affected Public: Individuals or households.
Abstract: Chapter 301 of Title 49 of the United States Code (formerly the National Traffic and Motor Vehicle Safety Act, as amended (the Act), the Secretary of Transportation is authorized to require manufacturers of motor vehicles and items of motor vehicle equipment to conduct owner notification and remedy, i.e., a recall campaign, when it has been determined that a safety defect exists in the performance, construction, components, or materials in motor vehicles and motor vehicle equipment. To make this determination, the National Highway Traffic Safety Administration (NHTSA) solicits information from vehicle owners which is used to identify and evaluate possible safety-related defects and provide the necessary evidence of the existence of such a defect. Under the Authority of Chapter 301 of Title 49 of the United States Code, the Secretary of Transportation is authorized to require manufacturers of motor vehicle and items of motor vehicle equipment which do not comply with the applicable motor vehicle safety standards or contains a defect that relates to motor vehicle safety to notify each owner that their vehicle contains a safety defect or noncompliance. Also, the manufacturer of each such motor vehicle or item of replacement equipment presented for remedy pursuant to such notification shall cause such defect or noncompliance to be remedied without charge. In the case of a motor vehicle presented for remedy pursuant to such notification, the manufacturer shall cause the vehicle to be remedied by whichever of the following means he elects: (1) By repairing such vehicle; (2) by replacing such motor vehicle without charge; or (3) by refunding the purchase price less depreciation. To ensure these objectives are being met, NHTSA audits recalls conducted by manufacturer. These audits are performed on a randomly selected number of vehicle owners for verification and validation purposes.
Estimated Annual Burden: 36,380.
Number of Respondents: 239,000.
(8) *Title:* Voluntary Child Safety Seat Registration Form.
OMB Control Number: 2127–0576.
Affected Public: Individuals or households.
Abstract: Chapter 301 of Title 49 of the United States provides that if either NHTSA or a manufacturer determines that motor vehicles or items of motor vehicle equipment contain a defect that relates to motor vehicle safety or fail to comply with an applicable Federal Motor Vehicle Safety Standard, the manufacturer must notify owners and purchasers of the defect or noncompliance and must provide a remedy without charge. Pursuant to 49 CFR Part 577 Defects and noncompliance notification for equipment items, including child safety seats, must be sentby first class mail to the most recent purchaser known to the manufacturer. In the absence of a registration system, man owners of child safety seats are not notified of safety defects and noncompliance, since the manufacturer is not aware of their identities.
Estimated Annual Burden: 26 hours.
Number of Respondents: 1,200.
(9) *Title:* Drug Offender's License Suspension Certification.
OMB Control Number: 2127–0566.
Affected Public: State, Local or Tribal Government.
Abstract: Section 33 of the Department of Transportation (DOT) and Related Agencies Appropriations Act for FY 1991 amends 23 U.S.C. 104, and requires the withholding of certain Federal-aid highway funds from States that do not enact legislation requiring the revocation or suspension of an individual's driver's license upon conviction for any violation of the Controlled Substances Act or any drug offense. This notice proposes the violation of the Controlled Substances Act or any drug offense. This notice proposes the manner in which States certify that they are not subject to this withholding, and disposition of funds that are withheld.
Estimated Annual Burden: 260 hours.
Number of Respondents: 52.
(10) *Title:* Fatal Accident Reporting System (FARS).
OMB Control Number: 2127–0006.
Affected Public: State, Local or Tribal Government.
Abstract: Under both the Highway Safety Act of 1966 and the National

Traffic and Motor Vehicle Safety Act of 1966, the National Highway Traffic Safety Administration (NHTSA) has the responsibility to collect accident data that support the establishment and enforcement of motor vehicle regulations and highway safety programs. These regulations and programs are developed to reduce the severity of injury and the property damage associated with motor vehicle accidents. The Fatal Accident Reporting System (FARS) is in its twenty-third year of operation as a major system that acquires national fatality information directly from existing State files and documents. Since FARS is an on-going data acquisition system, reviews are conducted yearly to determine whether the data acquired are responsive to the total user population needs. The total user population includes Federal and State agencies and the private sector. Annual changes in the forms are minor in terms or operation and method of data acquisition, and do not affect the reporting burden of the respondent (State employees utilize existing State accident files). The changes usually involve clarification adjustments to aid statisticians in conducting more precise analyses and to remove potential ambiguity for the respondents. OMB Clearance 2127–0006 authorizes the four FARS data acquisition forms, 214, 214A, 214B, and 214C. This clearance expired December 31, 1995. An extension of this clearance to December 2000 is requested with this submission. Since changes are not introduced during an information acquisition period. Only minor changes to data element to remove ambiguities in the information requested are planned for the 1998 data collection year. Two data items, Death Certificate Number and Fatal Injury At Work, are not recorded on any FARS form but are electronically transmitted to the central FARS file. Any subsequent increases in burden will be due to an increase in the number of traffic accidents that may occur between 1996 and 2000 throughout the country.

Estimated Annual Burden: 77,400 hours.

Number of Respondents: 52.

(11) *Title:* Consolidated Labeling Requirements for Motor Vehicles (Except the VIN).

OMB Control Number: 2127–0512.

Affected Public: Business or for-profit.

Abstract: 49 U.S.C. 3011 authorizes the issuance of Federal Motor Vehicle Safety Standards (FMVSS) and regulations. The agency, in prescribing a FMVSS or regulation is to consider available relevant motor vehicle safety data, and consult with other agencies as it deems appropriate. Further, the statute mandates that in issuing any FMVSS or regulation, the agency consider whether the standard or regulation is "reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed," and whether such a standard will contribute to carrying out the purpose of the Act. The Secretary is authorized to revoke such rules and regulations as he deems necessary to carry out this subchapter. Using this authority, the agency issued the following FMVSS and regulations, specifying labeling requirements to aid the agency in achieving many of its safety goals. FMVSS 105, 205, 209, and 567 are the standards the agency issued. Through FMVSS 105, this standard, under section 5.4 requiring labeling, each vehicle shall have a brake fluid warning statement in letters at least one-eighth of an inch high on the master cylinder reservoirs and located so as to be visible by direct view. FMVSS 205 requires manufacturer's distinctive trademark; manufacturer's DOT code number; Mode of glazing (alpha-numerical designation) and Type of glazing (there are currently 13 items of glazing ranging from plastic windows to bullet resistant windshields). In addition to requirements which apply to all glazing, certain specialty items such as standee windows in buses, roof openings and interior partitions made of plastic require that the manufacturer affix a removable label to each item. The label specifies cleaning instructions which will minimize the loss of transparency. Other information may be provided by the manufacturer but is not required. FMVSS 209-Seat belt Assemblies requires safety belts to be labeled with the year of manufacture, the; model and the name or trademark of the manufacturer (S4.5(j). Additionally, replacement safety belts that for specific models of motor vehicles must have labels or accompanying instruction sheets to specify the applicable vehicle models and seating positions (S4.5(k)). All other replacement belts are required to be accompanied by an installation instruction sheet (S4.1(k)). Seat belt assemblies installed as original equipment in new motor vehicles need not be required to be labeled with position model information. This information is only useful if the assembly is removed with the intention of using the assembly as a replacement in another vehicle; this is not a common practice. 49 U.S.C. 30111 requires each manufacturer or distributor of motor vehicle to furnish to the dealer or distributor of the vehicle a certification that the vehicle meets all applicable FMVSS. This certification is required by that provision to be in the form of a label permanently affixed to the vehicle. Under 49 U.S.C. 32504, vehicle manufacturers are directed to make a similar certification with regard to bumper standards. To implement this requirement, NHTSA issued 49 CFR Part 567. The agency's regulations establish form and content requirement for the certification labels.

Estimated Annual Burden: 71,095 hours.

Number of Respondents: 1214.

(12) *Title:* Compliance Labeling of Retroreflective Materials for Heavy Trailer Conspicuity.

OMB Control Number: 2127–0569.

Affected Public: Business or other for-profit.

Abstract: 49 U.S.C. 30111, 30112, and 30117 of the National Traffic and Motor Vehicle Safety Act of 1966 authorizes the issuance of Federal Motor Vehicle Safety Standards (FMVSS) and the collection of data which supports their implementation. The agency, in prescribing a FMVSS, is to consider available relevant motor vehicle safety data, and to consult with other agencies as it deems appropriate. Further, the Act mandates, that in issuing any FMVSS, the agency consider whether the standard is reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed, and whether such standards will contribute to carrying out the purpose of the Act. The Secretary is authorized to promulgate such rules and regulations as deemed necessary to carry out this subchapter. Using this authority, the agency issued the initial FMVSS No. 108, Lamps, Reflective Devices, and Associated Equipment, specifying requirements for vehicle lighting for the purpose of improved vehicle conspicuity, appropriate information transmission through signal lamps, in both day, night, and other conditions of reduced visibility. The standard has been amended numerous times, and the subject amendment, which became effective on December 1, 1993, increases the conspicuity of large trailers would be reduced by about 15 percent if retroreflective material having certain essential properties is used to mark the trailers. The amendment requires the permanent marking of the letters DOT–C2, DOT–C3 or DOT–C4 at least 3mm high at regular intervals on retroreflective sheeting material having adequate performance to provide

effective trailer conspicuity. The high reflective brightness of the material and its ability to reflect light which strikes it at an angle are special properties required by the safety standard. The high brightness is required because the material must be effective even when it is dirty. One of the principal goals of the standard is to prevent crashes in which the side of the trailer is blocking the road and it is not sufficiently visible at night to fast traffic. Frequently, the side of the trailer is not perpendicular to approaching traffic and the conspicuity material must reflect light which strikes it at an angle in order to be effective. There exist many types of retroreflective material similar in appearance to the required materials but lacking in its requisite properties. The manufacturers of new trailers are required to certify that their products are equipped with retroreflective material complying with the requirements of the standard. The Federal Highway Administration Office of Motor Carrier Safety enforces this and other standards through roadside inspections of trucks. There is no practical field test for the performance requirements, and labeling is the only objective way of distinguishing truck conspicuity grade material from lower performance material. Without labeling, FHWA will not be able to enforce the performance requirements, and labeling is the only objective way of distinguishing truck conspicuity grade material from lower performance material. Without labeling, FHWA will not be able to enforce the performance requirements of the standard, and the compliance testing of new trailers will be complicated. Labeling is also important to small trailer manufacturers because it may help them to certify compliance. As a result of the comments to the NPRM, the agency decided to allow wider stripes of material of lower brightness than originally proposed as alternate means of providing the minimum safety performance. Therefore, the marking system serves the additional role of identifying the minimum stripe width required for the retroreflective brightness of the particular material. Since the difference between the brightness grades of suitable retroreflective conspicuity material is not obvious from inspection, the marking system is necessary for trailer manufacturers and repair ships to assure compliance and for FHWA to inspect trailers in use.

Estimated Annual Burden: 0 hours.

Number of Respondents: 3.

(13) *Title:* Names and Addresses of First Purchasers of Motor Vehicles.

OMB Control Number: 2127–0044.

Affected Public: Business or other for-profit.

Abstract: 49 U.S.C. 30117 Providing information to, and maintaining records on, purchasers at subparagraph (b) Maintaining purchaser records and procedures states in part: A manufacturer of a motor vehicle or tire (except a retreaded tire) shall maintain a record of the name and address of the first purchasers of each vehicle or tire it produces and, to the extent prescribed by regulations of the Secretary, shall maintain a record of the name and address of the name and address of the first purchaser of replacement equipment (except a tire) that the manufacturer produces. This agency has no regulation specifying how the information is to be collected or maintained. When NHTSA's authorizing statute was enacted in 1966, Congress determined that an efficient recall of defective or noncomplying motor vehicles required the vehicle manufacturers to retain an accurate record of vehicle purchasers. By virtue of quick and easy access to this information, the manufacturer is able to quickly notify vehicle owners in the event of a recall. Experience with this statutory provision has shown that manufacturers have retained this information in a manner sufficient to enable them to expeditiously notify vehicle purchasers in case of a recall. Based on this experience, NHTSA has determined that no regulation is needed. Without this type of information readily available, manufacturers would either need to spend more time or money to notify purchasers of a recall.

Estimated Annual Burden: 950,000.

Number of Respondents: 19,000.

(14) *Title:* 49 CFR Part 566 Manufacturers' Identification.

OMB Control Number: 2127–0043.

Affected Public: Business or other for-profit.

Abstract: The National Highway Traffic Safety Administration's statute at 49 U.S.C. 30118 Notification of defects and noncompliance requires manufacturers to determine if the motor vehicle or item or replacement equipment contains a defect related to motor vehicle safety or fails to comply with an applicable Federal Motor Vehicle Safety Standard. Following such a determination, the manufacturer is required to notify the Secretary of Transportation, owners, purchasers and dealers of motor vehicles or replacement equipment, of the defect or noncompliance and to remedy the defect or noncompliance without charge to the owner. With this determination, NHTSA issued 49 CFR Part 566, Manufacturer Identification. Part 566 requires every manufacturer of motor vehicles and/or replacement equipment to file with the agency on a one time basis, the required information specified in Part 566.

Estimated Annual Burden: 25.

Number of Respondents: 100.

(15) *Title:* 49 CFR Part 556, Petitions for Inconsequentiality.

OMB Control Number: 2127–0045.

Affected Public: Business or other for-profit.

Abstract: The National Highway Traffic Safety Administration's statute at 49 U.S.C. 30113 General exemptions at subsection (b) Authority to exempt and procedures, authorizes the Secretary of Transportation upon application of a manufacturer, to exempt the applicant from the notice and remedy requirements of 49 U.S.C. Charter 301, if the Secretary determines that the defect or noncompliance is inconsequential as ti relates to motor vehicle safety. The notice and remedy requirements of Chapter 301 are set forth in 49 U.S.C. 30120 Remedies for defects and noncompliance. Those section require a manufacturer of motor vehicles or motor vehicle equipment to notify distributors, dealers and purchasers if any of the manufacturer's products are determined either to contain a safety-related defect or to fail to comply with an applicable Federal motor vehicle safety standard. The manufacturer is under a concomitant obligation to remedy such defects or noncompliance. NHTSA exercised this statutory authority to excuse inconsequential defects or noncompliance when it promulgated 49 CFR Part 556, Petitions for Inconsequentiality—this regulation establishes the procedures for manufacturers to submit such petitions to the agency will use in evaluating those petitions. Part 556 allows the agency to ensure that petitions filed under 15 U.S.C. 30113(b) are both properly substantiated and efficiently processed.

Estimated Annual Burden: 30.

Number of Respondents: 15.

(16) *Title:* 49 CFR Part 573, Defect and Noncompliance Reports.

OMB Control Number: 2127–0004.

Affected Public: Business or other for-profit.

Abstract: NHTSA's statute at 49 U.S.C. sections 30112, and 30116–30121 requires the manufacturers of motor vehicles and motor vehicle equipment to recall and remedy their products that do not comply with applicable safety standards or contain a defect related to motor vehicle safety. The manufacturer must notify the Secretary of Transportation (through NHTSA),

owners, purchasers and dealers of its determination, and must remedy the defect or noncompliance. The notification must be furnished within a reasonable time after a determination is made with respect to defect or failure to comply. The manufacturer of each motor vehicle or item of replacement equipment presented for remedy shall make the remedy without charge. If a manufacturer fails to notify owners or purchasers within the period specified, the court may hold it liable under a civil penalty with respect to such failure.

The Secretary may hold hearings in which any interested person may make oral or written views on questions of whether a manufacturer has reasonably met its obligations to notify and remedy a defect or failure to comply, or the Secretary may place specific actions on the manufacturer to comply. The manufacturer shall furnish the Secretary with a true copy of all notices, bulletins, and other communications to the manufacturer's dealers, owners and purchasers regarding any defect or noncompliance in the manufacturer's vehicle or item of equipment. These statutes shall not create or affect any warranty obligations under State and Federal law. To implement this authority, NHTSA promulgated 49 CFR Part 573, Defect and Noncompliance Reports. This regulation sets out the following requirements: (1) Manufacturers are to include specific information in reports that must be filed with NHTSA within five working days of a determination of defect or noncompliance, pursuant to 49 U.S.C. 30118 and 30119; (2) Manufacturers are to submit quarterly reports to the agency on the progress of recall campaigns; (3) Manufacturers are to furnish copies to the agency of notices, bulletins, and other communications to dealers, owners, or purchasers regarding any defect or noncompliance, and; (4) Manufacturers are to retain records of owners or purchasers of their products that have been involved in a recall campaign.

Estimated Annual Burden: 6,300.

Number of Respondents: 50.

(17) *Title:* Consolidated Labeling Requirements for 49 CFR 571.115, and Parts 565, 541 and 567.

OMB Control Number: 2127–0510.

Affected Public: Business or other for-profit.

Abstract: NHTSA's statute at 15 U.S.C. 1392, 1397, 1401, 1407, and 1412 (Attachment 3–9) of the National Traffic and Motor Vehicle Safety Act of 1966 authorizes the issuance of Federal Motor Vehicle Safety Standard (FMVSS) and the collection of data which support their implementation. The agency, in prescribing a FMVSS, is to consider available relevant motor vehicle safety data and to consult with other agencies as it deems appropriate. Further, the Act mandates, that in issuing any FMVSS, the agency should consider whether the standard is reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed, and whether such standards will contribute to carrying out the purpose of the Act. The Secretary is authorized to revoke such rules and regulations as deemed necessary to carry out this subchapter. Using this authority, the agency issued the initial FMVSS No. 115, Vehicle Identification Number, specifying requirements for vehicle identification numbers to aid the agency in achieving many of its safety goals.

The standard was amended in August 1978 by extending its applicability to additional classes of motor vehicles and by specifying the use of a 30-year, 17-character Vehicle Identification Number (VIN) for worldwide use. The standard was amended in May 1983 (Attachment 8) by deleting portions of FMVSS No. 115 and reissuing those portions as a general agency regulation, Part 565. The provisions of these two regulations require vehicle manufacturers to assign a unique VIN to each new vehicle and to inform the National Highway Traffic Safety Administration (NHTSA) of the code used in forming the VIN. These regulations apply to all vehicles: passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, incomplete vehicles, and motorcycles.

b. 49 CFR Parts 541 and 567.

Part 541

The Motor Vehicle Information and Cost Savings Act was amended by the Anti-Car Theft Act of 1992 (Pub.L. 102–519). The enacted Theft Act states that passenger motor vehicles, multipurpose passenger vehicles, and light-duty trucks with a gross vehicle weight rating of 6,000 pounds or less be covered under the Theft Prevention Standard. Each major component part must be either labeled or affixed with the VIN and for the replacement component part it must be marked with the DOT symbol, the letter (R) and the manufacturers' logo.

Part 567

The VIN is required to appear on the certification label.

Estimated Annual Burden: 376,591.

Number of Respondents: 1,000.

Issued on: February 12, 1998.

Herman L.Simms,

Associate Administrator.

[FR Doc. 98–4089 Filed 2–18–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[TD 8223, TD 8432, and TD 8657]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final and temporary regulations, TD 8223, Branch Tax; TD 8432, Branch Profits Tax; and TD 8657, Regulations on Effectively Connected Income and the Branch Profits Tax (§§ 1.884–1, 1.884–2, 1.884–2T, 1.884–4, 1.884–5).

DATES: Written comments should be received on or before April 20, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: TD 8223, Branch Tax; TD 8432, Branch Profits Tax; and TD 8657, Regulations on Effectively Connected Income and the Branch Profits Tax.

OMB Number: 1545–1070.

Regulation Project Number: TD 8223, TD 8432, and TD 8657.

Abstract: These regulations provide guidance on how to comply with Internal Revenue Code section 884, which imposes a tax on the earnings of a foreign corporation's branch that are removed from the branch and which subjects interest paid by the branch, and

certain interest deducted by the foreign corporation, to tax.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizatiens.

Estimated Number of Respondents: 28,500.

Estimated Time Per Respondent: 27 minutes.

Estimated Total Annual Burden Hours: 12,694.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 10, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–4082 Filed 2–18–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–146–81]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning an existing final regulation, IA–146–81 (TD 8269), Installment Method Reporting by Dealers in Personal Property; Change From Accrual to Installment Method Reporting (§ 1.453A–3).

DATES: Written comments should be received on or before April 20, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Installment Method Reporting by Dealers in Personal

Property: Change From Accrual to Installment Method Reporting.

OMB Number: 1545–0963.

Regulation Project Number: IA–146–81.

Abstract: The regulations describe the procedure by which dealers in personal property may adopt or change to the installment method of accounting from another method of accounting.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 50,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 10, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–4083 Filed 2–18–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 89–61

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the

Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 89–61, Imported Substances; Rules for Filing a Petition.

DATES: Written comments should be received on or before April 20, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Imported Substances; Rules for Filing a Petition.

OMB Number: 1545–1117.

Notice Number: Notice 89–61.

Abstract: Section 4671 of the Internal Revenue Code imposes a tax on the sale or use of certain imported taxable substances by the importer. Code section 4672 provides an initial list of taxable substances and provides that importers and exporters may petition the Secretary of the Treasury to modify the list. Notice 89–61 sets forth the procedures to be followed in petitioning the Secretary.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 10, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–4084 Filed 2–18–98; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "CHUCK CLOSE" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Museum of Modern Art, New York from February 26 to May 26, 1998, after which it will travel to the Museum of Contemporary Art in Chicago for exhibition June 20 to September 13, 1998 and then to the Hirshhorn Museum and Sculpture Garden in Washington, DC from October 15, 1998 to January 10, 1999, and finally to the Seattle Art Museum from February 18 to May 9, 1999 is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

Dated: February 13, 1998.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 98–4225 Filed 2–18–98; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Neila Sheahan, Assistant General Counsel, at (202) 619–5030. The address is U.S. Information Agency, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0546]

Agency Information Collection Activities Under OMB Review

AGENCY: National Cemetery System, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the National Cemetery System (NCS), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 23, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0546."

SUPPLEMENTARY INFORMATION:

Title and Form Number: Adjacent Gravesite Set-Aside Survey (2 Year), VA Form Letter 40–40.

OMB Control Number: 2900–0546.

Type of Review: Revision of a currently approved collection.

Abstract: In the past, the survey was conducted annually. VA Form Letter 40–40 will be sent biennially (once every two years on a 24 month rotating basis) to individuals holding gravesite set-asides in national cemeteries to ascertain their wish to retain their set-aside, or wish to relinquish it. The collection of information is necessary to assure that gravesite set-asides are not wasted. Some holders become ineligible, are buried elsewhere, or simply wish to cancel a gravesite set-aside for them. Without this information, unused set-asides would exist which could be used by other veterans.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on November 13, 1997 at page 60936.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Biennially.

Estimated Number of Annual Respondents: 18,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–4650. Please refer to "OMB Control No. 2900–0546" in any correspondence.

Dated: January 26, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–4133 Filed 2–18–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0074]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 23, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0074."

SUPPLEMENTARY INFORMATION:

Title and Form Number: Request for change of Program or Place of Training, VA Form 22–1995.

OMB Control Number: 2900–0074.

Type of Review: Extension of a currently approved collection.

Abstract: VA uses the information on the form to determine continued eligibility for educational benefits, and to monitor the number of time a veteran, person on active duty, or person in the Selected Reserve has Changed his or her educational objectives or place of training.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on October 27, 1997 at page 55671.

Affected Public: Individuals or households.

Estimated Annual Burden: 46,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 138,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0074" in any correspondence.

Dated: January 26, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–4134 Filed 2–18–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0495]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 et seq.), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 23, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0495."

SUPPLEMENTARY INFORMATION:

Title and Form Number: Marital Status Questionnaire, VA Form 21–0537.

OMB Control Number: 2900–0495.

Type of Review: Extension of a currently approved collection.

Abstract: This form is used to confirm the marital status of a surviving spouse in receipt of dependency and indemnity compensation (DIC) benefits. If a surviving spouse remarries, he or she is no longer entitled to DIC. The information collected is used to determine whether a surviving spouse is still entitled to DIC benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on October 27, 1997 at page 55673.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,875 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: Reporting on Occasion.

Estimated Number of Respondents: 34,500.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–4650. Please refer to "OMB Control No. 2900–0495" in any correspondence.

Dated: January 26, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–4135 Filed 2–18–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0012]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 23, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0012."

SUPPLEMENTARY INFORMATION:

Title and Form Numbers: Application for Cash Surrender or Policy Loan, VA Form 29–1546.

OMB Control Number: 2900–0012.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form is used by the insured to apply for cash surrender value or policy loan on his/her Government Life Insurance. The information is used by the VBA to process the insured's request for a loan or cash surrender.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on October 30, 1997 at page 58777.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,939 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 29,636.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–4650. Please refer to "OMB Control No. 2900–0012" in any correspondence.

Dated: January 26, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–4136 Filed 2–18–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0396]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 et seq.), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 23, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0396."

SUPPLEMENTARY INFORMATION:

Title and Form Number: Certification of Training (Under the Service Members Occupational Conversion and Training Act), VA Form 22–8929.

OMB Control Number: 2900–0396.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: Public Law 102–484 established the Service Members Occupational Conversion and Training Act (SMOCTA). Section 4467 requires monthly or quarterly certification of training under SMOCTA. An employer uses VA Form 22–8929 to advise VA of: (1) The number of hours a veteran has worked in an approved program during each month; (2) the amount and date of payment the employer has made to the veteran for the purchase of any tools and work-related equipment; and (3) the training status of the veteran (e.g., currently training, satisfactorily completed training, quit, laid off, etc.). Continued use of VA Form 22–8929 is necessary to authorize reimbursement to an employer.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on November 6, 1997 at page 60121.

Affected Public: Business or other for-profit, individuals or households, State, Local or Tribal Government, and not-for-profit institutions.

Estimated Annual Burden: 500 hours.

Estimated Average Burden Per Respondent: 30 minutes per application.

Estimated Annual Recordkeeping Burden: 85 hours.

Estimated Average Burden Per Recordkeeper: 1 hour.

Frequency of Response: Monthly or Quarterly.

Estimated Number of Respondents: 1,000.

Estimated Number of Recordkeepers: 85.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0396" in any correspondence.

Dated: January 26, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director Information Management Service.

[FR Doc. 98–4137 Filed 2–18–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer matching program matching Department of Justice, Bureau of Prison (BOP), inmate records with VA pension, compensation, and dependency and indemnity compensation (DIC) records. The goal of this match is to identify incarcerated veterans and beneficiaries who are receiving VA benefits, and to reduce or terminate benefits, if appropriate. The match will include records of current VA beneficiaries.

DATES: The match is estimated to start April 1, 1998, but will start no sooner than 30 days after publication of this notice in the **Federal Register**, or 40 days after copies of this Notice and the agreement of the parties is submitted to Congress and the Office of Management and Budget, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their BIDs, within three months of the ending date of the original match, that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to conduct the matching program to the Director, Office of Regulations Management 02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. All written comments received will be available for public inspection in the Office of Regulations Management, Room 1158, 810 Vermont Avenue, NW, Washington, DC 20420, between 8 a.m. and 4:30 p.m., Monday through Fridays except holidays.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge (213B), (202) 273–7218.

SUPPLEMENTARY INFORMATION: VA will use this information to verify incarceration and adjust VA benefit payments as prescribed by law. The proposed matching program will enable VA to accurately identify beneficiaries who are incarcerated for a felony or a misdemeanor in a Federal penal facility.

The legal authority to conduct this match is 38 U.S.C. 1505, 5105, and 5313. Section 5106 requires any Federal department or agency to provide VA such information as VA requests for the purposes of determining eligibility for, or the amount of VA benefits, or verifying other information with respect thereto. Section 1505 provides that no VA pension benefits shall be paid to or for any person eligible for such benefits, during the period of that person's incarceration as the result of conviction of a felony or misdemeanor, beginning on the sixty-first day of incarceration. Section 5313 provides that VA compensation or dependency and indemnity compensation above a specified amount shall not be paid to any person eligible for such benefits, during the period of that persons' incarceration as the result of conviction of a felony, beginning on the sixty-first day of incarceration.

The VA records involved in the match are the VA system of records, Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22) first published at 41 FR 9294 (March 3, 1976) and last amended at 60 FR 20156 (April 24, 1995). The BOP records consist of information from the system of records identified as Inmate Records System, BOP #005 published on June 7, 1984 (48 FR 23711). In accordance with Title 5 U.S.C. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget. This notice is provided in accordance with the provisions of Privacy Act of 1974 as amended by Public Law 100–503.

Approved: February 9, 1998.

Togo D. West, Jr.,

Acting Secretary of Veterans Affairs.

[FR Doc. 98–4226 Filed 2–18–98; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 63, No. 33
Thursday, February 19, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–243025–96]

RIN 1545–AU61

Tax Treatment of Cafeteria Plans

Correction

In proposed rule document 97–29086, beginning on page 60196, in the issue of Friday, November 7, 1997, make the following corrections:

1. On page 60196, in the second column, in the **ADDRESSES** section, the IRS internet address should read, "http://www.irs.ustreas.gov/prod/tax_regs/comments.html"

§ 1.125–2 [Corrected]

2. On page 60197, in the second column, in § 1.125–2 A-6 (c), in the last line, "§ 1.125-1T" should read "§ 1.125-4T".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8738]

RIN 1545–AV43

Tax Treatment of Cafeteria Plans

Correction

In rule document 97–29087 beginning on page 60165, in the issue of Friday, November 7, 1997, make the following corrections:

§ 1.125–4T [Corrected]

1. On page 60167, in the first column, in § 1.125–4T, paragraph (c)(3)(1) and (2) only the paragraph designations should be italicized, not the text.

2. On page 60168, in the second column, in Example 5, paragraph (i), in the 6th and 10th line "P s" should read "P's".

3. On the same page, in the same column, in Example 6, paragraph (ii), in the 10th line "L s" should read "L's".

4. On the same page, in the third, paragraph, in Example 9, paragraph (i), in the 12th line, "W s" should read "W's".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209476–82]

RIN 1545–AE41

Loans to Plan Participants

Correction

In proposed rule document 97–33983 beginning on page 42, in the issue of Friday, January 2, 1998, make the following corrections:

PART 1 [CORRECTED]

1. On page 43, in the third column, in the Authority citation, "126" should read "26".

§ 1.72(p)-1 [Corrected]

2. On page 44, in the second column, in § 1.72(p)-1, in paragraph A-21(c)(1), in the ninth line, "transaction" should read "transition".

BILLING CODE 1505-01-D

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

[TD 8755]

RIN 1545–AV74

Qualified Zone Academy Bonds

Correction

In rule document 98–21 beginning on page 671, in the issue of Wednesday, January 7, 1998, make the following correction:

§ 1.1397E–1T [Corrected]

On page 673, in the second column, in § 1.1397E–1T(e)(1), in the 14th line, "taxpayer s" should read "taxpayer's".

BILLING CODE 1505-01-D

federal register

Thursday
February 19, 1998

Part II

Department of Education

Office of Special and Rehabilitative Services; Grants and Cooperative Agreements: Availability, etc.: Children With Disabilities Programs; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Grants and Cooperative Agreements: Availability, etc.: Children With Disabilities Programs; Notice

AGENCY: Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Secretary proposes priorities for two programs administered by the Office of Special Education and Rehabilitative Services (OSERS) under the Individuals with Disabilities Education Act (IDEA), as amended. The Secretary may use these priorities in Fiscal Year 1998 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve results for children with disabilities. The proposed priorities are intended to ensure wide and effective use of program funds.

DATES: Comments on all proposed priorities must be received on or before March 23, 1998.

ADDRESSES: All comments concerning proposed priorities should be addressed to: Debra Sturdivant, U.S. Department of Education, 600 Independence Avenue, SW, Room 3521, Switzer Building, Washington, D.C. 20202–2641.

Comments may also be sent through the Internet: comments@ed.gov

You must include the term "Technical Assistance and Dissemination and Research and Innovation" in the electronic message.

FOR FURTHER INFORMATION CONTACT: For further information on these proposed priorities contact Debra Sturdivant, U.S. Department of Education, 600 Independence Avenue, SW, room 3317, Switzer Building, Washington, D.C. 20202–2641. FAX: (202) 205–8717 (FAX is the preferred method for requesting information). Telephone: (202) 205–8038. Internet: Debra__Sturdivant@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953. Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) by calling (202) 205–8113.

SUPPLEMENTARY INFORMATION: This notice contains three proposed priorities under two programs authorized by the Individuals with Disabilities Education Act, as follows: Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (two proposed priorities); and Research and Innovation to Improve Services and Results for Children with Disabilities (one proposed priority). These proposed priorities would support the National Education Goals by helping to improve results for children with disabilities.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the content of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

General Requirements

All projects funded under the proposed priorities must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (see Section 606 of IDEA). In addition, all applicants and projects funded under the proposed priorities must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see Section 661(f)(1)(A) of IDEA).

Note: This notice of proposed priorities does *not* solicit applications. Notices inviting applications under these competitions will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Technical Assistance and Dissemination to Improve Services and Results for Children With Disabilities

Purpose of Program

The purpose of this program is to provide technical assistance and information through such mechanisms as institutes, regional resource centers, clearinghouses, and programs that support States and local entities in building capacity, to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and to address systemic-change goals and priorities.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under these competitions only applications that meet one of these absolute priorities:

Proposed Absolute Priority 1—Center for Positive Behavioral Interventions and Supports

Background

Problem behaviors are one of the most common reasons children with disabilities are excluded from school, community, and work. Research on positive behavioral support is rapidly developing and demonstrates how school-wide approaches to positive behavioral interventions can enable students with disabilities who exhibit problem behaviors to achieve independence and become participants and contributing members in school, community, and work.

Despite this growing body of knowledge, however, awareness of the value of these approaches and their use in the educational environment remains limited. There is clearly a need to develop a greater awareness on the part of educators and others of the important contribution that positive behavioral interventions can make in achieving successful results for children with disabilities who exhibit challenging problem behaviors and for improving the overall climate of schools.

Part B of IDEA includes provisions intended to guide and assist schools in cases in which the behavior of a child with a disability impedes learning. For example, the Act specifies that teams developing individualized education programs (IEPs) consider, when appropriate, positive behavioral supports and other strategies to address behavior problems. The following priority is intended to assist schools in designing and implementing effective school-wide positive behavioral support programs by creating a greater awareness of these approaches, including identifying effective State and local policies which support the approaches, and by building the necessary knowledge base, momentum, and resource network to encourage their widespread application.

Priority

The Secretary proposes to establish an absolute priority to support a Center for Positive Behavioral Interventions and Supports that builds awareness and motivation for schools to design and implement school-wide support for children with disabilities who exhibit challenging problem behaviors. The Center must, at a minimum:

(a) Evaluate the state of policy and practice regarding school-wide behavioral support, including relevant State and local policies and guidelines, and financing and cross-agency coordination strategies for supporting

behavioral intervention services. Develop and apply criteria for identifying exemplary programs of school-wide positive behavioral support. Identify and publicize schools implementing such programs.

(b) Establish a coordinated network of researchers, educators, parents, mental health professionals, and policymakers who will serve as resources to schools and each other in designing and implementing school-wide positive behavioral support programs. Conduct outreach activities with relevant federally supported technical assistance and information activities and projects (e.g., the National Institute of Disability and Rehabilitation Research programs, the Federal Resource Center, regional resource centers, the Office of Educational Research and Improvement (OERI), the Office of Elementary and Secondary Education's Safe and Drug Free Schools program, the Department of Justice's Office of Juvenile Justice and Delinquency Prevention, etc.), State and local organizations and other relevant organizations and projects to promote public awareness of positive behavioral support practices and the availability of information, supports and services.

(c) Provide for information exchanges between researchers and practitioners who direct exemplary behavioral support programs and educators who seek to design and implement effective school-wide programs. The exchanges must include, but are not limited to, two regional forums during each of the first four years of the project, and a national forum in the fifth year. The forums must be designed to expand the coordinated network, develop awareness of research-based practices, and create a dialogue about school-wide positive behavioral support programs. The forums must include examples and descriptions of exemplary school-wide programs and effective State and local policies, and may include other appropriate activities such as visits to exemplary sites.

(d) Provide information to the national information center for children with disabilities. Collaborate with the national information center for children with disabilities on the development and dissemination of materials on behavioral intervention and supports. Establish linkages with the national information center for children with disabilities to ensure timely and accurate dissemination of information to customers.

(e) Organize, synthesize, and report information to teachers, administrators, parents, and other interested parties regarding research, policy, and practice advances on positive behavioral support. Develop and disseminate products that are easy to use and accessible (e.g., print and electronic formats). Respond to written and telephone inquiries with research-based information.

(f) Develop and implement a blueprint for providing technical assistance to local educational agencies (LEAs), which includes alternative designs of effective school wide positive behavioral support programs and alternative approaches to delivering technical assistance in their implementation. Identify barriers to assisting school districts across the country in developing and implementing school-wide positive behavioral support programs and develop strategies for overcoming these barriers.

(g) Budget for two trips annually to Washington, D.C., for: (1) A two-day Research to Practice Division Project Directors' meeting; and (2) a meeting to collaborate with the Research to Practice Division project officer and the other related projects, and to share information and discuss findings and methods of dissemination.

(h) Conduct, every two years, a results-based evaluation of the technical assistance provided. Such an evaluation must be conducted by a review team consisting of three experts approved by the Secretary and must measure elements such as—

(1) The type of technical assistance provided and the perception of its quality by the target audience;

(2) The changes that occurred as a result of the technical assistance provided; and

(3) The review team will examine the progress that the Center has made with respect to the objectives in its application.

The services of the review team, including a two-day site visit to the Center is to be performed during the last half of the center's second year and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review team must also be included in the Center's budget for year two. These costs are estimated to be approximately $4,000.

Under this priority, the Secretary will make one award for cooperative agreements with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the center for the fourth and fifth years of the project period, the Secretary, in addition to the requirements of 34 CFR 75.253(a), will consider—

(a) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or is being met by the Center; and

(b) The degree to which the Center's design and methodology demonstrates the potential for advancing significant new knowledge.

Proposed Absolute Priority 2—National Center on Dispute Resolution

Background

Disputes within the education community affect systemic change and results for children with disabilities. A dispute resolution process such as mediation is less costly to schools and families, can help to minimize adverse effects on a child's progress in school, and is more apt to foster positive relationships between families and educators than litigation. Technical assistance that focuses primarily on dispute resolution procedures would assist State educational agencies (SEAs), local educational agencies (LEAs), and families to resolve their differences in a less adversarial and more responsive manner than through standard due process hearing procedures, while enabling State and local entities to achieve systemic change and promoting improved early intervention, educational, and transitional results for children with disabilities. This priority would support a national center to provide technical assistance to SEAs, LEAs, and families on resolving their differences. The center would provide technical assistance on mediation and other effective dispute resolution procedures that do not impede parental rights under IDEA or otherwise conflict with the statute. As such the center would provide technical assistance as needed in order to facilitate the effective use of due process procedures. The chief aim of the center however, would be to provide needed technical assistance to enable parties to effectively resolve their disputes through more expedient and less confrontational means, including mediation.

Priority

The Secretary establishes an absolute priority to support a national technical assistance center on dispute resolution procedures, including mediation. The center must—

(a) Provide technical assistance on dispute resolution procedures (with an emphasis on procedures other than due process hearings) to all States, outlying areas, and the freely associated States (to the extent such States participate in Parts B or C of IDEA), and the Bureau

of Indian Affairs. At a minimum, the center must—

(1) Conduct annual needs assessments;

(2) Develop technical assistance agreements with each entity; and

(3) Provide technical assistance, training, and on-going consultation based on the technical assistance agreements (including technical assistance, training, and on-going consultation at the local level, as appropriate).

(b) Coordinate with the existing technical assistance to parent project to provide technical assistance to all parent training and information centers and community parent resource centers on dispute resolution procedures;

(c) Develop informational exchanges about dispute resolution procedures between the center and other technical assistance and information dissemination systems;

(d) Establish an advisory group of persons with complementary expertise on dispute resolution procedures to advise the center on its technical assistance activities;

(e) Collect information on the use and effectiveness of mediation and other dispute resolution procedures. The effectiveness of any such procedure would be based on the degree to which all parties feel satisfied with the result and agree that an efficient and expeditious process had been followed;

(f) Identify, and disseminate information on, best practices in dispute resolution;

(g) Maintain an information data base that includes: (1) State practices on dispute resolution, including information on mediator training and the implementation of the mediation requirements in Parts B and C of IDEA; and (2) research, literature, and products about dispute resolution procedures.

(h) Examine the effectiveness of State efforts regarding mediation and other dispute resolution proceedings. Analyze information on the number of due process hearings, mediation sessions, and other dispute resolution proceedings conducted and on the outcome of each such hearing, session, or proceeding;

(i) Collaborate with the national information center on children with disabilities regarding the dissemination of information to respond to information needs. Establish linkages with the national information center on children with disabilities to ensure timely and accurate dissemination of information to customers;

(j) Serve as a clearinghouse for information on dispute resolution procedures;

(k) Conduct an annual forum each year of the project that identifies the unique features of dispute resolution procedures, the strengths of the procedures, and the potential for adopting the procedures. At least one forum must address the specific needs of under represented and underserved populations; another must address dispute resolution procedures (including mediator training issues) in the context of general education reform;

(l) Evaluate the impact of the center's technical assistance system and its components relative to the—

(1) Assessed needs of States and jurisdictions;

(2) Needs of parents; and

(3) Linkages with other technical assistance and information dissemination systems; and

(m) Budget for two trips annually to Washington, D.C., for: (1) A two-day Research to Practice Division Project Directors' meeting; and (2) a meeting to collaborate with the Research to Practice Division project officer and the other related projects to share information, and to discuss findings and methods of dissemination.

(n) Conduct, every two years, a results-based evaluation of the technical assistance provided. Such an evaluation must be conducted by a review team consisting of three experts approved by the Secretary and must measure elements such as—

(1) The type of technical assistance provided and the perception of its quality by the target audience; and

(2) The changes that occurred as a result of the technical assistance provided; and

(3) The review team will examine the progress that the Center has made with respect to the objectives in its application.

The services of the review team, including a two-day site visit to the center is to be performed during the last half of the center's second year and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review team must also be included in the center's budget for year two. These costs are estimated to be approximately $4,000.

Under this priority, the Secretary will make one award for a cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the center for the fourth and fifth years of the project period, the Secretary, in addition to the requirements of 34 CFR 75.253(a), will consider—

(a) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or is being met by the center.

(b) The degree to which the center's design and methodology demonstrates the potential for advancing significant new knowledge.

Program Authority: Section 685 of IDEA.

Research and Innovation to Improve Services and Results for Children With Disabilities

Purpose of Program

To produce, and advance the use of, knowledge to: (1) Improve services provided under IDEA, including the practices of professionals and others involved in providing those services to children with disabilities; and (2) improve educational and early intervention results for infants, toddlers, and children with disabilities.

Priority

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority.

Proposed Absolute Priority—Directed Research Projects

This priority provides support for projects that advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals who work with children with disabilities in regular education environments and natural environments, to provide those children effective instruction and interventions that enable them to learn and develop successfully. Under this priority, projects must support innovation, development, exchange of information, and use of advancements in knowledge and practice designed to contribute to the improvement of early intervention, instruction, and learning of infants, toddlers, and children with disabilities.

A research project must address one of the following focus areas and the Secretary intends to award at least one project in each focus area:

Focus 1—Beacons of Excellence

Research projects supported under Focus 1 must identify and study schools or programs achieving exemplary results for students with disabilities in the

context of efforts to achieve exemplary results for all students. Projects must develop and apply procedures and criteria to identify these schools or programs, and to identify factors contributing to exemplary learning or developmental results, and examine how those factors and other factors relate to achieving exemplary learning or developmental results for children with disabilities. Projects may focus on early intervention, preschool, elementary, or secondary levels, or a combination of levels. Following the second year of the project, the Secretary may fund an optional six-month period for additional dissemination activities.

Focus 2—The Sustainability of Promising Innovations

A growing body of practice-based research and model demonstration work in schools, local districts, and early intervention programs, including projects supported by the Office of Special Education Programs (OSEP), has focused on meeting the needs of, and improving results for, children with disabilities in schools, districts, or early intervention programs involved in reform and restructuring initiatives. Some of this work is yielding promising positive results for children with disabilities. However, little is known about the extent to which the innovations developed and implemented in these efforts are sustained in project sites beyond the term of time-limited external support and assistance.

Focus 2 supports projects to study the implementation of practices that have been found to be effective in meeting the needs of children with disabilities by reform and restructuring initiatives in local and district schools, or early intervention programs. The study must address: (a) The extent to which practices that have been shown to be effective have been sustained beyond the existence of the projects; and (b) factors that influence the level of sustainability. Factors to be studied may include, but are not limited to: (a) The nature of the innovations and the extent to which the innovations have undergone adaptation or alteration over time; (b) the type and extent of support strategies employed during initial implementation stages and over time; (c) planned and unplanned changes in agency, school organizational or structural contexts, or both; (d) the level of penetration of the innovation; (e) the actual or perceived, or both, cost and benefit for participants; (f) constancy of site leadership, staff, and policy requirements; (g) the extent of consonance or dissonance between critical features of the innovations and existing (and emerging) school and district or agency practices and policies; and (h) resource access and allocation. Projects must provide comprehensive descriptions of the targeted effective practices to be studied, and evidence of positive results for children with disabilities. In addition, projects must dedicate the bulk of support requested to research on the issues of sustainability including the ability to sustain the project results beyond the life of the project. The Secretary particularly encourages an in-depth case study research design where the site or sites to be studied is the case (unit of analysis).

Focus 3—Research on Improving Reading Comprehension Results for Children With Learning Disabilities

In recent years, research has advanced our understanding of how skilled readers comprehend and instructional strategies that support children with learning disabilities to comprehend text. Comprehension is not merely a text-based process where meaning resides in the text and the role of the reader is to get the meaning. Meaning comes from both the text and the reader. Many children with learning disabilities need an instructional program that: (a) Teaches them how to access prior knowledge (e.g., strategies such as story grammar elements, semantic mapping, or think aloud sheets); (b) motivates and supports persistence on a task (e.g., including expressions of a student's own thoughts when reading and writing, questioning the expert or inquiry, or using technology or grouping practices); and (c) teaches them cognitive and metacognitive strategies for reading with understanding, including how to monitor one's own progress (e.g., summarizing, generating questions, mnemonics, or imagery). Therefore, becoming a skilled reader is not automatic. Teachers need to teach reading comprehension, and, in particular, children with learning disabilities need effective instructional approaches.

Under Focus 3, a research project must pursue a systematic program of applied research that focuses on one or more issues related to improving reading comprehension results of children with learning disabilities related to reading. These issues include, but are not limited to:

(a) The extent to which children with learning disabilities need differential strategies to comprehend narrative and expository text;

(b) The types of effective comprehension instruction for children with learning disabilities in grades K–2, 3–5, and 6–8 inclusive; the components of particularly effective programs for children with learning disabilities; the basal materials, supplemental materials, and instructional strategies used by teachers; and how families support the instructional program;

(c) The types of effective questioning strategies used by teachers, peers, and experts affecting comprehension; and

(d) The kind of contexts that promote critical analysis and evaluation for comprehension and learning, and the grouping practices, instructional strategies, and curricula that promote comprehension and problem solving.

Focus 4—Studying Models That Bridge the Gap Between Research and Practice

Educational research most often includes the following phases: (1) Planning and preparation; (2) information gathering; (3) analysis and interpretation; (4) reporting and dissemination; and (5) use of findings. In traditional research models, the researcher is solely or primarily responsible for all phases but the last. Using research findings is seen as a job for the practitioner. However, it has been observed that research knowledge rarely translates directly into practice.

In recent years, a variety of promising models have been developed to bridge the gap between research and practice by altering the roles of researchers and practitioners for one or more phases of the research. In some models (e.g., interactive research and development, practitioner-researcher, partnership research) researchers and practitioners collaborate in all phases of the research process. Some of these models include parents on their site-based research teams. In other models, practitioners, working individually (e.g., practitioner-research linkers), in groups (e.g., practitioner study groups), or in pairs (e.g., peer coaching) interpret extant research to understand how to integrate research into practice. In some models, teachers conduct research (e.g., action research, or collegial experimentation). To date there have been few systematic examinations of the effectiveness of the various models to improve practice in special education or early intervention.

Under Focus 4, research projects must implement and examine a model or models for using research knowledge to improve educational practice and results for children with disabilities.

In studying a model or models, projects must apply methodologies with the capacity to determine the effectiveness of the model or models as implemented in practice settings. The projects must identify the knowledge

utilization model or models to be studied, specify the components of the knowledge utilization model or models selected or created, the supports and policies necessary to support the model or models, both alterable and unalterable factors affecting practice improvement, and the effect of the model or models to improve organizational culture, practitioner attitudes and practices, and child results. In judging effectiveness, the projects must address improvements for researchers, practitioners, and children with disabilities.

The projects must report their findings in a manner which can serve as a "blueprint" so that practitioners in other school districts or agencies can implement the model using research knowledge to improve practice in special education or early intervention.

Focus 5—Inclusion of Students With Disabilities in Large-Scale Assessment Programs

IDEA includes a number of provisions to ensure the participation of students with disabilities in general State and district-wide assessment programs. Students with disabilities must participate in large-scale assessment programs if they are to benefit from the educational accountability and reforms that are linked to these assessments. While much information has been gained from prior efforts to include disabled students in assessments such as the National Assessment of Educational Progress, applied research is needed to build on this base of information in order to provide technical and implementation information to guide the effective inclusion of students with disabilities in large-scale assessment programs.

Focus 5 supports projects that pursue systematic programs of applied research to determine how State and local educational programs can best meet one or more of the following requirements:

(a) Including students with disabilities in either general State or district-wide assessment programs or both;

(b) Developing and using appropriate accommodations for students with disabilities on general State or district-wide assessments, or both;

(c) Developing and using alternate assessments for students with disabilities who cannot participate in State and district-wide assessment programs;

(d) Reporting on the participation or performance or both of students with disabilities in either general assessment programs, or on alternate assessments, or both; and

(e) Making decisions during the development of individualized education programs concerning individual modifications in the administration of State or district-wide assessments, or individual participation in alternate assessments.

Focus 6—Synthesize and Communicate a Professional Knowledge Base: Contributions to Research and Practice

Traditionally researchers have communicated their findings from individual research projects and systematic lines of research through journal publications and conference presentations. These findings are communicated to other researchers and engage researchers in dialogues. These dialogues contribute to innovation and development in special education and early intervention. In recent years the Office of Special Education Programs (OSEP) has sought to expand these traditional approaches. While continuing to support innovation and development, OSEP has established a goal to foster the use of a professional knowledge base by professionals who serve children with disabilities and parents who are involved in the education and development of their children with disabilities.

Focus 6 supports projects that synthesize and communicate an extant professional knowledge base on curricular, instructional, early intervention, or organizational strategies and approaches that would contribute to professional practice as a means for achieving better results for children with disabilities. In past years, the Department has supported syntheses on positive behavioral supports of children who exhibit challenging behaviors, grouping practices in reading, differences between children with learning disabilities and low achieving students, instructional approaches for special education students who speak English as a second language, generalization strategies for using augmentative communication devices, interventions for children with learning disabilities, and effects of setting on social and academic outcomes. Building upon these previous efforts, the Secretary intends to support and fund a limited number of new syntheses in other areas such as—

(a) Effects of self-determination and self-advocacy interventions on children with disabilities;

(b) Effects of interventions on children with disabilities that promote generalization of academic or developmental skills;

(c) Effects of teacher or practitioner efficacy on children with disabilities' achievement or development;

(d) Effects of technology for improving literacy results for children with disabilities;

(e) Effects of school-wide approaches for improving reading results of children with disabilities; or

(f) Effects of school-wide approaches for improving math results of children with disabilities.

Under Focus 6, a synthesis project must—

(a) Identify the topical focus and the relevant and irrelevant concepts under review, and pose hypotheses around which the synthesis would be conducted;

(b) Identify and implement rigorous social science methods for synthesizing the professional knowledge base (e.g., integrative reviews (Cooper, 1982), best-evidence synthesis (Slavin, 1989), meta-analysis (Glass, 1977), multi-vocal approach (Ogawa & Malen, 1991), and National Institute of Mental Health consensus development program (Huberman, 1977));

(c) Develop hypotheses with input from potential consumers of the synthesis to enhance the usability and validity of project efforts. Consumers include researchers, technical assistance providers, policy makers, educators, other relevant practitioners, individuals with disabilities, and parents;

(d) Develop linkage of synthesis with technical assistance providers and disseminators and prepare products for use by practitioners, technical assistance providers, and disseminators;

(e) Implement procedures for locating and organizing the extant literature and ensure that these procedures address and guard against potential threats to the integrity, including generalization of findings;

(f) Establish criteria and procedures for judging the appropriateness of studies;

(g) Meet with the Office of Special Education Programs to review the project's topical focus and methodological approach for conducting the synthesis prior to the start of its synthesis;

(h) Analyze and interpret the professional knowledge base, including identification of general trends in the literature, points of consensus and conflict among the findings, and areas of evidence where the literature base is lacking. The interpretation of the literature base must address the contributions of the findings for improving the practice of professionals serving children with disabilities; and

(i) Submit a draft report in the 21st month of the project and, based on peer reviews, revise and submit a final report of the synthesis in the 24th month. During the second year of the project, the Secretary may fund an optional six-month period for additional dissemination activities.

Focus 7—Improving the Delivery of Special Education and Related Services or Early Intervention Services to Children Who Are English Language Learners

Appropriate instruction and intervention for children with disabilities who are limited in their English language proficiency can be achieved in a variety of ways. Ultimately, the responsibility for assuring that the English language learner is receiving appropriate access to the curriculum or intervention rests with the school district or agency in its provision of necessary training and ongoing support to the teachers or practitioners. Providing native speakers of the child's language in the classroom or intervention program, including parents, may not be sufficient to assure delivery of appropriate education or interventions. Limitations of resources and availability of qualified bilingual personnel to provide special education, related services, or early intervention services throughout the Nation suggest that other approaches should be investigated that will enhance the availability and assurance of the provision of meaningful education.

Under Focus 7 projects must pursue a systematic program of applied research that focuses on one or more areas related to improved approaches to the delivery of special education and related services or early intervention services to children who are English language learners. These areas may include, for example—

(a) Examination of early reading practices (K–3) for children with learning and behavior issues who are limited in their English proficiency;

(b) Improvement of reading comprehension in content area instruction in grades 4–8;

(c) Examination of alternatives in the delivery of services to children with disabilities who are English language learners (e.g., is placement optimal in regular classes or programs with support from special education resources or is the child better served in placements with other children with similar disabilities with support from bilingual resources?);

(d) The role cultural issues play in the provision of services (e.g., how do the perceptions of families regarding disabilities and services affect delivery of services?);

(e) The preferred strategies to support the transition from bilingual to mainstream English speaking classes or programs (e.g., what teaching or intervention strategies are most effective?);

(f) Examination of specific instructional approaches that promote problem solving and comprehension in reading, science, math, and social studies;

(g) Examination of instructional or intervention approaches for growth in English language learning for these children;

(h) Factors that improve the effectiveness of cooperative learning and classwide peer tutoring for English language learners;

(i) The techniques that improve the transfer of proven practices to practitioner; and

(j) The qualitative differences that exist in implementation of proven practices with practitioner and children who are English language learners who are located in inner-city schools or served through inner-city agencies (e.g., what is the involvement of families).

Focus 8—Educating Children With Disabilities in Inclusive Settings

Focus 8 supports research projects to (a) identify new or improved systems change strategies that provide all children with disabilities, including children with severe disabilities, effective access to the general curriculum in regular classrooms as well as to nonsegregated extracurricular activities, and (b) describe how these school inclusion efforts as identified in (a) are aligned with systemic reform and school improvement strategies for all students.

Each project will identify, describe, and examine: (1) The efficacy and linkages of existing systemic reform and school inclusion strategies; (2) how school systems provide administrative and other supports in general education settings to meet the needs of students with disabilities and other diverse learners; (3) how standards established for all children and authentic assessment practices are implemented for students with disabilities, and (4) social support strategies, including peer mediated strategies, that promote positive interactions among students with disabilities and their same-aged peers to foster cohesive school and classroom communities.

To be considered for funding under Focus 8, a research project must—

(a) Identify specific interventions or strategies to be investigated;

(b) Design the research activities in a manner that is likely to improve services for all students in inclusive classrooms, including students with severe disabilities;

(c) Conduct the research in schools pursuing systemic education reform and school inclusion; and

(d) Use methodological procedures designed to produce findings useful to program implementers and policy makers regarding the impact and interaction effects of systemic reform and school inclusion strategies in State and local contexts and demonstrate the benefits to students including the reciprocal benefits of inclusive schooling for all students.

Requirements for All Directed Research Projects

In addition to addressing one of the above mentioned focus areas, projects must—

(a) Apply rigorous research methods (qualitative or quantitative, or both) to identify approaches contributing to improved results for children with disabilities;

(b) Provide a conceptual framework, based on extant research and theory to serve as a basis for the issues to be studied, the research design, and the target population;

(c) Prepare dissemination materials for both researcher and practitioner audiences and develop linkages with U.S. Department of Education dissemination and technical assistance providers, in particular those supported under the Individuals with Disabilities Education Act, to communicate research findings and distribute products; and

(d) Budget for two trips annually to Washington, D.C., for: (1) A two-day Research to Practice Division Project Directors' meeting; and (2) another meeting to collaborate with the Research to Practice Division project officer and the other projects funded under this priority, and to share information and discuss findings and methods of dissemination.

Executive Order 12866

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities are those determined by the Secretary as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed

priorities, the Secretary has determined that the benefits of the proposed priorities justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed priorities without impeding the effective and efficient administration of the program.

Summary of Potential Costs and Benefits

There are no identified costs associated with this notice of proposed priorities. Announcement of the priorities will not result in costs to State and local governments, recipients of grant funds, or to children and youth with disabilities and their families. The benefit from these priorities will be to focus activities and Federal assistance on improving results for children and youth with disabilities.

Intergovernmental Review

All programs in this notice (except for the Research and Innovation Projects) are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3524, 300 C Street, SW, Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed priorities. An individual with a disability who wants to schedule an appointment for this type of aid may call (202)–205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339, between 8 a.m., and 8 p.m., eastern time, Monday through Friday.

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Note: The official version of a document is the document published in the **Federal Register**.

(Catalog of Federal Domestic Assistance Numbers: Research and Innovation to Improve Services and Results for Children with Disabilities, 84.324; and Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities, 84.326)

Dated: January 29, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–4138 Filed 2–18–98; 8:45 am]

BILLING CODE 4000–01–P

federal register

Thursday
February 19, 1998

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention Program

Notice of the Fiscal Year 1998 Missing and Exploited Children's Program; Proposed Program Plan and Announcement of Discretionary Competitive Assistance Grant; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention Programs

[OJP (OJJDP–1154]

RIN 1121–ZA91

Notice of the Fiscal Year 1998 Missing and Exploited Children's Program; Proposed Program Plan and Announcement of Discretionary Competitive Assistance Grant

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, DOJ.

ACTION: Proposed Program Plan for public comment.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing its Missing and Exploited Children's Fiscal Year (FY) 1998 Proposed Program Plan and soliciting public comment on the proposed plan and priorities. After analyzing the public comments on this Proposed Program Plan, OJJDP will issue its final FY 1998 Missing and Exploited Children's Program Plan.

DATES: Comments must be submitted by April 20, 1998.

ADDRESSES: Public comments should be mailed to Shay Bilchik, Administrator, Office of Juvenile Justice and Delinquency Prevention, 810 Seventh Street NW., Room 8413, Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: Ronald C. Laney, Director, Missing and Exploited Children's Program, 202–616–3637. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Missing and Exploited Children's Program is administered by the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Pursuant to the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, section 406(a)(2), 42, U.S.C. 5776, the Administrator of OJJDP is publishing for public comment a Proposed Program Plan for activities authorized by Title IV of the JJDP Act, the Missing Children's Assistance Act, 42 U.S.C. 5771 *et seq.*, that OJJDP proposes to initiate or continue in FY 1998. Taking into consideration comments received on this Proposed Program Plan, the Administrator will develop and publish a Final Program Plan that describes the program activities OJJDP plans to fund during FY 1998 using Title IV funds.

The actual solicitation of any competitive grant applications under the Final Program Plan will be published at a later date in the **Federal Register**. No proposals, concept papers, or other types of applications should be submitted at this time.

Background: The Nature of the Problem of Missing and Exploited Children

The issues involving missing and exploited children can be divided into four categories: family abduction, nonfamily abduction, child exploitation, and the impact these events have on children and families. These issues are summarized below, using data drawn from the 1988 National Incidence Study of Missing, Abducted, Runaway, or Thrownaway Children (NISMART), the most current available data. The NISMART II study, funded in 1996, will produce new data beginning in 1999.

Family Abduction

In 1988, NISMART estimated that 354,100 family abductions were occurring each year. Forty-six percent of these abductions (163,200) involved concealment of the child, transportation of the child out of State, or intent by the abductor to keep the child indefinitely or to permanently alter custody. Of this more serious subcategory of family abductions, a little more than half were perpetrated by men who were noncustodial fathers and father figures. Most victims were children between the ages of 2 and 11. Half of these abductions involved unauthorized takings, and half involved failure to return the child after an authorized visit or stay. Fifteen percent of these abductions involved the use of force or violence, and between 75 and 85 percent involved interstate transportation of the child. About half of family abductions occurred before the parents' relationship ended. Half did not occur until 2 or more years after a divorce or separation, usually after parents developed new households, moved away, developed new relationships, or became disenchanted with the legal system. More than half occurred in the context of relationships with a history of domestic violence. An estimated 49 percent of abductors had criminal records, and a significant number had a history of violent behavior, substance abuse, or emotional disturbance. As NISMART found, it is not uncommon for child victims of family abduction to have their names and appearances altered; to experience medical or physical neglect, unstable schooling, or homelessness; or to endure frequent moves. These children are often told lies about the abduction and the left-behind parent, event that the left-behind parent is dead.

Nonfamily Abduction

NISMART reported that an estimated 3,200 to 4,600 short-term nonfamily abductions were known to law enforcement in 1988. Of these, an estimated 200 to 300 were stereotypical kidnapings where a child is gone overnight, is killed, is transported a distance of 50 miles or more, or is being detained by a perpetrator who intends to keep the child permanently. Young teenagers and girls were the most common victims. Two-thirds of short-term abductions involved a sexual assault. A majority of the victims were abducted from the street. More than 85 percent of nonfamily abductions involved force, and more than 75 percent involved a weapon. Most episodes lasted less than a day. Most researchers and practitioners consider the number of short-term abductions to be an underestimate because of police reporting methods and lack of reporting on the part of victims. Federal Bureau of Investigation (FBI) data support estimates of 43 to 147 stranger abduction homicides of children annually between 1976 and 1987. Using FBI data, NISMART estimated that 114,600 nonfamily abductions were attempted in 1988, most involving strangers and usually involving an attempt to lure a child into a car. In a majority of these cases, the police were not contacted.

Child Exploitation

Children are also at risk of being victimized as a result of a range of circumstances that fall into three categories: running away; being expelled from the home, or "thrownaway," by parents or guardians; or being otherwise lost or missing.

NISMART estimated that each year 446,700 children ran away from households and 12,800 children ran from juvenile facilities. Many children who ran from households also ran from facilities. About one-third of these runaways left home or a juvenile facility more than once. Of all runaways identified, 133,500 were without secure and familiar places to stay during their episodes. More than a third of runaways ran away more than once during the year. One in ten traveled a distance of more than 100 miles. Of the runaways from juvenile facilities, almost one-half left the State. Runaways were mostly teenagers, but almost 10 percent were 11 years old or youngers. Runaways tended to come disproportionately from households with stepparents. Family conflict seemed to be at the heart of most runaway episodes. Between 60 and 70 percent of runaways reported being

seriously abused physically. It is estimated that from 25 to 80 percent of all runaways are sexually abused. Runaways, particularly chronic runaways, are at higher risk for physical and sexual victimization, substance abuse, sexually transmitted diseases, unintended pregnancies, violence, and suicide.

NISMART reported that an estimated 127,100 thrownaway children were told directly to leave their households, had been away from home and were not allowed back by their caretakers, had caretakers, who made no effort to recover them when they ran away, or had been abandoned or deserted. By comparison, for every thrownaway child, there were four runaway children. An estimated 59,200 thrownaway children were without secure and familiar places to stay during the episodes. Most thrownaways were older teenagers, but abandoned children tended to be young (half under the age of 4). Thrownaways were concentrated in low-income families and families without both natural parents. Compared with runaways, thrownaways experienced more violence and conflict within their families and were less likely to return home.

An estimated 438,200 children were lost, injured, or otherwise missing each year, according to the 1988 study. Of these, 139,100 cases were serious enough for the police to be called. Almost half involved children under 4. Most of these episodes lasted less than a day. A fifth of the children experienced physical harm. Fourteen percent of the children were abused or assaulted during the episodes.

Impact on Children and Families

The majority of families of missing children experience serious psychological consequences and substantial emotional distress. The level of emotional distress equals or exceeds the emotional distress for other groups of individuals exposed to trauma, such as combat veterans and victims of rape, assault, or other violent crime, with families where the missing child is subsequently recovered deceased exhibiting the highest level of emotional distress. Once home, a third of abducted children live in constant fear of reabduction. Many child victims of family abduction experience serious psychological consequences and substantial emotional distress. Trauma symptoms may be evident for up to 4 or 5 years after recovery. More than 80 percent of recoveries of missing children are concluded in less than 15 minutes with no psychological or social service support. In most cases, the only nonfamily person present is a police officer. Almost four-fifths of victims and families of missing children do not receive mental health or counseling services.

Introduction to the Fiscal Year 1998 Program Plan

According to the most recent FBI National Crime Information Center (NCIC) Missing Person file statistics, approximately 2,200 children are reported missing to law enforcement every day in the United States. Many of these children are runaways; others are taken by noncustodial parents and used as pawns in custody battles between their parents. Some wander away and are unable to find their way home, and still others represent a parent's worst nightmare, the loss of a child to a predator.

In 1984, Congress recognized the need for a national response to missing children and enacted the Missing Children's Assistance Act to establish a Missing and Exploited Children Program within OJJDP. The Missing Children's Assistance Act authorizes assistance for research, demonstration, and service programs and for establishment and support of a national resource center and clearinghouse dedicated to missing and exploited children.

In FY 1997, OJJDP's Missing and Exploited Children's Program continued to coordinate the Federal Government's response to missing and exploited children and provided funding support for research, training, technical assistance, and demonstration projects. Some notable FY 1997 accomplishments are described below.

OJJDP and the National Center for Missing and Exploited Children (NCMEC) published A Report to the Nation: Missing and Exploited Children, which offers State action plans and advisory memorandums suggesting methods to enhance State and local responses to missing and exploited children cases. The report has been disseminated to all State Governors and attorneys general and is available through OJJDP's Juvenile Justice Clearinghouse (JJC) and NCMEC. The JJC telephone number is 800–638–8736, and the NCMEC number is 800–843–5678.

OJJDP and the Washington State Attorney General's Office released the results of a 3-year, OJJDP-funded research project that analyzed the solvability factors of missing children homicide investigations. The study provided information regarding victim, offender, and serial offender composites; the importance of linking all of the evidentiary sites within a homicide event; and the relationships between the various sites. Copies of the report can be obtained by calling the Washington State Attorney General's Office Homicide Investigation Tracking Office at 800–345–2793.

OJJDP, working with NCMEC and the FBI's Child Abduction and Serial Killer Unit (CASKU) and Criminal Justice Information Services Division, developed and implemented the Jimmy Ryce Law Enforcement Training Center (JRLETC), which offers multitiered training for law enforcement executives and investigators. The training center, dedicated to the memory of 9-year-old Jimmy Ryce, who was abducted and murdered in Florida, opened April 15, 1997. OJJDP Administrator Shay Bilchik presided over the dedication ceremony, which included remarks from Assistant Attorney General Laurie Robinson, FBI Director Louis Freeh, Senator Mitch McConnell of Kentucky, and Jimmy's parents, Donald and Claudine Ryce. Composed of several complementary elements, JRLETC offers 2-day seminars focusing on broad coordination and policy development issues for law enforcement executives and regional 5-day courses emphasizing investigative techniques for law enforcement officers who are responsible for investigating missing children cases.

In FY 1997, Fox Valley Technical College, an OJJDP cooperative agreement recipient, provided training to more than 4,100 law enforcement and other professionals working on missing and exploited children cases. These courses integrate current research and include modules pertaining to investigative techniques, interview strategies, comprehensive response planning, media relations, lead and case management, and other topics related to missing and exploited children cases.

To help investigators determine if a child is abused or exploited and collect the evidence necessary for effective prosecution, OJJDP released seven additional Portable Guides in FY 1997 (the first four in the series were issued in FY 1996) for police officers, medical professionals, and social service professionals investigating child abuse and exploitation cases. The Guides, sized to fit in patrol car glove compartments or detectives' briefcases, provide immediate reference materials for "on the scene" investigations. Subjects covered include methods of interviewing victims, evidence collection techniques, investigative strategies, and recognition of injuries caused by abuse. Two additional guides are currently under development: Multidisciplinary Team Approach to

Investigating Child Abuse and Computers and the Sexual Exploitation of Children.

Fiscal Year 1998 Programs

In FY 1998, OJJDP proposes to continue its concentration on programs that are national in scope, promote awareness, and enhance the Nation's response to missing and exploited children and their families.

New Programs

Title IV new programs to be funded in FY 1998 are summarized below. The grant to the National Center for Missing and Exploited Children to implement the Title IV national resource and clearinghouse function is considered a new program because the existing project period grant expires in FY 1998 and a new award will be made to support these functions during FY 1998. The Training and Technical Assistance program will be recompleted in FY 1998, and a new project period grant will be awarded. The Internet Crimes Against Children Regional Task Force Development program is a new program to be competitively funded in FY 1998. While funds for other new programs in FY 1998 are limited, OJJDP is interested in obtaining input from the field on program and service needs that will assist us in planning both FY 1998 and future programming.

National Resource Center and Clearinghouse

Congress has provided $5 million to continue and expand the programs, services, and activities of the National Center for Missing and Exploited Children, a national resource center and clearinghouse dedicated to missing and exploited children and their families. As provided in Title IV, the functions of the Center include, but are not limited to, the following:

- Provide a toll-free hotline where citizens can report investigative leads and parents and other interested individuals can receive information concerning missing children.
- Provide technical assistance to parents, law enforcement, and other agencies working on missing and exploited children issues.
- Promote information sharing and provide technical assistance by networking with regional nonprofit organizations, State missing children clearinghouses, and law enforcement agencies.
- Develop publications that contain practical, timely information.
- Provide information regarding programs offering free or low-cost transportation services that assist in reuniting children with their families.

In FY 1997, NCMEC's toll-free hotline received 127,796 calls ranging from citizens reporting information concerning missing children to requests from parents and law enforcement for information and publications. NCMEC also assisted in the recovery of 4,607 children, disseminated millions of missing children photographs, distributed thousands of publications, and sponsored four regional meetings of State missing children clearinghouses.

In a major effort to broaden its photograph distribution capacity, NCMEC is displaying missing children posters on hundreds of Web sites by using push technology to automatically broadcast photographs and case information to requesting Web sites. In addition, NCMEC worked with private industry representatives to create a wide array of awareness and prevention activities that include public service announcements, direct mail campaigns, and distribution of mousepads that list safe Internet practices for children.

In FY 1998, in addition to performing the ongoing functions of the national resource center and clearinghouse, NCMEC will complete the development of a Web site that will enable State missing children clearinghouses and law enforcement agencies to post missing children posters on the Internet. In response to research documenting that adolescent females are at greater risk than adolescent males of sexual victimization, NCMEC will revise its Internet safety publication, Child Safety on the Information Highway, and will implement a new safety awareness program focusing on teens.

Congress has appropriated $1.9 million in FY 1998 for NCMEC to develop a national training and technical assistance program designed to enhance the national investigative response to Internet crimes against children. NCMEC, in partnership with OJJDP and in cooperation with the U.S. Customs Service; the U.S. Postal Inspection Service; the U.S. Department of Justice's Criminal Division's Child Exploitation and Obscenity Section and the Federal Bureau of Investigation; and the National District Attorneys Association, will initiate a broad program of activities in FY 1998 to combat crimes against children by criminals using computer technology or the Internet. As envisioned, these activities will include the installation of a NCMEC CYBER Tipline to collect information regarding child pornography and other computer crimes against children. Once the Tipline is implemented, citizens will be able to use the Internet to provide information about criminal Internet activity targeting children.

Additional project activities include an Internet crimes against children teleconference for law enforcement and a national law enforcement training program that will include regional investigative seminars in the field and policy development seminars at JRLETC. NCMEC and OJJDP will be using a national technical advisory group composed of representatives from Federal, State, and local law enforcement, prosecutors, and private industry (including the agencies referenced above) to guide implementation of this initiative.

A 1-year cooperative agreement will be awarded to NCMEC in FY 1998 for the performance of the national resource center and clearinghouse functions. No additional applications will be solicited in FY 1998.

Missing and Exploited Children Training and Technical Assistance

OJJDP proposes to issue a solicitation for an assistance award to provide Title IV national training and technical assistance on missing and exploited children to law enforcement, prosecutors, and health and family services professionals. The purpose of this program is to ensure the provision of up-to-date, practical training and technical assistance for professionals working on missing and exploited children issues.

The program was competitively funded in FY 1995 for a 3-year project period under a cooperative agreement awarded to Fox Valley Technical College (FVTC) of Appleton, Wisconsin. In FY 1997, FVTC provided training to more than 4,100 law enforcement, prosecution, child welfare services, and medical professionals. FVTC supported missing and exploited children activities by providing direct technical assistance pertaining to information sharing, protocol development, response planning, child protection legislation, juvenile prostitution, and multidisciplinary team development to more than 40 State and local units of government and professional associations. FVTC also facilitated the development of several OJJDP publications including, When Your Child is Missing: A Family Survival Guide. Written by parents for parents, this publication, scheduled for release in spring 1998, will provide guidance for searching parents from the perspective of parents who have lost children to abductions. FVTC also provided substantial assistance in the creation of several titles in OJJDP's

Portable Guides series and the publication of the Federal Agency Task Force Joint Report.

One cooperative agreement with a 3-year project period would be awarded in FY 1998 under a competitive program announcement.

Internet Crimes Against Children Regional Task Force Development

Congress has appropriated $2.4 million in FY 1998 to develop and support regional law enforcement task forces to address the problem of Internet crimes against children. OJJDP will issue a solicitation for assistance awards to States or local units of government, or combinations thereof, to support implementation of regional task forces to investigate Internet crimes against children. The purpose of the program design will be to assist communities to develop comprehensive multiagency responses that emphasize collaboration, information sharing, and victim assistance. Eight to twelve grants will be awarded to develop or expand regional multidisciplinary task forces under this solicitation.

Continuation Programs

Title IV continuation programs for FY 1998 are summarized below. Available funds, implementation sites, and other descriptive information are subject to change based on the plan review process, grantee performance, application quality, fund availability, and other factors. No additional applications will be solicited for these programs in FY 1998.

Alzheimer's Disease and Related Disorders Association's Safe Return Program

OJJDP is responsible for providing oversight of this program, for which Congress has provided $900,000 in FY 1998 to facilitate the identification and safe return of memory-impaired persons who are at risk of wandering from their homes.

In FY 1997, the Safe Return Program increased its registration data base to 30,000 individuals, assisted in the return of more than 1,700 wanderers, and continued the development of an image data base consisting of more than 25,500 photographs.

In FY 1998, the program will continue to expand the national registry of memory-impaired persons, maintain the toll-free telephone service, provide a Fax Alert System, conduct a "train the trainers" program for law enforcement and emergency personnel, develop information and educational materials, launch a national public awareness campaign, and transition current "wandering persons" programs into the national Safe Return Program.

National Crime Information Center (NCIC)

OJJDP proposes to continue to transfer funds to the Department of Justice's Management Division through a reimbursable agreement to continue NCMEC's online access to the FBI's National Crime Information Center (NCIC) Wanted and Missing Persons files. The ability to verify NCIC entries, communicate with law enforcement through the Interstate Law Enforcement Telecommunication System, and be notified of life-threatening cases through the NCIC flagging system is crucial to NCMEC's mission of providing advice and technical assistance to law enforcement.

NISMART II

Temple University Institute for Survey Research was awarded a 3-year project period grant in FY 1995 to conduct the second National Incidence Study of Missing, Exploited, Abducted, Runaway, and Thrownaway Children (NISMART II). This project builds on the strengths and addresses some of the weaknesses of NISMART I. Temple has assembled a team of experts in the field of child victimization and survey research capabilities, particularly surveys involving children and families concerning sensitive topics. Temple has contracted with the University of New Hampshire Survey Research Laboratory and Westat, Inc., to carry out specific components of the study and provide extensive background knowledge about the particulars of NISMART I. Specifically, the NISMART II study will (1) revise NISMART I definitions, (2) conduct a household survey that interviews both caretaker and child, (3) conduct a police records study, (4) conduct a juvenile facilities study, (5) analyze National Incidence Study-3 Community Professionals Study, (6) develop a single estimate of missing children, and (7) conduct analyses and prepare reports. The project is scheduled for completion in FY 2000.

In FY 1997, the NISMART II definitions were revised under the guidance of the project Advisory Board, and data survey collection instruments were developed and submitted to the Office of Management and Budget for clearance.

In FY 1998, project activities will include completing the Computer Assisted Telephone Interview program, pretesting the survey questionnaires and refining them as necessary, and collecting data. In addition, a Fact Sheet documenting the scope of the research, definition revisions, and methodology changes will be published.

Effective Community-Based Approaches for Dealing With Missing and Exploited Children

In FY 1995, the American Bar Association (ABA) was awarded an 18-month grant to study effective community-based approaches for dealing with missing and exploited children. The objectives of Phase I of this study were to (1) conduct a national search for communities that have implemented a multiagency response to missing and exploited children and their families, (2) select five communities with working multiagency responses that hold promise for replication, (3) evaluate these five communities, and (4) prepare a final report. Phase I was completed in July 1997. In Phase II, which started in August 1997, the ABA is preparing a final report that synthesizes the research findings from Phase I into a modular training curriculum to help communities plan, implement, and evaluate a multiagency response to missing and exploited children and their families. The project will be completed in FY 1998 with no further funding anticipated at this time.

Parent Resource Support Network

In FY 1997, OJJDP entered into a competitively awarded 3-year cooperative agreement with Public Administration Services (PAS) to develop and maintain a parent support network. The need for victim parents to speak with other victim parents has emerged as a constant theme in several OJJDP focus groups. The goal of this project is to stimulate development of a network of screened and trained parent volunteers who will provide assistance and advice to other victim parents.

In FY 1998, PAS will install a case management system to document referrals and assistance activity, recruit parent mentors, develop and deliver a training curriculum for the volunteer parents, and begin direct service delivery to requesting parents. No funds will be required in FY 1998.

Jimmy Ryce Law Enforcement Training Center Program

In FY 1997, OJJDP—in partnership with the National Center for Missing and Exploited Children, the FBI, and OJJDP grantee Fox Valley Technical College—developed and implemented the Jimmy Ryce Law Enforcement Training Center (JRLETC) program. JRLETC offers two law enforcement training tracks that are designed to

improve the national investigative response to missing children cases.

JRLETC's Chief Executive Officer (CEO) seminars approach missing children cases from a management perspective and offer information regarding coordination and communication issues, resource assessment, legal concerns, and policy development for police chiefs and sheriffs. The Responding to Missing and Exploited Children (REMAC) course offers modules focusing on investigative techniques for all aspects of missing children cases.

In FY 1997, 197 police chiefs and sheriffs and 634 investigators representing law enforcement agencies from every State participated in at least one of the JRLETC programs. In addition, representatives from every National Crime Information Center (NCIC) State Control Terminal Agencies received training at JRLETC about the NCIC flagging system and related missing children issues.

Congress appropriated $1,185,000 in FY 1998 to continue operation of the Jimmy Ryce Law Enforcement Training Center. OJJDP, NCMEC, the FBI, and FVTC will continue to provide training and technical assistance through the JRLETC and will augment the training with a new onsite technical assistance program to respond to the numerous requests for assistance from JRLETC graduates. It is envisioned that teams composed of FBI, NCMEC, and law enforcement management experts will merge FBI Child Abduction and Serial Killer Unit (CASKU) investigative expertise with proven law enforcement management practices to assist police chiefs and sheriffs in designing unique missing children investigative and response protocols for their communities.

Under the JRLETC appropriation, OJJDP plans to award $500,000 to FVTC to support regional REMAC courses, with the remaining $685,000 to be awarded to NCMEC to continue the CEO seminars.

Fiscal year 1998 funds will be awarded to supplement cooperative agreements to NCMEC and FVTC to continue operation of the Jimmy Ryce Law Enforcement Training Center. No additional applications will be solicited in FY 1998.

Criminal Parental Kidnaping Training and Technical Assistance

In FY 1997, OJJDP supplemented an FY 1994 competitive award by awarding continuation funding to the American Prosecutors Research Institute (APRI) to provide parental abduction training and technical assistance for prosecutors and to develop a training course pertaining to the prosecution of child exploitation cases. Child exploitation prosecutions are among the most complicated that prosecutors confront because of the age and immaturity of victims, societal and law enforcement attitudes toward these victims, the need for specialized understanding of the dynamics of sexual exploitation, and the jurisdiction and communication difficulties resulting from the involvement of numerous agencies. To effectively handle such cases, prosecutors must approach victims with great sensitivity and an understanding of the psychological dynamics involved.

In FY 1997, APRI—in addition to delivering training to 60 prosecutors—disseminated a quarterly newsletter, maintained an up-to-date parental kidnaping and child exploitation data base that included a compilation of statutes and case law summaries, and provided technical assistance to more than 100 prosecutors and investigators on an as-needed basis. APRI also produced a Judge's Guide benchbook, continued to update the National Directory of Parental Kidnaping Prosecutors and Investigators, created a Web site that provides access to case law information and law review articles, and provided assistance to numerous professional conferences.

In FY 1998, while continuing, updating, or expanding the above-mentioned technical assistance activities, APRI will offer an advanced dual track training course for prosecutors in the areas of child exploitation and parental kidnaping. The parental abduction track will concentrate on difficult case strategies, resource availability, preventive measures, and recovery techniques. The child exploitation track will discuss legal issues pertaining to computer search and seizures, juvenile prostitution, child pornography, and the emerging threat posed by criminals using Internet technology to victimize children. No additional funds are necessary in FY 1998.

National Center on Child Fatality Review

In FY 1997, OJJDP awarded a noncompetitive award to the National Center on Child Fatality Review (NCCFR) in Los Angeles, California, to develop State and local uniform reporting definitions and generic child fatality review team protocols for consideration by communities working on enhancing their child death investigations.

NCCFR developed a model for integrating data among the Criminal Justice, Vital Statistics, and Social Services Child Abuse Indices. NCCFR also selected a National Advisory Board, which is composed of representatives from across the country and from relevant disciplines.

In FY 1998, OJJDP proposes to continue support to NCCFR to (1) disseminate the model protocols for integrating the data mentioned above to State and local child fatality review teams and other relevant agencies; (2) develop a Web site and update it with journal articles, references, new studies, new findings, and new resources; (3) maintain paper and electronic directories of State and local child fatality review teams, national associations, and Federal agency contacts; (4) maintain a listing of contacts for professional specialists such as head trauma, burns, neglect, NCCFR Advisory Board, and related organizations and systems in the respective fields; (5) provide information and training materials on basic team management and special problems such as confidentiality, risk assessment, and special case circumstances; (6) coordinate teleconferences and Internet meetings of the Advisory Board; (7) maintain and share published reports of State and local teams; (8) develop, coordinate, and implement multidisciplinary training; and (9) plan for a national conference.

Investigative Case Management for Missing Children Homicides

In FY 1993, OJJDP made a competitive award to the Washington State Attorney General's Office (WAGO) to analyze the solvability factors of missing children homicide investigations. During the course of that research, WAGO collected and analyzed the specific characteristics of more than 550 missing child homicide cases. These characteristics were recorded in WAGO's child homicide data base.

In FY 1998, OJJDP proposes to continue to provide funding support to WAGO to ensure the vitality and investigative relevance of its child homicide data base. This funding would support both the gathering of new case information and the development of specific case studies that will be used to illustrate the research findings in training presentations. In addition, the data base would be used by Federal, State, and local law enforcement to perform link analysis by identifying cases with similar characteristics. Law enforcement data base inquiries can be made by calling WAGO at 800–345–2793.

FBI Child Abduction and Serial Killer Unit (CASKU)

In FY 1997, OJJDP entered into a 3-year interagency agreement with the FBI's CASKU to expand research to broaden law enforcement's understanding of homicidal pedophiles' selection and luring of their victims, their planning activities, and their efforts to escape prosecution. This information will be used by the FBI and OJJDP in training and technical assistance programs. Fiscal year 1997 activities included the drafting of the research manager position description and preliminary survey development.

In FY 1998, OJJDP will continue funding support to CASKU to (1) complete the research manager employment process to include background screening; (2) complete development of the survey protocol; (3) identify specific individuals to include in the case studies; and (4) begin data collection.

Dated: February 12, 1998.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 98–4155 Filed 2–18–98; 8:45 am]

BILLING CODE 4410–18–M

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federal register

Thursday
February 19, 1998

Part IV

Executive Office of the President

Office of Management and Budget

OMB Circular A–119; Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities; Notice

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

OMB Circular A–119; Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities

AGENCY: Office of Management and Budget, EOP.

ACTION: Final Revision of Circular A–119.

SUMMARY: The Office of Management and Budget (OMB) has revised Circular A–119 on federal use and development of voluntary standards. OMB has revised this Circular in order to make the terminology of the Circular consistent with the National Technology Transfer and Advancement Act of 1995, to issue guidance to the agencies on making their reports to OMB, to direct the Secretary of Commerce to issue policy guidance for conformity assessment, and to make changes for clarity.

DATES: Effective February 19, 1998.

ADDRESSES: Direct any comments or inquiries to the Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB Room 10236, Washington, D.C. 20503. Available at http://www.whitehouse.gov/WH/EOP/omb or at (202) 395–7332.

FOR FURTHER INFORMATION CONTACT: Virginia Huth (202) 395–3785.

SUPPLEMENTARY INFORMATION:

I. Existing OMB Circular A–119
II. Authority
III. Notice and Request for Comments on Proposed Revision of OMB Circular 119–A
IV. Discussion of Significant Comments and Changes

I. Existing OMB Circular A–119

Standards developed by voluntary consensus standards bodies are often appropriate for use in achieving federal policy objectives and in conducting federal activities, including procurement and regulation. The policies of OMB Circular A–119 are intended to: (1) Encourage federal agencies to benefit from the expertise of the private sector; (2) promote federal agency participation in such bodies to ensure creation of standards that are useable by federal agencies; and (3) reduce reliance on government-unique standards where an existing voluntary standard would suffice.

OMB Circular A–119 was last revised on October 20, 1993. This revision stated that the policy of the federal government, in its procurement and regulatory activities, is to: (1) '[r]ely on voluntary standards, both domestic and international, whenever feasible and consistent with law and regulation;" (2) "[p]articipate in voluntary standards bodies when such participation is in the public interest and is compatible with agencies' missions, authorities, priorities, and budget resources;" and (3) "[c]oordinate agency participation in voluntary standards bodies so that * * * the most effective use is made of agency resources * * * and [that] the views expressed by such representatives are in the public interest and * * * do not conflict with the interests and established views of the agencies." [See section 6 entitled "Policy']

II. Authority

Authority for this Circular is based on 31 U.S.C. 1111, which gives OMB broad authority to establish policies for the improved management of the Executive Branch.

In February 1996, Section 12(d) of Public Law 104–113, the "National Technology Transfer and Advancement Act of 1995," (or "the Act") was passed by the Congress in order to establish the policies of the existing OMB Circular A–119 in law. [See 142 Cong. Rec. H1264–1267 (daily ed. February 27, 1996) (statement of Rep. Morella); 142 Cong. Rec. S1078–1082 (daily ed. February 7, 1996) (statement of Sen. Rockefeller); 141 Cong. Rec. H14333–34 (daily ed. December 12, 1995) (statements of Reps. Brown and Morella)]. The purposes of Section 12(d) of the Act are: (1) To direct "federal agencies to focus upon increasing their use of [voluntary consensus] standards whenever possible," thus, reducing federal procurement and operating costs; and (2) to authorize the National Institute of Standards and Technology (NIST) as the "federal coordinator for government entities responsible for the development of technical standards and conformity assessment activities," thus eliminating "unnecessary duplication of conformity assessment activities." [See Cong. Rec. H1262 (daily ed. February 27, 1996) (statements of Rep. Morella)].

The Act gives the agencies discretion to use other standards in lieu of voluntary consensus standards where use of the latter would be "inconsistent with applicable law or otherwise impractical." However, in such cases, the head of an agency or department must send to OMB, through NIST, "an explanation of the reasons for using such standards." The Act states that beginning with fiscal year 1997, OMB will transmit to Congress and its committees an annual report summarizing all explanations received in the preceding year.

III. Notice and Request for Comments on Proposed Revision of OMB Circular A–119

On December 27, 1996, OMB published a "Notice and Request for Comments on Proposed Revision of OMB Circular A–119" (61 FR 68312). The purpose of the proposed revision was to provide policy guidance to the agencies, to provide instructions on the new reporting requirements, to conform the Circular's terminology to the Act, and to improve the Circular's clarity and effectiveness.

On February 10, 1997, OMB conducted a public meeting to receive comments and answer questions.

In response to the proposed revision, OMB received comments from over 50 sources, including voluntary consensus standards bodies or standards development organizations (SDOs), industry organizations, private companies, federal agencies, and individuals.

IV. Discussion of Significant Comments and Changes

Although some commentators were critical of specific aspects of the proposed revision, the majority of commentators expressed support for the overall policies of the Circular and the approaches taken. The more substantive comments are summarized below, along with OMB's response.

The Circular has also been converted into "Plain English" format. Specifically, the following changes were made. We placed definitions where the term is first used; replaced the term "must" with "shall" where the intent was to establish a requirement; created a question and answer format using "you" and "I"; and added a Table of Contents.

We replaced proposed sections 6, 7 and 10 ("Policy," "Guidance," and "Conformity Assessment") with sections 6, 7, and 8, which reorganized the material. We reorganized the definitions for "standard," "technical standard," and "voluntary consensus standard." We reorganized proposed section 8 on "Procedures" into sections 9, 10, 11, 12. For clarity, we have referenced provisions by their location both in the proposed Circular and in the final Circular.

Proposed Section 1—Purpose. Final Section 1

1. Several commentators suggested that this section should be modified to make clear that the primary purpose of

the revision of the Circular is to interpret the provisions of section 12(d) of Pub. L. 104–113 so that federal agencies can properly implement the statutory requirements. We revised the wording of this section to reflect this suggestion.

Proposed Section 2—Rescissions. Final Section 1

2. We moved this section to Final Section 1.

Proposed Section 3—Background. Final Section 2

3. Several commentators suggested substituting "use" for "adoption" in this section to conform to the new set of definitions. We agree, and we modified the final Circular.

Proposed Section 4—Applicability. Final Section 5

4. Several commentators found this section unclear. One commentator suggested deleting "international standardization agreements," suggesting this section could be interpreted as conflicting with proposed section 7a(1) which encouraged consideration of international standards developed by voluntary consensus standards. We agree, and we modified the final Circular.

Proposed Section 5a—Definition of Agency. Final Section 5

5. A commentator suggested defining the term "agency mission." Upon consideration, we have decided that this term is sufficiently well understood as to not require further elaboration; it refers to the particular statutes and programs implemented by the agencies, which vary from one agency to the next. Thus, we did not add a definition.

6. A commentator questioned whether federal contractors are intended to be included within the definition of "agency." Federal contractors do not fall within the definition of "agency." However, if a federal contractor participates in a voluntary consensus standards body on behalf of an agency (i.e., as an agency representative or liaison), then the contractor must comply with the "participation" policies in section 7 of this Circular (i.e., it may not dominate the proceedings of a voluntary consensus standards body.).

Proposed Section 5b—Conformity Assessment. Final Section 8

7. In response to the large number of commentators with concerns over the definition of conformity assessment, we have decided to not define the term in this Circular but to defer to NIST when it issues its guidance on the subject. The Circular's policy statement on conformity assessment is limited to the statutory language.

Proposed Section 5c—Definition of Impractical. Final Section 6a(2)

8. A commentator suggested that if an agency determines the use of a standard is impractical, the agency must develop an explanation of the reasons for impracticality and the steps necessary to overcome the use of the impractical reason. We decided that no change is necessary. The Act and the Circular already require agencies to provide an "explanation of the reasons." Requiring agencies to describe the steps necessary "to overcome the use of the impractical reason" is unnecessarily burdensome and not required by the Act.

9. A commentator suggested that the definition of "impractical" is too broad and proposed deleting words such as "infeasible" or "inadequate." We have decided that the definition is appropriate, because things that are infeasible or inadequate are commonly considered to be impractical. Thus, we made no change.

10. A commentator suggested eliminating the phrase "unnecessarily duplicative" because it is unlikely that a voluntary consensus standard that was considered "impractical" would also be "unnecessarily duplicative." We agree, and the final Circular is modified accordingly.

11. A few commentators suggested adding "ineffectual" to the definition. A few other commentators suggested adding the phrase "too costly or burdensome to the agency or regulated community." Another commentator suggested the same phrase but substituted the term "affected" for "regulated." We have decided that concerns for regulatory cost and burden fall under the term "inefficient" contained in this definition. Thus, we made no change.

12. A few commentators suggested deleting the term "demonstrably" as it implies a greater level of proof than that required in the Act. Upon consideration, we have decided that the term "demonstrably" is unnecessary, as the Act already requires an explanation, and it may be reasonably inferred that an explanation can be demonstrated. Thus, we deleted the term.

Proposed Section 5d—Definition of Performance Standard. Final Section 3c

13. A commentator suggested deleting the "and" in the definition. We have decided that this suggestion would distort the meaning. Therefore, no change is made.

14. A few commentators suggested substituting the term "prescriptive" for "design" because of the multiple connotations associated with the term "design." In addition, several commentators suggested related clarifying language. We agree, and we modified the final Circular.

Proposed Section 5f—Definition of Standard. Final Section 3

15. Several commentators suggested overall clarification of this section, while other commentators endorsed the proposed section. One commentator suggested that "clarification is necessary to distinguish the appropriate use of different types of standards for different purposes (i.e., acquisition, procurement, regulatory)." This commentator proposed that, "For example, regulatory Agencies should only rely upon national voluntary consensus standards (as defined in Section 5j) for use as technical criteria in regulations but a federal agency may want to use industry-developed standards (without a full consensus process) for certain acquisition purposes if there are no comparable consensus standards." We do not agree with this proposal. The same general principles apply in the procurement context as in the regulatory context.

16. A commentator suggested that the definition of "standard" be limited to ensure that agencies are only required to consider adopting voluntary "technical" standards. The final Circular clarifies this by clearly equating "standard" with "technical standard."

17. One commentator recommended adding to the definition of "standard" an exclusion for State and local statutes, codes, and ordinances, because agency contracts often require contractors to meet State and local building codes, which contain technical standards which may not be consensus-based. For example, the Department of Energy builds facilities that must be compliant with local building codes, which may be more strict than nationally accepted codes. It is not the intent of this policy to preclude agencies from complying with State and local statutes, codes, and ordinances. No change is necessary, because the Act already states that, "If compliance * * * is inconsistent with applicable law * * * a Federal agency may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies."

Proposed Section 5f—Definition of Standard. Final Section 4

18. Several commentators had concerns with this section, believing that the final sentence in the proposed

version might imply that other-than-consensus standards may qualify as consensus processes. This is not the case. We have clarified this point through the reorganization of final sections 3 and 4 and through minor clarifying language. In addition, we note that the subject of the Circular is "voluntary consensus standards," which are a subset of "standards." Consistent with the 1993 version, the final Circular defines "standard" generally to describe all the different types of standards, whether or not they are consensus-based, or industry- or company-based. Accordingly, we have inserted the phrase "government-unique" in final section 4b(2) in order to provide a complete picture of the different sources of standards, while also adding a reference to "company standards" in final section 4b(1), previously found in the definition of "standard."

Proposed Section 5g—Definition of Technical Standard. Final Section 3a

19. Several commentators suggested combining this term with the definition of standard. We agree, and the terms have been merged.

20. Another commentator suggested adding the phrase "and related management practices" because this phrase appears in Section 12(d)(4) of the Act. We agree, and we modified the final Circular.

Proposed Section 5h—Definition of Use. Final Section 6a(1)

21. Several commentators suggested that limiting an agency's use to the latest edition of a voluntary consensus standard was unnecessarily restrictive. We agree, and we modified the final Circular.

Proposed Section 5i—Definition of Voluntary Consensus Standards. Final Section 4

22. Several commentators objected to the phrase regarding making "intellectual property available on a non-discriminatory, royalty-free or reasonable royalty basis to all interested parties." Several commentators also supported this language. This section does not limit the ability of copyright holders to receive reasonable and fair royalties. Accordingly, we made no change.

Proposed Section 5j—Voluntary Consensus Standards Bodies. Final Section 4a(1)

23. Several commentators proposed that the words "but not necessarily unanimity" be inserted for clarification. We agree, and we modified the final Circular.

24. A commentator suggested deleting the examples of voluntary consensus standards bodies. We agree that the examples were unnecessary and confusing, and we modified the final Circular.

25. A few commentators suggested that the Circular acknowledge the American National Standards Institute (ANSI) as the means of identifying voluntary consensus standards bodies. Since the purpose of the Circular is to provide general principles, rather than make determinations about specific organizations or guides, these determinations will be made by agencies in their implementation of the Act. Thus, we made no change.

26. A commentator suggested that the definition be modified so "that only those organizations that permit an acceptable level of participation and approval by U.S. interests can be considered to qualify." We have decided that no change is necessary, because the requirements of consensus—openness, balance of interests, and due process—likewise apply to international organizations.

27. The same commentator suggested adding the phrase "the absence of sustained opposition" to the definition of "consensus." Although we did not make this change, we added other language that improves the definition.

28. Several commentators proposed that the Circular further clarify aspects of this section, including further definitions of "balance of interest," "openness," and "due process." We have decided that the definition provided is sufficient at this time, and no change is made.

29. Several commentators proposed that this definition should be "clarified to state the Federal agencies considering the use of voluntary consensus standards, not the organizations themselves, are to decide whether particular organizations qualify as voluntary consensus standards bodies by meeting the operational requirements set out in the definition." For purposes of complying with the policies of this Circular, agencies may determine, according to criteria enumerated in final section 4, whether a standards body qualifies. However, it is the domain of the private sector to accredit voluntary consensus standards organizations, and accordingly, we have inserted clarifying language in final section 6l.

Proposed Section 6a. Final Section 6c

30. A commentator proposed deleting in section 6a "procurement guidelines" suggesting it was confusing and inappropriate to mandate use of voluntary consensus standards for "procurement guidelines or procedures." We have decided to delete the reference to "procurement guidelines." The Circular says nothing about "procurement procedures."

31. The same commentator suggested adding in section 6a "monitoring objectives" as part of an agency's regulatory authorities and responsibilities. We have decided that, under the Act and the Circular, agencies already have sufficient discretion regarding the use and non-use of standards relating to such authorities and responsibilities. Thus, we have made no change.

Proposed Section 6a. Final Section 6f

32. Some commentators expressed concern that once a standard was determined to be a voluntary consensus standard, an agency might incorporate such standard into a regulation without performing the proper regulatory analysis. To address this concern, another commentator suggested adding language referencing "The Principles of Regulation" enumerated in Section 1(b) of Executive Order 12866. We agree, and we modified the final Circular.

Proposed Section 6b. Final Section 7

33. In the proposed revision of the Circular, sections 6b and 7b(2) were strengthened by adding language that directed agency representatives to refrain from actively participating in voluntary consensus standards bodies or their committees when participating did not relate to the mission of the agency.

Several commentators were not satisfied with these changes and remain concerned that an agency member might dominate a voluntary consensus standards body as a result of the agency member chairing and/or providing funding to such body, thus making the process not truly consensus. These commentators urged additional limitations on agency participation in voluntary consensus standards bodies, including: Prohibiting federal agency representatives from chairing committees or voting (or if chairing a committee, then denying them the authority to select committee members); having only an advisory role; participating only if directly related to an agency's mission or statutory authority; and participating only if there is an opportunity for a third party challenge to the participation through a public hearing.

On the other hand, most commentators supported the proposed changes and agreed that federal participation in voluntary consensus

standards bodies should not be further limited, because federal participation benefited both the government and the private sector. These commentators noted that agencies must be involved in the standards development process to provide a true consensus and to help support the creation of standards for agency use. These purposes are consistent with the intent of the Act.

In the final Circular, we have added language to clarify the authorities in the Circular. We have also strengthened the final Circular by adding language in final section 7f that directs agency employees to avoid the practice or the appearance of undue influence relating to their agency representation in voluntary consensus standards activities. We would also like to underscore the importance of close cooperation with the private sector, including standards accreditors, in ensuring that federal participation is fair and appropriate.

With respect to imposing specific limitations on agency participation in such bodies, which would result in unequal participation relative to other members, we have decided that such limitations would (1) not further the purposes of the Act and (2) could interfere with the internal operations of voluntary consensus standards organizations.

First, the Act requires agencies to consult with voluntary consensus standards bodies and to participate with such bodies in the development of technical standards "when such participation is in the public interest and is compatible with agency and departmental missions, authorities, and budget resources." The legislative history indicates that one of the purposes of the Act is to promote federal participation. [See 141 Cong. Rec. H14334 (daily ed. December 12, 1995) (Statement of Rep. Morella.)] Moreover, neither the Act nor its legislative history indicate that federal agency representatives are to have less than full and equal representation in such bodies. Given the explicit requirement to consult and participate and no concomitant statement as to any limitation on this participation, we believe the Act was intended to promote full and equal participation in voluntary consensus standards bodies by federal agencies.

Second, although an agency is ultimately responsible for ensuring that its members are not participating in voluntary consensus standards bodies in a manner inconsistent with the Circular and the Act, it would be inappropriate for the federal government to direct the internal operations of private sector voluntary consensus standards bodies or standards development organizations (SDOs) by proscribing the activities of any of its members. The membership of an SDO is free to choose a chair, to establish voting procedures, and to accept funding as deemed appropriate. We expect that the SDO itself or a related parent or accrediting organization would act to ensure that the organization's proceedings remain fair and balanced. An SDO has a vested interest in ensuring that its consensus procedures and policies are followed in order to maintain its credibility.

Proposed Section 6b. Final Sections 7e, 7f, and 7h

34. Other commentators were concerned that an agency representative could participate in the proceedings of a voluntary consensus standards body for which the agency has no mission-related or statutorily-based rationale to become involved. For example, a situation might exist in which a technical standard developed by the private sector could be so widely adopted as to result in the emergence of a de facto regulatory standard, albeit one endorsed by the private sector rather than by the government. For example, a construction standard for buildings could become so widely accepted in the private sector that the result is that the construction community acts as if it is regulated by such standards. The commentator suggested that if an agency were to participate in the development of such a technical standard, in an area for which it has no specific statutory authority to regulate, that agency could be perceived as attempting to regulate the private sector "through the back door." A perception of such activity, whether or not based in fact, would be detrimental to the interests of the federal government, and agencies should avoid such involvement.

In response to this concern, we feel that changes initiated in the proposed revision and continued in the final Circular sufficiently strengthened the Circular in this regard. In particular, section 7 expressly limits agency support (e.g., funding, participation, etc.) to "that which clearly furthers agency and departmental missions, authorities, priorities, and budget resources." Moreover, this language is consistent with the Act. Thus, if an agency has no mission-related or statutory-related purpose in participation, then its participation would be contrary to the Circular.

An agency is ultimately responsible for ensuring that its employees are not participating in such bodies in a manner inconsistent with the Act or this Circular. Agencies should monitor their participation in voluntary consensus standards bodies to prevent situations in which the agency could dominate proceedings or have the appearance of impropriety.

Agencies should also work closely with private sector oversight organizations to ensure that no abuses occur. Comments provided by ANSI described the extensive oversight mechanisms it maintains in order to ensure that such abuses do not occur. We encourage this kind of active oversight on the part of the private sector, and we hope to promote cooperation between the agencies and the private sector to ensure that federal participation remains fair and equal.

Proposed Section 7—Policy Guidelines. Final Section 6c

35. A few commentators inquired whether the Circular applies to "regulatory standards." In response, the final Circular distinguishes between a "technical standard," which may be referenced in a regulation, and a "regulatory standard," which establishes overall regulatory goals or outcomes. The Act and the Circular apply to the former, but not to the latter. As described in the legislative history, technical standards pertain to "products and processes, such as the size, strength, or technical performance of a product, process or material" and as such may be incorporated into a regulation. [See 142 Cong. Rec. S1080 (daily ed. February 7, 1996) (Statement of Sen. Rockefeller.)] Neither the Act nor the Circular require any agency to use private sector standards which would set regulatory standards or requirements.

Proposed Section 7. Final Section 6g

36. A commentator inquired whether the use of non-voluntary consensus standards meant use of any standards developed outside the voluntary consensus process, or just use of government-unique standards. The intent of the Circular over the years has been to discourage the government's reliance on government-unique standards and to encourage agencies to instead rely on voluntary consensus standards. It is has not been the intent of the Circular to create the basis for discrimination among standards developed in the private sector, whether consensus-based or, alternatively, industry-based or company-based. Accordingly, we added language to clarify this point.

Proposed Section 7. Final Section 6f

37. One commentator inquired how OMB planned to carry out the "full

account" of the impact of this policy on the economy, applicable federal laws, policies, and national objectives. This language is from the current Circular and refers to the considerations agencies should make when considering using a standard. No change is necessary.

Proposed Section 7. Final Section 17

38. Several commentators noted that the proposed revision eliminated language from the current Circular which stated that its provisions "are intended for internal management purposes only and are not intended to (1) create delay in the administrative process, (2) provide new grounds for judicial review, or (3) create legal rights enforceable against agencies or their officers." We have decided that, while some sections of the Circular incorporate statutory requirements, other sections remain internal Executive Branch management policy. Accordingly, we have retained the language, with minor revisions.

Proposed Section 7a

39. One commentator inquired as to whether the use of a voluntary consensus standard by one agency would mandate that another agency must use such standard. Implementation of the policies of the Circular are on an agency by agency basis, and in fact, on a case by case basis. Agencies may have different needs and requirements, and the use of a voluntary consensus standard by one agency does not require that another agency must use the same standard. Each agency has the authority to decide whether, for a program, use of a voluntary consensus standard would be contrary to law or otherwise impractical.

40. Another comment suggested that the Circular did not contain sufficient assurance that the standards chosen would be true consensus standards. We have expanded the guidance in the Circular to address this concern by first expanding the definition of "consensus" in final section 4a(1)(v). Second, we have described in final section 6l how agencies may identify voluntary consensus standards. Third, we have developed reporting procedures that allow for public comment.

Proposed Section 7a(1). Final Section 6h

41. Several commentators suggested that "international voluntary consensus standards body" be defined in proposed section 5. We have decided that this definition is not necessary, as the term "international" is sufficiently well understood in the standards community, and the term "voluntary consensus standards body" has already been defined. Moreover, the distinction between "international standards" and "domestic standards" is not relevant to the essential policies of the Circular, and this point is clarified in this section.

42. Several commentators also noted that two trade agreements ("TBT" and the "Procurement Code") of the World Trade Organization were mentioned but inquired as to why other international agreements like the World Trade Organization Agreement on Sanitary and Phytosanitary Measures or the North American Free Trade Agreement were not mentioned. We did not intend this list to be exhaustive. Therefore, we deleted this phrase to emphasize the main point of this section.

43. Several commentators questioned why the Circular included language that standards developed by international voluntary consensus standards bodies "should be considered in procurement and regulatory applications." We recognize that both domestic and international voluntary consensus standards may exist, sometimes in harmony, sometimes in competition. This language, which is unchanged from the current version of the Circular, states only that such international standards should be "considered," not that they are mandated or that they should be given any preference. In addition, some confusion has emerged based on a perceived conflict between the commitments of the United States with respect to international treaties and this Circular. No part of this Circular is intended to preempt international treaties. Nor is this Circular intended to create the basis for discrimination between an international and a domestic voluntary consensus standard. However, wherever possible, agencies should consider the use of international voluntary consensus standards.

Proposed Section 7a(2). Final Section 6i

44. One commentator suggested that the Circular promote the concept of performance-based requirements when regulating the conduct of work for safety or health reasons (e.g., safety standards). Where performance standards can be used in lieu of other types of standards (or technical standards), the Circular already accomplishes this by stating in final section 6i that "preference should be given to standards based on performance criteria."

Proposed Section 7a(3). Final Section 6j

45. One commentator suggested using stronger language to protect the rights of copyright holders when referenced in a regulation. Others thought the language too strong. We have decided that the language is just right.

Proposed Section 7a(4). Final Section 6k, 7j

46. One commentator suggested that legal obligations that supersede the Circular and cost and time burdens need to be emphasized as factors supporting agencies' developing and using their own government-unique standards. Another commentator suggested that untimeliness or unavailability of voluntary consensus standards development should be a reasonable justification for creation of a government standard. On the first point, these specific changes are not necessary, because the Act and the Circular already state that agencies may choose their own standard "where inconsistent with applicable law or otherwise impractical." On the second point, we did clarify the language in final sections 6k and 7j.

47. Another commentator suggested that the Circular should define in this section factors that are considered to be "impractical." See comments on proposed section 5c. We made no change.

Proposed Section 7a(5). Final Section 6l.

48. This section is intended to give agencies guidance on where they may go to identify voluntary consensus standards. One commentator proposed language to indicate that, in addition to NIST, voluntary consensus standards may also be identified through other federal agencies. Another commentator proposed language that such standards may also be identified through standards publishing companies. We agree, and the Circular is changed.

Proposed Section 7b

49. Other commentators proposed that **Federal Register** notices be published whenever a federal employee is to participate in a voluntary consensus standards body. We have decided that this would be overly burdensome for the agencies and would provide comparatively little benefit for the public. Moreover, each agency is already required in section 15b(5) to publish a directory of federal participants in standards organizations. We made no change.

Proposed Section 7b(2). Final Section 7d

50. Some commentators noted that the current Circular's language, which states that agency employees who "at government expense" participate in voluntary consensus standards bodies shall do so as specifically authorized agency representatives, has been deleted

from the proposed revision. These commentators opposed this deletion. This phrase has been reinstated. Federal employees who are representing their agency must do so at federal expense. (On the other hand, employees are free to maintain personal memberships in outside organizations, unless the employee's agency has a requirement for prior approval.) We expect that, as a general rule, federal participation in committees will not be a problem, while participation at higher levels, such as officers or as directors on boards, will require additional scrutiny. Employees should consult with their agency ethics officer to identify what restrictions may apply.

Proposed Section 7b(2). Final Section 7

51. Several commentators suggested changing the language in this section from "permitting agency participation when relating to agency mission," to "permitting agency participation when compatible with agency and departmental missions, authorities, priorities, and budget resources," as stated in the Act. We have decided to accept this suggestion, and the Circular is changed.

Proposed Section 7b(4). Final Sections 7d, 7g

52. One commentator suggested that the Circular should prohibit agency employees from serving as chairs or board members of voluntary consensus standards bodies. We have not amended the Circular to prohibit agency employees from serving as chairs or board members of voluntary consensus standards bodies. However, we have modified final section 7g to clarify that agency employees, whether or not in a position of leadership in a voluntary consensus standards body, must avoid the practice or appearance of undue influence relating to the agency's representation and activities in the voluntary consensus standards bodies. In addition, we added language in final section 7d to remind agencies to involve their agency ethics officers, as appropriate, prior to authorizing support for or participation in a voluntary consensus standards body.

Proposed Section 7b(5). Final Section 7h

53. One commentator suggested changing the word "should" to "shall" regarding keeping the number of individual agency participants to a minimum. We decided that this change is unnecessary and made no change.

Proposed Section 7b(6)

54. A few commentators suggested requiring that the amount of federal support should be made public or at least made known to the supported committee of the voluntary consensus standards body or SDO. We have decided that this is unnecessary because we expect that the amount of federal support will already be known to a committee receiving the funds.

Proposed Section 7b(7). Final Section 7g

55. A commentator suggested either deleting "and administrative policies" or inserting "internal" before "administrative policies" to clarify that the prohibition is intended to apply to the internal management of a voluntary consensus standard body. This phrase is parenthetical to the words "internal management;" thus, the suggested revision is unnecessary.

Proposed Section 7b(8). Final Section 7i

56. One commentator questioned the relationship of the Circular to the Federal Advisory Committee Act (FACA). Federal participation in standards activities would not ordinarily be subject to FACA, because FACA applies to circumstances in which private individuals would be advising the government. The private sector members of standards organizations are not advising the government, but are developing standards. Nevertheless, issues may arise in which agencies should be aware of FACA.

Proposed Section 7b. Final Sections 7e, 7f

57. Several commentators, fearing agency dominance, criticized the proposed revision of the Circular for promoting increased agency participation. We have decided that the revisions to the Circular are balanced, in that they encourage agency participation while also discouraging agency dominance. Moreover, legislative history states, "In fact, it is my hope that this section will help convince the Federal Government to participate more fully in these organizations' standards developing activities." [See 141 Cong. Rec. H14334 (daily ed. December 12, 1995) (Statement of Rep. Morella.)]

Proposed 7c (4). Final Section 15b

58. A commentator suggested changing "standards developing groups" to "voluntary consensus standards bodies" for consistency. We agree, and we modified the final Circular.

Proposed 7c(6). Final Section 15b(7)

59. The current and proposed versions of the Circular required agencies to review their existing standards every five years and to replace through applicable procedures such standards that can be replaced with voluntary consensus standards. Several commentators suggested adding language that either requires agencies to review standards referenced in regulations on an annual basis or an ongoing basis. Other commentators proposed extending the review period to ten years (in order to mirror the review cycle of the Regulatory Flexibility Act) or to eliminate the review entirely because it was burdensome.

We decided to change this requirement to one in which agencies are responsible for "establishing a process for ongoing review of the agency's use of standards for purposes of updating such use." We decided that this approach will encourage agencies to review the large numbers of regulations which may reference obsolete and out-dated standards in a timely manner. Agencies are encouraged to undertake a review of their uses of obsolete or government-unique standards as soon as practicable.

60. A commentator proposed language to require agencies to respond to requests from voluntary consensus standards bodies to replace existing federal standards, specifications, or regulations with voluntary consensus standards. This change is not necessary, because the Circular already requires agencies to establish a process for reviewing standards. (See comment 59.) We made no change.

Proposed Section 8. Final Section 11

61. Several commentators suggested eliminating the requirement in the proposed Circular for an analysis of the use and non-use of voluntary consensus standards in both the Notice of Proposed Rulemaking (NPRM) and the final rule in order to simplify and clarify Federal Register notices. As an alternative, these commentators proposed including such analysis in a separate document that accompanies the NPRM and the subsequent final rule.

We have decided that, rather than simplifying the rulemaking process, this change would make it more difficult for the public to comment on the rule and would complicate the process by adding another source of information in a separate location. However, we did make some minor changes to this section to clarify that agencies are not expected to provide an extensive report with each NPRM, Interim Final Rulemaking, or Final Rule. The section was also modified to improve the ability of agencies to identify voluntary consensus standards that could be used in their regulations, to ensure public

notice, and to minimize burden. First, the notice required in the NPRM may merely contain/include (1) a few sentences to identify the proposed standard, if any; and, if applicable, (2) a simple explanation of why the agency proposes to use a government-unique standard in lieu of a voluntary consensus standard. This step places the public on notice and gives them an opportunity to comment formally. Second, we expect that the majority of rulemakings will not reference standards at all. In these cases, the agency is not required to make a statement or to file a report. In those instances where an agency proposes a government-unique standard, the public, through the public comment process, will have an opportunity to identify a voluntary consensus standard (when the agency was not aware of it) or to argue that the agency should have used the voluntary consensus standard (when the agency had identified one, but rejected it).

62. Several commentators suggested adding a new section entitled "Sufficiency of Agency Search." The purpose of this new section would be to limit an agency's obligation to search for existing voluntary consensus standards under the requirements of this section. We have decided that this section is unnecessary in light of the requirements elsewhere in the Circular for identifying voluntary consensus standards. Accordingly, we made no change.

63. One commentator suggested that agencies be required to fully investigate and review the intent and capabilities of a standard before making a decision to use a particular voluntary consensus standard. We have decided that the effort an agency would have to undertake to conduct its own scientific review of a voluntary, consensus standard is unnecessary, as SDOs adhere to lengthy and complex procedures which already closely scrutinize the uses and capabilities of a standard. However, in adopting a standard for use, whether in procurement or in regulation, agencies are already required to undertake the review under the Act and the Circular, as well as the review and analysis, described in other sources, such as the Federal Acquisition Regulation or the Executive Order 12866 on Regulatory Planning and Review. Accordingly, we made no change.

64. A few commentators suggested that the Circular should ensure prompt notification to interested parties when voluntary consensus standards activities are about to begin and should encourage greater public participation in such activities. Another commentator noted a lack of clear procedures on how voluntary consensus standards bodies handle public comments and whether those comments are available to interested persons or organizations. OMB has determined that these responsibilities fall within the jurisdiction of voluntary consensus standards bodies and are outside the scope of the Act and the Circular. Accordingly, we made no change.

Proposed Section 8. Final Sections 6g and 12c

65. A few commentators requested clarification on the use of "commercial-off-the-shelf" ("COTS") products as they relate to voluntary consensus standards. In response, we have clarified final section 6g to state that this policy does not establish preferences between products developed in the private sector. Final section 12c clarified that there is no reporting requirement for such products.

Proposed Section 9—Responsibilities. Final Sections 13, 14, 15

66. Several commentators proposed that OMB have more defined oversight responsibility in determining whether an agency's participation in a voluntary consensus standards body is consistent with the Circular. We did not make this change. Agency Standards Executives, with the advice of the Chair of the ICSP, are responsible for ensuring that agencies are in compliance with the requirements of this Circular.

With respect to the issue of "agency dominance" of SDOs, we expect that SDOs will likewise ensure that members abide by their rules of conduct and participation, working closely with Standards Executives where necessary and appropriate. We inserted minor clarifying language in new sections 13, 14, and 15.

Proposed 9b(2). Final Section 14c

67. A commentator suggested broadening the category of agencies that must designate a standards executive, from designating those agencies with a "significant interest" in the use of standards, to those agencies having either "regulatory or procurement" responsibilities. We decided that this proposed change was vague and would only confuse the scope of the Circular. Accordingly, we made no change.

Proposed Section 10. Final Sections 9 and 10

68. One commentator expressed concern that the reporting requirements would require agencies to report reliance on commercial-off-the-shelf (COTS) products as a decision not to rely on voluntary consensus standards. The Act and the Circular do not limit agencies' abilities to purchase COTS or other products or services containing private sector standards. The Circular specifically excludes reporting of COTS procurements in final section 12, and final sections 9a and 12 require agencies to report only when an agency uses a government-unique standard in lieu of an existing voluntary consensus standard. Accordingly, we made no change.

Proposed 10b —Agency Reports on Standards Policy Activities. Final Section 9b

69. One commentator suggested that agencies also report the identity of standards development bodies whose standards the agency relies on and the identities of all the standards developed or used by such bodies. We have decided that it would be unnecessary, duplicative, and burdensome to require agencies to identify this level of detail in the annual report. The identity of individual standards developed by a standards body may be obtained either through the standards body or through a standards publishing company. In addition, agencies are already required to provide in their annual report, under section 9b(1), the number of voluntary consensus standards bodies in which an agency participates. Moreover, each agency is required under section 15b(5) to identify the standards bodies in which it is involved. Accordingly, we made no change.

Proposed 10b(3). Final Section 9b

70. A commentator suggested that agencies should be required to identify federal regulations and procurement specifications in which the standards were "withdrawn" and replaced with voluntary consensus standards. We have decided that this requirement is unnecessary, because information is already provided in the annual report described in final section 9b(3). Accordingly, we made no change.

Proposed Section 11—Conformity Assessment. Final Section 8

71. A commentator expressed concern that the coordination by the National Institute of Standards and Technology (NIST) of standards activities between the public and private sector will undermine the coordination that ANSI has performed for many years for the private sector.

In addition, the commentator expressed concern that NIST's involvement in such coordination will undermine the United States' ability to

compete internationally as two organizations are coordinating standards developing activities instead of one. The Act states that NIST is to "coordinate Federal, State, and local technical standards activities and conformity assessment activities with private sector technical standards activities and conformity assessment activities." This language makes clear that NIST will have responsibility for coordinating only the public sector and for working with the private sector. In addition, ANSI's role is affirmed in the Memorandum Of Understanding (MOU) issued on July 24, 1995, between NIST and ANSI. The MOU states "[t]his MOU is intended to facilitate and strengthen the influence of ANSI and the entire U.S. standards community at the international level * * * and ensure that ANSI's representation of U.S. interests is respected by the other players on the international scene." Thus, we made no change.

Accordingly, OMB Circular A–119 is revised as set forth below.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

Washington, D.C. 20503

February 10, 1998.

Circular No. A–119

Revised

Memorandum for Heads of Executive Departments and Agencies

Subject: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities

Revised OMB Circular A–119 establishes policies on Federal use and development of voluntary consensus standards and on conformity assessment activities. Pub. L. 104–113, the "National Technology Transfer and Advancement Act of 1995," codified existing policies in A–119, established reporting requirements, and authorized the National Institute of Standards and Technology to coordinate conformity assessment activities of the agencies. OMB is issuing this revision of the Circular in order to make the terminology of the Circular consistent with the National Technology Transfer and Advancement Act of 1995, to issue guidance to the agencies on making their reports to OMB, to direct the Secretary of Commerce to issue policy guidance for conformity assessment, and to make changes for clarity.

Franklin D. Raines,

Director.

Attachment

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

Washington, D.C. 20503

February 10, 1998.

Circular No. A–119

Revised

To the Heads of Executive Departments and Establishments

Subject: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities

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Background

1. What Is The Purpose Of This Circular?

This Circular establishes policies to improve the internal management of the Executive Branch. Consistent with Section 12(d) of Pub. L. 104–113, the "National Technology Transfer and Advancement Act of 1995" (hereinafter "the Act"), this Circular directs agencies to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical. It also provides guidance for agencies participating in voluntary consensus standards bodies and describes procedures for satisfying

the reporting requirements in the Act. The policies in this Circular are intended to reduce to a minimum the reliance by agencies on government-unique standards. These policies do not create the bases for discrimination in agency procurement or regulatory activities among standards developed in the private sector, whether or not they are developed by voluntary consensus standards bodies. Consistent with Section 12(b) of the Act, this Circular directs the Secretary of Commerce to issue guidance to the agencies in order to coordinate conformity assessment activities. This Circular replaces OMB Circular No. A–119, dated October 20, 1993.

2. What Are The Goals Of The Government In Using Voluntary Consensus Standards?

Many voluntary consensus standards are appropriate or adaptable for the Government's purposes. The use of such standards, whenever practicable and appropriate, is intended to achieve the following goals:

a. Eliminate the cost to the Government of developing its own standards and decrease the cost of goods procured and the burden of complying with agency regulation.

b. Provide incentives and opportunities to establish standards that serve national needs.

c. Encourage long-term growth for U.S. enterprises and promote efficiency and economic competition through harmonization of standards.

d. Further the policy of reliance upon the private sector to supply Government needs for goods and services.

Definitions of Standards

3. What Is A Standard?

a. The term *standard*, or *technical standard* as cited in the Act, includes all of the following:

(1) Common and repeated use of rules, conditions, guidelines or characteristics for products or related processes and production methods, and related management systems practices.

(2) The definition of terms; classification of components; delineation of procedures; specification of dimensions, materials, performance, designs, or operations; measurement of quality and quantity in describing materials, processes, products, systems, services, or practices; test methods and sampling procedures; or descriptions of fit and measurements of size or strength.

b. The term *standard* does not include the following:

(1) Professional standards of personal conduct.

(2) Institutional codes of ethics.

c. *Performance standard* is a standard as defined above that states requirements in terms of required results with criteria for verifying compliance but without stating the methods for achieving required results. A performance standard may define the functional requirements for the item, operational requirements, and/or interface and interchangeability characteristics. A performance standard may be viewed in juxtaposition to a prescriptive standard which may specify design requirements, such as materials to be used, how a requirement is to be achieved, or how an item is to be fabricated or constructed.

d. *Non-government standard* is a standard as defined above that is in the form of a standardization document developed by a private sector association, organization or technical society which plans, develops, establishes or coordinates standards, specifications, handbooks, or related documents.

4. What Are Voluntary, Consensus Standards?

a. For purposes of this policy, *voluntary consensus standards* are standards developed or adopted by voluntary consensus standards bodies, both domestic and international. These standards include provisions requiring that owners of relevant intellectual property have agreed to make that intellectual property available on a non-discriminatory, royalty-free or reasonable royalty basis to all interested parties. For purposes of this Circular, "technical standards that are developed or adopted by voluntary consensus standard bodies" is an equivalent term.

(1) *Voluntary consensus standards bodies* are domestic or international organizations which plan, develop, establish, or coordinate voluntary consensus standards using agreed-upon procedures. For purposes of this Circular, "voluntary, private sector, consensus standards bodies," as cited in Act, is an equivalent term. The Act and the Circular encourage the participation of federal representatives in these bodies to increase the likelihood that the standards they develop will meet both public and private sector needs. A voluntary consensus standards body is defined by the following attributes:

(i) Openness.

(ii) Balance of interest.

(iii) Due process.

(vi) An appeals process.

(v) Consensus, which is defined as general agreement, but not necessarily unanimity, and includes a process for attempting to resolve objections by interested parties, as long as all comments have been fairly considered, each objector is advised of the disposition of his or her objection(s) and the reasons why, and the consensus body members are given an opportunity to change their votes after reviewing the comments.

b. Other types of standards, which are distinct from voluntary consensus standards, are the following:

(1) "Non-consensus standards," "Industry standards," "Company standards," or "de facto standards," which are developed in the private sector but not in the full consensus process.

(2) "Government-unique standards," which are developed by the government for its own uses.

(3) Standards mandated by law, such as those contained in the United States Pharmacopeia and the National Formulary, as referenced in 21 U.S.C. 351.

Policy

5. Who Does This Policy Apply To?

This Circular applies to all agencies and agency employees who use standards and participate in voluntary consensus standards activities, domestic and international, except for activities carried out pursuant to treaties. "Agency" means any executive department, independent commission, board, bureau, office, agency, Government-owned or controlled corporation or other establishment of the Federal Government. It also includes any regulatory commission or board, except for independent regulatory commissions insofar as they are subject to separate statutory requirements regarding the use of voluntary consensus standards. It does not include the legislative or judicial branches of the Federal Government.

6. What Is The Policy For Federal Use Of Standards?

All federal agencies must use voluntary consensus standards in lieu of government-unique standards in their procurement and regulatory activities, except where inconsistent with law or otherwise impractical. In these circumstances, your agency must submit a report describing the reason(s) for its use of government-unique standards in lieu of voluntary consensus standards to the Office of Management and Budget (OMB) through the National Institute of Standards and Technology (NIST).

a. When must my agency use voluntary consensus standards?

Your agency must use voluntary consensus standards, both domestic and international, in its regulatory and procurement activities in lieu of government-unique standards, unless use of such standards would be

inconsistent with applicable law or otherwise impractical. In all cases, your agency has the discretion to decline to use existing voluntary consensus standards if your agency determines that such standards are inconsistent with applicable law or otherwise impractical.

(1) "Use" means incorporation of a standard in whole, in part, or by reference for procurement purposes, and the inclusion of a standard in whole, in part, or by reference in regulation(s).

(2) "Impractical" includes circumstances in which such use would fail to serve the agency's program needs; would be infeasible; would be inadequate, ineffectual, inefficient, or inconsistent with agency mission; or would impose more burdens, or would be less useful, than the use of another standard.

b. What must my agency do when such use is determined by my agency to be inconsistent with applicable law or otherwise impractical?

The head of your agency must transmit to the Office of Management and Budget (OMB), through the National Institute of Standards and Technology (NIST), an explanation of the reason(s) for using government-unique standards in lieu of voluntary consensus standards. For more information on reporting, see section 9.

c. How does this policy affect my agency's regulatory authorities and responsibilities?

This policy does not preempt or restrict agencies' authorities and responsibilities to make regulatory decisions authorized by statute. Such regulatory authorities and responsibilities include determining the level of acceptable risk; setting the level of protection; and balancing risk, cost, and availability of technology in establishing regulatory standards. However, to determine whether established regulatory limits or targets have been met, agencies should use voluntary consensus standards for test methods, sampling procedures, or protocols.

d. How does this policy affect my agency's procurement authority?

This policy does not preempt or restrict agencies' authorities and responsibilities to identify the capabilities that they need to obtain through procurements. Rather, this policy limits an agency's authority to pursue an identified capability through reliance on a government-unique standard when a voluntary consensus standard exists (see Section 6a).

e. What are the goals of agency use of voluntary consensus standards?

Agencies should recognize the positive contribution of standards development and related activities. When properly conducted, standards development can increase productivity and efficiency in Government and industry, expand opportunities for international trade, conserve resources, improve health and safety, and protect the environment.

f. What considerations should my agency make when it is considering using a standard?

When considering using a standard, your agency should take full account of the effect of using the standard on the economy, and of applicable federal laws and policies, including laws and regulations relating to antitrust, national security, small business, product safety, environment, metrication, technology development, and conflicts of interest. Your agency should also recognize that use of standards, if improperly conducted, can suppress free and fair competition; impede innovation and technical progress; exclude safer or less expensive products; or otherwise adversely affect trade, commerce, health, or safety. If your agency is proposing to incorporate a standard into a proposed or final rulemaking, your agency must comply with the "Principles of Regulation" (enumerated in Section 1(b)) and with the other analytical requirements of Executive Order 12866, "Regulatory Planning and Review."

g. Does this policy establish a preference between consensus and non-consensus standards that are developed in the private sector?

This policy does not establish a preference among standards developed in the private sector. Specifically, agencies that promulgate regulations referencing non-consensus standards developed in the private sector are not required to report on these actions, and agencies that procure products or services based on non-consensus standards are not required to report on such procurements. For example, this policy allows agencies to select a non-consensus standard developed in the private sector as a means of establishing testing methods in a regulation and to choose among commercial-off-the-shelf products, regardless of whether the underlying standards are developed by voluntary consensus standards bodies or not.

h. Does this policy establish a preference between domestic and international voluntary consensus standards?

This policy does not establish a preference between domestic and international voluntary consensus standards. However, in the interests of promoting trade and implementing the provisions of international treaty agreements, your agency should consider international standards in procurement and regulatory applications.

i. Should my agency give preference to performance standards?

In using voluntary consensus standards, your agency should give preference to performance standards when such standards may reasonably be used in lieu of prescriptive standards.

j. How should my agency reference voluntary consensus standards?

Your agency should reference voluntary consensus standards, along with sources of availability, in appropriate publications, regulatory orders, and related internal documents. In regulations, the reference must include the date of issuance. For all other uses, your agency must determine the most appropriate form of reference, which may exclude the date of issuance as long as users are elsewhere directed to the latest issue. If a voluntary standard is used and published in an agency document, your agency must observe and protect the rights of the copyright holder and any other similar obligations.

k. What if no voluntary consensus standard exists?

In cases where no voluntary consensus standards exist, an agency may use government-unique standards (in addition to other standards, see Section 6g) and is not required to file a report on its use of government-unique standards. As explained above (see Section 6a), an agency may use government-unique standards in lieu of voluntary consensus standards if the use of such standards would be inconsistent with applicable law or otherwise impractical; in such cases, the agency must file a report under Section 9a regarding its use of government-unique standards.

l. How may my agency identify voluntary consensus standards?

Your agency may identify voluntary consensus standards through databases of standards maintained by the National Institute of Standards and Technology (NIST), or by other organizations including voluntary consensus standards bodies, other federal agencies, or standards publishing companies.

7. What Is The Policy For Federal Participation In Voluntary Consensus Standards Bodies?

Agencies must consult with voluntary consensus standards bodies, both domestic and international, and must participate with such bodies in the development of voluntary consensus standards when consultation and participation is in the public interest

and is compatible with their missions, authorities, priorities, and budget resources.

a. What are the purposes of agency participation?

Agency representatives should participate in voluntary consensus standards activities in order to accomplish the following purposes:

(1) Eliminate the necessity for development or maintenance of separate Government-unique standards.

(2) Further such national goals and objectives as increased use of the metric system of measurement; use of environmentally sound and energy efficient materials, products, systems, services, or practices; and improvement of public health and safety.

b. What are the general principles that apply to agency support?

Agency support provided to a voluntary consensus standards activity must be limited to that which clearly furthers agency and departmental missions, authorities, priorities, and is consistent with budget resources. Agency support must not be contingent upon the outcome of the standards activity. Normally, the total amount of federal support should be no greater than that of other participants in that activity, except when it is in the direct and predominant interest of the Government to develop or revise a standard, and its timely development or revision appears unlikely in the absence of such support.

c. What forms of support may my agency provide?

The form of agency support, may include the following:

(1) Direct financial support; e.g., grants, memberships, and contracts.

(2) Administrative support; e.g., travel costs, hosting of meetings, and secretarial functions.

(3) Technical support; e.g., cooperative testing for standards evaluation and participation of agency personnel in the activities of voluntary consensus standards bodies.

(4) Joint planning with voluntary consensus standards bodies to promote the identification and development of needed standards.

(5) Participation of agency personnel.

d. Must agency participants be authorized?

Agency employees who, at Government expense, participate in standards activities of voluntary consensus standards bodies on behalf of the agency must do so as specifically authorized agency representatives. Agency support for, and participation by agency personnel in, voluntary consensus standards bodies must be in compliance with applicable laws and regulations. For example, agency support is subject to legal and budgetary authority and availability of funds. Similarly, participation by agency employees (whether or not on behalf of the agency) in the activities of voluntary consensus standards bodies is subject to the laws and regulations that apply to participation by federal employees in the activities of outside organizations. While we anticipate that participation in a committee that is developing a standard would generally not raise significant issues, participation as an officer, director, or trustee of an organization would raise more significant issues. An agency should involve its agency ethics officer, as appropriate, before authorizing support for or participation in a voluntary consensus standards body.

e. Does agency participation indicate endorsement of any decisions reached by voluntary consensus standards bodies?

Agency participation in voluntary consensus standards bodies does not necessarily connote agency agreement with, or endorsement of, decisions reached by such organizations.

f. Do agency representatives participate equally with other members?

Agency representatives serving as members of voluntary consensus standards bodies should participate actively and on an equal basis with other members, consistent with the procedures of those bodies, particularly in matters such as establishing priorities, developing procedures for preparing, reviewing, and approving standards, and developing or adopting new standards. Active participation includes full involvement in discussions and technical debates, registering of opinions and, if selected, serving as chairpersons or in other official capacities. Agency representatives may vote, in accordance with the procedures of the voluntary consensus standards body, at each stage of the standards development process unless prohibited from doing so by law or their agencies.

g. Are there any limitations on participation by agency representatives?

In order to maintain the independence of voluntary consensus standards bodies, agency representatives must refrain from involvement in the internal management of such organizations (e.g., selection of salaried officers and employees, establishment of staff salaries, and administrative policies). Agency representatives must not dominate such bodies, and in any case are bound by voluntary consensus standards bodies' rules and procedures, including those regarding domination of proceedings by any individual. Regardless, such agency employees must avoid the practice or the appearance of undue influence relating to their agency representation and activities in voluntary consensus standards bodies.

h. Are there any limits on the number of federal participants in voluntary consensus standards bodies?

The number of individual agency participants in a given voluntary standards activity should be kept to the minimum required for effective representation of the various program, technical, or other concerns of federal agencies.

i. Is there anything else agency representatives should know?

This Circular does not provide guidance concerning the internal operating procedures that may be applicable to voluntary consensus standards bodies because of their relationships to agencies under this Circular. Agencies should, however, carefully consider what laws or rules may apply in a particular instance because of these relationships. For example, these relationships may involve the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), or a provision of an authorizing statute for a particular agency.

j. What if a voluntary consensus standards body is likely to develop an acceptable, needed standard in a timely fashion?

If a voluntary consensus standards body is in the process of developing or adopting a voluntary consensus standard that would likely be lawful and practical for an agency to use, and would likely be developed or adopted on a timely basis, an agency should not be developing its own government-unique standard and instead should be participating in the activities of the voluntary consensus standards body.

8. What Is The Policy On Conformity Assessment?

Section 12(b) of the Act requires NIST to coordinate Federal, State, and local standards activities and conformity assessment activities with private sector standards activities and conformity assessment activities, with the goal of eliminating unnecessary duplication and complexity in the development and promulgation of conformity assessment requirements and measures. To ensure effective coordination, the Secretary of Commerce must issue guidance to the agencies.

Management and Reporting of Standards Use

9. What Is My Agency Required to Report?

a. As required by the Act, your agency must report to NIST, no later than December 31 of each year, the decisions by your agency in the previous fiscal year to use government-unique standards in lieu of voluntary consensus standards. If no voluntary consensus standard exists, your agency does not need to report its use of government-unique standards. (In addition, an agency is not required to report on its use of other standards. See Section 6g.) Your agency must include an explanation of the reason(s) why use of such voluntary consensus standard would be inconsistent with applicable law or otherwise impractical, as described in Sections 11b(2), 12a(3), and 12b(2) of this Circular. Your agency must report in accordance with format instructions issued by NIST.

b. Your agency must report to NIST, no later than December 31 of each year, information on the nature and extent of agency participation in the development and use of voluntary consensus standards from the previous fiscal year. Your agency must report in accordance with format instructions issued by NIST. Such reporting must include the following:

(1) The number of voluntary consensus standards bodies in which there is agency participation, as well as the number of agency employees participating.

(2) The number of voluntary consensus standards the agency has used since the last report, based on the procedures set forth in sections 11 and 12 of this Circular.

(3) Identification of voluntary consensus standards that have been substituted for government-unique standards as a result of an agency review under section 15b(7) of this Circular.

(4) An evaluation of the effectiveness of this policy and recommendations for any changes.

c. No later than the following January 31, NIST must transmit to OMB a summary report of the information received.

10. How Does My Agency Manage And Report Its Development and Use Of Standards?

Your agency must establish a process to identify, manage, and review your agency's development and use of standards. At minimum, your agency must have the ability to (1) report to OMB through NIST on the agency's use of government-unique standards in lieu of voluntary consensus standards, along with an explanation of the reasons for such non-usage, as described in section 9a, and (2) report on your agency's participation in the development and use of voluntary consensus standards, as described in section 9b. This policy establishes two ways, category based reporting and transaction based reporting, for agencies to manage and report their use of standards. Your agency must report all uses of standards in one or both ways.

11. What Are The Procedures For Reporting My Agency's Use Of Standards In Regulations?

Your agency should use transaction based reporting if your agency issues regulations that use or reference standards. If your agency is issuing or revising a regulation that contains a standard, your agency must follow these procedures:

a. Publish a request for comment within the preamble of a Notice of Proposed Rulemaking (NPRM) or Interim Final Rule (IFR). Such request must provide the appropriate information, as follows:

(1) When your agency is proposing to use a voluntary consensus standard, provide a statement which identifies such standard.

(2) When your agency is proposing to use a government-unique standard in lieu of a voluntary consensus standard, provide a statement which identifies such standards and provides a preliminary explanation for the proposed use of a government-unique standard in lieu of a voluntary consensus standard.

(3) When your agency is proposing to use a government-unique standard, and no voluntary consensus standard has been identified, a statement to that effect and an invitation to identify any such standard and to explain why such standard should be used.

b. Publish a discussion in the preamble of a Final Rulemaking that restates the statement in the NPRM or IFR, acknowledges and summarizes any comments received and responds to them, and explains the agency's final decision. This discussion must provide the appropriate information, as follows:

(1) When a voluntary consensus standard is being used, provide a statement that identifies such standard and any alternative voluntary consensus standards which have been identified.

(2) When a government-unique standard is being used in lieu of a voluntary consensus standard, provide a statement that identifies the standards and explains why using the voluntary consensus standard would be inconsistent with applicable law or otherwise impractical. Such explanation must be transmitted in accordance with the requirements of Section 9a.

(3) When a government-unique standard is being used, and no voluntary consensus standard has been identified, provide a statement to that effect.

12. What Are The Procedures For Reporting My Agency's Use Of Standards In Procurements?

To identify, manage, and review the standards used in your agency's procurements, your agency must either report on a categorical basis or on a transaction basis.

a. How does my agency report the use of standards in procurements on a categorical basis?

Your agency must report on a category basis when your agency identifies, manages, and reviews the use of standards by group or category. Category based reporting is especially useful when your agency either conducts large procurements or large numbers of procurements using government-unique standards, or is involved in long-term procurement contracts which require replacement parts based on government-unique standards. To report use of government-unique standards on a categorical basis, your agency must:

(1) Maintain a centralized standards management system that identifies how your agency uses both government-unique and voluntary consensus standards.

(2) Systematically review your agency's use of government-unique standards for conversion to voluntary consensus standards.

(3) Maintain records on the groups or categories in which your agency uses government-unique standards in lieu of voluntary consensus standards, including an explanation of the reasons for such use, which must be transmitted according to Section 9a.

(4) Enable potential offerors to suggest voluntary consensus standards that can replace government-unique standards.

b. How does my agency report the use of standards in procurements on a transaction basis?

Your agency should report on a transaction basis when your agency identifies, manages, and reviews the use of standards on a transaction basis rather than a category basis. Transaction based reporting is especially useful when your agency conducts procurement mostly through commercial products and services, but is occasionally involved in a procurement involving government-unique standards. To report use of government-unique standards on a transaction basis, your agency must follow the following procedures:

(1) In each solicitation which references government-unique standards, the solicitation must:

(i) Identify such standards.

(ii) Provide potential offerors an opportunity to suggest alternative voluntary consensus standards that meet the agency's requirements.

(2) If such suggestions are made and the agency decides to use government-unique standards in lieu of voluntary consensus standards, the agency must explain in its report to OMB as described in Section 9a why using such voluntary consensus standards is inconsistent with applicable law or otherwise impractical.

c. For those solicitations that are for commercial-off-the-shelf products (COTS), or for products or services that rely on voluntary consensus standards or non-consensus standards developed in the private sector, or for products that otherwise do not rely on government-unique standards, the requirements in this section do not apply.

Agency Responsibilities

13. What Are The Responsibilities Of The Secretary Of Commerce?

The Secretary of Commerce:

a. Coordinates and fosters executive branch implementation of this Circular and, as appropriate, provides administrative guidance to assist agencies in implementing this Circular including guidance on identifying voluntary consensus standards bodies and voluntary consensus standards.

b. Sponsors and supports the Interagency Committee on Standards Policy (ICSP), chaired by the National Institute of Standards and Technology, which considers agency views and advises the Secretary and agency heads on the Circular.

c. Reports to the Director of OMB concerning the implementation of the policy provisions of this Circular.

d. Establishes procedures for agencies to use when developing directories described in Section 15b(5) and establish procedures to make these directories available to the public.

e. Issues guidance to the agencies to improve coordination on conformity assessment in accordance with section 8.

14. What Are The Responsibilities Of The Heads Of Agencies?

The Heads of Agencies:

a. Implement the policies of this Circular in accordance with procedures described.

b. Ensure agency compliance with the policies of the Circular.

c. In the case of an agency with significant interest in the use of standards, designate a senior level official as the Standards Executive who will be responsible for the agency's implementation of this Circular and who will represent the agency on the ICSP.

d. Transmit the annual report prepared by the Agency Standards Executive as described in Sections 9 and 15b(6).

15. What Are The Responsibilities Of Agency Standards Executives?

An Agency Standards Executive:

a. Promotes the following goals:

(1) Effective use of agency resources and participation.

(2) The development of agency positions that are in the public interest and that do not conflict with each other.

(3) The development of agency positions that are consistent with administration policy.

(4) The development of agency technical and policy positions that are clearly defined and known in advance to all federal participants on a given committee.

b. Coordinates his or her agency's participation in voluntary consensus standards bodies by:

(1) Establishing procedures to ensure that agency representatives who participate in voluntary consensus standards bodies will, to the extent possible, ascertain the views of the agency on matters of paramount interest and will, at a minimum, express views that are not inconsistent or in conflict with established agency views.

(2) To the extent possible, ensuring that the agency's participation in voluntary consensus standards bodies is consistent with agency missions, authorities, priorities, and budget resources.

(3) Ensuring, when two or more agencies participate in a given voluntary consensus standards activity, that they coordinate their views on matters of paramount importance so as to present, whenever feasible, a single, unified position and, where not feasible, a mutual recognition of differences.

(4) Cooperating with the Secretary in carrying out his or her responsibilities under this Circular.

(5) Consulting with the Secretary, as necessary, in the development and issuance of internal agency procedures and guidance implementing this Circular, including the development and implementation of an agency-wide directory identifying agency employees participating in voluntary consensus standards bodies and the identification of voluntary consensus standards bodies.

(6) Preparing, as described in Section 9, a report on uses of government-unique standards in lieu of voluntary consensus standards and a report on the status of agency standards policy activities.

(7) Establishing a process for ongoing review of the agency's use of standards for purposes of updating such use.

(8) Coordinating with appropriate agency offices (e.g., budget and legal offices) to ensure that effective processes exist for the review of proposed agency support for, and participation in, voluntary consensus standards bodies, so that agency support and participation will comply with applicable laws and regulations.

Supplementary Information

16. When Will This Circular Be Reviewed?

This Circular will be reviewed for effectiveness by the OMB three years from the date of issuance.

17. What Is The Legal Effect Of This Circular?

Authority for this Circular is based on 31 U.S.C. 1111, which gives OMB broad authority to establish policies for the improved management of the Executive Branch. This Circular is intended to implement Section 12(d) of Public Law 104–113 and to establish policies that will improve the internal management of the Executive Branch. This Circular is not intended to create delay in the administrative process, provide new grounds for judicial review, or create new rights or benefits, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, or its officers or employees.

18. Do You Have Further Questions?

For information concerning this Circular, contact the Office of Management and Budget, Office of Information and Regulatory Affairs: Telephone 202/395–3785.

[FR Doc. 98–4177 Filed 2–18–98; 8:45 am]
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LIST OF PUBLIC LAWS

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H.R. 1271/P.L. 105–155

FAA Research, Engineering, and Development Authorization Act of 1998 (Feb. 11, 1998; 112 Stat. 5)

H.R. 3042/P.L. 105–156

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S. 1564/P.L. 105–158

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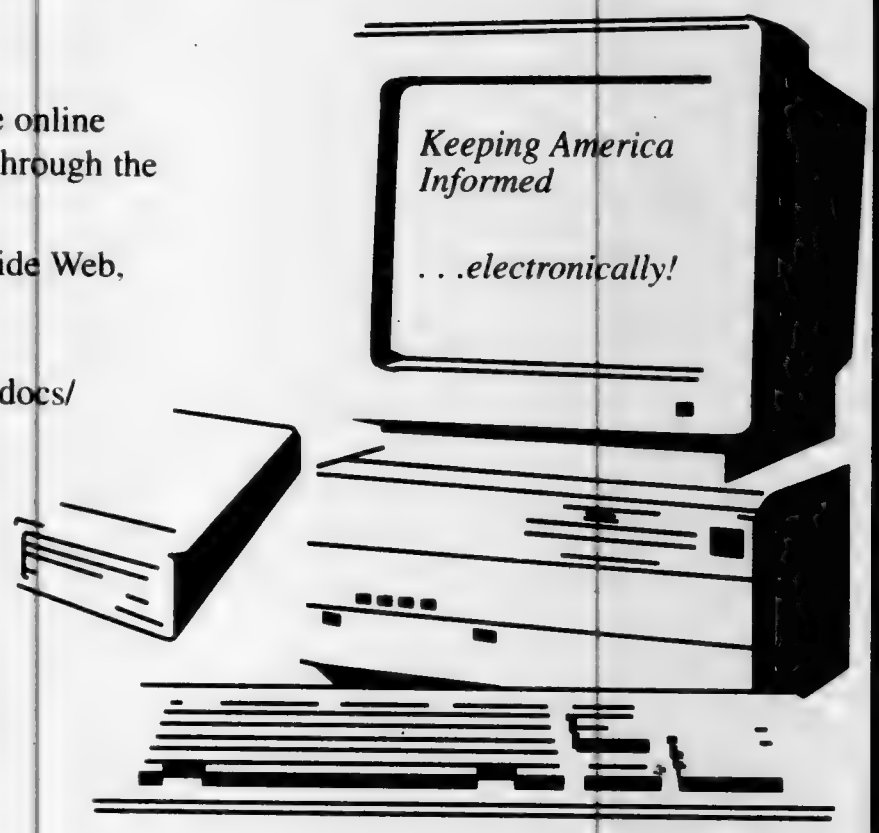

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Federal Register

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Federal Register
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Friday, February 20, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV98–985–1 FR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1998–99 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1998–99 marketing year. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market.

EFFECTIVE DATES: June 1, 1998, through May 30, 1999.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2043; Fax: (503) 326–7440; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491; Fax (202) 205–6632.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 (7 CFR Part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule establishes the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1998–99 marketing year, which begins on June 1, 1998. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the order, the Committee recommended the salable quantities and allotment percentages for the 1998–99 marketing year at its October 8, 1997, meeting. With 6 members favoring the recommendation and 1 member opposed, the Committee recommended the establishment of a salable quantity and allotment percentage for Class 1 (Scotch) spearmint oil of 1,187,077 pounds and 65 percent, respectively. The member in opposition favored the establishment of a higher salable quantity and allotment percentage. In a unanimous vote, the Committee recommended the establishment of a salable quantity and allotment percentage for Class 3 (Native) spearmint oil of 1,155,217 pounds and 57 percent, respectively.

This final rule limits the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 1998–99 marketing year, which begins on June 1, 1998. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order accounts for approximately 65 percent of the annual U.S. production of Scotch spearmint oil and approximately 90 percent of the annual U.S. production of Native spearmint oil.

When the order became effective in 1980, the United States produced nearly 100 percent of the world's supply of Scotch spearmint oil, of which approximately 80 percent was produced in the regulated production area in the Far West. International production characteristics have changed in recent years, however, with foreign Scotch spearmint oil production contributing significantly to world production. Although still a leader in production, the Far West's market share has decreased to approximately 41 percent of the world total. Therefore, the Committee's recommendation for Scotch spearmint oil is designed to maintain market stability by avoiding extreme fluctuations in supplies and

prices, and may help the industry remain competitive on an international level by potentially regaining some of the Far West's historical share of the global market. The Committee's recommendation is intended to foster market stability so that the Far West's Scotch spearmint oil market share will not only be retained, but expanded as well.

The order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. For example, between 1971 and 1975 the price of Native spearmint oil ranged from $3.00 per pound to $11.00 per pound. In contrast, under the order, prices have stabilized between $10.50 and $11.50 per pound for the past ten years. With approximately 90 percent of the U.S. production located in the Far West, the method of calculating the Native spearmint oil salable quantity and allotment percentage primarily utilizes information on price and available supply as they are affected by the estimated trade demand.

The salable quantity and allotment percentage for each class of spearmint oil for the 1998–99 marketing year is based upon the Committee's recommendation and the data presented below.

(1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 1998—456,994 pounds. This figure is derived by subtracting the estimated 1997–98 marketing year trade demand of 853,987 pounds from the revised 1997–98 marketing year total available supply of 1,310,981 pounds.

(B) Estimated world production for the 1997–98 marketing year—2,186,128 pounds.

(C) Estimated Far West production for the 1997–98 marketing year—892,628 pounds.

(D) Far West percentage of total world production in 1997–98—41 percent. This is down from the 1980 level of approximately 80 percent.

(E) Total estimated allotment base for the 1998–99 marketing year—1,826,272 pounds. This figure represents a one percent increase over the revised 1997–98 allotment base.

(F) Recommended 1998–99 allotment percentage—65 percent. This figure is based upon recommendations made at the October 8, 1997, meeting, as well as at five production area meetings held during September.

(G) The Committee's computed 1998–99 salable quantity—1,187,077 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 1998–99 marketing year—1,644,071 pounds. This figure is derived by adding the computed salable quantity to the June 1, 1998, carry-in volume, and represents the total amount of Scotch spearmint oil that could be available to the market during the 1998–99 marketing year.

(I) Estimated trade demand for Far West Scotch spearmint oil during the 1998–99 marketing year—900,000 pounds. This figure is based upon estimates provided to the Committee by buyers of spearmint oil.

(J) Estimated carry-out on June 1, 1999—744,071 pounds. This figure is the difference between the 1998–99 estimated trade demand and the 1998–99 estimated available supply.

(2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 1998—34,756 pounds. This figure is the difference between the estimated 1997–98 marketing year trade demand of 1,150,000 pounds and the revised 1997–98 marketing year total available supply of 1,184,756 pounds.

(B) Estimated trade demand (domestic and export) for the 1998–99 marketing year—1,178,401 pounds. This figure is based on the average of the three most recent years' sales figures and input from spearmint oil buyers.

(C) Salable quantity required from 1998 production—1,143,645 pounds. This figure is the difference between the estimated 1998–99 marketing year trade demand and the estimated carry-in on June 1, 1998.

(D) Total estimated allotment base for the 1998–99 marketing year—2,026,696 pounds. This figure represents a one percent increase over the revised 1997–98 allotment base.

(E) Computed allotment percentage—56.4 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—57 percent. This is the Committee's recommendation based on the computed allotment percentage.

(G) The Committee's recommended salable quantity—1,155,217 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

The salable quantity is the total quantity of each class of spearmint oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch spearmint oil salable quantity of 1,187,077 pounds and allotment percentage of 65 percent are based on the Committee's goal of maintaining market stability by avoiding extreme fluctuations in supplies and prices, and thereby helping the industry remain competitive on the international level. The Committee's recommended Native spearmint oil salable quantity of 1,155,217 pounds and allotment percentage of 57 percent are based on anticipated supply and trade demand during the 1998–99 marketing year. The salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year can be satisfied by an increase in the salable quantities. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 1998–99 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool.

This regulation is similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this action are expected to be offset by the benefits derived from a stable market, a greater market share, and possible improved returns. In conjunction with the issuance of this rule, the Committee's marketing policy statement for the 1998–99 marketing year has been reviewed by the Department. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of section 985.50 of the order. During its discussion of potential 1998–99 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the Department's "Guidelines for Fruit, Vegetable, and Specialty Crop

Marketing Orders" has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages allows for anticipated market needs. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil which should be produced for next season in order to meet anticipated market demand.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 9 spearmint oil handlers subject to regulation under the order, and approximately 124 producers of Class 1 (Scotch) spearmint oil and approximately 110 producers of Class 3 (Native) spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000.

Based on the SBA's definition of small entities, the Committee estimates that two of the nine handlers regulated by the order would be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 29 of the 124 Scotch spearmint oil producers and 14 of the 110 Native spearmint oil producers would be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. A normal spearmint oil producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint oil producing farm would thus have to have considerably more acreage than would be planted to spearmint during any given season. Most farms producing spearmint oil would fall under the SBA category of large businesses due to the added costs associated with the production of this crop.

This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1998–99 marketing year. The Committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market. This action is authorized by the provisions of sections 985.50, 985.51 and 985.52 of the order.

Small spearmint oil producers generally are not extensively diversified and as such are more at risk to market fluctuations. Such small producers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because incomes from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

The order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. For example, between 1971 and 1975 the price of Native spearmint oil ranged from $3.00 per pound to $11.00 per pound. In contrast, under the order, prices have stabilized between $10.50 and $11.50 per pound for the past ten years.

Alternatives to this rule were discussed at the meeting and included not regulating the handling of spearmint oil during the 1998–99 marketing year, and recommending either higher or lower levels for the salable quantities and allotment percentages. The Committee reached its decision to recommend the establishment of salable quantities and allotment percentages for both classes of spearmint oil for the 1998–99 marketing year after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended will achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pattern of cyclical prices of prior years, as well as suffer the potentially price depressing consequence that a release of the nearly 1.2 million pounds of spearmint oil reserves would have on the market. According to the Committee, higher or lower salable quantities and allotment percentages would not achieve the intended goals of market and price stability, with market share maintenance and growth.

Annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule was published in the **Federal Register** (62 FR 67297) on

December 24, 1997. A 30-day comment period was provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impacts of this action on small businesses. Copies of the rule were faxed and mailed to the Committee office, which in turn notified Committee members and spearmint oil producers and handlers of the proposed action. In addition, the Committee's meetings were widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. A copy of the proposal was also made available on the Internet by the U.S. Government Printing Office. No comments were received.

Accordingly no changes are made to the rule as proposed.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 985.217 is added to read as follows:

[**Note:** This section will not appear in the Code of Federal Regulations.]

§ 985.217 Salable quantities and allotment percentages—1998–99 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1998, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 1,187,077 pounds and an allotment percentage of 65 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,155,217 pounds and an allotment percentage of 57 percent.

Dated: February 12, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–4036 Filed 2–19–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANE–91]

Amendment to Class D Airspace; Westfield, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revises the Class D airspace area at Westfield, MA (KBAF) to reflect the results of improved airspace computations through the use of computer mapping to determine the controlled airspace requirements for standard instrument approach procedures to Barnes Municipal Airport, Westfield, MA.

DATES: Effective 0901 UTC, April 23, 1998.

Comments for inclusion in the Rules Docket must be received on or before March 23, 1998.

ADDRESSES: Send comments on the rule to: Manager, Airspace Branch, ANE–520, Federal Aviation Administration, Docket No. 98–ANE–91, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7530; fax (781) 238–7596. Comments may also be sent electronically via the internet to the following address: "9 ne airspace@faa.dot.gov" Comments sent electronically must indicate Docket 98–ANE–91 in the subject line.

The official docket file may be examined in the Office of the Regional Counsel, New England Region, ANE–7, Room 401, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7050; fax (781) 238–7055.

An informal docket may also be examined during normal business hours in the Air Traffic Division, Room 408, by contacting the Acting Manager, Airspace Branch at the first address listed above.

FOR FURTHER INFORMATION CONTACT: David T. Bayley, ANE–502.3, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7523; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION:

The FAA recently performed a review of the controlled airspace in the vicinity of Barnes Municipal Airport, Westfield, MA (KBAF), noted a need to recompute the airspace requirements to accommodate aircraft using the standard instrument approach procedures at that airport. This effort utilized computer mapping which resulted in greater accuracy in determining the requirements for controlled airspace to accommodate aircraft using the RWY 20 HI Alt TACAN and HI Alt ILS instrument approaches to Barnes Municipal Airport. This action is needed to revise the Class D airspace area at Westfield, MA by increasing slightly the base radius of the Class D airspace while eliminating all Class D extensions. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation contained in this document will be published subsequently in this Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications

should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–ANE–91." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANE MA D Westfield, MA [Revised]

Westfield, Barnes Municipal Airport, MA
(Lat. 42°09'28" N, long. 72°42'56" W)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 4.9-mile radius of Barnes Municipal Airport excluding that airspace within the Springfield/Chicopee, MA Class D airspace area during the dates and times it is effective, and that airspace within the Windsor Locks, CT Class C airspace area. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Burlington, MA, on February 12, 1998.

William C. Yuknewicz,

Assistant Manager, Air Traffic Division, New England Region.

[FR Doc. 98–4313 Filed 2–19–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANE–92]

Amendment to Class E Airspace; Laconia, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revises the Class E airspace at Laconia, NH (KLCI) to provide for adequate controlled airspace for those aircraft using the new GPS RWY 26 standard instrument approach procedure to Laconia Municipal Airport.

DATES: Effective 0901 UTC, April 23, 1998.

Comments for inclusion in the Rules Docket must be received on or before March 23, 1998.

ADDRESSES: Send comments on the rule to: Manager, Airspace Branch, ANE–520, Federal Aviation Administration, Docket No. 98–ANE–92, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7520; fax (781) 238–7596. Comments may also be sent electronically via the internet to the following address: "9 ne airspace@faa.dot.gov" Comments sent electronically must indicate Docket 98–ANE–92 in the subject line.

The official docket file may be examined in the Office of the Regional Counsel, New England Region, ANE–7, Room 401, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7050; fax (781) 238–7055.

An informal docket may also be examined during normal business hours in the Air Traffic Division, Room 408, by contacting the Acting Manager, Airspace Branch at the first address listed above.

FOR FURTHER INFORMATION CONTACT: David T. Bayley, ANE–520.3, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7523; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION: A new Standard Instrument Approach Procedure (SIAP) to Laconia Municipal Airport, the GPS RWY 26 approach, requires additional controlled airspace in the vicinity of Laconia extending upward from 700 feet above the surface. This action is needed to add an additional extension of controlled airspace northeast of the airport in order to provide that controlled airspace to adequately accomondate aircraft using the new GPS SIAP to Laconia. Class E airspace areas extending upward from 700 feet above the surface are published in paragraph 6500 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation contained in this document will be published subsequently in this Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or

negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–ANE–92." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6500 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ANE NH E5 Laconia, NH [Revised]

Laconia Municipal Airport, NH
(Lat. 43°34'22"N, long. 71°25'08"W)
Belknap NDB
(Lat. 43°32'12"N, long. 71°32'13"W)

That airspace extending upward from 700 feet above the surface within a 3.5-mile radius of Laconia Municipal Airport, and within 2.8 miles on each side of the Belknap NDP 249° bearing extending from the 3.5-mile radius to 8.8 miles southwest of the Belknap NDB, and within 2.8 miles on each side of the Laconia Municipal Airport 041° bearing extending from the 3.5-mile radius to 6.5 miles northeast of Laconia Municipal Airport, and within 2 miles on each side of the Laconia Municipal Airport 067° bearing extending from the 3.5-mile radius to 10.5 miles northeast of Laconia Municipal Airport.

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Issued in Burlington, MA, on February 12, 1998.

William C. Yuknewicz,

Assistant Manager, Air Traffic Division, New England Region.

[FR Doc. 98–4314 Filed 2–19–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASO–20]

RIN 2120–AA66

Modification of Multiple Federal Airways, Jet Routes, and Reporting Points; FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule modifies the airspace designations for several jet routes, Federal airways, and the one domestic reporting point in the State of Florida. The Tallahassee, FL, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) is being renamed "Seminole, FL, VORTAC" concurrent with the effective date of this rule. This rule modifies all associated airspace designations to reflect the name change. This rule does not alter the dimensions or operating requirements of any of the affected airways, routes, or reporting points.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia Crawford, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On July 2, 1997, the FAA proposed to amend 14 CFR part 71 (part 71) to modify the airspace designations for several jet routes, Federal airways, and one domestic reporting point in the State of Florida (62 FR 35713). Interested parties were invited to participate in this rulemaking proceeding by submitting comments. No comments objecting to the proposal were received. The notice contained two errors in the legal descriptions of affected airspace; one in the description for J–2, and one in the description for J–20. Specific radials in the legal descriptions of airways and jet routes are given in relation to true (T) north. In NPRM's, however, magnetic (M) north equivalents are also provided. The reference magnetic variation for the Tallahassee/Seminole VORTAC is 2° east, indicating a −2° conversion factor must be applied to convert a true radial to a magnetic radial. The notice listed the magnetic equivalent of the Tallahassee/Seminole VORTAC 290° true radial as 282° in the description for J–2. The correct magnetic equivalent is 288°. Similarly, the notice listed the magnetic equivalent of the Tallahassee/Seminole VORTAC 129° true radial as 131° in the description for J–20. The correct magnetic equivalent is 127°. Except for editorial changes and the corrections to the airspace designations for the two jet routes, this rule is the same as that proposed in the notice.

The Rule

This amendment to part 71 changes the airspace designations for several jet routes, Federal airways, and the domestic reporting point "COVIA" in the State of Florida. The airspace designations are being changed to reflect the name change of the Tallahassee VORTAC to "Seminole VORTAC." This rule does not alter the dimensions or operating requirements of any of the affected airways, routes, or reporting points. Jet routes, domestic Federal airways, and other domestic reporting points are published in paragraphs 2004, 6010(a), and 7003, respectively, of FAA Order 7200.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR section 71.1. The jet routes, airways, and reporting point listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this regulation: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–2 [Revised]

From Mission Bay, CA, via Imperial, CA; Bard, AZ; INT of the Bard 089° and Gila Bend, AZ, 261° radials; Gila Bend, Cochise, AZ; El Paso, TX; Fort Stockton, TX; Junction, TX; San Antonio, TX; Humble, TX; Lake Charles, LA; Semmes, AL; Crestview, FL; INT of the Crestview 091° and the Seminole, FL, 290° radials; Seminole; to Taylor, FL.

* * * * *

J–20 [Revised]

From Seattle, WA, via Yakima, WA; Pendleton, OR; Donnelly, ID; Pocatello, ID; Rock Springs, WY; Falcon, CO; Hugo, CO; Lamar, CO; Liberal, KS; INT Liberal 137° and Will Rogers, OK, 284° radials; Will Rogers; Belcher, LA; Jackson, MS; Montgomery, AL; Meridian, MS; Seminole, FL; INT Seminole 129° and Orlando, FL, 306° radials; Orlando; INT Orlando 140° and Virginia Key, FL, 344° radials; Virginia Key.

* * * * *

J–41 [Revised]

From Key West, FL; Lee County, FL; St. Petersburg; Seminole, FL; Montgomery, AL; Vulcan, AL; Memphis, TN; Springfield, MO, Kansas City, MO, to Omaha, NE.

* * * * *

J–43 [Revised]

From Dolphin, FL; LaBelle, FL; St. Petersburg, FL; Seminole, FL; Atlanta, GA; Volunteer, TN; Falmouth, KY; Rosewood, OH; Carleton, MI; to Sault Ste. Marie, MI.

* * * * *

J–73 [Revised]

From Dolphin, FL; LaBelle, FL; Lakeland, FL; Seminole, FL; La Grange, GA; Nashville, TN; Pocket City, IN; to Northbrook, IL.

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Paragraph 6010(a)—Domestic VOR Federal Airways

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V–7 [Revised]

From Dolphin, FL; INT Dolphin 299° and Lee County, FL, 120° radials; Lee County; Lakeland, FL; Cross City, FL; Seminole, FL; Wiregrass, AL; INT Wiregrass 333° and Montgomery, AL, 129° radials; Montgomery; Vulcan, AL; Muscle Shoals, AL; Graham, TN; Central City, KY; Pocket City, IN; INT Pocket City 016° and Terre Haute, IN, 191° radials; Terre Haute; Boiler, IN; Chicago Heights, IL; INT Chicago Heights 358° and Falls, WI, 170° radials; Falls; Green Bay, WI; Menominee, MI; Marquette, MI. The airspace below 2,000 feet MSL outside the United States is excluded. The portion outside the United States has no upper limit.

* * * * *

V–87 [Revised]

From Dolphin, FL; La Belle, FL; St. Petersburg, FL; Seminole, FL; Pecan, GA; Atlanta, GA; INT Atlanta 001° and Volunteer, TN, 197° radials; Volunteer; London, KY; Lexington, KY; Cincinnati, OH; Shelbyville, IN, INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; Chicago Heights, IL; to INT Chicago Heights 358° and Chicago O'Hare, IL, 127° radials. From INT Northbrook, IL, 290° and Janesville, WI, 112° radials; Janesville; Lone Rock, WI; Nodine, MN; to Gopher, MN. The airspace below 2,000 feet MSL outside the United States is excluded.

* * * * *

V–198 [Revised]

From San Simon, AZ, via Columbus, NM; El Paso, TX; 6 miles wide; INT El Paso 109° and Hudspeth, TX, 287° radials; 6 miles wide; Hudspeth; 29 miles, 38 miles, 82 MSL, INT Hudspeth 109° and Fort Stockton, TX, 284° radials; 18 miles, 82 MSL; Fort Stockton; 20 miles, 116 miles, 55 MSL; Junction, TX; San Antonio, TX; Eagle Lake, TX; Hobby, TX; Sabine Pass, TX; White Lake, LA; Tibby, LA; Harvey, LA; 69 miles, 33 miles, 25 MSL; Brookley, AL; INT Brookley 056° and Crestview, FL, 266° radials;

Crestview; Marianna, FL; Seminole, FL; Greenville, FL; Taylor, FL; INT Taylor 093° and Craig, FL, 287° radials; to Craig.

* * * * *

V–295 [Revised]

From Virginia Key, FL; INT Virginia Key 014° and Vero Beach, FL, 143° radials; Vero Beach; INT Vero Beach 296° and Orlando, FL, 162° radials; Orlando; Ocala, FL; Cross City, FL; to Seminole, FL. The portion outside the United States has no upper limit.

* * * * *

Paragraph 7003—Other Domestic Reporting Points

* * * * *

COVIA: [Revised]

Lat. 27°56'11"N., long. 84°44'10"W. (INT Sarasota, FL, 286°, Seminole, FL, 187° radials)

* * * * *

Issued in Washington, DC, on February 13, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–4311 Filed 2–19–98; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 30, 33, and 190

Distribution of Risk Disclosure Statements by Futures Commission Merchants and Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: On September 10, 1997, the Commodity Futures Trading Commission ("CFTC" or "Commission") published for comment proposed amendments to its rules concerning the mandatory risk disclosure obligations of futures commission merchants ("FCMs") and introducing brokers ("IBs") to their customers (the "Proposal").[1] Specifically, the Commission proposed to relieve FCMs and IBs from the requirements to furnish certain defined customers with mandatory risk disclosure statements and to receive from such customers a signed acknowledgment of receipt of such statements pursuant to Rule 1.55(a) (risk disclosure pertaining to domestic futures); Rule 30.6(a) (risk disclosure pertaining to foreign futures or foreign options); Rule 33.7(a) (risk disclosure pertaining to domestic exchange-traded commodity options); Rule 1.65(a)(3) (risk disclosure for customers whose accounts are transferred other than at the customer's request to another FCM or IB) and Rule 190.10(c) (disclosure pertaining to treatment in bankruptcy of non-cash property held by an FCM as margin for commodity interest contracts). The comment period for the Proposal was sixty days and closed on November 10, 1997.

The Commission has carefully considered the comments received on the Proposal, and based upon its review of these comments and its reconsideration of the proposed rule amendments, it is adopting the Proposal as modified herein.

EFFECTIVE DATE: April 21, 1998.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

CFTC rules require FCMs and IBs to provide customers with Commission-approved disclosure statements describing the risks of trading in domestic (and, as applicable, foreign) commodity futures and options and to receive written acknowledgment of receipt of such statements prior to opening an account for the customer.[2] In addition, Commission Rule 190.10(c) requires an FCM to provide a customer with a disclosure statement concerning the treatment in bankruptcy of any non-cash property deposited as margin at the FCM by a customer before the FCM may accept this property from the customer to margin, guarantee or secure any commodity interest contract.[3] As discussed more fully in the Proposal, the Commission, based upon its previous efforts to simplify disclosure obligations of Commission registrants, believed that it was appropriate to provide FCMs and IBs with relief from certain disclosure and bankruptcy statement requirements in the context of accounts for specified customers and thus published for comment proposed amendments to the risk disclosure and bankruptcy rules.[4]

The comment period for the Proposal closed on November 10, 1997, although the Commission considered comments received after this date. The Commission received comment letters from: (1) The Chicago Board of Trade ("CBOT"); (2) the Government Finance Officers Association ("GFOA"); (3) the Chicago Mercantile Exchange ("CME"); (4) the Futures Industry Association ("FIA"); (5) the National Futures Association ("NFA"); and (6) the Association of the Bar of the City of New York, Committee on Futures Regulation ("NYCBar"). Only the GFOA opposed the Commission's effort to modify its risk disclosure rules, although the GFOA alternatively requested that the Commission delete government entities from the list of customers for whom this relief can be claimed. The remaining five commenters generally supported the Proposal but suggested certain modifications, as discussed more fully below. The following discussion focuses principally on the comments received on the Proposal and the modifications to the Proposal made in response to these comments. Additional background information on these final rules is found in the **Federal Register** release setting forth the Proposal.[5]

II. Discussion

The rule amendments adopted herein eliminate the requirement that FCMs and IBs provide specified customers, defined in Rule 1.55(f), with Commission-mandated risk disclosure statements and obtain from these customers a written acknowledgment of receipt of the risk disclosure statement, as required by Rules 1.55(a), 1.65(a)(3), 30.6(a), and 33.7(a), before opening a commodity futures or options account for these customers. Additionally, the amendments relieve FCMs of the obligation to furnish these customers with the bankruptcy disclosure statement required by Rule 190.10(c) before accepting non-cash property from such customers to margin a commodity interest contract. FCMs or IBs will remain free to provide customers specified in proposed Rule 1.55(f) with the Commission-approved risk disclosure statement without obtaining a written acknowledgement of receipt of this statement from these qualifying customers.[6]

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[1] 62 FR 47612 (September 10, 1997).

[2] *See* Rule 1.55(a) (risk disclosure requirement concerning trading domestic commodity futures); Rule 30.6(a) (risk disclosure requirement concerning non-United States commodity futures or options contracts); and Rule 33.7(a) (risk disclosure requirement concerning domestic, exchange-traded commodity options).

[3] Commission Rule 190.10 does not require an FCM to obtain a customer's written acknowledgment of receipt of this statement.

[4] *See* 62 FR at 47612–13 (discussing previous Commission efforts to reduce and streamline disclosure obligations of registrants).

[5] 62 FR 47612 (September 10, 1997).

[6] FCMs will also remain free to provide all customers with the disclosure statement concerning

The categories of customers specified in Rule 1.55(f) for whom an FCM or IB may claim the relief adopted herein are based substantially upon the categories of eligible swap participants in part 35 of the Commission rules[7] and eligible participants in part 36 of the Commission rules.[8] Rule 1.55(f) provides FCMs and IBs with clear, objective criteria for identifying the customers to whom delivery of the Commission-approved disclosure statements is not required. In this regard, the Commission notes that the rule contains no specific requirement that FCMs and IBs maintain with their books and records any information in addition to that already required by other Commission rules in order to identify a particular customer's eligibility for the relief provided by the proposed amendments.[9] However, FCMs and IBs are required to assure that mandated disclosure statements are provided to customers other than those to whom this relief applies. In order to substantiate compliance with such disclosure requirements and exercise meaningful supervision over customer accounts, FCMs and IBs should maintain and review on a regular basis adequate documentation relevant to establish the qualifications of the customers for whom the relief adopted herein will be claimed and to confirm the identities of customers to whom specified risk disclosures have been made and from whom acknowledgments have been obtained.[10]

The comments received on the Proposal are summarized below. The Commission has carefully considered these comments. For the reasons discussed herein, the Commission is adopting these rule amendments substantially as proposed, although the Commission is removing government entities from the list of qualifying customers set forth in Rule 1.55(f)[11] and deleting language, which commenters felt was redundant, from Rule 1.55(f) that had referred to the obligation of any FCM or IB claiming this relief to "provide such disclosure as is material in the circumstances."

Comment in Opposition to the Proposal

The GFOA objected to the Proposal and recommended that no change be made in the Commission's risk disclosure requirements. The GFOA stressed the difficulty of developing generalized standards to assess financial sophistication and the likelihood that the proposed rule amendments will erode customer protections. However, as the Commission emphasized in the Proposal, its previous efforts to consolidate and reduce disclosure obligations for registrants have not negatively affected the public interest. Moreover, the Commission believes that the stringent criteria set forth in Rule 1.55(f), along with the continuing disclosure obligations set forth in newly-designated Rule 1.55(g), will allow it to eliminate requirements for standardized risk disclosures and customer acknowledgments of that disclosure for certain specified customers without eroding overall customer protection. Thus, after considering GFOA's objections, the Commission continues to believe that it would not be contrary to the public interest to adopt the Proposal, as modified herein, and has decided to adopt these final rule amendments.

Categories of Customers for Whom Relief May Be Claimed

All the commenters urged the Commission to reconsider the categories of parties for whom FCMs and IBs can claim the relief adopted herein. Most generally, the NYCBar questioned "the creation of a further group of 'sophisticated' customers" in defining the categories of customers for whom FCMs or IBs can claim the risk disclosure relief and urged the Commission to adopt an already existing standard such as that used by the Commission for defining qualified eligible participants ("QEPs"), qualified eligible clients ("QECs") or appropriate persons,[12] or used by the Securities and Exchange Commission ("SEC") to define accredited investor, qualified institutional buyer or qualified purchaser.[13] The NYCBar commented that creation of a new class of customers will lead to even more paperwork as FCMs or IBs try "to insure that they receive the appropriate representations permitting them to invoke the expected relief." The NYCBar also suggested that the policy reasons behind the selection of the criteria used to define the customers set forth in Rule 1.55(f) were not sufficiently explained.

As stated in the Proposal, the categories of customers for whom an FCM or IB can claim the risk disclosure relief are based substantially upon the existing definitions of eligible swap participant and eligible Part 36 participant, which themselves are based upon the definition of appropriate persons contained in the Act. The Commission explained that these definitions were "appropriate models for the definitions set forth in proposed Rule 1.55(f) inasmuch as the Part 35 and 36 rules exempt parties from providing mandatory risk disclosure statements * * * in connection with transactions covered by these rules."[14] Modifications were made to the Part 35 and 36 definitions only to assure that the Proposal did not cause some commodity pools to be given risk disclosure statements when then-current Rule 1.55 did not require any pool to receive such a statement and to prevent applying criteria from the Part 35 and 36 rules that made little sense in the context of the Proposal.[15]

Moreover, as discussed more fully below, the Commission does not believe that the criteria applicable to securities regulations or to other commodities transactions are as relevant as the Part 35 and Part 36 standards in identifying which categories of FCM or IB customers do not require the protections afforded by mandatory risk disclosure. By contrast, the criteria set forth in the Part 35 and Part 36 rules provide a reasonable basis for protecting the public interest and limiting the affected categories of commodity futures or options customers to those persons

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the treatment in bankruptcy of non-cash property held by an FCM to margin, secure or guarantee a commodity interest contract.

[7] *See* CFTC Rule 35.1(b)(2). Part 35 of the Commission's rules exempts certain swap agreements from most provisions of the Act and Commission rules.

[8] *See* CFTC Rule 36.1(c)(2). Part 36 of the Commission's rules exempts certain contract market transactions from specified provisions of the Act and Commission regulations thereunder. Parts 35 and 36 of the Commission rules were adopted pursuant to authority set forth in Section 4(c) of the Act, 7 U.S.C. 6(c). *See* 58 FR 5587 (January 22, 1993) (adopting Part 35) and 60 FR 51323 (October 2, 1995) (adopting Part 36). Section 4(c)(2) of the Act, 7 U.S.C. 6(c)(2), requires that, among other conditions, any agreement, contract or transaction exempted from any provision of the Act pursuant to Section 4(c) of the Act must "be entered into solely between appropriate persons," who are defined in Section 4(c)(3) (A) through (J) of the Act, 7 U.S.C. 6(c)(3)(A)–(J). Thus, the lists of eligible swap participants and eligible participants were, in turn, modeled closely on the list of appropriate persons provided in Section 4(c) of the Act.

[9] For example, FCMs and IBs would be required to obtain and maintain the information required by CFTC Rule 1.37 concerning all customers, including customers listed in Rule 1.55(f).

[10] Rule 166.3 requires FCMs and IBs to supervise diligently the handling of commodity interest accounts.

[11] The Commission's reasons for deleting "government entities" from the categories of customers for whom the relief adopted may be claimed is discussed below in the subsection entitled *Government Entities*.

[12] Commission Rule 4.7, 17 CFR 4.7, defines the terms QEP and QEC. The term "appropriate persons" is defined in Section 4(c) of the Act.

[13] The term "accredited investor" as used in SEC Regulation D is defined at 17 CFR 230.501. The term "qualified institutional buyer" is defined at 17 CFR 230.144A. The term "qualified purchaser" is defined at 15 U.S.C. 80–2(a)(51)(A) and 17 CFR 270.2a51–1. *See* 62 FR 17512 (April 9, 1997) (adopting, among other rules, 17 CFR 270.2a51–1).

[14] 62 FR at 47613.

[15] *Id.*

whose wealth, line of business or other proxies of financial sophistication render them unlikely to require the protections afforded by standardized risk disclosure. Therefore, with the exception of removing government entities, the Commission has adopted in Rule 1.55(f) the categories of customers for whom FCMs and IBs may claim this relief, as proposed, based upon the reasons explained below.

Government Entities

As an alternative to its recommendation that the Commission not adopt the Proposal, the GFOA urged that government entities be removed from the list of qualifying customers. The GFOA emphasized that the proposed rule did not distinguish between small, local governmental organizations and large state treasury operations. In this respect, GFOA commented that:

> Finance officers in many of the smallest jurisdictions often have additional responsibilities as far removed from finance as handling public works projects and supervising public safety officers. These small jurisdictions often rely on public servants who may have little expertise with commodities. At a minimum, they should be able to expect full disclosure regarding the risk of commodities futures prior to deciding whether or not to open a commodities futures account and to commit taxpayer funds to such an investment.

Further, the GFOA commented that "asset-based or, similarly portfolio-size measurement tests have proved to be ineffective as predictors of problems. Large entities and investors, both public and private, have been the victims of misrepresentations and other misconduct just as small ones have." [16]

The GFOA is a 13,500-member professional association of state and local government finance officials and other public finance specialists whose responsibilities include debt, cash and pension fund management and is in a unique position to comment upon the financial sophistication and disclosure needs of governmental organizations. The Commission, based upon the GFOA's comments, believes that government entities, especially those in smaller jurisdictions, would benefit from continued receipt of the mandatory risk and bankruptcy disclosure statements. Moreover, the Commission has taken note, in particular, of the GFOA's comments that taxpayers deserve the full protection of the CFTC's risk disclosure regulations. Therefore, after careful consideration of the GFOA's comments, the Commission has decided to remove government entities from the list of customers for whom FCMs or IBs may claim the relief provided herein.

Natural Persons

The CBOT, CME, FIA and NFA urged the Commission to allow FCMs and IBs to claim the proposed relief for customers who are natural persons who meet financial criteria significantly less stringent than the $10 million total asset standard proposed in the rule. The two Chicago futures exchanges recommended that FCMs and IBs be allowed to claim the relief for natural persons who are accredited investors as defined in SEC Regulation D. The FIA urged the Commission to allow FCMs and IBs to claim the relief for natural persons with a net worth of $1 million while the NFA suggested that the Commission apply the same standard used to define a natural person who is a QEP under CFTC Rule 4.7(a). These commenters generally argued that the standards applied to regulated exchange-traded futures should be less onerous than those applied in unregulated markets such as the swaps market. The CBOT, in particular, believed that it was not realistic to require an individual to have the same level of assets as a qualifying corporation or to have asset holdings twice as large as those required for a qualifying investment company.

As already mentioned, the total asset test is a proxy for financial sophistication. Trading futures even on regulated exchanges involves different risks than investments in securities. Thus, the private offering safeharbor codified in SEC Regulation D is not necessarily relevant to determining when a futures customer is not in need of standardized risk disclosure.[17] Moreover, the Commission does not believe that in the context of this relief, it is unreasonable for natural persons to be required to have asset holdings larger than entities which are directly involved in the financial industry and are otherwise regulated since such entities would be less likely than individuals to require the protections afforded by mandatory risk disclosure.

Perhaps more relevant to the issues raised by the proposal is the suggestion that FCMs and IBs be able to claim the relief with respect to natural persons who qualify as QEPs under CFTC Rule 4.7(a). Rule 4.7(a) relieves CPOs from providing eligible clients who invest in qualifying pools with a Commission required Disclosure Document (which normally would include a standardized risk disclosure statement), provided that any offering memorandum must include all disclosures necessary to make the information contained therein not misleading. However, a pool participant's potential losses are generally limited to the amount of his or her investment in the pool, while persons trading directly in the futures markets (*i.e.*, customers of an FCM or IB) are exposed potentially to losses beyond amounts deposited as initial margin and are responsible for any deficits that occur in their accounts as a result of adverse price movements. Given the potentially disparate risk exposures assumed by pool investors and customers of IBs and FCMs, the QEP criteria would not necessarily be a reasonable basis for defining customers for whom an FCM and IB can claim the relief adopted herein.[18]

Requirement That FCMs and IBs Claiming Relief Disclose Material Information

FIA and NFA urged the Commission to eliminate from proposed Rule 1.55(f) the statement that FCMs and IBs claiming relief "provide such disclosure as is material in the circumstances." FIA and NFA commented that the requirement could be viewed as imposing a higher disclosure standard on FCMs and IBs claiming relief under the amendments than on other FCMs and IBs and, in any event, it was

[16] In its comment letter, the GFOA noted that it had supported the inclusion of local governments among the entities deemed "eligible swap participants" by the Part 35 rules because it believed that to exclude such entities would have been an unwarranted federal intrusion into what is properly a state function—that is, the regulation of allowable investment activity by a state and its political subdivisions. The GFOA further noted that, in its comments on the Part 35 rules, it recommended that the Commission require improved disclosure regarding the types of contracts being entered into and the risks involved in such transactions. The GFOA also stated that it had opposed the Commission's Part 36 professional trading market exemption.

[17] This point is also applicable to FIA's suggestion concerning the net worth criteria for natural persons inasmuch as the SEC's Regulation D defines an "accredited investor" to include a natural person with a net worth of $1 million.

[18] The Commission notes that natural persons, along with other specified persons, may qualify as a QEC of a CTA under Rule 4.7(b). QECs are potentially exposed to unlimited liability in connection with the trading of their commodity futures accounts. Some but not all QECs will be among the categories of customers listed in Rule 1.55(f). Under CFTC rules in effect prior to the rule amendments adopted herein, all QECs received a standardized risk disclosure statement from an FCM or IB before opening a commodity trading account although AECs would not receive a Disclosure Document from a CTA who correctly claimed the 4.7(b) relief. Given that QECs have received the full protections of the CFTC risk disclosure rules governing FCMs and IBs, the Commission does not believe that the QEC criteria are appropriate for determining which persons are no longer in need of the protections afforded by the standardized FCM/IB risk disclosure statements.

duplicative of disclosure obligations recognized in then-current Rule 1.55(f) (redesignated Rule 1.55(g) by this final rule).[19]

As the Commission stated in the Proposal, FCMs and IBs currently have obligations independent of the duty to deliver the standardized risk disclosure statement to disclose to customers information that would be material in the circumstances. These rule amendments are not intended to enlarge the scope of an FCM's or IB's existing duties. Given that the proposed wording may create confusion concerning the disclosure obligations for FCMs and IBs which claim this relief, the Commission has decided to delete the above-cited language from Rule 1.55(f). As the commenters noted, however, FCMs and IBs continue to have disclosure obligations to customers for whom this relief has been claimed as recognized in newly-designated Rule 1.55(g).[20] Moreover, as the Commission stated when it first adopted Rule 1.55(g), "the essential purpose of the rule [is] to confirm the existing obligations of an FCM or IB under the law to disclose material information to its customers."[21]

Obligation That FCM or IB Assure That Customers for Whom Relief Is Claimed Qualify for Such Relief

FIA argued that FCMs or IBs should be able to claim the proposed relief and be relieved of any disclosure obligation if a customer's investment adviser or CTA represents that the client qualifies for relief and that the adviser or the CTA has made all necessary disclosure to such client. FIA contended that an institutional client's primary market relationship is with its investment adviser or CTA and not the FCM or IB and, thus, a CTA or adviser should have primary responsibility for disclosure. FIA also urged the Commission to consider whether CTAs and investment advisers, and not the carrying FCMs, should be responsible for providing their clients with the necessary risk and related disclosures in all circumstances, without regard to the financial status of those clients.

FCMs and IBs have obligations under Commission Rules 166.3, 1.37 and, as designated herein, 1.55(g) to supervise customer accounts diligently, to maintain accounts in the name of the ultimate customer, and to provide customers with adequate disclosure. In addition, the Commission has stated, and current law has already recognized, that an FCM's or IB's disclosure obligations vary with the functions and responsibilities that an FCM or IB undertakes on behalf of a customer.[22] This current rulemaking is not intended to shift an FCM's or IB's existing obligations to other parties, such as a CTA or investment adviser, and therefore, the Commission has not made any change in the Proposal in response to this comment.

Financial and Segregation Interpretation No. 12

The CBOT, CME, FIA and NFA suggested that the Commission eliminate the requirement under Financial and Segregation Interpretation No. 12 that FCMs receive a signed, Commission-mandated subordination agreement from customers before the customer may have segregated funds held in foreign depositories. The Commission notes that on December 30, 1997, it published a concept release soliciting public comment on how to address risks related to holding segregated funds offshore or in foreign currencies.[23] Since the subordination agreement has been one means by which the Commission has addressed these risks,[24] comments concerning the need for or effectiveness of the subordination agreement requirement would best be considered by the Commission in connection with the December 30, 1997 concept release and not as part of this rulemaking exercise.[25]

Electronic Distribution of Risk Disclosure Statement

FIA and NFA also urged the Commission to allow FCMs/IBs to establish customer acknowledgment of receipt of electronically-distributed risk disclosure statements through means of a unique customer identifier. Such a change would bring FCM and IB disclosure rules into line with similar, recently-amended rules for CPOs and CTAs[26] and permit FCMs and IBs to deliver the required risk disclosure statements electronically to all categories of customers.

The Commission did not address the question of a customer's "electronic" acknowledgment of risk disclosure statements in the Proposal. Any change in current procedures would clearly affect the rights of commodity futures customers beyond those persons identified in Rule 1.55(f), and such customers should be allowed adequate notice and opportunity to comment on any possible changes to current rules. However, although the Commission believes that this suggested change is outside the scope of the current rulemaking, the Commission recognizes the importance of the issues raised by FIA and NFA and will consider undertaking a future rulemaking or other action to address these issues.[27]

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611, requires that agencies, in promulgating final rules, consider the impact of those rules on small businesses. The rules discussed herein will affect FCMs and IBs. The Commission has already established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA. FCMs have been determined not to be small entities under the RFA.

With respect to IBs, the Commission has stated that it is appropriate to evaluate within the context of a particular rule whether some or all IBs should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time. These rule amendments would not require any IB to alter its current method of doing business. Instead the rule amendments provide IBs with relief from certain disclosure and recordkeeping requirements with respect to certain identified customers. Presumably, an IB would only choose to make use of this relief if it were cost-

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[19] Newly-designated Rule 1.55(g) provides: "This section [Rule 1.55] does not relieve a futures commission merchant or introducing broker from any other disclosure obligation it may have under applicable law."

[20] The NYCBar also urged the Commission to define "the scope and duty of such remaining [risk] disclosure obligations." As the Commission stated in the Proposal, these minimum disclosure obligations arise under the Act, under state law and under common law, and may differ in particular circumstances. *See* 62 FR at 47614–15. Thus, the scope of an FCM's or IB's disclosure obligations will be affected by the particular facts surrounding a transaction and by the Act, by state law and by common law, as interpreted by the courts or in administrative proceedings. *See id.* at 47615 n.22.

[21] 50 FR 5380, 5381 (February 8, 1985).

[22] *See* 50 FR at 5381–82 ("the extent of the required risk disclosure [by an FCM or IB] will vary with the precise nature of the customer relationship and with the degree of customer reliance on an FCM's or IB's advice").

[23] 62 FR 67841 (December 30, 1997).

[24] *See* 53 FR 46911, 46913 (November 21, 1988) (release adopting Financial and Segregation Interpretation No. 12).

[25] Comments concerning the issues addressed in the concept release, including those related to the subordination agreement requirement, should be received by the Commission on or before March 2, 1998. *See* 62 FR 67841.

[26] *See* 62 FR 39104 (July 22, 1997) (amending Rules 4.21 and 4.31).

[27] CFTC staff is reviewing issues related to the electronic distribution and acknowledgment of documents and will provide the Commission with recommendations on how best to address these issues.

effective to do so. Further, these rule amendments impose no additional burden or requirements on IBs and, thus, should not have a significant economic impact on a substantial number of IBs.

B. Paperwork Reduction Act

When publishing final rules, the Paperwork Reduction Act of 1995 (Pub. L. 104–13 (May 13, 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. There is no burden associated with the rule amendments to Rule 1.55 or Rule 1.65. While these rule amendments have no burden, the group of rules (3038–0024) of which these rules are a part has the following burden:

Average burden hours per response: 128
Number of Respondents: 3,148
Frequency of response: 36

Three OMB approved collections are affected by the adoption of these rule amendments. In compliance with the Act, this final rule informs the public of:

(1) The reasons the information is planned to be and/or has been collected; (2) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency; (3) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden); (4) whether responses to the collection of information are voluntary, required to obtain or retain a benefit or mandatory; (5) the nature and extent of confidentiality to be provided, if any; and (6) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Commission previously submitted these rule amendments in proposed form and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the associated information collection on January 6, 1998.

3038–0007—Regulation of Domestic Exchange-Traded Commodity Options. The burden associated with collection 3038–0007, including these final rule amendments, is as follows:

Average burden hours per response: 50.57
Number of Respondents: 190,422
Frequency of response: 1,111

The burden associated with Rule 33.7 is as follows:

Average burden hours per response: 0.08
Number of Respondents: 175
Frequency of response: 115

3038–0021—Regulations Governing Bankruptcies of Commodity Brokers. The burden associated with collection 3038–0021, including these final rule amendments, is as follows:

Average burden hours per response: 0.35
Number of Respondents: 472
Frequency of response: 34

The burden associated with Rule 190.10(c) is as follows:

Average burden hours per response: 0.05
Number of Respondents: 235
Frequency of response: 8

3038–0035—Rules Relating to the Offer and Sale of Foreign Futures and Options. The burden associated with collection 3038–0035, including these final rule amendments, is as follows:

Average burden hours per response: 15.70
Number of Respondents: 2,832
Frequency of response: 48

The burden associated with Rule 30.6 is as follows:

Average burden hours per response: 0.60
Number of Respondents: 360
Frequency of response: 4

Persons wishing to comment on the information which would be required by these amended rules should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, N.W., Washington, DC 20581, (202) 418–5160.

List of Subjects

17 CFR Part 1

Customer protection, Risk disclosure statements, Commodity futures.

17 CFR Part 30

Foreign futures and options transactions, Customer protection, Risk disclosure statements.

17 CFR Part 33

Domestic exchange-traded commodity options transactions.

17 CFR Part 190

Bankruptcy.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and in particular sections 2(a)(1), 4b, 4c, 4d, 4f, 4g and 8a of the Act, as amended, 7 U.S.C. 2, 6b, 6c, 6f, 6g and 12a, the Commission hereby amends Chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, 24.

2. Section 1.55 is amended by revising paragraph (a)(1), by removing paragraph (a)(1)(iii), by redesignating paragraph (f) as paragraph (g), and by adding new paragraph (f) to read as follows:

§ 1.55 Distribution of "Risk Disclosure Statement" by futures commission merchants and introducing brokers.

(a)(1) Except as provided in § 1.65, no futures commission merchant, or in the case of an introduced account no introducing broker, may open a commodity futures account for a customer, other than for a customer specified in paragraph (f) of this section, unless the futures commission merchant or introducing broker first:

* * * * *

(f) A futures commission merchant or, in the case of an introduced account an introducing broker, may open a commodity futures account for a customer without furnishing such customer the disclosure statements or obtaining the acknowledgments required under paragraph (a) of this section, § 1.65(a)(13), and § 30.6(a), § 33.7(a), and § 190.10(c) of this chapter, provided that the customer is, at the time at which the account is opened:

(1) A bank or trust company;

(2) A savings association or credit union;

(3) An insurance company;

(4) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a–1, *et seq.*) or a foreign entity performing a similar role or function subject as such to foreign regulations, provided that such investment company has total assets exceeding $5,000,000;

(5) A pool operated by a commodity pool operator registered under the Commodity Exchange Act or exempt such registration or by a foreign person performing a similar function to that of a commodity pool operator and subject as such to foreign regulation;

(6) A corporation, partnership, proprietorship, organization, trust, or other entity:

(i) which has total assets exceeding $10,000,000; or

(ii) which has a net worth of $1,000,000;

(7) An employee benefit plan subject to the Employee Retirement Income Security Act of 1974, or a foreign person performing a similar role or function and subject as such to foreign regulation, with total assets exceeding $5,000,000 or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1, *et seq.*), or a commodity trading advisor subject to regulation under the Commodity Exchange Act;

(8) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf: *provided, however,* that if such broker-dealer is a natural person or proprietorship, the broker-dealer must also meet the requirements of paragraphs (f)(6) or (f)(10) of this section;

(9) A futures commission merchant, floor brokers, or floor traders subject to regulation under the Commodity Exchange Act or a foreign person performing a similar role or function subject as such to foreign regulation; or

(10) Any natural person with total assets exceeding $10,000,000.

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3. Section 1.65 is amended by redesignating paragraph (a)(3)(ii) as (a)(3)(iii) and adding new paragraph (a)(3)(ii) to read as follows:

§ 1.65 Notice of bulk transfers and disclosure obligations to customers.

(a) * * *

(3) * * *

(ii) As to customers for which the transferee futures commission merchant or introducing broker has clear evidence that such customer was at the time the account was opened by the transferring futures commission merchant or introducing broker, or is at the time the account is being transferred, a customer listed in § 1.55(f); or

* * * * *

PART 30—FOREIGN FUTURES OR FOREIGN OPTIONS TRANSACTIONS

4. The authority citation for part 30 continues to read:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

5. Section 30.6 is amended by revising paragraph (a) to read as follows:

§ 30.6 Disclosure.

(a) *Future commission merchants and introducing brokers.* Except as provided in § 1.65 of this chapter, no futures commission merchant, or in the case of an introduced account no introducing broker, may open a foreign futures or option account for a foreign futures or option customer, other than for a customer specified in § 1.55(f) of this chapter, unless the futures commission merchant or introducing broker first furnishes the customer with a separate written disclosure statement containing only the language set forth in § 1.55(b) of this chapter or as otherwise approved under § 155(c) of this chapter (except for nonsubstantive additions such as captions), which has been acknowledged in accordance with § 1.55 of this chapter: *Provided, however,* that the risk disclosure statement may be attached to other documents as the cover page or the first page of such documents and as the only material on such page.

* * * * *

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

6. The authority citation for part 33 continues to read:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6a, 6b, 6c,6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 12c, 13a, 13a–1, 13b, 19, and 21, unless otherwise noted.

7. Section 33.7 is amended by revising paragraph (a)(1) introductory text, to read as follows:

§ 33.7 Disclosure.

(a)(1) Except as provided in § 1.65 of this chapter, no futures commission merchant, or in the case of an introduced account no introducing broker, may open or cause the opening of a commodity option account for an option customer, other than for a customer specified in § 1.55(f) of this chapter, unless the futures commission merchant or introducing broker first:

* * * * *

PART 190—BANKRUPTCY

8. The authority citation for Part 190 continues to read:

Authority: 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7a, 12, 19, and 24, and 11 U.S.C. 362, 546, 548, 556 and 761–766, unless otherwise noted.

9. Section 190.10 is amended by revising paragraph (c)(1) to read as follows:

§ 190.10 General.

* * * * *

(c) *Disclosure statement for non-cash margin.* (1) Except as provided in § 1.65 of this chapter, no commodity broker (other than a clearing organization) may accept property other than cash from or for the account of a customer, other than a customer specified in § 1.55(f) of this chapter, to margin, guarantee, or secure a commodity contract unless the commodity broker first furnishes the customer with the disclosure statement set forth in paragraph (c)(2) of this section in boldface print in at least 10 point type which may be provided as either a separate, written document or incorporated into the customer agreement, or with another statement approved under § 1.55(c) of this chapter and set forth in appendix A to § 1.55 which the Commission finds satisfies this requirement.

* * * * *

Issued in Washington, DC on February 13, 1998 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–4258 Filed 2–19–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 96F–0477]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyamide/polyether block copolymers prepared by reacting a copolymer of *omega*-laurolactam and adipic acid with poly(tetramethylene ether glycol) for use in the manufacture of rubber articles intended for repeated use in contact with food. This action responds to a petition filed by Elf Atochem North America, Inc.

DATES: The regulation is effective February 20, 1998. Submit written objections and request for a hearing by March 23, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–

216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 12, 1996 (61 FR 65405), FDA announced that a food additive petition (FAP 7B4528) had been filed by Elf Atochem North America, Inc., 2000 Market St., Philadelphia, PA 19103–3222 . The petition proposed to amend the food additive regulations in § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) to provide for the safe use of polyamide/polyether block copolymers prepared by reacting a copolymer of *omega*-laurolactam and adipic acid with poly(tetramethylene ether glycol) for use in the manufacture of rubber articles intended for repeated use in contact with food.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and that therefore, (3) the regulations in § 177.2600 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before March 23, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 177.2600 is amended in paragraph (c)(4)(i) by alphabetically adding a new entry to read as follows:

§ 177.2600 Rubber articles intended for repeated use.

* * * * *

(c) * * *

(4) * * *

(i) * * *

Polyamide/polyether block copolymers (CAS Reg. No. 77402–38–1 prepared by reacting a copolymer of *omega*-laurolactam and adipic acid with poly(tetramethylene ether glycol). The polyamide and polyether components are reacted in ratios such that the polyamide component constitutes a minimum of 30 weight-percent of total polymer units. The copolymers may be used in contact with foods of Types I, II, III, IV, V, VI, VII, VIII, and IX identified in Table 1 of § 176.170(c) of this chapter at temperatures not to exceed 150 °F except that those copolymers prepared with less than 50 weight-percent of polyamide are limited to use in contact with such foods at temperatures not to exceed 100 °F.

* * * * *

Dated: February 6, 1998.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–4310 Filed 2–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. 96F–0410]

Food Additives Permitted in Feed and Drinking Water of Animals; Sodium Stearate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additives regulations to provide for the safe use of sodium stearate as an anticaking agent in animal feeds. This action is in response to a food additive petition (animal use) filed by Betty J. Pendleton, Chesterfield, MO.

DATES: Effective February 20, 1998; written objections and requests for a hearing by March 23, 1998.

ADDRESSES: Submit written objections and requests for a hearing to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John P. Honstead, Center for Veterinary Medicine (HFV–222), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1728.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 6, 1996 (61 FR 64754), FDA announced that a food additive petition (animal use) (FAP 2236) had been filed by Betty J. Pendleton, 15505 Country Ridge Dr., Chesterfield, MO 63017. The petition proposed that the regulations in § 573.280 *Feed-grade calcium stearate* (21 CFR 573.280) be amended to provide for the safe use of sodium stearate as an anticaking agent in animal feeds. The notice of filing provided for a 60-day comment period. No comments have been received.

FDA has evaluated data in the petition and other relevant material. FDA concludes that the proposed food additive use of sodium stearate as an

anticaking agent for animal feeds is safe when used in accordance with current good manufacturing practices.

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Veterinary Medicine by appointment with the information contact person listed above. As provided in 21 CFR 571.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before March 23, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Veterinary Medicine, 21 CFR part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

1. The authority citation for 21 CFR part 573 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

2. Section 573.280 is revised to read as follows:

§ 573.280 Feed-grade calcium stearate and sodium stearate.

Feed-grade calcium stearate and sodium stearate may be safely used in an animal feed in accordance with the following prescribed conditions:

(a) Feed-grade calcium stearate and sodium stearate are the calcium or sodium salts of a fatty acid mixture that is predominately stearic acid. Associated fatty acids, including palmitic acid and minor amounts of lauric, myristic, pentadecanoic, margaric, arachidic, and other fatty acids may be contained in the mixture, but such associated fatty acids in aggregate do not exceed 35 percent by weight of the mixture. The fatty acids may be derived from feed-grade fats or oils.

(b) The additives meet the following specifications:

(1) Unsaponifiable matter does not exceed 2 percent.

(2) They are free of chick-edema factor.

(c) The additives are manufactured so that in aqueous solution they are exposed for 1 hour or longer to temperature in excess of 180 °F.

(d) They are used as anticaking agents in animal feeds in accordance with current good manufacturing practices.

Dated: January 30, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–4223 Filed 2-19-98; 8:45 am]

BILLING CODE 4160-01-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI58–01–7266; FRL–5967–3]

Approval and Promulgation of State Implementation Plans; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rulemaking finalizes the United States Environmental Protection Agency's (USEPA) disapproval of the State Implementation Plan (SIP) revision submitted by Michigan containing start-up, shutdown and malfunction (SSM) regulations which would apply generally to sources covered under the applicable SIP. This action is being taken under section 110 of the Clean Air Act (Act).

DATES: This final rule is effective March 23, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–1767.

SUPPLEMENTARY INFORMATION:

I. Background

On March 20, 1997 (62 FR 13357), the USEPA published a document proposing disapproval of a SIP revision containing Rules 336.1912, 336.1913 and 336.1914, which was submitted by the Michigan Department of Environmental Quality (MDEQ) on May 16 1996. Rule 336.1912 requires that a source be operated in a manner consistent with good air pollution control practices for minimizing emissions during start-ups, shutdowns and malfunctions, and contains notice and reporting requirements in the event of start-up, shutdown or malfunction. Rules 336.1913 and 336.1914 excuse excess emissions resulting from start-ups, shutdowns or malfunctions, providing that the notice and reporting requirements in Rule 336.1912 are met. The rationale for USEPA's proposed action is explained in the notice of proposed rulemaking and will not be restated here.

II. Public Comments/Response to Comments

This section summarizes the comments submitted during the public comment period for the notice of proposed rulemaking and provides USEPA's response to those comments. The comment period closed April 21, 1997. Adverse comments were received from the Michigan Department of

Environmental Quality, the Michigan Chamber of Commerce, the Michigan Manufacturers Association, General Motors Corporation and the American Automobile Manufacturers Association.

Comment: USEPA's proposed disapproval is not supported by section 110 of the Clean Air Act (CAA). There is no specific language in section 110 that provides the USEPA with the authority to disapprove Michigan's SSM rules. Section 110 contains no provisions that prohibit the type of exemption and affirmative defense contained in the SSM rules.

Response: It is true that section 110 does not explicitly address SSM regulations. However, under section 110 of the Act, USEPA is required to determine whether a SIP submission, *inter alia*, provides for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). Because SIPs are developed to attain and maintain ambient-based standards, any emissions above the SIP-approved limits may cause or contribute to violations of the NAAQS. USEPA believes that SSM regulations which are too broadly drawn can threaten attainment and maintenance of the NAAQS. Therefore, EPA believes that it is reasonable to interpret section 110 to prohibit generally applicable SSM provisions.

In addition, § 110(a)(2)(A) of the Act requires that SIP submissions contain enforceable limitations. Enforceability deficiencies, i.e., overly broad bypass provisions and definitions of "malfunction," are discussed further below. (See USEPA's response to the comment that Michigan's SSM rules are consistent with the 1983 memorandum from Kathleen Bennett.)

Comment: Because CAA regulations, e.g., 40 CFR part 63, already allow for protection which is broader than that proposed in the Michigan rules, the USEPA is without authority to proclaim that enforcement discretion is the only avenue for an SSM process to proceed. It is illogical to argue that Michigan's SSM rules do not comply with the CAA when CAA regulations provide for at least as broad protection against enforcement.

Response: The statutory and regulatory focus of NESHAPS (and NSPS) is fundamentally different from the SIP program and different policies apply, i.e., technology-based standards as opposed to the air quality objectives of section 110. The Bennett memoranda recognize that the attainment and maintenance of the NAAQS cannot be assured with overly-broad SSM provisions. EPA continues to believe that the health-based objective of SIPs make general SSM provisions unacceptable, even though such provisions may be appropriate for technology-based standards such as NESHAP and NSPS.

Comment: There is a substantive difference between the position set forth in the Bennett memoranda and the protections afforded by both 40 CFR 63 and the Michigan SSM rules. The promulgated Federal and State rules provide that there is no violation if the requirements of the rules are met. In contrast, the USEPA's memoranda position provides that there is a substantive violation of the CAA which then becomes subject to its enforcement discretion.

Response: The USEPA acknowledges that the Bennett memoranda recognize all periods of excess emissions as violations of the applicable SIP standard whereas periods of excess emissions occurring during start-ups, shutdowns or malfunctions may be excused under 40 CFR part 63 for NESHAPS. For the reasons discussed in response to the previous comment, USEPA believes that this is a reasonable distinction.

Comment: The USEPA misconstrues its authority under section 110 of the CAA. The United States Court of Appeals for the District of Columbia Circuit recently affirmed that the USEPA is not authorized under section 110 to dictate to states the methods to be used to achieve and maintain compliance with the National Ambient Air Quality Standards (NAAQS). Rather the D.C. Circuit recognized the relationship between the states and USEPA as one in which the states determine how best to regulate emission sources to achieve and maintain compliance with the NAAQS while USEPA is limited to determining whether each state's program will achieve the required air quality standards.

In promulgating the SSM statutory provisions and corresponding regulations, Michigan has exercised its power to "determine which sources would be burdened by regulations and to what extent." Provided that attainment and maintenance of the NAAQS is the result of Michigan's overall implementation plan, the USEPA is not authorized, under section 110, to reject portions of Michigan's SIP that differ from the USEPA's enforcement policy.

Response: USEPA agrees that the CAA places primary responsibility upon the states to formulate requirements it deems appropriate to protect air quality. However, the CAA does not grant states unfettered discretion. Rather, the CAA and USEPA policy form a framework which states must work within when developing SIPs. (Some programs and requirements are expressly set forth in the CAA, e.g. inspection and maintenance, reasonably available control technology.) Furthermore, the Act charges USEPA with the determination as to whether the state's choices will result in attainment and maintenance of the NAAQS. For the reasons previously discussed, USEPA believes that the effect of Michigan's SSM regulations is to create uncertainty as to whether this statutory goal can be accomplished. In addition, § 110(a)(2)(A) of the Act requires that SIP submissions contain enforceable limitations. Enforceability deficiencies, i.e., overly broad bypass provisions and definitions of "malfunction," are discussed further below. (See USEPA's response below to the comment that Michigan's SSM rules are consistent with the 1983 memorandum from Kathleen Bennett.)

Comment: Inconsistency with USEPA policy is not a valid reason for disapproval of a State Implementation Plan (SIP) revision. There is no reference to the Bennett memoranda, or any other policy, in section 110 of the CAA. Therefore, it is inappropriate to base the disapproval of Michigan's SSM rules on such policy memoranda. Statutory authority, and not policy memoranda, should be the basis for the disapproval.

Response: As noted previously, it is appropriate for USEPA to clarify regulations and statutes with written policies and guidance documents. In the context of rulemakings on SIP submissions, the public has an opportunity to comment and respond to USEPA's policies that interpret the relevant statutes and regulations. Through rulemaking actions, such as this, USEPA can determine whether to modify its policy or whether it still stands by its policy interpretation in light of any public comments. In this case, USEPA continues to support the policy established by the Bennet memoranda for the reasons stated in those memoranda and in this rulemaking action.

Comment: EPA's disapproval of Michigan's regulations, based on internal policy memoranda, is groundless. The SSM rules are the result of a publicly conducted work group, and were promulgated in accordance with all applicable State laws. The rationale offered by USEPA is not the result of a lawfully conducted notice and comment rulemaking process, nor does it cite any specific portion of any rule or statute with which the SSM rules are inconsistent. The substantive rights

of the regulated community are affected by the enforcement discretion interpretation contained in the Bennett memoranda. Therefore, rulemaking is required in order for the interpretation contained in the policy memoranda to be enforceable.

Response: Policy documents generally interpret the statute and do not establish binding requirements. Therefore, they are not subject to notice and comment rulemaking. As discussed above, rulemaking such as this provides the public with an opportunity to comment and to question USEPA's policy interpretations. If a sufficient basis had been provided for USEPA to revise or deviate from its policy, the Agency would do so. However, the comments submitted have not persuaded the Agency to change the existing policy, nor its application with respect to the Michigan SSM rule.

Comment: The enforcement discretion approach is insufficient following recent statutory and program changes. Title V of the CAA requires that the Responsible Official certify, under penalty of imprisonment, all data as truthful, accurate, and complete and requires periodic submittal of certifications by the Responsible Official detailing the compliance status of each facility. Thus, the Responsible Official for each Title V source has a duty to disclose any noncompliance with any applicable regulation. In addition, the 1990 Amendments provided enhanced criminal penalty provisions and revised the citizen suit provisions, increasing the likelihood of CAA enforcement actions. If an owner or operator of a source has knowledge that a process during startup or shutdown would possibly violate an emission limitation and proceeds to startup or shutdown the process, that knowledge could satisfy the intent requirement for a criminal prosecution. In many cases, compliance with applicable regulations during startup, shutdown, or malfunctions is technically or economically impossible. The SSM regulations contained in Michigan's SIP provide owners and operators of facilities with the appropriate protection against prosecution for startup problems of older facilities.

The enforcement discretion approach asks the regulated industry to rely on the exercise of discretion by both state and federal agencies. In addition, if such dual discretion does occur, nothing prevents citizens from pursuing a civil action to impose penalties on the source for the emission violations. Because of the enhanced federal and state statutes, the creation of criminal liability, and the lack of protection from citizen suits, a reliance on enforcement discretion is insufficient.

Response: With respect to start-up and shutdown situations, it is USEPA's general policy, as set forth in the Bennett memoranda, that: "Startup and shutdown of process equipment are part of the normal operation of a source and should be accounted for in the planning, design and implementation of operating procedures for the process and control equipment. Accordingly, it is reasonable to expect that careful and prudent planning and design will eliminate violations of emission limitations during such periods." If there are circumstances where a source cannot comply with the SIP during start-up, shutdown or maintenance situations despite careful and prudent planning and design, the State should address these particular problems in development of (or revision to) the underlying rules applicable to those sources and not through overarching excess emissions provisions. (Any revision made to the state's rules to address these concerns must be submitted to USEPA as a SIP revision request.)

USEPA is cognizant of the various remedies under the Clean Air Act for SIP violations, including those available under the criminal suit provisions of Section 113(c). It should be noted, however, that no criminal action may be brought under that section unless a person knowingly violates the applicable requirement "* * * more than 30 days after having been notified * * * that such person is violating such requirement or prohibition* * *." Thus, the scenario envisioned by the commentor is not realistic, unless appropriate notice is given and the violations continue. As discussed earlier, where there is such a likelihood of continuing violation, sources should seek relief through the SIP revision process.

USEPA also believes that the commentor's concern about the perceived inadequacy of an enforcement discretion approach is misplaced. The CAA has long provided for enforcement of SIP violations. Moreover, the revisions to enforcement provisions in 1990 were not intended to impact substantive regulations. Rather they were included with the recognition that the CAA has, at times, been difficult to enforce. USEPA further notes that reliance on the judicial system and courts' equitable discretion provides further protection.

Comment: Michigan's SSM provisions are consistent with the February 15, 1983 memorandum from Kathleen M. Bennett, Assistant Administrator for Air, Noise and Radiation to the Regional Administrators entitled "Policy on Excess Emissions During Startup, Shutdown, Maintenance and Malfunctions." The SSM rules contain all of the criteria required to be considered by the regulator in determining whether enforcement action or discretion is warranted.

Response: The criteria referenced above are to be considered when determining whether to exercise enforcement discretion for periods of excess emissions caused by a malfunction, not to excuse those emissions. As discussed previously, because SIPs protect ambient-based standards, any emissions above the allowable may cause or contribute to violations of the NAAQS, and therefore cannot be excused. State and federal agencies (and citizens) need to be able to seek relief where public health may be threatened by periods of excess emissions.

Furthermore, the criteria referenced above apply only in the case of malfunctions. They do not apply to periods of excess emissions caused by startup, shutdown or maintenance (unless the excess is attributable to a malfunction occurring during those times). Start-up and shutdown of process equipment are part of the normal operation of a source and should be accounted for in the design and implementation of the operating procedure for the process and control equipment. Accordingly, it is reasonable to expect that, in most cases, careful planning will eliminate violations of emission limitations during such periods.

Moreover, even if USEPA did determine that the state could excuse these emissions, there remain issues which make the rules unapprovable. The definitions of "malfunction," contained in 324.5509(1), part 55 of the Michigan Natural Resources and Environmental Protection Act and R 336.1113(d), Michigan administrative code, do not limit malfunctions to failures that are "infrequent" and "not reasonably preventable," and are therefore too broad. [See e.g. 40 CFR 60.2] Frequent or reasonably preventable excess emissions would tend to indicate an underlying problem with the design, operating procedures or maintenance of a source and therefore should not be considered a malfunction. The State's bypass provisions in SIP R 336.1913(3)(b) and R 336.1914(4)(b) are also too broad. USEPA policy regarding bypass states that "* * * if effluent gasses are bypassed which cause an emission limitation to be exceeded, this excess need not be treated as a violation

if the source can show that the excesses could not have been prevented through careful and prudent planning and design and that bypassing was unavoidable to prevent loss of life, personal injury or severe property damage." [Memorandum dated February 15, 1983, from Kathleen M. Bennett, Assistant Administrator for Air, Noise and Radiation entitled "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions"]. The USEPA continues to believe that this is a necessary policy, and that the bypass provisions contained in the State's rule are inadequate for the reasons stated in that policy.

In addition, the alternate emission limitations for startups and shutdowns in R 336.1914(4)(d) could (impermissibly) allow relaxations of Act requirements, including NSR limitations, New Source Performance Standards, toxics requirements (NESHAP, MACT), etc. Finally, the State SSM regulations provide no authority for MDEQ to review and require revisions to a source's written emission minimization plan for normal or usual startups and shutdowns. Such authority is necessary to ensure that operating practices for startups and shutdowns meet good engineering practice for minimizing emissions, similar to the authority R 336.1911 currently provides for State review and revision of written preventative maintenance and malfunction abatement plans.

Comment: The USEPA's position is not consistent with existing, long-standing regulations, and not consistent with its own rulemakings in other state's SIPs. Unless the USEPA intends to rescind 40 CFR 63 and other state SIPS as being inconsistent with the CAA, and then propose a general rule consistent with its internal memoranda, the USEPA's argument that Michigan's SSM rules do not comply with the CAA is without merit.

Response: As previously discussed, the difference in approach between the technology-based NESHAP rules and air quality-based SIP rules merits the different treatment for provisions concerning SSM excess emissions. With regard to the suggestion that USEPA's action on the Michigan submission is somehow inconsistent with its action(s) with other state submission, without additional information on which state(s) the commentor is referencing, USEPA cannot reasonably respond to this comment. However, as noted previously, USEPA continues to support the policy established by the Bennett memoranda for the reasons stated in those memoranda and in this rulemaking action. It should nonetheless be noted that, even if the commentor had identified such an inconsistent action, USEPA would not be precluded from disapproving Michigan's SSM submission. *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 121 F. 3d 106 (3d Cir. 1997).

Comment: The USEPA does not identify any deficiencies with Rule 912. Therefore, Rule 912 should be approved as part of the SIP.

Response: USEPA acknowledges that it did not cite any deficiencies for Rule 912 in its notice of proposed rulemaking. However, USEPA believes that when Rule 912 was adopted by Michigan, it was promulgated as an integral part of the SSM regulations; i.e., the protection granted in Rules 913 and 914 is contingent on meeting the operating, notification and reporting requirements in Rule 912. In this case, approving Rule 912 while disapproving Rules 913 and 914 would result in establishing operating, notification and reporting requirements for sources without granting the protection to them contemplated by the companion rules. Under existing case law, USEPA may not partially approve a state SIP submission if such action will result in the approved rules being more stringent than was intended by the state when they were adopted. See *Bethlehem Steel Corp.* v. *Gorsuch,* 742 F. 2d 1028 (7th Cor. 1984); *Indiana and Michigan Elec. Co.* v. *U.S.E.P.A.,* 733 F. 2d 489 (7th Cir. 1984).

III. Final Rulemaking Action

To determine the approvability of a rule, USEPA must evaluate the rule for consistency with the requirements of the Act, USEPA regulations and the USEPA's interpretation of these requirements as expressed in USEPA policy guidance documents. While USEPA understands the concerns raised by the commentors, rules 913 and 914 remain inconsistent with the Act and the applicable policies by which USEPA must evaluate submittals. Therefore, in today's action, USEPA is finalizing the disapproval proposed on March 20, 1997.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. §§ 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

USEPA's disapproval of the State request under Section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state enforceability. Moreover, USEPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, USEPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the disapproval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal disapproval action imposes no new requirements. Accordingly, no additional costs to

State, local, or tribal governments, or to the private sector, result. No new Federal requirements are imposed. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Small Business Regulatory Enforcement Fairness Act

The Congressional Review Act, 5 U.S.C. § 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. USEPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 21, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

V. List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. § 7401 *et seq.*

Dated: January 30, 1998.

David A. Ullrich,

Acting Regional Administrator, Region V.

[FR Doc. 98–4003 Filed 2–19–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 157

[OPP–250125; FRL–5764–3]

Termite Insecticide Bait Stations; Exemption From Adult Portion of Child-Resistant Testing Specifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Exemption Order.

SUMMARY: This Order grants a 5–year exemption from the senior-adult test and younger-adult test effectiveness specifications, described in 16 CFR 1700.15(b)(2) (Ease of adult opening), for prefilled, nonrefillable termite insecticide bait stations not designed or intended to be opened or activated in a manner that exposes the contents to human contact. Products qualifying for this exemption must still fully comply with all other child-resistant packaging (CRP) effectiveness, compatibility, and durability standards, as well as all other requirements of 40 CFR part 157. CRP certification for products relying on this exemption must specify that the package does not comply with the senior and younger adult effectiveness specifications per this exemption. This exemption was requested by Griffin Corporation and FMC APG Specialty Products, who suggested that a package that does not require opening or activation to put into use should not require adult ease of opening testing.

DATES: This exemption Order becomes effective on February 20, 1998 and expires on February 20, 2003.

FOR FURTHER INFORMATION CONTACT: Rosalind L. Gross, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone number: (703) 308–7368, e-mail: gross.rosalind@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Griffin Corporation and FMC APG Specialty Products requested an exemption from the senior-adult test and younger-adult test effectiveness specifications, described in 16 CFR 1700.15(b)(2) (Ease of adult opening), for prefilled, nonrefillable termite insecticide bait stations that are not designed or intended to be opened or activated in a manner that exposes the contents to human contact.

I. Background

FIFRA 25(c)(3) requires EPA's CRP standards to be consistent with those of the Consumer Product Safety Commission (CPSC). EPA's CRP regulations at 40 CFR 157.32 require that CRP for pesticides meet the CPSC packaging standards (effectiveness specifications) and testing procedures set forth in 16 CFR 1700.15(b) and 1700.20. The CPSC Poison Prevention Packaging Standards in 16 CFR 1700.15(b) provide that CRP, when tested by the method described in 16 CFR 1700.20, shall meet certain child-resistant test, senior-adult test, and younger-adult test effectiveness specifications. In 16 CFR 1700.15(b)(2), the senior-adult test and younger-adult test effectiveness specifications are discussed with reference to the senior-adult panel test of 16 CFR 1700.20(a)(3) and the younger-adult panel test of 16 CFR 1700.20(a)(4), respectively.

The EPA CRP regulations provide that exemptions from compliance may be requested on a case-by-case basis for specific products based on technical factors (40 CFR 157.24(b)(3)). The regulations further provide that any such exemption decision will be published in the **Federal Register**, will be for a specified length of time, and will be applicable to any product with substantially similar composition and intended uses.

II. Requested Grounds for Exemption

As support for the exemption request, Griffin Corporation and FMC APG Specialty Products advanced the following arguments:

The purpose of adult testing is to ensure that the package is not difficult for adults to use properly. If CRP is difficult for adults to open, the concern arises that the package may be disabled or left unsecured to eliminate the difficulty of reopening it. Under such circumstances the contents would be accessible to children. In the case of prefilled, nonrefillable termite insecticide bait stations not designed or intended to be opened, this concern does not arise. There is no risk that an adult will disable or fail to resecure a difficult to open package, because the packages need not be opened or activated in order to function properly. As there is no concern that an adult will disable or fail to resecure such a package, there is also no concern that the contents of disabled or unsecured packages will be accessible to children. Instead, from a child safety standpoint, the only relevant question regarding such packages is whether they can prevent a child from gaining access to the bait.

III. Agency Determination

The Agency has considered the Griffin Corporation and FMC APG Specialty Products exemption request

and the basis therefore and agrees that it is unnecessary to test the ability of a senior-adult or younger-adult to open and properly resecure a package not designed or intended to be opened or activated. No benefits in terms of improved child safety would be gained by such testing. Therefore, the Agency hereby grants a 5–year exemption Order from the senior-adult test and younger-adult test effectiveness specifications, described in 16 CFR 1700.15(b)(2) for prefilled, nonrefillable termite insecticide bait stations not designed or intended to be opened or activated in a manner that exposes the contents to human contact. The Agency has authority under 40 CFR 157.24(b)(3) to grant an exemption from any CRP requirement, including the testing requirements, based on technical considerations.

IV. Exemption

A 5–year exemption is granted from the senior-adult test and younger-adult test effectiveness specifications, described in 16 CFR 1700.15(b)(2), for prefilled, nonrefillable termite insecticide bait stations not designed or intended to be opened or activated in a manner that exposes the contents to human contact. Products that qualify for this exemption must fully comply with all other CRP effectiveness, compatibility, and durability standards as well as all other requirements of 40 CFR part 157. CRP certification for products relying on this exemption must specify that the package does not comply with the senior and younger adult effectiveness specifications per this exemption. This exemption becomes effective on February 20, 1998 and expires on February 20, 2003.

V. Regulatory Assessment Requirements

This exemption Order does not impose any requirements. As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4), Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

VI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3).

List of Subjects

Administrative practice and procedure, Infants and children, Packaging and containers, Pesticides and pest, Reporting and recordkeeping requirements.

Dated: February 9, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–4186 Filed 2-19-98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[IB Docket No. 96–261; FCC 97–280]

International Settlement Rates

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission amended its rules to revise its international settlement benchmarks. Section 43.61(b) of these rules contained new and modified information collection requirements and became effective on January 23, 1998.

EFFECTIVE DATE: The amendment to 47 CFR § 43.61(b) published at 62 FR 45758, August 29, 1997, became effective on January 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathryn O'Brien, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION: On August 7, 1997, the Commission adopted an order revising its international settlement rate benchmarks, a summary of which was published in the **Federal Register**. See 62 FR 45758, August 29, 1997. Section 43.61(b) of the Commission's rules imposed new or modified information collection requirements. We stated that "the information collection requirements adopted in this Order will become effective following Office of Management and Budget (OMB) approval. The Commission will publish a document at a later date establishing the effective date." The information collections were approved by OMB on January 23, 1998. See OMB No. 3060–0106. This publication satisfies our statement that the Commission would publish a document announcing the effective date of the rules.

List of Subjects in 47 CFR Part 43

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–4329 Filed 2–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–116, RM–8507, RM–8587]

Radio Broadcasting Services; Jefferson City, Cumberland Gap, Elizabethton, TN, and Jonesville, VA

AGENCY: Federal Communications Commission.

ACTION Final rule.

SUMMARY: This document denies a Petition for Reconsideration filed by Eaton P. Govan, III and Berton B. Cagle directed to the *Report and Order* in this proceeding. The *Report and Order* denied their proposals for a reallotment of a channel from Jefferson City to Cumberland Gap, Tennessee, and an upgrade at Elizabethton. Instead, the *Report and Order* allotted Channel 256A to Jonesville, Virginia. *See* 60 FR 57368, published November 15, 1995. With this action the proceeding is terminated.

EFFECTIVE DATE: February 20, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 94–116, adopted January 21, 1998, and released January 30, 1998. The full text of this decision is available for inspection and copying during normal business hours in the

FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3805, 1231 M Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

Federal Communications Commission.

Charles W. Logan,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–4224 Filed 2–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–202; RM–8879, RM–8963, RM–8964]

Radio Broadcasting Services; Mount Vernon, Stanford and Brodhead, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Rock Communications of Mount Vernon, allots Channel 270A at Brodhead, Kentucky, as the community's first local aural transmission service (RM–8879). *See* 61 FR 54142, October 17, 1996. Channel 270A can be allotted to Brodhead in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.2 kilometers (2.6 miles) southwest to avoid short-spacings to the licensed site of Station WLJC(FM), Channel 271A, Beattyville, Kentucky. The coordinates for Channel 270A at Brodhead are North Latitude 37–22–29 and West Longitude 84–26–41. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 30, 1998. A filing window for Channel 270A at Brodhead, Kentucky, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–202, adopted February 4, 1998, and released February 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by adding Brodhead, Channel 270A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–4330 Filed 2–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–224; RM–9177]

Radio Broadcasting Services; Monroe, UT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Charles D. Hall, allots Channel 257C2 to Monroe, Utah, as the community's first local aural transmission service. *See* 62 FR 61719, November 19, 1997. Channel 257C2 can be allotted to Monroe, Utah, in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.3 kilometers (0.8 miles) south of the community in order to avoid a short-spacing conflict with vacant Channel 256A at Levan, Utah. The coordinates for Channel 257C2 at Monroe are 38–37–21 NL and 112–07–29 WL. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 30, 1998. A filing window for Channel 257C2 at Monroe, Utah, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–224, adopted February 4, 1998, and released February 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Monroe, Channel 257C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–4336 Filed 2–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–230; RM–9185]

Radio Broadcasting Services; New Albany, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of George G. Callicut, allots Channel 268A to New Albany, Mississippi, as an additional FM service to the community. *See* 62 FR 61721, November 19, 1997. Channel 268A can be allotted to New Albany in compliance with the Commission's minimum distance separation

requirements with a site restriction of 5.5 kilometers (3.4 miles) northwest in order to avoid a short-spacing conflict with the licensed operation of Station WFTA–FM, Channel 270C2, Fulton, Mississippi. The coordinates for Channel 268A at New Albany are 34–31–14 NL and 89–03–03 WL. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 30, 1998. A filing window for Channel 268A at New Albany, Mississippi, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–230, adopted February 4, 1998, and released February 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Channel 268A at New Albany.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–4337 Filed 2–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–202; RM–9129]

Radio Broadcasting Services; Farmersburg, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 242A to Farmersburg, Indiana, as that community's first local aural transmission service in response to a petition filed on behalf of Farmersburg Community Broadcasting. *See* 62 FR 49190, September 19, 1997. Coordinates used for Channel 242A at Farmersburg are 39–15–18 and 87–23–00. With this action, the proceeding is terminated.

DATES: Effective March 30, 1998. A filing window for Channel 242A at Farmersburg, Indiana, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a separate Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–202, adopted February 4, 1998, and released February 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by adding Farmersburg, Channel 242A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–4335 Filed 2–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–117; RM–9009]

Radio Broadcasting Services; Wray and Otis, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a request by New Directions Media, Inc., licensee of Station KATR–FM, Wray, Colorado, this document substitutes Channel 252C1 for Channel 252C2 at Wray, reallots Channel 252C1 to Otis, Colorado, and modifies the license for Station KATR–FM accordingly, pursuant to the provisions of Sections 1.420(g) and (i) of the Commission's Rules. *See* 62 FR 22900, April 28, 1997. The allotment of Channel 252C1 to Otis will provide that community with its first local aural transmission facility without depriving Wray of local aural service, and enable Station KATR–FM to expand its service area. Coordinates used for Channel 252C1 at Otis are 40–08–54 and 102–57–48. With this action, the proceeding is terminated.

EFFECTIVE DATE: March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–117, adopted January 28, 1998, and released February 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado is amended by removing Channel 252C2 at Wray and adding Otis, Channel 252C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–4334 Filed 2–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–66; RM–8997]

Radio Broadcasting Services; Fredonia, Kentucky

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of JoeMyers Productions, Inc., allots Channel 221A at Fredonia, Kentucky, as the community's first local aural transmission service. *See* 62 FR 7981, February 21, 1997. Channel 221A can be allotted to Fredonia in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.2 kilometers (3.8 miles) northeast to avoid short-spacings to the licensed sites of Station WYNU(FM), Channel 222C, Milan, Tennessee, Station WBKR(FM), Channel 223C, Owensboro, Kentucky, and Station WMJL–FM, Channel 274A, Marion, Kentucky. The coordinates for Channel 221A at Fredonia are North Latitude 37–15–22 and West Longitude 88–01–49. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 23, 1998. A filing window for Channel 221A at Fredonia, Kentucky, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–66, adopted January 28, 1998, and released February 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by adding Fredonia, Channel 221A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–4333 Filed 2–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–50; RM–8995]

Radio Broadcasting Services; Ocean Shores, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Ryan Broadcasting Company, allots Channel 228A at Ocean Shores, Washington, as the community's first local aural transmission service. *See* 62 FR 6928, February 14, 1997. Channel 228A can be allotted to Ocean Shores in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 228A at Ocean Shores are North Latitude 46–57–47 and West Longitude 124–09–50. Since Ocean Shores is located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 30, 1998. A filing window for Channel 228A at Ocean Shores, Washington, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–50, adopted February 4, 1998, and released February 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Ocean Shores, Channel 228A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–4332 Filed 2–19–98; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 63, No. 34
Friday, February 20, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1755

RIN 0572–AB35

Special Equipment Contract (Including Installation)

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulation on RUS Telecommunications Standards and Specifications for Material, Equipment and Construction. This action codifies RUS Form 397, Special Equipment Contract (including installation) and announces a general revision of RUS Form 397. This contract incorporates amendments currently attached to the RUS Form 397, Special Equipment Contract, and updates contract terms and format.

DATES: Written comments must be received by RUS or carry a postmark or equivalent not later than April 21, 1998.

ADDRESSES: Submit written comments to Orren E. Cameron III, Director, Telecommunications Standards Division, Rural Utilities Service, US Department of Agriculture, STOP 1598, 1400 Independence Ave., SW, Washington, DC 20250–1598. RUS requires a signed original and three copies of all comments (7 CFR part 1700.30(e)). All comments received will be made available for public inspection at Room 4034, South Building, U.S. Department of Agriculture, Washington, DC, between 8:00 a.m. and 4:00 p.m. (7 CFR part 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Gary B. Allan, Chief, Transmission Branch, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, STOP 1598, 1400 Independence Ave., SW, Washington, DC 20250–1598, telephone number (202) 720–0665.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866, Regulatory Planning and Review, and, therefore has not been reviewed by the Office of Management and Budget (OMB).

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in Sec. 3. of the Executive Order.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS programs provide and finance grants and loans to RUS borrowers at interest rates and terms that are more favorable than those generally available form the private sector. RUS borrowers, as a result of obtaining Federal financing, receive economic benefits which ultimately offset any direct economic costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in the proposed rule were approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) under control number 0572–0059.

Send questions or comments regarding this burden or any aspect of these collections of information, including suggestions for reducing the burden to F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, US Department of Agriculture, STOP 1522, Washington, DC 20250–1422, FAX: (202) 720–1422.

Unfunded Mandates

This rule contains no Federal mandates for State, local, and tribal governments for the private section. Thus, this is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

National Environmental Policy Act Certification

RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.851, Rural Telephone Loans and Loan Guarantees; and No. 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Intergovernmental Review

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS and RTB loans and loan guarantees, and RTB bank loans, to governmental and nongovernmental entities from coverage under this Order.

Background

RUS has issued a series of 7 CFR chapter XVII parts which serve to implement the policies, procedures and requirements for administering its loan and loan guarantee programs and the loan documents and security instruments which provide for secure RUS financing. This revision to 7 CFR part 1755 codifies RUS Form 397, Special Equipment Contract (including installation). The 7 CFR part 1755 also describes where copies of the contract may be obtained. RUS telecommunications borrowers are required to use the RUS Form 397 when purchasing and installing special equipment financed with loan funds. Divestiture, competition, legislation and regulation changes have made the current RUS Form 397 outdated. Contract terms and obligations have been modified and updated to reflect

present business practices as well as changes in technology, services and equipment. The changes to the proposed RUS Form 397 include but are not limited to the following: sealed bid requirements; bid bond requirements; format for listing bid prices and alternatives; delivery and installation requirements; and particular undertakings of the bidder requirements.

List of Subjects in 7 CFR Part 1755

Loan programs-communications, Reporting and recordkeeping requirements, Rural areas, Telecommunications.

For the reasons set forth in the preamble, RUS proposes to amend chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

§ 1755.397 [Redesignated as § 1755.396]

2. Section 1755.397 is redesignated as § 1755.396.

3. Section 1755.397 is added to read as follows:

§ 1755.397 Form 397, special equipment contract (including installation).

The contract form in this section shall be used when purchasing and installing special equipment, which includes but is not limited to digital carrier equipment, fiber optic equipment and microwave equipment, financed with loan funds. The RUS Form 397, special equipment contract (including installation) follows:

Notice and Instructions to Bidders Special Equipment Project (Including Installation)

1. Sealed Proposals for the engineering, furnishing, delivery and installation of special telephone equipment, materials and software (hereinafter called the "Equipment") for the

_____

_____

(hereinafter called the "Owner") which is to be part of the system known as

_____

_____

to be financed pursuant to a loan contract between the Owner and the United States of America (hereinafter called the "Government") by the Administrator of the Rural Utilities Service (hereinafter called the "Administrator") will be received by the Owner on or before

_____o'clock, _____ .M., _____,

at _____

at which time and place the Proposals will be publicly opened and read. The Rural Telephone Bank may also be a party to the loan contract.

2. The Bid Documents, composed of plans, specifications and drawings (hereinafter called the "Specifications"), together with all necessary forms and other documents for Bidders, may be obtained from the Owner or from the Engineer, at the latter's office at

_____

_____

The Documents may be examined at the office of the Owner or at the office of the Engineer. A copy of the loan contract between the Owner and the Government may be examined at the office of the Owner.

Each set of Bid Documents will have a serial number, assigned by the Engineer, and the number of each set with the name of the Bidder will be recorded by the Engineer. Bids will be accepted only from original Bidders, or from some other qualified Bidder to whom such a set has been transferred by the original Bidder with the approval of the Engineer prior to the pre-bid technical session.

3. A pre-bid technical session will be held with each Bidder during the week of _____,

19 _____

at _____,

for the purpose of receiving the Bidder's Technical Proposal, discussing details of the Project(s), and considering suggestions from Bidders. The Owner shall attach to this Notice a list of the information required in the Bidder's Technical Proposal. Each Bidder will be given a specific time period for the pre-bid technical session. At the pre-bid technical session, the Bidder shall fully describe to the Owner any exceptions to the Specifications the Bidder may request. In addition, the Bidder shall identify all features and capabilities that are not fully developed or do not have a verifiable satisfactory field performance record. If the Owner decides to incorporate any changes into the Specifications, the Owner shall furnish all prospective Bidders a copy of the Specifications containing such revisions (the "Revised Specifications") and all Bids shall be made on the basis of the Revised Specifications. At this session, the Bidder shall identify all documentation and materials that it claims constitute agreed excluded documentation under Section (2)(xi) of the Software License Agreement, 7 CFR § 1753.38. The Bidder shall claim as agreed excluded documentation only those items it may be unable to provide to the Borrower as required by said Section (2)(xi). The Engineer shall immediately provide a list of all items so identified to the appropriate RUS office. The Engineer shall inform the Bidder at least _____days before the scheduled bid opening whether either the Engineer or RUS will reject the Bid because of items so identified. The Licensor, as defined in the Software License Agreement, shall agree that certain licensed software cannot be excluded from the requirements of said Section (2)(xi), including but not limited to software that would significantly impair the operation of the System, would significantly impair the ability of the Owner to generate revenue, or would, in the opinion of RUS, pose a risk to RUS loan security. If allowed, the agreed excluded documentation shall be individually identified in an attachment to the Bid. No bid shall be accepted from a Bidder who fails to attend the pre-bid technical session or fails to demonstrate to the Owner that its equipment meets the requirements of the Specifications.

4. Proposals shall be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder, the license number (if the State requires a license to bid on a project), and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be in ink or typewritten. No alterations or interlineations will be permitted, unless made, initialed, and dated before submission.

5. Prior to the submission of the Proposal, the Bidder shall make and shall be deemed to have made a careful examination of the Specifications, Bidder's Proposal and Acceptance, and Contractor's Bond attached hereto, and shall become informed as to the location and characteristics of the proposed equipment installations, the transportation facilities, the kind of facilities required before and during the delivery and installation of the equipment and materials, the general local conditions and all other matters that may affect the cost and the time of completion of the installations. Bidders will be required to comply with all applicable statutes, codes, and regulations, including those pertaining to the licensing of contractors and the "Anti Kick-Back Acts," as amended, (40

U.S.C. 276c; 41 U.S.C. 51 *et seq.*) and regulations issued pursuant thereto, and 18 U.S.C. 287, 874, 1001, as amended.

6. Each Proposal must be accompanied by a Bid Bond, RUS Form 307, or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum possible bid price. The maximum possible bid price is the sum of the total base bid, spare parts, maintenance tools and all positive amounts for alternatives. Each Bidder agrees that, if its Proposal is one of the three low Proposals, its Bid Bond or check shall be held by the Owner until a Proposal is accepted and a Contractor's Bond, when required, is furnished by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed ninety (90) days from the date hereinbefore set for the opening of Proposals whichever period shall be the shorter. If such Proposal is not one of the three low Proposals, the Bid Bond or check will be returned to the Bidder within a period of thirty (30) days.

7. The successful Bidder will be required to furnish to the Owner a Contractor's Bond in conformance with the requirements of 7 CFR Part 1788, Subpart C, Insurance for Contractors, Engineers, and Architects.

8. Should the successful Bidder fail or refuse to furnish a Contractor's Bond within thirty (30) days after written notification of the award of the Contract by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled to (a) enforce the Bid Bond in accordance with its terms, or (b) retain from the proceeds of the certified check the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Owner may in good faith contract with another party to construct the Project(s). The term "successful Bidder" shall be deemed to include any Bidder whose Proposal is accepted after another Bidder has previously refused or has been unable to execute the Contract or to furnish a Contractor's Bond.

9. If requested by the Owner or the Administrator, the Bidder shall furnish evidence, satisfactory to the Owner and the Administrator, that the Bidder has the necessary facilities, ability, and financial resources to perform the Contract.

10. The Contract, when executed, shall be deemed to include the entire agreement between the parties thereto and neither party shall claim any modification thereof resulting from any representation or promise made at any time by any officer, agent, or employee of the other or by any other person.

11. The Owner reserves the right to waive minor irregularities or minor errors in any Proposal, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal in which they occur prior to the execution of any Contract which may be awarded thereon. Failure to provide a Bid Bond or check as specified in item six (6) above is not a minor irregularity.

12. The Owner reserves the right to reject any or all Proposals.

13. Equal Opportunity and Employment.

(a) The Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

(b) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables	Goals for minority participation for each trade	Goals for female participation in each trade
	(Insert goals for each year.)	(Insert goals for each year.)

(i) These goals are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

(ii) The Contractor's compliance with Executive Order 11246 and the regulations in 41 CFR Part 60–4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60–4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women without discrimination on each of its projects. Transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246 and the regulations in 41 CFR part 60–4. Compliance with the goals will be measured against the total work hours performed.

(c) The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) working days of award of any construction subcontract in excess of ten thousand dollars ($10,000) at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

(d) As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is

_____

_____

(insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any.)

Note: Paragraph 13 is applicable to the extent required by law. If applicable, certain information needs to be inserted at subparagraphs (b) and (d). In determining whether and how this paragraph is applicable, reference should be made to the Department of Labor Office of Federal Contract Compliance Programs regulations (41 CFR Chapter 60.)

By _____
Owner

_____
Title

_____
Date

Bidder's Proposal to Engineer, Furnish, Deliver, and Install Equipment and Materials

(Proposal shall be submitted in ink or typewritten)

To: _____
(Hereinafter called the "Owner")

The undersigned (hereinafter called the "Bidder") hereby proposes to engineer, furnish, deliver, install, align and test the equipment, materials and software (hereinafter called the "Equipment") described in the plans, specifications and drawings (hereinafter called the "Specifications") prepared by the Owner and attached hereto and made a part hereof, financed by a loan to the Owner made or guaranteed by the United States of America, acting through the Administrator of the Rural Utilities Service (hereinafter called the "Administrator"), or by loans to the Owner by the United States of America and by the Rural Telephone Bank, and designated _____.

The Bidder has become informed as to the location and characteristics of the proposed Equipment and the facilities over which the Equipment is to perform, has become informed as to the kind of facilities required before and during the delivery and installation of the Equipment and has become acquainted with the labor conditions which would affect the work.

The Bidder agrees that if its bid is accepted the following terms and conditions shall govern.

If, in submitting this Proposal, the Bidder has taken any exception to the form of proposal furnished by the Owner, the Bidder understands that the Owner and the Administrator may evaluate the effect of such change as they see fit and they may exclude the Proposal from consideration in determining the award of the Contract.

Article I

Section 1. Bid Price. The Bidder will engineer, furnish, deliver, install, align and test the equipment, materials, and software described in the Specifications for the following sums:

(1) Location by exchange	(2) Equipment	(3) Cost	(4) Installation	(5) Base bid	Time in calender days		(8) Spare parts	(9) Item	(10) Maintenance tools
					(6) Delivery	(7) Completion of project			
		$	$	$			$	a	$
		$	$	$			$	b	$
		$	$	$			$	c	$
		$	$	$			$	d	$
		$	$	$			$	e	$
		$	$	$			$	f	$
		$	$	$			$	g	$
		$	$	$			$	h	$
		$	$	$			$	i	$
		$	$	$			$	j	$
Totals		$	$	XXXXXXX	XXXXXXX	XXXXXXX	$	XX	$
Total Base Bid				$	XXXXXXX	XXXXXXX	XXXXXXX	XX	XXXXXXX
Alternate No. 1		$	$	$			$	k	$
Alternate No. 2		$	$	$			$	l	$
Alternate No. 3		$	$	$			$	m	$
Alternate No. 4		$	$	$			$	n	$
Alternate No. 5		$	$	$			$	o	$
Alternate No. 6		$	$	$			$	p	$

Section 2. Acceptable Equipment. Unless otherwise specified by the Owner (and agreed to in advance in writing by RUS), the Bidder agrees to furnish under this Proposal only equipment which is currently included in the "List of Materials Acceptable for Use on Telecommunications Systems of RUS Borrowers", RUS Informational Publication 344–2. [Note: foreign manufactured products must be covered by a currently valid letter of technical acceptance issued by the Chairman, Committee "A" (Telecommunications)]. The Bidder agrees also to furnish only materials, equipment and software which are new and most recent issue and manufacture as of the date of the bid opening.

Section 3. Changes in Project. The Owner, with the approval of the Administrator, may from time to time during the performance of the Contract, make reasonable changes, additions to or subtractions from the Specifications which are part of the Proposal as conditions warrant. However, if substantial changes in the Project shall require an extension of time, a reasonable extension will be granted if the Bidder shall make a written request therefore to the Owner within thirty (30) days after any such change is made. Further, if the cost to the Bidder shall be increased or decreased by any such change or addition, the Contract price shall be increased or decreased by a reasonable amount in accordance with a contract amendment signed by the Owner and the Bidder and approved by the Administrator. No claim for additional compensation for any such change or add-on will be considered unless the Bidder shall have made a written request to the Owner prior to the commencement of work in connection with such change or addition. The Delivery or Completion of Project time in calendar days specified under Columns 6, "Delivery", and 7, "Completion of Project", in Article I, Section 1, can only be changed by a contract amendment approved by the Bidder, the Owner and RUS.

Section 4. Taxes. The bid prices herein set forth do not include any amounts payable by the Bidder or the Owner on account of taxes imposed by any taxing authority upon the sale, purchase or use of the Equipment to be incorporated in the Project(s). If any such tax is applicable to the sale, purchase or use of the Equipment thereunder, the amount thereof shall be stated separately on all invoices and paid by the Owner.

Article II

Delivery and Installation

Section 1. Time of Completion of Installation. The time of delivery of the

Equipment and of Completion of Project is of the essence of this Contract. The Bidder shall deliver the Equipment within the number of calendar days specified under Column 6, "Delivery", in Article I, Section 1, after the Administrator shall have approved this contract in writing and shall complete the installation of Equipment in accordance with the terms of this Contract and Specifications to the satisfaction of the Owner and the Administrator within the number of calendar days specified under Column 7, "Completion of Project", in Article I, Section 1. The time for such "Delivery" or "Completion of Project" shall be extended for the period of any reasonable delay due exclusively to causes beyond the control and without the fault of the Bidder, including, but not limited to, acts of God, fires, strikes, floods, changes in the Specifications as herein provided, and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible. However, no such extension of time shall be granted the Bidder unless within twenty (20) days, after Bidder becomes aware of the happening of any event relied upon by the Bidder for such an extension of time, the Bidder shall have made a request therefor in writing to the Owner. Further, no delay in such time for "Delivery", "Completion of Project", or in the progress of the work shall result in any liability on the part of the Owner, except that the Owner shall be responsible for and shall pay the Bidder on demand all additional, supportable costs and expenses incurred by the Bidder due to delays to the extent such delays are caused by the Owner's failure to perform its obligations under this Contract unless the Owner's failure to perform is caused by forces beyond its control.

Section 2. Supervision and Inspection. The Bidder shall give adequate supervision to the work at the site of the Project(s), using the Bidder's best skill and attention. The Bidder shall carefully study and compare all drawings, specifications, and other instructions and shall promptly report to the Owner any error, inconsistency or omission which Bidder may discover. The Bidder shall keep on the Project(s) during its progress a competent superintendent (hereinafter called the "Superintendent") and any necessary qualified assistants, all satisfactory to the Owner. The Superintendent shall represent the Bidder and all directions given to the Superintendent by the Owner shall be as binding as if given to the Bidder. When requested, such directions shall be confirmed in writing.

The Owner shall make available during installation a competent representative to coordinate installation activities with the Bidder, including coordination with any connecting company.

Section 3. Alignment, Inspection and Tests. The Bidder shall install, adjust and align the Equipment in accordance with the Specifications. The Bidder shall notify the Owner in writing upon completion of installation and alignment of each Project. In addition, the Bidder shall provide the necessary test equipment and perform the inspections and tests specified in the Specifications under the direct supervision of the Owner or its Engineer. The Owner shall receive a copy of the results of all tests conducted by the Bidder. All Equipment furnished for Project(s) shall be subject to the inspection, test and approval of the Owner and Administrator. The Bidder shall furnish all pertinent information required concerning the nature or source of materials. The Owner and the Administrator shall have the right to inspect pertinent records (other than manufacturing cost information) of the Bidder and of any subcontractor relevant to the Project(s). The Owner shall provide all reasonable facilities necessary for such inspection and tests. Failure of the Owner to make inspections shall not release the Bidder from performances required hereunder.

(a) The Owner shall make inspections and determine if results of the tests for each Project are in compliance with the Specifications. The Owner must notify the Bidder, within thirty (30) days after the written notification of Completion of Project from the Bidder, of any deficiencies or corrective measures necessary and whether these corrections shall be made by the Owner or the Bidder.

(b) If, at the request of the Owner, the Bidder shall have commenced work prior to the completion of facilities over which the equipment is to operate or if arrangements with connecting companies for joint testing have not been completed and the Bidder shall have incurred additional expenses because of delays or additional work resulting from lack of completion of such facilities or arrangements, the Owner shall pay the Bidder for such reasonable additional expense. The Owner shall also pay the Bidder for such reasonable additional expenses for the corrections, realignment and retesting the Bidder is required to perform due to the above conditions, including, if necessary, the added expense of returning to the Project. If tests subsequent to this are made necessary by the Bidder's failure to satisfactorily resolve all such deficiencies or corrective measures, the Bidder shall pay the Owner for the cost incurred by the Owner for all such subsequent tests.

Section 4. Delivery of Possession and Control to the Owner. The Bidder shall deliver to the Owner, and the Owner shall accept, full possession and control of each Project on the date of Completion of the Project or on an earlier date if agreed under Article IV, Section 2.

Section 5. Employees. The Owner shall have the right to require the removal of any employee of the Bidder from the Project site if in the judgment of the Owner such removal is necessary in order to protect the interests of the Owner.

Section 6. Defective Workmanship, Materials or Software. Throughout the warranty period defined below, the Bidder shall, within thirty (30) days of written notification from the Owner, and without charge to the Owner, at the Bidder's option, either remedy or replace any materials, equipment or software found to be defective in material, workmanship or installation, or not in conformity with the Specification. This is subject to the following definitions and conditions:

(a) The warranty start date for the Project is the date of delivery of possession and control by the Bidder to the Owner of that Project included in the Contract. Refer to Article II, Section 4. The warranty period is twelve (12) months from the warranty start date, or six (6) months from Completion of Project, whichever results in the longer period of coverage.

(b) Without regard to the expiration of the warranty period set forth above, the Bidder warrants to the Owner that any Software furnished under this Contract shall function, for a period of twelve (12) months from the warranty start date defined in the Contract, in accordance with the specifications and any written or printed technical material provided by the Bidder to explain the operation of the Software and aid in its use. The Bidder shall correct all deficiencies within thirty (30) days from the date of receipt by the Bidder or written notice of such deficiencies from the Owner. An extension of this thirty (30) day period may be allowed only if agreed upon by the Owner. It shall be the Bidder's obligation to insert and thoroughly test, at no charge to the Owner, any software alteration provided to satisfy the obligations of this Section 6. If a deficiency is detected or a correction made within the final ninety (90) days of the warranty, the warranty shall be

extended to a date ninety (90) days after the deficiency has been corrected.

(c) This warranty is not diminished by the acceptance of workmanship, materials, equipment or software, or by the issuing of any certificate with respect to the Completion of the Project.

(d) This warranty does not cover defects in materials, equipment or software that are caused by modifications to or abuse of materials, equipment or software by the Owner.

(e) The Owner shall bear the cost and risk of shipping defective components to the Bidder's designated repair center. The Bidder shall bear the cost and risk of shipping new or repaired replacement components to the Owner.

Article III

Payments and Releases of Lien

Section 1. Payment to Bidder. (a) The Owner shall pay the Bidder upon the basis of written estimates of the Equipment delivered at the site of the Project, presented by the Bidder, and approved by the Owner, the following percentages of the price of the materials, equipment and software for each Project set forth under Column 3, "Cost", in Article I, Section 1, as and if revised:

(i) Forty-five percent (45%) when fifty percent (50%) of the materials, equipment and software for each Project has been delivered at the site of the Project(s), and

(ii) Ninety percent (90%) when all of the materials, equipment and software required to place each Project into operation has been delivered at the site of the Project(s).

(b) Upon the Completion of Project, but prior to the payment to the Bidder of any amount in excess of ninety percent (90%) of the Total Contract Price, the Owner shall inspect the work performed thereunder and if the work shall be found to be in accordance with the Specifications and all provisions thereunder, the Owner shall certify as to that fact and as to the amount of the balance found to be due to the Bidder. No later than thirty (30) days after Completion of Contract, as defined in Article VII, Section 1, "Definitions" the Owner shall submit such final certificate to the Administrator for approval and when such approval has been given, the Owner shall pay to the Bidder all unpaid amounts to which the Bidder shall be entitled thereunder; provided, however, such final payments shall be made not later than sixty (60) days after Completion of the Contract unless approval by the Administrator shall be withheld or delayed due to Bidder's actions or failure to act.

(c) Payment on undisputed invoices submitted by the Bidder shall be due thirty (30) days after receipt. Any amounts of these invoices not paid when due shall accrue interest at a rate one and one-half percent (1 ½%) higher than the "Prime Rate" published in the Wall Street Journal in its first issue of the month in which payment becomes due and changing each subsequent month with the first issue published in the respective month.

(d) Acceptance by the Owner of equipment, materials, workmanship or software while the Bidder is in default under any provision of this Contract shall not be construed as a waiver by the Owner of any right thereunder including, without limitation, any right to liquidated damages the Owner may have by virtue of Article V, Section 2.

Section 2. Release of Liens. Upon the Completion of Project by the Bidder, but prior to the payment to the Bidder of any amount in excess of ninety percent (90%) of the Total Contract Price, the Bidder shall deliver to the Owner, (a) two (2) original Waiver and Release of Lien, in the form attached hereto, from manufacturers, material suppliers and subcontractors who have furnished materials or services for the work, and (b) two (2) original Certificate of Contractor, in the form attached hereto, to the effect that all labor has been paid and that all such releases have been submitted to the Owner; and the Owner shall deliver to the Administrator for approval one of the originals of each such release and certificate.

(a) In lieu of releases of liens where the Bidder is the equipment manufacturer, the Bidder may deliver to the Owner, in duplicate, (1) a Certificate of Contractor and Indemnity Agreement stating that all manufacturers, material suppliers and subcontractors who have furnished materials or services for the Project(s) have been paid in full, and (2) an agreement to indemnify the Owner harmless against any liens arising out of the Bidder's performance thereunder which may have been or may be filed against the Owner.

(b) In this Article III "manufacturer" shall mean a Bidder who makes, produces or manufactures the equipment and whose interest, including non-contracted installation, represent more than fifty percent (50%) of the value of the Total Contract Price.

Article IV

Particular Undertakings of the Bidder

Section 1. Protection to Persons and Property. At all times when equipment and materials are being delivered and installed, the Bidder shall exercise reasonable precautions for the safety of employees on the job and of the public, and shall comply with all applicable provisions of Federal, State and Municipal safety, building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America, unless such instructions are incompatible with Federal, State or Municipal laws or regulations. The following provisions shall not limit the generality of the above requirements:

(a) The Bidder shall at all times keep the premises free from accumulations of waste material or rubbish caused by its employees or work, and at the completion of the work, the Bidder shall remove all rubbish from and about the Project(s) and all tools, scaffolding and surplus materials and shall leave its work "broom clean."

(b) The work, from its commencement to completion, or to such earlier date or dates when the Owner may take possession and control, shall be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection therewith, and in connection with the Equipment to be used therein, shall be borne by the Bidder. The Bidder shall make good and fully repair all damages to the Equipment under the control of the Bidder by reasons of any act of God, or any other casualty of cause whether or not the same shall have occurred by reason of the Bidder's negligence. The Bidder shall hold the Owner harmless from any and all claims for injuries to persons or for damage to property happening by the reason of any negligence on the part of the Bidder or any of the Bidder's agents, subcontractors or employees during the control by the Bidder of the Project(s) or any part thereof. The Owner shall promptly notify the Bidder in writing of any such claims received and, except where the Owner is the claimant, shall give to the Bidder full authority and opportunity to settle such claims, and reasonably cooperate with the Bidder in obtaining information relative to such claims.

(c) Monthly reports of all accidents shall be promptly submitted by the Bidder, giving such data as may be prescribed by the Owner.

Section 2. Termination of Bidder's Risks and Obligations. The Bidder shall deliver to the Owner, and the Owner shall accept, full possession and control of each Project on the date of Completion of the Project. However, at any time after payment by the Owner to the Bidder of ninety percent (90%) of the Total Base Bid plus accepted

alternatives for that Project, but prior to Completion of the Project, the Owner and Bidder may agree in writing to an earlier date of delivery of possession and control. Upon such delivery of the possession and control of any Project, the risks and obligations of the Bidder, as set forth in Article IV, Section 1(b), pertaining to such Project shall be terminated; provided, however, that nothing herein contained shall relieve the Bidder of its obligation for full performance any liability with respect to defective workmanship or materials as specified in Article II, Section 6, hereof. The equipment shall not be placed in service until transfer of possession and control to the Owner has been accomplished, as set forth above.

Section 3. Insurance. During the Bidder's performance hereunder, the Bidder shall take out and maintain fully paid insurance providing not less than the minimum coverage required by 7 CFR Part 1788, Subpart C.

(a) The Owner shall have the right to require public liability insurance and property damage liability insurance greater than the amounts specified in 7 CFR Part 1788, Subpart C. If this requirement is included in the Specifications used for bidding, the added costs shall be included in the Bid Price. If the requirement is added after the Contract is approved, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price, by Contract amendment.

(b) Upon request by the Administrator, the Bidder shall furnish to the Administrator a certificate in such form as the Administrator may prescribe evidencing compliance with the foregoing requirements.

Section 4. Purchase of Materials. The Bidder shall purchase all materials and supplies outright and not subject them to any conditional sales agreements, bailment lease or other agreement reserving unto the Bidder any right, title or interest therein. Materials and supplies shall become the property of the Owner as the Owner makes payments therefor to the Bidder in accordance with Article III, Section 1(a). Unless otherwise specified, all materials shall be new.

Section 5. Assignment of Guarantees. All guarantees of materials, equipment, software and workmanship running in favor of the Bidder shall be transferred and assigned to the Owner on Completion of the Project and at such time as the Bidder receives final payment. Any such guarantees shall be in addition to the Bidder's warranty defined in Article II, Section 6. This provision may be modified with respect to a particular warranty if the Bidder demonstrates to the satisfaction of RUS and the Owner that a transfer is not possible.

Section 6. Patent, Copyright, Trademark and Trade Secret Infringement. The Bidder shall hold harmless and indemnify the Owner from all claims, suits, and proceedings for the infringement of any patent, copyright, trademark or violation of trade secrets covering any equipment, materials, software, supplies or installation methods used in the work, except for items of the Owner's design or selection. If the Owner's use of equipment or software is enjoined, the Bidder shall promptly, at its own expense, modify or replace the infringing equipment or software so that it no longer infringes but remains functionally equivalent, or obtain for the Owner a license or other right to use. This shall be in addition to any other rights or claims which the Owner may have. The Bidder shall, at its own cost, (and the Owner agrees to permit Bidder to do so) defend any suits which may be instituted by any party against the Owner for alleged infringement of patents, copyright, trademark or violation of trade secrets relative to the Bidder's performance hereunder. Either party shall notify the other promptly of any such claims, and the Owner shall give to the Bidder full authority and opportunity to settle such claims, and shall reasonably cooperate with the Bidder in obtaining information relative to such claims.

Section 7. Compliance with Statutes and Regulations. The Bidder shall comply with all applicable laws, statutes, ordinances, rules or regulations pertaining to the work. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended (7 U.S.C. 901–950b), the Anti-Kickback Acts, as amended (40 U.S.C. 276c; 41 U.S.C. 51 *et seq.*), and any rules and regulations issued pursuant thereto, and 18 U.S.C. 201, 286, 287, 641, 666, 874, 1001, 1361 and 1366, as amended. The Bidder understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of the Governmental agencies having jurisdiction in the premises.

(a) The Bidder represents that to the extent required by Executive Orders 12549 (3 CFR, 1985–1988 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), Debarment and Suspension, and 7 CFR Part 3017, it has submitted to the Owner a duly executed certification in the form prescribed in 7 CFR part 3017.

(b) The Bidder represents that, to the extent required, it has complied with the requirements of Pub. L. 101–121, Section 319, 103 Stat. 701, 750–765 (31 U.S.C. 1352), entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions" and any rules and regulations issued pursuant thereto.

Section 8. Software License. The software licensing agreement, if required, covering the rights, terms and conditions of the use and assignability of all software integral to the operation of the Project(s), shall adhere to 7 CFR part 1753, Subpart E, RUS software licensing requirements. The warranty period for all software under this contract shall be in accordance with Article II, section (6)(b).

Article V

Remedies

Section 1. Completion on Bidder's Default. If default shall be made by the Bidder or by any subcontractor in the performance of any of the work hereunder, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder and the surety or sureties upon the Bidder's Bond or Bonds, if any, a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within thirty (30) days after the service of such notice upon the Bidder such default shall be corrected or arrangements for the correction thereof, satisfactory to both the Owner and the Administrator, shall be made by the Bidder or its surety or sureties, the Owner may take over the performance of the Bidder's obligations hereunder and prosecute the same to completion by contract or otherwise for the account and at the expense of the Bidder, and the Bidder and its surety or sureties shall be liable to the Owner for any cost or expense in excess of the Bid Price occasioned thereby. In such event, the Owner may take possession of and utilize, in completing the Project(s), any tools, supplies, equipment, appliances and plant belonging to the Bidder which may be situated at the site of the Project(s). The Owner, in such contingency, may exercise any rights, claims or demands which the Bidder may have against third persons in connections herewith and for such purpose the Bidder does hereby assign, transfer and set over unto the Owner all such rights, claims and demands.

Section 2. Liquidated Damages. Should the Bidder neglect, refuse or fail to complete any Project as shown under Column 7, "Completion of Project" in Article I, Section 1, within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in

view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such moneys which may be then due, or which may become due and payable to the Bidder the sum of:

_____
dollars ($_____)
for _____
(Project)

_____
dollars ($_____)
for _____
(Project)

_____
dollars ($_____)
for _____
(Project)

_____
dollars ($_____)
for _____
(Project)

_____
dollars ($_____)
for _____
(Project)

per day for each and every day that such completion is delayed beyond the specified time for Completion of the Project, as liquidated damages and not as a penalty; if the amount due and to become due from the Owner to the Bidder is insufficient to pay in full any such liquidated damages, the Bidder shall pay to the Owner the amount necessary to effect such payment in full: provided, however, that the Owner shall promptly notify the Bidder in writing of the manner in which the amount retained, or claimed as liquidated damages was computed. The Bidder shall pay to the Owner the amount necessary to effect such payment in full. Such payment is not to be reduced by the value of any partial performance by the Bidder.

At the technical sessions, each Bidder shall identify all features and capabilities that are not fully developed or do not have a verifiable satisfactory field performance record. If the Owner allows these features to be bid as separate Projects, then they are to be individually listed under Columns 1 through 10, in Article I, Section 1. These unproven features and capabilities are to be individually listed in this Section 2 also, with liquidated damages amounts determined by the Owner and stated for each. If a Bidder neglects to identify any such feature at the technical session, delay in providing the feature is considered a delay in completing the associated Project and the Owner may assess liquidated damages listed for that Project regardless of whether the Project is placed in service.

Section 3. Consequential Damages. In no event shall the Bidder's liability for incidental or consequential loss or damage, except for personal injury or tangible property damage, exceed the amount of ten times the total contract price, as amended.

Section 4. Enforcement of Remedies by Administrator. The Administrator may, on behalf of the Owner, exercise any right or enforce any remedy which the Owner may exercise or enforce hereunder.

Section 5. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner or the Administrator shall be cumulative and shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election; provided, however, that the provisions of Section 2 of this Article V shall be the exclusive measure of damages for the failure by the Bidder to have effected the Completion of Project within the time herein agreed upon.

Article VI

Equal Employment

Section 1. The Bidder.

(a) The Bidder represents that:

(i) It has ____, does not have ____, 100 or more employees, and if it has, that

(ii) It has ____, has not ____, submitted the Equal Employment Opportunity Employers Information Report EEO–1, Standard Form 100, required of employees with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

(b) The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

(c) The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

(d) The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 2. During the performance of this contract, the Bidder agrees as follows:

(a) The Bidder will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising: layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Bidder agrees to pose in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or disability.

(c) The Bidder will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Bidder's books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of the Bidder's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the Bidder may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Bidder will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Bidder will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.

Section 3. Equal Employment Opportunity Specifications.

(a) As used in these specifications:

(i) "Covered area" means the geographical area described in the solicitation from this contract;

(ii) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

(iii) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, United States Treasury Department Form 941; and

(iv) "Minority" includes:

(1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(b) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

(c) If the Contractor is participating (pursuant to 41 CFR 60–4.5) in a Hometown Plan approved by the United States Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan for each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

(d) The Contractor shall implement the specific affirmative action standards provided in paragraphs (g) (i) through (xv) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the **Federal Register** in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

(e) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the Department of Labor.

(g) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve

maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(i) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

(ii) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractors or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(iii) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

(iv) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(v) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under (g)(ii) above.

(vi) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at lease once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

(vii) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(viii) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

(ix) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(x) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority Contractor's work force.

(xi) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60–3.

(xii) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(xiii) Ensure that all facilities and company activities are nonsegrated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(xiv) Document and maintain a record of all solicitations of offers or subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(xv) Conduct a review, at least annually of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

(h) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations under (g) (i) through (xv). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (g) (i) through (xv) of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of Executive Order

11246 if a particular group is employed in a substantially disparate manner (for example, even though the Contractor may be in violation of Executive Order 11246 if a specific minority group of women is underutilized).

(j) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, national origin or disability.

(k) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

(l) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

(m) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (g) of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR part 60–4.8.

(n) The Contractor shall designate a responsible official monitor for all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(o) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Section 4. In this Article VI—

(a) The term "Contractor" shall also mean "Bidder" or "Subcontractor" as applicable.

(b) The provisions of Sections 2 and 3 of this Article are applicable to the extent required by law. In determining whether these Sections are applicable, reference should be made to the Department of Labor Office of Federal Contract Compliance Programs regulations (41 CFR Part 60).

Article VII

Miscellaneous

Section 1. Definitions.

(a) The term "Completion of the Contract" shall mean accomplishment of Completion of the Project for all equipment materials and services listed under Column 2, "Equipment", in Article I, Section 1, and all alternatives accepted by the Owner, on the Owner's Acceptance.

(b) The "Completion of the Project" shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof. The scheduled date for Completion of the Project is the date from which liquidated damages are computed. The actual date of Completion of the Project shall be the date of the receipt by the Owner from the Bidder of (i) all documents listed in Article III, Section 2, (ii) other final documents, and (iii) written notification that all deficiencies have been corrected, provided that the Owner finds the deficiencies satisfactorily resolved. If the deficiencies have not been satisfactorily resolved, the actual date of Completion of the Project shall be the date that the deficiencies are fully and satisfactorily resolved as determined by the Owner. The Certificate of Completion approved and signed by the Owner and approved in writing by the Administrator shall be conclusive evidence as to the fact of Completion of the Project and the date thereof. Full compliance with the procedure for "Completion of the Project" and an individual Certificate of Completion is required for each Project listed in Article I, Section 1.

(c) The "Contract" shall consist of the Notice and Instructions to Bidders, the Bidder's Proposal and the Owner's Acceptance, the Contractor's Bond and the Specifications.

(d) The term "minor errors or irregularities" shall mean a defect or variation in a Bidder's bid that is a matter of form and not of substance. Errors or irregularities are "minor" if they can be corrected or waived without being prejudicial to other Bidders and when they do not affect the price, quantity, quality, or timeliness of construction. Unless otherwise noted, the borrower determines whether an error or irregularity is "minor."

(e) The term "placed in service" shall mean used by the Owner to earn revenue.

(f) The term "Project" shall mean any special equipment, including but not limited to carrier, lightwave or wireless systems, and all associated terminals (if any), which is listed under Column 2, "Equipment," in Article I, Section 1. A Project will have a single completion schedule listed under Column 7, "Completion of Project," in Article I, Section 1, and a single liquidated damages amount shown in Article V, Section 2. The Contract may consist of one or more Projects.

(g) The term "Software" shall mean computer programs contained on a tape, disc, semiconductor device or other memory device or system memory consisting of logic instructions and instruction sequences in machine-readable object code, which manipulate data in the specific special equipment to perform path diagnostic and recovery routines, control call processing, and perform peripheral control, and perform operations, administration, maintenance and provisioning functions; as well as associated documentation used to describe, maintain and use the programs provided under the Contract.

(h) The term "days" shall mean calendar days.

(i) The term "Specifications" shall mean the minimum performance requirements of the Owner as contained in the documents listed below, which are either attached or become a part of the Contract by reference, as amended by specific written exceptions contained in the Bidder's proposal and accepted by the Owner and the Administrator:

RUS Form _____,
dated _____

RUS Form _____,
dated _____

RUS Form _____,
dated _____

RUS Form _____,
dated _____

Section 2. Continuing Equipment Support. Parts, Service, and Software. In addition to warranty repairs and replacement, the Bidder shall offer repair service and repair parts to the Owner in accordance with the Bidder's practices and terms then in effect, for the Bidder's manufactured equipment and software furnished pursuant to the Agreement. Such repair service or repair parts shall be available for as long as the Bidder is manufacturing or stocking such equipment and software, or for no less than five (5) years after the Bidder has ceased manufacturing or offering for sale such equipment and software.

Section 3. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States or in any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States or in any eligible country substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States or in any eligible country; provided that the articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, as amended. For purposes of this section, an "eligible country" is any country that applies with respect to the United States an Agreement ensuring reciprocal access for United States products and services and United States suppliers to the markets of that country, as determined by the United States Trade Representative. The Bidder agrees to submit to the Owner such certificates, signed by the Bidder and all subcontractors, with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 4. Confidentiality. All information supplied by the Bidder to the Owner which bears a legend or notice restricting its use, copying, or dissemination, except insofar as it may be in the public domain through no acts attributable to the Owner, shall be treated by the Owner as confidential information, and the Owner shall not reproduce any such information except for its own internal use and as authorized by this Contract, and shall use any information only for archival backup, in-house training, operating, maintenance and administrative purposes and in conjunction with its use of the equipment, materials and software furnished hereunder. All information supplied to the Bidder by the Owner which bears a legend or notice restricting its use, copying, or dissemination, except insofar as it may be in the public domain through no acts attributable to the Bidder, shall be treated by the Bidder as confidential information, and shall not be used by the Bidder for any purpose adverse to the interests of the Owner, and shall not be reproduced or distributed by the Bidder except for the Bidder's use in its performance under this Contract. The foregoing confidentiality obligations do not apply to information which is independently developed by the receiving party or which is lawfully received by the receiving party free of restriction from another source having a right to so furnish such information, or is already known to the receiving party at the time of disclosure free of restriction. If the Bidder has failed to provide continuing equipment support as described in Article VII, Section 2, the Owner is released from this obligation. This provision does not restrict release of information by the United States of America pursuant to the Freedom of Information Act or other legal process.

Section 5. Entire Agreement. The terms and conditions of this Contract as approved by RUS supersede all prior oral or written understandings between the parties. There are no understandings or representations, expressed or implied, not expressly set forth herein.

Section 6. Survival of Obligations. The rights and obligations of the parties, which by their nature, would continue beyond the termination, cancellation, or expiration of this Contract, shall survive such termination or expiration.

Section 7. Non-Waiver. No waiver of any terms or conditions of this Contract, or the failure of either party to enforce strictly any such term or condition on one or more occasions, shall be construed as a waiver of the same or of any other terms or conditions of this Contract on any other occasion.

Section 8. Releases Void. Neither party shall require releases or waivers of any personal rights from representatives or employees or the other in connection with visits to its premises, nor shall such parties plead such releases or waivers in any action or proceeding.

Section 9. License. The Bidder shall comply with all applicable construction codes. (Check one.)

____ The Bidder warrants that it possesses contractor's license number _____ issued to him by the State of _____ in which the Project(s) is located, and said license expires on _____, 19 ___.

____ The Bidder warrants that no license is required in the State in which the Project(s) is located.

Section 10. Nonassignment of Contract. The Bidder will not assign the Contract, effected by acceptance of this Proposal, or any part hereof, or enter into any contract with any person, firm or corporation, for the performance of the Bidder's obligations hereunder, or any part hereof, without the approval in writing of the Owner, the Surety, and the Administrator. However, the Bidder may subcontract the whole or any part of the installation work to be performed at the installation site, (as distinguished from furnishing and delivery of equipment and materials), provided that: (a) the Bidder shall be responsible for the performance thereof and (b) the Bidder shall obtain the consent of the surety to such subcontract. A copy of such consent shall be submitted to the Owner and the Administrator.

Section 11. Choice of Law. The rights and obligations of the parties and all interpretations and performance of this Contract shall be governed in all respects by the laws of the State of _____ except for its rules with respect to the conflict of laws.

Section 12. Approval of the Administrator. The acceptance of this proposal by the Owner shall not create a contract unless such acceptance shall be approved in writing by the Administrator within ninety (90) days after the date hereof:

By _____
(Signature of Bidder)

_____
(Name—Type or Print)

_____
(Title)

_____
(Company Name of Bidder)

_____

_____
(Address of Bidder)

Attest:

_____
(Secretary)

_____
(Date)

The Proposal must be signed with the full name of the Bidder. In the case of a partnership the Proposal must be signed in the firm name by each partner. In the case of a corporation the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

(If executed by one other than President, a Vice-President, a partner or the individual owner, a power of attorney or other legally acceptable document authorizing execution shall accompany

this contract, unless such power of attorney is on file with RUS)

Acceptance

Subject to the approval of the Administrator, the Owner hereby accepts the Proposal of

_____

_____

for the Project(s) herein described for the Total Base Bid of $_____and Alternate For:

Space Parts, Item(s)
$ _____

Maintenance Tools, Item(s)
$ _____

Alternate No. 1 (add) (deduct)
$ _____

Alternate No. 2 (add) (deduct)
$ _____

Alternate No. 3 (add) (deduct)
$ _____

Alternate No. 4 (add) (deduct)
$ _____

Alternate No. 5 (add) (deduct)
$ _____

Alternate No. 6 (add) (deduct)
$ _____

The total contract price is
$ _____

By _____
Owner

_____
President
Attest:

_____
Secretary

_____
Date of Acceptance

Specifications

Special Telephone Equipment

The Specifications listed below can be attached and made a part of this Contract. (The Owner will check the applicable Specification.)

____ *RUS Form 397b, Trunk Carrier System Specifications*

____ *RUS Form 397c, Subscriber Carrier Specifications*

____ *RUS Form 397d, Design Specifications for Point-to-Point Microwave Radio Systems*

____ *RUS Form 397g, Performance Specifications for Line Concentrators*

____ *RUS Form 397h, Design Specifications for Digital Lightwave Transmission Systems*

[End of clause]

Dated: February 9, 1998.

Inga Smulkstys,

Acting Under Secretary, Rural Development.

[FR Doc. 98–4320 Filed 2–19–98; 8:45 am]

BILLING CODE 3410–15–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1614

RIN 3046–AA66

Federal Sector Equal Employment Opportunity

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission is proposing revisions to its federal sector complaint processing regulations to implement recommendations made by the Chairman's Federal Sector Workgroup. The Commission proposes to require that agencies establish or make available alternative dispute resolution (ADR) programs during the EEO pre-complaint process. The Commission proposes revisions to the counseling process, the bases for dismissal of complaints, and procedures for requesting a hearing. The Commission also proposes to provide administrative judges with the authority to issue dismissals and final decisions on complaints. The Commission proposes a number of changes to the class complaint procedures, including authorizing administrative judges to issue final decisions on class certification and requiring that administrative judges determine whether a settlement agreement is fair and reasonable. The Commission proposes changes to the appeals procedures to provide agencies the right to appeal an administrative judge's final decision, to revise the appellate briefing schedule, to establish different standards of review for agency final decisions and administrative judges' final decisions, and to revise the process for seeking reconsideration of a decision on appeal. Finally, the Commission proposes to amend the remedies section of the regulation to permit administrative judges to award attorney's fees and to provide for payment of attorney's fees for all services provided by an attorney throughout the equal employment opportunity (EEO) process, including counseling.

DATES: Comments on the notice of proposed rulemaking must be received on or before April 21, 1998.

ADDRESSES: Written comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 1801 L Street, N.W., Washington, D.C. 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4078 (voice) or (202) 663–4077 (TDD). (These are not toll free numbers.) Copies of comments submitted by the public will be available for review at the Commission's Library, room 6502, 1801 L Street, N.W., Washington, D.C. between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Deputy Legal Counsel, Thomas J. Schlageter, Assistant Legal Counsel or Kathleen Oram, Senior Attorney, Office of Legal Counsel, 202–663–4669 (voice), 202–663–7026 (TDD). This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to EEOC's Publications Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION:

Introduction

As part of an ongoing effort to evaluate and improve the effectiveness of the Equal Employment Opportunity Commission's operations, the Chairman established the Federal Sector Workgroup to review the federal sector equal employment opportunity process. The Workgroup was composed of representatives from offices throughout the Commission. The Workgroup focused on the effectiveness of the EEOC in enforcing the statutes that prohibit workplace discrimination in the federal government, namely: section 717 of Title VII of the Civil Rights Act of 1964, which prohibits discrimination against applicants and employees based on race, color, religion, sex and national origin; section 501 of the Rehabilitation Act of 1973, which prohibits employment discrimination on the basis of disability; section 15 of the Age Discrimination in Employment Act, which prohibits employment discrimination based on age; and the Equal Pay Act, which prohibits sex-based wage discrimination.

The Workgroup's review evaluated the Commission's administrative processes governing its enforcement responsibilities in the federal sector and developed recommendations to improve

its effectiveness. In addition, the review sought to implement the goals of Vice President Gore's National Performance Review (NPR), including eliminating unnecessary layers of review, delegating decision-making authority to front-line employees, developing partnership between management and labor, seeking stakeholder input when making decisions, and measuring performance by results.

The Federal Sector Workgroup issued a report entitled "The Federal Sector EEO Process * * * Recommendations for Change" in May 1997. The report contains numerous recommendations for changing the federal sector complaint process, including changes to the Part 1614 regulations, changes to EEOC's Management Directive 110 which contains additional guidance and instructions on the federal complaint process, and changes to EEOC's internal procedures.

The Commission proposes to amend Part 1614 to implement the regulatory recommendations. The proposed changes, which are discussed in greater detail below, address the continuing perception of unfairness and inefficiency in the federal sector complaint process. In addition, the proposals accomplish the National Performance Review goals of removing unnecessary layers of review and delegating decision-making authority to front-line employees.

EEOC spent over a year and a half in the development of the federal sector NPRM. During that time period, EEOC consulted extensively with all stakeholders in the federal sector process, very much including the other federal agencies. On April 22, 1996, prior to the development of any recommendations, the EEOC's Federal Sector Workgroup held a meeting with federal EEO and Civil Rights personnel organized by the President of the Council of Federal and Civil Rights Executives. At that time the Council supported EEOC's interest in making the administrative judge decisions final and eliminating agency final decisions following those decisions. The Council subsequently changed its view on this question. On May 21, 1996, then-Chairman Casellas wrote to the EEO Directors of all departments and agencies requesting their written comment on a number of subjects related to the federal sector complaint process. We received comments from 27 agencies, all of which were fully considered in developing the recommendations contained in the Workgroup's report. On September 26, 1997, the Workgroup held a briefing for EEO Directors on the Workgroup's recommendations.

The Commission coordinated this proposed regulation with all federal agencies pursuant to Exec. Order No. 12067 (1978). A number of comments were received from agencies, which included helpful suggestions to improve the proposed regulation as well as criticisms of essential elements of the proposals. The Commission has included a discussion of its proposal, the rationale for the changes, as well as the criticisms of the agencies, in this statement of Supplementary Information and has made certain changes to the proposal. It prefers to decide whether or how to make other changes to this proposal after the benefit of public comment. Federal agencies are, of course, the entities whose conduct would be regulated by these proposals and making decisions based only on their input, without having the opportunity to consider the input of other stakeholders, including complaining parties and their representatives, would be insufficient. The Commission will seriously consider the agency comments in conjunction with the public comments. The Commission will retain the comments received from the agencies during the coordination period in the rulemaking file and will consider and address those comments in the final rule.

In proposing these changes, the Commission seeks to serve two different yet intertwined purposes: first, to ensure that the process for federal employee complaints is fair and is perceived to be fair, and second, to make the process more efficient by eliminating unnecessary layers, dealing expeditiously with meritless claims and by delegating authority to front-line employees.

Alternative Dispute Resolution

The Commission proposes to amend section 1614.102 to require all agencies to establish or make available an alternative dispute resolution (ADR) program for the EEO pre-complaint process. The required pre-complaint ADR program would be in addition to the provisions in the current regulation that encourage the use of ADR at all stages of the complaint process. Agencies would be free to develop the programs that best suit their particular needs. While many agencies have adopted the mediation model as their ADR initiative, other resolution techniques would be acceptable, provided that they conform to the core principles set forth in EEOC's policy statement on ADR, which will be contained in Management Directive 110. Although ADR is believed to be most effective at the early stages of a dispute, agencies may continue their ADR efforts at any stage in the process, including after the formal complaint has been filed. An effective ADR program will serve both goals set out by the Commission. By resolving complaints early on, ADR will make the process more efficient. ADR will also serve to make the process fairer, by giving complainants an alternative to the counseling process that has been criticized by agency officials and employee representatives.

The Commission also proposes changes to section 1614.105, which covers pre-complaint processing, to require that counselors advise aggrieved persons that they may choose between participation in the ADR program offered by the agency and the traditional counseling activities provided for in the current regulation. If a matter is not resolved during ADR or during traditional counseling activities, the counselor will conduct a final interview and the aggrieved person may file a formal complaint. As noted above, agencies would be free to establish the type of ADR program they offer during the counseling period as long as it is consistent with the ADR program core principles set out by EEOC. Before aggrieved persons make a choice between counseling and ADR, they will have an initial counseling session in which counselors must fully inform them about their rights and the choice between the counseling process and the ADR program. Counselors must also inform aggrieved persons that if the ADR process does not result in a resolution of the dispute, they will receive a final interview and have the right to file a formal complaint. If the aggrieved person chooses to participate in the agency's ADR program, the role of the counselor would be limited to advising that person of his or her rights and responsibilities in the EEO complaint process, as set forth currently in section 1614.105(b). Counselors would not be required, in those instances, to attempt to resolve the dispute, but would not be precluded from doing so, if they believe a matter could be resolved quickly.

Many agencies who submitted comments on the draft revisions when it was coordinated under Exec. Order No. 12067 (1978) welcomed Alternative Dispute Resolution (ADR) at the pre-complaint process stating that ADR would result in an early resolution of many cases and create a positive view of the EEO process. A number of agencies suggested that not all cases are appropriate for ADR. Rather, these

agencies requested that they should have the flexibility to establish what type of matter or circumstance would be eligible for ADR. Several agencies also requested that consideration be given to the practical difficulties of creating an ADR program, and accordingly, that ample time be provided to them to obtain the necessary expertise, personnel and funds for ADR. An effective date will be included in the final rule and the governing management directive.

Under the proposed regulations, agencies would be free to develop ADR programs that would best serve their particular needs and unique circumstances. The EEOC encourages creativity and flexibility in establishing ADR programs. This would certainly encompass an array of ADR programs. Agencies with limited funds and resources could use the services, in whole or in part, of another agency, a volunteer organization or other resources to provide for their ADR programs. Keeping with our emphasis on flexibility, an agency could exclude circumstances or matters that it believes are not appropriate for its ADR program. The Commission does not anticipate that ADR will be used in connection with every complaint. For example, agencies may exclude class allegations from its ADR program. As circumstances and needs change within a particular agency, it could modify its ADR program. However, it is essential that all agency ADR programs comply with the spirit of the EEOC's policy statement on the core principles of ADR. Equal Employment Opportunity Commission's Alternative Dispute Resolution Policy Statement (July 17, 1995). Management Directive 110 (MD 110) will provide further information and amplify these core principles.

Some agencies urged that the regulations should clarify the precise roles and responsibilities of the person responsible for conducting ADR during the pre-complaint process and the EEO counselor, for example, whether the mediator or counselor will complete the counselor's report if mediation or other means of ADR fails. These concerns and other questions raised by the agencies about how ADR and EEO counseling will coexist will be explained in MD 110. Each agency will have discretion to develop its own procedures in accordance with the regulation and MD 110. With this flexibility, there will most likely not be uniformity among agencies in the precise roles and responsibilities of EEO counselors and persons conducting ADR activities.

Dismissals

The Commission proposes to amend section 1614.107 to remove one basis for dismissal of EEO complaints and add two new bases for dismissal. The Commission proposes to eliminate the provision in section 1614.107(h) that permits agencies to dismiss complaints for failure to accept a certified offer of full relief. The full relief dismissal policy was premised on the view that adjudication of a claim is unnecessary if the agency is willing to make the complainant whole. The regulatory process, however, has been criticized because complainants are placed in the position of risking dismissal of their complaints if they do not believe the offer of their opposing party is an offer of full relief. If a complainant makes the wrong assessment of the offer and EEOC decides on appeal that the agency did offer full relief, the complainant is precluded from proceeding with the complaint or from accepting the offer. In addition, difficulties assessing what constitutes full relief increased when, as a result of the Civil Rights Act of 1991, damages became available to federal employees. Unless the agency offers the full amount of damages permitted under the statutory caps in the law, it is virtually impossible to assess whether the agency has offered full relief. The Commission found that offers of full relief must address compensatory damages, where appropriate. *Jackson* v. *USPS*, Appeal No. 01923399 (1992); Request No. 05930306 (1993).

During coordination of EEOC's proposals pursuant to Exec. Order No. 12067, some agencies agreed with EEOC's position that full relief dismissals have become rare since compensatory damages became available to federal employees. Other agencies recommended that EEOC revise the procedure to permit an independent review and certification of full relief offers by EEOC, arguing that certification of offers by EEOC would minimize the risk complainants must now take in determining on their own whether an agency's offer constitutes full relief. Finally, some agencies simply disagreed with the proposal to eliminate the full relief dismissal provision, arguing that they continue to use it in some cases. As noted above, without certification of full relief offers by EEOC, complainants are in the unfortunate position of trying to evaluate whether the agencies they believe discriminated against them have truly offered them all the relief they would be entitled to in a federal court, and jeopardizing their whole case if they decide in error. The Commission has determined that it would not be a wise use of our limited resources at this time to create a certification procedure for full relief offers. In response to agency comments, though, as more fully explained below, the Commission has added a provision permitting agencies to make an "offer of resolution" in a case. The offer of resolution is similar, but not identical, to the procedure under Rule 68 of the Federal Rules of Civil Procedure for an offer of judgment. Hence, for all of the reasons set forth above, the Commission proposes eliminating the regulatory provision permitting agencies to dismiss complaints for failure to accept a certified offer of full relief.

The Commission proposes to add dismissal provisions permitting agencies to dismiss complaints for two reasons. First, the Commission proposes to permit agencies to dismiss complaints that allege dissatisfaction with the processing of a previously filed complaint (commonly called spin-off complaints). EEOC's regulations at 29 CFR Part 1613, which were superseded by 29 CFR Part 1614 in 1992, expressly permitted complainants to file separate complaints alleging dissatisfaction with agencies' processing of their original complaints. 29 CFR 1613.262 (1991). The procedure resulted in the filing of multiple spin-off complaints. The Commission recognized the need to limit these complaints, and did not include the Part 1613 provision in Part 1614. Guidance was provided in Management Directive 110. Complainants continued, however, to file spin-off complaints. Any alleged unfairness or discrimination in the processing of a complaint can—and must—be raised during the processing of the underlying complaint and there is ample authority to deal with such allegations in that process. There is no provision in either the regulations or the management directive permitting the filing of a separate complaint on this issue. Accordingly, separate complaints should be dismissed. The Commission proposes to add the dismissal provision permitting dismissal of spin-off complaints to ensure that a balance is maintained between fair and nondiscriminatory agency processing of complaints and the need to eliminate multiple filing of burdensome complaints about the manner in which an original complaint was processed.

In conjunction with this regulatory change, the Commission will issue companion guidance in Management Directive 110 addressing the procedures agencies must follow to resolve allegations of dissatisfaction with the complaints process quickly. Individuals

who are dissatisfied with the processing of a complaint will be advised to bring this dissatisfaction to the attention of the official responsible for the complaint, whether it be an investigator, an EEOC administrative judge, or the Commission's Office of Federal Operations on appeal. The allegation of dissatisfaction, and any appropriate evidence, will then be considered during the processing of the existing complaint. Proper handling of spin-off allegations is important to the Commission because it involves the overall quality of the complaints process. Individuals who do not follow the process set out in the Management Directive for allegations of dissatisfaction will have such complaints dismissed by the agency or by the Commission. The procedure to be used will ensure that any evidence of discrimination or improper handling will be considered as part of the claim before the agency or Commission without unnecessarily adding complaints to the system.

The Commission also proposes to add a dismissal provision to section 1614.107 permitting an agency to dismiss a complaint where it finds a clear pattern of abuse of the EEO process through strict application of the criteria set forth in Commission decisions. The proposed section codifies the Commission's decision in *Buren* v. *USPS*, Request No. 05850299 (1985). The Commission has stated that it has the inherent power to control and prevent abuse of its processes, orders or procedures. It is within the Commission's purview to determine that either complainants or agencies are engaging in conduct that constitutes a scheme designed to frustrate the administrative process. The Commission also has recognized that dismissing complaints for abuse of process should be done only on rare occasions because of the strong policy in favor of preserving complainants' EEO rights whenever possible. *Kleinman* v. *Postmaster General*, Request No. 05940579 (1994). The Commission believes that evaluating complaints for dismissal for abuse of process requires careful deliberation and application of strict criteria. Agencies must analyze whether a complainant's prior behavior evidences an ulterior purpose to abuse the EEO process. Evidence of numerous complaint filings, in and of itself, is an insufficient basis for making such a finding. *Hooks* v. *USPS*, Appeal No. 01953852 (1995). However, multiple filings combined with the nature of the subject matter of the complaints, lack of specificity in the allegations, and allegations involving matters previously raised may be considered in determining whether a complainant has engaged in a pattern of abuse of the EEO process. *Goatcher* v. *USPS*, Request No. 05950557 (1996). The Commission proposes to add the dismissal provision based on abuse of process, as well as the dismissal for spin-off complaints, because it believes that they will improve the efficiency and effectiveness of the EEO process. In addition, dealing summarily with abusive complaints will make the process fairer for agencies that must process complaints and for complainants who raise bona fide allegations by focusing resources on bona fide allegations.

Offer of Resolution

The Commission proposes to add a provision to the procedures permitting agencies to make offers of resolution to complainants as long as they are made at least 30 days prior to the hearing. Offers of resolution must be in writing and must explain to the complainant the possible consequences of failing to accept the offer. Complainants will have 30 days to consider the offer and decide whether to accept it. If a complainant is represented by an attorney at the time that the offer is made and fails to accept an offer of resolution, and the decision on the complaint is not more favorable than the offer, then, except where the interest of justice will not be served, the complainant will not receive payment from the agency of attorney's fees or costs incurred after the date of rejection or the expiration of the 30-day period of the offer of resolution if there has been no rejection. If the offer of resolution is not accepted within thirty days it is deemed to have been rejected. Failure to accept an offer of resolution will not preclude an agency from making other offers of resolution or either party from seeking to negotiate a settlement of the complaint at any time. If an agency believes that it has made a fair offer to an unrepresented complainant who later obtains representation and seeks to avoid further liability for attorney's fees, the agency can make a new offer in writing at that time.

The Commission proposes the offer of resolution procedure, in part, in response to comments from the agencies requesting that the failure to accept a certified offer of full relief dismissal provision be retained or modified. The Commission wishes to encourage resolution of complaints at all times in the complaint process and believes the proposed offer of resolution provision will provide incentive for agencies and complainants to resolve complaints. The Commission seeks comment on the offer of resolution proposal, particularly on the interest of justice exception to the preclusion of costs and fees. The Commission believes that the interest of justice standard in the proposal will apply to those situations in which an administrative judge determines that it would be unfair to preclude payment of attorney's fees and costs.

Fragmentation of Complaints

The Commission seeks public comment on whether regulatory changes are necessary to correct the problem of fragmented processing of EEO claims. A recurring problem found by the Federal Sector Workgroup was that many agencies do not distinguish between allegations in support of a legal claim and the legal claim itself. As a result, some claims involving a number of different allegations are fragmented or separated. What should be one legal claim then becomes a number of miscellaneous events, losing its character as a claim. A hypothetical example would be a harassment claim where a pattern of incidents are used to support a claim, but the separate incidents would not constitute a legally cognizable claim of discrimination. As a result of fragmentation, the number of discrimination complaints by federal employees is unnecessarily multiplied and cognizable claims are fragmented to such an extent that potentially valid claims become meaningless. The Commission plans on amending its Management Directive to address this problem and seeks comment on what, if any, regulatory changes are necessary to correct this problem.

Partial Dismissals

The Commission proposes changes to the regulations to eliminate interlocutory appeals of partial dismissals of complaints. Currently, where an agency dismisses part of a complaint, but not the entire complaint, the complainant has the right to immediately appeal the partial dismissal to EEOC. The Commission provided for interlocutory appeals of partial dismissals in Part 1614, hoping to streamline the process and avoid holding two or more hearings on the same complaint. Multiple hearings could have occurred absent an interlocutory appeal when EEOC reversed an agency's partial dismissal after a hearing was held on the rest of the complaint. The Commission believes that this result can be accomplished without the unintended delays of complaints or fragmentation of complaints that may have resulted from the current provision.

The Commission proposes to amend section 1614.401 to remove the right to immediately appeal the dismissal of a portion of a complaint. In addition, the Commission proposes to add a paragraph to the dismissals section, section 1614.107, explaining how to process complaints where a portion of the complaint, but not the entire complaint, meets one or more of the standards for dismissal contained in that section. In those circumstances, the agency will document the file with its reasons for believing that the portion of the complaint meets the standards for dismissal and will investigate the remainder of the complaint. If the complainant requests a hearing from an administrative judge, the administrative judge will evaluate the reasons given by the agency for believing a portion of the complaint meets the standards for dismissal before holding the hearing. If the administrative judge believes that all or a part of the agency's reasons are not well taken, the entire complaint or all of the portions not meeting the standards for dismissal will continue in the hearing process. The parties may conduct discovery to develop a record for all portions of the complaint continuing in the hearing process. The administrative judge's decision on the partial dismissal will become part of the final decision on the complaint, which either party may appeal to EEOC, in accordance with proposed section 1614.401. Where a complainant requests a final decision from the agency without a hearing, the agency will issue a decision addressing all claims in the complaint, including its rationale for dismissing claims, if any, and its findings on the merits of the remainder of the complaint. The complainant may appeal the agency's final decision, including any partial dismissals, to the EEOC.

Hearings

The Commission proposes four changes to the hearings process. First, the Commission proposes to amend section 1614.108, by adding a new paragraph (g), providing that complainants who wish to have a hearing on their complaints after the 180 days period for investigation has expired would be required to submit requests for hearings directly to EEOC, rather than to their agencies, as is the current practice. Agencies will be required to inform complainants in their acknowledgment letters of the EEOC office and address where a request for hearing is to be sent. When requesting a hearing from EEOC, complainants will be required at the same time to send a copy of the request for a hearing to their agencies' EEO offices. Upon receipt of a request for hearing, EEOC would request that the agency provide copies of the complaint file to EEOC and, if not previously provided, to the complainant. The Commission believes that the proposed change will expedite the complaint process. Complainants will communicate directly with EEOC with copies to their agency, rather than through their agency whose only function was to serve as a conduit for getting the request to EEOC. In addition, the proposed change would alleviate concerns that agencies are not responding to requests for hearings quickly enough by allowing the parties to communicate directly with EEOC.

Second, the Commission proposes to specify in the regulation at section 1614.109(b) that administrative judges have the authority to dismiss complaints during the hearing process for all of the reasons contained in the dismissal section, 29 CFR 1614.107. Currently, administrative judges do not have the authority to dismiss complaints that are in the hearing process, but will remand a complaint back to the agency for dismissal, where appropriate. The proposed change would eliminate an unnecessary layer by giving the administrative judge the authority to dismiss without the need for remanding the complaint to the agency.

Third, the Commission proposes to add a provision permitting administrative judges to issue a final decision without a hearing where they determine, even though material facts remain in dispute, that there is sufficient information in the record to decide the case, that the material facts in dispute can be decided on the basis of the written record, that there are no credibility issues that would require live testimony in order to evaluate a witness' demeanor and that the case lacks merit. A new paragraph 1614.109(f)(4) would contain this provision, which would supplement administrative judges' existing authority to issue summary judgment decisions currently contained in 29 CFR 1614.109(e). While the decision is like a dismissal in that it will result in a ruling against the complainant, it is set out as a separate subsection because it will be an adjudication on the merits of the complaints.

Finally, the Commission proposes to amend the regulations to provide that administrative judges issue final decisions on complaints that have been referred to them for a hearing. Complainants or agencies could appeal administrative judges' final decisions to EEOC. Agencies would continue to issue final decisions in cases where the complainants request an immediate final decision without a hearing.

The Commission believes that allowing agencies to reject or modify an administrative judge's findings of fact and conclusions of law leads to an unavoidable conflict of interest. This is particularly true because those cases have been referred to a neutral third party, an EEOC administrative judge, to hear the dispute. Historically, agencies have rejected or modified a majority of administrative judges' findings of discrimination, but have adopted nearly all findings of no discrimination. In fiscal year 1996, Commission administrative judges issued 3,083 decisions, of which 284, or 9.2%, found discrimination. Agencies accepted only 101 of those decisions and rejected 178, or 62.7%. Conversely, of the 2,799 findings of no discrimination, agencies rejected only four or 0.1%. The Commission does not have available current information containing the percentage of agency decisions it accepts or rejects on appeal following administrative judge decisions. The Commission believes that the proposed change will address the perception of unfairness and conflict of interest in agencies deciding complaints of discrimination against them. In addition, this proposal eliminates a layer of review and permits decision-making at an earlier state, central goals of the National Performance Review, thus making the process more efficient.

Of those federal agencies that commented on the draft regulation when the regulation was coordinated under Exec. Order No. 12067 (1978), some supported the proposal to make the decision of the administrative judge final. A number of agencies opposed it, however, chiefly arguing that the Commission did not have authority to allow administrative judges to issue final decisions, while some agencies believed that the administrative judge could only issue a final decision if the hearing was the first level of an appeal to the Commission. The Commission believes that it has broad authority to restructure the discrimination complaint process for federal employee complaints and that administrative judges can issue decisions as proposed.

Section 717(b) of the Civil Rights Act of 1964 authorizes the Commission to "issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this section." 42 U.S.C. § 2000e–16(b). Such broad language has been interpreted by the courts to constitute a delegation of legislative rulemaking authority. *E.g.,*

Mourning v. *Family Publications Service, Inc.*, 411 U.S. 356 (1973); *Public Utilities Commission of California* v. *United States*, 355 U.S. 534, 542–43 n. 4 (1958).

In 1972 Congress gave this rulemaking authority to the Civil Service Commission, which was the predecessor to the EEOC in having responsibility for enforcing the employment discrimination laws in the federal sector. In so doing, Congress made it clear that it was granting the Commission complete authority to restructure the complaint process to ensure protection of the interests of all parties involved in the process. It explained:

> One feature of the present equal employment opportunity program which deserves special scrutiny by the Civil Service Commission is the complaint process. The procedure under the present system, intended to provide for the informal disposition of complaints, may have denied employees adequate opportunity for impartial investigation and resolution of complaints.
>
> Under present procedures, in most cases, each agency is still responsible for investigating and judging itself. Although provision is made for the appointment of an outside examiner, the examiner does not have the authority to conduct an independent investigation, and his conclusions and findings are in the nature of recommendations to the agency head who makes the final agency determination on whether there is, in fact, discrimination in that particular case. The only appeal is to the Board of Appeals and Review in the Civil Service Commission.
>
> The testimony before the Labor Subcommittee reflected a general lack of confidence in the effectiveness of the complaint procedure on the part of Federal employees. Complainants have indicated skepticism regarding the Commission's record in obtaining just resolution of complaints and adequate remedies. This has, in turn, discouraged persons from filing complaints with the Commission for fear that doing so will only result in antagonizing their supervisors and impairing any future hope of advancement. The new authority given to the Civil Service Commission in the bill is intended to enable the Commission to reconsider its entire complaint structure and the relationships between the employee, agency, and Commission in these cases.

S. Rept. No. 92–415 (1971), reprinted in Legislative History of the Equal Employment Opportunity Act of 1972, 410 at 423 (1972) (emphasis added).

In 1979, the authority for enforcement of the federal employee complaint process was transferred from the Civil Service Commission to EEOC. In proposing this transfer, the President stated:

> Transfer of the Civil Service Commission's equal employment opportunity responsibilities to EEOC is needed to ensure that: (1) Federal employees have the same rights and remedies as those in the private sector and in state and local government; (2) Federal agencies meet the same standards as are required of other employers; and (3) potential conflicts between an agency's equal employment opportunity and personnel management functions are minimized.... The Civil Service Commission has in the past been lethargic in enforcing fair employment requirements within the Federal government.

Hearings Before a Subcommittee of the Committee on Government Operations, Reorganization Plan No. 1 of 1978 (Equal Employment Opportunity), at 6–7 (1978). In its report on the Plan, the Office of Management and Budget stated that "The Civil Service Commission is expected to be lawmaker, prosecutor, judge and jury on employment discrimination in the Federal workforce. Organizational deficiencies like these inevitably lead to less rigorous compliance." Hearings, Reorganization Plan No. 1 of 1978 at 186. In addition, OMB stated that "[t]he Civil Service Commission's regulations concerning the filing of class action complaints are highly restrictive." Hearings, Reorganization Plan No. 1 of 1978 at 193. The type of organization conflict of interest that the Commission seeks to eliminate in this proposal, where an agency both takes an action and then serves as the final decision maker on the complaint, has been of concern for years.

By proposing these changes, the EEOC is doing precisely what the Congress envisioned would be done, i.e., the Commission is reconsidering the complaint structure and the relative positions of the employee, the agency and the Commission. The language of section 717, its legislative history, and the transfer of that responsibility to EEOC under Reorganization Plan No. 1 of 1978 all confirm that the EEOC has been given the broadest possible authority to restructure the complaints process for individual and class complaints.

Those agencies that assert that EEOC lacks the authority to change its regulations to make administrative judges' decisions final, or that it can only be done as part of an appellate procedure, rely on section 717(c), 42 U.S.C. § 2000e–16(c). Section 717(c) provides:

> Within thirty days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection 717(a), or by the Civil Service Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination, * * * or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit, until such time as final action may be taken by a department, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706, * * *

This language, which permits a federal employee to file suit against the agency alleged to have discriminated, waives the government's sovereign immunity from suit. *Chandler* v. *Roudebush*, 425 U.S. 849 (1976); *Brown* v. *GSA*, 425 U.S. 820 (1976). Nothing in this statutory language limits EEOC's ability to issue regulations under subsection 717(b) or to structure the administrative process to enhance its effectiveness and fairness. The language delineates when, under the procedures that existed at that time, an individual could file suit in court. There is no indication that Congress also intended to codify any parts of the existing administrative procedures by the language of this sentence. Indeed, the legislative history of section 717 demonstrates that Congress expected the then-Civil Service Commission to make significant changes to the complaint process. The importance of administrative flexibility to improve the complaint process was reaffirmed in 1978 when the President transferred the responsibilities for federal employee complaints to EEOC.

Class Complaints

The Federal Sector Workgroup identified a series of concerns with the class complaint process. It found that despite studies indicating that class-based discrimination may continue to exist in the federal government, recent data reflect that very few class complaints are filed or certified at the administrative level. Only a very small number of cases are brought as class actions and those that are filed generally result in a denial of class certification. While an effective administrative process for class complaints offers several advantages over litigation in federal court, including informality, lower cost, and the speed of resolution, the Workgroup found there is a perception the current process does not adequately address class-based discrimination in the federal government. As a result, complainants often have elected to pursue their complaints in federal court.

Class actions play a particularly vital role in the enforcement of the equal employment laws. They are an essential mechanism for attacking broad patterns of workplace discrimination and providing relief to victims of discriminatory policies or systemic practices. The courts have long

recognized that class actions "are powerful stimuli to enforce Title VII," providing for the "removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification." *Wetzel* v. *Liberty Mutual Ins. Co.*, 508 F.2d 239, 254 (3d Cir.), *cert denied*, 421 U.S. 1011 (1975). The class action device exists, in large part, to vindicate the interests of civil rights plaintiffs. See 5 James W. Moore, *Moore's Federal Practice* § 23.43[1][a], at 23–191 (3d ed. 1997).

These same policies apply with equal force in the federal sector. Accordingly, we propose several changes to strengthen the class complaint process. The purpose of these changes is to ensure that complaints raising class issues are not unjustifiably denied class certification in the administrative process and that class cases are resolved under appropriate legal standards consistent with the principles applied by federal courts. Where a class of individuals have been affected by a policy or practice, it is far more efficient to address those concerns in one action rather than requiring numerous individual complaints. These proposed changes seek to make the class complaint process fairer by allowing individuals to seek class certification at any reasonable stage in the process. The class implications of a complaint may not be apparent until the complainant receives the investigative file or information in discovery that would indicate that the agency has acted in a way that will have implications for a class. In addition, to further address the concerns identified by the Workgroup, the Commission has undertaken a pilot program in which all decisions on class certification will be made centrally by the Complaint Adjudication Division of its Office of Federal Operations to explore possible operational changes.

The Commission proposes four regulatory changes to the class complaint procedures found at 29 CFR 1614.204. The Commission proposes to revise section 1614.204(b) to provide that a complainant may move for class certification at any reasonable point in the process when it becomes apparent that there are class implications raised in an individual complaint. If a complainant moves for class certification after completing counseling, the complainant will not be required to return to the counseling stage. Some agencies who commented on this proposal when it was coordinated under Exec. Order No. 12067 supported the change but asked that the regulation define "reasonable point in the process" and indicate what criteria would be used to determine that a complaint has class implications. Some agencies opposed the change, arguing that it would entail additional investigative costs and invite abuse by complainants seeking to bypass the counseling process by making frivolous class allegations. They maintained that a complainant should have to elect between a class or an individual claim at the pre-complaint stage. Others objected only to eliminating counseling, as that it is how the complainant is informed of his or her rights and responsibilities as class agent.

The Commission believes that the proposed change is an important step toward removing unnecessary barriers to class certification of complaints that are properly of a class nature. The Commission has consistently recognized that its decisions on class certification must be guided by the complainant's lack of access to pre-certification discovery; this is different from the situation of a Rule 23 plaintiff who does have access to pre-certification discovery on class issues. Similarly, often an individual complainant will not have reason to know at the counseling stage that the challenged action actually reflects an agency policy or practice generally applicable to a class of similarly situated individuals. The Commission intends that "reasonable point in the process" be interpreted to allow a complainant to seek class certification when he or she knows or should know that the complaint has class implications, i.e., it potentially involves questions of fact common to a class and is typical of the claims of a class. Normally, this point would be no later than the end of discovery at the hearing stage. It would be the responsibility of the agency or administrative judge, as appropriate, to ensure that the class agent is advised of his or her obligations at this time. The Commission believes it would be impracticable and unproductive to require the complainant to return to counseling at this stage.

The Commission proposes to amend section 1614.204(d) to provide that administrative judges would issue final decisions on whether a class complaint will be accepted (or certified) or dismissed. Currently, administrative judges make recommendations to agencies on acceptance or dismissal. The Commission particularly invites comment on this proposal. Agencies who commented on this proposal when it was coordinated under Exec. Order No. 12067 said they either supported or opposed it for the same reasons they gave with respect to the proposal for administrative judges to issue final decisions on individual complaints. Some agencies said they supported it only if the agency is given the right to appeal a certification decision. Under the Commission's proposal, an agency would have such a right under section 1614.401(b), which provides that an agency may appeal an administrative judge's final decision. The Commission also seeks public comment on whether to make administrative judges' decisions on the merits final in class cases, consistent with the proposal to allow administrative judges to issue final decisions in section 1614.109(h).

In addition, the Commission proposes to amend section 1614.204(g)(2) to require that administrative judges must approve class settlement agreements pursuant to the "fair and reasonable" standard, even when no class member has asserted an objection to the settlement. Several agency commenters under Exec. Order No. 12067 supported this proposal while others disagreed, arguing that it would add an unnecessary layer of review and that adequate safeguards exist in section 1614.204(g)(4), which gives dissatisfied class members the right to petition to vacate a settlement, and 1614.204(a)(2), which requires the class agent to fairly and adequately represent the class. The Commission believes this proposed change is necessary to protect the interests of the class. As one agency commenter noted, class agents sometimes seek to settle their individual claims without full regard for the interests of the class. The change would make the regulations consistent with the practice in federal courts where the court must approve any settlement of a class case under a fair and reasonable standard.

Finally, the Commission proposes to amend section 1614.204(l)(3) to clarify the burdens of proof applicable to individual class members who believe they are entitled to relief. The proposed change would make explicit that the burdens enunciated in *Teamsters* v. *United States*, 431 U.S. 324 (1977), apply. In *Teamsters*, the Court stated that where a finding of discrimination has been made, there is a presumption of discrimination as to every individual who can show he or she is a member of the class and was affected by the discrimination during the relevant period of time. Agencies then would be required to show by clear and convincing evidence that any class member is not entitled to relief, as is provided currently in sections 1614.501 (b) and (c).

Appeals

In addition to the proposal to allow complainants or agencies to appeal administrative judges' final decisions, noted above, the Commission proposes to revise the briefing schedules for appeals to EEOC, to add a provision permitting the Office of Federal Operations to sanction parties for failure to comply with the regulations, to change the standard of review for some appeals, and to revise the process for seeking reconsideration of appeals decisions. The Commission proposes to amend section 1614.403 of the regulations to require that complainants submit any statement or brief in support of an appeal of dismissal of a complaint to EEOC within 30 days of receipt of the dismissal. Any statement or brief in support of an appeal of a final decision on a complaint would have to be submitted to EEOC within 30 days of filing the notice of appeal. Statements or briefs in opposition to appeals would have to be served on the opposing party within 30 days of receipt of a statement or brief in support of an appeal. The Commission will strictly apply appellate time frames. Currently, complainants have 30 days after filing the notice of appeal to submit a statement or brief. The Commission believes that 30 days is sufficient time to file briefs in procedural cases (cases that are dismissed by the agency or the administrative judge) because those cases usually do not raise voluminous factual issues. On the other hand, appeals of final decisions on the merits of cases generally require a thorough review of the record and warrant additional time to formulate arguments to support the appeals. In connection with the briefing schedule changes, the Commission proposes to amend the regulation to require agencies to submit the complaint file to EEOC within 30 days of notification that the complainant has filed an appeal or within 30 days of submission of an appeal by the agency.

The Commission proposes to amend section 1614.404 to add a paragraph authorizing the Office of Federal Operations to take appropriate action where a party to an appeal fails without good cause shown to comply with the appellate procedures or to respond fully and in timely fashion to a request for information. The proposal would allow the Office of Federal Operations to draw an adverse inference that requested information a party failed to provide would have reflected unfavorably on that party, to consider the matters to which the requested information pertains to be established in favor of the opposing party, to issue a decision fully or partially in favor of the opposing party, or to take such other actions as appropriate.

The Commission proposes to amend section 1614.405 of the regulations to provide that decisions on appeal from final decisions by administrative judges after a hearing will be based on a substantial evidence standard of review, but review of all other decisions will be based on a de novo standard of review. The version of the NPRM circulated for interagency coordination had included a clearly erroneous standard of review for administrative judges' factual findings; this was changed to the substantial evidence standard now in the NPRM at the request of agencies, who took the position that the clearly erroneous standard was too restrictive. No new evidence will be considered on appeal unless the evidence was not reasonably available during the hearing process. It should be emphasized that the substantial evidence standard does not preclude meaningful review of factual findings. However, applying the de novo standard of review to the factual findings in administrative judges' final decisions after hearings would be an inefficient use of EEOC's limited resources. In addition, since EEOC's Office of Federal Operations did not see and hear the witnesses, it would not be in a position to second-guess the administrative judge during the appellate process, especially with respect to credibility determinations based on a witness' demeanor. Factual findings based on documentary evidence are more susceptible to review in the appellate process.

Finally, the Commission proposes to amend sections 1614.405 and 1614.407 to model its reconsideration process after the process used by the Merit Systems Protection Board (MSPB). Reconsideration is an extra layer of review that is duplicative and time-consuming but that does little to improve the complaints process. The Commission denies the majority of requests for reconsideration, whether in procedural or merits cases. The purpose of this change is to enable the Commission to direct more resources to decision-making at the first appellate level, focusing on policy issues it deems important and developing a consistent body of decisional law on those issues. Restructuring the reconsideration process will permit the Commissioners to become more involved in the initial appellate decision. This proposal would also effectuate one of the central goals of the National Performance Review by, in many cases permitting decision-making at an earlier stage. The Commission will retain its discretion to reconsider any decision under section 1614.407(a).

Most agency commenters who commented on this proposal when it was coordinated under Exec. Order No. 12067 opposed eliminating the right to seek reconsideration. They urged retention of the right to request reconsideration as a safeguard for agencies against mistakes and inconsistencies by the Office of Federal Operations. It would be unfair to deny agencies this last opportunity for recourse, they maintained, particularly if administrative judges' decisions are made final and given greater deference. They argued the change would unjustifiably tip the balance in favor of complainants, who have the right to file suit in federal court and receive a *de novo* review. As they noted, agencies do not have the right to any court review if dissatisfied with a Commission decision. Several commenters also argued in favor of preservation of the right to request reconsideration of at least those decisions involving important legal issues or having a significant impact on agency policies or programs beyond the case at hand. In response to these comments the Commission has provided standards for parties to meet in seeking reconsideration. While reconsideration will continue to be discretionary, parties can seek reconsideration where there is a clear mistake of fact or law or where the decision will have a far ranging impact on the agency.

Reformation of the reconsideration process is an important component of the proposed federal sector reforms. It will provide the resources to improve the timeliness and quality of the Commission's Office of Federal Operations decisions across the board. The broad availability of reconsideration has not significantly enhanced the overall decision-making process. Many requests are simply a reargument of previously unsuccessful positions. They are sometimes used only to delay the finality of an adverse decision. The overwhelming majority of requests are denied. For example, in fiscal year 1997, requests for reconsideration resulting in a reversal of an order on the merits occurred in only seven instances or about 4% of the cases. For fiscal years 1996, 1995, 1994 and 1993, the figures were 5%, 2%, 2% and 3%, respectively.

To the extent agencies have legitimate complaints about erroneous Office of Federal Operations decisions, the Commission believes the principal remedy is to seek to improve the quality timeliness and consistency of the

decision-making process as a whole. This is best accomplished by shifting resources to the appeal stage. Although the agencies view it as unfair that, unlike complainants, they cannot go to court if they are dissatisfied with the administrative process, the Commission does not believe that this argument supports adding another layer to the process. Regardless of how the reconsideration process is structured, complainants will still have the right to obtain court review while agencies will not. This inherent aspect of the process does not outweigh the need for finality at an earlier stage and the value of a more streamlined process. Finally, some agencies have argued that reconsideration is an important step to ensure full consideration of the agency position in cases involving significant legal issues or broader consequences for agency policies and programs. In the first instance, it is incumbent upon the agency to identify and thoroughly address such policy or legal issues in its brief at the appellate stage so that the Commission can give the case the level of scrutiny warranted at the most appropriate level of review. Moreover, the proposed standards address this concern.

Attorney's Fees

The Commission proposes to amend the attorney's fees section of the regulations to authorize administrative judges to calculate reasonable attorney's fees in cases where a hearing is requested. Currently, administrative judges decide the entitlement to attorney's fees. Agencies, however, calculate the amount of the award. The Commission believes that administrative judges are in a better position to render an impartial decision on the reasonableness of the fees request. They have heard the evidence and can assess the complexity of the case as presented by the attorney as the basis of the award. Moreover, because administrative judges are neutral third parties to the dispute, their attorney's fees calculations will not be perceived as biased in favor of one party or the other. This proposal has been questioned by some agencies because administrative judges generally have not issued such awards previously. In light of these concerns, the Commission will issue guidance to administrative judges on the calculation of reasonable attorney's fees. The Commission will consult with other agencies prior to issuing the guidance.

In addition, the Commission proposes to amend section 1614.501(e)(1)(iv) to provide that an award of attorney's fees may include compensation for the time spent during the counseling period including any ADR process. The Commission believes that the current regulation, which limits attorney's fees awards to fees for work performed after a formal complaint is filed, could serve as a disincentive to participate in alternative dispute resolution, which often occurs during the counseling period, or otherwise settle a case during counseling.

During inter-agency coordination of the proposed rule, many agencies expressed opposition to this proposal to provide for attorney's fees awards for pre-complaint activities, arguing that providing for attorney's fees will formalize the informal counseling process and make it more legalistic and adversarial. While the Commission believes that the availability of attorney's fees will permit settlement early on, agencies believe that it will draw out the process. The Commission proposes the change, in part, to make the EEO complaint remedies consistent with the remedies available to Federal employees in other forums. The Office of Personnel Management's (OPM) Back Pay Act regulations provide for the payment of attorney's fees without a temporal restriction in cases correcting unjustified or unwarranted personnel actions. 5 CFR 550.807. In other words, OPM's regulations provide for full attorney's fees, including cases resolved during the informal stage (first step) of the grievance process. Likewise, the Merit System Protection Board's (MSPB) regulations do not contain any restriction on attorney's fees. 5 CFR 1201.37. The Commission does not believe that federal employees who have been discriminated against should receive a lesser remedy than federal employees who prevail in grievances and MSPB appeals. The Commission is particularly interested in comments on this proposal.

In addition to the proposed changes outlined above, the Commission proposes to amend section 1614.103(b) of the regulations to include the Public Health Service Commissioned Corps and the National Oceanic and Atmospheric Administration Commissioned Corps in the coverage of Part 1614. This inclusion is consistent with prior Commission decisions and with the determination of the Solicitor General that Commissioned Corps member are covered by federal sector anti-discrimination statutes.

In proposing these changes, the Commission wishes to reiterate its intention to monitor the federal employee complaint process and to propose changes that may become necessary to correct problems that may develop. In order to better monitor the system, the Commission will examine the data that it maintains on complaints and appeals to ensure that appropriate information about appeals from final decisions, attorney's fees awarded and other costs exists.

Regulatory Procedures

Executive Order 12866

In promulgating this notice of proposed rulemaking, the Commission has adhered to the regulatory philosophy and applicable principles of regulation set forth in section 1 of the Executive Order 12866, Regulatory Planning and Review. This regulation has been designated as a significant regulation and reviewed by OMB consistent with the Executive Order.

Regulatory Flexibility Act

In addition, the Commission certifies under 5 U.S.C. § 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not have a significant economic impact on a substantial number of small entities, because it applies exclusively to employees and agencies and departments of the federal government. For this reason, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This regulation contains no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 29 CFR Part 1614

Administrative practice and procedure, Age discrimination, Equal employment opportunity, Government employees, Individuals with disabilities, Race discrimination, Religious discrimination, Sex discrimination.

For the Commission.

Paul M. Igasaki,

Chairman.

Accordingly, for the reasons set forth in the preamble, it is proposed to amend chapter XIV of title 29 of the Code of Federal Regulations as follows:

PART 1614—[AMENDED]

1. The authority citation for 29 CFR Part 1614 continues to read as follows:

Authority: 29 U.S.C. 206(d), 633a, 791 and 794a; 42 U.S.C. 2000e–16; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306; E.O. 11478, 3 CFR, 1969 Comp., p. 133; E.O. 12106, 3 CFR, 1978 Comp., p. 263; Reorg. Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

2. Section 1614.102 is amended by redesignating paragraphs (b)(2) through (b)(6) as paragraphs (b)(3) through (b)(7), and by adding paragraph (b)(2) to read as follows:

§ 1614.102 Agency program.

* * * * *

(b) * * *

(2) Establish or make available an alternative dispute resolution program for the equal employment opportunity pre-complaint process.

* * * * *

3. Section 1614.103 is amended by removing the word "and" at the end of paragraph (b)(3), removing the period at the end of paragraph (b)(4), adding the word "; and" at the end of paragraph (b)(4) and adding paragraphs (b)(5) and (b)(6) to read as follows:

§ 1614.103 Complaints of discrimination covered by this part.

* * * * *

(b) * * *

(5) The Public Health Service Commissioned Corps, except when, in time of war or national emergency, the President declares the Corps to be a military service in accordance with 42 U.S.C. 217;

(6) The National Oceanic and Atmospheric Administration Commissioned Corps.

* * * * *

4. Section 1614.105 is amended by redesignating paragraph (b) as paragraph (b)(1), revising the first sentence of redesignated paragraph (b)(1), adding paragraph (b)(2), revising the first sentence of paragraph (d) and revising paragraph (f) to read as follows:

§ 1614.105 Pre-complaint processing.

* * * * *

(b)(1) At the initial counseling session, Counselors must advise individuals orally and in writing of their rights and responsibilities, including the right to request a hearing or an immediate final decision after an investigation by the agency in accordance with § 1614.108(f), election rights pursuant to §§ 1614.301 and 1614.302, the right to file a notice of intent to sue pursuant to § 1614.201(a) and a lawsuit under the ADEA instead of an administrative complaint of age discrimination under this part, the duty to mitigate damages, administrative and court time frames, and that only the matter(s) raised in precomplaint counseling (or issues like or related to issues raised in pre-complaint counseling) may be alleged in a subsequent complaint filed with the agency. * * *

(2) Counselors shall advise aggrieved persons that they may choose between participation in the alternative dispute resolution program offered by the agency and the counseling activities provided for in paragraph (c) of this section.

* * * * *

(d) Unless the aggrieved person agrees to a longer counseling period under paragraph (e) of this section, or the aggrieved person chooses an alternative dispute resolution procedure in accordance with paragraph (b)(2) of this section, the Counselor shall conduct the final interview with the aggrieved person within 30 days of the date the aggrieved person contacted the agency's EEO office to request counseling. * * *

* * * * *

(f) Where the aggrieved person chooses to participate in an alternative dispute resolution procedure in accordance with paragraph (b)(2) of this section, the pre-complaint processing period shall be 90 days. If the matter has not been resolved before the 90th day, the notice described in paragraph (d) of this section shall be issued.

* * * * *

5. Section 1614.106 is amended by adding a sentence after the first sentence of the introductory text of paragraph (d) to read as follows:

§ 1614.106 Individual complaints.

* * * * *

(d) * * * The agency shall advise the complainant in the acknowledgment of the EEOC office and its address where a request for a hearing shall be sent. * * *

* * * * *

6. Section 1614.107 is amended by redesignating paragraphs (a) through (h) as paragraphs (a)(1) through (8), redesignating the introductory text as paragraph (a) introductory text and revising it, revising paragraph (a)(8) and adding new paragraph (a)(9) and paragraph (b) to read as follows:

§ 1614.107 Dismissals of complaints.

(a) Prior to a request for a hearing in a case, the agency shall dismiss an entire complaint:

* * * * *

(8) That alleges dissatisfaction with the processing of a previously filed complaint; or

(9) Where the agency strictly applies the criteria set forth in Commission decisions and finds a clear pattern of misuse of the EEO process.

(b) Where the agency believes that some but not all of the claims in a complaint should be dismissed for the reasons contained in paragraphs (a)(1) through (9) of this section, the agency shall notify the complainant in writing of its determination, the rationale for that determination and that those allegations will not be investigated, and shall place a copy of the notice in the investigative file. A determination under this paragraph is reviewable by an administrative judge if a hearing is requested on the remainder of the complaint, but is not appealable until a final decision is issued on the remainder of the complaint.

7. Section 1614.108 is amended by revising paragraph (f) and adding a new paragraph (g) to read as follows:

§ 1614.108 Investigation of complaints.

* * * * *

(f) Within 180 days from the filing of the complaint, within the time period contained in an order from the Office of Federal Operations on an appeal from a dismissal, or within any period of extension provided for in paragraph (e) of this section, the agency shall provide the complainant with a copy of the investigative file, and shall notify the complainant that, within 30 days of receipt of the investigative file, the complainant has the right to request a hearing and final decision from an administrative judge or may receive an immediate final decision pursuant to § 1614.110 from the agency with which the complaint was filed.

(g) Where the complainant has received the notice required in paragraph (f) of this section or at any time after 180 days have elapsed from the filing of the complaint, the complainant may request a hearing by submitting a request for a hearing directly to the EEOC office indicated in the agency's acknowledgment letter. The complainant shall send a copy of the request for a hearing to the agency EEO office. Upon receipt of a request for a hearing, EEOC will request that the agency provide copies of the complaint file to EEOC and, if not previously provided, the complainant.

8. Section 1614.109 is amended by revising paragraph (a), redesignating paragraphs (b) through (g) as paragraphs (d) through (i), adding new paragraphs (b) and (c), revising the introductory text of redesignated paragraph (f)(3), in redesignated paragraph (g) removing the phrases "findings and conclusions" and adding, in their place, the words "final decisions", adding a new paragraph (g)(4), and revising paragraph (i) to read as follows:

§ 1614.109 Hearings.

(a) When a complainant requests a hearing, the Commission shall appoint an administrative judge to conduct a

hearing in accordance with this section. Any hearing will be conducted by an administrative judge or hearing examiner with appropriate security clearances. Where the administrative judge determines that the complainant is raising or intends to pursue issues like or related to those raised in the complaint, but which the agency has not had an opportunity to address, the administrative judge may remand any such issue for counseling in accordance with § 1614.105 or for such other processing as ordered by the administrative judge.

(b) *Dismissals.* Administrative judges shall dismiss complaints pursuant to § 1614.107.

(c) *Offer of resolution.* Any time after the initial counseling session but more than 30 days prior to the hearing, the agency may make an offer of resolution of the complaint to the complainant. The offer of resolution shall be in writing and shall include a notice explaining the possible consequences of failing to accept the offer. The complainant shall have 30 days from receipt of the offer of resolution to accept or reject it. If the complainant is represented by an attorney when the offer is made and fails to accept an offer of resolution, and the final decision on the complaint is not more favorable than the offer, then, except where the interest of justice would not be served, the complainant shall not receive payment from the agency of attorney's fees or costs incurred after the date of rejection or the expiration of the 30-day period of the offer of resolution if no rejection has been made. An acceptance of an offer must be in writing and will be timely if postmarked or received within the 30-day period. Where a complainant fails to accept an offer of resolution, an agency may make other offers of resolution or either party may seek to negotiate a settlement of the complaint at any time.

(f) * * *

(3) When the complainant, or the agency against which a complaint is filed, or its employees fail without good cause shown to respond fully and in timely fashion to an order of an administrative judge, or requests for the investigative file, for documents, records, comparative data, statistics, affidavits, or the attendance of witness(es), the administrative judge shall, in appropriate circumstances:

* * * * *

(g) * * *

(4) Where the administrative judge determines, even though material facts remain in dispute, that there is sufficient information in the record to decide the case, that the material facts in dispute can be decided on the basis of the written record, that there are no credibility issues that would require live testimony in order to evaluate a witness' demeanor and that the case lacks merit, the administrative judge may issue a final decision without a hearing.

* * * * *

(i) *Final decisions by administrative judges.* Unless the administrative judge makes a written determination that good cause exists for extending the time for issuing a final decision, within 180 days of receipt by EEOC of a request for a hearing, an administrative judge shall issue a final decision on the complaint, and shall order appropriate remedies and relief where discrimination is found with regard to the matter that gave rise to the complaint. The administrative judge shall send copies of the entire record, including the transcript, and the final decision to the parties by certified mail, return receipt requested. The final decision shall contain notice of the right of either party to appeal to the Commission, notice of the right of the complainant to file a civil action in Federal district court, the name of the proper defendant in any such lawsuit and the applicable time limits for appeals and lawsuits. A copy of EEOC Form 573 shall be attached to the decision.

9. Section 1614.110 is amended by revising the title and first and second sentence to read as follows:

§ 1614.110 Final decisions by agencies.

Within 60 days of receiving notification that a complainant has requested an immediate decision from the agency, or within 60 days of the end of the 30-day period for the complainant to request a hearing or an immediate final decision where the complainant has not requested either a hearing or a decision, the agency shall issue a final decision. The final decision shall consist of findings by the agency on the merits of each issue in the complaint, or, as appropriate, the rationale for dismissing any claims in the complaint and, when discrimination is found, appropriate remedies and relief in accordance with subpart E of this part.* * *

10. Section 1614.204 is amended by revising paragraph (b), removing the words "recommend that the agency" from paragraphs (d)(2), (d)(3), (d)(4), and (d)(5), removing the word "recommend" and replacing it with the word "decide" in paragraph (d)(6), revising paragraph (d)(7), paragraph (e)(1), paragraph (g)(2) and paragraph (l)(3) to read as follows:

§ 1614.204 Class complaints.

* * * * *

(b) *Pre-complaint processing.* An employee or applicant who wishes to file a class complaint must seek counseling and be counseled in accordance with § 1614.105. A complainant may move for class certification at any reasonable point in the process when it becomes apparent that there are class implications to the claim raised in an individual complaint. If a complainant moves for class certification after completing the counseling process contained in § 1614.105, no additional counseling is required.

* * * * *

(d) * * *

(7) The administrative judge shall transmit his or her decision to accept or dismiss a complaint to the agency and the agent. The dismissal of a class complaint shall inform the agent either that the complaint is being filed on that date as an individual complaint of discrimination and will be processed under subpart A or that the complaint is also dismissed as an individual complaint in accordance with § 1614.107. In addition, it shall inform the agent of the right to appeal the dismissal of the class complaint to the Office of Federal Operations or to file a civil action and shall include EEOC Form 573, Notice of Appeal/Petition.

(e) (1) Within 15 days of receiving notice that the administrative judge has accepted a class complaint or a reasonable time frame specified by the administrative judge, the agency shall use reasonable means, such as delivery, mailing to last known address or distribution, to notify all class members of the acceptance of the class complaint.

* * * * *

(g) * * *

(2) The complaint may be resolved by agreement of the agency and the agent at any time as long as the administrative judge finds the agreement to be fair and reasonable.

* * * * *

(l) * * *

(3) When discrimination is found in the final decision and a class member believes that he or she is entitled to individual relief, the class member may file a written claim with the head of the agency or its EEO Director within 30 days of receipt of notification by the agency of its final decision. The claim must include a specific, detailed showing that the claimant is a class member who was affected by a personnel action or matter resulting from the discriminatory policy or practice, and that this discriminatory

action took place within the period of time for which the agency found class-wide discrimination in its final decision. Where a finding of discrimination against a class has been made, there shall be a presumption of discrimination as to each member of the class. The agency must show by clear and convincing evidence that any class member is not entitled to relief. The period of time for which the agency finds class-wide discrimination shall begin not more than 45 days prior to the agent's initial contact with the Counselor and shall end not later than the date when the agency eliminates the policy or practice found to be discriminatory in the agency decision. The agency shall issue a final decision on each such claim within 90 days of filing. Such decision must include a notice of the right to file an appeal or a civil action in accordance with subpart D of this part and the applicable time limits.

11. Section 1614.401 is amended by redesignating paragraphs (b) through (d) as paragraphs (c) through (e), revising paragraph (a) and adding a new paragraph (b) to read as follows:

§ 1614.401 Appeals to the Commission.

(a) A complainant may appeal an agency's final decision or the agency's dismissal of a complaint.

(b) A complainant or an agency may appeal an administrative judge's final decision or an administrative judge's dismissal of a complaint.

* * * * *

12. Section 1614.403 is revised to read as follows:

§ 1614.403 How to appeal.

(a) The complainant, agency, agent, grievant or individual class claimant (hereinafter appellant) must file an appeal with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, at P.O. Box 19848, Washington, DC 20036, or by personal delivery or facsimile. The appellant should use EEOC Form 573, Notice of Appeal/Petition, and should indicate what is being appealed.

(b) The appellant shall furnish a copy of the appeal to the opposing party at the same time it is filed with the Commission. In or attached to the appeal to the Commission, the appellant must certify the date and method by which service was made on the opposing party.

(c) If an appellant does not file an appeal within the time limits of this subpart, the appeal will be untimely and shall be dismissed by the Commission.

(d) Where an appellant appeals a dismissal, any statement or brief in support of the appeal must be submitted to the Office of Federal Operations within 30 days of receipt of the dismissal. Where an appellant appeals a final decision, any statement or brief in support of the appeal must be submitted within 30 days of filing the notice of appeal.

(e) The agency must submit the complaint file to the Office of Federal Operations within 30 days of notification that the complainant has filed an appeal or within 30 days of submission of an appeal by the agency.

(f) Any statement or brief in opposition to an appeal must be submitted to the Commission and served on the opposing party within 30 days of receipt of the statement or brief supporting the appeal.

13. Section 1614.404 is amended by adding a new paragraph (c) to read as follows:

§ 1614.404 Appellate procedure.

* * * * *

(c) When either party to an appeal fails without good cause shown to comply with the requirements of this section or to respond fully and in timely fashion to requests for information, the Office of Federal Operations shall, in appropriate circumstances:

(1) Draw an adverse inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information;

(2) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(3) Issue a decision fully or partially in favor of the opposing party; or

(4) Take such other actions as appropriate.

14. Section 1614.405 is amended by revising the third sentence of paragraph (a) and revising paragraph (b) to read as follows:

§ 1614.405 Decisions on appeals.

(a) * * * The decision on an appeal from a final decision shall be based on a de novo review, except that the review of the factual findings in a decision by an administrative judge issued pursuant to § 1614.109(h) shall be based on a substantial evidence standard of review.

* * *

(b) A decision issued under paragraph (a) of this section is final within the meaning of § 1614.408 unless the Commission reconsiders the case. A party may request reconsideration within 30 days of receipt of a decision of the Commission, which the Commission in its discretion may grant, if the party demonstrates that:

(1) The appellate decision involved a clearly erroneous interpretation of material fact or law; or

(2) The decision will have a substantial impact on the policies, practices or operations of the agency.

15. Section 1614.407 is removed and sections 1614.408 through 1614.410 are redesignated sections 1614.407 through 1614.409.

16. Section 1614.501 is amended by revising the last sentence of the introductory text of paragraph (e)(1), and revising paragraph (e)(1)(iv) to read as follows:

§ 1614.501 Remedies and relief.

* * * * *

(e) *Attorney's fees or costs*—(1) * * * In a final decision, the agency, administrative judge, or Commission may award the applicant or employee reasonable attorney's fees or costs (including expert witness fees) incurred in the processing of the complaint.

* * * * *

(iv) Attorney's fees shall be paid for all services performed by an attorney, provided that the attorney provides reasonable notice of representation to the agency, administrative judge or Commission. Written submissions to the agency that are signed by the representative shall be deemed to constitute notice of representation.

* * * * *

17. Section 1614.502 is amended by revising the first sentence of paragraph (a), revising paragraph (b) introductory text and paragraph (b)(2) and adding a new paragraph (b)(3) to read as follows:

§ 1614.502 Compliance with final Commission decisions.

(a) Relief ordered in a final decision on appeal to the Commission is mandatory and binding on the agency except as provided below. * * *

(b) Notwithstanding paragraph (a) of this section, when the agency requests reconsideration and the case involves removal, separation, or suspension continuing beyond the date of the request for reconsideration, and when the decision orders retroactive restoration, the agency shall comply with the decision to the extent of the temporary or conditional restoration of the employee to duty status in the position specified by the Commission, pending the outcome of the agency request for reconsideration.

* * * * *

(2) When the agency requests reconsideration, it may delay the payment of any amounts ordered to be paid to the complainant until after the request for reconsideration is resolved. If the agency delays payment of any

amount pending the outcome of the request to reconsider and the resolution of the request requires the agency to make the payment, then the agency shall pay interest at the rate set by the IRS for the underpayment of taxes compounded quarterly from the date of the original appellate decision until payment is made.

(3) The agency shall notify the Commission and the employee in writing at the same time it requests reconsideration that the relief it provides is temporary or conditional and, if applicable, that it will delay the payment of any amounts owed but will pay interest as specified in paragraph (b)(2) of this section. Failure of the agency to provide notification will result in the dismissal of the agency's request.

* * * * *

[FR Doc. 98–4165 Filed 2–19–98; 8:45 am]

BILLING CODE 6670–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–17; RM–9319]

Radio Broadcasting Services; Beaver Dam and Brownsville, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Charles M. Anderson proposing the substitution of Channel 264C3 for Channel 264A at Beaver Dam, the reallotment of Channel 264C3 from Beaver Dam to Brownsville, Kentucky, and the modification of the Station WAUE(FM)'s construction permit accordingly. Channel 264C3 can be allotted to Brownsville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site. The coordinates for Channel 264C3 at Brownsville are North Latitude 37–10–34 and West Longitude 86–18–08. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 264C3 at Brownsville, Kentucky, or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before April 6, 1998, and reply comments on or before April 21, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Brian M. Madden, Esq., Leventhal, Senter & Lerman, 2000 K Street, NW., Suite 600, Washington DC 20006 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–17, adopted January 28, 1998, and released February 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–4331 Filed 2–19–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC–97–5; FHWA–97–2384]

RIN 2125–AD40

Public Meeting To Discuss Requirements for Brake Hoses Used on Commercial Motor Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA is announcing a public meeting to discuss requirements for brake hoses used on commercial motor vehicles. The meeting is intended to initiate dialogue between the FHWA; the National Highway Traffic Safety Administration (NHTSA); manufacturers of brake hoses, brake hose assemblies, and brake hose end fittings for use on commercial motor vehicles; and interested parties concerning the adequacy of current Federal requirements for brake hoses and related components. The meeting will include presentations by the FHWA and the NHTSA explaining their respective roles. The agencies would provide brake hose manufacturers and interested parties the opportunity to voice their concerns about the adequacy of current Federal requirements for brake hoses.

DATES: The meeting will be held on March 24, 1998. The meeting will begin at 10:00 a.m. and end at 4:00 p.m.

ADDRESSES: The meeting will be held in room 4200 of the Department of Transportation's headquarters located at 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HCS–10, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://

www.nara.gov/nara/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/su_docs.

Background

On April 14, 1997 (62 FR 18170), the FHWA published a notice of proposed rulemaking (NPRM) concerning 49 CFR part 393 of the Federal Motor Carrier Safety Regulations (FMCSRs), and requested comments on the proposed amendments. The FHWA indicated that the proposed changes are intended to remove obsolete and redundant regulations; respond to several petitions for rulemaking; provide improved definitions of vehicle types, systems, and components; resolve inconsistencies between part 393 and the National Highway Traffic Safety Administration's Federal Motor Vehicle Safety Standards (49 CFR 571); and codify certain FHWA regulatory guidance concerning the requirements of part 393. Generally, the amendments do not involve the establishment of new or more stringent requirements, but a clarification of existing requirements. The agency indicated that this action is consistent with the President's Regulatory Reinvention Initiative and furthers the FHWA's ongoing Zero-Base Regulatory Review in that it proposes to make many sections more concise, easier to understand, and more performance oriented.

On June 12, 1997, the FHWA extended the comment period from June 13, 1997, to July 28, 1997, in response to a petition from the Motor and Equipment Manufacturers Association (MEMA) (62 FR 32066). The MEMA requested additional time to formulate comments in response to the proposed amendments in § 393.25, Requirements for lamps other than head lamps, § 393.45, Brake tubing and hose, adequacy, and § 393.46, Brake tubing and hose connections. A copy of the MEMA request is included in the docket.

FHWA's Proposed Amendments to §§ 393.45 and 393.46

Currently, the FHWA requires that brake hose and tubing installed on commercial motor vehicles conform to the applicable provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 106, Brake hoses (49 CFR 571.106). In addition, the FHWA's regulations reference several Society of Automotive Engineers (SAE) standards concerning testing procedures for brake hoses used in air, hydraulic, and vacuum brake systems. There are also references to SAE standards for metallic and nonmetallic tubing, and tubing and hose connections.

As part of the FHWA's effort to make the FMCSRs easier to understand, use and enforce, the agency proposed eliminating all of the references to SAE brake hose and tubing standards, with the exception of SAE J844, *Nonmetallic Air Brake System Tubing*. The proposed revisions, if adopted, would continue to require that all brake tubing and hoses, brake hose assemblies, and brake hose end fittings on commercial motor vehicles meet the applicable requirements of FMVSS No. 106. The FHWA would incorporate by reference SAE J844 concerning coiled nylon brake tubing in air brake systems to take into account three exceptions currently contained in the FMVSS No. 106 test procedures for air brake hose.[1] The tests concerning length change, tensile strength, and tensile strength of an assembly after immersion in water, have exceptions for coiled brake tubing. Manufacturers may choose between using the test procedures specified in FMVSS No. 106, or the test procedures specified in the SAE standards referenced in the FHWA's brake hose requirements. The proposed revision would have the effect of limiting each of the exceptions in FMVSS No. 106 to coiled nylon tubing that meets the testing requirements in SAE J844.

Purpose of the Meeting

Several brake hose manufacturers have submitted comments to the rulemaking docket expressing opposition to the proposed changes. The manufacturers believe the SAE standards that would no longer be referenced provide more stringent testing requirements than FMVSS No. 106 and are essential to ensuring that brake hose is adequate for use on commercial motor vehicles. Certain brake hose manufacturers have contacted members of Congress to voice their concerns stating that the proposed changes will decrease highway safety.

The FHWA has received numerous calls from congressional staff and letters from members of the House and Senate. At the request of congressional staff, the FHWA met with representatives from several congressional offices on October 24, 1997, to explain the proposed rulemaking and the roles of the FHWA and the NHTSA. During the meeting, the FHWA offered to hold a public meeting concerning brake hoses. It was agreed that the public meeting would give the FHWA and the NHTSA the opportunity to clarify their respective roles for the brake hose manufacturers, and provide the brake hose manufacturers with the opportunity to voice their concerns about §§ 393.45 and 393.46 and FMVSS No. 106 to the FHWA and the NHTSA.

Meeting Information

The meeting will be held on March 24, 1998, at the Department of Transportation's headquarters located at 400 Seventh Street, SW., Washington, D.C., 20590. The meeting will be held in room 4200. The Department of Transportation's headquarters is located above the L'Enfant Plaza subway station and is two blocks south of the intersection of Independence Avenue and Seventh Street, SW. The meeting is scheduled from 10:00 a.m. to 4:00 p.m.

Since access to the Department of Transportation's headquarters is controlled, all visitors must sign-in with the security office located at the southwest entrance to the building and wear a visitor's badge at all times while in the building.

Individuals who wish to make a formal presentation should contact Mr. Larry W. Minor at (202) 366–4012 no later than March 16, 1998, to ensure that sufficient time is allotted for the presentation and to identify any audio-visual equipment needed for the presentation.

List of Subjects in 49 CFR Part 393

Highways and roads, Incorporation by reference, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

Authority: 49 U.S.C. 31136, 31502; and 49 CFR 1.48.

Issued on: February 13, 1998.

Paul L. Brennan,

Acting Associate Administrator for Motor Carriers.

[FR Doc. 98–4352 Filed 2–19–98; 8:45 am]

BILLING CODE 4910–22–P

[1] Paragraphs S7.3.6 (length change), S7.3.10 (tensile strength), and S7.3.11 (water absorption and tensile strength) of 49 CFR 571.106 cross reference § 393.45 and indicate that certain coiled tubing that meets the requirements of § 393.45 is not required to meet the testing requirements described in those paragraphs.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 120996A]

Magnuson Act Provisions; Essential Fish Habitat; Extension of Comment Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Extension of comment period.

SUMMARY: NMFS announces an extension of the public comment period on the interim final regulations containing guidelines for the description and identification of essential fish habitat (EFH) in fishery management plans. The public comment period is hereby extended to March 19, 1998, to give members of the public additional time to review and comment on the interim final regulation.

DATES: Written comments will be accepted on or before March 19, 1998.

ADDRESSES: Comments should be addressed to Director, Office of Habitat Conservation, Attention: EFH, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282; telephone: 301/713–2325.

FOR FURTHER INFORMATION CONTACT: Lee Crockett, NMFS, 301/713–2325.

SUPPLEMENTARY INFORMATION:

Background

The rulemaking is required by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq*). The interim final rule was promulgated on December 19, 1997 (62 FR 66531). Details concerning the justification for and development of this interim final rule were provided in the proposed rule (62 FR 19723, April 23, 1997).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 13, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–4363 Filed 2–17–98; 3:44 pm]

BILLING CODE 3510–22–F

Notic

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DEPARTM

Forest Se

Supplemen Impact Sta Recovery, Grant Cou

AGENCY: Fo

ACTION: No a final envi

SUMMARY: will prepar environme for the Sun Long Creek Malheur Na and Record Fire Recove Supervisor 1997 [Notic 1997, (62 F existing en to riparian management water quali project area environmen information supplement

DATES: Writ March 6, 19

ADDRESSES: suggestions supplement District Ran Oregon 978

FOR FURTHE Acting Dep Craig, P.O. or District R 849, John D 575–3000).

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Notices

Federal Register
Vol. 63, No. 34
Friday, February 20, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Supplement to the Final Environmental Impact Statement for the Summit Fire Recovery, Malheur National Forest, Grant County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to supplement a final environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare a supplement to the final environmental impact statement (EIS) for the Summit Fire Recovery on the Long Creek Ranger District of the Malheur National Forest. The final EIS and Record of Decision for the Summit Fire Recovery were released by Forest Supervisor F. Carl Pence in October 1997 [Notice of Availability, October 10, 1997, (62 FR 52998)]. A review of the existing environemtal analysis specific to riparian habitat conservation areas, management indicator species, and water quality within the Summit Fire project area revealed new environmental information. This information will be documented as a supplement to the existing analysis.

DATES: Written comments are due March 6, 1998.

ADDRESSES: Send written comments and suggestions concerning the scope of this supplemental analysis to Doug V. Robin, District Ranger, P.O. Box 849, John Day, Oregon 97845.

FOR FURTHER INFORMATION CONTACT: Acting Deputy Forest Supervisor Dave Craig, P.O. Box 909, John Day, OR 97845 or District Ranger Doug Robin, P.O. Box 849, John Day, OR 97845 (phone: 541–575–3000).

SUPPLEMENTARY INFORMATION: The purpose of the supplement is to evaluate new information available to the Forest Service with regard to riparian habitat conservation areas (RHCA), management indicator species (MIS), soils, roadless area character, and water quality. Alternatives in the final EIS will include at least one new alternative which will be considered in light of the new information.

A draft supplement will be prepared and circulated for comment. Comments received on the draft supplement EIS will be considered in the preparation of the final EIS. The draft supplement is expected to be available for public review and comment in March 1998.

The Forest Service believes it is important to give reviewers notice, at this early stage, of several court rulings related to public participation in the environmental review process. First, reviewers of the supplemental EIS must structure their participation in the environmental review of the proposal so that it is meangingful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 436 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft supplement EIS stage, but that are not raised until completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1002 (9th Cir, 1986), and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft supplement EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft supplement. Comments may also address the adequacy of the supplement EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled for completion by Summer 1998. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft supplement. Forest Supervisor F. Carl Pence is the Responsible Official. He will decide which, if any, of the alternatives will be implemented. His decision and rationale for the decision will be documented in the Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR 215).

Dated: February 11, 1998.

F. Carl Pence,

Forest Supervisor.

[FR Doc. 98–4287 Filed 2–19–98; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 87–12A004."

Export Trade Certificate of Review No. 87–00004 was issued to AMT—The Association For Manufacturing Technology ("AMT") on May 19, 1987 (52 FR 19371, May 22, 1987) and subsequently amended on December 11, 1987 (52 FR 48454, December 22, 1987), January 3, 1989 (54 FR 837, January 10, 1989), April 20, 1989 (54 FR 19427, May 5, 1989), May 31, 1989 (54 FR 24931, June 12, 1989), May 29, 1990 (55 FR 23576, June 11, 1990), June 7, 1991 (56 FR 28140, June 19, 1991), November 27, 1991 (56 FR 63932, December 6, 1991), July 20, 1992 (57 FR 33319, July 28, 1992), May 10, 1994 (59 FR 25614, May 17, 1994), December 1, 1995 (61 FR 13152, March 26, 1996), and October 11, 1996 (61 FR 55616, October 28, 1996).

Summary of the Application

Applicant: AMT—The Association For Manufacturing Technology ("AMT"), 7901 Westpark Drive, McLean, Virginia 22102–4269.

Contact: Andrew J. Shapiro, legal counsel, Telephone: (202) 662–5447.

Application No.: 87–12A004.

Date Deemed Submitted: February 5, 1998.

Proposed Amendment

AMT seeks to amend its Certificate to:

1. Add as "Members" the following companies: Aldridge Grinding Machine Co., Huntsville, Alabama; Alliance Automation Systems, Rochester, New York; Alliance Manufacturing, Inc., Fond Du Lac, Wisconsin; Apex Broaching Systems, Warren, Michigan; Azon USA, Inc., Kalamazoo, Michigan; Defiance Machine & Tool Co., Maryland Heights, Missouri; Durant Tool Company, Warwick, Rhode Island; Grob Systems, Inc., Bluffton, Ohio; J&S Tool Company, Inc., Livingston, New Jersey; Jewett Automation, Richmond, Virginia; Liberty Precision Industries, Rochester, New York; Manufacturing Technology, Inc., Ventura, California; Mayfran International, Cleveland, Ohio; Mitts & Merrill L.P., Harvard, Illinois; Process Control Automation, Inc., Montague, Missouri.

2. Delete as "Members" the following companies: Hobart Laser products; ISI Robotics; Mattison Technologies; Milman Engineering Inc.; Modern Machine Works, Inc.; Niagara Falls Grinders.

3. Change the listing of the company name for the current "Members" cited in this paragraph to the new listing cited in parenthesis as follows: Command Corporation International (Command Tooling Systems LLC); Cone Blanchard Machine Systems (Cone-Blanchard); Eaton Leonard Inc. (Eagle Eaton Leonard); Gleason Corp. (The Gleason Works); Grinding Technology Inc. (GTI Technologies, Inc.); Hardinge Brothers, Inc. (Hardinge Inc.); Komo Machine, Inc. (Komo Butler); PH Hydraulics & Automation, Inc. (PH Group, Inc.); Tenco Industries, Inc. (Tenco Industries, Inc., Division of RMT Technologies); Western Atlas (Unova Inc.).

Dated: February 17, 1998.

Morton Schnabel,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 98–4356 Filed 2–19–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No.: 980212034–8034–01]

Notice of Opportunity for Collaboration

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Office of Export Trading Company Affairs (OETCA), International Trade Administration, Department of Commerce, is seeking a private sector partner to produce and distribute both a print and an electronic directory of U.S. exporters and export intermediaries.

DATES: Proposals should be sent no later than March 6, 1998.

ADDRESSES: Send proposals to Mort Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Vanessa Bachman, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title I of the Export Trading Company Act of 1982 (15 U.S.C. 4001–4003) mandates that the Office of Export Trading Company Affairs (OETCA) provide a referral service to facilitate contact between producers of exportable goods and services and firms offering export trade services. In support of this mandate and for several years, OETCA has produced and distributed, in partnerships with a private sector firm, a directory listing trade contact information on U.S. manufacturers, service organizations and export trade intermediaries under the name "Export Yellow Pages®" (EYP).

The EYP includes trade contact information on approximately 17,000 U.S. companies, primarily small and medium sized firms, that have registered their export interests with OETCA's Contact Facilitation Service (CFS), a computerized database. Registration on the CFS, and the directory, is free of charge. Display advertising can be purchased for a fee.

A minimum of 50,000 copies of the EYP have been printed annually. They have been distributed free of charge, primarily through the U.S. Department of Commerce's Export Assistance Centers (domestically) and through U.S. Embassies and Consulates abroad. In 1997, OETCA implemented a pilot program to make the directory available to the public on-line via the Internet. The directory is also made available in electronic form through the U.S. Department of Commerce's National Trade Databank (NTDB), an electronic clearinghouse that provides information to the public for a subscription fee.

OETCA is now seeking a new partner to produce and distribute both a print and an electronic directory of U.S. exporters and export intermediaries. The private sector partner will be responsible for:

1. Printing a minimum of 50,000 copies of the directory and delivering them to the sites designated by OETCA;

2. Issuing the first print edition of the directory no later than December 31,1998 and filling orders throughout

the year, issuing subsequent editions no later than December 31st on an annual basis;

3. Establishing, maintaining, and operating, on a continuous basis, an electronic version of the directory that is available to the public via the Internet for World Trade Week, usually the third week in May;

4. Inviting U.S. firms to participate in the directory as registrants, free of cost, or as display advertisers for a competitively determined fee;

5. Collaborating with OETCA on the design of a revised CFS registration form to be used in hard-copy and on-line;

6. Ensuring that the directory contains appropriate material only, particularly ensuring that the directory promotes U.S. exports and not U.S. companies seeking to import or attract foreign investment; and,

7. Providing OETCA the opportunity to review and comment on the content of the directory.

A copy of the Export Yellow Pages® print directory and additional information on the responsibilities of the parties may be obtained through the contact above. The electronic directory can be accessed via the Internet at http://export.uswest.com.

OETCA is looking for a partner that:

(1) Has a successful track record in publishing, preferably involving both directory-type publications and Internet-based services, and the timely distribution of publications both domestically and internationally;

(2) Has sufficient financial resources to ensure a sustainable long-term partnership;

(3) Has dedicated managerial and staff resources to ensure the continued development and improvement of the product and its distribution;

(4) Will provide strong customer service, to meet the needs of the advertisers in the directory and the Department of Commerce;

(5) Has demonstrated managerial and technical ability to continually enhance the quality of both the printed and electronic versions of the directory, including substantial experience with the use of interactive media;

(6) Has the ability to develop and support the use of the electronic version of the directory as a medium for electronic commerce; and

(7) Has a demonstrated interest in export activities and in assisting OETCA in fulfilling its mandate to promote exports of U.S. goods and services.

Interested parties should send a proposal (including a proposed time line for the issuance of both the print and electronic versions of the directory), as well as corporate bona fides including financial data (in audited form if available), to the above address. The proposal can also be sent by fax at (202) 482–1790.

Notwithstanding any other provision of law, no person is required to respond nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The information collection requirements in this notice have been approved by the Office of Management and Budget under OMB Control No. 0625–0120.

Authority: 15 U.S.C. § 175; 22 U.S.C. § 2455(f); and, 15 U.S.C. §§ 4001–4003.

Dated: February 13, 1998.

Morton Schnabel,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 98–4321 Filed 2–19–98; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010698C]

International Whaling Commission; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: NOAA makes use of a public Interagency Committee to assist in preparing for meetings of the International Whaling Commission (IWC). This notice sets forth guidelines for participating on the Committee and a tentative schedule of meetings and other important dates.

DATES: March 6, 1998, 2:00 p.m. See **SUPPLEMENTARY INFORMATION** for additional information and tentative dates of additional interagency meetings in 1998.

ADDRESSES: The March 6, 1998, meeting will be held in Room 1863, Herbert C. Hoover Building, Department of Commerce, 14th and Constitution, Washington, DC. Copies of nominations for the U.S. Delegation to the May IWC meetings should be sent to Catherine Corson, Office of Protected Resources, NMFS, 13th floor, SSMC3, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Catherine Corson, telephone: (301) 713–2322.

SUPPLEMENTARY INFORMATION: The March 6, 1998, Interagency Committee meeting will review recent events relating to the IWC and will review the agenda for the 1998 IWC annual meeting.

The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the Regulation of Whaling, 1946. This authority has been delegated to the Under Secretary for Oceans and Atmosphere, who is also the U.S. Commissioner to the IWC. The U.S. Commissioner has primary responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and by other interested agencies.

Each year, NOAA conducts meetings and other activities to prepare for the annual meeting of the IWC. The major purpose of the preparatory meetings is to provide input in the development of policy by individuals and non-governmental organizations interested in whale conservation. NOAA believes that this participation is important for the effective development and implementation of U.S. policy concerning whaling. Any person with an identifiable interest in United States whale conservation policy may participate in the meetings, but NOAA reserves the authority to inquire about the interest of any person who appears at a meeting and to determine the appropriateness of that person's participation. Foreign nationals and persons who represent foreign governments may not attend. These stringent measures are necessary to promote the candid exchange of information and to establish the necessary basis for the relatively open process of preparing for IWC meetings that characterizes current practices.

Tentative Meeting Schedule

The tentative schedule of additional meetings and deadlines, including those of the IWC, during 1998 follows. Confirmation of Interagency Committee meeting times, dates and locations will be provided in future Federal Register notices.

March 1, 1998: Nominations for the U.S. Delegation to the May IWC meetings are due to the U.S.

Commissioner, with a copy to Catherine Corson (see **ADDRESSES**). All persons wishing to be considered for the U.S. Commissioner's recommendation to the Department of State concerning the composition of the delegation should ensure that nominations are received by this date. Prospective Congressional advisers to the Delegation should contact the Department of State directly.

April 23, 1998: 2:00 p.m., Room 1863, Herbert C. Hoover Building, Department of Commerce, 14th and Constitution, Washington, DC: Tentative Interagency Committee meeting to review recent events relating to the IWC and to review U.S. positions for the 1998 IWC annual meeting.

April 27 to May 9, 1998 (Oman): IWC Scientific Committee Meeting.

May 11 to 20, 1998 (Oman): IWC 50th Annual Meeting.

Special Accommodations

Department of Commerce meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Catherine Corson at least 5 days prior to the meeting date.

Dated: February 17, 1998.

Patricia Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–4364 Filed 2–17–98; 3:44 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021398A]

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Council (Council) will hold meetings of its Bottomfish and Crustaceans Plan Teams in Honolulu, HI.

DATES: The Bottomfish Plan Team (BPT) meeting will be held on March 11–13, 1998, from 8:30 a.m. to 5:00 p.m., each day. The Crustaceans Plan Team (CPT) meeting will be held on March 17–19, 1998, from 8:30 a.m. to 5:00 p.m., each day.

ADDRESSES: Both meetings will be held at the Council office conference room, 1164 Bishop Street, Suite 1400, Honolulu, HI; telephone: (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director: telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The BPT will discuss and may make recommendations to the Council on a draft comprehensive amendment to implement new Sustainable Fishery Act (SFA) requirements (bycatch, fishing sectors, fishing communities, overfishing, essential fish habitat); a draft amendment with management options to restore overfished Main Hawaiian Island (MHI) onaga and ehu, or address the situation in other ways; and draft island-area modules for the 1997 bottomfish annual report. Other agenda items that the BPT will discuss and may take action on include:

1. State and Federal research on MHI overfished bottomfish;
2. Possible addition of generic level management unit species to the fishery management plan;
3. Improvements to annual report modules, including reconsideration of geographic reporting of overfishing indicator;
4. Update on the status of the draft amendment for the limited access program for the Mau Zone in the Northwestern Hawaiian Islands (NWHI); and
5. Other business as required.

The CPT will discuss and make recommendations to the Council on a draft comprehensive amendment to implement new SFA requirements (bycatch, fishing sectors, fishing communities, overfishing, essential fish habitat); the draft 1997 NWHI lobster annual report; and the addition of new areas (Commonwealth of the Northern Mariana Islands and U.S. Possessions) to Permit Area 3.

Other agenda items that the CPT will discuss and may take action on include:

1. Research and data collection plans for 1998;
2. Determination of the 1998 harvest guideline, including estimation of exploitable population size and establishment of separate bank quotas;
3. Status of framework regulatory changes: Vessel Monitoring System vessel transit of 50 mile closed area, announce harvest guideline 28 February, add May to closed season for MHI Federal waters; and
4. Other business as required.

Although other issues not contained in this agenda may come before these Teams for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: February 13, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–4365 Filed 2–19–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021298A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. Christopher W. Clark, Cornell University, Ithaca, New York 14850, has been issued an amendment to scientific research Permit No. 875–1401.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802–4213 (562/980–4001).

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: On December 23, 1997, notice was published in the **Federal Register** (62 FR 61093) that an amendment of Permit No. 875–1401, issued September 8, 1997 (62 FR 48611) had been requested by the above-name individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the

regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

The requested amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 875–1401 currently authorizes the harassment of several species of marine mammals during the conduct of research to study the effects of low-frequency sound produced by the Navy's Surface Towed Array Surveillance System Low Frequency Active (SURTASS LFA) system on the behavior of blue whales (*Balaenoptera musculus*) and fin whales (*Balaenoptera physalus*) feeding in the Southern California Bight during September/October of 1997 and/or 1998. It was amended on December 10, 1997 to provide for the conduct of playback experiments using a SURTASS LFA sound source to study behavioral responses of gray whales (*Eschrichtius robustus*) to SURTASS LFA signals, radio tagging via suction cup attachment of up to 14 gray whales, and harassment of individuals of several other species of cetaceans, pinnipeds, and possibly sea turtles, may be taken (*i.e.*, by harassment or auditory temporary threshold shift) during the studies on gray whales. Permit No. 875–1401 has now been amended to authorize the conduct of playback experiments using the SURTASS LFA sound source to study behavioral responses of breeding and nursing humpback whales (*Megaptera novaeangliae*) and foraging sperm whales (*Physeter macrocephalus*) in Hawaii from mid-February through mid-April of 1998. Individuals of several other cetacean, pinniped, and sea turtle species may be taken (*i.e.*, by harassment or auditory temporary threshold shift) during the proposed experiments.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 12, 1998.

Art Jeffers,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–4366 Filed 2–19–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Technical Information Service

NTIS Advisory Board Meeting

AGENCY: National Technical Information Service, Technology Administration, U.S. Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Technical Information Service Advisory Board (the "Board") will meet on Tuesday, March 10, 1998, from 8:30 a.m. to 12:30 p.m., and from 1:30 p.m. to 4:00 p.m. The session from 8:30 a.m. to 12:30 p.m., will be closed to the Public.

The Board was established under the authority of 15 U.S.C. 3704b(c), and was Chartered on September 15, 1989. The Board is composed of five members appointed by the Secretary of Commerce who are eminent in such fields as information resources management, information technology, and library and information services. The purpose of the meeting is to review and make recommendations regarding general policies and operations of NTIS, including policies in connection with fees and charges for its services. The agenda will include a progress report on NTIS activities, an update on the progress of FedWorld, and a discussion of NTIS' long range plans. The closed session discussion is scheduled to begin at 8:30 a.m. and end at 12:30 p.m. on March 10, 1998. The session will be closed because premature disclosure of the information to be discussed would be likely to significantly frustrate implementation of NTIS' business plans.

DATES: The meeting will convene on March 10, 1998, at 8:30 a.m. and adjourn at 4:00 p.m.

ADDRESSES: The meeting will be held in Room 2029 Sills Building, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

PUBLIC PARTICIPATION: The meeting will be open to public participation from 1:30 p.m. to 4:00 p.m. on March 10, 1998. Approximately thirty minutes will be set aside on March 10, 1998, for comments or questions from the public. Seats will be available for the public and for the media on a first-come, first-served basis. Any member of the public may submit written comments concerning the Board's affairs at any time. Copies of the minutes of the open session meeting will be available within thirty days of the meeting from the address given below.

FOR FURTHER INFORMATION CONTACT: Linda Lucas, NTIS Advisory Board Secretary, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, Telephone: (703) 605–6400; Fax (703) 487–4093.

Dated: February 17, 1998.

Donald R. Johnson,

Director.

[FR Doc. 98–4362 Filed 2–19–98; 8:45 am]

BILLING CODE 3510–04–M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Intent to Renew Information Collection #3038–0005: Rules Pertaining to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants.

SUMMARY: The Commodity Futures Trading Commission is planning to renew information collection 3038–0005, Rules Pertaining to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants, which is due to expire on April 30, 1998. The information collected pursuant to this rule provides a basis for determining compliance with Part 4 of the Commission's regulations which pertains to Commodity Pool Operators and Commodity Trading Advisors.

In compliance with the Paperwork Reduction Act of 1995, the Commission solicits comments to:

(1) evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Comments must be received on or before April 21, 1998.

ADDRESSES: Persons wishing to comment on this information collection should contact the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418–5160.

Title: Rules Pertaining to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants.
Control Number: 3038–0005.

Action: Extension.

Respondents: Commodity Pool Operators, Commodity Trading Advisors.

Estimated Annual Burden: 55,725.58.

Respondents	Regulation (17 (CFR)	Estimated number of respondents	Annual responses	Est. avg. hours. per response
CPO/CTA	Part 4	4,174	11,243.25	124.75

Issued in Washington, D.C. on February 17, 1998.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–4357 Filed 2–19–98; 8:45 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

Pursuant to the provisions of the Government in the Sunshine Act (5 U.S.C. 552b), notice is hereby given of the following meeting of the Board of Directors of the Corporation for National and Community Service.

DATE AND TIME: Tuesday, February 24, 1998, from 9:30 a.m. to 12:30 p.m.

PLACE: The meeting will be held at the Corporation for National and Community Service, 1201 New York Avenue NW, Room 8410, Washington, D.C.

STATUS: The meeting will be open.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of October 31, 1997, Board meeting.
2. Report by the Chief Executive Officer.
3. Committee reports.
   a. Executive Committee.
   b. Management Committee.
   c. Planning Committee.
   d. Communications Committee.
4. Report by the network of State Commissions on National and Community Service.
5. Program reports.
   a. AmeriCorps.
   b. Learn and Service America.
   c. Senior Corps.
   d. America Reads.
6. Consider and act on other business.
7. Public Comment.

FOR FURTHER INFORMATION CONTACT: Rhonda Taylor, Assoc. Dir., Special Projects and Initiatives, Corporation for National Service, 1201 New York Avenue NW, 8th Floor, Washington, DC 20525. Telephone (202) 606–5000 ext. 282. (T.D.D. (202) 565–2799).

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternative formats to accommodate visual and hearing impairments. Individuals who have a disability and who need an accommodation to attend the meeting may notify Ms. Taylor.

Dated: February 24, 1998.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 98–4472 Filed 2–18–98; 10:48 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–24]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–24, with attached transmittal and policy justification pages.

Dated: February 17, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

5 FEB 1998
In reply refer to:
I-61345/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-24 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $355 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Attachments

Separate Cover:
Classified Annex

Transmittal No. 98-24

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$209 million
Other	$146 million
TOTAL	$355 million

(iii) Description of Articles or Services Offered:
Two FFG-7 PERRY class frigates, two currently leased FF 1052 KNOX class frigates, 42 HARPOON missiles and containers, upgrade modifications kits for 20 SM-1 STANDARD missiles, sonobuoys and other related ammunition items, shipyard/port support services and post transfer activities relating to "hot ship" turnover of two PERRY class frigates from the U.S. Navy, U.S. Government and contractor engineering and logistics personnel support services, publications, repair and calibration services for shipboard equipment, publications and technical data/drawings, personnel training and training equipment, support equipment, spare and repair parts and other elements of logistics necessary to prepare the frigates for transfer to Egypt in a "Safe to Steam" condition with all shipboard and weapon systems operational.

(iv) Military Department: Navy (SBF, SBG, ABZ, ACA, GES, and GET)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex under separate cover.

(vii) Date Report Delivered to Congress: 5 FEB 1998

* as defined in Section 47(6) of the Arms Export Control Act.

[FR Doc.
BILLING CO

POLICY JUSTIFICATION

Egypt - FFG-7 PERRY and FF-1052 KNOX Class Frigates

The Government of Egypt has requested a possible sale of two FFG-7 PERRY class frigates, two currently leased FF 1052 KNOX class frigates, 42 HARPOON missiles and containers, upgrade modification kits for 20 SM-1 STANDARD missiles, sonobuoys and other related ammunition items, shipyard/port support services and post transfer activities relating to "hot ship" turnover of two PERRY class frigates from the U.S. Navy, U.S. Government and contractor engineering and logistics personnel support services, publications, repair and calibration services for shipboard equipment, publications and technical data/drawings, personnel training and training equipment, support equipment, spare and repair parts and other elements of logistics necessary to prepare the frigates for transfer to Egypt in a "Safe to Steam" condition with all shipboard and weapon systems operational. The estimated cost is $355 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Egypt already has two U.S. Navy PERRY and two leased KNOX class frigates in its Navy fleet, and air/surface/submarine launched HARPOON missiles in their weapon inventory. Egypt needs these frigates to continue its naval modernization program and enhance its Anti-Submarine Warfare (ASW) capability. The frigates will enable Egypt to continue providing security for the Suez Canal and its shipping lanes in the Mediterranean Sea.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor involved for the HARPOON missiles will be Boeing Company, St. Louis, Missouri. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel to Egypt. Contractor representatives representing varying technical skills and disciplines will be required to provide in-country support for approximately five years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 98-4361 Filed 2-19-98; 8:45 am]
BILLING CODE [illegible]-04-C

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 198. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the North Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 198 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: March 1, 1998.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 197. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

Dated: February 13, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000-04-M

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Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA:						
ANCHORAGE [INCL NAV RES]						
05/01 -- 09/30	120		59		179	03/01/98
10/01 -- 04/30	86		56		142	03/01/98
BETHEL	103		65		168	03/01/98
CORDOVA	85		62		147	03/01/98
CRAIG						
05/01 -- 08/31	95		66		161	05/01/97
09/01 -- 04/30	79		64		143	05/01/97
DENALI NATIONAL PARK						
06/01 -- 08/31	115		52		167	03/01/98
09/01 -- 05/31	90		50		140	03/01/98
DUTCH HARBOR-UNALASKA	110		69		179	03/01/98
EARECKSON AIR STATION	72		55		127	03/01/98
EIELSON AFB						
05/15 -- 09/15	121		60		181	03/01/98
09/16 -- 05/14	75		56		131	03/01/98
ELMENDORF AFB						
05/01 -- 09/30	120		59		179	03/01/98
10/01 -- 04/30	86		56		142	03/01/98
FAIRBANKS						
05/15 -- 09/15	121		60		181	03/01/98
09/16 -- 05/14	75		56		131	03/01/98
FT. RICHARDSON						
05/01 -- 09/30	120		59		179	03/01/98
10/01 -- 04/30	86		56		142	03/01/98
FT. WAINWRIGHT						
05/15 -- 09/15	121		60		181	03/01/98
09/16 -- 05/14	75		56		131	03/01/98
GLENNALLEN	86		53		139	08/01/97
HEALY						
06/01 -- 08/31	115		52		167	03/01/98
09/01 -- 05/31	90		50		140	03/01/98
HOMER						
05/01 -- 09/30	116		66		182	03/01/98
10/01 -- 04/30	87		64		151	03/01/98
JUNEAU	89		72		161	03/01/98
KENAI-SOLDOTNA						
04/01 -- 09/30	109		61		170	03/01/98
10/01 -- 03/31	74		59		133	03/01/98
KENNICOTT	149		84		233	08/01/97

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KETCHIKAN						
05/01 -- 09/30	100		74		174	03/01/98
10/01 -- 04/30	85		73		158	03/01/98
KLAWOCK						
05/01 -- 08/31	95		66		161	05/01/97
09/01 -- 04/30	79		64		143	05/01/97
KODIAK						
04/16 -- 09/30	98		69		167	03/01/98
10/01 -- 04/15	88		68		156	03/01/98
KOTZEBUE						
05/16 -- 09/15	101		81		182	04/01/97
09/16 -- 05/15	90		80		170	04/01/97
KULIS AGS						
05/01 -- 09/30	120		59		179	03/01/98
10/01 -- 04/30	86		56		142	03/01/98
MCCARTHY	149		84		233	08/01/97
MURPHY DOME						
05/15 -- 09/15	121		60		181	03/01/98
09/16 -- 05/14	75		56		131	03/01/98
NOME	83		63		146	03/01/98
PETERSBURG	76		62		138	03/01/98
SEWARD						
05/01 -- 09/15	114		62		176	03/01/98
09/16 -- 04/30	78		59		137	03/01/98
SITKA-MT. EDGECOMBE						
04/01 -- 09/04	101		60		161	03/01/98
09/05 -- 03/31	83		59		142	03/01/98
SKAGWAY						
05/01 -- 09/30	100		74		174	03/01/98
10/01 -- 04/30	85		73		158	03/01/98
SPRUCE CAPE						
04/16 -- 09/30	98		69		167	03/01/98
10/01 -- 04/15	88		68		156	03/01/98
TANANA	83		63		146	03/01/98
UMIAT	125		107		232	08/01/97
VALDEZ						
05/15 -- 09/15	105		65		170	03/01/98
09/16 -- 05/14	84		62		146	03/01/98
WASILLA	79		72		151	03/01/98
WRANGELL						
05/01 -- 09/30	100		74		174	03/01/98
10/01 -- 04/30	85		73		158	03/01/98
[OTHER]	72		55		127	03/01/98

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Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
AMERICAN SAMOA:						
AMERICAN SAMOA	73		53		126	03/01/97
GUAM:						
GUAM (INCL ALL MIL INSTAL)	185		90		275	05/01/97
HAWAII:						
CAMP H M SMITH	110		61		171	07/01/97
EASTPAC NAVAL COMP TELE AREA	110		61		171	07/01/97
FT. DERUSSEY	110		61		171	07/01/97
FT. SHAFTER	110		61		171	07/01/97
HICKAM AFB	110		61		171	07/01/97
HONOLULU NAVAL & MC RES CTR	110		61		171	07/01/97
ISLE OF HAWAII: HILO	76		55		131	07/01/97
ISLE OF HAWAII: OTHER						
04/01 -- 12/18	137		53		190	07/01/97
12/19 -- 03/31	150		54		204	07/01/97
ISLE OF KAUAI						
05/01 -- 11/30	109		71		180	07/01/97
12/01 -- 04/30	133		73		206	07/01/97
ISLE OF KURE	60		41		101	07/01/97
ISLE OF MAUI						
04/16 -- 12/14	100		58		158	07/01/97
12/15 -- 04/15	113		59		172	07/01/97
ISLE OF OAHU	110		61		171	07/01/97
KANEOHE BAY MC BASE	110		61		171	07/01/97
KEKAHA PACIFIC MISSILE RANGE FAC						
05/01 -- 11/30	109		71		180	07/01/97
12/01 -- 04/30	133		73		206	07/01/97
KILAUEA MILITARY CAMP	76		55		131	07/01/97
LULUALEI NAVAL MAGAZINE	110		61		171	07/01/97
NAS BARBERS POINT	110		61		171	07/01/97
PEARL HARBOR [INCL ALL MILITARY]	110		61		171	07/01/97
SCHOFIELD BARRACKS	110		61		171	07/01/97
WHEELER ARMY AIRFIELD	110		61		171	07/01/97
[OTHER]	79		62		141	06/01/93
JOHNSTON ATOLL:						
JOHNSTON ATOLL	13		9		22	07/01/97
MIDWAY ISLANDS:						
MIDWAY ISLANDS [INCL ALL MIL]	60		41		101	07/01/97
NORTHERN MARIANA ISLANDS:						
ROTA	105		71		176	05/01/97
SAIPAN	170		78		248	05/01/97
[OTHER]	61		53		114	05/01/97

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
PUERTO RICO:						
BAYAMON						
05/01 -- 11/28	105		65		170	09/01/97
11/29 -- 04/30	134		68		202	09/01/97
CAROLINA						
05/01 -- 11/28	105		65		170	09/01/97
11/29 -- 04/30	134		68		202	09/01/97
DORADO						
04/01 -- 12/19	196		68		264	09/01/97
12/20 -- 03/31	354		83		437	09/01/97
FAJARDO [INCL CEIBA, LUQUILLO & HUMACAO]	82		60		142	03/01/98
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]						
05/01 -- 11/28	105		65		170	09/01/97
11/29 -- 04/30	134		68		202	09/01/97
LUIS MUNOZ MARIN IAP AGS						
05/01 -- 11/28	105		65		170	09/01/97
11/29 -- 04/30	134		68		202	09/01/97
MAYAGUEZ	74		58		132	09/01/97
PONCE	99		58		157	09/01/97
ROOSEVELT ROADS & NAV STA	82		60		142	03/01/98
SABANA SECA [INCL ALL MILITARY]						
05/01 -- 11/28	105		65		170	09/01/97
11/29 -- 04/30	134		68		202	09/01/97
SAN JUAN & NAV RES STA						
05/01 -- 11/28	105		65		170	09/01/97
11/29 -- 04/30	134		68		202	09/01/97
[OTHER]	80		55		135	09/01/97
VIRGIN ISLANDS (U.S.):						
ST. CROIX						
04/15 -- 12/14	109		80		189	07/01/97
12/15 -- 04/14	129		82		211	07/01/97
ST. JOHN						
06/01 -- 12/15	228		79		307	07/01/97
12/16 -- 05/31	344		91		435	07/01/97
ST. THOMAS						
04/15 -- 12/18	215		76		291	07/01/97
12/19 -- 04/14	322		87		409	07/01/97
WAKE ISLAND:						
WAKE ISLAND	40		35		75	10/01/96

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[FR Doc. 98–4315 Filed 2–19–98; 8:45 am]

BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend system of records.

SUMMARY: The Department of the Army is updating the address directory located at the back of the inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective February 20, 1998.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 13, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DIRECTORY OF UNITED STATES ARMY, ARMY AND AIR FORCE EXCHANGE SERVICE (AAFES), AND FEDERAL ACQUISITION INSTITUTE (FAI) ADDRESSES

This directory is published to enable users of systems of records notices to identify the location of such systems of records in order to request access to and amendment of records.

Headquarters, Department of the Army

The following elements of the Army constitute the Headquarters, Department of the Army

Office of the Secretary of the Army, 101 Army Pentagon, Washington, DC 20310–0101.

Under Secretary of the Army, 102 Army Pentagon, Washington, DC 20310–0102.

Assistant Secretary of the Army Civil Works, 108 Army Pentagon, Washington, DC 20310–0108.

Assistant Secretary of the Army Financial Management and Comptroller, 109 Army Pentagon, Washington, DC 20310–0109.

Assistant Secretary of the Army Installations, Logistics and Environment, 110 Army Pentagon, Washington, DC 20310–0110.

Assistant Secretary of the Army Manpower and Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

Assistant Secretary of the Army Research, Development and Acquisition, 103 Army Pentagon, Washington, DC 20310–0103.

Department of the Army Review Boards Agency, 1941 Jefferson Davis Highway, Arlington, VA 22202–4508.

Office of the Director of Information Systems for Command, Control, Communications and Computers, 107 Army Pentagon, Washington, DC 20310–0107.

Office of the Inspector General, 1700 Army Pentagon, Washington, DC 20310–1700.

Office of Auditor General, 3101 Park Center Drive, Alexandria, VA 22302–1596.

Chief, Legislative Liaison, 1600 Army Pentagon, Washington, DC 20310–1500.

Director, Small and Disadvantaged Business Utilization, 106 Army Pentagon, Washington, DC 20310–0112.

Commander, U.S. Army Civilian Personnel Evaluation Agency, 1941 Jefferson Davis Highway, Arlington, VA 22202–4508.

Office of the Chief of Staff, 200 Army Pentagon, Washington, DC 20310–0200.

Office of the Chief of Public Affairs, 1500 Army Pentagon, Washington, DC 20310–1500.

Office of the Chief, Army Reserve, 2400 Army Pentagon, Washington, DC 20310–2400.

Office of the Chief of Engineers, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

Deputy Under Secretary of the Army, Operations Research, 102 Army Pentagon, Washington, DC 20320–1600.

Office of the Chief, Military History, 1099 14th Street, NW, Washington, DC 2005–3402.

Office of the Surgeon General, Falls Church, VA 22044–3258.

Office of the Chief of Chaplains, 2700 Army Pentagon, Washington, DC 20310–2700.

Office of the Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200.

Office of the Deputy Chief of Staff for Logistics, Army Pentagon, Washington, DC 20310.

Office of the Assistant Chief of Staff for Intelligence, 1000 Army Pentagon, Washington, DC 20310–1001.

Office of the Deputy Chief of Staff for Personnel, Washington, DC 20310–0300.

Office of the Chief, National Guard Bureau, 2500 Army Pentagon, Washington, DC 20310–2500.

Office of the Deputy Chief of Staff for Operations and Plans, 400 Army Pentagon, Washington, DC 20310–0400.

Commander, U.S. Army Special Operations Agency, 400 Army Pentagon, Washington, DC 20310–0400.

Commander, U.S. Army Command and Control Support Agency, 3200 Army Pentagon, Washington, DC 20310–3200.

Army and Air Force Exchange Service, P.O. Box 660202, Dallas, TX 75266–0202.

Major Commands

Commander in Chief, U.S. Army Europe and Seventh Army, Unit 29351, APO AE 09014–0010.

Commander, U.S. Army Forces Command, 1777 Hardee Avenue, SW, Fort McPherson, GA 30330–1062.

Commander, U.S. Army Corps of Engineers, 20 Massachusetts Ave NW, Washington, DC 20314–1000.

Commander, U.S. Military Traffic Management Command, 5611 Columbia Pike, Falls Church, VA 22041–5050.

Commander, U.S. Army Criminal Investigation Command, 6010 6th Street, Fort Belvoir, VA 22060–5506.

Commander, U.S. Army Medical Command, 2050 Worth Road, Fort Sam Houston, TX 78234–6003.

Commander, U.S. Army Intelligence and Security Command, 8825 Beulah Street, Fort Belvoir, VA 22060–5246.

Commander, U.S. Army Materiel Command, 5001 Eisenhower Avenue, Alexandria, VA 22333–0001.

U.S. Army Space and Missile Defense Command, P.O. Box 15280, Arlington, VA 22215–0280.

Commander, U.S. Army Military District of Washington, Fort Lesley J. McNair, DC 20319–5058.

Commander, U.S. Army South, APO AA 34004–7101.

Commander, U.S. Army Training and Doctrine Command, Fort Monroe, VA 23561–5000.

Commander, U.S. Army Pacific Command, Fort Shafter, HI 96858–5100.

Commander, U.S. Forces Korea/ Eighth U.S. Army, APO AP 96205–0010.

Unified Command

Commander in Chief, U.S. European Command, Unit 30400 Box 10000, APO AE 09128–4209.

Commander in Chief, U.S. Southern Command, 3511 NW 91st Avenue, Miami, FL 33172–1217.

Commander in Chief, U.S. Special Operations Command, MacDill Air Force Base, FL 33608–6001.

Army Field Operating Agencies, Subordinate Commands, and Major Installations

Alabama

Commander, U.S. Army Safety Center, 5th Avenue, Fort Rucker, AL 36362–5363.

Commander, Annistron Army Depot, 7 Frankford Avenue, Anniston, AL 36201–5001.

Commander, U.S. Army Engineer Division Huntsville, 4820 University Square, Huntsville, AL 35816–1822.

Commander, U.S. Army Engineering and Support Center P.O. Box 1600, Huntsville, AL 35807–4301.

Commander, U.S. Army Aviation and Missile Command, Redstone Arsenal, AL 35898–5000.

Commander, Fort McClellan, Fort McClellan, AL 36205–5000.

Commander, U.S. Army Aviation Center and Fort Rucker, Fort Rucker, AL 36362–5000.

Commander, U.S. Army Engineer District Mobile, P.O. Box 2288, Mobile, AL 36628–0001.

Commander, Alabama Army Ammunition Plant, 110 Highway No. 235, Childersburg, AL 35044–1021.

Alaska

Commander, U.S. Army Engineer District Alaska, P.O. Box 898, Anchorage, AK 99506–0898.

Commander, U.S. Army Alaska, Fort Richardson, AK 99505–0898.

Commander, U.S. Army Cold Region Test Center, Fort Greely, AK APO AP 98733–5000.

Arizona

Commander, U.S. Army Intelligence Center and Fort Huachuca, Fort Huachuca, AZ 85613–6000.

Commander, U.S. Army Yuma Proving Ground, Yuma, AZ 85635–9102.

Commander, U.S. Army Signal Command, Fort Huachuca, AZ 85613–5000.

Arkansas

Commander, U.S. Army Engineer District Little Rock, P.O. Box 867, Little Rock, AR 72203–0867.

Commander, U.S. Army Pine Bluff Arsenal, Pine Bluff, AR 71602–9500.

California

Commander, U.S. Army Engineer Division South Pacific, 333 Market Street, San Francisco, CA 94105–2195.

Commander, U.S. Army Engineer District Los Angeles, P.O. Box 2711, Los Angeles, CA 90053–2325.

Commander, U.S. Army Engineer District Sacramento, 1325 J Street, Sacramento, CA 95814–2922.

Commander, U.S. Army Engineer District San Francisco, 211 Main Street, San Francisco, CA 94105–1905.

South Pacific Laboratory, 25 Liberty Ship Way, Sausalito, CA 94965–1768.

Commander, U. S. Army National Training Center and Fort Irwin, Fort Irwin, CA 92310–5000.

Colorado

Commander, U.S. Army Space Command, 1670 North Newport Road, Colorado Springs, CO 80916–2749.

Commander, Fitzsimons Army Medical Center, Denver, CO 80045–5001.

Commander, 4th Infantry Division (MECH) and Fort Carson, Fort Carson, CO 80913–5000.

District of Columbia

Commander, U.S. Army Center of Military History, 102 4th Avenue, Fort McNair, DC 20319–5058.

Commander, Walter Reed Army Medical Center, 6925 16th Street NW, Washington, DC 20307–5001.

Commander, Fort Lesley J. McNair, 4th and P Streets SW, Washington, DC 20319–5000.

Armed Forces Institute of Pathology, Washington, DC 20307.

Commander, U.S. Army Physical Disability Agency FGS–WRAMC, Washington, DC 20307–5001.

Florida

Commander, U.S. Army Engineer District, Jacksonville, P.O. Box 4970, Jacksonville, FL 32232–0019.

Georgia

Commander, U.S. Army Reserve Command, 3800 North Camp Creek Pkwy SW, Atlanta, GA 30331–5099.

Commander, Dwight David Eisenhower Army Medical Center, Fort Gordon, GA 30905–5650.

Commander, U.S. Army Signal Center and Fort Gordon, Fort Gordon, GA 30905–5000.

Commander, Fort McPherson, Fort McPherson, GA 30330–5000.

Commander, Fort Stewart and Hunter Army Airfield, Hinesville, GA 31313–5000.

Commander, U.S. Army Engineer District Savannah, P.O. Box 889 Savannah, GA 31402–0889.

Commander, U.S. Army Engineer Division South Atlantic, 77 Forsyth Street, SW, Atlanta, GA 30335–3490.

Hawaii

Commander, U.S. Army Engineer Division Pacific Ocean, Building 230, Fort Shafter, HI 96858–5440.

Commander, U.S. Army Engineer District Honolulu, Building 230, Fort Shafter, HI 96858–5440.

Commander, Tripler Army Medical Center, 1 Jarrett White Road, Honolulu, HI 96859–5000.

Illinois

Commander, U. S. Military Entrance Processing Command, 2500 Green Bay Road, North Chicago, IL 60064–3094.

Commander, U.S. Army Engineer District Chicago, 111 North Canal Street, Suite 600, Chicago, IL 60606–7205.

Commander, U.S. Army Engineer District Rock Island, P.O. Box 2004, Rock Island, IL 61204–2004.

Commander, U.S. Army Construction, Engineering Research Laboratories, P.O. Box 9005, Champaign, IL 61826–9005.

Commander, U.S. Army Industrial Operations Command, Rock Island, IL 61299–5000.

Commander, Rock Island Arsenal Rock Island, IL 61299–5000.

Commander, U.S. Army Engineer Division North Central, 536 South Clark Street, Chicago, IL 60605–1892.

Indiana

Defense Finance and Accounting Service, Building 1225A, Fort Benjamin Harrison, IN 46249–1601.

Commander, U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Fort Benjamin E. Harrison, IN 46249–5301.

Kansas

Commander, U.S. Army Combined Arms Center and Fort Leavenworth, Fort Leavenworth, KS 66027–5000.

Commandant, U.S. Army Command and General Staff College, Fort Leavenworth, KS 66027–5000.

Commander, U.S. Army Disciplinary Barracks, Fort Leavenworth, KS 66027–5000.

Commander, 1st Infantry Division and Fort Riley, Fort Riley, KS 66442–5000.

Kentucky

Commander, U.S. Army Recruiting Command, 1307 3rd Avenue, Fort Knox, KY 40121–2726.

Commander, U.S. Army Engineer District Louisville, P.O. Box 59, Louisville, KY 40201–0059.

Commander, U.S. Army 101st Airborne Division and Fort Campbell, Fort Campbell, KY 42223–5000.

Commander, U.S. Army Armor Center and Ft Knox, Fort Knox, KY 40121–5000.

Commander, Blue Grass Army Depot, 2091 Kingston Highway, Richmond, KY 40475–5000.

Louisiana

Commander, U.S. Army Engineer District New Orleans, P.O. Box 60627, New Orleans, LA 70160–0267.

Maine

Commander, U.S. Army Engineer District New England, Frederick C. Murphy Federal Building, 424 Trapelo Road, Waltham, MA 02254–9149.

Maryland

Commander, U.S. Army Physical Disability Agency, 8120 Woodmont Avenue, Bethesda, MD 20814–2796.

Commander, U.S. Army Central Personnel Security Clearance Facility, Pike Road, Fort Meade, MD 20755–5250.

Commander, U.S. Army Engineer District, Baltimore and Supervisor of Harbor Baltimore, P.O. Box 1715, Baltimore, MD 21203–1715.

Commander, U.S. Army Research Laboratory, Adelphi, MD 20783–1197.

Commander, U.S. Army Chemical and Biological Defense Command. Aberdeen Proving Ground, MD 21010–5423.

Commander, U.S. Army Test and Evaluation Command, Aberdeen Proving Ground, MD 21005–5055.

Commander, U.S. Army Aberdeen Proving Ground, Aberdeen Proving Ground, MD 21005–5000.

Commander, U.S. Army Environmental Center, Aberdeen Proving Ground, MD 21005–5422.

Commander, U.S. Army Ordnance Center, Aberdeen Proving Ground, MD 21005–5201.

Commander, Fort George G. Meade, Fort George G. Meade, MD 20755–5000.

Commander, U.S. Army Garrison, Fort Ritchie, MD 21719–5010.

Massachusetts

Commander, U.S. Army Soldier Systems Command, Natick, MA 01760–6000.

Commander, U.S. Army Natick Research, Development, and Engineering Center, Natick, MA 01760–5000.

Commander, U.S. Army Engineer Division New England, 424 Trapelo Road, Waltham, MA 02234–9149.

Michigan

Commander, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, MI 48231–1027.

Commander, U.S. Army Tank-Automotive Command, Warren, MI 48397–5000.

Minnesota

Commander, U.S. Army Engineer District St. Paul, Army Corps of Engineers Centre, 190 5th Street East, St. Paul, MN 55101–1638.

Mississippi

Commander, U.S. Army Engineer Division, Mississippi Valley, P.O. Box 80, Vicksburg, MS 39181–0080.

Commander, U.S. Army Engineer District Vicksburg, 4155 Clay Street, Vicksburg, MS 39180–3435.

Commander, U.S. Army Engineers, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199.

Lower Mississippi Valley Division, 3909 Halls Ferry Road, Vicksburg, MS 39180–0080.

Missouri

Commander, U.S. Army Reserve Personnel Center, 9700 Page Avenue, St. Louis, MO 63132–5200.

Commander, U.S. Army Engineer District St. Louis, 122 Spruce Street, St. Louis, MO 63103–2833.

Commander, U.S. Army Engineer District Kansas City, 700 Federal Building, Kansas City, MO 64106–2896.

Commander, U.S. Army Engineer Center, Fort Leonard Wood, MO 65473–5000.

Commander, U.S. Army Engineer District St. Louis, 210 Tucker Boulevard N, St. Louis, MO 63101–1986.

National Personnel Records Center (Civilian), 111 Winnebago Street, St. Louis, MO 63118–4199.

Nebraska

Commander, U.S. Army Engineer District Omaha, 215 North 17th Street, Omaha, NE 68102–4978.

Chemistry and Material Quality Assurance Laboratory, 420 South 18th Street, Omaha, NE 68102–2586.

New Hampshire

Commander, U.S. Army Cold Regions, Research and Engineering Laboratory, 72 Lyme Road, Hanover, NH 03755–1290.

New Jersey

Commandant, U.S. Military Academy Preparatory School, Fort Monmouth, NJ 07303–5000.

Commander, U.S. Army Communications–Electronics Command, Fort Monmouth, NJ 07703–5000.

Commander, Picatinny Arsenal, Dover, NJ 07801–5000.

Commander, U.S. Army Training Center and Fort Dix, Fort Dix, NJ 98640–5000.

Commander, U.S. Army Armament Research Development and Engineering Center, Picatinny Arsenal, NJ 07806–5000.

New Mexico

Commander, U.S. Army Engineer District Albuquerque, 4101 Jefferson Plaza NE, Albuquerque, NM 87109–3435.

Commander, White Sands Missile Range, NM 88002–5031.

New York

Commander, United States Military Academy West Point, NY 10996–2001.

Commander, U.S. Army Engineer District New York and Supervisor of New York Harbor, 26 Federal Plaza, New York, NY 10278–0090

Commander, U.S. Army Engineer District Buffalo, 1776 Niagara Street, Buffalo, NY 14207–3199.

Commander, U.S. Army Engineer Division North Atlantic, 90 Church Street, New York, NY 10007–2979.

Commandant, U.S. Army Chaplain School Fort Wadsworth, Staten Island, NY 10305–5000.

North Carolina

Commander, U.S. Army Engineer District Wilmington, P.O. Box 1890, Wilmington, NC 28402–1890.

Commander, Womack Army Medical Center, Ft Bragg, NC 28307–5000.

Commander, Army Special Forces (Airborne) Command, Fort Bragg, NC 28307–5200.

Commander, U.S. Army John F. Kennedy Special Warfare Center and School, Fort Bragg, NC 28307–5200.

Commander, XVIII Airborne Corps-Fort Bragg, Fort Bragg, NC 28307–5000.

Ohio

Commander, U.S. Army Engineer Division Great Lakes and Ohio River, P.O. Box 1159, Cincinnati, OH 45202–2215.

Oklahoma

Commander, U.S. Army Engineer District Tulsa, P.O. Box 61, Tulsa, OK 74121–0061.

Commander, U.S. Army Ammunition Plant, McAlester, OK 74121–5000.

Commander, U.S. Army Field Artillery Center and Fort Sill, Fort Sill, OK 73503–5000.

Oregon

Commander, U.S. Army Engineer North Pacific Regional, P.O. Box 2870, Portland, OR 97208–2870.

Commander, U.S. Army Engineer District Portland, P.O. Box 2946, Portland, OR 97208–2946.

Commander, U.S. Army Engineer Division Northwestern, P.O. Box 2870, Portland, OR 97208–2870.

Pennsylvania

U.S. Army Center of Military History, 22 Ashburn Drive, Carlisle Barracks, Carlisle, PA 17103–5008.

Commander, U.S. Army War College, 122 Forbes Avenue, Carlisle Barracks, PA 17013–5215.

Commander, U.S. Army Engineer District Pittsburgh, William S. Moorehead Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222–4186.

Commander, U.S. Army Engineer District Philadelphia, 100 Penn Square East, Philadelphia, PA 19107–3390.

Director, U.S. Army Marine Design Center, 100 Penn Square East, Philadelphia, PA 19107–3391.

Commander, Letterkenny Army Depot, Chambersburg, PA 17201–4150.

Commander, Tobyhanna Army Depot, Tobyhanna, PA 18466–5000.

South Carolina

Commander, U.S. Army Training Center and Fort Jackson, Fort Jackson, SC 29207–5000.

Commander, U.S. Army Engineer District Charleston, P.O. Box 919, Charleston, SC 29402–0919.

Tennessee

Commander, U.S. Army Engineer District Nashville, P.O. Box 1070, Nashville, TN 37202–1070.

Commander, U.S. Army Engineer District Memphis, 167 North Main Street, Memphis, TN 38103–1894.

Director, U.S. Army Corps of Engineers Finance Center, 7800 Third Street, Milington, TN 38054–8001.

Commander, Holston Army Ammunition Plant, 4509 West Stone Drive, Kingsport, TN 37660–9982.

Texas

Commander, U.S. Army Medical Command, Fort Sam Houston, TX 78234–6000.

Commander, U.S. Army Engineer Division Southwestern, 1114 Commerce Street, Dallas, TX 75242–0216.

Commander, U.S. Army Engineer District Fort Worth, P.O. Box 17300, Fort Worth, TX 76102–0300.

Commander, U.S. Army Engineer District Galveston, P.O. Box 1229, Galveston, TX 77553–1229.

Southwestern Laboratory, 4815 Cass Street, Dallas, TX 75235–8011.

Commander, Brooke Army Medical Center, 3851 Roger Brooke Drive, Fort Sam Houston, TX 78234–6200.

Commander, William Beaumont Army Medical Center, 5005 North Piedras St, El Paso, TX 79920–5001.

Commander, U.S. Army Medical Department Center and School, Fort Sam Houston, TX 78234–5000.

Commander, Fifth U.S. Army, Fort Sam Houston, TX 78234–5000

Commander, U.S. Army Air Defense Artillery School, Fort Bliss, TX 79916–7000.

Commander, III Corps and Fort Hood, Fort Hood, TX 76544–5000

Commander, Red River Army Depot, Texarkana, TX 75507–5000.

Utah

Commander, U.S. Army Dugway Proving Ground, Dugway, UT 84022–5000.

Commander, Tooele Army Depot, Tooele, UT 84074–5000.

Virginia

Commander, U.S. Total Army Personnel Command, Hoffman Building I, 200 Stovall Street, Alexandria, VA 22332–0400.

Commander, U.S. Army Combine Arms Support Command and Fort Lee, Fort Lee, VA 23801–5000.

Commander, U.S. Army Operational Test and Evaluation Command, 4501 Ford Avenue, Alexandria, VA 22302–1458.

Commandant, The Judge Advocate General's School U.S. Army, Charlottesville, VA 22903–1781.

Commander, U.S. Army Legal Service Agency, 5611 Columbia Pike, Falls Church, VA 22041–5013.

Commander, U.S. Army Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0500.

Commander, U.S. Army Research Institute for the Behavioral and Social Sciences, 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

Administrator, U.S. Army Civilian Appellate Review Agency, NASSIF Building, Falls Church, VA 22041–5091.

Commander, Gulf War Declassification Project, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

Commander, Casualty and Memorial Affairs, 2461 Eisenhower Avenue, Alexandria, VA 22041–3206.

Department of Army, Freedom of Information Act Office, 1725 Jefferson Davis, Arlington, VA 22202–4102.

Commander, U.S. Armed Services Center for Research of Unit Records, 7798 Cissna Road, Springfield, VA 22150–3197.

Director, The Institute of Heraldry, 9325 Gunston Road, Fort Belvoir, VA 22050–5579.

Commander, U.S. Army Engineer District Norfolk and Supervisor of Norfolk Harbor, 803 Front Street, Norfolk, VA 23510–1096.

Commander, U.S. Army Engineer Trans Atlantic Programs Center, P.O. Box 2250, Winchester, VA 22604–1450.

Director, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22315–3862.

Director, U.S. Army Support Activity, Humphreys Engineer Center, 7701 Telegraph Road, Alexandria, VA 22315–3860.

Director, U.S. Army Corps of Engineers, Water Resources Support Center, 7701 Telegraph Road, Alexandria, VA 22315–3868.

Commander, U.S. Army Topographic Engineering Center, 7701 Telegraph Road, Alexandria, VA 22315–3864.

Director, U.S. Army Crime Records Center, 6010 6th Street, Fort Belvoir, VA 22060–6686.

Commander, U.S. Army Security Assistance Command, Alexandria, VA 22333–1000.

Commander, U.S. Army Space and Missile Defense Command, P.O. Box 15280, Arlington, VA 22215–0280.

Commander, U.S. Army Transportation Center and Fort Eustis, Fort Eustis, VA 23604–5000.

Commandant, U.S. Army Logistics Management College, Fort Lee, VA 23801–5000.

Commander, U.S. Army Quartermaster Center and School, Fort Lee, VA 23801–5000.

Washington

Commander, U.S. Army Engineer District Seattle, P.O. Box 3755, Seattle, WA 98124–3755.

Commander, U.S. Army Engineer District Walla Walla, 201 North Third Avenue, Walla Walla, WA 99362–1876.

Commander, Madigan Army Medical Center, Tacoma, WA 98431–1110.

Commander, Fort Lewis and I Corps, Fort Lewis, WA 98433–5000.

West Virginia

Commander, U.S. Army Engineer District, Huntington 502 8th Street, Huntington, WV 25701–2070.

Wisconsin

Commander, Fort McCoy, Sparta, WI 54656–5000.

Overseas

Commander, U.S. Army Engineer District Far East, Unit 15546, APO AP 96205–0610.

Commander, U.S. Army Engineer District Japan, USAED–J Unite 45010, APO AP 96338–5010.

[FR Doc. 98–4317 Filed 2–19–98; 8:45 am]
BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Procurement Technical Assistance Cooperative Agreement Program

AGENCY: Defense Logistics Agency (DLA).

ACTION: Notice of Solicitation for cost-sharing cooperative agreement applications.

SUMMARY: On March 17, 1997, the DLA, Office of Small and Disadvantaged Business Utilization, published the revised procedures to implement Title 10, United States Code, Chapter 142, as amended, in Volume 62, Number 51, pages 12610–12622 of the **Federal Register**. Title 10, United States Code, Chapter 142, as amended, authorizes the Secretary of Defense, acting through the Director, DLA, to enter into cost-sharing cooperative agreements to support new and existing procurement technical assistance programs established by state and local governments, private nonprofit organizations, Indian tribal organizations, and Indian-owned economic enterprises. This notice provides clarification regarding the application process.

CLARIFICATION: DLA issued Solicitation Number 96–1 for cooperative agreement applications for the General Program on April 5, 1996, and Solicitation Number 96–2 for applications for the American Indian Program on June 12, 1996, respectively. These solicitations also governed the submission of applications for Fiscal Year 1998. Eligible entities and other interested parties may obtain copies of the solicitation from the Office of Small and Disadvantaged Business (DDAS), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

1. Eligible Entities Qualifying to Submit an Application Under the General Program

a. State

Any of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, exclusive of local governments. The term does not include any public and Indian housing agency under the US Housing Act of 1937.

b. Local Government

A county, municipality, city, town, township, local public authority (including any public and Indian Housing agency under the US Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government. The term does not include institutions of high education and hospitals.

C. Private, Nonprofit Organization

A business entity organized and operated exclusively for charitable, scientific, or education purposes, of which no part of the earnings inure to the benefit of any private shareholder or individual, of which no substantial part of the activities is carrying on propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office, and which are exempt from Federal income taxation under section 501 of the Internal Revenue Code.

d. Indian Economic Enterprise

Any Indian-owned (as defined by the Secretary of the Interior) commercial, industrial, or business activity established or organized, whether or not such economic enterprise is organized for profit or nonprofit purposes: Provided, that such Indian ownership shall constitute not less than 51 per centum of the enterprise.

c. Indian/Tribal Organization

The recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body, or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, that in any case where a cooperative agreement is let or made to an organization to perform services benefiting more than one India tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such cooperative agreement.

2. Eligible Entities Qualifying to Submit an Application Under the American Indian Program

a. Indian Economic Enterprise

Any Indian-owned (as defined by the Secretary of the Interior) commercial, industrial, or business activity established or organized, whether or not such economic enterprise is organized for profit or nonprofit purposes: Provided, that such Indian ownership shall constitute not less than 51 per centum of the enterprise.

b. Indian/Tribal Organization

The recognized governing body of any Indian tribe; any legally established organization Indians which is controlled, sanctioned, or chartered by such governing body, or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, that in any case where a cooperative agreement is let or made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such cooperative agreement.

3. Submission of FY 1998 applications for a new start program is April 1 through April 30, 1998. FY 1997 cooperative agreement recipients have 30 calendar days after receipt of the Government's preliminary notice of intent to exercise the option for FY 1998 to submit their applications.

4. An application conference will be held at the DLA Headquarters, Room 2421, 8725 John J. Kingman Road, Fort Belvoir, VA, starting at 9:00 AM on March 18, 1998, and at the Bahia Hotel, 998 West Mission Bay Drive, San Diego, CA, starting at 1:00 PM on March 31, 1998. Potential attendees should notify the Office of Small and Disadvantaged Business Utilization at (730) 767–1663, not later than March 6, 1998, if they plan on attending either location.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Kuders, Deputy Director, Office of Small and Disadvantaged Business Utilization (DDAS), Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, Telephone (703) 767–1663.

Lloyd C. Alderman,

Director, Small and Disadvantaged Business Utilization.

[FR Doc. 98–4351 Filed 2–19–98; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program

AGENCY: Defense Manpower Data Center, DLA, DoD.

ACTION: Notice amendment.

SUMMARY: The Department of Defense is amending the effective date of a Computer Matching notice between DoD and HUD. This amendment brings the notice into compliance with the 30-day statutory public comment period.

DATES: This effective date of the Computer Matching notice between DoD and HUD is amended to read March 24, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Mousehegian, Jr., at 703–607–2943.

SUPPLEMENTARY INFORMATION: On February 9, 1998, at 63 FR 6542, the Department published a Computer Matching notice between DoD and HUD. This amendment brings the notice into compliance with the 30-day statutory public comment period.

Dated: February 17, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–4316 Filed 2–19–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–125–001]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 13, 1998.

Take notice that on February 10, 1998, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised sheets bearing a proposed effective date of March 2, 1998:

Fifth Revised Sheet No. 130

Columbia Gulf states that on January 30, 1998, Columbia Gulf filed revised tariff sheets in Docket No. RP98–125–000 to re-incorporate the term "Offsystem-Onshore Zone" into the General Terms and Conditions (GTC) of Columbia Gulf's tariff. The term had been mistakenly omitted in other Columbia Gulf filings. By the Commission's order issued February 5, 1998, in Docket No. RP98–125–000, Columbia Gulf is tendering the instant filing to eliminate duplicate tariff sheet pagination. The January 30, 1998 filing contained Fourth Revised Sheet No. 130, but should have been paginated as Fifth Revised Sheet No. 130 according to the Commission's pagination guidelines. The instant filing corrects the pagination and complies with the Commission's order.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4278 Filed 2–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–363–012]

El Paso Natural Gas Company; Notice of Tariff Filing

February 13 1998.

Take notice that on February 9, 1998, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets to become effective February 1, 1998:

Second Revised Volume No. 1–A

Thirteenth Revised Sheet No. 20
Seventeenth Revised Sheet No. 24
Thirteenth Revised Sheet No. 27
Fifth Revised Sheet No. 29

Third Revised Volume No. 2

Thirty-sixth Revised Sheet No. 1–D.3

El Paso states that the tendered tariff sheets implement the pro forma fuel charge provisions that were recently approved by the Commission in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4272 Filed 2–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–221–000]

Iroquois Gas Transmission System L.P.; Notice of Request Under Blanket Authorization

February 13, 1998.

Take notice that on February 6, 1998, Iroquois Gas Transmission System, L.P. (Iroquois), One Corporate Drive, Suite 600, Shelton, Connecticut 06484, filed in Docket No. CP98–221–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a third meter run at its existing Northport Meter Station, located in Suffolk County, New York, to permit additional capability to serve Long Island Lighting Company (LILCO), under Iroquois' blanket certificate issued in Docket No. CP89–634–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Iroquois proposes to construct and operate a third meter run at Iroquois; Northport Meter Station, located in Suffolk County, New York, to provide additional capacity to serve LILCO at that delivery point. LILCO proposes the conversion of an existing 380 MW generating unit at its Northport Power Station to provide it with dual fuel capability and the addition of a third meter run would provide additional capacity at the meter station to meet LILCO's planned requirements. Iroquois declares the third meter run would increase the delivery capability at the Northport Meter Station from approximately 213 MMcf to approximately 312 MMcf per day.

Iroquois states the estimated cost of the third meter run is $190,000, which will be recovered through the provision of additional deliveries to LILCO.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30

days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4269 Filed 2–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–373–010]

Koch Gateway Pipeline Company; Notice of Proposed Changes To FERC Gas Tariff

February 13, 1998.

Take notice that on February 10, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet to be effective December 1, 1997:

Substitute Fourth Revised Sheet No. 1807

Koch states that it is submitting this Substitute Fourth Revised Sheet No. 1807 to replace a previously accepted version of Sheet No. 1807 with a modification that was the intention of the previous filing.

Koch states that copies of this filing have been served upon each party contained in the official service list as compiled by the Secretary in the above captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4276 Filed 2–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–11–000 and EL98–22–000]

Long Island Lighting Company; Notice of Initiation of Proceeding and Refund Effective Date

February 13, 1998.

Take notice that on February 12, 1998, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL98–22–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL98–22–000 will be 60 days after publication of this notice in the **Federal Register.**

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4267 Filed 2–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–575–000]

MAC Power Marketing, L.L.C.; Notice of Issuance of Order

February 13, 1998.

MAC Power Marketing, L.L.C. (MAC Power) submitted for filing a rate schedule under which MAC Power will engage in wholesale electric power and energy transactions as a marketer. MAC Power also requested waiver of various Commission regulations. In particular, MAC Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by MAC Power.

On December 16, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by MAC Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, MAC Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of MAC Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 16, 1998. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4270 Filed 2–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–132–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 13, 1998.

Take notice that on February 10, 1998, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No.1, Fourth Revised Sheet No. 9, to be effective March 12, 1998.

MRT states that the purpose of this filing is to provide for recovery of additional prior period adjustments to MRT's Account No. 191 balance, representing amounts paid by MRT to resolve litigation involving pre-Order No. 636 gas purchase contracts, pursuant to Sections 16.2(b) and (c) of the General Terms and Conditions of MRT's Tariff.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be

filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4282 Filed 2–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–216–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

February 13, 1998.

Take notice that on February 3, 1998, as supplemented on February 5, 1998, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, NE 68124–1000, filed in Docket No. CP98–216–000 a request pursuant to Sections 157.205, 157.212(a), and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212(a), and 157.216(b)) for authorization to abandon the Glenwood, Iowa branchline and to relocate two small volume farm taps all located in Mills County, Iowa, under the blanket certificate issued in Docket No. CP82–401–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to abandon approximately 0.2 miles of 2-inch pipe and 1.1 miles of 3-inch lines which were installed in 1950 and 1934, respectively. Northern is requesting abandonment of the Glenwood branchline due to the age of the pipeline. Specifically, Northern asserts that the 3-inch pipeline has deteriorated to the point where it needs to be replaced. Additionally, Northern notes that the 3-inch line crosses 9 out of 11 lots in a new housing development which, per Department of Transportation regulations, requires a class location change. Rather than replace the existing Glenwood branchline in its current location, Northern proposes to abandon the line. Northern notes that it will provide the same service to Glenwood, Iowa via a replacement line installed at a more accessible location under Blanket Authority. The 2-inch line was originally installed to augment service to Glenwood, Iowa but will be rendered useless once the 3-inch line is abandoned. As a result of the abandonment, Northern notes that two farm taps located along the 3-inch line require removal and relocation.

Northern notes that it will utilize the most efficient method of abandonment based on circumstances at the time of abandonment. Generally, Northern proposes to abandon in-place pipeline at unique situations where the environment is better protected by not removing the pipeline. Northern contends that it will also restore the area to its original condition by reseeding or allowing resumption of farming activity (or as specified by landowner). Northern states that the affected state commission has been mailed copies of this request. Northern submitted letters with the customers consenting to the pipeline project.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed authorized effective the day after the time allowed for filing a request. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protests, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4268 Filed 2–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–129–000]

Northwest Pipeline Corporation; Notice of Petition for Grant of Limited Waiver of Tariff

February 13, 1998.

Take notice that on February 9, 1998, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(5), Northwest Pipeline Corporation (Northwest) tendered for filing a Petition for Grant of Limited Waiver of Tariff.

Northwest seeks a waiver of the Commission's first-come, first-served policy as reflected in Section 1 of Northwest's Rate Schedule TI–1 and in the Priority Date provisions in Section 12.3 of the General Terms and Conditions of Northwest's FERC Gas Tariff, Third Revised Volume No. 1, in order to allow the receipt point priority dates held by Vastar Gas Marketing, Inc. (Vastar) under an interruptible transportation agreement dated November 1, 1997, as amended, to be retained by Vastar's assignee and affiliate, Southern Company Energy Marketing L.P.

Northwest states that a copy of this filing has been served upon Northwest's jurisdictional customers and upon affected state regulatory commissions.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 20, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4279 Filed 2–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–306–005]

Paiute Pipeline Company; Notice of Refund Report

February 13, 1998.

Take notice that on January 15, 1998, Paiute Pipeline Company (Paiute) filed its report of refunds in the above referenced docket for the period January 1, 1997, through July 31, 1997.

Paiute states that on December 16, 1997, it distributed refunds in compliance with Section 3.3 of the Settlement approved by the Commission on October 21, 1997, in Docket No.

RP96–306–000 (Settlement). Section 3.3 of the Settlement requires Paiute to distribute refunds to each of its jurisdictional transportation and storage customers within sixty days of the effective date of the Settlement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 19, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4273 Filed 2–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–130–000]

Questar Pipeline Company; Notice of Tariff Filing

February 13, 1998.

Take notice that on February 9, 1998, Questar Pipeline Company tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 164 to be effective March 11, 1998.

Questar states that the proposed tariff sheet revises Section 6, "Transfer of Gas in Storage" of the General Terms and Conditions of Part 3 of its tariff to allow in-place transfers of working gas between shippers receiving storage service under different rate schedules, i.e., FSS and ISS.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4260 Filed 2–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–1096–000, ER94–1348–000, ER95–1468–000, OA96–27–000, and EL98–24–000]

Southern Company Services, Inc.; Notice of Initiation of Proceeding and Refund Effective Date

February 13, 1998.

Take notice that on February 12, 1998, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL98–24–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL98–24–000 will be 60 days after publication of this notice in the **Federal Register**.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4266 Filed 2–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–131–000]

Sumas International Pipeline Inc.; Notice of Compliance Filing and Request for Certain Waivers

February 13, 1998.

Take notice that on February 10, 1998, Sumas International Pipeline Inc. (SIPI) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the tariff sheets listed in Appendix A to the filing, to become effective April 1, 1998.

SIPI asserts that the purpose of this filing is to comply with Order No. 587 issued on July 17, 1996, and the Notice Clarifying Procedures for Filing Pro-Forma Tariff Sheets issued on September 12, 1996, in Docket No. RM96–1–000. These pro-forma sheets reflect the requirement that interstate natural gas pipelines follow standardized procedures for critical business practices (nominations; allocations, balancing and measurement; invoicing; and capacity release) and standardized protocols and file formats for electronic communication except where waivers have been requested.

SIPI states that copies of this filing were mailed to all customers of SIPI and Interested Parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 20, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4281 Filed 2–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–143–009]

T C P Gathering Co.; Notice of Tariff Filing

February 13, 1998.

Take notice that on February 9, 1998, T C P Gathering Co., (TCP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet, to be effective June 1, 1997:

Substitute First Revised Sheet No. 103

TCP states that the above reference tariff sheet is being filed to correct pagination of Sheet No. 103. On July 28, 1997, an order was received directing TCP to repaginate First Revised Sheet No. 103 in the June 9th filing as "Second Revised Sheet No. 103". TCP complied with this request in its August 12, 1997 filing. However, due to a timing discrepancy not apparent at the time, this page reference was inappropriate. "Second Revised Sheet No. 103" designation had already been used in a July 1, 1997 filing in this docket to reflect other changes required by OPR in previous orders. Therefore,

TCP is submitting repaginated Sheet No. 103 as Substitute First Revised Sheet No. 103.

TCP states that copies of the filing were served upon TCP's jurisdictional customers, interested public bodies and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4275 Filed 2–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–133–000]

Texas Eastern Transmission Corporation; Notice of Compliance Filing

February 13, 1998.

Take notice that on February 10, 1998, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing notification of the proposed change of service resulting from the transfer of certain facilities.

Texas Eastern asserts that the purpose of this filing is to comply with the Commission's order issued December 1, 1997, as clarified on February 6, 1998, in Docket No. CP97–677–000 which authorizes Texas Eastern to abandon by sale to CCNG Gas Gathering, L.P. (CCNG) certain facilities. Texas Eastern states that no contracts will be terminated as a result of the abandonment and that equivalent quantities of natural gas can be made available to Duke Energy Trading and Marketing, L.L.C. (DETM), the only shipper currently using the facilities to be transferred, at other interconnections on Texas Eastern's system.

Texas Eastern states that copies of the filing were served on their firm customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4263 Filed 2–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–71–009 and RP97–312–004]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 13, 1998.

Take notice that on February 10, 1998, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Original Sheet No. 33. The tariff sheet is proposed to become effective May 1, 1997.

Transco states that the purpose of the instant filing is to supplement Transco's Stipulation and Agreement (Agreement) filed on January 20, 1998 in order to correct an error on Original Sheet No. 33 proposed effective May 1, 1997, which sheet was included in Appendix D to the Agreement. Specifically, Original Sheet No. 33, which sets forth the rates and charges applicable to gathering service provided by Transco, incorrectly reflects rates and charges for firm gathering service effective May 1, 1997. Original Sheet No. 33 should only reflect rates and charges for interruptible gathering service as of that date. Thus, Substitute Original Sheet No. 33 submitted herein, eliminates the reference to firm gathering service on the tariff sheet proposed effective May 1, 1997.

The test of the Agreement at Section C of Article VI, correctly states the agreement of the participants that Transco shall implement the firm rate for gathering service "upon the effectiveness of this Agreement". The pro forma Sheet No. 33 included in Appendix D to the Agreement will remain unchanged, as it reflects rates and charges applicable to interruptible and firm gathering service to be effective prospectively upon the effective date of the Agreement.

Transco states that it is serving copies of the instant filing to its affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4274 Filed 2–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–105–001]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

February 13, 1998.

Take notice that on February 10, 1998, Williams Gas Pipelines Central, Inc., formerly Williams Natural Gas Company (Williams), tendered for filing its compliance filing in the above referenced docket.

Williams states that by order issued January 30, 1998, the Commission accepted Williams' GSR filing to be effective February 1, 1998, and directed Williams to file, within 10 days of the date of the order, its firm transportation customer MDTQ's as of December 31, 1997, and an explanation of any differences between the MDTQ's used in its previous filing and the MDTQ's included in this filing; between its most recent customer index and the MDTQ's included in this filing; and between the January 1, 1998 MDTQ's and the December 31, 1997 MDTQ's. This filing is being made to comply with the order.

Williams states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4277 Filed 2–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–526–000]

Southern Natural Gas Company; Notice of Availability of the Environmental Assessment For The Proposed East Tennessee Expansion Project

February 13, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Southern Natural Gas Company in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed natural gas expansion facilities including:

- East Tennessee Lateral—2.81 miles of 8-inch-diameter pipeline in Catoosa County, Georgia and Hamilton County, Alabama;
- Ocmulgee-Atlanta Loop—8.03 miles of 30-inch-diameter pipeline in Spalding and Henry Counties, Georgia;
- 2nd North Main Loop—2.81 miles of 24-inch-diameter pipeline in Pickens County, Alabama;
- South Main 3rd Loop—4.63 miles of 30-inch-diameter pipeline in Perry County, Alabama;
- Macon Branch Loop—10.73 miles of 16-inch-diameter pipeline replacing an existing 12-inch-diameter Pipeline in Fulton and Clayton Counties, Georgia;
- Rome Compressor Station—3,755 horsepower (hp) installed at a new compressor station in Floyd County, Georgia;
- Bell Mills Compressor Station—1,415 hp added to an existing compressor station in Cleborne County, Alabama;
- Auburn Compressor Station—5,320 hp increased by modifications to two units at an existing compressor station in Lee County, Alabama;
- York Compressor Station—5,320 hp increased by modifications to two units at an existing compressor station in Sumter County, Alabama;
- East Tennessee Meter Station—new meter station at the terminus of the proposed East Tennessee Lateral in Hamilton County, Tennessee;
- Cleveland Branch Meter Station—expansion of an existing meter station in Bradley County, Tennessee; and
- Cartersville Gate Regulator Station—new regulator station in Floyd County, Georgia.

The purpose of the proposed facilities would be to provide about 64,911 thousand cubic feet of natural gas per day in new firm transportation services between 1998 and the year 2000 to 15 different shippers.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspaper, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1
- Reference Docket No. CP97–526–000; and
- Mail your comments so that they will be received in Washington, DC on or before March 13, 1998.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4265 Filed 2–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File Application for New License

February 13, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File Application for New License.

b. *Project No.:* 3410.

c. *Date filed:* January 28, 1998.

d. *Submitted By:* Woods Lake Hydro Company.

e. *Name of Project:* Woods Lake.

f. *Location:* On Lime Creek in Eagle County, Colorado.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of original license:* February 1, 1983.

i. *Expiration date of original license:* January 31, 2003.

j. *The project consists of:* (1) a 6-foot-high, 3713-foot-long reinforced concrete dam with a spillway crest elevation of

9,588.5 feet; (2) a reservoir with negligible storage capacity; (3) a gated and screened intake structure and sluiceway; (4) a 15-inch-diameter, 630-foot-long PVC penstock; (5) a powerhouse with a 45-kilowatt turbine-generator unit; (6) a 24-inch-diameter corrugated metal pipe tailrace; (7) a 2.4 KV, 1.02-mile-long transmission line; and (8) other appurtenances.

k. *Pursuant to 18 FR 16.7, information on the project is available at:* Lake Woods Hydro Company, P.O. Box 11175, Aspen, CO 81612, (970) 925–8854; or Kenneth M. Knight, P.O. Box 247, Parker, CO 80134, (303) 841–5771.

l. *FERC contact:* Hector M. Perez (202) 219–2843.

m. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by January 31, 2001.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4271 Filed 2–17–98; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5480–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed February 09, 1998 Through February 13, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980037, Draft EIS, AFS, WA, Green River Road Access Requests, Easements Grant, Mt. Baker-Snoqualmie National Forest, North Bend Ranger District, King County, WA, Due: April 06, 1998, Contact: Lloyd Johnson (425) 888–1421.

EIS No. 980038, Draft EIS, AFS, NH, Appalachian Mountain Club (AMC) Hut and Pinkham Notch Visitor Center (PNVC) Continued Operations, Special Use Permit and Possible COE Permit Issuance, White Mountain National Forest, Grafton and Coos Counties, NH, Due: April 06, 1998, Contact: Rebecca Oreskes (603) 466–2713, Ext 212.

EIS No. 980039, Final EIS, FHW, CA, Carquinez Bridge Project, Replace/Retrofit the westbound I–80 between Cummings Skyway and CA–29, Funding, US Coast Guard and COE Section 10 and 404 Funding, Contra Costa and Solano Counties, CA, Due: March 23, 1998, Contact: John R. Schultz (916) 498–5041.

EIS No. 980040, Draft EIS, AFS, CA, Sirretta Peak Motorcycle Trail Construction, Approval and Implementation, Sirretta Peak/Machine Creek Area, Kern Plateau, Sequoia National Forest, Cannell Meadow Ranger District, Tulare County, CA, Due: April 06, 1998, Contact: Susan Porter (760) 376–3781.

EIS No. 980041, Final EIS, FHW, WI, WI–10 Highway Corridor, Construction between Village of Fremont and WI–45 near Appleton Urban Area, Funding and COE Section 404 Permit, Winnebago, Outagamie, Waupaca and Waushara Counties, WI, Due: March 23, 1998, Contact: Peter Garcia (608) 829–7513.

EIS No. 980042, Final EIS, BLM, NV, Olinghouse Mine Project, Construction of Two Open Pits, Waste Dump, Haul Road and Cyanide Heap Leach Pads, Plan-of-Operation Approval Carson City, Washoe County, NV, Due: March 23, 1998, Contact: Terri Knutson (702) 885–6156.

EIS No. 980043, Final Supplement, COE, AR, Red River Waterway, Louisiana, Texas, Arkansas and Oklahoma and Related Projects, New and Updated Information, Red River Below Denison Dam Levee Rehabilition, Implementation, Hempstead, Lafayette and Miller Counties, AR, Due: March 23, 1998, Contact: Stuart McLean (601) 631–5965.

EIS No. 980044, Final EIS, BLM, WY, Powder River (WYW136142) and Thundercloud (WYW136458) Coal Lease Applications, Federal Coal Leasing, Campbell and Converse Counties, WY, Due: March 23, 1998, Contact: Nancy Doelger (307) 261–7627.

Amended Notices

EIS No. 980027, Regulatory Draft EIS, NOA, ME, NC, American Lobster Fishery Management Plan, Implementation, To Prevent Overfishing of American Lobster, Exclusive Economic Zone (EEZ) off the New England and Mid-Atlantic, ME , Due: March 23, 1998, Contact: Rolland A. Schmitten (301) 713–2239.

Published FR 02–06–98 Officially Withdrawn by the Preparing Agency.

Dated: February 17, 1998.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–4368 Filed 2–19–98; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5489–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 02, 1998 Through February 06, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Offices of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D–BLM–J39027–CO Rating EC2, Plateau Creek Pipeline Replacement Project, Operation and Maintenance, Ute Water Conservancy District, Right-of-Way Permit, Mesa County, CO.

Summary: EPA expressed environmental concerns about potential impacts to wetlands and requested the purpose and need include future water needs.

ERP No. D–FRC–B03008–00 Rating EO2, Portland Natural Gas Transmission System Project (PNGTS) and (PNGTS)/Maritimes & Northeast Pipeline L.L.C., Phase II Joint Facilities Project, Construction and Operation, COE Section 10 and 404 Permits, MA, York and Cumberland Counties, ME, Coos County, NH and Essex County, VT.

Summary: EPA commented that the scope of the environmental review may have been to limited, resulting in a potentially segmented review of related and/or interconnected projects. EPA requested additional information with regard to wetlands, drinking water, groundwater supply and secondary impacts in order to fully evaluate the environmental impacts of the proposed project.

ERP No. D–STB–A53053–00 Rating EC2, Conrail Acquisition (Finance Docket No. 33388) by CSX Corporation and CSX Transportation Inc., and Norfolk Southern Corporation and Norfolk Southern Railway Company

(NS), Control and Operating Leases and Agreements, To serve portion of eastern United States.

Summary: EPA expressed environmental concerns for the project's potential impact to air quality and requested additional information regarding the noise analysis and mitigation for communities identified by-the STB's environmental justice review.

ERP No. DS–APH–A82124–00 Rating EO2, Logs, Lumber and Other Unmanufactured Wood Articles Importation, Additional Updated Information, Improvements to the existing system to Prohibit Introduction of Plant Pests into the United States.

Summary: EPA had environmental objections to the proposed project and requested additional information. The objections focused on the adequacy of analysis for assessing risk and consequences of pest introduction, compliance of regulations by exporters, human health effects of the program, and the comparison of alternatives. EPA also had concerns about the use of methyl bromide in the program.

ERP No. DS–NOA–L91001–AK Rating EC2, Juneau Consolidated Facility, Additional Information, Space for the University of Alaska Fairbanks School of Fisheries and Ocean Science (UAF), Possible Site Lena Point, Fisheries Management Operation, "Vision for 2005", Juneau, AK.

Summary: EPA still has environmental concerns regarding water quality/groundwater, noise, wastewater treatment, and mitigation measures. Clarification of these issues was requested.

Final EISs

ERP No. F–AFS–J65261–MT, Beaverhead Forest Plan Riparian Amendment, Implementation, Beaverhead—Deerlodge National Forest, Beaverhead, Madison, Silver Bow, Deer Lodge and Gallatin Counties, MT.

Summary: EPA expressed environmental concerns regarding the anticipated slow rate of improvement or restoration of existing degraded riparian areas with the preferred alternative. EPA recommended more timely attainment of proper functioning condition and desired future condition, and recommended inclusion of water quality protection language in the objectives.

ERP No. F–IBR–J64006–ND, Arrowwood National Wildlife Refuge, Implementation, Water Management Capability to Mitigate for Past, Present and Future Impacts of Jamestown Reservoir, Stutsman and Foster Counties, ND.

Summary: EPA expressed environmental concerns over potential water quality impacts, and recommended that downstream water quality should be monitored and an adaptive operations plan be developed to ensure that water quality standards are met.

Dated: February 17, 1998.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–4369 Filed 2–19–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[PF–791; FRL–5768–9]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

DATES: Comments, identified by the docket control number PF–791, must be received on or before March 23, 1998.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins, Product Manager (PM) 25, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 239, 1921 Jefferson Davis Hwy., Arlington, VA., (703) 305–5697; e-mail: Tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various raw agricultural commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports grantinig of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice, as well as the public version, has been established for this notice of filing under docket control number PF–791 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (insert docket number) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 21 U.S.C. 346a.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and

pests, Reporting and recordkeeping requirements.

Dated: February 12, 1998.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Below summaries of the pesticide petitions are printed. The summaries of the petitions were prepared by the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. DowElanco

PP 1F3935

EPA has received a pesticide petition (PP 1F3935) from DowElanco, 9330 Zionsville Road, Indianapolis, IN 46268-1054 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of triclopyr, (3,5,6-trichloro-2-pyridinyl)oxyacetic acid and its metabolites 3,5,6-trichloro-2-pyridinol (TCP) and 2-methoxy-3,5,6-trichloropyridine (TMP) in or on the raw agricultural commodity fish at 3.0 parts per million (ppm), and shellfish at 5.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Analytical method.* Adequate methodology is available for the enforcement of tolerances for triclopyr residues of concern. Gas chromatography methods are available for the determination of triclopyr residues of concern. Residues of triclopyr, 3,5,6-trichloro-2-pyridinol, and 2-methoxy-3,5,6-trichloropyridine can be separately determined. The limits of quantitation are 0.01 – 0.05 ppm in fish and shellfish, depending on the compound being analyzed. The water method has a limit of quantitation of 0.1 parts per billion (ppb).

2. *Magnitude of residues.* In field studies, triclopyr and its metabolites in water have half-lives of 0.5 – 15 days. Triclopyr residues in lake water treated at the maximum label rate were below 0.5 ppm within 3 – 14 days. In pond water where whole ponds were treated at the maximum label rate, residues were below 0.5 ppm by 28 days after treatment. After 42 days in both lakes and ponds, residues were non-detectable (<0.010 ppm) to 0.013 ppm.

Residues of triclopyr and its metabolites 3,5,6-trichloro-2-pyridinol and 2-methoxy-3,5,6-trichloropyridine reach a maximum concentration in fish at 3–14 days after treatment of water, and total residues of triclopyr and its metabolites were detectable in the edible flesh at a maximum level of 3.0 ppm in fish and 5.0 ppm in shellfish. Residues in fish and shellfish decline as residues in water dissipate.

B. Toxicological Profile

1. *Acute toxicity.* The developmental no-effect level (NOEL) of 30 milligrams/kilograms/day (mg/kg/day) from a rabbit developmental study was recommended for the acute dietary risk assessment. At the lowest effect level (LEL) of 100 mg/kg/day, there were embryotoxic and fetotoxic effects associated with significant maternal toxicity, including death. Acute exposure assessment will evaluate risk to pregnant females age 13 and older.

2. *Short- and Intermediate-Term Toxicity.* Based on the available data, short- and intermediate-term dermal and inhalation risk assessments are not required. A systemic NOEL of 1,000 mg/kg/day, the highest dose tested (HDT), was determined in a 21–day dermal toxicity study in rabbits. The LC_{50} from the acute inhalation study in rats was determined to be > 2.6 mg/L (Toxicity Category III).

3. *Chronic toxicity.* The Reference Dose (RfD) for triclopyr is 0.05 mg/kg/day. This RfD is based on a 2-generation reproductive toxicity study in rats with a NOEL of 5.0 mg/kg/day using an uncertainty factor of 100. At the next higher dose level of 25 mg/kg/day, an increased incidence of slight degeneration of the proximal tubules of the kidneys was observed in some P1 and P2 parents of both sexes. Chronic exposure assessment will evaluate risk using this RfD.

4. *Carcinogenicity.* Environmental Protection Agency's Cancer Peer Review Committee (CPRC) concluded that triclopyr should be classified as a "Group D chemical" - not classifiable as to human carcinogenicity. A cancer risk assessment is not required.

5. *Animal metabolism.* Disposition and metabolism of ^{14}C-triclopyr in rats demonstrated that triclopyr was well absorbed after oral administration. Excretion was relatively rapid with a majority of radioactivity eliminated in the urine by 24 hours. At the high dose of 60 mg/kg, urinary elimination of ^{14}C-triclopyr was decreased due to apparent saturation of renal elimination mechanisms. Fecal elimination of ^{14}C-triclopyr was a minor route of excretion, as was elimination via exhaled air. Unmetabolized parent chemical represented >90% of urinary radioactivity, with the remainder accounted for by the metabolite 3,5,6-trichloro-2-pyridinol (3,5,6-TCP), and possible glucuranide and/or sulfate conjugates of 3,5,6-TCP. Plasma elimination following intravenous administration of ^{14}C-triclopyr was consistent with a one-compartment model with an elimination half-life of 3.6 hr and zero-order kinetics from 0–12 hours at the 60 mg/kg dose.

6. *Bioequivalency.* Toxicology studies conducted with triclopyr have been performed using both the free acid or the triethylamine salt from of triclopyr. Bioequivalency of the two chemical forms of triclopyr has been addressed through the conduct of special studies with the triethylamine from of triclopyr. These studies, which included data on comparative disposition, plasma half-life, tissue distribution, hydrolytic cleavage under physiological and environmental conditions for triclopyr triethylamine salt were found to adequately address the issue of Bioequivalency. In addition, subchronic toxicity studies supported the pharmacokinetics data in demonstrating bioequivalence. Therefore, studies conducted with any one from of triclopyr can be used to support the toxicology database as a whole.

7. *Endocrine effects.* An evaluation of the potential effects on the endocrine systems of mammals has not been determined; However, no evidence of such effects were reported in the chronic or reproductive toxicology studies described above. There was no observed pathology of the endocrine organs in these studies. There is no evidence at this time that triclopyr causes endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure.* The RfD for triclopyr is based upon the 2-generation reproduction toxicity study in rats with a NOEL of 5.0 mg/kg/day, the lowest dose tested. An uncertainty factor of 10 for interspecies differences in response and an uncertainty factor of 10 for intraspecies differences in response was applied. Thus, the RfD for triclopyr was established at 0.05 mg/kg/day by the RfD Peer Review Committee on September 4, 1996.

A chronic dietary exposure analysis was performed using tolerance level

residues and 100 percent crop treated information to estimate the Theoretical Maximum Residue Contribution (TMRC) for the general population and 22 subgroups. Existing tolerances, including the proposed tolerances for fish and shellfish, result in a TMRC that represents 1.25% of the RfD for the U.S. general population. The highest subgroup, Non-Nursing Infants (<1 year old) occupies 2.65% of the RfD. The chronic analysis for triclopyr is a worse case estimate of dietary exposure with all residues at tolerance level and 100 percent of the commodities assumed to be treated with triclopyr. Based on the risk estimates calculated in this analysis, the chronic dietary risk from the uses currently registered is not of concern.

Since the toxicological endpoint to which exposure is being compared in the acute dietary risk analysis is a developmental NOEL (30 mg/kg/day), females (13+ years) are the sub population of particular interest. The Margin of Exposure (MOE) is a measure of how close the high end exposure comes to the NOEL (the highest dose at which no effects were observed in the laboratory test), and is calculated as the ratio of the NOEL to the exposure (NOEL/exposure = MOE.) Generally, acute dietary margins of exposure greater than 100 tend to cause no dietary concern. The high end MOE value of 1,639 is above the acceptable level and demonstrates no acute dietary concern.

An acute dietary exposure analysis was performed using tolerance level residues and 100 percent crop treated to estimate the high end exposure for the general population and females (13+, pregnant, non-nursing). The high end exposure was assumed to be the upper 0.5% of consumers, that is, the 99.5 percentile. The resulting exposure estimates and margins of exposure are as follows:

Population Subgroup	Exposure (mg/kg BW/day)	MOE
U.S. Population	0.01359	2208
Females	0.01831	1639

These high end MOE values are above the acceptable level and demonstrate no acute dietary concerns.

2. *Drinking water.* The use of triclopyr as described on the label allows only slight additional exposure of triclopyr to humans. The proposed labeling requires that the product not be applied within one-quarter mile of a potable water intake and that treated water not be used for domestic purposes until the residue level is demonstrated to be at or below 0.5 ppm as determined by laboratory analysis or immunoassay. The basis for these restrictions is a series of aquatic dissipation studies conducted in lakes and ponds. In these studies, triclopyr was applied to lakes and ponds at the maximum concentration of 2.5 ppm triclopyr in water. Triclopyr residues in the lakes at one-quarter mile from the treatment areas were well below 0.1 ppm throughout the study, with a maximum reported value of 0.058 ppm. Within the treatment area, triclopyr residues of less than 0.5 ppm were reported at 3 – 14 days after treatment in the Lake Minnetonka and Lake Seminole studies. In seven test ponds treated with triclopyr at a water concentration of 2.5 ppm, total residues of triclopyr were less than 0.5 ppm by 28 days after application, with the highest residue value being 0.193 ppm. At 42 days after treatment, total residues in both treated lakes and ponds ranged from non-detectable to 0.013 ppm.

If the proposed labeling is followed precisely, that is, potable water is not collected within one-quarter mile of a treated area, there will be little contribution from water to the "risk cup" for triclopyr. If drinking water is collected from the treatment area when water analysis indicates triclopyr residues are 0.5 ppm or less, the risk is still acceptable on an acute basis. On a chronic basis, the value of 0.013 ppm, found to be the highest triclopyr residue at 42 days after treatment in all studies, uses only 0.9% of the RfD for females (13+, pregnant, not nursing) and 2.6% of the RfD for children (1–6 years).

For a worst case estimate of potential drinking water exposure, the water residue at the proposed allowable water level at 0.5 ppm was utilized. When this residue level is considered, the following analysis indicates no level of concern for acute exposure:

For a 60 kg pregnant female consuming 2 liters a day (Acute)

(0.5 mg/L × 2 L/day) / 60 kg = 0.0167 mg/kg/day

MOE = NOEL / Exposure = (30 mg/kg/day) / (0.0167 mg/kg/day) = 1796

For a 60 kg pregnant female consuming 2 liters a day (Chronic)

(0.013 mg/kg/day × 2 L/day) / 60 kg = 0.00043 mg/kg/day

% RfD = (0.00043 mg/kg/day × 100) / (0.05 mg/kg/day) = 0.9 %

For a 10 kg child consuming 1 liter a day (Acute)

(0.5 mg/L × 1 L/day) / 10 kg = 0.05 mg/kg/day

MOE = (30 mg/kg/day) / (0.05 mg/kg/day) = 600

For a 10 kg child consuming 1 liter a day (Chronic)

(0.013 mg/L × 1 L/day) / 10 kg = 0.0013 mg/kg/day

% RfD = (0.0013 mg/kg/day × 100) / (0.05 mg/kg/day) = 2.6 %

3. *Non-dietary exposure.* There are potential exposures to homeowners during usual use-patterns associated with triclopyr. These involve application of triclopyr-containing products by means of aerosol cans, pump spray bottles, squeeze bottles, "weed sticks," hose-end sprayers, power sprayers, paint brush, rotary and drop spreaders. It is unlikely that power sprayers will be used by homeowners; this is an application method requiring special applicator equipment more apt to be used by agricultural or commercial applicator.

Homeowner exposure will not be significant for the following reasons: the percent ai in products for homeowner use is less than that for agricultural or industrial use; the areas treated are usually limited in size; all products are intended for outdoor use which is likely to reduce the concentration in the environment by allowing dissipation in the outdoor air; the application methods recommended or commonly used by homeowners are not expected to provide significant exposure. Additionally, no toxicological endpoints of concern have been identified by EPA for dermal exposure to triclopyr, therefore, no exposure assessment is required for this exposure; an inhalation exposure assessment is also not required and no chronic use pattern is expected for homeowner use of triclopyr products.

There is a potential for post-application exposure to swimmers following applications to aquatic sites

that may be used for recreational purposes. There are no triclopyr-specific exposure data to assess swimmer exposure. However, an assessment was conducted using information provided in EPA's Dermal Exposure Assessment: Principles and Applications. The dermal permeability constant (Kp) was calculated to be 6.5×10^{-8} mg/cm²/hr. The assessment of swimmer exposure was based on a six-year old boy having a body weight of 21.9 kg and a surface area of 0.88 m². The swimming period was assumed to be 3 hours on the day of treatment in water containing 2.5 ppm triclopyr.

Total dermal exposure (mg) = 3 hr/day × 0.88 m² × 104 cm²/m² × 6.5×10^{-8} mg/cm²/hr = 1.716×10^{-3} mg/day

Oral absorption could also account for a portion of the exposure. It was assumed that 1% of the water in residence in the mouth while breathing will be swallowed.

Oral exposure = 3 hr/day × 0.05 L/hr × 2.5 mg/L = 0.375 mg/day

Combining the dermal exposure and oral exposure for a 21.9 kg child, the swimming exposure for one day was estimated to be 0.377 mg/day ÷ 21.9 kg = 0.017 mg/kg/day. Compared to the acute NOEL of 30 mg/kg/day, an MOE of 1,765 was obtained. No dermal or inhalation endpoint has been established for triclopyr, so this represents a very conservative estimate of the risk due to swimming in triclopyr-treated waters.

D. Cumulative Effects

The potential for cumulative effects of triclopyr and other substances that have a common mechanism of toxicity was considered. The mammalian toxicity of triclopyr is well defined. However, the biochemical mechanism of toxicity of this compound is not known. No reliable information exists to indicate that toxic effects produced by triclopyr would be cumulative with those of other similar compounds. Therefore, consideration of a common mechanism of toxicity with other compounds is not appropriate. Thus, only the potential risks of triclopyr are considered in the aggregate exposure assessment.

E. Safety Determination

1. *U.S. population.* Because of the toxicological characteristics of triclopyr (no dermal endpoint of concern), post-application exposure assessment was not necessary. Residential exposure is considered to be negligible. Swimming in treated water was shown to be a minimal risk. Therefore, residential and swimming exposure were not considered in the aggregate risk calculation.

For the population subgroup of concern, pregnant females age 13 and older, an MOE of 857 was estimated for the acute aggregate dietary risk (food + water) from exposures to triclopyr residues.

MOE = (30 mg/kg/day) / (0.0183 + 0.0167) mg/kg/day = 857

Using the TMRC exposure assumptions described above, the percentage of the RfD that will be utilized by aggregate exposures (food + water) to residues of triclopyr ranges from 2.1% to 5.3% for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants <1 year old. The water exposure value used the highest water residue concentration at 42 days after treatment of lakes and ponds (the longest sampling time interval common to all studies), 0.013 ppm, in the calculations below:

Total U.S. Population (Dietary + Drinking Water)

(0.00062 + 0.00043) mg/kg/day × 100 / (0.05 mg/kg/day) = 2.1% Rfd

Non-nursing Infants (Dietary + Drinking Water)

(0.00133 + 0.0013) mg/kg/day × 100 / (0.05 mg/kg/day) = 5.3% Rfd

Determination of Safety for U.S. Population

Based on the current state of knowledge for this chemical, the RfD approach accurately reflects the exposure of the U.S. population, infants and children to triclopyr.

2. *Infants and children.* Studies cited earlier in this document indicate that triclopyr is not a selective developmental toxicant, and an additional uncertainty factor for infants and children is unnecessary. This decision is based on the following data.

Since the developmental and reproductive NOELs were either the same or greater than the maternal or parental, it is unlikely that there is additional risk concern for immature or developing organisms which is not reflected by the risk assessment utilizing the established reference dose. The effects noted for the RfD NOEL are parental effects, not developmental.

F. International Tolerances

There are no established or proposed Codex MRLs for triclopyr residues. Therefore, there are no issues of compatibility with respect to U.S. tolerances and Codex MRLs.

2. E.I. du Pont de Nemours & Company

PP 6F4706

EPA has received a pesticide petition (PP 6F4706)from E.I. du Pont de Nemours & Company, Barley Mill Plaza, P.O. Box 80038, Willimington, DE 19880–0038. proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of rimsulfuron: *N*-((4,6-dimethoxypyrimidin-2-yl) aminocarbonyl) -3- (ethylsulfonyl) -2-pyridinesulfonamide in or on the raw agricultural commodity tomato fruit at 0.10 parts per million. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* With the initial establishment of rimsulfuron tolerances in field corn and potatoes, the EPA determined that the nature of plant residues was adequately understood for the purposes establishing those tolerances. A metabolism study on tomatoes was conducted at the following use rates:

Tomatoes grown in field	72 g active ingredient per hectare (approx. 1 oz. ai per acre, maximum proposed use rate).
Tomatoes grown in greenhouse	172, 350, and ca. 700 g ai per hectare (2.5, 5, and 10 oz. ai per acre or up to 10 times the proposed maximum use rate).

No residues of rimsulfuron or any metabolite were detected in any tomato fruit, immature or mature. Detection limits for the study were 0.004 ppm for the field-grown samples and 0.013 ppm for the greenhouse-grown samples. This study conclusively shows that application of rimsulfuron to tomatoes, when used in accordance with the proposed label directions, will not result in detectable residue of rimsulfuron or its metabolites in tomato fruit. Therefore, the nature of rimsulfuron residues (i.e., their absence) has been established for tomato fruit, the only raw agricultural commodity established for tomatoes.

2. *Analytical method.* Adequate analytical methodology, high-pressure liquid chromatography with Uv detection, is available for enforcement purposes. The method is "Analytical Method for the Quantitiation of DPX-E9636 (rimsulfuron) in Various Crop Matrices and Their Processed Fractions", DuPont Report No. AMR 3424–95, EPA MRID No. 43979002. The method involves liquid chromatography utilizing eluent and column switching with UV/VIS detection at 254 nm. The limit of quantitation for rimsulfuron in tomatoes is 0.05 ppm. EPA offers enforcement methodology to anyone interested in pesticide enforcement when requested by mail from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1130A, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

3. *Magnitude of residues.* —i. *Plant residues.* Magnitude of residues of rimsulfuron in tomato fruit were determined following application of rimsulfuron at the proposed maximum annual use rate of 1.0 oz ai/acre (1×), and at twice that rate (2×). An additional test was conducted at an exaggerated rate of 5.0 oz ai/acre (5×) in an attempt to generate quantifiable residues in tomato fruit (RAC) for a processing study.

Seventeen tests, each containing one control and two treatment plots, were established in California, Florida, Indiana, Maryland, and Pennsylvania. Row-crop tomato samples were collected approximately 45 days following the final application; staked tomatoes were collected immediately following the final application. Tomato samples were analyzed using the procedures described in DuPont Method No. AMR 3424–95, Analytical Method for the Quantitation of DPX-E9636 in Various Crop Matrices and Their Processed Fractions. The overall mean percent recovery of 52 control tomato samples fortified at either 0.05 or 0.10 ppm was 86%, with a relative standard deviation of 4%. Results of freezer storage stability study indicate that rimsulfuron is stable up to 6 months in tomatoes stored at −20C +/− 5C.

No quantifiable residues (<0.05 ppm) of rimsulfuron were found in any of the tomato samples treated at 1.0, 2.0, and 5.0 oz ai/acre. A processing study was not necessary since all 1× and 5× samples did not have rimsulfuron present with a limit of quantitation of 0.05 ppm.

Data generated from this study support the use of rimsulfuron on tomatoes at a maximum seasonal use rate of 1.0 oz ai/acre with a minimum preharvest interval of 45 days. Study results also support the petition for a 0.10 ppm tolerance of rimsulfuron on tomatoes.

ii. *Animal residues.* EPA determined, upon granting field corn and potato tolerances, that there is no reasonable expectation of residues occurring in meat, milk, poultry, or eggs from these tolerances. Tomato fruit and its processed commodities (i.e., tomato paste and puree) are not considered by the EPA to be animal feed items. Further, no residues would be available to enter animal feed based on results from the tomato metabolism study and magnitude or residue study discussed above. Therefore, there remains a reasonable expectation that no residue of rimsulfuron will occur in meat, milk, poultry, or eggs from all rimsulfuron tolerances, current (field corn and potatoes) and proposed (tomatoes).

B. Toxicological Profile

1. *Acute toxicity.* Technical rimsulfuron has been placed in acute toxicology category III based on overall results from several studies. This compound was placed in toxicology category III for acute dermal toxicity (LD_{50} > 2,000 mg/kg; rabbits) and eye irritation (effects reversible within 72 hours; rabbits). Acute oral toxicity (LD_{50} > 5,000 mg/kg; rats), acute inhalation toxicity (LC_{50} > 5.4 mg/L; rats) and skin irritation (no observed irritation; rabbits) results were assigned toxicology category IV. Technical rimsulfuron is not a dermal sensitizer.

2. *Genotoxicty.* Technical rimsulfuron was negative for genotoxicity in a battery of in vitro and in vivo tests. These tests included the following: mutagenicity in bacterial (Ames test) and mammalian (CHO/HGPRT assay) cells; in vitro cytogenetics (chromosomal aberration in human lymphocytes); in vivo cytogenetics (bone marrow micronucleus assay in mice); and unscheduled DNA synthesis in rat primary hepatocytes.

3. *Reproductive and developmental toxicity.* A two-generation reproduction study was conducted in rats with dietary technical rimsulfuron concentrations of 0, 50, 3,000 or 15,000 ppm. The study was negative for reproductive toxicity and there was no indication that offspring were more susceptible to rimsulfuron administration than parents. The NOEL was 3,000 ppm (or 165 to 264 mg/kg/day for P1 and F1 males and females and their offspring). This was based on the following effects at 15,000 ppm (830 to 1,316 mg/kg/day): lower food consumption and/or food efficiency in P1 males and females and F1 females; decreased mean body weights and/or body weight gain by P1 and F1 males and females; lower mean body weights and increased incidence of small body size for F2 pups during lactation.

A developmental study was conducted in rats administered technical rimsulfuron by gavage at 0, 200, 700, 2,000 or 6,000 mg/kg/day. There were no systemic or developmental effects observed up to and including the highest dose tested. The NOEL was therefore > 6,000 mg/kg/day.

A developmental study was conducted in rabbits administered technical rimsulfuron by gavage at 0, 25, 170, 500 or 1,500 mg/kg/day. The NOELs for maternal and offspring toxicity were 170 and 500 mg/kg/day, respectively. The maternal NOEL was based on reduced body weight and mortality at higher doses. These maternal effects precluded any evaluation of adverse effects in fetuses at 1,500 mg/kg/day; however, there were no systemic or developmental effects observed among fetuses at 500 mg/kg/day and below.

4. *Subchronic toxicity.* A 90-day study in mice was conducted at dietary concentrations of 0, 50, 375, 1,500 or 7,500 ppm. The NOELs were 375 ppm (56.0 mg/kg/day) for male mice and 7,500 ppm (1,575 mg/kg/day) for female mice. The NOEL for males was based on slight reductions in mean body weight gain and food efficiency at 1,500 ppm (228 mg/kg/day).

Technical rimsulfuron was administered in the diets of rats at 0, 50, 1,500, 7,500 or 20,000 ppm for 90 days. The NOEL was 1,500 ppm (102 and 120 mg/kg/day for males and females, respectively) based on reduced mean body weights and body weight gains and increased relative liver weights at

7,500 ppm (495 and 615 mg/kg/day for males and females, respectively).

Dogs were administered technical rimsulfuron in their diets at 0, 250, 5,000 or 20,000 ppm for 90 days. The NOEL was 250 ppm (9.63 and 10.6 mg/kg/day for males and females, respectively). This was based on slight increases in liver and/or kidney weights, increased urine volume and decreased urine osmolarity at 5,000 ppm (193 and 189 mg/kg/day for males and females, respectively).

5. *Chronic toxicity.* An 18-month mouse study was conducted with dietary concentrations of 0, 25, 250, 2,500 or 7,500 ppm technical rimsulfuron. This product was not oncogenic in mice. The systemic NOEL was 2,500 ppm (351 and 488 mg/kg/day for males and females, respectively) based on decreased mean body weights in both sexes and increased incidence of spontaneous, age-related artery and tunica degeneration in the testes for this mouse strain at the highest dose tested, 7,500 ppm (1,127 and 1,505 mg/kg/day for males and females, respectively). The latter was observed in the absence of any effect on spermatogenesis. An increased incidence of dilation and cysts in the glandular stomach of males was also observed at 7,500 ppm.

A 2-year chronic toxicity/oncogenicity study was conducted in rats fed diets that contained 0, 25, 300, 3,000 or 10,000 ppm technical rimsulfuron. This product was not oncogenic in rats. The systemic NOELs were 300 ppm (11.8 mg/kg/day) for males and 3,000 ppm (163 mg/kg/day) for females. The NOELs were defined by decreased body weight gain and increased relative liver weights at 3,000 ppm (121 mg/kg/day) and 10,000 ppm (569 mg/kg/day) for males and females, respectively.

Technical rimsulfuron was administered for one year to dogs at dietary concentrations of 0, 50, 2,500 or 10,000 ppm. The NOELs were 50 ppm (1.6 mg/kg/day) for males and 2,500 ppm (86.5 mg/kg/day) for females. The NOEL for males was based on the following effects observed at 2,500 ppm (81.8 mg/kg/day): increased absolute liver and kidney weights; and increased incidence of seminiferous tubule degeneration and increased numbers of spermatid giant cells present in the epididymides. The NOEL for females was based on the following effects observed at 10,000 ppm (358.5 mg/kg/day): decreased body weight and body weight gain; increased serum cholesterol levels and alkaline phosphatase activity, increased absolute liver weight and increased relative liver and kidney weights.

6. *Animal metabolism.* The metabolism of rimsulfuron in animals (rat, goat and hen) is adequately understood and is similar among the species evaluated. Rimsulfuron was rapidly eliminated via urinary and fecal excretion in the rat. Approximately 60 to 70% of the administered dose to rats was excreted within 24 hours. There were no volatile metabolites detected and unmetabolised rimsulfuron was the major component in the urine (42 – 55%) and feces (5 – 16%). The major metabolic pathway in rats involved a contraction of the sulfonylurea bridge followed by dealkylation, hydroxylation and/or conjugation reactions. Cleavage of the sulfonylurea bridge was observed; however, it was considered to be a minor pathway. Elimination of administered rimsulfuron was similarly rapid for the goat and hen. Tissue residue levels were generally less than 0.3% of the administered dose for the rat, goat and hen. There was no evidence of accumulation of rimsulfuron or its metabolites in tissues of any of the species or in milk and eggs.

7. *Metabolite toxicology.* Common metabolic pathways for rimsulfuron were demonstrated in the rat, goat and hen as well as plants (corn, tomatoes and potatoes). When evaluated for acute toxicity and mutagenicity, two of the major metabolites, i.e., one resulting from contraction of the sulfonylurea bridge and one from the cleavage of this bridge, were found to be of low toxicity and were negative in the Ames test. The existing metabolism studies indicate that the metabolites formed are unlikely to accumulate in humans or in animals that may be exposed to these residues in the diet. The fact that no quantifiable residues were found in treated crops further indicates that exposures to and accumulation of metabolites are unlikely. Because of the above, toxicology studies on metabolites were not required.

C. Aggregate Exposure

1. *Dietary exposure — Residue of concern.* When tolerances were established on field corn and potatoes, EPA determined that the residue of concern was rimsulfuron. The metabolism study conducted on tomatoes (see Plant Metabolism Section) showed no residues of rimsulfuron are present in the tomato fruit. Therefore, the residue of concern continues to be rimsulfuron.

2. *Food.* For the general U.S. population, acute dietary exposure assessments were not considered relevant for rimsulfuron for the following reasons: rimsulfuron presents very low acute toxicity based on animal testing; and no detectable residues have been demonstrated in edible portions of treated crops.

The Agency has conducted chronic dietary exposure assessments for rimsulfuron and the results are summarized below. The Reference Dose (RfD) is based on a NOEL of 1.6 mg/kg/day established in the 1-year feeding study with dogs and combines an uncertainty factor of 100. EPA calculated the RfD to be 0.016 mg/kg/day. The theoretical maximum residue contribution (TMRC) for these tolerances for the overall U.S. population is 1.47×10^{-4} mg/kg/day or 0.92% of the RfD based on current (field corn and potatoes) tolerances and would be 2.21×10^{-4}, or 1.4% of the RfD when the proposed tolerance on tomatoes is included.

For infants and children, the TMRC for the most exposed subgroup, children (1 to 6 years old), is 2.37×10^{-4} mg/kg/day, respectively, or 1.95% of the RfD based on current (field corn and potatoes) tolerances and would be 4.37×10^{-4} mg/kg/day, or 2.73% of the RfD, when the proposed tomato tolerance is included. As with calculations for the general US population, these values assume the residues are at the established tolerance level and that 100 percent of the crop is treated.

3. *Drinking water.* Another potential dietary source of exposure of the general population to residues of pesticides is residues in drinking water. There have been no field studies or monitoring programs conducted to assess rimsulfuron residues in groundwater or drinking water. Several factors indicate very low potential that rimsulfuron will be present in raw or finished drinking water: low use rate (1 oz a.i./acre), rapid hydrolysis (half-life < 7 days), short half-lives under field conditions (7–18 days), absence of leaching in field soil dissipation studies. Water solubility for rimsulfuron is as follows:

Unbuffered Water:		< 10 ppm
Buffers:	pH 5	135 ppm
.....	pH 7	7,300 ppm
.....	pH 9	5,560 ppm (rapidly decomposes at pH 9); K_{oc} is less than 100.

Computer modeling, taking into account use rate, physical properties, and degradation rates, predicts low probability of rimsulfuron being present in ground- or drinking water. Given that only 2.73% of the RfD is attained by the TMRC for the population sub-group with the highest theoretical dietary exposure (children 1–6 years old; see above), there is ample allowance for safe exposure to rimsulfuron via drinking water.

4. *Non-dietary exposure.* Rimsulfuron is not registered for any use which could result in non-occupational, or non-dietary exposure to the general population.

D. Cumulative Effects

Rimsulfuron belongs to the sulfonylurea class of crop protection chemicals. Other structurally similar compounds in this class are registered herbicides. However, the herbicidal activity of sulfonylureas is due to the inhibition of acetolactate synthase (ALS), an enzyme found only in plants. This enzyme is part of the biosynthesis pathway leading to the formation of branched chain amino acids. Animals lack ALS and this biosynthetic pathway. This lack of ALS contributes to the relatively low toxicity of sulfonylurea herbicides in animals. There is no reliable information that would indicate or suggest that rimsulfuron has any toxic effects on mammals that would be cumulative with those of any other chemical.

E. Safety Determination

1. *U.S. population.* Based on the completeness and reliability of the toxicology database and using the conservative assumptions presented earlier, EPA has established an RfD of 0.016 mg/kg/day. This was based on the NOEL for the 1-year dog study of 1.6 mg/kg/day and employed a 100–fold uncertainty factor. It has been concluded that the aggregate exposure for existing crops (corn and potatoes) would utilize 0.92% of the RfD and that the addition of tomatoes would increase utilization to 1.4% of the RfD. Generally, exposures below 100% of the RfD are of no concern because it represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risk to human health. Thus, there is reasonable certainty that no harm will result from aggregate exposures to rimsulfuron residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of rimsulfuron, data from the previously discussed developmental and multigeneration reproductive toxicity studies were considered.

Developmental studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during pre-natal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from pre-natal and post-natal exposures to the pesticide. The studies with rimsulfuron demonstrated no evidence of developmental toxicity at exposures below those causing maternal toxicity. This indicates that developing animals are not more sensitive to the effects of rimsulfuron administration than adults.

FFDCA section 408 provides that EPA may apply an additional uncertainty factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on current toxicological data requirements, the database for rimsulfuron relative to pre- and post-natal effects for children is complete. In addition, the NOEL of 1.6 mg/kg/day in the 1-year dog study and upon which the RfD is based is much lower than the NOELs defined in the reproduction and developmental toxicology studies. Conservative assumptions utilized to estimate aggregate dietary exposures of infants and children to rimsulfuron demonstrated that only 1.95% of the RfD was utilized for current tolerances (corn and potatoes) and the addition of tomatoes would only increase utilization to 2.73% of the RfD for the highest exposed group. Based on these exposure estimates and the fact that the current database demonstrates that the developing offspring or young animals are not uniquely susceptible to rimsulfuron administration, the extra 10–fold uncertainty factor is not warranted for these groups. Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposures to rimsulfuron.

F. International Tolerances

The following international tolerances (or Maximum Residue Levels, MRL's) exist:

Country	Tolerance in ppm	Crop
Australia	0.05	Tomatoes
Austria	0.1	Corn, Potato
Belgium	0.05	Corn
Bulgaria	0.5	Corn-Fodder
Canada	0.1	Corn, Potato
Croatia	0.1	Fodder
Czech. Rep.	0.05	Corn, Grain, Potato
Germany	0.05	Corn, Potato
Hungary	0.2	Corn
Italy	0.10	Corn, Potato, Tomatoes
Romania	0.05	Corn, Potato

Country	Tolerance in ppm	Crop
Slovakia	0.05	Corn, Grain
Spain	0.05	Corn, Tomatoes
United States	0.1	Corn, Potato

3. Monsanto Company

PP 2E4118 and 7F4886

EPA has received a pesticide petitions (PP 2E4118 and 7F4886) from Monsanto Company, 700 14th St.,NW., Suite 1100, Washington, D.C. 20005, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for glyphosate [(*N*-phosphonomethyl) glycine] in or on the imported raw agricultural commodities barley grain at 20 parts per million (ppm); barley, bran and pearled barley at 60 ppm; cereal grains group (except wheat, corn, oats, grain sorghum, and barley at 0.1 ppm; canola, seed at 10 ppm; canola, meal at 25 ppm; legume vegetables (succulent or dried) group (except soybeans) at 5 ppm. (PP 2E4118) and in or on the raw agricultural commodities beets, sugar, tops (leaves) at 10 ppm; beets, sugar, root at 10 ppm; and beets, sugar, pulp, dried at 25 ppm (PP 7F4886). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the residue in plants is adequately understood and consists of the parent, glyphosate and its metabolite AMPA (aminomethyl-phosphonic acid). Only glyphosate parent is to be regulated in plant and animal commodities since the metabolite AMPA is not of toxicological concern in food.

2. *Analytical method.* Adequate methodology High Pressure Liquid Chromatograpy (HPLC) with fluorometric detection is available for enforcement purposes, and the methodology has been published in the Pesticide Analytical Manual (PAM), Vol. II. This method has a limit of detection (0.05 ppm) that allows monitoring of food with residues at or above the levels set in these tolerances.

3. *Magnitude of residues.* The submitted residue data adequately support the proposed tolerances on Barley, grain (20 ppm); Barley, bran and pearled barley (60 ppm); Canola, seed (10 ppm); Canola, meal (25 ppm); and Legume vegetables (succulent or dried) group (except soybeans) (5 ppm), Sugar beet roots at 10 ppm, Sugar beet tops at 10 ppm and Sugar beet dried pulp at 25 ppm. Any secondary residues occurring in liver or kidney of cattle, goats, horses, and sheep and liver and kidney of poultry will be covered by existing tolerances.

B. Toxicological Profile

1. *Acute toxicity.* A rat acute oral study with a combined LD_{50} of > 5000 mg/kg,

A rabbit acute dermal LD_{50} of > 5000 mg/kg,

A primary eye irritation study in the rabbit which showed severe irritation for glyphosate acid. However, glyphosate is normally formulated as one of several salts and eye irritation studies on the salts showed essentially no irritation.

A primary dermal irritation study which showed essentially no irritation.

A primary dermal sensitization study which showed no sensitization.

2. *Genotoxicty.* A number of mutagenicity studies were conducted and were all negative. These studies included: chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with or without S9 activation); DNA repair in rat hepatocyte; *in vivo* bone marrow cytogenic test in rats; rec-assay with *B. subtilis*; reverse mutation test with *S. typhimurium*; Ames test with *S. typhimurium*; and dominant-lethal mutagenicity test in mice.

3. *Reproductive and developmental toxicity.* An oral developmental toxicity study with rats given doses of 0, 300, 1,000 and 3,500 mg/kg/day with a maternal no observable effect level (NOEL) of 1,000 mg/kg/day based on clinical signs of toxicity, body weight effects and mortality, and a fetal NOEL of 1,000 mg/kg/day based on reduced body weights and delayed sternebrae maturation at the highest dose tested of 3,500 mg/kg/day.

An oral developmental toxicity study with rabbits given doses of 0, 75, 175 and 350 mg/kg/day with a maternal of NOEL of 175 mg/kg/day based on clinical signs of toxicity and mortality, and a fetal NOEL of 350 mg/kg/day based on no developmental toxicity at any dose tested.

A 3-generation reproduction study with rats fed dosage levels of 0, 3, 10 and 30 mg/kg/day with a NOEL for systemic and reproductive/ developmental parameters of 30 mg/kg/ day based on no adverse effects noted at any dose level.

A 2-generation reproduction study with rats fed dosage levels of 0, 100, 500 and 1,500 mg/kg/day with a NOEL for systemic and developmental parameters of 500 mg/kg/day based on body weight effects, clinical signs of toxicity in adult animals and decreased pup bodyweights, and a reproductive NOEL of 1,500 mg/kg/day.

4. *Subchronic toxicity.* A 90-day feeding study in rats fed dosage levels of 0, 1,000, 5,000 and 20,000 ppm with a NOEL of 20,000 ppm based on no effects even at the highest dose tested.

A 90-day feeding study in mice fed dosage levels of 0, 5,000, 10,000 and 50,000 with a NOEL of 10,000 ppm based on body weight effects at the high dose.

A 90-day feeding study in dogs given glyphosate, via capsule, at doses of 0, 200, 600 and 2,000 mg/kg/day with a NOEL of 2,000 mg/kg/day based on no effects even at the highest dose tested.

5. *Chronic toxicity.* A 12-month oral study in dogs given glyphosate, via capsule, at doses of 0, 20, 100 and 500 mg/kg/day with a NOEL of 500 mg/kg/ day based on no adverse effects at any dose level.

A 26-month chronic/feeding oncogenicity study with rats fed dosage levels of 0, 3, 10 and 31 mg/kg/day (males) and 0, 3, 11 and 34 mg/kg/day (females) with a systemic NOEL of 31 mg/kg/day (males) and 34 mg/kg/day (females) based on no carcinogenic or other adverse effects at any dose level.

A 24-month chronic/feeding oncogenicity study with rats fed dosage levels of 0, 89, 362 and 940 mg/kg/day (males) and 0, 113, 457 and 1,183 mg/ kg/day (females) with a systemic NOEL of 362 mg/kg/day based on body weight

effects in the female and eye effects in males. There was no carcinogenic response at any dose level.

6. *Carcinogenicity.* A mouse oncogenicity study with mice fed dosage levels of 0, 150, 750 and 4,500 mg/kg/day with a NOEL of 750 mg/kg/day based on body weight effects and microscopic liver changes at the high dose. There was no carcinogenic effect at the highest dose tested of 4,500 mg/kg/day.

Glyphosate is classified as a Group E (evidence of non-carcinogenicity for humans), based upon lack of convincing carcinogenicity evidence in adequate studies in two animal species. This classification is based on the following findings: (1) There were no tumor findings in the chronic testing that were determined to be compound related; (2) glyphosate was tested up to the limit dose on the rat and up to levels higher than the limit dose in mice; and (3) there is no evidence of genotoxicity for glyphosate.

7. *Animal metabolism.* The nature of the residue in animals is adequately understood and consists of the parent, glyphosate and its metabolite AMPA (aminomethyl-phosphonic acid).

8. *Metabolite toxicology.* Only glyphosate parent is to be regulated in plant and animal commodities since the metabolite AMPA is not of toxicological concern in food.

9. *Endocrine disruption.* The toxicity studies required by EPA for the registration of pesticides measure numerous endpoints with sufficient sensitivity to detect potential endocrine-modulating activity. No effects have been identified in subchronic, chronic or developmental toxicity studies to indicate any endocrine-modulating activity by glyphosate. In addition, negative results were obtained when glyphosate was tested in a dominant-lethal mutation assay. While this assay was designed as a genetic toxicity test, agents that can affect male reproduction function will also cause effects in this assay. More importantly, the multi-generation reproduction study in rodents is a complex study design which measures a broad range of endpoints in the reproductive system and in developing offspring that are sensitive to alterations by chemical agents. Glyphosate has been tested in two separate multi-generation studies and each time the results demonstrated that glyphosate is not a reproductive toxin.

C. Aggregate Exposure

1. *Dietary exposure — Food.* For purposes of assessing the potential exposure under these tolerances, dietary exposure was estimated based on the Theoretical Maximum Residue Contribution (TMRC) from the all present tolerances for glyphosate and the additional exposure that could result if the proposed tolerances are established on barley grain at 20 ppm, barley bran and pearled barley at 60 ppm, canola seed at 10 ppm, canola meal at 25 ppm, legume vegetables (succulent or dried) group (except soybeans) at 5 ppm, sugar beet roots at 10 ppm, sugar beet tops at 10 ppm and sugar beet dried pulp at 25 ppm. The TMRC is obtained by multiplying the tolerance level residue for each food commodity by the consumption data which estimates the amount of those products eaten by various population subgroups. In conducting this exposure assessment, very conservative assumptions were made -- 100% of these crops will contain glyphosate residues and those residues would be at the level of the tolerance -- which result in an overestimate of human exposure. Thus, in making a safety determination for these tolerances, EPA is taking into account this conservative exposure assessment.

Secondary residues in animal commodities may occur from these uses through the feeding of barley grain and canola meal to livestock. Since these proposed tolerances do not arise from changes in U.S. registrations involving the use of glyphosate herbicides on barley, canola, or legume vegetables, it has been concluded that livestock feed items derived from these crops are not likely to enter channels of trade in the United States. Based on these considerations and the results of animal feeding studies and the amount of glyphosate residues expected in animal feeds, EPA has concluded that there is no reasonable expectation that such secondary residues of glyphosate will exceed existing tolerances in edible animal products.

2. *Drinking water.* In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue via drinking water. The lifetime health advisory and maximum contaminant level (MCL), for glyphosate are both 700 parts per billion in the EPA Office of Drinking Water's "Drinking Water Health Advisory; Pesticides." The MCL represents the level at which no known or anticipated adverse health effects will occur, allowing for an adequate margin of safety, and is based on the reference dose (RfD).
Environmental Fate data for glyphosate indicate little potential for the chemical to migrate to drinking. Glyphosate is not highly mobile and not persistent in a soil or water environment. Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water related exposures to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfDs or acute dietary NOELs) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for consumption of contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause glyphosate to exceed the RfD if the tolerances being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with glyphosate in water, even at higher levels the Agency may consider a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *Non-dietary exposure.* Glyphosate is registered for use on non-food sites such as around ornamental, shade trees, shrubs, walks, driveways, flowerbeds, home lawns, farmsteads including building foundations, along and in fences, in dry ditches and canals, along ditchbanks, farm roads, shelterbelts, forestry, Christmas trees, and industrial sites and other non-crop or industrial areas such as airports, lumber yards, manufacturing sites, utility substations, parking areas, petroleum tank farms, and pumping station.

Margins of Exposure (MOEs) are determined for non-dietary exposure based on toxicological endpoints and measured or estimated exposures. Since glyphosate is a class E chemical (evidence of non-carcinogenicity for humans), the 21 day dermal study lacked any observable effects at the limit dose, and no adverse effects were observed in developmental toxicity studies in rats up to 1,000 mg/kg/day and rabbits up to 175 mg/kg/day, no toxicological endpoints are applicable. Because available data indicated no evidence of significant toxicity via the dermal or inhalations routes, MOEs were not calculated and risk

assessments are not required for non-occupational (residential uses).

D. Cumulative Effects

EPA does not have, at this time, available data to determine whether glyphosate has a common mechanism of toxicity with other substances or how to include it in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on common mechanism of toxicity, glyphosate does not produce a toxic metabolite which is common to other substances. For the purposes of this tolerance action, therefore EPA has assumed that glyphosate does not have a common mechanism of toxicity with other substances. A condition of the registrations associated with these tolerances will be that the registrant will provide common mechanism data in a timely manner when and if the Agency asks for it. After EPA develops methodologies for more fully applying common mechanism of toxicity issues to risk assessments, the Agency will develop a process to reexamine those tolerance decisions made earlier.

E. Safety Determination

1. *U.S. population —i. Acute dietary exposure.* Based on the available acute toxicity data, glyphosate does not pose any acute dietary risks, and an acute dietary risk assessment is not required.

ii. *Chronic dietary exposure.* Using the TAS Exposure 1 software and 1977–78 consumption data, a chronic dietary exposure estimate was based on 100% of the crops treated and all residues at tolerance levels to provide the TMRC. Based this assessment the combined new proposed tolerances contribute dietary exposure equal to 0.36% of the RfD for U.S. population and 0.69% of the RfD for non- nursing infants under 1 year old. Total estimated dietary exposure from glyphosate residues in food, taking into account both existing and these proposed uses will be 1.4% of the RfD for the overall U.S. population and 3.1% of the RfD for non- nursing infants, the most highly exposed population subgroup. An additional risk assessment for residential uses was not required because of no evidence of significant toxicology via dermal or inhalation routes. Even though an appropriate bounding figure for consumption of contaminated water has not been determined, the ranges being examine are all below the level that would cause glyphosate to exceed the RfD. Generally there is no concern for exposures below 100 percent of the RfD. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, there is reasonable certainty that no harm will occur from aggregate exposure to glyphosate.

2. *Infants and children.* FFCDA section 408 provides that an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless it is determined that a different margin of exposure (safety) will be safe for infants and children. Monsanto believes that reliable data support using the standard margin of exposure (usually 100× for combined inter- and intra-species variability) without the additional tenfold margin of exposure when a complete data base under existing guidelines exists and when the nature of the findings from these studies do not raise concerns regarding the adequacy of the standard margin of exposure.

The toxicological database for evaluating pre- and post-natal toxicity for glyphosate is considered to be complete at this time. Risk to infants and children for glyphosate was determined by the use of two developmental toxicity studies in rats and rabbits and a two-generation reproduction study in rats. The developmental toxicity studies evaluates the potential for adverse effects on the developing organism resulting from exposure during prenatal development. The reproduction study provides information relating to effects from exposure to the chemical on the reproductive capability of both (mating) parents and on systemic toxicity, in addition to information on prenatal development. The results of these studies indicate that glyphosate does not produce birth defects and is not a reproductive toxin.

In the rabbits, no developmental toxicity was observed at the highest dose tested (HDT) where significant maternal toxicity occurred (death and clinical signs at 350 mg/kg/day, highest dose tested HDT). Because no developmental toxicity was observed at any dose level, the developmental NOEL is considered to be 350 mg/kg/day. In the rat developmental toxicity study, severe maternal (systemic) and developmental toxicity was noted at 3,500 mg/kg/ day HDT. The HDT in this study was 3.5 times higher than the limit dose that is currently required by the guidelines. The maternal and developmental (pup) NOEL was 1,000 mg/kg/day. No effects on reproductive parameters were observed.

In the rat 2-generation reproduction study, parental toxicity was observed at 1,500 mg/kg/day as soft stools, decreased food consumption and body weight gain; therefore, the systemic NOEL is considered to be 500 mg/kg/day. Developmental (pup) toxicity was also only exhibited at 1,500 mg/kg/day as decreased body weight gain of the $F1_a$, $F2_a$, and $F2_b$ male and female pups during the second and third weeks of lactation. Glyphosate did not affect the ability of rats to mate, conceive, carry or deliver normal offspring at any dose level.

The RfD is based on the NOEL for maternal toxicity in the rabbit developmental study. No developmental effects were noted in the study. In the rat developmental study, effects were noted only at doses 20-fold higher than the NOEL used for the RfD. No pre- or post-natal effects were seen in any study in the absence of maternal toxicity. In the rat reproduction study, developmental effects were noted at doses 5 times higher than the NOEL used for the RfD. The Agency does not believe the effects seen in these studies are of such concern to require an additional safety factor. Accordingly, the Agency believes the RfD has an adequate margin of protection for infants and children. The dietary exposure from current and proposed uses of glyphosate ranges from 1% of the RfD for nursing infants (less than 1 year old) to 3% for non-nursing infants and children 1 to 6 years old. Monsanto has concluded that there is reasonable certainty that no harm will occur to infants and children from aggregate exposure to glyphosate.

F. International Tolerances

Codex MRLs have been established for residues of glyphosate in or on Barley Grain at 20 ppm, Dry Peas at 5 ppm, Dry Beans at 2 ppm, and Rape (Canola) Seed at 10 ppm. The proposed tolerances will achieve harmonization with these existing MRLs. The increase in U.S. tolerances on legume vegetables up to 5 ppm was recommended in 1993 in the glyphosate Reregistration Eligibility Decision.

The proposed U. S. tolerances are also consistent with the MRLs presently established for these commodities by other trade partner countries such as Canada, the European Union, and Japan.

[FR Doc. 98–4187 Filed 2–19–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

February 9, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Public Law 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission

OMB Control No.: 3060–0805.
Expiration Date: 1/31/2000.
Title: Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 (NPRM).
Form No.: N/A.
Estimated Annual Burden: 644,450 annual hour; average 10,270 hours per regional planning committee, 10,000 hours for the national planning committee, and 6 hours third party response; 8,712 respondents.
Description: In order to satisfy local and regional needs and preferences, the Commission proposes that regional planning committees made up of representatives from each public safety community draft and submit regional plans. These may include plans for both spectrum reserved for interoperability and spectrum available for general public safety use. The Commission will use the information to assign licenses and may also use the information to determine whether prospective licensees will operate in compliance with the Commission Rules.

OMB Control No.: 3060–0226.
Expiration Date: 2/28/2001.
Title: Section 90.135(d)&(e) Modification of License.
Form No.: N/A.
Estimated Annual Burden: 276 annual hours; 10 minutes per respondent; 1,656 responses.
Description: Rules require licensees who change certain parameters (name, address, mobile units, etc.) to inform the Commission by form or letter. This information collection covers the submission of letters to notify the FCC. Information is used to maintain an accurate database.

OMB Control No.: 3060–0281.
Expiration Date: 2/28/2001.
Title: Section 90.651 Supplemental reports required of licensees authorized under this subpart.
Form No.: N/A.
Estimated Annual Burden: 2,724 annual hours; 10 minutes per respondent; 16,408 responses.
Description: This section lists various reports required of 800 MHz licensees. The reports indicate whether the system has been constructed and the number of mobile units served.

OMB Control No.: 3060–0291.
Expiration Date: 2/28/2001.
Title: Section 90.477 Interconnected Systems.
Form No.: N/A.
Estimated Annual Burden: 1,000 annual hours; 1 hour per respondent; 1,000 respondents.
Description: Rule permits land mobile licensees to employ interconnection on a non-profit, cost shared basis and requires the cost sharing records to be maintained.

OMB Control No.: 3060–0621.
Expiration Date: 1/31/2000.
Title: Rules and Requirements for Broadband PCS Licenses.
Form No.: N/A.
Estimated Annual Burden: 14,044 annual hours; 30 minutes to 20 hours per responses, and 1 hour of recordkeeping per licensee; 3,000 responses.
Description: Rules require applicants to file certain information so that the Commission can determine whether the applicants are legally, technically and financially qualified to be licensed and to determine whether applicants claiming designated entity status are entitled to certain benefits. This collection covers sections: 24.203, 24.294(f), 24.204(f)(2), 24.709, 24.709(c)(2), 24.714, 24.714(b), 24.719(e), 24.806, 24.813, 24.813(f), 24.815(j), 24.819, 24.825, 24.827, 24.830, and 24.839.

OMB Control No.: 3060–0224.
Expiration Date: 2/28/2001.
Title: Section 90.151 Requests for Waiver.
Form No.: N/A.
Estimated Annual Burden: 120 annual hours; 2 hours per respondent; 60 responses.
Description: Rule requires applicants who request waiver of various rules to submit a justification for the proposed waiver. This is necessary to enable the Commission to make an informed decision on the requests.

OMB Control No.: 3060–0813.
Expiration Date: 7/31/98.
Title: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems.
Form No.: N/A.
Estimated Annual Burden: 194,457 annual hours; 15 minutes—12 hours per response; 125,996 responses. This collection contains various reporting and third party requirements that range in estimated completion time.
Description: The Commission is placing several burdens on the wireless E911 industry and on government entities and phone systems. Most of these are one time rather than ongoing requirements, and are minimal to ensure the rapid implementation of the technologies needed to bring emergency help to wireless callers throughout the United States. In establishing these requirements, the Commission balanced consumers' need for dependable, speedy access to 911 services with carriers' need for flexibility in providing emergency services. The actions were taken in response to concerns raised by the initial Report and Order.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.

[FR Doc. 98–4327 Filed 2–19–98; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Repurchase Agreements of Depository Institutions With Securities Dealers and Others; Notice of Modification of Policy Statement

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Modification of policy statement.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC is adopting modifications recently made by the Federal Financial Institutions Examination Council (FFIEC) to its policy statement on Repurchase Agreements of Depository Institutions with Securities Dealers and Others (Policy Statement). The Policy Statement provides guidance to insured

depository institutions about entering into repurchase agreements in a safe and sound manner. The FDIC is adopting the changes to the Policy Statement which the FFIEC has made to update and streamline the Policy Statement.

EFFECTIVE DATE: February 20, 1998.

FOR FURTHER INFORMATION CONTACT: William A. Stark, Assistant Director, (202/898–6972), Kenton Fox, Senior Capital Markets Specialist, (202/898–7119), Division of Supervision; Leslie Sallberg, Counsel, (202/898–8876), Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Background

The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires the FDIC, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), and the Office of Thrift Supervision (OTS) (collectively, the federal banking agencies) to each streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires each of the federal banking agencies to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies.

The FFIEC developed the Policy Statement to establish guidelines for insured depository institution repurchase agreement activities, including guidelines for written repurchase agreements, policies and procedures, credit risk management, and collateral management. The OCC, FRB, and FDIC each adopted the FFIEC's original Policy Statement, (50 FR 49764, December 4, 1985) with the FDIC's adoption taking place on December 31, 1985. 2 FDIC, Law, Regulations, and Related Acts (FDIC) 5265.

On February 11, 1998, the FFIEC published a notice making changes to its Policy Statement in order to update, clarify and streamline it. 63 FR 6935. There are three principal revisions to the Policy Statement.

First, the Policy Statement has been updated and streamlined to reflect the enactment of the Government Securities Act of 1986 and the Government Securities Act Amendments of 1993, 15 U.S.C. 78o–5 (GSA). The Policy Statement section, Dealings with Unregulated Securities Dealers, has been deleted. The GSA established a regulatory structure for government securities dealers, making this section obsolete. A new section, Legal Requirements, has been added to the Policy Statement. The first subsection, Government Securities Regulations, presents general information on the requirements of the GSA.

Second, the Policy Statement has been updated to generally cover the other laws and regulations applicable to repurchase agreements. These include the antifraud provisions of the securities laws, the requirements of the Uniform Commercial Code, and lending limitations. Third, the list of written repurchase agreement provisions has been updated with an expanded list of provisions to reflect current market practice. These provisions include terms of transaction initiation, confirmation and termination, payments and transfers of securities, collateral segregation, collateral repricing, rights to principal and interest payments, required disclosures for hold-in-custody repurchase agreements, and disclosures required by regulatory agencies. In addition to the revisions to the Policy Statement previously described, minor changes to the Policy Statement have also been made to improve clarity and readability.

Consistent with the goals of the CDRI review, the FDIC is adopting the FFIEC's modifications to the Policy Statement to eliminate outdated material, provide clarification, and to streamline the contents of the Policy Statement. The modified Policy Statement reads as follows:

Federal Financial Institutions Examination Council Supervisory Policy

Repurchase Agreements of Depository Institutions With Securities Dealers and Others

Purpose

Depository institutions and others involved with repurchase agreements [1] have sometimes incurred significant losses as a result of a default or fraud by the counterparty to the transaction. Inadequate credit risk management and the failure to exercise effective control over securities collateralizing the transactions are the most important factors causing these heavy losses.

The following guidelines are examples of elements that address credit risk management and exposure to counterparties under securities repurchase agreements and for controlling the securities in those transactions. Depository institutions that enter into repurchase agreements with securities dealers and others should consider these guidelines. Each depository institution that actively engages in repurchase agreements must have adequate policies and controls to suit their particular circumstances. The examining staffs of the federal supervisory agencies will review written policies and procedures of depository institutions to determine their adequacy in light of the scope of each depository institution's operations.

I. Legal Requirements

A. Government Securities Regulations

Securities sold under an agreement to repurchase that is collateralized by U.S. government and agency obligations are subject to regulations of the Treasury Department issued under the Government Securities Act of 1986, 15 U.S.C. 78o–5 (GSA). These regulations appear at 17 CFR Parts 400 to 450. Particular attention should be given to the requirements and "Required Disclosures" in 17 CFR 403.5. Institutions engaging in hold-in-custody repurchase transactions should also give attention to 17 CFR 450.

B. Other Laws and Regulations

Federal and state laws such as the antifraud provisions of the securities laws and the requirements of the Uniform Commercial Code may apply to a repurchase agreement.

Resale transactions of national banks and thrift institutions are subject to the lending limitations of 12 U.S.C. 84. In addition, state-chartered institutions should consult with their counsel or state regulatory authorities as to the applicability of state lending limitations. Depository institutions should also consider other rules that may apply to the transactions depending on the type of bank charter.

II. Credit Policy Guidelines for Securities Purchased Under Agreement To Resell

All depository institutions that engage in securities repurchase agreement transactions should establish written credit policies and procedures governing these activities. These policies and procedures usually address:

[1] The term *repurchase agreement* in this policy statement refers to both repurchase and reverse repurchase agreements. A repurchase agreement is one in which a party that owns securities, acquires funds by selling the specified securities to another party under a simultaneous agreement to repurchase the same securities at a specified price and date. A reverse repurchase (resale) agreement is one in which a party provides funds by purchasing specified securities pursuant to a simultaneous agreement to resell the same securities at a specified price and date.

A. Counterparties

Policies normally include "know your counterparty" principles. Engaging in repurchase agreement transactions in volume and in large dollar amounts frequently requires the services of a counterparty who is also a dealer in the underlying securities. Some firms that deal in the markets for U.S. Government and federal agency securities are subsidiaries of, or related to, financially stronger and better-known firms. However, these stronger firms may be independent of their U.S. Government securities subsidiaries and affiliates and may not be legally obligated to stand behind the transactions of related companies. Without an express written guarantee, the stronger firm's financial position cannot be relied upon to assess the creditworthiness of a counterparty.

Depository institutions should know the legal entity that is the actual counterparty to each repurchase agreement transaction. This includes knowing about the actual counterparty's character, integrity of management, activities, and the financial markets in which it deals.

Depository institutions should be particularly careful in conducting repurchase agreements with any firm that offers terms that are significantly more favorable than those currently prevailing in the market.

In certain situations, depository institutions may use, or serve as, brokers or finders to locate repurchase agreement counterparties or particular securities. When using or acting as this type of agent, the name of each counterparty should be fully disclosed. Depository institutions should not enter into undisclosed agency or "blind brokerage" repurchase transactions in which the counterparty's name is not disclosed.

B. Credit Analysis

Periodic evaluations of counterparty creditworthiness should be conducted by individuals who routinely make credit decisions and who are not involved in the execution of repurchase agreement transactions.

Before engaging in initial transactions with a new counterparty, depository institutions should obtain audited financial statements and regulatory filings from the proposed counterparty, and should require the counterparty to provide similar information on a periodic and timely basis in the future.

The credit analysis should consider the counterparty's financial statements and those of any related companies that could have an impact on the financial condition of the counterparty.

When transacting business with a subsidiary, consolidated financial statements of a parent are not adequate. Repurchase agreements should not be entered into with any counterparty that is unwilling to provide complete and timely disclosure of its financial condition. The depository institution also should inquire about the counterparty's general reputation and whether state or federal securities regulators or self-regulatory organizations have taken any enforcement actions against the counterparty or its affiliates.

C. Credit Limits

Depository institutions usually establish maximum position and temporary exposure limits for each approved counterparty based upon credit analysis performed. Periodic reviews and updates of those limits are necessary.

When assigning individual repurchase agreement counterparty limits, the depository institution should consider overall exposure to the same or related counterparty throughout the organization. Repurchase agreement counterparty limitations should consider the overall permissible dollar positions in repurchase agreements, maximum repurchase agreement maturities, limitations on the maturities of collateral securities, and limits on temporary exposure that may result from decreases in collateral values or delays in receiving collateral.

III. Guidelines for Controlling Collateral for Securities Purchased Under Agreement to Resell

Repurchase agreements can be a useful asset and liability management tool, but repurchase agreements can expose a depository institution to serious risks if they are not managed appropriately. It is possible to reduce repurchase agreement risk if the depository institution executes written agreements with all repurchase agreement counterparties and custodian banks. Compliance with the terms of these written agreements should be monitored on a daily basis.

The marketplace perceives repurchase agreement transactions as similar to lending transactions collateralized by highly liquid securities. However, experience has shown that the collateral securities probably will not serve as protection if the counterparty becomes insolvent or fails, and the purchasing institution does not have control over the securities. This policy statement provides general guidance on the steps depository institutions should take to protect their interest in the securities underlying repurchase agreement transactions (see "C. Control of Securities"). However, ultimate responsibility for establishing adequate procedures rests with management of the institution. The depository institution's legal counsel should review repurchase agreements to determine the adequacy of the procedures used to establish and protect the depository institution's interest in the underlying collateral.

A. General Requirements

Before engaging in repurchase transactions, a depository institution should enter into a written agreement covering a specific repurchase agreement transaction or master agreement governing all repurchase agreement transactions with each counterparty. Valid written agreements normally specify all the terms of the transaction and the duties of both the buyer and seller. The agreement should be signed by authorized representatives of the buyer and seller. Senior managers of depository institutions should consult legal counsel regarding the content of the repurchase and custodial agreements. Counsel should review the enforceability of the agreement with consideration as to the differing rules of liquidation for agreements with different counterparties, such as broker/dealers, banks, insurance companies, municipalities, pension plans, and foreign counterparties. Repurchase and custodial agreements normally specify, but are not limited to, the following:

- terms of transaction initiation, confirmation and termination;
- provisions for payments and transfers of securities;
- requirements for segregation of collateral securities;
- acceptable types and maturities of collateral securities;
- initial acceptable margin for collateral securities of various types and maturities;
- margin maintenance and collateral repricing provisions;
- provisions for collateral substitution;
- rights to interest and principal payments;
- events of default and the rights and obligations of the parties;
- required disclosures for transactions in which the seller retains custody of purchased securities;
- disclosures required by regulatory agencies; and
- persons authorized to transact business for the depository institution and its counterparty.

B. Confirmations

Some repurchase agreement confirmations may contain terms that attempt to change the depository institution's rights in the transaction. The depository institution should obtain and compare written confirmations for each repurchase agreement transaction to be certain that the information on the confirmation is consistent with the terms of the agreement. Confirmations normally identify the essential terms of the transaction, including the identity of specific collateral securities and their market values.

C. Control of Securities

As a general rule, a depository institution should obtain possession or control of the underlying securities and take necessary steps to protect its interest in the securities. The legal steps necessary to protect its interest may vary with applicable facts and law, and accordingly should be undertaken with the advice of counsel. Particular attention should also be given to the possession or control requirements under 17 CFR 450 for depository institutions when acting as a custodian for any type of repurchase agreement. Additional prudential management controls may include:

(1) Direct delivery of physical securities to the institution, or transfer of book-entry securities by appropriate entry in an account maintained in the name of the depository institution by a Federal Reserve bank which maintains a book-entry system for U.S. Treasury securities and certain agency obligations (for further information as to the procedures to be followed, contact the Federal Reserve bank for the district in which the depository institution is located);

(2) Delivery of either physical securities to, or in the case of book-entry securities, making appropriate entries in the books of a third-party custodian designated by the depository institution under a written custodial agreement which explicitly recognizes the depository institution's interest in the securities as superior to that of any other person; or

(3) Appropriate entries on the books of an independent third-party custodian exercising independent control over the exchange of securities and funds and acting pursuant to a tripartite agreement with the depository institution and the counterparty. The third-party custodian should ensure adequate segregation, free of any lien or claim, and specific identification and valuation of either physical or book-entry securities.

If control of the underlying securities is not established, the depository institution may be regarded only as an unsecured general creditor of an insolvent counterparty. Under these circumstances, substantial losses are possible. Accordingly, a depository institution should not enter into a repurchase agreement without obtaining control of the securities unless all of the following minimum procedures are observed:

- it is completely satisfied as to the creditworthiness of the counterparty;
- the transaction is within credit limitations that have been pre-approved by the board of directors, or a committee of the board, for unsecured transactions with the counterparty;
- the depository institution has conducted periodic credit evaluations of the counterparty;
- the depository institution has ascertained that collateral segregation procedures of the counterparty are adequate; and
- it obtains a written and executed repurchase agreement and pays particular attention to the provisions of 17 CFR 403.5.

Unless prudential internal procedures of these types are instituted and observed, the financial supervisory agency may cite the depository institution for engaging in unsafe or unsound practices.

All receipts and deliveries of either physical or book-entry securities should be made according to written procedures, and third-party deliveries should be confirmed in writing directly by the custodian. The depository institution normally obtains a copy of the advice of the counterparty to the custodian requesting transfer of the securities to the depository institution. Where securities are to be delivered, the depository institution should not make payment for securities until the securities are actually delivered to the depository institution or its agent. In addition, custodial contracts normally provide that the custodian take delivery of the securities subject to the exclusive direction of the depository institution.

Substitution of securities should not be allowed without the prior written consent of a depository institution. The depository institution should give its consent before the delivery of the substitute securities to the depository institution or a third-party custodian and receive a written list of specific securities substituted and their respective market values. Any substitution of securities should take into consideration the following discussion of "Margin Requirements."

D. Margin Requirements

Under the repurchase agreement a depository institution should pay less than the market value of the securities, including the amount of any accrued interest, with the difference representing a predetermined margin. When establishing an appropriate margin, a depository institution should consider the size and maturity of the repurchase transaction, the type and maturity of the underlying securities, and the creditworthiness of the counterparty. Margin requirements on U.S. government and federal agency obligations underlying repurchase agreements should allow for the anticipated price volatility of the security until the maturity of the repurchase agreement. Less marketable securities may require additional margin to compensate for less liquid market conditions. Written repurchase agreement policies and procedures normally require daily mark-to-market of repurchase agreement securities to the bid side of the market using a generally recognized source for securities prices. Repurchase agreements normally provide for additional securities or cash to be placed with the depository institution or its custodian bank to maintain the margin within the predetermined level.

Margin calculations should also consider accrued interest on underlying securities and the anticipated amount of accrued interest over the term of the repurchase agreement, the date of interest payment, and which party is entitled to receive the payment. In the case of pass-through securities, anticipated principal reductions should also be considered when determining margin adequacy.

E. Maturity and Renewal Procedures

Depository institutions should follow prudent management procedures when administering any repurchase agreement. For longer term repurchase agreements, management should monitor daily the effects of securities substitutions, margin maintenance requirements (including consideration of any coupon interest or principal payments) and possible changes in the financial condition of the counterparty. Engaging in open repurchase agreement transactions without maturity dates may be regarded as an unsafe and unsound practice unless the depository institution has, in its written agreement, retained rights to terminate the transaction quickly to protect itself against changed circumstances. Similarly, automatic renewal of short-term repurchase agreement transactions

without reviewing collateral values, adjusting collateral margin, and receiving written confirmation of the new contract terms, may be regarded as an unsafe and unsound practice. If additional margin is not deposited when required, the depository institution's rights to sell securities or otherwise liquidate the repurchase agreement should be exercised without hesitation.

IV. Guidelines for Controlling Collateral for Securities Sold Under Agreement to Repurchase

Depository institutions normally use current market values (bid side), including the amount of any accrued interest, to determine the price of securities that are sold under repurchase agreements. Counterparties should not be provided with excessive margin. Thus, the written repurchase agreement contract normally provides that the counterparty must make additional payment or return securities if the margin exceeds agreed upon levels. When acquiring funds under repurchase agreements it is prudent business practice to keep at a reasonable margin the difference between the market value of the securities delivered to the counterparty and the amount borrowed. The excess market value of securities sold by a depository institution may be viewed as an unsecured loan to the counterparty subject to the unsecured prudential limitations for the depository institution and should be treated accordingly for credit policy and control purposes.

By order of the Board of Directors.

Dated at Washington, D.C., this 10th day of February, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–4143 Filed 2–19–98; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, February 25, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 18, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4470 Filed 2–18–98; 10:48 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Commission on Consumer Protection and Quality in the Health Care Industry; Public Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, Public Law. 92–463, notice is hereby given of the meeting of the Advisory Commission on Consumer Protection and Quality in the Health Care Industry. This two-day meeting will be open to the public, limited only by the space available.

Place of meeting: Omni Shoreham Hotel, 2500 Calvert Street, NW.; Washington, DC 20008. Exact locations of the sessions will be available at the registration desk and on the Commission's web site, "http://www.hcqualitycommission.gov".

Times and Dates: The public meeting will span two days. On Wednesday, February 25, 1998, the Subcommittee on Roles and Responsibilities will meet from 10:30 a.m. until 4:30 p.m. On Thursday, February 26, 1998, the General Session will begin at 8 a.m. and it will continue until 4 p.m.

Purpose/Agenda: To hear testimony and continue formal proceedings of the Commission's remaining subcommittee (Subcommittees on Quality Measurement, on a Quality Improvement Environment and on Consumer Rights have completed their work). The General Session will focus on the Commission's draft components to the final report. Agenda items are subject to change as priorities dictate.

Contact Person: For more information, including substantive program information and summaries of the meeting, please contact: Edward (Chip) Malin, Hubert Humphrey Building, Room 118F, 200 Independence Avenue, SW., Washington, DC 20201; (202/205–3333).

Dated: _____ February 12, 1998.

Janet Corrigan,

Executive Director, Advisory Commission on Consumer Protection and Quality in the Health Care Industry.

[FR Doc. 98–4222 Filed 2–19–98; 8:45 am]

BILLING CODE 4110–60–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Times and Dates: 8:00 a.m.–5:30 p.m., March 3, 1998. 8:00 a.m.–5:00 p.m., March 4, 1998.

Place: Conference Room 303A–339A, Hubert H. Humphrey Building, 200 Independence Avenue S.W., Washington, D.C. 20201.

Status: Open.

Purpose: The meeting will focus on a variety of data policy and privacy issues. The Committee will review its progress and consider next steps in addressing new responsibilities in health data standards and health information privacy as outlined in the administrative simplification provisions of Pub. L. 104–191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as well as on related matters. Department officials will brief the Committee on recent activities of the HHS Data Council, the status of HHS activities in implementing the administrative simplification provisions of Pub. L. 104–191, and data implications of the Balanced Budget Act.

A presentation also is scheduled relating to the President's Commission on Quality and Consumer Protection, with special attention to data issues. A panel discussion on data quality standards is planned, as well as a panel discussion of approaches to standards for computer-based patient records. Breakout sessions are planned for the Subcommittee on Health Data Needs, Standards and Security, the Subcommittee on Privacy and Confidentiality, and the Subcommittee on Population-Specific Issues. In addition, a new member orientation is scheduled, and the Committee will discuss priorities and work plans. All topics are tentative and subject to change. Please check the NCVHS website for a detailed agenda.

Contact Person for More Information: Substantive information as well as summaries of the meeting and a roster of committee members may be obtained by visiting the NCVHS website (http://

aspe.os.dhhs.gov/ncvhs) or by calling James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D. Humphrey Building, 200 Independence Avenue S.W., Washington, D.C. 20201, telephone (202) 690–7100, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Note: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, individuals without a government identification card may need to have the guard call for an escort to the meeting room.

Dated: February 12, 1998.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 98–4346 Filed 2–19–98; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Translation Advisory Committee for Diabetes Prevention and Control Programs: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Translation Advisory Committee for Diabetes Prevention and Control Programs.

Times and Dates: 9 a.m.–6 p.m., March 10, 1998. 9 a.m.–1 p.m., March 11, 1998.

Place: The Georgian Terrace, 659 Peachtree Street, Atlanta, Georgia 30308, telephone 404/897–1991.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This committee is charged with advising the Director, CDC, regarding policy issues and broad strategies for diabetes translation activities and control programs designed to reduce risk factors, health services utilization, costs, morbidity, and mortality associated with diabetes and its complications. The Committee identifies research advances and technologies ready for translation into widespread community practice; recommends broad public health strategies to be implemented through public health interventions; identifies opportunities for surveillance and epidemiologic assessment of diabetes and related complications; and for the purpose of assuring the most effective use and organization of resources, maintains liaison and coordination of programs within the Federal, voluntary, and private sectors involved in the provision of services to people with diabetes.

Matters to be Discussed: Agenda items include a discussion of public health issues pertinent to the role of future program models best suited for Diabetes Control Programs in the Division of Diabetes Translation (DDT) priorities. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Margaret Hurd, Committee Management Specialist, DDT, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE, M/S K–10, Atlanta, Georgia 30341–3717, telephone 770/488–5505.

Dated: February 13, 1998.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–4288 Filed 2–19–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Title: April 1998 Current Population Survey Supplement on Child Support.

OMB No.: 0992–0003.

Description: Collection of these data will assist legislators and policymakers in determining how effective their policy making efforts have been over time in applying the various child support legislation to the overall child support enforcement picture. This information will help policymakers determine to what extent individuals on welfare would be removed from the welfare rolls as a result of more stringent child support enforcement efforts.

Respondents: Individuals or households.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Supplement	47,000	1	.0241	1,136

Estimated Total Annual Burden Hours: 1,136.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make decision concerning the collection information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: February 13, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–4347 Filed 2–19–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

State Median Income Estimates for Four-Person Families (FY 1999); Notice of the Fiscal Year (FY) 1999 State Median Income Estimates for Use Under the Low Income Home Energy Assistance Program (LIHEAP)

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Notice of estimated state median income for FY 1999.

SUMMARY: This notice announces the estimated median income for four-

person families in each state and the District of Columbia for FY 1999 (October 1, 1998 to September 30, 1999). LIHEAP grantees may adopt the state median income estimates beginning with the date of this publication of the estimates in the **Federal Register** or at a later date as discussed below. This means that LIHEAP grantees could choose to implement this notice during the period between the heating and cooling seasons. However, by October 1, 1998, or by the beginning of a grantee's fiscal year, whichever is later, LIHEAP grantees using state median income estimates must adjust their income eligibility criteria to be in accord with the FY 1999 state median income estimates.

This listing of estimated state median incomes concerns maximum income levels for households to which LIHEAP grantees may make payments under LIHEAP.

EFFECTIVE DATE: The estimates are effective at any time between the date of this publication and October 1, 1998, or by the beginning of a LIHEAP grantee's fiscal year, whichever is later.

FOR FURTHER INFORMATION CONTACT: Leon Litow, Administration for Children and Families, HHS, Office of Community Services, Division of Energy Assistance, 5th Floor West, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Telephone: (202) 401–5304, Internet E-Mail: llitow@acf.dhhs.gov,

SUPPLEMENTARY INFORMATION: Under the provisions of section 2603(7) of Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35, as amended), we are announcing the estimated median income of a four-person family for each state, the District of Columbia, and the United States for FY 1999 (the period of October 1, 1998, through September 30, 1999).

Section 2605(b)(2)(B)(ii) of the LIHEAP statute provides that 60 percent of the median income for each state, as annually established by the Secretary of Health and Human Services, is one of the income criteria that LIHEAP grantees may use in determining a household's eligibility for LIHEAP.

LIHEAP is currently authorized through the end of FY 1999 by the Human Services Amendments of 1994, Pub. L. 103–252, which was enacted on May 18, 1994.

Estimates of the median income of four-person families for each state and the District of Columbia for FY 1999 have been developed by the Bureau of the Census of the U.S. Department of Commerce, using the most recently available income data. In developing the median income estimates for FY 1999, the Bureau of the Census used the following three sources of data: (1) The March 1997 Current Population Survey; (2) the 1990 Decennial Census of Population; and (3) 1996 per capita personal income estimates, by state, from the Bureau of Economic Analysis of the U.S. Department of Commerce.

Like the estimates for FY 1998, the FY 1999 estimates include income estimates from the March Current Population Survey that are based on population controls from the 1990 Decennial Census of Population. Income estimates prior to FY 1996 from the March Current Population Survey had been based on population controls from the 1980 Decennial Census of Population. Generally, the use of 1990 population controls results in somewhat lower estimates of income.

For further information on the estimating method and data sources, contact the Housing and Household Economic Statistics Division, at the Bureau of the Census (301–457–3242).

A state-by-state listing of median income, and 60 percent of median income, for a four-person family for FY 1999 follows. The listing describes the method for adjusting median income for families of different sizes as specified in regulations applicable to LIHEAP, at 45 CFR 96.85(b), which was published in the **Federal Register** on March 3, 1988 at 53 FR 6824.

Dated: February 13, 1998.

Donald Sykes,

Director, Office of Community Services.

ESTIMATED STATE MEDIAN INCOME FOR 4-PERSON FAMILIES, BY STATE, FISCAL YEAR 1999 [1]

States	Estimated state median income 4-person families [2]	60 Percent of estimated state median income 4-person families
Alabama	$44,879	$26,927
Alaska	62,078	37,247
Arizona	45,032	27,019
Arkansas	36,828	22,097
California	53,807	32,284
Colorado	53,632	32,179
Connecticut	67,380	40,428
Delaware	56,662	33,997
District of Col.	53,256	31,954
Florida	44,829	26,897
Georgia	48,920	29,352
Hawaii	57,909	34,745
Idaho	44,133	26,480
Illinois	55,372	33,223
Indiana	52,962	31,777
Iowa	48,167	28,900
Kansas	49,034	29,420
Kentucky	44,932	26,959
Louisiana	41,851	25,111
Maine	48,632	29,179
Maryland	61,860	37,116
Massachusetts	62,385	37,431
Michigan	56,174	33,704
Minnesota	56,200	33,720
Mississippi	38,748	23,249
Missouri	50,015	30,009
Montana	41,462	24,877
Nebraska	46,726	28,036
Nevada	50,946	30,568
New Hampshire	56,497	33,898
New Jersey	65,586	39,352
New Mexico	38,143	22,886
New York	52,799	31,679
North Carolina	49,272	29,563
North Dakota	45,480	27,288
Ohio	51,835	31,101
Oklahoma	43,138	25,883
Oregon	46,245	27,747
Pennsylvania	53,814	32,288
Rhode Island	53,967	32,380
South Carolina	46,973	28,184
South Dakota	45,043	27,026
Tennessee	45,245	27,147
Texas	46,757	28,054
Utah	45,775	27,465
Vermont	49,401	29,641
Virginia	53,394	32,036
Washington	53,153	31,892
West Virginia	41,293	24,776
Wisconsin	52,986	31,792
Wyoming	46,830	28,098

NOTE—FY 1999 covers the period of October 1, 1998 through September 30, 1999. The estimated median income for 4-person families living in the United States is $51,518 for FY 1999. The estimates are effective for the Low Income Home Energy Assistance Program (LIHEAP) at any time between the date of this publication and October 1, 1998, or by the beginning of a LIHEAP grantee's fiscal year, whichever is later.

[1] In accordance with 45 CFR 96.85, each state's estimated median income for a 4-person family is multiplied by the following percentages to adjust for family size: 52% for one person, 68% for two persons, 84% for three persons, 100% for four persons, 116% for five persons, and 132% for six persons. For family sizes greater than six persons, add 3% to 132% for each additional family member and multiply the new percentage by the state's estimated median income for a 4-person family.

[2] Prepared by the Bureau of the Census from the March 1997 Current Population Survey, 1990 Decennial Census of Population and Housing, and 1996 per capita personal income estimates, by state, from the Bureau of Economic Analysis.

[FR Doc. 98–4355 Filed 2–19–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing infromaiton and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Aspirin Metabolites As Protectors Against Oxidative Stress And Chemotherapy Drug Toxicity

JB Mitchell, A Russo, CM Krishna, W DeGraff, AM DeLuca, L Myers, SM Hahn (NCI)
Serial No. 60/039,375 filed 20 Mar 97
Licensing Contact: Leopold J. Luberecki, Jr., 301/496–7735 ext. 223

Although oxygen is required to sustain most life forms, a variety of toxic oxygen-related species, such as hydroxyl radicals, hydrogen peroxide, and superoxide, are produced, which could damage cells if left unchecked. Cells usually possess systems which rid themselves of these by-products, yet there is a small amount of these substances which escapes the biochemical defense network. It is not known whether chronic exposure to low levels of oxygen-derived free radical species is deleterious. It is postulated that the aging process may be a manifestation of the organism's inability to cope with sustained oxidative stress. In addition, some cancer treatment modalities exert their cytotoxicity via production of free radicals. This invention describes methods of using a composition made of a hydroxybenzoate metabolite, a hydroxybenzoate analogue, or a mixture thereof, in the preventative and therapeutic treatment for oxidative stress. The use of the compounds to treat oxidative stress is superior to aspirin itself for reasons including avoidance of gastric and duodenal ulcers and platelet function disorders, and the ability to realize high concentrations of specific metabolities or analogues, which cannot be achieved using aspirin. In addition, compositions may be used to protect biological material from the cytotoxic effects of cancer chemotherapeutic agents, including adriamycin, one of the most widely used chemotherapeutic agents. As an example, the effectiveness of adriamycin is limited by the resulting bone marrow suppression, gastorintestional damage, and cumulative cardiotoxicity caused by the treatment. The compositions of this invention could act as anti-cytotoxic agents. The compositions also could be used to treat extravasation tissue injury. Extravasation occurs when a hypodermic injection, such as an injection of a chemotherapeutic agent, misses the vein, as frequently occurs in older persons, thereby causing release of a high localized concentration of the agent into the surrounding tissue, which results in cellular damage and a disfiguring ulceration. A composition as described in this invention could be rapidly injected at the site of the missed injection to alleviate or prevent this damage.

Trophic and Cell Differentiating Effects of Glucagon-Like Peptite (GLP–1) and Exedin-4

J Egan, R Perfetti, A Passaniti, N Greg, H Holloway (NIA)
DHHS Reference No. E–251–97/0
Licensing Contact: Charles M. Maynard, 301/496–7735 ext. 243

GLP–1 is a hormone produced and predominantly found in the mammalian gut. GLP–1 has been found to stimulate insulin production and suppress glucagon production in response to increases in serum glucose levels caused by a variety of events, such as ingestion of a mixed meal. Consequently, it has generated a considerable amount of investigation as a potentially useful therapeutic agent in the treatment of diabetes. Clinical trials of administration of synthetic GLP–1 have shown a reduction of the need for insulin injection in patients with diabetes, both type I and type II. GLP–1 also has the distinct advantage over traditional treatment of these conditions, in that the insulinotropic effect of GLP–1 is dependent on serum glucose concentration, resulting in the fact that in vivo administration of significant amounts of GLP–1 appears not to trigger hyperinsulinemia. Unfortunately, GLP–1 has an effective pharmaceutical half-life in the realm of five minutes, requiring repeated dosing.

Exedin–4 is an abstract from the venom of the Gila monster, about 50% structurally related to GLP–1, which was found to be a potent agonist of GLP–1, and which also was found to increase insulin production when administered by itself. Exedin–4 also has the advantage of a significantly longer effective duration, on the order of ten hours. Research, therefore, has focused on finding combinations of GLP–1 and exedin–4 that are likely to provide the longest effect, as well as on the mechanisms through which they mediate insulin production.

Oncoimmunins

B Packard, A Komoriya (FDA)
U.S. Patent 5,364,619 issued 15 Nov 94 and U.S. Patent 5,635,356 issued 3 Jun 97
Licensing Contact: Jaconda Wagner, 301/496–7735 ext. 284

Two tumor-derived soluble proteins named oncoimmunin-L and oncoimmunin-M have been isolated and partially characterized. Oncoimmunin-L is a T-cell mitogen and oncoimmunin-M is a myeloid differentiation inducing agent. The partial characterization of these two factors has shown that they are similar to human leukocyte elastase inhibitor and human lactate dehyrodrogenase M, respectively. As cells of both lymphoid and myeloid origin are known to play roles in immune defense, factors which can modulate their number and/or function may be useful in the diagnosis and treatment of cancer. Since these factors are derived from tumors, their appearance in blood may signal the presence of tumor or of metastatic disease. The in vivo bioactivities of these factors suggests their utility as therapeutic agents for cancer and infectious diseases.

This research has been published in Biochim Biophys Acta 1995 Oct 19; 1269(1): 41–50.

Dated: February 11, 1998.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 98–4236 Filed 2–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Human Genome Research Institute Initial Review Group, Genome Research Review Subcommittee.

Agenda Purpose: To review and evaluate grant applications and/or contract proposals.

Date: March 10–11, 1998.

Time: March 10, 7a.m. to 10 a.m; March 11, 12 noon to 5 p.m.

Place: The Stanford Terrace Inn, Palo Alto, California.

Contact Person: Rudy Pozzatti, Ph.D., Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Building 38A, Room 604, Bethesda, Maryland 20892, (301) 402–0838.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The applications and/or contract proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Dated: February 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–4235 Filed 2–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following National Institute of General Medical Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: RFA Review.

Date: March 11, 1998.

Time: 8:30 a.m.—adjournment.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: Dr. Arthur L. Zachary, Scientific Review Administrators, NIGMS, Natcher Building—Room 1AS–13, Bethesda, Maryland 20892, Telephone: 301–594–2886.

Purpose/Agenda: To evaluate and review grant applications

The meeting will be closed in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6) Title 5 U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers (MARC); and 93.375, Minority Biomedical Research Support (MBRS)], National Institutes of Health)

Dated: February 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–4232 Filed 2–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 18, 1998.

Time: 11:30 a.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis D. Artis, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 18, 1998.

Time: 1:30 p.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Richard Johnson, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 20, 1998.

Time: 9:30 a.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Richard Johnson, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: February 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–4233 Filed 2–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), Notice is hereby given of the following National Institute of General Medical Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: RFA Review (Teleconference).

Date: February 23, 1998.

Time: 1 p.m.—adjournment.

Place: NIH, NIGMS, Natcher Building, Room 1AS–13, Bethesda, Maryland.

Contact Person: Dr. Arthur L. Zachary, Scientific Review Administration, NIGMS, Natcher Building—Room 1AS–13, Bethesda, Maryland 20892, Telephone: 301–594–2886.

Purpose/Agenda: To evaluate and review grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.821, Biophysics and Physiological Sciences; 93.859,

Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers (MARC); and 93.375, Minority Biomedical Research Support (MBRS)], National Institutes of Health)

Dated: February 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–4238 Filed 2–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meetings of the Diabetes and Digestive and Kidney Diseases Special Grant Review Committee, National Institute of Diabetes and Digestive Kidney Diseases (NIDDK) for March 1998.

Name of Committee: Diabetes, Endocrinology and Metabolic B Subcommittee.
Date: March 9, 1998.
Time: 8:30 a.m.–Adjournment.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814, Telephone: (301) 657–1234.
Contact Person: Ned Feder, M.D., Scientific Review Administrator, Natcher Building, Room 6AS–25S, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8890.
Purpose/Agenda: To review and evaluate research grant applications.

Name of Committee: Digestive Diseases and Nutrition C Subcommittee.
Date: March 12, 1998.
Time: 8:30 a.m.–Adjournment.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Bethesda, MD 20815, Telephone: (301) 656–1500.
Contact Person: Daniel Matsumoto, Ph.D., Scientific Review Administrator, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8894.
Purpose/Agenda: To review and evaluate research grant applications.

Name of Committee: Kidney, Urologic and Hematologic Diseases D Subcommittee.
Date: March 27, 1998.
Time: 8:00 a.m.–Adjournment.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Bethesda, MD 20815, Telephone: (301) 656–1500.
Contact Person: Ann A. Hagan, Ph.D., Scientific Review Administrator, Natcher Building, Room 6AS–37F, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8886.

Purpose/Agenda: To review and evaluate research grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: February 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–4239 Filed 2–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings;

Purpose/Agenda: To review individual grant applications.
Name of SEP: Chemistry and Related Sciences.
Date: March 4–6, 1998.
Time: 8:30 a.m.
Place: Best Western McArthur Hotel, Holtsville, NY.
Contact Person: Dr. Marjam Behar, Scientific Review Administrator, 6701 Rockledge Drive, Room 5218, Bethesda, Maryland 20892, (301) 435–1180.
Name of SEP: Chemistry and Related Sciences.
Date: March 6–7, 1998.
Time: 8:30 p.m.
Contact Person: Dr. Marjam Behar, Scientific Review Administrator, 6701 Rockledge Drive, Room 5218, Bethesda, Maryland 20892, (301) 435–1180.

Name of SEP: Biological and Physiological Sciences.
Date: March 10, 1998.
Time: 10:30 a.m.
Place: NIH, Rockledge 2, Room 5196, Telephone Conference.
Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435–1257.

Name of SEP: Clinical Sciences.
Date: March 12, 1998.
Time: 11:00 a.m.
Place NIH, Rockledge 2, Room 4118, Telephone Conference.
Contact Person: Dr. Christine Melchior, Scientific Review Administrator, 6701 Rockledge Drive, Room 4118, Bethesda, Maryland 20892, (301) 535–1713.

Name of SEP: Biological and Physiological Sciences.
Date: March 12, 1998.
Time: 2:00 p.m.
Place: Embassy Suites, Washington, DC.
Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435–1257.

Name of SEP: Chemistry and Related Sciences.
Date: March 23, 1998.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5106, Telephone Conference.
Contact Person: Dr. Richard Panniers, Scientific Review Administrator, 6701 Rockledge Drive, Room 5106, Bethesda, Maryland 20892, (301) 435–1166.

Name of SEP: Biological and Physiological Sciences.
Date: March 23–24, 1998.
Time: 8:30 a.m.
Place: Ana Hotel, Washington, DC.
Contact Person: Dr. Mushtaq Khan, Scientific Review Administrator, 6701 Rockledge Drive, Room 4124, Bethesda, Maryland 20892, (301) 435–1778.

Name of SEP: Chemistry and Related Sciences.
Date: April 2, 1998.
Time: 8:00 a.m.
Place: Ramada Inn, Bethesda, MD.
Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 4172, Bethesda, Maryland 20892, (301) 435–1727.

Purpose/Agenda: To review Small Business Innovation Research.
Name of SEP: Clinical Sciences.
Date: March 17, 1998.
Time: 8:00 a.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Gertrude McFarland, Scientific Review Administrator, 6701 Rockledge Drive, Room 4110, Bethesda, Maryland 20892, (301) 435–1784.

Name of SEP: Clinical Sciences.
Date: March 19–20, 1998.
Time: 7:00 p.m.
Place: Holiday Inn–Georgetown, Washington, DC.
Contact Person: Dr. Nancy Shinowara, Scientific Review Administrator, 6701 Rockledge Drive, Room 5216, Bethesda, Maryland 20892, (301) 435–1173.

Name of SEP: Clinical Sciences.
Date: March 31, 1998.
Time: 8:00 a.m.
Place: Holiday Inn–Georgetown, Washington, DC.
Contact Person: Dr. Nancy Shinowara, Scientific Review Administrator, 6701 Rockledge Drive, Room 5216, Bethesda, Maryland 20892, (301) 435–1173.

Name of SEP: Biological and Physiological Sciences.
Date: April 4, 1998.
Time: 8:30 a.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Michael Micklin, Scientific Review Administrator, 6701 Rockledge Drive, Room 5198, Bethesda, Maryland 20892, (301) 435–1258.

Name of SEP: Clinical Sciences.
Date: April 8, 1998.
Time: 8:00 a.m.
Place: Holiday Inn, Silver Spring, MD.
Contact Person: Dr. Gertrude McFarland, Scientific Review Administrator, 6701 Rockledge Drive, Room 4110, Bethesda, Maryland 20892, (301) 435–1784.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.383–93.396, 93.837–93,844, 93.846–93.878, 93,892, 93,893, National Institutes of Health, HHS)

Dated: February 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–4234 Filed 2–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Biological and Physiological Sciences.
Date: March 12–13, 1998.
Time: 9:00 a.m.
Place: Holiday Inn–Georgetown, Washington, DC.
Contact Person: Dr. Anita Sostek, Scientific Review Administrator, 6701 Rockledge Drive, Room 5202, Bethesda, Maryland 20892, (301) 435–1260.

Name of SEP: Biological and Physiological Sciences.
Date: March 20, 1998.
Time: 8:30 a.m.
Place: Holiday Inn-Georgetown, Washington, DC.
Contact Person: Dr. Krish Krishnan, Scientific Review Administrator, 6701 Rockledge Drive, Room 4122, Bethesda, Maryland 20892, (301) 435–1779.

Name of SEP: Chemistry and Related Sciences.
Date: March 23–24, 1998.
Time: 8:00 a.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Gopa Rakhit, Scientific Review Administrator, 6701 Rockledge Drive, Room 4154, Bethesda, Maryland 20892, (301) 435–1721.

Purpose/Agenda: To review Small Business Innovative Research.
Name of SEP: Biological and Physiological Sciences.
Date: March 2–3, 1998.
Time: 8:00 a.m.
Place: Bethesda Marriott Hotel, Bethesda, MD.
Contact Person: Dr. Nabeeh Mourad, Scientific Review Administrator, 6701 Rockledge Drive, Room 4212, Bethesda, Maryland 20892, (301) 435–1222.

The meetings will be closed in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 9, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–4237 Filed 2–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Microbiological and Immunological Sciences.
Date: March 3, 1998.
Time: 7:30 p.m.
Place: Palm Springs Hilton Resort, Palm Springs, CA.
Contact Person: Dr. Sami Mayyasi, Scientific Review Administrator, 6701 Rockledge Drive, Room 5106, Bethesda, Maryland 20892, (301) 435–1166.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 20, 1998.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 5106, Telephone Conference.
Contact Person: Dr. Sami Mayyasi, Scientific Review Administrator, 6701 Rockledge Drive, Room 5106, Bethesda, Maryland 20892, (301) 435–1166.

Name of SEP: Clinical Sciences.
Date: April 8, 1998.
Time: 8:30 p.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Anthony Chung, Scientific Review Administrator, 6701 Rockledge Drive, Room 4138, Bethesda, Maryland 20892, (301) 435–1213.

Name/Purpose:

To review Small Business Innovation Research.

Name of SEP: Biological and Physiological Sciences.
Date: March 30, 1998.
Time: 8 a.m.
Place: Ramada Inn, Rockville, MD.
Contact Person: Dr. Abubakar Shaikh, Scientific Review Administrator, 6701 Rockledge Drive, Room 6166, Bethesda, Maryland 20892, (301) 435–1042.

Name of SEP: Chemistry and Related Sciences.
Date: April 1–3, 1998.
Time: 6 p.m.
Place: Triphammer Lodge, Ithaca, NY.
Contact Person: Dr. Nancy LaMontagne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4170, Bethesda, Maryland 20892, (301) 435–1726.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institute of Health.

[FR Doc. 98–4240 Filed 2–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 62 FR 37587, July 14, 1997, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to reflect the reorganization of the information technology functions within NIH into a single organization, the Center for Information Technology. (1) Establish the Center for Information Technology by transferring the functions of the Division of Computer Research and Technology and the functions of two offices in the Office of Management, Office of the Director, NIH, to the Center. (2) Establish the functional statement for the newly established Center and revise the functional statements for the Office of Management and the Office of Administration. (3) Within the Center, establish the Office of Telecommunications Management and the Office of Resources Management; revise the functional statements of the Office of Computational Bioscience and the Office of Computing Resources and Services; in the Office of the Director (OD), revise the functional statement of the OD and the Office of Administrative Management and retitle the Office of Information Resources Management as the Office of Information Technology Planning and revise its functional statement.

Section N–B, Organization and Functions, is amended as follows:

(1) Under the heading Division of Computer Research and Technology (NU, formerly HNU), the following is inserted:

Center for Information Technology (NU, formerly HNU). (1) Provides leadership for the determination of NIH computational and telecommunications needs at all levels and oversees the development of appropriate infrastructure support to meet identified needs; (2) develops, operates, and maintains a state-of-the-art regional computer facility and provides overall guidance based on legislation and policy that is responsive to the NIH mission; (3) develops and provides NIH information technology policy to implement legislative mandates, such as those under the Information Technology Management Reform Act, Presidential and other Administration initiatives, and HHS, OMB, and other policy and administrative requirements; (4) provides leadership and focus within NIH for the development and implementation of policy and standards in the area of information technology by identifying, documenting, and communicating information technology issues, problems, and solutions to the NIH community in a comprehensive and meaningful way; (5) establishes and operates the necessary organization and infrastructure to ensure appropriate security, connectivity, and inter-operability across the NIH Institutes and Centers, off-campus locations, and remote access; (6) serves as a Federal Delta Processing Center for administrative, biomedical, and statistical computing, provides data processing and high performance computing facilities and integrated telecommunications data networks, and provides services to the DHHS and other Federal agencies.

Office of the Director (NUI, formerly HNUI). (1) Plans, directs, coordinates, and evaluates the Center's programs, policies, and procedures; and (2) provides analysis and guidance in the development of systems for the effective use of ADP techniques and equipment in support of NIH programs.

Office of Administrative Management (NU14, formerly HNU14). (1) Advises the Center Director on management aspects of the Center's programs, policies, and procedures; (2) provides administrative services in support of Center program efforts; (3) coordinates the Center's response to NIH-wide management programs; (1) provides staff support in information sciences in support of the missions of the Center and the NIH; (5) plans and carries out scientific and technical communications activities for the Center; and (6) manages a core collection of computer and computer science-related information for NIH.

Office of Information Technology Planning (NU18, formerly HNU18). (1) Advises the Director and Deputy Director of the Center on all aspects of internal information technology (IT) activities, including strategic planning, budget planning, performance measurement, capacity management, security, and coordination of the acquisition of information processing resources; (2) oversees the Center's IT programs for compliance with regulatory IRM requirements; (3) coordinates the Center's IT portfolio management and investment review process; (4) performs strategic and budget planning for the Center; (5) assists staff in IT management, including acquisition of major information technology resources; (6) provides internal quality control and oversight for Center IT programs; and (7) oversees and coordinates initiatives related to computer and information security, including the Center's computer emergency response team (CERT).

Office of Computational Bioscience (NU2, formerly HNU2). (1) Coordinates and managers all Center activities related to the conduct and support of NIH research in the computational biosciences; (2) applies computing technology to research involving molecular structure determination and modeling, protein and DNA sequence analysis, and biomedical imaging; (3) conducts and supports research in mathematical theory and biophysical instrumentation to explain biological phenomena in terms of chemistry and physics; (4) conducts research and development in computer science and computational engineering; (5) promotes the application of high performance computing to biomedical research and represents the Center to the Federal Program in High Performance Computing and Communication (HPCC); (6) evaluates the overall performance of these programs; and (7) communicates and collaborates with researchers, both within and outside NIH, to obtain and provide information concerning the Center's ongoing and future research and support for research.

Office of Computing Resources and Services (NU3, formerly HNU3). (1) Advises the Center's Director and Deputy Director on all matters pertaining to the management of the Center's ADP service and support programs; (2) coordinates and oversees all programs related to the development and provision of networking facilities; (3) provides centralized computational and data processing facilities and professional programming services; (4) provides guidance and support for end users of distributed computing technology, including personal computers, workstations, and local area networks; (5) provides engineering design to facilitate laboratory and clinical applications of automation technology; and (6) provides central systems analysis, design, and programming resources for database projects relating to scientific, technical, management, financial, and administrative data.

Office of Telecommunications Management (NU4, formerly HNU4). (1) Manages and directs the NIH telecommunications systems and

administers the telecommunications budget; (2) develops technical requirements for the NIH Institutes and Centers (ICs) and implements telecommunications programs to meet the needs of the NIH community; (3) serves as the focal point for service orders and billing; (4) develops and disseminates policies and procedures for the nationwide implementation and management of the NIH telecommunication systems; and (5) serves as the telecommunications liaison for NIH with other Federal agencies, GSA, DHHS, and private industry.

Office of Information Resources Management (NU5, formerly HNU5). Advises the Chief Information Officer on the direction and management of NIH information technology (IT) program activities under the Paperwork Reduction Act, the Computer Security Act, the Information Technology Management Reform Act, and OMB Circular A–130 by serving as a focal point for: (1) Implementing, managing, and overseeing NIH IT activities related to IT policy, planning and budgeting, IT resources user requirements, IT reviews, IT and automated systems inventories, capacity management and planning, security, IT standards, and IT resources obsolescence and excess shipment: (2) collaborating with NIH components responsible for acquisition of IT resources, major information systems, telecommunications management, printing management, computer matching, IT accommodations for persons with disabilities, records and forms management including the Privacy Act, information collection, and information dissemination; (3) serving as the NIH liaison to the Department and to OMB, GSA, and the National Institute of Standards and Technology and other Federal agencies on all IT matters; (4) participating with appropriate NIH components in assessing and enhancing the level of knowledge and skill of users of IT resources; (5) coordinating with appropriate NIH components in developing an NIH-wide plan for standardizing networking, cabling, and electrical facilities for IT resources; (6) ensuring that oversight measures are appropriate for the diversity, complexity, and size of the major providers and the individual ICs; and (7) providing direction to the major providers/individual ICs in enhancing and strengthening their individual IT program management to ensure compliance with legislative mandates.

(2) Under the heading Office of the Director (NA, formerly HNA) the following is inserted: Office of Management (NAM, formerly HNAM). (1) Advises the NIH Director and staff on all phases of NIH-wide administration and Management; (2)provides leadership and direction to all aspects of management; and (3) oversees the management of functions in the areas of budget and financial management, personnel management, management policy, management assessment, program integrity, contract, procurement, and logistics management, engineering services, safety, space and facility management, support services, and security operations.

Office of Administration (NAM2, formerly HNAM2). (1) Advises the NIH Director and staff on administration and management; (2) provides leadership and guidance to NIH components on administrative management; and (3) develops and implements policies, provides oversight, and manages the operational components in the areas of management assessment, contract management, procurement management, and logistics management.

Delegatins of Authority Statement: All delegations and redelegations of authority to offices and employees of NIH that were in effect immediately prior to the effective date of this reorganization and are consistent with this reorganization shall continue in effect, pending further redelegation.

Dated: February 10, 1998.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 98–4241 Filed 2–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Exotic Feline Breeding Compound, Inc., Rosamond, CA, PRT–839056.

The applicant requests a permit to import one captive-born male Amur leopard (*Panthera pardus orientalis*) from Estonia for the purpose of enhancement through captive propagation.

Applicant: Grand Canyon Monitoring & Research Ctr., Flagstaff, AZ, PRT–839107.

The applicant requests a permit to import up to 210 preserved specimens of Kanab ambersnail (*Oxyloma haydeni kanabensis*) from Canada for the purpose of scientific research related to taxonomic identification.

Applicant: John J. Schumann, Jr., Vero Beach, FL, PRT–839357.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: David Roberts, Madison, WI, PRT–839037.

The applicant requests a permit to import 2 male and 7 female certified bred-in-captivity Cabot's tragopan (*Tragopan caboti*) from Glenn Howe, Ontario, Canada, for the purpose of enhancement of the survival of the species through captive propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Institute of Marine Science, University of California, Santa Cruz, CA, PRT–839099.

Permit Type: Take for Scientific Research.

Name and Number of Animals: Pacific Walrus (*Odobenus rosmarus*), 400.

Summary of Activity to be Authorized: Analysis of tissue samples to determine metabolic activity and model energy reserves.

Source of Marine Mammals: The samples will be provided to the applicant by Fish and Wildlife Service, Marine Mammals Management Office biologists. The samples are taken from walrus killed during Native American subsistence hunts.

Period of Activity: Up to 5 years from issuance date of permit, if issued.

Applicant: Mote Marine Laboratory, Sarasota, FL, PRT–838930.

Permit Type: Take for scientific research.

Name and Number of Animals: West Indian manatee (*Trichechus manatus*), up to 70.

Summary of Activity to be Authorized: The applicant requests a

permit to perform in-water observations of manatees to determine gender for life history studies.

Source of Marine Mammals: Sarasota Bay, Florida.

Period of Activity: Up to 5 years from issuance date of permit, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: John Abercrombie, Las Vegas, NV, PRT–839323.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Applicant: Wallace Gott, Upland, CA, PRT–839315.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted prior to April 30, 1994, from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Applicant: Jesse Kirk, Irving, TX, PRT–838024.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with the application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the above address within 30 days of the date of publication of this notice.

Dated: February 13, 1998.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–4260 Filed 2–19–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–839030

Applicant: Bobby C. Reed, Inland Fisheries Division, Louisiana Department of Wildlife and Fisheries, Lake Charles, Louisiana.

The applicant requests authorization to take (capture and retain for captive propagation and release of progeny) the pallid sturgeon, Scaphirhynchus albus, throughout the species range in Louisiana, for the purpose of enhancement of survival of the species.

PRT–839029

Applicant: Anthony J. Savereno, Mt. Pleasant, South Carolina.

The applicant requests authorization to take (capture, band, and harass during surveys and installation of cavity restrictors) the red-cockaded woodpecker, Picoides borealis, throughout the species range in North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, Kentucky, Arkansas, Mississippi, and Louisiana, for the purpose of enhancement of survival of the species.

Written data or comments on these applications should be submitted to: Regional Permit Biologist, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received by March 23, 1998.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: February 12, 1998.

Sam D. Hamilton,

Regional Director.

[FR Doc. 98–4286 Filed 2–19–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On November 28, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 229, Page 63374, that an application had been filed with the Fish and Wildlife Service by Texas A&M University, Marine Mammals Research Program, Galveston, TX for amendment and renewal of their permit (PRT–766146) to take captive manatees (*Trichechus manatus*) for the scientific research.

Notice is hereby given that on January 26,1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: February 13, 1998.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–4259 Filed 2–19–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1990–00]

Availability for the Olinghouse Mine Project Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability for the Olinghouse Mine Project Final Environmental Impact Statement (FEIS), Washoe County, Nevada.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act, 40 CFR 1500–1508 and 43 CFR 3809, notice is given that the Bureau of Land Management (BLM) has prepared, with the assistance of a third-party consultant, a FEIS for Alta Gold Company's proposed Olinghouse Mine, located approximately 33 miles east of Reno, Nevada. Copies of the document are available for public review.

DATES: Written comments on the FEIS will be accepted until close of business on March 20, 1998. No public meetings are scheduled. Following the 30-day availability period of this FEIS, a Record of Decision (ROD) will be issued.

ADDRESSES: A copy of the FEIS can be obtained from: Bureau of Land Management, Carson City Field Office, Attn: Terri Knutson, Olinghouse Project Manager, 5665 Morgan Mill Road, Carson City, Nevada 89701.

The FEIS is available for inspection at the following location: BLM Carson City Field Office.

FOR FURTHER INFORMATION CONTACT: For additional information, write to the above address or call Terri Knutson at (702) 885–6156.

Dated: February 6, 1998.

Karl L. Kipping,

Associate District Manager.

[FR Doc. 98–4263 Filed 2–19–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–10; COC–39308]

Notice of Proposed Withdrawal: Opportunity for Public Meeting; Colorado

February 9, 1998.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw an additional 10,503 acres of National Forest System lands adjacent to the Keystone Ski Area at Keystone, Colorado, for 10 years to protect recreational facilities and high resource values. This proposed action will withdraw these lands for 10 years. This notice closes the 10,503 acres to location and entry under the mining laws for up to two years. The lands remain open to mineral leasing and to such forms of disposition may by law be made of National Forest System land.

DATES: Comments on this proposed withdrawal must be received on or before May 21, 1998.

ADDRESSES: Comments should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239-3706.

SUPPLEMENTARY INFORMATION: On February 2, 1998, the Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch 2):

White River National Forest

T. 5 S., R. 76 W.,
- Sec. 20, Lots 2, 3, 4, 15, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 43, 47, 48, 49, 50, and 51;
- Sec. 21, S½N½ and S½;
- Sec. 22, S½;
- Sec. 23, SW¼SW¼;
- Sec. 26, Lots 2, 3, and 7, and NW¼NW¼;
- Sec. 27, All;
- Sec. 28, All;
- Sec. 29, E½ and E½E½W½;
- Sec. 32, E½, E½NE¼NW¼, SE¼NW¼ and E½SW¼;
- Sec. 33, All;
- Sec. 34, NW¼.

T. 5 S., R. 77 W.,
- Sec. 23, Lots 11, 13, and 15, S½SE¼ and S½NW¼SE¼;
- Sec. 24, Lot 11 and W½SW¼;
- Sec. 25, W½NW¼, W½NE¼SW¼, NW¼SW¼, SE¼SW¼SW¼, N½SW¼SW¼, and SE¼SW¼;
- Sec. 26, W½E½, E½W½, NE¼NE¼NE¼, SW¼NE¼SE¼, and W½SE¼SE¼;
- Sec. 35, E½ and E½NW¼;
- Sec. 36, W½NE¼, SE¼NE¼, NE¼NW¼, SW¼NW¼NW¼, SW¼NW¼, NE¼SE¼NW¼, W½NE¼SW¼, S½SW¼, and NW¼SW¼.

T. 6 S., R. 76 W.,
- Sec. 4, Lots 3, 4, 5, 6, 11, and 12, and SW¼;
- Sec. 5, Lots 1 thru 12, inclusive;
- Sec. 6, Lots 1, 8, and 9, and E½SE¼;
- Sec. 8, S½N½SW¼.

T. 6 S., R. 77 W.,
- Sec. 2, Lots 1, 2, 3, and 4, and S½N½, SW¼ and W½SE¼;
- Sec. 3, S½;
- Sec. 4, SE¼SE¼;
- Sec. 9, E½E½;
- Sec. 10, All;
- Sec. 11, All;
- Sec. 12, SW¼NW¼, SW¼, and S¼SE¼;
- Sec. 13, N½ and N½S½;
- Sec. 14, Lots 1, 2, 4, and 5, N½ and N½SE¼;
- Sec. 15, N½;
- Sec. 16, NE¼.

The areas described aggregate approximately 10,503 acres in Summit County.

The purpose of this withdrawal is to protect recreational resources and planned recreational facilities at the Keystone Ski Area.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal may present their views in writing to the Colorado State Director. A public meeting will be scheduled and held. The meeting will be conducted in accordance with 43 CFR 2310.3–1(c)(2). Notice of the public meeting will be published in the **Federal Register**.

This application will be processed in accordance with the regulations set forth in 43 CFR part 2310.

For a period of two years from the date of publication in the **Federal Register** this land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 98–4264 Filed 2–19–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 146–97]

Privacy Act of 1974; Notice of Modified Systems of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Department proposes to modify the following Privacy Act systems of records:

Antitrust Information Management System (AMIS)—Matter Report, Justice/ATR–006 (previously published on October 17, 1988 at 53 FR 40502)

Central Civil Rights Division Index File and Associated Records, Justice/CRT–001 (previously published on May 17, 1993 at 58 FR 28896)

Central Criminal Division Index File and Associated Records, Justice/CRM–001 (previously published on December 11, 1987 at 53 FR 47186)

Civil Division Case File System, Justice/CIV–001 (previously published on October 17, 1988 at 53 FR 40504)

Civil Case Files, Justice/USA–005 (previously published on January 22, 1988 at 53 FR 1864)

Criminal Case Files, Justice/USA–007 (previously published on January 22, 1988 at 53 FR 1861)

FBI Central Records System, Justice/FBI–002 (previously published on October 5, 1993 at 58 FR 51858)

Tax Division Central Classification Cards, Index Docket Cards, and Associated Records—Criminal Tax Cases, Justice/TAX–001 (previously published on September 30, 1977 at 42 FR 53389)

Tax Division Central Classification Cards, Index Docket Cards, and Associated Records—Civil Tax Cases, Justice/TAX–002 (previously published on September 30, 1977 at 42 FR 53390)

The Department proposes to add a new routine use disclosure to all of the above-named systems of records. The routine use will permit disclosure of health care-related information obtained during health-care related investigations. In addition, the

Department proposes to add an additional routine use disclosure to the Central Civil Rights Division Index File and Associated Records system to permit the disclosure of information regarding the progress and results of investigations to the complainants and/or victims involved. The proposed disclosures have been italicized for the reader's convenience. The modified systems of records are printed below.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on proposed new routine use disclosures. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of the new routine uses.

Therefore, please submit any comments by March 23, 1998. The public, OMB, and the Congress are invited to send written comments to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification.

Dated: December 31, 1997.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/ATR–006

SYSTEM NAME:

Antitrust Information Management System (AMIS)-Matter Report.

SYSTEM LOCATION:

U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Professional employees of the Antitrust Division of the U.S. Department of Justice and individual defendants and investigation targets involved in past and present Antitrust investigations and cases.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the names of Division employees and their case/investigation assignments and the names of individual defendants/investigation targets as they relate to a specific case/investigation. In addition, information reflecting the current status and handling of Antitrust cases/investigations is included within this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The file is established and maintained pursuant to 28 CFR 40(f), 28 U.S.C. 522, and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The file is used by Antitrust Division personnel as a basis for determining Antitrust Division allocation of resources to particular products and industries (e.g., oil, autos, chemicals), to broad categories of resource use such as civil cases, criminal cases, regulatory agency cases, and Freedom of Information Act requests. It is employed by the section chiefs, the Director and Deputy Director of Operations, and other Division personnel to ascertain the progress and current status of cases and investigations within the Division. In addition, the files will be employed in the preparation of reports for the Division's budget requests and to the Attorney General and Congress.

A record maintained in this system, or any facts derived therefrom, may be disseminated:

1. In a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

2. *In any health care-related civil or criminal case, investigation, or matter, information indicating patient harm, neglect, or abuse, or poor or inadequate quality of care, at a health care facility or by a health care provider, may be disclosed as a routine use to any federal, state, local, tribal, foreign, joint, international or private entity that is responsible for regulating, licensing, registering, or accrediting any health care provider or health care facility, or enforcing any health care-related laws or regulations. Further, information indicating an ongoing quality of care problem by a health care provider or at a health care facility may be disclosed to the appropriate health plan. Additionally, unless otherwise prohibited by applicable law, information indicating patient harm, neglect, abuse, or poor or inadequate quality of care may be disclosed to the affected patient or his or her representative or guardian at the discretion of and in the manner determined by the agency in possession of the information.*

3. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

4. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record. Information not otherwise required to be released pursuant to 5 U.S.C. 552 may be made available.

5. To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically in the Information systems support group's AMIS Computerized information system.

RETRIEVABILITY:

Information is retrieved by a variety of key words.

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected in accordance with Department rules and procedures governing the handling of computerized information. Access to the file is limited to those persons whose official duties require such access and employees of the Antitrust Division.

RETENTION AND DISPOSAL:

Information contained in the file is retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Systems Support Group; Antitrust Division; U.S. Department of Justice; 555 4th Street, NW., Room 11–854, Washington, DC 20001.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General, Antitrust Division, U.S. Department of Justice, 10th and

Constitution Avenue, Washington, DC. 20530.

RECORD SOURCE CATEGORIES:

Information for the monthly report is provided by the Antitrust Division section and filed office chiefs.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3), (d), (e)(4)(G)–(H), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e) and have been published in the **Federal Register**.

JUSTICE/CRT–001

SYSTEM NAME:

Central Civil Rights Division Index File and Associated Records.

SYSTEM LOCATION:

United States Department of Justice Civil Rights Division (CRT), 10th and Constitution Avenue, NW, Washington, DC 20530; 1425 New York Avenue, NW., Washington, DC 20530; and Federal Records Center, Suitland, Maryland 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These persons may include: Subjects of investigations, victims, potential witnesses, individuals of Japanese ancestry who are eligible, or potentially eligible, for restitution benefits as a result of their evacuation, relocation, or internment during World War II, correspondents on subjects directed or referred to CRT or other persons or organizations referred to in potential or actual cases and matters of concern to CRT, and CRT employees who handle complaints, cases or matters of concern to CRT.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of alphabetical indices bearing the names of those individuals identified above and the associated record to which the indices relate containing the general and particular records of all CRT correspondences cases, matters, and memoranda, including, but not limited to, investigative reports, correspondence to and from the Division memoranda, legal papers, evidence, and exhibits. The names of some individuals, e.g., witnesses, may not yet be on the central indices. Records relating to such individuals may be obtained by direct access to the file jackets. Such file jackets are located within the respective sections of CRT according to the legal subject matter assigned to each CRT section. The delegated legal duties and responsibilities of each section are described as follows:

The records related to the duties of the Appellate Section of CRT include records generated by all CRT cases that have entered the U.S. Supreme Court and the Courts of Appeal. Other records include those generated in the course of Appellate Section duties such as advising Members of Congress on legislative matters, providing legal counsel on civil rights issues to Federal agencies and providing counsel to the various components of the Department of Justice.

The records related to the duties of the Coordination and Review Section of CRT include letters, studies, and reports concerning the implementation of Executive Orders 12250 and 12236. Under E.O. 12250, the Attorney General coordinates and monitors the enforcement of Title VI of the Civil Rights Act of 1964. Title IX of the Education Amendments of 1972, as amended, and the civil rights provisions of any Federal assistance grant which forbids discrimination in federally assisted programs on the basis of race, color, national origin, sex, handicap or religion. The Coordination and Review Section also works with Federal agencies under E.O. 12236 to monitor review of their enabling legislation on the basis of sex.

In addition, the records related to the duties of the Coordination and Review Section of CRT include complaint investigation files and other matters arising under Titles II and III of the Americans with Disabilities Act (ADA), 42 U.S.C. 12131–12134, 12181–12189. Further, the Coordination and Review Section may maintain case-related records on investigations arising under section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, and other nondiscrimination statutes.

The records related to the duties of the Criminal Section of CRT include cases or matters arising under 18 U.S.C. 241 and 242 which prohibit persons acting under color of law or in conspiracy with others to interfere with or deny the exercise of Federal constitutional rights, cases involving criminal violations of the Voting Rights Act of 1965 (42 U.S.C. 1971 through 1974), cases or matters involving criminal interference with housing rights as is prohibited by 42 U.S.C. 3631 and criminal interference with other federally protected rights as is prohibited by 18 U.S.C. 245. Other Criminal Section records include cases or matters involving 18 U.S.C. 1581 through 1588 which prohibit involuntary servitude, some cases involving maritime law.

The records related to the duties of the Educational Opportunities Section of CRT include cases or matters arising under Federal laws requiring nondiscrimination in public education such as Titles IV and IX of the Civil Rights Act of 1964 (42 U.S.C. 2000c, 42 U.S.C. 2000h–2) which prohibit discrimination on the basis of race, color, religion, sex, or national origin: Title IX of the 1972 Education Amendments (20 U.S.C. 1681) which prohibits discrimination on the basis of sex in educational programs or activities receiving federal financial assistance and section 504 of the Rehabilitation Act of 1973 which grants rights to handicapped persons participating in educational programs receiving federal financial assistance. In addition, the records related to the duties of the Educational Opportunities Section include cases or matters arising under the Equal Educational Opportunities Act of 1974 (20 U.S.C. 1701).

The records related to the duties of the Employment Litigation Section of CRT include cases or matters arising under Federal laws prohibiting discriminatory employment practices by State and local governments such as the equal employment opportunity provisions contained within the Revenue Sharing Act of 1972, as amended. Other records include cases or matters arising under Title VII of the Civil Rights Act of 1964 and its amendment which is the Pregnancy Discriminatory Act of 1978 (42 U.S.C. 2000e(k)). In addition, the records related to the duties of the Employment Litigation Section include cases or matters arising under Executive Order No. 11246 involving equal opportunity laws applicable to public employers, Federal contractors and subcontractors involved in federally financed projects.

The records related to the duties of the Housing and Civil Enforcement Section of CRT include cases or matters involving the Fair Housing Act of 1968 (42 U.S.C. 3501 through 3619), and cases or matters involving fair credit laws such as the Equal Credit Opportunity Act (15 U.S.C. 1691 through 1691g) as well as its implementing regulations. Regulation B (12 CFR part 202). Other records include cases or matters arising under Title II and Title III of the Civil Rights Act of 1964 which prohibit discrimination in public facilities (except those Title III matters that involve prison facilities)

and cases or matters arising under the nondiscrimination provisions of the Revenue Sharing Act and the Housing and Community Development Act of 1974.

The records related to the duties of the Special Litigation Section of CRT includes cases or matters arising under Title III of the Civil Rights Act of 1964 as it applies to prison facilities, cases or matters arising under the Civil Rights of Institutionalized Persons Act of 1980 (42 U.S.C. 1997), cases or matters involving the constitutional rights of institutional juveniles, and the constitutional rights of mentally and physically handicapped persons of all ages, cases arising under section 504 of the Rehabilitation Act of 1973, as amended.

The records relate to the duties of the Office of Redress Administration (ORA) and include records pertaining to the identification, location and authorization for restitution payments to eligible individuals of Japanese ancestry who were evacuated, relocated or interned during World War II. Such restitution payments are authorized by Section 1C5 of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b). Records will also relate to any criminal or civil cases arising under this Act which occur as a result of fraud, challenges to ORA administrative regulations.

The records related to the duties of the Public Access Section of the Civil Rights Division include cases or matters arising under Titles II and III of the Americans with Disabilities Act (ADA), 42 U.S.C. 12131–12134, 12181–12189, which prohibit discrimination by State and local governments, public accommodations, commercial facilities, and providers of certain examinations and courses on the basis of disability. Other records include cases or matters involving the certification of State and local building codes under section 308(b) of the ADA, 42 U.S.C. 12188(b)(1)(A)(ii), and the provision of technical assistance under section 506 of the ADA, 42 U.S.C. 12206. Further, the Public Access Section may maintain case-related records on investigations arising under section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 and other nondiscrimination statutes. Other records relate to litigation involving the civil rights statutes coordinated by the Department of Justice, and such other matters as may be required to fulfill the duties mandated by the President and Congress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in the system of records are kept under the authority of 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibility assigned to CRT under the provisions of 28 CFR 0.50, 0.51.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Information in the system may be used by employees and officials of the Department to make decisions in the course of investigations and legal proceedings: to assist in preparing responses to correspondence from persons outside the Department to prepare budget requests, and various reports on the work product of CRT or to carry out other authorized Department functions.

B. A record maintained in this system of records may be disseminated as a routine use of such records as follows:

(1) A record relating to a possible or potential violation of law, whether civil, criminal, or regulatory in nature may be disseminated to the appropriate federal, state or local agency charged with the responsibility of enforcing or implementing such law; (2) In the course of the Administration by CRT of a federally mandated program, or the investigation or litigation of a case or matter, a record may be disseminated to a federal, state or local agency, or to an individual or organization, if there is reason to believe that such agency, individual or organization possesses information or has the expertise in an official or technical capacity to assist in the administration of such program or to analyze information relating to the investigation, trial or hearing and the dissemination is reasonably necessary to elicit such assistance, information or expert analysis, or to obtain the cooperation of a prospective witness; (3) A record relating to a case or matter, or any facts derived therefrom, may be disseminated in a proceeding before a court, grand jury, administrative or regulatory proceeding or any other adjudicative body before which CRT is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by CRT to be arguably relevant to the litigation; (4) a record relating to a case or matter may be disseminated to an actual or potential party to litigation or the party's attorney (a) for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or (b) in formal or informal discovery proceedings; (5) A record relating to a case or matter that has been referred for investigation may be disseminated to the referring agency to notify such agency of the status of the case or matter or of any determination that has been made; (6) A record relating to a person held in custody or probation during a criminal proceeding or after conviction, may be disseminated to any agency or individual having responsibility for the maintenance, supervision or release of such person; (7) A record may be disseminated to the United States Commission on Civil Rights in response to its request and pursuant to 42 U.S.C. 1975d; (8) A record may be disseminated to volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties; *(9) A record may be disseminated to complainants and victims to the extent necessary to provide such persons with information and explanations concerning the progress or results of the investigation or case arising from the matters of which the complainants or victims complained or of which they were a victim; (10) In any health care-related civil or criminal case, investigation, or matter, information indicating patient harm, neglect, or abuse, or poor or inadequate quality of care, at a health care facility or by a health care provider, may be disseminated as a routine use to any federal, state, local, tribal, foreign, joint, international or private entity that is responsible for regulating, licensing, registering, or accrediting any health care provider or health care facility, or enforcing any health care-related laws or regulations. Further, information indicating an ongoing quality of care problem by a health care provider or at a health care facility may be disseminated to the appropriate health plan. Additionally, unless otherwise prohibited by applicable law, information indicating patient harm, neglect, abuse, or poor or inadequate quality of care may be disseminated to the affected patient or his or her representative or guardian at the discretion of and in the manner determined by the agency in possession of the information; (11)* Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; (12) Information may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that

are subject to CRT records; (13) A record may be disclosed as a routine use to the National Archives and Records Administration (NARA) and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS OF RECORDS OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored on index cards, in file jackets, and on computer disks or tapes.

RETRIEVABILITY:

Information is retrieved through either use of an index card system or logical queries to the computer-based system. Entries are arranged alphabetically by the names of individuals covered by the system. (Complaints received from individuals which have not been investigated by the Department have not been systematically indexed and information pertaining to such individuals may or may not be retrievable.) Information on such individuals may be retrievable from the file jackets by a number assigned and appearing on the index cards.

SAFEGUARDS:

Information in manual and computer form is safeguarded and protected in accordance with applicable Department security regulations for systems of records. Only a limited number of staff members who are assigned a specific identification code will be able to use the computer to access the stored information.

RETENTION AND DISPOSAL:

Records are maintained on the system while current and required for official Government use. When no longer needed on an active basis, the paper files are transferred to the Federal Records Center, Suitland, Maryland and some records are transferred to computer tape and stored in accordance with Department security regulations for system of records. Final disposition is in accordance with records retirement or destruction as scheduled by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Officer. Administrative Management Section, Civil Rights Division, United States Department of Justice, Washington, DC 20530.

NOTIFICATION PROCEDURE:

Part of this system is exempted from this requirement under 5 U.S.C. 552a(j)(2) and (k)(2). Address inquiries to the System Manager listed above.

RECORD ACCESS PROCEDURES:

Part of this system is exempted from this requirement under 5 U.S.C. 552a(j)(2) and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record retrievable in this system shall be made in writing, with the envelope and letter clearly marked "Privacy Access Request." Include in the request the full name of the individual, his or her current address, date and place of birth, notarized signature (28 CFR 16.41(b)), the subject of the case or matter as described under "Categories of records in the system," and any other information which is known and may be of assistance in locating the record, such as the name of the civil rights related case or matter involved, where and when it occurred and the name of the judicial district involved. The requester will also provide a return address for transmitting the information. Access requests should be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend non-exempt information retrievable in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system may be an agency or person who has or offers information related to the law enforcement responsibilities and/or other statutorily-mandated duties of CRT.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted parts of this system from subsections (c)(3), (d), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

These exemptions apply only to the extent that information in a record pertaining to a particular individual relates to an official Federal investigation and/or law enforcement matter. Those files indexed under an individual's name which concern only the administrative management of restitution payments under Section 105 of the Civil Liberties Act of 1988 are not being exempted pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

JUSTICE/CRM–001

SYSTEM NAME:

Central Criminal Division Index File and Associated Records.

SYSTEM LOCATION:

U.S. Department of Justice, Criminal Division, Bond Building, 1400 New York Avenue NW., Washington, DC 20530, and, Federal Records Center, Suitland, Maryland 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons referred to in potential or actual cases and matters of concern to the Criminal Division and correspondents on subjects directed or referred to the Criminal Division.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of alphabetical indices bearing individual names, and the associated records to which they relate, arranged either by subject matter or individual identifying number containing the general and particular records of all Criminal Division correspondence, cases, matters, and memoranda, including but not limited to investigative reports, correspondence to and from the Division, legal papers, evidence, and exhibits. The system also includes items classified in the interest of national security with such designations as confidential, secret, and top secret received and maintained by the Department of Justice. This system may also include records concerning subject matters more particularly described in other systems of records of the Criminal Division.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 44 U.S.C. 3101 to implement all functions assigned to the Criminal Division in 28 CFR 0.55 through 0.64–2.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use of such record as follows: (1) In any case in which there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, the record in question may be disseminated to the appropriate federal, state, local, or foreign agency charged with the responsibility for investigation or

prosecuting such violation or charged with enforcing or implementing such law; (2) in the course of investigating the potential or actual violation of any law, whether civil, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local, or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant; (3) a record related to a case or matter may be disseminated in an appropriate federal, state, local, or foreign court or grand jury proceeding in accordance with established constitutional, substantive, or procedural law or practice; (4) a record relating to a case or matter may be disseminated to a federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing; (5) a record relating to a case or matter may be disseminated to an actual or potential party or his attorney for the purposes of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings; (6) a record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement, or that involves a case or matter within the jurisdiction of an agency, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter; (7) a record relating to a person held in custody pending or during arraignment, trial, sentence, or extradition proceedings, or after conviction or after extradition proceedings, may be disseminated to a federal, state, local, or foreign prison, probation, parole, or pardon authority, or to any other agency or individual concerned with the maintenance, transportation, or release of such a person; (8) a record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement; (9) a record may be disseminated to a federal, state, local, foreign, or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency; (10) a record may be disseminated to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter; (11) a record may be disseminated to the public, news media, trade associations, or organized groups, when the purpose of the dissemination is educational or informational, such as descriptions of crime trends or distinctive or unique modus operandi, provided that the record does not contain any information identifiable to a specific individual other than such modus operandi; (12) a record may be disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in apprehending and/or returning a fugitive to a jurisdiction which seeks his return; (13) a record that contains classified national security information and material may be disseminated to persons who are engaged in historical research projects, or who have previously occupied policy making provisions to which they were appointed by the President, in accordance with the provisions codified in 28 CFR 17.60; (14) a record relating to an actual or potential civil or criminal violation of title 17, United States Code, may be disseminated to a person injured by such violation to assist him in the institution or maintenance of a suit brought under such title; *(15) in any health care-related civil or criminal case, investigation, or matter, information indicating patient harm, neglect, or abuse, or poor or inadequate quality of care, at a health care facility or by a health care provider, may be disclosed as a routine use to any federal, state, local, tribal, foreign, joint, international or private entity that is responsible for regulating, licensing, registering, or accrediting any health care provider or health care facility, or enforcing any health care-related laws or regulations. Further, information indicating an ongoing quality of care problem by a health care provider or at a health care facility may be disclosed to the appropriate health plan. Additionally, unless otherwise prohibited by applicable law, information indicating patient harm, neglect, abuse, or poor or inadequate quality of care may be disclosed to the affected patient or his or her representative or guardian at the discretion of and in the manner determined by the agency in possession of the information;* (16) information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; (17) information not otherwise required to be released pursuant to 5 U.S.C. 552 may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record; and (18) a record may be disclosed as a routine use to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents are stored in file folders and in the Federal Records Center; selected summary data is stored on manual index cards and on microfilm and on IBM System/38.

RETRIEVABILITY:

Summary data, e.g., names, file numbers, subjects, dates of correspondence, dates of receipt, due dates of assignments, docket numbers and/or synopses are retrieved from manual index cards microfilm, and a numerical listing maintained on IBM System/38. File folders are retrieved through manual or automated indexes which are accessed through certain summary data, i.e., name or file and docket numbers.

SAFEGUARDS:

The records are safeguarded and protected in accordance with applicable Departmental rules. Security for the automated records include strictly controlled access codes and passwords. In addition, only authorized Criminal Division employees will have access to the system.

RETENTION AND DISPOSAL:

Currently there is an agreement with the Federal Records Center for retention

and disposal after ten years applicable to approximately 20 percent of the Division records. All other paper records are currently retained indefinitely. A retention and disposal schedule for automated records will be under review in connection with a revised schedule for the paper records.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General, Criminal Division, U.S. Department of Justice; 10th and Constitution Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

The major part of this system is exempted from this requirement under 5 U.S.C. 552a(j)(2), (k)(1), or (k)(2). Inquiry concerning this system should be directed to the system manager listed above.

RECORD ACCESS PROCEDURES:

The major part of this system is exempted from this requirement under 5 U.S.C. 552a(j)(2), (k)(1), or (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record contained in this system shall be made in writing, with the envelope and the letter clearly marked 'Privacy Access Request.' Include in the request the name of the individual involved, his birth date and place, or any other identifying number or information which may be of assistance in locating the record, the name of the case or matter involved, if known, and the name of the judicial district involved, if known. The requestor will also provide a return address for transmitting the information. Access requests will be directed to the system manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Department officers and employees, and other federal, state, local, and foreign law enforcement and non-law enforcement agencies, private persons, witnesses, and informants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e)(1), (2) and (e)(4), (G), (H) and (I), (e)(5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

JUSTICE/CIV–001

SYSTEM NAME:

Civil Division Case File System.

SYSTEM LOCATION:

Civil Division, U.S. Department of Justice 10th Street NW, Washington, DC 20530; Record Management Unit, 5320 Marinelli Road, Rockville, MD 20652; and Federal Records Center, Suitland, MD 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals referenced in potential or actual cases and matters under the jurisdiction of the Civil Division; and attorneys, paralegal, and other employees of the Civil Division directly involved in these cases or matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Records in this system pertain to a broad variety of litigation under the jurisdiction of the Civil Division relating to torts, civil fraud and other commercial matters, federal programs and national security, immigration, and consumer issues. The case files contain court records, inter-agency and intra-agency correspondence, and legal research. These records may include civil investigatory and/or criminal law enforcement information and information classified pursuant to Executive Order to protect national security interests. (2) Summary information (i.e., names of principal parties or subjects, case file numbers, assignments, status, and classification) of these cases or matters is maintained prior to FY 78 on index cards and from FY 78 in an automated case tracking system. (3) A timekeeping function for attorneys, paralegal, and other employees of the Civil Division directly involved in litigation supplements the automated case tracking system from May of 1981.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

General authority to maintain the system is contained in 5 U.S.C. 301 and 44 U.S.C. 3101. The particular system was established in accordance with 28 CFR 0.77(f) and 28 U.S.C. 552 and was delegated to the Civil Division pursuant to the memorandum from the Deputy Attorney General, dated July 17, 1974.

PURPOSE(S):

Case records are maintained for the purpose of litigating or resolving any case or matter under consideration by the Civil Division. The automated case tracking and timekeeping system exists for the purpose of managing and evaluating the Division's litigative activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use of such record as follows: (1) In any case in which there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, the record in question may be disseminated to the appropriate federal, state, local or foreign agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law; (2) in the course of investigating the potential or actual violation of any law, whether civil, criminal or regulatory in nature, or during the course of a trial or hearing, or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual or organization possesses information or is responsible for acquiring information relating to the investigation, trial or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant; (3) a record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement, or that involves a case or matter within the jurisdiction of an agency, or where the agency or officials thereof are a party to litigation or where the agency or officials may be affected by a case or matter, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter (4) a record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement (5) a record may be disseminated to a federal, state, local, foreign, or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient

agency or to provide investigative leads to such agency; (6) a record may be disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in civil or criminal proceedings in which the United States or one of its officers or agencies has an interest; (7) a record, or any facts derived therefrom, may be disclosed in a grand jury proceeding or in a proceeding before a court or adjudicative body before which the Civil Division is authorized to appear when the United States, or any agency or subdivision thereof, is a party to litigation and such records are determined by the Civil Division to be arguably relevant to the litigation; (8) to facilitate processing Freedom of Information and Privacy Act requests for these records, information may be disclosed to another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records; (9) information may be released to the news media and the public in accordance with 28 CFR 50.2 unless it is determined that release would constitute an unwarranted invasion of personal privacy; (10) a record may be disclosed to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906; *(11) in any health care-related civil or criminal case, investigation, or matter, information indicating patient harm, neglect, or abuse, or poor or inadequate quality of care, at a health care facility or by a health care provider, may be disclosed as a routine use to any federal, state, local, tribal, foreign, joint, international or private entity that is responsible for regulating, licensing, registering, or accrediting any health care provider or health care facility, or enforcing any health care-related laws or regulations. Further, information indicating an ongoing quality of care problem by a health care provider or at a health care facility may be disclosed to the appropriate health plan. Additionally, unless otherwise prohibited by applicable law, information indicating patient harm, neglect, abuse, or poor or inadequate quality of care may be disclosed to the affected patient or his or her representative or guardian at the discretion of and in the manner determined by the agency in possession of the information.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records are stored in file cabinets and on index cards. Automated records are stored on magnetic disks. Classified information is stored in locked safes.

RETRIEVABILITY:

Manual records are retrieved by file number. This number can be obtained from index cards arranged alphabetically by subject name for records received prior to FY 78 and from logical queries to the computer-based data for FY 78 and subsequent years.

SAFEGUARDS:

Classified information is maintained in locked safes. Access to all information is limited to Department of Justice personnel who have need for the records to perform their duties. Automated records are safeguarded and protected in accordance with Department rules and procedures governing the handling of computerized information.

RETENTION AND DISPOSAL:

When a case file is closed by the responsible attorney, it is sent to the Federal Records Center for retention in accordance with the authorized Record Disposal Schedule for the classification of the case. Such schedules are approved by the National Archives.

After the designated period has passed, the file is destroyed. However, the index and docket cards are not purged. Automated records constitute a cumulative resource file for which there are no plans to delete records.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General; Civil Division: U.S. Department of Justice; 10th and Constitution Avenue, NW, Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to: Assistant Attorney General; Civil Division; U.S. Department of Justice; 10th and Constitution Avenue, NW, Washington, DC 20530.

RECORD ACCESS PROCEDURES:

Portions of this system are exempt from disclosure and contest by 5 U.S.C. 552a(j)(2), (k)(1) and (k)(2). Submit in writing all requests for access to those portions not so exempted to the system manager identified above. Clearly mark the envelope and letter "FOI/PA Request" and provide a return address. The subject of the record should also provide his/her full name and notarized signature, data and place of birth, case caption, or other information which may assist in locating the records sought.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the Assistant Attorney General, Department of Justice, 10th and Constitution Avenue, NW, Washington, DC 20530. The request should clearly state what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information may be obtained from all individuals referred to in all cases or matters under consideration of the Civil Division. Timekeeping information is obtained from all Civil Division attorneys, paralegals, and other employees directly involved in such litigation or matters.

SYSTEMS EXEMPTED FORM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted certain categories of records in this system form subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G) and (H), (e)(5), (e)(8), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1) and (k)(2). That is, these exemptions apply only to the extent that the file contains information which has been properly classified pursuant to an Executive Order, or to the extent that it contains investigatory and other law enforcement materials. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 552(b), (c) and (e) and have been published in the **Federal Register**.

JUSTICE/USA–005

SYSTEM NAME:

Civil Case Files.

SYSTEM LOCATION:

Ninety-four United States Attorneys' Offices (See Appendix identified as Justice/USA–999), Executive Office for United States Attorneys, U.S. Department of Justice, 10th and Constitution Avenue, NW, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals being investigated in anticipation of Civil suits; (b)

Individuals involved in Civil suits; (c) Defense Counsel(s); (d) Information sources; (e) Individuals relevant to the development of Civil suits.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) All Civil Case Files (USA–34); (b) Docket Cards (USA–116); (c) Civil Debtor Cards—(USA–117b); (d) Civil Case Activity Card (USA–164); (e) Civil Debtor Activity Card (USA–166); (f) 3 x 5 Index Cards; (g) Caseload Printouts; (h) General Correspondence re: Civil Cases; (i) Reading Files re: Civil Cases; (j) Information Source File; (k) Attorney Assignment sheets; (l) Telephone records; (m) Miscellaneous Investigative files; (n) Lands condemnation files (Appraisal and Negotiator Reports); (o) Tax Case Resource File; (p) Material in Civil File related to Criminal cases arising out of Civil Proceedings; (q) Search Warrants; (r) Files unique to District; (s) Civil Miscellaneous Correspondence File.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These systems are established and maintained pursuant to 5 U.S.C. 301, 28 U.S.C. 547 and 44 U.S.C. 3101.

PURPOSE(S):

Records are maintained for the purpose of litigating or otherwise resolving civil cases or matters handled by the United States Attorneys or the Executive Office for United States Attorneys.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use of such record as follows:

(a) In any case in which there is an indication of a violation or potential violation of law, civil, or regulatory in nature, the record in question may be disseminated to the appropriate Federal, State, local or foreign agency charged with the responsibility of investigating, defending or pursuing such violation, civil claim or remedy, or charged with enforcing, defending or implementing such law;

(b) In the course of investigating the potential or actual violation or civil liability of any government action or law, civil, or regulatory in nature or during the course of a trial or hearing or the preparation for a trial or hearing for such civil action, a record may be disseminated to a Federal, State, local, or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation or civil action trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an agency;

(c) A record relating to a case or matter may be disseminated in an appropriate Federal, State, local, or foreign court or grand jury proceeding in accordance with established constitutional, substantive, or procedural law or practice;

(d) A record relating to a case or matter may be disseminated to a Federal, State, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing;

(e) A record relating to a case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or informal discovery proceedings;

(f) A record relating to a case or matter that has been referred by an agency for investigation, civil action, or enforcement, or that involves a case or matter within the jurisdiction of an agency, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter;

(g) A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement;

(h) A record may be disseminated to a Federal, State, local, foreign, or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency or to assist in general civil matters or cases;

(i) A record may be disseminated to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of security clearance as is required, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter;

(j) A record may be disseminated to the public, news media, trade associations, or organized groups, when the purpose of the dissemination is educational or informational, such as descriptions of types or courses of action or distinctive or unique modus operandi, provided that the record does not contain any information identifiable to a specific individual other than such modus operandi;

(k) A record may be disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in general crime prevention, the pursuit of general civil, regulatory or administrative civil actions or to provide investigative leads to such country, or assist in the location and/or returning of witnesses and other evidence;

(l) A record that contains classified national security information and material may be disseminated to persons who are engaged in historical research projects, or who have previously occupied policy making positions to which they were appointed by the President, in accordance with the provisions codified in 28 CFR 17.96;

(m) A record relating to an actual or potential civil or criminal violation of title 17, United States Code, may be disseminated to a person injured by such violation to assist him in the institution or maintenance of a suit brought under such title;

(n) A record may be accessed by volunteer student workers and students working under a college work-study program, as is necessary to enable them to perform their function;

(o) A record, or facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the United States Attorney's office or the Executive Office for U.S. Attorneys is authorized to appear when (i) the United States Attorney's office or the Executive Office for U.S. Attorneys, or any subdivision thereof, or (ii). any employee of the United States Attorney's office or the Executive Office for U.S. Attorneys in his or her official capacity, or (iii). any employee of the United States Attorney's office or the Executive Office for U.S. Attorneys in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (iv). the United States, where the United States Attorney's office or the Executive Office for U.S. Attorneys determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the United States Attorney's office or the Executive Office for U.S. Attorneys to be arguably relevant to the litigation;

(p) A record, or facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the

United States Attorney's Office is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by the United States Attorney's Office to be arguably relevant to the litigation;

(q) In any health care related civil or criminal case, investigation, or matter, information indicating patient harm, neglect, or abuse, or poor or inadequate quality of care, at a health care facility or by a health care provider, may be disclosed as a routine use to any federal, state, local, tribal, foreign, joint, international or private entity that is responsible for regulating, licensing, registering, or accrediting any health care provider or health care facility, or enforcing any health care related laws or regulations. Further, information indicating an ongoing quality of care problem by a health care provider or at a health care facility may be disclosed to the appropriate health plan. Additionally, unless otherwise prohibited by applicable law, information indicating patient harm, abuse or poor or inadequate quality of care may be disclosed to the affected patient or his or her representative or guardian at the discretion of and in the manner determined by the agency in possession of the information;

(r) Records relating to an individual who owes an overdue debt to the United States may be disseminated to (1) a Federal agency which employs the individual to enable the employing agency to offset the individual's salary, (2) a Federal, State, local or foreign agency, an organization, including a consumer reporting agency, or individual to elicit information to assist the United States Attorney in the collection of the overdue debt, (3) a collection agency or private counsel to enable them to collect the overdue debt, and (4) the Internal Revenue Service (IRS) to enable that agency to offset the individual's tax refund. Records provided to the IRS may be used in a computer matching program to identify individuals who are entitled to refunds against which such offset for overdue debts would be appropriate;

(s) Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(t) Information not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of this record;

(u) A record may be disclosed as a routine use to the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906; and *Notice of disclosure under subsection (b)(12) of the Privacy Act:* Records relating to individuals who owe a past-due debt to the United States may be disseminated to consumer reporting agencies to encourage payment of the past-due debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

All information, except that specified in this paragraph, is recorded on basic paper/cardboard material, and stored within manila file folders, within metal file cabinets, electric file/card retrievers or safes. Some material is recorded and stored on magnetic tape, card or other data processing type storage matter for reproduction later into conventional formats.

RETRIEVABILITY:

Information is retrieved primarily by name of person, case number, complaint number or court docket number. Information within this system of records may be accessed by various U.S. Attorneys' offices, and the Executive Office for United States Attorneys by means of cathode-ray tube terminals (CRT's).

SAFEGUARDS:

Information in the system is both confidential and nonconfidential and located in file cabinets in the United States Attorney offices.

Confidential materials are in locked file drawers and safes, and nonconfidential materials are in unlocked file drawers. Offices are locked during nonworking hours and are secured by either Federal Protective Service, United States Postal Service, or private building guards. Information that is retrievable by CRT's within various U.S. Attorney's offices and the Executive Office for United States Attorneys requires user identification numbers which are issued to authorized employees of the Department of Justice.

RETENTION AND DISPOSAL:

Records are destroyed ten years after case is closed in accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

System Manager for the system in each office is the Administrative Officer/Assistant, for the U.S. Attorney for each district, (See appendix.)

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager for the judicial district in which the case or matter is pending. (See appendix.)

RECORD ACCESS PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to access. A determination as to examination shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." Include in the request the name of the individual involved, his birth date and place, or any other identifying number or information which may be of assistance in locating the record and the name of the case or matter involved, if known. The requestor will also provide his or her notarized signature and a return address for transmitting the information. Access requests will be directed to the System Manager. (See appendix.)

CONTESTING RECORD PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to contest. A determination as to exemption shall be made at the time a request for contest is received. Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager (see appendix) stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system include, but are not limited to, investigative reports of Federal, State, and local law enforcement, civil litigation, regulatory and administrative agencies; client agencies of the Department of Justice; other non-Department of Justice investigative agencies: forensic reports; statements of witnesses and parties; verbatim transcripts of deposition and court proceedings; date, memoranda and

reports from the court and agencies thereof; and the work product of Assistant United States Attorneys, Department of Justice attorneys and staff, and legal assistants working on particular cases.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k) (1) and (2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in the **Federal Register**.

JUSTICE/USA–007

SYSTEM NAME:

Criminal Case Files.

SYSTEM LOCATION:

Ninety-four United States Attorneys' Offices (See Appendix identified as Justice/USA–999), Executive Office for United States Attorneys, U.S. Department of Justice, 10th and Constitution Avenue NW, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals charged with violations; (b) Individuals being investigated for violations; (c) Defense Counsel(s); (d) Information Sources; (e) Individuals relevant to development of Criminal Cases; (f) Individuals investigated, but prosecution declined; (g) Individuals referred to in potential or actual cases and matters of concern to a U.S. Attorney's Office; (h) Individuals placed into the Department's Pretrial Diversion program.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) All case files (USA–33); (b) Docket Cards (USA–115); (c) Criminal Debtor Cards (USA–117a); (d) Criminal Case Activity Card (USA–163); (e) Criminal Debtor Activity Card (USA–164); (f) 3 by 5 Index Cards; (g) Caseload Printouts; (h) Attorney Assignment Sheets; (i) General Correspondence re: Criminal Cases; (j) Reading Files re: Criminal Cases; (k) Grand Jury Proceedings; (l) Miscellaneous Investigative Reports; (m) Information Source Files; (n) Parole Recommendations; (o) Immunity Requests; (p) Witness Protection Files; (q) Wiretap Authorizations; (r) Search Warrants; (s) Telephone Records; (t) Criminal Complaints; (u) Sealed Indictment Records; (v) Files Unique to a District; (w) Criminal Miscellaneous Correspondence File; (x) Prosecution Declined Reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These systems are established and maintained pursuant to 5 U.S.C. 301, 28 U.S.C. 547 and 44 U.S.C. 3101.

PURPOSE(S):

Records are maintained for the purpose of prosecuting or otherwise resolving criminal cases or matters handled by the United States Attorneys.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use of such record as follows:

(a) In any case in which there is an indication of a violation or potential violation of law, criminal, or regulatory in nature, the record in question may be disseminated to the appropriate Federal, state, local, or foreign agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law;

(b) In the course of investigating the potential or actual violations of any law, criminal, civil, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a Federal, state, local, or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant;

(c) A record relating to a case or matter may be disseminated in an appropriate Federal, state, local, or foreign court or grand jury proceeding in accordance with established constitutional, substantive, or procedural law or practice;

(d) A record relating to a case or matter may be disseminated to a Federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing;

(e) A record relating to a case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings;

(f) A record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement, or that involves a case or matter within the jurisdiction of an agency, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter;

(g) A record relating to a person held in custody pending or during arraignment, trial, sentence, or extradition proceedings, or after conviction or after extradition proceedings, may be disseminated to a Federal, state, local, or foreign prison, probation, parole, or pardon authority, or to any other agency or individual concerned with the maintenance, transportation, or release of such a person;

(h) A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement;

(i) A record may be disseminated to a Federal, state, local, foreign, or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency;

(j) A record may be disseminated to a Federal agency, in response to its request, in connection with the hiring or retention of any employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter;

(k) A record may be disseminated to the public, news media, trade associations, or organized groups, when the purpose of the dissemination is educational or informational, such as descriptions of crime trends or distinctive or unique modus operandi: Provided that the record does not contain any information identifiable to a specific individual other than such modus operandi;

(l) A record may be disseminated to a foreign country through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in apprehending and/or returning a fugitive to a jurisdiction which seeks his return;

(m) A record that contains classified national security information and material may be disseminated to persons who are engaged in historical research projects, or who have previously occupied policy making positions to which they were appointed

by the President, in a accordance with the provisions codified in 28 CFR 17.96;

(n) A record relating to an actual or potential civil or criminal violation of title 17, United States Code, may be disseminated to a person injured by such violation to assist him in the institution or maintenance of a suit brought under such title;

(o) Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(p) Information not otherwise required to be released pursuant to 5 U.S.C. 552 may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record;

(q) A record may be disclosed as a routine use to the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(r) A record may be accessed by volunteer student workers and students working under a college work-study program, as is necessary to enable them to perform their function;

(s) A record, or facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the United States Attorney's office or the Executive Office for U.S. Attorneys is authorized to appear when i. the United States Attorney's office or the Executive Office for U.S. Attorneys, or any subdivision thereof, or ii. any employee of the United States Attorney's office or the Executive Office for U.S. Attorneys in his or her official capacity, or iii. any employee of the United States Attorney's office or the Executive Office for U.S. Attorneys in his or her individual capacity where the Department of Justice has agreed to represent the employee, or iv. the United States, where the United States Attorney's office or the Executive Office for U.S. Attorneys determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the United States Attorney's office or the Executive Office for U.S. Attorneys to be arguably relevant to the litigation;

(t) A record, or facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the United States Attorney's office is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by the United States Attorney's office to be arguably relevant to the litigation;

(u) In any health care related civil or criminal case, investigation, or matter, information indicating patient harm, neglect, or abuse, or poor or inadequate quality of care, at a health care facility or by a health care provider, may be disclosed as a routine use to any federal, state, local, tribal, foreign, joint, international or private entity that is responsible for regulating, licensing, registering, or accrediting any health care provider or health care facility, or enforcing any health care related laws or regulations. Further, information indicating an ongoing quality of care problem by a health care provider or at a health care facility may be disclosed to the appropriate health plan. Additionally, unless otherwise prohibited by applicable law, information indicating patient harm, abuse or poor or inadequate quality of care may be disclosed to the affected patient or his or her representative or guardian at the discretion of and in the manner determined by the agency in possession of the information.

(v) Records relating to an individual who owes an overdue debt to the United States may be disseminated to (1) a Federal agency which employs the individual to enable the employing agency to offset the individual's salary, (2) a Federal, State, local or foreign agency, an organization, including a consumer reporting agency, or individual to elicit information to assist the United States Attorney in the collection of the overdue debt, (3) a collection agency or private counsel to enable them to collect the overdue debt, and (4) the Internal Revenue Service (IRS) to enable that agency to offset the individual's tax refund. Records provided to the IRS may be used in a computer matching program to identify individuals who are entitled to refunds against which such offset for overdue debts would be appropriate; and *Notice of disclosure under Subsection (b)(12) of the Privacy Act:* Records relating to individuals who owe a past-due debt to the United States may be disseminated to consumer reporting agencies to encourage payment of the past-due debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All information except that specified in this paragraph, is recorded on basic paper/cardboard material, and stored within manila file folders, within metal file cabinets, electric file/card retrievers or safes. Some material is recorded and stored on magnetic tape, card or other data processing type storage matter for reproduction later into conventional formats.

RETRIEVABILITY:

Information is retrieved primarily by name of person, case number, compliant number of court docket number. Information within this system of records may be accessed by various U.S. Attorney's offices and the Executive Office for United States Attorneys by means of catho-ray tube terminals (CRTs).

SAFEGUARDS:

Information in the system is both confidential and non-confidential and located in file cabinets in the United States Attorney offices.

Confidential materials are in locked file drawers and safes, and nonconfidential materials are in unlocked file drawers. Offices are locked during non-working hours and are secured by either Federal Protective Service, United States Postal Service, or private building guards. Information that is retrievable by CRTs within various U.S. Attorney's offices and the Executive Office for United States Attorneys requires user identification numbers which are issued to authorized employees of the Department of Justice.

RETENTION AND DISPOSAL:

Case files involving no sentence, or sentences of ten years or less, are destroyed ten years after case is closed. Case files involving sentences of more than ten years are destroyed one year after the date of termination of sentence. Both are in accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

System manager for the system in each office is the Administrative Office/ Assistant, for the U.S. Attorney for each district (See appendix).

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager for the judicial district in which the case or matter is pending (See appendix).

RECORD ACCESS PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a(j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." Include in the request the name of the individual involved, his birth date and place, or any other identifying number or information which may be of assistance in locating the record and the name of the case or matter involved, if known. The requester will also provide his or her notarized signature and a return address for transmitting the information. Access requests will be directed to the System Manager (See appendix).

CONTESTING RECORD PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a(j)(2), (k)(1) and/or (k)(2).

To the extent that this system is not subject to exemption, it is subject to contest. A determination as to exemption shall be made at the time a request for contest is received. Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager (See Appendix) stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system include, but are not limited to, investigative reports of federal, state and local law enforcement agencies; client agencies of the Department of Justice; other non-Department of Justice investigative agencies; forensic reports; statements of witnesses and parties; verbatim transcripts of Grand Jury and court proceedings; data, memoranda and reports from the Court and agencies thereof; and the work product of Assistant United States Attorneys, Department of Justice attorneys and staff, and legal assistants working on particular cases.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k) (1) and (2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

JUSTICE/FBI–002

SYSTEM NAME:

The FBI Central Records System.

SYSTEM LOCATION:

a. Federal Bureau of Investigation, J. Edgar Hoover Building, 10th and Pennsylvania Avenue, NW, Washington DC 20535; b. 56 field divisions (see Appendix); c. 16 Legal Attache (see Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals who relate in any manner to official FBI investigations including, but not limited to subjects, suspects, victims, witnesses, and close relatives and associates who are relevant to an investigation.

b. Applicants for and current and former personnel of the FBI and persons related thereto who are considered relevant to an applicant investigation, personnel inquiry, or other personnel matters.

c. Applicants for and appointees to sensitive positions in the United States Government and persons related thereto who are considered relevant to the investigation.

d. Individuals who are the subject of unsolicited information, who offer unsolicited information, request assistance, and make inquiries concerning record material, including general correspondence, and contacts with other agencies, businesses, institutions, clubs; the public and the news media.

e. Individuals associated with administrative operations or services including pertinent functions, contractors and pertinent persons related thereto. (All manner of information concerning individuals may be acquired in connection with and relating to the varied investigative responsibilities of the FBI which are further described in "CATEGORIES OF RECORDS IN THE SYSTEM." Depending on the nature and scope of the investigation this information may include, among other things, personal habits and conduct, financial information, travel and organizational affiliation of individuals. The information collected is made a matter of record and placed in FBI files.)

CATEGORIES OF RECORDS IN THE SYSTEM:

The FBI Central Records Systems—The FBI utilizes a central records system of maintaining its investigative, personnel, applicant, administrative, and general files. This system consists of one numerical sequence of subject matter files, an alphabetical index to the files, and a supporting abstract system to facilitate processing and accountability of all important mail placed in files. This abstract system is both a textual and an automated capability for locating mail. Files kept in FBI field offices are also structured in the same manner, except they do not utilize an abstract system.

The 281 classifications used by the FBI in its basic filing system pertain primarily to Federal violations over which the FBI has investigative jurisdiction. However, included in the 281 classifications are personnel, applicant, and administrative matters to facilitate the overall filing scheme. These classifications are as follows (the word "obsolete" following the name of the classification indicates the FBI is no longer initiating investigative cases in these matters, although the material is retained for reference purposes):

1. Training Schools; National Academy Matters: FBI National Academy Applicants. Covers general information concerning the FBI National Academy, including background investigations of individual candidates.

2. Neutrality Matters. Title 18, United States Code, Sections 956 and 958 962; Title 22, United States Code, Sections 1934 and 401.

3. Overthrow or Destruction of the Government. Title 18, United States Code, Section 2385.

4. National Firearms Act, Federal Firearms Act; State Firearms Control Assistance Act; Unlawful Possession or Receipt of Firearms. Title 26, United States Code, Sections 5801–5812; Title 18, United States Code, Sections 921–928; Title 18, United States Code, Sections 1201–1203.

5. Income Tax. Covers violations of Federal income tax laws reported to the FBI. Complaints are forwarded to the Commissioner of the Internal Revenue Service.

6. Interstate Transportation of Strikebreakers. Title 18, United States Code, Section 1231.

7. Kidnapping. Title 28, United States Code, Sections 1201 and 1202.

8. Migratory Bird Act. Title 18, United States Code, Section 43; Title 16, United States Code, Section 703 through 718.

9. Extortion. Title 18, United States Code, Sections 876, 877, 875, and 873.

10. Red Cross Act. Title 18, United States Code, Sections 706 and 917.

11. Tax (Other than Income). This classification covers complaints concerning violations of Internal

Revenue law as they apply to other than alcohol, social security and income and profits taxes, which are forwarded to the Internal Revenue Service.

12. Narcotics. This classification covers complaints received by the FBI concerning alleged violations of Federal drug laws. Complaints are forwarded to the headquarters of the Drug Enforcement Administration (DEA), or the nearest district office of DEA.

13. Miscellaneous. Section 125, National Defense Act, Prostitution; Selling Whiskey Within Five Miles of An Army Camp, 1920 only. Subjects were alleged violators of abuse of U.S. flag, fraudulent enlistment, selling liquor and operating houses of prostitution within restricted bounds of military reservations. Violations of Section 13 of the Selective Service Act (Conscription Act) were enforced by the Department of Justice as a war emergency measure with the Bureau exercising jurisdiction in the detection and prosecution of cases within the purview of that Section.

14. Sedition. Title 18, United States Code, Sections 2387, 2388, and 2391.

15. Theft from Interest Shipment. Title 18, United States Code, Section 859; Title 18, United States Code, Section 660; Title 18 United States Code, Section 2117.

16. Violations of Federal Injunction (obsolete). Consolidated into Classification 69, "Contempt of Court".

17. Fraud Against the Government, Department of Veterans Affairs, Department of Veterans Affairs Matters. Title 18, United States Code, Section 287, 289, 290, 371, or 1001, and Title 38, United States Code, Sections 787(a), 787(b), 3405, 3501, and 3502.

18. May Act. Title 18, United States Code, Section 1384.

19. Censorship Matter (obsolete). Pub. L. 77th Congress.

20. Federal Grain Standards Act (obsolete) 1920 only. Subjects were alleged violators of contracts for sale. Shipment of Interstate Commerce, Section 5, U.S. Grain Standards Act.

21. Food and Drugs. This classification covers complaints received concerning alleged violations of the Food, Drug and Cosmetic Act; Tea Act; Import Milk Act; Caustic Poison Act; and Filled Milk Act. These complaints are referred to the Commissioner of the Food and Drug Administration of the field component of that Agency.

22. National Motor Vehicle Traffic Act, 1922–27 (obsolete). Subjects were possible violators of the National Motor Vehicle Theft Act, Automobiles seized by Prohibitions Agents.

23. Prohibition. This classification covers complaints received concerning bootlegging activities and other violations of the alcohol tax laws. Such complaints are referred to the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, or field representatives of the Agency.

24. Profiteering 1920–42 (obsolete). Subjects are possible violators of the Lever Act—Profiteering in food and clothing or accused company was subject of file. Bureau conducted investigations to ascertain profits.

25. Selective Service Act; Selective Training and Service Act. Title 50, United States Code, Section 462; Title 50, United States Code, Section 459.

26. Interstate Transportation of Stolen Motor Vehicle; Interstate Transportation of Stolen Aircraft. Title 18, United States Code, Sections 2311 (in part), 2312, and 2313.

27. Patent Matter. Title 35, United States Code, Sections 104 and 105.

28. Copyright Matter. Title 17, United States Code, Sections 104 and 105.

29. Bank Fraud and Embezzlement. Title 18, United States Code, Sections 212, 213, 215, 334, 655–657, 1004–1006, 1008, 1009, 1014, and 1306; Title 12, United States Code, Section 1725(g).

30. Interstate Quarantine Law, 1922–25 (obsolete). Subjects alleged violators of Act of February 15, 1893, as amended, regarding interstate travel of persons afflicted with infectious diseases. Cases also involved unlawful transportation of animals, Act of February 2, 1903. Referrals were made to Public Health Service and the Department of Agriculture.

31. White Slave Traffic Act. Title 18, United States Code, Section 2421–2424.

32. Identification (Fingerprint) Matters. This classification covers general information concerning Identification (fingerprint) matters.

33. Uniform Crime Reporting. This classification covers general information concerning the Uniform Crime Reports, a periodic compilation of statistics of criminal violations throughout the United States.

34. Violation of Lacy Act. 1922–43. (obsolete) Unlawful Transportation and shipment of black bass and fur seal skins.

35. Civil Service. This classification covers complaints received by the FBI concerning Civil Service matters which are referred to the Office of Personnel Management in Washington or regional offices of that Agency.

36. Mail Fraud. Title 18, United States Code, Section 1341.

37. False Claims Against the Government. 1921–22 (obsolete). Subjects submitted claims for allotment, vocational training, compensation as veterans under the Sweet Bill. Letters were generally referred elsewhere (Veterans Bureau). Violators apprehended for violation of Article No. 1, War Risk Insurance Act.

38. Application for Pardon to Restore Civil Rights. 1921–35 (obsolete). Subjects allegedly obtained their naturalization papers by fraudulent means. Cases later referred to Immigration and Naturalization Service.

39. Falsely Claiming Citizenship (obsolete). Title 18, United States Code, Sections 911 and 1015(a)(b).

40. Passport and Visa Matter. Title 18, United States Code, Sections 1451–1546.

41. Explosives (obsolete). Title 50, United States Code, Sections 121 through 144.

42. Deserter; Deserter, Harboring. Title 10, United States Code, Sections 808 and 885.

43. Illegal Wearing of Uniforms; False Advertising or Misuse of Names, Words, Emblems or Insignia; Illegal Manufacturer, Use, Possession, or Sale of Emblems and Insignia; Illegal Manufacture, Possession, or Wearing of Civil Defense Insignia; Miscellaneous, Forging or Using Forged Certificate of Discharge from Military or Naval Service; Miscellaneous, Falsely Making or Forging Naval, Military, or Official Pass; Miscellaneous, Forging or Counterfeiting Seal of Department or Agency of the United States, Misuse of the Great Seal of the United States or of the Seals of the President or the Vice President of the United States; Unauthorized Use of "Johnny Horizon" Symbol; Unauthorized Use of Smokey Bear Symbol. Title 18, United States Code, Sections 702, 703, and 704; Title 18, United States Code, Sections 701, 705, 707, and 710; Title 36, United States Code, Section 182; Title 50, Appendix, United States Code, Section 2284; Title 46, United States Code, Section 249; Title 18, United States Code, Sections 498, 499, 506, 709, 711, 711a, 712, 713, and 714; Title 12, United States Code, Sections 1457 and 1723a; Title 22, United States Code, Section 2518.

44. Civil Rights; Civil Rights, Election Laws, Voting Rights Act, 1965, Title 18, United States Code, Sections 241, 242, and 245; Title 42, United States Code, Section 1973; Title 18, United States Code, Section 243; Title 18, United States Code, Section 244, Civil Rights Act—Federally Protected Activities; Civil Rights Act—Overseas Citizens Voting Rights Act of 1975.

45. Crime on the High Seas (includes stowaways on boats and aircraft). Title

18, United States Code, Sections 7, 13, 1243, and 2199.

46. Fraud Against the Government (includes Department of Health, Education and Welfare; Department of Labor (CETA), and Miscellaneous Government Agencies), Anti-Kickback Statute; Department Assistance Act of 1950; False Claims, Civil; Federal-Aid Road Act; Lead and Zinc Act; Public Works and Economic Development Act of 1965; Renegotiation Act, Criminal; Renegotiation Act, Civil; Trade Expansion Act of 1962; Unemployment Compensation Statutes; Economic Opportunity Act, Title 50, United States Code, Section 1211 et seq.; Title 31, United States Code, Section 231; Title 41, United States Code, Section 119; Title 40, United States Code, Section 489.

47. Impersonation. Title 18, United States Code, Sections 912, 913, 915, and 916.

48. Postal. Violation (Except Mail Fraud). This classification covers inquiries concerning the Postal Service and complaints pertaining to the theft of mail. Such complaints are either forwarded to the Postmaster General or the nearest Postal Inspector.

49. Bankruptcy Fraud. Title 18, United States Code, Sections 151–155.

50. Involuntary Servitude and Slavery. U.S. Constitution, 13th Amendment; Title 18, United States Code, Sections 1581–1588, 241, and 242.

51. Jury Panel Investigations. This classification covers jury panel investigations which are requested by the appropriate Assistant Attorney General as authorized by 28 U.S.C. 533 and AG memorandum 781, dated November 9, 1972. These investigations can be conducted only upon such request and consist of an indices and arrest check, and only in limited important trials where defendant could have influence over a juror.

52. Theft, Robbery, Embezzlement, Illegal Possession or Destruction of Government Property. Title 18, United States Code, Sections 641, 1024, 1660, 2112, and 2114. Interference With Government Communications, Title 18, United States Code, Section 1632.

53. Excess Profits on Wool. 1918 (obsolete). Subjects possible violators of Government Control of Wool Clip Act of 1918.

54. Customs Laws and Smuggling. This classification covers complaints received concerning smuggling and other matters involving importation and entry of merchandise into and the exportation of merchandise from the United States. Complaints are referred to the nearest district office of the U.S. Customs Service or the Commissioner of Customs, Washington, DC.

55. Counterfeiting. This classification covers complaints received concerning alleged violations of counterfeiting of U.S. coins, notes, and other obligations and securities of the Government. These complaints are referred to either the Director, U.S. Secret Service, or the nearest office of that Agency.

56. Election Laws. Title 18, United States Code, Sections 241, 242, 245, and 591–607; Title 42, United States Code, Section 1973; Title 26, United States Code, Sections 9012 and 9042; Title 2, United States Code, Sections 431–437, 439, and 441.

57. War Labor Dispute Act (obsolete). Pub. L. 89—77th Congress.

58. Corruption of Federal Public Officials. Title 18, United States Code, Sections 201–203, 205–211; Public Law 89–4 and 89–136.

59. World War Adjusted Compensation Act of 1924–44 (obsolete). Bureau of Investigation was charged with the duty of investigating alleged violations of all sections of the World War Adjusted Compensation Act (Pub. L. 472, 69th Congress (H.R. 10277)) with the exception of Section 704.

60. Anti-Trust, Title 15, United States Code, Sections 1–7, 12–27, and 13.

61. Treason or Misprision of Treason. Title 18, United States Code, Sections 2381, 2382, 2389, 2390, 756, and 757.

62. Administrative Inquiries. Misconduct Investigations of Officers and Employees of the Department of Justice and Federal Judiciary; Census Matters (Title 13, United States Code, Sections 211–214, 221–224, 304, and 305) Domestic Police Cooperation; Eight-Hour-Day Law (Title 40, United States Code, Sections 321, 332, 325a, 326); Fair Credit Reporting Act (Title 15, United States Code, Sections 1681q and 1681r); Federal Cigarette Labeling and Advertising Act (Title 15, United States Code, Section 1333); Federal Judiciary Investigations; Kickback Racket Act (Title 18, United States Code, Section 874); Lands Division Matter, other Violations and/or Matters; Civil Suits—Miscellaneous; Soldiers' and Sailors' Civil Relief Act of 1940 (Title 50, Appendix, United States Code, Sections 510–590); Tariff Act of 1930 (Title 19, United States Code, Section 1304); Unreported Interstate Shipment of Cigarettes (Title 15, United States Code, Sections 375 and 376); Fair Labor Standards Act of 1938 (Wages and Hours Law) (Title 29, United States Code, Sections 201–219); Conspiracy (Title 18, United States Code, Section 371 (formerly Section 88, Title 18, United States Code); effective September 1, 1948).

63. Miscellaneous—Nonsubversive. This classification concerns correspondence from the public which does not relate to matters within FBI jurisdiction.

64. Foreign Miscellaneous. This classification is a control file utilized as a repository for intelligence information of value identified by country. More specific categories are placed in classification 108–113.

65. Espionage. Attorney General Guidelines on Foreign Counterintelligence; Internal Security Act of 1950; Executive Order 11905.

66. Administrative Matters. This classification covers such items as supplies, automobiles, salary matters and vouchers.

67. Personnel Matters. This classification concerns background investigations of applicants for employment with the FBI and folders for current and former employees.

68. Alaskan matters (obsolete). This classification concerns FBI investigations in the Territory of Alaska prior to its becoming a State.

69. Contempt of Court. Title 18, United States Code, Sections 401, 402, 3285, 3691, 3692; Title 10, United States Code. Section 847; and Rule 42, Federal Rules of Criminal Procedure.

70. Crime on Government Reservation. Title 18, United States Code, Sections 7 and 13.

71. Bills of Lading Act, Title 49, United States Code, Section 121.

72. Obstruction of Criminal Investigations: Obstruction of Justice, Obstruction of Court Orders. Title 18, United States Code. Sections 1503 through 1510.

73. Application for Pardon After Completion of Sentence and Application for Executive Clemency. This classification concerns the FBI's background investigation in connection with pardon applications and request for executive clemency.

74. Perjury. Title 18, United States Code, Sections 1621, 1622, and 1623.

75. Bondsmen and Sureties. Title 18, United States Code, Section 1506.

76. Escaped Federal Prisoner. Escape and Rescue; Probation Violator, Parole Violator, Mandatory, Release Violator. Title 18, United States Code, Sections 751–757, 1072; Title 18, United States Code. Sections 3651–3656; and Title 18, United States Code. Sections 4202–4207, 5037, and 4161–4166.

77. Applicants (Special Inquiry, Departmental and Other Government Agencies, except those having special classifications). This classification covers the background investigations

conducted by the FBI in connection with the aforementioned positions.

78. Illegal Use of Government Transportation Requests. Title 18, United States Code, Section 287, 495, 508, 641, 1001 and 1002.

79. Missing Persons. This classification covers the FBI's Identification Division's assistance in the locating of missing persons.

80. Laboratory Research Matters. At FBI Headquarters this classification is used for Laboratory research matters. In field office files this classification covers the FBI's public affairs matters and involves contact by the FBI with the general public, Federal and State agencies, the Armed Forces, Corporations, the news media and other outside organizations.

81. Gold Hoarding. 1933–45. (obsolete) Gold Hoarding investigations conducted in accordance with an Act of March 9, 1933 and Executive Order issued August 28, 1933. Bureau instructed by Department to conduct no further investigations in 1935 under the Gold Reserve Act of 1934. Thereafter, all correspondence referred to Secret Service.

82. War Risk Insurance (National Life Insurance (obsolete)). This classification covers investigations conducted by the FBI in connection with civil suits filed under this statute.

83. Court of Claims. This classification covers requests for investigations of cases pending in the Court of Claims from the Assistant Attorney General in charge of the Civil Division of the Department of Justice.

84. Reconstruction Finance Corporation Act (obsolete). Title 15, United States Code, Chapter 14.

85. Home Owner Loan Corporation (obsolete). This classification concerned complaints received by the FBI about alleged violations of the Home Owners Loan Act, which were referred to the Home Owners Loan Corporation. Title 12, United States Code, Section 1464.

86. Fraud Against the Government—Small Business Administration. Title 15, United States Code, Section 645; Title 18, United States Code, Sections 212, 213, 215, 216, 217, 657, 658, 1006, 1011, 1013, 1014, 1906, 1907, and 1909.

87. Interstate Transportation of Stolen Property (Heavy Equipment—Commercialized Theft). Title 18, United States Code, Sections 2311, 2314, 2315 and 2318.

88. Unlawful Flight to Avoid Prosecution, Custody, or Confinement; Unlawful Flight to Avoid Giving Testimony. Title 18, United States Code, Sections 1073 and 1074.

89. Assaulting or Killing a Federal Officer, Crimes Against Family Members, Congressional Assassination Statute, Title 18, United States Code, Sections 1111, 1114, 2232.

90. Irregularities in Federal Penal Institutions. Title 18, United States Code, Sections 1791 and 1792.

91. Bank Burglary, Bank Larceny; Bank Robbery. Title 18, United States Code, Section 2113.

92. Racketeer Enterprise Investigations. Title 18, United States Code. Section 3237.

93. Ascertaining Financial Ability. This classification concerns requests by the Department of Justice for the FBI to ascertain a person's ability to pay a claim, fine or judgment obtained against him by the United States Government.

94. Research matters. This classification concerns all general correspondence of the FBI with private individuals which does not involve any substantive violation of Federal law.

95. Laboratory Cases (Examination of Evidence in Other Than Bureau's Cases). The classification concerns non-FBI cases where a duly constituted State, county or a municipal law enforcement agency in a criminal matter has requested an examination of evidence by the FBI Laboratory.

96. Alien Applicant (obsolete). Title 10, United States Code, Section 310.

97. Foreign Agents Registration Act. Title 18, United States Code, Section 951; Title 22, United States Code, Sections 611–621; Title 50, United States Code, Sections 851–857.

98. Sabotage. Title 18, United States Code, Sections 2151–2156; Title 50, United States Code, Section 797.

99. Plant Survey (obsolete). This classification covers a program wherein the FBI inspected industrial plants for the purpose of making suggestions to the operations of those plants to prevent espionage and sabotage.

100. Domestic Security. This classification covers investigations by the FBI in the domestic security field, e.g., Smith Act violations.

101. Hatch Act (obsolete). Public Law 252, 76th Congress.

102. Voorhis Act, Title 18, United States Code, Section 1386.

103. Interstate Transportation of Stolen Livestock, Title 18, United States Code, Sections 667, 2311, 2316 and 2317.

104. Servicemen's Dependents Allowance Act of 1942 (obsolete). Public Law 625, 77th Congress, Sections 115–119.

105. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

106. Alien Enemy Control; Escaped Prisoners of War and Internees, 1944–55 (obsolete). Suspects were generally suspected escaped prisoners of war, members of foreign organizations, failed to register under the Alien Registration Act. Cases ordered closed by Attorney General after alien enemies returned to their respective countries upon termination of hostilities.

107. Denaturalization Proceedings (obsolete). This classification covers investigation concerning allegations that an individual fraudulently swore allegiance to the United States or in some other manner illegally obtained citizenship to the U.S. Title 8, United States Code, Section 738.

108. Foreign Travel Control (obsolete). This classification concerns security-type investigations wherein the subject is involved in foreign travel.

109. Foreign Political Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign political matters broken down by country.

110. Foreign Economic Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign economic matters broken down by country.

111. Foreign Social Conditions. This classification is a control file utilized as a repository for intelligence information concerning foreign social conditions broken down by county.

112. Foreign Funds. This classification is a control file utilized as a repository for intelligence information concerning foreign funds broken down by country.

113. Foreign Military and Naval Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign military and naval matters broken down by country.

114. Alien Property Custodian Matter (obsolete). Title 50, United States Code, Sections 1 through 38. This classification covers investigations concerning ownership and control of property subject to claims and litigation under this statute.

115. Bond Default; Bail Jumper. Title 18, United States Code, Sections 3146–3152.

116. Department of Energy Applicant; Department of Energy, Employee. This classification concerns background investigations conducted in connection with employment with the Department of Energy.

117. Department of Energy, Criminal. Title 42, United States Code, Sections 2011–2281; Public Law 93–438.

118. Applicant, Intelligence Agency (obsolete). This classification covers applicant background investigations conducted of persons under

consideration for employment by the Central Intelligence Group.

119. Federal Regulation of Lobbying Act. Title 2, United States Code, ections 261–270.

120. Federal Tort Claims Act, Title 28, United States Code, Sections 2671 to 2680. Investigations are conducted pursuant to specific request from the Department of Justice in connection with cases in which the Department of Justice represents agencies sued under the Act.

121. Loyalty of Government Employees (obsolete). Executive Order 9835.

122. Labor Management Relations Act, 1947. Title 29, United States Code, Sections 161, 162, 176–178 and 186.

123. Section inquiry, State Department, Voice of America (U.S. Information Center) (Public Law 402, 80th Congress) (obsolete). This classification covers loyalty and security investigations on personnel employed by or under consideration for employment for Voice of America.

124. European Recovery Program Administration, formerly Foreign Operations Administration, Economic Cooperation Administration or E.R.P., European Recovery Programs; A.I.D. Agency for International Development (obsolete). This classification covers security and loyalty investigation of personnel employed by or under consideration for employment with the European Recovery Program, Public Law 472, 80th Congress.

125. Railway Labor Act; Railway Labor Act—Employer's Liability Act Title 45, United States Code, Sections 151–163 and 181–188.

126. National Security Resources Board, Special Inquiry (obsolete). This classification covers loyalty investigations on employees and applicants of the National Security Resources Board.

127. Sensitive Positions in the United States Government, Public Law 266 (obsolete). Public Law 81st Congress.

128. International Development Program (Foreign Operations Administration) (obsolete). This classification covers background investigations conducted on individuals who are to be assigned to duties under the International Development Program.

129. Evacuation Claims (obsolete). Public Law 886, 80th Congress.

130. Special Inquiry. Armed Forces Security Act (obsolete). This classification covers applicant-type investigations conducted for the Armed Forces security agencies.

131. Admiralty Matter. Title 46, United States Code, Sections 741–752 and 781–799.

132. Special Inquiry, Office of Defense Mobilization (obsolete). This classification covers applicant-type investigations of individuals associated with the Office of Defense Mobilization.

133. National Science Foundation Act, Applicant (obsolete). Public Law 507, 81st Congress.

134. Foreign Counterintelligence Assets. This classification concerns individuals who provide information to the FBI concerning Foreign Counterintelligence matters.

135. PROSAB (Protection of Strategic Air Command Bases of the U.S. Air Force (obsolete). This classification covered contacts with individuals with the aim to develop information useful to protect bases of the Strategic Air Command.

136. American Legion Contact (obsolete). This classification covered liaison contracts with American Legion offices.

137. Informants. Other than Foreign Counterintelligence Assets. This classification concerns individuals who furnish information to the FBI concerning criminal violations on a continuing and confidential basis.

138. Loyalty of Employees of the United Nations and Other Public International Organizations. This classification concerns FBI investigations based on referrals from the Office of Personnel Management wherein a question or allegation has been received regarding the applicant's loyalty to the U.S. Government as described in Executive Order 10422.

139. Interception of Communications (Formerly, Unauthorized Publication or Use of Communications). Title 47, United States Code, Section 605; Title 47, United States Code, Section 501; Title 18, United States Code, Sections 2510–2513.

140. Security of Government Employees; Fraud Against the Government, Executive Order 10450.

141. False Entries in Records of Interstate Carriers. Title 47, United States Code, Section 220; Title 49, United States Code, Section 20.

142. Illegal Use of Railroad Pass. Title 49, United States Code, Section 1.

143. Interstate Transport of Gambling Devices. Title 15, United States Code, Sections 1171 through 1180.

144. Interstate Transportation of Lottery Tickets. Title 18, United States Code, Section 1301.

145. Interstate Transportation of Obscene Materials. Title 18, United States Code, Sections 1462, 1464, and 1465.

146. Interstate Transportation of Prison-Made Goods. Title 18, United States Code, Sections 1761 and 1762.

147. Fraud Against the Government—Department of Housing and Urban Development, Matters. Title 18, United States Code, Sections 657, 709, 1006, and 1010; Title 12, United States Code, Sections 1709 and 1715.

148. Interstate Transportation of Fireworks. Title 18, United States Code, Section 836.

149. Destruction of Aircraft or Motor Vehicles. Title 18, United States Code, Section 31–35.

150. Harboring of Federal Fugitives, Statistics (obsolete).

151. (Referral cases received from the Office of Personnel Management under Pub. L. 298). Agency for International Development; Department of Energy; National Aeronautics and Space Administration; National Science Foundation; Peace Corps; Action; U.S. Arms Control and Disarmament Agency; World Health Organization; International Labor Organization; International Communications Agency. This classification covers referrals from the Office of Personnel Management where an allegation has been received regarding an applicant's loyalty to the U.S. Government. These referrals refer to applicants from Peace Corps; Department of Energy, National Aeronautics and Space Administration, Nuclear Regulatory Commission, United States Arms Control and Disarmament Agency and the International Communications Agency.

152. Switchblade Knife Act. Title 15, United States Code, Sections 1241–1244.

153. Automobile Information Disclosure Act. Title 15, United States Code, Sections 1231–1233.

154. Interstate Transportation of Unsafe Refrigerators. Title 15, United States Code, Sections 1211–1214.

155. National Aeronautics and Space Act of 1958. Title 18, United States Code, Section 799.

156. Employee Retirement Income Security Act. Title 29, United States Code, Sections 1021–1029, 1111, 1131, and 1141; Title 18, United States Code, Sections 644, 1027, and 1954.

157. Civil Unrest. This classification concerns FBI responsibility for reporting information on civil disturbances or demonstrations. The FBI's investigative responsibility is based on the Attorney General's Guidelines for Reporting on Civil Disorders and Demonstrations Involving a Federal Interest which became effective April 5, 1976.

158. Labor-Management Reporting and Disclosure Act of 1959 (Security Matter) (obsolete). Public Law 86–257, Section 504.

159. Labor-Management Reporting and Disclosure Act of 1959

(Investigative Matter). Title 29, United States Code, Sections 501, 504, 522, and 530.

160. Federal Train Wreck Statute. Title 18, United States Code, Section 1992.

161. Special Inquiries for White House, Congressional Committee and Other Government Agencies. This classification covers investigations requested by the White House. Congressional committees or other Government agencies.

162. Interstate Gambling Activities. This classification covers information acquired concerning the nature and scope of illegal gambling activities in each field office.

163. Foreign Police Cooperation. This classification covers requests by foreign police for the FBI to render investigative assistance to such agencies.

164. Crime Aboard Aircraft. Title 49, United States Code, Sections 1472 and 1473.

165. Interstate Transmission of Wagering Information. Title 18, United States Code, Section 1065.

166. Interstate Transportation in Aid of Racketeering. Title 18, United States Code, Section 1952.

167. Destruction of Interstate Property. Title 15, United States Code, Sections 1281 and 1282.

168. Interstate Transportation of Wagering Paraphernalia. Title 18, United States Code, Section 1953.

169. Hydraulic Brake Fluid Act (obsolete); 76 Stat. 437, Public Law 87–637.

170. Extremist Informants (obsolete). This classification concerns individuals who provided information on a continuing basis on various extremist elements.

171. Motor Vehicle Seat Belt Act (obsolete). Pub. L. 88–201, 80th Congress.

172. Sports Bribery. Title 18, United States Code, Section 244.

173. Public Accommodations. Civil Rights Act of 1964 Public Facilities; Civil Rights Act of 1964 Public Education; Civil Rights Act of 1964 Employment; Civil Rights Act of 1964. Title 42, United States Code, Section 2000; Title 18, United States Code, Section 245.

174. Explosives and Incendiary Devices; Bomb Threats (Formerly Bombing Matters; Bombing Matters, Threats). Title 18, United States Code, Section 844.

175. Assaulting, Kidnapping or Killing the President (or Vice President) of the United States. Title 18, United States Code, Section 1751.

176. Anti-riot Laws. Title 18, United States Code, Section 245.

177. Discrimination in Housing. Title 42, United States Code, Sections 3601–3619 and 3631.

178. Interstate Obscene or Harassing Telephone Calls. Title 47, United States Code, Section 223.

179. Extortionate Credit Transactions. Title 18, United States Code, Sections 891–896.

180. Desecration of the Flag. Title 18, United States Code, Section 700.

181. Consumer Credit Protection Act. Title 15, United States Code, Section 1611.

182. Illegal Gambling Business: Illegal Gambling Business, Obstruction; Illegal Gambling Business Forfeiture. Title 18, United States Code, Section 1955; Title 18, United States Code, Section 1511.

183. Racketeer, Influence and Corrupt Organizations. Title 18, United States Code, Sections 1961–1968.

184. Police Killings. This classification concerns investigations conducted by the FBI upon written request from local Chief of Police or duty constituted head of the local agency to actively participate in the investigation of the killing of a police officer. These investigations are based on a Presidential Directive dated June 3, 1971.

185. Protection of Foreign Officials and Officials Guests of the United States. Title 18, United States Code, Sections 112, 970, 1116, 1117, and 1201.

186. Real Estate Settlement Procedures Act of 1974. Title 12, United States Code, Section 2602; Title 12, United States Code, Section 2606, and Title 12, United States Code, Section 2607.

187. Privacy Act of 1974, Criminal. Title 5, United States Code, Section 552a.

188. Crime Resistance. This classification covers FBI efforts to develop new or improved approaches, techniques, systems, equipment and devices to improve and strengthen law enforcement as mandated by the Omnibus Crime Control and Safe Streets Action of 1968.

189. Equal Credit Opportunity Act. Title 15, United States Code, Section 1691.

190. Freedom of Information/Privacy Acts. This classification covers the creation of a correspondence file to preserve and maintain accurate records concerning the handling of requests for records submitted pursuant to the Freedom of Information—Privacy Acts.

191. False Identity Matters. (obsolete) This classification covers the FBI's study and examination of criminal elements' efforts to create false identities.

192. Hobbs Act—Financial Institutions; Commercial Institutions Armored Carrier. Title 18, United States Code, Section 1951.

193. Hobbs Act—Commercial Institutions (obsolete). Title 18, United States Code, Section 1951; Title 47, United States Code, Section 506.

194. Hobbs Act—Corruption of Public Officials. Title 18, United States Code, Section 1951.

195. Hobbs Act—Labor Related. Title 18, United States Code, Section 1951.

196. Fraud by Wire. Title 18, United States Code, Section 1343.

197. Civil Actions or Claims Against the Government. This classification covers all civil suits involving FBI matters and most administrative claims filed under the Federal Tort Claims Act arising from FBI activities.

198. Crime on Indian Reservations. Title 18, United States Code, Sections 1151, 1152, and 1153.

199. Foreign Counterintelligence—Terrorism. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

200. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

201. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

202. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

203. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

204. Federal Revenue Sharing. This classification covers FBI investigations conducted where the Attorney General has been authorized to bring civil action whenever he has reason to believe that a pattern or practice of discrimination in disbursement of funds under the Federal Revenue Sharing status exists.

205. Foreign Corrupt Practices Act of 1977. Title 15, United States Code, Section 78.

206. Fraud Against the Government—Department of Defense, Department of Agriculture, Department of Commerce, Community Services Organization, Department of Transportation. (See classification 46 (supra) for a statutory authority for this and the four following classifications.)

207. Fraud Against the Government—Environmental Protection Agency, National Aeronautics and Space Administration, Department of Energy, Department of Transportation.

208. Fraud Against the Government—General Services Administration.

209. Fraud Against the Government—Department of Health and Human Services (Formerly Department of Health, Education, and Welfare).

210. Fraud Against the Government—Department of Labor.

211. Ethics in Government Act of 1978, Title VI (Title 28, Sections 591–596).

212. Foreign Counterintelligence—Intelligence Community Support. This is an administrative classification for the FBI's operational and technical support to other Intelligence Community agencies.

213. Fraud Against the Government—Department of Education.

214. Civil Rights of Institutionalized Persons Act (Title 42, United States Code, Section 1997).

215. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

216. thru 229. Foreign Counterintelligence Matters. (Same authority as 215.)

230. thru 240. FBI Training Matters.

241. DEA Applicant Investigations.

242. Automation Matters.

243. Intelligence Identities Protection Act of 1982.

244. Hostage Rescue Team.

245. Drug Investigative Task Force.

246 thru 248. Foreign Counterintelligence Matters. (Same authority as 215.)

249. Environmental Crimes—Investigations involving toxic or hazardous waste violations.

250. Tampering With Consumer Products (Title 18, U.S. Code, Section 1395).

251. Controlled Substance—Robbery;—Burglary (Title 18, U.S. Code, section 2118).

252. Violent Crime Apprehension Program (VICAP). Case folders containing records relevant to the VICAP Program, in conjunction with the National Center for the Analysis of Violent Crime Record System at the FBI Academy; Quantico, Virginia.

253. False Identification Crime Control Act of 1982 (Title 18, U.S. Code, Section 1028—Fraud and Related Activity in Connection With Identification Documents, and Section 1738—Mailing Private Identification Documents Without a Disclaimer).

254. Destruction of Energy Facilities (Title 18, U.S. Code, Section 1365) relates to the destruction of property of nonnuclear energy facilities.

255. Counterfeiting of State and Corporate Securities (Title 18, U.S. Code, Section 511) covers counterfeiting and forgery of all forms of what is loosely interpreted as securities.

256. Hostage Taking—Terrorism (Title 18, U.S. Code, Section 1203) prohibits taking of hostage(s) to compel third party to do or refrain from doing any act.

257. Trademark Counterfeiting Act (Title 18, United States Code, section 2320) covers the international trafficking in goods which bear a counterfeited trademark.

258. Credit Card Fraud Act of 1984 (Title 18, United States Code, section 1029) covers fraud and related activities in connection with access devices (credit and debit cards).

259. Security Clearance Investigations Program. (Same authority as 215.)

260. Industrial Security Program. (Same authority as 215.)

261. Security Officer Matters. (Same authority as 215.)

262. Overseas Homicide (Attempted Homicide—International Terrorism). Title 18, United States Code, Section 2331.

263. Office of Professional Responsibility Matters.

264. Computer Fraud and Abuse Act of 1986. Electronic Communications Privacy Act of 1986. Title 18, United States Code, Section 1030; Title 18, United States Code, Section 2701.

265. Acts of Terrorism in the United States—International Terrorist. (Followed by predicate offense from other classification.)

266. Acts of Terrorism in the United States—Domestic Terrorist. (Followed by predicate offense from other classification.)

267. Drug-Related Homicide. Title 21, U.S. Code, Section 848(e).

268. Engineering Technical Matters—FCI.

269. Engineering Technical Matters—Non-FCI.

270. Cooperative Witnesses.

271. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

272. Money Laundering. Title 18, U.S. Code, Sections 1956 and 1957.

273. Adoptive Forfeiture Matter—Drug. Forfeiture based on seizure of property by state, local or other Federal authority.

274. Adoptive Forfeiture Matter—Organized Crime. (Same explanation as 273.)

275. Adoptive Forfeiture Matter—White Collar Crime. (Same explanation as 273.)

276. Adoptive Forfeiture Matter—Violent Crime/Major Offenders Program. (Same explanation as 273.)

277. Adoptive Forfeiture Matter—Counterterrorism Program. (Same explanation as 273.)

278. Presidents Intelligence Oversight Board. Executive Order 12334.

279. Biological Weapons Anti-Terrorism Act of 1989. (Title 18, U.S. Code, Sections 175–179).

280. Equal Employment Opportunity Investigations.

281. Organized Crime Drug Investigations. Records Maintained in FBI Field Divisions—FBI field divisions maintain for limited periods of time investigative, administrative and correspondence records, including files, index cards and related material, some of which are duplicated copies of reports and similar documents forwarded to FBI Headquarters. Most investigative activities conducted by FBI field divisions are reported to FBI Headquarters at one or more stages of the investigation. There are, however, investigative activities wherein no reporting was made to FBI Headquarters, *e.g.*, pending cases not as yet reported and cases which were closed in the field division for any of a number of reasons without reporting to FBI Headquarters.

Duplicate records and records which extract information reported in the main files are also kept in the various divisions of the FBI to assist them in their day-to-day operation. These records are lists of individuals which contain certain biographic data, including physical description and photograph. They may also contain information concerning activities of the individual as reported to FBIHQ by the various field offices. The establishment of these lists is necessitated by the needs of the Division to have immediate access to pertinent information duplicative of data found in the central records without the delay caused by a time-consuming manual search of central indices. The manner of segregating these individuals varies depending on the particular needs of the FBI Division. The information pertaining to individuals who are a part of the list is derivative of information contained in the Central Records System. These duplicative records fall into the following categories:

(1) Listings of individuals used to assist in the location and apprehension of individuals for whom legal process is outstanding (fugitives):

(2) Listings of individuals used in the identification of particular offenders in cases where the FBI has jurisdiction. These listings include various photograph albums and background data concerning persons who have been formerly charged with a particular crime and who may be suspect in similar criminal activities; and photographs of individuals who are unknown but

suspected of involvement in a particular criminal activity, for example, bank surveillance photographs:

(3) Listings of individuals as part of an overall criminal intelligence effort by the FBI. This would include photograph albums, lists of individuals known to be involved in criminal activity, including theft from interstate shipment, interstate transportation of stolen property, and individuals in the upper echelon of organized crime:

(4) Listings of individuals in connection with the FBI's mandate to carry out Presidential directives on January 8, 1943, July 24, 1950, December 15, 1953, and February 18, 1976, which designated the FBI to carry out investigative work in matters relating to espionage, sabotage, and foreign counterintelligence. These listings may include photograph albums and other listings containing biographic data regarding individuals. This would include lists of identified and suspected foreign intelligence agents and informants:

(5) Special indices duplicative of the central indices used to access the Central Records System have been created from time to time in conjunction with the administration and investigation of major cases. This duplication and segregation facilitates access to documents prepared in connection with major cases.

In recent years, as the emphasis on the investigation of white collar crime, organized crime, and hostile foreign intelligence operations has increased, the FBI has been confronted with increasingly complicated cases, which require more intricate information processing capabilities. Since these complicated investigations frequently involve massive volumes of evidence and other investigative information, the FBI uses its computers, when necessary to collate, analyze, and retrieve investigative information in the most accurate and expeditious manner possible. It should be noted that this computerized investigative information, which is extracted from the main files or other commercial or governmental sources, is only maintained as necessary to support the FBI's investigative activities. Information from these internal computerized subsystems of the "Central Records System" is not accessed by any other agency. All disclosures of computerized information are made in printed form or other appropriate format, in accordance with the routine uses which are set forth below and in compliance with applicable security requirements.

Records also are maintained on a temporary basis relevant to the FBI's domestic police cooperating program, where assistance in obtaining information is provided to state and local police agencies. Also, personnel type information, dealing with such matters as attendance and production and accuracy requirements is maintained by some divisions.

(The following chart identifies various listings or indexes maintained by the FBI which have been or are being used by various divisions of the FBI in their day-to-day operations. The chart identifies the list by name, description and use, and where maintained, i.e., FBI Headquarters and/or Field Office. The number of field offices which maintain these indices is also indicated. The list indicates those indexes which are in current use (designated by the word "active") and those which are no longer being used, although maintained (designated by the word "inactive"). There are 27 separate indices which are classified in accordance with existing regulations and are not included in this list. The following indices are no longer being used by the FBI and are being maintained at FBIHQ pending receipt of authority to destroy: Black Panther Party Photo Index; Black United Front Index; Security Index; and Wounded Knee Album.)

1. Administrative Index (ADEX). Consists of cards with descriptive data on individuals who were subject to investigation in a national emergency because they were believed to constitute a potential or active threat to the internal security of the United States. When ADEX was started in 1971, it was made up of people who were formerly on the Security Index, Reserve Index, and Agitator Index. This index is maintained in two separate locations in FBI Headquarters. ADEX was discontinued in January 1978. This list is inactive at FBI Headquarters and 29 Field Offices.

2. Anonymous Letter File. Consists of photographs of anonymous communications and extortionate credit transactions, kidnapping, extortion and threatening letters. It is active at FBI Headquarters.

3. Associates of DEA Class I Narcotics Violators Listing. Consists of a computer listing of individuals whom DEA has identified as associates of Class I Narcotics Violators. It is active at FBI Headquarters and 56 Field Offices.

4. Background Investigation Index—Department of Justice. Consists of cards on persons who have been the subject of a full field investigation in connection with their consideration of employment in sensitive positions with Department of Justice, such as U.S. Attorney, Federal judges, or a high level Department position. It is active at FBI Headquarters.

5. Background Investigation Index—White House, Other Executive Agencies, and Congress. Consists of cards on persons who have been the subject of a full field investigation in connection with their consideration for employment in sensitive positions with the White House, Executive agencies (other than the Department of Justice) and the Congress. Active at FBI Headquarters.

6. Bank Fraud and Embezzlement Index. Consists of individuals who have been the subject of "Bank Fraud and Embezzlement" investigation. This file is used as an investigative aid. It is active in one Field Office.

7. Bank Robbery Album. Consists of photos of bank robbers, burglars, and larceny subjects. In some field offices it will also contain pictures obtained from local police departments of known armed robbers and thus potential bank robbers. The index is used to develop investigative leads in bank robbery cases and may also be used to show to witnesses of bank robberies. It is usually filed by race, height, and age. This index is also maintained in one resident agency (a suboffice of a field office). Active in 47 Field Offices.

8. Bank Robbery Nickname Index. Consists of nicknames used by known bank robbers. The index cards on each would contain the real name and method of operation and are filed in alphabetical order. Active in one Field Office.

9. Bank Robbery Note File. Consists of photographs of notes used in bank robberies in which the suspect has been identified. This index is used to help solve robberies in which the subject has not been identified but a note was left. The role is compared with the index to try to match the sentence structure and handwriting for the purpose of identifying possible suspects. Active at FBI Headquarters.

10. Bank Robbery Suspect Index. Consists of a control file or index cards with photos, if available, of bank robbers or burglars. In some field offices these people may be part of a bank robbery album. This index is generally maintained and used in the same manner as the bank robbery album. Active in 33 Field Offices.

11. Car Ring Case Photo Album. Consists of photos of subjects and suspects involved in a large car theft ring investigation. It is used as an investigative aid. Active in one Field Office.

12. Car Ring Case Photo Album and Index. Consists of photos of subjects and

suspects involved in a large car theft ring investigation. The card index maintained in addition to the photo album contains the names and addresses appearing on fraudulent title histories for stolen vehicles. Most of these names appearing on these titles are fictitious. But the photo album and card indexes are used as an investigative aid. Active in one Field Office.

13. Car Ring Case Toll Call Index. Consists of cards with information on persons who subscribe to telephone numbers to which toll calls have been placed by the major subjects of a large car theft ring investigation. It is maintained numerically by telephone number. It is used to facilitate the development of probable cause for a court-approved wiretap. Active in two Field Offices.

14. Car Ring Theft Working Index. Contains cards on individuals involved in car ring theft cases on which the FBI Laboratory is doing examination work. Active at FBI Headquarters.

15. Cartage Album. Consists of photos with descriptive data of individuals who have been convicted of theft from interstate shipment or interstate transportation of stolen property where there is a reason to believe they may request the offense. It is used in investigating the above violations. Active in three Field Offices.

16. Channelizing Index. Consists of cards with the names and case file numbers of people who are frequently mentioned in information reports. The index is used to facilitate the distributing or channeling of information reports to appropriate files. Active in nine Field Offices.

17. Check Circular File. Consists of fliers numerically in a control file on fugitives who are notorious fraudulent check passers and who are engaged in a continuing operation of passing checks. The fliers, which include the subject's name, photo, a summary of the subject's method of operation and other identifying data, are used to alert other FBI field offices and business establishments which may be the victims of bad checks.

18. Computerized Telephone Number File (CTNF) Intelligence. Consists of a computer listing of telephone numbers (and) subscribers' names and addresses) utilized by subjects and/or certain individuals which come to the FBI's attention during major investigations. During subsequent investigations, telephone numbers, obtained through subpoena, are matched with the telephone numbers on file to determine connections or associations. Active at FBI Headquarters.

19. Con Man Index. Consists of computerized names of individuals, along with company affiliation, who travel nationally and internationally while participating in large-dollar-value financial swindles. Active in four Field Offices.

20. Confidence Game (Flim Flam) Album. Consists of photos with descriptive information on individuals who have been arrested for confidence games and related activities. It is used as an investigative aid. Active in one Field Office.

21. Copyright Matters Index. Consists of cards of individuals who are film collectors and film titles. It is used as a reference in the investigation of copyright matters. Active in one Field Office.

22. Criminal Intelligence Index. Consists of cards with name and file number of individuals who have become the subject of an antiracketeering investigation. The index is used as a quick way to ascertain file numbers and the correct spelling of names. This index is active in two Field Offices and one Resident Agency.

23. Criminal Informant Index. Consists of cards containing identity and brief background information on all active and inactive informants furnishing information in the criminal area. Active at FBI Headquarters.

24. DEA Class 1 Narcotics Violators Listing. Consists of a computer listing of narcotic violators—persons known to manufacture, supply, or distribute large quantities of illicit drugs—with background data. It is used by the FBI in their role of assisting DEA in disseminating intelligence data concerning illicit drug trafficking. This index is also maintained in two resident agencies.

25. Deserter Index. Contains cards with the names of individuals who are known military deserters. It is used as an investigative aid. Active in four Field Offices.

26. False Identities Index. Contains cards with the names of deceased individuals whose birth certificates have been obtained by other persons for possible false identification uses and in connection with which the FBI laboratory has been requested to perform examinations. Inactive at FBI Headquarters.

27. False Identities List. Consists of a listing of names of deceased individuals whose birth certificates have been obtained after the person's death, and thus whose names are possibly being used for false identification purposes. The listing is maintained as part of the FBI's program to find persons using false identities for illegal purposes. Inactive at 31 Field Offices.

28. False Identity Photo Album. Consists of names and photos of people who have been positively identified as using a false identification. This is used as an investigative aid in the FBI's investigation of false identities. Inactive in two Field Offices.

29. FBI/Inspector General (IG) Case Pointer System (FICPS). Consists of a computerized listing of individual names of organizations which are the subject of active and inactive fraud investigations, along with the name of the agency conducting the investigation. Data is available to IG offices throughout the federal government to prevent duplication of investigative activity. Active at FBI Headquarters.

30. FBI Wanted Persons Index. Consists of cards on persons being sought on the basis of Federal warrants covering violations which fall under the jurisdiction of the FBI. It is used as a ready reference to identify those fugitives. Active at FBI Headquarters.

31. Foreign Counterintelligence (FCI). Consists of cards with identity background data on all active and inactive operational and informational assets in the foreign counterintelligence field. It is used as a reference aid on the FCI Asset program. Active at FBI Headquarters.

32. Fraud Against the Government Index. Consists of individuals who have been the subject of a "fraud against the Government"investigation. It is used as an investigative aid. Active in one Field Office.

33. Fugitive Bank Robbers File. Consists of fliers on bank robbery fugitives filed sequentially in a control file. FBI Headquarters distributes to the field offices fliers on bank robbers in a fugitive status for 15 or more days to facilitate their location. Active at FBI Headquarters and in 43 Field Offices.

34. General Security Index. Contains cards on all persons that have been the subject of a security classification investigation by the FBI field office. These cards are used for general reference purposes. Active in one Field Office.

35. Hoodlum License Plate Index. Consists of cards with the license plate numbers and descriptive data on known hoodlums and cars observed in the vicinity of hoodlum homes. It is used for quick identification of such person in the course of investigation. The one index which is not fully retrievable is maintained by a resident agency. Active in three Field Offices.

36. Identification Order Fugitive Flier File. Consists of fliers numerically in a control file. When immediate leads have

been exhausted in fugitive investigations and a crime of considerable public interest has been committed, the fliers are given wide circulation among law enforcement agencies throughout the United States and are posted in post offices. The fliers contain the fugitive's photograph, fingerprints, and description. Active at FBI Headquarters and in 49 Field Offices.

37. Informant Index. Consists of cards with the name, symbol numbers, and brief background information on the following categories of active and inactive informants, top echelon criminal informants, security informants, criminal information, operational and informational assets, extremist informants (discontinued), plant informant—informants on and about certain military basis (discontinued), and potential criminal informants. Active in 56 Field Offices.

38. Informants in Other Field Offices, Index of. Consist of cards with names and/or symbol numbers of informants in other FBI field offices that are in a position to furnish information that would also be included on the index card. Active in 15 Field Offices.

39. Interstate Transportation of Stolen Aircraft Photo Album. Consists of photos and descriptive data on individuals who are suspects known to have been involved in interstate transportation of stolen aircraft. It is used as an investigative aid. Active in one Field Office.

40. IRS Wanted List. Consists of one-page fliers from IRS on individuals with background information who are wanted by IRS for tax purposes. It is used in the identification of persons wanted by IRS. Active in 11 Field Offices.

41. Kidnapping Book. Consists of data, filed chronologically, on kidnappings that have occurred since the early fifties. The victims' names and the suspects, if known, would be listed with a brief description of the circumstances surrounding the kidnapping. The file is used as a reference aid in matching up prior methods of operation in unsolved kidnapping cases. Active at FBI Headquarters and inactive in four Field Offices.

42. Known Check Passers Album. Consists of photos with descriptive data of persons known to pass stolen, forged, or counterfeit checks. It is used as an investigative aid. Active in four Field Offices.

43. Known Gambler Index. Consists of cards with names, descriptive data, and sometimes photos of individuals who are known bookmakers and gamblers. The index is used in organized crime and gambling investigations. Subsequent to GAO's review, and at the recommendation of the inspection team at one of the two field offices where the index was destroyed and thus is not included in the total. Active in five Field Offices.

44. La Cosa Nostra (LCN) Membership Index. Contains cards on individuals having been identified as members of the LCN index. The cards contain personal data and pictures. The index is used solely by FBI agents for assistance in investigating organized crime matters. Active at FBI Headquarters and 55 Field Offices.

45. Leased Line Letter Request Index. Contains cards on individuals and organizations who are or have been the subject of a national security electronic surveillance where a leased line letter was necessary. It is used as an administrative and statistical aid. Active at FBI Headquarters.

46. Mail Cover Index. Consists of cards containing a record of all mail covers conducted on individuals and group since about January 1973. It is used for reference in preparing mail cover requests. Active at FBIHQ.

47. Military Deserter Index. Consists of cards containing the names of all military deserters where the various military branches have requested FBI assistance in locating. It is used as an administrative aid. Active at FBI Headquarters.

48. National Bank Robbery Album. Consists of fliers on bank robbery suspects held sequentially in a control file. When an identifiable bank camera photograph is available and the case has been under investigation for 30 days without identifying the subject, FBIHQ sends a flier to the field offices to help identify the subject. Active at FBI Headquarters and in 42 Field Offices.

49. National Fraudulent Check File. Contains photographs of the signature on stolen and counterfeit checks. It is filed alphabetically but there is no way of knowing the names are real or fictitious. The index is used to help solve stolen check cases by matching checks obtained in such cases against the index to identify a possible suspect. Active at FBI Headquarters.

50. National Security Electronic Surveillance Card File. Contains cards recording electronic surveillances previously authorized by the Attorney General and previously and currently authorized by the FISC; current and previous assets in the foreign counterintelligence field; and a historical, inactive section which contains cards believed to record nonconsented physical entries in national security cases, previously toll billings, mail covers and leased lines. The inactive section also contains cards Attorney General approvals and denials for warrantless electronic surveillance in the national security cases. Inactive at FBI Headquarters.

51. Night Depository Trap Index. Contains cards with the names of persons who have been involved in the theft of deposits made in bank night depository boxes. Since these thefts have involved various methods, the FBI uses the index to solve such cases by matching up similar methods to identify possible suspects. Active at FBI Headquarters.

52. Organized Crime Photo Album. Consists of photos and background information on individuals involved in organized crime activities. The index is used as a ready reference in identifying organized crime figures within the field offices' jurisdiction. Active in 13 Field Offices.

53. Photospread Identification Elimination File. Consists of photos of individuals who have been subjects and suspects in FBI investigations. It also includes photos received from other law enforcement agencies. These pictures can be used to show witnesses of certain crimes. Active in 14 Field Offices.

54. Prostitute Photo Album. Consists of photos with background data on prostitutes who have prior local or Federal arrests for prostitution. It is used to identify prostitutes in connection with investigations under the White Slave Traffic Act. Active in four Field Offices.

55. Royal Canadian Mounted Policy (RCMP) Wanted Circular File. Consists of a control file of individuals with background information of persons wanted by the RCMP. It is used to notify the RCMP if an individual is located. Active in 17 Field Offices.

56. Security Informant Index. Consists of cards containing identity and brief background information on all active and inactive informants furnishing information in the criminal area. Active at FBI Headquarters.

57. Security Subjects Control Index. Consists of cards containing the names and case file numbers of individuals who have been subject to security investigations check. It is used as a reference source. Active in one Field Office.

58. Security Telephone Number Index. Contains cards with telephone subscriber information subpoenaed from the telephone company in any security investigation. It is maintained numerically by the last three digits in the telephone number. It is used for general reference purposes in security

investigations. Active in one Field Office.

59. Selective Service Violators Index. Contains cards on individuals being sought on the basis of Federal warrants for violation of the Selective Service Act. Active at FBI Headquarters.

60. Sources of Information Index. Consists of cards on individuals and organizations such as banks, motels, local government that are willing to furnish information to the FBI with sufficient frequency to justify listing for the benefit of all agents. It is maintained to facilitate the use of such sources. Active in 10 Field Offices.

61. Special Services Index. Contains cards of prominent individuals who are in a position to furnish assistance in connection with FBI investigative responsibility. Active in 28 Field Offices.

62. Stolen Checks and Fraud by Wire Index. Consists of cards on individuals involved in check and fraud by wire violations. It is used as an investigative aid. Active in one Field Office.

63. Stop Notices Index. Consists of cards on names of subjects or property where the field office has placed a stop at another law enforcement agency or private business such as pawn shops in the event information comes to the attention of that agency concerning the subject or property. This is filed numerically by investigative classification. It is used to insure that the agency where the stop is placed is notified when the subject is apprehended or the property is located or recovered. Active in 43 Field Offices.

64. Surveillance Locator Index. Consists of cards with basic data on individuals and businesses which have come under physical surveillance in the city in which the field office is located. It is used for general reference purposes in antiracketeering investigations. Active in two Field Offices.

65. Telephone Number Index—Gamblers. Contains information on persons identified usually as a result of a subpoena for the names of subscribers to particular telephone numbers or toll records for a particular phone number of area gamblers and bookmakers. The index cards are filed by the last three digits of the telephone number. The index is used in gambling investigations. Active in two Field Offices.

66. Telephone Subscriber and Toll Records Check Index. Contains cards with information on persons identified as the result of a formal request or subpoena to the phone company for the identity of subscribers to particular telephone numbers. The index cards are filed by telephone number and would also include identity of the subscriber, billing party's identity, subscriber's address, date of request from the telephone company, and file number. Active in one Field Office.

67. Thieves, Couriers and Fences Photo Index. Consists of photos and background information on individuals who are or are suspected of being thieves, couriers, or fences based on their past activity in the area of interstate transportation of stolen property. It is used as an investigative aid. Active in four Field Offices.

68. Toll Record Request Index. Contains cards on individuals and organizations on whom toll records have been obtained in national security related cases and with respect to which FBIHQ had to prepare a request letter. It is used primarily to facilitate the handling of repeat requests on individuals listed. Active at FBIHQ.

69. Top Burglar Album. Consists of photos and background data of known and suspect top burglars involved in the area of interstate transportation of stolen property. It is used as an investigative aid. Active in four Field Offices.

70. Top Echelon Criminal Informer Program (TECIP) Index. Consists of cards containing identity and brief background information on individuals who are either furnishing high level information in the organized crime area or are under development to furnish such information. The index is used primarily to evaluate, corroborate, and coordinate informant information and to develop prosecutive data against racket figures under Federal, State, and local statutes. Active at FBI Headquarters.

71. Top Ten Program File. Consists of fliers, filed numerically in a control file, on fugitives considered by the FBI to be 1 of the 10 most wanted. Including a fugitive of the top 10 usually assures a greater national news coverage as well as nation-wide circulation of the flier. Active at FBI Headquarters and in 44 Field Offices.

72. Top Thief Program Index. Consists of cards of individuals who are professional burglars, robbers, or fences dealing in items likely to be passed in interstate commerce or who travel interstate to commit the crime. Usually photographs and background information would also be obtained on the index card. The index is used as an investigative aid. Active in 27 Field Offices.

73. Truck Hijack Photo Album. Contains photos and descriptive data of individuals who are suspected truck hijackers. It is used as an investigative aid and for displaying photos to witnesses and/or victims to identify unknown subjects in hijacking cases. Active in four Field Offices.

74. Truck Thief Suspect Photo Album. Consists of photos and background data on individuals previously arrested or are currently suspects regarding vehicle theft. The index is used as an investigative aid. Active in one Field Office.

75. Traveling Criminal Photo Album. Consists of photos with identifying data of individuals convicted of various criminal offenses and may be suspects in other offenses. It is used as an investigative aid. Active in one Field Office.

76. Veterans Administrative (VA)/ Federal Housing Administration (FHA) Matters Index. Consists of cards of individuals who have been subject of an investigation relative to VA and FHA matters. It is used as an investigative aid. Active in one Field Office.

77. Wanted Fliers File. Consists of fliers, filed numerically in a control file, on badly wanted fugitives whose apprehension may be facilitated by a flier. The flier contains the names, photographs, aliases, previous convictions, and a caution notice. Active at FBI Headquarters and in 46 Field Offices.

78. Wheeldex. Contains the nicknames and the case file numbers of organized crime members. It is used in organized crime investigations. Active in one Field Office.

79. White House Special Index. Contains cards on all potential White House appointees, staff members, guests, and visitors that have been referred to the FBI by the White House security office for a records check to identify any adverse or derogatory information. This index is used to expedite such check in view of the tight timeframe usually required. Active at FBI Headquarters.

80. Witness Protection Program Index. Contains cards on individuals who have been furnished a new identity by the U.S. Justice Department because of their testimony in organized crime trials. It is used primarily to notify the U.S. Marshals Service when information related to the safety of a protected witness comes to the FBI's attention. Active at FBI Headquarters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Records Act of 1950, Title 44, United States Code, chapter 31, section 3101; and title 36, Code of Federal Regulations, chapter XII, require Federal agencies to insure that adequate and proper records are made and preserved to document the organization, functions, policies, decisions, procedures and transactions and to protect the legal and

financial rights of the Federal Government, title 28, United States Code, section 534, delegates authority to the Attorney General to acquire, collect, classify, and preserve identification, criminal identification, crime and other records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records, both investigative and administrative, are maintained in this system in order to permit the FBI to function efficiently as an authorized, responsive component of the Department of Justice. Therefore, information in this system is disclosed to officials and employees of the Department of Justice, and/or all components thereof, who have need of the information in the performance of their official duties.

Personal information from this system may be disclosed as a routine use to any Federal agency where the purpose in making the disclosure is compatible with the law enforcement purpose for which it was collected, e.g., to assist the recipient agency in conducting a lawful criminal or intelligence investigation, to assist the recipient agency in making a determination concerning an individual's suitability for employment and/or trustworthiness for employment and/or trustworthiness for access clearance purposes, or to assist the recipient agency in the performance of any authorized function where access to records in this system is declared by the recipient agency to be relevant to that function.

In addition, personal information may be disclosed from this system to members of the Judicial Branch of the Federal Government in response to a specific request, or at the initiation of the FBI, where disclosure appears relevant to the authorized function of the recipient judicial office or court system. An example would be where an individual is being considered for employment by a Federal judge. Information in this system may be disclosed as a routine use to any state or local government agency directly engaged in the criminal justice process, e.g., police, prosecution, penal, probation and parole, and the judiciary, where access is directly related to a law enforcement function of the recipient agency, e.g., in connection with a lawful criminal or intelligence investigation, or making a determination concerning an individual's suitability for employment as a state or local law enforcement employee or concerning a victim's compensation under a state statute. Disclosure to a state or local government agency, (a) not directly engaged in the criminal justice process or (b) for a licensing or regulatory function, is considered on an individual basis only under exceptional circumstances, as determined by the FBI.

Information in this system pertaining to the use, abuse or traffic of controlled substances may be disclosed as a routine use to federal, state or local law enforcement agencies and to licensing or regulatory agencies empowered to engage in the institution and prosecution of cases before courts and licensing boards in matters relating to controlled substances, including courts and licensing boards responsible for the licensing or certification of individuals in the fields of pharmacy and medicine.

In any health care-related civil or criminal case, investigation, or matter, information indicating patient harm, neglect, or abuse, or poor or inadequate quality of care, at a health care facility or by a health care provider, may be disclosed as a routine use to any Federal, State, local, tribal, foreign, joint, international, or private entity that is responsible for regulating, licensing, registering, or accrediting any health care provider or health care facility, or enforcing any health care-related laws or regulations. Further, information indicating an ongoing quality of care problem by a health care provider or at a health care facility may be disclosed to the appropriate health plan. Additionally, unless otherwise prohibited by applicable law, information indicating patient harm, neglect, abuse, or poor or inadequate quality of care may be disclosed to the affected patient or his or her representative or guardian at the discretion of and in the manner determined by the agency in possession of the information. Information in this system may be disclosed as a routine use in a proceeding before a court of adjudicative body, e.g., the Equal Employment Opportunity Commission and the Merit Systems Protection Board, before which the FBI is authorized to appear, when (a) the FBI or any employee thereof in his or her official capacity, or (b) any employee in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (c) the United States, where the FBI determines it is likely to be affected by the litigation, is a party to litigation or has an interest in litigation and such records are determined by the FBI to be relevant to the litigation.

Information in this system may be disclosed as a routine use to an organization or individual in both the public or private sector if deemed necessary to elicit information or cooperation from the recipient for use by the FBI in the performance of an authorized activity. An example would be where the activities of an individual are disclosed to a member of the public in order to elicit his/her assistance in our apprehension or detection efforts.

Information in this system may be disclosed as a routine use to an organization or individual in both the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy, to the extent the information is relevant to the protection of life or property.

Information in this system may be disclosed to legitimate agency of a foreign government where the FBI determines that the information is relevant to that agency's responsibilities, and dissemination serves the best interests of the U.S. Government, and where the purpose in making the disclosure is compatible with the purpose for which the information was collected.

Relevant information may be disclosed from this system to the news media and general public where there exists a legitimate public interest, e.g., to assist in the location of Federal fugitives, to provide notification of arrests, and where necessary for protection from imminent threat of life or property. This would include releases of information in accordance with 28 CFR 50.2.

A record relating to an actual or potential civil or criminal violation of the copyright statute, Title 17, United States Code, or the trademark statutes. Titles 15 and 17, U.S. Code, may be disseminated to a person injured by such violation to assist him/her in the institution or maintenance of a suit brought under such titles. The FBI has received inquiries from private citizens and Congressional offices on behalf of constituents seeking assistance in locating individuals such as missing children and heirs to estates. Where the need is acute, and where it appears FBI files may be the only lead in locating the individual, consideration will be given to furnishing relevant information to the requester. Information will be provided only in those instances where there are reasonable grounds to conclude from available information the individual being sought would want the information to be furnished, e.g., an heir to a large estate. Information with regard to missing children will not be provided where they have reached their majority.

Information contained in this system, may be made available to a Member of Congress or staff acting upon the

member's behalf when the member of staff requests the information in behalf of and at the request of the individual who is the subject of the record.

A record from this system of records may be disclosed as a routine use to the National Archives and Records Administration and General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906, to the extent that legislation governing the records permits.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The active main files are maintained in hard copy form and some inactive records are maintained on microfilm. Investigative information which is maintained in computerized form may be stored in memory, on disk storage, on computer tape, or on a computer printed listing.

RETRIEVABILITY:

The FBI General Index must be searched to determine what information, if any, the FBI may have in its files. Index records, or pointers to specific FBI files, are created on all manner of subject matters, but the predominant type record is the name index record. It should be noted the FBI does not index all individuals who furnish information or all names developed during the course of an investigation. Only that information considered pertinent, relevant, or essential for future retrieval, is indexed. In certain major cases, individuals interviewed may be indexed to facilitate the administration of the investigation. The FBI has automated that portion of its index containing the most recent information—15 years for criminal related matters and 30 years for intelligence and other type matters.

Automation will not change the "Central Records System"; it will only facilitate more economic and expeditious access to the main files. Searches against the automated records are accomplished on a "batch off-line" basis for certain submitting agencies where the name search requests conform to FBI specified formats and also in an "on-line" mode with the use of video display terminals for other requests. The FBI will not permit any organization, public or private, outside the FBI to have direct access to the FBI indices system. All searches against the indices data base will be performed on site within FBI space by FBI personnel with the assistance of the automated procedures, where feasible. Automation of the various FBI field office indices was completed in 1989. This automation initiative has been on a "day-one" basis. This indices system points to specific files within a given field office. Additionally, certain complicated investigative matters may be supported by specialized computer systems or by individual microcomputers. Indices created in these environments are maintained as part of the particular computer system and accessible only through the system or through printed listings of the indices. Full text retrieval is used in a limited number of cases as an investigative technique. It is not part of the normal search process and is not used as a substitute for the General Index or computer indices mentioned above.

The FBI will transfer historical records to the National Archives consistent with 44 U.S.C. 2103. No record of individuals or subject matter will be retained for transferred files; however, a record of the file numbers will be retained to provide full accountability of FBI files and thus preserve the integrity of the filing system.

SAFEGUARDS:

Records are maintained in a restricted area and are accessed only by agency personnel. All FBI employees receive a complete background investigation prior to being hired. All employees are cautioned about divulging confidential information or any information contained in FBI files. Failure to abide by this provision violates Department of Justice regulations and may violate certain statutes providing maximum severe penalties of a ten thousand dollar fine or 10 years imprisonment or both. Employees who resign or retire are also cautioned about divulging information acquired in the jobs. Registered mail is used to transmit routine hard copy records between field offices. Highly classified records are hand carried by Special Agents or personnel of the Armed Forces Courier Service. Highly classified or sensitive privacy information, which is electronically transmitted between field offices, is transmitted in encrypted form to prevent interception and interpretation. Information transmitted in teletype form is placed in the main files of both the receiving and transmitting field offices. Field offices involved in certain complicated investigative matters may be provided with on-line access to the duplicative computerized information which is maintained for them on disk storage in the FBI Computer Center in Washington, DC, and this computerized data is also transmitted in encrypted form.

RETENTION AND DISPOSAL:

As the result of an extensive review of FBI records conducted by NARA, records evaluated as historical and permanent will be transferred to the National Archives after established retention periods and administrative needs of the FBI have elapsed. As deemed necessary, certain records may be subject to restricted examination and usage, as provided by 44 U.S.C. section 2104.

FBI record disposition programs relevant to this System are conducted in accordance with the FBI Records Retention Plan and Disposition Schedule which was approved by the Archivist of the United States and the U.S. District Court, District of Columbia. Investigative, applicant and administrative records which meet the destruction criteria will be destroyed after 20 or 30 years at FBI Headquarters and after 1, 5, 10 or 20 years in FBI Field Offices. Historical records will be transferred to the National Archives after 30 or 50 years, contingent upon investigative and administrative needs. The administrative indices and listings described within this System were appraised separately and disposition authority established. (Job No. NC1–65–82–4 and amendments)

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, Washington, DC 20535.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURES:

A request for access to a record from the system shall be made in writing with the envelope and the letter clearly marked "Privacy Access Request". Include in the request your full name, complete address, date of birth, place of birth, notarized signature, and other identifying data you may wish to furnish to assist in making a proper search of our records. Also include the general subject matter of the document of its file number. The requester will also provide a return address for transmitting the information. Requests for access to information maintained at FBI Headquarters must be addressed to the Director, Federal Bureau of Investigation, Washington, DC 20535. Requests for information maintained at FBI field divisions or Legal Attaches must be made separately and addressed to the specific field division or Legal Attache listed in the appendix to this system notice.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should also direct their request to the Director, Federal Bureau of Investigation, Washington, DC 20535, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

The FBI, by the very nature and requirement to investigate violations of law within its investigative jurisdiction and its responsibility for the internal security of the United States, collects information from a wide variety of sources. Basically, it is the result of investigative efforts and information furnished by other Government agencies, law enforcement agencies, and the general public, informants, witnesses, and public source material.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(8) (f), (g), of the Privacy Act pursuant to 5 U.S.C. 552a (j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e).

Appendix of Field Divisions and Legal Attaches for the Federal Bureau of Investigation Field Divisions; Justice/FBI–999

5th Floor, 445 Broadway, Albany, NY 12201.
POB 25186, Albuquerque, NM 87125.
POB 100560, Anchorage, AK 99510.
POB 1683, Atlanta, GA 30370.
7142 Ambassador Road, Baltimore, MD 21207.
2122 Building, Birmingham, AL 35203.
One Center Plaza, Suite 600, Boston, MA 02108.
111 West Huron Street, Buffalo, NY 14202.
6010 Kenley Lane, Charlotte, NC 28217.
219 S. Dearborn St., Chicago, IL 60604.
POB 1277, Cincinnati, OH 45201.
1240 E. 9th St., Cleveland, OH 44199.
POB 137, Columbia, SC 29202.
1801 W. Lamar, Dallas, TX 75202.
POB 1229, Denver, CO 80201.
POB 2118, Detroit, MI 48231.
700 E. San Antonio Ave., El Paso, TX 79901.
POB 50164, Honolulu, HI 96850.
POB 61369, Houston, TX 77208.
POB 1186, Indianapolis, IN 45206.
100 W. Capitol St., Jackson, MS 39269.
POB 8928, Jacksonville, FL 32239.
POB 2449, Kansas City, MO 64142.
POB 10368, Knoxville, TN 37919.
POB 16032, Las Vegas, NV 89101.
POB 21470, Little Rock, AR 72221–1470.
11000 Wilshire Blvd., Los Angeles, CA 90024.
POB 2467, Louisville, KY 40201.
167 N. Main St., Memphis, TN 38103.
POB 592418, Miami, FL 33159.
POB 2058, Milwaukee, WI 53201.
111 Washington Ave. South S–1100, Minneapolis, MN 55401.
POB 2128, Mobile, AL 36652.
POB 1158, Newark, NJ 07101.
POB 2058, New Haven, CT 06521.
POB 51930, New Orleans, LA 70151.
POB 1425, New York, NY 10008.
POB 3828, Norfolk, VA 23514.
POB 54511, Oklahoma City, OK 73154.
POB 548, Omaha, NE 68101.
600 Arch St., Philadelphia, PA 19106.
201 E. Indianola, Phoenix, AZ 85012.
POB 1315, Pittsburgh, PA 15230.
POB 709, Portland, OR 97207.
POB 12325, Richmond, VA 23241.
POB 13130, Sacramento, CA 95813.
POB 7251, St. Louis, MO 63177.
125 S. State St., Salt Lake City, UT 84138.
POB 1630, San Antonio, TX 78296.
880 Front St., San Diego, CA 92188.
POB 36015, San Francisco, CA 94102.
POB BT, San Juan, PR 00936.
915 2nd Ave., Seattle, WA 98174.
POB 3646, Springfield, IL 62708.
POB 172177, Tampa, FL 33602.
Washington Field Office, Washington, DC 20535.
Federal Bureau of Investigation Academy, Quantico, VA 22135.
Legal Attaches: (Send c/o the American Embassy for the Cities indicated).
Athens, Greece (PSC 108, Box 45, APO AE 09842) Bangkok, Thailand (Box 67, APO AP 96546).
Bern, Switzerland.
Bogota, Columbia (APO, Miami 34038).
Bonn, Germany (Box 310, APO, New York 09080).
Bridgetown, Barbados (Box B, FPO, Miami 34054).
Brussels, Belgium (APO, New York 09667).
Canberra, Australia (APO, San Francisco 96404–0001).
Caracas, Venezuela (Unit 4966, APO AA 34037).
Hong Kong, B.C.C. (FPO, San Francisco 96659–0002).
London, England (Box 2, FPO, New York 09509).
Madrid, Spain (PSC 61, Box 0001, APO AE 09642).
Manila, Philippines (APO, San Francisco 96528).
Mexico City, Mexico (POB 3087, Laredo, TX 78044–3087).
Montevideo, Uruguay (APO, Miami 34035).
Ottawa, Canada.
Panama City, Panama (Box E, APO, Miami 34002).
Paris, France (APO, New York 09777).
Rome, Italy (APO, New York 09794).
Tokyo, Japan (APO, San Francisco 96503).
Vienna, Austria (Unit 27937, Box 37, APO AE 09222).

JUSTICE/TAX–001

SYSTEM NAME:

Tax Division Central Classification Cards, Index Docket Cards, and Associated Records—Criminal Tax Cases.

SYSTEM LOCATION:

U.S. Department of Justice, Tax Division, 10th and Constitution Avenue, NW, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons referred to in potential or actual criminal tax cases and related matters of concern to the Tax Division under the Internal Revenue laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of an alphabetical index by individual name of all criminal tax cases, and related matters assigned, referred, or of interest to the Tax Division. Records in many instances are duplicated in the criminal section of the Division which has specific jurisdiction over criminal tax cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 28 CFR 0.70 and 0.71.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Classification cards are maintained on each Tax Division criminal case to identify and assign mail to the proper office within the Division; to relate incoming material to an existing case; to establish a file number for a new case upon receipt; and to provide a central index of cases within the Division.

B. Docket cards are records pertaining to the flow of legal work in the Division. They are maintained on each criminal case which is being or was handled by the Division's sections.

C. Case files maintained allow Division attorneys immediate access to information which is essential in carrying out their responsibilities concerning all criminal tax cases.

D. A record maintained in this system of records may be disseminated as a routine use as follows: (1) In any case in which there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, the record in question may be disseminated to the appropriate federal, state, local, or foreign agency charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law; (2) In the course of investigating the potential or actual violation of any law whether civil, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local or foreign agency, or to an individual or organization, if there is reason to believe

that such agency, individual, or organization possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant; (3) A record relating to a case or matter may be disseminated to the appropriate Federal, state, local, or foreign court or grand jury in accordance with applicable constitutional, substantive, or procedural law or practice; (4) A record relating to a case or matter may be disseminated to a Federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing; (5) A record relating to a case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings; (6) A record relating to a case or matter that has been referred to the Tax Division may be disseminated to the referring agency to notify such agency of the status of the case or matter or of any decision or determination that has been made; (7) A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement; (8) A record may be disseminated to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter. (9) *In any health care-related civil or criminal case, investigation, or matter, information indicating patient harm, neglect, or abuse, or poor or inadequate quality of care, at a health care facility or by a health care provider, may be disclosed as a routine use to any federal, state, local, tribal, foreign, joint, international or private entity that is responsible for regulating, licensing, registering, or accrediting any health care provider or health care facility, or enforcing any health care-related laws or regulations. Further, information indicating an ongoing problem by a health care provider or at a health care facility may be disclosed to the appropriate health plan. Additionally, unless otherwise prohibited by applicable law, information indicating patient harm, neglect, abuse or poor or inadequate quality of care may be disclosed to the affected patient or his or her representative or guardian at the discretion of and in the manner determined by the agency in possession of the information;* and (10) a record may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is stored manually on index cards and in folders.

RETRIEVABILITY:

Information is retrieved manually by the name of the individual from the index card which in turn indicates the case number, and the section unit or attorney assigned to work on the material.

SAFEGUARDS:

Information contained in this system is safeguarded and protected in accordance with applicable Departmental rules and procedures governing access, production and disclosure of any materials contained in its official files.

RETENTION AND DISPOSAL:

Currently there are no provisions for the disposal of the cards in this system, however, the records of the closed classes are forwarded to the Federal Record Center, where they are destroyed after 25 years.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General; Tax Division; U.S. Department of Justice; 10th Street and Constitution Avenue, NW, Washington, DC 20530.

NOTIFICATION PROCEDURE:

An inquiry concerning this system should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to the applicability of an exemption as to a specific record shall be made at the time a request for access is received. A request for access to a record contained in this system shall be made in writing, with the envelope and the letter clearly marked 'Privacy Access Request'. Include in the request the name of the individual involved, his birth date and place, or any other identifying number which may be of assistance in locating the record, the name of the case or matter involved, if known, the name of the judicial district involved, if known, and any other information which may be of assistance in locating the record. The requestor will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Internal Revenue Service, Department offices and employees, and other Federal, state, local, and foreign law enforcement and non-law enforcement agencies, private persons, witnesses, and informants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has proposed exemption of this system from subsection (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

JUSTICE/TAX–002

SYSTEM NAME:

Tax Division Central Classification Cards, Index Docket Cards, and Associated Records—Civil Tax Cases.

SYSTEM LOCATION:

U.S. Department of Justice; Tax Division; 10th and Constitution Avenue, NW, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons referred to in potential or actual civil tax cases and related matters of concern to the Tax Division under the Internal Revenue laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of an alphabetical index by individual name of all civil tax cases, and related matters assigned, referred, or of interest to the Tax

Division. Records in many instances are duplicated in the various Civil Tax Sections of the Division which have specific jurisdiction over civil tax cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 28 CFR 0.70 and 0.71.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Classification cards are maintained on each Tax Division civil case in order to identify and assign mail to the proper office within the Division; to relate incoming material to an existing case; to establish a file number for a new case upon receipt; and to provide a central index of civil tax cases within the Division.

B. Docket cards are records pertaining to the flow of legal work in the Division. They are maintained on each civil tax case which is being or was handled by the Division's Sections.

C. Case files maintained allow Division attorneys immediate access to information which is essential in carrying out their responsibilities concerning all civil tax cases.

D. A record maintained in this system of records may be disseminated as a routine use as follows: (1) In any case in which there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, the record in question may be disseminated to the appropriate Federal, state, local, or foreign agency charged with the responsibility of investigating or prosecuting such violations or charged with enforcing or implementing such law; (2) In the course of investigating the potential or actual violation of any law whether civil, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a Federal, state, local or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, trial or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant; (3) A record relating to a case or matter may be disseminated to the appropriate Federal, state, local, or foreign court or grand jury in accordance with applicable constitutional, substantive, or procedural law or practice; (4) A record relating to a case or matter may be disseminated to a Federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing; (5) A record relating to a case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings; (6) A record relating to a case or matter that has been referred to the Tax Division may be disseminated to the referring agency to notify such agency of the status of the case or matter of any decision or determination that has been made; (7) A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement; (8) A record may be disseminated to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter; (9) *In any health care-related civil or criminal case, investigation, or matter, information indicating patient harm, neglect, or abuse, or poor or inadequate quality of care, at a health care facility or by a health care provider, may be disclosed as a routine use to any federal, state, local, tribal, foreign, joint, international or private entity that is responsible for regulating, licensing, registering, or accrediting any health care provider or health care facility, or enforcing any health care-related laws or regulations. Further, information indicating an ongoing problem by a health care provider or at a health care facility may be disclosed to the appropriate health plan. Additionally, unless otherwise prohibited by applicable law, information indicating patient harm, neglect, abuse or poor or inadequate quality of care may be disclosed to the affected patient or his or her representative or guardian at the discretion of and in the manner determined by the agency in possession of the information;* and (10) a record may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is stored manually on index cards and in folders.

RETRIEVABILITY:

Information is retrieved manually by the name of the individual from the index card which, in turn, indicates the case number, and the section unit or attorney assigned to work on the material.

SAFEGUARDS:

Information contained in the system is safeguarded and protected in accordance with Departmental rules and procedures governing access, production and disclosure of any materials contained in its official files.

RETENTION AND DISPOSAL:

Currently, there are no provisions for the disposal of the cards in this system; however, the records of the closed classes are forwarded to the Federal Record Center, where they are destroyed after 25 years.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General, Tax Division, U.S. Department of Justice, 10th and Constitution Avenue, NW, Washington, DC 20530.

NOTIFICATION PROCEDURE:

An inquiry concerning this system should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to the applicability of an exemption to a specific record shall be made at the time a request for access is received. A request for access to a record contained in this system shall be made in writing, with the envelope and the letter clearly marked 'Privacy Access Request'. Include in the request the name of the individual involved, his birth date and place, or any other identifying number which may be of assistance in locating the record, the name of the case or matter involved, if known, the name of the judicial district involved, if known, and any other information which may be of assistance in locating the record. The requestor will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Internal Revenue Service, Department offices and employees, and other Federal, state, local, and foreign law enforcement and non-law enforcement agencies, private persons, witnesses and informants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3), (d)(1), (d)(2), (d)(3), and (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

[FR Doc. 98–4206 Filed 2–19–98; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–8]

Samuel Arnold, D.D.S.; Reprimand and Continuation of Registration

On November 1, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Samuel Arnold, D.D.S. (Respondent) of Fairborn, Ohio, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BA4089620, pursuant to 21 U.S.C. 824(a)(1), and deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent materially falsified his July 7, 1994 application for registration with DEA.

By letter dated November 24, 1995, Respondent filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Dayton, Ohio on October 22, 1996, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and the Government introduced documentary evidence. After the hearing, Government counsel submitted proposed findings of fact, conclusions of law and argument. Respondent did not submit any posthearing filing. On November 25, 1997, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's registration not be revoked, but that Respondent be issued a reprimand. Neither party filed exceptions to Judge Bittner's Opinion and Recommended Ruling, and on January 9, 1998, the record was transmitted to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Ruling of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that the Ohio State Dental Board (Board) issued a Notice of Opportunity for Hearing to Respondent on June 20, 1991, alleging that Respondent had charged the Ohio Department of Human Services for services to 29 nursing home patients that he did not actually perform in violation of state law. As a result, Respondent and the Board entered into a Consent Agreement that was fully executed on November 21, 1991, in which Respondent admitted the allegations in the Notice of Opportunity for Hearing, his license to practice dentistry was suspended for one year effective January 1, 1992, with 60 days stayed, and he was placed on probation for two years effective January 1, 1992. Respondent was permitted to resume the practice of dentistry on November 1, 1992.

Upon learning of his state suspension, DEA contacted Respondent on January 10, 1992, and requested that he voluntarily surrender his DEA registration. Respondent agreed to surrender his registration, but did not in fact do so. Instead, Respondent's previous registration was ultimately retired, since he did not submit an application for renewal of the registration.

On July 7, 1994, Respondent executed an application for a new DEA Certificate of Registration. One question on the application, hereinafter referred to as "the liability question," asks, "Has the applicant ever been convicted of a crime in connection with controlled substances under State or Federal law, or ever surrendered or had a Federal controlled substance registration revoked, suspended, restricted or denied, or ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?" Respondent answered "no" to this question. Respondent's application was approved by the registration unit in the DEA Detroit Field Division, and Respondent was issued the DEA Certificate of Registration that is the subject of these proceedings.

A DEA investigator testified at the hearing before Judge Bittner that had Respondent answered "yes" to the liability question his application would have been referred to the local DEA office in Columbus, Ohio for investigation. The investigator further testified on cross-examination however, that had Respondent answered "yes" to the liability question, his application would "more than likely" have been granted. The investigator further testified that there was nothing that would lead him to believe Respondent intentionally tried to circumvent DEA procedures to acquire a DEA registration, and that there had never been any charges or allegations relating to Respondent's handling of controlled substances.

Two individuals testified on behalf of Respondent, his office manager and the dental technician who owns and operates the dental laboratory that is located in Respondent's office. Both testified that they overhead a conversation between Respondent and an unidentified DEA employee which was conducted using a speaker telephone so they were able to hear both parties to the conversation. The office manager testified that the conversation occurred sometime "in July" and that Respondent asked how he should respond to the liability question in light of the Ohio Board's action. The office manager could not specifically identify who Respondent talked to, but testified that the DEA employee told Respondent that because his Ohio dental license was no longer suspended, he should answer the liability question in the negative. The dental technician was also unable to specifically identify the DEA employee, but testified that the DEA employee instructed Respondent to answer the liability questions in the negative after ascertaining that Respondent's suspension was unrelated to his handling of controlled substances. Both testified that Respondent is very cautious in his prescribing of controlled substances.

Pursuant to 21 U.S.C. 824(a)(1), "A registration pursuant to section 823 of

this title to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registration—(1) has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter." DEA has previously held that in finding that there has been a material falsification for purposes of 21 U.S.C. 824(a)(1), it must be determined that the applicant knew or should have known that the response given to the liability question was false. See, *Martha Hernandez, M.D.*, 62 FR 61,145 (1997); *Bobby Watts, M.D.*, 58 FR 4699 (1993); *Herbert J. Robinson, M.D.*, 59 FR 6304 (1994).

Here, it is undisputed that Respondent's Ohio dental license had been suspended and placed on probation, yet Respondent answered "no" to the question asking whether he had "ever had a state professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation." It is also undisputed that Respondent knew that his Ohio dental license had previously been suspended. Therefore, the Acting Deputy Administrator concurs with Judge Bittner's conclusion "that Respondent materially falsified his application, and that therefore there are grounds to revoke Respondent's DEA registration."

The question then becomes whether revocation is the appropriate sanction in light of the facts and circumstances of this case. Respondent argues that although he was aware that his Ohio dental license had been suspended, he did not understand the liability question. However, DEA has previously held that such an explanation does not relieve the applicant of the "responsibility to carefully read the question and to honestly answer all parts of the question." *Martha Hernandez, M.D.*, 62 FR 61,145, 61,147 (1997).

Nevertheless, in exercising his discretion in determining the appropriate remedy in this case, the Acting Deputy Administrator finds it significant that Respondent presented the testimony of two individuals who overheard Respondent telephoning someone before executing the application. The Acting Deputy Administrator concurs with Judge Bittner's finding "that the telephone call indicates that Respondent attempted to comply with the applicable laws and regulations related to maintaining a DEA registration." While this telephone call does not relieve Respondent of the responsibility for falsifying his application, it does indicate an effort on his part to answer the question correctly.

Also, in considering the appropriate remedy in this matter, the Acting Deputy Administrator has considered that the suspension of Respondent's Ohio dental license did not relate to his handling of controlled substances. While DEA has revoked registrations in the past based upon the material falsification of an application that was not related to the mishandling of controlled substances, the Acting Deputy Administrator has previously concluded that he must consider all of the facts and circumstances of a particular case. See *Id.* at 61,148. Here, Respondent apparently attempted to get guidance on the appropriate response to the liability question, the office manager and dental technician both testified that Respondent was very cautious in his prescribing of controlled substances, and Judge Bittner was favorably impressed with "the manner in which (Respondent) conducted himself at the hearing." Therefore, the Acting Deputy Administrator agrees with Judge Bittner's conclusion that revocation would be too severe a sanction given the facts and circumstances of this case.

However, the Acting Deputy Administrator is troubled by Respondent's failure to correctly answer the liability question on the application. DEA relies on the truthfulness of the responses to the questions on the application. Therefore, the Acting Deputy Administrator finds that it is appropriate to reprimand Respondent for his failure to accurately respond to the liability question on his application for a DEA Certificate of Registration.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby reprimands Samuel Arnold, D.D.S., for failing to properly complete his DEA registration application. The Acting Deputy Administrator further orders that DEA Certificate of Registration BA4089620, issued to Samuel Arnold, D.D.S., be continued, and any pending applications be granted. This order is effective February 20, 1998.

Dated: February 12, 1998.

[FR Doc. 98–4359 Filed 2–19–98; 8:45 am]

BILLING CODE 4410–09–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 5–98]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Wednesday, February 25, 1998, 9:30 a.m. to 5:00 p.m.; Friday, February 27, 1998, 9:30 a.m. to 5:00 p.m.; Monday, March 2, 1998, 9:30 a.m. to 5:00 p.m.; Wednesday, March 4, 1998, 9:30 a.m. to 5:00 p.m.; Friday, March 6, 1998, 9:30 a.m. to 5:00 p.m.

SUBJECT MATTER: (1) Oral Hearings and Hearings on the Record on Objections to Individual Proposed Decisions on Claims of Holocaust Survivors Against Germany; (2) Issuance of Individual Final Decisions on Claims of Holocaust Survivors Against Germany.

STATUS: Closed.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC February 17, 1998.

Delissa A. Ridgway,

Chair.

[FR Doc. 98–4469 Filed 2–18–98; 12:14 pm]

BILLING CODE 4410–01–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1895–97]

Direct Mail Program for the New Orleans District Office and the Louisville and Memphis Suboffices; Form N–400

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice announces that the Immigration and Naturalization Service (INS or Service) is expanding its Direct Mail Program to include the New Orleans District Office and the Louisville and Memphis Suboffices on

the list of direct mail sites for filing Form N–400, Application for Naturalization. Applicants residing within these districts and suboffices will mail their Form N–400 directly to the designated INS Service Center for processing. This expansion is intended to improve INS service to the public by reducing processing times for Form N–400, limiting in-person visits to local offices, and improving the quality of case status information provided to the public.

DATES: This notice is effective February 20, 1998.

FOR FURTHER INFORMATION CONTACT: Susan Arroyo, Adjudications Officer, Immigration and Naturalization Service, Office of Naturalization Operations, 801 I Street, NW., Room 935E, Washington, DC 20536, telephone, (202) 514–8247.

SUPPLEMENTARY INFORMATION: Under the Direct Mail Program, certain applicants and petitioners for immigration benefits mail applications and petitions directly to an INS service center for processing instead of submitting them to a local INS office. The purposes and strategy of the Direct Mail Program have been discussed in previous rulemaking and notices (see, e.g., 59 FR 33903 and 59 FR 33985).

The Service is continuing expansion of the Direct Mail Program as applied to Form N–400 by adding the New Orleans District Office, and the Louisville and Memphis Suboffices, as Direct Mail sites.

Where To File

Effective February 20, 1998, applicants for naturalization residing within the jurisdiction of the New Orleans District Office and the Louisville and Memphis Suboffices must mail the Form N–400, Application for Naturalization, directly to the Texas Service Center at the following address; USINS Texas Service Center, Attention: N–400 Unit, P.O. Box 851204, Mesquite, Texas 75185–1204.

Transition

During the first 60 days following the effective date of this notice, the New Orleans District Office and the Louisville and Memphis Suboffices will forward in a timely fashion to the Texas Service Center any Form N–400, Application for Naturalization, which has been inadvertently filed with the respective district or suboffice. Applicants will be provided a notice at the time of filing at the district or suboffice advising them their application is being forwarded to the service center for initial processing. The applicant will receive written notification from their respective district or suboffice of the date, place, and time of their interview for naturalization. When applications are forwarded from the district or suboffices, they will be receipted and filed when they arrive at the service center. After the 60-day transition period, applicants attempting to file Form N–400, Application for Naturalization, at the offices listed above will be directed to mail their application directly to the Texas Service Center for processing.

Dated: February 18, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–4344 Filed 2–19–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1885–97]

Direct Mail Program for the San Francisco District Office and the Fresno, Oakland, Sacramento and San Jose Suboffices; Form N–400

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice announces that the Immigration and Naturalization Service (INS or Service) is expanding its Direct Mail Program to include the San Francisco District Office and the Fresno, Oakland, Sacramento and San Jose Suboffices on the current list of direct mail sites for filing Form N–400, Application for Naturalization. Applicants residing within these districts and suboffices will mail their Form N–400 directly to the designated INS service center for processing. This expansion is intended to improve INS service to the pubic by reducing processing times for Form N–400, limiting in-person visits to local offices, and improving the quality of case status information provided to the public.

DATES: This notice is effective February 20, 1998.

FOR FURTHER INFORMATION CONTACT: Susan Arroyo, Adjudications Officer, Immigration and Naturalization Service, Office of Naturalization Operations, 801 I Street, NW., Room 935E, Washington, DC 20536, telephone, (202) 514–8247.

SUPPLEMENTARY INFORMATION: Under the Direct Mail Program, certain applicants and petitioners for immigration benefits mail their applications and petitions directly to an INS service center for processing instead of submitting them to a local INS office. The purposes and strategy of the Direct Mail Program have been discussed in detail in previous rulemaking and notices (see, e.g., 50 FR 33903 and 59 FR 33985).

The Service is continuing expansion of the Direct Mail Program as applied to Form N–400 by adding the San Francisco District Office and the Fresno, Oakland, Sacramento, and San Jose Suboffices as Direct Mail sites.

Where To File

Effective February 20, 1998, applicants for naturalization residing within the jurisdiction of the San Francisco District Office and the Fresno, Oakland, Sacramento, and San Jose Suboffices must mail the Form N–400, Application for Naturalization, directly to the California Service Center at the following address: USINS California Service Center, *Attention:* N–400 Unit, P.O. Box 10400, Laguna Nigel, California 92607–0400.

Transition

During the first 60 days following the effective date of this notice, the San Francisco District Office and the Fresno, Oakland, Sacramento, and San Jose Suboffices will forward in a timely fashion to the California Service Center any Form N–400, Application for Naturalization, which has been inadvertently filed with the respective district or suboffice. Applicants will be provided a notice at the time of filing at the district or suboffice advising them their application is being forwarded to the Service Center for initial processing. The applicant will receive written notification from their respective district or suboffice of the date, place, and time of their interview for naturalization. When applications are forwarded from the district or suboffices, they will be receipted and filed when they arrive at the Service Center. After the 60-day transition period, applicants attempting to file Form N–400, Application for Naturalization, at the offices listed above will be directed to mail their application directly to the California Service Center for processing.

Dated: February 13, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–4345 Filed 2–19–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; U.S. National Administrative Office; North American Agreement on Labor Cooperation; Hearing on Submission #9703

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of hearing.

SUMMARY: The purpose of this notice is to announce a hearing, open to the public, on Submission #9703.

Submission #9703, was filed with the U.S. National Administrative Office (NAO) on December 15, 1998, by the Echlin Workers Alliance, a group that includes the Teamsters; the Canadian Auto Workers; the Union of Needletrades and Industrial Textile Employees (UNITE); the United Electrical, Radio and Machine Workers of America; the Paperworkers; and the Steelworkers. Twenty-four other organizations, including non-governmental organizations, human rights groups and labor unions from the three NAFTA countries are cited as concerned organizations in the submission. The submission was accepted for review by the NAO on January 30, 1998, and a Notice of acceptance for review was published in the **Federal Register** on February 4, 1998.

Article 16(3) of the North American Agreement on Labor Cooperation (NAALC) provides for the review of labor law matters in Canada and Mexico by the NAO in accordance with U.S. domestic procedures. Revised procedural guidelines pertaining to the submission, review, and reporting process utilized by the Office were published in the **Federal Register** on April 7, 1994 (59 FR 16660). The guidelines provide for a discretionary hearing as part of the review.

DATES: The hearing will be held on March 23, 1998, commencing at 9:00 a.m. Persons desiring to present oral testimony at the hearing must submit a request in writing, along with a written statement or brief desiring the information to be presented or position to be taken.

ADDRESSES: The hearing will be held at the Department of Labor, 200 Constitution Ave., N.W., Room C–5515 1A and 1B, in Washington, D.C. Written statements or briefs and requests to present oral testimony may be mailed or hand delivered to the U.S. National Administrative Office (NAO), Department of Labor, 200 Constitution Avenue, N.W., Room C–4327, Washington, D.C. 20210. Requests to present oral testimony and written statements or briefs must be received by the NAO no later than close of business, March 13, 1998.

FOR FURTHER INFORMATION CONTACT: Irasema T. Garza, Secretary, U.S. National Administrative Office, Department of Labor, 200 Constitution Avenue, N.W., Room C–4327, Washington, D.C. 20210. Telephone: (202) 501–6653 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Nature and Conduct of Hearing

As set out in the notice published in the **Federal Register** on February 4, 1998, the objective of the NAO's review of the submission is to gather information to better understand and publicly report on the Government of Mexico's promotion of, compliance with, and effective enforcement of, its labor law through appropriate government action, among them its laws relating to freedom of association and the right to bargain collectively as well as its labor laws relating to the prevention of occupational injuries and illnesses in violation of the NAALC article 3(1). The review will also address the composition of the labor tribunal in this case in view of its compliance with Article 5(4) of the NAALC which commits the Parties to ensuring that tribunals that conduct review proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

The hearing will be conducted by the Secretary of the NAO or the Secretary's designee. It will be open to the public. All proceedings will be conducted in English, with simultaneous translation in English and Spanish provided. The public files for the submission, including written statements, briefs, and requests to present oral testimony, will be made a part of the appropriate hearing record. The public files will also be available for inspection at the NAO prior to the hearing.

The hearing will be transcribed. A transcript of the proceeding will be made available for inspection, as provided for in Section E of the procedural guidelines, or may be purchased from the reporting company.

Disabled persons should contact the Secretary of the NAO no later than March 17, 1998 if special accommodations are needed.

II. Written Statements or Briefs and Requests to Present Oral Testimony

Written statements or briefs shall provide a description of the information to be presented or position taken and shall be legibly typed or printed. Requests to present oral testimony shall include the name, address, and telephone number of the witness, the organization represented, if any, and any other information pertinent to the request. Five copies of a statement or brief and a single copy of a request to present oral testimony shall be submitted to the NAO at the time of filing.

No request to present oral testimony will be considered unless accompanied by a written statement or brief. A request to present oral testimony may be denied if the written statement or brief suggests that the information sought to be provided is unrelated to the review of the submission or for other appropriate reasons. The NAO will notify each requester of the disposition of the request to present oral testimony.

In presenting testimony, the witness should summarize the written statement or brief, may supplement the written statement or brief with relevant information, and should be prepared to answer questions from the Secretary of the NAO or the Secretary's designee. Oral testimony will ordinarily be limited to a ten minute presentation, not including the time for questions. Persons desiring more than ten minutes for their presentation should so state in the request, setting out reasons why additional time is necessary.

The requirements relating to the submission of written statements or briefs and requests to present oral testimony may be waived by the Secretary of the NAO for reasons of equity and public interest.

Signed at Washington, D.C. on February 13, 1998.

Irasema T. Garza,

Secretary, U.S. National Administrative Office.

[FR Doc. 98–4371 Filed 2–19–98; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and

fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts" shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing from the date of this notice, General Wage Determination No. PA980068 dated February 13, 1998.

Agencies with construction projects pending, to which this wage decision would have been applicable, should utilize Wage Decision No PA980057 dated February 13, 1998. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (1)) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and States:

Volume III:

Mississippi
MS980059 (Feb. 20, 1998)
MS980060 (Feb. 20, 1998)

Volume V:

Arkansas
AR980047 (Feb. 20, 1998)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis—Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

New Jersey
NJ980002 (Feb. 13, 1998)
NJ980003 (Feb. 13, 1998)
NJ980004 (Feb. 13, 1998)
NJ980005 (Feb. 13, 1998)
NJ980007 (Feb. 13, 1998)

Volume II:

Pennsylvania
PA980057 (Feb. 13, 1998)

Volume III:

Alabama
AL980034 (Feb. 13, 1998)
Florida
FL980009 (Feb. 13, 1998)
FL980017 (Feb. 13, 1998)
FL980032 (Feb. 13, 1998)
FL980045 (Feb. 13, 1998)
FL980096 (Feb. 13, 1998)
Georgia
GA970032 (Feb. 13, 1998)
GA980053 (Feb. 13, 1998)
GA980065 (Feb. 13, 1998)
GA980073 (Feb. 13, 1998)
Kentucky
KY980025 (Feb. 13, 1998)
KY980027 (Feb. 13, 1998)
North Carolina
NC980050 (Feb. 13, 1998)
South Carolina
SC980036 (Feb. 13, 1998)

Volume IV:

Illinois
IL980001 (Feb. 13, 1998)
IL980002 (Feb. 13, 1998)
IL980003 (Feb. 13, 1998)
IL980004 (Feb. 13, 1998)
IL980006 (Feb. 13, 1998)
IL980007 (Feb. 13, 1998)
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IL980067 (Feb. 13, 1998)
IL980070 (Feb. 13, 1998)
Michigan
MI980003 (Feb. 13, 1998)
MI980004 (Feb. 13, 1998)
MI980017 (Feb. 13, 1998)
MI980023 (Feb. 13, 1998)
MI980034 (Feb. 13, 1998)
MI980036 (Feb. 13, 1998)
MI980039 (Feb. 13, 1998)
MI980040 (Feb. 13, 1998)
MI980064 (Feb. 13, 1998)
MI980075 (Feb. 13, 1998)
Minnesota
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MN980039 (Feb. 13, 1998)
MN980058 (Feb. 13, 1998)
MN980059 (Feb. 13, 1998)
MN980061 (Feb. 13, 1998)
Ohio
OH980001 (Feb. 13, 1998)
OH980002 (Feb. 13, 1998)
OH980003 (Feb. 13, 1998)
OH980012 (Feb. 13, 1998)
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OH980018 (Feb. 13, 1998)
OH980026 (Feb. 13, 1998)
OH980027 (Feb. 13, 1998)
OH980028 (Feb. 13, 1998)
OH980029 (Feb. 13, 1998)
OH980032 (Feb. 13, 1998)
OH980035 (Feb. 13, 1998)

Volume V:

Iowa
IA980002 (Feb. 13, 1998)
IA980006 (Feb. 13, 1998)
Kansas
KS980006 (Feb. 13, 1998)
KS980007 (Feb. 13, 1998)
KS980008 (Feb. 13, 1998)
KS980011 (Feb. 13, 1998)
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KS980018 (Feb. 13, 1998)
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KS980028 (Feb. 13, 1998)
KS980035 (Feb. 13, 1998)
Louisiana
LA980005 (Feb. 13, 1998)
LA980009 (Feb. 13, 1998)
LA980018 (Feb. 13, 1998)

Volume VI:

Colorado
CO980006 (Feb. 13, 1998)
CO980008 (Feb. 13, 1998)
CO980009 (Feb. 13, 1998)
CO980016 (Feb. 13, 1998)
CO980018 (Feb. 13, 1998)
CO980025 (Feb. 13, 1998)
North Dakota
ND980001 (Feb. 13, 1998)
ND980003 (Feb. 13, 1998)
ND980004 (Feb. 13, 1998)
ND980005 (Feb. 13, 1998)
Washington
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Volume VII:

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

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Signed at Washington, D.C., this 13th day of February 1998.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–4202 Filed 2–19–98; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

The "Significant and Substantial" Phrase in Sections 104(d) and (e) of the Federal Mine Safety and Health Act of 1977; Interpretative Bulletin

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice, request for comments.

SUMMARY: MSHA is announcing a public comment period concerning the Interpretative Bulletin providing notice of the Secretary's interpretation of the statutory phrase "significant and substantial" appearing in sections 104(d) and (e) of the Federal Mine Safety and Health Act of 1977 (Mine Act). The Interpretative Bulletin was published in the **Federal Register** on February 5, 1998 (63 FR 6012). The Agency solicits public comment concerning the implementation and impact of the Secretary's interpretation of the "significant and substantial" phrase.

DATES: Comments must be submitted on or before April 21, 1998.

ADDRESSES: A copy of the Interpretative Bulletin may be obtained from the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203.

Comments on the Interpretative Bulletin may be transmitted by electronic mail, fax, or mail, or dropped off in person at any MSHA office. Comments by electronic mail must be clearly identified as such and sent to this e-mail address: comments@msha.gov. Comments by fax must be clearly identified as such and sent to: MSHA, Office of Standards, Regulations, and Variances, 703–235–5551. Send mail comments to: MSHA, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, VA 22203–1984.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 703–235–1910.

SUPPLEMENTARY INFORMATION: The purpose of the Interpretative Bulletin is to provide notice of the Secretary's interpretation of the statutory phrase "significant and substantial" appearing in sections 104(d) and (e) of the Mine Act. The Secretary's Interpretative Bulletin noted that "a violation must be found to be 'significant and substantial' as long as it is shown to present a hazard that is more than remote or speculative." The Interpretative Bulletin

sets out a statement of purpose, and the Secretary's disagreement with the Federal Mine Safety and Health Review Commission's interpretation of the phrase "significant and substantial." The document provides a basis for the Secretary's interpretation based on the plain language of the Mine Act and its legislative history, and the underlying purpose and enforcement scheme of the Mine Act.

The "significant and substantial" designation is an important part of the Mine Act's scheme for promoting miner safety and health because a "significant and substantial" finding forms the basis for possible withdrawal of miners under Section 104(d) of the Mine Act when combined with an "unwarrantable failure" finding and the basis for a possible withdrawal of miners under Section 104(e) when a pattern of "significant and substantial" violations is established. The Secretary's decision to publish the Interpretative Bulletin was a result of concern that, in certain cases, violations that present real hazards to miner safety and health are not being determined to be "significant and substantial." In *Hobet*, miners were exposed to dust being generated by a high wall drill at a mine which in the past, had been placed on a reduced dust standard due to high levels of silica. Studies by the National Institute for Occupational Safety and Health and x-ray surveillance efforts at surface coal mines have demonstrated that such exposures result in serious and sometimes fatal lung disease. In another instance, it was determined that the failure to follow the mine evacuation plan and withdraw miners outby during a belt fire was not "significant and substantial" (S&S) because the fire was quickly extinguished. In a recently decided case, the administrative law judge found that stuck rollers on a conveyor did not constitute an S&S violation, even though there were accumulations of coal on rollers and belt structures, rollers had been worn flat by rubbing, and rollers were warm to the touch. However, because the Secretary did not establish the exact amount of material in the accumulations the violation was found to be non S&S. In the Secretary's view, such violations clearly involve hazards that demand serious attention by mine operators because they present real threats to miner safety and health. Challenges to the S&S determinations made by inspectors on citations such as these have led to the Secretary's conclusion that the Commission's interpretation creates uncertainty about hazards to miners' safety and health and, more importantly, misleads miners and mine operators to underestimate the risk of injury, illness or death.

As the Secretary indicated in the Interpretative Bulletin, the Secretary's interpretation is that a violation is "significant and substantial" if it presents a hazard that is more than remote or speculative in nature—that is, if it presents a hazard that has a *realistic possibility of occurring*. The Secretary believes that applying the "significant and substantial" designation to such violations will result in a realistic application of the "significant and substantial" clause and will serve to focus enforcement efforts on those violations that pose a real threat to miner safety and health. The Secretary's interpretation does not treat as "significant and substantial" all violations that are non-technical in nature.

MSHA believes that the Interpretative Bulletin will have a consequential impact on the mining community. MSHA is interested in receiving comments from the mining public on the implementation, application, and effect of the Secretary's interpretation on the mining public. MSHA is especially interested in comments from miners, mine operators, and other mine industry groups that may be affected by the Secretary's interpretation. The Agency's solicitation of such public comment does not indicate that the Secretary intends to or is required to engage in notice-and-comment rulemaking with respect to her interpretation of the "significant and substantial" phrase.

Dated: February 17, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 98–4451 Filed 2–19–98; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–97–17]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Occupational Safety and Health Administration.

ACTION: Notice.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing that a collection of information regarding occupational injuries and illnesses has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This document announces the OMB approval number and expiration date.

FOR FURTHER INFORMATION CONTACT: Joseph J. DuBois, Office of Statistics, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3507, 200 Constitution Avenue, NW, Washington, D.C. 20210, telephone (202) 219–6463.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 11, 1997 (62 FR 31848–31849), the Agency announced its intent to request an extension of approval for the OSHA Data Collection System. This data collection will request occupational injury and illness data and employment and hours worked data from selected employers in the following Standard Industrial Classifications (SICs):

20–39 Manufacturing
0783 Ornamental Shrub and Tree Services
4210 Trucking & Courier Services, Ex. air
4220 Public Warehousing and Storage
4230 Trucking Terminal Facilities
4490 Water Transportation Services
4510 Air Transportation, Scheduled
4580 Airports, Flying Fields, & Services
4783 Packing and Crating
4953 Refuse Systems
5010 Motor Vehicles, Parts, and Supplies
5050 Metals and Minerals, Exc. Petroleum
5093 Scrap and Waste Materials
5140 Groceries and Related Products
5180 Beer, Wine, and Distilled Beverages
5210 Lumber and Other Building Materials
8050 Nursing and Personal Care Facilities

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB has renewed its approval for the information collection and assigned OMB control number 1218–0209. The approval expires 12/31/1998. Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated February 13, 1998.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 98–4370 Filed 2–19–98; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office; National Industrial Security Program Policy Advisory Committee: Notice of Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2) and implementing regulation 41 CFR 101.6, announcement is made for the following committee meeting:

Name of Committee: National Industrial Security Program Policy Advisory Committee (NISPPAC).

Date of Meeting: March 24, 1998.

Time of Meeting: 9:00 a.m. to 11:00 a.m.

Place of Meeting: National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Room 105, Washington, DC 20408.

Purpose: To discuss National Industrial Security Program policy matters.

This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than March 19, 1998. ISOO will provide additional instructions for gaining access to the location of the meeting.

For Further Information Contact: Steven Garfinkel, Director, Information Security Oversight Office, National Archives Building, 700 Pennsylvania Avenue, NW, Room 100, Washington, DC 20408, telephone (202) 219–5250.

Dated: February 12, 1998.

Gerald W. George,

Director, Policy and Communications Staff.

[FR Doc. 98–4326 Filed 2–19–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA has submitted the following final rule information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. It was published as a proposed rule on March 13, 1997. No comments relating to the information collection were received.

DATES: Comments will be accepted until March 23, 1998.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: New collection.

Form Number: New collection.

Type of Review: Final rule—proposed collection.

Title: 12 CFR Parts 701.26(b), 701.27, 740.3(c) and Part 712 Credit Union Service Organization Rule.

Description: This rule updates, clarifies, and streamlines existing rules concerning credit union service organizations (CUSO), a common means of outside provision of services to federal credit union members. The intended effect is to reduce regulatory burden, maintain safety and soundness, and ensure the continuity and growth of services to federal credit unions and their members.

Respondents: All credit unions.

Estimated No. of Respondents/Recordkeepers: 482.

Estimated Burden Hours Per Response: 4.47 hours.

Frequency of Response: Other. Information disclosures required are made on an on-going basis.

Estimated Total Annual Burden Hours: 1,631.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on February 13, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–4289 Filed 2–19–98; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems #1189.

Date and Time: March 12, 1998; 8:30 am–5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 530, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: George B. Vermont, Program Director, Biochemical Engineering, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate POWRE proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial date, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 17, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–4349 Filed 2–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (No. 1189).

Date and Time: March 11, 1998; 8:00 a.m.–6:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 370, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: H. Frederick Bowman, Program Director, Biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 17, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–4350 Filed 2–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meetings

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended). During the period March 1 through March 31, 1998, the Special Emphasis Panel will be holding panel meetings to review and evaluate research proposals. The dates, contact person, and types of proposals are as follows:

Special Emphasis Panel in Electrical and Communications Systems (1196).

1. *Date:* March 9, 1998, Room 680.

Contact: Dr. Rajinder Khosla and Dr. Usha Varshney, Program Directors, Physical Foundations of Enabling Technologies (PFET), Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Room 675, Arlington, VA 22230. Telephone: (703) 306–1339.

Type of Proposal: Physical Foundations of Enabling Technologies (PFET).

2. *Date:* March 12 & 13, 1998, Room 1295.

Contact: Dr. Rajinder Khosla, Program Director, Physical Foundations of Enabling Technologies (PFET), Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Room 675, Arlington, VA 22230. Telephone: (703) 306–1339.

Type of Proposal: Physical Foundations of Enabling Technologies (PFET).

3. *Date:* March 12 & 13, 1998, Room 1120 & 680.

Contact: Dr. Usha Varshney, Program Director, Physical Foundations of Enabling Technologies (PFET), Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Room 675, Arlington, VA 22230. Telephone: (703) 306–1339.

Type of Proposal: Physical Foundations of Enabling Technologies (PFET).

4. *Date:* March 23 & 24, 1998, Room 680, 390, & 770.

Contact: Dr. Saifur Rahman, Program Director, Knowledge Modeling and Computational Intelligence (KMCI), Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Room 675, Arlington, VA 22230. Telephone: (703) 306–1339.

Type of Proposal: Knowledge Modeling and Computational Intelligence (KMCI).

Times: 8:00 a.m. to 5:00 p.m. each day.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate PFET & KMCI proposals submitted to the Division as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 17, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–4348 Filed 2–19–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Company, Turkey Point Unit 3 and Unit 4; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Florida Power and Light Company (the licensee), holder of Facility Operating Licenses Nos. DPR–31 and DPR–41 for operation of Turkey Point Units 3 and 4, respectively.

Environmental Assessment

Identification of Proposed Action

The proposed action is in accordance with the licensee's application dated December 12, 1996, for exemption from certain requirements of Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," for Turkey Point Units 3 and 4. Specifically, the licensee requests an exemption from the requirements of Appendix R, Subsection III.G.2.a, for raceway fire barriers in outdoor fire zones, excluding the Open Turbine Building.

The Need for the Proposed Action

The Thermo-Lag fire barriers installed at Turkey Point Units 3 and 4 were found to have a rating of 25-minutes, which does not meet the requirements specified in Subsection III.G.2.a. The proposed exemptions are needed because compliance with the regulation would result in significant additional costs.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action involves features located entirely within the restricted area as defined in 10 CFR part 20.

The proposed action will not result in an increase in the probability or consequences of accidents or result in a change in occupational or offsite dose. Therefore, there are no radiological impacts associated with the proposed action.

The proposed action will not result in a change in nonradiological plant effluents and will have no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no environmental impacts associated with this action.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of Turkey Point Units 3 and 4, dated July 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on February 11, 1998 the NRC staff consulted with the Florida State official, Mr. William Passetti of the State Office of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 12, 1996, as

supplemented on July 31 and October 31, 1997, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Florida International University, University Park, Miami, Florida 33199.

Dated at Rockville, Maryland, this 11th day of February, 1998.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–4323 Filed 2–19–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Licensing Support System Advisory Review Panel

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of location for public meeting.

SUMMARY: As announced earlier (63 FR 6968), the Licensing Support System Advisory Review Panel (LSSARP) will hold its next meeting on February 24 and 25, 1998, in Las Vegas, Nevada. No location for the meeting was given at that time. It is now being announced that the meeting will be held in the Great Basin Room (A106) of the U.S. Department of Energy's office at 232 Energy Way, North Las Vegas, Nevada. The meeting will be open to the public pursuant to the Federal Advisory Committee Act (Pub. L. 94–463, 86 Stat. 770–776).

AGENDA: The meeting will be held from 8:30 a.m. to 4:30 p.m. on Tuesday, February 24, and from 8:30 a.m. to 10 a.m., as needed, on Wednesday, February 25, 1998. The purpose of the meeting is to discuss amendments proposed by the Nuclear Regulatory Commission (NRC) to its regulations concerning the design and operation of the Licensing Support System (LSS). The proposed amendments were published in the **Federal Register** on November 13, 1997 (62 FR 60789). The time period for comments on the proposed amendments expires on March 30, 1998.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) established the LSSARP in 1989 to provide advice and recommendations to the NRC and to the Department of Energy (DOE) concerning the design, development and operation of an electronic information management system, known as the Licensing Support System (LSS), for the storage and retrieval of information relevant to the Commission's future licensing proceeding for a geologic repository for the disposal of high-level radioactive waste. Membership on the panel consists of representatives of the State of Nevada, Nye County Nevada, a coalition of local counties of Nevada and California adjoining Nye County, the National Congress of American Indians, the Nevada Nuclear Waste Task Force, the nuclear industry, DOE, NRC and other agencies of the Federal Government which have experience with large electronic information management systems.

FOR FURTHER INFORMATION CONTACT: John C. Hoyle, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555: telephone 301–415–1969.

PUBLIC PARTICIPATION: Interested persons may make oral presentations to the Panel or file written statements. Requests for oral presentations should be made to the contact person listed above as far in advance as practicable so that appropriate arrangements can be made.

Dated: February 13, 1998.

John C. Hoyle,

Secretary.

[FR Doc. 98–4221 Filed 2–19–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on March 2–4, 1998, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, November 20, 1997 (62 FR 62079).

Monday, March 2, 1998

8:30 A.M.–8:45 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:45 A.M.–10:15 A.M.: Draft Commission Paper on Modified Approach for Fire Protection Rulemaking (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding a modified approach to fire protection rulemaking. The Nuclear Energy Institute and other industry representatives may provide their views, as appropriate.

10:30 A.M.–12:00 Noon: Final Rule for Requirements for Shipping Packages Used to Transport Vitrified High-Level Waste (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final rule for requirements for shipping packages used to transport vitrified high-level waste.

1:00 P.M.–2:30 P.M.: Risk Ranking Approach for Motor-Operated Valves (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding risk ranking approach for motor-operated valves.

2:45 P.M.–4:15 P.M.: SECY–98–001, Mechanism for Addressing Generic Safety Issues (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding SECY–98–001.

4:15 P.M.–6:30 P.M.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Tuesday, March 3, 1998

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 A.M.–10:00 A.M.: Elevation of CDF to a Fundamental Safety Goal and Possible Revision to the Safety Goal Policy Statement (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding staff actions related to elevation of the CDF to a fundamental safety goal and modifying the Safety Goal Policy.

10:15 A.M.–12:15 P.M.: Proposed Final SRP Sections and Regulatory Guides for Risk-Informed, Performance-Based Regulation and Related Matters (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and industry regarding proposed final Standard Review Plan sections and Regulatory Guides for risk-informed, performance-based regulations including applications for technical specifications, graded quality assurance, and inservice testing.

1:15 P.M.–1:45 P.M.: Report of the Subcommittee on Reliability and Probabilistic Risk Assessment (Open)—

The Committee will hear a report by the Chairman of the Reliability and Probabilistic Risk Assessment Subcommittee regarding matters considered during the February 19–20, 1998 meeting.

1:45 P.M.–7:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

Wednesday, March 4, 1998

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 A.M.–10:00 A.M.: Proposed Improvements to the Senior Management Meeting Process (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed improvements to the Senior Management Meeting process.

10:15 A.M.–10:30 A.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters.

10:30 A.M.–11:15 A.M.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business agenda for the planning, meeting, and organizational and personnel matters relating to the ACRS.

[**Note:** A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

11:15 A.M.–12:00 Noon: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

1:00 P.M.–5:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

5:00 P.M.–5:30 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 4, 1997 (62 FR 46782). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Dr. Medhat M. El-Zeftawy, Acting Chief of the Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Acting Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Acting Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with subsection 10(d) Public Law 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Dr. Medhat M. El-Zeftawy, Acting Chief of the Nuclear Reactors Branch (telephone 301/415–6889), between 7:30 A.M. and 4:15 P.M. EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Dated: February 13, 1998.

John C. Hoyle,

Acting Advisory Committee Management Officer.

[FR Doc. 98–4220 Filed 2–19–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–245, 50–336, 50–423, 50–213]

Northeast Utilities; Millstone Nuclear Power Station, Units 1, 2, and 3, Haddam Neck Plant; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a director's decision with regard to a Petition dated March 3, 1997, filed by Mr. Albert A. Cizek, hereinafter referred to as "Petitioner." The Petition pertains to the Millstone Nuclear Power Station, Units 1, 2, and 3, and the Haddam Neck Plant.

The Petitioner requested that the NRC:

1. Within 30 calendar days of receiving a total of three license violations from the U.S. Nuclear Regulatory Commission [NRC] during any [3-year] period, irrespective of the violation level, the operating license of the facility shall be suspended for a period of not less than 90 days and not more than 180 days.

2. Within 30 calendar days of receiving a total of three violations of 10 CFR Part 50, including all applicable appendices, from the [NRC] during any [3-year] period, irrespective of the violation level, the operating license of the facility shall be suspended for a period of not less than 90 days and not more than 180 days.

3. Within 30 calendar days of receiving a total of three violations of the UFSAR [Updated Final Safety Analysis Report] from the [NRC] during any [3-year] period, irrespective of the violation level, the operating license of the facility shall be suspended for a period of not less than 90 days and not more than 180 days.

4. Within 30 calendar days of receiving any harassment, intimidation and discrimination ("HI&D") finding by the U.S. Nuclear Regulatory Commission, the U.S. Department of Labor, or any [S]tate or [F]ederal court of competent jurisdiction, the operating license of the facility shall be suspended for a period of not less than 90 days and not more than 180 days.

5. If, within [5] years of a license suspension based on paragraphs 1 through 4 above, the licensee receives a total of three license violations from the [NRC], irrespective of the violation level; receives a total of three violations of 10 CFR Part 50, including all applicable appendices, from the [NRC], irrespective of violation level;

receives a total of three violations of the UFSAR from the [NRC], irrespective of violation level; or receives any HI&D finding by the [NRC], the U.S. Department of Labor, or any [S]tate or [F]ederal court of competent jurisdiction, the operating license of that facility shall be permanently revoked within 90 calendar days.

6. In the event that the license of a facility is revoked pursuant to paragraph 5, no operation of that facility for the purpose of generating electric power shall be permitted during the pendency of any administrative or judicial processes or appeals related to such revocation.

7. In the event that the license of a facility is suspended or revoked under paragraphs [1] through [5], the [NRC] shall designate an appropriate licensee to maintain the facility in shutdown mode for the duration of the suspension or until such time as a new licensee is found to operate the facility. [Footnote omitted] NU [Northeast Utilities] shall be responsible for all expenses related to the operation of the facility during such shutdown. NU shall be required to post a bond in the amount of $500,000,000 ([5] hundred million) as reasonable assurance that it can fulfill this requirement.

The Petitioner further requested that these license conditions be imposed on the operating licenses of Millstone Units 1, 2, and 3 before Commission approval to restart any of those plants, and further requested that these license conditions be imposed on the operating license of Haddam Neck before any decommissioning of that plant.

The Director of the Office of Nuclear Reactor Regulation has denied the Petition. The reasons for this denial are explained in the "Director's Decision Pursuant to 10 CFR 2.206" (DD–98–01), the complete text of which follows this notice and is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, at the local public document rooms located at the Learning Resources Center, Three Rivers Community-Technical College, New London Turnpike, Norwich, Connecticut, and at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut, for Millstone Units 1, 2, and 3; and at the Russell Library, 123 Broad Street, Middletown, Connecticut, for the Haddam Neck Plant.

A copy of the director's decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes a review of the decision in that time.

Dated at Rockville, Maryland, this 11th day of February 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

DD–98–01

Director's Decision Pursuant To 10 CFR 2.206

I. Introduction

On March 3, 1997, Ernest C. Hadley, Esq., filed with the U.S. Nuclear Regulatory Commission (NRC or Commission) a Petition pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206), on behalf of Mr. Albert A. Cizek, hereinafter, referred to as Petitioner. This submittal will hereinafter be referred to as the Petition. The Petition was filed with the Executive Director for Operations of the NRC. The Petition was referred to the Director of the Office of Nuclear Reactor Regulations for preparation of a response.

The Petitioner requested that the NRC impose the following license conditions on the operating licenses of Millstone Nuclear Power Station, Units 1, 2, and 3, and the Haddam Neck Plant held by Northeast Nuclear Energy Company (NNECO or Licensee):

1. Within 30 calendar days of receiving a total of three license violations from the U.S. Nuclear Regulatory Commission [NRC] during any [3-year] period, irrespective of the violation level, the operating license of the facility shall be suspended for a period of not less than 90 days and not more than 180 days.

2. Within 30 calendar days of receiving a total of three violations of 10 [CFR] Part 50, including all applicable appendices, from the [NRC] during any [3-year] period, irrespective of the violation level, the operating license of the facility shall be suspended for a period of not less than 90 days and not more than 180 days.

3. Within 30 calendar days of receiving a total of three violations of the UFSAR [Updated Final Safety Analysis Report] from the [NRC] during any [3-year] period, irrespective of the violation level, the operating license of the facility shall be suspended for a period of not less than 90 days and not more than 180 days.

4. Within 30 calendar days of receiving any harassment, intimidation and discrimination ("HI&D") finding by the [NRC], the U.S. Department of Labor, or any [S]tate or [F]ederal court of competent jurisdiction, the operating license of the facility shall be suspended for a period of not less than 90 days and not more than 180 days.

5. If, within [5] years of a license suspension based on paragraphs 1 through 4 above, the licensee receives a total of three license violations from the [NRC], irrespective of the violation level; receives a total of three violations of 10 [CFR] Part 50, including all applicable appendices, from the [NRC], irrespective of the violation level; receives a total of three violations of the UFSAR from the [NRC], irrespective of violation level; or receives any HI&D finding by the [NRC], the U.S. Department of Labor, or any [S]tate or [F]ederal court of competent jurisdiction, the operating license of that facility shall be permanently revoked within 90 calendar days.

6. In the event that the license of a facility is revoked pursuant to paragraph 5, no operation of that facility for the purpose of generating electric power shall be permitted during the pendency of any administrative or judicial processes or appeals related to such revocation.

7. In the event that the license of a facility is suspended or revoked under paragraphs [1] through [5], the [NRC] shall designate an appropriate licensee to maintain the facility in shutdown mode for the duration of the suspension or until such time as a new licensee is found to operate the facility. [Footnote omitted] NU [Northeast Utilities] shall be responsible for all expenses related to the operation of the facility during such shutdown. NU shall be required to post a bond in the amount of $500,000,000 ([5] hundred million) as reasonable assurance that it can fulfill this requirement.

The Petitioner further requested that these license conditions be imposed on the operating licenses of Millstone Units 1, 2, and 3 before Commission approval to restart any of those plants, and further requested that these license conditions be imposed on the operating license of Haddam Neck before any decommissioning of that plant.

Additionally, the Petitioner requested that public hearings on the Petition be scheduled in the immediate vicinity of the Millstone and Haddam Neck reactors for the presentation of further evidence in support of the Petition. The Petitioner specifically requested that these public hearings be held and that a decision on this Petition be issued before restart or decommissioning of any of these units.

The Petitioner sought the above license conditions on the basis of the following contentions:

1. NU has knowingly, willingly and recklessly operated Millstone Unit 1, Unit 2, Unit 3 at Waterford, [Connecticut], and its Connecticut Yankee Nuclear Power Plant [i.e., Haddam Neck Plant] at Haddam Neck, [Connecticut], in violation of their respective operating licenses, the regulations of the NRC, and their respective UFSARs for a prolonged period of time, which unnecessarily but significantly compromised public health and safety by eroding the required defense in depth philosophy.

2. NU has knowingly, willingly and intentionally harassed, intimidated and discriminated against its employees who raise safety concerns in violation of United States statutes and NRC regulations for a prolonged period of time, which unnecessarily but significantly compromised

public health and safety by eroding the required defense in depth philosophy.

3. In the absence of express license conditions, there is no reasonable assurance that NU will cease and desist from engaging in these activities in the future.

A letter acknowledging receipt of the Petition was sent to the Petitioner on April 8, 1997. In that letter, the NRC staff informed the Petitioner that the NRC staff had decided not to hold a public hearing as requested by the Petitioner. Instead, the NRC staff requested that the Petitioner promptly supply, in writing, any additional information relevant to the Petition. In letters of April 16 and July 19, 1997, the Petitioner reiterated his request for an informal public hearing. In a letter dated August 7, 1997, the NRC staff responded to the Petitioner's letters of April 16 and July 19, 1997, and provided its detailed basis for concluding that an informal public hearing as requested by the Petitioner was not warranted. The NRC staff also noted that the Petitioner had a public forum to raise his concerns through the regularly scheduled public meetings held in the vicinity of the Millstone site. The Petitioner did not provide the staff with any additional evidence in support of the Petition.

II. Discussion

The NRC staff has reviewed the Petition and has not found any information regarding either the Millstone or the Haddam Neck facilities of which it was not already aware prior to receipt of the Petition. As discussed below, these facilities have been the subject of close NRC scrutiny for several years.

Millstone Facility

With regard to the Millstone units, the NRC staff has been concerned for the last several years about the number and duration of violations at the Millstone site in the broad programmatic areas of design and licensing bases, testing, and radiological controls. Programmatic concerns in these areas, along with concerns in other areas, were major contributors to the decline in performance at the Millstone site. In the cover letter to the most recent systematic assessment of licensee performance (SALP) report of August 26, 1994, the NRC staff stated that it had noted several performance weaknesses, common to all three Millstone units. Among these were continuing problems with procedure quality and implementation, the informality in several maintenance and engineering programs (contributing to instances of poor performance), and the failure to resolve several longstanding problems at the site. In addition to these programmatic problems, the Licensee has had significant problems in dealing with employee concerns involving safety issues at the site.

On November 4, 1995, the Licensee shut down Millstone Unit 1 for a scheduled refueling outage. The NRC sent a letter to the Licensee on December 13, 1995, requiring the Licensee, before restarting Millstone Unit 1, to inform NRC, pursuant to Section 182a of the Atomic Energy Act of 1954, as amended (the Act), and 10 CFR 50.54(f), of the actions taken to ensure that, in the future, the Licensee would operate that facility according to the terms and conditions of the unit's operating license, the Commission's regulations, and the unit's Final Safety Analysis Report (FSAR).

In January 1996, NRC designated the three Millstone units as Category 2 on the NRC's Watch List. Plants on the Watch List in this category have weaknesses that warrant increased NRC attention until the licensees demonstrate improved performance for an extended period of time.

On February 20, 1996, the Licensee shut down Millstone Unit 2 when it declared both trains of the high-pressure safety-injection (HPSI) system inoperable because of a design issue. There was a potential that the HPSI throttle valves could become plugged with debris when taking suction from the sump during the recirculation mode.

On March 30, 1996, the Licensee shut down Millstone Unit 3 after finding that containment isolation valves for the auxiliary feedwater turbine-driven pump were inoperable because the valves did not meet NRC requirements. In response to a Licensee root cause analysis of inaccuracies in the Millstone Unit 1 FSAR, identifying the potential for similar configuration control problems at Millstone Units 2 and 3 and the existing design configuration issues identified at these units, NRC sent 10 CFR 50.54(f) letters to the Licensee on March 7 and April 4, 1996. These letters required that the Licensee inform the NRC of the corrective actions taken regarding design configuration issues at Millstone Units 2 and 3 before the restart of each unit.

In June 1996, the NRC designated the three units at Millstone as Category 3 on the NRC's Watch List. Plants in this category have significant weaknesses that warrant maintaining them in a shutdown condition until the licensee can demonstrate to NRC that it has taken adequate corrective actions to ensure substantial improvement. This category also requires Commission approval before operations can be resumed.

On August 14, 1996, the NRC issued a confirmatory order directing the Licensee to contract with a third party to implement an independent corrective action verification program (ICAVP) to confirm the adequacy of its efforts to reestablish the design basis and configuration controls for each of the three Millstone units. The ICAVP is intended to provide additional assurance, before a unit restart, that the Licensee has identified and corrected existing problems in the design and configuration control processes for that unit.

On April 16, 1997, the NRC sent another 10 CFR 50.54(f) letter, which superseded the earlier 10 CFR 50.54(f) letters and consolidated its requests for information and periodic updates. The following information was requested: (1) significant items that needed to be accomplished before restart; (2) items that are to be deferred until after restart; (3) NU's process and rationale for deferring items; and (4) actions to be taken by NU to ensure that future operation will be conducted in accordance with the terms and conditions of the operating licenses, the Commission's regulations, and the FSARs. In a letter dated May 29, 1997, the Licensee submitted the initial information requested. Additional information and updates will be submitted in accordance with the time intervals specified in the 10 CFR 50.54(f) letter.

During eight NRC inspections conducted between October 1995 and August 1996, more than 60 apparent violations of NRC requirements were found at the Millstone site. These apparent violations were discussed at a public predecisional enforcement conference held at the Millstone site on December 5, 1996. During the meeting, the Licensee stated that management had failed to give clear direction and oversight, performance standards were low, management expectations were weak, and station priorities were inappropriate. A notice of violation and proposed imposition of civil penalties in the amount of $2,100,000 was issued to the Licensee on December 10, 1997. This is the largest civil penalty ever proposed by the NRC. In the enforcement action, the NRC staff identified violations relating to inadequate engineering, inadequate corrective actions, technical specifications violations, and quality assurance violations.

Additionally, the Licensee has had a chronic problem of not dealing effectively with employee concerns at

the Millstone site. On December 12, 1995, the NRC set up a review group to conduct an independent evaluation of the history of the Licensee's handling of employee concerns related to licensed activities at the Millstone facility. The review group determined that, in general, an unhealthy work environment, which did not tolerate dissenting views and did not welcome or promote questioning attitudes, has existed at the Millstone facility for the last several years. To address this problem, the NRC issued an order on October 24, 1996, directing NU to devise and implement a comprehensive plan for handling safety concerns raised by Millstone employees and to ensure an environment free from retaliation or discrimination. In addition, the order required NU to have an independent third party oversee its employee concerns program. The third-party is responsible for providing periodic reports to NU and NRC detailing its findings and recommendations. The third-party findings and the NU responses to them will be assessed by the NRC staff for any restart issues.

The conduct of NRC regulatory oversight at the Millstone site is based on the recognition that the Licensee bears primary responsibility to demonstrate that corrective actions have been effectively implemented. Thus, before the NRC staff can recommend that the Commission approve the restart of any Millstone unit, the Licensee must determine that a unit is in conformance with applicable NRC regulations, its license conditions, and its FSAR, and that applicable licensing commitments have been met. The Licensee's conformance with NRC regulations, license conditions, and licensing commitments is fundamental to NRC's confidence in the safety of licensed activities. In short, the Licensee has the primary responsibility for the safe operation of its facilities.

In a June 20, 1996, letter to NRC, the Licensee described its Configuration Management Plan (CMP), which is its principal program to provide reasonable assurance that weaknesses at the Millstone units have been effectively corrected. The CMP includes efforts to understand and correct the licensing and design-bases issues that led NRC to send the 10 CFR 50.54(f) letters and order actions to prevent recurrence of those issues. The Licensee stated that the objective of the CMP was to document and meet the licensing and design-bases requirements of each unit and to ensure that adequate programs and processes are in place to maintain control of these requirements. The Licensee's CMP must either correct each FSAR deficiency or evaluate it to ensure that the change to the facility does not involve any unreviewed safety question or change to the facility TSs. NU has documented a large number of deficiencies, which vary in scope and safety significance for each unit. These lists contain significant deficiencies that must be corrected before restart and others that the Licensee is planning to correct after restart. In its continuing reviews of the deficiency lists, the NRC staff will determine whether the Licensee has appropriately scheduled safety-significant items for completion before restart and whether those items that the Licensee will defer until after restart are appropriate for each unit. The results of these efforts will be documented in NRC inspection reports.

The NRC's regulatory oversight of the Licensee's corrective actions requires extensive planning and program integration. To focus more regulatory attention on all of the restart issues related to the Millstone units, NRC has established a Special Projects Office (SPO) within the Office of Nuclear Reactor Regulation to oversee these activities. The SPO has developed a comprehensive and multifaceted oversight program to verify the adequacy of NU's corrective actions, programs, and processes. The breadth and significance of the problems identified at the Millstone site require this program. The SPO has developed a Restart Assessment Plan (assessment plan) for each of the Millstone units, which includes (1) the appropriate aspects of NRC Inspection Manual, Manual Chapter (MC) 0350, "Staff Guidelines for Restart Approval"; (2) oversight of NU's ICAVP; and (3) oversight of NU's corrective actions relating to employee concerns involving safety issues. The activities associated with the assessment plan are in addition to the normal inspection and licensing activities being carried out at the Millstone site.

MC 0350 establishes the guidelines for approving the restart of a nuclear power plant after a shutdown resulting from a significant event, a complex hardware problem, or serious management deficiencies. The primary objective of the guidelines in MC 0350 is to ensure that NRC's restart review efforts are appropriate for the individual circumstances, are reviewed and approved by the appropriate NRC management levels, and provide objective measures of restart readiness.

The assessment plan for each unit includes those issues listed in MC 0350 that the NRC staff has identified as relevant to the shutdown of the unit. Each assessment plan also includes additional issues determined to be applicable to the specific situation. The assessment plans include all actions the NRC expects NU to take before the NRC staff recommends to the Commission that a unit be permitted to restart. Accordingly, the staff will use the assessment plan for each Millstone unit to track and monitor all significant actions necessary to support a decision on restart approval of the unit.

The assessment plan for each Millstone unit includes the requirement to review the NU Operational Readiness Plan, the deficiency lists associated with the assessment plan, including restart and deferred items, the corrective action program, work planning and controls, the procedures upgrade program, the nuclear oversight function (quality assurance), outstanding enforcement items, and a Significant Issues List (SIL), which includes issues identified by both NU and NRC as issues requiring resolution before restart. NRC MC 93802, "Operational Safety Team Inspection" (OSTI), provides the framework for a team inspection to be performed during the later stages of the restart process. The inspection will be structured to focus on the pertinent issues at each of the Millstone units.

Within the SPO, a Millstone Restart Assessment Panel (RAP) has been formed in accordance with MC 0350. The RAP meets to assess the Licensee's performance and its progress in completing the designated restart activities. The RAP is composed of the Director, SPO (chairman); the Deputy Directors of Licensing, Inspections, and Independent Corrective Action Verification Program Oversight; the project managers for the three Millstone units; the Inspection Branch Chief; the senior resident inspectors for the three Millstone units; and the appointed Division of Reactor Safety representative. The RAP holds periodic meetings with the Licensee to discuss the Licensee's corrective actions and schedules of each Millstone unit. Notices of the meetings with the licensee are issued and the meetings are open to the public. Additionally, NRC holds frequent meetings with the public near the Millstone facility that include a summary of the latest meeting with the Licensee, updates on NRC activities, and questions and comments from the public.

The purpose of the ICAVP, as stated in the confirmatory order, is to confirm that the plant's physical and functional characteristics are in conformance with its licensing and design bases. The ICAVP audit required by NRC is expected to provide independent verification, beyond NU's quality

assurance and management oversight, that the Licensee has identified and satisfactorily resolved existing nonconformances with the design and licensing bases; documented and utilized the licensing and design bases to resolve nonconformances; and established programs, processes, and procedures for effective configuration management in the future. NU has started programs to identify and understand the root causes of the licensing and design-bases issues that led to NRC issuance of the 10 CFR 50.54(f) letters to NU and to implement corrective actions to ensure that NU maintains the design configuration and that each unit is in conformance with its licensing basis. NU has indicated that the scope of its corrective programs will include those systems that it has categorized as either Group 1 (safety-related and risk-significant) or Group 2 (safety-related or risk-significant). The ICAVP audit must provide insights into the effectiveness of NU's programs so that the results can be reasonably extrapolated to the structures, systems, and components that were not reviewed in the audit.

The NRC staff has developed a comprehensive and multifaceted oversight process to provide a high level of confidence that the Licensee has implemented required corrective actions and that all of the issues on the SILs have been resolved. The independent third-party evaluations required by NRC will be used to enhance NRC confidence that the Licensee's corrective action programs have been effectively implemented at each unit.

NRC activities (including oversight of the ICAVP) to ensure that effective corrective actions are being taken by the Licensee will provide additional assurance that the Licensee's corrective action programs have been effectively implemented. These activities will include in-process reviews of the ICAVP contractor's activities, reviews of the ICAVP results, and additional independent reviews of compliance with the design and licensing bases of selected systems. The State of Connecticut's Nuclear Energy Advisory Council has provided input to the NRC staff for selecting the systems that will be reviewed by the ICAVP contractor and has been invited to observe the NRC staff's ICAVP inspections.

When the restart review process has identified, corrected, and reviewed relevant issues regarding each Millstone unit, a restart authorization process will be initiated for that unit. Upon receipt of an NRC staff recommendation and a briefing on any ongoing investigations, the Commission will meet to assess the recommendation and vote on whether to allow the restart of the unit. The same process will be followed for the remaining units.

It is important to note that the Licensee and NRC are continuing to identify problems at the Millstone site, as documented in inspection reports issued after this Petition was filed. These findings indicate that the corrective actions required to restart the Millstone units have not yet been fully implemented. The NRC staff will not recommend that the Commission allow the restart of a Millstone unit until the NRC staff has determined, in accordance with the assessment plan, that the necessary corrective actions have been effectively implemented for the unit. Following any positive Commission vote for restart, the unit will remain on NRC's watchlist, in Category 2, and will continue to be subject to a high level of NRC oversight. The unit will remain as a Category 2 watchlist plant until the NRC determines that the Licensee's performance warrants a normal level of NRC oversight.

Haddam Neck Facility

The Licensee shut down the Haddam Neck facility on July 22, 1996, as required by the facility's TSs, because of concerns that service water piping for the air recirculation fans in the containment may exceed design loads during certain accident scenarios. The Licensee determined that these concerns and other hardware and programmatic problems identified before and during the forced outage should be resolved before restarting the plant. Thus, the Licensee decided to begin Refueling Outage 19 on August 17, 1996. On October 9, 1996, the owners of the Haddam Neck Plant stated that a permanent shutdown of the plant was being considered by the Board of Trustees as a result of an economic analysis of operations, expenses, and the cost of replacement power. Subsequently, all fuel assemblies were removed from the reactor and placed in the spent fuel pool.

From November 21, 1995, to November 22, 1996, NRC conducted numerous inspections at the Haddam Neck Plant to review several facets of plant performance. These inspections included a special team inspection by NRC headquarters staff focused on engineering performance; a special augmented inspection team (AIT) inspection of a reactor vessel nitrogen intrusion event in late August and early September 1996, which lowered the reactor vessel water level; a special radiation protection inspection of a significant contamination event in November 1996; an emergency preparedness inspection to observe the Licensee's response during an emergency exercise held in August 1996; and several resident inspections. Numerous violations, as well as several significant regulatory concerns, were identified during these inspections. Most of the violations were discussed at a transcribed public predecisional enforcement conference at the Millstone training building in Waterford, Connecticut, on December 4, 1996. That conference was open to the public and focused on the broader programmatic deficiencies underlying the violations that contributed to the problems at Haddam Neck. A notice of violation and proposed imposition of civil penalties in the amount of $650,000 was issued on May 12, 1997, and was subsequently paid by the Licensee.

By letter dated December 5, 1996, the Licensee certified to the NRC, pursuant to 10 CFR 50.82(a)(1)(i) and 10 CFR 50.82(a)(1)(ii), that it had decided to permanently cease operations at the Haddam Neck Plant and had permanently removed the fuel from the reactor. The Licensee further noted that a post-shutdown decommissioning activities report (PSDAR) and a site-specific decommissioning cost estimate would be submitted in accordance with 10 CFR 50.82, "Termination of License." Therefore, the NRC's restart process oversight described for the three Millstone units is not applicable to the Haddam Neck Plant. However, the NRC staff has taken pertinent actions at the Haddam Neck Plant.

A confirmatory action letter (CAL) was issued to the Licensee on March 4, 1997, concerning radiological-control problems at the Haddam Neck Plant to ensure that the limited activities at the site will be conducted in a safe manner and in accordance with regulatory requirements. The CAL confirms the Licensee's commitment to not perform any radiological work, except that required to maintain the plant in a safe configuration until the corrective actions identified in the CAL have been implemented.[1]

As with the Millstone site, it is important to note that the Licensee and NRC continue to identify problems at the Haddam Neck Plant, as documented in inspection reports issued after this

[1] In a November 17, 1997, letter, the NRC staff confirmed certain modifications of the Licensee's commitments on the conduct of radiological work at the Haddam Neck Plant. The modification allows the Licensee to remove an 8-foot section of piping associated with the reactor coolant system to allow vendors to determine the best method for eventual decontamination of the entire reactor coolant system.

Petition was filed. These findings indicate that the corrective actions required to be completed before conducting significant decommissioning activities have not yet been fully implemented. The NRC staff will continue to closely monitor the Licensee's activities until the staff has determined that the necessary corrective actions have been effectively implemented for the unit.

III. NRC Response to Requested Actions

The Petitioner requested that a mechanistic enforcement approach be used at the Millstone and Haddam Neck plants to preclude recurrence of the problems.

The NRC's enforcement policy, which has been revised many times since the March 9, 1982, policy was first issued, continues to recognize that the regulation of nuclear activities does not lend itself to a mechanistic treatment. The NRC staff's extensive experience shows that judgment and discretion must be exercised in determining the severity levels of the violations and the appropriate enforcement sanctions.

The latest staff assessment of the NRC's enforcement policy was completed in 1997 (NUREG–1622 [2]). This assessment also contained a discussion of a suggestion from the public [3] recommending that the enforcement policy be modified to eliminate what was viewed as subjective enforcement based on performance issues. In particular, the commenter recommended that the NRC staff consistently impose a civil penalty every time a licensee fails to meet a requirement, regardless of a licensee's performance or ability to meet requirements in other areas. The NRC staff's assessment concluded, in part, that "the staff does not believe that the enforcement policy should be reduced to a formula for rigid application. Few cases are entirely straightforward, and the NRC must always apply judgment in determining whether to give credit for the licensee's actions." The Petitioner requested that mechanistic enforcement-related license conditions be added to the Millstone and Haddam Neck licenses. As noted above, the NRC staff has long experience in the enforcement of its requirements. That experience shows that judgment and discretion based on the facts at hand are key elements in any enforcement decision. A fair and reasonable enforcement decision cannot be made without an understanding of the nature of the violations involved and the context in which the violations occurred. The Petitioner's approach calls for specific and severe sanctions based on unknown future events of unknown significance occurring in an unknown context. Such an approach is unreasonable and could very well be found as arbitrary and capricious and thus legally unsound. It is not an approach that the NRC staff would apply in any case and so it would not be applied in the case of the Millstone and Haddam Neck units as requested by the Petitioner.

As noted in the Discussion section above, the NRC staff is aware of the significant performance problems at the Licensee's facilities. These performance problems have led the NRC staff to increase its oversight activities at these facilities. The Millstone plants will not be allowed to restart until the NRC staff is satisfied that sufficient corrective action has taken place and until Commission approval is granted. After restart, the plants will continue to be subject to a high level of NRC oversight until the NRC determines that the Licensee's performance warrants a normal level of NRC oversight. The decommissioning of the Haddam Neck Plant will not be allowed to proceed until the NRC staff determines that the applicable performance problems noted there have been corrected. The Licensee has also made significant management changes at each of these facilities. In the NRC staff's judgment, the scope of actions taken by the Licensee and the NRC regarding these facilities is extensive.

Furthermore, the NRC staff has had significant experience in overseeing licensees that have either been ordered to or have volunteered to shut down their facilities because of performance problems. For example, in NRC's Region I alone, the Pilgrim, Peach Bottom, Nine Mile Point, Calvert Cliffs, FitzPatrick, and Indian Point Unit 3 plants have been shut down while significant problems were corrected. Despite their significant problems, these plants have been able to perform corrective actions that have significantly improved the performance of these facilities. On the basis of the special circumstances involved with overseeing the restart of plants shut down for performance problems, the NRC staff developed MC 0350 (for more detail about this document, see Discussion section). Thus, the NRC staff has a considerable amount of experience overseeing facilities shut down because of significant enforcement problems; the NRC staff has seen numerous examples of licensees that have successfully improved their performance to a level acceptable for restart and continued operation; and, the NRC staff has a tested procedure in place to safely oversee the restart of such facilities.

Regarding the Haddam Neck Plant, the risks to the public from a permanently shutdown facility are significantly less than those from an operating power plant. Additionally, as noted in the preceding discussion, the NRC staff is closely observing the Licensee's actions until confidence in the Licensee is restored.

IV. Conclusion

In summary, a mechanistic enforcement approach will not be applied by the NRC staff in this matter. Such an approach is neither necessary nor appropriate to assure regulatory compliance and safe conduct of activities at the Millstone and Haddam Neck facilities. Extensive efforts have been and are being taken by the Licensee to assure that future operation of the Millstone units and decommissioning of the Haddam Neck Plant are accomplished safely. The NRC staff has in place an extensive oversight program to assure that the Licensee meets its objectives. The NRC staff also has extensive experience with other facilities in assessing major corrective action programs providing assurance that its oversight of the Licensee's corrective action efforts will be sound and will assure that the Commission receives a sound NRC staff recommendation before the Commission itself determines whether restart of the Millstone units is warranted. After restart, the plants will continue to be subject to a high level of NRC oversight until the NRC determines that the Licensee's performance warrants a normal level of NRC oversight. Accordingly, the Petitioner's request for specific enforcement-related license conditions at the Millstone and Haddam Neck facilities is denied.

As provided for in 10 CFR 2.206(c), a copy of this decision will be filed with the Secretary of the Commission for the Commission's review. This director's decision will constitute the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the decision in that time.

Dated at Rockville, Maryland, this 11th day of February 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–4325 Filed 2–19–98; 8:45 am]

BILLING CODE 7590–01–P

[2] As of the date of this Director's Decision, this NUREG has not been issued. It is expected to be issued shortly.

[3] September 9, 1997, letter from David A. Lochbaum of the Union of Concerned Scientists.

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282, 50–306 and 72–10]

Northern States Power Company, Prairie Island Nuclear Plant and Prairie Island Independent Spent Fuel Storage Installation; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a Petition dated August 26, 1997, filed by the Prairie Island Coalition (Petitioner) under Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206). The Petitioner requests that the NRC (1) suspend Northern States Power Company's (the licensee's) Materials License No. SNM–2506 for cause under Section 50.100 of Title 10 of the *Code of Federal Regulations* (10 CFR 50.100) until all material issues regarding the maintenance, unloading, and decommissioning processes and procedures, as described in the Petition and in the Petition filed on May 28, 1997, by the Prairie Island Indian Community, have been adequately addressed and resolved, and until the maintenance and unloading processes and procedures in question are safely demonstrated under the scrutiny of independent third-party review of the TN–40 cask seal maintenance and unloading procedure; (2) determine that the licensee violated 10 CFR 72.122(f) by using a cask design that requires periodic seal maintenance and emergency seal replacement that must be performed in the plant storage pool. The Petitioner asserts that these casks cannot be placed back into the pool to perform these functions due to unresolved problems with fuel degradation during storage, flash steam, thermal shock, and the resulting potential for radiation dispersion; (3) determine that the licensee violated 10 CFR 72.122(h) by using a cask that must be placed into the pool for necessary maintenance and/or unloading procedures. The Petitioner asserts that such placement of the cask into the pool will prematurely degrade the fuel and pose operational safety problems with respect to its ultimate and necessary removal from dry cask storage; (4) determine that the licensee violated 10 CFR 72.122(l) by loading casks and storing them before the licensee had developed and implemented procedures adequate to safely unload and decommission the TN–40 casks; (5) determine that the licensee violated 10 CFR 72.130 by using the TN–40 cask and failing to make provisions capable of accomplishing the removal of radioactive waste and contaminated materials at the time the independent spent fuel storage installation (ISFSI) is permanently decommissioned; (6) determine that the licensee violated 10 CFR 72.11 by failing to provide and include complete and accurate material information regarding maintenance and unloading of TN–40 casks in the application for the Prairie Island ISFSI and in subsequent submittals regarding cask maintenance and unloading issues; (7) determine that the licensee violated 10 CFR 72.12 by deliberately and knowingly submitting incomplete and inaccurate material information regarding maintenance and unloading of TN–40 casks in the application for the Prairie Island ISFSI and in subsequent submittals regarding cask maintenance and unloading issues; (8) require that the licensee pay a substantial penalty for each cask loaded in violation of NRC regulations; (9) administer such other sanctions for the alleged violations of NRC regulations as the NRC deems necessary and appropriate; (10) provide Petitioner the opportunity to participate in a public review of maintenance, unloading, and decommissioning processes and procedures in question and an opportunity to comment on draft findings after investigation by the NRC; (11) order modification of the licensee's Technical Specifications for the Prairie Island ISFSI to ensure a demonstrated ability to, in fact, safely maintain, unload, and decommission TN–40 casks; and (12) review the licensee's processes and procedures for maintenance, unloading, and decommissioning, and if the licensee does not possess capability to unload casks, order the licensee to build a "hot shop" for air unloading of casks and transfer of the fuel.

The Director of the Office of Nuclear Reactor Regulation has determined that the Petition should be denied for the reasons stated in the "Director's Decision Under 10 CFR 2.206" (DD–98–02), the complete text of which follows this notice. The decision and documents cited in the decision are available for public inspection and copying in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document room in the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota.

A copy of this decision has been filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided therein, this decision will become the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 11th day of February 1998.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[DD–98–02]

Director's Decision Under 10 CFR 2.206

I. Introduction

On August 26, 1997, the Prairie Island Coalition filed a Petition pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206) requesting that the U.S. Nuclear Regulatory Commission (NRC) take action to accomplish the following:

1. Suspend Northern States Power Company's (the licensee's) Materials License No. SNM–2506 for cause under Section 50.100 of Title 10 of the *Code of Federal Regulations* (10 CFR 50.100) until all material issues regarding the maintenance, unloading, and decommissioning processes and procedures, as described in the Petition and in an earlier Petition filed on May 28, 1997, by the Prairie Island Indian Community, have been adequately addressed and resolved, and until the maintenance and unloading processes and procedures in question are safely demonstrated under the scrutiny of independent third-party review of the TN–40 cask seal maintenance and unloading procedure;

2. Determine that the licensee violated 10 CFR 72.122(f) by using a cask design that requires periodic seal maintenance and emergency seal replacement that must be performed in the plant storage pool. The Petitioner asserts that these casks cannot be placed back into the pool to perform these functions due to unresolved problems with fuel degradation during storage, flash steam, thermal shock, and the resulting potential for radiation dispersion;

3. Determine that the licensee violated 10 CFR 72.122(h) by using a cask that must be placed into the pool for necessary maintenance and/or unloading procedures. The Petitioner asserts that such placement of the cask into the pool will prematurely degrade the fuel and pose operational safety problems with respect to its ultimate and necessary removal from dry-cask storage;

4. Determine that the licensee violated 10 CFR 72.122(l) by loading casks and storing them before developing and preparing procedures adequate to safely

unload and decommission the TN–40 casks;

5. Determine that the licensee violated 10 CFR 72.130 by using the TN–40 cask and failing to make provisions capable of accomplishing the removal of radioactive waste and contaminated materials at the time the independent spent fuel storage installation (ISFSI) is permanently decommissioned;

6. Determine that the licensee violated 10 CFR 72.11 by failing to provide and include complete and accurate material information regarding maintenance and unloading of TN–40 casks in the application for the Prairie Island ISFSI and in subsequent submittals regarding cask maintenance and unloading issues;

7. Determine that the licensee violated 10 CFR 72.12 by deliberately and knowingly submitting incomplete and inaccurate material information regarding maintenance and unloading of TN–40 casks in the application for the Prairie Island ISFSI and in subsequent submittals regarding cask maintenance and unloading issues;

8. Require that the licensee pay a substantial penalty for each cask loaded in violation of NRC regulations;

9. Administer such other sanctions for the alleged violations of NRC regulations as the NRC deems necessary and appropriate;

10. Provide Petitioner the opportunity to participate in a public review of maintenance, unloading, and decommissioning processes and procedures in question and an opportunity to comment on draft findings after investigation by the NRC;

11. Order modification of the licensee's Technical Specifications for the Prairie Island ISFSI to ensure a demonstrated ability to in fact safely maintain, unload, and decommission TN–40 casks; and

12. Review the licensee's processes and procedures for maintenance, unloading, and decommissioning, and if the licensee does not possess capability to unload casks, order the licensee to build a "hot shop" for air unloading of casks and transfer of the fuel.

The Petition has been referred to me pursuant to 10 CFR 2.206. The NRC letter dated October 2, 1997, to George Crocker, on behalf of the Petitioner, acknowledged receipt of the Petition and reported the NRC staff's determination that the Petition did not require immediate action to be taken by the NRC. The letter of October 2, 1997, also explained that the NRC staff would address the requests for formal rulemaking proceedings as detailed in Items 13, 14, and 15 of the Petition, in accordance with 10 CFR 2.802, "Petition for Rulemaking." A notice of receipt was published in the **Federal Register** on October 10, 1997 (62 FR 53031).

On the basis of the NRC staff's evaluation of the issues and for the reasons given below, the Petitioner's requests as detailed in Items 1 through 12 of the Petition are denied.

II. Background

On October 19, 1993, the NRC issued Materials License No. SNM–2506 to allow the licensee to store spent nuclear fuel in TN–40 dry-storage casks, designed by Transnuclear Incorporated, at the ISFSI located at the Prairie Island Nuclear Plant. The NRC issued Technical Specifications (TS) defining operating limits, surveillance requirements, design features, and administrative controls as Appendix A to Materials License No. SNM–2506. No spent nuclear fuel was allowed to be loaded into a storage cask at Prairie Island until several preoperational license conditions were satisfied. Among the preoperational license conditions were a required training exercise (dry-run) of the loading, handling, and unloading activities for the TN–40 casks and the implementation of written procedures describing the actions to be taken during operational, off-normal, and emergency conditions associated with the Prairie Island ISFSI.

A report dated April 20, 1995, submitted by the licensee to the NRC pursuant to 10 CFR 72.82(e), gave the results of the preoperational tests that the licensee was required to perform before loading spent fuel into a TN–40 cask.[1] On May 12, 1995, following the completion of the staff's reviews and inspections that found that the licensee had satisfied the conditions of the license, the licensee began loading spent fuel assemblies into a TN–40 cask. The licensee subsequently placed the cask, and casks loaded since that time, onto the storage pad within the Prairie Island ISFSI.

The NRC staff's determination that the licensee was in compliance with applicable regulations and license conditions was the basis for the NRC staff's decision to approve the ISFSI at Prairie Island and to allow the actual loading of TN–40 casks at that facility. The Petitioner has requested that, in light of the information in the Petition, the NRC staff reconsider its findings and suspend Materials License No. SNM–2506. The regulations cited by the Petitioner as those that establish technical requirements not being satisfied by the licensee for the ISFSI at Prairie Island are:

- 72.122(f) *Testing and maintenance of systems and components.* Systems and components that are important to safety must be designed to permit inspection, maintenance, and testing.
- 72.122(h) *Confinement barriers and systems.* (1) The spent fuel cladding must be protected during storage against degradation that leads to gross ruptures or the fuel must be otherwise confined such that degradation of the fuel during storage will not pose operational safety problems with respect to its removal from storage. This may be accomplished by canning of consolidated fuel rods or unconsolidated assemblies or other means as appropriate.
- 72.122(l) *Retrievability.* Storage systems must be designed to allow ready retrieval of spent fuel or high-level radioactive waste for further processing or disposal.
- 72.130 *Criteria for decommissioning.* The ISFSI or MRS (monitored retrievable storage [installation]) must be designed for decommissioning. Provisions must be made to facilitate decontamination of structures and equipment, minimize the quantity of radioactive wastes and contaminated equipment, and facilitate the removal of radioactive wastes and contaminated materials at the time the ISFSI or MRS is permanently decommissioned.

The regulations in 10 CFR Part 72 require that the design of the storage system and the procedures implemented by specific licensees support the unloading activity, whether it is being performed to allow further processing or disposal of the spent fuel, such as may be necessary to support decommissioning of the ISFSI; as part of planned maintenance activities; or as part of the response to an unplanned event or condition. The unloading of a cask, for any reason, should be performed in a manner that prevents gross rupture of the fuel cladding, which could result in operational safety problems. Although unloading procedures need not contain detailed guidance on removing damaged fuel, they should contain precautions in case fuel cladding has unexpectedly degraded during storage so that additional measures can be taken to address increased radiological hazards during the unloading process.

NRC regulations, facility licenses, and NRC-approved quality assurance

[1] On May 11, 1995, the NRC granted a schedular exemption to the provision of 10 CFR 72.82(e) that requires licensees to submit the preoperational test results at least 30 days before receipt of spent fuel into the ISFSI. The basis for the exemption was the fact that the NRC staff had reviewed cask fabrication records, observed portions of the preoperational test activities, and completed its review of the report submitted on April 20, 1995.

programs require licensees to establish and maintain a formal process for preparing and issuing procedures and changes thereto. NRC assessments of licensee procedures are generally conducted within the NRC's inspection program. The major procedures pertaining to dry-cask-storage activities at Prairie Island, including the procedure for unloading a cask, were reviewed by the NRC staff during a special inspection conducted from January 24 through May 11, 1995, to oversee the preoperational activities discussed above. In addition to reviewing the licensee's facility and procedures, as previously noted, the NRC inspectors observed preoperational testing that the licensee was required to perform before loading casks with spent fuel assemblies. The inspection findings are documented in NRC Inspection Report 50–282/95002; 50–306/95002; 72–10/95002(DRP), dated June 30, 1995.

The NRC inspectors noted several instances in which the procedures for dry-cask-storage activities that the licensee had in place at the beginning of the inspection, including the procedures for loading and unloading of TN–40 casks, did not ensure compliance with the requirements of the license. Although the licensee corrected these procedural deficiencies during the course of the inspection, the staff issued a Notice of Violation to the licensee for failing to satisfy Criterion V of Appendix B to 10 CFR Part 50, which, for activities affecting quality, requires the preparation of and adherence to procedures appropriate to the circumstances. In addition, the inspectors found weaknesses in the licensee's initial performance in overseeing the activities of the cask vendor and in overall planning for dry-cask-storage activities. On the basis of the licensing reviews and inspection findings, documented in Inspection Report 50–282/95002; 50–306/95002; 72–10/95002(DRP), the NRC staff concluded that as of May 1995, the licensee had corrected these deficiencies and was ready to safely load, and if necessary unload, spent nuclear fuel in TN–40 casks.

In July 1995, the NRC staff issued an action plan for dry-cask storage to manage the resolution of a variety of technical and process issues that were noted during the licensing reviews and inspections completed for the first several ISFSI facilities, including the ISFSI at Prairie Island. An item related to the loading and unloading of dry-storage casks was added to the action plan, in part to ensure that the importance of the unloading procedures was emphasized to licensees and that technical issues related to unloading problems were resolved. Addition of an item pertaining to unloading was deemed prudent because the staff observed that some of the licensees' unloading procedures failed to consider contingencies and assumptions related to possible fuel degradation, gas-sampling techniques, cask design issues, radiation protection requirements, and the thermal-hydraulic behavior of a cask during the process of cooling and filling it with water from the spent fuel pool.

To fulfill the goals of its dry-cask-storage action plan, the NRC staff has emphasized the importance of unloading procedures and shared observations with licensees using or considering dry-cask storage. The staff revised inspection procedures and licensing review guidance to specifically instruct NRC inspectors to review unloading procedures developed by licensees and to identify those issues that warrant particular attention. Application of the revised guidance ensures that recent and future reviews will address the adequacy of unloading procedures developed by licensees. To address those ISFSIs that began operation before NRC improved its guidance on review and inspection, the staff audited or inspected those licensee programs for which the inspection record did not document whether the unloading procedures adequately addressed the major issues in the action plan. Regarding Prairie Island, the staff reviewed the available information and determined that the assessment of the unloading procedure performed as part of the inspection documented in NRC Inspection Report 50–282/95002; 50–306/95002; 72–10/95002(DRP) adequately addressed the concerns in the NRC action plan, and that additional reviews or inspections therefore were not necessary.

In a Petition dated June 5, 1995, Prairie Island Coalition requested that, among other things, the NRC review—and take whatever administrative actions were necessary concerning—the licensee's plans to unload a TN–40 cask if the spent fuel pool lacked sufficient space to accommodate the spent fuel assemblies from a cask. The NRC staff issued *Northern States Power Company* (Prairie Island Nuclear Generating Plant, Units 1 and 2), DD–96–21, 44 NRC 297, on November 27, 1996, denying the Petitioner's request. The denial was based, in part, on the staff's finding that if a cask must be unloaded, it is unlikely that the need to unload it would represent a time-urgent activity and the licensee would be able to develop and execute a plan to maintain the safe storage of the spent fuel assemblies. The NRC staff determined that even if such an unlikely event occurred and the licensee needed to implement corrective actions to maintain safe storage conditions, options would be available to the licensee. These options include returning a cask to the auxiliary building, returning a cask to the spent fuel pool without actually removing the spent fuel, and removing non-fuel-bearing components from the spent fuel pool to allow the removal of fuel assemblies from a cask. *Id.*, 44 NRC at 309.

The Petitioner has incorporated by reference a Petition dated May 28, 1997, filed by the Prairie Island Indian Community, which, among other things, asked the NRC to suspend Materials License No. SNM–2506 on the premise that the licensee has failed to establish adequate procedures for safely unloading the TN–40 dry-storage containers. The Prairie Island Indian Community also requested that an independent third-party review of the TN–40 unloading procedure be conducted, that they be given an opportunity to participate fully in the reviewing of the unloading procedure for the TN–40 cask, that the NRC hold hearings and allow them to participate fully in these and in any other procedures initiated in response to their Petition, and that the TS for the Prairie Island ISFSI be revised to incorporate mandatory unloading procedure requirements. The NRC issued *Northern States Power Company* (Prairie Island Nuclear Plant and Prairie Island Independent Spent Fuel Storage Installation), DD–97–18, on August 29, 1997, denying the requests made by the Prairie Island Indian Community. Although the staff acknowledged the potential difficulties in retrieving fuel from dry-storage casks if significant fuel degradation has occurred, the NRC staff concluded that licensees need not be required to incorporate specific guidance into the normal unloading procedure to address this unlikely situation. This conclusion was based on the staff's findings that (1) the licensee's procedure could support the normal unloading of spent fuel assemblies from TN–40 casks at Prairie Island, (2) the licensee's unloading procedure contained the necessary measurements and precautions to detect if fuel had degraded during storage, and (3) the licensee could reasonably be expected to develop procedures to safely unload damaged fuel assemblies in the unlikely event that fuel did degrade during storage.

III. Discussion

The Petitioner requests actions by the NRC based on the contention that the unloading procedure developed by the licensee is inadequate and, therefore, the licensee has violated various NRC regulations related to having the ability to test and maintain systems and components, protecting the spent fuel cladding from degradation, designing storage systems to allow ready retrieval of spent fuel for further processing or disposal, and designing ISFSIs to facilitate decommissioning activities. In addition, the Petitioner alleges that the licensee violated NRC regulations pertaining to the submittal of complete and accurate information regarding maintenance and unloading issues associated with the TN–40 cask.

Item 1. Suspend SNM–2506

On the basis of the contention that the licensee's unloading procedure is inadequate, and, therefore, that the licensee is in violation of NRC regulations such as 10 CFR 72.122 and 10 CFR 72.130, the Petitioner requests that Materials License No. SNM–2506 be suspended for cause, in accordance with 10 CFR 50.100, until such time as the significant issues in the unloading process have been resolved and the unloading process has been demonstrated under the scrutiny of an independent third-party review.[2]

As previously stated, the NRC staff has reviewed the licensee's procedure for unloading a TN–40 cask at Prairie Island. The review, including verification that the licensee's unloading procedure was revised to address deficiencies found by the NRC inspectors, is documented in NRC Inspection Report 50–282/95002; 50–306/95002; 72–10/95002(DRP). Reasonable confidence that the licensee could, if necessary, safely unload a TN–40 cask is supported by the findings from the NRC inspection. The findings of subsequent evaluations performed by the NRC staff as part of the activities associated with the dry-cask-storage action plan and the review of the Petition filed by the Prairie Island Indian Community confirmed the adequacy of the licensee's procedure for unloading a cask. The licensee is required to maintain the adequacy of the unloading procedure through programs required by NRC regulations, facility licenses, and NRC-approved quality assurance programs. Additional bases for the staff's findings regarding the cited regulatory requirements are discussed in the sections that follow. The NRC staff has determined that the findings discussed in the subsequent sections of this decision adequately address the Petitioner's claims regarding the licensee's compliance with the regulatory requirements pertaining to retrievability of spent fuel, maintenance of ISFSI systems, and decommissioning. The Petitioner's request to suspend Materials License No. SNM–2506 is, therefore, denied.

Regarding a third-party review, the NRC staff's concern about the quality of licensees' unloading procedures led NRC to include the issue in the dry-cask-storage action plan. The action plan served as a framework for identifying and resolving various technical and administrative issues related to the use of dry-storage casks. The previously-mentioned actions taken by the NRC staff and licensees adequately resolved the issues pertaining to cask unloading procedures. In the specific case of the unloading procedure at Prairie Island, the licensee revised the procedure to address the problems raised by the staff during its inspection. On the basis of the actions it has already taken, the NRC staff does not believe that requiring additional demonstration of the procedures or review of the licensee's procedures by an independent third party is warranted.

Item 2. Determine That the Licensee Violated 10 CFR 72.122(f)

The Petitioner requests that the NRC determine that the licensee violated 10 CFR 72.122(f) by using a cask design that may require periodic seal maintenance or seal replacement that would necessitate returning the cask to the spent fuel pool. The Petitioner asserts that these casks cannot be placed back into the pool for the licensee to perform these functions, due to unresolved problems with fuel degradation during storage, flash steam, thermal shock, and the resulting potential for radiation dispersion. The Petitioner states that such a condition is in violation of the requirements that systems and components that are important to safety must be designed to permit inspection, maintenance, and testing.

The fact that the TN–40 cask design uses metallic seals to maintain the helium atmosphere within the cask was thoroughly reviewed during the licensing of the Prairie Island ISFSI as well as during staff reviews of similar casks designed by Transnuclear Inc., such as the TN–24 cask, which has been certified as an acceptable cask for use under the general licensing provisions of Subpart K of 10 CFR Part 72, and the TN–32 cask, which has had an associated topical report approved by the NRC staff for referencing in site-specific licensing applications. The seal design and related pressure-monitoring system were found to provide the necessary confidence that the inert atmosphere would be maintained and thereby prevent degradation of the fuel cladding during storage.

If it were necessary to repair or replace the metallic seals, the licensee would use the unloading procedure or a similar procedure to control the return of a TN–40 cask to the spent fuel pool. As will be discussed in more detail in the following section, the staff has determined that the licensee's unloading procedure is adequate. As documented in NRC Inspection Report 50–282/95002; 50–306/95002; 72–10/95002(DRP), the NRC staff did not require demonstration of seal replacement activities but did find that those activities performed during the dry-run exercises were adequate to demonstrate that such an activity could, if necessary, be accomplished. Given the staff's finding that the licensee's procedure for returning a cask to the spent fuel pool and subsequently unloading the fuel would not cause operational safety problems and the fact that the same procedure or a similar procedure would be used to support the repair or replacement of a TN–40 cask's metallic seals, the NRC concludes that the licensee has not violated 10 CFR 72.122(f) as alleged by the Petitioner.

Item 3. Determine That the Licensee Violated 10 CFR 72.122(h)

The Petitioner requests that the NRC determine that the licensee violated 10 CFR 72.122(h) by using a cask that must be placed into the spent fuel pool to perform necessary maintenance and unloading procedures. The Petitioner asserts that such placement of the cask into the pool will prematurely degrade the fuel and pose operational safety problems with respect to its ultimate and necessary removal from dry-cask storage. The Petitioner states that such a condition is in violation of the requirements that spent fuel cladding either be protected against degradation that leads to gross ruptures or otherwise confined so that fuel degradation during storage will not pose operational safety problems with respect to its removal from storage.

[2] The Petitioners request that Materials License No. SNM–2506 be suspended for cause in accordance with 10 CFR 50.100. Provisions for the modification, revocation, or suspension of the licenses for ISFSI facilities are contained in 10 CFR 72.60. The possible reasons for suspending licenses for ISFSIs in accordance with 10 CFR 72.60 are similar to the corresponding reasons for suspending licenses for production and utilization facilities in accordance with 10 CFR 50.100.

The staff has found that the TN–40 cask can adequately maintain the inert atmosphere within the cask to prevent fuel degradation and provides for sufficient indication of the loss of the inert atmosphere using the pressure-monitoring system. Maintaining the inert atmosphere and other design requirements established for the TN–40 casks is sufficient to protect the fuel cladding during storage. In the event that the pressure-monitoring system indicates that the helium atmosphere is not being maintained within a TN–40 cask, the TS for the Prairie Island ISFSI require that the cask be returned to the spent fuel pool for replacing or repairing the seals.

The Petitioner asserts that the return of the cask to the spent fuel pool will prematurely degrade fuel and poses operational safety problems. In support of this assertion, the Petitioner enclosed, as Exhibit A to the Petition, a letter from Dr. Gail Marcus of the NRC staff, dated February 25, 1997, which responded to an inquiry made to the NRC staff by Mr. George Crocker of the Prairie Island Coalition. In the letter, Dr. Marcus makes the following statements:

(1) As part of its assessments of licensees' procedures for unloading dry storage casks, the NRC staff considers the dry-run exercises performed to verify key aspects of unloading procedures, as well as licensees' actual experience in the loading and unloading of transportation casks, loading of storage casks, handling of spent fuel assemblies under various conditions, and performing various activities associated with reactor facilities. In the absence of actual experience in unloading spent fuel from a cask following a long period of storage, a general understanding of technical capabilities and related experiences enables the NRC staff to assess the adequacy of a licensee's procedures for unloading dry storage casks.

(2) Although the limited unloading experiences with storage casks have not involved the temperature differences between fuel and coolant that may occur if a cask was unloaded after a period of storage, engineering evaluations and experiences with transportation casks have shown that "thermal shocking" is unlikely to cause operational safety problems.

(3) Although licensees would be able to develop means to retrieve degraded fuel assemblies from a dry storage cask, the accumulated occupational dose to perform this activity may be increased from the previously mentioned estimates. Fuel reactivity for criticality considerations could increase only under very idealistic and highly unlikely disintegration patterns in the fuel. Upon detection that fuel disintegration had occurred, special measures would be developed and implemented to assure an adequate safety margin is maintained during unloading.

The statement regarding "thermal shock" is based on the fact that the licensee's unloading procedure contains precautions to slowly introduce water to the TN–40 cask and thereby minimize the thermal shock to the fuel assemblies. As explained in DD–97–18, at pp. 13–14, the NRC staff does not believe that the process of refilling a cask with water and returning it to the spent fuel pool will cause fuel degradation or operational safety problems. In DD–97–18, the staff stated:

The Petitioners expressed concerns regarding the reaction of the cask and stored fuel assemblies to the introduction of spent fuel pool water during the execution of the unloading procedure. The unloading procedure includes the partial immersion of the TN–40 cask into the spent fuel pool, connection of hoses to the vent and drain connections, and the slow introduction of spent fuel pool water to the cask cavity and stored fuel assemblies. The procedure instructs personnel to continuously monitor the temperature and pressure instrumentation installed on the vent connection and to stop pumping water if the pressure exceeds 10 psig or the temperature exceeds 240 °F. In the staff's judgment, the cooling process imposed by these limitations on temperatures and pressures at the vent port of the cask will adequately ensure that the cooling of the cask and spent fuel is gradual and, thereby, prevent safety problems that could hypothetically result from damage to the cask or the fuel assemblies because of stresses induced by a poorly controlled addition of cooling water from the spent fuel pool.

The Petitioner also cites a letter dated April 15, 1997, from Susan Frant Shankman of the NRC staff to Sierra Nuclear Corporation, which emphasizes that NRC regulations require that inert atmospheres be maintained within dry-storage casks in order to prevent fuel degradation during storage. The Petitioner states that the pressure-monitoring system is included in the design because the loss of helium from TN–40 casks is an anticipated event and that neither fuel degradation that may result from a loss of the helium nor the method by which the licensee would replace a damaged seal has been addressed. As previously mentioned, the NRC staff has found that the design of the TN–40 casks, including its combination of metallic seals and a pressure-monitoring system, is adequate to maintain a helium atmosphere within the cask. The helium atmosphere, in turn, has been found, when combined with other restrictions in the license for the Prairie Island ISFSI, to adequately protect against degradation of the spent fuel cladding.

Given its finding that (1) fuel integrity will be maintained during normal storage by the inert atmosphere and (2) the return of a cask to the spent fuel pool for unloading or seal maintenance would not result in fuel degradation that would result in operational safety problems, the NRC staff has not identified a violation of 10 CFR 72.122(h) at the Prairie Island ISFSI, as is claimed by the Petitioner.

Item 4. Determine That the Licensee Violated 10 CFR 72.122(l)

The Petitioner requests that the NRC determine that the licensee violated 10 CFR 72.122(l) by loading casks and storing them before the licensee had developed and implemented procedures adequate to safely unload and decommission the TN–40 casks.

The staff's basis for determining that the licensee has not violated the requirements of 72.122(l) for the reasons cited by the Prairie Island Indian Community was discussed in DD–97–18. As discussed in DD–97–18, normal unloading procedures do not need to incorporate contingency actions for failed fuel, provided that precautions exist to check for fuel degradation before breaching the confinement boundaries of a cask. In the unlikely event that fuel degradation has occurred during storage, the licensee would need to address the retrieval of failed fuel and implement necessary precautions related to the radioactive and fissile materials within the cask.

In support of its claim regarding potential problems in unloading a TN–40 cask, the Petitioner enclosed, as Exhibit B to the Petition, a letter from the NRC staff which asked the licensee questions about a proposed amendment to the operating license for the Prairie Island Nuclear Generating Plant.[3] The proposed and subsequently issued amendment pertained to the TS associated with the operability of the

[3] The Petitioner also claims that an NRC memorandum dated April 16, 1997, that addressed a request from an NRC regional office for clarification of terms associated with dry-cask storage, is deficient in that it does not address possible problems that may be encountered during unloading of a dry-storage cask or all of the possible reasons for returning a dry-storage cask to the spent fuel pool. In that memorandum, the staff stated:

The two basic reasons to return a cask to the spent fuel pool and unload the spent fuel assemblies are either to (1) retrieve the fuel assemblies for further processing or disposal or (2) respond to an event or condition that has potentially degraded the design requirements established for the cask.

The Petitioner claims that the memorandum failed to address two reasons to return a cask to the spent fuel pool: maintenance of the metallic seals and decommissioning of the ISFSI. These are, however, only specific examples of the general reasons given above to unload a cask. Seal maintenance is performed to respond to or prevent a condition that potentially degrades the design requirements associated with maintaining the inert atmosphere; decommissioning of the ISFSI would obviously require retrieving or transporting the fuel assemblies for further processing or disposal.

reactor facility's spent fuel pool special ventilation system during movement of fuel assemblies within the spent fuel pool enclosure. During its review of the proposed amendment, the NRC staff requested that the licensee submit additional information about the use of the ventilation system during the possible unloading of dry-storage casks. This request for additional information, dated July 10, 1997, is the letter cited by the Petitioner. In its response of July 29, 1997, to the staff's request for additional information, the licensee explained the relationship of the ventilation system to dry-cask activities and clarified details of the procedure for unloading a TN–40 cask. The NRC was satisfied with the licensee's response to the questions which explained that the spent fuel pool special ventilation system is not operable during the filling and venting of a cask during the unloading procedure and that cracking of spent fuel rods is not expected as a result of introducing water to the cask during the unloading procedure. Those aspects of the proposed revision to the Prairie Island TS that potentially related to dry-cask activities were subsequently approved by the NRC staff in Amendment No. 130 to Facility Operating License No. DPR–42 and Amendment No. 122 to Facility Operating License No. DPR–60.

In support of its claim regarding potential problems with removing fuel assemblies from TN–40 casks, the Petitioner enclosed, as Exhibits C and D to the Petition, letters from personnel at the Idaho National Engineering Laboratory (INEL) regarding problems with removing fuel canisters from a TN–24P cask during testing at INEL. The TN–24P cask is similar in design to the TN–40 cask used at Prairie Island. The problems were addressed in the rulemaking that added Transnuclear Inc.'s TN–24 cask to the list of NRC-certified casks. The subject comment on the proposed rulemaking pertaining to the TN–24 cask and the NRC staff's response as published in the **Federal Register** (58 FR 51762) are provided below:

> *2. Comment.* One commenter stated that the TN–24 cask is seriously flawed. Test and operation at Idaho showed the TN–24 storage sleeves to be subject to warpage after only a few years of storage. A fuel assembly became stuck in the TN–24 cask while trying to remove it. It could not be removed and it was forced back into the cask.
>
> *Response.* The NRC discussed this issue with personnel at INEL who worked on the tests of the TN–24 cask and other casks. These individuals said that a canister of consolidated fuel, not a fuel assembly, got stuck in the TN–24 cask. The canister was larger than a fuel assembly and, unlike a fuel assembly, it had many screws and nuts protruding from it. The storage sleeves in the TN–24 Basket did not warp. The individuals suspect that one of the screws or nuts got caught on an interlocking plate in the basket of the TN–24 cask. The Certificate of Compliance does not allow the storage of consolidated fuel in canisters. Additionally, the basket of the TN–24 tested at INEL is slightly different from the one which Transnuclear plans to use in its certified cask.
>
> The license issued for the Prairie Island ISFSI also prohibits the storage of consolidated fuel assemblies and, therefore, the problems with unloading experienced during the testing at INEL are not expected to occur when the licensee unloads its TN–40 casks.
>
> The Petitioner asserts that additional evidence that dry-storage casks cannot be unloaded is provided by the experiences of the licensee for the ISFSI at the Palisades Nuclear Plant. As discussed in detail in NRC Inspection Report 50–255/96201(NRR) dated September 4, 1997, the NRC staff has found that the Palisades dry-cask unloading procedure, along with supporting operating, maintenance, radiation protection, and administrative procedures, contains adequate directions for the safe unloading of VSC–24 storage casks.[4]
>
> Much of the argument pertaining to the inadequacy of the licensee's unloading procedure that is presented by the Petitioner centers on the lack of an actual example of the unloading of a dry-storage cask at a commercial reactor facility. As discussed in DD–97–18, the NRC staff's judgment that there is reasonable assurance that the TN–40 casks can be safely unloaded comes from a variety of experiences related to the use and storage of radioactive materials. Among these experiences are the dry-run exercises that were performed to verify key aspects of unloading procedures for the TN–40 cask; related research sponsored by the commercial nuclear industry, the U.S. Department of Energy, and the NRC; actual loading and unloading of transportation casks; loading of storage casks; handling of spent fuel assemblies under various conditions; and performing relevant maintenance and engineering activities associated with reactor facilities.

[4] The NRC staff has also found that the subject cask can safely be used for storing spent fuel despite the licensee's announced plans for unloading the cask after it discovered (from radiographs for a weld in a VSC–24 multi-assembly sealed basket) indications of possible defects. The licensee subsequently announced that it was deferring the unloading of the cask pending the availability of a cask that supports both storage and transport functions.

The NRC staff has reviewed the information submitted by the Petitioner and has determined that the licensee could, if necessary, unload a TN–40 cask and has not, therefore, identified a violation of 10 CFR 72.122(l).

Item 5. Determine That the Licensee Violated 10 CFR 72.130

The Petitioner requests that the NRC determine that the licensee violated 10 CFR 72.130 by using the TN–40 cask and failing to make provisions to successfully accomplish the removal of radioactive waste and contaminated materials at the time the independent spent fuel storage installation (ISFSI) is permanently decommissioned. The basis for this assertion is that TN–40 casks cannot be safely unloaded. As discussed in previous sections and as discussed in DD–96–21, the NRC staff has found that spent nuclear fuel can be safely unloaded from the TN–40 casks, whether such unloading is necessary in response to an event or in support of decommissioning the ISFSI.

In order to support the decommissioning of the Prairie Island ISFSI, the licensee may need to transfer the spent fuel stored in TN–40 casks to another cask for transfer of the fuel assemblies to another location for storage or disposal. In order to transfer the spent fuel assemblies, the licensee will need to either return the casks to the spent fuel pool or use a yet-to-be-approved system that transfers fuel assemblies under dry conditions. In the event that the spent fuel pool is used to transfer fuel assemblies, the unloading procedure or a similar procedure would control the return of the fuel from the ISFSI to the spent fuel pool. Given that the staff has determined that the unloading procedure is adequate to control the unloading of fuel assemblies from a TN–40 cask to the spent fuel pool, the staff has no reason to (1) find that its use as part of the decommissioning of the ISFSI facility raises unique questions regarding compliance with 10 CFR 72.130 or (2) otherwise change the conclusion it reached during the licensing of the ISFSI at Prairie Island regarding the viability of decommissioning the facility.

Item 6. Determine That the Licensee Violated 10 CFR 72.11

The Petitioner requests that the NRC determine that the licensee violated 10 CFR 72.11 by failing to provide and include complete and accurate material information regarding maintenance and unloading of TN–40 casks in the application for the Prairie Island ISFSI and in subsequent submittals on the

subject of cask maintenance and unloading. In support of this contention, the Petitioner references the letter from G. Marcus dated February 25, 1997, (Exhibit A to the Petition), which explained the NRC action plan for dry-cask storage and its item related to oversimplified descriptions of the process for unloading fuel from casks as the reverse of loading casks. In that letter to Mr. Crocker of the Prairie Island Coalition, Dr. Marcus states:

> Some SARs do state that unloading is basically the reverse of loading and this statement, in a general sense, is true, However, such statements may tend to over-simplify matters because they do not reflect that the unloading process introduces different conditions and complications compared to the loading process. In the NRC action plan for dry cask storage and related statements made by the NRC staff, including those by Mr. Kugler, the staff was emphasizing that licensees need to identify the conditions and complications that are associated with the unloading process and ensure that unloading procedures address those concerns. The unloading procedure for the dry storage casks at Prairie Island was inspected by the NRC staff and, following minor revisions, was found to provide adequate guidance to control the unloading process. A copy of NRC Inspection Report 50–282/95002; 50–306/95002; 72–10/95002 is provided as Enclosure 2.

The petitioner asserts that upon receipt of information related to unloading issues, the licensee has not taken steps to correct its unloading problem and has refused to address these continuing problems.

As stated in DD–97–18, in response to a similar request made by the Prairie Island Indian Community, the safety analysis report (SAR) for the Prairie Island ISFSI and other docketed correspondence do state that a TN–40 cask would be unloaded using a procedure that is basically the reverse of the procedure used to load the cask. Although this statement, in a general sense, is true, the NRC staff has expressed its concerns that such statements may oversimplify the description of the unloading activity. For this reason, the NRC staff added an item related to unloading procedures to its dry-cask-storage action plan to ensure that actual unloading procedures did not reflect such an oversimplified representation. Additional inspections, revised staff guidance, and communications with the nuclear industry were conducted under the staff's action plan related to this issue. The staff inspected the unloading procedures at Prairie Island and found that they provided adequate guidance to control the unloading process.

The staff's review of the information originally submitted by the licensee shows that the information pertaining to cask unloading was complete and accurate given the staff's expectations and the information provided by other licensees in applications submitted in the same time period. It should be noted that material submitted by the licensee for the ISFSI at Prairie Island includes copies of the loading and unloading procedures and those procedures have been available for public review. Regarding the information given to the NRC pertaining to maintenance of the TN–40 casks, which the Petitioner also claims was incomplete and inaccurate, the NRC staff acknowledged in its safety evaluation report that maintenance activities were discussed only briefly in the submittals supporting the ISFSI at Prairie Island. The level of information submitted, however, was generally consistent with the level of information in other applications of that same time period and was sufficient to meet the staff's expectations for the review process. The NRC staff has not identified a violation of 10 CFR 72.11 pertaining to the information provided by the licensee as is claimed by the Petitioner.

Item 7. Determine That the Licensee Violated 10 CFR 72.12

The Petitioner requests that the NRC determine that the licensee violated 10 CFR 72.12 by deliberately and knowingly submitting incomplete and inaccurate material information regarding maintenance and unloading of TN–40 casks in the application for the Prairie Island ISFSI and in subsequent submittals on cask maintenance and unloading issues. The Petitioner states that the licensee has continually insisted that it can unload TN–40 casks and that the licensee has referenced inapplicable studies to support its position.

As mentioned in the response to the preceding item, the staff believes that the information submitted by the licensee is consistent with the information in other applications of that same time period and was sufficient to meet the staff's expectations for the review process. Given that the NRC staff has found that the licensee could, if necessary, unload a cask, the staff does not agree this statement when made by the licensee was deliberately incomplete or inaccurate information in any material respect. The NRC staff has not identified a violation of 10 CFR 72.12 pertaining to the information provided by the licensee as is claimed by the Petitioner.

Item 8. Require That the Licensee Pay a Substantial Penalty

The Petitioner requests that the NRC require the licensee to pay a substantial penalty for each cask loaded in violation of NRC regulations. Given that the staff has not identified violations of NRC regulations as alleged by the Petitioner, the staff has no basis to issue a notice of violation and proposed civil penalty.

Item 9. Administer Other Sanctions Deemed Necessary and Appropriate

The Petitioner requests that the NRC administer such other sanctions for the alleged violations of NRC regulations as the NRC deems necessary and appropriate. Given that the staff has not identified violations of NRC regulations as alleged by the Petitioner, there is no basis for sanctions against the licensee.

Item 10. Provide Petitioner the Opportunity to Review Procedures

The Petitioner requests that it be given the opportunity to participate in a public review of maintenance, unloading, and decommissioning processes and procedures in question and an opportunity to comment on draft findings after investigation by the NRC.

Regarding the unloading procedure, the licensee has provided the NRC with the unloading procedure, including Revision 2, dated November 8, 1996, for placement into the public record, and the Petitioner has been supplied with a copy of the procedure. Accordingly, the Petitioner has had the opportunity to review a recent revision of the unloading procedure and may continue to review other documents in the public domain. As previously discussed in this decision, the NRC staff has performed various technical reviews and inspections related to the issues raised by the Petitioner. These reviews and inspections have provided the bases of the NRC staff's findings that the licensee has complied with the applicable regulatory requirements. Given that no violations or previously unidentified regulatory issues have been raised by the Petitioner, the NRC staff sees no reason to undertake additional reviews of the maintenance, unloading, and decommissioning processes and procedures or to initiate public hearings.

Regarding the Petitioner's request for an opportunity to comment on draft findings after the requested NRC "investigation," the request is rendered moot by the NRC staff's determination that additional reviews or "investigations" are unnecessary. In addition, the NRC staff does not, as a matter of general policy, release draft or

predecisional information to its licensees or to the public for review and comment.

Item 11. Order Modification of the Licensee's ISFSI Technical Specifications

The Petitioner requests that the NRC issue an order to modify the TS for the Prairie Island ISFSI to ensure a demonstrated ability to, in fact, safely maintain, unload, and decommission TN–40 casks.

Although the TS for the Prairie Island ISFSI require that TN–40 casks be unloaded if certain events or conditions defined in the TS are satisfied, the TS do not include specific requirements for the unloading process. Likewise the TS do not detail maintenance or decommissioning procedures or processes. The content of the TS for the Prairie Island ISFSI is typical in this respect since neither 10 CFR 72.44 nor the associated regulatory guidance documents specify that technical specifications should include special requirements for these procedures.[5] Instead, the functional and operating limits, limiting conditions, administrative controls, and other requirements included in the TS for the Prairie Island ISFSI are intended to maintain the cask and stored spent fuel assemblies within the limits established for safe operation during storage within the ISFSI and activities such as loading and unloading of the casks. For example, TS 2.3 limits the allowable lifting heights during movement of the cask from the ISFSI and TS 3/4.2 requires a measurement of the boron concentration of the water in the spent fuel pool before water is introduced to the cask during the unloading process.

As the staff explained in DD–97–18, the absence of specific requirements in the TS to control the unloading process does not diminish the importance that the NRC staff places on this activity. Likewise, specific requirements for performing routine maintenance activities and possible activities during decommissioning, although important, are not prescribed in the TS. The TS do, however, contain requirements for monitoring the integrity of the metallic seals and actions to be taken in the event that the pressure-monitoring system indicates a potential loss of the inert atmosphere within the cask. The NRC staff believes that other regulatory requirements offer an equivalent level of protection to the Petitioner's request to include specific requirements in the TS to control the maintenance and unloading of TN–40 casks and the eventual decommissioning of the ISFSI. The administrative controls in the TS for the Prairie Island ISFSI require that the associated procedures be prepared, reviewed, and maintained in accordance with the requirements of the Prairie Island Nuclear Generating Plant facility operating licenses and associated TS. In addition, under existing NRC requirements, the licensee must adequately implement procedures to control loading, maintaining, and unloading of dry-storage casks (see 10 CFR 72.122, 10 CFR 72.150, and 10 CFR 72.152). For example, as indicated in the NRC inspection documented in Inspection Report 50–282/95002; 50–306/95002; 72–10/95002(DRP), and the resulting notice of violation to the licensee, NRC's requirements in Criterion V of Appendix B to 10 CFR Part 50 already require the incorporation of appropriate steps and precautions into the original procedure developed to control unloading of a TN–40 cask. Thus, as demonstrated by the example, no changes to the TS or the SAR are needed to ensure that enforceable requirements for operating controls and limits are in place to address the unloading of a cask.

Given that the unloading procedure or a similar procedure can be used during maintenance activities for the repair or replacement of seals or during the decommissioning of the Prairie Island ISFSI, no changes to the TS or the SAR are needed to ensure that enforceable requirements for operating controls and limits are in place to address the unloading of the cask for these specific purposes.

Item 12. If Necessary, Order the Licensee to Build a Facility for Dry Transfer of Spent Fuel Assemblies

The Petitioner requests that the NRC review the licensee's processes and procedures for maintenance, unloading, and decommissioning, and if the licensee does not possess a capability to unload casks, order the licensee to build a "hot shop" for air unloading of casks and transfer of the fuel. Given that the staff has performed the level of reviews and inspections it feels are warranted and has found that the licensee could safely unload a TN–40 cask using the spent fuel pool, it is not necessary to order the licensee to build a facility to support the transfer of fuel assemblies under dry conditions.[6]

IV. Conclusion

For the reasons described above, the NRC has determined that no adequate basis exists for granting the Petitioner's request for suspension of Northern States Power Company's license for dry-cask storage of spent nuclear fuel at Prairie Island or for taking the other actions requested by the Petitioner.

A copy of this decision will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c).

As provided by this regulation, this decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 11th day of February 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director.

[FR Doc. 98–4324 Filed 2–19–98; 8:45 am]

BILLING CODE 7590–01–P

[5] Recent NRC staff guidance pertaining to the appropriate content of technical specifications is provided in NUREG–1536, "Standard Review Plan for Dry Cask Storage Systems," published in January 1997. Similar guidance is provided by NRC Regulatory Guide 3.61, "Standard Format and Content for a Topical Safety Analysis Report for a Spent Fuel Dry Storage Cask," issued in February 1989, and NRC Regulatory Guide 3.48, "Standard Format and Content for the Safety Analysis Report for an Independent Spent Fuel Storage Installation (Dry Storage)," issued in October 1981.

[6] However, as noted in response to Item 5, the licensee may elect to transfer fuel assemblies under dry conditions if a dry-transfer system is developed and receives appropriate NRC approval.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IA–1700/803–130]

Moreland Management Company; Notice of Application

February 12, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 ("Advisers Act").

Applicant: Moreland Management Company.

Relevant Advisers Act Sections: Exemption requested under section 202(a)(11)(F) from section 202(a)(11).

Summary of Application: Applicant requests an order declaring it to be a person not within the intent of section 202(a)(11), which defines the term "investment adviser."

Filing Dates: The application was filed on December 19, 1997 and amended on January 29, 1998.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a

copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 9, 1998, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, Moreland Management Company, Suite 550 at Cambridge Court, 28601 Chagrin Boulevard, Cleveland, Ohio 44122–4531.

FOR FURTHER INFORMATION CONTACT: Catherine M. Saadeh, Staff Attorney, at (202) 942–0650, Jennifer S. Choi, Special Counsel, at (202) 942–0725 (Division of Investment Management, Task Force on Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant was organized as an Ohio corporation in 1987 by LJR Trust (the "Trust"), which owns all of applicant's outstanding stock. The Trust exists for the benefit of Mr. Leonard C. Horvitz and his descendants (the "Horvitz Family").

2. Applicant was formed to serve as the "family office" for the Horvitz Family. In addition to the Trust, applicant's other clients consist of (i) The immediate members of Mr. Horvitz's family and (ii) the trusts, foundations, partnerships, and other entities created by them, or by the Trust, to serve as vehicles for investments.

3. Applicant provides asset allocation, record-keeping, investment due diligence, federal and state tax advice, coordination of professional relationships with accountants and attorneys, and other services to the Trust and applicant's other clients. Applicant currently has 14 employees. Applicant is paid for its services by the Trust and applicant's other clients.

Applicant's Legal Analysis

1. Section 202(a)(11) of the Advisers Act defines the term "investment adviser" to mean "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities * * *." Section 202(a)(11)(F) of the Advisers Act authorizes the SEC to exclude from the definition of "investment adviser" persons that are not within the intent of section 202(a)(11).

2. Section 203(a) of the Advisers Act requires investment advisers to register with the SEC. Section 203(b) of the Advisers Act provides exemptions from this registration requirement.

3. Applicant asserts that it does not appear to qualify for any of the exemptions provided by section 203(b). Applicant states that it is not prohibited from registering with the SEC under section 203A of the Advisers Act because its principal office and place of business is located in Ohio.[1] Applicant requests that the SEC declare it to be a person not within the intent of section 202(a)(11).

4. Applicant asserts that there is no public interest in requiring it to be registered under the Advisers Act. Applicant states that it is a private organization that was formed to be the "family office" for the Horvitz Family. Applicant represents that all of its clients have a close relationship with the Horvitz Family in that they are all either immediate members of Mr. Horvitz's family or are entities created by and for the Horvitz Family. Applicant states that it has no public clients in the sense of retail investors, and that it has no plans, now or in the future, to solicit clients from the retail public. Applicant asserts that serving as the "family office" for the Horvitz Family will be its exclusive mission.

5. Applicant states that it does not hold itself out to the public as an investment adviser. Applicant states that only its name, which doe not itself have any suggestive connotations, is listed in the Cleveland-area telephone book and on the index of residents located in the lobby of its building. Applicant represents that it does not engage in any advertising, attend investment management-related conferences as a vendor, or conduct any marketing activities.

6. Applicant states that its investment advisory activities constitute a very small portion of its overall activities. Applicant represents that of its 14 employees, only three have any involvement in applicant's investment advisory activities. Applicant states that these three employees estimate that investment advisory activities make up less than 25 percent of their responsibilities. Applicant states that its principal activities are not investment advisory in nature, and that the largest portion of its activities involve providing services that do not involve investment advice of any kind.

[1] Ohio does not currently regulate investment advisers.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4256 Filed 2–19–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39661; International Series Release No. 1117; File No. 600–30]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Granting Temporary Registration as a Clearing Agency

February 13, 1998.

On May 30, 1997, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") an application on Form CA–1 [1] for registration as a clearing agency pursuant to Sections 17A and 19 of the Securities Exchange Act of 1934 ("Exchange Act") [2] and Rule 17Ab2–1 thereunder.[3] Notice of EMCC's application was published in the **Federal Register** on July 10, 1997.[4] Eight comment letters were received in response to the notice of filing of the EMCC application.[5] This order grants FMCC registration as a clearing agency for a period not to exceed eighteen months and exempts EMCC from certain provisions of the Exchange Act.

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A. EMCC Organization
B. Eligible Securities

[1] On June 2, 1997, June 17, 1997, August 7, 1997, October 14, 1997, October 21, 1997, and October 28, 1997, EMCC filed amendments to its application. Copies of the application are available for inspection and copying at the Commission's Public Reference Room.

[2] 15 U.S.C. 78q–1 and 78s.

[3] 17 CFR 240.17Ab2–1.

[4] Securities Exchange Act Release No. 38810 (July 1, 1997), 62 FR 37093 ("EMCC Notice").

[5] Letters from Jonathan Kord Lagemann, attorney for Asialuck Limited (July 15, 1997); JP Morgan (July 30, 1997); Emerging Markets Traders Association (August 8, 1997); UBS Limited (August 7, 1997); Euro Brokers Maxcor Inc. (undated); EMCC European Operations Committee (August 8, 1997); Salomon Brothers Inc. (August 8, 1997); and Merrill Lynch, Pierce, Fenner & Smith Incorporated (August 6, 1997).

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I. Description of EMCC

A. EMCC Organization

EMCC is a corporation organized under the laws of the State of New York. EMCC was formed by the Emerging Markets Traders Association ("EMTA")[6] and the International Securities Clearing Corporation ("ISCC")[7] in response to an industry initiative to reduce risk in the clearance and settlement of emerging markets debt instruments. Currently, the International Securities Markets Association ("ISMA"),[8] the National Securities Clearing Corporation ("NSCC"),[9] and EMTA are the owners of EMCC.[10]

B. Eligible Securities

EMCC has been established as a clearing agency to facilitate the clearance and settlement of transactions in U.S. dollar-denominated Brady bonds at Cedel and Euroclear (collectively referred to as "depositories").[11] Currently, Brady bonds[12] are settled through the facilities of Cedel Bank, Société anonyme ("Cedel") and the Euroclear system, which is operated by the Brussels Office of Morgan Guaranty Trust Company of New York ("Euroclear").[13] In the future, EMCC may expand its clearance and settlement services to include other emerging markets debt instruments.[14]

C. Clearance Services

Dealers and interdealer brokers ("broker") will submit transaction data relating to trades to be settled at EMCC to a locked-in trade source which will match such data using its own criteria. Initially, the locked-in trade sources designated by EMCC are Match-EM and TRAX.[15] Upon completion of the matching process, each locked-in trade source will submit transaction data to EMCC.[16]

EMCC will receive data from the locked-in trade sources three times each business day: (1) Between 8:00 a.m. and 8:30 a.m. eastern time ("ET") ("early morning transmission"); (2) between 11:00 a.m. and 11:30 a.m. ET ("midmorning transmission"); and (3) between 9:00 p.m. and 9:30 p.m. ET ("evening transmission"). At approximately 10:30 a.m. ET and 11:30 p.m. ET, EMCC will send to its members and to the locked-in trade sources a report of data that was rejected because it did not meet EMCC's or the depositories' operational parameters.[17] Any correction or cancellation of data must be done through the locked-in trade sources.[18]

EMCC will report to each member on its "accepted trade report" data on all trades: (a) That are matched by the locked-in trade sources; (b) that are received by EMCC by the early morning transmission two days after trade date ("T+2"); (c) that are eligible for processing by EMCC (*i.e.*, U.S. dollar denominated Brandy bonds); and (d) that are not rejected by EMCC based on the operational parameters. EMCC will interpose itself as the counterparty and guarantor on a trade-for-trade basis with respect to the trades it reports on its accepted trade report unless EMCC notifies or has made information available to its members that trades

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[6] EMTA is a trade association organized in 1990 as a New York not-for-profit corporation by financial institutions to promote the development of trading markets in emerging market instruments. At the end of 1996, EMTA had 154 members, which were mainly broker-dealers and banks. EMTA owns 100% of the outstanding voting securities of EMTA Black, Inc. EMTA Black, Inc. in turn owns 100% of the outstanding voting securities of each of Clear-EM, Inc.; match-EM, Inc.; and Net-EM, Inc. Match-EM, Inc. is the owner of Match-EM, which is an electronic post-trade confirmation and matching system for Brady bonds and sovereign loans operated by GE Information Services, Inc. ("GE"). Match-EM also enables EMTA to disseminate daily market volume and price data. Match-EM began operations in May 1995.

[7] ISCC is the wholly owned subsidiary of the National Securities Clearing Corporation and is registered as a clearing agency under the Exchange Act. Securities Exchange Act Release No. 26612 (May 12, 1989), 54 FR 21091 (order approving temporary registration of ISCC as a clearing agency). ISCC continues to operate under its temporary registration. Securities Exchange Act Release No. 38703 (May 30, 1997), 62 FR 31183.

[8] ISMA is an industry association composed of broker-dealer firms. ISMA has approximately 820 members in 48 countries. ISMA is organized under the laws of Switzerland and is registered in the United Kingdom ("U.K.") as a designated investment exchange. ISMA owns TRAX, a trade matching and reporting system started in 1989. ISMA's wholly-owned subsidiary, International Securities Market Association Limited ("ISMA Ltd."), operates TRAX. U.K. broker-dealers can use TRAX to fulfill their U.K. reporting requirements.

[9] NSCC is a clearing agency registered under Section 17A of the Exchange Act. Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (order approving full registration of NSCC as a clearing agency). NSCC is owned by the New York Stock Exchange, Inc., the American Stock Exchange, Inc., and the National Association of Securities Dealers, Inc.

[10] EMTA owns 300 shares (37.5% of the outstanding shares), NSCC owns 300 shares (37.5% of the outstanding shares), and ISMA owns 200 shares (25% of the outstanding shares). No later than June 30, 1998, EMCC intends to issue shares to persons that have contributed to the EMCC development fund and to finance EMCC's initial operations in such amounts and at such times as determined by EMCC. EMCC will file a proposed rule change prior to any such issuances.

[11] Initially, only Brady bonds will be eligible for processing at EMCC. As defined in EMCC's rules, Brady bonds are: (i) any bond or note issued in connection with the restructuring of indebtedness by a sovereign or an agency or entity thereof under the auspices of the Brady plan or under any similar restructuring or financing plan whether or not collateralized and including bonds or notes issued in exchange thereof or (ii) any warrant or similar right originally issued attached to a Brady bond. The term does not include securities offered by a sovereign debtor to investors through normal underwriting syndication channels.

[12] Pursuant to a plan developed by then U.S. Treasury Secretary Nicholas Brady, certain countries have issued collateralized debt securities (*i.e.*, Brady bonds) in exchange for outstanding bank loans as part of an internationally supported sovereign debt restructuring. Typically, the collateral would be U.S. Treasury securities. More recently, some issues of Brady bonds have been issued without collateral.

[13] For a description of Cedel, *see* Securities Exchange Act Release No. 38328 (February 24, 1997), 62 FR 9225 (order approving application for limited exemption from registration as a clearing agency). For a description of Euroclear, *see* Securities Exchange Act Release No. 38580 (May 9, 1997) 62 FR 26833 (notice of filing of application for exemption from registration as a clearing agency).

[14] EMCC will file proposed rule changes with the Commission prior to expanding the categories of securities eligible for processing at EMCC.

[15] *See supra* notes 6 and 8.

[16] TRAX will only submit data to EMCC on matched trades that members have designated as EMCC trades. Match-EM will submit data to EMCC on all trades submitted to it. EMCC will segregate out for processing all data on trades between two EMCC members. However, if an EMCC member maintains two accounts with Match-EM, EMCC will only process trades in the EMCC designated account.

[17] Such parameters include complete information and valid characters. In addition, EMCC has established a maximum delivery size of $20 million.

[18] Any cancellation or correction must be received by EMCC no later than the early morning transmission two business days after trade date ("T+2").

listed on the accepted trade report are not assumed and guaranteed because EMCC has ceased to act for the original counterparty.[19] EMCC's guarantee will be effective with respect to: (a) Trades reported on the evening accepted trade report at the later of midnight ET or one half hour after the issuance of the preliminary margin report [20] and (b) trades reported on the morning accepted trade report at the later of 1:00 p.m. ET or two and one-half hours after issuance of the final margin report.[21]

Matched trades that are eligible for processing and that are received on T+2 in the midmorning transmission will be listed on a settlement instructions only report ("SIO report"). For trades listed on this report, EMCC will provide settlement instructions on behalf of its members to the depositories but will not novate or guarantee the trade. EMCC will not accept transaction data sent after the midmorning transmission on T+2.

Upon standing instructions of a member, EMCC will also include on the SIO report uncompared transaction on T+2. If EMCC receives by the early morning transmission on T+2 updated data from Match-EM indicating that an uncompared trade has been cancelled or compared, EMCC will not include data on the trade on the SIO report. If submitted in time, these trades will be reported on the accepted trade report. If not, they will be processed by the depositories, but will not be guaranteed by EMCC.

Accepted trade reports will be made available to members at approximately 10:30 a.m. ET and 11:30 p.m. ET. The morning report will contain data on matched trades received in the early morning transmission. The evening report will contain data on matched trades received in the midmorning and evening transmissions. The SIO report will be issued at approximately 12:00 p.m. ET. At approximately 12:30 p.m. on T+2, EMCC will send settlement instructions to the depositories based on trade data contained in the accepted trade reports and in the SIO reports.

D. Settlement Services

EMCC is a member of both Euroclear and Cedel. For trades listed on the accepted trade report, EMCC will transmit settlement instructions to the appropriate depository on behalf of members with EMCC as the counterparty to each side of the trade. EMCC will send instructions to the depository at 12:30 p.m. on T+2 for settlement the next day ("T+3"). The settlements will be made on a delivery against payment/receive against payment basis through EMCC's account at each depository.[22]

In accordance with the depositories' rules, settlement will occur only if the receiver has sufficient cash or line of credit to pay for the delivery and the deliverer has sufficient securities to make full delivery.[23] The depositories will notify EMCC and its members each day at midnight ET of the status of trades indicating which have settled and which were scheduled to settlement but are still pending. EMCC will not provide settling trade reports or fail reports to its members.

If a member fails to accept delivery of securities from EMCC because it has insufficient funds, EMCC will send a fail compensation instruction to the appropriate depository. The next day (presuming that the member is not insolvent), the depository will debit the account of the member that had insufficient funds and credit its counterparty's account an amount of money based on the depository's overnight borrowing interest rate multiplied by the amount of funds which were not paid.

With respect to transactions reflected on a member's SIO report, EMCC will send instructions on the afternoon of T+2 to the depository on behalf of that member for T+3 settlement. EMCC will not monitor the settlement of these transactions.

E. Buy-ins/Sell-outs

EMCC's rules permit a member to buy-in or a sell-out of Brady bonds in the event that a transaction has not been completed by five days after settlement date ("SD+5").[24] EMCC may also initiate a buy-in or sell-out if it determines that such action is necessary to protect EMCC, its members, its creditors, or its investors; to safeguard securities or funds in EMCC's custody or control; or to promote the prompt and accurate clearance and settlement of securities transactions.

While a member may request a buy-in or sell-out for deliver and receive obligations for warrants, EMCC will only complete the buy-in or sell-out of warrants at the requesting member's expense in the event that EMCC ceases to act for the member's counterparty. In addition, if EMCC ceases to act for the defaulting member after the pre-advice notice has been submitted but before the execution of the buy-in or sell-out, EMCC will only proceed with the buy-in or sell-out after confirming with the requesting firm that it wants to proceed at its expense.

F. Release of Clearing Data

Pursuant to EMCC's rules, EMCC may release its members' transaction data to EMTA in accordance with a written agreement between EMCC and EMTA. Such data may be used only for the purpose of promoting market transparency on a noncommercial basis. On June 9, 1997, EMCC and EMTA entered into a letter agreement that provides for the public dissemination of information relating to the aggregate and per trade transaction volumes and prices of trades processed by EMCC.

II. Comment Letters

The Commission received eight comment letters in response to the

[19] EMCC does not interpose itself as the counterparty and guarantor for transactions reported on the settlement instructions only report.

[20] *See Infra* Section III.D.1.a for a description of the preliminary margin report.

[21] *See infra* Section III.D.1.a for a description of the final margin report.

[22] Unless otherwise specified, EMCC assumes that bonds will be delivered with attached warrants.

[23] Both Cedel and Euroclear employ mechanisms that can look beyond the initial counterparties' obligations. Cedel has a "chaining" program which scans open transactions until all cash and securities resulting from same day settlements are reemployed to settle further transactions for same day value. Therefore, for back-to-back transfers for equivalent funds, customers may not need to pay because proceeds from sales are used to settle purchases.

Euroclear's chaining program operates somewhat differently. In scanning open transactions, the Euroclear program will only look to the next settlement. For example, if a member does not have sufficient funds to receive securities, Euroclear will ascertain whether that member has a corresponding securities deliver obligation to another member. In such case, Euroclear will complete both transactions if the counterparty to the deliver obligation has sufficient funds to pay for the securities. But if the counterparty to the securities deliver obligation did not have sufficient funds to settle the transaction, Euroclear, unlike Cedel, would not look to subsequent settlements for funds and securities. Accordingly, where EMCC as the counterparty to EMCC member trades has insufficient funds to accept deliveries, Euroclear's system will only look to EMCC's member to determine if sufficient funds exist. In order to permit Euroclear to "look through" EMCC for settlement and deliveries, EMCC will maintain a line of credit of at least $50 million at Euroclear. EMCC's line of credit will permit Euroclear to review not only the available funds of EMCC's member but also such member's subsequent counterparty, if any.

[24] A buy-in or sell-out may be initiated by submitting a "pre-advice" notice to EMCC. Upon receipt of the pre-advice notice, EMCC will transmit the notice to the member with the fail obligation. If the instruments or money covered by the pre-advice notice are not received within two business days after the date of the pre-advice notice, then the member that requested the buy-in or sell-out must deliver to EMCC a buy-in or sell-out notice between two to five business days after issuance of the pre-advice notice in order to proceed with the buy-in or sell-out. Upon receipt of the buy-in or sell-out notice, EMCC will transmit a buy-in or sell-out notice to the member with the fail obligation. Execution of the buy-in or sell-out will take place through an agent selected by EMCC on the fifth business day following the issuance of the buy-in or sell-out notice.

notice of filing of EMCC's application.[25] Seven were in favor of granting EMCC's application for registration. These commenters stated that EMCC would be effective in reducing the risks, particularly counterparty risk, involved in settling Brady bonds. In addition, many of these commenters thought that EMCC would provide a cost-effective means of settling Brady bond trades.

The one commenter that opposed EMCC's application stated that EMTA has failed to respond to a New York Stock Exchange subpoena and that such conduct was inconsistent with the conduct expected of a registered clearing agency. EMCC responded to this commenter by stating that EMTA had in fact responded to the subpoena and that EMTA's actions were irrelevant to EMCC's application because EMTA's involvement is limited to an ownership interest in EMCC pursuant to which it may elect only one director out of the 21 directors on EMCC's board.

III. Discussion

A. Statutory Standards

Section 17A of the Exchange Act directs the Commission, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and the maintenance of fair competition, to use its authority to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions.[26] Registration of clearing agencies is a key element of the statutory objectives set forth in Section 17A.[27] Before granting registration to a clearing agency, Section 17A(b)(3) of the Exchange Act requires that the Commission make a number of determinations with respect to, among other things, a clearing agency's organization, rules, and ability to provide safe and accurate clearance and settlement.[28] Additionally, the Division of Market Regulation has published the standards it applies in evaluating applications for clearing agency registration.[29]

Section 17A(b)(1) provides that the Commission:

> May conditionally or unconditionally exempt any clearing agency or security or any class of clearing agencies or securities from any provisions of [Section 17A] or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of [Section 17A], including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.[30]

As a result, in granting exemptions from portions of Section 17A, the Commission requires substantial compliance with Section 17A and the rules and regulations thereunder based on a review of the standards.[31]

B. Participant Standards

1. Eligible Categories of Members

Section 17A(b)(3)(B) of the Exchange Act enumerates certain categories of persons that a clearing agency's rules must authorize as potentially eligible for access to clearing agency membership and services.[32] As discussed in the Standards Release, a clearing agency may also accept specific categories of persons other than those enumerated but must be cognizant of the impact that any additional category of members may have on the clearing agency and must take steps to address any such risk. While entities falling into the specified categories are eligible for membership, applicants must also satisfy the other criteria established by EMCC and discussed later in this release.

A partnership, corporation, limited liability company, or other organization, entity, or individual will be qualified to become a member of EMCC if it satisfies at least one of the following qualifications: (a) It is a broker or dealer registered under the Exchange Act; (b) it is a broker or deraler registered or regulated under the laws of another jurisdiction;[33] (c) it is a bank or trust company, including a trust company having limited power, which is a member of the Federal Reserve System or is supervised and examined by state or federal authorities in the U.S. having supervision over banks; (d) it is a bank or trust company, which is supervised and examined by the banking regulator in another jurisdiction; or (e) if it does not qualify under (a) through (d) but is the successor or assign of any member and has demonstrated to the board of directors that its business and capabilities are such that it could use EMCC's services without undue risk to EMCC, then such successor or assign may become a member for the limited purpose of winding up its business with EMCC in an orderly manner.

After the issuance of shares to persons which have contributed to the development fund for the organization and initial operation of EMCC,[34] all applicants that EMCC accepts for membership will be required to be either a shareholder of EMCC or an affiliate or subsidiary of a shareholder of EMCC. EMCC may deny an application to become a member or to use one or more services of EMCC upon a determination by EMCC that EMCC does not have adequate personnel, space, data processing capacity, or other operational capability at such time to perform its services for the applicant or member without impairing the ability of EMCC to provide services for its existing members, to assure the prompt, accurate, and orderly processing and settlement of securities transactions, or to otherwise carry out its functions. However, any such applications which are denied will be approved as promptly as the capabilities of EMCC permit. Further Section 17A(b)(3)(F) of the Exchange Act requires that the rules of a clearing agency should not be designed to discriminate in the admission of members.

2. Examination of Applicants

The Standards Release notes that a registered clearing agency is empowered by the Exchange Act to examine and verify the qualifications of an applicant in accordance with the procedures

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[25] *Supra* note 5.

[26] 15 U.S.C. 78q–1. For legislative history concerning Section 17A, *see, e.g.*, Report of Senate Comm. on Housing and Urban Affairs, Securities Acts Amendments of 1975: Report to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 4 (1975); Conference Comm. Report to Accompany S. 249, Joint Explanatory Statemen[illegible] Comm. of Conference, H.R. Rep. No. 229, 94th Cong., 1st Sess., 102 (1975).

[27] "Clearing agency" is defined in Section 3(a)(23) of the Exchange Act. 15 U.S.C. 78c(a)(23).

[28] 15 U.S.C. 78q–1(b)(3). *See also* Section 19 of the Exchange Act, 15 U.S.C. 78s, and Rule 19b–4, 17 CFR 240.19b–4, setting forth procedural requirements for registration and continuing Commission oversight of clearing agencies and other self-regulatory organizations.

[29] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 ("Standards Release"). *See also*, Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (omnibus order granting registration as clearing agencies to The Depository Trust Company, Stock Clearing Corporation of Philadelphia, Midwest Securities Trust Company, The Options Clearing Corporation, Midwest Clearing Corporation, Pacific Securities Depository, National Securities Clearing Corporation, and Philadelphia Depository Trust Company).

[30] 15 U.S.C. 78q–1(b)(1)

[31] The Commission has granted temporary registrations that included exemptions from specific statutory requirements of Sections 17A. In granting these temporary registrations, the subject clearing agencies were expected to become registered on a permanent basis. *See, e.g.*, Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19839 (order approving Government Securities Clearing Corporation's temporary registration as a clearing agency with a temporary exemption from compliance with Section 17A(b)(3)(C)).

[32] The classes are registered broker or dealers, registered clearing agencies, registered investment companies, banks, and insurance companies.

[33] Initially, only broker-dealers that are organized under the laws of the U.K. will be eligible for admission. EMCC will file a proposed rule change setting forth membership criteria prior to admission of other categories of non-U.S. broker-dealers.

[34] *See supra* note 10.

established by the rules of the clearing agency. However, the Standards Release also states that such authority could be used only subject to a clearing agency's responsibility not to discriminate in the admission of participants and not to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Each applicant for admission to EMCC must provide a copy of its financial statements for the two most recent fiscal years certified by the applicant's independent certified public accountants. To the extent that such audited financial statements are not prepared in accordance with U.S. generally accepted accounting principles ("GAAP"), the applicant must provide EMCC with a discussion of the material variations of such accounting principles from U.S. GAAP.

A U.S. broker-dealer applicant must provide copies of its Form X–17A–5 FOCUS Reports or Form G–405 FOGS Reports for the last two years and any supplemental reports required to be filed with the Commission pursuant to Exchange Act Rule 17a–11 [35] or 17 CFR 405.3. If the applicant is a U.K. broker-dealer subject to regulation by the Securities and Futures Authority ("SFA") or any successor organization, it must provide EMCC with its SFA monthly reports and returns for the prior 24 months and if necessary and feasible, financial statements prepared in accordance with U.S. GAAP.

A bank applicant must provide all quarterly financial statements covered by the last audited financial statement plus all subsequent quarterly financial statements. A U.S. bank applicant also must provide copies of its three most recent Consolidated Reports of Condition and Income ("Call Reports") and information as to its capital levels and ratios. A non-U.S. bank applicant also must provide all material regulatory filings made with its primary regulator in its home country over the prior two years.

If required by EMCC, an applicant must provide a certificate of the chief executive or chief financial officer of the applicant that no material adverse changes have occurred in the financial condition of the applicant since the date of the most recent financial statements or reports filed with EMCC; that the applicant has not guaranteed the obligations of any other person; and that the applicant is not subject to any other contingent liabilities except as set forth in such financial statements, reports, or the certificate.

[35] 17 CFR 240.17a–11.

All applicants must fill out a questionnaire that elicits information on any liabilities of the applicant, the types of business conducted by the applicant, and the applicant's operational capabilities. All applicants must provide to EMCC an opinion of outside counsel as to the member's organization, the validity and enforceability of the member's agreement, and the need for regulatory approvals. In addition, the opinion of non-U.S. applicants must also opine as to jurisdictional and conflict-of-law issues. A non-U.S. applicant must represent that it is in good standing with its home country's financial regulatory authority.

3. Membership Standards

Section 17A(b)(4)(B) of the Exchange Act contemplates that a registered clearing agency have financial responsibility, operational capability, experience, and competency standards that are used to accept, deny, or condition participation of any participant or any category of participants, but that these criteria may not be used to unfairly discriminate among participants. The Standards Release states that a clearing agency may discriminate among persons in the admission to or the use of the clearing agency if such discrimination is based on standards of financial responsibility, operational capability, experience, and competence.

EMCC's board or the membership and risk committee of the board may approve an application to become a member upon a determination that such applicant meets the applicable admission criteria. The applicant must have adequate personnel, physical facilities, books and records, accounting systems, and internal procedures to enable it to satisfactorily handle transactions and communicate with EMCC, to fulfill anticipated commitments to and meet the operational requirements of EMCC with necessary promptness and accuracy, and to conform to any condition and requirement that EMCC reasonably deems necessary for its protection or that of its members.

The applicant must have an established business history of a minimum of three years or personnel with sufficient operational background and experience to ensure, in the judgment of the board, the ability of the firm to conduct its business. The applicant must agree to make and have sufficient financial ability to make all anticipated payments required to be made to EMCC. The applicant must be in compliance with the capital requirements imposed by its designated examining authority or appropriate regulatory agency, any other self-regulatory organizations, and any other regulatory authority or self-regulatory authority to which it is subject by statute, regulation, or agreement. The applicant cannot be subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act [36] or similar order. EMCC may deny an application if it has reasonable grounds to believe that the applicant or any associated person meets a disqualification criteria specified in EMCC's rules.[37]

If the applicant is a U.S. broker or dealer, its aggregate indebtedness/excess net capital ratio must be less than 950%, or its excess net capital/aggregate debit items ratio must be in excess of 5.25% and its excess net capital must equal at least $100 million. If the applicant is a U.K. broker or dealer, its financial resources must be at least 120% of its financial resources requirement and its excess financial resources must equal at least $100 million. However, a broker or dealer applicant may have excess regulatory capital of at least $50 million if the membership and risk committee of EMCC's board of directors makes a written finding that other credit factors of the applicant compensate for the lower financial resources.[38]

In addition, if the applicant is a bank, it must have net worth as of the end of the quarter prior to the effective date of its membership determined in accordance with U.S. GAAP of at least $500 million. However, an applicant bank may be accepted if it has a net worth of at least $200 million if the membership and risk committee of EMCC's board of directors makes a written finding that other credit factors of the applicant compensate for the lower net worth.[39]

[36] 15 U.S.C. 78c(a)(39).

[37] For example, disqualification criteria will include closer than normal surveillance by the applicant's designated examining authority or appropriate regulatory agency, violations of the federal securities laws, convictions of any criminal offense involving securities transactions, or any injunction against engaging in securities transactions. In addition, if the applicant has been enjoined from engaging in securities related business or has been expelled from a self-regulatory organization, EMCC must deny the application.

[38] EMCC will consider any ratings assigned by a nationally recognized statistical rating organization, any significant adverse off-balance sheet items, and the applicant's significant business lines as compared to its internal risk management controls and short term funding arrangements.

[39] In making such determination, EMCC will consider the applicant's return on average assets, capital to total assets ratio, nonperforming assets to total assets ratio, and liquid assets to total assets ratio. EMCC will also consider the ratings assigned to the applicant by a nationally recognized

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If a U.S. broker applicant is applying to become a broker member, it must have excess net capital of at least $10 million and must agree to submit trading data to EMCC in such instruments as requested by EMCC. EMCC will determine the broker's potential margin calls, and the broker must demonstrate an ability to meet such margin calls and any loss allocation assessments. The broker can demonstrate this ability by agreeing to submit to EMCC only transactions with EMCC members on both sides and by demonstrating a low error rate.[40]

During the first six months of EMCC's operations, EMCC will permit a broker to become an EMCC member which cannot demonstrate its ability to meet potential margin calls if it meets an alternate criterion. Such applicant must maintain a clearing relationship with an EMCC member which is not a broker. Pursuant to the clearing relationship, the clearing firm must take the place of the broker on T+1 for all trades that do not have EMCC members on both sides. The broker will have a fixed clearing fund deposit in lieu of the required margin deposit. However, EMCC will calculate each day for such broker a preliminary and final required fund deposit excluding any positions that resulted from a systems failure of a counterparty resulting in a failure to submit trade data. If the required fund deposit exceeds the broker's fixed deposit, EMCC will not guarantee any transactions to the broker until its required fund deposit is equal to or lower than its fixed deposit.[41] However, EMCC will guarantee completion of the broker's trades to the original EMCC counterparties pursuant to the loss allocation rules relating to a broker's default.[42] In addition, if the broker's required fund deposit exceeds its fixed deposit, the broker will not be subject to assessment for loss allocations[43] and the broker will be charged a market rate of interest on the difference between its required fund deposit and its fixed deposit. EMCC will notify all dealer members whenever a broker's required fund deposit exceeds its fixed deposit.

The foregoing financial responsibility standards are minimum requirements, and EMCC's board may impose higher standards based upon the level of the anticipated positions and obligations of an applicant, the anticipated risk associated with the volume and types of transactions an applicant proposes to process through EMCC, and the overall financial condition of an applicant. If an applicant does not itself satisfy its capital requirements, the board may include for such purposes the capital of an affiliate of the applicant if the affiliate has delivered to EMCC a guaranty, satisfactory in form and substance to the board, of the obligations of the applicant to EMCC.

4. Membership Agreement

Each applicant to become a member of EMCC will be required to sign a membership agreement pursuant to which the member's books and records must at all times be open to inspection by EMCC and the member must furnish EMCC with any information with respect to the member's business and transactions as EMCC may require. However, upon ceasing to be a member, EMCC cannot inspect a member's books and records or require information relating to transactions that occurred after the time the member ceased to be a member.

Membership in EMCC and use of EMCC's services are governed by the laws of the state of New York. Each member must agree to submit to the jurisdiction of the courts of the state of New York and the U.S. District Court for the Southern District of New York and to appoint a person acceptable to EMCC as its agent to receive on its behalf service of process. Each member must also agree that any judgment obtained in an action or proceeding may be enforced in the courts of any jurisdiction where the member or any of its property may be found, and the member must irrevocably submit to the jurisdiction of each such court with respect to any such action or proceeding. To the fullest extent permitted by law, each member must waive all immunity whether on the basis of sovereignty or otherwise from jurisdiction, attachment both before and after judgment, and execution to which it might otherwise be entitled in any action or proceeding in any county or jurisdiction relating in any way to the agreement or to any transaction.

The membership agreement also provides EMCC with an additional source of information for risk control purposes. Upon the request of and at no charge to EMCC, members must provide research that they provide to any of their customers relating to EMCC eligible instruments and events or conditions which might affect the price of EMCC eligible instruments.

5. Compliance With the Statutory Membership Requirements

The Commission notes that EMCC's rules do not provide for the admission of certain of the statutory categories of members (*e.g.*, registered investment companies).[44] The Commission believes that EMCC's provision for limited categories of members is appropriate at least during EMCC's initial phases of operations. The Commission also notes that during the comment period, EMCC did not receive any comments from anyone in the category of entities not covered by EMCC's rules. Therefore, the Commission is granting EMCC a temporary exemption from Section 17A(b)(3)(B) of the Exchange Act with respect to this requirement.

EMCC's rules also make certain categories of entities eligible for EMCC services that are not within the statutory categories (*i.e.*, non-U.S. banks and U.K. broker-dealers).[45] As discussed in the Standards Release, clearing agencies may admit additional categories of members provided that the goals of safety and soundness are met. The Commission believes that the admission criteria EMCC has established for non-U.S. banks and U.K. broker-dealers are consistent with the goals of safety and soundness. As discussed above, EMCC will obtain legal opinions from foreign members to assure that EMCC will be able to enforce its rules and member's agreement. In addition, EMCC will obtain information from the participant regarding its regulatory status in its home country and will obtain copies of all regulatory filings made in its home

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statistical rating organization, any significant off-balance sheet items, and the applicant's risk management controls.

[40] If a broker has a margin obligation because one of its counterparties fails to submit data on a trade prior to 8:00 a.m. ET on T+1, the nonsubmitting counterparty must compensate the broker for the cost of financing the payment obligation and may be subject to fine by EMCC.

[41] The broker could lower its required fund deposit by depositing additional funds with EMCC. If it does not deposit additional funds, its required fund deposit will exceed its fixed deposit until at least the end of the next month (because its required fund deposit its based on the highest margin calculation during the current month and the prior month).

[42] Because EMCC is not guaranteeing trades to the broker, if a dealer counterparty becomes insolvent, the broker is responsible for completing the trade to its counterparty on the other side. As a result, the nondefaulting EMCC dealer member does not receive the benefit of EMCC's guarantee of brokered trades. In such a situation, if the broker is then unable to complete the trade, EMCC will then guarantee the broker's trade to its EMCC member counterparty. However, the trade is treated as a direct trade between the broker and its counterparty. Thus, under the loss allocation rules, the dealer would be allocated a greater portion of its loss than if the broker had not exceeded its fixed deposit requirement.

[43] Because EMCC is not guaranteeing trades to the broker, there would be no loss from direct trades entered into with the broker.

[44] *Supra* note 32.

[45] EMCC's admission criteria for non-U.S. entities initially will apply only to non-U.S. banks and U.K. broker-dealers.

country. Thus, the Commission believes that EMCC's current procedures for acceptance of non-U.S. participants are consistent with the goals of the Exchange Act.

C. Fair Representation

Section 17A(b)(3)(C) of the Exchange Act requires that the rules of a clearing agency provide for fair representation of the clearing agency's shareholders or members and participants in the selection of the clearing agency's directors and administration of the clearing agency's affairs. This section contemplates that users of a clearing agency have a significant voice in the direction of the affairs of the clearing agency.

1. Governance Procedures

EMCC's board has a total of 21 directors, divided into four classes. The first three classes consist of five directors each ("participant directors").[46] The fourth class has six directors, consisting of one director selected by EMTA, one director selected by ISMA, two directors selected by NSCC, and two directors selected by EMCC. The term of office of the participant directors is three years with the term of one class of directors expiring each year.[47] Participant directors may not serve for more than six consecutive years. The term of the fourth class is one year.

A nominating committee selected by the board will select individuals to serve as participant directors. Members may also nominate individuals to serve as participant directors by filing with EMCC's Secretary at least 30 days prior to the date of the annual meeting a petition signed by the lesser of five percent of the participants of ten participants. If any member files a petition for participant director, EMCC's Secretary will mail ballots to all members. Members will then be provided the opportunity to vote for participant directors.[48]

Because members are given an opportunity both to nominate board members and to vote in any contested election, members should have a meaningful voice in the governance of EMCC. Therefore, the Commission believes that EMCC's election procedures provide fair representation to its members.

2. Provision of Information to Participants

The Standard Release states that participants should have sufficient information concerning a clearing agency's affairs to participate meaningfully in its administration. Clearing agencies should furnish participants with audited annual financial statements, an annual report on internal accounting control prepared by an independent public accountant, and notices of any proposed rule changes.

The Standards Release states that the annual financial statements should be provided to participants within 60 days following the close of the clearing agency's fiscal year and should be prepared in accordance with generally accepted accounting principles. The Standards Release also states that the report on internal accounting control should be furnished to all participants promptly after it becomes available and no later than 60 days after the period covered by the report.[49] The Standards Release also states that a notice of a proposed rule change should be provided to participants prior to or as soon as possible after filing with the Commission and should provide a description of the rule change, its purpose, and its effect. After review of EMCC's rules and procedures, the Commission finds that such rules and procedures are consistent with EMCC's obligations to provide information to its participants.

D. Safety and Soundness Considerations

Sections 17A(b)(3)(A) and (F) of the Exchange Act require that a clearing agency be organized and its rules be designed to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible and to safeguard securities and funds in its custody or control or for which it is responsible.[50] In the Standards Release, the Division enumerated certain requirements that should be met to comply with this standard.

1. Clearing Fund

The Standards Release states that a clearing agency should have a clearing fund which is based on a formula applicable to all users and is composed of cash or highly liquid securities. The rules of a clearing agency should limit the investments that can be made with the cash portion of its clearing fund to government securities or other safe and liquid investments. The clearing fund should only be used to protect participants and the clearing agency from defaults of participants and from clearing agency losses not resulting from day to day expenses and not covered by insurance or other resources of the clearing agency. While the Standards Release states that a clearing agency could use temporary applications of the clearing fund in limited amounts to meet unexpected and unusual requirements for funds, the regular or substantial use of a clearing fund for operational purposes would be inappropriate.[51]

a. Clearing Fund Formula

EMCC will maintain and will manage a clearing fund for the purpose of limiting or eliminating EMCC's exposure to loss in the event a member fails to perform its obligations to EMCC. Each member will be obligated to make deposits to EMCC's clearing fund. EMCC will set the initial required clearing fund deposit for each member based on the expected nature and level of the member's activity. A member's required margin deposit will be equal to the largest single final daily margin amount computed, as described below, for that member for the month during which such margin calculation is being performed and for the previous calendar month. The minimum required clearing fund deposit for each member will be U.S. $1,000,000.

Every day, EMCC will calculate margin in the morning and in the evening but will only collect margin based on the morning calculation.[52] EMCC will generally calculate the margin amount as follows: (mark-to-

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[46] A member along with any of its affiliates which are members may only have one representative sitting on the board.

[47] The term of the initial directors in class one will expire in 1998, the term of the initial directors in class two will expire in 1999, and the term of the initial directors in class three will expire in 2000.

[48] Members will have three votes for each $1.00 of average clearing fund deposits during the twelve month period ending on the last day of the second month prior to the date of determination and two votes for each $1.00 of the average monthly fee payable or paid by the member to EMCC during the same twelve month period.

[49] The Standards Release also states that the report on internal accounting control should be based on a study and an evaluation which was made for the purpose of reporting on the clearing agency's overall system of internal accounting control and should disclose any material weaknesses discovered and any corrective action taken or proposed to be taken. The Commission expects EMCC to prepare its reports in accordance with these principles.

[50] 15 U.S.C. 78q–1(b)(3)(A) and (F).

[51] The Standards Release also states that there may be legitimate purposes for which a clearing fund may be used for a longer period of time so long as (a) the funds are properly protected, (b) the funds are used to facilitate the process of clearance and settlement, and (c) the participants and the Commission approve such use during the registration proceedings.

[52] EMCC refers to the amount that each member must contribute to the clearing fund as its margin requirement.

market amount + volatility amount) × event risk factor.[53]

The mark-to-market amount will be based on all trades due to settle on or after that day and all fails, unless EMCC has received notice from the depository that such trade or fail has settled.[54] The mark-to-market amount will be based on the difference between the market price and the contract value of the trade. If the net mark-to-market is a credit, the firm will have a zero mark-to-market charge.

The volatility amount for the evening calculation will be based on all trades due to settle on or after that day and all fails, unless EMCC has received notice from the depository that such trade or fail has settled.[55] The volatility amount for the morning calculation will be based on all trades due to settle on or after the current day and all fails calculated as of the prior day whether or not EMCC has received notice of the settlement of such trades or fails. Thus, the morning volatility amount will include trades that have already settled that day while the evening volatility amount will only include trades that have not settled.[56] In order to calculate the volatility amount, each security will be placed into one of four liquidity categories based on the average bid/offer spread. The liquidity category into which a security is placed will determine the volatility formula to be applied to that security.[57] The sum of the volatility amounts for each security will be the clearing member's volatility amount.[58]

The event risk factor, which is designed to give EMCC an additional cushion against events in countries not covered by two standard deviations, will initially be set at 1.25. EMCC may adjust the event risk factor for an individual member or for all members without prior notice to the member(s). EMCC also will increase margin requirements by use of a global holiday risk factor to take into account days on which U.S. banks are closed but securities markets are open.

The preliminary margin amount will be calculated each evening and will be reported to members at approximately 11:30 p.m. on a preliminary margin report. The report will show the member's current deposit, preliminary margin amount, and preliminary amount due, if any. However, members are not required to make any payment to EMCC based on the preliminary margin report.

The final margin amount will be calculated each morning and will be reported to members at approximately 10:30 a.m. on a final margin report. The final margin report will indicate each member's current deposit, final margin amount, and final amount due, if any. A member will be required to pay any obligation with respect to its margin obligation reflected on the final margin report no later than the later of 11:30 a.m. ET or one hour after the final margin report is made available. Margin deficits of less than $100,000 will not have to be paid by members. Payment must be made through the U.S. Fedwire system.

EMCC also has the authority to collect amounts over and above the daily margin requirement in order to obtain adequate assurances of the financial responsibility or operational capability of a member. EMCC has created a policy statement on procedures to follow in determining whether additional clearing fund deposits are needed.[59] EMCC also may collect additional margin if a member has been placed on surveillance status.[60]

[53] EMCC has provided the results of a stress test in which the proposed formula was applied using three months of data on EMCC eligible transactions obtained from Match-EM. The test assumed for each member that the market in which such member had its highest concentration of positions experienced an abnormal negative market move (*i.e.*, the "stressed market"). All securities positions for that member in other countries were run under the baseline assumptions of no unusual market movements. The tests assumed first a 10 standard deviation market drop in the stressed market and second a 4 standard deviation market gain in the stressed market. The test assumed that bonds on the opposite sides of the stressed market had correlations of 80% while bonds on the same side of the stressed market had 100% correlation.

Under this test, EMCC had no exposure 73.64% of the time. EMCC had exposure between $1 and $1 million 9.18% of the time. EMCC had exposure of greater than $10 million 1.7% of the time. The highest exposures were four occurrences of an exposure of approximately $15 million and one exposure of approximately $50 million. EMCC has represented that it will continue to conduct periodic stress testing on a quarterly basis. Results of the stress tests will be reviewed with the membership and risk committee of EMCC's board of directors, and EMCC will reconsider the event risk factor if warranted by the results of the stress tests. The Commission directs EMCC to make the results available to Commission staff periodically. For example, EMCC is currently conducting stress testing based on data from trading during the week of October 27, 1997, a volatile period for the Brady bond markets. EMCC has stated that it will provide the Commission with the results of this testing.

[54] EMCC will receive notice at midnight ET (or 6:00 a.m. in Brussels and Luxembourg) from Euroclear and Cedel of all trades that have settled. At that time, Euroclear and Cedel have already completed most of their settlements of that day (*i.e.*, the notice issued at midnight ET on Friday morning will indicate trades that will settle Friday at the depository). Thus, when EMCC calculates the margin in the morning and the evening, it will have received notice of which trades have settled or failed for the day.

[55] *Supra* note 54.

[56] By including transactions in the morning volatility calculation whether or not they have settled, EMCC insures that data on three days of pending trades (*i.e.*, the number of days that EMCC is guaranteeing) is included. At the time of the morning volatility calculation, the trades entered into three days before will have settled, but EMCC will not have received data for the trades entered into on the current day. Thus, by including data for trades settling that day, EMCC will be using three days of data. EMCC will use fails as of the prior day because fails as of the current day would include trades due to settle that day (*i.e.*, these trades would be double counted as trades due to settle that day and fail trades). With respect to the evening volatility calculation, EMCC will have received data on trades entered into on that day and therefore will have data on three days of pending trades on which to base its calculation.

[57] The four liquidity classes and their bid/offer spreads are as follows: L1—⅜ of a point or less; L2—¾ of a point or less; L3—2 points or less; L4—greater than 2 points or no trading activity for a certain period of days.

[58] For each L4 security, the volatility amount is the value of the position ×30%. For L1, L2, and L3 securities of each issuer, EMCC will take the larger of the following formula with: (a) the member's long positions in lines 1 and 2 and short positions in lines 3 and 4; and (b) the member's short positions in lines 1 and 2 and long positions in lines 3 and 4.

1. (value of long or short L1+L2)×2 Std plus
2. (value of long or short L3)×4 Std plus
3. (value of long or short L1+L2)×2 Std × CC plus
4. (value of long or short L3)×1 Std × CC

Std is equal to a one standard deviation move over a five day holding period based on the higher of a calculation using price data for one year and three months. CC is the smallest correlation coefficient between any security of that issuer in which the member has short position and any security of that issuer in which the member has a long position. The correlation coefficient will be based on one year's pricing data and will be updated daily.

EMCC may adjust the fixed percentage applied to L4 securities or the number of standard deviations applied to L1, L2, and L3 securities without prior notice in order to increase the volatility calculations when warranted by circumstances. These adjustments may be made on a country by country basis or a bond by bond basis either for all members or for members unduly concentrated.

[59] Each day, EMCC will calculate a net country position and a net geographical position for each member. The net country position will be the sum of the settlement values of the member's positions in L1, L2, and L3 securities plus the sum of the absolute settlement values of the member's net position in L4 securities of each country. The net geographical position will be the sum of the net country positions in Latin America, Eastern Europe, Asia, and Africa. An undue concentration will be deemed to exist for a bank when its net country position exceeds 20% of net worth or its net geographical position exceeds 30% of net worth. An undue concentration will be deemed to exist for a broker-dealer when its net country position exceeds 50% of excess regulatory capital or its net geographical position exceeds 80% of excess regulatory capital. Under such circumstances, EMCC will contact the member to request information on the nature and magnitude of non-Brady bond exposure and on any hedging positions. After analyzing a member's responses, EMCC may request additional clearing fund deposits if it determines an additional deposit is necessary.

[60] EMCC will put a member on surveillance status if any of the following factors are present: (a) the member fails to meet any financial standard for admission or continuance as a member; (b) the member's capital position falls below the standards for admission; (c) the member experiences an inability to meet its money or securities settlement obligations to EMCC; (d) EMCC's board determines that a significant reorganization, change in control, or management of the member is likely to impair

The Commission preliminarily believes that EMCC's method of calculating clearing fund requirements is consistent with its obligations to safeguard securities and funds. The Commission will to review the results form EMCC's future stress tests. Prior to any grant of permanent registration as a clearing agency, the Commission will reevaluate EMCC's clearing fund formula.

b. Margin Composition and Investment

Members will be required to pay margin in cash, U.S. Treasury securities, or letters of credit from banks that have been approved by EMCC. If letters of credit are used as margin, no more than 70% of a member's requirement may be satisfied with letters of credit, and as a minimum, the greater of $100,000 or 10% of the member's margin requirement (up to a maximum of $1,000,000) must be in cash. Furthermore, no more than 20% of EMCC's total clearing fund may be letters of credit from any one issuer. If letters of credit are not used, the greater of $100,000 or 5% of the member's margin requirement (up to a maximum of $1,000,000) must be in cash. A haircut of 5% will be applied to letters of credit and treasury securities.

Pursuant to EMCC's rules, EMCC may invest any cash deposited as margin in securities issued or guaranteed as to principal or interest by the U.S. or agencies or instrumentalities of the U.S. ("government securities"), repurchase agreements related to such securities, or otherwise pursuant to the investment policy adopted by EMCC. As part of its application, EMCC has filed a copy of its investment policy.[61] EMCC's investment policy provides that EMCC clearing fund cash may be invested only in government securities with terms of one year or less or in overnight repurchase agreements with government securities as underlying collateral. The repurchase agreements must conform to certain standards set forth in the investment policy regarding custody and market value of the collateral and eligible counterparty. If not invested, cash funds will be deposited by EMCC in its name in a depository institution selected by EMCC. EMCC will retain all investment income from cash deposits.

The Commission believes that EMCC's investment policy and required margin composition are consistent with EMCC's obligations under the Exchange Act as explained in the Standards Release because they require that EMCC's clearing fund is composed of liquid securities and that the cash portion of the clearing fund is invested appropriately.

c. Loss Allocation

EMCC will establish an overnight exposure cap for each member. This cap will be set at the lesser of: (a) 5% of excess net capital for U.S. broker-dealers, 5% of excess financial resources for U.K. broker-dealers, and 1% of shareholders' equity for banks; or (b) $20 million. If a member's preliminary margin calculation is in excess of its overnight exposure cap, the member will be subject to fines. The loss allocation method applied to trades of an insolvent member will be dependent open whether a defaulting member has exceeded its overnight exposure cap.

When a failed member is not a broker, EMCC will classify trades as brokered or direct.[62] If there was an overnight exposure cap violation, EMCC will further classify such trades as trades received by EMCC before the violation ("old trades") or trades received by EMCC after the violation ("new trades"). Any collateral of the defaulting member will be divided between direct trades and brokered trades in proportion to the amount of losses attributable to old trades in each category. If there is insufficient collateral to cover all of the losses attributable to old trades: (a) Losses attributable to brokered transactions that are old trades will be allocated pro rata among all members based upon each member's average final daily margin amount for the prior 30 calendar days;[63] and (b) losses attributable to direct transactions that are old trades will be allocated among all the original counterparties in proportion to the amount of losses created by each member's transactions.

After the losses from old trades have been satisfied, EMCC will determine if any clearing fund collateral of the defaulting member remains. EMCC will net new trades to obtain a net loss per security issue. Any remaining clearing fund of the defaulting member will be applied to the smallest loss, then the next remaining smallest loss until there is no remaining clearing fund of the defaulting member. Next, EMCC will take the smallest remaining losses up to an amount that equals the amount of the defaulting member's overnight exposure cap ("under the cap losses") and will allocate the under the cap losses as follows: (a) Losses attributable to direct transactions will be allocated back to the original counterparties in an amount equal to the losses attributable to each member's trades; and (b) losses attributable to brokered transactions will be allocated pro rata among all EMCC members based upon each member's final daily margin amount calculated with respect to the prior 30 calendar days. Any remaining losses attributable to new trades will be allocated as follows: (a) Losses attributable to direct transactions will be allocated back to the original counterparties in an amount equal to the losses attributable to each member's trades; and (b) losses attributable to brokered transactions will be allocated first to the broker members that were counterparties to the trades to the extent of the loss attributable to each trade up to a maximum allocation of $3 million per broker and then pro rata among members that were counterparties to brokers that reach their maximum allocation and that were on the opposite side of the market in the same security issues creating a loss with the same settlement dates and approximately the same prices.

Different loss allocation rules will apply when the defaulting member is a broker. In such cases, any collateral of the defaulting member will be applied first to losses resulting from old trades. If there are remaining losses from old trades, such losses will be allocated among all the original counterparties in proportion to the amount of loss created by each member's transactions. EMCC then will net new trades to obtain a net loss per security issue. Any remaining clearing fund of the defaulting member will be applied to the smallest loss, then

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the member's ability to meet its money or securities settlement obligations to EMCC; or (e) the member has been placed on surveillance status by another self-regulatory organization or comparable regulatory organization. EMCC also will have the discretion to put a member on surveillance status if any of the following factors are present: (a) it experiences a significant operational problem; (b) the member's positions are significantly disproportionate to its usual activity in light of current industry conditions; (c) EMCC receives notification from the member's designated examining authority or appropriate regulatory agency or comparable regulatory organization of a pending investigation or administrative action that could call into question the member's ability to meet its obligations to EMCC; or (d) the member experiences any condition that could materially affect its financial or operational capability so as to potentially increase EMCC's exposure to loss or liability.

[61] If EMCC amends its investment policy, it will file a proposed rule change with the Commission.

[62] If the failed member's counterparty was an interdealer broker, but the interdealer broker's counterparty on the other side was not an EMCC member, EMCC will consider the trade to be a direct trade between the insolvent and the interdealer broker. In other words, "brokered trades" are trades where the interdealer broker is an EMCC member and EMCC members are on both sides.

[63] A member that is assessed pursuant to this provision may limit its assessment to its current margin requirement if it chooses to terminate its membership.

the next remaining smallest loss until there is no remaining clearing fund. Any remaining loss after application of clearing fund will be allocated to the counterparties to the transactions giving rise to such loss to the extent of the loss attributable to such transactions.

d. Use of Clearing Fund

EMCC's rules provide that the use of clearing fund deposits is limited to: (a) Satisfaction of losses or liabilities of EMCC arising from the failure of a member to satisfy an obligation to EMCC, or (b) providing EMCC with a source of collateral: (i) To finance the temporary receipt by EMCC of EMCC eligible instruments that cannot be redelivered to a member due to the inability of the member to pay for the receipt but only if such inability constitutes the failure by the member to meet its securities settlement obligations to EMCC; (ii) to finance only on an intraday basis the receipt of EMCC eligible instruments that will be redelivered to another member at a depository, provided that no more than 10% of the total clearing fund may be used for this purpose and that eligible letters of credit will be used to the maximum extent practicable prior to the use of treasury securities, and that cash will not be used;[64] and (iii) to temporarily finance the amount of any loss or liability allocated to a member prior to such time as such member's actual clearing fund is applied to the loss. If EMCC pledges any part of the clearing fund deposits for more than 60 days as a source of temporary financing, EMCC will by the 74th day consider such amount to be a loss and will allocate such loss in accordance with the loss allocation rules.

The Commission believes that EMCC's uses of clearing fund to satisfy losses or to finance settlements related to the failure of a member is consistent with the Exchange Act and the Standards Release. As a general rule, the Commission believes that procedures permitting the routine use of clearing fund assets to finance on a daily basis the receipt of instruments in the normal settlement process is not consistent with the Exchange Act or the guidelines set forth in the Standards Release. However, the Commission believes that the limitations EMCC has established on its use of assets for the routine, daily financing of security receipts (*i.e.*, intraday financing, 10% limitation, and use of letters of credit first to the extent possible) and the limited purpose for which EMCC intends to use the clearing fund collateral (*i.e.*, to collateralize a line of credit at Euroclear to permit "chaining"[65]), are reasonably designed and should not cause undue risk to EMCC. The intraday financing procedures will allow EMCC to collateralize its line of credit at Euroclear, which is needed to allow EMCC to conduct its business effectively and efficiently, while still providing adequate protection to the assets of its clearing fund. Therefore, the Commission is granting EMCC a temporary exemption from Sections 17A(b)(3)(A) and 17A(b)(3)(F) of the Exchange Act to permit EMCC to use a portion of its clearing fund as described in (ii) above until the earlier of one year after EMCC has commenced operations or the date on which EMCC begins its netting service.[66]

2. Standard of Care

The Division stated in the Standards Release that the rules of a clearing agency should provide that it is liable to a participant for failure to deliver the participant's securities resulting from: (1) The negligence or misconduct of the clearing agency, the clearing agency's subcustodian or agent, or any of their respective employees; (2) the placement on fully-paid participant securities of a lien or charge of any kind in favor of the clearing agency, the clearing agency's subcustodian or agent, or any person claiming through any one or more of them; (3) larceny; (4) mysterious disappearance; or (5) any other cause for which the clearing agency has assumed responsibility. Subsequent to issuance of the Standards Release, the Commission has stated that clearing agencies should perform their functions under a high standard of care and that at a minimum custody functions should be performed under an ordinary negligence standard.[67] The Commission has also stated that custody functions include all functions related to transaction processing and the safekeeping of customer funds and securities.[68]

The member's agreement between EMCC and each member provides that EMCC is not subject to any liability under the agreement, including any liability with respect to EMCC's failure to provide any services under the agreement or EMCC's rules, except for losses resulting from EMCC's gross negligence, criminal act, or willful misconduct in connection with its duties. However, with respect to the safeguarding of securities or funds within its custody or control, the member's agreement provides that EMCC is not be subject to any liability for any act or omission in connection with the safeguarding of securities or funds within its custody or control except for losses, costs, or expenses resulting from EMCC's negligence, criminal act, or willful misconduct. The agreement further provides that EMCC will not be liable for any consequential or special damages which may result from EMCC's failure to perform its obligations under the agreement.

The Commission believes that EMCC's standard of care is consistent with the Exchange Act and prior Commission positions. However, the Commission preliminarily believes that a clearing agency should accept some responsibility for damages that are foreseeable and related to securities settlement (*e.g.*, damages resulting from a buy-in or sell-out conducted as a result of EMCC's negligence in delivering or not delivering funds or securities). At this time, the Commission is temporarily registering EMCC as a clearing agency but intends to review this issue further.

3. Operational Capacity

Pursuant to a service agreement, ISCC has agreed to perform services for EMCC with respect to EMCC's clearing agency activities. ISCC will furnish the services for a fee designed to cover ISCC's costs. ISCC will provide EMCC with technical services in the following areas: data processing, operations, planning and development, communications, and research and development. Currently, ISCC provides limited clearing agency services and has seven employees whose duties are generally limited to operational functions.

Pursuant to its service agreement, ISCC may use outside parties to fulfill its commitments to EMCC. Many of ISCC's functions will be performed by NSCC. Specifically, NSCC through ISCC will provide EMCC with management and administrative services in the following areas: financial, personnel, corporate communications, marketing, regulatory or compliance, and legal. The Securities Industry Automation

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[64] This provision will automatically expire the earlier of the first anniversary of EMCC's commencement of operations or the date on which EMCC begins its netting service.

[65] *See supra* note 23.

[66] When EMCC institutes netting, the need for repeated use of the clearing fund to facilitate chaining will be greatly reduced.

[67] Securities Exchange Act Release Nos. 26154 (October 3, 1988), 53 FR 39556 (registration order of The Intermarket Clearing Corporation ["ICC"]); 26450 (January 12, 1989), 54 FR 2010 (registration order of the Delta Government Options Corp. ["DGOC"]); 26812 (May 12, 1989), 54 FR 21691 (registration order of ISCC); and 27611 (January 12, 1990), 55 FR 1890 (second registration order of DGOC).

[68] *See, e.g.*, ICC registration order, *supra* note 67.

Corporation ("SIAC"),[69] through ISCC and NSCC, also will provide EMCC with clerical and data processing services. In addition, ISCC will rely on International Depository & Clearing, L.L.C. ("IDC")[70] for product development, marketing and sales, and planning functions.

As discussed above, EMCC has no independent capacity to match trades. Instead, it will rely on Match-EM and TRAX for such services. EMCC has verified that its board of directors has authorized the selection of Match-EM and TRAX after review of information describing these entities' operations and capacity testing.[71] Furthermore, EMCC has represented that Match-EM and TRAX have procedures in place relating to capacity planning and systems testing, and that EMCC will receive and will furnish to the Commission documentation relating to such areas.

While EMCC's operational structure will be unusual for a clearing agency, the Commission believes that its structure and operational arrangements will provide an adequate level of service. The Commission notes in particular that EMCC's core functions, such as its managerial functions, will not be performed by an unregistered entity. The Commission will monitor EMCC's operation during the term of its temporary registration and will review its structure and outsourcing arrangements prior to granting permanent registration.

4. Audit Committee and Internal Audit Department

The Standards Release states that each clearing agency should have an audit committee composed of nonmanagement directors. A nonmanagement director is a director who is not associated with the clearing agency other than in a user capacity or with any entity which furnishes securities processing services to the clearing agency. The audit committee should have responsibility for reviewing the work performed by the clearing agency's independent public accountant.

EMCC's bylaws provide that the board of directors may appoint an audit committee consisting of three or more directors other than directors that are members of Class IV (*i.e.*, directors elected by EMTA, ISMA, or NSCC), or are officers of EMCC. The audit committee has responsibility for reviewing with the independent certified public accountant the scope of its auditing procedures and the financial statements of EMCC to be certified by the accountant.

The Standards Release also states that a clearing agency should have an internal audit department which is adequately staffed with qualified personnel. The internal audit committee should report periodically to the audit committee. NSCC's internal audit department will perform EMCC's internal auditing functions. The audit department reports directly to EMCC's audit committee. Accordingly, with regard to internal audits, the Commission believes that EMCC fulfills the Exchange Act's requirements.

5. Securities, Funds, and Data Controls

The Standards Release provides that a clearing agency should have, among other things, off-site storage of back-up data, written procedures detailing steps involved in handling funds and securities, and emergency mechanisms for establishing and maintaining communications with participants and other entities. In addition, clearing agencies should have adequate insurance coverage.

EMCC has represented that through its facilities manager, SIAC, it has access to two computer sites in different locations, both of which are capable of being operated independently and are capable of handling total member activity. Data received will be automatically written to both sites. EMCC has provided a detailed written statement of security measures that will be used to prevent unauthorized access to EMCC's processing facilities. EMCC maintains blanket bond insurance and all risk insurance.

The Standards Release emphasizes that a clearing agency should assure the integrity and accuracy of its automatic data processing operations. More recently, the Commission has issued automation review guidelines for clearing agencies that provide a more specific outline of clearing agencies' obligations with respect to such things as capacity planning, contingency planning, data security, telecommunications, systems development, and internal/external audit.[72] EMCC has acknowledged that it has obligations with respect to capacity planning and systems testing under these guidelines and has represented that it will fulfill its responsibilities with respect to these obligations.[73]

The Commission has also been monitoring efforts within the industry to prepare computer systems for the Year 2000 date change.[74] EMCC has represented that it is Year 2000 compliant and will take appropriate actions to ensure that the parties with which it conducts business (*e.g.*, vendors, and members) will be Year 2000 compliant on a timely basis.[75] Based on the foregoing, the Commission believes that EMCC has adequate controls with respect to securities, funds, and data processing.

E. Capacity To Enforce Rules

Section 17A(b)(3)(A) of the Exchange Act provides that a clearing agency must be organized and have the capacity to enforce (subject to any rule or order of the Commission pursuant to Section 17(d) or 19(g)(2) of the Exchange Act) compliance by its participants with the rules of the clearing agency. Sections 17A(b)(3)(G) and (H) require that the rules of a clearing agency provide that its participants shall be appropriately disciplined for violations of any provision of those rules and provide fair procedures for disciplining participants, denying participation in the clearing agency to any person, prohibiting or limiting access to the clearing agency's services, and reviewing summary suspensions.

1. Participant Monitoring

EMCC's Rule 13 authorizes EMCC to examine the financial responsibility and operational capability of any member or applicant to become a member. Pursuant to Rule 13, EMCC may require a member to furnish EMCC with adequate assurances of its financial responsibility and operational capability, including additional reporting by a member of its financial or operational condition; increased clearing fund deposits; and other assurances as may be required by EMCC.

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[69] SIAC is owned by the New York Stock Exchange and the American Stock Exchange.

[70] IDC is a company equally owned by NSCC and The Depository Trust Company, both registered clearing agencies. However, IDC is not a regulated entity.

[71] Copies of the materials that EMCC's board of directors relied on were filed with the Commission as part of EMCC's application.

[72] Securities Exchange Act Release Nos. 27445 (November 16, 1989), 54 FR 48703 and 29185 (May 9, 1991), 56 FR 22490; and Memorandum from Division of Market Regulation to all registered clearing agencies regarding Development of an Automation Review Policy Statement For Clearing Agencies (April 25, 1994). Available for copying and inspection in the Commission's Public Reference Room.

[73] As discussed above in Section III.D.3., EMCC has represented to the Commission that March-EM and TRAX will provide to EMCC information in these areas and that EMCC will provide the information to the Commission.

[74] *See Report to the Congress on the Readiness of the United States Securities Industry and Public Companies To Meet the Information Processing Challenges of the Year 2000*, U.S. Securities and Exchange Commission (June 1997).

[75] Letter from EMCC (October 8, 1997).

EMCC also has general continuance standards that require a member to promptly inform EMCC in the event that it is no longer in compliance with any of the relevant standards for membership or has had any materially adverse change. The board may require additional financial reporting if a member no longer meets the standards for admission to membership; if it has violated any rule to EMCC; if it fails to satisfy in a timely manner any obligation to EMCC; if there is a material change in control or financial condition of such member; or if the board determines that it is necessary or advisable to protect EMCC, its other members, or its creditors or investors; to safeguard securities and funds in the custody or control of EMCC; or to promote the prompt and accurate processing, clearance, or settlement of securities transactions. The board must also make a determination as to whether the member should be placed on surveillance status consistent with its rules.[76]

2. Ceasing to Act

Section 17A(b)(5)(C) of the Exchange Act provides that a clearing agency may summarily suspend and close the accounts of a participant that is expelled or suspended from any self-regulatory organization; that is in default of any delivery of funds or securities to the clearing agency; or that is in such financial or operational difficulty that the clearing agency determines and so notifies the appropriate regulatory agency for such participant that such suspension and closing of accounts are necessary for the protection of the clearing agency, its participants, creditors, or investors.

Upon providing notice to a member, EMCC may at any time cease to act for such member if the board of directors determines that adequate cause exists to do so.[77] EMCC may cease to act either with regard to a particular transaction or with regard to transactions generally. EMCC will promptly notify all members when it ceases to act for a member. A member for which EMCC has ceased to act may request a hearing to review EMCC's decision.

If certain factors are present, EMCC will treat a member as insolvent.[78] EMCC will notify all members of the treatment of the member as insolvent. Upon a determination of insolvency, EMCC will immediately cease to act for such member. EMCC will delete all trades of that member to which EMCC's guaranty has not attached except trades that the board determines will promote an orderly market. EMCC will then close out the guaranteed trades and the trades that the board has determined to accept. EMCC will close out by buying in or selling out securities deliverable by or to the insolvent. The close out procedure will be completed by EMCC as promptly as practicable after EMCC has given notice of the treatment of the member as insolvent.

3. Hearing Procedures

Section 17A(b)(5) of the Exchange Act provides that in any proceeding to determine whether a participant should be denied participation, prohibited or limited with respect to access to the clearing agency's services, or disciplined, the clearing agency must notify the participant of the specific ground of the denial of services of the charges brought against the member. The clearing agency must provide the member with an opportunity to be heard on the grounds of the denial or to defend against any charges. The clearing agency must keep a record of the proceeding.

A member may request a hearing by filing with EMCC a written request setting forth the contested action of EMCC. Within seven business days after filing the request or three business days in the case of summary action, the objecting member must provide EMCC with a detailed written statement setting forth the contested action and the basis for objection. EMCC will notify the member in writing of the date and place of the hearing at least five business days prior to the hearing.

The hearing will be before a panel drawn from participant directors on the membership committee unless the contested action was taken by the membership committee. In such a case, the panel will be drawn from participant directors on the executive committee. The committee will select the members of the panel. The objecting members will have an opportunity to be heard and may be represented by counsel. The panel will make a decision within ten business days after conclusion of the hearing. Although the panel's decision is considered final, the board may overturn any decision adverse to the member.

The Commission believes that EMCC has the capacity to enforce its rules. EMCC has criteria to determine when its has cause to cease to act for a member or when it must treat a member as insolvent. A member for which EMCC has ceased to act or for which EMCC has limited its access to EMCC services may request a hearing pursuant to EMCC's rules. The hearing procedures are consistent with the guidelines discussed in the Standards Release. Therefore, the Commission believes that EMCC's rules in this are consistent with the Exchange Act.

F. Dues, Fees, and Charges

Sections 17A(b)(3)(D) and (E) of the Exchange Act require that the rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants and prohibits a clearing agency from imposing or fixing prices for services rendered by its participants. EMCC's proposed fee schedule is generally usage based. EMCC does not impose any schedule of prices or fix rates or other fees for services rendered by its customers. Accordingly, the Commission is satisfied that the method by which EMCC provides for the equitable allocation of reasonable dues, fees, and other charges among its customers and its prohibitions regarding the fixing of prices of its customers substantially satisfies the Exchange Act requirements.

IV. Conclusion

The Commission finds that EMCC's application for registration as a clearing agency meets the standards and requirements deemed appropriate except as otherwise discussed in this order for which EMCC has received temporary exemptions.

[76] *See, supra* note 60.

[77] Such cause may exist if one or more factors are found, including: the member has failed to perform any of its obligations or has failed to make any required payment to EMCC; the member is no longer in compliance with the admissions standards or continuance standards; the board has reasonable grounds to believe the member has been responsible for any fraudulent or dishonest conduct or breach of fiduciary duty or has made any material misstatement to EMCC in connection with its application to be a member of any EMCC service; the board has reasonable grounds to believe the member is in financial or operation difficulty; the member is in breach of any requirement imposed by an appropriate regulatory agency, self-regulatory organization, or any regulatory body; the member is not paying its debts as they become due or is otherwise involved in a bankruptcy proceeding; the member is dissolved or ceases to carry on its business; the member contests the validity of any agreement with EMCC; the member fails to perform its contracts with EMCC; or the board has reasonable grounds to believe that ceasing to act is necessary either for the protection of EMCC or for any of the other members or to facilitate the orderly and continuous performance of EMCC's services. EMCC Rule 15, Section 1.

[78] Such circumstances include: the member provides notice to EMCC that it is insolvent; the board or any regulatory body determines that the member is insolvent; a court order is entered adjudging the member to be insolvent; the member files or consents to the filing of a petition seeking bankruptcy relief, the member makes a general assignment to its creditors; the member is dissolved; or a resolution is passed by the member that it be wound up, liquidated, or dissolved. EMCC Rule 17, Section 1.

The Commission has granted EMCC partial exemptions from Section 17A(b)(3)(B) of the Exchange Act to permit EMCC to limit the eligible categories of members and from Sections 17A(b)(3)(A) and 17A(b)(3)(F) of the Exchange Act to permit EMCC to use a portion of its clearing fund to collateralize a line of credit at Euroclear subject to the limitations discussed above. The Commission finds that granting the above exemptions is consistent with the public interest, the protection of investors, and the purposes of Section 17A, including the prompt and accurate clearance and settlement of securities transactions as well as the safeguarding of securities and funds. The Commission reserves the right to modify, by order (including such orders as the Commission may issue under Section 19(b) of the Exchange Act in connection with changes to EMCC's rules), the terms, scope, or conditions of the exemptions from the Exchange Act, if it determines such modification is appropriate for the protection of investors or in the public interest.

It is therefore ordered, pursuant to Section 19(a)(1) of the Exchange Act, that the applications for registration as a clearing agency filed by EMCC (File No. 600–30) be and hereby is approved until August 20, 1999 and that EMCC be granted the exemptions described above subject to the terms, exemptions, and other qualification contained in this order.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4255 Filed 2–19–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39484; File No. SR–Amex–97–44]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Institutional Index Option Position Limits

February 11, 1998.

I. Introduction

On November 4, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 ("Exchange Act" or "Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase both position and exercise limits, as well as the firm facilitation exemption, for its Institutional Index Options ("XII").

The proposed rule change was published for comment in the **Federal Register** on November 17, 1997.[3] No comments were received on the proposal. This order approves the proposal, as amended.

II. Description

A. Increase XII Position and Exercise Limits

The Amex is proposing to increase XII position and exercise limits to 100,000 contracts on the same side of the market. Existing Exchange rules provide for XII position and exercise[4] limits of 45,000 contracts on the same side of the market of which no more than 25,000 contracts may be used for purposes of realizing any differential in price between XII and the securities underlying XII. In July of 1992, the Exchange increased position and exercise limits for XII to their current levels.[5] Since that time, options on XII continue to be traded primarily by institutional and professional investors and member firms, each often needing to hedge large asset quantities.

The Exchange believes that increasing the position and exercise limits for XII options to 100,000 contracts will allow increased institutional use of XII and allow it to be more competitive with alternative products. In addition, the Exchange believes that an increase in XII position and exercise limits will benefit not only the beneficiaries of assets managed by various institutions, but also the marketplace in general through increased liquidity.

These proposed changes are intended to result in little or no attendant risk to the marketplace as XII is composed of seventy-five of the most widely-held stocks in institutional portfolios that have a market value of more than one hundred million in investment funds.[6] Thus the component issues are extremely liquid and the overall index less volatile than individual stocks. Lastly, XII options are European-style and therefore can only be exercised at expiration.

To enhance its ability to monitor unhedged positions, the Amex will add a reporting requirement (new Commentary .03 to Exchange Rule 904(C) for accounts having a position in excess of 45,000 a.m.-settled, European-style XII option contracts on the same-side of the market. Specifically, new Commentary .03 to Exchange Rule 904C states that if a member or member organization, other than an Exchange Specialist or Registered Options Trader, maintains a position in excess of 45,000 a.m.-settled, European-style XII option contracts on the same-side of the market on behalf of its own account or for the account of a customer, it must report information as to whether those positions are hedged and provide documentation as to how such contracts are hedged, in the manner and form required by the Exchange. In addition, to address the Commission's concerns with respect to the ability of the Exchange to monitor customer accounts that maintain large unhedged positions, the Amex will add a margin and clearing firm requirement. Pursuant to new Commentary .04 to Exchange Rule 904C, whenever the Exchange determines that additional margin is warranted in light of the risks associated with an under-hedged option position in excess of 45,000 contracts, the Exchange may impose additional margin upon the account maintaining such under-hedged position, or assess capital charges upon the clearing firm carrying the account to the extent of any margin deficiency resulting from the higher margin requirement.

B. Increase XII Firm Facilitation Exemption

The Exchange is proposing to increase the XII firm facilitation exemption[7] from 100,000 contracts to 400,000 contracts in order to accommodate the needs of investors as well as market participants. The Exchange believes that this increase should not substantially increase concerns regarding the potential for manipulation and other trading abuses.[8] Furthermore, the Exchange believes that proposed rule change will further enhance the potential depth and liquidity of the options market as well as the underlying

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] Exchange Act Release No. 39313 (November 7, 1997), 62 FR 61418 (November 17, 1997).

[4] The exercise limit for XII, which is equal to XII's position limit, is determined under Exchange Rules 905C and 905.

[5] *See* Exchange Act Release No. 31330 (Oct. 16, 1992) 57 FR 30516 (Oct. 23, 1992).

[6] To qualify for inclusion in XII, stocks must be held by a minimum of 200 of the reporting institutions filing Section 13(f) reports and must have traded at least 7 million shares in each of the two preceding calendar quarters.

[7] The Amex defines a facilitation order as an order which is only executed in whole or in part, in a cross transaction with an order for a public customer of the member organization. *See* Amex Rule 950 (e)(iv).

[8] The Exchange notes that the XII firm facilitation exemption is in addition to the standard limit and other exemptions under Exchange rules, commentaries and policies.

markets by providing Exchange members greater flexibility in executing large customer orders, which the Exchange's existing safeguards applicable to current facilitation exemptions continue to serve to minimize any potential disruption or manipulation concerns.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[9] Specifically, the Commission believes that the proposed increase in the XII position and exercise limits, as well as the firm facilitation exemption, will enhance the depth and liquidity of the market for both members and investors. Accordingly, the Commission believes that these changes are consistent with, and further the objectives of, Section 6(b)(5)[10] of the Act in that they would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.[11]

A. Increase XII Position and Exercise Limits

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulation[12] and for corners or squeezes of the underlying market. In addition, they serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.

The Commission has been careful to balance two competing concerns when considering an SRO's position and exercise limits. First, the Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market for the underlying security by acquiring and exercising a number of options contracts disproportionate to the deliverable supply and average trading volume of the underlying security. At the same time, the Commission has realized that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[13]

The Commission believes that the proposed increase in XII position and exercise limits to 100,000 contracts will expand the depth and liquidity of the XII market without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities.[14] As previously noted by the Commission, markets with active and deep trading interest, as well as with broad public ownership, are more difficult to manipulate or disrupt than less active and deep markets with smaller public floats. In this regard, the XII market is composed of seventy-five of the most widely-held stocks in institutional portfolios that have a market value of more than one hundred million in investment funds.

Moreover, the Amex has adopted important safeguards that will allow it to monitor large unhedged positions (those in excess of 45,000 contracts) in order to identify instances of potential risk[15] and to assess additional margin or capital charges against the clearing firm, if necessary.[16]

Accordingly, given the size and breadth of the XII, along with the new XII reporting requirement set forth in Commentary .03 to Exchange Rule 904C and the new margin and clearing firm requirements set forth in Commentary .04 to Exchange Rule 904C, the Commission believes that increasing the XII position and exercise limits to 100,000 contracts should not increase any manipulative concerns. Finally, the Exchange's surveillance program will continue to detect and deter trading abuses arising from the increased position and exercise limits.[17]

B. Increase XII Firm Facilitation Exemption

The Commission believes that the proposed increase of the XII firm facilitation exemption from 100,000 contracts to 400,000 contracts will accommodate the needs of investors as well as market participants without substantially increasing concerns regarding the potential for manipulation and other trading abuses.[18] The Commission also believes that the proposed rule change will further enhance the potential depth and liquidity of the options market as well as the underlying market by providing Exchange members greater flexibility in executing large customer orders.[19]

The Amex's existing safeguards that apply to the current facilitation exemption will continue to serve to minimize any potential disruption or manipulation concerns. First, the facilitation firm must receive approval from the Exchange prior to executing facilitating trades. Second, a facilitation firm must, within five business days after the execution of a facilitation exemption order, hedge all exempt options positions that have not previously been liquidated, and furnish to the Exchange documentation reflecting the resulting hedged

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[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(5).

[11] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[12] Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established derivatives position.

[13] See H.R. Rep. No. IFC–3, 96th Cong., 1st Sess. at 189–91 (Comm. Print 1978) ("Options Study").

[14] See Amex Rule 904C(a).

[15] Under new Commentary .03 to Exchange Rule 904C, each member or member organization, other than an Exchange Specialist or Registered Options Trader, that maintains a position in excess of 45,000 A.M.-settled, European-style XII option contracts on the same side of the market on behalf of its own account or for the account of a customer will report information as to whether those positions are hedged and provide documentation as to how such contracts are hedged, in the manner and form required by the Exchange.

[16] Under new Commentary .04 Exchange Rule 904C, whenever the Exchange determines that additional margin is warranted in light of the risks associated with an under-hedged XII option position in excess of 45,000 contracts, the Exchange may impose additional margin upon the account maintaining such under-hedged position, or assess capital charges upon the clearing firm carrying the account to the extent of any margin deficiency resulting from the higher margin requirement.

[17] The Exchange has represented that it intends to implement increased surveillance and reporting procedures to ensure a thorough understanding of the uses and risks of the underlying strategies supported by the increased position limits. The Exchange also has represented that it intends to provide reports regarding position limits to the Commission's Division of Market Regulation on a periodic basis and at appropriate thresholds of activity.

[18] The Commission notes that the XII firm facilitation exemption is in addition to the Standard limit and other exemptions under Exchange rules, commentaries and policies.

[19] When initially approving the firm facilitation exemption for XII options, the Commission stated that providing member organizations with an exemption for the purpose of facilitating large customer orders would better serve the needs of the investing public. At that time, the Commission also noted that safeguards were built into the exemption to minimize any potential disruption or manipulation concerns. The Commission currently believes that these same benefits and assurances are also applicable with respect to the increased firm facilitation exemption. See Exchange Act Release No. 31330 (October 16, 1992), 57 FR 48408 (October 23, 1992).

positions.[20] Third, the facilitation exemption member is required to provide the Exchange with any information or document requested concerning the exempted options positions and the positions hedging them. Fourth, a facilitation exemption member is not permitted to use the facilitation exemption for the purpose of engaging in index arbitrage. Fifth, neither the member's nor the customer's order may be contingent upon "all or none" or "fill or kill" instructions and the orders may not be executed until the XII specialist has announced the orders to the entire crowd and crowd members have been given a reasonable time to participate in the trade. Finally, once liquidated or reduced, the member organization may not increase the exempted option positions without receiving approval from the Exchange again. The Commission believes that these requirements will help to ensure that the facilitation exemption will not have an undue market impact on the options or on any underlying stock positions.

In summary, the Commission continues to believe that the safeguards built into the facilitation exemptive process will serve to minimize the potential for disruption and manipulation concerns, while at the same time benefiting market participants by allowing member firms greater flexibility to facilitate large customer orders. The Commission also believes that the Amex has adequate surveillance procedures to surveil for compliance with the rule's requirements. Based on these reasons, the Commission believes that it is appropriate to increase the XII firm facilitation exemption to 400,000 contracts.

IV. Conclusion

Based on the above, the Commission believes that the proposed rule change will serve to provide market participants with greater flexibility without significantly increasing concerns regarding intermarket manipulations or disruptions of either the options market or the underlying stock market.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–Amex97–44) is approved.

[20] In meeting this requirement, the facilitation firm must liquidate and establish its customer's and its own options and stock positions or their equivalent in an orderly fashion, and not in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes.

[21] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4257 Filed 2–19–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39657; International Series Release No. 1116; File No. SR–DTC–97–22]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to Establishing an Omnibus Account at the Canadian Depository for Securities

February 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 30, 1997, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–97–22) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to establish a DTC omnibus account at the Canadian Depository for Securities ("CDS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, DTC maintains a link with CDS that allows a CDS participant to establish an account at DTC or use CDS's omnibus account at DTC. The link permits CDS's participants to process book-entry transactions with other DTC participant. In addition, the link permits CDS and its participants to use DTC's custody, clearance, and settlement services for transactions involving securities eligible in both systems. However, the current link limits book-entry deliveries from a CDS participant to a DTC counterparty by requiring that the securities be physically held at DTC. As a result, a CDS participant is unable to deliver securities in its CDS account by book-entry movement.[3]

Occasionally, a CDS participant attempting to settle a trade with a DTC counterparty has sufficient inventory in its account at CDS to settle a transaction but does not have sufficient inventory in its DTC account. When this occurs, the CDS participant must physically withdraw the securities fro CDS to make a physical deposit a DTC.[4] The costs and risks associated with withdrawing and physically transporting certificates for purpose of redepositing them at DTC, which involves reregistration and forwarding of certificates to the U.S., can be significant. In addition, due to overlapping processing deadlines between CDS withdrawals and DTC deposits, a CDS participant may not be able to obtain same-day credit at DTC so that it can avoid a failure to deliver. As a result, a participant may incur certain expenses associated with its failure to deliver. Similarly, CDS participants face the same difficulties when on occasion they need to physically withdraw Canadian securities from DTC in order to redeposit them at CDS for reasons other than trade settlement (*e.g.*, to repatriate their holdings of Canadian securities for inventory management purposes).

Under the proposed rule change, DTC will establish an omnibus account at CDS thereby creating a two-way interface between CDS and DTC. As a

[3] CDS participants sometimes represent U.S. investors or U.S. intermediaries who are in turn also adversely affected.

[4] As of October 1, 1997, new deposit procedures provide CDS participants same-day credit at DTC for securities deposited through DTC's deposit facilities in CDS offices in Vancouver, Toronto, Montreal, and Calgary. CDS, on behalf of DTC, arranges for the reregistration of Canadian securities into the name of Cede & Co. prior to sending them to DTC.

result of the proposed rule change, a CDS participant will be able to settle a cross-border transaction with a DTC counterparty by making a book-entry delivery from its participant account at CDS to the DTC omnibus account at CDS.[5] The CDS participant would identify which DTC participant account should be credited with the position. This transaction would then result in an immediate credit to the receiving DTC participant account on DTC's books. The receiving DTC participant could then redeliver on a free or versus payment basis within DTC. Thus, there would be no need for the physical transporting of certificates to DTC. The securities would remain at CDS unless withdrawn by DTC. DTC and CDS would conduct automated daily reconciliation to ensure balanced books. In addition, to minimize any subsequent physical movement of securities, DTC and CDS would engage in weekly netting. The netting would reduce on an omnibus basis the number of securities in the same issue held by each depository on behalf of the other.

CDS would provide subcustody services as income collection, maturity presentments, and reorganization processing on securities held in DTC's omnibus account at CDS in accordance with CDS procedures (as DTC currently provides for securities held by DTC on behalf of CDS). Whether DTC is holding its underlying inventory in Canada or in the U.S., DTC services to participants will be the same as currently provided.

DTC believes that the primary benefits of opening an omnibus account at CDS are: (i) The elimination of failed transactions on the trade settlement date that result from delays in the current process; (ii) the elimination of most physical movements of Canadian securities between CDS, DTC, and Canadian transfer agents, and the costs and risks associated with such movements; and (iii) the reduction of costs to DTC and CDS participants related to (i) and (ii). DTC believes that the realization of these benefits is consistent with DTC's objectives of providing efficient book-entry clearance and settlement facilities and reducing risk to DTC participants by immobilizing certificates.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act[6] and the rules and regulations thereunder applicable to DTC because the proposed enhancements will reduce risks and associated costs to DTC and CDS participants by streamlining the processing of crossborder securities transactions between U.S. and Canadian entities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change was developed through discussions with several participants. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–97–22 and should be submitted by March 13, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4251 Filed 2–19–98; 8:45 am]

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[5] International Depository & Clearing LLC, a subsidiary that DTC owns jointly with National Securities Clearing Corporation, is coordinating DTC's development of the proposed enhancement.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39658; File No. SR–DTC–97–14]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Revisions to the Procedures for Running Call Lotteries on Issues of Book Entry Only Securities

February 12, 1998.

On July 14, 1997, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–97–14) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on December 8, 1997.[2] The Commission received no comment letters in response to the filing. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change amends DTC's procedures for running call lotteries for book-entry only ("BEO") issues of securities.[3] Prior to the rule

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39373 (November 28, 1997), 62 FR 64612.

[3] For a discussion of DTC's call lottery process, refer to Securities Exchange Act Release Nos. 21523 (November 27, 1984), 49 FR 47352 [File No. SR–DTC–84–09] (filing and immediate effectiveness of proposed rule change); 30552 (April 2, 1992), 57 FR 12352 [File No. SR–DTC–90–02] (order temporarily approving a proposed rule change by the DTC relating to the establishment of a procedure to recall certain deliveries which have created short positions as a result of call lotteries); 35034 (November 30, 1994), 59 FR 63396 [File Nos. SR–DTC–94–08 and SR–DTC–94–09] (order granting temporary approval of proposed rule changes to establish procedures to recall certain deliveries which have created short positions as a result of call lotteries and rejected deposits); and 36651 (December 28, 1995), 61 FR 429 [File No. SR–DTC–95–21] (order granting accelerated permanent approval of a proposed rule change concerning short position reclamation procedures).

change, DTC's call lottery process allocated partially called securities [4] among participants having positions in the called securities based on the participants' positions on the call publication date.[5] Under the amendment, for BEO issues of securities DTC will run lotteries using its participants' positions as of the close of business on the day DTC announces the lottery instead of the call publication date.[6] The proposed rule change does not set forth any other amendments to DTC's call lottery procedures.

DTC has stated its belief that changing procedures solely for BEO securities will contribute to a reduction in short positions without causing any adverse impact to the parties concerned. The concept of a publication date appears to be far less relevant to BEO securities than to other securities. Generally issuers of these securities do not publish partial call notices but rather inform only the holder of record (which is DTC for BEO issues) which then notifies its participants. Although the issuer may inform DTC of a publication date, DTC believes this is done only for purposes of DTC's lottery, and the date has no other real significance. DTC generally processes calls of BEO issues within twenty-four hours of the call being announced by DTC.

II. Discussion

Section 17A(b)(3)(F) [7] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that DTC's proposed rule change is consistent with DTC's obligations under the Act because the new procedures should help reduce the number of short positions created by call lotteries. In particular, the rule change will eliminate short positions that occur when a participant sells its shares between the call publication date and the date DTC announces the lottery. As a result, DTC participants will avoid the expenses associated with experiencing short positions, including DTC's daily charge of 130% of the market value of each security for which the participant has a short position at DTC.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–97–14) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4254 Filed 2–19–98; 8:45 am]

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[4] The terms of certain issues allows the issuer to call for part or all of the outstanding securities for redemption at certain times during the issue's life. This type of issue is referred to as a callable security. Callable securities are either preferred stock or bonds which the issuer is permitted or required to redeem before the stated maturity. Generally when an issuer calls a security, the issuer's trustee publishes notice that the issue has been called or in the case of registered securities, mails notice to the registered holders.

[5] The call publication date is the date on which the issuer gives notice of the redemption.

[6] A copy of DTC's proposed call lottery procedures is attached as Exhibit A to DTC's proposed rule change, which is available for inspection and copying at the Commission's Public Reference room or through DTC.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39664; File No. SR–NASD–98–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Extension of Time to Answer Arbitration Complaints

February 13, 1998.

Pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 2, 1998,[2] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Association has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (e)(6) of Rule 19b–4 under the Act [3] which renders the proposal effective upon receipt of this filing by the Commission.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(3)(A).

[2] The NASD filed a technical amendment on February 11, 1998 to change the operative date of the proposed rule filing from March 1, 1998 to March 16, 1998. *See* letter from Jean I. Feeney, Assistant General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated February 6, 1998.

[3] 17 CFR 240.19b–4(e)(6).

[4] The Association has represented that this proposed rule change: (1) Will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on competition, and (iii) will not become operative for 30 days after the date of this filing, unless otherwise accelerated by the Commission. The Association also has provided at least five business days notice to the Commission of its intent to file this proposed rule change, as required by Rule 19b–4(e)(6) under the Act. *Id.*

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 10314 of the NASD's Code of Arbitration Procedure ("Code") to recognize and conform to current practice and to reduce the administrative burden on NASD Regulation staff. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

10314. Initiation of Proceedings

Except as otherwise provided herein, an arbitration proceeding under this Code shall be instituted as follows:

(a) Unchanged.

(b) Answer-Defenses, Counterclaims, and/or Cross-Claims

(1) Within twenty (20) business *45 calendar* days from receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission Agreement and a copy of the Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any deposit required under the schedule of fees. The Answer shall specify all available defenses and relevant facts thereto that will be relied upon at the hearing and may set forth any related Counterclaim the Respondent(s) may have against the Claimant, any Cross-Claim the Respondents(s) may have against any other named Respondents(s) and any Third-Party Claim against any other party or person based upon any existing dispute, claim, or controversy subject to arbitration under this Code.

(2)(A)—(B) Unchanged.

(c) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who fails to file an [a] *Answer* within [twenty (20) business] *45 calendar* days from receipt of service of a Claim, unless the time to answer has been

extended pursuant to subparagraph (5) below, may, in the discretion of the arbitrators, be barred from presenting any matter, arguments, or defenses at the hearing.

(3)—(4) Unchanged.

(5) The time period to file any pleading, whether such be denominated as a Claim, Answer, Counterclaim, Cross-Claim, Reply, or Third-Party Pleading, may be extended for such further period as may be granted by the Director of Arbitration *or with the consent of the initial claimant. Extensions of the time period to file an Answer are disfavored and will not be granted by the Director except in extraordinary circumstances.*

(c)—(d) Unchanged.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose Of, and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, the Association included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. The Association has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose of Rule Change

NASD Regulation is proposing to amend Rule 10314 of the Code to recognize and conform to current practice and to reduce the administrative burden on NASD Regulation staff. Currently, Rule 10314 requires respondents to answer an arbitration claim within twenty business days of receiving it. NASD Regulation's Office of Dispute Resolution ("Office") routinely grants requests for extension of the time to answer for two weeks. Requests for extension generally arise because respondents need additional time to develop a complete answer to the claim. Complete answers are encouraged. In fact, under Rule 10314(b)(2)(A), to party who pleads only a general denial as an answer may, upon objection by a party, be barred by the arbitrators from presenting any facts of defenses at the hearing. In addition, under Rule 10314(b)(2)(B), a party who fails to specify all available defenses and relevant facts in the answer may, upon objection by a party, be barred by arbitrators from presenting such facts or defenses at the hearing.

The practice of granting extensions of time to answer, burdens the staff with processing requests and responses, and it undermines the certainty of the deadlines specified in the Rule. The NASD believes the Code should reflect the current reality that most claims are not answered within the 20 business day period that currently is specified.

Accordingly, the NASD has determined that Rule 10314 of the Code should be amended to extend the time to answer a claim to 45 calendar days and to eliminate routine extensions.[5] Under the proposed amendment, extensions are disfavored and will be granted only in extraordinary circumstances or with the consent of the initial claimant. The term "extraordinary circumstances" is not defined; however, the NASD intends that the circumstances that would qualify for an extension would be limited to unusual and unforeseeable personal or professional conflicts that would make filing on time extremely difficult or burdensome. Extending the time period to 45 calendar days provides approximately the same amount of time to answer as is currently the case, since 20 business days equal 28 calendar days, and a two-week routine extension (14 calendar days) would bring the total to 42 calendar days.

The Securities Industry Conference on Arbitration ("SICA")[6] considered the proposed rule change at its October 16, 1997 meeting, but declined to adopt it as part of the Uniform Code of Arbitration. The other self-regulatory organization ("SRO") members of SICA noted that, because of the small number of claims they process, they do not experience significant burdens related to administering extensions of time to answer. SICA members also believe that the proposed change would not reduce the number of extension requests and that it may result in additional delays. Notwithstanding their reluctance to adopt the proposed change, the members of SICA understood NASD Regulation's position that the proposed amendment will eliminate the administrative costs associated with granting extension in the time to answer claims. Accordingly, SICA recommended that NASD Regulation adopt the change on a pilot basis. The NASD has determined to adopt the rule without a sunset provision, but the NASD will monitor the impact of the proposed rule change.

2. Statutory Basis of Rule Change

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general , to protect investors and the public interest. The NASD believes that the proposed rule change protects the public interest by making the time period within which to answer uniform for all parties, whether or not they are knowledgeable enough to seek an extension of time, and by eliminating further extensions of time, absent extraordinary circumstances, in order to make the arbitration process move more expeditiously.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Association as a "non-controversial" rule change under Rule 19b–4(e)(6) under the Act.[8] Consequently, because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become

[5] The proposed rule change will not apply to simplified arbitration claims filed under Rule 10302 of the Code. Answers to claims involving less than $10,000 will continue to be due within 20 days of receipt of the Statement of Claim.

[6] SICA is a group composed of representatives of the self-regulatory organizations that provide dispute resolution forums, public investors, and the securities industry. Staff of the SEC attend as non-voting invitees. SICA was established with the encouragement of the SEC to develop uniform rules for securities arbitration (the "Uniform Code of Arbitration") and to provide a forum for the various dispute resolution forums and users of those forums to communicate about issues relating to securities industry dispute resolution SICA member forums are encouraged to adopt the provisions of the SICA Uniform Code of Arbitration, but are not required to do so.

[7] 15 U.S.C. 78o–3(b)(6).

[8] 17 CFR 240.19b–4(e)(6).

operative until March 16, 1998, more than 30 days from February 2, 1998, the date on which it was filed, and the NASD provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above (SR–NASD–98–07) and should be submitted by March 13, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4342 Filed 2–19–98; 8:45 am]

BILLING CODE 8010–01–M

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39656; File No. SR–NSCC–97–18]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Modifying the Interpretation of the Release of Clearing Data

February 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 23, 1997, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies NSCC's interpretation concerning the release of clearing data to regulatory and self-regulatory organizations to permit NSCC to pass through customer municipal securities transaction data required by the Municipal Securities Rulemaking Board ("MSRB").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The MSRB's rules require brokers, dealers, and municipal securities dealers (collectively, "dealers") to report interdealer municipal securities transaction data to the MSRB. In connection with this requirement, NSCC currently provides the MSRB with interdealer municipal securities transaction data based on trades submitted to NSCC by dealers for automated comparison. The MSRB uses the data to maintain a surveillance database and to make public reports on price and volume of frequently traded issues.

The MSRB has amended its rules to require dealers also to report customer (*i.e.*, institutional and retail) municipal securities transaction data to the MSRB for transactions effected after January 1, 1998. In connection with this requirement, the MSRB has asked NSCC to act as a conduit to enable dealers that are NSCC participants to use existing telecommunications links between NSCC and the MSRB to pass through the required customer municipal securities transaction data.

NSCC's interpretation concerning the release of clearing data to regulatory and self-regulatory organizations is set forth in Addendum H to NSCC's rules and procedures. Addendum H limits the release of municipal securities clearing data to regulatory and self-regulatory organizations that have demonstrated the necessity for obtaining the data in furtherance of their regulatory purpose.

The proposed rule change modifies Addendum H to permit NSCC to facilitate the provision of interdealer and customer municipal securities transaction data to the MSRB.[3] NSCC believes that the provision of this data is consistent with NSCC's interpretation as it serves the MSRB's regulatory purposes, namely to provide transparency in the municipal securities market and to assist compliance by participants with the MSRB's rules.

NSCC believes the proposed rule change is consistent with Section 17A(b)(3)(F)[4] of the Act because provision of interdealer and customer municipal securities transaction data to the MSRB will help foster cooperation and coordination with persons engaged in the clearance and settlement of security transactions and in general will help protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] NSCC does not intend to edit, to validate, or otherwise to alter the information to be received from dealers and transmitted to the MSRB.

[4] 15 U.S.C. 78q–1(b)(3)(F).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes an interpretation with respect to the meaning, administration, or enforcement of an existing rule of NSCC, it has become effective pursuant to Section 19(b)(3)(A)(i) of the Act [5] and Rule 19b–4(e)(1) thereunder.[6] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth street N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NSCC. All submissions should refer to the File No. SR–NSCC–97–18 and should be submitted by March 13, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98–4253 Filed 2–19–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39663; File No. SR–NSCC–97–16]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NSCC's Annuity Processing Service Fees and Charges

February 13, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 22, 1997, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises NSCC's annuity processing service ("APS") membership fee schedule for users establishing multiple membership accounts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organzation's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Some users of NSCC's APS establish multiple APS memberships for themselves in order to comply with insurance regulations. Under NSCC's current fee schedule, APS users are charged $335 per month for each membership account that the user establishes. NSCC believes that the per account charge for additional accounts is greater than the incremental cost to NSCC associated with establishing them.

The purpose of the rule change is to adopt a graduated fee schedule for multiple APS membership accounts for users with common ownership schemes or with operational support services agreements. Pursuant to this fee schedule, two to five related memberships are $550 per month, and six or more related memberships are $750 per month. The revised fee schedule became effective January 1, 1998.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [3] and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among NSCC's participants that use NSCC's APS service.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impose any burden on competition this is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) [4] of the Act and pursuant to Rule 19b–4(e)(2) [5] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by NSCC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

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[5] 15 U.S.C. 78s(b)(3)(A)(i).
[6] 17 CFR 240.19b–4(e)(1).
[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).
[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] 15 U.S.C. 78q–1.
[4] 15 U.S.C. 78s(b)(3)(A)(ii).
[5] 17 CFR 240.19b–4(e)(2).

investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No SR–NSCC–97–16 and should be submitted by March 13, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4343 Filed 2–19–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39654; File No. SR–OCC–97–18]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges

February 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 13, 1997, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends OCC's fee structure to provide for an interim discounted fee schedule for new products.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC proposes to introduce an interim discounted fee schedule for new products for the purpose of encouraging their trading and clearance. These new introductory discounted fees are at the same rates as the recently approved discounted fees for the Dow Jones Industrial Average Index options contracts.[3] OCC's proposed schedule offers an introductory clearing fee of $0.00 per contract per side for the first month the new product is traded, $0.025 per contract per side for the second month, $0.05 per contract per side for the third month, and normal OCC rates thereafter.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among OCC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[5] of the Act and pursuant to Rule 19b–4(e)(2)[6] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by OCC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–97–18 and should be submitted by March 13, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4252 Filed 2–19–98; 8:45 am]

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] Securities Exchange Act Release No. 39231 (October 10, 1997), 62 FR 54669 [File No. SR–OCC–97–18].

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39662; File No. SR–OCC–97–15]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Relating to Contrary Exercise Intentions

February 13, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 16, 1997, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will require all OCC members to adhere to exchange rules regarding contrary exercise intentions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory basis for, the Proposed Rule Change

Pursuant to a request made by OCC's participant exchanges, OCC proposes to adopt a rule to require clearing members to comply with the uniform exchange rules relating to contrary exercise advices. Under OCC's by-laws, an "exchange" is defined as "a national securities exchange or a national securities association which has qualified for participation in the Corporation pursuant to the provisions of Article VII of the by-laws."[3]

The rules of all OCC participant exchanges require exchange members to advise their exchange if the member has determined to act contrary to OCC's exercise-by-exception ("ex-by-ex") processing procedures for listed equity options.[4] The exchanges require that "contrary exercise advices" be submitted by 4:30 p.m. Central Standard Time on the business day before expiration Saturday. OCC clearing members are permitted to submit such advices using OCC's clearing member on-line interface system, C/MACS. OCC understands that the exchanges use contrary exercise advice information as part of their surveillance programs to assess whether the decision to act contrary to OCC's ex-by-ex processing procedures was made on news released after the uniform cutoff time.

Because not all OCC clearing members are members of a participant exchange and therefore are not subject to the rules of any participant exchange, OCC's participant exchanges have asked OCC to adopt a rule that would require those clearing members to submit contrary exercise advices in accordance with the procedures specified in the exchange rules. Participant exchanges believe that requiring these clearing members to submit contrary advice information will ensure that there is a "level playing field" among OCC's clearing members with respect to the exercise of expiring options and will enhance the exchanges' market surveillance programs by creating a mechanism for identifying additional instances in which participants in their markets may have unjustly benefitted by acting on late breaking news.

Accordingly, OCC proposes to adopt a rule requiring all clearing members to follow the exchanges procedures relating to contrary exercise advices to ensure uniform application. The proposed rule will also provide that failure to follow the exchanges procedures could subject a clearing member to discipline by the exchanges listing the option which was exercised or was not exercised in contravention of the provisions of OCC's Rule 805. OCC believes that each exchange is the appropriate organization to determine whether its rule relating to contrary exercise advices has been violated and what disciplinary sanctions, if any, should be imposed as a result thereof.

The proposed rule change is consistent with Section 17A of the Act[5] and the rules and regulations thereunder because it furthers the public interest and protection of investors by imposing a requirement that will foster the maintenance of fair competition among OCC's clearing members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer periods (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

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[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] OCC's by-laws, Article 1, Section 1.

[4] OCC's ex-by-ex processing procedures have been developed solely for the administrative convenience of OCC's clearing members. Ex-by-ex procedures presume that a clearing member desires to exercise all options that are in-the-money by a specified threshold. Accordingly, all options subject to ex-by-ex processing are identified as being in-the-money, at-the-money, or out-of-the-money in a report provided to clearing members. That report reflects that the clearing member instructs OCC to exercise all options that are in-the-money by the stated threshold amount. However, the clearing member is able to issue contrary instructions directing OCC to act otherwise.

[5] 15 U.S.C. 78q–1.

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–97–15 and should be submitted by March 13, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4341 Filed 2–19–98; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities; Submissions for OMB Review

This notice lists information collection packages that have been sent to the Office of Management and Budget (OMB) for clearance, in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

1. Disability Report—0960–0141. The information collected on Form SSA–3368–BK is needed for the determination of disability by the State Disability Determination Services (DDS). This version of the form will be used in those Social Security Administration (SSA) offices and State DDS offices that are piloting SSA's Reengineered Disability System. The information will be used to develop medical evidence and to assess the alleged disability. The respondents are applicants for disability benefits.

Number of Respondents: 36,500.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 18,250 hours.

2. Request for Earnings and Benefit Estimate Statement—0960–0466. Form SSA–7004 is used by members of the public to request information about their Social Security earnings records and to get an estimate of their potential benefits. SSA provides information, in response to the request, from the individual's personal Social Security record. The respondents are Social Security numberholders who have covered earnings on record.

Number of Respondents: 3,350,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Average Burden: 279,167 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses: (OMB) Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, D.C. 20503. (SSA) Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed above.

Dated: February 12, 1998.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 98–4159 Filed 2–19–98; 8:45 am]

BILLING CODE 4190–29–P

STATE JUSTICE INSTITUTE

Sunshine Act Meeting; Notice of Public Meeting

Date and Time: Friday, February 27, 1998—9:00 a.m.–5:00 p.m.

Place: State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

Matters To Be Considered: FY 1998 grant requests, internal Institute business matters.

Portions Open To The Public: All matters other than those noted as closed below.

Portions Closed To The Public: Internal personnel matters and Board of Directors' committee meetings.

Contact Person For More Information: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 98–4306 Filed 2–17–98; 4:12 pm]

BILLING CODE 6820–SC–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Advisory Committee for Trade Policy and Negotiations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the March 26, 1998, meeting of the Advisory Committee for Trade Policy and Negotiations will be held from 10:00 a.m. to 2:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 1:30 p.m. and open to the public from 1:30 p.m. to 2:00 p.m.

SUMMARY: The Advisory Committee for Trade Policy and Negotiations will hold a meeting on March 26, 1998 from 10:00 a.m. to 2:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 1:30 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously comprise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 1:30 p.m. to 2:00 p.m. when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for March 26, 1998, unless otherwise notified.

ADDRESSES: The meeting will be held at the Mayflower Hotel in the Chinese Room, located at 1127 Connecticut Avenue, NW, Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Bill Daley, Office of the United States Trade Representative, (202) 395–6120.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 98–4322 Filed 2–19–98; 8:45 am]

BILLING CODE 3190–01–M

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Burlington International Airport, South Burlington, Vermont

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge at Burlington International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 23, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John J. Hamilton, Airport Director for Burlington International Airport at the following address: Burlington International Airport, 1200 Airport Drive, #1, South Burlington, Vermont 05403.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Burlington under § 158.23 of part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (781) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge (PFC) at Burlington International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 5, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Burlington was substantially complete within the requirements of § 158.25 of part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in while or in part, no later than May 19, 1998.

The following is a brief overview of the impose and use application.

PFC Project #: 98–02–C–00–BTV.

Level of the proposed PFC: $3.00.

Charge effective date: April 1, 1997.

Estimated charge expiration date: March 1, 2006.

Estimated total net PFC revenue: $10,916,233.

Brief description of use projects: Expand Terminal Landside, South Commuter Ramp Expansion.

Brief description of impose and use project: Professional PFC Services.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Burlington International Airport, 1200 Airport Drive, #1, South Burlington, Vermont 05403.

Issued in Burlington, Massachusetts, on February 12, 1998.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 98–4312 Filed 2–19–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Research and Development Programs Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will describe and discuss specific research and development projects. Further, the notice requests suggestions for topics to be presented by the agency.

DATES AND TIMES: The National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on March 17, 1998, beginning at 1:30 p.m. and ending at approximately 5:00 p.m. The deadline for interested parties to suggest agenda topics is 4:15 p.m. on February 27, 1998. Questions may be submitted in advance regarding the agency's research and development projects. They must be submitted in writing by March 3, 1998, to the address given below. If sufficient time is available, questions received after the March 3 date will be answered at the meeting in the discussion period. The individual, group, or company asking a question does not have to be present for the question to be answered. A consolidated list of answers to questions submitted by March 3 will be available at the meeting and will be mailed to requesters after the meeting.

ADDRESSES: The meeting will be held at the Clarion Inn, Detroit Metro Airport, 9191 Wickham Road, Romulus, MI 48174. Suggestions for specific R&D topics as described below and questions for the March 17, 1998, meeting relating to the agency's research and development programs should be submitted to the Office of the Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Room 6206, 400 Seventh St., S.W., Washington, DC 20590. The fax number is (202) 366–5930.

SUPPLEMENTARY INFORMATION: NHTSA intends to provide detailed presentations about its research and development programs in a series of public meetings. The series started in April 1993. The purpose is to make available more complete and timely information regarding the agency's research and development programs. This twentieth meeting in the series will be held on March 17, 1998.

NHTSA requests suggestions from interested parties on the specific agenda topics to be presented. NHTSA will base its decisions about the agenda, in part, on the suggestions it receives by close of business at 4:15 p.m. on February 27, 1998. Before the meeting, it will publish a notice with an agenda listing the research and development topics to be discussed. The agenda can also be obtained by calling or faxing the information numbers listed elsewhere in this notice or from NHTSA's Web site under Announcements/Public Meetings at URL http://www.nhtsa.dot.gov/nhtsa/announce/meetings/. NHTSA asks that the suggestions be limited to six, in

priority order, so that the presentations at the March 17 R&D meeting can be most useful to the audience. Specific R&D topics are listed below. Many of these topics have been discussed at previous meetings. Suggestions for agenda topics are not restricted to this listing, and interested parties are invited to suggest other R&D topics of specific interest to their organizations. Additionally, if any interested parties would like to make a presentation regarding technical issues concerning any of NHTSA's research programs, information concerning the proposed topic and speaker should be submitted in writing by close of business February 27, 1998.

Specific R&D topics are:

- Fiscal Year 1998 R&D Research Efforts,
- International Harmonized Research Activities (IHRA),
- On-line tracking system for NHTSA's research projects, and
- Crash Injury Research and Engineering Network (CIREN).

Specific Crashworthiness R&D topics are:

- Automatic lifesaving system—improved triage, transport, and treatment decisionmaking for automatic collision notification technologies,
- Status of advanced air bag research,
- Demonstration of CD ROM for child restraint/vehicle compatibility,
- Preparation of new dummies for assessment of advanced air bag technology,
- Status of research on restraint systems for rollover protection,
- Improved frontal crash protection (program status, problem identification, offset testing),
- Advanced glazing research,
- Vehicle aggressivity and fleet compatibility,
- Upgrade side crash protection,
- Upgrade seat and occupant restraint systems,
- Child safety research (ISOFIX),
- Child restraint/air bag interaction (CRABI) dummy testing,
- Truck crashworthiness/occupant protection,
- National Transportation Biomechanics Research Center (NTBRC),
- Head and neck injury research,
- Lower extremity injury research,
- Thorax injury research,
- Human injury simulation and analysis,
- Refinements to the Hybrid III dummy, and
- Advanced frontal test dummy.

Specific Crash Avoidance R&D topics are:

- National Advanced Driving Simulator (NADS),
- Intelligent vehicle initiative,
- Cellular phone use in vehicles,
- Status and plans for anti-lock brake system (ABS) research and testing,
- Human factors guidelines for crash avoidance warning devices,
- Drowsy driver monitoring,
- Driver workload assessment,
- Rearend collision avoidance system guidelines,
- Road departure collision avoidance system guidelines,
- Intersection collision avoidance system guidelines,
- Lane change/merge collision avoidance system guidelines.

National Center for Statistics and Analysis (NCSA) topic is:

- Special crash investigation studies of air bag cases.

Separately, questions regarding research projects that have been submitted in writing not later than close of business on March 31, 1998, will be answered. A transcript of the meeting, copies of materials handed out at the meeting, and copies of the suggestions offered by commenters will be available for public inspection at NHTSA's Technical Information Services, Room 5108, 400 Seventh St., S.W., Washington, DC 20590. Copies of the transcript will then be available at 10 cents a page, upon request to NHTSA's Technical Information Services. The Technical Information Services section is open to the public from 9:30 a.m. to 4:00 p.m. The transcript will also be available on NHTSA's Web site under Announcements/Public Meetings at URL http://www.nhtsa.dot.gov/nhtsa/announce/meetings/.

NHTSA will provide technical aids to participants as necessary, during the Research and Development Programs Meeting. Thus, any person desiring the assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunication devices for deaf persons (TTDs), readers, taped texts, braille materials, or large print materials and/or a magnifying device), please contact Rita Gibbons on (202) 366–4862 or by telefax on (202) 366–5930 by close of business March 5, 1998.

FOR FURTHER INFORMATION CONTACT: Rita Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, S.W., Washington, DC 20590. Telephone: (202) 366–4862. Fax number: (202) 366–5930.

Issued: February 13, 1998.

Raymond P. Owings,

Associate Administrator for Research and Development.

[FR Doc. 98–4353 Filed 2–19–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3194; Notice 1]

Cosco, Inc.; Receipt of Application for Decision of Inconsequential Noncompliance

Cosco, Incorporated of Columbus, Indiana, has determined that several models of the Touriva convertible child restraint system fail to comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," (49 CFR 571.213) and has filed an appropriate report pursuant to 49 CFR Part 573, "Defects and Noncompliance Reports." Cosco has also petitioned to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of a petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

FMVSS No. 213, Paragraph S5.7 requires that each material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302, "Flammability of Interior Materials." This requires that any material that does not adhere to other material(s) at every point of contact shall meet the burn rate requirements of S4.3 when tested separately. Materials are to be tested as a composite only if the material adheres to other material(s) at every point of contact.

After testing by the National Highway Traffic Safety Administration (NHTSA) and notification to Cosco, the company confirmed through its own investigation that it manufactured and distributed 148,098 Touriva convertible child restraint systems between April 1994 and June 1996, of which 82,176 have covers that incorporate an additional polyester fiberfill pillow which may not meet the flammability requirements of FMVSS Nos. 213 and 302. The Cosco child restraints affected and the dates of production are as follows: Touriva Overhead Shield Accu-Just (Model 02–025; 3/95 to 6/96); Touriva Luxury

Overhead Shield AccuJust (Model 02–045; 2/95 to 6/96); Touriva Overhead Shield (Model 02–034; 4/94 to 6/96); Touriva Overhead Shield Accu-Just (Model 02–054; 4/94 to 6/96); Touriva 5 point (Model 02–564; 3/95 to 6/96); Touriva Overhead Shield (Model 02–055; 1/95 to 6/96); Touriva Luxury Overhead Shield (Model 02–065; 3/95 to 6/96); Olympian Overhead Shield (Model 02–257; 6/96); Touriva 5 point (Model 02–597; 6/96); Touriva Safe T-Shield (Model 02–096; 4/96 to 6/96); and Touriva Overhead Shield Accu-Just (Model 02–064; 1/95 to 6/96). All of the models listed are convertible child restraints incorporating the same shell design and a pillow in the head contact area, but the different models are a combination of restraint types, cover designs, and options. In each of the affected models, a polyester fiberfill is utilized to form the pillow in the head area of the cover, and it is this polyester fiberfill material which exceeded the 4 inches per minute burn rate when tested in accordance with S5 of FMVSS No. 302. In its investigation, Cosco found burn rates ranging from 17.3 inches per minute to 39.5 inches per minute in six tests conducted on two different samples of the polyester fiberfill in question. In addition, Cosco determined that the noncompliant fiberfill material had been provided by one of the two vendors responsible for supplying the material to Cosco, but that not all fiberfill from this particular supplier was non-complying. However, as Cosco is unable to limit the extent to which the Touriva child restraints in question were manufactured with non-complying fiberfill with greater certainty, the 82,176 units referenced above represent all Touriva models manufactured using fiberfill from the supplier of the non-compliant material.

Cosco supports its application for inconsequential noncompliance with the following:

The non-complying polyester fiberfill is incorporated into a pillow located in the child restraint near the top of the pad in a vertical orientation. Cosco contends that this configuration minimizes the likelihood of ignition from cigarettes, which are specifically listed in FMVSS Standard No. 302 as a primary ignition source of concern, or any other similar ignition source.

The amount of potentially non-complying polyester fiberfill incorporated in the pillow is 0.0951 pounds, or approximately one percent of the total weight of the child restraint. This relatively small amount of non-complying polyester fiberfill is fully encased by materials which comply with the FMVSS No. 302 flammability requirements to include the fabric covering the surface of the pad, the polyurethane foam in the pad, the fabric backing of the pad, and the polypropylene shell itself. The only way the non-complying fiberfill would be exposed to a source of ignition that has not already consumed the child restraint is if the cover of the pillow is torn, exposing the fiberfill, and an ignition source then finds its way to this exposed fiberfill. Cosco contends that the probability of such a sequence of events occurring is virtually nonexistent, and that the corresponding potential of the non-complying polyester fiberfill in the pillow contributing to an injury or death even less likely.

Cosco has not received reports indicating the burning of a cover of one of the suspect models, or any other child restraint cover. All occupant protection studies reviewed by Cosco indicate an almost infinitesimal risk of injury or death by vehicle fires in collisions.

Interested persons are invited to submit written data, views, and arguments on the application of Cosco described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested, but not required, that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 23, 1998.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: February 13, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–4354 Filed 2–19–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 4)]

Railroad Cost Recovery Procedures—Productivity Adjustment

AGENCY: Surface Transportation Board.

ACTION: Proposed adoption of a Railroad Cost Recovery Procedures productivity adjustment.

SUMMARY: The Surface Transportation Board proposes to adopt 1.096 (9.6%) as the measure of average growth in railroad productivity for the 1992–1996 (5-year) period. The current value of 5.0% was developed for the 1991 to 1995 period.

DATES: Comments are due by March 9, 1998.

EFFECTIVE DATE: The proposed productivity adjustment is effective 30 days after the date of service.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 290 (Sub-No. 4) to: Office of the Secretary, Case Control Branch, 1925 K Street, NW, Washington, DC 20423–0001. Parties should submit all pleading and attachments on a 3.5-inch diskette in WordPerfect 6.0 or 6.1 compatible format.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1549. TDD for the hearing impaired: (202) 565–1695.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, NW, Washington, DC 20423–0001, telephone (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: February 9, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–4358 Filed 2–19–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33548]

Pioneer Industrial Railway Co.—Lease and Operation Exemption—Peoria, Peoria Heights & Western Railroad

Pioneer Industrial Railway Co. (PRY), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to

lease from Peoria, Peoria Heights & Western Railroad (PPHW) [1] and to operate approximately 8.29 miles of rail line (line) in Peoria, Peoria County, IL, extending from approximately milepost 1.71 (E.P.S. 80+15, connecting with the Peoria & Pekin Union Railway Company) to approximately milepost 10.00 (E.P.S. 516+21, Pioneer Industrial Park Track). [2]

The parties report that they intend to consummate the transaction on or about February 17, 1998. The earliest the transaction can be consummated is February 16, 1998, the effective date of the exemption (7 days after the exemption was filed).

This transaction is related to STB Finance Docket No. 33550, *Pioneer Railcorp—Continuance in Control Exemption—Pioneer Industrial Railway Co.*, wherein Pioneer Railcorp has concurrently filed a verified notice to continue in control of PRY upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33549, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, Rea, Cross & Auchincloss, 1920 N Street, N.W., Suite 420, Washington, DC 20036.

Decided: February 11, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–4339 Filed 2–19–98; 8:45 am]

BILLING CODE 4915–00–P

[1] PPHW is jointly controlled by the City of Peoria, IL, and the Village of Peoria Heights, IL.

[2] Peoria & Pekin Union Railway Company, the current lessee and operator of the line, has reportedly asked PPHW to find a new operator for the line.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33550]

Pioneer Railcorp—Continuance in Control Exemption—Pioneer Industrial Railway Co.

Pioneer Railcorp (Pioneer), a noncarrier holding company, has filed a notice of exemption to continue in control of Pioneer Industrial Railway Co. (PRY), upon PRY's becoming a carrier. Pioneer owns all of the outstanding stock of PRY.

The transaction is scheduled to be consummated on February 17, 1998.

This transaction is related to STB Finance Docket No. 33549, *Pioneer Industrial Railway Co.—Lease and Operation Exemption—Peoria, Peoria Heights & Western Railroad*, wherein PRY seeks to lease and operate 23.4 miles of rail line from Peoria, Peoria Heights & Western Railroad.

Pioneer owns and controls twelve existing Class III shortline rail carriers: West Michigan Railroad Co., operating in Michigan; Fort Smith Railroad Co., operating in Arkansas; Alabama Railroad Co., operating in Alabama; Mississippi Central Railroad Co., operating in Mississippi and Tennessee; Alabama & Florida Railway Co., Inc., operating in Alabama; Decatur Junction Railway Co., operating in Illinois; Vandalia Railroad Company, operating in Illinois; Minnesota Central Railroad Co., operating in Minnesota; Keokuk Junction Railway, operating in Iowa and Illinois; Wabash & Western Railway Co., d/b/a Michigan Southern Railroad, operating in Michigan and Indiana; Rochelle Railroad Co., operating in Illinois; and Shawnee Terminal Railway Company, operating in Illinois.

Pioneer states that: (i) The railroads will not connect with each other or any railroad in their corporate family; (ii) the acquisition of control is not part of a series of anticipated transactions that would connect the eleven railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33550, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, Esq., Rea, Cross & Auchincloss, 1920 N Street, N.W., Suite 420, Washington, DC 20036.

Decided: February 11, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–4340 Filed 2–19–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 98–14]

Customs Accreditation of Columbia Inspection Incorporated as an Accredited Laboratory

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of Accreditation of Columbia Inspection, Inc. as a Commercial Accredited Laboratory.

SUMMARY: Columbia Inspection, Inc., of Portland, Oregon, has applied to U.S. Customs for an extension of accreditation to perform petroleum analysis methods under § 151.13 of the Customs Regulations (19 CFR 151.13) to their Portland, Oregon, Fife, Washington, and Martinez, California facilities. Customs has determined that the Portland, Oregon and the Martinez, California offices meet all of the requirements for accreditation as a Commercial Laboratory to perform (1) API Gravity, (2) Sediment, (3) Distillation, (4) Reid Vapor Pressure, (5) Saybolt Universal Viscosity, (6) Sediment by Extraction, (7) Percent by Weight of Sulfur and (8) Percent by Weight of Lead. Further, Customs has determined that the Fife, Washington office meets all requirements for accreditation as a Commercial

Laboratory to perform (1) API Gravity, (2) Sediment, (3) Distillation, (4) Saybolt Universal Viscosity, (5) Sediment by Extraction and (6) Percent by Weight of Sulfur. Therefore, in accordance with § 151.13(f) of the Customs Regulations, Columbia Inspection, Inc., is granted accreditation to perform the analysis methods listed above.

LOCATION: Columbia Inspection, Inc. accredited sites are located at: 7133 North Lombard Street, Portland, Oregon 97203; 613 Escobar Street, Martinez, California 94553; 4901 East 20th Street, Fife, Washington 98424.

EFFECTIVE DATE: February 4, 1998.

FOR FURTHER INFORMATION CONTACT: Michael J. Parker, Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Room 5.5–B, Washington, D.C. 20229 at (202) 927–1060.

Dated: February 5, 1998.

Marceline Borges,

Acting Director, Laboratories and Scientific Services.

[FR Doc. 98–4261 Filed 2–19–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Correction—Atlas Assurance Company of America

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 8 to the Treasury Department Circular 570; 1997 Revision, published July 1, 1997, at 62 FR 35548.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874-7102.

SUPPLEMENTARY INFORMATION: The name of ATLAS ASSURANCE COMPANY OF AMERICA had an error in the notice published on January 21, 1998 at 63 FR 3184. The name is hereby corrected to read ATLAS ASSURANCE COMPANY OF AMERICA. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 1997 Revision, at page 35553 to reflect this change.

The Circular may be viewed and downloaded through the Internet (http://fms.treas.gov/c570.html) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO). Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number; 048000-00509–8.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6A11, Hyattsville, MD 20782.

Dated: February 10, 1998.

Charles F. Schwan III,

Director,

Funds Management Division,

Financial Management Service.

[FR Doc. 98–4319 Filed 2–19–98; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable On Federal Bonds: Termination—Great Lakes American Reinsurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 9 to the Treasury Department Circular 570; 1997 Revision, published July 1, 1997, at 62 FR 35548.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–7102.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to GREAT LAKES AMERICAN REINSURANCE COMPANY, of New York, New York, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable reinsuring company on Federal bonds is hereby terminated.

The Company was last listed as an acceptable reinsuring company on Federal bonds at 62 FR 35581, July 1, 1997.

With respect to any bonds currently in force with GREAT LAKES AMERICAN REINSURANCE COMPANY, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

The Treasury Department Circular 570 may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570.html) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the circular from GPO, use the following stock number: 048–000–00509–8.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6A11, Hyattsville, MD 20782.

Dated: February 10, 1998.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 98–4318 Filed 2–19–98; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register
Vol. 63, No. 34
Friday, February 20, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF LABOR

Mine Safety and Health Administration

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

RIN 1219–AA82

Mine Shift Atmospheric Conditions; Respirable Dust Sample

Correction

In notice document 97–33934, beginning on page 68372, in the issue of Wednesday, December 31, 1997 (republished at 63 FR 5664), make the following corrections:

1. On page 68388, in the second column, in the first line, "(x=g1.438/ m^3)" should read "(x=g•1.438/m^3)".

2. On page 68391, in the first column, in the first full paragraph, in the seventh line, "σ_σ" should read "σ_δ".

3. On page 68393, in the first column, in the last line, "$a_0=2(CV^2_{pump}+CV^2+_{sampler}+CV^2_{spatial})$" should read "$a_0=2(CV^2_{pump}+CV^2_{sampler}+CV^2_{spatial})$".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Coal Mine Respirable Dust Standard Noncompliance Determinations

Correction

In notice document 97–33937, beginning on page 68395, in the issue of Wednesday, December 31, 1997 (republished at 63 FR 5687), make the following corrections:

1. On page 68408, in the first column, in the 23rd line from the bottom, "(μ^i)" should read "(μ_i)".

2. On page 68408, in the first column, in the 11th line from the bottom, "s" should read "σ".

3. On page 68413, in the first column, in the 19th line from the bottom, "E(μ)" should read "E{μ}".

4. On page 68413, in the first column, in the 11th line from the bottom, "E(μ)" should read "E{μ}".

5. On page 68416, in the first column, in the first full paragraph, in the second line from the bottom, "(3513α°)" should read "(3513•α°)".

BILLING CODE 1505-01-D

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federal register

Friday
February 20, 1998

Part II

Federal Communications Commission

Semiannual Report of Payment Accepted From Non-Federal Sources Under 31 U.S.C. 1353 for the Period Beginning April 1, 1997, Ending September 30, 1997; Notice

FEDERAL COMMUNICATIONS COMMISSION

Semiannual Report of Payment Accepted From Non-Federal Sources Under 31 U.S.C. 1353—for the Period Beginning April 1, 1997, Ending September 30, 1997

Summary Report

Reimbursement/In-kind Payments in Excess of $250

Total Number of Sponsored Events: 162.

Total Number of Sponsoring Organizations: 114.

Total Number of Different Commissioners/Employees Attending: 128.

Total Amount of Reimbursement Received

	Check	In-kind
In excess of $250	$47,130.75	$216,464.59
Under $250 (Detail not included)	951.30	1,949.34
Total	48,082.05	218,413.93

1. *Agency:* Federal Communications Commission.
2. *Employee:* Thomas W. Phillips.
Government Position: Electronics Engineer, Office of Engineering & Technology.
3. *Event:* 2nd EMC Laboratory Accreditation Workshop.
4. *Sponsor of Event:* ACIL.
5. *Sponsor Address:* Attn: Dana Marshall, 1629 K Street, N.W., Suite 400, Washington, D.C. 20006.
6. *Location of Event:* Chicago, Illinois.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/09/97.
9. *Travel Dates:* 04/08–09/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$124.00	
2. Hotel Room		$119.00
3. Meals		42.00
4. Grd. Transportation	20.00	
5. Telephone	3.47	
	147.47	161.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Thomas A. Boasberg.
Government Position: Senior Legal Advisor, International Bureau.
3. *Event:* X Executive Forum.
4. *Sponsor of Event:* AHCIET.
5. *Sponsor Address:* Attn: Sr. D. Mariano Klinge-Loy, Guzmon el Bueno, 133, Edificio Britannio (7 Planta), 28003 Madrid—Espana.
6. *Location of Event:* San Juan, Puerto Rico.
7. *Employee's Role: Speaker.*
8. *Dates of Event:* 12/02–03/96.
9. *Travel Dates:* 12/01–03/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		$1073.00
2. Hotel Room		290.00
3. Meals		
4. Fax & Telephone	$66.75	
5. Grd. Transportation	131.20	
	198.05	1363.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* James R. Keegan.
Government Position: Associate Chief for Networks, Office of Engineering & Technology.
3. *Event:* Cost Allocations & Business Process Re-Engineering for the Telecoms Industry Conference.
4. *Sponsor of Event:* AIC Conferences.
5. *Sponsor Address:* Attn: Christian Ernst Suarey, Nueva De Lyon 96, Of. 405, Providentia, Santiago, Chile.
6. *Location of Event:* Santiago, Chile.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 11/25–28/96.
9. *Travel Dates:* 11/23–12/01/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		$1249.00
2. Hotel Room		*324.00
3. Meals		
4. Taxi	$104.80	
	104.80	1573.00
(b) Non-Fed Source: Same as No. 4.		

*Lodging Amount Includes Meals per Travel Orders.

1. *Agency:* Federal Communications Commission.
2. *Employee:* John B. Muleta.
Government Position: Chief, Enforcement Division, Common Carrier Bureau.
3. *Event:* Directory Assistance and Operator Services Conference.
4. *Sponsor of Event:* AIC Conferences.
5. *Sponsor Address:* Attn: Ms. Jill Banaszewski, 60 Broad Street, 19th Floor, New York, NY 10004.
6. *Location of Event:* Chicago, Illinois.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/24–25/97.
9. *Travel Dates:* 03/23–24/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		$638.00
2. Hotel Room		145.00
3. Meals		
4. Grd. Transportation		
		783.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Jeffrey C. Anspacher.
Government Position: Economist, International Bureau.
3. *Event:* Interconnection & Number Portability.
4. *Sponsor of Event:* AIC Conferences.
5. *Sponsor Address:* Attn: Niclas Ingemarson.
6. *Location of Event:* Stockholm, Sweden.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/22–23/97.
9. *Travel Dates:* 04/20–26/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		$1520.00
2. Hotel Room		592.75
3. Meals		25.00
4. Grd. Transportation		
		2137.75
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.

2. *Employee*: Kerry Murray.
Government Position: Senior Legal Advisor, International Bureau.
3. *Event:* International Telecommunications Traffic Issues.
4. *Sponsor of Event:* AIC Conferences.
5. *Sponsor Address:* Attn: Leonie Molesworth, 2nd Floor, 100 Hatton Garden, London, EC1 N8NX.
6. *Location of Event:* London, England.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/25–26/97.
9. *Travel Dates:* 06/23–07/03/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$946.16
2. Hotel Room	.....	470.50
3. Meals	.....	158.77
4. Grd. Transportation	.....	.....
	.....	1575.45
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Troy F. Tanner.
Government Position: Chief, Policy & Facilities Branch, International Bureau.
3. *Event:* Accounting Rates, International Simple Resale & Callback Conference.
4. *Sponsor of Event:* AIC Conferences.
5. *Sponsor Address:* Attn: Ms. Audrey Van Houten, 12 Prince Edward Road, #03–01 Podium A, Bestway Building, Singapore 079212.
6. *Location of Event:* Singapore.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 09/29–30/97.
9. *Travel Dates:* 09/26–30/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$1437.00
2. Hotel Room	.....	519.00
3. Meals	.....	40.00
4. Grd. Trainsportation	.....	.....
	.....	1996.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Regina M. Keeney
Government Position: Chief, Common Carrier Bureau.
3. *Event:* AirTouch Symposium.
4. *Sponsor of Event:* AirTouch Communications.
5. *Sponsor Address:* Attn: Mr. Brian Kidney San Francisco, One California, California 28th Floor, San Francisco, CA 94111.
6. *Location of Event:* San Francisco, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 10/15–17/96.
9. *Travel Dates:* 10/15–17/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	*$768.16
2. Hotel Room	.....	.....
3. Meals	.....	201.95
4. Grd. Transportation	.....	
5. Telephone	.....	12.35
(b) Non-Fed Source: Same as No. 4.	.....	982.42

*Price includes lodging.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Keith Larson.
Government Position: Assistant Chief, Engineering, Mass Media Bureau.
3. *Event:* ABA Annual Convention.
4. *Sponsor of Event:* Alaska Broadcasters Association—ABA.
5. *Sponsor Address:* Attn: Ms. Nancy Johnson, P.O. Box 102424, Anchorage, AK 99510.
6. *Location of Event:* Anchorage, Alaska.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 9/25–26/97.
9. *Travel Dates:* 09/25–10/2/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$1261.00
2. Hotel Room	.....	882.00
3. Meal	.....	
4. Grd. Transportation	.....	.....
	.....	2143.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Kent Nilsson.
Government Position: Deputy Chief, Network Services Division, Common Carrier Bureau.
3. *Event:* ATA 1996 Annual Meeting.
4. *Sponsor of Event:* Alaska Telephone Association—ATA.
5. *Sponsor Address:* Attn: Mr. James Rowe, 4341 B Street, Suite 304, Anchorage, AK 99503.
6. *Location of Event:* Dutch Harbor, Alaska.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/20–22/96.
9. *Travel Dates:* 5/20–24/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$2487.00
2. Hotel Room	.....	*237.72
3. Meals	.....	.....
4. Supplies	$12.00	.....
5. Grd. Transportation	51.60	.....
	63.60	2724.72
(b) Non-Fed Source: Same as No. 4.		

*Meals included in lodging amount.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Julius Genachowski.
Government Position: Counsel to Chairman, Reed E. Hundt.
3. *Event:* ALTV/NATPE Convention.
4. *Sponsor of Event:* ALTV/NATPE.
5. *Sponsor Address:* Attn: David Donovan, 320 19th Street, N.W., Suite 300, Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/11–16/97.
9. *Travel Dates:* 01/12–14/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$299.00	.....
2. Hotel Room	.....	$250.47
3. Meals	115.50	3.29
4. Grd. Transportation	16.50	.....
5. Telephone	.....	14.64
	431.00	268.40

	(c) Type & amount of payment	
	Check	In kind
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Susan Ness.
Government Position: Commissioner.
3. *Event:* ALTV/NATPE Convention.
4. *Sponsor of Event:* ALTV/NATPE.
5. *Sponsor Address:* Attn: David Donovan, 1320 19th Street, N.W., Suite 300, Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 01/11–16/97.
9. *Travel Dates:* 01/12–14/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$630.00
2. Hotel Room	.....	274.00
3. Meals	$95.00	.....
4. Grd. Transportation	86.00	.....
	181.00	904.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Saul Shapiro.
Government Position: Assistant Chief, Technology Mass Media Bureau.
3. *Event:* ALTV/NATPE Convention.
4. *Sponsor of Event:* ALTV/NATPE.
5. *Sponsor Address:* Attn: David Donovan, 320 19th Street, N.W., Suite 300, Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 01/11–16/97.
9. *Travel Dates:* 01/11–15/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$474.00
2. Hotel Room	.....	264.00
3. Meals	.....	.....
4. Grd. Transportation	$24.50	.....
	24.50	738.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Robert M. Pepper.
Government Position: Chief, Office of Plans & Policy.
3. *Event:* ABA Annual Seminar.
4. *Sponsor of Event:* American Bar Association—ABA.
5. *Sponsor Address:* Attn: Ms. Jennifer Manner, 750 North Lake Shore Drive, Chicago, IL 60611.
6. *Location of Event:* San Francisco, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 08/01–05/97.
9. *Travel Dates:* 08/02–05/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$404.00
2. Hotel Room	.....	228.00
3. Meals	.....	105.00
4. Grd. Transportation	.....	.....
	.....	737.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Melanie A. Godschall.
Government Position: Attorney, Mass Media Bureau.
3. *Event:* National AWRT Convention.
4. *Sponsor of Event:* American Women in Radio & Television.
5. *Sponsor Address:* Attn: Ms. Chancey Blackburn, 1650 Tysons Boulevard, Suite 200, McLean, VA 22102.
6. *Location of Event:* Dallas, Texas.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 06/13/97.
9. *Travel Dates:* 06/13/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$500.00
2. Hotel Room	.....	38.00
3. Meals	.....	.....
4. Taxi	.....	.....
	.....	538.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Larry G. Weikert.
Government Position: Industry Analyst, Wireless Telecommunications Bureau.
3. *Event:* Annual Hamfest.
4. *Sponsor of Event:* Anchorage Amateur Radio Board Club—AARBC.
5. *Sponsor Address:* Attn: Roger Hansen, 2628 Turnagain Pkwy, Anchorage, AK 99517.
6. *Location of Event:* Anchorage, Alaska.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 09/21–22/96.
9. *Travel Dates:* 09/19–25/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$650.00
2. Hotel Room	.....	256.62
3. Meals	.....	36.95
4. Mileage & Parking	$67.82	.....
	67.82	943.57
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Kevin Werbach.
Government Position: Attorney, Office of Plans & Policy.
3. *Event:* AOP's Second Meeting & Conference.
4. *Sponsor of Event:* Association of Online Professionals—AOP.
5. *Sponsor Address:* Attn: Mr. David P. McClure, 6096 Franconia Road, Suite D, Alexandria, VA 22310.
6. *Location of Event:* San Diego, California.
7. *Employee's Role:* Keynote Speaker.
8. *Dates of Event:* 09/12/97.
9. *Travel Dates:* 09/11–15/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$404.00
2. Hotel Room	.....	336.00
3. Meals	.....	171.00
4. Grd. Transportation	.....	.....
	67.82	911.00
(b) Non Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Stephen L. Markendorff.
Government Position: Chief, Broadband Branch, Wireless Telecommunications Bureau.
3. *Event:* Annual Meeting.
4. *Sponsor of Event:* AT&T Wireless Services.
5. *Sponsor Address:* Attn: Mr. William Covington, 5000 Carillon Point, Kirkland, WA 98033–7397.
6. *Location of Event:* Denver, Colorado.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 06/07/96.
9. *Travel Dates:* 06/06–07/96.
10.

	(c) Type & amount of Payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$1,215.00
2. Hotel Room	.....	164.00
3. Meals	$51.00	.....
4. Telephone	3.00	.....
	54.00	1,379.82
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Stephen L. Markendorff.
Government Position: Chief, Broadband Branch, Wireless Telecommunications Bureau.
3. *Event:* Touch the Future: A Forum on Wireless & Your Community.
4. *Sponsor of Event:* AT&T Wireless Services.
5. *Sponsor Address:* Attn: Ms. Mary Ann Noyer, 15 East Midland Avenue, Paramus, NJ 07652–2936.
6. *Location of Event:* Boston, Massachusetts.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 06/18/96.
9. *Travel Dates:* 06/17–18/96.
10.

	(c) Type & amount of Payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$546.00
2. Hotel Room	.....	115.00
3. Meals	$47.50	.....
4. Telephone	.....	.....
	47.50	661.00
(b) Non-Fed Source; Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Suzanne K. Toller.
Government Position: Legal Advisor to Commissioner, Rachelle B. Chong.
3. *Event:* Annual Meeting.
4. *Sponsor of Event:* AT&T Wireless Services.
5. *Sponsor Address:* Attn: Ms. Cathleen A. Massey, Fourth Floor, 1150 Connecticut Avenue, N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/11–13/97.
9. *Travel Dates:* 06/09–11/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$714.00
2. Hotel Room	.....	286.38
3. Meals	.....	105.00
4. Grd. Transportation	.....	.....
	.....	1105.38
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Shaun A. Maher.
Government Position: Attorney Advisor, Wireless Telecommunications Bureau.
3. *Event:* Annual Meeting.
4. *Sponsor of Event:* AT&T Wireless Services.
5. *Sponsor Address:* Attn: Mr. William Covington, 5000 Carillon Point, Kirkland, WA 98033.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/11–13/97.
9. *Travel Dates:* 06/11–12/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$714.00
2. Hotel Room	.....	258.00
3. Meals	.....	105.00
4. Grd. Transportation	.....	.....
	.....	1077.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Stephen L. Markendorff.
Government Position: Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau.
3. *Event:* Annual Meeting.
4. *Sponsor of Event:* AT&T Wireless Services.
5. *Sponsor Address:* Attn: Mr. William Covington, 5000 Carillon Point, Kirkland, WA 98033.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 06/11–13/97.
9. *Travel Dates:* 06/10–13/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$848.00
2. Hotel Room	.....	397.00
3. Meals	.....	147.00
4. Grd. Transportation	$9.00	100.00
	9.00	1282.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* David Ellen.
Government Position: Special Council, Policy Division, Common Carrier Bureau.
3. *Event:* In World Forum.
4. *Sponsor of Event:* Bell Atlantic.
5. *Sponsor Address:* Attn: Mr. Joseph J. Mulieri, 1133 20th Street, N.W., Suite 810, Washington, D.C. 20036.
6. *Location of Event:* Orlando, Florida.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/24–27/97.
9. *Travel Dates:* 03/25–26/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$481.09
2. Hotel Room	.....	186.48
3. Meals	$51.00	.....
4. Grd. Transportation	24.00	39.27
	75.00	706.84
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Michael R. Nelson.
Government Position: Director of Technology, Office of Plans & Policy.
3. *Event:* ISCP Applications Forum.
4. *Sponsor of Event:* Bellcore.
5. *Sponsor Address:* Attn: Mr. Robert E. Ziemba, Jr., 444 Hoes Lane, Room 4F228, Piscatawy, NJ 08854.
6. *Location of Event:* Phoenix, Arizona.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 09/23/97.
9. *Travel Dates:* 09/22–24/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$228.00
2. Hotel Room	.....	130.00
3. Meals	.....	66.50
4. Grd. Transportation	.....	.....
	.....	424.50
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Jon C. Garcia.
Government Position: Director of Strategic Analysis, Office of Plans & Policy.
3. *Event:* Annual Strategic Decisions Conference.
4. *Sponsor of Event:* Sanford C. Bernstein & Co., Inc.
5. *Sponsor Address:* Attn: Mr. Tod A. Jacobs, 767 Fifth Avenue, New York, NY 10153–0185.
6. *Location of Event:* New York, New York.
7. *Employee's Role:* Discussant.
8. *Dates of Event:* 06/04–06/97.
9. *Travel Dates:* 06/04–05/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$118.00
2. Hotel Room	.....	153.00
3. Meals	.....	35.00
4. Grd. Transportation	.....	.....
	.....	306.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Richard M. Smith.
Government Position: Chief, Office of Engineering & Technology.
3. *Event:* Caribbean Telecommunications Reform.
4. *Sponsor of Event:* Bins Company.
5. *Sponsor Address:*
Attn: Mr. David Lomax, 1306 Clayborne House Court, McLean, VA 22101.
6. *Location of Event:* St. Lucia.
7. *Employee's Role:* Consultant.
8. *Dates of Event:* 06/03–06/97.
9. *Travel Dates*: 06/02–07/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$693.95	.....
2. Hotel Room	.....	$330.40
3. Meals	.....	134.00
4. Grd. Transportation	158.40	.....
	852.35	464.40
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Robert M. Pepper.
Government Position: Chief, Office of Plans & Policy.
3. *Event:* Internet World Wide Web & BBS Internet Conference.
4. *Sponsor of Event:* Boardwatch Magazine.
5. *Sponsor Address:* Attn: Mr. Brian Noto, 8500 W. Bowles Avenue, Suite 210, Littleton, CO 80123.
6. *Location of Event:* San Francisco, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 08/20–23/97.
9. *Travel Dates:* 08/17–21/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$1469.50
2. Hotel Room	.....	342.00
3. Meals	.....	199.50
4. Grd. Transportation	.....	.....
	.....	2011.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Susan Ness.
Government Position: Commissioner.
3. *Event:* BFCM's 37th Annual Conference.
4. *Sponsor of Event:* Broadcast Cable Financial Management Association—BCFM.
5. *Sponsor Address:* Attn: Mr. Howard L. Schrott, 950 North Meridian Street, 12th Floor, Indianapolis, IN 46204.
6. *Location of Event:* San Francisco, California.
7. *Employee's Role:* Keynote Speaker.
8. *Dates of Event:* 05/21–24/97.
9. *Travel Dates:* 05/22–24/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$1805.00
2. Hotel Room	.....	326.00
3. Meals	.....	84.00
4. Grd. Transportation	$52.00	.....
5. Telephone	8.20	.....
	60.20	2215.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Troy F. Tanner.
Government Position: Chief, Policy & Facilities Branch, International Bureau.
3. *Event:* Cable & Wireless College.
4. *Sponsor of Event:* Cable & Wireless Inc.
5. *Sponsor Address:* Attn: Mr. Paul W. Kenefick, 8219 Leesburg Pike, Vienna, VA 22182.
6. *Location of Event:* Coventry, United Kingdom.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/07–08/97.
9. *Travel Dates:* 04/06–09/97

10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$1440.00
2. Hotel Room	.....	229.06
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	1669.00
(b) Non-Fed Source: Same as No. 4		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Roy J. Stewart.
Government Position: Chief, Mass Media Bureau.
3. *Event:* CBA 50th "Solid Gold" Convention.
4. *Sponsor of Event:* California Broadcasters Association—CBA.
5. *Sponsor Address:* Attn: Mr. Stan Statham, 915 L Street, Suite 1150, Sacramento, CA 95814.
6. *Location of Event:* Monterey, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 07/26–28/97.
9. *Travel Dates:* 07/25–29/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$751.00	.....
2. Hotel Room	.....	$158.00
3. Meals	104.50	.....
4. Grd. Transportation	$52.00	.....
	907.50	158.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Jackie E. Chorney.
Government Position: Legal Advisor to the Chairman Reed E. Hundt.
3. *Event:* Western Show.
4. *Sponsor of Event:* California Cable, Television Association—CCTA.
5. *Sponsor Address:* Attn: Toni Irwin, 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611.
6. *Location of Event:* Anaheim, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 12/11–13/96.
9. *Travel Dates:* 12/10–13/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$248.00	.....
2. Hotel Room	.....	$169.06
3. Meals	114.00	19.38
4. Grd. Transportation	.....	.....
	362.00	188.44
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* James Coltharp.
Government Position: Special Advisor to Commissioner James H. Quello.
3. *Event:* Western Show.
4. *Sponsor of Event:* California Cable Television Association—CCTA.
5. *Sponsor Address:* Attn: Toni Irwin, 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611.
6. *Location of Event:* Anaheim, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 12/11–13/96.
9. *Travel Dates:* 12/08–12/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$1718.00
2. Hotel Room	.....	84.53
3. Meals	$86.50	.....
4. Taxi	34.10	.....
	100.60	1802.53
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Patrick J. Donovan.
Government Position: Deputy Chief, Competitive Pricing Division, Common Carrier Bureau.
3. *Event:* Western Show.
4. *Sponsor of Event:* California Cable Television Association—CCTA.
5. *Sponsor Address:* Attn: Toni Irwin, 4341 Piedmont Avenue, P.O. Box 11080 Oakland, CA 94611.
6. *Location of Event:* Anaham, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 12/11–13/96.
9. *Travel Dates:* 12/11–13/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$199.00	.....
2. Hotel Room	.....	$169.06
3. Meals	85.50	.....
4. Taxi	90.00	90.00
	374.50	259.06
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Susan Ness.
Government Position: Commissioner.
3. *Event:* Western Show.
4. *Sponsor of Event:* California Cable Television Association—CCTA.
5. *Sponsor Address:* Attn: Toni Irwin, 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611.
6. *Location of Event:* Anaheim, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 12/11–13/96.
9. *Travel Dates:* 12/10–11/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$247.00	.....
2. Hotel Room	.....	$84.00
3. Meals	66.50	.....
4. Taxi	.....	.....
	313.50	84.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Suzanne K. Toller.
Government Position: Legal Advisor to Commissioner, Rachelle B. Chong.
3. *Event:* Western Show.
4. *Sponsor of Event:* California Cable Television Association—CCTA.
5. *Sponsor Address:* Attn: Toni Irwin, 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611.
6. *Location of Event:* Anaheim California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 12/11–13/96.
9. *Travel Dates:* 2/10–15/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		

	(c) Type & amount of payment	
	Check	In kind
1. Roundtrip Transportation	$199.00	
2. Hotel Room		$401.25
3. Meals	133.00	
4. Grd. Transportation	74.80	
	406.80	401.25
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* John P. Wong.
Government Position: Chief, Engineering & Technical Services Division, Cable Services Bureau.
3. *Event:* Western Show.
4. *Sponsor of Event:* California Cable Television Association—CCTA.
5. *Sponsor Address:* Attn: Toni Irwin, 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611.
6. *Location of Event:* Anaheim, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 12/11–13/96.
9. *Travel Dates:* 12/10–13/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		$1747.00
2. Hotel Room		665.88
3. Meals	$142.50	
4. Taxi	43.56	
	186.06	2412.88
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Kelly Cameron.
Government Position: Senior Attorney Advisor, International Bureau.
3. *Event:* International Telecommunications Conference.
4. *Sponsor of Event:* Canadian Institute.
5. *Sponsor Address:* Attn: Ms. Anne V. Fleming, 1329 Bay Street, Toronto, Ontario M5R 2C4, Canada.
6. *Location of Event:* Toronto, Canada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/19/97.
9. *Travel Dates:* 06/18–19/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$308.20	
2. Hotel Room		$116.06
3. Meals		
4. Taxi		
	308.20	116.06
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* John Giusti.
Government Position: Attorney Advisor, International Bureau.
3. *Event:* CANTO 13th Annual Conference & Trade Exhibition.
4. *Sponsor of Event:* Caribbean Association of National Telecommunications Organizations—CANTO.
5. *Sponsor Address:* Attn: Mr. Carl M. Lewis, #67 Picton Street, Newton, Port of Spain, Trinidad, W.I.
6. *Location of Event:* Caracao, Netherlands Antilles.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/25–29/97.
9. *Travel Dates:* 05/23–27/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		$769.00
2. Hotel Room		
3. Meals		
4. Grd. Transportation		
		769.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Julius P. Knapp.
Government Position: Chief, Authorization & Evaluation Division, Office of Engineering & Technology.
3. *Event:* International Electrotechnical Regulatory Compliance Symposium.
4. *Sponsor of Event:* China Shanghai Bureau Technical Supervision, China Guangzhou Electrical Safety Testing Bureau & Hong Kong Electronics Industry Association.
5. *Sponsor Address:* Attn: Mr. Raymond Wong, Inchape Testing Service, Hong Kong Ltd., 2/F., Garment Center, 576 Castle Peak Road, Kowloon, Hong Kong.
6. *Location of Event:* Shanghai & Gungzhou China & Hong Kong.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/10–16/95.
9. *Travel Dates:* 06/09–17/95.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		$3875.00
2. Hotel Room		969.81
3. Meals	$413.25	533.00
4. Mileage & Taxi	14.00	
	427.25	5377.81
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* A. Richard Metzger.
Government Position: Deputy Chief, Common Carrier Bureau.
3. *Event:* Tenth National & First Andean.
4. *Sponsor of Event:* Colombian Telecommunications Research Center—CINTEL.
5. *Sponsor Address:* Av. 9 No. 118–85, Santa Fe de Bogota, Columbia.
6. *Location of Event:* Cartagena, Columbia.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/10–12/95.
9. *Travel Dates:* 05/09–13/95.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$787.95	
2. Hotel Room		
3. Meals		
4. Grd. Transportation		
	787.95	
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Troy F. Tanner
Government Position: Chief, Policy & Facilities Branch International Bureau.
3. *Event:* International Simple Resale Conference.
4. *Sponsor of Event:* CommEd Limited.

5. *Sponsor Address:* Attn: Ms. Julie Shephard, Communications House, 137 Dulwich Road, London SE24 0NG.
6. *Location of Event:* London, England.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 10/14–15/96.
9. *Travel Dates:* 10/13–15/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$956.86
2. Hotel Room	.....	616.21
3. Meals	$232.50	.....
4. Taxi	.....	.....
	232.50	1573.07
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Rachelle B. Chong.
Government Position: Commissioner.
3. *Event:* CNMI's Admission to the North American Numbering Plan.
4. *Sponsor of Event:* Commonwealth of the Northern Mariana Islands—CNMI.
5. *Sponsor Address:* Attn: Mr. David Ecret, Caller Box 10007, Saipan, MP 96950.
6. *Location of Event:* Saipan.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 07/01/97.
9. *Travel Dates:* 06/28–07/03/97.
10.

	(c) Type & amount of payment	
	(c) Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$3630.00
2. Hotel Room	.....	432.00
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	4062.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Daniel Gonzalez.
Government Position: Legal Advisor to Commissioner Rachelle B. Chong.
3. *Event:* CNMI's Admission to the North American Numbering Plan.
4. *Sponsor of Event:* Commonwealth of the Northern Mariana Islands—CNMI.
5. *Sponsor Address:* Attn: Mr. David Ecret, Caller Box 10007, Saipan, MP 96950.
6. *Location of Event:* Saipan.
7. *Employee's Role:* Attendee.
8. *Dates of Event:* 07/01/97.
9. *Travel Dates:* 06/28–07/03/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$3630.00	.....
2. Hotel Room	.....	$432.00
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	4062.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Roy J. Stewart.
Government Position: Chief, Mass Media Bureau.
3. *Event:* CBA Convention.
4. *Sponsor of Event:* Community Broadcasters Association—CBA.
5. *Sponsor Address:* Attn: Mr. Sherwin Grossman, 1520 Northwest 79th Avenue, Miami, FL 33126.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 10/25–27/96.
9. *Travel Dates:* 10/24–26/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$237.00	.....
2. Hotel Room	.....	$148.00
3. Meals	85.00	.....
4. Taxi	66.40	.....
	388.40	148.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Jon C. Garcia.
Government Position: Director of Strategic Analysis, Office of Plans & Policy.
3. *Event:* Current Issues In Wireless Communications Breakfast Seminar.
4. *Sponsor of Event:* Kelley Drye & Warren.
5. *Sponsor Address:* Attn: Ms. Judith St. Ledger-Roty, 1200 19th Street, N.W., Suite 500, Washington, D.C. 20036.
6. *Location of Event:* New York, New York.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 09/25/97.
9. *Travel Dates:* 02/24–25/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$118.00
2. Hotel Room	.....	153.00
3. Meals	.....	42.00
4. Grd. Transportation	.....	.....
	.....	$313.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Reed E. Hundt.
Government Position: Chairman.
3. *Event:* 1997 Platforms for Communication Forum.
4. *Sponsor of Event:* EDventure Holdings Inc.
5. *Sponsor Address:* Attn: Ms. Daphne Kis, Forum Director, 104 Fifth Avenue, New York, NY 10011.
6. *Location of Event:* Tucson, Arizona.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/23–26/97.
9. *Travel Dates:* 03/23–25/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	.....
2. Hotel Room	.....	$517.26
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	517.26
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Blair S. Levin.
Government Position: Chief of Staff to Chairman, Reed E. Hundt.
3. *Event:* 1997 Platforms for Communication Forum.
4. *Sponsor of Event:* EDventure Holdings Inc.
5. *Sponsor Address:* Attn: Ms. Daphne Kis, Forum Director, 104 Fifth Avenue, New York, NY 10011.
6. *Location of Event:* Tucson, Arizona.

7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/23–26/97.
9. *Travel Dates:* 03/23–25/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	.....
2. Hotel Room	.....	$517.26
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	517.26
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Julius Genachowski.
Government Position: Counsel to Chairman Reed E. Hundt.
3. *Event:* 1997 Winter Consumer Electronics Show.
4. *Sponsor of Event:* Electronics Industries Association—EIA/Consumer Electronics Manufacturers Association—CEMA.
5. *Sponsor Address:* Attn: Mr. Doug Johnson, 2500 Wilson Boulevard, Arlington, VA 22201–3834.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 01/09–12/97.
9. *Travel Dates:* 01/09–14/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$104.00	.....
2. Hotel Room	.....	$618.84
3. Meals	104.50	32.00
4. Grd. Transportation	56.00	.....
5. Telephone	.....	25.32
	264.50	676.16
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* William H. Johnson.
Government Position: Deputy Chief, Cable Services Bureau.
3. *Event:* 1997 Winter Consumer Electronics Show.
4. *Sponsor of Event:* Electronics Industries Association—EIA/Consumer Electronics Manufacturers Association—CEMA.
5. *Sponsor Address:* Attn: Mr. Joe Peck 2500 Wilson Boulevard, Arlington, VA 22201–3834.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/09–12/97.
9. *Travel Dates:* 01/09–12/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$563.00
2. Hotel Room	.....	585.00
3. Meals	$133.00	.....
4. Taxi	.....	.....
	133.00	1148.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Blair S. Levin.
Government Position: Chief of Staff for Chairman Reed E. Hundt.
3. *Event:* 1997 Winter Consumer Electronics Show.
4. *Sponsor of Event:* Electronics Industries Association—EIA Consumer Electronics Manufacturers Association—CEMA.
5. *Sponsor Address:* Attn: Mr. Joe Peck, 2500 Wilson Boulevard, Arlington, VA 22201–3834.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 01/09–12/97.
9. *Travel Dates:* 01/08–11/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$303.00	.....
2. Hotel Room	.....	618.84
3. Meals	61.00	76.00
4. Grd. Transportation	51.00	.....
	415.00	694.84
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* John P. Wong.
Government Position: Chief, Engineering & Technical Services Division, Cable Services Bureau.
3. *Event:* 1997 Winter Consumer Electronics Show.
4. *Sponsor of Event:* Electronics Industries Association—EIA Consumer Electronics Manufacturers Association—CEMA.
5. *Sponsor Address:* Attn: Mr. Gary Shapiro, 2500 Wilson Boulevard, Arlington, VA 22201–3834.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/09–12/97.
9. *Travel Dates:* 01/09–12/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$546.82
2. Hotel Room	.....	195.00
3. Meals	$133.00	.....
4. Grd. Transportation	43.56	.....
	176.56	741.82
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Leslie A. Wall.
Government Position: Chief, Customer Service Branch.
3. *Event:* EMC Zurich '97.
4. *Sponsor of Event:* EMC Zurich.
5. *Sponsor Address:* Attn: Prof. Peter E. Leuthold, ETH Zentrum—IKT, 8092 Zurich, Switzerland.
6. *Location of Event:* Zurich, Switzerland.
7. *Employee's Role:* Keynote Speaker.
8. *Dates of Event:* 02/18–20/97.
9. *Travel Dates:* 07/15–21/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	.....
2. Hotel Room	.....	$950.00
3. Meals	.....	96.25
4. Grd. Transportation	.....	.....
	.....	1046.25
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Joanne F. Wall.
Government Position: Attorney Advisor, International Bureau.
3. *Event:* Competition in Network Conference.

4. *Sponsor of Event:* Europaisches Institut Fur Internationale Wirtschaftsbeziehungen EIIW.
5. *Sponsor Address:* Attn: Cornelius Graack, August-Bebel-Str. 89, D–14482 Potsdam, Germany.
6. *Location of Event:* Berlin, Germany.
7. *Employee's Role:* Moderator.
8. *Dates of Event:* 11/21–23/96.
9. *Travel Dates:* 11/20–25/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$1075.00
2. Hotel Room	.....	600.00
3. Meals	.....	21.48
4. Grd. Transportation	.....	.....
	.....	1696.48
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Brett Haan.
Government Position: Telecommunications Specialist, International Bureau.
3. *Event:* Regulatory Authority Meeting.
4. *Sponsor of Event:* Expert Group.
5. *Sponsor Address:* Attn: Klaus Oertel, Vebacom GmbH, Postfach 301007, D–40410 Dusseldorf.
6. *Location of Event:* Bonn, Germany.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/07–08/97.
9. *Travel Dates:* 01/06–10/97.
10.

	(c) Type and amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$3965.31
2. Hotel Room	.....	150.00
3. Meals	.....	.....
4. Telephone	.....	2.50
	.....	4117.81
(b) Non-Fred Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Rachelle B. Chong.
Government Position: Commissioner.
3. *Event:* FCBA Annual Seminar.
4. *Sponsor of Event:* Federal Communications Bar Association—FCBA.
5. *Sponsor Address:* Attn: Ms. Paula G. Friedman, 1722 Eye Street, N.W., Suite 300, Washington, D.C. 20036–3705.
6. *Location of Event:* Kingsmill Resort, Williamsburg, Virginia.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/09–11/97.
9. *Travel Dates:* 05/09–11/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$51.15	.....
2. Hotel Room	.....	$194.00
3. Meals	.....	85.00
4. Grd. Transportation	.....	.....
	51.15	279.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Peter F. Cowhey.
Government Position: Chief, International Bureau.
3. *Event:* FCBA Annual Seminar.
4. *Sponsor of Event:* Federal Communications Bar Association—FCBA.
5. *Sponsor Address:* Attn: Ms. Paula G. Friedman, 1722 Eye Street, N.W., Suite 300, Washington, D.C. 20036–3705.
6. *Location of Event:* Kingsmill Resort, Williamsburg, Virginia.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/09–11/97.
9. *Travel Dates:* 05/09–11/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	.....
2. Hotel Room	.....	$264.00
3. Meals	.....	85.00
4. Grd. Transportation	.....	.....
	.....	349.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Gerald P. Vaughan.
Government Position: Deputy Chief, Wireless Telecommunications Bureau.
3. *Event:* FITEL Workshop.
4. *Sponsor of Event:* FITEL/OSIPTEL.
5. *Sponsor Address:* Attn: Mr. Jose Escaffi Kahatt, Av. Camino Real s/n., Torre "El Pilar" Officina 1302, Lima 27—Peru.
6. *Location of Event:* Lima, Peru.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 05/27/96.
9. *Travel Dates:* 05/25–29/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$1026.00
2. Hotel Room	.....	848.00
3. Meals	.....	382.50
4. Grd. Transportation	.....	.....
	.....	2056.50
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Renee Licht.
Government Position: Deputy Chief, Mass Media Bureau.

3. *Event:* 62nd Annual FAB Convention.
4. *Sponsor of Event:* Florida Association of Broadcasters—FAB.
5. *Sponsor Address:* Attn: C. Patrick Roberts, 101 East College, Tallahassee, FL 32301.
6. *Location of Event:* Boca Raton, Florida.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/25–27/97.
9. *Travel Dates:* 06/25–29/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$199.00	.....
2. Hotel Room	.....	$150.00
3. Meals	105.00	.....
4. Grd. Transportation	58.20	.....
	362.20	150.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Meredith J. Jones.
Government Position: Chief, Cable Services Bureau.
Event: FCTA Annual Convention.
4. *Sponsor of Event:* Florida Cable Telecommunications Association—FCTA.
5. *Sponsor Address:* Attn: Ms. Laura L. Wilson, 310 North Monroe Street, Tallahassee, FL 32301.
6. *Location of Event:* Palm Beach, Florida.
7. *Employee's Role:* Panelist.
8. *Date of Event:* 07/15/97.
9. *Travel Dates:* 07/14–15/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$164.00
2. Hotel Room	.....	126.50
3. Meals	.....	57.00
4. Grd. Transportation	$32.00	.....
5. Telephone	21.59	.....
	53.59	347.50
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Gerald P. Vaughan.
Government Position: Deputy Chief, Wireless Telecommunications Bureau.
Event: 1996 Frederick & Warinner Annual Seminar.
4. *Sponsor of Event:* Frederick & Warinner.
5. *Sponsor Address:* Attn: Ms. Mary Anne Cummings, 10901 W. 84th Terrace, Suite 101, Lenexa, KS 66214–1631.
6. *Location of Event:* San Antonio, Texas.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 12/05–06/96.
9. *Travel Dates:* 12/05–07/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$887.50
2. Hotel Room	.....	182.00
3. Meals	$60.00	.....
4. Grd. Transportation 35.20	.....	
.....	95.20	1069.50
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Thomas V. Wasilewski.
Government Position: Telecommunications Specialist, International Bureau.
3. *Event:* Handelsblatt Congress, "Telecom market Europe".
4. *Sponsor of Event:* Handelsblatt, Veranstaltungen.
5. *Sponsor Address:* Attn: Ralf Teschner, c/o EUROFORUM Deutschland Gmbll Postfach 23 02 65, 40088 Dusseldorf.
6. *Location of Event:* Bonn, Germany.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/21–22/96.
9. *Travel Dates:* 05/19–24/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$898.55	.....
2. Hotel Room	.....	$125.00
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	898.55	125.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Andrew C. Barrett.
Government Position: Commissioner.
3. *Event:* 1996 Radio Y Musica Convention.
4. *Sponsor of Event:* Hispanic Radio Industry.
5. *Sponsor Address:* Attn: Gene Bryan, 6408 Bergenline Ave., Suite 2, West New York, NJ 07093.
6. *Location of Event:* Los Angeles, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 02/03/96.
9. *Travel Dates:* 02/02–05/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$239.00
2. Hotel Room	.....	222.30
3. Meals	$123.50	28.82
4. Grd. Transportation	30.00	.....
5. Telephone	.....	50.71
	153.50	540.83
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Katherine C. Power.
Government Position: Attorney Advisor, Wireless Telecommunications Bureau.
3. *Event:* ICM's Conference on Integrated Customer Care.
4. *Sponsor of Event:* ICM Conferences, Inc.
5. *Sponsor Address:* Attn: Mr. Chip Heflin, 303 East Wacker Drive, 3 Illinois Center, Chicago, IL 60601.
6. *Location of Event:* San Diego, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 02/12–13/97.
9. *Travel Dates:* 02/12–18/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$397.00
2. Hotel Room	.....	439.80
3. Meals	.....	.....
4. Taxi	.....	.....
	.....	836.80
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Joseph P. Weber.
Government Position: Attorney, Wireless Telecommunications Bureau.
3. *Event:* Fixed Wireless Conference.
4. *Sponsor of Event:* ICM Conferences, Inc.
5. *Sponsor Address:* Attn: Ms. Kimberlee Mulherin, 303 East Wacker Drive, Twentieth Floor, Chicago, IL 60601.
6. *Location of Event:* Chicago, Illinois.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 07/23–24/97.
9. *Travel Dates:* 07/18–23/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$163.00
2. Hotel Room	.....	296.00
3. Meals.		
4. Grd. Transportation	.....	.....
	.....	459.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Pat DeGraba.
Government Position: Chief Economist, Common Carrier Bureau.
3. *Event:* Illinois Telecommunications Association's Convention.
4. *Sponsor of Event:* Illinois Telecommunications Association.
5. *Sponsor Address:* Attn: Mr. Jack Tharp, P. O. Box 730, 300 E. Moore Street, Suite 306, Springfield, IL 62705.
6. *Location of Event:* Pleasant Run Resort, St. Charles, Illinois.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/09/97.
9. *Travel Dates:* 06/08–09/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$114.00	.....
2. Hotel Room	.....	$116.55
3. Meals	31.50	.....
4. Grd. Transportation	21.70	52.00
	167.20	166.55
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Lauren J. Belvin.
Government Position: Senior Legal Advisor to Commissioner James H. Quello.
3. *Event:* INTV/NATPE Convention.
4. *Sponsor of Event:* Association of Independent Television/National Association of Television Program Executives—INTV/NATPE.
5. *Sponsor Address:* 1320 Nineteenth Street, N.W., Suite 300, Washington, D.C. 20036.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 01/20–25/96.
9. *Travel Dates:* 01/20–23/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$365.00
2. Hotel Room	.....	207.00
3. Meals	$133.00	.....
4. Grd. Transportation	.....	.....
	133.00	572.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* William W. Sharkey.
Government Position: Economist, Common Carrier Bureau.
3. *Event:* Third International Conference in Applied Public Economics.
4. *Sponsor of Event:* Institut D'Economic Industrielle—IDEI.
5. *Sponsor Address:* Attn: F. Gasmi, Universite des Sciences, Sodales de Toulouse, Place Anatole France, 31042 Toulouse cedax.
6. *Location of Event:* Toulouse, France.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/07–11/97.
9. *Travel Dates:* 6/06–11/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$1380.00
2. Hotel Room	.....	375.00
3. Meals	.....	20.00
4. Grd. Transportation	.....	.....

	(c) Type & amount of payment	
	Check	In kind
	.....	1775.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Scott B. Harris.
Government Position: Chief, International Bureau.
3. *Event:* Satellite Telecommunications Summit, 1995.
4. *Sponsor of Event:* Institute for International Research—IIR.
5. *Sponsor Address:* Attn: Bridgit FitzGerald, Glen House, 200/208 Tottenham Court Road, London W1P 9LA.
6. *Location of Event:* London, England.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/27–28/95.
9. *Travel Dates:* 06/25–27/95.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$910.95	.....
2. Hotel Room	.....	$189.00
3. Meals	202.50	5.04
4. Taxi, Parking & Mileage	139.12	.....
5. Telephone	48.47	.....
	1301.04	194.04
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Michael L. Katz.
Government Position: Chief Economist, Office of Plans & Policy.
3. *Event:* Global Telecoms '95.
4. *Sponsor of Event:* Institute for International Research—IIR.
5. *Sponsor Address:* 6th Floor, 29 Bressenden Place, London SW1E 5DR.
6. *Location of Event:* London, England.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 09/11–13/95.
9. *Travel Dates:* 9/09–13/95.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$1049.55	.....

	(c) Type & amount of payment	
	Check	In kind
2. Hotel Room	.....	$459.00
3. Meals	.....	80.00
4. Taxi	.....	.....
	1049.55	539.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Blair S. Levin.
Government Position: Chief of Staff to Chairman, Reed E. Hundt.
3. *Event:* Customer Satisfaction Conference.
4. *Sponsor of Event:* Institute for International Research—IIR.
5. *Sponsor Address:* Attn: Mr. Hugh Roberts, 6th Floor, 29 Bressenden Place, London SW1E 5DR.
6. *Location of Event:* London, England.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 12/04–08/95.
9. *Travel Dates:* 12/04–06/95.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$554.95	.....
2. Hotel Room	.....	$130.00
3. Meals	.....	132.00
4. Grd. Transportation	.....	.....
	554.95	262.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Saul Shapiro.
Government Position: Assistant Bureau Chief for Technology Policy, Mass Media Bureau.
3. *Event:* Intelligent Set-top Box Conference.
4. *Sponsor of Event:* Institute for International Research—IIR.
5. *Sponsor Address:* Attn: Mr. Eric Jager, 708 Third Avenue, 4th Floor, New York, NY 10017–4103.
6. *Location of Event:* San Francisco, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/28–29/96.
9. *Travel Dates:* 03/28–30/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$198.00
2. Hotel Room	.....	198.00
3. Meals	.....	76.00
4. Grd. Transportation	.....	.....
	.....	472.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Peter F. Cowhey.
Government Position: Senior Counselor, International Bureau.
3. *Event:* Interconnection Asia '96.
4. *Sponsor of Event:* Institute for International Research—IIR.
5. *Sponsor Address:* Attn: Tariq Zaidi, 20/F Siu On Centre, 188 Lockhart Road, Wanchai, Hong Kong.
6. *Location of Event:* Hong Kong.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 09/16–17/96.
9. *Travel Dates:* 09/11–19/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$1547.95
2. Hotel Room	.....	407.22
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	1955.17
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Jason Karp.
Government Position: Attorney-Advisor, Common Carrier Bureau.
3. *Event:* Number Portability.
4. *Sponsor of Event:* Institute for International Research—IIR.
5. *Sponsor Address:* Attn: Ms. Sharon Gregory, 6th Floor, 29 Bressenden Place, London SW1E 5DR.
6. *Location of Event:* London, England.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 09/25–26/96.
9. *Travel Dates:* 09/24–27/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$548.55	.....
2. Hotel Room	.....	$357.83
3. Meals	302.25	.....
4. Taxi & Telephone	91.19	.....
	941.99	357.83
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Donald K. Stockdale.
Government Position: Deputy Chief, Policy & Planning Division, Common Carrier Bureau.
3. *Event:* Telecom Alliances.
4. *Sponsor of Event:* Institute for International Research—IIR.
5. *Sponsor Address:* Attn: Ms. Laura S. Cranham, 6th Floor, 29 Bressenden Place, London SW1E 5DR.
6. *Location of Event:* London, England.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 10/21–23/96.
9. *Travel Dates:* 10/19–21/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	.....
2. Hotel Room	.....	$349.62
3. Meals	$232.50	43.70
4. Grd. Transportation	30.81	.....
	263.31	393.32
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Susan L. O'Connell.
Government Position: Attorney Advisor, International Bureau.
3. *Event:* Competing with Incumbent Operators.
4. *Sponsor of Event:* Institute for International Research—IIR.
5. *Sponsor Address:* Attn: Ms. Sharon Gregory, 6th Floor, 29 Bressenden Place, London SW1E 5DR.
6. *Location of Event:* London, England.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 01/29–31/97.
9. *Travel Dates:* 01/26–31/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit		
1. Roundtrip Transportation		$268.00
2. Hotel Room		295.00
3. Meals		120.00
4. Grd. Transportation		
		683.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Richard B. Engelman. *Government Position:* Chief, Standards Development Branch, Office of Engineering & Technology.
3. *Event:* Telecoms Conference.
4. *Sponsor of Event:* Institute for International Research—IIR.
5. *Sponsor Address:* Attn: Bridgit Napleton, 6th Floor, 29 Bressenden Place, London SW1E 5DR.
6. *Location of Event:* London, England.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 02/03–05/97.
9. *Travel Dates:* 02/01–04/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit		
1. Roundtrip Transportation	.....	$1339.33
2. Hotel Room	.....	531.40
3. Meals	.....	110.00
4. Grd. Transportation	.....	.....
	.....	1980.73
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Elliot Maxwell. *Government Position:* Deputy Chief, Office of Plans & Policy.
3. *Event:* Billing & Pricing Internet Services: International Forum.
4. *Sponsor of Event:* Institute for International Research—IIR.
5. *Sponsor Address:* Attn: Leigh Gilmore, 29 Bressenden Place, 6th Floor, London SW1E 5DR.
6. *Location of Event:* London, England.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/19–21/97.
9. *Travel Dates:* 05/18–20/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$1569.95
2. Hotel Room	.....	542.57
3. Meals	.....	135.00
4. Grd. Transportation	.....	.....
	.....	2247.52
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Robert M. Pepper. *Government Position:* Chief, Office of Plans & Policy.
3. *Event:* Telecoms the Internet III.
4. *Sponsor of Event:* Institute for International Research—IIR.
5. *Sponsor Address:* Attn: Izi Muraben, 6th Floor, 29 Bressenden Place, London SW1E 5DR.
6. *Location of Event:* London, England.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/09–13/97.
9. *Travel Dates:* 06/08–15/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit		
1. Roundtrip Transportation		$303.73
2. Hotel Room		327.12
3. Meals	$16.10	98.30
4. Grd. Transportation	45.23	
5. Exchange Fee & Telephone:	7.89	36.10
	69.22	765.25
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Kerry Murray. *Government Position:* Senior Legal Advisor, International Bureau.
3. *Event:* Interconnection Asia '97.
4. *Sponsor of Event:* Institute for International Research—IIR.
5. *Sponsor Address:* Attn: Sinead Leng, 20/F Siu On Centre, 188 Lockhart Road, Wanchai, Hong Kong.
6. *Location of Event:* Singapore.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/21–24/97.
9. *Travel Dates:* 04/18–25/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit		
1. Roundtrip Transportation	.....	$1563.00
2. Hotel Room	.....	.....
3. Meals	.....	100.00
4. Grd. Transportation	.....	.....
	.....	1663.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee: Robert M. Pepper. Government Position:* Chief, Office of Plans & Policy.
3. *Event:* Asian Telecoms @ Internet II.
4. *Sponsor of Event:* Institute for International Research—IIR.
5. *Sponsor Address:* Attn: Ms. Diane Ann C. Pe, Conference Manager, 20/F Siu On Center, 188 Lockhart Road, Wanchai, Hong Kong.
6. *Location of Event:* Hong Kong.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/03–05/97.
9. *Travel Dates:* 05/31–6/03/97.
10.

	(c) Type & amount of payment	
	Check	In Kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$1038.41
2. Hotel Room	.....	1715.67
3. Meals	.....	300.00
4. Grd. Transportation	.....	.....
	.....	3054.08
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Kevin Werbach. *Government Position:* Attorney, Office of Plans & Policy.
3. *Event:* Telecoms the Internet III.
4. *Sponsor of Event:* Institute for International Research—IIR.
5. *Sponsor Address:* Attn: Izi Muraben, 6th Floor, 29 Bressenden Place, London SW1E 5DR.
6. *Location of Event:* London, England.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/09–13/97.
9. *Travel Dates:* 06/08–11/97.
10.

	(c) Type & amount of payment	
	Check	In Kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$1560.05
2. Hotel Room	.....	467.91
3. Meals	.....	150.00
4. Grd. Transportation	.....	.....
	.....	$2177.96
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Joslyn Read.
Government Position: Assistant Chief, Satellite & Radiocommunications Division, International Bureau.
3. *Event:* Global Mobile Personal Communications by Satellite.
4. *Sponsor of Event:* Institute for International Research—IIR.
5. *Sponsor Address:* Attn: Ms. Rosalind Slee, 6th Floor, 29 Bressenden Place, London SW1E 5DR.
6. *Location of Event:* London, England.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/24–27/97.
9. *Travel Dates:* 06/23–28/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$1450.81
2. Hotel Room	.....	630.00
3. Meals	.....	363.17
4. Grd. Transportation	.....	.....
	.....	$2443.98
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Robert M. Pepper.
Government Position: Chief, Office of Plans & Policy.
3. *Event: Second Annual Set-Top Box Conference.*
4. *Sponsor of Event:* Institute for International Research—IIR.
5. *Sponsor Address:* Attn: Mr. Eric Jager, 708 Third Avenue, 4th Floor, New York, NY 10017–4103.
6. *Location of Event:* San Francisco, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 07/14–15/97.
9. *Travel Dates:* 07/14–15/97.

10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$404.00
2. Hotel Room	.....	114.00
3. Meals	.....	74.00
4. Grd. Transportation	.....	.....
	.....	592.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Troy Tanner.
Government Position: Chief, Policy & Facilities Branch, International Bureau.
3. *Event:* Telecom Conference.
4. *Sponsor of Event:* Institute for International Research—IIR.
5. *Sponsor Address:* Attn: Mr. Nathalie Johnson, 440 Boul. Rene-Levesque Quest, Bureau 206, Montreal QC H2z 1V7.
6. *Location of Event:* Montreal, Canada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 09/03–05/97.
9. *Travel Dates:* 09/04/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	.....	$1128.59
2. Hotel Room	.....	.....
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	1128.59
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Karen Gulick.
Government Position: Assistant Chief, Wireless Telecommunications Bureau.
3. *Event:* Wired-Wireless Convergence Conference.
4. *Sponsor of Event:* Institute for International Research—IIR.
5. *Sponsor Address:* Attn: Mr. Glenn Waldorf, 708 Third Avenue, 4th Floor, New York, NY 10017–4103.
6. *Location of Event:* Chicago, Illinois.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 09/17–19/97.
9. *Travel Dates:* 09/16–18/97.

10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$405.00
2. Hotel Room	.....	350.00
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	755.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Sandi Taxali.
Government Position: Policy Advisor, Wireless Telecommunications Bureau.
3. *Event:* China Cellular & Wireless Summit '97.
4. *Sponsor of Event:* International Business Communications—IBC.
5. *Sponsor Address:* Attn: Ms. Traci DeCocq, 225 Turnpike Road, Southboro, MA 01772–1749.
6. *Location of Event:* New York City, New York.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 02/24–26/97.
9. *Travel Dates:* 02/23–24/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$231.00
2. Hotel Room	.....	180.00
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	411.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Carol E. Mattey.
Government Position: Deputy Chief, Policy Division, Common Carrier Bureau.
3. *Event:* Intelligent Networks Conference.
4. *Sponsor of Event:* International Business Communications—IBC.
5. *Sponsor Address:* Attn: Stacy A. Melillo, 25 Turnpike Road, Southboro, MA 01772–1749.
6. *Location of Event:* San Francisco, California.
7. *Employee's Role:* Speaker.

8. *Dates of Event:* 03/05–07/97.
9. *Travel Dates:* 03/05–07/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$375.00
2. Hotel Room	.....	$230.00
3. Meals	$105.00	.....
4. Grd. Transportation	128.00	.....
5. Telephone	.75	.....
	233.75	605.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* William A. Luther. *Government Position:* Chief, Radiocommunication Policy Branch, International Bureau.
3. *Event:* Conferences on Spectrum Pricing and Spectrum Auctions & Spectrum Management.
4. *Sponsor of Event:* International Business Communications—IBC.
5. *Sponsor Address:* Attn: Mr. Gavin Whitechurch, 57–61 Mortimer Street, London, England.
6. *Location of Event:* London, England.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/09–06/11/97.
9. *Travel Dates:* 06/07–12/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$1015.59
2. Hotel Room	.....	728.70
3. Meals	.....	93.43
4. Grd. Transportation	183.74	.....
	183.74	1837.72
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Howard C. Davenport. Government Position: Chief, Enforcement Division, Wireless Telecommunications Bureau.
3. *Event:* IBC's Premier Summit Meeting.
4. *Sponsor of Event:* International Business Communications—IBC.
5. *Sponsor Address:* Attn: Ms. Stephanie E. Starr, 25 Turnpike Road, Southborough, MA 01772–1749.
6. *Location of Event:* West Hollywood, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 07/31–08/01/97.
9. *Travel Dates:* 07/31–08/03/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$376.00
2. Hotel Room	.....	$291.00
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	667.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Rosalind K. Allen. Government Position: Deputy Chief, Wireless Telecommunications Bureau.
3. *Event:* Competitive Strategies for Wireless Communications Conference.
4. *Sponsor of Event:* International Communications Group.
5. *Sponsor Address:* Attn: Mr. Stanley M. Gorinson, 5555 Preserve Drive, Greenwood Village, CO 80121.
6. *Location of Event:* Denver, Colorado.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/21–22/97.
9. *Travel Dates:* 05/20–21/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$542.00
2. Hotel Room	.....	78.00
3. Meals	.....	51.00
4. Grd. Transportation	.....	.....
	.....	671.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Beverly G. Baker. *Government Position:* Chief, Compliance & Information Bureau.
3. *Event:* Competitive Strategies for Wireless Communications Conference.
4. *Sponsor of Event:* International Communications Group.
5. *Sponsor Address:* Attn: Mr. Stanley M. Gorinson, 5555 Preserve Drive, Greenwood Village, CO 80121.
6. *Location of Event:* Denver, Colorado.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/21–22/97.
9. *Travel Dates:* 05/21–25/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$627.00
2. Hotel Room	.....	149.58
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	776.58
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Lawrence Spiwak. *Government Position:* Attorney, Office of General Counsel.
3. *Event:* Utilities & Wireless Telecommunications Alliances Conference.
4. *Sponsor of Event:* International Communications Group.
5. *Sponsor Address:* Attn: Mr. Martin Stern, Preston Gates Ellis & Rouvelas Meeds LLP, 1735 New York Avenue, N.W., Suite 500, Washington, D.C. 20006–5209.
6. *Location of Event:* Denver, Colorado.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/23/97.
9. *Travel Dates:* 05/22–23/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$264.50
2. Hotel Room	.....	150.00
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	414.50
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* John T. Nakahata. *Government Position:* Senior Legal Advisor to Chairman Reed E. Hundt.

3. *Event:* IIC Telecommunications Forum.
4. *Sponsor of Event:* International Institute of Communications—IIC.
5. *Sponsor Address:* Attn: Ms. Emma Jackets, Tavistock House South, Tavistock Square, London WC1H 9LF.
6. *Location of Event:* London, England.
7. *Employee's Role:* Discussant.
8. *Dates of Event:* 01/20–21/97.
9. *Travel Dates:* 01/18–21/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$616.75	
2. Hotel Room		
3. Meals		
4. Grd. Transportation		
	616.75	
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Elliot Maxwell.
Government Position: Deputy Chief, Office of Plans & Policy.
3. *Event:* IIC Telecommunications Forum.
4. *Sponsor of Event:* International Institute of Communications—IIC.
5. *Sponsor Address:* Attn: Ms. Rachel Coldeboeuf, Tavistock House South, Tavistock Square, London WC1H, 9LF.
6. *Location of Event:* Tokyo, Japan.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/21–22/97.
9. *Travel Dates:* 04/21–22/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		$2788.00
2. Hotel Room		
3. Meals		50.00
4. Grd. Transportation		
		2838.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Todd F. Silbergeld.
Government Position: Legal Advisor to Commissioner, Andrew C. Barrett.
3. *Event:* New Frontiers in Utilities-Based Telecommunications.
4. *Sponsor of Event:* International Communications for Management—ICM.
5. *Sponsor Address:* Attn: Alexandra B. Early, 3 Illinois Center, 303 East Wacker Drive, Chicago, IL 60601.
6. *Location of Event:* Atlanta, Georgia.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 02/14–15/96.
9. *Travel Dates:* 02/14–15/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit		
1. Roundtrip Transportation		$373.00
2. Hotel Room		159.00
3. Meals	$42.48	
4. Grd. Transportation	102.30	
	144.78	532.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Sandra K. Danner.
Government Position: Chief, Legal Branch, Wireless Telecommunications Bureau.
3. *Event:* Trade Mission Meeting, on Frequency & Interference Issues.
4. *Sponsor of Event:* International Mobile Telecommunications Association—IMTA.
5. *Sponsor Address:* Attn: Mr. Alan R. Shark, 1150 18th Street, N.W., Suite 250, Washington, D.C. 20036.
6. *Location of Event:* Sao Paulo, Brazil.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 07/22–26/96.
9. *Travel Dates:* 07/22–27/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		$1762.00
2. Hotel Room	$685.70	
3. Meals		651.00
4. Telephone	20.00	
5. Supplies	82.15	45.00
	787.85	2458.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Joseph V. Farrell.
Government Position: Chief Economist, Office of Plans & Policy.
3. *Event:* Internet Telephony Conference.
4. *Sponsor of Event:* International Quality & Productivity Center.
5. *Sponsor Address:* Attn: Mr. Steve Eck, 208 South LaSalle Street, Suite 1240, Chicago, IL 60604.
6. *Location of Event:* San Francisco, California.
7. *Employee's Role:* Keynote Speaker.
8. *Dates of Event:* 02/19–20/97.
9. *Travel Dates:* 02/14–25/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		$404.00
2. Hotel Room		
3. Meals		70.00
4. Grd. Transportation		84.00
		558.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* John B. Muleta.
Government Position: Chief, Enforcement Division, Common Carrier Bureau.
3. *Event:* Directory Services & Enhanced Services, 1997 Executive Summit.
4. *Sponsor of Event:* International Quality & Productivity Centre—IQPC.
5. *Sponsor Address:* Attn: Ms. Juliane Jung, 1st Floor, West Wing, Chancery House, 54–64 Chancery Lane, London WC2A 1QU.
6. *Location of Event:* Chicago, Illinois.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 07/15–17/97.
9. *Travel Dates:* 07/14–15/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		$508.00
2. Hotel Room		150.00
3. Meals		
4. Grd. Transportation		
		658.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Beverly G. Baker.
Government Position: Chief, Compliance & Information Bureau.
3. *Event:* International Wireless Communications Exposition.
4. *Sponsor of Event:* Intertec Publishing.
5. *Sponsor Address:* Attn: Ms. Jane Van Velson, IWCE Speaker Manager, Intertec Publications, 6300 S. Syracuse Way, Suite 650, Englewood, CO 80111.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/22–24/97.
9. *Travel Dates:* 04/22–24/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$702.00
2. Hotel Room	.....	278.64
3. Meals	.....	56.08
4. Grd. Transportation	$76.00	.....
5. Telephone	.....	17.42
	76.00	1054.14
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Riley Hollingsworth.
Government Position: Deputy Associate Chief, Office of Operations-Gettysburg Wireless Telecommunications Bureau.
3. *Event:* International Wireless Communications Exposition.
4. *Sponsor of Event:* Intertec Publishing.
5. *Sponsor Address:* Attn: Ms. Jane Van Velson, IWCE Speaker Manager, Intertec Publications, 6300 S. Syracuse Way, Suite 650, Englewood, CO 80111.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/22–24/97.
9. *Travel Dates:* 04/22–24/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$411.00
2. Hotel Room	.....	244.08
3. Meals	$76.00	.....
4. Grd. Transportation	.....	.....
(b) Non-Fed Source: Same as No. 4.		

	(c) Type & amount of payment	
	Check	In kind
	76.00	655.08
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Ira R. Keltz.
Government Position: Electronics Engineer, Wireless Telecommunications Bureau.
3. *Event:* International Wireless Communications Exposition.
4. *Sponsor of Event:* Intertec Publishing.
5. *Sponsor Address:* Attn: Ms. Jane Van Velson, IWCE Speaker Manager, Intertec Publications, 6300 S. Syracuse Way, Suite 650, Englewood, CO 80111.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/22–24/97.
9. *Travel Dates:* 04/22–24/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$410.00
2. Hotel Room	.....	226.00
3. Meals	$76.00	.....
4. Grd. Transportation	.....	.....
	76.00	636.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Jake Jennings.
Government Position: Telecommunications Policy Analyst, Common Carrier Bureau.
3. *Event:* Seminar on Interconnection Costing & Pricing for PT.TELKOM of Indonesia Communications Exposition.
4. *Sponsor of Event:* ITA of New Jersey.
5. *Sponsor Address:* Attn: Shawky El-Toukhy, Ph.D., 11 Betsy Ross Drive, Freehold, NJ 07728.
6. *Location of Event:* Piscataway, New Jersey.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/01/97.
9. *Travel Dates:* 04/01/97.
10.

	(c) Type & Amount of Payment	
	Check	In Kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$327.00
2. Hotel Room	.....	.....
3. Meals	.....	7.00
4. Grd. Transportation	$15.00	.....
	15.00	334.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Jon C. Garcia.
Government Position: Director of Strategic Analysis, Office of Plans & Policy.
3. *Event:* Lunch Meeting.
4. *Sponsor of Event:* Janney Montgomery Scott.
5. *Sponsor Address:* Attn: Ms. Anna-Maria Kovacs, First Vice President, 60 State Street, Boston, MA 02109.
6. *Location of Event:* Boston, Massachusetts.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/02/97.
9. *Travel Dates:* 06/02/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
11. Roundtrip Transportation	.....	$566.50
2. Hotel Room	.....	.....
3. Meals	.....	40.00
4. Grd. Transportation	.....	.....
	.....	606.50
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Kathleen B. Levitz.
Government Position: Deputy Chief, Common Carrier Bureau.
3. *Event:* KMB 17th Invitational Conference.
4. *Sponsor of Event:* KMB Associates.
5. *Sponsor Address:* Attn: Mike Beilis, 437 3rd Avenue North, Tierra Verde, FL 33715.
6. *Location of Event:* St. Petersburg, Florida.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 05/01–04/96.
9. *Travel Dates:* 05/02–03/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$206.00
2. Hotel Room	.....	168.00
3. Meals	.....	52.00
4. Taxi	$15.00	.....
	15.00	426.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: James W. Olson.
Government Position: Chief, Competition Division, General Counsel Bureau.
3. *Event:* KMB 17th Invitational Conference.
4. *Sponsor of Event:* KMB Associates.
5. *Sponsor Address:* Attn: Mike Beilis, 437 3rd Avenue North, Tierra Verde, FL 33715.
6. *Location of Event:* St. Petersburg, Florida.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/01–04/96.
9. *Travel Dates:* 05/01–04/96.
10.

	Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$204.00
2. Hotel Room	.....	215.00
3. Meals	45.50	.....
4. Taxi, Fax & Telephone	50.56	.....
	96.06	426.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: James W. Olson.
Government Position: Chief, Competition Division, General Counsel Bureau.
3. *Event:* KMB 18th Invitational Conference.
4. *Sponsor of Event:* KMB Associates.
5. *Sponsor Address:* Attn: Mike Beilis, 437 3rd Avenue North, Tierra Verde, FL 33715.
6. *Location of Event:* St. Petersburg, Florida.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 10/28–31/96.
9. *Travel Dates:* 10/28–31/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$156.00
2. Hotel Room	.....	405.00
3. Meals	.....	.....
4. Taxi & Telephone	$29.56	.....
	29.00	561.11
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Robert M. Pepper.
Government Position: Chief, Office of Plans & Policy.
3. *Event:* 19th KMB Conference.
4. *Sponsor of Event:* KMB Associates.
5. *Sponsor Address:* Attn: Mike Beilis, 3882 Belle Vista Drive, E., St. Pete Beach, FL 33706.
6. *Location of Event:* St. Petersburg, Florida.
7. *Employee's Role:* Guest Speaker.
8. *Dates of Event:* 04/07–09/97.
9. *Travel Dates:* 04/08–09/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$253.94
2. Hotel Room	.....	256.40
3. Meals	.....	66.50
4. Grd. Transportation	.....	.....
	.....	576.84
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Meredith J. Jones.
Government Position: Chief, Cable Services Bureau.
3. *Event:* 9th KISDI International Conference.
4. *Sponsor of Event:* Korea Information, Society Development Institute—KISDI.
5. *Sponsor Address:* Attn: Daeho Kim, 1–33 Juam-Dong, Kwachun, Kyunggi-Do, Korea, 427–070.
6. *Location of Event:* Seoul, Korea.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/14–20/97.
9. *Travel Dates:* 06/14–21/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$845.95	.....
2. Hotel Room	.....	726.45
3. Meals	.....	630.00
4. Grd. Transportation	65.44	.....
5. Telephone	207.31	.....
	1118.70	1356.45
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Thomas A. Boasberg.
Government Position: Legal Advisor to Chairman, Reed E. Hundt.
3. *Event:* International Telcom Competition Conference.
4. *Sponsor of Event:* Law Seminars International–LSI.
5. *Sponsor Address:* Attn: Ms. H. Kate Johnson, 810 3rd Avenue, Suite 140–1, Seattle, WA 98104.
6. *Location of Event:* Seattle, Washington.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 07/24–25/97.
9. *Travel Dates:* 07/23–29/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$577.00
2. Hotel Room	.....	464.70
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	1041.70
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission
2. *Employee:* Peter F. Cowhey.
Government Position: Chief, International Bureau.
3. *Event:* International Telcom Competition Conference.
4. *Sponsor of Event:* Law Seminars International–LSI.
5. *Sponsor Address:* Attn: Ms. H. Kate Johnson, 810 3rd Avenue, Suite 140–1, Seattle, WA 98104.
6. *Location of Event:* Seattle, Washington.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 07/24–25/97.
9. *Travel Dates:* 07/23–27/97.

10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$464.00
2. Hotel Room	.....	.....
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	464.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Elbert L. Robertson.
Government Position: Attorney, Office of General Counsel.
3. *Event:* Third Annual Telcom/Media Conference.
4. *Sponsor of Event:* Lehman Brothers.
5. *Sponsor Address:* Attn: Ms. Kim N. Wallance, 800 Connecticut Avenue, N.W., Washington, D.C. 20036.
6. *Location of Event:* New York, New York.
7. *Employee's Role:* Attendant.
8. *Dates of Event:* 05/08–09/97.
9. *Travel Dates:* 05/08–09/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$182.00
2. Hotel Room	.....	250.02
3. Meals	.....	20.00
4. Grd. Transportation	.....	.....
	.....	452.02
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Jonathan D. Levy.
Government Position: Economist, Office of Plans & Policy.
3. *Event:* Andina Link.
4. *Sponsor of Event:* Link Events.
5. *Sponsor Address:* Attn: Mr. Robert L. Vogelsang, 1909 Avenue G, Rosenberg, TX 77471.
6. *Location of Event:* Cartegena, Columbia.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 08/20–22/97.
9. *Travel Dates:* 08/18–22/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$1084.95
2. Hotel Room	.....	512.00
3. Meals	.....	301.50
4. Grd. Transportation	.....	.....
	.....	1898.45
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Kelly Cameron.
Government Position: Senior Attorney Advisor International Bureau.
3. *Event:* Symposium on the 21st Century's Global Information Society.
4. *Sponsor of Event:* Masyarakat, Telekomunikasi, Indonesia—MASTEL.
5. *Sponsor Address:* Attn: Mr. Sukarno Abdulrachman, d/a PTLACaS, Sentra Mulia LL 12, JL H.R. Rasuna Said Kav., X—5 / 8, Jakarta 12840—Indonesia.
6. *Location of Event:* Jakarta, Indonesia.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/11–13/97.
9. *Travel Dates:* 06/06–14/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$2435.50	.....
2. Hotel Room	.....	$270.00
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	2435.50	270.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Jon C. Garcia.
Government Position: Director of Strategic Analysis, Office of Plans & Policy.
3. *Event:* Annual Worldwide Telecommunications Conference.
4. *Sponsor of Event:* McKinsey & Company.
5. *Sponsor Address:* Attn: Mr. Rance Hesketh.
6. *Location of Event:* Berlin, Germany.
7. *Employee's Role: Speaker.*
8. *Dates of Event:* 06/09–11/97.
9. *Travel Dates:* 06/08–11/97.

10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$4546.05
2. Hotel Room	.....	336.00
3. Meals	.....	100.00
4. Grd. Transportation	.....	.....
	.....	4982.05
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Susan Ness.
Government Position: Commissioner.
3. *Event:* 1997 Great Lakes Broadcasting Conference & Expo.
4. *Sponsor of Event:* Michigan Association of Broadcasters—MAB.
5. *Sponsor Address:* Attn: Chris Suever, 819 North Washington Avenue, Lansing, MI 48906.
6. *Location of Event:* Lansing, Michigan.
7. *Employee's Role:* Keynote Speaker.
8. *Dates of Event:* 02/25/97.
9. *Travel Dates:* 02/24–25/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$332.00	.....
2. Hotel Room	.....	$77.00
3. Meals	45.00	.....
4. Grd. Transportation	.....	.....
	377.00	77.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Anita L. Wallgren.
Government Position: Legal Advisor to Commissioner Susan Ness.
3. *Event:* 1997 Great Lakes, Broadcasting Conference, & Expo.
4. *Sponsor of Event:* Michigan Association of Broadcasters—MAB.
5. *Sponsor Address:* Attn: Chris Suever, 819 North Washington Avenue, Lansing, MI 48906.
6. *Location of Event:* Lansing, Michigan.
7. *Employee's Role:* Attendee.
8. *Dates of Event:* 02/25/97.
9. *Travel Dates:* 02/24–25/97.

10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$332.00	
2. Hotel Room		$77.00
3. Meals		45.00
4. Grd. Transportation		
	377.00	77.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Roy J. Stewart.
Government Position: Chief, Mass Media Bureau.
3. *Event:* Annual Meeting & Management Retreat.
4. *Sponsor of Event:* Michigan Association of Broadcasters—MAB.
5. *Sponsor Address:* Attn: Chris Suever, 819 North Washington Avenue, Lansing, MI 48906.
6. *Location of Event:* Traverse City, Michigan.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 07/25–27/97.
9. *Travel Dates:* 07/25–29/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$384.00	
2. Hotel Room		$196.00
3. Meals	59.50	
4. Grd. Transportation	32.40	
	475.90	196.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Roy J. Stewart.
Government Position: Chief, Mass Media Bureau.
3. *Event:* 1997 Annual Convention.
4. *Sponsor of Event:* Missouri Broadcasters Association—MBA.
5. *Sponsor Address:* Attn: Mr. Donald J. Hicks, 1803 Sun Valley Drive, Jefferson City, MO 65109.
6. *Location of Event:* Lake Ozark, Missouri.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 06/12–14/97.
9. *Travel Dates:* 06/12–15/97.

10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		$279.00
2. Hotel Room		162.00
3. Meals	$105.00	
4. Grd. Transportation	52.40	
	157.40	441.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Roy J. Stewart.
Government Position: Chief, Mass Media Bureau.
3. *Event:* MAB Annual Convention.
4. *Sponsor of Event:* Mississippi Association of Broadcasters—MAB.
5. *Sponsor Address:* Attn: Jackie Lett, 15 Northtown Drive, Suite A, Jackson, MS 65109.
6. *Location of Event:* Biloxi, Mississippi.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 07/10–11/97.
9. *Travel Dates:* 07/10–11/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$396.00	
2. Hotel Room		$216.00
3. Meals	119.00	
4. Grd. Transportation	47.00	
	562.00	216.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Richard M. Smith.
Government Position: Chief, Office of Engineering & Technology.
3. *Event:* 20th Montreux International Television Symposium.
4. *Sponsor of Event:* Montreux International Television Symposium.
5. *Sponsor Address:* Attn: Ms. Renee Crawford, P.O. Box 1451, Rue du Theatre 5, CH—1820 Montreux, Switzerland.
6. *Location of Event:* Montreux, Switzerland.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/12–17/97.

9. *Travel Dates:* 06/11–25/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		
2. Hotel Room		$2464.02
3. Meals		625.00
4. Grd. Transportation		
		3089.02
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: John B. Muleta.
Government Position: Chief, Enforcement Division, Common Carrier Bureau.
3. *Event:* TeleCard World '97 Conference.
4. *Sponsor of Event:* MultiMedia Publishing Corp.
5. *Sponsor Address:* Attn: Ms. Stella M. Ireton, P.O. Box 42375, Houston, TX 77242.
6. *Location of Event:* Orlando, Florida.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 02/26–28/97.
9. *Travel Dates:* 02/26–27/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		$366.00
2. Hotel Room		128.00
3. Meals		
4. Grd. Transportation		
		494.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Troy F. Tanner.
Government Position: Chief, Policy & Facilities Branch International Bureau.
3. *Event:* Telecom Reseller Opportunities Conference.
4. *Sponsor of Event:* MultiMedia Publishing Corp.
5. *Sponsor Address:* Attn: Ms. Pamela Blomquist, P.O. Box 42375, Houston, TX 77242.
6. *Location of Event:* Orlando, Florida.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 02/26–28/97.

9. *Travel Dates:* 02/26–27/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$162.00
2. Hotel Room	.....	143.00
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	385.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Adam Krinsky.
Government Position: Attorney Advisor, International Bureau.
3. *Event:* Telecom Opportunities '97 Conference & Exposition
4. *Sponsor of Event:* MultiMedia Publishing Corp.
5. *Sponsor Address:* Attn: Mr. Eric Stebel, P.O. Box 42375, Houston, TX 77242.
6. *Location of Event:* New York.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 09/24–26/97.
9. *Travel Dates:* 09/24–25/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	.....	$213.00
2. Hotel Room	.....	79.00
3. Meals	.....	18.00
4. Grd. Transportation	.....	.....
	.....	310.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Beverly G. Baker.
Government Position: Chief, Compliance & Information Bureau.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/07–10/97.
9. *Travel Dates:* 04/05–10/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$344.00	.....
2. Hotel Room	.....	$73.44
3. Meals	.....	3.43
4. Grd. Transportation	64.23	.....
	408.23	76.87
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Linda B. Blair.
Government Position: Chief, Audio Services Division, Mass Media Bureau.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/07–10/97.
9. *Travel Dates:* 04/06–10/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$234.00	.....
2. Hotel Room	.....	220.32
3. Meals	171.00	.....
4. Grd. Transportation	57.00	.....
	462.00	220.32
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Rachelle B. Chong.
Government Position: Commisssioner.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/07–10/97.
9. *Travel Dates:* 04/07–10/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$117.00	.....
2. Hotel Room	.....	220.32
3. Meals	121.00	39.84
4. Grd. Transportation	25.00	.....
5. Telephone	.....	62.33
	263.00	322.49
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Jacqueline E. Chorney.
Government Position: Senior Legal Advisor to Chairman Reed E. Hundt.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/07–10/97.
9. *Travel Dates:* 04/07–09/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$234.00	.....
2. Hotel Room	.....	$146.88
3. Meals	95.00	.....
4. Grd. Transportation	81.00	.....
5. Telephone	.....	2.00
	410.00	148.88
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Robert F. Cleveland.
Government Position: Physical Scientist, Office of Engineering & Technology.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/07–10/97.
9. *Travel Dates:* 04/08–13/97.

10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$234.00	
2. Hotel Room		$220.32
3. Meals	104.50	
4. Grd. Transportation	49.00	
	387.50	220.32
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Julius Genachowski.
Government Position: Counsel to Chairman Reed E. Hundt.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/07–10/97.
9. *Travel Dates:* 04/06–09/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$237.00	
2. Hotel Room		$220.32
3. Meals	133.00	28.08
4. Grd. Transportation	138.00	
5. Telephone		84.24
6. Other Charges		42.00
	508.00	374.64
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Jack W. Gravely.
Government Position: Director, Office of Workplace Diversity.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/07–10/97.
9. *Travel Dates:* 04/04–09/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$300.00	
2. Hotel Room	85.12	$220.32
3. Meals	209.00	20.18
4. Grd. Transportation	82.80	
5. Telephone		18.76
	676.92	259.26
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Reed E. Hundt.
Government Position: Chairman.
3. *Event:* NAB '97
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Featured Speaker.
8. *Dates of Event:* 04/07–10/97.
9. *Travel Dates:* 04/07–09/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$251.00	
2. Hotel Room		$146.88
3. Meals	87.00	58.30
4. Grd. Transportation	40.00	
5. Telephone & Fax		124.06
	378.00	329.24
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Charles W. Kelley.
Government Position: Chief, Enforcement Division Mass Media Bureau.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/07–10/97.
9. *Travel Dates:* 04/05–10/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$237.00	
2. Hotel Room		$367.20
3. Meals	209.00	
4. Grd. Transportation	53.00	
	499.00	367.20
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* William E. Kennard.
Government Position: General Counsel, Office of General Counsel.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/07–10/97.
9. *Travel Dates:* 04/05–10/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$231.00	
2. Hotel Room		$220.32
3. Meals	57.00	
4. Grd. Transportation	48.00	
5. Telephone	11.00	
	347.00	220.32
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Barbara A. Kreisman.
Government Position: Chief, Video Services Division, Mass Media Bureau.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, DC 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.

8. *Dates of Event:* 04/07–10/97.
9. *Travel Dates:* 04/08–10/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$234.00	
2. Hotel Room		$146.88
3. Meals	95.00	
4. Grd. Transportation	90.00	
	419.00	146.88
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Keith Larson.
Government Position: Assistant Chief for Engineering, Mass Media Bureau.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/07–10/97.
9. *Travel Dates:* 04/07–10/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$240.00	
2. Hotel Room		$220.32
3. Meals	133.00	
4. Grd. Transportation	16.67	
5. Telephone	51.61	
	441.28	220.32
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Renee Licht.
Government Position: Deputy, Chief, Mass Media Bureau.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.

8. *Dates of Event:* 04/07–10/97.
9. *Travel Dates:* 04/06–09/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$231.00	
2. Hotel Room		$220.32
3. Meals	133.00	
4. Grd. Transportation	56.72	
	420.72	220.32
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Frank M. Lucia.
Government position: Director, Emergency Communications, Compliance & Information Bureau.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/07–10/97.
9. *Travel Dates:* 04/05–10/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$333.00	
2. Hotel Room		$367.20
3. Meals	209.50	
4. Grd. Transportation		
5. Telephone		2.00
	542.50	369.20
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Marsha J. Macbride.
Government Position: Legal Advisor to Commissioner James H. Quello.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.

7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/07–10/97.
9. *Travel Dates:* 04/06–09/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$240.00	
2. Hotel Room		$220.32
3. Meals	133.00	
4. Grd. Transportation	87.00	
	460.00	220.32
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Jane E. Mago.
Government Position: Senior Legal Advisor to Commissioner Rachelle B. Chong.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/07–10/97.
9. *Travel Dates:* 04/07–10/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$351.00	
2. Hotel Room		$220.32
3. Meals	121.00	
4. Grd. Transportation	71.30	
5. Telephone		7.23
	543.30	227.55
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Susan Ness.
Government Position: Commissioner.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.

7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/07–10/97.
9. *Travel Dates:* 04/07–09/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$507.00	
2. Hotel Room		$146.88
3. Meals	95.00	
4. Grd. Transportation	59.00	
	661.00	146.88
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* James H. Quello.
Government position: Commissioner.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.
7. Employee's Role: Speaker.
8. *Dates of Event:* 04/07–10/97.
9. *Travel Dates:* 04/05–10/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$234.00	
2. Hotel Room		$995.00
3. Meals	173.00	
4. Grd. Transportation	56.00	
5. Telephone	73.93	
	536.93	995.00
(b) Non-Fed Source Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. Employee: Robert H. Ratcliffe.
Government position: Senior Legal Advisor, Mass Media Bureau.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/07–10/97.
9. *Travel Dates:* 04/03–09/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$312.00	
2. Hotel Room		$293.76
3. Meals	209.00	
4. Grd. Transportation	127.60	
	648.60	293.76
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Gretchen Rubin.
Government position: Special Advisor, Mass Media Bureau.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/07–10/97.
9. *Travel Dates:* 04/07–10/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$234.00	
2. Hotel Room		$183.60
3. Meals	133.00	
4. Grd. Transportation	61.00	
5. Telephone	24.41	
	452.41	183.60
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Saul T. Shapiro.
Government position: Assistant Chief, Mass Media Bureau.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/07–10/97.
9. *Travel Dates:* 04/07–11/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$400.00	
2. Hotel Room		$293.76
3. Meals	171.00	
4. Grd. Transportation	151.50	
	722.50	293.76
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* David R. Siddall.
Government Position: Legal Advisor to Commissioner Susan Ness.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/07–10/97.
9. *Travel Dates:* 04/07–10/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$616.00	
2. Hotel Room		$220.32
3. Meals	133.00	
4. Grd. Transportation	61.60	
	810.60	220.32
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Richard M. Smith.
Government Position: Chief, Office of Engineering & Technology.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, NW., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/07–10/97.

9. *Travel Dates:* 04/05–10/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$388.82	
2. Hotel Room		$367.20
3. Meals		23.20
4. Grd. Transportation	72.40	
5. Fax		20.00
	461.22	410.40
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Roy J. Stewart.
Government Position: Chief, Mass Media Bureau.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/07–10/97.
9. *Travel Dates:* 04/05–09/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$237.00	
2. Hotel Room		$293.76
3. Meals	171.00	
4. Grd. Transportation	62.40	
	470.40	293.76
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Anita L. Wallgren.
Government Position: Legal Advisor to Commissioner Susan Ness.
3. *Event:* NAB '97.
4. *Sponsor of Event:* National Association of Broadcasters—NAB.
5. *Sponsor Address:* Attn: Ms. Karen Fullum, 1771 N Street, N.W., Washington, D.C. 20036–2891.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 04/07–10/97.

9. *Travel Dates:* 04/06–09/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$402.00	
2. Hotel Room		$220.32
3. Meals	133.00	
4. Grd. Transportation	103.00	
5. Telephone		1.00
	638.00	221.32
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Laurence D. Atlas.
Government position: Associate Bureau Chief, Common Carrier Bureau.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/16–18/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation		$633.96
2. Hotel Room		368.30
3. Meals	$105.00	
4. Grd. Transportation	36.00	
	141.00	1002.26
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Rudolfo M. Baca.
Government position: Legal Advisor to Commissioner James H. Quello.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.

7. *Employee's Role:* Panelist.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:*
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation		$520.00
2. Hotel Room		552.45
3. Meals	$125.00	15.00
4. Grd. Transportation		80.00
5. Telephone & Fax		31.68
	125.00	1199.13
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Thomas A. Boasberg.
Government Position: Legal Advisor to Chairman Reed E. Hundt.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/14–18/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$360.00	
2. Hotel Room		5368.30
3. Meals	105.00	
4. Grd. Transportation	56.00	
5. Telephone		12.00
	521.00	380.30
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Rick Chessen.
Government Position: Assistant Chief for Policy & Rules Division, Cable Services Bureau.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.

5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. Location of Event: New Orleans, Louisiana.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/15–19/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	.....	$634.20
2. Hotel Room	.....	736.60
3. Meals	$157.50	.....
4. Grd. Transportation	68.45	.....
	225.95	1370.80
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Rachelle B. Chong.
Government Position: Commissioner.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/15–17/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	.....	$733.71
2. Hotel Room	.....	368.30
3. Meals	$105.00	29.36
4. Grd. Transportation	15.00	.....
5. Telephone	.....	3.75
	120.00	1135.12
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Lawrence R. Clance.
Government position: Assistant Chief, Bureau for Law Compliance & Information Bureau.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/15–24/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	.....	$514.00
2. Hotel Room	.....	736.60
3. Meals	$127.00	27.44
4. Grd. Transportation	85.74	.....
5. Telephone	.....	4.00
	212.74	1282.04
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* James R. Coltharp.
Government Position: Special Counsel to Commissioner James H. Quello.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:*
Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/15–19/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	.....	$809.00
2. Hotel Room	.....	552.45
3. Meals	$127.00	114.33
4. Grd. Transportation	73.50	80.00
5. Telephone	.....	33.74
6. Laundry	.....	34.65
	200.50	1624.17
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Julius Genachowski.
Government Position: Counsel to Chairman Reed E. Hundt.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/17–19/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$396.00	.....
2. Hotel Room	.....	$368.30
3. Meals	105.00	.....
4. Grd. Transportation	62.50	.....
5. Telephone	.....	23.11
	563.50	391.41
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Daniel Gonzalez.
Government Position: Legal Advisor to Commissioner Rachelle B. Chong.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/15–18/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$844.86
2. Hotel Room	.....	552.45
3. Meals	$147.00	.....
4. Grd. Transportation	46.00	.....
5. Telephone	.....	2.25
	193.00	1399.56
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Reed E. Hundt.
Government Position: Chairman.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/17–18/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$338.91	
2. Hotel Room		184.15
3. Meals	32.00	
4. Grd. Transportation		
	370.91	184.15
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Meryl S. Icove.
Government Position: Legal Advisor, Cable Services Bureau.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/15–19/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		$725.15
2. Hotel Room		736.60
3. Meals	$157.50	
4. Grd. Transportation	52.00	
	209.50	1461.75
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* William H. Johnson.
Government Position: Deputy Chief, Cable Services Bureau.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/16–19/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		$520.00
2. Hotel Room		552.45
3. Meals	$147.00	
4. Grd. Transportation	25.00	
	172.00	1072.45
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Meredith J. Jones.
Government Position: Chief, Cable Services Bureau.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/16–20/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		$520.00
2. Hotel Room		736.60
3. Meals	$189.00	
4. Grd. Transportation	15.00	
	204.00	1256.60
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Regina M. Keeney.
Government Position: Chief, Common Carrier Bureau.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/17–18/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		$598.81
2. Hotel Room		184.15
3. Meals	$63.00	
4. Grd. Transportation	43.00	
	106.00	782.96
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* William E. Kennard.
Government Position: General Counsel, Office of General Counsel.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/17–19/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		$823.20
2. Hotel Room		368.30
3. Meals		
4. Grd. Transportation	$16.50	
5. Telephone & Fax		26.00
	16.50	1217.50

	(c) Type & amount of payment	
	Check	In kind
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* John E. Logan.
Government Position: Deputy Chief,Cable Services Bureau.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/17–18/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$598.81
2. Hotel Room	.....	184.15
3. Meals	$63.00	.....
4. Grd. Transportation	33.30	.....
	96.30	782.96
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* JoAnn Lucanik.
Government Position: Chief, Policy & Rules Division, Cable Services Bureau.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/15–19/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$633.95
2. Hotel Room	.....	736.60
3. Meals	$147.00	.....
4. Grd. Transportation	35.50	.....
	182.50	1370.55
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Marsha J. Macbride.
Government Position: Legal Advisor to Commissioner James H. Quello.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/16–19/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$520.00
2. Hotel Room	.....	552.45
3. Meals	.....	62.35
4. Grd. Transportation	71.00	.....
5. Telephone	.....	36.19
	$71.00	1170.99
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* A.R. Metzger, Jr.
Government Position: Deputy Bureau Chief, Common Carrrier Bureau.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/17–18/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$598.81
2. Hotel Room	.....	184.15
3. Meals	63.00	.....
4. Grd. Transportation	.....	.....
	$63.00	782.96
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* John T. Nakahata.
Government Position: Acting Chief, Competition Division, Office of General Counsel.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/17–18/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$671.71
2. Hotel Room	.....	184.15
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	855.86
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Susan Ness.
Government Position: Commissioner.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/15–17/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$655.00	
2. Hotel Room	.....	$368.30
3. Meals	105.00	63.97
4. Grd. Transportation	72.00	80.00
5. Telephone	.....	4.50
	832.00	516.77
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Thomas Power.
Government Position: Assistant Chief, Policy & Rules Division, Cable Services Bureau.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/15–18/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$633.95
2. Hotel Room	.....	368.30
3. Meals	$115.50	
4. Grd. Transportation	.....	.....
	115.50	1002.25
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* James H. Quello.
Government Position: Commissioner.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/17–19/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$520.00
2. Hotel Room	.....	370.08
3. Meals	$52.00	48.38
4. Grd. Transportation	44.00	80.00
5. Telephone	.....	63.35
6. Other Charges	.....	22.85
	96.00	1104.66
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Richard M. Smith.
Government Position: Chief, Office of Engineering & Technology.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/15–20/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$950.00
2. Hotel Room	.....	920.75
3. Meals	.....	84.84
4. Grd. Transportation	$72.40	.....
5. Telephone & Fax	.....	26.75
	72.40	1982.34
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Suzanne K. Toller.
Government Position: Legal Advisor to Commissioner Rachelle B. Chong.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/15–19/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	.....	$868.60
2. Hotel Room	.....	736.60
3. Meals	$189.00	1.59
4. Grd. Transportation	20.60	.....
5. Telephone	.....	23.97
	209.60	1630.76
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Anita L. Wallgren.
Government Position: Legal Advisor to Commissioner Susan Ness.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.
5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, D.C. 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/16–19/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$360.00	.....
2. Hotel Room	.....	$552.45
3. Meals	147.00	30.16
4. Grd. Transportation	35.00	80.00
5. Telephone	.....	15.75
	542.00	678.36
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* John P. Wong.
Government Position: Chief, Engineering & Technical Services Division, Cable Services Bureau.
3. *Event:* NCTA 46th Annual Convention & International Exposition.
4. *Sponsor of Event:* National Cable Television Association—NCTA.

5. *Sponsor Address:* Attn: Ms. Gina Thomerson, 1724 Massachusetts Ave., N.W., Washington, DC 20036.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/16–19/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	.....	$520.00
2. Hotel Room	.....	552.45
3. Meals	$147.00	.....
4. Grd. Transportation	40.68	.....
	187.68	1072.45
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Roger P. Anderson.
Government Position: Electronics Engineer, Compliance & Information Bureau.
3. *Event:* NMEA Great Lakes Regional Meeting.
4. *Sponsor of Event:* National Marine Electronics Association—NMEA.
5. *Sponsor Address:* Attn: Mr. Greg Hoffman, P.O. Box 5313, North Muskegan, MI 49445.
6. *Location of Event:* Rosemont, Illinois.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/16/97.
9. *Travel Dates:* 05/16–17/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	.....	$226.00
2. Hotel Room	.....	23.84
3. Meals	.....	22.00
4. Grd. Transportation	.....	.....
	.....	271.84
(b) Non-Fed Source: Same as No. 4.		

1. *Agency*: Federal Communications Commission.
2. *Employee*: George R. Dillon.
Government Position: Engineering Advisor, Compliance & Information Bureau.
3. *Event:* 1997 NMEA Annual Convention.
4. *Sponsor of Event*: National Marine Electronics Association—NMEA.
5. *Sponsor Address*: Attn: Ms. Cindy Ensley, P.O. Box 3435, New Bern, NC 28564–3435.
6. *Location of Event*: Las Vegas, Nevada.
7. *Employee's Role*: Panelist.
8. *Dates of Event*: 09/28–30/97.
9. *Travel Dates*: 09/27–30/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	.....	$234.00
2. Hotel Room	.....	327.00
3. Meals	.....	88.12
4. Grd. Transportation	.....	.....
	.....	649.12
(b) Non-Fed Source: Same as No. 4.		

1. *Agency*: Federal Communications Commission.
2. *Employee*: James W. Olson.
Government Position: Chief, Competition Division, Office of General Counsel.
3. *Event:* 13th Annual Private & Wireless Show.
4. *Sponsor of Event*: National Satellite Publishing Inc.—NSPI.
5. *Sponsor Address*: Attn: Ms. Renee Jowhari, 1909 Avenue G, Rosenberg, TX 77471–1489.
6. *Location of Event*: Miami, Florida.
7. *Employee's Role*: Panelist.
8. *Dates of Event*: 10/31/95.
9. *Travel Dates*: 10/30–11/01/95.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	.....	$226.00
2. Hotel Room	.....	216.00
3. Meals	85.50	.....
4. Taxi	66.00	.....
	151.50	442.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency*: Federal Communications Commission.
2. *Employee*: Robert L. Baker.
Government Position: Senior Attorney, Mass Media Bureau.
3. *Event*: NEBA Conference.
4. Sponsor of Event: New England Broadcasting Association—NEBA.
5. *Sponsor Address*: Attn: Ron Nayland, 20 Park Plaza Suite 914, Boston, MA 02116.
6. *Location of Event*: Boston, Massachusetts.
7. *Employee's Role*: Speaker.
8. *Dates of Event*: 03/07/96.
9. *Travel Dates*: 03/05–06/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$306.00
2. Hotel Room	.....	79.00
3. Meals	.....	57.00
4. Grd. Transportation	.....	62.00
	.....	504.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency*: Federal Communications Commission.
2. *Employee*: James H. Quello.
Government Position: Commissioner.
3. *Event*: NJBA Annual Convention.
4. *Sponsor of Event*: New Jersey Broadcasters Association—NJBA.
5. *Sponsor Address*: Attn: Mr. Philip H. Roberts, 348 Applegarth Road, Cranbury, NJ 08512.
6. *Location of Event*: Atlantic City, New Jersey.
7. *Employee's Role*: Speaker.
8. *Dates of Event*: 06/07–10/97.
9. *Travel Dates*: 06/07–10/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$327.00	.....
2. Hotel Room	.....	$283.02
3. Meals	93.00	40.00
4. Grd. Transportation	.....	86.00
	505.00	323.02
(b) Non-Fed Source: Same as No. 4.		

1. *Agency*: Federal Communications Commission.
2. *Employee:* Robert H. Ratcliffe.
Government Position: Senior Legal Advisor, Mass Media Bureau.
3. *Event:* NJBA Annual Convention.
4. *Sponsor of Event:* New Jersey Broadcasters Association—NJBA.
5. *Sponsor Address:* Attn: Mr. Philip H. Roberts, 348 Applegarth Road, Cranbury, NJ 08512.
6. *Location of Event:* Atlantic City, New Jersey.

7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/09–10/97.
9. *Travel Dates:* 06/09–10/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$64.00	
2. Hotel Room		$114.00
3. Meals	57.00	
4. Grd. Transportation	5.00	
	126.00	114.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Roy J. Stewart.
Government Position: Chief, Mass Media Bureau.
3. *Event:* NJBA Annual Convention.
4. *Sponsor of Event:* New Jersey Broadcasters Association—NJBA.
5. *Sponsor Address:* Attn: Mr. Philip H. Roberts, 348 Applegarth Road, Cranbury, NJ 08512.
6. *Location of Event:* Atlantic City, New Jersey.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/09–10/97.
9. Travel Dates: 06/09–10/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$64.00	
2. Hotel Room		$114.00
3. Meals	57.00	
4. Grd. Transportation	17.40	
	138.40	114.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Roy J. Stewart.
Government Position: Chief, Mass Media Bureau.
3. *Event:* NYSBA 36th Executive Conference.
4. *Sponsor of Event:* New York State Broadcasters Association—NYSBA.
5. *Sponsor Address:* Attn: Mr. Joseph A. Reilly, 115A Great Oaks Boulevard, Albany, NY 12203–5954.
6. *Location of Event:* Lake George, New York.

7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/29–07/01/97.
9. *Travel Dates:* 06/29–07/01/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$384.00	
2. Hotel Room		$162.00
3. Meals	95.00	
4. Grd. Transportation	14.00	
	493.00	162.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Donald H. Gips.
Government Position: Chief, International Bureau.
3. *Event:* Annual General Meeting.
4. *Sponsor of Event:* North American National Broadcasters Association—NANBA.
5. *Sponsor Address:* Attn: Ms. Eleni Mokas, P. O. Box 500, Station A, Toronto, Ontario, Canada M5W 1E6.
6. *Location of Event:* Mexico City, Mexico.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 01/23–24/97.
9. *Travel Dates:* 01/22–29/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$544.32	
2. Hotel Room		$152.13
3. Meals	112.00	
4. Grd. Transportation	48.27	
	704.59	152.13
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission
2. *Employee:* Bruce Romano.
Government Position: Deputy Chief, Policy & Rules Division, Mass Media Bureau.
3. *Event:* NDBA Annual Convention.
4. *Sponsor of Event:* North Dakota Broadcasters Association.
5. *Sponsor Address:* Attn: Ms. LeAnn M. Harner, P.O. Box 3178, Bismarck, ND 58502–3178.
6. *Location of Event:* Fargo, ND.

7. *Employee's Role:* Speaker.
8. *Dates of Event:* 09/13–14/96.
9. *Travel Dates:* 09/12–15/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		$545.00
2. Hotel Room		*382.50
3. Meals		
4. Grd. Transportation		
		$927.50
(b) Non-Fed Source: Same as No. 4.		

*Meals included in lodging amount.

1. *Agency:* Federal Communications Commission.
2. *Employee:* Blair S. Levin.
Government Position: Chief of Staff to Chairman Reed E. Hundt.
3. *Event:* Deregulation Seminar.
4. *Sponsor of Event:* Northern Telecom—NORTEL.
5. *Sponsor Address:* Attn: Raymond L. Strassburger, 801 Pennsylvania Avenue, NW., Suite 700, Washington, D.C. 20004, Raleigh, NC 27612.
6. *Location of Event:* Beijing, China.
7. *Employee's Role:* Participant.
8. *Dates of Event:* 11/14/96.
9. *Travel Dates:* 11/11–17/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		$4653.95
2. Hotel Room		
3. Meals		
4. Grd. Transportation		
		4653.95
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Barbara A. Kreisman.
Government Position: Chief, Video Services Division, Mass Media Bureau.
3. *Event:* OAB Convention.
4. *Sponsor of Event:* Ohio Association of Broadcasters—OAB.
5. *Sponsor Address:* Attn: Dale V. Bring, 88 East Broad Street, Suite 1780, Columbus, OH 43215.
6. *Location of Event:* Columbus, Ohio.
7. *Employee's Role:* Speaker.

8. *Dates of Event:* 11/20/96.
9. *Travel Dates:* 11/20/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$510.00
2. Hotel Room	.....	.....
3. Meals	$22.50	
4. Taxi	83.50	.....
	106.00	510.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* James R. Coltharp.
Government Position: Special Counsel to Commissioner James H. Quello.
3. *Event:* OCTA Annual Meeting.
4. *Sponsor of Event:* Ohio Cable Telecommunications Association—OCTA.
5. *Sponsor Address:* Attn: Ms. Carol Caruso, 50 West Broad Street, Suite 1118, Columbus, OH 43215–5906
6. *Location of Event:* Columbus, Ohio.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/14–15/97.
9. *Travel Dates:* 04/14–15/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$530.00
2. Hotel Room	.....	142.37
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
		672.37
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Roy J. Stewart.
Government Position: Chief, Mass Media Bureau.
3. *Event:* OAB Winter Convention.
4. *Sponsor of Event:* Oklahoma Association of Broadcasters—OAB.
5. *Sponsor Address:* Attn: Mr. Carl C. Smith, 6520 N. Western, Suite 104, Oklahoma City, OK 73116.
6. *Location of Event:* Tulsa, Oklahoma.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 02/14/97.
9. *Travel Dates:* 02/13–14/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$261.00	.....
2. Hotel Room	.....	$55.00
3. Meals	45.00	.....
4. Grd. Transportation	31.00	.....
	337.00	55.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Daniel Gonzalez.
Government Position: Legal Advisor to Commissioner Rachelle B. Chong.
3. *Event:* OPASTCO 34th Annual Winter Convention.
4. *Sponsor of Event:* Organization for the Promotion & Advancement of Small Telecommunications Companies—OPASTCO, Alaska Telephone Association—ATA.
5. *Sponsor Address:* Attn: Ms. Suzanne Bagshaw, 21 Dupont Circle, N.W., Suite 700, Washington, D.C. 20036.
6. *Location of Event:* Kauai, Hawaii.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 01/18–22/97.
9. *Travel Dates:* 01/18–25/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$774.50
2. Hotel Room	.....	668.79
3. Meals	$233.75	.....
4. Taxi	92.00	.....
	325.75	1443.29
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Lewrence J. Spiwak.
Government Position: Attorney, Office of General Counsel.
3. *Event:* 1st Annual Conference, Residential Gateways: The Why, The When & the How.
4. *Sponsor of Event:* Parks Associates.
5. *Sponsor Address:* Attn: Deby Girven, 5310 Harvest Hill Road, Suite 235, Lock Box 162, Dallas, TX 75230–5805.
6. *Location of Event:* San Francisco, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/01–02/97.
9. *Travel Dates:* 04/30–50/03/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$447.00
2. Hotel Room	.....	447.00
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	894.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Kevin Werbach.
Government Position: Attorney, Office of Plans & Policy.
3. *Event:* Spring '97 Von Conference.
4. *Sponsor of Event:* Pulver. com.
5. *Sponsor Address:* Attn: Mr. Jeff Pulver, 2 Brook Bridge Rd., Great Neck, NY 11021.
6. *Location of Event:* San Francisco, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/01–03/97.
9. *Travel Dates:* 03/31–04/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$820.00
2. Hotel Room	.....	752.40
3. Meals	.....	189.00
4. Grd. Transportation	.....	87.00
5. Telephone	.....	2.22
	.....	1850.62
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Kevin Werbach.
Government Position: Attorney, Office of Plans & Policy.
3. *Event:* Fall '97 Von Conference.
4. *Sponsor of Event:* Pulver.com.
5. *Sponsor Address:* Attn: Mr. Jeff Pulver, 2 Brook Bridge Rd., Great Neck, NY 11021.
6. *Location of Event:* Boston, Massachusetts.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 09/22–25/97.

9. *Travel Dates:* 09/24–25/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$566.50
2. Hotel Room	.....	131.64
3. Meals	.....	52.50
4. Grd. Transportation	.....	.....
	.....	750.64
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Meredith J. Jones.
Government Position: Chief, Cable Services Bureau.
3. *Event:* SBCA Trade Show.
4. *Sponsor of Event:* Satellite Broadcasting & Communications Association—SBCA.
5. *Sponsor Address:* Attn: Mr. Andrew Paul, 225 Reinekers Lane, Suite 600, Alexandria, VA 22314.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/25–27/97.
9. *Travel Dates:* 03/26–28/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$951.26
2. Hotel Room	.....	248.00
3. Meals	.....	95.00
4. Grd. Transportation	$33.50	.....
5. Telephone	82.64	.....
	116.14	1294.26
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* John Stern.
Government Position: Senior Legal Advisor International Bureau.
3. *Event:* SBCA Trade Show.
4. *Sponsor of Event:* Satellite Broadcasting & Communications Association—SBCA.
5. *Sponsor Address:* Attn: Ms. Melissa Hudspeth, 225 Reinekers Lane, Suite 600, Alexandria, VA 22314.
6. *Location of Event:* Las Vegas, Nevada.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/25–27/97.
9. *Travel Dates:* 03/25–30/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$689.68
2. Hotel Room	.....	267.84
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	957.52
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Rosalee Chiara.
Government Position: Chief, Satellite Policy Branch International Bureau.
3. *Event:* SBCA Convention & Trade Show.
4. *Sponsor of Event:* Satellite Broadcasting & Communications Association—SBCA.
5. *Sponsor Address:* Attn: Mr. Andrew Paul, 225 Reinekers Lane, Suite 600, Alexandria, VA 22314.
6. *Location of Event:* Nashville, Tennessee.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 07/24–26/97.
9. *Travel Dates:* 07/23–25/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$453.91
2. Hotel Room	.....	289.60
3. Meals	.....	106.00
4. Grd. Transportation	.....	.....
	.....	849.51
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Meredith J. Jones.
Government Position: Chief, Cable Services Bureau.
3. *Event:* SBCA Convention & Trade Show.
4. *Sponsor of Event:* Satellite Broadcasting & Communications Association—SBCA.
5. *Sponsor Address:* Attn: Mr. Andrew Paul, 225 Reinekers Lane, Suite 600, Alexandria, VA 22314.
6. *Location of Event:* Nashville, Tennessee.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 07/24–26/97.
9. *Travel Dates:* 07/24–25/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$395.50
2. Hotel Room	.....	180.00
3. Meals	$48.50	.....
4. Grd. Transportation	103.52	.....
	152.02	575.50
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Jonathan D. Levy.
Government Position: Senior Economist Office of Plans & Policy.
3. *Event:* SBCA Convention & Trade Show.
4. *Sponsor of Event:* Satellite Broadcasting & Communications Association—SBCA.
5. *Sponsor Address:* Attn: Mr. Andrew Paul, 225 Reinekers Lane, Suite 600, Alexandria, VA 22314.
6. *Location of Event:* Nashville, Tennessee.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 07/24–26/97.
9. *Travel Dates:* 07/23–25/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$402.00
2. Hotel Room	.....	164.00
3. Meals	.....	95.00
4. Grd. Transportation	.....	.....
	.....	661.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Stephen Markendorff.
Government Position: Chief, Broadband Branch Wireless Telecommunications Bureau.
3. *Event:* Wireless Buildout Conference.
4. *Sponsor of Event:* Shorecliff Communications International.

5. *Sponsor Address:* Attn: Ms. Renee Stecker, 34127 Pacific Coast Highway, Suite C, Dana Point, CA 92629.
6. *Location of Event:* San Diego, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 08/20–22/96.
9. *Travel Dates:* 08/21–23/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$1514.00
2. Hotel Room	.....	400.00
3. Meals	$61.00	24.00
4. Grd. Transportation	60.00	.....
	121.00	1938.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Stephen Markendorff. *Government Position:* Chief, Broadband Branch Wireless Telecommunications Bureau.
3. *Event:* Wireless Buildout Conference.
4. *Sponsor of Event:* Shorecliff Communications International.
5. *Sponsor Address:* Attn: Ms. Susan S. Pepe, 34127 Pacific Coast Highway, Suite C, Dana Point, CA 92629.
6. *Location of Event:* San Antonio, Texas.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 09/30–10/01/96.
9. *Travel Dates:* 09/28–10/02/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$357.00
2. Hotel Room	.....	680.00
3. Meals	$135.00	.....
4. Grd. Transportation	30.00	.....
5. Telephone	3.00	.....
	168.00	1037.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Stephen Markendorff, *Government Position*: Chief, Broadband Branch, Wireless Telecommunications Bureau.
3. *Event:* Wireless Buildout Conference.
4. *Sponsor of Event:* Shorecliff Communications International.
5. *Sponsor Address:* Attn: Ms. Renee Stecker, 34700 Pacific Coast Highway, Suite 200, Capistrano Beach, CA 92624.
6. *Location of Event:* Atlanta, Georgia.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/05–06/97.
9. *Travel Dates:* 05/04–06/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	.....	$582.00
2. Hotel Room	.....	238.00
3. Meals	$95.00	.....
4. Grd. Transportation	2.65	.....
5. Telephone	10.00	.....
	107.65	820.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Stephen Markendorff, *Government Position*: Chief, Broadband Branch, Wireless Telecommunications Bureau.
3. *Event:* Wireless Buildout Conference.
4. *Sponsor of Event:* Shorecliff Communications International.
5. *Sponsor Address:* Attn: Ms. Renee Stecker, 34700 Pacific Coast Highway, Suite 200, Capistrano Beach, CA 92624.
6. *Location of Event:* Newark, New Jersey.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/19–20/97.
9. *Travel Dates:* 05/19–20/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	.....	$299.00
2. Hotel Room	.....	184.95
3. Meals	$41.00	24.37
4. Grd. Transportation	15.25	.....
5. Telephone	5.00	.....
	61.25	508.32
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* A. Richard Metzger. *Government Position*: Deputy Chief, Common Carrier Bureau.
3. *Event:* Practical Strategies For The Negotiation of UK & European Interconnection Charges.
4. *Sponsor of Event:* SMI Limited.
5. *Sponsor Address:* Attn: Ms. Katharine Gillespie, Number One, New Concordia Wharf Mill Street, London SE1 2BB.
6. *Location of Event:* London, England.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 10/14–15/96.
9. *Travel Dates:* 10/12–15/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$598.65	.....
2. Hotel Room	.....	.....
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	598.65	.....
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* William E. Kennard. *Government Position*: General Counsel, Office of General Counsel.
3. *Event:* SEARUC Conference.
4. *Sponsor of Event:* Southeastern Association of Regulatory Utility Commissioners—SEARUC.
5. *Sponsor Address:* Attn: Ms. Linda Breathitt, P.O. Box 615, Frankfort, KY 40602.
6. *Location of Event:* Lexington, Kentucky.
7. *Employee's Role:* Keynote Speaker.
8. *Dates of Event:* 06/02/97.
9. *Travel Dates:* 06/02/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	.....	$554.00
2. Hotel Room	.....	.....
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	554.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission
2. *Employee:* Robert A. Calaff
Government Position: Senior Legal Advisor International Bureau.
3. *Event:* AUTEL VI Congress
4. *Sponsor of Event:* Spanish Association of Business Users Telecommunications (AUTEL).
5. *Sponsor Address:* Attn: Mr. Miguel Angel, Eced Avda. de San Luis. 148, 28033 Madrid.
6. *Location of Event:* Madrid, Spain.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/09–10/97.
9. *Travel Dates:* 04/07–10/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	.....	$1502.49
2. Hotel Room	.....	242.17
3. Meals	.....	17.81
4. Grd. Transportation	.....	.....
5. Telephone	.....	1.87
	.....	1764.34
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Jeffrey Steinberg.
Government Position: Attorney, Wireless Telecommunications Bureau.
3. *Event:* Public Information Meeting.
4. *Sponsor of Event:* Sprint Spectrum L.P.
5. *Sponsor Address:* Attn: Mr. Larry Woods, 9 Barnes Industrial Road, Wallingford, CT 06492.
6. *Location of Event:* Windsor, Connecticut.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 10/29/96.
9. *Travel Dates:* 10/29–30/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	.....	$494.00
2. Hotel Room	$102.95	.....
3. Meals	1.76	26.00
4. Grd Transportation	3.73	20.00
5. Telephone	3.60	.....
	112.04	540.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Diane J. Cornell.
Government Position: Chief, Telecommunications Division International Bureau.
3. *Event:* Mergers & Acquisitions in Telcom & Cable Conference.
4. *Sponsor of Event:* Strategic Research Institute.
5. *Sponsor Address:* Attn: Mr. Rafael Lopez, 500 Fifth Avenue, 11th Floor, New York, NY 10110–0192.
6. *Location of Event:* New York City, New York.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 07/23–25/97.
9. *Travel Dates:* 07/25/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	.....	$378.00
2. Hotel Room	.....	.....
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	378.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Reed E. Hundt.
Government Position: Chairman.
3. *Event:* "III International Seminar on New Technologies & Telecommunications SEMINT 95".
4. *Sponsor of Event:* Telepar & Abinee (Brazilian Telecom Organizations/ Assns.).
5. *Sponsor Address:* Attn: Laudallo Veiga Filho, Rua Indcio Lustosa, 1174, 80510–000 Curiliba, Parana, Brazil.
6. *Location of Event:* Foz De Iguacu, Brazil.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 11/06–09/95.
9. *Travel Dates:* 11/05–12/95.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	.....	$398.14
2. Hotel Room	.....	296.00
3. Meals	$215.00	.....
4. Taxi & Telephone	.....	.....
	215.00	694.14

	(c) Type & amount of payment	
	Check	In kind
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Brad Wimmer.
Government Position: Chief Economist, Common Carrier Bureau.
3. *Event:* 63rd Annual Convention.
4. *Sponsor of Event:* Tennessee Telecommunications Association.
5. *Sponsor Address:* Attn: Mr. C. Steve Parrott, Mid-Atlantic Operations, 14111 Capital Boulevard, Wake Forest, NC 27587–5900.
6. *Location of Event:* Nashville, Tennessee.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 09/02–05/97.
9. *Travel Dates:* 09/04–05/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	.....	$518.00
2. Hotel Room	.....	99.00
3. Meals	.....	8.00
4. Grd. Transportation	.....	.....
	.....	625.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Lisa Gelb.
Government Position: Attorney, Common Carrier Bureau.
3. *Event:* 37th Annual Trade Show & Convention.
4. *Sponsor of Event:* Texas Cable & Telecommunications Association.
5. *Sponsor Address:* Attn: W. D. Arnold, P.O. Box 13518, Austin, TX 78711.
6. *Location of Event:* San Antonio, Texas.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 02/19–21/97.
9. *Travel Dates:* 02/19–20/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$205.00	.....
2. Hotel Room	.....	$140.00

	(c) Type & amount of payment	
	Check	In kind
3. Meals		
4. Grd. Transportation		
	205.00	140.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Frank M. Lucia.
Government Position: Director Emergency Communications Compliance & Information Bureau
3. *Event:* 37th Annual Trade Show & Convention.
4. *Sponsor of Event:* Texas Cable & Telecommunications Association.
5. *Sponsor Address:* Attn: W. D. Arnold, P.O. Box 13518, Austin, TX 78711.
6. *Location of Event:* San Antonio, Texas.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 02/19–21/97.
9. *Travel Dates:* 02/19–20/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$205.00	
2. Hotel Room		$35.00
3. Meals.		
4. Grd. Transportation		
	205.00	35.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Thomas Power.
Government Position: Assistant Chief, Policy & Rules Division, Cable Services Bureau.
3. *Event:* 37th Annual Trade Show & Convention.
4. *Sponsor of Event:* Texas Cable & Telecommunications Association.
5. *Sponsor Address:* Attn: W. D. Arnold, P.O. Box 13518, Austin, TX 78711.
6. *Location of Event:* San Antonio, Texas.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 02/19–21/97.
9. *Travel Dates:* 02/19–23/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation		$379.21
2. Hotel Room		278.30
3. Meals.		
4. Grd. Transportation		
		657.51
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Michael R. Nelson.
Government Position: Telcommunications Analyst Office of Plans & Policy.
3. *Event:* Annual Meeting.
4. *Sponsor of Event:* United Nations Educational, Scientific & Cultural Organization—UNESCO.
5. *Sponsor Address:* Attn: Mr. Philippe Queau 7, Place de Fontenoy 75352 Paris 07 SP France.
6. *Location of Event:* Monte Carlo, Principality of Monaco.
7. *Employee's Role:* Keynote Speaker.
8. *Dates of Event:* 03/07–12/97.
9. *Travel Dates:* 03/06–12/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		$1046.00
2. Hotel Room		592.29
3. Meals		304.36
4. Grd. Transportation		110.39
5. Telephone		11.87
		2064.91
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* William W. Sharkey.
Government Position: Economist Common Carrier Bureau.
3. *Event:* Third International Conference in Applied Public Economics.
4. *Sponsor of Event: University of Western Brittany.*
5. *Sponsor Address:* Attn: F. Gasmi, 12 Rue de Kergoat: BP 816, 29285 Brest, Cedex France.
6. *Location of Event:* Brest, France.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/12–13/97.
9. *Travel Dates:* 06/12–15/97.
10.

	(c) Type & amount of payment	
	Check	In Kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		$800.00
2. Hotel Room		225.00
3. Meals		45.00
4. Grd. Transportation		24.00
		1094.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Robert F. Cleveland.
Government Position: Physical Scientist Office of Engineering & Technology.
3. *Event:* 12th MCM COST 244.
4. *Sponsor of Event:* University of Zagreb, Faculty of Electrical Engineering & Computing.
5. *Sponsor Address:* Attn: Prof. Dr. Zlatko Koren, Dept. for Radiocommunications & Microwaves, Unska 3, HR–10000 Zagreb CROATIA.
6. *Location of Event:* Zagreb, Croatia.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 10/05–06/96.
9. *Travel Dates:* 02–07/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation		$1600.00
2. Hotel Room		480.00
3. Meals		220.00
4. Grd. Transportation		
		2300.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Scott B. Harris.
Government Position: Chief, International Bureau.
3. *Event:* The First Annual, Unterberg Harris Space & Satellite Communications Conference.
4. *Sponsor of Event:* Unterberg Harris.
5. *Sponsor Address:* Attn: Mr. Robert B. Kaimowitz, Swiss Bank Tower, 10 East 50th Street, New York, NY 10022.
6. *Location of Event:* New York City, New York.

7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/28/96.
9. *Travel Dates:* 03/28/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$116.00	.....
2. Hotel Room	.....	.....
3. Meals	.....	.....
4. Taxi, Parking & Mileage	63.00	.....
	179.00	.....
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Lawrence J. Spiwak.
Government Position: Attorney, Office of General Counsel.
3. *Event:* Global Telecommunications Opportunities Conference.
4. *Sponsor of Event:* UTC.
5. *Sponsor Address:* Attn: Ms. Christine S. Benz, 1140 Connecticut Avenue, N.W., Suite 1140, Washington, D.C. 20036.
6. *Location of Event:* Manchester, England.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 04/23–24/97.
9. *Travel Dates:* 04/21–26/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$1379.55
2. Hotel Room	.....	700.00
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	2079.55
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Daniel Phythyon.
Government Position: Chief, Wireless Telecommunications Bureau.
3. *Event:* UTC Annual Conference.
4. *Sponsor of Event:* UTC.
5. *Sponsor Address:* Attn: Coleman J. Kane, 1140 Connecticut Avenue, N. W., Suite 1140, Washington, D.C. 20036.
6. *Location of Event:* Portland, Oregon.
7. *Employee's Role:* Guest Speaker.
8. *Dates of Event:* 06/22–26/97.
9. *Travel Dates:* 06/24–25/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$1609.00
2. Hotel Room	.....	175.00
3. Meals	$57.00	.....
4. Grd. Transportation	39.50	50.00
5. Telephone	9.77	.....
	106.27	1834.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Lawrence J. Spiwak.
Government Position: Attorney, Office of General Counsel.
3. *Event:* UTC Annual Conference.
4. *Sponsor of Event:* UTC.
5. *Sponsor Address:* Attn: Ms. Christine S. Benz, 1140 Connecticut Avenue, N.W., Suite 1140, Washington, D.C. 20036.
6. *Location of Event:* Portland, Oregon.
7. *Employee's Role:* Guest Speaker.
8. *Dates of Event:* 06/22–26/97.
9. *Travel Dates:* 06/21–25/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$750.50
2. Hotel Room	.....	303.00
3. Meals	.....	.....
4. Registration Fees	.....	490.00
	.....	1543.50
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Charles W. Kelley.
Government Position: Chief, Enforcement Division Wireless Telecommunications Bureau.
3. *Event:* VAB Convention.
4. *Sponsor of Event:* Vermont Association of Broadcasters—VAB.
5. *Sponsor Address:* Attn: Mr. Al Noyes, 15 West Patterson Street, Barre, VT 05641.
6. *Location of Event:* Fairlee, Vermont.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/17–19/96.
9. *Travel Dates:* 05/17–19/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$576.00	.....
2. Hotel Room	.....	$80.00
3. Meals	65.00	.....
4. Parking	36.00	.....
5. Car Rental & Gas	82.00	.....
	759.00	80.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Melissa Newman.
Government Position: Legal Counsel to Bureau Chief, Common Carrier Bureau.
3. *Event:* 1996 SCC/VTIA Telecommunications Summit.
4. *Sponsor of Event:* Virginia Telecommunications Industry Association—VTIA.
5. *Sponsor Address:* Attn: Mr. Ralph L. Frye, 11 South 12th Street, Suite 310, Richmond, VA 23219.
6. *Location of Event:* Irvington, Virginia.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 10/30–11/01/96.
9. *Travel Dates:* 10/30–31/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$124.00	.....
2. Hotel Room	.....	$235.00
3. Meals	20.50	28.00
4. Grd. Transportation	.....	.....
	144.50	263.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee*: Timothy A. Peterson.
Government Position: Legal Counsel to Bureau Chief, Common Carrier Bureau.
3. *Event:* VTIA Convention & RUS Engineering Symposium.
4. *Sponsor of Event:* Virginia Telecommunications Industry Association—VTIA.

5. *Sponsor Address:* Attn: Mr. Ralph L. Frye, 11 South 12th Street, Suite 310, Richmond, VA 23219.
6. *Location of Event:* New Orleans, Louisiana.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/16–19/97.
9. *Travel Dates:* 03/17–18/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	.....	$630.00
2. Hotel Room	.....	80.70
3. Meals	$63.00	.....
4. Grd. Transportation	10.00	.....
	73.00	710.70
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Mary Beth E. Richards.
Government Position: Deputy Chief, Common Carrier Bureau.
3. *Event:* VTIA 1997 Annual Meeting.
4. *Sponsor of Event:* Virginia Telecommunications Industry Association—VTIA.
5. *Sponsor Address:* Attn: Mr. Ralph L. Frye, 11 South 12th Street, Suite 310, Richmond, VA 23219.
6. *Location of Event:* Hot Springs, Virginia.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/14–16/97.
9. *Travel Dates:* 05/15–16/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	$138.00	.....
2. Hotel Room	.....	$258.12
3. Meals	.....	.....
4. Grd. Transportation	4.00	.....
	142.26	258.12
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Thomas C. Spavins.
Government Position: Assistant for Special Projects, Office of General Counsel.
3. *Event:* Incorporating Cost & Non-cost Data Analysis for Inconnect Pricing Conference.
4. *Sponsor of Event:* Vision in Business Ltd.
5. *Sponsor Address:* Attn: Ms. Anne Olsen, 41 Whitcomb Street, London WC2H 7BT.
6. *Location of Event:* Brussels, Belgium.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 03/05–07/97.
9. *Travel Dates:* 03/03–09/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of benefit:		
1. Roundtrip Transportation	.....	$441.18
2. Hotel Room	.....	535.53
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	976.71
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Doron Fertig.
Government Position: Economist, Office of General Counsel.
3. *Event:* 4th International Forum.
4. *Sponsor of Event:* Vision in Business Ltd.
5. *Sponsor Address:* Attn: Ms. Anne Olsen, 41 Whitcomb Street, London WC2H 7BT.
6. *Location of Event:* Brussels, Belgium.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 09/24–25/97.
9. *Travel Dates:* 09/22–25/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$1267.20
2. Hotel Room	.....	285.12
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	1552.32
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Anna M. Gomez.
Government Position: Deputy Chief, Network Services Division, Common Carrier Bureau.
3. *Event:* WVTA 46th Annual Convention.
4. *Sponsor of Event:* West Virginia Telecommunications Association—WVTA.
5. *Sponsor Address:* Attn: Ms. Gladys Stephenson, P.O. Box 248, St. Marys, WV 26170.
6. *Location of Event:* Wheeling, West Virginia.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 09/15–17/97.
9. *Travel Dates:* 09/15–16/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	.....
2. Hotel Room	.....	$93.74
3. Meals	.....	52.00
4. Grd. Transportation	.....	.....
	.....	145.74
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Charles Dzeidzic.
Government Position: Assistant Chief, Video Services Division, Mass Media Bureau.
3. *Event:* 10th Annual Convention & Exhibition.
4. *Sponsor of Event:* Wireless Cable Association International Inc.—WCAI.
5. *Sponsor Address:* Attn: Mr. Andrew Kreig, 1140 Connecticut Avenue, N.W., Suite 810, Washington, D.C. 20036.
6. *Location of Event:* Anaheim, California.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 06/23–25/97.
9. *Travel Dates:* 06/21–25/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$895.00
2. Hotel Room	.....	431.25
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	1326.25
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Meredith J. Jones.

Government Position: Chief, Cable Services Bureau.
3. *Event:* 10th Annual Convention & Exhibition.
4. *Sponsor of Event:* Wireless Cable Association International, Inc.,—WCAI.
5. *Sponsor Address:* Attn: Mr. Andrew Kreig, 1140 Connecticut Avenue, N.W., Suite 810, Washington, D.C. 20036.
6. *Location of Event:* Anaheim, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 06/23–25/97.
9. *Travel Dates:* 06/21–23/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	$187.00	.....
2. Hotel Room	171.35	.....
3. Meals	.....	$105.00
4. Grd. Transportation	104.00	.....
5. Telephone	9.40	.....
	471.75	105.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* David R. Siddall.
Government Position: Legal Advisor to Commissioner Susan Ness.
3. *Event:* 10th Annual Convention & Exhibition.
4. *Sponsor of Event:* Wireless Cable Association International Inc—WCAI.
5. *Sponsor Address:* Attn: Mr. Andrew Kreig, 1140 Connecticut Avenue, N.W. Suite 810 Washington, D.C. 20036.
6. *Location of Event:* Anaheim, California
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 06/23–25/97.
9. *Travel Dates:* 06/22–23/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$858.00
2. Hotel Room	.....	125.00
3. Meals	.....	68.00
4. Grd. Transportation	.....	53.00
	.....	1104.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Michael J. Marcus.
Government Position: Associate Chief Technology, Office of Engineering & Technology.
3. *Event:* WCA Meeting.
4. *Sponsor of Event:* Wireless Communications Alliance—WCA.
5. *Sponsor Address:* Attn: Mr. Robert J. Roy, 1639 Lewiston Drive, Sunnyvale, CA 94087.
6. *Location of Event:* Santa Clara, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 05/20/97.
9. *Travel Dates:* 05/19–21/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$400.00
2. Hotel Room	.....	180.00
3. Meals	.....	126.00
4. Grd. Transportation	$27.40	.....
5. Rental Car	.....	120.00
	27.40	826.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Michael R. Nelson.
Government Position: Telecommunications Analyst, Office of Plans & Policy.
3. *Event:* Annual Meeting.
4. *Sponsor of Event:* World Economic Forum.
5. *Sponsor Address:* Attn: Mr. Thomas Scherer, 53 chemin des Hauts-Crets, CH 1223 Cologny/Geneva.
6. *Location of Event:* Davos, Switzerland.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 01/30–02/04/97.
9. *Travel Dates:* 01/29–02/06/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	.....
2. Hotel Room	.....	$480.00
3. Meals	.....	270.00
4. Taxi	.....	.....
	.....	750.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Mindel DeLaTorre.
Government Position: Deputy Chief, Telecommunications Division, International Bureau.
3. *Event:* 2nd Annual Brazil Telecom Summit.
4. *Sponsor of Event:* World Research Group.
5. *Sponsor Address:* Attn: Rachel Weissbard, 12 East 49th Street, 17th Floor, New York, NY 10017.
6. *Location of Event:* Miami, Florida.
7. *Employee's Role:* Chairperson.
8. *Dates of Event:* 10/17–18/96.
9. *Travel Dates:* 10/16–18/96.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$644.00
2. Hotel Room	.....	298.00
3. Meals	$95.00	
4. Grd. Transportation	32.10	.....
	127.10	942.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Meredith J. Jones.
Government Position: Chief, Cable Services Bureau.
3. *Event:* The Bandwidth Solutions Summit '97 Conference.
4. *Sponsor of Event:* World Research Group.
5. *Sponsor Address:* Attn: Andrew Wolf, 12 East 49th Street, 17th Floor, New York, NY 10017.
6. *Location of Event:* San Francisco, California.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 01/28–29/97.
9. *Travel Dates:* 01/25–29/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$343.00
2. Hotel Room	.....	410.00
3. Meals	$73.50	.....
4. Grd. Transportation	123.00	.....
	196.50	753.00
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Kevin Werbach.
Government Position: Attorney, Office of Plans & Policy.
3. *Event:* Internet Telephony Summit Conference.
4. *Sponsor of Event:* World Research Group.
5. *Sponsor Address:* Attn: Ms. Judith Robinson, 1120 Avenue of the Americas, 7th Floor, New York, NY 10036.
6. *Location of Event:* New York, New York.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 07/14/97.
9. *Travel Dates:* 07/13–14/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$118.00
2. Hotel Room	.....	153.00
3. Meals	.....	52.50
4. Grd. Transportation	.....	.....
	.....	323.50
(b) Non-Fed Source: Same as No. 4.		

1. *Agency:* Federal Communications Commission.
2. *Employee:* Thomas Koutsky.
Government Position: Senior Attorney, Office of General Counsel.
Event: 2nd Annual Conference on Developing Competitive Telecom Services.
4. *Sponsor of Event:* World Research Group.
5. *Sponsor Address:* Attn: Ms. Judith Robinson, 1120 Avenue of the Americas, 7th Floor, New York, NY 10036.
6. *Location of Event:* Atlanta, Georgia.
7. *Employee's Role:* Speaker.
8. *Dates of Event:* 07/28–30/97.
9. *Travel Dates:* 07/28–29/97.
10.

	(c) Type & amount of payment	
	Check	In kind
(a) Nature of Benefit:		
1. Roundtrip Transportation	.....	$491.00
2. Hotel Room	.....	145.77
3. Meals	.....	.....
4. Grd. Transportation	.....	.....
	.....	636.77
(b) Non-Fed Source: Same as No. 4.		

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 98–3925 Filed 2–19–98; 8:45 am]
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	In kind
..	$491.00
..	145.77
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federal register

Friday
February 20, 1998

Part III

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–43]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available or use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Ms. Barbara Jenkins, Air Force Real Estate Agency, Area-MI, Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; COE: Mr. Bob Swieconek, Army Corps of Engineers, Management & Disposal Division, Pulaski Building, Room 4224, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000; (202) 761–1749; DOT: Mr. Philip Rockmaker, Acting Principal, Space Management, SVC–140, Transportation Administrative Service Center Department of Transportation, 400 7th Street, SW, Room 2310, Washington, DC20590; (202) 366–4246; ENERGY: Ms. Marsha Penhaker, Department of Energy, Facilities Planning and Acquisition Branch, FM–20, Room 6H–058, Washington, DC 20585; (202) 586–0426; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexander, VA 22332–2300; (703) 325–7342; (These are not toll-free numbers).

Dated: February 12, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 02/20/98

Suitable/Available Properties

Buildings (by State)

California

Bldg. 604
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010237
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 605
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010238
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 612
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010239
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 611
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010240
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 613
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010241

Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 614
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010242
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 615
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010243
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 616
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010244
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 617
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010245
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 618
Point Arena Air Force Station Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010246
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing; needs rehab.

Colorado

Residence
Cherry Creek Lake Project
3311 Parker Road
Aurora Co: Arapahoe CO 80112–
Landholding Agency: COE
Property Number: 319720001
Status: Excess
Comment: 1,000 sq. ft. house and 900 sq. ft. garage, needs rehab, off-site use only.

Storage Shed
Cherry Creek Lake Project
3311 Parker Road
Aurora Co: Arapahoe CO 80112–
Landholding Agency: COE
Property Number: 319720002
Status: Excess
Comment: 600 sq. ft. w/dirt floor, off-site use only.

District of Columbia

Dalecarlia Reservoir
Bldgs. 5900, 5902, 5904, 5906, 5908, 5910
Washington Aqueduct
Washington, DC 20016–
Landholding Agency: COE
Property Number: 319610004
Status: Excess
Comment: Brick/frame residences in poor condition w/2 floors and basement, presence of asbestos, on National Historic Register, off-site use only.

Georgia

Phil Landrum Federal Bldg.
35 W. Church Street
Jasper Co: Pickens GA 30143–
Landholding Agency: GSA
Property Number: 549810008
Status: Surplus
Comment: 9533 sq. ft., 2-story, no elevators/no handicapped ramps, steps need repair, most recent use—postal service with parking lot
GSA Number: 4–G–GA–854.

Idaho

Bldg. 2201
Mountain Home Air Force Base
Mountain Home Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189520005
Status: Underutilized
Comment: 6804 sq. ft., 1 story wood frame, most recent use—temporary garage for base fire dept. vehicles, presence of lead paint and asbestos shingles.

Iowa

Tract 141
Melos, Stanley, Camp Dodge
Johnston Co: Poke IA 50131–
Landholding Agency: COE
Property Number: 319610005
Status: Excess
Comment: 1104 sq. ft., most recent use—storage, needs rehab, possible asbestos, off-site use only.

Kentucky

Green River Lock & Dam #3
Rochester Co: Butler KY 42273–
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site.
Landholding Agency: COE
Property Number: 319010022
Status: Unutilized
Comment: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab.

Kentucky River Lock and Dam 3
Pleasureville Co: Henry KY 40057–
Location: SR 421 North from Frankfort, KY. to highway 561, right on 561 approximately 3 miles to site.
Landholding Agency: COE
Property Number: 319010060
Status: Unutilized
Comment: 897 sq. ft.; 2 story wood frame; structural deficiencies.

Bldg. 1
Kentucky River Lock and Dam
Carrolton Co: Carroll KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR # 227 to Highway 320, then left for about 1.5 miles to site.
Landholding Agency: COE
Property Number: 319011628
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.

Bldg. 2
Kentucky River Lock and Dam
Carrolton Co: Carroll KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR # 227 to highway 320, then left for about 1.5 miles to site.
Landholding Agency: COE
Property Number: 319011629
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.

Utility Bldg, Nolin River Lake
Moutardier Recreation Site Co: Edmonson KY
Landholding Agency: COE
Property Number: 319320002
Status: Unutilized
Comment: 541 sq. ft., concrete block, off-site use only.

Missouri

Tract 113—House
Smithville Lake
Smithville Co: Clay MO 64089–
Landholding Agency: COE
Property Number: 319540002
Status: Excess
Comment: 1200 sq. ft. residence, presence of lead base paint, off-site use only.

Riverlands Ofc. Bldg.
Melvin Price Locks & Dam
Access Road
Location: West Alton Co: St. Charles MO 63386–
Landholding Agency: COE
Property Number: 319730001
Status: Excess
Comment: 5000 sq. ft., steel, most recent use—office, flood damaged, off-site use only.

Montana

Facility #1
Havre Training Site Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189530047
Status: Excess
Comment: 6843 sq. ft., 1 story brick frame, good condition, most recent use—technical training site.

Bldg. 110
Forsyth Training Site Co: Rosebud MT
Landholding Agency: Air Force
Property Number: 189610001
Status: Unutilized
Comment: 6843 sq. ft., needs repair, on top of bluff, most recent use—offices.

Bldg. 112
Forsyth Training Site Co: Rosebud MT
Landholding Agency: Air Force
Property Number: 18961002
Status: Unutilized
Comment: 586 sq. ft., most recent use—cold storage.

Nebraska

Bldg. 20
Offutt Communications Annex 4
Silver Creek Co: Nance NE 68663–
Landholding Agency: Air Force
Property Number: 189610004
Status: Unutilized
Comment: 4714 sq. ft., most recent use—dormitory needs major repair.

Natl Weather Svc Forecast Ofc
Rt. 2
Alliance Co: Box Butte NE
Landholding Agency: GSA
Property Number: 549740021
Status: Excess
Comment: 1500 sq. ft., presence of asbestos, most recent use—office

GSA Number: 7–C–NE–0524

Ohio

Barker Historic House
Willow Island Locks and Dam
Newport Co: Washington OH 45768–9801
Location: Located at lock site, downstream of lock and dam structure
Landholding Agency: COE
Property Number: 319120018
Status: Unutilized
Comment: 1600 sq. ft. bldg. with ½ acre of land, 2 story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, off-site use only.

Oklahoma

Water Treatment Plant
Belle Starr, Eufaula Lake
Eufaula Co: McIntosh OK 74432–
Landholding Agency: COE
Property Number: 319630001
Status: Excess
Comment: 16'x16', metal, off-site use only.

Water Treatment Plant
Gentry Creek, Eufaula Lake
Eufaula Co: McIntosh OK 74432–
Landholding Agency: COE
Property Number: 319630002
Status: Excess
Comment: 12'x16', metal, off-site use only.

Pennsylvania

Mahoning Creek Reservoir
New Bethlehem Co: Armstrong PA 16242–
Landholding Agency: COE
Property Number: 319210008
Status: Unutilized
Comment: 1015 sq. ft., 2 story brick residence, off-site use only.

One Unit/Residence
Conemaugh River Lake, RD #1, Box 702
Saltburg Co: Indiana PA 15681–
Landholding Agency: COE
Property Number: 319430011
Status: Unutilized
Comment: 2642 sq. ft., 1-story, 1-unit of duplex, fair condition, access restricitons.

Dwelling
Lock & Dam 6, Allegheny River, 1260 River Rd.
Freeport Co: Armstrong PA 16229–2023
Landholding Agency: COE
Property Number: 319620008
Status: Unutilized
Comment: 2652 sq. ft., 3-story brick house, in close proximity to Lock and Dam, available for interim use for nonresidential purposes.

Dwelling
Lock & Dam 4, Allegheny River
Natrona Co: Allegheny PA 15065–2609
Landholding Agency: COE
Property Number: 319710009
Status: Unutilized
Comment: 1664 sq. ft., 2-story brick residence, needs repair, off-site use only.

Dwelling #1
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Landholding Agency: COE
Property Number: 319740002
Status: Excess
Comment: 2030 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Landholding Agency: COE
Property Number: 319740003
Status: Excess
Comment: 3045 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #3
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Landholding Agency: COE
Property Number: 319740004
Status: Excess
Comment: 1847 sq. ft., most recent use—office, good condition, off-site use only.

Govt Dwelling
East Branch Lake
Wilcox Co: Elk PA 15870–9709
Landholding Agency: COE
Property Number: 319740005
Status: Underutilized
Comment: approx. 5299 sq. ft., 1-story, most recent use—residence, off-site use only.

Dwelling #1
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Landholding Agency: COE
Property Number: 319740006
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Landholding Agency: COE
Property Number: 319740007
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #1
Woodcock Creek Lake
Saegertown Co: Crawford PA 16433–0629
Landholding Agency: COE
Property Number: 319740008
Status: Excess
Comment: 2106 sq. ft., most recent use—residential, good condition, off-site use only.

Dwelling #2
Lock & Dam 6, 1260 River Road
Freeport Co: Armstrong PA 16229–2023
Landholding Agency: COE
Property Number: 319740009
Status: Excess
Comment: 2652 sq. ft., most recent use—residential, good condition, off-site use only.

Rhode Island

Bldg. A33
Navy Hospital Gate 5
Newport RI 02841–
Landholding Agency: Navy
Property Number: 779810083
Status: Underutilized
Comment: 1512 sq. ft., detached 5 stall garage, needs repair, presence of asbestos, off-site use only.

South Dakota

West Communications Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340051
Status: Unutilized
Comment: 2 bldgs. on 2.37 acres, remote area, lacks infrastructure, road hazardous during winter storms, most recent use—industrical storage.

Tennessee

Cheatham Lock & Dam
Tract D, Lock Road
Nashville Co: Davidson TN 37207–
Landholding Agency: COE
Property Number: 319520003
Status: Unutilized
Comment: 1100 sq. ft. dwelling w/storage bldgs on 7 acres, needs major rehab, contamination issues, approx. 1 acre in fldwy, modif. to struct. subj. to approval of St. Hist. Presv. Ofc.

Virginia

Peters Ridge Site
Gathright Dam
Covington VA
Landholding Agency: COE
Property Number: 319430013
Status: Excess
Comment: 64 sq. ft., metal bldg.

Metal Bldg.
John H. Kerr Dam & Reservoir Co: Boydton VA
Landholding Agency: COE
Property Number: 319620009
Status: Excess
Comment: 800 sq. ft., most recent use—storage, off-site use only.

West Virginia

German Ridge Radio Transmitter
Huntington Co: Wayne WV 25701–
Landholding Agency: COE
Property Number: 319610002
Status: Unutilized
Comment: 187 sq. ft. cinder block bldg. on .55 acre in remote area, most recent use—radio equipment room.

Wisconsin

Former Lockmaster's Dwelling
Cedar Locks
4527 East Wisconsin Road
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011524
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 4th Lock
905 South Lowe Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011525
Status: Unutilized
Comment: 908 sq. ft.; 2 story wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Kaukauna 1st Lock
301 Canal Street
Kaukauna Co: Outagamie WI 54131–
Landholding Agency: COE
Property Number: 319011527
Status: Unutilized

Comment: 1290 sq. ft.; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 1st Lock
905 South Oneida Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011531
Status: Unutilized
Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Rapid Croche Lock
Lock Road
Wrightstown Co: Outagamie WI 54180–
Location: 3 miles southwest of intersection State Highway 96 and Canal Road.
Landholding Agency: COE
Property Number: 319011533
Status: Unutilized
Comment: 1952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab.

Former Lockmaster's Dwelling
Little KauKauna Lock
Little KauKauna
Lawrence Co: Brown WI 54130–
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway "D") and River Street.
Landholding Agency: COE
Property Number: 319011535
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Little Chute, 2nd Lock
214 Mill Street
Little Chute Co: Outagamie WI 54140–
Landholding Agency: COE
Property Number: 319011536
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access.

Land (by State)

Arkansas

Parcel 01
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010071
Status: Unutilized
Comment: 77.6 acres.

Parcel 02
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010072
Status: Unutilized
Comment: 198.5 acres.

Parcel 03
DeGray Lake
Section 18
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010073
Status: Unutilized
Comment: 50.46 acres.

Parcel 04
DeGray Lake
Section 24, 25, 30 and 31
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010074
Status: Unutilized
Comment: 236.37 acres.

Parcel 05
DeGray Lake
Section 16
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010075
Status: Unutilized
Comment: 187.30 acres.

Parcel 06
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010076
Status: Unutilized
Comment: 13.0 acres.

Parcel 07
DeGray Lake
Section 34
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010077
Status: Unutilized
Comment: 0.27 acres.

Parcel 08
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010078
Status: Unutilized
Comment: 14.6 acres.

Parcel 09
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010079
Status: Unutilized
Comment: 6.60 acres.

Parcel 10
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010080
Status: Unutilized
Comment: 4.5 acres.

Parcel 11
DeGray Lake
Section 19
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010081
Status: Unutilized
Comment: 19.50 acres.

Lake Greeson
Section 7, 8 and 18
Murfreesboro Co: Pike AR 71958–9720
Landholding Agency: COE
Property Number: 319010083
Status: Unutilized
Comment: 46 acres.

Colorado

Otis Lane
Chatfield Lake Project
Littleton Co: Jefferson CO 80123–
Landholding Agency: COE
Property Number: 319540001
Status: Excess
Comment: 25 ft. wide (5000 sq. ft.), subject to easements.

Kansas

Parcel 1
El Dorado Lake
Section 13, 24, and 18
(See County) Co: Butler KS
Landholding Agency: COE
Property Number: 319010064
Status: Unutilized
Comment: 61 acres; most recent use—recreation.

Kentucky

Tract 2625
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: Adjoining the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010025
Status: Excess
Comment: 2.57 acres; rolling and wooded.

Tract 2609–10 and 2710–2
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010026
Status: Excess
Comment: 2.00 acres; steep and wooded.

Tract 2708–1 and 2709–1
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010027
Status: Excess
Comment: 3.59 acres; rolling and wooded; no utilities.

Tract 2800
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 4½ miles in a southeasterly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010028
Status: Excess
Comment: 5.44 acres; steep and wooded.

Tract 2915
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 6½ miles west of Cadiz.
Landholding Agency: COE
Property Number: 319010029
Status: Excess
Comment: 5.76 acres; steep and wooded; no utlities.

Tract 2702
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 1 mile in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010031
Status: Excess
Comment: 4.90 acres; wooded; no utilities.

Tract 4318
Barkley Lake, Kentucky, and Tennessee
Canton Co: Trigg KY 42212–

Location: Trigg Co. adjourning the city of Canton, KY. on the waters of Hopson Creek.
Landholding Agency: COE
Property Number: 319010032
Status: Excess
Comment: 8.24 acres; steep and wooded.

Tract 4582
Barkley Lake, Kentucky, and Tennessee
Canton Co: Trigg KY 42212–
Location: 3½ miles in a southerly direction from Canton, KY.
Landholding Agency: COE
Property Number: 319010033
Status: Excess
Comment: 4.26 acres; steep and wooded.

Tract 4611
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg, KY 42212–
Location: 5 miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010034
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities.

Tract 4619
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg, KY 42212–
Location: 4½ miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010035
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities.

Tract 4817
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg, KY 42212–
Location: 6½ miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010036
Status: Excess
Comment: 1.75 acres; wooded.

Tract 1217
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42030–
Location: On the north side of the Illinois Central Railroad.
Landholding Agency: COE
Property Number: 319010042
Status: Excess
Comment: 5.80 acres; steep and wooded.

Tract 1906
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42030–
Location: Approximately 4 miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010044
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities.

Tract 1907
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42038–
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 319010045
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities.

Tract 2001 #1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010046
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities.

Tract 2001 #2
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon, KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010047
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities.

Tract 2005
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 5½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010048
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities.

Tract 2307
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 7½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010049
Status: Excess
Comment: 11.43 acres; steep; rolling and wooded; no utilities.

Tract 2403
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 7 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010050
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities.

Tract 2504
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 9 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010051
Status: Excess
Comment: 24.46 acres; steep and wooded; no utilities.

Tract 214
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River.
Landholding Agency: COE
Property Number: 319010052
Status: Excess
Comment: 5.5 acres; wooded; no utilities.

Tract 215
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa.
Landholding Agency: COE
Property Number: 319010053
Status: Excess
Comment: 1.40 acres; wooded; no utilities.

Tract 241
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010054
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities.

Tract 306, 311, 315 and 325
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 2.5 miles southwest of Kuttawa, KY. on the waters of Cypress Creek.
Landholding Agency: COE
Property Number: 319010055
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities.

Tracts 2305, 2306, and 2400–1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 6½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010056
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities.

Tract 500–2
Barkley Lake, Kentucky and Tennessee
Kuttawa Co: Lyon KY 42055–
Location: Situated on the waters of Poplar Creek, approximately 1 mile southwest of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010057
Status: Excess
Comment: 3.58 acres; hillside ridgeland and wooded; no utilties.

Tracts 5203 and 5204
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: Village of Linton, KY state highway 1254.
Landholding Agency: COE
Property Number: 319010058
Status: Excess
Comment: 0.93 acres; rolling, partially wooded; no utilities.

Tract 5240
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: 1 mile northwest of Linton, KY.
Landholding Agency: COE
Property Number: 319010059
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities.

Tract 4628
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319011621
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements.

Tract 4619–B
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319011622

Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements.

Tract 2403–B
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: 7 miles southeasterly from Eddyville, KY.
Landholding Agency: COE
Property Number: 319011623
Status: Unutilized
Comment: 0.70 acres, wooded; subject to utility easements.

Tract 241–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011624
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements.

Tracts 212 and 237
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Landholding Agency: COE
Property Number: 319011625
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements.

Tract 215–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011626
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract 233
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011627
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract B–Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 319130002
Status: Unutilized
Comment: 10 acres, most recent use—recreational, possible periodic flooding.

Tract A—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 319130003
Status: Unutilized
Comment: 8 acres, most recent use—recreational, possible periodic flooding.

Tract C—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 319130005
Status: Unutilized
Comment: 4 acres, most recent use—recreational, possible periodic flooding.

Tract N–819
Dale Hollow Lake & Dam Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601–
Landholding Agency: COE
Property Number: 319140009
Status: Underutilized
Comment: 91 acres, most recent use—hunting, subject to existing easements.

Portion of Lock & Dam No. 1
Kentucky River
Carrolton Co: Carroll KY 41008–0305
Landholding Agency: COE
Property Number: 319320003
Status: Unutilized
Comment: approx. 3.5 acres (sloping), access monitored.

Portion of Lock & Dam No. 2
Kentucky River
Lockport Co: Henry KY 40036–9999
Landholding Agency: COE
Property Number: 319320004
Status: Underutilized
Comment: approx. 13.14 acres (sloping), access monitored.

Louisiana

Wallace Lake Dam and Reservoir
Shreveport Co: Caddo LA 71103–
Landholding Agency: COE
Property Number: 319011009
Status: Unutilized
Comment: 11 acres; wildlife/forestry; no utilities.

Bayou Bodcau Dam and Reservoir
Haughton Co: Caddo LA 71037–9707
Location: 35 miles Northeast of Shreveport, LA.
Landholding Agency: COE
Property Number: 319011010
Status: Unutilized
Comment: 203 acres; wildlife/forestry; no utilities.

Maine

Irish Ridge NEXRAD Site
Loring AFB
Fort Fairfield Co: Aroostook ME 04742–
Landholding Agency: Air Force
Property Number: 189640017
Status: Unutilized
Comment: 3.491 acres in fee simple.

GWEN Site (Patten)
Loring AFB
Stacyville Co: Herseytown ME 04742–
Landholding Agency: GSA
Property Number: 189640018
Status: Excess
Comment: 23.55 acres w/226 sq. ft. relay station.
GSA Number: 1–D–ME–630.

Minnesota

Parcel D
Pine River
Cross Lake Co: Crow Wing MN 56442–
Location: 3 miles from city of Cross Lake, between highways 6 and 371.
Landholding Agency: COE
Property Number: 319011038
Status: Excess
Comment: 17 acres; no utilities.

Tract 92
Sandy Lake
McGregor Co: Aitkins MN 55760–
Location: 4 miles west of highway 65, 15 miles from city of McGregor.
Landholding Agency: COE
Property Number: 319011040
Status: Excess
Comment: 4 acres; no utilities.

Tract 98
Leech Lake
Benedict Co: Hubbard MN 56641–
Location: 1 mile from city of Federal Dam, MN.
Landholding Agency: COE
Property Number: 319011041
Status: Excess
Comment: 7.3 acres; no utilities.

Mississippi

Parcel 7
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011019
Status: Underutilized
Comment: 100 acres; no utilities; intermittently used under lease—expired 1994.

Parcel 8
Grenada Lake
Section 20, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011020
Status: Underutilized
Comment: 30 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 9
Grenada Lake
Section 20, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011021
Status: Underutilized
Comment: 23 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 10
Grenada Lake
Sections 16, 17, 18 T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 319011022
Status: Underutilized
Comment: 490 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 2
Grenada Lake
Section 20 and T23N, R5E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 319011023
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 3
Grenada Lake
Section 4, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011024
Status: Underutilized
Comment: 120 acres; no utilities; most recent use—wildlife and forestry management; (13.5 acres/agriculture lease).

Parcel 4

Grenada Lake
Section 2 and 3, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011025
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 5
Grenada Lake
Section 7, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011026
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease).

Parcel 6
Grenada Lake
Section 9, T24N, R6E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 319011027
Status: Underutilized
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 11
Grenada Lake
Section 20, T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 319011028
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 12
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha MS 38390–10903
Landholding Agency: COE
Property Number: 319011029
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 13
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 319011030
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease).

Parcel 14
Grenada Lake
Section 3, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011031
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 15
Grenada Lake
Section 4, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011032
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 16
Grenada Lake
Section 9, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011033
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 17
Grenada Lake
Section 17, T23N, R7E
Grenada Co: Grenada MS 28901–0903
Landholding Agency: COE
Property Number: 319011034
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 18
Grenada Lake
Section 22, T23N, R7E
Grenada Co: Grenada MS 28902–0903
Landholding Agency: COE
Property Number: 319011035
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 19
Grenada Lake
Section 9, T22N, R7E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 319011036
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management.

Missouri

Harry S Truman Dam & Reservoir
Warsaw Co: Benton MO 65355–
Location: Triangular shaped parcel soutwest of access road "B", part of Bledsoe Ferry Park Tract 150.
Landholding Agency: COE
Property Number: 319030014
Status: Underutilized
Comment: 1.7 acres; potential utilities.

Montana

6.43 acres
Forsyth Training Site Co: Rosebud MT
Landholding Agency: Air Force
Property Number: 189610003
Status: Unutilized
Comment: 6.43 acres, most recent use—tech. oper. site for radar bombing range.

Ohio

Hannibal Locks and Dam
Ohio River
P.O. Box 8
Hannibal Co: Monroe OH 43931–0008
Location: Adjacent to the new Martinsville Bridge.
Landholding Agency: COE
Property Number: 319010015
Status: Underutilized
Comment: 22 acres; river bank.

Oklahoma

Pine Creek Lake
Section 27
(See County) Co: McCurtain OK
Landholding Agency: COE
Property Number: 319010923
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Pennsylvania

Mahoning Creek Lake
New Bethlehem Co: Armstrong PA 16242–9603
Location: Route 28 north to Belknap, Road #4
Landholding Agency: COE
Property Number: 319010018
Status: Excess
Comment: 2.58 acreas; steep and densely wooded.

Tracts 610, 611, 612
Shenang River Lake
Sharpsville Co: Mercer PA 16150–
Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, Left on R518, right on Mercer Avenue.
Landholding Agency: COE
Property Number: 319011001
Status: Excess
Comment: 24.09 acres; subject to flowage easement.

Tracts L24, L26
Crooked Creek Lake Co: Armstrong PA 03051–
Location: Left bank—55 miles downstream of dam.
Landholding Agency: COE
Property Number: 319011011
Status: Unutilized
Comment: 7.59 acres; potential for utilities.

Portion of Tract L–21A
Crooked Creek Lake, LR 03051
Ford City Co: Armstrong PA 16226–
Landholding Agency: COE
Property Number: 319430012
Status: Unutilized
Comment: Approximately 1.72 acres of undeveloped land, subject to gas rights.

Tennessee

Tract 6827
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles west of Dover, TN.
Landholding Agency: COE
Property Number: 319010927
Status: Excess
Comment: .57 acres; subject to existing easements.

Tracts 6002–2 and 6010
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3½ miles south of village of Tabaccoport.
Landholding Agency: COE
Property Number: 319010928
Status: Excess
Comment: 100.86 acres; subject to existing easements.

Tract 11516
Barkley Lake
Ashland City Co: Dickson TN 37015–
Location: ½ mile downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 319010929
Status: Excess
Comment: 26.25 acres; subject to existing easements.

Tract 2319
J. Percy Priest Dam and Resorvior
Murfreesboro Co: Rutherford TN 37130–
Location: West of Buckeye Bottom Road
Landholding Agency: COE
Property Number: 319010930

Status: Excess
Comment: 14.48 acres; subject to existing easements.

Tract 2227
J. Percy Priest Dam and Resorvior
Murfreesboro Co: Rutherford TN 37130–
Location: Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010931
Status: Excess
Comment: 2.27 acres; subject to existing easements.

Tract 2107
J. Percy Priest Dam and Resorvior
Murfreesboro Co: Rutherford TN 37130–
Location: Acrosas Fall Creek near Fall Creek camping area.
Landholding Agency: COE
Property Number: 319010932
Status: Excess
Comment: 14.85 acres; subject to existing easements.

Tract 2601, 2602, 2603, 2604
Cordell Hull Lake and Dam Project
Doe Crow Creek
Gainesbor Co: Jackson TN 38562–
Location: TN Highway 56
Landholding Agency: COE
Property Number: 319010933
Status: Excess
Comment: 11 acres; subject to existing easements.

Tract 1911
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: East of Lamar Road
Landholding Agency: COE
Property Number: 319010934
Status: Excess
Comment: 15.31 acres; subject to existing easements.

Tract 2321
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: South of Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010935
Status: Excess
Comment: 12 acres; subject to existing easements.

Tract 7206
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 319010936
Status: Excess
Comment: 10.15 acres; subject to existing easements.

Tract 8813, 8814
Barkley Lake
Cumberland Co: Stewart TN 37050–
Location: 1½ miles East of Cumberland City.
Landholding Agency: COE
Property Number: 319010937
Status: Excess
Comment: 96 acres; subject to existing easements.

Tract 8911
Barkley Lake
Cumberland City Co: Montgomery TN 37050–
Location: 4 miles east of Cumberland City.
Landholding Agency: COE
Property Number: 319010938
Status: Excess
Comment: 7.7 acres; subject to existing easements.

Tract 11503
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2 miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010939
Status: Excess
Comment: 1.1 acres; subject to existing easements.

Tract 11523, 11524
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2½ miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010940
Status: Excess
Comment: 19.5 acres; subject to existing easements.

Tract 6410
Barkley Lake
Bumpus Mills Co: Stewart TN 37028–
Location: 4½ miles SW. of Bumpus Mills.
Landholding Agency: COE
Property Number: 319010941
Status: Excess
Comment: 17 acres; subject to existing easements.

Tract 9707
Barkley Lake
Palmyer Co: Montgomery TN 37142–
Location: 3 miles NE of Palmyer, TN. Highway 149
Landholding Agency: COE
Property Number: 319010943
Status: Excess
Comment: 6.6 acres; subject to existing easements.

Tract 6949
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 1½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 319010944
Status: Excess
Comment: 29.67 acres; subject to existing easements.

Tracts 6005 and 6017
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3 miles south of Village of Tobaccoport.
Landholding Agency: COE
Property Number: 319011173
Status: Excess
Comment: 5 acres; subject to existing easements.

Tracts K–1191, K–1135
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074–
Landholding Agency: COE
Property Number: 319130007
Status: Underutilized
Comment: 92 acres (38 acres in floodway), most recent use—recreation.

Tract A–102
Dale Hollow Lake & Dam project
Canoe Ridge, State Hwy 52
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140006
Status: Underutilized
Comment: 351 acres, most recent use—hunting, subject to existing easements.

Tract A–120
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140007
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements.

Tracts A–20, A–21
Dale Hollow Lake & Dam Project
Red Oak Ridge, State Hwy No. 53
Celina Co: Clay TN 38551—
Landholding Agency: COE
Property Number: 319140008
Status: Underutilized
Comment: 821 acres, most recent use—recreation, subject to existing easements.

Tract D–185
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 53
Livingston Co: Clay TN 38576–
Landholding Agency: COE
Property Number: 319140010
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements.

Suitable/Unavailable Properties

Buildings (by State)

Alaska

Bldgs. 001A&B
Spruce Cape Loran Station
Kodiak Co: Kodiak Is. Bor. AK 99615–
Landholding Agency: DOT
Property Number: 879720001
Status: Excess
Comment: 12492 sq. ft. steel frame, most recent use—barracks and shops, needs extensive repairs, in Tsunami evacuation area.

Arizona

Facility # 4250
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510043
Status: Excess
Comment: 7800 sq. ft., prefab steel frame, 2 story, good condition, off-site removal only, most recent use—dormitory.

Facility # 4252
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ 86025–
Landholding Agency: Air Force
Property Number: 189510044
Status: Excess
Comment: 144 sq. ft., metal frame, 1 story, good condition, off-site removal only, most recent use—storage.

California

Hawes Site (KHGM)
March AFB
Hinckley Co: San Bernardino CA 92402–
Landholding Agency: Air Force
Property Number: 189010084
Status: Unutilized
Comment: 9290 sq. ft., 2 story concrete, most recent use-radio relay station, possible

asbestos, land belongs to Bureau of Land Management, potential utilities.

Santa Fe Flood Control Basin
Irwindale Co: Los Angeles CA 91706–
Landholding Agency: COE
Property Number: 319011298
Status: Unutilized
Comment: 1400 sq. ft.; 1 story stucco; needs rehab; terminte damage; secured area with alternate access.

Colorado

Bldg. 8026
U.S. Air Force Academy
Colorado Springs Co: El Paso 80814–2400
Landholding Agency: Air Force
Property Number: 189730009
Status: Underutilized
Comment: heat plant, 4-story.

Bldg. 9023
U.S. Air Force Academy
Colorado Springs Co: El Paso CA 80814–2400
Landholding Agency: Air Force
Property Number: 189730010
Status: Underutilized
Comment: 4112 sq. ft., most recent use—preschool.

Bldg. 9027
U.S. Air Force Academy
Colorado Springs Co: El Paso CA 80814–2400
Landholding Agency: Air Force
Property Number: 189730011
Status: Underutilized
Comment: 4112 sq. ft., most recent use—child care center.

Florida

Facility No. 0001
Cocoa Beach Comm. Annex No. 2
Cocoa Beach Co: Brevard FL 32931–
Landholding Agency: Air Force
Property Number: 189610010
Status: Unutilized
Comment: telephone switchgear bldg., 474 sq. ft., possible asbestos.

Facility No. 00901
Cocoa Beach Comm. Annex No. 1
Cocoa Beach Co: Brevard FL 32931–
Landholding Agency: Air Force
Property Number: 189610011
Status: Unutilized
Comment: 1100 sq. ft., telephone switch bldg., possible asbestos.

Bldg. CN7
Ortona Lock Reservation, Okeechobee Waterway
Ortona Co: Glades FL 33471–
Location: Located off Highway 78 approximately 7 miles west of intersection with Highway 27.
Landholding Agency: COE
Property Number: 319010012
Status: Unutilized
Comment: 1468 sq. ft.; one floor wood frame; most recent use—residence; secured with alternate access.

Bldg. CN8
Ortona Lock Reservation, Okeechobee Waterway
Ortona Co: Glades FL 33471–
Location: Located off Highway 78 approximately 7 miles west of intersection with Highway 27.
Landholding Agency: COE
Property Number: 319010013
Status: Unutilized
Comment: 1468 sq. ft.; one floor wood frame; most recent use—residence; secured with alternate access.

Idaho

Bldg. 516
Mountain Home Air Force Base
Mountain Home Co: Elmore ID 86348–
Landholding Agency: Air Force
Property Number: 189520004
Status: Excess
Comment: 4928 sq. ft., 1 story wood frame, presence of lead paint and asbestos, most recent use—offices.

Illinois

Bldg. 7
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010001
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence.

Bldg. 6
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010002
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 5
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010003
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 4
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010004
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 3
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010005
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame.

Bldg. 2
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010006
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 1
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010007
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Iowa

Bldg. 00627
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 189310001
Status: Unutilized
Comment: 1932 sq. ft., 1-story concrete block bldg., most recent use—storage, pigeon infested, contamination investigation in progress.

Bldg. 00669
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 189310002
Status: Unutilized
Comment: 1113 sq. ft., 1-story concrete block bldg., contamination clean-up in process.

Kansas

Bldg. 2703, Forbes Field Co: Topeka KS
Landholding Agency: Air Force
Property Number: 189720042
Status: Unutilized
Comment: 192,000 sq. ft. warehouse, needs major repairs.

Maine

Mount Desert Rock Light
U.S. Coast Guard
Southwest Harbor Co: Hancock ME 04679–
Landholding Agency: DOT
Property Number: 879240023
Status: Unutilized
Comment: 1600 sq. ft., 2-story wood frame dwelling, needs rehab, limited utilities, limited access, property is subject to severe storms.

Little River Light
U.S. Coast Guard
Cutler Co: Washington ME
Landholding Agency: DOT
Property Number: 879240026
Status: Unutilized
Comment: 1100 sq. ft., 2-story wood frame dwelling, well is contaminated, limited utilities.

Burnt Island Light
U.S. Coast Guard
Southport Co: Lincoln ME 04576–
Landholding Agency: DOT
Property Number: 879240027
Status: Unutilized
Comment: 750 sq. ft., 2-story wood frame dwelling.

Massachusetts

Keepers Dwelling
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport Co: Essex MA 01966–
Landholding Agency: DOT
Property Number: 879240024
Status: Unutilized
Comment: 1000 sq. ft., 2-story brick dwelling, large wave action with severe ocean storms.

Assistant Keepers Dwelling
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport Co: Essex MA 01966–
Landholding Agency: DOT
Property Number: 879240025
Status: Unutilized
Comment: 1100 sq. ft., 2-story wood frame dwelling, large wave action with severe ocean storms.

Michigan

Bldg. 50
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010790
Status: Excess
Comment: 6171 sq. ft.; 1 story; concrete block; potential utilities; possible asbestos; most recent use—Fire Department vehicle parking building.

Bldg. 14
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010833
Status: Excess
Comment: 6751 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—gymnasium.

Bldg. 16
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010834
Status: Excess
Comment: 3000 sq. ft.; 1 floor concrete block; most recent use—commissary facility.

Bldg. 15
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010864
Status: Excess
Comment: 538 sq. ft.; 1 floor; concrete/wood structure; potential utilities; most recent use—gymnasium facility.

Montana

Bldg. 00007
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330066
Status: Unutilized
Comment: 992 sq. ft., 1-story metal, most recent use—auto/hobby shop.

Bldg. 00008
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330067
Status: Unutilized
Comment: 2640 sq. ft., 1-story metal, most recent use—vehicle parking.

Bldg. 00016
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330068
Status: Unutilized
Comment: 3604 sq. ft., 1-story cinder block, most recent use—storage.

Bldg. 00023
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330069
Status: Unutilized
Comment: 3315 sq. ft., 1-story wood, most recent use—fire station.

Bldg. 00024
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330070
Status: Unutilized
Comment: 5016 sq. ft., 1-story cinder block, most recent use—dormitory.

Bldg. 00027
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330071
Status: Unutilized
Comment: 14280 sq. ft., 1-story cinder block, most recent use—recreation center and commissary store.

Bldg. 00029
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330072
Status: Unutilized
Comment: 63 sq. ft., 1-story metal.

Bldg. 00031
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330073
Status: Unutilized
Comment: 3130 sq. ft., 1-story cinder block, most recent use—maintenance shop and admin.

Bldg. 00032
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330074
Status: Unutilized
Comment: 64 sq. ft., metal, most recent use—storage.

Bldg. 00035
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330075
Status: Unutilized
Comment: 2252 sq. ft., 4-story metal, most recent use—storage.

Bldg. 00039
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330076
Status: Unutilized
Comment: 21824 sq. ft., 1-story masonry, most recent use—storage.

Bldg. 00040
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330077
Status: Unutilized
Comment: 874 sq. ft., 1-story masonry, most recent use—storage.

Bldg. 00041
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330078
Status: Unutilized
Comment: 108 sq. ft., 1-story masonry.

Bldg. 00042
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330079
Status: Unutilized
Comment: 760 sq. ft., 1-story masonry, most recent use—warehouse.

Bldg. 00044
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330080
Status: Unutilized
Comment: 3298 sq. ft., 1-story metal, most recent use—wood hobby shop.

Malmstrom Communications Annex (Transmitter), 39 78th St., N.
Malmstrom AFB Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189510023
Status: Excess
Comment: 1966 sq. ft., 1 story masonry block bldg. on 22 acres, limited utilities, roof needs replacement
GSA Number: 7–D–MT–4240.

Nebraska

Bldg. 64
Offutt AFB
Silver Creek Co: Nance NE 68113–
Landholding Agency: Air Force
Property Number: 189720040
Status: Unutilized
Comment: 4000 sq. ft., most recent use—admin., nees major rehab, possible asbestos/lead base paint.

New Hampshire

Bldg. 127
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320057
Status: Excess
Comment: 698 sq. ft., 1-story, concrete and metal frame, possible asbestos, access restrictions, most recent use—storage.

New York

U.S. Army Reserve Center
Elizabethtown Reserve Center
Corner of Water and and Cross Streets
Elizabethtown Co: Esses NY 12932–
Landholding Agency: GSA
Property Number: 219540016
Status: Excess
Comment: 4316 sq. ft. reserve center/1315 sq. ft. motor repair shop, 1 story each, concrete block/brick frame
GSA Number: 1–D–NY–861.

Ohio

Bldg—Berlin Lake
7400 Bedell Road
Berlin Center Co: Mahoning OH 44401–9797
Landholding Agency: COE
Property Number: 319640001
Status: Unutilized
Comment: 1420 sq. ft., 2-story brick w/garage and basement, most recent use—residential, secured w/alternate access.

Pennsylvania

Tract 302B
Grays Landing Lock & Dam Project
Old Glassworks Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430017
Status: Unutilized
Comment: 502 sq. ft., 2-story, needs repair, most recent use—beauty shop/residence, if used for habitation must be flood proofed or removed off-site.

Tract 353
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE

Property Number: 319430019
Status: Unutilized
Comment: 812 sq. ft., 2-story, log structure, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site.

Tract 402
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430020
Status: Unutilized
Comment: 728 sq. ft., 2-story, needs repairs, most recent use—residential/parsonage, if used for habitation must be flood proofed or removed off-site.

Tract 403A
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430021
Status: Unutilized
Comment: 620 sq. ft., 2-story, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site.

Tract 403B
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430022
Status: Unutilized
Comment: 1600 sq. ft., 2-story, brick structure, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site.

Tract 403C
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430023
Status: Unutilized
Comment: 672 sq. ft., 2-story carriage house/stable barn type structure, needs repair, most recent use—storage/garage, if used for habitation must be flood proofed or removed.

Tract 434
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430024
Status: Unutilized
Comment: 1059 sq. ft., 2-story, wood frame, 2 apt. units, historic property, if used for habitation must be flood proofed or removed off-site.

Tract No. 224
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319440001
Status: Unutilized
Comment: 1040 sq. ft., 2 story bldg., needs repair, historic struct., flowage easement, if habitation is desired property will be required to be flood proofed or removed off site.

Govt. Dwelling
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Landholding Agency: COE
Property Number: 319640002
Status: Unutilized
Comment: 1421 sq. ft., 2-story, brick w/basement, most recent use—residential.

Texas

Brownsville Urban System (Grantee)
700 South Iowa Avenue
Brownsville Co: Cameron TX 78520–
Landholding Agency: DOT
Property Number: 879010003
Status: Unutilized
Comment: 3500 sq. ft., 1 story concrete block, (2nd floor of Admin. Bldg.) on 10750 sq. ft. land, contains underground diesel fuel tanks.

Virginia

Housing
Rt. 637—Gwynnville Road
Gwynn Island Co: Mathews VA 23066–
Landholding Agency: DOT
Property Number: 879120082
Status: Unutilized
Comment: 929 sq. ft., one story residence
GSA Number: 4–U–DE–461

Wisconsin

Former Lockmaster's Dwelling
DePere Lock
100 James Street
DePere Co: Brown WI 54115–
Landholding Agency: COE
Property Number: 319011526
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access

Land (by State)

California

Norton Com. Facility Annex
Norton AFB
Sixth and Central Streets
Highland Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010194
Status: Excess
Comment: 30.3 acres; most recent use—recreational area; portion subject to easements.

Lake Sonoma, Tract 1607
Geyserville CA
Landholding Agency: GSA
Property Number: 549740020
Status: Excess
Comment: 139 acres, most recent use—recreation
GSA Number: 9–D–CA–1504.

Excess Land at Eureka Housing
Eureka Co: Humboldt CA 95501–
Landholding Agency: DOT
Property Number: 879540001
Status: Unutilized
Comment: .5 acres, encroachment by adjoining land owners, easement

Florida

Woodland Tract
Elgin AFB, AF Enlisted Widows' Home
Ft. Walton Beach Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540020
Status: Unutilized
Comment: 3.43 acres, easement.

Georgia

Land—St. Simons Boathouse
St. Simons Island Co: Glynn GA 31522–0577
Landholding Agency: DOT
Property Number: 879540003
Status: Unutilized
Comment: .08 acres, most recent use—pier and dockage for Coast Guard boats.

Illinois

Lake Shelbyville
Shelbyville Co: Shelby & Moultr IL 62565–9804
Landholding Agency: COE
Property Number: 319240004
Status: Unutilized
Comment: 5 parcels of land equalling 0.70 acres, improved w/4 small equipment storage bldgs. and a small access road, easement restrictions.

Kentucky

Carr Fork Lake
5 miles SE of Hindman, Ky., Hwy. 60
Hindman Co: Knott KY
Landholding Agency: COE
Property Number: 319240003
Status: Unutilized
Comment: 2.81 acres, most recent use—drainage area for bank stabilization for adjacent cemetary.

Nebraska

Land/Offutt Comm. Annex No. 4
Silver Creek Co: Nance NE 68663–
Landholding Agency: Air Force
Property Number: 189720041
Status: Unutilized
Comment: 354 acres, most recent use—radio transmitter site, wetlands, isolated area.

North Dakota

Tracts V–1971B, V–1971
Garrison Dam/Lake Sakakawea Co: McKenzie ND
Landholding Agency: COE
Property Number: 319620006
Status: Unutilized
Comment: approx. 4.49 acres, most recent use—cattle ranching operation, rough broken ground—Badlands.

Lot 3/0.16 acre
Snake Creek Cabin Site/Tract C272A Co: Mclean ND
Landholding Agency: COE
Property Number: 319720003
Status: Unutilized
Comment: 0.16 of an acre, most recent use—private recreation (cottage site), floodplain.

Pennsylvania

East Branch Clarion River Lake
Wilcox Co: Elk PA
Location: Free camping area on the right bank off entrance roadway.
Landholding Agency: COE
Property Number: 319011012
Status: Underutilized
Comment: 1 acre; most recent use—free campground.

Dashields Locks and Dam
(Glenwillard, PA)
Crescent Twp. Co: Allegheny PA 15046–0475
Landholding Agency: COE
Property Number: 319210009
Status: Unutilized
Comment: 0.58 acres, most recent use—baseball field.

Texas

Parcel #222
Lake Texoma Co: Grayson TX
Location: C. Meyerheim survey A–829 J. Hamilton survey A–529
Landholding Agency: COE
Property Number: 319010421
Status: Excess
Comment: 52.80 acres; most recent use—recreation.

Suitable/To Be Excessed

Buildings (by State)

Massachusetts

Cuttyhunk Boathouse
South Shore of Cuttyhunk Pond
Gosnold Co: Dukes MA 02713–
Landholding Agency: DOT
Property Number: 879310001
Status: Unutilized
Comment: 2700 sq. ft., wood frame, one story, needs rehab, limited utilities, off-site use only.

Nauset Beach Light
Nauset Beach Co: Barnstable MA
Landholding Agency: DOT
Property Number: 879420001
Status: Unutilized
Comment: 48 foot tower, cylindrical cast iron, most recent use—aid to navigation.

Plymouth Light Co: Plymouth MA
Landholding Agency: DOT
Property Number: 879420003
Status: Unutilized
Comment: 250 sq. ft. tower, and 2096 sq. ft. dwelling, wood frame, most recent use—aid to navigation/housing.

Light Tower, Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 879430005
Status: Excess
Comment: 66 ft. tower, 14'9" diameter, brick structure, scheduled to be vacated 9/94.

Keepers Dwelling
Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 879430006
Status: Excess
Comment: 1160 sq. ft., 2-story wood frame, attached to light tower, scheduled to be vacated 9/94.

Duplex Housing Unit
Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 879430007
Status: Excess
Comment: 2 living units, 930 sq. ft. each, 1-story each, located on eroding ocean bluff, scheduled to be vacated 9/94.

Nahant Towers
Nahant Co: Essex MA
Landholding Agency: DOT
Property Number: 879530001
Status: Unutilized
Comment: 196 sq. ft., 8-story observation tower.

New York

Bldg. 1
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530048
Status: Excess
Comment: 4955 sq. ft., 2 story concrete block, needs rehab, most recent use—administration.

Bldg. 2
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530049
Status: Excess
Comment: 1476 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop.

Bldg. 6
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530050
Status: Excess
Comment: 2466 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop.

Bldg. 11
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530051
Status: Excess
Comment: 1750 sq. ft., 1 story wood frame, needs rehab, most recent use—storage.

Bldg. 8
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530052
Status: Excess
Comment: 1812 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop communications.

Bldg. 14
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530053
Status: Excess
Comment: 156 sq. ft., 1 story wood frame, most recent use—vehicle fuel station.

Bldg. 30
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530054
Status: Excess
Comment: 3649 sq. ft., 1 story, needs rehab, most recent use—assembly hall.

Bldg. 31
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530055
Status: Excess
Comment: 8252 sq. ft., 1 story concrete block, most recent use—storage.

Bldg. 32
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530056
Status: Excess
Comment: 1627 sq. ft., 1 story concrete block, most recent use—storage.

Oregon

Yaquina Head Lighthouse
860 Lighthouse Drive
Newport Co: Lincoln OR 97365–
Landholding Agency: DOT
Property Number: 879430003
Status: Underutilized
Comment: 300 sq. ft. tower and needs repair, 4.52 acres lighthouse area, historic property.

Land (by State)

Georgia

Lake Sidney Lanier Co: Forsyth GA 30130–
Location: Located on Two Mile Creek adj. to State Route 369
Landholding Agency: COE
Property Number: 319440010
Status: Unutilized
Comment: 0.25 acres, endangered plant species.

Lake Sidney Lanier-3 parcels
Gainesville Co: Hall GA 30503–
Location: Between Gainesville H.S. and State Route 53 By-Pass
Landholding Agency: COE
Property Number: 319440011
Status: Unutilized
Comment: 3 parcels totalling 5.17 acres, most recent use—buffer zone, endangered plant species.

Indiana

Brookville Lake—Land
Liberty Co: Union IN 47353–
Landholding Agency: COE
Property Number: 319440009
Status: Unutilized
Comment: 6.91 acres, limited utilities.

Kansas

Parcel #1
Fall River Lake
Section 26 Co: Greenwood KS
Landholding Agency: COE
Property Number: 319010065
Status: Unutilized
Comment: 126.69 acres; most recent use—recreation and leased cottage sites.

Parcel No. 2, El Dorado Lake
Approx. 1 mi. east of the town of El Dorado
Co: Butler KS
Landholding Agency: COE
Property Number: 319210005
Status: Unutilized
Comment: 11 acres, part of a relocated railroad bed, rural area.

Massachusetts

Buffumville Dam
Flood Control Project
Gale Road
Carlton Co: Worcester MA 01540–0155
Location: Portion of tracts B–200, B–248, B–251, B–204, B–247, B–200 and B–256
Landholding Agency: COE
Property Number: 319010016
Status: Excess
Comment: 1.45 acres.

Michigan

U.S. Coast Guard—Air Station
Traverse City Co: Grand Traverse MI 49684–
Landholding Agency: DOT
Property Number: 879120099
Status: Underutilized

Comment: 21.7 acres, most recent use—helo landings.

Minnesota

Tract #3
Lac Qui Parle Flood Control Project
County Rd. 13
Watson Co: Lac Qui Parle MN 56295–
Landholding Agency: COE
Property Number: 319340006
Status: Unutilized
Comment: approximately 2.9 acres, fallow land.

Tract #34
Lac Qui Parle Flood Control Project
Marsh Lake
Watson Co: Lac Qui Parle MN 56295–
Landholding Agency: COE
Property Number: 319340007
Status: Unutilized
Comment: approximately 8 acres, fallow land.

New York

14.90 Acres
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 189530057
Status: Excess
Comment: Fenced in compound, most recent use—Air Natl. Guard Communication & Electronics Group.

Tennessee

Tract D–456
Cheatham Lock and Dam
Ashland Co: Cheatham TN 37015–
Location: Right downstream bank of Sycamore Creek
Landholding Agency: COE
Property Number: 319010942
Status: Excess
Comment: 8.93 acres; subject to existing easements.

Texas

Corpus Christi Ship Channel
Corpus Christi Co: Neuces TX
Location: East side of Carbon Plant Road, approx. 14 miles NW of downtown Corpus Christi
Landholding Agency: COE
Property Number: 319240001
Status: Unutilized
Comment: 4.4 acres, most recent use—farm land.

Unsuitable Properties

Buildings (by State)

Alabama

Bldg. 426, Maxwell AFB
Montgomery Co: Montgomery AL 36114–3112
Landholding Agency: Air Force
Property Number: 189720027
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Dwelling A
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120001
Status: Excess
Reason: Floodway.

Dwelling B
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120002
Status: Excess
Reason: Floodway.

Oil House
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120003
Status: Excess
Reason: Floodway.

Garage
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120004
Status: Excess
Reason: Floodway.

Shop Building
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120005
Status: Excess
Reason: Floodway.

Alaska

Bldg. 203
Tin City Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010296
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 165
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010298
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 150
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010299
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 130
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010300
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 306
King Salmon Airport
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010301
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 11–230
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010303
Status: Unutilized
Reason: Secured Area; Contamination.

Bldg. 63–320
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010307
Status: Unutilized
Reason: Secured Area; Contamination.

Bldg. 63–325
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010308
Status: Unutilized
Reason: Secured Area; Contamination.

Bldg. 103
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010309
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 110
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010310
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 112
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010311
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 113
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010312
Status: Unutilized

Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 114
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010313
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 115
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010314
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 118
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010315
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 1018
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010317
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 1025
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010318
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 1055
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010319
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 107
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010320
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 115
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010321
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 113
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010322
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 150
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010323
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 152
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010324
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 301
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010325
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 1001
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010326
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 1003
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010327
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 1055
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010328
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 1056
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010329
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 103
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010330
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 104
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010331
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 105
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010332
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 110
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010333
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 114
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010334
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 202
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010335
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 204

Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010336
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 205
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010337
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 1001
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010338
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 1015
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010339
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 50
Cold Bay Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010433
Status: Unutilized
Reason: Other; Isolated area; Not accessible by road.
Comment: Isolated and remote; Arctic environment.

Bldg. 1548, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189420001
Status: Unutilized
Reason: Floodway; Secured Area; Extensive deterioration.

Bldg. 1568, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189420002
Status: Unutilized
Reason: Floodway; Secured Area; Extensive deterioration.

Bldg. 1570, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189420003
Status: Unutilized
Reason: Floodway; Secured Area; Extensive deterioration.

Bldg. 1700, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189420004
Status: Unutilized
Reason: Floodway; Secured Area; Extensive deterioration.

Bldg. 1832, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189420005
Status: Unutilized
Reason: Floodway; Secured Area; Extensive deterioration.

Bldg. 1842, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189420006
Status: Unutilized
Reason: Floodway; Secured Area; Extensive deterioration.

Bldg. 1844, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189420007
Status: Unutilized
Reason: Floodway; Secured Area; Extensive deterioration.

Bldg. 1853, Galena Airport
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189440011
Status: Unutilized
Reason: Secured Area; Floodway.

Bldg. 142
Tin City Long Range Radar Site
Wales Co: Nome AK
Landholding Agency: Air Force
Property Number: 189520013
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 110
Tin City Long Range Radar Site
Wales Co: Nome AK
Landholding Agency: Air Force
Property Number: 189520014
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 646
King Salmon Airport
Naknek Co: Bristol Bay AK
Landholding Agency: Air Force
Property Number: 189520015
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 2541
Galena Airport
Galena Co: Yukon AK
Landholding Agency: Air Force
Property Number: 189520016
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 1770
Galena Airport
Galena Co: Yukon AK
Landholding Agency: Air Force
Property Number: 189520017
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 1
Lonely Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520024
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2
Lonely Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520025
Status: Unutilized
Reason: Extensive deterioration; Not accessible by road.

Bldg. 12
Lonely Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520026
Status: Unutilized
Reason: Extensive deterioration; Not accessible by road.

Bldg. 1
Wainwright Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520027
Status: Unutilized
Reason: Extensive deterioration; Not accessible by road.

Bldg. 2
Wainwright Dewline Site
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520028
Status: Unutilized
Reason: Extensive deterioration; Not accessible by road.

Bldg. 3
Wainwright Dewline Site.
Fairbanks Co: Fairbanks NS AK
Landholding Agency: Air Force
Property Number: 189520029
Status: Unutilized
Reason: Extensive deterioration; Not accessible by road.

Bldg. 3024
Tatalina Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530001
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 3045
Tatalina Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530002
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 18
Lonely Dewline Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530003
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 23
Lonely Dewline Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530004

Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 1015
Kotzebue Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530005
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 1
Flaxman Island DEW Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530006
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 2
Flaxman Island DEW Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530007
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 3
Flaxman Island DEW Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530008
Status: Unutilized
Reason: Secured Area; Extensive Deterioration.

Bldg. 4100
Cape Romanzof Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530009
Status: Unutilized
Reason: Secured Area; Extnsive deterioration.

Bldg. 200
Cape Newenham Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530010
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 2166
Cape Newenham Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530011
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5500
Cape Newenham Long Range Radar Site
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530012
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 8
Barter Island
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530013
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 75
Barter Island
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530014
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 86
Barter Island
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530015
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 3060
Barter Island
Elmendorf AFB AK 99506–4420
Landholding Agency: Air Force
Property Number: 189530016
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 11–330
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530017
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area; Extensive deterioriation.

Bldg. 21–870
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530019
Status: Unutilized
Reason: Secured Area.

Bldg. 31–342
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530022
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 32–126
Elmendorf Air Force Base
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189530023
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area; Extensive deterioration.

Bldg. 21–737
Elmendorf Air Force Base
Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189540001
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 52–651
Elmendorf AFB
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189740004
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 132
Tin City Long Range Radar Site
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 189810003
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldgs. 1001, 211
Murphy Dome AF Station
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 189810004
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 28
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210126
Status: Excess
Within airport runway clear zone; Secured Area.

Bldg. 24
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210127
Status: Excess
Reason: Within airport runway clear zone; Secured Area; Within 2000 ft. of flammable or explosive material.

Bldg. 19
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210128
Status: Excess
Reason: Within airport runway clear zone; Secured Area; Other
Comment: Extensive deterioration.

Bldg. 94
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210129
Status: Excess
Reason: Secured Area; Other
Comment: Extensive deterioration.

Bldg. 18
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210132
Status: Excess
Reason: Secured Area; Within airport runway clear zone.
GSA Number: U–ALAS–655A.

Bldg. A512
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210133
Status: Excess
Reason: Secured Area; Within airport runway clear zone; Within 2000 ft. of flammable or explosive material

Bldg. R1, Holiday Beach
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310014
Status: Unutilized
Reason: Secured Area.

Bldg. S–3
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014

Landholding Agency: DOT
Property Number: 879310015
Status: Unutilized
Reason: Secured Area.

Bldg. S–16
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310016
Status: Unutilized
Reason: Secured Area.

Bldg. 82
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310017
Status: Unutilized
Reason: Secured Area.

Bldg. 86
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310018
Status: Unutilized
Reason: Secured Area.

Bldg. 98
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310019
Status: Unutilized
Reason: Secured Area.

Bldg. 524A
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310020
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.

Bldg. 624
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310021
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.

Housing Ketchikan (Naushon UPH)
3615 Baranof Avenue
Ketchikan Co: Ketchikan AK 99801–
Landholding Agency: DOT
Property Number: 879320005
Status: Unutilized
Reason: Extensive deterioration.

Old Petersburg Moorings
Cannery Wharf
Petersburg AK 99833–
Landholding Agency: DOT
Property Number: 879330002
Status: Unutilized
Reason: Extensive deterioration.

Building 408–B
USCG Support Center Kodiak
Kodiak Co: Kodiak Is. Bor. AK 99619–
Landholding Agency: DOT
Property Number: 879640001
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 456
Coast Guard—ISC Kodiak
Kodiak Co: Kodiak Borough AK 99615–
Landholding Agency: DOT
Property Number: 879710002
Status: Excess
Reason: Within airport runway clear zone; Secured Area; Extensive deterioration.

Bldg. 524A
USCG ISC Kodiak
Kodiak Co: Kodiak Is. Bor. AK 99619–
Landholding Agency: DOT
Property Number: 879710004
Status: Excess
Reason: Floodway; Secured Area.

Bldg. R13, USCG ISC Kodiak
Holiday Beach
Kodiak Co: Kodiak Is. Bor. AK 99619–
Landholding Agency: DOT
Property Number: 879720003
Status: Excess
Reason: Secured Area.

Bldg. 172, USCG ISC Kodiak
Kyman's Peninsula
Kodiak Co: Kodiak Is. Bor. AK 99619–
Landholding Agency: DOT
Property Number: 879720004
Status: Excess
Reason: Secured Area.

Bldg. 160, USCG ISC Kodiak
Comsta/Buskin Lake
Kodiak Co: Kodiak Is Bor AK 99619–
Landholding Agency: DOT
Property Number: 879720005
Status: Excess
Reason: Secured Area; Extensive deterioration.

Arizona

Facility 90002
Holbrook Radar Site
Holbrook Co: Navajo AZ 86025–
Landholding Agency: Air Force
Property Number: 189340049
Status: Unutilized
Reason: Within airport runway clear zone.

Facility #41
Gila Bend AF Auxiliary Field
Gila Bend Co: Maricopa AZ
Landholding Agency: Air Force
Property Number: 189710002
Status: Unutilized
Reason: Secured Area.

California

Bldg. 707 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010193
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 575 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010195
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 502 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010196
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 23 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010197
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 100
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010233
Status: Unutilized
Reason: Secured Area.

Bldg. 101
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010234
Status: Underutilized
Reason: Secured Area.

Bldg. 116
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010235
Status: Unutilized
Reason: Secured Area.

Bldg. 202
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010236
Status: Unutilized
Reason: Secured Area.

Bldg. 201
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010546
Status: Unutilized
Reason: Secured Area.

Bldg. 202
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010547
Status: Unutilized
Reason: Secured Area.

Bldg. 203
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010548
Status: Unutilized
Reason: Secured Area.

Bldg. 204
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–

Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010549
Status: Unutilized
Reason: Secured Area.

Bldg. 1823
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189130360
Status: Excess
Reason: Secured Area; within 2000 ft. of flammable or explosive material.

Bldg. 10312
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189210026
Status: Unutilized
Reason: Secured Area.

Bldg. 10503
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189210028
Status: Unutilized
Reason: Secured Area.

Bldg. 16104, Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246; Coast Rd., Pt Sal Rd.; Miguelito Cyn
Landholding Agency: Air Force
Property Number: 189230020
Status: Underutilized
Reason: Secured Area.

Bldg. 5428, Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310015
Status: Unutilized
Reason: Secured Area.

Bldg. 6407, Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310024
Status: Unutilized
Reason: Secured Area.

Bldg. 7304, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310030
Status: Unutilized
Reason: Secured Area.

Bldg. 8215
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330016
Status: Unutilized
Reason: Secured Area.

Bldg. 1988
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340003
Status: Unutilized
Reason: Other; Secured Area
Comment: Electrical Power Generator Bldg.

Bldg. 1324
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340006
Status: Unutilized
Reason: Secured Area.

Bldg. 1341
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340007
Status: Unutilized
Reason: Secured Area.

Bldg. 1955
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340008
Status: Unutilized
Reason: Secured Area.

Bldg. 5007
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340009
Status: Unutilized
Reason: Secured Area.

Bldg. 6008
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340014
Status: Unutilized
Reason: Secured Area.

Bldg. 6443
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340020
Status: Unutilized
Reason: Secured Area.

Bldg. 7306
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340022
Status: Unutilized
Reason: Secured Area.

Bldg. 16164
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340028
Status: Unutilized
Reason: Secured Area.

Bldg. 6521
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189410004
Status: Unutilized
Reason: Secured Area.

Bldg. 1203
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189440001
Status: Unutilized
Reason: Secured Area.

Bldg. 6438
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189510020
Status: Unutilized
Reason: Secured Area.

Bldg. 908
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189520018
Status: Excess
Reason: Other
Comment: Detached Latrine.

Bldg. 13004
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189520022
Status: Excess
Reason: Secured Area; Extensive deterioration.

Bldg. 422
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530029
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 431
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530030
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 470
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530031
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 480
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530032
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 6011

Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530035
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 6606
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530037
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 7307
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530039
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 10717
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530041
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 10722
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530043
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 13213
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530044
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 13215
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189530045
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 893
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 189620028
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 9350
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 189620030
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 13003
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 189620031
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 13222
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 189620032
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 815
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 189630040
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 1850
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 189630041
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 1853
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 189630042
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 1856
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 189630043
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 1865
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 189630044
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 1874
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 189630045
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 1875
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630046
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 1877
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630047
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 1879
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630048
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 1885
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630049
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 1898
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630050
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 06440
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630051
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 06445
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630052
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 13016
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630054
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 21160
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630055
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 00350
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189630058
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 06437
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189710014
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 10715
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189710016
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 13522
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189710018
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 13607
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189710019
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 21300
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189710020
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 23206
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189710021
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 00530
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189720007
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 00835
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189720008
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 00879
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189720009
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 1028
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189720010
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 01630
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189720011
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 01797
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189720012
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 01830
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189720013
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 01852
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189720014
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 06449
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189720015
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 10003
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189720016
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 10252
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189720017
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 11345
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189720019
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 13219
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189720020
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 13600
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189720021
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 14019
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189720022
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 14026
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189720023
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 16162
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189720024
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 00866
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189730001

Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 22300
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189730002
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 01310
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189740005
Status: Unutilized
Reason: Secured Area.

Bldg. 08412
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189740006
Status: Unutilized
Reason: Secured Area.

Bldg. 11153
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189740007
Status: Unutilized
Reason: Secured Area.

Bldg. 11154
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189740008
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 15001
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189740009
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 16158
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189740010
Status: Unutilized
Reason: Secured Area: Extensive deterioration.

10 Bldg.
USCG Station Humboldt Bay
Samoa Co: Humboldt CA 95564–9999
Landholding Agency: DOT
Property Number: 879440027
Status: Excess
Reason: Extensive deterioration
Comment: Land to be relinquished to BLM (Public Domain Land).

Colorado

Bldg. 00910
"Blue Barn"—Falcon Air Force Base
Falcon Co: El Paso CO 80912–
Landholding Agency: Air Force
Property Number: 189530046
Status: Underutilized
Reason: Secured Area.

Bldg. 1007
U.S. Air Force Academy
Colorado Springs Co: El Paso CO 80814–2400
Landholding Agency: Air Force
Property Number: 189730003
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration.

Bldg. 1008
U.S. Air Force Academy
Colorado Springs Co: El Paso CO 80814–2400
Landholding Agency: Air Force
Property Number: 189730004
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration.

Bldg. 9214
U.S. Air Force Academy
Colorado Springs Co: El Paso CO 80814–2400
Landholding Agency: Air Force
Property Number: 189730012
Status: Underutilized
Reason: Within airport runway clear zone; Secured Area.

Bldg. 9214
U.S. Air Force Academy
Colorado Springs Co: El Paso CO 80814–2400
Landholding Agency: Air Force
Property Number: 189730012
Status: Underutilized
Reason: Within airport runway clear zone; Secured Area.

Bldg. 7067
USAF Academy
Colorado Springs Co: El Paso CO 80840–
Landholding Agency: Air Force
Property Number: 189810005
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 8222
USAF Academy
Colorado Springs Co: El Paso CO 80840–
Landholding Agency: Air Force
Property Number: 189810006
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 9200
USAF Academy
Colorado Springs Co: El Paso CO 80840–
Landholding Agency: Air Force
Property Number: 189810007
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.

Alemeda Facility
350 S. Santa Fe Drive
Denver Co: Denver CO 80223–
Landholding Agency: DOT
Property Number: 879010014
Status: Unutilized
Reason: Other environmental
Comment: contamination.

Connecticut

Bldg. 10053
Bradley International Airport
East Granby Co: Hartford CT 06026–9309
Landholding Agency: Air Force
Property Number: 189640001
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Extensive deterioration.

Bldg. 13
Bradley International Airport
East Granby Co: Hartford CT 06026–9309
Landholding Agency: Air Force
Property Number: 189640002
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 10
Bradley International Airport
East Granby Co: Hartford CT 06026–9309
Landholding Agency: Air Force
Property Number: 189640003
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 5
Bradley International Airport
East Granby Co: Hartford CT 06026–9309
Landholding Agency: Air Force
Property Number: 189640004
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 4
Bradley International Airport
East Granby Co: Hartford CT 06026–9309
Landholding Agency: Air Force
Property Number: 189640005
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Hezekiah S. Ramsdell Farm
West Thompson Lake
North Grosvenordale Co: Windham CT 06255–9801
Landholding Agency: COE
Property Number: 319740001
Status: Unutilized
Reason: Floodway; Extensive deterioration.

Falkner Island Light
U.S. Coast Guard
Guilford Co: New Haven CT 06512–
Landholding Agency: DOT
Property Number: 879240031
Status: Unutilized
Reason: Floodway.

Florida

Bldg. 1179
Patrick Air Force Base
1179 School Avenue Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189240030
Status: Unutilized
Reason: Secured Area; Other
Comment: Extensive Deterioration.

Bldg. 575
Patrick Air Force Base Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189320004
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material; Within airport runway clear zone Other
Comment: Extensive Deterioration.

Facility 90523
Cape Canaveral AFS
Cape Canaveral AFS Co: Brevard FL
Landholding Agency: Air Force

Property Number: 189330001
Status: Underutilized
Comment: Secured Area.

Bldg. 921
Patrick Air Force Base
1179 School Avenue Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189430002
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 2613
Tyndall Air Force Base
Panama City Co: Bay FL 32403–
Landholding Agency: Air Force
Property Number: 189430004
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 2625
Tyndall Air Force Base
Panama City Co: Bay FL 32403–
Landholding Agency: Air Force
Property Number: 189430005
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 2639
Tyndall Air Force Base
Panama City Co: Bay FL 32403–
Landholding Agency: Air Force
Property Number: 189430006
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 2642
Tyndall Air Force Base
Panama City Co: Bay FL 32403–
Landholding Agency: Air Force
Property Number: 189430007
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

23 Family Housing
MacDill Auxiliary Airfield No. 1
Avon Park Co: Polk FL 33824–
Location: Include Bldgs: 448, 451 thru 470, 472 and 474
Landholding Agency: Air Force
Property Number: 189520006
Status: Excess
Reason: Within airport runway clear zone.

Bldg. 240
MacDill Auxiliary Airfield No. 1
Avon Park Co: Polk FL 33825–
Landholding Agency: Air Force
Property Number: 189520007
Status: Excess
Reason: Extensive deterioration.

Bldg. 243
Eglin Air Force Base
Eglin AFB Co: Oskaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540002
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 510
Eglin Air Force Base
Eglin AFB Co: Oskaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540003
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 521
Eglin Air Force Base
Eglin AFB Co: Oskaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540004
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 872
Eglin Air Force Base
Eglin AFB Co: Oskaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540005
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 30004
Eglin Air Force Base
Eglin AFB Co: Oskaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540006
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 12513
Eglin Air Force Base
Eglin AFB Co: Oskaloosa FL 32542–5000
Landholding Agency: Air Force
Property Number: 189540007
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Facility 36901
Cape Canaveral Air Station
Cape Canaveral Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189640006
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Facility 8816
Cape Canaveral Air Station
Cape Canaveral Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189640007
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 12734, Eglin AFB
Eglin AFB Co: Oskaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 189640011
Status: Unutilized
Reason: Secured Area.

Bldg. 12708, Eglin AFB
Eglin AFB Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 189640012
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 307
Patrick Air Force Base
Patrick AFB Co: Brevard FL
Landholding Agency: Air Force
Property Number: 189710022
Status: Unutilized
Reason: Secured Area.

Bldg. 315
Patrick Air Force Base
Patrick AFB Co: Brevard FL
Landholding Agency: Air Force
Property Number: 189710023
Status: Unutilized
Reason: Secured Area.

Bldg. 317
Patrick Air Force Base
Patrick AFB Co: Brevard FL
Landholding Agency: Air Force
Property Number: 189710024
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 318
Patrick Air Force Base
Patrick AFB Co: Brevard FL
Landholding Agency: Air Force
Property Number: 189710025
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 324
Patrick Air Force Base
Patrick AFB Co: Brevard FL
Landholding Agency: Air Force
Property Number: 189710026
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Facility No. 1114
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189710027
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Facility No. 1345
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189710028
Status: Unutilized
Reason: Secured Area.

Facility No. 1346
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189710029
Status: Unutilized
Reason: Secured Area.

Facility No. 1348
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189710030
Status: Unutilized
Reason: Secured Area.

Facility No. 7805
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189710031
Status: Unutilized
Reason: Secured Area.

Facility No. 7850
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189710032
Status: Unutilized
Reason: Secured Area.

Facility No. 10831
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189710033
Status: Unutilized

Reason: Secured Area.
Facility No. 15509
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189710034
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Facility No. 39764
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189710035
Status: Unutilized
Reason: Secured Area.
Facility No. 70580
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189710036
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Facility No. 70662
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189710037
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Facility No. 72920
Cape Canaveral Air Station
Cape Canaveral AS Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189710038
Status: Unutilized
Reason: Secured Area.
Bldg. 897, Eglin AFB
Eglin AFB Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 189710044
Status: Unutilized
Reason: Extensive deterioration.
Bldg. 895, Eglin AFB
Eglin AFB Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 189710045
Status: Unutilized
Reason: Extensive deterioration.
Facility No. 90520
Cape Canaveral AS
Cape Canaveral Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189720038
Status: Underutilized
Reason: Secured Area.
Bldg. 312, Patrick AFB
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189720039
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 10686
Eglin AFB
Eglin AFB Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 189740001
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 10563
Eglin AFB
Eglin AFB Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 189740002
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 10352
Eglin AFB
Eglin AFB Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 189740003
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Fac. No. 09010
Cape Canaveral Air Station
Cape Canaveral Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189810008
Status: Unutilized
Reason: Secured Area.
Fac. No. 15832
Cape Canaveral Air Station
Cape Canaveral Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189810009
Status: Unutilized
Reason: Secured Area.
Bldg. #3, Recreation Cottage
USCG Station
Marathon Co: Monroe FL 33050–
Landholding Agency: DOT
Property Number: 879210008
Status: Unutilized
Reason: Secured Area; Floodway.
Bldg. 103, Trumbo Point
Key West Co: Monroe FL 33040–
Landholding Agency: DOT
Property Number: 879230001
Status: Unutilized
Reason: Floodway; Secured Area.
Exchange Building
St. Petersburg Co: Pinellas FL 33701–
Landholding Agency: DOT
Property Number: 879410004
Status: Unutilized
Reason: Floodway.
9988 Keepers Quarters A
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440009
Status: Underutilized
Reason: Secured Area; Floodway.
9989 Keepers Quarters B
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440010
Status: Underutilized
Reason: Secured Area; Floodway.
9990 Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440011
Status: Underutilized
Reason: Secured Area; Floodway.
9991 Plant Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440012
Status: Underutilized
Reason: Secured Area; Floodway.
9992 Shop Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440013
Status: Underutilized
Reason: Secured Area; Floodway.
9993 Admin. Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440014
Status: Underutilized
Reason: Secured Area; Floodway.
9994 Water Pump Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440015
Status: Underutilized
Reason: Secured Area; Floodway.
Storage Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440016
Status: Underutilized
Reason: Secured Area; Floodway.
9999 Storage Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440017
Status: Underutilized
Reason: Secured Area; Floodway.
3 Bldgs. and Land
Peanut Island Station
Riveria Beach Co: Palm Beach FL 33419–0909
Landholding Agency: DOT
Property Number: 879510009
Status: Underutilized
Reason: Secured Area; Floodway.
Cape St. George Lighthouse Co: Franklin FL 32328–
Landholding Agency: DOT
Property Number: 879640002
Status: Unutilized
Reason: Extensive deterioration.

Georgia

Coast Guard Station
St. Simons Island Co: Glynn GA 31522–0577
Landholding Agency: DOT
Property Number: 879540002
Status: Unutilized
Reason: Extensive deterioration.

Idaho

Bldg. 1012
Mountain Home Air Force Base
7th Avenue
(See County) Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189030004
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.
Bldg. 923
Mountain Home Air Force Base
7th Avenue
(See County) Co: Elmore ID 83648–
Landholding Agency: Air Force

Property Number: 189030005
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 604
Mountain Home Air Force Base
Pine Street
(See County) Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189030006
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 229
Mountain Home Air Force Base
1st Avenue and A Street
Mt. Home AFB Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189040857
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; within airport runway clear zone.

Bldg. 4403
Mountain Home Air Force Base
Mountain Home Co: Elmore ID 83647–
Landholding Agency: Air Force
Property Number: 189520008
Status: Unutilized
Reason: Extensive deterioration.

Illinois

Calumet Harbor Station
U.S. Coast Guard
Chicago Co: Cook IL
Landholding Agency: DOT
Property Number: 879310005
Status: Excess
Reason: Secured Area.

Indiana

Brookville Lake—Bldg.
Browsville Rd. in Union
Liberty Co: Union IN 47353–
Landholding Agency: COE
Property Number: 319440004
Status: Excess
Reason: Extensive deterioration.

Iowa

Bldg. 00671
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 189310009
Status: Unutilized
Reason: Other
Comment: Fuel pump station.

Bldg. 00736
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 189310010
Status: Unutilized
Reason: Other
Comment: Pump station.

House, Tract 100
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530002
Status: Excess
Comment: Extensive deterioration.

Play House, Tract 100
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530003
Status: Excess
Comment: Extensive deterioration.

House, Tract 122
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530004
Status: Excess
Comment: Extensive deterioration.

Shed, Tract 122
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530005
Status: Excess
Comment: Extensive deterioration.

Garage, Tract 122
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530006
Status: Excess
Comment: Extensive deterioration.

Machine Shed, Tract 122
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530007
Status: Excess
Comment: Extensive deterioration.

Barn, Tract 122
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530008
Status: Excess
Comment: Extensive deterioration.

2-Car Garage, Tract 122
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530009
Status: Excess
Comment: Extensive deterioration.

Barn, Tract 128
Camp Dodge
Johnston Co: Polk IA 50131
Landholding Agency: COE
Property Number: 319530010
Status: Excess
Reason: Extensive deterioration.

Shed, Tract 128
Camp Dodge
Johnston Co: Polk IA 50131
Landholding Agency: COE
Property Number: 319530011
Status: Excess
Reason: Extensive deterioration.

House, Tract 129
Camp Dodge
Johnston Co: Polk IA 50131
Landholding Agency: COE
Property Number: 319530012
Status: Excess
Reason: Extensive deterioration.

Play House, Tract 129
Camp Dodge
Johnston Co: Polk IA 50131
Landholding Agency: COE
Property Number: 319530013
Status: Excess
Reason: Extensive deterioration.

Kennel, Tract 129
Camp Dodge
Johnston Co: Polk IA 50131
Landholding Agency: COE
Property Number: 319530014
Status: Excess
Reason: Extensive deterioration.

Corn Crib, Tract 129
Camp Dodge
Johnston Co: Polk IA 50131
Landholding Agency: COE
Property Number: 319530015
Status: Excess
Reason: Extensive deterioration.

Barn W, Tract 129
Camp Dodge
Johnston Co: Polk IA 50131
Landholding Agency: COE
Property Number: 319530016
Status: Excess
Reason: Extensive deterioration.

Barn E, Tract 129
Camp Dodge
Johnston Co: Polk IA 50131
Landholding Agency: COE
Property Number: 319530017
Status: Excess
Reason: Extensive deterioration.

Shed, Tract 129
Camp Dodge
Johnston Co: Polk IA 50131
Landholding Agency: COE
Property Number: 319530018
Status: Excess
Reason: Extensive deterioration.

House, Tract 130
Camp Dodge
Johnston Co: Polk IA 50131
Landholding Agency: COE
Property Number: 319530019
Status: Excess
Reason: Extensive deterioration.

Out House, Tract 130
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530020
Status: Excess
Reason: Extensive deterioration.

Chicken House, Tract 130
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530021
Status: Excess
Reason: Extensive deterioration.

Shed, Tract 130
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530022
Status: Excess
Reason: Extensive deterioration.

Barn, Tract 135
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530023
Status: Excess
Reason: Extensive deterioration.

Smokehouse, Tract 135
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE

Property Number: 319530024
Status: Excess
Reason: Extensive deterioration.

Shed, Tract 137
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530025
Status: Excess
Reason: Extensive deterioration.

Shed-White, Tract 137
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530026
Status: Excess
Reason: Extensive deterioration.

Leanto, Tract 137
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530027
Status: Excess
Reason: Extensive deterioration.

Tract 116, Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319630006
Status: Unutilized
Reason: Extensive deterioration.

Kentucky

Spring House
Kentucky River Lock and Dam No. 1
Highway 320
Carrollton Co: Carroll KY 41008–
Landholding Agency: COE
Property Number: 219040416
Status: Unutilized
Reason: Other
Comment: Spring House.

Building
Kentucky River Lock and Dam No. 4
1021 Kentucky Avenue
Frankfort Co: Franklin KY 40601–9999
Landholding Agency: COE
Property Number: 219040417
Status: Unutilized
Reason: Other
Comment: Coal Storage.

Building
Kentucky River Lock and Dam No. 4
1021 Kentucky Avenue
Frankfort Co: Franklin KY 40601–9999
Landholding Agency: COE
Property Number: 219040418
Status: Unutilized
Reason: Other
Comment: Storage.

Barn
Kentucky River Lock and Dam No. 3
Highway 561
Pleasureville Co: Henry KY 40057–
Landholding Agency: COE
Property Number: 219040419
Status: Underutilized
Reason: Other
Comment: 110 year old barn with crumbled foundation.

Latrine
Kentucky River Lock and Dam No. 3
Highway 561
Pleasureville Co: Henry KY 40057–
Landholding Agency: COE
Property Number: 319040009
Status: Unutilized
Reason: Other
Comment: Detached Latrine.

6-Room Dwelling
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120010
Status: Unutilized
Reason: Floodway.

2-Car Garage
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120011
Status: Unutilized
Reason: Floodway.

Office and Warehouse
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120012
Status: Unutilized
Reason: Floodway.

2 Pit Toilets
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Landholding Agency: COE
Property Number: 319120013
Status: Unutilized
Reason: Floodway.

Barn Structure
Hardingsburg Dr.
Owensboro Co: Daviess KY 42303–
Landholding Agency: DOT
Property Number: 879710001
Status: Unutilized
Reason: Floodway; Secured Area; Extensive deterioration.

Louisiana

Bldg. 3477
Barksdale Air Force Base
Davis Avenue
Barksdale AFB Co: Bossier LA 71110–5000
Landholding Agency: Air Force
Property Number: 189140015
Status: Unutilized
Reason: Secured Area.

Maine

Supply Bldg., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 879240005
Status: Unutilized
Reason: Floodway.

Base Exchange, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 879240006
Status: Unutilized
Reason: Floodway.

Engineering Shop, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 879240007
Status: Unutilized
Reason: Floodway.

Storage Bldg., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 879240008
Status: Unutilized
Reason: Floodway.

Squirrel Point Light
U.S. Coast Guard
Phippsburg Co: Sayadahoc ME 04530–
Landholding Agency: DOT
Property Number: 879240032
Status: Unutilized
Reason: Floodway.

Keepers Dwelling
Heron Neck Light, U.S. Coast Guard
Vinalhaven Co: Knox ME 04841–
Landholding Agency: DOT
Property Number: 879240035
Status: Unutilized
Reason: Extensive deterioration.

Fort Popham Light
Phippsburg Co: Sagadahoc ME 04562–
Landholding Agency: DOT
Property Number: 8797320024
Status: Unutilized
Reason: Extensive deterioration.

Nash Island Light
U.S. Coast Guard
Addison Co: Washington ME 04606–
Landholding Agency: DOT
Property Number: 879420005
Status: Unutilized
Reason: Other Comment: Inaccessible.

Bldg.—South Portland Base
U.S. Coast Guard
S. Portland Co: Cumberland ME 04106–
Landholding Agency: DOT
Property Number 879420006
Status: Unutilized
Reason: Secured Area.

Garage—Boothbay Harbor Stat.
Boothbay Harbor Co: Lincoln ME 04538–
Landholding Agency: DOT
Property Number: 879430001
Status: Unutilized
Reason: Secured Area.

Maryland

Bldg. 3542
Andrews AFB
Andrews AFB MD 20652–25177
Landholding Agency: Air Force
Property Number: 189810010
Status: Unutilized
Reason: Secured Area.

Bldg. 3543
Andrews AFB
Andrews AFB MD 20652–25177
Landholding Agency: Air Force
Property Number: 189810011
Status: Unutilized
Reason: Secured Area.

Bldgs. 38–39, 41, 43–46, 56
U.S. Coast Guard Yard
Baltimore MD 21226–
Landholding Agency: DOT
Property Number 879540005

Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration.

Bldg. 53
U.S. Coast Guard Yard
Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 879540006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration.

Bldg. 6
U.S. Coast Guard Yard, 2401 Hawkins Point Rd.
Baltimore MD 21226–1797
Landholding Agency: DOT
Property Number: 879620001
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 59
U.S. Coast Guard Yard, 2401 Hawkins Point Rd.
Baltimore MD 21226–1797
Landholding Agency: DOT
Property Number: 879620002
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Massachusetts

Bldg. 4, USCG Support Center
Commercial Street
Boston Co: Suffolk MA 02203–
Landholding Agency: DOT
Property Number: 879240001
Status: Underutilized
Reason: Secured Area.

Eastern Point Light
U.S. Coast Guard
Gloucester Co: Essex MA 01930–
Landholding Agency: DOT
Property Number: 879240029
Status: Unutilized
Reason: Floodway; Secured Area.

Storage Shed
Highland Light
N. Truro Co: Barnstable MA 02652–
DeSoto Johnson KS66018–
Landholding Agency: DOT
Property Number: 879430004
Status: Unutilized
Reason: Extensive deterioration.

Michigan

Bldg. 1005
Selfridge Air National Guard Base
1005 C. Street
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010526
Status: Unutilized
Reason: Secured Area.

Bldg. 1012
Selfridge Air National Guard Base
1012 A. Street
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010527
Status: Unutilized
Reason: Secured Area.

Bldg. 1041
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010528
Status: Unutilized
Reason: Secured Area.

Bldg. 1412
Selfridge Air National Guard Base
1412 Castle Avenue
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010529
Status: Unutilized
Reason: Secured Area.

Bldg. 1434
Selfridge Air National Guard Base
1434 Castle Avenue
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010530
Status: Unutilized
Reason: Secured Area.

Bldg. 1688
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Location:
Near South Perimeter Road, near Building 1694.
Landholding Agency: Air Force
Property Number: 189010531
Status: Unutilized
Reason: Secured Area.

Bldg. 1689
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Location: Near South Perimeter Road, near Building 1694.
Landholding Agency: Air Force
Property Number: 189010532
Status: Unutilized
Reason: Secured Area.

Bldg. 5670
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010533
Status: Unutilized
Reason: Secured Area.

Bldg. 71
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010810
Status: Excess
Reason: Other
Comment: sewage treatment and disposal facility.

Bldg. 99 (WATER WELL)
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010831
Status: Excess
Reason: Other
Comment: water well.

Bldg. 100 (WATER WELL)
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010832
Status: Excess
Reason: Other
Comment: water well.

Bldg. 118
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010875
Status: Excess
Reason: Other
Comment: Gasoline Station.

Bldg. 120
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010876
Status: Excess
Reason: Other
Comment: Gasoline Station.

Bldg. 166
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010877
Status: Excess
Reason: Other
Comment: Pump lift station.

Bldg. 168
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010878
Status: Excess
Reason: Other
Comment: Gasoline station.

Bldg. 69
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010889
Status: Excess
Reason: Other
Comment: Sewer pump facility.

Bldg. 2
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010890
Status: Excess
Reason: Other
Comment: Water pump station.

Facility 20
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630001
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 21
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630002
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 30
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630003
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 98
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force

Property Number: 189630004
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 103
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630005
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 116
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 129
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630007
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 152
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630008
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 156
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630009
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 181
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630010
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 509
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630011
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 562
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630012
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 573
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630013
Status: Unutilized
Reason: Secured Area.

Facility 801
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630014
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 827
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630015
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 832
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 833
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630017
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 1005
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630018
Status: Unutilized
Reason: Secured Area.

Facility 1012
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630019
Status: Unutilized
Reason: Secured Area.

Facility 1017
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630020
Status: Unutilized
Reason: Secured Area.

Facility 1025
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630021
Status: Unutilized
Reason: Secured Area.

Facility 1031
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630022
Status: Unutilized
Reason: Secured Area.

Facility 1041
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630023
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 1445
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630024
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 1514
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630025
Status: Unutilized
Reason: Secured Area.

Facility 1575
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630026
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 1576
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630027
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 1578
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630028
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 2580
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630029
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 1582
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630030
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 1583
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630031
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 1584
Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630032
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 1585

Selfridge AFB
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189630033
Status: Unutilized
Reason: Secured Area.

Facilities 246, 248, 252–254
Selfridge Air National Guard
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189710039
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

7 Facilities
Selfridge Air National Guard
#240, 242, 244, 245, 247, 250, 251
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189710040
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facilities 237, 238
Selfridge Air National Guard
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189710041
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

5 Facilities
Selfridge Air National Guard
#228, 230, 232, 234, 236
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189710042
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Facility 114
Selfridge Air National Guard
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189710043
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 402, U.S. Air Station
Traverse City Co: Grand Traverse MI 49684–3586
Landholding Agency: DOT
Property Number: 879220001
Status: Unutilized
Reason: Extensive deterioration.

Quarters B
U.S. Coast Guard
Marquette MI 49855–
Landholding Agency: DOT
Property Number: 879740001
Status: Unutilized
Reason: Secured Area.

Mississippi

Natchez Moorings
82 L.E. Berry Road
Natchez Co: Adams MS 39121–
Landholding Agency: DOT
Property Number: 879340002
Status: Unutilized
Reason: Extensive deterioration.

Missouri

Tract 2222
Stockton Project
Aldrich Co: Polk MO 65601–
Landholding Agency: COE
Property Number: 319510001
Status: Excess
Reason: Extensive deterioration.

Barn, Longview Lake
Kansas City Co: Jackson MO 64134–
Landholding Agency: COE
Property Number: 319620001
Status: Excess
Reason: Extensive deterioration.

Montana

Bldg. 529
Malmstrom Air Force Base
Malmstrom AFB Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189510011
Status: Underutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.

Bldg. 1189, Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189540013
Status: Underutilized
Reason: Secured Area.

Bldg. 1308, Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189540014
Status: Underutilized
Reason: Secured Area.

Bldg. 547
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189620025
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 23
Great Falls ANG Station
Great Falls Co: Cascade MT 59404–
Landholding Agency: Air Force
Property Number: 189720030
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 24
Great Falls ANG Station
Great Falls Co: Cascade MT 59404–
Landholding Agency: Air Force
Property Number: 189720031
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 35
Great Falls ANG Station
Great Falls Co: Cascade MT 59404–
Landholding Agency: Air Force
Property Number: 189720033
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 1090
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189720035
Status: Excess
Reason: Secured Area.

Bldg. 1091
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189720036
Status: Excess
Reason: Secured Area.

Bldg. 360
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189720037
Status: Excess
Reason: Secured Area.

Bldg. 3070
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189740011
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 230
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189810012
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 1065
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189810013
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 1305
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189810014
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 42
Great Falls IAP
Great Falls Co: Cascade MT 59404–5570
Landholding Agency: Air Force
Property Number: 189810015
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Nebraska

Offutt Communications Annex—#3
Offutt Air Force Base
Scribner Co: Dodge NE 68031–
Landholding Agency: Air Force
Property Number: 189210006
Status: Unutilized
Reason: Other
Comment: Former sewage lagoon.

Bldg. 637
Lincoln Municipal Airport
2301 West Adams
Lincoln Co: Lancaster NE 68524–
Landholding Agency: Air Force
Property Number: 189230021
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 639
Lincoln Municipal Airport
2301 West Adams
Lincoln Co: Lancaster NE 68524–
Landholding Agency: Air Force
Property Number: 189230022

Status: Unutilized
Reason: Extensive deterioration.

Bldg. 31
Offutt Air Force Base
Sac Boulevard
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240007
Status: Unutilized
Reason: Secured Area.

Bldg. 311
Offutt Air Force Base
Nelson Drive
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240008
Status: Unutilized
Reason: Secured Area.

Bldg. 401
Offutt Air Force Base
Custer Drive
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240009
Status: Unutilized
Reason: Secured Area.

Bldg. 416
Offutt Air Force Base
Sherman Turnpike
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240010
Status: Unutilized
Reason: Secured Area.

Bldg. 417
Offutt Air Force Base
Sherman Turnpike
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240011
Status: Unutilized
Reason: Secured Area.

Bldg. 545
Offutt Air Force Base
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240012
Status: Unutilized
Reason: Secured Area.

Bldg. 21
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320058
Status: Excess
Reason: Other
Comment: Generator.

Bldg. 4, Hastings Family Hsg.
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320059
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 500
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320060
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 502
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320061
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 504
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320062
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 506
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320063
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 507
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320064
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 509
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320065
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 511
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320066
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 512
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320067
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 515
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320068
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 517
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320069
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 519
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320070
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 521
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320071
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 523
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320072
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 525
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320073
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 526
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320074
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 529
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320075
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 531
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320076
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 533
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–

Landholding Agency: Air Force
Property Number: 189320077
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 534
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320078
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 536
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320079
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 538
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320080
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 541
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320081
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 542
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320082
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 544
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320083
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 546
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320084
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 549
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320085
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 550
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320086
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 552
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320087
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 553
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320088
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 555
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320089
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 557
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320090
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 558
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320091
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 560
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320092
Status: Excess
Reason: Other
Comment: Contamination.

27 Detached Garages
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320093
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 17
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320094
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 16
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320095
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 18
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320096
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 6
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320097
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 547
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320098
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 604
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320099
Status: Excess
Reason: Other
Comment: Contamination.

Bldg. 686
Offutt Air Force Base
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189510021
Status: Unutilized
Reason: Secured Area.

Bldg. 439
Offutt Air Force Base
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189510022
Status: Unutilized
Reason: Secured Area.

Bldg. 606
NE Air National Guard
Lincoln Co: Lancaster NE 68524–1888
Landholding Agency: Air Force
Property Number: 189720028
Status: Underutilized
Reason: Floodway; Secured Area.

Bldg. 675

NE Air National Guard
Lincoln Co: Lancaster NE 68524–1888
Landholding Agency: Air Force
Property Number: 189720029
Status: Unutilized
Reason: Floodway; Secured Area.

New Hampshire

Bldg. 101
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320005
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 102
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 104
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320007
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 116
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189540016
Status: Unutilized
Reason: Extensive deterioration.

New Jersey

Piers and Wharf
Station Sandy Hook
Highlands Co: Monmouth NJ 07732–5000
Landholding Agency: DOT
Property Number: 879240009
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Chapel Hill Front Range Light Tower
Middletown Co: Monmouth NJ 07748–
Landholding Agency: DOT
Property Number: 879440002
Status: Unutilized
Reason: Other
Comment: Skeletal tower.

Bldg. 103
U.S. Coast Guard Station Sandy Hook
Middleton Co: Monmouth NJ 07737–
Landholding Agency: DOT
Property Number: 879610002
Status: Unutilized
Reason: Secured Area.

New Mexico

Bldg. 831
833 CSG/DEER
Holloman AFB Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189130333
Status: Unutilized
Reason: Secured Area.

Bldg. 21
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240032
Status: Unutilized
Reason: Secured Area.

Bldg. 80
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240033
Status: Unutilized
Reason: Secured Area.

Bldg. 98
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240034
Status: Unutilized
Reason: Secured Area.

Bldg. 324
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240035
Status: Unutilized
Reason: Secured Area.

Bldg. 598
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240036
Status: Unutilized
Reason: Secured Area.

Bldg. 801
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240037
Status: Unutilized
Reason: Secured Area.

Bldg. 802
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240038
Status: Unutilized
Reason: Secured Area.

Bldg. 1095
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240039
Status: Unutilized
Reason: Secured Area.

Bldg. 1096
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240040
Status: Unutilized
Reason: Secured Area.

Facility 321
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240041
Status: Unutilized
Reason: Secured Area.

Facility 75115
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240042
Status: Unutilized
Reason: Secured Area.

Bldg. 874
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189320041
Status: Unutilized
Reason: Secured Area; Other.
Comment: Extensive Deterioration.

Bldg. 1258
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189342042
Status: Unutilized
Reason: Secured Area; Other.
Comment: Extensive Deterioration.

Bldg. 134
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430014
Status: Unutilized
Reason: Secured Area.

Bldg. 640
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430015
Status: Unutilized
Reason: Secured Area.

Bldg. 703
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430016
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.

Bldg. 813
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430017
Status: Unutilized
Reason: Secured Area.

Bldg. 821
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430018
Status: Unutilized
Reason: Secured Area.

Bldg. 829
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430019
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.

Bldg. 867
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430020
Status: Unutilized
Reason: Secured Area.

Bldg. 884
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430021
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.

Bldg. 886
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430022
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.

Bldg. 908
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430023
Status: Unutilized
Reason: Secured Area.

Bldg. 599
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189510001
Status: Unutilized
Reason: Secured Area.

Bldg. 600
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189510002
Status: Unutilized
Reason: Secured Area.

Bldg. 599
Holloman AFB Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189610007
Status: Unutilized
Reason: Secured Area.

Bldg. 600
Holloman AFB Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189610008
Status: Unutilized
Reason: Secured Area.

Bldg. 995
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189610009
Status: Unutilized
Reason: Secured Area.

Bldg. 1257
Holloman AFB Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189740012
Status: Unutilized
Reason: Secured Area.

Bldg. 332
Holloman AFB Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189740013
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 205
Holloman AFB Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189740014
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

New York

Bldg. 626 (Pin: RVKQ)
Niagara Falls International Airport
914th Tactical Airlift Group
Niagara Falls Co: Niagara NY 14303–5000
Landholding Agency: Air Force
Property Number: 189010075
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 272
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189140022
Status: Excess
Reason: Secured Area.

Bldg. 888
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189140023
Status: Excess
Reason: Secured Area.

Facility 814, Griffiss AFB
NE of Weapons Storage Area
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189230001
Status: Excess
Reason: Within airport runway clear zone; Secured Area.

Facility 806, Griffiss AFB
Perimeter Road
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189230002
Status: Excess
Reason: Within airport runway clear zone; Secured Area.

Facility 807, Griffiss AFB
Perimeter Road
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189230003
Status: Excess
Reason: Within airport runway clear zone; Secured Area.

Facility 126
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240020
Status: Unutilized
Reason: Secured Area.

Facility 127
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240021
Status: Unutilized
Reason: Secured Area.

Facility 135
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240022
Status: Unutilized
Reason: Secured Area.

Facility 137
Griffiss Air Force Base
Otis Street
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240023
Status: Unutilized
Reason: Secured Area.

Facility 138
Griffiss Air Force Base
Otis Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240024
Status: Unutilized
Reason: Secured Area.

Facility 173
Griffiss Air Force Base
Selfridge Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240025
Status: Unutilized
Reason: Secured Area.

Facility 261
Griffiss Air Force Base
McDill Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240026
Status: Unutilized
Reason: Secured Area.

Facility 306
Griffiss Air Force Base
205 Chanute Street
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240027
Status: Unutilized
Reason: Secured Area.

Facility 1200
Griffiss Air Force Base
Donaldson Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240028
Status: Unutilized
Reason: Secured Area.

Facility 841
Griffiss Air Force Base
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189330097
Status: Unutilized
Reason: Secured Area.

Bldg. 740
Niagara Falls Air Force Reserve
Niagara Falls Co: Niagara NY 14304–5001
Landholding Agency: Air Force
Property Number: 189720026
Status: Unutilized
Reason: Within airport runway clear zone; Floodway; Secured Area.

Bldg. 629
Hancock Field
Syracuse Co: Onondaga NY 13211–
Landholding Agency: Air Force
Property Number: 189730006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 604
Hancock Field
Syracuse Co: Onondaga NY 13211–
Landholding Agency: Air Force
Property Number: 189810016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 606
Hancock Field

Syracuse Co: Onondaga NY 13211–
Landholding Agency: Air Force
Property Number: 189810017
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 615
Hancock Field
Syracuse Co: Onondaga NY 13211–
Landholding Agency: Air Force
Property Number: 189810018
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 629
Hancock Field
Syracuse Co: Onondaga NY 13211–
Landholding Agency: Air Force
Property Number: 189810019
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 630
Hancock Field
Syracuse Co: Onondaga NY 13211–
Landholding Agency: Air Force
Property Number: 189810020
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 635
Hancock Field
Syracuse Co: Onondaga NY 13211–
Landholding Agency: Air Force
Property Number: 189810021
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 640
Hancock Field
Syracuse Co: Onondaga NY 13211–
Landholding Agency: Air Force
Property Number: 189810022
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 733
Hancock Field
Syracuse Co: Onondaga NY 13211–
Landholding Agency: Air Force
Property Number: 189810023
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 514
Niagara Falls ARS
Niagara Falls Co: Niagara NY 14304–5001
Landholding Agency: Air Force
Property Number: 189810024
Status: Unutilized
Reason: Floodway; Secured Area; Extensive deterioration.

Warehouse
Whitney Lake Project
Whitney Point Co: Broome NY 13862–0706
Landholding Agency: COE
Property Number: 31930007
Status: Unutilized
Reason: Extensive deterioration.

2 Buildings
Ant Saugerties
Saugerties Co: Ulster NY 12477–
Landholding Agency: DOT
Property Number: 879230005
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 606, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 879240020
Status: Unutilized
Reason: Secured Area.

Bldg. 607, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 879240021
Status: Unutilized
Reason: Secured Area; Other Comment: Extensive deterioration.

Bldg. 605, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 879240022
Status: Unutilized
Reason: Secured Area; Other Comment: Extensive deterioration.

Eatons Neck Station
U.S. Coast Guard
Huntington Co: Suffolk NY 11743–
Landholding Agency: DOT
Property Number: 879310003
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 517, USCG Support Center
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 879320025
Status: Unutilized
Reason: Secured Area.

Bldg. 138
U.S. Coast Guard Support Center
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 879410003
Status: Unutilized
Reason: Secured Area.

Bldg. 830
U.S. Coast Guard
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 879420004
Status: Unutilized
Reason: Secured Area.

Bldg. 8
Rosebank—Coast Guard Housing
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 879530009
Status: Unutilized
Reason: Secured Area.

Bldg. 7
Rosebank—Coast Guard Housing
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 879530010
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 222
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 879620003
Status: Unutilized
Reason: Secured Area.

Bldg. 223
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 879620004
Status: Unutilized
Reason: Secured Area.

Bldg. 205
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 879620005
Status: Unutilized
Reason: Secured Area.

Bldg. 9
U.S. Coast Guard—Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 879630027
Status: Excess
Reason: Secured Area.

Bldg. 10
U.S. Coast Guard—Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 879630028
Status: Excess
Reason: Secured Area.

Bldg. 206, Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 879630029
Status: Excess
Reason: Secured Area.

North Carolina

Bldg. 4230—Youth Center
Cannon Ave.
Goldsboro Co: Wayne NC 27531–5005
Landholding Agency: Air Force
Property Number: 189120233
Status: Underutilized
Reason: Secured Area.

Bldg. 607, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 189330041
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 910, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189420022
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 912, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189420023
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 914, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189420024
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 633, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–
Landholding Agency: Air Force
Property Number: 189540019
Status: Unutilized

Reason: Secured Area; Extensive deterioration.

Group Cape Hatteras
Boiler Plant
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 89240018
Status: Unutilized
Reason: Secured Area.

Group Cape Hatteras
Bowling Alley
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 879240019
Status: Unutilized
Reason: Secured Area.

Bldg. 21, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co.: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320010
Status: Unutilized
Reason: Floodway; Secured Area.

Bldg. 22, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320011
Status: Unutilized
Reason: Floodway; Secured Area.

Bldg. 25, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320012
Status: Unutilized
Reason: Floodway; Secured Area.

Bldg. 27, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320013
Status: Unutilized
Reason: Floodway; Secured Area.

Bldg. 32, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320014
Status: Unutilized
Reason: Floodway; Secured Area.

Bldg. 67, USCG Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320016
Status: Unutilized
Reason: Secured Area.

Bldg. 69, USCG Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320017
Status: Unutilized
Reason: Secured Area.

Bldg. 71, USCG Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320018
Status: Unutilized
Reason: Secured Area.

Bldg. 73, USCG Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320019
Status: Unutilized
Reason: Secured Area.

Bldg. 54
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 879340004
Status: Unutilized
Reason: Secured Area.

Bldg. 83
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 879340005
Status: Unutilized
Reason: Secured Area.

Water Tanks
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 879340006
Status: Unutilized
Reason: Secured Area.

USCG Gentian (WLB 290)
Fort Macon State Park
Atlantic Beach Co: Carteret NC 27601–
Landholding Agency: DOT
Property Number: 879420007
Status: Unutilized
Reason: Secured Area.

Unit #71
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530011
Status: Unutilized
Reason: Floodway.

Unit #72
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530012
Status: Unutilized
Reason: Floodway.

Unit #73
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530013
Status: Unutilized
Reason: Floodway.

Unit #74
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530014
Status: Underutilized
Reason: Floodway.

Unit #75
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530015
Status: Underutilized
Reason: Floodway.

Unit #63
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530016
Status: Underutilized
Reason: Floodway.

Unit #64
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530017
Status: Underutilized
Reason: Floodway.

Unit #76
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530018
Status: Underutilized
Reason: Floodway.

Unit #68
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530019
Status: Underutilized
Reason: Floodway.

Unit #69
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530020
Status: Underutilized
Reason: Floodway.

Unit #70
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530021
Status: Underutilized
Reason: Floodway.

Unit #77
Buxton Annex, Old Lighthouse Road
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530022
Status: Underutilized
Reason: Floodway.

Unit #78
Buxton Annex, Old Lighthouse Road
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530023
Status: Underutilized
Reason: Floodway.

Bldg. 45
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879630020
Status: Unutilized
Reason: Secured Area.

Bldg. 47
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879630021
Status: Unutilized
Reason: Secured Area.

Bldg. 53
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006

Landholding Agency: DOT
Property Number: 879630022
Status: Unutilized
Reason: Secured Area.

Bldg. 57
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879630023
Status: Unutilized
Reason: Secured Area.

Bldg. 59
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879630024
Status: Unutilized
Reason: Secured Area.

Bldg. 92
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879630025
Status: Unutilized
Reason: Secured Area.

Bldg. 94, Coast Guard
Elizabeth City Co: Pasquotank NC 27909–
Landholding Agency: DOT
Property Number: 879640004
Status: Unutilized
Reason: Secured Area.

North Dakota

Bldg. 422
Minot Air Force Base
Minot Co: Ward ND 58705–
Landholding Agency: Air Force
Property Number: 189010724
Status: Underutilized
Reason: Secured Area.

Bldg. 50
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310107
Status: Excess
Reason: Other
Comment: garbage incinerator.

Bldg. 119
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320034
Status: Unutilized
Reason: Secured Area.

Bldg. 526
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320038
Status: Unutilized
Reason: Secured Area.

Bldg. 895
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320039
Status: Unutilized
Reason: Secured Area.

Ohio

Lab
Ohio River Division Laboratories
Mariemont Co: Hamilton OH 15227–4217
Landholding Agency: COE
Property Number: 319510002
Status: Unutilized
Reason: Secured Area.

Storage Facility
Ohio River Division Laboratories
Mariemont Co: Hamilton OH 15227–4217
Landholding Agency: COE
Property Number: 319510003
Status: Unutilized
Reason: Secured Area.

Office Building
Ohio River Division Laboratories
Mariemont Co: Hamilton OH 15227–4217
Landholding Agency: COE
Property Number: 319510004
Status: Unutilized
Reason: Secured Area.

Oregon

Mooring/Boathouse
Station Chetco River
Brookings Co: Curry OR 97415–
Landholding Agency: DOT
Property Number: 879630026
Status: Excess
Reason: Floodway.

Puerto Rico

NAFA Warehouse
U.S. Coast Guard Air Station Borinquen
Aquadilla PR 00604–
Landholding Agency: DOT
Property Number: 879310011
Status: Unutilized
Reason: Secured Area.

Storage Equipment Bldg.
U.S. Coast Guard Air Station Borinquen
Aquadilla PR 00604–
Landholding Agency: DOT
Property Number: 879330001
Status: Unutilized
Reason: Secured Area.

Bldg. 115
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510001
Status: Unutilized
Reason: Secured Area.

Bldg. 117
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510002
Status: Unutilized
Reason: Secured Area.

Bldg. 118
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510003
Status: Unutilized
Reason: Secured Area.

Bldg. 119
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510004
Status: Unutilized
Reason: Secured Area.

Bldg. 120
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510005
Status: Unutilized
Reason: Secured Area.

Bldg. 122
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510006
Status: Unutilized
Reason: Secured Area.

Bldg. 128
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510007
Status: Unutilized
Reason: Secured Area.

Bldg. 129
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510008
Status: Unutilized
Reason: Secured Area.

Rhode Island

Station Point Judith Pier
Narranganset Co: Washington RI 02882–
Landholding Agency: DOT
Property Number: 879310002
Status: Unutilized
Reason: Extensive deterioration.

South Dakota

Bldg. 200, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320048
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 201, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320049
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 203, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320050
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 204, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320051
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 205, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320052
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 206, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force

Property Number: 189320053
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 00605
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320054
Status: Underutilized
Reason: Secured Area.

Bldg. 88470
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340033
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 7506
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340037
Status: Unutilized
Reason: Secured Area.

Bldg. 1111, Ellsworth AFB
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189610005
Status: Unutilized
Reason: Secured Area.

Bldg. 111
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189730007
Status: Unutilized
Reason: Secured Area.

Bldg. 7530
Ellsworth AFB
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189810025
Status: Unutilized
Reason: Secured Area.

Tennessee

Bldg. 204
Cordell Hull Lake and Dam Project
Defeated Creek Recreation Area
Carthage Co: Smith TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 319011499
Status: Unutilized
Reason: Floodway.

Tract 2618 (Portion)
Cordell Hull Lake and Dam Project
Roaring River Recreation Area
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 135
Landholding Agency: COE
Property Number: 319011503
Status: Underutilized
Reason: Floodway.

Water Treatment Plant
Dale Hollow Lake & Dam Project
Obey River Park, State Hwy 42
Livingston Co: Clay TN 28251–
Landholding Agency: COE
Property Number: 319140011
Status: Excess
Reason: Other
Comment: water treatment plant.

Water Treatment Plant
Dale Hollow Lake & Dam Project
Lillydale Recreation Area, State Hwy 53
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 319140012
Status: Excess
Reason: Other
Comment: water treatment plant.

Water Treatment Plant
Dale Hollow Lake & Dam Project
Willow Grove Recreational Area, Hwy No. 53
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 319140013
Status: Excess
Reason: Other
Comment: water treatment plant.

Texas

Bldg. 00153
Reese Air Force Base
Lubbock Co: Lubbock TX 79489–5000
Landholding Agency: Air Force
Property Number: 189540017
Status: Unutilized
Reason: Secured Area

Bldg. 03130
Reese Air Force Base
Lubbock Co: Lubbock TX 79489–5000
Landholding Agency: Air Force
Property Number: 189540018
Status: Unutilized
Reason: Secured Area.

Old Exchange Bldg.
U.S. Coast Guard
Galveston Co: Galveston TX 77553–3001
Landholding Agency: DOT
Property Number: 879310012
Status: Unutilized
Reason: Secured Area.

WPB Building
Station Port Isabel
Coast Guard Station
South Padre Island Co: Cameron TX 78597–5497
Landholding Agency: DOT
Property Number: 879530002
Status: Unutilized
Reason: Floodway.

Aton Shops Building
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 879530003
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.

WPB Storage Shed
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 879530004
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.

Flammable Storage Building
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 879530005
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.

Battery Storage Building
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 879530006
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.

Boat House
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 879530007
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.

Small Boat Pier
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 879530008
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.

Bldg. 108
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 879630008
Status: Unutilized
Reason: Extensive deterioration.

Utah

Bldg. 789
Hill Air Force Base
(See County) Co: Davis UT 84056–
Landholding Agency: Air Force
Property Number: 189040859
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.

Vermont

Facility 100
Burlington IAP
Burlington Co: Chittenden VT 05403–5872
Landholding Agency: Air Force
Property Number: 189730008
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Depot Street
Downtown at the Waterfront
Burlington Co: Chittenden VT 05401–5226
Landholding Agency: DOT
Property Number: 879220003
Status: Excess
Reason: Floodway.

Virginia

Bldg. 417
Camp Pendleton
Virginia Beach VA 23451–
Landholding Agency: Air Force
Property Number: 189710003
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 418
Camp Pendleton
Virginia Beach VA 23451–
Landholding Agency: Air Force
Property Number: 189710004
Status: Unutilized
Reason: Extensive deterioration.

Bldg. C13
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy

Property Number: 779810054
Status: Excess
Reason: Extensive deterioration.
Bldg. 1503
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810055
Status: Unutilized
Reason: Extensive deterioration.
Bldg. 1502
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810056
Status: Excess
Reason: Extensive deterioration.
Bldg. C6
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810057
Status: Excess
Reason: Extensive deterioration.
Bldg. 1438
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810058
Status: Excess
Reason: Extensive deterioration.
Bldg. C8
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810059
Status: Excess
Reason: Extensive deterioration.
Bldg. 1437
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810060
Status: Excess
Reason: Extensive deterioration.
Bldg. I
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810061
Status: Excess
Reason: Extensive deterioration.
Bldg. 1408
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810062
Status: Excess
Reason: Extensive deterioration.
Bldg. J
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810063
Status: Excess
Reason: Extensive deterioration.
Bldg. 1441
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810064
Status: Excess
Reason: Extensive deterioration.
Bldg. K
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810065
Status: Excess
Reason: Extensive deterioration.
Bldg. G9
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810066
Status: Excess
Reason: Extensive deterioration.
Bldg. L
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810067
Status: Excess
Reason: Extensive deterioration.
Bldg. G10
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810068
Status: Excess
Reason: Extensive deterioration.
Bldg. O
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810069
Status: Excess
Reason: Extensive deterioration.
Bldg. 1410
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810070
Status: Excess
Reason: Extensive deterioration.
Bldg. P
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810071
Status: Excess
Reason: Extensive deterioration.
Bldg. G13
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810072
Status: Excess
Reason: Extensive deterioration.
Bldg. 02
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810073
Status: Excess
Reason: Extensive deterioration.
Bldg. G17
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810074
Status: Excess
Reason: Extensive deterioration.
Bldg. Q
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810075
Status: Excess
Reason: Extensive deterioration.
Bldg. G14
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810076
Status: Excess
Reason: Extensive deterioration.
Bldg. R
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810077
Status: Excess
Reason: Extensive deterioration.
Bldg. G15
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810078
Status: Excess
Reason: Extensive deterioration.
Bldg. S
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810079
Status: Excess
Reason: Extensive deterioration.
Bldg. 1409
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810080
Status: Excess
Reason: Extensive deterioration.
Bldg. T
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810081
Status: Excess
Reason: Extensive deterioration.
Bldg. 1411
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779810082
Status: Excess
Reason: Extensive deterioration.
Bldg. 052 & Tennis Court
USCG Reserve Training Center
Yorktown Co: York VA 23690–
Landholding Agency: DOT
Property Number: 879230004
Status: Excess
Reason: Secured Area.
Admin. Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361–510
Landholding Agency: DOT
Property Number: 879240014
Status: Unutilized
Reason: Secured Area.
Little Creek Station
Navamphib Base, West Annex, U.S. Coast Guard
Norfolk Co: Princess Anne VA 23520–
Landholding Agency: DOT
Property Number: 879310004
Status: Unutilized
Reason: Secured Area.
Operations Bldg.

U.S. Coast Guard Group Hampton Roads
Portsmouth VA 23703–
Landholding Agency: DOT
Property Number: 879710003
Status: Unutilized
Reason: Secured Area.

Washington

Bldg. 100, Geiger Heights
Grove and Hallet Streets
Fairchild AFB Co: Spokane WA 99204–
Landholding Agency: Air Force
Property Number: 189210004
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2000
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310058
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.

Facility 2450
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310065
Status: Unutilized
Reason: Secured Area; within 2000 ft. of flammable or explosive material.

Bldg. 1, Waste Annex
West of Craig Road Co: Spokane WA 99022–
Landholding Agency: Air Force
Property Number: 189320043
Status: Unutilized
Reason: Secured Area.

Pistol Range Bldg.
USCG Port Angeles
Port Angeles Co: Clallam WA 98362–0159
Landholding Agency: DOT
Property Number: 879630030
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area; Extensive deterioration.

Wisconsin

Rawley Point Light
Two Rivers Co: Manitowoc WI
Landholding Agency: DOT
Property Number: 879540004
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Wyoming

Bldg. 31
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010198
Status: Unutilized
Reason: Secured Area.

Bldg. 34
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010199
Status: Unutilized
Reason: Secured Area.

Bldg. 37
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010200
Status: Unutilized
Reason: Secured Area.

Bldg. 284
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010201
Status: Unutilized
Reason: Secured Area.

Bldg. 385
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010202
Status: Unutilized
Reason: Secured Area.

Bldg. 2780
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189240005
Status: Unutilized
Reason: Secured Area.

Bldg. 2781
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189240006
Status: Unutilized
Reason: Secured Area.

Bldg. 386
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189620021
Status: Unutilized
Reason: Secured Area.

Bldg. 831
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189620022
Status: Unutilized
Reason: Secured Area.

Bldg. 832
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189620023
Status: Unutilized
Reason: Secured Area.

Bldg. 833
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189620024
Status: Unutilized
Reason: Secured Area.

Bldg. 920
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189640016
Status: Unutilized
Reason: Secured Area.

Bldgs. 2565–2571
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189720001
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldgs. 2564, 2572
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189720002
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

9 Bldgs.
F.E. Warren AFB
2982–2986, 2989, 2991, 2994–2995
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189720003
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

6 Bldgs.
F.E. Warren AFB
2768, 2772, 2773, 2993, 2980, 2988
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189720004
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

8 Bldgs.
F.E. Warren AFB
2784, 2762–2764, 2769, 2775, 2777, 2981
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189720005
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

8 Bldgs.
F.E. Warren AFB
2785–2786, 2770–2771, 2774, 2776, 2990, 2992
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189720006
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Land (by State)

Alaska

Campion Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010430
Status: Unutilized
Reason: Other; Isolated area; Not accessible by road
Comment: isolated and remote area; Arctic environment.

Lake Louise Recreation
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010431
Status: Unutilized
Reason: Other; Isolated area; Not accessible by road
Comment: Isolated and remote area; Arctic coast.

Nikolski Radio Relay Site
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010432

Status: Unutilized
Reason: Other; Isolated area; Not accessible by road
Comment: Isolated and remote area; Arctic coast.

Russian Creek Aggregate Site
USCG Support Center Kodiak
Kodiak Co: Kodiak AK 99619–
Landholding Agency: DOT
Property Number: 879440025
Status: Excess
Reason: Floodway.

Sargent Creek Aggregate Site
USCG Support Center Kodiak
Kodiak Co: Kodiak AK 99619–
Landholding Agency: DOT
Property Number: 879440026
Status: Excess
Reason: Floodway.

Land—Sanak Island
106+ acres
Sanak Island Co: Sanak Harbor AK
Landholding Agency: DOT
Property Number: 879640003
Status: Unutilized
Reason: Other
Comment: Inaccessible.

Florida

Land
MacDill Air Force Base
6601 S. Manhattan Avenue
Tampa Co: Hillsborough FL 33608–
Landholding Agency: Air Force
Property Number: 189030003
Status: Excess
Reason: Floodway.

Land—approx. 220 acres
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440018
Status: Underutilized
Reason: Secured Area; Floodway.

Kentucky

Tract 4626
Barkley, Lake, Kentucky and Tennessee
Donaldson Creek Launching Area
Cadiz Co: Trigg KY 42211–
Location: 14 miles from US Highway 68.
Landholding Agency: COE
Property Number: 319010030
Status: Underutilized
Reason: Floodway.

Tract AA–2747
Wolf Creek Dam and Lake Cumberland
US HWY. 27 to Blue John Road
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 319010038
Status: Underutilized
Reason: Floodway.

Tract AA–2726
Wolf Creek Dam and Lake Cumberland
KY HWY. 80 to Route 769
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 319010039
Status: Underutilized
Reason: Floodway.

Tract 1358
Barkley Lake, Kentucky and Tennessee
Eddyville Recreation Area
Eddyville Co: Lyon KY 42038–
Location: US Highway 62 to state highway 93.
Landholding Agency: COE
Property Number: 319010043
Status: Excess
Reason: Floodway.

Red River Lake Project
Stanton Co: Powell KY 40380–
Location: Exit Mr. Parkway at the Stanton and Slade Interchange, then take SR Hand 15 north to SR 613.
Landholding Agency: COE
Property Number: 319011684
Status: Unutilized
Reason: Floodway.

Barren River Lock & Dam No. 1
Richardsville Co: Warren KY 42270–
Landholding Agency: COE
Property Number: 319120008
Status: Unutilized
Reason: Floodway.

Green River Lock & Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy. 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120009
Status: Unutilized
Reason: Floodway.

Green River Lock & Dam No. 4
Woodbury Co: Butler KY 42288–
Location: Off State Hwy. 403, which is off State Hwy 231
Landholding Agency: COE
Property Number: 319120014
Status: Underutilized
Reason: Floodway.

Green River Lock & Dam No. 5
Readville Co: Butler KY 42275–
Location: Off State Highway 185
Landholding Agency: COE
Property Number: 319120015
Status: Unutilized
Reason: Floodway.

Green River Lock & Dam No. 6
Brownsville Co: Edmonson KY 42210–
Location: Off State Highway 259
Landholding Agency: COE
Property Number: 319120016
Status: Underutilized
Reason: Floodway.

Vacant land west of locksite
Greenup Locks and Dam
5121 New Dam Road
Rural Co: Greenup KY 41144–
Landholding Agency: COE
Property Number: 319120017
Status: Unutilized
Reason: Floodway.

Tract 6404, Cave Run Lake
U.S. Hwy 460
Index Co: Morgan KY
Landholding Agency: COE
Property Number: 319240005
Status: Underutilized
Reason: Floodway.

Tract 6803, Cave Run Lake
State Road 1161
Pomp Co: Morgan KY
Landholding Agency: COE
Property Number: 319240006
Status: Underutilized
Reason: Floodway.

Maryland

Land
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB Co: Prince Georges MD 20613–
Landholding Agency: Air Force
Property Number: 189010263
Status: Unutilized
Reason: Secured Area.

Tract 131R
Youghiogheny River Lake, Rt. 2, Box 100
Friendsville Co: Garrett MD
Landholding Agency: COE
Property Number: 319240007
Status: Underutilized
Reason: Floodway.

Michigan

Middle Marker Facility
Yipsilanti Co: Washtenaw MI 48198–
Location: 549 ft. north of intersection of Coolidge and Bradley Ave. on East side of street
Landholding Agency: DOT
Property Number: 879120006
Status: Unutilized
Reason: Within airport runway clear zone.

Minnesota

Parcel G
Pine River
Cross Lake Co: Crow Wing MN 56442–
Location: 3 miles from city of Cross Lake between highways 6 and 371.
Landholding Agency: COE.
Property Number: 319011037
Status: Excess
Reason: Other
Comment: highway right of way.

Mississippi

Parcel 1
Grenada Lake
Section 20
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 319011018
Status: Underutilized
Reason: Within airport runway clear zone.

Missouri

Ditch 19, Item 2, Tract No. 230
St. Francis Basin Project
2½ miles west of Malden Co: Dunklin MO
Landholding Agency: COE
Property Number: 319130001
Status: Unutilized
Reason: Floodway.

New Mexico

Facility 75100
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240043
Status: Unutilized
Reason: Secured Area.

North Dakota

0.23 acres
Minot Middle Marker Annex Co: Ward ND 58705–
Landholding Agency: Air Force
Property Number: 189810001
Status: Unutilized
Reason: Within airport runway clear zone.

Tracts 1 & 2
Garrison Dam

Lake Sakakawea
Williston Co: Williams ND 58801–
Landholding Agency: COE
Property Number: 319410015
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Floodway.

Ohio

Mosquito Creek Lake
Everett Hull Road Boat Launch
Cortland Co: Trumbull OH 44410–9321
Landholding Agency: COE
Property Number: 319440007
Status: Underutilized
Reason: Floodway.

Mosquito Creek Lake
Housel-Craft Rd., Boat Launch
Cortland Co: Trumbull OH 44410–9321
Landholding Agency: COE
Property Number: 319440008
Status: Underutilized
Reason: Floodway.

36 Site Campground
German Church Campground
Berlin Center Co: Portage OH 44410–9707
Landholding Agency: COE
Property Number: 319810001
Status: Unutilized
Reason: Floodway.

Pennsylvania

Lock and Dam #7
Monongahela River
Greensboro Co: Greene PA
Location: Left hand side of entrance roadway to project.
Landholding Agency: COE
Property Number: 319011564
Status: Unutilized
Reason: Floodway.

Mercer Recreation Area
Shenango Lake
Transfer Co: Mercer PA 16154–
Landholding Agency: COE
Property Number: 319810002
Status: Unutilized
Reason: Floodway.

South Dakota

Badlands Bomb Range
60 miles southeast of Rapid City, SD
1½ miles south of Highway 44 Co: Shannon SD
Landholding Agency: Air Force
Property Number: 189210003
Status: Unutilized
Reason: Secured Area.

Tennessee

Brooks Bend
Cordell Hull Dam and Reservoir
Highway 85 to Brooks Bend Road
Gainesboro Co: Jackson TN 38562–
Location: Tracts 800, 802–806, 835–837, 900–902, 1000–1003, 1025
Landholding Agency: COE
Property Number: 219040413
Status: Underutilized
Reason: Floodway.

Cheatham Lock and Dam
Highway 12
Ashland City Co: Cheatham TN 37015–
Location: Tracts E–513, E–512–1 and E–512–2
Landholding Agency: COE
Property Number: 219040415
Status: Underutilized
Reason: Floodway.

Tract 6737
Blue Creek Recreation Area
Barkley Lake, Kentucky and Tennessee
Dover Co: Steward TN 37058–
Location: U.S. Highway 79/TN Highway 761
Landholding Agency: COE
Property Number 319011478
Status: Underutilized
Reason: Floodway.

Tracts 3102, 3105, and 3106
Brimstone Launching Area
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011479
Status: Excess
Reason: Floodway.

Tract 3507
Proctor Site
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 52
Landholding Agency: COE
Property Number: 319011480
Status: Unutilized
Reason: Floodway.

Tract 3721
Obey
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011481
Status: Unutilized
Reason: Floodway.

Tracts 608, 609, 611 and 612
Sullivan Bend Launching Area
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011482
Status: Underutilized
Reason: Floodway.

Tract 920
Indian Creek Camping Area
Cordell Hull Lake and Dam Project
Granville Co: Smith TN 38564–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011483
Status: Underutilized
Reason: Floodway.

Tracts 1710, 1716 and 1703
Flynns Lick Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Whites Bend Road
Landholding Agency: COE
Property Number: 319011484
Status: Underutilized
Reason: Floodway.

Tract 1810
Wartrace Creek Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011485
Status: Underutilized
Reason: Floodway.

Tract 2524
Jennings Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011486
Status: Unutilized
Reason: Floodway.

Tracts 2905 and 2907
Webster
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011487
Status: Unutilized
Reason: Floodway.

Tracts 2200 and 2201
Gainesboro Airport
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011488
Status: Underutilized
Reason: Within airport runway clear zone Floodway.

Tracts 710C and 712C
Sullivan Island
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011489
Status: Unutilized
Reason: Floodway.

Tract 2403, Hensley Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011490
Status: Unutilized
Reason: Floodway.

Tracts 2117C, 2118 and 2120
Cordell Hull Lake and Dam Project
Trace Creek
Gainesboro Co: Jackson TN 38562–
Location: Brooks Ferry Road
Landholding Agency: COE
Property Number: 319011491
Status: Unutilized
Reason: Floodway.

Tracts 424, 425 and 426
Cordell Hull Lake and Dam Project
Stone Bridge
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011492
Status: Unutilized
Reason: Floodway.

Tract 517
J. Percy Priest Dam and Reservoir
Suggs Creek Embayment
Nashville Co: Davidson TN 37214–
Location: Interstate 40 to S. Mount Juliet Road.
Landholding Agency: COE
Property Number: 319011493
Status: Underutilized
Reason: Floodway.

Tract 1811

West Fork Launching Area
Smyrna Co: Rutherford TN 37167–
Location: Florence road near Enon Springs Road
Landholding Agency: COE
Property Number: 319011494
Status: Underutilized
Reason: Floodway.

Tract 1504
J. Percy Priest Dam and Reservoir
Lamon Hill Recreation Area
Smyrna Co: Rutherford TN 37167–
Location: Lamon Road
Landholding Agency: COE
Property Number: 319011495
Status: Underutilized
Reason: Floodway.

Tract 1500
J. Percy Priest Dam and Reservoir
Pools Knob Recreation
Smyrna Co: Rutherford TN 37167–
Location: Jones Mill Road
Landholding Agency: COE
Property Number: 319011496
Status: Underutilized
Reason: Floodway.

Tracts 245, 257, and 256
J. Percy Priest Dam and Reservoir
Cook Recreation Area
Nashville Co: Davidson TN 37214–
Location: 2.2 miles south of Interstate 40 near Saunders Ferry Pike.
Landholding Agency: COE
Property Number: 319011497
Status: Underutilized
Reason: Floodway.

Tracts 107, 109 and 110
Cordell Hull Lake and Dam Project
Two Prong
Carthage Co: Smith TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 319011498
Status: Unutilized
Reason: Floodway.

Tracts 2919 and 2929
Cordell Hull Lake and Dam Project
Sugar Creek
Gainesboro Co: Jackson TN 38562–
Location: Sugar Creek Road
Landholding Agency: COE
Property Number: 319011500
Status: Unutilized
Reason: Floodway.

Tracts 1218 and 1204
Cordell Hull Lake and Dam Project
Granville—Alvin Yourk Road
Granville Co: Jackson TN 38564–
Landholding Agency: COE
Property Number: 319011501
Status: Unutilized
Reason: Floodway.

Tract 2100
Cordell Hull Lake and Dam Project
Galbreaths Branch
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011502
Status: Unutilized
Reason: Floodway.

Tract 104 et. al.
Cordell Hull Lake and Dam Project
Horshoe Bend Launching Area
Carthage Co: Smith TN 37030–
Location: Highway 70 N
Landholding Agency: COE
Property Number: 319011504
Status: Underutilized
Reason: Floodway.

Tracts 510, 511, 513 and 514
J. Percy Priest Dam and Reservoir Project
Lebanon Co: Wilson TN 37087–
Location: Vivrett Creek Launching Area, Alvin Sperry Road
Landholding Agency: COE
Property Number: 319120007
Status: Underutilized
Reason: Floodway.

Tract A–142, Old Hickory Beach
Old Hickory Blvd.
Old Hickory Co: Davidson TN 37138–
Landholding Agency: COE
Property Number: 319130008
Status: Underutilized
Reason: Floodway.

Texas

Tracts 104, 105–1, 105–2 & 118
Joe Pool Lake Co: Dallas TX
Landholding Agency: COE
Property Number: 319010397
Status: Underutilized
Reason: Floodway.

Part of Tract 201–3
Joe Pool Lake Co: Dallas TX
Landholding Agency: COE
Property Number: 319010398
Status: Underutilized
Reason: Floodway.

Part of Tract 323
Joe Pool Lake Co: Dallas TX
Landholding Agency: COE
Property Number: 319010399
Status: Underutilized
Reason: Floodway.

Tract 702–3
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 319010401
Status: Unutilized
Reason: Floodway.

Tract 706
Granger Lake
Route 1, box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 319010402
Status: Unutilized
Reason: Floodway.

Utah

10.24 acres
Southern Utah Communication Site
Salt Lake UT
Landholding Agency: Air Force
Property Number: 189810002
Status: Unutilized
Reason: Other
Comment: inaccessible.

Washington

Fairchild AFB
SE corner of base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010137
Status: Unutilized
Reason: Secured Area.

Fairchild AFB
Fairchild AFB Co: Spokane WA 99011–
Location: NW corner of base
Landholding Agency: Air Force
Property Number: 189010138
Status: Unutilized
Reason: Secured Area.

West Virginia

Morgantown Lock and Dam
Box 3 RD #2
Morgantown Co: Monongahelia WV 26505–
Landholding Agency: COE
Property Number: 319011530
Status: Unutilized
Reason: Floodway.

London Lock and Dam
Route 60 East
Rural Co: Kanawha WV 25126–
Location: 20 miles east of Charleston, W. Virginia.
Landholding Agency: COE
Property Number: 319011690
Status: Unutilized
Reason: Other
Comment: .03 acres; very narrow strip of land located too close to busy highway.

[FR Doc. 98–4184 Filed 2–19–98; 8:45 am]
BILLING CODE 4210–55–M

federal register

Friday
February 20, 1998

Part IV

Department of Commerce

National Telecommunications and Information Administration

15 CFR Chapter XXIII

Improvement of Technical Management of Internet Names and Addresses; Proposed Rule

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

15 CFR Chapter XXIII

[Docket No. 980212036–8036–01]

RIN 0660–AA11

Improvement of Technical Management of Internet Names and Addresses

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Proposed rule; request for public comment.

SUMMARY: This document sets forth ways to improve technical management of the Internet Domain Name System (DNS). Specifically, it describes the process by which the Federal government will transfer management of the Internet DNS to a private not-for-profit corporation. The document also proposes to open up to competition the administration of top level domains and the registration of domain names.

DATES: Comments must be received by March 23, 1998.

ADDRESSES: Comments may be mailed to Karen Rose, Office of International Affairs, National Telecommunications and Information Administration (NTIA), Room 4701, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230 or sent via electronic mail to dns@ntia.doc.gov. Messages to that address will receive a reply in acknowledgment. Comments submitted in electronic form should be in ASCII, WordPerfect (please specify version), or Microsoft Word (please specify version) format. Comments received will be posted on the NTIA website at http://www.ntia.doc.gov. Detailed information about electronic filing is available on the NTIA website, *http://www.ntia.doc.gov/domainname/domainname130.htm*. Paper submissions should include three paper copies and a version on diskette in the formats specified above.

FOR FURTHER INFORMATION CONTACT: Karen Rose, NTIA, (202) 482–0365.

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 1512; 47 U.S.C. 902(b)(2)(H); 47 U.S.C. 902 (b)(2)(I); 47 U.S.C. 902(b)(2)(M); 47 U.S.C. 904(c)(1).

I. Introduction

On July 1, 1997, The President directed the Secretary of Commerce to privatize, increase competition in, and promote international participation in the domain name system. Domain names are the familiar and easy-to-remember names for Internet computers (*e.g.* "www.ecommerce.gov"). They map to unique Internet Protocol (IP) numbers (*e.g.*, 98.37.241.30) that serve as routing addresses on the Internet. The domain name system (DNS) translates Internet names into the IP numbers needed for transmission of information across the network. On July 2, 1997, the Department of Commerce issued a Request for Comments (RFC) on DNS administration (62 FR 35896). This proposed rule, shaped by over 430 comments received in response to the RFC, provides notice and seeks public comment on a proposal to transfer control of Internet domain names from government to a private, nonprofit corporation.

II. Background

Today's Internet is an outgrowth of U.S. government investments in packet-switching technology and communications networks carried out under agreements with the Defense Advanced Research Projects Agency (DARPA), the National Science Foundation (NSF) and other U.S. research agencies. The government encouraged bottom-up development of networking technologies through work at NSF, which established the NSFNET as a network for research and education. The NSFNET fostered a wide range of applications, and in 1992 the U.S. Congress gave the National Science Foundation statutory authority to commercialize the NSFNET, which formed the basis for today's Internet.

As a legacy, major components of the domain name system are still performed by or subject to agreements with agencies of the U.S. government.

A. Assignment of Numerical Addresses to Internet Users

Every Internet computer has a unique IP number. The Internet Assigned Numbers Authority (IANA), headed by Dr. Jon Postel of the Information Sciences Institute (ISI) at the University of Southern California, coordinates this system by allocating blocks of numerical addresses to regional IP registries (ARIN in North America, RIPE in Europe, and APNIC in the Asia/Pacific region), under contract with DARPA. In turn, larger Internet service providers apply to the regional IP registries for blocks of IP addresses. The recipients of those address blocks then reassign addresses to smaller Internet service providers and to end users.

B. Management of the System of Registering Names for Internet Users

The domain name space is constructed as a hierarchy. It is divided into top-level domains (TLDs), with each TLD then divided into second-level domains (SLDs), and so on. More than 200 national, or country-code, TLDs (ccTLDs) are administered by their corresponding governments or by private entities with the appropriate national government's acquiescence. A small set of generic top-level domains (gTLDs) do not carry any national identifier, but denote the intended function of that portion of the domain space. For example, .com was established for commercial users, .org for not-for-profit organizations, and .net for network service providers. The registration and propagation of these key gTLDs are performed by Network Solutions, Inc. (NSI), a Virginia-based company, under a five-year cooperative agreement with NSF. This agreement includes an optional ramp-down period that expires on September 30, 1998.

C. Operation of the Root Server System

The root server system contains authoritative databases listing the TLDs so that an Internet message can be routed to its destination. Currently, NSI operates the "A" root server, which maintains the authoritative root database and replicates changes to the other root servers on a daily basis. Different organizations, including NSI, operate the other 12 root servers. In total, the U.S. government plays a direct role in the operation of half of the world's root servers. Universal connectivity on the Internet cannot be guaranteed without a set of authoritative and consistent roots.

D. Protocol Assignment

The Internet protocol suite, as defined by the Internet Engineering Task Force (IETF), contains many technical parameters, including protocol numbers, port numbers, autonomous system numbers, management information base object identifiers and others. The common use of these protocols by the Internet community requires that the particular values used in these fields be assigned uniquely. Currently, IANA, under contract with DARPA, makes these assignments and maintains a registry of the assigned values.

III. The Need For Change

From its origins as a U.S.-based research vehicle, the Internet is rapidly becoming an international medium for commerce, education and communication. The traditional means

of organizing its technical functions need to evolve as well. The pressures for change are coming from many different quarters:

- There is widespread dissatisfaction about the absence of competition in domain name registration.
- Mechanisms for resolving conflict between trademark holders and domain name holders are expensive and cumbersome.
- Without changes, a proliferation of lawsuits could lead to chaos as tribunals around the world apply the antitrust law and intellectual property law of their jurisdictions to the Internet.
- Many commercial interests, staking their future on the successful growth of the Internet, are calling for a more formal and robust management structure.
- An increasing percentage of Internet users reside outside of the U.S., and those stakeholders want a larger voice in Internet coordination.
- As Internet names increasingly have commercial value, the decision to add new top-level domains cannot continue to be made on an ad hoc basis by entities or individuals that are not formally accountable to the Internet community.
- As the Internet becomes commercial, it becomes inappropriate for U.S. research agencies (NSF and DARPA) to participate in and fund these functions.

IV. The Future Role of the U.S. Government in the DNS

On July 1, 1997, as part of the Clinton Administration's Framework for Global Electronic Commerce, the President directed the Secretary of Commerce to privatize, increase competition in, and promote international participation in the domain name system.

Accordingly, on July 2, 1997, the Department of Commerce issued a Request for Comments (RFC) on DNS administration, on behalf of an inter-agency working group previously formed to explore the appropriate future role of the U.S. government in the DNS. The RFC solicited public input on issues relating to the overall framework of the DNS system, the creation of new top-level domains, policies for registrars, and trademark issues. During the comment period, over 430 comments were received, amounting to some 1500 pages.[1]

This discussion draft, shaped by the public input described above, provides notice and seeks public comment on a proposal to improve the technical management of Internet names and addresses. It does not propose a monolithic structure for Internet governance. We doubt that the Internet should be governed by one plan or one body or even by a series of plans and bodies. Rather, we seek to create mechanisms to solve a few, primarily technical (albeit critical) questions about administration of Internet names and numbers.

We expect that this proposal will likely spark a lively debate, requiring thoughtful analysis, and appropriate revisions. Nonetheless, we are hopeful that reasonable consensus can be found and that, after appropriate modifications, implementation can begin in April, 1998. Recognizing that no solution will win universal support, the U.S. government seeks as much consensus as possible before acting.

V. Principles for a New System

Our consultations have revealed substantial differences among Internet stakeholders on how the domain name system should evolve. Since the Internet is changing so rapidly, no one entity or individual can claim to know what is best for the Internet. We certainly do not believe that our views are uniquely prescient. Nevertheless, shared principles have emerged from our discussions with Internet stakeholders.

A. Stability

The U.S. government should end its role in the Internet number and name address systems in a responsible manner. This means, above all else, ensuring the stability of the Internet. The Internet functions well today, but its current technical management is probably not viable over the long term. We should not wait for it to break down before acting. Yet, we should not move so quickly, or depart so radically from the existing structures, that we disrupt the functioning of the Internet. The introduction of a new system should not disrupt current operations, or create competing root systems.

B. Competition

The Internet succeeds in great measure because it is a decentralized system that encourages innovation and maximizes individual freedom. Where possible, market mechanisms that support competition and consumer choice should drive the technical management of the Internet because they will promote innovation, preserve diversity, and enhance user choice and satisfaction.

C. Private, Bottom-Up Coordination

Certain technical management functions require coordination. In these cases, responsible, private-sector action is preferable to government control. A private coordinating process is likely to be more flexible than government and to move rapidly enough to meet the changing needs of the Internet and of Internet users. The private process should, as far as possible, reflect the bottom-up governance that has characterized development of the Internet to date.

D. Representation

Technical management of the Internet should reflect the diversity of its users and their needs. Mechanisms should be established to ensure international input in decision making.

In keeping with these principles, we divide the name and number functions into two groups, those that can be moved to a competitive system and those that should be coordinated. We then suggest the creation of a representative, not-for-profit corporation to manage the coordinated functions according to widely accepted objective criteria. We then suggest the steps necessary to move to competitive markets in those areas that can be market driven. Finally, we suggest a transition plan to ensure that these changes occur in an orderly fashion that preserves the stability of the Internet.

VI. The Proposal

A. The Coordinated Functions

Management of number addresses is best done on a coordinated basis. As technology evolves, changes may be needed in the number allocation system. These changes should also be undertaken in a coordinated fashion.

Similarly, coordination of the root server network is necessary if the whole system is to work smoothly. While day-to-day operational tasks, such as the actual operation and maintenance of the Internet root servers, can be contracted out, overall policy guidance and control of the TLDs and the Internet root server system should be vested in a single organization that is representative of Internet users.

Finally, coordinated maintenance and dissemination of the protocol parameters for Internet addressing will best preserve the stability and interconnectivity of the Internet.

We propose the creation of a private, not-for-profit corporation (the new corporation) to manage the coordinated functions in a stable and open institutional framework. The new corporation should operate as a private

[1] The RFC and comments received are available on the Internet at the following address: <http://www.ntia.doc.gov>.

entity for the benefit of the Internet as a whole. The new corporation would have the following authority:

1. To set policy for and direct the allocation of number blocks to regional number registries for the assignment of Internet addresses;

2. To oversee the operation of an authoritative root server system;

3. To oversee policy for determining, based on objective criteria clearly established in the new organization's charter, the circumstances under which new top-level domains are added to the root system; and

4. To coordinate the development of other technical protocol parameters as needed to maintain universal connectivity on the Internet.

The U.S. government would gradually transfer existing IANA functions, the root system and the appropriate databases to this new not-for-profit corporation. This transition would commence as soon as possible, with operational responsibility moved to the new entity by September 30, 1998. The U.S. government would participate in policy oversight to assure stability until the new corporation is established and stable, phasing out as soon as possible and in no event later than September 30, 2000. The U.S. Department of Commerce will coordinate the U.S. government policy role. In proposing these dates, we are trying to balance concerns about a premature U.S. government exit that turns the domain name system over to a new and untested entity against the concern that the U.S. government will never relinquish its current management role.

The new corporation will be funded by domain name registries and regional IP registries. Initially, current IANA staff will move to this new organization to provide continuity and expertise throughout the period of time it takes to establish the new corporation. The new corporation should hire a chief executive officer with a background in the corporate sector to bring a more rigorous management to the organization than was possible or necessary when the Internet was primarily a research medium. As these functions are now performed in the United States, the new corporation will be headquartered in the United States, and incorporated under U.S. law as a not-for-profit corporation. It will, however, have and report to a board of directors from around the world.

It is probably impossible to establish and maintain a perfectly representative board for this new organization. The Internet community is already extraordinarily diverse and likely to become more so over time. Nonetheless, the organization and its board must derive legitimacy from the participation of key stakeholders. Since the organization will be concerned mainly with numbers, names and protocols, its board should represent membership organizations in each of these areas, as well as the direct interests of Internet users.

The board of directors for the new corporation should be balanced to equitably represent the interests of IP number registries, domain name registries, domain name registrars, the technical community, and Internet users (commercial, not-for-profit, and individuals). Officials of governments or intergovernmental organizations should not serve on the board of the new corporation. Seats on the initial board might be allocated as follows:

- Three directors from a membership association of regional number registries, representing three different regions of the world. Today this would mean one each from ARIN, APNIC and RIPE. As additional regional number registries are added, board members could be designated on a rotating basis or elected by a membership organization made up of regional registries. ARIN, RIPE and APNIC are open membership organizations that represent entities with large blocks of numbers. They have the greatest stake in and knowledge of the number address system. They are also representative internationally.
- Two members designated by the Internet Architecture Board (IAB), an international membership board that represents the technical community of the Internet.
- Two members designated by a membership association (to be created) representing domain name registries and registrars.

Seven members designated by a membership association (to be created) representing Internet users. At least one of those board seats could be designated for an individual or entity engaged in non-commercial, not-for-profit use of the Internet, and one for individual end users. The remaining seats could be filled by commercial users, including trademark holders.

- The CEO of the new corporation would serve on the board of directors.

The new corporation's processes should be fair, open and pro-competitive, protecting against capture by a narrow group of stakeholders. Its decision-making processes should be sound and transparent; the bases for its decisions should be recorded and made publicly available. Super-majority or even consensus requirements may be useful to protect against capture by a self-interested faction. The new corporation's charter should provide a mechanism whereby its governing body will evolve to reflect changes in the constituency of Internet stakeholders. The new corporation should establish an open process for the presentation of petitions to expand board representation.

In performing the functions listed above, the new corporation will act much like a standard-setting body. To the extent that the new corporation operates in an open and pro-competitive manner, its actions will withstand antitrust scrutiny. Its standards should be reasonably based on, and no broader than necessary to promote its legitimate coordinating objectives. Under U.S. law, a standard-setting body can face antitrust liability if it is dominated by an economically interested entity, or if standards are set in secret by a few leading competitors. But appropriate processes and structure will minimize the possibility that the body's actions will be, or will appear to a court to be, anti-competitive.

B. The Competitive Functions

The system for registering second-level domain names and the management of the TLD registries should become competitive and market-driven.

In this connection, we distinguish between registries and registrars. A "registry," as we use the term, is responsible for maintaining a TLD's zone files, which contain the name of each SLD in that TLD and each SLD's corresponding IP number. Under the current structure of the Internet, a given TLD can have no more than one registry. A "registrar" acts as an interface between domain-name holders and the registry, providing registration and value-added services. It submits to the registry zone file information and other data (including contact information) for each of its customers in a single TLD. Currently, NSI acts as both the exclusive registry and as the exclusive registrar for .com, .net, .org, and .edu.

Both registry and registrar functions could be operated on a competitive basis. Just as NSI acts as the registry for .com, .net, and .org, other companies could manage registries with different TLDs such as .vend or .store. Registrars could provide the service of obtaining domain names for customers in any gTLD. Companies that design Web sites for customers might, for example, provide registration as an adjunct to other services. Other companies may perform this function as a stand-alone business.

There appears to be strong consensus that, at least at this time, domain name

registration—the registrar function—should be competitive. There is disagreement, however, over the wisdom of promoting competition at the registry level.

Some have made a strong case for establishing a market-driven registry system. Competition among registries would allow registrants to choose among TLDs rather than face a single option. Competing TLDs would seek to heighten their efficiency, lower their prices, and provide additional value-added services. Investments in registries could be recouped through branding and marketing. The efficiency, convenience, and service levels associated with the assignment of names could ultimately differ from one TLD registry to another. Without these types of market pressures, they argue, registries will have very little incentive to innovate.

Others feel strongly, however, that if multiple registries are to exist, they should be undertaken on a not-for-profit basis. They argue that lack of portability among registries (that is, the fact that users cannot change registries without adjusting at least part of their domain name string) could create lock-in problems and harm consumers. For example, a registry could induce users to register in a top-level domain by charging very low prices initially and then raise prices dramatically, knowing that name holders will be reluctant to risk established business by moving to a different top-level domain.

We concede that switching costs and lock-in could produce the scenario described above. On the other hand, we believe that market mechanisms may well discourage this type of behavior. On balance, we believe that consumers will benefit from competition among market oriented registries, and we thus support limited experimentation with competing registries during the transition to private sector administration of the domain name system.

C. The Creation of New gTLDs

Internet stakeholders disagree about who should decide when a new top-level domain can be added and how that decision should be made. Some believe that anyone should be allowed to create a top-level domain registry. They argue that the market will decide which will succeed and which will not. Others believe that such a system would be too chaotic and would dramatically increase customer confusion. They argue that it would be far more complex technically, because the root server system would have to point to a large number of top-level domains that were changing with great frequency. They also point out that it would be much more difficult for trademark holders to protect their trademarks if they had to police a large number of top-level domains.

All these arguments have merit, but they all depend on facts that only further experience will reveal. At least in the short run, a prudent concern for the stability of the system requires that expansion of gTLDs proceed at a deliberate and controlled pace to allow for evaluation of the impact of the new gTLDs and well-reasoned evolution of the domain space. The number of new top-level domains should be large enough to create competition among registries and to enable the new corporation to evaluate the functioning, in the new environment, of the root server system and the software systems that enable shared registration. At the same time, it should not be so large as to destabilize the Internet.

We believe that during the transition to private management of the DNS, the addition of up to five new registries would be consistent with these goals. At the outset, we propose that each new registry be limited to a single top-level domain. During this period, the new corporation should evaluate the effects that the addition of new gTLDs have on the operation of the Internet, on users, and on trademark holders. After this transition, the new corporation will be in a better position to decide whether or when the introduction of additional gTLDs is desirable.

Individual companies and consortia alike may seek to operate specific generic top-level domains. Competition will take place on two levels. First, there will be competition among different generic top-level domains. Second, registrars will compete to register clients into these generic top-level domains. By contrast, existing national registries will continue to administer country-code top-level domains if these national government seek to assert those rights. Changes in the registration process for these domains are up to the registries administering them and their respective national governments.

Some have called for the creation of a more descriptive system of top-level domains based on industrial classifications or some other easy to understand schema. They suggest that having multiple top-level domains is already confusing and that the addition of new generic TLDs will make it more difficult for users to find the companies they are seeking.

Market driven systems result in innovation and greater consumer choice and satisfaction in the long run. We expect that in the future, directory services of various sorts will make it easy for users to find the sites they seek regardless of the number of top-level domains. Attempts to impose too much central order risk stifling a medium like the Internet that is decentralized by nature and thrives on freedom and innovation.

D. The Trademark Dilemma

It is important to keep in mind that trademark/domain name disputes arise very rarely on the Internet today. NSI, for example, has registered millions of domain names, only a tiny fraction of which have been challenged by a trademark owner. But where a trademark is unlawfully used as a domain name, consumers may be misled about the source of the product or service offered on the Internet, and trademark owners may not be able to protect their rights without very expensive litigation.

For cyberspace to function as an effective commercial market, businesses must have confidence that their trademarks can be protected. On the other hand, management of the Internet must respond to the needs of the Internet community as a whole, and not trademark owners exclusively. The balance we strike is to provide trademark holders with the same rights they have in the physical world, to ensure transparency, to guarantee a dispute resolution mechanism with resort to a court system, and to add new top-level domains carefully during the transition to private sector coordination of the domain name system.

There are certain steps that could be taken in the application process that would not be difficult for an applicant, but that would make the trademark owner's job easier. For instance, gTLD registrants could supply basic information—including the applicant's name and sufficient contact information to be able to locate the applicant or its representative. To deter the pirating of domain names, the registry could also require applicants to certify that it knows of no entity with superior rights in the domain name it seeks to register.

The job of policing trademarks could be considerably easier if domain name databases were readily searchable through a common interface to determine what names are registered, who holds those domain names, and how to contact a domain name holder. Many trademark holders find the current registration search tool, who is, too limited in its functioning to be effective for this purpose. A more robust and flexible search tool, which features multiple field or string searching and retrieves similar names, could be

employed or developed to meet the needs of trademark holders. The databases also could be kept up to date by a requirement that domain name registrants maintain up-to-date contact information.

Mechanisms that allow for on-line dispute resolution could provide an inexpensive and efficient alternative to litigation for resolving disputes between trademark owners and domain name registrants. A swift dispute resolution process could provide for the temporary suspension of a domain name registration if an adversely affected trademark holder objects within a short time, e.g. 30 days, of the initial registration. We seek comment on whether registries should be required to resolve disputes within a specified period of time after an opposition is filed, and if so, how long that period should be.

Trademark holders have expressed concern that domain name registrants in faraway places may be able to infringe their rights with no convenient jurisdiction available in which the trademark owner could file suit to protect those rights. At the time of registration, registrants could agree that, in the event of a trademark dispute involving the name registered, jurisdiction would lie where the registry is domiciled, where the registry database in maintained, or where the "A" root server is maintained. We seek comment on this proposal, as well as suggestions for how such jurisdictional provisions could be implemented.

Trademark holders have also called for the creation of some mechanism for "clearing" trademarks, especially famous marks, across a range of gTLDs. Such mechanisms could reduce trademark conflict associated with the addition of new gTLDs. Again, we seek comment on this proposal, and suggested mechanisms for trademark clearance processes.

We stop short of proposals that could significantly limit the flexibility of the Internet, such as waiting periods or not allowing any new top-level domains.

We also do not propose to establish a monolithic trademark dispute resolution process at this time, because it is unclear what system would work best. Even trademark holders we have consulted are divided on this question. Therefore, we propose that each name registry must establish minimum dispute resolution and other procedures related to trademark considerations. Those minimum procedures are spelled out in Appendix 2. Beyond those minimums, registries would be permitted to establish additional trademark protection and trademark dispute resolution mechanisms.

We also propose that shortly after their introduction into the root, a study be undertaken on the effects of adding new gTLDs and related dispute resolution procedures on trademark and intellectual property right holders. This study should be conducted under the auspices of a body that is internationally recognized in the area of dispute resolution procedures, with input from trademark and domain name holders and registries. The findings of this study should be submitted to the board of the new corporation and considered when it makes decisions on the creation and introduction of new gTLDs. Information on the strengths and weaknesses of different dispute resolution procedures should also give the new corporation guidance for deciding whether the established minimum criteria for dispute resolution should be amended or maintained. Such a study could also provide valuable input with respect to trademark harmonization generally.

U.S. trademark law imposes no general duty on a registrar to investigate the propriety of any given registration.[2] Under existing law, a trademark holder can properly file a lawsuit against a domain name holder that is infringing or diluting the trademark holder's mark. But the law provides no basis for holding that a registrar's mere registration of a domain name, at the behest of an applicant with which it has an arm's-length relationship, should expose it to liability.[3] Infringers, rather than registrars, registries, and technical management bodies, should be liable for trademark infringement. Until case law is fully settled, however, registries can expect to incur legal expenses in connection with trademark disputes as a cost of doing business. These costs should not be borne by the new not-for-profit corporation, and therefore registries should be required to indemnify the new corporation for costs incurred in connection with trademark disputes. The evolution of litigation will be one of the factors to be studied by the group tasked to review Internet trademark issues as the new structure evolves.

E. The Intellectual Infrastructure Fund

In 1995, NSF authorized NSI to assess new domain name registrants a $50 fee per year for the first two years, 30 percent of which was to be deposited in a fund for the preservation and enhancement of the intellectual infrastructure of the Internet (the "Intellectual Infrastructure Fund").

In excess of $46 Million has been collected to date. In 1997, Congress authorized the crediting of $23 Million of the funds collected to the Research and Related Activities Appropriation of the National Science Foundation to support the development of the Next Generation Internet. The establishment of the Intellectual Infrastructure Fund currently is the subject of litigation in the U.S. District Court for the District of Columbia.

As the U.S. government is seeking to end its role in the domain name system, we believe the provision in the cooperative agreement regarding allocation of a portion of the registration fee to the Internet Intellectual Infrastructure Fund should terminate on April 1, 1998, the beginning of the ramp-down period of the cooperative agreement.

VII. The Transition

A number of steps must be taken to create the system envisioned in this paper.

1. The new not-for-profit organization must be established and its board chosen.

2. The membership associations representing (1) registries and registrars, and (2) Internet users, must be formed.

3. An agreement must be reached between the U.S. government and the current IANA on the transfer of IANA functions to the new organization.

4. NSI and the U.S. government must reach agreement on the terms and conditions of NSI's evolution into one competitor among many in the registrar and registry marketplaces. A level playing field for competition must be established.

5. The new corporation must establish processes for determining whether an organization meets the transition period criteria for prospective registries and registrars.

6. A process must be laid out for making the management of the root server system more robust and secure, and, for transitioning that management from U.S. government auspices to those of the new corporation.

A. The NSI Agreement

The U.S. government will ramp down the NSI cooperative agreement and phase it out by the end of September 1998. The ramp down agreement with NSI should reflect the following terms and conditions designed to promote competition in the domain name space.

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[2] See generally *MDT Corp.* v. *New York Stock Exchange*, 858 F. Supp. 1028 (C.D. Calif. 1994).

[3] See *Lockheed Martin Corp.* v. *Network Solutions, Inc.*, 1997 WL 721899 (C.D. Calif. 11/17/97); *Panavision International* v. *Toeppen*, 1996 U.S. Dist. LEXIS 20744, 41 U.S.P.Q.2d 1310 (C.D. Calif. 1996).

1. NSI will effectively separate and maintain a clear division between its current registry business and its current registrar business. NSI will continue to operate .com, .net and .org but on a fully shared-registry basis; it will shift operation of .edu to a not-for-profit entity. The registry will treat all registrars on a nondiscriminatory basis and will price registry services according to an agreed upon formula for a period of time.

2. As part of the transition to a fully shared-registry system, NSI will develop (or license) and implement the technical capability to share the registration of its top-level domains with any registrar so that any registrar can register domain names there in as soon as possible, by a date certain to be agreed upon.

3. NSI will give the U.S. government a copy and documentation of all the data, software, and appropriate licenses to other intellectual property generated under the cooperative agreement, for use by the new corporation for the benefit of the Internet.

4. NSI will turn over control of the "A" root server and the management of the root server system when instructed to do so by the U.S. government.

5. NSI will agree to meet the requirements for registries and registrars set out in Appendix 1.

B. Competitive Registries, Registrars, and the Addition of New gTLDs

Over the past few years, several groups have expressed a desire to enter the registry or registrar business. Ideally, the U.S. government would stay its hand, deferring the creation of a specific plan to introduce competition into the domain name system until such time as the new corporation has been organized and given an opportunity to study the questions that such proposals raise. Should the transition plan outlined below, or some other proposal, fail to achieve substantial consensus, that course may well need to be taken.

Realistically, however, the new corporation cannot be established overnight. Before operating procedures can be established, a board of directors and a CEO must be selected. Under a best case scenario, it is unlikely that the new corporation can be fully operational before September 30, 1998. It is our view, based on widespread public input, that competition should be introduced into the DNS system more quickly.

We therefore set out below a proposal to introduce competition into the domain name system during the transition from the existing U.S. government authority to a fully functioning coordinating body. This proposal is designed only for the transition period. Once the new corporation is formed, it will assume authority over the terms and conditions for the admission of new top-level domains.

Registries and New gTLDs

This proposal calls for the creation of up to five new registries, each of which would be initially permitted to operate one new gTLD. As discussed above, that number is large enough to provide valuable information about the effects of adding new gTLDs and introducing competition at the registry level, but not so large as to threaten the stability of the Internet during this transition period. In order to designate the new registries and gTLDs, IANA must establish equitable, objective criteria and processes for selecting among a large number of individuals and entities that want to provide registry services. Unsuccessful applicants will be disappointed.

We have examined a number of options for recognizing the development work already underway in the private sector. For example, some argue for the provision of a "pioneer preference" or other grand fathering mechanism to limit the pool of would-be registrants to those who, in response to previous IANA requests, have already invested in developing registry businesses. While this has significant appeal and we do not rule it out, it is not an easy matter to determine who should be in that pool. IANA would be exposed to considerable liability for such determinations, and required to defend against charges that it acted in an arbitrary or inequitable manner. We welcome suggestions as to whether the pool of applicants should be limited, and if so, on what basis.

We propose, that during the transition, the first five entities (whether from a limited or unlimited pool) to meet the technical, managerial, and site requirements described in Appendix 1 will be allowed to establish a domain name registry. The IANA will engage neutral accounting and technical consultancy firms to evaluate a proposed registry under these criteria and certify an applicant as qualified. These registries may either select, in order of their qualification, from a list of available gTLDs or propose another gTLD to IANA. (We welcome suggestions on the gTLDs that should be immediately available and would propose a list based on that input, as well as any market data currently available that indicates consumer interest in particular gTLDs.)

The registry will be permitted to provide and charge for value-added services, over and above the basic services provided to registrars. At least at this time, the registry must, however, operate on a shared registry basis, treating all registrars on a nondiscriminatory basis, with respect to pricing, access and rules. Each TLD's registry should be equally accessible to any qualified registrar, so that registrants may choose their registrars competitively on the basis of price and service. The registry will also have to agree to modify its technical capabilities based on protocol changes that occur in Internet technology so that interoperability can be preserved. At some point in the future, the new organization may consider the desirability of allowing the introduction of non-shared registries.

Registrars

Any entity will be permitted to provide registrar services as long as it meets the basic technical, managerial, and site requirements as described in Appendix 1 of this paper. Registrars will be allowed to register clients into any top-level domain for which the client satisfies the eligibility rules, if any.

C. The Root Server System

IANA and the U.S. government, in cooperation with NSI, the IAB, and other relevant organizations will undertake a review of the root server system to recommend means to increase the security and professional management of the system. The recommendations of the study should be implemented as part of the transition process to the new corporation.

D. The .us Domain

At present, the IANA administers .us as a locality based hierarchy in which second-level domain space is allocated to states and US territories.[4] This name space is further subdivided into localities. General registration under localities is performed on an exclusive basis by private firms that have requested delegation from IANA. The .us name space has typically been used by branches of state and local governments, although some commercial names have been assigned. Where registration for a locality has not been delegated, the IANA itself serves as the registrar.

Some in the Internet community have suggested that the pressure for unique identifiers in the .com gTLD could be relieved if commercial use of the .us space was encouraged. Commercial

[4] Management principles for the .us domain space are set forth in Internet RFC 1480, (http://www.isi.edu/in-notes/rfc1480.txt)

users and trademark holders, however, find the current locality-based system too cumbersome and complicated for commercial use. Expanded use of the .us TLD could alleviate some of the pressure for new generic TLDs and reduce conflicts between American companies and others vying for the same domain name.

Clearly, there is much opportunity for enhancing the .us domain space, and the .us domain could be expanded in many ways without displacing the current geopolitical structure. Over the next few months, the U.S. government will work with the private sector and state and local governments to determine how best to make the .us domain more attractive to commercial users. It may also be appropriate to move the gTLDs traditionally reserved for U.S. government use (i.e. .gov and .mil), into a reformulated .us ccTLD.

The U.S. government will further explore and seek public input on these issues through a separate Request for Comment on the evolution of the .us name space. However, we welcome any preliminary comments at this time.

E. The Process

The U.S. government recognizes that its unique role in the Internet domain name system should end as soon as is practical. We also recognize an obligation to end this involvement in a responsible manner that preserves the stability of the Internet. We cannot cede authority to any particular commercial interest or any specific coalition of interest groups. We also have a responsibility to oppose any efforts to fragment the Internet, as this would destroy one of the key factors—interoperability—that has made the Internet so successful.

Our goal is to seek as strong a consensus as possible so that a new, open, and accountable system can emerge that is legitimate in the eyes of all Internet stakeholders. It is in this spirit that we present this paper for discussion.

VIII. Other Information

Executive Order 12866

This proposal has been determined not to be significant under section 3(f) of Executive Order 12866.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy, the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

We believe that the overall effect of the proposal will be highly beneficial. No negative effects are envisioned at this time. In fact, businesses will enjoy a reduction in the cost of registering domain names as a result of this proposal. In 1995, the National Science Foundation authorized a registration fee of $50 per year for the first two years, 30 percent of which was to be deposited in a fund for the preservation and enhancement of the intellectual infrastructure of the Internet (the "Intellectual Infrastructure Fund"). The proposal seeks to terminate the agreement to earmark a portion of the registration fee to the Intellectual Infrastructure Fund. We also believe that a competitive registration system will lead to reduced fees in registering domain names.

The proposal is pro-competitive because it transfers the current system of domain name registration to a market-driven registry system. Moreover, as the Internet becomes more important to commerce, particularly small businesses, it is crucial that a more formal and robust management structure be implemented. As the commercial value of Internet names increases, decisions regarding the addition of new top-level domains should be formal, certain, and accountable to the Internet community. For example, presently, mechanisms for resolving disputes between trademark holders and domain name holders are expensive and cumbersome. The proposal requires each name registry to establish an inexpensive and efficient dispute resolution system as well as other procedures related to trademark consideration.

The U.S. government would gradually transfer existing Internet Assigned Numbers Authority (IANA) functions, the root system and the appropriate databases to a new not-for-profit corporation by September 30, 1998. The U.S. government would, however, participate in policy oversight to assure stability until the new corporation is established and stable, phasing out completely no later than September 30, 2000. Accordingly, the transition period would afford the U.S. government an opportunity to determine if the structure of the new corporation negatively impacts small entities. Moreover, the corporation would be headquartered in the U.S. and incorporated under U.S. law. Accordingly, the corporation would be subject to antitrust scrutiny if dominated by economically interested entities, or if its standards are established by a few leading competitors.

As a result, no initial regulatory flexibility analysis has been prepared.

Paperwork Reduction Act

This rule does not contain information collection requirements subject to the provisions of the Paperwork Reduction Act.

Kathy Smith,

Acting Deputy Assistant Secretary for Communications and Information.

Appendix 1—Recommended Registry and Registrar Requirements

In order to ensure the stability of the Internet's domain name system, protect consumers, and preserve the intellectual property rights of trademark owners, all registries of generic top-level domain names must meet the set of technical, managerial, and site requirements outlined below. Only prospective registries that meet these criteria will be allowed by IANA to register their gTLD in the "A" server. If, after it begins operations, a registry no longer meets these requirements, IANA may transfer management of the domain names under that registry's gTLD to another organization.

Independent testing, reviewing, and inspection called for in the requirements for registries should be done by appropriate certifying organizations or testing laboratories rather than IANA itself, although IANA will define the requirements and the procedures for tests and audits.

These requirements apply only to generic TLDs. They will apply to both existing gTLDs (e.g., .com, .edu., .net, .org) and new gTLDs. Although they are not required to, we expect many ccTLD registries and registrars may wish to assure their customers that they meet these requirements or similar ones.

Registries will be separate from registrars and have only registrars as their customers. If a registry wishes to act both as registry and registrar for the same TLD, it must do so through separate subsidiaries. Appropriate accounting and confidentiality safeguards shall be used to ensure that the registry subsidiary's business is not utilized in any manner to benefit the registrar subsidiary to the detriment of any other registrar.

Each top-level domain (TLD) database will be maintained by only one registry and, at least initially, each new registry can host only one TLD.

Registry Requirements

1. An independently-tested, functioning Database and Communications System that:

a. Allows multiple competing registrars to have secure access (with encryption and authentication) to the database on an equal (first-come, first-served) basis.

b. Is both robust (24 hours per day, 365 days per year) and scalable (i.e., capable of handling high volumes of entries and inquiries).

c. Has multiple high-throughput (i.e., at least T1) connections to the Internet via at least two separate Internet Service Providers.

d. Includes a daily data backup and archiving system.

e. Incorporates a record management system that maintains copies of all transactions, correspondence, and communications with registrars for at least the length of a registration contract.

f. Features a searchable, on-line database meeting the requirements of Appendix 2.

g. Provides free access to the software and customer interface that a registrar would need to register new second-level domain names.

h. An adequate number (perhaps two or three) of globally-positioned zone-file servers connected to the Internet for each TLD.

2. Independently-reviewed Management Policies, Procedures, and Personnel including:

a. Alternate (i.e., non-litigation) dispute resolution providing a timely and inexpensive forum for trademark-related complaints. (These procedures should be consistent with applicable national laws and compatible with any available judicial or administrative remedies.)

b. A plan to ensure that the registry's obligations to its customers will be fulfilled in the event that the registry goes out of business. This plan must indicate how the registry would ensure that domain name holders will continue to have use of their domain name and that operation of the Internet will not be adversely affected.

c. Procedures for assuring and maintaining the expertise and experience of technical staff.

d. Commonly-accepted procedures for information systems security to prevent malicious hackers and others from disrupting operations of the registry.

3. Independently inspected Physical Sites that feature:

a. A backup power system including a multi-day power source.

b. A high level of security due to twenty-four-hour guards and appropriate physical safeguards against intruders.

c. A remotely-located, fully redundant and staffed twin facility with "hot switchover" capability in the event of a main facility failure caused by either a natural disaster (e.g., earthquake or tornado) or an accidental (fire, burst pipe) or deliberate (arson, bomb) man-made event. (This might be provided at, or jointly supported with, another registry, which would encourage compatibility of hardware and commonality of interfaces.)

Registrar Requirements

Registries will set standards for registrars with which they wish to do business. The following are the minimal qualifications that IANA should mandate that each registry impose and test or inspect before allowing a registrar to access its database(s). Any additional requirements imposed by registries on registrars must be approved by IANA and should not affect the stability of the Internet or substantially reduce competition in the registrar business. Registries may refuse to accept registrations from registrars that fail to meet these requirements and may remove domain names from the registries if at a later time the registrar which registered them no longer meets the requirements for registrars.

1. A functioning Database and Communications System that supports:

a. Secure access (with encryption and authentication) to the registry.

b. Robust and scalable operations capable of handling moderate volumes.

c. Multiple connections to the Internet via at least two Internet Service Providers.

d. A daily data backup and archival system.

e. A record management system that maintains copies of all transactions, correspondence, and communications with all registries for at least the length of a registration contract.

2. Management Policies, Procedures, and Personnel including:

a. A plan to ensure that the registrar's obligations to its customers and to the registries will be fulfilled in the event that the registrar goes out of business. This plan must indicate how the registrar would ensure that domain name holders will continue to have use of their domain name and that operation of the Internet will not be adversely affected.

b. Commonly-accepted procedures for information systems security to prevent malicious hackers and others from disrupting operations.

3. Independently inspected Physical Sites that features:

a. A backup power system.

b. A high level of security due to twenty-four-hour guards and appropriate physical safeguards against intruders.

c. Remotely-stored backup files to permit recreation of customer records.

Appendix 2—Minimum Dispute Resolution and Other Procedures Related to Trademarks

1. Minimum Application Requirements.

a. Sufficient owner and contact information (e.g., names, mail address for service of process, e-mail address, telephone and fax numbers, etc.) to enable an interested party to contact either the owner/applicant or its designated representative; and a

b. Certification statement by the applicant that:

—It is entitled to register the domain name for which it is applying and knows of no entity with superior rights in the domain name; and

—It intends to use the domain name.

2. Searchable Database Requirements.

a. Utilizing a simple, easy-to-use, standardized search interface that features multiple field or string searching and the retrieval of similar names, the following information must be included in all registry databases, and available to anyone with access to the Internet:

—Up-to-date ownership and contact information;

—Up-to-date and historical chain of title information for the domain name;

—A mail address for service of process;

—The date of the domain name registration; and

—The date an objection to registration of the domain name was filed.

3. Updated Ownership, Contact and Use Information.

a. At any time there is a change in ownership, the domain name owner must submit the following information:

—Up-to-date contact and ownership information; and

—A description of how the owner is using the domain name, or, if the domain name is not in use, a statement to that effect.

4. Alternative Dispute Resolution of Domain Name Conflicts.

a. There must be a readily available and convenient dispute resolution process that requires no involvement by registrars.

b. Registries/Registrars will abide by the decisions resulting from an agreed upon dispute resolution process or by the decision of a court of competent jurisdiction.

If an objection to registration is raised within 30 days after registration of the domain name, a brief period of suspension during the pendency of the dispute will be provided by the registries.

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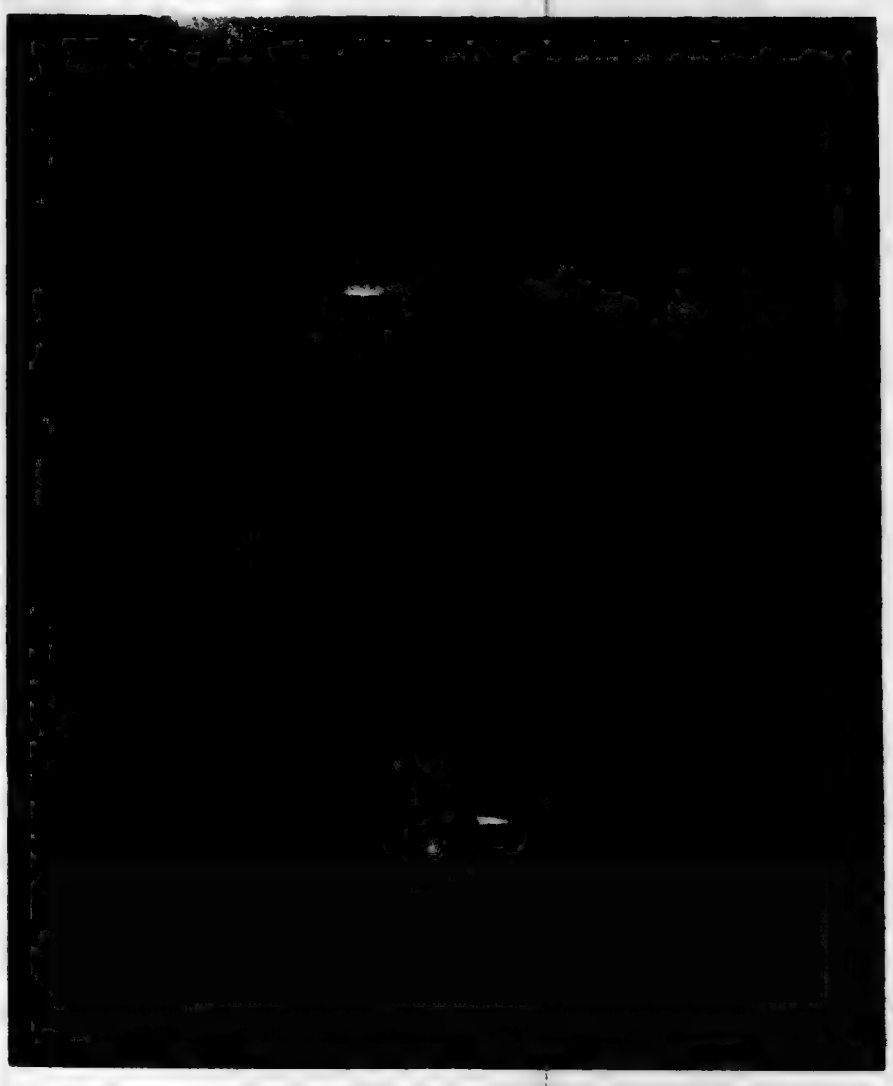

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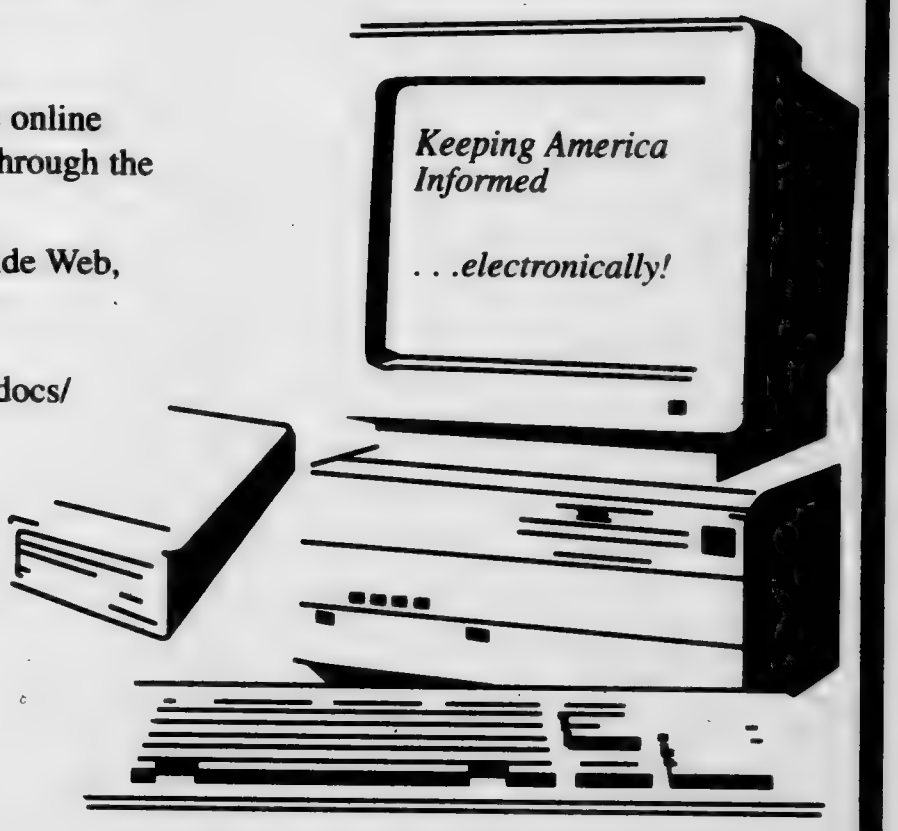

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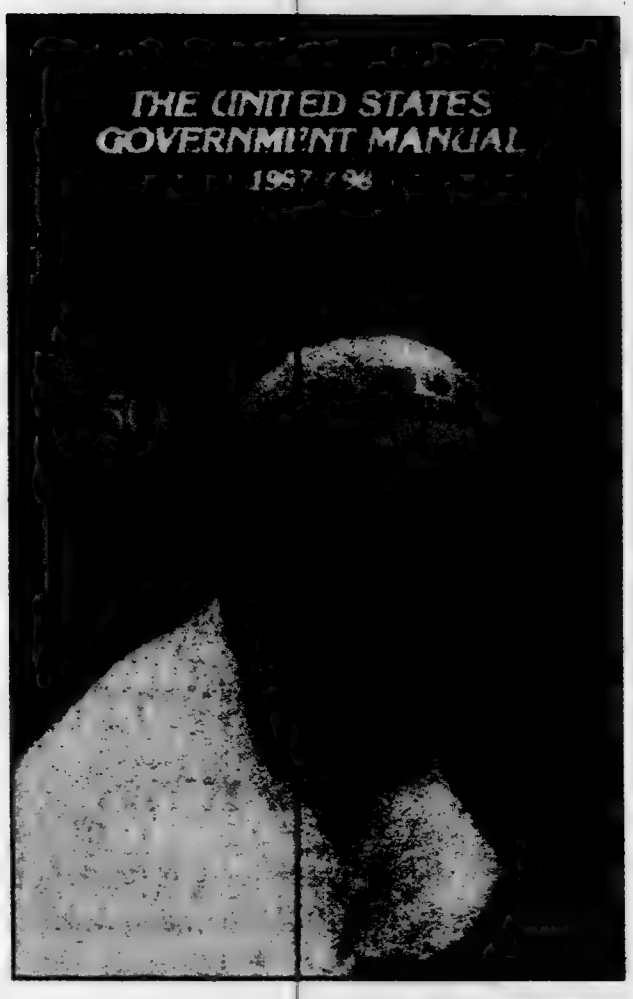

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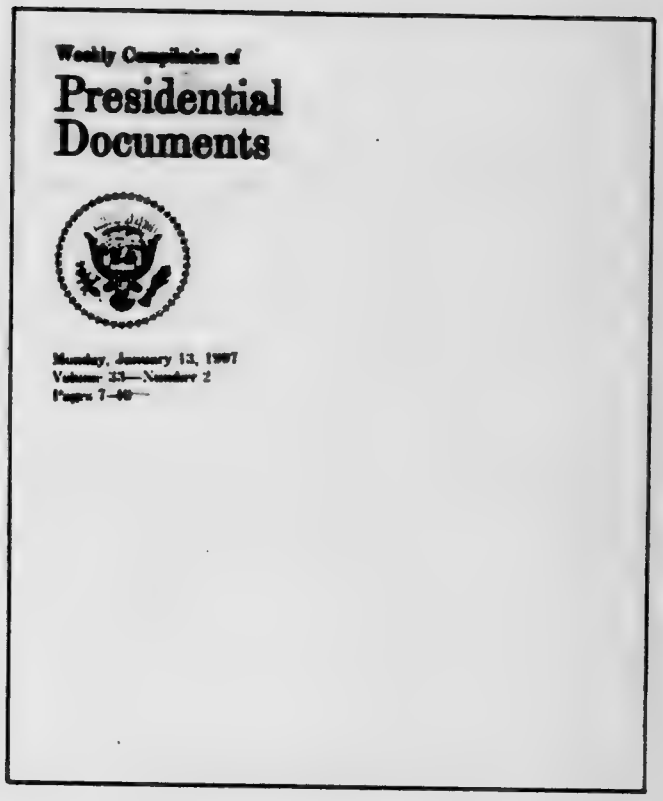

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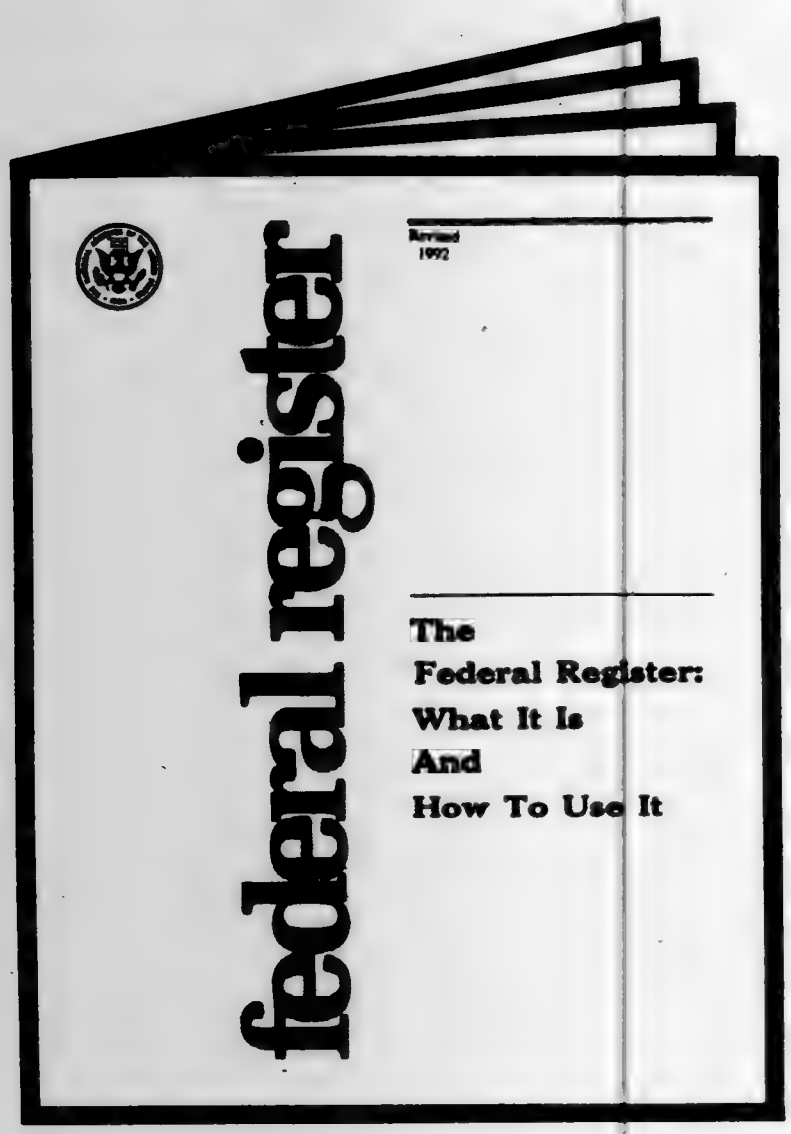

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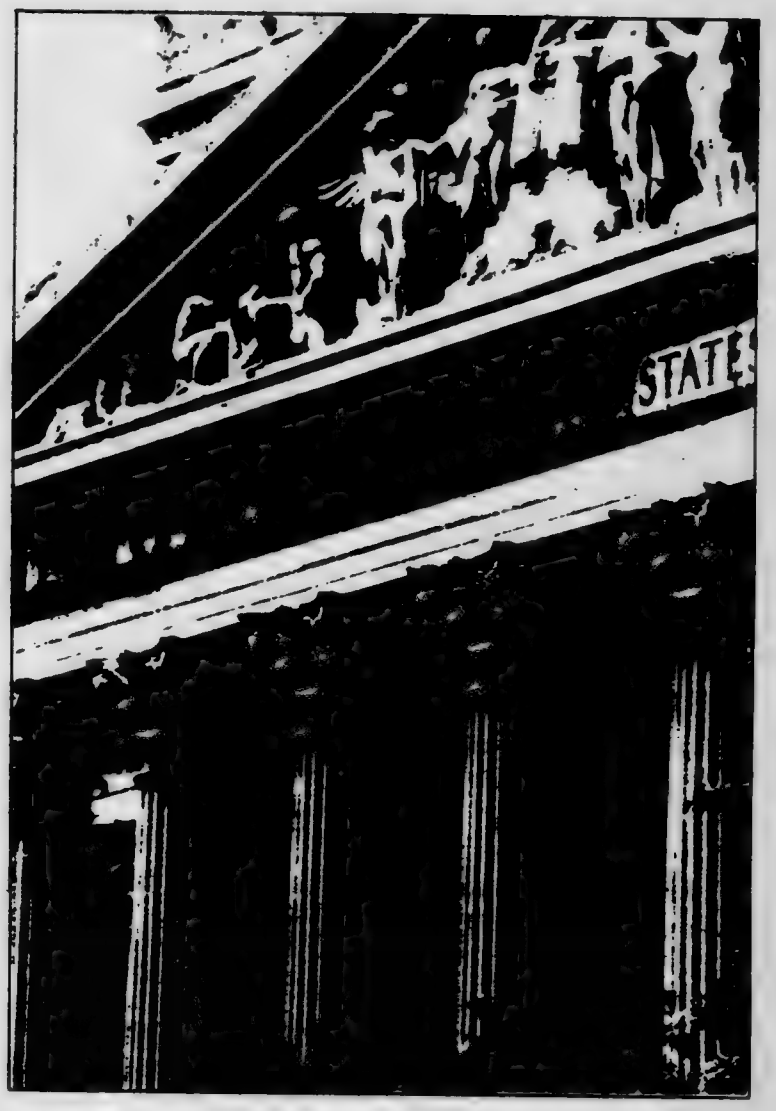

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 63, No. 35
Monday, February 23, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–073–4]

Oriental Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the Oriental fruit fly regulations by removing the quarantine on a portion of Los Angeles County, CA, and by removing the restrictions on the interstate movement of regulated articles from that area. This action is necessary to relieve restrictions that are no longer needed to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. We have determined that the Oriental fruit fly has been eradicated from this portion of Los Angeles County and that the quarantine and restrictions are no longer necessary.

DATES: Interim rule effective February 18, 1998. Consideration will be given only to comments received on or before April 24, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–073–4, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–073–4. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, and vegetables. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks that can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93–10 (referred to below as the regulations), impose restrictions on the interstate movement of regulated articles from quarantined areas to prevent the spread of the Oriental fruit fly to noninfested areas of the United States. The regulations also designate soil and a large number of fruits, nuts, vegetables, and berries as regulated articles.

In an interim rule effective August 20, 1997, and published in the **Federal Register** on August 26, 1997 (62 FR 45141–45142, Docket No. 97–073–1), we quarantined a portion of Los Angeles County, CA, and restricted the interstate movement of regulated articles from the quarantined area. In a second interim rule effective September 4, 1997, and published in the **Federal Register** on September 10, 1997 (62 FR 47551–47553, Docket No. 97–073–2), we quarantined an additional area in Los Angeles County, CA. In a third interim rule effective October 7, 1997, and published in the **Federal Register** on October 14, 1997 (62 FR 53223–53225, Docket No. 97–073–3), we expanded the second quarantined area to include new areas found to be infested with Oriental fruit fly.

Based on trapping surveys conducted by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, we have determined that the Oriental fruit fly has been eradicated from the portion of Los Angeles County, CA, that was quarantined on August 20, 1997. The last finding of Oriental fruit fly in this area was September 22, 1997.

Since then, no evidence of Oriental fruit fly infestations has been found in this area. Based on Departmental experience, we have determined that sufficient time has passed without finding additional flies or other evidence of infestation to conclude that the Oriental fruit fly no longer exists in this portion of Los Angeles County, CA. Therefore, we are removing this portion of Los Angeles County, CA, from the list of quarantined areas in § 301.93–3(c). One other portion of Los Angeles County remains on the list of quarantined areas.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove an unnecessary regulatory burden on the public. A portion of Los Angeles County, CA, was quarantined due to the possibility that the Oriental fruit fly could be spread from this area to noninfested areas of the United States. Since this situation no longer exists, immediate action is necessary to remove part of the quarantine on Los Angeles County, CA, and to relieve the restrictions on the interstate movement of regulated articles from that part.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule relieves restrictions on the interstate movement of regulated articles from a portion of Los Angeles County, CA.

Within the previously quarantined portion of Los Angeles County, there are approximately 143 entities that will be affected by this rule. All would be considered small entities. These include 2 farmers' markets, 1 community garden, 4 distributors, 93 fruit sellers, 7 vendors, 2 growers, 2 haulers, 27 nurseries, 2 packers, 2 processors, and 1 swap meet. These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, these small entities sell regulated articles primarily for local intrastate, not interstate, movement so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that did move regulated articles interstate was minimized by the availability of various treatments, that, in most cases, allowed these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.93–3, paragraph (c) is revised to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) * * *

California

Los Angeles County. That portion of Los Angeles County beginning at the intersection of Interstate Highway 10 and Gateway Boulevard; then east along Interstate Highway 10 to its second intersection with National Boulevard; then east along National Boulevard to Jefferson Boulevard; then east along Jefferson Boulevard to La Cienega Boulevard; then south along La Cienega Boulevard to Rodeo Road; then east along Rodeo Road to Martin Luther King, Jr. Boulevard; then southeast along Martin Luther King, Jr. Boulevard to Crenshaw Boulevard; then south along Crenshaw Boulevard to Slauson Avenue; then east along Slauson Avenue to Vermont Avenue; then south along Vermont Avenue to Florence Avenue; then east along Florence Avenue to Interstate Highway 110; then south along Interstate Highway 110 to Manchester Avenue; then east along Manchester Avenue to Avalon Boulevard; then south along Avalon Boulevard to Rosecrans Avenue; then west along Rosecrans Avenue to Interstate Highway 110; then south along Interstate Highway 110 to State Highway 91 (Artesia Boulevard); then west along State Highway 91 (Artesia Boulevard) to Western Avenue; then south along Western Avenue to 190th Street; then west along 190th Street to Anita Street; then southwest along Anita Street to Herondo Street; then southwest along Herondo Street to Hermosa Avenue; then west along an imaginary line to the Pacific Ocean coastline; then northwest along the Pacific Ocean coastline to a point due west of the west end of Ocean Park Boulevard; then east along an imaginary line drawn from that point to the west end of Ocean Park Boulevard; then northeast along Ocean Park Boulevard to Gateway Boulevard; then northeast along Gateway Boulevard to the point of beginning.

Done in Washington, DC, this 18th day of February 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–4491 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR PART 1499

RIN 0551–0035

Foreign Donation of Agricultural Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends regulations governing procedures for procuring ocean transportation for agricultural commodities provided under section 416(b) of the Agricultural Act of 1949 and the Food for Progress Act of 1985. These changes are consistent with the procedures applicable to title I of the Agricultural Trade Development and Assistance Act of 1954 (P.L. 480).

DATES: This interim rule is effective February 23, 1998. Comments must be received in writing by April 24, 1998 to be assured of consideration.

ADDRESSES: Send comments to the Director, Commodity Credit Corporation, Program Support Division, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Avenue, S.W., Stop 1031, Washington, D.C. 20250–1031; telephone (202) 720–3573.

FOR FURTHER INFORMATION CONTACT: Ira Branson, Director, Commodity Credit Corporation Program Support Division, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Avenue, S.W., Stop 1031, Washington, D.C. 20250–1031; telephone (202) 720–3573.

SUPPLEMENTARY INFORMATION: This interim rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this interim rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this interim rule.

Paperwork Reduction Act

This interim rule does not contain any information collection requirements that require OMB approval under the provisions of the Paperwork Reduction Act.

Executive Order 12372

This interim rule is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 46 FR 29115 (June 24, 1983).

Executive Order 12988

This interim rule has been reviewed under the Executive Order 12988, Civil Justice Reform. The interim rule would have pre-emptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The interim rule would not have retroactive effect. Administrative proceedings are not required before parties may seek judicial review.

In accordance with section 416(b) of the Agricultural Act of 1949, 7 U.S.C. 1431(b), ("section 416(b)") and the Food for Progress Act of 1985, 7 U.S.C. 1736o, ("FFP"), Commodity Credit Corporation ("CCC") donates agricultural commodities overseas to meet food needs and to support economic development efforts in foreign countries. The recipient of a donation, commonly referred to as a "cooperating sponsor," is required to contract for the ocean transportation of the donated commodities. Current regulations governing section 416(b) and FFP require cooperating sponsors to follow certain procedures when contracting for ocean transportation of bulk cargoes and non-liner shipments of packaged commodities that parallel procedures required under title I of the Agricultural Trade Development and Assistance Act of 1954, (Pub. L. 480). The Pub. L. 480 Operations Division, Export Credits, Foreign Agricultural Service, has the responsibility of overseeing the contracting process for all these programs.

On October 10, 1997, CCC published a final rule applicable to title I, Pub. L. 480 at 7 CFR part 17 that changed certain requirements regarding the procedures for contracting for ocean transportation of bulk cargoes and non-liner shipments of packaged commodities and also reorganized part 17 (62 FR 52929). The purpose of this interim rule is to amend the regulations applicable to section 416(b) and FFP to be consistent with the new title I, P.L. 480 requirements. In particular, the interim rule deletes the prohibition in § 1499.8(b)(4) against "clarification or submission of additional information" under competitive freight invitations for bids and updates a cross reference to the title I, Pub. L. 480 regulations regarding information and certifications required from prospective shipping agents. Public participation in these rule changes is unnecessary because the changes were the subject of public comments during the title I, Pub. L. 480 rule-making process. Also, any delay in promulgating these changes may delay implementation of these foreign assistance programs this fiscal year. For these reasons, CCC is promulgating this rule as an interim rule, effective on publication. However, comments on the provisions of this regulation are invited. CCC will consider all comments received and may make changes based on the comments received.

List of Subjects in 7 CFR Part 1499

Agricultural commodities, Exports, Foreign aid.

Accordingly, CCC proposes to amend 7 CFR part 1499 as follows:

PART 1499—FOREIGN DONATION PROGRAMS

1. The authority citation for part 1499 continues to read as follows:

Authority: 7 U.S.C. 1431(b); 7 U.S.C. 1736o; E.O. 12752.

2. In § 1499.8, paragraph (b)(4) is amended by revising the first sentence to read as follows:

§ 1499.8 Ocean transportation.

* * * * *

(b) * * *

(4) In the case of shipments of bulk commodities and non-liner shipments of packaged commodities, the Cooperating Sponsor shall open offers in public in the United States at the time and place specified in the invitation for bids and consider only offers that are responsive to the invitation for bids without negotiation. * * *

* * * * *

§ 1499.8 [Amended]

3. In § 1499.8, paragraph (c)(2) is amended by removing "7 CFR 17.5" and adding, in its place, "7 CFR 17.4".

Signed at Washington, DC on November 20, 1997.

Christopher E. Goldthwait,

General Sales Manager, FAS, and Vice President, Commodity Credit Corporation.

[FR Doc. 98–4430 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 97–062–1]

Tuberculosis Testing of Livestock Other Than Cattle and Bison

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the tuberculosis regulations to include species of livestock other than cattle and bison in the requirement for two annual herd tests for newly assembled herds on premises where a tuberculous herd has been depopulated. This requirement is necessary because, without testing, such livestock could become infected and spread tuberculosis to the cattle or bison in the herd before the disease was detected in the herd. Adding this requirement to the tuberculosis regulations will help ensure continued progress toward eradicating tuberculosis in the U.S. livestock population.

DATES: Interim rule effective February 23, 1998. Consideration will be given only to comments received on or before April 24, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–062–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–062–1. Comments

received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. James P. Davis, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–7727; or e-mail: jdavis@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. The regulations in 9 CFR part 77, "Tuberculosis" (referred to below as the regulations), regulate the interstate movement of cattle and bison because of tuberculosis. Cattle or bison not known to be affected with or exposed to tuberculosis may be moved interstate without restriction if those cattle or bison are moved from a State designated as an accredited-free, accredited-free (suspended), or modified accredited State. The regulations restrict the interstate movement of cattle or bison not known to be affected with or exposed to tuberculosis if those cattle or bison are moved from a nonmodified accredited State.

The status of a State is based on its freedom from evidence of tuberculosis in cattle and bison, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards contained in a document titled "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (referred to below as the UM&R), which, as explained in the definition of *Uniform Methods and Rules—Bovine Tuberculosis Eradication* in § 77.1, has been incorporated by reference into the regulations.

Under the provisions of the UM&R, disclosure of tuberculosis in any herd must be followed by a complete epidemiologic investigation to determine the source of the infection in the herd and delimit the possible spread of the disease from the herd. Given the serious effects of the disease and the need to contain its spread, the Animal and Plant Health Inspection Service (APHIS) believes that every effort needs to be made to ensure the immediate elimination of tuberculosis from all species of domestic livestock on the affected premises. The most effective and immediate means of eliminating tuberculosis from a premises is the depopulation—i.e., removal directly to slaughter—of the entire herd.

When an affected herd has been depopulated, there is still some risk that the bovine tuberculosis disease agent, *M. bovis*, could persist on the premises from which the affected herd was removed. Because of that risk, the UM&R requires that two annual herd tests be applied to all cattle and bison in a newly assembled herd on premises where a tuberculous herd has been depopulated, with the first test being applied approximately 6 months after the assembly of the new herd. These two tests are intended to ensure that the animals in the new herd have not been infected with tuberculosis through environmental exposure to *M. bovis* remaining on the premises. The provisions of the UM&R do, however, recognize that the *M. bovis* organism cannot persist indefinitely in the environment without an animal host. Thus, the UM&R provides that the requirement for two annual herd tests for a newly assembled herd can be waived if the premises has remained vacant—i.e, free of livestock—for 1 year or more.

We believe that the testing requirement described in the previous paragraph is a necessary and sound approach to reducing the risk of tuberculosis being introduced into a newly assembled herd on a premises where a tuberculous herd has been depopulated. Because the UM&R currently incorporated specifically calls for the herd tests to be applied to all cattle and bison, the herd test requirement does not extend to other species of livestock that may be included in a new herd. However, it is becoming increasingly common for herd owners to maintain mixed groups of livestock on common ground, with cattle and bison commingling with animals such as llamas, alpacas, or captive deer. These other species are as susceptible to tuberculosis as cattle or bison and are capable of spreading the disease to, or contracting the disease from, the other livestock in the herd. Thus, the UM&R's omission of livestock other than cattle and bison from the herd testing requirement makes it possible for tuberculosis-infected livestock to be present in a mixed herd without being diagnosed, which could result in the herd's cattle or bison becoming infected with tuberculosis.

This potential risk presented by other species of livestock is recognized in our regulations in 9 CFR part 50, which provide for the payment of indemnity to the owners of animals destroyed because of tuberculosis. Specifically, § 50.14(f) of those regulations provides that a claim for compensation for exposed cattle, bison, or cervids destroyed during a herd depopulation will not be allowed if a designated epidemiologist determines that exotic bovidae (such as antelope) or other species of livestock in the herd were exposed to tuberculosis by reason of association with tuberculous livestock but were not destroyed as part of the herd depopulation. This basis for the denial of a compensation claim is intended to encourage herd owners to destroy all exposed livestock in a herd, not just the cattle, bison, or cervids for which compensation would be paid. This ensures that when the cattle, bison, or cervids in an affected herd are depopulated, other exposed species do not remain on the premises to infect the healthy livestock with which the owner reassembles the herd.

Given that the risk of tuberculosis exposure applies to all the livestock—not just the cattle and bison—in a newly assembled herd on a premises where a tuberculous herd was depopulated, we believe that it is necessary to include other species of livestock in the requirement for two annual herd tests for such herds. To do so, we have amended the definitions of *Accredited-free (suspended) State* and *Modified accredited State* in § 77.1 of the regulations. To support those changes, we have also amended the definition of *herd* in § 77.1 and have added a definition for *livestock* to that section.

The definition of *Accredited-free (suspended) State* provides that a State with the status of an accredited-free State is designated as accredited-free (suspended) if tuberculosis is detected in any cattle or bison in the State. Such a State will qualify for redesignation as an accredited-free State after the herd in which tuberculosis is detected has been quarantined, an epidemiological investigation has confirmed that the disease has not spread from the herd, and all reactor cattle and bison have been destroyed. The definition of *Modified accredited State* provides, in part, that a State must comply with all the provisions of the UM&R regarding modified accredited States, and must apply those provisions to bison in the same manner as to cattle, in order to establish or maintain status as a modified accredited State. To each of those definitions, we have added the further requirement that if any livestock other than cattle or bison are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State must apply

the herd test requirements of the UM&R for such newly assembled herds to those other livestock in the same manner as to cattle and bison.

Because, as discussed above, the composition of a herd may not be limited to cattle or bison, we have also amended the definition of *herd* in § 77.1. The scope of the definition had been limited to groups of cattle, bison, or both; as amended by this interim rule, the definition of *herd* now includes other livestock. We have also added the following definition of *livestock*: "Cattle, bison, cervids, swine, dairy goats, and other hoofed animals (such as llamas, alpacas, and antelope) raised or maintained in captivity for the production of meat and other products, for sport, or for exhibition." These two definitions are the same as those already provided for those terms in § 50.1 of the tuberculosis indemnity regulations.

Applicability to State Tuberculosis Status

Although this interim rule provides for the testing of all livestock in a newly assembled herd on a premises where a tuberculous herd has been depopulated, a State's tuberculosis status will continue to be based on the presence or absence of tuberculosis in cattle or bison in herds within the State. The intent of this interim rule is to provide for the identification and elimination of potential sources of tuberculosis infection in those newly assembled herds when they contain cattle or bison and other livestock. The detection of tuberculosis in livestock other than cattle and bison in a herd as a result of the testing provisions of this interim rule will not affect a State's tuberculosis status unless it is conclusively determined, in accordance with the existing regulations and the provisions of the UM&R, that tuberculosis infection is also present in the herd's cattle or bison.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to change the regulations in order to close a loophole in the herd testing requirements that could result in the spread of tuberculosis within mixed herds of cattle, bison, and other species of livestock. Without this testing requirement, it is possible for a tuberculosis-infected animal to spread the disease throughout a newly assembled herd, and for the disease to remain undetected until the cattle or bison in the herd are tested for tuberculosis. Two notable examples of tuberculosis being spread in this way occurred in 1992. In the State of New York, two dairy herds were depopulated after cattle in the herds were found to be infected with tuberculosis, and an additional 18 dairy herds were quarantined and tested. It was determined that the cattle in one of the herds that was depopulated had been exposed to tuberculous cervids that shared the premises. Similarly, tuberculosis was found in beef cattle in Pennsylvania that had been in contact with tuberculous cervids in the herd. As a result of these outbreaks, New York and Pennsylvania lost their accredited-free State status. Further, in one State there is a premises where cattle and bison were depopulated because of bovine tuberculosis, but other livestock exposed to the tuberculous cattle and bison remained after the depopulation. These exposed livestock have now commingled with the newly reassembled cattle and bison on that same premises. It is necessary to immediately implement this interim rule to ensure that all livestock on that premises have been properly tested before upgrading the State's tuberculosis status to accredited-free.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This interim rule amends the tuberculosis regulations by including species of livestock other than cattle and bison in the requirement for two annual herd tests for newly assembled herds on premises where a tuberculous herd has been depopulated. We are taking this action because, without testing, such livestock could become infected and spread tuberculosis to the cattle or bison in the herd before the disease was detected in the herd. Adding this requirement to the tuberculosis regulations will help ensure continued progress toward eradicating tuberculosis in the U.S. livestock population.

The U.S. livestock industry relies on healthy animals for its economic well-being, and the industry's role in the U.S. economy is significant. As an example, the total value of U.S. livestock output in 1991 was $66.6 billion, about half of the value of all agricultural production in the United States for that year. The value of live animal exports and exports of meat products totaled $4.3 billion in 1991, equivalent to 10 percent of the value of all U.S. agricultural exports that year. In 1996, there were 1,194,390 domestic operations with cattle and calves, and the inventory of cattle and calves at the end of that year stood at 101.2 million head with a value of more than $52 billion (U.S. Department of Agriculture, National Agricultural Statistics Service, "Agricultural Statistics 1995–96," Table 370).

Recent studies on the economic impact of bovine tuberculosis in the United States are not available. However, a comprehensive computer model developed by Canada in 1979 indicates that, if the United States' tuberculosis eradication program were discontinued, annual losses in the United States would exceed $1 billion. Another study, conducted in 1972, concluded that APHIS' tuberculosis eradication program was fully justified from an economic standpoint, as benefits exceeded costs by a margin of 3.64 to 1.[1]

The Regulatory Flexibility Act requires that agencies consider the economic impact of rule changes on small entities. The entities potentially affected by this rule change are herd owners, most of whom are classified as small entities under the Small Business Administration's (SBA's) criteria. In 1992, for example, 92 percent of all 1,074,349 farms in the U.S. with cattle inventory had herds of fewer than 200 cattle (U.S. Department of Commerce, "1992 Census of Agriculture," 1993). In that same year, 98 percent of all 921,695 livestock and dairy farms in the United States had sales of less than $0.5 million, the small entity size standard established by the SBA for firms engaged in livestock and animal specialty services.

This interim rule is not expected to have a significant economic impact on a substantial number of herd owners, large or small, for several reasons. First,

[1] Information about these studies can be obtained by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

only a very small percentage of herds will be affected. It is estimated that only about 1 percent of all herds in the United States are mixed herds comprised of both cattle and/or bison and other species of livestock. Second, the testing of these other species of livestock will be conducted by Federal or State veterinary medical officers at no cost to herd owners. Herd owners will have to bear the cost of presenting the animals for testing, but that cost should be minimal in most cases. Only in rare situations, such as those where exotic animals have to be sedated, would the cost of presenting animals exceed minimal levels. Third, if it is necessary to destroy cattle or bison that have been identified as tuberculosis-exposed on the basis of a herd test that considers livestock other than cattle and bison, the economic impact on herd owners will be mitigated, if not entirely offset, by the payment of indemnity by APHIS.

For the reasons stated above, this interim rule is not expected to have an adverse impact on a significant number of herd owners. Indeed, herd owners are more likely to benefit over time as continued progress toward the eradication of tuberculosis serves to enhance livestock values.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, 9 CFR part 77 is amended as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 77.1 is amended as follows:

a. In the definition of *Accredited-free (suspended) State,* paragraph (1)(ii) is revised to read as set forth below.

b. The definition of *Herd* is revised to read as set forth below.

c. A definition of *Livestock* is added, in alphabetical order, to read as set forth below.

d. In the definition of *Modified accredited state,* paragraph (1)(i) is revised to read as set forth below.

§ 77.1 Definitions.

* * * * * *

Accredited-free (suspended) State. (1) * * *

(ii) A State is qualified for redesignation of accredited-free status after the herd in which tuberculosis is detected has been quarantined, an epidemiological investigation has confirmed that the disease has not spread from the herd, and all reactor cattle and bison have been destroyed. If any livestock other than cattle or bison are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State must apply the herd test requirements of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" for such newly assembled herds to those other livestock in the same manner as to cattle and bison.

* * * * *

Herd. Any group of livestock maintained on common ground for any purpose, or two or more groups of livestock under common ownership or supervision, geographically separated but that have an interchange or movement of livestock without regard to health status, as determined by the Administrator.

* * * * *

Livestock. Cattle, bison, cervids, swine, dairy goats, and other hoofed animals (such as llamas, alpacas, and antelope) raised or maintained in captivity for the production of meat and other products, for sport, or for exhibition.

Modified accredited State. (1)(i) To establish or maintain status as a modified accredited State, a State must comply with all of the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding modified accredited States, and must apply these provisions to bison in the same manner as to cattle. Further, if any livestock other than cattle or bison are included in a newly assembled herd on a premises where a tuberculous herd has been depopulated, the State must apply the herd test requirements of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" for such newly assembled herds to those other livestock in the same manner as to cattle and bison. Modified accredited State status must be renewed annually.

* * * * *

Done in Washington, DC, this 18th day of February 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–4490 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1720

RIN 2550–AA05

Implementation of the Privacy Act of 1974

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Interim regulation with request for comments.

SUMMARY: The Office of Federal Housing Enterprise Oversight is issuing an interim regulation to implement the Privacy Act of 1974. The regulation sets forth the procedures by which an individual may request access to records about him/her that are maintained by OFHEO, amendment of such records, or an accounting of disclosures of such records. OFHEO is requesting comments on the regulation.

DATES: This interim regulation is effective February 23, 1998. Comments regarding the regulation must be received in writing on or before April 24, 1998.

ADDRESSES: Send written comments to Anne E. Dewey, General Counsel, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. Copies of all comments received will be available for examination by interested parties at the Office of Federal Housing Enterprise

Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Deputy General Counsel, or Isabella W. Sammons, Associate General Counsel, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552, telephone (202) 414–3800 (not a toll-free number). The toll-free telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Effective Date

The Office of Federal Housing Enterprise Oversight (OFHEO) has determined that it is in the public interest to publish an interim regulation that is effective immediately in order to give effect to the OFHEO Notice of Systems of Records published elsewhere in this issue of the **Federal Register**. The immediate effective date will permit the public to gain access to information pertaining to themselves without delay. The Administrative Procedure Act (APA) permits agencies to forgo the notice and comment period and to make a regulation effective immediately if doing so would be in the public interest. 5 U.S.C. 553(b) and (d).

Request for Public Comment

OFHEO is seeking comments on the interim regulation. Before making this interim regulation final, OFHEO will carefully review and consider all comments.

Discussion of Regulation

Section 1720.1 Scope

This section explains that the regulation implements the provisions of the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a). The regulation sets forth the procedures by which an individual may request access to records about him/her that are maintained by OFHEO in a designated system of records, may request amendment of such records, or may request an accounting of disclosures of such records.

This section further explains that a request from an individual for a record about that individual that is not contained in an OFHEO designated system of records will be considered to be a Freedom of Information Act (FOIA) (5 U.S.C. 552) request and will be processed under the FOIA.

Section 1720.2 Definitions

This section defines various terms as follows:

Amendment means any correction of, addition to, or deletion from a record.

Designated system of records means a system of records that OFHEO has listed and summarized in the **Federal Register** pursuant to the requirements of 5 U.S.C. 552a(e).

Individual means a natural person who is either a citizen of the United States of America or an alien lawfully admitted for permanent residence.

Maintain includes collect, use, disseminate, or control.

Privacy Act Appeals Officer means the OFHEO employee who has been delegated the authority to determine Privacy Act appeals.

Privacy Act Officer means the OFHEO employee who has been delegated the authority to determine Privacy Act requests.

Record means any item, collection, or grouping of information about an individual that is maintained by OFHEO and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual.

Routine use, with respect to disclosure of a record, means the use of such record for a purpose that is compatible with the purpose for which it was created.

Statistical Record means a record in a system of records maintained only for statistical research or reporting purposes and not used, in whole or in part, in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

System of records means a group of records under the control of OFHEO from which information is retrieved by the name of the individual or some identifying number, symbol, or other identifying particular assigned to the individual.

Section 1720.3 Requests for Access to Individual Records

This section explains how individuals may request access to records about themselves that are maintained by OFHEO. The procedure depends on whether or not the records are contained in a governmentwide system of records of another Federal agency or in a system of records of OFHEO.

If the records are contained in a governmentwide system of records of the U.S. Office of Personnel Management (OPM), the request is submitted to the agency specified (which may be other than OFHEO) as prescribed by OPM in its regulations found at 5 CFR part 297 and in the OPM **Federal Register** Privacy Act notice for the specific governmentwide system. If the records are contained in a governmentwide system of records of another **Federal Register** Privacy Act notice for the specific governmentwide system. Federal agencies that have published governmentwide systems of records include the Equal Employment Opportunity Commission, the General Services Administration, the Department of Labor, the Office of Government Ethics, and the Office of Personnel Management.

If the records are contained in a system of records of OFHEO, a written request must be submitted to the OFHEO Privacy Act Officer. The written request should describe the records sought and identify the designated systems of records in which such records may be contained. (A copy of the designated systems of records published by OFHEO in the **Federal Register** is available upon request from the Privacy Act Officer.) No individual will be required to state a reason or otherwise justify a request for access to records about him/her.

Section 1720.4 Decision To Grant or Deny Requests for Access to Individual Records

This section provides that access to records contained in an OFHEO system of records will be granted unless the records were compiled in reasonable anticipation of a civil action or proceeding or require special procedures for medical records. It also describes the procedures for notifying individuals of the decision to grant or deny requests for access.

Although the Privacy Act does not prescribe a time period for responding to requests for access, this section requires the Privacy Act Officer to send a written acknowledgment of receipt within 20 business days of receipt of a request. It also requires the Privacy Act Officer to inform the requesting individual, as soon as reasonably possible, normally within 20 business days following receipt of the request, whether the requested records exist and whether access is granted or denied.

If access is granted, this section requires the Privacy Act Officer to provide the individual with a reasonable period of time to inspect the records at OFHEO during normal business hours or to mail a copy of the records to the individual. If access is denied, this section requires the Privacy Act Officer to inform the individual of the reason for the denial and the right to appeal.

Section 1720.5 Special Procedures for Medical Records

With respect to medical records, this section requires the Privacy Act Officer

to disclose such records directly to the requesting individual, unless, in the judgment of OFHEO, such disclosure may have an adverse effect on that individual. If medical records are not disclosed directly to the individual, the medical records will be submitted to a licensed medical doctor named by the individual.

Section 1720.6 Requirements for Verification of Identity

To protect the privacy of individuals, this section provides for verification of identity. If an individual submits a written request in person, he/she may be required to present two forms of identification, such as an employment identification card, driver's license, passport, or other document typically used for identification purposes. One of the two forms of identification must contain the individual's photograph and signature.

If an individual submits a written request, other than in person, for access to or amendment of records, he/she may be required to provide either one or both of the following: (1) Minimal identifying information, such as full name, date and place of birth, or other personal information; (2) at the election of the individual, either a certification of a duly commissioned notary public of any State or territory or the District of Columbia attesting to the requesting individual's identity or an unsworn declaration subscribed to as true under penalty of perjury under the laws of the United States of America.

Section 1720.7 Requests for Amendment of Individual Records

This section explains how an individual may request amendment of any record about him/her that the individual believes is not accurate, relevant, timely, or complete. To request amendment, the individual must submit a written request to the Privacy Act Officer. The request should include the reason for requesting the amendment; a description of the record, or portion thereof, including the name of the appropriate designated system of record; and, if available, a copy of the record on which the specific portion requested to be amended is notated.

As with requests for access, this section provides that the Privacy Act Officer may require the individual making the request for amendment to provide identifying information.

Section 1720.8 Decision To Grant or Deny Requests for Amendment of Individual Records

This section explains the procedures that must be followed by the Privacy Act Officer in processing requests for amendment of individual records. Within 10 business days following receipt of a request for amendment of records, the Privacy Act Officer must send a written acknowledgment of receipt to the requesting individual.

The Privacy Act does not require a specific time in which the Privacy Act Officer must respond to the request for amendment. This section requires that, as soon as reasonably possible, normally within 30 business days from the receipt of the request for amendment, the Privacy Act Officer must inform the individual in writing of the decision to grant or deny the request for amendment. If the request for amendment is granted, the regulation provides that the amendment must be made. If the request for amendment is denied, the written notification must include the reason for the denial and an explanation of the right to appeal.

Section 1720.9 Appeals of the Initial Decision To Deny Access to or Amendment of Individual Records

The Privacy Act requires that agencies establish procedures by which an individual may appeal an initial denial of access to or amendment of records. This section provides that the individual must submit a written appeal, within 30 business days following receipt of notification of the denial, to the Privacy Act Appeals Officer. Both the envelope and the appeal request should be marked "Privacy Act Appeal." The appeal should include the information specified for requests for access or for requests for amendment, a copy of the initial denial notice, and any other relevant information for consideration by the Privacy Act Appeals Officer.

Section 1720.10 Decision To Grant or Deny Appeals

This section describes the notification process with respect to appeals. It requires, within 30 business days following receipt of the appeal, that the Privacy Act Appeals Officer send a written notification of the decision to the appealing individual. The Privacy Act Appeals Officer may extend the 30-day notification period for good cause. If the time period is extended, the Privacy Act Appeals Officer must provide written notice of the reason for the extension and the expected date of the final decision.

If the Privacy Act Appeals Officer grants the appeal for access or amendment, this section provides that, as appropriate, the individual must be provided access to the records or the amendment must be made. If the Privacy Act Appeals Officer denies the appeal for access or amendment, this section provides that the written notification of the decision must include the reason for the denial, the right to seek judicial review of the final decision, and, if applicable, the right to submit a statement of disagreement.

An individual may file a statement with the Privacy Act Appeals Officer that sets forth the reason he/she disagrees with the decision to deny the appeal for amendment. If filed, the statement of disagreement must be attached to the record that is the subject of the request for amendment. The Privacy Act Appeals Officer has the discretion to prepare a statement in response to the statement of disagreement that explains why the requested amendment was not made. If prepared, the statement of explanation must be attached to the subject record and a copy provided to the individual.

This section explains that, if the final decision on the appeal for amendment of records is not made within 30 working days (unless the 30-day notification period is extended), the individual may bring a civil action against OFHEO in the appropriate district court of the United States.

Section 1720.11 Disclosure of Individual Records to Other Persons or Agencies

The Privacy Act provides for certain circumstances in which individual records may be disclosed to a person or agency other than the individual about whom the record pertains (third parties). These circumstances are—

- Upon written request and authorization by the individual;
- With the prior written consent of the individual;
- If required under the Freedom of Information Act;
- For a routine use, with respect to a designated system of records as described by OFHEO in its notice of systems of records published in the **Federal Register**;
- Pursuant to the order of a court of competent jurisdiction;
- To those officers and employees of OFHEO who have a need for the record in the performance of their duties. For purposes of the regulation, officers and employees of OFHEO include officers and employees of other federal agencies with whom OFHEO has an interagency agreement to provide services and contractors with whom OFHEO has a contract for services;
- To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity

pursuant to the provisions of title 13 of the United States Code;

- To a recipient who has provided OFHEO with advance, adequate written assurance that the record will be used solely as a statistical research or reporting record, and that the record is to be transferred in a form that is not individually identifiable;
- To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Archivist of the United States to determine whether the record has such value;
- To an agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to OFHEO specifying the particular portion of the record desired and the law enforcement activity for which the record is sought;
- To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, concurrently with such disclosure, notification is transmitted to the last known address of the individual to whom the record pertains;
- To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or subcommittee of any such joint committee;
- To the Comptroller General, or any of his/her authorized representatives, in the course of the performance of the duties of the General Accounting Office; or
- To a consumer reporting agency in accordance with 31 U.S.C. 3711(e). Section 3711(e) of title 31, United States Code, provides, in connection with the collection and compromise of claims of the U.S. Government, that certain information from a system of records may be disclosed to a consumer reporting agency.

Section 1720.12 Accounting of Disclosures

The Privacy Act requires that agencies keep an accounting of disclosures made to third parties. This section provides that OFHEO keep an accurate accounting of the date, nature, and purpose of each disclosure of a record and the name and address of each person to whom a disclosure was made. There are two exceptions to the requirement for accounting. The first exception is disclosure to those officers and employees of OFHEO who have a need for the record in the performance of their duties; the second exception is disclosure required under the Freedom of Information Act.

This section further requires that OFHEO retain the accounting for at least 5 years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

Furthermore, this section explains that, when a record has been amended or when a statement of disagreement has been filed, a copy of the amended record and any statement of disagreement must be provided, and any statement of explanation may be provided, to all prior and subsequent recipients of the affected record whose identities can be determined pursuant to the required disclosure of accountings.

Section 1720.13 Requests for Accounting of Disclosures

This section explains that any individual may request an accounting of disclosures of records about him/her for which an accounting is required to be maintained by submitting a written request to the Privacy Act Officer. Before processing the request, the Privacy Act Officer may require that the individual provide identifying information.

The Privacy Act Officer must provide the accounting of disclosures with one exception to the requesting individual. The Privacy Act Officer is not required to provide an accounting of any disclosures made to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity.

Section 1720.14 Fees

Generally, it will be more convenient for OFHEO and the individual to have access to the requested records by receiving a copy rather than inspecting the records at OFHEO. Therefore, this section provides that OFHEO will not charge a fee for providing a copy of the requested record or any portion thereof.

Section 1720.15 Preservation of Records

This section requires that OFHEO preserve all correspondence relating to the written requests it receives and all records processed pursuant to such requests, in accordance with the records retention provisions of General Records Schedule 14, Informational Services Records. Furthermore, this section provides that OFHEO must not destroy records that are subject to a pending request for access, amendment, appeal, or lawsuit pursuant to the Privacy Act.

Section 1720.16 Rights of Parents and Legal Guardians

This section provides that a parent of any minor or the legal guardian of any individual who has been declared to be incompetent due to a physical or mental incapacity or age by a court of competent jurisdiction may act on behalf of the individual.

Section 1720.17 Penalties

This section notes that the Privacy Act makes it a misdemeanor, subject to a maximum fine of $5,000, to knowingly and willfully request or obtain any record concerning an individual from OFHEO under false pretenses.

Regulatory Impact

Executive Order 12612, Federalism

Executive Order 12612 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the States, on the relationship or distribution of power between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government. OFHEO has determined that this regulation has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Executive Order 12866, Regulatory Planning and Review

The regulation has been reviewed by the Office of Management and Budget (OMB) pursuant to Executive Order 12866.

Executive Order 12988, Civil Justice Reform

Executive Order 12988 sets forth guidelines to promote the just and efficient resolution of civil claims and to reduce the risk of litigation to the Federal Government. The regulation meets the applicable standards of sections 3(a) and 3(b) of Executive Order 12988.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an

analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

OFHEO has considered the impact of the regulation under the Regulatory Flexibility Act. The regulation only affects individuals and has no effect on small entities. Therefore, the General Counsel of OFHEO has certified that the regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, requires that regulations involving the collection of information receive clearance from OMB. The regulation contains no such collection of information requiring OMB approval under the Paperwork Reduction Act. Consequently, no information has been submitted to OMB for review under the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

The regulation does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995. Assessment statements are not required for regulations that incorporate requirements specifically set forth in law. As explained in the preamble, the regulation implements the Privacy Act. In addition, the regulation does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.

List of Subjects in 12 CFR Part 1720

Privacy.

For the reasons set forth in the preamble, OFHEO is amending on an interim basis Chapter XVII of title 12 of the Code of Federal Regulations by adding part 1720 to read as follows:

PART 1720—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.

1720.1 Scope.
1720.2 Definitions.
1720.3 Requests for access to individual records.
1720.4 Decision to grant or deny requests for access to individual records.
1720.5 Special procedures for medical records.
1720.6 Requirements for verification of identity.
1720.7 Requests for amendment of individual records.
1720.8 Decision to grant or deny requests for amendment of individual records.
1720.9 Appeals of the initial decision to deny access to or amendment of individual records.
1720.10 Decision to grant or deny appeals.
1720.11 Disclosure of individual records to other persons or agencies.
1720.12 Accounting of disclosures.
1720.13 Requests for accounting of disclosures.
1720.14 Fees.
1720.15 Preservation of records.
1720.16 Rights of parents and legal guardians.
1720.17 Penalties.

Authority: 5 U.S.C. 552a, 12 U.S.C. 4513(b).

§ 1720.1 Scope.

(a) This part 1720 sets forth the procedures by which an individual may request access to records about him/her that are maintained by the Office of Federal Housing Enterprise Oversight (OFHEO) in a designated system of records, amendment of such records, or an accounting of disclosures of such records. This part 1720 implements the provisions of the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a).

(b) A request from an individual for a record about that individual that is not contained in an OFHEO designated system of records will be considered to be a Freedom of Information Act (FOIA) (5 U.S.C. 552) request and will be processed under the FOIA.

§ 1720.2 Definitions.

For the purposes of this part 1720—

Amendment means any correction of, addition to, or deletion from a record.

Designated system of records means a system of records that OFHEO has listed and summarized in the **Federal Register** pursuant to the requirements of 5 U.S.C. 552a(e).

Individual means a natural person who is either a citizen of the United States of America or an alien lawfully admitted for permanent residence.

Maintain includes collect, use, disseminate, or control.

Privacy Act Appeals Officer means the OFHEO employee who has been delegated the authority to determine Privacy Act appeals.

Privacy Act Officer means the OFHEO employee who has been delegated the authority to determine Privacy Act requests.

Record means any item, collection, or grouping of information about an individual that is maintained by OFHEO and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual.

Routine use, with respect to disclosure of a record, means the use of such record for a purpose that is compatible with the purpose for which it was created.

Statistical Record means a record in a system of records maintained only for statistical research or reporting purposes and not used, in whole or in part, in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

System of records means a group of records under the control of OFHEO from which information is retrieved by the name of the individual or some identifying number, symbol, or other identifying particular assigned to the individual.

§ 1720.3 Requests for access to individual records.

(a) Any individual may request records about him/her that are maintained by OFHEO.

(b) The procedures for submitting requests are as follows:

(1) If the records are contained in a governmentwide system of records of the U.S. Office of Personnel Management (OPM), the request must be submitted as prescribed by the regulations of OPM (5 CFR part 297).

(2) If the records are contained in a record in a system of records of another Federal agency, the request must be submitted as prescribed in the **Federal Register** Privacy Act notice for the specific governmentwide system.

(3) If the records are contained in a system of records of OFHEO, the request must be submitted in writing to the Privacy Act Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. The written request should describe the records sought and identify the designated systems of records in which such records may be contained. (A copy of the designated systems of records published by OFHEO in the **Federal Register** is available upon request from the Privacy Act Officer.) No individual shall be required to state a reason or otherwise justify a request for access to records about him/her.

§ 1720.4 Decision to grant or deny requests for access to individual records.

(a) *Basis for the decision.* The Privacy Act Officer shall grant access to records upon receipt of a request submitted under § 1720.3(b)(3), unless the records—

(1) Were compiled in reasonable anticipation of a civil action or proceeding; or

(2) Require special procedures for medical records provided for in § 1720.5.

(b) *Notification procedures.* (1) Within 20 business days of receipt of a request

submitted under § 1720.3(b)(3), the Privacy Act Officer shall send a written acknowledgment of receipt to the requesting individual.

(2) As soon as reasonably possible, normally within 20 business days following receipt of the request, the Privacy Act Officer shall send a written notification that informs the individual whether the requested records exist and, if the requested records exist, whether access is granted or denied, in whole or in part.

(c) *Access procedures.* If access is granted, in whole or in part, the Privacy Act Officer shall provide the individual with a reasonable period of time to inspect the records at OFHEO during normal business hours or shall mail a copy of the requested records to the individual.

(d) *Denial procedures.* If access is denied, in whole or in part, the Privacy Act Officer shall inform the individual of the reasons for the denial and of the right to appeal the denial, as set forth in § 1720.9.

§ 1720.5 Special procedures for medical records.

The Privacy Act Officer shall grant access to medical records to the requesting individual to whom the medical records pertain. However, if, in the judgment of OFHEO, such direct access may have an adverse effect on that individual, the Privacy Act Officer shall transmit the medical records to a licensed medical doctor named by the individual.

§ 1720.6 Requirements for verification of identity.

(a) *Written requests submitted in person.* Any individual who submits in person a written request under this part, may be required to present two forms of identification, such as an employment identification card, driver's license, passport, or other document typically used for identification purposes. One of the two forms of identification must contain the individual's photograph and signature.

(b) *Other written requests.* Any individual who submits, other than in person, a written request under this part may be required to provide either one or both of the following:

(1) Minimal identifying information, such as full name, date and place of birth, or other personal information.

(2) At the election of the individual, either a certification of a duly commissioned notary public of any State or territory or the District of Columbia attesting to the requesting individual's identity or an unsworn declaration subscribed to as true under penalty of perjury under the laws of the United States of America.

§ 1720.7 Requests for amendment of individual records.

(a) *Procedures for requesting amendment of a record.* Any individual may request amendment of any record about him/her that the individual believes is not accurate, relevant, timely, or complete. To request amendment, the individual must submit a written request to the Privacy Act Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. The request should include—

(1) The reason for requesting the amendment;

(2) A description of the record, or portion thereof, including the name of the appropriate designated system of records, sufficient to enable the Privacy Act Officer to identify the particular record or portion thereof; and

(3) If available, a copy of the record, or portion thereof, on which the specific portion requested to be amended is notated.

(b) *Requirement for identifying information.* The Privacy Act Officer may require the individual making the request for amendment to provide the identifying information specified in § 1720.6.

§ 1720.8 Decision to grant or deny requests for amendment of individual records.

(a) *Notification procedures.* Within 10 business days following receipt of a request for amendment of records, the Privacy Act Officer shall send a written acknowledgment of receipt to the requesting individual. As soon as reasonably possible, normally within 30 business days from the receipt of the request for amendment, the Privacy Act Officer shall send a written notification to the individual that informs him/her of the decision to grant or deny, in whole or in part, the request for amendment.

(b) *Amendment procedures.* If the request is granted, in whole or in part, the requested amendment shall be made to the subject record. A copy of the amended record shall be provided to all prior recipients of the subject record in accordance with § 1720.12(b).

(c) *Denial procedures.* If the request is denied, in whole or in part, the Privacy Act Officer shall include in the written notification the reasons for the denial and an explanation of the right to appeal the denial, as set forth in § 1720.9.

§ 1720.9 Appeals of the initial decision to deny access to or amendment of individual records.

Any individual may appeal the initial denial, in whole or in part, of a request for access to or amendment of his/her record. To appeal, the individual must submit a written appeal, within 30 business days following receipt of written notification of denial, to the Privacy Act Appeals Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. Both the envelope and the appeal request should be marked "Privacy Act Appeal." The appeal should include—

(a) The information specified for requests for access in § 1720.3(b)(3) or for requests for amendment in § 1720.7, as appropriate;

(b) A copy of the initial denial notice; and

(c) Any other relevant information for consideration by the Privacy Act Appeals Officer.

§ 1720.10 Decision to grant or deny appeals.

(a) *Notification of decision.* Within 30 business days following receipt of the appeal, the Privacy Act Appeals Officer shall send a written notification of the decision to grant or deny to the individual making the appeal. The Privacy Act Appeals Officer may extend the 30-day notification period for good cause. If the time period is extended, the Privacy Act Appeals Officer shall inform in writing the individual making the appeal of the reason for the extension and the expected date of the final decision.

(b) *Appeal granted.* If the appeal for access is granted, in whole or in part, the Privacy Act Appeals Officer shall provide the individual with reasonable time to inspect the requested records at OFHEO during normal business hours or mail a copy of the requested records to the individual. If the appeal for amendment is granted, in whole or in part, the requested amendment shall be made. A copy of the amended record shall be provided to all prior recipients of the subject record in accordance with § 1720.12(b).

(c) *Appeal denied.* If the Privacy Act Appeals Officer denies, in whole or in part, the appeal for access or amendment, he/she shall include in the written notification of the reasons for the denial an explanation of the right to seek judicial review of the final decision, and, with respect to an appeal for amendment, the right to submit a statement of disagreement under paragraph (d) of this section.

(d) *Statements of disagreement and explanation.* (1) Upon receipt of a decision to deny, in whole or in part, the appeal for amendment of records, the individual may file a statement with the Privacy Act Appeals Officer that sets forth his/her reasons for disagreeing with the decision. The Privacy Act Appeals Officer shall attach the statement of disagreement to the record that is the subject of the request for amendment. In response to the statement of disagreement, the Privacy Act Appeals Officer has the discretion to prepare a statement that explains why the requested amendment was not made. If prepared, the statement of explanation shall be attached to the subject record and a copy of the statement provided to the individual who filed the statement of disagreement.

(2) The Privacy Act Appeals Officer shall provide a copy of any statement of disagreement, and may provide any statement of explanation, to prior recipients of the subject record in accordance with § 1720.12(b).

(e) *Right to judicial review.* If OFHEO does not comply with the notification procedures under paragraph (a) of this § 1720.10 with respect to an appeal for amendment of records, the appealing individual may bring a civil action against OFHEO in the appropriate district court of the United States, as provided for under 5 U.S.C. 552a(g)(1)(A) and 552a(g)(5) before receiving the written notification of the decision.

§ 1720.11 Disclosure of individual records to other persons or agencies.

(a) OFHEO may disclose a record to a person or agency other than the individual about whom the record pertains only under one or more of the following circumstances:

(1) If requested and authorized in writing by the individual.

(2) With the prior written consent of the individual.

(3) If such disclosure is required under the Freedom of Information Act.

(4) For a routine use, as defined in § 1720.2, with respect to a designated system of records as described by OFHEO in its notice of systems of records published in the Federal Register.

(5) Pursuant to the order of a court of competent jurisdiction.

(6) To the following persons or agencies—

(i) Officers and employees of OFHEO who have a need for the record in the performance of their duties;

(ii) The Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 of the United States Code;

(iii) A recipient who has provided OFHEO with advance, adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(iv) The National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Archivist of the United States to determine whether the record has such value;

(v) An agency or an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to OFHEO specifying the particular portion of the record desired and the law enforcement activity for which the record is sought;

(vi) A person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, concurrently with such disclosure, notification is transmitted to the last known address of the individual to whom the record pertains;

(vii) Either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or subcommittee of any such joint committee;

(viii) The Comptroller General, or any of his/her authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(ix) A consumer reporting agency in accordance with 31 U.S.C. 3711(e).

(b) Before a record is disclosed to other persons or agencies under paragraph (a)(1) or (2) of this section, the identifying information specified in § 1720.6 may be required.

§ 1720.12 Accounting of disclosures.

(a) OFHEO shall keep an accurate accounting of the date, nature, and purpose of each disclosure of a record, and the name and address of each person or agency to whom a disclosure was made under § 1720.11, except for disclosures made under § 1720.11(a)(3) or (a)(6)(i). OFHEO shall retain such accounting for at least 5 years or the life of the record, whichever is longer, after the disclosure for which the accounting was made.

(b) When a record has been amended, in whole or in part, or when a statement of disagreement has been filed, a copy of the amended record and any statement of disagreement must be provided, and any statement of explanation may be provided, to all prior and subsequent recipients of the affected record whose identities can be determined pursuant to the disclosure accountings required under paragraph (a) of this section.

§ 1720.13 Requests for accounting of disclosures.

(a) Any individual may request an accounting of disclosures of records about him/her for which an accounting is required to be maintained under § 1720.12(a) by submitting a written request to the Privacy Act Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. Before processing the request, the Privacy Act Officer may require that the individual provide the identifying information specified under § 1720.6.

(b) The Privacy Act Officer shall make available the accounting of disclosures required to be maintained under § 1720.12, except for an accounting made under § 1720.11(a)(6)(v).

§ 1720.14 Fees.

OFHEO shall not charge any fees for providing a copy of any records, pursuant to a request for access under this part.

§ 1720.15 Preservation of records.

OFHEO shall preserve all correspondence relating to the written requests it receives and all records processed pursuant to such requests under this part, in accordance with the records retention provisions of General Records Schedule 14, Informational Services Records. OFHEO shall not destroy records that are subject to a pending request for access, amendment, appeal, or lawsuit pursuant to the Privacy Act.

§ 1720.16 Rights of parents and legal guardians.

For purposes of this part, a parent of any minor or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction may act on behalf of the individual.

§ 1720.17 Penalties.

The Privacy Act (5 U.S.C. 552a(i)(3)) makes it a misdemeanor, subject to a maximum fine of $5,000, to knowingly and willfully request or obtain any record concerning an individual from OFHEO under false pretenses.

Dated: February 12, 1998.
Mark A. Kinsey,
Acting Director.
[FR Doc. 98–4452 Filed 2–20–98; 8:45 am]
BILLING CODE 4229–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 29147, Amdt. No. 25–94]

Transport Category Airplanes, Technical Amendments and Other Miscellaneous Corrections

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment corrects a number of errors in the safety standards for transport category airplanes. None of the changes are substantive in nature, and none will impose any additional burden on any person.

EFFECTIVE DATE: March 25, 1998.

FOR FURTHER INFORMATION CONTACT: Gary L. Killion, Manager, Regulations Branch, ANM–114, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Ave. S.W., Renton, Washington 98055–4056; telephone (425) 227–2114.

SUPPLEMENTARY INFORMATION:

Background

A number of unrelated errors in the safety standards for transport category airplanes have been brought to the attention of the FAA. Some are due to inadvertent omissions or other editing errors; others are simply typographical or printing errors. This final rule amends part 25 to correct those errors. None of the corrections are substantive in nature, and none will impose any additional burden on any person.

Discussion

Subpart B of part 25, which contains flight requirements, incorporates a number of miscellaneous printing errors. Section 25.107 contains two such errors concerning the symbols used to denote specific airspeeds. Section 25.111(a) contains an erroneous reference to § 25.121(f) in lieu of § 25.121(c), and § 25.111(d)(4) contains a misspelled word. The heading of § 25.119 refers to the singular "engine" rather than the plural "engines". Section 25.233 contains an inappropriate sentence break. All of those errors are corrected herewith.

Part 25 was amended by Amendment 25–86 (61 FR 5218, February 9, 1996) to incorporate revised discrete gust load design requirements. As printed in the **Federal Register**, the introductory paragraph of § 25.349(a) incorrectly reads, "* * * principal masses furnishing the *reaching* inertia *forces*." This phrase is corrected to read, * * * principal masses furnishing the *reacting* inertia *forces*."

Part 25 was amended by Amendment 25–91 (62 FR 40702, July 29, 1997) to incorporate revised structural loads requirements for transport category airplanes. Due to an editing error associated with that amendment, § 25.481(a)(3) is worded as a sentence rather than a prepositional phrase continuing the text of paragraph (a). That error is corrected by removing the word "is" from § 25.481(a)(3).

Part 25 was amended by Amendment 25–88 (61 FR 57946, November 8, 1996) to adopt a number of changes concerning the type and number of passenger emergency exits in transport category airplanes. Due to inadvertent editing errors, existing requirements concerning flightcrew emergency exits and the distance between passenger emergency exits were omitted from § 25.807. That section is hereby amended to correct those omissions. This amendment places no additional burden on any persons because the operators of such airplanes are required to comply in any event by corresponding standards in parts 121 and 135.

Prior to the adoption of Amendment 25–56 (47 FR 58489, December 30, 1982), § 25.832(a)(2) specified a maximum cabin ozone concentration of 0.1 parts per million by volume under specified conditions. Although unrelated to that amendment, a printing error was introduced shortly thereafter in § 25.832(a)(2). As a result of that error, subsequent printings of part 25 have specified a maximum concentration of 0.01 parts per million by volume. Also the lead-in paragraph of § 25.832(a) was inadvertently changed to read, "* * * shown *now* to exceed—" in lieu of "* * * shown *not* to exceed—." Section 25.832 is hereby amended to correct both of those printing errors.

Prior to the adoption of Amendment 25–40, § 25.903(c) specified that each component of the stopping and restarting system on the engine side of the firewall that might be exposed to fire must be at least fire-resistant. It was recognized then that the benefits of requiring the components of the restarting system to be fire-resistant were slight because an engine could seldom be restarted safely following a fire in that engine. Amendment 25–40, therefore, removed the words "and restarting" from § 25.903(c). Although this change was adopted and published appropriately in the **Federal Register** (42 FR 15042, March 17, 1977), it has never appeared in subsequent printings of part 25. This misprint is, therefore, corrected by omitting the words "and restarting" as intended by Amendment 25–40.

Prior to 1968, the oil tanks of transport category airplanes type certificated under the provisions of part 25 of the Federal Aviation Regulations (FAR) were required to be constructed of fireproof materials. In contrast, those in smaller general aviation airplanes type certificated under the provisions of part 23 were, and still are, permitted to be constructed of materials that are only fire resistant. This difference was in recognition of the relatively small quantity of oil that can be carried in the integral sumps of the reciprocating engines typically used in the latter airplanes, the fact that the oil sump serves as a heat sink in dissipating heat from a fire near the sump, and the fact that the cooling airflow around a reciprocating engine will direct flames away from the sump. During the late 1960s, two applicant each proposed to replace the troublesome existing engines in de Havilland DH.114 Heron transport category airplanes with then modern reciprocating engines. Although large enough to be transport category airplanes, the Herons incorporated four engines comparable in size and power ratings to the engines typically used in twin-engine part 23 airplanes. Because they were designed primarily for installation in part 23 airplanes, the replacement engines proposed by both applicants incorporated integral oil sumps that were not constructed of fireproof materials. Replacing the integral sumps of those engines with fireproof sumps would have imposed an undue burden with no commensurate safety improvement. Part 25 was, therefore, amended (Amendment 25–19, 33 FR 15410, October 17, 1968) to permit the installation of reciprocating engines having non-fireproof integral oil sumps of not more than a specified quantity. As a result of this amendment, an erroneous reference to § 25.1013(a) was introduced in § 25.1185(a). Section 25.1185(a) is, therefore, amended to refer correctly to § 25.1183(a) in lieu § 25.1013(a).

Part II of Appendix F contains criteria for seat cushion flammability testing. The last sentence of paragraph (a)(3) of Part II refers to "* * * the test specified in § 25.853(b) * * *." At the time the paragraph was written the reference was correct; however, the material contained

in § 25.853(b) has since been moved to § 25.853(c). Paragraph (a)(3) of Part II of Appendix F is, therefore, amended to refer correctly to § 25.853(c).

Regulatory Evaluation

There are no quantifiable costs of benefits attributable to this final rule since each change is a non-substantive correction that will impose no additional burden on any person. A full regulatory evaluation is, therefore, not required.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (FRA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities. This final rule will have no economic impact, significant or otherwise, because it makes only non-substantive corrections of errors.

International Trade Impact Assessment

Recognizing that regulations that are nominally domestic in nature often affect international trade, the Office of Management and Budget directs Federal Agencies to assess whether or not a rule or regulation would affect any trade-sensitive activity. This final rule will have no effect, positive or negative, on international trade since it makes only non-substantive corrections of errors.

Federalism Implications

The changes adopted herein will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power or responsibilities among the various levels of government. It is, therefore, determined in accordance with Executive Order 12612 that this final rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

International Compatibility

The FAA has reviewed the corresponding regulations of the International Civil Aviation Organization regulations, where they exist, and those of the European Joint Aviation Authorities (JAA). The FAA has identified no differences in these amendments and the foreign regulations. Some of the errors were, in fact, brought to the attention of the FAA by JAA representatives.

Good Cause Justification for Immediate Adoption

This amendment is needed to make editorial corrections in part 25. In view of the need to expedite these changes, and because the amendment is editorial in nature and would impose no additional burden on the public, I find that notice and opportunity for public comment before adopting this amendment are unnecessary.

Conclusion

The FAA has determined that this final rule imposes no additional burden on any person. Accordingly, it has been determined that the action (1) is not a significant rule under Executive Order 12866 and (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration (FAA) amends 14 CFR part 25 as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g) 40113, 44701, 44702 and 44704.

§ 25.107 [Amended]

2. In § 25.107, paragraph (a)(1), remove "$V_{MC}G$" and add "V_{MCG}," in its place; and in paragraph (e), remove "VR" and add "V_R," in its place.

§ 25.111 [Amended]

3. In § 25.111, paragraph (a), remove "§ 25.121(f)" and add "§ 25.121(c)" in its place.

§ 25.119 [Amended]

4. In the heading of § 25.119, remove the word "engine" and add "engines" in its place.

§ 25.233 [Amended]

5. In § 25.233, paragraph (a), remove ". At" and add "at" in its place.

§ 25.349 [Amended]

6. In § 25.349, introductory paragraph, remove the words "reaching inertia fores" and add "reacting inertia forces" in its place.

§ 25.481 [Amended]

7. In § 25.481, paragraph (a)(3), remove the word "is".

8. Section 25.807 is amended by adding a new paragraph (f)(4) and new paragraph (j) to read as follows:

§ 25.807 Emergency exits

* * * * *

(f) * * *

(4) For an airplane that is required to have more than one passenger emergency exit for each side of the fuselage, no passenger emergency exit shall be more than 60 feet from any adjacent passenger emergency exit on the same side of the same deck of the fuselage, as measured parallel to the airplane's longitudinal axis between the nearest edges.

* * * * *

(j) *Flightcrew emergency exits.* For airplanes in which the proximity of passenger emergency exits to the flightcrew area does not offer a convenient and readily accessible means of evacuation of the flightcrew, and for all airplanes having a passenger seating capacity greater than 20, flightcrew exits shall be located in the flightcrew area. Such exits shall be of sufficient size and so located as to permit rapid evacuation by the crew. One exit shall be provided on each side of the airplane; or, alternatively, a top hatch shall be provided. Each exit must encompass an unobstructed rectangular opening of at least 19 by 20 inches unless satisfactory exit utility can be demonstrated by a typical crewmember.

§ 25.832 [Amended]

9. In § 25.832, paragraph (a), remove the word "now" and add the word "not" in its place, and in paragraph (a)(2) remove "0.01" and add "0.1" in its place.

§ 25.903 [Amended]

10. In § 25.903, paragraph (c), remove the words "and restarting" from the second sentence.

§ 25.1185 [Amended]

11. In § 25.1185, paragraph (a), remove "§ 25.1013(a)" and add "§ 25.1183(a)" in its place.

Appendix F to Part II [Amended]

12. In Appendix F, Part II, in paragraph (a)(3), remove "§ 25.853(b)" and add "§ 25.853(c)" in its place.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 98–4162 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–75–AD; Amendment 39–10353; AD 98–04–42]

RIN 2120–AA64

Airworthiness Directives; Grumman Model TS–2A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Grumman Model TS–2A series airplanes, that requires revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to add a statement of the consequences of such positioning of the power levers. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by this AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power, caused by the power levers being positioned below the flight idle stop when the airplane is in flight.

EFFECTIVE DATE: March 30, 1998.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Frank Hoerman, Aerospace Engineer, Flight Test Branch, ANM–160L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 527–5371; fax (562) 625–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Grumman Model TS–2A series airplanes was published in the **Federal Register** on December 9, 1997 (62 FR 64780). That action proposed to require revising the Limitations Section of the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning of the power levers below the flight idle stop while the airplane is in flight, and adds a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 1 airplane of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on the single U.S. operator is estimated to be $60.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–04–42 Grumman: Amendment 39–10353. Docket 97–NM–75–AD.

Applicability: All Model TS–2A series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power, caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO),

FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 30, 1998.

Issued in Renton, Washington, on February 12, 1998.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–4248 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–30–AD; Amendment 39–10362; AD 98–04–41]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200 and –300 Series Airplanes Equipped With a Main Deck Cargo Door Installed in Accordance With Supplemental Type Certificate SA2969SO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–200 and –300 series airplanes. This action requires repetitive inspections to detect cracks in the hinge and lift actuator box area of the main deck cargo door and upper jamb of the fuselage; and repair or replacement of any cracked part with a new part having the same part number. This amendment is prompted by a report that, during a periodic heavy maintenance check, cracks were found in the upper jamb area of the fuselage and in the main deck cargo door. The actions specified in this AD are intended to detect and correct such cracking, which could result in reduced structural integrity of the main cargo door and/or fuselage, and consequent loss or opening of the main deck cargo door while the airplane is in flight, or reduced controllability of the airplane.

DATES: Effective March 10, 1998.

Comments for inclusion in the Rules Docket must be received on or before April 24, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–30–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information concerning this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349.

FOR FURTHER INFORMATION CONTACT: Curtis Jackson, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6083; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: The FAA has received a report that, during a periodic heavy maintenance check of a Boeing Model 737–300 series airplane equipped with a main deck cargo door installed in accordance with Supplemental Type Certificate SA2969SO, cracks were found in the upper jamb area of the fuselage and in the main cargo door. The cracks were between 0.50 inches and 2.35 inches in length. The cause of such cracking is unknown at this time. However, several scenarios (e.g., improper cargo door operations during loading and unloading of cargo, and improper fastener locations) are being examined at this time to determine a possible cause of the cracking.

Cracking in the upper jamb area of the fuselage or in the main deck cargo door, if not corrected, could result in reduced structural integrity of the main deck cargo door and/or fuselage, and consequent loss or opening of the main deck cargo door while the airplane is in flight, or reduced controllability of the airplane.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 737–200 and –300 series airplanes, equipped with a main deck cargo door installed in accordance with Supplemental Type Certificate SA2969SO, of the same type design, this AD is being issued to detect and correct cracking in the upper jamb area of the fuselage and in the main deck cargo door; such cracking could result in reduced structural integrity of the main deck cargo door and/or fuselage, and consequent loss or opening of the main deck cargo door while the airplane is in flight, or reduced controllability of the airplane. This AD requires repetitive detailed visual inspections to detect cracks in the hinge and lift actuator box area of the main deck cargo door and upper jamb of the fuselage; and replacement of any cracked part with a new part having the same part number, or repair in accordance with a method approved by the FAA.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments,

in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–30–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket.

A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–04–41 Boeing: Amendment 39–10352. Docket 98–NM–30–AD.

Applicability: Model 737–200 and –300 series airplanes equipped with a main deck cargo door installed in accordance with Supplemental Type Certificate (STC) SA2969SO; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking in the upper jamb area of the fuselage and in the main cargo door, which could result in reduced structural integrity of the main cargo door and/or fuselage, and consequent loss or opening of the main cargo door while the airplane is in flight, or reduced controllability of the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD, and thereafter at intevals not to exceed 600 flight cycles, perform a detailed visual inspection to detect cracks in the hinge and lift actuator box area of the main deck cargo door and upper jamb of the fuselage. Pay particular attention to the upper frame of the fuselage and upper jamb frames of the main deck cargo door, primary longeron, and clips of the fuselage, primarily in the hinge and lift actuator box area. If any crack is detected, prior to further flight, replace the cracked part with a new part having the same part number, or repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 10, 1998.

Issued in Renton, Washington, on February 12, 1998.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–4245 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 97F–0336]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to change the intrinsic viscosity specifications for the poly(2,6-dimethyl-1,4-phenylene) oxide resins intended for use in contact with food from "not less then 0.40 deciliter per gram" to "not less than 0.30 deciliter per gram" as determined by ASTM method D1243–79. This action is in response to a petition filed by General Electric Co.

DATES: Effective February 23, 1998. Written objections and requests for a hearing by March 25, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 14, 1997 (62 FR 43535), FDA announced that a food additive petition (FAP 7B4551) had been filed by General Electric Co., One Lexan Lane, Mt. Vernon, IN 47620–9364. The petition proposed to amend the food additive regulations in § 177.2460 *Poly(2,6-dimethyl-1,4-phenylene) oxide resins* (21 CFR 177.2460) to change the intrinsic viscosity specifications for the poly(2,6-dimethyl-1,4-phenylene) oxide resins intended for use in contact with food from "not less then 0.40 deciliter per gram" to "not less than 0.30 deciliter per gram" as determined by ASTM method D1243–79.

In the **Federal Register** of August 14, 1997 (62 FR 43535), the filing notice for the petition stated that the action resulting from the petition qualified for a categorical exclusion under previous 21 CFR 25.24[(a)](9). Upon further review, the agency determined that such a categorical exclusion, which is based on a technical change in a regulation, is not appropriate for this proposed action because the proposed amendment is not simply a technical change. Consequently, the agency considered the environmental effects of this action.

FDA has evaluated data in the petition supporting the chemical identity of the additive and other relevant material. The agency finds that the petitioner has adequately demonstrated that poly(2,6-dimethyl-1,4-phenylene) oxide resins with an intrinsic viscosity of not less than 0.30 deciliter per gram (dL/g), which replaces the current intrinsic viscosity of 0.40 dL/g meet the specifications and extractive limitations for poly(2,6-dimethyl-1,4-phenylene) oxide resins as prescribed in § 177.2460. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and (3) the regulations in § 177.2460 should be amended as set forth in this document.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before March 25, 1998. File with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

§ 177.2460 [Amended]

2. Section 177.2460 *Poly(2,6-dimethyl-1,4-phenylene) oxide resins* is amended in the first sentence of paragraph (c)(1) by removing "0.40" and adding in its place "0.30".

* * * * *

Dated: February 11, 1998.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–4372 Filed 2–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 97F–0375]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the expanded safe use of phosphorous acid, cyclic butylethyl propanediol, 2,4,6-tri-*tert*-butylphenyl ester, which may contain up to 1 percent by weight of triisopropanolamine, as an antioxidant and/or stabilizer for olefin copolymers intended for use in contact with food. This action is in response to a petition filed by General Electric Co.

DATES: The regulation is effective February 23, 1998; written objections and requests for a hearing by March 25, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 16, 1997 (62 FR 48665), FDA announced that a food additive petition (FAP 7B4553) had been filed by General Electric Co., One Lexan Lane, Mt. Vernon, IN 47620–9364. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of phosphorous acid, cyclic butylethyl propanediol, 2,4,6-tri-*tert*-butylphenyl ester, which may contain up to 1 percent by weight of triisopropanolamine, as an antioxidant and/or stabilizer for olefin copolymers complying with 21 CFR 177.1520(c), items 3.1 and 3.2, intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe and the additive will achieve its intended technical effect. Therefore, the regulations in § 178.2010

should be amended as set forth below. In amending the regulation in § 178.2010, the agency updated the reference to items 3.1 and 3.2 found in § 177.1520(c) to include the current subparts listed for these items, i.e., 3.1a, 3.1b, 3.2a, and 3.2b.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this rule as announced in the notice of filing for the petition. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

Any person who will be adversely affected by this regulation may at any time on or before March 25, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b) by revising the entry for "Phosphorous acid, cyclic butylethyl propanediol, 2,4,6-tri-*tert*-butylphenyl ester" in item "3." under the heading "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * * *
Phosphorous acid, cyclic butylethyl propanediol, 2,4,6-tri-*tert*-butylphenyl ester (CAS Reg. No. 161717–32–4), which may contain not more than 1 percent by weight of triisopropanolamine (CAS Reg. No. 122–20–3).	For use only: * * * 3. At levels not to exceed 0.1 percent by weight of olefin copolymers complying with § 177.1520(c) of this chapter, items 3.1a, 3.1b, 3.2a, or 3.2b, having a density less than 0.94 grams per cubic centimeter, in contact with food only of types III, IV, V, VI–A, VI–C, VII, VIII, and IX and under conditions of use B, C, D, E, F, G, and H as described in Tables 1 and 2 of § 176.170(c) of this chapter; provided that the food-contact surface does not exceed 0.003 inch (0.076 mm) in thickness.
* * *	* * * *

Dated: February 2, 1998.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–4530 Filed 2–20–98; 8:45 am]

BILLING CODE 4160–01–F

LIBRARY OF CONGRESS

36 CFR Part 701

[Docket No. LOC 98–2]

Policy on the Authorized Use of the Library Name, Seal, or Logo

AGENCY: Library of Congress.

ACTION: Final regulation.

SUMMARY: The Library of Congress issues this final regulation to insure that the Library's name, seal and logos are used properly and in accordance with the procedures set forth herein.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Pugh, General Counsel, Office of the General Counsel, Library of Congress, Washington, D.C. 20540–1050. Telephone No. (202) 707–6316.

SUPPLEMENTARY INFORMATION: The purpose of this regulation is (1) To assure that the Library of Congress is properly and appropriately identified and credited as a source of materials in publications; (2) to assure that the name or logo of the Library of Congress, or any unit thereof, is used only with the prior approval of the Librarian of Congress or his designee; and (3) to assure that the

seal of the Library of Congress is used only on official documents or publications of the Library.

List of Subjects in 36 CFR Part 701

Libraries, Seals and insignias.

In consideration of the foregoing the Library of Congress amends 36 CFR part 701 to read as follows:

PART 701—PROCEDURES AND SERVICES

1. The authority citation for part 701 continues to read as follows:

Authority: 2 U.S.C. 136.

Section 35 also issued under 2 U.S.C. 154, 179m; 18 U.S.C. 701, 709, 1017.

2. Section 701.35 is revised to read as follows:

§ 701.35 Policy on the Authorized Use of the Library Name, Seal, or Logo

(a) *Purpose.* The purpose of this part is three-fold:

(1) To assure that the Library of Congress is properly and appropriately identified and credited as a source of materials in publications.

(2) To assure that the name or logo of the Library of Congress, or any unit thereof, is used only with the prior approval of the Librarian of Congress or his designee; and

(3) To assure that the seal of the Library of Congress is used only on official documents or publications of the Library.

(b) *Definitions.* (1) For the purposes of this part, *publication* means any tangible expression of words or thoughts in any form or format, including print, sound recording, television, optical disc, software, online delivery, or other technology now known or hereinafter created. It includes the whole range of tangible products from simple signs, posters, pamphlets, and brochures to books, television productions, and movies.

(2) *Internal Library publication* means a publication over which any unit of the Library has complete or substantial control or responsibility.

(3) *Cooperative publications* are those in which the Library is a partner with the publisher by terms of a cooperative publishing agreement.

(4) *Commercial publications* are those known or likely to involve subsequent mass distribution, whether by a for-profit or not-for-profit organization or individual, which involve a cooperative agreement. A commercial publication can also include a significant number of LC references and is also approved by the LC office that entered into a formal agreement. Noncommercial publications are those which are produced by non-commercial entities.

(5) *Internet sites* are those on-line entities, both commercial and non-commercial, that have links to the Library's site.

(6) *Library logo* refers to any official symbol of the Library or any entity thereof and includes any design officially approved by the Librarian of Congress for use by Library officials.

(7) *Seal* refers to any statutorily recognized seal.

(c) *Credit and Recognition Policy.* (1) The name "Library of Congress," or any abbreviation or subset such as "Copyright Office" or "Congressional Research Service," thereof, is used officially to represent the Library of Congress and its programs, projects, functions, activities, or elements thereof. The use of the Library's name, explicitly or implicitly to endorse a product or service, or materials in any publication is prohibited, except as provided for in this part.

(2) The Library of Congress seal symbolizes the Library's authority and standing as an official agency of the U.S. Government. As such, it shall be displayed only on official documents or publications of the Library. The seal of the Library of Congress Trust Fund Board shall be affixed to documents of that body as prescribed by the Librarian of Congress. The seal of the National Film Preservation Board shall be affixed to documents of that body as prescribed by the Librarian of Congress. Procedures governing the use of any Library of Congress logo or symbol are set out below.

(3) Questions regarding the appropriateness of the use of any Library logos or symbols, or the use of the Library's name, shall be referred to the Public Affairs Officer.

(4) Internal Publications. Each internal Library publication shall include a copy of an official Library logo in a position, format, and location suitable to the particular media involved. The logo may be alone or in addition to an approved unit or activity logo, but shall be no less prominent than any other logo used, except in the cases of the Copyright Office, the Congressional Research Service, and the Center for the Book. Other exceptions to this policy may be made only if a written request is approved by the Executive Committee member under whose jurisdiction the publication falls.

(5) Cooperative Ventures. (i) Individual, commercial enterprises or non-commercial entities with whom the Library has a cooperative agreement to engage in cooperative efforts shall be instructed regarding Library policy on credit, recognition, and endorsement by the officer or manager with whom they are dealing.

(ii) Ordinarily, the Library logo should appear in an appropriate and suitable location on all cooperative publications. The Library requires that a credit line accompany reproductions of images from its collections and reflect the nature of the relationship such as "published in association with * * *".

(iii) The size, location, and other attributes of the logo and credit line should be positioned in such a way that they do not imply Library endorsement of the publication unless such endorsement is expressly intended by the Library, as would be the case in cooperative activities. Use of the Library name or logo in any context suggesting an explicit or implicit endorsement may be approved in only those instances where the Library has sufficient control over the publication to make changes necessary to reflect Library expertise.

(iv) Library officers working on cooperative projects shall notify all collaborators of Library policy in writing if the collaboration is arranged through an exchange of correspondence. All uses of the Library of Congress's name, seal or logo on promotional materials must be approved by the Public Affairs Officer, in consultation with the Office of the General Counsel, in advance. A statement of Library policy shall be incorporated into the agreement if the terms of the collaboration are embodied in any written instrument, such as a contract or letter of understanding. The statement could read as follows:

> NAME OF PARTNER recognizes the great value, prestige and goodwill associated with the name, "Library of Congress" and any logo pertaining thereto. NAME OF PARTNER agrees not to knowingly harm, misuse, or bring into disrepute the name or logo of the Library of Congress, and further to assist the Library, as it may reasonably request, in preserving all rights, integrity and dignity associated with its name. Subject to the Library's prior written approval over all aspects of the use and presentation of the Library's name and logo, the NAME OF PARTNER may use the name of the Library of Congress in connection with publication, distribution, packaging, advertising, publicity and promotion of the ____, produced as a result of this Agreement. The Library will have fifteen (15) business days from receipt of NAME OF PARTNER'S written request to approve or deny with comment such requests for use of its name or logo.

(5) Noncommercial Users. Library officers assisting individuals who are noncommercial users of Library resources shall encourage them to extend the customary professional courtesy of acknowledging their sources

in publications, including films, television, and radio, and to use approved credit lines.

(6) Each product acquired for resale by the Library that involves new labeling or packaging shall bear a Library logo and shall contain information describing the relevance of the item to the Library or its collections. Items not involving new packaging shall be accompanied by a printed description of the Library and its mission, with Library logo, as well as the rationale for operating a gift shop program in a statement such as, "Proceeds from gift shop sales are used to support the Library collections and to further the Library's educational mission."

(7) Electronic Users. Links to other sites from the Library of Congress's site should adhere to the Appropriate Use Policy for External Linking in the Internet Policies and Procedures Handbook. Requests for such linkage must be submitted to the Public Affairs Office for review and approval.

(8) Office Systems Services shall make available copies of the Library seal or logo in a variety of sizes and formats, including digital versions, if use has been approved by the Public Affairs Officer, in consultation with the Office of General Counsel.

(9) Each service unit head shall be responsible for devising the most appropriate way to carry out and enforce this policy in consultation with the General Counsel and the Public Affairs Officer.

(e) *Prohibitions and Enforcement.* (1) All violations, or suspected violations, of this part, shall be reported to the Office of the General Counsel as soon as they become known. Whoever, except as permitted by laws of the U.S., or with the written permission of the Librarian of Congress or his designee, falsely advertises or otherwise represents by any device whatsoever that his or its business, product, or service has been in any way endorsed, authorized, or approved by the Library of Congress shall be subject to criminal penalties pursuant to law.

(2) Whenever the General Counsel has determined that any person or organization is engaged in or about to engage in an act or practice that constitutes or will constitute conduct prohibited by this part or a violation of any requirement of this part, the General Counsel shall take whatever steps are necessary, including seeking the assistance of the U.S. Department of Justice, to enforce the provisions of the applicable statutes and to seek all means of redress authorized by law, including both civil and criminal penalties.

Dated: January 30, 1998.

James H. Billington,

The Librarian of Congress.

[FR Doc. 98–3860 Filed 2–20–98; 8:45 am]

BILLING CODE 1410–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL147–1a, IL156–1a; FRL–5965–1]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On January 23, 1996, and January 9, 1997, the State of Illinois submitted to EPA two site-specific State Implementation Plan (SIP) revision requests for Solar Corporation's (Solar) manufacturing facility located in Libertyville, Lake County, Illinois. The January 23, 1996, request seeks to revise the State's Volatile Organic Material (VOM) Reasonably Available Control Technology (RACT) requirements applicable to certain Solar adhesive operations. The January 9, 1997, request seeks to grant a temporary variance from VOM RACT requirements applicable to Solar's automotive plastic parts coating operations. In this action, EPA is approving the above requested SIP revisions through a "direct final rulemaking;" the rationale for this approval is discussed below.

DATES: This final rule is effective April 24, 1998 unless adverse written comments are received by March 25, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the SIP revision request and Technical Support Document (TSD) for this rulemaking action are available for inspection at the following address: (It is recommended that you telephone Mark J. Palermo at (312) 886–6082, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, Air Programs Branch (AR–18J) at (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990, Congress enacted amendments to the 1977 Clean Air Act (Act); Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Section 182(b)(2) of the Act requires States to adopt RACT rules covering "major sources" not already covered by a Control Techniques Guideline (CTG) for all areas classified moderate nonattainment for ozone or above.[1] The Chicago ozone nonattainment area (Cook, DuPage, Kane, Lake, McHenry, Will Counties and Aux Sable and Goose Lake Townships in Grundy County and Oswego Township in Kendall County) is classified as "severe" nonattainment for ozone, and therefore is subject to the Act's non-CTG RACT requirement.

Under section 182(d) of the Act, sources located in severe ozone nonattainment areas are considered "major sources" if they have the potential to emit 25 tons per year or more of VOM.[2] Solar's Libertyville facility has the potential to emit more than 25 tons of VOM per year, and therefore is subject to RACT requirements.

II. Solar Operations

Solar owns and operates a facility in Libertyville, Illinois which produces custom-made, fabric covered and/or painted plastic decorative components for manufacturers of automobiles and electronic home and office products. The decorative components produced by Solar for the home and office electronics industry include speaker grilles for stereos and televisions, pressure-formed thermoplastic back enclosures for large-screen and projection television sets, and other decorative molded parts and fabric wrapped subassemblies. Solar's automotive interior products include speaker grilles, vinyl- and fabric-clad door trim components, injection molded decorative assemblies, seating trim

[1] A definition of RACT is cited in a General Preamble-Supplement published at 44 FR at 53761 (September 17, 1979). RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. CTGs are documents published by EPA which contain information on available air pollution control techniques and provide recommendations on what the EPA considers the "presumptive norm" for RACT. Sources which are not covered by a CTG are called "non-CTG" sources.

[2] VOM, as defined by the State of Illinois, is identical to "Volatile Organic Compounds" (VOC), as defined by EPA.

component, and electronic subassemblies.

III. Non-CTG Adhesives Adjusted Standard

A. Existing SIP Requirements

On October 21, 1993, and March 4, 1994, the State of Illinois submitted RACT rules covering major non-CTG sources in the Chicago severe ozone nonattainment area, which includes subparts PP, QQ, RR, TT, and UU of Part 218 of the 35 Illinois Administrative Code (IAC), as a revision to the Illinois SIP. The SIP revision was approved by EPA on October 21, 1996 (61 FR at 54556). Prior to Illinois' non-CTG rule adoption, the State's RACT rules did not apply to Solar because the facility's emissions were below the rules' applicability threshold of 100 TPY or more of VOM. Pursuant to section 182(b), the State lowered the applicability threshold to include as major sources all sources with a potential to emit 25 TPY or more VOM. Solar, which had not been affected by the 100 ton RACT rules, became subject to the 25 ton RACT rules.

Among the non-CTG rule provisions Solar became subject to is subpart PP, which contains VOM control requirements for miscellaneous fabricated product manufacturing processes. Under subpart PP, Solar would be required either to use adhesives which do not exceed 3.5 pounds of VOM per gallon (lbs VOM/gallon) as-applied, or to operate emission capture and control techniques which achieve an overall reduction in uncontrolled VOM emissions of at least 81 percent (%). Subpart PP is based upon requirements promulgated under the Chicago VOC Federal Implementation Plan (FIP). In developing the FIP, the EPA used information from existing coating CTGs and the State and EPA's regulatory experience to establish the 3.5 lbs VOM/gallon limitation for non-CTG coating operations.

B. Solar Adjusted Standard

On February 28, 1995, Solar and the Illinois Environmental Protection Agency (IEPA) filed a joint petition for an adjusted standard with the Illinois Pollution Control Board (Board). The adjusted standard petition requested that Illinois relax the stringency of the VOM limit for Solar's adhesive application from 3.5 lbs VOM/gallon as-applied, to 5.75 lbs VOM/gallon as-applied.

In its petition, Solar noted that the technical support for the non-CTG limitation promulgated under the Chicago FIP and adopted by Illinois did not take into account the necessary characteristics of adhesives used to adhere fabric to plastic parts for the home entertainment and auto industry, which is Solar's specific industry. Further, Solar justified the rule relaxation based upon its own technical support demonstrating that the 3.5 lbs VOM/limit is technically and economically infeasible, and that a 5.75 lbs VOM/gallon limit for its adhesive operations is RACT for the facility.

A public hearing on the adjusted standard petition was held on July 18, 1995, in Libertyville, Illinois. On July 20, 1995, the Board adopted a Final Opinion and Order, AS 94–2, granting the adjusted standard requested by Solar. The adjusted standard also became effective on July 20, 1995. On August 14, 1995, the IEPA filed a motion to modify the final Board Order. On September 1, 1995, Solar filed a response to the IEPA's motion to modify. On September 7, 1995, the Board adopted the IEPA's proposed changes to the final opinion, noting that the language of the July 20, 1995, opinion would not be affected. The IEPA formally submitted the adjusted standard for Solar on January 23, 1996, as a site-specific revision to the Illinois SIP for ozone.

C. Criteria for Evaluating Adjusted Standard

The EPA has identified VOC control levels in its CTGs and non-CTG control evaluations that it presumes to constitute RACT for various categories of sources. However, case-by-case RACT determinations may be developed that differ from EPA's presumptive norm. The EPA will approve these RACT determinations as long as a demonstration is made that they satisfy the Act's RACT requirements based on adequate documentation of the economic and technical circumstances of the particular sources being regulated. To make this demonstration, it must be shown that the current SIP requirements do not represent RACT because pollution control technology necessary to reach the requirements is not and cannot be expected to be reasonably available. The EPA will determine on a case-by-case basis whether this demonstration has been made, taking into account all the relevant facts and circumstances concerning each case. A demonstration must be made that reasonable efforts were taken to determine and adequately document the availability of complying coatings or other kinds of controls, as appropriate. If it is conclusively demonstrated that complying low-solvent coatings are unavailable, the EPA would consider an alternative RACT determination based on the lowest level of VOM control technically and economically feasible for the facility.

D. Solar's Efforts To Meet the Non-CTG SIP Requirement

To comply with the 3.5 lbs VOM/gallon non-CTG SIP requirement, Solar investigated reformulation of adhesives, water-based adhesives, alternatives to adhesives, and catalytic oxidation add-on control. In testing adhesive technologies, Solar attempted to meet the 3.5 lbs VOM/gallon SIP limit while meeting customer aesthetic and environmental performance specifications. Solar's customers require the company to conduct various tests on its products to determine whether the fabric bonds withstand a wide variety of temperatures and humidities which the products will be subject to during shipment and actual use.

Solar's adhesive supplier attempted to reformulate the adhesives it sells to Solar to bring the adhesives into compliance, and was able to increase the solids content of Solar's primary adhesive from 20% to 30%, thereby reducing the VOM content from 6.02 lbs VOM/gallon to 5.49 lbs VOM/gallon. The supplier, however, determined that further reduction could not be achieved without increasing the solids content to 50%, which would result in an adhesive so viscous that it could not be applied with either a manual gun or auto-spray. Solar also investigated partially reformulating Solar's primary adhesive using acetone, which resulted in the adhesive drying too fast before the fabric could be properly adhered to the plastic. In addition to trying adhesive reformulation, Solar and its adhesive supplier conducted major test trials of several two-component water-based adhesives. However, the testing showed that the adhesives set too quickly, which was unacceptable given that Solar's process requires repeated repositioning of fabric to ensure the proper tautness of the fabric on each plastic part.

The January 1996 State submittal also provides documentation of Solar's contacts with two other adhesive suppliers to determine whether they could offer low-emitting adhesives to Solar which would both meet the 3.5 lbs VOM/gallon limit, as well as meet the performance specifications of Solar's customers. However, according to the State submittal, these suppliers did not offer adhesives which would meet the performance specifications of Solar's

customers in the majority of its adhesive operations.

After EPA received the January 1996 submittal, EPA requested that IEPA and Solar analyze whether Solar can use the adhesives or techniques of two California companies in compliance with South Coast Air Quality Management District adhesive limits, James B. Lansing (JBL) and Fleetwood Motor Homes (Fleetwood). IEPA submitted subsequent documentation on July 23, 1997, indicating that Solar cannot use the adhesives used at the California JBL and Fleetwood plants because the plants have distinguishable products and processes involving different adhesive bonding requirements than that of Solar.

Besides seeking compliant adhesives, Solar has tried adhesiveless processes as an alternative to adhesives by conducting test trials with sonic welding and use of a heat plate. Solar was unsuccessful with sonic welding because of the curved surfaces of many of its plastic components. However, Solar was somewhat successful with the heat plate technique and now uses a heat plate to bond cloth to about 20% of the plastic parts it produces. Yet, Solar cannot use the hot plate technique in more operations because for this technique to be feasible, the plastic part must have sufficient cross section to withstand the heat generated in bonding.

As for add-on controls, Solar investigated catalytic oxidation as a means of achieving 81% capture and control of VOM emission from the manual spray booths and auto-spray machines. Radian Corporation's consultants examined Solar's operations estimated costs for catalytic oxidation control to be $25,000 and $10,000 per ton for the manual spray guns and auto-spray machines, respectively. Solar contends that these costs are economically unreasonable for the facility.

E. EPA Analysis of Solar's Adjusted Standard

Based on the information and technical support IEPA provided in its submittal, the EPA finds that the non-CTG SIP requirements are not technically or economically feasible for the Solar Libertyville facility's adhesive process, and that a limit of 5.75 lbs VOM/gallon limit on adhesive content is RACT for the facility. For a more detailed analysis of this SIP revision, please refer to the TSD available from the Region 5 office listed above.

IV. Variance for Automotive Plastic Parts Coating Limit

A. Existing SIP Requirements

On October 26, 1995, EPA approved Illinois RACT regulations covering plastic parts coating operations in the Chicago ozone nonattainment area. The regulations establish VOM emission limitations which can be met in one of four ways: (1) use of coatings which meet a specified VOM content limit (218.204(n) and (o)); (2) meet a daily-weighted average limit for those coating lines that apply coatings from the same coating category (218.205(g)); (3) use of an add-on capture system and control device which meets an 81% VOM capture and control efficiency (218.207(i)); or, (4) meet a cross-line averaging limit (218.212).

Solar through its variance petition seeks temporary relief from 218.204(n)(1)(B)(i), which requires operations that apply air dried color coating to automotive interior plastic parts to meet a VOM content limit of 0.38 kg/l or 3.2 lbs/gallon, by March 15, 1996.

B. Solar Variance

On May 22, 1996, Solar filed its petition for variance from 35 IAC 218.204(n)(1)(B)(i) with the Board. On July 15, 1996, the IEPA filed its recommendation of support for the variance. A public hearing on the variance petition was held on August 9, 1996, in Libertyville, Illinois. On September 5, 1996, the Board adopted a Final Opinion and Order, PCB 96–239, granting the variance requested by Solar. On September 13, 1996, Solar signed a certificate of acceptance, which binds Solar to all terms and conditions of the granted variance. The IEPA formally submitted the variance for Solar on January 9, 1997, as a site-specific revision to the Illinois SIP for ozone.

The variance was granted because Solar presented adequate proof to the Board that immediate compliance with section 218.204(n)(1)(B)(i) would result in an arbitrary or unreasonable hardship which outweighs the public interest in attaining immediate compliance with regulations designed to protect the public. Such a burden of proof is required by Illinois law before a variance can be granted.

As of the date of the Illinois submittal, Solar replaced approximately 98% of its coatings to water-based products. However, Solar's coating supplier needed extra time to reformulate the remaining paints to water-based so as to comply with the State's VOM content requirement. Also, additional time was needed for any unanticipated delays and to ensure that the water-based coatings meet customer specifications.

Solar indicated in its variance petition that it hired a consultant to investigate the use of add-on controls to comply with the State's RACT requirements. The consultant studied carbon adsorbers, thermal and catalytic afterburners, as well as condensers, and estimated that the cost to install capture and control equipment at the spray booths would be more than $25,000 per ton. Solar contends that the use of any add-on controls is economically unreasonable because it has reformulated 98% of its paints, and only 134.25 gallons of non-compliant paint will be used.

IEPA agrees with Solar's position that daily-weighted averaging is not an appropriate option for Solar because Solar's coating lines are subject to different VOM content limits. As for cross-line averaging, this compliance option would require an operational change to pre-existing coating lines. Since Solar has committed to reformulating its paints as a means to achieve compliance, the IEPA contends in the submittal that requiring Solar to make an operation change for the five remaining non-compliant paints is not an effective or reasonable alternative. The IEPA further notes that these options are not appropriate for Solar because Solar is seeking temporary, not permanent relief.

The variance, Solar's use of non-compliant interior automotive coating is limited to the 134.25 gallons of the above coatings Solar has in stock. The variance indicates the vendor number, VOM content, and gallons allowed to be used for each of the five non-compliant coatings in stock. Solar is not allowed to use any other non-compliant coatings under the variance. Solar is also limited to a total of 0.67 tons of VOM emissions from these compliant coatings over a 12 month period beginning May 22, 1996. The variance terminates on the earlier of two dates: May 22, 1997, or when the water-based interior automotive coatings are available and approved as substitutes for the non-compliant coatings specified in the variance.

The variance provides that Solar shall send monthly status reports to IEPA providing various information regarding the non-compliant interior automotive coatings. Once a water-based automotive interior coating is available and approved by Solar's customers as a substitute for a coating covered by the variance, the variance for that coating no longer applies and the coating becomes subject to 35 IAC 218.204(n)(l)(B)(i). The variance

requires Solar to notify the IEPA within 10 days after any non-compliant interior automotive coating subject to the variance is converted to a water-based coating is approved and available to use.

C. EPA Analysis of Solar Variance

Based on the information provided in the SIP submittal, the EPA finds that the variance for Solar is justified, and the compliance milestone provisions required by the variance represent a reasonable approach to bringing the Solar facility into compliance with the automotive plastic parts coating limit in a timely manner. Therefore, the EPA finds this SIP submittal approvable.

V. Final Action

The EPA is approving, through direct final rulemaking action, Illinois' January 23, 1996, site-specific SIP revision for Solar's Libertyville, Illinois facility, which relaxes the VOM content limit required for its adhesive operations from 3.5 lbs VOM/gallon to 5.75 lbs VOM/gallon. The EPA is also approving, through direct final rulemaking action, Illinois' January 9, 1997, site-specific SIP revision which provides a temporary variance from the State's plastic parts coating rule for Solar's Libertyville facility.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should specified written adverse or critical comments be filed. This rule will become effective without further notice unless the Agency receives relevant adverse written comment on the parallel notice of proposed rulemaking (published in the proposed rules section of this **Federal Register**), within 30 days of today's document. Should the Agency receive such comments, it will publish a document informing the public that this rule did not take effect. Any parties interested in commenting on this action should do so at this time.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

VI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 24, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: January 29, 1998.

David A. Ullrich,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(135) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(135) On January 23, 1996, Illinois submitted a site-specific revision to the State Implementation Plan which relaxes the volatile organic material (VOM) content limit for fabricated

product adhesive operations at Solar Corporation's Libertyville, Illinois facility from 3.5 pounds VOM per gallon to 5.75 pounds VOM per gallon.

(i) Incorporation by reference. July 20, 1995, Opinion and Order of the Illinois Pollution Control Board, AS 94–2, effective July 20, 1995.

3. Section 52.720 is amended by adding paragraph (c)(136) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(136) On January 9, 1997, Illinois submitted a site-specific revision to the State Implementation Plan which grants a temporary variance from certain automotive plastic parts coating volatile organic material requirements at Solar Corporation's Libertyville, Illinois facility.

(i) Incorporation by reference. September 5, 1996, Opinion and Order of the Illinois Pollution Control Board, PCB 96–239, effective September 13, 1996. Certificate of Acceptance signed September 13, 1996.

[FR Doc. 98–4378 Filed 2–20–98; 8:45 am]

BILLING CODE 6560–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Marine Fisheries Service

50 CFR Part 222

[Docket No. 980212035–8035–01]

RIN 1018–AE24

Habitat Conservation Plan Assurances ("No Surprises") Rule

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Final rule.

DATES: This rule is effective March 25, 1998.

SUMMARY: This final rule codifies the Habitat Conservation Plan assurances provided through section 10(a)(1)(B) permits issued under the Endangered Species Act (ESA) of 1973, as amended. Such assurances were first provided through the "No Surprises" policy issued in 1994 by the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), (jointly referred to as the "Services,") and included in the joint FWS and NMFS Endangered Species Habitat Conservation Planning Handbook issued on December 2, 1996 (61 FR 63854). The No Surprises policy announced in 1994 provides regulatory assurances to the holder of a Habitat Conservation Plan (HCP) incidental take permit issued under section 10(a) of the ESA that no additional land use restrictions or financial compensation will be required of the permit holder with respect to species covered by the permit, even if unforeseen circumstances arise after the permit is issued indicating that additional mitigation is needed for a given species covered by a permit. The Services issued a proposed rule on May 29, 1997 (62 FR 29091) and the comments received on that proposal have been evaluated and considered in the development of this final rule. This final rule contains revisions to parts 17 (FWS) and 222 (NMFS) of Title 50 of the Code of Federal Regulations necessary to implement the Habitat Conservation Plan assurances.

ADDRESSES: To obtain copies of the final rule or for further information, contact Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C., 20240; or Chief, Endangered Species Division, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD, 20910.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, (Telephone 703/358–2171, or Facsimile 703/358–1735), or Nancy Chu, Chief, Endangered Species Division, National Marine Fisheries Service (Telephone (301/713–1401, or 301/713–0376).

SUPPLEMENTARY INFORMATION: These final regulations and the background information regarding the final rule apply to both Services. The proposed rule has been revised based on the comments received. The final rule is presented in two parts because the Services have separate regulations for implementing the section 10 permit process. The first part is for the final changes in the FWS's regulations found at 50 CFR 17.22 and 17.32, and the second part is for the final changes in NMFS's regulations found at 50 CFR 222.22.

Background

Section 9 of the ESA generally prohibits the "take" of species listed under the ESA as endangered. Pursuant to the broad grant of regulatory authority over threatened species in section 4(d) of the ESA, the Services' regulations generally prohibit take of species listed as threatened. See, e.g., 50 CFR 17.31 and 17.21 (FWS). Section 3(18) of the ESA defines "take" to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." FWS regulations (50 CFR 17.3) define "harm" to include "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering."

Section 10 of the ESA, as originally enacted in 1973, contained provisions allowing the issuance of permits authorizing the taking of listed species under very limited circumstances for non-Federal entities. In the following years, both the Federal government and non-Federal landowners became concerned that these permitting provisions were not sufficiently flexible to address situations in which a property owner's otherwise lawful activities might result in limited incidental take of a listed species, even if the landowner were willing to plan activities carefully to be consistent with the conservation of the species. As a result, Congress included in the ESA Amendments of 1982 provisions under section 10(a) to allow the Services to issue permits authorizing the incidental take of listed species in the course of otherwise lawful activities, provided that those activities were conducted according to an approved conservation plan (habitat conservation plan or HCP) and the issuance of the HCP permit would not jeopardize the continued existence of the species. In doing so, Congress indicated it was acting to "* * * address the concerns of private landowners who are faced with having otherwise lawful actions not requiring Federal permits prevented by section 9 prohibitions against taking * * *" H.R. Rep. No. 835, 97th Cong., 2d Sess. 29 (1982) (hereafter "Conf. Report").

Congress modeled the 1982 section 10 amendments after the conservation plan developed by private landowners and local governments to protect the habitat of two listed butterflies on San Bruno Mountain in San Mateo County, California while allowing development activities to proceed. Congress recognized in enacting the section 10 HCP amendments that:

"* * * significant development projects often take many years to complete and permit applicants may need long-term permits. In this situation, and in order to provide sufficient incentives for the private sector to

participate in the development of such long-term conservation plans, plans which may involve the expenditure of hundreds of thousands if not millions of dollars, adequate assurances must be made to the financial and development communities that a section 10(a) permit can be made available for the life of the project. Thus, the Secretary should have the discretion to issue section 10(a) permits that run for periods significantly longer than are commonly provided [for other types of permits]." (Conf. Report at 31).

Congress also recognized that long-term HCP permits would present unique issues that would have to be addressed if the permits were to function to protect the interests of both the species involved and the non-Federal community. For instance, Congress realized that "* * * circumstances and information may change over time and that the original [habitat conservation] plan might need to be revised. To address this situation, the Committee expects that any plan approved for a long-term permit will contain a procedure by which the parties will deal with unforeseen circumstances." (Conf. Report at 31). Congress also recognized that non-Federal property owners seeking HCP permits would need to have economic and regulatory certainty regarding the overall cost of species mitigation over the life of the permit. As stated in the Conference Report on the 1982 ESA amendments:

"The Committee intends that the Secretary may utilize this provision to approve conservation plans which provide long-term commitments regarding the conservation of listed as well as unlisted species and long-term assurances to the proponent of the conservation plan that the terms of the plan will be adhered to and that further mitigation requirements will only be imposed in accordance with the terms of the plan. In the event that an unlisted species addressed in the approved conservation plan is subsequently listed pursuant to the Act, no further mitigation requirements should be imposed if the conservation plan addressed the conservation of the species and its habitat as if the species were listed pursuant to the Act." (Conf. Report at 30 and 50 FR 39681–39691, Sept. 30. 1985).

Congress thus envisioned and allowed the Federal government to provide regulatory assurances to non-Federal property owners through the section 10 incidental take permit process. Congress recognized that conservation plans could provide early protection for many unlisted species and, ideally, prevent subsequent declines and, in some cases, the need to list covered species.

The Services decided that a clearer policy regarding the assurances provided to landowners entering into an HCP was needed. This need prompted the development of the No Surprises policy, which was based on the 1982 Congressional Report language and a decade of working with private landowners during the development and implementation of HCPs. The Services believed that non-Federal property owners should be provided economic and regulatory certainty regarding the overall cost of species conservation and mitigation, provided that the affected species were adequately covered by a properly functioning HCP, and the permittee was properly implementing the HCP and complying with the terms and conditions of the HCP permit in good faith. A driving concern during the development of the policy was the absence of adequate incentives for non-Federal landowners to factor endangered species conservation into their day-to-day land management activities.

The Services issued the ESA No Surprises policy in August of 1994. This policy was then included in the joint Endangered Species Habitat Conservation Planning Handbook, which was published in draft form for public review and comment on December 21, 1994 (59 FR 65782), and, after consideration of the comments, was issued as final in December 1996 (61 FR 63854). In addition to that opportunity for public comment on the No Surprises policy in general, the application of the policy and its assurances have been and continue to be subject to an opportunity for public comment on each proposed HCP permit under section 10(c) of the ESA on a case-by-case basis. The Services were subsequently sued in *Spirit of the Sage Council* v. *Babbitt*, No. 1:96CV02503 (SS) (D. D.C.), which challenged the procedures under which the No Surprises policy was adopted and under which subsequent HCP permits were issued. In settling this lawsuit, the Services agreed to submit the No Surprises Policy to further public comment and to consider public comment in deciding whether to adopt the No Surprises policy as a final regulation. The Services agreed to this approach because they recognized the benefits of permanently codifying the No Surprises policy as a rule in 50 CFR, as well as the value of soliciting additional comments on the policy itself.

Summary of the Proposed Rule

The proposed rule stated that the Services, when negotiating unforeseen circumstances provisions for HCPs, would not require the commitment of additional land, property interests, or financial compensation beyond the level of mitigation that was otherwise adequately provided for a species under the terms of a properly functioning conservation plan. Moreover, the Services would not seek any other form of additional mitigation from a permittee except under unforeseen circumstances. However, if additional mitigation measures were subsequently deemed necessary to provide for the conservation of a species that was otherwise adequately covered under the terms of a properly functioning conservation plan, the obligation for such measures would not rest with the permittee.

Under the proposed rule, if unforeseen circumstances warrant additional mitigation from a permittee who is in compliance with the conservation plan's obligations, such mitigation would, to the maximum extent possible, be consistent with the original terms of the conservation plan. Further, any such changes will be limited to modifications within conserved habitat areas, if any, or to the conservation plan's operating conservation program for the affected species. Additional mitigation requirements would not involve the payment of additional compensation or apply to parcels of land or the natural resources available for development under the original terms of the conservation plan without the consent of the permittee.

Criteria were also developed by the Services that must be used for determining whether and when unforeseen circumstances arise.

Under the proposed rule, the Services also would not seek *any* form of additional mitigation for a species from a permittee where the terms of a properly functioning conservation plan were designed to provide an overall net benefit for that species and contained measurable criteria for the biological success of the conservation plans which have been or are being met. Nothing in the proposed rule would limit or constrain the Services, or any other governmental agency, from taking additional actions at its own expense to protect or conserve a species included in a conservation plan.

The Services also proposed a permit-shield provision in the proposed rule that stated that compliance with the terms of an incidental take permit constitutes compliance with the requirements of sections 9 and 10 of the ESA with respect to the species covered by the permit regardless of changes in circumstances, policy, and regulation, unless a change in statute or court order specifically requires that assurances given in the original permit be modified or withdrawn.

The Services also clarified in the proposed rule that the regulatory and economic assurances provided to HCP permittees are limited to section 10(a)(1)(B) permits. In addition, the assurances are not provided to Federal agencies.

Summary of Comments Received

The Services received more than 800 comments on the proposed rule from a large variety of entities, including Federal, State, County, and Tribal agencies, industry, conservation groups, religious groups, coalitions, and private individuals. The Services considered all of the information and recommendations received from all interested parties on the proposed regulation during the public comment period and appreciated the comments received on the proposed rule. In addition to comments that specifically addressed the proposed No Surprises policy in the proposed rule, the Services received numerous additional comments on the HCP process itself, comments which were beyond the narrow scope of this particular rulemaking on the No Surprises policy. The Services will utilize these more generic comments on HCPs, as appropriate, as we continue to improve the implementation of our HCP programs. However, at this time, the Services will only address comments received that are specific to the proposed No Surprises rule.

The Services have made changes in the proposed rule where appropriate. In addition, the Services intend to revise the HCP Handbook, both to reflect the final No Surprises rule and to further enhance the effectiveness of the HCP process in general through expanded use of adaptive management, monitoring provisions, and the establishment of overall biological goals for HCPs.

The following is a summary of the comments on the proposed regulations, and the Services' response.

Issue 1: Many commenters believed that to provide regulatory No Surprises assurances, the Secretary was directed to "* * * consider the extent to which the conservation plan is likely to enhance the habitat of the listed species or increase the long-term survivability of the species or its ecosystem * * *" (Conf. Report at 31.) and that the Services have no legislative authority to provide regulatory assurances for HCPs that do not meet this standard.

Response 1: A proposed HCP must satisfy the specific issuance criteria enumerated in section 10(a)(2)(B) of the ESA. In deciding whether these criteria have been satisfied and whether the permit should be issued for a given species, the Services consider, among other things, the extent to which the habitat of the affected species or its long-term survivability may be improved or enhanced. While it may be appropriate to consider an "enhancement factor" for an HCP, it is not a mandatory section 10(a)(2)(B) issuance criterion for all species.

Each HCP is analyzed on a case-by-case basis, using the best scientific information available. Habitat conditions are part of the data the Services evaluate to determine whether a proposed HCP meets the section 10 issuance criteria. The legislative history of the 1982 amendments to section 10 of the ESA indicates that Congress viewed habitat improvement and species conservation as appropriate considerations in determining whether to issue long-term incidental take permits. Certain types of HCPs, such as forest HCPs that include aquatic species, often allow for significant timber harvest and consequent species impacts during the initial years, while it may take decades before the riparian measures under the plan produce stream conditions that provide essential habitat functions for the listed species. The Services agree that, in appropriate situations, the legislative history supports including measures to provide for improved habitat over the life of the plan in section 10 permits. Severely depleted species and species for which the HCP covers all or a significant portion of the range are examples of circumstances in which essential habitat functions must be addressed to ensure that the conservation measures in the HCP provide a high probability that the habitat functions essential to the species' long-term survival will be achieved and maintained during the term of the permit.

Issue 2: Many commenters felt that this proposed regulation was driven solely by the needs of private landowners, and is not in the best interests of the species or other public concerns. Many commenters noted that the proposed regulation did not have commensurate certainties for protection of biological resources.

Response 2: The section 10(a) HCP provisions of the ESA were designed to help alleviate section 9 "take" liability for species on non-Federal lands. The ESA, as originally enacted, allowed the taking of listed species only under very limited circumstances, and did not, for example, allow the incidental take of listed species in the course of otherwise lawful activities. The 1982 ESA amendments to section 10(a) authorize the Services to issue HCP permits allowing the incidental take of listed species in the course of otherwise lawful activities, provided the activities are conducted according to an approved habitat conservation plan that minimize and mitigate take and avoids jeopardy to the continued existence of the affected species.

The Services disagree that the No Surprises policy has a narrow focus that excludes the consideration of listed species conservation. To the contrary, a driving concern in the development of the policy was the absence of adequate incentives for non-Federal landowners to factor endangered species conservation into their day-to-day land management activities. The Services knew that much of the habitat of listed species is in non-Federal lands and believed that HCPs should play a major role in protecting this habitat. Yet, while thousands of acres of species habitat were disappearing each year, only a handful of HCPs had been sought and approved since 1982. The No Surprises policy was designed to rechannel this uncontrolled ongoing habitat loss through the regulatory structure of section 10(a)(1)(B) by offering regulatory certainty to non-Federal landowners in exchange for a long-term commitment to species conservation. Given the significant increase in landowner interest in HCPs since the development of the No Surprises policy, the Services believe that the policy has accomplished one of its primary objectives—to act as a catalyst for integrating endangered species conservation into day-to-day management operations on non-Federal lands. The Services also believe that the HCP process, which is a mechanism that reconciles economic development and the conservation of listed species, is good for rare and declining species, and encourages the development of more of these plans. If species are to survive and recover, such plans are necessary because more than half of the species listed have 80 percent of their habitat on non-Federal lands.

Issue 3: Many commenters stressed that the proposed regulation would unlawfully allow the Services to avoid their mandatory duties under section 7 of the ESA. They argued that the proposed regulation precludes the Services from meeting the regulatory and statutory requirements under 50 CFR 402.16 and section 7(d) because it makes reinitiation of consultation useless and precludes any meaningful reexamination of mitigation measures if the measures in the HCP are later found to be inadequate to avoid jeopardy as required under section 7(a)(2). If jeopardy did arise, commenters do not

feel that the Services would be able to implement the necessary mitigation to avoid the jeopardy because of lack of funding. Other concerns were also raised by commenters regarding the respective balance of responsibilities among the participants to an HCP containing a No Surprises assurance. Also, some commenters suggested the Services would not be fulfilling their mandatory conservation obligations under section 7(a)(1).

Response 3: The Services are committed to meeting their responsibilities under section 7(a)(2) of the ESA. As required by law, the Services conduct a formal intra-Service section 7 consultation regarding the issuance of each permit issued under section 10(a)(1)(B). The purpose of any consultation is to insure that any action authorized, funded, or carried out by the Federal government, including the issuance of an HCP permit, is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat of such species. In addition, the Services encourage all applicants to maximize benefits to species covered by their HCPs because of the Services' responsibilities under 7(a)(1). Moreover, as discussed in Response #1, in appropriate situations, such as when an HCP covers most or the entire range of a species or covers severely depleted species, the Services will seek measures necessary for the long-term survival of the species and its habitat.

The Services do not believe they are disregarding the requirements of section 7(d) in providing assurances to landowners through the section 10 process. During the formal section 7(a)(2) consultation process, and prior to the issuance of a final biological opinion, the Services (like any other Federal action agency) must not make any irreversible or irretrievable commitments of resources (in the case of proposing to issue an HCP permit, the Services cannot authorize incidental take) that would preclude the development of reasonable and prudent alternatives in the event that the action, as proposed, violates section 7(a)(2) of the ESA. In the context of HCP permit procedures, the only manner in which the Services could violate section 7(d) is if they authorized incidental take prior to making a final decision on a permit application, which is never the case.

In addition, the No Surprises assurances do not make reinitiation of consultation useless or preclude any meaningful reexamination of the HCP's operating conservation program. The Services will not require the landowner to provide additional mitigation measures in the form of additional land, water, or money. However, additional mitigation measures can be provided by another entity. Similarly, the No Surprises rule does not preclude the Services from shifting emphasis within an HCP's operating conservation program from one strategy to another in an effort to enhance an HCP's overall effectiveness, provided that such a shift does not increase the HCP permittee's costs. For example, if an HCP's operating conservation program originally included a mixture of predator depredation control and captive breeding, but subsequent research or information demonstrated that one of these was considerably more effective than the other, the Services would be able to request an adjustment in the proportionate use of these tools, provided that such an adjustment did not increase the overall costs to the HCP permittee.

Moreover, if the Services reinitiate consultation on the permitting action, and if additional measures are needed, the Services will work together with other Federal, State, and local agencies, Tribal governments, conservation groups, and private entities to ensure additional measures are implemented to conserve the species.

Regarding the concerns on the respective balance of responsibilities among the participants to an HCP containing a No Surprises assurance, the Services believe the No Surprises rule places the preponderance of the responsibility for protection beyond the terms of a specific HCP upon the Services. The only impediments to the Services' assumption of this additional responsibility will arise from limits on authority or funding to provide this additional protection.

The Services have significant resources and authorities that can be utilized to provide additional protection for threatened or endangered species that are the subject of a given HCP including land acquisition or exchange, habitat restoration or enhancement, translocation, and other management techniques. For example, lands managed by the Department of the Interior could be used to ensure listed species protection. Moreover, subsequent section 7 consultations and approval of subsequent section 10 permits will have to take into account the HCP and the status of the species at that time. The section 9 prohibition against unauthorized take by other landowners provides additional protection.

In addition, section 5 of the ESA authorizes the Services to acquire lands to conserve endangered and threatened fish, wildlife, and plants, and section 6 of the ESA authorizes the Services to cooperate with the States in conserving listed species. While many of these programs and authorities are subject to the availability of appropriations, others, such as the authority under the Federal Land Policy and Management Act to exchange land for conservation purposes, do not require appropriations. These authorities provide additional flexibility through which the Services could meet their section 7 responsibilities. While by no means exhaustive, the above discussion demonstrates the depth of authorities and resources available to the Services to meet their No Surprises commitments.

Utilizing these authorities and resources, the Services should be able to provide additional species protection that may be required in the unexpected event that an HCP falls short of providing sufficient protection.

Issue 4: Many commenters stated that the proposed regulation violates section 4(b)(8) of the ESA, which requires "* * * the publication in the **Federal Register** of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this ESA shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such regulation * * *".

Response 4: The Services believe section 4(b)(8) is intended to apply only to listing and critical habitat decisions under section 4. However, even if section 4(b)(8) did apply to this rule, the Services have complied with its requirements. The proposed rule contained a thorough discussion of the basis for the proposed rule (62 FR 29091, May 29, 1997). In addition, the Services had previously explained the background of the No Surprises Policy in the draft HCP Handbook, which was published for public comment in the **Federal Register** (59 FR 65782, December 21, 1994).

Issue 5: Many commenters believe that the Secretary of the Interior does not have the authority to issue assurances for species covered by the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA).

Response 5: The FWS believes that the ESA is more restrictive and protective of species than the MBTA and the BGEPA, and that species covered under an HCP that are also covered by the MBTA and the BGEPA will adequately be protected as long as the HCP is properly implemented. The FWS has concluded that under certain

conditions, a section 10 permit allowing incidental take of listed migratory birds is sufficient to relieve the permittee from liability under the MBTA and BGEPA for taking those species. For the MBTA, this is accomplished by having the HCP permit double as a Special Purpose Permit authorized under 50 CFR 21.27. For the BGEPA, the FWS would exercise its prosecutorial discretion not to prosecute an incidental take permittee under the BGEPA if such take is in compliance with a section 10 permit under the ESA.

However, there are conditions that must be satisfied before either of these protections apply, which are explained on pages 3–40 to 3–41 in the joint Endangered Species Habitat Conservation Planning Handbook (61 FR 63854, December 2, 1996). The FWS believes this approach is warranted because the permittee already would have agreed to an operating conservation program designed to conserve the species and minimize and mitigate the impacts of take of the listed species of migratory birds to the maximum extent practicable. Through the permitting provisions of the MBTA and the FWS's discretion in the enforcement of the BGEPA and the ESA, the FWS has the authority to provide a permittee with assurance that they will not be prosecuted under the MBTA or BGEPA for take expressly allowed under the ESA.

Issue 6: Many commenters stated that HCPs with No Surprises assurances are in conflict with the issuance criteria in the ESA because, in the event of unforeseen circumstances, the project impacts may not be fully mitigated and the plan may reduce the survival and recovery of a covered species.

Response 6: The assurances provided through this regulation are consistent with the issuance criteria of the ESA. Before issuing a permit, the Services ensure that the applicant minimizes and mitigates the project impacts, to the maximum extent practicable, and that the permitted activities avoid jeopardy to the continued existence of the affected species.

In addition, in cases where significant data gaps exist, adaptive management provisions are included in the HCP. The primary reason for using adaptive management in HCPs is to allow for up-front, mutually agreed upon changes in the operating conservation program that may be necessary in light of subsequently developed biological information. In the event of unforeseen circumstances, these strategies may be redirected as long as the redirection is consistent with the scope of the mutually agreed-upon adaptive management provisions of the HCP.

Issue 7: Many commenters stated that the applicant is legally required to address all unforeseen circumstances in the HCP pursuant to section 10. They noted that fire, disease, drought, flood, global climate change, and non-point source pollution may be unforeseen, but are not uncommon. Also the proposed regulation does not direct the applicant to provide for all unforeseen circumstances that might occur during the length of the permit because it is the Services' responsibility to determine that there was an unforeseen circumstance that was not addressed and is not the fault of the permittee implementing the HCP. In addition, commenters noted that the nature of many of the HCPs that the Services are approving increases the likelihood for unforeseen events to happen (i.e., the permits are issued for many years and cover large areas and many species).

Response 7: The Services disagree that HCPs must address *all* hypothetical future events, no matter how remote the probability that they may occur. Rather, the Services believe that only reasonably foreseeable changes in circumstances need to be addressed in an HCP. Moreover, these circumstances are likely to vary from HCP to HCP given the ever changing mix of species and affected habitats covered by a given plan. Nevertheless, the Services agree that the proposed rule's treatment of unforeseen circumstances could be strengthened, and a definition of unforeseen circumstances has been codified in this rule. In particular, the Services would like to clarify that unforeseen circumstances will only include events that could not reasonably have been anticipated. *All reasonably foreseeable circumstances, including natural catastrophes that normally occur in the area, should be addressed in the HCP.* The final rule specifies how unforeseen circumstances will be addressed if they occur during the life of the permit.

Issue 8: Commenters believe that the proposed regulation would not allow for social changes that could occur over the lifetime of the permit. For example, they claim that the development and implementation of the Emergency Salvage Timber rider has affected the success of the conservation measures of several HCPs.

Response 8: There may be situations that do arise related to social changes that could occur during the lifetime of the permit. In these situations, the Services will use all of their legal authorities to adequately address the changes. The Timber Salvage rider to the Appropriations bill is actually a good example of how the Administration responded to a change in social policy. On July 27, 1995, the President signed the Rescission Act (Public Law 104–19) that provided funds for disaster relief and other programs. This bill contained provisions for an emergency salvage timber sale, and directed the preparation, offer, and award of timber salvage sales nationwide. Although the bill passed, the President did not support the provision that waived compliance with environmental laws during timber salvage and directed the Secretaries of Agriculture, the Interior and Commerce, and the heads of other agencies, to move forward to implement the timber-related provisions of the bill in an expeditious and environmentally-sound manner. The Services worked with other Federal agencies to develop a process that, as a matter of Administration policy, addressed compliance with all environmental laws while also meeting the requirements of Pub. L. 104–19. An interagency team of Federal agencies then drafted a process that addressed compliance with the ESA through a streamlined section 7 consultation procedure to ensure that these sales did not jeopardize listed species. In this case, the Services and other Federal agencies cooperatively used their administrative discretion and legal authorities to ameliorate adverse impacts upon listed species conservation.

Issue 9: Several commenters believe that the proposed No Surprises rule negates adaptive management provisions incorporated into HCPs, and may not allow future jeopardy situations to be addressed, because adaptive management must allow for adaptions to changes as they occur rather than trying to plan for everything up front. In addition, many commenters believe that in order to get No Surprises assurances, an HCP must have an adaptive management program that addresses all foreseeable biological and environmental changes and that is designed so that new applicable scientific information and information developed through a monitoring program is incorporated into the plan.

Response 9: The Services do not believe that the proposed rule negates adaptive management provisions incorporated into HCPs for the species with biological data gaps. The No Surprises assurances only apply to an approved HCP that has otherwise satisfied the issuance criteria under section 10(a)(2)(B) of the ESA. When considering permits where there are significant biological data gaps, the

Services have two choices: either deny an HCP permit application due to the inadequacy of the overall proposed plan, or build in adaptive management and monitoring provisions where warranted because of biological data gaps and issue the permit. If there is significant uncertainty associated with the operating conservation program, adaptive management becomes an integral component of the HCP. Incorporating adaptive management provisions into the HCP becomes important to the planning process and the long-term interest of affected species when HCPs cover species with significant biological data gaps. Through adaptive management, the biological objectives of an operating conservation program are defined using techniques such as models of the ecological system that includes its components, interactions, and natural fluctuations. If existing data makes it difficult to predict exactly what conservation and mitigation measures are needed to achieve a biological objective, then an adaptive management approach should be used in the HCP. Under adaptive management, the HCP's operating conservation program can be monitored and analyzed to determine if it is producing the desired results (*e.g.*, properly functioning riparian habitats). If the desired results are not being achieved, then adjustments in the program can be considered through an adaptive management clause of the HCP. Thus, adaptive management can be an integral part of the operating conservation program for an HCP and can be implemented to adjust strategies accordingly. The Services support continuing to strengthen the effectiveness of adaptive management provisions in HCPs and intend to do so in further revisions to the HCP Handbook.

Issue 10: Numerous commenters stated that the proposed regulation should identify secured sources of funding that do not rely on appropriations for the implementation of conservation measures that may be needed to address unforeseen circumstances.

Response 10: Funding mechanisms of this type would have to be established through Congressional action. Absent Congressional action on this matter, the Services must operate with the fiscal resources otherwise made available to them through the appropriations process. Moreover, in approving an HCP in the first instance, the Services must conclude that the permittee has provided for adequate funding to implement the terms of the HCP.

Issue 11: Many commenters stated that the Federal government is not capable of shouldering the financial burden of funding the implementation of conservation measures that may be needed to address unforeseen circumstances. The hardship of paying for any changes needed in the HCP on the government may have severe and far reaching effects on funding for other Federal activities. In addition, some commenters noted that the proposed regulation unlawfully shifts the burden of funding to the Services when section 10 clearly states that the applicant will provide the funding. Numerous commenters stated that the government does not have guaranteed funding for covering unforeseen circumstances and cannot make such guarantees in violation of the Anti-Deficiency Act.

Response 11: The ESA requires the Service to find that an incidental take permittee has provided adequate funding to implement an HCP in the first instance. In addition, the Services must ensure that HCPs are designed to adequately mitigate the incidental take authorized by the permit, include measures to deal with unforeseen circumstances that may arise, and comply with such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan. Once the Services have concluded that a permittee has initially satisfied the issuance criteria in section 10(a), there is nothing in the ESA that precludes the Services from assuming additional responsibility for species covered under the terms of an HCP, especially when such responsibilities are limited to highly unlikely unforeseen circumstances. In fact, the Services have responsibility for listed species conservation regardless of whether an HCP is involved or not, and carrying out that responsibility (for example, through the initiation of litigation to enforce section 9 of the ESA) is also dependent upon the availability of appropriated funds. Therefore, at a conceptual level, the lack of guaranteed funding to handle a breakdown of an HCP due to unforeseen circumstances is no different from a lack of guaranteed funding to enforce the ESA generally.

The Anti-Deficiency Act applies to the Services' activities under the ESA as it does to their activities under all other environmental laws. In the face of an unexpected species decline, where additional conservation efforts are warranted, the Services have significant resources at their disposal to address the comparative needs of the species. As noted earlier in Response #3, the Services can also work with Congress, other Federal, State, and local agencies, tribes, environmental groups, and private entities to help ensure the continued conservation of the species in the wild. The Services have a variety of tools available to ensure that the needs of the species affected by unforeseen circumstances are adequately addressed, including land acquisition or exchange, habitat restoration or enhancement, translocation, and other management techniques. Thus, the Services believe they have a wide array of options and resources available to respond to any unforseen circumstances.

Issue 12: Many commenters noted that many HCPs do not have adequate funding, and the Services must not issue an incidental take permit unless an applicant has secured adequate funding to address all foreseeable changes that might be needed in the conservation measures during the lifetime of the permit. County or State Bonds that are not guaranteed should not be considered "adequate funding."

Response 12: Section 10(a)(2)(B)(iii) requires incidental take permit applicants to "ensure that adequate funding for the plan will be provided." This issuance criterion requires that the applicant detail the funding that will be available to implement the proposed operating conservation program. Therefore, all conservation plans specify funding requirements necessary to implement the plan. The Services issue a permit only when they have concluded that the operating conservation program will be adequately funded. No Surprises only applies to an HCP that is being properly implemented, and if a major component of an HCP, like its funding strategy, is never initiated or implemented, then No Surprises no longer applies and the assurances lapse.

The FWS has incorporated provisions into HCPs that allow for a reevaluation of species coverage in case a County or State Bond that is supposed to meet the adequate funding issuance criterion ultimately is not passed. Under these provisions, the list of species authorized for incidental take may be diminished if funding is not in place within a specified time frame, and any incidental take that would occur before the bond measure is acted upon would have to be adequately mitigated up-front. This reevaluation mechanism was used in the Multiple Species Conservation Program for southwestern San Diego County, California. This type of reevaluation process will be incorporated into other HCPs that rely on proposed bonds to provide required funding.

Issue 13: Many commenters stated that funding and accountability mechanisms are more complicated for permits that involve third party beneficiaries (*e.g.*, certificates of inclusion), and that these types of permits should not include assurances.

Response 13: The Services believe that the assurances provided by the final rule should be available to individuals who participate in HCPs through a larger regional planning process. These large-scale, regional HCPs can significantly reduce the burden of the ESA on small landowners by providing efficient mechanisms for compliance, distributing the economic and logistical impacts of endangered species conservation among the community, and bringing a broad range of landowner activities under the HCPs' legal protection. In addition, these large-scale HCPs allow for ecosystem planning, which can provide benefits to more species than small-scale HCPs. Large-scale HCPs also provide the Services with a better opportunity for analyzing the cumulative effects of the projects, which is more efficient than the piecemeal approach that could result if each landowner developed his/her own HCP. The Services do believe, however, that the party that holds the "overarching" permit, and issues subpermits (*e.g.*, Certificates of Inclusion or Participation Certificates) must have the legal authority to enforce the terms and conditions of the permit and the underlying funding mechanisms for the HCP.

Issue 14: Many commenters requested the Services to remove the permit-shield provision from the proposed regulation because it improperly restricts the authority of the Secretary and citizens to enforce the requirements of the ESA. These commenters assert that the Services do not have the authority to prevent citizens from suing those who are in violation of the ESA. One commenter stated that the permit-shield provision lacks important limitations found in other permit-shield provisions, such as the Clean Water Act and Resource Conservation and Recovery Act. Commenters also stated that the proposed permit-shield provision conflicts with the citizen suit provision in section 11(g) of the ESA. Other commenters supported the proposed permit-shield provision and urged the Service to incorporate it into the final rule. These commenters believe failure to include a permit-shield provision would undercut the No Surprises assurances by exposing permit holders to potential enforcement actions even if they are complying fully with the terms and conditions of valid permits.

Response 14: After further review of the permit-shield concept, including a review of legal authorities, the Services have decided not to include a legally binding permit-shield provision in the final rule. The purpose of the permit-shield provision was to provide certainty to permittees regarding their legal obligations. The current statutory and regulatory framework appears to already provide permittees with that certainty. Although commenters stated that a permit holder might still be vulnerable to government-initiated enforcement actions notwithstanding the No Surprises assurances, the Services cannot identify situations in which a permittee would be in violation of Sections 9 or 11 of the ESA, if in fact they were acting within the permit's authorization and were complying with the terms and conditions of the permit.

In addition, as part of the review of legal authorities, the Services reviewed the court decision in *Shell Oil Company* v. *Environmental Protection Agency*, 950 F.2d 741, 761–765 (D.C. Cir. 1991), which addressed the legality of the Environmental Protection Agency's permit-shield rule for permits issued under the Resource Conservation and Recovery Act (RCRA). Although that decision upheld the RCRA permit-shield rule promulgated by the EPA, 40 CFR 270.4(a), the Services are concerned that the incidental take permit program is sufficiently different from the RCRA permit program that the *Shell Oil* decision may not support a permit-shield rule for incidental take permits. For instance, the court noted that the maximum term of RCRA permits is 10 years, which is considerably shorter than the terms of most incidental take permits. In addition, the EPA retains explicit authority to modify or terminate RCRA permits in response to information arising after a permit is issued that would have justified different permit terms had it existed when the permit was issued. In contrast, the No Surprises rule commits the Service to issue permits that do not require additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources if unforeseen circumstances arise.

Although the Services have decided not to include a legally binding permit-shield provision in the final rule, they nonetheless strongly support a policy that permittees should feel free of potential prosecution if they are acting under the authorizations of their permit and are complying with the terms and conditions of the permit. The Services therefore will continue their policy of not enforcing the prohibitions of Section 9 of the ESA against any incidental take permittee who complies fully with the terms and conditions of the permit.

Many commenters requested that the Services remove the permit-shield provision from the proposed regulation because it improperly restricts the authority of citizens to enforce the requirements of the ESA. The purpose of the proposed permit-shield provision was to provide that the Services would not utilize Section 11(e) of the ESA to enforce Section 9 prohibitions against a permittee who is in full compliance with the terms and conditions of a permit. The permit-shield provision would not, therefore, have restricted citizen suits.

Issue 15: Commenters believe that the regulatory assurances provided to the permittee deprive citizens of the right to have general oversight of HCPs, including challenging government's management decisions, guaranteeing that landowners are in compliance with the agreements, and ensuring that the plans are actually working to conserve listed species.

Response 15: The No Surprises assurances do not deprive citizens of HCP oversight or of their ability to challenge an improperly issued HCP permit. In addition, all Service decision documents (such as approval of HCP management plans) are part of the Administrative Record for any individual HCP and are available to any member of the public upon request. Nothing in this rule prevents citizens from challenging the adequacy of those decisions or bringing HCP permit terms and conditions compliance issues to the Services' attention. The Services welcome citizen input on HCP implementation. Public comments must be considered in all permit decisions. Providing No Surprises assurances to an HCP permittee does not eliminate this public comment period. In addition, the Services or any party designated as responsible by the Services (*e.g.*, State wildlife agency, local government) in the HCP will be expected to monitor the project for compliance with the terms of the incidental take permit and HCP. The Services also require periodic reporting from the permittee in order to maintain oversight to ensure the implementation of the HCP's terms and conditions. The final rule does nothing to affect these reporting requirements.

Issue 16: Numerous commenters stated that the proposed regulation should provide for permits to contain a reopener clause. Any entity (*e.g.*, landowners, government agencies, ecologists, environmentalists) would then be able to reopen the permit for any of the following reasons: 1) Any

party fails to implement the terms and conditions of the permit; (2) new listings of any species not covered; and (3) monitoring indicates that conservation goals are not being met and that the operating conservation program is ineffective.

Response 16: The HCP process already provides various mechanisms for reopening an HCP. First, the Services may suspend, or in certain circumstances, revoke all or part of the privileges authorized by a permit if the permittee does not comply with the terms and conditions of the permit or with applicable laws and regulations governing the permitted activity. If an HCP permit is suspended or revoked, incidental take must cease. The provisions of most HCPs expressly address permit suspension or revocation procedures. Second, if a species was not initially listed on an HCP permit, it may not be automatically covered by an HCP when subsequently listed. For example, if a species was not originally listed on a permit, the HCP must be formally amended. Amendment of a section 10(a)(1)(B) permit is also required when the permittee wishes to significantly modify the project, activity, or conservation program as described in the original HCP. Such modifications might include significant boundary revisions, alterations in funding or schedule, or an addition of a species to the permit that was not addressed in the original HCP. The Services encourage the public to provide them with applicable information concerning any approved HCP that would be useful in evaluating the effectiveness of the HCP or other concerns they may have.

Issue 17: Numerous commenters stated that the assurances provided through these proposed regulations should not be automatic and should be commensurate with risk, and that the Services should provide assurances to a permittee only if the HCP includes specific objectives or measurable biological goals that must be met and that would ensure the conservation of the species, if they are attained.

Response 17: The Services believe that the commitments of an HCP must be specifically identified and scientifically based, reflecting the particular needs of the species that are covered. Thus, the concept of comparative risk to various species is factored in by the Services as they assess the adequacy of the operating conservation program for a given HCP. The Services will not approve an HCP permit request found to be inadequate, but will provide No Surprises assurances to all HCPs that are found to be adequate.

For many recent HCPs, the Services are defining specific biological goals. Furthermore, comprehensive monitoring programs provide added value for measuring progress toward meeting the goals and commitments and ensuring that the permittee is in compliance with the permit. The Services often incorporate monitoring measures to assess whether goals are being met, especially in cases where additional information may be desirable or there is significant scientific uncertainty. If existing data makes it difficult to predict exactly what measures are needed to achieve a biological objective, then an adaptive management strategy is usually required. Adaptive management, which then becomes an integral component of the operating conservation program, is not negated by the No Surprises assurances because it was a part of the HCP's operating conservation program as approved by the Services.

Issue 18: Most commenters stated that to get assurances, a multispecies HCP must adequately cover each individual species rather than collectively cover a group of species defined by some type of commonality (*e.g.*, guild or habitat).

Response 18: The Services believe that each species in a multispecies HCP must be adequately addressed by satisfying the permit issuance criteria under section 10(a)(2)(B) of the ESA. The Services believe, nevertheless, that in some cases, using a "guilding" or habitat-based approach to craft preserve designs or management measures may be appropriate.

However, even when such tools are used, the Services will ensure that for each species that receives assurances, the species must be specifically named in the HCP, and adequate conservation measures are included in the plan.

Issue 19: Commenters believe that to get assurances, an HCP must have an adequate and comprehensive biological monitoring program that addresses all foreseeable changes in circumstances that may occur over the lifetime of the permit.

Response 19: Monitoring is already an element of HCPs under the Services' Federal regulations [50 CFR 17.22(b)(1), 17.32(b)(1), and 222.22]. Monitoring is also an important tool for HCPs, and their associated permit and Implementing Agreements, and should be properly designed and implemented. The scope of the monitoring program should be sufficient to address reasonably foreseeable changes in circumstances that occur during the life of the permit. Monitoring is needed to obtain the information necessary to properly assess the impacts from the HCP and to ensure that HCPs are properly implemented. Monitoring will also allow the use of the scientific data obtained on the effects of the plan's operating conservation program to modify specific strategies through adaptive management, and to enhance future strategies for the conservation of species and their habitat.

While the Services appreciate the numerous benefits of a well-developed monitoring program, some low-effect HCPs have minimal monitoring requirements because the impacts from the plan are minor or negligible, and the attempt by the commenters to make an extensive monitoring program a requirement for No Surprises assurances is misplaced. A well-developed monitoring program will add to the credibility of an HCP proposal and will facilitate the eventual approval of the HCP. Thus, the Services believe that the real test for receiving the No Surprises assurances should be whether the issuance criteria under section 10(a) have been satisfied, and not whether a particular conservation tool, such as monitoring, has been extensively employed under an HCP whether it is needed or not.

Issue 20: Numerous commenters stated that to get assurances for unlisted species, a plan must be in place that describes what is necessary for their long-term conservation. Commenters encouraged a standard for unlisted species equal to that used in the proposed policy and regulations for the Candidate Conservation Agreements (CCAs).

Response 20: While the Services agree that these two types of agreements are similar, the purposes of the proposed CCA policy and the No Surprises rule are somewhat different. As stated in the proposed CCA policy, the ultimate goal of these agreements is to encourage landowners and State and local land managing agencies to manage their lands in a manner that, if adopted on a broad enough scale by similarly situated landowners, would remove threats to species and thereby obviate the need to list them under the ESA. The purposes of including unlisted species in HCPs and of making them subject to No Surprises assurances, are to enlist landowners in efforts to conserve these species and to provide certainty to landowners who are willing to make long-term commitments to the conservation of listed and unlisted species that they will not be subjected to additional conservation and mitigation measures if one of the species is listed, except as provided in their HCPs. The standards for including an unlisted species under an HCP are the

issuance criteria under section 10(a)(2)(B) of the ESA. For HCPs, the Services will continue to use the conservation standard identified in the Habitat Conservation Planning Handbook for unlisted species. The Handbook clearly states that an unlisted species is "adequately covered" in an HCP only if it is treated as if it were listed pursuant to section 4 of the ESA, and if the HCP meets the permit issuance criteria in section 10(a)(2)(B) of the ESA with respect to the species. The No Surprises assurances apply only to species (listed and unlisted) that are adequately covered in the HCP. Species, whether listed or nonlisted, will not be included in the HCP permit if data gaps or insufficient information make it impossible to craft conservation and mitigation measures for them, unless these data gaps can be overcome through the inclusion of adaptive management clauses in the HCP.

Issue 21: Many commenters requested an addition to the rule that would address the early termination of an HCP. Commenters want the Services to discuss the possibility of terminating an HCP, including how the assurances and applicable mitigation apply to the termination.

Response 21: The Services believe that such a requested change is unnecessary. The No Surprises assurances apply during the life of the permit, provided that the HCP is properly implemented and the terms and conditions of the HCP incidental take permit are being followed. Should a permit be terminated early, the No Surprises assurances also terminate as of the same date. The question of how outstanding mitigation responsibilities should be handled upon early termination is a more generic HCP policy issue that is unrelated to the No Surprises assurances and is, therefore, beyond the scope of this particular rulemaking.

Issue 22: Several commenters stated that the proposed rule was confusing regarding the different level of assurances established in the proposed rule (for regular HCPs and for HCPs that provide a "net benefit" to the covered species) and that the distinction between the two levels should be clarified further or only one level of assurances should be provided to HCP permittees.

Response 22: The Services agree that these distinctions were unnecessarily confusing and have revised the final rule accordingly. The final rule requires the Services to provide only one level of assurances to any permittee that has an approved HCP permit. The Services eliminated the level of assurances for HCPs that were developed to provide a net benefit for the covered species since the distinction between the two types of HCPs were very difficult to delineate in practice.

Issue 23: Commenters noted that there were differences between the regulations, such as FWS use of the term "unforeseen" circumstances throughout the proposed rule, whereas NMFS used the terms "unforeseen" and "extraordinary" circumstances in their proposed rule.

Response 23: The Services agree that there was some confusion and have made the regulations consistent between the two agencies, where possible. Moreover, there was never an intention in the August 1994 No Surprises announcement to create a substantive difference between "unforeseen" and "extraordinary" circumstances. NMFS will use the term "unforeseen" in its regulations in place of "extraordinary."

Revisions to the Proposed Rule

The following represents a summary of the revisions to the proposed rule as a result of the consideration of the public comments received during this rulemaking process. The Services have rewritten the "Assurances" section of the preamble and regulatory language to improve clarity and readability. Many commenters were confused by the language in the proposed rule, and asked the Services to provide a clearer explanation of this section. Accordingly, the Services have edited and reorganized the Assurances provision, but have not made any substantive changes.

(1) Some of the definitions used in this rulemaking process will now be codified as definitions in 50 CFR 17.3 for FWS and 50 CFR 222.3 for NMFS. These definitions were concepts identified in the "Background" section of the proposed rule.

(2) The rule was revised so the Services will only provide assurances for species listed on a permit that are adequately covered in the conservation plan and specifically identified on the permit.

(3) The Services have clarified that the duration of the assurances is the same as the length of the permit.

(4) The Services revised the rule so that there is only one level of assurances provided to permittees, instead of one level of assurances for standard HCPs and another level for HCPs that were developed to provide a "net benefit" for the covered species.

(5) The Services have clarified the rule so that it is apparent that No Surprises assurances do not apply to Federal agencies who have a continuing obligation to contribute to the conservation of threatened and endangered species under section 7(a)(1) of the ESA.

(6) The Services believe that HCPs are, and will continue to be, carefully crafted so that unforeseen circumstances will be rare, if at all, and that the Services will be able to successfully handle any unforeseen circumstance so that species are not jeopardized. To help ensure that unforeseen circumstances are a rare occurrence, the Service revised the rule in appropriate areas.

(7) The Services replaced the term "properly functioning," which was used in the proposed rule to "properly implemented." This change accurately reflects the intent of the Services when discussing the implementation of HCPs.

(8) The Services eliminated the permit-shield provisions from the final rule.

(9) The Services revised the final rule by replacing the term "property interests" with the term "natural resources," which more accurately describes the intent of the Services.

Description/Overview of the Final Habitat Conservation Plan Assurances ("No Surprises" Policy) Rule

The information presented below briefly describes the "No Surprises" assurances adopted in this final rule. These assurances provide economic and regulatory certainty for non-Federal property owners that participate in the ESA's section 10(a)(1)(B) permitting process through the following:

1. General assurances. The No Surprises assurances apply only to incidental take permits issued in accordance with the requirements of the Services' regulations where the conservation plan is being properly implemented, and apply only to species adequately covered by the conservation plan.

Discussion: Once an HCP permit has been issued and its terms and conditions are being fully complied with, the permittee may remain secure regarding the agreed upon cost of conservation and mitigation. If the status of a species addressed under an HCP unexpectedly worsens because of unforeseen circumstances, the primary obligation for implementing additional conservation measures would be the responsibility of the Federal government, other government agencies, or other non-Federal landowners who have not yet developed an HCP.

"Adequately covered" under an HCP for listed species refers to any species addressed in an HCP that has satisfied the permit issuance criteria under section 10(a)(2)(B) of the ESA. For

unlisted species, the term refers to any species that is addressed in an HCP *as if it* were listed pursuant to section 4 of the ESA and is adequately covered by HCP conditions that would satisfy permit issuance criteria under section 10(a)(2)(B) of the ESA if the species were actually listed. For a species to be covered under a HCP it must be listed on the section 10(a)(1)(B) permit. These assurances apply *only* to species that are "adequately covered" in the HCP.

"Properly implemented conservation plan" means any HCP, Implementing Agreement, and permit whose commitments and provisions have been and are being fully implemented by the permittee and in which the permittee is in full compliance with the terms and conditions of the permit, so the HCP is consistent with the agreed-upon operating conservation program for the project.

2. Changed circumstances provided for in the plan. If additional conservation and mitigation measures are deemed necessary to respond to changes in circumstances that were provided for in the plan's operating conservation program, the permittee will be expected to implement the measures specified in the plan.

3. Changed circumstances not provided for in the plan. If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances that were not provided for in the plan's operating conservation program, the Services will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

Discussion: It is important to distinguish between "changed" and "unforeseen" circumstances. Many changes in circumstances during the course of an HCP can reasonably be anticipated and planned for in the conservation plan (*e.g.*, the listing of new species, or a fire or other natural catastrophic event in areas prone to such events), and the plans should describe the modifications in the project or activity that will be implemented if these circumstances arise. "Unforeseen circumstances" are changes in circumstances affecting a species or geographic area covered by an HCP that could not reasonably have been anticipated by plan developers or the Services at the time of the HCP's negotiation and development, and that result in a substantial and adverse change in the status of a covered species (e.g., the eruption of Mount St. Helens was not reasonably foreseeable).

4. Unforeseen circumstances. In negotiating unforeseen circumstances, the Services will not require without the consent of the permittee, the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, including quantity and timing of delivery, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan.

If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Services may require additional measures of the permittee where the conservation plan is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the conservation plan's operating conservation program for the affected species, and maintain the original terms of the conservation plan to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or restrictions on the use of land, water (including quantity and timing of delivery), or other natural resources otherwise available for development or use under the original terms of the conservation plan, without the consent of the permittee.

In determining unforeseen circumstances, the Services will have the burden of demonstrating that such unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Services will consider, but not be limited to, the following factors: size of the current range of the affected species; percentage of range adversely affected by the conservation plan; percentage of range conserved by the conservation plan; ecological significance of that portion of the range affected by the conservation plan; level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

Discussion: The first criterion is self-explanatory. The second identifies factors to be considered by the Services in determining whether the unforeseen circumstances are biologically significant. Generally, the inquiry would focus on the level of biological threats to the affected species covered by the HCP and the degree to which the welfare of those species is tied to a particular HCP. For example, if a species is declining rapidly, and the HCP encompasses an ecologically insignificant portion of the species' range, then unforeseen circumstances warranting reconsideration of an HCP's conservation program typically would not exist because the overall effect of the HCP upon the species would be negligible or insignificant. Conversely, if a species is declining rapidly and the HCP in question encompasses a majority of the species' range, then unforeseen circumstances warranting a review of an HCP's conservation program probably would exist. If unforeseen circumstances are found to exist, the Services will consider changes in the operating conservation program or additional mitigation measures. However, measures required of the permittee must be as close as possible to the terms of the original HCP and must be limited to modifications within any conserved habitat area or to adjustments within lands or waters that are already set aside in the HCP's operating conservation program. "Conserved habitat areas" are areas explicitly designated for habitat restoration, acquisition, protection, or other conservation uses under an HCP. An "operating conservation program" consists of the conservation management activities, which are expressly agreed upon and described in an HCP or its Implementing Agreement and that are undertaken for the affected species when implementing an approved HCP. Any adjustments or modifications will not include requirements for additional land, water, or financial compensation, or additional restrictions on the use of land, water (including quantity and timing of delivery), or other natural resources otherwise available for development or use under the HCP, unless the permittee consents to such additional measures.

Modifications within conserved habitat areas or to the HCP's operating conservation program means changes to the plan areas explicitly designated for habitat protection or other conservation uses under the HCP, or changes that increase the effectiveness of the HCP's operating conservation program, provided that any such changes do not impose new restrictions or require additional financial compensation on the permittee's activities. Thus, if an HCP's operating conservation program originally included a mixture of predator depredation control and captive breeding, but subsequent

research or information demonstrated that one of these was considerably more effective than the other, the Services would be able to request an adjustment in the proportionate use of these tools, provided that such an adjustment did not increase the overall costs to the HCP permittee. Additionally, the No Surprises assurance does not preclude any Federal agency from exercising its Federal reserved water rights.

The "Unforeseen circumstances" section of the HCP should discuss the process for addressing those future changes in circumstances surrounding the HCP that could not reasonably be anticipated by HCP planners. While HCP permittees will not be responsible for bearing any additional economic burden for more mitigation measures, other methods remain available to respond to the needs of the affected species and to assure that the goals of the ESA are satisfied. These include increasing the effectiveness of the HCP's operating conservation program by adjusting the program in a way that does not result in a net increase in costs to the permittee, and actions taken by the government or voluntary conservation measures taken by the permittee.

When negotiating the unforeseen provisions in an HCP, the permittee cannot be required to commit additional land, funds, or additional restrictions on lands, water (including quantity and timing of delivery) or other natural resources released under an HCP for development or use from any permittee who is implementing the HCP and is abiding by all of the permit terms and conditions in good faith or has fully implemented their commitments under an approved HCP. Moreover, this rule does not preempt or affect any Federal reserved water rights.

In the event of unforeseen circumstances, the Services will work with the permittee to increase the effectiveness of the HCP's operating conservation program to address the unforeseen circumstances without requiring the permittee to provide an additional commitment of resources as stated above. The specific nature of the requested changes to the operating conservation program will vary among HCPs depending upon individual habitat and species needs.

5. Nothing in this rule will be construed to limit or constrain the Services, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a conservation plan.

Discussion: This means the Services or other entities can intervene on behalf of a species at their own expense at any time and be consistent with the assurances provided to the permittee under this final rule. However, it is unlikely that the Services would have to resort to protective or conservation action requiring new appropriations of funds by Congress in order to meet their commitment under this final rule (consistent with their obligations under the ESA). If this unlikely event occurred, these actions would be subject to the requirements of the Anti-Deficiency Act and the availability of funds appropriated by Congress.

Also, nothing in this final rule prevents the Services from asking a permittee to voluntarily undertake additional mitigation on behalf of affected species. While an HCP permittee who has been implementing the HCP and permit terms and conditions in good faith would not be obligated to provide additional mitigation, the Services believe that many landowners would be willing to consider additional conservation assistance on a voluntary basis if a compelling argument for assistance could be made.

The Services believe that it will be rare for unforeseen circumstances to result in a jeopardy situation. However, in such cases, the Services will use all of their authorities, will work with other Federal agencies to rectify the situation, and work with the permittee to redirect conservation and mitigation measures so as to offset the likelihood of jeopardy. The Services have a wide array of authorities and resources that can be used to provide additional protection for threatened or endangered species covered by an HCP.

Required Determinations

A major purpose of this final rule is to provide section 10(a)(1)(B) permittees regulatory assurances related to the issuance of an HCP permit. From the Federal government's perspective, implementation of this rule would not result in additional expenditures to the permittee that are above and beyond that already required through the section 10(a)(1)(B) permitting process. There are, however, benefits derived from HCPs for both the non-Federal permittees and the species covered by the HCPs. HCPs are mechanisms that allow non-Federal entities to continue with economic use or development activities, while factoring species' conservation needs into natural resource management decisions. Benefits to the covered species may include the conservation of lands and waters upon which the species depends, decreased habitat fragmentation, the removal of threats to candidate, proposed, or other unlisted species, and in various instances, advancement of the recovery of listed species. Non-Federal entities are then provided regulatory assurances pursuant to an approved incidental take permit under section 10(a)(1)(B) of the ESA for those species that are adequately covered by the permit, conditioned, of course, on the proper implementation of the HCP. Since the Habitat Conservation Plan Assurances ("No Surprises" policy) impose no additional economic costs or burdens upon an HCP permittee, the Services have determined that the final rule would not result in significant costs of implementation to non-Federal entities.

Information Collection/Paperwork Reduction Act

No significant effects are expected on non-Federal entities exercising their option to enter into the HCP planning program because there is no additional information required during the HCP development or processing phase due solely to these regulatory assurances.

The Services have examined this final rule under the Paperwork Reduction Act of 1995 and found it to contain no requests for additional information or increase in the collection requirements associated with incidental take permits other than those already approved for incidental take permits with OMB approval #1018–0094, which has an expiration date of February 28, 2001.

Economic Analysis

This final rule was subject to Office of Management and Budget review under Executive Order 12866. However, the Services have determined that there will be no additional costs placed on the non-Federal entity associated with this final regulation. The No Surprises policy, which was drafted in 1994, went through a public comment period as part of the draft *1994 Habitat Conservation Planning Handbook* (59 FR 65782, December 21, 1994), was included in the final *1996 Habitat Conservation Planning Handbook* (61 FR 63854, December 2, 1996), and currently is being implemented in individual HCP permits as they are issued after an opportunity for public comment. The No Surprises assurances provided to permittees through these final rules apply to the HCP permitting process only, and the Services have determined that there will be no additional information required of non-Federal entities through the HCP permitting process to provide assurances to the permittee.

The Department of the Interior has certified that this rulemaking will not

have a significant economic impact on a substantial number of small entities, which includes businesses, organizations, or governmental jurisdictions. This final rule will provide non-Federal entities regulatory certainty pursuant to an approved incidental take permit under section 10(a)(1)(B) of the Act. No significant effects are expected on non-Federal entities exercising their option to enter into the HCP planning program because there will be no additional information required through the HCP process due to the application of assurances or "No Surprises." Therefore, this rule would have a minimal effect on such entities. NMFS has also reviewed this rule under the Regulatory Flexibility Act of 1980 and concurs with the above certification.

The implementation of the final Habitat Conservation Plan Assurances rule does not require any additional data not already required by the HCP process. Regulatory assurances are provided to the permittee if the HCP is properly implemented, and if all the terms and conditions of the HCP, permit, or Implementing Agreement are all being met. The underlying economic basis of comparing the final rule with and without the assurances was used to determine if there existed any potential economic effects from implementing this policy. Since the rule is being implemented with existing data, there are no incremental costs being imposed on non-Federal landowners. The benefits generated by this rule are being shared by the Services (*i.e.*, less habitat fragmentation, habitat management, and protection for covered species) and by non-Federal landowners (*i.e.*, assurances that approved HCPs will allow for future economic uses of non-Federal land without further conservation and mitigation measures).

There are no specific data to assess the effects on businesses from this rule. To the extent businesses are affected, however, such effects would be positive, not negative. Until specific HCPs are approved, it is not possible to determine effects on commodity prices, competition or jobs. Moreover, any economic effects would likely be tied to the cost of the development and implementation of the HCP itself and not to these assurances. There is a positive effect expected on the environment because these assurances act as an incentive for non-Federal entities to seek HCPs and to factor species conservation needs into national resources management decisions. No effect on public health and safety is expected from this rule. Therefore, this rule most likely would not have a significant effect on a substantial number of small entities.

The Services have determined and certify pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. No additional information will be required from a non-Federal entity solely as a result of these assurances.

Civil Justice Reform

The Departments have determined that these final regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

National Environmental Policy Act

The Department has determined that the issuance of the final rule is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1.10. NMFS concurs with the Department of Interior's determination that the issuance of the final rule qualifies for a categorical exclusion and falls within the categorical exclusion criteria in NOAA 216–3 Administrative Order, Environmental Review Procedure.

List of Subjects

50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 222

Administrative practices and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

For the reasons set out in the preamble, the Services amend Title 50, Chapter I, subchapter B; and Title 50, Chapter II, subchapter C of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

Subpart C—Endangered Wildlife

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. The FWS amends § 17.3 by adding the following definitions alphabetically to read as follows:

* * * * *

Adequately covered means, with respect to species listed pursuant to section 4 of the ESA, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the ESA for the species covered by the plan, and, with respect to unlisted species, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the ESA that would otherwise apply if the unlisted species covered by the plan were actually listed. For the Services to cover a species under a conservation plan, it must be listed on the section 10(a)(1)(B) permit.

* * * * *

Changed circumstances means changes in circumstances affecting a species or geographic area covered by a conservation plan that can reasonably be anticipated by plan developers and the Service and that can be planned for (*e.g.*, the listing of new species, or a fire or other natural catastrophic event in areas prone to such events).

Conserved habitat areas means areas explicitly designated for habitat restoration, acquisition, protection, or other conservation purposes under a conservation plan.

Conservation plan means the plan required by section 10(a)(2)(A) of the ESA that an applicant must submit when applying for an incidental take permit. Conservation plans also are known as "habitat conservation plans" or "HCPs."

* * * * *

Operating conservation program means those conservation management activities which are expressly agreed upon and described in a conservation plan or its Implementing Agreement, if any, and which are to be undertaken for the affected species when implementing an approved conservation plan, including measures to respond to changed circumstances.

* * * * *

Properly implemented conservation plan means any conservation plan, Implementing Agreement and permit whose commitments and provisions have been or are being fully implemented by the permittee.

* * * * *

Unforeseen circumstances means changes in circumstances affecting a species or geographic area covered by a conservation plan that could not reasonably have been anticipated by plan developers and the Service at the time of the conservation plan's negotiation and development, and that result in a substantial and adverse

change in the status of the covered species.

* * * * *

3. The FWS amends § 17.22 by adding paragraphs (b) (5) and (6) to read as follows:

§ 17.22 Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking.

* * * * *

(b) * * *

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (b)(5) apply only to incidental take permits issued in accordance with paragraph (b)(2) of this section where the conservation plan is being properly implemented, and apply only with respect to species adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. This rule does not apply to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998 remain in effect, and those permits will not be revised as a result of this rulemaking.

(i) *Changed circumstances provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan's operating conservation program, the permittee will implement the measures specified in the plan.

(ii) *Changed circumstances not provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the plan's operating conservation program, the Director will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

(iii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the conservation plan is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the conservation plan's operating conservation program for the affected species, and maintain the original terms of the conservation plan to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of the permittee.

(C) The Director will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Director will consider, but not be limited to, the following factors:

(*1*) Size of the current range of the affected species;

(*2*) Percentage of range adversely affected by the conservation plan;

(*3*) Percentage of range conserved by the conservation plan;

(*4*) Ecological significance of that portion of the range affected by the conservation plan;

(*5*) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and

(*6*) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a conservation plan.

Subpart D—Threatened Wildlife

4. The FWS amends § 17.32 by adding paragraphs (b)(5) and (6) to read as follows:

§ 17.32 Permits—general.

* * * * *

(b) * * *

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (b)(5) apply only to incidental take permits issued in accordance with paragraph (b)(2) of this section where the conservation plan is being properly implemented, and apply only with respect to specifies adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. This rule does not apply to incidental take permits issued prior to [insert 30 days after the date of publication in the **Federal Register**]. The assurances provided in incidental take permits issued prior to [insert 30 days after the date of publication in the **Federal Register**] remain in effect, and those permits will not be revised as a result of this rulemaking.

(i) *Changed circumstances provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan's operating conservation program, the permittee will implement the measures specified in the plan.

(ii) *Changed circumstances not provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the plan's operating conservation program, the Director will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

(iii) *Unforeseen circumstances.* (A) In negotiating unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(B) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the conservation plan is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the conservation plan's operating conservation program for the affected species, and maintain the original terms of the conservation plan to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original

terms of the conservation plan without the consent of the permittee.

(C) The Director will have the burden of demonstrating that such unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Director will consider, but not be limited to, the following factors:

(*1*) Size of the current range of the affected species;

(*2*) Percentage of range adversely affected by the conservation plan;

(*3*) Percentage of range conserved by the conservation plan;

(*4*) Ecological significance of that portion of the range affected by the conservation plan;

(*5*) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and

(*6*) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(6) Nothing in this rule will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a conservation plan.

PART 222—ENDANGERED FISH OR WILDLIFE

5. The authority citation for part 222 is revised to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

Subpart C—Endangered Fish or Wildlife Permits

6. In part 222, a new section is added to read as follows:

222.3 Definitions.

These definitions apply only to § 222.22:

Adequately covered means, with respect to species listed pursuant to section 4 of the ESA, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the ESA for the species covered by the plan and, with respect to unlisted species, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the ESA that would otherwise apply if the unlisted species covered by the plan were actually listed. For the Services to cover a species under a conservation plan, it must be listed on the section 10(a)(1)(B) permit.

Changed circumstances means changes in circumstances affecting a species or geographic area covered by a conservation plan that can reasonably be anticipated by plan developers and NMFS and that can be planned for (*e.g.*, the listing of new species, or a fire or other natural catastrophic event in areas prone to such events).

Conserved habitat areas means areas explicitly designated for habitat restoration, acquisition, protection, or other conservation purposes under a conservation plan.

Conservation plan means the plan required by section 10(a)(2)(A) of the ESA that an applicant must submit when applying for an incidental take permit. Conservation plans also are known as "habitat conservation plans" or "HCPs."

Operating conservation program means those conservation management activities which are expressly agreed upon and described in a conservation plan or its Implementing Agreement, if any, and which are to be undertaken for the affected species when implementing an approved conservation plan, including measures to respond to changed circumstances.

Properly implemented conservation plan means any conservation plan, Implementing Agreement and permit whose commitments and provisions have been or are being fully implemented by the permittee.

Unforeseen circumstances means changes in circumstances affecting a species or geographic area covered by a conservation plan that could not reasonably have been anticipated by plan developers and NMFS at the time of the conservation plan's negotiation and development, and that result in a substantial and adverse change in the status of the covered species.

§ 222.22 [Amended]

7. In § 222.22, paragraphs (g) and (h) are added.

* * * * *

(g) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (g) apply only to incidental take permits issued in accordance with paragraph (c) of this section where the conservation plan is being properly implemented, and apply only with respect to species adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. This rule does not apply to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998 remain in effect, and those permits will not be revised as a result of this rulemaking.

(1) *Changed circumstances provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan's operating conservation program, the permittee will implement the measures specified in the plan.

(2) *Changed circumstances not provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the plan's operating conservation program, NMFS will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

(3) *Unforeseen circumstances.* (i) In negotiating unforeseen circumstances, NMFS will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(ii) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, NMFS may require additional measures of the permittee where the conservation plan is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the conservation plan's operating conservation program for the affected species, and maintain the original terms of the conservation plan to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of the permittee.

(iii) NMFS will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. NMFS will

consider, but not be limited to, the following factors:

(A) Size of the current range of the affected species;

(B) Percentage of range adversely affected by the conservation plan;

(C) Percentage of range conserved by the conservation plan;

(D) Ecological significance of that portion of the range affected by the conservation plan;

(E) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and

(F) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(h) Nothing in this rule will be construed to limit or constrain the Assistant Administrator, any Federal, State, local, or tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a species included in a conservation plan.

Dated: February 13, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

Dated: February 11, 1998.

Donald J. Barry,

Acting Assistant Secretary, Fish, Wildlife, and Parks, Department of Interior.

[FR Doc. 98–4367 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 63, No. 35
Monday, February 23, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 930

RIN 3206–AI08

Appointment, Pay, and Removal of Administrative Law Judges

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise the regulations governing the appointment, pay, and removal of administrative law judges appointed under 5 U.S.C. 3105. Among the major revisions, these regulations would permit an above-the-minimum pay rate for reinstatement eligibles with superior qualifications; permit promotion of a judge to an AL–1 position after 52 weeks in an AL–3 or AL–2 position; permit details from other agencies when an agency has insufficient work to employ a full-time administrative law judge; place a limit of 1 year on details from other agencies with a possible extension of up to 1 year; and give agencies the option of filling a vacancy by selecting a current administrative law judge employed within the agency or selecting one from OPM's priority referral list.

DATES: Written comments will be considered if received on or before April 24, 1998.

ADDRESSES: Send or deliver written comments to Mary Lou Lindholm, Associate Director for Employment, Office of Personnel Management, Room 6F08, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Juanita Love on 202–606–4890, FAX 202–606–0584, or TDD 202–606–0023.

SUPPLEMENTARY INFORMATION: The administrative law judge function was established by the Administrative Procedure Act (APA) of 1946. Administrative law judges preside at formal hearings, which agencies are required by statute to hold, and make or recommend decisions on the basis of the record. The APA requires that this function be carried out in an impartial manner. To assure the objectivity of judges and insulate them from improper pressure, the APA made them independent of their employing agencies in matters of tenure and compensation. Further, the Office of Personnel Management (OPM) is charged with administering merit selection and pay systems for judges, and regulations covering these matters are in 5 CFR part 930, subpart B. OPM proposes to revise the regulations to make a number of substantive and editorial changes, as follows.

Section 930.203 Examination

The current regulation contains a detailed description of the components and scoring of the examination. We propose to delete this description as unnecessary because the examination announcement contains a more detailed description, and OPM makes the announcement readily available. The regulation also contains numerous references to "OPM Examination Announcement No. 318," the announcement for administrative law judge positions. We believe these references also are unnecessary in regulation and plan to delete them as other examination announcement numbers and descriptions of examination components and scoring are not routinely published in regulation.

Section 930.204 Appointment (Formerly § 930.203a)

We are renumbering section 203a and subsequent sections in subpart B to conform with publication numbering requirements.

Paragraph (c)(3) of this section addresses appointment of employees whose positions are classified as administrative law judge positions by legislation, Executive order, or court decision. An agency has six months after such classification to recommend to OPM that the incumbent be appointed as an administrative law judge. We propose to delete this requirement and instead rely on the terms of the legislation, Executive order, or court decision for any time frames for appointment.

Paragraph (c)(4) of this section provides that in an emergency situation OPM may authorize a conditional appointment of an administrative law judge pending final decision on the individual's appointment eligibility. We propose to delete this provision as inconsistent with the intent of the APA that administrative law judges serve without condition.

Section 930.205 Promotion (Formerly § 930.204)

We propose to transfer the one-year service requirement for promotion from § 930.210 to this section and change the period to 52 weeks to be consistent with the waiting period for pay increases for judges at level AL–3 and before transfer to a different agency. We also propose to grant agencies the discretion to require 52 weeks of service at either the AL–2 or AL–3 level when filling a position at AL–1. This change will enable an agency to consider its own administrative law judges when filling a chief judge position at AL–1.

In addition, we clarify that an agency has the authority to promote a current administrative law judge when an existing managerial position at AL–1 or AL–2 is vacated or a new managerial position is established.

Section 930.211 Pay (Formerly § 930.210)

An agency may pay, with OPM approval, an above-the-minimum rate to a candidate with superior qualifications who is appointed from a certificate of eligibles to a position at level AL–3. We propose to expand this authority in paragraph (g)(2) to include reinstatement eligibles with superior qualifications.

We added a new paragraph to clarify that an agency may reduce the level or pay of an administrative law judge for good cause only after the Merit Systems Protection Board has specified such action.

In addition, we deleted paragraphs (j) through (m). These paragraphs provided instructions for implementing the current pay system authorized by the Federal Employees Pay Comparability Act of 1990. Since all administrative law judges have been converted to the current pay system, these paragraphs are no longer needed.

Section 930.214 Use of Administrative Law Judges on Detail From Other Agencies (Formerly § 930.213)

This section provides for the detail of judges from one agency to another one that is occasionally or temporarily insufficiently staffed with judges. We propose to clarify this authority to include agencies with insufficient work to detail an administrative law judge to conduct and complete the hearing of one or more specified cases and issue decisions. We also propose a one-year limit on all interagency details, with the possibility of an extension of up to one additional year. This maximum limit should be sufficient to satisfy agency needs.

Section 930.216 Reduction in Force (Formerly § 930.215)

We propose permitting an additional flexibility to agencies when administrative law judges affected by reductions in force are on OPM's priority referral list for geographic locations where agencies wish to fill vacant positions. This change would give agencies the option of filling the vacant positions either from OPM's priority referral list or by selection of administrative law judges currently employed by the hiring agency. At the present time, agencies are allowed to fill the vacant positions only through the priority referral list. OPM would still retain the authority to grant exceptions to this order of selection. This change will allow agencies to better manage their administrative law judge workforce by giving them the flexibility to make intra-agency reassignments when vacancies arise.

Miscellaneous

We made the following additional changes:

- Moved the provision specifying the proper title for administrative law judges to § 930.201 from § 930.203b, which is abolished. A statement that administrative law judge positions are in the competitive service is added to § 930.201.
- Moved the prohibition against awards from § 930.210(b) to § 930.212.
- Made revisions throughout the subpart to clarify in certain situations that an applicant must meet the minimum qualification requirements for administrative law judge positions rather than take the examination.
- Clarified throughout the subpart that administrative law judges are given "career absolute" appointments.
- Deleted reference in § 930.215(c)(4) to Standard Form 171, Application for Federal Employment, which was abolished in 1994. Application may be by resume, the Optional Form 612-Optional Application for Federal Employment, or other written format.
- Made various editorial changes.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains only to Federal agencies.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 930

Administrative practice and procedure, Computer technology, Government employees, Motor vehicles.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM proposes to amend 5 CFR part 930 as follows:

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

Subpart B—Appointment, Pay, and Removal of Administrative Law Judges

1. Subpart B is revised to read as follows:

Subpart B—Appointment, Pay, and Removal of Administrative Law Judges

Sec.

930.201 Coverage.
930.202 Definitions.
930.203 Examination.
930.204 Appointment.
930.205 Promotion.
930.206 Reassignment.
930.207 Transfer.
930.208 Reinstatement.
930.209 Restoration.
930.210 Detail and assignment to other duties within the same agency.
930.211 Pay.
930.212 Performance rating and awards.
930.213 Rotation of administrative law judges.
930.214 Use of administrative law judges on detail from other agencies.
930.215 Actions against administrative law judges.
930.216 Reduction in force.
930.217 Temporary employment: senior administrative law judges.

Authority: 5 U.S.C. 1104(a)(2), 1305, 3105, 3323(b), 3344, 4301(2)(D), 5372, 7521.

Subpart B—Appointment, Pay, and Removal of Administrative Law Judges

§ 930.201 Coverage.

(a) This subpart applies to employment of administrative law judges appointed under 5 U.S.C. 3105 for proceedings required to be conducted in accordance with 5 U.S.C. 556 and 557.

(b) Administrative law judge positions are in the competitive service. Except as otherwise provided in this subpart, the rules and regulations applicable to positions in the competitive service apply to administrative law judge positions.

(c) In accordance with 5 U.S.C. 1104(a)(2), OPM shall conduct competitive examinations for administrative law judge positions, and agencies employing administrative law judges shall reimburse OPM for the cost of developing and administering such examinations. Each employing agency's share of reimbursement shall be based on its relative number of administrative law judges as of March 31 of the preceding fiscal year. OPM will work with employing agencies to review the examination program for effectiveness and efficiency and identify needed improvements, consistent with statutory requirements. Subsequently, OPM will annually compute the cost of the examination program and notify each agency of its share, along with a full accounting of the costs, and payment procedures.

(d) The title "administrative law judge" is the official class title for an administrative law judge position. Each agency will use only this official class title for personnel, budget, and fiscal purposes.

§ 930.202 Definitions.

In this subpart—

(a) *Agency* has the same meaning as given in 5 U.S.C. 551.

(b) *Detail* means the temporary assignment of an employee from one position to another position without change in civil service or pay status.

(c) *Administrative law judge position* means a position in which any portion of the duties requires the appointment of an administrative law judge under 5 U.S.C. 3105.

(d) *Promotion* means a change from a lower to a higher level position.

(e) *Reinstatement* means reemployment authorized on the basis of the appointee's absolute status as administrative law judge after an earlier separation from an administrative law judge position.

(f) *Removal* means discharge of an administrative law judge from the

position of administrative law judge or involuntary reassignment, demotion, or promotion to a position other than that of administrative law judge.

§ 930.203 Examination.

(a) *Periodic open competition.* Applicants for administrative law judge positions will be examined periodically in open competition as announced by OPM. Applicants who demonstrate in their written applications and supporting materials that they meet the minimum qualifying experience requirements specified in the OPM examination announcement will be eligible to compete in further examination procedures.

(b) *Preparation of certificates.* When agencies request certificates of eligibles to consider in filling vacant administrative law judge positions, OPM will certify candidates from the top of the register. Candidates are ranked on the basis of assigned final ratings, augmented by veterans' preference points, if applicable. At least three eligible applicants, if available, will be certified to the employing agency for consideration for each vacancy.

(c) *Appeal of rating.* Applicants who obtain an ineligible rating or applicants who are dissatisfied with their final rating may appeal the rating to the Administrative Law Judge Rating Appeals Panel, Office of Personnel Management, Washington, DC 20415, within 30 days after the date of final action by the Office of Administrative Law Judges or such later time as may be allowed by the Panel.

§ 930.204 Appointment.

(a) Prior approval. An agency may make an appointment to an administrative law judge position only with the prior approval of OPM, except when it makes its selection from a certificate of eligibles furnished by OPM. When requesting OPM approval of an appointment to an administrative law judge position or the issuance of a certificate of eligibles, the requesting agency must demonstrate that its hearing workload requires the appointment of an additional administrative law judge(s) to get necessary work done. An appointment is subject to suitability investigation in accordance with subparts B and C of part 731 of this chapter and subject to conflict of interest and security clearance requirements by the appointing agency.

(b) *Probationary and career-conditional periods.* Administrative law judges are given career appointments (commonly called career absolute appointments) and placed in tenure group I. The requirements for probationary and career-conditional periods do not apply to an appointment to an administrative law judge position.

(c) *Appointment of incumbents of newly classified administrative law judge positions.* An agency may give a career absolute appointment as an administrative law judge to an employee who is serving in a position at the time it is classified as an administrative law judge position on the basis of legislation, Executive order, or decision of a court, if—

(1) The employee is serving under a career or career-conditional appointment or an excepted appointment without time limit;

(2) The employee is serving in the position on the date of the legislation, Executive order, or decision of the court, on which the classification of the position is based;

(3) OPM receives a recommendation for the employee's appointment from the agency concerned; and

(4) OPM finds that the employee meets the minimum qualification requirements for the position.

(d) *Appointment of incumbents of nonadministrative law judge positions.* Except as provided in paragraph (c) of this section, an agency may not appoint an employee who is serving in a position other than an administrative law judge position to an administrative law judge position other than by selection from a certificate of eligibles furnished by OPM from the open competitive register.

§ 930.205 Promotion.

(a) When OPM places an occupied administrative law judge position at a higher level, OPM will direct the promotion of the incumbent administrative law judge. The promotion will be effective on the date named by OPM.

(b) When OPM places an administrative law judge position at level AL–1 or AL–2 on the basis of the position's managerial and administrative responsibilities, or an agency has a vacant position at AL–1 or AL–2, the employing agency may promote one of its administrative law judges to the position, provided the selection and/or promotion is in accordance with regular civil service procedures.

(c) Judges must serve at least 52 weeks in an AL level before advancing to a higher level. In filling a position in level AL–1, an agency has the discretion to determine whether to consider administrative law judges who have served at least 52 weeks in level AL–3 but not 52 weeks in AL–2. Service in an equivalent or higher grade level in other Federal civilian positions is creditable toward the 52-week requirement.

§ 930.206 Reassignment.

With the prior approval of OPM, an agency may, without competition, reassign an administrative law judge serving under career absolute appointment to another administrative law judge position at the same level in the same agency, provided the assignment is for bona fide management reasons and in accordance with regular civil service procedures and merit system principles.

§ 930.207 Transfer.

(a) With the prior approval of OPM, an agency may, without competition, appoint an administrative law judge by transfer from an administrative law judge position in another agency in accordance with regular civil service procedures, provided the administrative law judge maintains a current license to practice law under the laws of a state, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the Constitution.

(b) An agency may not transfer a person from one administrative law judge position to another administrative law judge position under paragraph (a) of this section sooner than 52 weeks after the person's last appointment, unless the gaining and losing agencies agree to the transfer.

§ 930.208 Reinstatement.

With the prior approval of OPM, an agency may reinstate a former administrative law judge who has served with career absolute status under 5 U.S.C. 3105 in accordance with regular civil service procedures, provided the former judge maintains a current license to practice law under the laws of a state, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the Constitution. Reinstatement is subject to investigation by OPM in accordance with part 731 of this chapter.

§ 930.209 Restoration.

Parts 352 and 353 of this chapter governing reemployment rights and restoration to duty after uniformed service or recovery from compensable injury apply to reemployment and restoration to administrative law judge positions.

§ 930.210 Detail and assignment to other duties within the same agency.

(a) An agency may not detail an employee who is not an administrative law judge to an administrative law judge position.

(b) An agency may assign an administrative law judge (by detail or otherwise) to perform duties that are not the duties of an administrative law judge without prior approval of OPM only when—

(1) The other duties are consistent with the duties and responsibilities of an administrative law judge;

(2) The assignment is to last no longer than 120 days; and

(3) The administrative law judge has not had an aggregate of more than 120 days of those assignments or details within the preceding 12 months.

(c) On a showing by an agency that it is in the public interest to do so, OPM may authorize a waiver of paragraphs (b) (2) and (3) of this section.

(d) An agency may detail an administrative law judge from one administrative law judge position to another in the same agency, without the prior approval of OPM, provided the detail is in accordance with regular civil service procedures.

§ 930.211 Pay.

(a) OPM will place each administrative law judge position in one of the three grades or levels of basic pay, AL–3, AL–2 or AL–1, of the Administrative Law Pay System established for such positions under 5 U.S.C. 5372 in accordance with this section. AL–3 will have six rates of basic pay, A, B, C, D, E, and F, ranging respectively in 5 percent intervals from 65 percent of level IV of the Executive Schedule (EX–IV) to 90 percent of EX–IV. AL–2 will have one rate of basic pay equal to 95 percent of EX–IV. AL–1 will have one rate of basic pay equal to 100 percent of EX–IV.

(b) AL–3 is the basic pay level for administrative law judge positions filled through competitive examination, as provided in § 930.204 of this part.

(c) Subject to the approval of OPM, agencies may establish administrative law judge positions at pay levels AL–2 and AL–1. Administrative law judge positions may be placed at such levels when they involve significant administrative and managerial responsibilities.

(d) For promotion to a higher level, see § 930.205 of this part.

(e) Except as provided in paragraph (g) of this section, upon appointment to an administrative law judge position placed in AL–3, an administrative law judge shall be paid at the minimum rate A of AL–3, and shall be automatically advanced successively to rates B, C, and D of that level upon completion of 52 weeks of service in the next lower rate, and to rates E and F of that level upon completion of 104 weeks of service in the next lower rate. Time in a nonpay status is generally creditable service in the computation of a waiting period only in so far as it does not exceed 2 weeks per year for each 52 weeks of service. However, absence due to uniformed service or compensable injury is fully creditable upon reemployment as provided in part 353 of this chapter.

(f) Upon appointment to a position at AL–3, an administrative law judge will be paid at the minimum rate A, unless the administrative law judge is eligible for a higher rate B, C, D, E, or F because of prior service or superior qualifications, as follows—

(1) An agency may offer an administrative law judge applicant with prior Federal service a higher than minimum rate, without obtaining the prior approval of OPM in order to pay the rate that is next above the applicant's highest previous Federal rate of pay, up to the maximum rate F.

(2) With the prior approval of OPM, an agency may offer a higher than minimum rate to an applicant with superior qualifications who is within reach for appointment from an administrative law judge certificate of eligibles or is eligible for reinstatement under § 930.208. The agency may pay that rate of pay that is next above the applicant's existing pay or earnings up to the maximum rate F. "Superior qualifications" for applicants includes having legal practice before the hiring agency, having practice in another forum with legal issues of concern to the hiring agency, or having an outstanding reputation among others in the field. OPM will approve such payment of higher than minimum rates for applicants with superior qualifications only when it is clearly necessary to meet the needs of the Government.

(g) With the prior approval of OPM, an agency may on a one-time basis, advance an administrative law judge in a position at AL–3 with added administrative and managerial duties and responsibilities one rate beyond that allowed under current pay rates for AL–3, up to the maximum rate F.

(h) Upon appointment to an administrative law judge position placed at AL–2 or AL–1, administrative law judges will be paid at the established rates for those levels.

(i) An employing agency may reduce the grade, level, or pay of the administrative law judge only upon a finding of good cause for such action as determined by the Merit Systems Protection Board pursuant to 5 U.S.C. 7521.

§ 930.212 Performance rating and awards.

(a) An agency shall not rate the performance of an administrative law judge.

(b) An agency may not grant a monetary or honorary award under 5 U.S.C. 4503 for superior accomplishment by an administrative law judge.

§ 930.213 Rotation of administrative law judges.

Insofar as practicable, an agency shall assign its administrative law judges in rotation to cases.

§ 930.214 Use of administrative law judges on detail from other agencies.

(a) An agency that is occasionally or temporarily insufficiently staffed with, or has insufficient work for, administrative law judges may ask OPM to provide for the temporary use by the agency of the services of an administrative law judge of another agency to conduct and complete the hearing of one or more specified cases and issue decisions therein. The agency request must:

(1) Identify and describe briefly the nature of the case(s) to be heard (including parties and representatives when available);

(2) Specify the legal authority under which the use of an administrative law judge is required; and

(3) Demonstrate, as appropriate, that the agency has no administrative law judge available to hear the case(s).

(b) OPM, with the consent of the agency in which an administrative law judge is employed, will select the administrative law judge to be used, and will name the date or period for which the administrative law judge is to be made available for detail to the agency in need of his or her services. OPM will approve a detail for a period not to exceed 1 year with a possible extension not to exceed 1 additional year.

(c) Such details generally will be reimbursable by the agency requesting the detail.

§ 930.215 Actions against administrative law judges.

(a) *Procedures.* An agency may remove, suspend, reduce in grade or level, reduce in pay, or furlough for 30 days or less, an administrative law judge only for good cause established and determined by the Merit Systems Protection Board on the record and after opportunity for a hearing before the Board as provided in 5 U.S.C. 7521 and

§§ 1201.131 through 1201.136 of this title. Procedures for adverse actions by agencies under part 752 of this chapter are not applicable to actions against administrative law judges.

(b) *Status during removal proceedings.* In exceptional cases when there are circumstances in which the retention of an administrative law judge in his or her position, pending adjudication of the existence of good cause for his or her removal, would be detrimental to the interests of the Government, the agency may either:

(1) Assign the administrative law judge to duties consistent with his or her normal duties in which these conditions would not exist;

(2) Place the administrative law judge on leave with his or her consent;

(3) Carry the administrative law judge on appropriate leave (annual or sick leave, leave without pay, or absence without leave) if he or she is voluntarily absent for reasons not originating with the agency; or

(4) If none of the alternatives in paragraphs (b) (1), (2) and (3) of this section is available, agencies may consider placing the administrative law judge in a paid, non-duty or administrative leave status.

(c) *Exceptions from procedures.* The procedures in this subpart governing the removal, suspension, reduction in grade or level, reduction in pay, or furlough of 30 days or less of administrative law judges do not apply in making dismissals or taking other actions requested by OPM under §§ 5.2 and 5.3 of this chapter; nor to dismissals or other actions made by agencies in the interest of national security under 5 U.S.C. 7532; nor to reduction-in-force action taken by agencies under 5 U.S.C. 3502; nor any action initiated by the Special Counsel of the Merit Systems Protection Board under 5 U.S.C. 1215.

§ 930.216 Reduction in force.

(a) *Retention preference regulations.* Except as modified by this section, the reduction-in-force regulations in part 351 of this chapter apply to reductions in force of administrative law judges.

(b) *Determination of retention standing.* In determining retention standing in a reduction in force, each agency will classify its administrative law judges in groups and subgroups according to tenure of employment, veteran preference, and service date in the manner prescribed in part 351 of this chapter. However, as administrative law judges are not given performance ratings, the provisions in part 351 of this chapter referring to the effect of performance ratings on retention standing are not applicable to administrative law judges.

(c) *Placement assistance.* (1) Administrative law judges who are reached by an agency reduction in force and who are notified they are to be separated are eligible for placement assistance under—

(i) Agency reemployment priority lists established and maintained by agencies under subpart B of part 330 of this chapter for all agency tenure group I career employees displaced in a reduction in force;

(ii) Agency and OPM priority placement programs under subparts C, F, and G of part 330 of this chapter for all agency tenure group I career employees displaced in a reduction in force.

(2) On request of administrative law judges who are reached by an agency in a reduction in force and who are notified they are to be separated, furloughed for more than 30 days, or demoted, OPM will place their names on OPM's priority referral list for administrative law judges displaced in a reduction in force for the level in which they last served and for all lower levels.

(3) An administrative law judge may file a request under paragraph (c)(2) of this section, for placement on the OPM priority referral list, at any time after the receipt of the specific reduction-in-force notice but not later than 90 days after the date of separation, furlough for more than 30 days, or demotion. Placement assistance through the OPM priority referral list continues for 2 years from either the effective date of the reduction-in-force action, or the date assistance is requested if a timely request is made. Eligibility of the displaced administrative law judge for the OPM priority referral list is terminated earlier upon the administrative law judge's written request, acceptance of a non-temporary, full-time administrative law judge position, or declination of more than one offer of full-time employment as an administrative law judge at or above the grade level held when reached for reduction in force at geographic locations previously indicated as acceptable.

(4) The displaced administrative law judge will file with the request for priority referral by OPM an employment application or resume and a copy of the reduction-in-force notice. Also, the displaced administrative law judge may ask OPM to limit consideration for vacant positions to any pay level for which qualified and to specific geographic areas.

(5) When there is no administrative law judge on the agency's reemployment priority list, but there is an administrative law judge who has been placed on the OPM priority referral list for the location where a vacant administrative law judge position exists, the agency may fill the position with a candidate from outside the agency only by selection from the OPM priority referral list, unless it obtains the prior approval of OPM for filling the vacant position under § 930.204(a), (c), and (d); § 930.205; § 930.207; or § 930.208 of this subpart. OPM will grant such approval only under the extraordinary circumstance that the proposed candidate from outside the agency who is not on the OPM priority referral list possesses experience and qualifications superior to the displaced administrative law judge(s) on the list. In addition, the agency retains the option to select from within the agency to fill the vacant position by reassignment, as defined in § 930.206.

(6) Referral, certification, and selection of administrative law judges from OPM's priority referral list are made without regard to selective certification or special qualification procedures which may have been applied in the original appointment.

§ 930.217 Temporary reemployment: senior administrative law judges.

(a)(1) Subject to the requirements and limitations of this section, OPM may authorize an agency that has temporary, irregular workload requirements for conducting proceedings in accordance with 5 U.S.C. 556 and 557 to temporarily reemploy as administrative law judges those annuitants, as defined by 5 U.S.C. 8331 and 8401, who are receiving an annuity from the Civil Service Retirement and Disability Fund, and:

(i) Have served with career absolute status as administrative law judges under 5 U.S.C. 3105; and

(ii) Maintain a current license to practice law under the laws of a state, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the Constitution.

(2) These retired administrative law judges who are so reemployed will be known as senior administrative law judges.

(b) Retired administrative law judges who meet the requirements of paragraph (a) of this section and who are available for temporary reemployment must notify OPM in writing of their availability, providing pertinent information as requested by OPM. OPM will maintain a master list of such retired administrative law judges for use

in responding to agency requests for such administrative law judges.

(c) An agency that wishes to temporarily reemploy administrative law judges must submit a written request to OPM. The request must—

(1) Identify the statutory authority under which the administrative law judge is expected to conduct proceedings;

(2) Demonstrate that the agency is occasionally or temporarily understaffed;

(3) Specify the tour of duty, location, period of time, or particular case(s), for the requested reemployment; and

(4) Describe any special qualifications desired in the retired administrative law judge that it wishes to reemploy, such as experience in a particular field, agency, or substantive area of law.

(d) OPM will approve agency requests for temporary reemployment of retired administrative law judges for a specified period or periods provided—

(1) The requesting agency fully justifies the need for an administrative law judge for formal proceedings and demonstrates that it is occasionally or temporarily understaffed; and

(2) No other administrative law judge with the appropriate qualifications is available through OPM under § 930.216(c)(5) of this subpart to perform the occasional or temporary work for which reemployment is requested.

(e) Upon approval of an agency request to reemploy a retired administrative law judge, OPM will select from its master list of retired administrative law judges, in rotation to the extent practicable, those retired judges who it determines meet agency requirements. OPM will then provide a list of such individuals to the requesting agency and the agency must then select from that list a retired administrative law judge for reemployment.

(f) Reemployment of retired administrative law judges is subject to suitability investigation in accordance with subparts B and C of part 731 of this chapter. It is also subject to conflict of interest and security clearance requirements by the appointing agency.

(g) Reemployment as senior administrative law judges will be for either a specified period not to exceed 1 year or such periods as may be necessary for the reemployed administrative law judge to conduct and complete the hearing of one or more specified cases and issue decisions therein. Upon agency request, OPM may either reduce or extend such period of reemployment, as necessary, to coincide with changing staffing requirements. All reemployment is authorized for periods of 1 year or less.

(h) An agency may assign its senior administrative law judges to either:

(1) Hear one or more specific cases; or

(2) Hear, in normal rotation to the extent practicable, a number of cases on its docket and issue decisions therein.

(i) Hours of duty, administrative support services, and travel reimbursement for senior administrative law judges will be determined by the employing agency in accordance with the same rules and procedures that are generally applicable to employees.

(j) The reemployment of a senior administrative law judge is terminated on the date specified by OPM. Otherwise, a senior administrative law judge serves subject to the same limitations as any other administrative law judge employed under this subpart and 5 U.S.C. 3105. An agency will not rate the performance of a senior administrative law judge. Reduction-in-pay or removal actions may not be taken against senior administrative law judges during the period of reemployment, except for good cause established and determined by the Merit Systems Protection Board after opportunity for a hearing on the record before the Board as provided in 5 U.S.C. 7521 and §§ 1201.131 through 1201.136 of this title.

(k) A senior administrative law judge will be paid by the employing agency the current rate of pay for the level at which the duties to be performed have been placed and at the lowest rate of the level that is nearest (when rounded up) to the highest previous pay rate attained by the appointee as an administrative law judge before retirement. An amount equal to the annuity allocable to the period of actual employment will be deducted from his or her pay and deposited in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund.

[FR Doc. 98–4498 Filed 2–20–98; 8:45 am]

BILLING CODE 6325–01–P

COMMODITY CREDIT CORPORATION

7 CFR Part 1499

RIN 0551–0035

Foreign Donation of Agricultural Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation proposes to amend the rules governing foreign donations of agricultural commodities. This proposed rule contains changes, corrections and clarifications to the final regulations to achieve more effective management of foreign donations of agricultural commodities.

DATES: Submit comments on or before April 24, 1998.

ADDRESSES: Address all comments concerning this proposed rule to Ira D. Branson, Director/Commodity Credit Corporation, Program Support Division, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Ave., S.W., Stop 1031, Washington, D.C. 20250–1031; telephone (202) 720–3573.

You may submit comments and data by sending electronic mail (E-mail) to: pebreports@fas.usda.gov.

FOR FURTHER INFORMATION CONTACT: Juanita Lambert, Chief/Program Evaluation Branch, Commodity Credit Corporation Program Support Division, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Ave., S.W., Stop 1031, Washington, D.C. 20250–1031; telephone (202) 720–2465.

SUPPLEMENTARY INFORMATION: This rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

Paperwork Reduction Act

The information collection requirements imposed by this proposed

rule have been previously submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). OMB has assigned control number 0551–0035 for this information collection. This proposed rule change would not require collection of additional information; however, the proposed rule includes a requirement to use new forms for the semiannual logistics and monetization reports. These report forms have been submitted to OMB for review.

Executive Order 12372

This rule is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 46 FR 29115 (June 24, 1983).

Executive Order 12988

This rule has been reviewed under the Executive Order 12988, Civil Justice Reform. The rule would have pre-emptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The rule would not have retroactive effect. Administrative proceedings are not required before parties may seek judicial review.

Rules governing Commodity Credit Corporation's ("CCC") donation of agricultural commodities under section 416(b) of the Agricultural Act of 1949 and the Food for Progress Act of 1985 appear at 7 CFR part 1499. This proposed rule would review the regulations to address certain issues that have arisen since the rules were first published on November 29, 1996, and, additionally, make no-substantive corrections.

Program Operation Budgets

The regulations require cooperating sponsors to submit a Program Operation Budget in order to obtain CCC funding of certain administrative expenses and overseas internal transportation or handling cost. The Program Operation Budget details the costs for which CCC funding is requested. Currently, the regulations (7 CFR § 1499.7(e)) provide that a cooperating sponsor may make adjustments to individual line items in an approved Program Operation Budget up to 20 percent of the total approved budget, or $1,000, whichever is less. This provision has limited cooperating sponsor's flexibility in meeting unanticipated circumstances during implementation of activities. Consequently, cooperating sponsors have needed to prepare numerous budget amendments thereby increasing their paperwork burden and imposing additional administrative burdens on CCC.

CCC proposes to permit cooperating sponsors to make adjustments in line items of the Program Operation Budget of up to 20 percent of the total budget or $5,000, which ever is less. This increase will allow CCC to maintain effective oversight of the use of its funding while eliminating paperwork and administrative burdens.

Payment Documentation

If CCC agrees to pay ocean transportation for donated commodities, CCC will pay the ocean freight directly to the ocean carrier. The regulations specify the documentation required to be submitted to CCC before payment will be made.

In accordance with requirements of the Debt Management Improvement Act of 1994, CCC is moving towards a system whereby all payments of CCC funds will be by electronic transfer. Therefore, this rule includes a proposed new section (7 CFR 1499.8(h)(3)) listing the information that ocean carriers and cooperating sponsors must submit to CCC in order to receive funds. Recipients must submit the information with every request for payment. This will speed processing by ensuring that payment information is kept current.

The proposed rule also clarifies that certain specified documents must be signed when submitted to CCC for payment. Additionally, CCC would require a copy of the tariff pages applicable to any liner shipments to enable CCC to check liner rates.

Termination of Program Activities

This proposed rule adds a new § 1499.10(d) to address the disposition of donated commodities and local currency proceeds by a non-governmental cooperating sponsor in the event that the cooperating sponsor's participation in the program terminates for any reason prior to completion of approved activities. The proposed rule would add a requirement that the cooperating sponsor take reasonable steps to secure any undistributed commodities or sales proceeds and notify CCC of their status. The commodities or proceeds would then be disposed of as directed by CCC. Given the varied situations that may arise to cause termination, the rule cannot set forth, in advance, any standard disposition procedures.

Reports

The proposed regulation would establish a standard date for submission of all semiannual logistic and monetization reports and a standardized reporting period. Also, as mentioned above FAS proposes the use of specific reporting forms for these reports. Currently, each agreement set forth the reporting date and period. This uniformity should ease administration for both the cooperating sponsors and CCC.

Miscellaneous

The proposed regulation would also make a number of nonsubstantive changes intended for clarification only or to update office references.

List of Subjects in 7 CFR Part 1499

Agricultural commodities, Exports, Foreign aid.

Accordingly, CCC proposes to amend 7 CFR part 1499 as follows:

PART 1499—FOREIGN DONATION PROGRAMS

1. The authority citation for part 1499 continues to read as follows:

Authority: 7 U.S.C. 1431(b); 7 U.S.C. 1736o; E.O. 12752.

§ 1499.1 [Amended]

2. Section 1499.1 is amended by removing "*KCFMO*—Kansas City Financial Management Office" and adding, in its place, "*KCMO/DMD*—Kansas City Management Office/Debt Management Division".

3. Section 1499.7(e) is amended by revising the third and fourth sentences to read as follows:

§ 1499.7 Apportionment of costs and advances.

* * * * *

(e) * * * The non-government Cooperating Sponsor may make adjustments between line items of an approved Program Operations Budget up to 20 percent of the total amount approved or $5,000, whichever is less without any further approval. Adjustments beyond these limits must be specifically approved by the Director, PDD.

* * * * *

§ 1499.7 [Amended]

4. Section 1499.7(i) is amended by deleting "Director, CCCPSD" and adding in its place, "Director, PDD."

5. In § 1499.8, the introductory text of paragraph (b) and the headings of paragraph (g) and (g)(1) are revised, paragraph (g)(1)(vii) is redesignated as paragraph (g)(1)(viii), and new

paragraphs (g)(1)(vii) and (g)(1)(ix) are added, to read as follows:

§ 1499.8 Ocean transportation.

* * * * *

(b) *Freight procurement requirements.* When CCC is financing any portion of the ocean freight, whether on U.S.-flag or non-U.S. flag vessels, and the Cooperating Sponsor arranges ocean transportation:

* * * * *

(g) *Documents required for payment of freight—(1) General rule.* * * *

* * * * *

(vii) For all liner cargoes, a copy of the tariff page.

* * * * *

(ix) Each request to CCC for payment must provide a document, on letterhead and signed by an official or agent of the requester, the name of the entity to receive payment, the bank ABA number to which payment is to be made; the account number for the deposit at the bank; the requester's taxpayer identification number; and the type of account into which funds will be deposited.

* * * * *

1499.8 [Amended]

6. In section 1499.8, paragraph (8) is amended by deleting "One copy" wherever it appears and adding "One signed copy" in its place, and paragraph (g)(1)(vi) is amended by deleting "a notice" and adding, in its place, "a signed notice".

7. Section 1499.10 is amended by adding a new paragraph (d) to read as follows:

§ 1499.10 Restrictions on commodity use and distribution.

* * * * *

(d) In the event that its participation in the program terminates, the non-government cooperating sponsor will safeguard any undistributed commodities and sales proceeds and dispose of such commodities and proceeds as directed by CCC.

8. Section 1499.14(b)(2) is amended by deleting "KCFMO" and adding, in its place "KCMO/DMD."

9. Section 1499.15, is amended by removing "KCFMO" wherever it appears and add, in its place "KCMO/DMD", revising the last sentence of paragraphs (d)(2) and (f)(3), and adding paragraphs (d)(2)(i) through (d)(2)(vi) to read as follows:

§ 1499.15 Liability for loss, damage, or improper distribution of commodities—claims and procedures.

* * * * *

(d) * * *

(2) * * * In the event of a declaration of general average:

(i) The Cooperating Sponsor shall assign all claim rights to CCC and shall provide CCC all documentation relating to the claim, if applicable;

(ii) CCC will be responsible for settling general average and marine salvage claims;

(iii) CCC has sole authority to authorize any disposition of commodities which have not commenced ocean transit or of which the ocean transit is interrupted;

(iv) CCC will receive and retain any monetary proceeds resulting from such disposition;

(v) CCC will initiate, prosecute and retain all proceeds of cargo loss and damage against ocean carriers and any allowance in general average; and

(vi) CCC will pay any general average or marine salvage claims determined to be due.

* * * * *

(f) * * *

(3) * * * If the Agricultural Counselor or Attache approves a Cooperating Sponsor's decision not to take further action on the claim, the Cooperating Sponsor shall assign the claim to CCC and shall forward all documentation relating to the claim to KCMO/DMD.

* * * * *

10. In section 1499.16, the second and third sentences of (c)(1) and the second and third sentences of (c)(2) are revised to read as follows:

§ 1499.16 Records and reporting requirements.

* * * * *

(c) *Reports.* (1) * * * Cooperating Sponsors must submit reports on Form CCC–620 and submit the first report by May 16 for agreements signed during the period, October 1 through March 31 or by November 16 for agreements signed during the period, April 1 through September 30. The first report must cover the time period from the date of signing and subsequent reports must be provided at six months intervals covering the period from the due date of the last report until all commodities have been distributed or sold and such distribution or sale reported to CCC. * * *

(2) * * * Cooperating Sponsors must submit reports on Form CCC–621 and submit the first report by May 16 for agreements signed during the period, October 1 through March 31 or by November 16 for agreements signed during the period, April 1 through September 30. The first report must cover the time period from the date of signing and subsequent reports must be provided at six months intervals covering the period from the due date of the last report until all funds generated from commodity sales have been distributed and such distribution reported to CCC. * * *

* * * * *

Dated: November 20, 1997.

Christopher E. Goldthwait,

General Sales Manager, FAS, and Vice President, Commodity Credit Corporation.

[FR Doc. 98–4424 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–199–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace (Jetstream) Model 4101 airplanes. This proposal would require replacement of certain wheel tie bolts with new bolts; and placing a life limit on these wheel tie bolts. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent metal fatigue failure of the wheel tie bolts, which could result in a tire burst or loss of the main wheel/tire assembly, and consequent reduced controllability of the airplane.

DATES: Comments must be received by March 25, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–199–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be

examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–199–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–199–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace (Jetstream) Model 4101 airplanes. The CAA advises that it has received reports indicating that the main wheel tie bolts are failing due to metal fatigue after repeated installations and removals during normal tire changes. This condition, if not corrected, could result in a tire burst or loss of the main wheel/tire assembly, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Jetstream Service Bulletin J41–32–058, dated May 9, 1997, which describes procedures for replacement of wheel tie bolts having part number BAC–B30M516 (DSR4528–1216) with new bolts; and establishing a life limit of five installations for those wheel tie bolts.The CAA classified this service bulletin as mandatory and issued British airworthiness directive 002–05–97 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 57 airplanes of U.S. registry would be affected by this proposed AD; however, wheel tie bolts must be removed and reinstalled during each tire change, therefore no additional workhours would be required as a result of this AD. The required parts would be supplied by the manufacturer at no charge. Based on this information, the cost impact of the proposed AD on U.S. operators is estimated to be negligible.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 97–NM–199–AD.

Applicability: Jetstream Model 4101 airplanes equipped with main wheels having part number (P/N) AHA1837, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area

subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent metal fatigue failure of the wheel tie bolts, which could result in a tire burst or loss of the main wheel/tire assembly, and consequent reduced controllability of the airplane, accomplish the following:

(a) At the next tire change after the effective date of this AD, remove main wheel tie bolts having P/N BAC–B30M516 (DSR4528–1216), and replace them with new tie bolts in accordance with Jetstream Service Bulletin J41–32–058, dated May 9, 1997. Repeat this replacement thereafter at every fifth tire change.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in CAA airworthiness directive 002–05–97.

Issued in Renton, Washington, on February 17, 1998.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–4464 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–217–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace (Jetstream) Model 4101 airplanes. This proposal would require a one-time inspection for corrosion of electrical connectors in certain areas on the pressure bulkhead and rear baggage bay areas, and repair, if necessary; and installation of improved sealing. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the accumulation of moisture inside the electrical connectors, which could result in a short circuit and consequent autopilot disconnect, or a latent failure of the stick pusher system.

DATES: Comments must be received by March 25, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–217–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–217–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–217–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace (Jetstream) Model 4101 airplanes. The CAA advises that moisture has been found at the electrical connectors on the rear pressure bulkhead, in the ceiling area of the rear baggage bay, and in the auxiliary power unit (APU) area. This moisture has been attributed to accumulation of condensation on the soundproofing material used in these areas. This condition, if not corrected, could result in a short circuit and consequent autopilot disconnect, or a latent failure of the stick pusher system.

Explanation of Relevant Service Information

Jetstream has issued Service Bulletin J41–24–027, dated July 8, 1997, as

revised by Erratum No. 1, dated August 8, 1997, which describes procedures for a one-time inspection for corrosion of the electrical connectors on the rear pressure bulkhead, the rear baggage area, and the APU area; and repair, if necessary. The service bulletin also describes procedures for installation of new boot lip adaptors and heat shrink boots, and application of new sealant, in order to improve the sealing of the electrical connectors. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 004–07–97, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 37 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 30 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $714 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $93,018, or $2,514 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 97–NM–217–AD.

Applicability: Jetstream Model 4101 airplanes, constructors numbers 41004 through 41079 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the accumulation of moisture inside the electrical connectors, which could result in a short circuit and consequent autopilot disconnect, or a latent failure of the stick pusher system, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a one-time inspection for corrosion of the electrical connectors on the rear pressure bulkhead, the ceiling area of the rear baggage bay, and the auxiliary power unit area; and improve the sealing of the electrical connectors for these areas; in accordance with Jetstream Service Bulletin J41–24–027, dated July 8, 1997, as revised by Erratum No. 1, dated August 8, 1997. If any corrosion is found, prior to further flight, repair in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in British airworthiness directive 004–07–97.

Issued in Renton, Washington, on February 13, 1998.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–4411 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–51–AD]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. TFE731 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to AlliedSignal Inc. TFE731 series turbofan engines, that currently requires the installation of a clamp assembly to support the rigid fuel tube. This action would require installation of an improved flexible (flex) fuel tube. This proposal is prompted by reports of fuel leaks from a cracked fuel tube in engines that have already installed a clamp assembly in accordance with the current AD. The actions specified by the proposed AD are intended to prevent cracking of the fuel tube and the subsequent leakage of fuel on or around electrical components, which can cause an engine fire.

DATES: Comments must be received by April 24, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–51–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5246, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–51–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–51–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On June 3, 1993, the Federal Aviation Administration (FAA) issued airworthiness directive AD 93–10–10, Amendment 39–8589 (58 FR 32835, June 14, 1993), applicable to Allied-Signal Aerospace Company, Garrett Engine Division (now AlliedSignal Inc.) TFE731 series turbofan engines, to require the installation of a clamp assembly to support the fuel line. Installation of the clamp assembly was to minimize excessive vibration and possible cracking of the fuel line due to starter generator bearing failure. That action was prompted by reports of fuel lines cracking and failing, resulting in inflight engine shutdowns and fuel spillage on and around electrical components in the engine accessory gearbox area. That condition, if not corrected, could result in a cracked fuel tube and the subsequent leakage of fuel on and around electrical components, which can cause an engine fire.

Since the issuance of that AD, the FAA has received an additional 11 reports of continued cracking of the rigid fuel tube in engines that have already installed a clamp assembly in accordance with the current AD. Eighteen of 19 tube failures which occurred before and after the implementation of AD 93–10–10 resulted from starter generator bearing failures. This AD does not affect the AlliedSignal engine Model TFE731–2–2B and engine series TFE731–3A and –3AR installed on Learjet Models 35, 36, and 55 because starter generators are not used on these aircraft. In addition, for this application, there have been no reported fuel line failures.

The FAA has reviewed and approved the technical contents of AlliedSignal Inc. Alert Service Bulletin (ASB) No. TFE731–A73–3128, dated February 26, 1997, and AlliedSignal Inc. ASB No. TFE731–A73–3132, dated April 9, 1997, that describe procedures for installing an improved flex fuel tube.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 93–10–10 and require the installation of an improved flex fuel tube.

There are approximately 3,325 engines of the affected design in the worldwide fleet. The FAA estimates that 2,319 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 2.0 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $300 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $973,980.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1)

is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8589 (58 FR 32835, June 14, 1993) and by adding a new airworthiness directive to read as follows:

ALLIEDSIGNAL INC.: Docket No. 97–ANE–51–AD. Supersedes AD 93–10–10, Amendment 39–8589.

Applicability: AlliedSignal Inc. (formerly Allied-Signal Aerospace Company, Garrett Engine Division and Garrett Turbine Engine Co.) TFE731–2, –3, and –4 series turbofan engines with fuel tubes, part numbers (P/Ns) 3071051–1, 3073729–1, or 3072886–1, installed. These engines are installed on but not limited to the following aircraft: Avions Marcel Dassault Falcon 10, 50, and 100 series; Cessna Model 650, Citation III, VI, and VII; Learjet 31 (M31) 35, 36 and 55 series, Raytheon British Aerospace HS–125 series; and Sabreliner NA–265–65.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracked fuel tubes and the subsequent leakage of fuel on and around electrical components, which can cause an engine fire, accomplish the following:

(a) Within 160 hours time in service (TIS) after the effective date of this AD, or prior to December 20, 1999, whichever occurs first, install an improved flexible fuel tube, as follows:

(1) For engines installed on Cessna aircraft, install in accordance with the Accomplishment Instructions of AlliedSignal Inc. Alert Service Bulletin (ASB) No. TFE731–A73–3132, dated April 9, 1997.

(2) For engines installed on all other aircraft except for the Learjet 35, 36 and 55 series, install in accordance with the Accomplishment Instructions of AlliedSignal Inc. ASB No. TFE731–A73–3128, dated February 26, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on February 11, 1998.

James C. Jones,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–4406 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–07–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This proposal would require modification of the airplane wiring to separate the electrical inputs sent by the engine interface units (EIU's) to certain probe heat computers (PHC's). This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent simultaneous loss of heating to both pitot probes, which could result in incorrect airspeed indications to both the primary and secondary airspeed indication systems. Loss of these systems could result in reduced controllability of the airplane.

DATES: Comments must be received by March 25, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–07–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained

in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–07–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–07–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that it received a report indicating that one operator experienced two airspeed discrepancy events due to pitot probes 1 and 3 not heating. The condition originated from isolation defects caused by internal corrosion of probe heat computer (PHC) 3. The existing PHC's 1 and 3 receive the same discrete information from engine interface units (EIU's) 1 and 2 to automatically control the pitot probe heating. This condition, if not corrected, could result in simultaneous loss of heating to both pitot probes, which could lead to incorrect airspeed indications to both the primary and secondary airspeed indication systems. Loss of these systems could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–30–1036, dated May 9, 1997, which describes procedures for modification of the airplane wiring to separate the electrical inputs sent by the EIU's to PHC's 1 and 3. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 97–203–102B, dated August 27, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 150 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $45,000, or $300 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 98–NM–07–AD.

Applicability: Model A319, A320, and A321 series airplanes, on which Airbus Modification 26403 or Airbus Service Bulletin A320–30–1036 has not been accomplished, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent simultaneous loss of heating to both pitot probes, which could result in incorrect airspeed indications to both the primary and secondary airspeed indication systems, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the airplane wiring to separate the electrical inputs sent by the engine interface units (EIU's) to probe heat computers 1 and 3 in accordance with Airbus Service Bulletin A320–30–1036, dated May 9, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–203–102B, dated August 27, 1997.

Issued in Renton, Washington, on February 13, 1998.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–4410 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 349

[Docket No. 98N–0002]

RIN 0910–AA01

Ophthalmic Drug Products for Over-The-Counter Human Use; Proposed Amendment of Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the final monograph for over-the-counter (OTC) ophthalmic drug products. The amendment adds a new warning and revises an existing warning for ophthalmic vasoconstrictor drug products. These products contain the ingredients ephedrine hydrochloride, naphazoline hydrochloride, phenylephrine hydrochloride, or tetrahydrozoline hydrochloride; and they are used to relieve redness of the eye due to minor eye irritations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Submit written comments by May 26, 1998; written comments on the agency's economic impact determination by May 26, 1998. FDA is proposing that any final rule that may issue based on this proposal become effective 12 months after its date of publication in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2307.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 4, 1988 (53 FR 7076), FDA published a final monograph for OTC ophthalmic drug products in part 349 (21 CFR part 349). That monograph included four ophthalmic vasoconstrictor active ingredients in § 349.18. Section 349.3(i) defines an ophthalmic vasoconstrictor as "A pharmacologic agent which, when applied topically to the mucous membranes of the eye, causes transient constriction of conjunctival blood vessels." Paragraphs (a) and (b) of § 349.75 provide that these products are labeled with the statement of identity "redness reliever" or "vasoconstrictor (redness reliever)" "eye" or "ophthalmic" "insert (dosage form, e.g., drops)" and with the indication for use "Relieves redness of the eye due to minor eye irritations." Section 349.75(c)(2) requires these products to bear the warning statement: "If you have glaucoma, do not use this product except under the advice and supervision of a doctor."

II. Recent Developments

In the last 3 years, FDA has approved three new drug applications (NDA's) (Ref. 1) for ophthalmic drug products containing pheniramine maleate and naphazoline hydrochloride. These products are used for eye allergy relief to relieve itching and redness of the eye due to pollen, ragweed, grass, animal hair, and dander. These products are not covered by the OTC ophthalmic drug products monograph because the ingredient pheniramine maleate is not included in that monograph.

The agency has received more than 400 adverse drug experience (ADE) reports involving these three products (Ref. 1) in which consumers have reported pupil dilatation (enlarged pupils) after using the eye drops (Ref. 2). Because of the vasoconstrictor action of naphazoline hydrochloride (and the other active ingredients included in § 349.18), pupil dilatation is a known pharmacologic effect of these drugs. The Advisory Review Panel on OTC Ophthalmic Drug Products (the Panel), in its report (May 6, 1980, 45 FR 30002 at 30033), stated that, even at the low concentrations used in OTC drug products, vasoconstrictors occasionally may cause some dilation of the pupil, especially in people who wear contact lens, whose cornea is abraded, or who have lightly colored irides. However, the Panel did not recommend any labeling warning based on this pharmacologic effect of these drugs. The agency also did not include a labeling warning in the past because the enlargement of the pupil(s) is not clinically significant (usually persists for 1 to 4 hours) and does not affect pupil reactivity. As a result, the agency did not mention this pharmacologic side effect in product labeling. Thus, OTC ophthalmic drug products marketed under the monograph or under NDA's do not contain this type of information in their labeling.

The more than 400 ADE reports that have been received have caused the agency to rethink its position on including information about pupil enlargement in the labeling of these OTC vasoconstrictor drug products. The agency now believes that it would be beneficial and informative to consumers to inform them that their pupils may become dilated (enlarged). The agency believes this information in product labeling will reduce the number of ADE reports and will enable consumers to continue using these products and not discontinue use after one or two instillations because they do not expect this pupil enlargement to occur. Accordingly, the agency is proposing to add the following warning in new § 349.75(c)(5) to state: "Pupils may become dilated (enlarged)."

The agency recognizes that space on OTC ophthalmic drug product labeling is limited, but it considers these additional five words worthwhile because of the number of consumers who have reported this pupil

enlargement as a problem. The agency questions whether it would be additionally beneficial to add several more words, i.e., "This is temporary and not serious," after the first statement so that consumers will not be alarmed if this pupil enlargement occurs and will not discontinue use of the product for this reason. These additional words could be required or optional, if the manufacturer wishes to include them. The agency invites specific comment on the wording of both statements, and the desirability of including the second statement (even if optional).

The Panel also noted that the dilation of the pupil caused by the ophthalmic vasoconstrictor drug may in turn trigger an attack of narrow-angle glaucoma in a susceptible individual (45 FR 30002 at 30033). The Panel recommended the following glaucoma warning for ophthalmic vasoconstrictors: "If you have glaucoma, do not use this product except under the advice and supervision of a physician." (See 45 FR 30002 at 30033.) The agency included this warning in § 349.75(c)(2) of the final monograph for OTC ophthalmic drug products (with the word "physician" changed to "doctor").

In the three NDA's for the pheniramine maleate-naphazoline hydrochloride eye drop products approved in the last several years, the agency has changed the glaucoma warning to state: "Do not use this product if you have * * * narrow angle glaucoma unless directed by a physician." This was done because the potential risk only applies to people with narrow angle glaucoma, a condition where it is not desirable to use a drug of this type that could cause mid-dilation of the pupil. The agency believes that a number of physicians inform their patients what type of glaucoma they have. Further, it is beneficial for consumers to know this information, and the agency encourages consumers to ask their physician in order to be fully informed and knowledgeable.

III. The Agency's Tentative Conclusions and Proposal

The agency is proposing to add the following new warning in § 349.75(c)(5) to state: "Pupils may become dilated (enlarged)." The agency invites comment whether to expand this warning to also state: "This is temporary and not serious." This second statement could be a required or optional statement (because of the limited space available in ophthalmic drug product labeling), added if the manufacturer desires.

The agency is proposing to amend § 349.75(c)(2) to add the words "narrow angle" before "glaucoma." The warning would then read: "If you have narrow angle glaucoma, do not use this product except under the advice and supervision of a doctor."

The agency is proposing that any final rule that may issue based on this proposal become effective 12 months after its date of publication in the **Federal Register**. The agency considers this new labeling an improvement to the current labeling of OTC ophthalmic vasoconstrictor drug products, but it recognizes that existing products have used the current monograph labeling for over 9 years. Therefore, to reduce relabeling costs for manufacturers of these specific products, the agency might consider an 18-month effective date for any final rule that may issue based on this proposal. This longer effective date would enable manufacturers to use up existing labeling and implement the new labeling in the normal course of reordering labeling for these products. The agency invites specific comment on this extended effective date.

IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Approved labeling from NDA's 20–065, 20–226, and 20–485.

2. Center for Drug Evaluation and Research, FDA, "Adverse Drug Experience Report for OTC Ophthalmic Drug Products Containing Pheniramine Maleate and Naphazoline Hydrochloride, May 29, 1997.

V. Analysis of Impacts

FDA has examined the impacts of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities.

Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the principles set out in the Executive Order and in these two statutes. The purpose of this proposed rule is to add a new warning and to revise an existing warning for OTC ophthalmic vasoconstrictor drug products. These warning statements should improve consumers' self-use of these drug products and enable some consumers with glaucoma to self-medicate when necessary.

Manufacturers of these products will incur costs to relabel their products to include the new labeling information. The agency has been informed that relabeling costs of the type required by this proposed rule generally average about $2,000 to $3,000 per stock keeping unit (SKU) (individual products, packages, and sizes). The agency is aware of 50 manufacturers that together produce about 100 SKU's of OTC ophthalmic vasoconstrictor drug products marketed under the monograph. There may be a few additional small manufacturers or products in the marketplace that are not identified in the sources FDA reviewed. Assuming that there are about 100 affected OTC SKU's in the marketplace, total one-time costs of relabeling would be $200,000 to $300,000. The agency believes the actual cost could be lower for several reasons. Most of the label changes will be made by private label manufacturers that tend to use simpler and less expensive labeling. In addition, the agency is considering and inviting public comment on an 18-month effective date for the final rule, rather than the standard 12-month effective date. This extended effective date may allow the new labeling to be implemented concurrently with the general labeling changes that may be required by the new OTC drug labeling format. (See the **Federal Register** of February 27, 1997, 62 FR 9024.) The agency believes that these actions provide substantial flexibility and reductions in cost for small entities.

The agency considered but rejected several labeling alternatives, such as: (1) A shorter implementation period, and (2) an exemption from coverage for small entities. While the agency would like to have this new labeling in place as soon as possible, it considers a period less than 1 year difficult for manufacturers to implement and not critical in this situation. The agency

does not consider an exemption for small entities appropriate because consumers who use these manufacturers' products would not have the most recent information for the safe and effective use of these OTC ophthalmic vasoconstrictor drug products.

This analysis shows that this proposed rule is not economically significant under Executive Order 12866 and that the agency has undertaken important steps to reduce the burden to small entities. Nevertheless, some entities may incur some impacts, especially private label manufacturers that provide labeling for a number of the affected products. Thus, this economic analysis, together with other relevant sections of this document, serves as the agency's initial regulatory flexibility analysis, as required under the Regulatory Flexibility Act. Finally, this analysis shows that the Unfunded Mandates Act does not apply to the proposed rule because it would not result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million.

VI. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements proposed in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the proposed warning statements are a "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VII. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that is categorically excluded from the preparation of an environmental assessment because these actions, as a class, will not result in the production or distribution of any substance and therefore will not result in the production of any substance into the environment.

VIII. Request for Comments

Interested persons may, on or before May 26, 1998, submit written comments on the proposed regulation to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before May 26, 1998. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 349

Labeling, Ophthalmic goods and services, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 349 be amended as follows:

PART 349—OPHTHALMIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 349 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

2. Section 349.75 is amended by revising paragraph (c)(2) and adding paragraph (c)(5) to read as follows:

§ 349.75 Labeling of ophthalmic vasoconstrictor drug products.

* * * * *

(c) * * *

(2) "If you have narrow angle glaucoma, do not use this product except under the advice and supervision of a doctor."

* * * * *

(5) "Pupils may become dilated (enlarged)."

* * * * *

Dated: January 20, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–4531 Filed 2–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–105162–97]

RIN 1545–AV41

Treatment of Changes in Elective Entity Classification; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations regarding the classification of entities for federal tax purposes.

DATES: The public hearing originally scheduled for Tuesday, February 24, 1998, beginning at 10:00 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Lanita Van Dyke of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 7701 of the Internal Revenue Code. A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Tuesday, October 28, 1997 (62 FR 55768), announced that the public hearing on proposed regulations under section 7701 of the Internal Revenue Code would be held on Tuesday, February 24, 1998, beginning at 10:00 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C.

The public hearing scheduled for Tuesday, February 24, 1998, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–4383 Filed 2–20–98; 8:45 am]

BILLING CODE 4830–01–U

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Rules Regarding Standardized Remedial Provisions in Board Unfair Labor Practice Decisions and the Appropriateness of Single Location Bargaining Units in Representation Cases

AGENCY: National Labor Relations Board.

ACTION: Withdrawal of proposed rulemakings.

SUMMARY: The NLRB is indefinitely withdrawing from active consideration two rulemaking proceedings: (1) The Notice of Proposed Rulemaking issued on March 5, 1992 entitled Codification of Standardized Remedial Provisions in Board Decisions Regarding Offers of Reinstatement, Make-Whole Remedies, Computation of Interest, and Posting of Notices (57 FR 7897); and (2) the Advanced Notice of Proposed Rulemaking and Notice of Proposed

Rulemaking issued on June 2, 1994 (59 FR 28501) and September 28, 1995 (60 FR 50146), respectively, entitled Appropriateness of Requested Single Location Bargaining Units in Representation Cases. The Board [1] has decided to take this action given that no action has been taken by the Board on either rulemaking proceeding for several years [2] and the Board's determination to focus its time and resources on reducing the backlog of adjudicated cases pending before the Board.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street NW, Room 11600, Washington, D.C. 20570. Telephone: (202) 273–1940.

Dated: Washington, D.C., February 18, 1998.

By direction of the Board.

John J. Toner,

Executive Secretary.

[FR Doc. 98–4543 Filed 2–20–98; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is proposing to clarify three final rule decisions, to remove a required amendment, and to vacate its retroactive approval of amendments to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The clarifications concern West Virginia statutes pertaining to administrative appeals and the State Environmental Quality Board, and the required amendment pertains to termination of jurisdiction. The proposed actions are intended to comply with a settlement agreement reached in *West Virginia Mining and Reclamation Association (WVMRA)* v. *Babbitt*, No. 2: 96–0371 (S.D. W.Va.).

DATES: Written comments must be received on or before 4:00 p.m. on March 25, 1998. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on March 20, 1998. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on March 10, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

Copies of the West Virginia program, the program amendment decision that is the subject of this notice, and the administrative record on the West Virginia program are available for public review and copying at the addresses below, during normal business hours, Monday through Friday, excluding holidays.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301 Telephone: (304) 347–7158

West Virginia Division of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0515.

In addition, copies of the amendments that are the subject of this notice are available for inspection during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office; Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. Background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of the approval can be found in the January 21, 1981, **Federal Register** (46 FR 5915–5956). Subsequent actions concerning the West Virginia program and previous amendments are codified at 30 CFR 948.10, 948.12, 948.13, 948.15 and 948.16.

II. Discussion of the Proposed Amendment

In a series of three letters dated June 28, 1993, and July 30, 1993 (Administrative Record Nos. WV–888, WV–889 and WV–893), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to its approved permanent regulatory program that included numerous revisions to the West Virginia Surface Coal Mining and Reclamation Act (referred to herein as "the Act", WVSCMRA § 22A–3–1 *et seq.*) and the West Virginia Surface Mining Reclamation Regulations (CSR § 38–2–1 *et seq.*). OSM approved the proposed revisions on durable rock fills on August 16, 1995, (60 FR 42437–42443) and approved with exceptions, the proposed revisions on bonding on October 4, 1995, (60 FR 51900–51918). OSM approved, with exceptions, the remaining amendments on February 21, 1996, (61 FR 6511–6537). See 30 CFR 948.15 for the provisions that were partially approved by OSM. See 30 CFR 948.16 for required amendments.

On April 18, 1996, the WVMRA, the West Virginia Coal Association, and the Tri-State Coal Operators Association, Inc. filed an appeal, pursuant to section 526(a)(1) of SMCRA, 30 U.S.C. 1276(a)(1), challenging certain OSM decisions contained in the February 21, 1996, **Federal Register** Notice, including the decision to make approval of the amendment retroactive. (Administrative Record Number WV–1027) On October 29, 1997, the parties reached a settlement agreement with respect to six of the seven counts contained in the above referenced case. (Administrative Record Number WV–1077). The other count, pertaining to the use of passive treatment systems after final bond release, was decided by the United States District Court for the Southern District of West Virginia in OSM's favor. *See WVMRA* v. *Babbitt*, No. 2: 96–0371 (S.D. W.Va. July 11, 1997) (Administrative Record Number WV–1072). This rulemaking is proposed in order that OSM may fulfill its obligations with respect to five of the six counts of the appeal which are addressed by settlement agreement. The remaining count addressed in the settlement agreement, pertaining to the

[1] Members Fox, Liebman, Hurtgen and Brame. Chairman Gould agrees with his colleagues as to the notice of proposed rulemaking regarding standardized remedial orders in Board unfair labor practice decisions, but dissents from the withdrawal of the notice of proposed rulemaking regarding the appropriateness of single location bargaining units in representation cases.

[2] A Congressional rider attached to each of the NLRB's 1996, 1997, and 1998 appropriations bills has prohibited the Agency from expending any funds to promulgate a final rule regarding the appropriateness of single location bargaining units in representation cases.

windrowing of materials on the downslope in steep slope areas, is the subject of another proposed rulemaking, announced in the June 10, 1997, **Federal Register**. *See* 62 FR 31543, 32545.

1. Proposed Clarifications

Section 22B–1–7(d) Administrative Appeals

As announced in the **Federal Register** on February 21, 1996 (61 FR at 6516, 6536) OSM did not approve language at § 22B–1–7(d) concerning allowing temporary relief where the appellant demonstrates that the executed decision appealed from will result in the appellant suffering an "unjust hardship." OSM stated that the provision was disapproved because the exception is inconsistent with SMCRA section 514(d) and 525(c). Further, OSM required, at 30 CFR 948.16(nnn), that § 22B–1–7(d) be amended to be consistent with SMCRA sections 514(d) and 525(c). In accordance with the settlement agreement in *WVMRA* v. *Babbitt, supra*, OSM is proposing to clarify its February 21, 1996, decision by stating that § 22B–1–7(d) is not approved only to the extent that it includes unjust hardship as a criterion to support the granting of temporary relief from an order or other decision issued under Chapter 22, Article 3 of the West Virginia Code, which is the West Virginia counterpart to SMCRA. OSM is also proposing to revise the required amendment at 30 CFR 948.16(nnn) to require West Virginia to amend its program to remove unjust hardship as a criterion to support the granting of temporary relief from an order or other decision issued under Chapter 22, Article 3 of the West Virginia Code.

Section 22B–1–7(h) Administrative Appeals

As announced in the **Federal Register** on February 21, 1996 (61 FR at 6516, 6536), OSM did not approve language at § 22B–1–7(h) to the extent that the provision would allow the West Virginia Surface Mining Board to decline to order an operator to treat or control discharges due to economic considerations. In addition, OSM required, at 30 CFR 948.16(ooo), that the State further amend § 22B–1–7(h) to be no less stringent than SMCRA section 515(b)10 and no less effective than the Federal regulations at 30 CFR 816.42 by requiring that discharges be controlled or treated without regard to economic feasibility.

In accordance with the settlement agreement in *WVMRA* v. *Babbitt, supra*, OSM is proposing to clarify that § 22B–1–7(h) is approved only to the extent that it references Article 3, Chapter 22 of the West Virginia Code. OSM is also proposing to revise the required amendment, at 30 CFR 948.16(ooo), to require West Virginia to amend its program by removing the reference, in § 22B–1–7(h), to Article 3, Chapter 22.

Section 22B–3–4 Environmental Quality Board

As announced in the **Federal Register** on February 21, 1996 (61 FR at 6517), OSM approved the provisions at § 22B–3–4 concerning the Environmental Quality Board's rulemaking authority. Under the State's S.B.287, the Board is authorized, with certain restrictions, to promulgate procedural rules granting site-specific variances for water quality standards for coal remining operations. In approving the provision, OSM also stated that any such procedural rules that grant variances must be submitted to OSM for approval prior to their implementation.

In accordance with the settlement agreement in *WVMRA* v. *Babbitt, supra*, OSM is proposing to clarify that it does not have approval authority over rules developed by the Environmental Quality Board under the authority of the Clean Water Act. Therefore, OSM is stating that the Environmental Quality Board is not required to submit to OSM for approval procedural rules for the implementation of site specific variances for water quality standards for remining operations.

2. Proposed Amendment Findings Revisions

CSR 38–2–1.2(c)(1) Termination of Jurisdiction

As announced in the **Federal Register** on February 21, 1996 (61 FR at 6517, 6536), OSM found § 38–2–1.2(c)(1) to be less effective than the Federal regulations at 30 CFR 700.11(d)(1)(i) to the extent that subsection (c)(1) does not require compliance with the Federal initial program regulations at Subchapter B or the West Virginia permanent regulatory program as a prerequisite to the termination of jurisdiction over an initial program site. In addition, OSM required, at 30 CFR 948.16(ppp), that the State further amend subsection (c)(1) to require compliance with the Federal initial program regulations at Subchapter B or the West Virginia permanent regulatory program regulations as a prerequisite to the termination of jurisdiction over an initial program site.

By letter dated December 12, 1996 (Administrative Record Number WV–1052), the West Virginia Division of Environmental Protection (WVDEP) stated its commitment to require that initial program sites in West Virginia meet the West Virginia program's permanent program requirements as a precondition of the termination of regulatory jurisdiction over such sites.

In recognition of the acknowledgment contained in the December 12, 1996, WVDEP letter, and in accordance with the settlement agreement in *WVMRA* v. *Babbitt, supra*, OSM is proposing to accept the WVDEP December 12, 1996 letter as satisfying the requirements of 30 CFR 700.11(d)(1)(i), and is proposing to delete the required amendment codified at 30 CFR 948.16(ppp).

3. Vacating Retroactive Approval of Amendments

As published in the **Federal Register** on February 21, 1996 (61 FR 6533), OSM stated that with respect to laws and regulations being approved in the notice, that OSM was making the effective date of the approval retroactive to the date upon which each provision took effect in West Virginia for purposes of State law. However, as stated in the settlement agreement in *WVMRA* v. *Babbitt, supra*, OSM has agreed to vacate the retroactive effect of its approval of the program amendment which was the subject of the February 21, 1996, **Federal Register** notice. Therefore, OSM is hereby announcing its intention to vacate the retroactive approval of the amendments discussed and approved in the February 21, 1996, **Federal Register** notice, 61 FR 6511, 6535. In addition, OSM is proposing to change the effective dates of all the amendments approved in the February 21, 1996 notice to February 21, 1996.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on the proposed clarifications, the proposed removal of the required amendment codified at 39 CFR 948.16(ppp), and the proposed change of the effective dates of the amendments currently codified at 30 CFR 948.15(p)(1) to February 21, 1996. Comments should address whether the proposed clarifications, the proposed deletion of the required amendment at 30 CFR 948.16(ppp), and the change of the effective dates of the amendments codified at 30 CFR 948.15(p)(1) to February 21, 1996, satisfy the applicable program approval criteria of 30 CFR 732.15. If the clarifications, deletion of the required amendment, and change of the effective date of approval are deemed adequate, they will become part of the West Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this notice and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business on March 10, 1998. If no one requests an opportunity to testify at the public hearing by that date, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate remarks and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person or group requests to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed clarification, removal of the required amendment, or change in the effective dates of the approval may request a meeting at the OSM Charleston Field Office listed under **ADDRESSES** by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of the rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 12, 1998.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 98–4471 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 501

Manufacture, Distribution, and Use of Postage Meters

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would clarify and expand the sources of and uses of applicant information derived from PS Form 3601–A and PS Form 3601–C, both printed and electronic versions.

DATES: Comments must be received on or before March 25, 1998.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Metering Technology Management, U.S. Postal Service, Room 8430, 475 L'Enfant Plaza SW Washington DC 20260–2444. Copies of all written comments will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Nicholas S. Stankosky, (202) 268–5311.

SUPPLEMENTARY INFORMATION: To provide greater specificity regarding uses of the information derived from the meter license applications received by the United States Postal Service ("Postal Service") from meter users and authorized meter manufacturers. Such information is hereafter referred to as "Applicant Information." Applicant information is derived from postal forms, both printed and electronic versions.

Notice of Proposed Changes in Regulations

Appropriate amendments to 39 CFR part 501 to reflect these changes will be published if the proposal is adopted.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b, c,)) regarding proposed

rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments to the Code of the Federal Regulations.

List of Subjects in 39 CFR Part 501

Administrative practice and procedure.

For the reasons set forth above, the Postal Service proposes to amend 39 CFR part 501 as follows:

PART 501—AUTHORIZATION TO MANUFACTURER AND DISTRIBUTE POSTAGE METERS

1. The authority citation for part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a): 39 U.S.C. 101, 401, 410, 2610, 2605; Inspector General Act of 1978, as amended (pub L. 95–452, as amended), 5 U.S.C. App 3.

2. Section 501.22 is amended by revising paragraph (b) to read as follows:

§ 501.22 Distribution controls.

* * * * *

(b) On behalf of applicants, transmit electronically copies of completed PS Forms 3601-A, Application for a License to Lease and Use Postage meters, to the designated Postal Service central data processing facility. The Postal Service may use Applicant Information for the following purposes in the administration of postage meter and related activities:

(1) Issuance (including re-licensing, renewal, transfer, revocation or denial, as applicable) of a meter license to a postal patron that uses a postage meter, and communications with respect to the status of such license.

(2) Disclosure to a meter manufacturer of the identity of any meter required to be removed from service by that meter manufacturer, and any related licensee data, as the result of revocation of a meter license, questioned accurate registration of that meter, or de-certification by the Postal Service of any particular class or model of postage meter.

(3) Use for the purpose of tracking the movement of meters between a meter manufacturer and its customers and communications to a meter manufacturer (but not to any third party other than the applicant/licensee) concerning such movement. The term "meter manufacturer" includes a meter manufacturer's dealers and agents.

(4) To transmit general information to all meter customers concerning rate and rate category changes implemented or proposed for implementation by the United States Postal Service.

(5) To advertise Postal Service services relating to the acceptance, processing, delivery, or postage payment of mail matter to all meter customers.

(6) Any internal use by Postal Service personnel, including identification and monitoring activities relating to postage meters, provided that such use does not result in the disclosure of Applicant Information to any third party or will not enable any third party to use Applicant Information for its own purposes; except that the Applicant Information may be disclosed to other governmental agencies for law enforcement purposes as provided by law.

(7) Identification of authorized meter manufacturers or announcements of de-authorization of an authorized meter manufacturer, or provision of currently available public information, where an authorized meter manufacturer is identified, all authorized meter manufacturers will be identified, and the same information will be provided to all meter customers.

(8) To promote and encourage the use of postage meters, including remotely set postage meters, as a form of postage payment, provided that the same information is provided to all meter customers, and no particular meter manufacturer will be recommended by the Postal Service.

(9) To contact meter customers in cases of revenue fraud or revenue security except that any meter customer suspected of fraud shall not be identified to other meter customers.

(10) Disclosure to a meter manufacturer of Applicant Information pertaining to that meter manufacturer's customers that the Postal Service views as necessary to enable the Postal Service to carry out its duties and purposes.

(11) To a meter manufacturer of all applicant and postage meter information pertaining to that manufacturer's customers and postage meters that may be necessary to synchronize the computer files of the manufacturer with the computer files of the Postal Service including but not limited to computerized data that reside in Postal Service meter management databases.

(12) Subject to the conditions stated herein, to communicate in oral or written form with any or all applicants any information that the Postal Service views as necessary to enable the Postal Service to carry out its duties and purposes.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–4382 Filed 2–20–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL147–1a, IL156–1a; FRL–5965–2]

Approval and Promulgation of State Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve two Illinois site-specific State Implementation Plan revision requests, dated January 23, 1996, and January 9, 1997, submitted to EPA to revise or delay certain reasonably available control technology requirements to control volatile organic compound emissions at Solar Corporation's manufacturing facility located in Libertyville, Lake County, Illinois. In the final rules section of this **Federal Register**, the EPA is approving this action as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse written comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse written comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse written comments, the direct final rule will be withdrawn and all written public comments received will be addressed in a subsequent final rule based on the proposed rule. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments on this proposed rule must be received on or before March 25, 1998.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: January 28, 1998.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 98–4377 Filed 2–20–98; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 63, No. 35
Monday, February 23, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License; Correction Notice

AGENCY: Agricultural Research Service, USDA.

ACTION: Correction to notice of intent to grant exclusive license.

SUMMARY: In notice document published in the issue of Friday, January 23, 1998 (63 FR 3533) which was to correct the issue of Wednesday, December 31, 1997 (62 FR 68248) the publication date of the FR Notice of Availability was still erroneous. This notice corrects the exclusive grant license (for Integrated BioControl Systems, Inc.) information to Serial No. 08/863,261 as follows:

On page 3533, in the first column, second paragraph of the USDA notice the **Federal Register** publication date for the Notice of Availability for Serial No. 08/404,779 was specified as May 27, 1995. The date should be changed to December 14, 1995.

Dated: February 12, 1998.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 98–4425 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that a federally owned invention, U.S. Patent Application Serial No. 08/806,592, entitled "Passive Self-Contained Camera Protection and Method for Fire Documentation" is available for licensing and that the U.S. Department of Agriculture, Forest Service, intends to grant to Timberwolf Corporation, DBA Timberline Tool and Casting of Whitefish, Montana, an exclusive license for U.S. Patent Application Serial No. 08/806,592.

DATES: Comments must be received on or before May 26, 1998.

ADDRESSES: Send comments to: USDA Forest Service, One Gifford Pinchot Drive, Madison, Wisconsin 53705–2398.

FOR FURTHER INFORMATION CONTACT: Janet I. Stockhausen of the USDA Forest Service at the Madison address given above; telephone: 608–231–9502.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Timberwolf Corporation, DBA Timberline Tool and Casting has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Forest Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 98–4427 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–122–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of activities to prevent the introduction and spread of diseases and parasites harmful to honeybees.

DATES: Comments on this notice must be received by April 24, 1998 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–122–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–122–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information regarding exotic bee diseases and parasites, honeybees, and honeybee semen, contact Dr. Robert Flanders, Senior Entomologist, Biological Assessment and Taxonomic Support, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231, (301) 734–5930. For copies of more detailed information on the information collection, contact Mr. Gregg Ramsey, Information Collection Coordinator, at (301) 734–5682.

SUPPLEMENTARY INFORMATION:

Title: Exotic Bee Diseases & Parasites, Honeybees, and Honeybee Semen.

OMB Number: 0579–0072.

Expiration Date of Approval: August 31, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: The United States Department of Agriculture is responsible for preventing the introduction and spread of diseases and parasites harmful to honeybees, the introduction of genetically undesirable germ plasm of honeybees, and the introduction and spread of undesirable species or subspecies of honeybees.

The introduction and establishment of new honeybee diseases, parasites, and undesirable honeybee strains in the United States could cause multimillion dollar losses to American agriculture. Diseases or parasites can weaken or kill honeybees, thereby causing substantial reductions in the production of honey and other honeybee products, as well as a reduction in pollination activity. Pollination is necessary for the production of many important crops, including forages, fruits, vegetables, and vegetable oils.

To protect the health of the U.S. honeybee population, we engage in a number of information collection activities designed to allow us to determine whether shipments of honeybees, honeybee semen, or bee-related items (such as beekeeping equipment) represent a possible risk of introducing exotic bee diseases, parasites, or undesirable honeybee strains into the United States.

Our primary means of obtaining this vital information is requiring importers to apply to us for an import permit. The permit application contains such information as the amount of bee semen to be imported and the species or subspecies of honeybee from which the semen was collected; the country or locality of origin; and the intended port of entry in the United States.

We also require importers and shippers to adhere to a number of marking and shipping requirements that enable us to easily identify and process shipments of honeybees, honeybee semen, and other restricted articles when they arrive at U.S. ports of entry.

These information gathering procedures help us prevent the entry of shipments that pose a potential health risk to the U.S. honeybee population.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .269 hours per response.

Respondents: Importers and shippers of honeybees, honeybee semen, and other regulated articles.

Estimated annual number of respondents: 91.

Estimated annual number of responses per respondent: 1.2637.

Estimated annual number of responses: 115.

Estimated total annual burden on respondents: 31 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 18th day of February 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–4493 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–119–1]

AgrEvo USA Co.; Receipt of Petition for Determination of Nonregulated Status for Corn Genetically Engineered for Insect Resistance and Glufosinate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from AgrEvo USA Company seeking a determination of nonregulated status for corn designated as Transformation Event CBH–351, which has been genetically engineered for insect resistance and tolerance to the herbicide glufosinate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this corn presents a plant pest risk.

DATES: Written comments must be received on or before April 24, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–119–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–119–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Koehler, Biotechnology and Biological Analysis, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–4886. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–4885; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On September 22, 1997, APHIS received a petition (APHIS Petition No. 97–265–01p) from AgrEvo USA Company (AgrEvo) of Wilmington, DE, requesting a determination of nonregulated status under 7 CFR part 340 for corn designated as

Transformation Event CBH–351 (event CBH–351), which has been genetically engineered for insect resistance and tolerance to the herbicide glufosinate. The AgrEvo petition states that the subject corn should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, event CBH–351 corn has been genetically engineered to express a Cry9C insecticidal protein derived from the common soil bacterium, *Bacillus thuringiensis* subsp. *tolworthi (Bt tolworthi)*. The petitioner states that the Cry9C protein is effective in controlling the larvae of the European corn borer during the complete growing season. The subject corn also contains the *bar* gene derived from the bacterium *Streptomyces hygroscopicus*. The *bar* gene encodes the phosphinothricin acetyltransferase (PAT) protein, which confers tolerance to the herbicide glufosinate. Expression of these added genes is controlled in part by gene sequences from the plant pathogens cauliflower mosaic virus and *Agrobacterium tumefaciens*. Microprojectile bombardment was used to transfer the added genes into the recipient inbred corn line (PA91 × H99) × H99. While the subject corn contains the *bla* selectable marker gene, which is normally expressed in bacteria, tests indicate that this gene is not expressed in the plant.

Event CBH–351 corn has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from plant pathogens. This corn has been field tested since 1995 in the United States under APHIS notifications. In the process of reviewing the notifications for field trials of the subject corn, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa, *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136, *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, EPA must approve the new or different use. When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301, *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by EPA under the FFDCA. A pesticide petition has been filed with EPA to establish a regulation for an exemption from the requirement of a tolerance for residues of *Bt tolworthi* Cry9C and the genetic material necessary for its production in or on all raw agricultural commodities.

FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. The petitioner has begun consultation with FDA on the subject corn.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of AgrEvo's insect resistant and glufosinate-tolerant corn event CBH–351 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 18th day of February 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–4492 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the above-named Agencies to request an extension for the currently approved information collection in support of the servicing of Community and Insured Business Programs Loans and Grants.

DATES: Comments on this notice must be received by April 24, 1998 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Sharon R. Douglas, Loan Specialist, Community Programs Division, Rural Housing Service, U.S. Department of Agriculture, Stop 3222, 1400 Independence Avenue SW., Washington, DC 20250–3222. Telephone (202) 720–1506.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1951, subpart O, "Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Community and Business Programs."

OMB Number: 0575–0103.

Expiration Date of Approval: March 31, 1998.

Type of Request: Extension of a currently approved information collection.

Abstract: The following Community and Insured Business, Indian Tribal Land Acquisition, Grazing, Association, Irrigation and Drainage, and Water and Waste Disposal programs are serviced by this currently approved regulation: The Community Facilities loan program is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public entities, nonprofit corporations, and Indian tribes for the development of community facilities for public use in rural areas.

The Economic Opportunity Act of 1964, Title 3 (Pub. L. 88–452), authorizes Economic Cooperative loans to assist incorporated and unincorporated associations in providing to low-income rural families essential processing, purchasing, or marketing services, supplies, or facilities.

The Water and Waste Disposal program is authorized by Section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)) to provide basic human amenities, alleviate health hazards, and promote the orderly growth of the rural areas of the Nation by meeting the need for new and improved water and waste disposal systems.

The Business and Industry program is authorized by Section 310 B (7 U.S.C. 1932) (Pub. L. 92–419, August 30, 1972) of the Consolidated Farm and Rural Development Act to improve, develop, or finance business, industry, and employment and to improve the economic and environmental climate in rural communities, including pollution abatement and control.

The Food Security Act of 1985, Section 1323 (Pub. L. 99–198), authorizes loan guarantees and grants to Nonprofit National Corporations to provide technical and financial assistance to for-profit or nonprofit local businesses in rural areas.

The Powerplant and Industrial Fuel Use Act of 1978, Section 601 (42 U.S.C. 8401), authorizes Energy Impact Assistance Grants to states, councils of local government, and local governments to assist areas impacted by coal or uranium development activities. Assistance is for the purposes of growth management, housing planning, and acquiring and developing sites for housing and public facilities.

The Consolidated Farm and Rural Development Act, Section 310 B(c) (7 U.S.C. 1932 (c)), authorizes Rural Business Enterprise Grants to public bodies and nonprofit corporations to facilitate the development of private businesses in rural areas.

The Consolidated Farm and Rural Development Act, Section 310 B(f)(i) (7 U.S.C. 1932 (c)), authorizes Rural Technology and Cooperative Development Grants to nonprofit institutions for the purpose of enabling such institutions to establish and operate centers for rural technology or cooperative development.

The Indian Tribal Land Acquisition program is authorized under 25 U.S.C., 488, et seq. to make direct loans to Indian Tribes or tribal corporations within tribal reservations and Alaskan communities. The Consolidated Farm and Rural Development Act, as amended, also gives the authority for grazing, other irrigation and drainage projects, and association irrigation and drainage loans.

The purpose of the loan and grant servicing function for the above programs is to service cases where unauthorized assistance was received by a borrower or grantee for which there was not regulatory authorization or for which the recipient was not eligible. This assistance may be in the form of a loan or grant where the recipient did not meet the eligibility requirements set forth in program regulations or where the recipient qualified for assistance but interest subsidy benefit was erroneously granted and the loan was closed.

Supervision by the Agencies include, but is not limited to: review of financial data such as facts and written records to assist in the determination that the assistance received was unauthorized and the necesssary account adjustments can be made. The borrower submits the information requested on Rural Development forms or on other forms, if desired. The information collected is evaluated by the local Rural Development or Farm Service Agency servicing office.

Information will be collected by the field offices from applicants and borrowers. Under the provisions of this regulation, the information collected will be primarily financial data.

Failure to collect information could result in improper servicing of these loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.86 hours per response.

Respondents: State, local or tribal Governments, Not-for-profit institutions.

Estimated Number of Respondents: 14.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12 hours.

Copies of this information collection can be obtained from Tracy Gillin, Regulations and Paperwork Management Branch, (202) 690–1065.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Gillin, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0743, 1400 Independence Avenue SW., Washington, DC 20250–0743. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 12, 1998.

Eileen M. Fitzgerald,

Acting Administrator, Rural Housing Service.

Dated: February 17, 1998.

Wilber T. Peer,

Acting Administrator Business-Cooperative Rural Service.

Dated: February 13, 1998.

Wally Beyer,

Administrator, Rural Utilities Service.

Dated: February 13, 1998.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

[FR Doc. 98–4485 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent to Seek Approval to Conduct an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request approval for a new information collection, the Fruit and Nut Wildlife Damage Survey.

DATES: Comments on this notice must be received by April 29, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 4117 South Building, Washington, DC 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Fruit and Nut Wildlife Damage Survey.

Type of Request: Intent to seek approval to conduct an information collection.

Abstract: A sample of U.S. producers of selected fruits and nuts will be surveyed. The primary goal of the survey is the collection and development of valid statistical data reflecting the percentage of U.S. fruit and nut growers experiencing loss of product or resources caused by vertebrate wildlife. An accurate measurement of dollar losses due to vertebrate wildlife will also be obtained.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Respondents: Fruit and Nut Growers.

Estimated number of Respondents: 15,000.

Estimated total Annual Burden on Respondents: 2,500 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to:

Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 4162 South Building, Washington, DC 20250–2000.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, January 22, 1998.

Rich Allen,

Acting Administrator, National Agricultural Statistics Service.

[FR Doc. 98–4426 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Hackberry Draw Watershed, Eddy County, NM; Notice of a Finding of No Significant Impact

AGENCY: Natural Resources Conservation Service.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environment Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Rules (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the repair of Floodwater Retarding Structure 1 and Floodwater Diversion 2 in the Hackberry Draw Watershed.

FOR FURTHER INFORMATION CONTACT: Kenneth B. Leiting, Acting State Conservationist, National Resources Conservation Service, 6200 Jefferson, NE, Albuquerque, NM 87109–3734; telephone 505–761–4400.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Kenneth B. Leiting, Acting State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is flood prevention. The action includes the repair of one floodwater retarding dam and one floodwater diversion.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency and various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Kenneth B. Leiting.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

Kenneth B. Leiting,

Acting State Conservationist.

[FR Doc. 98–4395 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

National Sheep Industry Improvement Center; Solicitation of Nominations of Board Members

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice: invitation to submit nominations.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces that it is accepting nominations for the Board of Directors of the National Sheep Industry Improvement Center for two directors' positions whose terms are expiring on February 13, 1999. The two positions are for active producers of

sheep or goats, at least one of whom should be involved in goat production. Board members manage and oversee the Center's activities. Nominations may only be submitted by National organizations that consist primarily of active sheep or goat producers in the United States and who have as their primary interest the production of sheep or goats in the United States. Nominating organizations should submit:

(1) Substantiation that the nominating organization is national in scope,

(2) The number and percent of members that are active sheep or goat producers,

(3) Substantiation of the primary interests of the organization, and

(4) An Advisory Committee Membership Background Information form (Form AD–755) for each nominee.

This action is taken to carry out section 759 of the Federal Agriculture Improvement and Reform Act of 1996 for the establishment of a National Sheep Industry Improvement Center.

DATES: The closing date for acceptance of nominations is June 23, 1998. Nominations must be received by, or postmarked, on or before, this date.

ADDRESSES: Submit nominations and statements on qualifications to Cooperative Services, RBS, USDA, 1400 Independence Ave., SW, Stop 3252, Room 4204, Washington, DC 20250–3252, Attn.: National Sheep Improvement Center, Nominations.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas H. Stafford, Director, Cooperative Marketing Division, Cooperative Services, RBS, USDA, 1400 Independence Ave, SW, Stop 3252, Washington, DC 20250–3252, telephone (202) 690–0368 (this is not a toll free number), FAX 202–690–2723, or e-mail thomas.stafford@usda.gov.

SUPPLEMENTARY INFORMATION: The Federal Agriculture Improvement and Reform Act of 1996, known as the 1996 Farm Bill, established a National Sheep Industry Improvement Center. The Center shall: (1) Promote strategic development activities and collaborative efforts by private and State entities to maximize the impact of Federal assistance to strengthen and enhance production and marketing of sheep or goat products in the United States; (2) optimize the use of available human capital and resources within the sheep or goat industries; (3) provide assistance to meet the needs of the sheep or goat industry for infrastructure development, business development, production, resource development, and market and environmental research; (4) advance activities that empower and build the capacity of the United States sheep or goat industry to design unique responses to special needs of the sheep or goat industries on both a regional and national basis; and (5) adopt flexible and innovative approaches to solving the long-term needs of the United States sheep or goat industry. The Center has a Revolving Fund established in the Treasury to carry out the purposes of the Center. Management of the Center is vested in a Board of Directors, which has hired an Executive Director and other staff to operate the Center.

The Board of Directors is composed of seven voting members of whom four are active producers of sheep or goats in the United States, two have expertise in finance and management, and one has expertise in lamb, wool, goat or goat product marketing. The two open positions are the producer seats, with at least one designated as representing goat producers. The Board also includes two non-voting members, the Under Secretary of Agriculture for Rural Development and the Under Secretary of Agriculture for Research, Education, and Economics. Board members will not receive compensation for serving on the Board of Directors, but shall be reimbursed for travel, subsistence, and other necessary expenses.

The Secretary of Agriculture shall appoint the voting members from the submitted nominations. Member's term of office shall be three years. Voting members are limited to two terms. The two positions for which nominees are sought are currently held by members serving their first term, thus are eligible to be re-nominated. The Board shall meet not less than once each fiscal year, but are likely to meet at least quarterly.

The statement of qualifications of the individual nominees is being obtained by using Form AD–755, "Advisory Committee Membership Background Information." The requirements of this form are incorporated under OMB number 0505–0001.

Dated: February 13, 1998.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 98–4428 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Lincoln-Pipestone Rural Water; Existing System North/Lyon County Phase and Northeast Phase Expansion Project

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of draft environmental impact statement.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) is issuing a Draft Environmental Impact Statement (EIS) for the Lincoln-Pipestone Rural Water Existing System North/Lyon County Phase and Northeast Phase Expansion Project. The Draft EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (U.S.C. 4231 *et seq.*) in accordance with the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR 1500–1508) and Agency regulations (7 CFR 1940–G). RUS invites comments on the Draft EIS.

The purpose of the EIS is to evaluate the potential environmental impacts of a project proposal located in southwestern Minnesota. The proposal to which the Agency is responding to involves providing financial assistance for the development and expansion of a public rural water system and a review of the environmental impacts from previous expansion phase activities. The applicant for this proposal is a public body named Lincoln-Pipestone Rural Water (LPRW). LPRW's main offices are located in Lake Benton, MN. Specific project activities are and have included the development of groundwater sources and production well fields and the construction of water treatment facilities and water distribution networks. The counties in Minnesota affected by this proposal include Yellow Medicine, Lincoln, and Lyon Counties and Deuel County in South Dakota.

DATES: Written comments on the Draft EIS will be accepted on or before April 24, 1998.

ADDRESSES: To send comments or for more information, contact: Mark S. Plank, USDA, Rural Utilities Service, Engineering and Environmental Staff, 1400 Independence Avenue, Stop 1571, Washington, DC 20250, telephone (202) 720–1649, fax (202) 720–0820, or e-mail: mplank@rus.usda.gov.

A copy of the Draft EIS or an Executive Summary can be obtained over the Internet at http://www.usda.gov/rus/water/ees/environ.html. The files are in a portable document format (pdf); in order to review or print the document, users need to obtain a free copy of Acrobat Reader. The Acrobat Reader can be obtained from http://www.adobe.com/prodindex/acrobat/readstep.html.

Copies of the Draft EIS will be available for public review during

normal business hours at the following locations:

USDA Service Center, Rural Development, 1424 E. College Drive, Suite 500, Marshall, MN 56258; (507) 532–3234, Ext. 203.

Limited copies of the Draft EIS will be available for distribution at this address.

Marshall Public Library, 301 W. Lyon, Marshall, MN 56258; (507) 537–7003.

Ivanhoe Public Library, P.O. Box 54, Ivanhoe, MN 56142; (507) 694–1555.

Canby Public Library, 110 Oscar Ave. N, Canby, MN 56220; (507) 223–5738.

Deuel County Extension Service, 419 3rd Ave. S, P.O. Box 350, Clear Lake, SD 57226; (605) 874–2681.

Lincoln County Extension Service, 402 N. Harold, Ivanhoe, MN 56142; (507) 694–1470.

Lyon County Extension Service, 1400 E. Lyon St., Marshall, MN 56258; (507) 537–6702.

Yellow Medicine County Extension Service, 1000 10th Ave., Clarkfield, MN 56223.

SUPPLEMENTARY INFORMATION: Some of the issues evaluated in this EIS date back to previous decisions made in funding one of the phases of a multi-phase system expansion project initiated by LPRW in 1991. Due to Congressional funding cycles, Rural Utilities Service (RUS) and LPRW have administratively pursued LPRW's requests for financial assistance of this expansion project in discrete fundable phases. As part of the last construction phase, known as the Existing System North/Lyon County (ESN/LC) Phase project, a water source was developed along with the construction of a Water Treatment Plant that was designed to provide potable water to the northern portion of LPRW's service area. The water source developed in this phase was the Burr Well Field. The Burr Well Field is located close to Burr, MN, between Clear Lake, SD, and Canby, MN, and is within ½ mile of the South Dakota-Minnesota state line. The water-bearing formations utilized at this well field underlie portions of both South Dakota and Minnesota.

During construction of the Burr Well Field (started on April 19, 1993) and subsequent to its operations, public and regulatory concerns were raised and continue to be raised regarding potential environmental effects of groundwater appropriations from one of the water-bearing formations (called the Burr Unit) utilized by the well field. The second aquifer utilized at the Burr Well Field is called the Altamont aquifer. The Altamont is a deeper formation that appears to be hydraulically isolated from the Burr Unit.

Because of geologic factors and the topographic position of the Burr Unit in relation to ground surface elevations, groundwater from the Burr Unit discharges onto the land surface in both South Dakota and Minnesota as springs or seeps creating unique wetland features called patterned calcareous fens. In addition after performing geologic investigations in the area, the South Dakota Department of Environment and Natural Resources (SDDENR) concluded that one of the lakes in the area, Lake Cochrane, was also receiving groundwater discharges from the Burr Unit aquifer.

An Environmental Assessment (EA) was prepared for the ESN/LC Phase project by the Farmers Home Administration (FmHA) in accordance with its Environmental Policies and Procedures (7 CFR Part 1940–G). FmHA published a Finding of No Significant Impact for the project on February 7, 1992. Because of concerns raised regarding the Burr Well Field, the EA was amended to address these concerns by an agency newly created by a 1993 USDA reorganization, the Rural Development Administration (RDA). RDA published a draft copy of the amended EA for public review and comment on October 14, 1994. Upon receipt of the public comments, it was decided to prepare an EIS. During the time this decision was being made USDA again reorganized its programs and the RDA programs were combined with the utility programs of the Rural Electrification Administration to form a new agency—the Rural Utilities Service.

RUS announced its intent to prepare an EIS and hold public scoping meetings in a Notice of Intent published in the **Federal Register** on June 8, 1995.

The primary issues evaluated in the EIS included the outstanding concerns from the earlier 1992 EA, that is, the environmental effects on fens and Lake Cochrane (herein referred to as surface water resources) from groundwater appropriations at the Burr Well Field, and the potential environment impacts from the construction of the Northeast Phase Expansion proposal. The primary objective of the Northeast Phase Expansion proposal is to provide rural water service to rural residents (240 rural users) who have requested service and to the rural communities of Hazel Run and Echo, Minnesota. The proposal includes the installation of 170 miles of 2- to 8-in pipelines, an elevated water storage tank near Minneota, and a booster station near Green Valley. The overall purpose of this and previous actions by LPRW is to assist citizens in southwestern Minnesota in obtaining a consistent, reliable and safe supply of high-quality, affordable drinking water in an area that has difficulty in obtaining good quality drinking water.

Because all of the decisions and funding obligations have been made on the previous ESN/LC Phase project, the only decision facing the Agency at this time is whether or not to provide financial assistance to LPRW for the construction of the Northeast Phase Expansion proposal. All decisions regarding the issuance and disposition of the Water Appropriation Permit authorizing groundwater appropriations at the Burr Well Field are subject to the regulatory authority of the Minnesota Department of Natural Resources (MNDNR), Division of Water.

After the Agency made the decision to prepare an EIS, the Agency requested, pursuant to 40 CFR 1501.6, "Cooperating Agencies", that the U.S. Environmental Protection Agency (USEPA), Region 8 in Denver, CO, serve in the capacity of a cooperating agency. This request was made because of USEPA's specialized expertise in groundwater issues. USEPA agreed to the Agency's request, therefore, RUS is the lead agency for this action and was responsible for the preparation of the EIS, and USEPA provided technical assistance to RUS through its role as a cooperating agency.

For purposes of this EIS, the proposed action to which the Agency is responding to and for which all of the environmental impacts of past and present actions were evaluated, is the application LPRW submitted to the Agency to fund the Northeast Phase Expansion. In addition to this application, LPRW submitted a Water Appropriation Permit application to the MNDNR to increase groundwater appropriation rates from the present 750 gallons per minute (gpm) and 400 million gallons per year (Mgpy) to 1,500 gpm/800 Mgpy. Both of these actions encompass what was termed the "proposed action."

The Agency evaluated six alternatives to meeting the water supply needs of the LPRW system. The following table lists the alternatives considered.

LIST OF THE ALTERNATIVES CONSIDERED

Alternative	Northeast phase expansion status	Burr Well Field status
Current Status	LPRW submitted application to RUS to fund construction of the Northeast Phase Expansion.	LPRW is authorized under their current Water Appropriation Permit to appropriate groundwater at the rate of 750 gpm/400 Mgpy. LPRW submitted an application to the MNDNR to increase groundwater appropriations to 1,500 gpm/800 Mgpy.
Proposed Action	Fund the Northeast Phase Expansion.	Increase groundwater appropriations at the Burr Well Field to 1,500 gpm/800 Mgpy.
Alternative 1	Fund the Northeast Phase Expansion.	Discontinue use of Burr Well Field.
Alternative 2	Fund the Northeast Phase Expansion.	Discontinue use of Burr Well Field. Supplement water needs from other sources: Adjacent rural water systems, Lewis and Clark system, Altamont aquifer, Canby aquifer, other aquifers.
Alternative 3	Fund the Northeast Phase Expansion.	Maintain current appropriations at Burr Well Field.
Alternative 4	Fund the Northeast Phase Expansion.	Maintain current or reduce appropriations at Burr Well Field; fund and construct new well field and Water Treatment Plant in the Wood Lake area.
Alternative 5	Do not fund the Northeast Phase Expansion; finance Point-of-Use systems in Northeast Phase Expansion area.	Maintain current appropriations at Burr Well Field.
Alternative 6—No Action Alternative.	Do not fund the Northeast Phase Expansion.	Maintain current appropriations at Burr Well Field.

Of the six alternatives considered, the Agency performed an economic analysis on three of the alternatives determined to be reasonable. In addition, an economic analysis was performed on Agency's preferred alternative. The only alternatives considered to be economically and technically viable included continuing to appropriate groundwater from the aquifers utilized at the Burr Well Field. Therefore, the EIS focussed its analyses on evaluating the potential environmental effects on surface water resources from continued pumping at the Burr Well Field.

Based on the analyses performed in the EIS concerning the relationship of surface water resources and pumping at the Burr Well Field, the Agency concludes the following:

As a result of detailed investigations of water chemistry, changes in hydraulic head during production pumping and pump tests, tritium content and age-dating of aquifer water and water being discharged at two of the area's fens that were monitored—the Fairchild and Sioux Nation Fens—it has been clearly demonstrated and established that a hydraulic connection exists between the Burr Unit and the fens. In addition, further evidence indicates that reductions in the potentiometric surface caused by pumping the Burr Unit at the Burr Well Field causes reciprocal responses in the hydraulic head measured in observation wells and piezometers installed in and adjacent to selected fens. No evidence of a similar hydraulic connection between the Altamont aquifer and the fens was observed.

Drawing conclusions based on limited information concerning Lake Cochrane was not as conclusive. However, based on the information that is available, the Agency has concluded that all lines of evidence indicate that it is likely Lake Cochrane is receiving a groundwater contribution to its water budget from both shallow and deeper (Burr Unit) aquifers. The information that would be necessary to quantify the overall percentage of groundwater contribution in relation to surface water inputs to Lake Cochrane's water budget and the percentage of the contribution from shallow aquifers versus the Burr Unit is incomplete and unavailable. The cost and technical difficulty of obtaining such information for evaluating reasonably foreseeable impacts by the Agency has been determined to be exorbitant and unreasonable.

Based on a systematic and objective evaluation of the environmental and economic issues related to the remaining alternatives, the Agency has concluded that the proposed action (to appropriate groundwater at 1,500 gpm/800 Mgpy from the Burr Unit at the Burr Well Field) poses an unreasonable environmental risk to surface water resources in the area. Because of the uncertainty and potential for long-term environmental impacts on surface water resources in the area around the Burr Well Field, the Agency has concluded that pumping at the proposed appropriation rate under drought conditions is likely to cause significant adverse environmental impacts to these resources.

Conversely, in analyzing the information available, the Agency has concluded that through mitigation and a groundwater appropriation rate lower than the proposed action, adverse environmental effects could be avoided or minimized. Therefore, it could be feasible to continue using the Burr Well Field at certain appropriation rates without causing significant adverse environmental effects.

Attempting to establish an appropriation rate that could avoid or minimize adverse environment effects to the fens and Lake Cochrane was the major dilemma of the EIS. Because of limited baseline data and period of record, the only information that can be evaluated is data that has been collected since 1992. The entire time period since 1992 to the present has been dominated by a sustained period of relatively high precipitation. Therefore, these climatic conditions have prevented detailed observations of aquifer responses from pumping during a drought cycle or what effects current pumping has had on surface water resources. Because of this uncertainty and the reality of periodic and cyclic drought conditions, it is prudent to manage this aquifer system and withdrawals from it in a conservative manner.

Notwithstanding a lack of long-term data, taking into account current data sets and through consultations with state and federal agencies and experts in the field of hydrogeology, the Agency has concluded the following:

1. There could be effects to Lake Cochrane from long-term pumping from the Burr Unit at the Burr Well Field.

Based on data collected from the various pump tests and in consultation with experts in the field of hydrology and geology, it is the Agency's opinion that effects to Lake Cochrane from the continuation of pumping from wells screened in the Burr Unit at the Burr Well Field at the rate of 400–525 gpm would not have significant environmental impacts. That is not to say that Lake Cochrane could not be affected, but that in the range of 400–525 gpm it is unlikely that any effects would have significant consequences. In addition, at these appropriation rates it would be extremely difficult to distinguish any impacts from reduced groundwater inputs into the lake from the biological effects of ongoing management practices or human influences at the lake.

2. During all of the pump tests and production pumping for the last three years at current and maximum pumping rates of 400–525 gpm (1997 appropriations from the Burr Unit equaled 274 million gallons for an average of 521 gallons per minute), the effects from pumping at the Burr Well Field at the fens, as represented by the Sioux Nation Fen and measured by three piezometers installed at various depths in the fen dome, have been minor. At no time did the hydraulic head or water table elevations in the fens or potentiometric surface fall close to or below the surface elevations of the peat domes. Therefore, the Agency has concluded that as long as the hydraulic gradient remains above the surface elevation of the fen dome and the dome itself remains under saturated conditions it appears unlikely that appropriation rates between the range of 400–525 gpm will adversely affect the fens.

In order to avoid or minimize any adverse environmental effects to surface water resources, the Agency has developed mitigation measures it believes could be protective of surface water resources and at the same time support LPRW in its need to secure a reliable water supply for the northern portions of its service area. The mitigation measures listed below constitute the Agency's preferred alternative. It is estimated that if these mitigation measures are implemented, user rates for the overall system would increase approximately 21 percent. Although this rate increase is higher than the proposed action, LPRW concludes that its membership would be able to sustain this increase. The Agency believes that implementing the preferred alternative will help meet LPRW and its customers' long-term water supply needs, but yet be protective of the area's surface water resources.

The Agency's preferred alternative includes:

1. Continue to maintain the Burr Well Field as a primary water source. The Agency supports reducing or limiting ground water appropriations at the Burr Well Field from each of the two aquifers—the Burr Unit and Altamont aquifer—to 400–525 gpm with a corresponding annual appropriation rate.

2. Supplement existing wells at the Burr Well Field with a new well field in an area south-southeast of the current Burr Well Field. This new well field could utilize both the Burr Unit and Altamont aquifers in a configuration similar to that at the Burr Well Field. Water from the new wells could be transported to the Burr Water Treatment Plant for treatment and distribution to LPRW customers.

3. The Agency recommends that the appropriation rates of the supplemental wells be similar to those permitted at the Burr Well Field or higher in the case of the Altamont aquifer. This configuration would give LPRW two well fields and enable it to continue utilizing the existing treatment capacity at the Burr Water Treatment Plant to meet the primary and secondary needs in the northern portion of its service area. This recommendation would likely "spread out" the effects or reductions in the potentiometric surface of the Burr Unit caused by production pumping, thus potentially avoiding or minimizing any adverse effects to surface water resources in the area.

4. The Agency recommends that MNDNR establish, as part of its permitting requirements for LPRW, protocols and standard operating procedures for well field operations that are designed to minimize drawdowns in the potentiometric surface in the Burr Unit. These protocols could include regulating pumping rates and annual withdrawals for each well and aquifer.

5. Formalize a water resource management plan that will continue to use existing monitoring points at fen locations and observation wells in the Burr Unit in Minnesota and South Dakota. This monitoring plan would enable LPRW and natural resource management agencies in both Minnesota and South Dakota to monitor and develop a long-term strategy for evaluating groundwater appropriations and their effects on surface water features in the area.

The Agency will condition approval on LPRW's application for financial assistance for the Northeast Phase Expansion and other associated costs on successful completion of the following terms. This approval is subject to LPRW's being able to obtain the appropriate water appropriation permit(s) from the MNDNR.

1. Explore the development of a supplemental well field in the area south of the Burr Well Field determined by various geologic exploration efforts as containing aquifer materials that would be capable of supplying municipal quantities of water. The new well field should utilize both the Burr Unit and the Altamont aquifer providing for more reliance on the Altamont than it does at the Burr Well Field. Raw water from this well field should be transported to the existing Burr Water Treatment Plant to take advantage of the facility's existing water treatment capacity.

2. LPRW shall formalize a water resource management plan with the MNDNR to establish monitoring procedures and protocols to evaluate the effects of pumping the Burr Unit on surface water resources in Minnesota. Included within this plan LPRW shall develop standard operating procedures to manage and implement groundwater appropriations from the Burr Unit at both the new well field and Burr Well Field to minimize drawdown of the potentiometric surface from production pumping.

3. LPRW shall formalize an agreement with SDDENR to establish monitoring procedures and protocols to evaluate the effects of pumping the Burr Unit on surface water resources in South Dakota.

Provided these conditions are met and LPRW has formalized all the above with the appropriate regulatory authorities, the Agency is prepared to approve LPRW's application for construction of the Northeast Phase Expansion proposal, subject to the availability of funding.

All direct construction related activities associated with the funding of the Northeast Phase Expansion by themselves will have no significant environmental impact. The environmental effects of constructing an elevated water storage tank near Minneota, booster stations near Minneota and Green Valley, and 170 miles of pipeline will be minimal consisting of temporary disturbances consistent with standard construction practices. All environmental impacts will be mitigated as is appropriate for these individual construction activities.

No historic or cultural resources or threatened and endangered species will be affected by the Northeast Phase Expansion action. Less than 2 acres of important farmland will be converted at the water storage and booster station

sites. However, the majority of the land within the Northeast Phase Expansion area has been identified as important farmland, so the overall impact to this resource will be minimal.

For a detailed analysis of the data supporting the above conclusions, see the Draft EIS.

Dated: February 12, 1998.

John P. Romano,

Deputy Administrator, Water and Environmental Program.

[FR Doc. 98–4484 Filed 2–20–98; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Export of Parcels Through the Postal Service; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 24, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawn Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Persons exporting through the U.S. Postal Service must place on the parcel the authorization for the export—either the validated export license number or the General License symbol, as appropriate. If a General License is utilized, the exporter must also show on the parcel the phrase "Export License Not Required".

II. Method of Collection

Submitted on parcel.

III. Data

OMB Number: 0694–0095.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit, and not-for-profit institutions.

Estimated Number of Respondents: 8,000,000.

Estimated Time Per Response: 5 seconds per response.

Estimated Total Annual Burden Hours: 11,110.

Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4476 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Five-Year Record Retention Period; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 24, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawn Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Exporters are required to maintain records of export transactions. The recordkeeping requirement corresponds with the five-year statute of limitations for criminal actions brought under the Export Administration Act of 1979 and predecessor acts, and the five-year statute for administrative compliance proceedings. Without this authority, potential violators could discard records demonstrating violations of the EAR prior to the expiration of the five-year statute of limitations.

II. Method of Collection

Recordkeeping.

III. Data

OMB Number: 0694–0096.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit, and not-for-profit institutions.

Estimated Number of Respondents: 154,816.

Estimated Time Per Response: 10 seconds per response.

Estimated Total Annual Burden Hours: 259.

Estimated Total Annual Cost: $0—no capital expenditures are required.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4477 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Destination Control Statement; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 24, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawn Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Destination Control Statement serves as a notice to all foreign parties in an export transaction that further shipment to any country not authorized is prohibited. In any Office of Export Enforcement proceeding, evidence of the sending of the commercial invoice, bill of lading or other form of notice of the prohibition against diversion will serve as proof of that person's receipt of the notice.

II. Method of Collection

Notice on shipping document.

III. Data

OMB Number: 0694–0097.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit, and not-for-profit institutions.

Estimated Number of Respondents: 647,000.

Estimated Time Per Response: 10 seconds per response.

Estimated Total Annual Burden Hours: 1,759.

Estimated Total Annual Cost: $0—no capital expenditures are required.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4478 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Procedures For Acceptance or Rejection of a Rated Order; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 24, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawn Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This notification requirement is necessary for administration and enforcement of delegated authority under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*) and the Selective Service Act of 1948 (50 U.S.C. App. 468). Any person (supplier) who receives a priority rated order under the Defense Priority Allocation System (DPAS) regulation (15 CFR 700) must notify the customer of acceptance or rejection of that order within a specified period of time. Also, if shipment against a priority rated order will be delayed, the supplier must immediately notify the customer.

II. Method of Collection

Written or electronic notification.

III. Data

OMB Number: 0694–0092.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 25,000.

Estimated Time Per Response: 1 to 15 minutes per response.

Estimated Total Annual Burden Hours: 31,500.

Estimated Total Annual Cost: $630,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4479 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Procedure for Voluntary Self-Disclosure of Violations of the Export Administration Regulations (EAR); Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 24, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawn Battle, Department of Commerce, 14th and Constitution Ave., NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

BXA has established procedures for voluntary self-disclosure of export violations. Exporters provide a narrative statement which outlines the violation involved. The information is needed to detect violations of the Export Administration Act and to determine if an investigation or prosecution is necessary. The information is used to reach settlement with violators. The respondents are likely to be export-related businesses.

II. Method of Collection

Written submission.

III. Data

OMB Number: 0694–0058.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 67.

Estimated Time Per Response: 10 hours per response.

Estimated Total Annual Burden Hours: 670.

Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4480 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Import Certificates and End-User Certificates; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 24, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawnielle Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is the certification of the overseas importer to the U.S. government that he/she will import specific commodities from the U.S. and will not reexport such commodities except in accordance with U.S. export regulations.

II. Method of Collection

Written documentation is required.

III. Data

OMB Number: 0694–0093.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 4,576.

Estimated Time Per Response: 15 minutes per response.

Estimated Total Annual Burden Hours: 1,144 hours.

Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4481 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–DT–F

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–401–801, A–549–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final court decision and amended final results of administrative reviews.

SUMMARY: On October 15, 1997, the United States Court of Appeals for the Federal Circuit affirmed the Department of Commerce's final remand results affecting final assessment rates for the second administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan (except NSK), Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. As there is now a final and conclusive court decision in these actions (with the exception noted above), we are amending our final results of reviews and we will subsequently instruct the U.S. Customs Service to liquidate entries subject to these reviews.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Ross or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions in effect as of December 31, 1994. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations as codified at 19 CFR Part 353 (April 1, 1997).

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1992, the Department published its final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof, from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, covering the period May 1, 1990 through April 30, 1991 (AFBs II) (57 FR 28360). These final results were amended on July 24, 1992, and December 14, 1992, to correct clerical errors (see 57 FR 32969 and 57 FR 59080, respectively). The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). Subsequently, two domestic producers, the Torrington Company and Federal-Mogul, and a number of other interested parties, filed lawsuits with the U.S. Court of International Trade (CIT) challenging the final results. These lawsuits were litigated at the CIT and the United States Court of Appeals for the Federal Circuit (CAFC). In the course of this litigation, the CIT issued a number of orders and opinions of which the following have resulted in changes to the antidumping margins calculated in AFBs II:

Federal-Mogul Corp. v. *United States*, 862 F. Supp. 384 (CIT 1994), 872 F. Supp. 1011 (CIT 1994), and Slip Op. 95–184 (November 20, 1995) with respect to France, Germany, Italy, Japan, Sweden, and the United Kingdom;

Torrington Company v. *United States*, 881 F. Supp. 622 (CIT 1995) and 926 F. Supp. 1151 (CIT 1996) with respect to France, Germany, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom;

Koyo Seiko Company Ltd. v. *United States*, Slip Op. 96–168 (October 17, 1996) with respect to Japan;

SKF USA Inc. v. *United States*, 874 F. Supp. 1395 (CIT 1995) with respect to Italy;

SKF USA Inc. v. *United States*, 875 F. Supp. 847 (CIT 1995) with respect to Germany;

SKF USA Inc. v. *United States*, Slip Op. 95–11 (January 31, 1995) with respect to the United Kingdom;

SKF USA Inc. v. *United States*, 876 F. Supp. 273 (CIT 1995) with respect to France;

SKF USA Inc. v. *United States*, Slip Op. 95–124 (July 5, 1995) with respect to Sweden;

Societe Nouvelle de Roulements v. *United States*, 927 F. Supp. 1558 (CIT 1996) with respect to France.

In the context of the above-cited litigation, the CIT (in some cases based on decisions by the CAFC) ordered the Department to make methodological changes and to recalculate the antidumping margins for certain firms under review. Specifically, the CIT ordered the Department *inter alia:* (1) To change its methodology to account for value-added taxes with respect to the comparison of U.S. and home market prices, (2) not to deduct pre-sale inland freight incurred in the home market if the Department determined that there was no statutory authority to make such a deduction, (3) to develop a methodology which removes post-sale price adjustments and rebates paid on out-of-scope merchandise from any adjustment made to foreign market value or to deny such an adjustment if a viable method could not be found, and (4) to correct certain clerical errors.

On October 15, 1997, the CAFC affirmed the Department's final remand results affecting final assessment rates for all the above cases (except the reviews involving NSK Ltd. of Japan which are still subject to further litigation). See *Torrington Co.* v. *United States*, 127 F.3d 1077 (Fed. Cir. 1997). As there are now final and conclusive court decisions in these actions, we are amending our final results of review in these matters and we will subsequently instruct the U.S. Customs Service to liquidate entries subject to these reviews.

Amendment to Final Results

Pursuant to 516A(e) of the Tariff Act, we are now amending the final results of administrative reviews of the antidumping duty orders on antifriction

bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, and the period May 1, 1990, through April 30, 1991. The revised weighted-average margins are as follows:

Company	BBs	CRBs	SPBs
France			
SKF	5.56	(1)	(3)
SNR	8.08	18.37	(2)
Germany			
FAG	20.10	7.83	1.05
INA	19.90	1.23	(1)
SKF	12.08	5.10	0.82
Italy			
FAG	7.50	(1)	.....
SKF	8.78	(3)	.....
Japan			
Fujino	1.83	(2)	(2)
IJK	1.89	(3)	(2)
Izumoto	12.14	(2)	(2)
Koyo Seiko	5.95	1.39	(3)
Nachi	7.90	22.61	(1)
Nakai	6.47	(2)	(2)
Nankai	9.41	(2)	(2)
NTN	2.42	2.78	0.51
Showa	7.51	(2)	(2)
Singapore			
NMB/Pelmec	4.49	.....	.....
Sweden			
SKF	7.67	4.18	.....
Thailand			
NMB/Pelmec	0.498	.....	.....
United Kingdom			
Barden Corporation	0.85	(1)	.....
FAG	48.97	(3)	.....
RHP Bearings	16.75	50.39	.....
SKF	8.33	(1)	.....

(1) No U.S. sales during the review period.
(2) No review requested.
(3) No change to the last published margin. See AFBs II, 57 FR 28360, as amended by 57 FR 32969 and 57 FR 59080.

The above rates will become the new antidumping duty deposit rates for firms that have not had a deposit rate established for them in subsequent reviews.

Accordingly, the Department will determine and the U.S. Customs Service will assess appropriate antidumping duties on entries of the subject merchandise made by firms covered by these reviews. Individual differences between United States price and foreign market value may vary from the percentages listed above. The Department has already issued appraisement instructions to the Customs Service for certain companies whose margins have not changed from those announced in AFBs II and the two previous amendments. For companies covered by these amended results, the Department will issue appraisement instructions to the U.S. Customs Service after publication of these amended final results of reviews.

This notice is published pursuant to section 751(a) of the Tariff Act.

Dated: February 11, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–4542 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–827]

Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson at (202) 482–1776, or David Genovese at (202) 482–0498,

Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 353 (April 1, 1996).

Final Determination

We determine that static random access memory semiconductors (SRAMs) from Taiwan are being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination in this investigation on September 23, 1997 (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Static Random Access Memory Semiconductors from Taiwan*, 62 FR 51442 (Oct. 1, 1997)), the following events have occurred:

In September 1997, we issued supplemental questionnaires to Integrated Silicon Solution Inc. (ISSI) and United Microelectronics Corporation (UMC). We received responses to these questionnaires in October 1997.

On October 14, 1997, Taiwan Semiconductor Manufacturing Company Ltd. (TSMC) requested that the Department reconsider its preliminary determination to exclude TSMC as a respondent in this investigation. On October 29, 1997, we informed TSMC that we were not altering our decision and that we would not verify the information submitted by TSMC. For further discussion of this issue, see the memorandum to the file from James Maeder, dated October 29, 1997, and *Comment 4* in the "Interested Party Comments" section of this notice.

On October 15, 1997, a U.S.-based producer of subject merchandise, Galvantech, Inc. (Galvantech), requested that the Department accept and verify a questionnaire response from it. On October 22, 1997, we denied Galvantech's request. For further discussion, see *Comment 3* in the "Interested Party Comments" section of this notice.

On October 17, 1997, an interested party in this investigation, Texas Instruments-Acer Incorporated (TI-Acer), claimed that it had not received the antidumping duty questionnaire issued to it in April 1997. Thus, TI-Acer requested that the Department make no final determination for it on the basis of facts available. On October 22, 1997, we provided TI-Acer with a copy of the courier's delivery record which indicated that TI-Acer had, in fact, received the questionnaire.

In October and November 1997, we verified the questionnaire responses of the following respondents: Alliance Semiconductor Corp. (Alliance), ISSI, UMC, and Winbond Electronics Corporation (Winbond).

In November and December 1997, the respondents submitted revised sales databases at the Department's request. In addition, Alliance, ISSI and UMC submitted revised cost databases.

On November 19, 1997, TI-Acer submitted its case brief in which it reiterated its assertion that it did not receive a questionnaire. On December 9, 1997, we provided TI-Acer with an additional copy of the courier's delivery record demonstrating that the questionnaire had been received by a TI-Acer official. TI-Acer responded to this letter on December 18, 1997. For further discussion, see *Comment 5* in the "Interested Party Comments" section of this notice.

The petitioner (*i.e.*, Micron Technology, Inc.), the four respondents, Galvantech, and TSMC submitted case briefs on December 23 and 24, 1997, and rebuttal briefs on January 7 and 8, 1998. In addition, five interested parties, Compaq Computer Corporation (Compaq), Cypress Semiconductor Corporation (Cypress), Digital Equipment Corporation (Digital), Integrated Device Technology (IDT), and Motorola Inc. (Motorola) submitted rebuttal briefs on January 7, 1998.

On January 7, 1998, the authorities on Taiwan submitted comments on the appropriate treatment of stock distributions to company employees. The petitioner responded to these comments on January 12, 1998. The Department held a public hearing on January 13, 1998.

Scope of Investigation

The products covered by this investigation are synchronous, asynchronous, and specialty SRAMs from Taiwan, whether assembled or unassembled. Assembled SRAMs include all package types. Unassembled SRAMs include processed wafers or die, uncut die and cut die. Processed wafers produced in Taiwan, but packaged, or assembled into memory modules, in a third country, are included in the scope; processed wafers produced in a third country and assembled or packaged in Taiwan are not included in the scope.

The scope of this investigation includes modules containing SRAMs. Such modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), dual in-line memory modules (DIMMs), memory cards, or other collections of SRAMs, whether unmounted or mounted on a circuit board.

We have determined that the scope of this investigation does not include SRAMs that are physically integrated with other components of a motherboard in such a manner as to constitute one inseparable amalgam (*i.e.*, SRAMs soldered onto motherboards). For a detailed discussion of our determination on this issue, see *Comment 2* in the "Interested Party Comments" section of this notice and the memorandum to Louis Apple from the Team dated February 13, 1998.

The SRAMs within the scope of this investigation are currently classifiable under the subheadings 8542.13.8037 through 8542.13.8049, 8473.30.10 through 8473.30.90, and 8542.13.8005 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of this investigation (POI) for all respondents is January 1, 1996, through December 31, 1996.

Facts Available

Three interested parties in this investigation, Advanced Microelectronics Products Inc. (Advanced Microelectronics), Best Integrated Technology, Inc. (BIT), and TI-Acer, failed to provide timely responses to the Department's requests for information. Specifically, Advanced Microelectronics and BIT did not respond at all to the Department's questionnaire issued in April 1997, while TI-Acer provided a partial response five months after the due date.

TI-Acer informed the Department after the preliminary determination that it had not received the questionnaire. Moreover, TI-Acer asserted that it is not a producer of subject merchandise. As such, TI-Acer argued that it should not be assigned a margin based on facts available. However, because there is evidence on the record which

demonstrates that the questionnaire was delivered to TI-Acer's offices in Taiwan and that a TI-Acer company official actually signed for this document, and because TI-Acer filed its partial response five months after the original due date, we do not find TI-Acer's arguments persuasive. For further discussion, see *Comment 5* in the "Interested Party Comments" section of this notice, below.

Section 776(a)(2) of the Act provides that if an interested party 1) withholds information that has been requested by the Department, 2) fails to provide such information in a timely manner or in the form or manner requested, 3) significantly impedes a determination under the antidumping statute, or 4) provides such information but the information cannot be verified, the Department shall, subject to subsections 782(c)(1) and (e) of the Act, use facts otherwise available in reaching the applicable determination. Because Advanced Microelectronics, BIT, and TI-Acer failed to respond to the Department's questionnaire in a timely manner and because subsections (c)(1) and (e) do not apply with respect to these companies, we must use facts otherwise available to calculate their dumping margins.

Section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103d Cong., 2d Sess. 870 (SAA). The failure of Advanced Microelectronics, BIT, and TI-Acer to reply to the Department's questionnaire or to provide a satisfactory explanation of their conduct demonstrates that they have failed to act to the best of their ability in this investigation. Thus, the Department has determined that, in selecting among the facts otherwise available to these companies, an adverse inference is warranted.

In accordance with our standard practice, as adverse facts available, we are assigning to Advanced Microelectronics, BIT, and TI-Acer the higher of: 1) the highest margin stated in the notice of initiation; or 2) the highest margin calculated for any respondent in this investigation. In this case, this margin is 113.85 percent, which is the highest margin stated in the notice of initiation.

Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. When analyzing the petition, the Department reviewed all of the data the petitioner relied upon in calculating the estimated dumping margins, and adjusted those calculations where necessary. *See* Initiation Checklist, dated March 17, 1997. These estimated dumping margins were based on a comparison of constructed value (CV) to U.S. price, the latter of which was based on price quotations offered by two companies in Taiwan. The estimated dumping margins, as recalculated by the Department, ranged from 93.54 to 113.85 percent. For purposes of corroboration, the Department re-examined the price information provided in the petition in light of information developed during the investigation and found that it has probative value. *See* the memorandum to Louis Apple from the Team dated September 23, 1997, for a detailed explanation of corroboration of the information in the petition.

Time Period for Cost and Price Comparisons

Section 777A(d) of the Act states that in an investigation, the Department will compare the weighted average of the normal values to the weighted average of the export prices or constructed export prices. Generally, the Department will compare sales and conduct the sales below cost test using annual averages. However, where prices have moved significantly over the course of the POI, it has been the Department's practice to use shorter time periods. *See, e.g., Final Determination of Sales at Less Than Fair Value: Erasable Programmable Read Only Memories (EPROMs) from Japan*, 51 FR 39680, 39682 (Oct. 30, 1986) (*EPROMs from Japan*), *Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of* Korea, 58 FR 15467, 15476 (Mar. 23, 1993) (*DRAMs from Korea*).

We invited comments from interested parties regarding this issue. An analysis of these comments revealed that the petitioner and three of the four respondents agreed that the SRAM market experienced a significant and consistent price and cost decline during the POI. Accordingly, in recognition of the significant and consistent price decline in the SRAM market during the POI, the Department has compared prices and conducted the sales below cost test using quarterly data [1]. *See Comment 10* in the "Interested Party Comments" of this notice for further discussion.

Fair Value Comparisons

To determine whether sales of SRAMs from Taiwan to the United States were made at less than fair value, we compared the EP or CEP, as appropriate, to the Normal Value (NV), as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

In order to determine whether we should base price-averaging groups on customer types, we conducted an analysis of the prices submitted by the respondents. This analysis does not indicate that there was a consistent and uniform difference in prices between customer types. Accordingly, we have not based price comparisons on customer types.

On January 8, 1998, the Court of Appeals of the Federal Circuit issued a decision in *Cemex* v. *United States*, 1998 WL 3626 (Fed. Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using CV as the basis for foreign market value when the Department finds home market sales to be outside the ordinary course of trade. This issue was not raised by any party in this proceeding. However the URAA amended the definition of sales outside the "ordinary course of trade" to include sales below cost. *See* section 771(15) of the Act. Because the Court's decision was issued so close to the deadline for completing this investigation, we have not had sufficient time to evaluate and apply the decision to the facts of this post-URAA case. For these reasons, we have determined to continue to apply our policy regarding the use of CV when we have disregarded below-cost sales from the calculation of normal value.

Consequently, in making our comparisons, in accordance with section 771(16) of the Act, we considered all products sold in the home market fitting the description specified in the "Scope of Investigation" section of this notice, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Regarding

[1] In accordance with section 773(b)(2)(D) of the Act, we conducted the recovery of cost test using annual cost data.

ISSI and UMC, where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product, based on the characteristics listed in Sections B and C of the Department's antidumping questionnaire. Regarding Winbond, we were unable to make price-to-price comparisons involving non-identical products because Winbond did not provide reliable difference in merchandise (difmer) information. Therefore, we based the margin for U.S. products with no corresponding identical home market match on facts available. As facts available, we used the highest non-aberrant margin calculated for any of Winbond's other U.S. sales. *See Comment 25* in the "Interested Party Comments" section of this notice for further discussion. Regarding Alliance, because we found no home market sales at prices above the COP, we made no price-to-price comparisons. *See* the "Normal Value" section of this notice, below, for further discussion.

Moreover, Alliance and ISSI did not report certain costs of production which were contemporaneous (*i.e.*, in the same or a prior quarter) with their U.S. sales, and ISSI did not report cost or difmer information for one product sold in the United States. Because there is insufficient information on the record to calculate a margin for these products, we based the margin for them on facts available. As facts available, we used the highest non-aberrant margin calculated for any of that respondent's other sales. For further discussion, see *Comment 7* in the "Interested Party Comments" section of this notice.

Level of Trade and Constructed Export Price Offset

In the preliminary determination, the Department determined that there was sufficient evidence on the record to justify a CEP offset for each of the four respondents. We found no evidence at verification to warrant a change from that preliminary determination. Accordingly, we have made a CEP offset for each of the respondents in this final determination. For further discussion, see *Comment 6* in the "Interested Party Comments" section of this notice and the memorandum to the file from the Team, dated February 13, 1998.

Export Price and Constructed Export Price

For UMC and Winbond, we used the EP methodology, in accordance with section 772(a) of the Act, when the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and the CEP methodology was not otherwise indicated.

In addition, for all companies, where sales to the first unaffiliated purchaser took place after importation into the United States, we used CEP methodology, in accordance with section 772(b) of the Act.

We made the following company-specific adjustments:

A. Alliance

We calculated CEP based on packed, FOB U.S. warehouse prices to unaffiliated purchasers in the United States. We adjusted gross unit price for billing adjustments and freight revenue. We made deductions, where appropriate, for discounts. We also made deductions for international freight (including air freight and U.S. Customs merchandise processing fees) and U.S. inland freight to the customer, where appropriate, pursuant to section 772(c)(2)(A) of the Act.

In accordance with section 772(d) of the Act, we made additional deductions for commissions, warranty and credit expenses, indirect selling expenses, inventory carrying costs, U.S. repacking expenses and U.S. further manufacturing costs.

Pursuant to section 772(d)(3) of the Act, gross unit price was further reduced by an amount for profit, to arrive at CEP.

With regard to modules which were further-manufactured in the United States, we have based CEP on the net price of the modules rather than the net price of the individual SRAMs included in the modules.

B. ISSI

We calculated CEP based on packed, FOB U.S. warehouse prices to unaffiliated purchasers in the United States. We made deductions from the gross unit price, where appropriate, for discounts. We also made deductions for foreign inland freight, pre-sale warehousing expenses, foreign and U.S. inland insurance, foreign brokerage and handling, and international freight (including air freight, U.S. customs merchandise processing fees, and U.S. inland freight to ISSI's U.S. office), where appropriate, pursuant to section 772(c)(2)(A) of the Act.

In accordance with section 772(d) of the Act, we made additional deductions for commissions, credit expenses, indirect selling expenses, inventory carrying costs, and U.S. repacking expenses. Regarding credit expenses, we found that ISSI had not received either full or partial payment for certain sales as of the date of verification. Consequently, we used the last day of ISSI's U.S. sales verification as the date of payment for any unpaid amount and recalculated credit expenses accordingly. For further discussion, see *Comment 11* in the "Interested Party Comments" section of this notice.

Pursuant to section 772(d)(3) of the Act, gross unit price was further reduced by an amount for profit, to arrive at CEP.

C. UMC

We calculated EP and CEP based on packed, FOB prices to unaffiliated purchasers in the United States. We adjusted the gross unit price for billing adjustments and freight charges. We made deductions from the gross unit price, where appropriate, for discounts. We also made deductions for foreign inland freight, foreign brokerage and handling, and international freight, where appropriate, pursuant to section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, in accordance with section 772(d) of the Act, for commissions, warranty and credit expenses, indirect selling expenses, and inventory carrying costs. Regarding credit expenses, we found that UMC had not received payment for certain sales as of the date of verification. Consequently, we used the last day of UMC's U.S. sales verification as the date of payment for those sales and recalculated credit expenses accordingly.

Pursuant to section 772(d)(3) of the Act, gross unit price was further reduced by an amount for profit, to arrive at CEP.

D. Winbond

We calculated EP and CEP based on packed, FOB or delivered prices to unaffiliated purchasers in the United States. We made deductions from the gross unit price, where appropriate, for discounts. We also made deductions for foreign inland freight, pre-sale warehousing expenses, foreign inland insurance, foreign brokerage and handling, international freight (including air freight, U.S. inland freight from the port to Winbond's U.S. warehouse, and U.S. brokerage and handling fees), international insurance, U.S. Customs merchandise processing fees, and U.S. inland freight to customer, where appropriate, pursuant to section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, in accordance with section 772(d) of the Act, for commissions, credit expenses, advertising expenses, warranty expenses, technical service expenses, indirect selling expenses,

inventory carrying costs, and U.S. repacking expenses.

Pursuant to section 772(d)(3) of the Act, gross unit price was further reduced by an amount for profit, to arrive at CEP.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C)(i) of the Act. Because each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that there was a sufficient volume of home market sales.

Because UMC and Winbond reported home market sales to affiliated parties, as defined by section 771(4)(B) of the Act, during the POI, we tested these sales to ensure that the affiliated party sales were made at "arm's-length" prices, in accordance with our practice. (*See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (Appendix II) (July 9, 1993).) To conduct this test, we compared the gross unit prices of sales to affiliated and unaffiliated customers net of all movement charges, discounts, rebates, and packing, where appropriate. Based on the results of that test, we disregarded sales from UMC and Winbond to their affiliated parties when they were not made at "arm's-length" prices.

Based on the cost allegation contained in the petition, the Department found reasonable grounds to believe or suspect that sales in the home market were made at prices below the cost of producing the merchandise, in accordance with section 773(b)(1) of the Act. As a result, the Department initiated an investigation to determine whether the respondents made home market sales during the POI at prices below their respective COPs, within the meaning of section 773(b) of the Act.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A) and packing costs, in accordance with section 773(b)(3) of the Act. General expenses include items such as research and development (R&D) expenses, and interest expenses.

Where possible, we used the respondents' reported weighted-average COPs for each quarter of the POI, adjusted as discussed below. In cases where there was no production within the same quarter as a given sale, we referred to the most recent prior quarter for which costs had been reported. In cases where there was no cost reported for either the same quarter as the sale, or a prior quarter, we based the margin for those sales of the products in question on facts available. *See Comment 7* in the "Interested Party Comments" of this notice for further discussion.

We compared the weighted-average quarterly COP figures to home market prices of the foreign like product, less any applicable movement charges and discounts, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below their respective COPs.

In determining whether to disregard home market sales made at prices below the COP, we examined: (1) whether, within an extended period of time, such sales were made in substantial quantities; and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the ordinary course of trade.

Where 20 percent or more of a respondent's sales of a given foreign like product were made at prices below the COP, we found that the below-cost sales of that model were made in "substantial quantities" within an extended period of time, in accordance with section 773(b)(2)(B) and (C) of the Act. To determine whether prices were such as to provide for recovery of costs within a reasonable period of time, we tested whether the prices which were below the per-unit COP at the time of the sale were above the weighted-average per-unit COP for the POI, in accordance with section 773(b)(2)(D) of the Act. If such sales were found to be below the weighted-average per-unit COP for the POI, we disregarded them in determining NV.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication costs, SG&A, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. Where respondents made no home market sales in the ordinary course of trade (*i.e.*, all sales were found to be below cost), we based SG&A and profit on one of the alternatives under section 773(e)(2)(B) of the Act. Specifically, we based SG&A and profit on the weighted-average of the SG&A and profit computed for those respondents with home market sales of the foreign like product made in the ordinary course of trade. For further discussion, *see Comment 11* in the "Interested Party Comments" section of this notice.

Company-specific calculations are discussed below.

A. Alliance

We relied on the reported per-unit COPs and CVs except as follows.

1. For COP, we revised the reported R&D expenses to allocate total annual semiconductor R&D expenses over total annual semiconductor cost of sales (*see Comment 9*).

2. For CV, we based SG&A and profit on the weighted-average SG&A and profit experience of the three other respondents (*see Comment 11*).

Because all of Alliance's home market sales were made at prices below the COP, we based NV on CV. In addition to the adjustments to CV reported above, in accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset adjustment and reduced CV by the amount of weight-averaged home market indirect selling expenses and commissions incurred by those respondents with sales above the COP up to the amount of indirect expenses which were deducted from the starting price under section 772(d)(1)(D) of the Act.

B. ISSI

We relied on the reported per-unit COPs and CVs except as follows.

1. We revised the reported R&D expenses to allocate total annual semiconductor R&D expenses over total annual semiconductor cost of sales (*see Comment 9*). Additionally, we offset R&D expenses with R&D revenue (*see Comment 16*).

2. We revised the reported general and administrative (G&A) expense ratio to include physical inventory loss and loss from disposal of property, plant and equipment (*see Comment 14*) and to eliminate the double counting of marine insurance (*see Comment 15*).

3. We revised the cost of sales denominator used for the G&A and R&D expense ratios by using the cost of sales from the audited income statement.

For those comparison products for which there were sales made at prices

above the COP, we based NV on delivered prices to home market customers. We made deductions for discounts, foreign inland freight, and insurance, where appropriate, pursuant to section 773(a)(6)(B) of the Act. We also made circumstance-of-sale adjustments for credit expenses and bank charges, pursuant to section 773(a)(6)(C)(iii) of the Act.

We deducted home market indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with section 773(a)(7)(B) of the Act. In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR section 353.57. Where applicable, in accordance with 19 CFR section 353.56(b)(1), we offset any commission paid on a U.S. sale by reducing the NV by any home market commissions and indirect selling expenses remaining after the deduction for the CEP offset, up to the amount of the U.S. commission.

Where NV was based on CV, we deducted from CV the weighted-average home market direct selling expenses. In accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset adjustment and reduced NV by the amount of commissions and indirect selling expenses incurred by ISSI in Taiwan on sales of SRAMs in Taiwan, up to the amount of commissions and indirect selling expenses incurred on U.S. sales which were deducted from the starting price.

C. UMC

We relied on the reported per-unit COPs and CVs except as follows.

1. We increased the cost of manufacturing (COM) to include the market value of bonuses paid to directors, supervisors, and employees (*see Comment 8*).

2. We revised the reported costs for wafers supplied by an affiliated party to reflect the COP of the affiliate and the startup adjustment claimed by UMC (*see Comment 20*).

3. We revised the reported R&D expenses to allocate total annual semiconductor R&D expenses over total annual semiconductor cost of sales (*see Comment 9*).

4. We removed from G&A foreign exchange gains and losses generated by accounts receivable and another source.

5. We added bonuses to the cost of sales used in the denominator in the G&A, R&D and interest expense ratios.

For those comparison products where there were sales made at prices above the COP, we based NV on delivered and FOB prices to home market customers. For home market price-to-EP comparisons, we adjusted the gross unit price for billing adjustments, where appropriate. We made deductions, where appropriate, for discounts, export duties, and foreign inland freight, in accordance with section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR section 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, for differences in warranty and credit expenses. We did not allow an adjustment for home market commissions because we determined that they were not made at "arm's length." See the memorandum to Louis Apple from the Team dated September 23, 1997, for a detailed explanation.

For home market price-to-CEP comparisons, we adjusted the gross unit price for billing adjustments, where appropriate. We made deductions, where appropriate, for discounts, export duties, and foreign inland freight, pursuant to section 773(a)(6)(B) of the Act. We also made deductions for warranty and credit expenses. We deducted home market indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with section 773(a)(7)(B) of the Act. Where applicable, in accordance with 19 CFR section 353.56(b), we offset any commission paid on a U.S. sale by reducing the NV by any home market indirect selling expenses remaining after the deduction for the CEP offset, up to the amount of the U.S. commission.

For all price-to-price comparisons, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. In addition, where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with 773(a)(6)(C)(ii) of the Act and 19 CFR section 353.57.

Where CV was compared to EP, we made circumstance-of-sale adjustments, where appropriate, for credit and warranty expenses and U.S. commissions in accordance with sections 773(a)(6)(C)(iii) and (a)(8) of the Act. In accordance with 19 CFR section 353.56(b)(i), we reduced NV by the amount of indirect selling expenses incurred by UMC in Taiwan on sales of SRAMs in Taiwan, up to the amount of U.S. commissions.

Where CV was compared to CEP, we made circumstance-of sale adjustments, where appropriate, for credit and warranty expenses. We also deducted indirect selling expenses, up to the amount of commissions and indirect selling expenses incurred on U.S. sales, in accordance with 773(a)(7)(B) of the Act.

D. Winbond

We relied on the reported per-unit COPs and CVs except as follows.

1. We increased the COM to include the market value of bonuses paid to directors, supervisors, and employees (*see Comment 8*).

2. We revised the reported R&D expenses to allocate total annual semiconductor R&D expenses over total annual semiconductor cost of sales (*see Comment 9*).

3. We adjusted G&A expenses to include the unrecovered fire loss (*see Comment 27*), bank charges, and other miscellaneous expenses. Additionally, we excluded foreign exchange gains and losses on sales transactions.

4. We added bonuses to the cost of sales used in the denominators in the G&A, R&D and interest expense ratios (*see Comment 28*).

5. We increased Winbond's second quarter COM to include an unreconciled difference between its accounting records and its reported costs (*see Comment 24*).

6. We revised the COM for two products to reflect the standard cost and variance at the time of production.

Furthermore, we found at verification that, for all products, Winbond had misclassified certain variable overhead costs as fixed overhead. Because we do not have sufficient data on the record to appropriately reclassify these costs, we are unable to make difmer adjustments based on Winbond's reported variable costs. Therefore, we based the margin for all sales requiring a difmer adjustment on facts available. For further discussion, *see Comment 25* in the "Interested Party Comments" section of this notice.

Regarding EP sales, because there were no identical comparison products sold in the home market at prices above the COP, we made no EP to home market price or EP to CV comparisons. Regarding CEP, for those identical comparison products for which there were sales made at prices above the COP, we based NV on delivered prices to home market customers. We made deductions from gross unit price for discounts, import duties and development fees paid on sales to

customers outside of duty free zones. We deducted home market movement charges including pre-sale warehouse expenses, foreign inland freight, brokerage and handling charges, and inland insurance, where appropriate, in accordance with section 773(a)(6)(B) of the Act. We also made circumstance-of-sale adjustments for credit expenses (offset by the interest revenue actually received by the respondent), direct advertising expenses, warranty expenses, and post-sale payments to a third-party customer, pursuant to section 773(a)(6)(C)(iii) of the Act. We made no separate adjustment for technical service expenses, as they were included as part of R&D expenses. *See Comment 30.*

We deducted home market indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with section 773(a)(7)(B) of the Act. Where applicable, in accordance with 19 CFR section 353.56(b), we offset any commission paid on a U.S. sale by reducing the NV by any home market indirect selling expenses remaining after the deduction for the CEP offset, up to the amount of the U.S. commission. In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

Where CV was compared to CEP, we deducted from CV the weighted-average home market direct selling expenses. In accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset adjustment and reduced normal value by the amount of indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales which were deducted from the starting price.

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. *See Change in Policy Regarding Currency Conversions*, 61 FR 9434 (March 8, 1996). Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the New Taiwan Dollar did not undergo a sustained movement.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by the respondents.

Interested Party Comments

General Issues

Comment 1: U.S. Companies as Producers

Alliance, ISSI, and Galvantech argue that, as U.S. producers of subject merchandise, they should be excluded from this investigation. Specifically, these companies contend that: 1) the Department has found that the design is the essential component of the SRAMs under investigation; and 2) because their designs are developed in the United States, the SRAMs incorporating these designs are necessarily of U.S. origin.

Furthermore, Alliance, ISSI, and Galvantech maintain that the decision on origin of the subject merchandise set forth in the current scope definition (*i.e.*, where the wafer is produced) clearly conflicts with the Department's preliminary decision on who constitutes the producer in this case (*i.e.*, who controls the design). These companies state that continuing to define what constitutes subject merchandise by the origin of the wafer would lead to the treatment of U.S. companies as foreign producers, even when their home market is indisputably the United States and they have no foreign facilities. According to these companies, this result is contrary to the plain language of the dumping law, which was intended to reach foreign, not U.S., producers.

Alliance argues that the Department should harmonize its respondent and scope determinations by narrowly amending the scope of the case to exclude SRAMs from Taiwan that are imported by a U.S. design company that: 1) designed the chips in the United States; 2) controlled their production from the United States; and 3) either will use them itself or will market them from the United States. Alliance contends that this exclusion would not create a loophole that would diminish the effectiveness of any order in this case, because firms meeting the above requirements would add significant value in the United States.

According to the petitioner, Alliance, ISSI, and Galvantech have confused the Department's practice on two separate issues: 1) determining country of origin for dumping purposes; and 2) selecting the proper producer and exporter. The petitioner notes that, in past semiconductor cases, the Department has consistently based country of origin for dumping purposes on the place of wafer fabrication. Moreover, the petitioner states that the Department has not hesitated to include U.S. companies as respondents provided, as here, the elements of the Department's test for tolling are satisfied. As support for this contention, the petitioner cites several cases including *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan*, 61 FR 14064 (Mar. 29, 1996) (*PVA from Taiwan*) and *Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium and Nitrided Vanadium from the Russian Federation*, 60 FR 27957 (May 26, 1995) (*Ferrovanadium from Russia*).

According to the petitioner, the Department dealt with an identical issue in the 1993–1994 administrative reviews of the antidumping duty orders on carbon steel flat products. Specifically, the petitioner cites a December 1994 memorandum issued in those cases, where the Department stated that "the choice of respondent would be based on the party which controls the sale of the subject merchandise, including U.S. parties which subcontract part of the production process in a foreign country . . ." *See* "Discussion Memorandum: A Proposed Alternative to Current Tolling Methodology in the Current Antidumping (AD) Reviews of Carbon Steel Flat Products" from Joseph A. Spetrini, Deputy Assistant Secretary for Compliance to Susan G. Esserman, Assistant Secretary for Import Administration, dated December 12,

1994. The petitioner further notes that the analysis in those cases was consistent with the current regulation on tolling, which states that the Department will not consider a subcontractor to be the manufacturer or producer, regardless of the proportion of production attributable to the subcontracted operation or the location of the subcontractor or owner of the goods. *See* 19 CFR section 351.401(h).

DOC Position

We agree with the petitioner. The Department's current policy on subcontracted operations is to consider as the manufacturer the entity which controls the production and sale of the subject merchandise. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value. Certain Forged Stainless Steel Flanges from India,* 58 FR 68853, 68855 (Dec. 29, 1993) (*Flanges from India*). Although the new regulations are not in effect for purposes of this case, they codify this practice. According to 19 CFR 351.401(h), the Department—

> * * * will not consider a toller or subcontractor to be a manufacturer or producer where the toller or subcontractor does not acquire ownership, and does not control the relevant sale, of the subject merchandise or foreign like product.

Nowhere in either our practice or in this regulation is there a prohibition against selecting U.S. companies as producers, nor is this the first case where we have treated U.S. companies as such.[2] Indeed, we note that Alliance agreed with our respondent selection analysis at the public hearing in this case, when it stated that U.S. companies can be respondents in dumping cases if their products are within the scope. *See* page 92 of the transcript of the public hearing, dated January 22, 1998. Because the U.S. design houses control the production of the subject merchandise, as well as its ultimate sale, we find that they are the appropriate respondents here. *See* the memorandum to Louis Apple from the Team, dated September 23, 1997, regarding Treatment of Foundry Sales and the Elimination of TSMC as a Respondent for a more detailed analysis concerning this issue.

Regarding the respondents' arguments on the country of origin of their products, we disagree that the design alone confers origin. At the design stage, the SRAMs in question are merely ideas, not physical products (*i.e.*, merchandise). These designs do not become actual merchandise until they are translated onto wafers. As such, while the design may be the essential component in the finished product, the design itself is *not* merchandise.

Consistent with our past practice, we find that the place of wafer fabrication is determinative as to country of origin. *See, e.g., DRAMs from Korea.* Because the wafers in question are fabricated in Taiwan, we find that they constitute subject merchandise within the meaning of the Act. Consequently, we are continuing to treat them as such for purposes of the final determination.

Comment 2: Scope of the Investigation

The petitioner argues that the Department should clarify that the scope of the order on SRAMs from Taiwan includes the SRAM content of motherboards for personal computers. The petitioner contends that if SRAMs incorporated on motherboards are not included in the scope of the order, the respondents will shift a significant volume of SRAMs into the production of motherboards in Taiwan that are destined for the United States, thereby avoiding paying duties on the SRAMs.

In addition, argues the petitioner, while motherboards viewed as a whole may be considered to fall within a class or kind of merchandise separate from SRAMs, the placement of SRAMs on a motherboard does not diminish their separate identity or function, and should not insulate them from antidumping duties. The petitioner contends that its position is supported by: 1) the Department's practice regarding combined or aggregated products; 2) analogous principles of Customs Service classification; and 3) the Department's inherent authority to craft an antidumping order that forestalls potential circumvention of an order.

The petitioner also argues that the Customs Service can administer, without undue difficulty, an antidumping duty order that covers SRAMs carried on non-subject merchandise.

At the public hearing held by the Department, the petitioner asserted that there are fundamental differences between the scope language in *DRAMs from Korea* and the scope language in this investigation that distinguish the two cases. The petitioner first argues that the scope language in DRAMs from Korea "said that the modules had to be limited to where the function of the board was memory. That limitation does not exist in this case." *See* the transcript of the public hearing, dated January 22, 1998, at page 162. The petitioner further argues that "[i]n the DRAM case, it says that 'modules which contain additional items which alter the function of the module to something other than memory are not covered modules.' That's a fundamental difference between these two scopes that was very carefully written and very carefully put into the scope of these two cases." *See* the hearing transcript at page 163.

IDT and Cypress agree with the petitioner, arguing that SRAMs on a motherboard are no less SRAMs than those imported separately and that the Department's failure to cover such imports would provide an incentive to foreign SRAM producers to shift their sales to motherboard producers in Taiwan and elsewhere.

Alliance, ISSI, UMC, Winbond, Motorola, Compaq, and Digital oppose the petitioner's position. Alliance, Compaq, and Digital argue that the petitioner's circumvention concerns are unfounded. They note that the Department determined in *DRAMs from Korea* that DRAMs physically integrated with the other components of a motherboard in a manner that made them part of an inseparable amalgam posed no circumvention risk and that the same holds true in this case.

In addition, Alliance, Compaq, Digital, UMC, and Winbond argue that, contrary to the petitioner's assertion, SRAMs affixed to a motherboard do not retain their separate functional identities. Rather, explains Alliance, SRAMs are integrated onto motherboards by soldering, are interconnected with other motherboard elements by intricate electronic circuitry, and become part of a complex electronic processing unit representing an inseparable amalgam constituting a different class or kind of merchandise that is outside the scope of the investigation.

Finally, UMC, Compaq and Digital argue that the petitioner's proposal is unworkable from an administrative standpoint, since it would require motherboard manufacturers to track all SRAMs placed in every motherboard throughout the world. Compaq and Digital note that they cannot determine the value of Taiwan SRAMs incorporated in a particular motherboard. In addition, ISSI, Compaq, and Digital argue that the petitioner's proposal would be unadministrable by the Customs Service because the SRAM content of a motherboard cannot be determined by physical inspection and also because the petitioner has provided no realistic proposition as to how the Customs Service might carry out the petitioner's proposal on an entry-by-entry basis, given the enormous volume of trade in motherboards.

With regard to the petitioner's assertion that the scope of the language

[2] *See, e.g., PVA from Taiwan.*

in *DRAMs from Korea* is fundamentally different from the scope language in this investigation, Compaq and Digital argue that the language is quite similar and that there is no "doubt that literally the language in this Notice of Investigation and in the preliminary referred to certain modules, and those are memory modules, not any kind of board on which other elements are stuffed." *See* the hearing transcript at page 172.

DOC Position

We disagree with the petitioner. The petitioner's argument that the scope of the investigation as defined in the preliminary determination should be interpreted to encompass the SRAM content of motherboards is unpersuasive for three basic reasons. First, the SRAM content of motherboards (when affixed to the motherboard) was not expressly or implicitly referenced in the scope language used in this investigation. Second, just as we found in the investigation of *DRAMs from Korea*, the petitioner's claims about potential circumvention of the order with SRAMs soldered onto motherboards are inseparable. Third, it is not appropriate for an antidumping duty order to cover the input content of a downstream product. As the Department found in *DRAMs from Korea*, a case in which a nearly identical proposal was rejected by the Department, when a DRAM is physically integrated with a motherboard, it becomes a component part of the motherboard (an inseparable amalgam). As there has been no request to include motherboards within the scope of this investigation, the SRAM content of motherboards (when physically integrated with the motherboard) cannot be covered.

As to the first point, we disagree with the petitioner's assertion that the differences between the scope language in *DRAMs From Korea* and the language in this case are so fundamental that the differences can be interpreted to mean that SRAMs soldered onto motherboards are included within the scope of this investigation. The SRAM scope language relied upon by the petitioner includes within the scope of this investigation "other collection[s] of SRAMs;" as the petitioner notes in its argument, this refers specifically to modules whether mounted or unmounted on a circuit board. There is similar scope language in *DRAMs From Korea*. In that case, we interpreted the language as not extending to modules which contain additional items which alter the function of the module to something other than memory. Such an interpretation, applied to this case, indicates clearly that the SRAM content of motherboards is not within the scope of this investigation.

We found in *DRAMs From Korea* that memory boards whose sole function was memory were included within the definition of memory modules; however, we further concluded that other boards, such as video graphic adapter boards and cards were not included because they contained additional items which altered the function of the modules to something other than memory. Consequently, at the time of the final determination, we added language to the *DRAMs From Korea* scope in order that these other, enhanced, boards be specifically excluded. Since the issue of such enhanced boards was not raised in this case, we did not find it necessary to include an express exclusion for such products. Thus, the absence of such language should not be interpreted to permit the inclusion of products which do not fall under the rubric of "other collections of SRAMs."

As to the second point, the petitioner argued in *DRAMs from Korea* that unremovable DRAMs on motherboards should be included in the scope of the order to counter the potential for circumvention of the order. We stated in our determination that we considered it "infeasible that a party would import motherboards with the intention of removing the integrated DRAM content and, therefore, consider it unreasonable to expect that any order arising from this investigation could be evaded in such a fashion." *See* the memorandum to Joseph Spetrini from Richard Moreland, dated March 15, 1993, at page 13, attached as Exhibit 1 to Winbond's submission of January 7, 1998. We find it equally infeasible that an importer would import SRAMs soldered onto a motherboard for the sole purpose of removing those SRAMs for individual resale thereby circumventing the antidumping duty order.

As to the third point, our statute does not provide a basis for assessing duties on the input content of a downstream product. *See* Senate Rep. 100–71, 100th Congress, 1st Sess. 98 (1987) (in which the report notes both the general rule and the "major input" exception, which applies only in an investigation or review of a downstream product). Thus, where an SRAM loses its separate identity by being incorporated into a downstream product, and where the investigation covers SRAMs but does not cover the downstream product, there can be no basis for assessing duties against the SRAMs incorporated in the downstream product.

For a more detailed discussion regarding this issue, see the memorandum to Louis Apple from the Team, dated February 13, 1998.

Comment 3: Selection of Dumping Margin for Galvantech

Galvantech argues that, if the Department does not exclude its products from the scope of the investigation, the Department should assign Galvantech the margin calculated for ISSI for purposes of the final determination. According to Galvantech, 19 U.S.C. § 1677(e) requires the Department to determine an importer's margin based on the most reliable information available. Galvantech asserts that, in this case, ISSI's margin is the most reliable information applicable to Galvantech because both companies fabricate wafers using the same foundry under similar foundry agreements. Galvantech asserts that the all others rate is less reliable because it does not contain any information related to either Galvantech or its foundry.

The petitioner asserts that Galvantech is not entitled to ISSI's margin as facts available. According to the petitioner, Galvantech provides no compelling reason for the Department to abandon its standard practice in this investigation and assign one individual respondent's rate to a non-participating producer. The petitioner notes that, because Galvantech neither submitted a questionnaire response nor participated in verification, the Department has no basis to determine that Galvantech is more similarly situated to ISSI than to Alliance, another design house without a fabrication facility (*i.e.*, "fabless") that received a preliminary dumping margin which exceeded the all others rate.

DOC Position

We agree with the petitioner that Galvantech should not be assigned ISSI's margin. The Department's practice in this area is to assign the all others rate to any company not specifically investigated in a proceeding. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737, 9742 (Mar. 4, 1997) (*Rebar from Turkey*). Consistent with this practice, we have assigned Galvantech the all others rate because it was not a respondent in this investigation.

We note that the all others rate is not intended to set the rate at which antidumping duties are ultimately assessed on entries of subject merchandise. Rather, the all others rate merely establishes the level of antidumping duty deposits required on future entries. Prior to the time that

actual duty assessments are made, each exporter, importer or producer of subject merchandise has the right to request that the Department conduct an administrative review of its actual entries and determine its dumping liability on a company-specific basis. In the event that an antidumping duty order is issued in this case, Galvantech will have an opportunity to request such an administrative review.

Comment 4: Exclusion of TSMC as a Respondent

TSMC argues that the decision to exclude it as a respondent in this investigation is not supported by evidence on the record, and is contrary to applicable laws, regulations, precedent, and requirements for procedural fairness.

Specifically, TSMC cites 19 CFR section 351.401(h),[3] stating that TSMC qualifies as both a manufacturer and an interested party because evidence on the record establishes that TSMC acquires ownership of the subject merchandise and that design houses do not control TSMC's sales of subject merchandise.[4]

In addition, TSMC contends that the Department based its decision on erroneous information, including the following: (1) design houses perform all of the R&D for SRAMs; (2) design houses tell the foundries what and how much to produce; (3) TSMC has no right to sell wafers to any party other than the design house unless it fails to pay for the wafers; (4) design houses own and provide masks for the production process; and (5) masks are considered to be inputs into the production of SRAMs. TSMC argues that it is a proper respondent because it performs all process R&D, freely negotiates production quantities and types, freely contracts to supply merchandise exclusively to particular design houses, and makes and maintains possession of virtually all masks used in its fabrication facilities (also known as "fabs"). Moreover, TSMC characterizes masks as equipment used in the wafer fabrication process, rather than raw material inputs.

TSMC also states that, based on the facts on the record and the Department's practice of granting manufacturer status to, and calculating individual margins for, producers that manufacture and sell custom-made products, it should be considered the producer of the subject merchandise. TSMC cites the following cases in support of its position: *Flanges from India, Notice of Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan*, 62 FR 24394 (May 5, 1997), *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 54 FR 18992, 19012 (May 3, 1989) (*AFBs*), *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081 (Jan. 15, 1997), *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Preliminary Results of Antidumping Duty Administrative Reviews*, 61 FR 51891 (Oct. 4, 1996), *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan*, 61 FR 38139 (July 23, 1996), *Mechanical Transfer Presses from Japan; Final Results of Antidumping Administrative Review*, 62 FR 11820 (Mar. 13, 1997), and *Large Power Transformers from Japan; Final Results of Antidumping Duty Administrative Review*, 56 FR 29215 (June 26, 1991). In addition, TSMC cites *Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 58 FR 32644 (June 11, 1993), claiming that, as in that case, the Department should grant TSMC manufacturer status because it bought raw materials used to produce subject merchandise, controlled the process of manufacture, and performed processing on the subject merchandise.

TSMC claims that, by making the decision to exclude it at the preliminary determination and, therefore, to not verify it, the Department denied any meaningful opportunity for TSMC to present its case. Finally, TSMC argues that, if the Department upholds its decision that the design house is the producer of the subject merchandise, the Department should also find that TSMC's products (*i.e.*, SRAM wafers) are of U.S. origin. Accordingly, TSMC argues that the Department should exclude its wafers from the scope of the investigation.

The petitioner states that the Department properly excluded TSMC as a respondent for the following reasons: (1) the Department properly determined that TSMC is not a proper producer or exporter based on applicable law and regulations regarding "tolling"; (2) the Department's decision is fully grounded in the record with respect to each element of an affirmative finding of tolling between TSMC and its design houses; (3) the cases cited by TSMC are distinguishable from the instant case, as described in the memorandum to Louis Apple from the Team, dated September 23, 1997; and (4) TSMC was afforded due process not only because the memorandum to Louis Apple from the Team, dated May 15, 1997, regarding respondent selection, implied that TSMC would not be considered a proper respondent if all of its sales were made through foundry agreements, but also because all interested parties were given an opportunity to comment on this issue after the preliminary determination.

DOC Position

We agree with the petitioner. The preliminary determination to exclude TSMC as a respondent in this investigation was made after taking into account the evidence on the record, and was in accordance with applicable law, regulations, and precedent. Regarding TSMC's claim that the Department based its decision on erroneous information, we continue to reach the central conclusions set forth in our decision memorandum on this issue. See the memorandum to Louis Apple from the Team, dated September 23, 1997, regarding Treatment of Foundry Sales and the Elimination of TSMC as a Respondent. As we stated in this memorandum,

> Regarding control over production in this case, after reviewing and analyzing the information submitted by respondents, including the contracts between the design houses and the foundries, we believe that the entity controlling the wafer design in effect controls production in the SRAMs industry. The design house performs all of the research and development for the SRAM that is to be produced. It produces, or arranges and pays for the production of, the design mask. At all stages of production, it retains ownership of the design and design mask. The design house then subcontracts the production of processed wafers with a foundry and provides the foundry with the design mask. It tells the foundry what and how much to make. The foundry agrees to dedicate a certain amount of its production capacity to the production of the processed wafers for the design house. The foundry has no right to sell those wafers to any party other than the design house unless the design house fails to pay for the wafers. Once the design house takes possession of the processed

[3] TSMC cites to the new regulations as a codification of current Department practice.

[4] TSMC considers the relevant sale to be its sale of SRAM wafers to its design house customers in the United States and Taiwan. However, the Department preliminarily determined that the relevant sale in a foundry agreement is the ultimate sale of SRAMs made by the design house.

wafers, it arranges for the subsequent steps in the production process. The design of the processed wafer is not only an important part of the finished product, it is a substantial element of production and imparts the essential features of the product. The design defines the ultimate characteristics and performance of the subject merchandise and delineates the purposes for which it can be used. The foundries manufactured processed SRAMs wafers using the proprietary designs of the design houses during the POI. As such, they did not control the production of the wafers in question, but merely translated the design of other companies into actual products.

We agree with TSMC that there are certain factual errors in the memorandum of September 23, 1997, but disagree as to the significance of these errors. With regard to the first alleged "error" identified by TSMC, we agree that the process R&D is performed by the foundry, but note that the design houses are responsible for all product-related R&D as well as the proprietary designs. These steps impart the essential features of the product and define its ultimate characteristics and performance. With regard to the second alleged "error," we agree that the production quantities and types are negotiated between the foundry and the design houses; this fact neither supports nor undermines a finding that the design houses are the producers of the subject merchandise. With regard to the third alleged "error," we note that TSMC does not dispute the finding that the foundry has no right to sell wafers to any party other than the design house unless the design house fails to pay for the wafers. With regard to the fourth alleged "error," while it may be true that the masks are produced and retained for a limited time by the foundry, the party that provides the design imparts the essential features of both the mask and the product; indeed, the design house controls the use of the mask just as much as it controls the use of the finished product (in that TSMC is obligated at some point to destroy the mask to prevent unauthorized reuse). With regard to the fifth alleged "error," we do not find the characterization of the masks as either "inputs" or "equipment" to be a relevant distinction in this case.

With regard to TSMC's argument that this case is analogous to cases in which the Department has found the manufacturer of a "custom-made" product to be the producer, we note that the decision memorandum concluded with the finding that "[t]he design of the processed wafer is not only an important part of the finished product, it is a substantial element of production and imparts the essential features of the product. The design defines the ultimate characteristics and performance of the subject merchandise and delineates the purposes for which it can be used." This case is not analogous to cases in which the purchaser merely provides product specifications to the manufacturer. Moreover, we find unpersuasive TSMC's reference to *AFBs*. The issue discussed by the Department in the cited portion of the notice was whether certain custom-designed bearings were within the scope of the investigation. The Department did not discuss the question of whether the bearing designer, as opposed to the bearing manufacturer, should be considered to be the respondent.

Finally, with regard to TSMC's argument that its wafers should not be covered by the scope of the investigation, we find that these wafers constitute subject merchandise. As subject merchandise, we find that they are properly included in the scope. For further discussion, see *Comment 1*, above.

Comment 5: Facts Available for TI–Acer

For the preliminary determination, the Department assigned TI–Acer a margin based on adverse facts available because it did not respond to the antidumping questionnaire. TI–Acer argues that the Department should not assign it a dumping margin based on adverse facts available because TI–Acer has no record of receiving the questionnaire. Rather, TI–Acer asserts that the Department should apply the all others rate, consistent with both previous legal decisions and the Department's treatment of other companies in this investigation. (*See Queen's Flowers de Colombia v. United States*, Slip Op. 97–120 (CIT Aug. 25, 1997) (*Queen's Flowers*), where the Court of International Trade found that the use of facts available was unwarranted when a respondent did not receive the questionnaire, and the Department's preliminary determination in this investigation, where the Department applied the all others rate to a company that could not be located.) TI–Acer claims that it should be subject to the all others rate because it is not a producer of subject merchandise and section 735(c)(1)(B)(i)(II) of the Act states that the all others rate is applied to all exporters and producers not individually investigated.

DOC Position

We disagree with TI–Acer's assertion that the Department should assign it the all others rate. In *Queen's Flowers*, the Department found that the application of facts available was unwarranted because the questionnaire was delivered to the wrong address. However, in this case the questionnaire was sent to TI–Acer's correct address and, according to records obtained from the courier, was accepted by TI–Acer. *See* the Department's letters addressed to TI–Acer dated October 22 and December 9, 1997.

Regarding TI–Acer's assertion that it should be assigned the all others rate under section 735(c)(1)(B)(i)(II) of the Act because it was not individually investigated, we note that our investigation of TI–Acer began with the issuance of the questionnaire. Because TI–Acer did not file a timely questionnaire response, we were unable to determine that it was not a significant producer or exporter of subject merchandise and, consequently, to determine that it did not warrant individual investigation. For this reason, we found that TI–Acer failed to act to the best of its ability and applied adverse facts available to it for the preliminary determination. Since the time of the preliminary determination we have not received any information which would cause us to change this decision. Accordingly, we have assigned a dumping margin to this company based on adverse facts available for purposes of the final determination. This margin, 113.85 percent, is the highest margin stated in the notice of initiation.

Comment 6: CEP Offset

The petitioner contends that the Department should make no CEP offset adjustment for any respondent for purposes of the final determination. The petitioner asserts that the Department's practice of determining the number and comparability of levels of trade after making all adjustments to CEP, but before adjusting NV, makes CEP offsets virtually automatic. According to the petitioner, under both the plain terms of the statute and the intent of Congress, such adjustments should be the exception, not the rule. The petitioner notes that it raised the same argument in another case and that the issue is being litigated. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 62 FR 965 (Jan. 7, 1997) (*1994–1995 DRAMs Review*).

In addition to this general argument, the petitioner asserts that the Department specifically erred in granting a CEP offset adjustment to UMC because UMC neither requested an adjustment nor demonstrated that it was entitled to one. According to the

petitioner, the Department's practice is to require respondents to affirmatively request adjustments in their favor and to demonstrate entitlement for these adjustments. As support for this position, the petitioner cites *Mechanical Transfer Presses From Japan; Final Results of Antidumping Administrative Review*, 61 FR 52910 (Oct. 9, 1996) (*Mechanical Transfer Presses*) and *Cold-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Administrative Review*, 62 FR 18476 (April 15, 1997) (*Cold-Rolled Carbon Steel Flat Products*).

The respondents disagree, noting that the statute requires that a level of trade analysis be performed only after adjustment is made for U.S. selling expenses. *See* 19 U.S.C. § 1677b(a)(7)(A). The respondents further state that the Department's practice in this area is both clear and consistent with the statute. As support for this proposition, the respondents cite the *1994–1995 DRAMs Review*, where the Department stated that the level of trade will be evaluated based on the price after adjustments are made under section 772(d) of the Act. The respondents maintain that there is nothing new in the law or the facts of this investigation to suggest that the Department should reexamine its practice of beginning its level of trade analysis after adjusting for U.S. expenses.

The respondents further assert that the Department properly interpreted its statutory mandate by granting CEP offset adjustments in this case. Specifically, the respondents assert that they have supported their claims for these adjustments in their questionnaire responses and the Department verified the basis for these claims.

Regarding the offset granted to UMC, UMC argues that nothing in the statute imposes an obligation on a respondent to claim a CEP offset. Nonetheless, UMC states that it effectively asked the Department for the equivalent of an offset when it requested that the Department find two levels of trade in the home market and the United States.

Moreover, UMC asserts that the cases cited by the petitioner (*i.e.*, *Mechanical Transfer Presses* and *Cold-Rolled Carbon Steel Flat Products*) do not apply here, as the former involved a company which submitted no information showing a difference in selling functions and the latter involved a company which made inconsistent statements involving level of trade in its questionnaire responses. UMC states that, since the beginning of the case, it has consistently provided information showing that it qualifies for a CEP offset. Consequently, UMC states that the statute leaves the Department with no choice but to grant one.

DOC Position

We agree with the respondents. As we stated in the *1994–1995 DRAMs Review*, the Department has—

> consistently stated that, in those cases where a level of trade comparison is warranted and possible, then for CEP sales the level of trade will be evaluated based on the price after adjustments are made under section 772(d) of the Act (see *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan; Notice of Final Determination of Sales at Less Than Fair Value*, 61 FR 38139, 38143 (July 23, 1996). In every case decided under the revised antidumping statute, we have consistently adhered to this interpretation of the SAA and of the Act. *See, e.g., Aramid Fiber Formed of Poly para-Phenylene Terephthalamide from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 15766, 15768 (April 9, 1996); *Certain Stainless Steel Wire Rods from France; Preliminary Result of Antidumping Duty Administrative Review*, FR 8915, 8916 (March 9, 1996); *Antifriction Bearings (Other Than Tapered Roller Bearings) and parts Thereof from France, et. al., Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 25713, 35718–23 (July 8, 1996).

The Department's practice in this area is clear. Accordingly, consistent with this practice, we performed our level of trade analysis only after adjusting for selling expenses deducted from CEP starting price pursuant to section 772(d) of the Act. Based on our analysis, we determined that each respondent sold SRAMs during the POI at a level of trade in the home market which was different, and more advanced, than the level of trade at which it sold SRAMs in the United States.

Because there is insufficient information on the record to make a level of trade adjustment for any respondent in this case, we have granted a CEP offset adjustment for purposes of the final determination, in accordance with section 773(a)(7)(B) of the Act. Each of the respondents, including UMC, provided sufficient data to justify this adjustment.

Comment 7: Use of Production Costs Incurred After the Quarter of Sale

The petitioner argues that the Department should compare home market sales with quarterly costs for the same or a prior quarter when performing the cost test, rather than using costs incurred in subsequent quarters. The petitioner asserts that use of actual production costs is particularly important in this case, because the Department found that there was a significant and consistent price and cost decline which requires the use of quarterly data. The petitioner contends that the Department should use facts available for those sales where the respondents have not provided actual cost data. As facts available, the petitioner argues that the Department should use the weighted-average dumping margin calculated for all other sales by that respondent.

ISSI does not dispute the use of quarterly costs incurred in the same or a prior quarter as the quarter of sale. However, ISSI contends that, when those costs are not on the record, the Department should use either: (1) The reported costs from the closest subsequent quarter in which production occurred (*i.e.*, the methodology employed in the preliminary determination); or (2) the weighted-average margin calculated for ISSI's other sales. According to ISSI, the latter methodology is the Department's practice when adverse facts available is not warranted.

Alliance argues that the petitioner's arguments do not apply, because it supplied all of the data requested by the Department.

DOC Position

We agree with the petitioner, in part. We requested that all respondents provide cost data in the same quarter as the quarter of their home market and U.S. sales, or, when production did not occur in that quarter, to provide cost data for the most recent prior quarter in which production did occur. UMC and Winbond complied with these requests. Accordingly, we have used their cost data for purposes of the final determination. However, Alliance and ISSI did not submit production costs on this basis for a small number of products. Moreover, ISSI did not report production costs at all for one product. Because we afforded respondents the opportunity to report their actual costs for these products and Alliance and ISSI failed to do so, we have based the dumping margins for the associated sales on facts available.

Regarding Alliance, as facts available, we have used the weighted-average dumping margin calculated for all of Alliance's other sales. We have determined that this methodology is appropriate, given that, after the preliminary determination, Alliance was not given an express opportunity (unlike the other respondents, including ISSI) to provide the necessary data.

Regarding ISSI, we have determined that, contrary to the petitioner's neutral facts available methodology, an adverse assumption is appropriate. Because ISSI

has not explained why it was unable to provide the requested data, we find that ISSI has failed to cooperate to the best of its ability in complying with our requests for this information. Accordingly, as adverse facts available, we have used the highest non-aberrant margin calculated for any of ISSI's other U.S. sales, consistent with our treatment of ISSI's unreported costs in the preliminary determination.

Comment 8: Cash and Stock Bonus Distributions to Directors, Supervisors, and Employees

UMC and Winbond argue that cash and shares of company stock given to their employees are distributions of profits that should not be included in the calculations of COP or CV. These respondents argue that these distributions are not recorded on their audited financial statements as an expense, but as direct reductions to retained earnings. In addition, Winbond argues that its distributions are paid out of post-tax earnings and are, therefore, not tax-deductible. The respondents note that section 773(f)(1)(A) of the Act states that COP and CV shall normally be calculated based on the books and records of the exporter or producer of the merchandise if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country, and if such records reasonably reflect the costs associated with the production of the merchandise under investigation. The respondents claim that these requirements are met by their consistent treatment of these stock distributions as reductions to retained earnings, in accordance with Taiwan GAAP.

The respondents argue that the distributions are analogous to dividends, which the Department has previously excluded from COP and CV. Specifically, Winbond maintains that, as with dividends, the company shareholders alone have the ability to authorize these payments. In support of its position, Winbond presented a letter from its Taiwanese attorneys which argues that cash and stock distributions to employees are treated as equivalent to dividends. Winbond also claims that English versions of its financial statements refer to the employee stock distributions as "bonus shares" in a short-hand, casual manner, which is factually inaccurate and prejudicial. Winbond argues that readers of its financial statements understand that such distributions are actually a transfer of wealth from shareholders to employees. Winbond also presented a letter from its auditing firm which stated that the distributions were issued from equity, rather than company capital, and, as such, are more akin to preferred stock than bonuses under U.S. GAAP.

Winbond argues that the Department has consistently held that payments made by a company on behalf of its owners are not costs of production, even if they are carried on the company's books. In support of its position, Winbond cites to *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Colombia*, 60 FR 6980, 7000 (Feb. 6, 1995) (*Colombian Roses*) and *Final Determination of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand*, 57 FR 13695, 13704 (April 17, 1992) (*New Zealand Kiwifruit*). Winbond also cites to *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Austria*, 60 FR 33551, 33557 (June 28, 1995) (*Austrian OCTG*), claiming that the bonus distributions are similar to dividends which were recorded in the equity section of the balance sheet rather than on the income statement.

Likewise, UMC argues that the recipients of its distributions are in a similar position to shareholders who receive dividends. UMC notes that the value of company stock varies with its performance and the recipients of distributions and dividends both share the economic risk the company faces. UMC argues that company stock distributed to employees represents a conveyance of ownership rights, and thus these distributions are more akin to dividends than to the cash distributed as bonuses to employees in *Porcelain-on-Steel Cookware from Mexico: Notice of Final Results of Antidumping Duty Administrative Review*, 62 FR 25908, 25914 (May 12, 1997) (*Mexican Cookware*).

The respondents claim that treating employee stock distributions as a cost of production would be contrary to Department practice. UMC cites *Notice of Final Results of Antidumping Duty Administrative Review: Ferrosilicon from Brazil*, 62 FR 43504, 43511 (August 14, 1997) (*Ferrosilicon from Brazil*), where the Department treated "social contributions" for employees as a type of federal income tax and excluded the costs from the calculation of G&A expenses. Similarly, Winbond cites the Department's treatment of the enterprise tax in *Final Determination of Sales at Less Than Fair Value: High Information Content Flat Panel Display Screen and Glass Therefor from Japan*, 56 FR 32376, 32392 (July 16, 1991) (*Flat Panel Displays from Japan*), where the tax was levied on the basis of corporate income and unrelated to the COP.

Finally, the respondents argue that, should the Department decide to include employee stock distributions in COP and CV, the stock should be valued at par rather than at market value. The respondents claim that the par value more accurately reflects the cost of the transaction, as reflected in their accounting records. However, UMC asserts that, if the Department uses market value, it should discount the value of the distributions for associated risk factors because to do otherwise would overstate their value. Finally, arguing that the Department's calculation was incorrect under U.S. GAAP, Winbond presented a calculation prepared by its auditors setting forth their calculation of the market value of the distributions.

The authorities on Taiwan argue that the record in this case provides substantial evidence that stock distributions bear no relationship to production costs and have been properly classified as adjustments to retained earnings. The authorities on Taiwan state that this evidence includes: (1) A clear record of prior accounting treatment; (2) the fact that the existence and amount of stock distributions are ultimately controlled by shareholders; (3) the fact that stock bonuses are not tax deductible; and (4) the fact that the market value of the stock can and has fluctuated significantly.

The petitioner argues that the Department correctly classified the stock distributions in question as bonuses and properly included them in COP and CV. The petitioner points out that the Department's questionnaire requires respondents to report all compensation to employees, including bonuses. Moreover, the petitioner argues that, not only does U.S. GAAP prohibit companies from excluding stock bonuses from the income statement, but also excluding a significant portion of employee remuneration from the cost calculation fails to reasonably reflect the costs associated with the production of subject merchandise. Therefore, according to the petitioner, it is appropriate for the Department to adjust the costs as recorded in the respondents' normal books and records.

The petitioner points to an article prepared by ING Barings in March 1996 which states that net margins for some Taiwan electronics corporations "are deceptively high * * * due to the way employee bonus shares are distributed and the way accounting is treated." *See* the petitioner's letter dated September 3, 1997. According to the petitioner, the ING Barings report notes that the Taiwan GAAP treatment of such

bonuses permits companies to retain key employees while giving the appearance of high profitability, and characterizes such bonuses as a hidden cost not reflected in the income statement.

The petitioner asserts that the respondents' arguments regarding the control and authorization of bonuses by company shareholders are irrelevant and that such arguments do not change the fact that these amounts represent a cost of labor. The petitioner claims that stock and cash payments represent compensation by UMC and Winbond to their employees because they are paid in return for work performed for the company. The petitioner notes that U.S. GAAP states that, with regard to stock options, "Employees provide services to the entity—not directly to the individual stockholders—as consideration for their options * * * To omit such costs would give a misleading picture of the entity's financial performance." *See* Statement of Financial Accounting Standards (SFAS) No. 123, issued by the Financial Accounting Standards Board (FASB) in October 1995, at paragraph 90.

The petitioner argues that the Department has previously found that payments to employees, in whatever form, are a part of the compensation paid to employees and should be treated no differently than salaries or other employee benefits because they flow directly to a factor of production. *See Mexican Cookware.* The petitioner claims that the Department did not conclude in *Mexican Cookware* that if the bonuses had been made in the form of stock then they should be excluded from cost, despite the respondents' arguments to the contrary.

According to the petitioner, stock bonuses should be included in COP and CV at the market value. The petitioner argues that the par value of stock is purely nominal, with no relationship to the stock's actual value. The petitioner notes that the par value of stock for all companies in Taiwan is set at NT$10 and that the use of par value ignores the economic substance of the transaction. The petitioner points out that U.S. GAAP rejects the use of par value and instead requires that bonuses be recorded at the market value on the date the stock or stock option is granted.

DOC Position

We agree with the petitioner. The amounts distributed by UMC and Winbond to their directors, supervisors, and employees, whether in the form of stock or cash, represent compensation for services which the individual has provided to the company. Therefore, in accordance with section 773(f)(1)(A) of the Act, we have determined that it is appropriate to include these amounts in the calculation of COP and CV.

We acknowledge that the respondents' treatment of these distributions as reductions to equity is in accordance with Taiwan GAAP. However, we find that this treatment is contrary to the requirements of section 773(f)(1)(A) of the Act, as it does not reasonably reflect the respondents' cost of production, because the stock transferred to employees in exchange for their labor is a cost to the company that is not reflected in the reported COPs and CVs.

Specifically, we disagree with the respondents' classification of these payments as dividends. First, we note that they are identified on the respondents' English version audited financial statements as bonuses. Second, we note that the distribution arrangement is set forth in each company's articles of incorporation, is known to the individuals that seek employment at UMC or Winbond and is considered by each company's management when setting wage and salary levels.[5]

Authorization by the stockholders does not mean that the distributions are not a cost to the company; we note that the company is foregoing the opportunity to acquire capital by issuing or selling those shares to investors at the market price. The economic substance of the distributions is that the directors, supervisors and employees have performed services for the company and the stock and cash distributions are provided to them as additional compensation for their services. Under U.S. GAAP, these distributions would be reported as an expense on the income statement and not as a deduction from retained earnings.

We disagree with the respondents' claims that the inclusion of these amounts in COP and CV contradicts Department's normal practice and is contrary to our findings in *Mexican Cookware.* The Department addressed the issue of profit-sharing in *Mexican Cookware*, where profit-sharing was accounted for in a similar manner. In *Mexican Cookware* we stated that profit-sharing is distinct from dividends in that the profit-sharing distributions represent a legal obligation to a productive factor in the manufacturing process and not a distribution to the owners of the company. Dividends paid to shareholders would not be considered a cost by the Department. In *Mexican Cookware,* as in this case, the distributions were to employees in exchange for their services on behalf of the company. It is irrelevant that company employees who receive stock bonuses obtain ownership rights and will thereafter share an economic risk with other shareholders.

Furthermore, we disagree with Winbond's interpretation of the Department's practice, as presented in *Colombian Roses, New Zealand Kiwifruit,* and *Austrian OCTG.* In *Colombian Roses,* the amounts paid out by the respondent were excluded because the recipient of the payments did not perform any service for the company. In the instant case, however, the stock distributions made by UMC and Winbond are compensation to company employees for their services. Similarly, in *New Zealand Kiwifruit* the Department excluded from COP costs which were determined to be the owner's personal expenses. Contrary to Winbond's claim, the *New Zealand Kiwifruit* decision does not indicate that the Department excluded costs which were recorded in the respondent's accounting records. Finally, we note that *Austrian OCTG* supports the Department's decision in this case, because in *Austrian OCTG* the Department noted that "profit sharing plans are directly related to wages and salaries. Profit distributions to employees are treated in a manner similar to bonuses * * * these mandatory payments represent compensation to the employees for their efforts in the production of merchandise and the administration of the company." The same circumstances exist here and our treatment of employee stock distributions is entirely consistent with the decision made in *Austrian OCTG.* Finally, regarding Winbond's attempts to compare its stock distributions to the dividends paid out in *Austrian OCTG,* we note that stock distributions can be easily distinguished from dividends, as discussed in *Mexican Cookware.*

We find that the respondents' cites to *Ferrosilicon from Brazil* and *Flat Panel Displays from Japan* are equally misplaced. In those cases the amounts were charges by the government to the company, rather than amounts authorized by the board of directors and paid by the company to its employees.

Regarding the respondents' claim that we should value the stock distributions at par value (which reflects the amount at which they are recorded in the

[5] For example, UMC announces on its Internet home page, under the heading of "Employment opportunities—Compensation" that a "fixed portion of surplus profit is passed to employees as either cash or UMC shares." Winbond announces on its home page that its compensation and benefits include "holiday bonuses" and "profit sharing."

companies' financial statements), we disagree. Because the par value of company stock in Taiwan is set under the Company Law at NT$10 for each company, we find that the stock's par value does not represent the value of the distribution to the employees. As described in Intermediate Accounting (8th Edition, Kieso & Weygandt, 1995) at 739, par value "has but one real significance; it establishes the maximum responsibility of a stockholder in the event of insolvency or other involuntary dissolution. Par value is thus not 'value' in the ordinary sense of word."

We agree with the petitioner that these distributions should be valued at fair market value. Under U.S. GAAP, as directed by the FASB in SFAS No. 123, shares of stock awarded to employees should be valued at the fair value of the stock at the grant date. The SFAS also directs that, "If an award is for past services, the related compensation cost shall be recognized in the period in which it is granted." In the instant case, the stock distributed by UMC and Winbond in the current year was for service of the prior year. Under U.S. GAAP, it is appropriate to recognize the compensation cost in the period when it was granted. Therefore, the stock bonus granted during 1996 for 1995 service should be recognized as a cost during 1996.

As to the determination of fair market value, because the employee stock bonuses were authorized by UMC and Winbond shareholders at the annual shareholders' meetings, our preference would be to value the stock at the market price on those dates. However, since the dates of those meetings are not on the case record, we have valued the stock distributions on the dates of issuance. This is a reasonable surrogate because employees do not receive the stock until the date of issuance and, thus, the value of what they are receiving is not fixed until that date. We note that using the closing stock price on the date of issuance accounts for market risk associated with the distribution. We disagree with the calculation prepared by Winbond's auditors because that calculation incorrectly values Winbond stock at the company's fiscal year end, rather than the grant date specified under U.S. GAAP.

We also disagree with the arguments raised by the authorities on Taiwan. The record supports the Department's determination that the cash and stock distributions represent compensation to directors, supervisors, and employees and, therefore, they are a cost within the meaning of section 773(f)(1)(A) of the Act, despite the accounting treatment prescribed by Taiwan GAAP. We acknowledge the existence of the specific items that the government of Taiwan points to as evidence, but we disagree with the government of Taiwan's conclusion that these items support the exclusion of the cash and stock distributions from the respondents' COP and CV.

Comment 9: Research and Development Expenses

Each of the four respondents argues that the Department improperly allocated semiconductor R&D expenses to all semiconductor products in the preliminary determination.

Alliance claims that such an allocation is inappropriate because companies without fabrication facilities, such as Alliance, engage in R&D for circuit design of new products, rather than in the process R&D pursued by companies that fabricate SRAM wafers. Alliance refers to a letter from Professor Bruce A. Wooley which states that, "[I]n the case of circuit design techniques there is virtually no cross-fertilization among various classes of memories." *See* exhibit one of Alliance's submission dated September 15, 1997. Alliance claims that the articles proffered by the petitioner to support its claim that R&D conducted in one area benefits other areas mainly relate to process technology which may benefit a variety of products and to the incorporation of separate designs on a single chip; they do not address whether design technology from one type of memory product benefits the design of another. Alliance argues that both its verified R&D information and the fact that the company separates product-specific R&D for accounting purposes demonstrate that the R&D conducted by Alliance is product-specific design R&D, which does not benefit all products. Alliance argues that, if the Department determines that cross-fertilization of design R&D among memory products does occur, it should still not aggregate product-specific R&D for logic products with product-specific R&D for memory products.

In addition, argues Alliance, if the Department allocates R&D expenses over all SRAM products, it should calculate the R&D expense factor using the costs incurred during the POI, rather than the company's fiscal year. Alliance claims that the Department's intention in the preliminary determination was to "allocate the total amount of semiconductor R&D for the POI over the total cost of sales of semiconductor products sold during the POI, using an annual ratio." Alliance argues that the Department incorrectly calculated its R&D ratio using data from its fiscal year, rather than the expenses incurred during the POI.

ISSI claims that the methodology followed by the Department in previous cases where it allocated all semiconductor R&D expenses to all semiconductor products does not apply to ISSI because it is a non-integrated, U.S.-owned and controlled, fabless semiconductor producer. *See e.g., Dynamic Random Access Memory Semiconductors from Korea: Final Results of Antidumping Duty Administrative Review*, 61 FR, 20216, 20217 (May 6, 1996). ISSI asserts that the Department should accept its R&D expense allocation methodology because ISSI performs largely design R&D which, unlike process R&D, is specific to a given product category and has no application or benefit to other product groups. ISSI notes that it separated and allocated design R&D expenses into the distinct, non-overlapping product areas of volatile memory (*i.e.*, DRAMs and SRAMs), non-volatile memory, and logic.

UMC argues that the Department should allocate process and design R&D only for memory products to SRAMs, not total semiconductor R&D to all semiconductors. UMC contends that, while it may be appropriate to allocate process R&D across all semiconductor products in some instances, it is not appropriate to use this methodology with product-specific design R&D. Moreover, UMC argues that the Department's practice is to use product-specific costs and cites to the Court of International Trade's decision in *Micron Technology, Inc.* v. *U.S.* 893 F. Supp. 21, 27 (CIT, 1995) (*Micron Technology*). UMC argues that the CIT stated in *Micron Technology* that R&D costs may not be allocated on an aggregate basis unless there is substantial evidence demonstrating that the subject merchandise benefits from R&D expenditures earmarked for non-subject merchandise. UMC states that, in this case, there is no credible evidence on the record demonstrating that the subject merchandise benefits from non-subject R&D (*i.e.*, there are no specific instances on the record of cross-fertilization of R&D across product lines). In addition, UMC claims that a number of detailed statements on the record by semiconductor experts unanimously conclude that there is virtually no benefit accruing to memory products from R&D performed on non-memory products.

Furthermore, argues UMC, the Department should differentiate the Taiwan SRAM industry from its Korean counterpart, in that most Korean firms

are highly integrated, while much of the Taiwan industry consists of segmented production. UMC argues that product design R&D is far more likely to lead to cross-fertilization among products when it is performed by an integrated firm rather than by a non-integrated firm. Accordingly, UMC argues that a finding of cross-fertilization of R&D in the Korean industry may have little or no application here. Moreover, UMC maintains that in its accounting records it segregates process R&D from product design R&D which relates only to specific types of integrated circuits. UMC claims that there is no cross-fertilization between its R&D for SRAM product design and R&D for product design for other types of integrated circuit devices. UMC argues that, if the Department determines that design R&D costs for non-subject merchandise do, in fact, cross-fertilize SRAM design R&D, then a distinction must be drawn between design R&D for memory and design R&D for non-memory (*i.e.*, logic) products.

Winbond asserts that the Department's R&D allocation at the preliminary determination significantly overstated its COP. According to Winbond, its other product lines have an entirely different engineering focus and are segregated from Winbond's SRAM R&D activities both organizationally and in its accounting system. Winbond asserts that it tracks in its accounting records all R&D expenses by category, such as product design or process R&D, and further by product type and project.

Winbond argues that the antidumping law requires the use of product-specific costs. Winbond argues further that, as a legal matter, there is no evidence on the record to overcome the verified fact that cross-fertilization does not occur at Winbond. Winbond contends that the allocation of R&D on a company-wide basis fails to account for the fluctuation of logic R&D and the stability of SRAM R&D. In addition, Winbond notes that the focus of logic product R&D is the end product's specific function, whereas SRAM R&D focuses on the reduction in cell size, a completely different and more discrete goal. Moreover, Winbond asserts that it is unreasonable to include Winbond's logic product R&D costs in the allocation factor since R&D spending on logic products was vastly higher in 1996 than R&D spending for SRAMs.

The petitioner agrees with the Department's treatment of R&D expenses in its preliminary determination. The petitioner argues that contrary to ISSI's and Alliance's assertions, the allocation methodology used in Korean DRAMs applies in this case. The petitioner states that the respondents fail to appreciate that in Korean DRAMs, process R&D was considered to be part of overhead and that only product R&D of the type incurred by ISSI and Alliance was at issue. Furthermore, in Korean DRAMs, the Department allocated all product semiconductor R&D over all semiconductor production.

The petitioner criticizes the letters submitted on behalf of the respondents, stating that each is entitled to no more weight on the basis of their credentials than are those submitted on behalf of the petitioner or the Department. The petitioner claims that information on the record, such as the expert testimony of Mr. Cloud of Micron and Dr. Murzy Jhabvala of the National Aeronautics and Space Administration (NASA), as well as numerous magazine articles, supports its claim that cross-fertilization occurs among R&D projects conducted for various semiconductor products. The petitioner notes that ISSI itself allocated SRAM and DRAM R&D over memory cost of sales, thereby implicitly assuming cross-fertilization of SRAM and DRAM R&D.

In addition, the petitioner maintains that the Department's methodology was appropriate because R&D is supported by revenues from the complete range of products sold, not solely by the revenues of a particular product on which an R&D project is focused. Accordingly, the petitioner argues, it is most appropriate to allocate all semiconductor R&D over the base that sustains it (*i.e.*, over all semiconductor production). Moreover, the petitioner argues that the respondents' maintenance of product-specific accounting categorization by project does not prove that R&D conducted for one type of semiconductor cannot benefit the development of another type.

DOC Position

We agree with the petitioner. We find that there is cross-fertilization of scientific ideas between the R&D activities of semiconductor products. Processing advancements for one semiconductor product can benefit other types of semiconductor products (including logic and memory). Furthermore, design improvements, although undertaken for a specific product, can, and often do, become incorporated into the design of other semiconductors, whether they are logic or memory devices. We find that it is appropriate to allocate the cost of all semiconductor R&D to all semiconductor products, given that scientific ideas developed in one semiconductor area can be and have been utilized in the development of other semiconductor products. Therefore, for purposes of the final determination, we have calculated R&D for SRAMs using the ratio of total semiconductor R&D to total semiconductor cost of sales for the annual period that most closely corresponds to the POI.

Due to the forward-looking nature of R&D activities, the Department cannot identify every instance where SRAM R&D may influence logic products or where logic R&D may influence SRAM products, but the Department's own expert has identified areas where R&D from one type of semiconductor product has influenced another semiconductor product. Dr. Murzy Jhabvala, a semiconductor device engineer at NASA with twenty-four years of experience, was invited by the Department to express his views regarding cross-fertilization of R&D efforts in the semiconductor industry. He has stated that "it is reasonable and realistic to contend that R&D from one area (*e.g.*, bipolar) applies and benefits R&D efforts in another area (*e.g.*, MOS memory)." Dr. Jhabvala went on to state that—

> SRAMs represent along with DRAMs the culmination of semiconductor research and development. Both families of devices have benefitted from the advances in photolithographic techniques to print the fine geometries (the state-of-the-art steppers) required for the high density of transistors. . . . Clearly, three distinct areas of semiconductor technology are converging to benefit the SRAM device performance. There are other instances where previous technology and the efforts expended to develop that technology occurs in the SRAM technology. Some examples of these are the use of thin film transistors (TFTs) in SRAMs, advanced metal interconnect systems, anisotropic etching and filling techniques for trenching and planarization (CMP) and implant technology for retrograde wells.

See memo from Peter Scholl to the file dated September 16, 1997, placing letters from Dr. Jhabvala on the record.[6]

The Department has also identified through published magazine articles examples of cross-fertilization in the semiconductor industry. *See, e.g.*, "A 250–MHz Skewed-Clock Pipelined Data

[6] In letters dated January 23 and 28, 1998, the respondents expressed concern that the Department might consider information from the Korean SRAM record or a memorandum from Dr. Jhabvala placed on the record on January 15, 1998, (*i.e.*, after the public hearing in this case) which the parties did not have any opportunity to comment upon. We agree that the parties have not had an opportunity to comment upon this memorandum. Therefore, we have not considered it or any information on the Korean SRAMs record in our final determination. We note that we have quoted from Dr. Jhabvala's pre-verification comments on the record in this case.

Buffer," *Institute of Electrical and Electronics Engineers Journal of Solid State Circuits*, March 1996; and "A 1–Mb 2 Tr/b Nonvolatile CAM Based on Flash Memory Technologies," *Institute of Electrical and Electronics Engineers Journal of Solid State Circuits*, November 1996. We also noted numerous published articles in the *Institute of Electrical and Electronics Engineers Journal of Solid State Circuits* which described how significant advancements in the advanced semiconductor integrated circuit (ASIC)/logic product area have had important ramifications for chip design in the memory areas. The articles described how multilayer metal design development categorized as logic/ASIC R&D will permit companies to build chips that are smaller, faster and more power-efficient. The articles concluded that the research will be used in the future to improve microprocessors, memory and mixed-signal devices. As an example, one article entitled "The Challenges of Embedded DRAM in ASICs: A Manufacturing Economics Point of View," *Dataquest Interactive*, August 25, 1997, discussed the technical challenges of embedding memory into ASICs, which illustrated the overlap in design and process technology between logic and memory circuits. This article noted on page two that "[b]oth the fast SRAM and the 'pseudo-DRAM' structures are actually subsets of the process flow for advanced logic, so designing and constructing SLI ASICs are a natural extension and do not really add much to the per-wafer cost of the process." The articles were attached as exhibits to the letter submitted by the petitioner on October 15, 1997.

We reviewed the views of the respondents' expert on this subject and found them to be of less probative value than the cases cited above, as the published articles refute Dr. Wooley's assertion that there is no cross-fertilization among circuit design techniques. In fact, Dr. Wooley, writing on behalf of ISSI, agrees that there can be cross-fertilization in the development of process technologies among various classes of memories. This assertion also refutes the other respondents' claims that there is no cross-fertilization in the development of process technologies.

Moreover, contrary to the respondents' assertion, the methodology we are applying does calculate product-specific costs. Where expenditures benefit more than one product, it is the Department's practice to *allocate* those costs to all the products which are benefitted. Therefore, as semiconductor R&D benefits all semiconductor products, we have allocated semiconductor R&D to all semiconductor products.

We also disagree with the respondents' assertion that the methodology employed by the Department should be based on respondents' normal accounting records. While we do not disagree that each R&D project is accounted for separately in each of the respondents' respective books and records, we note that the existence of separate accounting records does not necessarily preclude the phenomenon of cross-fertilization of scientific ideas. Since accounting records do not address the critical issue of whether ideas from research in one area benefit another area, we do not find this argument persuasive.

We also found unpersuasive the following arguments presented by respondents: (1) That SRAMs are a mature product that cannot benefit from R&D performed in other areas; (2) that logic R&D is more complex than memory R&D; (3) that logic R&D is unique to an application; and (4) that logic R&D involves high level architecture and functionality which is different from SRAM R&D (which focuses on shrinking cell size, increasing capacity and efficiency). The record shows that the primary focus for SRAM and DRAM R&D is reducing die size and increasing speed, which will benefit from the metal multilayer design R&D being conducted in connection with logic/ASIC products. Moreover, the issue is not whether application-specific design R&D for logic products can be used for SRAMs, but rather whether what is learned from logic/ASIC product R&D can be used to improve SRAM performance. We also disagree with Winbond's arguments that, since it has more logic product lines than memory product lines, more employees for logic R&D than SRAM R&D and proportionally more expenses for the logic product line than the SRAM product line, it follows that no logic R&D should be assigned to SRAMs. When applied to the cost of manufacturing, the ratio of total semiconductor R&D to the total semiconductor cost of sales results in proportional amounts of R&D for each specific product. Our methodology assigns R&D costs to products in proportion to the amount sold during the period. If 75 percent of the cost of products sold were logic products then logic products would receive 75 percent of the R&D costs incurred during the period. This in no way assigns SRAMs an unreasonable portion of R&D costs.

Based on the foregoing, for purposes of the final determination, we have calculated R&D for SRAMs using the ratio of total semiconductor R&D to total semiconductor cost of sales for the annual period that most closely corresponds to the POI.

Company-Specific Issues

A. Alliance

Comment 10: Time Period for Cost and Price Comparisons

In the preliminary determination, the Department compared prices and conducted the sales below cost test using quarterly data. Alliance argues that for the final determination the Department should compare prices and conduct the sales below cost test using annual data. Alliance gives three reasons in support of its argument.

First, Alliance argues that there is no regulatory requirement that the Department compare prices and costs on a quarterly basis and that it is clearly envisioned that the Department will use annual averages unless there is a strong reason to do otherwise. Alliance argues that, in this case, there is no such reason. Moreover, Alliance argues, while the Department has used quarterly data in some previous semiconductor cases, the Department has recognized that it must apply the most reasonable methodology for each respondent based upon its price and cost trends. Alliance cites to *DRAMs From Korea* at 15476, where the Department used monthly averages for one respondent and POI averages for another.

Second, Alliance argues that its structure as a fabless company that subcontracts various phases of SRAM production makes the use of annual costs appropriate. Alliance states that integrated producers have large fixed costs that tend to mute changes in total costs from one quarter to another and that they tend to have declining costs over time due to the learning curve. By contrast, argues Alliance, its costs of production consist almost completely of variable costs, which vary greatly from quarter to quarter according to volume and other factors. Moreover, Alliance maintains that, because its costs consist primarily of payments to subcontractors, they do not steadily trend downward over time.

Third, Alliance argues that the Department has established that, where cost or pricing factors vary erratically from quarter to quarter, it is more appropriate to use annual comparisons to smooth out the aberrational results. In support of this argument, Alliance cites to a number of cases, including *Color Television Receivers From the Republic of Korea; Final Results of Antidumping*

Duty Administrative Review, 55 FR 26225, 26228 (June 27, 1990), *Final Determination of Sales at Less Than Fair Value; Color Picture Tubes From Canada*, 52 FR 44161, 44167 (Nov. 18, 1987), *Final Determination of Sales at Less Than Fair Value; Color Picture Tubes From Japan*, 52 FR 44171, 44182 (Nov. 18, 1987), and *Final Determination of Sales at Less Than Fair Value; Sweaters Wholly or In Chief Weight of Man-Made Fiber From Taiwan*, 55 FR 34585, 34598 (Aug. 23, 1990).

Moreover, Alliance also notes that the Department often uses annual averages in seasonal industries to avoid magnifying the impact of costs that vary from quarter to quarter. Alliance cites to *Grey Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review*, 58 FR 47253, 47255 (Sept. 8, 1993), and *Circular Welded Non-Alloy Steel Pipe and Tube From Mexico; Final Results of Antidumping Duty Administrative Review*, 62 FR 37014, 37020 (July 10, 1997), in support of this contention.

Accordingly, Alliance argues that, given the extreme variability of its prices and costs in different quarters, it is more reasonable for the Department to use annual, rather than quarterly, figures for Alliance, regardless of whether prices declined in general over the POI.

Finally, Alliance notes that the Department's statement in its preliminary determination that "all parties agree" that there was "a significant and consistent price decline during the POI" is false. Alliance contends that its position has always been that its costs and prices during the POI were marked by aberrational, short-term price or cost fluctuations.

The petitioner argues that the Department's decision to use quarterly rather than annual averages was both in accordance with the regulations and based on an established dynamic in the semiconductor industry—that costs and prices generally decline from quarter to quarter. According to the petitioner, all of the parties in this investigation except Alliance have accepted this principle. The petitioner contends that the Department is not obligated to deviate from a rational, well-established industry benchmark simply on the basis that a particular respondent prefers an alternative approach that may lower its margin. The petitioner notes that declining market prices affect all of the respondents (including Alliance) and that, therefore, the Department's approach at the preliminary determination was fair and reasonable.

With regard to Alliance's argument that, as a fabless company, its costs are mostly variable, and hence vary more than the costs of integrated producers, which are mostly fixed, the petitioner notes that ISSI, another fabless company, did not share Alliance's views. The petitioner states that the Department's decision was based on an established consensus regarding declining market prices and that this phenomenon affected the behavior of all of the respondents (including Alliance), as well as the petitioner. The petitioner further states that basing the Department's decision on such a broad phenomenon of market behavior is an eminently fair and reasonable approach, and that the Department acted well within its discretion.

In addition, the petitioner notes that none of the cases cited by Alliance to demonstrate that the Department uses annual comparisons when costs or prices vary from quarter to quarter involve the semiconductor industry, which tends to exhibit discernible price and cost declines. Rather, the petitioner notes that many of the cases Alliance cites involve industries impacted by seasonal price or cost fluctuations, patterns not present in the semiconductor industry.

DOC Position

We disagree with Alliance. The Department's practice is to calculate weighted-averages over a shorter period of time when normal values, export prices, or constructed export prices have moved significantly over the POI. *See, e.g., EPROMs from Japan* and *DRAMs from Korea;* see also 19 CFR section 351.414(d)(3) of the Department's new regulations. In this case, demand for SRAMs decreased dramatically during the POI, causing worldwide SRAM prices to decrease dramatically. As SRAM producers, all respondents, including Alliance, were directly affected by this decrease in prices, whether they were fabless or integrated producers. Moreover, while Alliance may not have agreed with the other respondents that there was a significant and consistent price decline during the POI, Alliance concedes that there was a "worldwide drop in demand and falling prices that occurred in 1996" for SRAMs. *See* Alliance's submission of December 23, 1997, at page 47.

In addition, none of the cases cited by Alliance involve instances in which prices and cost were declining over the POI. Rather, they focus on instances where the Department used annual averages to smooth out quarterly or seasonal fluctuations in costs. Moreover, none of those cases involved the semiconductor industry, which, as the Department has recognized through its practice of using shorter averaging periods, is subject to declining prices and costs. Indeed, Alliance fails adequately to distinguish the cases relied on by the Department at the preliminary determination (*i.e., EPROMs from Japan* and *DRAMs from Korea*) from the facts in this case. Alliance does cite to *DRAMs from Korea* to argue that the Department recognizes that it must apply the methodology that makes the most sense for each respondent, based upon its price and cost trends. However, in that case, the Department determined that it was more appropriate to use monthly weighted-average prices for foreign market value (*i.e.*, normal value) for one respondent since those averages were more representative of its pricing than POI averages. *See DRAMs from Korea*, comment 29. Similarly, in this case, given the significant decrease in the price of SRAMs that occurred throughout the POI, we have determined that quarterly averages result in a more accurate comparison of pricing behavior during the POI than do annual averages.

Accordingly, we made quarterly weighted-average price and cost comparisons for all respondents, including Alliance, for the final determination.

Comment 11: General Expenses and Profit for Constructed Value

Alliance argues that the methodology employed by the Department to calculate Alliance's CV value at the preliminary determination was contrary to the letter and intent of the statute. Alliance notes that the statue provides three alternatives for determining SG&A and profit when a respondent's own data may not be used and argues that the lack of a hierarchy implies that the chosen methodology should produce the most accurate and fair result possible. Alliance claims that, because it has cooperated fully in this investigation, the Department's selected methodology should not be adverse in nature.

Alliance argues that the Department's use of the weighted-average SG&A expenses of the other three respondents to calculate CV is unreasonable. Alliance claims that the statute requires the use of actual SG&A expense data, that such data is available for Alliance, and that this data was verified by the Department.

Alliance argues that the fact that all of its home market sales were found to be below cost does not suggest that its SG&A expenses would have been higher

had these sales been above cost. Alliance argues that its cost data was considered acceptable for purposes of the below-cost test and should also be accepted for purposes of calculating CV. Alliance claims that the costs incurred by UMC and Winbond are very different from its own SG&A expenses because they perform more steps in the SRAM production process, including wafer fabrication, and have a larger corporate bureaucracy to manage those facilities. Additionally, Alliance argues that its R&D activities are for product development alone, while UMC and Winbond have both product and process R&D activities. Alliance argues that the process R&D costs reported by other respondents are part of their cost of manufacturing and that these costs would already be included in the price paid by Alliance for wafers, since it does not have its own wafer fabrication facilities. Alliance argues that, if the Department calculates Alliance's R&D expenses using cost data from the other Taiwan respondents, it should also exclude that portion of R&D expenses incurred on behalf of wafer fabrication process developments since Alliance's costs would not include such activities.

Alliance also claims that the Department's use of the weighted-average profit rate of the other three respondents to calculate CV is likewise unreasonable. According to Alliance, the rationale behind basing profit on the data of other respondents appears to be that the other respondents are similarly situated and that their profits reflect those which Alliance would earn in the home market if its sales were made in the ordinary course of trade. However, Alliance claims that neither the results of its relatively few sales to its developing Taiwan export market, nor the profits of Taiwan producers operating in their own home market, are indicative of Alliance's normal profit experience. Moreover, Alliance claims that the profit rate assigned by the Department includes the profits of two companies, UMC and Winbond, which have entirely different cost structures. Alliance argues that the foundry operations of UMC and Winbond involve high fixed costs, whereas Alliance's costs are largely variable. Alliance maintains that basing its profit rate on the experience of UMC and Winbond, both of which fabricate their own SRAM wafers, has the effect of double-counting profit; UMC and Winbond earn a higher profit because their costs do not include the profit markup that Alliance, a fabless producer, must pay for fabricated wafers. Finally, Alliance argues that its costs are based on accounting under U.S. GAAP, while UMC and Winbond follow Taiwan GAAP. Accordingly, Alliance claims that the only reasonable method for determining CV profit is to use the profit of either its own SRAM product line or the overall company, for the fiscal year ending March 30, 1996. Alliance argues that both of these approaches would be consistent with the Department's methodology, contemporaneous to the POI, and reasonably specific to subject merchandise.

The petitioner argues that the Department is not required to justify the methodology selected for determining Alliance's SG&A expenses and profit as the most reasonable alternative. The petitioner claims that the statute clearly indicates a preference for the Department to base SG&A expenses and profit, if possible, on amounts normally incurred or realized on above-cost home market sales. Moreover, the petitioner maintains that the statute intends for CV profit to correspond to normal rates of profit for the respondent or industry in the comparison foreign market and that Alliance's suggested methodology fails to meet this requirement. Specifically, the petitioner notes that Alliance's overall company profits result from sales to all markets, with the United States representing Alliance's dominant market.

According to the petitioner, there is no evidence that the differences in corporate strategy identified by Alliance render the other companies' profit rates unrepresentative of Taiwan SRAM producers in the context of this case. Moreover, the petitioner claims that Alliance has not suggested any means to establish that a profit rate that includes the integrated producers' profits somehow "double-counts" profits. Consequently, the petitioner argues that it is proper to include all types of SRAM producers in the calculation of the weighted-average profit rate. Finally, the petitioner notes that Alliance's 1996 fiscal year data only overlaps with three months of the POI and, thus, is only marginally contemporaneous.

The petitioner argues that Alliance's arguments regarding the methodology to be used for SG&A expenses depend on the assertion that Alliance would have incurred the same level of expenses on its home market sales irrespective of whether those sales were made at prices above or below COP. The petitioner contends that such an argument flies in the face of the statutory scheme, which directs the Department to use SG&A expenses for sales made in the ordinary course of trade. Moreover, the petitioner claims that Alliance's argument is flawed because it allocates its reported home market indirect selling expenses among semiconductor products on the basis of sales revenue. The petitioner notes that, if Alliance's home market sales had been made at significantly higher prices, then the allocated selling expenses would have been proportionately increased.

DOC Position

We disagree with Alliance, in part. Pursuant to section 773(e)(2)(A) of the Act, the Department will calculate SG&A expenses and profit based on the actual amounts incurred and realized by the company in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the home market. Where a respondent's own SG&A expense and profit data are not available, section 773(e)(2)(B) of the Act provides the Department with three alternatives for calculating CV. In the instant case, Alliance's own SG&A expense and profit data may not be used because all of its home market sales failed the cost test, and hence, pursuant to section 771(15) of the Act, are not sales in the ordinary course of trade.

For purposes of the preliminary determination, we calculated Alliance's CV using the alternative methodology described in section 773(e)(2)(B)(ii) of the Act. This approach involved basing SG&A expenses and profit on the weighted-average data of the other three respondents. Because R&D expenses are included in general expenses, we also based R&D expenses on the same methodology used to determine SG&A expenses.

For our final determination, we have considered several alternatives which are available for calculating Alliance's CV under section 773(e)(2)(B) of the Act, including the methodology used for the preliminary determination and the alternatives proposed by Alliance. The SAA at 840 (170) indicates that the Act does not establish a hierarchy or preference among the alternatives under section 773(e)(2)(B) of the Act and that the selection of an alternative will be made on a case-by-case basis. The methodology which we used for the preliminary determination is one of the three alternatives provided for in the Act and provides a reasonable basis on which to base SG&A expenses and profit for Alliance's CV.

As discussed below, Alliance's proposed alternatives have significant flaws that make them less desirable choices for use as Alliance's SG&A expenses and profit. The method we used in the preliminary determination provides a reasonable methodology on

which to base Alliance's SG&A expenses and profit. Accordingly, we have used this approach for calculating Alliance's CV for the final determination because it reflects the experience of the other Taiwanese SRAM producers. Although we recognize that there may be differences in organizational structure and strategy among the respondents, the differences identified by Alliance do not preclude us from choosing one of the alternatives provided for in the Act.

We believe that the methodologies offered by Alliance for calculating profit have significant flaws. First, with respect to Alliance's suggestion that the Department use Alliance's own SRAM product line data for the fiscal year ended March 31, 1996, we verified cost and price information for the three months of this period, January through March 1996, that fell within the POI and found significant quantities of below-cost sales. Based on these findings, we have no reason to believe that the amounts reported by Alliance as SRAM profits for the March 31, 1996, fiscal year would provide a reasonable measure of profit due to the fact that the figure includes a number of sales known to be outside the ordinary course of trade, as well as significant potential for other such sales during the first nine months of the fiscal year. Moreover, data is available for the profit calculation that is more contemporaneous than the respondent's proposed period. Second, with respect to Alliance's suggestion that we base profit on its overall operations for the fiscal year ended March 31, 1996, this data includes sales to markets other than the home market. In addition, this data includes sales of products which are outside the general category of SRAMs. Again, we have data that is more contemporaneous than the data offered under this proposal.

We disagree with Alliance's assertion that the Department should use its SG&A expenses for the calculation of CV. The Act directs the Department to use an alternative methodology for these expenses when a respondent's actual data are not available. As stated above, Alliance did not make any home market SRAM sales in the ordinary course of trade and therefore its actual data may not be used.

With respect to Alliance's argument regarding our treatment of process R&D expenses, we believe that including these expenses in the weighted-average SG&A rate calculated for our final determination would double count the actual amount of the expense. Process R&D costs would normally be accounted for as part of the cost of the wafer which Alliance purchases from its supplier. Thus, for our final determination, we have excluded process R&D expenses from Alliance's SG&A expenses.

B. ISSI

Comment 12: Commission Expenses

According to the petitioner, the Department discovered at verification that ISSI failed to report commission expenses on sales to its U.S. distributor customers. The petitioner maintains that the Department should base the amount of the commissions for these customers on facts available because the information presented at verification was not a minor correction. As facts available, the petitioner argues that the Department should use the highest commission rate paid on sales to any other customer.

ISSI contends that its failure to report distributor commissions was a ministerial error of small magnitude. Specifically, ISSI asserts that these commissions: 1) represent only a fraction of the total commissions paid; 2) are recorded in a different manner in its accounting system; and 3) were thoroughly verified by the Department. Moreover, ISSI argues that it is a cooperative respondent that has done nothing in this investigation that would justify adverse inferences. As such, ISSI contends that the Department should use the commission expense data on the record for purposes of the final determination.

DOC Position

We agree with ISSI. We find that ISSI's failure to report commissions on sales to distributor customers was the result of an inadvertent error which was minor in nature. Because it is the Department's practice to accept such minor corrections arising from verification, we have used ISSI's verified commission rate for purposes of the final determination. *See, e.g., Rebar from Turkey* and *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19044 (April 30, 1996) *(Bicycles from the PRC).*

Comment 13: Date of Payment

The Department noted at verification that ISSI had not received full or partial payment for a small number of U.S. sales. According to ISSI, the Department should assign these sales the average payment period for ISSI's other U.S. sales, rather than using the date of the final determination. Alternatively, ISSI asserts that the Department should calculate a weighted-average payment date for each sale where partial payment was received, using both the date of the partial payment and the date of verification. ISSI argues that to use the date of the final determination would be inappropriate because to do so would be to make the adverse assumption that its outstanding receivables have not been collected.

The petitioner asserts that the Department's standard practice in situations involving unpaid sales is to calculate the credit period using the date of the final determination as a proxy for the actual date of payment. *See Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rods From France*, 58 FR 68865 (Dec. 29, 1993). According to the petitioner, the Department should follow its standard practice in this case because ISSI has provided no compelling reason to depart from it. Specifically, the petitioner notes that ISSI has provided no reason to assume that the payments in question will be received prior to the final determination. Indeed, the petitioner maintains, it is equally likely that payment will be received after this date. Moreover, the petitioner asserts that, given the long time since the end of the POI, it is unclear that using the date of the final determination represents an adverse inference.

Regarding ISSI's suggestion that the Department use an average payment period, the petitioner asserts that this method would be no more accurate. The petitioner notes that the sales in question have unusually long payment periods which would be excluded entirely from the calculation of the average.

DOC Position

The Department's recent practice regarding this issue has been to use the last day of verification as the date of payment for all unpaid sales. *See Brass Sheet and Strip from Sweden; Final Results of Antidumping Administrative Review* 60 FR 3617, 3620 (Jan. 18, 1995). Accordingly, we have used the last day of ISSI's U.S. verification as the date of payment for all unpaid transactions or portions thereof.

Comment 14: Non-operating expenses

The petitioner argues that the Department should include non-operating expenses incurred by ISSI-Taiwan in the calculation of ISSI's G&A expense. The petitioner argues that failure to include these expenses in ISSI's total G&A expenses conflicts with the Department's established practice concerning the classification of such expenses and results in a distortion of the reported cost of production for ISSI.

ISSI does not dispute that the Department should capture the loss on

disposal of property, plant and equipment and physical inventory loss, but argues that the cost should be included as part of financial expense. ISSI stated that the expenses were classified with other non-operating expenses in its audited records. Therefore, ISSI contends that the Department should follow its normal practice of adhering to a firm's recording of costs in its financial statements, in accordance with the GAAP of its home country, when such principles are not distortive.

DOC Position

We agree with the petitioner that these expenses should be included in the calculation of ISSI's total G&A expenses. We disagree with the respondent that these expenses should be classified as financial expenses because disposal of property, plant, and equipment and physical inventory losses relate to the general activities of the company and not to financing activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard Line and Pressure Pipe From Italy*, 60 FR 31981, 31989 (June 19, 1995). Inclusion of these expenses in financing expense would not reasonably reflect the costs associated with the production of the merchandise. Accordingly, we have adjusted the G&A expense ratio to include these items.

Comment 15: Double-Counting of Marine Insurance Expenses

According to ISSI, the Department discovered during verification that ISSI reported marine insurance expenses both as part of G&A and as a separate movement expense in its U.S. sales listing. ISSI asserts that the Department should reduce G&A by the amount of these expenses in order to avoid double-counting.

The petitioner disagrees, stating that the burden is on the respondent to submit accurate information. According to the petitioner, the discovery of this error at verification indicates that ISSI's response may contain additional errors which were not discovered due to the limited time available at verification. Consequently, the petitioner asserts that the Department should make no adjustment to G&A for purposes of the final determination because it is unable to adjust for the undetected inaccuracies in ISSI's response.

DOC Position

The Department conducted thorough verifications of ISSI's sales and cost data. Based on these verifications, we have deemed the respondent's data to be reliable for use in the final determination. We do not believe that these data contain material inaccuracies, as the petitioner suggests.

Because it is the Department's practice to correct minor errors found during the course of verification *(see, e.g., Rebar From Turkey* and *Bicycles From the PRC)*, we have made the appropriate correction to ISSI's G&A expenses for purposes of the final determination.

Comment 16: Offset to R&D Expenses

ISSI argues that the Department should include an offset for R&D revenue in its calculation of ISSI's R&D expense.

DOC Position

We agree with ISSI that the R&D revenue should be included as an offset in the R&D expense ratio calculation, because the corresponding costs are included in ISSI's R&D expense. Consequently, we have granted this offset for purposes of the final determination.

C. UMC

Comment 17: Calculation of the CV Profit Rate

UMC argues that the Department erred in its choice of methodology for the computation of profit in calculating CV. UMC explains that the Department computed UMC's CV profit by first calculating a profit percentage for each home market transaction in the ordinary course of trade, then weight-averaging the percentages by quantity to determine the overall CV profit rate. UMC argues that this methodology was a departure from the Department's normal practice of calculating a CV profit rate based on the total revenue and total cost of home market sales transacted in the ordinary course of trade. In support of its position, UMC cites to *Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review*, 62 Fed. Reg. 7206, 7209–7210 (Feb. 18, 1997) *(SSWR from France)* and *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Final Results of Antidumping Duty Administrative Review*, 61 Fed. Reg. 56514, 56514 (Nov. 1, 1996) (Lead and Bismuth from the U.K.). UMC contends that in *Lead and Bismuth from the U.K.* the Department recognized that weight-averaging individual profit percentages by quantity introduces serious distortions into the calculation of CV profit.

The petitioner argues that the methodology used at the preliminary determination does not produce a serious distortion of the CV profit in this case. The petitioner contends that use of this methodology is appropriate, because a small number of expensive-to-produce, low profit sales of higher-density SRAMs will not artificially pull down the overall profit rate that applies to the large majority of sales. Thus, the petitioner argues that this methodology more realistically calculates a per-unit profit rate that is applied to all CV sales comparisons.

DOC Position

We agree with UMC. It is the Department's normal practice to divide total home market profits by total home market costs when calculating the profit ratio. As noted in *SSWR from France* and *Lead and Bismuth from the U.K.*, the methodology employed by the Department in the preliminary determination has the effect of distorting the respondent's CV profit rate. Accordingly, for the final determination, we calculated profit based on total home market profits and total home market costs for sales made in the ordinary course of trade.

Moreover, because CV profit was calculated in the same fashion for ISSI at the preliminary determination, we have also made the corresponding change to ISSI's calculations.

Comment 18: Substantial Quantities Test

UMC argues that the Department made an error in performing the substantial quantities portion of the sales below cost test. UMC maintains that, in a case where quarterly costs are used, sales can only be disregarded if: (1) the sale price is below the quarterly average cost; (2) the sale price is below the annual average cost; and (3) the quantity of such sales meets the substantial quantities threshold of 20 percent on a product-specific basis. UMC alleges that the Department failed to correctly apply the third part of this test. Specifically, UMC states that the Department conducted the substantial quantities test only on an annual average cost basis when in fact it should have conducted the test on an annual average cost *and* quarterly average cost basis.

According to the petitioner, UMC's assertion that the Department is required, under section 773(b)(1) of the Act, to examine the volume of sales against the 20 percent threshold on the basis of the volume of sales made in each quarter is without merit. The petitioner states that section 773(b)(2)(C)(i) of the Act provides that the substantial quantities test is satisfied

if the volume of such sales represents 20 percent or more of the volume of sales under consideration for the determination of normal value. The petitioner notes that section 773(b)(2)(B) of the Act provides that the term "extended period of time" means a period that is normally one year, but not less than six months. Thus, argues the petitioner, the Department correctly determined that a given product was below cost in substantial quantities if the volume of below cost sales was at least 20 percent of the volume during the twelve-month POI.

DOC Position

We agree with the petitioner. Section 773(b) of the Act states that the Department will disregard sales made at less than the cost of production if such sales were made within an extended period of time in substantial quantities (*see* section 773(b)(1)(A)). The Act defines "extended period of time" as normally one year but not less than six months (*see* section 773(b)(2)(B) of the Act). Because the Act states that "an extended period of time" can not be less than six months, we cannot follow UMC's recommendation and perform the substantial quantities test on a quarterly basis.

Accordingly, we have made no changes to the substantial quantities test for purposes of the final determination.

Comment 19: Startup Adjustment

UMC claims that the Department should continue the approach taken in its preliminary determination in accepting its claimed startup adjustment, because it has met the threshold criteria. According to UMC, the technical factors limiting production at its affiliate's new facility included process qualification to qualify both new equipment technology and new process technology. Additionally, UMC notes that the startup period involved the qualification of individual products and the fine tuning of new equipment to allow it to work efficiently with the existing equipment.

UMC claims that a company will not meet its practicable level of operations until the fab has achieved the level of "cleanness" to operate properly (which requires a certain amount of time) and it also has achieved a critical mass of product qualifications. UMC argues that the initial product qualification phase, which involves test runs and evaluations to build a stable of products that the new fab is qualified to produce, is a significant technical factor which impedes production during the startup phase.

Although UMC's claimed startup adjustment reflects a startup period that does not include the entire year, UMC argues that the new fab was actually in a startup phase at least through the end of 1996. UMC bases its claim on the quantity of wafer starts and wafers out in relation to the quantity of wafers processed in May 1997 and at the time of the cost verification. UMC notes that low product yields are one of a number of factors that the Department can consider as evidence of the extent to which technical factors affect production levels. UMC also argues that, although the same number of production processes were available for sale to customers in December 1996 as were in place in June of that year, the number available at September 1997 demonstrates that the company was still in startup mode at the end of 1996 and that the startup adjustment claimed is conservative.

The petitioner asserts that UMC's request for a startup adjustment should be denied since UMC failed to demonstrate that its production levels were limited by technical factors. The petitioner acknowledges that the product qualification process contributed to UMC's low production levels, but claims that the qualification process does not represent a "technical difficulty." The petitioner argues that the statute directs the Department to "consider factors unrelated to startup operations that might affect the volume of production processed, such as demand, seasonality, or business cycles" in determining whether commercial production levels have been achieved. *See* section 773(f)(1)(C)(ii) of the Act. The petitioner claims that customer demand was the only factor that may have limited production volumes and points out that demand is not a technical factor. The petitioner notes that the SAA at 836 (166) states that "to determine when a company reaches commercial production levels, Commerce will consider first the actual production experience of the merchandise in question. Production levels will be measured based on units processed." The petitioner claims that yields improve continually throughout a product's life cycle beyond the point at which commercial production can be said to have begun and thus yields are irrelevant to the startup analysis. Finally, the petitioner argues that, even if technical factors did limit production to some extent, commercial production at the new facility began sooner than claimed by UMC.

DOC Position

We have accepted UMC's claimed startup adjustment. UMC produced subject merchandise during the POI using SRAM wafers obtained from its affiliate's new facility and provided the Department with a number of technical factors that limited the new facility's production levels, including the development of process parameters, cleaning of the fabrication facility, and installation, adjustment, calibration, and testing of new equipment. These technical factors appear to have restricted production of SRAM wafers through the startup period, after which time the new facility achieved commercial production levels that are characteristic of the producer. Although UMC claims that product qualification represents another technical factor that limited production levels during the startup period, we agree with the petitioner that this process is a normal part of operations that is often performed for new products the company plans to produce. Moreover, it does not appear that product qualification, which involved UMC's producing small quantities of products for customer approval while bringing the new facility up to normal levels of production, represents a technical difficulty that resulted in the underutilization of the facility.

While we agree with UMC that production yields may indicate the existence of technical factors that limited production output, the SAA at 836 (166) directs us to examine the units processed in determining the claimed startup period. Accordingly, our determination of the startup period was based, in large part, on a review of the wafer starts at the new facility during the POI, which represents the best measure of the facility's ability to produce at commercial production levels. We concluded that the number of wafer starts during the startup period did not meet commercial production levels that are characteristic of the producer. Consequently, we determined that the claimed startup period did, in fact, end when commercial production reached a level that was characteristic of UMC's non-startup experience.

While the petitioner argues that an absence of customer demand may have contributed to the low production levels during the claimed startup period, evidence on the record suggests that the demand for the type of SRAM wafers produced at the new facility was as high during the claimed startup period as it was during the remainder of the POI. Moreover, even if demand had been greater during the claimed startup period, there is no evidence that UMC could have more quickly achieved production levels at the new facility that are characteristic of the producer, merchandise, or industry.

Comment 20: Calculation of Credit Expense

UMC argues that the Department incorrectly computed UMC's imputed credit expense adjustment using a 365 day year. In its response, UMC reported its imputed credit expense based on a 360 day year. UMC alleges that the Department's computation of UMC's imputed credit expense based on a 365 day year was inconsistent with section 773(f)(1)(A) of the Act and the Department's longstanding practice as outlined in the *Import Administration Antidumping Manual* ((1994) Chapter 8, p. 36).

DOC Position

We disagree with UMC. Section 773(f)(1)(A) of the Act directs the Department to calculate costs based on the records of the exporter or producer of the merchandise. The expense in question, however, is an imputed expense which is not kept by UMC in its records. Thus, we note that UMC does not record imputed credit expense in its accounting system based on a 360 day year. The Department is not required to compute this expense based on 360 days, instead of the standard 365, merely because UMC chose to report it in that manner in its submissions.

In addition, we note that UMC itself was inconsistent in its credit calculations, in that it calculated its accounts receivable turnover rate using a 365 day year. Accordingly, for the final determination, we have continued to calculate UMC's imputed credit expense using a 365 day year.

Comment 21: Ministerial Errors Acknowledged by the Department

UMC notes that in its memorandum of October 20, 1997, the Department acknowledged that it made several ministerial errors in the calculations performed at the preliminary determination for UMC. UMC requests that the Department correct these ministerial errors in its final determination.

DOC Position

We agree. We have made the appropriate corrections for purposes of the final determination.

D. Winbond

Comment 22: Treatment of Winbond's EP sales

Winbond argues that its EP transactions were outside the ordinary course of trade and should be disregarded for purposes of the final determination. Winbond cites to *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from France*, 56 FR 56380 (Nov. 4, 1991) (*Coated Groundwood Paper*) and *Colombian Roses* at 7004 as instances where the Department disregarded U.S. sales when the volume of such sales was insignificant or when the sales were atypical and not part of the respondent's ordinary business practice. Including such sales, according to Winbond, has the potential to undermine the fairness of the dumping comparisons.

According to the petitioner, the term "outside the ordinary course of trade" applies only to home market sales, and, nonetheless, Winbond has not demonstrated that its EP sales are outside the ordinary course of trade. The petitioner asserts that, although it is true that the Department may disregard certain U.S. sales if the volume of such sales is insignificant, Winbond has not demonstrated that these particular sales were low volume sales. Furthermore, the petitioner maintains that Winbond has not established, as required in *Colombian Roses*, that the inclusion of these sales would undermine the fairness of the comparison. The petitioner states that the Department should use its discretionary authority and retain Winbond's EP sales.

DOC Position

We agree with the petitioner. Although the ordinary course of trade provision does not apply to U.S. transactions, the Department does have the discretion to exclude U.S. sales from its analysis. *See, e.g., Coated Groundwood Paper* and *Colombian Roses*. However, there is no requirement in either the Act or the regulations that we do so merely because there are small quantities of a particular type of sale. In this case, Winbond has no provided compelling reason to disregard its EP sales. Accordingly, we have used them for purposes of the final determination.

Comment 23: Reliance on Winbond's Cost Data

According to the petitioner, the cost verification report raises substantial questions regarding the overall reliability of Winbond's cost response. Specifically, the petitioner argues that: (1) Winbond failed to provide the reconciliation between its reported total cost of manufacturing and the costs in its cost accounting system, as requested in the cost verification outline; and (2) Winbond first revealed at the cost verification that, contrary to the explicit questionnaire instructions, not only had it reported sales quantities rather than production quantities, but it also was unable to provide the requested production quantity data at verification. The petitioner argues that, due to these limitations, the Department should consider using partial facts available in calculating Winbond's COP and CV.

Winbond argues that it was cooperative and that the Department successfully verified the overall reliability of its submitted sales and cost data, including the requested reconciliations. Winbond argues that it successfully reconciled its total reported COM to its total costs in its accounting system and that the importance of certain reconciling amounts has been over-emphasized. Winbond maintains that it was entirely appropriate to report sales quantities rather than production quantities, because, if it had used the finished goods input quantity, it would have overstated production volumes and distorted costs.

DOC Position

We agree with the petitioner, in part. We agree that the unsubstantiated reconciling item found at verification should be included in the cost for that quarter and we have done so. Not only did we request in the verification agenda that Winbond reconcile the total costs in its cost accounting system to total COM reported on its cost tapes, but we also requested numerous times during the verification process that Winbond reconcile its costs. We compared the submitted costs to the costs recorded in Winbond's normal books and records and found the difference noted above. Although Winbond attempted to explain this difference, it was unable to provide requested documentation (*e.g.*, invoices) to support its assertion.

However, we disagree with the petitioner that the sales quantities reported in the COP and CV data warrant an adjustment to Winbond's reported per-unit COPs and CVs. Because the variances Winbond applied to its standard costs were correctly calculated using production quantities, Winbond's per-unit COPs and CVs were not affected by the incorrect quantities. Consequently, we have not adjusted COP or CV to account for the quantity difference. For further discussion, see the memorandum to Louis Apple from the Team, dated February 13, 1998.

Comment 24: Winbond's Difmer Adjustment

Winbond argues that the Department should accept its submitted difmer data without adjustment, because these difmer data were appropriate and classified in accordance with its cost accounting system. Winbond argues that, contrary to statements in the Department's cost verification report, it

could only report its fixed costs based on uniform budgeted ratios and that such ratios were the most valid and manageable approach for segregating cost elements. Winbond argues that its methodology separates the cost elements and does not significantly alter the amount of the difmer adjustment. Moreover, Winbond states that the vast majority of its U.S. sales had identical matches in the home market, making the distinction between variable and fixed costs less important than in cases involving more comparisons with similar merchandise.

DOC Position

We disagree. Although Winbond's accounting system classifies all costs other than direct materials and labor as fixed costs, at verification we were able to calculate the depreciation expense for specific products from Winbond's standard cost sheets. A comparison of the depreciation expense calculated at verification to those reported by Winbond shows that the reported depreciation amounts, and therefore the difmer data, were not accurate.

Because the reported difmer data cannot be relied upon, we have based the margin for all U.S. sales without an identical home market match on adverse facts available. As adverse facts available, we have selected the highest non-aberrant margin from the price-to-price or price-to-CV comparisons which were performed for Winbond. In selecting this margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner. We also sought a margin that is indicative of Winbond's customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied. To that end, we selected a margin for sales of a product that involved a substantial commercial quantity and fell within the mainstream of Winbond's transactions based on quantity. Finally, we found nothing on the record to indicate that the sales of the product we selected were not transacted in a normal manner.

Comment 25: Use of Annual Profit for CV

Winbond claims that the Department should have used quarterly, rather than annual, profit in calculating CV. Winbond asserts that using annual profit creates the same distortions that the Department tried to avoid by using quarterly price and cost comparisons. Winbond cites to page 843 of the SAA which indicates that, when CV is used for normal value and "costs are rapidly changing, it may be appropriate to use shorter periods, such as quarters or months, which may allow a more appropriate association of costs with sales prices." Winbond claims that the Department's use of annual profit in conjunction with quarterly cost and sales data overstates profit significantly in the down-market periods.

The petitioner argues that an annual profit rate is appropriate because it reflects not only the quarterly cost of manufacture but also those annual, often non-recurring costs such as G&A, interest and selling expenses, which must be calculated on an annual basis to ensure that all such costs are captured in the COP. The petitioner notes that neither the statute nor the SAA specifies the period over which profit should be calculated.

Moreover, the petitioner asserts that the use of quarterly averages to capture the lower profits in quarters where more sales are made below cost, as suggested by Winbond, could lead to the use of a zero profit rate if all of the respondent's sales in a given quarter were below cost. This approach, according to the petitioner, is contrary to the clear statutory intent that the Department include a positive profit figure for CV.

DOC Position

We agree with the petitioner. The Department applies the average profit rate for the POI or period of review (POR) even when the cost calculation period is less than a year. *See, e.g., 1994–1995 DRAMs Review, Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53295 (Oct. 14, 1997) and *Silicon Metal from Brazil; Final Results of Antidumping Duty Administration Review*, 61 FR 46763, 46774 (Sept. 5, 1996).

We disagree with Winbond that the use of annual profit distorts the analysis. First, a difference between the quarterly profits and the annual average profit does not automatically mean that a distortion exists. In fact, there is no evidence on the record that indicates such a distortion. Second, profit remains a function of the relationship between price and cost, regardless of whether there is a downward trend of prices or a stable period of prices and costs. The parties commented on matching sales on a quarterly basis (*see* the "Time Period for Cost and Price Comparisons" section of this notice, above). In their comments, the parties indicated that both prices and costs generally decreased during the POI. The profit figures used by the Department measure the weighted-average amount by which prices exceeded costs. Third, the use of annual profit mitigates fluctuations in profits and, therefore, represents a truer picture of profit.

Furthermore, we disagree that the SAA at page 843 (173) provides any guidance. The SAA indicates that "shorter periods may allow for a more appropriate association of *costs* with sales prices," but is silent as to the profit to be added to those costs.

Comment 26: Unrecoverable Fire Loss Expenses

Winbond argues that the Department distorted its G&A expenses by including expenses associated with a fire at an incomplete facility which is now being reconstructed to produce DRAMs. Winbond argues that it recorded the unrecovered portion of the fire loss as a non-operating expense; that the facility was not operational; and that, therefore, the costs associated with the fire are not relevant to the COP and CV of subject merchandise. Winbond asserts that, even if the Department were to conclude that the fire loss was related to 1996 SRAM production, the costs should be excluded from G&A because they were extraordinary.

The petitioner argues that the Department correctly included Winbond's unrecovered portion of the fire loss in Winbond's cost of production. The petitioner argues that Winbond's assertion that the facility was not being constructed to produce the subject merchandise is contrary to strong evidence on the record. The petitioner cites two published articles which state that the facility was constructed for the production of SRAMs. The petitioner argues that the unrecoverable fire loss was appropriately included in G&A because, under Winbond's own standard accounting practice, the uncompensated fire loss was recorded as a current cost. The petitioner argues further that the Department has included in COP and CV losses which were not reimbursed by insurance. *See Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway*, 56 FR 7661, 7670 (Hofa Comment 5) (Feb. 15, 1991) (*Salmon from Norway*).

DOC Position

We agree with the petitioner. The uncompensated fire loss should be included in Winbond's G&A expense for this period because the expense incurred (*i.e.*, the capital) relates to the company as a whole. The fact that

Winbond is reconstructing the facility to produce DRAMs is irrelevant.

Moreover, we disagree with Winbond's assertion that the fire was an extraordinary event. Winbond has offered no support for this assertion. Moreover, evidence on the record contradicts this claim. Fires at semiconductor production facilities have been neither unusual nor infrequent. Specifically, we note that fires occurred at the following semiconductor facilities during the past 16 months: (1) United Integrated Circuits Company, January 1998; (2) Advanced Microelectronics, November 1997; (3) United Integrated Circuits Company, October 1997; (4) Charted Semiconductor Manufacturing Pte. Ltd., September 1997; and (5) Winbond, October 1996. Thus, we are unconvinced that the fire at Winbond's facility was an extraordinary event. As in other cases, we are including the unrecovered or uninsured portion of loss as a G&A expense. *See e.g., Salmon from Norway.*

Comment 27: Denominator for G&A and Interest Expense

Winbond argues that the Department erred by not revising the denominator used to calculate its G&A, R&D and interest expense rates to reflect the bonuses and royalties which were added to COM.

DOC Position

We agree. In the preliminary determination, we increased Winbond's reported COM to include bonuses and royalty expenses. However, we failed to revise the denominator used to calculate Winbond's G&A and interest expense rates which we applied to the revised COM. We have made the appropriate correction for purposes of the final determination.

Comment 28: Net Interest Expense

Winbond argues that the Department failed to account for its actual net interest income in the preliminary determination. Winbond argues that the Department deprived it of the benefit of its actual net interest income, and, thus, overstated its COP and CV. Winbond asserts that the statute does not require the Department to disregard cost offsets merely because the results benefit the respondent.

The petitioner argues that there is no basis for the Department to allow Winbond to offset its actual production costs with net financial income. The petitioner argues that the Department followed its long-standing practice by treating Winbond's negative financial cost as zero.

DOC Position

We agree with the petitioner. It is the Department's normal practice to allow short-term interest income to offset financial costs up to the amount of such financial costs. *See Porcelain on Steel Cookware from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 54616, 54621 (Oct. 21, 1996). Using total short-term interest income to reduce production costs, as suggested by Winbond, would permit companies with large short-term investment activity to sell their products below COP. The application of excess interest income to production costs would distort a company's actual costs. When calculating COP and CV, the Department includes interest earned on working capital, not interest earned on long-term financing activities. *See Final Results of Antidumping Duty Administrative Review: Porcelain on Steel Cookware from Mexico,* 60 FR 2378, 2379, (Jan. 9, 1995); *Final Results of Antidumping Duty Administrative Review: Porcelain on Steel Cookware from Mexico,* 58 FR 43327, 43332, (Aug. 16, 1993); *Final Determination of Sales at Less Than Fair Value: Steel Wire Rope from Korea,* 58 FR 11029, 11038, (Feb. 23, 1993); and *Final Results of Antidumping Duty Administrative Review: Frozen Concentrated Orange Juice from Brazil,* 55 FR 26721, (June 29, 1990).

Comment 29: Royalty Payments and Technical Services

Winbond argues that in the preliminary dumping analysis the Department double-counted its royalty and technical service expenses.

DOC Position

We agree. We double counted these expenses at the preliminary determination by adding both the royalty and the revised total R&D (which included both the royalty and technical service expenses) in COP and CV. Consequently, we have corrected this error for purposes of the final determination.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) and 735(c)(4)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of SRAMs from Taiwan, that are entered, or withdrawn from warehouse, for consumption on or after October 1, 1997 (the date of publication of the preliminary determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Advanced Microelectronics	113.85
Alliance	50.58
BIT	113.85
ISSI	7.59
TI-Acer	113.85
UMC	93.87
Winbond	102.88
All Others	41.98

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded the margins determined entirely under section 776 of the Act from the calculation of the "All Others Rate."

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: February 13, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–4360 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–828]

Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Blankenbaker or Thomas F. Futtner, Office of AD/CVD Enforcement 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0989 or (202) 482–3814.

APPLICABLE STATUTE: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 353 (April 1, 1996).

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that static random access memory semiconductors (SRAMs) from the Republic of Korea are being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination in this investigation (Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Static Random Access Memory Semiconductors from the Republic of Korea, 62 FR 51437 (October 1, 1997)), the following events have occurred: In November and December of 1997, we verified the Samsung Electronics Co. Ltd. ("Samsung"), and Hyundai Electronics Industries Co. Ltd. ("Hyundai"), questionnaire responses. On December 17, 1997, the Department issued its report on the verification findings for Hyundai. On December 18, 1997, the Department issued its report on the verification findings for Samsung.

The petitioner and the respondents, Hyundai, Samsung and LG Semicon Co. Ltd. ("LGS"), submitted case briefs on December 30, 1997, and rebuttal briefs on January 5, 1998. In addition, five interested parties, Compaq Computer Corporation ("Compaq"), Cypress Semiconductor Corporation ("Cypress"), Digital Equipment Corporation ("Digital"), Integrated Device Technology ("IDT"), and Motorola, Inc. ("Motorola"), submitted rebuttal briefs on January 7, 1998. We held a public hearing on January 16, 1998.

Scope of Investigation

The products covered by this investigation are synchronous, asynchronous, and specialty SRAMs from Korea, whether assembled or unassembled. Assembled SRAMs include all package types. Unassembled SRAMs include processed wafers or die, uncut die, and cut die. Processed wafers produced in Korea, but packaged, or assembled into memory modules, in a third country, are included in the scope; processed wafers produced in a third country and assembled or packaged in Korea are not included in the scope.

The scope of this investigation includes modules containing SRAMs. Such modules include single in-line processing modules ("SIPs"), single in-line memory modules ("SIMMs"), dual in-line memory modules ("DIMMs"), memory cards, or other collections of SRAMs, whether unmounted or mounted on a circuit board.

We have determined that the scope of this investigation does not include SRAMs that are physically integrated with other components of a motherboard in such a manner as to constitute one inseparable amalgam (*i.e.*, SRAMs soldered onto motherboards). For a detailed discussion of our determination on this issue, see *Comment* 6 in the "Interested Party Comments" section of this notice and the memorandum to Louis Apple from Tom Futtner dated February 13, 1998.

The SRAMs within the scope of this investigation are currently classified under the subheadings 8542.13.8037 through 8542.13.8049, 8473.30.10 through 8473.30.90, and 8542.13.8005 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is January 1, 1996, through December 31, 1996.

Facts Available

On June 16, 1997, LGS, notified the Department that it was withdrawing from further participation in this investigation. For purposes of the preliminary determination, the Department assigned an adverse facts available rate of 55.36 percent. This margin was higher than the preliminary margin calculated for either respondent in this investigation.

Section 776(a)(2) of the Act provides that "if an interested party or any other person: (A) Withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

In addition, section 776(b) of the Act provides that if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition. (See also Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103d Cong., 2d Sess. 870 (SAA).) The failure of LG to reply to the Department's questionnaire or to provide a satisfactory explanation of their conduct demonstrates that they have failed to act to the best of their ability in this investigation. Thus, the Department has determined that, in selecting among the facts otherwise available to these companies, an adverse inference is warranted.

In accordance with our standard practice, as adverse facts available, we are assigning to LG the higher of: (1) The highest margin stated in the notice of initiation; or (2) the highest margin calculated for any respondent in this investigation. In this case, this margin is 55.36 percent, which is the highest margin stated in the notice of initiation.

Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise

available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. When analyzing the petition, the Department reviewed all of the data the petitioner relied upon in calculating the estimated dumping margins, and adjusted those calculations where necessary. (See Initiation Checklist, dated March 17, 1997.) These estimated dumping margins were based on a comparison of constructed value (CV) to U.S. price, the latter of which was based on price quotations offered one company in Korea. The estimated dumping margin, as recalculated by the Department, was 55.36 percent. For purposes of corroboration, the Department re-examined the price information provided in the petition in light of information developed during the investigation and found that it has probative value. (See the Memorandum to Tom Futtner from the Team dated September 23, 1997, for a detailed explanation of corroboration of the information in the petition.)

Time Period for Cost and Price Comparisons

Section 777A(d) of the Act states that in an investigation, the Department will compare the weighted average of the normal values to the weighted average of the export prices or constructed export prices. Generally, the Department will compare sales and conduct the sales below cost of production test using annual averages. However, when prices have moved significantly over the course of the POI, it has been the Department's practice to use shorter time periods. See, e.g., Final Determination of Sales at Less Than Fair Value: Erasable Programmable Read Only Memories (EPROMs) from Japan, 51 FR 39680, 39682 (October 30, 1986), Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea, 58 FR 15467, 15476 (March 23, 1993) ("DRAMs Final Determination").

We invited comments from interested parties regarding this issue. An analysis of these comments revealed that all parties agreed that the SRAMs market experienced a significant and consistent price decline during the POI. Accordingly, in recognition of the significant and consistent price declines in the SRAMs market during the POI, the Department has compared prices and conducted the sales below cost of production test using quarterly instead of annual data.

Normal Value Comparisons

To determine whether sales of SRAMs from the Republic of Korea to the United States were made at less than normal value, we compared the Constructed Export Price (CEP) and Export Price (EP) to the Normal Value (NV), as described in the "Constructed Export Price", "Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEPs and EPs for comparison to weighted-average NVs.

In order to determine whether we should base price-averaging groups on customer types, we conducted an analysis of the prices submitted by the respondents. This analysis does not indicate that there was a consistent and uniform difference in prices between customer types. Accordingly, we have not based price comparisons on customer types.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 1998 WL 3626 (Fed. Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ordinary course of trade. The Uruguay Round Agreements Act (URAA) amended the definition of sales outside the ordinary course of trade to include sales below cost. See Section 771(15) of the Act. Because the court's decision was issued so close to the deadline for completing this final determination, we have not had sufficient time to evaluate and apply the decision to the facts of this post-URAA case. For these reasons, we have determined to continue to apply our policy regarding the use of CV when we have disregarded below-cost sales from the calculation of normal value.

In making our comparisons, in accordance with section 771(16) of the Act, we considered all products sold in the home market, fitting the description specified in the "Scope of Investigation" section of this notice, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product, based on the characteristics listed in Sections B and C of the Department's antidumping questionnaire.

Level of Trade and Constructed Export Price Offset

In the preliminary determination, the Department determined that there was sufficient evidence on the record to establish a distinction in level of trade between the U.S. CEP sales and the home market sales used for normal value as well as to justify a CEP offset for each of the two respondents. We found no evidence at verification to warrant a change from that preliminary determination. Accordingly, we have made a CEP offset for each of the respondents in this final determination. For further discussion, see "General Comment 5" in the "Interested Party Comments" section of this notice.

Constructed Export Price

A. Hyundai

We used CEP in accordance with section 772(b) of the Act, because the sales to unaffiliated purchasers were made after importation. We calculated CEP based on packed prices, f.o.b. the U.S. affiliate's warehouse to the first unaffiliated purchaser in the United States. We made the following deductions from the starting price ("gross unit price"): foreign inland freight, brokerage and handling; international freight; and U.S. brokerage, handling and inland freight. We made additional deductions, in accordance with section 772(d) (1) and (2) of the Act, for: commissions; credit, inventory carrying costs, and other indirect and direct selling expenses; and bank and extended test charges. Pursuant to section 772(d)(3) of the Act, the price was further reduced by an amount for profit, to arrive at the CEP. The amount of profit deducted was calculated in accordance with section 772(f) of the Act.

B. Samsung

We used CEP in accordance with section 772(b) of the Act, because the sales to unaffiliated purchasers were made after importation. We calculated CEP based on packed prices, f.o.b. the U.S. affiliate's warehouse to the first unaffiliated purchaser in the United States. We made the following deductions from the starting price ("gross unit price"): Foreign inland freight, brokerage, handling, and banking charges; international freight and insurance; and U.S. inland freight, brokerage, handling, insurance, and banking charges. We made additional deductions, in accordance with section 772(d) (1) and (2) of the Act for commissions, credit, advertising, and royalty expenses; inventory carrying costs and other direct and indirect

selling expenses. We also deducted U.S. repacking costs. Pursuant to section 772(d)(3) of the Act, the price was further reduced by an amount for profit, to arrive at the CEP. The amount of profit deducted was calculated in accordance with section 772(f) of the Act.

Export Price

For the Export Price (EP) sales by Samsung, we made deductions from the gross unit price for the following expenses: foreign inland freight, brokerage, handling, and banking charges; international freight and insurance; and U.S. inland freight, brokerage, handling, and banking charges.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's aggregate volume of home market sales of the foreign like product to the aggregate volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise. Accordingly, we determined that the home market was viable for each respondent.

Based on a cost allegation presented in the petition, the Department found reasonable grounds to believe or suspect that home market sales by Samsung and Hyundai were made at prices below their respective costs of production ("COPs"). As a result, the Department initiated an investigation to determine whether either respondent made home market sales during the POI at prices below its COP, within the meaning of section 773(b) of the Act.

We calculated COP as the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Act. We used the respondents' reported COPs, adjusted as discussed below, to compute quarterly weighted-average COPs for the POI. We compared the weighted-average COPs to home market sales of the foreign like product as required under section 773(b) of the Act in order to determine whether these sales had been made at prices below COP. On a product-specific basis, we compared COPs to the home market prices, less any applicable movement charges, discounts, and packing expenses.

In determining whether to disregard home market sales made at prices below the COP, we examined whether: (1) Within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. When 20 percent or more of a respondent's sales of a given product during the POI were at prices below the COP, we found that sales of that model were made below cost in "substantial quantities" within an extended period of time, in accordance with section 773(b)(2) (B) and (C) of the Act. To determine whether prices provided for recovery of costs within a reasonable period of time, we tested whether the prices which were below the per unit cost of production at the time of the sale were above the weighted average per unit cost of production for the POI, in accordance with section 773(b)(2)(D) of the Act. When we found that a substantial quantity of sales during the POI were below cost and not at prices that provided for recovery of costs within a reasonable period of time, we disregarded the below cost sales in the calculation of NV.

When NV was based on prices, we made appropriate adjustments to those prices. First, we deducted home market inland freight and home market packing costs and we added U.S. packing costs.

When there were differences in the merchandise to be compared, we made adjustments in accordance with section 773(a)(6)(C)(ii) of the Act to account for those differences. When appropriate, we made circumstance-of-sale adjustments in accordance with section 773(a)(6)(C)(iii) of the Act. For purposes of CEP sales comparisons, we deducted home market indirect expenses.

When there were no above cost home market sales for comparison, NV was based on CV. In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Although we generally relied, in our COP and CV calculation, on the data submitted by respondents, we made adjustments in the allocation of both research and development ("R&D"), the treatment of foreign exchange gains and losses, G&A expenses and interest expense as discussed below.

Hyundai

For those comparison products for which there were sales above the COP, we based NV on delivered prices to home market customers. We made deductions for inland freight, imputed credit expenses and banking charges, and home market direct and indirect selling expenses. As indirect selling expenses, we included inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

For all price-to-price comparisons, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. In addition, where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with 773(a)(6)(C)(ii) of the Act and 19 CFR 353.57.

For price-to-CV comparisons, we made deductions, where appropriate, for credit expenses and banking charges. We also deducted home market indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

Samsung

For those comparisons for which there were sales above the COP, we based NV on delivered prices to home market customers. We made deductions for inland freight, imputed credit, advertising, and royalty expenses, and home market direct and indirect selling expenses. For indirect selling expenses, we included inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses and commissions incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2). In the case of letter-of-credit sales, we added in the amount of any duty drawback.

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, SG&A, profit and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the home market.

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. See Change in Policy Regarding Currency Conversions, 61 FR 9434 (March 8, 1996). Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the Korean Won did not undergo a sustained movement.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Hyundai and Samsung for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents. The verification team included a semiconductor product expert. The Department has placed on the record in Room B–099 the following verification reports: (1) December 19, 1997, "Verification of Cost of Production and Constructed Value Data Less Than Normal Value Investigation of Static Random Access Memory Semiconductors (SRAMS) from Korea-Samsung Electronics Co. Ltd." (Samsung Cost Verification Report); (2) December 18, 1997, "Verification of Home Market Sales Response of Samsung Electronics Company (SEC) in the Antidumping Investigation of Static Random Access Memory Semiconductors (SRAMS) from the Republic of Korea" (Samsung Home Market Sales Verification Report); (3) December 12, 1997, "Verification of U.S. Sales Response of Samsung Semiconductor, Inc. in the Antidumping Investigation of Static Random Access Memory Semiconductors (SRAMS) from the Republic of Korea" (Samsung U.S. Sales Verification Report); (4) December 16, 1997, "Verification of Cost of Production and Constructed Value Data Less Than Normal Value Investigation of Static Random Access Memory Semiconductors (SRAMS) from Korea-Hyundai Electronics Industries Co. Ltd." (Hyundai Cost Verification Report); (5) December 16, 1997, "Verification of Home Market Sales Questionnaire Responses of Hyundai Electronics Industries in the Antidumping Investigation of Static Random Access Memory Semiconductors (SRAMS) from the Republic of Korea" (Hyundai Home Market Sales Verification Report); and (6) December 16, 1997, "Verification of the U.S. Sales Questionnaire of Hyundai Electronics Industries, Static Random Access Memory Semiconductors (SRAMS) from the Republic of Korea" (Hyundai U.S. Sales Verification Report).

General Comments

Comment 1: Depreciation. The petitioner contends that the Department should continue to use the same depreciation adjustment used in the preliminary determination because of the following: (1) Samsung and Hyundai avoided losses on their income statements by changing the amount of depreciation recorded; and (2) the auditors notes to the financial statements for both respondents confirms that their reported depreciation understates their actual costs. As argued by the petitioner, the object of making such an adjustment is to counteract the effort by respondents to appear to be showing a profit when prices fell below costs during 1996.

Samsung states that the Department adjusted the reported depreciation expenses based on an erroneous assumption that Samsung changed its depreciation methodology for equipment and machinery in 1996. As argued by Samsung, the change was only a change in accounting estimate, and not a change in accounting principle. Samsung also states that the adjustment is not warranted since the reported expenses reasonably reflected costs and were appropriately reported in the audited financial statements as required by and consistent with the Korean generally accepted accounting principles (GAAP). Since its reported depreciation expenses are conservative compared with depreciation expenses taken by other semiconductor manufacturers, Samsung contends these expenses cannot be considered unreasonable and distortive of costs. Further, Samsung maintains that the accounting methods used to estimate the change in useful life of the equipment are prospective, under both U.S. and Korean GAAP. They also do not require any adjustment for the cumulative effect of the change from the date of purchase since there has been no change in accounting principle, which would require that the value of the assets be restated. If the Department does continue to adjust depreciation, Samsung argues that it must cumulatively restate the effect of the change based on the data submitted before verification which was fully verified.

Hyundai argues that the Department should not have adjusted the company's depreciation expense and methodology. According to Hyundai, the reported depreciation expenses and methodology are fully consistent with Korean GAAP. Specifically, Hyundai maintains that if the auditor's opinion attached to its financial statements documents that all elements of the financial statement, including depreciation, were fully prepared in accordance with Korean GAAP. As further claimed by Hyundai, the reported depreciation expenses also reasonably reflected the cost of producing SRAMS. For example, the five year useful life period used by Hyundai in 1996 is appropriate for semiconductor equipment. Finally, Hyundai claims the depreciation expenses as reported are fully consistent with the company's historical accounting methodology.

DOC Position. We agree with the petitioner in part. Historically both respondents have been inconsistent in their approach to special depreciation. For example, both respondents took advantage of the special depreciation option available to them under the Korean Corporate Income tax law in 1995. However, no special depreciation was taken during this current investigation.

It is the Department's normal practice to use costs recorded in the books and records of the respondent. Section 773(f)(1)(A) of the Act states that cost "shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country where appropriate) and reasonably reflect the costs associated with production and sale of the

merchandise." Further, as explained in the SAA, "[t]he exporter or producer will be expected to demonstrate that it has historically utilized such allocations, particularly with regard to the establishment of appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs." (SAA at 834.)

In contrast to the previous year, both respondents, for this POI, elected not to take special depreciation. This represents a failure to report depreciation expenses in a systematic and rational matter. As a result, disproportionately greater costs were attributed to products manufactured from when the special depreciation was taken than subsequent period when it was not taken. See DRAMs Final Determination. Therefore, for the final determination, we are making an adjustment to the respondents' reported depreciation. We are adding only special depreciation to the reported cost of production.

Comment 2: Interest expense. The petitioner maintains that using tangible fixed assets as the basis for allocating interest expenses is more appropriate to measure costs than using either total assets or cost of sales because of the respondents' heavy use of debt to finance the purchase of tangible fixed assets and because a larger proportion of total fixed assets is related to the semiconductor line of business than to other lines of business.

Samsung and Hyundai state that the Department incorrectly allocated interest expenses on the basis of fixed assets and not on the cost of goods sold. As argued by both respondents, the Department has a long-standing practice of allocating interest expense based on the cost of goods sold. Samsung argues that allocating interest based on fixed assets overstates financing costs since it does not account for income generated by the semiconductor division. Samsung contends that if the Department continues to allocate interest based on assets, it should use total assets rather than fixed assets because the Department would fail to account for the total investment required by its various business units by limiting the allocation base to fixed assets and would not account for the value of fixed assets used up in prior years by allocating interest based on the historical value of fixed assets. Hyundai also maintains that if the Department continues to allocate interest based on fixed assets, the Department, first, should use Cost of Goods Sold ("COGS") to allocate total consolidated corporate interest to Hyundai, then Hyundai's total interest can be allocated to SRAMs based upon the ratio of semiconductor fixed assets to total fixed assets based on the net book value of the assets rather than the acquisition cost.

DOC Position. We agree with the respondents that interest expense should be allocated based on COGS. In our preliminary determination, we allocated interest expense among the various operating units according to the proportional share of fixed assets. We have reconsidered this issue for the final determination and concluded that because the COGS includes a proportional amount of the depreciation of the assets used in the production of the merchandise, allocation of financing expenses on the basis of COGS distributes proportionately more interest expense to those products having higher capital investment. Moreover, we note that it has been the Department's longstanding policy to allocate interest expense on the basis of the COGS of the merchandise subject to investigation. We also note that, for the 1995–1996 administrative review of DRAMs, we have allocated interest expenses based on COGS consistent with the methodology in this case. Therefore, interest expense will be allocated over COGS since it reasonably apportions the interest expenses between SRAMs and other products.

Comment 3: Research & Development. Hyundai argues that the Department overstated R&D expenses by allocating a portion of non-memory R&D expense to SRAMs. According to Hyundai, the preliminary determination deviates from the long-standing practice of calculating product-specific R&D and of excluding R&D relating to non-subject merchandise from its CV calculations. Additionally, the antidumping statute precludes the Department from attributing expenses relating to non-subject merchandise to SRAMs. Moreover, Hyundai states that the *Micron* case requires the Department to provide substantial evidence justifying its departure from its practice. As such, Hyundai argues that the record in the instant case does not support the Department's preliminary determination. For example, Hyundai claims the September 8, 1997, Memorandum from Dr. Murzy Jhabvala to Thomas Futtner, "Cross Fertilization of Research and Development of Semiconductor Memory Devices" ("September 8, 1997 Jhabvala Memo") and the Micron submissions, used by the Department in the Preliminary Determination, do not support an assumption of cross-fertilization.

Hyundai also asserts that its organizational structure and accounting records clearly distinguish between R&D expenditures for memory and non-memory products. Hyundai maintains that cross fertilization of memory and non-memory R&D is extremely unlikely considering the fundamental differences in product design, marketing and production.

Samsung argues that R&D costs related to non-memory products should be excluded because R&D performed for micro and logic products do not benefit memory products such as SRAMs. Samsung disagrees with the Department's position, stated in the preliminary determination, that all R&D conducted for semiconductor products benefits all semiconductor products and, therefore, aggregate R&D costs should be allocated to all semiconductor products for purpose of determining the cost of production and CV. Samsung cites the cases Carbon Steel Flat Products From France (See Certain Carbon Steel Flat Products from France; Final Determination of Sales at Less than Fair Value 58 FR 37125 (July 9, 1993) and Cell Site Transceivers from Japan (see Cell Site Transceivers From Japan; Final Determination of Sales at Less than Fair Value 49 FR 43080 (October 26, 1984), as examples of past cases that the Department has required R&D be calculated on a product-specific basis. Samsung also cites *Micron*, in which the court ordered the Department to "recalculate Samsung's Cost of Production for the LTFV by allocating Research & Development costs on a product-specific basis." (See *Micron Technology, Inc.* v. *U.S.* 893 F.Supp 21 (CIT 1995)). Furthermore, Samsung contends the Department's finding that R&D expenses incurred for non-memory merchandise benefits SRAMs is not supported by the record.

Samsung argues that the R&D costs relating to SRAMs consist of efforts to apply state-of-the art technology to reduce the size of circuits utilized in the subject merchandise. Samsung further states that only after a new generation of memory products has been developed are the technologies developed for memory products applied to develop customer and market specific logic devices. These later devices use existing, mature, process and manufacturing technologies. The R&D that Samsung conducts to develop new memory products might benefit the later developed micro products. Thus, the flow of R&D may be from memory to micro and application specific products, but not vice-versa. Samsung asserts that it is primarily a memory products company, with a one-way flow of R&D from memory to micro products.

Samsung disagrees with the statement prepared by Dr. Murzy Jhabvala of the National Aeronautics and Space Administration. Samsung claims that the statement does not provide enough evidence to refute what the CIT has already ruled upon. Samsung claims that Dr. Jhabvala's assertion that R&D in a given area of semiconductors, such as micro devices, is widely disseminated and read by all micro engineers, says nothing about whether the results of that research benefit development or production of memory products. Samsung further contends that his memorandum does not explain how "cross fertilization" takes place and purportedly benefits the development or production of DRAMs (or SRAMs).

Furthermore, Samsung argues that Dr. Jhabvala's December 18, 1997 memorandum does not support the Department's view that R&D expenses on ASIC and logic devices could benefit the development or production of SRAMs. Samsung claims that the issue before the Department is how to allocate the pool of R&D costs, and whether some or all of the expenses should be allocated to SRAMs production. Moreover, Samsung asserts, Dr. Jhabvala's memorandum does not demonstrate how the work performed on non-memory projects benefit SRAMs.

Samsung concludes that because non-memory R&D does not benefit SRAMs or any other memory products, those expenses cannot be properly allocated to the cost of producing SRAMs. Samsung recognizes that there is limited cross-fertilization of R&D within memory products and its methodology already accounts for any possible cross fertilization concerns. Samsung states that there is no need to include totally unrelated R&D undertaken for micro or logic products in the memory related production costs.

Samsung refers to a letter from Professor Bruce A. Wooley which states that, "[I]n the case of circuit design techniques there is virtually no cross-fertilization among various classes of memories." (See Samsung submission dated September 29, 1997.) Samsung claims that the articles proffered by the petitioner to support its claim that R&D conducted in one area benefits other areas mainly relate to process technology which may benefit a variety of products and to the incorporation of separate designs on a single chip; they do not address whether design technology from one type of memory product benefits the design of another. Samsung argues that both its verified R&D information and the fact that the company separates product-specific R&D for accounting purposes demonstrate that the R&D conducted by Samsung is product-specific design R&D, which does not benefit all products. Samsung argues that, if the Department determines that cross-fertilization of design R&D among memory products does occur, it should still not aggregate product-specific R&D for logic products with product-specific R&D for memory products.

In response to Samsung's and Hyundai's assertions, the petitioner states that the Department properly allocated all semiconductor R&D over all semiconductor production. As argued by the petitioner, there is already sufficient evidence on the record to support the Department's determination that there is significant cross-fertilization among the different areas of semiconductor design and development. Moreover, petitioner contends that logic R&D benefits SRAMs R&D expenses. Petitioner also claims that since new R&D expenses for application-specific integrated circuits (ASICs) do not benefit current production of any product, it must be allocated over all current semiconductor production. Finally, petitioner states that the presence of separate accounts for separate R&D projects does not contradict cross-fertilization.

DOC Position. We agree with the petitioner and have allocated all semiconductor R&D expenses over the total semiconductor cost of goods sold. In the DRAMs Final Determination, the Department recalculated respondents' reported R&D expense based on the ratio of each company's total semiconductor expenses to the total semiconductor costs of goods sales. As we stated in the DRAMs Final Determination:

> * * * Semiconductors present unique problems related to R&D. Because the general underlying technology is the same for all semiconductor products, the benefits from the results of R&D, even if intended to advance the design or manufacture of a specific product, provide an intrinsic benefit to other semiconductor products. It is impossible to measure the extent to which R&D benefits one semiconductor product relative to another. Thus, identification of specific R&D costs with any one product causes overstating or understating of these costs in relation to the benefits that product derived from the total R&D expenditures for semiconductors * * *.
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> (See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Determination of Sales at Less Than Fair Value 58 FR 15470 (March 23, 1993.))

Subsequent to the Department's final determination, Micron and the three respondents, Samsung, LG and Hyundai filed lawsuits with the Court of International Trade challenging that determination. Thereafter, in *Micron Technologies, Inc.* v. *United States*, 893 F.Supp. 21 (CIT 1995), the Court remanded to the Department the allocation of R&D expenses. The Court stated that the Department had failed to place on the record any evidence of cross-fertilization in the semiconductor industry. Therefore, the Court instructed the Department to recalculate respondents' cost of production by allocating research and development (R&D) expenses on a product-specific basis. In the remand results, the Department did so and the remand was affirmed. CIT No. 93–06–00318, Slip Op. 95–175 (October 27, 1995).

In the 1992–1994 DRAMs review, LG Semicon (LG) argued that the Department should not have included R&D expenses of non-DRAM products in the DRAM R&D. See Dynamic Random Access Memory Semiconductor of One Megabit or Above From the Republic of Korea; Final Results of Review 61 FR 20217 (May 6, 1996) ("1992–1994 DRAMs review"). According to LG, the Department identified and verified product-specific expenses in its accounting system. Therefore, LG argued that the Department's decision to include non-DRAM R&D was inconsistent with the *Micron* decision. In the 1992–1994 DRAMs Review final results, the Department stated:

> * * * At verification, we confirmed that each R&D project is accounted for separately in each of the respondent's respective books and records. Separate accounting, however, does not necessarily mean that cross-fertilization of scientific ideas does not occur. Moreover, the CIT specifically stated in *Micron Technology* that the Department did not "direct the court to any record evidence of R&D cross-fertilization in the semiconductor industry." *Micron Technology*, 893 F. Supp., at 27. In this review, the Department has provided such information. See Memorandum from Karen Park to Holly Kuga regarding Cross-Fertilization of R&D for DRAMs, August 14, 1995 (cross-fertilization memo). The cross-fertilization memo includes pages from verification exhibits, a memorandum from a non-partisan expert from the semiconductor industry, as well as information from certain articles widely read by experts in the DRAM R&D field demonstrating the existence of cross-fertilization of R&D in the DRAM industry * * *
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> Dynamic Random Access Memory Semiconductor of One Megabit or Above From the Republic of Korea; Final Results of Review 61 FR 20218 (May 6, 1996).

Due to the forward-looking nature of the R&D activities, the Department, in this investigation, cannot identify every instance where SRAM R&D may influence logic products or where logic R&D may influence SRAM products, but

the Department's own semiconductor expert has identified areas where R&D from one type of semiconductor product has influenced another semiconductor product in the past. Dr. Murzy Jhabvala, a semiconductor device engineer at NASA with twenty-four years experience, was asked by the Department to state his views regarding cross-fertilization of R&D efforts in the semiconductor industry. In a July 14, 1995 Memorandum to Holly Kuga, " Cross Fertilization of Research and Development Efforts in the Semiconductor Industry," Dr. Jhabvala stated that "it is reasonable and realistic to contend that R&D from one area (*e.g.*, bipolar) applies and benefits R&D efforts in another area (*e.g.*, MOS memory)." Dr. Jhabvala also stated that:

> SRAMs represent along with DRAMs the culmination of semiconductor research and development. Both families of devices have benefitted from the advances in photo lithographic techniques to print the fine geometries (the state-of-the-art steppers) required for the high density of transistors * * *. Clearly, three distinct areas of semiconductor technology are converging to benefit the SRAM device performance. There are other instances where previous technology and the efforts expended to develop that technology occurs in the SRAM technology. Some examples of these are the use of thin film transistors (TFTs) in SRAMs, advanced metal interconnect systems, anisotropic etching and filling techniques for trenching and planarization (CMP) and implant technology for retrograde wells.

(See "September 8, 1997 Jhabvala Memo.")

Furthermore, Dr. Jhabvala also participated in the verification of Samsung's R&D expenses. After interviewing several of Samsung's R&D engineers, Dr. Jhabvala concluded that "the most accurate and most consistent method to reflect the appropriate R&D expense for any semiconductor device is to obtain a ratio by dividing all semiconductor R&D by the cost to fabricate all semiconductor sold in a given period." (December 19, 1997, Memorandum from Murzy Jhabvala to the File, "Examination of Research and Development Expenses and Samsung Electronic Corporation ").

We reviewed the views of Samsung's expert on this subject and found them to be of less probative value than the cases cited above, as Jhabvala's articles refute Dr. Wooley's assertion that there is no cross-fertilization among circuit design techniques. In fact, Dr. Wooley agrees that there can be cross-fertilization in the development of process technologies among various classes of memories. This assertion also refutes the claims that there is no cross-fertilization in the development of process technologies.

The respondents argue we should follow their normal accounting records which categorize R&D expenses by project and product. While we do not disagree that each R&D project is accounted for separately in each of the respondents' respective books and records, we do not find this argument persuasive since accounting records do not address the critical issue of whether R&D in one area benefits another area. Therefore, we do not believe that the R&D expenses associated with these records reasonably reflect the appropriate cost of producing the subject merchandise.

Finally, contrary to the respondents' assertion, the methodology we are applying does calculate product-specific costs. It is the Department's practice where costs benefit more than one product to allocate those costs to all the products which they benefit. This practice is consistent with section 773(f)(1)(A) of the Act because we have determined that the product-specific R&D accounts do not reasonably reflect the costs associated with the production and sale of SRAMs. Therefore, as semiconductor R&D benefits all semiconductor products, we allocated semiconductor R&D to all semiconductor products.

Comment 4: Foreign exchange loss. The petitioner argues that current period foreign exchange losses on long-term debt should be included in cost of production since the Department's practice and U.S. and international accounting standards all require that current period foreign exchange losses on long-term debt be included in cost of production and the Department's past practice has been to disregard Korea's local accounting standard that called for deferring current period foreign exchange losses on long-term debt.

Samsung contends that its methodology is consistent with Korean GAAP and with the Department's past practice of amortizing foreign exchange losses relating to debt over the life of the loan. Samsung further maintains that its methodology does not exclude the foreign exchange losses but rather amortizes them over the life of the loans and does not distort the dumping calculation. Samsung argues that foreign exchange losses should not be treated like interest because they are not functionally equivalent to interest.

Hyundai maintains that its treatment of unrealized foreign exchange losses is in accordance with Korean GAAP and reasonably reflects the cost of production. Hyundai argues that Korean GAAP provides for the recognition of such gains or losses when they are actually incurred and unrealized long-term foreign currency translation losses do not represent an actual cost to them. Hyundai further contends that the Department should reject Micron's contention that the losses be treated as interest expenses and be allocated over fixed assets because such foreign exchange losses on long-term debt are not current interest expenses, but rather reflect fluctuations in exchange rates associated with year end valuation of foreign currency liabilities.

DOC Position. We agree with the petitioner, in part, and have included the amortized portion of foreign exchange losses on long-term debt in the cost of production as part of interest expense. The translation gains and losses at issue are related to the cost of acquiring and maintaining debt. These costs are related to production and are properly included in the calculation of financing expense as a part of COP. In previous cases, we have found that translation losses represent an increase in the actual amount of cash needed by respondents to retire their foreign currency denominated loan balances. (See Notice of Final Determination of Sales at Less than Fair Value: Fresh Cut Roses from Ecuador, 24 FR 7019, 7039, (Feb. 6, 1995).) Furthermore, the Department has amortized these expenses over the remaining life of the companies' loans in the past. (See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey, 62 FR 9737, 9743, (March 4, 1997).) We have verified deferred foreign exchange translation gains and losses for both respondents. See Samsung Cost Verification Report and Hyundai Cost Verification Report. To reasonably reflect the cost of producing and selling the subject merchandise, it is necessary that the respondents' cost reflect the additional financial burden represented by the additional cash need to retire foreign currency denominated loans. Therefore, for the final determination, the Department amortized deferred foreign exchange translation gains and losses over the average remaining life of the loans on a straight-line basis and included the amortized portion in net interest expense.

Comment 5: CEP Offset. The petitioner contends that the Department should make no CEP offset adjustment for any respondent for purposes of the final determination. The petitioner asserts that the Department's practice of determining the number and comparability of levels of trade after making all adjustments to CEP, but before adjusting NV, makes CEP offsets virtually automatic. According to the petitioner, under both the plain terms of

the statute and the intent of Congress, such adjustments should be the exception, not the rule. The petitioner notes that it raised the same argument in another case and that the issue is now before the courts. (See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review 62 FR 965 (Jan. 7, 1997) ("DRAMs 1994–1995 review") .

Hyundai disagrees, noting that the statute requires that a level of trade analysis be performed only after adjustment is made for U.S. selling expenses. Hyundai further states that the Department has rejected similar arguments made in the second and third review of DRAMS. As support for this proposition, Hyundai cites to the second review, where the Department stated that the level of trade will be evaluated based on the price after adjustments are made under section 772(d) of the Tariff Act. Hyundai maintains there is nothing new in the law or the facts of this investigation to suggest that the Department should reexamine its practice of beginning its level of trade analysis after adjusting for U.S. expenses

Samsung also disagrees with the petitioners' argument that the Department should not grant the CEP offset. Samsung cites to the second and third reviews of DRAMs in which the Department rejected identical arguments by the petitioner and stated "while the petitioner is correct in noting that the starting price for calculating the Constructed Export Price (CEP) is that of the subsequent resale by the affiliated importer to an unaffiliated buyer, the Act, as amended by the URAA, and the SAA clearly specifies that the relevant sale for our level of trade (LOT) analysis is the CEP transaction between the exporter and the importer." (See Dynamic Random Access Memory from Korea, 62 FR 39809, 39821 (July 24, 1997) ("DRAMs 1995–1995 review"). Samsung states that the statute, the SAA, the Department's regulations and the Department's practice in every case decided under the new law all mandate that in making the LOT determination, the Department should compare normal value to CEP.

Samsung also claims that the new regulations issued by the Department formally codify this policy. 19 CFR 351.412 (c) (ii) states that for purposes of the LOT analysis, the Department will "[i]n the case of constructed export price, the export price as adjusted under section 772(d) of the Act." (See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27414 (May 19, 1997). Samsung contends that the SAA instructs the Department "to establish normal value based on home market sales at the same LOT as the CEP or the starting price for the export price". Samsung asserts that the petitioner has failed to offer any evidence that the Department's level of trade analysis is incorrect and should disregard the petitioner's argument.

Samsung further claims that for CEP sales, use of the starting price, which is the sale to the first unaffiliated customer in the United States, is inappropriate because the starting price of CEP sales includes expenses associated with economic activity in the United States.

DOC Position. The statute and SAA both support analyzing the level of trade of CEP sales at the constructed export level price, i.e. after expenses associated with economic activities in the United States have been deducted pursuant to section 772(d) of the Act. As we stated in the second *DRAMs* review, the Department has:

> * * * Consistently stated that, in those cases where a level of trade comparison is warranted and possible, then for CEP sales the level of trade will be evaluated based on the price after adjustments are made under section 772(d) of the Act (see Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan; Notice of Final Determination of Sales at Less Than Fair Value, 61 FR 38139, 38143 (July 23, 1996). In every case decided under the revised antidumping statute, we have consistently adhered to this interpretation of the SAA and of the Act. See, e.g., Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review, 61 FR 15766, 15768 (April 9, 1996); Certain Stainless Steel Wire Rods from France; Preliminary Result of Antidumping Duty Administrative Review, FR 8915, 8916 (March 9, 1996); Antifriction Bearings (Other Than Tapered Roller Bearings) and parts Thereof from France, et al., Preliminary Results of Antidumping Duty Administrative Review, 61 FR 25713, 35718–23 (July 8, 1996)'.
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> Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review 62 FR 965, January 7, 1997).)

Consistent with this practice, we performed our level of trade analysis of CEP sales only after adjusting for selling expenses incurred in the United States. Based on our analysis, we determined that each respondent sold SRAMs during the POI at a level of trade in the home market which was different, and more advanced, than the level of trade of the CEP sales of SRAMs in the United States. In addition, we did not have the data necessary to consider whether a level of trade adjustment was appropriate.

Because Samsung and Hyundai provided sufficient data to justify CEP offset adjustments, we have continued to grant these adjustments.

Comment 6: Scope of the Investigation. The petitioner argues that the Department should clarify that the scope of the order on SRAMs from Korea includes the SRAM content of motherboards for personal computers. The petitioner contends that if SRAMs incorporated on motherboards are not included in the scope of the order, the respondents will shift a significant volume of SRAMs into the production of motherboards in Korea that are destined for the United States, thereby avoiding paying duties on the SRAMs.

In addition, argues the petitioner, while motherboards viewed as a whole may be considered to fall within a class or kind of merchandise separate from SRAMs, the placement of SRAMs on a motherboard does not diminish their separate identity or function, and should not insulate them from antidumping duties. The petitioner contends that its position is supported by: (1) The Department's practice regarding combined or aggregated products; (2) analogous principles of Customs Service classification; and (3) the Department's inherent authority to craft an antidumping order that forestalls potential circumvention of an order.

The petitioner also argues that the Customs Service can administer, without undue difficulty, an antidumping duty order that covers SRAMs carried on non-subject merchandise.

At the public hearing held by the Department, the petitioner asserted that there are fundamental differences between the scope language in the DRAMs Final Determination and the scope language in this investigation that distinguish the two cases. The petitioner first argues distinguishes this investigation from the DRAMs Final Determination, because in this case there "is no limitation to the function of memory." See January 16, 1998, Hearing on SRAMs from Korea, Transcript dated January 22, 1998, at page 225. The petitioner further argues that, in the DRAM case the function of the product was memory, which is not the case in this investigation. See January 16, 1998, Hearing on SRAMs from Korea, Transcript dated January 22, 1998, at page 225.

IDT and Cypress agree with the petitioner, arguing that SRAMs on a motherboard are no less SRAMs than

those imported separately and that the Department's failure to cover such imports would provide an incentive to foreign SRAM producers to shift their sales to motherboard producers in Taiwan and elsewhere.

Hyundai, Motorola, Compaq, and Digital opposed the petitioner's position. Compaq, and Digital argue that the petitioner's circumvention concerns are unfounded. They note that the Department determined in the DRAMs Final Determination that DRAMs physically integrated with the other components of a motherboard in a manner that made them part of an inseparable amalgam (*i.e.*, a motherboard) posed no circumvention risk and that the same holds true in this case.

In addition, Compaq and Digital argue that, contrary to the petitioner's assertion, SRAMs affixed to a motherboard do not retain their separate functional identities. In this case, SRAMs are integrated onto motherboards by soldering, are interconnected with other motherboard elements by intricate electronic circuitry, and become part of a complex electronic processing unit representing an inseparable amalgam (*i.e.*, a motherboard) constituting a different class or kind of merchandise that is outside the scope of the investigation.

Hyundai disputes petitioner's contention that the memory function of SRAMs is not altered by the placement of chips on a motherboard. According to Hyundai, the same statement could be made of any product installed in a finished product. For example, Hyundai argues that the Department has not determined that the scope of the antifriction bearings antidumping duty orders should be extended to include the ball bearing content of imported automobiles. Finally, Compaq and Digital argue that the petitioner's proposal is unworkable from an administrative standpoint, since it would require motherboard manufacturers to track all SRAMs placed in every motherboard throughout the world. Compaq and Digital note that they cannot determine the value of Korea SRAMs incorporated in a particular motherboard. In addition, Compaq, and Digital argue that the petitioner's proposal would be unadministrable by the Customs Service because the SRAM content of a motherboard cannot be determined by physical inspection and because the petitioner has provided no realistic proposition as to how the Customs Service might carry out the petitioner's proposal on an entry-by-entry basis, given the enormous volume of trade in motherboards.

With regard to the petitioner's assertion that the scope of the language in DRAMs Final Determination is fundamentally different from the scope language in this investigation, Compaq and Digital argue that the language is quite similar and that there is no "doubt that literally the language in this Notice of Investigation and in the preliminary referred to certain modules, and those are memory modules, not any kind of board on which other elements are stuffed." See January 16, 1998, Hearing on SRAMs from Korea, Transcript dated January 22, 1998, at page 203.

DOC Position. We disagree with the petitioner. The petitioner's argument that the scope of the investigation as defined in the preliminary determination should be interpreted to encompass the SRAM content of motherboards is unpersuasive for three basic reasons. First, the SRAM content of motherboards (when affixed to the motherboard) was not expressly or implicitly referenced in the scope language used, to date, in this investigation. Second, just as we found in the DRAMs Final Determination, the petitioner's claims about potential circumvention of the order are groundless. Third, it is not appropriate for an antidumping duty order to cover the input content of a downstream product. As the Department found in DRAMS Final Determination, a case in which a nearly identical proposal was rejected by the Department, when a DRAM is physically integrated with a motherboard, it becomes a component part of the motherboard (an inseparable amalgam). As there has been no request to include motherboards within the scope of this investigation, the SRAM content of motherboards (when physically integrated with the motherboard) cannot be covered.

As to the first point, we disagree with the petitioner's assertion that the differences between the scope language in DRAMs From Korea and the language in this case are so fundamental that the differences can be interpreted to mean that SRAMs soldered onto motherboards are included within the scope of this investigation. The SRAM scope language relied upon by the petitioner includes within the scope of this investigation "other collection[s] of SRAMs;" as the petitioner notes in its argument, this refers specifically to modules whether mounted or unmounted on a circuit board. There is similar scope language in DRAMs From Korea. In that case, we interpreted the language as not extending to modules which contain additional items which alter the function of the module to something other than memory. Such an interpretation, applied to this case, indicates clearly that the SRAM content of motherboards is not within the scope of this investigation.

We found in DRAMs From Korea that memory boards whose sole function was memory were included within the definition of memory modules; however, we further concluded that other boards, such as video graphic adapter boards and cards were not included because they contained additional items which altered the function of the modules to something other than memory. Consequently, at the time of the final determination, we added language to the DRAMs From Korea scope in order that these other, enhanced, boards be specifically excluded. Since the issue of such enhanced boards was not raised in this case, we did not find it necessary to include an express exclusion for such products. Thus, the absence of such language should not be interpreted to permit the inclusion of products which do not fall under the rubric of "other collections of SRAMs."

As to the second point, the petitioner argued in DRAMS Final Determination that unremovable DRAMs on motherboards should be included in the scope of the order to counter the potential for circumvention of the order. We stated in that determination that we considered it "infeasible that a party would import motherboards with the intention of removing the integrated DRAM content and, therefore, consider it unreasonable to expect that any order arising from this investigation could be evaded in such a fashion." (See DRAMS Final Determination, Case Number A–580–812, "Memorandum to Joseph Spetrini from Richard Moreland", dated March 15, 1993, at page 13). We find it equally infeasible that an importer would import SRAMs soldered onto a motherboard for the sole purpose of removing those SRAMs for individual resale thereby circumventing the antidumping duty order.

As to the third point, our statute does not provide a basis for assessing duties on the input content of a downstream product. See Senate Rep. 100–71, 100th Congress, 1st Sess. 98 (1987) (in which the report notes both the general rule and the "major input" exception, which applies only in an investigation or review of a downstream product). Thus, where an SRAM loses its separate identity by being incorporated into a downstream product, and where the investigation covers SRAMs but does not cover the downstream product, there can be no basis for assessing

duties against the SRAMs incorporated in the downstream product.

For a more detailed discussion regarding this issue, see the Memorandum to Louis Apple from the Team, dated February 13, 1998.

Comment 7: Calculation of CV Profit. Petitioner maintains that the Department erroneously included in its calculation of CV profit sales that failed both prongs of the cost test. Samsung disagrees and argues that the Department, for the purposes of calculating CV profit, should not have disregarded sales below costs which have not otherwise been excluded from the calculation of normal value. Furthermore, petitioner argues that the Department should revise its computer program to ensure that only sales that are above quarterly costs at the time of sale are included in the calculation. According to petitioner, sales that fail the cost test, but pass the "cost recovery test" under section 773(b)(2)(D), are deemed to have zero profit even if they are not excluded from normal value. As a result, an erroneous CV profit rate was calculated by the Department. Therefore, the Department should correct the programming language.

Samsung asserts that the Department inadvertently included sales of models that were found to be one hundred percent below costs in the calculation of CV profit. It argues that the Department's longstanding practice is to exclude from the pool of sales used to calculate CV profit only those sales which have been disregarded in the cost test.

DOC Position. We agree with Samsung. It is the Department's practice to exclude any home market sales that failed the cost test from the pool of sales used to calculate CV profit. According to the SAA, the Department "will base amounts for SGA and profit only on amounts incurred and realized in connection with sales in the ordinary course of trade . . . Commerce may ignore sales it disregards as a basis for normal value, such as those sales disregarded because they are made at below-cost prices." *See* SAA at 839. The Department has revised its preliminary calculations to include in the CV profit only those sales which have not been disregarded as the basis for normal value.

Company Specific Issues

A. Petitioner

Comment 1: Untimely Clerical Error Allegation. Petitioner alleges that the Department accepted an untimely clerical error submission from Samsung. Samsung's clerical error allegation was that the Department inadvertently set inventory carrying costs to zero.

DOC Position. We agree with the petitioner. Samsung's submission was dated after the deadline to submit any allegations for clerical errors pursuant to the preliminary determination. However, the Department had already determined that inventory carrying cost had been set to zero prior to the Samsung submission. Therefore, for this final determination, we have revised the computer program, accordingly.

Comment 2: Cost Test Methodology. Petitioner claims that the Department inappropriately compared U.S. models to the next most similar model in the home market when all of the home market sales of the identical or most similar product made during a given quarter failed the cost test. Petitioner claims that if all of the sales made during a given quarter fail the cost test, the Department should make comparisons to CV, rather than going to the next most similar model, even if more than 80 percent of the sales of that home market model were made above cost during the POI.

DOC Position. Section 773(b)(1) instructs the Department to disregard sales below cost when they "(A) have been made within an extended period of time in substantial quantities; and (B) were not at prices which permit recovery of all costs within a reasonable period of time." To measure cost recovery of each below-cost sale, the Department compares each below-cost price to the annual cost of production of that model, and disregards those sales whose price is lower than the annual cost of production. The Department defines the extended period of time and the cost recovery period as the POI. To measure whether sales have been made in substantial quantities over an extended period of time, the Department determines the quantity of sales that were made below cost during the POI. If 80 percent or more of the sales during the POI were made above cost, then the Department uses all sales, above and below cost, to determine normal value. If less than 80 percent of the sales during the POI were above cost, then the Department uses only the above-cost sales to determine normal value.

Therefore, in cases where comparisons are made on a POI-basis, the Department calculates a weighted-average normal value for all models that had at least one sale above cost during the POI. It resorts to CV only when there are no sales of identical or similar merchandise or when all sales of a comparison product fail the cost test.

Comment 3: Depreciation Ratio Adjustment. Petitioner claims that the Department applied the wrong depreciation ratio adjustment for components to Samsung's modules.

DOC Position. We agree with petitioner. We inadvertently applied the wrong depreciation ratio and therefore, have made the adjustment for the final determination. (See Comment 1.)

Comment 4: Overwritten Data. Petitioner alleges, and Hyundai and Samsung concur, that the cost test results are applied to the original sales database in such a way that the cost test data set inappropriately overwrites the data in the original data set.

DOC Position. We agree with petitioner, Hyundai and Samsung, and have made the appropriate corrections to our calculations.

Comment 5: Adjustment to Fabrication Costs. Petitioner argues that the evidence on the record clearly has demonstrated that Samsung shifted costs from the production of SRAMs to the production of non-subject merchandise. Therefore, petitioner requests that the Department make an adjustment to Samsung's fabrication costs. Petitioner claims the verification team missed the demonstrable under-reporting of costs of the SRAMs. The team did not do the following: (1) Verify the entire production of a sample cost center; (2) ask to see the entire production quantities of subject and non-subject merchandise; (3) examine all costs; (4) determine if the allocation of costs between subject and non-subject merchandise was reasonable. Petitioner also developed a cost model to demonstrate how Samsung's costs were allocated away from SRAMs to uncovered merchandise. In a parallel argument, petitioner also alleges that Samsung was unable to provide contemporaneous "written" records of its non letter-of-credit home market sales. Although it contained price and quantity information, Samsung's computer-generated sales listing does not constitute a verifiable document and permits the manipulation of past prices.

Samsung argues that it did not shift costs from SRAMs to non-subject merchandise. Citing the verification report, Samsung argues that the Department did the following: (1) Examined and differentiated between the allocation of costs for SRAMs and non-subject merchandise; (2) reconciled the allocation of the processing costs between subject and non-subject merchandise using actual data from the cost system and the cost submission; (3) tied the reported product costs to the financial statements; (4) tested the allocations and the standard machine and labor hours; and (5) summarized

that all costs were reconciled to the financial statements.

DOC Position. We agree with Samsung and have not made an adjustment to fabrication costs. Regarding Samsung's costs, the Department conducted an extensive verification. See Samsung Cost Verification Report. Moreover, contrary to the petitioner's allegation, the Department verified the entire cost of several cost centers as well as production quantities. We determined that the allocation of costs between subject and non-subject merchandise was reasonable, as based on Samsung's actual accounting records. We examined these issues during the overall cost reconciliation and the verification of major cost components, such as materials, labor, and overhead. Furthermore, the Department reconciled the total accumulated costs for each cost center to the total cost of manufacturing for Samsung. Therefore, the Department fully verified and reconciled all reported costs.

In regard to petitioner's cost model, we note that it was based on three faulty assumptions: (1) That all models produced on a given line have the same processing times; (2) that all models produced on the same line have the same yields; and (3) that the total products processed on a given line will equal the rated capacity for the product. The Department examined standard times and yields in detail and verified that there are differences among products. Also, actual throughput will vary from rated capacity depending on the operation and utilization of the resources of the line. For these reasons, we do not find that petitioner's cost model provides a substantial basis for disregarding our verification findings

With respect to the sales verification allegation, the Department examined at length Samsung's computerized record keeping system. The fact that Samsung did not state the price of the merchandise on the shipping orders is irrelevant. The Department successfully conducted extensive sales traces on both pre-selected and surprise sales to verify prices and received voluminous documentation for each sale, from shipping orders to bank receipts, which were then tracked into the sales ledgers and then tied to the audited financial statements. This process was clearly described in the verification report. As noted in the verification report, the Department found no discrepancies or omissions in Samsung's reporting. See Samsung Cost Verification Report. For these reasons, we are not making changes to Samsung's sales response except as noted elsewhere in this notice.

B. Samsung

Comment 1: Double-Counting of Duty Drawback. Samsung claims that the Department double-counted the duty drawback for local letter of credit sales by adding duty drawback to the sales value in the determination of revenue in the CEP profit calculation. Samsung argues, that the Department, however, also reduced direct selling expenses, which were deducted from Korean revenues, by the amount of duty drawback. As a result, duty drawback was double-counted.

DOC Position. We disagree with Samsung. We did not inadvertently double-count duty drawback in the calculation for U.S. and home market revenue.

Comment 2: Use of Consolidated Financial Statements. Samsung argues that the Department's use of its unconsolidated financial statements for determining interest expense is appropriate in this case since the use of the unconsolidated financial statements is consistent with the DRAMs Final Determination investigation and the first administrative review of 1992–1994 DRAMs review. It further contends that calculating the interest expense based on the consolidated financial statements would distort the interest expense calculation because it is not possible for Samsung to break out the short-term interest income which would be used to offset interest expense on the consolidated basis. However, Samsung maintains that the requisite data is on the record and has been verified if the Department decides to use the consolidated financial statements to calculate the interest expense.

DOC Position. We disagree with Samsung. It is a longstanding Department policy to use consolidated interest expense because this practice recognizes the fungible nature of invested capital resources within a consolidated group of companies. See Kaplan, Kamarck and Parker Cost Analysis under the Antidumping Law, 21 Geo. Wash. J. Int'l L & Econ., 357, 387 (1988). The Department previously used the unconsolidated financial statements for the DRAMs investigation and the first and second reviews because the consolidated financial statements were not available at that time. For this final determination, we have used the used the interest expense as recorded in Samsung's consolidated financial statement.

Comment 3: Guaranty Fees. Samsung maintains it did not include guaranty fees in its interest expense because these fees were included in the G&A calculation. If the fees are an interest expense, Samsung argues that they should be deducted from G&A to avoid double-counting.

DOC Position. We have not reclassified guaranty fees from G&A expense to interest expense as it would have no impact on the submitted costs.

Comment 4: Revised Interest Expense. Samsung claims that the Department erroneously calculated the revised interest expense as a percentage of the variable TOTAL, which includes the cost of manufacturing (COM), G&A and R&D. It maintains that the revised interest adjustment factor was based on COGS which does not include G&A or R&D, and, therefore, the revised interest factor should be calculated as a percentage of COM.

DOC Position. We agree and have revised our calculations in our computer program

Comment 5: CV Profit Rate Methodology. Samsung claims that the Department erroneously calculated the overall CV profit rate by first computing the transaction specific profit rate for each home market sale, then weight-averaging the transaction specific rates based on sale quantity to compute the overall CV profit rate. It claims that the Department's standard practice is to calculate the CV profit rate by dividing the total home market profit by the total home market cost to derive a profit ratio. It quotes Certain Stainless Steel Wire Rods from France, 62 FR 7206, 7209 (February 18, 1997) and Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom, 61 FR 56514 (November 1, 1996), as saying that the method used in the preliminary determination seriously distorts the dumping calculation. For the final determination, the Department should use its normal methodology for calculating CV profit.

Petitioner states that it is more appropriate to calculate CV profit using the methodology in the preliminary determination. Further, petitioner notes that the two cases cited by Samsung did not make a judgement as to the general applicability of the CV profit methodology. Instead, the Department in these two above-cited cases only acknowledged that it was changing the programming language and not revising its overall CV profit methodology.

DOC Position. We agree with Samsung. For this final determination, we have used the normal methodology used to calculate the CV profit rate for both Samsung and Hyundai. It measures more accurately the actual profit for sales of the foreign like product made in the ordinary course of trade. Therefore, for the final determination, the CV profit ratio was calculated by dividing total

home market profit by total home market costs, for each respondent, as both respondents had above-cost sales in the home market.

C. Hyundai

Comment 1: CV Profit on a Quarterly Basis. Hyundai argues that the Department must calculate CV profit on no longer than a quarterly basis. For the purposes of the preliminary determination, the Department recognized that prices during the POI declined significantly and, therefore, used quarterly data for the comparisons of prices and sales below cost test. However, the Department did not calculate profit for CV on a quarterly basis. Hyundai further argues that declining prices, in turn affect the profit rates earned on sales during the period of investigation. Since the antidumping comparison is based on matching comparable products in a comparable period, the Department should also apply the appropriate quarterly profit rates in the calculation of CV.

Petitioner contends that the Department properly used the annual profit figure in the CV calculation. The annual profit rate is the correct figure since it reflects not only the quarterly cost of manufacture but also those annual costs, such as general and administrative and financing expenses, which are non-recurring and must be calculated on an annual basis to ensure that all costs are captured in the cost of production.

DOC Position. We agree with the petitioner. The Department applies the average profit rate for the POI or period of review (POR) even when the cost calculation period is less than a year. See, e.g., Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 62 FR 53287, 53295 (Oct. 14, 1997) and Silicon Metal from Brazil; Final Results of Antidumping Duty Administration Review, 61 FR 46763, 46774 (Sept. 5, 1996). The calculation of profit as an average for the period of investigation or review is implied by the statute's guidance as to the recovery of cost test. Section 773(e)(2)(A) of the Act mandates that the Department use the actual amounts for profit in connection with the production and sale of the foreign like product in the ordinary course of trade. Moreover, section 773(b)(2)(D) of the Act directs us to perform the recovery of cost test on a POI basis. Therefore, in order to be consistent we must calculate profit on the same basis as the basis used to determine whether sales were made in the ordinary course of trade.

Comment 2: Reversal of Bad Debt. Hyundai contends that the reversal of bad debt should be used to offset G&A expense. Hyundai submitted a revised G&A calculation at verification to reflect this reversal of bad debt. Hyundai states that the reversal of the allowance for bad debt is classified under non-operating income in its financial statements.

DOC Position. We agree with Hyundai. The allowance for bad debt is properly classified as a non-operating general expense. The revised G&A calculation was properly submitted prior to the beginning of verification. We have made the appropriate changes for the final determination.

D. LG Semicon

Comment 1: Facts Available. LG argues that the Department should not use a facts available rate based on information supplied by the petitioner that has been determined to be inaccurate in the course of the Department's investigation. LG contends that because the petition was based on Samsung's data, and since Samsung received an estimated margin in the preliminary determination significantly different than the petition rate, the petition data cannot be used as facts available. LG maintains that to assign it a rate of 55.36 percent nullifies the subsequent investigation which led to Samsung having a 1.59 percent margin. LG cites the case of *D & L Supply Co.* v *United States* 113 F.3d 1220 (1997), in which the Federal Circuit ruled that the Department should use the best information provisions of the Act "to determine current margins as accurately as possible."

Petitioner contends that the Department properly assigned a facts available rate to LG based on corroborated information from the petition since LG refused to participate in the investigation. The Department should not give preferential treatment to LG, a non-cooperative respondent, by assigning as facts available a margin calculated for a participating respondent. Petitioner disputes LG's contention that the petition data was "seriously flawed." Petitioner argues that the Department compared Samsung's actual prices with the petitioner's home market and U.S. price quotes, and found them sufficiently "close." LG had full opportunity to present its own data and receive its own calculated dumping margin based on that data if it disagreed with the data presented in the petition. LG chose not to cooperate.

DOC Position. We agree with petitioner. We have assigned an adverse facts available rate due to LG's refusal to provide information pursuant to the investigation. Section 776(a)(2) of the Act provides that if an interested party: (1) Withholds information that has been requested by the Department; (2) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (3) significantly impedes a determination under the antidumping statute; or (4) provides such information but the information cannot be verified, the Department shall use the facts otherwise available in reaching the applicable determination. At the time of LG's withdrawal from the investigation, the Department did not consider LG to be an insignificant supplier to the U.S. market and did not excuse the company from responding to the questionnaire. Because LG failed to respond to the Department's questionnaire, we recommend using the facts otherwise available to calculate their dumping margins.

When a party fails to cooperate to the best of its ability, the Department may make an adverse inference when selecting from the facts otherwise available, and pursuant to Section 776(b) of the Act such an inference may be based on information in the petition. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. When analyzing the petition, the Department reviewed all of the data the petitioner relied upon in calculating the estimated dumping margins, and adjusted those calculations where necessary. These estimated dumping margins were based on a comparison of CV to U.S. price, the latter of which was based on price quotations offered by Samsung. For purposes of corroboration, the Department re-examined the price information provided in the petition in light of information developed during the investigation and found that it had probative value. See September 23, 1997, Memorandum from the Team to Tom Futtner. In this case, the Department corroborated the sales information contained in the petition by comparing it to Samsung's actual data. The Department found that the petition prices reasonably reflected Samsung's actual reported prices during this investigation. While Samsung's calculated, weighted-average margin differs from the weighted-average

margin based on the petition information, that difference is a result of the more complete data-set provided by Samsung. Within that data-set, we have confirmed that some of Samsung's product-specific margins exceed the 55.36 percentage rate calculated in the petition. Thus, because the petition rate is not contradicted by the evidence gathered during the investigation, we continue to find it of probative value in drawing an adverse inference concerning dumping by LG.

LG's reliance on *D&L Supply* is misplaced. *D&L Supply* dealt with a situation in which the Department attempted to rely on a calculated margin from a prior review when that calculated margin had been revised as a result of litigation. The Federal Circuit held that continued use of the judicially invalidated rate was erroneous. That situation is significantly different from the present case. In this case, the petition was based on data from one respondent and the Department has calculated a different weighted-average dumping margin for that respondent. A petition rate is normally based on a limited selection of the products and prices at which subject merchandise has been sold during the period of the investigation. Only by participation in the investigation will the Department obtain, for each individual respondent, more complete data on the products and prices sold by the respondents throughout the period of investigation. Based on the complete universe of products and prices for each respondent, the Department calculates a weighted-average dumping margin for the respondent. Of course, each respondent's products and prices will be different and, typically, different from that contained in the petition. However, it is only by cooperating in the investigation that the Department obtains the data to determine the extent to which a respondent's product-mix and price-mix differs from the information contained in the petition. Finally, LG argues that Samsung's reported U.S. and home market prices were different from those used in the petition. It further maintains that had Samsung's reported prices been used, the result would have lowered the margin. However, the prices cited in the petition represented a reasonable estimate of Samsung's prices based on the information available at the time the petition was filed. Corroboration of the petition does not require the substitution if actual reported numbers where the Department finds that the information originally submitted has probative value. Because the Department has found that the petition prices were probative of the level of dumping which may have taken place during the period of investigation, we have continued to rely on it in this final determination.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) and 735(c)(4)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of SRAMs from Korea that are entered, or withdrawn from warehouse, for consumption on or after October 1, 1997 (the date of publication of the preliminary determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Samsung Electronics Co. Ltd ...	1.00
Hyundai Electronics Co. Ltd	5.08
LG Semicon Co. Ltd	55.36
All others rate	5.08

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: February 13, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–4537 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–307–813]

Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final determination of sales at less than fair value.

SUMMARY: The Department has made a final affirmative determination in this antidumping duty investigation. Because the respondent, C.V.G. Siderurgica del Orinoco, C.A., did not permit verification of its questionnaire responses, the margin in this determination is based on the facts available, in accordance with section 776(a)(2) of the Tariff Act of 1930, as amended. As facts available, we have applied the highest margin derived from the petition.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Daniel Manzoni, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–1121, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 353 (April 1997). Although the Department's new regulations, codified at 19 CFR 351 (62 FR 27296: May 19, 1997), do not govern this investigation, citations to those regulations are provided, where appropriate, to explain current Departmental practice.

Final Determination

We determine that steel wire rod ("SWR") from Venezuela is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735(b) of the Act. The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination in this investigation (Preliminary Determination and Postponement of Final Determination: Steel Wire Rod from Venezuela, 62 FR 51584, October 1, 1997), (Preliminary Determination) the following events have occurred:

On October 2, 1997, we issued a supplemental questionnaire regarding the cost of production questionnaire response to the respondent, C.V.G. Siderurgica del Orinoco, C.A. ("Sidor").

On October 28, 1997, Sidor advised the Department that it would not respond to the Department's October 2, 1997, supplemental questionnaire and it would not participate in verification of its questionnaire responses.

On January 5, 1998, the petitioners submitted a case brief and on January 12, 1998, Sidor submitted a rebuttal brief.

Scope of Investigation

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States ("HTSUS") definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods. The following products are also excluded from the scope of this investigation:

- Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as "Tire Cord Wire Rod."
- Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth, containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."
- Coiled products 11 mm to 12.5 mm in diameter, with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.72 percent; manganese 0.50–1.10 percent; phosphorus less than or equal to 0.030 percent; sulfur less than or equal to 0.035 percent; and silicon 0.10–0.35 percent. This product is free of injurious piping and undue segregation. The use of this excluded product is to fulfill contracts for the sale of Class III pipe wrap wire in conformity with ASTM specification A648–95 and imports of this product must be accompanied by such a declaration on the mill certificate and/or sales invoice. This excluded product is commonly referred to as "Semifinished Class III Pipe Wrap Wire."

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Exclusion of Pipe Wrap Wire

As stated in the Preliminary Determination, North American Wire Products Corporation ("NAW"), an importer of the subject merchandise from Germany, requested that the Department exclude steel wire rod used to manufacture Class III pipe wrapping wire from the scope of the investigations of steel wire rod from Canada, Germany, Trinidad and Tobago, and Venezuela. On December 22, 1997, NAW submitted to the Department a proposed exclusion definition. On December 30, 1997, and January 7, 1998, the petitioners submitted letters concurring with the definition of the scope exclusion and requesting exclusion of this product from the scope of the investigation. We have reviewed NAW's request and petitioners' comments and have excluded steel wire rod for manufacturing Class III pipe wrapping wire from the scope of this investigation (see Memorandum to Richard W. Moreland dated January 9, 1998, and instructions to Customs dated January 13, 1998).

Period of Investigation

The period of investigation ("POI") is January 1, 1996, through December 31, 1996.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, (3) significantly impedes an antidumping investigation, or (4) provides such information but the information cannot be verified, the Department is required to use facts otherwise available to make its determination (subject to subsections 782(c) (1) and (e)).

In addition, section 776 (b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences against an interested party if that party failed to cooperate by not acting to the best of its ability to comply with requests for information. See also "Statement of Administrative Action" accompanying the URAA, H.R. Rep. No. 316, 103rd Cong., 2d Sess. 870 ("SAA"). The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition.

Sidor's decision not to respond to the Department's October 2, 1997, supplemental cost of production questionnaire and refusal to permit the Department to verify the information it submitted for the record in this investigation demonstrates that it failed to act to the best of its ability in this investigation. Therefore, the Department has determined that, in selecting from among the facts available, an adverse inference is appropriate. Consistent with Department practice in cases where a respondent withdraws its participation in an investigation, as adverse facts available, we have applied a margin based on information in the petition (see, e.g., Final Determination of Sales at Less Than Fair Value: Vector Supercomputers From Japan, 62 FR 45623, August 28, 1997, ("Vector Supercomputers")). See also Comment 1.

Section 776(c) of the Act provides that, when the Department relies on secondary information (such as information contained in the petition) as facts available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Corroborate means determine that the secondary information to be used has probative value. See SAA at 870.

The petitioners calculated the highest margin in the petition, 66.75 percent, based on a comparison of the petitioners' estimate of ex-factory export price to the petitioners' estimate of the constructed value ("CV"), as shown at Exhibit D of the petitioners' March 11, 1997, submission. The petitioners derived export price based on price quotations to U.S. purchasers. Because Sidor's questionnaire response data is unverified, we did not rely on this data for purposes of corroboration. Therefore, we have compared the petitioners' export price estimate to IM–145 Import Statistics. Our comparison of these prices showed them to be reasonably consistent (see Memorandum to the file dated February 6, 1998). Accordingly, we determine that this export price calculation set forth in the petition has probative value.

To calculate CV, the petitioners used manufacturing costs based on one petitioner's own production experience and publicly available industry data. When analyzing the petition, the Department reviewed all of the data the petitioners relied upon in calculating the estimated CV, and adjusted those calculations where necessary. For purposes of corroboration, we re-examined the data submitted by the petitioners and found it to be reasonable and of probative value. In addition, we note that no party has presented to the Department any information to support a challenge to the appropriateness of the information contained in the petition as the basis for a facts available margin for Sidor. See Vector Supercomputers, where the Department applied facts available margin in closely similar circumstances. In accordance with section 776(c) of the Act, we have corroborated the highest margin in the petition, which is secondary information upon which we have relied as facts available.

Interested Party Comment

Comment: Facts Available Rate for Sidor

The petitioners contend that, because Sidor refused to allow the Department to verify its questionnaire responses and refused to respond to the Department's October 2, 1997, supplemental questionnaire, the Department must assign Sidor a margin based on adverse facts available. Accordingly, the petitioners claim that the Department should assign the higher of the highest non-aberrational dumping margin calculated from Sidor's questionnaire responses, or the highest estimated dumping margin listed in the petition.

Sidor contends that the Department should apply the rate of 51.21 percent calculated for the preliminary determination as the appropriate facts available rate for this proceeding. However, Sidor has provided no support for its position.

DOC Position

We agree with the petitioners that the highest rate alleged in the petition, and as corroborated by the Department, is the appropriate facts available rate in this determination. Under section 782(i)(1) of the Act, the Department must rely on verified information for making a final determination in an antidumping duty investigation. Sidor's refusal to permit verification of its questionnaire responses prevents the Department from using Sidor's information for our final determination. Therefore, we did not use the margin calculated in the preliminary determination because it is based on unverified questionnaire response information. Using Sidor's unverified information as the basis for the final margin could possibly reward the respondent by assigning a margin lower than what would have been calculated using verified information. As noted above, in cases such as this one, the Department relies on the facts otherwise available, normally data from the petition, for making its determination. We have no basis in this instance to depart from this practice. Normally, the all-others rate is to be amount equal to the weighted average of the estimated weighted average dumping margins for exporters and producers individually investigated, excluding margins based entirely on facts available. Section 735(c)(5)(A). However, if all of the estimated dumping margins are based entirely on facts available, the statute permits the Department to use any reasonable method to establish the all others rate. Section 735(c)(5)(B). As discussed above, Sidor was the only respondent in this investigation and its margin was based entirely on facts available. The margin calculated for Sidor for purposes of the preliminary results of this investigation cannot serve as a reasonable all others rate because, as discussed above, it has not been verified. Further, there is no other information on which to base an all others rate. Accordingly, we have based the all others rate on Sidor's rate.

Suspension of Liquidation

On February 13, 1998, pursuant to section 734(b) the Act, the Department signed a suspension agreement, with SIDOR. Pursuant to section 734(f)(2)(A) of the Act, we are instructing Customs to terminate the suspension of liquidation of all entries of steel wire rod from Venezuela. Any cash deposits of entries of steel wire rod from Venezuela shall be refunded and any bonds released.

On February 13, 1998, we received a request from Sidor requesting that we continue the investigation. As a result of this request, we have continued and completed the investigation in accordance with section 734(g) of the Act. We have found the following margins of dumping:

Exporter/manufacturer	Margin percentage
CVG Siderurgica Del Orinoco C.A. ("Sidor")	66.75
All Others	66.75

ITC Notification

In Accordance with section 734(d) of the Act, we have notified the ITC of our determination. If our determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC's injury determination is negative, the agreement will have no force or effect. See section 734(f)(3)(A) of the Act. If the ITC's injury determination is affirmative, the Department will not issue an antidumping duty order as long as the suspension agreement remains in force, the agreement continues to meet the requirements of subsections (b) and (d) of section 734 of the Act, and the parties to the agreement carry out their obligations under the agreement in accordance with its terms. See section 734(f)(3)(B) of the Act.

This determination is published pursuant to section 735(d) of the Act.

Dated: February 13, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–4538 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–307–813]

Suspension of Antidumping Duty Investigation: Steel Wire Rod From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has suspended the antidumping duty investigation involving steel wire rod from Venezuela. The basis for this action is an agreement between the Department and C.V.G. Siderurgica del Orinoco, C.A. (Sidor) to revise their prices to eliminate completely sales of this merchandise to the United States at less than fair value.

EFFECTIVE DATE: February 13, 1998.

FOR FURTHER INFORMATION CONTACT: Lyn Baranowski, Lesley Stagliano, Elisabeth Urfer, or Edward Yang, Office of AD/CVD Enforcement III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue N.W., Washington, DC 20230; telephone (202) 482–1385, (202) 482–0648, (202) 482–4236, or (202) 482–0406, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 1997, the Department initiated an antidumping investigation under section 732 of the Tariff Act of 1930, (the Act), as amended, to determine whether imports of steel wire rod from Venezuela are being or are likely to be sold in the United States at less than fair value (62 FR 13854 (March 18, 1997)). On April 14, 1997, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination (see ITC Investigation Nos. 701-TA–368–371 and 731-TA–763–766). On October 1, 1997, the Department preliminarily determined that steel wire rod is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (62 FR 51584 (October 1, 1997) ("LTFV Prelim")).

The Department and Sidor initialed a proposed agreement suspending this investigation on January 14, 1998. On January 14, 1998, we invited interested parties to provide written comments on the agreement and received comments from Connecticut Steel Corporation, Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Company, North Star Steel Texas, Inc. and Northwestern Steel and Wire Company.

The Department and Sidor signed the final suspension agreement on February 13, 1998.

Scope of Investigation

The products covered by the investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States ("HTSUS") definitions for a) stainless steel; b) tool steel; c) high nickel steel; d) ball bearing steel; e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or f) concrete reinforcing bars and rods. The following products are also excluded from the scope of this investigation:

- Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as "Tire Cord Wire Rod."
- Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth, containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."
- Coiled products 11 mm to 12.5 mm in diameter, with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.72 percent; manganese 0.50–1.10 percent; phosphorus less than or equal to 0.030 percent; sulfur less than or equal to 0.035 percent; and silicon 0.10–0.35 percent. This product is free of injurious piping and undue segregation. The use of this excluded product is to fulfill contracts for the sale of Class III pipe wrap wire in conformity with ASTM specification A648–95 and imports of this product must be accompanied by such a declaration on the mill certificate and/or sales invoice. This excluded product is commonly referred to as "Semifinished Class III Pipe Wrap Wire."

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Exclusion of Pipe Wrap Wire

As stated in the LTFV Prelim, North American Wire Products Corporation ("NAW"), an importer of the subject merchandise from Germany, requested that the Department exclude steel wire rod used to manufacture Class III pipe wrapping wire from the scope of the investigations of steel wire rod from Canada, Germany, Trinidad and Tobago, and Venezuela. On December 22, 1997, NAW submitted to the Department a proposed exclusion definition. On December 30, 1997, and January 7, 1998, the petitioners submitted letters concurring with the definition of the scope exclusion and requesting exclusion of this product from the scope of the investigation. We have reviewed NAW's request and petitioners' comments and have excluded steel wire rod for manufacturing Class III pipe wrapping wire from the scope of this investigation (*see* Memorandum to Richard W. Moreland dated January 9, 1998).

Suspension of Investigation

The Department consulted with parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with Section 734(b) of the Act, exporters of the subject merchandise who account for substantially all of the imports of that merchandise agree to revise their prices to eliminate completely any amount by which the normal value of the subject merchandise exceeds the export price or constructed export price of that merchandise. We are satisfied that suspension of the investigation pursuant to section 734(b) of the Act is in the public interest and have concluded that the agreement can be monitored effectively. See Public Interest Memorandum, February 13, 1998. We find, therefore, that the criteria for suspension of an investigation pursuant to section 734(b) of the Act have been met. The terms and conditions of this agreement, signed February 13, 1998, are set forth in Annex I to this notice.

Pursuant to section 734(f)(2)(A)(ii) of the Act, the suspension of liquidation of all entries of steel wire rod from Venezuela entered or withdrawn from warehouse, for consumption, as directed in our LTFV Prelim is hereby

terminated. Pursuant to section 734(f)(2)(A)(iii) and 733(d)(1)(B) of the Act, any cash deposits on entries of steel wire rod from Venezuela pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

Notwithstanding the suspension agreement, the Department will continue the investigation if we receive a request for continuation of the investigation from an appropriate party in accordance with section 734(g) of the Act within 20 days after the date of publication of this notice. In accordance with section 734(g) of the Act, if we receive such a request for continuation, we will complete the investigation and notify the ITC of our final determination. If the ITC's injury determination is negative, the agreement will have no force or effect, and the investigation will be terminated (See section 734(f)(3)(A) of the Act). If the ITC's determination is affirmative, the Department will not issue an antidumping duty order as long as the suspension agreement remains in force, the agreement continues to meet the requirements of subsections (b) and (d) of section 734 of the Act, and the parties to the agreement carry out their obligations under the agreement in accordance with its terms (see section 734(f)(3)(B) of the Act).

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: February 19, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Suspension Agreement Carbon Steel Wire Rod from Venezuela

Under section 734(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c(b)) (the Act), and 19 CFR 353.18, the U.S. Department of Commerce (the Department) and the signatory producers/exporters of carbon steel wire rod from Venezuela enter into this suspension agreement (the Agreement). On the basis of the Agreement, the Department shall suspend its antidumping investigation initiated on March 24, 1997(62 FR 13854), with respect to carbon steel wire rod from Venezuela, subject to the terms and provisions set out below.

(A) Product Coverage

The products covered by this Agreement ("subject merchandise") are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this Agreement:

Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as "Tire Cord Wire Rod."

Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth; containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."

Coiled products 11 mm to 12.5 mm in diameter, with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.72 percent; manganese 0.50—1.10 percent; phosphorus less than or equal to 0.030 percent; sulfur less than or equal to 0.035 percent; and silicon 0.10—0.35 percent. This product is free of injurious piping and undue segregation. The use of this excluded product is to fulfill contracts for the sale of Class III pipe wrap wire in conformity with ASTM specification A648–95 and imports of this product must be accompanied by such a declaration on the mill certificate and/or sales invoice. This excluded product is commonly referred to as "Semifinished Class III Pipe Wrap Wire."

The products subject to this Agreement are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this Agreement is dispositive.

(B) U.S. Import Coverage

The signatory producers/exporters collectively are the producers and exporters in Venezuela which, during the antidumping investigation of the merchandise subject to the Agreement, accounted for substantially all (not less than at least 85 percent) of the subject merchandise imported into the United States. The Department may at any time during the period of the Agreement require additional producers/exporters in Venezuela to sign the Agreement in order to ensure that not less than substantially all imports of subject merchandise into the United States are covered by the Agreement.

(C) Basis of the Agreement

On and after the effective date of the Agreement, each signatory producer/exporter individually agrees to make any necessary price revisions to eliminate completely any amount by which the normal value (NV) of this merchandise exceeds the U.S. price of its merchandise subject to the Agreement. For this purpose, the Department will determine the NV in accordance with section 773(e) of the Act and U.S. price in accordance with section 772 of the Act.

(1) For all sales occurring on or after the effective date of the Agreement through June 30, 1998, each signatory producer/exporter agrees not to sell its merchandise subject to the Agreement, whether in the form imported or as further manufactured subsequent to importation, to unaffiliated purchasers in the United States; and

(2) For all sales occurring from July 1, 1998 through September 30, 1998, each signatory producer/exporter agrees not to sell its merchandise subject to the Agreement, whether in the form imported or as further manufactured subsequent to importation, to unaffiliated purchasers in the United States at prices that are less than its NV, as determined by the Department based on cost information for the period October 1, 1997 through December 31, 1997, and provided to parties not later than June 20, 1998; and

(3) For all sales occurring on or after October 1, 1998, each producer/exporter agrees not to sell its merchandise subject to the Agreement, whether in the form imported or as further manufactured subsequent to

importation, to any unaffiliated purchaser in the United States at prices that are less than its NV of the merchandise, as determined by the Department on the basis of information submitted to the Department not later than the dates specified in Section D of the Agreement and provided to parties not later than September 20, December 20, March 20, and June 20 of each year. This NV shall apply to sales occurring during the fiscal quarter beginning on the first day of the month following the date the Department provides the NV, as stated in this paragraph.

(D) Monitoring

Each signatory producer/exporter will supply to the Department all information that the Department decides is necessary to ensure that the producer/exporter is in full compliance with the terms of the Agreement. As explained below, the Department will provide each signatory producer/exporter a detailed request for information and prescribe a required format and method of data compilation, not later than the beginning of each reporting period.

(1) Sales Information

The Department will require each producer/exporter to report, on computer tape in the prescribed format and using the prescribed method of data compilation, each sale (which includes further manufactured sales) of the merchandise subject to the Agreement, either directly or indirectly to unaffiliated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department.

The first report of sales data shall be submitted to the Department, on computer tape in the prescribed format and using the prescribed method of data compilation, not later than October 15, 1998, and shall contain the specified sales information covering the period of July 1 through September 30, 1998. Each subsequent report of sales data shall be submitted to the Department not later than January 15, April 15, July 15, and October 15 of each year, and each report shall contain the specified sales information for the quarterly period ending one month prior to the due date, except that if the Department receives information that a possible violation of the Agreement may have occurred, the Department may request sales data on a monthly, rather than quarterly basis.

(2) Cost Information

Producers/exporters must request NVs for all subject merchandise that will be sold in the United States. For those products for which the producer/exporter is requesting NVs, the Department will require each producer/exporter to report: their actual cost of manufacturing; selling, general and administrative (SG&A) expenses; further manufacturing costs; and profit data on a quarterly basis, in the prescribed format and using the prescribed method of data compilation. Further manufacturing costs plus an allocable portion of profit, as provided in section 772(d)(2) and (3) of the Act, will be subtracted from the U.S. sale price to determine compliance with the NV. Each such producer/exporter also must report anticipated increases in production costs and may report anticipated decreases in production costs in the quarter in which the information is submitted resulting from factors such as anticipated changes in production yield, changes in production process, changes in production quantities or changes in production facilities. Extraordinary cost items related to the privatization will be considered, consistent with the Department's regulations and policies. If they meet our statutory and regulatory criteria, such items may include shutdowns of facilities, environmental cleanups, and workforce reductions. (For example, see the Side Letter to the Suspension Agreement for Grey Portland Cement and Clinker from Venezuela (initialed version dated December 22, 1991, finalized February 11, 1992).)

The first report of cost data related to the relevant period of July 1, 1998, through September 30, 1998 shall be submitted to the Department not later than April 30, 1998, and shall contain the specified cost data covering the period October 1, 1997, through December 31, 1997. Each subsequent report shall be submitted to the Department not later than July 31, October 31, January 31, and April 30 of each year, and each report shall contain specified information for the quarter ending one month prior to the due date.

(3) Special Adjustment of Normal Value

If the Department determines that the NV it determined for a previous quarter was erroneous because the reported costs for that period were inaccurate or incomplete, or for any other reason, the Department may adjust NV in a subsequent period or periods, unless the Department determines that Section F of the Agreement applies.

(4) Verification

Each producer/exporter agrees to permit full verification of all cost and sales information semi-annually, or more frequently, as the Department deems necessary.

(5) Bundling or Other Arrangements

Producers/exporters agree not to circumvent the Agreement. In accordance with the date set forth in Section D(1) of the Agreement, producers/exporters will submit a written statement to the Department certifying that the sales reported herein were not, or are not part of or related to, any bundling arrangement, on-site processing arrangement, discounts/free goods/financing package, swap, or other exchange where such arrangement is designed to circumvent the basis of the Agreement.

Where there is reason to believe that such an arrangement does circumvent the basis of the Agreement, the Department will request the producers/exporters to provide, within 15 days, all particulars regarding any such arrangement, including, but not limited to, sales information pertaining to covered and non-covered merchandise that is manufactured or sold by producers/exporters. The Department will accept written comments, not to exceed 30 pages, from all parties no later than 15 days after the date of receipt of such producer/exporter information.

If the Department, after reviewing all submissions, determines that such arrangement circumvents the basis of the Agreement, it may, as it deems most appropriate, utilize one of two options: (1) the cumulative amount of the effective price discount resulting from such arrangement shall be reflected in NV in accordance with Section D(3), or (2) the Department shall determine that the Agreement has been violated and take action according to the provisions under Section F.

(6) Rejection of Submissions

The Department may reject any information submitted after the deadlines set forth in this section or any information which it is unable to verify to its satisfaction. If information is not submitted in a complete and timely fashion or is not fully verifiable, the Department may calculate fair value, NV, and/or U.S. price based on facts otherwise available, as it determines appropriate, unless the Department determines that Section F applies.

(E) Disclosure and Comment

(1) The Department may make available to representatives of each domestic party to the proceeding, under appropriately drawn administrative protective orders, business proprietary information submitted to the

Department during the reporting period as well as the results of its analysis under section 773 of the Act.

(2) Not later than May 31, August 31, November 31, and the last day in February of each year, the Department will disclose to each producer/exporter the results and the methodology of the Department's calculations of its NV. At that time, the Department may also make available such information to the domestic parties to the proceeding, in accordance with this section.

(3) Not later than 7 days after the date of disclosure under paragraph E(2), the parties to the proceeding may submit written comments to the Department, not to exceed 15 pages. After reviewing these submissions, the Department will provide to each producer/exporter its NV as provided in paragraph C(2). In addition, the Department may provide such information to domestic interested parties as specified in this section.

(F) Violations of the Agreement

If the Department determines that the Agreement is being or has been violated or no longer meets the requirements of section 734 (b) or (d) of the Act, the Department shall take action it determines appropriate under section 734(i) of the Act and the regulations.

(G) Other Provision

In entering into the Agreement, the signatory producer/exporter does not admit that any sales of the merchandise subject to the Agreement have been made at less than fair value.

(H) Termination

The Department will not consider requests for termination of this suspended investigation prior to February 13, 2003. Termination will be conducted in accordance with section 751(c) of the Act and the Department's regulations.

Any producer/exporter may terminate the Agreement at any time upon notice to the Department. Termination shall be effective 60 days after such notice is given to the Department. Upon termination, the Department shall follow the procedures outlined in section 734(i)(1) of the Act.

(I) Definitions

For purposes of the Agreement, the following definitions apply:

(1) U.S. Price—means the export price or constructed export price at which merchandise is sold by the producer or exporter to the first unaffiliated party in the United States, including the amount of any discounts, rebates, price protection or ship and debit adjustments, and other adjustments affecting the net amount paid or to be paid by the unaffiliated purchaser, as determined by the Department under section 772 of the Act.

(2) Normal Value—means the constructed value (CV) of the merchandise, as determined by the Department under section 773 of the Act and the corresponding sections of the Department's regulations.

(3) Producer/Exporter—means (1) the foreign manufacturer or producer, (2) the foreign producer or reseller which also exports, and (3) the affiliated person by whom or for whose account the merchandise is imported into the United States, as defined in section 771(28) of the Act.

(4) Date of Sale—means the date on which the essential terms of the contract, including price and quantity, are agreed and determinable.

The effective date of the Agreement is the date on which it is published in the **Federal Register**.

For the Venezuelan Producers/Exporters.

Dated: February 13, 1998.

Oscar Montero,

Director for Strategic Planning.

For the U.S. Department of Commerce.

Dated: February 12, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix A—Carbon Steel Wire Rod from Venezuela Principles of Cost

General Framework

The cost information reported to the Department that will form the basis of the NV calculations for purposes of the Agreement must be:

- Comprehensive in nature and based on a reliable accounting system (i.e., a system based on well-established standards and can be tied to the audited financial statements);
- Representative of the company's costs incurred for the general class of merchandise;
- Calculated on a quarterly weighted-average basis of the plants or cost centers manufacturing the product;
- Based on fully-absorbed costs of production, including any downtime;
- Valued in accordance with generally accepted accounting principles;
- Reflective of appropriately allocated common costs so that the costs necessary for the manufacturing of the product are not absorbed by other products; and
- Reflective of the actual cost of producing the product.

Additionally, a single figure should be reported for each cost component.

Cost of Manufacturing (COM)

Costs of manufacturing are reported by major cost category and for major stages of production. Weighted-average costs are used for a product that is produced at more than one facility (including further manufacturing in the United States); based on the cost at each facility.

Direct materials—cost of those materials which are input into the production process and physically become part of the final product.

Direct labor—cost identified with a specific product. These costs are not allocated among products except when two or more products are produced at the same cost center. Direct labor costs should include salary, bonus, and overtime pay, training expenses, and all fringe benefits. Any contracted-labor expense should reflect the actual billed cost or the actual costs incurred by the subcontractor when the corporation has influence over the contractor.

Factory overhead—overhead costs include indirect materials, indirect labor, depreciation, and other fixed and variable expenses attributable to a production line or factory. Because overhead costs are typically incurred for an entire production line, an appropriate portion of those costs must be allocated to covered products, as well as any other products produced on that line. Acceptable cost allocations can be based on labor hours or machine hours. Overhead costs should also reflect any idle or downtime and be fully absorbed by the products.

Cost of Production (COP)

Is equal to the sum of materials, labor, and overhead (COM) plus SG&A expenses in the home market (HM).

SG&A—those expenses incurred for the operation of the corporation as a whole and not directly related to the manufacture of a particular product. They include corporate general and administrative expenses, financing expenses, and general research and development expenses. Additionally, direct and indirect selling expenses incurred in the HM for sales of the product under investigation are included. Such expenses are allocated over cost of goods sold.

Constructed Value (CV)

Is equal to the sum of materials, labor, and overhead (COM) and SG&A expenses plus profit in the comparison market and the cost of packing for exportation to the United States.

Calculation of Suspension Agreement NVs

NVs (for purposes of the Agreement) are calculated by adjusting the CV and are provided for both EP and CEP transactions. In effect, any expenses uniquely associated with the covered products sold in the HM are subtracted from the CV, and any such expenses which are uniquely associated with the covered products sold in the United States are added to the CV to calculate the NV.

Export Price—Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs before the goods are imported into the United States. In cases where the foreign manufacturer knows or has reason to believe that the merchandise is ultimately destined for the United States, the manufacturer's sale is the sale subject to review. If, on the other hand, the manufacturer sold the merchandise to a foreign trader without knowledge of the

trader's intention to export the merchandise to the United States, then the trader's first sale to an unaffiliated person is the sale subject to review. For EP NVs, the CV is adjusted for movement costs and differences in direct selling expenses such as commissions, credit, warranties, technical services, advertising, and sales promotion.

Constructed Export Price—Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to the unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation, unless the U.S. affiliate performs only clerical functions in connection with the sale. For CEP NVs, the CV is adjusted similar to EP sales, with differences for adjustment to U.S. and HM indirect-selling expenses.

Home market direct-selling expenses—expenses that are incurred as a direct result of a sale. These include such expenses as commissions, advertising, discounts and rebates, credit, warranty expenses, freight costs, etc. The following direct-selling expenses are treated individually:

Commission expenses—payments to unaffiliated parties for sales in the HM.

Credit expenses—expenses incurred for the extension of credit to HM customers.

Movement expenses—freight, brokerage and handling, and insurance expenses.

U.S. direct-selling expenses—the same as HM direct-selling expenses except that they are incurred for sales in the United States.

Movement expenses—additional expenses incidental to importation into the United States. These typically include U.S. inland freight, insurance, brokerage and handling expenses, U.S. Customs duties, and international freight.

U.S. indirect-selling expenses—include general fixed expenses incurred by the U.S. sales subsidiary or affiliated exporter for sales to the United States. They may also include a portion of indirect expenses incurred in the HM for export sales.

For EP Transactions

+direct materials
+direct labor
+factory overhead
=Cost of Manufacturing
+home market SG&A
=Cost of Production
+U.S. packing
+Profit
=Constructed Value
+U.S. direct selling expense
+U.S. commission expense
+U.S. movement expense
+U.S. credit expense
– HM direct selling expense
– HM commission expense [1]
– HM credit expense
=NV for EP sales

For CEP Transactions

+direct materials
+direct labor
+factory overhead
=Cost of Manufacturing
+home market SG&A
=Cost of Production
+U.S. packing
+profit
=Constructed Value
+U.S. direct selling expense
+U.S. indirect selling expense
+U.S. commission expense
+U.S. movement expense
+U.S. credit expense
+U.S. further manufacturing expenses (if any)
+CEP profit
– HM direct selling expense
– HM commission expense [2]
– HM credit expense
=NV for CEP sales

[1] If the company does not have HM commissions, HM indirect expenses are subtracted only up to the amount of the U.S. commissions.

[2] If the company does not have HM commissions, HM indirect expenses are subtracted only up to the amount of the U.S. commissions.

[FR Doc. 98–4539 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–822]

Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Judith Wey Rudman or John Brinkmann, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0192 or (202) 482–5288.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 353 (April 1997). Although the Department's new regulations, codified at 19 CFR 351 (62 FR 27296; May 19, 1997), do not govern these proceedings, citations to those regulations are provided, where appropriate, to explain current departmental practice.

Final Determination

We determine that steel wire rod from Germany is being sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination in this investigation on September 24, 1997, (62 FR 51577, October 1, 1997) ("Notice of Preliminary Determination"), the following events have occurred:

On September 29, 1997, we issued a second supplemental request for information covering all sections of the questionnaire to Ispat Hamburger Stahlwerke GmbH ("IHSW"), the only company to respond to the Department's original antidumping duty questionnaire. IHSW submitted its response to this supplemental questionnaire, including revised United States, home market, cost of production (COP), and constructed value (CV) databases, on October 14, 1997. At the Department's request, IHSW submitted clarifications of its response on October 23 and 24, 1997.

On October 14, 1997, Connecticut Steel Group, Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Co., North Star Steel Texas, Inc., and Northwestern Steel & Wire Co. (collectively "petitioners") informed the Department that IHSW's parent company had purchased two units of Thyssen Stahl AG ("Thyssen") and requested that the Department collapse IHSW and Thyssen when determining the dumping margins for these companies (*see* Comment 3 below).

The Department conducted verifications of IHSW's cost and sales information in November 1997, in Hamburg, Germany. The Department issued the sales and cost verification reports on December 16 and 18, 1997, respectively, citing numerous deficiencies in IHSW's cost and sales information. Because it seemed at the time that the deficiencies could be corrected and that we would be able to confirm that corrections made to the databases were done completely and accurately, the Department allowed IHSW a final opportunity to submit revised cost and sales databases. On December 19, 1997, the Department transmitted to IHSW a list of specific revisions to be made to its databases (see December 19, 1997, Memorandum to Gary Taverman). IHSW submitted its revised response on January 9, 1998. On

January 12, 1998, IHSW notified the Department that there were certain errors in the January 9 submission.

Petitioners, IHSW, and Saarstahl AG ("Saarstahl") submitted case briefs on January 15, 1998. Petitioners and IHSW submitted rebuttal briefs on January 21, 1998.

Scope of Investigation

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this investigation:

- Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as "Tire Cord Wire Rod."
- Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth, containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."
- Coiled products 11 mm to 12.5 mm in diameter, with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.72 percent; manganese 0.50–1.10 percent; phosphorus less than or equal to 0.030 percent; sulfur less than or equal to 0.035 percent; and silicon 0.10–0.35 percent. This product is free of injurious piping and undue segregation. The use of this excluded product is to fulfill contracts for the sale of Class III pipe wrap wire in conformity with ASTM specification A648–95 and imports of this product must be accompanied by such a declaration on the mill certificate and/or sales invoice. This excluded product is commonly referred to as "Semifinished Class III Pipe Wrap Wire."

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Exclusion of Pipe Wrap Wire

As stated in the Notice of Preliminary Determination, North American Wire Products Corporation (NAW), an importer of the subject merchandise from Germany, requested that the Department exclude steel wire rod used to manufacture Class III pipe wrapping wire from the scope of the investigations of steel wire rod from Canada, Germany, Trinidad and Tobago, and Venezuela. On December 22, 1997, NAW submitted to the Department a proposed exclusion definition. On December 30, 1997 and January 7, 1998, petitioners submitted letters concurring with the definition of the scope exclusion and agreeing to the exclusion of this product from the scope of the investigation. We have reviewed NAW's request and petitioners' comments and have excluded steel wire rod for manufacturing Class III pipe wrapping wire from the scope of the four concurrent investigations (see Memorandum to Richard W. Moreland dated January 9, 1998).

Period of Investigation

The period of investigation ("POI") is January 1 through December 31, 1996.

Facts Available

At the preliminary determination, the Department found that Brandenburg Elektrostahlwerk GmbH ("Brandenburg"), Saarstahl, and Thyssen "have clearly failed to cooperate to the best of their ability in this investigation, as they have not responded to the Department's antidumping questionnaire." See Notice of Preliminary Determination. Accordingly, the Department based the antidumping rate for these companies on facts otherwise available and assigned them the highest margin from the petition (as adjusted by the Department), 153.10 percent.

With regard to IHSW, the Department found that "despite the detailed requests for supplemental information issued by the Department and the extension of time granted to IHSW to file its responses, IHSW's questionnaire responses remained seriously deficient." See Notice of Preliminary Determination. In particular, IHSW's home market sales data and cost of production information were so deficient as to render them unreliable for conducting a proper LTFV analysis and sales-below-cost test. Because of these deficiencies, the Department was unable to use IHSW's responses to calculate a margin for the preliminary determination of sales at less than fair value and therefore relied on facts otherwise available. The Department stated that it would proceed with the investigation and verify IHSW's information if IHSW cooperated and provided "complete and accurate" information in response to a supplemental questionnaire. We further stated that "[i]f IHSW's reported information verified, we will use such information in making the final determination."

As stated in the "Case History" section above, the Department issued a second supplemental questionnaire to IHSW following the preliminary determination and conducted verification of IHSW's revised cost and sales information. During these verifications, numerous inconsistencies were found when we compared IHSW's reported cost and sales data to the company's records, as noted in the verification reports (see the December 16 sales verification report, the December 18 cost verification report, and the Memorandum to Gary Taverman dated December 19, 1997). After the verifications, the Department granted IHSW a final opportunity to correct the deficiencies in its cost and sales databases.

Despite allowing IHSW numerous opportunities to correct its questionnaire responses, the cost and sales information submitted by IHSW remains seriously deficient and unusable. The significant deficiencies in the information submitted by IHSW include: (1) Failure to calculate COP and CV in accordance with the Department's instruction with respect to the weighting factor; (2) the multiple counting of production quantities in deriving per unit COP; (3) failure to make specific changes to identified errors in the coding of reported product characteristics, resulting in the incorrect assignment of product control numbers;

the impact is particularly significant in the U.S. sales database where correcting the control numbers would affect 72 percent of the volume of reported U.S. sales; and (4) numerous errors and inconsistencies in IHSW's sales database which call into question the integrity of the entire response. (For a more detailed discussion of the deficiencies in the information IHSW has provided, *see* the February 13, 1998, Memorandum to Richard W. Moreland.) Despite specific instructions from the Department detailing what corrections should be made, IHSW's January 9 response contained numerous errors in the COP and CV databases. Without accurate COP and CV databases, we cannot perform a reliable sales-below-cost test and LTFV analysis. Further, given IHSW's repeated failure throughout the investigation to correct its deficiencies and its failure to submit an accurate response on January 9, we cannot be certain that the problems with IHSW's responses are limited to only those uncovered in our analysis of the January 9 submission.

Section 776(a)(2) of the Act provides that if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, (3) significantly impedes a determination under the antidumping statute, or (4) provides such information but the information cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination (subject to subsections 782(d) and (e)). As detailed below, the Department has determined that all four respondents have failed to cooperate to the best of their ability in this investigation as defined under 776(a)(2) and that the use of facts otherwise available is applicable.

IHSW's questionnaire responses constituted deficient submissions within the meaning of section 782(d). Under these circumstances, section 776(a) directs the Department to use facts available subject to section 782(e). Section 782(e) provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination, but does not meet all the applicable requirements established by the Department, if—

(1) The information is submitted by the deadline established for its submission,

(2) The information can be verified,

(3) The information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,

(4) The interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and

(5) The information can be used without undue difficulties.

Thus, if any one of these criteria is not met, the Department may decline to consider the information at issue in making its determination. IHSW's information has arguably satisfied the first two criteria. However, regarding the third criterion, whether the information may serve as a "reliable basis" for the Department's determination, as detailed above, IHSW's sales data and cost of production information is so deficient as to render it unusable. In particular, IHSW's failure to: (a) Correct those items on the December 19 list of required revisions completely and accurately; (b) submit the accurate revised cost and sales databases in proper SAS format; and (c) properly change the sales databases to reflect changes in the cost database, calls into question the integrity of the entire January 9 submission. As to criterion (4), IHSW has not demonstrated that it acted to the best of its ability in providing the requested information because IHSW failed to comply with the Department's specific instructions in the requests for information. Finally, as to criterion (5), while the Department may be able to correct some of the errors in IHSW's responses, this would be a difficult task involving significant changes to IHSW's information, including the restructuring of many of IHSW's product control numbers. To attempt to correct all of the errors in IHSW's responses would be burdensome. Moreover, even if the Department attempted to correct the responses, given the numerous errors in IHSW's information on the record, we cannot be certain that an accurate analysis could be conducted.

IHSW has failed to provide its sales and cost information in the form and manner requested under the terms of sections 782(d) and (e) of the Act. The information provided by IHSW is unreliable and inadequate for the purpose of calculating a LTFV margin. Section 776(a) thus requires the Department to use facts otherwise available in making its final determination with respect to IHSW.

Section 776(b) provides that adverse inferences may be used for a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information (see also the Statement of Administrative Action ("SAA"), accompanying the URAA, H.R. Rep. No. 316, 103rd Cong., 2d Sess. 870). As discussed above, Brandenburg, IHSW, Saarstahl, and Thyssen have failed to act to the best of their ability to comply with requests for information and, therefore, adverse inferences are warranted with respect to all four companies. Consistent with Department practice in cases where respondents refuse to participate or provide seriously deficient information that precludes the Department from conducting its LTFV analysis, as facts otherwise available, we are basing their margins for the final determination on information in the petition. As facts otherwise available, the Department is continuing to assign to Brandenburg, Saarstahl, and Thyssen, the companies that did not respond at all to the Department's requests for information, the highest margin from the petition (as adjusted by the Department), 153.10 percent. Since IHSW made some effort to comply with the Department's requests for information, we are continuing to assign IHSW a facts available margin based on a simple average of the margins in the petition (as adjusted by the Department), 72.51 percent.

Section 776(c) provides that when the Department relies on secondary information (*e.g.*, the petition) as the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The Department reviewed the adequacy and accuracy of the secondary information in the petition from which the margins were calculated during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose, (*e.g.*, import statistics, independent trade data, U.S. Bureau of Labor Statistics, International Energy Agency). (See Notice of Preliminary Determination and September 24, 1997, Memorandum to Richard W. Moreland).

At the preliminary determination, the Department reexamined the price information provided in the petition and found it to be of probative value (see the September 24, 1997, Memorandum to Richard W. Moreland). The parties did not comment on this issue. For purposes of the final determination, absent information to the contrary, we find that the information in the petition continues to be of probative value.

All foreign manufacturers/exporters in this investigation are being assigned dumping margins on the basis of facts otherwise available. Section 735(c)(5) of the Act provides that where the dumping margins established for all exporters and producers individually

investigated are determined entirely under section 776, the Department "* * * may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated." This provision contemplates that we weight average the facts-available margins to establish the all-others rate. Where the data is not available to weight average the facts available rates, the SAA, at 873, provides that we may use other reasonable methods. Inasmuch as we do not have the data necessary to weight average the respondents' facts available margins, we are continuing to base the all-others rate on a simple average of the margins in the petition (as adjusted by the Department), 72.51 percent.

Interested Party Comments

Comment 1. The Application of Facts Available to Saarstahl

Saarstahl contends that the Department should not use an adverse inference in determining its antidumping margin. Saarstahl argues that it has acted to the best of its ability to respond to the Department's questionnaire, but that its financial situation has precluded it from participating in this proceeding. Even if an adverse inference is made in setting its margin, Saarstahl argues that the Department should use the Saarstahl-specific lower margin information contained in the petition rather than the 153.10% margin used in the preliminary determination.

Petitioners contend that Saarstahl's argument that the Department may not use the highest dumping margin alleged in the petition as adverse facts available is directly contradicted by the statute and Department precedent. Further, petitioners claim that factors such as Saarstahl's financial condition are immaterial to the issue of whether Saarstahl cooperated in this investigation (see, *e.g.*, Final Determination of Sales at Less than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Germany, 61 FR 38166, 38179 (July 23, 1996)). Petitioners insist that the Department acted appropriately in assigning the highest margin alleged in the petition to Saarstahl for the preliminary determination and should use the same rate for the final determination.

DOC Position. We disagree with Saarstahl's contention that it acted to the best of its ability, given its financial hardship, to comply with the Department's information requests. Under limited circumstances, such as where a company immediately informs the Department that it cannot comply with the Department's information requests due to the liquidation of its assets, it may be appropriate not to assign adverse facts available. However, where a respondent continues to produce the subject merchandise but fails altogether to provide information, we find that it has failed to act to the best of its ability. As we explained in Certain Fresh Cut Flowers From Colombia: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 62 FR 16772, 16775 (April 8, 1997), an adverse inference is warranted where a respondent states merely "that it was on the verge of bankruptcy" but provides no further information.

Section 782(c)(1) requires that the Department consider modifying its reporting requirements where a respondent promptly notifies the Department that it cannot submit information in the "requested form and manner" and suggests "alternative forms" in which to submit the requested information. Saarstahl made no such suggestions; it only informed the Department that it would supply the requested information in a letter dated June 11, 1997. Under these circumstances, we continue to find that Saarstahl failed to act to the best of its ability, and that an adverse inference is warranted.

Furthermore, we agree with petitioners that the continued use of the highest margin in the petition as adverse facts available for Saarstahl is warranted given Saarstahl's failure to supply the Department with any of the requested information. The use of the highest calculated rate in the petition as adverse facts available for Saarstahl is consistent with both the Act and Department practice. Section 776(b) of the Act explicitly states that the Department may rely upon information contained in the petition when making adverse inferences. See also SAA at 870. Recently, the Department employed this approach in Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan, 62 FR 51427, 51428 (October 1, 1997).

Comment 2. The Application of Facts Available to IHSW

Petitioners argue that IHSW's January 9 post-verification submission constitutes substantial new information and should be rejected by the Department in favor of facts available. Even if the Department accepts IHSW's January 9 submission, petitioners contend that the information submitted by IHSW remains incomplete and unreliable, and therefore, the Department must use facts available for the final determination.

IHSW argues that it has been cooperative with the Department to the best of its ability throughout the investigation and, as such, the Department has no basis to use an adverse facts available rate for the final determination. IHSW concedes that it encountered some difficulties in responding to the questionnaires, but claims that its difficulties in reporting information were not the result of IHSW failing to act to the best of its ability, but rather the result of clerical errors or how IHSW maintains its business records. Concerning the submission of data post-verification, IHSW asserts that the Department was properly within its discretion to request revised cost and sales databases from IHSW and that the January 9 submission did not constitute new information. Further, IHSW addresses the specific errors cited in petitioners' case brief, arguing that its January 9 submission is "sufficiently complete" to serve as the basis for calculating an antidumping margin. Finally, IHSW contends that the information in its January 9 submission has been verified and can be easily used by the Department.

DOC Position. In allowing IHSW to file its post-verification submission, the Department was not permitting the submission of new information, but rather permitting corrections to the information already on the record, based on the findings at verification. Further, the Department may request the submission of factual information at any time during the proceeding, as provided for at 19 CFR 353.31(b)(1). We have analyzed all of IHSW's information on the record for purposes of the final determination. However, as discussed in detail in the "Facts Available" section above, the Department has determined that: (1) IHSW has failed to act to the best of its ability to provide information; and (2) the information provided by IHSW remains unreliable and unusable for purposes of conducting an accurate cost of production or LTFV analysis (see also the February 13, 1998, Memorandum to Richard W. Moreland). Therefore, we are basing our final determination margin for IHSW on facts available.

Comment 3. Whether To Collapse IHSW and Thyssen and Assign Them a Single Margin Rate

IHSW argues that the Department should not consider collapsing IHSW with Thyssen, as alleged in petitioners' October 14, 1997, submission. IHSW asserts that petitioners' contention is unfounded because: (1) IHSW and Thyssen were completely unrelated during the POI and this issue would be more appropriately considered, if at all, in an administrative review; (2) the acquisition occurred after the POI and therefore, neither company could have exercised control over the other during the POI; and (3) there is no verified information on the record to determine whether the potential for shifting of production between IHSW and Thyssen exists.

Petitioners rebut IHSW's argument, stating that, for the reasons detailed in their October 14, 1997, submission, the Department should collapse IHSW and Thyssen and calculate a single margin rate for the two companies. Petitioners contend that the relationship between IHSW and Thyssen is such that it meets the criteria for collapsing the companies (*i.e.*, the producers are affiliated; the producers have similar manufacturing facilities such that production can be shifted between the two; and "there is significant potential for manipulation of price or production").

DOC Position. We disagree with petitioners. IHSW purchased Thyssen's steel wire rod-producing subsidiary six months or more after the POI. There is no evidence of any affiliation between these companies during the POI. Further, the limited evidence concerning this transaction is insufficient to determine that it established any affiliation between IHSW or Thyssen or, if they are affiliated, to determine that collapsing is warranted. Therefore, we have assigned the companies separate cash deposit rates in this final determination. The merits of petitioners' collapsing argument may be explored in the context of an administrative review, if an antidumping order is issued and a review requested, for the period during which the acquisition of Thyssen's rod-producing subsidiary took place.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of steel wire rod from Germany, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after October 1, 1997, the date of publication of our preliminary determination in the **Federal Register**. For these entries, the Customs Service will require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price as shown below. This suspension of liquidation will remain in effect until further notice.

MFR/producer/exporter	Margin percentage
Brandenburg Elektrostahlwerk GmbH	153.10
Ispat Hamburger Stahlwerke GmbH	72.51
Saarstahl AG	153.10
Thyssen Stahl AG	153.10
All-Others	72.51

The all-others rate applies to all entries of subject merchandise except for the entries of merchandise produced by the exporters/manufacturers listed above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether these imports are causing material injury, or threat of material injury, to the industry within 45 days of its receipt of this notification.

If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: February 13, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–4541 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Princeton University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–096. *Applicant:* Princeton University, Princeton, NJ 08544–0033. *Instrument:* Crystal Growth Furnace, Model FZ–T–10000–HVP–II–P. *Manufacturer:* Crystal Systems Inc., Japan. *Intended Use:* See notice at 63 FR 809, January 7, 1998.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides optical melting of a polycrystalline rod to produce a single uncontaminated crystal along a moving float zone on the rod. The National Aeronautics and Space Administration advised on February 3, 1998 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–4540 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021798B]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings.

DATES: The meetings will be held March 9–13, 1998.

ADDRESSES: These meetings will be held at the Hawk's Cay Resort & Marina, Mile Marker 61, Duck Key, FL; telephone: 305–743–7000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

March 11

8:30 a.m.—Convene.

8:45 a.m. - 5:30 p.m.—Receive public testimony on: (1) Reef Fish Amendment 16; (2) Draft Mackerel Amendment 9; and, (3) Control Date for Limited Access for Recreational For-Hire Vessels. Draft Reef Fish Amendment 16 contains the following alternatives: (1) Possible phase-out of the use of fish traps in 2 years or status quo - a 10-year phase out; (2) Possible restrictions on the commercial harvest from reef fish vessels tending spiny lobster and stone crab traps; (3) Possible implementation of a vessel monitoring system for fish trap vessels; (4) Possible additional reporting requirements for fish trap vessels; (5) Possible establishment of a slot limit, of 14 inches and 20 (or 22) inches fork length, for banded rudderfish and lesser amberjack; and possible prohibition on the sale of minor amberjack species that are smaller than 36 inches fork length; (6) Possible 5–fish bag limit for lesser amberjack and banded rudderfish; (7) Possible removal from the fishery management plan or management of sand perch, dwarf sand perch, Queen triggerfish, and hogfish; (8) Possible minimum size limits of 20 inches for scamp and yellowmouth grouper; 16 inches for mutton snapper; and 12 inches for blackfin snapper, cubera snapper, dog snapper, mahogany snapper, schoolmaster, silk snapper, mutton snapper, queen snapper, scamp, yellowmouth grouper, gray triggerfish, and hogfish; (9) Possible inclusion of the 5–fish red snapper bag limit as part of the 10–snapper aggregate snapper limit, and a 5–fish bag limit for hogfish, and 2 fish per vessel of cubera snapper over 30 inches total length; (10) Possible establishment of a 1–fish bag limit and commercial quotas for speckled hind and warsaw grouper, or a prohibition on harvest of these species.

Draft Mackerel Amendment 9 contains the following alternatives: (1) Possible changes to the fishing year for Gulf group king mackerel; (2) Possible prohibitions of sale of Gulf mackerel caught under the recreational allocation; (3) Possible reallocations of total allowable catch (TAC) for the commercial fishery for Gulf group king mackerel in the Eastern Zone; (4) Possible reallocations of TAC for Gulf group king mackerel between the recreational and commercial sectors to 70 percent recreational and 30 percent commercial; (5) Possible establishment of two (2) subdivisions of TAC for the commercial, hook-and-line allocation of Gulf group king mackerel by area for the Florida west coast; (6) Possible subdivisions of TAC for commercial Gulf group king mackerel in the Western Zone (Alabama through Texas) by area, season, or a combination of area and season; (7) Possible trip limits for vessels fishing for Gulf group king mackerel in the Western Zone; (8) Possible additional restrictions on the use of net gear to harvest Gulf group king mackerel off the Florida west coast; including a phase-out, a moratorium on additional net endorsements with requirements for continuing existing net endorsements, restrictions on the transferability of net endorsements, and restriction of the use of nets to primarily the waters off Monroe and Collier Counties; (9) Possible increase in the minimum size limit for Gulf group king mackerel to 24 or 26 inches fork length; (10) Possible re-establishment of an annual allocation or a TAC percentage of Gulf group Spanish mackerel for the purse seine fishery with consideration of trip limits and area restrictions; (11) Possible retention and sale of cut-off (damaged) legal-sized king and Spanish mackerel within established trip limits.

The control date for recreational-for-hire vessels (charter and head boats) would serve as notice that such vessels entering the reef fish and mackerel fisheries after that date (fall of 1998) may not be able to participate in the fisheries if the Council were to develop a limited entry system for such vessels.

March 12

8:30 a.m. - 12:00 p.m.—Receive a report of the Reef Fish Management Committee.

1:00 p.m. - 4:00 p.m.—Receive a report of the Mackerel Management Committee

4:00 p.m. - 4:30 p.m.—Receive a report of the Law Enforcement Committee.

4:30 p.m. - 5:30 p.m.—Receive reports of the Marine Reserves Committee and AP Selection Committee.

March 13

8:30 a.m. - 8:45 a.m.—Receive a report of the Vessel Monitoring Committee.

8:45 a.m. - 9:00 a.m.—Receive a report of the Personnel Committee.

9:00 a.m. - 9:15 a.m.—Receive a report of the Habitat Protection Committee.

9:15 a.m. - 9:30 a.m.—Receive a report from the South Atlantic Fishery Management Council Liaison.

9:30 a.m. - 9:45 a.m.—Receive a report on the Ecosystem Advisory Panel (AP).

9:45 a.m. - 10:00 a.m.—Receive Enforcement Reports.

10:00 a.m. - 10:15 a.m.—Receive a report on the Red Snapper Appeals Board.

10:15 a.m. - 10:45 a.m.—Receive Directors' Reports.

10:45 a.m. - 11:00 p.m.—Other business to be discussed. Under Other Business the Council will consider a provision regulating Ecological Reserves (ER) and Sanctuary Preservation Areas (SPA) by allowing vessels legally harvesting fish to transit the Gulf EEZ portion of SPAs and ERs in the Florida Keys National Marine Sanctuary.

Committees

March 9

9:00 a.m. - 10:00 a.m.—Convene the Personnel Committee to consider health insurance.

10:00 a.m. - 11:30 a.m.—Convene the Ad Hoc Marine Reserve Monitoring Committee to select Scientific and Statistical Committee (SSC) members.

12:30 p.m. - 2:00 p.m.—Convene the AP Selection Committee to consider the user group and geographic representation of the Red Snapper and Reef Fish APs.

2:00 p.m. - 5:30 p.m.—Convene the Law Enforcement Committee.

March 10

8:00 a.m. - 11:00 a.m.—Convene the Mackerel Management Committee to review summaries of comments from public hearings, the recommendations of its APs and SSCs and develop recommendations to the Council on the alternatives of Draft Mackerel Amendment 9.

11:00 a.m. - 12:00 noon—Convene the Ad Hoc Vessel Monitoring Management Committee to who will develop a policy on the use of vessel monitoring systems (VMS) on vessels and will hear a report on the use of VMS on vessels off Florida.

1:00 p.m. - 5:00 p.m.—Convene the Reef Fish Management Committee to review summaries of public comment from public hearings, the recommendations of the APs and SSCs, and develop recommendations to the Council on the alternatives of Draft Reef Fish Amendment 16. They will also

consider the need for a control date for recreational-for-hire vessels; and consider federal actions in approving the TAC for red snapper and need for further Council action.

5:00 p.m. - 5:30 p.m.—Convene the Habitat Protection Committee to consider a Corps of Engineers permit application for enlargement of the Gulfport, Mississippi harbor facility.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by March 2, 1998.

Dated: February 17, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–4534 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021398E]

Mid-Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Surfclam and Ocean Quahog Committee (with Economists); Dogfish Committee; Atlantic Mackerel, Squid, and Butterfish Committee; Habitat Committee; Large Pelagics Committee; Committee Chairmen; Executive Committee; Comprehensive Management Committee; and the Information & Education (I & E) Committee will hold public meetings.

DATES: The meetings will be held on Monday, March 9, 1998 to Thursday, March 12, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: These meetings will be held at the Wyndham Garden Hotel-Annapolis, 173 Jennifer Road, Annapolis, MD; telephone: 410–266–3131.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: On Monday, March 9, the Surfclam and Ocean Quahog Committee (with Economists) will meet from 10:00 a.m. until noon. The Dogfish Committee will meet from 1:00–5:00 p.m. On Tuesday, March 10, the Atlantic Mackerel, Squid, and Butterfish Committee will meet from 8:00 until noon. The Habitat Committee (with Advisors and the Science & Statistical Committee) will meet from 1:00–3:30 p.m. The Large Pelagics Committee will meet from 3:30–4:30 p.m. The Committee Chairmen will meet from 4:30–6:00 p.m. On Wednesday, March 11, the Executive Committee will meet from 8:00–9:00 a.m. The Comprehensive Management Committee will meet from 9:00–11:00 a.m. Council will meet from 11:00 a.m. until 5:00 p.m. On Thursday, March 12, Council will meet from 8:00 a.m. until 2:00 p.m. The I & E Committee will meet from 2:00–3:00 p.m.

Agenda items include surfclam and Ocean Quahog demand forecasting; review of potential surfclam and ocean quahog committee advisors; possible adoption to the Council's surfclam and ocean quahog quota setting policy; review results from the March 5 Dogfish Technical Committee meeting; discuss and possibly adopt goals and objectives for the Dogfish Fishery Management Plan (FMP); possible discussion of the dogfish definition of overfishing, possible discussion of qualifying criteria for limited entry for dogfish; possible adoption of dogfish control date; discuss alternative mackerel entry limitation programs; review progress of Atlantic Herring FMP development and limited entry programs being considered for the Herring FMP; possible review of fleet analysis and economic analyses of commercial Atlantic mackerel fishery; possible adoption of essential habitat criteria; possible delineation and specification of bluefish essential fish habitat; review possible management changes for large pelagics and comment on proposed rules; review of 1998 work schedule by committee chairs; vessel replacement criteria; comprehensive management matrix; possible adoption of the Monkfish FMP; view demonstration of the Council's web site; and amendment of Statement of Organization, Practices, and Procedures concerning the replacement of chairman and other matters.

The agenda items may not be taken in the order in which they appear and are subject to change as necessary; other items may be added. This meeting may also be briefly closed at any time to discuss employment or other internal administrative matters.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 17, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–4536 Filed 2–20–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Commander, Navy Recruiting Command

AGENCY: Department of the Navy, DoD.

ACTION: Notice of proposed information collection.

SUMMARY: The Navy Recruiting Command announces the proposed extension of a previously approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the

information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 24, 1998.

ADDRESSES: Send written comments and recommendations on the proposed information collection to Commander, Navy Recruiting Command (Code 10D), 801 N. Randolph Street, Arlington, VA 22203–1991.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, contact Mrs. Lambert at (703) 696–4185.

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: "NROTC Applicant Questionnaire"; OMB Control Number 0703–0028.

Needs and Uses: Used by the Navy Recruiting Command to determine basic eligibility for the Four-Year NROTC Scholarship Program, and is necessary for the initial screening of prospective applicants. Use of this questionnaire is the only accurate and specific method to determine scholarship awardees. Each individual who wishes to apply for the scholarship program completes and returns the questionnaire.

Affected Public: Individuals or Households.

Annual Burden Hours: 10,000.

Number of Respondents: 40,000.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

Authority: 44 U.S.C. Sec. 3506(c)(2)(A)).

Dated: February 11, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–4392 Filed 2–20–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Invention

AGENCY: Department of the Navy, DoD.

ACTION: Notice of availability of invention for licensing.

SUMMARY: The Patent Application entitled "Atmospheric Ozone Concentration Detector" filed March 29, 1996, Serial No. 08/625,506, is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

ADDRESSES: Requests for copies of the patent application cited should be directed to the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the patent application number.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Authority: 35 U.S.C. 207; 37 CFR Part 404.

Dated: February 5, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–4391 Filed 2–20–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Evalutech, LLC

AGENCY: Department of the Navy, DoD.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Evalutech, LLC, a revocable, nonassignable, exclusive license in the United States to practice the Government owned invention described in U.S. Patent No. 5,478,058, entitled "Shock Isolation Method and Apparatus," issued December 26, 1995.

DATES: Anyone wishing to object to the grant of this license must file written objections, along with any supporting evidence, not later than April 24, 1998.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Authority: 35 U.S.C. 207; 37 CFR Part 404.

Dated: February 5, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–4390 Filed 2–20–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 97–109–NG, 97–113–NG, 86–29–NG, 98–01–NG, 97–115–NG, 98–02–NG, 95–38–NG, 97–42–NG and 98–07–NG]

Office of Fossil Energy; New England Power Company, et al.; Orders Granting and Amending Blanket Authorizations To Import and/or Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued Orders granting and amending various natural gas import and export authorizations. These Orders are summarized in the appendix that follows.

These Orders are available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities, Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on February 12, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

APPENDIX—IMPORT/EXPORT BLANKET AUTHORIZATIONS GRANTED AND TRANSFERRED

Order No.	Date issued	Importer/exporter FE docket No.	Two-year maximum		Comments
			Import volume	Export volume	
1348	01/08/98	New England Power Company 97–109–NG.	47.5 Bcf		Import from Canada beginning February 1, 1998, through January 31, 2000.

APPENDIX—IMPORT/EXPORT BLANKET AUTHORIZATIONS GRANTED AND TRANSFERRED—Continued

Order No.	Date issued	Importer/exporter FE docket No.	Two-year maximum		Comments
			Import volume	Export volume	
1349	01/08/98	WGR Canada, Inc. 97–113–NG	73 Bcf	73 Bcf	Import and export from and to Canada beginning on the date of first delivery of either.
145–A	01/08/98	Pan-Alberta Gas (U.S.) Inc. (Formerly NATGAS (U.S.), Inc. 86–29–NG.			Name change.
1350	01/09/98	El Paso Energy Marketing Company 98–01–NG.	200 Bcf		Import from Canada beginning on the date of first delivery.
1351	01/12/98	The Montana Power Trading & Marketing Company 97–115–NG.	40 Bcf		Import from Canada beginning on the date of first delivery after January 27, 1998.
1353	01/16/98	Cook Inlet Energy Supply, Limited Partnership 98–02–NG.		200 Bcf	Export to Mexico beginning on the date of first delivery.
1070–A	01/22/98	Sempra Energy Trading Corp. (Formerly AIG Trading Corporation) 95–38–NG.			Name change.
1276–A	01/22/98	Sempra Energy Trading Corp. (Formerly AIG Trading Corporation) 97–42–NG.			Name change.
1355	01/30/98	SEMCO Energy Services, Inc. 98–07–NG.	800 Bcf		Import from Canada beginning February 1, 1998, through January 31, 2000.

[FR Doc. 98–4503 Filed 2–20–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 98–08–NG]

Office of Fossil Energy, Vermont Gas Systems, Inc.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Vermont Gas Systems, Inc. (Vermont Gas) authorization to import 8,000 Mcf of natural gas per day from Canada (or alternatively 12,355 Mcf per day should Vermont Gas exercise an option under its supply contract) for a ten-year term beginning on November 1, 1998, under the terms and conditions of its supply contract with Renaissance Energy Ltd. The natural gas will be imported at the international border between Canada and the United States near Philipsburg, Québec, and Highgate Springs, Vermont.

This order is available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., February 11, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 98–4504 Filed 2–20–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1752–000]

Black Hills Corporation; Notice of Filing

February 17, 1998.

Take notice that on February 5, 1998, Black Hills Corporation, which operates its electric utility business under the assumed name of Black Hills Power and Light Company (Black Hills), tendered for filing an executed Form Service Agreement with Platte River Power Authority.

Copies of the filing were provided to the regulatory commission of each of the states of Montana, South Dakota, and Wyoming.

Black Hills has requested that further notice requirement be waived and the tariff and executed service agreements be allowed to become effective January 12, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 27, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4437 Filed 2–20–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1579–000]

Cinergy Services, Inc.; Notice of Filing

February 17, 1998.

Take notice that on January 26, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Sales Standard Tariff (the Tariff), entered into between Cinergy and Entergy Services, Inc. (Entergy).

Cinergy and Entergy are requesting an effective date of one day after the filing of the Power Sales Service Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 26, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4438 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–488–001]

Cinergy Services, Inc.; Notice of Filing

February 17, 1998.

Take notice that on January 23, 1998, Cinergy Services, Inc., tendered for filing its amended power service agreement in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 27, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4473 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–488–000]

Cinergy Services, Inc.; Notice of Filing

February 12, 1998.

Take notice that on January 23, 1998, Cinergy Services, Inc., filed an amendment in the above-captioned proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests must be filed on or before February 26, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4528 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–1292–000 and EL98–20–000]

Dayton Power and Light Company; Notice of Initiation of Proceeding and Refund Effective Date

February 17, 1998.

Take notice that on February 13, 1998, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL98–20–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL98–20–000 will be 60 days after publication of this notice in the **Federal Register**.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4439 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–013]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 17, 1998.

Take notice that on February 11, 1998, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheet to become effective January 1, 1998:

Substitute Sixth Revised Sheet No. 31

El Paso states that the above tariff sheet is being filed to revise a footnote reference regarding the charges related to a minimum take provision that was included in El Paso's Statement of Negotiated Rates filing made effective on January 1, 1998 by Commission order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4440 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–123–002]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

February 17, 1998.

Take notice that on February 10, 1998, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to become effective March 1, 1998:

Fifth Revised Sheet No. 66

Equitrans states that the purpose of this filing is to comply with the Federal

Energy Regulatory Commission's Letter Order issued on February 5, 1998, the Commission found that the filing contained a duplicate numbered tariff sheet Fourth Revised Sheet No. 66 which should have been paginated Fifth Revised Sheet No. 66.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4441 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1532–000]

Florida Power & Light Company; Notice of Filing

February 17, 1998.

Take notice that on January 22, 1998, Florida Power & Light Company, tendered for filing its summary of transactions for the calendar quarter ending December 31, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 26, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4442 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1635–000]

Great Bay Power Corporation; Notice of Filing

February 17, 1998.

Take notice that on January 29, 1998, Great Bay Power Corporation, tendered for filing a summary of activity for the quarter ended December 31, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 27, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4443 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–144–008]

KN Wattenberg Transmission Limited Liability Co.; Notice of Tariff Filing

February 17, 1998.

Take notice that on February 11, 1998, KN Wattenberg Transmission Limited Liability Co. (Wattenberg) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet, to be effective June 1, 1997:

Substitute Original Sheet No. 66A

Wattenberg states that the above referenced tariff sheet is being filed to correct pagination of Sheet No. 66A. On July 28, 1997, an order was received directing Wattenberg to repaginate Sheet No. 66A in the June 9th filing as "First Revised Sheet No. 103". Wattenberg complied with this request in its August 12, 1997, filing. It has since been determined that Sheet No. 66A should have been filed as "Substitute Original Sheet No. 66A". Therefore, Wattenberg submits Substitute Original Sheet No. 66A, to become effective June 1, 1997.

Wattenberg states that copies of the filing were served upon Wattenberg's jurisdictional customers, interested public bodies and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4444 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1614–000]

Pacific Gas and Electric Company; Notice of Filing

February 17, 1998.

On January 29, 1998, Pacific Gas and Electric Company (PG&E), tendered for filing several amendments to PG&E's Master Must-Run Agreements with the California Independent System Operator (ISO), originally filed on October 31, 1997, in Docket No. ER98–495–000. The amendments would add Black Start service from some units to the ancillary services already provided by PG&E under these agreements; modify billing, settlement and payment procedures to conform to current ISO practices; and update and correct some rates and unit performance data. PG&E has requested that these proposed changes be consolidated with the existing proceeding.

PG&E has served this filing on all parties listed on the official service list

in docket No. ER98–495–000, including the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 26, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4445 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1749–000]

PacifiCorp; Notice of Filing

February 11, 1998.

Take notice that PacifiCorp on February 5, 1998, tendered for filing in accordance with 19 CFR Part 35 of the Commission's Rules and Regulations, a Notice of Termination of firm transmission service under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to PacifiCorp's Merchant Function, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 25, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–4446 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1701–000]

Puget Sound Energy, Inc.; Notice of Filing

February 17, 1998.

Take notice that on February 2, 1998, Puget Sound Energy, Inc., as Transmission Provided, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with American Electric Power Service Corporation (AEPSC), as Transmission Customer.

A copy of the filing was served upon AEPSC.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 27, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4447 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–230–000]

Questar Pipeline Company; Notice of Request Under Blanket Authorization

February 17, 1998.

Take notice that on February 13, 1998, Questar Pipeline Company (Questar), 180 East 100 South Salt Lake City, Utah 84145, filed a prior notice request with the Commission in Docket No. CP98–230–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to increase the maximum certificated storage capacity of its Clay Basin storage field (Clay Basin) in Daggett County, Utah, under Questar's blanket certificates issued in Docket Nos. CP82–491–000 and CP88–650–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Questar proposes to increase (1) the maximum certificated natural gas storage capacity at Clay Basin from 110.0 Bcf (46.3 Bcf of working gas) to 117.5 Bcf (51.3 Bcf of working gas) and (2) the maximum reservoir shut-in pressure from 2,360 psia to 2,517 psia, the original gas-in-place discovery pressure. Questar states that no new facilities would be required to increase the capacity of Clay Basin. Questar further states that the average depth of the storage formation is 5,800 feet and that the increased storage capacity would be used to provide open-access storage services.

Questar states that it would use 5.0 Bcf of the proposed increased capacity for working-gas inventory and 2.5 Bcf of the proposed increased capacity for cushion gas to support the additional working-gas inventory capacity. Questar also states that the additional 5.0 Bcf of working-gas capacity would increase the Minimum Required Deliverability (MRD) from 385 MMcf of natural gas per day to 427 MMcf of natural gas per day.

Questar explains that (1) the proposed 117.5 Bcf of storage inventory capacity equals the original natural gas volume determined to be in place at the time of discovery; (2) the increased storage inventory reservoir shut-in pressure would not exceed the original gas-in-place discovery pressure of 2,517 psia; (3) the required number of days needed to inject the increased working-gas inventory level of 51.3 Bcf would be 152 days, well within the 184-day injection season (May 1 to October 31) provided for in Questar's tariff; (4) the entire 5.0 Bcf of expanded working gas capacity

has been subscribed by two customers; (5) Questar currently has adequate pipeline take-away capacity to accommodate the increased working-gas inventory; and (6) the cost-of-service associated with the required 2.5 Bcf of cushion gas is not presently known but would be less than the revenues Questar would receive for storing the 5.0 Bcf of newly subscribed working-gas capacity and would be addressed in Questar's next Section 4 rate case.

Questar states that it would provide the increased working-gas storage service to two new customers who successfully bid for the expanded capacity during an open season held January 15 through January 30, 1998. Questar would provide the new customers firm service pursuant to Questar's FERC Gas Tariff Rate Schedule FSS.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4448 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1025–020]

Safe Harbor Water Power Corporation; Notice of Extension of Time

February 17, 1998.

In light of a recent filing requesting an extension of time to file comments in response to the Commission's Notice of Amendment of License (63 FERC 2383, January 15, 1998) issued January 9, 1998, in the above-docketed proceeding, the Commission hereby extends the comment date 28 days to and including March 27, 1998.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4431 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–134–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 17, 1998.

Take notice that on February 11, 1998, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets proposed to be effective January 30, 1998:

Sixth Revised Sheet No. 141
Second Revised Sheet No. 144
Second Revised Sheet No. 146

Viking states that the purpose of this filing is to revise Viking's Electronic Bulletin Board Access Service Agreement (EBB Agreement) in response to shipper requests that Viking clarify that any modification or termination of WebShipper will be in accordance with Section 284.10 of the Commission's Rules and Regulations (18 C.F.R. § 284.10), as applicable. Accordingly, Viking is modifying Section 7.7 of its EBB Agreement to state: "Pipeline reserves the right to modify or terminate WebShipper at any time, provided that in such event Pipeline complies with the requirements of Section 284.10 of the Commission's Rules and Regulations governing Electronic Bulletin Boards, as applicable."

Viking is also making the following changes to its EBB Agreement:

1. Viking is replacing "shall" with "may" in the second sentence of Article I; and

2. Viking is deleting the reference to Order No. 636 in Article V.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4449 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–000–000]

Western Resources, Inc.; Notice of Filing

February 17, 1998.

Take notice that on February 6, 1998, Western Resources, Inc., tendered for filing a response to the Commission's deficiency letter in this docket issued on January 8, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 27, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4450 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL98–21–000, et al.]

Consumers Energy Company, et al.; Electric Rate and Corporate Regulation Filings

February 12, 1998.

Take notice that the following filings have been made with the Commission:

1. Consumers Energy Company

[Docket No. EL98–21–000]

Take notice that on January 22, 1998, Consumers Energy Company (CECo), tendered for approval by the Federal Energy Regulatory Commission an order issued by the Michigan Public Service Commission dated January 14, 1998, approving CECo's proposed division between electric transmission and distribution facilities based upon Order No. 888 criteria. A copy of the filing was served upon the service list in CECo Docket No. OA96–77–000 and the Michigan Public Service Commission.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Nevada Power Company

[Docket No. EL98–23–000]

Take notice that on January 26, 1998, Nevada Power Company (Nevada Power), tendered for filing an Application For Waiver requesting approval of a deviation of the standards contained in § 35.14, and requests that Nevada Power be permitted to recover estimated fuel costs for its purchases from Qualifying Facilities through its fuel adjustment clause (FAC). This would require a waiver of the requirement in 18 CFR 34.14 that only actual identifiable fuel costs be included in the FAC.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER97–3359–001]

Take notice that on December 31, 1997, Florida Power & Light Company filed a revision to the November 13, 1997, compliance filing made in this docket.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Howard/Avista Energy, LLC

[Docket No. ER98–181–001]

Take notice that on October 16, 1997, Howard/Avista Energy, LLC (Howard/Avista), filed a revised Statement of Policy and Code of Conduct in compliance with the Commission's Order Conditionally Accepting For Filing Proposed Market-Based Rates, issued December 15, 1997, in the above-captioned docket.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Long Island Lighting Company

[Docket No. ER98–381–001]

Take notice that on January 9, 1998, Long Island Lighting Company (LILCO), filed a Compliance Filing Refund Report pursuant to the Commission's Order dated December 9, 1997, in Docket No. ER98–381–000 in connection with the Electric Power Service Agreement entered into between LILCO and the Incorporated Village of Freeport.

LILCO has served a copy of this filing on the Incorporated Village of Freeport and on the New York State Public Service Commission.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER98–411–000]

Take notice that on January 30, 1998, Wolverine Power Supply Cooperative, Inc. (Wolverine), filed a Form of Service Agreement in compliance with the Commission's order in this docket. Wolverine will require customers under its market-based power sales tariff, FERC Electric Tariff No. 5, to execute the Service Agreement.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–426–001]

Take notice that on January 23, 1998, Ohio Edison Company and Pennsylvania Power Company (together Ohio Edison), tendered for filing an amendment to Ohio Edison's Power Sales Tariff (Tariff) which was accepted by the Commission's order dated March 27, 1997, in Docket No. ER97–664–000 and designated as OE Operating Companies FERC Electric Tariff Original Volume No. 2.

Ohio Edison states that a copy of the filing has been served on the public utility commissions of Ohio and Pennsylvania, current customers under the Tariff, and participants in Docket No. ER97–664–000.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER98–488–000]

Take notice that on January 23, 1998, Cinergy Services, Inc., filed an amendment in the above-captioned proceeding.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER98–702–001]

Take notice that on January 30, 1998, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (collectively and each doing business as GPU Energy), filed a revised Market-based Sales Tariff in compliance with the Commission's January 15, 1998, order in this docket.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Southern Company Services, Inc.

[Docket No. ER98–859–000]

Take notice that on February 2, 1998, Southern Company Services, Inc., acting on behalf of Gulf Power Company, tendered for filing an amendment to its previous filing of an amended Service Agreement by and among itself, as agent for Gulf Power Company, Gulf Power Company and the City of Blountstown, Florida (City of Blountstown), pursuant to which Gulf Power Company will make wholesale power sales to the City of Blountstown for a term in excess of one (1) year.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Southern Company Services, Inc.

[Docket No. ER98–860–001]

Take notice that on February 2, 1998, Southern Company Services, Inc., acting on behalf of Gulf Power Company, tendered for filing an amendment to its previous filing of an amended Service Agreement by and among itself, as agent for Gulf Power Company, Gulf Power Company and the Florida Public Utilities Company (FPUC), on behalf of its Marianna Division, pursuant to which Gulf Power Company will make wholesale power sales to FPUC for a term in excess of one (1) year.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Western Resources, Inc.

[Docket No. ER98–1317–000]

Take notice that on January 26, 1998, Western Resources, Inc., tendered for filing revised firm transmission agreements between Western Resources and Duke/Louis Dreyfus L.L.C. Western Resources states that the purpose of the revised agreements is to clarify the actual points of receipt and delivery and specify which ancillary services are being provided.

Copies of the filing were served upon Duke/Louis Dreyfus L.L.C., and the Kansas Corporation Commission.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER98–1758–000]

Take notice that on February 2, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, Service Agreements to provide Non-Firm Point-To-Point Transmission Service to the Constellation Power Source, Inc. under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to the Constellation Power Source, Inc.

NUSCO requests that the Service Agreement become effective February 2, 1998.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Northeast Utilities Service Company

[Docket No. ER98–1759–000]

Take notice that on February 2, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, Service Agreements to provide Non-Firm Point-To-Point Transmission Service and Firm Point-To-Point Transmission Service to the Williams Energy Services Company under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to the Williams Energy Services Company.

NUSCO requests that the Service Agreement become effective February 2, 1998.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. The Detroit Edison Company

[Docket No. ER98–1763–000]

Take notice that on February 3, 1998, The Detroit Edison Company, tendered for filing its report of transactions for the quarter ending December 31, 1997.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Electric and Gas Company

[Docket No. ER98–1764–000]

Take notice that on February 3, 1998, Public Service Electric and Gas Company (PSE&G), tendered for filing a compliance refund report applicable to the offer of settlement in Docket No. ER96–1320–000. PSE&G states that, subsequent to the effective date of the rates pursuant to its settlement order issued on November 28, 1997 in the above referenced docket, PSE&G provided no transmission service at rates in excess of the settlement rates and, therefore, no refunds are due.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Bangor Hydro-Electric Company

[Docket No. ER98–1765–000]

Take notice that on February 3, 1998, Bangor Hydro-Electric Company (Bangor), tendered for filing initial filing Service Agreements with the following customers to receive service under Bangor's FERC Electric Rate Schedule, Original Volume No. 1:

Entergy Power Marketing Corp.
Green Mountain Power Corporation.
Constellation Power Source, Inc.
Northeast Energy Services, Inc.
CNG Power Services Corp.
AIG Trading Corporation
Public Service Electric and Gas Co.
The Power Company of America, L.P.
Niagara Mohawk Power Corp.
Baltimore Gas & Electric Co.
New Energy Ventures, Inc.
United Illuminating Co.

Comment date: February 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4435 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–26–000, et al.]

Nova Corporation, et al.; Electric Rate and Corporate Regulation Filings

February 13, 1998.

Take notice that the following filings have been made with the Commission:

1. Nova Corporation and TransCanada PipeLines Limited

[Docket No. EC98–26–000]

Take notice that on February 11, 1998, TransCanada PipeLines Limited and NOVA Corporation (Applicants) tendered for filing an Application requesting Commission approval for the proposed merger of applicants' energy services businesses.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Tenaska Frontier Partners, Ltd.

[Docket No. EG98–39–000]

On February 6, 1998, Tenaska Frontier Partners, Ltd., a Texas limited partnership, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The applicant is proposing to construct and own an independent power production facility in Grimes County, Texas. Major plant equipment will consist of three combustion turbine-generators, three heat recovery steam generators and one steam turbine generator with a nominal net plant output of 830 MW. The primary fuel supply for the facility will be natural gas. Fuel oil will be used as a back-up fuel supply. Net capacity and electric energy will be sold to PECO Energy Company for resale and, under certain conditions, to others for resale.

Upon completion of construction, Applicant will be engaged directly and exclusively in the business of owning the facility and selling electric energy at wholesale. No rate or charge for, or in connection with, the construction of the Facility or for electric energy produced by the facility was in effect under the

laws of any state as of the date of enactment of Section 32 of the Public Utility Holding Company Act.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Transmission Agency of Northern California

[Docket No. EL98–26–000]

Take notice that on February 6, 1998, the Transmission Agency of Northern California (TANC), tendered for filing a Complaint And Motion For Expedited Consideration. The Transmission Agency of Northern California's (TANC) complaint against Pacific Gas and Electric Company (PG&E) for violation of the contract between TANC and PG&E entitled Principles for Tesla-Midway Transmission Service, known as the South Tesla Principles or SOTP, which contract, pursuant to orders of the Commission, is on file with the Commission as PG&E FERC Rate Schedule No. 143.

Comment date: March 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. The Montana Power Company

[Docket Nos. ER96–334–003, ER96–334–001, and OA96–199–004]

Take notice that on January 30, 1998, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission in compliance to the FERC order dated December 18, 1996, in the above reference dockets a refund report.

A copy of the filing was served upon Idaho Power Company, Colstrip Project Division, and Montana Public Service Commission.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Ameren Services Company

[Docket Nos. ER96–677–004 and ER96–679–004]

Take notice that on February 2, 1998, Ameren Services Company (Ameren Services), acting on behalf of Union Electric Company and Central Illinois Public Service Company (Ameren Companies), filed a Compliance filing in accordance with the Commission's orders in authorizing the Ameren Companies' merger into a public utility holding company system owned by Ameren Corporation. Ameren Services states that the Ameren merger was consummated on December 31, 1997 and that the Ameren Companies' Open Access Tariff and Joint Dispatch Agreement, which are included in the Compliance filing, became effective on such date. Ameren Services also states that no refunds are due under the Compliance Filing.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Long Island Lighting Company

[Docket No. ER98–381–002]

Take notice that on January 9, 1998, Long Island Lighting Company (LILCO), filed a Compliance Filing Refund Report pursuant to the Commission's Order dated December 9, 1997 in Docket No. ER98–381–000 in connection with the Electric Power Service Agreement entered into between LILCO and the Niagara Mohawk Power Corporation.

LILCO has served a copy of this filing on Niagara Mohawk Power Corporation and on the New York State Public Service Commission.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Pool

[Docket Nos. ER98–499–000, ER97–4421–000, OA97–608–000, ER97–3574–000, OA97–237–000, and ER97–1079–000]

Take notice that on January 30, 1998, the New England Power Pool (NEPOOL), Executive Committee submitted materials related to its filing on December 31, 1996 in the captioned dockets. These materials include waiver rules and auction procedures relating to Non-Use Charges for reservations of transmission service into New England.

The NEPOOL Executive Committee states that copies of these materials were sent to protestants and persons seeking intervention in the captioned dockets, the participants in the New England Power Pool, and the New England state governors and regulatory commissions.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Central and South West Services, as agent for Central Power & Light Company, West Texas Utilities Company, and Public Service Company of Oklahoma

[Docket No. ER98–542–002]

Take notice that on January 16, 1998, Central and South West Services, Inc. (CSW Services), as agent for Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company, submitted for filing a revised market-based power sales tariff and revised code of conduct in compliance with the Federal Energy Regulatory Commission's January 2, 1998, order in the above captioned proceeding.

CSW Services states that a copy of the filing has been served on all parties to the above captioned proceeding.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Citizens Utilities Company

[Docket No. ER98–1766–000]

Take notice that on February 6, 1998, Citizens Utilities Company filed a revised Attachment E, Index of Point-to-Point Transmission Service Customers to update the Open Access Transmission Tariff of the Vermont Electric Division of Citizens Utilities Company.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Tenaska Frontier Partners, Ltd.

[Docket No. ER98–1767–000]

Take notice that on February 6, 1998, Tenaska Frontier Partners, Ltd. (Tenaska Frontier), tendered for filing its initial FERC electric service tariff, Rate Schedule No. 1, which is a power marketing rate schedule.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp

[Docket No. ER98–1769–000]

Take notice that on February 6, 1998, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Notice of Termination of PacifiCorp's Rate Schedule FERC No. 415.

Copies of this filing were supplied to the City of Anaheim, California; the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Tucson Electric Power Company

[Docket No. ER98–1770–000]

Take notice that on February 6, 1998, Tucson Electric Power Company (TEP), tendered for filing an updated Attachment E—Index of Point-to-Point Transmission Service Customers to its Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requested waiver of the 60-day prior

notice requirement to allow the updated Attachment E to become effective as of February 6, 1998.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Northern States Power Company (Minnesota)

[Docket No. ER98–1793–000]

Take notice that on February 9, 1998, Northern States Power Company-Minnesota (NSP), tendered for filing an Amendment executed by NSP and the City of Sioux Falls, South Dakota as a supplement to the December 17, 1997 filing. This supplement has been served on all recipients of the December 17th filing.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. MidAmerican Energy Company

[Docket No. OA96–42–001]

Take notice that on August 15, 1997, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission revisions to its Open Access Transmission Tariff consisting of tariff sheets to update the Index of Point-to-Point Transmission Customers and the Index of Network Integration Transmission Service Customers. MidAmerican states that the filing is made pursuant to the Commission's Order on Compliance Tariff Rates and Generic Clarification of Implementation Procedures in Allegheny Power Systems, Inc., *et al.*, 80 FERC ¶ 61,143 (1997), and requests an effective date of August 15, 1997.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Black Hills Power and Light Company

[Docket No. OA96–75–001]

Take notice that on August 15, 1997, Black Hills Power and Light Company, tendered for filing revised tariff sheets to its open access transmission tariff filed in Docket No. OA96–75–000 and an index of customers as required by the Commission's order, 80 FERC ¶ 61,143 (1997).

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Bangor Hydro-Electric Company

[Docket Nos. OA96–191–002, ER97–1170–000, OA97–645–000 (not consolidated)]

Take notice that on August 15, 1997, Bangor Hydro-Electric Company (Bangor), tendered for filing pursuant to the Commission's July 31, 1997, Order on Compliance Tariff Rates and Generic Clarification of Implementation Procedures, Allegheny Power System, Inc., et al., 80 FERC ¶ 61,143, Bangor's Open Access Transmission Tariff compliance filing. This filing contains the changes required by the Commission's July 31st Order.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Ohio Edison Company and Pennsylvania Power Company

[Docket Nos. OA96–197–004]

Take notice that on January 23, 1998, FirstEnergy Corp., parent of Ohio Edison Company and Pennsylvania Power Company, tendered for filing a compliance refund report pursuant to the Commission's October 17, 1997, Letter Order.

FirstEnergy Corp. states that a copy of the filing has been served on the parties in the above-referenced proceedings.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas and Electric Company

[Docket No. OA96–208–001]

Take notice that on August 15, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an index of customers served since July 9, 1996, under its compliance tariffs or revised compliance tariffs. This filing is pursuant to the Order on Compliance Tariff Rates and Generic Clarification of Implementation Procedures, issued July 31, 1997.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. North West Rural Electric Cooperative

[Docket No. OA98–8–000]

Take notice that on January 8, 1998, North West Rural Electric Cooperative (North West), filed a request for waiver of the requirements of Order No. 888 and Order No. 889 pursuant to 18 CFR 35.28(d) of the Federal Energy Regulatory Commission's Regulations. North West's filing is available for public inspection at its offices in Orange City, Iowa.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Minnkota Power Cooperative, Inc.

[Docket No. OA98–9–000]

Take notice that on January 22, 1998, Minnkota Power Cooperative, Inc., (Minnkota), tendered for filing an Application of Minnkota for Waiver of the Requirements of Order No. 889 reciprocity requirements to separate the operation of its transmission system function from the wholesale marketing function, and to submit standards of conduct.

Comment date: February 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4436 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1702–000, et al.]

Puget Sound Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

February 11, 1998.

Take notice that the following filings have been made with the Commission:

1. Puget Sound Energy, Inc.

[Docket No. ER98–1702–000]

Take notice that on February 2, 1998, Puget Sound Energy, Inc., as Transmission Provided, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement), and a Service Agreement for Non-firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement), with Coral Power L.L.C. (Coral), as Transmission Customer.

A copy of the filing was served upon Coral.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. American Electric Power Service Corporation

[Docket No. ER98–1703–000]

Take notice that on February 2, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing an executed service agreement under the AEP Companies' Power Sales Tariff. The Power Sales Tariff was accepted for filing effective October 1, 1995, and has been designated AEP Companies' FERC Electric Tariff First Revised Volume No. 2, AEPSC respectfully request the Commission to permit this service agreement to become effective for service billed on and after January 4, 1998.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Commonwealth Edison Company

[Docket No. ER98–1704–000]

Take notice that on February 2, 1998 Commonwealth Edison Company (ComEd), submitted for filing a Service Agreement establishing Griffin Energy Marketing, L.L.C., (Griffin), as a non-firm transmission customer under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of January 14, 1998, for the service agreements, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Griffin, and the Illinois Commerce Commission.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. New York State Electric & Gas Corporation

[Docket No. ER98–1705–000]

Take notice that on February 2, 1998, New York State Electric & Gas Corporation (NYSEG), tendered for filing its summary of quarterly activity for the calendar year quarter ending December 31, 1997.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER98–1706–000]

Take notice that PacifiCorp, on February 2, 1998, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a revised Exhibit 2 of the Amendment of Agreements between PacifiCorp and Moon Lake Electric Association (Moon Lake).

Copies of this filing were supplied to Moon Lake Electric Association, the Public Utility Commission of Oregon and the Utah Public Service Commission.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Carolina Power & Light Company

[Docket No. ER98–1707–000]

Take notice that on February 2, 1998, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service executed between CP&L and the following Eligible Transmission Customer, Columbia Power Marketing. Service to the Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Illinois Power Company

[Docket No. ER98–1708–000]

Take notice that on January 29, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which SCANA Energy Marketing will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of January 23, 1998.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Orange and Rockland Utilities, Inc.

[Docket No. ER98–1709–000]

Take notice that Orange and Rockland Utilities, Inc. (O&R), on January 29, 1998, tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, a service agreement under which O&R will provide capacity and/or energy to Strategic Energy Limited (Strategic).

O&R requests waiver of the notice requirement so that the service agreement with Strategic becomes effective as of January 30, 1998.

O&R has served copies of the filing on The New York State Public Service Commission and Strategic.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Cleveland Electric Illuminating Company

[Docket No. ER98–1710–000]

Take notice that on January 30, 1998, Cleveland Electric Illuminating Company, tendered for filing its quarterly report of transactions for the period October 1, 1997 through December 31, 1997.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER98–1711–000]

Take notice that on January 30, 1998, Cinergy Services, Inc., (Cinergy), tendered for filing an amended service agreement under Cinergy's Power Sales Standard Tariff entered into between Cinergy and Edgar Electric Cooperative Association.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Houston Lighting & Power Company

[Docket No. ER98–1712–000]

Take notice that on February 2, 1998, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA), with Equitable Power Services Company for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of February 2, 1998.

Copies of the filing were served on Equitable and the Public Utility Commission of Texas.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Kansas City Power & Light Co.

[Docket No. ER98–1713–000]

Take notice that on February 2, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated January 19, 1998, between KCPL and Columbia Power Marketing, Inc. KCPL proposes an effective date of January 20, 1998, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Houston Lighting & Power Company

[Docket No. ER98–1714–000]

Take notice that on February 2, 1998, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA), with Western Power Services, Inc. (Western), for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of February 2, 1998.

Copies of the filing were served on Western and the Public Utility Commission of Texas.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Kansas City Power & Light Co.

[Docket No. ER98–1715–000]

Take notice that on February 2, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated January 19, 1998, between KCPL and Columbia Power Marketing, Inc. KCPL proposes an effective date of January 20, 1998, and requests a waiver of the Commission's notice requirement to allow the requested effective date. This Agreement provides for the rates and charges for Short-term Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636–000.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER98–1716–000]

Take notice that on February 2, 1998, Cinergy Services, Inc., on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (collectively referred to as Cinergy), tendered for filing a Service Agreement between Cinergy and CNG Energy Services Corporation (CNG), as a Service Agreement for a long-term market-based sale in fulfillment of requirements imposed on Cinergy by Order dated November 15, 1996 in Docket No. ER96–2506–000 or, in the alternative, as an original rate schedule.

Copies of the filing have been served on CNG.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Ocean State Power

[Docket No. ER98–1717–000]

Take notice that on February 2, 1998, Ocean State Power (Ocean State), tendered for filing the following supplements (the Supplements), to its rate schedules with the Federal Energy Regulatory Commission:

Supplements No. 22 to Rate Schedule FERC No. 1
Supplements No. 19 to Rate Schedule FERC No. 2
Supplements No. 18 to Rate Schedule FERC No. 3
Supplements No. 20 to Rate Schedule FERC No. 4

The Supplements to the rate schedules request approval of Ocean State's proposed rate of return on equity for the period beginning on February 1, 1998, the requested effective date of the Supplements, and ending on the effective date of Ocean State's updated rate of return on equity to be filed in February of 1999.

Copies of the Supplements have been served upon, among others, Ocean State's power purchasers, the Massachusetts Department of Public Utilities, and the Rhode Island Public Utilities Commission.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Ocean State Power II

[Docket No. ER98–1718–000]

Take notice that on February 2, 1998, Ocean State Power II (Ocean State II), tendered for filing the following supplements (the Supplements) to its rate schedules with the Federal Energy Regulatory Commission:

Supplements No. 21 to Rate Schedule FERC No. 5
Supplements No. 21 to Rate Schedule FERC No. 6
Supplements No. 20 to Rate Schedule FERC No. 7
Supplements No. 21 to Rate Schedule FERC No. 8

The Supplements to the rate schedules request approval of Ocean State II's proposed rate of return on equity for the period beginning on February 1, 1998, the requested effective date of the Supplements, and ending on the effective date of Ocean State II's updated rate of return on equity to be filed in February of 1999.

Copies of the Supplements have been served upon, among others, Ocean State II's power purchasers, the Massachusetts Department of Public Utilities, and the Rhode Island Public Utilities Commission.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Baltimore Gas and Electric Company

[Docket No. ER98–1719–000]

Take notice that on February 3, 1998, Baltimore Gas and Electric Company (BGE), filed Service Agreements with DTE Energy, Inc., dated January 19, 1998, and GPU Energy, dated January 19, 1998, under BGE's FERC Electric Tariff Original Volume No. 3 (Tariff). Under the tendered Service Agreements, BGE agrees to provide services to the parties to the Service Agreements under the provisions of the Tariff. BGE requests an effective date of February 1, 1998, for the Service Agreements. BGE states that a copy of the filing was served upon the Public Service Commission of Maryland and parties to the Service Agreements.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. San Diego Gas & Electric Company

[Docket No. ER98–1720–000]

Take notice that on February 3, 1998, San Diego Gas & Electric Company (SDG&E), tendered for filing a notice of cancellation of Service Agreement with Enron Power Marketing, Inc., for Firm Point-to-Point Transmission Service under SDG&E's Open Access Transmission Tariff.

Notice of the proposed cancellation has been served upon Enron Power Marketing, Inc. SDG&E requests that this cancellation become effective March 31, 1998.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Atlantic City Electric Company

[Docket No. ER98–1721–000]

Take notice that on February 3, 1998, Atlantic City Electric Company (Atlantic Electric), tendered for filing service agreements under which Atlantic Electric will sell capacity and energy to Southern Company Energy Marketing, Inc. (Southern Energy), and El Paso Energy Marketing Company (El Paso), under Atlantic Electric's market-based rate sales tariff. Atlantic Electric requests the agreement with Southern

Energy be accepted to become effective on June 23, 1997, and the agreement with El Paso be accepted to become effective on June 19, 1997.

Atlantic Electric states that a copy of the filing has been served on Southern Energy and El Paso.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Great Western Power Cooperatives Company

[Docket No. ER98–1722–000]

Take notice that on February 3, 1998, Great Western Power Cooperatives Company (GWPCC), tendered for filing a Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority. The Petition requests acceptance of GWPCC Rate Schedule FERC No. 1, under which GWPCC will engage in wholesale electric power and energy transactions as a marketer, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and the waiver of certain Commission Regulations.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. FirstEnergy System

[Docket No. ER98–1723–000]

Take notice that on February 3, 1998, FirstEnergy System filed Service Agreements to provide Non-Firm Point-to-Point Transmission Service for Duquesne Light Company and Tenaska Power Services Company, the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000. The proposed effective dates under the Service Agreements is January 8, 1998.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Baltimore Gas and Electric Company

[Docket No. ER98–1724–000]

Take notice that on February 3, 1998, Baltimore Gas and Electric Company (BGE), submitted in accordance with § 205 of the Federal Power Act and Part 35 of the Rules and Regulations of the Federal Energy Regulatory Commission, 18 CFR Part 35, a Service Agreement between BGE and Constellation Power Source, Inc. (CPS), under which BGE may engage in sales of capacity and energy to its power marketing affiliate, CPS.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Western Resources, Inc.

[Docket No. ER98–1725–000]

Take notice that on February 4, 1998, Western Resources, Inc., tendered for filing a short-term firm transmission agreement between Western Resources and Western Resources Generation Services. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective January 14, 1998.

Copies of the filing were served upon Western Resources Generation Services and the Kansas Corporation Commission.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Duquesne Light Company

[Docket No. ER98–1726–000]

Take notice that February 4, 1998, Duquesne Light Company (DLC), filed a Service Agreement dated February 1, 1998, with New Energy Ventures, L.L.C., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds New Energy Ventures, L.L.C., as a customer under the Tariff. DLC requests an effective date of February 1, 1998, for the Service Agreement.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Interstate Power Company

[Docket No. ER98–1727–000]

Take notice that on February 4, 1998, Interstate Power Company (IPW), tendered for filing a Network Transmission Service and Operating Agreement between IPW and Southern Minnesota Municipal Power Agency (SMMPA). Under the Service Agreement, IPW will provide Network Integration Transmission Service to SMMPA for their Fairmont, Spring Valley, and Wells substations.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. The Toledo Edison Company

[Docket No. ER98–1728–000]

Take notice that on January 30, 1998, The Toledo Edison Company, tendered for filing its quarterly report of transactions for the period October 1, 1997 through December 31, 1997.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. UtiliCorp United Inc.

[Docket No. ER98–1730–000]

Take notice that on February 4, 1998, UtiliCorp United Inc. (UtiliCorp), filed a service agreement with Wyoming Municipal Power Agency for service under its Non-Firm Point-to-Point open access service tariff for its operating division, WestPlains Energy-Colorado.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. UtiliCorp United Inc.

[Docket No. ER98–1731–000]

Take notice that on February 4, 1998, UtiliCorp United Inc. (UtiliCorp), filed a service agreement with Black Hills Power and Light Company for service under its Non-Firm Point-to-Point open access service tariff for its operating division, WestPlains Energy-Colorado.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Northern States Power Company (Minnesota Company)

[Docket No. ER98–1732–000]

Take notice that on February 4, 1998, Northern States Power Company (Minnesota) (NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and Engage Energy US, L.P.

NSP requests that the Commission accept both the agreements effective January 7, 1998, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. The Washington Water Power Company

[Docket No. ER98–1733–000]

Take notice that on February 4, 1998, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements for Non-Firm Point-to-Point Transmission Service under WWP's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8, with Power Fuels, Inc., and Tenaska Power Services Co. WWP requests the Service Agreements be given effective dates of February 1, 1998.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Commonwealth Edison Company

[Docket No. ER98–1734–000]

Take notice that on February 4, 1998, Commonwealth Edison Company (ComEd), filed with the Federal Energy Regulatory Commission its FERC Electric Rate Schedule, an application for blanket authorizations and for certain waivers of the Commission's Regulations. ComEd intends to engage in transactions in which ComEd sells electricity at rates and on terms and conditions that are negotiated with the purchasing party.

ComEd has requested expedited action on its filing so that the Commission may accept ComEd's rate schedule for filing to become effective as soon as possible. ComEd has also served a copy of the application on the state utility commissions that regulate its public utility affiliates, the Illinois Commerce Commission and the Indiana Utility Regulatory Commission.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. PP&L, Inc.

[Docket No. ER98–1735–000]

Take notice that on February 2, 1998, PP&L, Inc., formerly known as Pennsylvania Power & Light Company (PP&L), tendered for filing with the Federal Energy Regulatory Commission one Corrected Borderline Service Agreement (Corrected Agreement) between PP&L and Pennsylvania Electric Company, d/b/a GPU Energy, dated January 19, 1998. The Corrected Agreement corrects a supplement to a borderline service umbrella tariff approved by the Commission in Docket No. ER93–847–000 by establishing the precise point of delivery, metering arrangements, and transmission losses associated with a new point of delivery under the umbrella tariff.

PP&L requests the Commission to make the Corrected Agreement effective as of September 11, 1997, the date of the Borderline Service Agreement that is now corrected by the Corrected Agreement, and which the Commission has already approved. In accordance with 18 CFR 35.11, PP&L has requested waiver of the sixty-day notice period in 18 CFR 35.2(e). PP&L has also requested waiver of certain filing requirements for information previously filed with the Commission in Docket No. ER93–847–008.

PP&L states that a copy of its filing was provided to Pennsylvania Electric Company d/b/a GPU Energy, and to Pennsylvania Public Utility Commission.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Midwest Energy, Inc.

[Docket No. ER98–1736–000]

Take Notice that on February 3, 1998, Midwest Energy, Inc. (Midwest), tendered for filing with the Federal Energy Regulatory Commission the Service Agreement for Non-Firm Point-to-Point Transmission Service entered into between Midwest and Amoco Energy Trading Corporation.

Midwest states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. UtiliCorp United Inc.

[Docket No. ER98–1737–000]

Take notice that on February 3, 1998, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Colorado, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 11, with Williams Energy Services Company. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Colorado to Williams Energy Services Company pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Williams Energy Services Company.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. UtiliCorp United Inc.

[Docket No. ER98–1738–000]

Take notice that on February 3, 1998, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with Williams Energy Services Company. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to Williams Energy Services Company pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Williams Energy Services Company.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. UtiliCorp United Inc.

[Docket No. ER98–1739–000]

Take notice that on February 3, 1998, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with Williams Energy Services Company. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to Williams Energy Services Company pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Williams Energy Services Company.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. Central Louisiana Electric Co., Inc.

[Docket No. ER98–1740–000]

Take notice that on February 3, 1998, Central Louisiana Electric Company, Inc., (CLECO), tendered for filing a service agreement under which CLECO will provide non-firm point-to-point transmission service to OGE Energy Resources, Inc., under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on OGE Energy Resources, Inc.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. Bangor Hydro-Electric Company

[Docket No. ER98–1741–000]

Take notice that on February 4, 1998, Bangor Hydro-Electric Company filed an executed service agreement for non-firm point-to-point transmission service with the Cinergy Capital & Trading, Inc.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

40. MidAmerican Energy Company

[Docket No. ER98–1742–000]

Take notice that on February 2, 1998, MidAmerican Energy Company tendered for filing a proposed change in its Rate Schedule for Power Sales, FERC Electric Rate Schedule, Original Volume No. 5. The proposed change consists of certain reused tariff sheets consistent with the quarterly filing requirement.

MidAmerican states that it is submitting these tariff sheets for the purpose of complying with the requirements set forth in Southern Company Services, Inc., 75 FERC ¶61,130 (1996), relating to quarterly filings by public utilities of summaries of short-term market-based power transactions. The tariff sheets contain summaries of such transactions under the Rate Schedule for Power Sales for the applicable quarter with confidential price and quantity information removed.

MidAmerican proposes an effective date of the first day of the applicable quarter for the rate schedule change. Accordingly, MidAmerican requests a waiver of the 60-day notice requirement for this filing. MidAmerican states that this date is consistent with the requirements of the Southern Company Services, Inc., order and the effective date authorized in Docket No. ER96–2459–000.

Copies of the filing were served upon MidAmerican's customers under the Rate Schedule for Power Sales and the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

41. Western Resources, Inc.

[Docket No. ER98–1743–000]

Take notice that on February 5, 1998, Western Resources, Inc., tendered for filing a short-term firm transmission agreement between Western Resources and Duke/Louis Dreyfus L.L.C. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective January 1, 1998.

Copies of the filing were served upon Duke/Louis Dreyfus L.L.C. and the Kansas Corporation Commission.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

42. South Carolina Electric & Gas Company

[Docket No. ER98–1744–000]

Take notice that on February 5, 1998, South Carolina Electric & Gas Company (SCE&G), submitted service agreements establishing American Electric Power Service Corporation (AEPSC), Avista Energy, Inc. (AVISTA), and Western Resources (WR) as customers under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon AEPSC, AVISTA, WR, and the South Carolina Public Service Commission.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

43. Central Louisiana Electric Co., Inc.

[Docket No. ER98–1745–000]

Take notice that on February 5, 1998 Central Louisiana Electric Company, Inc., (CLECO), tendered for filing two service agreements under which CLECO will provide non-firm and short term firm point-to-point transmission services to Amoco Energy Trading Corporation under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on Amoco Energy Trading Corporation.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

44. New York State Electric & Gas Corporation

[Docket No. ER98–1747–000]

Take notice that on February 5, 1998, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, service agreements under which NYSEG may provide capacity and/or energy to Engage Energy US, L.P. (Engage), Eastern Power Distribution, Inc. (Eastern Power), Energetix, Inc. (Energetix), New England Power Company (NEP), and Wheeled Electric Power Corp. (WEPCo), (collectively, the Purchasers) in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 1.

NYSEG has requested waiver of the notice requirements so that the service agreements with Eastern Power, Energetix, NEP, and WEPCo become effective as of February 6, 1998, and the service agreement with Engage becomes effective as of February 2, 1998.

The Service Agreements are subject to the Commission Order Authorizing Disposition of Jurisdictional Facilities and Corporate Reorganization issued on December 16, 1997 in Docket No. EC97–52–000.

NYSEG served copies of the filing upon the New York State Public Service Commission, Engage, Eastern Power, Energetix, NEP, and WEPCo.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

45. Northern Indiana Public Service Company

[Docket No. ER98–1750–000]

Take notice that on February 5, 1998, Northern Indiana Public Service Company tendered for filing an executed Sales Service Agreement and an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Continental Energy Services, L.L.C. (Continental).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Continental pursuant to the Open-Access Transmission Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Under the Sales Service Agreement, Northern Indiana Public Service Company will provide general purpose energy and negotiated capacity to Continental pursuant to the Wholesale Sales Tariff field by Northern Indiana Public Service Company in Docket No. ER95–1222–000 as amended by the Commission's order in Docket No. ER97–458–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreements be allowed to become effective as of February 15, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

46. Black Hills Corporation

[Docket No. ER98–1751–000]

Take notice that on February 5, 1998, Black Hills Corporation, which operates its electric utility business under the assumed name of Black Hills Power and Light Company (Black Hills), tendered for filing an executed Form Service Agreement with Public Service Company of Colorado.

Copies of the filing were provided to the regulatory commission of each of the states of Montana, South Dakota, and Wyoming.

Black Hills has requested that further notice requirement be waived and the tariff and executed service agreements

be allowed to become effective January 12, 1998.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

47. Black Hills Corporation

[Docket No. ER98–1753–000]

Take notice that on February 5, 1998, Black Hills Corporation, which operates its electric utility business under the assumed name of Black Hills Power and Light Company (Black Hills), tendered for filing an executed Form Service Agreement with Wyoming Municipal Power Agency.

Copies of the filing were provided to the regulatory commission of each of the states of Montana, South Dakota, and Wyoming.

Black Hills has requested that further notice requirement be waived and the tariff and executed service agreements be allowed to become effective December 12, 1997.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

48. Cinergy Services, Inc.

[Docket No. ER98–1754–000]

Take notice that on February 5, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff entered into between Cinergy and Northern States Power Company (NSP).

Cinergy and NSP are requesting an effective date of February 4, 1998.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

49. UtiliCorp United Inc.

[Docket No. ER98–1755–000]

Take notice that on February 6, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with OGE Energy Resources, Inc. for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

50. UtiliCorp United Inc.

[Docket No. ER98–1756–000]

Take notice that on February 6, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with OGE Energy Resources, Inc., for service under its Short-Term Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

51. Public Service Company of New Mexico

[Docket No. ER98–1757–000]

Take notice that on February 6, 1998, Public Service Company of New Mexico (PNM), submitted for filing a service agreement executed January 12, 1998, for firm point-to-point transmission service between PNM (Transmission Provider), and Southwestern Public Service Company (Transmission Customer), under the terms of PNMs Open Access Transmission Service Tariff. Under this service agreement Transmission Provider will provide to Transmission Customer 20 MW of firm point-to-point reserved capacity from the Four Corners 345kV Switchyard to the Roosevelt 230KV Bus, subject to certain conditions and scheduling provisions, for the four (4) month period beginning May 1, 1998, and ending August 31, 1998. PNMs filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

52. California Power Exchange Corporation

[Docket Nos. ER98–210–000 and ER98–1729–000]

Take notice that on January 30, 1998, the California Power Exchange Corporation (PX), made an amended rate filing to be effective on March 31, 1998, pursuant to Section 205 of the Federal Power Act. According to the PX, as a result of the delay in the start of the operations of the PX, it is necessary for the PX to amend the rate filing that it made on October 17, 1997 in Docket No. ER98–210–000. Copies of the filing were served upon all persons included on the service list compiled in Docket No. ER98–210–000.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4434 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11181–002]

Energy Storage Partners; Notice of Intent To Prepare an Environmental Impact Statement and To Conduct Scoping Meetings

February 17, 1998.

The staff of the Federal Energy Regulatory Commission (staff) has determined that issuance of a license for the construction and operation of the proposed Lorella Pumped Storage Project, FERC No. 11181–002, in Klamath County, Oregon, would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an environmental impact statement (EIS) on the proposed project in accordance with the National Environmental Policy Act. The staff's EIS will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

The scoping process will provide a public forum to determine the scope and the significant issues that should be analyzed in depth in the EIS. The times and locations of the scoping meetings and public hearings will be announced in a subsequent public notice.

For further information, please contact the FERC Project Coordinator, Héctor M. Pérez at (202) 219–2843.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4433 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Preliminary Permit

February 17, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11611–000.

c. Date filed: January 14, 1998.

d. Applicant: Alaska Power & Telephone Company.

e. Name of Project: Twin Basin Hydroelectric.

f. Location: Off Kizhuyak Bay, on two unnamed streams, near the town of Kodiak, Kodiak Island Borough, Alaska.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C., § 791(a)–825(r).

h. Applicant Contact: Mr. Glen D. Martin, Project Manager, Alaska Power and Telephone Co., 191 Otto Street, P.O. Box 222, Port Townsend, WA 98368, (360) 385–1733.

i. FERC Contact: Surender M. Yepuri, P.E., (202) 219–2847.

j. Comment Date: April 22, 1998.

k. Description of Project: The proposed project would consist of: (1) two 30-foot-long, 15-foot-high concrete or wood crib diversion structures with screened intakes; (2) two reservoirs with a total surface area of maximum 5 acres; (3) two 30-inch-diameter penstocks totaling 5,300 feet; (4) a 40-foot-long, 30-foot-wide, and 20-foot-high powerhouse with a total installed capacity of 5 MW; (5) a tailrace; (6) a 12.5-kV, 2.0-mile-long transmission line connecting the project to an existing substation; and (7) other appurtenances.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named document must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4432 Filed 2–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed With the Office of Hearings and Appeals; Week of January 5 through January 9, 1998

During the Week of January 5 through January 9, 1998, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: February 11, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 5 through January 9, 1998]

Date	Name and location of Applicant	Case No.	Type of Submission
1/5/98	Cincinnati Gas & Electric Co., Cincinnati, OH.	VEA–0008	Appeal of an Order Issued Under A.F.T.P. 10 CFR Part 490. *If granted:* The Cincinnati Gas & Electric Co. would receive a waiver of the requirements of 10 CFR Part 490 that would give the firm credit for vehicles converted to alternative fuel use during the period October 1, 1997 through December 31, 1997 which would count toward Model Year 1997 compliance.
1/5/98	Personnel Security Review	VSA–0170	Request for Review of Opinion Under 10 CFR Part 710. *If granted:* The December 8, 1997 Opinion of the Office of Hearings and Appeals Case No. VSO–0170 would be reviewed at the request of an individual employed by the Department of Energy.
1/5/98	The Oregonian Portland, OR	VFA–0368	Appeal of an Information Request Denial. *If granted:* The November 26, 1997 Freedom of Information Request Denial issued by the Bonneville Power Administration would be rescinded, and the Oregonian would receive access to certain DOE information.

[FR Doc. 98–4501 Filed 2–20–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Case Filed With the Office of Hearings and Appeals; Week of January 12 Through January 16, 1998

During the Week of January 12 through January 16, 1998, the appeal, application, petition or other request listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in in this case may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: February 11, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 12 through January 16, 1998]

Date	Name and location of applicant	Case No.	Type of submission
1/13/98	Personnel Security Hearing	VSO–0191	Request for Hearing under 10 CFR part 710. If Granted, an individual employed by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.

[FR Doc. 98–4502 Filed 2–20–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of October 13 through October 17, 1997

During the week of October 13 through October 17, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: February 11, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

[Decision List No. 55] Week of October 13 Through October 17, 1997

Appeal

Dr. Daniel D. Eggers, 10/4/97; *VFA–0332*

Dr. Daniel D. Eggers Appealed a Determination issued to him in response to a request he submitted under the Freedom of Information Act for documents generated in connection with a patient his father, a DOE contractor employee, had filed in the 1940s. In its Determination, the Oak Ridge Operations Office (Oak Ridge) found that the DOE could not locate any responsive documents. On appeal, the DOE found that adequate search was adequate, because the Appellant had provided insufficiently specific information to enable Oak Ridge to focus its search. However, DOE determined that the Appellant possessed more specific information that might permit Oak Ridge to narrow its search and locate responsive documents. Therefore, OHA granted the Appeal remanded the matter to Oak Ridge for a further search.

Personnel Security Hearing

Personnel Security Hearing, 10/14/96; *VSO–0161*

A Hearing Officer recommended that access authorization not be restored to

an individual. The Hearing Officer found that information presented by the DOE established that the individual suffers from alcohol abuse and had not mitigated the security concerns by sufficient evidence of rehabilitation and reformation.

Refund Application

Pruner Healther Services, Inc., et al., 10/14/97; *RK272–02447 et al.*

The Department of Energy issued a Decision and Order granting 16 Applications for Supplemental Refund filed in the Subpart V crude oil refund proceeding.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

CRUDE OIL SUPPLE REF DIST	RB272–00123	10/15/97
ERIE MATERIALS, INC. ET AL	RF272–98607	10/16/97
MACDONALD H. JONES ET AL	RK272–04624	10/15/97

Dismissals

The following submissions were dismissed.

NAME	CASE NO.
OXNARD FROZEN FOOD COOPERATIVE	RF272–76782
PERSONNEL SECURITY HEARING	VSO–0162

[FR Doc. 98–4499 Filed 2–20–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearing and Appeals

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of November 3 Through November 7, 1997

During the week of November 3 through November 7, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: February 11, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 58; Week of November 3 through November 7, 1997

Appeals

Convergence Research, 11/7/97, [VFA–0340]

Convergence Research (CR) appealed a determination by the Bonneville Power Administration (BPA) that denied in part a request for information that it filed under the Freedom of Information Act (FOIA). The DOE found that a likelihood of significant competitive harm would result from release of the requested information and that, therefore, BPA properly withheld the information under Exemption 5. Consequently, CR's Appeal was denied.

The Oregonian, 11/3/97, [VFA–0336]

The Oregonian appealed a determination by the Bonneville Power Administration (BPA) that denied in part a request for information the newspaper filed under the Freedom of Information Act (FOIA). The DOE found that a likelihood of significant competitive harm would result from release of the requested information and that, therefore, BPA properly withheld the information under Exemption 5. Consequently, the Appeal filed by The Oregonian was denied.

Refund Applications

Eason Oil Co./Koch Hydrocarbon Co., 11/7/97, [RF352–2]

The DOE granted in part an application for refund submitted by Koch Hydrocarbon Co. (KHC) in the Eason Oil Co. (Eason) special refund proceeding. The DOE found that KHC purchased a mixed stream of NGLs from Eason, which it fractionated into propane, butane and natural gasoline and resold to third parties. KHC's NGL purchases from Eason were not discretionary in nature, and were dictated by KHC's requirements for its fractionation and marketing activities. For the period November 1973 through December 1979, the DOE found that KHC had demonstrated that the prices it paid to Eason for butane resulted in some economic injury to KHC. However, the DOE found that KHC's competitive disadvantage analysis failed to establish that KHC suffered the type of substantial and consistent competitive disadvantage that would qualify the firm for 100% of its allocable share of the refund. Accordingly, the DOE granted KHC a refund based on 79.5 percent of its allocable share.

Gulf Oil Corp./Ryder Energy Distributing, 11/3/97, [RR300–261]

The DOE denied a motion for reconsideration filed by the Ryder Energy Distributing in the Gulf refund proceeding. The DOE had previously granted Ryder a $36,637 refund based on the medium range presumption of injury applicable to resellers. In considering the motion, the DOE found that Ryder Energy failed to demonstrate that it was entitled to the end-user presumption of injury for any of its Gulf purchases.

Star-Kist Foods, Inc., 11/6/97, [RR272–148]

The DOE granted a Motion for Reconsideration filed by Star-Kist Foods, Inc. The DOE found that the company had acted in a timely fashion

when it corrected the deficiency which had caused the DOE to dismiss Star-Kist's Application for Refund, and DOE determined that Star-Kist should receive a refund.

TMBR/Sharp Drilling, Inc. Tom Brown, Inc, Tom Brown, Inc., 11/3/97, [RF272–98766; RC272–00375; RJ272–00050]

TMBR/Sharp Drilling, Inc. (TMBR) filed an Application for Refund in the crude oil refund proceeding. Another company, Tom Brown, Inc. (TBI), from which TMBR had been spun off, had earlier received a refund for the same purchases for which TMBR was entitled to a refund. The DOE rescinded the portions of TBI's original and supplemental refunds pertaining to purchases made by its drilling division, which became TMBR. Moreover, the DOE accepted TBI's estimates of its drilling division's purchases instead of TMBR's, because TBI's records were based on records contemporaneous to the refund period, as opposed to TMBR's estimates, which were based on current records. Accordingly, TMBR was granted a refund and TBI's refunds were reduced.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Crude Oil Supple Refund	RB272–00124	11/7/97
Gulf Oil Corporation/Monarch Oil Co., Inc	RF300–21676	11/3/97
Gulf Oil Corporation/Texas City Refining, Inc	RF300–14009	11/6/97
Shell Oil Co./Merbert M. Hsu	RF315–10287	11/4/97

Dismissals

The following submissions were dismissed.

Name	Case No.
Nash Finch Co.	RK272–04629

[FR Doc. 98–4500 Filed 2–20–98; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5970–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Registration of Fuels and Fuel Additives—Health-effects Research Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Registration of Fuels and Fuel Additives: Health-effects Research Requirements for Manufacturers (40 CFR 79—subpart F) (OMB Control Number 2060–0297, expiration date: 4–30–98). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 25, 1998.

FOR FURTHER INFORMATION CONTACT:

For a copy of the ICR, call Sandy Farmer at EPA, by phone at (202) 260–2740, by E–Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr/icr.htm, and refer to EPA ICR No. 1696.02.

SUPPLEMENTARY INFORMATION

Title: Registration of Fuels and Fuel Additives: Health-effects Research Requirements for Manufacturers (40 CFR 79—subpart F), (OMB Control Number 2060–0297, EPA ICR Number 1696.02) expiring 4–30–98. This is a request for an extension of a currently approved collection.

Abstract: In accordance with the Clean Air Act regulations at 40 CFR 79, manufacturers (including importers) of gasoline, diesel fuel, and additives for gasoline or diesel fuel, are required to have their products registered by the EPA prior to their introduction into commerce. Registration involves providing a chemical description of the fuel or additive, and certain technical, marketing, and health-effects information. The health-effects research is the subject of this ICR. The other information collection requirements at 40 CFR 79 are covered by a separate ICR (EPA ICR Number 309.09, OMB Control Number 2060–0150). The health-effects research is divided into three tiers of requirements for specific categories of fuels and additives. Tier 1 requires a health-effects literature search and emissions characterization. Tier 1 data were submitted in 1997 and will be applicable for most new products seeking registration. Tier 2 requires short-term inhalation exposures of laboratory animals to emissions to screen for adverse health effects, unless comparable data are already available. Alternative Tier 2 testing can be required in lieu of the standard Tier 2 if EPA concludes that such testing would be more appropriate. Certain small businesses are exempt from some or all of the Tier 1 and Tier 2 requirements. Tier 3 provides for follow-up research, if necessary. (However, no Tier 3 requirements have been established. Thus, it is not covered in this notice.) This information will be used to determine if there are any products whose evaporative or combustion emissions may pose an unreasonable risk to public health, thus meriting further investigation and potential regulation. In accordance with the Clean Air Act, the results of this research shall not be considered confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on December 1, 1997 (62 FR 63544); no comments were received.

Burden Statement: The burden covered by this document is limited because little additional Tier 1 activity is anticipated and the EPA is in negotiation with the regulated parties on Alternative Tier 2 requirements for most of the registered products for which standard Tier 2 testing would otherwise be required. This ICR will be amended once the Alternative Tier 2 requirements are established. Thus, over the next three years only one Tier 1 submission and one standard Tier 2 submission are anticipated, with a total burden of 10,400 hours and cost of $1 million. The annual public reporting and recordkeeping burden for this collection is estimated to average 3,467 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers of gasoline, diesel fuel, and fuel additives.

Estimated Number of Respondents: 2.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 3,467 hours.

Estimated Total Annualized Cost Burden: $154,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, to the following addresses. Please refer to EPA ICR Number 1696.02 and OMB Control Number 2060–0297 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated February 19, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–4519 Filed 2–20–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. FRL–5969–9]

Interstate Lead Company (ILCO) Superfund Site, Leeds, Alabama; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) has entered into de minimis settlements with 210 small quantity generators at the Interstate Lead Company (ILCO) Superfund site located in Leeds, Alabama.

EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303, 404/562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of publication at the address above.

Dated: February 6, 1998.

Anita Davis,

Acting Chief, Program Services Branch, Waste Management Division, Region 4.

[FR Doc. 98–4521 Filed 2–20–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Marianas Steamship Agencies, Inc., 1026 Cabras Highway, Administration Building Annex, Piti, Guam 96925, Officers: Junichi Kinoshita, President, Clarence Tenorio, Vice President

Crosstrans Service U.S.A., 339 Carey Ct., Chicago Heights, IL 604511, Officer: Kurt Konodi-Floch, President

International Transport Corp. 2229 N.W. 79th Avenue, Miami, FL 33122, Officer: Danica S. Campbell, President

Global Logistics International Inc., 1207 N.W. 93rd Ct., Miami, FL 33172, Officers: Guillermo Damian, President, Evelyn A. Damian, Vice President

Triton Forwarding, Inc., 3080 Bristol Street, Suite 610, Costa Mesa, CA 92626, Officers: George O. Eickhoff III, President, Anthony G. Khamis, Director

Dated: February 18, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–4494 Filed 2–20–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 9, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Eatherly Family Limited Partnership, Ponca City, Oklahoma; to acquire voting shares of First Bancorp of Oklahoma, Tonkawa, Oklahoma, and thereby indirectly acquire First National Bank of Oklahoma, Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, February 17, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4386 Filed 2–20–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 19, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. First Citizens Banc Corp., Sandusky, Ohio; to acquire 100 percent of the voting shares of The Farmers State Bank of New Washington, New Washington, Ohio.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. First American Corporation, and First American National Bank, both of Nashville, Tennessee; to merge with Victory Bancshares Inc., Memphis, Tennessee, and thereby indirectly acquire Victory Bank and Trust Company, Memphis, Tennessee. Comments regarding this application must be received by March 9, 1998.

C. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Farmers State Corporation, Mountain Lake, Minnesota; to acquire 100 percent of the voting shares of Community Bank New Ulm, New Ulm, Minnesota.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Azle Bancshares, Inc., Employee Stock Ownership Plan, Azle, Texas; to become a bank holding company by acquiring 26.20 percent of the voting shares of First Azle Bancshares, Inc., Azle, Texas, and thereby indirectly acquire First Bank, Azle, Texas.

Board of Governors of the Federal Reserve System, February 17, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4387 Filed 2–20–98; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Office of Acquisition Policy; Determination of Executive Compensation Benchmark Amount Pursuant to Section 808 of the FY 1998 Defense Authorization Act

AGENCY: General Services Administration (GSA).

ACTION: Notice.

SUMMARY: The Acting Administrator of the Office of Federal Procurement Policy (OFPP) has requested that the General Services Administration publish the following notice regarding his determination pursuant to Section 808 of the FY 1998 Defense Authorization Act related to the allowability of certain personal compensation costs covered by the Federal Acquisition Regulation at 48 CFR 31.205–6.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, OFPP, on (202) 395–3254.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Executive Office of the President

Office of Management and Budget, Washington, D.C. 20503

February 12, 1998.

To the Heads of Executive Departments and Agencies

Subject: Determination of Executive Compensation Benchmark Amount Pursuant to Section 808 of the FY 1998 Defense Authorization Act, Pub. L. 105–85

This memorandum sets forth the "benchmark compensation amount" as required by Section 39 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 435), as amended. Under Section 39, the "benchmark compensation amount" is "the median amount of the compensation provided for all senior executives of all benchmark corporations for the most recent year for which data is available." The "benchmark compensation amount" established as directed by Section 39 limits the allowability of compensation costs under government contracts. The "benchmark compensation amount" does not limit the compensation that an executive may otherwise receive.

Based on a review of commercially available surveys of executive compensation and after consultation with the Director of the Defense Contract Audit Agency, I have determined pursuant to the requirements of Section 39 that the benchmark compensation amount for contractor fiscal year 1998 is $340,650. This benchmark compensation amount is to be used for contractor fiscal year 1998, and subsequent contractor fiscal years, unless and until revised by OFPP. This benchmark compensation amount applies to contract costs incurred after January 1, 1998, under covered contracts of both the defense and civilian procurement agencies as specified in Section 808 of the FY 1998 Defense Authorization Act.

Questions concerning this memorandum may be addressed to Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, OFPP, on (202) 395–3254.

Allan E. Brown,

Acting Administrator.

[FR Doc. 98–4291 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service Notice of Availability of Agency Record of Decision for a New Federal Building and U.S. Courthouse in Fresno, CA

The United States General Services Administration (GSA) announces its decision, in accordance with the National Environmental Policy Act (NEPA) and the Regulations issued by the Council on Environmental Quality,

November 29, 1978, to construct a new United States Courthouse in downtown Fresno, California.

The new Courthouse will be 360,000 gross square feet, with 392 parking spaces. The project will be developed on a site of approximately 4.5 acre. This site size will accommodate possible building expansion to meet the U.S. Courts long term requirements.

The General Services Administration has prepared a Record of Decision (ROD) for the proposed project and believes that there are no outstanding issues to be resolved. Copies of the ROD are available and can be obtained from Mr. Javad Soltani, GSA, Portfolio Management (9PT), Public Building, Services, 450 Golden Gate Avenue, San Francisco, CA 94102, at (415) 522–3493.

Kim Schreiber,

Portfolio Management (9PT), PBS, GSA, Pacific Rim Region.

[FR Doc. 98–4429 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

State Offices of Rural Health Grant Program

AGENCY: Health Resources and Services Administration. HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Office of Rural Health Policy, Health Resources and Services Administration (HRSA), announces that applications are being accepted for matching grants to States for the purpose of improving health care in rural areas through the continued operation of State Offices of Rural Health. This program is authorized by section 338J of the Public Health Service Act 42 U.S.C. 254r. Awards will be made from funds appropriated under Public Law 105–78 (HHS Appropriations Act for Fiscal Year 1998). Approximately $3.0 million will be available to support 50 grants in fiscal year (FY) 1998.

Background

This Federal-State partnership helps America's rural communities rebuild their health care system by supporting initiatives and partnerships in rural health development. Begun in 1991, the State Office of Rural Health Grant Program has spurred the development of State offices by providing matching funds for their creation and a forum for exchanging information and strategies among States, providing an institutional framework that links small rural communities with State and Federal resources and developing long-term solutions to rural health problems.

Other Award Information

Grant applications should be submitted for a five-year project period. Funding will be for a single year. Continued funding is contingent upon the availability of Federal funds and satisfactory performance by the grantee. Only one grant application may be submitted from each State. It must indicate approval by a senior official of the State Health Department or their designee.

This is a renewal of an existing grant program that features a single grantee from each of the 50 States. A list of these grantees may be obtained by contacting Roberto Anson, Office of Rural Health Policy, HRSA, at (301) 443–0835.

Requesting Applications

Call the HRSA Grants Application Center at 1–888–300–4772 to request a grant application kit and program guidance for the State Office of Rural Health Grant Program (Catalog of Federal Domestic Assistance (CFDA) No. 93.913). Applications and guidance will be available following publication of this notice.

The standard application form and general instructions for completing applications (Form PHS–5161–1, OMB 0937–0189) have been approved by the Office of Management and Budget.

Deadline for Submitting Applications

Application deadline for this program is March 23, 1998. The application must be postmarked no later than March 23, 1998. Applicants should submit the signed original and two copies of the application to the: HRSA GRANTS APPLICATION CENTER, 40 West Gude Drive, Suite 100, Rockville, MD 20850.

Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing. Late applications will be returned to the sender.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to Roberto Anson, Director, State Offices of Rural Health Grant Program, Office of Rural Health Policy, HRSA, (301) 443–0835.

SUPPLEMENTAL INFORMATION:

Program Objectives

The purpose of the program is to improve health care in rural areas. To receive a Federal grant, each State must agree that its State Office of Rural Health will carry out at least the following activities: (1) Establish and maintain a clearinghouse for collecting and disseminating information on rural health care issues; (2) coordinate the activities carried out in the State that relate to rural health care, including providing coordination for the purpose of avoiding duplication in such activities; (3) identify Federal, State and non-governmental programs regarding rural health, and provide technical assistance to public and nonprofit private entities regarding participation in such programs; and (4) help develop rural health policies through inter-organization collaborations and partnerships. In addition to these required activities, State Offices of Rural Health are encouraged to use Federal grant funds for activities that support, but do not directly fund, the recruitment and retention of health professionals to serve in rural areas. State Offices must also submit an annual report regarding its performance, progress and activities.

Federal funds under this grant program may not be used to: (1) Provide health care services; (2) purchase medical equipment, vehicles or real property; or (3) conduct certificate of need activities. Also, not more than 10% of grant funds may be expended on research.

Eligible Applicants

The fifty States.

The State (*e.g.*, Department of Health, State University) can conduct the required and any discretionary activities directly or through grants or contracts to other public or nonprofit private entities (*e.g.*, University, Area Health Education Center). To encourage States to commit their own resources, this program requires a match of three non-Federal dollars for every one Federal dollar to support the operation of their State Office of Rural Health.

Review Criteria

Grant applications will be evaluated on the basis of the following criteria:

(1) The extent to which the application is responsive to the requirements and purposes of this Federal-State partnership program;

(2) The extent to which the applicant has developed measurable goals,

objectives and timetable including performance and outcome measures;

(3) The extent to which the Office coordinates rural health activities within the State and collaborates with other health entities, especially the State Primary Care Organizations and Primary Care Associations;

(4) The strength of the applicant's plans for administrative and financial management of the Office; and

(5) The reasonableness of the budget proposed for the Office.

Executive Order 12372

The State Office of Rural Health Grant Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intra-governmental review of Federal programs, as implemented by 45 CFR part 100. Executive Order 12372 sets up a system for State and local government review of proposed Federal assistance applications. A current list of State Single Point of Contact (SPOCs), including their names, addresses, and telephone numbers, is included in the application kit. Not all States have SPOCs so this requirement only applies to those States with SPOCs. Applicants should contact their SPOCs as early as possible to alert them to the prospective application and receive any necessary instructions on the State process. (See part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements.)

The OMB Catalog of Federal Domestic Assistance number is 93.913.

Dated: February 13, 1998.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 98–4532 Filed 2–20–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Bioethics Advisory Commission (NBAC) Meeting

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will continue addressing (1.) the protection of the rights and welfare of human subjects in research including research subjects with decisional impairments and (2.) issues in tissue storage as they relate to genetic information. The meeting is open to the public and opportunities for statements by the public will be provided.

Dates/Times	Location
March 3, 1998, 1:00 pm–5:00 pm; March 4, 1998, 8:00 am–5:30 pm.	McLean Hilton at Tysons Corner, 7920 Jones Branch Drive, McLean, Virginia 22102

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1995 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

Public Participation

The meeting is open to the public with attendance limited by the availability of space. Members of the public who wish to present oral statements should contact Ms. Patricia Norris by telephone, fax machine, or mail as shown below prior to the meeting as soon as possible. The Chair will reserve time for presentations by persons requesting to speak. The order of speakers will be assigned on a first come, first serve basis. Individuals unable to make oral presentations are encouraged to mail or fax their comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Norris, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Henrietta D. Hyatt-Knorr,

Deputy Executive Director, National Bioethics Advisory Commission.

[FR Doc. 98–4385 Filed 2–20–98; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96D–0235]

International Conference on Harmonisation; Guidance on Testing for Carcinogenicity of Pharmaceuticals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a guidance entitled "S1B Testing for Carcinogenicity of Pharmaceuticals." The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance outlines experimental approaches to evaluating the carcinogenic potential of pharmaceuticals to humans that may obviate the necessity for the routine conduct of two long-term rodent carcinogenicity studies.

DATES: Effective February 23, 1998. Submit written comments at any time.

ADDRESSES: Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the guidance are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573. Single copies of the draft guidance may be obtained by mail from the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), or by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Copies may be obtained from CBER's FAX Information System at 1–888–CBER–FAX or 301–827–3844.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Joseph J. DeGeorge, Center for Drug Evaluation and Research (HFD–24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6758.

Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have

been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of August 21, 1996 (61 FR 43298), FDA published a draft tripartite guideline entitled "Testing for Carcinogenicity of Pharmaceuticals" (S1B). The notice gave interested persons an opportunity to submit comments by October 21, 1996.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies on July 17, 1997.

In accordance with FDA's Good Guidance Practices (62 FR 8961, February 27, 1997), this document has been designated a guidance, rather than a guideline.

Long-term rodent carcinogenicity studies for assessing the carcinogenic potential of pharmaceuticals to humans are currently receiving critical examination. Many investigations have shown that it is possible to provoke a carcinogenic response in rodents by a diversity of experimental procedures, some of which are now considered to have little or no relevance for human risk assessment. It is in keeping with the mission of ICH to examine whether the need for carcinogenicity studies in two species could be reduced without compromising human safety. This guidance outlines experimental approaches to the evaluation of carcinogenic potential that may obviate the necessity for the routine conduct of two long-term rodent carcinogenicity studies for those pharmaceuticals that need such evaluation.

This guidance represents the agency's current thinking on methods for evaluating the carcinogenic activity of pharmaceuticals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

As with all of FDA's guidances, the public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet at "http://www.fda.gov/cder/guidance.index.htm" or at CBER's World Wide Web site at "http://www.fda.gov/cber/cberftp.html".

The text of the guidance follows:

S1B Testing for Carcinogenicity of Pharmaceuticals[1]

1. Objective

This document provides guidance on approaches for evaluating the carcinogenic potential of pharmaceuticals.

2. Background

Historically, the regulatory requirements for the assessment of the carcinogenic potential of pharmaceuticals in the three regions (EU, Japan, the United States) provided for the conduct of long-term carcinogenicity studies in two rodent species, usually the rat and the mouse. Given the cost of these studies and their extensive use of animals, it is in keeping with the mission of ICH to examine whether this practice requiring long-term carcinogenicity studies in two species could be reduced without compromising human safety.

This guidance should be read in conjunction with other guidances, especially:

S1A The Need for Carcinogenicity Studies of Pharmaceuticals.

S1C Dose Selection for Carcinogenicity Studies of Pharmaceuticals.

Long-term rodent carcinogenicity studies for assessing the carcinogenic potential of chemicals (including pharmaceuticals) to humans are currently receiving critical examination. Since the early 1970's, many investigations have shown that it is possible to provoke a carcinogenic response in rodents by a diversity of experimental procedures, some of which are now considered to have little or no relevance for human risk assessment. This guidance outlines experimental approaches to the evaluation of carcinogenic potential that may obviate the necessity for the routine conduct of two long-term rodent carcinogenicity studies for those pharmaceuticals that need such evaluation. The relative individual contribution of rat and mouse carcinogenicity studies and whether the use of rats or mice alone would result in a significant loss of information on carcinogenicity relevant to human risk assessment has been addressed by six surveys of the data for human pharmaceuticals. The surveys were those of the International Agency for Research on Cancer (IARC), the U.S. Food and Drug Administration (FDA), the U.S. Physicians' Desk Reference (PDR), the Japanese Pharmaceutical Manufacturers' Association (JPMA), the EU Committee for Proprietary Medicinal Products (CPMP), and the UK Centre for Medicines Research (CMR). The dimensions of these surveys and the principal conclusions of the analyses can be found in the Proceedings of the Third International Conference (1995) on Harmonisation.

Positive results in long-term carcinogenicity studies that are not relevant to the therapeutic use of a pharmaceutical present a dilemma to all parties: Regulatory reviewers, companies developing drugs, and the public at large. The conduct of one long-term carcinogenicity study (rather than two long-term studies) would, in part, allow resources to be diverted to other approaches to uncover potential carcinogenicity relevant to humans. A "weight of evidence" approach, that is use of scientific judgment in evaluation of the totality of the data

[1] This guidance represents the agency's current thinking on methods for evaluating the carcinogenic activity of pharmaceuticals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

derived from one long-term carcinogenicity study along with other appropriate experimental investigations, enhances the assessment of carcinogenic risk to humans.

3. Scope of the Guidance

The guidance embraces all pharmaceutical agents that need carcinogenicity testing as indicated in ICH guidance S1A. For biotechnology-derived pharmaceuticals, refer to ICH guidance "S6 Preclinical Safety Evaluation of Biotechnology-Derived Pharmaceuticals."

4. The Guidance

4.1 Preamble.

The strategy for testing the carcinogenic potential of a pharmaceutical is developed only after the acquisition of certain key units of information, including the results of genetic toxicology (ICH guidances "S2A Guidance on Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals" and "S2B Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals"), intended patient population, clinical dosage regimen (ICH guidance S1A), pharmacodynamics in animals and in humans (selectivity, dose-response) (ICH guidance S1C), and repeated-dose toxicology studies. Repeated-dose toxicology studies in any species (including nonrodents) may indicate that the test compound possesses immunosuppressant properties, hormonal activity, or other activity considered to be a risk factor for humans, and this information should be considered in the design of any further studies for the assessment of carcinogenic potential (see also Note 1).

4.2 Experimental approaches to testing for carcinogenic potential.

Flexibility and judgment should be exercised in the choice of an approach, which should be influenced by the information cited in the above preamble. Given the complexity of the process of carcinogenesis, no single experimental approach can be expected to predict the carcinogenic potential of all pharmaceuticals for humans.

The basic principle:

The basic scheme comprises one long-term rodent carcinogenicity study, plus one other study of the type mentioned in section 4.2.2 that supplements the long-term carcinogenicity study and provides additional information that is not readily available from the long-term assay.

4.2.1 Choice of species for a long-term carcinogenicity study.

The species selected should be appropriate, based on considerations that include the following:

(a) Pharmacology.

(b) Repeated-dose toxicology.

(c) Metabolism (see also ICH guidances S1C and "S3A Toxicokinetics: The Assessment of Systemic Exposure in Toxicity Studies").

(d) Toxicokinetics (see also ICH guidances S1C, S3A, and S3B).

(e) Route of administration (e.g., less common routes such as dermal and inhalation).

In the absence of clear evidence favoring one species, it is recommended that the rat be selected. This view is based on the factors discussed in section 6.

4.2.2 Additional in vivo tests for carcinogenicity.

Additional tests may be either (a) or (b) (see Note 2).

(a) Short- or medium-term in vivo rodent test systems.

Possibilities should focus on the use of in vivo models providing insight into carcinogenic endpoints. These may include models of initiation-promotion in rodents or models of carcinogenesis using transgenic or neonatal rodents (Note 3).

(b) A long-term carcinogenicity study in a second rodent species is still considered acceptable (see section 4.2.1 for considerations).

4.2.3 Considerations in the choice of short- or medium-term tests for carcinogenicity.

Emphasis should be placed on selection of a test method that can contribute information valuable to the overall "weight of evidence" for the assessment of carcinogenic potential. The rationale for this choice should be documented and based on information available at the time of method selection about the pharmaceutical, such as pharmacodynamics and exposure compared to human or any other information that may be relevant. This rationale should include a scientific discussion of the strengths and weaknesses of the method selected for the pharmaceutical (see Note 4).

5. Mechanistic Studies

Mechanistic studies are often useful for the interpretation of tumor findings in a carcinogenicity study and can provide a perspective on their relevance to human risk assessment. The need for or the design of an investigative study will be dictated by the particular properties of the drug and/or the specific results from the carcinogenicity testing. Dose dependency and the relationship to carcinogenicity study conditions should be evaluated in these investigational studies. Suggestions include:

5.1 Cellular changes.

Relevant tissues may be examined for changes at the cellular level using morphological, histochemical, or functional criteria. As appropriate, attention may be directed to such changes as the dose-relationships for apoptosis, cell proliferation, liver foci of cellular alteration, or changes in intercellular communication.

5.2 Biochemical measurements.

Depending on the putative mode of tumorigenic action, investigations could involve measurements of:

- plasma hormone levels, e.g. T3/T4, TSH, prolactin;
- growth factors;
- binding to proteins such as α2μ-globulin;
- tissue enzyme activity, etc.

In some situations, it may be possible to test a hypothesis of, for example, a hormone imbalance with another study in which the imbalance has been, at least in part, compensated.

5.3 Considerations for additional genotoxicity testing (see ICH guidances S2A and S2B).

Additional genotoxicity testing in appropriate models may be invoked for compounds that were negative in the standard test battery but that have shown effects in a carcinogenicity test with no clear evidence for an epigenetic mechanism. Additional testing can include modified conditions for metabolic activation in in vitro tests or can include in vivo tests measuring genotoxic damage in target organs of tumor induction (e.g., DNA damage and repair tests, 32P-postlabeling, mutation induction in transgenes).

5.4 Modified protocols.

Modified protocols may be helpful to clarify the mode of tumorigenic action of the test substance. Such protocols might include groups of animals to explore, for example, the consequence of interrupted dosage regimens, or the reversibility of cellular changes after cessation of dosing.

6. General Considerations in the Choice of an Appropriate Species for Long-Term Carcinogenicity Testing

There are several general considerations that, in the absence of other clear indications, suggest that the rat will normally be the species of choice for a long-term carcinogenicity study.

6.1 Information from surveys on pharmaceuticals.

In the six analyses, attention was given to data on genetic toxicology, tumor incidence, strain of animal, route and dosage regimen, pharmacological or therapeutic activity, development and/or regulatory status, and, if relevant, reason for termination of development. Inevitably, there was considerable overlap of the data, but that is not necessarily an impediment to drawing valid conclusions.

The main overall conclusions from the analysis were:

a. Although very few instances have been identified of mouse tumors being the sole reason for regulatory action concerning a pharmaceutical, data from this species may have contributed to a "weight of evidence" decision and to identifying agents that caused tumors in two rodent species.

b. Of the compounds displaying carcinogenic activity in only one species, the number of "rat-only" compounds was about double the number of "mouse-only" compounds, implying in a simplistic sense that the rat is more "sensitive" than the mouse.

c. As with other surveys accessible in the literature, the data for pharmaceuticals were dominated by the high incidence of rodent liver tumors. The high susceptibility of mouse liver to nongenotoxic chemicals has been the subject of many symposia and workshops. These have concluded that these tumors may not always have relevance to carcinogenic risk in humans and can potentially be misleading.

6.2 Potential to study mechanisms.

The carcinogenic activity of nongenotoxic chemicals in rodents is characterized by a

high degree of species, strain, and target organ specificity and by the existence of thresholds in the dose-response relationship. Mechanistic studies in recent years have permitted the distinction between effects that are specific to the rodent model and those that are likely to have relevance for humans. Progress has often been associated with increased understanding of species and tissue specificity. For example, receptor-mediated carcinogenesis is being recognized as of growing importance. Most of these advances are being made in the rat, and only rarely in the mouse.

6.3 Metabolic disposition.

Neither rats nor mice would seem, on metabolic grounds, to be a priori generally more suitable for the conduct of long-term carcinogenicity studies. However, much attention is now being given to pharmacokinetic-pharmacodynamic relationships and rapid progress is occurring in knowledge of the P–450 isozymes that mediate the biotransformation of drugs. Most of this research activity is confined to rats and humans. Therefore, in the near future at least, where specific information on the P–450 isozymes involved in biotransformation is critical for the evaluation, it appears that mice would be less likely to provide this mechanistic information.

6.4 Practicality.

Pertinent to the above two topics is the question of feasibility of investigative studies. Size considerations alone put the mouse at a severe disadvantage when it comes to the taking of serial blood samples, microsurgery/catheterization, and the weighing of organs. Blood sampling often requires the sacrifice of the animals, with the result that many extra animals may be needed when mice are subject to such investigations.

6.5 Testing in more than one species.

Most of the currently available short- and medium-term in vivo models for carcinogenicity testing involve the use of mice. In order to allow testing in more than one species for carcinogenic potential when this is considered important and appropriate, the rat will often be used in the long-term carcinogenicity study.

6.6 Exceptions.

Despite the above considerations, there may be circumstances under which the mouse or another rodent species could be justified on mechanistic, metabolic, or other grounds as being a more appropriate species for the long-term carcinogenicity study for human risk assessment (cf. section 4.2.1). Under such circumstances, it may still be acceptable to use the mouse as the short-term or medium-term model.

7. Evaluation of Carcinogenic Potential

Evidence of tumorigenic effects of the drug in rodent models should be evaluated in light of the tumor incidence and latency, the pharmacokinetics of the drug in the rodent models as compared to humans, and data from any ancillary or mechanistic studies that are informative with respect to the relevance of the observed effects to humans.

The results from any tests cited above should be considered as part of the overall "weight of evidence," taking into account the scientific status of the test systems.

Notes

Note 1. Data from in vitro assays, such as a cell transformation assay, can be useful at the compound selection stage.

Note 2. If the findings of a short- or long-term carcinogenicity study and of genotoxicity tests and other data indicate that a pharmaceutical clearly poses a carcinogenic hazard to humans, a second carcinogenicity study would not usually be useful.

Note 3. Several experimental methods are under investigation to assess their utility in carcinogenicity assessment. Generally, the methods should be based on mechanisms of carcinogenesis that are believed relevant to humans and applicable to human risk assessment. Such studies should supplement the long-term carcinogenicity study and provide additional information that is not readily available from the long-term assay. There should also be consideration given animal numbers, welfare, and the overall economy of the carcinogenic evaluation process. The following is a representative list of some approaches that may meet these criteria and is likely to be revised in the light of further information.

(a) The initiation-promotion model in rodent. One initiation-promotion model for the detection of hepatocarcinogens (and modifiers of hepatocarcinogenicity) employs an initiator, followed by several weeks of exposure to the test substance. Another multi-organ carcinogenesis model employs up to five initiators followed by several months of exposure to the test substance.

(b) Several transgenic mouse assays, including the p53+/- deficient model, the Tg.AC model, the TgHras2 model, the XPA deficient model, etc.

(c) The neonatal rodent tumorigenicity model.

Note 4. While there may be a number of approaches that will in general meet the criteria described in Note 3 for use as the additional in vivo study, not all may be equally suitable for a particular pharmaceutical. The following are examples of factors that should be considered and addressed in the rationale:

1. Can results from the model provide new information not expected to be available from the long-term study that is informative with respect to hazard identification and/or risk assessment?

2. Can results from the model address concerns related to the carcinogenic process arising from prior knowledge of the pharmaceutical or compounds with similar structures and/or mechanisms of action? These concerns may include genotoxic, mitogenic, promotional, or receptor-mediated effects, etc.

3. Does the metabolism of the pharmaceutical shown in the animal model affect the evaluation of carcinogenic risk for humans?

4. Is adequate systemic or local exposure attained in relation to human exposure?

5. How extensively has the model been evaluated for its intended use? Prior to using any new in vivo methods in testing the carcinogenic potential of pharmaceuticals for humans, it is critical that the method be evaluated for its ability to contribute to the weight of evidence assessment. Many experimental studies are in progress (1997) to evaluate the new short or medium tests for carcinogenic potential. These include selected pharmaceuticals with known potencies and known mechanism of carcinogenic activity in rodents and also putative human noncarcinogens. When the results of these studies become available, it may be possible to offer more specific guidance on which of these tests have the most relevance for cancer assessment in humans.

Other ICH Guidances Cited

"S2A Guidance on Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals."

"S2B Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals."

"S3A Toxicokinetics: The Assessment of Systemic Exposure in Toxicity Studies."

"S3B Pharmacokinetics: Guidance for Repeated Dose Tissue Distribution Studies."

"S6 Preclinical Safety Evaluation of Biotechnology-Derived Pharmaceuticals."

Dated: February 13, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–4373 Filed 2–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on March 12 and 13, 1998, 8 a.m. to 5 p.m.

Location: Holiday Inn Gaithersburg, Walker Room, Two Montgomery Ave., Gaithersburg, MD.

Contact Person: Kathleen R. Reedy or LaNise S. Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–

741–8138 (301–443–0572 in the Washington, DC area), code 12536. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 12, 1998, the committee will discuss a proposed draft of a guidance document for the development of drugs for the treatment of diabetes mellitis. On March 13, 1998, the committee will discuss New Drug Application 20–766, Xenical™, (orlistat tetrahydrolipstatin, Hoffman-LaRoche) for long term treatment of obesity.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 6, 1998. Oral presentations from the public will be scheduled between approximately 8 a.m. and 8:30 a.m. on March 12 and 13, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 6, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 18, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–4529 Filed 2–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0260]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Customer/Partner Satisfaction Surveys" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Mark L. Pincus, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1471.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 2, 1997 (62 FR 63721), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0360. The approval expires on January 31, 1999.

Dated: February 13, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–4374 Filed 2–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Publication of the OIG Compliance Program Guidance for Hospitals

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice sets forth the recently issued compliance program guidance for hospitals developed by the Office of Inspector General (OIG) in cooperation with, and with input from, several provider groups and industry representatives. Many providers and provider organizations have expressed an interest in better protecting their operations from fraud and abuse through the adoption of voluntary compliance programs. The first compliance guidance, addressing clinical laboratories, was prepared by the OIG and published in the **Federal Register** on March 3, 1997. We believe the development of this second program guidance, for hospitals, will continue as a positive step towards promoting a higher level of ethical and lawful conduct throughout the health care industry.

FOR FURTHER INFORMATION CONTACT: Stephen Davis, Office of Counsel to the Inspector General, (202) 619–0070.

SUPPLEMENTARY INFORMATION: The creation of compliance program guidances has become a major initiative of the OIG in its efforts to engage the private health care community in combating fraud and abuse. In developing these compliance guidances, the OIG has agreed to work closely with the Health Care Financing Administration, the Department of Justice and various sectors of the health care industry. The first of these compliance guidances focused on clinical laboratories, and was intended to provide clear guidance to those segments of the health care industry that were interested in reducing fraud and abuse within their organizations. The compliance guidance was reprinted in an OIG **Federal Register** notice published on March 3, 1997 (62 FR 9435). This second compliance program guidance developed by the OIG continues to build upon the basic elements contained in our initial compliance guidance, and encompasses principles that are applicable to hospitals as well as a wider variety of organizations that provide health care services to beneficiaries of Medicare, Medicaid and all other Federal health care programs.

Like the previously-issued compliance program guidance for clinical laboratories and future compliance program guidances, adoption of the hospital compliance program guidance set forth below will be voluntary. Future compliance program guidances to be developed will be similarly structured and based on substantive policy recommendations, the elements of the Federal Sentencing Guidelines, and applicable statutes, regulations and Federal health care program requirements.

A reprint of the OIG compliance program guidance follows.

Compliance Program Guidance for Hospitals

I. Introduction

The Office of Inspector General (OIG) of the Department of Health and Human Services (HHS) continues in its efforts to promote voluntarily developed and implemented compliance programs for the health care industry. The following compliance program guidance is intended to assist hospitals and their agents and subproviders (referred to collectively in this document as "hospitals") develop effective internal controls that promote adherence to applicable Federal and State law, and the program requirements of Federal, State and private health plans. The adoption and implementation of voluntary compliance programs significantly advance the prevention of fraud, abuse and waste in these health care plans while at the same time furthering the fundamental mission of

all hospitals, which is to provide quality care to patients.

Within this document, the OIG intends to provide first, its general views on the value and fundamental principles of hospital compliance programs, and, second, specific elements that each hospital should consider when developing and implementing an effective compliance program. While this document presents basic procedural and structural guidance for designing a compliance program, it is not in itself a compliance program. Rather, it is a set of guidelines for a hospital interested in implementing a compliance program to consider. The recommendations and guidelines provided in this document must be considered depending upon their applicability to each particular hospital.

Fundamentally, compliance efforts are designed to establish a culture within a hospital that promotes prevention, detection and resolution of instances of conduct that do not conform to Federal and State law, and Federal, State and private payor health care program requirements, as well as the hospital's ethical and business policies. In practice, the compliance program should effectively articulate and demonstrate the organization's commitment to the compliance process. The existence of benchmarks that demonstrate implementation and achievements are essential to any effective compliance program. Eventually, a compliance program should become part of the fabric of routine hospital operations.

Specifically, compliance programs guide a hospital's governing body (e.g., Boards of Directors or Trustees), Chief Executive Officer (CEO), managers, other employees and physicians and other health care professionals in the efficient management and operation of a hospital. They are especially critical as an internal control in the reimbursement and payment areas, where claims and billing operations are often the source of fraud and abuse and, therefore, historically have been the focus of government regulation, scrutiny and sanctions.

It is incumbent upon a hospital's corporate officers and managers to provide ethical leadership to the organization and to assure that adequate systems are in place to facilitate ethical and legal conduct. Indeed, many hospitals and hospital organizations have adopted mission statements articulating their commitment to high ethical standards. A formal compliance program, as an additional element in this process, offers a hospital a further concrete method that may improve quality of care and reduce waste. Compliance programs also provide a central coordinating mechanism for furnishing and disseminating information and guidance on applicable Federal and State statutes, regulations and other requirements.

Adopting and implementing an effective compliance program requires a substantial commitment of time, energy and resources by senior management and the hospital's governing body.[1] Programs hastily constructed and implemented without appropriate ongoing monitoring will likely be ineffective and could result in greater harm or liability to the hospital than no program at all. While it may require significant additional resources or reallocation of existing resources to implement an effective compliance program, the OIG believes that the long term benefits of implementing the program outweigh the costs.

A. Benefits of a Compliance Program

In addition to fulfilling its legal duty to ensure that it is not submitting false or inaccurate claims to government and private payors, a hospital may gain numerous additional benefits by implementing an effective compliance program. Such programs make good business sense in that they help a hospital fulfill its fundamental care-giving mission to patients and the community, and assist hospitals in identifying weaknesses in internal systems and management.

Other important potential benefits include the ability to:

- Concretely demonstrate to employees and the community at large the hospital's strong commitment to honest and responsible provider and corporate conduct;
- Provide a more accurate view of employee and contractor behavior relating to fraud and abuse;
- Identify and prevent criminal and unethical conduct;
- Tailor a compliance program to a hospital's specific needs;
- Improve the quality of patient care;
- Create a centralized source for distributing information on health care statutes, regulations and other program directives related to fraud and abuse and related issues;
- Develop a methodology that encourages employees to report potential problems;
- Develop procedures that allow the prompt, thorough investigation of alleged misconduct by corporate officers, managers, employees, independent contractors, physicians, other health care professionals and consultants;
- Initiate immediate and appropriate corrective action; and
- Through early detection and reporting, minimize the loss to the Government from false claims, and thereby reduce the hospital's exposure to civil damages and penalties, criminal sanctions, and administrative remedies, such as program exclusion.[2]

Overall, the OIG believes that an effective compliance program is a sound investment on the part of a hospital.

The OIG recognizes that the implementation of a compliance program may not entirely eliminate fraud, abuse and waste from the hospital system. However, a sincere effort by hospitals to comply with applicable Federal and State standards, as well as the requirements of private health care programs, through the establishment of an effective compliance program, significantly reduces the risk of unlawful or improper conduct.

B. Application of Compliance Program Guidance

There is no single "best" hospital compliance program, given the diversity within the industry. The OIG understands the variances and complexities within the hospital industry and is sensitive to the differences among large urban medical centers, community hospitals, small, rural hospitals, specialty hospitals, and other types of hospital organizations and systems. However, elements of this guidance can be used by all hospitals, regardless of size, location or corporate structure, to establish an effective compliance program. We recognize that some hospitals may not be able to adopt certain elements to the same comprehensive degree that others with more extensive resources may achieve. This guidance represents the OIG's suggestions on how a hospital can best establish internal controls and monitoring to correct and prevent fraudulent activities. By no means should the contents of this guidance be viewed as an exclusive discussion of the

[1] Indeed, recent case law suggests that the failure of a corporate Director to attempt in good faith to institute a compliance program in certain situations may be a breach of a Director's fiduciary obligations. See, e.g., *In re Caremark International Inc. Derivative Litigation*, 698 A.2d 959 (Ct. Chanc. Del. 1996).

[2] The OIG, for example, will consider the existence of an *effective* compliance program that pre-dated any Governmental investigation when addressing the appropriateness of administrative penalties. Further, the False Claims Act, 31 U.S.C. 3729–3733, provides that a person who has violated the Act, but who voluntarily discloses the violation to the Government, in certain circumstances will be subject to not less than double, as opposed to treble, damages. See 31 U.S.C. 3729(a).

advisable elements of a compliance program.

The OIG believes that input and support by representatives of the major hospital trade associations is critical to the development and success of this compliance program guidance. Therefore, in drafting this guidance, the OIG received and considered input from various hospital and medical associations, as well as professional practice organizations. Further, we took into consideration previous OIG publications, such as Special Fraud Alerts and Management Advisory Reports, the recent findings and recommendations in reports issued by OIG's Office of Audit Services and Office of Evaluation and Inspections, as well as the experience of past and recent fraud investigations related to hospitals conducted by OIG's Office of Investigations and the Department of Justice.

As appropriate, this guidance may be modified and expanded as more information and knowledge is obtained by the OIG, and as changes in the law, and in the rules, policies and procedures of the Federal, State and private health plans occur. The OIG understands that hospitals will need adequate time to react to these modifications and expansions to make any necessary changes to their voluntary compliance programs. We recognize that hospitals are already accountable for complying with an extensive set of statutory and other legal requirements, far more specific and complex than what we have referenced in this document. We also recognize that the development and implementation of compliance programs in hospitals often raise sensitive and complex legal and managerial issues.[3] However, the OIG wishes to offer what it believes is critical guidance for providers who are sincerely attempting to comply with the relevant health care statutes and regulations.

II. Compliance Program Elements

The elements proposed by these guidelines are similar to those of the clinical laboratory model compliance program published by the OIG in February 1997[4] and our corporate integrity agreements.[5] The elements represent a guide—a process that can be used by hospitals, large or small, urban or rural, for-profit or not for-profit. Moreover, the elements can be incorporated into the managerial structure of multi-hospital and integrated delivery systems. As we stated in our clinical laboratory plan, these suggested guidelines can be tailored to fit the needs and financial realities of a particular hospital. The OIG is cognizant that with regard to compliance programs, one model is not suitable to every hospital. Nonetheless, the OIG believes that every hospital, regardless of size or structure, can benefit from the principles espoused in this guidance.

The OIG believes that every effective compliance program must begin with a formal commitment by the hospital's governing body to include *all* of the applicable elements listed below. These elements are based on the seven steps of the Federal Sentencing Guidelines.[6] Further, we believe that every hospital can implement most of our recommended elements that expand upon the seven steps of the Federal Sentencing Guidelines.[7] We recognize that full implementation of all elements may not be immediately feasible for all hospitals. However, as a first step, a good faith and meaningful commitment on the part of the hospital administration, especially the governing body and the CEO, will substantially contribute to a program's successful implementation.

At a minimum, comprehensive compliance programs should include the following seven elements:

(1) The development and distribution of written standards of conduct, as well as written policies and procedures that promote the hospital's commitment to compliance (e.g., by including adherence to compliance as an element in evaluating managers and employees) and that address specific areas of potential fraud, such as claims development and submission processes, code gaming, and financial relationships with physicians and other health care professionals;

(2) The designation of a chief compliance officer and other appropriate bodies, e.g., a corporate compliance committee, charged with the responsibility of operating and monitoring the compliance program, and who report directly to the CEO and the governing body;

(3) The development and implementation of regular, effective education and training programs for all affected employees;

(4) The maintenance of a process, such as a hotline, to receive complaints, and the adoption of procedures to protect the anonymity of complainants and to protect whistleblowers from retaliation;

(5) The development of a system to respond to allegations of improper/illegal activities and the enforcement of appropriate disciplinary action against employees who have violated internal compliance policies, applicable statutes, regulations or Federal health care program requirements;

(6) The use of audits and/or other evaluation techniques to monitor compliance and assist in the reduction of identified problem area; and

(7) The investigation and remediation of identified systemic problems and the development of policies addressing the non-employment or retention of sanctioned individuals.

A. Written Polices and Procedures

Every compliance program should require the development and distribution of written compliance policies that identify specific areas of risk to the hospital. These policies should be developed under the direction and supervision of the chief compliance officer and compliance committee, and, at a minimum, should be provided to all individuals who are affected by the particular policy at issue, including the hospital's agents and independent contractors.

1. *Standards of Conduct.* Hospitals should develop standards of conduct for all affected employees that include a clearly delineated commitment to compliance by the hospital's senior management[8] and its divisions,

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[3] Nothing stated herein should be substituted for, or used in lieu of, competent legal advice from counsel.

[4] See 62 FR 9435, March 3, 1997.

[5] Corporate integrity agreements are executed as part of a civil settlement between the health care provider and the Government to resolve a case arising under the False Claims Act (FCA), including the *qui tam* provisions of the FCA, based on allegations of health care fraud or abuse. These OIG-imposed programs are in effect for a period of three to five years and require many of the elements included in this compliance guidance.

[6] See United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2, comment. (n.3(k)).

[7] Current HCFA reimbursement principles provide that certain of the costs associated with the creation of a voluntarily established compliance program may be allowable costs on certain types of hospitals' cost reports. These allowable costs, of course, must at a minimum be *reasonable* and related to patient care. See generally 42 U.S.C. 1395x(v)(1)(A) (definition of reasonable cost); 42 CFR 413.9(a) and (b)(2) (costs related to patient care). In contrast, however, costs specifically associated with the implementation of a corporate integrity agreement in response to a Government investigation resulting in a civil or criminal judgment or settlement are unallowable, and are also made specifically and expressly unallowable in corporate integrity agreements and civil fraud settlements.

[8] The OIG strongly encourages high-level involvement by the hospital's governing body, chief executive officer, chief operating officer, general counsel, and chief financial officer, as well as other medical personnel, as appropriate, in the development of standards of conduct. Such

Continued

including affiliated providers operating under the hospital's control,[9] hospital-based physicians and other health care professionals (e.g., utilization review managers, nurse anesthetists, physician assistants and physical therapists). Standards should articulate the hospital's commitment to comply with all Federal and State standards, with an emphasis on preventing fraud and abuse. They should state the organization's mission, goals, and ethical requirements of compliance and reflect a carefully crafted, clear expression of expectations for all hospital governing body members, officers, managers, employees, physicians, and, where appropriate, contractors and other agents. Standards should be distributed to, and comprehensible by, all employees (e.g., translated into other languages and written at appropriate reading levels, where appropriate). Further, to assist in ensuring that employees continuously meet the expected high standards set forth in the code of conduct, any employee handbook delineating or expanding upon these standards of conduct should be regularly updated as applicable statutes, regulations and Federal health care program requirements are modified.[10]

2. *Risk Areas.* The OIG believes that a hospital's written policies and procedures should take into consideration the regulatory exposure for each function or department of the hospital. Consequently, we recommend that the individual policies and procedures be coordinated with the appropriate training and educational programs with an emphasis on areas of special concern that have been identified by the OIG through its investigative and audit functions.[11] Some of the special areas of OIG concern include.[12]

- Billing for items or services not actually rendered;[13]
- Providing medically unnecessary services;[14]
- Upcoding;[15]
- "DRG creep;"[16]
- Outpatient services rendered in connection with inpatient stays;[17]
- Teaching physician and resident requirements for teaching hospitals;
- Duplicate billing;[18]
- False cost reports;[19]
- Unbundling;[20]
- Billing for discharge in lieu of transfer;[21]
- Patients' freedom of choice;[22]
- Credit balances—failure to refund;
- Hospital incentives that violate the anti-kickback statute or other similar Federal or State statute or regulation;[23]
- Joint ventures;[24]
- Financial arrangements between hospitals and hospital-based physicians;[25]
- Stark physician self-referral law;
- Knowing failure to provide covered services or necessary care to members of a health maintenance organization; and
- Patient dumping.[26]

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involvement should help communicate a strong and explicit statement of compliance goals and standards.

[9] E.g., skilled nursing facilities, home health agencies, psychiatric units, rehabilitation units, outpatient clinics, clinical laboratories, dialysis facilities.

[10] The OIG recognizes that not all standards, policies and procedures need to be communicated to all employees. However, the OIG believes that the bulk of the standards that relate to complying with fraud and abuse laws and other ethical areas should be addressed and made part of all affected employees' training. The hospital must appropriately decide which additional educational programs should be limited to the different levels of employees, based on job functions and areas of responsibility.

[11] The OIG periodically issues Special Fraud Alters setting forth activities believed to raise legal and enforcement issues. Hospital compliance programs should require that the legal staff, chief compliance officer, or other appropriate personnel, carefully consider any and all Special Fraud Alerts issued by the OIG that relate to hospitals. Moreover, the compliance programs should address the ramifications of failing to cease and correct any conduct criticized in such a Special Fraud Alert, if applicable to hospitals, or to take reasonable action to prevent such conduct from reoccurring in the future. If appropriate, a hospital should take the steps described in Section G regarding investigations, reporting and correction of identified problems.

[12] The OIG's work plan is currently available on the Internet at http://www.dhhs.gov/progorg/oig.

[13] Billing for services not actually rendered involves submitting a claim that represents that the provider performed a service all or part of which was simply not performed. This form of billing fraud occurs in many health care entities, including hospitals and nursing homes, and represents a significant part of the OIG's investigative caseload.

[14] A claim requesting payment for medically unnecessary services intentionally seeks reimbursement for a service that is not warranted by the patient's current and documented medical condition. See 42 U.S.C. 1395y(a)(1)(A) ("no payment may be made under part A or part B for any expenses incurred for items or services which . . . are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of the malformed body member"). On every HCFA claim form, a physician must certify that the services were medically necessary for the health of the beneficiary.

[15] "Upcoding" reflects the practice of using a billing code that provides a higher payment rate than the billing code that actually reflects the service furnished to the patient. Upcoding has been a major focus of the OIG's enforcement efforts. In fact, the Health Insurance Portability and Accountability Act of 1996 added another civil monetary penalty to the OIG's sanction authorities for upcoding violations. See 42 U.S.C. 1320a–7a(a)(1)(A).

[16] Like upcoding, "DRG creep" is the practice of billing using a Diagnosis Related Group (DRG) code that provides a higher payment rate than the DRG code that accurately reflects the service furnished to the patient.

[17] Hospitals that submit claims for non-physician outpatient services that were already included in the hospital's inpatient payment under the Prospective Payment System (PPS) are in effect submitting duplicate claims.

[18] Duplicate billing occurs when the hospital submits more than one claim for the same service or the bill is submitted to more than one primary payor at the same time. Although duplicate billing can occur due to simple error, systematic or repeated double billing may be viewed as a false claim, particularly if any overpayment is not promptly refunded.

[19] As another example of health care fraud, the submission of false costs reports is usually limited to certain Part A providers, such as hospitals, skilled nursing facilities and home health agencies, which are reimbursed in part on the basis of their self-reported operating costs. An OIG audit report on the misuse of fringe benefits and general and administrative costs identified millions of dollars in unallowable costs that resulted from providers' lack of internal controls over costs included in their Medicare cost reports. In addition, the OIG is aware of practices in which hospitals inappropriately shift certain costs to cost centers that are below their reimbursement cap and shift non-Medicare related costs to Medicare cost centers.

[20] "Unbundling" is the practice of submitting bills piecemeal or in fragmented fashion to maximize the reimbursement for various tests or procedures that are required to be billed together and therefore at a reduced cost.

[21] Under the Medicare regulations, when a prospective payment system (PPS) hospital transfers a patient to another PPS hospital, only the hospital to which the patient was transferred may charge the full DRG; the transferring hospital should charge Medicare only a per diem amount.

[22] This area of concern is particularly important for hospital discharge planners referring patients to home health agencies, DME suppliers or long term care and rehabilitation providers.

[23] Excessive payment for medical directorships, free or below market rents or fees for administrative services, interest-free loans and excessive payment for intangible assets in physician practice acquisitions are examples of arrangements that may run afoul of the anti-kickback statute. See 42 U.S.C. 1320a–7b(b) and 59 FR 65372 (12/19/94).

[24] Equally troubling to the OIG is the proliferation of business arrangements that may violate the anti-kickback statute. Such arrangements are generally established between those in a position to refer business, such as physicians, and those providing items or services for which a Federal health care program pays. Sometimes established as "joint ventures," these arrangements may take a variety of forms. The OIG currently has a number of investigations and audits underway that focus on such areas of concern.

[25] Another OIG concern with respect to the anti-kickback statute is hospital financial arrangements with hospital-based physicians that compensate physicians for less than the fair market value of services they provide to hospitals or require physicians to pay more than market value for services provided by the hospital. See OIG Management Advisory Report: "Financial Arrangements Between Hospitals and Hospital-Based Physicians." OEI–09–89–0030, October 1991. Examples of such arrangements that may violate the anti-kickback statute are token or no payment for Part A supervision and management services; requirements to donate equipment to hospitals; and excessive charges for billing services.

[26] The patient anti-dumping statute, 42 U.S.C. 1395dd, requires that all Medicare participating hospitals with an emergency department: (1) Provide for an appropriate medical screening examination to determine whether or not an individual requesting such examination has an emergency medical condition; and (2) if the person

Additional risk areas should be assessed as well by hospitals and incorporated into the written policies and procedures and training elements developed as part of their compliance programs.

3. *Claim Development and Submission Process.* A number of the risk areas identified above, pertaining to the claim development and submission process, have been the subject of administrative proceedings, as well as investigations and prosecutions under the civil False Claims Act and criminal statutes. Settlement of these cases often has required the defendants to execute corporate integrity agreements, in addition to paying significant civil damages and/or criminal fines and penalties. These corporate integrity agreements have provided the OIG with a mechanism to advise hospitals concerning what it feels are acceptable practices to ensure compliance with applicable Federal and State statutes, regulations, and program requirements. The following recommendations include a number of provisions from various corporate integrity agreements. While these recommendations include examples of effective policies, each hospital should develop its own specific policies tailored to fit its individual needs.

With respect to reimbursement claims, a hospital's written policies and procedures should reflect and reinforce current Federal and State statutes and regulations regarding the submission of claims and Medicare cost reports. The policies must create a mechanism for the billing or reimbursement staff to communicate effectively and accurately with the clinical staff. Policies and procedures should:

- Provide for proper and timely documentation of all physician and other professional services prior to billing to ensure that only accurate and properly documented services are billed;
- Emphasize that claims should be submitted only when appropriate documentation supports the claims and only when such documentation is maintained and available for audit and review. The documentation, which may include patient records, should record the length of time spent in conducting the activity leading to the record entry, and the identity of the individual providing the service. The hospital should consult with its medical staff to establish other appropriate documentation guidelines;
- State that, consistent with appropriate guidance from medical staff, physician and hospital records and medical notes used as a basis for a claim submission should be appropriately organized in a legible form so they can be audited and reviewed;
- Indicate that the diagnosis and procedures reported on the reimbursement claim should be based on the medical record and other documentation, and that the documentation necessary for accurate code assignment should be available to coding staff; and
- Provide that the compensation for billing department coders and billing consultants should not provide any financial incentive to improperly upcode claims.

The written policies and procedures concerning proper coding should reflect the current reimbursement principles set forth in applicable regulations[27] and should be developed in tandem with private payor and organizational standards. Particular attention should be paid to issues of medical necessity, appropriate diagnosis codes, DRG coding, individual Medicare Part B claims (including evaluation and management coding) and the use of patient discharge codes.[28]

a. Outpatient services rendered in connection with an inpatient stay. Hospitals should implement measures designed to demonstrate their good faith efforts to comply with the Medicare billing rules for outpatient services rendered in connection with an inpatient stay. Although not a guard against intentional wrongdoing, the adoption of the following measures are advisable:

- Installing and maintaining computer software that will identify those outpatient services that may not be billed separately from an inpatient stay; or
- Implementing a periodic manual review to determine the appropriateness of billing each outpatient service claim, to be conducted by one or more appropriately trained individuals familiar with applicable billing rules; or
- With regard to each inpatient stay, scrutinizing the propriety of any potential bills for outpatient services rendered to that patient at the hospital, within the applicable time period.

In addition to the pre-submission undertakings described above, the hospital may implement a post-submission testing process, as follows:

- Implement and maintain a periodic post-submission random testing process that examines or re-examines previously submitted claims for accuracy;
- Inform the fiscal intermediary and any other appropriate government fiscal agents of the hospital's testing process; and
- Advise the fiscal intermediary and any other appropriate government fiscal agents in accordance with current regulations or program instructions with respect to return of overpayments of any incorrectly submitted or paid claims and, if the claim has already been paid, promptly reimburse the fiscal intermediary and the beneficiary for the amount of the claim paid by the government payor and any applicable deductibles or copayments, as appropriate.

b. Submission of claims for laboratory services. A hospital's policies should take reasonable steps to ensure that all claims for clinical and diagnostic laboratory testing services are accurate and correctly identify the services ordered by the physician (or other authorized requestor) and performed by the laboratory. The hospital's written policies and procedures should require, at a minimum,[29] that:

- The hospital bills for laboratory services only after they are performed;
- The hospital bills only for medically necessary services;
- The hospital bills only for those tests actually ordered by a physician and provided by the hospital laboratory;
- The CPT or HCPCS code used by the billing staff accurately describes the service that was ordered by the

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has such a condition, (a) stabilize that condition; or (b) appropriately transfer the patient to another hospital.

[27] The official coding guidelines are promulgated by HCFA, the National Center for Health Statistics, the American Medical Association and the American Health Information Management Association. See International Classification of Diseases, 9th Revision, Clinical Modification (ICD9–CM); 1998 Health Care Financing Administration Common Procedure Coding System (HCPCS); and Physicians' Current Procedural Terminology (CPT).

[28] The failure of hospital staff to: (i) document items and services rendered; and (ii) properly submit them for reimbursement is a major area of potential fraud and abuse in Federal health care programs. The OIG has undertaken numerous audits, investigations, inspections and national enforcement initiatives aimed at reducing potential and actual fraud, abuse and waste. Recent OIG audit reports, which have focused on issues such as hospital patient transfers incorrectly paid as discharges, and hospitals' general and administrative costs, continue to reveal abusive, wasteful or fraudulent behavior by some hospitals. Our inspection report entitled "Financial Arrangements between Hospitals and Hospital-Based Physicians," see fn. 25, *supra*, and our Special Fraud Alerts on Hospital Incentives to Physicians and Joint Venture Arrangements, further illustrate how certain business practices may result in fraudulent and abusive behavior.

[29] The OIG's February 1997 Model Compliance Plan for Clinical Laboratories provides more specific and detailed information than is contained in this section, and hospitals that have clinical laboratories should extract the relevant guidance from both documents.

physician and performed by the hospital laboratory;

• The coding staff: (1) Only submit diagnostic information obtained from qualified personnel; and (2) contact the appropriate personnel to obtain diagnostic information in the event that the individual who ordered the test has failed to provide such information; and

• Where diagnostic information is obtained from a physician or the physician's staff after receipt of the specimen and request for services, the receipt of such information is documented and maintained.

c. Physicians at teaching hospitals. Hospitals should ensure the following with respect to all claims submitted on behalf of teaching physicians:

• Only services actually provided may be billed;

• Every physician who provides or supervises the provision of services to a patient should be responsible for the correct documentation of the services that were rendered;

• The appropriate documentation must be placed in the patient record and signed by the physician who provided or supervised the provision of services to the patient;

• Every physician is responsible for assuring that in cases where that physician provides evaluation and management (E&M) services, a patient's medical record includes appropriate documentation of the applicable key components of the E&M service provided or supervised by the physician (e.g., patient history, physician examination, and medical decision making), as well as documentation to adequately reflect the procedure or portion of the service performed by the physician; and

• Every physician should document his or her presence during the key portion of any service or procedure for which payment is sought.

d. Cost reports. With regard to cost report issues, the written policies should include procedures that seek to ensure full compliance with applicable statutes, regulations and program requirements and private payor plans. Among other things, the hospital's procedures should ensure that:

• Costs are not claimed unless based on appropriate and accurate documentation;

• Allocations of costs to various cost centers are accurately made and supportable by verifiable and auditable data;

• Unallowable costs are not claimed for reimbursement;

• Accounts containing both allowable and unallowable costs are analyzed to determine the unallowable amount that should not be claimed for reimbursement;

• Costs are properly classified;

• Fiscal intermediary prior year audit adjustments are implemented and are either not claimed for reimbursement or claimed for reimbursement and clearly identified as protested amounts on the cost report;

• All related parties are identified on Form 339 submitted with the cost report and all related party charges are reduced to cost;

• Requests for exceptions to TEFRA (Tax Equity and Fiscal Responsibility Act of 1982) limits and the Routine Cost Limits are properly documented and supported by verifiable and auditable data;

• The hospital's procedures for reporting of bad debts on the cost report are in accordance with Federal statutes, regulations, guidelines and policies;

• Allocations from a hospital chain's home office cost statement to individual hospital cost reports are accurately made and supportable by verifiable and auditable data; and

• Procedures are in place and documented for notifying promptly the Medicare fiscal intermediary (or any other applicable payor, e.g., TRICARE (formerly CHAMPUS) and Medicaid) of errors discovered after the submission of the hospital cost report, and where applicable, after the submission of a hospital chain's home office cost statement.

With regard to bad debts claimed on the Medicare cost report, see also section six, below, on Bad Debts.

4. Medical Necessity—Reasonable and Necessary Services. A hospital's compliance program should provide that claims should only be submitted for services that the hospital has reason to believe are medically necessary and that were ordered by a physician [30] or other appropriately licensed individual.

As a preliminary matter, the OIG recognizes that licensed health care professionals must be able to order any services that are appropriate for the treatment of their patients. However, Medicare and other government and private health care plans will only pay for those services that meet appropriate medical necessity standards (in the case of Medicare, i.e., "reasonable and necessary" services). Providers may not bill for services that do not meet the applicable standards. The hospital is in a unique position to deliver this information to the health care professionals on its staff. Upon request, a hospital should be able to provide documentation, such as patients' medical records and physicians' orders, to support the medical necessity of a service that the hospital has provided. The compliance officer should ensure that a clear, comprehensive summary of the "medical necessity" definitions and rules of the various government and private plans is prepared and disseminated appropriately.

5. Anti-Kickback and Self-Referral Concerns. The hospital should have policies and procedures in place with respect to compliance with Federal and State anti-kickback statutes, as well as the Stark physician self-referral law.[31] Such policies should provide that:

• All of the hospital's contracts and arrangements with referral sources comply with all applicable statutes and regulations;

• The hospital does not submit or cause to be submitted to the Federal health care programs claims for patients who were referred to the hospital pursuant to contracts and financial arrangements that were designed to induce such referrals in violation of the anti-kickback statute, Stark physician self-referral law or similar Federal or State statute or regulation; and

• The hospital does not enter into financial arrangements with hospital-based physicians that are designed to provide inappropriate remuneration to the hospital in return for the physician's ability to provide services to Federal health care program beneficiaries at that hospital.[32]

Further, the policies and procedures should reference the OIG's safe harbor regulations, clarifying those payment practices that would be immune from prosecution under the anti-kickback statute. See 42 CFR 1001.952.

6. Bad Debts. A hospital should develop a mechanism [33] to review, at least annually: (1) whether it is properly reporting bad debts to Medicare; and (2) all Medicare bad debt expenses claimed, to ensure that the hospital's procedures are in accordance with applicable

[30] For Medicare reimbursement purposes, a physician is defined as: (1) a doctor of medicine or osteopathy; (2) a doctor of dental surgery or of dental medicine; (3) a podiatrist; (4) an optometrist; and (5) a chiropractor, all of whom must be appropriately licensed by the state. 42 U.S.C. 1395x(r).

[31] Towards this end, the hospital's in-house counsel or compliance officer should, inter alia, obtain copies of all OIG regulations, special fraud alerts and advisory opinions concerning the anti-kickback statute, Civil Monetary Penalties Law (CMPL) and Stark physician self-referral law (the fraud alerts and anti-kickback or CMPL advisory opinions are published on HHS OIG's home page on the Internet), and ensure that the hospital's policies reflect the guidance provided by the OIG.

[32] See fn. 25, *supra*.

[33] E.g., assigning in-house counsel or contracting with an independent professional organization, such as an accounting, law or consulting firm.

Federal and State statutes, regulations, guidelines and policies. In addition, such a review should ensure that the hospital has appropriate and reasonable mechanisms in place regarding beneficiary deductible or copayment collection efforts and has not claimed as bad debts any routinely waived Medicare copayments and deductibles, which waiver also constitutes a violation of the anti-kickback statute. Further, the hospital may consult with the appropriate fiscal intermediary as to bad debt reporting requirements, if questions arise.

7. Credit Balances. The hospital should institute procedures to provide for the timely and accurate reporting of Medicare and other Federal health care program credit balances. For example, a hospital may redesignate segments of its information system to allow for the segregation of patient accounts reflecting credit balances. The hospital could remove these accounts from the active accounts and place them in a holding account pending the processing of a reimbursement claim to the appropriate program. A hospital's information system should have the ability to print out the individual patient accounts that reflect a credit balance in order to permit simplified tracking of credit balances.

In addition, a hospital should designate at least one person (e.g., in the Patient Accounts Department or reasonable equivalent thereof) as having the responsibility for the tracking, recording and reporting of credit balances. Further, a comptroller or an accountant in the hospital's Accounting Department (or reasonable equivalent thereof) may review reports of credit balances and reimbursements or adjustments on a monthly basis as an additional safeguard.

8. Retention of Records. Hospital compliance programs should provide for the implementation of a records system. This system should establish policies and procedures regarding the creation, distribution, retention, storage, retrieval and destruction of documents. The two types of documents developed under this system should include: (1) all records and documentation, e.g., clinical and medical records and claims documentation, required either by Federal or State law for participation in Federal health care programs (e.g., Medicare's conditions of participation requirement that hospital records regarding Medicare claims be retained for a minimum of five years, see 42 CFR 482.24(b)(1) and HCFA Hospital Manual section 413(C)(12–91)); and (2) all records necessary to protect the integrity of the hospital's compliance process and confirm the effectiveness of the program, e.g., documentation that employees were adequately trained; reports from the hospital's hotline, including the nature and results of any investigation that was conducted; modifications to the compliance program; self-disclosure; and the results of the hospital's auditing and monitoring efforts.[34]

9. Compliance as an Element of a Performance Plan. Compliance programs should require that the promotion of, and adherence to, the elements of the compliance program be a factor in evaluating the performance of managers and supervisors. They, along with other employees, should be periodically trained in new compliance policies and procedures. In addition, all managers and supervisors involved in the coding, claims and cost report development and submission processes should:

- Discuss with all supervised employees the compliance policies and legal requirements applicable to their function;
- Inform all supervised personnel that strict compliance with these policies and requirements is a condition of employment; and
- Disclose to all supervised personnel that the hospital will take disciplinary action up to and including termination or revocation of privileges for violation of these policies or requirements.

In addition to making performance of these duties an element in evaluations, the compliance officer or hospital management should include in the hospital's compliance program a policy that managers and supervisors will be sanctioned for failure to instruct adequately their subordinates or for failing to detect noncompliance with applicable policies and legal requirements, where reasonable diligence on the part of the manager or supervisor would have led to the discovery of any problems or violations and given the hospital the opportunity to correct them earlier.

B. Designation of a Compliance Officer and a Compliance Committee

1. Compliance Officer. Every hospital should designate a compliance officer to serve as the focal point for compliance activities. This responsibility may be the individual's sole duty or added to other management responsibilities, depending upon the size and resources of the hospital and the complexity of the task. Designating a compliance officer with the appropriate authority is critical to the success of the program, necessitating the appointment of a high-level official in the hospital with direct access to the hospital's governing body and the CEO.[35] The officer should have sufficient funding and staff to perform his or her responsibilities fully. Coordination and communication are the key functions of the compliance officer with regard to planning, implementing, and monitoring the compliance program.

The compliance officer's primary responsibilities should include:

- Overseeing and monitoring the implementation of the compliance program;[36]
- Reporting on a regular basis to the hospital's governing body, CEO and compliance committee on the progress of implementation, and assisting these components in establishing methods to improve the hospital's efficiency and quality of services, and to reduce the hospital's vulnerability to fraud, abuse and waste;
- Periodically revising the program in light of changes in the needs of the organization, and in the law and policies and procedures of government and private payor health plans;
- Developing, coordinating, and participating in a multifaceted educational and training program that focuses on the elements of the compliance program, and seeks to ensure that all appropriate employees and management are knowledgeable of, and comply with, pertinent Federal and State standards;
- Ensuring that independent contractors and agents who furnish medical services to the hospital are aware of the requirements of the hospital's compliance program with respect to coding, billing, and marketing, among other things;
- Coordinating personnel issues with the hospital's Human Resources office

[34] The creation and retention of such documents and reports may raise a variety of legal issues, such as patient privacy and confidentiality. These issues are best discussed with legal counsel.

[35] The OIG believes that there is some risk to establishing an independent compliance function if that function is subordinance to the hospital's general counsel, or comptroller or similar hospital financial officer. Free standing compliance functions help to ensure independent and objective legal reviews and financial analyses of the institution's compliance efforts and activities. By separating the compliance function from the key management positions of general counsel or chief hospital financial officer (where the size and structure of the hospital make this a feasible option), a system of checks and balances is established to more effectively achieve the goals of the compliance program.

[36] For multi-hospital organizations, the OIG encourages coordination with each hospital owned by the corporation or foundation through the use of a headquarter's compliance officer, communicating with parallel positions in each facility, or regional office, as appropriate.

(or its equivalent) to ensure that the National Practitioner Data Bank and Cumulative Sanction Report[37] have been checked with respect to all employees, medical staff and independent contractors;

• Assisting the hospital's financial management in coordinating internal compliance review and monitoring activities, including annual or periodic reviews of departments;

• Independently investigating and acting on matters related to compliance, including the flexibility to design and coordinate internal investigations (e.g., responding to reports of problems or suspected violations) and any resulting corrective action with all hospital departments, providers and sub-providers,[38] agents and, if appropriate, independent contractors; and

• Developing policies and programs that encourage managers and employees to report suspected fraud and other improprieties without fear of retaliation.

The compliance officer must have the authority to review all documents and other information that are relevant to compliance activities, including, but not limited to, patient records, billing records, and records concerning the marketing efforts of the facility and the hospital's arrangements with other parties, including employees, professionals on staff, independent contractors, suppliers, agents, and hospital-based physicians, etc. This policy enables the compliance officer to review contracts and obligations (seeking the advice of legal counsel, where appropriate) that may contain referral and payment issues that could violate the anti-kickback statute, as well as the physician self-referral prohibition and other legal or regulatory requirements.

2. *Compliance Committee.* The OIG recommends that a compliance committee be established to advise the compliance officer and assist in the implementation of the compliance program.[39] The committee's functions should include:

• Analyzing the organization's industry environment, the legal requirements with which it must comply, and specific risk areas;

• Assessing existing policies and procedures that address these areas for possible incorporation into the compliance program;

• Working with appropriate hospital departments to develop standards of conduct and policies and procedures to promote compliance with the institution's program;

• Recommending and monitoring, in conjunction with the relevant departments, the development of internal systems and controls to carry out the organization's standards, policies and procedures as part of its daily operations;

• Determining the appropriate strategy/approach to promote compliance with the program and detection of any potential violations, such as through hotlines and other fraud reporting mechanisms; and

• Developing a system to solicit, evaluate and respond to complaints and problems.

The committee may also address other functions as the compliance concept becomes part of the overall hospital operating structure and daily routine.

C. Conducting Effective Training and Education

The proper education and training of corporate officers, managers, employees, physicians and other health care professionals, and the continual retraining of current personnel at all levels, are significant elements of an effective compliance program. As part of their compliance programs, hospitals should require personnel to attend specific training on a periodic basis, including appropriate training in Federal and State statutes, regulations and guidelines, and the policies of private payors, and training in corporate ethics, which emphasizes the organization's commitment to compliance with these legal requirements and policies.

These training programs should include sessions highlighting the organization's compliance program, summarizing fraud and abuse laws, coding requirements, claim development and submission processes and marketing practices that reflect current legal and program standards. The organization must take steps to communicate effectively its standards and procedures to all affected employees, physicians, independent contractors and other significant agents, e.g., by requiring participation in training programs and disseminating publications that explain in a practical manner specific requirements.[40] Managers of specific departments or groups can assist in identifying areas that require training and in carrying out such training. Training instructors may come from outside or inside the organization. New employees should be targeted for training early in their employment.[41] Any formal training undertaken by the hospital as part of the compliance program should be documented by the compliance officer.

A variety of teaching methods, such as interactive training, and training in several different languages, particularly where a hospital has a culturally diverse staff, should be implemented so that all affected employees are knowledgeable of the institution's standards of conduct and procedures for alerting senior management to problems and concerns. Targeted training should be provided to corporate officers, managers and other employees whose actions affect the accuracy of the claims submitted to the Government, such as employees involved in the coding, billing, cost reporting and marketing processes. Given the complexity and interdependent relationships of many departments, proper coordination and supervision of this process by the compliance officer is important. In addition to specific training in the risk areas identified in section II.A.2, above, primary training to appropriate corporate officers, managers and other hospital staff should include such topics as:

• Government and private payor reimbursement principles;

• General prohibitions on paying or receiving remuneration to induce referrals;

• Proper confirmation of diagnoses;

[37] The Cumulative Sanction Report is an OIG-produced report available on the Internet at http://www.dhhs.gov/progorg/oig. It is updated on a regular basis to reflect the status of health care providers who have been excluded from participation in the Medicare and Medicaid programs. In addition, the General Services Administration maintains a monthly listing of debarred contractors on the Internet at http://www.arnet.gov/epls. Also, once the data base established by the Health Care Fraud and Abuse Data Collection Act of 1996 is fully operational, the hospital should regularly request information from this data bank as part of its employee screening process.

[38] E.g., skilled nursing facilities and home health agencies.

[39] The compliance committee benefits from having the perspectives of individuals with varying responsibilities in the organization, such as operations, finance, audit, human resources, utilization review, social work, discharge planning, medicine, coding and legal, as well as employees and managers of key operating units.

[40] Some publications, such as OIG's Management Advisory Report entitled "Financial Arrangements between Hospitals and Hospital-Based Physicians," Special Fraud Alerts, audit and inspection reports, and advisory opinions, as well as the annual OIG work plan, are readily available from the OIG and could be the basis for standards, educational courses and programs for appropriate hospital employees.

[41] Certain positions, such as those involving the coding of medical services, create a greater organizational legal exposure, and therefore require specialized training. One recommendation would be for a hospital to attempt to fill such positions with individuals who have the appropriate educational background and training.

• Submitting a claim for physician services when rendered by a non-physician (i.e., the "incident to" rule and the physician physical presence requirement);
• Signing a form for a physician without the physician's authorization;
• Alterations to medical records;
• Prescribing medications and procedures without proper authorization;
• Proper documentation of services rendered; and
• Duty to report misconduct.

Clarifying and emphasizing these areas of concern through training and educational programs are particularly relevant to a hospital's marketing and financial personnel, in that the pressure to meet business goals may render these employees vulnerable to engaging in prohibited practices.

The OIG suggests that all relevant levels of personnel be made part of various educational and training programs of the hospital. Employees should be required to have a minimum number of educational hours per year, as appropriate, as part of their employment responsibilities.[42] For example, for certain employees involved in the billing and coding functions, periodic training in proper DRG coding and documentation of medical records should be required.[43] In hospitals with high employee turnover, periodic training updates are critical.

The OIG recommends that attendance and participation in training programs be made a condition of continued employment and that failure to comply with training requirements should result in disciplinary action, including possible termination, when such failure is serious. Adherence to the provisions of the compliance program, such as training requirements, should be a factor in the annual evaluation of each employee.[44] The hospital should retain adequate records of its training of employees, including attendance logs and material distributed at training sessions.

Finally, the OIG recommends that hospital compliance programs address the need for periodic professional education courses that may be required by statute and regulation for certain hospital personnel.

D. Developing Effective Lines of Communication

1. *Access to the Compliance Officer.* An open line of communication between the compliance officer and hospital personnel is equally important to the successful implementation of a compliance program and the reduction of any potential for fraud, abuse and waste. Written confidentiality and non-retaliation policies should be developed and distributed to all employees to encourage communication and the reporting of incidents of potential fraud.[45] The compliance committee should also develop several independent reporting paths for an employee to report fraud, waste or abuse so that such reports cannot be diverted by supervisors or other personnel.

The OIG encourages the establishment of a procedure so that hospital personnel may seek clarification from the compliance officer or members of the compliance committee in the event of any confusion or question with regard to a hospital policy or procedure. Questions and responses should be documented and dated and, if appropriate, shared with other staff so that standards, policies and procedures can be updated and improved to reflect any necessary changes or clarifications. The compliance officer may want to solicit employee input in developing these communication and reporting systems.

2. *Hotlines and Other Forms of Communication.* The OIG encourages the use of hotlines (including anonymous hotlines), e-mails, written memoranda, newsletters, and other forms of information exchange to maintain these open lines of communication. If the hospital establishes a hotline, the telephone number should be made readily available to all employees and independent contractors, possibly by conspicuously posting the telephone number in common work areas.[46] Employees should be permitted to report matters on an anonymous basis. Matters reported through the hotline or other communication sources that suggest substantial violations of compliance policies, regulations or statutes should be documented and investigated promptly to determine their veracity. A log should be maintained by the compliance officer that records such calls, including the nature of any investigation and its results. Such information should be included in reports to the governing body, the CEO and compliance committee. Further, while the hospital should always strive to maintain the confidentiality of an employee's identity, it should also explicitly communicate that there may be a point where the individual's identity may become known or may have to be revealed in certain instances when governmental authorities become involved.

The OIG recognizes that assertions of fraud and abuse by employees who may have participated in illegal conduct or committed other malfeasance raise numerous complex legal and management issues that should be examined on a case-by-case basis. The compliance officer should work closely with legal counsel, who can provide guidance regarding such issues.

E. Enforcing Standards Through Well-Publicized Disciplinary Guidelines

1. *Discipline Policy and Actions.* An effective compliance program should include guidance regarding disciplinary action for corporate officers, managers, employees, physicians and other health care professionals who have failed to comply with the hospital's standards of conduct, policies and procedures, or Federal and State laws, or those who have otherwise engaged in wrongdoing, which have the potential to impair the hospital's status as a reliable, honest and trustworthy health care provider.

The OIG believes that the compliance program should include a written policy statement setting forth the degrees of disciplinary actions that may be imposed upon corporate officers, managers, employees, physicians and other health care professionals for failing to comply with the hospital's standards and policies and applicable statutes and regulations. Intentional or reckless noncompliance should subject transgressors to significant sanctions. Such sanctions could range from oral

[42] Currently, the OIG is monitoring approximately 165 corporate integrity agreements that require many of these training elements. The OIG usually requires a minimum of one to three hours annually for basic training in compliance areas. More is required for speciality fields such as billing and coding.

[43] Accurate coding depends upon the quality and completeness of the physician's documentation. Therefore, the OIG believes that active staff physician participation in educational programs focusing on coding and documentation should be emphasized by the hospital.

[44] In addition, where feasible, the OIG believes that a hospital's outside contractors, including physician corporations, should be afforded the opportunity to participate in, or develop their own, compliance training and educational programs, which complement the hospital's standards of conduct, compliance requirements, and other rules and regulations.

[45] The OIG believes that whistleblowers should be protected against retaliation, a concept embodied in the provisions of the False Claims Act. In many cases, employees sue their employers under the False Claims Act's *qui tam* provisions out of frustration because of the company's failure to take action when a questionable, fraudulent or abusive situation was brought to the attention of senior corporate officials.

[46] Hospitals should also post in a prominent, available area the HHS OIG Hotline telephone number, 1–800–HHS–TIPS (447–8477), in addition to any company hotline number that may be posted.

warnings to suspension, privilege revocation (subject to any applicable peer review procedures), termination or financial penalties, as appropriate. The written standards of conduct should elaborate on the procedures for handling disciplinary problems and those who will be responsible for taking appropriate action. Some disciplinary actions can be handled by department managers, while others may have to be resolved by a senior hospital administrator. Disciplinary action may be appropriate where a responsible employee's failure to detect a violation is attributable to his or her negligence or reckless conduct. Personnel should be advised by the hospital that disciplinary action will be taken on a fair and equitable basis. Managers and supervisors should be made aware that they have a responsibility to discipline employees in an appropriate and consistent manner.

It is vital to publish and disseminate the range of disciplinary standards for improper conduct and to educate officers and other hospital staff regarding these standards. The consequences of noncompliance should be consistently applied and enforced, in order for the disciplinary policy to have the required deterrent effect. All levels of employees should be subject to the same disciplinary action for the commission of similar offenses. The commitment to compliance applies to all personnel levels within a hospital. The OIG believes that corporate officers, managers, supervisors, medical staff and other health care professionals should be held accountable for failing to comply with, or for the foreseeable failure of their subordinates to adhere to, the applicable standards, laws, and procedures.

2. *New Employee Policy.* For all new employees who have discretionary authority to make decisions that may involve compliance with the law or compliance oversight, hospitals should conduct a reasonable and prudent background investigation, including a reference check, as part of every such employment application.[47] The application should specifically require the applicant to disclose any criminal conviction, as defined by 42 U.S.C. 1320a–7(i), or exclusion action. Pursuant to the compliance program, hospital policies should prohibit the employment of individuals who have been recently convicted of a criminal offense related to health care or who are listed as debarred, excluded or otherwise ineligible for participation in Federal health care programs (as defined in 42 U.S.C. 1320a–7b(f)).[48] In addition, pending the resolution of any criminal charges or proposed debarment or exclusion, the OIG recommends that such individuals should be removed from direct responsibility for or involvement in any Federal health care program.[49] With regard to current employees or independent contractors, if resolution of the matter results in conviction, debarment or exclusion, the hospital should terminate its employment or other contract arrangement with the individual or contractor.

F. Auditing and Monitoring

An ongoing evaluation process is critical to a successful compliance program. The OIG believes that an effective program should incorporate thorough monitoring of its implementation and regular reporting to senior hospital or corporate officers.[50] Compliance reports created by this ongoing monitoring, including reports of suspected noncompliance, should be maintained by the compliance officer and shared with the hospital's senior management and the compliance committee.

Although many monitoring techniques are available, one effective tool to promote and ensure compliance is the performance of regular, periodic compliance audits by internal or external auditors who have expertise in Federal and State health care statutes, regulations and Federal health care program requirements. The audits should focus on the hospital's programs or divisions, including external relationships with third-party contractors, specifically those with substantive exposure to government enforcement actions. At a minimum, these audits should be designed to address the hospital's compliance with laws governing kickback arrangements, the physician self-referral prohibition, CPT/HCPSC ICD–9 coding, claim development and submission, reimbursement, cost reporting and marketing. In addition, the audits and reviews should inquire into the hospital's compliance with specific rules and polices that have been the focus of particular attention on the part of the Medicare fiscal intermediaries or carriers, and law enforcement, as evidenced by OIG Special Fraud Alerts, OIG audits and evaluations, and law enforcement's initiatives. See section II.A.2, *supra*. In addition, the hospital should focus on any areas of concern that have been identified by any entity, i.e., Federal, State, or internally, specific to the individual hospital.

Monitoring techniques may include sampling protocols that permit the compliance officer to identify and review variations from an established baseline.[51] Significant variations from the baseline should trigger a reasonable inquiry to determine the cause of the deviation. If the inquiry determines that the deviation occurred for legitimate, explainable reasons, the compliance officer, hospital administrator or manager may want to limit any corrective action or take no action. If it is determined that the deviation was caused by improper procedures, misunderstanding of rules, including fraud and systemic problems, the hospital should take prompt steps to correct the problem. Any overpayments discovered as a result of such deviations should be returned promptly to the affected payor, with appropriate documentation and a thorough explanation of the reason for the refund.[52]

Monitoring techniques may also include a review of any reserves the hospital has established for payments that it may owe to Medicare, Medicaid, TRICARE or other Federal health care programs. Any reserves discovered that include funds that should have been paid to Medicare or another government program should be paid promptly,

[47] See fn. 37, *supra*.

[48] Likewise, hospital compliance programs should establish standards prohibiting the execution of contracts with companies that have been recently convicted of a criminal offense related to health care or that are listed by a Federal agency as debarred, excluded, or otherwise ineligible for participation in Federal health care programs.

[49] Prospective employees who have been officially reinstated into the Medicare and Medicaid programs by the OIG may be considered for employment upon proof of such reinstatement.

[50] Even when a hospital is owned by a larger corporate entity, the regular auditing and monitoring of the compliance activities of an individual hospital must be a key feature in any annual review. Appropriate reports on audit findings should be periodically provided and explained to a parent-organization's senior staff and officers.

[51] The OIG recommends that when a compliance program is established in a hospital, the compliance officer, with the assistance of department managers, should take a "snapshot" of their operations from a compliance perspective. This assessment can be undertaken by outside consultants, law or accounting firms, or internal staff, with authoritative knowledge of health care compliance requirements. This "snapshot," often used as part of benchmarking analyses, becomes a baseline for the compliance officer and other managers to judge the hospital's progress in reducing or eliminating potential areas of vulnerability. For example, it has been suggested that a baseline level include the frequency and percentile levels of various diagnosis codes and the increased billing of complications and co-morbidities.

[52] In addition, when appropriate, as referenced in section G.2 reports of fraud or systemic problems should also be made to the appropriate governmental authority.

regardless of whether demand has been made for such payment.

An effective compliance program should also incorporate periodic (at least annual) reviews of whether the program's compliance elements have been satisfied, e.g., whether there has been appropriate dissemination of the program's standards, training, ongoing educational programs and disciplinary actions, among others. This process will verify actual conformance by all departments with the compliance program. Such reviews could support a determination that appropriate records have been created and maintained to document the implementation of an effective program. However, when monitoring discloses that deviations were not detected in a timely manner due to program deficiencies, appropriate modifications must be implemented. Such evaluations, when developed with the support of management, can help ensure compliance with the hospital's policies and procedures.

As part of the review process, the compliance officer or reviewers should consider techniques such as:

- On-site visits;
- Interviews with personnel involved in management, operations, coding, claim development and submission, patient care, and other related activities;
- Questionnaires developed to solicit impressions of a broad cross-section of the hospital's employees and staff;
- Reviews of medical and financial records and other source documents that support claims for reimbursement and Medicare cost reports;
- Reviews of written materials and documentation prepared by the different divisions of a hospital; and
- Trend analysis, or longitudinal studies, that seek deviations, positive or negative, in specific areas over a given period.

The reviewers should:

- Be independent of physicians and line management;
- Have access to existing audit and health care resources, relevant personnel and all relevant areas of operation;
- Present written evaluative reports on compliance activities to the CEO, governing body and members of the compliance committee on a regular basis, but no less than annually; and
- Specifically identify areas where corrective actions are needed.

With these reports, hospital management can take whatever steps are necessary to correct past problems and prevent them from reoccurring. In certain cases, subsequent reviews or studies would be advisable to ensure that the recommended corrective actions have been implemented successfully.

The hospital should document its efforts to comply with applicable statutes, regulations and Federal health care program requirements. For example, where a hospital, in its efforts to comply with a particular statute, regulation or program requirement, requests advice from a government agency (including a Medicare fiscal intermediary or carrier) charged with administering a Federal health care program, the hospital should document and retain a record of the request and any written or oral response. This step is extremely important if the hospital intends to rely on that response to guide it in future decisions, actions or claim reimbursement requests or appeals. Maintaining a log of oral inquiries between the hospital and third parties represents an additional basis for establishing documentation on which the organization may rely to demonstrate attempts at compliance. Records should be maintained demonstrating reasonable reliance and due diligence in developing procedures that implement such advice.

G. Responding to Detected Offenses and Developing Corrective Action Initiatives

1. *Violations and Investigations.* Violations of a hospital's compliance program, failures to comply with applicable Federal or State law, and other types of misconduct threaten a hospital's status as a reliable, honest and trustworthy provider capable of participating in Federal health care programs. Detected but uncorrected misconduct can seriously endanger the mission, reputation, and legal status of the hospital. Consequently, upon reports or reasonable indications of suspected noncompliance, it is important that the chief compliance officer or other management officials initiate prompt steps to investigate the conduct in question to determine whether a material violation of applicable law or the requirements of the compliance program has occurred, and if so, take steps to correct the problem.[53] As appropriate, such steps may include an immediate referral to criminal and/or civil law enforcement authorities, a corrective action plan,[54] a report to the Government,[55] and the submission of any overpayments, if applicable.

Where potential fraud or False Claims Act liability is not involved, the OIG recognizes that HCFA regulations and contractor guidelines already include procedures for returning overpayments to the Government as they are discovered. However, even if the overpayment detection and return process is working and is being monitored by the hospital's audit or coding divisions, the OIG still believes that the compliance officer needs to be made aware of these overpayments, violations or deviations and look for trends or patterns that may demonstrate a systemic problem.

Depending upon the nature of the alleged violations, an internal investigation will probably include interviews and a review of relevant documents. Some hospitals should consider engaging outside counsel, auditors, or health care experts to assist in an investigation. Records of the investigation should contain documentation of the alleged violation, a description of the investigative process, copies of interview notes and key documents, a log of the witnesses interviewed and the documents reviewed, the results of the investigation, e.g., any disciplinary action taken, and the corrective action implemented. While any action taken as the result of an investigation will necessarily vary depending upon the hospital and the situation, hospitals should strive for some consistency by utilizing sound practices and disciplinary protocols. Further, after a reasonable period, the compliance officer should review the circumstances that formed the basis for the investigation to determine whether similar problems have been uncovered.

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[53] Instances of non-compliance must be determined on a case-by-case basis. The existence, or amount, of a *monetary* loss to a health care program is not solely determinative of whether or not the conduct should be investigated and reported to governmental authorities. In fact, there may be instances where there is no monetary loss at all, but corrective action and reporting are still necessary to protect the integrity of the applicable program and its beneficiaries.

[54] Advice from the hospital's in-house counsel or an outside law firm may be sought to determine the extent of the hospital's liability and to plan the appropriate course of action.

[55] The OIG currently maintains a voluntary disclosure program that encourages providers to report suspected fraud. The concept of voluntary self-disclosure is premised on a recognition that the Government alone cannot protect the integrity of the Medicare and other Federal health care programs. Health care providers must be willing to police themselves, correct underlying problems and work with the Government to resolve these matters. The OIG's voluntary self-disclosure program has four prerequisites: (1) the disclosure must be on behalf of an entity and not an individual; (2) the disclosure must be truly voluntary (i.e., no pending proceeding or investigation); (3) the entity must disclose the nature of the wrongdoing and the harm to the Federal programs; and (4) the entity must not be the subject of a bankruptcy proceeding before or after the self-disclosure.

If an investigation of an alleged violation is undertaken and the compliance officer believes the integrity of the investigation may be at stake because of the presence of employees under investigation, those subjects should be removed from their current work activity until the investigation is completed (unless an internal or Government-led undercover operation is in effect). In addition, the compliance officer should take appropriate steps to secure or prevent the destruction of documents or other evidence relevant to the investigation. If the hospital determines that disciplinary action is warranted, if should be prompt and imposed in accordance with the hospital's written standards of disciplinary action.

2. Reporting. If the compliance officer, compliance committee or management official discovers credible evidence of misconduct from any source and, after a reasonable inquiry, has reason to believe that the misconduct may violate criminal, civil or administrative law, then the hospital promptly should report the existence of misconduct to the appropriate governmental authority [56] within a reasonable period, but not more than sixty (60) days [57] after determining that there is credible evidence of a violation.[58] Prompt reporting will demonstrate the hospital's good faith and willingness to work with governmental authorities to correct and remedy the problem. In addition, reporting such conduct will be considered a mitigating factor by the OIG in determining administrative sanctions (e.g., penalties, assessments, and exclusion), if the reporting provider becomes the target of an OIG investigation.[59]

When reporting misconduct to the Government, a hospital should provide all evidence relevant to the alleged violation of applicable Federal or State law(s) and potential cost impact. The compliance officer, under advice of counsel, and with guidance from the governmental authorities, could be requested to continue to investigate the reported violation. Once the investigation is completed, the compliance officer should be required to notify the appropriate governmental authority of the outcome of the investigation, including a description of the impact of the alleged violation on the operation of the applicable health care programs or their beneficiaries. If the investigation ultimately reveals that criminal or civil violations have occurred, the appropriate Federal and State officials [60] should be notified immediately.

As previously stated, the hospital should take appropriate corrective action, including prompt identification and restitution of any overpayment to the affected payor and the imposition of proper disciplinary action. Failure to repay overpayments within a reasonable period of time could be interpreted as an intentional attempt to conceal the overpayment from the Government, thereby establishing an independent basis for a criminal violation with respect to the hospital, as well as any individuals who may have been involved.[61] For this reason, hospital compliance programs should emphasize that overpayment obtained from Medicare or other Federal health care programs should be promptly returned to the payor that made the erroneous payment.[62]

III. Conclusion

Through this document, the OIG has attempted to provide a foundation to the process necessary to develop an effective and cost-efficient hospital compliance program. As previously stated, however, each program must be tailored to fit the needs and resources of an individual hospital, depending upon its particular corporate structure, mission, and employee composition. The statutes, regulations and guidelines of the Federal and State health insurance programs, as well as the policies and procedures of the private health plans, should be integrated into every hospital's compliance program.

The OIG recognizes that the health care industry in this country, which reaches millions of beneficiaries and expends about a trillion dollars, is constantly evolving. However, the time is right for hospitals to implement a strong voluntary compliance program concept in health care. As stated throughout this guidance, compliance is a dynamic process that helps to ensure that hospitals and other health care providers are better able to fulfill their commitment to ethical behavior, as well as meet the changes and challenges being imposed upon them by Congress and private insurers. Ultimately, it is the OIG's hope that a voluntarily created compliance program will enable hospitals to meet their goals, improve the quality of patient care, and substantially reduce fraud, waste and abuse, as well as the cost of health care to Federal, State and private health insurers.

Dated: February 11, 1998.

June Gibbs Brown,

Inspector General.

[FR Doc. 98–4399 Filed 2–20–98; 8:45 am]

BILLING CODE 4150–04–M

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[56] I.e., Federal and/or State law enforcement having jurisdiction over such matter. Such governmental authority would include DOJ and OIG with respect to Medicare and Medicaid violations giving rise to causes of actions under various criminal, civil and administrative false claims statutes.

[57] To qualify for the "not less than double damages" provision of the False Claims Act, the report must be provided to the Government within thirty (30) days after the date when the hospital first obtained the information. 31 U.S.C. 3729(a).

[58] The OIG believes that some violations may be so serious that they warrant immediate notification to governmental authorities, prior to, or simultaneous with, commencing an internal investigation, e.g., if the conduct: (1) is a clear violation of criminal law; (2) has a significant adverse effect on the quality of care provided to program beneficiaries (in addition to any other legal obligations regarding quality of care); or (3) indicates evidence of a systemic failure to comply with applicable laws, an existing corporate integrity agreement, or other standards of conduct, regardless of the financial impact on Federal health care programs.

[59] The OIG has published criteria setting forth those factors that the OIG takes into consideration in determining whether it is appropriate to exclude a health care provider from program participation pursuant to 42 U.S.C. 1320a–7(b)(7) for violations of various fraud and abuse laws. See 62 FR 67392, December 24, 1997.

[60] Appropriate Federal and State authorities include the Criminal and Civil Divisions of the Department of Justice, the U.S. Attorney in the hospital's district, and the investigative arms for the agencies administering the affected Federal or State health care programs, such as the State Medicaid Fraud Control Unit, the Defense Criminal Investigative Service, and the Offices of Inspector General of the Department of Health and Human Services, the Department of Veterans Affairs and the Office of Personnel Management (which administers the Federal Employee Health Benefits Program).

[61] See 42 U.S.C. 1320a–7b(a)(3).

[62] Normal repayment channels as described in HCFA's manuals and guidances are the appropriate vehicle for repaying identified overpayments. Hospitals should consult with its fiscal intermediary or HCFA for any further guidance regarding these repayment channels. Interest will be assessed, when appropriate. See 42 CFR 405.376.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: January 1998

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of January 1998, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under

the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ABREU, JUAN F MIAMI, FL	02/19/1998
ADEYEYE, ADEREMI B WAUPUN, WI	02/19/1998
ANDERSON, BERN WHITE DEER, PA	02/19/1998
BEACKOM, BERNARD J HICKSVILLE, NY	02/19/1998
COMMODORE, PATRICIA WASHINGTON BALTIMORE, MD	02/19/1998
COOPER, WANDA DECATUR, GA	02/19/1998
DIXON, TERRY D E STONE GAP, VA	02/19/1998
FERRELL, CORRIE MATTHEW SOUTH BOSTON, VA	02/19/1998
GOLDBERG, LOIS MILWAUKEE, WI	02/19/1998
GONZALEZ, BARBARA ANN BRYAN, TX	02/19/1998
GRACE, KATHY ELAINE TURNER, OR	02/19/1998
GREEN, PATRICIA WOODVILLE, MS	02/19/1998
HARTLEY, CHERRI MONIC PHOENIX, AZ	02/19/1998
HERB, GREGORY WAYNE SAN JOSE, CA	02/19/1998
HOLMBERG, ANDERS BRONX, NY	02/19/1998
JACKSON, NATALIE JOYCE LITTLE ROCK, AR	02/19/1998
JOHNSON, ANTHONY L BALTIMORE, MD	02/19/1998
KEITH, LAURA S CLARKSTON, GA	02/19/1998
LODENQUAI, CHRISTOPHER TARPON SPRINGS, FL	02/19/1998
LOWRANCE, VICKY J COLORADO SPNGS, CO	02/19/1998
LUKESH, RICHARD J EXTON, PA	02/19/1998
MASON, DEBORAH MARIAH TUCSON, AZ	02/19/1998
MED-AMERICA PHYSICIAN, PC FRANKLIN SQUARE, NY	02/19/1998
MORENO, MARGIE FRESNO, CA	02/19/1998
PAULER, JOSEPH SOUTH ORANGE, NJ	02/19/1998
PENINSULA BRACE & LIMB, INC TAMPA, FL	02/19/1998
RATLIFF, GEAMES H CLINTON, VA	02/19/1998
RATLIFF, LESLIE LEE NORA, VA	02/19/1998
RAY, CAROL LENEXA, KS	08/04/1997
RIVERO, SOLEDAD M MIAMI, FL	02/19/1998
ROBBINS, JEFFREY STROUDSBERG, PA	02/19/1998
ROBINSON, RALLAND V POWHATAN, VA	02/19/1998
ROSENZWEIG, ALLAN LAWRENCE HOLLYWOOD, FL	02/19/1998
SIDDIQUI, SHAKIR KEARNY, NJ	02/19/1998
SLOAN, MELANIE COLLEGE PARK, GA	02/19/1998
SWEAT, DEBBIE L BRADENTON, FL	02/19/1998
SWERDLIK, RICHARD NEW YORK, NY	02/19/1998
TERRANA, CHARLES ELMA, NY	02/19/1998
THOMAS, CHARLES EDWARD KENBRIDGE, VA	02/19/1998
VADEN, VIRGILIO ROCKY POINT, NY	02/19/1998
VILLAVECER, VIRGIL WESTERVILLE, OH	02/19/1998
VILLAVECER, HERMENEGILDO T WESTERVILLE, OH	02/19/1998
WILKINS, DOROTHY RAWSHAWN SACRAMENTO, CA	02/19/1998
YI, FELIPE MIAMI, FL	02/19/1998
PATIENT ABUSE/NEGLECT CONVICTIONS	
CALDWELL, CHARLES A CANON CITY, CO	02/19/1998
GIBSON, ROXANNE HARKER HGTS, TX	02/19/1998
GOMEZ, ANA MARIE FRESNO, CA	02/19/1998
GORDON, TYLICIA C NASHVILLE, TN	02/19/1998
GREEN, PATRICIA MOSS POINT, MS	02/19/1998
REDDELL, ALICE LYNN MINERAL WELLS, TX	02/19/1998
RUTKOWSKI, JOSEPH CANANDAIGUA, NY	02/19/1998
SMITH, DALE A LEXINGTON PARK, MD	02/19/1998
STONE, ROBERTA CINCINNATI, OH	02/19/1998
VELURI, RAVI K ALEXANDRIA, VA	02/19/1998
WILLIAMS, CHARLES WAYNE LITTLE ROCK, AR	02/19/1998
CONVICTION FOR HEALTH CARE FRAUD	
LEITSON, MARC W BLOOMFIELD, IL	02/19/1998
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
ARCHULETA, MARILYN SKILES LANCASTER, PA	02/19/1998
BARBARO, ANDREA SOUTH RIDING, VA	02/19/1998
BAYLESS, JAMES M RIVERSIDE, CA	02/19/1998
BECKERT, MARGARET WEIER NAPA, CA	02/19/1998
BRAND, ROBERT L PETERSBURG, VA	02/19/1998
BRAVERMAN, RONALD A BRAINERD, MN	02/19/1998
BRODHEAD, CHARLES L RIVERSIDE, CA	02/19/1998
BROOKS, DAVID CHICAGO, IL	02/19/1998
BROWN, KEVIN P LYNDEN, WA	02/19/1998
BROWN, SANDORS LEESBURG, VA	02/19/1998
CARMON, KIM ALLEN RICHMOND, VA	02/19/1998
CARTER, CAROL HOVER TITUSVILLE, PA	02/19/1998
CURRY, CURTIS CHICAGO, IL	02/19/1998
DARRIN, THOMAS B COUDERSPORT, PA	02/19/1998
DAVIS, REED C SANTA ROSA, CA	02/19/1998
DAY, THERESA A PORTLAND, ME	02/19/1998
DEJULIA, WAYNE C HUNTINGTON, CT	02/19/1998
ELLIOTT, STACEY H PAYNESVILLE, MN	02/19/1998
FINN, MARY C MENANDS, NY	02/19/1998
FOX, COLLEEN ROCK ISLAND, IL	02/19/1998
FRACASSI, CAROL LANDIS ERIE, PA	02/19/1998
FRANKS, DENIS BALTIMORE, MD	02/19/1998
FREDERICK, HAROLD T DOWNEY, CA	02/19/1998
GADHOK, RAJINDER S BERKELEY HGHTS, NJ	02/19/1998
GIBSON, JANET M LUVERNE, MN	02/19/1998
GILL, JANE CARLINVILLE, IL	02/19/1998
GOLDEN, BRUCE M BROCKTON, MA	02/19/1998
GRINSTEAD, SHELLIA M WAKEFIELD, VA	02/19/1998
GROSS, MARIE KIAMESHA LAKE, NY	02/19/1998
HAYDEN, GINA M WESTPORT, CT	02/19/1998
HENDERSON, MARILYN MERCHANT LAS VEGAS, NV	02/19/1998
HICKS, DEANNA M CHICOPEE, MA	02/19/1998
ILIFF, KATHLEEN HATFIELD	02/19/1998

Subject, city, state	Effective date
RESTON, VA	
IPPEDICO, JESSICA	02/19/1998
SOMERVILLE, MA	
JOUBERT, EFFIE	02/19/1998
CHICAGO, IL	
KAPLAN, MARK	02/19/1998
NORCO, CA	
KASIEWSKI, REGINA GAFFNEY	02/19/1998
BENSALEM, PA	
KELLEY, SHANNON T	02/19/1998
SYRACUSE, NY	
KHOURY, NICHOLAS F	02/19/1998
FRESNO, CA	
KRAEGER, CARI	02/19/1998
BLOOMINGTON, IL	
KRILE, SCOTT	02/19/1998
PEKIN, IL	
LITTLE, BRUCE R	02/19/1998
LITCHFIELD, CT	
LONG, DAWN	02/19/1998
DECATUR, IL	
LOVE, BEVERLY MICHELE	02/19/1998
OKLAHOMA CITY, OK	
MAKHDOOMI, GOWHAR	02/19/1998
CLARENCE, NY	
MORAN, JANICE M	02/19/1998
WEYMOUTH, MA	
MOTLAGH, FRANK A	02/19/1998
SAN DIEGO, CA	
NALLS, DOUGLAS EARL	02/19/1998
MIAMI, FL	
NEUMAN, JACOB	02/19/1998
FLUSHING, NY	
OH, HEI YOUNG	02/19/1998
DIXHILLS, NY	
OKAJIMA, NILES M	02/19/1998
SOUTH GATE, CA	
ORCINOLO, SAMUEL L	02/19/1998
BROOKLYN, NY	
PITTS, FERRIS NEWCOMB	02/19/1998
PASADENA, CA	
POWELL, PERRY	02/19/1998
SAN DIEGO, CA	
RABOW, PETER J	02/19/1998
SPRINGFIELD, VT	
RAINEY, DIANA	02/19/1998
CHARLOTTESVILLE, VA	
REESE, TIMOTHY HERMAN	02/19/1998
MCKEESPORT, PA	
RICHARDS, JEFFREY M	02/19/1998
EDINBORO, PA	
RUCKHABER, JERRY WAYNE	02/19/1998
BINGHAMTON, NY	
SALDANHA, JOSEPH P	02/19/1998
MANHASSET, NY	
SEARS, CATHERINE	02/19/1998
BEVERLY, MA	
SHOHAYEB, AHMED ABDUL RAHMA	02/19/1998
LOS ANGELES, CA	
SMITH, DIANE	02/19/1998
DIXON, IL	
ST JEAN, POLUX ENRIQUE DILONE	02/19/1998
CAGUAS, PR	
STEPHEN, CAROL ANN	02/19/1998
NORFOLK, VA	
SUGAR, HARRY D	02/19/1998
CRANFORD, NJ	
TAYLOR, JAMES ALAN	02/19/1998
E STROUDSBURG, PA	
TOBIN, DAVID	02/19/1998
MORTON GROVE, IL	
TSENG, MAO-HSUNG	02/19/1998
EDEN, NY	
WAGNER, ROBERT R	02/19/1998
NORFOLK, VA	
WAGNER, ANDREA	02/19/1998
CHICAGO RIDGE, IL	
WAINIO, MAUREEN E	02/19/1998
NEW BEDFORD, MA	
WALKER, JERONE S	02/19/1998
NORTHRIDGE, CA	
WHEATLAND, SUZANNE	02/19/1998
STREATOR, IL	
WOO, DONNA	02/19/1998
RICHMOND, VA	
FEDERAL/STATE EXCLUSION/ SUSPENSION	
BHAREL, VIVENDRA	02/19/1998
MANHASSET HILLS, NY	
KESTEN, MARK M	02/19/1998
NEW YORK, NY	
QUEENS SURGICAL PHARMACY	02/19/1998
FOREST HILLS, NY	
SOLAN, JAY R	02/19/1998
LARCHMONT, NY	
WALKER, SANDRA	02/19/1998
BROOKLYN, NY	
FRAUD/KICKBACKS	
AUTOMATED BILLING SERVICES	02/19/1998
ROCKVILLE, MD	
JOHN J MERENDINO, SR, MD, PA	02/19/1998
ROCKVILLE, MD	
QRSS	02/19/1998
ROCKVILLE, MD	
OWNED/CONTROLLED BY CONVICTED EXCLUDED	
CHARLES OPTICAL	02/19/1998
ELMA, NY	
JORMER SPECIALTY CORPORATION	02/19/1998
MIAMI, FL	
U S MEDICAL SYSTEMS, INC	02/19/1998
BOCA RATON, FL	
DEFAULT ON HEAL LOAN	
ARAGON, JANETTE L	02/19/1998
UPLAND, CA	
BAKER, SAMUEL STEVEN	02/19/1998
TUCSON, AZ	
BLACKWELL, ROBERT E	12/22/1997
PINE BLUFF, AR	
BRADY, SCOTT M	02/19/1998
NEW MILFORD, CT	
BUCKLEY, JOHN F	12/22/1997
MASSILON, OH	
BURKS, TEMAN L	02/19/1998
COLUMBIA, MD	
CHERRY, ROBERT B	02/19/1998
SEATTLE, WA	
CLEMENTS, DAVID D	02/19/1998
DALLAS, TX	
CONNELLY, CHRISTOPHER FOUST	02/19/1998
CARSON CITY, NV	
COWLEY, ROBERT DANIEL	02/19/1998
CHARLESTON, SC	
DAVIS, MICHAEL E	12/22/1997
SHAKER HEIGHTS, OH	
DENNEY, TERESA A	02/19/1998
HONOLULU, HI	
DEVANEY, JOHN F	02/19/1998
SEABROOK, NH	
ECHOLS, HARVEY L	02/19/1998
CHICAGO, IL	
ELLIS, PATRICIA A	02/19/1998
PHILADELPHIA, PA	
GEE, WILL K	02/19/1998
CHICAGO, IL	
GEORGESON, RONALD M	02/19/1998
KERMAN, CA	
GOMES, STEVEN P	02/19/1998
GLEN ELLEN, CA	
HAYGOOD, REGINA J	12/22/1997
BROOKLYN, NY	
HERBST, STEPHEN H	12/22/1997
MOUNTAIN HOME, AR	
HETH, DAVID M	02/19/1998
LAYTON, UT	
HILL, STEPHEN J	02/19/1998
MONTGOMERYVILLE, PA	
JOHNSON, GARY M	02/19/1998
N HOLLYWOOD, CA	
KOFFEMAN, JOHN NICHOLAS	02/19/1998
JACKSON, MI	
KOSTENKO, MICHAEL MERRITT	02/19/1998
BECKLEY, WV	
LALL, LEN L	12/22/1997
ROCKWALL, TX	
LEWIS, CAROL E	12/22/1997
SCOTTDALE, AZ	
LINDSEY, SCOTT B	12/22/1997
AKRON, OH	
MAREK, MICHAEL L	12/22/1997
HOUSTON, TX	
MARTINSON, DAVID L	02/19/1998
FARGO, ND	
MASON (DOWNING), MARLENE K	02/19/1998
GLENDALE, AZ	
MCJILTON, STEPHEN J	02/19/1998
ROSSMOOR, CA	
MITCHELL, ROBERT S	02/19/1998
KIRKLAND, WA	
MONTELEONE, ANTHONY L JR	02/19/1998
NATRONA HGHTS, PA	
MUNSON, KEVIN D	12/22/1997
DETROIT, MI	
MURPHY, MICHAEL P	02/19/1998
QUINCY, MA	
PACEY, DAVID A	02/19/1998
SEATTLE, WA	
PICIULLO, LENNY R	02/19/1998
SPOKANE, WA	
POLLOCK, THOMAS G	02/19/1998
SANTA BARBARA, CA	
RABIN, SANDER M	02/19/1998
POUGHKEEPSIE, NY	
RAMOS, CARLOS A	02/19/1998
SAN DIEGO, CA	
RAMOS-VELEZ, GISELLA	02/19/1998
LOUISVILLE, KY	
RICHARDSON, GREGORY B	02/19/1998
MERIDIAN, ID	
RIVERO, EDUARDO C	02/19/1998

Subject, city, state	Effective date
MIAMI, FL	
ROGNEY, ROSS K EXCELSIOR, MN	02/19/1998
SMITH, ART G KERRVILLE, TX	02/19/1998
SMITH, ROBERT E COSTA MESA, CA	02/19/1998
SOLUM, JIM D LOS ANGELES, CA	02/19/1998
SUTHERLAND, SCOTT TRACY HONOLULU, HI	02/19/1998
SWETT, ROBERT A BELCHERTOWN, MA	02/19/1998
VANRENSSELAER, JEFFREY ALAN LAKE FOREST, CA	02/19/1998
VOLPATO, RONALD N CHICO, CA	02/19/1998
WADE, ERIC V TYLER, TX	12/22/1997
WALKER, JOSEPH C CLEVELAND HGTS, OH	12/22/1997
COLLINS, RODNEY DANIEL CULVER CITY, CA	01/14/1998
ELOFSON, OLOF R ISSAQUAH, WA	01/14/1998
GAMBLE, JEFFREY G SR SAN DIEGO, CA	01/14/1998
HESSER, ROBERT J DENVER, CO	01/14/1998
PARKER, SYLVESTER E JR TYLERTOWN, MS	01/14/1998
PAYNE, DENISE Y LOUISVILLE, KY	01/14/1998
PERRY, KEITH O'NEIL LOS ANGELES, CA	01/30/1998
SCHAEFFER, DARRELL RAY PHOENIX, AZ	01/14/1998
SCHUCKMAN, GARY A WILMINGTON, NC	01/14/1998
SMITH, ROBERT L OJAI, CA	01/14/1998
WATFORD, DOUGLAS E AHOSKIE, NC	01/14/1998
WILLIAMS, WILLIAM E OAKLAND, CA	01/14/1998
EXCLUSION BASED ON SETTLEMENT AGREEMENT	
BEAR LOVE MEDICAL EQUIPMENT	02/19/1998
HIALEAH, FL	
IGLESIAS, YAMIRAH ISABEL TAMPA, FL	02/19/1998
MENDEZ, FAUSTUS HIALEAH, FL	11/04/1997
PENINSULA BRACE & LIMB, INC TAMPA, FL	08/11/1997
PEER REVIEW ORGANIZATION CASES	
BROOKS, JESSE M ATLANTA, TX	12/10/1997

Dated: February 9, 1998.

Joanne Lanahan,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 98–4423 Filed 2–20–98; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Test-Retest Study of the Alcohol Use Disorder and Associated Disabilities Interview Schedule (AUDADIS–IV) in a General Population Sample

SUMMARY: Under the provisions of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously in the **Federal Register** on November 17, 1997, and allowed 60 days for public comment. There were no requests for additional information about this data collection activity, no public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The NIH may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after June 30, 1999, unless it displays a currently valid OMB control number.

PROPOSED COLLECTION: Title: Test-Retest Study of the Alcohol Use Disorder and Associated Disabilities Interview Schedule (AUDADIS–IV) in a General Population Sample. Type of Information Collection request: New. Need and Use of Information Collection: The information proposed for collection in this study will be used by the NIAAA to develop and finalize psychometrically sound measures of alcohol and drug-related disabilities for use in major epidemiologic surveys conducted in the United States. Currently, there is a great need for more reliable measurement of alcohol and drug use disorders and their associated disabilities in all fields of substance use research.

Frequency of Response: On occasion.

Affected Public: Individuals.

Type of Respondents: American adults.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 2.

Average Burden Hours per Response: 1.00.

And Estimated Total Annual Burden Hours Requested: 1000.

There are no Capital Costs to report.

There are no Operating or Maintenance Costs to report.

The annual burden estimates are as follows:

Type and number of respondents	Responses per respondent	Total responses	Hours	Total hours
(First (Test) Interviews): 500	1	500	1.00	500
(Second (Retest) Interviews): 500	1	500	1.00	500
Total Number of Respondents: 500 (per year) Total Number of Responses: 1000 (per year) Total Hours: 1000 (per year)				

REQUEST FOR COMMENTS: Comments are invited on: (a) Whether the proposed collection is necessary, including whether the information has practical use; (b) ways to enhance the clarity, quality, and use of the information to be collected; (c) the accuracy of the agency estimate of burden of the proposed collection; and (d) ways to minimize the collection burden of the respondents.

Send written comments to Dr. Bridget Grant, Biometry Branch, Division of Biometry and Epidemiology (DBE), NIAAA, NIH, Willco Bldg., Suite 514,

6000 Executive Blvd., Bethesda, Maryland 20892–7003.

DIRECT COMMENTS TO OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to the Office of Management and Budge, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans, contact Dr. Bridget Grant, Biometry Branch, Division of Biometry and Epidemiology, NIAAA, NIH, Willco Bldg. Suite 514, 6000 Executive Blvd., Bethesda, Maryland 20892–7003, or call non-toll-free number (301) 443–7370.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before March 25, 1998.

Dated: January 23, 1998.

Martin K. Trusty,

Executive Officer, NIAAA.

[FR Doc. 98–4515 Filed 2–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: SPOREs in Breast and Prostate Cancer.

Date: March 17–18, 1998.

Time: March 17–7:00 p.m. to Recess; March 18–9:00 a.m. to Adjournment.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Harvey P. Stein, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 611B, 6130 Executive Boulevard, Bethesda, MD 20892, Telephone: 301/496–7481.

Purpose/Agenda: To review, discuss and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–4507 Filed 2–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institutes; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review, discuss and evaluate grant applications.

Committee Name: Subcommittee E—Prevention and Control.

Date: April 6–7, 1998.

Time: April 6—8:00 a.m. to Recess; April 7—8:00 a.m. to Adjournment.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Mary Fletcher, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Boulevard, North, Room 635S, Bethesda, Md 20892, Telephone: 301/496–4964.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–4509 Filed 2–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Tissue and Biological Fluids Bank of HIV-Related Malignancies.

Date: March 6, 1998.

Time: 9:00 a.m. to Adjournment.

Place: Executive Plaza North, Conference Room H, 6130 Executive Boulevard, Bethesda, MD 20892.

Contact Person: Courtney M. Kerwin, Ph.D., M.P.H., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 630I, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–7421.

Purpose/Agenda: To review, discuss and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: February 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–4511 Filed 2–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institutes; Notice of Closed Meeting

Pursuant to Section 10 (d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review, discuss and evaluate grant applications.

Committee Name: Subcommittee D—Clinical Research Studies.

Date: April 1–2, 1998.

Time: April 1—6:00 p.m. to Recess, April 2—8:00 a.m. to Adjournment.

Place: Holiday Inn—Select, 881 Convention Center Boulevard, New Orleans, LA 70130.

Contact Person: Martin H. Goldrosen, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Boulevard, North, Room 635C, Bethesda, Md 20892–7408, Telephone: 301/496–7930.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(CATALOG OF FEDERAL DOMESTIC ASSISTANCE PROGRAM NUMBERS: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–4512 Filed 2–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting of the Board of Scientific Counselors, National Institute on Deafness and Other Communication Disorders

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Deafness and Other Communication Disorders on March 27, 1998 which will take place in Conference Room D, the Natcher Building, 9000 Rockville Pike, Bethesda MD 20892.

The meeting will be open to the public from 8:00 to 8:25 a.m. to present reports and discuss issues related to the business of the Board. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code and Section 10(d) of Public Law 92–463, the meeting will be closed to the public from 8:25 am to adjournment. The closed portion of the meeting will be for the review, evaluation, and discussion of the research programs of tenure-track scientists within the Voice, Speech and Language Branch, the Laboratory of Molecular Genetics and the Head and Neck Surgery Branch, Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, including consideration of personal qualifications and performance, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A meeting summary and roster of members may be obtained from James F. Battey, M.D., Ph.D., Executive Secretary, Board of Scientific Counselors, National Institute on Deafness and Other Communication Disorders, 5 Research Court, Room 2B–28, Rockville, Maryland 20850, 301–402–2829. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Battey at least two weeks prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: February 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–4506 Filed 2–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Mental Health on March 10, 1998.

In accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., the entire meeting will be closed for the review, discussion, and evaluation of staff scientist and individual intramural programs and projects. The subject matter to be reviewed contains information of a confidential nature, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Agenda/Purpose: To evaluate recent reviews of selected intramural research projects and make final recommendations.

Committee Name: Board of Scientific Counselors, National Institute of Mental Health.

Date: March 10, 1998.

Time: 5 p.m.

Place: Building 36, Room 1B07, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Robert W. Dennis, Executive Secretary, Building 10, Room 4N222, 9000 Rockville Pike, Bethesda, MD 20892, Telephone: 301, 496–4183.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: February 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–4508 Filed 2–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Closed Meeting

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, National Institute on Aging, March 13, 1998, Hay-Adams Hotel, 16th and H Streets, N.W., One Lafayette Square, Washington, D.C. which was published in the **Federal Register** on January 14, (Vol. 63, No. 9, page 2252).

This committee was to have convened at 1:30 p.m. on March 12, but has been changed to 6:00 p.m. on March 12. The location remains the same.

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, National Institute on Aging, March 13, 1998, Hay-Adams Hotel 16th and H Streets, N.W., One Lafayette Square, Washington, D.C. which was published in the **Federal Register** on January 14, (Vol. 63, No. 9, page 2252).

This committee was to have convened at 9:00 a.m. on March 13, but has been changed to 8:00 a.m. on March 13. The location remains the same. As previously announced, these meetings are closed to the public.

Dated: February 17, 1998.

LaVeen Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 98–4510 Filed 2–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Services; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meetings:

Name of SEP: Review of Conference Call Applications (R13s) (Telephone Conference Call).

Date: March 10, 1998.

Time: 9:30 a.m.

Place: National Institute of Environmental Health Sciences, East Campus, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709.

Contact Person: Dr. Carol Shreffler, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1445.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Chemical Mixtures in Environmental Health.

Date: April 6–8, 1998.

Time: 7:00 p.m.

Place: National Institute of Environmental Health Sciences, Building 101, Conference Room C, Research Triangle Park, NC 27709.

Contact Person: Mr. David Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Grant applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: February 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–4514 Filed 2–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following National Institute of General Medical Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: Structural Biology of AIDS-Related Proteins (Teleconference).

Date: March 5, 1998.

Time: 1:00 p.m.–adjournment.

Place: NIH, NIGMS, Natcher Building, Room 1AS–13, Bethesda, Maryland.

Contact Person: Dr. Arthur L. Zachary, Scientific Review Administrator, NIGMS, Natcher Building—Room IAS–13, Bethesda, Maryland 20892, Telephone: 301–594–2886.

Purpose/Agenda: To evaluate and review grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers (MARC); and 93.375, Minority Biomedical Research Support (MBRS)], National Institutes of Health)

Dated: February 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–4513 Filed 2–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–85]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* April 24, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4238, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public and Indian Housing/Section 8 Moving to Work Demonstration Participants Reporting Requirements.

OMB Control Number, if applicable: 2577–0216.

Description of the need for the information and proposed use: Twenty-four Housing Agencies (HAs) were approved to participate in the Moving To Work (MTW) Program after an invitation was published in the **Federal Register**. The approved applicants were required to submit a preliminary MTW plan, to hold a public hearing for citizens comments and to seek residents' comments on the MTW plan

and to comply with other submission and eligibility requirements. As a condition of MTW selection, an HA must provide assurance to HUD that it will comply with these reporting requirements: documentation on the HA's use of program funds, data to assist in assessing the MTW demonstration, and description and analyses of the effect of HA's activities in addressing the objectives of the MTW plan. Section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134; 110 Stat. 1321) is the authority for the MTW Program.

Agency form numbers, if applicable: None.

Members of affected public: State, Local Governments (Public Housing Agencies).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 24 respondents, semi-annually, six hours estimated average response time, 288 hours estimated annual reporting burden.

Status of the proposed information collection: Reinstatement of reporting requirements only.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 17, 1998.

Kevin Emanuel Marchman,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 98–4455 Filed 2–20–98; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–84]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* March 25, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal.

Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 12, 1998.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Subterranean Termite Soil Treatment Builder's Guarantee and New Construction Subterranean Termite Soil Treatment Record.

Office: Housing.

OMB Approval Number: None.

Description of the Need for the Information and Its Proposed Use: This information collection provide new home purchasers with the builder's guarantee concerning termite control treatment and the work performed by a licensed pest control company. The builder's guarantee and the termite certification are required before a mortgage insurance endorsement can take place.

Form Number: Forms NPCH–99a and NPCH–99b.

Respondents: Business or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	54,000		1		.166		8,964

Total Estimated Burden Hours: 8,964.
Status: New.
Contact: John W. Struchern, HUD, (202) 708–6396 x5626; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 12, 1998.

[FR Doc. 98–4457 Filed 2–20–98; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4240–N–02]

Announcement of Awards for the Community Partnerships for Resident Uplift and Economic Development Program Fiscal Year 1997

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Community Partnerships for Resident Uplift and Economic Development Program (Community Partnership). The announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Patricia Arnaudo, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 619–8201 x4250. Telecommunications Devices for the Deaf (TTY) can be accessed by contacting the Federal Information Relay Services on 1–800–877–TTY (1–800–877–8339) or (202) 708–9300. (With the exception of the "800" number, these are not toll free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the Community Partnerships grant is to provide Housing Authority (HA) and Community Development Corporation (CDC) collaboratives grants for the purpose of creating neighborhood-based programs to move families residing in public housing and the adjacent neighborhood from welfare to self-sufficiency through two primary strategies: (1) Encourage the creation of employment and business development opportunities for low-income people through business, physical or commercial development in the neighborhood; and (2) provide an array of supportive services in neighborhood-based comprehensive service centers (and accessible to persons with disabilities) to enable participants to successfully make and sustain the transition to self-sufficiency.

The 1997 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** notice published on July 29, 1997 (62 FR 40642). Applications were scored and selected for funding on the basis of selection criteria contained in that Notice.

A total of $4.2 million in Community Partnerships was awarded to six HA–CDC grantees. HUD and HHS each made available $2.5 million for award under this initiative. The Boys and Girls Clubs of America made up to $500,000 available to elected HA–CDC grantees for after school youth development activities providing constructive environments for children program participants.

This joint initiative, between HUD and the U.S. Department of Health and Human Services, is authorized pursuant to (1) the Community Planning and Development section of the 1997 HUD Appropriations Act entitled, "An Act Making Appropriations for the Departments of Veteran Affairs and Housing and Urban Development, and for sundry independent agencies; boards, commissions, corporations, and offices for the fiscal year ending September 30, 1997, and for other purposes", (Pub.L. 104–204, approved September 26, 1996), which provides grants to housing authorities to enable them to establish programs that increase resident self-sufficiency; and (2) the Community Initiative Program is authorized by Sections 681(a) and 681(b)(1) of the Community Services Block Grant Act (42 U.S.C. 9910(a) and (b)(1), as amended.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of those awards as follows:

Community Partnerships for Resident Uplift and Economic Development

New York City Housing Authority (with the South Brooklyn Local Development Corporation), 250 Broadway, New York, NY 10007, (212) 306–3000. Grant amount (HUD) $687,665 (HHS) $496,212.

Tampa Housing Authority (with Tampa-Hillsborough Community Development Corporation), 1514 Union Street, Tampa, FL 33607, (813) 253–0551. Grant amount (HUD) $250,000 (HHS) $350,000.

Housing Authority of the City of Charlotte (with the Reid Park Community Development Corporation), P.O.Box 36795, Charlotte, NC 28236, (704) 336–5183. Grant amount (HUD) $382,185 (HHS) $217,815.

Housing Authority of Kansas City (with the Community Development Corporation of Kansas City), 712 Broadway, Kansas City, MO 64105, (816) 842–2440. Grant amount (HUD) $300,000 (HHS) $300,000.

Housing Authority of the City of Oakland (with East Bay Local Development Corporation), 1619 Harrison Street, Oakland, CA 94612, (510) 874–1500. Grant amount (HUD) $580,150 (HHS) $205,839.

San Diego Housing Commission (with City Heights Community Development Corporation), 1625 Newton Avenue, San Diego, CA 92113–1038, (619) 685–1096. Grant amount (HUD) $300,000 (HHS) $150,000.

Dated: February 17, 1998.

Kevin E. Marchman,
Assistant Secretary for Public and Indian Housing.

[FR Doc. 98–4454 Filed 2–20–98; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4287–N–02]

Statutorily Mandated Designation of Difficult Development Areas for Section 42 of the Internal Revenue Code of 1986; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of correction.

SUMMARY: On October 21, 1997, HUD published a notice of statutorily mandated designations of "Difficult Development Areas" for purposes of the Low-Income Housing Tax Credit under section 42 of the Internal Revenue Code of 1986. The notice described the methodology used by HUD to make the designations. The purpose of this notice is to advise the public that the table accompanying this notice contained an error in the listing of certain counties.

FOR FURTHER INFORMATION CONTACT: With questions on how areas are designated and on geographic definitions, Kurt G. Usowski, Economist, Division of Economic Development and Public Finance, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202)

708–0426, e-mail Kurt_G._Usowski@hud.gov. With specific legal questions pertaining to section 42 and this notice, Chris Wilson, Attorney, Office of the Chief Counsel, Pass Throughs and Special Industries Branch 5, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20244, telephone (202) 622–3040, fax (202) 622–4779; or Harold J. Gross, Senior Tax Attorney, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3260, e-mail H._JERRY_GROSS@hud.gov. A telecommunications device for deaf persons (TTY) is available at (202) 708–9300. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUDUSER at (800) 245–2691 for a small fee to cover duplication and mailing costs.

COPIES AVAILABLE ELECTRONICALLY: Copies of the original notice with corrected tables are available electronically on the Internet (World Wide Web) at http://www.huduser.org/ under the heading "Data Available from HUDUser."

SUPPLEMENTARY INFORMATION:

Correction

On October 21, 1997 (62 FR 54732), HUD published a notice that provides revised designations of "Difficult Development Areas" for purposes of the Low-Income Housing Tax Credit under section 42 of the Internal Revenue Code of 1986, and describes the methodology used by the United States Department of Housing and Urban Development. The notice advised that the new Difficult Development Areas are based on FY 1997 Fair Market Rents, FY 1997 income limits and 1990 census population counts. The notice also advised that the corrected designations of "Qualified Census Tracts" under section 42 of the Internal Revenue Code published May 1, 1995 (60 FR 21246) remain in effect.

The purpose of this notice is to correct an error that appeared in the table accompanying the October 21, 1997 publication. The table listing 1998 Internal Revenue Code Section 423(d)(5)(C) Nonmetropolitan Difficult Development Areas inadvertently named Bradford, Calhoun, and Citrus counties as 1998 Nonmetropolitan Difficult Development Areas in the State of Delaware. Bradford, Calhoun, and Citrus counties should have been listed as 1998 Nonmetropolitan Difficult Development Areas in the State of Florida. Through this notice, the public is therefore advised of the error in the October 21, 1997 publication and provided with the correct information.

Dated: February 17, 1998.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 98–4456 Filed 2–20–98; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

RIN 2550–ZA00

Privacy Act of 1974: Publication of Notice of Systems of Records

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Publication of notice of systems of records.

SUMMARY: This notice publishes and seeks comments on the notice of systems of records maintained by the Office of Federal Housing Enterprise Oversight as required by the Privacy Act of 1974. It also sets forth the routine uses of records within systems of records and will permit individuals to identify those systems in which records about them may be located.

DATES: This notice shall become effective without further notice on April 6, 1998. Any interested party may submit written comments about this notice. Comments must be received on or before March 25, 1998.

ADDRESSES: Send written comments to Anne E. Dewey, General Counsel, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. Copies of all comments received will be available for examination by interested parties at the Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Deputy General Counsel, or Isabella W. Sammons, Associate General Counsel, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552, telephone (202) 414–3800 (not a toll-free number). The toll-free telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a), is a Federal law that requires Federal agencies to limit the manner in which they collect, use, and disclose information about individuals who are citizens of the United States or resident aliens. The Privacy Act provides that, upon request, an individual has the right to access any record maintained on her/him in an agency's system of records.

The Privacy Act prohibits agencies from disclosing any record that is contained in a system of records to any person or another agency (third parties), except pursuant to a written request by or the prior written consent of the individual to whom the records pertain. However, the Privacy Act authorizes the disclosure of individual records to certain third parties and under certain circumstances. 5 U.S.C. 552a(b). Such authorized disclosures include disclosure to those officers and employees of the agency that maintains the record who have a need for the record in the performance of their duties; to the Bureau of the Census for carrying out a census; and to the Comptroller General.

Another authorized disclosure to third parties is disclosure for a routine use. 5 U.S.C. 552a(b)(3). The term "routine use" is defined by the Privacy Act to mean, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected. 5 U.S.C. 552a(a)(7). In other words, routine use is the authorized disclosure of the record to third parties that is compatible with the purpose for which the information contained in the record was collected, in addition to those expressly specified in the Privacy Act.

The Privacy Act requires each agency to publish in the **Federal Register** the existence of each system of records it maintains so that individuals may be able to find more easily those systems where records about them may be located. In addition, the Privacy Act requires that the publication include the routine uses of the records contained in each system, *i.e.*, the third parties to whom they may be disclosed, in addition to those expressly specified by the Privacy Act. In compliance with that requirement, the Office of Federal Housing Enterprise Oversight (OFHEO) is publishing this notice of systems of records.

This notice of systems of records, as required by 5 U.S.C. 552a(r), has been submitted to the Committee on Governmental Affairs of the U.S. Senate, the Committee on Government Reform and Oversight of the U.S. House of Representatives, and the Office of Management and Budget.

With this publication, OFHEO is also publishing for comment an interim regulation elsewhere in this issue of the **Federal Register**. The interim regulation sets forth the procedures for requesting access to and amendment of records.

Comments on this notice of systems of records are requested and will be considered in determining whether the notice will become effective without further notice on April 6, 1998.

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Prefatory Statement of General Routine Uses

The following general routine uses apply to and are incorporated by reference into each system of records set forth below, except if otherwise noted or if obviously not appropriate.

1. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or other Federal agency conducting litigation when—

(a) Any of the following is a party to the litigation or has an interest in such litigation:

(i) The Office of Federal Housing Enterprise Oversight (OFHEO);

(ii) Any employee of OFHEO, in his/her official capacity;

(iii) Any employee of OFHEO, or any agency thereof, in his/her individual capacity where the Department of Justice has agreed to represent the employee;

(iv) The United States or any agency thereof where OFHEO determines that the proceeding is likely to affect the United States; and

(b) OFHEO determines that use of such records is relevant and necessary in the proceeding.

3. In the event that a system of records maintained by OFHEO indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

4. A record from this system of records may be disclosed to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, if necessary to obtain information relevant to the decision concerning the hiring or retention of an employee or the letting of a contract.

5. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

6. The information contained in this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in Office of Management and Budget Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

7. A record from this system of records may be disclosed to an authorized appeal grievance examiner; a formal complaints examiner; an equal employment opportunity investigator; or an arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the Office of Personnel Management in connection with the evaluation and oversight of Federal personnel management.

8. A record from this system of records may be disclosed to authorized employees of a Federal agency for purposes of audit.

9. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

10. A record in this system of records may be disclosed to the Department of Justice to determine whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

11. A record in this system of records may be disclosed when the information is subject to exemption under the Freedom of Information Act, but OFHEO, in its discretion, determines not to assert the exemption.

12. A record from this system of records may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements and to those State and local taxing authorities for which the employee is subject to tax whether or not tax is withheld.

OFHEO–01

SYSTEM NAME:

Financial Management System.

SYSTEM LOCATION:

Office of Finance and Administration, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former OFHEO employees and individuals who are providing or have provided goods or services to OFHEO under contractual agreements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relate to employee claims for reimbursement of official travel expenses, including travel authorizations and advances, and vouchers showing amounts claimed, exceptions taken as a result of audit, advance balances applied, and amounts paid. Other records maintained on employees, where applicable, include records relating to claims for reimbursement for relocation expenses, including authorizations and advances, and vouchers showing amounts claimed and amounts paid; records pertaining to reimbursement for educational expenses and other miscellaneous reimbursement for small purchases made for official business; records including the account number of the employee's Government American Express travel cards; records including the financial institution code and employee account number for direct

deposit; and records relating to funds owed to OFHEO. Records on individuals who are not employees of OFHEO include information relating to the purchase of and payments made for goods or services from individuals, including the financial institution code and account number for direct deposit of payments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701–5709; 12 U.S.C. 4513(b)(9); 31 U.S.C. 3512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the Prefatory Statement of General Routine Uses. Another routine use is transmittal of data contained in the records to the U.S. Treasury to effect issuance of nonsalary payments to employees and payments to vendors and contractors;

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in a computerized system and in paper files that are stored in file folders in locked file drawers.

RETRIEVABILITY:

Computerized records are retrieved by the individual's name or by taxpayer identification number if the individual is a vendor or contractor. File folders are indexed by year and by a unique order number.

SAFEGUARDS:

Access to the system is safeguarded by password and user identification number that provides specific levels of access or by locked file drawers and is restricted to employees who have a need to access the system in the performance of their duties.

RETENTION AND DISPOSAL:

Retention is determined by the General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Financial Management Officer, Office of Finance and Administration, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

NOTIFICATION PROCEDURE:

Contact the Privacy Act Officer, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

RECORD ACCESS PROCEDURE:

The OFHEO regulation for providing access to records appears at 12 CFR part 1720. If additional information or assistance is required, contact the Privacy Act Officer at OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

CONTESTING RECORD PROCEDURES:

The procedures for contesting initial denials for access to or amendment of records appears at 12 CFR part 1720. If additional information or assistance is required, contact the Privacy Act Appeals Officer at OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

RECORD SOURCE CATEGORIES:

The information is obtained from the individual on whom the record is maintained, other Federal agencies, financial institutions, and courts.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OFHEO–02

SYSTEM NAME:

Pay and Leave System.

SYSTEM LOCATION:

Office of Finance and Administration, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former OFHEO employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include the following information on each OFHEO employee: Name; organizational unit; leave status and associated leave data (such as annual, compensatory, jury duty, family, military, sick, donated, and leave without pay); and time and attendance records (including pay period number, leave accrual category, balances and applications, number of hours worked, time reports, adjustments to time and attendance, overtime and compensatory time justifications, and supporting data such as medical certificates).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 4513(b)(9).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the Prefatory Statement of General Routine Uses. Other routine uses are transmittal of data contained in the records to—

- The U.S. Treasury to effect issuance of salary payments through electronic funds transfer;
- The Internal Revenue Service, Social Security Administration, the individual, and taxing authorities of the States, the District of Columbia, territories, possessions, and local governments;
- The Office of Personnel Management concerning pay, benefits, retirement deductions, and other information necessary to carry on its governmentwide personnel functions, and to other Federal agencies to facilitate employee transfers;
- The Department of Labor to process workers' compensation injury claims;
- Other Federal agencies for the purpose of collecting debts owed to the Federal Government by administrative or salary offset;
- The Federal Retirement Thrift Investment Board to administer the Thrift Savings Plan;
- The National Finance Center of the Department of Agriculture for payroll/personnel action, receipt amount, time and attendance, and administrative overpayment processing;
- Department of Veterans Affairs regarding the final accounting for employee pay and benefits;
- Federal, State, and local agencies to assist in the enforcement of child and spousal support obligations; and
- State governments, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands to assist in processing unemployment claims under the Unemployment Compensation for Federal Employees Program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in a computerized system and in paper files that are stored in file folders in locked file drawers.

RETRIEVABILITY:

Computerized records are retrieved by the individual's name. File folders are indexed by year and pay period number.

SAFEGUARDS:

Access to the system is safeguarded by password or by locked file drawers and is restricted to employees who have a need to access the system in the performance of their duties.

RETENTION AND DISPOSAL:

Retention is determined by the General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Human Resources Officer, Office of Finance and Administration, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

NOTIFICATION PROCEDURE:

Contact the Privacy Act Officer, OFHEO, 1700 G Street, W., Fourth Floor, Washington, DC 20552.

RECORD ACCESS PROCEDURE:

The OFHEO regulation for providing access to records appears at 12 CFR part 1720. If additional information or assistance is required, contact the Privacy Act Officer at OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

CONTESTING RECORD PROCEDURES:

The procedures for contesting initial denials for access to or amendment of records appears at 12 CFR part 1720. If additional information or assistance is required, contact the Privacy Act Appeals Officer at OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

RECORD SOURCE CATEGORIES:

The information is obtained from the subject individual, supervisor, timekeeper, official personnel records, previous employers, other Federal agencies, National Finance Center, financial institutions, and courts. Where an employee is subject to a tax lien, a bankruptcy, or an attachment or a wage garnishment, information also is obtained from the appropriate taxing or judicial entity.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OFHEO–03

SYSTEM NAME:

Employee Identification Card System.

SYSTEM LOCATION:

Office of Finance and Administration, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current OFHEO employees and contractor personnel who have been assigned an identification card.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include the individual's name, date of birth, social security number, photograph, identification card expiration date, and organization and status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 4513(b)(9).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in a computerized system.

RETRIEVABILITY:

Records are retrieved by the individual's name.

SAFEGUARDS:

Access to the system is safeguarded by password and is restricted to employees who have a need to access the system in the performance of their duties.

RETENTION AND DISPOSAL:

Retention is determined by the General Records Schedules. Records of employees and contractors are deleted from the system upon termination of employment or contract.

SYSTEM MANAGER(S) AND ADDRESS:

Human Resources Officer, Office of Finance and Administration, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

NOTIFICATION PROCEDURE:

Contact the Privacy Act Officer, OFHEO, 1700 G Street, W., Fourth Floor, Washington, DC 20552.

RECORD ACCESS PROCEDURE:

The OFHEO regulation for providing access to records appears at 12 CFR part 1720. If additional information or assistance is required, contact the Privacy Act Officer at OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

CONTESTING RECORD PROCEDURES:

The procedures for contesting initial denials for access to or amendment of records appears at 12 CFR part 1720. If additional information or assistance is required, contact the Privacy Act Appeals Officer at OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

RECORD SOURCE CATEGORIES:

The information is obtained from the individuals on whom the information is maintained and from the OFHEO Human Resources staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OFHEO–04

SYSTEM NAME:

Property Inventory System.

SYSTEM LOCATION:

Office of Finance and Administration, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former OFHEO employees who have had property items assigned to them.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include the employee name, OFHEO organizational unit, office telephone number, pager number, room number, description of property item, and copies of signed custody receipts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 4513(b)(9); 40 U.S.C. 47, *et seq.*.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in a computerized system and in paper files that are stored in file folders in locked file drawers.

RETRIEVABILITY:

Computerized records are retrieved by the individual's name. File folders are indexed by property item.

SAFEGUARDS:

Access to the system is safeguarded by password or by locked file drawers and is restricted to employees who have a need to access the system in the performance of their duties.

RETENTION AND DISPOSAL:

Retention is determined by the General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Contracting/Facilities Management Specialist, Office of Finance and Administration, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

NOTIFICATION PROCEDURE:

Contact the Privacy Act Officer, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

RECORD ACCESS PROCEDURE:

The OFHEO regulation for providing access to records appears at 12 CFR part 1720. If additional information or assistance is required, contact the Privacy Act Officer at OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

CONTESTING RECORD PROCEDURES:

The procedures for contesting initial denials for access to or amendment of records appears at 12 CFR part 1720. If additional information or assistance is required, contact the Privacy Act Appeals Officer at OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

RECORD SOURCE CATEGORIES:

Information is obtained from the OFHEO Contracting/Facilities Management Specialist, Office of Finance and Administration, and from subject individuals to whom property items are assigned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OFHEO–05

SYSTEM NAME:

Senior Staff Biography System.

SYSTEM LOCATION:

Office of Public Affairs, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Senior-level OFHEO employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include the employee's name and a description of the employee's education, experience, and professional accomplishments and affiliations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 4513(b)(9).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used for distribution to the media and to groups which request OFHEO staff as speakers or panel participants. The general routine uses set forth in the Prefatory Statement, above, are not applicable to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in a computerized system.

RETRIEVABILITY:

Records are retrieved by the individual's name.

SAFEGUARDS:

Access to the system is safeguarded by password.

RETENTION AND DISPOSAL:

Records of employees are deleted from the system upon termination of employment.

SYSTEM MANAGER(S) AND ADDRESS:

Public Affairs Specialist, Office of Public Affairs, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

NOTIFICATION PROCEDURE:

Contact the Privacy Act Officer, OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

RECORD ACCESS PROCEDURE:

The OFHEO regulation for providing access to records appears at 12 CFR part 1720. If additional information or assistance is required, contact the Privacy Act Officer at OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

CONTESTING RECORD PROCEDURES:

The procedures for contesting initial denials for access to or amendment of records appears at 12 CFR part 1720. If additional information or assistance is required, contact the Privacy Act Appeals Officer at OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

RECORD SOURCE CATEGORIES:

The information is obtained from the individual on whom the record is maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: February 12, 1998.

Mark A. Kinsey,

Acting Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 98–4453 Filed 2–20–98; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: United States Geological Survey, Interior.

ACTION: To enter into a CRADA with a consortium.

SUMMARY: Notice is hereby given that the U.S. Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with a consortium of U.S. industries and academic institutions. The purpose of this CRADA is to develop a comprehensive quantitative mineral resource assessment for countries within the Latin American Region (Caribbean, Central and South America).

ADDRESS: If any other parties are interested in making contributions for the same or similar purposes, please contact Ms. Jean N. Weaver, U.S. Geological Survey, National Center, MS 913, Reston, Virginia 20192, telephone (703) 648–6012; e-mail jweaverusgs.gov.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: February 9, 1998.

P. Patrick Leahy,

Chief Geologic Division.

[FR Doc. 98–4419 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–016–98–1320–01]

Availability of Coal Data

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of data from three holes drilled in Northwest Colorado in 1985.

SUMMARY: The Bureau of Land Management (BLM), Little Snake Resource Area, Craig, Colorado, hereby gives notice that data from three (3) holes drilled in Moffat County, Colorado, is made available to the public.

ADDRESS: Bureau of Land Management, Little Snake Resource Area, 455 Emerson Street, Craig, CO 81625–1129.

FOR FURTHER INFORMATION CONTACT: Janet Hook at (970) 826–5079 or (970) 826–5000.

SUPPLEMENTARY INFORMATION: Three holes were drilled in 1985 by BLM in the Horse Gulch 7½ minute quadrangle. The purpose of the drill holes was to characterize the coal resources of the Late Cretaceous Williams Fork Formation. All three drill holes are located within Moffat County, Colorado. The names and locations are as follows:

HG–5–85 T.6N., R.93W., section 17: NE¼SW¼.
HG–5–85C T.6N., R.93W., section 17: SW¼NE¼.
HG–6–85 T.6N., R.93W., section 8: SW¼NW¼.

Available data includes geophysical logs, lithologic logs, core logs and photographs, and coal quality data.

Dated: February 10, 1998.

Robert W. Schneider,

Associate District Manager.

[FR Doc. 98–4389 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–GB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-933-98-1320-01; COC 60941]

Notice of Coal Lease Offering By Sealed Bid; COC 60941

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that certain coal resources in the lands hereinafter described in La Plata County, Colorado, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.).

DATES: The lease sale will be held at 11 a.m., Monday, March 30, 1998. Sealed bids must be submitted no later than 10 a.m., Monday, March 30, 1998.

ADDRESSES: The lease sale will be held in the Conference Room, Fourth Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted to the Cashier, First Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Karen Purvis at (303) 239–3795.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder submitting the highest offer, provided that the high bid meets the fair market value determination of the coal resource. The minimum bid for this tract is $100 per acre or fraction thereof. No bid less than $100 per acre or fraction thereof will be considered. The minimum bid is not intended to represent fair market value.

Sealed bids received after the time specified above will not be considered.

In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

Fair market value will be determined by the authorized officer after the sale.

Coal Offered: The coal resource to be offered is limited to coal recoverable by underground mining methods on the Upper Menefee seam on the 7 South Mains Tract in the following lands:

T. 34 N., R. 11 W., N.M.P.M.
sec. 6, lots 1 to 5, inclusive, NE¼SW¼, and NW¼SE¼;.
containing 194.79 acres.

The recoverable reserves have been adjusted from 646,000 tons down to 624,100 tons to account for coal purchased within a mineral right-of-way by National King Coal, LLC. The underground minable coal is ranked as high volatile B bituminous coal. The estimated coal quality for the Upper Menefee seam on an as-received bases is as follows:

Btu—12,300 Btu/lb.
Moisture—5.60%
Sulfur Content—0.67%
Ash Content—10.64%

Rental and Royalty

The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre or fraction thereof and a royalty payable to the United States of 8 percent of the value of coal mined by underground methods. The value of the coal will be determined in accordance with 30 CFR 206.

Notice of Availability

Bidding instruction for the offered tract are included in the Detailed Statement of Coal Lease Sale. Copies of the statement and the proposed coal lease are available upon request in person or by mail from the Colorado State Office at the address given above. The case file is available for inspection in the Public Room, Colorado State Office, during normal business hours at the address given above.

Dated: February 13, 1998.

Karen Purvis,

Solid Minerals Team Resource Services.

[FR Doc. 98–4422 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–08–1320–01; MTM 80697]

Notice of Hearing

SUMMARY: Notice is hereby given that a public hearing will be held at 10:00 a.m., Friday, April 3, 1998, in the conference room on the Sixth Floor of the Granite Tower Building, Bureau of Land Management, 222 North 32nd Street, Billings, Montana 59107.

Western Energy Company has requested the Bureau of Land Management to reschedule a coal lease sale for Coal Lease Application MTM 80697. The Bureau of Land Management requests additional public comments on the fair market value and maximum economic recovery of certain coal resources it proposes to re-offer for a competitive lease sale. A Decision Record was signed on May 16, 1995, which allows for coal leasing.

The land included in Coal Lease Application MTM 80697 is located in Rosebud County, Montana, and is described as follows:

T. 1 N., R. 39 E., P.M.M.
Sec. 2: S½NW¼, N½NE¼SE¼
T. 1 N., R. 40 E., P.M.M.
Sec. 6: Lots 1, 2, 3, 4, S½N½, S½
Sec. 8: E½, N½NW¼
Sec. 14: S½SW¼, SE¼
T. 2 N., R. 40 E., P.M.M
Sec. 32: All 2,061 acres

FOR FURTHER INFORMATION CONTACT: Ed Hughes (telephone 406–255–2830), Bureau of Land Management, Montana State Office, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Randy D. Heuscher,

Chief, Branch of Solid Minerals.

Dated: February 17, 1998.

[FR Doc. 98–4465 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–01; WYW 134662]

Public Land Order No. 7312; Withdrawal of Public Land for the Protection of Arabis Pusilla Plant Habitat; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 1,020 acres of public land from surface entry and mining for a period of 50 years to protect *Arabis pusilla* (small rockcress) plant habitat. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, for the Bureau of Land Management to protect *Arabis pusilla* plant habitat:

Sixth Principal Meridian

T. 29 N., R. 101 W.,
Sec. 26, S½NW¼ and S½;
Sec. 27, E½SW¼NE¼, SE¼NE¼, E½W½SE¼, and E½SE¼;
Sec. 35, N½, N½N½SW¼, and N½SE¼.

The area described contains 1,020 acres in Fremont County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: February 4, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–4396 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–015–1430–01: GP–8–0103]

Realty Action

AGENCY: Bureau of Land Management, Lakeview District.

ACTION: Direct sale of public land in Lake County, Oregon (OR 53809).

The following parcel of public land is suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at no less than the appraised fair market value. The land will not be offered for sale for at least 60 days following the publication of this notice in the **Federal Register**.

Legal description	Acreage	Sale price	Deposit
Parcel Serial No., OR 53809 T.27S., R.17E., W.M., Oregon Sec. 14: N1/2SW1/4.	80	$12,000.00	$2,400.00

The above described parcel of land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute for 270 days from the date of publication or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The land is not considered essential to the public land management base and is unsuitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with Bureau planning for the land involved and will serve important public objectives.

The sale parcel will be offered under direct sale procedures to the North Lake Family Progress Team. Direct sale procedures are considered appropriate, in this case, as the offered public land is necessary to accommodate the development of a community park for Christmas Valley, Oregon. Direct sale procedures are authorized under 43 CFR 2711.3–3. The land will be offered for direct sale at 10:00 am PST, on May 18, 1998 and will be by written bid only. A written bid must be submitted to the BLM, Lakeview District Office at P.O. Box 151, 1000 South Ninth Street, Lakeview, Oregon 97630, no later than 4:30 pm PST, May 15, 1998, and must be for not less than the appraised sale price indicated. The written bid must be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to the Department of the Interior-BLM for not less than the bid deposit specified in this notice.

The total purchase price for the land shall be paid within 180 days of the date of sale or the bid deposit will be forfeited and the parcel withdrawn from further sale consideration.

The terms, conditions and reservations applicable to the sale are as follows:

(1) Patent to the sale parcel will contain a reservation to the United States for ditches and canals.

(2) The sale parcel will be subject to all valid existing rights of record at the time of patent issuance.

(3) The mineral interests being offered for conveyance with sale parcel OR 53809 have no known value. A deposit or bid to purchase the parcel will also constitute an application for conveyance of the mineral estate with the following reservations;

(a) Oil and gas and geothermal resources will be reserved to the United States.

The above mineral reservations are being made in accordance with Section 209 of the Federal Land Policy and Management Act of 1976.

The North Lake Family Progress Team must include with their final payment a non-refundable $50.00 filing fee for conveyance of the mineral estate.

Federal law requires that the bidder must be a U.S. citizen, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

Detailed information concerning the sale, including the reservations, sale procedures, terms and conditions, planning and environmental documentation, is available at the Lakeview District Office, P.O. Box 151, 1000 South Ninth Street, Lakeview, Oregon 97630.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Lakeview Resource Area Manager, Bureau of Land Management, at the above address. Objections will be reviewed by the Lakeview District Manager who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: February 6, 1998.

Scott R. Florence,

Manager, Lakeview Resource Area.

[FR Doc. 98–4417 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-020-04-1430-01: G-0075]

Realty Action: Partial Cancellation of Sale of Public Land in Harney County, OR

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Partial cancellation of notice of realty action, sale of public land.

SUMMARY: The Notice of Realty Action—Sale of Public Land in Harney County, Oregon, published in the **Federal Register**, Volume 62, No. 217, on November 10, 1997 on pages 60527–60529 is hereby canceled as it relates to the sale of the following parcel only:

OR–52784–W.M., T.25S., R.30E.,
Sec. 33, NE¼NE¼.

On December 22, 1997, in response to the Notice of Realty Action, a protest was filed concerning the sale of Parcel No. OR–52783. The parcel is being withdrawn from sale pending review of the merits of the protest. Upon resolution of the protest the parcel may be included in future offerings. All other provisions of the Notice of Realty Action remain in effect.

ADDRESSES: Comments should be submitted to the Burns District Manager, HC 74–12533, Hwy 20 West, Hines, Oregon 97738.

FOR FURTHER INFORMATION CONTACT: Craig M. Hansen, Area Meeting or Skip Renchler, Realty Specialist, Three Rivers Resources Area at the above address, phone (541) 573–4400.

Dated: January 6, 1998.

Michael T. Green,

District Manager.

[FR Doc. 98–4418 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–950–5700–77; AZA 30355]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona; Correction

AGENCY: Bureau of Land Management.

ACTION: Correction.

SUMMARY: The Bureau of Land Management published a document in the **Federal Register** of December 3, 1997, concerning a proposed Bureau of Reclamation withdrawal. The legal descriptions did not reflect current survey information. This notice corrects those descriptions.

FOR FURTHER INFORMATION CONTACT: Larry Koontz, BOR Phoenix Area Office, 602–395–5672.

In the **Federal Register** issue of December 3, 1997, Vol. 62, No. 232, page 63957, second and third columns, make the following corrections:

T. 4 N., R. 11 E.,
Sec. 2, change W½NW¼ to lot 4 and SW¼NW¼;
Sec. 3, change NE¼ to lots 1 and 2, and S½NE¼.
T. 5 N., R. 11 E.,
Sec. 5, delete NW¼NW¼;
Sec. 6, change NW¼ to lots 3, 4, and 5, and SE¼NW¼, delete S½NW¼NE¼.
T. 6 N., R. 11 E.,
Sec. 31, change S½NW¼SW¼ to lot 9, and change SW¼SW¼ to lot 4.
T. 4 N., R. 12 E.,
Sec. 3, add lots 1 to 4 inclusive, S½N½, and S½;
Sec. 5, change E½NE¼ to lot 1 and SE¼NE¼.
T. 3 N., R. 13 E.,
Sec. 11, add "excluding private lands within Roosevelt Lake Estates."
T. 4 N., R. 13 E.,
Sec. 31, change NW¼ to lots 1 and 2, and E½NW¼.
T. 3 N., R. 14 E.,
Sec. 5, change N½NE¼ and NW¼NW¼ to lots 1, 2, and 4;
Sec. 6, change E½NE¼ to lot 1 and SE¼NE¼.
T. 4 N., R. 14 E.,
Sec. 30, change NW¼SW¼ to lot 3;
Sec. 31, change NW¼NE¼ to SW¼NE¼.

In column 3, line 54, change the area described from 9,880 acres to approximately 9,820 acres.

Dated: February 11, 1998.

Alvin L. Burch,

Acting Deputy State Director, Resources Division.

[FR Doc. 98–4388 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–01; COC–61332]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw approximately 2,737 acres of public land for 50 years to protect the Rough Canyon Area of Critical Environmental Concern. This notice closes this land to operation of the public land laws including location and entry under the mining laws for up to two years. The land has been and remains open to mineral leasing.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before May 26, 1998.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On February 4, 1998, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian

T. 12 S., R. 100 W., Protraction Diagram No. 13, Accepted January 22, 1965,
Sec. 29, that portion of the S½SW¼ lying southerly of Bureau of Land Management Road No. 7150, from the west boundary of section 29 easterly to the westerly side of the crossing of the streambed of Rough Canyon, thence continuing easterly along a line parallel to and 10 feet northerly of the mean high water line of the Rough Canyon watercourse to an intersection with the east boundary of the S½SW¼ of section 29;
Sec. 30, the portion lying southerly and westerly of a line parallel to and 200 feet southerly of the centerline of Bureau of Land Management Road No. 7150, from the east boundary of the section to a point 1500 feet east of the west boundary of said section 30, thence north along a line parallel to the west boundary of said section to the intersection with the north boundary thereof, thence westerly along said northern boundary of the northwest corner of section 30;
Sec. 31, All;
Sec. 32, W½.
T. 12 S., R, 101 W.,
Sec. 25: lots 2 thru 4, inclusive, SE¼NW¼ and SW¼;
Sec. 26: N½SE¼;
Sec. 35: lot 14;
Sec. 36: Lots 1 thru 6, inclusive, NW¼ and N½SW¼.
T. 13 S., R. 100 W. Protraction Diagram No. 13, accepted January 22, 1965,
Sec. Sec. 5, NW¼;
Sec. 6, N½NE¼ and SE¼NE¼.

The area described contains approximately 2,737 acres in Mesa County.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed action, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer

determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the **Federal Register**, this land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Bureau of Land Management will continue to manage this land.

Herbert Olsen,

Acting Realty Officer.

[FR Doc. 98–4420 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Preparation of an Environmental Assessment on Exploration, Development, and Production Operations and Activities in the Deepwater Gulf of Mexico OCS

AGENCY: Minerals Management Service.

ACTION: Preparation of an environmental assessment (EA).

SUMMARY: The Minerals Management Service (MMS) is beginning preparation of an environmental assessment document on oil and gas operations and activities in the deepwater areas of the Gulf of Mexico. The National Environmental Policy Act (NEPA) regulations recommend that agencies prepare an EA on any action at any time in order to assist agency planning and decisionmaking. The objectives of this EA are to identify and evaluate the significance of potential impacts from exploration, development, and production operations in the deepwater areas (generally beyond 1,000 feet water depth) of the Gulf of Mexico outer continental shelf (OCS) and from associated support activities and infrastructure.

There has been a recent upsurge of exploration and development in the deepwater areas of the Gulf of Mexico because of the development of new deepwater drilling and development technologies, the development of new geophysical surveying technologies, the announcement of several deepwater discoveries, favorable economics, the passage of the Deep Water Royalty Relief Act, and the opportunity to lease blocks from recently terminated leases. Many impacting factors associated with deepwater activities are identical or similar to those associated with conventional operations and activities on the continental shelf, which are evaluated in other MMS NEPA documents. Some deepwater operations may be significantly different from conventional operations in shallower waters of the shelf. For example, deepwater operations are farther from shore, encounter different environmental conditions, are technologically more sophisticated, may produce at much higher rates, and are subject to different economic determinants. These differences will present many technical and regulatory challenges. New and evolving technologies, larger and more complex facilities, modifications of procedures, and additional environmental protection issues are all anticipated for deepwater activities. Therefore, the EA will be used to determine the significance of impacts associated with deepwater operations. The EA will also be used to identify and eliminate from further detailed analysis those issues that are not deemed significant. If significant impacts are identified, they will be analyzed in future EIS's prepared for specific proposals that could cause these impacts. Appropriate measures to mitigate potential impacts will be developed and evaluated based on the analysis of the potential impacts of deepwater operations on the marine, coastal, and human environments.

The EA is scheduled for completion in July 1998.

FOR FURTHER INFORMATION: Questions regarding the EA should be directed to Deborah Cranswick, Environmental Assessment Section, (504) 736–2744. Questions regarding deepwater operations should be directed to Jim Regg, Field Operations, (504) 736–2843. The mailing address is Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana, 70123–2394.

Dated: February 9, 1998.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 98–4394 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Beaufort Sea

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) for Proposed Offshore Oil and Gas Development and Production of the Liberty Project in the Alaskan Beaufort Sea.

SUMMARY: The Minerals Management Service (MMS) is evaluating, through an EIS, approval of a Development and Production Plan (DPP) submitted by BP Exploration (Alaska) Inc. for activities to develop an offshore oil and gas discovery in Federal waters of the Beaufort Sea northeast of the Prudhoe Bay oilfields.

FOR FURTHER INFORMATION CONTACT: Mr. Fred King, Leasing Activities Section, Minerals Management Service, Alaska OCS Region, 949 E. 36th Avenue, Room 308, Anchorage, Alaska 99508–4302; telephone (907) 271–6696.

SUPPLEMENTARY INFORMATION:

1. Authority

This Notice is published pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as amended, and the regulations issued thereunder (40 CFR Part 1501).

2. Purpose of Notice of Intent

The MMS is announcing its intent to prepare an EIS on the proposed DPP for the Liberty Project in the Alaskan Beaufort Sea. This announcement initiates the scoping process for this EIS.

The BP Exploration (Alaska) Inc. proposes to develop the Liberty oilfield from a man-made gravel island constructed on the Federal Outer Continental Shelf in Foggy Island Bay in approximately 22 feet of water inside the Barrier Islands. The Liberty project, which is located approximately 5 miles offshore the coast, is about midway between Point Brower to the west and Tigvariak Island to the east. The proposed island would be located in Federal waters between McClure Islands and the coast. The overall project includes a gravel island, stand-alone processing facilities on the island, associated infrastructure, subsea buried oil and utility pipelines (approximately 6.1 miles long), and an above-ground onshore pipeline (approximately 1.5 miles long) south to tie-in with the Badami pipeline system, an onshore gravel mine site, and ice roads. The BP Exploration proposes a construction start-up in December 1999, and that will conclude in December 2000. Initial development drilling will begin in October 2000 and conclude in April 2002. Production operations are expected to begin December 2000, and continue for an estimated 15-year field life.

The Liberty DPP will require approval by MMS, the lead permitting agency with jurisdiction over the development project, including construction, drilling,

and operations. Other Federal, State, and local agencies such as the U.S. Army Corps of Engineers (Corps), the U.S. Environmental Protection Agency (EPA), the National Marine Fisheries Service (NMFS), the Fish and Wildlife Service (FWS), the State of Alaska (State) agencies, and the North Slope Borough (NSB) also have permit and other approval or authorization responsibilities over selected aspects of the project.

No development or production activities can be conducted until MMS has approved the DPP and the DPP has received coastal zone consistency concurrence from the State.

3. Alternatives

Alternatives considered in the EIS will include the action as proposed by BP Exploration (Alaska) Inc. as described in their DPP and a no action alternative. Other possible alternatives that may be considered include variations of the proposed action and alternatives identified during the scoping process.

4. Public Involvement and Scoping

The MMS consulted with Federal, State, and local agencies in January 1998 on the proposed action. At this time the Corps has indicated that they will be a cooperating agency for the EIS. Possible significant issues to be addressed in the draft EIS include: oil spill risk and spill response capabilities, potential effects on bowhead whale migration and subsistence hunting of whales and other marine mammals, and the potential effects of dredging and fill operations on the area known as the Boulder Patch. The MMS is requesting comments from Federal, State, and local governments and other interested parties on the scope of the EIS, significant issues that should be addressed, and additional alternatives that should be considered. Comments should be sent to the address given above and enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the Liberty Project, Beaufort Sea." Comments are due no later than 45 days from publication of this Notice.

Public information versions of the Liberty Project DPP submitted by BP Exploration (Alaska) Inc. are available for review at the Minerals Management Service, Alaska OCS Region, Public Information Resource Center, 949 E. 36th Avenue, Room 330, Anchorage, Alaska. Copies of the DPP are also available for inspection in the following locations:

Fairbanks North Star Borough Public Library (Noel Wien Library) 1215 Cowles Street, Fairbanks, Alaska
State of Alaska, Division of Governmental Coordination, 240 Main Street, Suite 500, Juneau, Alaska
Office of the Mayor, North Slope Borough, Barrow, Alaska
Office of the Mayor, City of Nuiqsut, Nuiqsut, Alaska
Office of the Mayor, City of Kaktovik, Kaktovik, Alaska
Tuzzy Consortium Library, Barrow, Alaska
Minerals Management Service, Engineering & Operations Division, 381 Elden Street, Herndon, Virginia

5. Meeting Schedule

Scoping meetings are tentatively planned for the communities of Barrow, Nuiqsut, Kaktovik, and Anchorage in mid-to-late March 1998. A public announcement of the final decision on the dates and locations of the scoping meetings will be made at a later date.

Dated: February 17, 1998.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 98–4416 Filed 2–20–98; 8:45 am]

BILLING CODE 4310–MR–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the newly appointed Advisory Committee on Voluntary Foreign Aid (ACVFA).

DATE: March 11, 1998 (9:00 a.m. to 5:00 p.m.).

LOCATION: State Department, Loy Henderson Auditorium, 23rd Street Entrance.

This will be the first full quarterly meeting of the newly appointed Advisory Committee on Voluntary Foreign Aid (ACVFA). Plenaries and breakout sessions involving public participants will focus on two major topics: (1) civil society programs and partnerships in development, and (2) achieving and measuring development results.

The meeting is free and open to the public. HOWEVER, NOTIFICATION BY MARCH 9, 1998 THROUGH THE ADVISORY COMMITTEE HEADQUARTERS IS REQUIRED. Persons wishing to attend the meeting must fax their name, organization, birthdate and social security number for security purposes to Lisa J. Douglas (703) 741–0567 or Susan Saragi (202) 216–3039.

Dated: February 9, 1998.

Elise Storck,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA).

[FR Doc. 98–4393 Filed 2–20–98; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Immigaration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB Emergency Approval; Haitian Deferred Enforcement Departure (DED) Supplement to Form I–765.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 5 CFR 1320.13(a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this Part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefore, OMB approval has been requested by February 20, 1997. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Mr. Daniel Chenok, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Mr. Daniel Chenok at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning the extension and revision of the proposed collection of information. Comments are encouraged and will be accepted until [Insert date of the 60th day from the date that this notice is published in the **Federal Register**]. During the 60-day regular review ALL comments and suggestions, or questions

regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Approval of new information collection.

(2) *Title of the Form/Collection:* Haitian Deferred Enforced Departure (DED) Supplement to Form I–765.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–765 Supplement D. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. On December 23, 1997, the President of the United States directed the Attorney General and the INS to defer the deportation of certain Haitians for one year under the Haitian DED program. This information collection is required so that INS may determine eligibility for certain immigration benefits under the Haitian DED program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 40,000 respondents at one (1) hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40,000 annual burden hours.

If additional information is required during the first 60 days of this same regular review period contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: February 17, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Departmeht of Justice.

[FR Doc. 98–4463 Filed 2–20–98; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–022]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). Information collection is required to ensure proper use of and disposition of rights to inventions made in the course of, and data developed under NASA contracts.

DATES: All comments should be submitted by April 24, 1998.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: NASA FAR Supplement, Part 1827, Patents, Data and Copyrights.

OMB Number: 2700–0052.

Type of review: Extension.

Need and Uses: The information is used by NASA legal and contracting offices to ensure disposition of inventions in accordance with statutes and to determine the Government's rights in data.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Number of Respondents: 2,845.

Responses Per Respondent: 1.

Annual Responses: 3,557.

Hours Per Request: 8 hrs, ½ hr for negative response.

Annual Burden Hours: 10,884.

Frequency of Report: As discovered.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 98–4376 Filed 2–20–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AGENCY

[Notice 98–021]

Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received by March 25, 1998.

ADDRESSES: All comments should be addressed to Mr. Michael Battaglia, Office of Aeronautics & Space Transportation Technology, Code RW, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.

Title: AST-Technology Utilization.

OMB Number: 2700–0009.

Type of review: Reinstatement.

Need and Uses: As required in Section 305(b) of the National Aeronautics and Space Act of 1958 and the NASA Supplement to the Federal Acquisitions Regulations, NASA R&D contracts require federally funded technology to the private sector.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Number of Respondents: 300.

Responses Per Respondent: 3.

Annual Responses: 900.

Hours Per Request: 1 hr.

Annual Burden Hours: 900.

Frequency of Report: Annually.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 97–4375 Filed 2–20–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Meeting Change

SUMMARY: NASA's Contractor Open Forum meeting at Ames Research Center, originally planned for March 4, 1998, has been rescheduled to avoid a conflict with the NASA Jet Propulsion Laboratory's 10th Annual High Tech Small Business Conference, which is scheduled to occur on March 3–4, 1998. Accordingly, the Ames Contractor Open Forum has been rescheduled for April 8, 1998. The time and place of the meeting remain the same.

DATE: April 8, 1998, from 1:30 p.m. to 3:30 p.m.

ADDRESS: The meeting will be held at NASA-Ames Research Center in the Space Science Auditorium located on the 2nd floor of Building 245, North Warehouse Road, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Michael R. Basta, NASA-Ames Research Center, Mail Stop 241–1, Moffett Field, CA 94035, (650) 604–4010.

SUPPLEMENTARY INFORMATION:

Format: There will be a presentation by the Associate Administrator for Procurement, followed by a question and answer period. Procurement issues will be discussed including NASA policies used in the award and administration of contracts.

Admittance: Doors will be open at 1:00 p.m. Admittance will be on a first-come, first-served basis. Auditorium capacity is limited to approximately 90 persons; therefore, a maximum of two representatives per firm is requested. No reservations will be accepted. Questions for the open forum should be presented at the meeting and should not be submitted in advance. Position papers are not being solicited.

Deidre A. Lee,

Associate Administrator for Procurement.

[FR Doc. 98–4467 Filed 2–20–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Senior Executive Service (SES) Performance Review Board; Members

AGENCY: National Archives and Records Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the National Archives and Records Administration (NARA) Performance Review Board.

EFFECTIVE DATE: This appointment is effective on February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Steven G. Rappold, Human Resources Services Division (NHH), National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001, (301) 713–6760.

SUPPLEMENTARY INFORMATION: Section 4314(c) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review the initial appraisal of a senior executive's performance by the supervisor and recommendations regarding the recertification of senior executives, and recommend final action to the appointing authority regarding matters related to senior executive performance.

The members of the Performance Review Board for the National Archives and Records Administration are: Lewis J. Bellardo, Deputy Archivist of the United States and Chief of Staff; Gerald W. George, Director, Policy and Communications Staff; and Adrienne C. Thomas, Assistant Archivist for Administrative Services. These appointments supersede all previous appointments.

Dated: February 13, 1998.

John W. Carlin,

Archivist of the United States.

[FR Doc. 98–4380 Filed 2–20–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA has resubmitted the following new information collections to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). These information collections are published to obtain comments from the public. They were originally published on November 19, 1997. No comments were received.

DATES: Comments will be accepted until March 25, 1998.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: New collection.

Form Number: New collection.

Type of Review: New collection—survey form.

Title: Survey—Sampled Credit Unions.

Description: NCUA is considering policy changes that may allow more than one credit union to serve the same group of potential members. As part of the consideration, the agency is concerned with the potential impact on credit unions. The proposed survey will gather information to be used in the policy development process.

Respondents: Randomly sampled credit unions.

Estimated No. of Respondents/Recordkeepers: 1,137.

Estimated Burden Hours Per Response: .53 hours.

Frequency of Response: Other. Once upon request.

Estimated Total Annual Burden Hours: 600.

Estimated Total Annual Cost: N/A.

OMB Number: New collection.

Form Number: New collection.

Type of Review: New collection—survey form.

Title: Survey—Selected Overlapped Credit Unions.

Description: NCUA is considering policy changes that may allow more

than one credit union to serve the same group of potential members. As part of the consideration, the agency is concerned with the potential impact on credit unions. The proposed survey will gather information to be used in the policy development process.

Respondents: Selected credit unions with overlapped fields of membership.

Estimated No. of Respondents/ Recordkeepers: 200.

Estimated Burden Hours Per Response: .50 hours.

Frequency of Response: Other. Information disclosures required are made on an on-going basis.

Estimated Total Annual Burden Hours: 100.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on February 17, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–4461 Filed 2–20–98; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA has resubmitted the following information collections without change to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). These information collections are published to obtain comments from the public. They were originally published on October 23, 1997. No comments were received.

DATES: Comments will be accepted until March 25, 1998.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0024.

Form Number: N/A.

Type of Review: Rule—proposed collection.

Title: 12 C.F.R. Part 708b—Merger Procedures for Federally Insured Credit Unions.

Description: The rule sets forth merger procedures for federally insured credit unions.

Respondents: All credit unions.

Estimated No. of Respondents/ Recordkeepers: 200.

Estimated Burden Hours Per Response: 15 hours.

Frequency of Response: Other. Information disclosures required are made on an on-going basis.

Estimated Total Annual Burden Hours: 3,000.

Estimated Total Annual Cost: N/A.

OMB Number: 3133–035.

Form Number: N/A.

Type of Review: Rule—proposed collection.

Title: 12 CFR Part 724—Trustees and Custodians of Pension Plans

Description: This rule establishes record keeping and notice to participants requirements for credit unions acting as trustees for retirement plans.

Respondents: All credit unions.

Estimated No. of Respondents/ Recordkeepers: 3,877.

Estimated Burden Hours Per Response: 50 hours.

Frequency of Response: Other. Information disclosures required are made on an on-going basis.

Estimated Total Annual Burden Hours: 193,850.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on February 17, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–4462 Filed 2–20–98; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 1:30 p.m. Wednesday, February 25, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Requests from Three (3) Federal Credit Unions to Convert to Community Charters.

2. Request from a Federal Credit Union to Convert to a Federal Mutual Savings Association.

3. Request from a Corporate Federal Credit Union for a Field of Membership Amendment.

4. Final Amendments to Interpretive Ruling and Policy Statement (IRPS) 94–1, (Chartering Manual).

5. Final Rule: Concerning Sections 701.26(b) and 701.27, and Part 712, NCUA's Rules and Regulations, Credit Union Service Contracts, Credit Union Service Organizations, and Advertising.

6. Final Rule: Amendments to Part 708a, Appendix A, NCUA's Rules and Regulations, Mergers or Conversions of Federally Insured Credit Unions to Non Credit Union Status.

7. Final Rule: Amendments to Part 708b, Subpart C, NCUA's Rules and Regulations, Mergers of Federally Insured Credit Unions; Voluntary Termination or Conversion of Insured Status.

RECESS: 2:45 p.m.

TIME AND DATE: 3:30 p.m., Wednesday, February 25, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. One (1) Administrative Action under Section 205 of the Federal Credit Union Act and Part 708b of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

2. Three (3) Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (6), (8), (9) (A)(ii), (9) (B), and (10).

3. One (1) Administrative Action under Section 701.14 and Part 747, Subpart J, NCUA's Rules and Regulations and Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (6) and (8).

4. One (1) Administrative Action under Part 704, NCUA's Rules and Regulations. Closed pursuant to exemption (8).

5. Year 2000 Compliance. Closed pursuant to exemptions (2), (6) and (8).

6. Four (4) Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–4606 Filed 2–18–98; 5:04 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR 4, "Nondiscrimination in Federally Assisted Commission Programs."
2. *Current OMB approval number:* 3150–0053.
3. *How often the collection is required:* Occasionally.
4. *Who is required or asked to report:* Recipients of Federal financial assistance provided by the Nuclear Regulatory Commission.
5. *The number of annual respondents:* 30.
6. *The number of hours needed annually to complete the requirement or request:* 8 hours annually (.27 hours per recordkeeper).
7. *Abstract:* Recipients of NRC financial assistance provide data to demonstrate assurance to NRC that they are in compliance with nondiscrimination regulations and policies.

Submit, by April 24, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld Collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 12th day of February, 1998.

For the U.S. Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–4487 Filed 2–20–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Southern Nuclear Operating Company, Inc., et al.

[Docket Nos. 50–348 and 50–364]

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–2 and NPF–8, issued to the Southern Nuclear Operating Company (SNC), Inc., *et al.* (the licensee) for operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2, located in Houston County, Alabama.

The proposed amendments would revise the Technical Specifications (TSs) by relocating the reactor coolant system (RCS) pressure and temperature limits from the TSs to the proposed Pressure Temperature Limits Report in accordance with the guidance provided by Generic Letter 96–03, "Relocation of the Pressure Temperature Limit Curves and Low Temperature Overpressure Protection System Limits." TS 3.4.10.3 would be revised to require that two residual heat removal system suction relief valves be operable or that the RCS be vented at RCS indicated cold leg temperatures less than or equal to 325 °F. In addition, a new TS would be added to limit the operation of more than one reactor coolant pump below 110 °F.

The July 23, 1997, application was previously noticed in the **Federal Register** on September 10, 1997 (62 FR 47699). In addition, the December 18, 1997, supplement provided additional information that revised the original licensee's evaluation of the no significant hazards consideration and, therefore, was noticed in the **Federal Register** on January 14, 1998 (63 FR 2281). The February 12, 1998, supplement provided additional information that revised the licensee's evaluation of the no significant hazards consideration. Therefore, renotification of the Commission's proposed determination of no significant hazards consideration is necessary.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed removal of the Reactor Coolant System (RCS) pressure temperature (P–T) limits from the Technical Specifications (TSs) and relocation to the proposed Pressure Temperature Limits Report (PTLR) in accordance with the guidance provided by Generic Letter (GL) 96–03 is administrative in that the requirements for the P–T limits are unchanged. The P–T limits proposed for inclusion in the PTLR are based on the fluence associated with 2775 MW thermal power and operation through 21.9 effective full power years (EFPY) for Unit 1 and 33.8 EFPY for Unit 2. GL 96–

03 requires that the P–T limits be generated in accordance with the requirements of 10 CFR [part] 50, Appendices G and H, and be documented in an NRC-approved methodology incorporated by reference in the TSs. Accordingly, the proposed curves have been generated using the NRC-approved methods described in WCAP–14040–NP-A, Revision 2, as modified at the direction of the NRC Staff, and meet the requirements of 10 CFR [part] 50, Appendices G and H. TS 3.4.10.1 will continue to require that the RCS pressure and temperature be limited in accordance with the limits specified in the PTLR. The NRC-approval document will be specified in TS 6.9.1.15, and NRC approval will be required in the form of a TS Amendment prior to changing the methodology. Use of P-T limit curves generated using the NRC-approved methods will provide additional protection for the integrity of the reactor vessel, thereby assuring that the reactor vessel is capable of providing its function as a radiological barrier.

TS 3.4.10.3 for Farley Nuclear Plant (FNP) Unit 1 and Unit 2 provides the operability requirements for RCS low temperature overpressure protection (LTOP). Specifically, TS 3.4.10.3 will be revised to require that two residual heat removal (RHR) system suction relief valves (RHRRVs) be operable or that the RCS be vented at RCS indicated cold leg temperatures less than or equal to 325°F. The higher temperature requirement for LTOP will provide additional assurance that overpressure protection will be available at low temperatures. Consistent with GL 96–03, the Farley Unit 1 and Unit 2 requirements for LTOP will be retained in TS 3.4.10.3 and will be evaluated in accordance with the proposed methodology.

Based on the above evaluation, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated above, the proposed changes to remove the RCS P–T limits from the TSs and relocate them to the proposed PTLR are administrative in nature. Consistent with the guidance provided by GL 96–03, the proposed P–T limits contained in the proposed PTLR meet the requirements of 10 CFR [part] 50, Appendices G and H, and were generated using the NRC-approved methods described in WCAP–14040–NP–A, Revision 2, as modified at the direction of the NRC Staff. The proposed changes do not result in a physical change to the plant or add any new or different operating requirements on plant systems, structures, or components with the exception of limiting the number of operating RCPs at RCS temperatures below 110°F, increasing the temperature requirement at which the RHR relief valves are required to be operational, and establishing a higher minimum boltup temperature. Limiting the number of operating RCPs below 110°F results in a reduction in the [D]P between the reactor vessel beltline and the RHRRVs, thereby providing additional margin to limits of Appendix G. Provisions are made to allow the start of a second RCP at temperatures below 110°F in order to secure the pump that was originally operating without interrupting RCS flow. The LTOP enable temperature will be increased and will exceed the minimum LTOP enable temperature determined as described in WCAP–14040–NP–A, Rev. 2, thereby providing additional assurance that the LTOP system will be available to protect the RCS in the event of an overpressure transient at RCS temperatures at or below 325°F.

As stated in the above response, implementation of the proposed changes do not result in a significant increase in the probability of a new or different accident (i.e., loss of reactor vessel integrity). The RCS P–T limits will continue to meet the requirements of 10 CFR [part] 50, Appendices G and H, and will be generated in accordance with the NRC approved methodology described in WCAP–14040–NP–A, Revision 2, as modified at the direction of the NRC Staff. Therefore, the proposed changes do not result in a significant increase in the possibility of a new or different accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The margin of safety is not affected by the removal of the RCS P–T limits from the TSs and relocating them to the proposed PTLR. The RCS P–T limits will continue to meet the requirements of 10 CFR [part] 50, Appendices G and H. To provide additional assurance that the P–T limits continue to meet the requirements of Appendices G and H, TS 6.9.1.15 will require the use of the NRC-approved methodology to generate P–T limits. The RCS LTOP requirements will be retained in TS 3.4.10.3 due to use of the RHRRVs for LTOP, consistent with the guidance provided by GL 96–03, and will be verified to provide adequate protection of the reactor coolant system against the limits of Appendix G. The LTOP enable temperature will be increased to 325°F and will exceed the LTOP enable temperature determined in accordance with the NRC-approved methodology, thus protecting the RCS in the event of a low temperature overpressure transient over a broader range of temperatures than required by WCAP–14040–NP–A, Rev. 2. Administrative procedures will preclude operation of the RCS at temperatures below the minimum boltup temperature for the reactor vessel head, thus precluding the possibility of tensioning the reactor vessel head at RCS temperatures below the minimum boltup temperature. Operation of the plant in accordance with the RCS P–T limits specified in the PTLR and continued operation of the LTOP system in accordance with TS 3.4.10.3 will continue to meet the requirements of 10 CFR [part] 50, Appendices G and H, and will, therefore, assure that a margin of safety is not significantly decreased as the result of the proposed changes.

Based on the preceding analysis, SNC has determined that removal of the RCS P–T limits from the TS and relocation to the proposed PTLR will not significantly increase the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety. SNC therefore concludes that the proposed changes meet the requirements of 10 CFR 50.92(c) and does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its

final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 25, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated February 12, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

Dated at Rockville, Maryland, this 18th day of February 1998.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–4486 Filed 2–20–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

Toledo Edison Company, Centerior Service Company and the Cleveland Electric Illuminating Company, Davis-Besse Nuclear Power Station, Unit 1; Notice of Corrections

In the **Federal Register** issue dated January 28, 1998, beginning at page 4327 (63 FR 4327), two amendment requests were listed, both with application dates of December 23, 1997. For both of these listed requests:

(1) The attorney for the licensees should be Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

(2) The NRC Acting Project Director should be Richard P. Savio.

Dated at Rockville, Maryland, this 18th day of February 1998.

For the Nuclear Regulatory Commission.

Allen G. Hansen,

Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–4488 Filed 2–20–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8943]

Crow Butte Resources, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Final finding of no significant impact; notice of opportunity for hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to renew NRC Source Material License SUA–1534 to authorize the licensee, Crow Butte Resources, Inc. (CBR), for continued commercial operation of its in-situ leach (ISL) uranium mine and processing facility, located in Dawes County, Nebraska. This license currently authorizes CBR to receive, acquire, possess, and transfer uranium at the Crow Butte Uranium Project, which is located approximately eight kilometers (five miles) southeast of the town of Crawford, Nebraska. An Environmental Assessment was performed by the NRC staff in support of its review of CBR's license renewal request, in accordance with the requirements of 10 CFR Part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Park, Uranium Recovery Branch, Mail Stop TWFN 7–J8, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone 301/415–6699.

SUPPLEMENTARY INFORMATION:

Background

At the Crow Butte facility, the ISL mining method involves: (1) The injection of native groundwater, with added sodium carbonate/bicarbonate and oxygen or hydrogen peroxide, into a uranium-bearing orebody through injection wells; (2) the chemical mobilization of the uranium through oxidation and then complexation with the carbonate species; and (3) the extraction of the uranium-bearing solution from the subsurface through a pattern of pumping wells. The uranium is separated from the leach solution by conventional ion exchange methods in the processing facility. The resulting uranium-poor solution is recharged with carbonate and oxygen and returned to the mining zone for additional uranium recovery. This cycle continues until the ore zone is depleted or recovery of the uranium is no longer economically feasible.

The recovered uranium solution is processed further by using ammonia or hydrogen peroxide to precipitate the uranium into a slurry. The resulting slurry is thickened by gravity settling, and then washed and de-watered in a filter press to about 50 percent solids. The filter press solids (cake) are then dried in a natural gas vacuum dryer, to produce uranium oxide, which is commonly known as "yellowcake." The dried yellowcake is packaged in 208-liter (55-gallon) steel drums for storage and eventual shipment to a fuel processing facility.

CBR conducts uranium recovery operations within designated areas ("mine units") of the Crow Butte site; these mine units range between 4 to 16 hectares (10 and 40 acres) in size. A number of well patterns are installed in each mine unit, with each pattern typically including four injection wells laid out in a roughly rectangular shape and one centrally-located pumping (production) well. Currently, CBR is conducting uranium recovery operations in three mine units and groundwater restoration in two other mine units in which uranium recovery has been concluded. CBR has completed construction of a sixth mine unit but has yet to initiate operations in it.

Summary of the Environmental Assessment

The NRC staff performed an appraisal of the environmental impacts associated with the continued operation of the Crow Butte ISL facility, in accordance with 10 CFR part 51, Licensing and Regulatory Policy Procedures for Environmental Protection. In conducting its appraisal, the NRC staff considered the following information: (1) CBR's license renewal application, as amended; (2) previous environmental evaluations of the Crow Butte facility; (3) CBR's license amendment requests submitted subsequent to its renewal application, and NRC staff approvals of such requests; (4) data contained in required semiannual environmental monitoring reports; (5) results of NRC staff site visits and inspections of the Crow Butte facility; and (6) consultations with the U.S. Fish and Wildlife Service, the State of Nebraska Department of Environmental Quality, and the State Historic Preservation Officer for the State of Nebraska. The results of the staff's appraisal are documented in an Environmental Assessment. The safety aspects for the continued operation of the facility are discussed in a Safety Evaluation Report.

The license renewal would authorize CBR to continue operating the Crow Butte ISL facility, such that the plant throughput does not exceed a flow rate of 18,930 liters (5000 gallons) per minute, exclusive of the flow involved in restoring the depleted mine units. Annual yellowcake production will not be authorized to exceed 907,185 kilograms (2 million pounds).

All conditions in the renewal license and commitments presented in the licensee's license renewal application are subject to NRC inspection. Violation of the license may result in enforcement action.

Conclusions

The NRC staff has re-examined actual and potential environmental impacts associated with continued operation of the Crow Butte facility, and has determined that renewal of Source Material License SUA–1534 will (1) Be consistent with requirements of 10 CFR part 40, (2) not be inimical to the public health and safety, and (3) not have long-term detrimental impacts on the environment. The following statements

support the FONSI and summarize the conclusions resulting from the staff's environmental assessment:

1. The proposed groundwater monitoring program is sufficient to detect excursions (vertical or horizontal) of mining solutions. Furthermore, aquifer testing and the previous history of operations indicate that the production zone is adequately confined, thereby assuring hydrologic control of mining solutions;

2. Liquid process wastes will be disposed in accordance with approved waste disposal options. Monitoring programs are in place to ensure appropriate operation of the deep disposal well and to detect potential leakage from the solar evaporation ponds;

3. An acceptable environmental and effluent monitoring program is in place to monitor effluent releases and to detect if applicable regulatory limits are exceeded. Radiological effluents from facility operations have been and are expected to continue to remain below the regulatory limits;

4. All radioactive wastes generated by facility operations will be disposed offsite at a licensed byproduct disposal site;

5. Groundwater impacted by mining operations will be restored to baseline conditions on a mine unit average, as a primary goal. If baseline conditions cannot be reasonably achieved, the R&D operations have demonstrated that the groundwater can be restored to applicable class-of-use standards; and

6. Because the staff has determined that there will be no significant impacts associated with approval of the license renewal, there can be no disproportionally high and adverse effects or impacts on minority and low-income populations. Consequently, further evaluation of Environmental Justice concerns, as outlined in Executive Order 12898 and NRC's Office of Nuclear Material Safety and Safeguards Policy and Procedures Letter 1–50, Revision 1, is not warranted.

Alternatives to the Proposed Action

The proposed action is to renew NRC Source Material License SUA–1534, for continued operation of the Crow Butte ISL facility, as requested by CBR. Therefore, the principal alternatives available to NRC are to:

(1) Renew the license with such conditions as are considered necessary or appropriate to protect public health and safety and the environment; or

(2) Renew the license, with such conditions as are considered necessary or appropriate to protect public health and safety and the environment, but not allow CBR to expand its operations beyond those previously approved; or

(3) Deny renewal of the license.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant either the limiting of CBR's future operations or the denial of the license renewal. Additionally, in the SER prepared for this action, the staff has reviewed the licensee's proposed action with respect to the criteria for license issuance specified in 10 CFR Part 40, Section 40.32, and has no basis for denial of the proposed action. Therefore, the staff considers that Alternative 1 is the appropriate alternative for selection.

Finding of No Significant Impact

The NRC staff has prepared an Environmental Assessment for the proposed renewal of NRC Source Material License SUA–1534. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The Environmental Assessment and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street N.W., Washington, DC 20555.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operators Licensing Proceedings," of the Commission's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders in 10 CFR Part 2 (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff.

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Crow Butte Resources, Inc., 216 Sixteenth Street Mall, Suite 810, Denver, CO 80202;

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or

(3) By mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) the requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Any hearing that is requested and granted will be held in accordance with the Commission's "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" in 10 CFR part 2, subpart L.

Dated at Rockville, Maryland, this 13th day of February 1998.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Acting Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–4489 Filed 2–20–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission For OMB Review; Comment Request Standard Form 87 and 87A

AGENCY: Office of Personnel Management.

ACTION: Proposed collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has

submitted to the Office of Management and Budget (OMB) a request for reclearance of an information collection on Standard Form 87 and 87A, Fingerprint Charts, and solicits comments on them.

Standard Form 87 and 87A Fingerprint Charts are completed by applicants for positions throughout the Federal Government. SF 87 is used by OPM, and SF 87A is used by agencies having a special agreement with OPM and the FBI. The information is used to conduct the checks of the FBI fingerprint files that are required by Executive Order 10450, Security Requirements for Government Employment, issued April 27, 1953, or required or authorized under other authorities.

It is estimated that 250,000 individuals will respond annually for a total burden of 20,833 hours. To obtain copies of this proposal please contact James M. Farron at (202) 418–3208 or E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received on or before March 25, 1998.

ADDRESSES: Send or deliver comments to:

Richard A. Ferris, Office of Personnel Management, Investigations Service, 1900 E. Street NW., Room 5416, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–4497 Filed 2–20–98; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Representative Payee Monitoring; OMB 3220–0151.

Under Section 12 of the Railroad Retirement Act (RRA), the RRB may pay annuity benefits to a representative payee when an employee, spouse or survivor annuitant is incompetent or a minor. The RRB is responsible for determining if direct payment to an annuitant or a representative payee would best serve the annuitant's best interest. The accountability requirements authorizing the RRB to conduct periodic monitoring of representative payees, including a written accounting of benefit payments received, are prescribed in 20 CFR 266.7.

The RRB utilizes the following forms to conduct its representative payee monitoring program.

Form G–99a, Representative Payee Report, is used to obtain information needed to determine whether the benefit payments certified to the representative payee have been used for the annuitant's current maintenance and personal needs and whether the representative payee continues to be concerned with the annuitant's welfare. The RRB also includes RRB Form G–99a (Enc), Representative Payee Duties, which includes the Paperwork Reduction Act notice and a list of representative payee duties with each RRB Form G–99a released. RRB Form G–99c, Representative Payee Evaluation Report, is used to obtain more detailed information from a representative payee who fails to complete and return Form G–99a, or in situations when the returned Form G–99a indicates the possible misuse of funds by the representative payee. Form G–99c contains specific questions concerning the representative payee's performance and is used by the RRB to determine whether or not the representative payee should continue in that capacity. Completion of the forms in this collection is required to retain benefits.

The RRB proposes minor editorial changes to Form G–99a (enc) and to Form G–99c to incorporate language required by the Paperwork Reduction Act of 1995. The addition of the annuitant's social security number is being proposed to Form G–99a. The completion time for Form G–99a is estimated at 18 minutes per response. The completion time for Form G–99c is estimated at between 24 and 31 minutes per response. The RRB estimates that approximately 6,000 Form G–99a's and 535 G–99c's are completed annually.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–4397 Filed 2–20–98; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Appeal Under the Railroad Retirement and Railroad Unemployment Insurance Act; OMB 3220–0007.

Under Section 7(b)(3) of the Railroad Retirement Act (RRA), and section 5(c) of the Railroad Unemployment Insurance Act (RUIA) any person aggrieved by a decision on his or her application for an annuity or benefit under that Act has the right to appeal to the RRB. This right is prescribed in 20

CFR 260 and 20 CFR 320. The notification letter sent to the individual at the time of the original action on the application informs the applicant of such right. When an individual protests a decision, the concerned bureau reviews the entire file and any additional evidence submitted and sends the applicant a letter explaining the basis of the determination. The applicant is then notified that if he or she wishes to protest further, they can appeal to the RRB's Bureau of Hearings and Appeals. The procedure pertaining to the filing of such an appeal is prescribed in 20 CFR 260.5 and 260.9 and 20 CFR 320.12 and 320.38.

The form prescribed by the RRB for filing an appeal under the RRA or RUIA is form HA–1, *Appeal Under the Railroad Retirement Act or Railroad Unemployment Insurance Act.* The form asks the applicant to furnish the basis for the appeal and what additional evidence, if any, is to be submitted. Completion is voluntary, however if the information is not provided the RRB cannot process the appeal.

The RRB proposes to add an item to Form HA–1 which requests the name, address and phone number of the applicant's representative. Minor editorial changes which include the addition of language required by the Paperwork Reduction Act of 1995 are also proposed. The completion time for the HA–1 is estimated at 20 minutes per response. The RRB estimates that approximately 1,200 Form HA–1's are completed annually.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312)751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–4421 Filed 2–20–98; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39660; File No. SR–BSE–97–08]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Listing and Trading Standards for Portfolio Depositary Receipts

February 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 9, 1997,[3] the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The Commission is also granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new listing standards and trading rules for Portfolio Depositary Receipts ("PDRs"). The text of the proposed rule change is available at the Office of the Secretary, BSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed Amendment No. 1 to the proposed rule change on December 11, 1997, the substance of which is incorporated into the notice. *See* letter from Karen A. Aluise, Vice President, BSE, to Michael Walinskas, Senior Special Counsel, Market Regulation Commission, dated December 9, 1997 ("Amendment No. 1").

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Listing Requirements for PDRs. The Exchange proposes to adopt new listing and delisting requirements to accommodate the trading of PDRs, *i.e.*, securities that are interests in a unit investment trust ("Trust") holding a portfolio of securities linked to an index. Each Trust will provide investors with an instrument that (1) closely tracks the underlying portfolio of securities, (2) trades like a share of common stock, and (3) pays holders of the instrument periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses (as described in the Trust prospectus).

Under the proposal, the Exchange may list and trade, or trade pursuant to unlisted trading privileges ("UTP"), PDRs based on one or more stock indices or securities portfolios. PDRs based on each particular stock index or portfolio will be designated as a separate series and identified by a unique symbol. The stocks that are included in an index or portfolio on which PDRs are based will be selected by the Exchange, or by another person having a proprietary interest in and authorized use of such index or portfolio, and may be revised as deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

In connection with an initial listing, the Exchange proposes that, for each Trust of PDRs, the Exchange will establish a minimum number of PDRs required to be outstanding at the time of commencement of Exchange trading, and such minimum number will be filed with the Commission in connection with any required submission under Rule 19b–4 for each Trust. If the Exchange trades a particular PDR pursuant to unlisted trading privileges, the Exchange will follow the listing exchange's determination of the appropriate minimum number.

Because the Trust operates on an open-end type basis, and because the number of PDR holders is subject to substantial fluctuations depending on market conditions, the Exchange believes it would be inappropriate and burdensome on PDR holders to consider suspending trading in or delisting a series of PDRs, with the consequent termination of the Trust, unless the number of holders remains severely depressed during an extended time period. Therefore, twelve months after

the formation of a Trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of, a Trust when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(i) If the Trust on which the PDRs are based has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the PDRs for 30 or more consecutive trading days;

(ii) If the index on which the Trust is based is no longer calculated; or

(iii) If such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings in such securities on the Exchange inadvisable.

A Trust will terminate upon removal from Exchange listing and its PDRs will be redeemed in accordance with provisions of the Trust prospectus. A Trust may also terminate under such other conditions as may be set forth in the Trust prospectus. For example, the sponsor of the Trust (the "Sponsor"), following notice to PDR holders, will have discretion to direct that the Trust be terminated if the value of securities in such Trust falls below a specified amount.

Trading of PDRs. Dealing in PDRs on the Exchange will be conducted pursuant to the Exchange's general agency-auction trading rules. The Exchange's general dealing and settlement rules will apply, including its rules on clearance and settlement of securities transactions and its equity margin rules. Other generally applicable Exchange equity rules and procedures will also apply, including, among others, rules governing the priority, parity and precedence of orders and the responsibilities of specialists.[4]

With respect to trading halts, the trading of PDRs will be halted, along with trading of all other listed or traded stocks, in the event the circuit breaker thresholds are reached.[5] In addition, for PDRs tied to an index, while the triggering of futures price limits for the S&P 500 Composite Price Index ("S&P 500 Index"), S&P 100 Composite Price Stock Index ("S&P 100 Index") or Major Market Index ("MMI") futures contracts will not, in themselves, result in a halt in PDR trading or a delayed opening, such an event could be considered by the Exchange, along with other factors, such as a halt in trading in S&P 100 Index Options ("OEX"), S&P 500 Index Options ("SPX"), or Major Market Index Options ("XMI"), in deciding whether to halt trading in PDRs.

The Exchange will issue a circular to its members and member organizations informing them of Exchange policies regarding trading halts in such securities. For a PDR based on an index, these factors would include whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value, or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Disclosure. The proposed rule requires that members and member organizations provide to all purchasers of each series of PDRs a written description of the terms, characteristics and risks of such securities, in a form approved by the Exchange, not later than the time a confirmation of the first transaction in such series of PDRs is delivered to such purchaser. In this regard, a member or member organization carrying an omnibus account for a non-member broker-dealer will be required to inform such nonmember that execution of an order to purchase PDRs for such omnibus account will be deemed to constitute an agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations. The written description must be included with any sales material relating to that series of PDRs that a member provides to customers or the public. Moreover, other written materials provided by a member or member organization to customers or the public making specific reference to a series of PDRs as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of PDRs] is available from your broker. It is recommended that you obtain and review such circular before purchasing [the series of PDRs]. In addition, upon request you may obtain your broker a prospectus for [the series of PDRs]." Additionally, as noted above, the Exchange requires that members and member organizations provide customers with a copy of the prospectus for a series of PDRs upon request.

Two existing PDRs, Standard & Poor's Depository Receipt ("SPDRs") and Standard & Poor's MidCap 400 Depository Receipts ("MidCap SPDRs"), are traded on the American Stock Exchange ("Amex").[6] The Exchange is not seeking approval to list SPDRs or MidCap SPDRs at this time, but rather is requesting approval to trade SPDRs and MidCap SPDRs pursuant to unlisted trading privileges once the generic listing standards set forth herein are approved.

Pursuant to Rule 12f–5 under the Act, in order to trade a particular class or type of security pursuant to unlisted trading privileges, the Exchange must have rules providing for transactions in such class or type of security. The Amex has enacted listing standards for PDRs, and the Exchange's proposed rule change is designed to create similar standards for PDR listing and/or trading on the Exchange. As stated above, the Exchange proposes to trade only SPDRs and MidCap SPDRs pursuant to unlisted trading privileges upon approval of this rule filing.

If at a later time the Exchange and the issuer of the product desire to list SPDRs and MidCap SPDRs or any other PDRs on the Exchange, the Exchange will request SEC approval for that listing in a separate proposed rule change filed pursuant to Section 19(b) of the Act. Additionally, in the event a new PDR is listed on another exchange using listing standards that are different than current Exchange listing standards or the Exchange listing standards proposed in this filing, the Exchange will file a proposed rule change pursuant to Section 19(b) of the Act to adopt those listing standards before it trades that PDR pursuant to unlisted trading privileges.

With respect to the above discussion regarding disclosure issues, because SPDRs and MidCap SPDRs will be traded pursuant to unlisted trading privileges and will not be listed on the Exchange at this time, the Exchange does not intend to create its own product description to satisfy the requirements of the proposed rule, which requires members to provide to purchasers a written description of the terms and characteristics of SPDRs and MidCap SPDRs in a form approved by the Exchange. Instead, the Exchange will deem a member or member organization to be in compliance with this requirement if the member delivers either (i) the current product description produced by the Amex from time to time, or (ii) the current prospectus for

[4] Chapter VII, Section 2, will also apply to the trading of PDRs. That rule provides, in part, that every member and allied-member is required to use due diligence to learn the essential facts relative to every customer, including the possible use of a name other than that of the interested party, and to every order or account accepted by him, except when acting as agent for another member.

[5] *See* Securities Exchange Act Release No. 38221 (January 31, 1997) 62 FR 5871 (February 7, 1997) and note 7 therein.

[6] SPDRs and MidCap SPDRs are defined and discussed more fully below.

the SPDR and MidCap SPDR, as the case may be.[7] It will be the member's responsibility to obtain these materials directly from Amex for forwarding to purchasers in the time frames prescribed by Exchange and Commission rules. The Exchange will notify members and member organizations of this requirement in a notice to members.

The remainder of this section provides background information on SPDRs and MidCap SPDRs. The information, requested by BSE to have been copied from SR–AMEX–94–52 and SR–AMEX–92–18, describes the structure and mechanics of SPDRs and MidCap SPDRs.

SPDRs and MidCap SPDRs Generally.[8] On December 11, 1992, the Commission approved Amex Rules 1000 *et seq.*[9] to accommodate trading on the Amex of PDRs generally. The Sponsor of each series of PDRs traded on the Amex is PDR Services Corporation, a wholly-owned subsidiary of the Amex. The PDRs are issued by a Trust in a specified minimum aggregate quantity ("Creation Unit") in return for a deposit consisting of specified numbers of shares of stock plus a cash amount.

The first Trust to be formed in connection with the issuance of PDRs was based on the S&P 500 Composite Stock Price Index ("S&P Index"), known as SPDRs. SPDRs have been trading on the Amex since January 29, 1993. The second Trust to be formed in connection with the issuance of PDRs was based on the S&P MidCap 400 Index,[10] known MidCap SPDRs.[11] The sponsor of the two Trusts has entered into trust agreements with a trustee in accordance with Section 26 of the Investment Company Act of 1940. PDR Distributors, Inc. ("Distributor") acts as underwriter of both SPDRs and MidCap SPDRs on an agency basis. The Distributor is a registered broker-dealer, a member of the National Association of Securities Dealers, Inc., and a wholly-owned subsidiary of Signature Financial Group, Inc.

SPDRs. The Trustee of the SPDR Trust will have the right to vote any of the voting stocks held by the Trust, and will vote such stocks of each issuer in the same proportion as all other voting shares of that issuer voted.[12] Therefore, SPDR holders will not be able to directly vote the shares of the issuers underlying the SPDRs.

The Trust will issue SPDRs in exchange for "Portfolio Deposits" of all of the S&P 500 Index securities weighted according to their representation in the Index.[13] An investor making a Portfolio Deposit into the Trust will receive a "Creation Unit" composed of 50,000 SPDRs.[14] The price of SPDRs will be based on a current bid/offer market. The Amex has designated 1/64's as the minimum increment for trading in SPDRs. The Exchange is proposing this same minimum variation for the trading of SPDRs on the Exchange. SPDRs will not be redeemable individually, but may be redeemed in Creation Unit size (*i.e.*, 50,000 SDPRs). Specifically, a Creation Unit may be redeemed for an in-kind distribution of securities identical to a Portfolio Deposit.[15]

MidCap SPDRs. All orders to create MidCap SPDRs in Creation Unit size aggregations (which has been set at 25,000) must be placed with the Distributor, and it will be the responsibility of the Distributor to transmit such orders to the Trustee. To be eligible to place orders to create MidCap SPDRs as described below, an entity or person either must be a participant in the Continuous Net Settlement ("CNS") system of the National Securities Clearing Corporation ("NSCC") or a Depository Trust Company ("DTC") participant. Upon acceptance of an order to create MidCap SPDRs, the Distributor will instruct the Trust to initiate the book-entry movement of the appropriate number of MidCap SPDRs to the account of the entity placing the order. MidCap SPDRs will be maintained in book-entry form at DTC.

Payment with respect to creation orders placed through the Distributor will be made by (1) the "in-kind" deposit with the Trustee of a specified portfolio of securities that is formulated to mirror, to the extent practicable, the component securities of the underlying index or portfolio, and (2) a cash payment sufficient to enable the Trustee to make a distribution to the holders of beneficial interests in Trust on the next dividend payment date as if all the securities had been held for the entire accumulation period for the distribution ("Dividend Equivalent Payment"), subject to certain specified adjustments. The securities and cash accepted by the Trustee are referred to, in the aggregate, as a "Portfolio Deposit."

Issuance of MidCap SPDRs. Upon receipt of a Portfolio Deposit in payment for a creation order placed through the Distributor as described above, the Trustee will issue a specified number of MidCap SPDRs, which aggregate number is referred to as a "Creation Unit." A Creation Unit is made up of 25,000 MidCap SPDRs.[16] Individual MidCap SPDRs can then be traded in the secondary market like other equity securities. Portfolio Deposits are expected to be made primarily by institutional investors, arbitrageurs, and Exchange specialists.

The Trustee or Sponsor will make available (1) on a daily basis, a list of the names and required number of shares for each of the securities in the current Portfolio Deposit; (2) on a minute-by-minute basis throughout the day, a number representing the value (on a per MidCap SPDR basis) of the securities portion of a Portfolio Deposit in effect on such day; and (3) on a daily basis, the accumulated dividends, less expenses, per outstanding MidCap SPDR.

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[7] The Exchange plans to notify its members in a regulatory circular that members must comply with Chapter VII, Section 2 of the Exchange Rules prior to recommending the purchase of SPDRs or MidCap SPDRs to customers. The circular will also state that members must deliver a SPDR or MidCap SPDR product description to all purchasers of the products and that they must provide the prospectus upon request.

[8] The Commission has recently approved rule change proposals covering the trading of PDRs on the CHX and the CSE, including SPDRs and MidCap SPDRs. *See* Securities Exchange Act Release No. 39076 (September 15, 1997) 62 FR 49270 (September 19, 1997) and Securities Exchange Act Release No. 39268 (October 22, 1997) 62 FR 56211 (October 29, 1997).

[9] *See* Securities Exchange Act Release No. 31591 (December 11, 1992) 57 FR 60253 (December 18, 1992).

[10] The S&P MidCap 400 Index is a capitalization-weighted index of 400 actively traded securities that includes issues selected from a population of 1,700 securities, each year-end market-value capitalization of between $200 million and $5 billion. The issues included in the Index cover a broad range of major industry groups, including industrials, transportation, utilities, and financials.

[11] *See* Securities Exchange Act Release No. 35534 (March 24, 1995) 60 FR 16686 (March 31, 1995).

[12] The Trustee will abstain from voting if the stocks held by the Trust cannot be voted in the same proportion as all other shares of the securities are voted.

[13] A Portfolio Deposit also will include a cash payment equal to a pro rata portion of the dividends accrued on the Trust's portfolio securities since the last dividend payment by the Trust, plus or minus an amount designed to compensate for any difference between the net asset value of the Portfolio Deposit and the S&P 500 Index caused by, among other things, the fact that a Portfolio Deposit cannot contain fractional shares.

[14] The Trust is structured so that the net asset value of an individual SPDR should equal one-tenth of the value of the S&P 500 Index.

[15] An investor redeeming a Creation Unit will receive Index securities and cash identical to the Portfolio Deposit required of an investor wishing to purchase a Creation Unit on that particular day. Since the Trust will redeem in kind rather than for cash, the Trust will not be forced to maintain cash reserves for redemptions. This should allow the Trust's resources to be committed as fully as possible to tracking the S&P 500 Index, enabling the Trust to track the Index more closely than other basket products that must allocate a portion of their assets for cash redemptions.

[16] PDRs may be created in other than Creation Unit size aggregations in connection with the DTC Dividend Reinvestment Service ("DRS").

The Amex has set the minimum fractional trading variation for MidCap SPDRs at 1/64 of $1.00. The Exchange is proposing this same minimum variation for MidCap SPDRs.

Redemption of MidCap SPDRs. MidCap SPDRs in Creation Unit size aggregations will be redeemable in kind by tendering them to the Trustee. While holders may sell MidCap SPDRs in the secondary market at any time, they must accumulate at least 25,000 (or multiples thereof) to redeem them through the Trust. MidCap SPDRs will remain outstanding until redeemed or until the termination of the Trust. Creation Units will be redeemable on any business day in exchange for a portfolio of the securities held by the Trust identical in weighting and composition to the securities portion of a Portfolio Deposit in effect on the date a request is made for redemption, together with a "Cash Component" (as defined in the Trust prospectus), including accumulated dividends, less expenses, through the date of redemption. The number of shares of each of the securities transferred to the redeeming holder will be the number of shares of each of the component stocks in a Portfolio Deposit on the day a redemption notice is received by the Trustee, multiplied by the number of Creation Units being redeemed. Nominal service fees may be charged in connection with the creation and redemption of Creation Units. The Trustee will cancel all tendered Creation Units upon redemption.

Distributions for MidCap SPDRs. The MidCap SPDR Trust will pay dividends quarterly. The regular quarterly ex-dividend date for MidCap SPDRs will be the third Friday in March, June, September, and December, unless that day is a New York Stock Exchange holiday, in which case the ex-dividend date will be the preceding Thursday. Holders of MidCap SPDRs on the business day preceding the ex-dividend date will be entitled to receive an amount representing dividends accumulated through the quarterly dividend period preceding such ex-dividend date, net of fees and expenses for such period. The payment of dividends will be made on the last Exchange business day in the calendar month following the ex-dividend date ("Dividend Payment Date"). On the Dividend Payment Date, dividends payable for those securities with ex-dividend dates falling within the period from the ex-dividend date most recently preceding the current ex-dividend date will be distributed. The Trustee will compute on a daily basis the dividends accumulated within each quarterly dividend period. Dividend payments will be made through DTC and its participants to all such holders with funds received from the Trustee.

The MidCap SPDR Trust intends to make the DTC DRS available for use by MidCap SPDR holders through DTC participant brokers for reinvestment of their cash proceeds. The DTC DRS is also available to holders of SPDRs. Because some brokers may choose not to offer the DTC DRS, an interested investor will have to consult his or her broker to ascertain the availability of dividend reinvestment through that broker. The Trustee will use cash proceeds of MidCap SPDR holders participating in the reinvestment to obtain the Index securities necessary to create the requisite number of SPDRs.[17] Any cash remaining will be distributed pro rata to participants in the dividend reinvestment.

Equity Requirements for PDRs. Because of the potential risk associated with PDRs, the Exchange is raising the minimum equity for the trading of PDRs by specialists and competing specialists to $1,000,000. Corresponding increases are also being made to the Early Warning Alert and caretaker provisions of the equity rule,[18] to $875,000 and $800,000 respectively. In addition, PDRs will not be eligible for alternate account trading.

The Exchange requests the Commission to find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Exchange believes that such action is appropriate, in that the listing standards proposed closely mirror the listing standards of the primary market for SPDRs MidCap SPDRs, as well as the standards approved for the regional exchanges currently trading PDRs. In addition, substantially the same trading rules and procedures exist on several of the exchanges.

2. Statutory Basis

The Exchange believes that the statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[19] in that it is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Specifically, the proposed rule change will increase competition in PDR markets by permitting Exchange members to compete for PDR order flow. By adopting the proposed rule change, the Exchange will bring the benefits of competition, including increased efficiency and price competition, to those markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–97–08 and should be submitted by March 16, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the

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[17] The Creation of PDRs in connection with DTC DRS represents the only circumstances under which PDRs can be created in other than Creation Unit size aggregations.

[18] Chapter XXII, Sections 2(f)(ii), (iii) and (iv).

[19] 15 U.S.C. 78f(b)(5).

requirements of Section 6(b)(5).[20] The Commission believes that providing for the exchange-trading on BSE of PDRs, in general, and SPDRs and MidCap SPDRs, in particular, will offer investors an efficient way of participating in the securities markets. Specifically, the Commission believes that the trading on BSE of PDRs, in general, and SPDRs and MidCap SPDRs pursuant to unlisted trading privileges, in particular, will provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a low-cost security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day, and by increasing the availability of SPDRs and MidCap SPDRs as an investment tool. The Commission also believes that PDRs will benefit investors by allowing them to trade securities based on unit investment trusts in secondary market transactions.[21] Accordingly, as discussed below, the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act that Exchange rules facilitate transactions in securities while continuing to further investor protection and the public interest.[22]

As the Commission noted in the orders approving SPDRs, and MidCap SPDRs for listing and trading on Amex,[23] the Commission believes that the trading on BSE of a security like PDRs in general, and SPDRs and MidCap SPDRs in particular, which replicate the performance of a broad portfolio of stocks, could benefit the securities markets by, among other things, helping to ameliorate the volatility occasionally experienced in these markets. The Commission believes that the creation of one or more products where actual portfolios of stocks or instruments representing a portfolio of stocks, such as PDRs, can trade at a single location in an auction market environment could alter the dynamics of program trading, because the availability of such single transaction portfolio trading could, in effect, restore the execution of program trades to more traditional block trading techniques.[24]

An individual SPDR has a value approximately equal to one-tenth of the value of the S&P 500 Index, and an individual MidCap SPDR has a value of approximately one-fifth of the value of the S&P MidCap 400 Index, making them more available and useful to individual retail investors desiring to hold a security replicating the performance of a broad portfolio of stocks. Accordingly, the Commission believes that trading of SPDRs and MidCap SPDRs on BSE will provide retail investors with a cost efficient means to make investment decisions based on the direction of the market as a whole and may provide market participants several advantages over existing methods of effecting program trades involving stocks.

The Commission also believes that PDRs, in general, and SPDRs and MidCap SPDRs, in particular, will provide investors with several advantages over standard open-end S&P 500 Index and S&P MidCap 400 Index mutual fund shares. In particular, investors will have the ability to trade PDRs continuously throughout the business day in secondary market transactions at negotiated prices.[25] In contrast, pursuant to Investment Company Act Rule 22c–1,[26] holders and prospective holders of open-end mutual fund shares are limited to purchasing or redeeming securities of the fund based on the net asset value of the securities held by the fund as designated by the board of directors.[27] Accordingly, PDRs in general, and SPDRs and MidCap SPDRs in particular, will allow investors to (1) Respond quickly to changes in the market; (2) trade at a known price; (3) engage in hedging strategies not currently available to retail investors; and (4) reduce transaction costs for trading a portfolio of securities.

Although PDRs in general, and SPDRs and MidCap SPDRs in particular, are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will still be derived and based upon the securities held in their respective Trusts. In essence, SPDRs are equity securities that are priced off a portfolio of stocks based on the S&P 500 Index and MidCap SPDRs are equity securities that are price off a portfolio of stocks based on the S&P MidCap 400 Index. Accordingly, the level of risk involved in the purchase or sale of a SPDR or MidCap SPDR (or a PDR in general) is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for SPDRs and MidCap SPDRs (and PDRs in general) is based on a basket of stocks. Nonetheless, the Commission has several specific concerns regarding the trading of these securities. In particular, PDRs raise disclosure, market impact, and secondary market trading issues that must be addressed adequately. As discussed in more detail below, and in the Amex Approval Order,[28] the Commission believes BSE adequately addresses these concerns.

The Commission believes that the BSE proposal contains several provisions that will ensure that investors are adequately apprised of the terms, characteristics, and risks of trading PDRs. As noted above, the proposal contains four aspects addressing disclosure concerns. First, BSE members must provide their customers trading PDRs with a written explanation of any special characteristics and risks attendant to trading such PDR securities (such as SPDRs or MidCap SPDRs), in a form approved by BSE. As discussed above, BSE's filing states that SPDRs and MidCap SPDRs product descriptions should be obtained from Amex.[29] The

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[20] 15 U.S.C. 78f(b)(5).

[21] The Commission notes, however, that unlike open-end funds where investors have the right to redeem their fund shares on a daily basis, investors could only redeem PDRs in creation unit share sizes. Nevertheless, PDRs would have the added benefit of liquidity from the secondary market and PDR holders, unlike holders of most other open-end funds, would be able to dispose of their shares in a secondary market transaction.

[22] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] *See supra* notes 8 and 10.

[24] Program trading is defined as index arbitrage or any trading strategy involving the related purchase or sale of a "basket" or group of fifteen or more stocks having a total market value of $1 million or more.

[25] Because of potential arbitrage opportunities, the Commission believes that PDRs will not trade at a material discount or premium in relation to their net asset value. The mere potential for arbitrage should keep the market price of a PDR comparable to its net asset value, and therefore, arbitrage activity likely will be minimal. In addition, the Commission believes the Trust will tract the underlying index more closely than an open-end index fund because the Trust will accept only in-kind deposits, and, therefore, will not incur brokerage expenses in assembling its portfolio. In addition, the Trust will redeem in kind, thereby enabling the Trust to invest virtually all of its assets in securities comprising the underlying index.

[26] Investment Company Act Rule 22c–1 generally requires that a registered investment company issuing a redeemable security, its principal underwriter, and dealers in that security, may sell, redeem, or repurchase the security only at a price based on the net asset value next computed after receipt of an investor's request to purchase, redeem, or resell. The net asset value of a mutual fund generally is computed once daily Monday through Friday as designated by the investment company's board of directors. The Commission granted SPDRs and MidCap SPDRs an exemption from this provision in order to allow them to trade at negotiated prices in the secondary market. The Commission notes that BSE would need to apply for a similar exemption in the instance that it wishes to list and trade a new PDR because the exemptions are specific to SPDRs and MidCap SPDRs.

[27] *Id.*

[28] *See supra* note 8.

[29] The Commission notes that, in the context of a proposed rule change by CHX to add rules for listing and trading of PDRs in general, and to trade

Commission beleives that it is reasonable under the Act to allow BSE to require its members to obtain the product description for SPDRs and MidCap SPDRs from Amex.[30] Amex might decide to impose a reasonable charge for this service.[31]

Second, BSE members must include this written product description with any sales material relating to the series of PDRs that is provided to customers or the public. Third, any other written materials provided by a member or member organization to customers or the public referencing PDRs as an investment vehicle must include a statement, in a form specified by BSE, that a circular and prospectus are available from a broker upon request. Fourth, a BSE member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of PDRs for such omnibus account will be deemed to constitute agreement by the non-member to make the written product description available to its customers on the same terms as member firms. Accordingly, the Commission believes that investors in PDR securities, in general, and SPDRs and MidCap SPDRs, in particular, will be provided with adequate disclosure of the unique characteristics of the PDR instruments and other relevant information pertaining to the instruments. Finally, BSE's Chapter VII, Section 2, Investigation of Accounts, will apply to the trading of PDRs, including transactions in SPDRs and MidCap SPDRs.

The Commission believes BSE has adequately addressed the potential market impact concerns raised by the proposal. First, BSE's proposal permits listing and trading of specific PDRs only after review by the Commission. Second, BSE has developed policies regarding trading halts in PDRs. Specifically, the Exchange would halt PDR trading if the circuit breaker parameters under BSE Chapter II, Section 34A were reached.[32] In addition, in deciding whether to halt trading or conduct a delayed opening in PDRs, in general, and SPDRs and MidCap SPDRs, in particular, BSE represents that it will be guided by, but not necessarily bound to, whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The Commission believes that the trading of PDRs in general on BSE should not adversely impact U.S. securities markets. As to the trading of SPDRs and MidCap SPDRs pursuant to UTP, the Commission notes that the corpus of the SPDR Trust is a portfolio of stocks replicating the S&P 500 Index, a broad-based capitalization-weighted index consisting of 500 of the most actively-traded and liquid stocks in the U.S. The corpus of the MidCap SPDR Trust is a portfolio of stocks replicating the S&P MidCap 400 Index, also a broad-based, capitalization-weighted index consisting of 400 actively traded and liquid U.S. stocks. In fact, as described above, the Commission believes SPDRs and MidCap SPDRs may provide substantial benefits to the marketplace and investors, including, among others, enhancing the stability of the markets for individual stocks.[33] Accordingly, the Commission believes that SPDRs and MidCap SPDRs do not contain features that will make them likely to impact adversely the U.S. securities markets, and that the addition of their trading on BSE pursuant to UTP could produce added benefits to investors through the increased competition between other market centers trading the product.

Finally, the Commission notes that BSE has submitted surveillance procedures for the trading of PDRs, specifically SPDRs and MidCap SPDRs, and believes that those procedures, which incorporate and rely upon existing BSE surveillance procedures governing equities, are adequate under the Act.

The Commission finds that BSE's proposal contains adequate rules and procedures to govern the trading of PDR securities, including trading SPDRs and MidCap SPDRs pursuant to UTP. Specifically, PDRs are equity securities that will be subject to the full panoply of BSE rules governing the trading of equity securities on BSE, including, among others, rules governing the priority, parity and precedence of orders and the responsibilities of specialists. In addition, BSE has developed specific listing and delisting criteria for PDRs that will help to ensure that the markets for PDRs will be deep and liquid. As noted above, BSE's proposal provides for trading halt procedures governing PDRs. Finally, the Commission notes that BSE has stated that Chapter VII, Section 2, Investigation of Accounts, will apply to the trading of PDRs in general, and SPDRs and MidCap SPDRs, in particular.

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate because it is very similar to CHX's and CSE's previously approved proposals covering the listing and trading of PDRs in general, and SPDRs and MidCap SPDRs, in particular.[34] As such, the Commission believes that the proposed rule change does not raise any new regulatory concerns or issues.

SPDRs and MidCap SPDRs pursuant to UTP. Amex commented on CHX's proposed method regarding the delivery of the SPDR and MidCap SPDR product descriptions, and reserved the right to charge CHX members for supplying the product description should the task become burdensome to Amex. Amex did not object to the underlying policy of CHX members obtaining the product description from Amex. *See* CHX Approval Order, *supra* note 7.

[30] The Commission notes that the exemptions granted by the Commission under the Investment Company Act that permit the secondary market trading of SPDRs an Mid Cap SPDRs are specifically conditioned upon the customer disclosure requirements described above. Accordingly, BSE rules adequately ensure its members must deliver the current product description to all investors in SPDRs and MidCap SPDRs.

[31] The Commission notes that Amex would need to file a proposed rule change under Section 19(b) of the Act in the event it decides to charge a fee for supplying the SPDR or MidCap SPDR product descriptions. The Commission notes that reasonable fees would have to be imposed on the member firms rather than the customers entitled to receive the propsectus or the product description.

[32] In addition, for PDRs tied to an index, the triggering of futures price limits for the S&P 500 Index, S&P 100 Index, or MMI futures contracts will not, in itself, result in a halt in PDR trading or a delayed opening. However, the Exchange could consider such an event; along with other factors, such as a halt in trading in OEX, SPX, or MMI options, in deciding whether to halt trading in PDRs.

[33] Even though PDR transactions may serve as substitutes for transactions in the cash market, and possibly make the order flow in individual stocks smaller than would otherwise be the case, the Commission acknowledges that during turbulent market conditions the ability of large institutions to redeem or create PDRs could conceivably have an impact on price levels in the cash market. In particular, if a PDR is redeemed, the resulting long stock position could be sold into the market, thereby depressing stock prices further. The Commission notes, however, that the redemption or creation of PDRs likely will not exacerbate a price movement because PDRs will be subject to the equity margin requirements of 50% and PDRs are non-leveraged instruments. In addition, as noted above, during turbulent market conditions, the Commission believes PDRs and SPDRs and MidCap SPDRs, in particular, will serve as a vehicle to accommodate and "bundle" order flow that otherwise would flow to the cash market, thereby allowing such order flow to be handled more efficiently and effectively. Accordingly, although PDRs and SPDRs and MidCap SPDRs could, in certain circumstances, have an impact on the cash market, on balance we believe the product will be beneficial to the marketplace and can actually aid in maintaining orderly markets.

[34] *See supra* note 7.

It is therefore ordered, pursuant to Section 19(b)(2)[35] that the proposed rule change is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[36]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4403 Filed 2–20–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39665; File No. SR–NASD–98–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Postpone the Effective Date of Recently-Approved Amendments to Rules 3010 and 3110

February 13, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 1998, the NASD Regulation, Inc. ("NASDR") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASDR. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASDR proposes to indefinitely postpone the effective date of recently-approved amendments to the National Association of Securities Dealers, Inc. ("NASD" or "Association") Rules 3010, "Supervision," and 3110, "Books and Records," to allow the NASDR an opportunity to consider comment letters received from the public.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASDR included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASDR has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 11, 1997, a proposed rule change to amend NASD Rules 3010 and 3110 was filed with the SEC.[3] The purpose of the amendments was to allow firms to develop flexible procedures for the review of correspondence with the public. In that filing, the NASD stated that it would make the proposed rule change effective within 45 days of Commission approval. Amendment No. 1, containing a draft Notice to Members to be issued following approval of the proposed rule change, was filed with the SEC on December 4, 1997.[4] The Notice to Members described the new rules and provided guidance to NASD members on the implementation of the new rules. The SEC approved the proposed rule change and Amendment No. 1 to the proposed rule change on December 31, 1997.[5] Notice to Members 98–11 announced approval of the proposed rule change and stated that the amendments to Rules 3010 and 3110 would be effective on February 15, 1998.

Subsequent to approval of the proposed rule change by the SEC, several commenters filed letters with the SEC raising issues regarding Amendment No. 1 to the proposed rule change and its accompanying Notice to Members.[6] NASDR believes that their letters raise important issues that should be fully addressed before the rule change becomes effective.

The proposed rule change indefinitely postpones the effective date of the amendments to Rules 3010 and 3110 approved in Release No. 39510. An extension of the effective date will allow NASDR an opportunity to consider comments on these and other issues raised by the rule and the accompanying Notice to Members. NASDR will submit a further proposed rule change to the SEC announcing the new effective date. Because this rule proposal has been made in conjunction with a similar proposal by the New York Stock Exchange ("NYSE"), which has been approved by the SEC[7] and immediately became effective,[8] and is designed to complement that proposal, joint members of the NYSE and NASD would be permitted to rely on the procedures provided by NYSE Rules 342, 440, and 472 and NYSE Interpretation 342.16/01 pending the effective date of the proposed rule change.

2. Statutory Basis

The NASDR believes the proposed rule change is consistent with Section 15A(b)(6) of the Act,[9] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASDR believes that delaying the effective date of the new rules to allow for consideration of member views will not be inconsistent with these requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDR does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the

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[35] 15 U.S.C. 78s(b)(2).

[36] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change (SR–NASD–97–24) was published for comment in the **Federal Register** on May 2, 1997. *See* Securities Exchange Act Release No. 38548 (April 25, 1997), 62 FR 24147.

[4] *See* Letter from Mary N. Revell, Associate General Counsel, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 1, 1997 ("Amendment No. 1").

[5] *See* Securities Exchange Act Release No. 39510 (December 31, 1997) 63 FR 1131 (January 8, 1998) (order approving File No. SR–NASD–97–24) ("Release No. 39510").

[6] *See* letters from Carl B. Wilkerson, American Council of Life Insurance, to Jonathan G. Katz, Secretary, SEC, dated January 9, 1998; Richard V. Silver, The Equitable Life Assurance Society of the United States, to Jonathan G. Katz, Secretary, SEC, dated January 29, 1998; and Michael L. Kerley, MML Investors Services, Inc. to Secretary, SEC, dated January 26, 1998.

[7] *See* Securities Exchange Act Release No. 39511 (December 31, 1997) 63 FR 1135 (January 8, 1998) (order approving File No. SR–NYSE–96–26).

[8] *See* NYSE Information Memo 98–3 (January 14, 1998).

[9] 15 U.S.C. 78o–3(b)(6).

meaning, administration or enforcement of an existing rule of the Association and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and subparagraph (e) of Rule 19b–4 thereunder.[11]

At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington D.C. Copies of such filing also will be available for inspection and copying at the NASD. All submissions should refer to File No. SR–NASD–98–10 and should be submitted by March 16, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4404 Filed 2–20–98; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 19b–4(e).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39655; File No. SR–NSCC–97–17]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Revising NSCC's Fee Schedule

February 12, 1998.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on December 22, 1997, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change eliminates references to NSCC's discontinued securities transfer service in NSCC's fee schedule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to eliminate references to NSCC's discontinued securities transfer service in NSCC's fee schedule. Earlier this year, NSCC discontinued its securities transfer service, which was also known as the national transfer service ("NTS"), by deleting NSCC Rule 42.[3] However, that rule filing inadvertently failed to delete references to NTS in NSCC's fee schedule. Therefore, this amendment eliminates all references to NTS in NSCC's fee schedule.

The proposed rule change is consistent with the requirements of Section 17A of the Act [4] and the rules and regulations thereunder because it facilitates the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) [5] of the Act and pursuant to Rule 19b–4(e)(4) [6] promulgated thereunder because the proposed rule change effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in its custody or control and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W.,

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Securities Exchange Act Release No. 38556 (April 29, 1997), 62 FR 24522.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(e)(4).

Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–97–17 and should be submitted by March 16, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4405 Filed 2–20–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39666; File No. SR–NYSE–98–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Exchange Rule 80B ("Trading Halts Due to Extraordinary Market Volatility")

February 13, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Exchange Rule 80B ("Trading Halts Due to Extraordinary Market Volatility").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose.

Rule 80B provides, in part, that if the Dow Jones Industrial Average℠ ("DJIA")[3] falls 350 or more points below its previous trading day's closing value, trading in all stocks on the Exchange will halt for one half-hour, except that if the 350 or more point decline is reached at or after 3:00 p.m., there will be no halt in trading. It further provides that if on the same day the DJIA drops 550 or more points from its previous trading day's close, trading on the Exchange will halt for one hour, except that if the 550 point decline occurs after 2:00 p.m., but before 3:00 p.m., the halt will be one half-hour instead of one hour. But if the 550 point drop occurs in the last hour of trading (at or after 3:00 p.m.), the Exchange will close for the rest of the day. These provisions are in effect on a pilot basis through April 30, 1998.

Some believe that the current trigger levels are too low given the current DJIA level of approximately 8000. Others believe that static point values are unresponsive to dynamic market conditions, and prefer triggers based on a percentage of the DJIA, so that the triggers will move with the market. The Exchange is now proposing revisions to the trigger levels that address these concerns.

a. The Proposal. The Exchange proposes to set the triggers at 10%, 20% and 30% of the DJIA, calculated at the beginning of each calendar quarter, using the average closing value of the DJIA for the prior month, thereby establishing specific point values for the quarter. Each trigger will be rounded to the nearest 50 points.

Generally, the halt for a 10% decline will be one hour. If the 10% trigger value is reached at or after 2:00 p.m., but before 2:30 p.m., the halt would be one half hour; at or after 2:30 p.m. the market would continue trading, unless a 20% decline occurred, in which case the market would close for the remainder of the day. Generally, the halt for a 20% decline will be two hours. If the 20% trigger value is reached at or after 1:00 p.m. but before 2:00 p.m. the halt would be one hour; at or after 2:00 p.m., trading would halt for the rest of the day. If the market declines by 30%, at any time, trading will be halted for the remainder of the day.

The Exchange has expanded the duration of the halts early in the day to address concerns that shorter periods were too compressed to respond adequately to extreme declines in the market. The Exchange believes that by varying the duration of the halt periods depending on the severity of the decline and the time of day it occurs, Rule 80B strikes a balance between the desire to reopen after a market-wide trading halt due to extraordinary volatility, and the need for there to be sufficient time before the scheduled close to allow for an orderly reopening.

The Exchange has filed a petition[4] with the Commission to amend Rule 10b–18[5] under the Exchange Act to extend the "safe harbor" provisions of the Rule. The Exchange wishes to reiterate its position, expressed in the petition, particularly in view of the amendments to Rule 80B proposed herein, that an expansion of the safe harbor provisions of Rule 10b–18 following a market-wide trading halt would benefit the market by providing additional liquidity during times of market stress. The Exchange requests that the Commission address the Exchange's concerns and amend Rule 10b–18 as proposed in the petition.

b. Price indications. The Exchange also proposes to amend Rule 80B to require that price indications be made during an intra-day Rule 80B trading halt for the stocks comprising the DJIA. This is designed to supply information to market participants on expected pricing levels for these highly capitalized stocks, and, thereby, the Index. Specialists in these stocks will have the responsibility to disseminate these price indications. Indications may

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] "Dow Jones Industrial Average" is a service mark of Dow Jones & Company, Inc.

[4] *See* letter to Jonathan Katz, Secretary, Commission, from James E. Buck, Senior Vice President and Secretary, NYSE, dated January 8, 1998.

[5] 17 CFR 240.10b–18.

also be disseminated in other stocks with Floor Official approval.

Floor Official supervision and approval is mandatory for any indication, including stocks in the DJIA, that represents a change from the last sale of one point or more for stocks priced under $10, the lesser of 10% or three points from a last sale for stocks priced between $10 and $99 15/16, and five points from the last sale for stocks priced at $100 or more. Indications in stocks in the DJIA which do not represent such a change do not require Floor Official approval.

c. Background. Rule 80B was enacted in response to studies of the October 1987 Market Break. One such study was the Interim Report of the Working Group on Financial Markets issued by the Under Secretary for Finance of the Department of the Treasury and the Chairmen of the Securities and Exchange Commission, the Commodity Futures Trading Commission and the Board of Governors of the Federal Reserve System in May, 1988. This "Working Group" recommended "coordinated trading halts and reopenings for large, rapid market declines that threaten to create panic conditions." The "Working Group" specifically recommended, and the Exchange endorsed, temporary halts in the trading of all stocks, stock options, and stock index options as well as the trading of stock index futures and options on stock index futures when the DJIA reaches certain trigger values. The Presidential Task Force on Market Mechanisms ("Brady Commission") also endorsed the concept of coordinated market trading halts.

Rule 80B was approved by the Commission on a pilot basis on October 19, 1988, and was extended annually, most recently until April 30, 1998.[6] Originally, the halt periods and trigger values were one hour for a decline of 250 points in the DJIA (11.7% of the DJIA at that time), and two hours for a 400 point decline (18.7% of the DJIA at that time). In July 1996, the SEC approved the Exchange's proposal to reduce the duration of the halts to 30 minutes and one hour, respectively.[7] In January 1997, the trigger values were increased to the current levels of 350 (5.1% of the DJIA at that time) and 550 points (8.1% of the DJIA at that time).[8]

The circuit breakers have been triggered just once since their adoption. On October 27, 1997, the market closed for 30 minutes at 2:35 p.m., and after reopening at 3:05 p.m., the Exchange halted trading for the remainder of the trading day when the decline reached 550 points. Several views on the appropriateness of the levels and the duration and timing of the halts were expressed. The Exchange initiated immediate discussions with the SEC, other markets and Exchange advisory committees on possible refinements to the process.

d. Constituent input. Exchange committees comprised of trading professionals, specialists, brokerage houses and representatives of the individual investor community were asked for their views. Other marketplaces, including equities, options and financial futures markets, were likewise consulted for their views. Indeed, the Exchange originally adopted Rule 80B with the understanding that all United States stock and option exchanges and the National Association of Securities Dealers would adopt rules or procedures substantively identical to Rule 80B, and that the futures exchanges would adopt rules halting the trading of stock index futures and options on such futures contracts under circumstances substantively identical to those contained in Rule 80B. The above-described rule change is proposed contingent on that same understanding.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed rule change accomplishes these ends by balancing the need to halt trading temporarily during periods of extraordinary market volatility with the need to provide an open marketplace for trading securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copes thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–98–06 and should be submitted by March 16, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4401 Filed 2–20–98; 8:45 am]

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[6] See Exchange Act Release No. 39582 (January 26, 1998) 63 FR 5406 (February 2, 1998).

[7] See Exchange Act Release No. 37457 (July 19, 1996) 61 FR 39176 (July 26, 1996).

[8] See Exchange Act Release No. 38221 (January 31, 1997) 62 FR 5871 (February 7, 1997).

[9] 15 U.S.C. 78f(b).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39659; File No. SR–NYSE–97–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Shareholder Approval Policy

February 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 23, 1997, as amended on January 30, 1998,[1] the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to modify its shareholder approval policy (the "Policy"), contained in Paragraphs 312.03 and 312.04 of the Exchange's Listed Company Manual (the "Manual"). The proposal will provide greater flexibility for listed companies to adopt stock option and similar plans ("Plans") without shareholder approval, while preserving the significant shareholder rights afforded under the Policy.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] The Exchange filed a letter supplementing and amending the proposed rule filing on January 30, 1998, the substance of which is incorporated into this notice. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Heather Seidel, Attorney, Market Regulation, Commission, dated January 28, 1998 ("Amendment No. 1").

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

During the past year, the Exchange has conducted a broad review of the Policy. Based on that review, the Exchange recently adopted, and the Commission approved, amendments to the Policy regarding related-party transactions and private sales.[2] The Exchange has continued its review of that portion of the Policy that requires shareholder approval of certain Plans.

Currently, the Policy requires a listed company to seek shareholder approval of all stock option plans that are not "broadly-based." The only exception is for stock or options issued as an inducement for employment to a person not previously employed by the company.

The legal requirements governing shareholder approval of Plans has been subject to recent change. The Commission recently amended its rules in this area, and those rules now permit companies to adopt Plans without shareholder approval.[3] The Commission's action recognizes the increasing role of independent compensation committees and enhanced disclosure rules regarding compensation policies. Listed companies also have urged the Exchange to review the Policy in light of these changes.

For these reasons, the Exchange has been reviewing the Policy with its various constituents. The consensus favored some relaxation in the Policy, but not a total repeal of the shareholder approval requirement for Plans. Specifically, the general view was to require shareholder approval when there is the potential for a material dilution of shareholder's equity. The consensus was that the threshold should be based on the cumulative dilution of an issuer's non-broad-based Plans, and not on a single Plan. Constituents also asked for more guidance on the definition of a "broad-based" Plan.

This proposed rule change would amend the Policy to exempt from shareholder approval non-broad-based Plans in which:

- No single officer or director acquires more than one percent of the shares of the issuer's common stock outstanding at the time the Plan is adopted; and
- The cumulative dilution of all non-broad-based Plans of the issuer does not exceed five percent of the issuer's common stock outstanding at the time the Plan is adopted.

[2] *See* Securities Exchange Act Release No. 39098 (September 19, 1997) 62 FR 50979 (September 29, 1997).

[3] *See* Rule 16b–3(d) under the Exchange Act, as amended in Securities Exchange Act Release No. 37260 (May 31, 1996) 61 FR 30376 (June 14, 1996).

The Exchange reviewed the non-broad-based Plans of a sample of listed companies,[4] and the average dilution for such Plans was 3.35 percent, with the median dilution being somewhat lower. Based on this review, the Exchange believes that a five percent cumulative threshold will protect shareholder interests while affording issuers reasonable flexibility in establishing their compensation policies.

The Exchange also proposes a definition of a "broadly-based Plan." The definition generally would require a review of a number of factors, including the number of persons covered by the Plan and the nature of the company's employees (such as whether they are compensated on an hourly or salaried basis). The Exchange will invite companies to discuss their proposed Plans with the Exchange staff to seek guidance on whether the Exchange considers such Plans to be "broadly-based."

To provide a level of certainty for companies, the definition would include a non-exclusive "safe harbor" for any Plan in which at least 20 percent of an issuer's employees are eligible, the majority of whom are neither officers nor directors. This is based on the current "rule of thumb" the Exchange uses in determining whether a Plan is broadly-based.[5]

The rule change also makes one correction to the previous amendments to the Policy, clarifying that, in calculating a company's outstanding shares, the company must exclude shares held by subsidiaries, not all affiliates.[6] Finally, the proposed rule

[4] NYSE has indicated that they sampled 29 companies. Telephone conversation between Michael Simon, NYSE, Steve Walsh, NYSE, and Heather Seidel, Market Regulation, Commission, on January 16, 1998.

[5] The NYSE's definition of a "broad-based plan" is based on NYSE interpretations of this term, and will not generally correspond to definitions regarding the scope of stock options plans used in other contexts. *See, e.g.*, Sections 401(a)(26), 410 and 423 of the Internal Revenue Code (26 U.S.C. 401(a)(26), 410 and 423) and Section 201(2) of the Employee Retirement Income Security Act (29 U.S.C. 1051(2)).

[6] In September, 1997, the Commission approved various changes to the NYSE's shareholder approval requirements. *See supra* note 2. One such change substituted the term "affiliate" for "subsidiary" in Paragraph 312.04(c) of the Manual. While the NYSE believed that use of the term "affiliate" would clarify the operation of that provision, in fact, it has created confusion. Specifically, an "affiliate" of a listed company can include natural persons who

change also amends the exception for stock or options issued as an inducement for employment to a person not previously employed by the company, to state that it must be a material inducement (as opposed to an inducement essential) to such person's entering into an employment contract with the company. In its discussions with the NYSE on the proposed rule change, the Legal Advisory Committee raised for discussion the current requirements that a stock option grant be an "essential" inducement, and believed that it is difficult, if not impossible, to conclude that any single item is "essential" to a person's entering into an employment contract. Rather, they believed that a "materiality" standard would be more workable, yet still would achieve the NYSE's goal of ensuring that the stock option grant be an important aspect of an employment decision. The NYSE agreed with that comment and incorporated the change into the proposed rule change.

2. Statutory Basis

The Exchange believes that the basis under the Act of this proposed rule change is the requirement under Section 6(b)(5)[7] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

control the company, as well as corporate affiliates. While the NYSE never intended to exclude stock holdings of natural persons in making calculations under Paragraph 312.04(c), the current wording of this provision is ambiguous. To eliminate this ambiguity, the NYSE now proposed to return to the original working of Paragraph 312.04(c) through the use of the term "subsidiary." As before, the NYSE will interpret the term to include any majority-owned subsidiary of the listed company. *See* Amendment No. 1, *supra* note 1.

[7] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested person are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–97–37 and should be submitted by March 16, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4402 Filed 2–20–98; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 98-1(8)]

Newton v. Chater; Entitlement to Trial Work Period Before Approval of an Award for Benefits and Before Twelve Months Have Elapsed Since Onset of Disability—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 98-1(8).

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1695.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Eighth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after February 23, 1998. If we made a determination or decision on your application for benefits between August 9, 1996, the date of the Court of Appeals decision, and February 23, 1998, the effective date of this Social Security Acquiescence Ruling, you may request application of the Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b) or 416.1485(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence

Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security - Disability Insurance; 96.002 Social Security - Retirement Insurance; 96.004 Social Security - Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income.)

Dated: December 22, 1997.

Kenneth S. Apfel,

Commissioner of Social Security.

Acquiescence Ruling 98-1(8)

Newton v. *Chater*, 92 F.3d 688 (8th Cir. 1996)—Entitlement to Trial Work Period Before Approval of an Award for Benefits and Before Twelve Months Have Elapsed Since Onset of Disability—Titles II and XVI of the Social Security Act.

Issue: Whether a person's return to substantial gainful activity (SGA) within 12 months of the onset date of his or her disability, and prior to an award of benefits, precludes an award of benefits and entitlement to a trial work period.

Statute/Regulation/Ruling Citation: Sections 222(c), 223, 1614(a)(3) and (4) and 1619 of the Social Security Act (42 U.S.C. 422(c), 423, 1382c(a)(3) and (4) and 1382h); 20 CFR 404.1505, 404.1520(b), 404.1592, 416.262, 416.905, 416.906, 416.920(b), 416.924(b); Social Security Ruling (SSR) 82-52.

Circuit: Eighth (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota).

Newton v. *Chater*, 92 F.3d 688 (8th Cir. 1996).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing and Appeals Council review).

Description of Case: Donald A. Newton applied for disability insurance benefits and Supplemental Security Income (SSI) on April 22, 1993, alleging disability since October 30, 1992, based on illiteracy, memory lapses, alcoholism and hypertension. The applications were denied initially and on reconsideration. From June to September 1994, Mr. Newton worked in a foundry as a grinder and a metal beater for at least 40 hours per week and earned between $6.50 and $7.26 per hour. In October 1994, he worked for one week at a wood products firm. In November 1994, a hearing was held before an ALJ who issued a decision in February 1995 denying disability benefits.

The ALJ found that Mr. Newton was not disabled under step one of the five-step sequential evaluation process due to his performance of substantial gainful activity from June to September 1994. The ALJ also cited this 1994 work activity as evidence that Mr. Newton's alleged impairments did not prevent him from performing his past relevant work. The Appeals Council denied Mr. Newton's request for review in May 1995 and the district court affirmed the ALJ's decision in December 1995. On his appeal to the United States Court of Appeals for the Eighth Circuit, Mr. Newton argued, among other things, that he was entitled to a trial work period for the work he performed in 1994 and that the evidence supported a finding of disability.

Holding: The Eighth Circuit reversed the judgment of the district court and directed that the case be remanded to the Social Security Administration (SSA) for further administrative proceedings. The court of appeals determined that the ALJ erred in considering Mr. Newton's work from June to September 1994 as evidence of substantial gainful activity to support a finding of no disability without first determining whether he was entitled to a trial work period during those months.[1] The court stated that under the Social Security Act (the Act) and SSA's regulations,

> . . . a trial work period starts in the month that entitlement to disability benefits begins, which is the month following five consecutive months of being under a disability that has lasted or is *expected* to last a total of twelve continuous months. (Emphasis in original.)[2]

The court found that the provision of SSR 82-52 which precludes a finding of disability where a claimant returns to substantial gainful activity before an award of benefits and before 12 months have elapsed since the date of onset of an impairment which prevented substantial gainful activity "is inconsistent with the statutory provisions governing the start of a trial work period." The Eighth Circuit held:

> The language in the statutes and regulations does not require that a trial work period be conditioned on a prior receipt of benefits and/or the lapse of a twelve month period of disability.

In support of its holding, the Eighth Circuit cited two other court of appeals decisions in which the courts reached a similar conclusion on this issue — *Walker* v. *Secretary of Health and Human Services*, 943 F.2d 1257 (10th Cir. 1991), for which SSA published Acquiescence Ruling (AR) 92-6(10), and *McDonald* v. *Bowen*, 818 F.2d 559 (7th Cir. 1987), for which SSA published AR 88-3(7).

Statement As To How Newton Differs From Social Security Policy

SSR 82-52 contains a clear statement of SSA policy on this issue[3] as follows:

> When the [individual's] return to work demonstrating ability to engage in SGA occurs before approval of the award and prior to the lapse of the 12-month period after onset, the claim must be denied.

The Eighth Circuit held that, under the Act and regulations, entitlement to a trial work period is not conditioned upon a prior award of benefits and/or the lapse of a 12-month period of disability. This raises the possibility that, on remand of the case to SSA, should Mr. Newton establish the onset of an impairment that could otherwise be the basis for a finding of disability, Mr. Newton may receive a benefit award and a trial work period even if he returned to work demonstrating an ability to engage in substantial gainful activity before the lapse of the 12-month period after the onset date of such impairment and before a decision by SSA to award benefits.

Explanation of How SSA Will Apply The Newton Decision Within The Circuit

This Ruling applies only to cases in which the claimant resides in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota or South Dakota at the time of the determination or decision at any administrative level, i.e., initial, reconsideration, ALJ hearing or Appeals Council review.

This Ruling applies to claims for title II benefits based on disability. It also applies to claims for title XVI benefits based on disability as explained below.

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[1] Section 222(c)(2) of the Act provides that "any services rendered by an individual during a period of trial work shall be deemed not to have been rendered by such individual in determining whether disability has ceased in a month during such period."

[2] Section 222(c)(3) of the Act provides, in pertinent part, that "[a] period of trial work for any individual shall begin with the month in which he becomes entitled to disability insurance benefits . . . ." Under section 222(c)(4) of the Act, a trial work period ends with the ninth month, in any period of 60 consecutive months, in which the individual renders services (whether or not the nine months are consecutive), or, if earlier, with the month in which disability ceases.

[3] SSR 91-7c superseded SSR 82-52, but only to the extent that SSR 82-52 discussed former procedures used to determine disability in children. The issue in this AR does not relate to those former procedures and the cited policy statement in SSR 82-52 remains in effect.

A claim for title II disability insurance benefits, widow(er)'s insurance benefits based on disability or child's insurance benefits based on disability in which the claimant returns to work within 12 months of the established onset date of an impairment which could otherwise be the basis for a finding of disability should be allowed and the claimant granted a trial work period if the following conditions are met:

(1) the claimant establishes that, at the time he or she returned to work and thereafter, the impairment was still expected to last for at least 12 consecutive months from the date of onset;

(2) the claimant returns to work after the waiting period (if a waiting period is applicable) and after the established onset date (but within the 12-month period following such onset date); and

(3) the return to work demonstrating an ability to engage in substantial gainful activity occurs either before or after approval of the award.

A claim for title XVI benefits based on disability in which the claimant returns to work within 12 months of the established onset date of an impairment which could otherwise be the basis for a finding of disability should be allowed and the claimant granted section 1619 status[4] if the following conditions are met:

(1) the claimant establishes that, at the time he or she returned to work and thereafter, the impairment was still expected to last for at least 12 consecutive months from the date of onset;

(2) the claimant returns to work in a month subsequent to the month of established onset (but within the 12-month period following such onset date);

(3) the claimant is eligible for "regular" SSI benefits under section 1611 of the Act (or a federally administered State supplementary payment) based on the impairment (disregarding the effect that the claimant's return to work within 12 months after onset would otherwise have on eligibility for such benefits or payment) for at least one month in the period preceding the month in which he or she returns to work;

(4) the claimant meets all other nondisability requirements for section 1619 status; and

(5) the return to work demonstrating an ability to engage in substantial gainful activity occurs either before or after approval of the award.

[FR Doc. 98-4468 Filed 2-20-98; 8:45 am]

BILLING CODE 4190-29-F

[4] Pursuant to statutory amendments made by Public Law 99-643, effective July 1, 1987, the trial work period provisions no longer apply to title XVI disability claims. Beginning July 1, 1987, a disabled individual, who was eligible to receive "regular" SSI benefits under section 1611 of the Act (or a federally administered State supplementary payment) for a month and subsequently has earnings ordinarily considered to represent substantial gainful activity, will move directly to section 1619 status rather than be accorded a trial work period. This Ruling extends to such individuals, i.e., a claim for title XVI benefits based on disability should be allowed and the claimant granted section 1619 status if the claimant would otherwise be eligible for section 1619 status and the same conditions set out above for title II claims based on disability are met.

DEPARTMENT OF STATE

[Public Notice 2745]

Bureau of Political-Military Affairs; Imposition of Chemical and Biological Weapons Proliferation Sanctions on a Foreign Person

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The United States Government has determined that an individual has engaged in chemical weapons proliferation activities that require the imposition of sanctions pursuant to the Arms Export Control Act and the Export Administration Act of 1979 (the authorities of which were most recently continued by Executive Order 12924 of August 19, 1994).

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological, and Missile Nonproliferation, Bureau of Political-Military Affairs, Department of State (202-647-1142).

SUPPLEMENTARY INFORMATION: Pursuant to Section 81(a) of the Arms Export Control Act (22 U.S.C. 2798(a)), Section 11C(a) of the Export Administration Act of 1979 (50 U.S.C. app. 2410c(a)) and Executive Order 12851 of June 11, 1993, the United States Government determined that the following foreign person has engaged in chemical weapons proliferation activities that require the imposition of the sanctions described in Section 81(c) of the Arms Export Control Act (22 U.S.C. 2798(c)) and Section 11C(c) of the Export Administration Act of 1979 (50 U.S.C. app. 2410c(c)): *Berge Aris Balanian* (fugitive from justice previously residing in Germany, and last known to be in Lebanon).

Accordingly, the following sanctions are being imposed:

(A) Procurement Sanction. The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from the sanctioned person; and

(B) Import Sanction. The importation into the United States of products produced by the sanctioned person shall be prohibited.

Sanctions on the person described above may apply to firms or other entities with which that individual is associated. Questions as to whether a particular transaction is affected by the sanctions should be referred to the contact listed above. The sanctions shall commence on February 9, 1998. They will remain in place for at least one year and until further notice.

These measures shall be implemented by the responsible agencies as provided in the Executive Order 12851 of June 11, 1993.

Dated: February 10, 1998.

Robert J. Einhorn,

Acting Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 98-4414 Filed 2-20-98; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF STATE

[Public Notice 2744]

Bureau of Political-Military Affairs, Determination Under the Arms Export Control Act

Pursuant to Section 654(c) of the Foreign Assistance Act of 1961, as amended, notice is hereby given that the Acting Under Secretary of State for Arms Control and International Security Affairs and Director of the Arms Control and Disarmament Agency has made a determination pursuant to Section 81 of the Arms Export Control Act and has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: February 10, 1998.

Robert J. Einhorn,

Acting Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 98-4415 Filed 2-20-98; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Form, and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of The Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44

U.S.C. Chapter 3501, *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on December 11, 1997 [62 FR 65307].

DATES: Comments must be submitted on or before March 25, 1998.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–25, Bureau of Transportation Statistics, 400 7th Street, SW, Room 3430, Washington, DC 20590 (202) 366–4387.

SUPPLEMENTARY INFORMATION:

Bureau of Transportation Statistics (BTS)

Title: Report of Passengers Denied Confirmed Space Part 250.

Type of Request: Extension of a Currently Approved Collection.

OMB Control Number: 2138–0018.

Form No.: 251.

Affected Entities: Large U.S. and foreign passenger air carriers.

Abstract: BTS Form 251 is a one-page report on the number of passengers denied boarding voluntarily or involuntarily, whether the bumped passengers were provided alternate transportation and/or compensation, and the amount of the payment. The report allows the Department to monitor the effectiveness of its oversales rule and take enforcement action when necessary. The involuntary denied-boarding rate has decreased over the years from 4.38 per 10,000 passengers in 1980 to 1.16 per 10,000 passengers for the nine months ended September 1997. These statistics demonstrate the effectiveness of the "volunteer" provision, which has reduced the need for more intrusive regulation.

The rate of denied boarding can be examined as an air carrier continuing fitness factor. This rate provides an insight into a carrier's policy on treating over booked passengers and its compliance disposition. A rapid sustained increase in the rate of denied boarding often is an indicator of operational difficulty.

Because the rate of denied boarding is released quarterly, travelers and travel agents can select carriers with low bumping incidents when booking a trip. This information is made available to the public through the Air Travel Consumer Report, which the Department publishes. The report is sent to newspapers, magazines, and trade journals.

Estimated Annual Burden Hours: 2,312 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: DOT/BTS Desk Officer. Comments are invited on: whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to OMB regarding this information collection is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on February 17, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–4474 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collections of information was published on December 10, 1997 [62 FR 65122].

DATES: Comments must be submitted on or before March 25, 1998.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267–2326.

SUPPLEMENTARY INFORMATION:

United States Coast Guard (USCG)

Title: Vessel Response Plans, Facility Response Plans, Shipboard Oil Pollution Emergency Plans, and Additional Requirements for Prince William Sound, Alaska.

OMB Control Number: 2115–0595

Type of Request: Extension of a currently approved collection.

Affected Public: Owners or operators of tank vessels that carry oil in bulk and operate in waters subject of U.S. jurisdiction; owners or operators of marine transportation-facilities; owners or operators of U.S. flag oil tankers of 150 gross tons and above and each U.S. ship of 400 gross tons and above; owners or operators of tank vessels that load cargo at a facility permitted under the Trans-Alaska Pipeline Authorization Act in Prince William Sound, Alaska.

Abstract: Three of the requirements found in this collection of information are from the passage of the Oil Pollution Act of 1990 (Pub.L. 101–380). The requirements meet the intent of the Oil Pollution Action of 1990 to reduce the impact of oil spills by requiring owners or operators of certain tank vessels and facilities to plan response actions, practice those actions, and ensure, through appropriate means, the necessary response resources for an oil spill. Additionally, Regulation 26 of Annex I of MARPOL 73/78, the Shipboard Oil Pollution Emergency Plan requirements were designed to improve response capabilities and minimize environmental impacts of oil spills.

Need: 33 U.S.C. 1321 requires the development of tank vessel and facility response plans. 33 U.S.C. 1901–1911 requires the implementation of MARPOL 73/78 in U.S. regulations. 33 U.S.C. 2735 requires the additional response measure in Prince William Sound, Alaska.

Estimated Annual Burden: 188,629 hours.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, N.W., Washington, DC 20503, Attention USCG Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be

collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to OMB regarding this information collection is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on February 17, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–4475 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3501, et seq.) this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and it's expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 25, 1997 [FR 62, page 50426].

DATES: Comments on this notice must be received on or before March 25, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Ladd Hakes, U.S. Department of Transportation (M–62), (202) 366–4268, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Office of the Secretary

Title: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.

OMB Control Number: 2105–0531.

Affected Public: Schools, hospitals, and other nonprofit organizations receiving Federal financial assistance from the Department of Transportation (DOT).

Type of Request: Extension of a previously approved collection.

Form(s): SF 269, SF 270, SF 271, SF 272, and SF 424.

Abstract: Requirements for Federal administration of financial assistance to schools, hospitals, and other nonprofit organizations is provided to affected Executive agencies via OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, with the Department has codified at 49 CFR part 19. OMB provides management and oversight of the circular. OMB also provides for a standard figure of seventy (70) annual burden hours per grantee for completion of required forms. This action initiates extension of an existing paperwork clearance approval (OMB Number 2105–0531).

These information collections are available for inspection at the Grants Management Division (M–62), Office of Acquisition and Grant Management, Department of Transportation, at the address above. Copies of 49 CFR parts 18 and 19 can be obtained from Mr. Ladd Hakes at the address and phone number shown above.

Estimated Annual Burden Hours: 10,500 hours.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention OST Desk Officer.

Comments are invited on: whether the proposed collection of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to OMB are best assured of having their full effect if OMB receives them within 30 days of publication.

Issued in Washington, DC, on February 17, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–4523 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ending June 18, 1997.

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.170 et seq.).The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1997–2632.

Date Filed: June 18, 1997.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: July 16, 1997.

Description: Application of Royal Aviation Inc., pursuant to 49 U.S.C. Section 40109, Subpart Q of the Regulations, requests a foreign air carrier permit to operate scheduled services between any point in Canada and any point in the United States of America.

Paulette V. Twine,

U.S. DOT Dockets.

[FR Doc. 98–4526 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Craven Regional Airport, New Bern, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Craven Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 25, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Campus Building, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia, 30337–2747.

In addition, one copy of any comments submitted to the FAA must

be mailed or delivered to Mr. John H. Price, Jr., Airport Director of the Craven Regional Airport Authority at the following address: Mr. John H. Price, Jr., Airport Director, Craven Regional Airport Authority, Post Office Box 3258, New Bern, NC 28564.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Craven Regional Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Southern Region, Atlanta Airports District Office, Mr. Terry R. Washington, Program Manager, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747, (404) 305–7143.

The application may be viewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Craven Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 11, 1998, the FAA determined that the application to use the revenue from a PFC submitted by Craven Regional Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 13, 1998. The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 1997.

Proposed charge expiration date: May 1, 2022.

Total estimated PFC revenue: $10,303,898.

Application number: 98–02–U–00–EWN.

Brief description of proposed project(s):

(1) Design & construction (Phase II) of Terminal Development
(2) Design & construction of air carrier apron
(3) Design & construction of access road

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: The airport has already received approval not to collect PFCs from nonscheduled operations by Air/Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Craven Regional Airport Authority.

Issued in College Park, Georgia on February 11, 1998.

Dell T. Jernigan,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 98–4482 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Recordkeeping Requirements Under Emergency Review by the Office of Management and Budget (OMB)

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comments on a proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes a collection of information for which NHTSA intends to seek expedited OMB approval.

DATES: OMB approval has been requested by March 31, 1998.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to Docket Section, Room 5110, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided by referencing its OMB Clearance Number. It is requested, but not required, that 1 original plus 2 copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Edward Kosek. NHTSA Information Collection Clearance Officer. NHTSA, 400 Seventh Street, SW, Room 5110, Washington, DC 20590. Mr. Kosek's telephone number is (202) 366–2589.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

Drivers' Experiences and Expectations of Light Vehicle Brake System Performance: ABS vs. Conventional

Type of Request—New collection.

OMB Clearance Number—2127–####.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—Two years from date of approval.

Summary of the Collection of Information—Data collection will be accomplished through the use of Computer Assisted Telephone Interviewing (CATI). The CATI system allows a computer to perform a number of functions prone to error when done manually by interviewers, including:

A. Providing correct question sequence;

B. Automatically executing skip patterns based on responses to prior questions (which decreases overall interview time and consequentially the burden on respondents);

C. Recalling answers to prior questions and displaying the

information in the test of later questions;

D. Providing random rotation of specified questions or response categories (to avoid bias);

E. Ensuring that questions cannot be skipped; and

F. Rejecting invalid responses or data entries.

The CATI system lists questions and corresponding response categories automatically on the screen, eliminating the need for interviewers to track slip patterns and flip pages. Moreover, the interviewers enter responses directly from their keyboards, and the information is automatically recorded in the computer's memory.

The CATI system includes safeguards to reduce interviewer error in direct key-entry of survey responses. It has a double check method to eliminate the problem of key entry error as a result of accidentally hitting the wrong key. Unlike some systems, when the interviewer enters the code for the respondent reply, the code is not immediately accepted and the interview moved to the next screen. Rather, the screen remains on the question and response categories for the item, and the code and category entered by the interviewer are displayed at the bottom of the screen. The interviewer must confirm the initial entry before it is accepted by the computer as final. If, despite these safeguards, the wrong answer is entered or a respondent changes his/her reply, the interviewer can correct the entry before moving on to the next question.

CATI allows the computer to perform a number of critical assurance routines that are monitored by survey supervisors, including tracking average interview length, refusal rate, and termination rate by interviewer; and performing consistency checks for inappropriate combination of answers.

Description of the need for the information and proposed use of the information: Antilock brake systems (ABS) have been increasingly prevalent on passenger car and light trucks in recent years. Brake experts anticipated that the introduction of ABS on these vehicles would reduce the number and severity of crashes. A number of statistical analyses of crash databases have been performed over the past three years, and suggest that the introduction of ABS does not appear to have reduced the number of automobile crashes where they were expected to be effective. Included in these analyses is a significant increase of single-vehicle, run-off-road crashes for vehicles equipped with ABS as compared to cars without ABS. It is unknown to what extent, if any, this increase is due to incorrect driver usage of ABS, incorrect driver responses to their ABS, or unrealistic driver expectations of an ABS braking ability.

NHTSA will analyze the survey data to determine differences in drivers' experiences and expectations of brake performance between ABS-equipped and non-ABS-equipped light vehicles. From these findings, inferences about the ability of ABS to mitigate crashes will be made and the need for an educational campaign for specific demographic groups will be assessed.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information): The respondents are the population of the United States age 16 and older living in households with telephones. The agency estimates the number of respondents to total 4000. The survey will be conducted once only.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information: The agency estimates there will be no annual reporting burden, as the study will be conducted only once. Respondents answer the survey strictly on a voluntary basis. No payment or gift will be provided to any respondent. The agency estimates the time per respondent to be 20 minutes, and a total time burden of 1375 hours. The agency estimates the total cost per survey respondent to be $50.00.

Authority: Title 15 U.S.C. 1395 Section 106(b): The National Traffic and Motor Vehicle Safety Act of 1966, Title 15 United States Code 1395, Section 106(b), (Exhibit V), gives the Secretary authorization to conduct research, testing, development, and training as authorized to be carried out by subsections of this title.

Dated: February 17, 1998.

Raymond P. Owings,

Associated Administrator for Research and Development.

[FR Doc. 98–4527 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1–Motor vehicle, 2–Rail freight, 3–Cargo vessel, 4–Cargo aircraft only, 5–Passenger-carrying aircraft.

DATES: Comments must be received on or before March 25, 1998.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, Room 8421, DHM–30, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW, Washington, DC 20590.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on February 13, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

New Exemptions

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12029–N	RSPA–98–3384	NACO Technologies, Lombard, IL.	49 CFR 179.14	To authorize the manufacture, mark and sale of specially designed couplers to be used on tank cars used in transporting various classes of hazardous materials. (mode 2)
12030–N	RSPA–98–3389	East Penn Manufacturing Co., Inc., Lyon Station, PA.	49 CFR 173.159(h)	To authorize the transportation in commerce of battery fluid, acid, Class 8, in UN6HG composite packagings tested to Packing Group II test criteria with dry storage batteries, continuing no hazardous material, in UN 4G fiberboard boxes. The maximum gross weight will not exceed 81.5 pounds. (modes 1, 3, 4)
12032–N	RSPA–98–3456	Physical Acoustics Quality Services, Lawrenceville, NJ.	49 CFR 173.31(c), 180.509(e)	To authorize the use of acoustic emission non-destructive testing procedure for tank car structural re-certification. (mode 2)
12033–N	RSPA–98–3457	PPG Industries, Inc, Pittsburgh, PA.	49 CFR 180.509(e)	To authorize the use of acoustic emission non-destructive testing procedure for tank car structural re-certification. (mode 2)
12037–N	RSPA–98–3460	The Carbide/Graphite Group, Inc., Louisville, KY.	49 CFR 173.35(b)	To authorize the transportation in commerce of Division 4.3 material in reused UN 13H4 lined woven polypropylene flexible intermediate bulk containers in truckload or carload lots. (modes 1, 2)
12038–N	RSPA–98–3461	Duracool Limited, Edmonton, Alberta, CN.	49 CFR 173.306(a)(3)	To authorize the transportation in commerce of Hydrocarbon Blend B refrigerant gas, Division 2.1, in non-DOT specification containers similar to DOT2Q cans with overpack. (modes 1, 2, 3)
12039–N	RSPA–98–3443	Sun Company, Inc., Philadelphia, PA.	49 CFR 173.319(d)(2)	To authorize the transportation in commerce of liquid refrigerated liquid, Division 2.1, in DOT113C120W tank car tank at a higher pressure than presently authorized. (mode 2)

NOTE: In Federal Register Vol. 63, No. 8, January 13, 1998, Page 1991, Application No. 11986, RSPA–98–3171 and Application No. 11989, RSPA–98–3170 should have appeared as Application No. 11986, RSPA–97–3171 and Application No. 11989, RSPA–97–3170.

[FR Doc. 98–4524 Filed 2–20–98; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.
ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions for the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional modes of transportation, etc.,) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before March 10, 1998.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Docket No.	Applicant	Modification of exemption
7887–M	.....	Kosdon Enterprises, Ventura, CA (See Footnote 1)	7887
9610–m	.....	Alliant Techsystems Inc., Hopkins, MN (See Footnote 2)	9610
9791–M	.....	Pressed Steel Tank Co., Inc., Milwaukee, WI (See Footnote 3)	9791
10996–M	.....	Kosdon Enterprises, Ventura, CA (See Footnote 4)	10996
11888–M	RSPA–97–2583	Alliant Techsystems, Inc., Hopkins, MN (See Footnote 5)	11888
11984–M	RSPA–97–3173	Trans World Airlines, Inc., Kansas City, MO (See Footnote 6)	11984
12013–M	RSPA–97–3249	All Pure Chemical Company, Walnut Creek, CA (See Footnote 7)	12013

(1) To modify the exemption to provide for rocket motors and reloadable kits which are classified as Division 1.3G that exceed the 25 gram limitation to be excepted from labeling requirements.

(2) To modify the exemption to provide for the transportation of smokeless powder in DOT-Specification UN 1A2 steel drums as an alternative container.

(3) To modify the exemption to provide for cargo only aircraft as an additional mode of transportation for shipment of non-specification cylinders containing Division 2.2 material.

(4) To modify the exemption to provide for certain rocket motors and explosive articles with propellant charges in excess of 25 grams to be classed as Division 1.3C.

(5) To reissue the exemption originally issued on an emergency basis and to modify the exemption to provide for transportation by ocean vessel.

(6) To reissue the exemption originally issued on an emergency basis to authorize the transportation in commerce of a second safety mechanism when shipping oxygen generators.

(7) To modify the exemption originally issued on an emergency basis to authorize the discharge of certain Class 8 liquids from IBCs without removing tanks from vehicles.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on February 13, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 98–4525 Filed 2–20–98; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–15: OTS No. 03934]

Bay State Federal Savings Bank, Brookline, Massachusetts; Approval of Conversion Application

Notice is hereby given that on February 12, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Bay State Federal Savings Bank, Brookline, Massachusetts, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: February 18, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–4518 Filed 2–20–98; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–14: OTS No. 03309]

First Federal Lincoln Bank, Lincoln, Nebraska; Approval of Conversion Application

Notice is hereby given that on February 12, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Lincoln Bank, Lincoln, Nebraska, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039–2010.

Dated: February 18, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–4517 Filed 2–20–98; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–13: OTS No. 03545]

First Federal Savings and Loan Association of Hazleton, Hazleton, Pennsylvania; Approval of Conversion Application

Notice is hereby given that on February 12, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Hazleton, Hazleton, Pennsylvania, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: February 18, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–4516 Filed 2–10–98; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Future of VA Long-Term Care

The Department of Veterans Affairs gives notice that a meeting of the Advisory Committee on the Future of VA Long-Term Care will be held on February 26–27, 1998, at the Department of Veterans Affairs, in Room 230, located at 810 Vermont Avenue, NW, Washington, DC. The purpose of the Committee is to provide professional advice on the present scope and structure of VA's long-term care services, and about changes necessary to ensure that services are available and effective in a future healthcare setting. The Committee will begin at 10:00 a.m. (EDT) and continue until 5:00 p.m. (EDT) on February 26 and will begin at 8:30 a.m. (EDT) and continue until 11:45 a.m. (EDT) on February 27.

The agenda for February 26 and 27 will cover review and preparation of the Committee's final report.

The meeting will be open to the public. Those wishing to attend should contact Jacqueline Holmes, Program Assistant, Geriatrics and Extended Care Strategic Healthcare Group at 202–273–8539 not later then February 23, 1998.

Dated: February 11, 1998.

By Direction of the Acting Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–4466 Filed 2–20–98; 8:45 am]

BILLING CODE 8320–01–M

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federal register

Monday
February 23, 1998

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1 et al.
Federal Acquisition Regulations (FAR); Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 97–04; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules, interim rules, and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97–04. A companion document, the Small Entity Compliance Guide, follows this FAC and may be located on the Internet at http://www.arnet.gov/far.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97–04 and specific FAR case number(s).

Item	Subject	FAR case	Analyst
I	Use of Data Universal Numbering System as the Primary Contractor Identification	95–307	Moss.
II	Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements	92–054B	Linfield.
III	Review of Procurement Integrity Clauses	97–601	Linfield.
IV	Certificate of Competency	96–002	Moss.
V	Applicability of Cost Accounting Standards (CAS) Coverage	97–020	Nelson.
VI	OMB Circular No. A–133	97–029	Olson.
VII	SIC Code and Size Standard Appeals	97–026	Moss.
VIII	Small Business Competitiveness Demonstration Program	97–305	Moss.
IX	Special Disabled and Vietnam Era Veterans	95–602	O'Neill.
X	Treatment of Caribbean Basin Country End Products	97–039	Linfield.
XI	Administrative Changes to Cost Accounting Standards (CAS) Applicability	97–025	Nelson.
XII	Changes in Contract Administration and Audit Cognizance	95–022	Klein.
XIII	Limitation on Allowability of Compensation for Certain Contractor Personnel (Interim)	97–303	Nelson.
XIV	Transfer of Assets Following a Business Combination	96–006	Nelson.
XV	Modular Contracting	96–605	Nelson.
XVI	Technical Amendments		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97–04 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Use of Data Universal Numbering System as the Primary Contractor Identification (FAR Case 95–307)

This final rule amends FAR Subpart 4.6, Contract Reporting, and 52.212–1, Instructions to Offerors—Commercial Items; and adds a new solicitation provision at 52.204–6, Data Universal Numbering System (DUNS) Number; to replace the Contractor Establishment Code (CEC) with the Data Universal Numbering System (DUNS) number as the means of identifying contractors in the Federal Procurement Data System (FPDS). It reflects Dun and Bradstreet procedures for offerors located overseas.

Item II—Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements (FAR Case 92–054B)

The interim rule published as Item V of FAC 90–46 is revised and finalized. The rule implements Executive Order 12856 of August 3, 1993, "Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements." The final rule differs from the interim rule in that it amends FAR 23.1004 and 52.223–5 to clarify the obligations of Federal facilities to comply with the reporting and emergency planning requirements of the Pollution Prevention Act of 1990 and the Emergency Planning and Community Right-to-Know Act of 1986.

Item III—Review of Procurement Integrity Clauses (FAR Case 97–601)

This final rule amends FAR Parts 4 and 52 to revise the application of procurement integrity requirements to contracts for commercial items. The rule amends (1) 4.803 to remove an obsolete requirement for maintenance of a record of persons having access to proprietary or source selection information, (2) the clause at 52.212–4 to add the procurement integrity provisions of 41 U.S.C. 423 to the list of laws applicable to contracts for commercial items, and (3) the clause at 52.212–5 to remove 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity, from the list of FAR clauses required to implement provisions of law or Executive orders. As amended by the Clinger-Cohen Act of 1996, 41 U.S.C. 423 no longer requires that a contract clause specify administrative remedies for procurement integrity violations.

Item IV—Certificate of Competency (FAR Case 96–002)

The interim rule published as Item IX of FAC 97–01 is converted to a final rule with a minor change at 19.302(d). The rule implements revisions made to the Small Business Administration's procurement assistance programs contained in 13 CFR Part 125.

Item V—Applicability of Cost Accounting Standards (CAS) Coverage (FAR Case 97–020)

This final rule amends FAR Parts 12 and 52 to exempt contracts and subcontracts for the acquisition of commercial items from Cost Accounting Standards requirements when these contracts and subcontracts are firm-fixed-price or fixed-price with economic price adjustment (provided that the

price adjustment is not based on actual costs incurred).

Item VI—OMB Circular No. A–133 (FAR Case 97–029)

This final rule amends FAR 15.209 and the associated clause at 52.215–2, Audits and Records—Negotiation, Alternate II, to implement revisions to OMB Circular No. A–133. The circular has a new title, "Audits of States, Local Governments, and Non-Profit Organizations," and now addresses audits of State and local governments as well as audits of institutions of higher learning and other nonprofit organizations.

Item VII—SIC Code and Size Standard Appeals (FAR Case 97–026)

This final rule amends FAR Subpart 19.3 to conform to the Small Business Administration regulations at 13 CFR 121 and 134 pertaining to protest of an offeror's small business representation, and appeal of a contracting officer's standard industrial classification code designation and related small business size standard.

Item VIII—Small Business Competitiveness Demonstration Program (FAR Case 97–305)

This final rule amends FAR Subpart 19.10 to eliminate the termination date of the Small Business Competitiveness Demonstration Program, in accordance with Section 401 of the Small Business Reauthorization Act of 1997 (Public Law 105–135).

Item IX—Special Disabled and Vietnam Era Veterans (FAR Case 95–602)

This final rule amends FAR Subpart 22.13 and the clauses at 52.212–5, 52.222–35, and 52.222–37 to implement revised Department of Labor regulations regarding affirmative action for disabled veterans and veterans of the Vietnam era.

Item X—Treatment of Caribbean Basin Country End Products (FAR Case 97–039)

This final rule revises FAR 25.402(b) to extend the time period for treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act. The United States Trade Representative has directed that such treatment continue through September 30, 1998.

Item XI—Administrative Changes to Cost Accounting Standards (CAS) Applicability (FAR Case 97–025)

This final rule amends FAR 30.101 and the clauses at 52.230–1 and 52.230–5 to conform to changes made to the Cost Accounting Standards (CAS) Board rules and regulations (FAR Appendix), pertaining to the applicability of CAS to negotiated contracts and subcontracts.

Item XII—Changes in Contract Administration and Audit Cognizance (FAR Case 95–022)

This final rule amends FAR Parts 31, 32, 42, 46, 47, and 52 to add policies and procedures for assigning and performing contract audit services, and to clarify the policy for assigning or delegating responsibility for establishing forward pricing and billing rates and final indirect cost rates.

Item XIII—Limitation on Allowability of Compensation for Certain Contractor Personnel (FAR Case 97–303)

This interim rule revises FAR 31.205–6(p) to implement Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85). Section 808 limits the allowable compensation costs for senior executives of contractors to the benchmark compensation amount determined applicable for each fiscal year by the Administrator for Federal Procurement Policy.

Item XIV—Transfer of Assets Following a Business Combination (FAR Case 96–006)

This final rule revises FAR 31.205–10(a)(5) and 31.205–52 to conform to changes made to the Cost Accounting Standards regarding the treatment of gains and losses attributable to tangible capital assets subsequent to business mergers or combinations.

Item XV—Modular Contracting (FAR Case 96–605)

This final rule amends FAR Part 39 to implement Section 5202 of the Information Technology Management Reform Act of 1996 (Public Law 104–106). Section 5202 encourages maximum practicable use of modular contracting for acquisition of major systems of information technology. Agencies may also use modular contracting to acquire non-major systems of information technology.

Item XVI—Technical Amendments

Amendments are being made at FAR 1.201–1(b)(2), 44.204(b), and 52.219–1(b)(2) and (b)(3) to update references and make editorial changes.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

FAC 97–04

[Date]

Federal Acquisition Circular (FAC) 97–04 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 97–04 are effective April 24, 1998, except for Items VIII, X, XIII, and XVI, which are effective February 23, 1998.

Dated: February 11, 1998.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: February 12, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: February 12, 1998.

Deidre A. Lee,

Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 98–4290 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 52, and 53

[FAC 97–04; FAR Case 95–307; Item I]

RIN 9000–AH33

Federal Acquisition Regulation; Use of Data Universal Numbering System as the Primary Contractor Identification

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published in the **Federal Register** at 61 FR 67412,

December 20, 1996, as Item III of Federal Acquisition Circular 90–43. This final rule amends the Federal Acquisition Regulation (FAR) to replace the Contractor Establishment Code (CEC) with the Data Universal Numbering System (DUNS) number as the means of identifying contractors in the Federal Procurement Data System (FPDS). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–04, FAR case 95–307.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Parts 4 and 52 to replace the CEC with the DUNS number as the means of identifying contractors in the FPDS. Federal agencies report data to the Federal Procurement Data Center, which collects, processes, and disseminates official statistical data on Federal contracting.

An interim rule was published in the **Federal Register** on December 20, 1996 (61 FR 67412). The final rule differs from the interim rule mainly (1) to reflect new Dun and Bradstreet procedures that accommodate offerors located overseas; and (2) to clarify that this requirement applies to commercial items by adding the DUNS requirement to the provision at FAR 52.212–1, Instructions to Offerors Commercial Items.

Public comments were received from two sources. The comments were considered in developing the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely replaces the Contractor Establishment Code with the Data Universal Numbering System number to identify contractors in the Federal Procurement Data System.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the final rule contains information collection requirements. The information collection aspects of this rule have been approved by the Office of Management and Budget and assigned Control No. 9000–0145.

List of Subjects in 48 CFR Parts 1, 4, 52, and 53

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Parts 4, 52, and 53, which was published at 61 FR 67412, December 20, 1996, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR Parts 1, 4, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.106 is amended in the table following the introductory paragraph by adding the following entries:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control No.
* * * *	*
4.602	9000–0145
4.603	9000–0145
* * * *	*
52.204–6	9000–0145
* * * *	*

PART 4—ADMINISTRATIVE MATTERS

3. Section 4.603 is amended by revising paragraph (a) to read as follows:

4.603 Solicitation provisions.

(a)(1) The contracting officer shall insert the provision at 52.204–6, Data Universal Numbering System (DUNS) Number, in solicitations that are expected to result in a requirement for the generation of an SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report (see 4.602(c)), or a similar agency form.

(2) For offerors located outside the United States, the contracting officer may modify paragraph (c) of the provision at 52.204–6 to provide the correct phone numbers for the Dun and Bradstreet offices in the areas from which offerors are anticipated to respond.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.204–6 is amended by revising the section heading, provision heading and date; and the provision is amended by removing paragraph (a) and redesignating paragraphs (b), (c), and (d), as (a), (b), and (c), respectively; by revising newly designated paragraph (a), the third sentence of newly designated introductory paragraph (b), and newly designated paragraph (c) to read as follows:

52.204–6 Data Universal Numbering System (DUNS) Number.

* * * * *

Data Universal Numbering System (DUNS) Number (Apr 1998)

(a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" followed by the DUNS number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet Information Services.

(b) * * * For information on obtaining a DUNS number, the offeror, if located within the United States, should call Dun and Bradstreet at 1–800–333–0505. * * *

* * * * *

(c) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet home page at http://www.dnb.com/. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at globalinfo@mail.dnb.com.

(End of provision)

5. Section 52.212–1 is amended by revising the provision date to read "(Apr 1998)" and adding paragraph (j) to the provision to read as follows:

52.212–1 Instructions to Offerors—Commercial Items.

* * * * *

Instructions to Offerors—Commercial Items (Apr 1998)

* * * * *

(j) *Data Universal Numbering System (DUNS) Number.* (Applies to offers exceeding $25,000.) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" followed by the DUNS number that identifies the offeror's name and address. If the offeror does not have a DUNS number, it should contact

Dun and Bradstreet to obtain one at no charge. An offeror within the United States may call 1–800–333–0505. The offeror may obtain more information regarding the DUNS number, including locations of local Dun and Bradstreet Information Services offices for offerors located outside the United States, from the Internet home page at http://www.dnb.com/. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at globalinfo@mail.dnb.com.

(End of provision)

[FR Doc. 98–4292 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 11, 23, and 52

[FAC 97–04; FAR Case 92–054B; Item II]

RIN 9000–AH39

Federal Acquisition Regulation; Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published in the **Federal Register** at 62 FR 12690, March 17, 1997, as Item V of Federal Acquisition Circular 90–46. The rule amends the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 12856 of August 3, 1993, "Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements". This regulatory action was not subject to Office of Management and Budget (OMB) review under E.O. 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAC 97–04, FAR case 92–054B.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule with request for public comment was published on March 17, 1997 (62 FR 12690), to implement E.O. 12856 of August 3, 1993, "Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements". E.O. 12856 requires that Federal facilities comply with the planning and reporting requirements of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101–13109) and the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) (42 U.S.C. 11001–11050). As a result of the one public comment received in response to the interim rule, FAR 23.1004(b) and 52.223–5(b) have been revised to clarify the obligations of Federal facilities to comply with the reporting and emergency planning requirements of the PPA and the EPCRA.

B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. The analysis is summarized as follows:

No comments were received in response to the Initial Regulatory Flexibility Analysis.

The rule will apply to all contractors that use certain hazardous or toxic substances in the performance of contracts on a Federal facility. It is estimated that there are approximately 6,100 small business contractors to which the rule will apply. Such contractors must provide any information necessary to enable the Federal facility to fulfill its reporting requirements under EPCRA, PPA, and E.O. 12856. The information collection would be prepared by contractor employees using records that the contractor is required to maintain under existing law and regulation. No special professional skills are needed for preparation of the required information.

There are no known alternatives which would accomplish the objectives of the PPA, EPCRA, and E.O. 12856. The rule implements an explicit requirement of E.O. 12856 to provide a contract clause to collect information on the use of specific substances from certain contractors. Any alternative to the final rule that lessens the burden on small entities would fail to comply with E.O. 12856.

C. Paperwork Reduction Act

The final rule imposes no new information collection requirements that require approval of OMB under 44 U.S.C. 3501, *et seq.* The information collection requirements imposed by the interim rule have been approved by OMB through May 31, 2000, under OMB Control Number 9000–0147.

List of Subjects in 48 CFR Parts 1, 11, 23, and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Parts 23 and 52, which was published at 62 FR 12696, March 17, 1997, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR Parts 1, 11, 23, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.106 is amended in the table following the introductory paragraph by adding the following entry:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB Control No.
. . . . .	
52.223–5	9000–0147
. . . . .	

PART 11—DESCRIBING AGENCY NEEDS

11.001 [Amended]

3. Section 11.001 is amended by removing the definition of "New".

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.1004 [Amended]

4. Section 23.1004 is amended at the end of paragraph (b) by removing the period and inserting ", and other agency obligations under E.O. 12856.".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.213–4 [Amended]

5. Section 52.213–4 is amended by revising the date of the clause to read "(APR 1998)"; and in paragraph (b)(1)(vii) of the clause by revising "(MAR 1997)" to read "(APR 1998)".

6. Section 52.223–5 is amended by revising the clause date and paragraph (b) to read as follows:

52.223–5 Pollution Prevention and Right-to-Know Information.

* * * * *

Pollution Prevention and Right-to-Know Information (Apr 1998)

* * * * *

(b) The Contractor shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA; the emergency notice requirements of Section 304 of EPCRA; the list of Material Safety Data Sheets required by Section 311 of EPCRA; the emergency and hazardous chemical inventory forms of Section 312 of EPCRA; the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA; and the toxic chemical reduction goals requirements of Section 3–302 of Executive Order 12856.

(End of clause)

[FR Doc. 98–4293 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4 and 52

[FAC 97–04; FAR Case 97–601; Item III]

RIN 9000–AH62

Federal Acquisition Regulation; Review of Procurement Integrity Clauses

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise the application of procurement integrity requirements to contracts for commercial items. This regulatory action was not subject to Office of Management and Budget (OMB) review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAC 97–04, FAR case 97–601.

SUPPLEMENTARY INFORMATION:

A. Background

Prior to its amendment by the Clinger-Cohen Act of 1996 (Public Law 104–106), Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) required that the FAR prescribe a contract clause specifying appropriate contractual penalties for procurement integrity violations. The resulting clause is FAR 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity. A reference to this clause was included in the clause at FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. The final rule published in the **Federal Register** at 62 FR 226, January 2, 1997, as FAR case 96–314, Item I of FAC 90–45, implemented the Clinger-Cohen amendments to 41 U.S.C. 423, but did not revise the contract clauses applicable to contracts for commercial items.

Upon subsequent review, the Councils have determined that 41 U.S.C. 423, as amended, no longer requires that a contract clause specify administrative remedies for procurement integrity violations. Therefore, this rule amends FAR 52.212–5 to remove the reference therein to FAR 52.203–10. However, since contracts for commercial items are not exempt from the procurement integrity prohibitions at 41 U.S.C. 423, the clause at FAR 52.212–4 is amended to add 41 U.S.C. 423 to the list of applicable laws.

The rule also amends FAR 4.803 to remove the obsolete requirement to maintain a record of persons having access to proprietary or source selection information.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAC 97–04, FAR Case 97–601), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 4 and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 4 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 4 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

4.803 [Amended]

2. Section 4.803 is amended by removing paragraph (a)(42).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.212–4 is amended by revising the date of the clause and paragraph (r) to read as follows:

52.212–4 Contract Terms and Conditions—Commercial Items.

* * * * *

Contract Terms and Conditions—Commercial Items (Apr 1998)

* * * * *

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51–58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

* * * * *

52.212–5 [Amended]

4. Section 52.212–5 is amended by revising the date of the clause to read

"(Apr 1998)" and removing and reserving paragraph (b)(2).

[FR Doc. 98–4294 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9 and 19

[FAC 97–04; FAR Case 96–002; Item IV]

RIN 9000–AH66

Federal Acquisition Regulation; Certificate of Competency

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final with a minor change.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with one change, the interim rule published in the **Federal Register** at 62 FR 44819, August 22, 1997, as Item IX of Federal Acquisition Circular 97–01. This final rule amends the Federal Acquisition Regulation (FAR) to implement revisions made to the Small Business Administration's regulations covering the procurement assistance programs. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–04, FAR case 96–002.

SUPPLEMENTARY INFORMATION:

A. Background

The interim rule amended FAR Parts 9 and 19 to comply with revisions made to the Small Business Administration's (SBA) procurement assistance programs contained in 13 CFR Part 125 and published at 61 FR 3310, January 31, 1996. The rule increased the threshold over which contracting officers may appeal the award of a certificate of competency (COC) from $25,000 to $100,000; updated the names of SBA offices involved in processing COCs; implemented the requirement that compliance with the limitations on subcontracting be considered an element of responsibility; and removed language implementing Section 305 of Pub. L. 103–403, as Section 305 has expired.

No public comments were received in response to the interim FAR rule. The interim FAR rule is being converted to a final rule with a minor change to provide a more precise reference to SBA regulations.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any new requirements on contractors, large or small. The Small Business Administration has certified that the revisions to 13 CFR Part 125 being implemented by this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 9 and 19

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With A Minor Change

Accordingly, the interim rule amending 48 CFR Parts 9 and 19, which was published at 62 FR 44819, August 22, 1997, is adopted as a final rule with the following change:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR Part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

19.302 [Amended]

2. Section 19.302 is amended in the introductory text of paragraph (d) by removing the reference "13 CFR 121.10" and inserting "13 CFR 121.1004".

[FR Doc. 98–4295 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12 and 52

[FAC 97–04; FAR Case 97–020; Item V]

RIN 9000–AH89

Federal Acquisition Regulation; Applicability of Cost Accounting Standards (CAS) Coverage

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise the criteria for application of Cost Accounting Standards (CAS) to negotiated Government contracts. This regulatory action was not subject to Office of Management and Budget (OMB) review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–04, FAR case 97–020.

SUPPLEMENTARY INFORMATION:

A. Background

On June 6, 1997, the CAS Board published a final rule, Applicability of CAS Coverage, in the **Federal Register** (62 FR 31294). The CAS rule implemented Section 4205 of Public Law 104–106, the Clinger-Cohen Act, by exempting contracts and subcontracts for the acquisition of commercial items from CAS requirements when these contracts and subcontracts are firm-

fixed-price or fixed-price with economic price adjustment (provided that the price adjustment is not based on actual costs incurred).

This final rule amends FAR Subpart 12.2, Special Requirements for the Acquisition of Commercial Items, and the clauses at 52.230–2, Cost Accounting Standards, and 52.230–3, Disclosure and Consistency of Cost Accounting Practices, to conform the FAR to the revised CAS.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–04, FAR case 97–020), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 12 and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 12 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 12 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

2. Section 12.214 is revised to read as follows:

12.214 Cost Accounting Standards.

Cost Accounting Standards (CAS) do not apply to contracts and subcontracts for the acquisition of commercial items when these contracts and subcontracts are firm-fixed-price or fixed-price with economic price adjustment (provided that the price adjustment is not based on actual costs incurred). See 48 CFR 30.201–1 for CAS applicability to fixed-price with economic price adjustment contracts and subcontracts for commercial items when the price adjustment is based on actual costs incurred. When CAS applies, the contracting officer shall insert the appropriate provisions and clauses as prescribed in 48 CFR 30.201.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.230–2 is amended by revising the clause date and paragraph (d) to read as follows:

52.230–2 Cost Accounting Standards.

* * * * *

Cost Accounting Standards (Apr 1998)

* * * * *

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201–4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of $500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201–1.

(End of clause)

4. Section 52.230–3 is amended by revising the clause date and paragraphs (d)(1), (2) and (3) to read as follows:

52.230–3 Disclosure and Consistency of Cost Accounting Practices.

* * * * *

Disclosure and Consistency of Cost Accounting Practices (Apr 1998)

* * * * *

(d) * * *

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201–4 of the Federal Acquisition Regulation shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of $500,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201–1.

(End of clause)

[FR Doc. 98–4296 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15 and 52

[FAC 97–04; FAR Case 97–029; Item VI]

RIN 9000–AH63

Federal Acquisition Regulation; OMB Circular No. A–133

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement revisions to Office of Management and Budget (OMB) Circular No. A–133, published as a final rule in the **Federal Register** at 62 FR 35277, June 30, 1997. This regulatory action was not subject to OMB review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAC 97–04, FAR case 97–029.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 15.209 and the associated clause at FAR 52.215–2, Audits and Records—Negotiation, Alternate II, to implement revisions to OMB Circular No. A–133. The circular has a new title, "Audits of States, Local Governments, and Non-Profit Organizations", and now addresses audits of State and local Governments as well as audits of institutions of higher learning and other nonprofit organizations.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C.610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–04, FAR case 97–029), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 15 and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 15 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 15 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY NEGOTIATION

2. Section 15.209 is amended by revising paragraph (b)(3) to read as follows:

15.209 Solicitation provisions and contract clauses.

* * * * *

(b) * * *

(3) For cost-reimbursement contracts with State and local Governments, educational institutions, and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.215–2 is amended by revising Alternate II to read as follows:

52.215–2 Audit and Records—Negotiation.

* * * * *

Alternate II (Apr 1998). As prescribed in 15.209(b)(3), add the following paragraph (h) to the basic clause:

(h) The provisions of OMB Circular No. A–133, "Audits of States, Local Governments, and Nonprofit Organizations," apply to this contract.

* * * * *

[FR Doc. 98–4297 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 97–04; FAR Case 97–026; Item VII]

RIN 9000–AH87

Federal Acquisition Regulation; SIC Code and Size Standard Appeals

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to conform to the Small Business Administration (SBA) regulations pertaining to protest of an offeror's small business representation, and appeal of a contracting officer's Standard Industrial Classification (SIC) code designation and related small business size standard. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–04, FAR case 97–026.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends FAR Subpart 19.3 to conform to SBA regulations at 13 CFR 121 and 134 pertaining to protest of small business representations, and appeal of SIC code designations and related small business size standards. The rule contains procedures for filing such protests and appeals.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–04, FAR case 97–026), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 19:

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 19 is amended as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR Part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 19.302 is amended—

a. By revising paragraph (a);

b. In paragraph (c)(1) by adding "Government Contracting" after "SBA";

c. In paragraph (d)(1)(i) by adding "business" after "1";

d. In paragraphs (e)(1) and (g)(1) by removing "protestant" and adding "protester" in its place;

e. In the first sentence of paragraph (g)(2) by adding "Government Contracting" after "SBA", and ", or designee," after "Director"; and in the third sentence by removing the word "below" and adding "of this section" in its place;

f. By revising the second sentence of paragraph (h)(4); and

g. By revising paragraphs (i) and (j) to read as follows:

19.302 Protesting a small business representation.

(a) An offeror, the SBA Government Contracting Area Director having responsibility for the area in which the headquarters of the protested offeror is located, the SBA Associate

Administrator for Government Contracting, or another interested party may protest the small business representation of an offeror in a specific offer.

* * * * *

(h) * * *

(4) * * * The contracting officer shall forward the protest to the SBA (see paragraph (c)(1) of this section) with a notation that the concern is not being considered for award, and shall notify the protester of this action.

(i) An appeal from an SBA size determination may be filed by: any concern or other interested party whose protest of the small business representation of another concern has been denied by an SBA Government Contracting Area Director; any concern or other interested party that has been adversely affected by a Government Contracting Area Director's decision; or the SBA Associate Administrator for the SBA program involved. The appeal must be filed with the—

Office of Hearings and Appeals, Small Business Administration, Suite 5900, 409 3rd Street, SW., Washington, DC 20416

within the time limits and in strict accordance with the procedures contained in subpart C of 13 CFR Part 134. It is within the discretion of the SBA Judge whether to accept an appeal from a size determination. If the Judge decides not to consider such an appeal, the Judge will issue an order denying review and specifying the reasons for the decision. The SBA will inform the contracting officer of its ruling on the appeal. The SBA decision, if received before award, will apply to the pending acquisition. SBA rulings received after award shall not apply to that acquisition.

(j) A protest that is not timely, even though received before award, shall be forwarded to the SBA Government Contracting Area Office (see paragraph (c)(1) of this section), with a notation on it that the protest is not timely. The protester shall be notified that the protest cannot be considered on the instant acquisition but has been referred to SBA for its consideration in any future actions. A protest received by a contracting officer after award of a contract shall be forwarded to the SBA Government Contracting Area Office with a notation that award has been made. The protester shall be notified that the award has been made and that the protest has been forwarded to SBA for its consideration in future actions.

3. Section 19.303 is amended by revising the section heading and paragraph (c) to read as follows:

19.303 Determining standard industrial classification codes and size standards.

* * * * *

(c) The contracting officer's determination is final unless appealed as follows:

(1) An appeal from a contracting officer's SIC code designation and the applicable size standard must be served and filed within 10 calendar days after the issuance of the initial solicitation. SBA's Office of Hearings and Appeals (OHA) will dismiss summarily an untimely SIC code appeal.

(2)(i) The appeal petition must be in writing and must be addressed to the—

Office of Hearings and Appeals, Small Business Administration, Suite 5900, 409 3rd Street, SW., Washington, DC 20416

(ii) There is no required format for the appeal; however, the appeal must include—

(A) The solicitation or contract number and the name, address, and telephone number of the contracting officer;

(B) A full and specific statement as to why the size determination or SIC code designation is allegedly erroneous and argument supporting the allegation; and

(C) The name, address, telephone number, and signature of the appellant or its attorney.

(3) The appellant must serve the appeal petition upon—

(i) The SBA official who issued the size determination;

(ii) The contracting officer who assigned the SIC code to the acquisition;

(iii) The business concern whose size status is at issue;

(iv) All persons who filed protests; and

(v) SBA's Office of General Counsel.

(4) Upon receipt of a SIC code appeal, OHA will notify the contracting officer by a notice and order of the date OHA received the appeal, the docket number, and Judge assigned to the case. The contracting officer's response to the appeal, if any, must include argument and evidence (see 13 CFR Part 134), and must be received by OHA within 10 calendar days from the date of the docketing notice and order, unless otherwise specified by the Administrative Judge. Upon receipt of OHA's docketing notice and order, the contracting officer must immediately send to OHA a copy of the solicitation relating to the SIC code appeal.

(5) After close of record, OHA will issue a decision and inform the contracting officer. If OHA's decision is received by the contracting officer before the date the offers are due, the decision shall be final and the solicitation must be amended to reflect the decision, if appropriate. OHA's decision received after the due date of the initial offers shall not apply to the pending solicitation but shall apply to future solicitations of the same products or services.

[FR Doc. 98–4298 Filed 2–20–98; 8:45 am]
BILLING CODE 8025–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 97–04; FAR Case 97–305; Item VIII]

RIN 9000–AH81

Federal Acquisition Regulation; Small Business Competitiveness Demonstration Program

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Section 401 of the Small Business Reauthorization Act of 1997. Section 401 eliminates the termination date of the Small Business Competitiveness Demonstration Program. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–04, FAR case 97–305.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Subpart 19.10 to eliminate the termination date of the Small Business Competitiveness Demonstration Program. Section 401 of the Small Business Reauthorization Act of 1997 (Pub. L. 105–135) amended Section 711(c) of the Small Business

Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note) to remove the program termination date of September 30, 1997.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–04, FAR case 97–305), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 19 is amended as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR Part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 19.1001 is revised to read as follows:

19.1001 General.

The Small Business Competitiveness Demonstration Program was established by the Small Business Competitiveness Demonstration Program Act of 1988, Public Law 100–656 (15 U.S.C. 644 note). Pursuant to the Small Business Reauthorization Act (Pub. L. 105–135), the Small Business Competitiveness Demonstration Program has been extended indefinitely. The program is implemented by an OFPP Policy Directive and Test Plan, dated August 31, 1989, as amended on April 16, 1993, which remains in effect until supplemented or revised to reflect the statutory changes in Public Law 105–135. Pursuant to Section 713(a) of Public Law 100–656, the requirements of the FAR that are inconsistent with the program procedures are waived. The program consists of two major components—

(a) Unrestricted competition in four designated industry groups; and

(b) Enhanced small business participation in 10 agency targeted industry categories.

3. Section 19.1003 is amended by revising the introductory text and the first sentence of paragraph (a) to read as follows:

19.1003 Purpose.

The purpose of the Program is to—

(a) Assess the ability of small businesses to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides. * * *

* * * * *

4. Section 19.1006 is amended by revising the first sentence of paragraph (b)(1) to read as follows:

19.1006 Procedures.

* * * * *

(b) *Designated industry groups.* (1) Solicitations for acquisitions in any of the four designated industry groups that have an anticipated dollar value greater than $25,000 shall not be considered for small business set-asides under Subpart 19.5 (however, see paragraphs (b)(2) and (c)(1) of this section). * * *

* * * * *

[FR Doc. 98–4299 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAC 97–04; FAR Case 95–602; Item IX]

RIN 9000–AH86

Federal Acquisition Regulation; Special Disabled and Vietnam Era Veterans

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement revised Department of Labor (DoL) regulations regarding affirmative action for employment of disabled veterans and veterans of the Vietnam era. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAC 97–04, FAR case 95–602.

SUPPLEMENTARY INFORMATION:

A. Background

As a result of 1994 amendments to the Vietnam Veteran Readjustment Act, DoL published revisions to its regulations at 41 CFR 60–250 on January 5, 1995 (60 FR 1985), and corrections to these revisions on February 16, 1996 (61 FR 6116). This final rule amends the FAR to conform to the DoL revisions.

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–04, FAR case 95–602), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 22 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 22 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 22.13—Disabled Veterans and Veterans of the Vietnam Era

2. The heading of Subpart 22.13 is revised to read as set forth above.

3. Sections 22.1300 and 22.1301 are revised to read as follows:

22.1300 Scope of subpart.

This subpart prescribes policies and procedures for implementing the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended (38 U.S.C. 4211 and 4212) (the Act); Executive Order 11701, January 24, 1973 (3 CFR 1971–1975 Comp., p. 752); and the regulations of the Secretary of Labor (41 CFR Part 60–250 and Part 61–250). In this subpart, the terms "contract" and "contractor" include "subcontract" and "subcontractor."

22.1301 Policy.

Government contractors, when entering into contracts subject to the Act, are required to list all employment openings, except those for executive and top management positions, positions to be filled from within the contractor's organization, and positions lasting 3 days or less, with the appropriate local employment service office. Contractors are required to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era without discrimination based on their disability or veteran's status.

22.1303 [Amended]

4. Section 22.1303 is amended in the last sentence of paragraph (d) by removing the word "calendar".

5. Section 22.1304 is amended by revising the first sentence of paragraph (b) to read as follows:

22.1304 Department of Labor notices and reports.

* * * * *

(b) The Act requires contractors to submit a report at least annually to the Secretary of Labor regarding employment of Vietnam era and disabled veterans unless all of the terms of the clause at 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era, have been waived (see 22.1303). * * *

* * * * *

6. Section 22.1308 is amended by revising paragraphs (a)(1)(i) and (b) to read as follows:

22.1306 Contract clauses.

(a)(1) * * *

(i) Work is performed outside the United States by employees recruited outside the United States (for the purposes of this subpart, "United States" includes the States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and Guam); or

* * * * *

(b) The contracting officer shall insert the clause at 52.222–37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era, in solicitations and contracts containing the clause at 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.

22.1303, 22.1304, and 22.1306 [Amended]

7a. In the list below, for each section listed in the left column, remove the title indicated in the middle column, and add the title indicated in the right column:

Section	Remove	Add
22.1303(a) introductory text	Director, Office of	Deputy Assistant Secretary for.
22.1303(a) introductory text	(Director)	(Deputy Assistant Secretary).
22.1303(b)(1)	Director of OFCCP	Deputy Assistant Secretary.
22.1303(b)(2)	Director	Deputy Assistant Secretary.
22.1303(d)	Director	Deputy Assistant Secretary.
22.1304(a)	Director	Deputy Assistant Secretary.
22.1306, second sentence	Director of the Office of Federal Contract Compliance Programs of the DOL.	Deputy Assistant Secretary.

7b. In addition to the amendments set forth above, in Subpart 22.13 remove the phrase "Affirmative Action for Special Disabled and Vietnam Era Veterans" and add "Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era" in the following places:

22.1302(b)
22.1303(a) introductory text
22.1305
22.1307 introductory paragraph
22.1308(a)(1) introductory text

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 52.212–5 is amended by revising the date of the clause, and paragraphs (b)(7), (b)(9), and (e)(2) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Apr 1998)

* * * * *

(b) * * *

(7) 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).

* * * * *

(9) 52.222–37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).

* * * * *

(e) * * *

(2) 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212);

* * * * *

9. Section 52.213–4 is amended by revising the clause date and paragraphs (b)(1)(iii) and (b)(1)(v) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions Simplified Acquisitions (Other than Commercial Items) (Apr 1998)

* * * * *

(b)(1) * * *

* * * * *

(iii) 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (Apr 1998) (38 U.S.C. 4212) (Applies to contracts over $10,000).

* * * * *

(v) 52.222–37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (APR 1998) (38 U.S.C. 4212) (Applies to contracts over $10,000).

* * * * *

10. Section 52.222–35 is amended—

a. By revising the section heading, introductory paragraph, clause heading and date, and paragraph (a);

b. By revising paragraph (b)(1) introductory text;

c. In the first sentence of paragraph (c)(1) by removing the word "suitable";

d. In (c)(2) by removing the words "their suitable" and adding "employment";

e. In the first sentence of paragraph (c)(3) by removing the word "suitable";

f. By removing paragraph (c)(5);

g. By revising paragraph (d);

h. In paragraph (e)(1)(i) by removing the word "special"; by revising (e)(2); and in (e)(3) by removing "special disabled and Vietnam Era veterans" and adding in its place "disabled veterans and veterans of the Vietnam era";

i. In the second sentence of paragraph (g) by removing the word "Director" and inserting in its place "Deputy Assistant Secretary"; and

j. By revising the introductory text of Alternate I. The revised text reads as follows:

52.222–35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.

As prescribed in 22.1308(a)(1), insert the following clause:

Affirmative Action for Disabled Veterans and Veterans of the Vietnam ERA (Apr 1998)

(a) *Definitions.* As used in this clause—

All employment openings includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

Appropriate office of the State employment service system means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

Positions that will be filled from within the Contractor's organization means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

Veteran of the Vietnam era means a person who—

(1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) *General.* (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as—

* * * * *

(d) *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(e) *Postings.* * * *

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.

* * * * *

Alternate I (Apr 1984). As prescribed in 22.1308(a)(2), add the following as a preamble to the clause:

* * * * *

11. Section 52.222–37 is amended—

a. By revising the section heading, clause heading, and date of the clause;

b. By revising the introductory text of paragraph (a);

c. In paragraphs (a)(1) and (a)(2) by removing the word "special"; and

d. By revising paragraph (e). The revised text reads as follows:

52.222–37 Employment Reports on Disabled Veterans and Veterans of the Vietnam Era.

* * * * *

Employment Reports on Disabled Veterans and Veterans of the Vietnam ERA (Apr 1998)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

* * * * *

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

* * * * *

12. Section 52.244–6 is amended by revising the date of the clause and paragraph (c)(2) to read as follows:

52.244–6 Subcontracts for Commercial Items and Commercial Components.

* * * * *

Subcontracts for Commercial Items and Commercial Components (Apr 1998)

* * * * *

(c) * * *

(2) 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));

* * * * *

[FR Doc. 98–4300 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 97–04; FAR Case 97–039; Item X]

RIN 9000–AH93

Federal Acquisition Regulation; Treatment of Caribbean Basin Country End Products

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to extend the time period for treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAC 97–04, FAR case 97–039.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises FAR 25.402(b) to extend the time period for treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act. The United States Trade Representative has directed that such treatment continue through September 30, 1998 (62 FR 59014, October 31, 1997).

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–04, FAR case 97–039), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR Part 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 25.402 is amended by revising paragraph (b) to read as follows:

25.402 Policy.

* * * * *

(b) The U.S. Trade Representative has determined that, in order to promote further economic recovery of the Caribbean Basin countries (as defined in 25.401), products originating in those countries that are eligible for duty-free treatment under the Caribbean Basin Economic Recovery Act shall be treated as eligible products for the purposes of this subpart. This determination is effective until September 30, 1998. This date may be extended by the U.S. Trade Representative by means of a notice in the **Federal Register**.

* * * * *

[FR Doc. 98–4301 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAC 97–04; FAR Case 97–025; Item XI]

RIN 9000–AH88

Federal Acquisition Regulation; Administrative Changes to Cost Accounting Standards (CAS) Applicability

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to conform to changes made to the Cost Accounting Standards (CAS) Board rules and regulations. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–04, FAR case 97–025.

SUPPLEMENTARY INFORMATION:

A. Background

On July 29, 1996, the CAS Board published an interim rule, Applicability of CAS Coverage, in the **Federal Register** (61 FR 39360). The CAS rule implemented Section 4205 of Public Law 104–106, the Clinger-Cohen Act of 1996, by revising the criteria for application of CAS to negotiated Federal contracts. The interim rule revised the solicitation provision at 48 CFR 9903.201–3, Cost Accounting Standards Notices and Certifications, and the contract clause at 48 CFR 9903.201–4, Cost Accounting Standards—Educational Institutions, to reflect these changes.

This final FAR rule amends Part 52 to conform the solicitation provision at FAR 52.230–1, Cost Accounting Standards Notices and Certification, and the contract clause at FAR 52.230–5, Cost Accounting Standards—Educational Institution, to the corresponding CAS Board contract clauses at 48 CFR 9903.201–3 and 9903.201–4. In addition, FAR 30.101, CAS, is amended to reflect the current contents of the CAS Board regulations.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–04, FAR case 97–025), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 30 and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 30 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 30 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

2. Section 30.101 is amended by revising paragraph (c) to read as follows:

30.101 Cost Accounting Standards.

* * * * *

(c) The appendix to the FAR loose-leaf edition contains—

(1) Cost Accounting Standards and Cost Accounting Standards Board Rules and Regulations Recodified by the Cost

Accounting Standards Board at 48 CFR Chapter 99; and

(2) The following preambles:

(i) Part I—Preambles to the Cost Accounting Standards Published by the Cost Accounting Standards Board.

(ii) Part II—Preambles to the Related Rules and Regulations Published by the Cost Accounting Standards Board.

(iii) Part III—Preambles Published under the FAR System.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.230–1 is amended by revising the provision date and paragraph (a) to read as follows:

52.230–1 Cost Accounting Standards Notices and Certification.

* * * * *

Cost Accounting Standards Notices and Certification (Apr 1998)

* * * * *

(a) Any contract in excess of $500,000 resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201–1.

* * * * *

4. Section 52.230–5 is amended by revising the clause date and paragraphs (d)(1) and (d)(2); and by adding (d)(3) to read as follows:

52.230–5 Cost Accounting Standards—Educational Institution.

* * * * *

Cost Accounting Standards—Educational Institution (Apr 1998)

* * * * *

(d) * * *

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 48 CFR 9903.201–4 shall be inserted;

(2) This requirement shall apply only to negotiated subcontracts in excess of $500,000; and

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201–1.

(End of clause)

[FR Doc. 98–4302 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31, 32, 42, 46, 47, and 52

[FAC 97–04; FAR Case 95–022; Item XII]

RIN 9000–AH27

Federal Acquisition Regulation; Changes in Contract Administration and Audit Cognizance

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to add policies and procedures for assigning and performing contract audit services and to clarify the policy for assigning or delegating responsibility for establishing forward pricing and billing rates and final indirect cost rates. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–04, FAR case 95–022.

SUPPLEMENTARY INFORMATION:

A. Background

In February 1994, the Office of Federal Procurement Policy formed a Contract Audit Committee. This final rule implements recommendations of the committee pertaining to civilian agencies' contract administration and audit practices. The rule amends FAR Parts 31, 32, 42, 46, 47, and 52 to add policies and procedures for assigning and performing contract audit services, and to clarify the policy for assigning or delegating responsibility for establishing forward pricing and billing rates and final indirect costs rates. A proposed rule was published in the **Federal Register** on December 11, 1996 (61 FR 65306). Forty-two comments were received from 19 respondents. All comments were considered in the development of this final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule primarily pertains to internal Government procedures for performing contract administration functions.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 31, 32, 42, 46, 47, and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 31, 32, 42, 46, 47, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 31, 32, 42, 46, 47, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.109 [Amended]

2. Section 31.109 is amended in paragraph (f)(3) by removing the word "cognizant" and adding "responsible" in its place.

PART 32—CONTRACT FINANCING

32.503–3 [Amended]

3. Section 32.503–3 is amended in paragraph (b)(2) by removing "cognizant independent" and adding "responsible" in its place.

32.503–12 [Amended]

4. Section 32.503–12 is amended in paragraph (c) by removing "cognizant independent" and adding "responsible" in its place.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

5. The heading for Part 42 is revised as set forth above.

6. Section 42.000 and Subparts 42.1 and 42.2 are revised to read as follows:

Sec.

42.000 Scope of part.
42.001 Definitions.
42.002 Interagency agreements.
42.003 Cognizant Federal agency.

Subpart 42.1—Contract Audit Services

42.101 Contract audit responsibilities.
42.102 Assignment of contract audit services.
42.103 Contract audit services directory.

Subpart 42.2—Contract Administration Services

42.201 Contract administration responsibilities.
42.202 Assignment of contract administration.
42.203 Contract administration services directory.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

42.000 Scope of part.

This part prescribes policies and procedures for assigning and performing contract administration and contract audit services.

42.001 Definitions.

As used in this part—

Cognizant Federal agency means the Federal agency that, on behalf of all Federal agencies, is responsible for establishing final indirect cost rates and forward pricing rates, if applicable, and administering cost accounting standards for all contracts in a business unit.

Responsible audit agency means the agency that is responsible for performing all required contract audit services at a business unit (as defined in 48 CFR 31.001).

42.002 Interagency agreements.

(a) Agencies shall avoid duplicate audits, reviews, inspections, and examinations of contractors or subcontractors, by more than one agency, through the use of interagency agreements (see OFPP Policy Letter 78–4, Field Contract Support Cross-Servicing Program).

(b) Subject to the fiscal regulations of the agencies and applicable interagency agreements, the requesting agency shall reimburse the servicing agency for rendered services in accordance with the Economy Act (31 U.S.C. 1535).

(c) When an interagency agreement is established, the agencies are encouraged to consider establishing procedures for the resolution of issues that may arise under the agreement.

42.003 Cognizant Federal agency.

(a) For contractors other than educational institutions and nonprofit organizations, the cognizant Federal agency normally will be the agency with the largest dollar amount of negotiated contracts, including options. For educational institutions and nonprofit organizations, the cognizant Federal agency is established according to Subsection G.11 of OMB Circular A–21, Cost Principles for Educational Institutions, and Attachment A, Subsection E.2, of OMB Circular A–122, Cost Principles for Nonprofit Organizations, respectively.

(b) Once a Federal agency assumes cognizance for a contractor, it should remain cognizant for at least 5 years to ensure continuity and ease of administration. If, at the end of the 5-year period, another agency has the largest dollar amount of negotiated contracts, including options, the two agencies shall coordinate and determine which will assume cognizance. However, if circumstances warrant it and the affected agencies agree, cognizance may transfer prior to the expiration of the 5-year period.

Subpart 42.1—Contract Audit Services

42.101 Contract audit responsibilities.

(a) The auditor is responsible for—

(1) Submitting information and advice to the requesting activity, based on the auditor's analysis of the contractor's financial and accounting records or other related data as to the acceptability of the contractor's incurred and estimated costs;

(2) Reviewing the financial and accounting aspects of the contractor's cost control systems; and

(3) Performing other analyses and reviews that require access to the contractor's financial and accounting records supporting proposed and incurred costs.

(b) Normally, for contractors other than educational institutions and nonprofit organizations, the Defense Contract Audit Agency (DCAA) is the responsible Government audit agency. However, there may be instances where an agency other than DCAA desires cognizance of a particular contractor. In those instances, the two agencies shall agree on the most efficient and economical approach to meet contract audit requirements. For educational institutions and nonprofit organizations, audit cognizance will be determined according to the provisions of OMB Circular A–133, Audits of Institutions of Higher Education and Other Non-Profit Institutions.

42.102 Assignment of contract audit services.

(a) As provided in agency procedures or interagency agreements, contracting officers may request audit services directly from the responsible audit agency cited in the Directory of Federal Contract Audit Offices. The audit request should include a suspense date and should identify any information needed by the contracting officer.

(b) The responsible audit agency may decline requests for services on a case-by-case basis, if resources of the audit agency are inadequate to accomplish the tasks. Declinations shall be in writing.

42.103 Contract audit services directory.

(a) DCAA maintains and distributes the Directory of Federal Contract Audit Offices. The directory identifies cognizant audit offices and the contractors over which they have cognizance. Changes to audit cognizance shall be provided to DCAA so that the directory can be updated.

(b) Agencies may obtain a copy of the directory or information concerning cognizant audit offices by contacting the—Defense Contract Audit Agency, ATTN: CMO, Publications Officer, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Subpart 42.2—Contract Administration Services

42.201 Contract administration responsibilities.

(a) For each contract assigned for administration, the contract administration office (CAO) (see 48 CFR 2.101) shall—

(1) Perform the functions listed in 42.302(a) to the extent that they apply to the contract, except for the functions specifically withheld;

(2) Perform the functions listed in 42.302(b) only when and to the extent specifically authorized by the contracting officer; and

(3) Request supporting contract administration under 42.202(e) and (f) when it is required.

(b) The Defense Logistics Agency, Defense Contract Management Command, Fort Belvoir, Virginia, and other agencies offer a wide variety of contract administration and support services.

42.202 Assignment of contract administration.

(a) *Delegating functions.* As provided in agency procedures, contracting officers may delegate contract administration or specialized support services, either through interagency agreements or by direct request to the cognizant CAO listed in the Federal

Directory of Contract Administration Services Components. The delegation should include—

(1) The name and address of the CAO designated to perform the administration (this information also shall be entered in the contract);

(2) Any special instructions, including any functions withheld or any specific authorization to perform functions listed in 42.302(b);

(3) A copy of the contract to be administered; and

(4) Copies of all contracting agency regulations or directives that are—

(i) Incorporated into the contract by reference; or

(ii) Otherwise necessary to administer the contract, unless copies have been provided previously.

(b) *Special instructions.* As necessary, the contracting officer also shall advise the contractor (and other activities as appropriate) of any functions withheld from or additional functions delegated to the CAO.

(c) *Delegating additional functions.* For individual contracts or groups of contracts, the contracting office may delegate to the CAO functions not listed in 42.302: *Provided* that—

(1) Prior coordination with the CAO ensures the availability of required resources;

(2) In the case of authority to issue orders under provisioning procedures in existing contracts and under basic ordering agreements for items and services identified in the schedule, the head of the contracting activity or designee approves the delegation; and

(3) The delegation does not require the CAO to undertake new or follow-on acquisitions.

(d) *Rescinding functions.* The contracting officer at the requesting agency may rescind or recall a delegation to administer a contract or perform a contract administration function, except for functions pertaining to cost accounting standards and negotiation of forward pricing rates and indirect cost rates (also see 42.003). The requesting agency must coordinate with the CAO to establish a reasonable transition period prior to rescinding or recalling the delegation.

(e) *Secondary delegations of contract administration.* (1) A CAO that has been delegated administration of a contract under paragraph (a) or (c) of this section, or a contracting office retaining contract administration, may request supporting contract administration from the CAO cognizant of the contractor location where performance of specific contract administration functions is required. The request shall—

(i) Be in writing;

(ii) Clearly state the specific functions to be performed; and

(iii) Be accompanied by a copy of pertinent contractual and other necessary documents.

(2) The prime contractor is responsible for managing its subcontracts. The CAO's review of subcontracts is normally limited to evaluating the prime contractor's management of the subcontracts (see Part 44). Therefore, supporting contract administration shall not be used for subcontracts unless—

(i) The Government otherwise would incur undue cost;

(ii) Successful completion of the prime contract is threatened; or

(iii) It is authorized under paragraph (f) of this section or elsewhere in this regulation.

(f) *Special surveillance.* For major system acquisitions (see Part 34), the contracting officer may designate certain high risk or critical subsystems or components for special surveillance in addition to requesting supporting contract administration. This surveillance shall be conducted in a manner consistent with the policy of requesting that the cognizant CAO perform contract administration functions at a contractor's facility (see 42.002).

(g) *Refusing delegation of contract administration.* An agency may decline a request for contract administration services on a case-by-case basis if resources of the agency are inadequate to accomplish the tasks. Declinations shall be in writing.

42.203 Contract administration services directory.

The Defense Contract Management Command (DCMC) maintains and distributes the Federal Directory of Contract Administration Services Components. The directory lists the names and telephone numbers of those DCMC and other agency offices that offer contract administration services within designated geographic areas and at specified contractor plants. Federal agencies may obtain a free copy of the directory on disk by writing to—HQ Defense Logistics Agency, ATTN: DCMC–AQBF, 8725 John J. Kingman Road, Fort Belvoir, VA 22060, or access it on the Internet at http://www.dcmc.dcrb.dla.mil.

7. Section 42.301 is revised to read as follows:

42.301 General.

When a contract is assigned for administration under Subpart 42.2, the contract administration office (CAO) shall perform contract administration functions in accordance with 48 CFR Chapter I, the contract terms, and, unless otherwise agreed to in an interagency agreement (see 42.002), the applicable regulations of the servicing agency.

8. Section 42.302 is amended by revising paragraphs (a) introductory text, (a)(11) introductory text, (a)(11)(iv), (a)(13), (a)(20), (a)(32), (a)(61), and (a)(63) to read as follows:

42.302 Contract administration functions.

(a) The following contract administration functions are normally delegated to a CAO. The contracting officer may retain any of these functions, except those in paragraphs (a)(5), (a)(9), and (a)(11) of this section, unless the contracting officer has been designated to perform these functions by the cognizant Federal agency (see 42.001).

* * * * *

(11) In connection with Cost Accounting Standards (see 48 CFR 30.601 and 48 CFR Chapter 99 (FAR Appendix))—

* * * * *

(iv) Negotiate price adjustments and execute supplemental agreements under the Cost Accounting Standards clauses at 48 CFR 52.230–2, 52.230–3, 52.230–4, 52.230–5, and 52.230–6.

* * * * *

(13) Make payments on assigned contracts when prescribed in agency acquisition regulations.

* * * * *

(20) For classified contracts, administer those portions of the applicable industrial security program delegated to the CAO (see Subpart 4.4).

* * * * *

(32) Perform preaward surveys (see Subpart 9.1).

* * * * *

(61) Obtain contractor proposals for any contract price adjustments resulting from amended shipping instructions. Review all amended shipping instructions on a periodic, consolidated basis to ensure that adjustments are timely made. Except when the ACO has settlement authority, the ACO shall forward the proposal to the contracting officer for contract modification. The ACO shall not delay shipments pending completion and formalization of negotiations of revised shipping instructions.

* * * * *

(63) Cancel unilateral purchase orders when notified of nonacceptance by the contractor. The CAO shall notify the contracting officer when the purchase order is canceled.

* * * * *

9. Section 42.602 is amended by revising paragraphs (c)(2) and (d) to read as follows:

42.602 Assignment and location.

* * * * *

(c) * * *

(2) When the locations are under the contract administration cognizance of more than one agency, the agencies concerned shall agree on the responsible agency (normally on the basis of the agency with the largest dollar balance, including options, of affected contracts). In such cases, agencies may also consider geographic location.

(d) The directory of contract administration services components referenced in 42.203 includes a listing of CACO's and the contractors for which they are assigned responsibility.

42.603 [Amended]

10. Section 42.603 is amended in the introductory text of paragraph (a) by removing the parenthetical "(see subpart 42.3)"; and in the introductory text of paragraph (b)(1) by removing the word "cognizant" and adding "responsible" in its place.

11. Section 42.701 is amended by revising the definitions for "Business unit" and "Indirect cost", and by adding, in alphabetical order, the definition for "Forward pricing rate agreement" to read as follows:

42.701 Definitions.

* * * * *

Business unit is defined at 31.001.

* * * * *

Forward pricing rate agreement is defined at 48 CFR 15.401.

Indirect cost is defined at 48 CFR 31.203.

* * * * *

12. Section 42.703–1 is amended by revising the first sentence of paragraph (a), and paragraph (c) to read as follows:

42.703–1 Policy.

(a) A single agency (see 42.705–1) shall be responsible for establishing final indirect cost rates for each business unit. * * *

* * * * *

(c) To ensure compliance with 10 U.S.C. 2324(a) and 41 U.S.C. 256(a)—

(1) Final indirect cost rates shall be used for contract closeout for a business unit, unless the quick-closeout procedure in 42.708 is used. These final rates shall be binding for all cost-reimbursement contracts at the business unit, subject to any specific limitation in a contract or advance agreement; and

(2) Established final indirect cost rates shall be used in negotiating the final price of fixed-price incentive and fixed-price redeterminable contracts and in other situations requiring that indirect costs be settled before contract prices are established, unless the quick-closeout procedure in 42.708 is used.

42.703–2 [Amended]

13. Section 42.703–2(d) is amended by removing the word "contractor" and adding "contractor's" in its place.

14. Section 42.704 is amended by revising paragraphs (a), (b), and (c) to read as follows:

42.704 Billing rates.

(a) The contracting officer (or cognizant Federal agency official) or auditor responsible under 42.705 for establishing the final indirect cost rates also shall be responsible for determining the billing rates.

(b) The contracting officer (or cognizant Federal agency official) or auditor shall establish billing rates on the basis of information resulting from recent review, previous rate audits or experience, or similar reliable data or experience of other contracting activities. In establishing billing rates, the contracting officer (or cognizant Federal agency official) or auditor should ensure that the billing rates are as close as possible to the final indirect cost rates anticipated for the contractor's fiscal period, as adjusted for any unallowable costs. When the contracting officer (or cognizant Federal agency official) or auditor determines that the dollar value of contracts requiring use of billing rates does not warrant submission of a detailed billing rate proposal, the billing rates may be established by making appropriate adjustments from the prior year's indirect cost experience to eliminate unallowable and nonrecurring costs and to reflect new or changed conditions.

(c) Once established, billing rates may be prospectively or retroactively revised by mutual agreement of the contracting officer (or cognizant Federal agency official) or auditor and the contractor at either party's request, to prevent substantial overpayment or underpayment. When agreement cannot be reached, the billing rates may be unilaterally determined by the contracting officer (or cognizant Federal agency official).

* * * * *

15. Section 42.705–1 is amended by revising paragraphs (a) introductory text, (a)(3), (a)(4), (b)(1), (b)(2), and (b)(3) to read as follows:

42.705–1 Contracting officer determination procedure.

(a) *Applicability and responsibility.* Contracting officer determination shall be used for the following, with the indicated cognizant contracting officer (or cognizant Federal agency official) responsible for establishing the final indirect cost rates:

* * * * *

(3) For business units not included in paragraph (a)(1) or (a)(2) of this subsection, the contracting officer (or cognizant Federal agency official) will determine whether the rates will be contracting officer or auditor determined.

(4) Educational institutions (see 42.705–3).

* * * * *

(b) *Procedures.* (1) In accordance with the Allowable Cost and Payment clause at 48 CFR 52.216–7 or 52.216–13, the contractor shall submit to the contracting officer (or cognizant Federal agency official) and to the cognizant auditor a final indirect cost rate proposal. The required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, contracting officer, and auditor must work together to make the proposal, audit, and negotiation process as efficient as possible. Accordingly, each contractor shall submit an adequate proposal to the contracting officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the contractor and granted in writing by the contracting officer. A contractor shall support its proposal with adequate supporting data. For guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data, contractors should refer to the Model Incurred Cost Proposal in Chapter 5 of the Defense Contract Audit Agency Pamphlet (DCAAP) No. 7641.90, Information for Contractors. The Model can be obtained by—

(i) Contacting Internet address http://www.dtic.mil/dcaa/chap5.html;

(ii) Sending a telefax request to Headquarters DCAA, ATTN: CMO, Publications Officer, at (703) 767–1061;

(iii) Sending an e-mail request to *CMO@hql.dcaa.mil; or

(iv) Writing to—Headquarters DCAA, ATTN: CMO, Publications Officer, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

(2) The auditor shall submit to the contracting officer (or cognizant Federal agency official) an advisory audit report identifying any relevant advance agreements or restrictive terms of specific contracts.

(3) The contracting officer (or cognizant Federal agency official) shall head the Government negotiating team, which includes the cognizant auditor and technical or functional personnel as required. Contracting offices having significant dollar interest shall be invited to participate in the negotiation and in the preliminary discussion of critical issues. Individuals or offices that have provided a significant input to the Government position should be invited to attend.

* * * * *

15. Section 42.705–2 is amended by revising paragraphs (a)(2) introductory text, (a)(2)(iv), and (b) to read as follows:

42.705–2 Auditor determination procedure.

(a) * * *

* * * * *

(2) In addition, auditor determination may be used for business units that are covered in 42.705–1(a) when the contracting officer (or cognizant Federal agency official) and auditor agree that the indirect costs can be settled with little difficulty and any of the following circumstances apply:

* * * * *

(iv) The contracting officer (or cognizant Federal agency official) and auditor agree that special circumstances require auditor determination.

(b) *Procedures.* (1) The contractor shall submit to the cognizant contracting officer (or cognizant Federal agency official) and auditor a final indirect cost rate proposal in accordance with 42.705–1(b)(1).

(2) Upon receipt of a proposal, the auditor shall—

(i) Audit the proposal and seek agreement on indirect costs with the contractor;

(ii) Prepare an indirect cost rate agreement conforming to the requirements of the contracts. The agreement shall be signed by the contractor and the auditor;

(iii) If agreement with the contractor is not reached, forward the audit report to the contracting officer (or cognizant Federal agency official) identified in the Directory of Contract Administration Services Components (see 42.203), who will then resolve the disagreement; and

(iv) Distribute resulting documents in accordance with 42.706.

16. Section 42.705–3 is amended by revising paragraph (a)(2) to read as follows:

42.705–3 Educational institutions.

(a) * * *

(2) OMB Circular No. A–21, Cost Principles for Educational Institutions, assigns each educational institution to a single Government agency for the negotiation of indirect cost rates and provides that those rates shall be accepted by all Federal agencies. Cognizant Government agencies and educational institutions are listed in the Directory of Federal Contract Audit Offices (see 42.103).

* * * * *

PART 46—QUALITY ASSURANCE

17. Section 46.103 is amended by revising paragraph (d) to read as follows:

46.103 Contracting office responsibilities.

* * * * *

(d) When contract administration is retained (see 42.201), verifying that the contractor fulfills the contract quality requirements; and

* * * * *

18. Section 46.104 is amended by revising paragraph (f) to read as follows:

46.104 Contract administration office responsibilities.

* * * * *

(f) Recommend any changes necessary to the contract, specifications, instructions, or other requirements that will provide more effective operations or eliminate unnecessary costs (see 46.103(c)).

19. Section 46.502 is amended by revising the second sentence to read as follows:

46.502 Responsibility for acceptance.

* * * When this responsibility is assigned to a cognizant contract administration office or to another agency (see 42.202(g)), acceptance by that office or agency is binding on the Government.

PART 47—TRANSPORTATION

47.301–3 [Amended]

20. Section 47.301–3 is amended in the introductory text of paragraph (c) by removing "42.202(d)" and adding "42.202(a)" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

21. Section 52.216–7 is amended by revising the clause date and the first sentence of paragraph (d)(2)(i) to read as follows:

52.216–7 Allowable Cost and Payment.

* * * * *

Allowable Cost and Payment (Apr 1998)

* * * * *

(d) *Final indirect cost rates.* (1) * * *

(2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. * * *

* * * * *

(End of clause)

22. Section 52.216–13 is amended by revising the clause date and the first sentence of paragraph (c)(2)(i) to read as follows:

52.216–13 Allowable Cost and Payment—Facilities.

* * * * *

Allowable Cost and Payment—Facilities (Apr 1998)

* * * * *

(c) *Negotiated Indirect Costs.* (1) * * *

(2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. * * *

* * * * *

(End of clause)

23. Section 52.216–15 is amended by revising the clause date and the first sentence of paragraph (b)(1); by revising the second sentence of paragraph (d); and revising paragraph (e) to read as follows:

52.216–15 Predetermined Indirect Cost Rates.

* * * * *

Predetermined Indirect Cost Rates (APR 1998)

* * * * *

(b)(1) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. * * *

* * * * *

(d)* * * The Contracting Officer (or cognizant Federal agency official) and Contractor shall negotiate rates for subsequent periods and execute a written indirect cost rate agreement setting forth the results. * * *

(e) Pending establishment of predetermined indirect cost rates for any fiscal year (or other period agreed to by the parties), the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year (or other period) or at billing rates acceptable to the Contracting Officer (or cognizant Federal agency official), subject to appropriate adjustment when the final rates for that period are established.

* * * * *

(End of clause)

[FR Doc. 98–4303 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 97–04; FAR Case 97–303; Item XIII]

RIN 9000–AH90

Federal Acquisition Regulation; Limitation on Allowability of Compensation for Certain Contractor Personnel

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85) by limiting the allowable compensation costs for senior executives of contractors to the benchmark compensation amount determined applicable for each fiscal year by the Administrator for Federal Procurement Policy. This regulatory action was not subject to Office of Management and Budget (OMB) review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 23, 1998.

Applicability Date: This policy applies to costs of compensation incurred under Federal contracts after January 1, 1998, regardless of the date of contract award.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before April 24, 1998, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: farcase.97–303@gsa.gov

Please cite FAC 97–04, FAR case 97–303 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–04, FAR case 97–303.

SUPPLEMENTARY INFORMATION:

A. Background

Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85) limits allowable compensation costs of senior executives of contractors for a fiscal year to the benchmark compensation amount determined applicable for each fiscal year by the Administrator, Office of Federal Procurement Policy. Section 808 requires the Administrator, Office of Federal Procurement Policy (OFPP), to review commercially available surveys of executive compensation, and, on the basis of the results of the review, determine the benchmark compensation amount for each fiscal year. See OFPP's "Determination of Executive Compensation Benchmark Amount", as published by GSA in the Notices Section of this **Federal Register**. This determination shall be made in consultation with the Defense Contract Audit Agency and other executive agencies, as the Administrator deems appropriate. Section 808 defines benchmark compensation as the median amount of the compensation provided for all senior executives of all benchmark corporations for the most recent year for which data is available at the time the determination is made.

This interim rule revises FAR 31.205–6(p) to implement the statutory ceiling on allowable compensation costs for senior executives. Because the commercial survey used in making the benchmark compensation determination is based on Securities and Exchange Commission disclosure data (which cannot be separately broken down), it includes the cost of employer contributions to defined contribution pension plans (which are a form of deferred compensation). The implementing language at FAR 31.205–6(p)(2)(i) specifies the components of compensation subject to the benchmark compensation. This restriction applies to costs of compensation incurred after January 1, 1998, under contracts awarded before, on, or after the date of the enactment of Public Law 105–85 (November 18, 1997). This restriction applies to the chief executive officer (CEO), the four most highly compensated employees in management positions other than the CEO, and the five most highly compensated individuals in management positions at intermediate home offices and segments if a contractor is organizationally subdivided into such units.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 97–303), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any new reporting, recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This rule implements Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85) and applies to costs of compensation incurred after January 1, 1998, under contracts entered into before, on, or after the date of enactment (November 18, 1997) of this public law. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–6 is amended by revising paragraph (p) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(p) *Limitation on allowability of compensation for certain contractor personnel.* (1) Costs incurred after January 1, 1998, for compensation of a senior executive in excess of the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy (OFPP), under Section 39 of the OFPP Act (41 U.S.C. 435) are unallowable (10 U.S.C. 2324(e)(1)(P) and 41 U.S.C. 256(e)(1)(P)). This limitation is the sole statutory limitation on allowable senior executive compensation costs incurred after January 1, 1998, under new or previously existing contracts. This limitation applies whether or not the affected contracts were previously subject to a statutory limitation on such costs.

(2) As used in this paragraph:

(i) *Compensation* means the total amount of wages, salary, bonuses, deferred compensation (see paragraph (k) of this subsection), and employer contributions to defined contribution pension plans (see paragraphs (j)(5) and (j)(8) of this subsection), for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in the contractor's cost accounting records for the fiscal year.

(ii) *Senior executive* means—

(A) The contractor's Chief Executive Officer (CEO) or any individual acting in a similar capacity;

(B) The contractor's four most highly compensated employees in management positions, other than the CEO; and

(C) If the contractor has intermediate home offices or segments that report directly to the contractor's corporate headquarters, the five most highly compensated employees in management positions at each such intermediate home office or segment.

(iii) *Fiscal year* means the fiscal year established by the contractor for accounting purposes.

[FR Doc. 98–4304 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 97–04; FAR Case 96–006; Item XIV]

RIN 9000–AH56

Federal Acquisition Regulation; Transfer of Assets Following a Business Combination

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement a final rule of the Cost Accounting Standards (CAS) Board regarding the treatment of gains and losses attributable to tangible capital assets subsequent to business mergers or combinations. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAC 97–04, FAR case 96–006.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** on July 2, 1997 (62 FR 35890). The rule proposed amendments to the FAR to implement a final rule published by the CAS Board on February 13, 1996 (61 FR 5520), that amended CAS 9904.404, Capitalization of Tangible Assets, and CAS 9904.409, Depreciation of Tangible Capital Assets. The final FAR rule differs from the proposed rule by revising FAR 31.205–52(a) to clarify that CAS 9904.404 measures the capitalized asset values that are used to compute depreciation expense and cost of money, and FAR 31.205–52(b) to delete the term "depreciation," since intangible capital assets do not generate depreciation expense.

Public comments were received from three sources. All comments were considered in developing the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–10 is amended by revising paragraph (a)(5) to read as follows:

31.205–10 Cost of money.

(a) * * *

(5) The requirements of 31.205–52 shall be observed in determining the allowable cost of money attributable to including asset valuations resulting from business combinations in the facilities capital employed base.

* * * * *

3. Section 31.205–52 is revised to read as follows:

31.205–52 Asset valuations resulting from business combinations.

(a) For tangible capital assets, when the purchase method of accounting for a business combination is used, whether or not the contract or subcontract is subject to CAS, the allowable depreciation and cost of money shall be based on the capitalized asset values measured and assigned in accordance with 48 CFR 9904.404–50(d), if allocable, reasonable, and not otherwise unallowable.

(b) For intangible capital assets, when the purchase method of accounting for a business combination is used, allowable amortization and cost of money shall be limited to the total of the amounts that would have been allowed had the combination not taken place.

[FR Doc. 98–4305 Filed 2–20–98; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 39

[FAC 97–04; FAR Case 96–605; Item XV]

RIN 9000–AH55

Federal Acquisition Regulation; Modular Contracting

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Section 5202 of the Information Technology Management Reform Act (ITMRA) of 1996, which encourages maximum practicable use of modular contracting in acquiring information technology. ITMRA is part of the Clinger-Cohen Act of 1996 (Public Law 104–106). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, 1800 F Street, NW, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst at (202) 501–1900. Please cite FAC 97–04, FAR case 96–605.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule with request for comment and notice of public meeting was published in the **Federal Register** (62 FR 14756) on March 27, 1997. Comments were received from four respondents. All comments were considered in the development of the final rule. The final rule differs from the proposed rule by adding in paragraph 39.103(d) "task order contracts" as another example.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because, while it may affect the structure of certain information technology (IT) acquisition programs, it will not impose any specific cost burden on small entities. The modular contracting approach should slightly benefit small entities, because use of modular contracting techniques should increase the number of business opportunities available to them. When a modular contracting approach is used, large, complex IT systems acquisitions will be divided into smaller, discrete increments that may subsequently be made available to small entities for competition.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 39

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 39 is amended as set forth below:

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

1. The authority citation for 48 CFR Part 39 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 39.002 is amended by adding in alphabetical order the definition of "Modular contracting" to read as follows:

39.002 Definitions.

Modular contracting, as used in this part, means use of one or more contracts to acquire information technology systems in successive, interoperable increments.

* * * * *

3. Section 39.103 is added to read as follows:

39.103 Modular contracting.

(a) This section implements Section 5202, Incremental Acquisition of Information Technology, of the Clinger-Cohen Act of 1996 (Public Law 104–106). Modular contracting is intended to reduce program risk and to incentivize contractor performance while meeting the Governments need for timely access to rapidly changing technology. Consistent with the agency's information technology architecture, agencies should, to the maximum extent practicable, use modular contracting to acquire major systems (see 2.101) of information technology. Agencies may also use modular contracting to acquire non-major systems of information technology.

(b) When using modular contracting, an acquisition of a system of information technology may be divided into several smaller acquisition increments that—

(1) Are easier to manage individually than would be possible in one comprehensive acquisition;

(2) Address complex information technology objectives incrementally in order to enhance the likelihood of achieving workable systems or solutions for attainment of those objectives;

(3) Provide for delivery, implementation, and testing of workable systems or solutions in discrete increments, each of which comprises a system or solution that is not dependent on any subsequent increment in order to perform its principal functions;

(4) Provide an opportunity for subsequent increments to take advantage of any evolution in technology or needs that occur during implementation and use of the earlier increments; and

(5) Reduce risk of potential adverse consequences on the overall project by

isolating and avoiding custom-designed components of the system.

(c) The characteristics of an increment may vary depending upon the type of information technology being acquired and the nature of the system being developed. The following factors may be considered:

(1) To promote compatibility, the information technology acquired through modular contracting for each increment should comply with common or commercially acceptable information technology standards when available and appropriate, and shall conform to the agency's master information technology architecture.

(2) The performance requirements of each increment should be consistent with the performance requirements of the completed, overall system within which the information technology will function and should address interface requirements with succeeding increments.

(d) For each increment, contracting officers shall choose an appropriate contracting technique that facilitates the acquisition of subsequent increments. Pursuant to Parts 16 and 17 of the Federal Acquisition Regulations, contracting officers shall select the contract type and method appropriate to the circumstances (*e.g.*, indefinite delivery, indefinite quantity contracts, single contract with options, successive contracts, multiple awards, task order contracts). Contract(s) shall be structured to ensure that the Government is not required to procure additional increments.

(e) To avoid obsolescence, a modular contract for information technology should, to the maximum extent practicable, be awarded within 180 days after the date on which the solicitation is issued. If award cannot be made within 180 days, agencies should consider cancellation of the solicitation in accordance with 48 CFR 14.209 or 15.206(e). To the maximum extent practicable, deliveries under the contract should be scheduled to occur within 18 months after issuance of the solicitation.

[FR Doc. 98–4306 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 44, and 52

[FAC 97–04; Item XVI]

Federal Acquisition Regulations; Technical Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendments.

SUMMARY: This document makes amendments to Federal Acquisition Regulations in order to update references, and make editorial changes.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755.

List of Subjects in 48 CFR Parts 1, 44 and 52

Government procurement.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 1, 44 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 44 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.201–1 [Amended]

1. Section 1.201–1 is amended in paragraph (b)(2) by adding "Social Security Administration," after "Agency,".

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.204 [Amended]

2. Section 44.204 is amended at the end of paragraph (b) by removing "See also 44.205."

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.219–1 [Amended]

3. Section 52.219–1 is amended by revising the date of the provision to read "(FEB 1998)", and in the parentheticals of paragraphs (b)(2) and (b)(3) by removing "block (b)(1) of this section" and adding "paragraph (b)(1) of this provision".

[FR Doc. 98–4307 Filed 2–20–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulation (FAR) Council. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 97–04 which amends the FAR. The rules marked with an asterisk (*) are those for which a final regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Further information regarding these rules may be obtained by referring to FAC 97–04 which precedes this document. This document may be obtained from the Internet at http://www.arnet.gov/far.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, (202) 501–4755. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 97–04

Item	Subject	FAR case	Analyst
I	Use of Data Universal Numbering System as the Primary Contractor Identification	95–307	Moss.

LIST OF RULES IN FAC 97–04—Continued

Item	Subject	FAR case	Analyst
II *	Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements	92–054B	Linfield.
III	Review of Procurement Integrity Clauses	97–601	Linfield.
IV	Certificate of Competency	96–002	Moss.
V	Applicability of Cost Accounting Standards (CAS) Coverage	97–020	Nelson.
VI	OMB Circular No. A–133	97–029	Olson.
VII	SIC Code and Size Standard Appeals	97–026	Moss.
VIII	Small Business Competitiveness Demonstration Program	97–305	Moss.
IX	Special Disabled and Vietnam Era Veterans	95–602	O'Neill.
X	Treatment of Caribbean Basin Country End Products	97–039	Linfield.
XI	Administrative Changes to Cost Accounting Standards (CAS) Applicability	97–025	Nelson.
XII	Changes in Contract Administration and Audit Cognizance	95–022	Klein.
XIII	Limitation on Allowability of Compensation for Certain Contractor Personnel (Interim)	97–303	Nelson.
XIV	Transfer of Assets Following a Business Combination	96–006	Nelson.
XV	Modular Contracting	96–605	Nelson.

Item I—Use of Data Universal Numbering System as the Primary Contractor Identification (FAR Case 95–307)

This final rule amends FAR Subpart 4.6, Contract Reporting, and 52.212–1, Instructions to Offerors—Commercial Items; and adds a new solicitation provision at 52.204–6, Data Universal Numbering System (DUNS) Number; to replace the Contractor Establishment Code (CEC) with the Data Universal Numbering System (DUNS) number as the means of identifying contractors in the Federal Procurement Data System (FPDS). It reflects Dun and Bradstreet procedures for offerors located overseas.

Item II—Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements (FAR Case 92–054B)

The interim rule published as Item V of FAC 90–46 is revised and finalized. The rule implements Executive Order 12856 of August 3, 1993, "Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements." The final rule differs from the interim rule in that it amends FAR 23.1004 and 52.223–5 to clarify the obligations of Federal facilities to comply with the reporting and emergency planning requirements of the Pollution Prevention Act of 1990 and the Emergency Planning and Community Right-to-Know Act of 1986.

Item III—Review of Procurement Integrity Clauses (FAR Case 97–601)

This final rule amends FAR Parts 4 and 52 to revise the application of procurement integrity requirements to contracts for commercial items. The rule amends (1) 4.603 to remove an obsolete requirement for maintenance of a record of persons having access to proprietary or source selection information, (2) the clause at 52.212–4 to add the procurement integrity provisions of 41 U.S.C. 423 to the list of laws applicable to contracts for commercial items, and (3) the clause at 52.212–5 to remove 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity, from the list of FAR clauses required to implement provisions of law or Executive orders. As amended by the Clinger-Cohen Act of 1996, 41 U.S.C. 423 no longer requires that a contract clause specify administrative remedies for procurement integrity violations.

Item IV—Certificate of Competency (FAR Case 96–002)

The interim rule published as Item IX of FAC 97–01 is converted to a final rule with a minor change at 19.302(d). The rule implements revisions made to the Small Business Administration's procurement assistance programs contained in 13 CFR Part 125.

Item V—Applicability of Cost Accounting Standards (CAS) Coverage (FAR Case 97–020)

This final rule amends FAR Parts 12 and 52 to exempt contracts and subcontracts for the acquisition of commercial items from Cost Accounting Standards requirements when these contracts and subcontracts are firm-fixed-price or fixed-price with economic price adjustment (provided that the price adjustment is not based on actual costs incurred).

Item VI—OMB Circular No. A–133 (FAR Case 97–029)

This final rule amends FAR 15.209 and the associated clause at 52.215–2, Audits and Records—Negotiation, Alternate II, to implement revisions to OMB Circular No. A–133. The circular has a new title, "Audits of States, Local Governments, and Non-Profit Organizations," and now addresses audits of State and local governments as well as audits of institutions of higher learning and other nonprofit organizations.

Item VII—SIC Code and Size Standard Appeals (FAR Case 97–026)

This final rule amends FAR Subpart 19.3 to conform to the Small Business Administration regulations at 13 CFR 121 and 134 pertaining to protest of an offeror's small business representation, and appeal of a contracting officer's standard industrial classification code designation and related small business size standard.

Item VIII—Small Business Competitiveness Demonstration Program (FAR Case 97–305)

This final rule amends FAR Subpart 19.10 to eliminate the termination date of the Small Business Competitiveness Demonstration Program, in accordance with Section 401 of the Small Business Reauthorization Act of 1997 (Public Law 105–135).

Item IX—Special Disabled and Vietnam Era Veterans (FAR Case 95–602)

This final rule amends FAR Subpart 22.13 and the clauses at 52.212–5, 52.222–35, and 52.222–37 to implement revised Department of Labor regulations regarding affirmative action for disabled veterans and veterans of the Vietnam era.

Item X—Treatment of Caribbean Basin Country End Products (FAR Case 97–039)

This final rule revises FAR 25.402(b) to extend the time period for treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act. The United States Trade Representative has directed that such treatment continue through September 30, 1998.

Item XI—Administrative Changes to Cost Accounting Standards (CAS) Applicability (FAR Case 97–025)

This final rule amends FAR 30.101 and the clauses at 52.230–1 and 52.230–5 to conform to changes made to the Cost Accounting Standards (CAS) Board rules and regulations (FAR Appendix), pertaining to the applicability of CAS to negotiated contracts and subcontracts.

Item XII—Changes in Contract Administration and Audit Cognizance (FAR Case 95–022)

This final rule amends FAR Parts 31, 32, 42, 46, 47, and 52 to add policies and procedures for assigning and performing contract audit services, and to clarify the policy for assigning or delegating responsibility for establishing forward pricing and billing rates and final indirect cost rates.

Item XIII—Limitation on Allowability of Compensation for Certain Contractor Personnel (FAR Case 97–303)

This interim rule revises FAR 31.205–6(p) to implement Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85). Section 808 limits the allowable compensation costs for senior executives of contractors to the benchmark compensation amount determined applicable for each fiscal year by the Administrator for Federal Procurement Policy.

Item XIV—Transfer of Assets Following a Business Combination (FAR Case 96–008)

This final rule revises FAR 31.205–10(a)(5) and 31.205–52 to conform to changes made to the Cost Accounting Standards regarding the treatment of gains and losses attributable to tangible capital assets subsequent to business mergers or combinations.

Item XV—Modular Contracting (FAR Case 96–605)

This final rule amends FAR Part 39 to implement Section 5202 of the Information Technology Management Reform Act of 1996 (Public Law 104–106). Section 5202 encourages maximum practicable use of modular contracting for acquisition of major systems of information technology. Agencies may also use modular contracting to acquire non-major systems of information technology.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–4308 Filed 2–20–98; 8:45 am]

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federal register

Monday
February 23, 1998

Part III

Department of Education

Office of Postsecondary Education; State Student Incentive Grant Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.069]

Office of Postsecondary Education; State Student Incentive Grant Program

AGENCY: Department of Education.

ACTION: Notice of the Closing Date for Receipt of State Applications for Fiscal Year 1998.

SUMMARY: The Secretary of Education (Secretary) gives notice of the closing date for receipt of State applications for fiscal year 1998 funds under the State Student Incentive Grant (SSIG) Program. This program, through matching formula grants to States for student awards, provides grants to students with substantial financial need. The SSIG Program supports Goals 2000, the President's strategy for moving the Nation toward the National Education Goals, by enhancing opportunities for postsecondary education. The National Education Goals call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education.

A State that wishes to receive SSIG funds for this fiscal year must have an agreement with the Secretary as provided under section 1203(a) of the Higher Education Act of 1965, as amended (HEA). The State must submit an application through the State agency that administered its SSIG Program as of July 1, 1985, unless the Governor has subsequently designated, and the Secretary has approved, a different State agency. (20 U.S.C. 1070c–2(a).)

The Secretary is authorized to accept applications from the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Republic of Palau. Authority for this program is contained in sections 415A through 415E of the HEA. (20 U.S.C. 1070c–1070c–4)

Closing Date for Transmittal of Applications: An application for fiscal year 1998 SSIG funds must be mailed or hand-delivered by March 31, 1998.

Application Form: The required application form for receiving SSIG funds will be mailed to officials of the appropriate State agency in each State or territory at least 30 days before the closing date. Applications must be prepared and submitted in accordance with the HEA and the program regulations cited in this notice. The Secretary strongly urges that applicants only submit information that is requested.

Applications Delivered by Mail: An application sent by mail must be addressed to: Mr. Harold McCullough, Acting Chief, Grants Branch, Room 3045, ROB–3, U.S. Department of Education, Student Financial Assistance Programs, 600 Independence Avenue, S.W., Washington, D.C. 20202–5447.

The Secretary will accept the following proof of mailing: (1) a legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service. The Department of Education encourages applicants to use certified or at least first-class mail.

A late applicant cannot be assured that its application will be considered for fiscal year 1998 funding.

Applications Delivered by Hand: An application that is hand-delivered must be taken to Mr. Harold McCullough, U.S. Department of Education, Student Financial Assistance Programs, 7th and D Streets, S.W., Room 3045, General Service Administration Regional Office Building #3, Washington, D.C. Hand-delivered applications will be accepted between 8:00 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: Section 415C(a) of the HEA requires that an annual application be submitted for a State or territory to receive SSIG funds. In preparing the application, each State agency should be guided by the table of allotments provided in the application package.

State allotments are determined according to the statutorily mandated formula under section 415B of the HEA and are not negotiable. A State may also request its share of reallotment, in addition to its basic allotment, which is contingent upon the availability of such additional funds. In fiscal year 1997, 48 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Island (Palau), and the Commonwealth of the Northern Mariana Islands received funds under the SSIG Program.

Applicable Regulations: The following regulations are applicable to the SSIG Program:

(1) The SSIG Program regulations in 34 CFR part 692.

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 75.60 through 75.62 (Ineligibility of Certain Individuals to Receive Assistance), part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement), and Governmentwide Requirements for Drug-Free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses).

(3) The regulations in 34 CFR part 604 that implement section 1203 of the HEA (Federal-State Relationship Agreements).

(4) The Student Assistance General Provisions in 34 CFR part 668.

For Further Information: For further information contact Mr. Mike Oliver, Grants Branch, U.S. Department of Education, Student Financial Assistance Programs, Washington, D.C. 20202–5447; telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

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Anyone may also view these documents in text copy only on an

electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

(Program Authority: 20 U.S.C. 1070c–1070c–4)

Dated: February 12, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–4384 Filed 2–20–98; 8:45 am]

BILLING CODE 4000–01–P

VOL
6 3
ISS
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federal register

Monday
February 23, 1998

Part IV

Environmental Protection Agency

40 CFR Part 156

Flammability Labeling Requirements for Total Release Fogger Pesticides; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 156

[OPP–36189; FRL–5748–7]

RIN 2070–AC60

Flammability Labeling Requirements for Total Release Fogger Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This rule requires specific precautionary labeling relating to the flammability of total release fogger pesticides. EPA has found that, as currently labeled, total release foggers pose an unreasonable risk to property and pesticide users from fires and explosions that can be caused by a build up of extremely flammable propellants. EPA expects that the additional flammability label warnings required by this rule will reduce the potential for fires and explosions by alerting consumers to the dangers of total release foggers. The required labeling will also provide specific directions for proper use of these products with minimal costs to industry or consumers. Although EPA issued a proposed rule and received public comments in 1994, this action includes some labeling requirements that differ from those discussed in the proposal. EPA is therefore issuing this action as a direct final rule in order to provide an opportunity for affected entities to submit adverse comments on the new labeling requirements. If EPA receives any adverse comments on the addition of these labeling requirements for pesticides within 30 days from the date of this final rule, EPA will withdraw that paragraph of the rule to which adverse comments pertain. At that point, EPA will issue a proposed rule addressing this issue and will provide a 30–day period for public comment. If no adverse comments are received, the rule will become effective on the date specified.

DATES: This rule will become effective on April 24, 1998. Comments must be received by March 25, 1998.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit VIII. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Downing, Labeling Team, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington VA, 703–308–9071, e-mail: downing.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Category	Examples of Regulated Entities
Industry	Persons who sell and distribute total release fogger products.

This table is not exhaustive, but is a guide to the entities EPA believes are regulated by this action. Read carefully the applicability criteria in § 156.10(h)(2)(iii)(C) of the regulatory text to decide whether this rule applies to you.

II. Background

A. Authority

This amendment to the labeling requirements for pesticides and devices (40 CFR 156.10) is issued under the authority of sections 3, 6, 12, and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. 136 through 136y. FIFRA section 25(a) authorizes the Administrator of EPA to prescribe regulations to carry out the provisions of FIFRA. The statutory standard that is the basis for Agency regulation of pesticide labeling is contained in section 2(q) of FIFRA, which defines a "misbranded" pesticide and enumerates specific labeling deficiencies that constitute misbranding. EPA's labeling regulations interpret and elaborate upon the statutory standard.

Under FIFRA section 3(c)(5), the labeling of the pesticide must comply with the requirements of FIFRA. Sections 12(a)(1)(E) and (F) of FIFRA provide that it is unlawful to distribute or sell a pesticide or device that is misbranded. Under FIFRA section 2(q), a pesticide may be considered misbranded in a number of circumstances. Sections 2(q)(1)(E) through (G) provide part of the basis for EPA's authority to impose label restrictions to protect health and the environment. Specifically, sections 2(q)(1)(F) and (G) provide that a pesticide is misbranded if its labeling does not contain directions for use or if the label does not contain a warning or caution statement adequate to protect health and the environment. Under FIFRA section 2(x), the term "protect health and the environment" means protect against any unreasonable adverse effects on the environment. FIFRA section 2(bb) defines the term "unreasonable adverse effects on the environment" to include any unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide. With this final rule, EPA is giving notice of its determination that total release fogger pesticides that are not labeled in accordance with the directions for use and warning statements required by this rule will be considered misbranded and subject to possible enforcement action.

Each provision described above is designed to prevent the sale or distribution of pesticides that, due to inadequate labeling, might cause unreasonable adverse effects to the environment.

B. Proposed Rule

EPA issued in the **Federal Register** of April 15, 1994 (59 FR 18058) (FRL–4186–4), a proposal to require additional precautionary labeling relating to the flammability of total release fogger pesticides. From the review of the fire/explosion incidents involving total release foggers, EPA found that foggers as currently labeled present a risk of unreasonable adverse effects from fires and/or explosions caused by a build up of extremely

flammable propellants. EPA concluded that this risk is not adequately addressed in current labeling of total release foggers. To mitigate this risk, EPA proposed specific label requirements including physical and chemical hazards warning statements, graphic symbols, and specific directions for total release foggers, which if complied with, would be adequate to human health and the environment. Comments about the scope of the proposed rule were also solicited.

Because comments received in response to the proposal have caused the Agency to include in this final rule certain requirements which were not discussed in the proposal (see discussion in Unit III.B., of this preamble), EPA is issuing this action as a direct final rule in order to provide an opportunity for affected entities to submit adverse comments on the new labeling requirements.

C. Hazards Caused by Total Release Foggers

For several years EPA has received reports of incidents of fires and explosions involving total release foggers. For instance, the New York City Fire Department (NYCFD) reported 40 incidents of fires or explosions (28% resulting in personal injuries) reported to be caused by total release foggers over a 12-year period. Fifteen of the 40 reported incidents occurred in 1990 and 1991 alone. In 32 of those 40 documented incidents, the specific total release fogger product involved was identified. In its proposal, the Agency identified many incidents, and solicited for additional incidents involving foggers. However, no additional incidents were submitted in the comments, but the Agency did receive reports of several incidents connected with use of foggers from various other locations around the country from states and media articles which revealed extensive property damage. These reports are in the public information docket for this rule.

Fire experts have indicated to the Agency that the actual number of such incidents occurring around the country is much higher. Due to the lack of a nationwide reporting system that could capture these type of fire incidents, EPA believes the reports it has received are only the "tip of the iceberg"; annually, there are many more such incidents occurring for which EPA does not receive reports.

III. Comments Received on the Proposed Rule

Twenty-two comments from registrants, trade associations, public interest groups, and others were received on the proposed rule. Most of the comments generally agreed with the need for label improvement for total release foggers. The significant comments are presented below with EPA's response to the comment. A detailed response to comments is available in the public record.

A. Graphic Symbols

EPA proposed the use of graphic symbols (one symbol depicting fire and one symbol representing explosive potential) to alert users of the potential dangers of misuse of total release foggers. Six commenters expressed concern with the use of graphic symbols or they were definitely opposed to the use of graphic symbols. Their biggest concerns were that the proposed symbols would be confusing, and could unduly alarm consumers or that consumers might "misunderstand or misinterpret" the meaning of the symbols. One commenter stated, "We have a strong concern that users will not understand the graphic symbols. For example, the bursting symbol may actually portray to a person that the product is meant to burst to disperse the product properly during usage when such, of course, is not the case. On the other hand, the symbol may be interpreted by others to mean that it presents far more of a danger than actually exists. Unlike an industrial worker audience, consumers are not generally educated as to the meaning of symbols."

As an alternative, one of the six commenters suggested using the fire symbol, but not the proposed explosion (bursting) symbol. One of the commenters supporting the use of symbols encouraged the use of the internationally accepted graphic symbol for fire.

The Agency has decided to retain the use of the fire symbol, but to eliminate the proposed explosion symbol. The Agency believes the fire symbol is widely recognized and is necessary to capture the pesticide user's attention to alert the user to the potential hazards of these products. EPA's fire symbol is similar to many other fire symbols used by other agencies for many years. The U.S. Department of Transportation, the European Community, and Canada use a fire symbol that incorporates a fire as a symbol of flammability. Because there are slight variations in the presentation of the fire symbol among various authorities, and to allow maximum flexibility, EPA has decided to allow use of an "equivalent" fire symbol as an alternative to the one in the proposed rule. Since a fire graphic is widely understood by the public, EPA believes that slight variations among existing symbols will not reduce the value of the information conveyed by the symbol. On the other hand, the Agency agreed with several commenters that the explosion symbol on total release foggers could be misunderstood or misinterpreted or that it might not be effective. Therefore the proposed explosion symbol was omitted from the final rule.

B. Number of Foggers to be Used and Pilot Lights

EPA proposed to limit the number of foggers to be used. By limiting the use to one fogger per room and eliminating all ignition sources, the risks of fire and/or explosions can be substantially reduced, if not eliminated. From an evaluation of the incidents, the Agency recognizes that fires/explosions are generally due to excessively high concentrations of highly flammable gases (propellent in the foggers) in the area being fogged. This is caused by too many foggers being used with the presence of an ignition source. Furthermore, the Agency has learned from fire officials that the elimination of ignition sources is very important to safe use of foggers containing highly flammable propellants. Several fire officials EPA talked with acknowledged the risk of consumers extinguishing and relighting their pilot lights. However, they agreed that those risks were far outweighed by the risks associated with activation of foggers with pilot lights unextinguished. A record of these conversations is available in the public information docket. Therefore, EPA has concluded that limiting the number of foggers to be used and eliminating all ignition sources are paramount to continued safe use of total release foggers. No commenter disagreed with the proposal to eliminate all ignition sources before using a total release fogger. In fact, two commenters recommended the label instruct users to extinguish pilot lights and other ignition sources. In earlier comments on a previous notice dated February 19, 1991 (56 FR 6856), a commenter had raised the issue of the hazard of instructing fogger users (consumers) to turn off their gas pilot lights; the danger of consumers extinguishing and relighting their own pilot lights was emphasized.

After consultation with fire safety professionals and gas industry representatives, the Agency has decided to instruct users to turn off all ignition sources such as pilot lights, other open flames and running electrical appliances. One fire professional suggested referring fogger users to their

gas utility or management company for assistance in extinguishing and relighting pilot lights. The Agency believes the risks of consumers improperly extinguishing and relighting pilot lights are outweighed by the benefits of eliminating all ignition sources before total release foggers are used; and that instructing consumers to contact their gas utility or management company for assistance will further reduce any risks.

This approach of limiting the number of foggers used and extinguishing pilot lights will also eliminate the issues from the proposed rule of the six-foot "buffer zone" and the square footage limitation. As was pointed out by one commenter, the flammability of total release fogger use is not a function of distance from an ignition source, but a function of the concentration of the highly flammable (propellant) gas. By eliminating sources of ignition altogether, risks can be reduced without complex decisions by consumers about distances between foggers and ignition sources. By simplifying the label instructions, EPA believes consumers are more likely to be able to comply.

One commenter, S.C. Johnson Son, Inc. conducted a consumer-based label testing and development program to determine the most effective method of improving consumer comprehension regarding the proper use of total release foggers. This study included qualitative research to decide which fogger labeling best communicates proper use and safety information and evaluated consumers' perceptions of room size. Quantitative research, also a part of the study program, tested various fogger labels, including a fogger label amended according to the proposed rule. An "optimized label" developed from the quantitative research was also tested, which included the simpler instructions "Do not use more than one fogger in a room." and "Extinguish All Flames and Pilot Lights."

The results of the S.C. Johnson study suggested limiting the user to only one fogger per room, as is shown in the final rule language. The study showed that consumers have difficulty accurately estimating room size. Less than 10% of consumers could accurately estimate cubic feet. Therefore, the approach ("DO NOT use more than one fogger per ____ square feet.") of the proposed rule was judged by EPA not to be very effective after all. However, limiting the use to one fogger per room to manage the concentration of highly flammable gases in the area to be fogged was judged to be the most effective. Furthermore, EPA has determined that a limit of one fogger per room will be adequately protective. An added safety factor is the limit of "Do not use in a room 5 ft. x 5 ft. or smaller. . .", as was shown on the "optimized label" used in the S.C. Johnson study. This limit would help a fogger user avoid using too many foggers in a dwelling with many small rooms. This limit of a room 5 ft. x 5 ft. (the typical "walk-in" closet or small bathroom) or smaller was judged to be appropriate.

The Agency has attempted to allow efficacious, but not excessive use, while creating a restriction that can be easily understood and carried out by the typical fogger user. The circumstances in which foggers can be used vary widely. Room size, natural ventilation, ambient temperatures, humidity, presence and proximity of ignition sources, etc. are different from structure to structure, yet each factor can have an impact on risk. While the one fogger per room approach may allow for more concentrated use than that permitted by the language of the proposed rule, it is still within a safe level of use considering the fact that the ignition sources will be eliminated as well. EPA also believes that the efficacy of foggers will be unaffected by this requirement. Users are far more likely to understand and successfully follow the one fogger per room approach than would have been the case from the formula approach of the proposed rule ("DO NOT use more than one fogger per ____ square feet."). Based on the above, EPA has determined that the "one fogger per room" label language achieves equivalent risk mitigation as the language of the proposed rule and has adopted this language and included it in the final rule.

C. Flammability Terminology

EPA proposed the use of the term "extremely flammable" to describe the hazard of the hydrocarbon propellant. Several commenters opposed the use of this term, stating that it would conflict with required flammability labeling already required in the Physical and Chemical Hazards statement for the product as a whole. EPA currently requires that a pressurized product bear a hazard statement of either "Flammable" or "Extremely Flammable" based on flash point and flame extension test results. The commenter's point is that a fogger that bears the statement "Extremely Flammable" under the proposal because it contains a flammable propellant might, based upon flammability characteristics of the product as a whole, bear only the term "Flammable."

EPA acknowledges that sometimes this could be true. However, EPA also believes it likely that total release foggers containing significant levels of hydrocarbon propellant requiring "Extremely Flammable" labeling under this rule would also require "Extremely Flammable" labeling under the current regulations. The "Extremely Flammable" term is required only when the propellant has a flash point of <20 °F. The same flash point triggers the flammability hazard warning for the product as a whole. Thus, a product would have to have a significant amount of non-propellant ingredients with flash points above 20 °F to compensate for the extremely flammable nature of the propellant. Even if this were the case, some number of products would likely fail the flame extension test for pressurized products (flashback to the valve opening) and would still require the "Extremely Flammable" statement.

Because of the potential for confusion with some fogger products, EPA has decided to require the term "Highly Flammable" instead of "Extremely Flammable." The Agency believes that most consumers would not distinguish between the two terms and believes the same message would be conveyed to the fogger user. EPA recognizes that it is very important that the user know the product contains highly or very flammable ingredients. This terminology, in addition to the fire symbol, is extremely important in communicating to the user the hazards of total release foggers containing extremely flammable propellants.

D. Format

EPA did not propose specific formatting or presentation criteria for the required label language. However, several commenters suggested setting off the warning language contained in the final rule with boxes, contrasting colors, and pictograms on the total release fogger labels. Many of these formatting ideas were a part of the S.C. Johnson consumer study mentioned earlier. EPA is not prescribing such formatting in this rule. However, registrants are encouraged to use formatting appropriate for the hazard statement that will highlight the statement for consumers.

E. General Comments

EPA solicited comments concerning the scope of the proposed rule, i.e., for total release foggers only. Most comments concurred with EPA's decision to limit labeling changes to the total release foggers. Two comments indicated that regulatory changes should be extended to aerosol pesticide products overall. However, no additional data were submitted

indicating unreasonable adverse effects from other aerosol pesticide products, so EPA has decided to limit the scope of this rule to total release foggers as proposed.

IV. Provisions of the Final Rule

This final rule amends 40 CFR 156.10 to add required label language to the "Directions for Use" and the "Physical and Chemical Hazards" warning statements. This new language warns fogger users about the hazard of a concentration of gases that could cause a fire or explosion. These warnings limit the number of foggers that can be released within the dwelling. The precautionary label language reads as outlined in Units IV.A. and IV.B. of this preamble.

A. Labeling Changes to the "Physical and Chemical Hazards" Section

This product contains a highly flammable ingredient. It may cause a fire or explosion if not used properly. Follow the "Directions for Use" on this label very carefully.

This wording is slightly different from that which was contained in the proposed rule. In the final rule, the Agency decided to alter the wording to improve communication. In addition to the above label language, EPA is requiring on all total release foggers the use of a standard graphic symbol representing fire.

B. Labeling Changes to the "Directions for Use" Section

DO NOT use more than one fogger per room. DO NOT use in small, enclosed spaces such as closets, cabinets, or under counters or tables. Do not use in a room 5 ft. x 5 ft. or smaller; instead, allow fog to enter from other rooms. Turn off ALL ignition sources such as pilot lights (shut off gas valves), other open flames, or running electrical appliances that cycle off and on (i.e., refrigerators, thermostats, etc.). Call your gas utility or management company if you need assistance with your pilot lights.

V. Risks/Benefits of this Rule

As discussed in the proposed rule, the Agency recognizes the benefits of total release foggers and has taken into consideration these benefits regarding the Agency's assessment of the risks of total release foggers. The Agency has determined that these label changes will be adequate to reduce the risks from total release foggers. EPA believes fewer fires/explosions with loss of life or property will result from the better labeling of these products. Further, these labeling requirements do not reduce the benefits of these products, but provide for safer use.

Overall, as was concluded in the proposed rule, EPA believes these label changes are needed and that the benefits of such changes outweigh the risks. The modification to the required label language mentioned above does not change in any way the Agency's risk-benefit determination. Labeling for improved hazard warnings of foggers does not affect the sale or use of such products.

VI. Implementation

Under 40 CFR 152.130, EPA may prescribe timeframes for the implementation of Agency directed label changes. This unit describes how EPA will implement the changes in this rule. EPA will provide detailed instructions directly to registrants. After the effective date of the final rule, applications for new registrations of total release foggers will not be approved unless they comply with these labeling requirements. Further, no total release fogger products containing an extremely flammable propellant may be distributed or sold by registrants after October 1, 1999, unless the product bears the amended label language required by this rule. Thereafter, EPA may initiate cancellation proceedings under FIFRA section 6, or an enforcement action for misbranding under FIFRA section 12(a)(1)(E), for any total release fogger product not in compliance with the requirements of FIFRA and this rule.

VII. Statutory Review

A draft of this rule was provided to the Secretary of Agriculture (USDA), the Committee on Agriculture, Nutrition, and Forestry of the United States Senate, and to the Committee on Agriculture, of the U.S. House of Representatives. The FIFRA Scientific Advisory Panel waived its review of this rule.

VIII. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number "OPP–36189" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the Virginia address in **ADDRESSES** at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPP–36189." Electronic comments on this final rule may be filed online at many Federal Depository Libraries.

IX. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB).

According to the Economic Assessment conducted by the Agency, the costs per product of this rule were between $8,000 and $13,000. The total costs for the industry would be between $1.87 million and $3 million (net present value). A copy of the Economic Assessment is available in the public docket for this rule.

B. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This action does not impact any small entities. Information relating to this determination is provided upon request to the Chief Counsel for Advocacy of the Small Business Administration, and is included in the docket for this rulemaking.

The label changes for aerosol pesticides, known as total release foggers, will not impose a significant adverse economic impact on a substantial number of small entities. The estimated cost impacts associated with the label changes are less than 1% (0.07%) of the annual revenues for small businesses. One of the main benefits of the rule is to reduce the number of accidents that occur from the misuse of total release foggers.

EPA will allow all registrants almost 2 years to incorporate the label changes. This compliance time will allow all registrants, including those that are small businesses, to revise labels in the

normal course of business, thus minimizing the economic impact. Therefore, no regulatory flexibility analysis was prepared. However, the economic assessment for this rule is available in the public docket for this rule.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* In accordance with the procedures at 5 CFR 1320.11, OMB has assigned OMB control number 2070–0060 (EPA ICR No. 277.10) to this activity. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information subject to OMB approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial publication in the **Federal Register**, are maintained in a list at 40 CFR part 9.

Public reporting burden for this collection of information is estimated to average 0.85 hours per product, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Send any comments on the burden estimates and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques within 30 days to EPA at the address provided above, with a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Please remember to include the ICR number in any correspondence.

D. Unfunded Mandates Reform Act and Executive Order 12875

Under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), this action does not result in the expenditure of $100 million or more by any State, local, or tribal governments, or by anyone in the private sector, and will not result in any "unfunded mandates" as defined by Title II. The costs associated with this action are described in the Executive Order 12866 unit above.

Under Executive Order 12875 (58 FR 58093, October 28, 1993), EPA must consult with representatives of affected State, local, and tribal governments before promulgating a discretionary regulation containing an unfunded mandate. This action does not contain any mandates on States, localities, or tribes and is therefore not subject to the requirements of Executive Order 12875.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 156

Environmental protection, Labeling, Occupational safety and health, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 4, 1998.

Carol M. Browner

Administrator.

Therefore, 40 CFR part 156 is amended as follows:

PART 156—[AMENDED]

1. The authority citation for part 156 continues to read as follows:

Authority: 7 U.S.C. 136 - 136y.

2. In § 156.10, by revising paragraph (h)(2)(iii) and adding paragraph (i)(2)(x)(D) to read as follows:

§ 156.10 Labeling requirements.

* * * * *

(h) * * *

(2) * * *

(iii) *Physical or chemical hazards.* (A) Warning statements on the flammability or explosive characteristics of all pesticides are required as set out in Table 1 and Table 2 of this paragraph as follows:

Table 1.—Pressurized Containers

Flash Point	Required Text
Flash point at or below 20 °F; if there is a flashback at any valve opening	Extremely flammable. Contents under pressure. Keep away from fire, sparks, and heated surfaces. Do not puncture or incinerate container. Exposure to temperatures above 130 °F may cause bursting
Flash point above 20 °F and not over 80 °F or if the flame extension is more than 18 inches long at a distance of 6 inches from the flame	Flammable. Contents under pressure. Keep away from heat, sparks, and open flame. Do not puncture or incinerate container. Exposure to temperatures above 130 °F may cause bursting
All other pressurized containers	Contents under pressure. Do not use or store near heat or open flame. Do not puncture or incinerate container. Exposure to temperatures above 130 °F may cause bursting.

Table 2.—Nonpressurized Containers

Flash Point	Required Text
At or below 20 °F	Extremely flammable. Keep away from fire, sparks, and heated surfaces.
Above 20 °F and not over 80 °F	Flammable. Keep away from heat and open flame.

Table 2.—Nonpressurized Containers—Continued

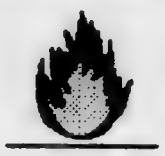
Flash Point	Required Text
Above 80 °F and not over 150 °F	Do not use or store near heat or open flame.

(B) A "total release fogger" is defined as a pesticide product in a pressurized container designed to automatically release the total contents in one operation, for the purpose of creating a permeating fog within a confined space to deliver the pesticide throughout the space.

(C)*(1)* If the pesticide product is a total release fogger containing a propellant with a flash point at or below 20 °F, then the following special instructions must be added to the "Physical and Chemical Hazards" warning statement:

This product contains a highly flammable ingredient. It may cause a fire or explosion if not used properly. Follow the "Directions for Use" on this label very carefully.

(2) A graphic symbol depicting fire such as illustrated in this paragraph or an equivalent symbol, must be displayed along with the required language adjoining the "Physical and Chemical Hazards" warning statement. The graphic symbol must be no smaller than twice the size of the first character of the human hazard signal word.



Highly Flammable Ingredient
Ingrediente Altamente Inflamable

(i) * * *
(2) * * *

(x) * * *

(D) For total release foggers as defined in paragraph (h)(2)(iii)(B) of this section, the following statements must be included in the "Directions for Use":

DO NOT use more than one fogger per room. DO NOT use in small, enclosed spaces such as closets, cabinets, or under counters or tables. Do not use in a room 5 ft. x 5 ft. or smaller; instead, allow fog to enter from other rooms. Turn off ALL ignition sources such as pilot lights (shut off gas valves), other open flames, or running electrical appliances that cycle off and on (i.e., refrigerators, thermostats, etc.). Call your gas utility or management company if you need assistance with your pilot lights."

* * * * *

[FR Doc. 98–4562 Filed 2–20–98; 8:45 am]
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

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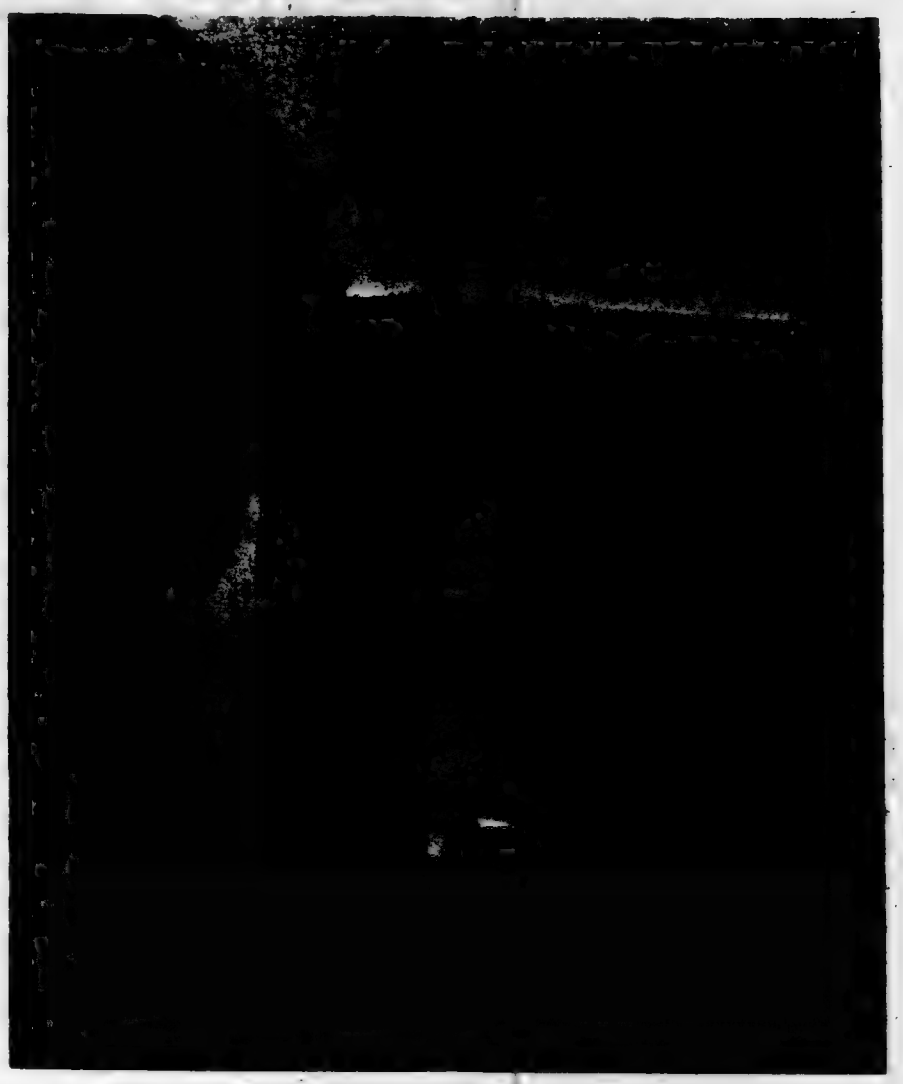

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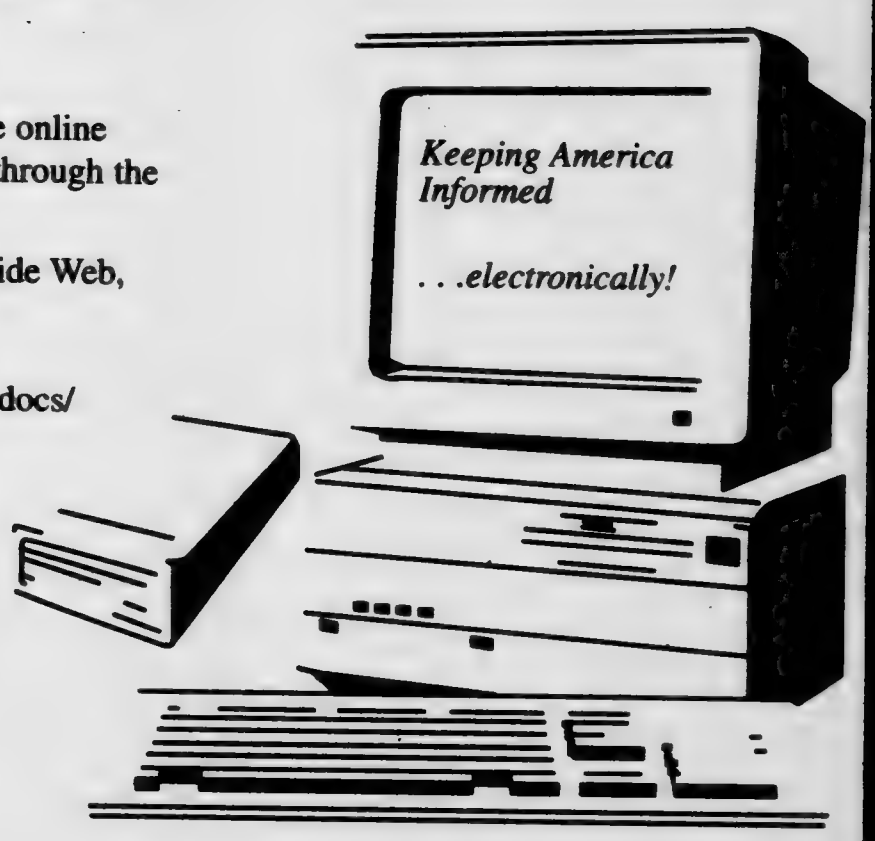

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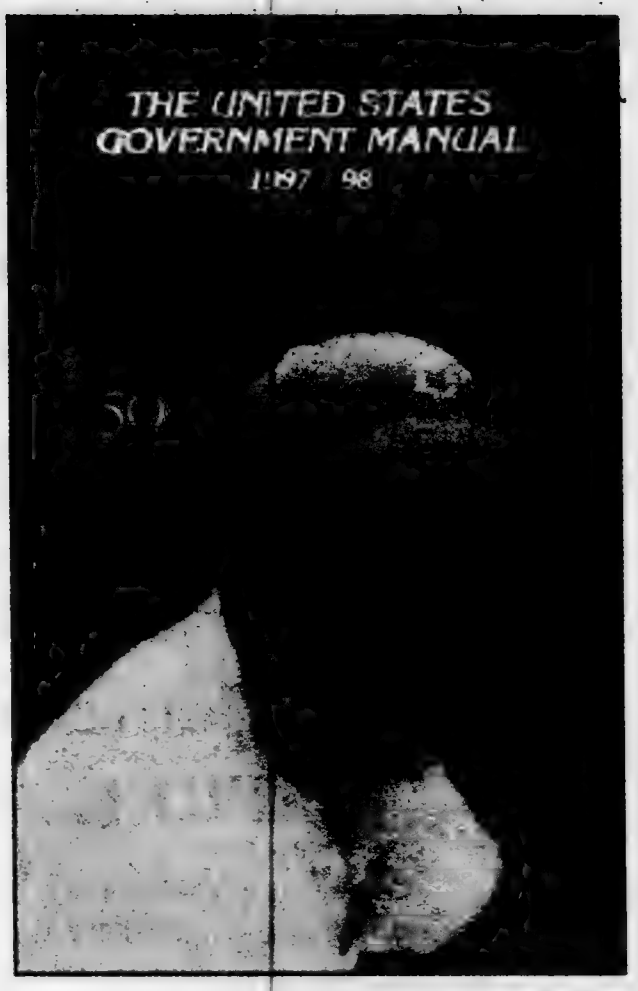

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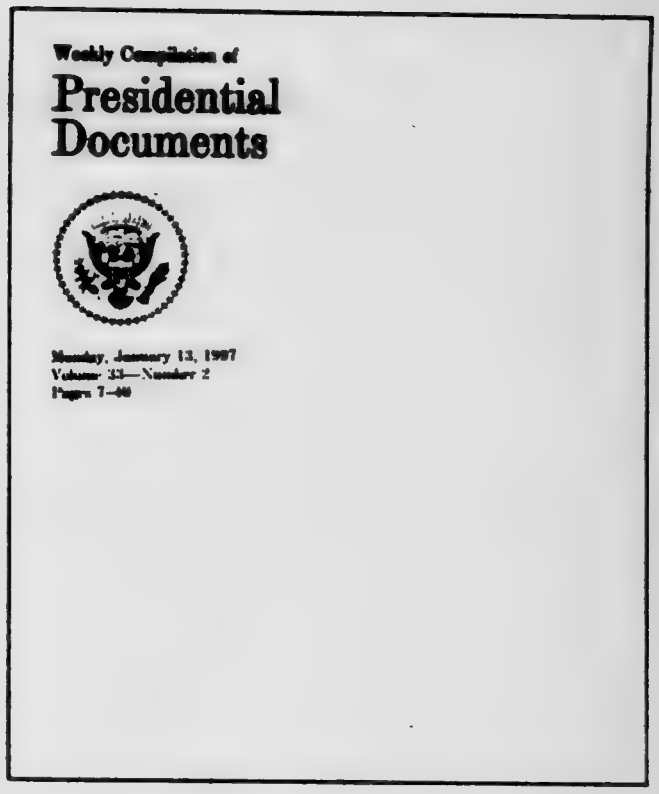

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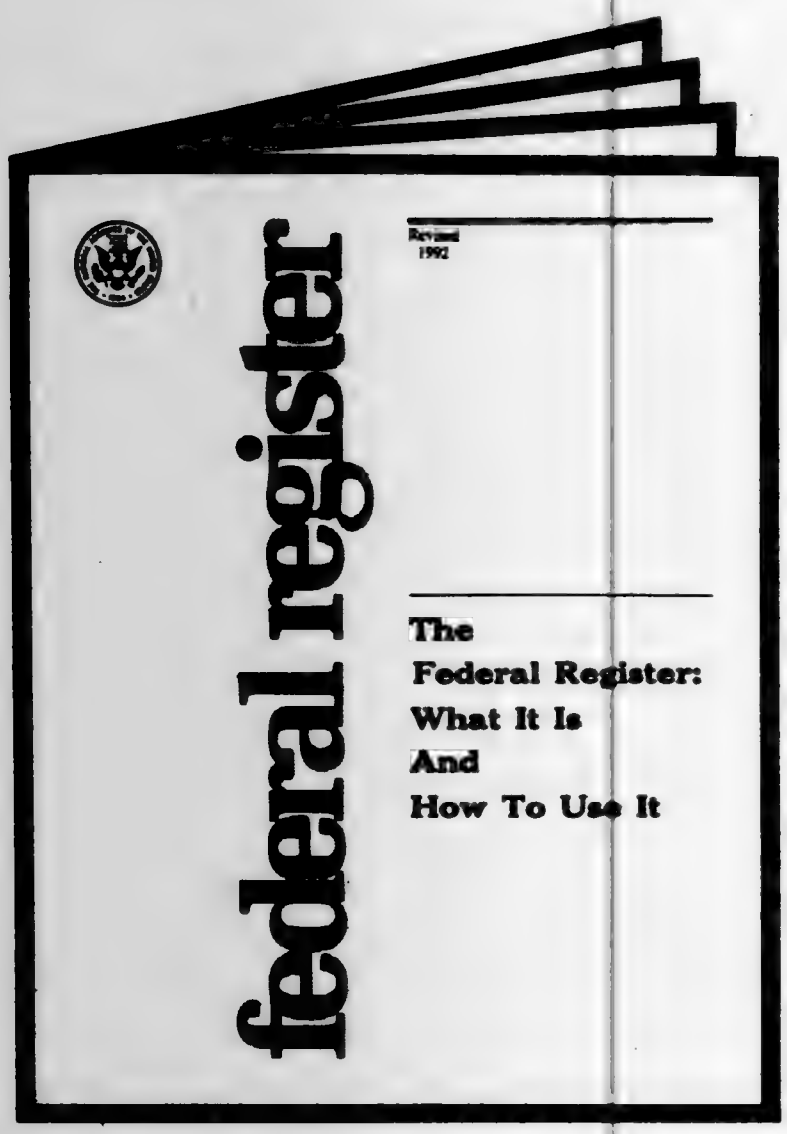

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Title 3—

The President

Executive Order 13075 of February 19, 1998

Special Oversight Board for Department of Defense Investigations of Gulf War Chemical and Biological Incidents

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is hereby established the Special Oversight Board for Department of Defense Investigations of Gulf War Chemical and Biological Incidents ("Special Oversight Board"). The Special Oversight Board shall be composed of not more than seven members appointed by the President. The members of the Special Oversight Board shall have expertise relevant to the functions of the Special Oversight Board and shall not be full-time officials or employees of the executive branch of the Federal Government.

(b) The President shall designate a Chairperson and a Vice Chairperson from among the members of the Special Oversight Board.

Sec. 2. *Functions.* (a) The Special Oversight Board shall report to the President through the Secretary of Defense.

(b) The Special Oversight Board shall provide advice and recommendations based on its review of Department of Defense investigations into possible detections of, and exposures to, chemical or biological weapons agents and environmental and other factors that may have contributed to Gulf War illnesses.

(c) It shall not be a function of the Special Oversight Board to conduct scientific research.

(d) It shall not be a function of the Special Oversight Board to provide advice or recommendations on any legal liability of the Federal Government for any claims or potential claims against the Federal Government.

(e) The Special Oversight Board shall submit an interim report within 9 months of its first meeting and a final report within 18 months of its first meeting, unless otherwise directed by the President.

Sec. 3. *Administration.* (a) The heads of executive departments and agencies shall, to the extent permitted by law, provide the Special Oversight Board with such information as it may require for purposes of carrying out its functions.

(b) Special Oversight Board members may be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707). The administrative staff for the Special Oversight Board shall be compensated in accordance with Federal law.

(c) To the extent permitted by law, and subject to the availability of appropriations, the Department of Defense shall provide the Special Oversight Board with such funds as may be necessary for the performance of its functions.

Sec. 4. *General Provisions.* (a) Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, that are applicable to the Special Oversight Board, except that of reporting annually to the Congress, shall be performed by the Secretary of Defense, in accordance with the guidelines and procedures established by the Administrator of General Services.

(b) The Special Oversight Board shall terminate 30 days after submitting its final report.

(c) This order is intended only to improve the internal management of the executive branch and it is not intended, and shall not be construed, to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

William J. Clinton

THE WHITE HOUSE,
February 19, 1998.

[FR Doc. 98–4816
Filed 2–23–98; 8:45 am]
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 210 and 226

Child and Adult Care Food Program: Improved Targeting of Day Care Home Reimbursements

RIN 0584–AC42

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Child and Adult Care Food Program regulations governing reimbursement for meals served in family day care homes by incorporating changes resulting from the Department's review of comments received on a January 7, 1997, interim rule. These changes and clarifications involve: The appropriate use of school and census data for making tier I day care home determinations; documentation requirements for tier I classifications; tier II day care home options for reimbursement, including use of child care vouchers; calculating claiming percentages/blended rates using attendance and enrollment lists; and procedures for verifying household applications of children enrolled in day care homes. This final rule also amends the National School Lunch Program regulations to facilitate tier I day care home determinations by requiring school food authorities to provide elementary school attendance area information to sponsoring organizations. These revisions implement in final form the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to target higher CACFP reimbursements to low-income children and providers.

EFFECTIVE DATE: April 27, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, Department of Agriculture, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302, or telephone (703) 305–2620.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be economically significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). This rule is expected to have a significant impact on a substantial number of small entities. Specifically, it will impact day care homes classified as tier II day care homes. Additional discussion of this impact is contained in the Economic Impact Analysis following this rule.

Executive Order 12372

The Child and Adult Care Food Program (CACFP) and the National School Lunch Program (NSLP) are listed in the Catalog of Federal Domestic Assistance Under No. 10.559 and 10.555, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

Unfunded Mandate Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, the Food and Consumer Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires the Food and Consumer Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

This final rule contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The final rule contains changes to the information collection requirements that were not included in the interim rule. Specifically, the final rule contains changes based on recent day care home participation data and on information contained in a recent study, and a requirement that school food authorities provide, upon request, elementary school attendance area information for schools in which 50 percent or more of enrolled children have been certified eligible for free or reduced price meals. In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the information collection or recordkeeping requirements included in this final rule have been submitted for approval to OMB. When OMB notifies us of its decision, we will publish a document in the **Federal Register** providing notice of the assigned OMB control number or, if approval is denied, providing notice of what action we plan to take.

Title: Child and Adult Care Food Program: Improved Targeting of Day Care Home Reimbursements.

Description: Under this final rule, some existing recordkeeping activities contained in 7 CFR parts 210 and 226 would be affected. The OMB control numbers are 0584–0006 and 0584–0055, respectively.

Description of Respondents: State agencies, school food authorities and sponsoring organization of family day care homes.

Estimated Annual Recordkeeping Burden: Changes in the annual burden

hours and participation figures from the interim rule are based on recent participation data and information contained in a recent study, Early Childhood and Child Care Study, Profile of Participants in the CACFP: Final Report, Volume 1, prepared in May of 1997. Specifically, adjustments were made in the number of National School Lunch Program State Agencies (SA), the number of sponsoring organizations of family day care homes, and the annual frequency of sponsoring organization's recordkeeping requirements. In addition, an adjustment was made to the projected number of households of tier II children who complete and submit an application. The use of this data results in the deletion of 23,813 reporting hours and the addition of 12,208 recordkeeping burden hours from the burden hours used in the interim rule estimate of burden hours to the Child and Adult Care Food Program.

The final rule also requires that school food authorities provide, when available and upon request by Child and Adult Care Food Program sponsoring organizations, elementary school attendance area information for schools in which 50 percent or more of enrolled children have been certified eligible for free or reduced price meals. This provision was not specifically addressed in the interim rule because the Department assumed that attendance area information would be publicly available to sponsoring organizations. However, given the importance of attendance area information in making tier 1 day care home determinations using school data, and commenter concern regarding the availability of attendance area information, the final rule requires school food authorities to provide this information. The final rule does not require the creation or collection of new data, but rather the provision, upon request, of attendance area information that already exists, thereby imposing a minimal burden. The inclusion of this provision results in the addition of 39,752 reporting burden hours to the burdens for the National School Lunch Program.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the CACFP: (1) Institution appeal procedures are set forth in 7 CFR 226.6(k); and (2) disputes involving procurement by State agencies and institutions must follow administrative appeal procedures to the extent required by 7 CFR 226.22 and 7 CFR part 3015.

This rule implements in final form the amendments set forth under sections 708(e) (1) and (3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. 104–193, which was enacted on August 22, 1996. In accordance with section 708(k)(3)(A) of PRWORA, the Department published an interim rule, instead of a proposed rule, on January 7, 1997 (62 FR 889). Due to errors contained in the preamble and regulatory text of the rule published on January 7, 1997, the Department published a correction document on February 6, 1997 (62 FR 5519), and extended the original 90-day comment period to 120 days, through May 7, 1997.

Among other things, this final rule amends § 210.9(b)(20) of the National School Lunch Program regulations to require that school food authorities provide, when available and upon request by CACFP sponsoring organizations, elementary school attendance area information for schools in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals. This provision was not specifically addressed in the interim rule published on January 7, 1997 (62 FR 889) because the Department assumed that such information would be publicly available to sponsoring organizations. However, a number of sponsoring organizations have expressed concern about their ability to obtain this information. Attendance area information is essential to making tier I day care home determinations using school data, an option specifically required by the PRWORA amendments. In addition, the requirement to provide attendance area information only pertains to those school food authorities in which such information already exists, thereby imposing a minimal burden. For these reasons, the Administrator of the Food and Consumer Service has determined, in accordance with 5 U.S.C. 553(b)(3)(B), that it is impracticable and contrary to the public interest to take prior public comment and that good cause therefore exists for promulgating this provision in the final rule without prior public notice and comment.

In addition, this final rule amends § 226.15(f) to include criteria on the appropriate use of school and census data for making tier I day care home determinations. These criteria place primary emphasis on the use of elementary school free and reduced price enrollment data. The preamble to the interim rule expressed the Department's strong preference for school data over census data, stated several reasons for this preference, and indicated that the Department would subsequently issue guidance for use by sponsoring organizations in making tier I day care home determinations. The Department issued this guidance on March 10, 1997. Because the criteria were not set forth in the interim rule, there was no opportunity for formal public comment. However, sponsoring organizations have made their initial tier I determinations in accordance with the criteria set forth in the March 10 guidance, and in this final rule. For this reason, the Administrator of the Food and Consumer Service has determined, in accordance with 5 U.S.C. 553(b)(3)(B), that it is impracticable and contrary to the public interest to take prior public comment and that good cause therefore exists for promulgating this provision in the final rule without prior public notice and comment.

The final rule is being published based on comments received on the interim rule, in accordance with the requirement contained in section 708(k)(3)(B) of PRWORA. The Department anticipates that it may later propose additional changes to address issues that arise after implementation of the two-tiered reimbursement structure on July 1, 1997.

Background

This rule implements in final form the amendments set forth under sections 708(e) (1) and (3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104–193, which was enacted on August 22, 1996. In accordance with section 708(k)(3)(A) of PRWORA, the Department published an interim rule, instead of a proposed rule, on January 7, 1997 (62 FR 889).

In addition to requiring that an interim rule be published by January 1, 1997, section 708(k)(3)(B) of PRWORA also required the Department to publish a final rule on these provisions by July 1, 1997. These extremely short timeframes limited the Department's ability to benefit from public input in the development of the interim or final rule. Thus, although the Department allowed 120 days for public comment on the interim rule, the requirement to

publish a final rule by the date for implementation of the two-tiered system (July 1, 1997) meant that the final rule could not reflect any knowledge gained by the Department, State agencies, or sponsoring organizations in operating the two-tiered system.

The Department recognizes the importance of State and local-level input in developing effective program regulations that carry out the intent of PRWORA while minimizing administrative burden. Therefore, the Department is interested in receiving comments on implementation and operation during the first year of the two-tiered system. Based on the comments received, the Department may develop, at a later date, a proposed rule to implement any needed changes within the statutory framework.

In an effort to improve the targeting of benefits to low-income children, PRWORA establishes a two-tiered system for reimbursing meals served in family day care homes participating in the Child and Adult Care Food Program (CACFP), effective July 1, 1997. Under this system, tier I day care homes are those that are located in low-income areas or those in which the provider's household income is at or below 185 percent of the Federal income poverty guidelines. All meals served to enrolled children in tier I day care homes are reimbursed at essentially the same rates as prior to the two-tiered system, as adjusted for inflation, regardless of the income levels of enrolled children's households. Tier II day care homes are those which do not meet the location or provider income criteria for a tier I day care home. All meals served in tier II day care homes are reimbursed at lower rates, unless the provider elects to have the sponsoring organization identify children from income-eligible households. In that case, meals served to identified income-eligible children are reimbursed at the tier I rates.

The Department received 713 comments on the interim rule published in the **Federal Register** on January 7, 1997. Of these, 21 were from State agencies administering the CACFP or National School Lunch Program (NSLP); 140 from sponsoring organizations of day care homes; 352 from day care home providers; 5 from advocacy groups; 192 from parents and other members of the general public; and 3 from others, including one from a State Representative, one from a public school system, and one from a school administrator's association.

In general, commenters were opposed to the changes made to the CACFP by Public Law 104–193. Of the commenters, 583 specifically expressed concern about the negative impact they anticipate that these provisions will have on child care and, therefore, on children, including: (1) Potentially significant dropout of providers from the CACFP, which could result in an increase in the number of "underground," unlicensed day care homes; (2) a possible increase in day care rates if tier II providers choose to "pass along" the effect of lost meal reimbursement to parents in the form of higher day care rates; (3) a potential decrease in the quality of meals served to children in CACFP day care homes, due to the lower reimbursement rates; and (4) an overall decrease in available quality child care at a time when new work requirements resulting from welfare reform necessitate an increased supply. Instead of the two-tiered reimbursement system set forth in PRWORA, 103 commenters suggested that budgetary savings could be achieved by maintaining one set of rates, but by lowering them. Only three commenters expressed support for the two-tiered reimbursement system.

Several of the concerns expressed by commenters were addressed in the economic impact analysis, which was published as an appendix to the interim rule (62 FR 904). Overall, it is expected that non-low-income providers and parents will bear most of the costs resulting from the two-tiered reimbursement system—as was the intent of PRWORA. First, as a result of the two-tiered reimbursement system, the annual rate of growth of the number of day care home providers participating in the CACFP is expected to decline. This anticipated decline in the annual rate of growth is attributed to a combination of decreased incentive for non-low-income providers to join the program, due to the lower reimbursement rates, and an increase in the number of these providers leaving the program. Similarly, the decreased CACFP reimbursements may cause some currently regulated and sponsored homes not only to drop out of the CACFP, but also to consider moving out of licensed care altogether.

As noted by some of the commenters, providers who remain in the program and operate tier II day care homes will most likely respond to their decrease in revenues from the CACFP through some combination of raising child care fees, absorbing the loss, and reducing their operating costs. Though many factors influence a provider's response, including the competitiveness of the child care market in which the provider operates, affected providers (tier II) will probably choose to pass some of their revenue loss on to their clientele, primarily non-low-income parents, through higher child care fees. To cut operating costs, tier II providers may also change their management practices relating to food service and developmental opportunities and materials. Providers may decide that certain snacks under the old, higher CACFP reimbursements will not be served under the new, lower rates, such as an afternoon snack. Providers might also respond by decreasing meal portions, although by specifying minimum serving sizes, CACFP regulations limit the extent to which this could be done. Among other comparisons, the CACFP study mandated by section 708(l)(1)(E) of PRWORA will compare the nutritional quality of meals served in post-tiering tier II day care homes with the quality of meals served in those day care homes before tiering.

The comments received on the provisions of the interim rule, and the Department's response to them, are discussed in greater detail in the preamble that follows. Although the Department carefully considered all of the comments received, many of the changes recommended by commenters are not feasible under the language of PRWORA. Any provisions that are not discussed in the preamble to this final rule were not addressed by commenters, and are retained as set forth in the interim rule. However, in several cases, the preamble addresses provisions on which the Department received no comments, in order to bring to readers' attention certain significant provisions of PRWORA and the interim rule.

Tier I Day Care Homes

Definition

The interim rule, in § 226.2, defined a "tier I day care home" as:

(a) A day care home that is operated by a provider whose household meets the income standards for free or reduced-price meals, as determined by the sponsoring organization based on a completed free and reduced price application, and whose income is verified by the sponsoring organization of the home in accordance with § 226.23(h)(6);

(b) A day care home that is located in an area served by a school enrolling elementary students in which at least 50 percent of the total number of children enrolled are certified eligible to receive free or reduced price meals; or

(c) A day care home that is located in a geographic area, as defined by FCS based on census data, in which at least 50 percent of the children residing in the area are members of households which meet the income standards for free or reduced price meals.

The definition promulgated in the interim rule was based on the definition

of "tier I family or group day care home" contained in section 17(f)(3)(A)(ii)(I) of the National School Lunch Act (NSLA), as amended by section 708(e)(1) of Public Law 104–193.

No comments were received on the definition of "tier I day care home" as added by § 226.2 of the interim rule. Therefore, this final rule retains the definition of "tier I day care home" as set forth in the interim rule.

Provision of Area Data

Unless a provider demonstrates that household income meets the free or reduced price eligibility standards, a sponsoring organization must use elementary school or census data—referred to collectively in this preamble as "area data"—to qualify the day care home as a tier I day care home. Section 708(e)(3) of PRWORA amended section 17(f)(3) of the NSLA to set forth requirements pertaining to the provision of area data for use in making tier I day care home determinations.

School Data

Based on the provisions of PRWORA, the interim rule added § 210.9(b)(20) to the NSLP regulations to require that school food authorities provide (by March 1, 1997, and by December 31 each year thereafter) the State agency that administers the NSLP with a list of all elementary schools under their jurisdiction in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day of October. Similarly, § 210.19(f) as added by the interim rule requires each State agency that administers the NSLP to provide (by March 15, 1997, and by February 1 each year thereafter) the State agency that administers the CACFP with a list of all elementary schools in the State in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals. Section 210.19(f) also requires the State agency that administers the NSLP to provide the list to any sponsoring organization that requests it. In addition, § 226.6(f) as amended by the interim rule requires the State agency that administers the CACFP to provide its sponsoring organizations with this list of elementary schools by April 1, 1997, and by February 15 each year thereafter.

The Department received 64 comments concerning the provision of elementary school free and reduced price enrollment data for the CACFP. Of these, five commenters objected to the requirements because they believe that they place an unnecessary burden on school food authorities and/or NSLP State agencies. For example, two commenters pointed out that this requirement is unrelated to the administration of the NSLP. The Department agrees that provision of these data is not directly related to administration of the NSLP, and is cognizant of the modest administrative burden it may place on State and local entities. Nevertheless, section 17(f)(3)(E)(ii) of the NSLA, as amended by section 708(e)(3) of PRWORA, explicitly requires that NSLP State agencies annually provide this data in order to facilitate tier I day care home classifications in the CACFP. Despite commenters who indicated that this is a new reporting burden, § 210.8(c) of the NSLP regulations previously required that school food authorities report the total number of enrolled free, reduced price, and paid children to the NSLP State agency on the October claim for reimbursement. In order to submit this data, school food authorities must already consolidate the enrollment data submitted by individual schools. In addition, while there was no prior Federal requirement that school food authorities report the names of participating schools to the State agency, many States already collected this information. Finally, although PRWORA required NSLP State agencies to provide the list directly to sponsoring organizations upon request, the interim rule requires that NSLP State agencies also provide it to CACFP State agencies, which will provide it to all sponsoring organizations. We expect that this requirement will reduce the number of requests received by NSLP State agencies from sponsoring organizations, thereby further minimizing the burden associated with this provision. Finally, the burden is also minimized due to the fact that more than three-fourths of States operate the CACFP out of the same State agency as the NSLP.

In addition, two commenters recommended that the annual February 15 date by which the CACFP State agency must provide the list of schools to sponsoring organizations be changed to April 1 or April 15, in order to provide the CACFP State agency additional time to assemble the data and distribute it to sponsoring organizations. While the interim rule requires that the CACFP State agency provide the school data to sponsoring organizations by February 15, which is only two weeks after its receipt from the NSLP State agency, the form in which the data is received from the NSLP State agency should not require any work by the CACFP State agency beyond duplicating and mailing the data to sponsoring organizations. In the Department's opinion, two weeks is sufficient time to perform this task. Furthermore, it is critical that the data be provided in as timely a manner as possible after receipt by the CACFP State agency, so that sponsoring organizations are able to make their tiering determinations with current information.

Therefore, this final rule makes no change to §§ 210.9(b)(20) and 210.19(f) regarding the requirement that school food authorities and NSLP State agencies, respectively, provide free and reduced price enrollment data for use by CACFP sponsoring organizations. In addition, no change is being made to the February 15 annual date by which the CACFP State agency must provide sponsoring organizations with the school data, contained in § 226.6(f)(9).

Sixteen commenters on the interim rule indicated that the free and reduced price enrollment data used in the CACFP should be based on a month other than October. These commenters expressed concerns that requiring October data will impose a new reporting burden on school food authorities and NSLP State agencies, and that data from another month would be more reflective of schools' free and reduced price enrollment. With regard to whether data from another month would more accurately reflect the free and reduced price enrollment of schools, five commenters recommended specific months that should be used instead of October, including January, March, May and June. Four commenters recommended that each NSLP State agency decide on the appropriate month for provision of data. In addition, 12 commenters questioned whether sponsoring organizations could themselves obtain updates of free and reduced price enrollment data from school food authorities or individual schools more frequently than annually, and one commenter recommended that NSLP State agencies provide updated data to sponsoring organizations on a monthly basis. Finally, 185 commenters expressed concern about the accuracy of the school data provided.

The Department continues to believe that October data accurately reflects the free and reduced price enrollment of schools, and also imposes the least burden on school food authorities. Nevertheless, in response to commenter concerns, this final rule permits NSLP State agencies to establish the list of schools on free and reduced price data on data from a month other than October.

At a minimum, PRWORA and the interim rule require that free and reduced price enrollment data be

provided to sponsoring organizations on an annual basis. In the interests of minimizing any burden associated with provision of this data, and the potential for administrative confusion which could result from monthly fluctuations in the data, this final rule does not require that data be provided more frequently than annually, and permits State agencies to update the list of schools more frequently only under unusual circumstances.

The circumstances under which State agencies may update the list help address commenters' concerns regarding the accuracy of the data provided. If, for example, free and reduced price data for a newly opened school becomes available after the list has already been provided, it would be logical for the NSLP State agency to provide to the CACFP State agency and requesting sponsoring organizations the new data for this particular school, and any other schools affected by its opening. Similarly if, after the list of schools is provided, it is discovered that data provided by a particular school food authority is several years old, the NSLP State agency should provide new data on those schools. However, this means that routine monthly fluctuations in a school's free and reduced price data may not be used to qualify or disqualify a home from tier I status after its initial determination of eligibility has been made. Although PRWORA and the interim rule explicitly allow a State agency to change a tier I determination if information becomes available indicating that a home is no longer in a qualified area, this should be done only when there has been a substantial, sustained shift in an area's socioeconomic makeup, not when there are minor fluctuations in a school's free and reduced price enrollment from one month to the next. In order to ensure that all sponsoring organizations (whose service areas often overlap) have equal access to any updated information, and to help ensure the integrity of the data provided, sponsoring organizations will not be permitted to use free and reduced price information obtained directly from local school food authorities without the express prior consent of the State agency administering the CACFP. Sponsoring organizations that become aware of particular circumstances that they believe would warrant the issuance of new data should notify the CACFP State agency, which can communicate with the NSLP State agency as necessary.

Accordingly, this final rule amends §§ 210.9(b)(20) and 210.19(f) to permit NSLP State agencies to base the list of free and reduced price schools for the CACFP on data as of the last operating day of the preceding October, or another month specified by the NSLP State agency. In order to accommodate NSLP State agencies which select a month other than October, § 210.9(b)(20) is also amended by adding language to clarify that school food authorities must annually provide the list of schools to the NSLP State agency by December 31, or, if data is based on a month other than October, within 60 calendar days following the end of the selected month. Similarly, § 210.19(f) is amended by adding language that NSLP State agencies must annually provide the list of schools to the CACFP State agency by February 1, or within 90 calendar days following the end of the month designated by the NSLP State agency if data is based on a month other than October. In addition, § 226.6(f)(9) is amended to clarify that the CACFP State agency must annually provide the list of schools to sponsoring organizations by February 15, or within 15 calendar days of receipt of the list from the NSLP State agency if data is based on a month other than October. Section 210.19(f) is further amended in this final rule to permit NSLP State agencies to provide updated free and reduced price enrollment data on individual schools, but only when unusual circumstances render the initial data obsolete.

In addition, the Department received 272 comments which expressed concern about the availability or accessibility of elementary school attendance area information, which is necessary for sponsoring organizations to obtain in order to be able to use the free and reduced price enrollment data.

First, many commenters suggested methods of classifying tier I day care homes which would greatly reduce, or even eliminate the need for attendance area information. For example, 38 commenters suggested that State agencies be given the authority to qualify larger geographic areas, such as cities or school districts, as tier I areas, thus eliminating the need for individual elementary school attendance area information for those areas. Similarly, six commenters suggested using data from the elementary school geographically closest to the provider, instead of data from the school serving the provider. Finally, 15 commenters recommended that sponsoring organizations be permitted to accept a provider's self-declaration of the elementary school serving the day care home as sufficient proof of the home's location in the school attendance area. Several of these commenters also recommended that sponsors be required to verify provider self-declarations through obtaining elementary school attendance information for a sample of their providers.

Although the Department appreciates commenters' suggestions and recognizes that they potentially would reduce the burden of obtaining attendance area information, none of the suggested alternatives is permissible under the provisions of PRWORA. Due to the definition contained in section 17(f)(3)(A)(ii)(I) of the NSLA, as added by section 708(e)(1) of PRWORA, which describes a "tier I day care home" in part as a day care home "served by a school enrolling elementary students," it would be contrary to the law to permit larger geographic areas to qualify as tier I areas, or to use data from the elementary school geographically closest to a provider's home. In addition, as discussed in a memorandum issued on April 25, 1997, a sponsor may not rely on a provider's self-declaration of elementary school attendance area for making a tier I determination. To comply with the law and the interim rule, a sponsor must independently substantiate and document any attendance area information obtained from its providers. (Additional discussion of provider self-declaration of elementary school attendance areas may be found later in this preamble under "Documentation Requirements.")

In addition, 62 of the commenters indicated that obtaining elementary school attendance area information for schools with a free and reduced price enrollment of 50 percent or more is burdensome and difficult for sponsoring organizations. Another of the concerns, expressed by nine commenters, was that school districts will not release attendance area information to sponsoring organizations due to concerns about liability for erroneous tier I classifications made using school data. In addition, 11 commenters indicated that there is no attendance area information available for some school districts, and 50 commenters indicated a concern that sponsoring organizations will have difficulty keeping up with school boundaries because they change frequently. Finally, 42 commenters suggested that NSLP State agencies be required to provide attendance area information, either directly to sponsoring organizations or through the CACFP State agency, along with the list of elementary schools in which 50 percent or more of enrolled children are determined eligible for free or reduced price meals. Many of these commenters indicated that NSLP State agency provision of attendance area information would eliminate

duplication of effort by sponsoring organizations, and ensure that the information obtained and used by sponsors is consistent.

When the interim rule was drafted, it was assumed that attendance area information would be publicly available to sponsoring organizations. In response to concerns expressed on this issue after publication of the interim rule, the Department issued a memorandum on February 10, 1997, in which NSLP State agencies were asked to urge their local school food authorities to make attendance area information available to sponsoring organizations upon their request.

Requiring NSLP State agencies to collect attendance area information from all elementary schools in the State with 50 percent or more of enrolled children identified as eligible for free or reduced price meals would, in most cases, place a substantial burden on NSLP State agencies. In addition, the Department believes it is unnecessary to impose an additional information collection requirement on NSLP State agencies when the information that sponsoring organizations need to make tier I day care home determinations is usually maintained by the local school district, and not by the NSLP State agency. Although NSLP State agencies are required by PRWORA and the interim rule to collect data from school food authorities regarding schools with 50 percent or more free and reduced price enrollees, attendance area information for individual schools is significantly more complex and varied.

However, given the significant commenter concern regarding the availability of attendance area information, this final rule requires school food authorities to provide elementary school attendance area information, when it is available for the schools under their jurisdiction, upon request by sponsoring organizations. We are requiring that the information be provided "when it is available" in recognition of the fact that not all school districts have distinct attendance areas attached to each of their elementary schools. The Department wishes to emphasize that it does not intend for school food authorities to create new information, but rather to provide sponsoring organizations only with attendance area information that already exists.

With regard to commenter concerns about a school district's liability if erroneous tier I day care home classifications are made based on school data, school districts should be assured, as previously indicated in our February 10, 1997, memorandum, that they will not be held financially or otherwise liable by FCS for erroneous tier I classifications, whether due to a sponsoring organization's misuse of attendance area information, or due to an inadvertent error by the school district when providing the information. Conversely, sponsoring organizations will not be liable for erroneous information obtained from school food authorities as long as the sponsoring organization takes action to correct misclassifications made with erroneous school data as soon as it learns of the errors.

As indicated above, many commenters expressed concern that sponsoring organizations will have difficulty maintaining up-to-date boundary information because boundaries for some schools change frequently. The Department recognizes that changes to a school's boundaries made during a school year may not be immediately known by the sponsor. However, the Department expects sponsoring organizations to make reasonable efforts to use current boundary information when making tier I determinations with school data. Therefore, this final rule requires that sponsoring organizations obtain current attendance area information at a minimum on an annual basis, for use in classifying new day care homes that enter the program. However, as discussed above with regard to changes in a school's percentage of free and reduced price enrollment from year to year, the Department does not expect sponsoring organizations to routinely reclassify tier I day care homes before the three-year period has expired based on shifts in an elementary school's boundaries.

Accordingly, this final rule amends § 210.9(b)(20) by adding the requirement that school food authorities provide elementary school attendance area information, upon request by sponsoring organizations, when it is available for the schools under their jurisdiction. In addition, § 226.15(f) is amended by adding the requirement that when making tier I day care home determinations based on school data, sponsoring organizations shall use attendance area information that has been obtained, or verified with appropriate school officials to be current, within the last school year.

Census Data

Section 708(e)(3) of PRWORA amended section 17(f)(3)(E)(i) of the NSLA to require that the Secretary provide each CACFP State agency with appropriate census data showing the areas of the State in which at least 50 percent of children are from households meeting the income standards for free or reduced price meals. In addition, § 226.6(f)(9) as amended by the interim rule requires CACFP State agencies to make the census data available to sponsoring organizations.

A special tabulation of data showing, for each census block group in the country, the percentage of children age 0–18 who are from households meeting the income standards for free or reduced price meals has been used for determining area eligibility for the Summer Food Service Program (SFSP) since 1994. By January 1997, the Department had provided this special tabulation to all CACFP State agencies that do not also administer the SFSP. In addition, since the CACFP defines a child as age 12 and under, a special tabulation of census data for children ages 0–12 was provided to all CACFP State agencies in March 1997. Because the 0–12 tabulation was not initially made available to State agencies, they were instructed that they could permit sponsoring organizations to use either of the special tabulations for determining tier I day care home eligibility for the purposes of implementation. However, after September 30, 1997, all sponsoring organizations must use the special tabulation of census data for children ages 0–12 since that data corresponds with the definition of "child" in the CACFP.

No comments were received concerning the provision of census data. Therefore, this final rule retains the requirement contained in § 226.6(f) as added by the interim rule that State agencies provide sponsoring organizations census data.

Making Tier I Day Care Home Determinations

By requiring that school and census data ultimately be provided to sponsoring organizations, PRWORA places the responsibility for determining which day care homes are eligible as tier I day care homes on sponsoring organizations. This is accomplished by applying the school or census data provided by the CACFP State agency, or by determining and verifying that the households of day care home providers are eligible for free or reduced price meals.

Appropriate Use of Area Data

With regard to using area data for making tier I day care home determinations, the preamble to the interim rule expressed the Department's strong preference that sponsoring organizations use elementary school free and reduced price eligibility data over

census data in making tier I day care home determinations. The preamble also stated several reasons for this preference, and indicated that the Department would issue subsequent guidance for use by sponsoring organizations in making tier I day care home determinations.

The Department issued guidance on the use of elementary school and census data for making tier I day care home determinations in the form of a March 10, 1997, memorandum, well in advance of the April 1, 1997, regulatory deadline at § 226.6(f)(2) for sponsors' submission of management plan amendments which detailed their system for making tier I determinations. That guidance indicated that, because it is typically more recent and more representative of a given area's current socioeconomic status, school data must be consulted first when using area data to try to qualify a day care home as a tier I day care home. The only exceptions to this rule are in cases in which busing, or other "district-wide" bases of attendance, such as magnet or charter schools, result in school data not being representative of an attendance area, or when attendance areas are not used by the school district. In these cases, census data should generally be consulted by sponsoring organizations instead of school data.

In addition, the guidance indicated that if, after reasonable efforts are made, a sponsoring organization is unable to obtain local elementary school attendance area information, as discussed above, the sponsor may use census data to determine a day care home's eligibility as a tier I day care home. The Department did not attempt to define "reasonable efforts," but rather provided discretion to State agencies to provide additional guidance in this area to sponsoring organizations.

Finally, the guidance delineated circumstances in which sponsoring organizations may consult census data after having consulted school data which fails to support a tier I determination. These circumstances were: (1) Rural areas with geographically large elementary school attendance areas; or (2) other areas in which an elementary school's free and reduced price enrollment is above 40 percent. This approach enables sponsoring organizations to identify "pockets of poverty" with higher concentrations of low-income children which are not evident when only consulting the list of schools with 50 percent or more of enrolled children determined eligible for free or reduced price meals. The March 10 guidance pointed out, however, that NSLP State agencies were only required by § 210.19(f), as amended by the interim rule, to provide a list of elementary schools in the State in which at least 50 percent of enrolled children are determined eligible for free or reduced price meals.

The Department received 166 comments on the appropriate use of school and census data, all of which indicated that there should be no restrictions on the use of school or census data for making tier I day care home determinations. Thirty-one of these commenters indicated their belief that PRWORA does not indicate a preference for one data source over another. Forty commenters indicated that the Department's policy restricting the use of census data to specific circumstances was contrary to what they believed to be PRWORA's intent to serve the maximum number of low-income children. Eleven commenters objected to the Department's position that school data should not generally be used in cases with significant student busing or other district-wide bases of attendance, such as magnet schools. Two commenters indicated that CACFP policy should not be based on comparisons to the SFSP because the programs are very different.

The Department prefers school data over census data because, in most cases, school data is more capable of accurately documenting an area's current socioeconomic status. Thus, placing primary reliance on school data for making tier I day care home determinations on the basis of area data is necessary to achieve the targeting goals of PRWORA. In addition, section 17(f)(3)(E)(ii)(II) of the NSLA, as amended by section 708(e)(3) of PRWORA, requires that in determining "whether a home qualifies as a tier I family or group day care home under subparagraph (A)(ii)(I)," State agencies and sponsoring organizations "shall use the most current available data at the time of the determination." Subparagraph (A)(ii)(I) of section 17(f)(3) of the NSLA encompasses all of the methods (i.e., elementary school data, census data, and provider's household income) for making tier I determinations. In most instances, free and reduced price applications are collected annually by elementary schools. Therefore, these data are a far more recent statement of individual and aggregate economic circumstances than census data, which was collected in 1990.

One hundred twenty-two commenters expressed concern that elementary school free and reduced price data does not necessarily accurately reflect an area's economic circumstances. These commenters cited several reasons, including that many low-income families choose not to apply for school meal benefits, and therefore, are not included in the school data. Although it is true that not all eligible households submit free and reduced price school meal applications on behalf of their school-age children, studies such as the National Evaluation of School Nutrition Programs (Abt Associates, 1983) have demonstrated that low-income households are more likely to apply on behalf of their elementary-age children than low-income households with older children. In addition, the special tabulation of census block group data is based on data submitted by a sample drawn from one out of every six American households. As such, it provides an excellent basis for generalizing about poverty at the national, State, and county levels. However, the average census block group includes approximately 400 housing units containing about 900 persons, and the one in six income sample is drawn randomly from all census block groups, not equally from within each block group. As a result, there is no way of predicting how many households within a particular block group completed and returned the household income questionnaire to the Bureau of the Census. The average number of households in a block group with school-age children which returned the questionnaire is unlikely to be greater than the average number of households with children enrolled in the local elementary school. Thus, census data for a particular block group is typically less accurate than school data.

Despite the shortcomings of census data, the Department believes that its inclusion in the law as a potential source for documenting a day care home's eligibility as a tier I day care home was purposeful and logical. There are, as noted above, certain circumstances in which school data does not more accurately portray the surrounding area's socioeconomic status than census data. In addition, if an area's socioeconomic makeup has not changed substantially since the census data were collected in 1990, there may also be other circumstances, such as rural and urban "pockets of poverty," in which census block group data can appropriately identify an eligible portion of an otherwise ineligible elementary school attendance area.

With regard to commenter objections to the Department's position that school data should not generally be used in cases with significant student busing or

other district-wide bases of attendance, the Department would like to reiterate that it promulgated this policy because in cases with district-wide bases of attendance, the school data does not necessarily reflect the household income levels of a particular geographic area. However, the March 10 guidance was not intended to require that, whenever busing occurred, census data would have to be used. Pupil busing might be used for a small portion of the student population and might not affect the elementary school data's ability to accurately portray an area's household income levels. Rather, the guidance was intended to underscore the Department's strong belief that Congress intended sponsoring organizations to utilize area data which best portrays the current household income levels of the area in which a particular day care home is located. Each community's situation may be potentially unique, and the State agency is in the best position to determine when busing or other circumstances have diminished the school data's ability to accurately portray an area's current household income levels. In addition, although the two programs are different in many operational respects, the Department believes that basing the CACFP policy on that for the SFSP is warranted in this situation due to the programs' similarities in establishing eligibility based on geographic areas.

Therefore, despite the concerns expressed by commenters, the Department continues to believe that school data is preferable to census data in the majority of cases, and that the policy set forth in the March 10 memorandum is consistent with the intent of Pub. L. 104–193 to utilize the best available data on aggregate socioeconomic conditions in order to better target CACFP benefits to low-income areas. Therefore, this final rule incorporates the criteria on the appropriate use of school and census data for making tier I day care home determinations set forth in the March 10, 1997, memorandum.

When making tiering determinations based on area data, sponsoring organizations are expected to make reasonable efforts to ensure that day care homes located within the geographic limits of an eligible school attendance area or census block group are classified as tier I homes only when appropriate. That is, if a sponsoring organization believes that a segment of an otherwise eligible elementary school attendance area is non-needy, the sponsoring organization must take additional steps to ensure that homes within the attendance area have been appropriately classified. For example, although sponsors should consult school data first in most circumstances, it is possible that some socioeconomically diverse school attendance areas which meet the 50 percent threshold might include substantial segments which are well above the criteria for free or reduced price meals. In such cases, in accordance with the law's intent to target higher meal reimbursements to low-income children and providers, it would be necessary for the sponsor to consult census data as well as to determine which part of the elementary school attendance area should be classified as tier I. If a review of the census block group data confirms the sponsoring organization's belief that a segment of an otherwise eligible school attendance area is, in fact, above the criteria for free or reduced price meals, the sponsoring organization must reclassify the homes in that area as tier II day care homes, unless the individual providers can document tier I eligibility on the basis of their household income.

Finally, in order to comply with the March 10 memorandum, 12 commenters requested that NSLP State agencies be required to provide free and reduced price enrollment data on all elementary schools in the State, or at least for all schools with 40 percent or more free or reduced price enrollment, instead of the currently required 50 percent. The Department will not impose a requirement on NSLP State agencies beyond the explicit requirement in section 708(e)(3) of PRWORA that they annually provide a list of elementary schools with 50 percent or more free or reduced price enrollment. However, as indicated in guidance issued by the Department on May 16, 1997, the CACFP State agency can request that the NSLP State agency provide data for schools with between 40 and 49 percent free and reduced price enrollment, or even data for all elementary schools in the State. In fact, we are aware that several NSLP State agencies have already provided the additional data. However, sponsoring organizations which do not have access to data for schools below 50 percent may consult census data to attempt to qualify day care homes located in identifiable "pockets of poverty" as tier I day care homes. There may also be some limited circumstances in which using census data is appropriate to identify "pockets of poverty" even when elementary school free and reduced price enrollment is below 40 percent. In both of these circumstances, however, sponsors must first receive State agency approval to ensure that determinations are made using the data, whether school or census, that is most reflective of an area's current household income levels.

Accordingly, this final rule amends § 226.15(f) to include the above-described criteria on the appropriate use of school and census data for making tier I day care home determinations.

Verification of Providers' Household Income

The definition of "tier I day care home" contained in section 17(f)(3)(A)(ii)(I) of the NSLA, as amended by section 708(e)(1) of Public Law 104–193, and as added to § 226.2 by the interim rule, requires that a day care home that qualifies as a tier I day care home on the basis of the provider's household income must have this income verified by the sponsoring organization. Therefore, the interim rule added to § 226.23(h)(6) the requirement that sponsoring organizations conduct verification of the provider's household income, for all day care homes that qualify as tier I day care homes on this basis, prior to approving the home as a tier I day care home. This verification must be performed in accordance with the verification performed for "pricing programs" in § 226.23(h)(2)(i), and consists of verifying the income information provided on the application by collecting documentation from the household, such as pay stubs or income tax statements.

The Department received 115 comments on the verification requirements for tier I day care homes. Of these, 71 commenters specifically objected to the verification requirements for tier I day care homes because they believe that the requirements are too burdensome. The Department received 44 comments which suggested that verification be conducted on a sample of applications, as currently required in the NSLP, instead of on all applications. Several of these commenters recommended that the sample consist of 3 percent of all applications; one commenter suggested a 50 percent sample. Three commenters supported more stringent verification than that required in the interim rule; for example, one commenter wanted pricing verification conducted on the applications of households of children enrolled in tier II day care homes. Finally, 17 commenters questioned how to perform the verification, or requested additional guidance, because sponsoring organizations of day care homes are unfamiliar with this type of verification. Seven commenters made recommendations concerning verification procedures.

The Department recognizes that verification of all applications for providers whose homes qualify as tier I homes on the basis of their household income places an additional administrative burden on sponsoring organizations. However, given the significant financial benefit associated with classification of a day care home as a tier I day care home, in the form of tier I reimbursements for meals served to all children enrolled in the home, Congress determined that it was necessary to impose these requirements to ensure that day care homes that are classified as tier I homes on the basis of household income are truly low-income, despite their location in an area which would not qualify them for tier I status. Thus, the explicit language of section 17(f)(3)(A)(ii)(I), as added by section 708(e)(1) of PRWORA, which defines a "tier I day care home" as one which is operated by a "provider whose household meets the income eligibility guidelines . . . and whose income is verified by the sponsoring organization of the home," requires that *all* day care homes qualifying as tier I day care homes on the basis of the provider's household income have income verified prior to participation as a tier I home. Conducting verification on only a sample of the applications, as recommended by commenters, would not meet the requirements of PRWORA. In addition, income verification is an important control for ensuring accurate tiering determinations.

In response to concerns expressed by sponsoring organizations and State agencies about how to perform the required verification for providers whose day care homes qualify as tier I homes on the basis of household income, the Department issued verification guidance for day care homes on May 14, 1997. This guidance was based on the verification guidance issued for the School Nutrition Programs, which is also used by CACFP day care centers.

Therefore, this final rule makes no changes to the requirements for verification of the income information for providers qualifying as tier I day care homes on the basis of their household income contained in the definition of "tier I day care home," and in § 226.23(h)(6) as added by the interim rule.

Misclassification of Tier I Day Care Homes

Based on the fact that there is a significant financial benefit associated with the classification of a day care home as a tier I day care home, § 226.14(a) as amended by the interim rule requires State agencies to assess overclaims against sponsoring organizations which misclassify day care homes as tier I day care homes, unless the misclassification is determined to be inadvertent under guidance issued by FCS.

The Department received 66 comments on assessing overclaims for misclassification of day care homes. Of these, 16 commenters requested that the first six months or one year of implementation be considered a "grace period" during which overclaims for misclassification are not assessed against sponsoring organizations except in cases of fraud. Twenty-four commenters suggested that the amount under which an overclaim can be "disregarded" in the CACFP, which is currently $100, be increased. Several of these commenters recommended that the disregard amount be based on a percentage of the sponsor's administrative budget. In addition, 12 commenters requested clarification or expressed concern that sponsoring organizations should not be assessed overclaims for reclassifications made by the State agency, in accordance with § 226.6(f)(9) as amended by the interim rule, based on information to which the sponsor could not reasonably have had access prior to the reclassification by the State agency. Finally, nine commenters requested guidance on how the Department will define "inadvertent" errors.

In accordance with the preamble to the interim rule, the Department issued guidance on assessing overclaims for improper tier I day care home classifications on August 6, 1997.

With regard to commenters' concerns that overclaims not be assessed for reclassifications made by the State agency based on information to which the sponsor could not reasonably have had access prior to the reclassification by the State agency, the Department wishes to stress that assessing an overclaim in such a situation would not be in accordance with the regulation or the August 6, 1997, guidance. In these situations, the sponsoring organization would be directed by the State agency to correct a home's determination, but an overclaim for the previous classification would likely not be appropriate.

In addition, this rule does not authorize a "grace period" during which State agencies would not have to assess overclaims against sponsors except in cases of fraud. This regulation and the guidance provided in support of this regulation do not require the establishment of a claim when the misclassification is inadvertent. The Department does not intend for State agencies to assess overclaims for every tiering misclassification made by sponsors. As the guidance emphasizes, State agencies need not assess overclaims for occasional or inadvertent errors, but rather for widespread or recurring misclassifications, or a systemic problem that may indicate improper management by the sponsor. Finally, any change to the disregard amount must first be considered in a proposed rule. Thus, the Department cannot implement commenters' recommendations that the current disregard amount in the regulations at § 226.8(e) be changed in this final rule, but will monitor the impact of the two-tiered reimbursement structure on administrative payments and, if warranted, may include a change in a future proposed rulemaking.

Therefore, this final rule makes no changes to the language in § 226.14(a) as amended by the interim rule.

Length of Determinations

Based on section 17(f)(3)(E)(iii) of the NSLA, as amended by section 708(e)(3) of PRWORA, § 226.6(f)(9) as amended by the interim rule requires that determinations of a day care home's eligibility as a tier I day care home be valid for three years if based on school data, or until more recent data are available if based on census data. In addition, § 226.6(f)(9) indicates that a sponsoring organization, the State agency, or FCS may change the determination if information becomes available indicating that a home is no longer in a qualified area.

The Department received 17 comments on the length of tier I determinations. Of these, 12 commenters requested that the Department clarify that State agencies should not routinely require annual redeterminations of tiering status. In contrast, three commenters supported annual redeterminations. Finally, several commenters indicated that sponsors must have access to any information used by State agencies to reclassify a home's status.

The Department agrees with commenters who indicated that redeterminations of a day care home's eligibility as a tier I day care home based on school area data should not routinely occur on an annual basis. Guidance issued by the Department on March 12, 1997, clarified that the State agency should not require that redeterminations be made more frequently than the standards set forth in the law (i.e., three years if based on school data, and until more recent data are available if based on census data)

except in situations in which there is substantial, sustained socioeconomic change, not minor fluctuations in school data.

Accordingly, in response to commenter concern, this final rule amends § 226.6(f)(9) and 226.15(f) to clarify that State agencies should not routinely require annual redeterminations of the tiering status of day care homes based on updated elementary school data.

Documentation Requirements

As discussed above, PRWORA and the interim rule clearly place the responsibility for making tiering determinations on the sponsoring organization. The interim rule amended § 226.15(e)(3) to require sponsoring organizations to collect and maintain documentation sufficient to support their tier I determinations.

The Department received 15 comments on the documentation requirements contained in the interim rule. Specifically, these commenters supported permitting State agencies and/or sponsoring organizations to accept a provider's self-declaration of the elementary school serving the day care home as sufficient documentation of the provider's residence in a particular elementary school attendance area.

In addition to the requirements discussed above, the interim rule amended § 226.6(f)(2) to require each sponsoring organization to submit an amendment to its management plan by April 1, 1997, describing its system for making tier I day care home classifications, subject to review and approval by the State agency. Further, sponsoring organizations are ultimately liable for classifications which are not supported with proper documentation. State agencies must evaluate the documentation used by sponsoring organizations to classify day care homes as tier I homes as part of the review required by § 226.6(l). Finally, § 226.14(a) requires State agencies to assess overclaims against sponsoring organizations for improper classifications, unless the misclassification is determined to be inadvertent under guidance issued by the Department.

As stated in guidance issued by the Department on April 25, 1997, a sponsoring organization's system of classifying a day care home as a tier I home on the basis of elementary school data may involve a sponsoring organization requesting that each provider identify the elementary school serving the home. However, for the purpose of making a tier I determination, a sponsoring organization may not rely on a provider's self-declaration that it is located within a particular elementary school's attendance area. To comply with PRWORA and the regulations, a sponsor must independently substantiate and document attendance area information obtained from its providers with official source documentation. Most commonly, sponsors would obtain an official school-boundary identifying map, match provider addresses to the map's boundaries, and retain the map as documentation. If such maps were unavailable, the sponsor might instead contact school officials to verify the attendance area of the schools serving its providers and document the results of this contact, either with a letter from school officials to the sponsor, or with a memorandum to the files detailing the information provided by school officials and the name of the official(s) consulted.

These documentation requirements are necessary in order to ensure that tier I classifications are being made in accordance with PRWORA, and to ensure that sponsoring organizations, and not the individual providers, are making tiering determinations, as required by PRWORA. This is especially important given the significant financial benefit to a provider associated with classifying a day care home as a tier I home.

Accordingly, in order to further clarify the documentation requirements for tier I day care home determinations, this final rule amends § 226.15(e)(3) to indicate that sponsoring organizations must document tier I determinations based on school data with official source documentation obtained from the school, as discussed above.

Tier II Day Care Homes

Definition

Section 226.2 as amended by the interim rule defines a "tier II day care home" as a day care home that does not meet the criteria for a tier I day care home. This definition is based on language contained in section 17(f)(3)(A)(iii) of the NSLA, as amended by § 708(e)(1) of PRWORA.

No comments were received on the definition of "tier II day care home" as added by § 226.2 of the interim rule. Therefore, this final rule retains the definition of "tier II day care home" as added by the interim rule.

Election by Providers

In contrast to tier I day care homes, in which all meals served are reimbursed at the same rates (tier I), meals served in tier II day care homes may be eligible for two levels of reimbursement—the tier I rates for meals served to identified income-eligible children, and tier II rates, which are lower, for meals served to all other children.

Sections 17(f)(3)(A)(iii) (II) and (III) of the NSLA, as amended by PRWORA, clearly give day care home providers, and not their sponsoring organizations, the authority to elect whether income-eligible children are identified by the sponsoring organization. The interim rule amended sections 226.6(f)(2) and 226.18(b)(11) to require that sponsoring organizations inform providers of day care homes classified as tier II day care homes of the options available to them under PRWORA with regard to whether income-eligible children are identified or not. The approach that providers select determines if, and how, sponsors are to establish the eligibility of children enrolled in tier II day care homes.

After publication of the interim rule, the Department received several questions concerning the reimbursement approaches available to tier II day care homes. In response to these questions, the Department issued a memorandum on June 2, 1997, to clarify these provisions and to resolve any confusion on this issue created by the interim rule. The following explanation restates the information contained in the June 2, 1997, memorandum.

Under the first approach set forth in PRWORA and discussed in the interim rule, a day care home provider may elect to have its sponsoring organization attempt to identify all income-eligible children enrolled in the day care home. In that case, for all meals served to enrolled children who are determined by the sponsoring organization to meet the criteria for free or reduced price meals (i.e., they are from households with incomes at or below 185 percent of the Federal income poverty guidelines), the home receives the tier I rates of reimbursement. Meals served to all other enrolled children are reimbursed at the tier II rates of reimbursement, which are lower.

If a provider selects this first approach, the sponsoring organization may establish the eligibility of enrolled children in several ways. First, a child may be identified as income-eligible based on the sponsoring organization's receipt of a completed free and reduced price application which demonstrates that the household's income is at or below 185 percent of the Federal income poverty guidelines. (The Department acknowledges that the term

"income eligibility statement" more accurately describes the purpose of such a form in day care homes. However, this rule refers to "free and reduced price applications," instead of "income eligibility statements," in order to maintain consistency with the terminology contained in § 226.23.) In addition, PRWORA also expanded, for tier II day care homes only, the categorical eligibility options found in section 9(d)(2) of the NSLA to include other Federal or State supported child care or other benefit programs with income eligibility limits at or below 185 percent of poverty. Meals served to a child who is a member of a household which participates in, or is subsidized under, such a program would also be eligible for tier I rates of reimbursement. The categorically eligible programs used to demonstrate the eligibility of children enrolled in tier II homes include those programs identified in section 9(d)(2) of the NSLA (i.e., food stamps, certain state programs for Temporary Assistance for Needy Families, and the Food Distribution Program on Indian Reservations), as well as any qualifying Federal programs identified by the Department, or State programs identified by the State agency. (Section 226.23(e) of the regulations, which contains the categorically eligible programs identified in section 9(d)(2) of the NSLA, still contains references to Aid to Families with Dependent Children (AFDC), which was eliminated pursuant to PRWORA and replaced by the program for Temporary Assistance for Needy Families (TANF). The Department will issue a future rulemaking to incorporate the provisions of PRWORA concerning TANF into the CACFP regulations.)

To facilitate the use of expanded categorical eligibility in tier II day care homes, § 226.6(f)(10) as amended by the interim rule requires that State agencies provide all sponsoring organizations, on an annual basis, a list of State-funded programs which meet the criteria for expanded categorical eligibility. In addition, on March 18, 1997, the Department provided to State agencies a list of Federal programs that meet the criteria. As indicated in the preamble to the interim rule, we expect that the process of identifying eligible programs will be ongoing at both the Federal and State levels, especially at first. This may necessitate that the list of eligible programs be updated more frequently than annually, as qualifying programs are identified.

Children from households participating in, or subsidized under, one of these programs could be identified by the sponsor in two ways. First, instead of providing income information on the free and reduced price application furnished by the sponsoring organization, the household could identify itself as participating in, or subsidized under, one of the categorically eligible programs listed on the application. Alternatively, a free and reduced price application would not be necessary for those children for whom the sponsoring organization or provider knows, on the basis of documented proof, to be categorically eligible for tier I reimbursement. This could occur when a provider receives payment for a child's care in the form of a subsidized voucher (and the voucher program has been identified by the Department or State agency as meeting the income criteria for categorically eligible programs); when the household provides the sponsor or provider with an official letter issued by the welfare or other office documenting the household's participation in a qualifying program, such as the National School Lunch Program; or when the sponsoring organization has legitimate access, for reasons unrelated to the CACFP, to eligibility information for another qualifying program. In these cases, a copy of the child's voucher, or other documentation by the sponsor of the child's participation in the other qualifying program, would be an acceptable alternative to completion of the free and reduced price application. Thus, when a provider elects the first option, the eligibility of each enrolled child may be established by submission of income information on a free and reduced price application, categorical eligibility information on a free and reduced price application, or with a copy of a voucher or other documentation available to the provider or sponsor.

When a household completes a free and reduced price application identifying itself as participating in, or subsidized under, one of the categorically eligible programs, § 226.23(e)(1)(iv) and the definition of "Documentation" in § 226.2 as amended by the interim rule require that such households provide the name of the enrolled child, the name of the qualifying program, and the household's case number for the program, along with the signature of an adult member of the household. Several commenters asked for clarification of the documentation requirements when the categorically eligible program in which the household participates does not issue case numbers to participants. Since not all programs issue case numbers, sponsors may accept a household's identification on the free and reduced price application of its participation in an approved Federal or State identified categorically eligible program as sufficient documentation for categorically eligible programs that do not utilize case numbers. Though they are not required to do so for free and reduced price applications collected in tier II day care homes, sponsors may verify households' participation in these programs through contact with officials of the categorically eligible program.

The only partial exception to this rule involves the Head Start Program. Because of the restrictions on Head Start categorical eligibility contained in § 9(b)(6)(A)(iii) of the NSLA, the sponsoring organization may not simply accept the household's self-identification of a child as a Head Start participant. Specifically, the NSLA limits Head Start categorical eligibility to Federally funded, income-eligible participants. Because parents of Head Start participants likely will not know whether their children are in Federally funded slots, the sponsoring organization must obtain documentation from the Head Start grantee which certifies that the child is: (1) Enrolled in a Federally funded Head Start slot; and (2) is from a household which meets Head Start's low-income criteria. The Department will issue a rulemaking in the near future to codify this provision of the law. However, sponsoring organizations and State agencies must comply with this provision in the meantime because it is explicitly contained in the law.

The second approach set forth in PRWORA recognizes that some day care providers may not want any of the households of the children in their care to receive free and reduced price applications, a fact pointed out by many commenters on the interim rule. Under this approach, the provider may elect to have the sponsor identify only categorically eligible children, under the expanded categorical eligibility provision, and receive tier I rates of reimbursement for the meals served to these children. In this case, as described above, the sponsor would identify only those children whom the sponsoring organization or provider knows, on the basis of documented proof, to be categorically eligible for tier I benefits, and would have on file only copies of vouchers or other proof of participation in an eligible program rather than free and reduced price applications.

The Department would like to emphasize that the above two approaches to identifying income-eligible children would not permit a provider to selectively identify for its

sponsoring organization those children whom the provider suspects or believes may be income-eligible, based on the provider's personal estimate of a household's socioeconomic status, and have its sponsoring organization send applications only to those households. The only time that a "selective identification" approach may be used is when either the sponsor or provider already possesses documented evidence of the child's or household's participation in, or subsidy under, a categorically eligible program. In these cases, the documentary evidence may be used to establish eligibility in lieu of an application. If a provider selects the first approach discussed above, then all enrolled children for whom the sponsor or provider does not already possess documentation of categorical eligibility would receive applications. Under the second approach above, no applications would be distributed.

In addition, the Department would like to point out that the interim rule required free and reduced price applications to be distributed even when a voucher, or other documented evidence was being used to establish a child's categorical eligibility. Subsequent to the publication of the interim rule, the Department reconsidered its position and concluded that the clear intent of PRWORA is to facilitate identification of income-eligible children in tier II homes by providing an approach under which a tier II day care home may receive tier I rates of reimbursement for eligible children without the distribution of applications to households. The Department's June 2, 1997, memorandum clarified this method, and this final rule removes references in § 226.23(e)(1)(i) to this requirement.

The preamble to the interim rule specifically requested comments on the appropriateness of the use of direct certification to establish an enrolled child's eligibility for tier I rates of reimbursement in a tier II day care home, and indicated that the use of direct certification in day care homes may be addressed in a future proposed rulemaking based on the nature of these comments. Direct certification, which is not permitted under the interim rule, is another method of establishing eligibility without the use of free and reduced price applications. The Department received 15 comments on the use of direct certification in tier II day care homes. Of these, 14 commenters supported direct certification, and one opposed it. Many of these commenters noted that direct certification reduces the paperwork associated with eligibility determinations, and several commenters also recommended that direct certification be included in this final rule, instead of in a future proposed rulemaking.

Under a system of direct certification, sponsoring organizations would contact the welfare (or other qualifying program) office directly and submit a list of children enrolled in their day care homes. From that list, the welfare office would identify children whose households are participating in the welfare program. It has been the Department's experience in the School Nutrition Programs, because of time and staffing constraints, that social service agencies may be reluctant to respond to these types of requests even from public entities such as school food authorities. Given that many areas are served by several sponsoring organizations that would want eligibility information for direct certification from the same local social service agency, it is possible that social service agencies would not be willing, or able, to handle all of these requests.

The key issue surrounding direct certification, however, involves access to information and household confidentiality. Eligibility information could only be released for programs which permit sharing of confidential information for purposes of determining eligibility in CACFP. A social service agency (or other government entity) may have significant concerns about sharing confidential information on households' eligibility. Therefore, the Department remains convinced that, if necessary, the appropriate place to address direct certification is in a proposed rulemaking, and not in this final rule.

Finally, under the third approach for tier II day care homes set forth in PRWORA, providers may choose to receive tier II reimbursements for all meals served to enrolled children. This approach recognizes those situations in which the provider believes it to be unlikely that any households of children in care will be income eligible for tier I reimbursements. In this case, the sponsoring organization will not collect any free and reduced price applications from the households of enrolled children, nor will it identify categorically eligible children based on provider or sponsor knowledge. Essentially, tier II homes whose providers elect this approach will operate exactly as they did before implementation of the two-tiered reimbursement structure, except that they will receive lower rates of reimbursement.

Accordingly, this final rule amends § 226.23(e)(1) to clarify the procedures for determining the income eligibility of children enrolled in tier II day care homes, particularly with respect to the use of vouchers or other documents in lieu of free and reduced price applications, as discussed above. In addition, § 226.18(b)(11) is amended to specify the three options for reimbursement available to providers of tier II day care homes. Finally, § 226.23(e)(1)(iv) and the definition of "Documentation" contained in § 226.2 are amended to indicate that households identifying themselves as participating in, or subsidized under, a categorically eligible program need only provide the program's case number if applicable.

Confidentiality of Household Income Information

The interim rule amended § 226.23(e)(1)(i) to require that sponsoring organizations keep eligibility information concerning individual households confidential. Specifically, sponsoring organizations are prohibited from making this information available to day care home providers. The interim rule does, however, permit sponsoring organizations to inform tier II day care homes of the number of identified income-eligible children, but not the names of these children. As discussed in the preamble to the interim rule, these requirements were promulgated to carry out the clear intent of PRWORA to protect the confidentiality of the households of children enrolled in day care homes.

The preamble to the interim rule specifically requested comments on how best to balance the confidentiality of the households of enrolled children with the needs of tier II day care home providers. The Department received 230 comments on this provision. Of these, 175 commenters expressed their belief that day care providers need to know the eligibility status of each child in their care, so that they can know the exact amount that should be in their reimbursement check each month. Many of these commenters also indicated their belief that the confidentiality of households can be protected as long as the sponsoring organization does not release specific income information from individual households, but only whether or not children in those households have been determined eligible. Others expressed concern that a check on fiscal accountability will be lost if providers do not know how much their sponsors should pay them. Three commenters indicated that providers will leave the program if they cannot know the exact amount to expect in their reimbursement payment. In addition,

seven commenters recommended that sponsors be permitted to include a parent waiver of confidentiality on the free and reduced price application distributed to households. Finally, 31 commenters expressed their support for the interim rule, under which providers are not permitted to know the eligibility status of enrolled children.

Unlike the households of children participating in other Child Nutrition Programs, households whose children are in care in CACFP day care homes do not apply to the home in order to obtain food benefits. Rather, the primary purpose of applying to the day care home is to secure care for their children. Although the children receive the nutritional benefits of the meals provided through the CACFP, the direct financial benefits associated with applying for meals go to participating providers and sponsoring organizations. The household receives only an indirect financial benefit in that the provider's receipt of higher meal reimbursements helps to keep overall day care fees lower. Thus, the Department strongly believes that it would be irresponsible to compromise the confidentiality of these households solely for the administrative convenience of providers or sponsoring organizations.

Further, while it might be convenient for providers to have information on the income status of the households of children in care, it is not necessary for the purposes of administering the Program. In accordance with PRWORA, the sponsoring organization has the responsibility for using the eligibility information to file reimbursement claims with the State agency, and for subsequently paying each provider based on the number of meals served in the home.

Many commenters expressed concern that under the interim rule providers will have no way of ensuring that their reimbursement payments are correct, as mentioned above. The Department recognizes that provider payments must be reliable and accurate. The Department fully expects that State agencies are already examining sponsor payment procedures during administrative reviews to ensure proper payments. In addition, providers who believe that their payments are incorrect may also bring the matter to the attention of the State agency. If a State agency receives repeated complaints from a particular sponsor's providers, it would be appropriate to conduct a special review of that sponsor.

With regard to whether free and reduced price applications may contain a household waiver of confidentiality which would permit sponsoring organizations to divulge the eligibility status of enrolled children, the Department strongly discourages such a practice due to PRWORA's emphasis on household confidentiality. However, if a State agency chooses to distribute an application which includes a household confidentiality waiver statement, or allows its sponsoring organizations to do so, this final rule requires that the form also include a statement informing the household that its participation in the program is not in any way dependent upon signing the waiver. Thus, a household may complete the application and choose not to have the information released to the day care home provider.

Accordingly, this final rule amends § 226.23(e)(1)(i) to require that applications that include a household confidentiality waiver statement must also include a statement informing the household that its participation in the program is not dependent upon signing such a waiver.

Finally, the Department would like to point out, as several commenters did, that this provision will not affect the ability of all tier II day care homes with identified income-eligible children to calculate their reimbursement payments, but rather only those tier II day care homes with identified income-eligible children whose sponsoring organizations select the actual count method for reimbursing their homes. For those tier II day care homes whose sponsors select either claiming percentages or blended rates, knowing the claiming percentage or blended rate will enable providers to calculate the precise amount of the reimbursement they will receive each month. (Additional discussion of the reimbursement methods available to sponsoring organizations is contained in the "Meal Counting and Claiming Procedures" section of the preamble below.)

At this time, the Department is not aware of any alternative to the system set forth in the interim rule that would protect the confidentiality of households. Therefore, this final rule retains the provision in the interim rule that prohibits sponsoring organizations from making free and reduced price eligibility information concerning individual households available to day care home providers.

With regard to the process of distributing and collecting free and reduced price applications from the households of children enrolled in tier II day care homes, the Department received 90 comments. Of these, 25 commenters indicated that this activity was burdensome for sponsoring organizations. Nineteen commenters expressed their concern that the households will not return completed applications because they have no financial incentive to do so. In addition, 35 commenters wanted providers to be involved in the process of distributing and/or collecting free and reduced price applications from the households of enrolled children, indicating their belief that provider involvement will facilitate return of the statements. Four commenters requested that the applications collected for the first year be valid through September 30, 1998, in order to coincide with the fiscal year.

The Department would like to point out that PRWORA's inclusion of "expanded categorical eligibility" for use in tier II day care homes, as previously discussed in this preamble, is one method which is intended to simplify the income eligibility determination process, and thus, encourage the return of completed applications by households. In addition, under the interim rule, as well as guidance issued by the Department on January 24, 1997, it is permissible for sponsors to have their day care home providers distribute free and reduced price applications to individual households of enrolled children, as long as the completed forms are returned by the households directly to the sponsor. If sponsoring organizations choose to have their providers distribute applications to the households of enrolled children, the Department recommends and would anticipate that providers will take the opportunity to explain the purpose of the form and to stress the importance of the household completing the form and returning it to the sponsor. This type of procedure could facilitate the household's return of eligibility information to the sponsoring organization, while at the same time maintaining the confidentiality of the income information provided by the households. However, the Department would also like to point out that either State agencies or sponsors which believe that providers should not have any role in the process of distributing applications to households may prohibit such activity.

Several of the commenters who indicated that providers should be involved in the process of distributing and/or collecting free and reduced price applications recommended that sponsors be allowed to inform providers which of the households of enrolled children have returned applications. Providers, in turn, could periodically urge those households that had not returned the forms to do so. Although

actual income information on individual households would not be released under such a scenario, the Department has serious concerns about this procedure and believes that simply knowing a household has returned a free and reduced price application may lead to assumptions about a family's income status. Therefore, the Department issued guidance on March 12, 1997, informing State agencies and sponsors that sponsors may not be permitted to inform their providers about which of the households of enrolled children have returned applications, as it would be inconsistent with the confidentiality provision of § 226.23(e)(1)(i).

Finally, as indicated above, four commenters recommended that free and reduced price applications collected during implementation be valid through September 30, 1998, to coincide with the fiscal year. In order to facilitate sponsors' implementation of the two-tiered reimbursement system, the Department already has permitted free and reduced price applications which were collected from households between March 1, 1997, and June 30, 1997, to be effective for a one-year period beginning July 1, 1997. Depending on when the applications were actually collected by sponsoring organizations, the information on the applications could be as much as 16 months old when they expire on July 1, 1998. Therefore, although sponsors may collect applications before the end of the one-year period that begins July 1, 1997, in order to have redeterminations coincide with the fiscal year cycle, free and reduced price applications which become effective upon implementation of the two-tiered system on July 1, 1997, may not be valid for more than a one-year period. This requirement helps ensure that individual eligibility determinations are based on up-to-date information, and is also consistent with policy in the other Child Nutrition Programs.

Meal Counting and Claiming Procedures

The two-tiered structure of reimbursement set forth under PRWORA necessitates new meal counting and claiming procedures for use by sponsoring organizations and those tier II day care homes in which there are a mix of income-eligible and non-income-eligible children.

The interim rule amended § 226.13(d) to set forth three methods by which sponsoring organizations may reimburse their tier II day care homes with a mix of income-eligible and non-income-eligible children—actual meal counts, claiming percentages, and blended rates. The interim rule permits sponsoring organizations to select which of the three methods they will use, though each sponsor must use only one method for all of its homes, and may change this method no more frequently than annually. In addition, if a sponsoring organization selects claiming percentages or blended rates, the interim rule requires that they be recalculated for each home at least every six months, unless the State agency requires the sponsor to recalculate a home's claiming percentage or blended rate before the required semiannual recalculation because it has reason to believe that a home's percentage of income-eligible children has changed significantly or was incorrectly established in the previous calculation.

The preamble to the interim rule requested comments on the "reimbursement categories" method set forth in the law and discussed in the preamble, but not included as an option in the interim rule due to the Department's opinion that it does not offer any distinct advantages over claiming percentages and blended rates. Under the "reimbursement categories" method, sponsoring organizations would either: (1) Establish multiple reimbursement rates within the range defined by the tier I and tier II rates, and then assign a home one of these rates based on the percentage of income-eligible children in the home; or (2) using only the tier I and tier II rates, reimburse all meals served in homes with 50 percent or more income-eligible children at the tier I rates, and all homes with less than 50 percent income-eligible children at the tier II rates. (The preamble to the interim rule describes the "reimbursement categories" method in more detail.) In addition, the interim rule also requested suggestions on other systems of meal counting and claiming that would not place an undue burden on day care home providers or sponsors, but would provide for reimbursement payments that accurately reflect the income level of the households of enrolled children.

The interim rule also amended § 226.13(d) to set forth the meal counting requirements for day care homes. Under these regulations, providers of tier II day care homes whose sponsoring organization uses the actual count method of reimbursement are required to record and submit to the sponsoring organization the number and types of meals served each day to each enrolled child by name. Providers whose sponsoring organization uses either claiming percentages or blended rates must submit the total number of meals served, by type, to enrolled children.

The Department received 62 comments on the meal counting and claiming provisions. Of these, 25 commenters commented on whether a State agency could require all sponsoring organizations in the State to use the same method for reimbursing tier II day care homes with a mix of income-eligible and non-income-eligible children: 19 commenters opposed the State selecting one method for all sponsors; six commenters supported it. Several commenters who supported State agency selection of the reimbursement method indicated that allowing sponsoring organizations to select the method would promote unhealthy competition among sponsoring organizations. Many commenters also indicated that State agencies already require providers to keep actual daily meal counts. These commenters believed that such requirements would necessarily force sponsoring organizations to utilize actual counts, thus depriving them of a meaningful choice of reimbursement method.

In response to commenter concern on this issue, the Department would like to reiterate that the choice of reimbursement method is the sponsoring organization's, and not the State agency's. In accordance with § 226.13(d)(3) as added by the interim rule, each sponsoring organization selects the method—either actual counts, claiming percentages, or blended rates—for reimbursing its tier II day care homes with a mix of income-eligible and non-income-eligible children. As discussed in the preamble to the interim rule, the Department decided to allow sponsoring organizations maximum flexibility by permitting them to select the reimbursement method in order to accommodate the varying levels of management sophistication among sponsors. State agencies may not require all sponsors in the State to use the same method.

With regard to commenters' concern that permitting sponsoring organizations to select the method of reimbursement would promote unhealthy competition among sponsoring organizations, none of the methods offers a financial advantage over the other to providers. Providers will choose, as they do now, the sponsoring organization whose services best meet their needs. The Department expects that this decision will be based on a variety of factors, and not exclusively the reimbursement method used by the sponsor.

However, State agencies may require—and many already do, for the purpose of monitoring compliance with licensing requirements concerning the number and ages of children in care, or for integrity or other purposes—that day care home providers maintain actual daily meal counts by child. When a State agency institutes such a requirement, sponsoring organizations still may select either actual counts, claiming percentages, or blended rates as the method they use to reimburse their tier II day care homes with a mix of income-eligible and non-income-eligible children. Sponsors selecting claiming percentages or blended rates will only use total meal counts by type of meal (i.e., breakfast, lunch/supper, supplement), rather than the daily meal counts by child, to calculate a home's reimbursement. Perhaps most significantly, use of claiming percentages or blended rates offers the additional advantage that sponsoring organizations do not have to immediately assess the eligibility status of each newly enrolled child in a day care home. Eligibility determinations for children new to a home need only be done by the time the recalculation of the claiming percentage or blended rate is necessary, which is at least every six months.

In addition, 14 commenters on the meal counting and claiming provisions indicated their belief that sponsoring organizations should only be required to recalculate each home's claiming percentage or blended rate on an annual basis, rather than semiannually as required in the interim rule. Most of these commenters pointed out that PRWORA required only annual recalculation. Four commenters indicated that requiring recalculation on a semiannual basis would add unnecessary paperwork for sponsoring organizations. Finally, two commenters indicated that any integrity concerns surrounding annual redeterminations of claiming percentages or blended rates were already adequately addressed in § 226.13(d)(3) as added by the interim rule, which permits State agencies to require sponsoring organizations to recalculate the claiming percentage or blended rate at any time, as discussed above.

Several commenters were concerned, as mentioned above, that PRWORA and the interim rule were in conflict because PRWORA requires annual redeterminations of claiming percentages or blended rates, while the interim rule requires semiannual redeterminations. The Department would like to point out that section 17(f)(3)(A)(iii)(IV) of the NSLA, as amended by section 708(e)(1) of PRWORA, sets forth two possible alternatives that may be used by the Secretary for simplified meal counting and claiming, and also gives the Secretary the authority to develop his own simplified procedures. While the alternative of claiming percentages/blended rates as set forth in PRWORA does indicate that the claiming percentage or blended rate be set on an annual basis, PRWORA does not require the Secretary to use either of these specific alternatives. In selecting claiming percentages and blended rates, and by requiring that recalculations be made on a semiannual basis, the discretion provided to the Secretary in PRWORA was being exercised.

Among the reasons for requiring semiannual recalculations was the Department's concern, as discussed in the preamble to the interim rule, that the simplified methods set forth in PRWORA, including claiming percentages and blended rates, do not adequately capture the frequent enrollment changes that are common in many day care homes. Despite one commenter's belief that the policy for recalculations in day care homes should be consistent with that for CACFP centers, the enrollment changes in day care homes affect the claiming percentage or blended rate much more dramatically than enrollment changes in centers do, simply because of the smaller number of children enrolled in a family day care home. Requiring that the claiming percentages and blended rates be recalculated on a semiannual, rather than annual, basis helps balance the need to account for the effects of these enrollment changes by ensuring more current numbers with the Department's desire to minimize administrative burden on sponsors. In addition, the Department is also concerned about the potential for abuse with claiming percentages and blended rates. Again, requiring semiannual instead of annual recalculations, as well as providing the State agency the authority to require a sponsoring organization to perform recalculations any time it has reason to believe that a home's percentage of income-eligible children has changed significantly or was incorrectly established in the previous calculation, will help minimize the potential for abuse associated with this method. Finally, despite commenters who indicated their belief that providing State agencies the authority to require recalculations would adequately address integrity concerns, the Department believes that requiring semiannual recalculations, in conjunction with providing State agencies this authority, is much more effective in promoting program integrity and maximizing the accuracy of the claiming process.

In response to the request in the interim rule for comments on the "reimbursement categories" method, as well as any alternative methods of reimbursement, the Department received five comments. Two commenters supported the reimbursement categories method. In addition, two commenters recommended the reimbursement categories method discussed in the preamble to the interim rule under which a tier II day care home would receive tier I rates of reimbursement for all meals served as long as at least 50 percent of enrolled children were determined eligible for free or reduced price meals. Finally, one commenter recommended that three tiers of reimbursement be instituted, with the middle tier applicable for all tier II homes with a mix of income-eligible and non-income-eligible children.

These comments did not persuade the Department to relinquish its concerns about the accuracy, complexity, and integrity of the alternative methods of reimbursement. The Department continues to hold the position that neither of the reimbursement categories methods described in PRWORA is acceptable as a means of reimbursing tier II day care homes with a mix of income-eligible and non-income-eligible children, since they are much less accurate in accomplishing the law's goal of targeting reimbursements to low-income children than either claiming percentages or blended rates.

Accordingly, this final rule makes no change in the requirement set forth in the interim rule that sponsoring organizations that select claiming percentages or blended rates as the method for reimbursing their tier II day care homes perform recalculations of the percentages or rates on at least a semiannual basis.

When a sponsoring organization chooses claiming percentages or blended rates for reimbursing its tier II day care homes with a mix of income-eligible and non-income-eligible children, § 226.13(d)(3)(ii) as added by the interim rule requires that the claiming percentage or blended rate be based on "one month's data concerning the number of enrolled children determined eligible for free or reduced price meals." (This provision of the regulations was corrected in a docket published in the **Federal Register** on February 6, 1997 (62 FR 5519)). The preamble to the corrected interim rule

discussed two methods available to sponsoring organizations for making these calculations—attendance lists and enrollment lists—and requested comments on whether both of these alternative methods should continue to be permitted in the final rule.

The sponsoring organization, after having determined the income eligibility of enrolled children, uses the information on the attendance or enrollment list to calculate the home's claiming percentage or blended rate. As discussed in the preamble to the interim rule, the primary difference between attendance and enrollment lists is that attendance lists produce weighted results of participation. That is, an attendance list shows, whether based on days or meals, the *rate* of participation of each child, by name, in the home in the month. In contrast, an enrollment list provides no measure of the rate of participation: a child who participates only one day during the month is counted the same for purposes of the calculation as a child who participates every day during the month. As indicated in the preamble to the interim rule, though the attendance list may impose an additional burden on the sponsor and its day care homes, it provides a higher level of accuracy than an enrollment list. Furthermore, an attendance list based on meals, rather than days, is an actual count of meals provided, by child, for one month, therefore providing the most accurate results on which to base the home's claiming percentage or blended rate.

The Department received three comments on the use of attendance and enrollment lists. Two commenters indicated a preference for attendance lists over enrollment lists. One commenter suggested that each State agency be permitted to decide which method all sponsors in the State will use, instead of sponsors. Since sponsoring organizations have the choice of which method to use for reimbursing their tier II day care homes with a mix of income-eligible and non-income-eligible children, sponsors choosing claiming percentages or blended rates also may select which method—either attendance list or enrollment list—to use in calculating claiming percentages or blended rates for their homes. The Department believes that permitting sponsoring organizations to select the method, instead of the State agency, will provide flexibility to sponsoring organizations, in recognition of their varying sizes and levels of management sophistication. Therefore, this final rule retains both attendance lists and enrollments lists as the methods for sponsoring organizations to use in calculating claiming percentages or blended rates for their homes. In light of the limited commenter input, the Department will attempt to gather information based on operating experience from State and local program administrators concerning the ramifications of allowing sponsors to choose either method, and may consider proposing changes in this area in a future rulemaking.

In addition, questions were raised subsequent to the publication of the interim rule regarding how to define "attendance" and "enrollment" for the purposes of making these calculations. The Department would like to clarify that, for the purposes of calculations made using either an attendance list or an enrollment list, sponsoring organizations and providers may consider a child "in attendance" or "enrolled" only when the child: (1) Is officially enrolled for care (i.e., the provider has the requisite enrollment paperwork for the child); (2) is present in the home for the purpose of child care; and (3) has eaten at least one meal with the other children in care during the claiming period. Thus, the difference between the two methods is not a function of a difference in definitions; rather, it is that an attendance list reflects *weighted* participation (i.e., the frequency of either the child's attendance or the number of meals eaten by the child) and is, therefore, a more mathematically accurate portrayal of the home's meal service during the month.

Accordingly, §§ 226.13(d)(3)(ii) and (iii) are amended by adding specific reference to attendance lists and enrollment lists as the methods available to sponsoring organizations for calculating each home's claiming percentage or blended rate. In addition, in order to ensure consistency of application among all sponsoring organizations, this final rule amends § 226.2 to include the above-discussed definition of enrollment/attendance under the current definition of "enrolled child."

Administrative Funds for Sponsoring Organizations

In accordance with § 226.12(a), during any fiscal year, administrative payments for sponsoring organizations may not exceed the lesser of: (1) Actual expenditures for the costs of administering the Program less income to the Program; or (2) the amount of administrative costs approved by the State agency in the sponsoring organization's budget; or (3) the sum of the products obtained by multiplying each month the number of homes administered by the sponsoring organization by a set of fixed reimbursement rates. In addition, § 226.12(a) of the regulations indicates that "during any fiscal year, administrative payments to a sponsoring organization may not exceed 30 percent of the total amount of administrative payments and food service payments for day care home operations." The interim rule did not make any changes to the regulations concerning administrative payments, including the requirement limiting a sponsor's administrative funds.

Nevertheless, the Department received 14 comments on this provision of the regulations, all of which expressed concern that lower food service payments resulting from the two-tiered reimbursement system will result in some sponsoring organizations being reimbursed for less than their full cost of administering the Program because of the 30 percent cap. Most commenters suggested changing the maximum limit on administrative payments to a figure higher than 30 percent. Some recommended that this regulatory provision be "suspended" until such time as its impact on sponsoring organization operations can be determined. In addition, 28 commenters indicated that sponsoring organizations need additional administrative funds to effectively administer the two-tiered reimbursement system. Finally, six commenters requested that State agencies continue to be required to make administrative fund advances available to sponsoring organizations, a former requirement of State agencies which was made optional under section 708(f) of Pub. L. 104–193.

No changes were made by the interim rule to the provision limiting administrative payments to 30 percent of administrative and food service payments because it is the Department's position that the current limitation on administrative payments is reasonable. Further, the current limitation on administrative payments, by maintaining an appropriate balance between the amount spent by sponsoring organizations on administrative and program meal expenses, helps achieve the Program goal of serving meals to enrolled children within reasonable fiscal limits. The Department recognizes that a limited number of sponsoring organizations, such as those with few homes, a high percentage of tier II day care homes, and a high percentage of non-income-eligible children in these homes, may be affected by this limitation under the two-tiered

reimbursement system. However, at this time the Department does not foresee that this possible consequence of the law will be widespread enough to warrant changing or suspending the current limitation. The study mandated by section 708(l) of PRWORA requires the Department to monitor the number of sponsoring organizations in the CACFP and consider whether changes need to be proposed in a future rulemaking. Absent such evidence, the Department is unwilling to make a change to the administrative reimbursement limit. For similar reasons, it is premature for the Department to propose any change to the current administrative rates paid to sponsors.

As indicated above, section 708(f) of Pub. L. 104–193 amended section 17(f) of the NSLA to make payment of advances to CACFP institutions, including administrative advances to sponsoring organizations of day care homes, optional. Although this provision of PRWORA is already in effect due to its nondiscretionary nature, the Department will make a conforming change to include this provision in the regulations in a future rulemaking. Due to this legislative provision, it is beyond the authority of the Department to *require* that State agencies continue to make advances available to sponsors. Therefore, sponsoring organizations should address concerns regarding advances to their State agencies.

Accordingly, this final rule makes no changes to the regulations governing administrative payments, including the requirement in § 226.12(a) regarding the limitation on administrative payments to sponsoring organizations.

Verification Requirements for Tier II Homes

As discussed in the preamble to the interim rule, no changes were made to the verification requirements for State agencies. Because day care homes are considered "nonpricing programs" (i.e., there is no separate identifiable charge made for meals served to participants), State agencies must follow the provisions of § 226.23(h)(1), for "nonpricing programs," to verify the applications of day care home providers" own children, as well as the applications of households of children enrolled in tier II day care homes. This section requires that State agencies review all free and reduced price applications on file to ensure that: (1) The application has been correctly and completely executed by the household; (2) the sponsoring organization has correctly determined and classified the eligibility of enrolled children; and (3) the sponsoring organization has accurately reported to the State agency the number of enrolled children who meet the criteria for free or reduced price eligibility and the number who do not. This section also permits State agencies to conduct additional verification to determine the validity of information supplied by households on the application, in accordance with § 226.23(h)(2), the verification procedures for "pricing programs." In addition, State agencies may conduct the required verification in conjunction with the reviews required by § 226.6(l).

The Department received two comments on the verification requirements for applications collected from the households of children enrolled in tier II day care homes. Commenters expressed concern regarding the burden associated with a State agency review of all applications on file, and suggested that State agencies instead be required to review a sample of the applications.

The Department recognizes that the requirement at § 226.23(h)(1) that a State agency review all of the applications maintained by a sponsoring organization could place a significant burden on a State agency, especially when the State agency is conducting a review of a large sponsoring organization with a large number of tier II day care homes for which applications have been collected. Since the verification required for applications collected from the households of children enrolled in tier II day care homes does not include verification of the income information provided by the households (or, for categorically eligible children, confirmation of participation in the categorically eligible programs) as discussed above, it is the Department's position that conducting the required verification on less than 100 percent of the applications strikes a balance between the need for detecting widespread or significant problems and the burden of reviewing all applications on file. Unlike most child care centers or sponsoring organizations of centers, the total number of applications for a sponsoring organization of day care homes may be quite large. Therefore, this final rule requires State agencies to conduct verification, in accordance with § 226.23(h)(1), only of the applications for enrolled children in those tier II day care homes that are selected for inclusion in the required review of the sponsoring organization, in accordance with §§ 226.6(l) (1) and (2), instead of for all of the sponsor's tier II day care homes. However, to help ensure that widespread or significant problems are identified, this final rule requires State agencies to ensure that the homes selected for review are representative of the sponsor's proportion of tier I, tier II, and tier II day care homes with a mix of income-eligible and non-income-eligible children, and that at least 10 percent of all applications on file in the sponsorship are reviewed as part of the State agency's review. The review requirements for sponsoring organizations and their day care homes are set forth in § 226.6(l). This rule also adds language to clarify that these verification requirements also apply to situations in which vouchers or other documentation are used in lieu of applications, in which case the State agency would review the voucher or other documentation on file.

Finally, the interim rule does not require sponsoring organizations to perform pricing program verification of income eligibility information for children enrolled in day care homes. However, the Department has been asked whether sponsoring organizations have the authority to verify the income information provided by the households of children enrolled in day care homes if they have reason to question the validity of the information. In order to help ensure Program integrity and appropriately targeted reimbursement rates, it is the Department's opinion that sponsoring organizations should have this authority.

Accordingly, this final rule amends § 226.23(h)(6) to explicitly provide sponsoring organizations the authority to conduct pricing verification of the income information provided by the households of children enrolled in day care homes. In addition, this final rule amends § 226.23(h)(1) to require State agencies to conduct nonpricing verification only for the applications of enrolled children in day care homes that are included in the required review of the sponsoring organization.

Other Amendments

This rule also makes technical changes to the definition of "Documentation" in § 226.2, and to §§ 226.23(e)(1) (i) and (iv), to include amendments which were made to these sections in an interim rule published on May 1, 1997 (62 FR 23613), but inadvertently eliminated from the Code of Federal Regulations when the January 7, 1997, interim rule (62 FR 889) on the two-tiered reimbursement system went into effect on July 1, 1997.

List of Subjects

7 CFR Part 210

Breakfast, Children, Food assistance programs, Grant program—Social

programs, Lunch, Meal Supplements, Nutrition, Reporting and recordkeeping requirements, School Nutrition Program, Surplus agricultural commodities.

7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, infants, and children, Records, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, the interim rule amending 7 CFR parts 210 and 226 which was published at 62 FR 889 on January 7, 1997, is adopted as a final rule with the following changes:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In Section 210.9, paragraph (b)(20) is revised to read as follows:

§ 210.9 Agreement with State agency.

* * * * *

(b) *Annual agreement.* * * *

(20) No later than March 1, 1997, and no later than December 31 of each year thereafter, provide the State agency with a list of all elementary schools under its jurisdiction in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day the preceding October. The State agency may designate a month other than October for the collection of this information, in which case the list must be provided to the State agency within 60 calendar days following the end of the month designated by the State agency. In addition, each school food authority shall provide, when available for the schools under its jurisdiction, and upon the request of a sponsoring organization of day care homes of the Child and Adult Care Food Program, information on the boundaries of the attendance areas for the elementary schools identified as having 50 percent or more of enrolled children certified eligible for free or reduced price meals.

* * * * *

3. In § 210.19, paragraph (f) is revised to read as follows:

§ 210.19 Additional responsibilities.

* * * * *

(f) *Cooperation with the Child and Adult Care Food Program.* On an annual basis, the State agency shall provide the State agency which administers the Child and Adult Care Food Program with a list of all elementary schools in the State participating in the National School Lunch Program in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day of the previous October, or other month specified by the State agency. The first list shall be provided by March 15, 1997; subsequent lists shall be provided by February 1 of each year or, if data is based on a month other than October, within 90 calendar days following the end of the month designated by the State agency. The State agency may provide updated free and reduced price enrollment data on individual schools to the State agency which administers the Child and Adult Care Food Program only when unusual circumstances render the initial data obsolete. In addition, the State agency shall provide the current list, upon request, to sponsoring organizations of day care homes participating in the Child and Adult Care Food Program.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765, and 1766).

2. In § 226.2:

a. Paragraphs (b), (c), and (d) of the definition of "Documentation" are revised; and

b. The definition of "Enrolled child" is amended by adding a sentence at the end.

The revisions and addition read as follows:

§ 226.2 Definitions

* * * * *

Documentation means: * * *

(b) For a child who is a member of a food stamp or FDPIR household or an AFDC assistance unit, "documentation" means the completion of only the following information on a free and reduced price application:

(1) The name(s) and appropriate food stamp, FDPIR or AFDC case number(s) for the child(ren); and

(2) The signature of an adult member of the household; or

(c) For a child in a tier II day care home who is a member of a household participating in a Federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free or reduced price meals:

(1) The name(s), appropriate case number(s) (if the program utilizes case numbers), and name(s) of the qualifying program(s) for the child(ren), and the signature of an adult member of the household; or

(2) If the sponsoring organization or day care home possesses it, official evidence of the household's participation in a qualifying program (submission of a free and reduced price application by the household is not required in this case); or

(d) For an adult participant who is a member of a food stamp or FDPIR household or is an SSI or Medicaid participant, as defined in this section, "documentation" means the completion of only the following information on a free and reduced price application:

(1) The name(s) and appropriate food stamp or FDPIR case number(s) for the participant(s) or the adult participant's SSI or Medicaid identification number, as defined in this section; and

(2) The signature of an adult member of the household.

Enrolled child means * * * In addition, for the purposes of calculations made by sponsoring organizations of family day care homes in accordance with §§ 226.13(d)(3)(ii) and 226.13(d)(3)(iii), "enrolled child" (or "child in attendance") means a child whose parent or guardian has submitted a signed document which indicates that the child is enrolled for child care; who is present in the day care home for the purpose of child care; and who has eaten at least one meal during the claiming period.

* * * * *

3. In § 226.6, paragraph (f)(9) is amended by removing the second sentence of the paragraph and by adding a new sentence in its place, and by adding a new sentence at the end to read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(f) * * *

(9) * * * The State agency shall provide the list to sponsoring organizations by April 1, 1997, and by February 15 of each year thereafter, unless the State agency that administers the National School Lunch Program has elected to base data for the list on a month other than October, in which case the State agency shall provide the list to sponsoring organizations within 15 calendar days of its receipt from the State agency that administers the National School Lunch Program. * * * The State agency shall not routinely require annual redeterminations of the tiering status of tier I day care homes based on updated elementary school data.

* * * * *

4. In § 226.13:

a. Paragraph (d)(3)(ii) is amended by adding a new sentence after the first sentence; and

b. The first sentence of paragraph (d)(3)(iii) is revised.

The addition and revision read as follows:

§ 226.13 Food service payments to sponsoring organizations for day care homes.

* * * * *

(d) * * *

(3) * * *

(ii) * * * Sponsoring organizations shall obtain one month's data by collecting either enrollment lists (which show the name of each enrolled child in the day care home), or attendance lists (which show, by days or meals, the rate of participation of each enrolled child in the day care home).* * *

(iii) Determine a blended per-meal rate of reimbursement, not less frequently than semiannually, for each such day care home by adding the products obtained by multiplying the applicable rates of reimbursement for each category (tier I and tier II) by the claiming percentage for that category, as established in accordance with paragraph (d)(3)(ii) of this section.* * *

* * * * *

5. In § 226.15:

a. Paragraph (e)(3) is revised; and

b. Paragraph (f) is amended by adding seven new sentences after the second sentence, and by adding a new sentence at the end.

The additions and revision read as follows:

§ 226.15 Institution provisions.

* * * * *

(e) * * *

(3) Documentation of: The enrollment of each child at day care homes; information used to determine the eligibility of enrolled providers' children for free or reduced price meals; information used to classify day care homes as tier I day care homes, including official source documentation obtained from school officials when the classification is based on elementary school data; and information used to determine the eligibility of enrolled children in tier II day care homes that have been identified as eligible for free or reduced price meals in accordance with § 226.23(e)(1).

* * * * *

(f) * * * When using elementary school or census data for making tier I day care home determinations, a sponsoring organization shall first consult school data, except in cases in which busing or other bases of attendance, such as magnet or charter schools, result in school data not being representative of an attendance area's household income levels. In these cases, census data should generally be consulted instead of school data. A sponsoring organization may also use census data if, after reasonable efforts are made, as defined by the State agency, the sponsoring organization is unable to obtain local elementary school attendance area information. A sponsoring organization may also consult census data after having consulted school data which fails to support a tier I day care home determination for rural areas with geographically large elementary school attendance areas, for other areas in which an elementary school's free and reduced price enrollment is above 40 percent, or in other cases with State agency approval. However, if a sponsoring organization believes that a segment of an otherwise eligible elementary school attendance area is above the criteria for free or reduced price meals, then the sponsoring organization shall consult census data to determine whether the homes in that area qualify as tier I day care homes based on census data. If census data does not support a tier I classification, then the sponsoring organization shall reclassify homes in segments of such areas as tier II day care homes unless the individual providers can document tier I eligibility on the basis of their household income. When making tier I day care home determinations based on school data, a sponsoring organization shall use attendance area information that it has obtained, or verified with appropriate school officials to be current, within the last school year. * * * The State agency shall not routinely require annual redeterminations of the tiering status of tier I day care homes based on updated elementary school data.

* * * * *

6. In § 226.18, paragraph (b)(11) is amended by adding a new sentence at the end of the paragraph to read as follows:

§ 226.18 Day care home provisions.

* * * * *

(b) * * *

(11) * * * These options include: electing to have the sponsoring organization attempt to identify all income-eligible children enrolled in the day care home, through collection of free and reduced price applications and/or possession by the sponsoring organization or day care home of other proof of a child or household's participation in a categorically eligible program, and receiving tier I rates of reimbursement for the meals served to identified income-eligible children; electing to have the sponsoring organization identify only those children for whom the sponsoring organization or day care home possess documentation of the child or household's participation in a categorically eligible program, under the expanded categorical eligibility provision contained in § 226.23(e)(1), and receiving tier I rates of reimbursement for the meals served to these children; or receiving tier II rates of reimbursement for all meals served to enrolled children.

* * * * *

7. In § 226.23:

a. Paragraph (e)(1)(i) is amended by removing the third sentence and adding a new sentence in its place, by adding the words "or FDPIR" after the words "food stamp" each time they appear in the sixth sentence, and by adding a new sentence to the end;

b. Paragraph (e)(1)(iv) is revised;

c. A new paragraph (e)(1)(vi) is added;

d. Paragraph (h)(1) is revised; and

e. Paragraph (h)(6) is amended by adding a new sentence to the end.

The additions and revision read as follows:

§ 226.23 Free and reduced price meals.

* * * * *

(e)(1) * * *

(i) * * * At the request of a provider in a tier II day care home, sponsoring organizations of day care homes shall distribute applications for free and reduced price meals to the households of all children enrolled in the home, except that applications need not be distributed to the households of enrolled children that the sponsoring organization determines eligible for free and reduced price meals under the circumstances described in paragraph (e)(1)(vi) of this section. * * * If a State agency distributes, or chooses to permit its sponsoring organizations to distribute, applications to the households of children enrolled in tier II day care homes which include household confidentiality waiver statements, such applications shall include a statement informing households that their participation in the program is not dependent upon signing the waivers.

* * * * *

(iv) If they so desire, households applying on behalf of children who are members of food stamp or FDPIR households or AFDC assistance units may apply under this paragraph rather than under the procedures described in paragraph (e)(1)(ii) of this section. In

addition, households of children enrolled in tier II day care homes who are participating in a Federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free and reduced price meals may apply under this paragraph rather than under the procedures described in paragraph (e)(1)(ii) of this section. Households applying on behalf of children who are members of food stamp or FDPIR households; AFDC assistance units; or for children enrolled in tier II day care homes, other qualifying Federal or State program, shall be required to provide:

(A) For the child(ren) for whom automatic free meal eligibility is claimed, their names and food stamp, FDPIR, or AFDC case number; or for the households of children enrolled in tier II day care homes, their names and other program case numbers (if the program utilizes case numbers); and

(B) The signature of an adult member of the household as provided for in paragraph (e)(1)(ii)(G) of this section. In accordance with paragraph (e)(1)(ii)(F) of this section, if a case number is provided, it may be used to verify the current certification for the child(ren) for whom free meal benefits are claimed. Whenever households apply for children not receiving food stamp, FDPIR, or AFDC benefits; or for tier II homes, other qualifying Federal or State program benefits, they must apply in accordance with the requirements set forth in paragraph (e)(1)(ii) of this section.

* * * * *

(vi) A sponsoring organization of day care homes may identify enrolled children eligible for free and reduced price meals (i.e., tier I rates), without distributing free and reduced price applications, by documenting the child's or household's participation in or receipt of benefits under a Federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free and reduced price meals. Documentation shall consist of official evidence, available to the tier II day care home or sponsoring organization, and in the possession of the sponsoring organization, of the household's participation in the qualifying program.

* * * * *

(h) * * *

(1) *Verification procedures for nonpricing programs.* Except for sponsoring organizations of family day care homes, State agency verification procedures for nonpricing programs shall consist of a review of all approved free and reduced price applications on file. For sponsoring organizations of family day care homes, State agency verification procedures shall consist of a review only of the approved free and reduced price applications (or other documentation, if vouchers or other documentation are used in lieu of free and reduced price applications) on file for those day care homes that are required to be reviewed when the sponsoring organization is reviewed, in accordance with the review requirements set forth in section 226.6(l) of this Part. However, the State agency shall ensure that the day care homes selected for review are representative of the proportion of tier I, tier II, and tier II day care homes with a mix of income-eligible and non-income-eligible children in the sponsorship, and shall ensure that at least 10 percent of all free and reduced price applications (or other documentation, if applicable) on file for the sponsorship are verified. The review of applications shall ensure that:

(i) The application has been correctly and completely executed by the household;

(ii) The institution has correctly determined and classified the eligibility of enrolled participants for free or reduced price meals or, for family day care homes, for tier I or tier II reimbursement, based on the information included on the application submitted by the household;

(iii) The institution has accurately reported to the State agency the number of enrolled participants meeting the criteria for free or reduced price meal eligibility or, for day care homes, the number of participants meeting the criteria for tier I reimbursement, and the number of enrolled participants that do not meet the eligibility criteria for those meals; and

(iv) In addition, the State agency may conduct further verification of the information provided by the household on the approved application for program meal eligibility. If this effort is undertaken, the State agency shall conduct this further verification for nonpricing programs in accordance with the procedures described in paragraph (h)(2) of this section.

* * * * *

(6) * * * Sponsoring organizations of day care homes may verify the information on applications submitted by households of children enrolled in day care homes in accordance with the procedures contained in paragraph (h)(2)(i) of this section.

Dated: February 13, 1998.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

Economic Impact Analysis

1. Title

Child and Adult Care Food Program: Improved Targeting of Day Care Home Reimbursements.

2. Statutory Authority

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193)

3. Rulemaking Background

The interim and final rules amend the Child and Adult Care Food Program (CACFP) regulations governing reimbursement for meals served in family or group day care homes by incorporating provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193). These provisions better target assistance to low income children by reducing the reimbursement for meals served to children who do not qualify for low-income subsidies. Specifically, this rule develops a two tier reimbursement structure for meals served to children enrolled in family or group day care homes. Under this structure, the level of reimbursement for meals served to enrolled children will be determined by: (1) The location of the day care home; (2) the income of the day care provider; or (3) the income of each enrolled child's household. The rules target CACFP meal reimbursement payments to low-income children and the day care home providers who serve them, where low-income is defined as not exceeding 185 percent of the Federal income poverty guidelines. The rules retain essentially near-current reimbursement rates for meals served to children by providers residing in low-income areas or served by providers who are low-income. Near-current reimbursements will also be retained for meals served to children who are identified as low-income even if the provider neither resides in a low-income area nor is low-income. Meals served to all other children will be reimbursed at the lower rates, although the lower rates are still high enough that participation in CACFP is expected to remain strong and new day care homes will continue to join CACFP. The interim rule became effective July 1, 1997; the final rule becomes effective 60 days after publication in the **Federal Register**.

4. Motivation for Statutory Changes and Summary of Findings

Until 1978, eligibility for free and reduced price meals in the Child and Adult Care Food Program (CACFP) was based on essentially the same income thresholds and procedures as those used in the National School Lunch Program: children in households at or below 130 percent of the Federal income poverty guidelines were eligible to have meals served to them reimbursed at the "free" (highest) rate while children in households with incomes above 130 but not exceeding 185 percent of the guidelines were eligible to have their meals reimbursed at the "reduced price" (middle) rate. In 1978, about 70 percent of CACFP enrolled children were from households at or below 185 percent of the Federal income poverty guidelines. The Child Nutrition Amendments of 1978 (Pub. L. 95–627) eliminated individual free and reduced price eligibility determinations (means tests) in CACFP day care homes, which substantially reduced program burden, and established a single reimbursement rate for each type of meal served in day care homes. Public Law 95–627 made no comparable changes to CACFP day care centers. The day care home meal reimbursement rates were set (by rulemaking) slightly below the rates used for meals served to children in CACFP centers with documented incomes below 130 percent of the Federal income poverty guidelines ("free" rates). The burden reduction and single rates in day care homes had the effect of promoting program growth. However, that growth turned out to be primarily among non-needy children (above 185 percent of Federal income poverty guidelines). By the late 1980's, just 30 percent of children in CACFP day care homes were from households with incomes at or below 185 percent of the Federal income poverty guidelines, and by 1995, the proportion had fallen to 22 percent. Public Law 95–627's elimination of individual means testing in CACFP day care homes thus produced a program at odds with the Child Nutrition Program's historical focus of targeting higher benefits to low-income children.

The President and Congress proposed to re-target benefits in CACFP day care homes by retaining the current day care home rates for meals served to low-income children and establishing new, lower rates for meals served to the non-needy. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193) sought to re-target benefits but, to keep program administration burdens down, did not call for a reinstatement of individual means testing of all day care home participants. Public Law 104–193 effectively retained the current meal reimbursements for meals served in tier I CACFP day care homes, i.e., day care homes operated by low income providers or located in low income areas. In all other CACFP day care homes, tier II homes, a lower rate was established, as these children are less likely to be low income. Public Law 104–193 provides for low income children in tier II day care homes by allowing the higher meal reimbursements to be claimed for all meals served to the children in tier II homes who are individually means tested and found to be needy. These changes, along with others called for by Public Law 104–193, are being implemented by this rule and the interim rule. Public Law 104–193's two tier rate structure is estimated to produce a six year savings of $1.7 billion (fiscal years 1997–2002).

Despite the reduction in reimbursement rates, the numbers of tier I and tier II day care homes participating in the CACFP are both expected to grow, although at slower rates than projected before Public Law 104–193. That CACFP day care home participation is expected to remain strong is important since welfare reform will lead more low-income parents to enter the workforce, which will increase the demand for day care. Tier I homes will continue to effectively receive the pre-Public Law 104–193 reimbursement rates. While the reimbursements available to tier II homes have been reduced—CACFP weekly revenue for an average tier II home with no documented low income children will drop from $82 to $41—CACFP meal reimbursements still represent another source of income for day care homes and in many cases will provide ample incentive to participate in the CACFP. Some would-be tier II providers will find that the lower rates offer insufficient incentive to remain in the CACFP and will leave the program; however, FCS expects that most tier II providers will remain in the CACFP and accommodate the reduced rates through some combination of absorbing the loss, raising child care fees, and making cost-saving operational changes. In addition, there is about a 20 percent annual turnover of homes offering day care services, and these homes regularly offer a fresh group of homes that will probably choose to participate in the CACFP.

Other CACFP organizations are also affected by Public Law 104–193 and this rulemaking. Organizations that sponsor day care homes (sponsors), which have agreements with State CACFP agencies to operate the CACFP in day care homes have new burdens due to the two tier system. The new sponsor burdens are associated with classifying day care homes as tier I or tier II, determining whether children in tier II homes have incomes below 185 percent of the Federal income poverty guidelines, informing homes of their new rights and responsibilities under this rule, and performing the other administrative duties imposed by this rule. The Department estimates that for sponsors considered as a group, the new, recurring burdens (one-time implementation burdens were not estimated) will represent an average increase of about 2 percent over current burden levels. However, as with any average, some sponsors will realize more than a 2 percent increase in recurring burden (while others will realize less than a 2 percent increase). In addition, implementation burdens during the first year or two of tiering may be significant. State CACFP agencies will see a noticeable increase in recurring burden associated with complying with new tiering related sponsor review requirements, providing sponsors with school and census area-eligibility information, and providing sponsors tiering related technical assistance. State agencies administering the NSLP and school districts also have new responsibilities under this rulemaking, although these responsibilities do not entail substantial new burdens.

5. Comparison of Final Analysis With Interim Analysis

The final analysis makes few technical changes to the interim analysis (in terms of numbers used and assumptions made). All technical changes are based on new CACFP program data, a recently completed study of the CACFP, or comments received on the interim analysis. Updating the analysis with the new program and study data produces improved cost and burden estimates. The changes significantly decrease the total Federal savings expected from the two tier system, with projected six year savings, fiscal years 1997–2002, declining from $2.2 to $1.7 billion. Essentially no changes have been made to the analysis' assessment of the effects that the two tier system will have on particular providers, parents, and children.

New CACFP program data was used to update several numbers in the analysis, including the number of CACFP participating day care homes (DCHs), the number of DCH sponsors,

and the average number of DCHs served by sponsors. These updates have a negligible effect on the findings of the analysis.

Since the publication of the interim analysis on January 1, 1997, the Food and Consumer Service has completed the Early Childhood and Child Care Study [1] (ECCCS). The ECCCS is a nationally representative evaluation of the CACFP and includes household income data for DCH providers and children enrolled in DCHs. The data on provider's and enrolled children's household incomes are appreciably different from the figures used in the interim analysis. ECCCS found that 38 percent of DCH providers are low-income while only 22 percent of children enrolled in DCHs are low-income. The interim analysis, based on the best data available at that time, indicated that 22 percent of DCH providers and 30 percent of DCH enrolled children were low-income, which understated the number of low-income providers and overstated the number of low-income DCH children. Together with the provider income data, the income data for DCH enrolled children indicate that low-income providers will probably serve a substantial number of non-low-income children, since 38 percent of providers are low-income while only 22 percent of DCH enrolled children are.

The ECCCS income data have several implications for the analysis. The provider data imply there are more low-income providers than estimated in the interim analysis. This change increases the percentage of DCH meals that will be reimbursed at the higher meal reimbursement rates and is the piece of data responsible for improving the accuracy of the estimate of Federal savings from tiering. The increased percentage of low-income providers also has implications for sponsor burdens. Since sponsors are responsible for identifying which DCHs are eligible for the higher reimbursement rates (tier I) and for verifying the DCHs' tier I eligibility, the increased proportion of DCHs eligible for the higher rates will increase the burden on sponsors for making DCH tier I eligibility determination burdens.

The final analysis is organized nearly the same as the interim, and the analytic section appearing in the interim analysis (numbered 6 in the final analysis and 4 in the interim) has effectively been left unchanged. Section 3, Rulemaking Background, in the final analysis is the same as Section 3, Background, in the interim analysis. Sections 4 and 5, Motivation for Statutory Changes and Summary of Findings and Comparison of Final Analysis with Interim Analysis, respectively, are new to the final analysis. Section 7, Requirements for Regulatory Analyses, as Established by Regulatory Flexibility Act, is an expanded version of the corresponding section in the interim analysis (numbered 5 there) and now includes a discussion of comments received on the interim analysis. Portions of the analytic section were altered to ensure that the analysis accurately describes the two tier system established by the interim and final rules. Since most changes made by the final rule are minor, these changes did not effect significant changes to the analysis. However, three changes made by the final rule are worth noting because they change burden estimates. These changes concern sponsors' income documentation requirements for low-income children in tier II DCHs, requirements for State agency reviews of low-income documentation during States' reviews of sponsors, and the requirement that school food authorities (SFAs) provide sponsors with school attendance area boundary information.

The final rule attempts to mitigate sponsor burdens on income determination by allowing sponsors to establish the low-income status of a DCH enrolled child through official evidence, in the sponsor's or provider's possession, that the child's household participates in a Federal or State benefits program with an income eligibility limit not exceeding 185 percent of the Federal income poverty guidelines. This change reduces burden for sponsors by allowing them to establish eligibility for children for whom they have such information without having to contact the children's households to ask for evidence of low-income status.

The final rule also lessens review requirements for State reviews of sponsors' documentation for low-income children. The interim rule required States, as part of sponsor reviews, to verify that the income application (or other acceptable documentation) for every child classified by the sponsor as low-income is complete and supports the eligibility determination made by the sponsor. The final rule lessens the documentation review burden for States by requiring that States review at least 10 percent of all applications on file with a sponsor, where application refers to whatever documentation establishes the income-eligibility of a child. The final rule stipulates that States draw the 10 percent of applications from those DCHs the State must review as part of its sponsor review, but if those DCHs provide less than 10 percent of all applications, then States must draw additional applications until the 10 percent requirement is met.

The third change made by the final rule concerns provision of school attendance area boundary information. The interim rule assumed this information would be readily available, since it is public information and public schools are public institutions. A number of commenters told FCS that the information is not readily available. Boundary information is essential for sponsors to accurately determine whether a DCH should be approved for the higher meal reimbursement rates based on whether the DCH is circumscribed by the attendance area of a school with at least 50 percent of its enrollment approved for free or reduced price meals. The final rule, recognizing sponsors' critical need for this information, requires SFAs to provide boundary information on school attendance areas when sponsors request it. This represents a new burden for SFAs.

Responses to comments received on the interim analysis are located in Section 7, Requirements for Regulatory Analyses, as Established by Regulatory Flexibility Act. There was one quantitative change that resulted from the comments. The average wage rate assumed for sponsors, which was used to estimate the financial burden of tiering on sponsors, was increased. The interim analysis had assumed that a staff level employee would be responsible for performing the new burdens, but commenters caused FCS to reconsider that assumption. The final analysis assumes an average sponsor wage rate that is twice the figure used in the interim analysis, which reflects the new assumption that the tiering burdens will require involvement at the sponsor staff level up through sponsor management.

6. Cost/Benefit Assessment of Economic and Other Effects Benefits

The need to reduce overall Federal expenditures has prompted a review of many programs and led to the legislative decision to improve the targeting of CACFP benefits to low-income children. To accomplish targeting of benefits, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 establishes two tiers of day care homes and reimbursement rates. Under tiering, any DCH located in a low-income area or operated by a low-income provider is eligible for tier I status, where low-income areas are determined by local school or census data, subject to

restrictions on how the data may be used. All meals served in tier I DCHs are reimbursed at the higher set of reimbursement rates. All DCHs not qualifying for tier I are tier II DCHs. Meals served in tier II DCHs are reimbursed at the lower set of rates, with the exception that meals are reimbursed at the higher set of rates when served to children whom the DCH sponsor documents as being low-income.

The initial establishment of the Child Care Food Program (CCFP) in November 1975 required both types of CCFP providers, day care centers and DCHs, to make individual eligibility determinations based on each participating child's household size and income. Meal reimbursement rates paid to sponsors for meals served in DCHs were based on each enrolled child's documented eligibility for free, reduced price or paid meals. In order to be a DCH, which denotes a CCFP participating home in this analysis, a home has always had to (1) meet State licensing requirements, or be approved by a State or local agency and (2) be sponsored by an organization that assumes responsibility for ensuring the DCH's compliance with Federal and State regulations (these licensing and sponsorship requirements are still in effect).

In the years following establishment of the program, concerns were raised that the paperwork and recordkeeping requirements were creating barriers to DCH participation in the CCFP. In 1978, Pub. L. 95–627 eliminated free and reduced price eligibility determinations for individual children in DCHs (but left unchanged day care centers' individual eligibility determination requirements), and established a single reimbursement rate for each type of meal served in DCHs (lunches/suppers, breakfasts, and supplements). These changes encouraged day care providers' participation in the CCFP by reducing their administrative paperwork burden. The Omnibus Budget Reconciliation Act of 1981 added the requirement of a means test for providers to claim reimbursements for meals served to their own children in care. With this sole exception, all DCHs continued to receive the same reimbursements for all meals served to children in care, regardless of each child's income.

The day care portion of the CCFP (The CCFP was renamed the Child and Adult Care Food Program (CACFP) in 1989 when an adult day care component was added.) has experienced dramatic growth in both DCH participation and Federal government costs. From fiscal year 1986 to fiscal year 1996, the number of participating DCHs increased from 82,000 to 194,000, an increase of 134 percent. During the same period, meal reimbursements in nominal dollars increased from around $190 million to about $750 million, a 280 percent increase.[2,3] Program growth has occurred primarily among non-low-income children: table 1 shows the proportion of low-income DCH participants decreased rapidly after individual eligibility determinations were eliminated in 1978. The table shows that the proportion of DCH children with household incomes below 130 percent of the Federal income poverty guidelines decreased by 33 percentage points between 1977 and 1982, by an additional 9 between 1982 and 1986, and by 5 more between 1986 and 1995. During the same periods the percentage of non-low-income children (above 185 percent of poverty) increased 46, 7, and 7 percentage points, respectively. Although the 1995 data was not available until after the interim rule was published, the marked growth in the proportion of non-low-income enrollment in DCHs between 1977 and 1986 was sufficient to serve as the impetus for Pub. L. 104–193's better targeting of DCH benefits to low-income children.

Table 1

Income Eligibility Status of Children in DCHs over Time

	Percent of DCH Children in Poverty Strata by Year(s)						
Percent of Poverty	1977[a]	1982[b]	Change Between 1977-1982	1986[c]	Change Between 1982-1986	1995[d]	Change Between 1986-1995
≤ 130 %	58 %	25 %	- 33 %	16 %	- 9 %	11 %	- 5 %
131-185 %	24 %	11 %	- 13 %	13 %	+ 2 %	10 %	- 3 %
≥ 185 %	18 %	64 %	+ 46 %	71 %	+ 7 %	78 %	+ 7 %
Total	100 %	100 %	N/A	100 %	N/A	100 %	N/A

[a] Percentages represent the proportion of meals served by category: free (to children from households with income ≤ 130 % of Federal income poverty guidelines), reduced price (131-185 % of poverty), and paid (≥ 185 % of poverty). Since most DCHs operating in 1977 were non-pricing, that is did not charge separately for each meal served, it is assumed children in care of different income strata have equal propensities to consume meals, which implies the proportion of meals served by category in 1977 is a reasonable proxy for children's income eligibility percentages (result assumes children eligible for free or reduced-price benefits generally became approved to receive them).

[b] *Study of the Child Care Food Program*[2] *cited data as being available from Evaluation of Child Care Food Program: Results of the Child Care Food Program: Results of the Child Impact Study Telephone Survey and Pilot Study.*

[c] *Study of the Child Care Food Program.*[2]

[d] *Early Childhood and Child Care Study (total does not sum to 100% due to rounding).* [1]

The 1986 *Study of the Child Care Food Program* (CCFP Study)[2] found that approximately 70 percent of the children enrolled in DCHs in 1986 were non-needy (i.e., they lived in households with incomes about 185 percent of Federal income poverty guidelines). The 1995 Early Childhood and Child Care Study (ECCCS), completed after the passage of Pub. L. 104–193 and publication of the interim rule, validated the potential for re-targeting; it found that in 1995, 78 percent of children enrolled in DCHs were non-needy. The establishment of a two tier reimbursement system offers the potential for re-focusing Federal child care benefits on children who are needy.

The two tier reimbursement rate structure is expected to effect significant Federal budgetary savings. The six year projected savings (fiscal years 1997–2002) are approximately $1.7 billion (see table 4). The savings would result from (1) a reduction in the reimbursement rates for meals served in tier II (non-low-income) DCHs and (2) a projected decrease in the rate of growth in the number of day care homes participating in the CACFP. The projected decrease in the rate of growth in the number of DCHs means the number of DCHs projected to exist in the future (under post-Pub. L. 104–193 CACFP conditions) is smaller than the number that were projected under pre-Pub. L. 104–193 CACFP conditions. Fewer DCHs produce savings by eliminating the meal reimbursements that would have been paid for meals served in the day care homes and by eliminating the administrative payments that sponsors would have received for sponsoring these day care homes (the tiering system leaves unchanged sponsors' per-home administrative reimbursement rates). The estimated savings assume that in fiscal years 1997–2002 approximately 45 percent of DCH meals will be reimbursed at the higher rates. The 45 percent assumption follows from the ECCCS finding that 38 percent of providers qualify for tier I based on income, as well as from assumptions concerning the number of providers eligible for tier I solely on the basis of their residing in low-income areas and assumptions about the number of documented low-income children enrolled in tier II DCHs (the 45 percent derivation is explained in detail near the end of Section 6, Area III, Part a, Tiering Determination Burden)

The reduction in reimbursement rates for meals served to children in tier II DCHs who are not documented income-eligible would result in savings of approximately $1.4 billion over the next six years (fiscal years 1997–2002). Rates for all meals served to these children—lunches/suppers, breakfasts, and supplements—would decrease as shown in table 2. The rate change would result in a savings of about $0.64 for every lunch or supper served during fiscal year 1998, the first full fiscal year in which the new two tier system will be in effect. The lunch/supper savings would increase to about $0.70 per meal by fiscal year 2002. Breakfast savings would range from almost $0.56 per meal served in fiscal year 1998 to $0.60 in fiscal year 2002, and supplement savings would range from about $0.35 cents in fiscal year 1998 to about $0.38 cents in fiscal year 2002.

Table 2

Changes in Tier II DCH Meal Reimbursement Rates Due to Tiering

		Projected Meal Reimbursement Rates[a,b]		
Fiscal Year	Meal Type	DCH Rates Before P.L. 104-193	Tier II DCH Rates After P.L. 104-193	Difference
1998	Lunch/Supper	$ 1.6175	$ 0.9800	-$ 0.6375
	Breakfast	$ 0.8850	$ 0.3300	-$ 0.5550
	Supplement	$ 0.4825	$ 0.1300	-$ 0.3525
1999	Lunch/Supper	$ 1.6600	$ 1.0100	-$ 0.6500
	Breakfast	$ 0.9050	$ 0.3400	-$ 0.5650
	Supplement	$ 0.4950	$ 0.1300	-$ 0.3650
2000	Lunch/Supper	$ 1.7000	$ 1.0300	-$ 0.6700
	Breakfast	$ 0.9275	$ 0.3500	-$ 0.5775
	Supplement	$ 0.5075	$ 0.1400	-$ 0.3675
2001	Lunch/Supper	$ 1.7425	$ 1.0600	-$ 0.6825
	Breakfast	$ 0.9475	$ 0.3600	-$ 0.5875
	Supplement	$ 0.5200	$ 0.1400	-$ 0.3800
2002	Lunch/Supper	$ 1.7875	$ 1.0900	-$ 0.6975
	Breakfast	$ 0.9700	$ 0.3700	-$ 0.6000
	Supplement	$ 0.5325	$ 0.1500	-$ 0.3825

[a] Reimbursement rates are established, in accordance with the National School Lunch Act, as amended, on a school year basis, July 1 through the following June 30. The rates shown are in effect three quarters of the stated fiscal year, October 1 through September 30 of the following year.

[b] Before P.L. 104-193 meal reimbursement rates were rounded to the nearest one-fourth cent. P.L. 104-193 changed the rounding rules to require that meal rates be rounded down to the nearest lower cent.

The growth of day care home participation in the CACFP is projected to slow as a result of the two tier rate structure, as some would-be providers are expected to perceive the program as offering insufficient financial incentive and/or being too administratively burdensome, relative to the financial benefits. A decline in homes' participation would cause a decline in the rate of growth of sponsor administrative payments and meals served (growth would persist, albeit at a slower rate). As shown in table 3, it is estimated that in fiscal year 1998, the first full year of tiering, 18 million fewer meals will be served than would have been served under the current reimbursement rate structure (due to a slower growth rate in day care home participation). The six year effect (fiscal years 1997–2002) of this projected decline in growth is a decrease in the number of meals served by 314 million, which is measured relative to the number projected under pre-July 1, 1997 reimbursement rates. The six year (fiscal years 1997–2002) projected savings from this slowing of program growth is approximately $300 million, measured in nominal dollars.

Table 3

Changes in DCH Meal Growth Rate Due to Tiering

	Projected Meals (In Thousands)[b]					
		After P.L. 104-193				
Fiscal Year	Before P.L. 104-193	Tier I	Tier II	Total	Difference (Total)	Percent Change
1997[a]	792,503	355,577	434,594	790,170	-2,333	- 0.3 %
1998	824,203	362,688	443,285	805,973	-18,229	- 2.2 %
1999	865,413	371,755	454,368	826,123	-39,290	- 4.5 %
2000	907,818	380,863	465,500	846,363	-61,455	- 6.8 %
2001	950,486	389,814	476,439	866,252	-84,233	- 8.9 %
2002	995,158	398,974	487,635	886,609	-108,549	- 10.9 %
1997-2002	5,335,581	2,259,671	2,761,821	5,021,490	-314,089	- 5.9 %

[a] Tiering did not become effective until the beginning of the fourth quarter (July 1, 1997) of fiscal year 1997.
[b] Fiscal year 1996, DCH data implies the average DCH served 20 breakfasts, 31 lunches/suppers, and 31 supplements during an average week.

Costs

The interim and final rules promulgate the two tier CACFP meal reimbursement system specified in Pub. L. 104–193. This system was designed to reduce Federal child care subsidies to providers and parents who are not low-income. Tiering will result in a projected $1.7 billion in Federal savings over the next six fiscal years through (1) lower meal reimbursement payment rates for non-low-income DCH providers and non-low-income children and (2) secondary savings stemming from the lower rates, including the decrease in the growth rate of the number of day care homes participating in the CACFP. The non-low-income providers will likely pass some of their revenue loss on to their clientele (primarily non-low-income parents) through higher child care fees. Non-low-income providers and parents will thus bear most of the costs resulting from the projected $1.7 billion reduction in Federal expenditures—as was the intent of Pub. L. 104–193. In addition to these fiscal costs, operating the two tier system will place new administrative burdens (costs) on DCH sponsors, State CACFP and State National School Lunch Program (NSLP) agencies, and NSLP school food authorities. The following analysis will show these administrative costs are minor in comparison with the costs to non-low-income providers and parents.

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Table 4

Federal CACFP DCH Costs Before and After P.L. 104-193

Fiscal Year	Before P.L. 104-193			After P.L. 104-193					Change			
					Meal $				Total DCH $			
	Total DCH $	Total Meal $	Admin. & Audit $	Total DCH $	Tier I Meal $	Tier II Meal $	Total Meal $	Admin. & Audit $	$	%	Meal $ (%)	Admin. & Audit $ (%)
1997[a]	$ 916,721	$ 778,041	$ 138,679	$ 857,194	$ 348,985	$ 369,887	$ 718,872	$ 138,322	-$ 59,527	- 6.5 %	- 7.6 %	- 0.3 %
1998	$ 975,855	$ 830,493	$ 145,362	$ 728,653	$ 365,764	$ 220,352	$ 586,116	$ 142,537	-$ 247,203	- 25.3 %	- 29.4 %	- 1.9 %
1999	$ 1,047,984	$ 893,989	$ 153,995	$ 765,092	$ 386,428	$ 232,018	$ 618,446	$ 146,646	-$ 282,892	- 27.0 %	- 30.8 %	- 4.8 %
2000	$ 1,124,112	$ 960,650	$ 163,462	$ 798,085	$ 405,231	$ 244,080	$ 649,312	$ 148,774	-$ 326,026	- 29.0 %	- 32.4 %	- 9.0 %
2001	$ 1,203,792	$ 1,030,389	$ 173,404	$ 836,217	$ 425,250	$ 256,731	$ 681,981	$ 154,236	-$ 367,575	- 30.5 %	- 33.8 %	-11.1 %
2002	$ 1,289,588	$ 1,105,662	$ 183,926	$ 875,940	$ 446,130	$ 270,014	$ 716,144	$ 159,796	-$ 413,648	- 32.1 %	- 35.2 %	- 13.1 %
1997-2002	$6,558,052	$ 5,599,224	$ 958,828	$ 4,861,181	$ 2,377,788	$ 1,593,082	$ 3,970,871	$ 890,311	-$ 1,696,871	-25.9 %	- 29.1 %	-7.2 %

Projected Costs and Savings (In Thousands of Dollars)

[a] Tiering did not become effective until the beginning of the fourth quarter (July 1, 1997) of fiscal year 1997.

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The costs of tiering to DCH providers will be addressed first and followed by a discussion of costs to families whose children are in tier II DCHs. The new administrative burdens that tiering imposes on DCH sponsors will then be discussed and followed by an examination of the administrative costs for CACFP State agencies, NSLP State agencies, and NSLP school food authorities.

Implementation and use of the tiering system will have both one-time implementation costs and periodically recurring costs for the entities discussed above. The implementation costs will depend highly on the specifics of the State and local CACFP procedures currently in place and on which of the reimbursement options DCH providers choose and which of the claiming options DCH sponsors choose. For these reasons, implementation costs will vary greatly across States and localities. Because of the lack of information on these current practices, quantification of the implementation costs, within a reasonable degree of accuracy, is precluded. It is recognized that these costs may be significant, especially for State CACFP agencies (sponsors will need more technical assistance). The recurring costs are more evident and quantifiable, and what follows is a discussion of the recurring costs the affected entities will incur.

I. Costs to Providers

For CACFP providers the costs of tiering will have an administrative burden component, but will be primarily financial, due to the lower meal reimbursement rates, and will fall on providers operating tier II DCHs. Virtually all tier II DCHs will experience a decrease in CACFP reimbursements; the majority of the $1.7 billion in projected savings is due to lower reimbursements to non-mixed tier II DCHs (a mixed tier II DCH is a tier II DCH where at least one child in care is documented income-eligible; meals served to such children are reimbursed at the higher rates). Non-mixed tier II DCHs comprise an estimated 48 percent of all DCHs (see Costs to Sponsors for explanation). For the average non-mixed tier II DCH, the July 1, 1997 tier II rate decrease will cause weekly CACFP revenues to decline 50 percent, from $82 to $41,[3] which follows directly from the average DCH's weekly meal mix footnoted in table 3 and the meal reimbursements shown in table 2. Since the average DCH has an attendance of about 7 children [1] this $41 decrease ($82–$41) represents about $5.80 per child. Although this is a significant decrease, the $41 a week represents income that would have to be completely or nearly completely replaced by increases in child care fees if the day care home dropped out of the CACFP; therefore, the $41 is sufficiently attractive for most tier II providers to stay in the program and for new providers to continue joining.

a. Potential Tier II Provider Responses to Lower CACFP Reimbursements. Providers of tier II DCHs will most likely respond to decreased CACFP revenues through some combination of raising fees, absorbing the loss, recruiting low-income children, providing care for more children, and reducing operating costs. Studies of the day care market corroborate this. They find that in general providers will not try to pass all of the CACFP loss on to the families they serve,[4 5] but rather employ some of these other options as well.

The amount which existing non-low-income providers can pass on through higher fees will depend on the character of their local day care market. Tier II providers in markets that are competitive on the basis of fee will be discouraged from passing all of the loss on to parents, as they need to keep fees approximately in line with the local going rate to retain their customers.[5] Providers in less competitive markets, such as those where there is a child care shortage, will be able to raise fees and pass most of their loss along to parents. An example of a fee competitive market is one where there are several day care homes operating in a moderate income neighborhood, all having nearly equal appeal to parents and nearly equal fees, but with only a few of the homes being tier II DCHs (the rest being non-CACFP homes or tier I DCHs). Although the tier II DCH providers would be tempted to raise fees in response to the CACFP reimbursement rate decrease, the non-CACFP and tier I DCHs would probably leave their fees unchanged; their doing so may cause the tier II DCHs to leave their fees unchanged as well. Empirical data on the relative extent of these two market scenarios is unavailable. However, because the markets affected by tiering serve mostly non-low-income families who, if fees are raised, would probably choose to pay higher fees to stay with their current provider (i.e., they will pay what is necessary to secure high quality care), fee competitive markets may be the less common variety.

Data from the 1990 Profile of Child Care Settings Study [4] (PCCS) and the 1976 National Day Care Home Study [6] (NDCH) provide information on the likelihood that providers will respond to decreased CACFP reimbursements by absorbing the loss or providing care for more children. The PCCS and NDCH studies indicate that most tier II CACFP providers are not in a position to completely absorb a significant portion of the reduction in meal reimbursements and still make a profit. The 1976–80 NDCH study found that homes like DCHs (sponsored and licensed) do not make even moderate operating surpluses (profits)—the mean net hourly wage for providers in licensed, sponsored homes was $1.92 (in 1976 dollars), 83 percent of the 1976 minimum wage rate of $2.30 per hour (all DCHs are sponsored and licensed, but not all sponsored, licensed homes are DCHs, i.e., participate in the CACFP). The PCCS study suggests that providers' economic situation may have even worsened since the NDCH study: PCCS found that in real dollars, fees for licensed, sponsored homes decreased between the period 1976–80 and 1990. Thus, the PCCS data suggests that providers in sponsored homes, such as DCHs, do not have much of an operating surplus to buffer a cut in subsidies. Other PCCS findings indicate that most providers will not consider taking more children into care as a means of increasing revenues to offset the decrease in CACFP reimbursements. PCCS found that most providers of sponsored, licensed homes are operating near their legal capacity and that over half of all such providers surveyed indicated they are unwilling to take more children into care.

b. Most Probable Provider Responses to Lower CACFP Reimbursements. The PCCS and NDCH data, and the data suggesting that some day care markets may discourage the raising of fees [5] imply that in general tier II providers will respond to decreased meal reimbursements by reducing operating costs; absorbing a small portion of the decrease; and raising fees a modest amount, but will not respond by providing care for more children.

c. Effects on Non-Mixed Tier II Providers. Tier II providers who respond to decreased CACFP revenues by noticeably reducing operating costs or sharply raising fees may, however, only exacerbate their income shortage, as parents may be unwilling to accept the providers' decreased child care expenditures (reduced operating costs) or higher fees and could respond by moving their children to other providers, which would decrease the original provider's income until replacement children could be found. However, given that fees for DCHs (i.e., licensed and sponsored providers) tend to be higher than those found in unlicensed day care homes,[6 7] parents

who patronize DCHs have demonstrated a willingness to pay a premium for licensed care and are therefore less likely to be sensitive to an increase in provider fees.

The new reimbursement rates will have a significant economic impact on non-mixed tier II DCHs. Based on Food and Consumer Service (FCS) program data [3] and projected increases in the food at home series of the Consumer Price Index, when DCH reimbursement rates are first tiered on July 1, 1997 the weighted average per meal rate for non-mixed tier II DCHs will drop from the tier I level of $1.01 down to $0.50, a 50 percent decrease. The July 1, 1997 rate cut will cause the average non-mixed tier II DCH's weekly CACFP revenues to decline from $82 to $41, a $41 decrease (a 50 percent decline), where the average DCH serves an average weekly meal mix of 20 breakfasts, 31 lunches/suppers, and 31 supplements [3] to seven children.[1] These estimates incorporate the dynamic nature of the licensed day care market, where the annual provider turnover rate is approximately 20 percent: They assume that lowering the meal reimbursement rates will decrease the incentive for day care homes to join the CACFP and also increase the rate of departure for existing DCHs. Numerically, this translates into the expectation that the lower rates will cause the annual rate of growth in DCHs to decrease from just below 5 percent to just below 2.5 percent.

d. Effects on Mixed Tier II Providers. —Although minor in comparison with non-mixed tier II CACFP revenue decreases, tiering's actual meal count system will place a new administrative burden on some portion of the sub-group of mixed tier II providers (an estimated 10 percent of DCHs are mixed tier II) whose sponsors require them to use an actual meal counts system (some providers already keep such counts). There will be no new burden for providers whose sponsors opt for either of the "simplified" meal counts systems (as explained in the Costs to Sponsors, Sponsor Meal Claiming Burden section). In an actual counts system, the mixed tier II DCHs would provide the sponsor, for each child in care, the number of reimbursable meals the child was served, by meal type and would also identify each child by name. This reporting requirement represents an increase in burden over the current system where some providers only record and provide sponsors with the total number of reimbursable meals served, by meal type. Few DCHs are expected to incur this burden, however, as this system is burdensome for the sponsors; it is being assumed that only 5 percent of sponsors will choose an actual count system, and that in addition, all such sponsors will be small—serving no more than 50 DCHs, on average only 32 (see the Costs to Sponsors, Sponsor Meal Claiming Burden section). The estimated weekly provider burden associated with an actual count system in an average DCH (serving 7 children [1] and operating 5 days a week [1]) is 35 minutes, which assumes a burden of 1 minute per child per day. The estimated annual burden for such a home is therefore 29 hours. This translates into an annual fiscal impact of $154 per provider. This calculation assumes that providers of licensed, sponsored care are making about $5.30 per hour for their services ($5.30 is an inflation adjusted version of the NDCH study [6] finding that providers of sponsored, licensed homes earned an average of $1.92 per hour in 1976).

e. Effects of Tiering on Potential CACFP Day Care Home Providers. The two tier system may affect whether new day care home providers choose to participate in the CACFP. A provider who attempts to qualify for tier I based on provider's income must supply income data or other evidence showing the provider's household income is at or below 185 percent of the Federal income poverty guidelines before the sponsor can approve the DCH for tier I. While seemingly a simple requirement, anecdotal evidence from sponsors and State agencies suggests that some providers who previously claimed an income below 185 percent of the Federal income poverty guidelines (required to claim reimbursements for meals served to providers' own children in care) are withdrawing from the CACFP altogether over this requirement. This suggests that some providers who begin offering child care after July 1, 1997 (effective date of the two tier system) may also choose not to join the CACFP due to this requirement.

For potential CACFP providers who begin offering child care after July 1, 1997 and who never experienced the pre-Pub. L. 104–193 rates, the $41 per week (about $2,000 per year) available to an average unmixed tier II DCH will be seen as a welcome source of additional income, and many of these would-be tier II providers will join the CACFP. However, $41 is not as attractive as the pre-Pub. L. 104–193 level of $82, and it is therefore expected that new, would-be tier II providers will join the CACFP at a slower rate.

II. Costs to Families

Tiering imposes few costs on low-income families. One cost, limited to low-income families with children in mixed tier II DCHs, is their being asked to provide household income information. Although the families are not obligated to provide this information it is expected that most will. Providing this information consumes time and could lessen a family's privacy. Sponsors have the authority to verify the income information at a later time, in which case the family would be contacted and asked to submit supporting documentation for the income figures provided, representing a second burden and an intrusion on family privacy. Despite being authorized to conduct income verifications, few sponsors are expected to do so in light of the associated burden. As explained below, there may also be a limited number of low-income families with children in non-mixed tier II DCHs; these families will experience costs similar to those described below for non-low-income families.

Tiering is intended to reduce subsidies to non-low-income families, which as previously stated, is the intent of Pub. L. 104–193. The reduction has potential cost implications for these families. The Costs to Providers section explained that providers will likely respond to the decrease in CACFP reimbursements through some combination of reducing operating expenses, raising fees, and absorbing the loss. At one extreme of the day care market, an area not fee-competitive in which DCH providers have the freedom to increase fees to completely offset the reduced reimbursements, raising fees to offset the reimbursement cut would increase fees by about $5.80 a week per child. This would represent a 9 percent increase over the average weekly fees, $70, that parents of non-low-income children currently pay for care ($70 is an inflation-adjusted version of the CCFP Study's figure of $49).[2] At the other extreme of the day care market, a highly fee competitive setting, fees would remain unchanged. Although empirical data on the relative extent of these market types is unavailable, data from the Costs to Providers section suggest that the non-competitive market type may be more common: First, the markets affected by tiering are serving non-low-income families who, if fees are raised, would probably choose to pay the higher fees to stay with their current provider; and second, families patronizing DCHs, which tend to charge higher fees than unlicensed providers, have already demonstrated a willingness to pay more for the higher quality of licensed care.

a. Competitive Markets. In child care markets where providers need to hold

fees down to retain customers, providers are constrained to react to the rate decrease through some mixture of absorbing the cut and cutting operating costs. The providers being considered here are primarily those operating non-mixed tier II DCHs, the group that will experience the greatest tiering related CACFP revenue drop. To cut costs, these tier II providers may change their management practices relating to food service and developmental opportunities and materials, among other potential changes. Although intended as cost cutting measures, some of these changes could have effects on the children in care. In the area of developmental opportunities and materials, lower reimbursements may leave providers somewhat less able to afford the games, books, audio or video tapes, etc. that were attainable when CACFP reimbursements were covering a greater proportion of food expenses. There are also a number of areas in food service where providers could reduce costs, and these would impact children in tier II DCHs. One way to reduce costs would be deciding that certain snacks or meals served under the old, higher CACFP reimbursements will not be served under the new, lower rates, such as an afternoon snack. Providers might also respond by decreasing meal portions, although by specifying minimum serving sizes, CACFP regulations limit the extent to which this could be done. Other means of cutting food service costs could include replacing more expensive ingredients and food items with less expensive ones. While purchasing lower quality items and ingredients may have detrimental nutritional implications, substituting something more affordable could also represent a nutritional improvement if wise choices are made, i.e., purchasing an alternate, more affordable and more healthful combination of foods rather than purchasing a lower-quality version of the same food. The CACFP study mandated by Pub. L. 104–193 will compare the nutritional quality of meals served in post-tiering tier II DCHs with the quality of meals served in those DCHs before tiering, among other pre/post-tiering comparisons.

If a tier II provider decides to cut operating costs, a family may find the resulting conditions unacceptable and seek another provider. The search for a new provider entails costs in the time and potential for lost wages spent finding a new provider. There is also the potential for subsequent transportation and added inconvenience costs if the more suitable providers are not as conveniently located as the original caregiver (although they might also be more convenient). It is also possible that providers constrained to hold fees down will exit the child care market, which would also require a family to find another provider.

Under the fee competitive market scenario just considered, which primarily affects non-low-income families, there is the potential that some of the low-income children in mixed tier II DCHs will experience some of the same costs the children in non-mixed tier II DCHs will experience. Although some of the meals served in a mixed tier II DCH will be eligible for the higher reimbursement rates, others will not. If the provider is constrained to not raise fees to recoup the decreased reimbursements for the non-low-income families, the provider will experience a net decrease in revenue. As discussed above, the provider will likely respond to this net decrease by either reducing operating costs or absorbing the loss. Reducing operating costs would affect the low-income children in care. However, FCS believes only 10 percent of all DCHs will be mixed and that only a portion of these mixed homes are in competitive fee markets (where providers are constrained to keep fees down); under these conditions, few low-income children would be affected.

b. Non-Competitive Markets.—In the other child care market being considered, where providers are not as constrained to hold fees down, providers will likely respond to the rate decrease primarily through increased fees. As suggested earlier in this section, because tiering mainly affects non-low-income families who will likely choose to pay increased provider fees, this type of market may be more common than the competitive fee variety. In non-fee competitive markets, families can respond to increased fees by either paying the higher fees, moving their children to more affordable providers, or dropping out of the labor force (fully or in part) to care for their children. Each choice has different costs for families. In cases where the parents elect not to move the child, the parents will be assuming greater responsibility for food costs than under the previous system where the Federal Government was performing that function (the intent of Pub. L. 104–193). In the case where the provider raises fees enough to completely offset the reduced reimbursements, fees could increase by about $5.80 a week per child, representing a 9 percent increase over pre-tiering average fees.[2] In the second case, where the parents move a child to achieve lower fees, the child may have to break established relationships with the current provider and other children in care. The third alternative, dropping out of the labor force, would presumably occur rarely, as the raising of fees will primarily affect higher income families who will probably choose to absorb the increase.

c. Effects of Tiering on Child Care Choices.—Studies show that child care regulations enforce practices beneficial to childhood development,[6] but the preceding discussion on the relationship between lower meal reimbursements and higher fees implies that under tiering the number of families choosing sponsored, licensed care may decrease. The 1976–80 NDCH Study compared fees among unlicensed providers; licensed but unsponsored providers; and providers who are both licensed and sponsored. The study found that providers who are both licensed and sponsored had the highest fees. In the years since that study, fees charged by licensed and sponsored providers have decreased until equaling the fees charged by licensed but unsponsored providers.[4] This equaling of fees in licensed homes coincided with the post-1978 rapid growth of DCHs. CACFP reimbursements—available only to sponsored, licensed homes—may have played a role in bringing down fees charged by licensed, sponsored providers to equal fees of licensed, unsponsored providers, which suggests that tiering's lowering of CACFP rates may cause licensed, sponsored fees to rise. Even if the post-1978 decline in licensed, sponsored provider fees is attributable to other factors, it is likely (as discussed in the Costs to Providers section) that decreased CACFP reimbursements will cause licensed, sponsored providers to raise fees, at least in some markets, which may shift children into more affordable, possibly unlicensed homes. Similarly, the decreased CACFP reimbursements might cause some currently licensed and sponsored providers to consider moving out of licensed care. Therefore, the possibility that CACFP rates will no longer encourage the placement of children in licensed care is another cost that tiering may bring to non-low-income children and even some low-income children.

d. Intended Effect of Tiering.—An important fact is that tiering almost exclusively affects families with incomes above 185 percent of the Federal income poverty guidelines (non-low-income), as intended by Pub. L. 104–193. The only low-income families potentially affected by tiering will be those with children in tier II DCHs. This presumably encompasses few families,

as it is believed, as mentioned earlier, that (1) only 10 percent of all DCHs will be mixed (having both non-low-income and documented low-income children in care) and that only 30 percent of the children in an average mixed DCH will be low-income (see Tier II Household Income-Eligibility Determination Burden under Costs to Sponsors); and (2) that the clear majority of low-income children will be in tier I DCHs. Similarly, the providers affected by tiering will presumably be all non-low-income, since providers with incomes below 185 percent of the Federal income poverty guidelines are eligible for Tier I status. The Federal income poverty guidelines are designed to take into account family size, so that a given household will qualify for low-income status at a lower income level than will a household that has more children.

Although the reimbursement decrease for tier II DCHs is significant, the $41 a week in CACFP reimbursements that the average non-mixed tier II DCH would receive under tiering represents income that would have to be completely or nearly completely replaced by increases in child care fees if the day care home were to drop out of the CACFP altogether; therefore, the reimbursements available to tier II DCHs are sufficient for most tier II providers to stay in the program and for new providers to continue joining. These reimbursements will continue to assist providers with offering healthful, nutritious meals to participating children.

III. Costs to Sponsors

The two tier structure will impose several new administrative burdens on organizations that sponsor DCHs, including determining and documenting which DCHs and children are entitled to receive the higher set of reimbursement rates; verifying the income of all providers who qualify for tier I status based on provider income; determining which providers qualify for tier I based on area-eligibility; and collecting and reporting separate tier I and tier II meal, enrollment, and provider counts and other information on DCHs.

a. Tiering Determination Burden. All sponsors will be responsible for determining whether each of their DCHs is tier I or II. A sponsor can approve a DCH for tier I status if the DCH is located in a low-income area or the provider is low-income. A low-income area is defined as one in which the local elementary school has at least one-half of its enrollment approved for free or reduced price NSLP lunches, or an area in which at least one-half of the resident children are low income, according to the most recent census data.

The interim and final rules establish procedures for acceptable uses of census and school data when approving DCHs for tier I on the basis of geographic eligibility. The rules establish school data as the preferred data source. FCS prefers school data over census data because, in most cases, school data is more capable of accurately documenting current household income levels in an area. Because it is collected on an annual basis, school enrollment data more accurately measures current economic conditions of the current population, whereas significant changes can occur to an area's economic health (e.g., local recession or new employment opportunities) and the income levels of an area's population (through demographic shifts) between the times census data is collected. Since it is more representative of current income levels, establishing it as the preferred data source is necessary for consistency with the targeting goals of Pub. L. 104–193, which states that sponsors "shall use the most current available data at the time of determination," where data refers to elementary school data, census data, and provider household income data.

Sponsors are to use school data to approve a DCH for tier I by area eligibility except when a school's attendance is primarily determined by something other than geographic proximity, which is true of most magnet schools and most schools in districts where substantial amounts of bussing takes place. When attendance is drawn in this manner, it almost always breaks the link between the percentage of enrollment approved for free or reduced price meals and household income levels in the school's attendance area, which makes school data inappropriate, in such instances, for making area-based tier I determinations. The final rule also directs sponsors to use census data for approving as tier I providers who reside in areas not circumscribed by school attendance areas. In all other efforts to classify DCHs for tier I by area-eligibility, sponsors must first use school data. If school data is used, but fails to support an area-based tier I classification, sponsors may then attempt to classify the DCH for tier I using census data if the DCH is either (1) circumscribed by a school attendance area where the school's free and reduced price enrollment is at least 40 percent of total enrollment or (2) circumscribed by a geographically large, rural school attendance area. Except for these two cases and situations where free and reduced price enrollment data does not reflect household income levels in a school's attendance area, sponsors must first receive State agency approval before using census data to classify DCHs as tier I by area eligibility. If a sponsor uses school data and determines that a DCH is located in an eligible enrollment area, but knows that some segments of that enrollment area are clearly non-needy—average income levels are well above the criteria for free and reduced price meals—then the sponsor must consult census data to determine whether the DCH operates in an eligible segment of the enrollment area before approving the DCH for tier I based on school data (eligible segment: census data show that at least 50 percent of the children live in households at or below 185 percent of the Federal income poverty guidelines). DCHs located in clearly non-needy areas within what are otherwise eligible attendance areas are not eligible for tier I via area eligibility.

FCS has attempted to establish procedures for the use of area data that meet the statutory requirements for low-income area data but do not place undue burden on sponsors and other involved organizations. State NSLP agencies will provide sponsors with lists of all State elementary schools in which at least 50 percent of enrollment is approved for free or reduced price meals (documented income below 185 percent of Federal income poverty guidelines). In addition, State CACFP agencies will provide sponsors with tabulations of census block group data showing the proportion of free or reduced price eligible children (income below 185 percent of Federal income poverty guidelines) in each block group. To determine attendance area boundaries for these 50 percent schools, sponsors may request attendance boundary information from the school districts, and school districts are required by the final rule to furnish the boundary information whenever boundaries exist for the schools in question. Sponsors must devise some method to determine which of their DCHs operate in eligible school attendance areas. Sponsors could do this by locating DCHs on a street map that also shows boundaries of eligible attendance areas; by telephoning the school district and being told by a school official whether a particular DCH is located in an eligible attendance area; by using geographic information systems software to create electronic street maps showing eligible attendance areas and DCH locations; or by any other means that allow a sponsor to independently determine whether a

DCH is located in an eligible attendance area. Although school boundaries may change during the 3 years of tier I eligibility following a school-data based tier I determination, and sponsors are to use the most recent boundary information when making determinations for DCHs just entering the CACFP and DCHs whose tier I eligibility status is about to expire, the final rule informs sponsors that in general, area-eligibility re-determinations should not be made when attendance area boundaries change during the 3 year eligibility period following a school-based tier I determination. Discouraging these re-determinations reduces sponsors' determination burdens and provides school-area approved DCHs a greater sense of predictability.

In the case of census data, sponsors can readily obtain block group boundary information from the U.S. census bureau in hard copy or electronic format. The methods that sponsors could use to demonstrate a DCH is located in a census-eligible block group are analogous to the methods described for school data. Census based determinations are valid until more recent census data becomes available.

A sponsor can also approve a DCH for tier I status if the DCH provider can demonstrate low-income status (i.e., income no more than 185 percent of the Federal income poverty guidelines). If a sponsor finds a provider to be low-income, the sponsor must verify the provider's household income before formally approving the DCH for tier I status. Sponsors must annually re-determine every Tier I eligibility determination based on a provider's income. Because verification of this kind is a non-trivial burden to sponsors, it is expected that whenever possible sponsors will approve providers for tier I on the basis of area eligibility. Area eligibility determinations offer sponsors the added benefit of being valid for three years when school data is used and until more recent data is available when census data is used, which would not exceed ten years.

The verification that sponsors will perform on income-approved tier I providers consists of obtaining pay stubs, tax returns, or some other form of independent income documentation to establish that the information provided on providers' tier I income applications is accurate. This type of verification is also known as "pricing-program" verification. The interim and final rules mandate this verification to protect the government against providers' financial incentive to qualify for tier I; the average tier I provider would receive 41 more dollars a week in CACFP meal reimbursements in 1998 than would the average non-mixed tier II provider (as was explained in the Costs to Providers section).

Collecting corroborating income documentation from providers for tier I income eligibility verifications represents an increase over pre Pub. L. 104–193 CACFP DCH application review requirements, which were established by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35. Pub. L. 93–35 eliminated CACFP DCH meal reimbursements for providers' own children in care, unless a provider submits an application demonstrating low-income status. Sponsors are not required to obtain supporting income information for these applications and typically make eligibility determinations based on the application information alone. Under the interim and final rules, providers will submit two types of income applications, which have different sponsor verification requirements. The first type will be submitted by providers seeking to qualify for tier I, so that, if approved for tier I, all meals served in the applying provider's home, including those to the provider's own children in care, would be reimbursed at the higher rates. The second type of application would be submitted by providers approved for tier I by area eligibility seeking to claim meals served to their own children in care. Pub. L. 104–193 does not supersede Pub. L. 97–35, so the requirement that a DCH provider demonstrate low-income status in order to claim meals served to the provider's own children remains in effect. For income applications for tier I status, Pub. L. 104–193 requires that pricing program verification (collection of substantiating income documentation) be performed. For applications from area-approved tier I providers seeking to claim meals served to their own children, sponsors will continue to approve these applications based on application content alone, which entails no new burden for sponsors.

Estimating sponsors' tiering determination burden requires first estimating the percentage of DCHs that are eligible for tier I based either on provider's household income or area-eligibility. The analysis does this by first estimating the percentage who are eligible on the basis of provider household income (and possibly also eligible on the basis of area) and then estimating the percentage of DCHs that are eligible on the basis of area exclusively. The ECCCS study, which was completed after the interim rule and analysis were published on January 7, 1997, finds that 38 percent of current DCH providers have household incomes low enough to be income eligible for tier I. Empirical data on the percentage of DCHs eligible for tier I on the basis of area alone is unavailable, as was the case for the interim rule. The figure used in this analysis, 4 percent of all DCHs, is comparable to the 6 percent figure used in the interim analysis.

The final rule's assumption that 4 percent of all DCHs are eligible for tier I by area, but not by income, like the 6 percent assumption in the interim analysis, is a consequence of the constraints imposed by (1) the percentage of meals reimbursed at the higher rates that will be consumed by documented low-income children in mixed tier II DCHs and (2) the percentage of providers eligible for tier I on the basis of income (and possibly area too). Constraint number 1 is considered first. The interim analysis assumed that few DCHs would be mixed tier II and, based on program knowledge, chose 10 percent of all DCHs as being mixed tier II. The interim analysis also assumed that 40 percent of mixed tier II DCHs' enrollments would be low-income. These two assumptions implied that documented low-income children in mixed tier II DCHs would consume nearly 4 percent of all DCH meals, which would all be reimbursed at the higher rates. The final analysis retains the 10 percent assumption, but assumes that 30, not 40, percent of mixed DCHs' enrollments will be documented low-income. The lowering of this percentage reflects the ECCCS finding that only 22 percent of the 1995 DCH enrollment is low-income, down from the CCFP study finding that 30 percent of the 1986 DCH enrollment was low-income. The preceding implies that documented low-income children in mixed tier II DCHs will consume about 3 percent of all DCH meals, which will all be reimbursed at the higher rates.

Having determined the contribution made by documented low-income children in mixed tier II DCHs to the percentage of total DCH meals reimbursed (and knowing they will be reimbursed at the higher rates), and also knowing the percentage of providers who are income-eligible for tier I (constraint number 2), the percentage of area-eligible, non-income-eligible tier I DCHs can be derived. The ECCCS finding that 38 percent of DCH providers are low income together with the higher reimbursement meals attributable to documented income-eligible children in mixed tier II DCHs imply that 41 percent of all DCH meals will be reimbursed at the higher rates. The only other DCH meals that will be

reimbursed at the higher rates are meals served in area-eligibility approved tier I DCHs with non-income-eligible. As stated above, the interim analysis assumed that 6 percent of all DCHs are area-eligible for tier I, but not income eligible. Given that the final rule assumes a higher proportion of DCHs will be income-eligible, the percentage of DCHs assumed area-eligible, but not income-eligible, has been reduced to 4 percent. Together with the income-eligible tier I DCHs and the documented low-income children in mixed tier II DCHs, the 4 percent implies that sponsors will be approving 42 percent of all DCHs for tier I and also that 45 percent of all DCH meals will be reimbursed at the higher rates.

Thirty-eight percent out of the 42 percent of DCHs that are eligible for tier I are eligible by income, but it is very likely that a substantial proportion of them (income-eligible) reside in low-income areas, which would make them area-eligible also. The burden of conducting pricing program income verifications on providers who apply for tier I on the basis of income and the interim rule's requirement that classifications based on providers' household incomes be re-determined annually will presumably cause sponsors to approve DCHs for tier I on the basis of area eligibility, rather than income, whenever possible. It was therefore assumed that one-half of the income-eligible DCHs will be approved for tier I on the basis of area eligibility rather than income (19 percent of all DCHs), which together with the 4 percent of tier I DCHs that are only area-eligible implies that 23 percent of all DCHs will be approved for tier I by area eligibility. The remaining one-half of tier I income-eligible DCHs, 19 percent of all DCHs, will be approved on the basis of income.

The dynamic nature of the DCH market will increase sponsors' tiering determination burdens. Data from the CCFP Study indicates the DCH market has an annual provider turnover rate of approximately 20 percent.[2] This volatility will lead sponsors to make more tiering determinations than would be necessary for a stable DCH population. See section e: Quantification of New Burdens for Sponsors for the quantification of sponsors' tiering determination burden.

b. Household Income-Eligibility Determination Burden on Sponsors. Meals served in tier II DCHs are reimbursed at the lower set of reimbursement rates. However, meals served to low-income children in tier II DCHs are eligible to be reimbursed at the higher set of rates, but sponsors must first document these children's low-income status before the higher rates can be claimed. The final rule provides tier II DCH providers who wish to secure higher meal reimbursements for low-income enrolled children (making the DCHs "mixed" tier II) two options for identifying them and documenting their low-income status. The interim and final rules direct sponsors to conduct all aspect of income-eligibility determinations and prohibits DCH providers from taking part, to protect the confidentiality of the household income information.

One option gives DCHs the opportunity to identify a portion of enrolled income-eligible children without ever asking the children's households to provide income information. Under this option, sponsors use whatever documentation they or their DCHs providers have on file that constitutes official evidence that a child's household participates in or is subsidized by a State or Federal benefits program with an income eligibility limit at or below 185 percent of the Federal income poverty guidelines. The other option supplements the preceding option's income determination activities with income applications sent to households of enrolled children. Under this option sponsors distribute income applications to households of the enrolled children for whom the sponsor lacks official evidence that the household participates in an applicable Federal or State benefits program. Tier II DCH providers receive the higher set of meal reimbursement rates for all meals served to children from households that complete the application, return it to the sponsor, and demonstrate on it that the household's income is at or below 185 percent of the Federal income poverty guidelines, as well as households for which official evidence exists documenting the households' income eligibility.

Sponsors must maintain supporting documentation for all children approved for the higher set of meal reimbursement rates. At least annually, sponsors must re-determine the eligibility of all children previously deemed income-eligible and also give all children previously deemed not income-eligible another opportunity to demonstrate low-income status. For the purposes of this analysis, it is assumed that sponsors will meet the annual re-determination requirement by cycling through each of their mixed DCHs once a year and making income-eligibility determinations on all children currently enrolled at that time. Sponsors must also make income-eligibility determinations for children who enter a mixed tier II DCH after the sponsor has made its annual income-eligibility determinations for that DCH. The schedule that sponsors will use to perform these latter income determinations is determined by the sponsor's choice of meal claiming system. Although it is providers who decide whether the sponsor must make income-eligibility determinations for enrolled children, sponsors decide which meal count system the sponsor and all its DCHs will use. The meal count system chosen determines the schedule on which income-eligibility determinations are made for children who enter mixed DCHs after the annual eligibility re-determination review has occurred. Sponsors can choose between an actual counts system and a "simplified" counts version. Each of these systems and its associated income-eligibility determination schedule is described below.

The final rule does not prescribe any additional income eligibility determination requirements, beyond annual re-determinations, for sponsors using an actual counts system. Rather, the provider's incentive structure under this system will determine the income-eligibility determination schedule used. In this system, providers of mixed tier II DCHs must report the number of meals served to each child by type and identify each child by name. Sponsors then use income-eligibility information to determine which set of reimbursements each child's meals are entitled to, with meals served to documented income-eligible children entitled to reimbursement at the higher rates. With reimbursements being determined on a per-child basis in actual meal count systems, providers of mixed tier II DCHs have the incentive to maximize the number of documented income-eligible children in their care. A provider can do this by directing its sponsor to make an eligibility determination on each new child upon the child's entering the provider's DCH. Assuming that most providers in actual count systems will behave in this manner, sponsors in these systems will be making income-eligibility determinations on an irregular, ongoing basis.

The final rule prescribes the income-eligibility determination schedule that sponsors employing simplified counting must use to determine the income-eligibility of children who enter mixed tier II DCHs outside the sponsor's annual income-eligibility determination cycle. The schedule requires that at least semi-annually, sponsors make income-eligibility determinations on all

children who enter a mixed DCH in the prior 6 months. Given that sponsors are already required to annually re-determine eligibility, sponsors using a simplified counting system will likely perform income-eligibility determinations twice a year: annual re-determinations at the beginning of the year and a second determination at mid-year for those children who entered a mixed DCH sometime in the preceding 6 months.

The two meal count systems will require sponsors to make near equal numbers of eligibility determinations; the burdens are expected to be equal. See section e: Quantification of Burdens for the burden estimates.

c. Data Collection and Reporting Burden for Sponsors. Tiering will place several new reporting requirements on sponsors. Sponsors will now have to annually collect and report to their State CACFP agency separate enrollment counts for tier I and tier II DCHs and an enrollment count for documented income-eligible children in mixed tier II DCHs (those DCHs serving at least one documented low-income child). Sponsors must also annually report the number of tier I and tier II DCHs they sponsor, as well as other information about their DCHs. Finally, in the management plan that every sponsor submits to its CACFP State agency, the sponsor will now have to include a description of how it will make DCH tiering determinations.

d. Sponsor Meal Claiming Burden. Under tiering, sponsors will have new burdens related to meal counting and claiming. Before tiering, sponsors were only required to claim meals by meal type (breakfasts, lunches, suppers, and supplements). Under tiering, sponsors will have to claim meals both by reimbursement category (higher/lower set of rates) and, within each category, by meal type. The claiming of meals served in tier I and non-mixed tier II DCHs remains straightforward. It simply entails separating claims submitted by tier I and non-mixed tier II DCHs, which amounts to categorizing the meals, and then, within each category, summing meal counts by type. In contrast, claiming for mixed DCHs requires that for each mixed DCH sponsors split out the meals by reimbursement category, which will typically be a more time consuming process than claiming for non-mixed DCHs. After the meals from mixed DCHs are separated by category, the meals are summed within each category by meal type. The method that sponsors use to split out mixed tier II DCH claims depends on whether the sponsor is using an actual or simplified meal counting system, as described below.

As previously noted, in an actual count system, mixed tier II DCHs record the number of meals served to each attending enrolled child, by meal type, and provide the sponsor with a claim that lists the meals served to each child by type and identifies each child by name. In such a system, the sponsor splits the meals into reimbursement categories by determining the appropriate reimbursement category for each child's meals based on the child's income eligibility status—the reason each child is identified by name. In contrast, in a simplified count system, the sponsor splits the counts into the two reimbursement categories by applying either blended rates or claiming percentages to the provider's aggregated counts (both blended rates and claiming percentages produce identical fiscal claims). In the case of claiming percentages, a sponsor computes, for each DCH, the number of meals of each type entitled to the higher reimbursements by multiplying the total number of meals claimed of that type by the proportion of children in that DCH who have been determined income-eligible (the remaining meals are reimbursed at the lower set of rates). The procedure for blended rates is essentially the same. In simplified count systems, the semi-annual collection of income information described in section b: Household Income-Eligibility Determination Burden is used to update the claiming percentages/blended rates for each DCH at least every six months. The updated claiming percentages/blended rates reflect the proportion of income eligible children in the DCH.

Simplified counting is less burdensome to sponsors than an actual count system. Actual counts require the sponsor to compare the provider's meal claim against a list of the DCH's income-eligible children to identify which children's meals are entitled to the higher rate. The sponsor then groups meals by reimbursement category and finally, sums by type within each category to produce an aggregated count of meals by category and by type. In contrast, to reach the same result in a simplified system, the sponsor need only multiply the aggregate meal counts by the DCH's claiming percentages/blended rates. Because of the relative ease of meal claiming in a simplified counts system, it is expected that only 5 percent of all sponsors will opt for actual counts and that all will be small sponsors (serving no more than 50 DCHs). In response to the interim rule, several commenters mentioned that some State agencies already require their DCHs to operate actual count systems and suggested that sponsors in these States were constrained to opt for an actual count system. This is not completely accurate. The final rule prohibits States from mandating which meal count systems sponsors use, but at the same time does not infringe on States right to establish additional recordkeeping requirements for their sponsors and DCHs, provided those requirements do not conflict with Federal regulations. Even if a State requires its DCHs to maintain actual counts, a DCH's sponsor is not compelled to opt for an actual counts system; the sponsor could still chose a simplified count system. In this scenario the sponsor would either direct its DCHs to report meals by type and to retain the actual count records at the DCH, or allow the DCHs to submit their actual count records, in which case the sponsor, when preparing its claim, would simply disregard all information except meal totals by type.

e. Quantification of New Burdens for Sponsors. To quantify the effects of this interim rule on sponsors, the 194,000 DCHs [3] were distributed across the 1,200 DCH sponsors [3] according to previous studies of the CACFP, and current DCH program data. Doing this enables the scaling of burden estimates according to sponsor size (the number of DCHs a sponsor serves), which produces more precise burden estimates. The first step in creating this structure, was dividing the approximately 1,200 current sponsors into three groups, as shown in table 5: (1) Small sponsors which serve no more than 50 DCHs, on average about 32 DCHs; (2) medium sponsors which serve between 51 and 300 DCHs, on average about 220; (3) large sponsors which serve more than 300 DCHs, on average about 420.[2 3]

Table 5

Sponsor Characteristics

Sponsor Characteristics	Sponsor Size		
	Small	Medium	Large
% of all Sponsors	50 %	30 %	20 %
% of all DCHs Served	10 %	41 %	49 %
Average Number of DCHs Served per Sponsor	32	220	420
Number of Sponsors (Total = 1,200) in Category	612	360	228

Based on these definitions, 50 percent of all sponsors are small in size and account for 10 percent of all DCHs; 30 percent are of medium size and account for 41 percent of all DCHs; and 20 percent are large and account for 49 percent of all DCHs.[2 3] Next, based on DCH providers' and enrolled children's income data, from ECCCS and other assumptions discussed above under *Tiering Determination Burden*, it was estimated that 42 percent of all DCHs will be approved for tier I; 48 percent will be tier II, and 10 percent will be mixed tier II, as shown in table 6. Finally, it was assumed that 30 percent of sponsors will serve at least one mixed tier II DCH.

Table 6

DCH Characteristics

DCH Type	Percent of All DCHs
Tier I	42 %
Area Eligible Only	4 %
Income Eligible, Possibly Area Eligible[a]	38 %
Approved by Area	23 %
Approved by Income	19 %
Tier II	58 %
Mixed	10 %
Non-Mixed	48 %

[a] Analysis assumes that more than one-half of all income eligible providers are also area eligible.

The estimates for new sponsor burden are presented in table 7. Shown are estimates for the annual burden hours imposed on each sponsor category, and the percentage of sponsors affected within each sponsor category. Of the listed burdens, only *Meal Claiming* recurs periodically (monthly). The other burdens occur only once or twice a year (with the exception of household income determinations in an actual meal count system, but the number of sponsors involved is minimal, 5 percent of total, i.e., 60). The estimates make the assumption that economies of scale are realized only for *Meal Claiming* burdens, where the recurring nature of the burden would presumably give larger sponsors sufficient incentive to establish efficient meal claiming systems.

Table 7

Estimated Annual Sponsor Burden from Two Tier DCH System

Burden	Estimated Annual Sponsor Burden by Sponsor Size (Hours)			Estimated Percent of Sponsors Affected in Each Size Category		
	Small	Medium	Large	Small	Medium	Large
Tiering Determinations						
1. Low Income Providers (Includes Verification)	16 Hrs.	108 Hrs.	179 Hrs.	100%	100%	100%
2. Area Eligibility	6 Hrs.	43 Hrs.	72 Hrs.	100%	100%	100%
Tier II Household Income-Eligibility Determinations	12 Hrs.	55 Hrs.	110 Hrs.	20%	43%	37%
Data Collection and Reporting[a]	4 Hrs.	15 Hrs.	28 Hrs.	100%	100%	100%
Meal Claiming						
1. Actual Counts System (with mixed tier II DCHs)	23 Hrs.	N/A[b]	N/A[b]	10%	N/A[b]	N/A[b]
2. Simplified Counts System (with mixed tier II DCHs)	11 Hrs.	51 Hrs.	76 Hrs.	10%	43%	37%
3. No Mixed Tier II DCHs	6 Hrs.	25 Hrs.	38 Hrs.	80%	57%	63%

[a] Includes tier I, tier II, and tier II low-income enrollment counts; tier I and tier II DCH counts; and description of tiering determination method in sponsor management plan.

[b] Due to the burden associated with actual meal counts systems, it is expected that only small sponsors will choose actual counts.

The *tiering determinations* burden estimates were calculated using data from ECCCS, which indicate that 38 percent of all DCHs are income-eligible for tier I; the assumption that 4 percent of all DCH providers are non-low-income, but area-eligible for tier I; and the assumption that sponsors will choose to approve tier I income-eligible providers on the basis of area eligibility whenever possible. Thus, it is assumed that 23 percent of all DCH providers (one-half of the 38 percent who are income eligible plus the 4 percent who are only area eligible) will be approved for tier I using area eligibility information, while the remaining tier I eligible DCHs (19 percent) will be approved using provider income information. For the burden estimate, these percentages were assumed to hold for the average sponsor in each sponsor category so that, for example, the average small sponsor (serving 32 DCHs) with its 14.4 tier I homes would approve 7.9 of the 14.4 on the basis of area eligibility (14.4 * 23%/42%) and the remaining 6.5 DCHs on the basis of the provider's income (14.4 * 19%/42%). The estimates incorporate the dynamic nature of the DCH market, which has an annual provider turnover rate of approximately 20 percent.[2] This volatility will require sponsors to make more tiering determinations than would be necessary for a stable DCH population. Finally, the estimates for area eligibility assume that sponsors identify income-eligible DCHs using sponsors' preexisting knowledge of economic conditions in areas where DCHs reside and that sponsors are thereby able to easily identify DCHs lying far outside all income-eligible areas. This approach would allow sponsors to focus their efforts on DCHs with reasonable probabilities of qualifying for tier I by area eligibility. This analysis assumes such an approach will be taken and that the average sponsor will consider 3 homes for low-income area eligibility for every 2 it finds eligible and approves.

The *tier II household income-eligibility determinations* estimates were calculated by estimating the income-eligibility burden associated with the average DCH and then, for sponsors serving mixed tier II DCHs, multiplying that figure by the average number of DCHs administered by sponsors in each of the three size categories.[2 3] The number of children in care in an average DCH was used as the starting point for estimating the per-DCH burden.[1] This figure was then inflated to account for the fact that on average, there is a 30 percent turnover of children every 6 months in the average day care home.[8] This inflated figure represents the number of children whose households could potentially submit an application over a year's time. It is assumed that one-half of households would submit an application, and that of these households, one-third will be documented income eligible through official evidence possessed by the sponsor or provider, without having to submit the application. There is a clear financial incentive for providers to encourage their low-income families to submit income information to sponsors. This incentive and providers' close relationships with parents suggest that providers will attempt to persuade parents to provide the income information and achieve a high response rate.

The *data collection and reporting burden* was calculated assuming that the average sponsor will spend about 12 hours complying with the new

requirements in this area, with 10 of these hours for the new data related requirements and the remaining 2 for the requirement that each sponsor now provide a description of its plan for making DCH tiering determinations in its management plan. The 12 hour burden implies annual burdens of 4, 15, and 28 hours for small, medium, and large sponsors, respectively. These estimates are consistent with this burden being an expansion on the current CACFP requirement that sponsors report quarterly the number of DCHs served and the DCHs' enrollment and submit annually a sponsor management plan.

The *meal claiming* burden was calculated assuming that the *monthly* burden resulting from the new meal claiming requirements will be 2 hours for the average sponsor. This weighted average implies a burden that increases with sponsor size and the number of mixed tier II DCHs being served. The estimates shown in table 7 make the assumption that an actual counts system will impose twice the meal claiming burden of a simplified counts system due to the relative difficulty that sponsors using actual counts are expected to have in producing meal claims broken down by reimbursement category and meal type (relative to the effort required under a simplified counts system). The estimates further assume that among sponsors using a simplified count system, the average meal claiming burden for sponsors without any mixed DCHs will be about one-half the average burden for sponsors serving mixed DCHs. This assumption is consistent with the lower level of effort required to process meal claims from non-mixed DCHs. In addition, as described above, the estimates assume economies of scale so that the burdens are not directly proportional to the number of DCHs a sponsor serves.

Table 8 translates the burdens displayed in table 7 into fiscal costs. The fiscal costs were produced by assuming that the weighted average pay rates for employees responsible for performing the new sponsor burdens is $15.00 per hour.[9] The table implies that the annual increase in administrative costs due to tiering, for the average small, medium, and large sponsor, are about $600, $3,400, and $5,600 (in 1997 dollars), respectively. These costs represent about one percent of the total annual administrative payments the average small, medium, and large sponsor would receive from USDA (in 1997 dollars): $29 thousand, $158 thousand, and $266 thousand, respectively.

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Table 8[c,d]

Estimated Annual Sponsor Fiscal Cost from Two Tier DCH System

Burden	Estimated Annual Sponsor Fiscal Cost by Sponsor Size (In 1997 Dollars)			Estimated Percent of Sponsors Affected in Each Size Category		
	Small	Medium	Large	Small	Medium	Large
Tiering Determinations						
1. Low Income Providers (Includes Verification)	$240	$1,620	$2,685	100%	100%	100%
2. Area Eligibility	$90	$645	$1,080	100%	100%	100%
Tier II Household Income-Eligibility Determinations	$180	$825	$1,650	20%	43%	37%
Data Collection and Reporting[a]	$60	$225	$420	100%	100%	100%
Meal Claiming						
1. Actual Counts System (with mixed tier II DCHs)	$345	N/A[b]	N/A[b]	10%	N/A[b]	N/A[b]
2. Simplified Counts System (with mixed tier II DCHs)	$165	$765	$1,140	10%	43%	37%
3. No Mixed Tier II DCHs	$90	$375	$570	80%	57%	63%
Weighted Average Cost	$549	$3,387	$5,576	—	—	—
Average USDA Administrative Payments, Annual	$28,800	$158,400	$266,400	—	—	—
Wght. Avg. Cost as % of Admin. Payments	2.0%	2.1%	2.1%	—	—	—

[a] Includes tier I, tier II, and tier II low-income enrollment counts; tier I and tier II DCH counts; and description of tiering determination method in sponsor management plan.

[b] Due to the burden associated with actual meal counts systems, it is expected that only small sponsors will choose actual counts.

[c] The sponsor costs shown in table 8 equal the burden hours in table 7 multiplied by a wage rate of $15.00/hour, as described in th text.

[d] The wage rate of $15.00/hour responds to comments on interim rule and is about twice the rate used in the interim analysis. See section 6 for complete explanation. This change approximately doubles the figures relative to the interim analysis.

IV. Costs to CACFP State Agencies

The costs to CACFP State agencies consist of their being required to provide sponsors with low-income area eligibility data; increased requirements for sponsor reviews, particularly auditing sponsors' documentation for approved income-eligible children; and State agencies' obligation to provide sponsors with technical assistance. In terms of area eligibility data, State agencies will be responsible for providing (1) census data identifying all State census blocks where at least 50 percent of the children are from low-income households and (2) an annually updated list of all State elementary schools that have more than 50 percent of their enrollment certified to receive free or reduced-price lunches under the NSLP. The agencies' other responsibility relating to area eligibility data is deciding when to authorize sponsors to use census data to make area eligibility based tier I classifications. The final rule states that when sponsors make area-based tier I classifications, they must first attempt to make the classification using school data, except when school enrollment patterns are not based on geographical proximity, in which case sponsors must make area-eligibility determinations using census data. If a home does not qualify for tier I based on school data and a sponsor wishes to use census data, the sponsor must first receive approval from the State agency, unless the attendance area-bounding the DCH belongs to a school with at least 40 percent of its enrollment approved for free or reduced price meals or a school with a geographically large rural attendance area. In these two special cases, sponsors may approve DCHs for tier I through census data if the school data does not support such a classification, otherwise sponsors must first receive approval from their State

agency before using census data to approve a DCH for tier I.

For the average State CACFP agency, it is estimated that the obligation to provide sponsors with elementary school data annually and census data as it becomes available represents an average annual burden of 25 hours, which assumes each instance of data transmittal and subsequent follow-up takes 1 hour. This estimated burden is equivalent to $450, which assumes a wage rate of $18 per hour, which is based on information in States' plans for State Administrative Expense funds and FCS-conducted State Management Evaluations.

Tiering will also increase State agencies' sponsor review requirements. The final rule requires that as part of their sponsor reviews, State agencies review the documentation sponsors used to deem children in tier II DCHs income-eligible as well as the documentation sponsors used to approve providers for tier I on the basis of income. State agencies are responsible for ensuring that application forms are completed correctly; that the stated income on each falls below 185 percent of the Federal income poverty guidelines; that proffered documentation of participation in a Federal or State benefits program represents "official evidence" of participation in a qualifying program; and that the incomes of income-approved tier I providers were properly verified. State agencies are given the option of performing "pricing program" verifications on all income documentation, but it is expected that very few will do so because of the significant time required to conduct such verifications. The agencies are also responsible for ensuring that sponsors used the most current data available for making area eligibility determinations, but are not required to independently verify the determinations. For the average State CACFP agency, it is estimated that performing these reviews amounts to an annual burden of 63 hours, with some States expending much less than this amount and others much more, depending on the size and number of sponsors in the State. This estimated burden is equivalent to $1,134, which assumes a wage rate of $18 per hour.

State CACFP agencies will likely see an appreciable increase in their training and technical assistance burden as the transition to the new two tier system is made. Under the new system, State agencies will have to provide new guidance and training on all new aspects of CACFP introduced by tiering, for example, DCH tiering determinations, new meal counting and claiming procedures, and new data reporting requirements. This burden will likely persist for the first several years the new system is in place. It is believed that the new training and technical assistance burdens represents about 10–20 hours of new burden per sponsor per year for a State agency. For the average State, this implies an annual burden of between 230 and 460 hours (between $4,140 and $8,280) for the first several years of tiering and presumably abating thereafter. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193) provides some funds to help State CACFP agencies make the transition. It directs the Secretary of Agriculture to set aside $5 million of fiscal year 1997 CACFP funds for one-time grants to State CACFP agencies. These grants must be used to aid States, sponsors, and DCHs with making the transition to the new system. Pub. L. 104–193 allows each of the 54 State agencies to retain up to 30 percent of its total grant for State agency use. If all States agencies retained the maximum allowable, a total of approximately $1.5 million would be retained at the State level, with the remaining $3.5 million going to DCHs and their sponsors.

The interim rule added a new requirement to the management plans that sponsors must submit annually. Now, each sponsor must describe the approach it will use to make DCH tiering determinations. Reviewing this component of the plan will presumably place minimal additional burden on the State agency.

There is the potential that in some States the decreased CACFP reimbursements will lead to an increase in the State-wide average fee charged by providers. This increase may have the effect of increasing State expenditures for subsidized child care, as a State's subsidized care payments are often based on the average fee that providers in the State are charging. Being unable to predict a numerical value for the effect the reimbursement rate cut will have on provider fees, as discussed previously under Costs to Providers, quantifying this potential cost to States is precluded. Neither the final nor the interim rule directs States to increase payments for subsidized child care.

V. Costs to NSLP State Agencies and NSLP School Food Authorities

Under Pub. L. 104–193, State NSLP agencies are required to annually provide a list of all State elementary schools in which at least 50 percent of the enrollment is certified to receive free or reduced-price NSLP lunches. However, these agencies do not currently collect school-level information. NSLP School Food Authorities (SFAs), which are generally school districts, are the only entities other than the schools that collect this data. SFAs are also more able than schools to provide the data to the NSLP State agency. The interim and final rules accommodates this situation by directing SFAs to inform their State NSLP agency of the elementary schools that have at least 50 percent of their enrollment certified to receive free or reduced-price NSLP lunches. It is estimated [10] that roughly 5,000 SFAs will contain the approximately 11,000 elementary schools meeting this criterion, and that the annual average reporting burden on an SFA will be roughly 1.5 hours ($12). The NSLP State agencies will receive the lists of elementary schools from their SFAs, compile and presumably do basic error checking on them, and pass the compiled listings on to the State CACFP agencies. It is estimated that the average NSLP State agency burden associated with this work will be 2.5 hours ($45) annually, using State CACFP agency wage assumptions.

The final rule also requires SFAs to provide sponsors with attendance area boundary information for elementary schools where at least 50 percent of the enrollment is certified eligible for free or reduced price meals. The requirement applies only to schools with defined attendance areas, which excludes magnet schools and all other schools in which attendance is not determined by geographic proximity. It is assumed that, on average, each of the roughly 5,000 SFAs with at least one elementary school having at least 50 percent of its enrollment approved for free or reduced price meals will receive 2 requests annually for attendance area boundary information and that the average time to meet each request will be 2 hours, for an annual burden of 4 hours per SFA ($60, using the table 8 wage assumptions).

Comparison of Costs and Benefits

The analysis presented here finds that the DCH tiering structure established by Pub. L. 104–193 and promulgated by the interim and final rules will partially accomplish its objective of targeting Federal child care benefits to low-income children. This targeting will save a projected $1.7 billion in Federal tax revenues over the next 6 years (fiscal years 1997–2002). Non-low-income providers (tier II DCHs providers) and non-low-income families with children in tier II DCHs will bear most of the costs resulting from the Federal

government's $1.7 billion savings. Non-low-income households served by tier I DCHs will be unaffected by tiering. It is possible that some low-income families with children in tier II DCHs may bear some of the costs, but States may offset them by opting to increase child care subsidies. The analysis further finds that while targeting will place new administrative burdens on sponsors, State CACFP and NSLP agencies, and NSLP school food authorities, these burdens are relatively modest.

7. Requirements for Regulatory Analyses, as Established by Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) establishes requirements for analyses of regulatory actions that are expected to have a significant economic impact on a substantial number of small entities. Public Law 96–354 was enacted at the urging of small businesses after repeated claims that uniform application of regulations regardless of business size was disproportionately damaging to small entities. It is expected that this rule will have an economically significant impact on tier II DCH providers due to the large decrease in reimbursement rates for meals served in those DCHs. This rule will also affect sponsoring organizations, considered to be "small organizations" by Public Law 96–354, although the economic impact on them is expected to be much less than the effect for DCHs.

The specific effects for sponsors and tier II providers were discussed under the Costs to Providers and Costs to Sponsors sections under the Cost/Benefit Assessment of Economic and Other Effects. The interim and final rules implement, to comply with statute and to meet the statutory intent of targeting benefits, the programmatic changes mandated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193). The rule's only economically significant impact is the decreased meal reimbursements for meals served in tier II DCHs. The Food and Consumer Service (FCS) cannot mitigate this effect other than by making targeting less accurate, which would be contrary to the spirit of Pub. L. 104–193. The only other class of small entities affected by this regulatory action is sponsors. The final analysis finds that the costs sponsors will incur in meeting the new program requirements established by the interim and final rules will be about two percent of the payments each sponsor receives from FCS for operating the CACFP in its DCHs. This implies that the rules' economic impact on sponsors is generally not significant and that in the few areas where FCS had discretion, its choices strike an appropriate balance between adhering to Public Law 104–193's intent to target benefits and making realistic demands of sponsors.

Public Law 96–354 mandates that the analyses contain "a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed (final) rule as a result of such comments." Six commenters addressed the interim analysis. The preponderance of their comments fall into four categories: They think the assumption that 10 percent of all DCHs will be mixed tier II is too low; they disagree with the conclusion that the total new costs imposed on sponsors by tiering will be less than one percent of the administrative funds the sponsors are paid in a year by FCS; they disagree with the description of tier II providers' likely responses to lower rates and the ramifications of those actions; and they disagree with the assumption that only small sponsors will use actual meal count systems. These areas, plus comments falling outside them, are considered in turn below.

Five commenters said the analysis underestimated the number of mixed tier II DCHs, basing their assertions on their own experience as DCH sponsors. They said the underestimation led FCS to underestimate sponsor burdens associated with mixed tier II DCHs. FCS has previously stated that there are no data on which to base an estimate of the percent of DCHs nationwide that will be mixed tier II. FCS does not believe it is appropriate to alter its assumption based on a very limited number of commenters whose own experience in particular geographic areas suggest that the 10 percent mixed tier II assumption is too low and who did not substantiate their claims with empirical data. It is possible that those whose experience is most at odds with the analysis would be the most motivated to submit comments expressing their disagreement, and that the experiences of other sponsors might suggest that the 10 percent assumption is either generally appropriate or too high. FCS recognizes that effective program administration requires empirical data on the number of mixed tier II DCHs and is currently working with the States to obtain that data.

Four commenters indicated the analysis underestimated the total costs of tiering imposed on sponsors; the interim analysis found that total new costs would be approximately 1 percent of the total administrative payments sponsors receive from FCS during a year. The 1 percent figure is the sum of several new costs imposed by tiering. FCS divided the new burdens/costs imposed on sponsors into four categories. For each category, FCS estimated to the best of its ability—using study data, program data, and program knowledge—the burdens/costs which that category of new burdens/costs would impose on sponsors. After these estimates were completed, FCS decided the new burdens needed to be compared to some metric to assess the relative magnitude of the total new burden. It was decided to compare the sum of the new burdens to total annual administrative payments made to sponsors, which produced the 1 percent figure contended by the commenters. FCS did not assume the new burdens would amount to 1 percent, rather the 1 percent was the mere summation of several calculations, each to estimate the new burdens/costs in a particular category. Since commenters asserted that 1 percent is too low, without being more specific as to what aspects of the intermediate calculations (burden calculations) are perceived to be deficient, FCS has decided to retain the burden estimation procedures used in the interim analysis. FCS did re-consider the wage rate used for employees of DCH sponsors. Data obtained from sponsors [9] suggest that the $8 hourly rate used in the interim analysis is too low, and that an hourly rate of $15 is more appropriate, which is used in this analysis.

Three commenters were dissatisfied with the discussion of how tier II providers may respond to the lower reimbursement rates and the consequences of their response. One commenter argued that the analysis was wrong in saying that tier II providers may decrease expenditure on "non-essentials", such as books and games, because these items are essential for childhood development. FCS was not making an evaluative statement on the materials necessary for providing a developmentally appropriate child care environment, but rather suggesting that some providers may view such items as non-essential in order to cut costs and stay in operation. The same commenter argued that tier II providers are not capable of absorbing a decrease in meal reimbursement rates. FCS agrees that there would be little profit left if the provider absorbed the total loss; however, some providers whose income is not limited to child care may be in a position to absorb a rate cut and may

choose to do so. Finally both commenters took issue with the statement that healthier food could be obtained for less money. The commenters appear to have misinterpreted a statement in the analysis which said that with decreased tier II meal reimbursements, providers may choose to buy lower quality food whereby the nutritional quality of the provider's meals would suffer, but that it is also possible for a provider to change the types of foods purchased and buy foods that are less expensive and of a higher nutritional quality than the more expensive foods purchased previously. The comments interpreted the statement as saying meals of higher nutritional quality can be obtained by purchasing cheaper, lower-quality foods. Rather, FCS believes that higher meal cost does not always result in more nutritious meals.

Two commenters expressed their belief that the interim rule is incorrect in assuming that only small sponsors will choose actual meal count systems because some States require sponsors to collect actual meal counts from DCHs. Under the interim and final rules, States may require that DCHs keep actual counts and may require that DCHs provide these counts to their sponsors, but States are prohibited from directing their sponsors to use an actual counts system, which means States cannot direct their sponsors to calculate reimbursement amounts according to DCHs' actual meal count records and the documented income-eligibility status of each enrolled child. If a sponsor chooses a simplified count system and is in a State that requires DCHs to submit actual counts to their sponsors, the sponsor would calculate mixed tier II DCH reimbursements by applying either claiming percentages or blended rates to meal count totals by meal type. FCS has no evidence that an appreciable number of medium and large sponsors would choose to self-impose the additional burden associated with actual counts when, compared with simplified count systems, actual counts do not reduce the probability of sponsors making reimbursement calculation errors; do not produce, over time, higher payments to DCHs; and do not allow providers to calculate the reimbursement they are due with any greater accuracy. Therefore, this analysis retains the interim analysis's assumption that an insignificant number of medium and large sponsors will opt for an actual meal count system.

In response to the six comments received on the initial regulatory flexibility analysis, FCS has made no changes to the final rule. However, FCS has made changes to the analysis in response to public comment, including changing the labor wage rate assumptions used to calculate the costs associated with the new sponsor burdens. Furthermore, FCS recognizes the need to obtain empirical data on the number of mixed tier II DCHs in operation and on the characteristics of sponsors using actual counts systems.

The Pub. L. 96–354 also requires that the final analysis estimate the types of professional skills necessary to meet the final and interim rules' reporting and record keeping requirements. The new reporting and record keeping required by this rule require no skills beyond those necessary for current program reporting and record keeping requirements.

Pub. L. 96–354 further requires that analyses describe the steps taken by the promulgating agency to minimize the economic impact on small entities. Specifically, the "analysis shall also contain a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes." There are no significant alternatives available to FCS that both (1) accomplish the stated objectives of Pub. L. 104–193 and (2) minimize any significant economic impact on small entities. FCS has attempted to adapt the rules based on comments received in response to the interim rule. Changes made by the final rule to the interim, in response to comments, were described in the section title *Summary of Changes to Interim Analysis*. All three reduce burdens; two reduce burdens on DCH sponsors, and the third reduces burdens for State CACFP agencies. All three changes should make the two tier system easier to implement and administer. In addition, the preamble to the final rule provides an in-depth discussion of how the final rule reflects the comments received on the interim rule.

8. References

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4. Kisker, Ellen E., Sandra L. Hoffereth, Deborah A. Phillips, and Elizabeth Farquhar. *A Profile of Child Care Settings: Early Education and Care in 1990, Volume I*. Princeton, NJ: Mathematica Policy Research, Inc., 1991.
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7. Kisker, Ellen Eliason, Valarie A. Piper. *Participation in the Child and Adult Care Food Program: New Estimates and Prospects for Growth*. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Analysis and Evaluation, April 1993.
8. Hoffereth, Sandra L., April Brayfield, Sharon Deich, and Pamela Holcomb. *National Child Care Survey, 1990*. Washington, DC: Urban Institute, 1991.
9. Selected sponsor data from FCS's Virginia CACFP Regional Office Administered Program (ROAP).
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Approved:
Dated: July 31, 1997.

William E. Ludwig,

Administrator, Food and Consumer Service.

Dated: October 7, 1997.

Stephen B. Dewhurst,

Director, Office of Budget and Program Analysis.

Dated: October 10, 1997.

Keith Collins,

Chief Economist.

Dated: October 31, 1997.

Shirley R. Watkins,

Under Secretary for Food, Nutrition and Consumer Services.

[FR Doc. 98–4407 Filed 2–23–98; 8:45 am]
BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 723

RIN 0560–AE13

Special Combinations for Tobacco Allotments and Quotas

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts with a modification the interim rule published in the **Federal Register** (62 FR 15599) on April 2, 1997. The interim rule provided for special combinations of flue-cured tobacco allotments and quotas on participating and nonparticipating farms with "production flexibility contracts" (PFC) under the Agricultural Market Transition Act of 1996 (AMTA) and for, burley tobacco, an exemption to dropping the quota on divided farms with less than 1,000 pounds if the farm meets the requirements for a farm combination. After further review of the rule and the comments, the regulations adopted in the interim rule have been modified to allow for other transfers of tobacco quota, for all tobacco types, between farms with the same owner in cases where a farm combination could otherwise be used to produce the desired result but is not available, as a practical matter, because of restrictions under the PFC program administered by the Department. The amended provisions permit such transfers to be approved without regard to restrictions for purchased quota that apply to transfers by lease or sale. Also, the interim rule has been modified to permit the agency to modify non-statutory deadlines for transfers and other requirements when special circumstances warrant such action.

EFFECTIVE DATE: February 24, 1998.

FOR FURTHER INFORMATION CONTACT: Joe Lewis Jr., Tobacco Branch, Tobacco and Peanuts Division, USDA, FSA, STOP 0514, 1400 Independence Avenue, SW., Washington, DC 20250–0514, telephone 202–720–0795.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant and therefore was not reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this final rule since the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12988

The final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule are not retroactive and preempt State laws to the extent that such laws are inconsistent with the provisions of this final rule. Before any legal action is brought regarding determinations made under provisions of 7 CFR part 723, the administrative appeal provisions set forth at 7 CFR part 780 and 7 CFR part 711, as applicable, must be exhausted.

Paperwork Reduction Act

This final rule does not contain new or revised information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 et seq.). The information collections required in 7 CFR part 723 have previously been cleared under OMB control number 0560–0058.

Effective Date of Rule

It has been determined for purposes of all limitations that might apply, including any provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, that this rule should be effective immediately. The interim rule (at 62 FR 15599, April 2, 1997) set forth the reasons that the rule should be effective immediately. The nature of the interim rule was to provide relief to flue-cured tobacco producers who were adversely affected by restriction on the combination of farms. Additional relief is provided in this final rule by allowing for other transfers of tobacco quota, for all tobacco types, between farms with the same owner in cases where a farm combination could otherwise be used to produce the desired result but is not available, as a practical matter, because of restrictions under the PFC program of the Department. As the rule simply provides additional flexibility to producers and should not have any material adverse effect on anyone, it has been determined that the full rule, including the modification, should be made effective immediately.

Discussion of Comments

The interim rule (at 62 FR 15599, April 2, 1997) requested comments from interested parties. A total of three comments were received from the public; two from State level farm organizations, and one from a county level farm organization. All comments were supportive of the provisions relating to the special combinations of flue-cured tobacco allotments and quotas. These special combinations would avoid undue hardships on many flue-cured tobacco producers. It should be noted that the adopted rule allows for effective combinations of farms in cases where the combination could otherwise occur but for restrictions that may arise under the PFC program of the Department, as was indicated in the preamble of the interim rule. The adopted regulations do not override basic limitations on transfers. Thus, for example, the rule does not provide new authority for the transfer or effective movement of quota across county lines that otherwise would not be possible through a farm combination as the existing restrictions on such movements of quota are statutory. However, on further review it has been determined to otherwise expand the rule to provide authority to allow for effective combinations in all instances for tobaccos, as the need may arise, where the result sought would be obtained, otherwise, by a farm combination were it not for restrictions arising under the PFC program. This would, for example, allow for effective transfers of quota to be made between two burley farms with the same owner in instances in which the transfer would otherwise be prohibited under the rules because of there being a transfer to and from the transferring farm within the same three year period. Essentially, the modified rule would simply allow the farms to be considered to be the same farm for tobacco purposes just as they could have been in the past through a farm combination without having to treat those farms as being combined for PFC purposes as well. Protection for the PFC program will be provided in the manner specified in the interim rule through restrictions on using the land freed up by the transfer of quota. Specifically, that land will not be usable for the production of "PFC commodities"—that is, commodities for which there is a potential eligibility for loans under the PFC program. To make this and other

clarifying changes, 7 CFR 723.209(c) as published in the interim rule is amended. In addition, with respect to restrictions relating to transfers in general, 7 CFR 723.103 is amended so that non-statutory deadlines and other requirements may be modified where circumstances warrant, such as in the case this year with the final deadline for marketing burley tobacco where that deadline has proven inopportune given weather and crop conditions this year. This additional flexibility should not have an adverse effect on anyone and should provide a greater opportunity to allow for relief in meritorious cases. Consequently, delaying implementation of that provision appears to be contrary to the public interest.

List of Subjects in 7 CFR Part 723

Acreage allotments, Auction warehouses, Dealers, Domestic manufacturers, Marketing quotas, Penalties, Reconstitutions, Tobacco.

For the reasons set forth in the preamble, the interim rule for 7 CFR part 723 published on April 2, 1997 (62 FR 15599) is hereby adopted as a final rule with the following changes:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 11377–1379, 1421, 1445–1 and 1445–2.

2. The heading for § 723.209 is revised as set forth below.

3. Paragraph (c) of 723.209 is amended as follows:

(i) In the first sentence, "quotas for flue-cured tobacco," is revised to read "quotas";

(ii) In the third sentence, "PFC flue-cured quota farm" is revised to read "PFC farm";

(iii) The fifth sentence is revised to read as follows:

§ 723.209 Determination of acreage allotments, marketing quotas, and yields for combined farms; special combinations for farms with production flexibility contracts.

* * * * *

(c) * * * Such action could result in a farm being found to have had excess acreage devoted to tobacco or excess marketings of tobacco, in which case certain penalties, along with other sanctions as may be applicable, would apply. * * *

4. Section 723.103(d) is amended by adding at the end a new sentence to read as follows:

§ 723.103 Administration

* * * * *

(d) * * * Further, the Administrator or the Administrator's designee may modify any deadline or other provisions of this part to the extent that doing so is determined by such person to be appropriate and not inconsistent with the purposes of the program administered under this part.

Signed at Washington, DC, on February 18, 1998.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 98–4560 Filed 2–23–98; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV98–959–2 IFR]

Onions Grown in South Texas; Removal of Sunday Packing and Loading Prohibitions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes the handling regulation under the South Texas onion marketing order by removing the Sunday packing and loading prohibitions. The marketing order regulates the handling of onions grown in South Texas and is administered locally by the South Texas Onion Committee (Committee). This rule will allow the South Texas onion industry to compete more effectively with other growing areas, better meet buyer needs, and increase supplies of South Texas onions in the marketplace.

DATES: Effective February 25, 1998; comments received by April 27, 1998, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This rule changes the handling regulation under the South Texas onion marketing order by removing the

Sunday packaging and loading prohibitions. It also modifies § 959.322(f)(5) by removing all references to the Sunday packaging and loading prohibitions. This rule will provide handlers with greater flexibility and additional time to prepare onions for market.

Section 959.322 of the order currently prohibits the packaging or loading of onions on Sunday during the period March 1 through May 20 of each season. This prohibition has been in place for 35 years to foster orderly marketing conditions. Handlers were permitted to move onions that were already inspected and billed, but were not prevented from harvesting onions or taking them to the packing shed for storage or to the dryers. The onions, however, could not be packaged or loaded on Sunday during that time period.

At a Committee meeting on November 6, 1997, producers and handlers expressed the view that the Sunday holiday had outlived its usefulness. In recent seasons, the Sunday packaging and loading prohibition has hindered the movement of South Texas onions by not allowing producers and handlers to harvest and pack each day of the week. Last year, the South Texas area received record amounts of rainfall and producers had difficulty harvesting their onions. The packaging and loading restriction prevented handlers from packaging or loading onions, even when it was dry by Sunday. These heavy periods of rain disrupted the normal pattern of harvesting, packing, and loading.

Due to these severe conditions last season, the Committee unanimously recommended relief from the Sunday packing and loading restriction in April through May 20 of the onion season. The restriction was removed and handlers had the flexibility to package and load onions on Sunday, which helped them to salvage some of their crop. According to the Committee's pre-season estimate, five million fifty-pound bags were expected to be harvested last season. However, due to the inclement weather, only 2.78 million fifty-pound bags were shipped.

At its November 6, 1997, meeting, the Committee unanimously recommended revising the current handling regulation to remove the restriction on packaging and loading onions on Sundays. This action will allow the South Texas onion industry to compete more effectively with other growing areas, better meet buyer needs, and increase supplies of South Texas onions in the marketplace.

Continuing to prohibit the packaging and loading of onions on Sunday could prevent the South Texas onion industry from marketing more of their onions. Producers object to the Sunday restriction because if the shed is full of onions they are prevented from sending more onions to the sheds. By removing the Sunday restriction, handlers could continue to package and load onions on Sunday and salvage the producers' crops if there were a threat of adverse weather conditions.

The Committee noted that competing areas pack and load on Sundays, and the restrictive Sunday holiday has prevented the South Texas onion industry from competing effectively with other areas that do not restrict packing or loading on Sundays. The South Texas onion industry wants the same opportunity. Continuing to prohibit the packing and loading of onions on Sunday would present an unreasonable and unnecessary hardship on handlers in the production area. If the prohibitions continue, the Committee believes that Texas markets will be taken by competing areas, and that the Texas onion industry will not be able to meet their buyers' needs.

The Committee's recommendation is expected to improve producers' and handlers' returns by allowing them to package and load onions on Sunday if their operations were curtailed for some reason earlier during the week. There have been times when handlers have been packing onions on Saturday night, and at 12:01 a.m. had to stop even though the packing had not been completed. This restriction is unacceptable to the South Texas onion industry. The producers and handlers need the flexibility to pack and ship each day of the week to effectively meet their competition.

This action will allow handlers to package and load onions on Sunday and permit producers to harvest and deliver their onions to packing sheds each day of the week. This will provide producers and handlers more flexibility in meeting buyer needs and additional time for preparing onions for market.

Removing the Sunday packing and loading prohibitions also requires that all references to the Sunday restrictions be removed from § 959.322(f)(5). Currently, the prohibition against packing or loading onions on Sunday may be modified or suspended to permit the handling of onions for export provided that such handling complies with safeguard procedures. In addition, whenever the handler grades, packages, and ships onions for export on any Sunday, such handler is required to cease all grading, packaging, and shipping on the first weekday following shipment for the same length of time as the handler operated on Sunday. The Committee recommended the removal of such references. Thus, § 959.322(f)(5) is revised to remove all references to the Sunday prohibition.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 38 handlers of South Texas onions who are subject to regulation under the order and approximately 70 onion producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 1996–97 marketing year, onions produced on 12,175 acres were shipped by the industry's 38 handlers; with the average acreage and median acreage handled being 310 acres and 177 acres, respectively. In terms of production value, total revenues from the 38 handlers were estimated to be $23.6 million; with average and median revenue being $620,000 and $146,000, respectively. The industry is highly concentrated as the largest 8 handlers (largest 25 percent) controlled 62 percent of the acreage and 77 percent of onion production.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that all the 38 handlers regulated by the order would be considered small entities if only their spring onion revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the $5,000,000 annual receipt threshold. All of the 70 producers may be classified as small entities based on the SBA definition if only their revenue from spring onions is considered. When revenue from all sources is considered, a majority of the producers would be considered small entities because many of the producers would exceed the $500,000 figure.

This rule would relieve the Sunday ban on packing and loading onions from South Texas allowing individual firms the flexibility to modify operations to effectively compete with production areas not bound by such restrictions, to fill customer orders, and to take advantage of available transportation.

The Committee recommended this rule change for the purpose of ensuring a timely flow of available supplies, and thus help to maintain stability in the onion market. Being reasonably assured of a stable price and market provides South Texas onion producers and handlers with added flexibility to maintain proper cash flow and to meet annual expenses. The market and price stability provided by the order potentially benefits the smaller handlers more than such provisions benefit large handlers. Smaller producers and handlers are more dependent upon stable prices. Larger handlers are more diversified and not as dependent upon price stability. Therefore, the relief of packing and loading restrictions on Sundays has small entity orientation.

While the level of benefits of removing the Sunday packing and loading prohibitions are difficult to quantify, this action is expected to allow the South Texas onion industry to compete more effectively with other growing areas, better meet buyer needs, and increase supplies of South Texas onions in the marketplace. Last season, the South Texas onion industry expected to ship 5 million 50-pound bags of onions with a production value of $45.6 million. However, inclement weather during a substantial part of the shipping season limited shipments. Late in the season, the packing and loading restrictions were removed to help producers and handlers salvage their crops. Industry shipments totaled 2.8 million bags with a production value of $25.4 million. The suspension for last season provided producers and handlers more flexibility in meeting the needs of their buyers.

The Committee believes that providing handlers the ability to pack and load on Sundays will benefit the industry. Removal of the prohibitions will provide producers with an additional window of opportunity to harvest and deliver their onions to handlers for sorting, grading, packaging, and loading. Moreover, the continued use of this self-imposed restriction could cause the South Texas area to lose its markets to other competing areas, because these areas can package and load onions on Sunday. Removing the Sunday packaging and loading prohibitions will positively impact both small and large handlers by helping them maintain markets.

This action is expected to improve producers' and handlers' returns by allowing them to package and load onions on Sunday if their operations were curtailed for some reason earlier in the week. The ability to pack and load on Sunday will help the handlers fill unexpected rush orders made at the end of the normal packing week. There have been times when handlers were packing onions on Saturday night, and at 12:01 a.m. had to stop even though the packing had not yet been completed. This hindered handler operations and unduly delayed the packing and shipping of onions to meet buyer needs.

The Committee considered not removing the Sunday packing and loading prohibitions. However, not relaxing the regulation could result in significant crop losses as occurred last season prior to the emergency suspension of the prohibitions. Also, the cessation in harvesting activity last season resulted in increased unemployment among onion field workers and employees at handlers' facilities. In addition, reduced supplies could result in consumers paying higher prices for onions. The opportunity to pack and load onions seven days a week will give producers and handlers more time to harvest and prepare onions for market. This increased flexibility will enable the industry to better meet buyer needs and to compete more effectively with its competition.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large South Texas onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the November 6, 1997, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the information and recommendation by the Committee and other available information, it is hereby found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a change to the handling regulation currently prescribed under the South Texas onion marketing order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes requirements in the handling regulations; (2) this action must be taken promptly to be in place by March 1, the start of the South Texas onion regulatory period; (3) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 959.322, the introductory paragraph is amended by removing the last sentence and paragraph (f)(5) is revised to read as follows:

§ 959.322 Handling regulation.

* * * * *

(f) * * *

(5) *Export shipments.* Export shipments shall be exempt from all container requirements of this section.

* * * * *

Dated: February 17, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–4596 Filed 2–23–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV97–982–1 FIR]

Hazelnuts Grown in Oregon and Washington; Reduced Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which decreased the assessment rate established for the Hazelnut Marketing Board (Board) under Marketing Order No. 982 for the 1997–98, and subsequent marketing years. The Board is responsible for the local administration of the marketing order which regulates the handling of hazelnuts grown in Oregon and Washington. Authorization to assess hazelnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The 1997–98 marketing year covers the period July 1 through June 30. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: March 26, 1998.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440 or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 115 and Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, hazelnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable hazelnuts beginning July 1, 1997, and continuing in effect indefinitely unless modified, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the assessment rate established for the Board for the 1997–98, and subsequent marketing years of $0.004 per pound of hazelnuts.

The order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of hazelnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97, and subsequent marketing years, the Board recommended, and the Department approved, an assessment rate that would continue in effect from marketing year to marketing year indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on August 28, 1997, and unanimously recommended 1997–98 expenditures of $553,218 and an assessment rate of $0.004 per pound of hazelnuts. In comparison, last year's budgeted expenditures were $558,974. The assessment rate of $0.004 is $0.003 less than the rate previously in effect. At the former rate of $0.007 per pound and an estimated 1997 hazelnut production of 70,000,000 pounds, the projected reserve on June 30, 1998, would have exceeded the level the Board believes is necessary to administer the program. Section 982.62 of the order allows the Board to establish and maintain an operating monetary reserve in an amount not to exceed approximately one marketing year's operational expenses. Last year's actual Board expenditures totaled $284,894. The reduced assessment rate is expected to result in an operating reserve of $257,497, which is about equal to what the Board actually spent last year for program expenses.

The Board discussed lower assessment rates, but decided that an assessment rate of less than $0.004 would not generate the income necessary to administer the program with an adequate reserve. Major expenses recommended by the Board for the 1997–98 marketing year include $46,864 for personnel service (salaries and benefits), $5,640 for rent, $5,000 for compliance, $17,000 for a crop survey, $269,000 for promotion, and $182,364 for an emergency fund. Budgeted expenses for these items in 1996–97 were $50,020, $5,640, $5,000, $15,000, $275,000, and $182,364, respectively.

The assessment rate recommended by the Board was derived by dividing

anticipated expenses by expected shipments of hazelnuts. With hazelnut shipments for the year estimated at 70,000,000 pounds, the $0.004 per pound assessment rate should provide $280,000 in assessment income. Income derived from handler assessments, along with interest and funds from the Board's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 1997–98 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,000 producers of hazelnuts in the production area and approximately 25 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of hazelnut producers and handlers may be classified as small entities.

This rule continues in effect a decreased assessment rate established for the Board and collected from handlers for the 1997–98, and subsequent marketing years. The Board unanimously recommended 1997–98 expenditures of $553,218 and an assessment rate of $0.004 per pound of hazelnuts. The assessment rate of $0.004 is $0.003 less than the rate previously in effect. At the former assessment rate of $0.007 per pound, the Board's reserve was projected to exceed the level the Board believes is necessary to administer the program. Therefore, the Board voted to lower its assessment rate and use more of the reserve to cover its expenses. Section 982.62 of the order allows the Board to establish and maintain an operating monetary reserve in an amount not to exceed approximately one marketing year's operational expenses. Last year's actual Board expenditures totaled $284,894. The reduced assessment rate is expected to result in an operating reserve of $257,497, which is about equal to what the Board actually spent last year for program expenses.

The Board discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with an adequate reserve. Major expenses recommended by the Board for the 1997–98 marketing year include $46,864 for personal services (salaries and benefits), $5,640 for rent, and $5,000 for compliance, $17,000 for a crop survey, $269,000 for promotion, and $182,364 for an emergency fund. Budgeted expenses for these items in 1996–97 were $50,020, $5,640, $5,000, $15,000, $275,000, and $182,364, respectively.

Hazelnut shipments for the year are estimated at 70,000,000 pounds, which should provide $280,000 in assessment income. Income derived from handler assessments, along with interest and funds from the Board's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order. The maximum permitted of one marketing year's operational expenditures is specified in § 982.62. The reduced assessment rate is expected to result in an operating reserve of $257,497, which is about equal to what the Board spent last year for program expenses.

Recent price information indicates that the grower price for the 1997–98 marketing season will range between $0.32 and $0.43 per pound of hazelnuts. Therefore, the estimated assessment revenue for the 1997–98 marketing year as a percentage of total grower revenue will range between .93 and 1.25 percent.

This action continues to reduce the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large hazelnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Board's meeting was widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations. Like all Board meetings, the August 28, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on October 14, 1997 (62 FR 53225). The rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended December 15, 1997. No comments were received.

After consideration of all relevant matter presented, including the Board's recommendation, and other information, it is hereby found that finalizing the interim final rule, without change, as published in the **Federal Register** (62 FR 53225, October 14, 1997) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 982

Marketing agreements, Hazelnuts, Reporting and recordkeeping requirements.

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 982 which was published at 62 FR 53225 on October 14, 1997, is adopted as a final rule without change.

Dated: February 17, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–4593 Filed 2–23–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV97–984–1 FIR]

Walnuts Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which decreased the assessment rate established for the Walnut Marketing Board (Board) under Marketing Order No. 984 for the 1997–98 and subsequent marketing years. The Board is responsible for local administration of the marketing order which regulates the handling of walnuts grown in California. Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: March 26, 1998.

FOR FURTHER INFORMATION CONTACT: Diane Purvis, Marketing Assistant, or Mary Kate Nelson, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning August 1, 1997, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the assessment rate of $0.0116 per kernelweight pound of certified merchantable walnuts established for the Board for the 1997–98 and subsequent marketing years.

The California walnut marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997–98 and subsequent marketing years, the Board recommended, and the Department approved, an assessment rate that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on September 12, 1997, and unanimously recommended 1997–98 expenditures of $2,391,289 and an assessment rate of $0.0116 per kernelweight pound of certified merchantable walnuts. In comparison, last year's budgeted expenditures were $2,301,869. The assessment rate of $0.0116 is $0.0001 lower than the rate formerly in effect. The lower assessment rate is needed to bring expected assessment income closer to the amount necessary to administer the program for the 1997–98 marketing year. The quantity of assessable walnuts for 1997–98 is estimated at 207,000,000 kernelweight pounds, or 9,000,000 kernelweight pounds higher than estimated for 1996–97. With more assessable walnuts, the former rate of assessment would have generated substantially more funds than needed to meet the Board's financial obligations. Assessment income would have exceeded anticipated expenses by about $31,000. The decrease in the assessment rate in conjunction with the anticipated increase in assessable walnuts should provide adequate assessment income to meet this year's expenses.

The major expenditures recommended by the Board for the 1997–98 year include $240,326 for general expenses, $147,126 for office expenses, $1,928,837 for research expenses, $50,000 for a production research director, and $25,000 for the reserve. Budgeted expenses for these items in 1996–97 were $232,684, $150,508, $1,840,677, $48,000, and $30,000, respectively.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected merchantable certifications of California

walnuts for the 1997–98 marketing year. As mentioned earlier, merchantable certifications for the year are estimated at 207,000,000 kernelweight pounds, which should provide $2,401,200 in assessment income (about $10,000 more than estimated expenses). Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within five months after the end of the year.

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 1997–98 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5,000 producers of California walnuts in the production area and approximately 50 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of California walnut producers and handlers may be classified as small entities.

This rule continues in effect the decreased assessment rate of $0.0116 per kernelweight pound of certified merchantable walnuts established for the Board and collected from handlers for the 1997–98 and subsequent marketing years. The Board unanimously recommended 1997–98 expenditures of $2,391,289 and that assessment rate. The assessment rate of $0.0116 is $0.0001 lower than the 1996–97 rate. The quantity of assessable walnuts for 1997–98 is estimated at 207,000,000 kernelweight pounds. Thus, the $0.0116 rate should provide $2,401,200 in assessment income and be adequate to meet this year's expenses. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within five months after the end of the year.

The lower assessment rate is needed to bring expected assessment income closer to the amount necessary to administer the program for the 1997–98 marketing year. The quantity of assessable walnuts for 1997–98 is estimated at 207,000,000 kernelweight pounds, or 9,000,000 kernelweight pounds higher than estimated for 1996–97. With more assessable walnuts, the former rate of assessment would have generated substantially more funds than needed to meet the Board's financial obligations. Assessment income would have exceeded anticipated expenses by about $31,000. The decrease in the assessment rate in conjunction with the anticipated increase in assessable walnuts should provide adequate assessment income to meet this year's expenses.

The Board's increase in budgeted expenses from $2,301,869 to $2,391,289 is due primarily to increases in the following line item categories—administrative and office salaries, research programs, and the production research director. Expenses for these items for 1997–98, with last year's budgeted expenses in parentheses, are: administrative and office salaries—$148,080 ($142,000), research programs—$1,928,837 ($1,840,677), and production research director—$50,000 ($48,000). Prior to arriving at this budget, the Board considered information from various sources, such as the Board's Budget and Personnel Committee, the Research Committee, and the Market Development Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the walnut industry. The assessment rate of $0.0116 per kernelweight pound of certified merchantable walnuts was then determined by dividing the total recommended budget by the quantity of assessable walnuts, estimated at 207,000,000 kernelweight pounds for the 1997–98 marketing year. This would produce assessment income of about $2,401,900. This is approximately $10,000 above the anticipated expenses, which the Board determined to be acceptable.

Data for recent seasons and projections for the upcoming season indicate that anticipated 1997–98 assessment revenue as a percentage of total grower revenue could range between 2 and 2.5 percent.

This action continues in effect the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California walnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 12, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on October 30, 1997, (62 FR 58641). Copies of that rule were also mailed to all walnut handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on December 29, 1997, and no comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 984 which was published at 62 FR 58641 on October 30, 1997, is adopted as a final rule without change.

Dated: February 17, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–4594 Filed 2–23–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWA–7]

RIN 2120–AA66

Revocation and Establishment of Class C Airspace Areas; Cedar Rapids, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class C airspace area designated as "Cedar Rapids Municipal Airport, IA," and establishes a Class C airspace area in its place designated as "The Eastern Iowa Airport, IA." The name of the Cedar Rapids Municipal Airport has been changed to The Eastern Iowa Airport. In order to rename the Class C airspace area, it is necessary to revoke the existing airspace designation, and to reestablish the airspace under the new designation. This action also makes a minor change to the airport reference point for The Eastern Iowa Airport.

EFFECTIVE DATE: 0901 UTC, May 21, 1998.

FOR FURTHER INFORMATION CONTACT: Steve Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Rule

This action amends 14 CFR part 71 by revoking the Class C airspace area designated as "Cedar Rapids Municipal Airport, IA," and establishing a Class C airspace area in its place designated as "The Eastern Iowa Airport, IA." The name of the airport changed from "Cedar Rapids Municipal Airport" to "The Eastern Iowa Airport." Additionally, the airport reference point will change in longitude by one second, from "91°42'40" W." to "91°42'39" W."

Since this action merely involves a name change to the title and the airport of the Class C airspace area and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Class C airspace areas are published in paragraph 4000 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class C airspace area listed in this document will be published subsequently in the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace

* * * * *

ACE IA C Cedar Rapids Municipal Airport, IA [Removed]

* * * * *

ACE IA C The Eastern Iowa Airport, IA [New]

The Eastern Iowa Airport, IA
(Lat. 41°53'05" N, long. 91°42'39" W.)

That airspace extending upward from the surface to and including 4,900 feet MSL within a 5-mile radius of The Eastern Iowa Airport and that airspace extending upward from 2,100 feet MSL to and including 4,900 feet MSL within a 10-mile radius of The Eastern Iowa Airport. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Washington, DC, on February 13, 1998.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–4703 Filed 2–23–98; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210 and 211

[Release No. 33–7507; 34–39676; IC–23029; FR–50]

Commission Statement of Policy on the Establishment and Improvement of Standards Related to Auditor Independence

AGENCY: Securities and Exchange Commission.

ACTION: Policy Statement.

SUMMARY: The Securities and Exchange Commission ("SEC" or "Commission") today reaffirmed that maintaining the independence of auditors of financial statements included in filings with the Commission is crucial to the credibility of financial reporting and, in turn, the capital formation process. In so doing, the Commission recognized the establishment of the Independence Standards Board ("ISB") and indicated that, consistent with its continuing policy of looking to the private sector for leadership in establishing and improving accounting principles and auditing standards, the Commission intends to look to the ISB for leadership in establishing and improving auditor independence regulations applicable to the auditors of the financial statements of Commission registrants, with the expectation that the ISB's conclusions will promote the interests of investors.

EFFECTIVE DATE: March 26, 1998.

FOR FURTHER INFORMATION CONTACT: Robert E. Burns or W. Scott Bayless, Office of the Chief Accountant, at (202) 942–4400, Mail Stop 11–3, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background

The various securities laws enacted by Congress and administered by the Securities and Exchange Commission underscore the crucial function of independent auditors in protecting public investors by requiring, or permitting the Commission to require, that financial statements filed with the Commission by public companies, investment companies, broker-dealers, public utilities, investment advisers, and others be certified (or audited) by "independent" public accountants.[1] They also give the Commission the authority to define the term "independent."[2]

Since the Commission's creation in 1934, it consistently has emphasized the need for auditors to remain independent. The Commission's regulations are set forth in Rule 2–01 of Regulation S–X[3] and in the extensive interpretations, guidelines, and examples for registrants and auditors to use in evaluating specific independence questions that are collected in Section 600 of the Codification of Financial Reporting Policies ("Codification"), entitled "Matters Relating to Independent Accountants."[4] The Commission also makes publicly available the staff's written responses to requests for informal advice on its independence requirements. Pursuant to the Commission's regulations, the basic test for auditor independence is whether a reasonable investor, knowing all relevant facts and circumstances, would perceive an auditor as having neither mutual nor conflicting interests with its audit client and as exercising objective and impartial judgment on all issues brought to the auditor's attention.[5] In determining whether an auditor is independent, the Commission considers all relevant facts and circumstances, and its consideration is not confined to the relationships existing in connection with the filing of reports with the Commission.[6]

In certain matters, the Commission also has referred registrants and their auditors to independence requirements adopted by the American Institute of Certified Public Accountants ("AICPA"), to the extent those standards do not conflict with those of the Commission.[7]

Day-to-day, the Commission's staff receives inquiries regarding the application of the Commission's independence regulations to specific situations confronting registrants and their auditors. In recent years, these situations have become more complex as auditors have entered into new service areas for their clients, auditing firms have merged and restructured their operations, and business practices and technology have become more sophisticated and, increasingly, more global in scope. Some of the Commission's auditor independence regulations, written years ago, do not provide obvious guidance in today's business environment. The Commission recognizes, therefore, that an update of the Commission's regulations may be in order.

II. The Independence Standards Board

After careful consideration, and without abdicating its statutory responsibilities, the Commission intends to look to a standard-setting body designated by the accounting profession—known as the Independence Standards Board ("ISB")—to provide leadership not only in improving current auditor independence requirements, but also in establishing and maintaining a body of independence standards applicable to the auditors of all Commission registrants.[8] The Commission has taken a similar course in developing its relationship with the Financial Accounting Standards Board ("FASB"), a standard-setting body designated by the accounting profession that provides leadership in establishing and improving accounting principles.[9] Although the Commission expects to look to the ISB as the private sector body responsible for establishing independence standards and interpretations for auditors of public entities, the Commission's existing authority regarding auditor independence is not affected. This includes the Commission's authority to institute such enforcement actions as it deems appropriate, such as actions or proceedings instituted pursuant to Rule 102(e), 17 CFR 102(e). The Commission also retains ultimate authority to not accept, or to modify or supplement, ISB independence standards and interpretations in the same manner that

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[1] Certain provisions of the Securities Act of 1933 ("Securities Act") and Securities Exchange Act of 1934 ("Exchange Act") expressly require that financial statements be audited by independent public or certified accountants. Securities Act Schedule A, items 25 and 26, 15 U.S.C. 77aa(25) and (26); Exchange Act § 17(e), 15 U.S.C. 78q. Various provisions of the securities laws authorize the Commission to require the filing of financial statements audited by independent accountants. Exchange Act §§ 12(b)(1)(J) and (K) and 13(a)(2), 15 U.S.C. 78l and 78m; Public Utility Holding Company Act of 1935 ("PUHCA"), §§ 5(b) (H) and (I), 10(a)(1)(G), and 14, 15 U.S.C. 79e(b), 79j, and 79n. Investment Company Act of 1940, §§ 8(b)(5) and 30(e), 15 U.S.C. 80a–8 and 80a–29; Investment Advisers Act of 1940, § 203(c)(1)(D), 15 U.S.C. 80b–3(c)(1). In accordance with these provisions, the Commission has required that certain financial statements be audited by independent accountants. *See, e.g.*, Article 3 of Regulation S–X, 17 CFR 210.3–01 *et seq.* (1996).

[2] Various provisions of the securities laws grant the Commission the authority to define accounting, technical, and trade terms. Securities Act § 19(a), 15 U.S.C. 77s(a); Exchange Act § 3(b), 15 U.S.C. 78c(b); PUHCA § 20(a), 15 U.S.C. 79t(a); and Investment Company Act § 38(a), 15 U.S.C. 80a–37(a).

[3] 17 CFR 210.2–01 (1996).

[4] Financial Reporting Codification, Section 600–Matters Relating to Independent Accountants, *reprinted in* SEC Accounting Rules (CCH) ¶ 3,851, at 3,781.

[5] This test encompasses an evaluation of an auditor's independence in both fact and appearance. *See* Codification § 601.01 (quoting Accounting Series Release No. 296).

[6] Rule 2–01(c), 17 CFR 210.2–01(c) (1996).

[7] *See, e.g.*, Office of the Chief Accountant, *Staff Report on Auditor Independence*, Appendix II at 5–7 (1994) (discussing AICPA requirements regarding loans to or from an audit client or its officers, directors, or stockholders; and stating that Commission has not adopted additional requirements in this area).

[8] The Commission generally has required foreign issuers and the auditors of their financial statements to comply with United States independence requirements when foreign issuers' audited financial statements are filed with the Commission. Accordingly, the ISB's pronouncements would apply to foreign as well as domestic audit reports that are filed with the Commission.

[9] *See* Accounting Series Release No. 150 (Dec. 20, 1973) (recognizing establishment of FASB); Accounting Series Release No. 280 (Sept. 2, 1980) (commenting on FASB's role in establishing and improving accounting principles).

the Commission can modify or supplement accounting standards and interpretations issued by the FASB. Moreover, the functioning of the ISB does not affect the authority of state licensing or disciplinary authorities regarding auditor independence.

The Commission expects that the public interest will be served by having the ISB take the lead in establishing, maintaining, and improving auditor independence requirements; and that operation of the ISB will promote efficiency, competition, and capital formation. The ISB, which is composed equally of public members (from which the ISB chairman must be elected) and practicing accountants, has undertaken to develop an institutional framework that will permit prompt and responsible actions by the ISB and its staff flowing from research and objective consideration of the issues. Collectively, the ISB members bring substantial experience and expertise to the process. In addition, the accounting profession's commitment of financial resources to the ISB is evidence of the private sector's willingness and intention to support the ISB. Under these circumstances, the Commission expects that determinations of the ISB will preserve and enhance the independence of public accountants, and thereby promote the interests of investors.

The central mission of the ISB will be to establish independence standards applicable to auditors of public entities that serve the public interest by promoting investor confidence in the securities markets. To further that goal, ISB standard-setting meetings will be open to the public, and proposed standards will be exposed for public comment before they are issued, in a process similar to that used by the FASB. In addition, the Commission will provide timely oversight of the ISB consistent with the Commission's statutory mandate to protect investors and safeguard the integrity of the capital markets.[10]

As noted, in the exercise of its statutory authority the Commission has the responsibility to ensure that independent audits of registrants' financial statements protect the interests of investors. In reviewing questions related to the fact or appearance of an auditor's independence from an audit client, the Commission will consider an auditor to be not independent unless the auditor has substantial authoritative support for the position that the questioned transaction, event, or other circumstance, does not impair the auditor's independence. In this regard, the Commission will consider principles, standards, interpretations, and practices established or issued by the ISB as having substantial authoritative support for the resolution of auditor independence issues.[11] Conversely, the Commission will consider principles, standards, interpretations, and practices contrary to such ISB promulgations as having no such support.[12]

III. Review of ISB Operations

Since the formation of the ISB, there have been public announcements of mergers of several of the "Big 6" accounting firms. The impact of these mergers, and the accelerating trend toward consolidation of auditing firms generally, on foreign and domestic self-regulatory programs is being discussed within the United States, other countries, and international organizations. These events will be monitored closely and may prompt the Commission to reconsider certain of the accounting profession's self-regulatory programs, including the ISB.

In view of the significance of auditor independence to investor confidence in the securities markets, the Commission also will review the operations of the ISB as necessary or appropriate and, within five years from the date the ISB was established, will evaluate whether this new independence framework serves the public interest and protects investors.

IV. Regulatory Requirements

This general policy statement is not an agency rule requiring notice of proposed rulemaking, opportunities for public participation, and prior publication under the provisions of the Administrative Procedure Act ("APA").[13] Similarly, the provisions of the Regulatory Flexibility Act,[14] which apply only when notice and comment are required by the APA or another statute, are not applicable.

V. Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982) (47 FR 21028) is updated to:

Add a new Section 601.04, captioned "Statement of Policy on the Establishment and Improvement of Standards Related to Auditor Independence" to include the text in topics I., II., and III. of this release.

The Codification is a separate publication of the Commission. It will not be published in the **Federal Register**/Code of Federal Regulations.

VI. Conclusion

The Commission believes that the foregoing statement of policy provides a sound basis for the Commission and the ISB to make significant contributions to meeting the needs of investors and the capital markets.

Dated: February 18, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4576 Filed 2–23–98; 8:45 am]

BILLING CODE 8010–01–P

[10] The Commission and its staff will consult with the ISB during the course of ISB consideration of standards or interpretations, including those dealing with matters addressed by existing SEC guidance. As the ISB reconsiders and effectuates changes in independence standards and practices that involve existing SEC guidance, the Commission will consider modifying or withdrawing its conflicting guidance unless the Commission determines that it should not accept the ISB position in a particular area.

[11] Positions of the ISB staff and consensuses of a permanent task force that will assist the ISB, the Independence Issues Committee, will not be considered authoritative unless or until ratified by the ISB. Positions issued by the ISB staff to a particular party, however, may be relied upon by that party in accordance with the ISB Operating Policies.

[12] Entities that may issue such principles, standards, or interpretations include the AICPA's Professional Ethics Executive Committee.

[13] 5 U.S.C. 553.

[14] 5 U.S.C. 601–602.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–242–FOR, #75]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Ohio regulatory program (hereinafter referred to as the "Ohio program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio proposed revisions to its statutes pertaining to attorney fees. The amendment is intended to revise the Ohio program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: February 24, 1998.

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, OSM, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the August 10, 1982, **Federal Register** (47 FR 34668). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of the Proposed Amendment

By letter dated June 24, 1997, (Administrative Record No. OH–2173–00) Ohio submitted a proposed amendment to its program pursuant to SMCRA in response to a required amendment at 30 CFR 935.16(a)(1) and (2). Ohio proposes to revise the Ohio Revised Code (ORC) at section 1513.13 which pertains to attorney fees.

OSM announced receipt of the proposed amendment in the July 7, 1997, **Federal Register** (62 FR 36248), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on August 6, 1997.

During its review of the proposed amendment, OSM identified concerns relating to the provisions of 1513.13(E)(1) and (2). OSM notified Ohio of the concerns by letter dated August 4, 1997 (Administrative Record No. OH–2173–05). Ohio responded by letter dated August 19, 1997 (Administrative Record No. OH–2173–07), and revised the language at 1513.13(E)(2) to clarify that the statute applies to judicial review of any order or decision issued in any administrative proceeding under Chapter 1513.

Ohio submitted a second letter date October 14, 1977 (Administrative Record No. OH–2173–08) and revised the language at 1513.13(E)(1) to clarify that the specified fee provisions apply to both enforcement and permitting decisions. It also revised section 1513.13(E)(2), in the manner described below, in the Director's Findings. Because the revisions merely clarified the original proposed language and did not constitute major changes to the Ohio program, OSM did not reopen the comment period.

OSM did reopen the comment period on December 2, 1997 (62 FR 63684) to summarize the provisions of the proposed revision to 1513.13(E)(2) which were inadvertently omitted from the first notice, and described in the Director's Findings below. The comment period closed on December 17, 1997.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

ORC 1513.13—Appeal of Violation, Order, or Decision to Reclamation Commission

At paragraph (E)(1), Ohio is requiring that whenever an enforcement order or permit is issued pursuant to Chapter 1513 and is appealed, certain costs and attorney fees may be awarded. At paragraph (E)(1)(a), Ohio is proposing that a party, other than the permittee or the Division of Mines and Reclamation, may file a petition for an award of costs and expenses. The party may be awarded those costs and expenses, including attorney's fees that were necessary and reasonably incurred by the petitioning party. At paragraph (E)(1)(b), Ohio is clarifying that a permittee may file, with the Chief, a request for an award to the permittee of the costs and expenses, including attorney's fees, reasonably incurred by the permittee in connection with an appeal initiated under this section. The Chief may assess those costs and expenses against a party who initiated, or participated in, the appeal if the permittee demonstrates that the party initiated or participated in the appeal in bad faith and for the purpose of harassing or embarrassing the permittee. At paragraph (E)(1)(c), Ohio is clarifying that attorney's fees are included in the costs and expenses specified. A party who participated in an appeal in bad faith may have costs and expenses assessed against him or her. At paragraph (E)(2), Ohio is providing that if a final order relating to Chapter 1513 is issued by the Reclamation Commission pursuant to section 1513.13(B) or by a Court of Common Pleas pursuant to section 1513.15(B) or by the Chief pursuant to section 1513.39 and becomes the subject of judicial review, certain costs and expenses, including attorney fees, reasonably incurred by a party in connection with their participation in the judicial proceedings may be awarded.

The Director finds that the proposed revisions at 1513.13(E)(2) are substantively identical to section 525(e) of SMCRA, 30 U.S.C. section 1275(e), which provides for the award of a sum equal to the aggregate amount of all costs and expenses, including attorney fees, to have been reasonably incurred by a participant in such administrative or judicial proceedings. The Director finds that the revisions proposed at 1513.13(E)(1), (E)(1)(a), (E)(1)(b), and (E)(1)(c) are substantively identical to section 525(e) of SMCRA, 43 CFR 4.1294(b), 43 CFR 4.1294(d), and 43 CFR 4.1294(e), respectively. The proposed revisions also satisfy the conditions of the required amendments at 30 CFR 935.16(a)(1) and (2). Ohio's provisions clarify that fee provisions apply to both enforcement and permitting decisions and that costs may be assessed against any participant in bad faith appeals. Therefore, the Director is removing the required amendments.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. One public comment was received in support of the proposed revisions. Four other commentors expressed concern that the proposed amendment appears to adversely affect or eliminate altogether the ability of citizens to recover the costs and fees they incur in appealing a decision which involves industrial minerals mining permits. The Director notes that to the extent that these comments pertain to non-coal mineral regulation, they are not germane to this rulemaking, which only concerns the effect which the proposed revisions have on the award of attorney fees as a result of administrative and judicial appeals of decisions related to coal mining. OSM's approval of these revisions is neither an explicit nor an implicit approval of the curtailment of attorney fee awards in industrial mineral proceedings, since OSM has no jurisdiction over such proceedings. (The converse is also true. Were OSM to disapprove these revisions, that disapproval would only affect coal mining proceedings. The applicability of the revisions to industrial minerals proceedings would not be affected.)

Two commenters also argued that the proposed change to ORC 1513.13(E)(1)

is inconsistent with the underlying objective of 30 CFR 732.15(b)(10), which is to require state mining laws to have provisions "for public participation in the development, revision and enforcement of State regulations and the State program, consistent with public participation requirements of the Act and this chapter." As noted in the finding above, the Director has determined that Ohio's proposed revisions are consistent with counterpart provisions in SMCRA and the Federal regulations. 30 CFR 732.15(b)(10) requires that states provide for public participation in all aspects of the regulation of surface coal mining operations only. The commenters fail to articulate how these revisions curtail public participation with respect to the regulation of surface coal mining operations.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Ohio program. The Department of Labor, Mine Safety and Health Administration, and the Department of the Army, Army Corps of Engineers, both concurred without comment.

Environmental Protection Agency (EPA)

Purusant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions Ohio proposed to make in its amendment pertains to air or water quality standards. Nevertheless, OSM requested EPA's concurrence with the proposed amendment. EPA did not respond to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Ohio on June 24, 1997, and revised on August 19, 1997, and October 14, 1997. The Director is also removing the required amendments at 30 CFR 935.16(a) (1) and (2) because they have been satisfied by revisions contained in this submission.

The Federal regulations at 30 CFR part 935, codifying decisions concerning the Ohio program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 9, 1998.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 935.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 935.15 Approval of Ohio regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
June 24, 1997.	[Insert date of publication in the Federal Register].	ORC 1513.13(E).

§ 935.16 [Amended]

3. Section 935.16 is amended by removing the text, and reserving the section and section heading.

[FR Doc. 98–4618 Filed 2–23–98; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[0720–AA35]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Program; Nonavailability Statement Requirements

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule revises certain requirements and procedures for the TRICARE Program, the purpose of which is to implement a comprehensive managed health care delivery system composed of military medical treatment facilities and CHAMPUS. Issues addressed in this rule include priority for access to care in military treatment facilities and requirements for payment of enrollment fees. This rule also includes provisions revising the requirement that certain beneficiaries obtain a non-availability statement from a military treatment facility commander prior to receiving certain health care services from civilian providers.

EFFECTIVE DATE: This rule is effective March 26, 1998.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Steve Lillie, Office of the Assistant Secretary of Defense (Health Affairs), telephone (703) 695–3350.

Questions regarding payment of specific claims under the CHAMPUS allowable charge method should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

A. Congressional Action

Section 712 of the National Defense Authorization Act for Fiscal Year 1996 revised 10 U.S.C. 1097(c), regarding the role of military medical treatment facilities in managed care initiatives, including TRICARE. Prior to the revision, section 1097(c) read in part, "However, the Secretary may, as an incentive for enrollment, establish reasonable preferences for services in facilities of the uniformed services for covered beneficiaries enrolled in any program established under, or operating in connection with, any contract under this section." The Authorization Act provision replaced "may" with "shall", which has the effect of directing access priority for TRICARE Prime enrollees over persons not enrolled.

Another statutory provision relating to access priority is 10 U.S.C. 1076(a), which establishes a special priority for survivors of sponsors who died on active duty: they are given the same priority as family members of active duty members. This special access priority is not time-limited, as is the special one-year cost sharing protection given to this category under 10 U.S.C. 1079.

The National Defense Authorization Act of FY 1997, section 734 amended 10 U.S.C. 1080 to establish certain exceptions to requirements for nonavailability statements in connection with payment of claims for civilian health care services. First, the Act eliminates authority for nonavailability statements for outpatient services; NASs have been required for a limited number of outpatient procedures over the past several years. Second, the Act eliminates authority for NAS requirements for enrollees in managed care plans, which has the effect of eliminating NAS requirements for TRICARE Prime enrollees. Finally, the Act gives the Secretary authority to waive NAS requirements based on an evaluation of the effectiveness of NAS in optimizing use of military facilities.

The National Defense Authorization Act of FY 1996, section 713 requires that enrollees in TRICARE Prime be permitted to pay applicable enrollment fees on a quarterly basis, and prohibits imposition of an administrative fee related to the quarterly payment option.

B. Public Comments

The proposed rule was published in the **Federal Register** on April 7, 1997 (62 FR 16510). We received no public comments.

II. Provisions of the Rule

A. Access Priority (Revisions to § 199.17(d)).

1. Provisions of the Proposed Rule

This paragraph explains that in Regions where TRICARE is implemented, the order of access priority for services in military treatment facilities is as follows: (1) Active duty service members; (2) family members of active duty service members enrolled in TRICARE Prime; (3) retirees, their family members and survivors enrolled in TRICARE Prime; (4) family members of active duty service members who are not enrolled in TRICARE Prime; and (5) all others based on current access priorities. For purposes of access priority, but not for cost sharing, survivors of sponsors who died on active duty are to be given the same priority as family members of active duty service members. This means that if they are enrolled in TRICARE Prime, they have the same access priority as family members of active duty service members who are enrolled in TRICARE Prime, or if not enrolled in TRICARE Prime, they have the same access priority for military treatment facility care as family members of active duty service members who are not enrolled in TRICARE Prime.

The proposed rule also includes a provision explaining that enrollment status does not affect access priority for some groups and circumstances. This provision would allow the commander of a military medical treatment facility to designate for access priority certain individuals, for specific episodes of health care treatment. Such individuals may include Secretarial designees, active duty family members from outside the MTF's service area, foreign military and their family members authorized care through international agreements, DoD civilians with authorizing conditions, individuals on the Temporary Disability Retired List, and Reserve and National Guard members. Additional exceptions may be granted for other categories of individuals, eligible for treatment in the MTF, whose access to care is needed to provide a clinical case mix to support graduate medical education programs, upon approval by the Assistant Secretary of Defense (Health Affairs).

2. Provisions of the Final Rule

The final rule is consistent with the proposed rule. Minor revisions emphasize that survivors of sponsors who died on active duty have the same access priority as active duty family members. Access priority for TRICARE Prime enrollees is not limited to military facilities near their residence, but includes access priority when they are traveling (although they are still required to access nonemergency care through their primary care manager, pursuant to § 199.17(o)).

B. Enrollment Fees (Revisions to §§ 199.17(o) and 199.18(c))

1. Provisions of the Proposed Rule

These revisions would eliminate the requirement for a TRICARE Prime enrollee to pay an additional maintenance fee of $5.00 per installment for those TRICARE Prime enrollees who elect to pay their annual enrollment fee on a quarterly basis. Additionally, these revisions would permit waiver of enrollment fee

collection for retirees, their family members, and survivors who are eligible for Medicare on the basis of disability. This group is eligible for TRICARE/CHAMPUS as a secondary payor if they are enrolled in Part B of Medicare, and pay the applicable monthly premium.

2. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

C. Nonavailability Statements (Revisions to § 199.4(a))

1. Provisions of the Proposed Rule

Revisions of this section modify our existing requirements for beneficiaries to obtain nonavailability statements (NASs). The requirement for beneficiaries to obtain an NAS for selected outpatient procedures is eliminated. Beneficiaries who choose to obtain outpatient care, including ambulatory surgery, from civilian sources remain subject to current TRICARE/CHAMPUS cost sharing rules, but the requirement that the beneficiary obtain an NAS prior to TRICARE/CHAMPUS sharing in the civilian health care costs has been removed.

The requirement for beneficiaries enrolled in TRICARE Prime to obtain an NAS for inpatient care is also eliminated. TRICARE was designed so that the military treatment facility is the first source of specialty care, with TRICARE Prime enrollees having access priority before non-enrolled beneficiaries. In general, TRICARE Prime enrollees obtain care from civilian network providers only when the military treatment facility cannot provide the care because it does not have the capability, or because the enrollee cannot be seen within time frames required by TRICARE Prime access standards. Since the Health Care Finder must authorize all non-emergency specialty care obtained from civilian sources, the NAS requirement for this category of beneficiary is redundant.

Lastly, the revisions would eliminate the requirement that a non-enrolled beneficiary must obtain an NAS for inpatient hospital maternity care before TRICARE/CHAMPUS shares in any costs for related outpatient maternity care. Some diagnostic tests, procedures, or consultations from civilian sources may be required during a course of maternity care and this allows TRICARE/CHAMPUS to share in the costs of the civilian care without requiring the beneficiary to obtain all maternity related care in a civilian setting.

3. Provisions of the Final Rule

The final rule is consistent with the proposed rule. It should be noted that requirements of § 199.15 related to preauthorization of services continue to apply. A key difference is that the responsibility for compliance, and penalties for noncompliance with the requirements of § 199.15 fall on providers of care rather than on beneficiaries.

D. Revisions to the Uniform HMO Benefit (Revisions to § 199.18(d))

1. Provisions of the Proposed Rule

We are contemplating minor changes in the copayment structure of the Uniform HMO Benefit, which is used in TRICARE Prime. The proposed rule included two revisions, which would eliminate copayments for preventive services and for ancillary services. Current provisions include copayments for ancillary services unless they are provided as part of an office visit. This has resulted in multiple copayments in cases where beneficiaries are sent to multiple sites for diagnostic testing pursuant to a visit, which we regard as unfair.

2. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

E. TRICARE Prime Catastrophic Cap (Revisions to § 199.18(f))

1. Provisions of the Proposed Rule

The proposed rule included a provision regarding the inapplicability of the TRICARE Prime annual catastrophic cap to out-of-pocket costs incurred under the TRICARE Prime point-of-service option. This is at § 199.18(f)(2).

2. Provisions of the Final Rule

The final rule is consistent with the proposed rule.

F. Preemption of State Laws (Revisions to § 199.17(a))

1. Provisions of the Proposed Rule

The proposed rule contained a restatement of current policy, at § 199.17(a)(7), recording DoD interpretation of two statutory provisions preempting State and local laws in connection with TRICARE contracts.

2. Provisions of the Final Rule

The final rule is similar to the proposed rule. The provision has been expanded to also record DoD's interpretation of these statutes in relation to State or local laws imposing premium taxes on health insurance carriers or health maintenance organizations.

III. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any "significant regulatory action," defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

This rule will impose no additional information collection requirements on the public under the Paperwork Reduction Act of 1985 (44 U.S.C. Chapter 55).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.2(b) is amended by revising the definition of nonavailability statement to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Nonavailability statement. A certification by a commander (or a designee) of a Uniformed Services medical treatment facility, recorded on DEERS, generally for the reason that the needed medical care being requested by a non-TRICARE Prime enrolled beneficiary cannot be provided at the facility concerned because the necessary resources are not available in the time frame needed.

* * * * *

3. Section 199.4 is amended by removing paragraphs (a)(9)(i)(C) and (a)(9)(v)(B) and the note following paragraph (a)(9)(vi), by redesignating paragraph (a)(9)(i)(D) as paragraph (a)(9)(i)(C) and paragraph (a)(9)(v)(A) as paragraph (a)(9)(v), and by revising

paragraphs (a)(9) introductory text, (a)(9)(i)(B), and (a)(9)(ii) and by adding new paragraph (a)(10)(vi)(E) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(a) * * *

(9) *Nonavailability statements within a 40-mile catchment area.* In some geographic locations, it is necessary for CHAMPUS beneficiaries not enrolled in TRICARE Prime to determine whether the required inpatient medical care can be provided through a Uniformed Services facility. If the required care cannot be provided, the hospital commander, or designee, will issue a Nonavailability Statement (DD form 1251). Except for emergencies, a Nonavailability Statement should be issued before medical care is obtained from a civilian source. Failure to secure such a statement may waive the beneficiary's rights to benefits under CHAMPUS.

(i) * * *

(B) For CHAMPUS beneficiaries who are not enrolled in TRICARE Prime, an NAS is required for services in connection with nonemergency inpatient hospital care if such services are available at a facility of the Uniformed Services located within a 40 mile radius of the residence of the beneficiary, except that an NAS is not required for services otherwise available at a facility of the Uniformed Services located within a 40-mile radius of the beneficiary's residence when another insurance plan or program provides the beneficiary primary coverage for the services. This requirement for an NAS does not apply to beneficiaries enrolled in TRICARE Prime, even when those beneficiaries use the point-of-service option under § 199.17(n)(3).

* * * * *

(ii) *Beneficiary responsibility.* A CHAMPUS beneficiary who is not enrolled in TRICARE Prime is responsible for securing information whether or not he or she resides in a geographic area that requires obtaining a Nonavailability Statement. Information concerning current rules and regulations may be obtained from the Offices of the Army, Navy, and Air Force Surgeons General; or a representative of the TRICARE managed care support contractor's staff, or the Director, OCHAMPUS.

* * * * *

(10) * * *

(vi) * * *

(E) The beneficiary is enrolled in TRICARE Prime.

* * * * *

3. Section 199.17 is amended by adding paragraph (a)(7) and revising paragraphs (d)(1) and (o)(3) to read as follows:

§ 199.17 TRICARE program.

* * * * *

(a) * * *

(7) *Preemption of State laws.* (i) Pursuant to 10 U.S.C. 1103 and section 8025 (fourth proviso) of the Department of Defense Appropriations Act, 1994, the Department of Defense has determined that in the administration of 10 U.S.C. chapter 55, preemption of State and local laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods is necessary to achieve important Federal interests, including but not limited to the assurance of uniform national health programs for military families and the operation of such programs at the lowest possible cost to the Department of Defense, that have a direct and substantial effect on the conduct of military affairs and national security policy of the United States.

(ii) Based on the determination set forth in paragraph (a)(7)(i) of this section, any State or local law relating to health insurance, prepaid health plans, or other health care delivery or financing methods is preempted and does not apply in connection with TRICARE regional contracts. Any such law, or regulation pursuant to such law, is without any force or effect, and State or local governments have no legal authority to enforce them in relation to the TRICARE regional contracts. (However, the Department of Defense may by contract establish legal obligations of the part of TRICARE contractors to conform with requirements similar or identical to requirements of State or local laws or regulations).

(iii) The preemption of State and local laws set forth in paragraph (a)(7)(ii) of this section includes State and local laws imposing premium taxes on health or dental insurance carriers or underwriters or other plan managers, or similar taxes on such entities. Such laws are laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods, within the meaning of the statutes identified in paragraph (a)(7)(i) of this section. Preemption, however, does not apply to taxes, fees, or other payments on net income or profit realized by such entities in the conduct of business relating to DoD health services contracts, if those taxes, fees or other payments are applicable to a broad range of business activity. For purposes of assessing the effect of Federal preemption of State and local taxes and fees in connection with DoD health and dental services contracts, interpretations shall be consistent with those applicable to the Federal Employees Health Benefits Program under 5 U.S.C. 8909(f).

* * * * *

(d) * * *

(1) *Military treatment facility (MTF) care.*—(i) *In general.* All participants in Prime are eligible to receive care in military treatment facilities. Participants in Prime will be given priority for such care over other beneficiaries. Among the following beneficiary groups, access priority for care in military treatment facilities where TRICARE is implemented as follows:

(A) Active duty service members;

(B) Active duty service members' dependents and survivors of service members who died on active duty, who are enrolled in TRICARE Prime;

(C) Retirees, their dependents and survivors, who are enrolled in TRICARE Prime;

(D) Active duty service members' dependents and survivors of service members who died on active duty, who are not enrolled in TRICARE Prime; and

(E) Retirees, their dependents and survivors who are not enrolled in TRICARE Prime. For purposes of this paragraph (d)(1), survivors of members who died while on active duty are considered as among dependents of active duty service members.

(ii) *Special provisions.* Enrollment in Prime does not affect access priority for care in military treatment facilities for several miscellaneous beneficiary groups and special circumstances. Those include Secretarial designees, NATO and other foreign military personnel and dependents authorized care through international agreements, civilian employees under workers' compensation programs or under safety programs, members on the Temporary Disability Retired List (for statutorily required periodic medical examinations), members of the reserve components not on active duty (for covered medical services), military prisoners, active duty dependents unable to enroll in Prime and temporarily away from place of residence, and others as designated by the Assistant Secretary of Defense (Health Affairs). Additional exceptions to the normal Prime enrollment access priority rules may be granted for other categories of individuals, eligible for treatment in the MTF, whose access to care is necessary to provide an adequate clinical case mix to support graduate medical education programs or

readiness-related medical skills sustainment activities, to the extent approved by the ASD(HA).

* * * * *

(o) * * *

(3) *Quarterly installment payments of enrollment fee.* The enrollment fee required by § 199.18(c) may be paid in quarterly installments, each equal to one-fourth of the total amount. For any beneficiary paying his or her enrollment fee in quarterly installments, failure to make a required installment payment on a timely basis (including a grace period, as determined by the Director, OCHAMPUS) will result in termination of the beneficiary's enrollment in Prime and disqualification from future enrollment in Prime for a period of one year. If enrollment in TRICARE Prime is terminated for failure to make a required installment payment, services received after the due date of the installment payment will be cost shared under TRICARE Extra.

* * * * *

4. Section 199.18 is amended by revising paragraphs (d)(2)(i) and (f), and by adding paragraph (c)(3), to read as follows:

§ 199.18 Uniform HMO benefit.

* * * * *

(c) * * *

(3) *Waiver of enrollment fee for certain beneficiaries.* The Assistant Secretary of Defense (Health Affairs) may waive the enrollment fee requirements of this section for beneficiaries described in 10 U.S.C. 1086(d)(2) (i.e., those who are eligible for Medicare on the basis of disability or end stage renal disease and who maintain enrollment in Part B of Medicare).

* * * * *

(d) * * *

(2) * * *

(i) For most physician office visits and other routine services, there is a per visit fee for each of the following groups: dependents of active duty members in pay grades E–1 through E–4; dependents of active duty members in pay grades of E–5 and above; and retirees and their dependents. This fee applies to primary care and specialty care visits, except as provided elsewhere in this paragraph (d)(2) of this section. It also applies to family health services, home health care visits, eye examinations, and immunizations. It does not apply to ancillary health services or to preventive health services described in paragraph (b)(2) of this section, or to maternity services under § 199.4(e)(16).

* * * * *

(f) *Limit on out-of-pocket costs under the uniform HMO benefit.* (1) Total out-of-pocket costs per family of dependents of active duty members under the Uniform HMO Benefit may not exceed $1,000 during the one-year enrollment period. Total out-of-pocket costs per family of retired members, dependents of retired members and survivors under the Uniform HMO Benefit may not exceed $3,000 during the one-year enrollment period. For this purpose, out-of-pocket costs means all payments required of beneficiaries under paragraphs (c), (d), and (e) of this section. In any case in which a family reaches this limit, all remaining payments that would have been required of the beneficiary under paragraphs (c), (d), and (e) of this section will be made by the program in which the Uniform HMO Benefit is in effect.

(2) The limits established by paragraph (f)(1) of this section do not apply to out-of-pocket costs incurred pursuant to paragraph (m)(1)(i) or (m)(2)(i) of § 199.17 under the point-of-service option of TRICARE Prime.

* * * * *

Dated: February 17, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–4545 Filed 2–23–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC47

Cape Cod National Seashore; Off-Road Vehicle Use

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is revising the current regulation for off-road vehicle (ORV) use at Cape Cod National Seashore. Since the current plan (1981 ORV Management Plan, as amended in 1985) went into effect, new and unrelated measures have impacted the off-road vehicle corridor identified in the amended plan. These measures have resulted from the necessity to protect the federally listed threatened piping plover (*Charadrius melodus*). Because of a lack of flexibility in the Amended 1985 Plan, there has been an inability to adapt it to changing natural resource concerns.

The piping plover became a federally listed threatened species in 1986. In 1995 there were 83 pair of plovers nesting on the beaches of Cape Cod National Seashore. Thirty-three pair were within the eight and one-half miles of the ORV corridor. During the Fourth of July weekend (a period of peak use for ORV's) in 1994, eight-tenths of a mile of the ORV corridor was open. In 1995, only six-tenths of a mile was open. Because of the sand dune configuration on portions of the outer beach, it is expected that the birds will continue to nest here. Thus, Cape Cod National Seashore hopes to develop a more flexible and effective regulation governing ORV use that will accommodate the NPS's responsibilities for managing natural resources.

DATE: This rule becomes effective on March 26, 1998.

FOR FURTHER INFORMATION CONTACT: Maria Burks, Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667. Telephone 508–349–3785, ext. 203.

SUPPLEMENTARY INFORMATION:

Background

The mission of the NPS is to preserve and protect park resources while at the same time allowing for the enjoyment of these same resources in a manner that will leave them unimpaired for future generations. In September 1995, Cape Cod National Seashore convened a committee to negotiate a rulemaking (per the Federal Advisory Commission Act (FACA), 5 U.S.C. App. II Sec. 9(c), and the Negotiated Rulemaking Act, 5 U.S.C. 561), to resolve an ongoing contentious issue of ORV use on Seashore beaches, while at the same time providing optimum protection for the piping plover (*Charadrius melodus*) in compliance with the Endangered Species Act of 1973, as amended, and other Seashore resources.

The 1981 ORV Management Plan was challenged in U.S. District Court. However, the plan, as amended in 1985 (50 FR 31181), was upheld by the District Court in 1988 and the U.S. Court of Appeals in 1989. The District Court found that ORV use at Cape Cod National Seashore is not inappropriate; that the 1985 Plan minimized user conflicts; that the NPS had provided other recreational users adequate use of the Seashore; that the NPS had properly surveyed the sentiments of Seashore users; and that ORV use, as managed by the NPS, does not adversely affect the Seashore's values or its ecology.

The 1985 regulation that established an 8.5 mile ORV corridor on the 40 miles of outer beach within the Seashore would have provided a satisfactory solution except that since

1988, the number of nesting pair of piping plover increased in this area over 800 percent. The ORV corridor is one of the prime nesting areas in the Seashore (in 1995, 33 of 87 pair nested in the corridor). Primarily because of plovers in the corridor, the Seashore staff monitors every bird, nest and egg daily to determine if the ORV corridor should be open or closed. Symbolic fencing is put up as soon as a nest is established to identify the site. Wire enclosures are put up once the eggs have been laid and the ORV corridor is closed from the time the birds hatch until they fledge, approximately 28 days later. In the past few years, during the time when the Seashore receives the most visitors (Fourth of July), including people wishing to use the ORV corridor, only 0.4 to 0.6 miles of the corridor has been open.

Decision To Initiate Negotiated Rulemaking

The need for a new rule and the use of the negotiated process was motivated by a number of events including legislative requirements, past litigation, management issues and inflexibility of the existing rule to deal with changing conditions such as the use of the corridor by the piping plover. The negotiated rulemaking process was an attempt to manage off-road vehicle (ORV) access on the outer beach in a way that accommodates the wishes of ORV enthusiasts and those choosing other forms of beach use, while minimizing impacts to natural and cultural resources and providing a degree of flexibility for managing the beach.

Since the current plan (1981 ORV Management Plan, as amended in 1985) went into effect, issues which had not been anticipated or addressed previously impacted the off-road vehicle corridor. These impacts were mainly in response to the importance of and the efforts to protect the piping plover. Thus, Cape Cod National Seashore hopes the new regulation will be more flexible and effective in governing ORV use, and will accommodate the NPS's responsibilities for managing natural resources and the recreational opportunities mandated in the Seashore's enabling legislation.

The objective of negotiated rulemaking was to front load the controversy by getting all the interested parties involved in the decision making process from the beginning and acknowledging, if not resolving, all the issues and concerns. The process brings together at the negotiating table the organizations that are interested in the issues and charges them with developing a solution that is acceptable to everyone. This process is used by many Federal agencies, but this was the first time the NPS used negotiated rulemaking to develop a rule that will become part of the Code of Federal Regulations (CFR).

A total of 23 agencies, organizations and interest groups with long term interests and involvement in the ORV issue were identified for the committee. They included State agencies, the 6 towns the Seashore is located within, ORV user groups, environmental groups, Federal agencies, and tourism and preservation groups.

Specifically, the Committee consisted of members from the following organizations:

1. Association for the Preservation of Cape Cod
2. Cape Cod Chamber of Commerce
3. Cape Cod Commission
4. Cape Cod Salties
5. Citizens Concerned for Seacoast Management
6. Conservation Law Foundation
7. Eastham Forum
8. Highland Fish and Game Club
9. Massachusetts Audubon Society
10. Massachusetts Beach Buggy Association
11. Massachusetts Coastal Zone Management
12. Massachusetts Department of Environmental Protection
13. Massachusetts Division of Fisheries and Wildlife
14. Massachusetts Division of Marine Fisheries
15. National Park Service
16. Sierra Club
17. Town of Chatham
18. Town of Eastham
19. Town of Orleans
20. Town of Provincetown
21. Town of Truro
22. Town of Wellfleet
23. U.S. Fish and Wildlife Service

Each organization selected one representative to sit at the table. This person spoke and made commitments for that organization. Only representatives were allowed to participate in the formal discussions. All participants at the table had an equal voice. To avoid problems with unbalanced votes on one "side," the negotiated rulemaking was done as a consensus process (every organization had veto authority). The task assigned the committee was to develop a new ORV regulation for Cape Cod National Seashore. If the committee was unable to reach consensus on a new regulation, then the NPS would develop a new rule using the ideas, information and creativity that had been gathered from the group. This process allowed every issue, idea and concern to be heard; all sides had a chance to hear what was most important and what most worried the other participants. The NPS agreed that if consensus was reached, the consensus regulation would be put forward as a proposed rule through the notice and comment rulemaking process with full public involvement. The proposed rule was published in the **Federal Register** on May 6, 1997 (FR 62 24624).

As required by FACA, all formal meetings were announced in the **Federal Register** and were open to the public. There was a public comment period at the end of each meeting. Letters could be submitted to be included in the official record if someone was unable to attend.

The rulemaking sessions were conducted by contracted professional negotiators. The sessions were limited to three, two-day meetings. These meetings were spaced one month apart to allow the representatives sufficient time between meetings to report back to their respective organizations and to ensure that they were not committing to things the organizations could not support and, very importantly, to allow time for independent interactions and negotiations among committee members to occur.

The committee was successful in reaching consensus on a proposed ORV regulation for Cape Cod National Seashore. It is the contents of that regulation that have been used to identify issues, alternatives and potential impacts for National Environmental Policy Act (NEPA) compliance.

Issues of Concern Raised During the Negotiated Rulemaking

During the course of negotiations, many ideas and issues were discussed, clarified and agreed to by the negotiating committee. The committee reached consensus on the following items and agreed that, although not appropriate for inclusion in the text of the regulation, these items were important points, ideas and agreements that should be included in the preamble where they would be part of the official record and identified as part of the committee consensus.

Executive Order 11644, as amended by E.O. 11989, "Use of Off-Road Vehicles on Public Lands" directs the NPS to monitor the impacts of the ORV program on the resources of Cape Cod National Seashore. The committee supported this monitoring to identify the actual effects (or lack of effects) of ORV use at the Seashore. The intent of

this research is not to develop "new" science on the effects of ORV use on the outer beaches, but to document specifically the current condition of the ORV corridor and to monitor the changes, if any, that occur over time. This data will be used to assess any changes that occur in the area where the ORV corridor is located and to try to identify the causes of these changes. The monitoring methods identified for use by the NPS will undergo peer review by the broader scientific community to identify weaknesses, including areas of monitoring not covered by the technical research design. In this context, "peer" includes scientists beyond the NPS scientific community. The monitoring will result in an annual report that NPS will also distribute for public and peer review and comment. While user fees gathered from ORV permits can be used to fund this research, this funding is limited.

The committee recognized the importance and relative fragility of barrier spits, such as the sand spit at Hatches Harbor. The NPS agrees to work in consultation with the Massachusetts Office of Coastal Zone Management to address concerns specific to barrier spits. It is understood that these areas are more sensitive; that they are important to shorebirds and for protecting the natural resources located behind them; and that a closer look at these sensitive areas may result in a need to limit use or further control existing uses to protect resources.

The Cape Cod National Seashore Advisory Commission will be requested to develop a new subcommittee to provide input and advice on the ORV program at Cape Cod National Seashore. The chair of the subcommittee will be a duly appointed member of the Commission. Other members of the subcommittee will represent the same general mix of interests represented in the negotiated rulemaking committee. This subcommittee will be assigned to review and analyze the annual monitoring report. Following its review and analysis, the subcommittee may refer any ORV program management issues it identifies to the commission for further deliberation, and the Commission may advise the Superintendent with respect to those issues.

Night fishing is recognized as an important activity on the beaches of Cape Cod National Seashore. Vehicles displaying a permit approved by the Superintendent are able to access paved public parking lots, closed to the general public after hours, for nighttime fishing.

An annual report submitted to the Secretary of the Interior will include an analysis of the annual operating costs of the ORV program.

The negotiated rulemaking committee discussed a potential future need for commercial permittees who would bring people to various outer beach locations to fish, swim, picnic or enjoy other activities compatible with the establishment of the Seashore. This service could potentially reduce the number of people needing to drive their personal ORV'S on the beach. The Seashore agreed to evaluate the impact if the number of commercial permits for the ORV corridor exceeded the number issued in 1981 (18). Operators of a passenger vehicle for hire, engaged in carrying passengers for a fee on a designated ORV route, will obtain a permit for commercial use issued by the Superintendent. One condition of this permit will be that the applicants must demonstrate they possess adequate knowledge of the Seashore's off-road system and points of interest, and they must comply with all applicable Federal, State and local regulations. The fee for this permit will be based on the costs incurred by the NPS to administer this program. Failure to comply with any provision of an ORV permit, any regulation listed in this section or Part 2 or Part 4 of this chapter, or the requirements of the commercial use permit may result in revocation of permits by the Superintendent.

The committee recognized that, even given the greater flexibility of the consensus rule, there is a high probability portions of the beach may be closed at various times because of resource protection concerns. To provide access to some locations immediately adjacent to prime fishing areas, the committee identified "limited parking areas" for fishing access. These areas will be sand pull-offs located behind the primary dunes and be limited to two or three cars. NPS staff will identify areas for these to be located on the High Head access route and the Power Line route. Every attempt will be made to locate the parking spaces on previously impacted areas. They will be located to provide minimal visual impact and to minimize widening of the route or impact to vegetation. The spaces will be posted to identify that only people actively fishing may park.

It is recognized that boat launching, within the ORV corridor, is permitted by properly approved and permitted vehicles. The definition of boat in this context does not include personal watercraft (e.g., jet skis style vessel). Additional information regarding the requirements pertaining to the use of personal watercraft and boats is contained within the Compendium of Designations, Closures (36 CFR 1.5 and 1.7) for Cape Cod National Seashore and 36 CFR Part 3.

Self-contained vehicles will continue to be managed as they have in the past. A self-contained vehicle is a vehicle with a water or chemical toilet and a permanently installed holding tank able to hold a minimum of three days of waste material. It is recognized that self-contained vehicles need to be located within close proximity to a beach access route. They also need to be located on a wider section of beach away from vegetation. The access route for self-contained vehicles must be fairly flat and stable. These factors will limit the possible locations for this activity. The committee agreed that, while the location of the self-contained parking area may need to shift somewhat, neither the scale nor the general level of impact would increase.

All the organizations represented by the committee agreed that the protection of the piping plover is important. There was consensus on the need to close beaches to ORV's when chicks have hatched and before they have fledged.

The committee acknowledged Executive Order 12962, Recreational Fisheries, which, in part, acknowledges the importance of participating in recreational fishing, and protecting and conserving fish stock.

The NPS recognizes the importance of citizen participation in the ORV program. In accordance with NPS policy, a program will be developed to make use of the unique skills and knowledge of individuals within the ORV community. This program will formalize and recognize the preservation efforts, education, beach clean up and other activities many of these individuals already perform.

Comments Received on Proposed ORV Regulation

During the public review period for the proposed Off-Road Vehicle Regulation for Cape Cod National Seashore, 15 written comments were received. Because of the concurrent comment period for the Environmental Assessment (EA) and the proposed regulation, some of these letters dealt partially or totally with comments on the EA. Response to EA comments will be dealt with separately as part of the NEPA process.

Of the 15 comments received, nine supported the regulation, one opposed it and five offered comment but were neutral as to whether they supported or opposed it. In addition to written comments, approximately 6 telephone comments were received. All telephone contacts supported the regulation.

In compliance with guidelines established as part of the negotiated rulemaking process and agreed to by all participants, organizations that were at the table during the rulemaking were not allowed to comment on the proposed regulation. They were invited to comment on the EA because this was drafted solely by the NPS and, unlike the proposed regulation, the organizations did not have a chance to review or comment on it during the rulemaking process. Individual members of organizations that were represented at the table were allowed to comment on the proposed regulation.

Annual Cap of 3400 Permits

The issue raised by the most people or organizations (four) was about the annual cap of 3,400 permits. Concerns were raised as to how this limit was established and justified. One group felt the number was too high, whereas others felt there should not be a limit to the number of permits issued. Some suggested that there should be a limit to the number of vehicles on the beach at any one time. Two suggested this system favored people who live in Massachusetts.

The rulemaking group spent considerable time discussing this issue. The group agreed that it was important to limit the number of vehicles on the beach, but at the same time to allow some growth in the number of users. The group understood the complexity of instituting a daily limit—numerous access points, potential traffic problems as users lined up to wait for people to leave, people who buy an annual pass but use it only for a limited time would be unsure if they would have access and additional staff needed to control access. Because of these concerns, the daily limit option was dropped in favor of the annual cap.

The annual cap was arrived at by looking at the number of permits which have been issued in the past and adding 10% to that number. Because the number of annual permits that can be issued in a calendar year exceeds the usual number issued, there has been no need to establish a procedure for issuing permits. When it appears that the annual cap will be reached, the NPS will work with an advisory group, which is a sub-committee of the Cape Cod National Seashore Advisory Commission, to establish a procedure that gives equal access to permits for people in-state as well as for people from out-of-state.

Personal Watercraft (PWC)

One group reminded the NPS that one of the areas of consensus during the negotiated rulemaking, was that the launching of PWC from the ORV corridor was prohibited. This statement is in the preamble of the regulation and has been codified in the park's compendium in the section dealing with boating. In addition, the NPS will be addressing the issue of PWCs through comment rulemaking in the general regulations.

Piping Plovers

One individual questioned the need to have an automatic closure of a section of the corridor from April 1 through July 20th. During the negotiated rulemaking many groups saw an advantage to having an automatic closure of a section of the corridor, especially with the establishment of another section which had a higher probability of not having nesting plovers. Because of the high concentration of plovers on the beach in the section scheduled for automatic closure, ORV users had to check daily to see whether or not they would be able to get out to that section of the beach. Also, this section of the beach required a high amount of management by the NPS as all the nests, eggs and chicks had to be checked each day. Because of these and other reasons, the group decided to schedule the automatic closure of a section of the corridor.

Cost

One individual questioned the cost of running the ORV program, specifically the cost of patrolling the night fishing area, and stated that as a taxpayer they, did not want to support this high cost activity. The regulation specifically states that the costs to run and manage the ORV program will be recovered by the Seashore through the cost of the permits. The cost of the program will be borne by the people who benefit from the program.

Winter Use of the ORV Corridor

One group stated that the regulation was unclear as to how limited access passes (LAP) for winter ORV use would be managed. The regulation states that winter use of the beach for ORV use would require an annual ORV pass as well as a LAP. Access must be for the purposes of getting to the town shellfishing beds at Hatches Harbor, recovering personal property or flotsam and jetsam from the beach, caretaker functions at a dune cottage or fishing. In addition, an operator is required to view a special education program on the unique situations encountered on a winter beach. To allow for the development of a system that is flexible and meets the needs of the users, provides for visitor safety and protects the resources, the specifics of the limited access pass are not included in the regulation. The Seashore staff, working with the advisory group, will develop procedures for winter access that meet all of these requirements. If problems arise the procedures will be reviewed, and if appropriate, revised to best accommodate all concerns while meeting the objectives of the regulation.

Support for the Regulation

One letter from a local resident claims that all of the surfcasters he has spoken with are 100 percent behind the new regulations. He made a point of saying that their appreciation will be shown by their making an extra effort to follow any guidelines to the "T", and to be courteous and considerate to all they come across in their travels.

Drafting Information

A formal negotiated rulemaking was utilized in the development of this proposed rule in accordance with the Federal Advisory Commission Act (FACA) and the Negotiated Rulemaking Act (5 U.S.C. 561).

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in this rule have been approved by the Office of Management and Budget and assigned clearance number 1024–0026. This information is being collected to solicit information that is necessary for the Superintendent to issue off-road vehicle permits. The public is being asked to provide this information in order for the park to track the number of permits issued and to whom they are issued. Should the park need to contact the permittees, a mechanism will be in place to allow them to do so. The information will be used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

Specifically, the NPS needs the following information to issue a permit:

(1) Name and address of registered owner.

(2) Driver's license number and State of issue.

(3) Vehicle license plate number and State.

(4) Vehicle description, including year, make, model and color.

(5) Make, model and size of tires.

(6) List of equipment on board as required in section 4 of the rule.

The public reporting burden for the collection of information in this instance is estimated to be 0.28 hours per response, including the time for

reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden of these information collection requests, to Information Collection Officer, National Park Service, 800 North Capitol Street, Washington, D.C. 20001; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for Department of the Interior (1024–0125), Washington, D.C. 20503.

Compliance With Other Laws

This rule was reviewed by the Office of Management and Budget under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*), that this rule will not impose a cost of $100 million or more in any given year on local, State or tribal governments or private entities.

This regulation is subject to National Environmental Policy Act (NEPA) compliance and an Environmental Assessment (EA) has been completed and a Finding of No Significant Impact has been determined. This document is available for public review and can be obtained by contacting the park at the address noted at the beginning of this rulemaking.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, NPS amends 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k), Sec. 7.96 also issued under Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Revise section 7.67(a) to read as follows:

§ 7.67 Cape Cod National Seashore.

(a) Off-road operation of motor vehicles.

(1) *What do I need to do to operate a vehicle off road?* To operate a vehicle off road at Cape Cod National Seashore, you must meet the requirements in paragraphs (b) through (e) of this section. You also must obtain a special permit if you:

(i) Will use an oversand vehicle (see paragraphs (a)(6) and (a)(7) of this section for details);

(ii) Will use an oversand vehicle to camp (see paragraph (a)(8) of this section for details); or

(iii) Are a commercial operator (see paragraph (a)(9) of this section for details).

(2) *Where and when can I operate my vehicle off road?* You may operate a vehicle off road only under the conditions specified in the following table. However, the Superintendent may close any access or oversand route at any time for weather, impassable conditions due to changing beach conditions, or to protect resources.

Route	When you may use the route
On the outer beach between the opening to Hatches Harbor, around Race Point to High Head, including the North and South Beach access routes at Race Point and the bypass route at Race Point Light.	April 15 through November 15, except Exit 8 to High Head which is closed April 1 through July 20.
Off road vehicle corridor from Exit 8 to High Head	July 21 through November 15.
Access road at High Head from the inland parking area to the primary dune.	January 1 through December 31.
Designated dune parking area at High Head (for fishing only)	January 1 through December 31.
Power Line Route access and fishing parking area	Only when the Superintendent opens the route due to high tides, beach erosion, shorebird closure or other circumstances which will, as a result, warrant public use of this access way.
On controlled access routes for residents or caretakers of individual dune cottages in the Province Lands.	January 1 through December 31.
On commercial dune taxi routes following portions of the outer beach and cottage access routes as described in the appropriate permit.	April 15 through November 15.
On the outer beach from High Head to Head of the Meadow	July 1 through August 31.
Coast Guard beach in Truro to Long Nook beach	April 15 through November 15 (hours posted).

(3) *May I launch a boat from a designated route?* Boat trailering and launching by a permitted vehicle from a designated open route corridor is permitted.

(4) *What travel restrictions and special rules must I obey?* You must comply with all applicable provisions of this chapter, including part 4, as well as the specific provisions of this section.

(i) On the beach, you must drive in a corridor extending from a point 10 feet seaward of the spring high tide drift line to the berm crest. You may drive below the berm crest only to pass a temporary cut in the beach, and you must regain the crest immediately following the cut. Delineator posts mark the landward side of the corridor in critical areas.

(ii) On an inland oversand route, you must drive only in a lane designated by pairs of delineator posts showing the sides of the route.

(iii) An oversand route is closed at any time that tides, nesting birds, or surface configuration prevent vehicle travel within the designated corridor.

(iv) When two vehicles meet on the beach, the operator of the vehicle with the water on the left must yield, except that self-contained vehicles always have the right of way.

(v) When two vehicles meet on a single-lane oversand route, the operator of the vehicle in the best position to yield must pull out of the track only so far as necessary to allow the other vehicle to pass safely, and then must back into the established track before resuming the original direction of travel.

(vi) If you make a rut or hole while freeing a stuck vehicle, you must fill the rut or hole before you remove the vehicle from the immediate area.

(5) *What activities are prohibited?* The following are prohibited:

(i) Driving off a designated oversand route.

(ii) Exceeding a speed of 15 miles per hour unless posted otherwise.

(iii) Parking a vehicle in an oversand route so as to obstruct traffic.

(iv) Riding on a fender, tailgate, roof, door or any other location on the outside of a vehicle.

(v) Driving a vehicle across a designated swimming beach at any time when it is posted with a sign prohibiting vehicles.

(vi) Operating a motorcycle on an oversand route.

(6) *What special equipment must I have in my vehicle?* You must have in your vehicle all the equipment required by the Superintendent, including:

(i) Shovel;

(ii) Tow rope, chain, cable or other similar towing device;

(iii) Jack;

(iv) Jack support board;

(v) Low air pressure tire gauge; and

(vi) Five tires that meet or exceed established standards.

(7) *What requirements must I meet to operate an oversand vehicle?* You may operate an oversand vehicle only if you first obtain an oversand permit from the Superintendent. The Superintendent administers the permit system for oversand vehicles and charges fees that are designed to recover NPS administrative costs.

(i) The oversand permit is a Special Use Permit issued under the authority of 36 CFR 1.6 and 4.10. You must provide the following information for each vehicle for which you request a permit:

(A) Name and address of registered owner;

(B) Driver's license number and State of issue;

(C) Vehicle license plate number and State of issue; and

(D) Vehicle description, including year, make, model and color; make, model and size of tires.

(ii) Before we issue a permit, you must:

(A) Demonstrate that your vehicle is equipped as required in paragraph (a)(6) of this section;

(B) Provide evidence that you have complied with all Federal and State licensing registering, inspecting and insurance regulations; and

(C) View an oversand vehicle operation educational program and ensure that all other potential operators view the same program.

(iii) The Superintendent will affix the permit to your vehicle at the time of issuance.

(iv) You must not transfer your oversand permit from one vehicle to another.

(8) *What requirements must I meet to operate an oversand vehicle in the off season?*

To operate an oversand vehicle between November 16 and April 14, you must obtain from the Superintendent an oversand permit and a limited access pass. We will issue you a limited access pass if you have a valid oversand permit (see paragraph (a)(7) of this section) and if you have viewed an educational program that outlines the special aspects of off season oversand use.

(i) You may operate a vehicle during the off-season only on the portion of the beach between High Head and Hatches Harbor.

(ii) You must not operate a vehicle during the off-season within two hours either side of high tide.

(iii) We may issue a limited access pass for the following purposes:

(A) Access to town shellfish beds at Hatches Harbor;

(B) Recovery of personal property, flotsam and jetsam from the beach;

(C) Caretaker functions at a dune cottage; or

(D) Fishing.

(9) *What requirements must I meet to use an oversand vehicle for camping?* You may use an oversand vehicle to camp on the beach only in the manner authorized in this section or as authorized by the Superintendent through another approved permitting process.

(i) You must possess a valid permit issued under paragraph (a)(7) of this section.

(ii) You may camp only in a self-contained vehicle that you park in a designated area. A self-contained vehicle has a self-contained water or chemical toilet and a permanently installed holding tank with a minimum capacity of 3 days waste material. There are two designated areas with a maximum combined capacity of 100 vehicles.

(A) You must drive the self-contained vehicle off the beach to empty holding tanks at a dumping station at intervals of no more than 72 hours.

(B) Before returning to the beach, you must notify the Oversand Station as specified by the Superintendent.

(iii) You must not drive a self-contained vehicle outside the limits of a designated camping area except when entering or leaving the beach by the most direct authorized route.

(iv) You are limited to a maximum of 21 days camping on the beach from July 1 through Labor Day.

(10) *What special requirements must I meet if I have a commercial vehicle?*

(i) To operate a passenger vehicle for hire on a designated oversand route, you must obtain a permit from the Superintendent. The Superintendent issues the permit under the authority of 36 CFR 1.6, 4.10 and 5.6.

(ii) You must obey all applicable regulations in this section and all applicable Federal, State and local regulations concerning vehicles for hire.

(iii) You must provide the following information for each vehicle that will use a designated oversand route:

(A) Name and address of tour company and name of company owner;

(B) Make and model of vehicle;

(C) Vehicle license plate number and State of issue; and

(D) Number of passenger seats.

(11) *How will the Superintendent manage the off-road vehicle program?*

(i) The Superintendent will issue no more than a combined total of 3400 oversand permits annually, including self-contained permits.

(ii) The Superintendent will monitor the use and condition of the oversand routes to review the effects of vehicles on natural, cultural, and aesthetic resources in designated corridors. If the Superintendent finds that resource degradation or visitor impact is occurring, he/she may amend, rescind, limit the use of, or close designated routes. The Superintendent will do this consistent with 36 CFR 1.5 and 1.7 and all applicable Executive Orders;

(iii) The Superintendent will consult with the Cape Cod National Seashore Advisory Commission regarding management of the off-road vehicle program.

(iv) The Superintendent will recognize and use volunteers to provide education, inventorying, monitoring, field support, and other activities involving off-road vehicle use. The Superintendent will do this in accordance with 16 U.S.C. 18 g–j.

(v) The Superintendent will report annually to the Secretary of the Interior and to the public the results of the monitoring conducted under this section, subject to availability of funding.

(12) *What are the penalties for violating the provisions of this section?* Violation of a term or condition of an oversand permit issued in accordance with this section is prohibited. A violation may also result in the suspension or revocation of the permit.

(13) *Has OMB approved the collection of information in this section?* As required by 44 U.S.C. 3501 *et. seq.*, the Office of Management and Budget has approved the information collection requirement contained in this section. The OMB approval number is 1024–0026. We are collecting this information to allow the Superintendent to issue off-road vehicle permits. You must provide the information in order to obtain a permit.

* * * * *

Dated: February 8, 1998.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–4638 Filed 2–23–98; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–5966–4]

Control of Air Pollution; Removal and Modification of Obsolete, Superfluous or Burdensome Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) published a direct final rule and an associated notice of proposed rulemaking of the same title on April 11, 1996 (61 FR 16050, 61 FR 16068). Both actions were to delete or modify certain rules previously promulgated under the Clean Air Act in the Code of Federal Regulations (CFR), 40 CFR parts 51 and 52, clarify their legal status and remove unnecessary, obsolete or burdensome regulations. EPA received adverse comments on the deletion of rules 40 CFR 51.100(o), 40 CFR 51.101, 40 CFR 51.110(g) and 40 CFR 51.213 as published in both the direct final rule and associated notice of proposed rulemaking. In response to those comments, EPA withdrew those sections from the direct final rule on June 14, 1996 (61 FR 30162). In today's action, EPA is finalizing the notice of proposed rulemaking with respect to these sections. Separate from the notice of proposed rulemaking action, EPA is also removing sections 40 CFR 51.103(a)(1) and (a)(2), as they were superseded by the Clean Air Act Amendments of 1990.

DATES: This rule will be in effect on March 26, 1998.

FOR FURTHER INFORMATION CONTACT: Maureen Delaney, Office of Air and Radiation, Office of Policy Analysis and Review (202) 260–7431.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 4, 1995, the President directed all Federal agencies and departments to conduct a comprehensive review of the regulations they administer, to identify those rules that are obsolete or unduly burdensome. EPA conducted a review of such rules, including rules issued under the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*). On June 29, 1995, EPA deleted more than 200 Clean Air Act rules that were no longer legally in effect under the amended Clean Air Act. 60 FR 33915 (June 29, 1995).

On April 11, 1996, EPA simultaneously published a direct final notice of rulemaking and a notice of proposed rulemaking consisting of EPA's second phase of its revision effort. 61 FR 106050 (April 11, 1996). Where EPA determined that a regulation did not add substantial value to what is already contained in the law, or where there are alternative means to accomplish the regulatory end without restricting EPA's ability to respond to factual peculiarities in a timely and appropriate way, EPA determined that the regulation should be deleted. The rulemaking specified that EPA would withdraw any portions of the direct final rule that were the subject of filed adverse or critical comments. EPA received adverse comments on the revisions to 40 CFR 51.100(o), 40 CFR 51.101, 40 CFR 51.110(g) and 40 CFR 51.213 as published in the direct final rule and associated notice of proposed rulemaking within 30 days of publication in the **Federal Register** of the proposed rule and withdrew those portions of the direct final rule on June 14, 1996 (61 FR 30162). This final rule summarizes the comments received on these CFR sections and EPA's responses.

Removal of any rules from the CFR is not intended to affect the status of any civil or criminal actions that were initiated prior to the publication of this rule, or which may be initiated in the future to readdress violations of the rules that occurred when the rules were still legally in effect. Removal of provisions on the ground that they reiterate or are redundant of statutory provisions does not affect any obligation or requirement to comply with such statutory provision.

II. Deletion and Modification of Unnecessary or Burdensome Rules

40 CFR 51.110(g)

Section 51.110(g) states that EPA encourages states, in developing their attainment plans, to identify alternative control strategies and the costs and benefits thereof. EPA proposed to delete this provision and rely on Clean Air Act sections 110(a)(2)(A) and 101(a)(3), as well as *Train* v. *NRDC*, 421 U.S. 60, 78–79 (1975) and *Union Electric Co.* v. *EPA*, 427 U.S. 246, 256–57 (1976), which make clear that a state is free to consider a broad range of factors in constructing its attainment plans.

Commenters suggest that without section 51.110(g) states may be hesitant to submit an implementation plan with provisions outside of the specific requirements of the CFR or Clean Air Act. As stated previously in the notice of proposed rulemaking, EPA agrees with the policies embodied in section 51.110(g). For that reason, EPA has decided to retain the provision in the CFR.

40 CFR 51.101 Stipulations

Section 51.101 states that nothing in part 51 should be construed to encourage states: to adopt implementation plans that do not protect the environment; to adopt plans that do not take into consideration cost-effectiveness and social and economic impact; to limit appropriate techniques for estimating air quality or demonstrating adequacy of control strategies; and otherwise to limit state flexibility to adopt appropriate control strategies or to attain and maintain air quality better than that required by a national standard. EPA proposed to delete this provision and rely on Clean Air Act sections 110(a)(2)(A) and 101(a)(3), as well as *Train* v. *NRDC*, 421 U.S. 60, 78–79 (1975) and *Union Electric Co.* v. *EPA*, 427 U.S. 246, 256–57 (1976), which make clear that a state is free to consider a broad range of factors in constructing its attainment plans.

Commenters suggested that section 51.101 should remain in the CFR because the flexibility available to States may not be clear if this section were removed. As stated previously in the notice of proposed rulemaking, EPA agrees with the policies embodied in section 51.101. For that reason, EPA has decided to retain the provision in the CFR.

40 CFR 51.100(o)

Section 51.100(o) defines reasonably available control technology ("RACT") for the purpose of implementing secondary national ambient air quality standards ("NAAQS"). This definition is only used in the establishment of secondary NAAQS attainment dates and in the evaluation of State requests for extensions of state implementation plan submittals for secondary NAAQS.

Section 51.110(c) requires plans to provide for the attainment of a secondary standard within a reasonable time after the date of the Administrator's approval of the plan, and for maintenance of the standard after it has been attained.

Under the Clean Air Act of 1977, the test for approval of the attainment date in a SIP implementing a secondary

NAAQS was contained in section 110(a)(2)(A)(ii). This required that the SIP attain the secondary NAAQS within a "reasonable time." Under the CAA of 1990, this was changed. The new test for approval of a secondary NAAQS attainment date is contained in section 172(a)(2)(B) and requires attainment "as expeditiously as practicable after the date such area was designated nonattainment."

As a result of this statutory change, EPA proposed to delete section 51.110(c) from the CFR to eliminate any possible confusion regarding the appropriate tests for approval of a secondary NAAQS attainment date. Because the sole purpose of the section 51.100(o) definition of RACT was to aid in EPA's evaluation of the approvability of secondary NAAQS attainment dates or requests for extension of SIP submittal dates and the 1990 Amendments changed the test governing the evaluation of secondary NAAQS attainment dates, EPA stated that it believed the definition was no longer necessary and proposed deletion. The EPA then stated its belief that evaluation of the approvability of the expeditiousness of attainment dates for secondary nonattainment areas requires a case-by-case analysis of the nature and extent of the problem. The EPA stated that it did not believe that the availability and effectiveness of RACT should be a determinative factor in implementing secondary NAAQS. In addition, EPA maintained that the deletion of section 51.100(o) would eliminate potential confusion, since for other purposes the Agency generally interprets the statute's RACT requirements consistently with the definition of RACT contained in a December 9, 1976, memorandum from R. Strelow to Regional Administrators, Regions I–X, entitled "Guidance to Determining Acceptability of SIP Regulations in Nonattainment Areas."

Commenters suggest that the definition of RACT in section 51.100(o) is the only regulatory definition that states that the availability and effectiveness of RACT should be a determinative factor in implementing secondary NAAQS. EPA does not agree that RACT as defined in section 51.100(o) should be the determinative factor in setting attainment dates for the secondary NAAQS under the new statutory test for setting those dates. However, EPA sees no compelling need to delete the definition of RACT for purposes of guiding the decisions under 40 CFR 51.341 on whether to grant extensions for submitting SIPs to attain the secondary NAAQS. For these reasons, section 51.100(o) will remain in the CFR, but for this latter purpose only. The reference to section 51.110(c)(2) will be deleted since that section has previously been deleted from the CFR.

40 CFR 51.103(a)(1), (a)(2)

Sections 51.103(a)(1) and (a)(2) require that a state make an official implementation plan submission to EPA for any primary national ambient air quality standard or secondary standard, or revision, within nine months after promulgation of such standard or revision.

Prior to the Clean Air Act Amendments of 1990, section 110(a)(1) required submission of state implementation plans within nine months after promulgation of a national primary ambient air quality standard. The Amendments of 1990 changed section 110(a)(1) to give states "3 years (or such shorter period as the Administrator may prescribe)" from promulgation. At this time, EPA sees no basis for retaining the nine month deadline, absent a new finding that nine months is reasonable for all purposes. Accordingly, EPA is removing the last sentence in section 51.103 and is deleting sections 51.103(a)(1) and (a)(2). EPA has determined that there is no need to promulgate another regulation stating the three year deadline since a regulation would not add substantial value to what is already contained in the law. EPA is relying on the "good cause" exception to the notice requirements of the Administrative Procedure Act (section 553(b)(3)(B)) because EPA believes it is unnecessary to provide an opportunity for comment since the deletion merely implements the changes Congress enacted in 1990.

40 CFR 51.213 Transportation Control Measure

Section 51.213(a) provides that plans must contain procedures for obtaining and maintaining data on actual emissions reductions achieved as a result of implementation of transportation control measures. Section 51.213(b) provides that, for measures based on traffic flow changes or reductions in vehicle use, data must include observed changes in vehicle miles traveled and average speeds. Section 51.213(c) requires data to be kept so as to facilitate comparison of the planned and actual efficacy of transportation control measures.

Section 51.213(a–c) are generally addressed in section III, SIP requirements, of the General Preamble for Title I of the 1990 CAA. The procedural elements of the SIP submittals are specifically required by sections 182 and 187 of the CAA. The requirements are incorporated in Agency regulation and guidance on each required SIP submittal that is related to transportation control. For example, guidance documents such as "Transportation Control Measure: State Implementation Plan Guidance (September 1990), "Section 187 VMT Forecasting and Tracking Guidance" (January 1992), and "Transportation Control Measure Information Documents" (March 1992), discuss the same requirements that are set forth in section 51.213. Therefore, EPA believed this section was redundant of other EPA guidance regarding transportation control measures, and proposed to delete it from the CFR.

Commenters suggest that even though guidance documents provide more detail than the rules implementing its provisions, rules, as opposed to guidance, are binding. EPA agrees that a binding rule on this subject would be useful, and section 51.213 will remain in the CFR.

III. Final Action

EPA determines that the above-referenced rules should be deleted or modified at this time. This action will become effective March 26, 1998.

IV. Analyses Under E.O. 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act, and the Paperwork Reduction Act

Because the withdrawal of these rules from the CFR merely withdraws obsolete, duplicative, or superfluous requirements, this action is not a "significant" regulatory action within the meaning of Executive Order 12866.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Today's determination does not create any new requirements, but deletes or modifies existing requirements which are obsolete, duplicative, superfluous, unnecessary, or otherwise unduly burdensome. I therefore certify that it does not have any significant impact on any small entities affected.

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State,

local, or tribal governments in the aggregate.

EPA's final action here does not impose upon the states any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. No additional costs to State, local, or tribal governments, or to the private sector, result from this action, which deletes or eases the indicated requirements. Thus, EPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector.

Finally, since EPA here is merely removing or revising superfluous requirements, their deletion from the CFR does not affect requirements under the Paperwork Reduction Act.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 27, 1998.

V. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Controller General of the General Accounting Office prior to the publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 51

Environmental protection, Air pollution control.

Dated: February 6, 1998.

Carol M. Browner,

Administrator.

Part 51, Chapter I, Title 40 of Code of Federal Regulations is amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7671 *et seq.*

Subpart F—Procedural Requirements

2. Section 51.100(o) (3) is revised to read as follows:

§ 51.100 Definitions.

* * * * *

(o) * * *

(3) Alternative means of providing for attainment and maintenance of such standard. (This provision defines RACT for the purposes of § 51.341(b) only.)

* * * * *

§ 51.103 [Amended]

3. Section 51.103 is amended by removing the last sentence in paragraph (a), and removing paragraphs (a)(1) and (a)(2).

[FR Doc. 98–3884 Filed 2–23–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5969–7]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Notice of Acceptability.

SUMMARY: This document expands the list of acceptable substitutes for ozone-depleting substances (ODS) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program.

EFFECTIVE DATE: February 24, 1998.

ADDRESSES: Information relevant to this document is contained in Air Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Telephone: (202) 260–7548. The docket may be inspected between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Carol Weisner at (202) 564–9193 or fax (202) 565–2095, U.S. EPA, Stratospheric Protection Division, 401 M Street, S.W., Mail Code 6205J, Washington, D.C. 20460; EPA Stratospheric Ozone Protection Hotline at (800) 296–1996; EPA World Wide Web Site (http://www.epa.gov/ozone/title6/snap).

SUPPLEMENTARY INFORMATION:

I. Section 612 Program
  A. Statutory Requirements
  B. Regulatory History
II. Listing of Acceptable Substitutes
  A. Refrigeration and Air Conditioning
  B. Foam Blowing
  C. Aerosols
  D. Solvent Cleaning
III. Additional Information
Appendix A—Summary of Acceptable Decisions

I. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.
- *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional 6 months.
- *90-day Notification*—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or *existing* chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.
- *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.
- *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the Final Rulemaking (FRM) (59 FR

13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvent cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

As described in the final rule for the SNAP program (59 FR 13044), EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substance. Consequently, by this notice EPA is adding substances to the list of acceptable alternatives without first requesting comment on new listings.

EPA does, however, believe that Notice-and-Comment rulemaking is required to place any substance on the list of prohibited substitutes, to list a substance as acceptable only under certain conditions, to list substances as acceptable only for certain uses, or to remove a substance from either the list of prohibited or acceptable substitutes. Updates to these lists are published as separate notices of rulemaking in the **Federal Register**.

The Agency defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to substitute manufacturers, but may include importers, formulators or end-users, when they are responsible for introducing a substitute into commerce.

EPA published Notices listing acceptable alternatives on August 26, 1994 (59 FR 44240), January 13, 1995 (60 FR 3318), July 28, 1995 (60 FR 38729), February 8, 1996 (61 FR 4736), September 5, 1996 (61 FR 47012), March 10, 1997, and June 3, 1997, and published Final Rulemakings restricting the use of certain substitutes on June 13, 1995 (60 FR 31092), May 22, 1996 (61 FR 25585), and October 16, 1996 (61 FR 54030).

II. Listing of Acceptable Substitutes

This section presents EPA's most recent acceptable listing decisions for substitutes for class I and class II substances in the following industrial sectors: refrigeration and air conditioning, foam blowing, aerosols, and solvent cleaning. In this Notice, EPA has split the refrigeration and air conditioning sector into two parts: substitutes for class I substances and substitutes for class II substances. For copies of the full list, contact the EPA Stratospheric Protection Hotline at (800) 296–1996.

Parts A through D below present a detailed discussion of the substitute listing determinations by major use sector. Tables summarizing today's listing decisions are in Appendix A. The comments contained in Appendix A provide additional information on a substitute, but for listings of acceptable substitutes, they are not legally binding under section 612 of the Clean Air Act. Thus, adherence to recommendations in the comments is not mandatory for use as a substitute. In addition, the comments should not be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA encourages users of acceptable substitutes to apply all comments to their use of these substitutes. In many instances, the comments simply allude to sound operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of the comments, if adopted, would not require significant changes in existing operating practices for the affected industry.

A. Refrigeration and Air Conditioning: Class I

1. Clarification

a. Secondary Loop Systems

In the Notice published on March 10, 1997 (62 FR 10700), EPA stated that it would not review secondary loop fluids under the SNAP program. In the final rule of June 13, 1995 (60 FR 31092), however, EPA listed the first set of acceptable substitute refrigerants for heat transfer fluids. EPA has received requests to further clarify the distinction between the use of a fluid in a secondary fluid system (which is not regulated under SNAP), and the use of such a fluid in a heat exchange system (which is regulated under SNAP).

A key characteristic of a secondary loop system is that it contains, as an integral part, a system that moves heat from a cooled area to a warmer one, thereby reversing the natural flow of heat. The secondary loop simply carries heat as an adjunct to the primary loop's effect. For example, in a building chiller, the primary loop uses a vapor compression or other cycle to refrigerate water. This chilled water then circulates throughout the building and fans blow air over the cold pipes to air condition occupied spaces. Under the SNAP program, EPA reviews the refrigerant used in the primary system, but not the fluid used to carry the chill throughout the building. Note that a secondary loop moves heat from a warmer area to a cooler one. Thus, neither loop within a cascade refrigeration system is considered a secondary loop.

In contrast, a heat transfer system's primary effect is to move heat from a warmer area to a cooler one. Thus, the heat transfer fluid is the primary refrigerant and it delivers the actual cooling. An example of this type of system is a thermosyphon transformer. A liquid heat transfer fluid absorbs heat from hot electrical components, vaporizes, and rises into a cooling heat exchanger, where it gives off the heat to the surrounding air. There are also heat transfer systems that rely on a pump, but their primary function is still to move heat in the direction it naturally flows. In essence, a heat transfer system augments or assists natural heat flow as the primary effect, rather than augmenting a primary loop that reverses the natural heat flow.

b. Definition of MVAC Under SNAP

Under the SNAP program, the motor vehicle air conditioning (MVAC) end-use includes all forms of air conditioning that provide cooling to the passenger compartments in moving vehicles. This definition includes both MVACS, defined at 40 CFR 82.32, and MVAC-like equipment, defined at 40 CFR 82.152. EPA regulations issued under sections 608 and 609 of the Clean Air Act distinguished between MVACS and MVAC-like equipment for purposes of refrigerant recycling and handling. EPA includes both in the SNAP MVAC end-use and has relied on this definition since the original SNAP rule of March 18, 1994 (59 FR 13044); today's Notice simply clarifies this definition. All use conditions, unacceptability findings, and other regulatory actions for this end-use apply equally to on-road vehicles, such as automobiles and trucks, and to off-road vehicles, such as tractors, combines, construction, and mining equipment.

c. Use of Adapters With Refrigerant Identifiers in MVACs

In the June 3, 1997 SNAP Notice (62 FR 32075), EPA clarified that manifold gauge sets may be used with multiple refrigerants, provided that for each refrigerant there is a separate set of hoses with permanently attached

fittings unique to that refrigerant. Today, EPA further clarifies that refrigerant identifiers may be used with multiple refrigerants under the same proviso. The connection between the identifier or similar service equipment and the service hose may be standardized and work with multiple hoses. For each refrigerant, the user must attach a hose to the identifier that has a fitting unique to that refrigerant permanently attached to the end going to the vehicle. Adapters may not be attached for one refrigerant and then removed and replaced with the fitting for a different refrigerant. The guiding principle is that once attached to a hose, the fitting is permanent and is not removed. This procedure allows identifiers and other service equipment to be used with more than one refrigerant while still preventing the attachment and detachment of unique fittings from hoses. Note that for recovery, recycling, or other equipment used to transfer refrigerant, hoses must include shutoff valves and must have the refrigerant recovered prior to changing hoses from one refrigerant to another, but for low-flow devices like refrigerant identifiers, there are no such requirements.

2. Acceptable Substitutes

Note that EPA acceptability does not imply that an acceptable substitute is technically viable or has been optimized for a given type of equipment within an end-use. Engineering expertise must be used to determine the appropriate use of substitutes for ozone depleting chemicals. In addition, although some alternatives are listed as acceptable substitutes for multiple refrigerants, they may not be appropriate for use in all equipment or under all conditions.

a. Self-Chilling Cans Using Carbon Dioxide as the Refrigerant

Self-chilling cans using carbon dioxide are acceptable substitutes for CFC–12, R–502, and HCFC–22 in retrofitted and new household refrigeration, transport refrigeration, vending machines, cold storage warehouses, and retail food refrigeration.

This technology represents a product substitute intended to replace several types of refrigeration equipment. A self-chilling can includes a heat transfer unit that performs the same function as one half of the traditional vapor-compression refrigeration cycle. The unit contains a charge of refrigerant that is released to the atmosphere when the user activates the cooling unit. As the refrigerant is released to the atmosphere it absorbs heat from the can's contents and evaporates, thus cooling the liquid inside the can. Because this process provides the same cooling effect as household refrigeration, transport refrigeration, vending machines, cold storage warehouses, or retail food refrigeration, it is a substitute for CFC–12, R–502, or HCFC–22 in these systems.

In a recent Notice of Proposed Rulemaking, EPA proposed that self-chilling cans using HFC–134a or HFC–152a as the refrigerant were unacceptable substitutes (63 FR 5491; February 3, 1998). In contrast to HFC–134a, which has a global warming potential (GWP) of 1300, CO_2 has a GWP of 1. Therefore, the potential impact of CO_2 use in self-chilling cans versus HFC–134a will be much lower. In addition, the submitter indicates that the self-chilling cans will use CO_2 either recovered as a by-product from other industrial activities or taken from the atmosphere, thus further reducing the net impact.

CO_2 exhibits very high pressures compared to some other refrigerants including HFC–134a. The submitter indicated that an alternative technology would prevent internal pressures within the heat exchange unit from exceeding 150 psig. EPA believes that this design is within acceptable limits, since this pressure will exist within the heat exchange unit rather than the outer can containing the beverage; if this pressure is transmitted to the can (which is not expected), existing beverage cans are designed to withstand equivalent pressure. In addition, tabs used to open existing cans are designed to open automatically at 200 psig, providing a safety valve if high pressures do develop.

EPA's determination that self-chilling cans using CO_2 are acceptable substitutes in the end-uses listed above is based on the maximum design pressure of 150 psig and the intent to use CO_2 recaptured from other activities or from the atmosphere. EPA invites information about the pressures actually found in self-chilling cans once they are produced and on the specific sources for CO_2. If either the cans exceed 150 psig in pressure or use newly produced CO_2, EPA may revisit today's decision.

b. THR–01

THR–01, composed of HCFC–22 and HFC–152a, is acceptable as a substitute for CFC–12 in the following new systems:

- Household Refrigerators
- Household Freezers

Because this blend contains an HCFC, it contributes to ozone depletion. However, this concern is mitigated by the scheduled phaseout of this chemical. Regulations regarding recycling and reclamation issued under section 608 of the Clean Air Act (58 FR 28660) apply to this blend. This blend is flammable, but significantly less so than pure HFC–152a. A risk assessment showed that HFC–152a can be safely used in newly designed household refrigerators and freezers; since HFC–152a is listed as acceptable in these end-uses, and THR–01 poses lower flammability risk than pure HFC–152a, THR–01 is also acceptable. The GWP of HFC–152a is much less than that of HCFC–22; again, since HCFC–22 is listed as acceptable, THR–01 is also acceptable.

c. FRIGC FR–12

FRIGC FR–12, which consists of HCFC–124, HFC–134a, and butane, is acceptable as a substitute for R–500 in the following new and retrofitted end-uses:

- Centrifugal Chillers
- Reciprocating Chillers
- Industrial Process Refrigeration
- Cold Storage Warehouses
- Refrigerated Transport
- Retail Food Refrigeration
- Vending Machines
- Water Coolers
- Commercial Ice Machines
- Residential Dehumidifiers

and as a substitute for CFC–12 in centrifugal chillers.

This blend contains HCFC–124. Therefore, it contributes to ozone depletion, but to a much lesser degree than R–500. Regulations regarding recycling and reclamation issued under section 608 of the Clean Air Act (58 FR 28660) apply to this blend. The GWPs of the components are moderate to low. This blend is nonflammable, and leak testing has demonstrated that the blend never becomes flammable.

d. Galden Fluids

Galden Fluids, which contain perfluoroethers and perfluorocarbons, are acceptable substitutes for CFC–11, CFC–12, CFC–113, CFC–114, and CFC–115 in retrofitted heat transfer systems. Perfluorocarbons (PFCs) offer high dielectric resistance, noncorrosivity, thermal stability, materials compatibility, chemical inertness, low toxicity, and nonflammability. In addition, they do not contribute to ground-level ozone formation or stratospheric ozone depletion. The principal characteristic of concern for PFCs is that they have long atmospheric lifetimes and have the potential to contribute to global climate change.

PFCs are also included in the Climate Change Action Plan, which broadly instructs EPA to use section 612 of the Clean Air Act, as well as voluntary programs, to control emissions. Despite these concerns, EPA is listing PFCs as acceptable in retrofitted heat transfer applications because they may be the only substitutes that can satisfy safety or performance requirements. For example, a transformer may require very high dielectric strength, or a heat transfer system for a chlorine manufacturing process could require compatibility with the process stream.

In cases where users must adopt PFCs (or PFC-containing blends like the Galden Fluids) to transition out of ozone depleting chemicals, they should make every effort to:

- Recover and recycle these fluids during servicing;
- Adopt maintenance practices that reduce leakage as much as is technically feasible;
- Recover these fluids after the end of the equipment's useful life and either recycle them or destroy them; and
- Continue to search for other long-term alternatives.

Users of PFCs should note that if other alternatives become available, EPA could be petitioned to list PFCs as unacceptable due to the availability of other suitable substitutes. If such a petition were granted, EPA may grandfather existing uses upon consideration of cost and timing of testing and implementation of new substitutes. EPA urges industry to develop new alternatives for this end-use that do not contain substances with such high GWPs and long lifetimes.

e. R–508A and R–508B

R–508A and R–508B, both of which contain HFC–23 and R–116, are acceptable as substitutes for CFC–13, R–13B1, and R–503 in retrofitted and new very low temperature refrigeration and industrial process refrigeration. Notices published on July 28, 1995 (60 FR 38729) and Feb. 8, 1996 (61 FR 4736) listed R–508 as acceptable in these end-uses. At the time of these listings, only R–508 was available. Since then, two blends with the same components in different percentages have entered the market. Today's Notice expands the acceptable listing to include both R–508A and R–508B.

B. Foam Blowing

1. Acceptable Substitutes

Under section 612 of the Clean Air Act, EPA is authorized to review substitutes for class I (CFCs) and class II (HCFCs) chemicals. The following listing expands the list of acceptable substitutes for CFCs and HCFCs in integral skin applications.

a. Polyurethane Integral Skin Foam

(a) Formic Acid

Formic acid is an acceptable substitute for CFCs and HCFCs in polyurethane integral skin foam. Formic acid is more flammable than CFCs and HCFCs but less flammable than hydrocarbons such as n-pentane and cyclopentane which are currently used in foam blowing. Use of formic acid may require additional investment to assure safe handling and shipping as prescribed by OSHA and DOT. The TVL–TWA for formic acid is 5 ppm and a 15-minute TLV–STEL of 10 ppm. Formic acid has no ODP and very low or zero global warming potential (GWP). It is a volatile organic compound (VOC) and must be controlled as such under Title I of the Clean Air Act. Relevant consumer product and other safety requirements necessary for use of formic acid-blown integral skin foam would have to be met.

(b) Acetone

Acetone is an acceptable substitute for CFCs and HCFCs in polyurethane integral skin foam. Acetone is more flammable than CFCs and HCFCs but less flammable than hydrocarbons such as n-pentane and cyclopentane which are currently used for foam blowing. Use of acetone may require additional investment to assure safe handling and shipping as prescribed by OSHA and DOT. The OSHA PEL–TWA for acetone is 750 ppm and a 15-minute STEL of 1000 ppm. Acetone has no ODP and very low or zero global warming potential (GWP). Acetone has been excluded from the definition of a VOC under Title I of the Clean Air Act (60 FR 31633; 6/15/95) but may be subject to state or local controls. Relevant consumer product and other safety requirements necessary for use of acetone-blown integral skin foam would have to be met.

C. Aerosols

1. Acceptable Substitutes

Organic solvents can be used to replace CFC–11, CFC–113, and MCF, in certain cleaning operations. This classification category of chemicals was previously determined under the SNAP program to include C6–C20 petroleum hydrocarbons (both naturally and synthetically derived) (59 FR 13044).

Under section 612 of the Clean Air Act, EPA is authorized to review substitutes for class I (CFCs) and class II (HCFCs) chemicals. The following decision expands the existing acceptable listing for petroleum hydrocarbons as substitutes for CFCs and HCFCs in aerosols solvents to include petroleum hydrocarbon C5.

(a) Aerosol Solvent

(1) Petroleum Hydrocarbon (C5)

Petroleum hydrocarbon C5 is an acceptable substitute for CFCs and HCFCs in aerosol solvents. Petroleum hydrocarbons are fractionated from the distillation of petroleum. These compounds are loosely grouped into paraffins or aliphatic hydrocarbons and light aromatics (toluene and xylene) and come in various stages of purity. Components with up to twenty carbons are now also being used in an effort to reduce flammability. These compounds have good solvent properties, are relatively inexpensive, and are readily available from chemical distributors. When a controlled substance is used only as a diluent, such as automotive undercoatings, substitution using petroleum hydrocarbons can be achieved with minor reformulation. Many of these products containing petroleum hydrocarbons have been reported to be comparable to or to outperform their chlorinated counterparts.

Petroleum hydrocarbons are, however, flammable and thus cannot be used as replacement solvents in applications where the solvent must be nonflammable such as electronic cleaning applications. In addition, pesticide aerosols formulated with certain petroleum hydrocarbons must adhere to requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

2. Clarification

(a) n-Propyl-Bromide

Review of the SNAP submission docket control number VI–D–114 for n-propyl-bromide has disclosed that a submission for the Aerosol sector has yet to be received. As such, all distribution and sale into this area must cease until a complete submission is obtained and the necessary review period has elapsed.

D. Solvent Cleaning

1. Clarification

a. Hydrofluoroether (HFE): $C_4F_9OCH_3$

In reference to the **Federal Register** dated September 5, 1996, HFE 7100 was characterized as exhibiting moderate toxicity (61 FR 47012). This Notice serves to inform users that additional toxicity data indicate that a characterization of low toxicity is now

warranted. This revision is made based on the 600 ppm 8-hr Time Weighted Average workplace standard set by the manufacturer. As with workplace exposure standards for other CFC alternatives, this standard will be examined by the Workplace Environmental Exposure Limit subcommittee of the American Industrial Hygiene Association.

b. Definition of Solvent Cleaning End Uses

In reference to the **Federal Register** dated March 18, 1994, the solvents cleaning sector was subdivided into three end uses; metals cleaning, electronics cleaning, and precision cleaning. This notice serves to further clarify the definition of these end uses in order to avoid any confusion as to user placement.

(1) Electronics Cleaning

Primarily the removal of flux residues from wiring assemblies after a soldering operation has been completed. This is considered a high value end use application where performance is critical.

(2) Metals Cleaning

The removal of a wide variety of contaminants from metal objects during a manufacturing or maintenance process. At each stage in the manufacturing process contaminants must be removed from the piece to ensure a clean metal surface for the next step in the production process or for final consumption. These parts tend to be metal objects ranging from fully assembled aircraft down to small metal parts stamped out in high volume. These contaminants are most often greases, cutting oils, coatings, large particles, and metal chips.

(3) Precision Cleaning

Applies to components and surfaces of any composition for which an extremely high level of cleanliness is necessary to ensure satisfactory performance during the manufacturing process or in final consumption. This end use is characterized as very high value end use segment based on a non-cost criteria. Examples of such criteria would be: high value products, protection or safeguarding of human life, compatibility concerns with plastics, temperature and mechanical stress limitations, precision mechanical assemblies/components with demanding machining tolerances or complex geometries, and base or mix of metals readily pitted, corroded, eroded or otherwise compromised.

2. Acceptable Substitutes

Under Section 612 of the Clean Air Act, EPA is authorized to review substitutes for class I (CFCs) and class II (HCFCs) chemicals. The following listing expands the list of acceptable petroleum hydrocarbon substitutes for CFCs, HCFCs and MCF as used in semiaqueous and straight organic solvent cleaning to include C5.

(a) Metals, Precision and Electronics Cleaning

(1) Semi-aqueous

Petroleum hydrocarbon C5 is an acceptable substitute for CFCs and HCFCs in semi-aqueous solvents. Semi-aqueous cleaners are alternatives for cleaning in all three SNAP solvent cleaning end-uses. These cleaners employ hydrocarbons/surfactant either emulsified in water solutions or applied in concentrated form and then rinsed with water. As both approaches involve water as part of the formulation, the system is commonly referred to as "semi-aqueous." The principal categories of chemicals used in this formulation were previously defined under the SNAP program as terpenes, C6–C20 petroleum hydrocarbons (both naturally or synthetically derived), or oxygenated solvents (such as alcohols) (59 FR 13044). This determination expands petroleum hydrocarbons to include C5.

An extensive discussion of various semi-aqueous cleaning alternatives may be found in the Industry Cooperative for Ozone Layer Protection (ICOLP) documents on the subject. Users can obtain these documents from the EPA Stratospheric Protection Hotline at 1–800–296–1996.

(b) Straight Organic Solvent Cleaning

(1) Petroleum Hydrocarbon (C5)

Petroleum hydrocarbon C5 is an acceptable substitute for CFCs and HCFCs as a straight organic solvent. Organic solvents can be used to replace CFC–113 and MCF in certain cleaning operations. This classification is defined to include terpenes, C5–C20 petroleum hydrocarbons (both naturally and synthetically derived), and oxygenated organic solvents such as alcohols, ethers, (including propylene glycol ethers), esters and ketones. These compounds are commonly used in solvent tanks at room temperature, although the solvents can also be used in-line cleaning systems or be heated to increase solvency power. If heated, the solvents must be used in equipment designed to control vapor losses.

These solvents, unlike class I and II compounds, do not contribute to stratospheric ozone depletion, and generally have short atmospheric lifetimes. Yet many of the organic solvents are regulated as VOCs because they can contribute to ground level ozone formation. In addition, certain of the organic solvents are toxic to human health and are subject to waste handling standards under the Resource Conservation and Recovery Act (RCRA) and to workplace standards set by Occupational Safety and Health Administration (OSHA). For example, xylene and toluene may be used as substitutes but are, once they become wastes, regulated under RCRA as listed or characteristic wastes.

E. Adhesives, Coatings & Inks

1. Clarification

(a) n-Propyl-Bromide

Review of the SNAP submission, docket control number VI–D–114, for n-propyl-bromide has disclosed that a submission for the Adhesives, Coatings & Inks sector has yet to be received. As such, all distribution and sale into this sector must cease until a complete submission is obtained and the mandatory 90-day review period has elapsed.

III. Additional Information

Contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday–Friday, between the hours of 10:00 a.m. and 4:00 p.m. (Eastern Standard Time).

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). **Federal Register** notices can be ordered from the Government Printing Office Order Desk (202) 783–3238; the citation is the date of publication. This Notice may also be obtained on the World Wide Web at http://www.epa.gov/ozone/title6/snap/snap.html.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Act of 1996, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3).

List of Subjects in 40 CFR Part 82

Environmental Protection, Administrative Practice and Procedure, Air Pollution Control, Reporting and Record keeping Requirements.

Dated: February 12, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix A: Summary of Acceptable Decisions

End-use	Substitute	Decision	Comments
Refrigeration and Air Conditioning			
CFC–12, R–502, and HCFC–22 Household Refrigeration, Transport Refrigeration, Vending Machines, Cold Storage Warehouses, and Retail Food Refrigeration (Retrofit and New).	Self-chilling cans using carbon dioxide.	Acceptable.	This decision is based on a maximum design pressure of 150 psig and the use of CO_2 captured from either other industrial activities or the atmosphere.
CFC–12 Household Refrigerators and Freezers (New).	THR01	Acceptable.	
R–500 Centrifugal and Reciprocating Chillers, Industrial Process Refrigeration, Cold Storage Warehouses, Refrigerated Transport, Retail Food Refrigeration, Vending Machines, Water Coolers, Commercial Ice Machines, and Residential Dehumidifiers, and CFC–12 Centrifugal Chillers (Retrofit and New).	FR–12	Acceptable	
CFC–11, CFC–12, CFC–113, CFC–114, CFC–115 Non-Mechanical Heat Transfer (Retrofit).	Galden Fluids	Acceptable	The principal environmental characteristic of concern for PFCs is that they have high GWPs and long atmospheric lifetimes.
CFC–13, R–13B1, and R–503 Very Low Temperature Refrigeration and Industrial Process Refrigeration (Retrofit and New).	R–508A and R–508B	Acceptable	This listing expands the prior determination for R–508 to R–508A and R–508B.
Foam Blowing			
CFCs and HCFCs, Polyurethane Integral Skin.	Formic Acid	Acceptable	Formic acid is flammable thus additional investment may be required to ensure safe handling, use and shipping for flammable materials. Formic acid is a VOC and subject to control under Title I of the Clean Air Act.
	Acetone	Acceptable	Acetone is flammable thus additional investment may be required to ensure safe handling, use and shipping.
Aerosol			
CFC–11, CFC–113, MCF, and HCFC–141b as aerosol solvents.	C5–C20 Petroleum hydrocarbons	Acceptable	Petroleum hydrocarbons are flammable. Use with the necessary precautions. Pesticides aerosols must adhere to FIFRA standards.
Solvent Cleaning			
Metals cleaning w/CFC–113, MCF	Straight organic solvent cleaning with petroleum hydrocarbon C5.	Acceptable	OSHA standards must be met, if applicable.
	Semi-aqueous cleaners	Acceptable	EPA effluent guidelines must be met.
Electronics cleaning w/CFC–113, MCF	Straight organic solvent cleaning with petroleum hydrocarbon C5.	Acceptable	OSHA standards must be met, if applicable.
	Semi-aqueous cleaners	Acceptable	EPA effluent guidelines must be met.
Precision Cleaning w/CFC–113, MCF	Straight organic solvent cleaning with petroleum hydrocarbon C5.	Acceptable	OSHA standards must be met, if applicable.
	Semi-aqueous cleaners	Acceptable	EPA effluent guidelines must be met.

[FR Doc. 98–4654 Filed 2–23–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 201

[Docket No. MARAD–98–3511]

RIN 2133–AB33

Removal of Obsolete Regulations; Revisions Removing Obsolete References

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: In connection with the review, by the Maritime Administration (MARAD), pursuant to the President's ongoing Regulatory Reinvention Initiative, certain regulations relating to agency practice and procedure have been identified for updating or for removal. The identified regulations in 46 CFR Charter II, or portions thereof, are obsolete and noncontroversial.

EFFECTIVE DATE: February 24, 1998.

FOR FURTHER INFORMATION CONTACT: Joel C. Richard, Secretary, Maritime Administration, Telephone No. (202) 366–5746.

SUPPLEMENTARY INFORMATION: The ongoing regulatory review of all agency regulations in force has identified certain MARAD regulations as being in need of either elimination or of revision. Obsolete regulations for removal or for revision by part, subpart, section or portion of a section include the following:

46 CFR Part 201—Rules of Practice and Procedure

Section 201.1. Mailing address; hours, is being revised since the address has changed. In the last sentence of this section "in room 7300" is being revised to "room 7210".

Section 201.21. Persons not attorneys at law, is being removed since it covers practice in MARAD proceedings by practitioners other than attorneys, who have actually never represented parties in these proceedings.

Section 201.85. Commencement of functions of Office of Hearing Examiners, is being revised in orders to make the terms consistent with the Department's nomenclature.

Section 201.86. Presiding Officer, was unintentionally removed, and is being restored revised consistent within the Department's nomenclature.

Section 201.87. Authority of Presiding Officer, is being revised consistent with the Department's nomenclature.

Subpart U—Charges for Orders, Notices, Rulings, Decisions, is being removed since this subpart concerns fees that are covered by the Department's Freedom of Information Act regulations at 49 CFR Part 7, Subpart I—Fees.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review)

This rulemaking has been reviewed under Executive Order 12866 and Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). It is not considered to be an economically significant regulatory action under section 3(f) of E.O. 12866, since it has been determined that it is not likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. It is not considered to be a significant rule under the Department's Regulatory Policies and Procedures.

MARAD has determined that this rulemaking presents no substantive issue which it could reasonably expect would produce meaningful public comment since it is merely removing, pursuant to a Presidential directive, regulations or portions thereof that are obsolete, retention of which could serve no useful purpose. Accordingly, pursuant to 5 U.S.C. 553(c) and (d), Administrative Procedure Act, MARAD finds that good cause exists to publish this as a final rule, without opportunity for public comment, and to make it effective on the date of publication. This rule has not been reviewed by the Office of Management and Budget under Executive Order 12866.

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certified that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains no reporting requirement that is subject to OMB approval under 5 CFR Part 1320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The Maritime Administration has determined this rulemaking contains no unfunded mandates.

List of Subjects in 46 CFR Part 201

Administrative practice and procedure.

Accordingly, for the reasons set forth, 46 CFR Part 201 is amended as set forth below:

1. The authority citation is revised to read as follows:

Authority: 46 App. U.S.C. 1114(b); 49 CFR 1.66 and 1.69.

§ 201.2 [Amended]

2. Section 201.2 Mailing Address; hours, is amended in the last sentence by removing room number "7300" and adding "7210" in its place.

§ 201.21 [Removed and Reserved]

3. Section 201.21 is removed and reserved.

§ 201.85 [Amended]

4. Section 201.85 Commencement of functions of Office of Hearing Examiners, is amended in the heading and in the text by removing "Office of Hearing Examiners", and adding "Department of Transportation Office of Hearings" in its place.

§ 201.87 [Amended]

5. Section 201.87 Authority of Presiding Officer, is amended in the last sentence by removing "Chief Hearing Examiner" and adding "Chief Administrative Law Judge" in its place.

6. Section 201.86 is added to read as follows:

§ 201.86 Presiding Officer.

An Administrative Law Judge in the Department of Transportation Office of Hearings will be designated by the Department's Chief Administrative Law Judge to preside at hearings required by statute, or directed to be held under the Administration's discretionary authority in hearings not required by statute, in rotation so far as practicable, unless the Administration shall designate one or more of its officials to serve as presiding

officer(s) in hearings required by statute, or member(s) of the staff in proceedings not required by statute.

Subpart U—[Removed]

7. In part 201, Subpart U—Charges for Orders, Notices, Rulings, Decisions, is removed.

Dated: February 18, 1998.

By Order of the Maritime Administration.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 98–4505 Filed 2–23–98; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

48 CFR Chapter 4

Use of Direct Final Rulemaking

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Policy Statement.

SUMMARY: The Office of Procurement and Property Management (OPPM) publishes rules governing USDA acquisition in 48 CFR chapter 4. OPPM also has proposed adding 7 CFR chapter XXXII to publish rules governing personal property management (63 FR 3481–3483, January 23, 1998). OPPM is implementing a new rulemaking procedure to expedite making noncontroversial changes to its regulations. Rules that the agency judges to be non-controversial and unlikely to result in adverse comments will be published as "direct final" rules. ("Adverse comments" are comments that suggest that a rule should not be adopted or suggest that a change should be made to the rule.) Each direct final rule will advise the public that no adverse comments are anticipated, and that unless written adverse comments or written notice of intent to submit adverse comments are received within 30 days, the revision made by the rule will be effective 60 days from the date the direct final rule is published in the **Federal Register**. This new policy should expedite the promulgation of routine or otherwise noncontroversial rules by reducing the time that would be required to develop, review, clear, and publish separate proposed and final rules.

EFFECTIVE DATE: February 24, 1998.

FOR FURTHER INFORMATION CONTACT: Joseph J. Daragan, U.S. Department of Agriculture, Office of Procurement and Property Management, Procurement Policy Division, STOP 9303, 1400 Independence Avenue SW, Washington, DC 20250–9303, telephone (202) 720–5729.

SUPPLEMENTARY INFORMATION: OPPM is committed to improving the efficiency of its regulatory process. In pursuit of this goal, we plan to employ the rulemaking procedure known as "direct final rulemaking" to promulgate some of OPPM's rules.

OPPM Regulations

OPPM promulgates USDA-wide policies, standards, techniques and procedures pertaining to procurement (acquisition), property management, disaster management, and coordination of emergency programs. To accomplish this function, OPPM may publish rules governing USDA acquisition in 48 CFR chapter 4. In a notice of proposed rulemaking (63 FR 3481–3483, January 23, 1998) OPPM proposed to publish rules governing personal property management by adding 7 CFR chapter XXXII.

The Direct Final Rule Process

Rules that OPPM judges to be noncontroversial and unlikely to result in adverse comments will be published as direct final rules. Each direct final rule will advise the public that no adverse comments are anticipated, and that unless written adverse comments or written notice of intent to submit adverse comments are received within 30 days, the revision made by the direct final rule will be effective 60 days from the date the direct final rule is published in the **Federal Register**.

"Adverse comments" are comments that suggest that the rule should not be adopted, or that suggest that a change should be made to the rule. A comment expressing support for the rule as published will not be considered adverse. Further, a comment suggesting that requirements in the rule should, or should not, be employed by OPPM in other programs or situations outside the scope of the direct final rule will not be considered adverse.

In accordance with the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553), the direct final rulemaking procedure gives the public general notice of OPPM's intent to adopt a rule, and gives interested persons an opportunity to participate in the rulemaking through submission of comments. The major feature of direct final rulemaking is that if OPPM receives no written adverse comments and no written notice of intent to submit adverse comments within 30 days of the publication of the direct final rule, the rule will become effective without the need to publish a separate final rule. However, OPPM will publish a notice in the **Federal Register** stating that no adverse comments were received regarding the direct final rule, and confirming that the direct final rule is effective on the date stated in the direct final rule.

If OPPM receives written adverse comments or written notice of intent to submit adverse comments within 30 days of the publication of a direct final rule, a notice of withdrawal of the direct final rule will be published in the **Federal Register**. If OPPM intends to proceed with the rulemaking, the direct final rule will be republished as a proposed rule and we will proceed with the normal notice-and-comment rulemaking procedures.

Determining When to Use Direct Final Rulemaking

Not all OPPM rules are good candidates for direct final rulemaking. OPPM intends to use the direct final rulemaking procedure only for rules that we consider to be non-controversial and unlikely to generate adverse comments. The decision to use direct final rulemaking for a rule will be based on OPPM's experience with similar rules.

Electronic Access Address

You may request additional information by sending electronic mail (E-mail) to JDARAGAN@USDA.GOV, or via fax at (202) 720–8972.

Done in Washington, D.C., this 7th day of January, 1998.

W.R. Ashworth,

Director, Office of Procurement and Property Management.

[FR Doc. 98–919 Filed 2–23–98; 8:45 am]

BILLING CODE 3410–XE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970930235–8028–02; I.D. 021798E]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Fishery Openings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Opening of Fisheries.

SUMMARY: NMFS announces openings of three fisheries for the Gulf migratory group of king mackerel in the exclusive economic zone (EEZ) of the eastern and western zones of the Gulf of Mexico. Two are in the Florida west coast subzone of the eastern zone, i.e., the run-around gillnet fishery and the hook-and-line fishery, and the third fishery is in the western zone. These openings result from implementation of a recent framework action that increased total allowable catch (TAC) and commercial quotas for Gulf group king mackerel for the 1997/98 fishing year.

DATES: Effective 12:01 a.m., local time, February 20, 1998.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

In accordance with the framework procedures of the FMP, the Councils recommended to increase TAC for Gulf group king mackerel from 7.8 to 10.6 million lb (3.54 to 4.81 million kg). NMFS published a proposed rule on October 14, 1997 (62 FR 53278) and a final rule on February 19, 1998, in the Federal Register. Accordingly, the commercial quota was increased from 2.50 million lb (1.13 million kg) to 3.39 million lb (1.54 million kg) with corresponding quota increases for the associated zones and subzones. Quotas for the eastern and western zones were increased from 1.73 million lb (0.78 million kg) to 2.34 million lb (1.06 million kg) and from 0.77 million lb (0.35 million kg) to 1.05 million lb (0.48 million kg), respectively. The eastern zone quota is divided into equal quotas for the Florida west and east coast subzones that increased from 865,000 lb (392,357 kg) to 1.17 million lb (0.53 million kg). The quota for the Florida west coast subzone is further divided, based upon gear types, into two equal quotas that increased from 432,500 (196,179 kg) to 585,000 lb (265,352 kg) for vessels using run-around gillnets and those using hook-and-line gear (50 CFR 622.42(c)(1)(i)(A)(*2*)). These increased commercial quotas are applicable for the 1997/98 fishing year, which began on July 1, 1997.

Prior to implementing the increased quotas, NMFS, in accordance with 50 CFR 622.43(a)(3), closed three commercial fisheries for Gulf group king mackerel based on the former, lower quotas. NMFS closed the commercial fishery in the western zone on August 2, 1997 (62 FR 42417, August 7, 1997). Similarly, NMFS closed the two commercial fisheries in the Florida west coast subzone. The commercial hook-and-line fishery was closed January 7, 1998 (63 FR 1772, January 12, 1998) and the commercial run-around gillnet fishery was closed at 12:00 noon, local time, February 3, 1998 (63 FR 6109, February 6, 1998). All three fisheries were closed through June 30, 1998, the end of the fishing year.

As a result of implementing the increased quotas for Gulf group king mackerel, unharvested balances are available for all three of the previously closed fisheries for the 1997/98 fishing year. Therefore, NMFS opens the commercial fisheries for Gulf group king mackerel in the western zone and in the Florida west coast subzone effective 12:01 a.m., local time, February 20, 1998. The fisheries will remain open under applicable trip limits until NMFS determines that the quota balances have been taken and the increased quota levels have been reached.

During the opening, a vessel fishing in the Florida west coast subzone under the run-around gillnet quota or hook-and-line quota may not exceed the commercial trip limits of 25,000 lb (11,340 kg) or 500 lb (227 kg) per day, respectively. A person who fishes in the EEZ may not combine these trip/possession limits with any trip or possession limit applicable to state waters. No trip limit is applicable for the western zone.

The 500–lb (227–kg) trip limit for hook-and-line vessels operating in the Florida west coast subzone is in accordance with 50 CFR 622.44(a)(2)(ii)(B) which specifies king mackerel may be possessed on board or landed from a permitted vessel in amounts not exceeding 500 lb (227 kg) per day from the date that 75 percent of the subzone's hook-and-line gear quota has been harvested. NMFS has determined that 75 percent of the hook-and-line quota for Gulf group king mackerel from the Florida west coast subzone has been reached.

The boundary between the eastern and western zones is 87°31'06" W. long., which is a line directly south from the Alabama/Florida boundary. The Florida west coast subzone extends from 87°31'06" W. long. (due south of the Alabama/Florida boundary) to: (1) 25°20.4' N. lat. (due east of the Dade/Monroe County, FL, boundary) through March 31, 1998; and (2) 25°48' N. lat. (due west of the Monroe/Collier County, FL, boundary) from April 1, 1998, through October 31, 1998.

Classification

This action is taken under 50 CFR 622.43(a)(3) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 18, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–4548 Filed 2-18-98; 5:03 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 36
Tuesday, February 24, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV98–993–1 PR]

Dried Prunes Produced in California; Undersized Regulation for the 1998–99 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on changes to the undersized prune regulation for dried prunes received by handlers from producers and dehydrators under Marketing Order No. 993 for the 1998–99 crop year. The marketing order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule would remove the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets, and allow handlers to dispose of the undersized prunes in such outlets as livestock feed. The Committee estimated that this rule would reduce the calculated excess of about 78,000 tons of dried prunes expected at the end of the 1997–98 crop year, by approximately 7,300 tons, leaving sufficient prunes to fulfill foreign and domestic trade demand.

DATES: Comments received by March 26, 1998, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on changes to the undersized regulation currently in effect for French prunes which pass freely through a screen opening from 23/32 to 24/32 in diameter and for non-French prunes from 28/32 to 30/32 of an inch in diameter for the 1998–99 crop year for volume control purposes. This rule would remove the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets. The rule would be in effect from August 1, 1998, through July 31, 1999, and was unanimously recommended by the Committee at a November 18, 1997, meeting.

Section 993.19b of the prune marketing order defines undersized prunes as prunes which pass freely through a round opening of a specified diameter. Since August 1, 1982, the undersized dried prune regulation specified in § 993.49(c) of the prune marketing order has been 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes. These diameter openings have been in effect continuously for quality control purposes. Section 993.49(c) also provides that the Secretary upon a recommendation of the Committee may establish larger openings for undersized dried prunes whenever it is determined that supply conditions for a crop year warrant such regulation. Section 993.50(g) states in part: "No handler shall ship or otherwise dispose of, for human consumption, the quantity of prunes determined by the inspection service pursuant to § 993.49(c) to be undersized prunes * * *." Pursuant to § 993.52, minimum standards, pack specifications, including the openings prescribed in § 993.49(c), may be modified by the Secretary, on the basis of a recommendation of the Committee or other information.

Pursuant to the authority in § 993.52 of the order, § 993.400 modifies the undersized openings prescribed in § 993.49(c) to permit undersized regulations using openings of 23/32 or 24/32 of an inch for French prunes, and 28/32 or 30/32 of an inch for non-French prunes.

During the 1974–75 and 1977–78 crop years, the undersized prune regulation was established by the Department at 23/32 of an inch in diameter for French prunes and 28/32 of an inch in diameter for non-French prunes. These diameter openings were established in §§ 993.401 and 993.404, respectively (39 FR 32733; September 11, 1974; and 42 FR 49802; September 28, 1977). During the 1975–76 and 1976–77 crop years, the undersized prune regulation was established at 24/32 of an inch for French prunes, and 30/32 of an inch for non-French prunes. These diameter openings were established in §§ 993.402 and 993.403, respectively (40 FR 42530; September 15, 1975; and 41 FR 37306; September 3, 1976). The prune industry had an excess supply of prunes, particularly small size prunes. Rather than recommending volume regulation percentages for the 1975–76, 1976–77, and 1977–78 crop years, the Committee recommended the establishment of an undersized prune regulation applicable to all prunes received by handlers from producers and dehydrators during each of those crop years. For the 1994-95 crop year, the Committee recommended and the Department established volume regulation percentages and an undersized regulation at the aforementioned 23/32 and 28/32 inch diameter screen sizes.

The objective of the undersized regulations during each of those crop years was to preclude the use of small prunes in manufactured prune products, such as juice and concentrate. Handlers could not market undersized prunes for human consumption, but could dispose of them in nonhuman outlets such as livestock feed.

With these experiences as a basis, the marketing order was amended on August 1, 1982, establishing the continuing quality-related regulation for undersized French and non-French prunes under § 993.49(c). That regulation has removed from the marketable supply those prunes which are not desirable for use in prune products.

As in the 1970's, the prune industry is currently experiencing an excess supply of prunes, particularly in the smaller sizes. At its meeting on November 18, 1997, the Committee unanimously recommended establishing an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes for volume control purposes for the 1998–99 crop year. That crop year begins August 1, 1998, and ends July 31, 1999.

The Committee estimated that this rule would reduce the calculated excess of about 78,000 natural condition tons of dried prunes as of July 31, 1998, by approximately 7,300 natural condition tons, still leaving sufficient prunes to fill domestic and foreign trade demand during the 1998–99 crop year, and provide an adequate carryout on July 31, 1999, for early season shipments until the new crop is available for shipment. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the new crop is almost 41,000 natural condition tons.

In its deliberations, the Committee reviewed statistics reflecting: (1) A worldwide prune demand which has been relatively stable at about 260,000 tons; (2) a world wide oversupply that is expected to continue growing into the next century (estimated at 387,170 natural condition tons by the year 2001); (3) a continuing oversupply situation in California caused by increased production from increased plantings and higher yields per acre (between the 1993–94 and 1996–97 crop years, the yield ranged from 2.3 to 2.8 versus a 10 year average of 2.2 tons per acre); and (4) a worsening of California's excess supply situation, even though dried prune shipments in 1996–97 reached a near-record high of 183,252 packed tons. The Committee also considered the quantity of "D" screen (24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes) prunes produced during the 1990–91 through 1996–97 crop years. The production of these small sizes ranged from 2,575 to 8,778 natural condition tons during that period. The Committee concluded that it had to utilize supply management techniques to accelerate the return to a balanced supply/demand situation in the interest of California dried prune producers and handlers. The proposed changes to the undersized regulation for the 1998–99 crop year are the result of these deliberations, and the Committee's desire to bring supplies more in line with market needs.

The current oversupply situation facing the California prune industry has been caused by four consecutive large crops of over 180,000 natural condition tons. Another large crop of 215,000 natural condition tons is forecast for the 1997–98 crop year, which will add to the existing oversupply. The yield per acre is forecast at 2.6 tons per acre. With an anticipated increase in bearing acreage, the 1998–99 season crop could be larger.

Because of the oversupply situation, producer prices for undersized prunes during the 1997–98 crop year have declined to $40–50 per ton. This represents a loss to the producer of about $260–270 per ton. The lower pricing of the smaller prunes is expected to provide producers an incentive to produce larger sizes which the industry needs to meet the increasing market demand for pitted prunes. However, the Committee felt that the undersized rule change was needed to expedite the reduction of the inventories of small prunes, and more quickly bring supplies in line with needs. Attainment of this goal would benefit all of the producers and handlers of California prunes.

The recommended decision of June 1, 1981 (46 FR 29271) regarding undersized prunes states that the undersized prune regulation at the 23/32 and 28/32 inch diameter size openings would be continuous for the purposes of quality control even in above parity situations. It further states that any change (i.e., increase) in the size of those openings would not be for the purpose of establishing a new quality-related minimum. Larger openings would only be applicable when supply conditions warranted the regulation of a larger quantity of prunes as undersized prunes. Thus, any regulation prescribing openings larger than those in § 993.49(c) should not be implemented when the grower average price is expected to be above parity. As discussed later, the average grower price for prunes during the 1998–99 crop year is not expected to be above parity, and implementation of this more restrictive undersized regulation would be appropriate as far as parity is concerned.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is for volume control, not quality control, purposes. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented for the purpose of improving product quality. The recommended increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of volume control. Therefore, the increased diameters would not be applied to imported prunes.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of

this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,400 producers of dried prunes in the production area and approximately 21 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Last year, as a percentage, about 34 percent of the handlers shipped over $5,000,000 worth of dried prunes and 66 percent of the handlers shipped under $5,000,000 worth of prunes. In addition, based on production, producer prices, and the total number of dried prune producers provided by the Committee, the average annual producer revenue is approximately $136,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This proposed rule would establish an undersized prune regulation of 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes for the 1998–99 crop year for volume control purposes. This change in regulation would result in more of the smaller sized prunes being classified as undersized prunes, and is expected to benefit producers, handlers, and consumers. The prune industry currently uses a "D" screen (24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes) for separating small prunes from the larger sizes. Thus, producers and handlers, both small and large, would not incur extra costs from having to purchase new screen sizes. Moreover, because the quality related undersized regulation has been in place continuously since the early 1980's, the only additional cost resulting from the increased openings would be the disposal of additional undersized prune tonnage (about 1,600 natural condition tons) to nonhuman consumption outlets as required by the order. With the less restrictive openings, only 5,686 natural condition tons or 3.4 percent of the marketable production has been removed on average over the past seven crop years since 1990–91. Since the benefits and costs of the proposed action would be directly proportional to the quantity of "D" screen prunes produced or handled, small businesses should not be disproportionately affected by the proposal. Sugar content, prune density, and dry-away ratio vary from county-to-county, from orchard-to-orchard, and from season-to-season in the major producing areas of the Sacramento and San Joaquin Valleys. These areas account for over 99 percent of the State's production, and the prunes produced are homogeneous enough so that the proposal would not be inequitable to producers, both large and small, in any area of the State.

The quantity of small prunes in a lot is not dependent on whether a producer or handler is small or large, but is primarily dependent on cultural practices, soil composition, and water costs. The cost to minimize the quantity of small prunes is similar for small and large entities. The anticipated benefits of this rule are not expected to be disproportionately greater or lesser for small handlers or producers than for larger entities. While this proposed rule may initially impose some additional costs on producers and handlers, the costs are expected to be minimal, and would be offset by the benefits derived by the elimination of some of the excess supply of small sized prunes.

At the November 18, 1997, meeting, the Committee discussed the impact of this change on handlers and producers in terms of cost. Handlers and producers receive higher returns for the larger size prunes. According to industry members, the small size prunes being eliminated through this rule have very little value. As mentioned earlier, the current situation for these small sizes is quite bleak with producers losing money on every ton they deliver to handlers. The 1997 grower field price for "D" screen prunes is ranging between $40 and $50 per ton. The cost of drying a ton of such prunes is $260 per ton at a 4 to 1 dry-away ratio, the cost to haul these prunes is at least $20 per ton, and the producer assessment that must be paid to the California Prune Board (a body which administers the State marketing order for promotion) is $30 per ton. The total cost is about $310 per ton which equates to a loss of about $260 per ton for every ton of "D" screen prunes produced and delivered to handlers.

The proposed rule is expected to benefit all producers and handlers by eliminating the smallest, least valuable prunes from the crop. This is expected to help reduce the oversupply situation and lessen the downward pressure on small prune prices to producers. Further, producers may alter their cultural practices to grow the larger sizes needed by the industry to meet the market demand for pitted prunes.

Utilizing data provided by the Committee, the Department has evaluated the impact of the proposed undersized regulation change upon producers and handlers in the industry. The analysis shows that a reduction in the marketable production and handler inventories would result in higher season-average prices which would benefit all producers. The removal of the smallest least desirable of the marketable dried prunes produced in California from human consumption outlets would eliminate an estimated 7,300 tons of small-sized dried prunes during the 1998–99 crop year from the marketplace. This would help lessen the negative marketing and pricing effects resulting from the excess supply situation facing the industry. California prune handlers reported that they held 102,386 tons of natural condition prunes on July 31, 1997, the end of the 1996–97 crop year. This was the largest year-end inventory reported since the Committee began collecting such statistics in 1949. The desired inventory level, which is based on an average 12-week supply deemed desirable to keep trade distribution channels full while awaiting new crop, is 40,991 natural condition tons. This leaves an inventory surplus of over 61,000 tons which will likely take the industry several years to market.

Further burdening this oversupply situation will be larger California prune crops over the next few years caused by the new prune plantings of recent years and higher yields per acre. During the 1990–91 crop year, the non-bearing acreage totaled 5,900 acres, but by 1996–97, the non-bearing acreage had quadrupled to more than 23,000 acres. Yields have ranged from 2.3 to 2.8 tons to the acre over the most recent three-year period, compared to a 10-year average of 2.2 tons to the acre. The 1997–98 crop is expected to be 215,000 natural condition tons which will add to the existing oversupply. Barring unforeseen circumstances, the 1998–99 crop may be larger further worsening the industry's oversupply problems.

As the marketable dried prune production and surplus prune inventories are reduced through this proposal, the trade should begin taking a position early in the season for their dried prune needs, which would help firm up market prices and eventually reflect a higher overall price to the

producers. In addition, as producers implement improved cultural and thinning practices, the overall size of the prunes will get larger. As a result, producer returns would increase because producers will no longer be receiving $40–50 per ton for the small-sized fruit at a $260–270 per ton loss, but be receiving the higher prices paid for the larger sizes.

For the 1992–93 through the 1996–97 crop years, the season average price received by the producers ranged from a high of $1,121 per ton to a low of $838 per ton during the 1996–97 crop year. The season average price received by producers averaged about 60 percent of parity during the 1992–93 through 1996–97 crop years. Based on available data and estimates of prices, production, and other economic factors, the season average producer price for the 1997–98 and 1998–99 seasons is expected to be below $800 per ton, or about 40 percent of parity.

The Committee discussed alternatives to this change, including making no changes to the undersized prune regulation and allowing market dynamics to foster prune inventory adjustments through lower prices on the smaller prunes. While reduced grower prices for small prunes are expected to contribute toward a slow reduction in dried prune inventories, the Committee believed that the undersized rule change was needed to expedite that reduction. With the excess tonnage of dried prunes, the Committee also considered establishing a reserve pool and diversion program to reduce the oversupply situation. These initiatives were not supported because they would not specifically eliminate the smallest, least valuable prunes which are in oversupply. Instead the reserve pool and diversion program would eliminate larger size prunes from human consumption outlets. Reserve pools for prunes have historically been implemented on dried prunes regardless of the size of the prunes. While the marketing order also allows handlers to remove the larger prunes from the pool by replacing them with small prunes and the value difference in cash, this exchange would be cumbersome and expensive to administer compared to the proposal.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is for volume control, not quality control, purposes. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented for the purpose of improving product quality. The recommended increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of volume control. Therefore, the increased diameters would not be applied to imported prunes.

This action would not impose any additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In addition, the Committee's meeting was widely publicized throughout the prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 18, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of twenty-two members, of which seven are handlers, fourteen are producers, and one is a public member. The majority of the producer and handler members are small entities. Moreover, the Committee and its Supply Management Subcommittee have been reviewing this supply management problem for almost a year, and this proposed rule reflects their deliberations completely. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule, if adopted, needs to be in place as soon as possible so that handlers and producers will be informed of any regulation for the 1998–99 crop year (beginning August 1, 1998). Producers would need time to thin prune-plums in order to obtain larger sizes. Producers generally begin thinning in late April. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is proposed to be amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 993.405 is added to read as follows:

§ 993.405 Undersized prune regulation for the 1998–99 crop year.

Pursuant to §§ 993.49(c) and 993.52, an undersized prune regulation for the 1998–99 crop year is hereby established. Undersized prunes are prunes which pass through openings as follows: for French prunes, 24/32 of an inch in diameter; for non-French prunes, 30/32 of an inch in diameter.

Dated: February 17, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–4595 Filed 2–23–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–248–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A310 series airplanes. This proposal would require repetitive inspections of the fuselage skin to detect corrosion or fatigue cracking around and under the chafing plates of the wing root; and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct fatigue cracks and corrosion around and under chafing plates of the wing root,

which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by March 26, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–248–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–248–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–1114, Attention: Rules Docket No. 96–NM–248–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A310 series airplanes. The DGAC advises that it has received reports from operators of the presence of corrosion under the chafing plates and around the fasteners of the wing root between fuselage frames (FR) 36 and FR 39. Investigation revealed that the corrosion damage was due to moisture penetrating into the sealant between the fuselage skin and the stainless steel chafing plates. This corrosion damage is accelerated by the galvanic activity created by the aluminum skin and the stainless steel plates. If corrosion is present, the area is susceptible to fatigue cracking. Such corrosion and fatigue cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A310–53–2069, Revision 1, dated September 19, 1995, which describes procedures for repetitive inspections to detect corrosion and fatigue cracking around and under the chafing plates of the wing root between fuselage FR 36 and FR 39; and corrective actions, if necessary.

Airbus has also issued Service Bulletin A310–53–2070, dated October 3, 1994, which describes procedures for replacement of the stainless steel chafing plates with new chafing plates made of aluminum alloy. Accomplishment of the replacement would eliminate the need for the repetitive inspections described in the previous service bulletin.

Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified Airbus Service Bulletin A310–53–2069, Revision 1, dated September 19, 1995, as mandatory, and issued French airworthiness directive 96–008–175(B), dated January 3, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in Airbus Service Bulletin A310–52–2070 described previously, except as discussed below. The proposed AD also provides for an optional replacement, which would constitute terminating action for the repetitive inspection requirements.

Differences Between the Proposed AD and the Related Service Bulletin

Airbus Service Bulletin A310–52–2070 specifies that appropriate corrective action may be obtained by contacting the manufacturer, Airbus, directly. However, this proposed AD would require that any such repair be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 36 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 68 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $146,880, or $4,080 per inspection cycle.

Should an operator elect to accomplish the optional terminating action rather than continue the repetitive inspections, it would take approximately 45 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $2,229 per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be $4,929 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 96–NM–248–AD.

Applicability: Model A310 series airplanes on which Airbus Modifications 8888 and 8889 have not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking and corrosion around and under chafing plates of the wing root between fuselage frames (FR) 36 and FR 39, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Except as provided by paragraph (b) of this AD: Within 4 years since date of manufacture, or within 12 months after the effective date of this AD, whichever occurs later, perform an inspection to detect discrepancies around and under the chafing plates of the wing root, in accordance with paragraph B. of the Accomplishment Instructions of Airbus Service Bulletin A310–53–2069, Revision 1, dated September 19, 1995. If any discrepancy is found, prior to further flight, accomplish follow-on corrective actions (i.e. removal of corrosion, corrosion protection, high frequency eddy current inspection, x-ray inspection) as applicable, in accordance with the service bulletin. Repeat the inspections, as applicable, thereafter, at intervals specified in the service bulletin.

(b) If any discrepancy is found as a result of an inspection required by paragraph (a) of this AD, and Airbus Service Bulletin A310–53–2069, Revision 1, dated September 19, 1995, specifies to contact Airbus for an appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Where differences in the compliance times or corrective actions exist between the service bulletin and this AD, the AD prevails.

(c) Accomplishment of the replacement of the chafing plates in accordance with Airbus Service Bulletin A310–53–2070, dated October 3, 1994, constitutes terminating action for the repetitive inspection requirement of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 96–008–175(B), dated January 3, 1996.

Issued in Renton, Washington, on February 12, 1998.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–4249 Filed 2–23–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SPATS No. NM–038–FOR]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the New Mexico regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of recodification of the New Mexico Surface Coal Mining Regulations. The amendment is intended to revise the New Mexico program to improve operational efficiency and assure that the New Mexico Surface Coal Mining Regulations are codified according to the New Mexico administrative procedures.

DATES: Written comments must be received by 4 p.m., m.s.t., March 26, 1998. If requested, a public hearing on the proposed amendment will be held on March 23, 1998. Requests to present oral testimony at the hearing must be received by 4 p.m., m.s.t. on March 11, 1998.

ADDRESSES: Written comments should be mailed or hand delivered to Willis Gainer at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive

one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Willis Gainer, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102.

Mining and Minerals Division, New Mexico Energy & Minerals Department, 2040 South Pacheco Street, Santa Fe, New Mexico 87505, Telephone: (505) 827–5970.

FOR FURTHER INFORMATION CONTACT: Willis Gainer, Telephone: (505) 248–5096.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated January 6, 1998, New Mexico submitted a proposed amendment (administrative record No. NM–795) to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment at its own initiative. New Mexico proposes to recodify the New Mexico Surface Coal Mining Regulations.

Specifically, New Mexico proposes to recodify its regulations from Coal Surface Mining Code Rule 80–1 (CSMC Rule 80–1), sections 1 through 15 and sections 19 through 34, to Title 19 (Natural Resources and Wildlife), Chapter 8 (Coal Mining), Part 2 (Coal Surface Mining) of the New Mexico Administrative Code (19 NMAC 8.2), Subparts 1 through 34. No substantive changes to the text of the regulations is proposed.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t. on March 11, 1998. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that

existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 17, 1998.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 98–4619 Filed 2–23–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 212

[DoD Instruction 1000.15]

RIN 0790–AG53

Private Organizations on DoD Installations

AGENCY: Assistant Secretary of Defense for Force Management Policy, DoD.

ACTION: Proposed rule.

SUMMARY: The proposed revision of this part will ensure that private organizations operating on DoD installations do so in accordance with parameters established for their authorization and support. Private organizations are self-sustaining, non-Federal entities which operate on DoD installations outside the scope of any official capacity as officers, employees, or agents of the Federal Government.

DATES: Comments are requested by April 27, 1998.

ADDRESSES: Forward comments to: ODASD (PSF&E), Room 1B700, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: Martin S. Thomas III, LTC, USA, (703) 614–3112.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

I, Francis M. Rush, Jr., Acting Assistant Secretary of Defense for Force Management Policy, hereby determine that 32 CFR part 212 is not a significant regulatory action. The rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

I, Frank M. Rush, Jr., Acting Assistant Secretary of Defense for Force Management Policy, hereby certify that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The primary effect of this rule will not be on small businesses, but on private organizations operating on DoD installations as the procedures for their authorization and support have been redefined and reestablished in this proposed rule.

Public Law 104–13, "Paperwork Reduction Act of 1995" (44 U.S.C. Chapter 35)

I, Francis M. Rush, Jr., Acting Assistant Secretary of Defense for Force Management Policy, hereby certify that CFR part 212 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 32 CFR Part 212

DoD installations, Federal buildings and facilities, Private organizations.

Accordingly, 32 CFR part 212 is proposed to be revised to read as follows:

PART 212—PRIVATE ORGANIZATIONS ON DOD INSTALLATIONS

Sec.

212.1 Reissuance and purpose.
212.2 Applicability.
212.3 Definitions.
212.4 Policy.
212.5 Responsibilities.
212.6 Procedures.

Authority: 5 U.S.C. 301.

§ 212.1 Reissuance and purpose.

This part:

(a) Revises 32 CFR part 212.

(b) Implements policy in DoD Directive 5124.5.[1]

(c) Updates responsibilities and procedures to define and reestablish parameters for private organizations located on DoD installations for their authorization and support.

§ 212.2 Applicability.

This part applies to:

(a) The Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Defense Agencies, and DoD Field Activities (hereafter referred to collectively as the "DoD Components").

(b) Private organizations authorized to operate on DoD installations.

§ 212.3 Definitions.

(a) *DoD Installation.* A location, facility, or activity owned, leased, assigned to, controlled, or occupied by a DoD Component.

(b) *Private Organizations.* Self-sustaining and non-Federal entities, incorporated or unincorporated, which are operated on DoD installations with the written consent of the installation commander or higher authority, by individuals acting exclusively outside the scope of any official capacity as officers, employees, or agents of the Federal Government.

§ 212.4 Policy.

It is DoD policy under DoD Directive 5124.5 that procedures be established for the operation of private organizations on DoD installations to prevent the official sanction, endorsement, or support by DoD Components except as in 32 CFR part 84. Private organizations are not entitled to sovereign immunity and privileges accorded to Federal entities and instrumentalities. Private organizations are not Federal entities and are not be treated as such, in order to avoid conflicts of interest and unauthorized expenditures of appropriated, commissary surcharge, or nonappropriated funds.

§ 212.5 Responsibilities.

(a) The *Assistant Secretary of Defense for Force Management Policy*, under the *Under Secretary of Defense for Personnel and Readiness*, shall be responsible for all policy matters and OSD oversight for the monitoring of

[1] Copies may be obtained, if needed, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

private organizations on DOD installations.

(b) The *Heads of the DoD Components* shall implement this part, shall be kept aware of all private organizations located on installations under their jurisdiction, and ensure that periodic reviews of private organizations are conducted to:

(1) Ensure for each such private organization that the membership provisions and purposes on the basis of which the organization was permitted on the installation continue to apply, thereby justifying continuance on the installation. Substantial changes to those conditions shall necessitate further review, documentation, and approval for continued permission to remain on the installation.

(2) Furnish reports to the Assistant Secretary of Defense for Force Management Policy on private organizations covered by this part as required.

§ 212.6 Procedures.

(a) To prevent the appearance of an official sanction or support by the Department of Defense, a private organization covered by this part shall not utilize the following in its title or letterhead:

(1) The name or seal of the Department of Defense or the acronym "DoD."

(2) The name, abbreviation, or seal of any DoD Component or instrumentality.

(3) The seal, insignia, or other identifying device of the local installation.

(4) Any other name, abbreviation, seal, logo, insignia, or the like, used by any DoD Component to identify any of its programs, locations, or activities.

(b) Activities of private organizations covered by this part shall not in any way prejudice or discredit the DoD Components or the other Agencies of the Federal Government.

(c) The nature, function, and objectives of a private organization covered by this part shall be delineated in a written constitution, by-laws, charter, articles of agreement, or other authorization documents acceptable to the head of the DoD installation. That documentation shall also include:

(1) Description of membership eligibility in the private organization.

(2) Designation of management responsibilities, to include the accountability for assets, satisfaction of liabilities, disposition of any residual assets on dissolution, and other matters that show responsible financial management.

(3) Documentation indicating an understanding by all members as to whether they are personally liable if the assets are insufficient to discharge all liabilities.

(d) A private organization covered by this part that offers programs or services similar to either appropriated or nonappropriated fund activities on a DoD installation shall not compete with, but may, when specifically authorized in the approval document, supplement those activities.

(e) Private organizations covered by this part shall be self-sustaining, primarily through dues, contributions, service charges, fees, or special assessment of members. There shall be no financial assistance to a private organization from a nonappropriated fund instrumentality in the form of contributions, repairs, services, dividends, or other donations of money or other assets. Fundraising and membership drives are governed by 32 CFR part 84.

(f) The DoD Components may provide logistical support to private organizations with appropriated Federal Government resources in accordance with 32 CFR part 84. In conformance with DoD Directive 1015.1,[2] nonappropriated fund instrumentalities funds or assets shall not be directly or indirectly transferred to private organizations.

(g) Personal and professional participation in private organizations by DoD employees is governed by 32 CFR part 84.

(h) Neither appropriated fund activities nor nonappropriated fund instrumentalities may assert any claim to the assets, or incur or assume any obligation of any private organization covered by this part except as may arise out of contractual relationships. Property abandoned by a private organization on its disestablishment or departure from the installation, or donated by it to the installation, may be acquired by the DoD installation under the terms of applicable agreements, statutes, and DoD policy.

(i) Adequate insurance, as defined by the Service concerned, shall be secured by the organization to protect against public liability and property damage claims or other legal actions that may arise as a result of activities of the organization or one or more of its members acting in its behalf, or the operation of any equipment, apparatus or device under the control and responsibility of the private organization.

(j) Private organizations shall be responsible for ensuring applicable fire and safety regulations, environmental laws, local, state, and Federal tax codes, and any other applicable statutes and regulations are complied within the operation of the private organization.

(k) Income shall not accrue to individual members except through wages and salaries as employees of the private organization or as award recognition for service rendered to the private organization or military community. The head of a DoD installation concerned may approve the operation of private organizations, such as investment clubs, in which the investment of members' personal funds result in a return on investment directly and solely to the individual members.

(l) No person because of race, color, creed, sex, age, disability or national origin shall be unlawfully denied membership, unlawfully excluded from participation, or otherwise subjected to unlawful discrimination by any private organization on a DoD installation covered by this part. DoD installations will publicly disseminate information on procedures for individuals to follow at the local installation when unlawful discrimination by private organizations is suspected.

(m) Applicable laws on labor standards for employment shall be observed.

(n) This part does not apply to the following organizations, which are governed by DoD Directives and Instructions as referenced:

(1) Scouting organizations operating at U.S. military installations located overseas (DoD Instruction 1015.9[3]).

(2) American National Red Cross (DoD Directive 1330.5[4]).

(3) United Service Organizations, Inc. (DoD Directive 1330.12[5]).

(4) United Seamen's Service (DoD Directive 1330.16[6]).

(5) Financial Institutions on DoD Installations (32 CFR part 231).

(o) Certain unofficial activities may be conducted on DoD installations, but need not be formally authorized because of the limited scope of their activities, membership or funds. Examples are office coffee funds, flower funds, and similar small, informal activities and funds. DoD Components shall establish the basis upon which such informal activities and funds shall operate.

Dated: February 19, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–4630 Filed 2–23–98; 8:45 am]

BILLING CODE 5000–04–M

[2] See footnote to § 212.1(b).

[3] See footnote to § 212.1(b).

[4] See footnote to § 212.1(b).

[5] See footnote to § 212.1(b).

[6] See footnote to § 212.1(b).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50631, etc; FRL–5767–2]

RIN 2070–AB27

Proposed Modification of Significant New Use Rules for Certain Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to modify significant new use rules (SNURs) for five substances promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) based on new data. Based on the new data the Agency finds that activities not described in the corresponding TSCA section 5(e) consent order or the significant new use notice (SNUN) for these chemical substances may result in significant changes in human or environmental exposure.

DATES: Written comments must be received by EPA by March 26, 1998.

ADDRESSES: Each comment must bear the docket control number OPPTS–50631 and the name(s) of the chemical substance(s) subject to the comment. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under Unit III. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

In the **Federal Register** referenced for each substance, EPA issued a SNUR establishing significant new uses for the substances listed in Unit I. of this preamble, OPPTS–50591, April 25, 1991 (56 FR 19235 and 19241); OPPTS–50537A, January 26, 1987 (52 FR 2703); OPPTS–50583, August 9, 1990 (55 FR 32419); and OPPTS–50582, August 15, 1990 (55 FR 33296). Because of additional data EPA has received for these substances, EPA is hereby proposing to modify the SNURs.

I. Proposed Modifications

EPA is proposing to modify the significant new use and recordkeeping requirements under 40 CFR part 721, subpart E for several chemical substances. In this unit, EPA provides a description for each substance, including its premanufacture notice (PMN) number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if available), the proposed modification and basis, **Federal Register** reference, docket number, and the CFR citation. Further background information for the substances is contained in the rulemaking record referenced in Unit III. of this preamble.

PMN Number P–88–436

Chemical name: (generic) Poly(substituted triazinyl) piperazine.
CAS number: Not available.
Federal Register *publication date and reference:* August 9, 1990 (55 FR 32419).
Docket number: OPPTS–50583.
Basis for modification: The original TSCA section 5(e) consent order and SNUR contained hazard communication requirements for a label and Material Safety Data Sheet (MSDS) accompanying the substance in commerce. The original requirements were intended only for manufacturers, as processors incorporated the substance within a polymer (polyolefin) matrix prior to shipping from their processing site and thus not in a form likely to result in significant exposures. Based on this lack of significant exposures, the TSCA section 5(e) consent order was modified so that hazard communication requirements were not applicable once the substance is encapsulated in a polymeric matrix. The proposed SNUR modification will extend this exemption to all manufacturers, importers, and processors.
CFR citation: 40 CFR 721.9800 (Formerly 40 CFR 721.2196).

PMN Numbers P–88–864, P–90–211, and P–94–921

Chemical name: Phenol, 4,4'-methylenebis (2,6-dimethyl-.
CAS number: 5384–21–4.
Federal Register *publication date and reference:* August 15, 1990 (55 FR 33306).
Docket number: OPPTS–50582.
Basis for modification: EPA received an additional PMN, P–94–921, for this substance. Based on the most recent toxicity data and potential exposures, a TSCA section 5(e) consent order was issued for P–94–921. This TSCA section 5(e) consent order contained additional hazard communication warnings and water release restrictions not found in previous consent orders and the SNUR for this substance. The proposed SNUR modification will extend these requirements to all manufacturers, importers, and processors.
CFR citation: 40 CFR 721.5740 (Formerly 40 CFR 721.1537).

PMN Number P–90–333

Chemical name: 2-Propenoic acid, 2-methyl-, 2-[3-(2H-benzotriazol-2-yl)-4-hydroxyphenyl]ethyl ester.
CAS number: 96478–09–0.
Federal Register *publication date and reference:* April 25, 1991 (56 FR 19241) amended June 9, 1995 (60 FR 30468).
Docket number: OPPTS–50591.
Basis for modification: Based on test data submitted pursuant to the TSCA section 5(e) consent orders for similar substances EPA no longer has concerns for potential carcinogenicity of this substance. In addition, the original SNUR included requirements for statements on the label and MSDS warning of potential birth defects, when instead it should have included statements warning of potential immune system effects. The SNUR modification will remove all references to potential carcinogenicity (40 CFR 721.72(h)) and will also change the warning statements by eliminating references to birth defects while including warnings about immune system effects.
CFR citation: 40 CFR 721.8450 (Formerly 40 CFR 721.1817).

PMN Number P–90–335

Chemical name: 2-Substituted benzotriazole.
CAS number: Not available.
Federal Register *publication date and reference:* April 25, 1991 (56 FR 19235) amended June 9, 1995 (60 FR 30468).
Docket number: OPPTS–50591.
Basis for modification: The original SNUR included requirements for statements on the label and MSDS warning of potential cancer. As EPA did not make a finding of potential cancer for this substance, the SNUR modification will remove all references to potential carcinogenicity (40 CFR 721.72(h)).
CFR citation: 40 CFR 721.1765 (Formerly 40 CFR 721.586).

PMN Number (not available)

Chemical name: Polybrominated biphenyls.
CAS number: 92–66–0.
Federal Register *publication date and reference:* January 26, 1987 (52 FR 2703).
Docket number: OPPTS–50537A.
Basis for modification: EPA received a SNUN for this substance for a limited specific use. EPA was unable to make an unreasonable risk finding based on limited human and environmental exposures. Based on test data demonstrating carcinogenicity of chlorinated and brominated biphenyls, EPA has concerns for cancer. Based on structural analogy to monochloro biphenyl and neutral organic substances, EPA also has a concern for potential toxicity to aquatic organisms at concentrations as low as 7 parts per billion (ppb). In addition, based on the potential high toxicity of the substance, its expected high bioaccumulation (log fish bioconcentration factor of 3.5) and its expected persistence in the environment, EPA considers this substance to be a persisent bioaccumulator. Based on these health and environmental concerns, EPA will issue a SNUR modification requiring additional 90-day notification before the SNUN substance, 1,1'-Biphenyl, 4-bromo, is used for any other uses other than the specific use described in the SNUN already received by EPA, is manufactured domestically, is predictably or purposefully released to surface waters, or exceeds a maximum yearly production volume of 10,000 kilograms (kg). All other brominated biphenyl compounds subject to this section will still require a SNUN for any use.
CFR citation: 40 CFR 721.1790 (Formerly 40 CFR 721.230).

II. Rationale for Modification of the Rules

During review of the chemical substances that are the subject of these modifications, EPA concluded that regulation was warranted based on the fact that activities not described in the TSCA section 5(e) consent order or the PMN may result in significant changes in human or environmental exposure. In the case of polybrominated biphenyls, EPA concluded that any use may result in significant changes in human or environmental exposure. The basis for such findings is in the rulemaking record referenced in Unit III. of this preamble. Based on these findings, a TSCA section 5(e) consent order was negotiated with the PMN submitter and/or a SNUR was promulgated.

In light of the modification to a consent order, toxicity data submitted for another PMN or the data submitted in a SNUN or a PMN, the Agency has determined that modifying these SNURs would not result in significant changes in human or environmental exposure. The modification of SNUR provisions for these substances designated herein is consistent with the provisions of the TSCA section 5(e) consnet order or data submitted in the SNUN or PMN.

III. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–50631 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS–50631. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

IV. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB). In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special considerations of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid OMB control number. The information collection requirements related to this action have already been approved by OMB pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burdens requiring additional OMB approval. The public reporting burden for this collection of information is estimated to average 100 hours per response. The burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined that the promulgation of a SNUR does not have a significant adverse economic impact on a substantial number of small entities. The Agency's generic certification for promulgation of new SNURs appears on June 2, 1997 (62 FR 29684) (FRL–5597–1) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 13, 1998.

Ward Penberthy,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. Section 721.1765 is amended by revising paragraphs (a)(2)(i) and (a)(2)(ii) to read as follows:

§ 721.1765 2-Substituted benzotriazole.

(a) * * *

(2) * * *

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(ii), (a)(5)(iv), (a)(5)(v), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(1)(iv), (g)(1)(vi), (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), and (g)(5).

* * * * *

3. Section 721.1790 is revised to read as follows:

§ 721.1790 Polybrominated biphenyls.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified as 1,1′-(Biphenyl, 4,4′-dibromo- (CAS No. 92–86–4); 1,1′-(Biphenyl, 2-bromo- (CAS No. 2052–07–5); 1,1′-(Biphenyl, 3-bromo- (CAS No. 2113–57–7); 1,1′-(Biphenyl, 2,2′, 3,3′, 4,4′, 5,5′, 6,6′-decabromo- (CAS No. 13654–09–6); Nonabromobiphenyl (CAS No. 27753–52–2); Octabromobiphenyl (CAS No. 27858–07–7); and Hexabromobiphenyl (CAS No. 36355–01–8) are subject to reporting under this section for the significant new uses described in paragraph (a)(1)(i) of this section.

(i) The significant new use is: Any use.

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Persons who must report.* Section 721.5 applies to this section except for § 721.5(a)(2). A person who intends to manufacture, import, or process for commercial purposes a substance identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(B) [Reserved]

(2) The chemical substance identified as 1,1′-(Biphenyl, 4-bromo- (CAS No. 92–66–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2)(i) of this section.

(i) The significant new uses are:

(A) *Industrial, commercial, and consumer activites.* Requirements as specified in § 721.80 (f), (j), and (p) (10,000 kg).

(B) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(C) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

(b) [Reserved]

4. Section 721.5740 is amended by revising paragraphs (a) and (b)(1) as follows:

§ 721.5740 Phenol, 4,4′-methylenebis(2,6-dimethyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phenol, 4,4′-methylenebis(2,6-dimethyl- (PMNs P–88–864, P–90–211, and P–94–921; CAS No. 5384–21–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(ii), (a)(5)(iv), (a)(5)(v), (a)(6)(i), (b) (concentration set at 1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1 percent), (f), (g)(1)(iv), (g)(2)(iv), (g)(2)(v), (g)(3)(ii), (g)(4)(iii), and (g)(5). The label and MSDS as required by this paragraph shall also include the following statements: This substance may cause blood effects. This substance may cause chronic effects.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (g), (l), and (q).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) * * *

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

* * * * *

5. Section 721.8450 is amended by revising paragraphs (a)(2)(i) and (a)(2)(ii) to read as follows:

§ 721.8450 2-Propenoic acid, 2-methyl-, 2-[3-(2H-benzotriazol-2-yl)-4-hydroxyphenyl]ethyl ester.

(a) * * *

(2) * * *

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(ii), (a)(5)(iv), (a)(5)(v), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(1)(iv), (g)(1)(vi), (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), and (g)(5).

* * * * *

6. Section 721.9800 is amended by revising paragraph (a)(2)(i) to read as follows:

§ 721.9800 Poly(substituted triazinyl) piperazine (generic name).

(a) * * *

(2) * * *

(i) *Hazard communication program.* Requirements as specified in § 721.72 (b)(2), (c), (e) (concentration set at 1.0 percent), (f), (g)(1) (statement-health effects not fully determined), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), and (g)(5). The requirements of this paragraph shall not apply when the PMN substance is encapsulated in a polymeric matrix.

* * * * *

[FR Doc. 98–4657 Filed 2–23–98; 8:45 am]

BILLING CODE 6560–40–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3106, 3130 and 3160

[AA–510–08–4111–2410]

RIN 1004–AC54

Oil and Gas Leasing; Onshore Oil and Gas Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: The Bureau of Land Management (BLM) hereby gives notice that it is extending the public comment period on a Notice of Proposed Rule,

which was published in the **Federal Register** on January 13, 1998 (63 FR 1936). The comment period for the proposed rule expires on March 16, 1998. The proposed rule would clarify the responsibilities of oil and gas lessees for protecting Federal oil and gas resources from drainage by operations on nearby lands that would result in lower royalties to the Federal government. It would specify when the obligations of the lessee or operating rights owner to protect against drainage begin and end and specify what steps should be taken to determine if drainage is occurring. It also would clarify the obligation of the assignor and assignee for drainage obligations, well abandonment and environmental remediation when BLM approves an assignment of record title or operating rights. In response to requests from the public, BLM extends the comment period to May 15, 1998.

DATES: Submit comments by May 15, 1998.

ADDRESSES: You may submit your comments by any one of several methods. You may mail comments to the Bureau of Land Management, Administrative Record, 1849 C Street, N.W., Room 401LS, Washington, D.C. 20240. You may also comment via the Internet to WOComment@Wo.blm.gov. Please submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: AC54" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452–5030.

Finally, you may hand-deliver comments to Bureau of Land Management at 1620 L Street, N.W., Room 401, Washington, D.C. Comments, including names and street addresses of respondents, will be available for public review at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality, which BLM will consider on a case-by-case basis. If you wish to request that BLM consider withholding your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Donnie Shaw of BLM's Fluid Minerals Group at (202) 452–0382.

Dated: February 18, 1998.

Frank Bruno,

Acting Group Manager, Regulatory Affairs Group.

[FR Doc. 98–4610 Filed 2–23–98; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Child Support Enforcement

45 CFR Part 303

RIN 0970–AB82

Child Support Enforcement Program, Standards for Program Operations

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend Federal regulations governing procedures for the case closure process in the child support program. The proposed rule clarifies the situations in which States may close child support cases and makes other technical changes.

DATES: Consideration will be given to comments received by April 27, 1998.

ADDRESSES: Send comments to Director, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th floor, Washington, DC 20447. Attention: Director, Policy and Planning Division, Mail Stop: OCSE/DPP. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5 p.m. on the 4th floor of the Department's offices at the above address.

FOR FURTHER INFORMATION CONTACT: Craig Hathaway, Policy Branch, OCSE (202) 401–5367, e-mail: chathaway@acf.dhhs.gov. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m.

SUPPLEMENTARY INFORMATION:

Statutory Authority

These proposed regulatory changes are made under the authority granted to the Secretary by section 1102 of the Social Security Act (the Act). Section 1102 of the Act requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which she is responsible under the Act. In accordance with the Presidential directive of March 4, 1995 to executive branch regulatory agencies to identify existing regulations that are redundant or obsolete, OCSE has examined Part 300 of Title 45, Code of Federal Regulations to evaluate those areas where regulations should be revised and/or removed. Accordingly, we are revising and removing existing regulations concerning criteria to close child support enforcement cases.

Background

The Child Support Enforcement program was established under Title IV–D by the Social Services Amendments of 1974, for the purpose of establishing paternity and child support obligations, and enforcing support owed by noncustodial parents. At the request of the States, OCSE originally promulgated regulations in 1989 which established criteria for States to follow in determining whether and how to close child support cases. In the final Program Standards regulations dated August 4, 1989, we gave examples of appropriate instances in which to close cases. In the Supplementary Information accompanying the final regulations, we stated that the goal of the case closure regulations was not to mandate that cases be closed, but rather to clarify conditions under which cases may be closed. The regulations allowed States to close cases that were not likely to result in any collection in the near future and to concentrate their efforts on the cases that presented a likelihood of collection.

In an effort to be responsive to the President's Memorandum of March 4, 1995 which announced a government-wide Regulatory Reinvention Initiative to reduce or eliminate burdens on States, other governmental agencies or the private sector, and in compliance with section 204 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, OCSE formed a regulation reinvention workgroup to exchange views, information and advice with respect to the review of existing regulations in order to eliminate or revise those regulations that are outdated, unduly burdensome, or unproductive. This group is made up of representatives of Federal, State and local government elected officials and their staffs.

As part of the regulation reinvention effort, § 303.11 on case closure criteria was reviewed to determine what

changes could be made to help States with their case closure process, while ensuring all viable cases remain opened. Somewhat earlier, the State IV–D Directors' Association had established a committee to examine the case closure issue. The committee developed several recommendations, which were considered in the development of the proposed regulation. We also consulted with several advocates and other interested parties and stakeholders, including custodial parents and groups advocating on their behalf, to discuss their concerns with the IV–D Directors' Association recommendations and about the case closure criteria in general. Their concerns were considered throughout the deliberations on each area under consideration for addition, deletion or revision. As the result of these exchanges of information, recommendations for changes in the criteria which States must use to determine whether child support cases may be closed were developed. These recommendations are reflected in the proposed rule.

The deliberative process to develop this proposal operated under a set of principles that balanced our joint concern that all children receive the help they need in establishing paternity and securing support, while being responsive to administrative concerns for maintaining caseloads that include only those cases in which there is adequate information or likelihood of successfully providing services. The circumstances under which a case could be closed include, for example, instances in which legitimate and repeated efforts over time to locate putative fathers or obligors are unsuccessful because of inadequate identifying or location information, or in interstate cases in which the responding State lacks jurisdiction to work a case and the initiating State has not responded to a request for additional information or case closure, Decision to close cases are linked with notice to recipients of the intent to close the case and an opportunity to respond with information or a request that the case be kept open. The proposals in this regulation balance good management and workable administrative decisions with providing needed services, always erring in favor of including any case in which there is any chance of success. For example, cases would remain open even if there is no likelihood of immediate or great success in securing support, perhaps because of a period of incarceration. In our consultations, we were consistently impressed with the commitment of all those involved to these operating principles.

The IV–D Directors' Association recommended that the requirement that a case in which the agency is unable to locate the putative father or noncustodial parent remain open with ongoing locate efforts for three years be changed to require a shorter time in cases in which the biological father is unknown or there is insufficient information to initiate a locate effort. This recommendation was accepted and is incorporated in the proposed rules.

We are aware of the concerns of the advocacy groups about closing cases too soon. However, we believe the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193 (PRWORA) provide adequate safeguards to prevent this from happening. Section 333 of PRWORA requires that the applicant for assistance under Title IV–A of the Act provide the IV–D agency with the name of the putative father, as well as additional identifying information. Failure to do so constitutes noncooperation and compromises the eligiblity for benefits. Determinations of noncooperation are to be documented, with notice provided to the applicant. We anticipate that cases under this changed criterion will be few and will be well documented.

The IV–D Directors' Association also recommended that the regulations be changed to allow notice of intent to close a case to be sent by first class mail, as opposed to the current requirement of certified mail. This recommendation was accepted, as well. The IV–D Directors' Association further recommended that immediate case closure be permitted in cases in which the parental rights of the noncustodial parent have been terminated by the court, unless an arrearage remains. Upon consideration of this suggestion we concluded that closure of such a case is already permitted by current regulations which allow closure in cases in which there is no loner a current obligation and in which there are no arrearages owed. The IV–D Directors' Association also recommended that case closure be permitted in cases in which neither party is a legal resident of the State, there is no order from the State and there is no State jurisdiction over the noncustodial parent. We concluded that this recommendation is contrary to the requirements section 454(6) of the Social Security Act, and, thus, declined to accept it. The IV–D Directors' Association recommended that cases involving an interstate request to locate an individual be eligible for closure by the responding State after all sources of information to help locate the individual have been exhausted and results forwarded to the initiating State, or when the initiating State has not provided enough information to the responding State to locate the noncustodial parent. In response, new criteria have been added to allow a responding State to close an interstate case if it can document inaction by the initiating State that renders the responding State unable to proceed with the case, as it would close a case for failure to cooperate by the recipient of services. Finally, the IV–D Directors' Association recommended that case closure be allowed after sixty days in cases in which the custodial parent's address is unknown and repeated attempts to contact the custodial parent are unsuccessful, with the States to have the flexibility to determine what type of locate attempts will be appropriate. In response, we decided to extend the time period to sixty days from thirty, and to require at least one letter by first class mail, as opposed to the current requirement of certified mail and a phone call. The allowance of a first class letter was thought to be in accord with the new requirements in welfare reform.

Description of Regulatory Provisions

We propose to amend and make technical changes to § 303.11 Case Closure Criteria. Under § 303.11, paragraph (b)(1) allows closure of a case where the child has reached the age of majority, there is no longer a current support order, and either no arrearages are owed or arrearages are under $500 or unenforceable under State law. In addition, paragraph (b)(2) currently allows case closure where the child has not reached the age of majority, arrearages are less than $500 or unenforceable under State law, and there is no longer a current support order.

In the final Program Standards regulations published in 1989, we gave examples of instances in which it would be appropriate to close cases under subsection (b)(1) and (b)(2); however, after reviewing the two subparagraphs, it is apparent that the distinction between subsections (b)(1) and (b)(2) which is based upon whether or not the child has reached the age of majority is unnecessary, as the criteria are the same. Therefore, we propose combining (b)(1) and (b)(2) to read, "There is no longer a current support order and arrearages are under $500 or unenforceable under State law[.]"

Paragraphs (b)(3) through (b)(12) would be renumbered as (b)(2) through (b)(11), and "absent parent" would be revised to read "noncustodial parent"

throughout, for consistency with preferred statutory terminology under PRWORA.

Under the new redesignated paragraph (b)(3), we would add a new subparagraph (3)(iv) to read, "The identity of the biological father is unknown and cannot be identified after diligent efforts, including at least one interview by the IV–D agency with the recipient of services." The IV–D Directors, concerned about having an abundance of unenforceable cases within the system, requested that the amount of time a case is required to remain open be reduced. Additionally, several States reported increased success in obtaining information to help identify a putative father when the recipient of services is interviewed personally. The interview is intended to be an attempt to gain additional information to aid the IV–D agency in establishing paternity. Therefore, the interview must be conducted by IV–D staff; the initial intake interview for another public assistance program is not sufficient to satisfy the requirement of an interview with the recipient of services.

Under the new redesignated paragraph (b)(4), we propose to delete, "over a three-year period" and to add new subparagraphs (i) and (ii) to read, "(i) over a three-year period when there is sufficient information to initiate automated locate efforts; or (ii) over a one-year period when there is not sufficient information to initiate automated locate efforts." As discussed above, the IV–D Directors expressed a desire to be permitted to close cases in which it is impossible to undertake any locate effort due to the scarcity of information. This change would allow States to close a case in which the recipient of services does not have even minimum information, such as name, date of birth, or social security number of the putative father or noncustodial parent.

In new redesignated paragraphs (b)(8), (b)(10) and (b)(11) "custodial parent" would be revised to read "recipient of services." In certain situations, such as paternity establishment or review and adjustment, the noncustodial parent may have opened the case. This language change would more accurately encompass all situations to which these provisions apply.

We propose to revise redesignated paragraph (b)(9) to add IV–D agencies to the list as an option for making good cause determinations. This section identifies the entities that may make a determination of good cause for failure to cooperate with IV–D efforts. Section 333 of PRWORA provides flexibility to the States to identify the agency which may make good cause determinations. Good cause for noncooperation may arise after IV–D services have been undertaken; the addition of this provision would allow the IV–D agency itself to determine whether good cause exists in appropriate cases.

In the redesignated paragraph (b)(10), we propose to revise the language after "within a" to read "60 calendar day period despite an attempt by at least one letter sent by first class mail to the last known address; or[.]" The IV–D directors, concerned about having an abundance of unenforceable cases within the system, requested that we reduce the amount of time a case is required to remain open despite an inability to contact the recipient of services.

Under § 303.11, we propose to add a new subparagraph (12) to read, "The IV–D agency documents failure by the initiating State to take an action which is essential for the next step in providing services." Under the current regulations, a responding State is not free to close a case without the permission of the initiating State. In some of these cases, the responding State may be unable to locate the noncustodial parent, or may locate him or her in another State, and request to close the case. If the initiating State fails to respond to this request, the responding State is obligated to leave the case open in its system. Similarly, if the initiating State fails to provide necessary information to enable the responding State to provide services, and fails to respond to requests to provide the information, the responding State is required to keep the case open, although it is unable to take any action on it. The proposed changes would permit the responding State to close the case if it is unable to process the case due to lack of cooperation by the initiating State.

In paragraph (c), we propose revisions based upon the proposed renumbering of paragraph (b). In the first sentence, the reference to "paragraphs (b)(1) through (7) and (11) and (12) of this section" would be changed to read "paragraphs (b)(1) through (6) and (10) and (11) of this section[.]" In addition, the references to "custodial parent" would be revised to read "recipient of services," for the reasons explained above. Also, in the second sentence, we propose to replace the reference to "paragraph (b)(11)" with paragraph "(b)(10)," based upon the proposed renumbering of paragraph (b).

In paragraph (d), we propose to remove the reference to "Subpart D," as that subpart has been reassigned and no longer addresses the issue of record retention.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this proposed regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments and individuals. State governments are not considered small entities under the Act.

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. No costs are associated with this proposed rule.

Unfunded Mandates Act

The Department has determined that this proposed rule is not a significant regulatory action within the meaning of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

This rule does not contain information collection provisions subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

List of Subjects in 45 CFR Part 303

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program)

Dated: August 8, 1997.

Olivia A. Golden,

Principal Deputy Assistant Secretary for Children and Families.

Approved: November 4, 1997.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons discussed above, we propose to amend title 45 CFR Chapter III of the Code of Federal Regulations as follows:

PART 303—STANDARDS FOR PROGRAM OPERATIONS

1. The authority citation of Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396(d)(2), 1396b(o), 1396b(p), and 1396(k).

§ 303.11 Case closure criteria. [Amended]

2. Section 303.11 is amended as follows:

a. Paragraph (b)(1) is revised and paragraph (b)(2) is removed to read as follows:

* * * * *

(b) * * *

(1) There is no longer a current support order and arrearages are under $500 or unenforceable under State law.

* * * * *

b. Paragraph (b)(3) is redesignated as paragraph (b)(2).

c. Paragraph (b)(4) is redesignated as paragraph (b)(3) and amended by adding paragraph (b)(3)(iv) to read as follows:

* * * * *

(b) * * *

(3) * * *

(iv) The identity of the biological father is unknown and cannot be identified after diligent efforts, including at least one interview by the IV–D agency with the recipient of services.

* * * * *

d. Paragraph (b)(5) is redesignated as paragraph (b)(4) and revised to read as follows:

* * * * *

(b) * * *

(4) The noncustodial parent's location is unknown, and the State has made regular attempts using multiple sources, all of which have been unsuccessful, to locate the noncustodial parent

(i) Over a three-year period when there is sufficient information to initiate an automated locate effort, or

(ii) Over a one-year period when there is not sufficient information to initiate an automated locate effort.

* * * * *

e. Paragraphs (b)(6) through (b)(12) are redesignated as paragraphs (b)(5) through (b)(11), respectively.

f. Newly redesignated paragraph (b)(9) is revised to read as follows:

* * * * *

(b) * * *

(9) There has been a finding of good cause as set forth at § 302.31(c) and either § 232.40 of this chapter or 42 CFR 433.147 and the State or local IV–A, IV–D, IV–E, or Medicaid agency has determined that support enforcement may not proceed without risk of harm to the child or caretaker relative[.]

* * * * *

g. Newly redesignated paragraph (b)(10) is revised to read as follows:

* * * * *

(b) * * *

(10) In a non-IV–A case receiving services under § 302.33(a)(1) (i) or (iii), the IV–D agency is unable to contact the recipient of services within a 60 calendar day period despite an attempt by at least one letter sent by first class mail to the last known address, or[.]

* * * * *

h. Paragraph (b)(12) is added to read as follows:

* * * * *

(b) * * *

(12) The IV–D agency documents failure by the initiating State to take an action which is essential for the next step in providing services.

* * * * *

i. Paragraph (c) is revised to read as follows:

* * * * *

(c) In cases meeting the criteria in paragraphs (b) (1) through (6) and (10) and (11) of this section, the State must notify the recipient of services in writing 60 calendar days prior to closure of the case of the State's intent to close the case. The case must be kept open if the recipient of services supplies information in response to the notice which could lead to the establishment of paternity or a support order or enforcement of an order, or, in the instance of paragraph (b)(10) of this section, if contact is reestablished with the recipient of services. If the case is closed, the recipient of services may request at a later date that the case be reopened if there is a change in circumstances which could lead to the establishment of paternity or a support order or enforcement of an order.

* * * * *

j. Paragraph (d) is revised to read as follows:

* * * * *

(d) The IV–D agency must retain all records for cases closed pursuant to this section for a minimum of three years, in accordance with 45 CFR part 74.

* * * * *

k. In addition to the amendments set forth above, remove the words "absent parent," and add, in their place, the words "noncustodial parent" in the following places:

(1) Newly redesignated paragraph (b)(2);

(2) Newly redesignated paragraph (b)(4);

(3) Newly redesignated paragraph (b)(5); and

(4) Newly redesignated paragraph (b)(6).

l. In addition to the amendments set forth above, remove the words "custodial parent," and add, in their place, the words "recipient of services" in the following places:

(1) Newly redesignated paragraph (b)(8);

(2) Newly redesignated paragraph (b)(10); and

(3) Newly redesignated paragraph (b)(11).

[FR Doc. 98–4229 Filed 2–23–98; 8:45 am]
BILLING CODE 4150–11–M

Notices

Federal Register
Vol. 63, No. 36
Tuesday, February 24, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Deschutes PIEC Advisory Committee will meet on March 31, 1998, at the Madras Fire Department Convention Hall located on the corner of Adam and J Street off of Hwy 97 in Madras, Oregon. The meeting will begin at 9:30 am and finish at 4:00 p.m. Agenda items include: (1) Ratify comment on Draft EIS for Interior Columbia Basin Ecosystem Management project, (2) Overview of FERC licensing project for Round Butte Pelton Dam, (3) Update on Working Groups (4) Open Public Forum. All Deschutes Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Mollie Chaudet, Province Liaison, USDA, Bend-Fort Rock Ranger District, 1230 N.E. 3rd, Bend, Oregon 97701, 541–383–4769.

Dated: February 11, 1998.

Sally Collins,

Deschutes National Forest Supervisor.

[FR Doc. 98–4674 Filed 2–23–98; 8:45 am]

BILLING CODE 3410–11–M

AMERICAN BATTLE MONUMENTS COMMISSION

Performance Review Board Appointments

AGENCY: American Battle Monuments Commission.

ACTION: Notice of performance review board appointments.

SUMMARY: This notice provides the names of individuals who have been appointed to serve as members of the American Battle Monuments Commission Performance Review Board. The publication of these appointments is required by Section 405(a) of the Civil Service Reform Act of 1978 (Pub.L. 95–454, 5 U.S.C. 4314(c)(4)).

DATE: These appointments are effective as of February 1, 1998.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Theodore Gloukhoff, Director of Personnel and Administration, American Battle Monuments Commission, Courthouse Plaza II, Suite 500, 2300 Clarendon Boulevard, Arlington, Virginia, 22201, Telephone Number: (703) 696–6908.

American Battle Monuments Commission SES Performance Review Board—1998/1999

Donald Leverenz, Assistant Director, Research and Development, US Army Corps of Engineers

John P. D'Aniello, P.E., Deputy Director of Civil Works, US Army Corps of Engineers

William A. Brown, Sr., Deputy Director of Military Programs, US Army Corps of Engineers

Theodore Gloukhoff,

Director, Personnel and Administration.

[FR Doc. 98–4565 Filed 2–23–98; 8:45 am]

BILLING CODE 6120–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Massachusetts Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 10:30 a.m. and adjourn 3:00 p.m. on Tuesday, March 10, 1998, at Sugarman, Rogers, Barshak & Cohen, 101 Merrimack Street, 9th Floor Conference Room, Boston, Massachusetts 02114. The purpose of the meeting is to discuss and make last minute decisions for the Civil Rights Leadership Conference scheduled for March 20–21, 1998 in Boston.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Fletcher A. Blanchard, 413–585–3909, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 18, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–4561 Filed 2–23–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 953]

Grant of Authority; Establishment of a Foreign-Trade Zone, Wood and Jackson Counties, West Virginia

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Wood County Development Authority (Grantee), a West Virginia public corporation, has made application to the Board (FTZ Docket 43–97, 62 FR 31070, 6/6/97), requesting the establishment of a foreign-trade zone at sites in Wood and Jackson Counties, West Virginia, adjacent to the Charleston Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register**; and,

Whereas, the Board adopts the findings and recommendations of the

examiner's report, and finds that the requirements of the Act and the Board's regulations are satisfied and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 228, at the sites described in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 13th day of February 1998.

Foreign-Trade Zones Board.

William M. Daley,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–4691 Filed 2–23–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 954]

Grant of Authority; Establishment of a Foreign-Trade Zone, Charleston, West Virginia

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the West Virginia Economic Development Authority (the Grantee), a West Virginia public corporation, has made application to the Board (FTZ Docket 61–97, 62 FR 40332, 7/28/97), requesting the establishment of a foreign-trade zone at a site in Charleston, West Virginia, within the Charleston Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register**; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the Act and the Board's regulations are satisfied and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 229, at the sites described in the application, subject to the Act and the Board's regulations.

Signed at Washington, DC, this 13th day of February 1998.

Foreign-Trade Zones Board.

William M. Daley,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–4692 Filed 2–23–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 955]

Grant of Authority for Subzone Status; Toyota Motor Manufacturing West Virginia, Inc. (Automobile Engines), Buffalo, West Virginia

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the FTZ Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the West Virginia Economic Development Authority, grantee of FTZ 229, for authority to establish special-purpose subzone status for the automobile engine manufacturing plant of Toyota Motor Manufacturing West Virginia, Inc., in Buffalo, West Virginia, was filed by the Board on July 22, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 62–97, 62 FR 40333, 7–28–97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the Toyota Motor Manufacturing West Virginia, Inc., plant in Buffalo, West Virginia (Subzone 229A), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 13th day of February 1998.

Foreign-Trade Zones Board.

William M. Daley,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–4693 Filed 2–23–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–274–802]

Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Trinidad & Tobago

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: February 24, 1998.

FOR FURTHER INFORMATION CONTACT: Abdelali Elouaradia or Alexander Braier, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2243 or (202) 482–3818, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at

19 CFR Part 353 (April 1997). Although the Department's new regulations, codified at 19 CFR 351 (62 FR 27296, May 19, 1997), do not govern these proceedings, citations to those regulations are provided, where appropriate, to explain current departmental practice.

Final Determination

We determine that steel wire rod ("SWR") from Trinidad & Tobago is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act.

Case History

Since the preliminary determination in this investigation (*Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Wire Rod from Trinidad & Tobago*), 62 FR 51581 (October 1, 1997) ("SWR"), the following events have occurred:

In November 1997, we conducted a verification of the respondent's questionnaire responses. On December 15, 1997, the Department issued its reports on verification findings for Caribbean Ispat, Ltd. (CIL). On December 29, 1997, respondents submitted new computer sales listings which included only data corrections identified through verification. Petitioners and respondents submitted case briefs on December 22, 1997, and rebuttal briefs on January 5, 1998. A public hearing was not held as there were no requests for a hearing.

Scope of Investigation

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States ("HTSUS") definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this investigation:

- Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as "Tire Cord Wire Rod."
- Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth, containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."
- Coiled products 11 mm to 12.5 mm in diameter, with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.72 percent; manganese 0.50–1.10 percent; phosphorus less than or equal to 0.030 percent; sulfur less than or equal to 0.035 percent; and silicon 0.10–0.35 percent. This product is free of injurious piping and undue segregation. The use of this excluded product is to fulfill contracts for the sale of Class III pipe wrap wire in conformity with ASTM specification A648–95 and imports of this product must be accompanied by such a declaration on the mill certificate and/or sales invoice. This excluded product is commonly referred to as "Semifinished Class III Pipe Wrap Wire."

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Exclusion of Pipe Wrap Wire

As stated in the Notice of Preliminary Determination, North American Wire Products Corporation ("NAW"), an importer of the subject merchandise from Germany, requested that the Department exclude steel wire rod used to manufacture Class III pipe wrapping wire from the scope of the investigation of steel wire rod from Canada, Germany, Trinidad and Tobago, and Venezuela. On December 22, 1997, NAW submitted to the Department a proposed exclusion definition. On December 30, 1997 and January 7, 1998, the petitioners submitted letters concurring with the definition of the scope exclusion and requesting exclusion of this product from the scope of the investigation. We have reviewed NAW's request and petitioners' comments and have excluded steel wire rod for manufacturing Class III pipe wrapping wire from the scope of this investigation (*see*, Memorandum to Richard W. Moreland dated January 9, 1998 and instructions to Customs dated February 3, 1998).

Period of Investigation

The period of investigation ("POI") is January 1, 1996 through December 31, 1996.

Fair Value Comparisons

To determine whether sales of steel wire rod sold by CIL to the United States were made at less than fair value, we compared the Export Price ("EP") to the normal value ("NV"), as described in the "EP" and "Normal Value" sections of this notice below. In accordance with section 777A(d)(1)(A)(i), we calculated weighted-average EPs for comparisons to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent, covered by the description in the *Scope of Investigation* section above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the antidumping duty questionnaire and the May 22, 1997, reporting instructions.

Consistent with our practice, we compared prime merchandise sold in the United States to prime merchandise sold in the home market, and secondary merchandise to secondary merchandise. *See, e.g., Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review*, 61 FR 48465, (September 13, 1996).

On January 8, 1998, the Court of Appeals of the Federal Circuit issued a decision in *Cemex, S.A.* v. *United States*, No. 97–1151, 1998 WL 3626 (Fed. Cir. Jan. 8, 1998). In that case,

based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value ("CV") as the basis for foreign market value when the Department finds home market sales to be outside the ordinary course of trade. This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the "ordinary course of trade" to include sales disregarded as below cost. *See* section 771(15) of the Act. Because the Court's decision was issued so close to the deadline for completing this administrative review, we have not had sufficient time to evaluate and apply (if appropriate and if there are adequate facts on the record) the decision to the facts of this "post-URAA" case. For these reasons, we have determined to continue to apply our policy regarding the use of CV when we have disregarded below-cost sales from the calculation of NV.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually the sale from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than the EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-length Carbon Steel Plate From South Africa*, 62 FR 61731 (November 19, 1997).

Neither CIL nor petitioners commented on our preliminary level of trade analysis. Furthermore, our verification findings were consistent with our preliminary level of trade analysis. Therefore, consistent with our findings in the preliminary determination, for this final determination we have continued to treat all of CIL's home market and U.S. sales as being at a single level of trade and we have made no level of trade adjustment when matching its U.S. sales to home market sales.

Export Price

We based price in the United States on EP, in accordance with subsections 772 (a) and (c) of the Act because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts on the record.

We calculated EP based on packed prices to the first unaffiliated customer in the United States. We made adjustments, where appropriate, for international ocean freight, marine insurance, U.S. brokerage and handling, U.S. Customs duties and user fees, U.S. inland freight from port to unaffiliated customer, U.S. inland insurance, dock handling and survey fees in both the United States and Trinidad in accordance with section 772(c)(2) of the Act.

We corrected the CIL's data for certain errors and omissions found at verification and submitted to the Department.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, if the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Since CIL's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home market sales.

Cost of Production Analysis

Pursuant to an allegation made by petitioner, we initiated a cost of production investigation in our notice of initiation (62 FR 13854 March 24, 1997). Before making any fair value comparisons, we conducted the COP analysis described below.

Calculation of COP

We calculated the COP based on the sum of respondent's cost of materials and fabrication for the foreign like product, plus amounts for home market general expenses and packing costs in accordance with section 773(b)(3) of the Act. We relied on the submitted COP data, except in the following instances where the costs were not appropriately quantified or valued:

1. We revised the reported general and administrative expense ("G&A") rate to include only net foreign exchange losses related to accounts payable. See comment 4.
2. We used CIL's COP/CV files which assign the cost of purchased billets to specific control numbers. See comment 5.

Test of Home Market Prices

We used the respondent's submitted POI weighted-average COPs, as adjusted (see above). We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home-market sales made at prices below the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, discounts, and direct and indirect selling expenses.

Results of COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities," and within an extended period of time in accordance with section 773(b)(2)(B) of the Act. Where we determined that such sales were also not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product, and calculated NV based on CV.

Calculation of CV

In accordance with section 773(e) of the Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, SG&A, U.S. packing costs, interest expenses and profit. As noted above, we assigned the cost of purchased billets to specific control numbers and recalculated Ispat's general and administrative expense amount. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the COP, we based NV on prices to home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

We calculated NV based on prices to unaffiliated home market customers. We made deductions for discounts, rebates, and inland freight. In addition, we made circumstance-of-sale adjustments or deductions for credit, mark-up by affiliated parties, and warranty, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

Currency Conversion

For purposes of the preliminary determination, we made currency conversions using the official daily exchange rate in effect on the date of the U.S. sales. The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for Trinidad currency. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones Business Information Service, as published in the Wall Street Journal. This is consistent with the Department's practice. *See, i.e., Final Affirmative Countervailing Duty Determination on Steel Wire Rod From Trinidad and Tobago,* (FR cite).

Verification

As provided in section 782 (i) of the Act, we conducted a verification of the information submitted by CIL for use in our final determination. We used standard verification procedures, including examination of relevant accounting and sales/production records and original source documents provided by respondents.

Interest Party Comments

Comment 1: Composite Coils

CIL argues that the Department incorrectly treated its sales of composite coil as sales of secondary merchandise rather than prime merchandise. CIL states that a composite coil consists of smaller sections of prime merchandise, which are physically banded together to produce a full coil of prime merchandise. CIL argues that "[Fo]ot for foot, composite coil is prime merchandise" (CIL Case Brief at 2) because it shares the identical physical characteristics as prime merchandise. Further, CIL maintains, petitioners have not introduced any evidence that the physical characteristics of composite coils make it a second quality product.

CIL notes that petitioner's argument that the Department should classify sales of composite coils as secondary merchandise on the basis of price alone is contrary to section 1677(16)(A) of the Act, which states that the preferred "foreign like product" is the merchandise "identical in physical characteristics" with the subject merchandise (CIL Case Brief at 3). CIL concludes, therefore, that the Department must consider its sales of composite coils to be sales of prime merchandise.

Petitioners urge the Department to uphold its preliminary determination to treat composite coil sales as non-prime merchandise sales, arguing that (1) the physical characteristics of composite coils are different from prime merchandise, (2) composite coils are much more difficult for wire drawers to process because they are not one continuous piece of wire rod, and (3) therefore, composite coils are priced lower than prime coils because they are less desirable to customers, and not, as CIL contends, because of competitive pressures in the home market. Petitioners assert that the very definition of a composite coil points to the most significant physical difference between it and prime merchandise, the fact that there are one or more breaks in the coil which renders it much more difficult to process and hence less desirable to customers. Petitioners conclude by rebutting CIL's allegation that the Department has based its preliminary finding that composite coils are not prime merchandise only based on price differences. Petitioners state that "* * * the Department is using the unquestionable physical difference between composite coils and prime merchandise as a matching criterion, not price" (CIL Case Brief at 3).

DOC Position

We agree with CIL. Section 771(16) of the Act directs the Department to compare sales of home market merchandise which are "such or similar" to merchandise sold in the United States. In accordance with section 771(16)(A), the Department first identifies and compares that merchandise which is "identical" in terms of physical characteristics, followed by sales of merchandise which is most "similar" in physical characteristics. To make these determinations, the Department devises a hierarchy of commercially meaningful characteristics suitable to each class or kind of merchandise. The Department considers merchandise to be identical within the meaning of section 771(16)(A) when all the relevant characteristics match. Composite coils were verified as identical in every way to prime merchandise within each CONNUM (*see* CIL Sales Verification) (Dec. 15, 1997), within the meaning of the statute and the Department's product matching hierarchy. In addition, composite coils are purchased and used by customers as prime merchandise, are used to fill orders of prime merchandise sold, and are used in the same applications as continuous coils. Therefore, as there is no basis for considering them as secondary merchandise, the Department has revised these final results to treat composite coils as prime merchandise.

Comment 2: U.S. Commissions

CIL claims that we made an improper adjustment to the U.S. price, by deducting the mark-up retained by its affiliated parties from the U.S. price. CIL further states that for the U.S. price calculation, in the case of EP sales, the Department should not deduct any selling expenses, direct or indirect, but can adjust normal value to reflect differences in direct selling expenses incurred on U.S. and home market sales through a "circumstance of sale adjustment". Furthermore, CIL argues that the mark-up retained by its U.S. affiliates is irrelevant to the dumping calculation, since it represents revenue to the overall Ispat group, not an expense.

Petitioners argue that this mark-up is commission incurred only on certain U.S. sales, but not in the home market. In addition, petitioners argued that (1) the Department policy is to adjust for commissions to affiliates or employees on EP sales, and (2) the regulations

permit circumstance of sale adjustments for direct selling expenses.

DOC Position

We disagree with both CIL and petitioners, in part. We disagree with CIL that the Department made an improper adjustment to U.S. price based on the mark-up retained by CIL's U.S. sales affiliates. The program log which was disclosed to all parties at disclosure clearly indicates that no such adjustment relating to this mark-up was made to U.S. price, and CIL's price calculation sheets for U.S. sales (*see, i.e.* Sales Analysis Memo) (Sept. 24, 1997) clearly demonstrate that this mark-up is incorporated into the gross unit price reported to the Department (See, *i.e.*, CIL Verification Exhibit 7).

We disagree with petitioners that this mark-up is a commission warranting a circumstance of sale adjustment, because the Department applies a two-pronged test to determine whether an adjustment for related party commissions is appropriate. First, we determine if the commissions are directly related to specific sales and, secondly, we determine whether the commissions are at arm's length (*See Final Results of Antidumping Duty Administrative Review; Certain Welded Carbons Steel Standard Pipes and Tubes from India*, 57 FR 54360 (Nov. 18, 1992). Even though the facts on the record support the allegation that this mark-up is directly related to specific sales, they do not demonstrate that it is at arm's length. Since the preliminary determination, we have reconsidered this issue. The Department's current practice, as well as the stated preference in the finalized regulations, is to use actual expenses incurred by U.S. affiliates. *See* 19 CFR 351.402; and *e.g. Granular Polytetrafluoroethylene Resin from Italy*, 62 Fed. Reg. 48592, 48593 (September 16, 1997) (Comment 2). The reported expenses incurred by CIL's U.S. affiliate are indirect expenses. Thus, a circumstance of sale adjustment pursuant to section 353.56(a) of the Department's regulations is not warranted.

Comment 3: Applicable Exchange Rates

CIL contends that in absence of official Trinidad dollar to U.S. dollar exchange rates from the Federal Reserve Bank, the Department shoul l use the publicly available published rates from the Central Bank of Trinidad and Tobago ("Bank"). CIL argues that these rates are more appropriate than the (Dow Jones rates) rates the Department used in the preliminary determination because the difference between the Bank rates and the preliminary determination rates is significant, and the Bank rates are more reasonable and reflective of commercial reality in Trinidad during the POI. CIL asserts that these rates do not represent "new factual information" in the context of the Department's regulations because exchange rates are not provided by respondents, but rather are obtained independently by the Department from publicly availably sources.

Petitioners argue that CIL's proposition to use the Bank exchange rates should be rejected because (1) the Bank's exchange rates constitute new factual information, and (2) CIL's argument that the Bank's rates are more reflective of commercial reality is predicated on an analysis of only two weeks of data, which is an insufficient sample to determine any significant difference between the two rates during the POI.

DOC Position

The Department's normal practice is to use exchange rates provided by the Federal Reserve Bank. When the Federal Reserve does not provide exchange rates, as in the case of Trinidad, a reasonable alternative is to use rates from the Dow Jones Business Information Services (*see Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey*, 62 FR 9737 (March 4, 1997), and *Ferrosilicon From Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 20793 (May 8, 1996)). The Dow Jones is a well established, reliable source of commercially available exchange rates. Thus it is reasonable to use these rates for this final determination. Furthermore, Ispat provided no evidence that the Bank rate was available to Ispat, or that Ispat used this rate during the POI. For all of these reasons, the Department is continuing to utilize Dow Jones exchange rates for this final determination.

Comment 4: Exchange Gains and Losses

CIL argues that the Department's policy to include exchange gains and losses arising from the purchase of production inputs, but exclude gains and losses arising from other foreign currency denominated accounts, fails to reflect normal commercial business practices. CIL argues that the Department calculated a nonexistent cost by recognizing a foreign exchange loss on purchases transactions (accounts payable), but disregarding foreign exchange gains on sales transactions (cash and accounts receivable). CIL states that in normal financial practices, corporate treasurers do not manage specific accounts, but instead manage the net exposed position of the corporation. For example, if a corporation is holding an accounts receivable (or cash) balance and an accounts payable balance in the same currency maturing on approximately the same date, the treasurer will consider the company hedged. Under these circumstances any change in relative currency values will be offset with no cost to the corporation. CIL claims that this situation is in fact what happened within their organization during the POI.

CIL explains that the Act requires the Department to use the exchange rate prevailing on the date of the sales transaction to convert foreign currency amounts to U.S. dollars, and any exchange gain or loss incurred when the actual payment is received is ignored. CIL argues that the Department uses the exchange rate as of the date of the sales transaction because the Department does not expect the producer to adjust its sales prices for unforeseeable future favorable or unfavorable exchange rate fluctuations. The Department's current policy for purchase transactions, however, assumes that a producer can foresee favorable or unfavorable exchange rate fluctuations, and can adjust sales prices accordingly. CIL argues that to ensure nonexistent (due to hedging) or unforeseeable (due to exchange rate fluctuations) costs are not included in the cost of production, the Department should either totally ignore the exchange gains and losses (regardless of whether they arise from purchase or sales transactions) or offset the exchange losses from purchase transactions with the exchange gain on sales transactions.

Petitioners argue that the Department should follow its longstanding practice as outlined in Circular Welded Non-Alloy Steel Pipe and Tube from Mexico, (62 FR 37014, 37026, July 10, 1997) (Final Results of the Administrative Review), where the Department did not include exchange gains and losses on accounts receivables, because these gains and losses relate to selling activities rather than production costs. Petitioners state that the Department should not alter its longstanding policy and should continue to ignore exchange gains and losses on accounts receivables, as it did in the preliminary determination.

DOC Position

We agree with the petitioner that foreign exchange gains and losses arising from sales transactions should not be included in CIL's COP and CV. It is the Department's normal practice to

distinguish between exchange gains and losses from sales transactions and exchange gains and losses from purchase transactions. *See, e.g.*, Circular Welded Non-Alloy Steel Pipe and Tube from Mexico, 62 FR 37014, 37026 (July 10, 1997) (Final Results of the Administrative Review, Comment 31). The Department normally includes in its calculation of COP and CV foreign exchange gains and losses resulting from transactions related to a company's manufacturing operations (*e.g.*, purchases of inputs). *See, e.g., Final Determination of Sales Less Than Fair Value: Polyethylene Tenephthalate Film, Sheet, and Ship From the Republic of Korea*, 56 FR 16305, 16313 (April 22, 1991) (comment 16). We do not consider foreign exchange gains and losses arising from sales transactions to relate to manufacturing activities of a company. Accordingly, for the final determination we included in COP and CV exchange gains and losses arising from purchase transactions (accounts payable), but disallowed exchange gains and losses arising from sales transactions.

Comment 5: Purchased Billet Costs

CIL argues that the Department should not specifically assign the cost of purchased billets to the specific CONNUMs produced from these billets. Instead, CIL maintains that the Department should allocate the cost of the purchased billets over all of CIL's production of subject merchandise. CIL claims that assigning the cost of purchased billets to the specific CONNUM distorts CIL's actual cost of production. CIL states that the company could have produced the purchased billet internally. The decision of which types of billets to purchase, however, was discretionary and driven by revenue and cost considerations, not by the type of billet.

CIL further claims that the purchase of billets is a departure from the company's normal course of business, in which it internally produces all billets. CIL states that, consistent with section 773(f)(1)(B) of the Act, its purchase of billets was a type of nonrecurring cost that benefitted the company's current production. Thus, according to CIL, the Department should adjust costs such that purchased billets are spread across all production.

Petitioners contend that whenever the Department is able to do so, it should assign costs only to those specific products whose production incurred such costs. Petitioners state that because the costs for purchased billets can be directly tied to specific CONNUMs, the most accurate method of calculating COP is to allocate purchased billet costs to the specific CONNUMs they were used to produce.

DOC Position

We agree with petitioners that the costs incurred for purchased billets should be charged directly to the products produced from these same billets. In fact, in this case, to do otherwise would not result in a product-specific cost since the record clearly demonstrates which products were manufactured by CIL from purchased billets.

With respect to CIL's characterization of purchased billets as a nonrecurring cost, we consider the company's reliance upon section 773(f)(1)(B) of the Act to be misplaced (19 U.S.C. 1677(f)(1)(B)). The billets at issue were purchased as direct material inputs used in the production of specific steel rod products. The statute, on the other hand, envisions nonrecurring costs as indirect costs that, by their nature, can be shown to benefit current or future production and, thus, should be systematically allocated to those products benefitted. As an example of such nonrecurring costs, the Statement of Administration Action (SAA), at page 835, cites preproduction research and development costs. Such costs may be demonstrated to provide a clear but indirect benefit to future production. In that regard, they differ markedly from the cost of purchased billets at issue here since the billets are simply a direct material input for a specific type of finished steel rod.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of steel wire rod from Trinidad and Tobago, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service will require a cash deposit or posting of a bond equal to the estimated duty margins by which the normal value exceeds the expert price, as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average percentage margin
CIL	11.85
All other	11.85

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of material injury, does not exist, the proceedings will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue antidumping duty orders directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: February 13, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–4695 Filed 2–23–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–826]

Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: February 24, 1998.

FOR FURTHER INFORMATION CONTACT: Alexander Braier at 202/482–3818, Lisette Lach 202/482–0190, Cindy Sonmez 202/482–0961 or Dorothy Woster at 202/482–3362, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930 ("the Act") as amended, are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at

19 CFR part 353 (April 1997). Although the Department's new regulations, codified at 19 CFR 351 (62 FR 27296 (May 19, 1997)) do not govern these proceedings, citations to those regulations are provided, where appropriate, to explain current departmental practice.

Final Determination

We determine that steel wire rod ("SWR") from Canada is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination in this investigation (*see Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Wire Rod ("SWR") from Canada*, 62 FR 51572 (October 1, 1997) (*"Preliminary Determination"*)), the following events have occurred:

In October and November 1997, we conducted verification of the responses of the following respondents: Sidbec-Dosco (Ispat) Inc. (now Ispat-Sidbec), Stelco, Inc. ("Stelco"), and Ivaco, Inc. ("Ivaco"). In November and December 1997, the Department instructed Ispat-Sidbec, Ivaco, and Stelco to resubmit their computer data which incorporated corrections made at verification. On December 2, 1997, Stelco submitted its revised computer data. On December 15, 1997, Ispat-Sidbec requested an extension of time to resubmit its data. On December 18, 1997, the Department granted Ispat-Sidbec an extension, until January 7, 1998, in which to resubmit its computer data. On December 12, 1997, Ivaco requested an extension of time for the case and rebuttal briefs, originally due December 23, 1997, and December 30, 1997, respectively. On December 18, 1997, the Department granted an extension of time for submission of case and rebuttal briefs to all interested parties. The new deadline for the case briefs was January 7, 1998, and rebuttal briefs, January 14, 1998. As none of the parties requested a public hearing, no such hearing was held.

Scope of Investigation

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States ("HTSUS") definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this investigation:

- Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as "Tire Cord Wire Rod."
- Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth, containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."
- Coiled products 11 mm to 12.5 mm in diameter, with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.72 percent; manganese 0.50–1.10 percent; phosphorus less than or equal to 0.030 percent; sulfur less than or equal to 0.035 percent; and silicon 0.10–0.35 percent. This product is free of injurious piping and undue segregation. The use of this excluded product is to fulfill contracts for the sale of Class III pipe wrap wire in conformity with ASTM specification A648–95 and imports of this product must be accompanied by such a declaration on the mill certificate and/or sales invoice. This excluded product is commonly referred to as "Semifinished Class III Pipe Wrapping Wire."

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Exclusion of Pipe Wrapping Wire

As stated in the *Preliminary Determination*, North American Wire Products Corporation ("NAW"), an importer of the subject merchandise from Germany, requested that the Department exclude SWR used to manufacture Class III pipe wrapping wire from the scope of the antidumping and countervailing duty investigations of SWR from Canada, Germany, Trinidad and Tobago, and Venezuela. Because petitioners did not agree to this scope exclusion, we did not exclude this merchandise in the preliminary determination. On December 22, 1997, NAW submitted to the Department a proposed exclusion definition. On December 30, 1997, and January 7, 1998, the petitioners submitted letters concurring with the definition of the scope exclusion and requesting exclusion of this product from the scope of the investigation. We have reviewed NAW's request and petitioners' comments and have excluded SWR for manufacturing Class III pipe wrapping wire from the scope of this investigation. *See* Memorandum to Richard W. Moreland dated January 12, 1998. Accordingly, on February 3, 1998, we instructed the U.S. Customs Service to terminate suspension of liquidation on all entries of Class III pipe wrapping wire from Canada.

Period of Investigation

The period of investigation ("POI") for all respondents is January 1, 1996 through December 31, 1996.

Fair Value Comparisons

To determine whether sales of SWR sold by respondents to the United States were made at less than fair value, we compared the Export Price ("EP") to the normal value ("NV"), as described in the "EP and CEP" and "Normal Value" sections of this notice below. In accordance with section 777A(d)(1)(A)(i), we calculated weighted-average EPs or CEPs for comparison to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents, covered by the description in the "Scope of Investigation" section above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise

in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the antidumping duty questionnaire and the May 22, 1997, reporting instructions.

Consistent with our practice, we compared prime merchandise sold in the United States to prime merchandise sold in the home market, and secondary merchandise to secondary merchandise. *See e.g., Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review*, 61 FR 48465 (Sept. 13, 1996).

On January 8, 1998, the Court of Appeals of the Federal Circuit issued a decision in *Cemex, S.A.* v. *United States*, No. 97–1151, 1998 WL 3626 (Fed. Cir. Jan. 8, 1998). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value ("CV") as the basis for foreign market value when the Department finds home market sales to be outside the ordinary course of trade. This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the "ordinary course of trade" to include sales disregarded as below cost. *See* section 771(15) of the Act. Because the Court's decision was issued so close to the deadline for completing this administrative review, we have not had sufficient time to evaluate and apply (if appropriate and if there are adequate facts on the record) the decision to the facts of this "post-URAA" case. For these reasons, we have determined to continue to apply our policy regarding the use of CV when we have disregarded below-cost sales from the calculation of NV.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value ("CV"), that of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

Ispat-Sidbec and Stelco did not claim a LOT adjustment. In the preliminary determination, for both respondents, we made no LOT adjustment, because we found all sales in the U.S. and home market to be at the same LOT. Our findings at verification do not warrant a change from our preliminary determination. Therefore, for the final determination, no LOT adjustment is warranted for Ispat-Sidbec and Stelco.

Ivaco did claim a LOT adjustment for its sales. In the preliminary determination, we determined that a LOT adjustment was appropriate, because we found sales in the U.S. and home market to be at different LOTs. Our findings at verification do not warrant a change from the preliminary determination. Therefore, for the final determination, where applicable, we have made a LOT adjustment for Ivaco's sales.

Export Price ("EP") and Constructed Export Price ("CEP")

We calculated EP and CEP, as appropriate, in accordance with subsections 772(a), (c) and (d) of the Act. The calculation for each respondent was based on the same methodology used in the preliminary determination.

Normal Value ("NV")

We calculated NV, in accordance with subsections 773(a) of the Act. The calculation for each respondent was based on the same methodology used in the preliminary determination.

Cost of Production Analysis

A. Calculation of COP

The calculation for each respondent was based on the respective cost submissions for each respondent, with the following exceptions:

Ispat-Sidbec

We adjusted Ispat-Sidbec's reported COP to include the consolidated financing cost of Ispat International N.V. We recalculated Walker Wire's further manufacturing COM to reflect the yield loss incurred during the production process. *See* Memorandum to Chris Marsh from Stan Bowen, dated February 13, 1998.

Ivaco

We recalculated Ivaco's general and administrative amounts based on the expenses incurred by IRM, Sivaco Ontario, and Sivaco Quebec. We adjusted the cost of billets to account for Atlantic Steel's selling, general, and administrative costs. We recalculated further manufacturing general and administrative amounts to reflect Sivaco New York's verified expenses rather than IRM's expenses. We adjusted Ivaco's COM to reflect the green rod yield loss incurred during rod processing at Sivaco Ontario and Sivaco Quebec. *See* Memorandum to Chris Marsh from Art Stein, dated February 13, 1998.

Stelco

We adjusted Stelco's reported COP to allocate ingot teeming costs only to the products manufactured from billets produced at the facility for which these costs were incurred. We subtracted Stelco McMaster Ltee's G&A expenses from Stelco's combined G&A expense calculation. Stelco McMaster Ltee's G&A expense was applied to the billet cost of only those CONNUMs that were produced using Stelco McMaster Ltee's billets. We recalculated Stelco's general and administrative amounts to exclude certain off-sets to research and development and capital tax expenses. *See* Memorandum to Chris Marsh from Stan Bowen, dated February 13, 1998.

B. Test of Home Market Prices

The calculation for each respondent was based on the same methodology used in the preliminary determination.

C. Results of the COP Test

The calculation for each respondent was based on the same methodology used in the preliminary determination.

D. Calculation of Constructed Value (CV)

The calculation for each respondent was based on the same methodology used in the preliminary determination. We used the cost information submitted by each respondent, except for the

adjustments noted above under "Calculation of COP."

Currency Conversion

For purposes of the preliminary determination, we made currency conversions using the official daily exchange rate in effect on the date of the U.S. sales. These exchange rates were derived from actual daily exchange rates certified by the Dow Jones & Company, Inc. *See* Change in Policy Regarding Currency Conversions, 61 FR 9434 (March 8, 1996).

Verification

As provided in section 782(i) of the Act, we verified the information submitted by all respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and sales/production records and original source documents provided by respondents.

Comments Related to U.S. Price

Comment 1: Ispat-Sidbec Freight Expenses

Ispat-Sidbec contends that the Department should use Ispat-Sidbec's reported and verified freight expenses in its final determination. In the normal course of business, Ispat-Sidbec maintains all freight costs recorded in its accounting system in Canadian dollars, regardless of whether the original invoice was issued in U.S. or Canadian dollars by the shipper. Due to the large number of sales, and the fact that one sale may have multiple freight invoices, Ispat-Sidbec claims that it would be virtually impossible to report the freight expense for each sale in the currency in which the freight invoice was received. Moreover, Ispat-Sidbec states that the Department verified that the freight expenses had been properly converted to Canadian dollars, and that this is how these expenses are maintained in the company's internal accounting system. To support its position, Ispat-Sidbec claims that the Department recently reaffirmed its preference for the use of verified information maintained in a company's normal course of business, even when that information may not correspond exactly to that requested by the Department, citing *Certain Cut-to-Length Steel Plate From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 62 FR 61964, 91991 (November 20, 1997).

Petitioners counter that, pursuant to section 776(a)(2)(A), the Department should substitute the highest rate reported as adverse facts available for Ispat-Sidbec's U.S. freight costs because Ispat-Sidbec refused to submit freight expenses reported in the currency incurred, as requested by the Department. Petitioners argue that the Department must not accept Ispat-Sidbec's unilateral determination that the requested information is unnecessary. Petitioners claim that if the Department does not apply adverse inferences, Ispat-Sidbec will benefit from its own lack of candor and cooperation.

Department's Position

Before applying facts available, section 782(e) of the Act permits the Department to consider the ability of an interested party to submit requested information if the party notifies the Department it cannot provide the necessary information and includes a full explanation and suggested alternatives. In its January 7, 1998 submission, Ispat-Sidbec notified the Department that to report freight expenses in the currency in which they were incurred would create an enormous burden requiring Ispat-Sidbec to review numerous sales individually. While the Department's standard questionnaire normally requires all parties to report expenses in the currency in which they were incurred, the Department verified that the expenses had been properly converted to Canadian dollars using the daily exchange rate, and that this is how the expenses were kept in the company's internal accounting system. In this case, we have continued to use Ispat-Sidbec's reported and verified freight expenses for these final results.

Comment 2: Ispat-Sidbec U.S. Selling Expenses

Ispat-Sidbec claims that in converting Ispat-Sidbec's U.S. selling expenses to Canadian dollars for purposes of the CEP profit calculation, the Department incorrectly applied the exchange rate conversion to Ispat-Sidbec's inventory carrying cost in the country of manufacture, which was already reported in Canadian dollars.

Department's Position

We agree with respondent and have corrected the CEP profit calculation for this final determination.

Comments Related to Normal Value

Comment 1: Ispat-Sidbec Home Market Rebates

Ispat-Sidbec contends that the Department should continue to deduct both of its reported rebates on home market sales from NV in the final determination. Ispat-Sidbec claims that the Department verified the terms and conditions of one (REBATE2H), and that another (REBATE1H) clearly qualifies as a rebate under the Department's definition.

Department's Position

We agree with respondent that the record evidence supports a deduction from NV for these rebates. In both instances, we verified the terms and conditions of REBATE1H and REBATE2H. *See* Verification of the Sales Data for Sidbec-Dosco (Ispat) Inc., December 18, 1997, at 12 and 19. Therefore, we will continue to deduct both REBATE1H and REBATE2H from NV for purposes of this final determination.

Comment 2: Exclusion of Certain Stelco Home Market Sales

Petitioners argue that Stelco has reported home market sales of subject merchandise that are neither made in commercial quantities nor made in the ordinary course of business. Petitioners contend that sales which do not meet Stelco's minimum order requirements are not sold in commercial quantities. Particularly, petitioners argue that Stelco's home market sale of a single coil was not made in commercial quantities, as confirmed by Stelco at verification. Petitioners reject Stelco's explanation that the sale at issue was made to fulfill a previous under-delivery, as consistent with the record evidence.

Petitioners also argue that Stelco's sale of a single coil was not made in the ordinary course of trade. They insist that the sale of a single coil is aberrational in the wire rod industry and claim that sales of single coils are used for samples, testing purposes, or other aberrational circumstances. Petitioners allege that the preliminary determination produced an anomalous result in the model match, where Stelco's largest volume of U.S. sales was matched to the sale at issue. Therefore, petitioners contend that the Department should exclude this sale from the margin calculations, citing *Nachi-Fujikoshi Corp. v. United States*, 798 F. Supp. 716, 718 (CIT 1992); *Stainless Steel Angle from Japan*, 60 FR 16608, 16614 (March 31, 1995); *Granular Polytetrafluoroethylene Resin from Japan*, 60 FR 5622, 5623 (January 30, 1995); *Carbon Steel Plate from France*, 58 FR 37125, 37126 (July 9, 1993).

Stelco urges the Department to reject petitioners' request to exclude certain home market sales made by Stelco. Respondent maintains that petitioners' arguments are meritless, because they rely primarily on one sale made by

Stelwire. Stelco asserts that this sale of one coil is a perfectly normal sale because it was part of shipment of multiple products, all of which constituted a complete truckload.

Stelco also asserts that it included this sale, along with other sales made by Stelwire, in the sales listings at petitioners' insistence. It excluded this sale in the original response because the sale at issue was a sale to an affiliated party. However, upon the request of petitioners and the Department, Stelco included sales to affiliates in its supplemental submissions to the Department. Consequently, the sale of one coil was included in Stelco's subsequent submissions of the sales tapes.

Moreover, Stelco insists that petitioners misinterpret Department practice with respect to sales outside the ordinary course of trade. Stelco alleges that petitioners have cited to court cases and Department determinations arguing for, rather than against, the inclusion of the sale at issue. First, respondent asserts that the court case, *Nachi-Fujikoshi Corp. v. United States*, involved a decision in which the Court upheld the Department's decision not to exclude a sample sale from its LTFV comparisons as outside the ordinary course of trade. Second, with regard to petitioners' cite to *Stainless Steel Angles from Japan*, Stelco contends that petitioners fail to acknowledge that, in that case, the Department rejected requests from both petitioners and respondents to exclude certain sales as outside the ordinary course of trade. Instead, the Department included in its dumping comparisons the sales which parties argued were outside the ordinary course of trade. Finally, Stelco asserts that *Granular Polytetrafluoroethylene Resin from France*, and *Carbon Steel Flat Products from France*, also do not support petitioners' argument. Respondent maintains that, in both those cases, the Department decided to exclude sales from its dumping comparisons because they were samples and sales of seconds. Since petitioners have not alleged the sale at issue is a sample sale, Stelco argues that these decisions are not relevant to this investigation.

Department Position

We disagree with petitioners that certain Stelco home market sales, including the sale of the single coil they reference, should be excluded as sales not in "usual commercial quantities" and not in the ordinary course of trade. First, we note that, while petitioners refer to "certain sales" their arguments exclusively address Stelco's sale of a single. With respect to petitioners' claim that this sale was made in a non-commercial quantity, we reviewed the volumes, values, and prices of Stelco's home market sales and found no evidence on the record that this sale was not sold in "usual commercial quantities" within the meaning of section 771(17) of the Act. The record evidence demonstrates that over 10% of the number of Stelco's home market sales, to affiliated and unaffiliated customers, is comprised of quantities comparable to the sale of the single coil. The prices of these sales, including the price of the sale of the single coil, fall very close to the midpoint of the price range of both Stelco's home market affiliated and unaffiliated sales. Moreover, based upon the particular facts of this case, we do not consider Stelco's minimum order practices as determinative of whether these sales are within "usual commercial quantities" because the record evidence demonstrates that Stelco made a large number of sales of SWR in quantities below the volume orders, and we have discovered nothing aberrational concerning these sales.

We also found the sale of the single coil to be within the ordinary course of trade under section 771(15) of the Act. The Department considers sales outside the ordinary course of trade to have extraordinary characteristics for the market in question. 19 CFR 351.102, 62 FR at 27381. An ordinary course of trade determination requires evaluation of sales on "an individual basis taking account all of the relevant facts of each case." *Nachi-Fujikishi Corp.* v. *United States*, 798 F. Supp. 716, 719 (CIT 1992). This means that the Department must review all circumstances particular to the sales in question. *See Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 17153 (April 9, 1997). The particular facts of this case do not support a finding that the sale of the single coil was an extraordinary transaction in relation to other home market sales transactions. First, during the POI, the sale of the single coil was shipped as a line item in an invoice including more than one type of subject merchandise, consistent with the vast majority of Stelco's sales, and was shipped pursuant to Stelco's regular shipping procedures. *See* Stelwire verification Exhibit 3. Second, Stelco had many similar sales of similar volumes in the home market to both affiliated and unaffiliated customers. Third, as noted above, the price of the sale at issue is near the midpoint of the price range of Stelco's home market sales, and there is no evidence that the price was aberrational. Fourth, there were no special handling or shipping arrangements made for this particular coil. In sum, we have found no record evidence demonstrating any significant distinctions between the sale of the single coil and Stelco's other home market sales. Therefore, since this sale was made in usual commercial quantities and in the ordinary course of trade, we will not exclude it from the home market sales listing.

Comments Related to Cost of Production

Comment 1: Ivaco Deferred Pre-Production Costs

Petitioners claim that the Department should deny Ivaco's deferral of "start-up" costs associated with its furnace conversion. Petitioners assert that the circumstances involving the furnace upgrade fail to satisfy the statutory and regulatory standards for a start-up cost adjustment because the furnace upgrade did not constitute a new production facility or the replacement or rebuilding of nearly all production machinery. Petitioners concede that the Department may rely on records kept by the respondent in the normal course of business if those accounts are in accordance with the home country GAAP and reasonably reflect the costs associated with the production of the subject merchandise. Petitioners argue that in this case, however, Canadian GAAP distorts actual costs. Petitioners, citing *Final Determination: Certain Pasta from Italy*, 62 FR 3028, 30355 (June 14, 1996) and *Micron Technology, Inc.* v. *United States*, 893 F. Supp. 21, 34 (CIT 1995), *aff'd* 117 F.3d 1386 (Fed. Cir. 1997), contend that because the furnace upgrade costs were incurred during the POI, they should be matched to the sales of the same period, and therefore, included in the POI production costs.

Ivaco asserts that it never requested a "start-up adjustment under the statute," but that it deferred these expenses in its own books. Respondent claims that the upgrades implemented during the furnace conversion were extensive in nature and constituted major production changes. Ivaco states that its external auditors approved its deferral of its pre-production costs, as disclosed in notes (2) and (5) of IRM's 1996 audited financial statements. Ivaco argues that if the Department chooses to disallow Ivaco's methodology of deferring and amortizing its pre-production costs, then the Department must net out the pre-production costs that Ivaco

capitalized prior to 1996 and amortized in 1996.

Department's Position

We agree with Ivaco that it properly deferred and amortized its pre-production costs associated with its furnace conversion. Section 773(f) of the Act directs the Department to calculate costs based upon the respondent's records, provided that such records are kept in accordance with respondent's home country GAAP and reasonably reflect the costs associated with the production of the merchandise. In this case, Ivaco is not claiming a start-up adjustment in accordance with section 773(f)(1)(C) of the Act. Rather, Ivaco, in the ordinary course of business, capitalized certain costs related to its conversion of a furnace. Ivaco's methodology of capitalizing and amortizing certain pre-production costs over periods of up to five years is consistent with Canadian GAAP and was approved by the company's auditors, as evidenced by the disclosures in notes (2) and (5) of IRM's 1996 audited financial statements.

Additionally, we consider it reasonable in this instance for Ivaco to spread the furnace upgrade costs over future periods because these costs will benefit the company's future operations through higher, more efficient production levels. Ivaco has demonstrated this, having deferred similar costs in past accounting periods. In fact, the amortization recognized by Ivaco this year with respect to such deferred costs from previous years approximates the total amount of furnace upgrade costs that Ivaco deferred in the current year. Thus, we find no reason to determine that such a methodology distorts the costs associated with the production of the merchandise. Because we have accepted Ivaco's methodology, the issue of netting out pre-production costs capitalized prior to 1996 is moot.

Comment 2: Ivaco Deferred Foreign Exchange Costs

Petitioners assert that the full amount of the POI foreign exchange losses should be included in the POI costs. Petitioners claim that Department precedent is to treat foreign exchange gains and losses as current period income or expenses, regardless of home country GAAP. According to petitioners, the Department may rely on records kept by the respondent in the normal course of business if those accounts are in accordance with the home country GAAP and reasonably reflect the costs associated with the production of the subject merchandise. Petitioners maintain that Canadian GAAP distorts actual costs in this situation. Petitioners cite *Certain Pasta from Italy*, where the Department stated that the extinguishment of debt caused a foreign exchange loss which represents a cost that provides no future benefit and that if the current foreign exchange losses were deferred they would not be properly matched against the sales of the period. Petitioners also cite *Micron Technology, Inc.* v. *U.S.*, an appeal from the Department's determination in *DRAMS from Korea*, in which it was ruled that if the foreign exchange translation gains and losses on outstanding foreign currency monetary assets and liabilities were deferred, the costs would not be appropriately matched to the sales of the company during the POI.

Ivaco justifies its practice of deferring foreign exchange gains and losses arising from non-current monetary items (*i.e.*, payments to be made after December 31, 1997) and amortizing those gains and losses over the payment of the debt, as being consistent with Canadian GAAP. Ivaco argues that this case differs from *Certain Pasta from Italy* because, in that case, the respondent sought to defer current foreign exchange gains and losses related to debt that had already been extinguished. Ivaco claims that it has deferred only those foreign exchange losses related to loans that were not extinguished, and that it has expensed all foreign exchange losses related to extinguished loans. Ivaco asserts that its methodology does not conflict with the decision in *Micron Technology, Inc.* v. *United States*, where the Court ruled that foreign exchange losses should be matched to the period in which the loss occurred. Ivaco maintains that all its foreign exchange losses related to loan repayments made in 1996 and projected loan repayments to be made in 1997 were expensed in 1996 and included in its COP, and that it deferred only those unrealized foreign exchange losses related to the non-current portion of its loans as of December 31, 1996. Finally, Ivaco makes the same consistency argument it made regarding its accounting for pre-production costs. Ivaco asserts that if the Department chooses to disallow the deferral of the foreign exchange losses, it should exclude the current period amortization of foreign exchange costs that were deferred from prior years. Ivaco claims that such treatment would result in a minimal difference in Ivaco's costs.

Department's Position

We agree with Ivaco that it properly amortized foreign exchange losses related to loans that were not extinguished during the POI. In this instance, there is little difference between its method of accounting for foreign exchange gains and losses and the method of amortizing deferred exchange gains and losses used by the Department in past cases. The Department normally relies upon the respondent's records, provided that such records are kept in accordance with respondent's home country GAAP and reasonably reflect the costs associated with the production of the merchandise. Ivaco demonstrated that its methodology of capitalizing non-current foreign exchange gains/losses attributable to its outstanding debt and amortizing the gains/losses over the payment of the debt is consistent with Canadian GAAP and was approved by its auditors, as disclosed in notes (1) and (6) of Ivaco Inc.'s 1996 audited financial statements. The Department's position, established in recent cases, is that exchange gains/losses should be amortized over the remaining life of the respondent's loans. *See Notice of Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador*, 24 FR 7019, 7039 (February 6, 1995) and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 42 FR 9737, 9743 (March 4, 1997). In this case, the impact of the difference between Ivaco's methodology of deferring and amortizing exchange gains/losses on only the non-current portion of long term debt and the Department's preferred methodology of deferring and amortizing exchange gains/losses over the remaining life of the debt is immaterial. Therefore, we find Ivaco's methodology acceptable because it reasonably reflects the costs associated with the production of the subject merchandise.

Comment 3: Sivaco Ontario and Quebec Yield Cost

Ivaco claims that it explained in its cost submissions and at verification that because Sivaco Ontario's cost computation is based on the volume produced at each production stage, its computation properly accounts for the yield loss associated with the green rod. Ivaco asserts that the yield losses are accurately reflected because the denominator used to compute the per unit costs is the produced volume, net of the yield loss.

Department's Position

We disagree with Ivaco that its methodology properly accounts for yield loss, and therefore, reflects the actual cost of production of SWR as

required by section 773(b)(3) of the Act. Although Sivaco Ontario and Sivaco Quebec properly accounted for the heat treating and cleaning/coating materials and processing costs associated with the rod lost during their processing, the companies failed to include such costs associated with the green rod received from IRM. We therefore calculated a weighted average yield loss percentage for the rod used in production at Sivaco Ontario and Sivaco Quebec. We based our calculation on the yields reported in Ivaco's submissions and the production volumes reported at verification. We then applied the yield loss percentage to the cost of the green rod.

Comment 4: Sivaco New York Further Manufacturing G&A Calculation

Ivaco states that the Department should use the reported further manufacturing data and G&A denominator in computing the further manufacturing G&A rate for Sivaco New York. Ivaco claims that the Sivaco New York cost of sales figure reported in the company's Section D submission is based on Sivaco New York's audited financial statement. Ivaco notes, however, that the cost of sales figure reported at verification is based on Sivaco New York's internal financial statement. Ivaco asserts that the cost of sales per Sivaco New York's audited financial statement exceeds the cost of sales per its internal financial statement by the sum of its shipping department and certain freight-in costs (for returning damaged or defective merchandise or racks). According to Ivaco, because these shipping department and certain freight-in costs are included in Sivaco New York's submitted further manufacturing costs, these costs must be included in the cost of sales figure used as the denominator in computing Sivaco New York's further manufacturing G&A rate.

Department's Position

We agree with Ivaco's contention that the cost of sales figure reported at verification was based on Sivaco New York's internal financial statement and excludes its shipping department and certain freight-in costs. We also agree with Ivaco that these costs were included in Sivaco New York's submitted further manufacturing costs. However, the difference between the cost of sales figure reported in the Section D submission and the cost of sales figure reported at verification is slightly larger than the sum of the shipping department and freight-in costs. We therefore adjusted the cost of sales figure reported at verification to include these costs and recalculated Ivaco's further manufacturing G&A rate for our final determination.

Comment 5: Ispat-Sidbec Interest Expense

Ispat-Sidbec contends that it is inappropriate for the Department to request that the company use an interest expense factor that is based on a reorganization that occurred after the POI. Ispat-Sidbec maintains that the company derived the revised interest expense factor solely for the Department's investigation and that it is not based on POI data maintained by Ispat-Sidbec in the ordinary course of business. According to Ispat-Sidbec, the statute requires the Department to calculate costs based on a company's normal records if the respondent maintains those records in accordance with GAAP. Ispat-Sidbec further notes that in *Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands*, 59 FR 23684, 23688 (May 6, 1994), the Department declined to calculate interest expense based on consolidated data, when the corporate restructuring did not occur until after the POI. Thus, Ispat-Sidbec argues that the Department should accept its interest expense factor as originally calculated based on the company's 1996 consolidated financial statements in accordance with Canadian GAAP.

Petitioners respond that for corporate groups, such as Ispat International and its subsidiaries, the Department generally calculates interest expense based on the consolidated financial results of a parent corporation and its subsidiaries, whether or not the respondent normally maintains such information in the ordinary course of business. Petitioners state that the Department's policy is "based on the fact that the group's parent, primary operating company, or other controlling entity . . . because of its influential ownership interest, has the power to determine the capital structure of each member company within the group." *New Minivans from Japan*, 57 FR 21937, 21946 (May 26, 1992). Petitioners also note that Ispat-Sidbec's argument that this interest information as derived solely for the investigation is flawed because Ispat International's consolidated financial statements for 1994 through 1996 were part of the record.

Department's Position

We agree with petitioners that it is the Department's long-standing practice to calculate interest expense for COP and CV purposes based on the borrowing costs incurred at the consolidated group level. This methodology, which has been upheld by the CIT in *Camargo Correa Metals, S.A.* v. *U.S.*, No. 91–09–00641, Slip Op. 93–163 (CIT August 13, 1993), is based on the fact that the consolidated group's controlling entity has the power to determine the capital structure of each member of the group. Thus, financial expenses at the group consolidation level must reasonably reflect the borrowing costs incurred by each member of the group. In this instance, prior to the POI, Ispat-Sidbec was a wholly-owned subsidiary within a large group of companies. Although these companies would normally prepare consolidated financial statements at the group level, it was unnecessary for them to do so because they were privately owned. Shortly after the POI, the Ispat Group reorganized its operations, eliminating certain holding companies as well as making other changes to its overall corporate structure. As part of the reorganization, Ispat International N.V. emerged as the lead entity of the former Ispat Group. Ispat International prepared consolidated financial statements for the group, including statements covering the POI.

Contrary to respondents arguments, this situation differs from that in *Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands*, 59 FR 23684, 23688 (May 6, 1994). In that instance, the Department did not compute interest expense at the consolidated level because the equity ownership in the respondent did not meet the requirements for consolidation until the post POI reorganization. However, in this case, Ispat-Sidbec was a member of the same group of consolidating companies both prior to and after the reorganization. Therefore, we will continue to use the Ispat Group's consolidated interest expense factor for purposes of this final determination.

Comment 6: Walker Wire Further Manufacturing Yield Loss

Ispat-Sidbec states that the Department should accept the yield loss reported in Walker Wire's further manufacturing Section E questionnaire. Ispat-Sidbec claims that Walker Wire submitted the yield loss that it normally calculates. Respondent maintains that Walker Wire's cost accounting system appropriately tracks all costs, including yield loss. In addition, Ispat-Sidbec asserts that the method used to allocate yield loss to merchandise is appropriate and reasonable.

Department's Position

We disagree with Ispat Sidbec that Walker Wire's reported costs adequately

accounts for yield loss associated with the further manufacture of the subject merchandise. Walker Wire's reported yield loss accounts only for a portion of its total yield loss because the company determined the reported loss based on the quantity of raw material recovered and sold for scrap. The company's methodology does not account for loss that it never recovers. Secondly, Walker Wire's reported conversion costs fail to account for yield loss incurred during production, which understates Walker Wire's conversion costs. Finally, Walker Wire uniformly allocates its yield loss to all products sold. Walker Wire allocated yield loss to merchandise bought for resale that required no fabrication and to customer-owned material that it fabricated. Neither of these items should incur the yield loss associated with Walker Wire's processing of its own materials. Therefore, for this final determination, we have increased Walker Wire's reported costs to account for the company's total yield loss.

Comment 7: Stelco Allocation of Excess Cost of Ingot Teeming

Stelco argues that it properly allocated the excess cost of ingot teeming (*i.e.*, the cost of ingots that are not required by Stelco's internal order practice) to only round products produced during the POI. Stelco notes that in its normal books and records it allocates these costs to all products produced, both flat-rolled and round products. However, in its submitted COP and CV data, Stelco allocated its ingot teeming costs to only round products produced since it cannot use ingots to produce flat-rolled products. Stelco contends that the Department should accept this allocation methodology because, in accordance with section 773(f) of the Act, it is the closest to Stelco's normal accounting procedures and because it reasonably reflects the actual cost of producing subject merchandise. Stelco further supports this argument by stating that the company can produce all of its round (*i.e.*, rod and bar) products from either ingot steel or cast steel.

Stelco further argues that if the Department does not accept its methodology of allocating excess ingot teeming costs to all round products, the Department should allocate these costs to those products that, because of customer requirements, could only be manufactured using ingots. Stelco maintains that during the POI, while no customers specifically required that only ingot steel be used in their orders, some customers required cast steel only.

Petitioners argue that the Department should reject Stelco's COP and CV data and apply total adverse facts available for the final determination because Stelco has repeatedly misreported its costs incurred on the teeming of ingots. Petitioners claim that Stelco incurs these costs on specific products and had the ability to assign its ingot teeming costs in a product-specific manner. Petitioners contend, however, that Stelco did not allocate its ingot teeming costs to specific products produced from ingots but, instead, allocated these costs over products that it claims could potentially be produced from ingots. Petitioners argue that this allocation methodology is unacceptable because the statute and the Department's long-standing practice require product-specific cost reporting. Petitioners cite *Final Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker from Mexico*, 58 FR 25803, 25809 (April 28, 1993), as precedent for use of best information available, in this case, when the respondent does not report product-specific materials costs.

Petitioners also assert that Stelco's submitted costs are not based on its books and records maintained in the normal course of business and argue that neither of Stelco's various cost submissions reasonably reflect the costs associated with the production and sale of subject merchandise. Petitioners claim that because Stelco's submitted methodologies do not assign costs only to the products for which those costs were incurred, Stelco diluted the dumping margins on ingot-teemed products, while reducing its profit margins on non-ingot teemed products. Petitioners further argue that since there is no verified evidence on the record demonstrating which specific CONNUMs are ingot-teemed products, the Department does not have the ability to correct Stelco's reported costs. Thus, petitioners urge the Department to reject Stelco's reported costs in their entirety and apply total adverse facts available, using either the dumping margin alleged in the petition for a Canadian respondent, or the highest dumping margin generated on any sale reported in Stelco's questionnaire response.

Department's Position

We disagree with petitioners that because Stelco was unable to allocate ingot teeming costs only to those products manufactured from ingot-produced billets, the Department should reject Stelco's reported costs in their entirety and resort to total adverse facts available. First, we do not find that Stelco's cost submissions are totally flawed and rendered unusable for the final determination under section 782(e) of the Act. Stelco submitted its cost data in a timely manner, we were able to verify significant elements of its COP and CV data, and as discussed below, we were able to use the cost data without undue difficulties. Thus, the facts in this case do not support rejection of the entire cost submission. *See* e.g., Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 62 FR 53808, 53819–20 (Oct. 16, 1997) (resorting to total adverse facts available because the respondent's cost submission was unverifiable). In addition, we do not find a sufficient basis to apply adverse inferences in accordance with section 776(b) of the Act because we determine that Stelco reported these costs to the best of its ability. Although Stelco did not report product-specific costs for all subject merchandise that used ingot steel, we confirmed at verification Stelco's claim that its computerized production records do not permit it to identify when a product is made using ingot steel. Based on this examination, we consider it acceptable for Stelco to allocate ingot teeming costs using an alternative methodology that reasonably reflects the costs associated with producing the subject merchandise.

However, we find neither of Stelco's alternative methodologies acceptable for the final determination. Because Stelco McMaster Ltee does not produce billets from ingots, allocating the ingot teeming costs incurred at the Hilton Works facility to all round products, including those made from billets manufactured at Stelco McMaster Ltee, unreasonably understates ingot teeming costs. Also, allocating ingot costs only to products that may be produced from ingots in the absence of actual production records unreasonably relies upon unsubstantiated costs. Therefore, we find that because Stelco states that it teems ingot to allow maximum utilization of available steel in the Hilton Works' ladles and that all round products can be produced using ingot steel, a reasonable methodology is to allocate ingot teeming costs to all products which used Hilton Works billets. Accordingly, for the final determination, we allocated ingot teeming costs incurred at the Hilton Works facility to all products manufactured from billets produced at this facility.

Comment 8: Inclusion of Stelco Capital Tax Credit in the G&A Expense Calculation

Stelco argues that its capital tax credit should be included in the general and administrative ("G&A") expense

calculation. Stelco cites *Final Results of Antidumping Duty Administrative Reviews: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada*, 62 FR 18448, 18465 (April 15, 1997) ("Carbon Steel from Canada"), as precedent for classifying capital taxes as a G&A expense. Stelco contends that because capital tax is a G&A expense, it properly offset the capital tax credit against G&A expenses. Furthermore, Stelco notes that the Department's practice is to include income items that are properly a part of G&A in the G&A expense calculation. To support this argument, Stelco cites *Notice of Antidumping Duty Order and Amended Final Determination: Canned Pineapple Fruit from Thailand*, 60 FR 36775, 36776 (July 18, 1995), in which the Department states it inadvertently relied on the gross, rather than the net, G&A expenses of the company in the calculations of COP and CV. Stelco maintains that the full amount of the credit relates to the POI, and not to prior years

Stelco further argues that if the Department accepts expense items which relate to non-POI periods because they are recorded in the company's normal books and records for the period, the Department should accept income items which relate to non-POI periods if they are recorded in the company's normal books and records in accordance with GAAP. Stelco cites *Final Results of Antidumping Duty Administrative Review: Certain Cold-Rolled Carbon Steel Flat Products from Canada*, 58 FR 37099, 37120 (July 9, 1993), in which the Department determined that because the respondent chose to expense the entire amount of certain expenses which related to future periods in the current period, the total expense was included in the calculation of COP and CV. Therefore, Stelco argues that even if the costs did relate to prior POI events, section 773(f) of the Act and the Department's long-standing policy require that costs be included in the calculation of COP and CV in the year those costs are recorded in a company's books, if those records are in accordance with GAAP and reasonably reflect the costs associated with the production and sale of the merchandise. Thus, Stelco maintains that its capital tax credit should be included in the calculation of G&A expenses for the final determination because it is recorded in Stelco's normal books and records in accordance with GAAP and reasonably reflects COP.

Petitioners urge the Department to exclude Stelco's capital tax offset from its G&A expense calculation. Petitioners argue that Stelco's credit to G&A expenses is improper because the Department does not normally include income taxes in its COP and CV calculations and because it does not relate to the POI since Stelco recorded this credit to reverse an overstated accrued liability from 1991. Petitioners state that, contrary to Stelco's claim, the Department does not have a long-standing policy of accepting such credits, particularly from prior years. To support this argument, petitioners cite *Final Results of Antidumping Duty Administrative Review: Fresh Kiwifruit from New Zealand*, 57 FR 13695, 13702 (April 17, 1992), in which the Department determined that "tax recoveries cannot be used to offset costs." In addition, petitioners argue that while the Department often accepts costs in the year they are recorded in a company's books, the statue specifically notes that COP shall be based on those records only when they reasonably reflect the costs associated with the production and sale of the merchandise. Thus, petitioners maintain that Stelco's capital tax credit should be excluded from the G&A expense calculation because it artificially and improperly lowers G&A expenses for the POI.

Department's Position

We agree with Stelco that the capital tax, which is a non-income-based tax, is a G&A expense item and, therefore, credits to capital tax should be offset to G&A expenses. *See e.g., Oil Country Tubular Goods From Canada; Final Determination of Sales at Less Than Fair Value*, 51 FR 15029 (April 22, 1986) and *Certain Steel from Canada*, 62 FR at 18465. However, we disagree with Stelco that the total amount of the capital tax credit should be included in the calculation of G&A expenses. While it is reasonable to offset Stelco's capital tax expense with its capital tax credit, it is not reasonable to offset other G&A expenses by the amount of the credit that exceeds the amount of the capital tax expense. Specifically, because the credit represents a reduction in the amount of capital taxes due by the company, it is unreasonable to offset unrelated G&A expenses, such as administrative salaries, professional fees, and office supplies. Therefore, for the final determination, we are including in Stelco's calculation of G&A expenses its capital tax credit only to the extent of its current capital tax expenses.

Comment 9: Inclusion of Stelco Tax Credit in G&A Expense Calculation

Stelco asserts that its investment tax credit should be included as a reduction to the company's G&A expenses. Stelco maintains that the credit is a reimbursement by the Canadian government of research and development ("R&D") expenses and, therefore, the company properly offset this credit to the R&D expenses it included as part of the total G&A expense. Stelco explains that although the Canadian government reimburses the company through a reduction of its income tax payable, the credit is not an income tax benefit. To support its argument that it properly recorded the credit as an offset to G&A expenses, Stelco cites the *Canadian Institute of Chartered Accountants ("CICA") Handbook*, the Canadian equivalent of U.S. GAAP. The *Handbook* states, where the investment tax credit relates to R&D costs, it should be accounted for using the cost reduction approach by including it in the period's net income if it relates to current expenses. If on the other hand, the ITC relates to fixed asset purchases, it may be accounted for either, by deducting the credit from the related assets and calculating depreciation expense on the net basis of the asset, or by deferring it if it relates to the acquisition of assets and amortizing it to income. The *Handbook*, however, states that "when the investment tax credits are not accrued in the year in which the qualifying expenditures are made because there is no reasonable assurance that the credit will be realized, such credits should be accrued in the subsequent year in which reasonable assurance of realization is first obtained." Stelco contends that reasonable assurance occurred in 1996 when the company had sufficient net income taxes payable to apply the investment tax credit. Stelco further argues that the Department's long-standing policy is to calculate COP and CV using net G&A expenses. Stelco maintains that the full amount of this credit should be included in the calculation of G&A expenses for the final determination. However, Stelco states that if the Department rejects its argument, it should at a minimum allow a full offset to Stelco's R&D expenses for the POI.

Petitioners counter that the Department should exclude Stelco's investment tax credit from the G&A expense calculation because the Department normally does not include income taxes in its COP and CV calculations. Petitioners cite *Statement of Financial Accounting Standards No. 109: Accounting for Income Taxes* to show that U.S. GAAP provides that investment tax credits be recorded as a reduction to income tax expense.

Petitioners respond that since Stelco concedes that the method of payment by the government is a reduction of income tax payable, the Department should adopt the approach that if a tax credit (such as an investment tax credit) results in an income tax reduction, it should be considered as an income tax item and thus excluded from G&A. Petitioners further argue that the credit should be excluded because portions of the credit may relate to R&D costs from previous years, or the credit may be calculated based on the purchase of equipment that is to be depreciated over future years. Petitioners allege that Canadian companies would receive an unfair advantage if the Department allows this credit to be classified as a reduction of cost of production instead of a reduction to income tax expense. Finally, petitioners claim that Stelco did not adequately support its classification of this credit to G&A expenses. They argue that the Department should reject as new factual information the CICA *Handbook* excerpts submitted by Stelco in its January 7, 1998, brief which relate to the timing of the receipt of the benefit, but do not address its classification. Petitioners conclude that Stelco's approach does not conform to Canadian GAAP because Stelco did not submit material to support its presentation and disclosure of the credit. Therefore, petitioners maintain that Stelco's investment tax credit should be excluded in the calculation of G&A expenses for the final determination.

Department's Position

We disagree with petitioners that the excerpts from the CICA *Handbook* submitted by Stelco in its January 7, 1998, brief constitute untimely new factual information which should be rejected. Stelco previously provided this information during the cost verification to clarify and support information already on the record. *See* Stelco Cost Verification Exhibit 29 at 10. However, we agree with petitioners that the Department normally does not include income taxes in its COP and CV calculations. The CICA *Handbook* states that "investment tax credits are a type of government assistance related to specific qualifying expenditures that are prescribed by tax legislation." These credits reduce the amount of income taxes Stelco pays. We do not consider it appropriate to offset production costs by the reduced income tax liability arising from tax legislation, because the Department does not include income taxes in the calculation of COP and CV. *See e.g., Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order*, 61 FR 63822, 63824 (December 2, 1996). Thus, we are excluding Stelco's investment tax credit in the calculation of G&A expenses for the final determination.

Comment 10: Inclusion of Stelco Pension Expenses in the G&A Expense Calculation

Stelco included in its G&A expenses an adjustment for the company's additional pension liability as of December 31, 1995, which resulted from a 1996 court decision to partially wind up the company's pension plan. Stelco notes that the company did not have any "control" over the events which triggered the applicability of its pension expense or its capital tax credit recorded during the POI. Stelco argues that if the Department excludes its capital tax and investment tax credits from its calculation of G&A expenses because these credits relate to prior years, the Department should also exclude this partial pension wind-up cost from the G&A calculation because it relates to prior years.

Petitioners state that Stelco's recognition in the POI of pension costs from prior years was proper and should be included in the G&A expense calculation. Petitioners reason that Stelco should include this cost because, unlike Stelco's tax credits, this amount was not "controlled" by Stelco, but by the Canadian courts. In addition, petitioners claim that, unlike the tax credits, the pension expense was recorded in accordance with both Canadian and U.S. GAAP which state that a liability contingent on a lawsuit's outcome is recorded only if the company is likely to lose the suit. Therefore, petitioners argue that the Department should include Stelco's pension cost expense related to prior years in the G&A expense calculation.

Department's Position

We agree with petitioners that Stelco's partial pension wind-up costs should be included in the calculation of G&A expenses. In *Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 62 FR 18404, 18443 (April 15, 1997), ("*Carbon Steel Flat Products from Korea*"), we determined that including prior-period expenses, such as severance benefits, as an element of COP and CV is appropriate to reasonably reflect the costs associated with the production and sale of the subject merchandise. We disagree with Stelco that if the Department excludes the company's capital tax and investment tax credits from the calculation of G&A expenses, we must also exclude these pension expenses. The Department considers each cost issue separately, based on the facts and circumstances surrounding each issue. Stelco did not recognize the pension expenses as a contingent liability in prior years because Stelco expected to successfully appeal the Canadian pension commissioner's ruling that employees terminated in the early 1990's were entitled to certain pension benefits. Stelco recognized these costs for the first time during the POI in accordance with GAAP after the Canadian Supreme Court denied Stelco's appeal. *See* Cost Verification Report, at 2–3. Consistent with *Carbon Steel Flat Products from Korea*, we determine that including Stelco's prior-period pension expenses as an element of COP and CV is appropriate to reasonably reflect the costs associated with the production and sale of the subject merchandise. Therefore, for the final determination, we have included Stelco's partial pension wind-up cost in the calculation of G&A expenses.

Comments Related to Other Issues

Comment 1: Whether a LOT Adjustment for Ivaco is Warranted

Petitioners state that the Department should reverse its preliminary determination to grant a level of trade adjustment to Ivaco. Petitioners argue that when examining the way in which IRM and its affiliates do business, the record evidence demonstrates that no level of trade adjustment is applicable in this case.

Petitioners first note that in its Level of Trade Memorandum ("LOT Memorandum") and *Preliminary Determination*, the Department found that IRM and Sivaco both sell to the same category of customer, and that both sell green and processed rod. Petitioners then state that the Department also found that warranty and credit services were provided at the same level. Petitioners argue that based on these similarities in business practices, and without record evidence of any substantial differences in the selling functions offered by the companies, the Department must determine that an LOT adjustment is not warranted in this case.

Petitioners then argue that the distinctions in selling functions between IRM and Sivaco, which Ivaco claims are indicative of different levels of trade, are instead simply a function of product mix, as IRM sells mostly green rod, while Sivaco, being a

processor, sells mostly processed rod. Petitioners argue that a comparison of IRM and Sivaco on a product-to-product basis would yield very similar selling practices and expenses. First, petitioners assert that IRM provides the same inventorying and JIT services that Sivaco provides through a certain type of IRM sale. They argue that this type of IRM sale is identical to a Sivaco sale from inventory, as in both types of sale, the seller incurs all opportunity costs up to the point of sale, and the customer purchases merchandise only when needed.

Second, petitioners state that Ivaco's claimed differences in inventory carrying periods do not constitute evidence of substantially different selling activities but instead are largely attributable to product mix differences. Petitioners assert that the inventory periods for processed rod is similar for both entities. In addition, petitioners argue that the average inventory period verified by the Department does not include the inventory period of a particular type of IRM's sales. Petitioners point out that while it is true that Sivaco maintains green rod inventory for a different period than IRM, this is only logical since Sivaco's green rod typically must go through additional processing. Petitioners conclude that since IRM's sales of a particular type allow IRM to extend the same JIT services as Sivaco, both companies offer the same products and inventory services.

Third, petitioners take issue with Ivaco's claims concerning differences in delivery terms, arguing that differences in shipment quantities are irrelevant to the level of trade analysis because both companies sell rod on a delivered basis, both deliver rod to the majority of their customers by truck, and both sell in truckload and less than truckload quantities. Finally, petitioners' comments also briefly addressed other selling function distinctions alleged by Ivaco. Petitioners claim that Sivaco's provision of bid assistance does not constitute a substantial difference between IRM and Sivaco, because Sivaco supplied this service to only a few of its customers, and because the provision of this service occupied a small percentage of the time of their employees. They state that the other alleged selling functions, (producing to order, small order processing, shipping in small quantities, and customer pick-up services) are all part of the services offered by both IRM and Sivaco and as such, do not constitute differences in levels of trade.

In response, Ivaco notes that petitioners do not dispute the fact that IRM's sales are made at an earlier point in the chain of distribution than Sivaco's sales, which is the first criterion that must be established in order to qualify for an LOT adjustment. Petitioners' argument that the Department should look at the customer category is the old law standard. The new standard, citing *Professional Electric Cutting Tools from Japan*, is that "* * * Differences in levels of trade are characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them." Ivaco Rebuttal Brief at 1. Ivaco notes that in the LOT Memorandum, the Department agreed with Ivaco on both these points.

According to Ivaco, petitioners ignore one of the most important differences between IRM and Sivaco: the fact that Sivaco offers significant inventory services while IRM does not. Ivaco notes that in order to provide these services, Sivaco maintains a large uncommitted general inventory, whereas IRM maintains no general uncommitted inventory. Ivaco notes that in its verification report, the Department confirmed that Sivaco Ontario inventories green rod many times longer than IRM. Further, Ivaco asserts that Sivaco acts as a service center for rod, bar, and wire, and maintains a large uncommitted inventory in order to service its customers' requirements for: "(i) small quantities of rod; (ii) inventory services; and/or (iii) JIT delivery." Ivaco Rebuttal Brief at 9. Ivaco goes on to cite several cases (*Polyethylene Terephthalate Film, - Sheet, and Strip from the Republic of Korea and* Welded Carbon Steel Pipe and Tube from Turkey), in which the Department has recognized the importance of services associated with maintaining inventory as a factor in defining distinct levels of trade.

Ivaco states that none of the arguments raised in petitioners' case brief alters the conclusion in the LOT memorandum, and confirmed by the Department's verification report and *Preliminary Determination*, that Sivaco offers significantly different services than IRM. Ivaco states, for example, that petitioners' contention that the difference in actual number of days of credit outstanding between IRM and Sivaco is not "particularly large" is contradicted by the facts on the record which indicate the actual difference in average payment dates is almost double for Sivaco Ontario as compared to IRM. Further, Ivaco noted that the Department stated in its LOT Memorandum that "IRM's customer's average payment period * * * reflects the greater liquidity of a larger company, whereas Sivaco's * * * reflects the generally smaller size of its customers." Ivaco Rebuttal Brief at 7.

Ivaco states that petitioners' attempt to categorize the inventory services provided by Sivaco Ontario as a "product-mix" issue is without merit. The company asserts that petitioners' comparison of the quantity of processed rod sold by IRM versus Sivaco Ontario is misleading, because during the POR, processed rod as a percentage of IRM's total sales is extremely small, while for Sivaco Ontario, this percentage is a very high percentage of sales. Therefore, Ivaco concludes that petitioners' comparison of overall tonnage does not take into consideration the "actual magnitude of sales or the business practices of either company." Ivaco Rebuttal Brief at 11.

Ivaco asserts that petitioners' argument that Sivaco does not offer significantly different delivery services is without merit because IRM's delivery services are structured to serve high-volume customers, whereas Sivaco's delivery services are structured to serve smaller customers who do not have the inventory capacity or buying power of larger customers and therefore require JIT or short-lead time delivery capability. Accordingly, Ivaco states, IRM sales structure is organized around its quarterly rolling schedule, while Sivaco's sales structure is organized around its uncommitted green rod inventory. Sivaco delivery services are set up to accommodate routine customer pick-up, while IRM is set up to provide for train-load deliveries. Further, Ivaco states that the Department's LOT Memorandum and Verification report confirm that Sivaco and IRM offer significantly different delivery services.

Ivaco also disagrees with petitioners' claim that IRM provides, for a particular type of sale, delivery services similar to those Sivaco provides its customers. Ivaco states that the only difference between its typical direct sales and this particular type of sale are the payment terms. Ivaco stresses that IRM provides no other services for this type of sale that are distinct from its other direct sales.

Department's Position

We disagree with petitioners that Ivaco's sales are made at the same LOT, and therefore, a LOT adjustment is not warranted in this case. As detailed in the LOT Memorandum for the preliminary determination, we examined the selling functions performed by IRM and Sivaco at each stage in the marketing process and identified substantial differences in

services provided. We concluded that these differences were attributed to selling at different points in the chain of distribution, *i.e.*, IRM primarily sells direct from the factory and Sivaco acts as a reseller of SWR. Our findings at verification confirmed this analysis, and petitioners have identified no record evidence to warrant changing our preliminary determination. For example, petitioners continue to assert that no LOT differences exist because both IRM and Sivaco sell to end-users and provide the same type of warranty and credit services. However, customer category alone is not the determinative factor of establishing a level of trade. *See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (Nov. 19, 1997). Moreover, the mere fact that certain selling activities are performed in a similar manner does not refute a finding of different LOTs, rather, the Department considers the totality of the circumstances in evaluating whether qualitatively and quantitatively different selling functions are performed for purchasers at different places in the chain of distribution. In this instance, the record evidence supports our finding of significant differences in the selling activities performed by IRM and Sivaco and no substantiation of petitioners' claim that these differences are attributable to product mix.

Comment 2: Petitioners' LOT Adjustment Methodology

Petitioners argue that if the Department does grant Ivaco a LOT adjustment, the Department should apply the cost test to the LOT-adjusted home market sales prices, and remove those sales which fail from the margin calculation. Petitioners state that this proposed methodology is supported by the statute, which requires the Department to make "due allowance" for any differences in EP CEP and NV caused by a difference in levels of trade. They assert that section 773(b) states that where 20 percent or more of a respondent's sales of a given product during the POI are at prices less than COP, the Department should disregard the below cost sales in the determination of normal value. Petitioners also point out that the Statement of Administrative Action (SAA) states that "[t]he Administration intends that Commerce will disregard sales [below cost] when the conditions in the law are met." *See* Petitioners Case Brief at 13. Petitioners argue that, when viewed together, these provisions establish a clear intention that the Department must not make "due allowance" for a level of trade adjustment when such adjustment would cause the home market normal value to fall below cost. Petitioners state that the importance of the below-cost principle to the Department is demonstrated in *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan*, 61 FR 38139, 38144 (July 23, 1996) ("*Printing Presses from Japan*"), in which the Department excluded below-cost sales from normal value, even though it did not initiate a below-cost investigation.

Finally, petitioners assert that, after removing the sales with prices below the cost of production, the data available does not provide an "appropriate basis" to determine a level of trade allowance, and therefore the Department should deny a level of trade adjustment for CEP sales in this investigation. Petitioners note, however, that the Department may grant a CEP offset where a LOT adjustment is not warranted, and where the comparison sales are made at a more advanced level of trade than sales to the United States, in accordance with section 773(a)(7)(B) of the Act.

Ivaco responds that petitioners' argument is specious, because it fails to take into account the fact that the sales used to calculate the LOT adjustment have already passed a below-cost test. As such, petitioners' cite to *Newspaper Presses* is not relevant, since, Ivaco claims, the issue there was whether the Department could use sales when no formal below-cost test was performed. In this case, the Department has already applied the below-cost test once; petitioners are requesting that it now be applied a second time. Ivaco states that petitioners, by contending that the LOT adjustment causes normal values to fall below cost, are asking the Department to: (1) Ignore the actual pricing differentials that exist between above cost sales at levels one and two; (2) perform a second below-cost test on home market sales that have already passed one below-cost test; and (3) perform a below-cost test on weighted-average normal values, which is contrary to the Department's practice for performing a below-cost test. Furthermore, Ivaco points out that it is just as likely that applying a difmer adjustment or a circumstances of sale (COS) adjustment might cause a given FUPDOL to be lower than the original home market sale's cost of production. Despite this fact, the Department has never thrown out such home market sales for failing the cost test. The reason, according to Ivaco, is obvious: the normal values in question have already passed a below-cost test.

Department Position

We disagree with petitioners that the Department should only apply the cost test to LOT-adjusted home market sales. The statute directs the Department to determine NV based on the price at which the foreign like product is sold for consumption in the home market, in the normal commercial quantities, and in the ordinary course of trade. Section 771(15) of the statute states that the sales which fail the cost test under section 773(b) are deemed to be outside the ordinary course of trade, and therefore should be excluded from the pool of home market sales used to determine NV. The statute contemplates that the remaining sales are suitable for purposes of determining NV. *See* section 773(b)(1) of the Act. The Department appropriately applies the LOT methodology after the cost test is administered to those sales which, according to the statute, are suitable for establishing NV. Moreover, petitioners ignore the fact that LOT-adjusted home market sales that "fail" the cost test do not do so because the actual selling prices are below cost, but do so as the result of other statutory adjustments to NV, which have nothing to do with determining COP. Thus, LOT-adjusted sales are not made at prices below cost within the meaning of section 773(b) of the Act. Based on the above, the Department finds that the petitioners' proposed methodology is inconsistent with the statute, and will not be used for the final determination.

Comment 3: Ivaco's Proposed Level of Trade Methodology

Ivaco asserts that the Department should use its proposed LOT methodology suggested in its pre-verification submissions. This methodology is to apply the Department's concordance program to the home market sales at level one and the home market sales at level two, and subsequently apply an appropriate difmer adjustment. Ivaco claims that this methodology allows the Department to analyze weight-averaged pricing for both identical and similar products, based on the same standard the Department uses for identifying similar products when comparing U.S. and home market sales. By employing this proposed methodology, the Department can assess the pricing differentials between levels one and two, rather than allowing a handful of products to determine the adjustment, as is currently the case. Furthermore, applying a difmer adjustment will

remove any distortions that would result from differences in the product mix at each level.

Ivaco states that the SAA provides the Department with wide latitude in making a LOT adjustment, and does not mandate that the Department rely solely on home market sales of *identical* products. Ivaco asserts that the Department's methodology is inadequate to demonstrate a pattern of price differences because it takes into account a small percentage of possible comparisons, and accounts for less than 25 percent of the home market sales quantity. Ivaco states that by applying the Department's "difmer" adjustment to the home market sales listing, the Department would avail itself of all home market sales.

Ivaco asserts that by using only identical sales to determine the amount of the adjustment, the Department failed to take into account most of the products sold in the home market, and that the identical matches used were of green rod, thus limiting the price comparison to products that are not representative of the Sivaco Ontario's overall business.

Department Position

We disagree with Ivaco that a difmer adjustment should be used in our LOT methodology in this case. The SAA states that the Department will normally base the calculation on sales of the same product; however, if this information is not available, the adjustment may be based on sales of similar products by the same company. *See The Statement of Administration Accompanying the URAA*, H.R. Doc. 316, Vol.1, 103d Cong. 830 (1994). Consistent with the SAA, to the extent possible, the Department calculates the LOT adjustment based on identical merchandise to reasonably ensure that the LOT adjustment is isolated to differences in price between the two levels, and not other factors. *See e.g.*, section 351.412 (d)(s) and (e), Final Rule, 62 FR 27415 (May 19, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings and Parts Thereof from France: Final Results of Antidumping Duty Administrative Review*, 62 FR 2081, 2016 (Jan. 15, 1997).

Moreover, we disagree that our standard LOT methodology results in distorted comparisons. Products sold at both home market LOTs account for nearly 25% of the quantity of Ivaco's home market sales. Ivaco's argument that over 98% of the home market control numbers were not used in this calculation does not diminish the fact nearly 25% of Ivaco's production was accounted for. Further, we note that the control numbers used in the LOT analysis were sold at both LOTs in sufficient quantities for a finding of a pattern of consistent price differences. Ivaco further argued that the Department based its adjustment only on green rod sales, and thus limited the price comparison to products that are not representative of Sivaco Ontario's overall business. Ivaco's assertion, although factually accurate, fails to address the underlying rationale for making a LOT adjustment. The Department's LOT adjustment is designed to isolate pricing differentials due to the provision of *different services* by comparing sales of identical products at different levels of trade. The LOT adjustment isolates pricing differentials which exist due to *services provided to customers*, and not to differences in *products*. Sivaco provided these services to all of its customers, irrespective of the control number associated with the products it sold them. The Department found a pattern of consistence during the POI. These pricing *differentials*, therefore, between sales of identical products sold by Sivaco and IRM, reflect these different services, and thus the different levels of trade. The Department's methodology reflects this principle, in that it calculates only one LOT adjustment percentage for each type of comparison of identical products at different levels of trade, irrespective of the control number of the products being compared.

Comment 4: Freight and Packing Calculation

Ivaco states that the Department incorrectly allocated all freight and packing variables to U.S. and home market sales, when in fact some of these variables are cost items. Ivaco claims that in situations in which Sivaco Ontario, Sivaco Quebec, or Sivaco New York process on behalf of IRM or independently sell the rod themselves, IRM's freight or packing on the unfinished goods shipped to these entities should be part of the cost of production, constructed value and CEP profit.

Petitioners disagree that all freight and packing expenses for movement of rod from IRM to Sivaco Ontario, Sivaco Quebec and Sivaco New York should be included in the cost of production. Citing Section 773(a)(6)(B)(ii) of the Act, as well as several Department determinations, petitioners state that freight and packing expenses are charges deductible from the selling price of the subject merchandise, and the Department adjusts for freight as a COS adjustment where such adjustment constitutes a direct selling expense.

Department Position

We agree with Ivaco, and petitioners in part. We agree with Ivaco that the Department incorrectly assigned all freight and packing expense variables to selling expenses, when in fact some of these variables are cost items. For Ivaco sales of processed rod, the packing and freight required to transport the rod from IRM to the processor is necessary to complete the production process and, as such, is a cost of production. *See e.g., Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, Certain Cut-to-Length Carbon Steel Plate from Canada*, 58 FR 37099, 37118 (Feb. 4, 1993). The exception to this practice is with regard to CEP transactions. Consistent with the URAA, for these transactions, all packing and freight expenses incurred in order to transport the subject merchandise to the U.S. processor are treated as further manufacturing expenses for the purpose of establishing the constructed export price and CEP profit. *See* sections 772(d) and 772(f)(2)(B) of the Act. Freight and packing expenses incurred in order to transport the finished product in condition packed and ready for shipment to the place of delivery are deducted as movement expenses from EP and CEP and treated as direct selling expenses in the home market. *See* sections 772(c)(2)(A) and 773(a)(6)(B) of the Act. As petitioners have correctly noted, when appropriate, the Department adjusts for such direct expenses through a circumstances of sale adjustment to NV. Therefore, we have modified our programing for the final determination consistent with these principles.

Comment 5: Exclusion of Trials

Ivaco states that the Department should exclude trial sales from its calculations. Petitioners disagree, arguing that the statute only allows the Department to exclude sales that are not within the usual commercial quantities . . . or . . . ordinary course of trade. Petitioners state that the gross weighted-average home market and U.S. prices for the sales Ivaco reported as trials are comparable to the average prices reported for Ivaco's non-trial sales, and that only a certain number of trial sales exceed a certain quantity of short tons in shipment size. Petitioners conclude from these facts that Ivaco's trial sales are "clearly not aberrational and certainly fall within the ordinary course of trade. Accordingly, the Department

should retain these sales in the margin calculation, as well as other programs.

Department Position

We disagree with Ivaco. An analysis of the sales Ivaco reported as trials indicates that the majority of these sales were made in the typical quantities and prices of Ivaco's other sales that were found to be in the normal course of trade. Therefore, for the final determination, the Department has continued to include trial sales in the margin calculations for Ivaco.

Comment 6: Clerical Errors in the Level of Trade Program

Ivaco states that the pattern of price differences (LOT) program does not exclude Ivaco's sales of seconds, and sales of rod manufactured by other manufacturers. Petitioners did not comment on these items.

Department Position

We agree with Ivaco and have modified program for the final determination accordingly.

Comment 7: Clerical Errors in the Arm's Length Program

Ivaco claims that the Department's arm's length program does not exclude seconds, does not incorporate the LOT adjustment, and does not exclude sales of rod manufactured by other manufacturers. Petitioners did not comment on these items.

Department Position

We agree with Ivaco and have modified the final determination accordingly.

Comment 8: Clerical Errors in the Concordance Program

Ivaco claims the Department made several clerical errors in the concordance program used for the preliminary determination. First, Ivaco claims that the Department incorrectly applied the revised billet costs which overstated the reduction in the COM. Ivaco argues that this error artificially eliminates home market sales from comparison with U.S. sales. Ivaco contends that the revised billet costs should also be reflected in a revised value for variable COM. Second, Ivaco claims that the Department's concordance program failed to exclude sales of subject merchandise produced by other manufacturers, trial sales in the home and U.S. markets, and sales of secondary merchandise even though these categories of sales were excluded from the margin calculation program. Finally, Ivaco claims that the Department's concordance program improperly converted values for control numbers for U.S. sales to character values.

Department Position

We agree with Ivaco that we inadvertently applied the incorrect amount to revised billet costs and inadvertently failed to make a corresponding correction to variable COM. We also agree that sales of subject merchandise produced by other manufacturers and sales of secondary merchandise should be excluded from the concordance program. As we stated in the preliminary determination, we concluded that sales of SWR produced by other manufacturers are outside the scope of this investigation. *See Preliminary Determination*, 62 FR at 51573. In addition, while the Department normally includes sales of secondary merchandise in its margin calculations, matching sales of secondary merchandise in the home market to sales of secondary merchandise in the U.S., the record evidence demonstrates that Ivaco had no U.S. sales of secondary merchandise during the POI; therefore, we have excluded home market sales of secondary merchandise from the concordance program. We have made all of the above changes to the concordance program for the final determination.

We have not excluded trial sales from the concordance program because we have determined that these sales are properly included in the margin calculation, and we have corrected the program accordingly. (see Comment 5). Finally, we have also corrected the concordance program with respect to the assigned values to control numbers for U.S. sales.

Comment 9: Ivaco's U.S. Price Calculations

Ivaco claims that the U.S. price calculation improperly calculates prices without considering levels of trade. Second, Ivaco contends that the Department's program improperly merged the revised further manufacturing data with the U.S. sales data set, causing numerous values to be uninitialized, including the value for revised total further manufacturing costs for all U.S. sales. Third, Ivaco asserts that the Department erred in calculating the indirect selling expenses incurred in Canada by expressing Sivaco Ontario's and IRM's indirect selling expenses as percentages even though Ivaco reported the figures as percentages and also failed to deduct amounts for credit adjustments. Fourth, Ivaco states the Department incorrectly calculated weighted-average U.S. prices by failing to combine EP and CEP sales in the weighted-average calculation. Fifth, Ivaco argues the Department incorrectly calculated direct U.S. selling expenses by adding the cost of further manufacturing on Ivaco's CEP sales to direct U.S. selling expenses rather than deducting further manufacturing costs from the net U.S. price of the specific CEP transactions which incurred the cost. Sixth, Ivaco claims the Department added rather than subtracted the credit adjustment amount in the calculation of home market revenue for CEP profit.

Department Position

We disagree with Ivaco in part. The Department has properly calculated level of trade. We also disagree that EP and CEP sales should be combined in the weighted-average calculation. Section 777A(d)(1)(A)(i) of the Act directs the Department to compare weighted-average NVs to weighted-average EP or weighted-average CEP sales. *See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (Nov. 19, 1997). Because different statutory adjustments are made to determine the net price of EP and CEP sales, combining these prices to calculate a single weighted-average price would distort the margin calculation. We agree, however, that the margin calculations contain the other clerical errors identified above and have corrected the calculations accordingly for the final determination. In addition, we have added amounts for credit to the calculation of U.S. direct selling expenses.

Comment 10: Clerical Errors in Ivaco's CV Calculations

Ivaco asserts that the CV calculation contains the following clerical errors: (1) Direct and indirect selling expenses should be included in the calculation of net cost of production, (2) credit expenses should be excluded because they are imputed rather than actual expenses, (3) the CV calculation should be based upon selling expenses and profit for each LOT in the home market, (4) in calculating CV by LOT, the Department should correct the program to ensure that each U.S. sale will be matched to a constructed value at the same LOT, (5) variable credit expenses should be excluded from the CV calculations.

Department Position

We agree with Ivaco that we inadvertently excluded indirect and direct selling expenses from the calculation of net price cost of

production and included credit and variable credit expenses in the CV calculations. We have corrected the margin calculations accordingly for the final determination. However, we disagree that CV should be calculated based upon LOT. As explained in the preliminary determination, our methodology is not to calculate CV based upon LOT. Rather, we calculate CV and then use the sales from which we derived selling expenses and profit in CV to determine the LOT of CV. The CV calculation program is consistent with the Department's standard methodology; therefore, we have not made Ivaco's suggested changes concerning LOT to the CV calculations.

Comment 11: Clerical Errors in Ivaco's CEP Calculations

Ivaco contends that several clerical errors exist in the calculation of CEP and CEP profit. First, Ivaco asserts that after correcting the calculation of U.S. indirect selling expenses as discussed above, the Department should make appropriate corrections to the calculation of total selling expenses in the CEP profit calculation. Second, Ivaco claims that the calculation of U.S. direct selling expenses should exclude amounts for imputed expenses and expenses incurred in the country of manufacture. Third, inventory carrying costs incurred for U.S. sales was reported in Canadian currency, and therefore, should be converted into U.S. dollars. Fourth, the calculation of U.S. selling expenses should be corrected to reflect amounts only for indirect selling expenses. Fifth, the Department should revise the CEP selling expenses variable to include direct selling expenses for further manufacturing and indirect selling expenses incurred in the U.S., including imputed expenses. Sixth, the calculation of CEP net price should be corrected to reflect the changes made in direct and indirect selling expenses.

Petitioners did not comment on any of these alleged clerical errors.

Department Position

We agree with Ivaco and have modified the calculations for the final determination accordingly.

Comment 12: Clerical Errors in Ispat-Sidbec Sales Below Cost Test

Ispat-Sidbec alleges that the Department made a clerical error in the sales below cost test. Ispat-Sidbec claims that the Department calculated the net price for each home market sale by deducting all movement, selling, and packing expenses from the gross unit price. The Department then compared this net price to a COP composed of the cost of manufacture, plus general and administrative expenses, net interest expense, plus selling expenses. Ispat-Sidbec claims that this results in an "apples-to-oranges" comparison, and that the Department should compare net price to a cost of production composed solely of total cost of manufacture, general and administrative expenses, and interest expenses. Ispat-Sidbec argues that the Department should change the margin calculation program accordingly for the final determination. Petitioners have no comment on this issue.

Department's Position

We agree with Ispat-Sidbec and have modified the calculations accordingly.

Comment 13: Exclusion of Secondary and Non-Prime Sales in Ispat-Sidbec Arm's Length Test

Ispat-Sidbec argues that the Department improperly excluded sales of secondary or non-prime merchandise from the arm's length test. Ispat-Sidbec contends that because the Department calculates dumping margins on sales of both prime and secondary merchandise, the Department's general practice is to include both types of merchandise in its arm's length test. To support its argument, respondent cites *Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 7066, 7069 (February 4, 1993), and *Certain Cold-Rolled Carbon Steel Flat Products from Germany*, 60 FR 65264, 65273 (December 19, 1995), in which an arm's length analysis was performed on all sales.

Petitioners agree with Ispat-Sidbec that the Department's consistent practice for steel cases is to perform the arm's length test on all sales, including prime and secondary (non-prime) merchandise. However, petitioners also note that the Department recognizes the potential for distortion if sales of non-prime merchandise are compared to sales of prime merchandise. Therefore, argues petitioners, the Department must separate the non-prime from the prime merchandise before performing the arm's length test.

Department's Position

We agree with respondent that the Department improperly excluded sales of non-prime merchandise from the arm's length test. We also agree with petitioners that sales of prime and non-prime merchandise must be separated before performing the arm's length test. As noted in *Certain Cold-Rolled Carbon Steel Flat Products from Germany*, in cases where sales of prime and secondary merchandise were reported together in the same CONNUM, the Department treated them as separate CONNUMs for purposes of the arm's length test. For purposes of the final determination, the arm's length test has been conducted on all of Ispat-Sidbec's home market sales, separating prime from non-prime merchandise.

Comment 14: Ispat-Sidbec Model Match

Ispat-Sidbec argues that the model match hierarchy matched both non-AWS welding grades (GRDRANGH/U = '81') and products sold according to ASTM and CSA grades (GRDRANGH/U = '91') to the numerically closest ranges, instead of to the most similar match. Ispat-Sidbec argues that, for example, welding grades are most similar to each other, and AWS grades are most similar to non-AWS welding grades. Ispat-Sidbec proposes that the Department modify the model match hierarchy to produce the most similar matches.

Department's Position

At the home market verification, we examined several sales of products classified as GRGRANGH/U = '81' and verified the appropriateness of the grade range classification. We agree with respondent that such non-AWS welding grade products should be matched to other welding grade products in the absence of an identical match, and have modified the model match hierarchy accordingly for purposes of the final determination. However, with respect to products classified as GRDRANGH/U = '91' (products sold according to ASTM and CSA grades) we do not accept Ispat-Sidbec's separate classification of these products. In general, such products should fall within the AISI grade ranges determined by the Department. No such products were examined at verification, and the Department does not have enough information to determine which AISI grade range is most appropriate for these ASTM and CSA grade products. We also note that only a small number of home market sales were classified as GRDRANGH = '91,' and that no products classified as GRDRANGU = '91' were sold in the U.S. market. Therefore, we have not used products with GRDRANGH = '91' in the margin calculation for the final determination.

Comment 15: Classification of Silicon-Killed Steel with Titanium Additives ("Grade X")

Stelco argues that the Department erroneously classified Stelco's product coding for one product sold by Stelco (*e.g.*, silicon-killed steel with titanium additives or "Grade X"). Stelco contends that this classification, which allegedly results in an inappropriate

product matching of dissimilar Grade X U.S. sales to dissimilar Grade X home market sales, is inconsistent with Department practice, court decisions, the underlying structure of the product matching hierarchy in this proceeding, and positions argued by petitioners at the outset of this investigation. Therefore, the Department should accept Stelco's revised product coding to ensure that Stelco's Grade X U.S. sales are matched only to Stelco's Grade X home market sales and accordingly revise the margin calculations of the final determination.

Stelco argues that Grade X steel warrants a separate deoxidation category other than those deoxidation categories, as defined in the Department's May 22, 1997 letter to Stelco, which revised the product coding system. Respondent maintains that such steel is fine-grained because titanium (an element not defined in any of the deoxidation codes in the above-mentioned letter) is a grain refiner. Classifying Grade X under deoxidation code of "2" for "silicon-killed" is inappropriate because silicon-killing is a deoxidant for coarse-grained steel rather than fine-grained steel. Stelco insists that merging coarse-grained steels with fine-grained steels is inconsistent with Department practice and courts decisions. Citing *NTN Bearing Corp.* v. *United States*, 747 F. Supp. 726 (CIT 1990), Stelco asserts that the principal objective of the Department's model match program is to obtain the most useful comparison possible. Stelco also argues that in practice the Department will consider a respondent's internal product code system in developing its product matching hierarchy as set forth in 19 CFR 351 (62 FR 27296, 27378 (May 19, 1997)).

Stelco contends that given the status of Grade X as a fine-grained steel, the Department should consider the most appropriate classification for Grade X steel. Stelco maintains that due to the physical, cost and price distinctions, this steel should not be classified under a deoxidation code of "2" for "silicon-killed." Stelco claims that important physical differences exist between coarse-grained, silicon-killed steel correctly classified as a deoxidation code of "2" and Grade X steel and that the most significant differences are the grain-refining process and the resulting grain size. Furthermore, it maintains that, as presented at verification, the current cost information for a standard coarse-grained, silicon-killed steel and a Grade X steel demonstrates a vast cost difference between the two products. It also maintains that a similar examination of the Section D cost information for the same two products evidences disparities in the costs for the two products. Therefore, Stelco urges the Department to not reclassify Grade X steel under the deoxidation code of 2 for "silicon-killed."

Petitioners urge the Department to reject Stelco's request to reclassify Grade X steel. They argue that Stelco did not suggest that titanium had special properties that required a separate category during the product coding comment process at the outset of this investigation or for two months after the comment period, and that since that time, Stelco has presented no dispositive evidence to support its classification. Thus, petitioners maintain that Stelco's request to reclassify Grade X steel should be denied.

First, petitioners assert that Stelco's request to reclassify Grade X steel under a separate model match was untimely. They state that the Department conducted a thorough inquiry on model match issues, providing an opportunity for parties to argue extensively over whether and how to categorize different deoxidation and grain refinement practices. Since Stelco did not comment on the impact of titanium in the deoxidation process during this period, petitioners argue that the Department did not address this issue in its revised reporting instructions for product characteristics. As a result, the Department only created five deoxidation categories.

Second, petitioners insist that they have submitted reliable scientific evidence from multiple sources demonstrating that titanium is not a reliable grain refiner. They claim that they have shown that titanium grain refined is not a recognized industry product classification, and that purchasers generally do not specify titanium as a grain refiner. Petitioners refute respondent's claim that Grade X has fine-grain structure and that its customers requested the addition of titanium to produce fine-grain rods. Citing the Stelco Sales Verification Report, they argue that the first point is irrelevant, claiming that only specified physical characteristics matter. Given that Stelco provided the Department only "hand-picked" samples of Grade X steel, the existence of fine-grained steel is expected because titanium widely affects the grain structure. Therefore, petitioners reiterate that Stelco has failed to provide record evidence for its claim that titanium is a grain refiner. As such, they argue that the Department should classify Grade X steel as silicon-killed steel.

Department's Position

The Department agrees with petitioners that reclassification of Stelco's Grade X steel is not warranted in this case. First, the Department's May 22, 1997, letter to respondents which revised the reporting instructions for product characteristics for this investigation was "in response to interested party comments regarding modifications to the product characteristic reporting requirements." *See* May 22, 1997, letters to Ivaco, Sidbec and Stelco at 1–3. After careful review of the comments received from both petitioners and respondents, the Department "modified the product reporting instructions," including a field for deoxidation practices. *Id.* As a result, the Department derived the various deoxidation codes, as identified in the above-cited letter. Thus, all interested parties had an opportunity to review and comment on the Department's product characteristic reporting requirements.

Second, since the issue of titanium as a grain refiner was not addressed during the comment period and since the Department did not intend to account for every conceivable physical characteristic in the subject merchandise, the Department did not subdivide a separate category for silicon-killed with titanium additives. The Department bases the product matching criteria on commercially meaningful characteristics and on interested parties' comments, which permits the Department to draw reasonable distinctions between products for matching purposes, without attempting to account for every possible difference inherent in the merchandise. Through this process, the Department is able to match certain products as "identical," consistent with section 771(16)(A) of the Act, even though they contain minor differences. *See e.g., Final Determination of Sales at Less Than Fair Value; Gray Portland Cement and Clinker from Mexico*, 55 FR 29244, 29247–48 (July 18, 1990). Furthermore, the Department need not account for every conceivable physical characteristic of a product in its model matching hierarchy. As such, in creating the various deoxidation codes, which reflected parties' comments, the deoxidation code of "2" for "silicon-killed" was intended to include all silicon-killed steels other than silicon-killed vanadium or niobium grain-refined steels. Since silicon-killed steel with titanium additives is not included among the five specific deoxidation codes, the Department has reclassified Grade X steels as Code "2" for "silicon-

killed." *See Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Wire Rod from Canada*, 62 FR 51573 (October 1, 1997).

Comment 16: Rejection of Stelco Sales Data Due to Numerous Verified Changes

Petitioners urge the Department to reject the changes made to Stelco's revised December 2, 1997, sales listing and to calculate U.S. price and NV based on the sales listing submitted prior to the above-cited submission. They assert that Stelco's changes, as found by the Department at verification, affected a number of inputs to U.S. price and NV, including rebates, freight taxes, inventory carrying costs, packing costs and inland freight. Because these changes were presented at verification, petitioners claim that neither they nor the Department had the opportunity to verify thoroughly these significant changes. Furthermore, they argue that even at verification, the Department found several inaccuracies in the revised data and that they find it difficult to ascertain whether Stelco has actually corrected all the errors identified at verification. As such, for its final determination, the Department should reject these changes and calculate U.S. price and NV based on the sales tapes submitted prior to Stelco's December 2, 1997, submission.

Stelco urges the Department to accept Stelco's verified information, insisting that petitioners are incorrect in alleging that Stelco's December 2, 1997, sales tapes contain last-minute revisions. Stelco states that respondents in an investigation are permitted by long-standing Department policy to present corrections to their response found when preparing for verification. In supporting its allegation, Stelco cites section 351.301(b)(1) of the Department's regulations. In addition, respondent asserts that it presented its list of corrections at the outset of verification, and that the corrections were minor. *See* Stelco Sales Verification Report at 1.

Department Position

We agree with Stelco that it is appropriate to use its revised sales listings for purposes of this final determination. The Department's practice is to permit respondents to submit minor corrections to their submitted sales data prior to verification for use in the final determination. *See e.g., Certain Cut-to-Lengths Carbon Steel Plate from the People's Republic of China*, 62 FR 61996 (November 20, 1997). At the outset of its verification, Stelco presented a list of corrections it found while preparing for verification. The Department's review of the corrections during the course of the verification indicates that they were caused by oversight or clerical error on the part of Stelco. *See* Stelco's Sales Verification Report at 1. In addition, as a result of corrections found at the beginning of verification, the Department instructed Stelco to revise its sales listings. In previous cases, the Department has accepted such corrections for the final determination. Therefore, the Department disagrees with petitioners' request to reject Stelco's December 2, 1997, sales tapes due to minor errors which allegedly affected a host of inputs to U.S. price and normal value and believes that Stelco's latest submission of sales data is the most appropriate version for the final margin calculations.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of steel wire rod from Canada, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service will require a cash deposit or posting of a bond equal to the estimated duty margins by which the normal value exceeds the USP, as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weight-average margin percentage
Ispat-Sidbec Inc.	11.94
Ivaco, Inc.	11.47
Stelco, Inc.	0.91
All Others Rate	11.62

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of material injury, does not exist, the proceedings will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue antidumping duty orders directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: February 13, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–4700 Filed 2–23–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Vermont; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–098. *Applicant:* University of Vermont, Burlington, VT 05405. *Instrument:* Special Laboratory Glass. *Manufacturer:* Louwers Hapert Glasstechnics BV, The Netherlands. *Intended Use:* See notice at 63 FR 809, January 7, 1998.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an existing instrument purchased for the use of the applicant. The National Institutes of Health advises in its memorandum dated January 5, 1998, that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the existing instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–4694 Filed 2–23–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 980107004–8004–01]

Proposed Withdrawal of Nineteen Federal Information Processing Standards (FIPS) Publications

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The following Federal Information Processing Standards (FIPS) Publications are proposed for withdrawal from the FIPS series:

- FIPS 41, Computer Security Guidelines for Implementing the Privacy Act of 1974
- FIPS 69–1, FORTRAN (ANSI X3.9–1978/R1989)
- FIPS 100–1, Interface Between Data Terminal Equipment (DTE) and Data Circuit-Terminating (DCE) for Operation with Packet-Switched Data Networks (PSDN), or Between Two DTEs, by Dedicated Circuit (ANSI X3.100–1989)
- FIPS 120–1, Graphical Kernel System (GKS) (ANSI X3.124–1985/R1991; X3.124.1–1985/R1991; X3.124.2–1988/R1994; X3.124.3–1989; and ISO/IEC 8651–4:1991)
- FIPS 125–1, MUMPS (ANSI/MDC X11.1–1990)
- FIPS 128–2, Computer Graphics Metafile (CGM) (ANSI/ISO 8632.1–4:1992[1994]; 8632:1992/Amd.1:1994 & Amd.2:1995; MIL–D–28003A+Amd.1; and ATA Spec. 2100, Version 2.1)
- FIPS 138, Electrical Characteristics of Balanced Voltage Digital Interface Circuits
- FIPS 142, Electrical Characteristics of Unbalanced Voltage Digital Interface Circuits
- FIPS 143, General Purpose 37-Position and 9-Position Interface Between Data Terminal Equipment and Data Circuit-Terminating Equipment (EIA–RS–449)
- FIPS 146–2, Profiles for Open Systems Internetworking Technologies (POSIT)
- FIPS 148, Procedures for Document Facsimile Transmission
- FIPS 153–1, Programmer's Hierarchical Interactive Graphics System (PHIGS) (ANSI/ISO 9592.1,2,3:1989; 9592.1a,2a,3a,4:1992; 9593.1:1990; 9593.3–1990; 9593.4:1991; and 9593.1/AM1,3/AM1,4/AM1:1991)
- FIPS 154, High Speed 25-Position Interface for Data Terminal Equipment and Data Circuit-Terminating Equipment (EIA–530–1987)
- FIPS 160, C (ANSI/ISO 9899:1992)
- FIPS 177–1, Initial Graphics Exchange Specification (IGES) (ANSI/US PRO–100–1993, Version 5.2, LEP Application Protocol, IP–110–1994, and Engr. Dwg. (Class II) Subset (MIL–D–28000A), Dec. 1992 Version)
- FIPS 178, Video Teleconferencing Services at 56 to 1,920 kb/s (ITU–T Recommendations H.221–1993, H.230–1993, H.242–1993, H.261–1993, and H.320–1993)
- FIPS 179–1, Government Network Management Profile (GNMP)
- FIPS 183, Integration Definition for Function Modeling (IDEFO)
- FIPS 184, Integration Definition for Information Modeling (IDEF1X)

Many of these FIPS adopt voluntary industry standards for Federal government use, but the FIPS documents have not been updated to reference current or revised voluntary industry standards. Others of these FIPS provide advisory guidance to Federal agencies with no requirements for compulsory and binding use. Federal agencies and departments are directed by the National Technology Transfer and Advancement Act of 1995, Public Law 104–113, to use technical standards that are developed in voluntary consensus standards bodies. Consequently, there no longer is a need for FIPS that duplicate voluntary industry standards.

Prior to the submission of this proposed withdrawal to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of industry, the public, and State and local governments. The purpose of this notice is to solicit such views.

Interested parties may obtain copies of these standards and guidelines from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, telephone (703) 605–6000.

DATES: Comments on this proposed withdrawal of these FIPS must be received on or before May 26, 1998.

ADDRESSES: Written comments concerning the withdrawal should be sent to: Director, Information Technology Laboratory, ATTN: Proposed Withdrawal of 19 FIPS, Technology Building, Room A–216, National Institute of Standards and Technology, Gaithersburg, MD 20899. Electronic comments should be sent to: fips.comments@nist.gov

Comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Ms. Shirley M. Radack, telephone (301) 975–2833, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Authority: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 5131 of the Information Technology Management Reform Act of 1996 and the Computer Security Act of 1987, Public Law 104–106.

Dated: February 17, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–4683 Filed 2–23–98; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Collection; Comment Request

TITLE: Certificate of Exemption Renewal.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 27, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Steven Springer, National Marine Fisheries Service, Office of Enforcement, 8484 Georgia Ave., Suite 415, Silver Spring, Maryland, 20910, Telephone (301) 427–2300.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information is collected to (1) grant certain members of the public an exemption under the Endangered Species Act of 1973 to which they would not otherwise be entitled, and (2) to manage the program and provide for effective law enforcement. The exemption allows holders to engage in interstate or foreign commerce in otherwise prohibited endangered species parts as long as those parts were part of the holder's inventory prior to the effective date of the Act. Exemption holders must submit quarterly reports, usually just invoices of an sale or transfer of items

II. Method of Collection

Respondents will meet the requirements set forth in the regulation. No forms will be used.

III. Data

OMB Number: 0648–0078.
Form Number: None.
Type of Review: Regular Submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 10.
Estimated Time Per Response: .5 hrs for renewal requests, 1 hour for a quarterly report.
Estimated Total Annual Burden Hours: 41.
Estimated Total Annual Cost to Public: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 18, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4583 Filed 2–23–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

Title: U.S. Fishermen Fishing in Russian Waters.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 27, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bob Dickinson, Office of Sustainable Fisheries, International Fisheries Division, 1315 East West Highway, Silver Spring, Maryland 20910, (301) 713–2337.

SUPPLEMENTARY INFORMATION:

I. Abstract

Regulations at 50 CFR Part 300 Subpart J govern U.S. fishing in the Russian Federation Economic Zone, and implement provisions of the "Agreement between the Government of the United States of America and the Government of the Russian Federation on Mutual Fisheries Relations." Under the Agreement, Russian authorities may permit U.S. fishermen to fish for allocations of surplus stocks in the Russian Economic Zone, a zone extending up to 200 nautical miles off the coast of the Russian Federation. Collection of information from permitted U.S. vessels is necessary to monitor their activities and whereabouts in Russian and U.S. waters and to ensure that permitted U.S. vessels are adhering to relevant Russian and U.S. fishery management regulations.

II. Method of Collection

Permit applications and copies of permits are mailed. Vessel abstract reports, and depart and return messages, are faxed to NOAA.

III. Data

OMB Number: 0648–0228.
Form Number: None.
Type of Review: Regular Submission.
Affected Public: Businesses and other for-profit (commercial fishing companies).
Estimated Number of Respondents: 10 (multiple responses).
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 75.
Estimated Total Annual Cost to Public: 0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 18, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4587 Filed 2–23–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Subsequent Purchaser Reports; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 27, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Steven Springer, National Marine Fisheries Service, Office of Enforcement, 8484 Georgia Ave., Suite 415, Silver Spring, Maryland 20910, Telephone (301) 427–2300.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the Endangered Species Act (ESA) it is illegal to engage in interstate or foreign commerce of products comprised of endangered fish or wildlife. This information is collected to (1) grant certain members of the public an exemption under the ESA of 1973 to which they would not otherwise be entitled, and (2) to manage the program and provide for effective law enforcement.

II. Method of Collection

Respondents will meet the requirements set forth in the regulation. No forms will be used. Information is contained on receipts.

III. Data

OMB Number: 0648–0079.
Form Number: None.
Type of Review: Regular Submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 300.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 150.
Estimated Total Annual Cost to Public: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 18, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4588 Filed 2–23–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coastal Zone Management Program Administration Grants; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 27, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Joseph A. Uravitch, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, tel. (301) 713–3155 ext. 195.

SUPPLEMENTARY INFORMATION:

I. Abstract

Coastal zone management grants provide funds to states and territories to implement Federally-approved Coastal Zone Management Programs and to develop assessment documents and multi-year strategies. NOAA is requesting OMB approval of related performance and annual report requirements, state requests for amendments or routine program changes in their approved coastal zone management programs, and of program management and assessment/strategy documents.

II. Method of Collection

These requirements are contained in 15 CFR 923 and in guidance sent to grant awardees.

III. Data

OMB Number: 0648–0119.
Form Number: None.
Type of Review: Regular Submission.
Affected Public: State governments.
Estimated Number of Respondents: 34.
Estimated Time Per Response: 8–20 hours for performance reports, 480 hours for program management documents, 350 hours for assessment/strategy documents, and 8 hours for program amendments or changes.
Estimated Total Annual Burden Hours: 6,131.
Estimated Total Annual Cost to Public: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection;

they also will become a matter of public record.

Dated: February 18, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4589 Filed 2–23–98; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Taking and Importing Marine Mammals: Deterrence Regulations and Guidelines; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 27, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3226, telephone 301–713–2332.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Marine Mammal Protection Act (MMPA) provides authority for individuals under the jurisdiction of the United States to deter marine mammals from: damaging private property, including fishing gear or catch, endangering public safety, and damaging public property. The MMPA requires the National Marine Fisheries Service (NMFS) to publish a list of guidelines for use in safely deterring marine mammals and to prohibit deterrence measures that have a significant adverse effect on marine mammals. A rule will set forth these guidelines and prohibitions, including requirements for reporting unintentional marine mammal mortality, petitioning NMFS to prohibit deterrent devices that might seriously injure or kill a marine mammal, and for the authorization to use certain measures to non-lethally deter marine mammals listed under the Endangered Species Act.

II. Method of Collection

Respondents will meet the requirements set forth in the regulation. No forms will be used.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: (1) Any member of the public having an interaction with a marine mammal that for reasons of personal safety, results in the death of the marine mammal. (2) Any member of the public wishing to petition NMFS to have certain deterrence measures either prohibited from use because they may seriously injure or kill a marine mammal or authorized for proper use on marine mammals listed as either threatened or endangered under the Endangered Species Act.

Estimated Number of Respondents: 3 (1 mortality report and 2 petitions per year).

Estimated Time Per Response: 30 minutes per mortality report, 40 hours per petition.

Estimated Total Annual Burden Hours: 81.

Estimated Total Annual Cost to Public: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 18, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4590 Filed 2–23–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Pacific Billfish Angler Survey; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 27, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dave Holts, Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, P.O. Box 271, La Jolla, California 92038-0271; (619) 546–7186.

SUPPLEMENTARY INFORMATION:

I. Abstract

The survey monitors volunteer angler fishing effort in the Pacific area. The data collected consists of catch and catch locations, how the fish are caught, data on vessel characteristics, and environmental conditions during catch. The data is used by fishery managers and is reported annually in the Billfish Newsletter.

II. Method of Collection

Survey cards are sent out with the Billfish Newsletter published in May of each year. Anglers are requested to fill out the NOAA 88–10 form by hand and return it to the Southwest Fisheries Science Center.

III. Data

OMB Number: 0648–0020.

Form Number: NOAA 88–10.

Type of Review: Regular Submission.

Affected Public: Individuals (billfish anglers).

Estimated Number of Respondents: 750.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 62.5.

Estimated Total Annual Cost to Public: 0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 18, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4591 Filed 2–23–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020998C]

Federal Investment Task Force; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: The Sustainable Fisheries Act (SFA) requires the Secretary of Commerce (Secretary) to establish a task force to study the role of the Federal Government in subsidizing fleet capacity and influencing capital investment in fisheries. The Federal Investment Task Force will hold its second meeting on March 5–7, 1998, in Tampa, FL.

DATES: The meeting of the task force will be held March 5–7, 1998 See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Ramada Inn and Conference Center, 5303 W. Kennedy Boulevard, Tampa, Florida 33609; telephone (813) 289–1950.

FOR FURTHER INFORMATION CONTACT: Robert Beal, Atlantic States Marine Fisheries Commission, (202) 289–6400; fax:(202) 289–6051; email: rbeal@asmfc.org; or Matteo Milazzo,(301) 713–2276

SUPPLEMENTARY INFORMATION:

Meeting Dates

March 5, 1998, 1:00 p.m. to 5:00 p.m.

The Task Force will hear a presentation and have a discussion on the influence of U.S. Fishery policy on capacity and capitalization of fishing fleets. The Task Force will also review the Federal programs that were discussed at the previous meeting.

March 5, 1998, 7:00 p.m. to 9:00 p.m.

The Task Force will hear public input regarding the Federal Investment Study. The public is encouraged to comment on the general scope and concept of the study, as well as the effect of Federal programs on the capacity and capitalization of fishing fleets.

March 6, 1998, 8:30 a.m. to 5:00 p.m.

The Task Force will have an open discussion on the effects of various Federal programs on capacity and capitalization of fishing fleets. The Task Force will also discuss the follow-up work that was to completed following the first meeting.

March 7, 1998, 8:30 a.m. to 5:00 p.m.

The Task Force will hear a presentation and have a discussion on the influence of Federal tax policy on capacity and capitalization of fishing fleets. The Task Force will also discuss the influence of other Federal agencies and policies on fishing capacity and fleet capitalization.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Bob Beal at (202) 289–6400 at least 5 days prior to the meeting date.

Dated: February 18, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–4535 Filed 2–18–98; 4:46 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120996A]

Magnuson Act Provisions; Essential Fish Habitat; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Meeting.

SUMMARY: The Alaska Region of the NMFS will hold an essential fish habitat (EFH) core team meeting to discuss the following items: strategic investment framework, FY 98 spending plan, habitat criteria paper and habitat areas of particular concern, EFH habitat assessment reports, GIS maps for survey and observer data, EFH technical team recommendations, EFH research needs, EFH proposed conservation and enhancement measures, fishing and non-fishing threats, prey species, public comments on EFH habitat assessments. There will also be an evening meeting/workshop to allow for more public involvement and public comment.

DATES: The Alaska Region core EFH team will meet Monday, March 2 through March 5 or 6, 1998, in Juneau, Alaska. The public is invited to participate from 11 a.m., Monday, March 2 through noon on Wednesday, March 4, 1998. From Wednesday afternoon through Friday the core team meeting will be limited to National Marine Fisheries Service employees only. There will be an evening public workshop on Tuesday, March 3, 1998, from 7 to 9 p.m.

ADDRESSES: The EFH core team will meet in Juneau, Alaska, at the Federal Building, 709 West 9th, room 445. The evening workshop will be March 3, 1998, from 7 to 9 p.m. at the Centennial Hall Convention Center, Egan Room, 101 Egan Drive in Juneau, Alaska.

Questions should be addressed to Protected Resources Management Division, ATTN: Cindy Hartmann, 709 W. 9th , Suite 461, P.O. Box 21668, Juneau, AK 99802–1668; telephone: (907) 586–7585.

FOR FURTHER INFORMATION CONTACT: Cindy Hartmann, NMFS, (907) 586–7585, e-mail: Cindy.Hartmann@noaa.gov

SUPPLEMENTARY INFORMATION:

Background

The NMFS Alaska Region core EFH team was formally established in April 1997 to implement the EFH provisions

of the Magnuson-Stevens Fishery Conservation and Management Act. EFH provisions include the description and identification of essential fish habitat and threats to that habitat and coordination and consultation on actions that may adversely affect EFH. From 11 a.m., Monday, March 2 through noon, Wednesday, March 4, the EFH core team will review and discuss the available information and be open to public comments. From 1 p.m., Wednesday, March 4 through the end of the meeting (Thursday or Friday) only NMFS employees will continue to meet to review the best available scientific information and draft NMFS EFH recommendation(s). This meeting is open to the public only from 11 a.m., Monday, March 2 to noon Wednesday, March 4, 1998.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cindy Hartmann, (907) 586–7235, at least 5 working days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February, 12, 1998.

James P Burgess,

Director, Office of Habitat Conservation National Marine Fisheries Service.

[FR Doc. 98–4682 Filed 2–19–98; 4:54 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021398B]

Magnuson Act Provisions; Essential Fish Habitat; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Meeting.

SUMMARY: NMFS is convening a meeting of the Pacific coast groundfish essential fish habitat (EFH) technical team to review EFH descriptions for groundfish and adverse affects on groundfish EFH. The meeting is open to the public.

DATES: The meeting will be held March 2, 1998, from 7:00 pm to 10:00 pm.

ADDRESSES: The meeting will be held at the Pacific Fishery Management Council offices, 2130 SW Fifth Ave., Suite 224, Portland, OR.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier, 206–526–6120.

SUPPLEMENTARY INFORMATION: NMFS is in the process of developing recommendations on EFH for Pacific coast groundfish in accordance with recent amendments to the Magnuson-Stevens Fishery Conservation and Management Act. EFH recommendations to be presented to the Pacific Fishery Management Council for an amendment to the Pacific Coast groundfish fishery management plan (FMP) include a description of EFH for groundfish species managed by the FMP; a description of adverse effects to EFH including fishing and non-fishing threats; and a description of measures to ensure the conservation and enhancement of EFH.

NMFS has formed a technical team consisting of individuals from the fishing industry, environmental, state, tribal, and Federal interests and agencies to provide technical input and advice on the development of the NMFS recommendations. The first meeting of the technical team was held on January 30, 1998. The technical team will meet a second time on March 2 to review draft EFH documents as they are prepared. The meetings will be open to the public and the public will have an opportunity to comment. EFH documents will be available at the meeting.

Special Accomodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Yvonne deReynier (206–526–6120) at least 5 working days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 17, 1998.

James P. Burgess,

Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 98–4533 Filed 2–18–98; 4:46 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021398D]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of an application for modification 4 to enhancement permit 895 and notice of public hearings.

SUMMARY: Notice is hereby given that the U.S. Army Corps of Engineers at Walla Walla, WA (Corps) has applied in due form for a modification to Permit 895 that would provide authorization for takes of Endangered Species Act (ESA) listed steelhead for the purpose of enhancement. Notice is also hereby given that NMFS will conduct public hearings on the Corps' request for a modification to Permit 895 and the request from the Fish Passage Center at Portland, OR (FPC) for modification 5 to scientific research permit 822, that authorizes takes of ESA-listed species associated with the Smolt Monitoring Program. Information received at the hearings will assist NMFS in the preparation of an ESA supplemental Section 7 biological opinion.

DATES: Public hearings are scheduled for March 10, 1998; March 11, 1998; March 12, 1998; and March 17, 1998 from 6:00 p.m. - 9:00 p.m., or until all comments have been heard. The comment period for the permit modification application ends on March 27, 1998. Time is provided for concerned parties to respond to the testimony presented at the public hearings.

ADDRESSES: Public hearings will be held at the following locations:

March 10 - Natural Resource Center, 1387 S. Vinnell Way, Boise, ID;

March 11 - Lewiston Community Center, 1424 Main Street, Lewiston, ID;

March 12 - Columbia Basin Community College, 2600 N. 20th Avenue, Pasco, WA, and;

March 17 - Federal Complex Auditorium, 911 NE. 11th Avenue, Portland, OR.

The permit modification application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments should be submitted to the Chief, Protected Resources Division in Portland, OR.

FOR FURTHER INFORMATION CONTACT: Robert Koch, Protected Resources Division (503–230–5424).

Special Accommodations

The hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Lisa Hensler at (503) 230–5414 at least five days prior to the date of the respective hearing.

SUPPLEMENTARY INFORMATION: The public hearings are being presented by NMFS as a forum for concerned parties to provide comments on the Corps' request for modification 4 to permit 895 and FPC's request for modification 5 to scientific research permit 822. A future notice is expected to be issued on the receipt of an application for modification 5 to FPC's permit 822. Information received at the hearings will assist NMFS in the preparation of the supplemental biological opinion.

The Corps requests a modification to Permit 895 under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

Permit 895 authorizes the Corps annual direct takes of juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*); juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*); and juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) associated with the Corps' juvenile fish transportation program at four hydroelectric projects on the Snake and Columbia Rivers in the Pacific Northwest (Lower Granite, Little Goose, Lower Monumental, and McNary Dams). Permit 895 also authorizes the Corps annual incidental takes of ESA-listed adult fish associated with fallbacks through the juvenile fish bypass systems at the four dams. The purpose of the juvenile fish transportation program is to enhance the survival of migrating anadromous salmonids that would otherwise be subjected to adverse environmental conditions at the dams and reservoirs on the rivers.

For modification 4 to the permit, the Corps requests: (1) Annual direct takes of juvenile, endangered, naturally-produced and artificially-propagated, upper Columbia River steelhead (*Oncorhynchus mykiss*) and juvenile, threatened, Snake River steelhead (*Oncorhynchus mykiss*) associated with the transportation program; and (2) annual incidental takes of ESA-listed adult steelhead associated with fallbacks through juvenile fish bypass systems. ESA-listed steelhead indirect and incidental mortalities associated with the transportation program are requested. Also for modification 4, the Corps requests an extension of the expiration date of permit 895 to December 31, 1999. Permit 895 is currently due to expire on December 31, 1998. The Corps is conducting a feasibility study to evaluate several alternatives to juvenile fish transport including: Removing parts of dams to restore natural river conditions, new bypass alternatives including surface collector systems, the role of the juvenile fish transportation program in long-term recovery efforts, and improving existing bypass systems. The study is scheduled to be completed by late 1999. An extension of permit 895 through December 31, 1999 will allow the duration of the permit to coincide with the completion of the feasibility study.

To date, protective regulations for threatened Snake River steelhead under section 4(d) of the ESA have not been promulgated by NMFS. This notice of receipt of an application requesting a take of this species is issued as a precaution in the event that NMFS issues protective regulations that prohibit takes of Snake River steelhead. The initiation of a public comment period on the application, including its proposed take of Snake River steelhead, does not presuppose the contents of the eventual protective regulations.

NMFS is preparing a supplemental biological opinion to the March 2, 1995 opinion that will analyze the impacts to ESA-listed steelhead due to the continuation of these activities. On March 2, 1995, NMFS issued a biological opinion that addresses impacts to ESA-listed Snake River salmon due to the operation of the Federal Columbia River Power System. That opinion also addresses NMFS' issuance of ESA section 10 permits that authorize takes of ESA-listed species associated with the Corps' juvenile fish transportation program and FPC's Smolt Monitoring Program. Relevant scientific and commercial information received at the hearings will also assist NMFS in the preparation of this supplemental biological opinion on the project.

Anyone wishing to make a presentation at any of the public hearings should register upon arrival and be prepared to provide a written copy of their testimony at the time of presentation. Depending on the number of persons wishing to speak at each respective hearing, a time limit may be imposed. All statements and opinions summarized in this notice are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: February 18, 1998.

Nancy I. Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–4579 Filed 2–18–98; 4:46 pm]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Honduras

February 18, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: February 24, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 352/652 is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 68261, published on December 31, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 18, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 23, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Honduras and exported during the period which began on January 1, 1998 and extends through March 26, 1998.

Effective on February 24, 1998, you are directed to increase the limit for Categories

352/652 to 2,898,411 dozen [1] of which not more than 1,941,519 dozen shall be in Categories 352–K/652–K [2], as provided for under the Uruguay Round Agreement on Textiles and Clothing.

The guaranteed access level for Categories 352/652 remains unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–4625 Filed 2–23–98; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Monday, March 2, 1998, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Upholstered Furniture

The Commission will consider options for Commission action to address the risk of fires caused by small open flame ignition of upholstered furniture.

2. Minoxidil

The staff will brief the Commission on a proposed rule requiring child-resistant packaging under the Poison Prevention Packaging Act for preparations containing more than 14 mg of minoxidil.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 352–K: only HTS numbers 6107.11.0010, 6107.11.0020, 6108.19.9010, 6108.21.0010, 6108.21.0020, 6108.91.0005, 6108.91.0015, 6108.91.0025, 6109.10.0005, 6109.10.0007, 6109.10.0009, 6109.10.0037; Category 652–K: only HTS numbers 6107.12.0010, 6107.12.0020, 6108.11.0010, 6108.11.0020, 6108.22.9020, 6108.22.9030, 6108.22.9020, 6108.22.0030, 6108.92.0005, 6108.92.0015, 6108.92.0025, 6109.90.1047 and 6109.90.1075.

Dated: February 19, 1998.

Sadye E. Dunn,

Secretary.

[FR Doc. 98–4701 Filed 2–19–98; 2:19 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Wednesday, March 4, 1998, 10:00 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway., Bethesda, MD 20207 (301) 504–0800.

Dated: February 19, 1998.

Sadye E. Dunn,

Secretary.

[FR Doc. 98–4702 Filed 2–19–98; 2:19 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Modeling the Individual Enlistment Decision; OMB Number 0702–[to be determined].

Type of Request: New collection.

Number of Respondents: 4,000.

Responses Per Respondent: 1.

Annual Responses: 4,000.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 2,000.

Needs and Uses: The career decision survey captures the attitudes of 16–21 year old youth toward service, as well as other available career options. It also addresses qualification for service, primarily in terms of aptitude, and their availability. This administration will be used to identify the items that best predict enlistment propensity, and to segment the population by quality and availability factors. The data collected will be used by analysts within the Army Research Institute and its prime contractor, HumRRO, to investigate the viability of alternative means of indirectly assessing cognitive ability and enlistment propensity. If the collection were not conducted, the Army would not have the information of improved relevance and validity needed to fulfill and improve upon its recruiting mission.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: February 18, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–4544 Filed 2–23–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–22]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Assistance Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–22,

with attached transmittal, policy justification, and sensitivity of technology pages.

Dated: February 18, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000-04-M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

11 FEB 1998
In reply refer to:
I-57986/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-22, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Italy for defense articles and services estimated to cost $110 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

H. Diehl McKalip
Acting Director

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Attachments

Transmittal No. 98-22

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) **Prospective Purchaser:** Italy

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 85 million
Other	$ 25 million
TOTAL	$ 110 million

(iii) **Description of Articles or Services Offered:** Seven hundred thirty-four STINGER Block 1 International missiles including 504 complete missile rounds without gripstocks, 194 partial weapon rounds without gripstocks, and 36 lot acceptance missiles; 194 gripstock control group guided missile launchers; support equipment; training devices; spare and repair parts; publications and technical data; support equipment; personnel training and training equipment; U.S. Government and contractor engineering and logistics personnel services; a Quality Assurance Team; and other related elements of logistics support.

(iv) **Military Department:** Army (XSO)

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** None

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached.

(vii) **Date Report Delivered to Congress:** 11 FEB 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Italy - STINGER Block 1 International Missiles

The Government of Italy has requested a possible sale of 734 STINGER Block 1 International missiles including 504 complete missile rounds without gripstocks, 194 partial weapon rounds without gripstocks, and 36 lot acceptance missiles; 194 gripstock control group guided missile launchers; support equipment; training devices; spare and repair parts; publications and technical data; support equipment; personnel training and training equipment; U.S. Government and contractor engineering and logistics personnel services; a Quality Assurance Team; and other related elements of logistics support. The estimated cost is $110 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Italy while enhancing weapon system standardization and interoperability.

Italy will use the STINGER missiles to upgrade its air defense capability. Italy, which already has STINGER missiles in its inventory, will have no difficulty absorbing these missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Hughes Aircraft Company, Tucson, Arizona. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will require a Quality Assurance Team for two weeks in-country. Two contractor representatives representing varying technical skills and disciplines will be required to provide in-country support for six years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 98-22

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The STINGER Block 1 International missile system, gripstock, hardware, software and documentation contain sensitive technology and are classified Confidential. The guidance section of the missile and tracking head trainer contain highly sensitive technology and are classified Confidential.

2. Missile system hardware and fire unit components contain sensitive/critical technologies. STINGER critical technology is primarily in the area of design and production know-how and not end-items. This sensitive/critical technology is inherent in the hybrid microcircuit assemblies; microprocessors; magnetic and amorphous metals; purification; firmware; printed circuit boards; laser range finder; dual detector assembly; detector filters; automatic text and associated computer software; optical coatings; ultraviolet sensors; semi-conductor detectors; infrared band sensors; compounding and handling of electronic, electro-optic, and optical materials; equipment operating instructions; primary and reserve battery; energetic materials formulation technology; energetic materials fabrication and loading technology; warhead components seeker assembly and the Identification Friend or Foe (IFF) system with Mode 3 capabilities.

3. Information on vulnerability to electronic countermeasures and counter-countermeasures, system performance capabilities and effectiveness, and test data are classified up to Secret.

4. Loss of this hardware and/or data could permit development of information leading to the exploitation of countermeasures. Therefore, if a technologically capable adversary were to obtain these devices, the missile system could be compromised through reverse engineering techniques which could defeat the weapon systems effectiveness.

5. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 98-4632 Filed 2-23-98; 8:45 am]
BILLING CODE 5000-04-C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0138]

Proposed Collection; Comment Request Entitled Contract Financing

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding a revision to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a revision to a currently approved information collection requirement concerning Contract Financing. The clearance currently expires on May 31, 1998.

DATES: Comments may be submitted on or before April 27, 1998.

FOR FURTHER INFORMATION CONTACT: Jerry Olson, Federal Acquisition Policy Division, GSA (202) 501–3221.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0138, Contract Financing, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, provided authorities that streamlined the acquisition process and minimize burdensome government-unique requirements. Sections 2001 and 2051 of the Federal Acquisition Streamlining Act of 1994 substantially changed the statutory authorities for Government financing of contracts. Sections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items, and sections 2001(b) and 2051(b) substantially revised the authority for Government financing of purchases of non-commercial items.

Sections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items. These paragraphs authorize the Government to provide contract financing with certain limitations.

Sections 2001(b) and 2051(b) also amended the authority for Government financing of non-commercial purchases by authorizing financing on the basis of certain classes of measures of performance.

To implement these changes, DOD, NASA, and GSA amended the Federal Acquisition Regulation by revising Subparts 32.0, 32.1, and 32.5; by adding new Subparts 32.2 and 32.10; and by adding new clauses to 52.232.

The coverage enables the Government to provide financing to assist in the performance of contracts for commercial items and provide financing for non-commercial items based on contractor performance.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *2* hours per request for commercial financing and *2* hours per request for performance-based financing, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden for Commercial Financing is estimated as follows: Respondents, *1,000*; responses per respondent, *5*; total annual responses, *5,000*; preparation hours per response, *2*; and total response burden hours, *10,000*.

The annual reporting burden for Performance-Based Financing is estimated as follows: Respondents, *500*; responses per respondent, *12*; total annual responses, *6,000*; preparation hours per response, *2*; and total response burden hours, *12,000*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0138, Contract Financing, in all correspondence.

Dated: February 19, 1998.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 98–4622 Filed 2–23–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board Action: Notice

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee meeting:

Date of Meeting: March 31, 1998 from 0830 to 1730 and April 1, 1998 from 0800 to 1400.

Place: Holiday Inn Arlington at Ballston, 4610 North Fairfax Drive, Arlington, VA.

Matters to be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Levine, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2124.

Dated: February 19, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–4631 Filed 2–23–98; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for non-exclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

This patent covers a wide variety of technical arts including: A Laminated ceramic Ferroelectric material having a graded dielectric constant.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the

Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Electronically Graded Multilayer Ferroelectric Composites.

Inventors: Louise C. Sengupta, Eric Ngo, Michelina E. O'Day, Steven Stowell, Robert Lancto, Somnath Sengupta and Thomas V. Hynes.

Patent Number: 5,693,429.

Issued Date: December 2, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Norma Vaught, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Adelphi, Maryland 20783–1197, tel: (301) 394–2952; fax: (301) 394–5815, e-mail: nvaught@arl.mil.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–4672 Filed 2–23–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent to Prepare a Draft Programmatic Environmental Impact Statement (PEIS) for the Dredged Material Management Plan (DMMP) for the Port of New York and New Jersey

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The action being taken is the evaluation of the dredged material management alternative-types through the promulgation of a draft PEIS for the Port of New York/New Jersey. The purpose of this PEIS is to use a tiering approach that will address the existing environment and impact of alternative types on a generic level. This approach is being undertaken to continue the process of scoping with the public, prior to the promulgation of individual NEPA review associated with specific sites and their associated alternatives. The PEIS will allow a step by step decision making approach to be used. This will allow highlighting of key issues to aid the decision-making process.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Kurtz, phone (212) 264–2230, Corps of Engineers, New York District, 26 Federal Plaza, New York, NY 10278–0090.

SUPPLEMENTARY INFORMATION: The proposed action is the promulgation of a draft PEIS to address the existing environment, and the kinds of impacts to be expected for the proposed range of alternative types for the disposal of dredged material associated with sediment removal in Federal and non-Federal channels of the Port of New York/New Jersey. The authority for the draft PEIS is under the existing Operations and Maintenance authority of the New York Harbor Navigation Project in accordance with EC 1165–2–200 (National Harbor Program: Dredged Material Management Plans).

Generic impact analysis will be conducted for the following alternative types: no action alternative, aquatic remediation-category one material, containment islands, nearshore containment, confined aquatic disposal such as existing and new borrow pits, sub-channel pits, land remediation-treated/stabilized material decontamination technologies, beneficial uses such as wetland creation, and contract management.

Scoping has been ongoing and has included eight meetings in a poster session format to inform the public of the process used to create the initial array of options from the alternative types available. The sessions were held from February through April 1997, in New York City, Kingston, and northeast New Jersey.

A draft PEIS is scheduled for circulation at the end of June 1998. A revised outline of the PEIS is scheduled to be sent out early in 1998 after the final revisions have been completed. Public meetings are planned for summer 1998, after the circulation of the draft PEIS. The draft PEIS will provide the next tier of the examination of impacts of the various alternative types from which the options for disposal of dredged material will be drawn.

The second tier of the process is the promulgation of individual NEPA documents for the options chosen by decision-makers. Scoping will continue throughout the process.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–4671 Filed 2–23–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the East Waterway Channel Deepening Project, Seattle Harbor, Seattle, Washington

AGENCY: U.S. Army Corps of Engineers, Seattle District, DoD.

ACTION: Notice of intent.

SUMMARY: The Corps of Engineers has been directed by Section 356 of the Water Resources Development Act (WRDA) of 1996 to (1) study the feasibility of deepening of a 750-foot-wide segment of existing federal channel in the East Waterway (Duwamish River) from Elliott Bay to Terminal 25 to a depth of up to 51 feet, and (2) if feasible, to implement deepening as routine maintenance. Section 356 of WRDA 96 further directs the Corps to coordinate with the Port of Seattle regarding use of Slip 27 as a nearshore confined dredged material disposal site. Plans call for the dredging and disposal of approximately 850,000 cubic yards of sediment from an approximately 112 acre area in East Waterway. Of this total, approximately 253,000 cubic yards are known to be contaminated to the extent that they would not qualify for disposal at the Elliott Bay Puget Sound Dredge Disposal Analysis (PSDDA) open water site. Based on sediment sampling conducted by the Port of Seattle, an additional 200,000 cubic yards may be similarly contaminated. Dredged material suitable for openwater disposal will either be placed at the PSDDA site in Elliott Bay, or at a beneficial use site, should such a need be identified.

A range of alternatives will be examined for placement of the contaminated dredged material, including: (1) a nearshore confined facility, (2) an offshore contained aquatic disposal (CAD) facility, (3) an upland confined disposal facility, and (4) disposal in a solid waste landfill. Key environmental issues in the DEIS will include: (1) impacts on an important juvenile salmon migration and feeding route; (2) potential loss of 12 acres of productive benthic habitat at Slip 27 or Terminal 90/91; (3) impacts on kelp beds and shorebird/waterfowl habitat; (4) dredging and disposal of up to 450,000 cubic yards of contaminated sediments with short-term adverse impacts in the water column at the dredging and disposal site; (4) beneficial impacts in that the dredging would

remove contaminated sediments from the waterway, and (5) Native American concerns, related to impacts on Tribal fishing access and operations in a usual and accustomed fishing area, and on salmon habitat. In addition, it is anticipated that Chinook salmon will be proposed for listing as threatened in Puget Sound in early 1998.

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process or preparation of the DEIS may be directed to Dr. Stephen Martin, Technical Services Branch, U.S. Army Corps of Engineers, P.O. Box 3755, 4735 East Marginal Way S., Seattle, Washington, 98134–3755, (206) 764–3631.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The East Waterway, located in Puget Sound's Elliott Bay at Seattle, Washington, is part of the federally authorized East, West and Duwamish Waterways navigation channel. The East Waterway is approximately 5,800 feet long and has an authorized width of 750 feet and depth of 39 feet Mean Lower Low Water. The waterway is deeper than the federally authorized depth throughout most of its reach and is not currently maintained by the federal government. The East Waterway provides access to the Port of Seattle's container terminals 18, 25, and 30. The container fleet is rapidly changing with ships becoming larger and having greater capacity. The most recent additions to the post-Panamax fleet are ships which are in excess of 900 feet long, 130 feet wide, have a design operating draft of 46 feet, and a capacity in excess of 5,000 twenty foot equivalent units. As a result, the Port of Seattle is concerned that current and potential tenants may elect not to use the Port's facilities due to depth limitations in East Waterway. The Port has stated that a deeper channel, specifically the area that allows access to berths 1 through 5 of Terminal 18, needs to be constructed by calendar year 2001. The deep water access to berths 1 through 5 in the East Waterway requires dredging in the federal channel.

As directed by Section 356 of the Water Resources Development Act of 1996, the Corps of Engineers is conducting an Evaluation Study with the following project features: dredging in the East Waterway (Seattle Harbor) to a depth of up to 51 feet of the 750-foot wide segment of the federal channel, construction of a disposal site for dredged material that is unsuitable for open water disposal at the Elliott Bay PSDDA disposal site, and construction of all mitigation features. If this is determined to be feasible, the channel would be deepened as part of the Federal project maintenance. The Port of Seattle would provide the dredged material disposal site(s). Major project features are as follows: (1) channel improvement dredging by the Corps to a depth of up to 51 feet plus 1 foot allowable overdepth of a 750-foot-wide segment of existing federal channel of the Duwamish River East Waterway; (2) construction of a disposal site(s) for dredge materials not acceptable for disposal at Elliott Bay PSDDA disposal site; (3) construction of mitigation features required for the project, and any required monitoring of mitigation improvements; (4) dredging and disposal of about 850,000 cubic yards of sediment from East Waterway. Of this total, approximately 253,000 cubic yards are known to be contaminated to the extent that they would not qualify for disposal at the Elliott Bay PSDDA open water site; and (5) total dredging acreage for the project is approximately 112 acres.

2. Alternatives

In addition to the "No Action" alternative, the draft EIS will evaluate a suite of commonly used disposal alternatives for the placement of dredged material that will not qualify for disposal at the PSDDA open water site. Included in the evaluation will be a comprehensive discussion of the environmental impacts of each alternative. The final EIS will identify the environmentally preferred disposal alternative. Disposal alternatives to be evaluated will include: (1) construction and operation of a Nearshore Confined Disposal Facility including Slip 27 in the East Waterway, and Terminal 91 in Elliott Bay; (2) construction and operation of an Upland Confined Disposal Facility; (3) construction and operation of a deep water Contained Aquatic Disposal Facility; (4) disposal in a Solid Waste Landfill; (5) a combination of the above alternatives; and (6) alternative fill designs at the proposed fill location. Dredging alternatives to be evaluated include established mechanical and hydraulic methods.

3. Scoping and Public Involvement

Public involvement will be sought during the scoping and conduct of the study in accordance with NEPA and SEPA procedures. A public meeting will be held during public review of the draft EIS. Further meetings will be scheduled as needed. A public scoping process will be initiated to clarify issues of major concern, identify studies that might be needed in order to analyze and evaluate impacts, and obtain public input on the range and acceptability of alternatives. This Notice of Intent formally commences the joint scoping process under NEPA. As part of the scoping process, all affected Federal, state, and local agencies, Indian Tribes, and other interested private organizations, including environmental interest groups, are invited to comment on the scope of the EIS. Comments are requested concerning project alternatives, mitigation measures, probable significant environmental impacts, and permits or other approvals that may be required. To date, the following areas have been identified to be analyzed in depth in the draft EIS: (1) extent and degree of sediment contamination in East Waterway; (2) dredging and disposal impacts on water quality; (3) impacts on juvenile salmon, as East Waterway is a major migration and feeding route for juvenile salmon, and is an area that they use for saltwater physiological adaptation; the project would result in the loss of several acres of intertidal and shallow subtidal fisheries habitat; (4) impacts on benthic organisms and their habitat at both nearshore confined disposal and contained aquatic disposal sites; e.g. with the construction of a nearshore confined fill area, there would be a loss of about 12 acres of productive benthic habitat that contributes to the aquatic food web of Elliott Bay; (5) other estuarine resources, as with construction of a nearshore confined fill area, there would be losses of other estuarine resources, including shorebirds and waterfowl habitat and kelp beds; (6) Native American concerns including dredging and disposal of contaminated sediments, increased shipping, and nearshore fills and their impacts on Tribal fishing access and operations, and on salmon habitat; also, concerns over cumulative impacts of recent shoreline developments in Elliott Bay on adjudicated treaty fishing rights; (7) beneficial impacts, in that dredging would remove up to 450,000 cubic yards of contaminated sediments over an extent of about 112 acres of East Waterway, thereby removing a substantive source of contaminants that affect the Elliott Bay food web; and (8) threatened and endangered Species, as the DEIS will evaluate the impact of the dredging/disposal project on bald eagles that are known to nest within two miles of the project site; it is likely that Chinook salmon will be proposed for listing as threatened in Elliott Bay in early 1998 and may be listed as threatened sometime during 1998. The

environmental review process will be comprehensive and will integrate and satisfy the requirements of NEPA (federal) and SEPA (Washington State), and other relevant Federal, state, and local environmental laws.

4. Scoping Meeting

A notice of the scoping meeting will be mailed to all involved agencies and individuals known to have an interest in this project. A scoping workshop will be held on March 5, 1998, at the Port of Seattle's Commission Chambers, 2711 Alaskan Way (Pier 69) from 4:00 to 6:00 PM. Verbal or written comments will be accepted at the scoping meeting, or written comments may be sent to Dr. Stephen Martin at the above address on or before March 20, 1998.

5. Other Environmental Review, Coordination, and Permit Requirements

Other environmental review, coordination, and permit requirements include preparation of a Section 404 (b)(1) evaluation by the Corps of Engineers; and consultation among the Corps, the U.S. Fish and Wildlife Service, and the State of Washington per Section 7 of the Endangered Species Act. Coordination will also be initiated with the U.S. Fish and Wildlife Service to meet the requirements of the Fish and Wildlife Coordination Act.

6. Availability of Draft EIS

The draft EIS is scheduled for release in March 1999.

Dated: February 12, 1998.

James M. Rigsby,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 98–4673 Filed 2–23–98; 8:45 am]

BILLING CODE 3710–ER–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Secretary of Education requests comments on the Free Application for Federal Student Aid (FAFSA) that the Secretary proposes to use for the 1999–2000 award year. The FAFSA is completed by students and their families and the information submitted on the form is used to determine the students' eligibility and financial need for the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, (Title IV, HEA Programs).

DATES: Interested persons are invited to submit comments on or before March 26, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651. In addition, interested persons can access this document at the following website: "http://www.ed.gov/offices/OPE/Professionals." Once at this website, the reader should go to the "What's New" area to locate the 1999–2000 FAFSA.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708-8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 483 of the Higher Education Act of 1965, as amended (HEA), requires the Secretary, "in cooperation with agencies and organizations involved in providing student financial assistance," to "produce, distribute and process free of charge a common financial reporting form to be used to determine the need and eligibility of a student under" the Title IV, HEA Programs. This form is the FAFSA. In addition, section 483 authorizes the Secretary to include on the FAFSA up to eight non-financial data items that would assist States in awarding State student financial assistance.

In a notice published in the **Federal Register** of March 18, 1997, the Secretary noted that the Department of Education was reengineering the FAFSA and looking anew at all the questions on the form. The Secretary asked for comment on questions that applicants were not required to answer in order to have their eligibility and need for Title IV, HEA Programs determined. The Secretary also requested comment with regard to which of the questions were integral to State student aid programs.

In addition to requesting comments in that notice, in May and June of 1997, the Secretary convened public meetings in New York, St. Louis, San Diego, and Washington, D.C. for the purpose of receiving comments on early drafts of the reengineering FAFSA. Further, at the invitation of the National Association of Student Financial Aid Officers (NASFAA), in July the Department conducted a forum on a later draft of the reengineered FAFSA at NASFAA's annual convention in Philadelphia.

The Secretary revised the FAFSA that was disseminated for comment based upon the suggestions made by the commenters in the Spring and Summer of 1997, and in the **Federal Register** of November 24, 1997, 62 FR 62568–61570, the Secretary published a notice requesting additional comment on this latest revised FAFSA. In that notice, the Secretary described the changes in the FAFSA from the previous disseminated version.

As a result of the November 24, 1997 **Federal Register** notice, the Department received comments and suggestions from over 80 commenters. These comments and suggestions related to the following substantive areas.

- Student's "permanent" telephone number. Many comments objected to the deletion of this item from the form. Many institutions indicated that they used the student's telephone number in ways helpful to students. Other institutions indicated that the number was useful in keeping track of borrowers under the Federal Family Education Loan (FFEL) and Federal Direct Loan Programs. Although very little is "permanent" about a student's telephone number, the Secretary has agreed to add this item back on the form for the reasons stated by the commenters.
- Untaxed income and benefits. Many commenters objected to the deletion of specific questions about untaxed income. The commenters felt that the accuracy of information would suffer if the form just requested the total of such income. In particular, commenters objected to the elimination of the item for earned income credit. We again request earned income credit on the FAFSA. Space would not allow the addition of other items.
- The inclusion of additional questions on the form would have required the form to expand beyond the current four pages. The Secretary believed that it was important to keep the actual FAFSA application to four pages in order to minimize any changes to the automated processing system which will begin to process these new forms in January of 1999, and to meet the requirements of scanning technology. The Secretary also believed that expansion of the form would have been inconsistent with goals of simplifying and clarifying the current form. As a result, it was not possible to

include on the form all the questions relating to nontaxable income that the commenters thought should be specifically included.

The Secretary is publishing this additional request for comment under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501 *et seq.* Under that Act, ED must obtain the review and approval of the Office of Management and Budget (OMB) before it may use a form to collect information. However, under the procedure for obtaining approval from OMB, ED must first obtain public comment on the proposed form, and to obtain that comment, ED must publish this notice in the **Federal Register**.

To accommodate the requirements of the Paperwork Reduction Act, the Secretary is interested in receiving comments with regard to the following matters: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 18, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Free Application for Federal Student Aid (FAFSA).

Frequency: Annually.

Affected Public: Individuals and families.

Annual Reporting and Recordkeeping Hour Burden: Responses: 9,998,997; Burden Hours: 6,274,770.

Abstract: The FAFSA collects identifying and financial information about a student and his or her family if the student applies for Title IV, Higher Education Act (HEA) Program funds. This information is used to calculate the student's expected family contribution, which is used to determine a student's financial need. The information is also used to determine the student's eligibility for grants and loans under the Title IV, HEA Programs. It is further used for determining a student's eligibility and need for State and institutional financial aid programs.

[FR Doc. 98–4615 Filed 2–23–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 27, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 18, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New

Title: Follow-up Study of State Implementation of Federal Elementary and Secondary Education Programs

Frequency: One time

Affected Public: State, local or Tribal Gov't, SEAs or LEAs

Reporting and Recordkeeping Hour Burden: Responses: 459; Burden Hours: 459

Abstract: The Department of Education is charged with evaluating Title I of the Elementary and Secondary Education Act and other elementary and secondary education legislation enacted by the 103d Congress. These surveys will collect information on the operations and effects at the state level of legislative provisions and federal assistance, in the context of state education reform efforts. Findings will be used in reporting to Congress and improving information dissemination. Respondents are managers in nine programs in all 50 state education agencies.

[FR Doc. 98–4616 Filed 2–23–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 26, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 18, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension
Title: Performance Report for the Training Program for Federal TRIO Programs
Frequency: Annually
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs
Annual Reporting and Recordkeeping Hour Burden: Responses: 16 Burden Hours: 60
Abstract: Data assures that grantees have conducted the project for which funded, signals problems of implementation, and indicates extent and quality of performance. The Department uses reports in evaluating project for continuation, assessing technical assistance needs, determining future funding levels and in assigning scores to projects in competition for new grants.

Office of Postsecondary Education

Type of Review: Extension
Title: Application for Grants Under the Centers for International Business Education Program
Frequency: Every 3 to 4 years
Affected Public: Not-for-profit institutions
Annual Reporting and Recordkeeping Hour Burden: Responses: 30 Burden Hours: 560
Abstract: Centers for International Business Education: Collect program and budget information to make grants to institutions of higher education.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (OMB Control No. 1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 98–4617 Filed 2–23–98; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

(CFDA No.: 84.264A)

Rehabilitation Continuing Education Programs; Notice Inviting applications for new awards for fiscal year (FY) 1998

Purpose of Program: To support cooperative agreements for training centers that serve either a Federal region or another geographic area and provide a broad, integrated sequence of training activities throughout a multi-State geographical area that focus on meeting recurrent and common training needs of employed rehabilitation personnel.

Eligible Applicants: State and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

Supplementary Information: On September 22, 1997, the Secretary published in the **Federal Register** a notice inviting applications for Rehabilitation Continuing Education Programs. The two applications submitted from Region VII, and the one application submitted from Region X, were found unacceptable. The Secretary believes that by reannouncing the competition in Region VII and Region X, acceptable applications will be submitted.

Deadline for Transmittal of Applications: April 10, 1998.

Deadline for Intergovernmental Review: June 9, 1998.

Applications Available: February 24, 1998.

Available Funds: $685,620.

Estimated Range of Awards: $318,612–$348,500.

Maximum Awards by Rehabilitation Services Administration (RSA)

Region: In no case does the Secretary make an initial award greater than the amount listed for each of the following RSA regions for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this amount.

Maximum Level of Awards by RSA Region:

Region VII—$348,500
Region X—$337,120

Note: Applicants should apply for level funding for each project year. Also, applicants are subject to a four percent cost-share requirement on awards.

Estimated Number of Awards: 2.

Note: Applications are invited for the provision of training for Department of Education Regions VII and X only. The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, and 86; and (b) The regulations for this program in 34 CFR Parts 385 and 389.

Note: The regulations in 34 CFR Part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Specifically note that under section 21(b)(6) of the Rehabilitation Act, as amended, applicants are required to demonstrate how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

For Applications Contact: The Grants and Contracts Service Team (GCST), U.S. Department of Education, 600

Independence Avenue, S.W., room 3317 Switzer Building, Washington, D.C. 20202–2550. Telephone: (202) 205–8351. The preferred method for requesting applications is to FAX your request to (202) 205–8717. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Information Contact: Mary C. Lynch, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3322 Switzer Building, Washington, D.C. 20202–2649. Telephone: (202) 205–8291.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document: Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 774.

Dated: February 18, 1998.

Howard R. Mesaa,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–4578 Filed 2–23–98; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Meeting cancellation notice.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the cancellation of the open Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site Advisory Committee meeting, which was scheduled to be held on Wednesday, March 4, 1998, from 5:30 p.m.–9:00 p.m., at the U.S. Department of Energy Nevada Support Facility, Great Basin Room, 232 Energy Way, North Las Vegas, Nevada. This meeting was announced in the **Federal Register** on Tuesday, February 10, 1998 (63 FR 6736).

Issued at Washington, DC on February 18, 1998.

Althea T. Vanzego,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 98–4641 Filed 2–23–98; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting: Name: Secretary of Energy Advisory Board.

DATES AND TIMES: Wednesday, March 4, 1998, 9:00 am–4:30 pm.

ADDRESSES: The Georgetown University Conference Center, Salon H, 3800 Reservoir Road, NW, Washington D.C. 20057.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The Secretary of Energy Advisory Board (Board) reports directly to the Secretary of Energy and is chartered under the Federal Advisory Committee Act, section 624(b) of the Department of Energy Organization Act (Pub. L. 95–91). The Board provides the Secretary of Energy with essential independent advice and recommendations on issues of national importance. The Board and its Task Force Subcommittees provide timely, balanced, and authoritative advice to the Secretary on the Department's management reforms, research, development, and technology activities, energy and national security responsibilities, environmental cleanup activities, and economic issues relating to energy.

Tentative Agenda

Wednesday, March 4, 1998

9:00 am–9:15 am
Welcome & Opening Remarks—
Chairman Walter Massey
9:15 am–11:30 am
Departmental Briefings
11:30 am–12:30 pm
Lunch
12:30 pm–1:00 pm
Secretary of Energy Remarks—
Secretary Federico Peña
1:00 pm–4:00 pm
SEAB Subcommittee Reports
4:00 pm–4:30 pm
Public Comment Period
4:30 pm
Closing Remarks

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation

The Chairman of the Secretary of Energy Advisory Board is empowered to conduct the meeting in a way that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington D.C., the Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 am and 4:00 pm, Monday through Friday except Federal holidays. Information on the Secretary of Energy Advisory Board may

also be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on February 18, 1998.

Althea T. Vanzego,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 98–4642 Filed 2–23–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2534]

Bangor Hydro-Electric Company; Notice of Site Visit to Project Area

February 18, 1998.

On February 27, 1998, the Federal Energy Regulatory Commission staff has scheduled a site visit to the Milford Project (Project No. 2534), located on the Penobscot River and Stillwater Branch of the Penobscot River in the Towns of Milford and Old Town in Penosbscot County, Maine. The Milford Project consists of two dams: Milford dam and powerhouse located on the main stem of the Penobscot River about 1.6 miles upstream from the Great Works Project (Project No. 2312) and Gilman Falls dam about 3 miles upstream of the Stillwater Project on the Stillwater Branch of the Penobscot River. The project impoundment extends upstream from Milford and Gilman Falls dams for about 3 miles and is about 235 acres. The site visit is scheduled for 2:00 p.m.

If you have any questions concerning this matter, pleas contact Ms. Patti Leppert-Slack at (202) 219–2767.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4602 Filed 2–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–113–000]

Colorado Interstate Gas Company; Notice of Technical Conference

February 18, 1998.

The filing in the above captioned proceeding raises issues that should be addressed in a technical conference.

Take notice that the technical conference will be held on Tuesday, March 10, 1998, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington D.C. 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4604 Filed 2–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1127–000]

El Segundo Power, LLC; Notice of Issuance of Order

February 18, 1998.

El Segundo Power, LLC (El Segundo) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, El Segundo requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by El Segundo. On February 12, 1998, the Commission issued an Order Accepting For Filing Proposed Tariff For Market-Based Power Sales And Reassignment Of Transmission Capacity And Granting Waiver Of Notice (Order), in the above-docketed proceeding.

The Commission's February 12, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days after the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by El Segundo should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, El Segundo is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of El Segundo, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of El Segundo's issuance of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 16, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4597 Filed 2–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT98–8–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

February 18, 1998.

Take notice that on February 12, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective March 15, 1998.

Second Revised Sheet No. 1403
Third Revised Sheet No. 1404

Koch is submitting the above-listed tariff sheets to add language as requested by the Commission in Docket No. CP97–337–000, which authorized the sale of Koch's Cabeza Creek Facilities to Delhi Gas Pipeline Corporation (Delhi). In this docket, the Commission requested that should Koch and Delhi become affiliated in the future, Koch add tariff language to prevent affiliate abuse.

Koch also states that it has served copies of this filing upon its customers, interested state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be

taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4600 Filed 2–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ97–2–002]

Omaha Public Power District; Notice of Filing

February 18, 1998.

Take notice that on January 3, 1997, Omaha Public Power District (Omaha) submitted written procedures implementing the standards of conduct under Part 37 of the Commission's regulations, 18 CFR Part 37.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before March 2, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4601 Filed 2–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–4829–000, ER97–4830–000, ER97–3189–007 and EL98–25–000]

PP&L, Inc.; Notice of Initiation of Proceeding and Refund Effective Date

February 18, 1998.

Take notice that on February 17, 1998, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL98–25–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL98–25–000 will be 60 days after publication of this notice in the **Federal Register**.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4687 Filed 2–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1149–000]

Southern Energy Retail Trading and Marketing, Inc.; Notice of Issuance of Order

February 18, 1998.

Southern Energy Retail Trading and Marketing, Inc. (Southern Energy) filed an application to engage in the wholesale sale of electric capacity and energy at market-based rates, and for certain waivers and authorizations. In particular, Southern Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Southern Energy. On February 13, 1998, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's February 13, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days after the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Southern Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, Southern Energy is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Southern Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Southern Energy's issuances of securities or assumptions of liabilities.* * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 16, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4598 Filed 2–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–8–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 18, 1998.

Take notice that on February 12, 1998, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A attached to the filing.

Transco states that the purpose of the instant filing is to track rate changes attributable to (1) storage service purchased from CNG Transmission Corporation (CNG) under its Rate Schedule GSS, the costs of which are included in the rates and charges payable under Transco's Rate Schedule GSS and LS$ and (2) transportation service purchased from CNG under its Rate Schedule X–74, the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT. This tracking filing is being made pursuant to Section 3 of Transco's Rate Schedule GSS and Section 4 of Transco's Rate Schedules LSS and FT–NT.

Transco states that included in Appendices B and C attached to the filing are explanations of the rate changes and details regarding the computation of the revised Rate Schedule GSS, LSS and FT–NT rates.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4605 Filed 2–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–105–002]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

February 18, 1998.

Take notice that on February 11, 1998, Williams Gas Pipelines Central, Inc., formerly Williams Natural Gas Company (Williams), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with the proposed effective date of February 1, 1998:

Substitute Third Revised Sheet Nos. 8E and 8F

Williams states that it made a filing in Docket Nos. RP98–105, et al., on December 31, 1997 to submit its first quarter 1998 report of take-or-pay buyout, buydown and contract reformation costs and gas supply related transition costs, and the application or distribution of those costs and refunds. The instant filing is being made to revise Schedule 4 of the original filing to reflect revision of certain customers' January MDTQ's which were not finalized until after January 1, 1998. All other aspects of Williams' January 1 filing are unchanged.

Williams states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4603 Filed 2–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–18–000]

Williston Basin Interstate Pipeline Company; Notice of Filing

February 18, 1998.

Take notice that on February 13, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective February 13, 1998:

Twelfth Revised Sheet No. 777
Twenty-second Revised Sheet No. 831
Twenty-third Revised Sheet No. 832
Twenty-third Revised Sheet No. 833

Williston Basin states that the revised tariff sheets are being filed simply to update its Master Receipt/Delivery Point List.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4599 Filed 2–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1760–000, et al.]

GEN–SYS Energy, et al.; Electric Rate and Corporate Regulation Filings

February 17, 1998.

Take notice that the following filings have been made with the Commission:

1. GEN–SYS Energy

[Docket No. ER98–1760–000]

Take notice that on February 4, 1998, GEN–SYS Energy (GSE), tendered for filing a market summary activity for the quarter ending December 31, 1997. GSE began its power market activity concurrent with its membership approval in the Mid-Continent Area Power Pool (MAPP), effective November 1, 1997.

Comment date: March 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Dartmouth Power Associates Limited Partnership

[Docket No. ER98–1761–000]

Take notice that on February 4, 1998, Dartmouth Power Associates Limited Partnership (Dartmouth), tendered for filing a Transaction Report for quarter ending December 31, 1997.

Comment date: March 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Company

[Docket No. ER98–1765–000]

Take notice that on February 9, 1998, Southern California Edison Company (Edison), tendered for filing Amendment III (Amendment) to the Operating Procedures for the Power Contract, with the Department of Water Resources of the State of California (CDWR). The Amendment defines how Devil Canyon will be operated, and addresses how capacity and energy will be scheduled and accounted for between Edison and CDWR to ensure

that Edison receives its benefits accorded pursuant to Section 10 of the Power Contract.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Company

[Docket No. ER98–1771–000]

Take notice that on February 9, 1998, Southern California Edison Company (Edison), tendered for filing Amendment No. 5 to the Power Contract dated October 11, 1979 (Amendment No. 5), and Amendment No. 1 to the Devil Canyon Additional Facilities and Firm Transmission Service Agreement (Amendment No. 1), with the Department of Water Resources of the State of California (CDWR). Amendment No. 5 and Amendment No. 1 provide for an additional 65 MW of firm transmission service from Devil Canyon to Vincent Substation to deliver CDWR's increased share of Devil Canyon.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company (Minnesota Company) and Northern States Power Company (Wisconsin Company)

[Docket No. ER98–1772–000]

Take notice that on February 9, 1998, Northern States Power Company (Minnesota), and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing an Electric Service Agreement between NSP and American Electric Power Service Corporation, by and on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company and Ohio Power Company (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff original Volume No. 4. NSP requests that this Electric Service Agreement be made effective on January 11, 1998.

Comment date: March 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Carolina Power & Light Company

[Docket No. ER98–1774–000]

Take notice that on February 9, 1998, Carolina Power & Light Company (Carolina), tendered for filing an executed Service Agreement between Carolina and the following Eligible Entity: DTE Energy Trading, Inc. Service to the Eligible Entity will be in accordance with the terms and conditions of Carolina's Tariff No. 1 for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: March 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Carolina Power & Light Company

[Docket No. ER98–1775–000]

Take notice that on February 9, 1998, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service executed between CP&L and the following Eligible Transmission Customer: NAEC, Inc.; and a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with NAEC, Inc. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: March 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Western Resources, Inc.

[Docket No. ER98–1776–000]

Take notice that on February 9, 1998, Western Resources, Inc., tendered for filing a change to its FERC Electric Tariff, First Revised Volume No. 5. Western Resources states that the change is to deny non-firm and short term firm transmission service under Western Resources' tariff when such service is available through the Southwest Power Pool, Inc., regional transmission service tariff.

Copies of the filing were served upon Western Resources' open access transmission customers and the Kansas Corporation Commission.

Comment date: March 2, 1998, in accordance with Standard Paragraph E at the end of his notice.

9. Central Louisiana Electric Company, Inc.

[Docket No. ER98–1777–000]

Take notice that on February 9, 1998, Central Louisiana Electric Company, Inc., (CLECO), tendered for filing an umbrella service agreement under which CLECO will make market based power sales under its MR–1 tariff with American Electric Power Service Corporation.

CLECO states that a copy of the filing has been served on American Electric Power Service Corporation.

Comment date: March 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Kansas City Power & Light Co.

[Docket No. ER98–1778–000]

Take notice that on February 9, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated February 5, 1998, between KCPL and Chillicothe Municipal Utilities. KCPL proposes an effective date of February 5, 1998, and requests waiver of the Commission's notice requirement. This Agreement provides for Non-Firm Power Sales Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are pursuant to KCPL's compliance filing in Docket No. ER94–1045.

Comment date: March 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Citizens Utilities Company

[Docket No. ER98–1779–000]

Take notice that on February 6, 1998, Citizens Utilities Company, tendered for filing on behalf of itself and Cinergy Capital & Trading, Inc., Constellation Power Source, Inc., NP Energy, Inc., and Williams Energy Services Company, Service Agreements for Non-Firm Point-to-Point Transmission Service under Citizens' Open Access Transmission Tariff.

Comment date: March 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Southern Company Services, Inc.

[Docket No. ER98–1780–000]

Take notice that on February 9, 1998, Southern Company Services, Inc. (SCS), acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company) (collectively referred to as the Southern Company System), submitted a filing to revise the Western Systems Power Pool (WSPP),

Agreement to reflect the addition of the Southern Company System. The Southern Company System requests an effective date of September 26, 1997. The filing will allow the Southern Company System to participate in coordination transactions under the WSPP Agreement.

Comment date: March 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4688 Filed 2–23–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DR98–52–000, et al.]

Jersey Central Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

February 18, 1998.

Take notice that the following filings have been made with the Commission:

1. Jersey Central Power & Light Company

[Docket No. DR98–52–000]

Take notice that on February 6, 1998, Jersey Central Power & Light Company, filed a request for approval of changes in nuclear depreciation rates, for accounting purposes only, pursuant to Section 302 of the Federal Power Act. These changes will be retroactively implemented by the Company on January 1, 1998.

Comment date: March 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Coastal Gusu Heat & Power Ltd.

[Docket No. EG98–40–000]

On February 9, 1998, Coastal Gusu Heat & Power, Ltd. (Applicant), West Wind Building, P.O. Box 1111, Grand Cayman, Cayman Islands, B.W.I., filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant, a Cayman Islands Corporation, intends to have an ownership interest in certain power generating facilities in China. These facilities will consist of a 30 MW heat recovery cogeneration power plant located in Suzhou City, Jiangsu Province, China, including two heat recovery steam generators, two 15 MW steam turbine generators, two auxiliary oil-fired boilers, a thermal pipeline and related facilities.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Sithe Medway LLC

[Docket No. EG98–42–000]

On February 11, 1998, Sithe Medway LLC, 450 Lexington Avenue, 37th Floor, New York, NY 10017 (Sithe Medway), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Sithe Medway will own an electric generating facility with a capacity of approximately 126 MW located in Medway, Massachusetts.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Sithe New Boston LLC

[Docket No. EG98–44–000]

On February 11, 1998, Sithe New Boston LLC, 450 Lexington Avenue, 37th Floor, New York, NY 10017 (Sithe New Boston), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Sithe New Boston will own an electric generating facility with a capacity of approximately 778 MW located in Boston, Massachusetts.

Comment date: March 11, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Sithe Edgar LLC

[Docket No. EG98–45–000]

On February 11, 1998, Sithe Edgar LLC, 450 Lexington Avenue, 37th Floor, New York, NY 10017 (Sithe Edgar), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Sithe Edgar will own an electric generating facility with a capacity of approximately 21 MW located in Weymouth, Massachusetts.

Comment date: March 11, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Portland General Electric Company

[Docket No. ER96–333–002]

Take notice that on December 17, 1997, Portland General Electric Company tendered for filing its refund report in the above-referenced docket.

Comment date: March 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Indiana Michigan Power Company

[Docket No. ER98–443–000]

Take notice that on January 27, 1997, Indiana Michigan Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER98–1781–000]

Take notice that on February 6, 1998, Cinergy Services, Inc., (Cinergy), tendered for filing an amended service agreement under Cinergy's Power Sales Standard Tariff (the Tariff), entered into between Cinergy and Nordic Electric, LLC.

Copies of the filing were served upon the customer, parties of record in Docket No. ER96–2506–000 and the Michigan Public Service Commission.

Comment date: March 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Montaup Electric Company

[Docket No. ER98–1782–000]

Take notice that on February 9, 1998, Montaup Electric Company (Montaup), filed 1) executed unit sales service

agreements under Montaup's FERC Electric Tariff, Original Volume No. III; and 2) executed service agreements for the sale of system capacity and associated energy under Montaup's FERC Electric Tariff, Original Volume No. IV. The service agreements under both tariffs are between Montaup and following companies (Buyers):

1. NP Energy Inc. (NPE).
2. PacifiCorp Power Marketing, Inc. (PacifiCorp).
3. Unitil Power Corp. (UPC).
4. Fitchburg Gas and Electric Light Company (FGE).

Montaup requests a waiver of the sixty-day notice requirement so that the service agreements may become effective as of February 9, 1998. No transactions have occurred under any of the agreements.

Comment date: March 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Central Illinois Light Company

[Docket No. ER98–1783–000]

Take notice that on February 9, 1998, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and one service agreement for one new customer, Columbia Power Marketing.

CILCO requested an effective date of February 3, 1998.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: March 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Central Hudson Gas and Electric Corporation

[Docket No. ER98–1784–000]

Take notice that on February 9, 1998, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to 35.12 of the Federal Energy Regulatory Commission's (Commission), Regulations in 18 CFR a Service Agreement between CHG&E and Northeast Energy Services, Inc. The terms and conditions of service under this agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: March 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Central Hudson Gas and Electric Corporation

[Docket No. ER98–1785–000]

Take notice that on February 9, 1998, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Strategic Energy LTD. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff), accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: March 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Central Vermont Public Service Corporation

[Docket No. ER98–1786–000]

Take notice that on February 9, 1998, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Williams Energy Services Company under its FERC Electric Tariff No. 5. The tariff provides for the sale by Central Vermont of power, energy, and/or resold transmission capacity at or below Central Vermont's fully allocated costs.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on February 10, 1998.

Comment date: March 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Duke Energy Corporation

[Docket No. ER98–1787–000]

Take notice that on February 9, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a modification to 1.22 of Duke's Open Access Transmission Tariff, FERC Electric Tariff Original Volume No. 4.

Comment date: March 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Niagara Mohawk Power Corporation

[Docket No. ER98–1788–000]

Take notice that on February 9, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and the New York Power Authority to serve 1.0 MW of New York Power Authority power to Encore Paper. This Transmission Service Agreement specifies that the New York Power Authority has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and the New York Power Authority to enter into separately scheduled transactions under which NMPC will provide transmission service for the New York Power Authority as the parties may mutually agree.

NMPC requests an effective date of February 15, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and the New York Power Authority.

Comment date: March 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER98–1789–000]

Take notice that on February 9, 1998, PECO Energy Company (PECO), filed a Service Agreement dated February 2, 1998, with Northern States Power Company (NSP), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds NSP as a customer under the Tariff.

PECO requests an effective date of February 2, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to NSP and to the Pennsylvania Public Utility Commission.

Comment date: March 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Competisys LLC

[Docket No. ER98–1790–000]

Take notice that on February 9, 1998, Competisys LLC (Competisys), petitioned the Commission for acceptance of Competisys Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Competisys intends to engage in wholesale electric power and energy purchases and sales as a marketer. Competisys is not in the business of

generating or transmitting electric power. Competisys is a utility services firm that provides utilities and substantial users of utility systems professional services that allow effective access to competitive market sources of energy and related services.

Comment date: March 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Virginia Electric and Power Company

[Docket No. ER98–1791–000]

Take notice that on February 9, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with DTE Energy Trading, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon DTE Energy Trading, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Virginia Electric and Power Company

[Docket No. ER98–1792–000]

Take notice that on February 9, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with DTE Energy Trading, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon DTE Energy Trading, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4689 Filed 2–23–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

February 18, 1998.

THE FOLLOWING NOTICE OF MEETING IS PUBLISHED PURSUANT TO SECTION 3(A) OF THE GOVERNMENT IN THE SUNSHINE ACT (PUB. L. NO. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: FEDERAL ENERGY REGULATORY COMMISSION.

DATE AND TIME: FEBRUARY 25, 1998, 10:00 A.M.

PLACE: ROOM 2C, 888 FIRST STREET, N.E., WASHINGTON, D.C. 20426.

STATUS: OPEN.

MATTERS TO BE CONSIDERED: AGENDA

*NOTE—ITEMS LISTED ON THE AGENDA MAY BE DELETED WITHOUT FURTHER NOTICE.

CONTACT PERSON FOR MORE INFORMATION: DAVID P. BOERGERS, ACTING SECRETARY, TELEPHONE (202) 208–0400, FOR A RECORDING LISTING ITEMS STRICKEN FROM OR ADDED TO THE MEETING, CALL (202) 208–1627.

THIS IS A LIST OF MATTERS TO BE CONSIDERED BY THE COMMISSION. IT DOES NOT INCLUDE A LISTING OF ALL PAPERS RELEVANT TO THE ITEMS ON THE AGENDA; HOWEVER, ALL PUBLIC DOCUMENTS MAY BE EXAMINED IN THE REFERENCE AND INFORMATION CENTER.

CONSENT AGENDA—HYDRO, 693RD MEETING—FEBRUARY 25, 1998, REGULAR MEETING (10:00 A.M.)

CAH–1.
OMITTED

CAH–2.
DOCKET# P–2323, 021, NEW ENGLAND POWER COMPANY

CAH–3.
OMITTED

CAH–4.
OMITTED

CAH–5.
DOCKET# P–2194, 001, CENTRAL MAINE POWER COMPANY
OTHER#S P–2530, 014, CENTRAL MAINE POWER COMPANY
P–2531, 020, CENTRAL MAINE POWER COMPANY

CAH–6.
DOCKET# P–2527, 002, CENTRAL MAINE POWER COMPANY

CAH–7.
DOCKET# P–2529, 005, CENTRAL MAINE POWER COMPANY

CAH–8.
OMITTED

CONSENT AGENDA—ELECTRIC

CAE–1.
DOCKET# ER98–6, 000, NEW ENGLAND POWER COMPANY, NARRAGANSETT ELECTRIC COMPANY, ALLENERGY MARKETING COMPANY, L.L.C. AND USGEN NEW ENGLAND, INC.
OTHER#S EC98–1, 000, NEW ENGLAND POWER COMPANY, NARRAGANSETT ELECTRIC COMPANY, ALLENERGY MARKETING COMPANY, L.L.C. AND USGEN NEW ENGLAND, INC.

CAE–2.
DOCKET# ER98–990, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
OTHER#S ER98–991, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–992, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–994, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–995, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–996 ,000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–997, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–998, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–999, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1000, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1001, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1002, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1003, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1004, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1005, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

ER98–1006, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1007, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1008, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1009, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1010, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1011, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1012, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1013, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1014, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1015, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1016, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1017, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1018, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1020, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1021, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1028, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1029, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1030, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1032, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1057, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1058, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1261, 000, SOUTHERN CALIFORNIA EDISON COMPANY
ER98–1309, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1310, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1311, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1313, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

CAE–3.
DOCKET# ER98–1267, 000, NEW YORK STATE ELECTRIC & GAS CORPORATION

CAE–4.
DOCKET# ER98–1278, 000, WKE STATION TWO INC.
OTHER#S ER98–1279, 000, WESTERN KENTUCKY ENERGY CORPORATION

CAE–5.
OMITTED

CAE–6.
DOCKET# OA96–198, 002, CAROLINA POWER & LIGHT COMPANY
OTHER#S OA96–74, 002, NEW ENGLAND POWER COMPANY
OA96–138, 003, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
OA96–158, 001, ENTERGY SERVICES, INC.
OA96–204, 002, CLEVELAND ELECTRIC ILLUMINATING COMPANY AND TOLEDO EDISON COMPANY

CAE–7.
DOCKET# ER97–3057, 002, FLORIDA POWER CORPORATION

CAE–8.
DOCKET# OA96–177, 001, JACKSONVILLE ELECTRIC AUTHORITY

CAE–9.
DOCKET# ER96–2438, 001, NEW YORK STATE ELECTRIC & GAS CORPORATION
OTHER#S OA96–195, 004, NEW YORK STATE ELECTRIC & GAS CORPORATION

CAE–10.
DOCKET# EC97–19, 001, LONG ISLAND LIGHTING COMPANY

CAE–11.
DOCKET# EL97–59, 000, OKLAHOMA MUNICIPAL POWER AUTHORITY V. PUBLIC SERVICE COMPANY OF OKLAHOMA AND CENTRAL AND SOUTH WEST SERVICES INC.

CAE–12.
DOCKET# EL97–31, 000, ENTERGY SERVICES, INC.

CAE–13.
DOCKET# OA97–105, 000, CAROLINA POWER & LIGHT COMPANY
OTHER#S OA97–184, 000, THE DETROIT EDISON COMPANY
OA97–280, 000, KANSAS CITY POWER & LIGHT COMPANY
OA97–287, 000, CENTRAL POWER AND LIGHT COMPANY, PUBLIC SERVICE COMPANY OF OKLAHOMA, SOUTHWESTERN ELECTRIC POWER COMPANY AND WEST TEXAS UTILITIES COMPANY
OA97–318, 000, WISCONSIN POWER & LIGHT COMPANY
OA97–407, 000, DUQUESNE LIGHT COMPANY
OA97–421, 000, INTERSTATE POWER COMPANY
OA97–432, 000, CENTRAL LOUISIANA ELECTRIC COMPANY, INC.
OA97–433, 000 ,PUBLIC SERVICE COMPANY OF NEW MEXICO
OA97–446, 000, UTILICORP UNITED, INC.
OA97–458, 000, ENTERGY SERVICES, INC., ENTERGY ARKANSAS, INC., ENTERGY GULF STATES, INC. AND ENTERGY LOUISIANA, INC. ET AL.
OA97–464, 000, SIERRA PACIFIC POWER COMPANY
OA97–512, 000, TEXAS-NEW MEXICO POWER COMPANY
OA97–520, 000, CITIZENS UTILITIES COMPANY
OA97–610, 000, CITIZENS UTILITIES COMPANY
OA97–720, 000, PUBLIC SERVICE COMPANY OF NEW MEXICO

CONSENT AGENDA—GAS AND OIL

CAG–1.
DOCKET# GT98–13, 000, TENNESSEE GAS PIPELINE COMPANY

CAG–2.
DOCKET# RP98–91, 001, CNG TRANSMISSION CORPORATION
OTHER#S RP97–406, 005, CNG TRANSMISSION CORPORATION
RP97–406, 009, CNG TRANSMISSION CORPORATION
RP98–91, 002, CNG TRANSMISSION CORPORATION
RP98–103, 001, CNG TRANSMISSION CORPORATION

CAG–3.
DOCKET# RP98–99, 000, TENNESSEE GAS PIPELINE COMPANY

CAG–4.
DOCKET# RP98–122, 000, NORAM GAS TRANSMISSION COMPANY

CAG–5.
DOCKET# RP96–367, 008, NORTHWEST PIPELINE CORPORATION

CAG–6.
DOCKET# RP97–287, 012, EL PASO NATURAL GAS COMPANY

CAG–7.
DOCKET# RP98–85, 000, NORAM GAS TRANSMISSION COMPANY

CAG–8.
DOCKET# RP98–117, 000, K N INTERSTATE GAS TRANSMISSION COMPANY
OTHER#S RP98–90, 001, K N INTERSTATE GAS TRANSMISSION COMPANY

CAG–9.
DOCKET# RP98–121, 000, PANHANDLE EASTERN PIPE LINE COMPANY

CAG–10.
DOCKET# RP98–127, 000, NORTHERN NATURAL GAS COMPANY

CAG–11.
DOCKET# CP88–391, 021, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S CP88–391, 022, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
RP93–162, 006, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
RP93–162, 007, TRANSCONTINENTAL GAS PIPE LINE CORPORATION

CAG–12.
DOCKET# RP97–392, 000, NATIONAL FUEL GAS SUPPLY CORPORATION
OTHER#S RP97–392, 001, NATIONAL FUEL GAS SUPPLY CORPORATION

CAG–13.
DOCKET# RP93–206, 017, NORTHERN NATURAL GAS COMPANY

OTHER#S RP96–347, 008, NORTHERN NATURAL GAS COMPANY
RP96–347, 010, NORTHERN NATURAL GAS COMPANY
CAG–14.
DOCKET# RP97–258, 005, WILLIAMS NATURAL GAS COMPANY
OTHER#S RP97–454, 001, WILLIAMS NATURAL GAS COMPANY
CAG–15.
OMITTED
CAG–16.
OMITTED
CAG–17.
DOCKET# RP96–190, 008, COLORADO INTERSTATE GAS COMPANY
CAG–18.
DOCKET# RP95–167, 007, INDICATED SHIPPERS V. SEA ROBIN PIPELINE COMPANY
CAG–19.
DOCKET# RP97–346, 014, EQUITRANS, INC.
OTHER#S RP93–187, 015, EQUITRANS, INC.
RP98–123, 000, EQUITRANS, L.P.
RP98–123, 001, EQUITRANS, L.P.
RP98–123, 002, EQUITRANS, L.P.
TM97–3–24, 004, EQUITRANS, INC.
CAG–20.
OMITTED
CAG–21.
OMITTED
CAG–22.
DOCKET# RP98–55, 001, TRANSWESTERN PIPELINE COMPANY
OTHER#S RP98–55, 002, TRANSWESTERN PIPELINE COMPANY
CAG–23.
DOCKET# RP97–126, 004, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
CAG–24.
DOCKET# RP97–291, 003, PANHANDLE EASTERN PIPE LINE COMPANY
OTHER#S RP97–291, 005, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–25.
DOCKET# RP96–345, 002, TENNESSEE GAS PIPELINE COMPANY
CAG–26.
DOCKET# IN97–1, 000, QUESTAR PIPELINE COMPANY
CAG–27.
DOCKET# RP97–320, 000, JOINT PARTIES V. NORTHWEST PIPELINE CORPORATION
CAG–28.
DOCKET# RP98–39, 002, NORTHERN NATURAL GAS COMPANY
OTHER#S RP98–38, 001, NATURAL GAS PIPELINE COMPANY OF AMERICA
RP98–40, 002, PANHANDLE EASTERN PIPE LINE COMPANY
RP98–42, 001, ANR PIPELINE COMPANY
RP98–43, 001, ANADARKO GATHERING COMPANY
RP98–44, 001, EL PASO NATURAL GAS COMPANY
RP98–52, 002, WILLIAMS NATURAL GAS COMPANY
RP98–53, 002, KN INTERSTATE GAS TRANSMISSION COMPANY
RP98–54, 002, COLORADO INTERSTATE GAS COMPANY
CAG–29.
DOCKET# GP97–7, 000, PLAINS PETROLEUM COMPANY AND PLAINS PETROLEUM OPERATING COMPANY
CAG–30.
DOCKET# GP91–8, 008, JACK J. GRYNBERG, ET AL. V. ROCKY MOUNTAIN NATURAL GAS COMPANY, A DIVISION OF K N ENERGY, INC.
OTHER#S GP91–10, 008, ROCKY MOUNTAIN NATURAL GAS COMPANY V. JACK J. GRYNBERG, ET AL.
CAG–31.
DOCKET# GP97–1, 002, ROCKY MOUNTAIN NATURAL GAS COMPANY
CAG–32.
DOCKET# CP96–342, 001, NORAM GAS TRANSMISSION COMPANY
CAG–33.
DOCKET# CP97–26, 001, TRUNKLINE LNG COMPANY
CAG–34.
DOCKET# CP97–156, 001, HOPKINTON LNG CORP.
CAG–35.
DOCKET# CP98–74, 000, ANR PIPELINE COMPANY V. TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–36.
DOCKET# CP97–350, 000, COPANO FIELD SERVICES/COPANO BAY, L.P.
OTHER#S CP97–362, 000, FLORIDA GAS TRANSMISSION COMPANY
CP97–362, 001, FLORIDA GAS TRANSMISSION COMPANY
CAG–37.
DOCKET# CP97–279, 002, WARREN TRANSPORTATION, INC.
OTHER#S CP97–280, 001, WARREN TRANSPORTATION, INC.
CP97–281, 001, WARREN TRANSPORTATION, INC.
CAG–38.
DOCKET# CP98–150, 000, MILLENNIUM PIPELINE COMPANY, L.P.
OTHER#S CP98–154, 000, MILLENNIUM PIPELINE COMPANY, L.P.
CP98–155, 000, MILLENNIUM PIPELINE COMPANY, L.P.
CP98–156, 000, MILLENNIUM PIPELINE COMPANY, L.P.

HYDRO AGENDA

H–1.
RESERVED

ELECTRIC AGENDA

E–1.
RESERVED

OIL AND GAS AGENDA

I.
PIPELINE RATE MATTERS
PR–1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4686 Filed 2–19–98; 2:38 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5970–3]

California State Motor Vehicles Pollution Control Standards; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and public comment period.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has promulgated regulations related to onboard refueling vapor recovery (ORVR) standards and testing procedures, and amendments to the California evaporative emission test procedures. By letter dated, July 22, 1997, California requested EPA to grant a waiver of Federal preemption for the ORVR regulations and to confirm that the evaporative emission test procedure amendments fall within the scope of a currently pending section 209(b) waiver request, pursuant to section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b). This notice announces that EPA has tentatively scheduled a public hearing for March 18, 1998, to consider CARB's request and to hear comments from the general public concerning CARB's request.

DATES: EPA has tentatively scheduled a public hearing for March 18, 1998 beginning at 1:00 p.m. Any person who wishes to testify on the record at the hearing must notify EPA by March 9, 1998 that it wishes to present oral testimony regarding CARB's requests. If EPA receives one or more requests to testify on the pending request, a hearing will be held. If no one notifies EPA that they wish to testify, no hearing will be held. By March 11, 1998 any person who plans to attend the hearing should call Mr. David Dickinson of EPA's Vehicle Programs and Compliance Division at (202) 564–9256 to determine if a hearing will be held. Regardless of whether or not a hearing is held, any party may submit written comments regarding CARB's request and will be accepted through April 16, 1998.

ADDRESSES: If EPA receives a request for a public hearing, EPA will hold the public hearing announced in this notice in the first floor conference room at 501 3rd Street, NW., Washington, D.C. Parties wishing to present oral testimony at the public hearing should provide written notice to Mr. Dickinson, Group Manager, Vehicles Programs and Compliance Division, 401 M St., S.W. (6405J), Washington, DC 20460. In addition, written comments regarding

the waiver request should be sent, in duplicate, to Mr. Dickinson at the address noted above. Copies of material relevant to the waiver request (Docket No. A–97–38) will be available for public inspection during the working hours of 8:00 a.m. to 5:30 p.m. Monday through Friday, at the U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, Room M1500, First Floor Waterside Mall, 401 M St., S.W., Washington, DC 20460, Telephone: (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Mr. David Dickinson, Group Manager, Vehicles Programs and Compliance Division, U.S. Environmental Protection Agency, 401 M St., S.W. (6405J), Washington, DC 20460. Telephone: (202) 564–9256. E-Mail address: Dickinson.David@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

Section 209(a) of the Act as amended, 42 U.S.C. 7543(a), provides in part: "No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part * * * [or] require certification, inspection, or any other approval relating to the control of emissions * * * as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment."

The State of California may be exempted from the prohibitions of section 209(a) of the Act. Section 209(b) of the Act provides in part that the Administrator shall, after notice and opportunity for public hearing, waive application of the prohibitions of section 209(a) for California "if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that—(A) the determination of the State is arbitrary and capricious, (B) [California] does not need such * * * standards to meet compelling and extraordinary conditions, or (C) [its] standards and accompanying enforcement procedures are not consistent with section 202(a) of (the Act)."

As previous decisions granting waivers of federal preemption have explained, State standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology given the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification requirements.

With regard to enforcement procedures accompanying standards, I must grant the requested waiver unless I find that these procedures may cause the California standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards promulgated pursuant to section 202(a), or unless the California and Federal certification test procedures are inconsistent.

Once California has been granted a waiver of the application of the prohibitions of section 209(a) for its standards and accompanying enforcement procedures for a class of vehicles, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject class of vehicles without the necessity of receiving further waiver of Federal preemption.

By letter dated July 22, 1997, CARB submitted to EPA a request for waiver of Federal preemption for its regulations that set forth onboard refueling vapor recovery (ORVR) standards and test procedures. In addition, CARB requested EPA to confirm that amendments to CARB's evaporative emission test procedures fall within the scope of a pending waiver request before EPA.

The ORVR requirements adopted by CARB are nearly identical to the Federal ORVR standards and test procedures. EPA published its final ORVR rule on April 6, 1994 (59 FR 16296), and both the CARB and EPA emission standard is the same—0.20 grams hydrocarbon (Organic Material Hydrocarbon Equivalent, or OMHCE, for alcohol fuels) per gallon of fuel dispensed. Both CARB and EPA ORVR regulations apply to all gasoline-, diesel-, and alcohol-fueled vehicles in the California vehicle classes of passenger cars, light-duty trucks, and medium-duty vehicles with a gross vehicle weight rating (GVWR) of 8,500 lbs. or less. CARB's regulation incorporates the federal preconditioning and sequencing provisions for integrated and non-integrated ORVR systems. The state regulation also incorporates the federal refueling steps that are common to both integrated and non-integrated systems: (a) Disconnect the vapor line from the fuel tank to the canister, (b) drain the fuel tank, (c) refuel with test fuel to 10 percent of the nominal tank capacity, (d) soak the vehicle for six to 24 hours at 80°F (±3°F), (e) reconnect the vapor line, and (f) refuel the vehicle with test fuel at a rate of 9.8 (±0.3) gallons per minute at 67°F (±1.5°F) in a sealed enclosure while measuring emissions (fueling is terminated at automatic shut-off after at least 85 percent of the nominal tank capacity has been dispensed). In addition CARB's ORVR regulations incorporate by reference the federal test procedures for ORVR, with some variances associated with fuel specifications for methanol, ethanol, liquefied petroleum, gas (LPG) and natural gas, and that a provision on preconditioning hybrid electric vehicles has been added. CARB's ORVR regulations also require manufacturers to meet the same ORVR phase-in schedule as that adopted by EPA. As noted above EPA published its final ORVR rule on April 6, 1994, which includes standards and test procedures for determining compliance with the standards. (59 FR 16296.) The federal and CARB ORVR compliance schedule requires that 40 percent of a manufacturer's 1998 model-year passenger cars be certified to the ORVR standard, followed by 80 percent in the 1999 model year and 100 percent in the 2000 model year. The same three-year implementation schedule applies to light-duty trucks starting with the 2001 model year, and applies to medium-duty vehicles of 6,001–8,500 lbs. GVWR starting with the 2004 model year. Passenger cars produced by small volume manufacturers are not subject to the ORVR requirements until the 2000 model year, when 100 percent compliance is required.

CARB's adopted amendments to the enhanced evaporative emission test procedures fall into two categories. First, in order to facilitate the testing of vehicles with ORVR systems, CARB's amendments allow for the preconditioning of integrated and non-integrated evaporative/refueling canisters. Second, the amendments further align California test procedures with the federal test procedures.

California states in its July 22, 1997 letter, that it has determined that its ORVR standards and test procedures are, in the aggregate, at least as protective of the public health and welfare as the applicable federal standards. Further, California states that it continues to need separate standards to meet compelling and extraordinary conditions. Finally, California states that its amendments are consistent with section 202(a) of the Act. With regard to amendments to its evaporative emission test procedures to which CARB seeks a within the scope determination, California states nothing within its amendments undermines prior protectiveness determinations and that its requirements continues to be consistent with section 202(a) of the

Act. Finally, CARB states that it is not aware of any new issues raised by the amendments which would affect the pending evaporative emission waiver request pending before EPA.

California's request, with regard to the ORVR standards and test procedures, will be considered according to the procedures for a waiver determination, thus an opportunity for a public hearing is being provided. Any party wishing to present testimony at the hearing and/or to submit written comments should address the following issues:

(1) Whether California's determination that its standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious;

(2) Whether California needs separate standards to meet compelling and extraordinary conditions; and,

(3) Whether California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

California's request, with regard to the amendments to the evaporative emission test procedures, will be considered by EPA as a within the scope request. Thus, EPA plans to review whether CARB's amendments have undermined its protectiveness determination or whether CARB's amendments have caused its evaporative emission standards and test procedures to be inconsistent with section 202(a) or has raised any new issues with regard the previous waiver granted by EPA for such standards or test procedures. EPA is currently reviewing a request for waiver of federal preemption for California's evaporative emission standards and test procedures for the 1996–1998 model years. EPA plans to issue its waiver decision with regard to CARB's pending waiver request (see EPA Air Docket A–95–39, 60 FR 9185 (February 28, 1997)) and shall either include its review of CARB's recently adopted amendments within such decision or EPA shall include such review with the waiver decision associated with the present ORVR waiver request. Any party wishing to present testimony at the hearing and/or to submit written comments on CARB's amendments to evaporative emission test procedures should address the same criteria as that for the ORVR waiver request noted above and may also comment on the appropriate location (within the waiver decision that EPA will issue for the ORVR waiver request or the waiver decision associated with CARB's pending evaporative emission standards and test procedure waiver request) for EPA's review of CARB's amendments.

II. Procedures for Public Participation

Any party desiring to make an oral statement on the record should submit ten (10) copies, if feasible, of its proposed testimony and other relevant material to Mr. Dickinson of EPA's Vehicles Programs and Compliance Division at the address listed above not later than March 11, 1998. In addition, the party should submit 25 copies, if feasible, of the planned statement to the presiding officer at the time of the hearing.

In recognition that a public hearing is designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements which he or she deems irrelevant or repetitious and to impose reasonable limits on the duration of the statement of any participant.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until April 16, 1998. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, if any, relevant written submissions and other information which she deems pertinent.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as "Confidential Business Information" (CBI). If a person making comments wants EPA to base its waiver decision in part on a submission labeled as CBI, then a nonconfidential version of the document which summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the person making comments.

Dated: February 18, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–4655 Filed 2–23–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140265; FRL–5771–5]

Access to Confidential Business Information by Chemical Abstract Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Chemical Abstract Services (CAS) and its subcontractor, TMC MICROIMAGE (TMC), both of Columbus, Ohio, access to information which has been submitted to EPA under sections 5 and 8(b) of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than March 6, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–W5–0015, contractor CAS, of 2540 Olentangy River Road, and its subcontractor TMC MICROIMAGE, of 2709 Sawbury Boulevard, Columbus, OH, will assist the Office of Pollution Prevention and Toxics (OPPTS) in microfilming and processing of TSCA CBI materials.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W5–0015, CAS and TMC will require access to CBI submitted to EPA under sections 5 and 8(b) of TSCA to perform successfully the duties specified under the contract (microfilming and providing a permanent storage medium for the confidential data). CAS and TMC personnel will be given access to information submitted to EPA under sections 5 and 8(b) of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the Federal Register of July 25, 1996 (61 FR 38728) (FRL–5386–2), CAS and TMC were authorized access to CBI submitted to EPA under sections 5 and 8 (b) of TSCA.

EPA is issuing this notice to inform all submitters of information under sections 5 and 8 (b) of TSCA that EPA may provide CAS and TMC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place either at CAS' Columbus, Ohio facility or the subcontractor may take TSCA CBI materials to its facility for the purpose of microfilming, provided that the transfer of materials is done so only under the direct supervision of a CAS official authorized for TSCA CBI access and that all TSCA CBI materials be returned daily to CAS' facility.

CAS and TMC will be authorized access to TSCA CBI at their facilities under the EPA *TSCA Confidential Business Information Security Manual.* Before access to TSCA CBI is authorized at CAS' site, EPA will perform the required inspection of its facility and ensure that the facility is in compliance with the manual. Upon completing review of the CBI materials, CAS will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until April 7, 1998.

CAS and TMC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: February 11, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–4656 Filed 2–23–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5970–2]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Call Sandy Farmer at (202) 260–2740, or E-mail at "farmer.sandy@epamail.epa.gov", and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 0309.09; Registration of Fuels and Fuel Additives: Requirements for Manufacturers; was approved 01/17/98; OMB No. 2060–0150; expires 06/30/2000.

EPA ICR No. 0916.08; Annual Updates of Emission Data to the Aerometic Information Retrieval System (AIRS); was approved 01/17/98; OMB No. 2060–0088; expires 01/31/2001.

EPA ICR No. 1071.06; NSPS for Stationary Gas Turbines, Information Requirements—Subpart GG; was approved 01/30/98; OMB No. 2060–0028; expires 01/31/2001.

EPA ICR No. 1716.02; 40 CFR part 63, subpart JJ, Final Standards for Hazardous Air Pollutions from Wood Furniture Manufacturing Operations; was approved 02/04/98; OMB No. 2060–0324; expires 02/28/2001.

EPA ICR No. 1658.02; Regulations Governing Constructed or Reconstructed Major Sources; was approved 02/02/98; OMB No. 2060–0373; expires 02/28/2001.

Extension of Expiration Dates

EPA ICR No. 1727.01; Evaluation of Mandated Drinking Water Filtration and its Effects on Community Health; OMB No. 2080–0050; expiration date was extended from 01/31/98 to 07/31/98.

EPA ICR No. 0559.05; Application for Reference or Equivalent Method Determination; OMB No. 2080–0005; expiration date was extended from 01/31/98 to 05/31/98.

EPA ICR No. 1463.03; National Oil and Hazardous Substances Pollution Contingency Plan (NCP); OMB No. 2050–0096; expiration date was extended from 01/31/98 to 04/30/98.

EPA ICR No. 1808.01; Environmental Impact Assessment of Nongovernmental Activities in Antarctica; OMB No. 2060–0028; expiration date was extended from 02/28/98 to 08/31/98.

EPA ICR No. 1696.01; Fuels and Fuel Additives Registration Regulations; OMB No. 2060–0297; expiration date was extended from 01/31/98 to 04/30/98.

EPA ICR No. 1702.01; Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; OMB No. 2060–0302; expiration date was extended from 01/31/98 to 04/30/98.

Dated: February 18, 1998.

Joseph Retzer,

Division Director, Regulatory Information Division.

[FR Doc. 98–4653 Filed 2–23–98; 8:45 am]

BILLING CODE 6560–50–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Committee of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Committee of Advisors on Science and Technology (PCAST), and describes the functions of the Committee. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES AND PLACE: March 5 and 6, 1998. The White House Conference Center, Truman Room, Third Floor, 726 Jackson Place NW, Washington, DC 20500.

TYPE OF MEETING: Open.

PROPOSED SCHEDULE AND AGENDA: The President's Committee of Advisors on Science and Technology (PCAST) will meet in open session on Thursday, March 5 at approximately 9 am, and on Friday, March 6, at approximately 9 am to discuss PCAST Panels, the federal budget, science policy and energy/environment, and the 1998 PCAST agenda setting. This session on March 5 will end at approximately 5 pm; the session on March 6, will end at approximately Noon.

PUBLIC COMMENTS: There will be a time allocated for the public to speak on any of the above agenda items. We request that you notify us of the topic that you would like to address at the PCAST meeting at least five (5) days in advance of the meeting. Please notify Yolanda Comedy on 202–456–6100 or fax your requests/comments to 202–456–6026.

FOR FURTHER INFORMATION: For information regarding time, place, and agenda please call Yolanda Comedy at

(202) 456–6005. Please note that public seating for this meeting is limited, and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Committee of Advisors on Science and Technology was established by Executive Order 12882, as amended, on November 23, 1993. The purpose of PCAST is to advise the President on matters of national importance that have significant science and technology content, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Committee members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by John H. Gibbons, Assistant to the President for Science and Technology, and by John Young, former President and CEO of the Hewlett-Packard Company.

Dated: February 19, 1998.

Barbara Ann Ferguson,

Administrative Officer, Office of Science and Technology Policy.

[FR Doc. 98–4722 Filed 2–20–98; 9:27 am]

BILLING CODE 3170–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

February 18, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 26, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0173.

Title: Section 73.1207, Rebroadcasts.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 5,562.

Estimated Time Per Response: 0.5 hours.

Frequency of Response: Recordkeeping requirement and third party disclosure requirement.

Cost to Respondents: N/A.

Total Annual Burden: 5,056 hours.

Needs and Uses: Section 73.1207 requires that licensees of broadcast stations obtain written permission from an originating station prior to retransmitting any program or any part thereof. A copy of the written consent must be kept in the station's files and made available to the FCC upon request. Section 73.1207 also requires stations who use the National Bureau of Standards ("NBS") time signals to notify the NBS semi-annually of use of time signals. The written consent assures the Commission that prior authorization for retransmission of a program was obtained.

OMB Control No.: 3060–XXXX.

Title: Computer III Further Remand Proceedings: BOC Provision of Enhanced Services (ONA Requirements), CC Docket No. 95–20.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 5. Total annual responses—10.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion reporting requirement; semi-annual reporting requirement.

Cost to Respondents: N/A.

Total Annual Burden: 20 hours.

Needs and Uses: In addition to seeking comment on a variety of Computer III and ONA rules, the Further Notice of Proposed Rulemaking (FNPRM) in CC Docket 95–20, tentatively concludes that the Commission should eliminate the requirement that the BOCs file Comparably Efficient Interconnection (CEI) plans and obtain Bureau approval for those plans prior to providing new intraLATA information services. Also, the Commission proposes allowing the BOCs to consolidate into one filing or posting all generic information they currently submit in their semi-annual reports.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–4648 Filed 2–23–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FCC 98–22]

Amended Notice; Commission To Hold En Banc February 19, 1998 in Connection With Report to Congress on Universal Service

February 18, 1998.

The prompt and orderly conduct of the Commission business requires that notice of this en banc meeting be given within less than 7 days notice.

The Federal Communications Commission will hold an En Banc on Thursday, February 19, 1998, from 2:00 p.m. to 4:00 p.m., in Room 856 at 1919 M Street, N.W., Washington, D.C. The En Banc is in connection with the Report to Congress on Universal Service required by statute.

The 1998 appropriations legislation for the Departments of Commerce, Justice, and State, Public Law 105–119, directs the Commission to undertake a review of the implementation of the provisions of the Telecommunications Act of 1996 (1996 Act) relating to universal service, and to submit a report to Congress no later than April 10, 1998.

At the En Banc, the Commission will hear from panels of experts addressing issues regarding various definitions in the 1996 Act, as well as the payment and receipt of Universal Service contributions by information service providers and telecommunications carriers.

The En Banc is open to the public, and seating will be available on a first come, first served basis. A transcript of the En Banc will be available 10 days after the event on the FCC's Internet site. The URL address for the FCC's Internet Home Page is <http://www.fcc.gov>.

The En Banc will also be carried live on the Internet. Internet users may listen to the real-time audio feed of the En Banc by accessing the FCC Internet Audio Broadcast Home Page. Step-by-step instructions on how to listen to the audio broadcast, as well as information regarding the equipment and software needed, are available on the FCC Internet Audio Broadcast Home Page. The URL address for this home page is http://www.fcc.gov/realaudio/.

News Media Contact: Rochelle Cohen (202) 418–0253.

Report Working Group Contacts: Melissa Waksman (202) 418–1580; Marcelino Ford-Livene (202) 418–2030.

Action by the Commission on February 18, 1998, Chairman Kennard and Commissioners Ness, Furchtgott-Roth, Powell, and Tristani voting to consider this item.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–4649 Filed 2–23–98; 8:45 am]

BILLING CODE 6712–01–M

Item No.	Bureau	Subject
2	Mass Media	*Title:* 1998 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996. *Summary:* The Commission will review its broadcast ownership rules as part of the regulatory reform review adopted by the Telecommunications Act of 1996.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–4647 Filed 2–19–98; 12:03 pm]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

[Notice 1998–7]

Filing Dates for the California Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: California has scheduled a special election on April 7, 1998, to fill the U.S. House seat in the Ninth Congressional District vacated by Congressman Ronald Dellums. Should no candidate achieve a minority vote, a Special Runoff Election will be held on June 2, 1998, among the top vote-getters of each qualified political party, including qualified independent candidates.

Committees required to file reports in connection with the Special General Election on April 7 should file a 12-day Pre-General Election Report on March 26, 1998. Committees required to file reports in connection with both the Special General and Special Runoff Election must file a 12-day Pre-General Election Report on March 26, an April Quarterly Report on April 15, a Pre-Runoff Report on May 21, and a consolidated Post-Runoff & July Quarterly Report on July 15, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Information Division, 999 E Street, N.W., Washington, DC 20463, Telephone: (202) 219–3420; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates who participate in the California Special General and Special Runoff Elections and all other political committees not filing monthly which support candidates in these elections shall file a 12-day Pre-General Report on March 26, 1998, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through March 18, 1998; an April Quarterly Report on April 15, 1998, with coverage dates from March 19 through March 31, 1998; a Pre-Runoff Report on May 21, 1998, with coverage dates from April 1 through May 13, 1998; and a consolidated Post-Runoff & July Quarterly Report on July 15, 1998, with coverage dates from May 14 through June 30, 1998.

All principal campaign committees of candidates in the Special General Election *only* and all other political committees not filing monthly which support candidates in the Special General Election shall file a 12-day Pre-General Report on March 26, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through March 18; an April Quarterly Report on April 15, with coverage dates from March 19 through March 31; and a Post-General Report on May 7, with coverage dates from April 1 through April 27, 1998.

All political committees not filing monthly which support candidates in the Special Runoff *only* shall file a 12-day Pre-Runoff Report on May 21, with coverage dates from the last report filed or the date of the committee's first activity, whichever is later, through May 13, and a consolidated Post-Runoff & July Quarterly Report on July 15, with coverage dates from May 14 through June 30, 1998.

CALENDAR OF REPORTING DATES FOR CALIFORNIA SPECIAL ELECTION

Report	Close of books [1]	Reg./cert. mailing date [2]	Filing date
If only the Special General is held (04/07/98), Committees must file:			
Pre-General	03/18/98	03/23/98	03/26/98
April Quarterly	03/31/98	04/15/98	04/15/98

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

February 18, 1998.

Deletion of Agenda Item From February 19th Open Meeting

The following item has been deleted from the list of agenda items scheduled for consideration at the February 19, 1998, Open Meeting and previously listed in the Commission's Notice of February 12, 1998.

CALENDAR OF REPORTING DATES FOR CALIFORNIA SPECIAL ELECTION—Continued

Report	Close of books [1]	Reg./cert. mailing date [2]	Filing date
Post-General	04/27/98	05/07/98	05/07/98
If two elections are held, but a Committee is involved only in the Special General (04/07/98):			
Pre-General	03/18/98	03/23/98	03/26/98
April Quarterly	03/31/98	04/15/98	04/15/98
Committees involved in the Special General (04/07/98) and Special Runoff (06/02/98) must file:			
Pre-General	03/18/98	03/23/98	03/26/98
April Quarterly	03/31/98	04/15/98	04/15/98
Pre-Runoff	05/13/98	05/18/98	05/21/98
Post-Runoff and July Quarterly [3]	06/30/98	07/15/98	07/15/98
Committees involved in the Special Runoff (06/02/98) only must file:			
Pre-Runoff	05/13/98	05/18/98	05/21/98
Post-Runoff and July Quarterly [3]	06/30/98	07/15/98	07/15/98

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.
[2] Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.
[3] Committees should file a consolidated Post-Runoff and July Quarterly Report by the filing date of the July Quarterly Report.

Dated: February 19, 1998.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 98–4628 Filed 2–23–98; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 10, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Gus Rusher, Brinkley, Arkansas (as General Partner), to retain, and Gus Rusher Family Limited Partnership, Brinkley, Arkansas; to acquire, voting shares of Brinkley Bancshares, Inc., Brinkley, Arkansas, and thereby indirectly acquire Bank of Brinkley, Brinkley, Arkansas.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Patrick A. Brooks, Paula Brooks, Stacey Brooks, Shelley Brooks, Nancy L. Smith, all of Chickasha, Oklahoma; Bruce Murray, and Joyce Murray, both of Redmond, Washington; and Stephanie Brooks Connel, Abilene, Texas; to acquire voting shares of First Independent Bancorp, Inc., Chickasha, Oklahoma, and thereby indirectly acquire First National Bank & Trust Company, Chickasha, Oklahoma.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Y.C. and Ya-Chen Yang, San Francisco, California; John and Betty Yang, San Francisco, California; Stephen and Virginia Yang, Los Altos, California; and Paul and Alice Yang, Los Angeles, California, all acting in concert; to retain voting shares of National American Bancorp, San Francisco, California, and thereby indirectly retain National American Bank, San Francisco, California.

Board of Governors of the Federal Reserve System, February 18, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4584 Filed 2–23–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 20, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. First Midwest Bancorp, Itasca, Illinois; to acquire 100 percent of the voting shares of Heritage Financial Services, Inc., Tinley Park, Illinois, and thereby indirectly acquire Heritage Bank, Blue Island, Illinois.

In connection with this application, Applicant also has applied to acquire Heritage Trust Company, Tinley Park, Illinois, and thereby engage in

performing trust company operations, pursuant to § 225.28(b)(5) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. BancFirst Corporation, Oklahoma City, Oklahoma; to acquire 100 percent of the voting shares of Lawton Security Bancshares, Inc., Lawton, Oklahoma; and thereby indirectly acquire Security Bank & Trust Company, Lawton, Oklahoma.

Board of Governors of the Federal Reserve System, February 18, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4582 Filed 2-23-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 20, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Kanbanc, Inc., Overland Park, Kansas; to acquire 54.94 percent of the voting shares of State Bank of Colony, Colony, Kansas.

Board of Governors of the Federal Reserve System, February 19, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4697 Filed 2–23–98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 10, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Union Bank of Switzerland, Zurich, Switzerland ("UBS") and UBS AG, Zurich, Switzerland ("New UBS"); to acquire Swiss Bank Corporation, Basle, Switzerland ("SBC"), and thereby acquire its subsidiaries and engage worldwide in certain nonbanking activities. Under the proposed transaction, SBC would merge into New UBS, which currently is a subsidiary of UBS. Shortly thereafter, UBS would merge into New UBS and New UBS would acquire the nonbanking subsidiaries of UBS. The nonbanking activities and companies involved in the transaction are listed in the notice. UBS, through various subsidiaries, currently conducts certain nonbanking activities in the United States, including underwriting and dealing in equity and debt securities that a state member bank may not underwrite and deal in ("bank-ineligible securities"), pursuant to grandfather rights established by section 8(c) of the International Banking Act of 1978 (IBA) (12 U.S.C. § 3106(c)). Following consummation of the proposed transaction with SBC, UBS and New UBS propose to transfer certain nonbanking activities currently conducted by subsidiaries of UBS operating pursuant to the grandfather rights established by section 8(c) of the IBA to subsidiaries that would operate pursuant to section 4(c)(8) of the Bank Holding Company (BHC) Act, and thereby engage in such activities worldwide pursuant to section 4(c)(8) of the BHC Act and the Board's Regulation Y.

In connection with the transactions described above, UBS and New UBS propose to engage in or acquire companies engaged in nonbanking activities including: (a) making, acquiring, or servicing loans or other extensions of credit pursuant to § 225.28(b)(1) of the Board's Regulation Y; (b) activities related to making, acquiring, brokering or servicing loans or other extensions of credit pursuant to § 225.28(b)(2) of the Board's Regulation Y, including acquiring debt that is in default at the time of acquisition; (c) leasing personal or real property or acting as agent, broker, or adviser in leasing such property pursuant to § 225.28(b)(3) of the Board's Regulation Y; (d) performing functions or activities that may be performed by a trust company pursuant to § 225.28(b)(5) of the Board's Regulation Y; (e) providing financial and investment advisory services pursuant to § 225.28(b)(6) of the Board's Regulation Y; (f) providing securities brokerage, riskless principal, private placement, futures commission merchant and other agency transactional services pursuant to § 225.28(b)(7) of the Board's Regulation Y; (g) underwriting and dealing in government obligations and other obligations that state member banks may underwrite and deal in ("bank-eligible securities"), engaging in investment and trading activities, and buying and selling bullion and related activities pursuant to § 225.28(b)(8) of the Board's Regulation Y and *Swiss Bank Corporation*, 81 Fed. Res. Bull. 185 (1995); (h) engaging in community development activities pursuant to § 225.28(b)(12) of the Board's Regulation

Y; (i) serving as general partner of certain private investment limited partnerships in accordance with the BHC Act and the Board's decisions and interpretations thereunder, *see Meridian Bancorp, Inc.*, 80 Fed. Res. Bull. 736 (1994); and (j) underwriting and dealing in, to a limited extent, all types of bank-ineligible securities, except ownership interests in open-end investment companies, *see Canadian Imperial Bank of Commerce*, 76 Fed. Res. Bull. 158 (1990) and *J.P. Morgan & Co., Inc.*, 75 Fed. Res. Bull. 192 (1989).

Board of Governors of the Federal Reserve System, February 18, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4585 Filed 2-23-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 11, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. First Chicago NBD Corporation, Chicago, Illinois; to acquire Roney & Co., L.L.C., Detroit, Michigan ("Roney"), and thereby engage in financial advisory activities, debt and equity securities underwriting activities, and debt and equity placement activities, and retail brokerage, pursuant to §§ 225.28(b)(6) and (b)(7) of the Board's Regulation Y, and *J.P. Morgan & Co. Inc.*, 75 Fed. Res. Bull. 92 (1989). First Chicago NBD Corporation received approval to engage to a limited extent in underwriting and dealing in equity securities in a Board Order dated July 28, 1997.

Board of Governors of the Federal Reserve System, February 19, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4696 Filed 2–23–98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 98-3950) published on page 8204 of the issue for Wednesday, February 18, 1998.

Under the Federal Reserve Bank of Kansas City heading, the entry for Morrill Bancshares, Inc., Sebetha, Kansas, and Morrill & Janes Bancshares, Inc., Hiawatha, Kansas, First Centralia Bancshares, Inc., Centralia, Kansas, Davis Bancorporation, Inc., Davis, Oklahoma, and Onaga Bancshares, Onaga, Kansas, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Morrill Bancshares, Inc., Sebetha, Kansas, and Morrill & Janes Bancshares, Inc., Hiawatha, Kansas, First Centralia Bancshares, Inc., Centralia, Kansas, Davis Bancorporation, Inc., Davis, Oklahoma, and Onaga Bancshares, Onaga, Kansas; to acquire FBC Financial Corporation, Claremore, Oklahoma, and thereby indirectly acquire 1st Bank Oklahoma, Claremore, Oklahoma, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4) of the Board's Regulation Y.

Comments on this application must be received by March 13, 1998.

Board of Governors of the Federal Reserve System, February 19, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4698 Filed 2–23–98; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Advisory Council on Government Auditing Standards; Notice of Meeting; Sunshine Act Meeting

The Advisory Council on Government Auditing Standards will meet on Monday, March 9, 1998, from 9:00 a.m. to 5:00 p.m., and Tuesday, March 10, 1998, from 8:30 a.m. to 3:00 p.m., in room 7C13 of the General Accounting Office building, 441 G St., NW., Washington, D.C.

The Advisory Council on Government Auditing Standards will hold a meeting to discuss issues that may impact Government Auditing Standards. Any interested person may attend the meeting as an observer. Council discussions and reviews are open to the public.

For further information contact: Marcia Buchanan, Assistant Director, Government Auditing Standards, AIMD, (202) 512–9321.

Dated: February 20, 1998.

Marcia B. Buchanan,

Assistant Director.

[FR Doc. 98–4823 Filed 2–20–98; 3:08 pm]

BILLING CODE 1610-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Annual Update of the HHS Poverty Guidelines

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice provides an update of the HHS poverty guidelines to account for last (calendar) year's increase in prices as measured by the Consumer Price Index.

EFFECTIVE DATE: These guidelines go into effect on the day they are published (unless an office administering a program using the guidelines specifies a different effective date for that particular program).

ADDRESSES: Office of the Assistant Secretary for Planning and Evaluation, Room 438F, Humphrey Building, Department of Health and Human Services (HHS), Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: *For information about how the poverty guidelines are used in a particular program*, contact the Federal (or other) office which is responsible for that program.

For general information about the poverty guidelines (but NOT for information about a particular program—such as the Hill-Burton Uncompensated Services Program—that uses the poverty guidelines), contact Gordon Fisher, Office of the Assistant Secretary for Planning and Evaluation, Room 438F, Humphrey Building, Department of Health and Human Services, Washington, D.C. 20201—telephone: (202) 690–6141.

For information about the Hill-Burton Uncompensated Services Program (no-fee or reduced-fee health care services at certain hospitals and other health care facilities for certain persons unable to pay for such care), contact the Office of the Director, Division of Facilities Compliance and Recovery, HRSA, HHS, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, Suite 520, Rockville, Maryland 20852—telephone: (301) 443–5656 or 1–800–638–0742 (for callers outside Maryland) or 1–800–492–0359 (for callers in Maryland). The Division of Facilities Compliance and Recovery notes that as set by 42 CFR 124.505(b), the effective date of this update of the poverty guidelines for facilities obligated under the Hill-Burton Uncompensated Services Program is sixty days from the date of this publication.

Under an amendment to the Older Americans Act, the figures in this notice are the figures that state and area agencies on aging should use to determine "greatest economic need" for Older Americans Act programs. *For information about Older Americans Act programs*, contact Carol Crecy, Administration on Aging, HHS—telephone: (202) 619–0011.

For information about the Department of Labor's Lower Living Standard Income Level (an alternative eligibility criterion with the poverty guidelines for certain Job Training Partnership Act programs), contact Theodore W. Mastroianni, Associate Assistant Secretary, Employment and Training Administration, U.S. Department of Labor—telephone: (202) 219–6236.

For information about the number of persons in poverty (since 1959) or about the Census Bureau (statistical) poverty thresholds, contact the HHES Division, Room 1462, Federal Office Building #3, U.S. Bureau of the Census, Washington, D.C. 20233—telephone: (301) 457–3242.

1998 Poverty Guidelines for the 48 Contiguous States and the District of Columbia

Size of family unit	Poverty guideline
1	$8,050
2	10,850
3	13,650
4	16,450
5	19,250
6	22,050
7	24,850
8	27,650

For family units with more than 8 members, add $2,800 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

1998 Poverty Guidelines for Alaska

Size of family unit	Poverty guideline
1	$10,070
2	13,570
3	17,070
4	20,570
5	24,070
6	27,570
7	31,070
8	34,570

For family units with more than 8 members, add $3,500 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

1998 Poverty Guidelines for Hawaii

Size of family unit	Poverty guideline
1	$9,260
2	12,480
3	15,700
4	18,920
5	22,140
6	25,360
7	28,580
8	31,800

For family units with more than 8 members, add $3,220 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

(Separate poverty guideline figures for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966–1970 period. Note that the Census Bureau poverty thresholds—the primary version of the poverty measure—have never had separate figures for Alaska and Hawaii. The poverty guidelines are not defined for Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and Palau. In cases in which a Federal program using the poverty guidelines serves any of those jurisdictions, the Federal office which administers the program is responsible for deciding whether to use the contiguous-states-and-D.C. guidelines for those jurisdictions or to follow some other procedure.)

The preceding figures are the 1998 update of the poverty guidelines required by section 673(2) of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (Pub. L. 97–35). As required by law, this update reflects last year's change in the Consumer Price Index (CPI–U); it was done using the same procedure used in previous years.

Section 673(2) of OBRA–1981 (42 U.S.C. 9902(2)) requires the use of the poverty guidelines as an eligibility criterion for the Community Services Block Grant program. The poverty guidelines are also used as an eligibility criterion by a number of other Federal programs (both HHS and non-HHS). Due to confusing legislative language dating back to 1972, the poverty guidelines have sometimes been mistakenly referred to as the "OMB" (Office of Management and Budget) poverty guidelines or poverty line. In fact, OMB has never issued the guidelines; the guidelines are issued each year by the Department of Health and Human Services (formerly by the Office of Economic Opportunity/Community Services Administration). The poverty guidelines may be formally referenced as "the poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services under authority of section 673(2) of the Omnibus Budget Reconciliation Act of 1981."

The poverty guidelines are a simplified version of the Federal Government's statistical poverty thresholds used by the Bureau of the Census to prepare its statistical estimates of the number of persons and families in poverty. The poverty guidelines issued by the Department of Health and Human Services are used for administrative purposes—for instance, for determining whether a person or family is financially eligible for assistance or services under a particular Federal program. The poverty thresholds are used primarily for statistical purposes. Since the poverty

guidelines in this notice—the 1998 guidelines—reflect price changes through calendar year 1997, they are approximately equal to the poverty thresholds for calendar year 1997 which the Census Bureau will issue in late summer or autumn 1998. (A preliminary version of the 1997 thresholds is now available from the Census Bureau.)

In certain cases, as noted in the relevant authorizing legislation or program regulations, a program uses the poverty guidelines as only one of several eligibility criteria, or uses a percentage multiple of the guidelines (for example, 125 percent or 185 percent of the guidelines). Non-Federal organizations which use the poverty guidelines under their own authority in non-Federally-funded activities also have the option of choosing to use a percentage multiple of the guidelines such as 125 percent or 185 percent.

Some programs, while not using the guidelines to exclude non-lower-income persons as ineligible, use them for the purpose of giving priority to lower-income persons or families in the provision of assistance or services.

In some cases, these poverty guidelines may not become effective for a particular program until a regulation or notice specifically applying to the program in question has been issued.

The poverty guidelines given above should be used for both farm and nonfarm families. Similarly, these guidelines should be used for both aged and non-aged units. The poverty guidelines have never had an aged/non-aged distinction; only the Census Bureau (statistical) poverty thresholds have separate figures for aged and non-aged one-person and two-person units.

Definitions

There is no universal administrative definition of "income," "family," "family unit," or "household" that is valid for all programs that use the poverty guidelines. Federal programs may use administrative definitions that differ somewhat from the statistical definitions given below; the Federal office which administers a program has the responsibility for making decisions about administrative definitions. Similarly, non-Federal organizations which use the poverty guidelines in non-Federally-funded activities may use administrative definitions that differ from the statistical definitions given below. In either case, to find out the precise definitions used by a particular program, one must consult the office or organization administering the program in question.

The following statistical definitions (derived for the most part from language used in U.S. Bureau of the Census, Current Population Reports, Series P60-185 and earlier reports in the same series) are made available for illustrative purposes only; in other words, these statistical definitions are not binding for administrative purposes.

(a) *Family.* A family is a group of two or more persons related by birth, marriage, or adoption who live together; all such related persons are considered as members of one family. For instance, if an older married couple, their daughter and her husband and two children, and the older couple's nephew all lived in the same house or apartment, they would all be considered members of a single family.

(b) *Unrelated individual.* An unrelated individual is a person 15 years old or over (other than an inmate of an institution) who is not living with any relatives. An unrelated individual may be the only person living in a house or apartment, or may be living in a house or apartment (or in group quarters such as a rooming house) in which one or more persons also live who are not related to the individual in question by birth, marriage, or adoption. Examples of unrelated individuals residing with others include a lodger, a foster child, a ward, or an employee.

(c) *Household.* As defined by the Bureau of the Census for statistical purposes, a household consists of all the persons who occupy a housing unit (house or apartment), whether they are related to each other or not. If a family and an unrelated individual, or two unrelated individuals, are living in the same housing unit, they would constitute two family units (see next item), but only one household. Some programs, such as the food stamp program and the Low-Income Home Energy Assistance Program, employ administrative variations of the "household" concept in determining income eligibility. A number of other programs use administrative variations of the "family" concept in determining income eligibility. Depending on the precise program definition used, programs using a "family" concept would generally apply the poverty guidelines separately to each family and/or unrelated individual within a household if the household includes more than one family and/or unrelated individual.

(d) *Family unit.* "Family unit" is not an official U.S. Bureau of the Census term, although it has been used in the poverty guidelines **Federal Register** notice since 1978. As used here, either an unrelated individual or a family (as defined above) constitutes a family unit. In other words, a family unit of size one is an unrelated individual, while a family unit of two/three/etc. is the same as a family of two/three/etc.

(e) *Income.* Programs which use the poverty guidelines in determining eligibility may use administrative definitions of "income" (or "countable income") which differ from the statistical definition given below. Note that for administrative purposes, in many cases, income data for a part of a year may be annualized in order to determine eligibility—for instance, by multiplying by four the amount of income received during the most recent three months.

For statistical purposes—to determine official income and poverty statistics—the Bureau of the Census defines income to include total annual cash receipts before taxes from all sources, with the exceptions noted below. Income includes money wages and salaries before any deductions; net receipts from nonfarm self-employment (receipts from a person's own unincorporated business, professional enterprise, or partnership, after deductions for business expenses); net receipts from farm self-employment (receipts from a farm which one operates as an owner, renter, or sharecropper, after deductions for farm operating expenses); regular payments from social security, railroad retirement, unemployment compensation, strike benefits from union funds, workers' compensation, veterans' payments, public assistance (including Aid to Families with Dependent Children or Temporary Assistance for Needy Families, Supplemental Security Income, and non-Federally-funded General Assistance or General Relief money payments), and training stipends; alimony, child support, and military family allotments or other regular support from an absent family member or someone not living in the household; private pensions, government employee pensions (including military retirement pay), and regular insurance or annuity payments; college or university scholarships, grants, fellowships, and assistantships; and dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts, and net gambling or lottery winnings.

For official statistical purposes, income does not include the following types of money received: capital gains; any assets drawn down as withdrawals from a bank, the sale of property, a house, or a car; or tax refunds, gifts, loans, lump-sum inheritances, one-time insurance payments, or compensation for injury. Also excluded are noncash benefits, such as the employer-paid or

union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, and such Federal noncash benefit programs as Medicare, Medicaid, food stamps, school lunches, and housing assistance.

Dated: February 17, 1998.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 98–4566 Filed 2–20–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 98021]

Fellowship Program in Violence Prevention for Minority Medical Students; Notice of Availability of Funds for Fiscal Year 1998

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for a cooperative agreement program for a Fellowship Program in Violence Prevention for Minority Medical Students. This program addresses the "Healthy People 2000" priority area of Violent and Abusive Behavior. The purpose of this program is to provide minority medical students with training in violence prevention and epidemiological research over an eight-week period at the Centers for Disease Control and Prevention. Specifically, this award is intended to:

1. Develop and strengthen minority physicians' leadership in violence prevention;
2. Provide education and research opportunities in violence prevention for minority medical students;
3. Provide a model for future violence prevention training programs at the undergraduate medical school level and;
4. Provide eight-week fellowships for four fellows to participate in epidemiological research on violence and in violence prevention projects.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Pub. L. 104–65, which became effective January 1, 1996, states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant (cooperative agreement), contract, loan, or any other form.

C. Availability of Funds

Approximately $35,000 is available in FY 1998 to fund one award. It is expected that the awards will begin on or about the third week of June, 1998, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Each fellow will receive a stipend of $5,000 during each budget period.

Continuation awards within the project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Note: Indirect Cost: Indirect costs under this cooperative agreement will be reimbursed at 8 percent of total allowable direct cost exclusive of tuition and related fees and equipment, or at the actual indirect cost rate, whichever results in a lesser dollar amount.

D. Application Requirements

Applicants must:

1. Demonstrate a 5-year history of developing and managing fellowship assistance and/or specialized training for minority medical students;
2. Demonstrate that faculty/staff committed to this project have experience supervising medical fellows and medical fellowship programs and;
3. Demonstrate experience in providing and managing fellowship programs which places no fewer than 10 fellows in a one year period, and which has placed no fewer than 50 fellows over the life of the program.

An affirmative response to each requirement is necessary for the full objective review of applications under this announcement. The applicant must provide this documentation on a separate page to be included as the first page of the application, entitled: "Application Requirements Declaration."

E. Program Requirements

Cooperative Activities: In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities: Select and provide four fellows for each budget period, (the performance period for the first budget period will begin the third week of June 1998), to participate in an 8–12 week program. Fellows should be: (a) Third or fourth year minority medical students; (b) able to organize and analyze data; (c) interested in pursuing a career in public health research, practice, or teaching. Fellows will:
   a. Review existing literature and data on violence prevention efforts and organize the information into text and table report;
   b. Evaluate violence prevention strategies;
   c. Analyze data and prepare written manuscripts for publication;
   d. Observe technical assistance to local violence prevention projects; and
   e. Make clear, concise presentations of projects completed during the fellowship period.
2. CDC Activities:
   a. Coordinate and facilitate fellows orientation on current CDC violence prevention research activities;
   b. Provide fellows office space and access to computers;
   c. Provide related background and reading materials;
   d. Coordinate site visits to CDC funded projects; and
   e. Coordinate and assign specific topic areas and project activities.

F. Application Content

Each application should be limited to 25 pages, excluding attachments (i.e., letters of support, resumes, etc.). All material must be typewritten, single-spaced, with type no smaller than 10 cpi on 8.5″×11″ paper, with at least 1″ margins, headings, and footers, unbound and printed on one side only. Do not include any spiral or bound materials.The first page of the application should contain the response to the requirements as indicated in the Application Requirements Section of this announcement.

The application must include:

1. Application Requirements Declaration. See Application Requirements Section.
2. Abstract:A one page abstract and summary of the proposed program outlining the goals and objectives, the evaluation design, and desired outcome.
3. Background and Need:Background and need for the program in terms of the magnitude of the violence related injury problem and minority medical students training in violence prevention efforts. Include a description of current

activities and previous experience in coordinating fellowship programs, and evaluation capability.

4. Goals:Specific goals which indicate where the applicant anticipates its Fellowship Program will be at the end of the 3 year project period.

5. Objectives:Specific, time-phased, measurable, and achievable objectives which are feasible to be accomplished during the budget period. Objectives should relate directly to the program goals, and should include, but not be limited to, identifying and describing the violence-related injury problem demonstrating the effectiveness of medical students experience/training in violence prevention efforts and epidemiological research.

6. Methods:A detailed description of specific activities that are proposed to achieve each of the program objectives during the budget period. A time-frame should be included which indicates when each activity will occur and when preparations for activities will occur. For each activity, describe who will do what to implement the activities. If other organizations will participate, describe the role of the unit or organization, who will coordinate and supervise the activities, and how this will occur. Document concurrences with this plan by other involved organizations.

7. Evaluation:A detailed description of the methods and design to evaluate program effectiveness, including what will be evaluated, data to be used, who will perform the evaluation and the time-frame. Document staff availability, expertise, and capacity to evaluate program activities and effectiveness. Evaluation should include progress in meeting the objectives during the budget and project periods, and the impact of program activities on Fellows. Provide detailed description of how evaluation results will be used for programmatic decisions and how results will be reported.

8. Project Management and Staffing:A description of the roles and responsibilities of the project director and each other staff member. Allocation of staff to the activities (described in the Methods section) should be provided. Descriptions should include education and experience required, and the percentage of time each will devote to the program. Curriculum vitae (CV) for existing staff should be included. If the identity of any individual who will fill a position as a Fellow is known, his/her name and CV should be attached.

9. Budget and Accompanying Justification:A detailed first year budget (with future year projections) with accompanying narrative justifying all individual budget items which make up the total amount of funds requested. The budget should be consistent with stated objectives and planned activities.

G. Submission and Deadline

Submit the original and two copies of PHS 5161 (OMB Number 0937–0189). Forms are in the application kit.

On or before April 27, 1998, submit to: Joanne A. Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98021, Centers for Disease Control and Prevention, Room 300, 255 East Paces Ferry Road, NE, Mailstop E–13, Atlanta, Georgia 30305–2209.

If your application does not arrive in time for submission to the independent review group, it will not be considered in the current competition unless you can provide proof that you mailed it on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable).

H. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (20 percent):The extent to which the applicant presents data justifying need for the program in terms of magnitude of the related injury problem and the need for minority medical students' training in violence prevention. The extent to which a description of current and previous related experiences: (a) Is inclusive in terms of fellowship activities and success, evaluation capability and coordination activities, and (b) demonstrates capacity to conduct the program.

2. Goals and Objectives (15 percent): The extent to which the applicant has included goals which are relevant to the purpose of the proposal and feasible to be accomplished during the project period, and the extent to which these are specific, and measurable. The extent to which the applicant has included objectives which are feasible to be accomplished during the budget period, and which address all activities necessary to accomplish the purpose of the proposal. The extent to which the objectives are specific, time-phased, and measurable.

3. Methods (35 percent): The extent to which the applicant provides a detailed description of proposed activities which are likely to achieve each objective and overall program goals and which includes designation of responsibility for each action undertaken. The extent to which the applicant provides a reasonable and complete schedule for implementing all activities. The extent to which roles of each Fellow and CDC are described, and coordination and supervision of Fellow in proposed activities is apparent. The extent to which documentation of program organizational location is clear. The extent to which position descriptions, CV's and lines of command are appropriate to accomplishment of program goals and objectives. The extent to which concurrence with the applicant's plans by all other involved parties is specific and documented.

4. Evaluation (30 percent): The extent to which the proposed evaluation system is detailed and will document program process, effectiveness, impact, and outcome. The extent to which the applicant demonstrates potential data sources for evaluation purposes, and documents staff availability, expertise, and capacity to perform the evaluation. The extent to which a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions is included.

5. Budget and Justification (not scored): The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

I. Other Requirements

The below listing of requirements are also included in this announcement. See Addendum 1 for a complete description of each requirement.

1. AR98–10: Smoke-Free Workplace Requirement.
2. AR98–11: Healthy People 2000 Requirement.
3. AR98–12: Lobbying Restrictions.
4. AR98–13: Prohibition on Use of CDC Funds for Certain Gun Control Activities.
5. AR98–16: Security Requirement.

J. Background

For further background information regarding this announcement see Addendum 2.

K. Technical Reporting Requirements

Provide CDC with an original plus two copies of:

1. progress reports annually;
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to: Joanne A. Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and

Grants Office, Centers for Disease Control and Prevention, Room 300, 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, GA 30305–2209.

L. Authority and Catalog of Federal Domestic Assistance Number

This program announcement is authorized under sections 391(a) and 393(a) of the Public Health Service Act (42 U.S.C. 280b(a), and 280b–1a), as amended. The Catalog of Federal Domestic Assistance number is 93.136.

M. Where To Obtain Additional Information

To receive a complete application kit, please call 1–888–GRANTS4. You will be asked to leave your name and address. A complete kit will be mailed to you.

Please refer to Program Announcement 98021 when you request information.

For a complete program description, information on application procedures, an application package, and business management technical assistance, contact: Joanne A. Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98021, Centers for Disease Control and Prevention, Room 300, 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, GA 30305–2209, telephone (404) 842–6535, E-mail address jcw6@cdc.gov.

See also the CDC home page on the Internet: http://www.cdc.gov.

For program technical assistance, contact: Wendy Watkins, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway, NE., Mailstop K–60, Atlanta, GA 30341–3724, telephone (404) 488–4646, E-mail address dmw7@cdc.gov.

Dated: February 18, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–4614 Filed 2–23–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council; Meeting Announcement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet on March 11th to review proposals for funding submitted pursuant to the North American Wetlands Conservation Act. Upon completion of the Council's review, proposals will be submitted to the Migratory Bird Conservation Commission with recommendations for funding. The meeting is open to the public.

DATES: March 11, 1998, 1:00 p.m.

ADDRESSES: The meeting will be held at the National Rural Electric Cooperative Association, located at 4301 Wilson Boulevard, Conference Center Room CC2, Arlington, VA. The North American Wetlands Conservation Council Coordinator is located at U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 110, Arlington, Virginia, 22203.

FOR FURTHER INFORMATION CONTACT: David A. Smith, Coordinator, North American Wetlands Conservation Council, (703) 358–1784.

SUPPLEMENTARY INFORMATION: In accordance with the North American Wetlands Conservation Act (Pub. L. 101–223, 103 Stat. 1968, December 13, 1989, as amended), the North American Wetlands Conservation Council is a Federal-State-private body which meets to consider wetland acquisition, restoration, enhancement and management projects for recommendation to and final approval by the Migratory Bird Conservation Commission. Proposals from State, Federal, and private sponsors require a minimum of 50 percent non-Federal matching funds.

Dated: February 13, 1998.

Paul R. Schmidt,

Acting Assistant Director, Refuges and Wildlife.

[FR Doc. 98–4592 Filed 2–23–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Department of the Interior announces that the following Information Collection Request (ICR) for grantees participating in the Public Law 102–477 program is being forwarded to the Office of Management and Budget (OMB) for review and extension: Public Law 102–477 Reporting, OMB 1076–0135 (expiring 3–31–98).

The proposed information collection requirement, with no appreciable changes, is submitted to OMB for review and extension, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A). The Department invites public comments on the subject proposal described below.

DATES: Interested parties are invited to submit written comments regarding this proposal on or before April 27, 1998.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is needed to document satisfactory compliance with statutory requirements of the various integrated programs. Public Law 102–477 authorizes tribal governments to integrate federally funded employment, training and related services programs into a single, coordinated, comprehensive service delivery plan. Funding agencies include the Department of the Interior, Department of Labor and the Department of Health and Human Services. The Bureau of Indian Affairs is statutorily required to serve as the lead agency. Section 11 of this Act requires that the Secretary of the Interior make available a single universal report format which shall be used by a tribal government to report on integrated activities and expenditures undertaken. The Bureau of Indian Affairs shares the information collected from these reports with the Department of Labor and Department of Health and Human Services.

II. Method of Collection

Public Law 102–477 grantees are required to complete two single page, one-sided report forms and one narrative report, with four pages of instructions, annually. They replace 166 pages of instructions and applications representing three different agencies and twelve different funded but related programs. We estimate a 95 percent reduction in reporting which is consistent with the Paperwork Reduction Act and goals of the National Performance Review. The statistical and narrative report will be used to demonstrate how well a plan was executed in comparison to proposed goals. The financial status report will be used to track cash flow, and will allow an analysis of activities versus expenditures and expenditures to approved budget. It is a slightly modified SF–269–A (short form).

These report forms and narrative are limited but satisfy the Department of Health and Human Services, Department of Labor and the Department of the Interior. They reduce the burden on tribal governments by consolidating data collection for employment, training, education, child care and related service programs. The reports are due annually. These forms have been developed within a partnership between tribes and representatives of all three Federal agencies, to standardized terms and definitions, eliminate duplication and reduce frequency of collection.

Respondents: Tribes participating in Pub. L. 102–477 will report annually. Currently there are 21 grantees participating in the program.

Burden: We estimate that completion of the reporting requirements will require ten hours per year to complete for each grantee.

Request for Comments

Comments may include:

(a) Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility.

(b) The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used.

(c) The quality, utility, and clarity of the information to be collected.

(d) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Comments should refer to the proposal by name and/or OMB Control Number and should be sent to Lynn Forcia, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, MS–4660–MIB, Washington, DC 20240.

All written comments will be available for public inspection in room 4644 of the Main Interior building, 1849 C Street, NW, Washington, DC, from 9 a.m. until 3 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or additional copies of the information collection instructions should be directed to Lynn Forcia, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, MS 4660–MIB, Washington, DC 20240, telephone 202–219–5270 (this is not a toll-free number).

Dated: February 18, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–4606 Filed 2–23–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection Activities: Comment

AGENCY: Bureau of Indian Affairs, Office of Indian Education Programs, Interior.

ACTION: Notice.

SUMMARY: This notice announces the Information Collection Request for the Bureau of Indian Affairs Higher Education Grant Program Annual Report Form, OMB No. 1076–0106, requires reinstatement. The proposed information collection requirement, with no appreciable changes, described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 350(c)(2)(A). The Bureau is soliciting public comments on the subject proposal.

DATES: Written comments must be submitted on or before April 27, 1998.

ADDRESSES: Comments are to be mailed to Director, Office of Indian Education Programs, Department of the Interior, Bureau of Indian Affairs, 1849 C Street NW, Mail Stop 3512–MIB, Washington, D.C. 20240, or hand delivered to Room 3512 at the above address. All written comments will be available for public inspection in Room 3543 of the Main Interior Building, 1849 C Street, NW, Washington D.C., from 9:00 a.m. until 3:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Garry R. Martin, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, Mail Stop 3512, Washington, D.C. 20240. Telephone 202–208–3478.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is necessary to assess annual performance in accordance with 25 CFR, Part 40—Administration Of Educational Loans, Grants And Other Assistance For Higher Education.

II. Method of Collection

The regulations provided in 25 CFR Part 40 contain the program requirements which govern the program. Information collected from the programs will be used for the continued operation and evaluation of program delivery to ensure continued and expanded opportunities for Indian students.

III. Data

(1) Title of the Collection of Information is the Higher Education Grant Program Annual Report Form, OMB No. 1076–0106. Expiration date: 5–31–98; Type of Review: Renewal of an approved information collection form.

(2) Summary of the Collection of Information: The collection of information provides pertinent data concerning annual performance of the Higher Education Program.

(3) Affected Entities: Bureau and tribally administered higher education grant programs.

(4) Description of the need for the information and proposed use of the information: Submission of an annual report is necessary to assess an annual performance for the expenditure of funds received under the authorizing Act. The information collected with the annual report will be used by the Bureau of Indian Affairs or tribal programs for fiscal accountability. The analysis of data will be utilized for administrative and program planning.

(5) Description of likely respondents including the estimated number of likely respondents and proposed frequency of responses to the collection of information: There are approximately 125 programs that respond annually.

(6) Estimate of total annual reporting and record keeping burden that will result from the collection of information: 375 hours per annum. This form is estimated to average three hours per respondent that includes time for reviewing the instructions, gathering and maintaining data and completing the form. Estimated Annual Costs: $6,750.00 (375 hours @ $18.00 per hour).

IV. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(b) The accuracy of the agency's estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used.

(c) Ways to enhance the quality, utility, and clarity of the information to be collected.

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information and disclosing and providing information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will become a matter of public record.

Dated: February 16, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

BILLING CODE 4310-02-P

OMB No. 1076-0106
Expiration Date: 5-31-98

HIGHER EDUCATION GRANT PROGRAM ANNUAL REPORT FORM

Bureau of Indian Affairs - Office of Indian Education Programs

Reporting Period: August 1, 19____ - July 31, 19____

Information and General Instructions: This information is collected to meet program reporting requirements. The annual report form is due on before July 31st of each year. The public reporting burden for this form is estimated to average three hours per response, including the time for reviewing the instructions, gathering and maintaining data, and completing and receiving the form. Send comments regarding the burden estimate, or any other aspect of this form to the Bureau ICCO, 1849 C Street, NW, MS-337-MIB, Washington, D.C. 20245, and the Office of Management and budget, Paperwork Reduction Project (1076-0106), Washington, D.C.

Program Site _____ Program Director _____

Mailing Address _____

Telephone Number _____ Facimile _____

TRIBES SERVED	

STATISTICAL PROFILE			
	AY 19__ (Carry Forward)	AY 19____	TOTAL $
Direct Grants to Students			
Administrative Cost[1]			

Administered by:(check one) _____ BIA _____ TRIBE _____ TRIBAL ORG _____ 93-638 _____ 102-325

OMB No. 1076-0106
Expiration Date: 5-31-98

Total Number of Grant Requests (Part Time and Full Time) Received.				
Total Number of Grants Awarded.				
Total Number of Students Not Funded.				
Total Amount of Unfunded Unmet Need.				
No.FTE Freshman[2]	No.FTE Sophomore	No.FTE Junior	No.FTE Senior	
Total Number Enrolled in Community Colleges.				
Total Number Enrolled in Four-Year Institutions				

FINANCIAL PROFILE[3]

Student/Spouse Contribution		Parent Contribution	
Federal Pell Grant		Student Incentive Grant	
College/University Sch		Federal SEOG	
Federal Stafford		College Work Study	
Federal SLS		Federal Perkins	
College/Univ Funded Loans		Plus Loans	
Voc Rehab		Tuition Waivers	
Veteran Assistance		Direct Tribal Assist	
Other		Total Resources	

GRADUATE LISTING

Total Number Graduates	

Submit graduates in publish ready format with the following information:

- Name & Mailing Address
- Tribe
- Institution, Degree & Graduation Date

1 Administrative Cost charged out of direct program funds and not the Indirect Cost fund.

2. FTE means Full Time Enrollment

3. These financial aid programs are frequently used by most college students applying for educational grants and loans. Individual program definitions are found in the Department of Education's edition of The Student Guide.

[FR Doc. 98–4639 Filed 2–23–98; 8:45 am]
BILLING CODE 4310–02–C

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection Activities; Comment

AGENCY: Bureau of Indian Affairs, Office of Indian Education Programs, Interior.

ACTION: Notice.

SUMMARY: This notice announces the Information Collection Request for the Johnson-O'Malley Program Annual Report Form, OMB No. 1076–0096, requires reinstatement. The proposed information collection requirement, with no appreciable changes, described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 350(c)(2)(A). The Bureau is soliciting public comments on the subject proposal.

DATES: Written comments must be submitted on or before April 27, 1998.

ADDRESSES: Comments are to be mailed to the Director, Office of Indian Education Programs, Department of the Interior, Bureau of Indian Affairs, 1849 C Street NW, Mail Stop 3512–MIB, Washington, D.C. 20240, or hand delivered to Room 3512 at the above address. All written comments will be available for public inspection in Room 3543 of the Main Interior Building, 1849 C Street, NW, Washington, D.C., from 9:00 a.m. until 3:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Garry R. Martin, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, Mail Stop 3512, Washington, D.C. 20240. Telephone 202–208–3478.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is necessary to assess the annual performance in accordance with 25 CFR Part 273—Education Contracts Under Johnson-O'Malley Act.

II. Method of Collection

The Johnson-O'Malley Act regulations provided in 25 CFR Part 273 contain the program requirements which govern the program. Information collected from the program will be used for the continued operation and improvement of efforts to meet the specialized and unique educational needs of Indian students.

III. Data

(1) The title of the Collection of Information is: Johnson-O'Malley Annual Report Form, OMB No. 1076–0096. Expiration Date: 9–30–93; Type of Review: Reinstatement of an approved information collection form.

(2) Summary of The Collection of Information: The collection of information provides pertinent data concerning program need and annual performance of educational programs.

(3) Affected Entities: Tribal and Non-Tribal Johnson-O'Malley education programs.

(4) Description of the need for this information and proposed use of the information: Submission of an annual report (OMB No. 1076–0096) is required by statute. Submission of the annual report is necessary to assess an annual performance for the expenditure of funds received under the authorizing Act. The information is needed to ensure continued support of the development, operation and improvement of supplementary education programs. The information collected with the annual report will be used by the Bureau of Indian Affairs or tribal programs for fiscal accountability. The analysis of data will be utilized for administrative and program planning.

(5) Description of likely respondents, including the estimated number of likely respondents, and proposed frequently of responses to the collection of information: There are 360 programs that respond annually.

(6) Estimate of total annual reporting and record keeping burden that will result from the collection of information: 1,800 hours per annum. The form is estimated to average five hours per respondent that includes time for reviewing the instructions, gathering and maintaining data and completing the form. 1,800 hours is the estimated public reporting burden for the 360 programs to complete the Johnson-O'Malley annual report form (OMB No. 1076–0096). Estimated Total Annual Burden Hours: 1,800 hours. Estimated Annual Costs: $32,400.00 (1,800 hours @ $18.00 per hour).

IV. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(b) The accuracy of the agency's estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used.

(c) Ways to enhance the quality, utility, and clarity of the information to be collected.

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information and disclosing and providing information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will become a matter of public record.

Dated: February 16, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

BILLING CODE 4310-02-P

BIA No. 62118

OMB No. 1076-0096
Expire Date 9-30-93

JOHNSON-O'MALLEY (JOM) ANNUAL REPORT FORM

Information and General Instructions: This information is collected to meet the contract application requirements. The application is due on or before December 31st of each year. The public reporting burden for this form is estimated to average 5 hours per response, including the time for reviewing the instructions, gathering and maintaining data, and completing and receiving this form. Send comments regarding the burden estimate, or any other aspect of this form to the Bureau ICCO, 1849 C Street NW, MS 337-SIB, Washington, D.C. 20245, and the Office of Management and Budget, Paperwork Reduction Project (1076-0096), Washington, D.C.

SECTION I - SUMMARY

CONTRACTOR	CONTRACT NO.	CURRENT YEAR FUNDS
MAILING ADDRESS	CONTRACT PERIOD	CARRY-OVER FUNDS
TELEPHONE NO./ E-MAIL ADDRESS		INDIRECT COSTS
PROGRAM OFFICIAL & TITLE		TOTAL BUDGET

Schools/Project Sites Contained in this Report: (Name & Address)	Signatory Authority:	
	Contractor's Authorized Representative	Date
	OIEP Education Line Officer	Date
	Area Contracts & Grants COR	Date

BIA No. 62118

OMB No. 1076-0096
Expire Date 9-30-93

JOHNSON-O'MALLEY PROGRAM ANNUAL REPORT FORM - PROGRESS & EVALUATION

SECTION II - QUANTITATIVE EVALUATION OR EFFECTIVENESS IN MEETING STATED OBJECTIVES

Name of School/Pre-School/Project Site

Official In Charge & Title

Eligible Students Counted		Grade Levels(s)	
Students Actually Served		Grade Levels(s)	

Instructions: For items 1 thru 5, summarize the goals, objectives and activities of each program component as contained in your approved education plan. Use a separate page for each component. Items 6 and 7, describe actual progress achieved and evaluate the program. Item 8, show funds expended to date. Enter cumulative totals in appropriate space on page 5.

(1) PROGRAM	(2) GRADE LEVELS SERVED	(3) EDUCATIONAL GOALS	MEASURABLE OBJECTIVES

BIA No. 62118

OMB No. 1076-0096
Expire Date 9-30-93

JOHNSON-O'MALLEY PROGRAM ANNUAL REPORT FORM - PROGRESS & EVALUATION

CONTINUED QUANTITATIVE EVALUATION OF EFFECTIVENESS IN MEETING STATED OBJECTIVES

Name of School/Pre-School/Project Site

Official In Charge & Title

(5) Activities & Procedures To Achieve Objectives	(6) Quantitative Evaluation
(7) Comments	(8) Program Expenditures a) Salaries _____ b) Fringe _____ c) Supplies _____ d) Travel _____ e) Other _____ f) Total _____

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BIA No. 62118

OMB No. 1076-0096
Expire Date 9-30-93

JOHNSON-O'MALLEY PROGRAM ANNUAL REPORT FORM

SECTION III - INDIAN EDUCATION COMMITTEE (IEC) REPORT

School/Project Site _____ Official In Charge & Title _____

In-School Project _____ Out-of-School Project _____ No. Of IEC Members _____

Average No. IEC attending JOM meetings _____ No. Of Meetings Held _____ Dates of Meetings _____

1. Does the JOM IEC also serve as the following: ____School Board of Education ____Title IV, Part A Committee

2. Explain how the IEC was involved in the planning, implementation and evaluation of the JOM Program.

3. Does the IEC recommend the continued operation of all of the JOM programs described within this annual report _____ _____ (No requires response.)
Y N

4. IEC Budget Expenditures $_____

Meetings _____ Training _____
Travel _____ Workshop _____

_____
IEC Chairperson & Date

[FR Doc. 98-4640 Filed 2-23-98; 8:45 am]
BILLING CODE 4310-02-C

BIA No. 62118

OMB No. 1076-0096
Expire Date 9-30-93

JOHNSON-O'MALLEY PROGRAM ANNUAL REPORT FORM

SECTION IV - EXPENSE SUMMARY

JOM Contractor Name: _____ Contract No. _____ Date _____

Contract Line Item	Original Budget	Modification	Revised Budget	YTD[1] Expenditures	Balance
Personnel/Salaries					
Fringe Benefits					
Travel					
Equipment					
Supplies					
Consultants/Contracts					
Space Cost					
IEC Expenditures					
Other (Itemize)					
Subtotal					
Indirect Cost					
Total					

1 - YTD - means Year to Date

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-030-1430-01; GP8-0096; OR-46698]

Notice of Intent To Prepare a Resource Management Plan Amendment/Environmental Impact Statement for Interpretive Center, Flagstaff, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) intends to prepare a Resource Management Plan Amendment/Environmental Impact Statement (RMPA/EIS) for the Interpretive Center, Flagstaff, Arizona. The Center will be a cooperative effort between the BLM, the National Park Service, and the Arizona Historical Society. The Interpretive Center will be located in Flagstaff, Arizona.

At an open house public meeting held during the noon recess for lunch. Public comments will be accepted for 30 days after the last public meeting. Written comments must be received by the Flagstaff Field Office by 4:30 p.m. on March 16, 1998. Written comments, requests, and inquiries are the Flagstaff Field Office.

Bureau of Land Management
0115 ...
Albuquerque ...
Rio Puerco ...
Taos ...
Las Cruces ...
Mimbres ...
Caballo ...
Socorro ...
Roswell District ...
Roswell ...
Carlsbad ...
Farmington ...

FOR FURTHER INFORMATION CONTACT: Whitney Tilt, Flagstaff Field Office, Planning and Environmental Coordinator, Land Management, P.O. Box 600, Flagstaff, Arizona 87502-0600, (520) 556-7000.

SUPPLEMENTARY INFORMATION: Reports ... whether ... supplement ... Statement ... evaluated ... threaten ... which ... were ... the biolo... from the ... the U.S. ... the eigh... The Rep... informat... Land Ma... regulatio... manage... Monitor...

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-030-08-1220-00; GP8-0096]

Notice of Meeting of the Oregon Trail Interpretive Center Advisor Board

AGENCY: National Historic Oregon Trail Interpretive Center, Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given that a meeting of the Advisory Board For the National Historic Oregon Trail Interpretive Center will be held on Friday, March 13, 1998 from 8 a.m. to 4 p.m. at the National Historic Oregon Trail Interpretive Center, Oregon Highway 86, Flagstaff Hill, Baker City, Oregon 97814.

At an appropriate time, the Board will recess for approximately one hour for lunch. Public comments will be received from 2 p.m. to 2:30 p.m., March 13, 1998. Topics to be discussed are the Pilot Fee Program Monies, the draft of the Strategic Plan, and reports from Coordinators of Subcommittees.

DATES: The meeting will begin at 8 a.m. and run to 4 p.m. March 13, 1998.

FOR FURTHER INFORMATION CONTACT: David B. Hunsaker, Bureau of Land Management, National Historic Oregon Trail, Interpretive Center, P.O. Box 987, Baker City, OR 97814, (Telephone 541-523-1845).

Edwin J. Singleton,

District Manager.

[FR Doc. 98-4567 Filed 2-23-98; 8:45 am]

BILLING CODE 4310-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-910-08-1020-00]

New Mexico Bureau of Land Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The New Mexico Bureau of Land Management (BLM) has completed eight Resource Management Plan Conformance and National Environmental Policy Act Adequacy Determination Reports. There is one Report for each of the eight Resource Management Plans that have been completed in NM. The Reports are for the following Resource Management Plans (RMP).

1. Carlsbad RMP
2. Farmington RMP
3. Mimbres RMP
4. Rio Puerco RMP
5. Roswell RMP
6. Socorro RMP
7. Taos RMP
8. White Sands RMP

ADDRESSES: Copies of the Reports may be obtained from the following offices:

Office and address	Telephone
Bureau of Land Management, New Mexico State Office, Information Access Center, P.O. Box 27115, Santa Fe, NM 87502-0115	(505) 438-7400
Albuquerque District Office, 435 Montano Road, NE, Albuquerque, NM 87107-4935	(505) 761-8700
Rio Puerco Resource Area, 435 Montano Road, NE, Albuquerque, NM 87107-4935	(505) 761-8704
Taos Resource Area, 226 Cruz Alta Road, Taos, NM 87571-5983	(505) 758-8851
Las Cruces District Office, 1800 Marquess Street, Las Cruces, NM 88005-3371	(505) 525-4300
Mimbres Resource Area, 1800 Marquess Street, Las Cruces, NM 88005-3371	(505) 525-4300
Caballo Resource Area, 1800 Marquess Street, Las Cruces, NM 88005-3371	(505) 525-4300
Socorro Resource Area, 198 Neel Avenue, NW, Socorro, NM 87801-4648	(505) 835-0412
Roswell District Office, 2909 West Second Street, Roswell, NM 88201-2019	(505) 627-0272
Roswell Resource Area, 2909 West Second Street, Roswell, NM 88201-2019	(505) 627-0272
Carlsbad Resource Area, 620 E. Greene St., Carlsbad, NM 88220-6292	(505) 887-6544
Farmington District Office, 1235 La Plata Highway, Farmington, NM 87401-1808	(505) 599-8900

FOR FURTHER INFORMATION CONTACT: J.W. Whitney, New Mexico State Office, Planning and Policy Team, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502-0115, telephone (505) 438-7438.

SUPPLEMENTARY INFORMATION: The Reports were prepared to determine whether a plan amendment and/or a supplemental Environmental Impact Statement was required. The Reports evaluated new information on threatened and endangered species, which has come to light since the RMPs were completed and implementation of the biological opinions, that resulted from the 1997 formal consultation with the U.S. Fish and Wildlife Service on the eight BLM RMPs in New Mexico. The Reports are an evaluation of this information as provided by Bureau of Land Management (BLM) Planning regulation; 43 CFR 1610.4-9 (Resource management planning process—Monitoring and evaluation) and the BLM H-1790-1, National Environmental Policy Handbook, Chapter III, B (Reviewing Existing Environmental Documents).

Dated: February 13, 1998.

Richard A. Whitley,

Deputy State Director.

[FR Doc. 98-4611 Filed 2-23-98; 8:45 am]

BILLING CODE 4310-FB-M

DEPARTMENT OF THE INTERIOR

National Park Service

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing marina facilities and services for the public at Gateway National Recreation Area for a period of approximately fifteen (15) years from date of contract execution.

EFFECTIVE DATE: April 27, 1998.

ADDRESSES: Interested parties should contact the Concession Management Division, Gateway National Recreation Area, Floyd Bennett Field, HQ Building 69, Brooklyn, NY 11234, Telephone No. (718) 338-4603, to obtain a copy of the prospectus describing the requirements of the proposed contract. The cost for each prospectus will be $100.00 to new respondents who have not previously paid.

SUPPLEMENTARY INFORMATION: This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioner does not have a right of preference in the renewal of its contract. The Secretary will consider and evaluate all proposals

received as a result of this notice. Any proposal must be received by the Senior Concessions Program Manager, Boston Support Office, not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: February 8, 1998.

Chrysandra L. Walter,

Acting Regional Director, Northeast Region.

[FR Doc. 98–4634 Filed 2–23–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Issue a Prospectus for Operation of a Snack Bar at Lake Roosevelt National Recreation Area

SUMMARY: The National Park Service will be releasing a concession Prospectus authorizing continued operation of a snack bar facility at Spring Canyon (day use recreation site) within Lake Roosevelt National Recreation Area. This is a modest operation accommodating visitors using the beach and swimming area with fast food, snacks and non-alcoholic beverage services. This seasonal operation serves visitors 3 months out of the year from Memorial Day (end of May) through Labor Day (first of September). The average visitation to the site is about 103,000 during the operating season.

The annual gross receipts average between $9,000 to $14,000. The new permit will be for four (4) years and eleven (11) months. The operator will be required to provide all the appliances necessary to conduct the proposed business. There is an existing concessioner which has operated satisfactorily under the existing permit and has a right of preference in renewal.

SUPPLEMENTARY INFORMATION: The cost for purchasing a Prospectus is $30.00. Parties interested in obtaining a copy should send a check (NO CASH) made payable to "National Park Service" to the following address: National Park Service, Pacific Great Basin Support Office, Office of Concession Program Management, 600 Harrison Street, Suite 600, San Francisco, California 94107–1372. The front of the envelope should be marked "Attention: Office of Concession Program Management—Mail Room Do Not Open". Please include in your request a mailing address indicating where to send the Prospectus. Inquiries may be directed to Ms. Teresa Jackson, Office of Concession Program Management at (415) 427–1369.

Dated: February 13, 1998.

Cynthia Ip,

Acting Regional Director, Pacific West Region.

[FR Doc. 98–4569 Filed 2–23–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Big Cypress National Reserve; 3–D Geophysical Seismic Survey

ACTION: In accordance with section 9.52 of Title 36 of the Code of Federal Regulations, the National Park Service (NPS) has received a Plan of Operations from Calumet Florida, Inc. for conducting a 3–D Geophysical Seismic Survey in Big Cypress National Preserve, Florida.

SUMMARY: The NPS has prepared an Environmental Assessment (EA) in compliance with the National Environmental Policy Act. The public is invited to review and comment on the Plan of Operations and the Environmental Assessment, which are available at the following locations.

DATES: Comments on the Plan of Operations and the Environmental Assessment will be accepted by the Superintendent for a period on or before April 27, 1998 and will become part of the official record.

ADDRESSES:

Superintendent, Big Cypress National Preserve, Star Route, Box 110, Ochopee, Florida 33943, Telephone: (941) 695–2000, X339

Regional Director, Southeast Region, National Park Service, Atlanta Federal Center, 1924 Building, 100 Alabama Street, SW., Atlanta, Georgia 30303, Telephone: (404) 562–3124

SUPPLEMENTARY INFORMATION: The proposed work may result in impacts to wetlands and floodplains. Executive Orders 11990 ("Protection of Wetlands") and 11988 ("Floodplain Management") require the NPS and other Federal agencies to evaluate the likely impacts of the proposed action in wetlands and floodplains and a Statement of Findings may be prepared.

Dated: February 13, 1998.

Daniel W. Brown,

Regional Director, Southeast Region.

[FR Doc. 98–4636 Filed 2–23–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Sleeping Bear Dunes National Lakeshore, Michigan

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement, and notice of public open house.

SUMMARY: The National Park Service (NPS) will prepare a General Management Plan (GMP) Amendment, Historic Properties Management Plan, and an Environmental Impact Statement (EIS) for Sleeping Bear Dunes National Lakeshore, Michigan (hereafter, "the Lakeshore"), in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This notice is being furnished as required by NEPA Regulations 40 CFR 1501.7.

To facilitate sound planning and environmental analysis, the NPS intends to gather information necessary for the preparation of the EIS, and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and suggestions in this scoping process are invited.

Public meetings and open houses will be held during the development of the GMP Amendment and Historic Properties Management Plan (HPMP), and the preparation of the EIS. Notices of the dates, times, and locations of these public sessions will be advertised in local media outlets prior to the events. Information about public sessions and about the management plans and EIS will also be provided through periodic newsletters.

DATES: Public open houses will be held on Friday, March 20 and Saturday, March 21, 1998. Both open houses will be held between 9:30 am and 12 pm at the offices of Sleeping Bear Dunes National Lakeshore, 9922 Front Street, Empire, Michigan.

Written comments and suggestions concerning preparation of the GMP Amendment, HPMP, and EIS should be received by April 17, 1998.

ADDRESS: Written comments and suggestions should be directed to: Superintendent, Sleeping Bear Dunes National Lakeshore, 9922 Front Street, Empire, Michigan 49630.

FOR FURTHER INFORMATION CONTACT: Superintendent, Sleeping Bear Dunes National Lakeshore, at the above address or at telephone number 616–326–5134.

SUPPLEMENTARY INFORMATION: The Lakeshore's existing general management plan was approved in

1979. In accordance with National Park Service Management Policies, the GMP sets forth a management concept for the Lakeshore, and identifies broad strategies for resolving issues and achieving management objectives. The GMP amendment described in this notice will only address changes to the GMP necessary to provide an updated foundation for decision-making related to the management of historic properties within the Lakeshore.

The Historic Properties Management Plan is an implementation plan that describes how goals identified in the Lakeshore's GMP and Strategic Plan will be achieved. The Historic Properties Management Plan is identified as a work element in the Lakeshore's Annual Performance Plan. The Annual Performance Plan and the Strategic Plan are required by the Government Performance and Results Act (GPRA).

Elements of the Historic Properties Management Plan will include:

(1) Identification of landscapes and properties that should or may be preserved, and a determination of preservation strategies;

(2) Identification of landscapes and properties that will not be preserved, and a determination of action strategies, and;

(3) Identification of how visitors, surrounding communities, other interested groups and the Lakeshore can protect and preserve and adaptively use these landscapes and properties.

The environmental review of the HPMP for Sleeping Bear Dunes National Lakeshore will be conducted in accordance with requirements of NEPA (42 U.S.C. Section 4371 *et seq.*), NEPA regulations (40 CFR Parts 1500–1508), other appropriate Federal regulations, and NPS procedures and policies for compliance with those regulations.

Dated: February 13, 1998.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 98–4564 Filed 2–23–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore, South Wellfleet, Massachusetts, Cape Cod National Seashore Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, March 20, 1998.

The Commission was reestablished pursuant to Public Law 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 9:30 a.m. at Headquarters, Marconi Station, South Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting 01/23/98
3. Reports of Officers
4. Report of Nickerson Subcommittee
5. Special Report: "Camp Wellfleet" ordnance
6. Superintendent's Report
   Hatches Harbor Update
   Fort Hill Update
   Clearing of Herring River Run
   Highlands Center for Arts & Environment
   General Management Plan
   News from Washington
   Renomination Procedures
7. Old Business—Advisory Commission Handbook
8. New Business
9. Agenda for next meeting
10. Date for next meeting
11. Public comment
12. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: February 12, 1998.

Maria Burks,

Superintendent.

[FR Doc. 98–4637 Filed 2–23–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Dayton Aviation Heritage Commission, Ohio

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting

SUMMARY: This notice sets the schedule for the forthcoming meetings of the Dayton Aviation Heritage Commission. Meeting notices are required under the Federal Advisory Committee Act (Pub. L. 92–463).

DATES: Tuesday, February 24, 1998; 4:15 p.m. to 6:30 p.m.

ADDRESSES: 22 South Williams Street (Bicycle Shop).

DATES: Monday, March 2, 1998; 5:15 p.m. to 6:30 p.m.

ADDRESSES: Innerwest Priority Board conference room, 1024 West Third Street, Dayton, Ohio 45407.

These business meetings will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the Superintendent, Dayton Aviation, 1 week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: William Gibson, Superintendent, Dayton Aviation, National Park Service, P.O. Box 9280, Wright Brothers Station, Dayton, Ohio 45409, or telephone 513–225–7705.

SUPPLEMENTARY INFORMATION: The Dayton Aviation Heritage Commission was established by Pub. L. 102–419, October 16, 1992.

Dated: February 17, 1998.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 98–4568 Filed 2–23–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Announcement of a public meeting to receive testimony concerning planning for how and where in the Franklin Delano Roosevelt Memorial, Washington, D.C., permanent recognition of President Roosevelt's disability should be achieved.

DATES: March 9, 1998, 10:00 am.

ADDRESSES: National Capital Planning Commission, 801 Pennsylvania Avenue, NW., Third Floor, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Parsons, Associate Superintendent, Stewardship and Partnerships, National Capital Region, at 202–619–7025. Written comments can be addressed to Mr. Parsons at National Park Service, National Capital Region, 1100 Ohio Drive, SW., Room 220, Washington, DC 20242. Comments must be received by March 27, 1998.

SUPPLEMENTARY INFORMATION: Pursuant to Public Law 105–29, the Franklin D. Roosevelt Memorial Committee and the National Park Service will conduct a public meeting to receive testimony on an addition to the Franklin Delano Roosevelt Memorial to recognize President Roosevelt's disability. On July 24, 1997, President William Clinton signed into law a Joint Resolution which directs the Secretary of the Interior to "plan for the design and construction of an addition of a permanent statue, bas-relief, or other similar structure to the [Franklin Delano Roosevelt Memorial] to provide recognition of the fact that President Roosevelt's leadership in the struggle by the United States for peace, well-being, and human dignity was provided while the president used a wheelchair." The National Park System Advisory Board established the Franklin D. Roosevelt Memorial Committee to help the Board advise the Secretary on achieving appropriate recognition. The Franklin D. Roosevelt Memorial Committee will make its recommendations to the full Board, which will then provide the advice the Secretary has requested.

The Franklin D. Roosevelt Memorial Committee is chaired by Dr. Holly A. Robinson, Historian and Vice Chair of the National Park System Advisory Board. The other members of the Committee are: Hugh Gallagher, author of *FDR's Splendid Deception* and noted disability rights activist; Karl Komatsu, historic architect and board member of the National Trust for Historic Preservation; Laurie D. Olin, landscape architect and Adjunct Professor, University of Pennsylvania; Michael R. Deland, Vice Chairman of American Flywheel Systems, Inc., and Chairman of the Board of the National Organization on Disability; David Dillon, author, architecture critic and Loeb Fellow at Harvard University; and James Roosevelt, Jr., public policy leader and grandson of President Franklin D. and Eleanor Roosevelt.

The Franklin D. Roosevelt Memorial Committee has met on three occasions with the memorial designer, Mr. Lawrence Halprin, to become familiar with the memorial and his design philosophy. As a result of these deliberations toward integrating an addition into the highly acclaimed memorial design, the Franklin D. Roosevelt Memorial Committee and the National Park Service have determined that the next step in the planning process is to seek public opinion concerning the placement of an addition at the Franklin Delano Roosevelt Memorial which will recognize President Roosevelt's disability.

The Franklin D. Roosevelt Memorial Committee and the National Park Service will conduct a public meeting on March 9, 1998, in the Commission Meeting Room at the National Capital Planning Commission, Third Floor, 801 Pennsylvania Avenue, NW., Washington, D.C. beginning at 10:00 am.

The intent of the meeting is to receive public testimony concerning how and where in the existing memorial recognition of President Roosevelt's disability should occur. Those who wish to register in advance to speak can do so by calling the Office of Stewardship and Partnerships of the National Capital Region of the National Park Service at 202–619–7025 until 4:00 on Friday, March 6, 1998. Those who register in advance will be called to testify at the meeting in the order of their registration. Those who register at the meeting will be called in turn in the order of their registration. Speakers are requested to limit their remarks to a 3-minute time period. Written testimony will be accepted at the meeting. For further information contact Mr. John G. Parsons, Associate Superintendent, Stewardship and Partnerships, National Capital Region, at 202–619–7025. Written comments can be addressed to Mr. Parsons at National Park Service, National Capital Region, 1100 Ohio Drive, SW., Room 220, Washington, DC 20242. Comments must be received by March 27, 1998.

Dated: February 17, 1998.

John G. Parsons,

Associate Superintendent, Stewardship and Partnerships, National Capital Region.

[FR Doc. 98–4563 Filed 2–23–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Meeting of the New Orleans Jazz Commission

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the New Orleans Jazz Commission will be held at the following place and time.

DATES: Tuesday, March 17, 1998 at 5:00 p.m.

ADDRESSES: The meeting will be held in the U.S. Mint Conference Room on 751 Chartres Street, New Orleans, LA 70116.

FOR FURTHER INFORMATION CONTACT: Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact: Rayford Harper, Superintendent, New Orleans Jazz National Historical Park, 365 Canal Street, Suite 2400, New Orleans, Louisiana 70130–1142, Telephone (504) 589–4806.

SUPPLEMENTARY INFORMATION: The official designation of the Commission is the New Orleans Jazz Commission.

The Commission has been established to assist the National Park Service in implementing the purposes of Public Law 103–433. The purposes of Public Law 103–433 are to:

a. Establish a New Orleans Jazz National Historical Park to preserve the origins, early history, development and progression of jazz;

b. Provide visitors with opportunities to experience the sights, sounds, and places where jazz evolved; and

c. Implement innovative ways of establishing jazz educational partnerships that will help to ensure that jazz continues as a vital element of the culture of New Orleans and our Nation.

In accordance with Public Law 103–433, Title XII, the duties of the Commission are to:

(1) Advise the Secretary in the preparation of the General Management Plan; assist in public discussions of planning proposals; and assist the National Park Service in working with individuals, groups, and organizations including economic and business interests in determining programs in which the Secretary should participate through cooperative agreement;

(2) In consultation and cooperation with the Secretary, develop partnerships with educational groups, schools, universities, and other groups in furtherance of the purposes of the act establishing the New Orleans Jazz National Historical Park;

(3) In consultation and cooperation with the Secretary, develop partnerships with city-wide organizations, and raise and disperse funds for programs that assist mutual aid and benevolent societies, social and pleasure clubs and other traditional groups in encouraging the continuation of and enhancement of jazz cultural traditions;

(4) Acquire or lease property for jazz education, and advise on hiring brass bands and musical groups to participate in education programs and help train young musicians;

(5) In consultation and cooperation with the Secretary, provide recommendations for the location of the visitor center and other interpretive sites;

(6) Assist the Secretary in providing funds to support research on the origins and early history of jazz in New Orleans; and

(7) Notwithstanding any other provision of law, seek and accept donations of funds, property, or services from individuals, foundations, corporations, or other public or private entities and expand and use the same for the purposes of providing services, programs, and facilities for jazz education, or assisting in the rehabilitation and restoration of structures identified in the national historic landmark study as having outstanding significance to the history of jazz in New Orleans.

The matters to be discussed at this meeting include:

Old Business (Commission Projects)
New Business
General Management Plan Update

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning matters to be discussed with the Superintendent, New Orleans Jazz National Historical Park.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the headquarters office of New Orleans Jazz National Historical Park.

Dated: February 10, 1998.

Daniel W. Brown,

Regional Director, Southeast Region.

[FR Doc. 98–4635 Filed 2–23–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 14, 1998. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, PO Box 37127, Washington, DC 20013–7127. Written comments should be submitted by March 11, 1998.

Carol D. Shull,

Keeper of the National Register.

ARIZONA

Yavapai County

Fort Misery, 415 W. Gurley St., Prescott, 98000224

CALIFORNIA

Yuba County

Miller, Warren P., House, 704 D St., Marysville, 98000225

COLORADO

Denver County

Helene Apartment Building, 1052 Pearl St., Denver, 98000226

GEORGIA

Lumpkin County

Davis, Daniel M., House, GA 9, 1.5 SW of jct. of GA 9 and GA 52, Dahlonega vicinity, 98000227

LOUISIANA

Iberia Parish

Lutzenberger Foundry and Pattern Shop Building, 502 and 505 Jane St., New Iberia, 98000228

MONTANA

Gallatin County

Flaming Arrow Ranch House and Office, 15325 Bridger Canyon Rd., Bozeman vicinity, 98000229

NEW JERSEY

Bergen County

Beech Street School, 49 Cottage Place, Ridgewood, 98000233

Camden County

Gloucester City Water Works Engine House, Jct. of Johnson Blvd and Gaunt St., Gloucester City, 98000235

Cape May County

Cold Spring Grange Hall, 720 Seahore Rd., Lower Township, 98000234

Mercer County

Green—Reading House, 107 Wilburtha Rd., Ewing Township, 98000237

Middlesex County

Wicoff, John Van Buren, House, 641 Plainsboro Rd., Plainsboro, 98000236

Union County

Young Women's Christian Association of Plainfield and North Plainfield, 232 W. Front St., Plainfield, 98000232

NEW MEXICO

Catron County

Zuni Salt Lake and Sanctuary District, Address Restricted, Quemado vicinity, 98000238

NEW YORK

New York County

First Romanian—American Congregation Synagogue, 89–93 Rivington St., New York, 98000239

NORTH CAROLINA

Martin County

Conoho Creek Historic District, Roughly bounded by Conoho Cr., Salsbury Mill Branch, and 0.5 mi. S of NC 142, Hassell vicinity, 98000230

New Hanover County

Hooper, William, School (Former), 410 Meares St., Wilmington, 98000231

TENNESSEE

Knox County

Daniel House, 2701 Woodson Dr., Knoxville, 98000240

Shelby County

Delmar—Lema Historic District, 1044–1066 Delmar Ave; 1044–1060, 1041–1061 Lemar Pl., Memphis, 98000242

Douglass High School, 3200 Mount Olive Rd., Memphis, 98000241

Washington County

Bowers—Kirkpatrick Farmstead, 3033 Boone's Creek Rd., Gray vicinity, 97001108

VIRGINIA

Alleghany County

Rosedale Historic District, Addams St., Midland Trail Rd., Rosedale Ave., Stoughton Ln., Sweetbrier Ave., Covington vicinity, 98000243

A Removal has been requested for:

TENNESSEE

Obion County

Parks Covered Bridge, N of Trimble of US 51, Trimble vicinity, 78002624

PENNSYLVANIA

Dauphin County

Greenawalt Building, 118–120 Market St., Harrisburg, 83002235

[FR Doc. 98–4607 Filed 2–23–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Desert Caballeros Western Museum, Wickenburg, AZ

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Desert Caballeros Western Museum which meets the

definition of "object of cultural patrimony" under Section 2 of the Act.

The item is an Apache *Gaan* ceremonial headdress of painted wood and cloth.

During the 20th century, this headdress was collected in Arizona. In 1978, this headdress was donated to the Desert Caballeros Western Museum by Henry Frick.

This headdress has been verified to be San Carlos Apache by representatives of the San Carlos Apache Tribe, the White Mountain Apache Tribe, the Tonto Apache Tribe, and the Yavapai-Apache Nation of the Camp Verde Reservation. The San Carlos Apache Tribe have documented that this item has ongoing traditional and cultural importance to the tribe and could not have been conveyed by any individual tribal member.

Based on the above-mentioned information, officials of the Desert Caballeros Western Museum have determined that, pursuant to 43 CFR 10.2 (d)(3), these cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Desert Caballeros Western Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between this item and the San Carlos Apache Tribe.

This notice has been sent to officials of the San Carlos Apache Tribe, the White Mountain Apache Tribe, the Tonto Apache Tribe, and the Yavapai-Apache Nation of the Camp Verde Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Sheila Kollasch, Curator, Desert Caballeros Western Museum, 21 North Frontier St., Wickenburg, AZ 85390; telephone (520) 684–2272 before March 26, 1998. Repatriation of this object to the San Carlos Apache Tribe may begin after that date if no additional claimants come forward.

Dated: February 18, 1998.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 98–4685 Filed 2-23; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Camp Verde, AZ in the Possession of Arizona State Parks, Phoenix, AZ

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43CFR 10.9, of the completion of an inventory of human remains from Camp Verde, AZ in the possession of Arizona State Parks, Phoenix, AZ

A detailed assessment of the human remains was made by Arizona State Parks professional staff in consultation with representatives of the Yavapai-Apache Nation of the Camp Verde Reservation.

In 1970, human remains representing one individual were acquired by Arizona State Parks from the Camp Verde Historical Society. This individual has been identified as Del-che, an Apache man killed in 1874. No associated funerary objects are present.

In 1874, Del-che was killed and his head was brought in to Fort Verde where his death was confirmed by the U.S. Army. Dr. James Reagles was the fort surgeon at the time, and retained possession of Del-che's skull. Following Dr. Reagles' death, his son, Walter J. Reagles had possession of the skull until it's donation to the Camp Verde Historical Society around 1943.

Based on the above mentioned information, officials of the Arizona State Parks have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Arizona State Parks have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Yavapai-Apache Nation of the Camp Verde Reservation.

This notice has been sent to officials of the Yavapai-Apache Nation of the Camp Verde Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Cathy Johnson, Historic Resources Manager/Archaeologist, 1300 West Washington, Phoenix, AZ 85007; telephone: (602) 542–6951, fax: (602) 542–4180, before March 26, 1998. Repatriation of the human remains to the Yavapai-Apache Nation of the Camp Verde Reservation may begin after that date if no additional claimants come forward.

Dated: February 18, 1998.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 98–4684 Filed 2-23-98 ; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Review of Existing Coordinated Long-Range Operating Criteria for Colorado River Reservoirs (Operating Criteria)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of final decision regarding the operating criteria.

SUMMARY: The purpose of this action is to provide public notice that the Secretary of the Interior (Secretary) has decided not to change the existing Operating Criteria as a result of the recently completed review process. The review has been conducted as an open public process, including formal consultation with the seven Colorado River Basin States (Basin States). The results of the review indicate that modification of the Operating Criteria is not justified at the present time.

EFFECTIVE DATE: February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Moore, Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone (801) 524-3702, or Ms. Jayne Harkins, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89005, telephone (702) 293–8190.

SUPPLEMENTARY INFORMATION: The public review process began with a **Federal Register** notice published on August 20, 1996 (61 FR 43073), announcing the review of the Operating Criteria and inviting comments during the 60 days following the notice. On October 31, 1996, another **Federal Register** notice (61 FR 56246) was published announcing two public consultation meetings and extending the comment period an additional 30 days. On November 4, 1996, a Fact Sheet containing information about the Operating Criteria review and an invitation to the public consultation meetings was sent to known and anticipated interested parties and agencies, and governor-designated

representatives of the Basin States, inviting their participation.

Comments from the two **Federal Register** notices were received from 18 respondents. The comments were reviewed by the Bureau of Reclamation for identification and analysis of the issues. Public consultation meetings were held on November 18, 1996, and December 2, 1996, to discuss the identified issues and answer questions from all interested parties. A set of all comment letters received was provided to any interested party requesting a copy. After the public consultation meetings, the analyses of the issues raised during the public review process were sent to all interested parties and participants in a March 1997 newsletter entitled the River Review.

In response to requests, another public consultation meeting and an additional 45-day comment period were announced in the **Federal Register** on March 28, 1997 (62 FR 14942). On April 4, 1997, a letter from the Reclamation Team Leader containing the preliminary results of Reclamation's analysis on each major issue area and an invitation to attend a public consultation meeting on the preliminary results and analysis was sent to all 18 respondents, governor-designated representatives of the Basin States, and any others who had attended meetings or expressed an interest in the review of the Operating Criteria. On April 22, 1997, a final public consultation meeting was conducted to discuss the preliminary analyses.

As required by Pub. L. 90–537, formal consultation with the representatives of the seven Basin States, and other parties and agencies as the Secretary may deem appropriate, was conducted in the context of public consultation meetings on three separate occasions: November 18, 1996; December 2, 1996; and April 22, 1997.

Following analysis of comments received as a result of this notice, the National Environmental Policy Act (NEPA) was applied to the Secretary's final decision.

Background

The Operating Criteria, promulgated pursuant to Section 602 of Pub. L. 90–537 (43 U.S.C. 1552), were published in the **Federal Register** on June 10, 1970. The Operating Criteria provide for the coordinated long-range operation of the reservoirs constructed and operated under the authority of the Colorado River Storage Project Act, the Boulder Canyon Project Act, and the Boulder Canyon Project Adjustment Act for the purposes of complying with and carrying out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty.

Previous reviews of the Operating Criteria were initiated in 1975, 1980, 1985, and 1990. They resulted in no changes to the Operating Criteria. Prior to 1990, reviews were conducted primarily through meetings with and correspondence among representatives of the seven Basin States and Reclamation. Because the long-range operation of the Colorado River reservoirs is important to many agencies and individuals, in 1990, through an active public involvement process, Reclamation expanded the review of the Operating Criteria to include all interested stakeholders. A team consisting of Reclamation staff from Denver, Colorado; Salt Lake City, Utah; and Boulder City, Nevada, was organized to conduct the 1990 review. Review of the Operating Criteria in 1990 resulted in no changes. For the 1995 review, Reclamation staff from Salt Lake City, Utah, and Boulder City, Nevada, followed the same public process.

The scope of the review has been consistent with the statutory purposes of the Operating Criteria which are "to comply with and carry out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty." Long-range operations generally refer to the planning of reservoir operations over several decades, as opposed to the Annual Operating Plan (AOP) which details specific reservoir operations for the next operating year.

Synopsis of Review Results

Many of the issues raised during the review are more properly dealt with during the development of the AOP. These include annual surplus determinations in the Lower Basin; the probability of spills from Lake Powell, including the release of beach/habitat building flows from Glen Canyon Dam; storage equalization between Lakes Powell and Mead; and factors for determining 602(a) storage.

The Operating Criteria were purposely designed to be flexible so that during the development of the AOP, variations in hydrologic conditions and changing demands for water use, including environmental demands and possible mitigation measures, could be accommodated. The process for developing the AOP is open to the public and all interested parties.

Reclamation regularly applies the NEPA process to activities constituting a major federal action significantly affecting the quality of the human environment. The decision not to change the Operating Criteria is subject to NEPA and a Categorical Exclusion has been executed.

With respect to other environmental issues, Reclamation is in various stages of consultation with the Fish and Wildlife Service under Section 7 of the Endangered Species Act on most Colorado River mainstem facilities. When a Section 7 consultation results in the Service providing Reclamation with specific flow recommendations to remove or prevent jeopardy to listed species or their critical habitat, they are incorporated into Reclamation's operations, and if appropriate, included in the AOP.

Reclamation has programmed and expended funds for fish and wildlife mitigation and enhancement for impacts associated with previous activities where appropriate. Reclamation will continue to use this approach. Any changes associated with the long-range Operating Criteria will also be evaluated to determine if there are any mitigation requirements or enhancement opportunities.

Regarding the issue of water marketing and banking, Reclamation has initiated a rule making process focused on water banking in groundwater aquifers or off-mainstem storage reservoirs in the Lower Basin. This administrative rule is considered a responsibility of the Secretary of the Interior and focuses only on the three Lower Basin states. Reclamation believes that water marketing and banking do not require a change to the current Operating Criteria, as this issue lends itself to the AOP process.

Throughout the course of the review of the Operating Criteria, Reclamation has encouraged public participation and developed a thorough administrative record. Based on the results of the review and the analysis of public comments, it has been decided not to modify the Operating Criteria at this time.

Analysis of Issues

Issue #1

Application of the Administrative Procedure Act (APA).

Background

The APA was signed into law in 1946 by President Truman. The purposes of the Act are: (1) To require agencies to keep the public informed on organization, procedures and rules, (2) to provide for public participation in the rule making process, (3) to prescribe uniform standards of conduct for rule making and adjudicatory proceedings,

and (4) to restate the law of judicial review. The law primarily deals with rule making. The definition in the law (5 U.S.C. 551(4)) of a rule in part is as follows: ". . . the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency . . . " Rule making has two parts, formal and informal.

Analysis and Response

The Coordinated Long-Range Operating Criteria is a document generated from a requirement in the 1968 Colorado River Basin Project Act. It describes how the Secretary of the Interior will meet some of the commitments under the Act. The review of the Coordinated Long-Range Operating Criteria is not a rule making exercise and is therefore not subject to the formal rule making provisions of the APA.

Nevertheless, the Bureau of Reclamation has encouraged full public participation in this process and has developed a thorough administrative record of this review.

Issue #2

Surplus declarations are referenced in the 1964 Supreme Court decree (Arizona v. California) and are a part of the 1970 Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs. The decree apportions surpluses (50 percent to California, 46 percent to Arizona, and 4 percent to Nevada), while the Operating Criteria define surpluses as existing when there is sufficient storage in Lake Mead to supply greater than 7.5 million acre-feet (MAF) for Lower Basin consumptive uses. Guidelines for determining when surplus conditions exist have never been formally adopted.

Background

In the past, Reclamation has performed computer modeling studies of alternative surplus guidelines to determine the effects of various levels of surplus use. Because the shortage risks of surplus use (Arizona) fall on other than the benefactor (California), impacts and differences in risks of future shortages and reservoir drawdown have been keenly debated. All modeling strategies have as their foundation the principle of reducing system spills by allowing greater use in the Lower Basin, thus drawing down the reservoirs and thereby avoiding flood control releases. This greater drawdown then allows the high flows of flood years to be captured by the reservoir system. While the amount of system spills is thus reduced, the degree of drawdown affects the risk of shortages to users during possible future drought conditions. Resolving the balance between risk of shortages and spills is the heart of the surplus issue.

Until 1996, Lower Basin consumptive uses were less than their allocation of 7.5 MAF, and California uses were met through unused apportionments of Arizona and Nevada rather than surplus declarations. However, with the implementation of the Arizona groundwater banking program, total Lower Basin use now exceeds 7.5 MAF and water above this amount can only be delivered through surplus declarations.

The 1996 Annual Operating Plan (AOP) committed to meet all reasonable beneficial consumptive uses, and later in the year when the annual Lower Division States' net diversions were projected to be greater than 7.5 MAF, a surplus was declared. The 1997 AOP contains an explicit determination of surplus, based on the current hydrologic situation and a lack of impacts from this single decision. Taking into account (1) the existing water storage conditions in the basin, (2) the most probable near-term water supply conditions in the basin, and (3) that the beneficial consumptive use requirements of Colorado River mainstream users in the Lower Division states are expected to be more than 7.5 MAF, the surplus condition is the criterion proposed to govern the operation of Lake Mead for calendar year 1998. This determination is based on flood control and spill avoidance considerations.

While these determinations have relied on an annual examination of existing water storage conditions in the basin, the most probable near-term water supply conditions in the basin, and the expected beneficial consumptive use requirements of Colorado River mainstream users in the Lower Division states, parties interested in the operation of the Colorado River system reservoirs have not collectively agreed to support any specific long-term strategy for declaring surplus and shortage conditions. Specific, long term strategies have been evaluated, each of which could provide potential benefits and affect water supply reliability when compared to the existing mode of operating the reservoir system. Drought periods in the basin can extend for many years and with the large volume of reservoir storage, many years could be required before negative impacts of surplus determinations are observed. Much of the current debate is focused on the risk of certain things happening in the future.

Analysis and Response

The comments received addressed three key topics relating to surplus determinations: (1) The establishment of guidelines, (2) the forum for establishing these guidelines, and (3) how surpluses will affect the probability of spills from Lake Powell.

Establishment of Guidelines. The commentors all agreed that surplus and shortage guidelines should be established, but varied in how firm or detailed these guidelines should be. The most flexible approach would be the annual determination of surplus/normal/shortage conditions through the AOP process, deciding on the condition of the reservoir system on a year-by-year basis. The most rigid approach would be the revision of the Operating Criteria to include specific guidelines which then would be applied each year to produce a determination.

Flexible guidelines have the advantage of being easily modified as consumptive use demands and hydrologic conditions change throughout the basin. For some parties, near-term surpluses could be more liberal than when Upper Basin uses increase and the likelihood of surplus deliveries are reduced. Flexible guidelines could be adopted without the more formal process of incorporating guidelines into the Operating Criteria.

Modifying the Operating Criteria to include surplus guidelines offers the advantage of clearly specifying under what conditions surpluses would be declared. All interests would then understand exactly what impacts could be expected under ranges of hydrologic conditions. Contingency plans could be implemented to mitigate adverse impacts and agreements could be formed to help meet consumptive use demands during non-surplus periods.

Forum for Establishing Guidelines. Most commentors felt that the AOP would be the most appropriate mechanism for preparing surplus/shortage guidelines. The less formal nature of the AOP meetings was viewed as positive for attempting to resolve this difficult issue. However, the issue has been addressed for the last five years in the AOP meetings, and no definite guidelines have been produced.

Probability of Spills from Lake Powell. The release of beach/habitat building flows from Glen Canyon Dam was a contentious topic during the completion of the Glen Canyon Dam Environmental Impact Statement. The 1968 Colorado River Basin Project Act directed the Secretary of the Interior to avoid anticipated spills while the 1992 Grand Canyon Protection Act directed the

Secretary to operate the dam to improve the environmental conditions in the Grand Canyon. In 1995, an agreement was reached between interested parties which attempts to meet the intent of both the 1968 and 1992 Acts by providing these high flows during high reservoir storage conditions when required for dam safety purposes.

Surplus determinations which explicitly drop the level of Lake Mead and through equalization drop the level of Lake Powell would likely reduce the probability of these powerplant bypasses. Commentors responded with concern for this possibility recommending that if surpluses were declared, measures should be taken to keep the probability of bypasses the same as at the present. The impacts of high spring flows are currently believed to be very important and this potential effect should be addressed as surplus guidelines are developed.

The Bureau of Reclamation believes that surplus/shortage criteria should (1) be specific guidelines that can be used to predict measurable effects in the future, (2) be developed through the AOP process, and (3) include a discussion of the potential effects on Lake Powell spills along with possible mitigation measures.

Issue #3

Section 602(a)(3) of the 1968 Colorado River Basin Project Act discusses the quantification of a reservoir storage volume in the Upper Basin. This storage is intended to supplement the unregulated flow of the Colorado River at Lees Ferry during drought periods as part of the 1922 Colorado River Compact deliveries to the Lower Basin. The intent of this provision is to avoid impairment of Upper Basin consumptive uses.

Background

The 1968 Act contains a provision providing that water not required to be stored shall be released from Lake Powell: (i) To the extent it can be reasonably applied in the States of the Lower Division to the uses specified in article III(e) of the Colorado River Compact, but no such releases shall be made when the active storage in Lake Powell is less than the active storage in Lake Mead, (ii) to maintain, as nearly as practicable, active storage in Lake Mead equal to the active storage in Lake Powell, and (iii) to avoid anticipated spills from Lake Powell. Through a combination of avoiding spills, equalizing storage between Lakes Powell and Mead, and the 602(a) storage volume, Upper Basin water was to be transferred to Lake Mead for use in the Lower Basin. When Upper Basin storage falls below this 602(a) storage level, storage equalization provisions of the 1968 Act are disregarded.

By statute, the 602(a) storage volume was to be quantified taking into account historic stream flows, the most critical period of record, and probabilities of water supply. Since the purpose of this storage is to help provide Lower Basin deliveries, it is quantified as the difference between depleted flow at Lees Ferry and the Lower Basin delivery requirements over some period of drought. Upper Basin depletion levels significantly affect the storage calculation. Using the most critical period of natural flow, the 602(a) volume is currently estimated to be about 10 million acre-feet, which includes preservation of the 5.2 million acre-feet minimum power pool in Lake Powell. In the future, when Upper Basin consumptive uses increase, it has been assumed that Lake Powell could be completely drained to provide Lower Basin deliveries.

Controversy exists regarding the probability attached to the depleted flow assumptions with respect to both the rarity of the critical flow period and the projected depletion increases in the Upper Basin. These are the principle reasons that 602(a) storage has never been formally determined and agreed to by the Basin States. However, in the computer modeling of long-range operations of the reservoir system, some estimate or procedure must be used to model this portion of the applicable statutes. Currently, the Bureau of Reclamation uses the observed critical 12-year period (1953–1964) as the basis for the storage calculation. Reflecting the lack of a formal determination, each year's Annual Operating Plan has contained language stating that current reservoir storage in Upper Basin reservoirs exceeds the storage required under Section 602 under any reasonable range of assumptions which may be applied. The current Upper Basin depletion level is the prime reason that this statement is true.

Analysis and Response

The relationship between the 602(a) volume and surplus/shortage criteria has been raised in previous Annual Operating Plan discussions. Some parties have argued that both less or more severe drought periods should be used in the modeling, thus changing the Upper Basin risk of shortages.

Formally specifying or changing the risks associated with the 602(a) storage level will likely require a legal opinion on the issue of avoiding impairment of Upper Basin consumptive uses. Since these uses presently do not significantly restrict Lower Basin surpluses and require much less than full Lake Powell storage to meet Lower Basin deliveries, this issue perhaps is not ripe for resolution. Reclamation recommends delaying implementing guidelines or changing the current 602(a) modeling assumptions until current assumptions or practices create unacceptable impacts.

Issue #4a

The Bureau of Reclamation should conduct an environmental analysis under the National Environmental Policy Act (NEPA) of any changes to the Operating Criteria.

Background

Letters of comment to the Operating Criteria review expressed concern over the long-term effects of the Operating Criteria on downstream resources as it relates to cumulative effects and spill frequency. Several letters indicated that the current Operating Criteria do not give equal consideration to environmental and recreational resources, and instead focus only on traditional water and power uses. To incorporate consideration of all resources and impacts of the Operating Criteria, the commentors recommended that the Operating Criteria be evaluated through application of NEPA.

Analysis and Response

Reclamation regularly applies the NEPA process to activities constituting a federal action, and agrees that compliance with NEPA would be required for any proposed changes to the long-range Operating Criteria that are discretionary Federal Actions (Chapter 2.1 of the Reclamation NEPA Handbook). The appropriate level of NEPA compliance after review of the Operating Criteria was determined to be a Categorical Exclusion which has been executed.

NEPA regulations require that each agency promulgate agency-specific guidelines to supplement the Council on Environmental Quality's general regulations (40 CFR parts 1500–1508). These classifications list those actions that: (1) Have a significant impact on the environment (requiring preparation of an environmental impact statement); (2) those which are categorically excluded from the EIS process (for which a categorical exclusion (CE) is prepared); and (3) those which fall in between (1) and (2) and will usually require the preparation of an environmental assessment (EA). As a result of the analysis contained in an EA, either an EIS or a Finding of No Significant

Impact (FONSI) is prepared by the agency.

The key issue in whether NEPA documentation is needed regarding this 5-year review is whether there is a federal action or federal discretion associated with this review. If no federal action is being proposed or taken by Reclamation, no NEPA documentation would be required. No changes are being proposed as the result of this review. However, because the decision to make no changes is a federal action, Reclamation concludes that preparation of a NEPA compliance document is appropriate. Reclamation executed a Categorical Exclusion pursuant to Departmental Instructions 516 DM 2, appendix 1.7, which provides that a CE may be prepared for routine and continuing government business, including such things as supervision, administration, operations, maintenance and replacement activities having limited context and intensity; e.g. limited size and magnitude or short-term effects.

Issue #4b

The Operating Criteria should recognize the need to preserve and recover endangered species dependent upon the quantity, quality, and pattern of release.

Background

Construction and operation of water storage and delivery facilities on the Colorado River and its tributaries are recognized as factors contributing to the decline of certain fish and wildlife species which have been listed as threatened or endangered by the Fish and Wildlife Service (Service). Storing water during the spring runoff decreases the natural spring flow, and releasing water later in the year for consumptive use raises the base flow. These types of changes in the hydrograph have removed spawning cues and affected water temperature, clarity, the food base, and fluvial geomorphology. Physical alteration from riverine to extensive reservoir environments has occurred causing further change to habitat for these species and contributed to the establishment of exotic species of fish, wildlife, and plants that compete with listed species and their habitat. The control of natural flood cycles and development of the floodplain for agriculture and other purposes has significantly changed or eliminated original habitats in and along extensive parts of the lower Colorado River. The success of efforts to recover endangered species are often thought to be dependant on restoring the natural hydrograph to the degree possible. Commentors are concerned that if provisions for releases designed to recover endangered species are not incorporated into the Operating Criteria, changes to operations will not be implemented.

Analysis and Response

Reclamation is in various stages of consultation with the Service under Section 7 of the Endangered Species Act on most mainstem facilities. Conservation plans and recovery programs are also a large part of Reclamation activities in operation of the Colorado River. Operation of these facilities for endangered species would remain consistent with the original intended purpose of the project in accordance with the implementing regulations of the Endangered Species Act. When a Section 7 consultation results in the Service providing Reclamation with specific flow recommendations or other alternatives to remove or prevent jeopardy to listed species or their critical habitat, they are incorporated into Reclamation's operations, and if appropriate, are included in the Annual Operating Plan of the particular facility which was the subject of the consultation. Operations remain consistent with the "Law of the River," water service contracts, and other legal obligations. Examples of facilities where consultation has been completed resulting in a flow recommendation are Flaming Gorge Dam on the Green River in Utah, Glen Canyon Dam on the Colorado River in Arizona, and several features of the Colorado River Front Work and Levee System Program on the last 270 miles of the Colorado River in the United States.

Reclamation and the Service recently completed formal Section 7 consultation on lower Colorado River operations and maintenance (Lake Mead to the Southerly International Boundary with Mexico), and are engaged in ongoing consultation for Navajo Reservoir operations on the San Juan River in Colorado, and Aspinall Unit operations on the Gunnison River in Colorado. The Department of the Interior signed a Memorandum of Agreement in August 1995 that was further described in a Memorandum of Clarification and most recently a joint Participation Agreement to develop a long-term (50 year) Lower Colorado River Multi-Species Conservation Program (MSCP) from Lees Ferry to the Southerly International Boundary with Mexico. The overall objective of the MSCP is to develop a plan which would conserve and protect more than 100 listed and sensitive species within the Colorado River and its one hundred-year flood plain, and to the extent consistent with law, accommodate current and future water and power operations.

Reclamation continues to undertake and pursue efforts for conservation and recovery of fish and wildlife and associated critical habitat under specific project authorities such as Section 8 of the Colorado River Storage Project Act and the Grand Canyon Protection Act. In addition, Reclamation has significant ongoing conservation and recovery efforts under the authority of Section 7(a)(1) of the Endangered Species Act. For example, the Lake Mohave Native Fish Rearing Program in the Lower Colorado River Basin continues to collect and rear wild larval razorback and bonytail chubs for release back into Lake Mohave to maintain the primary adult population and genetic pool for these species. Voluntary refinements to river operations have also been implemented when possible to benefit endangered species (i.e., management of reservoir levels in Lake Mohave for endangered fish). The Upper Colorado River Recovery Implementation Program, with an annual budget exceeding $7 million, and the San Juan River Basin Recovery Implementation Program are other examples.

Reclamation will continue to plan and implement initiatives for protection of endangered species and associated critical habitat on a project-specific basis as described, with the goal of integrating these actions to the greatest degree possible to address ecosystem level needs. Initiatives such as the Glen Canyon Adaptive Management Program and the MSCP will be considered and incorporated into future Annual Operating Plans and Section 7 consultations, as appropriate.

Issue #4c

Funding for mitigation of negative impacts to fish and wildlife resources should be provided.

Background

Modification of river flows due to the operation of projects authorized by the Colorado River Storage Project Act has impacted fish, wildlife, and their habitats through reduction or elimination of overbank flooding, channelization, water depletions, and changes in water quality. These projects produce revenue primarily through power production. Commentors are concerned that sufficient funds be made available for mitigation activities.

Analysis and Response

Reclamation, like all federal agencies, must have both authorization and appropriations to undertake actions and

incur debt. In the Upper Colorado River Basin, Section 8 of the Colorado River Storage Project Act authorizes and directs the Secretary of the Interior to investigate, plan, construct, operate, and maintain facilities to improve conditions for and mitigate losses of fish and wildlife. Funds authorized by this section of the Act are nonreimbursable and nonreturnable, and therefore must be appropriated by Congress. Section 5(a) specifies that the Basin Fund will not be applied to Section 8 (fish and wildlife mitigation). The Grand Canyon Protection Act states that power revenues may be used for activities designed to conserve the environment downstream from Glen Canyon Dam, but does not exclude the use of other funding mechanisms.

Mitigation and enhancement activities are typically identified and proposed on a project-by-project basis through project planning and environmental compliance. Reclamation has programmed and expended funds for fish and wildlife mitigation and enhancement for impacts associated with previous activities where appropriate. Most often these activities are identified in Fish and Wildlife Coordination Act Reports and National Environmental Policy Act documents. Reclamation will continue to use this approach. Since no changes are being proposed, there is no specific mitigation or enhancement necessary for this action. Reclamation will continue to comply with NEPA and other appropriate environmental laws in identifying, planning, and carrying out mitigation and enhancement activities.

Issue #5

Is there a need to change the Operating Criteria.

Background

The Operating Criteria are to accomplish the objectives of Section 602(a) of the Colorado River Basin Project Act. Modification of the Operating Criteria can be done by the Secretary of the Interior "* * * as a result of actual operating experiences or unforeseen circumstances * * * to better achieve the purposes specified in (Section 602(a) of the Colorado River Basin Project Act)."

Some commentors stated that they believe "* * * there are no conditions resulting from actual operating experiences or unforeseen circumstances, since the last review, that justify the need to modify the existing Criteria," and that the reservoirs have been operating satisfactorily under the present Operating Criteria. These comments support not changing the criteria at this time.

Others stated that we are entering a new era and that the Operating Criteria should be changed to reflect different circumstances and concerns. The Lower Basin States have reached their annual apportionment of 7.5 million acre-feet for consumptive use. Environmental and recreational issues have increased in value in the eyes of the public. There were also those who stated that the Operating Criteria need to be changed to include specific guidelines that allow the Secretary of the Interior to make surplus, shortage, and normal determinations. These comments all support a need for change.

Analysis and Response

The Operating Criteria provide guidelines for the operation of Upper Basin Reservoirs and Lake Mead. Specific operational needs are not detailed in the Operating Criteria. The specific needs have, in the past, been addressed in the Annual Operating Plan development process.

The Operating Criteria may be modified from time to time as a result of actual operating experiences or unforeseen circumstances. A significant amount of operating experience has been gained over the 27-year period since the Operating Criteria were issued. Furthermore, Reclamation has developed and used analytical tools which allow operations of the Colorado River system reservoirs to be projected into the future with the inclusion of alternative operating strategies.

With the above in mind, the evaluation of operational experiences over the next several years will determine whether or not to change the Operating Criteria. But in the interim, the recommendation is not to change the Operating Criteria.

Issue #6

Water marketing and banking.

Background

Several years ago the Bureau of Reclamation advanced draft regulations for administering Colorado River water entitlements in the Lower Basin States of Arizona, California, and Nevada. The draft regulations contained provisions for water banking and water marketing in the Lower Basin. Because there was not consensus with the states regarding the draft regulations, they have been held in abeyance while the three states attempt to reach some agreement on numerous issues, including water marketing and banking. This negotiation process among the states is continuing. Many people believe that some form of water banking and marketing will be essential to meeting future water needs in the Lower Colorado River Basin.

Analysis and Response

Reclamation initiated a rule making process focused on water banking in groundwater aquifers or off-mainstem storage reservoirs in the Lower Basin. Reclamation published the draft administrative rule on Offstream Storage of Colorado River Water in the **Federal Register** on December 31, 1997. In addition, the Environmental Assessment was released in the same timeframe. Both documents are out for review and comment until March 2, 1998. This administrative rule is considered a responsibility of the Secretary of the Interior under the Boulder Canyon Project Act, and focuses only on the three Lower Basin States.

Reclamation believes that the limited water marketing and banking currently under consideration would not require a change to the current Operating Criteria.

Final Decision

The Department considered issues arising from the review of the Operating Criteria. After a careful review of the issues, solicitation of involved parties' responses to Reclamation's analysis, and consultation with the Governors' representatives of the seven Basin States, the Department has decided not to modify the Operating Criteria at this time.

Dated: February 18, 1998.

Bruce Babbitt,

Secretary, Department of the Interior.

[FR Doc. 98–4570 Filed 2–23–98; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Supplemental Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation & Liability Act

On February 5, 1998, the Department of Justice published notice of lodging of a proposed consent decree on January 21, 1998, with the United States District Court for the Northern District of Illinois, in *United States et al.* v. *City of Rockford, Illinois,* Civil No. 98 C 50026, under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9601 *et seq. See* 63 FR 5967 (February 5, 1998). The Department of Justice hereby supplements its Notice to indicate that under section 7003(d) of the Resource

Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973(d), the public may request an opportunity for a public meeting at which time they may offer comment.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–4644 Filed 2–23–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Harold Shane et al.*, Civil Action No. 90–0102–C (S.D. Ohio) entered into by the United States and Harold Shane, was lodged on February 11, 1998, with the United States District Court for the Southern District of Ohio. The proposed Consent Decree will resolve claims of the United States against Harold Shane for recovery of response costs incurred by the U.S. Environmental Protection Agency at the Arcanum Iron & Metals Superfund Site in Arcanum, Ohio pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* ("CERCLA"). The settlement requires Harold Shane to make payment of $354,112 to the United States following entry of the proposed Consent Decree.

The Consent Decree includes a covenant not to sue by the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and under section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973 ("RCRA").

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *Harold Shane et al.*, Civil Action No. 90–0102–C, and the Department of Justice Reference No. 90–11–3–504. Commenters may request an opportunity for a public hearing in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Consent Decree, and attached exhibits, may be examined at the Office of the United States Attorney for the Southern District of Ohio, 200 West Second Street, Dayton, Ohio 45402; the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; and at the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005, telephone no. (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy with attached exhibits, please refer to DJ #90–11–3–504, and enclose a check in the amount of $5.50 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–4643 Filed 2–23–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—AMMAP Venture Team

Notice is hereby given that, on December 23, 1997, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the AMMAP Venture Team ("the AMMAP Team") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Ovonic Battery Company, Troy, MI; Manufacturing Sciences Corporation, Oak Ridge, TN; Oak Ridge National Laboratory, Oak Ridge, TN; Energy Conversion Devices, Inc., Troy, MI; Colorado School of Mines, Golden, CO; and Iowa State University, Ames, IA.

The objective of the AMMAP Team is to perform a research program with the goal of developing a Mg-based high-capacity hydrogen storage material and its production technology. The activities of the AMMAP Team will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–4645 Filed 2–23–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC) announces the availability of funds in FY '98 for a cooperative agreement to fund the "Prison Health Care Initiative" project.

Purpose: The National Institute of Corrections is seeking applications for a cooperative agreement for researching, updating and expanding the monograph, *Prison Health Care: Guidelines for the Management of an Adequate Delivery System.* The award recipient will conduct research and develop a new edition of this comprehensive guide on providing medical care and health services in a correctional environment.

Authority: Public Law 93–415

Funds Available: The award will be limited to a maximum total of $100,000.00 (direct and indirect costs) and project activity must be completed within 18 months of the date of the award. Funds may not be used for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Prisons Division.

Deadline for Receipt of Applications: Applications must be received in NIC's Washington, D.C. office by 4:00 p.m. Eastern Time, Friday, April 17, 1998.

ADDRESSES AND FURTHER INFORMATION: Request for application kit, which includes further details on the project's objectives, etc., should be directed to *Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street N.W., Room 5007, Washington, D.C. 20534* or by calling 800–995–6423, ext. 159. You may also obtain an application kit by an E-mail request to Ms. Evens, jevens@bop.gov.

Any technical and/or programmatic information/questions on this announcement should be directed to Mr. Keith O. Nelson at the above address or by calling 800–995–6423, ext. 141 or 202–307–3106, ext. 141, or by E-mail via knelson@bop.gov.

Eligible Applicants: An eligible applicant is any private, nonprofit organization or institution, or individual.

Review Consideration: Applications received under this announcement will be subjected to a NIC 3 to 5 member Peer Review Process.

Number of Awards: One (1)

NIC Application Number: 98P02. This number should appear as a reference line in your cover letter and box 11 of Standard Form 424.

Other Information: Applicants are advised that the narrative description of their program, not including the budget justification or Standard Form 424, attachments and appendices *should not* exceed forty (40), double-spaced typed pages.

Executive Order 12372: This program is subject to the provisions of Executive Order 12372. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of which is included in the application kit, along with further instructions on projects serving more than one State.

Dated: February 19, 1998.

(Catalog of Federal Domestic Assistance number is 16.603)

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 98–4681 Filed 2–23–98; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Bureau of International Labor Affairs

Office of Foreign Relations; Solicitation for Grant Application: Establish a Post-Graduate Masters-Level IR–HRM Degree Program With a Polish University

AGENCY: Bureau of International Labor Affairs, Office of Foreign Relations.

ACTION: Notice.

SUMMARY: The purpose of this one grant is to (develop and) establish a masters-level IR–HRM degree program with a Polish University in order to institutionalize previous Labor Management Relations (LMR) work done by the USDOL in Poland during the last five years. THIS GRANT IS LIMITED TO AMERICAN UNIVERSITIES OR COLLEGES LOCATED IN THE UNITED STATES OF AMERICA. The maximum funding level is $300,000.

DATES: An application package and instructions for completion will be made available for issuance on or about February 11, 1998. The closing date for receipt of a completed application in response to the SGA will be no later than 4:30 pm, May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Ave., NW, Washington, DC 20210, Telephone (202) 219–9355, e-mail: harvey-lisa@dol.gov.

Signed at Washington, D.C. this 18 day of February, 1998.

Lawrence J. Kuss,

Grant Officer.

[FR Doc. 98–4668 Filed 2–23–98; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,742]

Notice of Revised Determination on Reconsideration

On October 10, 1997, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on October 24 1997 (62 FR 55424).

The Department initially denied TAA to workers of Dana Corporation, Spicer Trailer Products, Berwick, Pennsylvania, producing leaf springs because the "contributed importantly" group eligibility requirement of Section 223(3) of the Trade Act of 1974, as amended, was not met.

On reconsideration, the Department conducted further survey analysis of major customers of Dana Corporation, Spicer Trailer Products. The survey revealed that a former major customer reduced purchases of leaf springs from the Berwick plant and increased purchases from a firm which increased its imports of leaf springs similar to the articles produced at the Berwick plant.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with leaf springs, contributed importantly to the declines in sales or production and to the total or partial separation of workers of Dana Corporation, Spicer Trailer Products. In accordance with the provisions of the Act, I make the following certification:

All workers of Dana Corporation, Spicer Trailer Products, Berwick, Pennsylvania who became totally or partially separated from employment on or after August 7, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 11th day of February 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4665 Filed 2–23–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–31,969]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 17, 1996, applicable to all workers of Hasbro Manufacturing Services, located in El Paso, Texas. The notice was published in the **Federal Register** on May 16, 1996 (61 FR 24815).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some workers separated from employment at Hasbro Manufacturing Services had their wages reported under a separate unemployment insurance (UI) tax account at Kelly Services. Workers from Kelly Services, Incorporated produced toys at the El Paso location of Hasbro Manufacturing.

Based on these findings, the Department is amending the certification to include workers from Kelly Services, Incorporated, El Paso, Texas who were engaged in the production of toys at Hasbro Manufacturing Services, El Paso, Texas by imports. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to TA–W–31,969 is hereby issued as follows:

All workers of Hasbro Manufacturing Services, El Paso, Texas and workers of Kelly Services, Incorporated, El Paso, Texas engaged in employment related to the production of toys for Hasbro Manufacturing Services, El Paso, Texas who became totally

or partially separated from employment on or after March 16, 1996, through April 17, 1998 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 11th day of February 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4667 Filed 2–23–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,050 and TA–W–33,050I]

Ithaca Industries, Incorporated; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 14, 1997, applicable to all workers of Ithaca Industries, Inc., Thomasville, Georgia. The notice was published in the **Federal Register** on April 29, 1997 (62 FR 23273).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations will occur in early February due to the closing of Ithaca's re-processing operation in Glennville, Georgia. The Glennville, Georgia workers are engaged in performing two operations for the production of men's and boy's undergarments; re-processing and sewing which will remain open. Based on these new findings, the Department is amending the certification to cover workers at the Glennville, Georgia facility.

The intent of the Department's certification is to include all workers of Ithaca Industries, Inc. adversely affected by increased imports.

The amended notice applicable to TA–W–33,050 is hereby issued as follows:

All workers of Ithaca Industries, Inc., Thomasville, Georgia (TA–W–33,050), and Glennville, Georgia (TA–W–33,050I) who became totally or partially separated from employment on or after December 4, 1995, through February 14, 1999 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 11th day of February, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4664 Filed 2–23–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,974]

Lightalarms Electronics Corporation, Baldwin, New York; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of January 12, 1998, the petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers of the subject firm. The certification was signed on December 17, 1997, and published in the **Federal Register** on January 22, 1998 (63 FR 3351).

The petitioner has made assertions regarding company imports of emergency lighting products from Canada.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 11th day of February 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4663 Filed 2–23–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,208]

Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 2, 1998 in response to a worker petition which was filed January 20, 1998 on behalf of workers at Oxford Industries, Incorporated, Oxford of Giles, Pearisburg, Virginia (TA–W–34,208).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA–W–34,061A). Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 6th day of February 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4659 Filed 2–23–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,935]

Reef Gear Manufacturing, Incorporated, Plant II, Marine City, Michigan; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of January 16, 1998, the company requested administrative reconsideration of the Department of Labor's Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance for workers of the subject firm. The certification was signed on December 10, 1997, and published in the **Federal Register** on January 6, 1998 (63 FR 578).

The company presents evidence that merits the Department's reinvestigation of the certification.

Conclusion

After careful review of the application, I concluded that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 11th day of February 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4662 Filed 2–23–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01866]

Dana Corporation, Spicer Trailer Products, Berwick, Pennsylvania; Notice of Revised Determination on Reconsideration

On October 10, 1997, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on October 24, 1997 (62 FR 55424).

The initial investigation resulted in a negative determination issued on September 4, 1997, because criteria (3) and (4) of paragraph (a)(1) of Section 250 of the Trade Act of 1974, as amended, were not met. There was no shift of production from the Berwick, Pennsylvania plant to Canada or Mexico, nor did Dana Corporation, or its major declining customers, increase import purchases of leaf springs.

On reconsideration, the Department conducted further survey analysis of major customers of Dana Corporation, Spicer Trailer Products. The survey revealed that a former major customer reduced purchases of leaf springs from the Berwick plant and increased purchases from a firm which increased its imports from Mexico and Canada of leaf springs similar to the articles produced at the Berwick plant.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles from Mexico and Canada like or directly competitive with leaf springs, contributed importantly to the declines in sales or production and to the total or partial separation of workers of Dana Corporation, Spicer Trailer Products. In accordance with the provisions of the Act, I make the following certification:

All workers of Dana Corporation, Spicer Trailer Products, Berwick, Pennsylvania who became totally or partially separated from employment on or after August 7, 1996 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, DC, this 11th day of February 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4666 Filed 2–23–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02076]

Dimetrics, Inc., Davidson, North Carolina; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on December 15, 1997 in response to a petition filed on behalf of workers at Dimetrics, Inc., Davidson, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 11th day of February, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4661 Filed 2–23–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–0823]

Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on April 17, 1996, applicable to all workers of Hasbro Manufacturing Services, El Paso, Texas. The notice was published in the **Federal Register** on May 16, 1996 (61 24815).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some workers separated from employment at Hasbro Manufacturing Services had their wages reported under a separate unemployment insurance (UI) tax account at Kelly Services. Workers from Kelly Services, Incorporated produced toys at the El Paso, Texas location of Hasbro Manufacturing.

Based on these findings, the Department is amending the certification to include workers from Kelly Services, Incorporated, El Paso, Texas who were engaged in the production of toys at Hasbro Manufacturing Services, El Paso, Texas.

The intent of the Department's certification is to include all workers of Hasbro Manufacturing Services adversely affected by imports.

The amended notice applicable to TA–W–31,969 is hereby issued as follows:

All workers of Hasbro Manufacturing Services, El Paso, Texas and workers of Kelly Services, Incorporated, El Paso, Texas engaged in employment related to the production of toys for Hasbro Manufacturing Services, El Paso, Texas who became totally or partially separated from employment on or after March 16, 1996, through April 17, 1998 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 11th day of February 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4669 Filed 2–23–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02050]

Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on December 1, 1997 in response to a petition filed on behalf of workers at Thunderbird Moulding Company, located in Yreka, California.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 9th day of February 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–4660 Filed 2–23–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "National Longitudinal Survey of Youth 97 (NLSY97)." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before April 27, 1998. The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, D.C. 20212. Ms. Kurz can be reached on 202–606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

Part of the mission of the Department of Labor (DOL) is to promote the development of the U.S. labor force and the efficiency of the U.S. labor market. BLS contributes to this mission by gathering information about the labor force and labor market and disseminating it to policy makers and the public so that participants in those markets can make more informed and, thus, more efficient choices.

The collection of the NLSY97 data will aid in the understanding of labor market outcomes faced by individuals in the early stages of career and family development and represents an important means of fulfilling BLS responsibilities.

II. Current Actions

This proposed collection covers the next three waves of the NLSY97 cohort. This will cover waves two through four of a longitudinal study of youths who were 12 through 16 years old on December 31, 1996. DOL will interview these youths on a yearly basis to study how young people make the transition from full-time schooling to the establishment of their families and careers. The longitudinal focus of this survey requires the collection of information about the same individuals over many years in order to trace their education, training, work experience, fertility, income and program participation. Recognizing the crucial role of schools in training the next generation of workers, we plan to collect data on which schools these youths attend to measure the characteristics of those schools and relate them to the cognitive development of the respondents. In addition we will use existing data resources about these schools and measure the youth's academic aptitudes both directly and by collecting scores on other standardized tests the youth may have taken.

A major purpose of the data collection is to determine the strengths and weaknesses of the process for guiding the nation's youth from school to work. The transition from school to work, and the process of establishing a more permanent career, takes several years and proceeds at a different pace for different people. Accordingly, these data will help us understand how different youths negotiate the transition and which youths experience less favorable outcomes for the work transition. This study will help us identify the antecedents and causes for youths experiencing difficulties making the school to work transition. By comparing these data to comparable data from previous cohorts, we will be able to identify and understand some of the dynamics of the labor market and whether and how the experiences of this cohort of young people differs from those of earlier cohorts.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: National Longitudinal Survey of Youth 97 (NLSY97).

OMB Number: 1220–0157.

Affected Public: Individuals or households and not-for-profit institutions (secondary schools).

Form	Total respondents	Frequency	Total responses	Average time per response	Estimated total burden (hours)
Youth	9,100	Annually	9,100	1 hour	9,100
Transcript request (letter)	1,800	Annually	1,800	30 minutes	900
Validation reinterview	1,300	Annually	1,300	6 minutes	130
Totals	10,900		12,200		10,130

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 19th day of February, 1998.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 98-4570 Filed 2-23-98; 8:45 am]

BILLING CODE 4510-24-M

NATIONAL INSTITUTE FOR LITERACY

Advisory Board Meeting

AGENCY: National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This Notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Advisory Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATE AND TIME: March 19, 1998, at 10:30 am–5 pm and March 20, 1998, at 9:30 am–4 pm.

ADDRESSES: National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Sara Pendleton, National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006. Telephone (202) 632–1524.

SUPPLEMENTARY INFORMATION: The Board is established under section 384 of the Adult Education Act, as amended by Title I of Public Law 102–73, the National Literacy Act of 1991. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group programs to achieve the goals of the Institute. Specifically, the Board performs the following functions (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute, and (c) receives reports from the Interagency Group and Director of the Institute. In addition, the Institute consults with the Board on the award of fellowships. The Board meeting will be held in Philadelphia, PA. On March 19, 1998, the meeting will be held at the offices of the National Center for Adult Literacy (NCAL) at the University of Pennsylvania, 3910 Chestnut Street. The focus of that day's meeting will be on technology and literacy, examining the Institute's current work in this area and discussing what role the Institute should play in the future. On March 20, 1998, the meeting will be held at the Philadelphia Public Library, 1901 Vine Street. The main focus of this day will be the need to expand and coordinate the information and communication capabilities of the Institute in support of its mission to improve and expand national literacy services. Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006 from 8:30 am to 5 pm.

Dated: February 18, 1998.

Andrew J. Hartman,

Director, National Institute for Literacy.

[FR Doc. 98–4613 Filed 2–23–98; 8:45 am]

BILLING CODE 6055-01-M

NATIONAL SCIENCE FOUNDATION

Committee Management; Notice of Establishment

The Deputy Director of the National Science Foundation has determined that the establishment of U.S. National Assessment Synthesis Team is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: U.S. National Assessment Synthesis Team.

Purpose: The U.S. National Assessment Synthesis Team is being formed under the auspices of the interagency Subcommittee on Global Change Research (SGCR), within the purview of the interagency Committee on Environmental and Natural Resources (CENR) and under the National Science and Technology Council (NSTC). The Team is meant to have broad responsibilities for the design and conduct of the national effort to assess the consequences of climate variability and climate change for the United States.

Balanced Membership Plans. The Committee will be balanced with 12 men and women from government, academia, and the private sector to ensure that the final product represents the best possible assessment of the impacts of climate change.

Responsible NSF Official: Dr. Robert Corell, Assistant Director for Geosciences and chair of the Subcommittee on Global Change Research, Room 705, National Science Foundation, 4301 Wilson Boulevard, Arlington, Va. 22300, telephone (703) 306–1500.

Dated: February 18, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–4581 Filed 2–23–98; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting; Public Hearing on Safety of Nation's Transit Bus Systems

The National Transportation Safety Board will convene a public hearing beginning at 9:00 a.m. local time on Tuesday, March 3, 1998, at the Adams Mark Hotel, Fourth and Chestnut Streets, St. Louis, Missouri. For more information, contact Jeanmarie Poole, NTSB Office of Highway Safety at (202) 314–6440 or Ted Lopatkiewicz, NTSB Office of Public Affairs at (202) 314–6100.

This meeting is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Bob Barlett at (202) 314–6446.

Dated: February 20, 1998.

Ray Smith,

Alternate Federal Register Liaison Officer.

[FR Doc. 98–4777 Filed 2–20–98; 12:10 pm]

BILLING CODE 7533-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting; Public Hearing on Safety Oversight of the Union Pacific Railroad

The National Transportation Safety Board will convene a public hearing beginning at 9:00 a.m. local time on Wednesday, March 18, 1998, at the Springfield Hilton Hotel, 6550 Loisdale, Road, Springfield, Virginia. For more information, contact James P. Dunn, NTSB Office of Railroad Safety at (202) 314–6430 or Shelly Hazle, NTSB Office of Public Affairs at (202) 314–6100.

Dated: February 20, 1998.
Ray Smith,
Alternate Federal Register Liaison Officer.
[FR Doc. 98–4778 Filed 2–20–98; 12:10 pm]
BILLING CODE 7533–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting; Public Symposium on Family and Victim Assistance for Transportation Disasters

On September 28 and 29, 1998, at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA, the National Transportation Safety Board will host an international symposium to discuss the role of government and industry in the care of victims and their families following major transportation disasters. For more information, contact Liz Cotham, NTSB Office of Family Assistance, at (202) 314–6100 or Matt Furman, NTSB Office of Public Affairs, at (202) 314–6100.

Dated: February 20, 1998.
Ray Smith,
Alternate Federal Register Liaison Officer.
[FR Doc. 98–4779 Filed 2–20–98; 12:10 pm]
BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–368]

Entergy Operations, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–51 issued to Entergy Operations, Inc., (the licensee) for operation of the Arkansas Nuclear One, Unit No. 1 (ANO–1), located in Pope County, Arkansas.

The proposed amendment would allow the use of the repair roll technology (reroll) for the upper tubesheet region of the ANO–1 steam generators. The reroll technology is proposed as an alternative to the existing technical specification requirements to either sleeve or plug steam generator tubes found during inservice inspections to have defects that exceed the stated repair criteria. The reroll process has been developed to repair tubes with flaws in the tubesheet region by creating a new mechanical tube to tubesheet structural joint below the tube defect indications.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The reroll process utilizes the original tube configuration and extends the roll expanded region. Thus all of the design and operating characteristics of the steam generator and connected systems are preserved. The reroll joint length has been analyzed and tested for design, operating, and faulted condition loading.

The qualification of the reroll joint is based on establishing a mechanical roll length which will carry all of the structural loads imposed on the tubes with required margins. A series of tests and analyses were performed to establish this length. Tests that were performed included leak, tensile, fatigue, ultimate load, and eddy current measurement uncertainty. The analyses evaluated plant operating and faulted loads in addition to tubesheet bow effects. Testing and analysis evaluated the tube springback and radial contact stresses due to temperature, pressure, and tubesheet bow. At worst case, a tube leak would occur with the result being a primary to secondary system leak. Any tube leakage would be bounded by the ruptured tube evaluation which has been previously analyzed. The potential for a tube rupture is not increased by the use of the reroll process.

The reroll process establishes a new pressure boundary for the associated tube in the upper tubesheet below the flaw. Qualification testing indicates that normal and faulted leakage from the new pressure boundary joint would be well below the Technical Specification limits. Since the normal and faulted leak rates are well within the Technical Specification limits, the analyzed accident scenarios are still bounding.

Applying a hydraulic expansion prior to making a repair roll near the secondary face of the upper tubesheet minimizes the potential for Obrigheim denting of the tube above the new roll. The hydraulic expansion does not have an adverse impact on the structural integrity of the tube or tubesheet. A tube that is rerolled deep into the tubesheet and not hydraulically expanded has the potential of denting inward if water is trapped between the new and old roll regions. The dented portion of the tube would be outside the pressure boundary and therefore not a safety concern. If the tube were dented, such that future inspections would not be possible, the tube would have to be removed from service.

Based on the Framatome Technologies Inc. qualification, as well as the history for similar industry repair rolls, there are no new safety issues associated with a reroll repair. Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The reroll process establishes a new pressure boundary for the associated tube in the upper tubesheet below the flaw. The new roll transition may eventually develop primary water stress corrosion cracking (PWSCC) and require additional repair. Industry experience with roll transition cracking has shown that PWSCC in roll transitions are normally short axial cracks, with extremely low leak rates. The standard MRPC eddy current inspection during the refueling outages have proven to be successful in detecting these defects early enough in their progression to facilitate repair.

In the unlikely event the rerolled tube failed and severed completely at the transition of the reroll region, the tube would retain engagement in the tubesheet bore, preventing any interaction with neighboring tubes. In this case, leakage is minimized and is well within the assumed leakage of the design basis tube rupture accident. In addition, the possibility of rupturing multiple steam generator tubes is not increased. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does Not Involve a Significant Reduction in the Margin of Safety.

A tube with degradation can be kept in service through the use of the reroll process. The new roll expanded interface created with the tubesheet satisfies all of the necessary structural and leakage requirements. Since the joint is constrained within the tubesheet bore, there is no additional risk associated with tube rupture. Therefore, the analyzed accident scenarios remain bounding, and the use of the reroll process does not reduce the margin of safety. Consequently, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 26, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the

Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(l)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 9, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas.

Dated at Rockville, Maryland, this 18th day of February 1998.

For the Nuclear Regulatory Commission.

William D. Reckley,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–4621 Filed 2–23–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

GPU Nuclear Corporation et al.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of GPU Nuclear Corporation, et al., (the licensee) to withdraw its January 16, 1995, application as supplemented by letters dated June 22, and September 20, 1995, for proposed amendment to Facility Operating License No. DPR–50 for the Three Mile Island Nuclear Station, Unit No. 1, located in Dauphin County, Pa.

The proposed amendment would have revised the Technical Specifications related to surveillance testing of the control room emergency ventilation system.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 15, 1995 (60 FR 14021). However, by letter dated January 16, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 16, 1995, as supplemented June 22 and September 20, 1995, and the licensee's letter dated January 16, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Law/Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, P.O. Box 1601, Harrisburg, PA 17105.

Dated at Rockville, Maryland, this 18th day of February 1998.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Senior Project Manager, Project Directorate 1–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–4623 Filed 2–23–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–387 and 50–388]

Pennsylvania Power and Light Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–14 and NPF–22 issued to Pennsylvania Power and Light Company (PP&L, the licensee) for operation of the Susquehanna Steam Electric Station (SSES), Units 1 and 2, located in Luzerne County, Pennsylvania.

The proposed amendment would change the SSES Technical Specifications facility staff requirements to allow an individual who does not hold a current senior reactor operator (SRO) license to hold the position of Manager-Nuclear Operations (MNO) and require an individual serving in the capacity of the Operations Supervisor-Nuclear to hold a current SRO license and report directly to the MNO and be responsible for directing the licensed activities of licensed operators.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes affect an administrative control which was based upon the guidance of ANSI N18.1–1971. ANSI N18.1–1971 establishes that the "Operations Manager" hold a SRO license. This standard was oriented to an organization where the duty Shift Supervisors reported directly to the "Operations Manager". The intent being that the person in the chain of command directly above the duty Shift Supervisors hold a SRO license. Susquehanna SES maintains the position of Operations Supervisor-Nuclear as this person within the chain of command. The position of Operations Supervisor-Nuclear satisfies all of the requirements of ANSI N18.1–1971 for the "Operations Manager". These changes retain the commitment to have a member of the unit staff not assigned to shift duties who holds a SRO license.

The proposed changes do not alter the design of any system, structure, or component, nor do they change the way plant systems are operated. They do not reduce the knowledge, qualifications, or skills of licensed operators, and do not affect the way the Operations Group is managed by the Manager-Nuclear Operations. The Manager-Nuclear Operations will continue to maintain the effective performance of operations personnel and ensure that the plant is operated safely and in accordance with the requirements of the operating license. Additionally, the control room operators will continue to be supervised by a licensed senior reactor operator.

The proposed changes do not detract from the Manager-Nuclear Operations ability to perform his primary responsibilities. The Manager-Nuclear Operations is required to achieve the necessary training, skills, and experience to fully understand the operation of plant equipment and the watch requirements for operators.

In summary, the changes retain the commitment to have a member of the unit staff not assigned to shift duties who holds a SRO license. The proposed changes do not detract from the Manger-Nuclear Operations ability to perform his primary responsibilities. Thus, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to Technical Specification 6.2.2g and 6.3.1 do not affect

the design or function of any plant system, structure, or component, nor do they change the way the plant systems are operated. They do not affect the performance of licensed operators. Operation of the plant in conformance with technical specifications and other license requirements will continue to be supervised by personnel who hold a SRO license. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes involve an administrative control that is not related to a margin of safety. The proposed changes do not reduce the level of knowledge or experience required of an individual in the chain of command who serves directly above the duty Shift Supervisors in that the control room operators will continue to be supervised by personnel who hold a SRO license. Thus, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 26, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest.

The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any

hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 26, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Dated at Rockville, Maryland, this 18th day of February 1998.

For the Nuclear Regulatory Commission.

Victor Nerses,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–4624 Filed 2–23–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

Agency Holding the Meeting: Nuclear Regulatory Commission.

Date: Weeks of February 23, March 2, 9, and 16, 1998.

Place: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

Status: Public and Closed.

Matters to be considered:

Week of February 23

There are no meetings the week of February 23.

Week of March 2—Tentative

There are no meetings the week of March 2.

Week of March 9—Tentative

There are no meetings the week of March 9.

Week of March 16—Tentative

Thursday, March 19

2:30 p.m. Affirmation Session (Public Meeting) (if needed)

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: February 20, 1998.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 98–4826 Filed 2–20–98; 3:13 pm]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection, Comment Request, Standard Form 1153

AGENCY: Office of Personnel Management (OPM).

ACTION: Proposed collection; Comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and 5 CFR 1320.5 (a)(i)(iv), this notice announces that OPM intends to submit to the Office of Management and Budget (OMB) a request for clearance of an information collection.

The Standard Form 1153, Claim for Unpaid Compensation of Deceased Civilian Employee, is provided to the appropriate person(s) for completion as soon as practicable after the death of a civilian employee. The employing agency and, in the event of a disputed claim, OPM will use this information to help determine the claimant's and others' rights to the deceased employee's unpaid compensation. The authority to settle these claims was transferred from the General Accounting Office to the Director of OMB pursuant to the Legislative Branch Appropriations Act of 1996. Subsequently, the Director of OMB delegated this function to OPM.

It is estimated that 3300 individuals will respond annually for a total burden of 1,650 hours. To obtain copies of this proposal please contact James M. Farron at (202) 418–3208 or by E-mail to jmfarron@opm.gov.

Comments are particularly invited on:

- whether this collection of information is necessary for the proper performance of functions of OPM, and whether it will have practical utility;
- whether our estimate of the public burden of this collection of information is accurate; and
- ways in which we can minimize the burden of collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments on this proposal should be received on or before April 25, 1998. Submit comments on this proposal to Paul Britner, Office of Personnel Management, Room 7F08A, 1900 E. Street, N.W., Washington, D.C. 20415.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–4495 Filed 2–23–98; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT*

Submission for OMB Review; Comment Request for Reclearance of Information Collection: Form RI 38–31

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a

request for reclearance of an information collection. RI 38–31, Request for Information About Your Missing Payment, is sent in response to a notification by an individual of the loss or non-receipt of a payment from the Civil Service Retirement and Disability Fund. The form requests the information needed to enable the OPM to trace and or reissue payment. Missing payments may also be reported to OPM by a telephone call.

Approximately 8,000 missing payment requests for both Treasury checks and electronic funds transfers (EFT's) are processed each year; 500 RI 38–31 forms will be completed annually while 7500 telephone calls are received at OPM. We estimate it takes approximately 10 minutes to complete the form for missing Treasury checks or to report the missing payment by telephone. Approximately 50 RI 38–31 forms are completed for missing EFT payments; we estimate it takes 30 minutes because financial institution information and signature(s) are required. The combined annual burden is 1,350 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received on or before March 26, 1998.

ADDRESS: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415 and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Budget and Administrative Services Division, (202) 606–0623

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–4496 Filed 2–23–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Rule 11Aa3–2; OMB Control No. 3235-new; SEC File No. 270–439.

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of the information collection discussed below.

• Rule 11Aa3–2: Filing and Amendment of National Market System Plans

Rule 11Aa3–2 provides that self-regulatory organizations ("SROs") may, acting jointly, file a national market system plan or may propose an amendment to an effective national market system plan by submitting the text of the plan or amendment to the Secretary of the Commission, together with a statement of the purpose of such plan or amendment and, to the extent applicable, the documents and information required by Rule 11Aa3–2(b) (4) and (5). These record keeping requirements assist the Commission with monitoring SROs, national market system plans, and ensuring compliance with the rule.

There are nine SROs which are members of the Intermarket Trading System ("ITS"), the Consolidated Tape Association ("CTA"), the Consolidated Quote System ("CQS"), the Nasdaq Stock Market, Inc., ("Nasdaq"), or the Options Price Reporting Association ("OPRA"). Only ITS, CTA, CQS, Nasdaq, and OPRA submit filings pursuant to Rule 11Aa3–2 and only after an agreement is reached among member SROs. The staff estimates that there will be approximately six filings pursuant to Rule 11Aa3–2 each year. The staff also estimates that the average number of hours necessary for compliance with the Rule 11Aa3–2 is 33 annually. The total burden is 200 hours annually, based upon past submissions. The average cost per hour is approximately $50. Therefore, the total cost of compliance for SROs is $10,000.

This rule does not require the SROs to maintain any records or submit filings. Instead, it merely sets forth procedures SROs must follow if they choose to file or amend NMS plans. Therefore, compliance with this rule is voluntary. Further, this rule does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 17, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4574 Filed 2–23–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of February 23, 1998.

A closed meeting will be held on Thursday, February 26, 1998, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, February 26, 1998, at 2:30 p.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: February 19, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–4709 Filed 2–19–98; 3:49 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of February 16, 1998.

A closed meeting will be held on Friday, February 20, 1998, at 10:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9) (A) and (10) and 17 CFR 200.402(a)(4), (8), (9) (i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Friday, February 20, 1998, at 10:30 a.m., will be:

Settlement of injunctive actions.

Commissioner Johnson, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: February 19, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–4710 Filed 2–19–98; 3:49 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39673; File No. SR–MBSCC–98–01]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying MBS Clearing Corporation's Schedule of Charges for the Dealer Account Group

February 17, 1998.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on January 26, 1998, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies MBSCC's schedule of charges for the dealer account group.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change modifies MBSCC's schedule of charges for the dealer account group.[3] Specifically, the proposed rule change reduces trade processing fees for settlement balance order ("SBO") destined trades, trade-for-trade transactions, and option trades to more accurately reflect the costs incurred by MBSCC to provide trade processing services to dealers.

MBSCC charges dealers for trade creates[4] relating to SBO destined trades a monthly fee for each million of par value. The fee currently charged is $2.45 [par value between $1 million and $2,500 million], $2.25 [par value between $2,501 and $5,000 million], $2.10 [par value between $5,001 and $7,500 million], $1.95 [par value between $7,501 and $10,000 million], $1.75 [par value between $10,001 and $12,500 million], and $1.60 [par value of $12,501 million and over]. These fees are reduced to $2.00, $1.85, $1.75, $1.60, $1.45, and $1.30 respectively.

The current fee charged to dealers for trade creates relating to trade-for-trade transactions is $5.00 per side. The current fee charged to dealers for trade creates for option trades is $4.00 per side. The new reduced fee charged to dealers for trade creates relating to both trade-for-trade transactions and option trades is $2.50 per side.

MBSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among MBSCC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[6] of the Act and pursuant to Rule 19b–4(e)(2)[7] promulgated thereunder in that the proposed rule change establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within sixty days of the filing of such

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by MBSCC.

[3] MBSCC has separate fee schedules for brokers and dealers. The dealer account group is the fee schedule for dealers' accounts.

[4] A trade create is a type of transaction used to identify the submission and/or subsequent processing of trades as opposed to cancels or notifications of settlement.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(e)(2).

rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–98–01 and should be submitted by March 17, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4571 Filed 2–22–98; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39672; File No. SR–NYSE–98–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Material

February 17, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 12, 1998, the New York Stock Exchange, Inc. (the "Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to modify Exchange Rule 451, "Transmission of Proxy Material," and Exchange Rule 465, "Transmission of Interim Reports and Other Material" (collectively the "Rules"). The Rules establish guidelines for the reimbursement of expenses incurred by NYSE member organizations for the processing of proxy materials and other issuer communications with respect to security holders whose securities are held in street name.

The Exchange proposes to reduce one of the fee reimbursement guidelines[2] that concerns charges for initial proxy and/or annual report mailings. In addition, the Exchange proposes to extend the pilot regarding the Rules, which currently is due to expire on May 13, 1998, through July 31, 1998.[3]

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] The specific fees listed in Rule 451 also are listed in Paragraph 402.10 of the Exchange's Listed Company Manual. The proposed rule change makes conforming changes to that paragraph.

[3] *See* Securities Exchange Act Release No. 38406 (Mar. 14, 1997), 62 FR 13922 (Mar. 24, 1997) (the "Previous Filing"). The Previous Filing contains a detailed description regarding the background and history of the Rules.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Among other things, the Previous Filing lowered the reimbursement guidelines, created incentive fees to eliminate duplicative mailings, and established a supplemental fee for intermediaries that coordinate multiple nominees. The Commission approved the Previous Filing as a one-year pilot, and designated May 13, 1998, as the date of expiration.

The purpose of the proposed rule change is to lower the rate of reimbursement for mailing each set of initial proxies and annual reports from $.55 to $.50. The Exchange is proposing this lower fee based on the experience over the last year, which indicates that the lower fee better approximates proxy handling costs. This reduced fee would be effective through the end of the current pilot period.

In addition, the pilot period presently is scheduled to expire in the midst of the current proxy season, on May 13, 1998. The proposed rule change would extend the pilot period through the end of the current proxy season to July 31, 1998.[4]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[5] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange further believes that the proposed rule change satisfies the requirement under Section 6(b)(5)[6] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest.

[4] On February 6, 1998, the Exchange submitted a companion filing to this proposed rule change that would extend the pilot period through June 30, 2001. *See* SR–NYSE–98–05.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date (or such shorter time period as designated by the Commission), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act[7] and Rule 19b–4(e)(6)[8] thereunder.

A proposed rule change filed pursuant to Rule 19b–4(e)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(e)(6)(iii)[9] permits the Commission to designate such shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested, in order to allow the fee reduction to be available for the 1998 proxy season, that the Commission designate such shorter time period so that the proposed rule change may take effect immediately upon its filing.

The Commission finds that the proposed rule change is consistent with the protection of investors and the public interest and therefore has determined to make the proposed rule change effective immediately upon filing. The proposed rule change reduces the reimbursement fee which Exchange member organizations are entitled to receive for mailing initial proxies and annual reports. The fee reduction should benefit issuers and public investors in the form of lower costs and expenses. The fee reduction is based upon the Exchange's experience during the pilot period and should better reflect the actual costs incurred by member organizations.

The proposed rule change also extends the expiration date of the pilot period from May 13, 1998, through July 31, 1998. The Commission recognizes that the current expiration date intersects the time period when proxy materials traditionally are distributed to shareholders. As a result, member organizations would potentially be reimbursed at two different rates—the rates established by the Previous Filing, and the rates in effect prior to the implementation of the Previous Filing (the default rates)—if the expiration date were not extended. The Commission believes such a result would be confusing and counterproductive. The Commission also believes the extension of the expiration date will enable the Exchange to evaluate the effectiveness of the reimbursement guidelines based on their application during an entire proxy season.

The Commission notes that the pilot period reimbursement guidelines were conditionally approved in the Previous Filing following a full notice and comment period. As part of its approval, the Commission carefully considered all submitted comments concerning the pilot reimbursement guidelines and their impact on affected parties. Furthermore, the Exchange provided the Commission with advance written notice of the proposed rule change and implemented changes in responses to staff comments. Therefore, the Commission believes it is reasonable that the proposed rule change become immediately effective upon the date of filing, February 12, 1998.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–98–04 and should be submitted by March 17, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4573 Filed 2–23–98; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(e)(6).

[9] 17 CFR 240.19b–4(e)(6)(iii).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39649; File No. SR–PCX–98–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Identification of Broker-Dealer Orders on the Options Floor

February 11, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 23, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX is proposing to amend its rules on the identification of broker-dealer orders by requiring that, if an order is for an account in which a broker-dealer has an interest, the broker-dealer status of the order must be disclosed to the trading crowd prior to execution,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

regardless of whether the order is to be executed at the trading crowd's disseminated bid or offering price. The text of the proposed rule change is attached as Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

On July 21, 1994, the Commission approved an Exchange proposal to adopt new Rule 6.66(c), which currently states: "Prior to executing an order in which a broker-dealer has an interest, a member must indicate by public outcry that such order is for a broker-dealer if the order is to be executed at the trading crowd's disseminated bid or offering price. This rule applies regardless of whether such broker-dealer is an Exchange member." [3] The Exchange is now proposing to expand the scope of Rule 6.66(c) by striking the words "if the order is to be executed at the trading crowd's disseminated bid or offering price" from the text of Rule 6.66(c). Accordingly, under the amended rule, prior to executing an order in which a broker-dealer has an interest, a Floor Broker would be required to indicate by public outcry that the order is for a broker-dealer.

The proposal is intended to facilitate transactions in option contracts by making the members in the trading crowd and the Order Book Official staff aware of the nature of orders being represented on the Floor, thereby assuring that broker-dealer orders will not be represented inadvertently as public customer orders. In that regard, the Exchange notes that only non-broker-dealer orders are entitled to be place in the public limit order book and to be given priority over broker-dealer orders under certain circumstances.[4] The Exchange further notes that only non-broker-dealers are entitled to receive a guaranteed minimum of 20 contracts at the disseminated bid or offering price.[5]

The Exchange believes the proposal will make the existing rule less complicated and easier to follow by removing the distinction between broker-dealer orders to be executed at the bid or offering price, and those that are not. In that regard, the Exchange notes that there is no such distinction applicable to Market Maker orders, the identification of which is governed by Rule 6.66(b), which requires Floor Brokers to verbally identify Market Maker orders as such prior to their execution.[6] Thus, removing the subject distinction from Rule 6.66(c) will make the Exchange's option order disclosure rules uniform, consistent, and easier to follow.

The Exchange is also proposing to amend Rules 6.2 and 6.77 by adding certain violations of Rule 6.66(c) (as amended) to the list of those violations that may give rise to a circumstance in which two Floor Officials may nullify a transaction or adjust its terms.[7] Specifically, such action could be taken if a Floor Broker failed to identify a broker-dealer order for 20 contracts or less. The reason for the limitation on the number of contract is that under Rule 6.86, only non-broker-dealer orders are eligible for a guaranteed execution of 20 contracts as the displayed price. If a Floor Broker does not disclose that an order for 20 contracts or less is for a broker-dealer (under the proposed rule), the numbers in the trading crowd may incorrectly assume that the order is for a public customer and provide an execution at the displayed price, without having an opportunity to update their quotes.[8] The Exchange believes that adding this provision is simply a logical extension of Rule 6.2, Commentary .05(v), which permits two Floor Officials to nullify, or adjust the terms of, any order executed in violation of Rule 6.86, which states that only non-broker-dealer orders are eligible for a guarantee of up to 20 option contracts at the disseminated market price.

Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5) of the Act, in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Receive From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Data of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will—

(A) by order approve such rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

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[3] See Exchange Act Release No. 34426 (July 21, 1994), 59 FR 38497 (July 28, 1994) (Order approving SR–PSE–92–14).

[4] See PCX Rules 6.52(a) and 6.75.

[5] See PCX Rule 6.86(a).

[6] Rule 6.66(b) states: "A Floor Broker holding an order for the amount of a Market Maker shall verbally identify the order as such prior to consummating a transaction, and shall, after effecting the trade, supply the name of the Market Maker concerned, by public outcry , upon the request of any member or member in the trading crowd."

[7] Specifically, as Exhibit A indicates, the PCX proposes to move Commentary .05 from Rule 6.2 to Rule 6.77 and renumber it as Commentary .01. The existing subparagraphs will then be relettered and a new subparagraph, (f), added to address violations of Rule 6.66(c) as amended.

[8] See PCX Rule 6.37(d) and Rule 6.37, Commentary .05 (Market Makers are required to make a market for, at a minimum, one contract for broker-dealer orders; they must also lower their bids or raise their offers if they do not satisfy an order in its entirety).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–04 and should be submitted by March 17, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A—Text of the Proposed Rule Change [10]

¶ 4733 Admission to and Conduct on the Options Trading Floor

Rule 6.2(a)–(c)—No change.

Commentary:

.01–.04—No change.

[.05] [Moved to Rule 6.77, Com. .01.]

* * * * *

¶ 5085 Order Identification

Rule 6.66(a)–(b)—No change.

(c) Broker-Dealer Orders. Prior to executing an order in which a broker-dealer has an interest, a member must indicate by public outcry that such order is for a broker-dealer. [if the order is to be executed at the trading crowd's disseminated bid or offering price.] This rule applies regardless of whether such broker-dealer is an Exchange member.

* * * * *

¶ 5151 Contract Made on Acceptance of Bid or Offer

Rule 6.77—No change.

Commentary:

.01 Two Options Floor Officials may nullify a transaction or adjust its terms if they determine the transaction to have been in violation of any of the following:

(*a*) [I] Rule 6.73 (Manner of Bidding and Offering).[;]

(*b*) [ii] Rule 6.75 (Priority of Bids and Offers).[;]

(*c*) [iii] Rule 6.56 (Transactions outside the Order Book Official's Last Quoted Range).[;]

(*d*) [iv] Rule 6.76 (Priority on Split Price Transaction).[;]

(*e*) [v] Rule 6.86 (Trading Crowd Firm Dissemination Market Quotes).

(*f*) *Rule 6.66(c) (Failure to identify a broker-dealer order for 20 contracts or less).*

[FR Doc. 98–4572 Filed 2–23–98; 8:45 am]

BILLING CODE 8010–01–M

[9] 17 CFR 200.30–3(a)(12).

[10] New text is italicized; deletions are bracketed.

SOCIAL SECURITY ADMINISTRATION

Information Collection Activities: Proposed Collection Requests and Comment Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

I. The information collection(s) listed below require(s) extension(s) of the current OMB approval(s) or are proposed new collection(s):

1. Response to Notice of Revised Determination—0960–0347. Form SSA–765 is used by claimants to request a disability hearing and/or to submit additional information before a revised reconsideration determination is issued. The respondents are claimants who wish to file for a disability hearing in response to a notice of a revised determination for Old-Age, Survivors and Disability Insurance and Supplemental Security Income (SSI), under titles II and XVI of the Social Security Act.

Number of Respondents: 1,925.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Average Burden: 963 hours.

2. Notification of Projected Completion Date—0960–0429. Form SSA–891 is used by the Social Security Administration (SSA) and Disability Determination Services (DDS) components to inform the disability hearing units whenever a hearing case will not be completed and forwarded to the hearing unit as expected. This information is necessary to enable the hearing units to schedule hearings as promptly and efficiently as possible. The respondents are State DDSs and SSA components that make disability determinations for the Agency.

Number of Respondents: 100.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Average Burden: 8 hours.

3. Subpoena—Disability Hearing—0960–0428. The information on Form SSA–1272–U4 is used by SSA to subpoena evidence or testimony needed at disability hearings. The respondents are comprised of officers from Federal and State DDSs.

Number of Respondents: 36.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Average Burden: 18 hours.

4. Student's Statement Regarding Resumption of School Attendance—0960–0143. The information on Form SSA–1386 is used by SSA to verify full-time attendance at educational institutions and to determine eligibility for student benefits. The respondents are student beneficiaries currently receiving SSA benefits.

Number of Respondents: 133,000.

Frequency of Response: 1.

Average Burden Per Response: 6 minutes.

Estimated Average Burden: 13,300 hours.

5. Real Property Current Market Value Estimate—0960–0471. The information on Form SSA–2794 is used by SSA to determine the value of non-home real property owned by applicants for or recipients of SSI. The respondents are persons experienced in estimating the current market value of real property.

Number of Respondents: 5,438.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Average Burden: 1,813 hours.

Written comments and recommendations regarding the information collection(s) should be sent on or before April 27, 1998, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

II. The information collection(s) listed below have been submitted to OMB:

1. Report by Former Representative Payee—0960–0112. SSA collects the information on Form SSA–625 when a mental facility is terminating its payee services and a successor payee is to be named. The information is needed to determine the proper disposition of any conserved funds. The respondents are State institutions or agencies which are no longer serving as representative payee for beneficiaries who are incapable of managing benefits.

Number of Respondents: 8,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Average Burden: 2,000 hours.

2. Pre-1957 Military Service Federal Benefit Questionnaire—0960–0120. Form SSA–2512 is used by SSA to solicit sufficient information to make a determination of eligibility for military wage credits. Sections 217 (a) and (e) of the Social Security Act provide for crediting military service to the wage earner's record and for using the data in the claims adjudication process to grant gratuitous military wage credits, when applicable. The respondents are individuals who are applying for Social Security benefits on a record where the wage earner has pre-1957 military service.

Number of Respondents: 56,000.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Average Burden: 9,333 hours.

3. Certificate of Support—0960–0001. The information collected on Form SSA–760–F4 is used to determine whether the deceased worker provided one-half support required for entitlement to parent's or spouse's benefits. The information will also be used to determine whether the Government pension offset would apply to the applicant's benefit payment. The respondents are parents of deceased workers or spouses who may be subject to Government pension offset.

Number of Respondents: 18,000.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Average Burden: 4,500 hours.

4. Report of Function—Child—0960–0542. The information collected on Forms SSA–3375, 3376, 3377, 3378, and 3379 will be used by SSA to help determine if a child claiming SSI disability benefits under title XVI is disabled. The respondents are parents or guardians who file for such benefits on behalf of a child.

Number of Respondents: 500,000.
Frequency of Response: 1.
Average Burden Per Response: 20 minutes.
Estimated Annual Burden: 166,667 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB) Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

(SSA) Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed above.

Dated: February 18, 1998.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 98–4705 Filed 2–23–98; 8:45 am]

BILLING CODE 4190–29–P

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 98-2(8)]

Sird v. Chater; Mental Retardation—What Constitutes an Additional and Significant Work-Related Limitation of Function—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 98-2(8).

EFFECTIVE DATE: February 24, 1998.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1695.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Eighth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after February 24, 1998. If we made a determination or decision on your application for benefits between January 27, 1997, the date of the Court of Appeals' decision, and February 24, 1998, the effective date of this Social Security Acquiescence Ruling, you may request application of the Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b) or 416.1485(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security - Disability Insurance; 96.002 Social Security - Retirement Insurance; 96.004 Social Security - Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income.)

Dated: December 29, 1997.

Kenneth S. Apfel,

Commissioner of Social Security.

Acquiescence Ruling 98-2(8)

Sird v. *Chater*, 105 F.3d 401 (8th Cir. 1997)—Mental Retardation—What Constitutes an Additional and Significant Work-Related Limitation of Function—Titles II and XVI of the Social Security Act.

Issue: Whether a claimant for disability insurance benefits or Supplemental Security Income (SSI) benefits based on disability who has mental retardation or autism with a valid IQ score in the range covered by Listing 12.05C, and who cannot perform his or her past relevant work because of a physical or other mental impairment, has *per se* established the additional and significant work-related limitation of function requirement of Regulations 20 CFR Part 404, Subpart P, Appendix 1, section 12.05C.[1]

Statute/Regulation/Ruling Citation: Sections 223(d)(1) and 1614(a)(3) of the Social Security Act (42 U.S.C. 423(d)(1) and 1382c(a)(3)); 20 CFR Part 404, Subpart P, Appendix 1, section 12.05C.

Circuit: Eighth (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota).

[1] Although *Sird* was a title XVI case, similar principles also apply to title II. Therefore, this Ruling extends to both title II and title XVI disability claims.

Sird v. *Chater*, 105 F.3d 401 (8th Cir. 1997).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing or Appeals Council).

Description of Case: Donald Sird applied for SSI benefits based on disability on September 27, 1991. In a decision dated January 27, 1995, an ALJ found that Mr. Sird had borderline intellectual capacity, a history of alcoholism, a history of chronic obstructive pulmonary disease and a history of urinary tract infection. The ALJ also found that Mr. Sird had an IQ score within the range required by Listing 12.05C but did not have "a physical or other mental impairment imposing additional and significant work-related limitation of function." The ALJ further found that the combination of Mr. Sird's impairments imposed several environmental restrictions and also functional limitations. Relying on the vocational expert's opinion that an individual with Mr. Sird's characteristics could perform light or sedentary work, the ALJ concluded that, although the claimant could not perform his past relevant work, he was not disabled. After the Appeals Council denied the claimant's request for review, he sought judicial review but the district court upheld the Social Security Administration's (SSA's) decision. Mr. Sird appealed this decision to the United States Court of Appeals for the Eighth Circuit.

Holding: The Eighth Circuit vacated the judgment of the district court and remanded the case to SSA with directions to award benefits. After reviewing Eighth Circuit case law that defined the other impairment requirement of Listing 12.05C as requiring "a physical or additional mental impairment that has a 'more than slight or minimal' effect on ability to work"[2] and the Fourth Circuit's holding in *Branham* v. *Heckler*, 775 F.2d 1271 (4th Cir. 1985)[3] that established the rule that an inability to do past relevant work meets the requirement of the Listing that the other impairment cause an additional and significant work-related limitation of function, the court held that the *Branham* court's conclusion was "ineluctable."

The Eighth Circuit observed that the ALJ's finding of Mr. Sird's inability to perform his past relevant work, assuming no change occurred in his mental impairments after he stopped working, was inconsistent with the ALJ's other finding that Mr. Sird did not satisfy the other impairment requirement of Listing 12.05C because he did not have an additional impairment that significantly limited his ability to work. The court was not convinced that, in this particular case, there was a difference in application between the Eighth Circuit's case law in *Warren* and *Cook*, and the *Branham* court's holding. The court concluded that under either test the claimant was disabled.

Statement As To How Sird Differs From SSA's Interpretation of the Regulations

At issue in *Sird* is the meaning of the term "additional and significant work-related limitation of function" in Listing 12.05C. What constitutes an "additional and significant work-related limitation of function" is not defined in SSA's regulations. SSA's interpretation of the Listing is that, if an individual has:

(1) mental retardation, i.e., significantly subaverage general intellectual functioning with deficits in adaptive behavior initially manifested during the developmental period, or autism, i.e., a pervasive developmental disorder characterized by social and significant communication deficits originating in the developmental period;

(2) a valid verbal, performance or full scale IQ in the range specified by Listing 12.05C; and

(3) a physical or other mental impairment that is severe within the meaning of 20 CFR 404.1520(c) or 416.920(c), the individual's impairments meet Listing 12.05C.[4] That is, to satisfy the criteria of Listing 12.05C, the additional physical or other mental impairment must result in more than minimal limitations in the individual's ability to do basic work activities. The inability to perform past work does not *per se* satisfy this standard.

The *Sird* court held that an impairment that prevents a claimant from performing his or her past relevant work constitutes a significant work-related limitation of function that is more than slight or minimal, and *per se* meets the other impairment requirement of Listing 12.05C.[5]

Explanation of How SSA Will Apply The Sird Decision Within The Circuit

This Ruling applies only where the claimant resides in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota or South Dakota at the time of the determination or decision at any administrative level of review, i.e., initial, reconsideration, ALJ hearing or Appeals Council.

A claimant who has:

(1) mental retardation, i.e., significantly subaverage general intellectual functioning with deficits in adaptive behavior initially manifested during the developmental period, or autism, i.e., a pervasive developmental disorder characterized by social and significant communication deficits originating in the developmental period;

(2) a valid verbal, performance or full scale IQ in the range specified by Listing 12.05C; and

(3) a physical or other mental impairment that prevents him or her from performing past relevant work, will be considered to have a physical or other mental impairment that results in more than minimal limitations in the ability to do basic work activities and to have satisfied the requirements of Listing 12.05C.

[FR Doc. 98-4704 Filed 2-23-98; 8:45 am]
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[2] *Warren* v. *Shalala*, 29 F.3d 1287 (8th Cir. 1994) and *Cook* v. *Bowen*, 797 F.2d 687 (8th Cir. 1986). The Court of Appeals made an alternative holding in the case, and found that, under the circumstances present in the case, the outcome would be the same under the interpretation of the regulations set out in *Warren* and *Cook*. *See* 105 F.3d at 403. The court's alternative holding in the case, relying on the interpretation of Listing 12.05C made in *Warren* and *Cook*, is not inconsistent with SSA's interpretation of the Listing.

[3] On March 10, 1992, SSA published Acquiescence Ruling (AR) AR 92-3(4) at 57 FR 8463 to reflect the holding in *Branham*. On April 29, 1993, the AR was revised and republished as AR 93-1(4) at 58 FR 25998 to incorporate a regulatory change regarding the IQ range included in Listing 12.05C and to make several technical corrections.

[4] For title XVI, an individual under age 18 shall be considered to have an impairment that meets Listing 112.05D if he or she has mental retardation, as defined above, with a valid verbal, performance or full scale I.Q. of 60 through 70 and a physical or other mental impairment that is severe within the meaning of 20 CFR 416.924(c).

[5] As noted above, the Court of Appeals alternative holding, relying on the decisions in *Warren* v. *Shalala*, 29 F.3d 1287 (8th Cir. 1994) and *Cook* v. *Bowen*, 797 F.2d 687 (8th Cir. 1986) is not inconsistent with SSA's interpretation of the Listing, as explained above.

DEPARTMENT OF STATE

Office of Consular Affairs

[Public Notice 2746]

60-Day Notice of Proposed Information Collection; Nonimmigrant Visa Application

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the Federal

Register preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Originating Office: The Office of Consular Affairs, Visa Services.

Title of Information Collection: Nonimmigrant Visa Application.

Frequency: On occasion.

Form Number: OF–156.

Respondents: Aliens.

Estimated Number of Respondents: 8,000,000.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 8,000,000.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: February 11, 1998.

Glen H. Johnson,

Acting Chief Information Officer.

[FR Doc. 98–4658 Filed 2–23–98; 8:45 am]

BILLING CODE 4710–06–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences; Imports Statistics Relating to Competitive Need Limitations; Invitation for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; invitation for public comment.

SUMMARY: The Trade Policy Staff Committee (TPSC) is informing the public of interim 1997 import statistics relating to Competitive Need Limitations (CNL) under the Generalized System of Preferences (GSP) program. The TPSC also invites public comments by 5:00 p.m. March 20, regarding possible de minimis CNL waivers with respect to particular articles, and possible redesignations under the GSP program of articles currently subject to CNLs.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, N.W., Room 518, Washington, DC 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

I. Competitive Need Limitations

Section 503(c)(2)(A) of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2463(c)(2)(A)), provides for Competitive Need Limitations on duty-free treatment under the GSP program. When the President determines that a beneficiary developing country exported to the United States during a calendar year either (1) a quantity of a GSP-eligible article having a value in excess of the applicable amount for that year ($80 million for 1997), or (2) a quantity of a GSP-eligible article having a value equal to or greater than 50 percent of the value of total U.S. imports of the article from all countries (the "50 percent" CNL), the President shall terminate GSP duty-free treatment for that article from that beneficiary developing country by no later than July 1 of the next calendar year.

II. Discretionary Decisions

A. De Minimis Waivers

Section 503(c)(2)(F) of the 1974 Act provides the President with discretion to waive the 50 percent CNL with respect to an eligible article imported from a beneficiary developing country if the value of total imports of that article from all countries during the calendar year did not exceed the applicable amount for that year ($13.5 million for 1997).

B. Redesignation of Eligible Articles

Where an eligible article from a beneficiary developing country ceased to receive duty-free treatment due to exceeding the CNL in a prior year, Section 503(c)(2)(C) of the 1974 Act provides the President with discretion to redesignate such an article for duty-free treatment if imports in the most recently completed calendar year did not exceed the CNLs.

III. Implementation of Competitive Need Limitations, Waivers, and Redesignations

Exclusions from GSP duty-free treatment where CNLs have been exceeded, as well as the return of GSP duty-free treatment to products for which the President has used his discretionary authority to grant redesignations will be effective July 1, 1998. Decisions on these matters, as well as decisions with respect to de minimis waivers, will be based on full 1997 calendar year import statistics.

IV. Interim 1997 Import Statistics

In order to provide advance indication of possible changes in the list of eligible articles pursuant to exceeding CNLs, and to afford an earlier opportunity for comment regarding possible de minimis waivers and redesignations, interim import statistics covering the first 10 months of 1997 are included with this notice.

The following lists contain the HTSUS numbers and beneficiary country of origin for GSP-eligible articles, the value of imports of such articles for the first ten months of 1997, and their percentage of total imports of that product from all countries. The flags indicate the status of GSP eligibility.

Articles marked with an "*" are those that have been excluded from GSP eligibility for the entire past calendar year. Flags "1" or "2" indicate products that were not eligible for duty-free treatment under GSP for the first six months or last six months, respectively, of 1997.

The flag "D" identifies articles with total U.S. imports from all countries, based on interim 1997 data, less than the applicable amount ($13.5 million in 1997) for eligibility for a de minimis waiver of the 50 percent CNL.

List I shows GSP-eligible articles from beneficiary developing countries that have exceeded the CNL of $80 million in 1997. Those articles without a flag identify articles that were GSP eligible during 1997 but stand to lose GSP duty-free treatment on July 1, 1998. In addition, List I shows articles (denoted with a flag "*" or "2") which did not have GSP duty-free treatment in all or the last half of 1997.

List II shows GSP-eligible articles from beneficiary developing countries that (1) Have not yet exceeded, but are approaching, the $80 million CNL during the period from January through October 1997, or (2) are close to or above the 50 percent CNL.

Depending on final calendar year 1997 import data, these products also

stand to lose GSP duty-free treatment on July 1, 1998.

List III is a subset of List II. List III identifies GSP-eligible articles from beneficiary developing countries that are near or above the 50 percent CNL, but that may be eligible for a de minimis waiver of the 50 percent CNL. Actual eligibility for de minimis waivers will depend on final calendar year 1997 import data.

List IV shows GSP articles from beneficiary developing countries which are currently not receiving GSP duty-free treatment, but which have import levels (based on interim 1997 data) below the CNLs and which thus may be eligible for redesignation pursuant to the President's discretionary authority. Articles with a "D" exceed the 50 percent CNL and would require both de minimis waivers and redesignation to receive GSP duty-free treatment. The list may contain articles that may not be redesignated until certain conditions are fulfilled, as for example, where GSP eligibility for articles was suspended because of deficiencies in beneficiary countries' protection of the rights of workers or owners of intellectual property. This list does not include articles from India which do not receive GSP treatment as a result of Presidential Proclamation 6425 of April 29, 1992 (57 FR 19067).

Each list is followed by a summary table that indicates the number of products cited from each beneficiary developing country and the total value of imports of those products from the beneficiary developing country.

The lists appended to this notice are provided for informational purposes only. The attached lists are computer-generated and, based on interim 1997 data, may not include all articles that may be affected by the GSP CNLs. Regardless of whether or not an article is included on the lists, all determinations and decisions regarding the CNLs of the GSP program will depend on full calendar year 1997 import data with respect to each GSP eligible article. Each interested party is advised to conduct its own review of 1997 import data with regard to the possible application of GSP CNLs.

IV. Public Comments

All written comments with regard to the matters discussed should be addressed to: GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, N.W., Room 518, Washington, DC 20508. All submissions must be in English and should conform to the information requirements of 15 CFR 2007. Furthermore, each party providing comments should indicate on the first page of the submission its name, the relevant Harmonized Tariff Schedule subheading(s), the beneficiary country or territory of interest, and the type of action (e.g., the use of the President's *de minimis* waiver authority, etc.) in which the party is interested.

A party must provide fourteen copies of its statement which must be received by the Chairman of the GSP Subcommittee no later than 5 p.m., Friday, March 20. Comments received after the deadline will not be accepted. If the comments contain business confidential information, fourteen copies of a non-confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, the submissions containing confidential information should be clearly marked "confidential" at the top and bottom of each page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential".

Written comments submitted in connection with these decisions, except for information granted "business confidential" status pursuant to 15 CFR 2007.7, will be available for public inspection shortly after the filing deadline by appointment only with the staff of the USTR Public Reading Room (202) 395–6186. Other requests and questions should be directed to the GSP Information Center at USTR by calling (202) 395–6971.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

BILLING CODE 3190-01-M

LIST I : ARTICLES EXCEEDING COMPETITIVE NEED LIMITS

LIST I : ARTICLES EXCEEDING COMPETITIVE NEED LIMITS
1997 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
*	0603.10.70	Colombia	117,210,838	88.1%
2	1701.11.10	Dominican Republic	162,165,853	21.2%
*	1701.11.10	Brazil	116,674,203	15.2%
*	2402.10.80	Dominican Republic	178,437,776	57.8%
*	2905.11.20	Trinidad and Tobago	82,299,819	31.9%
2	4015.11.00	Thailand	99,508,468	16.3%
2	4104.31.40	Argentina	123,389,026	39.3%
	4409.10.40	Chile	82,781,865	36.1%
*	6406.10.65	Dominican Republic	174,720,405	58.4%
2	7113.11.50	Thailand	104,894,087	29.8%
	7113.19.29	India	85,137,398	14.6%
*	7113.19.50	India	190,243,222	10.2%
2	7403.11.00	Peru	189,069,798	16.2%
*	7403.11.00	Chile	222,764,103	19.1%
2	8471.60.35	Indonesia	104,387,942	1.7%
2	8516.50.00	Thailand	88,023,841	17.3%
*	8517.21.00	Thailand	104,055,254	16.3%
*	8521.10.60	Thailand	256,379,553	11.4%
*	8544.30.00	Thailand	152,431,044	4.3%
*	8802.30.00	Brazil	203,883,988	8.7%
*	9009.12.00	Thailand	94,923,108	4.6%
*	9018.90.80	Dominican Republic	243,894,781	32.8%
2	9403.60.80	Indonesia	88,939,422	5.9%

FLAGS: '*'=Excluded full yr; '1'=Excluded January/June; '2'=Excluded July/December

LIST I : COUNTRIES EXCEEDING COMPETITIVE NEED LIMITS
1997 U.S. IMPORTS - JANUARY THROUGH OCTOBER

TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina	123,389,026	1
Brazil	320,558,191	2
Chile	305,545,968	2
Colombia	117,210,838	1
Dominican Republic	759,218,815	4
India	275,380,620	2
Indonesia	193,327,364	2
Peru	189,069,798	1
Thailand	900,215,355	7
Trinidad and Tobago	82,299,819	1
TOTAL	3,266,215,794	23

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
1997 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	NTSUS	PARTNER	IMPORTS	SHARE
D	0210.20.00	Uruguay	760,064	46.0%
D	0304.10.30	Namibia	103,019	61.5%
D	0305.20.20	Russia	18,500	100.0%
D	0708.90.30	Ecuador	142,619	66.6%
D	0710.29.30	Dominican Republic	849,020	55.7%
D	0711.30.00	Turkey	1,241,216	61.3%
	0714.90.10	Costa Rica	7,561,703	44.1%
	0714.90.20	Costa Rica	7,415,551	45.5%
D	0802.50.20	Turkey	1,454,367	99.4%
D	0802.50.40	Turkey	565,448	49.7%
D	0802.90.20	Pakistan	98,332	47.6%
D	0802.90.80	Guatemala	1,058,153	65.8%
D	0804.50.80	Thailand	1,244,907	53.8%
D	0813.40.10	Thailand	630,682	73.4%
D	0904.20.76	India	2,668,086	49.7%
D	1006.30.10	India	1,118,393	74.0%
D	1102.30.00	Thailand	2,727,424	79.7%
	1509.90.40	Turkey	10,473,504	42.2%
D	1510.00.60	Morocco	1,025,128	56.0%
D	1602.50.09	Argentina	3,214,313	74.5%
D	1604.14.50	Indonesia	121,185	79.2%
1	1604.15.00	Chile	9,011,023	64.6%
D	1604.30.20	Russia	8,935,952	94.8%
D	1701.91.42	Jamaica	14,445	57.7%
D	1703.90.30	India	15,301	51.0%
D	1806.10.65	India	7,068	100.0%
D	2005.10.00	Guatemala	93,894	53.4%
D	2005.80.00	Thailand	1,309,646	48.8%
D	2008.30.37	Argentina	249,790	48.0%
D	2008.30.95	Ecuador	8,800	67.1%
D	2008.99.35	Thailand	3,309,928	92.0%
D	2008.99.45	Dominican Republic	62,286	49.2%
D	2008.99.50	Thailand	1,387,669	48.2%
D	2101.20.32	India	8,400	82.4%
D	2208.90.05	Trinidad and Tobago	3,090,892	96.4%
D	2309.90.70	Hungary	506,257	94.1%
D	2401.20.57	Indonesia	195,000	58.6%
	2402.10.80	Honduras	60,385,512	19.5%
D	2516.90.00	Republic of South Af	2,461,142	51.5%
D	2619.00.30	Venezuela	1,086,801	78.0%
D	2707.99.40	Venezuela	779,143	65.5%
D	2804.29.00	Ukraine	2,375,870	53.8%
D	2811.29.50	Brazil	4,341,148	49.1%
D	2819.10.00	Kazakhstan	3,520,163	67.2%
D	2825.30.00	Republic of South Af	9,926,752	99.7%
D	2825.70.00	Chile	7,035,656	68.5%
D	2840.11.00	Turkey	1,419,928	95.1%
D	2840.19.00	Turkey	1,944,609	98.2%
D	2841.70.10	Chile	3,974,082	75.5%
D	2841.90.10	Republic of South Af	401,574	58.2%
D	2841.90.20	Kazakhstan	783,995	57.5%
	2843.30.00	Colombia	48,499,429	94.0%
D	2849.90.50	Republic of South Af	13,642,744	55.5%
D	2901.29.50	Republic of South Af	16,476,146	83.6%
D	2903.23.00	Brazil	8,019,841	88.3%
D	2903.61.10	Brazil	729,541	96.6%
D	2903.69.05	Hungary	28,381	76.5%
D	2921.42.23	Brazil	649,556	72.9%
1 D	2929.10.15	Brazil	912,600	80.4%
D	2931.00.25	Brazil	1,551,585	100.0%
D	2933.19.45	Slovakia	8,502	80.1%
D	2933.40.08	Hungary	402,977	100.0%
D	2933.40.10	Russia	1,901,909	47.9%
D	2938.10.00	Brazil	753,268	74.0%
D	3808.30.20	Brazil	394,893	63.3%
D	3817.10.50	Indonesia	2,732,046	60.2%
	4104.39.40	Argentina	67,913,023	66.6%
D	4106.12.00	Pakistan	1,790,506	73.2%
D	4202.22.35	Philippines	222,580	89.2%
D	4205.00.60	Venezuela	204,206	48.0%
1 D	4412.13.25	Brazil	1,939,012	63.2%
1 D	4412.14.25	Brazil	4,795,746	95.8%
1 D	4412.19.10	Brazil	909,822	96.6%
D	4412.22.50	Indonesia	1,575,583	47.5%
D	4412.29.15	Russia	5,899,426	72.0%
D	4412.29.45	Ecuador	2,474,582	54.7%
1 D	4412.92.10	Brazil	50,323	100.0%
1 D	4412.99.15	Brazil	315,711	100.0%
D	4412.99.45	Brazil	554,665	82.1%
	4414.00.00	Thailand	58,386,348	30.1%
D	4809.10.20	Guatemala	32,991	53.9%
D	5607.30.20	Philippines	3,615,917	84.2%
D	5608.90.23	Costa Rica	409,881	42.0%
D	6116.99.35	Thailand	58,468	81.3%
D	6501.00.30	Czech Republic	1,987,851	51.5%
D	6501.00.60	Colombia	83,171	88.2%
D	6814.90.00	India	914,987	42.7%
	7018.10.50	Czech Republic	7,916,223	45.5%
D	7018.90.50	Czech Republic	5,561,595	46.6%
	7113.19.50	Turkey	63,861,358	3.4%
D	7113.20.29	India	887,657	42.7%
D	7113.20.30	Mauritius	888,090	72.5%
D	7117.90.55	Peru	2,603,759	55.3%
D	7202.21.10	Argentina	722,005	47.3%
	7202.49.50	Russia	36,249,397	46.8%
	7202.50.00	Russia	11,987,531	76.0%
D	7202.80.00	Russia	3,701,360	89.6%
D	7206.90.00	Trinidad and Tobago	1,794,954	69.2%
D	7307.91.30	Brazil	2,391,227	68.3%
	7403.11.00	Brazil	70,681,136	6.0%
D	7407.22.30	Russia	522,720	64.4%
D	7409.39.50	Hungary	128,996	65.8%

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
1997 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
	2841.90.20	Kazakhstan	783,995	57.5%
D	7411.21.50	Trinidad and Tobago	5,876,153	62.1%
	7418.19.20	India	21,452,545	47.4%
D	7604.10.30	Slovenia	3,727,681	71.4%
1 D	7614.90.20	Venezuela	5,255,691	68.2%
D	7904.00.00	Republic of South Af	1,019,017	63.2%
D	8112.91.50	Chile	4,790,549	77.4%
D	8213.00.60	Brazil	221,901	42.4%
D	8410.13.00	Egypt	835,000	62.6%
D	8419.81.10	Thailand	4,446,374	53.6%
D	8455.90.40	Russia	2,807,702	59.9%
D	8479.89.70	Brazil	107,915	46.3%
	8483.10.30	Brazil	62,251,506	28.5%
D	8501.10.20	Indonesia	1,774,108	54.7%
	8517.19.80	Indonesia	57,905,512	6.6%
	8525.20.05	Philippines	25,945,727	55.6%
D	8525.20.28	Thailand	5,717,797	48.6%
	8528.12.16	Thailand	68,949,703	42.3%
D	8528.21.16	Thailand	550,758	43.4%
D	8528.21.34	Thailand	140,210	87.2%
	8531.20.00	Philippines	65,139,941	8.7%
	8534.00.00	Thailand	69,110,989	4.0%
D	8540.12.10	India	319,065	46.3%
D	8543.81.00	Philippines	3,208,841	46.6%
D	8543.90.64	Thailand	1,135,633	74.2%
D	8606.30.00	India	8,602	65.4%
	8708.40.50	Brazil	38,869,625	60.3%
	9001.30.00	Indonesia	59,515,728	58.0%
D	9005.80.60	Russia	2,914,576	43.5%
D	9013.10.30	Ukraine	2,679,360	72.5%
D	9401.90.15	Czech Republic	1,790,639	71.0%
D	9506.19.40	Czech Republic	1,367,291	74.4%
D	9614.20.60	Turkey	77,264	76.2%
D	7409.39.50	Hungary	128,996	65.8%

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
1997 U.S. IMPORTS - JANUARY THROUGH OCTOBER

TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina	72,099,131	4
Brazil	200,441,021	20
Chile	24,811,310	4
Colombia	48,582,600	2
Costa Rica	15,387,135	3
Czech Republic	18,623,599	5
Dominican Republic	911,306	2
Ecuador	2,626,001	3
Egypt	835,000	1
Guatemala	1,185,038	3
Honduras	60,385,512	1
Hungary	1,066,611	4
India	27,400,104	10
Indonesia	123,819,162	7
Jamaica	14,445	1
Kazakhstan	4,304,158	2
Mauritius	888,090	1
Morocco	1,025,128	1
Namibia	103,019	1
Pakistan	1,888,838	2
Peru	2,603,759	1
Philippines	98,133,006	5
Republic of South Af	43,927,375	6
Russia	74,939,073	10
Slovakia	8,502	1
Slovenia	3,727,681	1
Thailand	219,106,536	15
Trinidad and Tobago	10,761,999	3
Turkey	81,037,694	8
Ukraine	5,055,230	2
Uruguay	760,064	1
Venezuela	7,325,841	4
TOTAL	1,153,783,968	134

LIST III : POSSIBLE de MINIMIS ITEMS
1997 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	0210.20.00	Uruguay	760,064	46.0%
D	0304.10.30	Namibia	103,019	61.5%
D	0305.20.20	Russia	18,500	100.0%
D	0706.90.30	Ecuador	142,619	66.6%
D	0710.29.30	Dominican Republic	849,020	55.7%
D	0711.30.00	Turkey	1,241,216	61.3%
D	0802.50.20	Turkey	1,454,367	99.4%
D	0802.50.40	Turkey	565,448	49.7%
D	0802.90.20	Pakistan	98,332	47.6%
D	0802.90.80	Guatemala	1,058,153	65.8%
D	0804.50.80	Thailand	1,244,907	53.8%
D	0813.40.10	Thailand	630,682	73.4%
D	0906.20.76	India	2,668,086	49.7%
D	1006.30.10	India	1,118,393	74.0%
D	1102.30.00	Thailand	2,727,424	79.7%
D	1510.00.60	Morocco	1,025,128	56.0%
D	1602.50.09	Argentina	3,214,313	74.5%
D	1604.14.50	Indonesia	121,185	79.2%
D	1604.30.20	Russia	8,935,952	94.8%
D	1701.91.42	Jamaica	14,445	57.7%
D	1703.90.30	India	15,301	51.0%
D	1806.10.65	India	7,068	100.0%
D	2005.10.00	Guatemala	93,894	53.4%
D	2005.80.00	Thailand	1,309,646	48.8%
D	2008.30.37	Argentina	249,790	48.0%
D	2008.30.95	Ecuador	8,800	67.1%
D	2008.99.35	Thailand	3,309,928	92.0%
D	2008.99.45	Dominican Republic	62,286	49.2%
D	2008.99.50	Thailand	1,387,669	48.2%
D	2101.20.32	India	8,400	82.4%
D	2208.90.05	Trinidad and Tobago	3,090,892	96.4%
D	2309.90.70	Hungary	506,257	94.1%
D	2401.20.57	Indonesia	195,000	58.6%
D	2516.90.00	Republic of South Af	2,461,142	51.5%
D	2619.00.30	Venezuela	1,086,801	78.0%
D	2707.99.40	Venezuela	779,143	65.5%
D	2804.29.00	Ukraine	2,375,870	53.8%
D	2811.29.50	Brazil	4,341,148	49.1%
D	2819.10.00	Kazakhstan	3,520,163	67.2%
D	2825.30.00	Republic of South Af	9,926,752	99.7%
D	2825.70.00	Chile	7,035,656	68.5%
D	2840.11.00	Turkey	1,419,928	95.1%
D	2840.19.00	Turkey	1,944,609	98.2%
D	2841.70.10	Chile	3,974,082	75.5%
D	2841.90.10	Republic of South Af	401,574	58.2%
D	2841.90.20	Kazakhstan	783,995	57.5%
D	2903.23.00	Brazil	8,019,841	88.3%
D	2903.61.10	Brazil	729,541	96.6%
D	2903.69.05	Hungary	28,381	76.5%
D	2921.42.23	Brazil	649,556	72.9%
1 D	2929.10.15	Brazil	912,600	80.4%
D	2931.00.25	Brazil	1,551,585	100.0%
D	2933.19.45	Slovakia	8,502	80.1%
D	2933.40.08	Hungary	402,977	100.0%
D	2933.40.10	Russia	1,901,909	47.9%
D	2938.10.00	Brazil	753,268	74.0%
D	3808.30.20	Brazil	394,893	43.3%
D	3817.10.50	Indonesia	2,732,046	60.2%
Q	4106.12.00	Pakistan	1,790,186	73.2%
D	4202.22.35	Philippines	222,580	89.2%
D	4205.00.60	Venezuela	204,206	48.8%
1 D	4412.13.25	Brazil	1,939,012	63.2%
1 D	4412.14.25	Brazil	4,795,746	95.8%
1 D	4412.19.10	Brazil	989,822	94.4%
D	4412.22.50	Indonesia	1,575,583	47.5%
D	4412.29.15	Russia	5,890,424	72.0%
D	4412.29.45	Ecuador	2,474,582	56.7%
1 D	4412.92.10	Brazil	50,323	100.0%
1 D	4412.99.15	Brazil	315,711	100.0%
D	4412.99.45	Brazil	534,467	82.1%
D	4809.10.20	Guatemala	32,991	53.9%
D	5607.30.20	Philippines	3,615,917	84.2%
D	5608.90.23	Costa Rica	409,881	42.0%
D	6116.99.35	Thailand	88,468	81.3%
D	6501.00.30	Czech Republic	1,987,851	51.5%
D	6501.00.60	Colombia	83,171	88.2%
D	6814.90.00	India	974,987	42.7%
D	7018.90.50	Czech Republic	5,561,595	46.6%
D	7113.20.29	India	887,657	42.7%
D	7113.20.30	Mauritius	888,090	72.5%
D	7117.90.55	Peru	2,603,799	95.3%
D	7202.21.10	Argentina	722,005	47.3%
D	7202.80.00	Russia	3,781,360	89.6%
D	7206.90.00	Trinidad and Tobago	1,796,954	69.2%
D	7307.91.30	Brazil	2,381,227	88.3%
D	7407.22.30	Russia	522,720	44.4%
D	7409.39.50	Hungary	128,996	45.8%
D	7411.21.50	Trinidad and Tobago	5,876,153	62.1%
D	7604.10.30	Slovenia	3,727,681	71.6%
1 D	7614.90.20	Venezuela	5,295,691	68.2%
D	7904.00.00	Republic of South Af	1,019,917	63.2%
D	8112.91.50	Chile	4,790,569	77.4%
D	8213.00.60	Brazil	281,801	42.6%
D	8410.13.00	Egypt	835,000	62.6%
D	8419.81.10	Thailand	4,466,374	53.6%
D	8455.90.40	Russia	2,807,702	59.9%
D	8479.89.70	Brazil	107,915	46.3%
D	8501.10.20	Indonesia	1,774,188	44.7%
D	8525.20.28	Thailand	5,717,797	48.6%
D	8528.21.16	Thailand	550,758	43.4%
D	8528.21.34	Thailand	140,210	87.2%
D	8540.12.10	India	319,065	44.3%

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

LIST III : POSSIBLE de MINIMIS ITEMS
1997 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE

D	2905.69.65	Hungary.....	20,381	78.9%	D	8528.21.34	Thailand.....	160,210	87.2%
D	2921.42.23	Brazil.....	649,556	72.9%	D	8540.12.10	India.....	319,065	44.3%
1 D	2929.10.15	Brazil.....	912,600	80.4%					

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

LIST III : POSSIBLE de MINIMIS ITEMS
1997 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	8543.81.00	Philippines.....	3,208,841	46.6%
D	8543.90.64	Thailand.....	1,135,633	74.2%
D	8606.30.00	India.....	8,602	65.4%
D	9005.80.60	Russia.....	2,914,576	43.5%
D	9013.10.30	Ukraine.....	2,679,360	72.5%
D	9401.90.15	Czech Republic.....	1,790,639	71.0%
D	9506.19.40	Czech Republic.....	1,367,291	74.4%
D	9614.20.60	Turkey.....	77,264	76.2%

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

LIST III : POSSIBLE de MINIMIS ITEMS
1997 U.S. IMPORTS - JANUARY THROUGH OCTOBER

TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina.....	4,186,108	3
Brazil.....	28,638,754	17
Chile.....	15,800,287	3
Colombia.....	83,171	1
Costa Rica.....	409,881	1
Czech Republic.....	10,707,376	4
Dominican Republic..	911,306	2
Ecuador.....	2,626,001	3
Egypt.....	835,000	1
Guatemala.....	1,185,038	3
Hungary.....	1,066,611	4
India.....	5,947,559	9
Indonesia.....	6,397,922	5
Jamaica.....	14,445	1
Kazakhstan.....	4,304,158	2
Mauritius.....	888,090	1
Morocco.....	1,025,128	1
Namibia.....	103,019	1
Pakistan.....	1,888,838	2
Peru.....	2,603,759	1
Philippines.....	7,047,338	3
Republic of South Af	13,808,485	4
Russia.....	26,702,145	8
Slovakia.....	8,502	1
Slovenia.....	3,727,681	1
Thailand.....	22,659,496	12
Trinidad and Tobago.	10,761,999	3
Turkey.....	6,702,832	6
Ukraine.....	5,055,230	2
Uruguay.....	760,064	1
Venezuela.....	7,325,841	4
TOTAL.....	194,182,064	110

LIST IV : POSSIBLE REDESIGNATION ITEMS
1997 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
2	0303.77.00	Argentina	11,668,680	48.6%
*	0304.20.50	Argentina	0	0.0%
2	0404.90.10	Argentina	158,959	0.3%
*	0703.10.20	Chile	0	0.0%
2	0703.20.00	Argentina	3,014,848	15.6%
2 D	0708.10.20	Guatemala	982,578	74.7%
*	0709.10.00	Chile	1,802	0.2%
* D	0709.20.10	Peru	4,849,900	63.0%
*	0710.80.70	Guatemala	1,148,902	14.8%
2 D	0710.80.93	Guatemala	2,365,645	68.7%
2 D	0711.40.00	India	2,621,014	62.4%
2	0713.90.10	Peru	36,789	8.1%
2 D	0714.10.10	Costa Rica	3,795,932	92.5%
2 D	0714.10.20	Costa Rica	12,685,818	98.0%
2 D	0714.20.20	Dominican Republic	3,957,911	91.2%
* D	0811.20.20	Chile	7,267,147	65.8%
*	0811.20.40	Chile	492,279	17.1%
2 D	0811.90.10	Costa Rica	1,937,324	52.2%
2 D	0811.90.50	Costa Rica	2,052,040	80.5%
*	0813.10.00	Turkey	22,970,106	93.6%
* D	0813.30.00	Argentina	3,398,233	43.2%
*	1005.90.20	Argentina	2,628,612	10.7%
* D	1005.90.40	Argentina	3,183,161	49.6%
2 D	1007.00.00	Argentina	405,813	71.1%
2 D	1106.30.20	Ecuador	47,832	93.7%
2 D	1301.90.40	Indonesia	2,180,000	65.8%
2 D	1403.90.40	India	937,540	47.4%
*	1602.50.20	Argentina	49,900,767	70.7%
*	1604.14.50	Thailand	0	0.0%
2	1604.16.10	Argentina	513,229	3.1%
2 D	1605.90.55	Indonesia	924,807	44.3%
2	1701.11.10	Argentina	31,336,873	4.1%
*	1701.11.20	Guatemala	43,410,861	43.6%
*	1701.11.20	Brazil	234,651	0.2%
*	1701.91.10	Brazil	0	0.0%
*	1701.99.05	Brazil	0	0.0%
*	1701.99.10	Brazil	722,560	4.0%
2	1702.90.35	Belize	1,585,463	33.5%
2	1702.90.40	Dominican Republic	0	0.0%
2 D	1703.10.30	Dominican Republic	952,057	60.7%
*	1806.10.65	Brazil	0	0.0%
2 D	1806.32.55	Colombia	195,900	64.2%
2 D	2004.10.40	Colombia	7,790	80.8%
*	2007.99.48	Argentina	0	0.0%
*	2007.99.50	Brazil	445,206	5.0%
2 D	2008.30.10	Dominican Republic	162,071	58.5%
* D	2008.50.20	Argentina	359,984	80.7%
2 D	2008.99.13	Costa Rica	6,987,500	68.0%
2 D	2008.99.23	Dominican Republic	250,732	90.2%
2	2106.90.12	Dominican Republic	0	0.0%
2	2603.00.00	Chile	47,938,633	78.5%
*	2603.00.00	Indonesia	0	0.0%
2	2608.00.00	Peru	10,813,963	55.0%
*	2804.69.10	Brazil	8,594,418	10.7%
2	2805.40.00	Argentina	0	0.0%
2	2813.90.50	Argentina	37,200	2.3%
2	2832.30.10	Argentina	60,821	21.4%
2	2839.90.00	Argentina	543,960	14.3%
2	2841.30.00	Argentina	320,702	6.6%
2	2841.50.00	Argentina	0	0.0%
*	2843.30.00	Chile	0	0.0%
2	2843.30.00	Argentina	0	0.0%
2 D	2849.10.00	Argentina	204,682	70.0%
2	2850.00.50	Argentina	0	0.0%
2	2902.11.00	Argentina	7,282,053	29.4%
2	2904.90.15	Brazil	14,440,723	96.6%
2	2905.12.00	Argentina	1,727,246	6.6%
2	2905.13.00	Argentina	0	0.0%
2	2905.22.50	Argentina	13,662	0.1%
*	2906.11.00	Brazil	6,766,805	13.3%
2	2906.14.00	Argentina	31,585	4.0%
*	2907.23.00	Brazil	221,754	2.5%
2 D	2909.50.40	Indonesia	3,404,857	58.8%
2	2914.12.00	Argentina	733,622	11.7%
2	2914.13.00	Argentina	289,809	3.8%
2	2921.42.23	Guatemala	0	0.0%
2	2929.10.15	Argentina	138,108	12.1%
2	2932.99.90	Argentina	78,927	0.0%
2	2933.40.30	Argentina	0	0.0%
2	2933.90.55	Argentina	3,300	0.0%
*	2934.90.15	Brazil	1,332,198	9.2%
2	3209.90.00	Argentina	347,650	0.9%
*	3301.12.00	Brazil	16,472,999	72.0%
2	3301.19.10	Argentina	1,611	0.1%
2	3301.90.10	Argentina	0	0.0%
2	3302.10.10	Argentina	197,339	0.3%
2	3302.10.20	Argentina	315,626	4.9%
2	3302.90.10	Argentina	0	0.0%
2	3303.00.30	Argentina	32,848	0.0%
2	3304.20.00	Argentina	0	0.0%
2	3304.99.50	Argentina	35,344	0.0%
2	3305.10.00	Argentina	4,518	0.0%
2	3305.90.00	Argentina	118,406	0.2%
2	3307.20.00	Argentina	0	0.0%
2	3307.49.00	Argentina	16,270	0.0%
2	3401.11.10	Argentina	0	0.0%
2	3504.00.50	Argentina	0	0.0%
2	3506.99.00	Argentina	0	0.0%
2	3701.10.00	Argentina	652,821	0.3%
2	3702.10.00	Argentina	0	0.0%
2	3706.10.30	Argentina	0	0.0%
2	3707.90.32	Argentina	1,689	0.0%

FLAGS: '*'=Excluded full year; '2'=Excluded July/December; 'D'=De minimis;

LIST IV : POSSIBLE REDESIGNATION ITEMS
1997 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
2	0303.77.00	Argentina	11,668,680	48.6%
*	0304.20.50	Argentina	0	0.0%
2	0404.90.10	Argentina	158,959	0.3%
*	0703.10.20	Chile	0	0.0%
2	0703.20.00	Argentina	3,014,848	15.6%
2 D	0708.10.20	Guatemala	982,578	74.7%
*	0709.10.00	Chile	1,802	0.2%
* D	0709.20.10	Peru	4,849,900	63.0%
*	0710.80.70	Guatemala	1,148,902	14.8%
2 D	0710.80.93	Guatemala	2,365,645	68.7%
2 D	0711.40.00	India	2,621,014	62.4%
2	0713.90.10	Peru	36,789	8.1%
2 D	0714.10.10	Costa Rica	3,795,932	92.5%
2 D	0714.10.20	Costa Rica	12,685,818	98.0%
2 D	0714.20.20	Dominican Republic	3,957,911	91.2%
* D	0811.20.20	Chile	7,267,147	65.8%
*	0811.20.40	Chile	492,279	17.1%
2 D	0811.90.10	Costa Rica	1,937,324	52.2%
2 D	0811.90.50	Costa Rica	2,052,040	80.5%
*	0813.10.00	Turkey	22,970,106	93.6%
* D	0813.30.00	Argentina	3,398,233	43.2%
*	1005.90.20	Argentina	2,628,612	10.7%
* D	1005.90.40	Argentina	3,183,161	49.6%
2 D	1007.00.00	Argentina	405,813	71.1%
2 D	1106.30.20	Ecuador	47,832	93.7%
2 D	1301.90.40	Indonesia	2,180,000	65.8%
2 D	1403.90.40	India	937,540	47.4%
*	1602.50.20	Argentina	49,900,767	70.7%
*	1604.14.50	Thailand	0	0.0%
2	1604.16.10	Argentina	513,229	3.1%
2 D	1605.90.55	Indonesia	924,807	44.3%
2	1701.11.10	Argentina	31,336,873	4.1%
*	1701.11.20	Guatemala	43,410,861	43.6%
*	1701.11.20	Brazil	234,651	0.2%
*	1701.91.10	Brazil	0	0.0%
*	1701.99.05	Brazil	0	0.0%
*	1701.99.10	Brazil	722,560	4.0%
2	1702.90.35	Belize	1,585,463	33.5%
2	1702.90.40	Dominican Republic	0	0.0%
2 D	1703.10.30	Dominican Republic	952,057	60.7%
*	1806.10.65	Brazil	0	0.0%
2 D	1806.32.55	Colombia	195,900	64.2%
2 D	2004.10.40	Colombia	7,790	80.8%
*	2007.99.48	Argentina	0	0.0%
*	2007.99.50	Brazil	445,206	5.0%
2 D	2008.30.10	Dominican Republic	162,071	58.5%
* D	2008.50.20	Argentina	359,984	80.7%
2 D	2008.99.13	Costa Rica	6,987,500	68.0%
2 D	2008.99.23	Dominican Republic	250,732	90.2%
2	2106.90.12	Dominican Republic	0	0.0%
2	2603.00.00	Chile	47,938,633	78.5%
*	2603.00.00	Indonesia	0	0.0%
2	2608.00.00	Peru	10,813,963	55.0%
*	2804.69.10	Brazil	8,594,418	10.7%
2	2805.40.00	Argentina	0	0.0%
2	2813.90.50	Argentina	37,200	2.3%
2	2832.30.10	Argentina	60,821	21.4%
2	2839.90.00	Argentina	543,960	14.3%
2	2841.30.00	Argentina	320,702	6.6%
2	2841.50.00	Argentina	0	0.0%
*	2843.30.00	Chile	0	0.0%
2	2843.30.00	Argentina	0	0.0%
2 D	2849.10.00	Argentina	204,682	70.0%
2	2850.00.50	Argentina	0	0.0%
2	2902.11.00	Argentina	7,282,053	29.4%
2	2904.90.15	Brazil	14,440,723	96.6%
2	2905.12.00	Argentina	1,727,246	6.6%
2	2905.13.00	Argentina	0	0.0%
2	2905.22.50	Argentina	13,662	0.1%
*	2906.11.00	Brazil	6,766,805	13.3%
2	2906.14.00	Argentina	31,585	4.0%
*	2907.23.00	Brazil	221,754	2.5%
2 D	2909.50.40	Indonesia	3,404,857	58.8%
2	2914.12.00	Argentina	733,622	11.7%
2	2914.13.00	Argentina	289,809	3.8%
2	2921.42.23	Guatemala	0	0.0%
2	2929.10.15	Argentina	138,108	12.1%
2	2932.99.90	Argentina	78,927	0.0%
2	2933.40.30	Argentina	0	0.0%
2	2933.90.55	Argentina	3,300	0.0%
*	2934.90.15	Brazil	1,332,198	9.2%
2	3209.90.00	Argentina	347,650	0.9%
*	3301.12.00	Brazil	16,472,999	72.0%
2	3301.19.10	Argentina	1,611	0.1%
2	3301.90.10	Argentina	0	0.0%
2	3302.10.10	Argentina	197,339	0.3%
2	3302.10.20	Argentina	315,626	4.9%
2	3302.90.10	Argentina	0	0.0%
2	3303.00.30	Argentina	32,848	0.0%
2	3304.20.00	Argentina	0	0.0%
2	3304.99.50	Argentina	35,344	0.0%
2	3305.10.00	Argentina	4,518	0.0%
2	3305.90.00	Argentina	118,406	0.2%
2	3307.20.00	Argentina	0	0.0%
2	3307.49.00	Argentina	16,270	0.0%
2	3401.11.10	Argentina	0	0.0%
2	3504.00.50	Argentina	0	0.0%
2	3506.99.00	Argentina	0	0.0%
2	3701.10.00	Argentina	652,821	0.3%
2	3702.10.00	Argentina	0	0.0%
2	3706.10.30	Argentina	0	0.0%
2	3707.90.32	Argentina	1,689	0.0%

LIST IV : POSSIBLE REDESIGNATION ITEMS
1997 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
2	2106.90.12	Dominican Republic..	0	0.0%
2	2603.00.00	Chile.....	47,938,633	78.5%
2	3706.10.30	Argentina.....	0	0.0%
2	3707.90.32	Argentina.....	1,689	0.0%

FLAGS:'*'=Excluded full year; '2'=Excluded July/December; 'D'=De minimis;

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
*	3806.30.00	Argentina.....	0	0.0%
2	3822.00.50	Argentina.....	14,748	0.0%
2 D	3824.60.00	Indonesia.....	402,805	91.3%
*	3824.90.40	Brazil.....	1,799,691	3.7%
2	3901.90.90	Argentina.....	0	0.0%
2	3902.10.00	Argentina.....	0	0.0%
2	3902.20.50	Argentina.....	1,529,725	16.5%
2	3902.90.00	Argentina.....	4,608,328	9.9%
2	3903.90.50	Argentina.....	0	0.0%
*	3904.21.00	Brazil.....	7,780	0.0%
2	3904.40.00	Argentina.....	37,149	0.1%
2	3906.10.00	Argentina.....	43,217	0.1%
2	3906.90.50	Argentina.....	0	0.0%
2	3907.30.00	Argentina.....	0	0.0%
2	3907.60.00	Argentina.....	0	0.0%
2	3907.99.00	Argentina.....	0	0.0%
2	3909.10.00	Argentina.....	0	0.0%
2	3909.50.50	Argentina.....	0	0.0%
2	3913.90.20	Argentina.....	2,098,511	2.4%
2 D	3920.59.80	Dominican Republic..	645,455	51.8%
2	3921.90.50	Argentina.....	517,861	0.6%
2	3923.90.00	Argentina.....	334,822	0.1%
*	3926.20.30	Pakistan.....	620,045	13.2%
*	4006.10.00	Brazil.....	47,128	13.9%
*	4011.10.10	Brazil.....	65,759,886	5.4%
2	4011.10.10	Argentina.....	2,705,096	0.2%
*	4011.10.50	Brazil.....	712,813	2.3%
*	4011.20.10	Brazil.....	35,411,373	4.0%
*	4011.20.50	Brazil.....	311,243	0.2%
*	4016.99.30	Thailand.....	769,662	3.5%
*	4016.99.35	Thailand.....	5,777,218	36.2%
*	4104.21.00	Argentina.....	3,157,283	11.5%
*	4104.22.00	Brazil.....	522,519	9.4%
*	4104.22.00	Argentina.....	285,987	5.1%
*	4104.29.50	Argentina.....	271,425	10.2%
*	4104.29.90	Argentina.....	33,108	0.1%
*	4104.31.50	Argentina.....	1,628,698	4.1%
*	4104.31.60	Argentina.....	231,585	0.8%
*	4104.31.80	Argentina.....	2,818,677	3.1%
*	4104.39.50	Argentina.....	9,256	0.1%
2 D	4104.39.50	India.....	2,979,418	43.3%
*	4104.39.60	Argentina.....	3,529,009	29.9%
*	4104.39.80	Argentina.....	542,887	1.3%
*	4105.20.60	Argentina.....	910	0.0%
*	4106.12.00	India.....	88,657	3.6%
* D	4106.19.30	Pakistan.....	338,723	73.6%
*	4106.20.30	India.....	516,444	26.0%
*	4106.20.60	India.....	1,526,968	28.8%
* D	4106.20.60	Pakistan.....	2,869,807	54.2%
*	4107.21.00	Argentina.....	0	0.0%
*	4107.29.30	Argentina.....	628,248	14.2%
*	4107.29.60	Argentina.....	152,467	2.2%
*	4107.90.60	Argentina.....	274	0.0%
*	4109.00.70	Argentina.....	0	0.0%
2	4201.00.60	Argentina.....	2,094,726	4.0%
*	4203.21.20	Pakistan.....	296,662	1.5%
*	4203.21.55	Pakistan.....	388,242	28.7%
*	4203.21.60	Pakistan.....	893,605	16.3%
*	4203.21.80	Pakistan.....	5,408,370	7.0%
*	4205.00.60	Argentina.....	19,175	4.5%
2	4303.10.00	Argentina.....	3,251,907	2.9%
2	4303.90.00	Argentina.....	241,988	1.1%
2	4410.11.00	Argentina.....	0	0.0%
2	4410.19.00	Argentina.....	144,671	0.0%
*	4411.11.00	Brazil.....	25,460,275	46.0%
2	4411.11.00	Argentina.....	1,798,280	3.2%
* D	4411.19.20	Brazil.....	3,575,958	50.7%
*	4411.19.40	Brazil.....	3,446,802	6.1%
*	4411.21.00	Brazil.....	0	0.0%
*	4411.29.60	Brazil.....	12,959	0.3%
*	4411.29.90	Brazil.....	0	0.0%
*	4412.13.05	Indonesia.....	7,521,123	51.5%
*	4412.13.25	Indonesia.....	0	0.0%
*	4412.14.30	Brazil.....	27,195,257	20.9%
*	4412.14.30	Indonesia.....	37,301,130	28.8%
*	4412.14.55	Brazil.....	479,538	4.6%
*	4412.14.55	Indonesia.....	1,188,954	11.4%
2	4412.22.40	Colombia.....	69,948	8.8%
2	4412.92.50	Indonesia.....	0	0.0%
2	4412.99.55	Colombia.....	180,530	17.3%
*	4421.90.50	Brazil.....	0	0.0%
*	4421.90.60	Brazil.....	0	0.0%
2	4602.10.23	Indonesia.....	0	0.0%
2	4802.52.10	Argentina.....	0	0.0%
*	4823.20.10	Brazil.....	0	0.0%
2 D	4823.90.20	Philippines.....	6,733,320	52.8%
* D	5701.10.13	Pakistan.....	208,083	70.6%
*	5702.10.10	Pakistan.....	70,640	14.2%
2 D	5702.49.15	India.....	413,946	44.9%
*	5702.91.20	Pakistan.....	12,000	25.9%
*	5805.00.20	Pakistan.....	0	0.0%
*	6304.99.10	Pakistan.....	0	0.0%
*	6304.99.40	Pakistan.....	1,668	27.0%
*	6406.10.65	Brazil.....	2,330,399	0.7%
*	6406.99.60	Argentina.....	4,264,753	21.3%
*	6702.90.65	Thailand.....	0	0.0%
*	6908.10.20	Thailand.....	404,251	5.0%
*	6910.10.00	Brazil.....	1,770,065	4.6%
*	6910.90.00	Brazil.....	65,101	0.0%
2	6910.90.00	Argentina.....	887,058	0.7%
*	6911.90.00	Brazil.....	12,725	0.0%
*	6912.00.44	Brazil.....	81,020	0.0%

FLAGS:'*'=Excluded full year; '2'=Excluded July/December; 'D'=De minimis;

LIST IV : POSSIBLE REDESIGNATION ITEMS
1997 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
2	7007.11.00	Argentina	329,016	0.2%
*	7103.99.10	Thailand	23,059,054	22.7%
*	7106.92.50	Chile	0	0.0%
2 D	7109.00.00	Peru	2,309,735	85.5%
*	7113.11.20	Thailand	0	0.0%
2	7113.19.21	Peru	9,630,657	31.0%
2	7113.19.50	Dominican Republic	73,377,969	3.9%
*	7113.19.50	Thailand	0	0.0%
2	7114.11.60	Argentina	0	0.0%
*	7115.90.30	Argentina	0	0.0%
*	7115.90.40	Argentina	6,172	0.1%
*	7116.10.10	Thailand	0	0.0%
*	7116.20.05	Thailand	7,466,443	37.1%
*	7116.20.15	Thailand	1,260,543	8.1%
2	7202.21.50	Argentina	3,820,399	3.8%
*	7202.30.00	Brazil	0	0.0%
2	7202.30.00	Argentina	0	0.0%
2	7308.90.95	Argentina	143,013	0.1%
2	7315.90.00	Argentina	938,357	7.5%
*	7402.00.00	Chile	77,163,421	27.7%
2 D	7403.12.00	Peru	4,425,209	89.2%
*	7403.12.00	Chile	0	0.0%
*	7403.13.00	Chile	187,197	1.2%
*	7403.19.00	Chile	43,132,179	33.1%
*	7403.21.00	Chile	0	0.0%
*	7403.22.00	Chile	21,466	0.9%
*	7403.23.00	Chile	0	0.0%
*	7403.29.00	Chile	0	0.0%
*	7407.21.90	Brazil	2,985,156	2.6%
2	7409.11.50	Argentina	0	0.0%
2	7409.21.00	Argentina	548,219	1.5%
2	7419.99.50	Argentina	26,697	0.0%
*	7604.10.30	Venezuela	0	0.0%
*	7604.29.30	Venezuela	0	0.0%
*	7605.11.00	Venezuela	0	0.0%
2	7614.90.50	Venezuela	0	0.0%
*	7615.19.10	Thailand	0	0.0%
2	7901.11.00	Argentina	0	0.0%
2	7901.12.50	Argentina	0	0.0%
2	7903.00.00	Peru	18,841,383	75.6%
*	8104.11.00	Russia	21,849,770	56.2%
2	8108.90.60	Russia	29,128,513	52.7%
*	8112.11.60	Kazakhstan	0	0.0%
2	8112.30.60	Russia	10,103,484	58.9%
2	8207.20.00	Argentina	0	0.0%
2 D	8211.92.60	Pakistan	1,910,454	54.8%
*	8408.20.20	Brazil	82,583	0.0%
*	8408.20.90	Brazil	107,552	0.5%
*	8409.91.50	Brazil	22,299,582	1.9%
2	8409.91.50	Argentina	2,891,874	0.2%
2	8409.91.99	Argentina	2,867,863	1.1%
*	8409.91.91	Brazil	45,065,424	14.9%
2	8409.91.91	Argentina	2,123,537	0.7%
*	8409.99.99	Brazil	32,745,735	13.3%
2	8412.10.00	Russia	43,095,129	97.6%
2	8413.30.10	Brazil	73,125,879	32.9%
2	8413.91.90	Argentina	1,540,926	0.3%
2	8414.30.80	Brazil	44,248,394	12.8%
*	8419.90.20	Brazil	12,704	0.0%
2	8422.30.90	Argentina	330,610	0.1%
*	8429.11.00	Brazil	18,589,154	13.2%
*	8429.20.00	Brazil	23,107,850	39.1%
*	8429.30.00	Brazil	13,955,223	69.9%
2	8431.49.10	Argentina	0	0.0%
*	8431.49.90	Brazil	42,234,153	4.7%
*	8471.49.29	Thailand	12,966	0.0%
*	8471.60.45	Thailand	1,467,186	0.1%
2	8477.51.00	Argentina	0	0.0%
2	8479.20.00	Argentina	126,125	6.7%
2	8480.30.00	Argentina	0	0.0%
-	8481.30.20	Argentina	0	0.0%
2	8481.80.30	Argentina	1,810,987	0.5%
2	8481.80.90	Argentina	1,066,054	0.1%
2	8481.90.30	Argentina	73,737	0.1%
2	8503.00.65	Argentina	0	0.0%
2	8517.80.10	Indonesia	68,914,282	27.5%
2	8524.31.00	Argentina	511,900	0.5%
2	8524.32.00	Argentina	46,784	0.0%
2	8524.52.10	Argentina	682,873	7.2%
2	8524.60.00	Argentina	0	0.0%
2	8524.91.00	Argentina	23,120	0.0%
2	8524.99.60	Argentina	0	0.0%
2	8524.99.90	Argentina	6,380,352	8.0%
2	8528.12.04	Indonesia	56,513,217	96.3%
2	8531.20.00	Thailand	59,251,788	7.9%
*	8535.40.00	Dominican Republic	513,312	1.3%
2	8536.90.40	Argentina	0	0.0%
2	8536.90.80	Argentina	7,495	0.0%
2	8538.90.80	Argentina	0	0.0%
2	8708.39.50	Brazil	67,157,354	5.0%
2	8708.60.80	Argentina	15,183	0.0%
2	8708.70.60	Argentina	0	0.0%
2	8708.99.80	Argentina	13,784,087	0.4%
2	8716.90.50	Argentina	338,084	0.3%
2	9003.90.00	Argentina	0	0.0%
2 D	9006.62.00	Thailand	9,558,738	86.5%
*	9018.11.60	Argentina	0	0.0%
2 D	9018.90.10	Argentina	648,704	65.7%
*	9018.90.80	Pakistan	17,723,328	2.3%
*	9025.11.20	Brazil	710,409	32.6%
* D	9025.11.20	India	937,372	43.0%
*	9105.19.10	Brazil	0	0.0%

FLAGS:'*'=Excluded full year; '2'=Excluded July/December; 'D'=De minimis;

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2	8409.91.50 Argentina.....	2,891,874	0.2%	
2	8409.91.99 Argentina.....	2,867,863	1.1%	
*	9105.19.10 Brazil.....	0	0.0%	

FLAGS:'*'=Excluded full year; '2'=Excluded July/December; 'D'=De minimis;

[FR Doc. 98-4633 Filed 2-23-98; 8:45 am]
BILLING CODE 3190-01-C

LIST IV : POSSIBLE REDESIGNATION ITEMS
1997 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
*	9105.19.40	Brazil.....	1,712	0.0%
2	9113.10.00	Argentina.....	3,470	0.0%
2	9113.20.60	Argentina.....	0	0.0%
*	9401.30.40	Croatia.....	0	0.0%
*	9401.30.40	Slovenia.....	0	0.0%
*	9401.61.40	Croatia.....	0	0.0%
2	9401.69.40	Indonesia.....	8,030,345	57.0%
2	9403.20.00	Argentina.....	199,463	0.0%
2	9403.50.90	Argentina.....	649,660	0.1%
2	9403.60.80	Argentina.....	2,306,239	0.1%
*	9403.60.80	Thailand.....	0	0.0%
*	9405.30.00	Thailand.....	11,391,279	2.9%
* D	9506.61.00	Philippines.....	5,010,511	66.7%
*	9506.62.80	Pakistan.....	2,215,813	2.8%
*	9506.91.00	Pakistan.....	188,229	0.0%

FLAGS:'*'=Excluded full year; '2'=Excluded July/December; 'D'=De minimis;

LIST IV : POSSIBLE REDESIGNATION ITEMS
1997 U.S. IMPORTS - JANUARY THROUGH OCTOBER

TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina.....	201,881,787	148
Belize.....	1,585,463	1
Brazil.....	604,662,710	54
Chile.....	176,204,124	15
Colombia.....	454,168	4
Costa Rica.....	27,458,614	5
Croatia.....	0	2
Dominican Republic..	79,859,507	9
Ecuador.....	47,832	1
Guatemala.....	47,907,986	5
India.....	10,021,359	8
Indonesia.....	186,381,520	14
Kazakhstan.....	0	1
Pakistan.....	33,145,669	17
Peru.....	50,907,636	7
Philippines.....	11,743,831	2
Russia.....	104,176,896	4
Slovenia.....	0	1
Thailand.....	120,419,128	18
Turkey.....	22,970,106	1
Venezuela.....	0	4
TOTAL.....	1,679,828,336	321

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–117]

Initiation of Section 301 Investigation and Request for Public Comment: Intellectual Property Laws and Practices of the Government of Paraguay

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation; request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated a Section 301 investigation with respect to certain acts, policies and practices of the Government of Paraguay that deny adequate and effective protection of intellectual property rights. USTR invites written comments from the public on the matters being investigated.

DATES: This investigation was initiated on Tuesday, February 17, 1998. Written comments from the public are due on or before noon on Monday, March 23, 1998.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Claude Burcky, Director for Intellectual Property, (202) 395–6864; Kellie Meiman, Director for Southern Cone Affairs, (202) 395–5190; or Geralyn S. Ritter, Assistant General Counsel, (202) 395–6800.

SUPPLEMENTARY INFORMATION: Section 182 of the Trade Act (19 U.S.C. 2242) requires the USTR to identify foreign countries that deny adequate and effective protection of intellectual property rights or that deny fair and equitable market access to persons that rely on intellectual property protection. Accordingly, on January 16, 1998, the USTR identified Paraguay as a Priority Foreign County under that provision. In identifying Paraguay as a Priority Foreign Country, the USTR noted deficiencies in Paraguay's acts, policies and practices regarding intellectual property, including a lack of effective action to enforce intellectual property rights, as evidenced by the alarming levels of piracy and counterfeiting within the country and along its borders with Argentina and Brazil. The USTR also observed that the Government of Paraguay has failed to enact adequate and effective intellectual property legislation covering patents, copyrights and trademarks.

Investigation and Consultations

Section 302(b)(2)(A) of the Trade Act) (19 U.S.C. 2412(b)(2)(A)), requires the USTR to initiate an investigation of any act, policy or practice that was the basis of the identification of a country as a Priority Foreign Country under section 182(a)(2) of the Trade Act, unless such acts, policies and practices are already subject to investigation or action under the Section 301 chapter of the Trade Act, or the investigation is not in the national economic interest. The purpose of the investigation initiated under Section 302 is to determine whether such act, policy or practice is actionable under Section 301 of the Trade Act.

As required by Section 303(a) of the Trade Act, the USTR has requested consultations with the Government of Paraguay regarding the issues under investigation. USTR will seek information and advice from appropriate representatives provided for under Section 135 of the Trade Act in preparing the U.S. presentations for such consultations.

Within 6 months after the date on which this investigation was initiated, (i.e., on or before August 16, 1998), pursuant to Section 304 of the Trade Act, the USTR must determine on the basis of the investigation and the consultations, whether any act, policy or practice described in Section 301 of the Trade Act exists. If that determination is affirmative, the USTR must decide what action, if any, to take under Section 301 of the Trade Act. The deadline for making these determinations may, however, be extended to 9 months after the date of initiation of this investigation if the USTR determines that certain conditions are met.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the acts, policies and practices of the Government of Paraguay which are the subject of this investigation; the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices; and the determinations required under Section 304 of the Trade Act regarding whether they are actionable under Section 301 and, if affirmative, the appropriate action to take in response. Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20,593) and must be filed on or before noon on Monday, March 23, 1998. Comments must be in English and provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, Room 416, Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, D.C. 20508.

Comments will be placed in a file (Docket 301–117) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly market "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection. An appointment to review the docket (Docket No. 301–117) may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 98–4680 Filed 2–23–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of a currently approved collection. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 2, 1997 (62 FR, 63745).

DATES: Comments must be submitted on or before March 30, 1998.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, 400 Seventh Street, SW., Washington, D.C. 20590. Telephone 202–366–2811.

SUPPLEMENTARY INFORMATION:

Maritime Administration

Title: Port Facility Conveyance Information.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0524.

Affected Public: Eligible port entities.

Abstract: Public Law 103–160 authorizes the Department of Transportation to convey to public entities surplus Federal property needed for development or operation of a port facility. The information collection will allow the Maritime Administration to approve the conveyance of property and administer the port facility conveyance program.

Need and Use of the Information: The information collection is necessary for MARAD to determine whether (1) the community is committed to the redevelopment/reuse plan, (2) the redevelopment/reuse plan is viable and is in the best interest of the public, and (3) the property is being used in accordance with the terms of the conveyance and applicable statutes and regulations.

Estimated Annual Burden Hours: 2200 hours.

Estimated Annual Responses: 20 responses.

Address: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on February 18, 1998.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–4586 Filed 2–23–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Ending February 13, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–1998–3482.

Date Filed: February 13, 1998.

Parties: Members of the International Air Transport Association.

Subject: PTC12 NMS–AFR 0036 dated February 3, 1998 r1–10; PTC12 NMS–AFR 0037 dated February 3, 1998 r11–25; Minutes—PTC12 NMS–AFR 0038 dated Feb. 10, 1998; Tables—PTC12 NMS–AFR Fares 0018 dated February 6, 1998; PTC12—PTC12 NMS–AFR Fares 0019 dated February 6, 1998

Intended effective date: May 1, 1998.

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98–4629 Filed 2–23–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Los Angeles County, California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the pubic that an environmental impact statement will be prepared for a proposed highway project in Los Angeles County, California.

FOR FURTHER INFORMATION CONTACT: C. Glenn Clinton, Chief, District Operations—South, Federal Highway Administration, 980–9th Street, Suite 400, Sacramento, CA 95814–2724 Telephone: (916) 498–5037.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation and the City of Santa Clarita, will prepare an environmental impact statement (EIS) on a proposal to construct the extension of Magic Mountain Parkway (State Route 126) from west of San Fernando Road to Via Princessa (2.5 miles) and to construct the extension of Via Princessa from Magic Mountain Parkway to Rainbow Glen Drive (1.7 miles). The proposed project includes constructing a 120-foot wide roadway, an interchange on Magic Mountain Parkway with San Fernando Road including a structure over the Los Angeles County Metropolitan Transportation Authority Railroad, and widening the existing bridge over the South Fork of the Santa Clara River.

The new roadway will be approximately 4.5 miles in length. These improvements are intended to serve as a major east-west corridor to accommodate the substantial increases in traffic volumes associated with several large existing and planned developments in the area.

Alternatives under consideration include (1) Taking no action; (2) constructing an interchange and a six-lane, uncontrolled access arterial on new location; and (3) alignment variations as appropriate to minimize environmental effects of the project. Within the limits of the study area for this project, various environmental resources and issues are know to exist and include but are not limited to: cultural resources, wetlands, floodway and floodplain, wildlife habitat, growth inducement, economic, business relocation, noise, changes to vehicle traffic patterns, regional air quality, seismic exposure, land use planning, hazardous waste, and irrigation/drain systems.

Per the California Environmental Quality Act (CEQA), a Notice of Preparation on an Environmental Impact Report (EIR) for this project was published on February 12, 1997, and a 45-day public comment period followed from February 12, 1997, to March 31, 1997, including a Public Scoping Meeting held on March 5, 1997. In addition to the comment period and scoping meeting, three public meetings were conducted by the City of Santa Clarita in November 1996. The public and review agencies have had the opportunity to comment on the scope and content of the project. Thus, this Notice serves as additional public notification of the preparation of an EIS. The public and agencies will have further opportunity to comment on the project when the draft EIS has been completed.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. At least one public meeting will be held in the City of Santa Clarita to solicit input from the local citizens on alternatives. In addition, a public hearing will be held. Public Notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Document Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: February 10, 1998.

C. Glenn Clinton,

Chief, District Operations—South Sacramento, California.

[FR Doc. 98–4675 Filed 2–23–98; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety.

FOR FURTHER INFORMATION CONTACT: Dr. George Chiang, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–5206.

SUPPLEMENTARY INFORMATION: Mr. Walter E. Bull of Prescott, Arizona, submitted a petition dated December 31, 1997, requesting that an investigation be initiated to determine whether early model Ford Explorer sport utility vehicles contain a defect related to motor vehicle safety within the meaning of 49 U.S.C. Chapter 301. The petition alleges that early model Ford Explorer sport utility vehicles develop heavy lateral vibrations at speeds above 55 mph and when encountering bumps at low speeds. The petition further alleges that these vibrations could possibly cause loss of vehicle control.

A review of agency data files, including information reported to the Auto Safety Hotline by consumers, indicates that, in addition to the petition, there were 22 complaints concerning vehicle vibration, shaking, and shimmy at certain high speeds in model year (MY) 1991–1994 Ford Explorer vehicles, allegedly caused by defective engine mounts. No loss of vehicle control, and no crashes or injuries were reported. Of the 22 complaints, five are MY1994, five are MY1993, ten are MY1992, and two are MY1991 vehicles. Ford Motor Company (Ford) has manufactured approximately 1,137,000 MY1991–1994 Explorers.

The agency interviewed four recent complainants who filed reports about the subject vehicles and confirmed that the drivers felt vibration/shake in the seat and floor at certain speeds but little or no vibration in the steering wheel. They described the severity of vibration as one which would tip over a full cup of coffee when the cup is placed on the floor. One complainant had not fixed the engine mounts as of January 14, 1998, and the other three had sold or traded their Explorers without getting the vibration problems fixed. One sold her vehicle with over 72,000 miles, one sold at about 10,000 miles, one traded at about 8,000 miles, and one still has his vehicle which has about 50,000 miles now.

Ford has issued three Technical Service Bulletins to address the vibration/shake issue on MY1991–1994 Ford Explorers. One bulletin issued on September 1, 1994, BC1431940902, informs dealers of the availability of a new engine mount with revised insulator stiffening to correct a lateral shake problem on the subject vehicles. The other two bulletins, issued on February 12, 1996, Article Nos. 96–4–15 and 96–4–17, address vibration/shake in the seat and/or floor at speeds above 50 mph and peaking near 65 mph on certain MY1991–1994 Explorer vehicles. An "aftershake" condition may also exist when driving over a bump at speeds less than 45 mph. To reduce or eliminate the vibration/shake problem, these latter bulletins advise dealers to install revised LH and RH engine mounts as addressed in the 1994 bulletins and also to install a rear axle-to-frame lateral shock absorber kit.

The vibration/shake in the MY1991–1994 Explorers is apparently caused by inadequately designed engine mounts which allow the engine to move laterally at certain driving speeds. The vibration/shake is primarily limited to the seat and floor. When this occurs, the driver is able to control the vehicle and to either increase or decrease the vehicle's speed to eliminate the vibration. This is evidenced by no reports of loss of vehicle control, crashes, or injuries reported to NHTSA.

For the reasons presented above, it is unlikely that NHTSA would issue an order for the notification and remedy of a safety-related defect in the subject vehicles at the conclusion of the investigation requested in the petition. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: February 9, 1998.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 98–4626 Filed 2–23–98; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety.

FOR FURTHER INFORMATION CONTACT: Dr. George Chiang, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–5206.

SUPPLEMENTARY INFORMATION: Mr. and Mrs. Scott Montreuil of Ramsey, Minnesota, submitted a petition dated October 1, 1997, requesting that an investigation be initiated to determine whether 1993 Chrysler Jeep Grand Cherokees contain a defect related to motor vehicle safety within the meaning of 49 U.S.C. Chapter 301. The petition alleges that 1993 Chrysler Jeep Grand Cherokees have a defective viscous coupling that could cause the steering to bind and lock up, and possibly affect the vehicle's braking.

Although not all Jeep Grand Cherokees utilize a viscous coupling, some 1993 through 1995 Jeep Grand Cherokees are equipped with a Quadra-Trac transfer case. An integral part of the Quadra-Trac transfer case is its viscous coupling, a speed-sensitive device that controls torque output between the front and rear drive shafts.

The housing of the viscous coupling contains high viscosity silicone fluid and specially engineered metal plates splined alternately to an inner and outer drum. When there is a difference in front-to-rear axle speed, such as when the rear wheels slip, the resulting friction between the metal plates increases the temperature inside the unit. This causes the fluid to expand, building pressure that moves the plates together. This occurs almost instantaneously in two modes: the "shear" mode, when momentary speed differences occur such as in cornering or tight turns, causing the plates to move near each other, or the "hump" mode, when high-speed differences occur for a longer period of time, such as in deep snow or on off-road trails, causing the plates to lock and the front and rear drive shafts to turn at the same speed for maximum traction. As traction is gained, the fluid cools, and the plates separate.

When the viscous coupling fails, it may remain in one of the above two modes all the time, regardless of whether there is a difference between front-and-rear axle speed. If the coupling fails in the "hump" mode on dry pavement, it may cause vehicle hopping/bucking during turns, resulting in rapid wear of tires.

NHTSA drove a Jeep Grand Cherokee with a simulated failure of the viscous coupling in the "hump" mode on dry pavement at various speeds. Some hopping/bucking was experienced while the vehicle executed turns. However, no steering or braking problems were experienced at any time.

A review of agency data files, including information reported to the Auto Safety Hotline by consumers, indicated that, aside from the petition, there were no other reports concerning failure or malfunction of the viscous coupling in 1993 Jeep Grand Cherokees. There was a report pertaining to transmission lockup when the engine was started, but this was not related to a failure of the viscous coupling.

Chrysler Corporation has received 40 complaints concerning failure or malfunction of the viscous coupling in the transfer case of 1993 Jeep Grand Cherokees. Five of these complaints report handling problems, such as vehicle hopping during turns. The remaining 35 complaints are solely related to financial assistance issues. No crashes or injuries were reported.

The agency has analyzed available information concerning the problem alleged in the petition. Based on its understanding of viscous couplings, NHTSA believes that the failure or malfunction of the viscous coupling in the subject vehicles cannot cause lockup of the steering or adversely affect the brake system.

For the reasons presented above, it is unlikely that NHTSA would issue an order for the notification and remedy of a safety-related defect in the subject vehicles at the conclusion of the investigation requested in the petition. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: January 29, 1998.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 98–4627 Filed 2–23–98; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Contract DTRS–56–96–C–0010]

Quarterly Performance Review Meeting on the Contract "Detection of Mechanical Damage in Pipelines"

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of meeting.

SUMMARY: RSPA invites the pipeline industry, in-line inspection ("smart pig") vendors, and the general public to the next quarterly performance review meeting of progress on the contract "Detection of Mechanical Damage in Pipelines." The meeting is open to everyone, and no registration is required. This contract is being performed by Battelle Memorial Institute (Battelle), along with the Southwest Research Institute and Iowa State University. The contract is a research and development contract to develop electromagnetic in-line inspection technologies to detect and characterize mechanical damage and stress corrosion cracking. The meeting will cover a review of the overall project plan, the status of the contract tasks, progress made during the past quarter, and projected activity for the next quarter.

DATES: The next quarterly performance review meeting will be held on March 17, 1998, beginning at 1:00 p.m. and ending around 5:00 p.m.

ADDRESSES: The quarterly review meeting will be held at the Embassy Suites Downtown Salt Lake City, 110 West 600 South, Salt Lake City, Utah. The hotel's telephone number is (801) 359–7800.

FOR FURTHER INFORMATION CONTACT: Lloyd W. Ulrich, Contracting Officer's Technical Representative, Office of Pipeline Safety, telephone: (202) 366–4556, FAX: (202) 366–4566, e-mail: lloyd.ulrich@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

RSPA is conducting quarterly meetings on the status of its contract, "Detection of Mechanical Damage in Pipelines" (Contract DTRS–56–96–C–0010), because in-line inspection research is of immediate interest to the pipeline industry and in-line inspection vendors. RSPA will continue this practice throughout the life of the contract, which may be three years. The research contract with Battelle is a cooperative effort between the Gas Research Institute (GRI) and DOT, with GRI providing technical guidance. The meetings allow disclosure of the results to interested parties and provide an opportunity for interested parties to ask Battelle questions concerning the research. Attendance at this meeting is open to all and does not require advance registration or advance notice to RSPA.

We specifically want that segment of the pipeline industry involved with in-line inspection to be aware of the status of this contract. To ensure that a cross section of industry is well represented at these meetings, we have invited the major domestic in-line inspection company (Tuboscope Vetco Pipeline Services) and the following pipeline industry trade associations: American Petroleum Institute, Interstate Natural Gas Association of America, and the American Gas Association. Each has named an engineering/technical representative who, along with the GRI representative providing technical guidance, form the Industry Review Team (IRT) for the contract.

The original objective was to open each quarterly performance review meeting to the public. The first quarterly meeting was conducted on October 22, 1996, in Washington, DC. However, preparing for a formal briefing each quarter takes a considerable amount of time and resources on Battelle's part that could be better used to conduct the research. Therefore, Battelle requested and RSPA concurred that future public meetings would be conducted semiannually. The Salt Lake City meeting is the first of these semiannual meetings. Conducting public meetings semiannually will provide all interested parties with a sufficient update of

progress in the research. Only the IRT and RSPA staff involved with the contract will be invited to the quarterly performance review meetings held between the public semiannual meetings.

Another objective is to conduct each semiannual meeting at the same location and either before or after a meeting of GRI's Nondestructive Evaluation Technical Advisory Group to enable participation by pipeline technical personnel involved with nondestructive evaluation. This meeting is being held in Salt Lake City to dovetail with a meeting of the GRI Nondestructive Technical Advisory Group. Each of the future semiannual meetings will be announced in the **Federal Register** at least two weeks prior to the meeting.

II. The Contract

The Battelle contract is a research and development contract to evaluate and develop in-line inspection technologies for detecting mechanical damage and cracking, such as stress-corrosion cracking (SCC), in natural gas transmission and hazardous liquid pipelines. Third-party mechanical damage is one of the largest causes of pipeline failure, but existing in-line inspection tools cannot always detect or accurately characterize the severity of some types of third-party damage that can threaten pipeline integrity. Although SCC is not very common on pipelines, it usually appears in high stressed pipe, low population density areas under a limited set of environmental conditions. Several attempts have been made to develop an in-line inspection tool for SCC, but there is no commercially successful tool on the market.

Under the contract, Battelle will evaluate and advance magnetic flux leakage (MFL) inspection technology for detecting mechanical damage and two electromagnetic technologies for detecting SCC. The focus is on MFL for mechanical damage because experience shows MFL can characterize some types of mechanical damage and can be successfully used to detect metal-loss corrosion under a wide variety of conditions. The focus for SCC is on electromagnetic technologies that can be used in conjunction with, or as a modification to, MFL tools. The technologies to be evaluated take advantage of the MFL magnetizer either by enhancing signals or by using electrical currents that are generated by the passage of an inspection tool through a pipeline.

The contract includes two major tasks during the base two years of the contract. Task 1 is to evaluate existing MFL signal generation and analysis methods to establish a baseline from which today's tools can be evaluated and tomorrow's advances measured. Then, it will develop improvements to signal analysis methods and verify them through testing under realistic pipeline conditions. Finally, it will build an experience base and defect sets to generalize the results from individual tools and analysis methods to the full range of practical applications.

Task 2 is to evaluate two inspection technologies for detecting stress corrosion cracks. The focus in Task 2 is on electromagnetic techniques that have been developed in recent years and that could be used on or as a modification to existing MFL tools. Three subtasks will evaluate velocity-induced remote-field techniques, remote-field eddy-current techniques, and external techniques for sizing stress corrosion cracks.

A Task 3 is being considered for an option year to the contract. Task 3, if done, will verify the results from Tasks 1 and 2 by tests under realistic pipeline conditions. Task 3 will (1) extend the mechanical damage detection, signal decoupling, and sizing algorithms developed in the basic program to include the effects of pressure, (2) verify the algorithms under pressurized conditions in GRI's 4,700 foot, 24-inch diameter Pipeline Simulation Facility (PSF) flow loop, and (3) evaluate the use of eddy-current techniques for characterizing cold working within mechanical damage.

A drawback of present pig technology is the lack of a reliable pig performance verification procedure that is generally accepted by the pipeline industry and RSPA. The experience gained by the pipeline industry and RSPA with the use of the PSF flow loop in this project will provide a framework to develop procedures for evaluating pig performance. Defect detection reliability is critical if instrumented pigging is to be used as an in-line inspection tool in pipeline industry risk management programs.

The ultimate benefits of the project could be more efficient and cost-effective operations and maintenance programs to monitor and enhance the safety of gas transmission and hazardous liquid pipelines. Pipeline companies will benefit from having access to inspection technologies for detecting critical mechanical damage and stress-corrosion cracks. Inspection tool vendors will benefit by understanding where improvements are beneficial and needed. These benefits will support RSPA's long-range objective of ensuring the safety and reliability of the gas transmission and hazardous liquid pipeline infrastructure.

Issued in Washington, D.C., on February 18, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–4580 Filed 2–23–98; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 575]

Review of Rail Access and Competition Issues

AGENCY: Surface Transportation Board.

ACTION: Request for comments.

SUMMARY: At the request of Congress, the Surface Transportation Board (Board) is commencing a review of access and competition issues in the rail industry. The Board is requesting comments on these matters. One or more oral hearings will also be held.

DATES: An oral hearing will be held beginning on April 2, 1998. Written notices of intent to participate as parties of record *and* requests to speak at the oral hearing are due by March 3, 1998. Shortly thereafter, we will issue a preliminary service list and will request written corrections to the list by letter or FAX. We will issue a corrected service list if necessary. Written comments are due by March 26, 1998. By March 27, 1998, a scheduling order for the hearing will be served and published on our web page (www.stb.dot.gov). To facilitate our communication with the parties, we encourage everyone to submit FAX and E-mail addresses in their notices of intent to participate.

ADDRESSES: Send an original and 10 copies of notices of intent to participate and comments, referring to "STB Ex Parte No. 575," to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, D.C. 20423. The comments must be served on the persons identified as "parties of record" on the service list.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: The Chairman of the Senate Committee on Commerce and the Chairman of the Subcommittee on Surface Transportation and Merchant Marine

have requested that the Board hold hearings and develop a record on access and competition issues in the rail industry, stating in their request that, "[t]he information obtained through a Board inquiry on rail access and competition could be very useful as Congress conducts proper oversight of the rail industry and works to address rail service issues." See the attached copy of their February 12, 1998 letter to Board Chairman Linda Morgan. Accordingly, we are commencing this examination of rail access and competition and other proposals related to those issues.

We will hold a public hearing beginning at 10:00 A.M. on April 2, 1998, at the Board's offices at 1925 K Street N.W., Washington, D.C., to provide interested persons an opportunity to testify on these issues. The hearings may be continued on April 3, 1998, if necessary. We encourage parties with similar interests or positions to file joint statements and to designate a single spokesperson to provide oral testimony. The Board will group speakers and allocate times as necessary to expedite the hearing. To meet the responsibility entrusted to us by Congress, we invite comments, data, studies, and proposals for legislative action.[1] Following the initial hearing, and any subsequent hearings we may decide to hold, we will take further action based upon the record made in the comments and at the hearing(s).

Decided: February 20, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

BILLING CODE 4915–00–P

[1] As noted in the letter from Senators McCain and Hutchison, the Board has ongoing proceedings specifically addressing the rail service problems in the western United States. Thus, parties are urged to focus their submissions in the proceeding we are initiating here on the broader issues of rail access and competition generally, rather than on the specific existing service problems in the West.

JOHN McCAIN, ARIZONA, CHAIRMAN
TED STEVENS, ALASKA
CONRAD BURNS, MONTANA
SLADE GORTON, WASHINGTON
TRENT LOTT, MISSISSIPPI
KAY BAILEY HUTCHISON, TEXAS
OLYMPIA J. SNOWE, MAINE
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BILL FRIST, TENNESSEE
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SAM BROWNBACK, KANSAS
ERNEST F. HOLLINGS, SOUTH CAROLINA
DANIEL K. INOUYE, HAWAII
WENDELL H. FORD, KENTUCKY
JOHN D. ROCKEFELLER IV, WEST VIRGINIA
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RICHARD H. BRYAN, NEVADA
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RON WYDEN, OREGON
JOHN RAIDT, STAFF DIRECTOR
IVAN A. SCHLAGER, DEMOCRATIC CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
WASHINGTON, DC 20510-6125

February 12, 1998

CHAIRMAN MORGAN
FEB 1 1 10 AM '98
SURFACE TRANSPORTATION BOARD

The Honorable Linda Morgan
Chairman
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Dear Chairman Morgan:

As Chairman of the Senate Committee on Commerce, Science, and Transportation and Chairman of the Subcommittee on Surface Transportation and Merchant Marine, we consider reauthorization of the Surface Transportation Board (STB) to be a very important Committee priority for this session of Congress, and one that the Committee must proceed with expeditiously.

In this effort, the Committee will be carefully reviewing the Board's staffing and authorization levels. During reauthorization hearings, we will be seeking your views, as appropriate, on these and other matters.

In addition, you can expect that we will consider a number of other rail service and rail shipper concerns. In particular, service problems throughout the West and pending consolidation proposals in the East will likely be raised. These are serious matters, but specific issues and cases we believe are best resolved by the Board. The Congress established the STB as an independent non-political authority and we believe the Board must continue to fulfill its statutory responsibilities independently.

We fully support the deregulatory approach provided by the Staggers Rail Act of 1980 and recognize its critical importance to the economic viability of the rail industry. However, we are facing serious issues which must be reviewed, including, complaints by some smaller shippers who believe their rail service needs are not adequately fulfilled. Others are not satisfied with the federal process available to seek relief from unreasonable rates and practices.

While we would not support efforts to "re-regulate" the rail industry, Congress has the responsibility to examine proposals that would appropriately and effectively remedy legitimate

transportation problems. Some believe that providing open access, forced access, or competitive access in the rail industry would stimulate competition and help to address the concerns of shippers in general, and small shippers in particular. Since competition generally serves the public interest, we believe we should have a thorough review of the relevant views and issues on pro-competitive proposals and their impact on the rail industry.

It is our understanding that the Board would be agreeable to conducting hearings on rail access and competition issues. We urge you to hold these hearings. The information obtained through a Board inquiry on rail access and competition could be very useful as Congress conducts proper oversight of the rail industry and works to address rail service issues.

Thank you for your time and attention to these matters. Please do not hesitate to contact us if you have any questions or if we can be of any assistance.

Sincerely,

Kay Bailey Hutchison
Chairman
Surface Transportation &
Merchant Marine Subcommittee

John McCain
Chairman

[FR Doc. 98–4832 Filed 2–23–98; 8:45 am]
BILLING CODE 4915–00–C

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 11, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 26, 1998 to be assured of consideration.

Departmental Offices/Community Development Financial Institutions (CDFI) Fund

OMB Number: 1505–0153.
Form Number: Form CDFI–0002.
Type of Review: Extension.
Title: Bank Enterprise Award Program Application, Final Reporting Form, Regulations, NOFA.
Description: The Bank Enterprise Award (BEA) Program Application will be used by regulated financial institutions to voluntarily apply for awards given in this program. Information collected will be used to determine eligibility for an award, according to relevant law and regulation.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 75.
Estimated Burden Hours Per Respondent: Initial Application: 10 hours; Final Report: 7 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,240 hours.

ADDRESSES:

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 98–4676 Filed 2–23–98; 8:45 am]
BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 13, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 26, 1998 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0096.
Form Number: PD F 1993.
Type of Review: Extension.
Title: Reinvestment Application.
Description: The form is used to request that proceeds of matured Series H Savings Bonds be reinvested in Series HH Savings Bonds.
Respondents: Individuals or households.
Estimated Number of Respondents: 270,000.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 67,500 hours.

ADDRESSES:

Clearance Officer: Vicki S. Thorpe, (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 98–4677 Filed 2–23–98; 8:45 am]
BILLING CODE 4810–40–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 13, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 26, 1998 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0025.
Form Number: ATF F 2 (5320.2).
Type of Review: Extension.
Title: Notice of Firearms Manufactured or Imported.
Description: The National Firearms Act requires licensed importers and manufacturers to notify ATF when firearms are imported or manufactured. This action registers the firearms in the National Firearms Registration and Transfer Record and makes their possession of the firearms lawful. Tax otherwise due under 26 U.S.C. 5821 does not apply.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 590.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 5,900 hours.
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 98–4678 Filed 2–23–98; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB review; comment request

February 13, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the

submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 26, 1998.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0115.
Form Number: ATF F 2140 (5220.4).
Type of Review: Extension.
Title: Monthly Report—Export Warehouse Proprietor.
Description: Proprietors who are qualified to operate export warehouses that handle untaxpaid tobacco products are required to file a monthly report. This report summarizes all transactions by the proprietor handling receipts, dispositions and on-hand quantities. The form is used for product accountability and is examined by regional office personnel.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 221.
Estimated Burden Hours Per Respondent: 48 minutes.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 2,148 hours.
OMB Number: 1512–0184.
Form Number: ATF F 5400.4.
Type of Review: Extension.
Title: Explosives Transaction Record.
Description: This form is used to verify the qualification and identification of unlicensed persons wishing to purchase explosive materials from licensed dealers, as well as the location in which the explosives are intended for storage and/or use. ATF uses the information in its investigations and inspections to establish leads and determine compliance.
Respondents: Business or other for-profit, Individuals or household, Farms.
Estimated Number of Respondents/Recordkeepers: 1,140.
Estimated Burden Hours Per Respondent/Recordkeeper: 20 minutes.
Frequency of Response: Other (whenever sales are made).
Estimated Total Reporting/Recordkeeping Burden: 7,227 hours.
OMB Number: 1512–0188.
Form Number: ATF F 5100.1.
Type of Review: Extension.
Title: Signing Authority for Corporate Officials.
Description: ATF 5100.1 is substituted instead of a regulatory requirement to submit corporate documents or minutes of a meeting of the Board of Directors to authorize an individual or office to sign for the corporation in ATF matters. The form identifies the corporation, the individual or office authorized to sign, and documents the authorization.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 250 hours.
OMB Number: 1512–0198.
Form Number: ATF F 5110.28.
Recordkeeping Requirement ID Number: ATF REC 5110/03.
Type of Review: Extension.
Title: Distilled Spirits Plant Monthly Report of Processing.
Description: The information collected is necessary to account for and verify the processing of distilled spirits in bond. It is used to audit plant operations, monitor industry activities for efficient allocation of personnel resources and the compilation of statistics.
Respondents: Business or other for-profit, State, Local or Tribal Government.
Estimated Number of Respondents/Recordkeepers: 134.
Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours.
Frequency of Response: Monthly.
Estimated Total Reporting/Recordkeeping Burden: 3,886 hours.
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 98–4679 Filed 2–23–98; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–200–76]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–200–76 (TD 8069), Qualified Conservation Contributions (§ 1.170A–14).

DATES: Written comments should be received on or before April 27, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:
Title: Qualified Conservation Contributions.
OMB Number: 1545–0763.
Regulation Project Number: LR–200–76.
Abstract: Internal Revenue Code section 170(h) describes situations in which a taxpayer is entitled to a deduction for a charitable contribution for conservation purposes of a partial interest in real property. This regulation requires a taxpayer claiming a deduction for a qualified conservation contribution to maintain records of (1) the fair market value of the underlying property before and after the donation and (2) the conservation purpose of the donation.
Current Actions: There is no change to this existing regulation.
Type of Review: Extension of a currently approved collection.
Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.
Estimated Number of Recordkeepers: 1,000.
Estimated Time Per Recordkeeper: 1 hour, 15 minutes.
Estimated Total Annual Recordkeeper Hours: 1,250.
The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–4546 Filed 2–23–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 9356

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 9356, Application for Software Developers to Participate in the 1040PC Format for Individual Income Tax Returns.

DATES: Written comments should be received on or before April 27, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Software Developers to Participate in the 1040PC Format for Individual Income Tax Returns.

OMB Number: 1545–1250.

Form Number: Form 9356.

Abstract: Form 9356 is completed by software developers and submitted to the IRS as an application for producing software for the Form 1040PC.

Current Actions: On Form 9356 new item 10, E-Mail or Internet address, was added to expedite testing and communication with software developers.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 50.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–4547 Filed 2–23–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–260–82]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–260–82 (TD 8449), Election, Revocation, Termination, and Tax Effect of Subchapter S Status (§§ 1.1362–1 through 1.1362–7).

DATES: Written comments should be received on or before April 27, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election, Revocation, Termination, and Tax Effect of Subchapter S Status.

OMB Number: 1545–1308.

Regulation Project Number: PS–260–82.

Abstract: Section 1362 of the Internal Revenue Code provides for the election, termination, and tax effect of subchapter S status. Sections 1.1362–1 through 1.1362–7 of this regulation provides the specific procedures and requirements necessary to implement Code section 1362, including the filing of various elections and statements with the Internal Revenue Service.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 133.

Estimated Time Per Respondent: 2 hours, 25 minutes.

Estimated Total Annual Burden Hours: 322.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–4549 Filed 2–23–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041–T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1041–T, Allocation of Estimated Tax Payments to Beneficiaries.

DATES: Written comments should be received on or before April 27, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Allocation of Estimated Tax Payments to Beneficiaries.

OMB Number: 1545–1020.

Form Number: 1041–T.

Abstract: This form allows a trustee of a trust or an executor of an estate to make an election under Internal Revenue Code section 643(g) to allocate any payment of estimated tax to a beneficiary(ies). The IRS uses the information on the form to determine the correct amounts that are to be transferred from the fiduciary's account to the individual's account.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 hr., 2 min.

Estimated Total Annual Burden Hours: 1,030.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–4550 Filed 2–23–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4970

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4970, Tax on Accumulation Distribution of Trusts.

DATES: Written comments should be received on or before April 27, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Tax on Accumulation Distribution of Trusts.

OMB Number: 1545–0192.

Form Number: 4970.

Abstract: Form 4970 is used by a beneficiary of a domestic or foreign trust to compute the tax adjustment attributable to an accumulation distribution. The form is used to verify whether the correct tax has been paid on the accumulation distribution.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 30,000.

Estimated Time Per Respondent: 3 hr., 19 min.

Estimated Total Annual Burden Hours: 99,300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–4551 Filed 2–23–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1066 and Schedule Q (Form 1066)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return, and Schedule Q (Form 1066), Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation.

DATES: Written comments should be received on or before April 27, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return (Form 1066) and Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation Schedule Q (Form 1066)).

OMB Number: 1545–1014.

Form Number: Form 1066 and Schedule Q (Form 1066).

Abstract: Form 1066 and Schedule Q (Form 1066) are used by a real estate mortgage investment conduit (REMIC) to figure its tax liability and income and other tax-related information to pass through to its residual holders. IRS uses the information to determine the correct tax liability of the REMIC and its residual holders.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 4,917.

Estimated Time Per Respondent: 149 hr., 52 min.

Estimated Total Annual Burden Hours: 736,862.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection

techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–4552 Filed 2–23–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–POL

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–POL, U.S. Income Tax Return for Certain Political Organizations.

DATES: Written comments should be received on or before April 27, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Certain Political Organizations.

OMB Number: 1545–0129.

Form Number: 1120–POL.

Abstract: Certain political organizations file Form 1120–POL to report the tax imposed by Internal Revenue Code section 527. The form is used to designate a principal business campaign committee that is subject to a lower rate of tax under Code section 527(h). IRS uses Form 1120–POL to determine if the proper tax was paid.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 6,527.

Estimated Time Per Respondent: 39 hr., 38 min.

Estimated Total Annual Burden Hours: 258,730.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 13, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–4553 Filed 2–23–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8831

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8831, Excise Taxes on Excess Inclusions of REMIC Residual Interests.

DATES: Written comments should be received on or before April 27, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Excise Taxes on Excess Inclusions of REMIC Residual Interests.

OMB Number: 1545–1379.

Form Number: 8831.

Abstract: Form 8831 is used by a real estate mortgage investment conduit (REMIC) to figure its excise tax liability under Internal Revenue Code sections 860E(e)(1), 860E(e)(6), and 860E(e)(7). IRS uses the information to determine the correct tax liability of the REMIC.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 31.

Estimated Time Per Respondent: 7 hr., 39 min.

Estimated Total Annual Burden Hours: 237.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–4554 Filed 2–23–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–MISC

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–MISC, Miscellaneous Income.

DATES: Written comments should be received on or before April 27, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Miscellaneous Income.

OMB Number: 1545–0115.

Form Number: 1099–MISC.

Abstract: Form 1099–MISC is used by payers to report payments of $600 or more of rents, prizes and awards, medical and health care payments, nonemployee compensation, and crop insurance proceeds, $10 or more of royalties, any amount of fishing boat proceeds, certain substitute payments, golden parachute payments, and an indication of direct sales of $5,000 or more.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, Federal government, and state, local or tribal governments.

Estimated Number of Responses: 59,399,714.

Estimated Time Per Response: 14 min.

Estimated Total Annual Burden Hours: 13,661,934.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–4555 Filed 2–23–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8390

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8390, Information Return for Determination of Life Insurance Company Earnings Rate Under Section 809.

DATES: Written comments should be received on or before April 27, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Information Return for Determination of Life Insurance Company Earnings Rate Under Section 809.

OMB Number: 1545–0927.

Form Number: 8390.

Abstract: Life insurance companies are required to provide data so the Secretary of the Treasury can compute the: (1) Stock earnings rate of the 50 largest stock companies and (2) average mutual earnings rate. These factors are used to compute the differential earnings rate which will determine the tax liability for mutual life insurance companies.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 150.

Estimated Time Per Respondent: 64 hr., 43 min.

Estimated Total Annual Burden Hours: 9,706.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 10, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–4556 Filed 2–23–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5227

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5227, Split-Interest Trust Information Return.

DATES: Written comments should be received on or before April 27, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Split-Interest Trust Information Return.

OMB Number: 1545–0196.

Form Number: 5227.

Abstract: Form 5227 is used to report the financial activities of a split-interest trust described in Internal Revenue Code section 4947(a)(2), and to determine whether the trust is treated as a private foundation and is subject to the excise taxes under Chapter 42 of the Code.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 53,303.

Estimated Time Per Respondent: 62 hr., 13 min.

Estimated Total Annual Burden Hours: 3,316,513.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 13, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–4557 Filed 2–23–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1139

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1139, Corporation Application for Tentative Refund.

DATES: Written comments should be received on or before April 27, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Corporation Application for Tentative Refund.

OMB Number: 1545–0582.

Form Number: 1139.

Abstract: Form 1139 is filed by corporations that expect to have a net operating loss, net capital loss, or unused general business credits carried back to a prior tax year. IRS uses Form 1139 to determine if the amount of the loss or unused credits is proper.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 39 hr., 1 min.

Estimated Total Annual Burden Hours: 117,030.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 13, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–4558 Filed 2–23–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4466

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4466, Corporation Application for Quick Refund of Overpayment of Estimated Tax.

DATES: Written comments should be received on or before April 27, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Corporation Application for Quick Refund of Overpayment of Estimated Tax.

OMB Number: 1545–0170.

Form Number: 4466.

Abstract: Section 6425(a)(1) of the Internal Revenue Code provides that a corporation may file an application for an adjustment of an overpayment of estimated income tax. Form 4466 is used for this purpose. The IRS uses the information on Form 4466 to process the claim, so the refund can be issued.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 16,125.

Estimated Time Per Respondent: 4 hr., 3 min.

Estimated Total Annual Burden Hours: 65,306 .

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 10, 1998

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–4559 Filed 2–23–98; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1979), and Delegation Order No. 85–5 of June

27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit, "Alexander Calder: 1898–1976." (See list [1]), imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the National Gallery of Art from on or about March 29, 1998 to September 1, 1998 and at the San Francisco Museum of Modern Art, San Francisco, California from on or about September 4, 1998, to December 1, 1998, is in the national interest. Public Notice of these determinations is ordered to be published in the Federal Register.

Dated: February 18, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–4699 Filed 2–23–98; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Neila Sheehan, Assistant General Counsel, at 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, S.W., Washington, D.C. 20547–0001.

Corrections

Federal Register
Vol. 63, No. 36
Tuesday, February 24, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-1440-000]

Central Vermont Public Service Corporation; Notice of Filing

Correction

In notice document 98–3811 appearing on page 7779, in the issue of Tuesday, February 17, 1998, make the following correction:

On page 7779, in the first column, in the second document, the Docket No. should be as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bacitracin Zinc

Correction

In rule document 97–28015 beginning on page 55161, in the issue of Thursday, October 23, 1997, make the following correction:

On page 55161, in the third column, in the **EFFECTIVE DATE** section, "October 15, 1997" should read "October 23, 1997".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

Correction

In notice document 98–4194 beginning on page 8480 in the issue of Thursday, February 19, 1998, make the following correction:

On page 8481, in the second column, under **II. Current Actions**, in the entry for *Estimated Total Burden Hours* "846,400" should read "946,400".

BILLING CODE 1505-01-D

LEGAL SERVICES CORPORATION

45 CFR Part 1643

Restriction on Assisted Suicide, Euthanasia, and Mercy Killing

Correction

In rule document 97–33875 beginning on page 67746, in the issue of Tuesday, December 30, 1997, make the following correction:

On page 67749, in the second column, in the fifth line, "CS" should be removed.

BILLING CODE 1505-01-D

federal register

Tuesday
February 24, 1998

Part II

Office of Personnel Management

SES Positions That Were Career Reserved During 1997; Notice

OFFICE OF PERSONNEL MANAGEMENT

SES Positions That Were Career Reserved During 1997

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: As required by the Civil Service Reform Act of 1978, this gives notice of all position in the Senior Executive Service (SES) that were career reserved during 1997.

FOR FURTHER INFORMATION CONTACT: Charles Vaughn, Office of Executive Resources, (202) 606–1927.

SUPPLEMENTARY INFORMATION: Below is a list of titles of SES positions that were career reserved any time in calendar year 1997 whether or not they were still career reserved on December 31, 1997. Section 3132(b)(4) of title 5, United States Code, requires that the head of each agency publish the list by March of the following year. OPM is publishing a consolidated list for all agencies.

Office of Personnel Management.

Janice R. Lachance,

Director.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997

Agency/organization	Career reserved positions
Advisory Council on Historic Preservation:	
Ofc of the Exec Director	Executive Director.
	Executive Director.
Department of Agriculture:	
Ofc of the Inspector General	Deputy Inspector General.
	Asst. Inspector General for Investigations.
	Dep Asst Inspector General for Investigation.
	Asst Inspector General for Audit.
	Dep Assistant Inspector General for Audit.
	Dep Asst Inspector General for Audit.
	Asst Inspector Gen for Pol Dev & Res Mgmt.
	Dep Asst Insp Gen for Invest Immediate Office.
Office of the Chief Economist	Dir, Ofc of Risk Assessment & Cost-Benefit Anl.
World Agricultural Outlook Board	Chairperson.
	Director, USDA Program Outreach Division.
Office of Chief Information Officer	Deputy Chief Information Officer.
Office of Operations	Director, Office of Operations.
Office of the Chief Financial Officer	Deputy Chief Financial Officer.
National Finance Center	Director, Applications System Division.
	Dir, Info Resources Management Division.
	Director, Financial Services Division.
	Dir, Thrift Savings Plan Division.
Rural Housing Service	Controller.
	Asst Controller.
	Deputy Administrator for Operations & Mgmt.
	Director, Centralized Servicing Center.
Rural Business Service	Asst Admr Fin Prog.
	Deputy Administrator for Business Programs.
Agricultural Marketing Service	Deputy Administrator, Management.
	Director, Fruit & Vegetable Division.
	Director, Cotton Division.
	Director, Dairy Division.
	Director, Livestock Division.
	Director, Tobacco Division.
	Agricultural Marketing Svc, Dir Poultry Div.
	Director, Compliance Staff.
	Director.
	Director.
Grain Inspection, Packers & Stockyards Administration	Dir, Field Management Division.
Animal & Plant Health Inspection Service	Deputy Administrator for Management & Budget.
	Dep Admr, Regulatory Enforcement/Animal Care
Veterinary Services	Director, Northern Region.
	Dir, S.E. Region, Veterinary Services.
	Director, Western Region.
	Director, South Central Region.
	Dep Admr, Animal Damage Control.
	Dir, Operational Support, Veterinary Services.
	Dir, Natl Ctr for Veterinary Epidemiology
Plant Protection & Quarantine Service	Dep Admr, International Services.
	Director, Northeastern Region.
	Director, South Central Region.
	Director, Western Region.
	Director, Southeastern Region.
	Director, Operational Support PPQ
Organization Abolished	Director, Science and Technology.
Food Safety and Inspection Service	Asst Deputy Admin Technical Services.
	Dep Admr-Administrative Mgmt.
	Dir, Northeast Region, Phila., PA.
	Regl Director, Atlanta, Georgia.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
	Dir, North Central Region, Des Moines, Iowa.
	Director, Southwestern Region, Dallas, Texas.
	Asst Dep Admr Comp & Staff Operations.
	Asst Dep Admin (Admin Mgt).
	Asst Deputy Administrator.
	Regional Director.
	Associate Deputy Administrator.
	Associate Administrator.
	Deputy Administrator.
	Deputy Administrator.
	Director.
	Deputy Administrator.
	Deputy Administrator.
	Deputy Director.
	Dir Animal Production Food Safety Staff.
	Deputy Administrator.
	U.S. Coordinator for Codex Alimentarius.
	Director.
	Associate Deputy Administrator.
	Assistant Deputy Administrator.
	Deputy Administrator.
	Assistant Deputy Administrator.
	Assistant Deputy Administrator.
	Assistant Deputy Administrator.
	Deputy Administrator.
	Associate Deputy Administrator.
	Assistant Deputy Administrator.
	Assistant Deputy Administrator.
	Asst Deputy Administrator.
	Assistant Deputy Administrator.
	Director.
	Deputy Administrator.
	Director.
	Assistant Deputy Administrator.
	Assistant Deputy Administrator.
	Assistant Deputy Administrator.
Food and Consumer Service	Deputy Admin for Financial Management.
	Deputy Admr for Management.
Farm Service Agency	Director, Budget Division.
	Assistant Manager for Administration.
	Controller.
	Assistant Dep Administrator for Mgmt.
	Director, Management Services Division.
	Director, Budget Division.
Foreign Agricultural Service	Dir. Grain & Feed Div.
	Assistant Deputy Administrator Management.
Risk Management Agency	Asst Manager for Research & Development.
	Director, Insurance Services Division.
Agriculture Research Service	Dep Admr for Adm Mgmt.
	Assoc Dep Admin for Administrative Management.
	Asst Administration for Technology Transfer.
	Global Change Research Staff Assistant.
	Assistant Administrator for Genetic Resources.
	Dep Admin for Admin & Financial Mgmt.
	Associate Deputy Admin Financial Management.
National Program Staff Office	Deputy Administrator, National Program Staff.
	Assoc Dep Admr.
	Associate Dep Administrator, Animal Sciences.
	Assoc Deputy Administrator, for Animal PPV&S.
	Associ Dep Admin for Natural Resources & SAS.
Beltsville Area Office	Director, Beltsville Area Office.
	Assoc Dir, Beltsville Area.
	Assoc Dep Admr. Natural Resources/Systems.
	Associate Deputy Admin Genetic Resources.
	Associate Deputy Administrator.
	Supervisory Research Chemist.
	Dir, U.S. National Arboretum.
	Dir, Beltsville Human Nutrition Research Ctr.
	Director, Plant Sciences Institute.
	Dir, Livestock & Poultry Sciences Institute.
	Dir, Natural Resources Institute.
North Atlantic Area Office	Director, Eastern Regl Research Center.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
South Atlantic Area Office	Director, North Atlantic Area. Assoc Dir, North Atlantic Area. Director, Plum Island Animal Disease Center. Director, North Atlantic Area. Res Leader-Plant Physio & Photosynthesis Res. Associate Dir, South Atlantic Area. Director, Russell Research Center. Supervisory Research Geneticist. Director, South Atlantic Area.
Midwest Area Office	Dir, Center for Medical A & V Entomology. Dir, Midwest Area. Assoc Dir, Midwest Area. Supervisory Veterinary Medical Officer. Supervisory Research Chemist. Supervisory Research Geneticist (Plants).
Midsouth Area Office	Dir, Natl Ctr for Agri Utilization. Dir, Southern Regional Res Center, New Orlean. Director, Mid-South Area. Associate Director, Mid South Area.
Central Plains Area Office	Dir, Natl Animal Disease Center.
Southern Plains Area Office	Director, Southern Plains Area. Assoc Dir, Southern Plains Area. Dir, Subtropical Agricultural Res Laboratory. Research Leader F & F Safety Res Laboratory.
Northern Plains Area Office	Director, Northern Plains Area. Associate Director, Northern Plains Area Ofc. Dir R.L. Hruska U.S. Meat Animal Res Center. Supervisory Soil Scientist.
Pacific West Area Office	Director, Western Regional Research Center. Dir, Western Human Nutrition Research Center. Director, Pacific West Area Office. Director, Plant Gene Expression Center. Associate Director, Pacific West Area Office. Dir, Western Cotton Research Laboratory. Supervisory Soil Scientist. Supervisory Soil Scientist.
Cooperative State Res Education, & Extension Service	Deputy Admin Management. Assoc Administrator for Grants & Program Sys. Deputy Administrator Partnerships. Deputy Admin for Rural, Economic & Social Dev. Deputy Administrator Special Programs. Special Asst to the Administrator, CSREES. Deputy Admini Communication Tech Distance Edu.
Economic Research Service	Admr. Economic Research Service. Associate Administrator-Economic Rsch Svc. Dir. Natural Res & Environment Division. Director, Information Services Division. Director, Commercial Agriculture Division. Budget Coordinator and Strategic Planner. Dir, Food & Consumer Economics Division.
National Agricultural Statistics Service	Admr. National Agricultural Statistics Serv. Dir, Estimates Div. Dir. Systems & Information Division. Director, Office of Energy. Director, Survey Management Division.
Natural Resources Conservation Service	Deputy Administrator for Field Operations. Associate Administrator. Director, Engineering Division. Dir, Ecological Sciences and Technology Divisi. Deputy Chief for Management. Dir, Consv Planning and App. Dir, Community Asst & Rural Development Div. Associate Deputy Chief for Management. Dir, Soils (Soil Scientist). Dir, South National Technical Center. Associate Deputy Chief for Technology Sci Tec. Director, Strategic Planning Division. Dir, Biological Conservation Sciences Division. Dir, Quality Management & Prog Eval Division. Spec Asst Strategic Nat'l Resources Issues. National Information Res Mgmt Leader. Dir, Conservation Operations Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Forest Service	Dep Chief for Mgmt & Strategic Planning.
	Special Asst to the Chief for Soil Science.
	Dep Chf for Administration.
	Associate Deputy Chief-Administration.
	Dir, Forest Pest Mgmt Staff.
	Dir, Fiscal & Accounting Services.
	Associate Deputy Chief for Administrator.
Research	Director, Fire and Aviation Staff.
	Director, Timber Mgmt Research Staff.
	Dir, Insect and Disease Research Staff.
	Dir, Forest Environment Research Staff.
	Director, Forest Resource Economics Staff.
	Dir, Forest Prod & Harvesting & Research Staff.
	Dir, Forest Fire & Atmos Sciences Res Staff.
Nat'l Forest System	Dir, Range Management Staff.
	Dir, Recreation, Mgmt Staff.
	Dir, Timber Management Staff.
	Director, Engineering Staff.
	Director, Lands Staff.
	Dir, Land Management Planning Staff.
	Dir, Wildlife & Fisheries Mgmt Staff.
	Dir, Minerals & Geology Staff.
	Director, Watershed & Air Management Staff.
	Dir, Ecological Management.
State & Private Forestry	Dir, Cooperative Forestry.
Field Units	N.E. Area Dir, State & Private Forestry, U DARB.
	Dir, N. Eastern Forest Experiment Station.
	Dir, North Central Forest Exp Station.
	Dir, Pacific N.W. Forest & Range Exp Station.
	Dir, Pacific S.W. For & Range Exper Sta.
	Director, Rocky Mt Forest & Range Exper Stat.
	Dir, S. Eastern Forest Experiment Station.
	Dir, S. Forest Experiment Station, New Orlean.
	Director, Forest Products Laboratory.
	Dep Dir, Forest Products Lab.
	Dep Regional Forester, Pacific N.W. Region.
International Forest System	Associate Deputy Chief.
	Dir, International Institute of Ropical Forest.
Organization Abolished	Director, Economics Management Staff.
	Director, Resources & Technology Division.
	Director, Rural Economy Division.
Organization Abolished	Deputy Administrator for Operations.
American Battle Monuments Commission:	
Office of Executive Director	Executive Director.
Department of Commerce:	
Office of the General Counsel	Asst General Counsel for Finance & Litigation.
	Director, Office of Intelligence Liaison.
Assistant Secy Legislative & Intergovernmental AFFS	Dep Admin for Legislative & Internal Affairs.
Director, Human Resources Management	Director, Human Resources Management.
	Dep Dir of Human Resources Management.
Director, Financial Management	Dir, Financial Management.
Office of Budget Mgmt & Info & Chief Information Offcr	Director, Office of Budget.
Director, Executive Budgeting & Assistance Mgmt	Dir, Federal Asst & Management Support.
Office of Security and Administrative Services	Director, Procurement & Admin Services.
	Director, Office of Security.
	Deputy Director for Procurement.
Office of Inspector General	Asst Inspect Genrl for Compliance Admin.
	Asst Inspector General for Syst Evaluation.
Office of Counsel to the Inspector General	Counsel to the Inspector General.
Office of Compliance and Audit Resolution	Asst Insp Gen for Compl & Audit Resolution.
Office of Inspections and Resource Management	Asst Insp Gen for Plng, Eval & Inspections.
Office of Audits	Assistant Inspector General for Auditing.
	Dep Asst Inspector General for Auditing.
	Deputy Assistant Inspector Gen for Auditing.
Office of Investigations	Asst Inspector General for Investigations.
Office of the Director	Assoc Dir for Field Operations.
	Assistant Director for Decennial Census.
	Chief, Marketing Services Office.
	Chief, Decennial Sys & Contracts Magnt Office.
	Principal Assoc Dir and Chief Financial Offc.
	Principal Associate Director for Programs.
	Principal Assoc Dir, & Chief Financial Officer.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
	Principal Associate Director, for Programs.
	Chief, Policy & Stategic Planning Division.
	Chief, Field Division.
	Assistant to the Director.
Associate Director for Administration/Comptroller	Associate Director for Administration
	Comptroller.
	Chief, Human Resources Management.
Administrative and Customer Services Division	Assoc Dir for Admin/Comptroller
	Chief Admin & Customer Services Division.
Associate Director for Information Technology	Assoc Dir for Information Technology.
	Assoc Dir for Information Technology.
Data Preparation Division	Chief, Data Preparation Division.
Associate Director for Economic Programs	Associate Director for Economic Programs.
	Assistant Director for Economic Programs.
Economic Planning and Coordination Division	Chf, Economic Planning & Coordination Div.
Economic Statistical Methods and Programming Division	Chf, Economic Statistical M & P Division.
Agriculture and Financial Statistics Division	Chief, Agriculture Div.
	Chief Financial & Admin Systems Division.
Services Division	Chief, Services Division.
Foreign Trade Division	Chf, Foreign Trade Div.
Governments Division	Chf, Government Div.
Manufacturing and Construction Division	Chf, Manufacturing & Construction Division.
Associate Director for Decennial Census	Associate Director for the Decennial Census.
	Associate Director for Decennial Census.
	Asst to the Assoc Dir for Decennial Census.
	Asst to the Assoc Dir for Decennial Census.
Decennial Management Division	Chief, Decennial Management Division.
	Chief, Decennial Management Division.
Geography Division	Chf, Geography Div.
Decennial Statistical Studies Division	Chief, Decennial Statistical Studies Div.
Associate Director for Demographic Programs	Associate Dir for Demographic Progs.
	Chf, Population Div.
	Chief, Demographic Surveys Division.
Housing & Household Economic Statistics Division	Chf, Housing & Household Econ Statistics Div.
Demographic Statistical Methods Division	Chief, Statistical Methods Division.
Associate Director for Methodology & Standards	Assoc Dir for Statistical Standards & Method.
	Assoc Dir for Methodology & Standards.
Statistical Research Division	Chief, Statistical Research Division.
Bureau of Economic Analysis	Associate of Economic Analysis.
Office of the Director	Director.
	Dep Dir. Bur of Economic Analysis.
	Chief Economist.
	Chf Statistician.
Associate Director for Regional Economics	Assoc Dir for Regional Economics.
Associate Director for International Economics	Assoc Dir for International Economics.
Assoc Director for Natl Income, E & W Accounts	Assoc Dir for Natl Inc. Exp. Wealth Accounts.
	Chf, Natl Income & Wealth Div.
	Chief, International Investment Division.
	Chief, Computer Systems and Services Division.
Director of Administration	Director of Administration.
Office of the Asst. Secretary for Export Enforcement	Dep Asst Secry for Xort Enforcement.
Office of Chief Counsel	Dep. Director for Program Operations.
Office of Consumer Goods	Director Office of Consumer Goods.
Office of Under Secretary	Director, Information Systems Office (ISO).
Office of International Affairs	Chief, Financial Officer/Admin Officer.
NOAA Coastal Ocean Program Office	Dir, NOAA Coastal Ocean Program Office.
Office of Finance and Administration	Dir for Human Resources Management.
	Dir for Procurement, Grants & Adm Services.
Office of High Performance Computing and Communications	Dir for High Performance Computing Commun.
Advanced Weather Interactive P/S (AWIPS) Program	Chf/AWI Interactive Processing System/1990's.
	Dep Chf Fin Ofcr/Chf Adm Officer (CF/AO).
National Ocean Service	Senior Scientist for Ocean Services.
	Dir, Office of National Geodtic Survey (NGS).
Strategic Environmental Assessments Division	Chf, Strategic Environmental Assessments Div.
Coastal Monitoring and Bioeffects Assessment Division	Chief Costal Monitoring Bioeffects Asses Div.
Hazardous Materials Response and Assessment Division	Chf, Hazardous Materials R & A Division.
Office of Assistant Administrator, Weather Services	Dir, Ofc of Aeronautical Charting/Cartography.
	Deputy Assistant Administrator for Operations.
Management and Budget Office	Chief, Management and Budget Staff.
Office—Fed Coordinator—Meteorology	Chf, Ofc of the Fed Coordinator for Meteorolg.
Office of Meteorology	Dir, Office of Meteorology.
Service Division	Chief, Operations Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Office of Hydrology	Director, Office of Hydrology.
Hydrologic Operations Division	Chief, Hydrologic Services Division.
Hydrologic Research Laboratory	Chief, Hydrologic Research Laboratory.
Office of Systems Development	Director, Office of Systems Development.
	Dep Dir, Office of Systems Development.
Integrated Systems Laboratory	Chief, Integrated Systems Laboratory.
Techniques Development Laboratory	Chief, Techniques Devel Laboratory.
Office of Systems Operations	Dir, Office of Systems Operations.
Systems Integration Division	Chief, Systems Integration Division.
Systems Operations Center	Chief, Systems Operations Center.
Engineering Division	Chief, Engineering Division.
WSR–88D Operational Support Facility	Dir, NEXRAD Operational Support Facility.
National Data Buoy Center	Director, NOAA Data Buoy Office.
Eastern Region	Dir, Eastern Region NWS.
Southern Region	Dir, Southern Region, Ft Worth.
Central Region	Director Central Region.
Western Region	Dir, Salt Lake City Region.
Alaska Region	Dir, Alaska Region, Anchorage.
National Centers for Environmental Prediction	Director, National Meteorological Center.
	Dir, Nat'l Severe Storms Lab.
NCEP Central Operations	Chief, Automation Division.
	Director, Aviation Weather Center (AWC).
Environmental Modeling Center	Chief, Development Div.
Hydrometeorological Prediction Center	Chf, Meteorological Operations Division.
Climate Prediction Center	Dir, Climate Prediction Ctr (CPC).
Storm Prediction Center	Director, Storm Prediction Center.
Tropical Prediction Center	Dir, Tropical Prediction Ctr/Natl Hurricane Ct.
National Marine Fisheries Service	Dir, Ofc of Sustainable Fisheries (SF).
	Director, Office of Habitat Protection.
Office of Fisheries Conservation and Management	Chief, Intergovernmental & Recreational F & M.
Office of Protected Resources	Dir, Ofc of Science & Technology.
Northeast Fisheries Science Center	Science & Research Dir Northeast Region.
	Senior Advisor For International Relations.
Southeast Fisheries Science Center	Science & Research Dir.
Northwest Fisheries Science Center	Science & Research Dir.
Southwest Fisheries Science Center	Science & Research Dir Southwest Region.
Alaska Fisheries Science Center	Science and Research Director.
Office of Asst Administrator Satellite, Data Info Serv	Sr Sci for Environ Satel, D & I Serv (NESDIS).
	Satellite Systems Program Manager.
	Senior Advisor for Data Systems.
Director, NPOESS Integrated Program	Systems Program Director.
National Climatic Data Center	Director, National Climatic Data Center.
National Oceanographic Data Center	Dir, Natl Oceanographic Data Center.
National Geophysical Data Center	Dir, National Geophysical Data Center.
Office of Systems Development	Dir Ofc of Sys Development.
Ofc of Asst Administrator Ocean & Atmospheric Research	Program Director for Weather Research.
	Dep Asst Admr for Extramural Research.
	Dir, Program Development & Coordination Staff.
National Sea Grant College Program	Director, National Sea Grant College Program.
Aeronomy Laboratory	Director, Aeronomy Laboratory.
Air Resources Laboratory	Director Air Resources Laboratory.
Atlantic Ocean Meteorology Laboratory	Dir, Atlantic Oceanographic & Meteorological.
Geophysical Fluid Dynamics Laboratory	Director.
Great Lake Environmental Research Laboratory	Dir, Great Lakes Environmental Research Lab.
Pacific Marine Environmental Research Laboratory	Dir, Pacific Marine Environmental Lab.
Space Environment Center	Dir, Space Environment Laboratory.
Environmental Technology Laboratory	Director.
Forecast Systems Laboratory	Director, Forecast Systems Laboratory.
Climate Monitoring and Diagnostics Laboratory	Dir, Climate Monitoring & Diagnostics Lab.
Institute for Telecommunication Sciences	Assoc Admr for Telecommunications Science.
ITS, Systems Networks Division	Deputy Dir for Systems & Networks.
Chemical Patent Exam Groups	Group Director 110.
	Group Director 120.
	Group Director—130.
	Group Director 150.
	Deputy Group Director—110.
	Group Director—180.
	Deputy Group Dir 150.
Office of Asst Commissioner for Patents	Administrator for Search & Information Res.
	Dep Asst Comm for Patent Process Services.
	Deputy Group Director—1300.
Electrical Patent Exam Groups	Group Director for 260.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
	Group Director 210.
	Group Director for 220.
	Group Director—230.
	Group Director 240.
	Group Director 250.
	Deputy Group Director—250.
	Deputy Group Director—260.
	Deputy Group Director—230.
Mechanical Patent Exam Groups	Group Director—310.
	Group Director—320.
	Group Director—330.
	Group Director—340.
	Group Director—350.
Office of Asst Commissioner for Trademarks	Chairman, Trademark Trial & Appeal Board.
	Deputy Asst Commissioner for Trademarks.
	Director, Trademark Examining Operation.
Office of Quality Programs	Director for Quality Programs.
	Dep Dir, Ofc of Quality Programs.
Program Office	Director, Program Office.
	Deputy Director, Information Tech Laboratory.
Office of International and Academic Affairs	Dir, International & Academic Affairs.
	Chief Financial Officer.
Office of the Director for Technology Services	Deputy Director, Technology Services.
	Senior Policy Advisor for Standards & Technol.
Manufacturing Extension Partnership Program	Assoc Dir for National Programs.
	Dir, Manufacturing Extension Partnership Prog.
	Associate Director for Program Quality.
	Dep Dir, Manufacturing Ext Partnership Prog.
Office of the Director for Technology Partnerships	Dir, Office of Technology Commercialization.
Office of the Director's Office, Measurement Services	Director, Office of Measurement Services.
Office of the Director's Office, Technology Innovation	Dir, Ofc of Technol Evaluation & Assessment.
Ofc of the Director's Ofc, Advanced Technology Program	Dir Information Technology Laboratory.
	Dir. Chemical & Biomedical Technol Office.
	Assoc Dir for Tech & Business Assessment.
	Dep Director, Advanced Technology Program.
	Director, Advanced Technology Program.
	Dir, Materials & Manufacturing Technology Ofc.
	Dir, Electronics & Photonics Tech Office.
Electronics and Electrical Engineering Laboratory Ofc	Dir, Electronics & Electrical Eng Laboratory.
	Deputy Director.
	Dir, Office of Microelectronics Programs.
Semiconductor Electronics Division	Senior Research Scientist.
Manufacturing Engineering Laboratory Office	Manager for Industrial Relations.
	Dep Dir, Manufacturing Engineering Laboratory.
	Dep Dir, Manufacturing Engineering Laboratory.
Precision Engineering Division	Chief, Precision Engineering Division.
Automated Production Technology Division	Chief, Automated Production, Technology Div.
Intelligent Systems Division	Chief, Intelligent Systems Division.
Manufacturing Systems Integration Division	Chief, Factory Automation Systems Division.
Chemical Science and Technology Laboratory Office	Dir, Chemical Sci & Technology Laboratory.
	Dep Dir, Chemical Sci & Technol Laboratory.
Surface and Microanalysis Science Division	Chf, Surface & Microanalysis Science Division.
Physical and Chemical Properties Division	Chief, Physical & Chemical Properties Div.
Analytical Chemistry Division	Chief, Analytical Chemistry Division.
Physics Laboratory Office	Director, Physics Laboratory.
	Mgr, Fundamental Constants Data Center.
	Coordinator of Radiation Measurement Services.
	Deputy Director, Physics Laboratory.
Electron and Optical Physics Division	Group Leader for Far Ultraviolet Physics.
	Chief, Electron & Optical Physics Division.
Atomic Physics Division	Chief, Quantum Metrology Division.
	Chief, Atomic Physics Division.
Time and Frequency Division	Chief, Time and Frequency Division.
Quantum Physics Division	Senior Scientist & Fellow of JILA.
	Senior Scientist & Fellow of JILA.
Materials Science and Engineering Laboratory Office	Dir, Materials Sci & Eng Laboratory.
Ceramics Division	Dep Dir, Materials Sci & Eng Lab.
	Chief, Film & Fiber Technology.
	Chief, Ceramics Division.
Materials Reliability Division	Chief Materials Reliability Div.
Polymers Division	Chief, Polymers Division.
Reactor Radiation Division	Chief, Reactor Radiation Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
	Group Leader Neutron Condensed Matter Science.
	Chief, Reactor Operations.
Building and Fire Research Laboratory	Dir, Building & Fire Research Laboratory.
	Dep Dir, Building & Fire Research Laboratory.
	Asst Dir, Building & Fire Research Laboratory.
	Chief, Fire Safety Engineering Division.
Building Materials Division	Chf, Building Materials Div.
Building Environment Division	Chief, Building Environment Division.
Fire Science Division	Chief, Fire Science Division.
Computer Systems Laboratory Office	Associate Director for Program Implementation.
Advanced Network Technologies Division	Chief, Advanced Network Technologies Div.
Computer Security Division	Chief, Computer Security Division.
Computing and Applied Mathematics Laboratory Office	Dep Dir, Computing & Applied Mathematics Lab.
	Associate Director for Computing.
	Chief, High Perf Systems & Services Division.
Applied and Computational Mathematics Division	Chief, Mathematical Computational Science Div.
Statistical Engineering Division	Chief, Statistical Engineering Division.
National Technical Information Service	Deputy Director, Natl Technical Info Service.
Organization Abolished	Dir, NOAA Data Buoy Ofc.
Commodity Futures Trading Commission:	
Office of the General Counsel	Deputy General Counsel (Opinions & Review).
	Deputy General Counsel (Litigation).
	Deputy General Counsel (Reg & Adm).
	Deputy General Counsel.
Office of the Executive Director	Dep Exec Dir.
	Dir, Ofc in Information Resources Mgmt.
Division Economic Analysis	Dep Chf Economist.
	Chief Counsel.
	Associate Director for Surveillance.
Division of Enforcement	Deputy Director (Western Operations).
	Deputy Director (Eastern Operations).
	Associate Director.
	Associate Director.
	Associate Director.
Division of Trading and Markets	Deputy Director (Contract Markets).
	Chief Counsel.
Consumer Product Safety Commission:	
Ofc of Executive Dir	Asst Exec Dir for Compliance & Enforcement.
	Associate Executive Dir for Field Operations.
	Asst Exec Director for Information Services.
	Executive Assistant.
Office of Hazard Identification & Reduction	Asst Exec Dir for Hazard I & R.
	Associate Executive Director for Economics.
Corporation for National and Community Service:	
Department of the Chief Financial Officer	Associate Director for Management & Budget.
	Asst Dir for Financial Management.
Ofc Secy of Defense:	
Office of the Secretary	Asst to the Secy of Defense (Intel Oversight).
	Dep Asst to the Secry of Defense.
Office of Assistant Secretary (SOLIC)	Dep Asst Secy of Defense (Forces & Resources).
	Director for Budget and Execution.
	Director for Requirements & Programs.
Joint Activities	Director, DESA.
Director, Operational Test and Evaluation	Dep Dir for Resources & Administration.
	Dep Dir for Live Fire Test & Evaluation.
Ofc of Inspector General	Deputy Inspector General.
	Asst Inspector General for Investigations.
	Dep Asst Inspector Gen for Investigations.
	Dep Asst Inspector General for Inspections.
	Asst Insp Gen for Adm & Info Management.
	Dep Asst Inspector Gen for Adm & Info Mgmt.
	Dir, Audit Planning & Technical Support.
	Director, Logistics and Support.
	Director, Contract Management.
	Director, Financial Management.
	Deputy Asst Inspector General for Auditing.
	Asst Inspector General for Auditing.
	Dir for Investigative Operations.
	Dep Asst Inspector Gen for Program Evaluation.
	Director, Readiness & Operational Support.
	Director, Acquisition Management Directorate.
	Asst Inspector General for Policy & Oversight.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Office of Assistant Secy of Defense (Force Mgmt Policy).	Director, Audit Followup Directorate.
	Dept Asst Insp Gen for Criminal Invest P & O.
	Dept Asst Inspect General Audit Policy Oversight.
	Director, Office of Departmental Inquiries.
	Deputy Inspector General for Intelligence.
	Director, Staffing & Career Management.
Department of Defense Education Activity	Spec Asst DASD (CPP)/Dir, Def Cpms.
	Chief of Educational Support Policy & Legisl.
	Dep Dir Dep of Defense Dependents School.
Office Assistant Sec Health Affairs	Assoc Dir for Financial, Logistl, & Info Mgmt.
Uniformed Serv. University of the Health Sciences	Executive Dir, Def Medical Info Mgmt.
Office of Asst Secy of Def for Public Affairs	Scientific Director, AFRRI.
	Dir, Freedom of Information & Security Review.
	Dir, AFIS/Dir, AFR & Television Service.
	Dir, Armed Forces Radio & Television Service.
Deputy Comptroller (Program Budget)	Dir, Policy and Support.
	Dir, Prog & Fin Control.
Deputy Comptroller (Management Systems)	Dep Dir for Program & Financial Control.
	Dir, Contract Audit & Analysis.
Washington Headquarters Services	Deputy Chief, Financial Officer.
	Director of Personnel and Security.
	Director, Real Estate and Facilities.
	Dep Dir, Real Estate & Facilities.
	Dep Dir, Personnel and Security.
Office of the General Counsel	Deputy General Counsel (IG).
	Dir, Def Ofc of Hearings & Appeals.
Ofc of Under Secy of Def for ACQ & Technology	Director for Defense Procurement.
	Dep Dir, Naval Warfare.
	Deputy Dir, Cost Pricing & Finance.
	Dep Dir, Munitions.
	Sr Staff Special for Air Superiority Systems.
	Dep Dir, Contract Pol & Administration.
	Dep Dir, Land Warfare.
	Executive Director, Defense Science Board.
	Dir, Computer Aided Logistics Support Office.
	Director, Pacific Armaments Cooperation.
	Dep Dir. Acquisition Resources.
	Dep Dir, Def Syst Procurement Strategies.
	Dir, Planning & Analysis.
	Dep Dir, Foreign Contractor.
	Dep Dir, Mayor Policy Initiatives.
	Staff Spec for Spec Tech Program.
	Special Asst Concepts & Plans.
	Deputy Director, Defensive Systems.
	Dir, OSD Studies & FFRDCA.
	Asst Dep Under Secy Def (Cruise Missile Def).
	Princ Dep Dir, Strategic & Tactical Systems.
	Dir, Prog Acquisition Strategies Improvement.
	Deputy Director Air Warfare.
	Dep Dir, Arms Control Implementation Compl.
	Asst Dep Dir, Arms Control I & C.
	Deputy Dir, Information Management.
	Director, Ind Capabilities & Assessments.
	Dep Dir (Test & Evaluation).
	Asst Dep Under Secy of Def (ACQ P & P).
	Princ Asst Dep U.S. of Def (Advanced Technol).
	Asst Dep Under Secy of Defense SSA.
	ADUSD (Space Systems & Architectures).
	Special Asst to the USD (A&T).
	Dep Dir, Test Facilities & Resources.
	Special Asst to DUSD (ES).
	ADUSD (Continuous ACQ & Life Cycle Support).
	Information Managemnet Executive.
	Deputy Director, (Resources & Ranges).
	Deputy Director, (System Assessment).
Organization Abolished	Sr Staff Spec for Air Weapons Def Supp Sys.
Nuclear & Chemical & Biological Defense Programs (NCB)	Prin DASD (NCB).
	Senior Policy ADV/DAS Def (NCB).
	DAS of Def (Nuclear Treaty Programs).
Ofc of the Dir, Defense Research & Engineering	Dir, for Infor Tech.
Ofc of DD (Research and Advanced Tech)	Staff Specialist for Vehicle Propulsion.
	Dir, Environmental & Life Sciences.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Ofc of DD (Tactical Warfare Progs)	Dir, Balanced Technology Initiative.
	Dep Dir Electronic Warfare.
PD/Deputy Asst Secy of Defense (Strategic & Tactical C3)	Director CIA Planning & Strategics.
Deputy Assistant Secretary of Defense (Intelligence)	Dep Dir, Counterintelligence.
	Deputy Dir, Def Air Borne Reconnaissance Ofc.
Ofc of Emergency Operations	Dir, Weapons Technology.
Office of Under Secy Def (ACQ & Tech)/DDR&E	Director, Sensor & Electronics Technology.
Advanced Research Projects Agency (ARPA)	Deputy Director, ASTO.
	Deputy Director, Management.
	Dir, Electronic Systems Technology Office.
	Dir, Sensor Technology Officer.
	Dep Dir, Micro Electronics Technology.
	Dir, Martime Systems Technology.
	Executive Dir, Defense Science Office.
	Special Asst, Information Technology.
	Assistant Director, Intelligence & Targeting.
	Dep Dir for Warfare Info Technology.
	Deputy Director, DARPA.
	Dep Dir, (Battlefield Awareness).
	Prog Manager (Joint Applications Study Group).
	Program Manager (Acquisition Innovation).
Defense Sciences Office	Assistant Director for Material Sciences.
Contracts Management Office	Dir, Contracts Management Office.
Office of the Joint Chiefs of Staff	Dep Dir for Wargaming, Simulation & Analysis.
Ballistic Missile Defense Organization	Assoc Deputy for I & C Technology.
	Deputy for Program Operations.
	Director, Contracts Directorate.
	Dir, Battle Magt Command Control & Commun.
	Deputy for Technology Operations.
	Principal Dep for Acquisition Theater Mis Def.
	Asst Dep for Theater Air & Missile Defense.
	Deputy for System Integration.
	Chief, Architect/Engineer.
	Deputy Chief, Architect/Engineer.
	Asst Deputy Technical Operations.
Defense Contract Audit Agency	Director, DCAA.
	Deputy Director, DCAA.
	Assistant Director, Operations.
	Asst Dir, Policy & Plans.
	Director, Field Detachment.
	Deputy Regional Director, Western Region.
Regional Managers	Regional Director, Eastern.
	Regional Director, Northeastern.
	Regional Director, Central.
	Regional Director, Western.
	Regional Director, Mid-Atlantic.
	Dep Regional Director, Eastern Region.
	Deputy Regional Director, Northeastern Region.
	Deputy Regional Dir, Central Region.
	Dep Reg Dir, Mid Atlantic Region.
Defense Logistics Agency	Special Asst for Integrity in Contracting.
	Dir, Defense Manpower Data Center.
	Chief Actuary.
	Dep Gen Counsel (Acquisition & Contract Mgmt).
	Dep Commander Defense Industrial Supply Ctr.
	Dep Dir. Civilian Personnel Mgmt Service.
	Director, CPMS.
	Deputy Commander Defense Distribution Center.
	Exe Dir, Resource, Planning & Performance Dir.
Office of Deputy Director, Acquisition	Executive Dir, Contract Mgmt Pol Acquisition.
	Exec Dir, OPL Assessment & Programming ACQ.
	Assoc Director, Acquisition (Acquisition).
Directorate of Quality Assurance	Dep Commander, Def Construction Supply Ctr.
Ofc of Staff Dir-Small & Disadvantaged Business Util	Staff Dir. Small & Disadv Busin Utilization.
Office of General Counsel	General Counsel, DLA.
	Deputy General Counsel (Administration).
Office of the Comptroller	Comptroller.
Office of Deputy Director, Corporate Administration	Executive Director, Human Resources.
	Logistics Mgmt Advr, DLA Chair (ICAF).
	Director Defense Automated Printing Service.
	Admin, Defense Automated Printing & Supp Ctr.
Office of Deputy Director, Material Management	Executive Director, Procurement.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Defense Personnel Support Center	Deputy Commander, Defense Genral Supply Ctr. Deputy Commander (Defense R & M Services). Executive Director, Logistics Management. Executive Dir, Business Management. Executive Dir, Info Systems & Technology Dir. Principal Executive Director, Material Mgmt. Deputy Commander, DPSC.
Defense Training & Performance Data Center	Dep Commander, Def Fuel Supply Center.
Defense Contract Management	Deputy Dir, Defense Manpower Data Center. Executive Director, Program Integration.
Defense Information Systems Agency	Dep Director for Strategic Plans & Policy. Special Assistant for Liaison Activities. Professor of Information Science. Special Asst/Infrastructure & Info Assurance. Principal Advisor for DII COE & Shade. Deputy Commander Center for Syst Engineering.
Office of the Director	Deputy Manager National Commun Systems. Inspector General.
Directorate for Strategic Plans and Policy	Chief, Information Officer. Tech Adviso, Strategic Plans, Program & Policy.
National Communications System	Asst Mgr, Plans & Operations.
DISA (Field Activity)	Chief, Plans Policy Cust Svcs & Info Assurance. Chief, Technology & Standards Division. Chief, Current Network Operations Division. Assoc Dep Cmdr, Center for Software. Assoc D/D, Functional Info Mgmt Support Dept. Dep Commander, Center for Info Syst Security. Deputy Commander Center for Standards.
Directorate for C4 & Intelligence Programs.	Chf, Operational R & S Technology Management. Dep Comm Ctr for Computer Systems Engineering. Deputy Commander for OPS, DISA Westhem. Dep Dir for Switched Network Engineering. Dir, Center for Systems Intero & Integration. Dep Dir, Joint (IEO). Tech Dir, Joint Intero & Eng Comm (JIEO). Dir, Center for Engineering. Assoc Dir, Center for Standards. Associate Deputy Director, C4I Programs. Deputy Dir, C4I Integration Support Activity. Tech Dir, Adv Info Tech Services Joint Prog. Dep Dir for C4I Programs. Dep Dir for C4I Modeling, Simulation & Assess.
Directorate for Operations	Associate Deputy Commander, CTR for Standards. Assoc Deputy Director, DCS Data Systems. Asst Deputy Dir for Operations. Chief, Operational Requirement Customer Servic.
Directorate DISA, for Logistics, F & S Projects	Technical Dir, Space Information Syst Office. Dir Defense Information Systems. Dep Dir, for Procurement & Logistics.
Directorate for Personnel and Manpower	Chief Management Support Operations DISA West. Dep Dir for Personnel & Manpower.
Directorate for Engineering & Interoperability	Assoc Dir for Technical & Management Support.
Directorate for C4 Modeling, Simulation and Assessment	Deputy Director for Testing. Assoc Deputy Director for C4I modeling, S & A.
Directorate for Enterprise Integration	Director, Technical Integration Office. Deputy Director for Joint R A & I.
Comptroller Directorate	Comptroller.
Defense Special Weapons Agency	Director for Electronics and Systems. Director for Weapons Effects. Chief, Weapons Lethality Division. Chief, Atmospheric Effects Division. Chief, Electronics Technology Division. Dir, Acquisition Management. Deputy Director, Operations Directorate. Deputy Director. Director for Information Systems. Chief, Simulation and Test Division. Deputy for Nuclear Matters. Director for Programs. Prog Dir, Hard Target Defeat Program Office. Program Director, Special Programs Office. Dir for Counterproliferation Programs.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Organization Abolished	Deputy Director.
	Director, Planning & Analysis.
	Director, Procurement.
	Assoc Director, Requirements & Operations.
	Dir, Requirements & Pol Integration Dir.
	Assoc Dir, Technology & Information.
	Spec Asst to the Dep Director, Corp Affairs.
	Assoc Dir, Contract Production Division.
	Chief, Geospatial IPT Office.
Organization Abolished	Deputy Director for Systems Development.
Defense Finance & Accounting Service	Deputy Director, Cleveland Center.
Defense Investigative Service	Dir, Defense Investigative Service.
	Deputy Director, (Investigations).
	Dep Dir, (Industrial Security).
	Deputy Director, Dis.
	Special Asst to the Director.
	Deputy Director for Policy.
	Dir/Investigations Ctrl & Industrial Clearance.
	Chief, Operating Officer.
Defense Commissary Agency	Executive Director for Operations.
Department of Air Force:	
Office of Administrative Assistant to the Secretary	Administrative Assistant.
	Associate Director, Operations Support.
	Director, Human Resources.
	Director, Acquisition & Technology.
	Asst Dir, Customer Support/Modeling & Simulat.
	Assoc Dir, Eng & Maintenance Support Division.
	Assoc Dir, Interoperability Division.
	Assoc Director, Program Management Division.
	Associate Director, Support Staff.
	Asst Dir, Data Generation Div Eastern Office.
	Associate Director, Customer Services Div.
	Assoc Director, Data Generation Division.
	Director, Operations Group.
	Associate Dir, Customer Support Division.
	Assoc Director, International Operations Div.
	Associate Director, OG Support Staff.
	Associate Dir, Source Management Division.
	Asst Dir, Source Mgmt Div Eastern Office.
	Asst Dir, Source Mgmt Div Western Office.
Office of Small & Disadvantaged Business Utilization	Dir. Ofc of Small & Disadv Bus Utilization.
Office of the Inspector General	Dep Asst Inspector Gen/Spec Investigations.
Office of ASAF for Financial Management & Comptroller	Principal Dep Asst Secry (Financial Mgmt).
ODAS Budget	Deputy for Budget.
	Director of Budget Investment.
	Director of Budget Management & Execution.
ODAS Cost & Economics	Dep Asst Secy (Cost & Economics).
Office of ASAF for Acquisition	Principal Das (Acquisition & Mgmt).
Centralized RFP Support Team Office	Dir. Centralized RFP Support Team.
ODAS Science, Technology & Engineering	Das (Research & Engineering).
	Das (Science, Technology & Engineering).
ODAS Management Policy & Program Integration	Dep Asst Secy (Mgmt Pol & Prog Integration).
ODAS Contracting	Assoc Dep Asst Secy (Contracting).
Air Force Program Executive Office	Program Exec Officer, Info Systems.
	Prog Exec Ofcr, Conventional Strike.
	Prog Executive Officer Logistics Systems.
	Program Executive Officer Space.
Joint Logistics Systems Center	Dir, Depot Maintenance.
OFC of ASAF for Manpower, Reserve Affairs, Install & Env	Dep for Air Force Review Boards.
Air Force Base Conversion Agency	Dir, Air Force Base Conversion Agency.
Office of the Chief of Staff	Air Force Historian.
Test and Evaluation	Deputy Dir, Test & Evaluation.
Deputy Chief of Staff, Communications & Information	Director of CIO Support, AFCIC.
Civil Engineer	Deputy Civil Engineer.
Services	Dir of Res Mgmt & Dep Dir for MWR & Services.
Maintenance	Associate Director of Maintenance.
Logistics Support & Integration	Director of Plans & Integration.
Supply	Chief, Modification & O&M Programs Division.
	Chief, Combat Support Division.
Field Operating Agencies	Dir, AF Center for Environmental Excellence.
Deputy Chief of Staff, Plans & Programs	Asst Deputy Chief of Staff Plans & Programs.
Manpower, Organization & Quality	Deputy Director for Manpower, ORG & Quality.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Programs	Associate Director of Programs & Evaluation.
Strategic Planning	Dep Dir of Strategic Planning.
Deputy Chief of Staff, personnel	Asst Deputy Chief of Staff Personnel.
	Dir, Civil Personnel Policy & Personnel Plans.
Field Operating agencies	Dir, Air Force Personnel Operations Agency.
	Assoc DCS/Personnel & Chief AFPOA.
Deputy Chief of Staff, Air and Space Operations	Dep Dir of Operational Requirements.
	Assoc Dir, Modeling Simulation & Analysis.
	Associate Director of Operations.
Personnel	Director, Personnel.
Contracting	Deputy Director Contracting.
Logistics	Deputy Director, Logistics.
Engineering & Technical Management	Director, Engineering & Technical Mgmt.
Financial Management & Comptroller	Dep Director, Financial Mgmt & Comptroller.
Communications & Information	Director, Communications & Information.
Plans & Programs	Deputy Director, Plans & Programs.
Space and Missile Systems Center	Executive Director.
	Director, Contracting.
Phillips Laboratory	Deputy Director.
Geophysics Directorate	Dir, Space Physics Division.
Electronic Systems Center	Executive Director.
	Prog Dir for Air Base Decision Systems.
	Director, Engineering & Program Management.
	Director, Plans & Advanced Programs.
	Prog Dir, Strategic & Nuclear Deterrence C2.
Plans and Programs Directorate	Dir, Plans & Programs.
Command, Control and Communications Directorate	Dir, Command Control Communications.
Standard Systems Center	Director, Standard Systems Center.
Aeronautical Systems Center	Executive Director.
	Director, System Management.
	Dir, Financial Management & Comptroller.
Development Planning	Dir, Advanced Systems Analysis.
Engineering Directorate	Dir, Systems Engineering.
Directors of Engineering	Director of Engineering F–16.
	Dir of Engineering F–22.
	Dir of Engineering C–17.
	Director of Engineering Propulsion.
	Director of Engineering Joint Strike Fighter.
Systems Program Offices	Dir, Program Integration & Analysis.
	Prog Dir, Joint Air-to Surface Standoff Miss.
Wright Laboratory	Dir, Manufacturing Technology.
	Dir, Plans & Programs Directorate.
Air Force Research Laboratory	Executive Director, AFRL.
	Director, Plans & Programs.
	Assoc Dir for Investment Strategy.
	Director, AFRL Washington Office.
	Director, Propulsion.
Air Vehicles Directorate	Assoc Dir for Air Platforms.
Space Vehicles Directorate	Director, Space Vehicles.
	Assoc Dir for Space Vehicles.
Information Directorate	Dir, Information.
Directed Energy Directorate	Director, Directed Energy.
Materials and Manufacturing Directorate	Director, Materials & Manufacturing.
	Assoc Dir for Manuf Tech & Affordability.
Sensors Directorate	Director, Sensors.
	Associate Director for Sensors.
Human Effectiveness Directorate	Director, Human Effectives.
Human Systems Center	Executive Director.
Arnold Engineering Development Center	Executive Director.
Air Force Development Test Center	Executive Director.
Air Force Flight Test Center	Executive Director.
Air Logistics Center, San Antonio	Executive Director.
	Director, Financial Management.
	Product Group Manager, Propulsion Systems.
	Dir, Privatization & Realignment.
Air Logistics Center, Oklahoma City	Executive Director.
	Director, Financial Management.
	Director, Commodities Management.
	Director, Contracting.
Air Logistics Center, Warner Robins	Executive Director.
	Director, Financial Management.
	Director, Technology & Industrial Support.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Air Logistics Center, Ogden	Director, Contracting.
	Executive Director.
	Director, Financial Management.
	Director, Technology & Industrial Support.
Air Logistics Center, Sacramento	Director, Contracting.
	Executive Director.
	Director, Financial Management.
	Director, Technology & Industrial Support.
Air Force Audit Agency	Director, Contracting
	Auditor General of the Air Force.
	Asst Aud Gen (Materiel & Systems Audits).
	Asst Aud Gen (Field Activities).
	Asst Aud Gen (Operations).
	Asst Aud Gen (Financial & Support Audits).
Air Education & Training Command	Provost, Air University.
Air Mobility Command	Principal Dep Dir of Operations for Transport.
Air Force Reserves	Assistant Vice Commander.
	Director, Plans.
	Technical Director (Aerospace Systems).
	Air Commander, 4th Air Force.
	Air Commander, 10th Air Force.
	Air Commander, 22nd Air Force.
AF Space Command	Sr Scientist & Tech Advisor for AF Space Com.
AF Operational Test & Eval Ctr	Technical Director.
U.S. Central Command	Scientific Advisor.
U.S. Strategic Command	Assoc Dir for Strategic Planning.
	Dep Dir, Comd Ctrl Comm Computer & Intel Sys.
U.S. Transportation Command	Dir, Program Analysis & Financial Mgmt.
Shape Technical Centre	Deputy Director.
Department of Army:	
Office of the Secretary	Special Asst to the Under Secretary.
	Director of Operations.
	Dir, Single Agency Mgr for Pentagon Info Tech.
Office Deputy Under Secretary of Army (OPS Research)	Spec Asst for Air & Missil Defense.
	Special Asst for Forces & Program Evaluation.
	Asst Dep Under Secy of the Army for Oper Res.
	Special Assistant for Electronic Systems.
	Dir, Test and Evaluation Management Agency.
	Dir. U.S. Army Model I & S Management Agency.
Office Under Secretary of the Army (Intl Affairs)	Dir of International Dev & Security Asst.
Office Administrative Asst to the Secy of Army	Adm Asst to the Secy of the Army.
	Dep Admin Asst to the Secy of the Army.
Office of the General Counsel	Deputy General Counsel (Ethics & Fiscal).
Ofc Asst Secretary Army (Civil Works)	Deputy ASA (Management & Budget).
	Das of the Army (Policy & Legislation).
Ofc Asst Sec Army (Financial Management & Comptroller)	Assistant Deputy ASA for Army Budget.
	Deputy for Cost Analysis.
	Dir of investment.
	Das of the Army (Financial Operations).
	Spec Adv for Economic Pol & Productivity Prog.
	Director for Business Resources.
Ofc Asst Sec Army (Manpower & Reserve Affairs)	Director for Civilian Personnel Mgmt & Ops.
	Deputy Asst Secy of the Army (ARBA).
Ofc Asst Sec Army (Research, Development & Acquisition)	Deputy Asst Secy of the Army (Procurement).
	Das for Res & Tech/Chief Scientist.
	Dep Asst Secy for Plans & Programs.
	Director for Research.
	Director for Technology.
	Director for Assessment & Evaluation.
HQDA Army Acquisition Executive	Dep Prog Mgr for Chem Demiliarization Oper.
	Deputy PEO, Armored Systems Modernization.
	Dep Prog Exec Ofcr, Command & Control Systems.
	Deputy Prog Executive Officer, Comm Systems.
	Program Executive Officer, STAMIS.
	Prog Exec Ofcr, Field Artillery Systems.
	Dep Program Executive Officer for Aviation.
	Dep PEO, Intelligence & Electronic Warfare.
	Prog Exec Ofcr, Tactical Wheeled Vehicles.
	Prog Executive Ofcr, Tactical Missiles.
	Deputy Prog Executive Ofcr, Missile Defense.
	Program Manager, National Missile Defense.
	Dep Prog Executive Ofcr, Tactical Missiles.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Ofc of Dir of Info Sys for Comm, Contl, Comms/Computers	Prog Manager for Chemical Demi Operations.
	Vice Director to the DISC4.
	Dir of Army Information.
Army Audit Agency	The Auditor General.
	Deputy Auditor General.
	Director, Logistical & Financial Audits.
	Dir, Acquisition & Force Mgmt.
	Dir, Audit Policy Plans and Resources.
Operations Test & Evaluation Command (OCSA FOA)	Tech Dir, Test & Exper Command.
	Dir, Evaluation Analysis Center.
U.S.A. Space & Strategic Def Comm Huntsville, AL (OCSA FOA)	Prin Assistant Resp for Contracting.
	Assistant Director for Discrimination.
	Dir, Advanced Technology Directorate.
	Director, Weapons Directorate.
	Dir, Miss Def Battle Integration Ctr.
Army Center of Military History (OCSA FOA)	Chief Historian.
Office, Assistant Chief of Staff for Installation Mgmt	Dep Asst Chief of Staff for Installation Mgmt.
Office, Deputy Chief of Staff for Logistics	Asst Dir for Maintenance Mgmt.
	Asst Dir for Transportation.
	Asst Dir for Energy & Troop Support.
	Director for Resources and Management.
	Executive Director, Strategic Logistics Agcy.
	Chief, Aviation Logistics Office.
Office, Dep Chf of Staff for Operations & Plans	Tech Adv to the DCSOPS.
	Dir, U.S. Army Nuclear & Chemical Agency.
Office, Dep Chief of Staff for Personnel	Director of Manprint.
	ADCSPER (Army Civilians).
Army Research Institute (DCSPER FOA)	Dir. U.S. Army Res Inst & Chief Psychologist.
	Dir, Manp & Pers Res Lab & Assoc Dir, ARI.
U.S. Total Army Personnel Command (DCSPER FOA)	Director, Army Declassification Activity.
National Guard Bureau	Program Manager, Res Comp Auto Sys.
Walter Reed Army Institute of Research	Chief, Dept of Pharmacology.
Training and Doctrice Command (TRADOC)	Scientific Advisor to CG.
	Asst Deputy Chief of Staff for Resources Mgmt.
	ADCOS for Training Policy Plans and Programs.
	Deputy to the Commanding Gen, CASCOM.
	Asst Dep Chief of Staff for Base OPS Support.
	Asst Dep Chief of Staff for COMBAT Develop.
TRADOC Analysis Center	Director.
	Director of Operations.
	Director of Operations.
National Simulations Center	Technical Director, National Simulations Ctr.
Military Traffic Mgmt Command	Deputy to the Commander.
	Special Asst for Transportation Engineering.
U.S. Army Forces Command	Deputy Director, Resource Management.
	Asst DCS for Pers & Inst Mgmt.
U.S. Army Signal Command	Deputy Chief of Staff for Resources Management.
	Technical Director/Chief Engineer.
U.S. Army Corps of Engineers	Dir of Real Estate.
	Director of Human Resources.
	Director, Resource Management.
	Director, U.S. Army Center for Public Works.
	Principal Asst Responsible for Contracting.
	Dep to the Commander for Prog & Tech Mgmt.
Directorate of Research & Development	Asst to Chf of Eng for R & D & Dir, R & D Dir.
	Asst Dir for Research & Dev (Civil Works Prog).
	Asst Dir, Research & Dev (Military Prog).
Directorate of Civil Works	Deputy Director, Civil Works.
	Chief, Programs Management Division.
	Chief, Planning Division.
	Chief, Engineering Division.
	Chf, OPS, Construction & Readiness Division.
	Chief, Policy Review & Analysis Division.
Directorate of Military Programs	Deputy Director, Military Programs.
	Chief, Construction Division.
	Chief, Engineering Division.
	Chief, Programs Management Division.
	Chief, Environmental Restoration Division.
Directors of Programs Management	Dir, Programs Management, LMVD
	Dir, Programs Management, NAD.
	Dir, Programs Management, NPD.
	Dir, Programs Management, ORD.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Directors of Engineering & Technical Services	Dir, Programs Management, POD.
	Dir, Programs Management, SAD.
	Dir, Programs Management, SPD.
	Dir, Programs Management, SWD.
	Dir, Engineering & Technical Services, LMVD.
	Dir, Engineering & Technical Services, MRD.
	Dir, Engineering & Technical Services, NAD.
	Dir, Engineering & Technical Services, NAD.
	Dir, Engineering & Technical Services, NPD.
	Dir, Engineering & Technical Services, ORD.
	Dir, Engineering & Technical Services, POD.
	Dir, Engineering & Technical Services, SAD.
	Dir, Engineering & Technical Services, SPD.
	Dir, Engineering & Technical Services, SWD.
Engineer Waterways Experiment Station, COE	Dir, Waterways Experiment Station.
	Director, Geotechnical Laboratory.
	Director, Hydraulics Laboratory.
	Director, Environmental Lab.
	Director, Structures Laboratory.
	Director, Coastal Engineering Research Center.
Engineer Topographic Laboratories, C of Engineers	Director.
	Associate Director of Technology.
Construction Engineering Res Lab Champaign, IL	Director.
Cold Regions Research & Engineering Lab Hanover, NH	Director.
U.S. Army Materiel Command	Dep to Cmd for Business Mgmt & S P.
Office of DCS for Logistics & Operations	Asst Dep Chief of Staff for Logs & Operations.
	Exec Director, Logistics Support Activity.
Special Analysis Office	Chief, Special Analysis Office.
Office Deputy Commanding General	Principal Deputy for Logistics.
	Principal Deputy for Acquisition.
	Principal Deputy for Technology.
Army Research Office (AMC)	Director.
	Dir, Electronics Division.
	Director, Materials Science Division.
	Dir, Physics Div.
	Dir, Mathematical & Computer Sciences Div.
	Dir, Eng & Environmental Sciences Division.
	Dir, Research & Technology Integration.
	Dir, Chem & Bio Sci Div.
	Director, Engineering Sciences Directorate.
	Director, Physical Sciences Directorate.
Office of DCS for Research Dev and Engineering	ADCS for Res, D&E for Technol & Eng.
	Dir for Missile Guidance.
Office of Deputy Chief of Staff for Ammunition	Asst Deputy Chief of Staff for Ammunition.
Office of DCS for Acquisition	Asst Dep Chf of Staff for ACQ & Contract.
Office of Deputy Chief of Staff for Personnel	Dep Chief of Staff for Personnel.
Office of the Deputy Chief of Staff for Res Management	Deputy Chief of Staff for Resource Management.
	ADCS for Resource Mgmt/Exec Dir for Busin.
U.S.A. Security Assistance Command	Deputy.
U.S. Army Industrial Operations Command	Dir, U.S. Army Def Ammunition Center & School.
	Deputy to the Commander.
U.S. Army Chemical & Biological Defense Command	Deputy to the Commander.
U.S. Army C&B Def Command (CBDCOM)-Edgewood RD&E Center.	Director, Engineering Directorate.
	Dir, Res & Technology Directorate.
	Technical Director.
U.S. Army Aviation & Troop Command (ATCOM)	Deputy to the Commander.
	Exec Dir-U.S. Army Aviation RD&E Center.
	Director of Engineering.
	Dir of Aeroflight Dynamics.
	Executive Director, Acquisition Center.
	Dir of Advanced Syst/Assoc Dir for Technol.
	Assoc Dir for Tech Appl/Dir of Spec Prog.
	Exec Dir, Integrated Materiel Mgmt Center.
U.S. Army Soldier Systems Command	Deputy to the Commander.
Natick Research Development & Engineering Center	Director, Natick RD&E Center.
	Dir, Individual Protection Directorate.
	Director, Soldier Science Directorate.
U.S. Army Communications Elect Comd (CECOM)	Deputy to the Commander.
	Dir, CECOM Acquisition Center—Washington.
	Comptroller.
	Director, C3I Acquisition Center.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
CECOM Research, Development & Engineering Center	Dep to CMD Business Mngt & Strategic Planning.
	Director/Army Systems Engineer.
	Dir, Space & Terrestrial Comm Directorate.
	Dir, I&E Warfare Directorate.
	Dir, Software Engineering Directorate.
	Dir for C4I Log & Readiness Center.
U.S. Army Research Laboratory	Assoc Tech Dir, Resech Devel & Engineering Ctr.
	Director, U.S. Army Research Laboratory.
	Director, Sensors Directorate.
	Dir, Information Sci & Technology Directorate.
	Dep Dir, Info Sci/Tec/Dir of Atmospherics Res.
Advanced Concepts & Plans Directorate	Dir, Advanced Concepts & Plans Directorate.
Electronics & Powers Sources Directorate	Director.
Battlefield Environment Directorate	Director.
Survivability/Lethality Analysis Directorate	Director.
	Chief, Ballistic Vulnerability Division.
Vehicle Structures Directorate	Director.
Advanced Computing & Information Sciences Directorate	Director.
U.S. Army Weapons Technology Directorate (ARL)	Director.
	Chief, Terminal Effects Division.
	Chief, Weapons Concepts Division.
Human Research and Engineering Directorate (ARL)	Director, Human R & E Directorate.
U.S. Army Materials Directorate (ARL)	Director.
U.S. Army Missile Command (MICOM)	Deputy to the Commander.
	Director, Acquisition Center.
	Dir, Integrated Materiel Mgmt Center.
	Deputy Executive Director for TMDE.
Research Development & Engineering Center (RDEC)	Tech Dir for M&D, Res, Dev & Eng Center.
	Dir for System Engineering & Production.
	Director for Propulsion.
	Dir for Systems Simulation & Development.
	Associate Director for Systems.
	Assoc Director for Product Assurance.
	Director for Weapons Sciences.
	Director, Command, Ctrl & Syst Integration Dir.
Tank-Automotive and Armaments COMD (TACOM)	Deputy to the Commander.
	Director of Acquisition Center.
	Director, Integrated Materiel Mgmt Center.
	Dir U.S. Army Armament & Chemical A&L Act.
Tank-Automotive Res, D&E Center (TARDEC)	President/Director.
	Vice President for Research.
	Vice President for Customer Engineering.
	Vice President for Product Development.
U.S. Army Armament Research, D & E Center (ARDEC)	Technical Director for Armament.
	A/Tech/Dir/(Systems Concepts & Technology).
	A/Tech/Dir (Sys Development & Engineering).
	Assoc Tech Dir (Producib & Process Technol).
Armament Engineering Directorate	Dir, We & Combat Support Armaments Center.
	Chf, Energetics & Warheads Division,
Fire Support Armaments Centers	Dep Director, Fire Support Armaments Center.
Close Combat Armaments Center	Deputy Director, Close Combat Armament Ctr.
U.S. Army Simulation, Training & Instrumentation Command	Deputy to the Commander.
U.S. Army Test and Evaluation Command, (TECOM)	Dir, Redstone Technical Test Center.
	Tech Dir & Chf Sci.
	Dir for Test and Assessment.
	Dir, Joint Prog Ofc for Test & Evaluation.
U.S. Army Materiel Systems Analysis Activity	Director.
	Chief, Combat Integration Division.
	Chief, Combat Evaluation Division.
	Chief, Reliability Analysis Division.
Headquarters, U.S. Army, Europe	Asst Dep Chf of Staff, Personnel (Civ Pers).
	Asst Dep Chief of Staff Eng for Eng & Housing.
	Asst Deputy Chief of Staff Res Mangnt.
	Asst Dep Chf Staff for Eng (Intl Affairs).
U.S. Army Special Operations Command	Dir of Force Development & Integration.
NATO ACISA	Asst Dir, Command, Control and Comms Syst.
National Defense University	Dir, Information Resources Management College.
U.S. Southern Command	Spec Asst for Technology & Requirements Integ.
Department of Navy:	
Office of the Under Secretary of the Navy	Assistant for Administration.
Office of the Auditor General	Auditor General of the Navy.
Naval Audit Service	Eastern U.S. Audit Services Facilitator.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
	Director, Plans and Policy.
	Dir, Naval Audit Service Western Region.
	Dir, Naval Audit Service Capital Region.
	Dir, Program & Financial Audits Directorate.
Ofc of the Asst Secy of Navy (Manpwr & Res Affs)	Dir, Human Resources Operations Center.
	Associate Director (OCPM–20)
	Director, Plans, Programs & Diversity.
	Dep A/S of the Navy (Civilian Persnl P/EEO).
Organization Abolished	Dir, Civilian Personnel Programs Division.
	Dir, Ofc of Civilian Personnel Management.
OAS of the Navy (Research, Dev & Acquisition)	Director, Navy Acquisition R & S Improvement.
	Director, Procurement Policy.
	Head, Contract Policy.
	Dir, Intl Agreements, TTSARB & Special Proj.
	Director, Acquision Career Management.
	DASN Plann & Programming & Resource.
	Director for AAW & Strike Air Programs.
	Dep Dir, Navy International Programs Office.
Program Executive Officers	Chief Systems Engineer, Theater Air Defense.
	Dep Prog Exec Ofcr for Tactical Air Progs.
	Director, Plans & Programs Division.
	Chf Engr.
	Asst for Fire Control & Guidance Systems.
	Branch Engr, Ship Installation & Design Br.
	Branch Head, Reentry Systems Branch.
	Dep P/E Officer for Unmanned Aerial Vehicles.
	Dep Prog Exec Officer for Theater Air Defense.
	Technical Plans Officer.
	Head, Res Branch & DE Dir, Plans & Progs Div.
	Assistant for Missile Engineering Systems.
	Dep P/E Officer for Cruise Missiles Program.
	Prog Manager for Comm Satellite Programs.
	Dep Prog Officer, Submarines.
	Prog Exec Officer, Undersea Warfare.
	Asst for Systems Integration & Compatibility.
	Dep Prog Exec Ofcr for ASW, A/S Mission Prog.
	Dep Prog Exec Ofcr for Tactical Air Programs.
	Deputy PEO, Mine Warfare.
	Dep Prog Exec Ofc for Unmanned Aerial Vehicles.
	Prog Exec Officer for Space Comms & Sensors.
	AEGIS Deputy Program Manager.
	Prog Exec Officer, ASW Assault & Spec Miss Pro.
	Chief Engineer, PEO, SCS.
	Program Manager Ship Self Defense.
Ofc of the Asst Secy of Navy (Fin Mgmt Comptroller)	Assoc Dir, Budget & Reports/Fiscal Manag Div.
	Asst General Counsel (Financial Management).
	Dir, Investment & Dev Div.
	Dir, Financial Mgmt POL & Systems Division.
	Dir, Budget Evaluation Group.
	Dir, Resource Allocation & Analysis Division.
	Director, Financial Management Division.
	Director, Civilian-Contractor Manpower Div.
Naval Center for Cost Analysis	Dir, Naval Center for Cost Analysis.
Office of the Naval Inspector General	Deputy Naval Inspector General.
Office of the General Counsel	Asst Gen Coun (Res, Dev & Acquisition).
	Special Counsel for Litigation.
	Asst General Counsel (Install & Environment).
	Assist Gen Coun (Manpower & Reserve Affairs).
Naval Criminal Investigative Service	Dir, Naval Criminal Invest Service.
	Asst Dir of Counterintelligence.
	Special Agent in Charge, Norfolk Field Ofc.
	Special Agent in Charge.
	Deputy Director, NCIS.
Chief of Naval Operations	Asst Dep Chf of Naval Operations (Logistics).
	Dep Dir of Naval Training.
	Asst Dep Chief, Naval Oper Res Warfare.
	Asst Dep Chf of Naval Oper Manpower/Personnel.
	Head, Studies & Analysis Branch.
	Associate Director, Assessment Division.
	Tech Dir, Submarine & SSBN Security Program.
	Technical Director.
	Advisor for Research & Development Programs.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
	Dep Dir, Supportability, M & M Division.
	Deputy Director for Programming.
	Head, Assessment & Affordability Branch.
	Assoc Dir, Expeditionary Warfare Division.
	Dir, Naval History/Dir, Naval Historical Ctr.
	Head, Deep Submergence Systems Branch.
	Exe Director, Shore Installation Mgmt Div.
	Dep Dir, Envir Protection Safety Occup Heal Div.
	Director, Strategic Sealift Division.
	Asst for Educational Resources.
Bureau of Naval Personnel	ACNP for MPN Financial Management.
Bureau of Medicine & Surgery	Dep Commander for Fin Mgmt & Comptroller.
Military Sealift Command	Counsel.
	Comptroller.
	Asst Dep Comdr for Business Operations.
Naval Oceanography Command	Technical/Deputy Director.
Ofc of Commander in Chf/Allied Forces/Southern Eur	Dir, Joint Train Analysis & Simulation Ctr.
	Dep Dir, Fleet Maintenance.
	Deputy Director, Shore Activities Readiness.
	Dir, Warfare Programs & Readiness.
Ofc of the Commander-in-Chief, U.S. Pacific Command	Chief, Research & Analysis.
CINCPACFLT	Deputy Director, Fleet Maintenance.
	Deputy Director, Shore Installation Management.
	Associate Director, Resources Req & Assessment.
Ofc of the Chief of Naval Education and Training	Comptroller.
Naval Air Systems Command Headquarters	Standards Improvement Executive.
	Executive Dir, Corporate Operations.
	Federal Quality Consultant.
	Deputy Commander for Acquisition & Operations.
	Executive Director for Logistics.
	Executive Director for Contracts.
	Deputy Comptroller.
	Counsel, Naval Air Systems Command.
	Assoc Director, Weapons Sys Eng Division.
	Deputy Head, Avionics Dept.
	Deputy Head, Air Vehicle Dep.
	Dep. Head, Logistics Management.
	Head, Tactical A & M Contracts Department.
	Head, Aircraft Support Dept.
	Head, Cost Department.
	Deputy Acquisition Executive.
	Executive Director for Engineering.
	Dir, Industrial Operations.
	Head, Concepts Analysis Evaluation Plan Dept.
	Head, Propulsion & Power Systems Dept.
	Dep Head, Aircraft Sys Engineering Department.
	Head, Logistics Support Department.
	Deputy Commander, Naval Air Sys Command.
	Head, Cruise M & U Aerial Vehicles Dept.
	Dir, Budget Formulation Justification Exe Div.
	Deputy Counsel, NAVAIR.
	Executive Dir for Industrial Capabilities.
	Dir, Naval Aviation Science & Tech Office.
	Asst Commander for Corporate Operations.
	Dir, Technology Maturation Directorate.
	Head, Air ASW Assault & Special Mission Prog.
	Special Asst for Navy Test & Evaluation.
Naval Air Warfare Center Aircraft Division Lakehurst	Director, Engineering & Research.
	Hd, Supp Equip Aircraft Launch & Recovery Dept.
Naval Air Warfare Center Aircraft Division	Exec Dir, T & E Group NAWC-Aircraft Div.
	Head, Air Vehicle Department.
	Head, Avionics Department.
	Dir of Atlantic Ranges & Facilities Dept.
	Dep Commander, NAWC-Aircraft Division.
Organization Abolished	Head, Systems Engineering Depart.
	Head, Program Management Competency.
Naval Air Warfare Center Weapons Div. Pt. Mugu, CA	Head, Test Evaluation Engineering Department.
	Head, Syst Engineering Department.
	Director for Test & Evaluation.
	Head, Threat/Target Syst Depart.
Naval Air Warfare Center Weapons Div, China Lake, CA	Head, Res and Technology Division.
	Head, Pacific Ranges & Facilities Depart.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Naval Training Systems Center	Executive Director.
Space & Naval Warfare Systems Command	Dir of ACQ, Analysis, Engineering & Research. Exec Dir, Contracts. Depty Comptroller. Counsel, Space & Naval Warfare Systems Com. Technical Director. Chief, Eng Comms Sys Program Directorate. Chief, Engineer Command Sys Prog Directorate. Executive Dir, Space Tech Systems Prog Dir. Exec Dir, Undersea Surveillance Prog Dir. Exec Dir, Intelligence S & R System Prog Dir. Dir of Tech Head Engineering Tech Group. Dir, Naval Space & Electronic Warfare/C4ISR. Prog Dir, Command C & C System Program Dir. Chief, Eng SPAWAR. Executive Director, NWSAED. Prog Dir, I & E Warfare Syst Program Dir. Asst Comdr for Pol, OPS & ACQ Support Direct.
Space and Naval Warfare Systems Center	Deputy Commander. Deputy Chief Engineer.. Head, Surveillance Dept. Executive Director. Head, Marine Sciences & Technology Dept. Head, Navigation & Applied Sciences Dept. Head, Command and Control Department. Dep Exec Dir, Sci Tech Engineering. Head, Communication Department.
Space and Naval Warfare Systems Center, Charleston	Executive Director.
Naval Facilities Engineering Command	Senior Executive for Public Works Support. Director, Navy Crane Center. Counsel, Naval Facilities Engineering Command. Deputy Comptroller. Director for Contracts Support. Chief Engineer. Dir of Real Estate Support. Dir of Base Closure. Director of Environment.
Naval Sea Systems Command	Executive Director. Counsel, Naval Sea Systems Command. Asst Dep Commander for Contracts. Executive Director/Deputy Comptroller. Prog Mgr, Mine Warfare Ship Program. Director, Reactor Materials Divisions. Director, Secondary Plant Components Division. Head, Advanced Reactor Branch. Dir, Naval Architecture Group. Dep Dir, Surface Ship Design & Sys Eng Group. Director, Cost Estimating & Analysis Division. Dir, Shipbuilding Contracts Division. Exec Dir, Naval S & S M & F Activity Supp Dir. Executive Director, Surface Ship Directorate. Exec Dir, Submarine Directorate. Director, Warfare Systems Group. Director, Corporate Operations. Dep Commander for Fleet Log S/Chief Info Ofcr. Dep Prog Mgr/Techn Dir, New Attack Submarines. Dep Prog Manager, Tech Dir Attack Subm Prog. Dep Program Mgr. Surface Ship Prog Mgmt Ofc. Dep Prog Manager, Aircraft Carrier Prog Ofc. Director, Environmental & Auxiliary Syst Group. Dir, Reactor Plant Components Auxil Equip Div. Dep Dir/Advanced Submarine Reactor S&SF Mgmt. Dir, Surface Ship Systems Division. Deputy Director, Nuclear Components Div. Dir, Reactor Plant Safety & Analysis Divison. Dir, Ship S&S Integrity Group. Dir, Power Systems Group.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
	Director, Materials Engineering Office.
	Dir, Electrical Engineering Group.
	Exec. Dir, Anti-Air & Surface Warfare Systems.
	Exec. Dir, Ship Design & Engrng Directorate.
	Prog Mgr, Amphibious W & S Sealift Program.
	Program Manager for Commissioned Submarines.
	Command Asst for Human Resources Prog & Dir.
	Dir, Surface Systems Contracts Division.
	Assoc Director for Regulatory Affairs.
	Dep CDR SSD/DEP PEO for CLW & Auxiliary Ships.
	Director, Office of Resource Management.
	Dir, Reactor Refueling Division.
	Deputy Counsel, Naval Sea Systems Command.
	Dir Environmental Protection Office.
	Director, Ship Signatures Group.
	Director, Auxiliary Systems Group.
	Dir, Combat Systems Desighn & Eng Group.
	Program Manager, Strategic Sealift Prog Ofc.
	Dir, Ship Availability Plnng & Eng Center.
Naval Ordnance Center	Deputy Commander, Naval Ordnance Center.
Norfolk Naval Shipyard	Naval Shipyard Nuclear Engineering & PLan Mgr.
	Naval Shipyard Nuclear Eng Mgr Puget Nal Ship.
Naval Surface Warfare Center	Technical Director.
Naval Undersea Warfare Center	Technical Director.
Naval Surface Warfare Center, Crane Division	Executive Director.
Naval Undersea Warfare Center Div, Keyport, WA	Executive Director.
Naval Surface Warfare Center, Pt. Hueneme Division	Executive Director.
Naval Surface Warface Center, Indian Head Division	Director.
Coastal Systems Station	Executive Director.
	Head, Coastal Sci, Technology & Analysis Dept.
	Head, Coastal Warfare Systems Department.
Naval Surface Warfare Center, Carderock Division	Director.
	Assoc Dir for Hydromechancis/Head, HD.
	Assoc Dir for Business OPS/HBD.
	Assoc Dir for Syst/P & H Ship S/P Directorate.
	Assoc Dir for Ship A/E S/H S/Directorate.
	Assoc Dir for SS & M/HHS & M Directorate.
	Assoc Dir for Mise/HMIS Eng Directorate.
Naval Surface Warfare Center, Dahlgren Division	Exec Director.
	Head, Strategic & Space Systems Department.
	Head, Weapons Systems Department.
	Head, Combat Systems Department.
	Head, Ship Defense Systems Department.
	Deputy Executive Director.
	Head Strategic & Strike Systems Dept.
	Head, Systems Res & Technology Department.
	Head Joint Warfare Applications Dept.
	Head Warfare Analysis & Systems Dept.
Naval Undersea Warfare Center Division, Newport, RI	Head, Submarine Sonar Department.
	Executive Director.
	Head Test and Evaluation Dept.
	Superintendent Underwater Sound Ref Div.
	Director for Submarine Combat Systems.
	Director, Submarine Warfare Systems.
	Director, Surface Undersea Warfare.
	HD, Submarine Electromagnetic Sys Dept.
	Head Combat Control Systems Department.
	Head Combat Systems Analysis Department.
	Head, Torpedo Systems Department.
Naval Supply Systems Command Hdqtrs	Dir, Plans Programs & Resources
	Counsel.
	Dir, Defense Printing Serv/Dep Comdr, Navsup.
	Asst Dep Cmdr for Fin Mgmt/Comp.
	Competition Advocate Gen/Adc, Contracting Mgr.
	Director of Contracting for Special Programs.
	Executive Director Office of Special Projects.
	Assistant Commander for Fleet Logistics Ops.
	Joint Eng Data Mgmt I & C Syst Prog Manager.
	Executive Director.
Naval Inventory Control Point	Executive Dir, Acquisition & Strategic Plnng.
	Vice Commander.
Navy Fleet Material Support Office	Exec Dir, ADP System Planning and Development.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
U.S. Marine Corps Headquarters Office	Dep Dir, Facilities & Services Division.
	Dir, Contracts Division.
	Counsel for the Commandant.
	Deputy Counsel for the Commandant.
	Director of Administration and Resources.
	Asst Dep Chf for Prog & Resourc Fiscal Div.
	Asst Dep Chf of Staff for Installations & Log.
	Asst to the Dep Chf of Staff for M & R Affs.
	Asst Dep Chf of Staff for Requirements & Prog.
Marine Corps Systems Command	Executive Director.
	Deputy for Financial Management.
Marine Corps Logistics Base, Albany, GA	Deputy Commander for Logistics Operations.
Office of Naval Research	Dir, Ship Structures & Systems S&T Div.
	Dir, Mechanics & Energy Conversion S&T Div.
	Director, Marine Corps Science & Technology.
	Dep Chief, Nav Res & Tech Dir Ofc of Nav Res.
	Head Special Programs Department.
	Executive Dir for Acquisition Management.
	Dir, Financial Management Comptroller.
	Deputy Counsel (Intellectual Property).
	Counsel, Office of Naval Research.
	Head Engineering.
	Dir Strike Technology Division.
	Dir Math Computer & Information Science Div.
	Director, OAS Sci & Technol M & P Division.
	Dir, Science & Technology Directorate.
	Dir, OAS at Sensing & Systems Division.
	Head Industrial Programs Department.
	Director, Physical Sciences S&T Division.
	Dep Dir, Science & Technology Directorate.
	Dir, Congitive & Neural Science & Tech Div.
	Head Personnel Optimization Bio Sci & Tec Dep.
	Dir, Biological & Biomedical Science & Tech DV.
	Head Info Electronics & Surveil Sci Tech Dept.
	Dir of Surveillance Communications Electronic.
	Director, Electronics Division.
	Head Ocean Atmosphere Space Sci Tech Dept.
	Associate Technical Director.
	Dir, Reliance Sci Opportunities Prog Intell.
	Dir, Materials Sci and Technology Division.
	Assoc for Integration OAS St Sensing Sys Div.
NATO SACLANT ASW Research Center	Director, NATO SACLANT ASW Research Centre.
Naval Research Laboratory	Superintendent, Chemistry Division.
	Superintendent, Optical Sciences Div.
	Supt, Materials Sci and Tech Division.
	Superintendent, Plasma Physics Div.
	Supt, Condensed Matter & Radiation Sci Div.
	Assoc Dir of Res for Matl Sci & Comp Technol.
	Superintendent, Info Technol Div.
	Chf Sci, Lab for Structure of Matter.
	Dir of Research.
	Superintendent Space Science Div.
	Supt, Radar Div.
	Supt, Acoustics Div.
	Superintendent, Electronics Technology Div.
	Supt, Tactical Electronic Warfare Div.
	Chief Scientist Lab for Compt Phy Fluid Dynam.
	Chf Scientist & Head, Solar Physics Program.
	Superintendent, Remote Sensing Division.
	Assoc Dir of Res for Business Operations.
	Chief Sci & Head, Beam Physics Program.
	Superintendent, Marine Meteorology Division.
	Mgr, Joint Space Systems Technology Programs.
	Assoc Dir Res for Ocean & Atmospheric Sci Tec.
	Superintendent Ctr Bio/Molecular Science Eng.
	Head Elect Warfare Strategic Planning Org.
	Assoc Dir of Res for Warfare Sys & Senors Res.
	Superintendent, Space Syst Development Dep.
	Superintendent, Oceanography Division.
	Superintendent, Spacecraft Engineering Dep.
	Dir, Naval Center for Space Technology.
	Superintendent, Marine Geosciences Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Defense Nuclear Facilities Safety Board:	Asst Dir for Sys Analysis & Integration. Asst Dir for Operational Safety. Asst Dir for Engineering Develop & Technology. Asst Dir for Standards Develop & Implement. Dep Gen Counsel for Pol & Litigation. Chief Radiation & Environmental Safety. Deputy General Manager. Asst Dir for Process Engineering. Tech Adv for Hazards Anal & Health Physics. Technical Advisor for Technical Studies. Technical Advisor for Chemical Processing. Technical Advisor for Standards.
Department of Education:	
Chief Financial Officer	Director, Grants and Contracts Service. Dep Chf Fin Ofcr/Dir Financial Services. Director, Fin Rep & Systems Operations.
Office of Management	Dir Admin Resource Management Service. Chairperson, Education Appeal Board. Dir, Human Resources Group.
Inspector General	Assistant Inspector General for Audits. Asst Insp Gen for Policy Plng & Mgmt Serv. Asst Inspector General for Investigation. Dep Asst Insp Gen for Audit Operations. Dep Asst Inspector Gen for Techn Audit Svc. Associate Inspector General. Dep Asst Inspector General for Investigation. Counsel to the Inspector General. Deputy Inspector General. Asst Inspector General for Operations. Asst Inspec General for Operations East Area. Asst Inspec Gen for Investigation Services. Asst Inspector General for Audit Services.
General Counsel	Asst Gen Coun for Busin & Adm Law. Asst General Counsel for Educational Equity. Asst Gen Counsel for Regulations. Asst Gen Coun for Div of Legislative Counsel. Asst Gen Coun for Postsecondary Ed & Ed Res.
National Center for Education Statistics	Assoc Commr/Surveys & Cooperative Syst Group. Assoc Commr for Data D & L Studies Group. Assoc Commr for Stat Std & Methodology Div. Assoc Commissioner Assessment Group.
Department of Energy:	
Office of Chief Financial Officer	Dir Ofc of Budget. Dep Dir Ofc of Budget. Director, Budget Analysis Division. Dir Ofc of Headquarters Accounting Operations. Director, Budget Operations Division. Dir Ofc of Dep Accounting & Fin Sys Dev. Dir Ofc of Financial Policy. Dir Ofc Compliance and Audit Liaison. Deputy Controller. Controller.
Asst Secy for Defense Programs	Assoc Dep Asst Secy for Military Application. Nuclear Weapons Complex Project Manager. Assoc Das for Human & Administrative Res. Assoc Das for Program A & F Management.
Office of Economic Impact & Diversity	Dir of Sm and Disadv Bus Utilz.
Asst Secy for Energy Efficiency & Renewable Energy	Dir, Geothermal Division. Dir, Photovoltail Energy Technology Div. Director, Waste Material Management Division. Dir, Wind/Hydro/Ocean Technology Division. Dir Ofc Solar Energy Conversion. Assoc Dep Asst Secretary for Utility Tech Dir Ofc of Waste Reduction Tech.
Asst Secy for Environment, Safety & Health	Manager, Golden Field Office. Dir, Nuclear Safety Enforcement Division. Dep Dir, Invest Nuclear Safety Enforcement Div. Dir, Nuclear Operations & Analysis. Dir, Office of Environmental Compliance. Deputy Director Ofc of ES&H Evaluations. Dir, Office of Enforcement & Investigations.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Energy Information Administration	Dir, Ofc of Nuclear Safety Policy & Standards.
	Director, EIA–ADP Services Staff.
	Dir, Ofc of Oil and Gas.
	Dir, Ofc of Coal Nucl Elec & Altern Fuels.
	Director, Ofc of Energy Markets & End Use.
	Director Economics & Statistics Division.
	Dir, Ofc of Statistical Standards.
	Director, Quality Assurance Division.
	Dir, Reserves and Natural Gas Division.
	Director, Petroleum Marketing Division.
	Dir, Ofc of Integration Nal & Forecasting.
	Dir, EEUISD.
	Dir, Energy Supply & Conversion Div.
	Dir, Analysis & Systems Div.
	Dir, Energy Markets & Contingency Info Div.
	Dir, Survey Mgmt Div.
	Director, Information Technology Group.
Asst Secy for Environmental Management	Director, Office of Research & Development.
	Assoc. DAS for Oversight & Self-Assessment.
	Director, Office of Acquisition Management.
Office of Energy Research	Dir, Chem Sci Div.
	Dir, Adv Egy Proj Div.
	Chf Processes and Tech Br.
	Dir, High En Physics Div.
	Director, Human Health & Assessment Div.
	Deputy Dir for Management.
	Dir, Health Effects & Life Sci Research Div.
	Deputy Dir for Nuclear Safety Safeguard.
	Dir, Office of Assessment & Support.
	Assoc Dir, Ofc of Computational & Tech Research.
Office of Fossil Energy	Director, Ofc of Resource Management.
Associate DS for Field Management	Dir, Ofc of Resource Management & Services.
Albuquerque Operations Office	Dir, Weapons Quality Division.
	Dir, Transportation Safeguards Div.
	Dir, Production Assurance & Ops Division.
	Dir, Weapons Programs Div.
	Dir, of Emergency Plans & Operations.
	Asst Manager for Management & Administration.
	Carlsbad Area Office Manager.
	Chief Financial Officer.
	Director, Ops Management Division.
Chicago Operations Office	Acquisition & Asst Group Manager.
	Area Manager, Batavia Area Office.
	Asst Mgr for Laboratory Management.
	Chief Financial Officer.
Idaho Operations Office	Assistant Manager for Administration.
	Chief Financial Officer.
	Asst Mgr Ofc of Program Execution.
	Asst Manager for Applied E&T Transfer.
Nevada Operations Office	Chief Counsel.
	Assistant Manager for Administration.
	Asst Manager for Business & Financial Service.
Ohio Field Office	Manager Ohio Field Ofc.
	Deputy Manager, Ohio Field Office.
Oakland Operations Office	Field Chf Fin Officer and Business Manager.
	Assoc Manager for Site Management.
Oak Ridge Operations Office	Asst Manager for Administration.
	Chief Financial Officer.
Rocky Flats Office	Manager, Rocky Flats Field Office.
	Deputy Manager, Rocky Flats Field Office.
	Asst Manager for Government Operations.
	Dep Asst Mgr for Matl Stabilization & Disp.
Richland Operations Office	Asst Mgr Business Mgmt & Chief Fin Ofcr.
	Source Evaluation Board Advisor.
Savannah River Operations Office	Asst Manager for Business & Logistics.
Office of Hearings & Appeals	Dep Dir for Legal Analysis.
	Dep Dir for Financial Analysis.
	Dep Dir for Econ Analysis.
Asst Secy for Human Resources & Administration	Dir Ofc of Industrial Relations.
	Dir Hq Personnel Operations Div.
	Dir Ofc of Admin Svcs.
	Associate Dir, Office of Resource Mgmt.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
	Dep Dir of Administrative Services (Wash, DC).
	Dir, Ofc of Organization & Management.
	Dep Dir of Personnel.
	Dir, Ofc of Contractor Mgmt & Admin.
	Dir, Ofc of Clearance & Support.
	Dir, Ofc Policy.
	Dir, Ofc of Special Proj & Mgmt Systems.
	Dir, Ofc of Executive & Technical Resources.
	Dir, Ofc of Mgmt Sys (Competition Advocate).
	Director Ofc Contract & Resource Management.
	Executive Assistant to the Director.
	Dir, Headquarters & Executive Personnel Serv.
Office of Inspector General	Asst Inspector General for Investigations.
	Manager, Western Regional Audit Office.
	Director, Audit Policy, Plans & Programs.
	Manager, Eastern Regional Audit Office.
	Dir, Capitol Regional Audit Office.
	Deputy Asst Inspector Gen for Investigations.
	Spec Asst for Policy and Planning.
	Counsel to the Inpsector General.
	Dir, Office of Contractor Employee Protection.
	Asst Inspector General for Resource Mgmt.
	Principal Deputy Inspector General.
	Assistant Inspector General for Audits.
	Deputy Inspector General for Inspections.
	Deputy Inspector General for Audits.
Office of Fissile Materials Disposition	Deputy Director.
Office of Nuclear Energy, Science & Technology	Dir, Submarine Systems Div.
	Dir, Instrumentation & Control Div.
	Asst Program Manager for Surface Ships.
	Deputy Director for Naval Reactors.
	Sr. Naval Reactors Rep. (NWPT News).
	Senior Naval Reactors Rep (Pearl Harbor).
	Director Nuclear Technology Div.
	Dir, Reactor Engineering Division.
	Head, Core Manufacturing Branch.
	Dep Director, Reactor Materials Division.
	Director, Fiscal Division.
	Asst Manager for Operations.
	Program Manager for Shipyard Matters.
	Dir, Nuclear Components Division.
	Senior Naval Reactors Representative.
	Manager, Idaho Branch Office.
	Prog Manager for Advanced Submarines.
	Dir, Ofc of Techn Deployment & Strategic Plng.
	Dir, Isotope Production & Distribution Prog.
	Asst Manager for Operations.
	Prog Mgr for Analysis & Regulatory Matters.
	Director, Acquisition Division.
	Director for Submarine Refuelings.
	Senior Naval Reactors Representative.
	Dep Program Mgr for Commissioned Subs.
	Prog Mgr Prototype & Moored Training Ship.
	Assoc Dir., Ofc of Isotope P & D.
Office of Nonproliferation and National Security	Special Asst to the Ast Secretary.
	Dir, Ofc of Classification & Technology.
	Dir, Ofc of Security Affairs.
	Dep Dir, Ofc of Security Affairs.
Western Area Power Administration	Asst Admr for Mgmt Svcs.
	Chief Administrative Officer.
	Chief Financial Officer.
Environmental Protection Agency:	
Office of Small and Disadvantaged Business Utilization	Deputy Dir, Ofc of Small & Disadv Busin Util.
Office of the Chief Financial Officer	Deputy Chief Financial Officer.
Office of the Comptroller	Dir, Ofc of the Comptroller.
	Dir, Financial Mgmt Div.
	Deputy Comptroller.
	Director, Budget Division.
Office of Planning, Analysis & Accountability	Director, Office of Planning Analy & Account.
Ofc of the Asst Admr for Admin & Resources Management	Director, Ofc of Pol & Resource Mgmt.
	Principal Dep Asst Admr for Amd & Res Mgmt.
Office of the Comptroller	Assoc Dir, Financial Management Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Office of Administration	Dir, Ofc of Administration.
	Deputy Dir Ofc of Administration.
	Dir, Facilities & Support Services Division.
	Dir, Sfty, Health & Environmental Mgmt Div.
Office of Information Resources Management	Dir, Ofc of Information Resources Management.
	Dep Dir, Ofc of Information Resources Mgmt.
	Director Enterprise Systems Division.
Ofc of Administration & Resources Mgmt—Cincinnati, OH	Dir, Ofc of Admin and Resources Management.
Office of Administration & Resources Mgmt—RTP, NC	Director Office of Administration & Res Mgmt.
	Director, Office of Data Processing.
Ofc of Human Resources and Organizational Services	Dir, Office of Human Resources & Org Services.
	Assoc Dir for Integration & Innovation.
	Dep Dir, Ofc of Human Resources & Org Services.
	Assoc Director for Reengineering & Automation.
	Dir, Exec Resources & Special Programs Staff.
	Director, Org & Management Consulting Serv.
	Dir, Strategic Planning & Policy Systems.
Office of Acquisition Management	Dir, Superfund/RCRA Procurement Ops Division.
	Director, Office of Acquisition Management.
	Dep Dir, Office of Acquisition Management.
Office of Grants and Debarment	Dir, Grants Admin Div.
	Director, Office of Grants & Debarment.
Office of the Asst Admr for Enf & Comp Assurance	Director, OFC of Environmental Justice.
Office of Federal Activities	Dir, International Enforcement Program Div.
Office of Regulatory Enforcement	Director, Office of Regulatory Enforcement.
	Dep Dir, Office of Regulatory Enforcement.
	Dir, Air Enforcement Division.
Office of Criminal Enforcement, Forensics & Training	Dir, Natl Enforcement Training Institute.
	Dir, Ofc of Criminal Enforce Forensics Train.
Office of Compliance	Director, Office of Compliance.
	Dir, Enforcement Planning, T & D Division.
	Dep Dir, Enforcement Planning, T & D Division.
	Dir, Manufacturing, E & T Division.
	Deputy Director, Office of Compliance.
	Dir, Import Export Program.
Office of Site Remediation Enforcement	Director, Ofc of Site Remediation Enforcement.
	Dep Dir, Ofc of Site Remediation Enforcement.
Federal Facilities Enforcement Office	Dir, Federal Facilities Enforcement Office.
Office of the Inspector General	Deputy Inspector General.
Office of Investigations	Assist Inspector Gen for Investigations.
	Dep Asst Inspector General for Investigations.
Office of Audit	Asst Inspector General for Audits.
	Dep Asst Insp Gen for Acq & Asst Audits.
	Principal Dep Asst Insp Gen for Audit.
	Prin Dep Asst Inspector General for A&E Audits.
	Dep Asst Inspector General for External Audits.
Office of Management	Assistant Inspector General for Management.
Office of Wastewater	Director, Permits Division.
	Director, Municipal Support Division.
	Deputy Director, Municipal Support Division.
Office of Science and Technology	Dir, Standards & Applied Science Division.
	Dir, Health & Ecological Criteria Division.
Office of Wetlands, Oceans and Watersheds	Dir, Assessment & Watershed Protection Div.
	Dir, Oceans & Coastal Protection Division.
	Director, Wetlands Division.
Office of Ground Water & Drinking Water	Dir, E & P Implementation Division.
	Director, Drinking Water Standards Division.
	Dir, Implementation & Assistance.
Ofc of the Asst Admr for Solid Waste and Emgy Resp	Dir, Permits & State Prog Div Osw AA For SW&ER.
Office of Solid Waste	Director, Waste Management Division.
	Dir, Municipal & Industrial Solid Waste Div.
	Dir, Hazardous Waste Indentification Division.
Office of Emergency and Remedial Response	Dir, Emergency Response Div.
Office of Air Quality Planning and Standards	Dir, Emission Standards Division.
	Dir, Air Quality Strategies & Standards Div.
	Dir, Emissions Monitoring & Analysis Division.
	Deputy Dir, Ofc of Air Quality Planning & Stds.
Office of Mobile Sources	
	Dir, Advanced Technology Support Division.
	Dir, Fuels & Energy Division.
	Dir, Vehicle Programs & Compliance Division.
Office of Radiation & Indoor Air	Director, Indoor Environments Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Office of Atmospheric Programs	Dir, Atmospheric Pollution Prevention Division.
	Director, Acid Rain Division.
Office of the Asst Admr for Prevention P & T Substances	Dir, Ofc of Program Management Operations.
Office of Pesticide Programs	Dir—Registration Division.
	Director—Program Support Division.
	Dir, Biological & Economic Analysis Division.
	Dir, Spec Review & Reregistration Division.
	Dir, Envir Fate and Effects Division.
	Dir, Policy & Special Projects Staff.
Office of Pollution Prevention and Toxics	Dir, Health & Environmental Rev Div.
	Director, Environmental Assistance Division.
	Dir, Economics Exposure and Technology Div.
	Director, Chemical Control Division.
	Director, Information Management Division.
	Dir, Pollution Prevention Div.
	Dir, Chemical Screening & Risk Assesment Div.
	Dir, Chemical Management Division.
	Dir, Health Effects Division.
	Director, of Risk Assessment Division.
Office of Resources Management and Administration	Dir, Ofc of Resources Mgnt & Admin.
Office of Science Policy	Director, Office of Science Policy.
Office of Research and Science Integration	Dir, Ofc of Research & Sci Integration.
	Dep Dir, Ofc of Research & Science Integration.
National Health & Environmental Effects Res Lab (RTP)	Dir, Natl Health & Envir Effects Res Lab (RTP).
	Assoc Dir for Health NHEERL (RTP).
	Associate Director for Ecology NHEERL (RTP).
Western Ecology Division—Corvallis	Dir, Western Ecology Division Corvallis.
Gulf Ecology Division—Gulf Breeze	Dir, Gulf Breeze Ecology Division.
National Exposure Research Laboratory (RTP)	Dir, Natl Exposure Res Laboratory (RTP).
	Dep Dir for Management NERL (RTP).
	Assoc Dir for Ecology NERL (RTP).
Environmental Sciences Division—Las Vegas	Dir, Environmental Sciences Division.
Ecosystems Research Division—Athens	Dir, Ecosystems Res Div Athens.
National Risk Mgmt Research Laboratory (Cincinnati)	Dir, Natl Risk Mgmt Lab (Cinn).
	Dep Dir for Mgmt NRML (Cinn).
	Assoc Dir for Health NRML (Cinn).
Air Pollution Prevention and Control Division—RTP	Dir, Air Pollution Prevention & Control Div.
Subsurface Processes and Systems Division—Ada	Dir, Sub—Surface Process & Systems Division.
National Center for Environmental Assessment	Dir, Natl Ctr for Environmental Assessment.
	Associate Director for Health, NCEA.
	Associate Director for Ecology NCEA.
National Center for Environmental Assessment—Washington	Dir, Natl Ctr Environ Assessment.
National Center for Environmental Assessment—RTP	Dir, Natl Ctr Environ Assessment.
National Center for Environmental Assessment—Cincinnati	Dir, Natl Ctr for Environmental Assessment.
Natl Center for Environmental Res & Quality Assurance	Deputy Dir for Mgmt (NCERQA).
	Peer Review Compliance Executive.
	Dir, Environmental Engineer Research Division.
	Associate Director for Science (NCERQA).
	Dir, Natl Ctr for Env Res & Quality Assurance.
Region I—Boston	Regional Counsel.
	Dir, Ofc of Ecosystem Protection.
	Dir, Ofc of Site Remediation Restoration.
	Dir, Ofc of Environmental Stewardship.
	Asst. Regional Administrator.
	Dir, Ofc of Administration & Resources Mgmt.
Region II—New York	Special Assistant to Regional Administrative.
	Director, Environmental Services Division.
	Director, Water Management Division.
	Asst Regl Admr for Policy and Management.
	Dir, Air & Waste Management Division.
	Regional Counsel.
	Dir, Office of Emergency & Remedial Response.
	Dir, Div of Environmental Plnng & Protection.
	Dir, Div of Enforcement & Compliance Asst.
	Dir, Div of Environmental Science & Assessment.
Region III—Philadelphia	Director, Water Management Division.
	Regional Counsel.
	Director, Hazardous Waste Mgmt Div.
	Asst Reg Admin for Policy & Management.
	Dir, Air Management Division.
	Dir, Chesapeake Bay Program Office.
Region IV—Atlanta	Dir, Water Management Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Region V—Chicago	Asst Regional Admin for Policy and Mgmt. Regional Counsel. Director, Waste Management Division. Director, Air Management Division Director, Environmental Services Division. Director, Water Management Division. Director, Resources Management.
Region VI—Dallas	Regional Counsel. Dir, Waste Pesticides & Toxics Division. Dir, Great Lakes Natl Prog Ofc. Director, Superfund Division. Asst Regional Admr for Management. Regional Counsel. Director, Compliance A & E Division.
Region VII—Kansas City	Dir, Superfund Division. Dir, Water Quality Protection Division. Dir, Multimedia Plann & Permitting. Regional Counsel. Asst Regional Admin for Policy & Management.
Region VIII—Denver	Dir, Superfund Division. Dir, Air RCRA and Toxics Division. Dir, Water Wetlands & Pesticides Division Dir, Ecosystems Protection & Remediation. Dir, Ofc of Pollution Prevention State Tribal. Dir, Ofc of Tech & Mgnt Services.
Region IX—San Francisco	Regional Counsel. Director, Water Management Division. Director, Air Management Division.
Region X—Seattle	Regional Counsel. Asst Regional Admr for Policy & Management. Dir, Strategic Planning & Emerging Issues. Director, Water Division. Regional Counsel. Director, Hazardous Waste Division. Asst Regl Admr for Policy & Management.
Equal Employment Opportunity Commission:	
Office of the Chairman	Inspector General.
Field Management—East	Director, Field Management Programs (East). District Director (Baltimore). Dist Dir (New York). Dist Dir (Atlanta). District Director (Detroit). Dist Dir (Miami). Dist Dir (Memphis). Dist Dir—(Birmingham). Dist Dir—(New Orleans). Dist Dir—(Charlotte). District Director (Cleveland). Dist Dir—(Philadelphia).
Field Management—West	Program Manager. Dir, Field Management Programs (West). Dist Dir (Houston). Dist Dir (San Francisco). Dist Dir (Dallas). Dist Dir (Chicago). Dist Dir—(St. Louis). Dist Dir—(Indianapolis). Program Manager (Los Angeles). Dist Dir—(Denver). Dist Dir—(Phoenix). District Dir—(San Antonio). District Director (Seattle). District Director (Milwaukee).
Federal Communications Commission:	
Office of Inspector General	Inspector General.
Office of the Managing Director	Assoc Managing Director/Human Resources Mgmt.
Office of Engineering & Technology	Chief, Spectrum Engineering Division. Assistant Bureau Chief for Technology. Chief, Authorization and Evaluation Division.
Compliance and Information Bureau	Chief, Enforcement Division.
Common Carrier Bureau	Chief, Competitive Pricing Division. Chief, Accounting & Audits Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Mass Media Bureau	Chief, Audio Services Division.
	Chief, Video Services Division.
	Chf, Enforcement Div.
Federal Emergency Management Agency:	
Office of the Director	Chief of Staff.
Office of Financial Management	Chief, Financial Officer.
	Deputy Chief Financial Officer.
	Senior Procurement Executive.
Office of Human Resources Management	Director, Ofc of Human Resources Management.
Office of Inspector General	Deputy Inspector General.
	Asst Inspector General for Auditing.
	Asst Inspector General for Investigations.
Preparedness, Training and Exercises Directorate	Div Dir, State & Local Preparedness Division.
Response & Recovery Directorate	Div Dir, Human Services Support Division.
	Div Dir, Infrastructure Support Division.
Federal Insurance Administration	Deputy Administrator.
Federal Energy Regulatory Commission (DOE):	
Ofc of Chief Accountant	Deputy Chief Accountant.
	Dir, Division of Audits.
	Director, Division of Accounting Systems.
Ofc of Hydropower Licensing	Dir, Div of Dam Safety & Inspections.
Federal Labor Relations Authority:	
Office of the Chair	Solicitor.
	Chief Counsel.
Office of Member	Chief Counsel.
Office of Member	Chief Counsel.
Federal Service Impasses Panel	Exec Director, FSIP.
Ofc of the Executive Director	Executive Director.
Ofc of the General Counsel	Deputy General Counsel.
	Director of Operations & Resources Management.
Regional Offices	Regional Director—Washington, D.C.
	Regional Director—Boston.
	Regional Director—Atlanta.
	Regional Director—Dallas.
	Regional Director, Chicago, Illinois.
	Regional Director, San Francisco.
	Regional Director, Denver.
Federal Maritime Commission:	
Office of the Secretary	Secretary.
Office of the General Counsel	Dep Gen Cnsl for Reports, Opinions & Decisions.
Office of the Managing Director	Dep Managing Dir.
	Deputy Managing Director.
Bureau of Tariffs, Certification and Licensing	Prog Mgr (Dir, Bur of Tariffs C&L).
Bureau of Administration	Dir, Bureau of Administration.
Bureau of Economics & Agreement Analysis	Prog Manager (Dir, Bur of E&A Analysis).
	Deputy Director, Bureau of Enforcement.
Bureau of Enforcement	Dir, Bureau of Enforcement.
Federal Retirement Thrift Investment Board:	
	Director of Investments.
	Director of Contracts & Administration.
	Director of Automated Systems.
	Director of Benefits and Program Analysis.
	Director of Accounting.
	Director of Communications.
	Deputy General Counsel.
	Associate General Counsel.
Federal Trade Commission:	
Office of the Inspector General	Inspector General.
Ofc of Executive Director	Deputy Exec Dir for Management.
	Chief Information Officer.
General Services Administration:	
Office of Management Services and Human Resources	Director of Human Services.
	Dir of Management Services.
	Dir, Total Quality Management & Training.
Office of Governmentwide Policy	Deputy Associate Admin for Acquisition Policy.
	Director, Governmentwide Information Systems.
	Deputy Assoc Administrator for Real Property.
	Asst Deputy Assoc Adm for Information Technol.
	Senior Executive, Blue Pages Project.
	Director of Intergovermental Solutions.
Office of Inspector General	Deputy Inspector General.
	Asst Inspector Gen for Auditing.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Office of the Chief Financial Officer	Deputy Asst Inspector General for Auditing.
	Counsel to the Inspector General.
	Asst Inspector Gen for Investigations.
	Asst Inspector General for Quality Management.
	Director of Finance.
	Director of Budget.
	Dir of Financial Management Systems.
Public Buildings Service	Assistant Commr for Property Management.
	Assistant Commr for Fed Protective Service.
	Dep Asst Commissioner for Property Management.
	Asst Comm for Portfolio Management.
	Asst Commr for Business Development.
	Assistant Commr for Property Disposal.
	Assistant Commissioner for Property Devel.
	Asst Commissioner for Strategic Innovations.
	Asst Commissioner for Financial & Info System.
Federal Telecommunications Service	Assistant Commissioner for Serv Development.
	Assistant Commissioner for Service Delivery.
	Asst Commr for Info Technology Integration.
	Assistant Commissioner for Regional Services.
	Asst Commissioner for S P & Business Dev.
	Assistant Commr for Network Applications.
	Asst Commissioner for Acquisition.
Office of the Chief Information Officer	Assistant Chief Information Officer.
	Assistant Chief Information Officer.
Federal Supply Service	Asst Commr for Quality and Contract Admn.
	Asst Commissioner for Acquisition.
	Asst Comr for Transportation & Property Mgt.
	Asst Comm for Bus Management & Marketing.
	Asst Comm for Distribution Mgt.
	Dep Asst Commissioner for Acquisition.
	Assistant Commissioner for FSS Info Systems.
New England Region	Asst Reg Admr for Public Bldg Service.
Northeast & Caribbean Region	Asst Reg Admr for Public Blds Service.
	Asst Reg Admr for Federal Supply Service.
Mid-Atlantic Region	Asst Reg Admr for Public Blds Service.
	Asst Regl Admr, Federal Supply Service.
National Capital Region	Assistant Regional Administrator, FTS.
	Assistant Regional Administrator, PBS, NCR.
	Regional Counsel for National Capital Region.
Southeast Sunbelt Region	Asst Reg Admr for Public Blds Service.
	Assistant Reg Admin for Inform Res Mgmt—R–4.
	Asst Reg Admr for Federal Supply & Services.
Great Lakes Region	Asst Reg Admr for Public Blds Service.
The Heartland Region	Asst Reg Admr for Public Blds Service.
Greater Southwest Region	Asst Reg Admr for Public Blds Service.
	Asst Regional Admin for Info Tech Service.
	Asst Reg Admr for Federal Supply Service.
Rocky Mountain Region	Asst Reg Admr for Public Blds Service.
Pacific Rim Region	Asst Regl Admr for Public Buildings Services.
	Asst Reg Admr for Federal Supply Service.
Northwest/Arctic Region	Asst Regional Administrator, PBS Region 10.
Department of Health and Human Services:	
Office of the Deputy Secretary	Regl Health Administrator.
ODAS for Budget	Dir, Division of OS Budget Analysis.
	Dir, Div of Integrity & Organ Review.
ODAS for Finance	Dep Asst Sec, Finance.
	Dir, Office of Financial Policy.
	Dir, Ofc of Financial Operations.
ODAS for Grants & Acquisition Management	Dep Asst Secy, OGAM.
OAS for Planning and Evaluation	Dep to Deputy Asst Secry for Plann & Evaluat.
OAS for Public Health and Science	Dir, Div of Research Investigations.
	Dir, Ofc of HIV/AIDS Policy.
	Dep Dir, Ofc of Management.
	Reg Health Administrator.
	Director, Office of Research Integrity.
Associate General Counsel Divisions	Assoc Gen Coun, Business & Adm Law Division.
	Dep Assoc Gen Counl, Bus & Adm Law Div.
Office of the Inspector General	Principal Dep Inspector General.
	Deputy Inspector General for Mgmt & Policy.
	DEO Inspector General for Legal Affairs.
ODIG for Investigations	Dep Insp Gen for Investigations.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
ODIG for Audit Services	Asst Insp General for Criminal Investigations. Asst Insp Gen for Civil & Adm Remedies. Asst Insp Gen for Investigation P & O. Dep Insp General for Enforcement & Compliance. Dep Inspector General for Audit Services. Asst Insp Gen for Adm of C/F & Agin Audits. Asst Inspector Gen for Health Care Fin Audits. Asst Inspector Gen for Audit Pol & Oversight. Asst Insp Gen for Public Health Serv Audits.
ODIG for Evaluation & Inspections	Dep Insp Gen for Evaluation & Inspections. Asst Insp Gen for Analysis & Inspections.
Program Support Center	Dir, Program Support Center.
Office of Financial Management Service	Director, Financial Management Service.
Office of Program Support	Dir Ofc of Financial Management.
Health Care Financing Administration	Director, Ofc of Internal Customer Support.
Office of Associate Admr for Policy	Dir, Ofc of the Actuary (Chief Actuary).
Office Assoc Admr for Operations & Res Management	Director, Ofc of Medicare & Medicaid Cost Est. Dir, Bureau of Data Management and Strategy. Dep Dir, Bureau of Data Management & Strategy. Director, Office of Financial & Human Res. Director, Office of Financial Management. Deputy Director, Ofc of Financial Management. Dir Ofc of Benefits Integrity.
Center for Substance Abuse Prevention	Dir, Div of Comm Prevention & Training. Director, Division of Workplace Programs. Dir, Div of Demonstration for High Risk Pop. Dir, Div of State & Community Systems Dev.
Center for Mental Health Services	Chief, Retrovirus Branch. Dir, Div of Stste & Community Systems Develop.
Center for Substance Abuse Treatment	Dir, Ofc of Scientific Analysis & Evaluation.
Centers for Disease Control & Prevention	Director, Financial Management Office. Senior Advisor for Minority Health Education.
Center for Infectious Diseases	Asst Dir for Laboratory Science.
Nat'l Institute for Occupational Safety & Health	Assistant Director for Science. Executive Officer, NIOSH.
Center for Env Health & Injury Control	Dir Div of Enviromental Health Lab Sciences.
Center for Chronic Disease Prevention & Hlth Promotion	Director, Office on Smoking and Health.
Center for Prevention Services	Dir, Div of STD/HIV Prevention.
National Center for Health Statistics	Assoc Dir for Analysis & Epidemiology. Associate Dir, Ofc of P & E Programs. Assoc Dir for Research & Methodology. Assoc Dir Ofc of Vital & Health Stats Syst. Assoc Dir for Internal Statistics.
Food and Drug Administration	Senior Advisor. Deputy for Scientific & Medical Affairs. Deputy Chief Counsel for Program Review.
Center for Biological Evaluation & Research	Dep Dir, Ofc of Biological Product Review. Dir, Div of Biostatistics & Epidememiology. Dir, Ofc of Compliance. Dir, Ofc of Therapeutics Research & Review. Dir, Ofc of Blood Research & Review.
Center for Drug Evaluation & Research	Dir, Center for Drug Evaluation & Research. Director, Office of Management. Assoc Dir for Med Pol Dir Ofc of Drug Eval I. Dir, Div of Neuropharmacological Drug Prod. Dir, Div of Medical Imaging S&D Products. Director, Office of Drug Standards. Director, Office of Generic Drugs. Dep Dir, Office of Generic Drugs. Associate Director for Drug Monograph. Dir, Ofc of Over-the-Counter Drug Evaluation. Dir, Office of Epidemiology & Biostatistics. Dep Dir, Ofc of Epidemiology & Biostatistics. Dir, Div of Biometrics. Dep Dir, Office of Drug Evaluation II. Dir, Div of Anti-Infective Drug Products. Director, Office of Compliance. Dir, Div of Scientific Investigations. Director, Division of Biopharmacentics. Dep Dir, Office of Research Resources. Dep Ctr for Pharmaceutical Science. Dir, Ofc of Drug Evaluation V.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Center for Food Safety & Applied Nutrition	Director, Office of Seafood.
	Director, Office of Toxicological Sciences.
	Associate Dir for Laboratory Investigations.
	Dir, Division of Chemical Technology.
	Dir, Ofc of Premarket Approval.
	Dir, Ofc of Field Programs.
	Dir, Ofc of Plant & Dairy Foods & Beverages.
	Director, Office of Food Labeling.
	Dir, Ofc of Pol, P&S Initiatives.
Center for Devices & Radiological Health	Dir, Office of Standards & Regulations.
	Dir, Office of Device Evaluation.
	Dir, Div of Surgical & Rehabilitation Devices.
	Dir, Division of Cardiovascular Devices.
	Dir, Div of General & Restorative Devices.
	Dir, Office of Compliance.
	Dep Dir, Ofc of Compliance & Surveillance.
	Dir, Office of Science and Technology.
	Dep Dir, Ofc of Science & Technology.
	Dir, Div of Reproductive Abdominal, Ear, Throat.
	Dir, Ofc of Sys & Management.
Center for Veterinary Medicine	Director, Office of Science.
	Director, Office of Surveillance.
	Dir, Ofc of New Animal Drug Evaluation.
	Dep Dir for HFSCS.
	Dep Dir, Therapeutic & Production Drug Review.
	Dir, Div of Biometrics & Production Drugs.
Office of Regulatory Affairs	Assoc Comr for Regulatory Affairs.
	Dep Assoc Comr for Regulatory Affairs.
	Regl Food & Drug Director, NE Region.
	Regl Food & Drug Director, Mid-Atlantic Region.
	Regl Food & Drug Director, Southeast Region.
	Regl Food & Drug Director, Midwest Region.
	Regl Food & Drug Director, Southwest Region.
	Regl Food & Drug Director, Pacific Region.
	Dir, Ofc of Criminal Investigations.
National Center for Toxiocological Research	Director, Div of Biometry.
Office of Health Affairs	Director, Med Staff, Ofc of Health Affairs.
Office of Management and Systems	Director, Office of Financial Mgmt.
Office of Management	Dir, Parklawn Computer Center.
Bureau of Health Resources Development	Dep Dir, Bureau of Health Resources Dev.
Office of the Director	Director, Div of Financial Management.
	Director, Division of Contracts & Grants.
	Dir, Ofc of Protection From Research Risk.
	Associate Director for Extramural Affairs.
	Associate Director for Disease Prevention.
	Dir, Ofc of Medical Applications of Research.
	Assoc Dir for Information Resource Mgmt.
	Director, Acquisitions Management.
	Associate Director for Administration.
Nat'l Heart, Lung, & Blood Institute	Dir, Div of Lung Diseases.
	Dir, Div of Blood Diseases & Resources.
	Dep Director, Div of Extramural Affairs.
	Director, Division of Extramural Affairs.
	Assoc Dir for International Programs.
	Dir, Ofc of Biostatics Research.
	Deputy Dir, Division of Lung Diseases.
	Dep Dir, Div of Heart Vascular Diseases.
	Dep Dir, Div of Epidem & Clinical Application.
Intramural Research	Chf, Lab of Biochemical Genetics.
	Chf, Lab of Biochemistry.
	Chief, Molecular Hematology Branch.
	Chief Lab of Biophysical Chemistry.
	Chief, Laboratory of Chemical Pharamacology.
	Sr Res Chemist, Laboratory of Cell Biology.
	Chief, Macromolecules Section.
	Chf, Intermediary M & B Section.
	Chf, Lab of Kidney & Electrolyte Metabolism.
	Chief, Lab of Cardiac Energetics.
	Chief, Metabolic Regulation Section.
National Cancer Institute	Assoc Dir for Intramural Management.
	Assoc Director for Extramural Management.
Division of Cancer Biology, Diagnosis and Centers	Dir, Div of Cancer Biology Diagnosis & Ctrs.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Division of Cancer Etiology	Dep Dir, Div of Cancer Biology Diag & Centers. Chief, Lab of Cell Biol, Immun Prog, IRP. Chf, Microbial G & B Section, Lab of Biochem. Chief, Lab of Biochem Intramural Res Prog. Assoc Dir, Extramural Research Program. Chief, Dermatology Br, Intramural Res Prog. Chief, Cell Mediated Immunity Section. Chief, Lab of Tumor & Biol Immunology, IRP. Assoc Dir, Ctrs Training & Resources Prog. Chief, Laboratory of Molecular Biology. Dir Div of Cancer Etiology. Chief, Lab of Biology. Chief, Clinical Epidemiology Branch. Chief, Laboratory of Molecular Carcinogenesis. Chf, Lab of Experimental Pathology. Head, Math Statistics & Applied Mathematics S. Head, in Vitro Carcinogenesis Section. Assoc Dir for Chem & Physical Carcinogenesis.
Division of Cancer Prevention & Control	Dep Dir, Div of Cancer Prevention & Control. Assoc Dir, Cancer Prevention Research Prog. Associate Dir, Surveillance Program, DCPC. Assoc Dir, Early D&C Oncology Program.
Division of Extramural Activities	Dir, Div of Extramural Activities. Deputy Dir, Div of Extramural Activities.
Division of Cancer Treatment	Assoc Dir, Developmental Therapeutics Prog. Chf—Radiation Oncology Br. Assoc Dir, Radiation Research Program.
Natl Institute of Diabetes & Digestive & Kidney Dis	Dir, Div Kidney Urologic & Hematlogic Diseases. Dir, Division of Extramural Activities. Assoc Dir, Disease Prevention Technol Transfer.
Intramural Research	Chf, Lab of Molecular & Cellular Biology. Dep Dir for Management & Operations. Chief, Section on Biochemical Mechanisms. Chf, Sect on Biochemistry. Chf, Sect on Metabolic Enzymes. Chf, Sect on Physical Chemistry. Chief, Section on Molecular Structure. Chief, Theoretical Biophysics Section. Chief, Laboratory of Bio-Organic Chemistry. Chief, Oxidation Mechanisms Section L B C. Chief, Laboratory of Biochemistry & Metabolism. Clinical Dir & Chief, Kidney Disease Section. Chief, Section on Molecular Biophysics. Chf, Sec Carbohydrates Lab of Chemistry/NIDDK. Chief, Laboratory of Neuroscience, NIDDK. Chief, Epidemiology & Clinical Research Branch. Chf, Laboratory of Medicinal Chemistry. Chief, Morphogenesis Section.
Natl Inst of Arthr & Musculoskeletal & Skin Diseases	Chf, Lab of Physical Biology. Director, Extramural Program. Deputy Dir. Chief, Laboratory of Skin Biology.
National Library of Medicine	Dep Dir, Natl Lib of Medicine. Dep Dir for Res and Education. Associate Director for Library Operations. Assoc Dir for Extramural Programs. Assoc Dir, Specialized Info Services. Dep Dir, Lister Hill Natl Ctr for Biomed Comms. Director, Information Systems. Dir, Natl Ctr for Biotech Info. Assoc Dir for Health & Info Prog Development.
Natl Inst of Allergy & Infectious Diseases	Dir, Div of Allergy/Immunology/Transplantion. Chf, Lab of Parasitic Diseases. Dir, Div of Microbiology/Infectious Diseases. Chief, Lab of Immunogenetics. Dir, Div of Extramural Activities. Ch. Lab of Microbial Structure and Function. Chief, Lab of Molecular Microbiology. Dir, Div Acquired Immunodeficiency Syndrome. Deputy Dir, Division of Extramural Activities. Chief, Biological Resources Branch. Head, Lymphocyte Biology Section. Chief, Laboratory of Infectious Diseases. Dep Dir, Div of Acquired Immunodeficiency.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Natl Inst on Aging	Head, Epidemiology Section. Chief, Laboratory of Malaria Research. Dir, Div of Intramural Research. Dep Chief, Lab of Imm & Head Lymp Biol Section. Scientific Director Gerontology Rsch Cntr. Clin Director and Chief Clin Physiology Br. Chief, Lab of Molecular Aging. Chief, Lab of Cellular & Molecular Biology. Assoc Dir, Biology of Aging Program. Assoc Dir, Office of Extramural Affairs. Assoc Dir, Epidemi, Demo, & Biometry Program. Assoc Dir, Ofc. of Plnng, A & I Activities. Assoc Dir, Neurosci & Neuropsych of Aging Prog.
Natl Inst of Child Health & Human Development	Chief, Laboratory of Molecular Genetics. Chf, Endocrinology & Reproduction Research Br. Director, Ctr Forres for Mothers & Children. Director, Cntr for Population Research. Chief, Section on Growth Factors. Assoc Dir for Prevention Research. Chief, Laboratory of Mammalian Genes & Develop. Chief, Section on Molecular Endocrinology. Chief, Section Neuroendocrinology. Chief, Section on Microbial Genetics. Chief, Laboratory of Comparative Ethology. Associate Director for Administration.
Natl Inst of Dental Research	Dir, Natl Center for Medical Rehab Research. Chief, Laboratory of Immunology. Dir, Extramural Program. Chief, Bone Research Branch. Chief, Epidemiology Branch. Chief Neurobiology & Anesthesiology Branch.
Natl Inst of Environmental Health Sciences	Chf Lab of Pulmonary Pathobiology. Head Mutagenesis Section. Head Mammalian Mutagenesis Section. Dir, Div of Biometry and Risk Assessment. Senior Scientific Advisor. Dir, Div of Toxicology Research & Testing. Associate Director for Management. Chief Lab of Molecular & Integrative Neurosci. Chief Lab of Molecular Carcinogenesis. Head Statistics Section.
Natl Inst of General Medical Sciences	Dir, Natl Inst of Environmental Health Science. Dir, Environmental Toxicology Program. Dep Dir, Natl Institute of General Med Sci. Dir, Genetics Program. Assoc Dir for Program Activities. Dir, Pharmacology & Biorelated Chemistry Pr Br. Dir, Bio Phys Sciences Program Branch. Dir, Minority Opportunities in Res Prog Br.
Natl Inst of Neurological Disorders and Stroke	Dir, Div of Fundamental Neurosciences. Director, Division of Stroke & Trauma. Associate Director for Administration. Dir, Basic Neurosci Prog/Chf/Lab of Neurochem.
Intramural Research	Chf, Lab of Molecular & Cellular Neurobiology. Chief, Lab of Central Nervous System Studies. Chf, Dev & Metabolic Neurology Branch. Deputy Chief, Lab of Central Nervous Sys Stud. HD Cellular Neuropathology Section. Chief, Neuroimaging Branch. Chf, Lab of Neuropathology & Neuroanatomical S. Chief, Biometry & Field Studies Branch. Chief, Labortory of Neurobiology. Chief, Laboratory of Neura Control. Chief, Brain Structural Plaicity Section. Chf, Lab of Viral & Molecular Pathogenesis. Chief, Stroke Branch.
Natl Eye Institute	Chief Laboratory of Retinal Cell & Mol Biolog. Chief, Lab of Molecular & Dev. Biology. Chief, Laboratory of Sensorimotor Research. Assoc Dir, Biometry & Epidemiology Prog.
Natl Inst on Deafness & Other Communication Disorders	Director, Division of Human Communication. Dir. Div of Intra Res, NID & Other Comm Disor.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
NIH Clinical Center	Dir, Div of Extram Act, NID & Other Comm Diso. Dep Dir, Natl Inst on D & O Communication Dis. Chief Laboratory of Cellular Biology. Assoc Dir for Clinical Care/Dir, Clinical Ctr. Associate Director for Planning. Assoc Chf, Position Emission T & R.
Division of Computer Research & Tech	Deputy Director for Management and Operations. Chief, Computer Center Branch. Chief, Physical Sciences Lab. Deputy Director. Assoc Dir, Ofc of Computing Resources Services.
John E. Fogarty Intl Center	Assoc Dir for Intl Advanced Studies.
National Center for Research Resources	Dir, Natl Center for Research Resources. Dir, Gen Clinical Res Ctr for Res Resources. Dir, Biomedical Engr & Instrumentation Branch. Dep Dir, Natl Center for Research Resources.
Division of Research Grants	Associate Director for Referral and Review. Assoc Dir for Statistics & Analysis.
National Center for Nursing Research	Director, National Cntr for Nursing Research.
National Center for Human Genome Research	Deputy Director. Dir Div of Intramural Res Natl Ctr H G R. Chief Diag Devel Br Natl Ctr Human Gen Res. Chf, Lab of Genetic Dis Res Natl Ctr for Hgr.
National Institute of Drug Abuse	Assoc Dir for Planning & Resources Management. Dir, Office of Extramural Program Review. Director Division of Clinical Research. Dir, Medications Development Division. Director, Addiction Research Center. Chief, Neuroscience Research Branch.
National Institute of Mental Health	Dep Dir, National Institute of Mental Health Associate Director for Special Populations. Associate Director for Prevention. Exec Ofcr, Natl Institute of Mental Health. Dir. Ofc of Legislative Analysis & Coord. Dir. Div of Neuroscience & Behavioral Sci. Director, Division of Extramural Activities. Dir, Div of Intramural Res Programs. Dep Dir Div of Intramural Res Programs. Chief, Neuropsychiatry Branch. Chief, Child Psychiatry Branch. Chief, Biological Psychiatry Branch. Chief, Laboratory of Clinical Science. Chief, Section of Histopharmacology.
National Institute on Alcohol Abuse & Alcoholism	Dir. Natl Institute on Alcohol A & A Director, Division of Basic Research. Dir. Div of Biometry & Epidemiology. Chief Laboratory of Clinical Studies.
Agency for Health Care Policy & Research	Dir Ctr for Outcomes & Effectiveness Research. Dir. Ctr for Gen Health Serv Intramural Res. Dir, Ctr Gen Health Svce Extramural Research. Dir, Ofc of Sci & Data Dev/Agcy for HCP & Res.
Department of Housing and Urban Development:	
Office of the General Counsel	Assoc Gen Coun for Program Enforcement.
Office of the Inspector General	Deputy Inspector General. Asst Inspector General for Investigations. Assistant Inspector General for Audit. Asst Inspector General for Management & Pol. Deputy Asst 1nspector Gen for Audit Operation. Dep Asst Inspector Gen for P & O. Dep Asst Inspector General for Investigation. Counsel to the Inspector General.
Office of the Chief Financial Officer	Assoc Dep Chief Financial Officer for Account. Dep Chief Financial Officer for Accounting. Dep Chief Financial Officer for Finance.
Assistant Secretary for Administration	Deputy Director, Office of Human Resources. Dir. Ofc of Budget. Dep Dir, Ofc of Budget. Director Ofc of Procurements & Contracts. Special Advisor/Comptroller.
Assistant Secy for Housing	Director Office of Financial Services. Dir Ofc of Multifamily Asset Management Dispo.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
	Housing/Fed Housing Adm Comptroller.
	Dir of Multifamily Housing Development.
	Housing-FHA Deputy Comptroller.
	Program Systems Project Officer.
Asst Secy for Fair Housing and Equal Opportunity	Director, Office of Investigations.
	Dir, Ofc of Fair Housing I & V Programs.
Office of Departmental Equal Opportunity	Dep Dir Ofc of Equal Employment Opportunity.
	Dir, Ofc of Departmental Equal Employ Opport.
Asst Secy for Community Planning and Development	Director, Office of Economic Development.
	Director, Ofc of Community Viability.
Government National Mortgage Association	Vice President for Finance.
	Vice President, Ofc of Pol, P & R Management.
	Vice President Ofc of Customer Service.
	VP Office of Multifamily Programs.
Asst Secy for Public and Indian Housing	Gen Dep Asst Secy for Public & Indian Housing.
	Public & Indian Housing-Comptroller.
	Dep Asst Secry for Public & Asst Housing Oper.
	Deputy Public & Indian Housing Comptroller.
	Dep Dir to Dep Asst for Pub Asst Housing.
	Dir, Ofc of Public Housing Partnership.
	Director Office of Troubled Agency Recovery.
Department of the Interior:	
Office of the Inspector General	DAssistant Inspector General for Auditing.
	Asst Inspector General for Investigations.
	General Counsel.
Office of the Solicitor	Deputy Asst Inspector General for Audits.
	Deputy Assoc Solicitor, General Law.
	Asst Solicitor Bureau of Parks and Recreation.
	Deputy Associate Solicitor—Mineral Resources.
	Associate Solicitor for Administration.
	Dep Associate Solicitor—Energy & Resources.
	Dep Associate Solicitor—Indian Affairs.
Assistant Secretary—Policy, Management and Budget	Asst Dir for Economics.
	Manager, Science and Engineering.
	Natural Resource Damage Assessment Prog Mgr.
	Dir, Ofc of Fin Mgmt & Dep Chf Fin Officer.
	Chief Div of Budget & Program Review.
	Chief Div of Budget Admin.
	Deputy Agency Ethics Staff Officer.
National Park Service	Park Manager—Grand Canyon.
Field Offices	Park Manager—Yosemite (Superintendent).
	Park Manager Everglades.
	Park Manager—Yellowstone (Superintendent).
	Asst Dir, Design & Construction (Mgr. DSC).
	Park Manager—Independence Natl Historic Park.
U.S. Fish and Wildlife Service	Deputy Regl Director—Atlanta.
Field Offices	Executive Dir Regional Ecosystem Office.
Field Offices	Research Director.
	Director, Technical Services Center.
	Spec Asst to the Dir, Reclamation Serv Center.
	Project Manager/Arizona Projects Office.
	Director, Management Services Office.
National Mapping Division	Chief, National Mapping Division.
	Assoc Chief Programs & Finances.
	Associate Chief for Operations.
Field Offices	Chief, Eros Data Center.
	Chief Mid-Continent Mapping Center.
	Chief Rocky Mountain Mapping Center.
	Chief Mapping Applications.
Water Resources Division	Chief Hydrologist.
	Assoc Chief Hydrologist.
	Asst Chf Hydrologist for Operations.
	Chief, Natl Water Quality Assessment (NAWQA).
	Asst Chief Hydrologist for Tech Support.
	Asst Chief Hydrologist for Water Information.
	Chf, Ofc of Hydrologic Research.
	Chf, National Water Data Exchange Program.
Field Offices	Regional Hydrologist.
	Regl Hydrologist Southeastern Region.
	Regional Hydrologist, Western Region.
	Regional Hydrologist, Northeastern Region.
Geologic Division	Chief Geologist.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
	Chief, Ofc of Scientific Publications.
	Assoc Chf Geologist.
	Chf Ofc of Mineral Resources.
	Assistant Chief Geologist for Programs.
Biological Resources Division	Dep Asst Dir—Pol, Budget, & Administration.
	Asst Dir for Information & Technology Service.
Field Offices	Spec Asst to the Reg Dir Research & Develop.
	Assistant Director for Inventory & Monitoring.
Bureau of Land Management	Director National IRM/Center.
	International Tech Asst Program Manager.
	Helium Program Administrator.
Office of Surface Mining	Regional Director.
	Regional Director.
	Regional Director.
Minerals Management Service	Associate Dir for Policy and Mgmt Improvement.
	Chief, Leasing Management Division.
	Assistant Assoc Dir for Offshore Minerals Mgt.
	Special Assistant to the Director
Field Offices	Regional Director, Gulf of Mexico OCS Region.
	Regional Manager, Alaska OCS Region.
	Regional Manager, Pacific OCS Region.
	Dep Associate Dir for Offshore Operations.
	Dep Assoc Dir for Audit.
	Dep Assoc Dir for Valuation & Operations.
	Deputy Assoc Director for Administration.
Bureau of Indian Affairs	Dep to the Dir Indian Education Programs.
Field Offices	Special Assistant (Special Projects Officer).
International Development Cooperation Agency:	
Office of the General Counsel	Deputy General Counsel.
	Asst General Counsel for Ethics & Adm.
Office of the Inspector General	Asst Inspector General for Security.
	Asst Inspector General for Investigations.
	Counsel to the Inspector General.
	Deputy Inspector General.
Office of Equal Opportunity Programs	Dir Ofc of Equal Opportunity Programs.
Bureau for Global Programs, Field Support and Research	Assoc Asst Admr Center for Economic Growth.
	Senior Deputy Assistant Administrator.
	Dep Asst Admr Ctr for Pop, H/N BFGP, FS/RES.
	Associate Assistant Administrator.
Bureau for Europe and the New Independent States	Deputy Asst Administrator.
Bureau for Management	Deputy Asst Admr Bureau for Management.
	Chf Fin Ofcr, Office of Financial Management.
	Dep Director, Office of Financial Management.
	Dir, Office of Information Resource Management.
	Deputy Director Ofc of Procurement.
	Deputy Director, Ofc of Procurement.
	Director, Office of Financial Mgmt.
	Deputy Director, Office of Human Resources.
	Dir, Ofc of Admin Services.
Department of Justice:	
Office of the Attorney General	Counsel on Professional Responsibility.
	Dep Counsel on Professional Responsibility.
Ofc of the Legal Counsel	Special Counsel.
	Special Counsel.
Office of the Inspector General	Deputy Inspector General.
	Asst Inspector General for Inspections.
	Assistant Inspector General for Audit.
	Assistant Inspector General for Investigation.
	Asst Inspector Gen for Management & Planning.
	General Counsel.
	Dir, Special Investigational Review.
Office of the Deputy Attorney General	Dir, Exec Ofc for Organ Crime Drug Enfor Task
	Director, Office of Legal Education.
	Deputy Director, Financial Management Staff.
	Correctional Prog Ofcr/Sr Dep Asst Dir Prd.
Justice Management Division	Asst Attorney General for Administration
	Deputy Asst Attorney General.
	Dep Asst Attorney Gen Human Res/Admin.
	Dir, Security & Emergency Plnng Staff.
	Dir, Library Staff.
	Dir, Facilities and Administrative SVC Staff.
	Associate Asst Attorney General Legal Counsel.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
	Dir, Telecommunications Services Staff.
	Associate Assistant Attorney General.
	Director, Management and Planning Staff.
	Director, Budget Staff.
	Senior Management Counsel.
	Procurement Executive.
	Senior Policy Advisor.
	Dep Asst Attorney General, Info Res Mgt.
	Dir, Procurement Services Staff.
	Dir, Systems Technology Staff.
	General Counsel.
	Dir, Equal Employment Opportunity Staff.
	Senior Counsel.
Office of the Controller	Dep Asst Attorney General; Controller
	Dir, Finance Staff.
	Dep Asst Atty Gen for Debt Collection.
	Asst Dir, Management Planning Staff.
Office of Human Resources and Administration	Director, Personnel Staff
	Director, Ofc of Atty Pers Mgmt
Office of Info & Admin Services	Director, Computer Services Staff
	Director, Information Mgmt & Security Staff.
	Dir, Legal and Informations Systems Staff.
Executive Office for Immigration Review	Chief Immigration Judge.
	Assistant to the Director.
	Associate Director.
	Chairman, Board of Immigration Appeals.
	General Counsel.
	Chief Admin Hearing Officer.
Antitrust Division	Senior Litigator.
	Executive Officer.
	Chief, Computers and Finance Section.
	Senior Litigator.
Office of Litigation	Dep Dir of Operations.
	Chief, Competition Policy Section.
Civil Division	Director of Management Programs.
	Deputy Director, Commercial Litigation Branch.
	Appellate Litigation Counsel.
Commercial Litigation Branch	Spec Litigation Counsel (Foreign Litigation).
	Spes Litigation Coun, C/L Branch.
	Deputy Branch Director/Commercial Litigation.
	Deputy Branch Dir, Civil Frauds.
Federal Programs Branch	Special Litigation Counsel (Federal Programs).
	Deputy Branch Director.
Torts Branch	Spec Litigation Counsel.
	Spec Litigation Counsel.
	Deputy Branch Director.
	Deputy Branch Director.
	Deputy Branch Director.
	Director, Office of Consumer Litigation.
Civil Rights Division	Special Litigation Counsel.
Environment and Natural Resources Division	Executive Officer.
Office of Environmental Resources	Senior Litigation Coun, Attorney-Examiner.
	Dep Chf, Environmental Enforcement Section.
	Principal Deputy Chief Environ Enforce Sec.
Tax Division	Chief, Civil Trial Section, Southwestern Region.
	Executive Officer.
Deputy Assistant Attorney General—I	Special Litigation Counsel.
	Sr Trial Attorney.
	Special Litigation Counsel.
	Spec Litigation Counsel.
Immigration and Naturalization Service	Asst Commissioner for Detention & Deportation.
	Asst Commissioner for Adjudication & Natural.
	Assistant Commissioner for Border Patrol.
	Asst Comm for Employer & Labor Relations.
	Director of Internal Audit.
	Director of Security.
	Asst Comr, Budget.
	Regional Director, Central Region.
	Asst Commissioner, Administration.
	Chief Patrol Agent.
	District Director.
	Chief Patrol Agent

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
	District Dir, Western Reg, Phoenix District
	Asst Commissioner Data Systems.
Associate Commissioner for Examinations	Asst Comm for Inspections.
Associate Commissioner for Enforcement	Assistant Commissioner for Investigations.
Executive Associate Commissioner for Management	Assistant Comr, Human Resources & Development.
	Asst Commr for Personnel & Training.
Regional Offices—INS	District Director, Newark District.
	District Director, Newark, District.
Community Relations Service	Regl Director, Region IX, San Francisco.
Ofc of the Associate Attorney General	Deputy Associate Attorney General.
	Executive Officer (Principal Assoc Director).
Executive Ofc for U.S. Attorneys	Dir Ofc of Mgnt Information Systems Support.
	Dir, Office of Administration & Review.
	Dep Dir for Operations.
Criminal Division	Deputy Chief, Fraud Section.
	Dir, Ofc of Asset Forfeiture.
	Special Coun for International Programs.
	Senior Counsel.
	Senior Appelleate Counsel.
	Senior Counsel.
	Executive Officer.
	Dir, Intl Criminal Invest Train Asst Program.
	Chief, General Litigation & Legal Advice Sect.
	Senior Counsel for Natl Security Matters.
	Dep Chief Terrorism & Violent Crime Section.
Ofc of Senior Counsels	Sr Counsel for Litigation.
Ofc of Deputy Asst Attorney General I	Counsel to the Office Fraud Section.
Ofc of Deputy Asst Attorney General II	Chf, Public Integrity Section.
	Deputy Chief, Public Integrity Section.
Ofc of Deputy Asst Attorney General III	Dep CHF, Gen Litigation & Legal Advice Sect.
Federal Bureau of Prisons	Asst Dir for Planning and Development.
	General Counsel.
	Assoc Commr, Fed Prisons Industries, UNICOR.
	Dep Assoc Commr, Fed Prison Industries.
	Deputy Associate Commissioner.
	Warden, Ft Worth, Texas.
	Warden, Marianna, FL.
	Asst Director for Human Res Mgmt.
	Asst Director for Program Rev.
	(Warden) Miami, FL.
	Senior Deputy Asst, Dir Health Services Div.
	Assistant Dir, Program Review Division.
	Sr Dep Asst Dir, Federal Prison Industries.
	Regional Director Mid Atlantic Division.
	Correctional Institution Administrator.
	Asst Dir., Community Corrections & Detention.
	Asst Dir, Info, Pol, & Public Afrs Div.
	Warden, Talladega, AL.
	CIA (Warden) FCI, Texarkana, Texas.
	Sen Dep Asst Dir, Health Services Division.
	Correctional Institution Admin (Warden).
	Sr Dep Regl Director, Mid-Atlantic Region.
	Gen Counsel, Fed Prison Industries (UNICOR).
	Warden, Allenwood, Pennsylvania.
	Sr Mgt Counsel, (Federal Bureau of Prisons).
	(Warden) Fort Dix, NJ.
	(Warden) FCC, Floren, CO.
	Correctional Inst Admr (ARD) Scr, Dallas, TX.
	Corrl Inst Admr (SDAD), CC & D Div, Wash, DC.
	Warden, USP, Florence, CO.
	CIA (Warden) Fed Medical Center Carswell, TX.
	CIA (Warden), U.S. Penitentiary, Allenwood, PA.
	(Warden), FTC, Oklahoma, OK.
	Senior Dep Asst Dir (Administration).
	CIA (Warden) Fed Cortl Inst/El Reno, OK.
	CIA (Warden) Fed Medical Center/Miami, FL.
	Correctional Prog Offcr/Sr Dep Regl Dir.
	Correctional Inst Admr (Warden) Fci.
	Correctional Program Officer.
	Correctional Prog Officer (WFCI, ESTILL, SC).
	Correctional Prog Officer (Warden FED CI, SC).
Office of Correctional Programs	Asst Dir Correctional Programs Div.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Northeast Region	Regional Director, Northeast Region.
	Warden, Lewisburg, PA.
	Warden Danbury, Conn.
	Warden, McKean, PA.
	Senior Deputy Regional Director.
	(Warden), Oakdale, LA.
	Correctional Institution Admr (Warden).
	Correctional Institution Admr (Warden, USP).
Southeast Region	Regional Director, Southeast Region.
	Warden, Atlanta.
	Warden, Lexington Kentucky.
	Warden, Butner, North Carolina.
North Central Region	Regional Director, North Central Region.
	Warden, Leavenworth Kansas.
	Warden, Springfield, MO.
	Warden, Marion, IL.
	Warden, Terre Haute, IN.
	Correctional Institution Admr:
	Warden, Fed Correctional Institution.
	Correctional Institution Admr (Warden).
South Central Region	Regional Director, South Central Region.
	Warden, El Reno, Okla.
	Warden, Memphis TN.
Western Region	Regional Director, Western Region.
	Warden Terminal Island, CA.
	Warden, Lompoc, CA.
	Warden, Los Angeles, CA.
	Warden, Phoenix, AZ.
	Warden Federal Correctional Institution.
	Correctional Institution Admr (Warden).
Ofc of Justice Programs	Senior Counsel.
National Institute of Justice	Asst Dir, Ofc of Dev Testing & Dissemination.
Bureau of Justice Statistics	Deputy Dir, Bureau of Justice Statistics.
	Princl Dep Dir, Bureau of Justice Statistics.
U.S. Marshals Service	Associate Director of Administration.
	Assistant Director for Inspections.
	Comptroller.
	Assistant Director for Human Resources.
	Special Projects Officer.
	Associate Director for Operations Support.
	Associate Director for Administrative Serv.
	Assoc Director for Operational Support.
	Senior Management Advisor.
	Assistant Director for Prisoner Services.
	Assistant Director for Business Services.
	Assistant Director for Executive Service.
	Assistant Director for Investigative Servs.
	Assistant Director for Judicial Security.
	Asst Director for Organizational Development.
	Assistant Director for Training.
Department of Labor	
Ofc of the Inspector General	Deputy Inspector General
	Asst Inspector General for Investigations.
	Asst Inspector Gen for Audit.
	Deputy Assistant Inspector General for Audit.
	Asst Inspector Gen for Labor Racketeering.
	Asst Inspector Gen for Mgmt & Counsel.
Office of the Solicitor	Deputy Solicitor (Regional Operations).
	Associate Solicitor for Labor-Management Laws.
	Assoc Solicitor for Plan Benefits Security.
	Assoc Solicitor for Civil Rights.
	Assoc Solicitor for Occupational Safety & Hlt.
	Assoc Solicitor for Mine Safety & Health.
	Assoc Solicitor for Fair Labor Standards.
	Assoc Solicitor for Employee Benefits.
	Assoc Sol for Spec Appel & Sup Court Lit.
	Dep Solicitor for Planning and Coordination.
	Associate Solicitor for Black Lung Benefits.
Regional Solicitors	Regional Solicitor.
	Regional Solicitor Region IV—Atlanta.
	Regl Solicitor Boston.
	Regl Solicitor New York.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
	Regional Solicitor Philadelphia.
	Regl Solicitor Dallas.
	Regl Solicitor Kansas City.
	Regl Solicitor San Francisco.
OAS for Administration and Management	Das for Admin & Mgmt/Chf Information Ofcr.
	Director of Human Resources.
	Director of Information Technology.
	Dir, Administrative & Procurement Programs.
	Deputy Chief Financial Officer.
	Dir, Ofc of Fin Integrity.
	Deputy Assistant Secy for Budget.
	Director, Business Operations Center.
	Director of Civil Rights.
	Dir of Program Devel for Human Resources.
	Dir, Div of Agency Programs.
Office of Management, Administration and Planning	Dir, Ofc of Mgmt, Administration and Planning.
Ofc of Federal Contract Compliance Programs	Director, Division of Programs Operations.
Wage and Hour Division	Asst Admin for Policy Planning & Review.
	Dep, Wage & Hour Admin.
	Dep, Natl Ofc Program Administrator.
Ofc of Workers Compensation Programs	Dir, Federal Employees Compensation.
	Dir, Coal Mine Workers Compensation.
Pension & Welfare Benefits Administration	Dir of Regulations & Interpretations.
	Dep Asst Secy for Program Operations.
	Director of Exemption Determinations.
	Senior Policy Advisor.
	Regional Director.
	Regional Director.
	Regional Director.
	Regional Director.
	Dir of Enforcement.
Bureau of Labor Statistics	Deputy Commissioner.
	Associate Commissioner for Field Operations.
	Assoc Commr for Publications & Spec Studies.
	Asst Commr for Consumer Prices/Price Indexes.
	Asst Commr for Fedl/State Coop Stat Programs.
Data Analysis	Assoc Commissioner for Employment Projections.
	Assoc Comr for Prices and Living Conditions.
	Assoc Commr, Productivity & Technology.
	Assoc Commissioner/Survey Methods Research.
	Assoc Comm for Employment & Unempl Statistics.
	Asst Commr for Consumer Prices & Price Indexes.
	Asst Commr for Indust Prices & Price Indexes.
	Assistant Commissioner for Economic Research.
	Asst Commissioner for Federal-State Programs.
	Asst Commissioner for Current Employ Analysis.
	Asst Commr for Compensation Levels & Trends.
	Asst Commr for Safety, H & W Conditions.
	Assoc Commr Compensation & Working Conditions.
	Asst Comm for Survey Methods Research.
	Asst Comm for International Prices.
Administrative and Internal Operations	Associate Commissioner for Administrative.
	Director of Survey Processing.
	Dir of Technology & Computing SVCS.
	Asst Commr for Technology & Survey Processing.
	Dir Quality & Info Management.
Office of Financial & Administrative Management	Comptroller.
	Admr, Ofc of Financial & Administrative Mgmt.
	Dir, Ofc of Information Resources Management.
Administrative Programs	Dir, Adm Progs.
Health Standards Programs	Dir, Health Standards Programs.
Safety Standards Programs	Director Safety Standards Programs.
Federal/State Operations	Director, Federal/State Operations.
Technical Support	Director, Technical Support.
Mine Safety and Health Administration	Chf of Standards, Regulations & Variances.
	Director of Administration and Management.
	Director of Technical Support.
	Director of Prog Evaluation & Info Resources.
Merit Systems Protection Board:	
Office of the General Counsel	Deputy General Counsel.
Office of the Clerk of the Board	Clerk of the Board.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Office of Policy and Evaluation	Director, Office of Policy & Evaluation.
Office of Planning & Resource Management Services	Director of Office of Administration.
Office of Regional Operations	Director, Office of Regional Operations.
Atlanta Regional Office	Regional Director, Atlanta.
Central Regional Office	Regional Director, Chicago.
Philadelphia Regional Office	Regional Director, Philadelphia.
San Francisco Regional Office	Regional Director, San Francisco.
Philadelphia Office	Regional Director, Washington, D.C.
National Aeronautics and Space Administration:	
Ofc of the Administrator	Technical Assistant to the Chief Engineer.
Office of the Chief Financial Officer/Comptroller	Dir, Systems Analysis Division.
	Deputy Chief Financial Officer.
	Director, Financial Management Division.
	Director, Resources Analysis Division.
	Deputy Dir, Financial Management Division.
Office of Headquarters Operations	Chief, Information Syst & Technol Office.
	Director, Headquarters Acquisition Division.
Office of Equal Opportunity Programs	Director, Discrimination Complaints Division.
	Director, Multicultural Prog & Support Div.
	Manager, Minority University Programs.
Office of Human Resources & Education	Associate Administrator for Human Resources.
	Director, Education Division.
	Director, Personnel Division.
	Director, Management Systems Division.
	Dep Assoc Adm for Human Res & Education.
	Special Asst to the Associate Admr.
Office of Procurement	Asst Admr for Procurement.
	Director, Program Operations Division.
	Director, Procurement Policy Division.
	Dep Assistant Administrator for Procurement.
	Dir, Contract Management Division.
	Director, Analysis Division.
Office of External Relations	Dep Assoc Admin for Pol Coor & Intel Relation.
Defense Affairs	Director, Space Flight Division.
Space Flight	Spec Asst to the Dir, Intl Relations Div.
Policy Coordination	Manager, International Technol Transfer Pol.
Office of Management Systems & Facilities	Special Assistant to the Assoc Administrator.
Security, Logistics & Industrial Relations	Dir, Logistics & Security Division.
Aircraft Management	Director, Aircraft Management Office.
Information Resources Management	Director, Information Resources Mgmt Division.
Facilities Engineering	Deputy Director, Facilities Engineering Div.
	Dir, Environmental Management Division.
	Director Facilities, Engineering Division.
Office of Small & Disadvantaged Business Utilization	Assoc Admr for S&D Business Utilization.
Office of Legislative Affairs	Dep Assoc Admin.
	Dep Assoc Admin for Programs.
Office of Space Flight	Tech Asst to Dep Assoc Admin for Space Shuttle.
	Director, Advanced Project Office.
	Senior NASA Representative.
	Deputy Assoc Admr for Space Communications.
Institutions	Deputy Associate Admr for Business Mgmt.
	Techn Asst to the Dep Assoc Adm for Bus Mgmt.
Chief Engineer	Tech Asst to the Chief Engineer.
	Senior Engineer.
Mission Director	Asst Mission Dir, Mir.
Space Shuttle Program	Manager, Space Shuttle Syst Integration.
	Mgr, Natl Space Trans Syst Integration & Ops.
	Manager, Safety & Obsolescence.
Space Station Program	Manager, Strategic Utilization & Ops Office.
	Deputy Director, Space Station Program.
	Senior Engineer, Space Station Program.
Johnson Space Center	Chief Financial Officer.
	Director of Human Resources.
	Dir of Tech Transfer & Commercialization.
	Chief Information Officer.
	Deputy Chief Information Officer.
	Manager, Phase One Program Office.
	Dep Manager, Johnson Space Ctr Projects Office.
	Associate Director, (Technical).
	Assistant Director, Space Operations.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Space Operations Office	Manager, Advanced Communications Operations. Technical Assistant for External Reviews. Associate Director (Management). Manager, Space Operation Mgmt Office. Manager, Space Ops Engineering Office. Director, Space Operations Office. Deputy Dir, Space Operations Office.
Space Station Program Office	Space Station Program Manager. Space Station Vehicle Manager. Director, Management Operations. Deputy Space Station Vehicle Manager. Manager International Partners Office. Tech Asst to the Mgr, Space Station Program. Dep Program Manager for Business Management. Deputy Program Mgr, for Technical Development. Manager, Research Programs.
Space Shuttle Program Office	Mgr, Space Shuttle Vehicle Engineer Ofc. Mgr, Space Shuttle Mgmt Integration Office. Manager, Shuttle Projects Office (MSFC). Mgr, Launch Integration (KSC). Director, Space Shuttle Operations. Mgr, Space Shuttle Business Office. Asst Mgr Space Shuttle Prog Space Flight O/C. Asst Manager, Space Shuttle Program.
Mission Operations	Director, Mission Operations. Assistant to the Asst Dir for Program Support. Chief Flight Director Office. Deputy Director, Mission Operations. Assistant Director for Program Support. Asst Dir for Operations. Chief Integrated Planning System Office.
Flight Crew Operations	Chief, Simulator & Operations Technology Div. Chief, Aircraft Operations Division. Dep Dir, Flight Crew Operations.
Engineering	Deputy Director, Engineering. Chief, Structures and Mechanics Division. Chief, Crew & Thermal Systems Division. Chief, Automation, R & S Division. Director, Engineering. Chief, Engineer Space Station Program. Chief, Avionic Systems Division. Assistant to the Director, Engineering. Deputy Chief, Avionic Systems Division. Chief, Aeroscience & Flight Mechanics Div. Manager, Advanced Development Office. Deputy Mgr, Advanced Development Office. Asst Mgr, Advanced Development Office. Deputy Manager for Exploration. Special Assistant for Program Planning.
Space & Life Sciences	Chief, Medical Sciences Division. Assistant Director for Engineering. Assistant to the Director for Russian Progs. Chief, Flight Crew Support Division. Assistant Director for Space Science. Deputy Director, Space and Life Sciences. Manager, Science Payloads Management Office. Chief, Solar System Exploration Division.
Information Systems	Director, Business Manager. Director, Information Systems.
Business Management	Procurement Officer. Assistant Director, Business & Info Systems. Special Assistant to the Director.
Center Operations	Special Assistant for Facility Management. Dir, Center Operations. Deputy Director, Center Operations.
Safety, Reliability & Quality Assurance	Dir, Safety, Reliability, & Quality Assurance. Dep Dir, Safety, Reliability & Qual Assurance. Deputy Director for Russian Projects. Dummy.
White Sands Test Facility	Manager, NASA White Sands Test Facility.
Kennedy Space Center	Dir, Public Affairs. Associate Director.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Shuttle Management & Operations	Manager, Spacelab Carrier Prog. Ass Dir for Advanced Devel & Shuttle Upgrades. Dir, Space Station Hardware Integration Ofc. Director Safety & Reliability. Deputy Director for Planning and Projects. Dir, Shuttle Logistics Project Management. Dir of Shuttle Mgmt & Operations. Director, Ground Engineering. Deputy Manager, Launch Integration. Director, Process Integration. Deputy Dir of Shuttle Processing.
Safety, Reliability & Quality Assurance	Director, Process Engineering. Director, Safety and Reliability. Director, Quality Assurance.
Engineering Development	Deputy Director of Engineering Development. Dir, Mechanical Engineering. Director, Electronic Engineering.
Installation Management & Operations	Director, Installation Mgmt & Operations. Director, Facilities Engineering. Deputy Dir, of Installation Mgmt & Operations.
Payload Management & Operations	Director, Logistics Operations. Deputy Director, Payload Operations. Dir, Inter Space Station Launch Site Support.
Procurement	Director, Procurement.
Biomedical Operations & Research	Director, Biomedical Ops & Res Office.
Marshall Space Flight Center	Dir, Systems Safety & Reliability Office. Director, Procurement Office. Chief Financial Officer. Director, Safety & Mission Assurance Office. Dir, Human Res & Administrative Support Ofc. Associate Director. Assistant to the Center Dir for Space Station. Director, Advanced Transportation Syst Office. Associate Director (Technical). Manager, Space Transportation Prog Office. Dep Dir, Human Res & Adm Support Division. Manager X–34 Program. Assistant to the Manager, X–34 Program.
Program Development	Deputy Director, Program Development. Director, Preliminary Design Office. Deputy Manager, Technology Transfer Office.
Science & Engineering	Dir, Research & Technology Office. Director, Space Sciences Lab Director, Propulsion Laboratory. Director, Syst Anal & Integration Laboratory. Dep Dir, Structures & Dynamics Laboratory. Deputy Dir, Materials & Processes Laboratory. Dep Dir, Mission Operations Laboratory. Dep Dir, Syst Anal & Integration Laboratory. Deputy Director, Propulsion Laboratory. Dir, Astrionics Laboratory. Dir, Structures Dynamics Laboratory. Deputy Director, Structures & Dynamics Lab. Chief Engineer, Space Shuttle Main Engine Proj. Asst Director, Science & Engineering. Dep Dir for Space Transportation Systems. Manager, Space Station Furnace Facility. Deputy Manager for Development. Director, Mission Operations Laboratory. Dep Manager, Super Lightweight External Tank. Deputy Director, Space Sci Laboratory. Chf Eng. Reusable Launch Vehicle Project. Assistant Director, Science & Engineering Dir.
Institutional & Program Support	Dir, Info Systems Office. Dir, Institutional & Program Support. Dep Dir, Institutional & Program Support. Director, Facilities Office. Dir, Environmental Engineering & Mgnt Office.
Space Shuttle Projects	Manager, External Tank Project. Mgr, Solid Rocket Booster Project. Manager, Space Shuttle Main Engine Projects. Manager, Reusable Solid Rocket Motor Project.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Science & Applications Projects	Chief, Engineer Space Shuttle Main Engine Prog.
	Manager, Global Hydrology Research Office.
	Dep Dir, Science & Engineering.
	Dir, Materials & Processes Laboratory.
	Manager, Microgravity Projects.
	Manage, Microgravity Research Program Office.
Observatory Projects	Manager, Observatory Projects Office.
	Dep Mgr, Observatory Projects Office.
Payload Projects	Dep Manager, Payload Projects Office.
Technology Transfer	Director, Technology Transfer Office.
	Mgr, Earth & Space Sciences Projects.
Stennis Space Center	Director, Center Operations & Support Director
	Deputy Director, NASA Stennis Space Center.
	Assoc Director for Institution.
	Director, Propulsion Test Directorate.
	Deputy Director, Propulsion Test Directorate.
	Manager, Test Management Support.
Office of Space Communications	Chief, Communications Systems Branch.
Ground Networks	Assistant Associate Administrators (Plans).
Program Integration	Dir, Communications & Data Systems Div.
Communications & Data Systems	Dep Dir, Ground Network Division.
Space Network	Deputy Director, Space Network Division.
Office of Safety & Mission Assurance	Dep Assoc Adm for Safety & Mission Quality.
	Director, Programs Assurance Division.
	Mgr, Intl Sp Stn Indep A&O Act.
	Technical Advisor for Sr M Qa Initiatives.
Safety & Risk Management	Director, Safety Division.
Payloads & Aeronautics	Director, Payloads & Aeronautics Division.
Engineering & Quality Management	Director, Quality Management Office.
Office of Aeronautics	Dep Assoc Admin for Aeronautics Mgmt.
	Dep Assoc Admr for A&S Trans Technol (STT).
	Senior Engineer.
	Special Assistant for Systems Integrations.
	Director, Inter-Enterprise Operations.
Resources & Management Systems	Director, Resources Management Office.
High Performance Aircraft	Assistant Director for Program Evaluation.
High Speed Research	Director, Alliance Development Office.
National Aero-Space Plane	Assistant Dir for Aircraft Certification Serv.
Ames Research Center	Chief Financial Officer.
	Dir, National Rotorcraft Technology Center.
	Special Assistant for Programs.
	Manager, NASA Consolidated Supercomputing Ops.
	Associate Director for Institutional Mgmt.
	Deputy Director for Space.
Aerospace Systems	Chief, Aeronautical T&S Division.
	Chief, Flight Mgmt & Human Factors Division.
	Associate Director for Aeronautics.
	Deputy Director of Aeronautics.
	Chief, Applied Aerodynamics Division.
Flight Operations	Deputy Chf, Airborne Science & Flight Res Div.
	Chief, Flight Operations Office.
Aerophysics	Dir, Software Independent Verification Facility.
	Chief, Space Technology Division.
	Deputy Director of Information Systems.
Space Research	Chief, Space Science Division.
	Chief, Advanced Life Support Division.
	Chief, Information Sciences Division.
	Director of Space.
	Chief, Life Sciences Division.
Administration	Deputy Director of Center Operations (ADM).
	Chief, Airborne Science & Flight Res Div.
	Dep Director, Center Operations Directorate.
Engineering & Technical Services	Chf, Systems Engineering Div.
Dryden Flight Research Center	Asst Chief, Flight Operations Division.
	Director, Intercenter Aircraft Operations.
	Asst Dir for Program Integration.
	Assistant Director of Research Facilities.
Flight Operations	Chf, Flight Operations Division.
Aerospace Projects	Dir, Aerospace Projects Directorate.
Langley Research Center	Chief, Atmospheric Sciences Division.
	Chief Engineer
	Dir of Education Programs.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
	Assistant Director for Planning.
	Special Assistant for Outreach.
	Manager, Hyper-X Phase One Program.
	Dept Dir, Indep Progr Assessment Office.
Aeronautics	Chief, Aeronautics Systems Analysis Div.
	Deputy Director, Aeronautics Program Group.
Space & Atmospheric Sciences	Deputy Dir, S & A Sciences Program Group.
	Chief, Space Systems & Concepts Division.
Research & Technology	Director.
	Chief Structures Division.
	Chief, Information Systems Division.
	Chf, Flight Dynamics & Controls Division.
	Chief, Fluid Mechanics Division.
	Deputy Dir, Research & Technology Group.
	Chief, Aerodynamics Division.
	Chief, Power & On-Board Propulsion Techn Div.
	Director, Research & Technology Group.
	Chief, Gas Dynamics Division.
Technology Applications	Manager, Space Technologies Thrust Office.
Internal Operations	Deputy Dir, Internal OPS Group (FE & O).
	Chief, Aerospace Electronics Systems Division.
	Chief, Experimental Testing Technology Div.
	Deputy Dir for Engineering & Info Syst (IOG).
	Head, Planning & Resources Mgmt Office.
	Special Assistant.
	Procurement Officer.
	Chief, Aerospace Mechanical Systems Division.
	Director, Internal Operations Group.
High-Speed Research Project	Director for High-Speed Res Project Office.
Hypersonic Vehicles	Director, Hypersonic Vehicles Offices.
Safety, Environmental & Mission Assurance	Dir, Ofc of Safety, E & M Assurance.
Comptroller	Chief Financial Officer.
Lewis Research Center	Special Assistant to the Director for Policy.
	Chief Financial Officer.
	Deputy Director for Operations.
	Chief, Systems Engineering Division.
Aeronautics	Chf, Propulsion Systems Div.
	Chf, Internal Fluid Mechanics Division.
	Chf, Aeropropulsion Analysis Office.
Aerospace Technology	Chief, Space Propulsion Technology Division.
	Chief, Structural Systems Division.
	Chief, Structures Division.
	Deputy Director of Aerospace Technology.
	Chief, Space Communications Division.
	Chief, Interdisciplinary Technology Office.
Space Flight Systems	Manager, Acts Project Office.
	Chief, Space Experiments Division.
	Deputy Director of Space Flight Systems.
	Chief, Power Systems Project Office.
	Senior Advisor for Advanced Concepts.
Engineering	Chf, Electronics & Control Systems Division.
	Director of Engineering.
	Chief Engineer.
Technical Services	Deputy Dir of Engineering & Tech Services.
Administration & Computer Services	Chief, Computer Services Division.
	Dir, Adm & Computer Services Directorate.
External Programs	Director, External Programs.
Mission Safety & Assurance	Chf, Ofc of Spty, Reliability & Quality Assur.
Office of Space Science	Special Asst to the Deputy Assoc Admin.
	Asst Associate Admr for Technology.
Solar System Exploration	Chief, Flight Programs Branch.
	Senior Program Dir, Solar Syst Exploration.
	Director, Mission & Payloa Development Div.
	Senior Program Executive for JPL Programs.
	Dir, Advanced Technol & Mission Studies Div.
Space Physics	Senior Program Executive for GSFC/APL Progs.
	Senior Program Director, Sun-Earth Connection.
	Sr Sci Prog Executive for Review & Evaluation.
	Director, Research Program Management.
Technology & Information Systems	Sr Sci Program Executive for Information Syst.
Astrophysics	Science Program Director, Galaxy & Universe.
	Deputy Dir, Astrophysics Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
	Asst Assoc Admr for Education & Outreach.
	Science Prog Dir, Origins & Planetary Systems.
Office of Life & Microgravity Sciences & Applications	Dir, Space Development & Commercial Res Div.
Microgravity Science & Applications	Dir, Microgravity Sciences & Applications Div.
Life & Biomedical Sciences	Manager, Life Sciences and Technology.
	Dir, Life & Biomedical Science & Applics Div.
Aerospace Medicine & Occupational Health	Director, Program Integration Office.
Flight Systems	Chief, Mission Management Branch.
	Deputy Dir, Flight Systems Division.
Office of Inspector General	Assist Inspector General for Investigation.
	Assistant Inspector General for Auditing.
	Asst Insp Gen for Partnerships & Alliances.
	Dir for Program Asst & Review.
	Manager, Advanced Technology Programs.
Office of Space Access & Technology	Manager, Systems Integration.
	Chief Engineer.
	Manager, Communications Experiments.
	Deputy Assoc Admr for Space Access & Technol.
	Director, Commercial Dev & Technol Transfer.
	Manager for Propulsion Technology.
	Special Assistant for Facilities.
	Deputy Dir, Spacecraft Systems Division.
	Special Assistant for Special Projects.
Office of Mission to Planet Earth	Dep Assoc Admr for Mission to Planet Earth.
	Senior Science Advisor for Intl Programs.
Flight Systems	Director, Flight Systems Division.
Operations, Data & Information Systems	Director, Operations Data & Info Syst Div.
	Chief, Earth Science D & I System Branch.
Science	Director, Science Division.
Goddard Space Flight Center	Director of Human Resources.
	Dir of University Programs.
Comptroller	Chief Financial Officer/Comptroller.
Management Operations	Dep Dir of Management Operations.
	Associate Director for Acquisition.
Flight Assurance	Director of Flight Assurance.
	Dep Dir of Flight Assurance.
Flight Projects	Deputy Director of Flight Projects.
	Mgr Hubble Space Telescope Oper & Ground Syst.
	Project Mgr, Earth Observing Syst AM Project.
	Assoc Dir of Flt Proj Hubble Space Telescope.
	Proj Mgr, Intl Solar Terr Physics Proj (ISTP).
	Dir of Flight Projects.
	Proj Mgr, Hubble Spc Telescope Syst & Serv.
	Tracking & Data Relay Satellite TDRS Proj Mgr.
	Assoc Dir for Earth Sci Data & Info System.
	Proj Mgr, EOS–PM Proj Flight Proj Direct.
	Project Manager, Explorers Project.
	Project Mgr, Earth Sci D & I Syst Project.
Mission Operations & Data Systems	Chief, NASA Communications Division.
	Assoc Dir of Mission Operations & Data Syst.
	Dep Dir of Mission Operations & Data Systems.
	Chief, Networks and Mission Services Center.
	Chief, Flight Dynamics Division.
	Chf, Mission Ops & Syst Dev Division.
Space Sciences	Chief, Lab for Astronomy and Solar Physics.
	Chief, Lab for Extraterrestrial Physics.
	Director of Space Sciences.
	Chief, Goddard Institute for Space Studies.
	Chief, Laboratory for High Energy Astrophysics.
	Deputy Director of Space Sciences.
Engineering	Dep Dir of Engineering.
	Chief, Electrical Engineering Division.
	Chief, Engineer.
	Chief, Special Payloads Division.
	Associate Director of Flight Projects.
	Chief, Mechanical System Center.
	Chief, Systems Engineering Division.
	Spec Asst to Dir of Eng (Space Technol Comm).
Suborbital Projects & Operations	Deputy Director, Mission to Planet Earth.
Earth Sciences	Chief, Lab for Hydrospheric Processes.
	Chief, Space Data and Computing Division.
	Associate Dir for Mission to Planet Earth.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
	Asst Dir of Earth Sci for Projects Eng.
	Chf, Laboratory for Atmospheres.
	Deputy Director for Earth Sciences.
	Director for Earth Sciences.
	Chief Laboratory for Terrestrial Physics.
	Deputy Assoc Dir for Earth Sci D & I Syst.
	Asst Dir of Mission to P/E Prog for Globe.
Office of Policy and Plans	Director of Special Studies.
	Director of Special Projects.
National Archives & Records Administration:	
Archivist of U.S. Dep Archivist of the U.S./Chf of Staff	Deputy Archivist of the United States.
Office of Administrative Services	Assistant Archivist for Administrative Serv.
Office of the Federal Register	Director of the Federal Register.
	Asst Archivist for Spec & Regl Archives.
Office of Regional Records Services	Asst Archivist for Regional Records Services.
Office of Human Resources and Information Services	Assistant Archivist for policy & IRM Services.
	Asst Archivist for Human Resources & Info Ser.
Office of Records Services—Washington, DC	Asst Archivist for the National Archives.
	Asst Archivist for Federal Records Centers.
	Asst Archivist for Records Administration.
	Asst Archivist for Records Services.
	Senior Policy Advisor.
Office of Presidential Libraries	Asst Archivist for Presidential Libraries.
	Director, Lyndon B. Johnson Library.
National Capital Planning Commission:	
National Capital Planning Commission Staff	Executive Director.
	Assoc Exec Dir, D.C. Affairs.
	Deputy Executive Director.
	Assistant Executive Director for Regl Plnng.
	General Counsel.
National Endowment for the Arts:	
National Endowment for the Arts	Director of Guidelines & Panel Operations
	Director of Administration.
National Endowment for the Humanities:	
National Endowment for the Humanities	Dir, Office of Planning & Budget.
National Labor Relations Board:	
Ofc of the Board Members	Executive Secy.
	Deputy Executive Secretary.
	Inspector General.
Div of Enforcement Litigation	Deputy Assoc. Gen. Counsel, Appellate Court Br.
	Director, Office of Appeals.
Div of Advice	Associate Gen Counsel. Div of Advice.
	Deputy Assoc Gen Counsel.
Div of Administration	Director of Administration.
	Deputy Director of Administration.
Div of Operations Management	Assoc General Counsel, Div of Operation—Mgmt.
	Dep Asso Gen Counsel, Div of Operations—Mgmt.
	Assistant General Counsel.
	Assistant General Counsel.
	Assistant General Counsel.
	Assistant General Counsel.
	Assistant General Counsel.
	Assistant General Counsel.
	Asst to the General Counsel.
Regional Offices	Regl Dir, Reg 1, Boston.
	Regional Director, Reg. 2, New York.
	Regional Director, Reg. 3, Buffalo.
	Regl Dir, Reg. 4, Philadelphia.
	Regional Director, Reg. 5, Baltimore.
	Regional Director, Reg. 6, Pittsburgh.
	Reg Dir, Region 7, Detroit Mich.
	Regional Director, Reg. 8, Cleveland.
	Regional Director, Reg. 9, Cincinnati.
	Regl Dir, Reg. 10, Atlanta.
	Regl Dir, Reg. 11, Winston Salem.
	Regional Director, Reg. 12, Tampa.
	Regional Director, Reg. 13, Chicago.
	Regl Dir, Reg. 14, St Louis.
	Regl Dir, Reg. 15, New Orleans.
	Regl Dir, Reg. 16, Ft Worth.
	Reg Dir, Reg. 17, Kansas City.
	Regl Dir, Reg. 18, Minneapolis.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
	Regl Dir, Reg 19, Seattle.
	Regional Dir, Reg 20, San Francisco.
	Regional Director, Reg 21, Los Angeles.
	Regional Director, Reg 22, Newark.
	Regional Director, Reg 23, Houston, Texas.
	Regional Director, Reg 24, Hato Rey, Puerto Rico.
	Regl Dir, Reg 25, Indianapolis.
	Regl Dir, Reg 26, Memphis.
	Regl Dir, Reg 27, Denver.
	Regl Dir, Reg 28, Phoenix.
	Regl Dir, Reg 29, Brooklyn.
	Regl Dir, Reg 30, Milwaukee.
	Regl Dir, Reg 32, Oakland.
	Regional Director, Reg 33, Peoria, Ill.
	Regl Dir, Reg 31, Los Angeles.
	Regional Director, Reg 34, Hartford.
National Science Foundation:	
Office of the Director	Executive Asst & Special Counsel.
Office of Science & Technology Infrastructure	Senior Staff Associate.
Office of the General Counsel	Deputy General Counsel.
Office of Policy Support	Senior Advisor.
	Sr Staff Associate/Policy Analysis.
Office of Polar Programs	Deputy Office Director.
	Head Polar Research Support Section.
Office of the Inspector General	Inspector General.
	Assistant Inspector General for Oversight.
	Dep Inspector Gen & Senior Legal Advisor.
	Asst Inspector General for Audit.
National Science Board	Senior Staff Associate.
Directorate for Geosciences	Senior Science Associate.
Division of Atmospheric Sciences	Section Head, Upper Atmosphere Section.
	Head Lower Atmosphere Section.
Division of Earth Sciences	Head Major Projects Section.
	Section Head, Research Grants Section.
Division of Ocean Sciences	Section Head, Ocean Sciences Research Section.
Division of Engineering Education & Centers	Deputy Division Director (Education).
	Senior Staff Associate.
	Senior Engineering Advisor.
Division of Design, Manufacture & Industrial Innovation	Senior Advisor, Technology Integration.
	Senior Advisor.
Division of Civil and Mechanical Systems	Head, Hazard Mitigation Section.
	Head, Mechanical & Structural Syst Section.
Directorate for Biological Sciences	Deputy Asst Director.
Division of Environmental Biology	Deputy Division Director.
Division of Molecular & Cellular Biosciences	Deputy Director.
Directorate for Mathematical and Physical Sciences	Executive Officer.
	MPS Coordinator.
	Special Assistant to the Assistant Director.
Division of Physics	Executive Officer.
Division of Astronomical Sciences	Executive Officer.
Division of Mathematical Sciences	Executive Officer.
Division of Materials Research	Executive Officer.
Division of Chemistry	Dep Dir, Division of Chemistry.
Directorate for Education & Human Resources	Deputy Asst Director.
	Senior Staff Associate.
Division of Undergraduate Education	Senior Staff Associate.
Directorate for Social, Behavioral and Economic Sciences	Exe Officer, Social Behavioral Econ Sciences.
Division of International Programs	Deputy Division Director.
	Senior Staff Associate.
	Senior Staff Associate.
Division of Social, Behavioral & Economic Research	Deputy Director.
Directorate for Computer & Info Science & Engineering	Deputy Asst Dir.
Div of Computer and Computation Research	Deputy Division Director.
Division of Microelectronic Information Processing Sys	Deputy Division Director.
Office of Budget, Finance and Award Management	Director, Ofc of Budget, F&A Management.
Budget Division	Director, Budget Division.
Division of Financial Management	Division Director.
Division of Grants & Agreements	Division Director.
	Deputy Director.
Division of Contracts, Policy & Oversight	Division Director.
Office of Information and Resource Management	Dep Dir, Ofc of Information & Resource Mgmt.
	Senior Staff Associate.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Division of Information Systems	Dep Dir, Div of Information Systems.
Division of Human Resource Management	Div Dir, Div of Human Resource Management.
Division of Administrative Services	Dir, Division of Administrative Services.
National Transportation Safety Board:	
Office of the Managing Director	Deputy Managing Director.
	Chief Technical Advisor.
Office of Administration	Dir, Office of Administration.
Office of Aviation Safety	Director, Ofc of Aviation Safety.
	Deputy Director, Ofc of Aviation Safety.
Office of Research & Engineering	Dir, Ofc of Research and Engineering.
	Deputy Dir, Ofc of Research and Engineering.
Office of Safety Recommendations	Director Ofc of Safety Recommendations.
Office of Surface Transportation Safety	Dir, Ofc of Surface Transportation Safety.
	Deputy Director.
Nuclear Regulatory Commission:	
Atomic Safety and Licensing Brd Panel	Chief Administrative Judge.
	Deputy Chief Administrative Judge (Executive).
Office of the Chief Information Officer	Dep Dir/LSS Admr. Ofc of Info Res Mgmt.
	Dir, Information Technology Infrastructure.
	Director, Information Mgmt. Division.
	Director, Planning & Program Support Division.
Office of Chief Financial Officer	Deputy Chief Financial Officer.
	Dir, Division of Budget and Analysis.
	Dir, Division of Accounting and Finance.
	Special Assistant for Internal Controls.
Office of the Inspector General	Asst Inspector General for Investigations.
	Asst Inspector General for Audits.
	Deputy Inspector General.
	Assistant Inspector Gen for Investigations.
Deputy GC for Licensing & Regulation	Deputy Assistant GC/Legislative Counsel.
Dep GC for Hearings, Enforcement & Administration	Deputy Assistant GC for Administration.
Assistant GC for Hearings and Enforcement	Deputy Assistant General Counsel.
	Deputy Assistant General Counsel.
	Deputy Assistant General Counsel.
Office of Commission Appellate Adjudication	Dir, Ofc of Comm Appellate Adjudication.
Division of Operational Assessment	Deputy Director, Div Incident Response.
	Special Assistant to the Director.
Division of Safety Programs	Chief, Reactor Analysis Branch.
	Chf, Reliability & Risk Assessment Branch.
Office of Administration	Director, Div of Contracts & Prop Mgmt.
	Director, Div of Security.
	Dir, Div of Administrative Services.
Organization Abolished	Deputy Controller.
Ofc of Small and Disadv Bus Utilization/Civil Rights	Director.
Office of Nuclear Reactor Regulation	Proj Dir, Project Directorate II–1 .
	Project Director, Project Directorate IV–3.
	Chf, Vendor Inspecton Branch.
	Chf, Radiation Protection Branch.
	Dep Dir, Div of Radiation Safety & Safeguards.
Division of Inspection and Support Programs	Dir, Inspection & Support Programs.
	Chief, Plng, Program & Mgmt Support Branch.
	Chf, Inspection Program Branch.
	Chf, Special Inspections Branch.
Associate Director for Projects	Dir, Cost Benefits License Act Programs.
Division of Reactor Projects I/II	Project Dir, Project Directorate I–1.
	Project Director, Project Directorate I–2.
	Project Director, Project Directorate I–4.
	Proj Dir, Project Directorate II–2.
	Proj Dir, Project Directorate II–2.
	Project Dir, Project Directorate II–3.
	Deputy Dir, Div of Reactor Project I/II.
Division of Reactor Projects III/IV	Chf, Technical Specification Branch.
	Proj Dir, Project Directorate III–1.
	Proj Dir, Project Directorate III–2.
	Proj Dir, Project Directorate III–3.
	Proj Dir, Project Directorate IV–1.
	Chf, Events A & G Communications Branch.
	Proj Dir, N–P Reactor, D & E Proj Directorate.
	Proj Dir, Proj Directorate IV–2.
	Chief, Generic Issues & Envir Proj Branch.
Division of Engineering	Chief, Materials & Chemical Engineering Br.
	Chf, Mechanical Engineering Branch.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Division of Systems Safety & Analysis	Chief Civil Eng & Geosciences Branch. Chief, Electrical Engineering Branch. Chf, Plant Systems Branch. Chf, Reactor Systems Branch. Chief, Probablistic Safety Assessment Branch.
Division of Reactor Controls and Human Factors	Chief, Containment Sys & Severe Accident Brch. Chf, Human Factors Assessment Branch. Chf, Operator Licensing Branch. Chf, Instrumentation & Control Branch.
Division of Reactor Program Management	Chf, Quality Assur & Maint Branch. Chf, Emergency P & R Protection. Chf, Safeguards Branch. Project Dir, Standardization Proj Directorate.
Office of Nuclear Material Safety and Safeguards	Proj Dir, License Renewal & Environmental Rev. Deputy Director, Spent Fuel Project Ofc.
Division of Fuel Cycle Safety & Safeguards	Chief, Transportation & Storage Safety. Chief, Operations Branch. Chief, Regl & Intl Safeguards Branch. Chief, Special Projects.
Div of Industrial & Medical Nuclear Safety	Chief, Licensing Branch. Chief, Operations Branch. Chief, Medical, Acad & Com Use Sfty Branch.
Division of Waste Management	Chief, Source Containment & Devices Br. Deputy Dir, Prog Mgmt Policy Devel & Analysis. Chf, High Level Waste & Uranium Recovery Proj. Chief, Perf Assess & Hydrology Branch. Chief, Engineering & Geosciences Branch.
Ofc of Nuc Regulatory Research	Chf, Low Level Waste & Decommissioning Proj. Director: Fin Mgt, Procurement & Admin Staff. Director for Inspector Special Projects. Special Assistant to the Director. Special Assistant to the Director.
Division of Engineering Technology	Chief, Generic Safety Issues Branch. Chief, Elect, M & M Engineer Branch. Chief, Structural & Geological Eng Branch.
Division of Regulatory Applications	Chief, Regulation Development Branch. Chief, Waste Management Branch.
Division of Systems Technology	Chief, Accident Evaluation Branch. Chf, Probabilistic Risk Analysis Branch. Chf, Radiation Protection & Health Effects Br. Chief, Reactor and Plant Systems Branch. Chief, Control Instr & Human Factors Branch.
Region I	Deputy Regional Administrator. Dir, Div of Nuclear Materials Safety. Dep Dir, Div of Nuclear Materials Safety. Director, Division of Reactor Safety. Dep Dir, Div of Reactor Safety. Director, Division of Reactor Projects. Deputy Director, Division of Reactor Projects.
Region II	Deputy Regional Administrator, Region II. Dir, Div of Nuclear Materials Safety. Dep Dir, Div of Nuclear Materials Safety. Director, Division of Reactor Projects. Deputy Director, Division of Reactor Projects. Director, Division of Reactor Safety. Dep Dir, Div of Reactor Safety.
Region III	Dep Regional Administrator, Region III. Director, Division of Reactor Safety. Dep Dir, Div of Reactor Safety. Director, Division of Reactor Projects. Deputy Director, Division of Reactor Projects. Dir, Div of Nuclear Materials Safety.
Region IV	Dep Dir, Nuclear Materials Safety. Deputy Regional Administrator, Region IV. Director, Div of Reactor Projects. Deputy Director, Div of Reactor Projects. Dir, Div of Nuclear Materials Safety. Dir, Division of Reactor Safety. Dep Dir, Nuclear Materials Safety. Dep Dir, Division of Reactor Safety.
Office of Government Ethics: Office of Government Ethics	Deputy Director.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
	Deputy General Counsel.
	Senior Assoc Director for Agency Programs.
	Deputy Dir. for Government R & S Projects.
Office of Management and Budget:	
Office of the Director	Assistant Director for Administration.
	Deputy Associate Dir for Economic Policy.
	Staff Assistant.
	Senior Advisor to the Dep Dir for Management.
	Dep Assistant Director for Administration.
	Assistant to the Deputy Director for Mgmt.
Legislative Reference Division	Asst Dir, Legislative Reference.
	Chief, Labor, Welfare, Personnel Branch.
	Chief, Economics, Science & Govt. Branch.
	Chief, Resources-Defense-International Branch.
	Associate General Counsel for Budget.
Office of Federal Procurement Policy	Dep Admin for Procurement Law & Legislation.
Office of Information and Regulatory Affairs	Chief, Information Policy & Technology Branch.
	Chief, Human Resources and Housing Branch.
	Chief, Commerce and Lands Branch.
	Chief, Statistical Policy Branch.
	Chief, Natural Resources Branch.
	Senior Advisor.
Office of Federal Financial Management	Chief, Management Integrity Branch.
	Deputy Controller.
	Chief, Federal Financial Systems Branch.
Budget Review Division	Asst Dir for Budget Review.
	Dep Asst Dir for Budget Analysis & Systems.
	Chief, Budget Analysis Branch.
	Dep Chief, Budget Analysis Branch.
	Dep Asst Dir for Budget Review & Concepts.
	Chief, Budget Concepts Branch.
	Chief, Budget Systems Branch.
International Affairs Division	Dep Assoc Dir for Internatl Affairs.
	Chief, State-USIA Branch.
	Chief, Economic Affairs Branch.
National Security Division	Dep Assoc Dir for National Security.
	Chief, Command, Ctrl, Comms & Intellig Branch.
	Chief, Force Structure & Investment Branch.
	Dep Chief, Natl Sec Div & Chief Oper Sup Branch.
Associate Director for Human Resources	Associate Director for Human Resources.
Human Resources Division	Chief, Labor Branch.
	Chief, Education Branch.
	Deputy Assoc Dir for Human Resources.
	Chf, Income Maintenance Branch.
Transportation, Commerce, Justice & Services Division	D/A for Transp Commerce, Justice & Services.
	Chief, Commerce Branch.
	Chief, Transport Branch.
	Chief, Justice/GSA Branch.
Housing, Treasury and Finance Division	Deputy Assoc Dir for Housing, Treasury, Finance.
	Chief, Treasury Branch.
	Senior Advisor for Cash & Credit Mgmt.
	Chief, Financial Institutions Branch.
	Chief, Housing Branch.
Assoc Dir for Natural Resources, Energy, and Science	Senior Advisor.
Natural Resources Division	Dep Associate Dir for Natural Resources.
	Chief, Agricultural Branch.
	Chief, Environment Branch.
	Chief, Interior Branch.
Energy and Science Division	Dep Assoc Dir for Energy & Science.
	Chief, Water and Power Branch.
	Chief, Science and Space Programs Branch.
	Chief, Energy Branch.
Health Division	Deputy Associate Director for Health.
	Chief, Health Programs & Services Branch.
	Chief, Health & Financing Branch.
VA/Personnel Division	Chief, Veteran Affairs Branch.
	Deputy Assoc Director for VA & Personnel.
	Chief, Personnel, Portal, Exop Branch.
Office of Personnel Management:	
Office of the Chief Financial Officer	Chief Financial Officer.
Office of the Inspector General	Deputy Inspector General.
	Asst Inspector General for Audits.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
	Assistant Inspector Gen for Investigations.
	Deputy AIG for Audits.
Retirement and Insurance Service	Senior Advisor.
Office of Actuaries	Director, Office of Actuaries.
Office of Insurance Programs	Asst Dir for Insurance Program.
Office of Retirement Programs	Asst Dir for Retirement Programs.
Personnel Research and Development Center	Director, Personnel Res & Development Center.
Staffing Service Center	Director, Staffing Automation.
Office of Workforce Relations	Asst Dir for Classification.
	Director, Office of Workforce Relations.
Investigations Service	Director, Fed Investigation Systems.
Office of Information Technology	Chief, Information Technology Officer.
Office of Contracting and Administrative Services	Director of Contracting & Administrative Serv.
	Senior Advisor.
Office of Merit Systems Oversight and Effectiveness	Asst Dir for Merit Systems Oversight.
Office of Executive Resources	Asst Director for Executive Resources.
Office of Special Counsel:	
Headquarters, Office of Special Counsel	Assoc Spec Counsel (Investigation).
	Assoc Special Counsel (Prosecution).
	Deputy Associate Spec Counsel for Prosecution.
	Director for Management.
	Assoc Special Counsel, Planning and Oversight.
	Associate Special Counsel for Plan & Advice.
Railroad Retirement Board:	
Board Staff	Chief of Data Processing.
	Director of Hearings and Appeals.
	Chief Actuary.
	Director of Field Service.
	Director of Administration.
	Deputy General Counsel.
	Asst Inspector General for Investigations.
	Chief Financial Officer.
	Assistant Inspector General for Audit.
	Director of Taxation.
	General Counsel.
	Dir of Operations.
	Dir of Policy & Systems.
Office of Programs	Director of Programs.
Bureau of Information Systems	Chief Information Officer.
Securities and Exchange Commission:	
Office of the Chief Accountant	Dep Chf Accountant.
Office of the Executive Director	Dep Exec Director.
	Associate Executive Director (Finance).
	Associate Executive Director (Administration).
Div of Corporation Finance	Associate Director (Operations).
	Associate Director, (Legal).
Small Business Administration:	
Office of the Inspector General	Asst. Inspector General for Auditing.
	Asst Inspector General for Investigations.
	Counsel to the Inspector General.
	Deputy Inspector General.
	Asst Inspector General for Magnt Legal Cousl.
	Assistant Inspector Gen/Inspection & Eval
Office of the General Counsel	Associate General Counsel for General Law.
	Assoc Gen Counsel Litigation.
	Assoc Gen Coun—SBIC Liquidation/Litigation
Office of Equal Employment O & C Rights Compliance	Asst Admr for Equal Employ O & C Right Compl.
Office of Hearings and Appeals	Asst Administrator for Hearings and Appeals.
Office of the Chief Financial Officer	Deputy Chief Financial Officer.
Office of Financial Assistance	Assoc Administrator for Financial Assist.
	Dep Assoc Admr for Financial Assistance.
	Asst Admr for Borrower and Lender Servicing.
Office of Surety Guarantees	Assoc Administrator for Surety Guarantees.
Office of Minority Enterprise Development	Assoc Admr for MSB–COD.
Office of Information Resources Management	Asst Adm for Information Resources Management.
	Dep Asst Adm for Information Res Mgmt.
Office of Human Resources	Asst Administrator for Human Resources.
District Directors	District Director.
	District Director.
	District Director.
	District Director.
	District Director.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
	District Director.
	District Director.
	District Director.
Social Security Administration:	
Office of the Inspector General	Deputy Inspector General.
Office of Investigations	Asst Inspector General for Investigations.
	Dep Asst Inspector General for Investigations.
Office of Audits	Asst Inspector Gen for Social Security Audits.
	Dep Asst Inspetor General for Audits.
Office of Actuary	Chief Actuary.
	Deputy Chief Actuary (Long-Range).
	Deputy Chief Actuary (Short-Range).
Office of Human Resources	Dir, Ofc Labor-Management Employee Relations.
Office of Finance, Assessment and Management	Senior Financial Executive.
Office of Financial Policy and Operations	Assoc Comr. Office of Fin Policy & Operation.
	Dep Assoc Comm Financial Policy & Operations.
Office of Acquisition and Grants	Assoc Commissioner for Acquisition & Grants.
Office of Systems	Deputy Associate Commissioner for T&SO.
Office of Telecommunications	Assoc Comm for Telecommunications & Sys Oper.
	Dep Assoc Commr for T & S Ops (Telecomm).
Division of General Law	Associate General Counsel for General Law
Department of State:	
Bureau of Administration	Director, Office of Acquisitions.
Office of Foreign Buildings Operations	Supervisory Structural Engineer.
Bureau of Economic & Business Affairs	Dir. Office of East-West Trade.
Bureau of Intelligence and Research	Dir, Ofc of Intelligence Resources.
	Dir, Ofc of Research & Analysis Soviet Affrs.
Office of the Inspector General	Assistant Inspector General for Audits.
	Asst Inspector General for Investigations.
	Counsel to the Inspector General.
	Dep Asst Inspector General for Audits.
	Dept Asst Inspector Gen for Investigations.
	Asst Insp Gen for Policy, Plng and Management.
	Dep Asst Inspector Gen for Inspections.
	Dep Asst Insp Gen for Ofc of Secur Oversight.
	Deputy Inspector General.
	Asst Inspector Gen for Security Oversight.
Bureau of Personnel	Director, Ofc of Civil Service Personnel Mgmt.
International Boundary & Water Commission	Supervisory Civil Engineer.
	Supervisory Civil Engineer, Operations.
Department of Transportation:	
Office of Inspector General	Asst Insp General for Auditing.
	Asst Inspector General for Investigations.
	Dep Asst Inspector General for Auditing.
	Dep Asst Inspector General for Investigations.
	Deputy Inspector General.
	Asst Inspector General for Inspections & Eval.
	Deputy Inspector General.
	Director of Administration.
	Dir, Ofc Info Tech Financial & Secretarial Aud.
	Senior Counsel.
	Associate Deputy Inspector General.
	Asst Inspector General for Evaluations.
Asst Secretary for Budget & Programs	Deputy Chief Financial Officer.
Asst Sec for Administration	Asst Secy for Administration.
Office of Acquisition & Grant Management	Director, Ofc of Acquisition & Grant Mgnt.
Assoc Adm'r for Safety	Assoc Admr for Safety.
Office of Safety Enforcement	Director, Office of Safety Enforcement.
Associate Administration for Pipeline Safety	Assoc Admr for Pipeline Safety.
Office of Shipyard Revitalization	Dir, Ofc of Shipyard Revitalization.
Ofc of Assoc Admr for Ship Financial A & C Preference	Assoc Admr for Ship Fin A & C Preference.
Office of the Administrator	Senior Advisor.
Federal Highway Administration	Executive Director.
Office of Fiscal Services	Dir, Ofc of Budget & Finance.
Associate Administrator for Safety & System App	Assoc Admr for Safety & System Applications.
Office of Highway Safety	Dir, Office of Highway Safety.
Office of Motor Carrier Standards	Dir, Ofc of Motor Research & Standards.
Office of Motor Carrier Safety Field Operations	Director, Ofc of Motor Carrier Field Operation.
Office of Environment & Planning	Chief, Environmental Operations Division.
Office of Real Estate Services	Dir, Ofc of Real Estate Services.
Associate Administrator for Safety Assurance	Associate Administrator for Safety Assurance.
Ofc of Defects Investigation	Dir, Ofc of Defects Investigation.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Ofc of Vehicle Safety Comp	Dir, Ofc of Vehicle Safety Compliance.
Office of the Chief of Staff	Director of Finance and Procurement.
	Director of Finance and Procurement.
Surface Transportation—Board	Director of Economics, Environmental A & A.
Office of Proceedings	Deputy Director, Legal Analysis.
Department of Treasury:	
Assistant Secretary (International Affairs)	Dir, Ofc of Foreign Exchange Operations.
Fiscal Assistant Secretary	Fiscal Assistant Secretary.
	Assistant Fiscal Assistant Secretary.
Financial Management Service	Commr of Financial Management Service.
	Dep Com, Financial Management Service.
	Dir, Regional Financial Center (Chicago).
	Director, Regl Fin Ctr (San Francisco).
	Director, Regl Fin Ctr (Austin).
	Comptroller.
	Director, Platform Services Directorate.
	Asst Commissioner, Information Resources.
	Assistant Commissioner, Federal Finance.
	Director, Operations Group.
	Assistant Commissioner, Regional Operations.
	Asst Comr, Management (Chief Fin Ofcr).
	Director, Systems 90 Implementation.
	Dir, Fin Information Management Directorate.
	Director, Systems Management Directorate.
	Assistant Commissioner, Financial Information.
	Assistant Commissioner (Agency Services).
	Deputy, Chief Information Officer.
	Associate Deputy Commissioner for Re-Engineer.
	Assistant Commissioner, Debt Management Sercs.
Bureau of the Public Debt	Commissioner.
	Dept Commr of the Public Debt.
	Asst Commissioner (Savings Bond Operations).
	Asst Commr (Financing).
	Asst Commr (Administration).
	Government Securities Act Program Director.
	Government Securities Policy Advisor.
	Asst Commr, Securities & Accounting Services.
	Asst Commissioner (Automated Info Systems).
	Asst Commissioner (Public Debt Accounting).
Assistant Secretary (Enforcement)	Dep Dir, Financial Crimes Enforcement Network.
	Director, Fincen.
	Assoc Dir, Ofc of Mgmt/Chf Fin Ofcr, Fincen.
	Dir, Exe Ofc for Asset Forfeiture.
Bureau of Alcohol, Tobacco and Firearms	Associate Director (Enforcement).
	Special Agent in Charge (NY District Office).
	Spec Agent In Charge (Washington Dist Office).
	District Director (North Atlantic District).
	Assistant Director (Inspection).
	Dep Assoc Dir, Reg Enforcement Field Operation.
	SAC, Chicago Field Division.
	Dep Assoc Dir (Criminal Enforcement Programs).
	Special Agent in Charge.
	Brad, Malcolm W.
	Dep Assoc Dir, Criminal Enforcement Field Oper.
	Dep Assoc Dir, Criminal Enfor Field Oper West.
	Asst Dir, Science & Information Technology.
	Dep Asst Dir, (Sci & Info Technology).
	Dep Assoc Dir, Regulatory Enforcement Programs.
	Dep Asst Dir (Liaison & Public Information).
	Deputy Director.
	Asst Dir (Liaison & Public Information).
Chief Counsel	Assistant Chief Counsel (Chicago).
	Staff Assistant to the Chief Counsel.
	Associate Chief Counsel (Admin & Ethics).
U.S. Customs Service	Deputy Assistant Commissioner (Enforcement).
	Asst Commissioner for Internal Affairs.
	Dir, International Trade Compliance Division.
	Dir, Ofc of Regulatory Audit.
	Special Agent in Charge, Miami.
	District Director, Laredo.
	Director, Investigative Operations Division.
	Dir, Office of Enforcement Support.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
	Special Agent in Charge—New York.
	Special Agent in Charge.
	Dir, Customs Managment Center—New York.
	Area Dir, Newark.
	Dir, Customs Management Center.
	Dir, Strategic Trade Center—New York.
	Asst Commissioner, Field Operations.
	Dir, Strategic Trade Center Plantation FL.
	Dir, Customs Management Center—Gulf.
	Dir, Customs Management Center.
	Dir, Customs Management Center—S. Texas.
	Director, Customs Management Center.
	Project Executive.
	Asst Commissioner, Regulations & Rulings.
	Dir, Strategic Trade Center, Chicago.
	Area Director, JFK Airport.
	Port Director—Los Angeles.
	Asst Commissioner, Infor & Technical Services.
	Dir, Customs Management Center, South Florida.
	Special Agent in Charge (New Orleans).
	Dep Dir, Ofc of Regulatory Audit.
	Asst Commissioner, Investigations.
	Director, Strategic Trade Center.
	Dir, Laboratories & Scientific Services.
	Project Executive.
	Dir, Strategic Trade Center Operations.
	Chief, Operations Officer.
	Special Agent in Charge.
	Dir, Budget and Planning.
	Exec Dir, The Interdiction Committee.
	Assistant Commissioner, Finance.
	Project Executive.
	Dir, Tariff Classification Appeals Division.
	Dir, Strategic Trade Center, Long Beach.
	Processes and Policy Executive.
	Dir, Strategic Trade Center, Dallas/Ft Worth.
	Special Agent-in-Charge (Seattle, Wash).
	Special Agent in Charge—Baltimore.
	Dep Asst Comr, Ofc of A & M Interdiction.
	Special Agent in Charge (Houston).
	Dir, Customs Management Center.
	Dir, Office of Planning.
	Director, Applications Development Division.
	Dir, Customs Management Center, East Texas.
	Executive Director, Customs Management Center.
	Dir, Customs Management Center, South Pacific.
	Project Exec (Dir, Intervention Management).
	Director, Administration, Planning & Policy.
	Asst Commissioner, Strategic Trade.
	Special Agent-in-Charge (San Diego).
	Technology Manager.
	Asst Commissioner, Human Resources Mgmt.
	Director, Ofc of Automated Commercial Systems.
	Special Agent-in-Charge (Chicago).
	Special Agent-in-Charge—Dallas.
	Deputy Chief Financial Officer.
Customs Chief Counsel	Miami Regl Counsel.
	Chicago Regl Counsel.
	New York Regl Counsel.
	Associate Chief Counsel, Enforcement.
	Assoc Chief Counsel (Trade Tariff & Leg).
	Regional Counsel (Southwest Region).
	Assoc Chief Counsel (Administration).
	Regional Counsel (Pacific Region).
Secret Service	Asst Director, Investigations.
	Special Agent in Charge, New York Office.
	Director of the Secret Service.
	Deputy Director, U.S. Secret Service.
	Asst Dir (Protective Operations).
	Asst Dir (Protective Research).
	Assistant Director, Administration.
	Assistant Director, Inspection.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
	Dep Asst Dir (Protective Operations).
	Spec Agent in Charge—Presidential Protective.
	Special Agent in Charge, Chicago.
	Special Agent in Charge, Los Angeles Office.
	Dep. Asst. Dir. (Protective Research).
	Assistant Director—Training.
	Asst Director—Govt Liaison and Public Aff.
	Spec Agent in Charge—VP Protect Div.
	Spec Agent in Charge—Tech Sec Div.
	Spec Agent in Charge—Intelligence Div.
	Spec Agent in Charge—Washington Field Office.
	Spec Agent in Charge—Philadelphia Field Office.
	Special Agent in Charge, Detroit.
	Special Agent in Charge, Dallas Field Office.
	Deputy Asst Dir, Investigations.
	DAD—Administration.
	Deputy Special Agent in Charge, Pres Prot Div.
	DAD (Uniformed Forces, F & E Dev), Ofc Trng.
	Special Agent in Charge—Houston Field Ofc.
	Deputy Asst Director, Office of Inspection.
	Spec Agent in Charge—Miami Field Office.
	Deputy Special Agent in Charge—VP Prot Div.
	Dep Asst Dir, Protective Operations.
	CHF, Info Resources Management Division.
	Special Agent in Charge/Dignitary Prot Div.
	Special Agent in Charge—Boston Field Office
	Spec Agent in Charge—Atlanta Field Office.
Ofc of the Inspector General	Dep Asst Inspector Gen for Audit (Fin Mgmt).
	Dep Asst Inspector Gen for Audit (Audit OPS).
	Assistant Inspector General for Resources.
	Assistant Inspector General for Audit.
	Asst Inspector General for Investigations.
	Assoc Inspector Gen for Audit (Prog Audits).
	Dep Ass Inspector Gen for Investigations.
	Sr Technical Advisor to the Inspector General.
	Asst Inspector General for Investigations.
Assistant Secretary (Economic Policy)	Asst Dir for Economic Forecasting.
	Sr Economist.
Assistant Secretary (Tax Policy)	Dir (Economic Mod & Computer Applications).
Assistant Secretary (Management)	Director, Office of Procurement.
	Deputy Chief Financial Officer.
	Dep to the Chf Fin Ofcr for Pol & Planning.
United States Mint	Assoc Director, Chief Operating Officer.
	Dep Assoc Dir for Finance and Dep Chief Fin Ofc.
	Associate Director for Marketing.
	Assoc Dir for Pol & Mgmt, Chf Fin Officer.
Internal Revenue Service	Regional Dir of Appeals, North Atlantic Region.
	Regional Director of Appeals, Western Region.
	Natl Dir. Equal Employ Opportunity & Diversity.
	Deputy Commissioner.
	Taxpayer Advocate.
	Regional Director of Appeals.
	National Director of Appeals.
	Chief Compliance.
	Associate Commissioner for Modernization.
	Assistant Dir. Office of Business Transition.
	District Office Transition Site Executive.
	Computing CET Transition Site Executive.
	Deputy National Dir of Appeals.
	Submission Processing Transition Site Exec.
	Customer Service Transition Site Executive.
	Director of Practice.
	Asst to the Senior Dep Comissioner.
	Director, Office of Business Transition.
	Management Systems Site Executive.
North Atlantic Region	Reg Commr.
	Service Center Director, Andover, Mass.
	Srvc Ctr Dir. Brookhaven.
	District Dir, Manhattan.
	District Dir. Brooklyn.
	District Dir, Boston.
	Dist Dir (Hartford).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Mid-Atlantic Region	District Dir, Buffalo. Asst Dist Dir, Brooklyn. Assistant District Director, Manhattan. Asst District Dir, Boston. Asst District Director, Buffalo. Regional Chief, Customer Service. Director of Support Services. Chief Compliance. Assistant District Director. Deputy Regional Counsel, Northeast. Regional Counsel, Northeast. Field Information Systems Officer. Asst District Director. Service Center Dir, Philadelphia. District Dir, Newark. District Director, Richmond District. Asst District Dir, Philadelphia. Assistant District Director, Baltimore, MD. District Dir, Baltimore.
Southeast Region	Asst Service Center Director. District Director. Reg Commr. Srvc Ctr Dir, Atlanta. District Dir, Jacksonville. District Dir, Atlanta. District Director, Greensboro. District Dir, Nashville. District Dir, New Orleans. Asst District Director, Jacksonville. Assistant District Director, Atlanta. Assistant District Director, Gulf Coast. Dir of Support Services. Asst District Director. Assistant District Director. Regional Chief, Customer Service. Field Information Systems Officer, Southeast. District Director. Assistant Service Center Director.
Central Region	Assistant District Director. Dir, Service Ctr, Cincinnati. District Director, Detroit. District Director, Indianapolis. District Dir, Cincinnati. Asst Director, Detroit Computing Center. Asst District Director, Denver.
Midwest Region	Assistant District Director. Assistant District Director, Detroit. Srv Ctr Dir, Kansas City. District Dir, Chicago. District Dir, St Paul. District Dir, Milwaukee. Asst District Dir, Chicago. Assistant District Director. Assistant District Director. National Director for Internal Audit Planning.
Southwest Region	Assistant District Director. Service Center Dir, Ogden. District Dir, Austin. District Director, Dallas. District Director, St Louis. District Director, Oklahoma City. District Dir, Phoenix. District Dir, Denver. Assistant District Director, Dallas. District Director, Cheyenne. Compliance Center Director. Asst District Director, Austin. Asst Compliance Center Director. Field Information Systems Officer Midstates. Assistant Service Center Director. Director of Support Services. Assistant District Director, Houston.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Western Region	District Director, Houston. Regional Chief Customer Service. Regional Commissioner. Regional Director of Appeals, Midstates. Regional Chf Compliance Ofcr, Southwest. District Dir, Los Angeles. District Dir, San Francisco. District Dir, Seattle. Asst District Dir, Los Angeles. Asst Dist Dir, San Francisco. District Director, San Jose. Field Information Systems Officer, Western. Regional Counsel, Western. Special Assistant to the Regional Commr. National Transition Executive for Appeals. Assistant District Director, Laguna Nigule. Asst District Director, San Jose. Regional Chief, Customer Service. Asst District Director, Seattle. Chief Compliance. District Director, Laguna Nigule. Regional Commissioner, Western. Dir of Support Services. Service Center Director, Fresno.
Chief Compliance Officer	Asst Comr (Employee P & E Organizations). Asst Commissioner (Taxpayer Service). Asst Commr (Criminal Investigation). Dir Exempt Organizations Technical Division. D/Employee Plans Tech & Actuarial Division. Director, Statistics of Income Division. Dep Asst Commr (Criminal Investigation). Director of Investigations, Eastern Area Ops. Dir of Investigations. Dir of Investigations (Tax Refund Fraud). Dir of Investigations, Southern Area of Ops. Director, Office of National Operations. Dir of Investigations, Central Area of Ops. Asst Commissioner (Collection). Natl Director, Corporate Examinations. Assistant Commissioner (International). Asst Comr (Forms & Submission Processing). National Director, Compliance Specialization. National Director, Specialty Taxes. Chief Compliance Officer. National Dir, Electronic Program Operations. Executive for Submission Process Outsourcing. National Director, Service Center Compliance. National Dir, Collection Field Operations. National Director, Compliance Research. Deputy Asst Commissioner (International). Director, Business Systems Requirements. Asst Commr (Examination & Govntl Liaison). Natl Director, Electronic Prog Enhancement.
Chief, Taxpayer Services	Service Center Director, Memphis. Service Center Director, Austin. Asst Comr (Electronic Tax Administration). Executive for Electronic Filing Strategy. Asst Service Center Dir Brookhaven. Assistant Service Center Director. Assistant Service Center Director, Ogden. National Dir, Customer Service Operations. Deputy Chief, Taxpayer Service. Natl Dir, Submission Processing Division. Executive Ofcr for Service Center Operations. Project Director, Customer Service Site. National Dir, Customer Serv Planning & Syst. Chief, Taxpayer Services. National Dir, Multimedia Production Division. Executive Officer for Customer Service.
Chief Financial Officer	Chief Financial Officer. Controller National Dir for Financial Mgmt. Deputy Assistant Commissioner (Procurement).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Chief, Management & Administration	National Director for Financial Analysis. Director, Support & Services Division. National Director for Systems & Account Stds. Asst Comr (Procurement). National Director for Budget. Special Asst to Chief Mgmt & Administration. Exec Asst to the Natl Dir Ofc of Quality. Dean, School of Information Technology. Dean, School of Professional Development. Dir, Ofc of Media Relations. Natl Dir, Real Estate Planning & Management. National Director Personnel. National Director of Education. Dean, School of Taxation.
Chief Information Officer	Asst Commissioner (Support Services). Chief Management and Administration. Dir Martinsburg Computing Center. Dir, IRS Data Center Detroit. Director, Systems Design Division. Director, Technical Contract Support Division. Director, Submission Processing Division. Director, Government Program Management Ofc. Privacy Advocate. Dir, Technical Management Division. Dir, Customer Serv Compliance & Mgmt Sys Div. Asst Dir. Government Prog Management Ofc. Director, Technical Program Management. Director, Technical Contract Support. Dep Natl Dir, Applications Design & Develop. Project Director. Dep Natl Dir, Syst Eng & Program Management. Natl Dir Network & Systems Management. Dir, Operation Management Division. Director of Systems Life Cycle, S & E. Director, Systems Support Division. Director, Tennessee Computing Center. Project Director. Director, Product Assurance Division. National Dir, Syst Eng & Program Management. Dir, Program Management & Control Division. Dir, Architecture, Eng & Infrastructure Div. Dept Chief Info Officer (Info Resources Mgmt). Deputy Dir, System Standards & Evaluation Ofc. Director, Performance Management Office. Chief Information Officer. Director, National Office Operations Division. Dir, Office of System Standards & Evaluation. Project Director. Project Director. Project Director. Director, Corporate Processing Division. Director, Information Systems Services Div. Project Director. Deputy Chief Information Officer. Deputy Chief Information Officer (System Dev). Dep Chief Information Officer (Operations). Project Director. Project Director.
Chief, Strategic Planning & Communications	Director, Tax Forms & Publications Division. Director, Legislative Affairs Division. Natl Director, Strategic Planning Division. National Director of Quality.
Chief, Headquarters Operations	Chief, Headquarters Operations.
Chief Inspector	Chief Inspector. Dep Chief Inspector. Assistant Chief Inspector (Int Audit). Assistant Director, Internal Audit Division. Asst Chief Inspector (Internal Security). Asst Dir. Internal Security Division. Regional Inspector, North Atlantic. Regional Inspector, Western Region. Regional Inspector, Southwest Reg.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
Chief Counsel	Regional Inspector, Southeast.
	Natl Dir for Communication, Education Quality.
	Asst Chief Counsel (General Litigation).
	Asst Chief Counsel (Criminal Tax).
	Asst Chief Counsel (General Legal Services).
	Asst Chief Counsel (Disclosure Litigation).
	Assistant Chief Counsel (International).
	Assistant Chief Counsel (Corporate).
	Dept Asst Chf Coun (Income Tax & Accounting).
	Dep Asst Chf Coun (Passthroughs/Spec Indust).
	Asst Chief Counsel (Field Service).
	Asst Chf Coun (Passthroughs/Spec Industries).
	Deputy Asst Chief Counsel (Corporate).
	Dep Assoc Chief Counsel (Fin & Management).
	Dep Asst Chief Counsel (Field Service).
	Dep Asst Chief Coun (Financial Inst & Prod).
	Dep Assoc Chf Coun (Enforcement Litigation).
	Dep Assoc Chief Counsel, International.
	Asst Chf Coun (Fin Institutions & Products).
	Dep Asst Chief Coun (Income Tax & Accounting).
	Dep Assoc Chief Counsel (EBEO).
	Asst Chief Counsel (Income Tax & Accounting).
	Assoc Chief Counsel (Enforcement Litigation).
	Assoc Chief Counsel, Emp Benefits Exempt Org.
	Special Counsel (Modernization & Strat Plnng).
	Deputy Chief Counsel.
	Asst Chief Counsel (EBEO).
	Dep Assoc Chief Counsel (Domestic) (Technical).
	Associate Chief Counsel (International).
	Assoc Chf Counsel (Finance & Management).
	Dep Assoc Chief Coun (Domestic) (Field Serv).
Regional Counsels	Assoc Chief Counsel (Domestic).
	Regional Counsel, SE Region.
	District Counsel, Boston.
	District Counsel, Los Angeles.
	District Counsel, Cincinnati.
	District Counsel, Philadelphia.
	District Counsel, Newark.
	District Counsel, Chicago.
	District Counsel, Manhattan.
	District Counsel, Dallas.
	District Counsel, San Francisco.
	District Counsel.
	District Counsel.
	Regional Counsel, Midstates.
	Deputy Regional Counsel (Southeast).
	Deputy Regional Counsel, Western Region.
	District Counsel, Seattle.
	District Counsel, Baltimore.
	District Counsel, Brooklyn, New York.
	District Counsel, Atlanta.
	Deputy Regional Counsel, Midstates.
	District Counsel, Houston, Texas.
	District Counsel, Denver.
U.S. Arms Control and Disarmament Agency:	
Intelligence, Verification & Information Mgmt Bureau	Chief, Intelligence, Technol & Analysis Div.
Ofc of Administration	Director of Administration.
Strategic and Eurasian Affairs Bureau	Chief, Strategic Neg & Implementation Div.
	Chf, Theater & Strategic Defenses Division.
	Chief, Strategic Transition Division.
Non-Proliferation and Regional Arms Control Bureau	Chief Scientist.
	Chief, Nuclear Safeguards & Technology Div.
	Chf, Weapons and Technology Control Div.
	Chief, Nuclear Safeguards & Testing Div.
	Chf, International Nuclear Affairs Divisions.
Multilateral Affairs Bureau	Chief, Intl Security & Nuclear Policy Division.
	Chf, C & B Pol Div Bur of Multilateral Affs.
	Chief, Sci & Technological Division.
United States Information Agency:	
Bureau of Management	Director, Office of Personnel.
	Director, Office of the Comptroller.
	Dir, Ofc of Contracts.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1997—Continued

Agency/organization	Career reserved positions
International Broadcasting Bureau	Director, Office of Technology.
	Dir, Engineering and Technical Operations.
	Deputy for Engineering Resource Control.
	Deputy for Projects Management.
	Deputy for Operations.
	Director, for Spectrum Management.
Office of Information Resources	Director, OFC of Information Resources.
Ofc of the Gen Counsel	Deputy General Counsel.
U.S. International Trade Commission:	
Office of Industries	Dir, Ofc of Industries.
Office of Investigations	Dir, Ofc of Investigations.
Department of Veterans Affairs:	
Office of the Secretary and Deputy	Director, Office of Edca.
Office of the Inspector General	Dep Inspector General.
	Assistant Inspector general for auditing.
	Asst Inspector General for Investigations.
	Asst Insp Gen for Departmental R & M Support.
	Dep Asst Inspector General for Investigations.
	Counselor to the Inspector General.
	Asst Inspector General for Healthcare Inspect.
	Dep Asst Inspector General for Auditing.
Board of Veterans Appeals	Vice Chairman.
	Deputy Vice Chairman.
Office of Financial Management	Dep Asst Secy for Financial Management.
	Assoc Dep Asst Secy for Financial Operations.
	Dir, Austin Finance Center, Austin, TX.
Office of Information Resources Management	Dir, VA Automation Ctr, Austin, TX.
	Assoc Dep Asst Secy for telecommunications.
	Assoc Dep Asst Secy for Pol & Prog Assistance.
Office of Acquisition and Materiel Management	Dep Asst Sec for Acquisition & Materiel Mgmt.
	Assoc Dep Assistant Secy for Acquisitions.
	Assoc Dep Asst Secy for Serv & Distribution.
	Assoc Dep Asst Secy for Prog Mgmt & Oper.
	Executive Director/Chief Operating Officer.
Office of Human Resources Management	Assoc Dep Asst Secy for Human Res Management.
	Assoc Dep Asst Secy for Human Res Management.
	Dummy.
Office of Security and Law Enforcement	Dep Asst Secy for Security & Law Enforcement.
Veterans Benefits Administration	Deputy Chief Financial Officer.
	Dep Dir, Compensation & Pension Service.
	Chief Financial Officer.
Veterans Health Administration	Director, Resource Formulation Office.
	Dir, Office of Real Property Management.
	Dir, VA/DOD Medical Sharing Office.
	Dir, Medical Care Cost Recovery Office.
	Dir, Emergency Medical Preparedness Office.
	Deputy Director, Emergency Medical Prep Ofc.
	Chief Financial Officer.
	Director, Western Area Office.
	Director, Eastern Area Office.
	Director, Facilities Quality Office.
	Dir, Consulting Support Office.
	Director, Financial Management Office.
Veterans Integrated Service Network Directors	Dir, Canteen Service.

[FR Doc. 98–4156 Filed 2–23–98; 8:45 am]
BILLING CODE 8325–01–M

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federal register

Tuesday
February 24, 1998

Part III

Department of Education

Special Education and Rehabilitative Services; Grant Applications; Notice

DEPARTMENT OF EDUCATION

Special Education and Rehabilitative Services; Grant Applications

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1998.

SUMMARY: On June 4, 1997, the President signed into law Public Law 105–17, the Individuals with Disabilities Education Act Amendments of 1997, amending the Individual with Disabilities Education Act (IDEA).

This notice provides closing dates and other information regarding the transmittal of applications for fiscal year 1998 competitions under four programs authorized by IDEA, as amended. The four programs are: (1) Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (four priorities); (2) Special Education—Technology and Media Services for Individuals with Disabilities (two priorities); (3) Research and Innovation to Improve Services and Results for Children with Disabilities (one priority); and (4) Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities (one priority).

This notice supports the National Education Goals by helping to improve results for children with disabilities.

Waiver of Rulemaking

It is generally the practice of the Secretary to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priorities in this notice. In order to make awards on a timely basis, the Secretary has decided to publish these priorities in final under the authority of section 661(e)(2).

General Requirements

(a) Projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (see Section 606 of IDEA);

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see Section 661(f)(1)(A) of IDEA); and

(c) Projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, D.C. during each year of the project.

(d) In a single application, an applicant is required to address only one absolute priority in this notice.

Note: The Department of Education is not bound by any estimates in this notice.

Special Education—Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities

Purpose of Program: The purpose of this program is to provide technical assistance and information through such mechanisms as institutes, regional resource centers, clearinghouses and programs that support States and local entities in building capacity, to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and address systemic-change goals and priorities.

Eligible Applicants: State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 85, and 86; and (b) The selection criteria included in regulations for these programs in 34 CFR part 305.31 for the Regional Resource Centers priority, and 320.30 for the remaining three priorities.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority

Under section 685 and 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet any one of the following priorities. The Secretary funds under these competitions only those applications that meet these absolute priorities:

Absolute Priority 1—Regional Resource Centers (84.326R)

Background

State educational agencies (SEAs) are increasingly being asked to make changes to their systems for providing early intervention, special education, and transition services to improve results for children with disabilities and their families. Recent findings on educational change suggest that in order to create successful and lasting "systemic change": (1) decisions should be data-based; (2) multiple aspects of the system should be considered, including policies and practices at national, State, district, classroom, teacher, and student levels; (3) change should be driven from both the top-down and the bottom-up; (4) barriers to systemic change, such as fragmented policies and complicated administrative requirements should be eliminated; and (5) changes to one sector of the system should be directly linked to changes in all other system sectors (for example, personnel development and teacher certification must be linked to curriculum content and student outcomes). Furthermore, SEAs striving for such complex transformations will be required to establish new partnerships, translate validated research findings into practice, and provide personnel with specialized knowledge and skills.

In order to help States improve their special education programs, the Office of Special Education Programs (OSEP) has supported Regional Resource Centers (RRCs) which employ a variety of strategies, including needs assessment, staff training, policy and product development, and information dissemination. Historically, these strategies, although requested and well received by SEAs, have focused primarily on specific policy or program issues. They have seldom addressed the SEA's systemic needs.

For over a decade, OSEP has supported State system change efforts through a number of discretionary projects. These projects, although successful, were limited in number and scope, focusing specifically on secondary transition and the education of children with severe disabilities. The IDEA Amendments of 1997 specifically authorize technical assistance on assisting SEAs and their partners in planning and implementing systemic change. In this regard, the following priority would require the RRCs to assist SEAs and LEAs in including general educators in systems change efforts designed to improve results for children with disabilities.

The Regional Resource Centers will become a key component of OSEP's expanded systems change efforts, serving not only in their traditional capacity as technical assistance providers, but also as brokers of technical assistance for SEAs, LEAs, and their partners. This new role would require RRCs to serve as a link between SEAs and appropriate technical assistance providers at national, State, and local levels that can assist States in achieving systemic change and improving results for children with disabilities and their families.

Consistent with the Regional Resource Centers' central mission of helping States improve their special education

programs, the following priority requires centers to address the general technical assistance needs of SEAs and their partners related to the development and implementation of State Improvement Plans under the new State Program Improvement Grants for Children with Disabilities (or SIG program). The SIG program supports competitive grants designed to assist State educational agencies and their partners in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, in order to improve results for children with disabilities. Because Regional Resource Centers are funded to provide technical assistance and to serve as a resource for information requests from all States within their regions, and must do so on an equitable basis across those States, centers are prohibited from helping a State draft its SIG application, providing technical assistance on what to include in the application or how to draft the application contents, or performing any other function that could be viewed as providing a competitive advantage to one potential SIG program applicant over another. On the other hand, helping States, for example, with needs assessments, project implementation, and evaluation, and other activities related to the State improvement plan are consistent with the centers' general role and are authorized under the following priority.

Priority

The Secretary establishes an absolute priority for the purpose of supporting Regional Resource Centers. The Regional Resource Centers, through written technical assistance agreements with SEAs, LEAs, and other entities must—

(a) Increase the depth and utility of information in on-going and emerging areas of priority needs as identified by States, local educational agencies, and participants in SIG partnerships that are in the process of making systemic changes. To expand information depth and utility, Regional Resource Centers must, for example, cooperate with the Federal Resource Center in collecting and sharing information on current practices, policies, and programs relevant to State implementation of IDEA.

(b) Promote change through a multi-State or regional framework that benefits States, local educational agencies, and participants in SIG partnerships pursuing systemic-changes. To promote change, Regional Resource Centers must conduct activities such as—

(1) Identifying general and special education technical assistance providers funded by the Department of Education at national, State, and local levels, and linking them with SEAs to help them achieve systemic change and improved results for children with disabilities and their families.

(2) Collaborating with other Department-funded programs that address special needs related to school-based reform (e.g., school-wide and other programs under Title I of the Elementary and Secondary Education Act).

(3) Participating in Department of Education program coordinated reviews whose purpose is to ensure that technical assistance activities of the centers are coordinated with those of other technical assistance providers to meet State identified needs in a comprehensive and efficient manner. The program coordinated reviews conducted by the Department focus on areas in which technical assistance is needed across programs such as standards and assessments, parent involvement, professional development, transition from school to work, and education reform.

(c) Promote communication and information exchange among States, local educational agencies, and participants in SIG partnerships based on the needs, concerns, emerging issues, and trends identified by these agencies and participants. Such bases may include, for example:

(1) Persistent problems that arise as States comply with IDEA requirements (e.g., identifying appropriate settings for infants and toddlers, transition issues, shortages of related service personnel, alternate assessment strategies, or determining appropriate uses of technology).

(2) Issues faced by local, regional, and State entities in implementing systemic reform, (e.g., placement issues, training and support for teachers, developing useful curricular materials based on sound instructional principles, managing children who exhibit challenging behaviors).

(3) Variance in practices, procedures, and policies of States, local educational agencies, and participants in SIG partnerships.

(4) Accountability of States, local educational agencies and participants in SIG partnerships for improved early intervention, educational, and transitional results for children with disabilities.

(d) Provide technical assistance to State educational agencies and their partners related to State improvement plans under the SIG program. Technical assistance activities may include—

(1) Developing general models for SEAs to use in developing their State improvement plans under the SIG program (See § 653 of IDEA);

(2) Helping SEAs conduct needs assessment activities stipulated in the State improvement plan (See § 653(b) of IDEA);

(3) Helping SEAs and their partners implement systemic changes specified in the State improvement plan (See § 653(c) of IDEA);

(4) Helping to evaluate the systemic outcomes of State improvement activities (See § 653(f) of IDEA); and

(5) Serving as a technical assistance facilitator to establish mentoring relationships between SEAs that have successfully implemented State improvement activities under the SIG program and those seeking funding under the SIG program.

(e) Assist States in developing and implementing strategies to comply with IDEA requirements such as establishing performance goals and indicators under section 612(a)(16). To assist States, the Regional Resource Centers may conduct activities such as—

(1) Designing LEA systems for ensuring compliance, (e.g., LEA monitoring, eligibility, complaint resolution);

(2) Developing and assisting in the implementation of corrective action plans in response to U.S. Department of Education monitoring findings; and

(3) Assisting in coordinated program reviews conducted by the U.S. Department of Education.

(f) Conduct, every two years, a results-based evaluation of the technical assistance provided. Such an evaluation must be conducted by a review team consisting of three experts approved by the Secretary and must measure elements such as—

(1) The type of technical assistance provided and the perception of its quality by the target audience;

(2) The changes that occurred as a result of the technical assistance provided; and

(3) How the changes relate to State plan goals and objectives.

The services of the review team, including a two-day site visit to the centers are to be performed during the last half of a center's second year and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review team must also be included in the Regional Resource Center's budget for

year two. These costs are estimated to be approximately $4,000.

Geographic Regions:

The Secretary establishes the following geographic regions for the RRCs:

Region 1: Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont

Region 2: Delaware, District of Columbia, Kentucky, Maryland, North Carolina, South Carolina, Tennessee, Virginia, West Virginia

Region 3: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Texas, Puerto Rico, Virgin Islands

Region 4: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, Pennsylvania, Wisconsin

Region 5: Arizona, Colorado, Kansas, Montana, New Mexico, Nebraska, North Dakota, South Dakota, Utah, Wyoming, Bureau of Indian Affairs

Region 6: Alaska, California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, and the Northern Marianas, and the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau—for as long as they participate under Part B of IDEA.

In addition to the two-day Project Directors' meeting (see general requirement (c)), the project must also budget for an additional trip to Washington, D.C. to collaborate with the OSEP project officer.

Under this priority, the Secretary will make six awards for cooperative agreements with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the Regional Resource Centers for the fourth and fifth years of the project period, the Secretary, in addition to the requirements of 34 CFR 75.253(a), will consider the timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Regional Resource Centers.

Project Period: Up to 56 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $1,040,000 for the first budget period of 8 months, and $1,500,000 for the subsequent 12 month budget periods. The Secretary may change the maximum amounts through a notice published in the **Federal Register**.

Page Limits: In Part III of the application, the application narrative is where an applicant addresses the selection criteria that are used by reviewers in evaluating an application. An applicant must limit Part III to the equivalent of no more than 40 double-spaced number of pages, using the following standards: (1) A "page" is 8½" x 11" (on one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Absolute Priority 2—National Clearinghouse on Postsecondary Education (84.326H)

The Secretary establishes an absolute priority to support a National Clearinghouse on Postsecondary Education for Individuals with Disabilities. The National Clearinghouse on Postsecondary must—

(a) Collect and disseminate information on: the characteristics of individuals with disabilities entering and participating in education and training programs after high school; legislation affecting such individuals and such programs; policies, procedures, support service, (including assistive technology and adaptations), and other resources available or recommended to facilitate the postsecondary education of individuals with disabilities; available educational programs and services in postsecondary settings that include, or can be adapted to include, individuals with disabilities; and sources of financial aid for the postsecondary education and training of individuals with disabilities;

(b) Identify areas, in addition to those specified in paragraph (a), in which information is needed and provide information in those areas;

(c) Develop a coordinated network of professionals, related organizations and associations, mass media, other clearinghouses, and governmental agencies at the Federal, regional, State, and local level for purposes of disseminating information, promoting awareness of issues related to the postsecondary education of individuals with disabilities, and referring individuals who request information to local resources;

(d) Respond to requests for information from individuals with disabilities, their parents, and professionals who work with such individuals so that persons may make informed decisions about postsecondary education and training. All information requests should be collected and responses disseminated, at no cost to the requester, through multiple vehicles such as a toll free telephone number, a World Wide Web Site, and through electronic and regular mail. The project must link with other Federally supported technical assistance projects in collecting and disseminating information. Information products must be made available in accessible formats and, as appropriate, foreign languages.

Project Period: Up to 60 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $450,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: In Part III of the application, the application narrative is where an applicant addresses the selection criteria that are used by reviewers in evaluating an application. An applicant must limit Part III to the equivalent of no more than 40 double-spaced number of pages, using the following standards: (1) A "page" is 8½" x 11" (on one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page

abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Absolute Priority 3—National Information Center for Children With Disabilities (84.326N)

Background

There is a need to disseminate information and provide technical assistance on a national basis to parents, professionals, and other interested parties who live with, and work with, infants, toddlers, and children with disabilities. Activities such as disseminating information and providing technical assistance are intended to support States and local entities in building capacity to improve early intervention, educational, and transitional services, and results for children with disabilities and their families, and to address systemic-change goals and priorities. Since the inception of IDEA, the informational needs of parents, professionals, and others has greatly increased. Public awareness of IDEA has continued to improve. As additional parents and professionals confront issues related to IDEA and children with disabilities, the need for information will intensify and existing materials will have to be updated, revised, and improved upon.

Priority

The Secretary establishes an absolute priority for the purpose of establishing and operating a national information dissemination center to improve early intervention results for infants and toddlers and educational and transitional results for children with disabilities. The center shall also address national needs for the preparation and dissemination of information relating to eliminating barriers to systemic change.

The national information dissemination center must—

(a) Collect, develop, and disseminate research-based information on the characteristics of infants, toddlers, and children with disabilities and on the programs, legislation, and services related to early intervention or education under IDEA and other Federal laws;

(b) Develop and implement a process for reviewing materials related to the IDEA Amendments of 1997 for accuracy and for consistency with those Amendments. The process must be approved by OSEP prior to implementation;

(c) Participate in programs and activities for providing outreach, technical assistance, and collection and dissemination of information on issues related to children with disabilities; and promote networking between individuals and appropriate national, State, and local agencies and organizations that deal with issues under IDEA. The center must coordinate its activities with parent training and information centers; community parent resource centers; early childhood, elementary, secondary and postsecondary technical assistance centers; the technical assistance to parent information centers project; regional resource centers; and other national technical assistance systems and information sources, such as the center on dispute resolution, that are supported under IDEA. The project must create links with other Federally supported technical assistance projects and create a World Wide Web home page to link electronically to these projects, as appropriate;

(d) Establish a coordinated network and conduct outreach activities with relevant Federal, State, and local organizations and other sources for promoting public awareness of disability issues and the availability of relevant information, programs, and services;

(e) Collect, develop and disseminate research-based information related to early intervention, education, and related services of individuals with disabilities that is responsive to current and future informational needs of parents, professionals, individuals with disabilities, and other interested parties. Information, must be collected and disseminated on a national, regional, and State basis as appropriate;

(f) Provide technical assistance to national, federally supported, regional, State, and local agencies and organizations seeking to establish information and referral services for individuals with disabilities and their families;

(g) Develop strategies to disseminate information to underrepresented groups such as those with limited English proficiency, for purposes of carrying out center activities.

Project Period: Up to 60 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $1,100,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: In Part III of the application, the application narrative is where an applicant addresses the selection criteria that are used by reviewers in evaluating an application. An applicant must limit Part III to the equivalent of no more than 40 double-spaced number of pages, using the following standards: (1) A "page" is 8½" x 11" (on one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

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Program Authority: Section 685 of the Act.

Absolute Priority 4—Linking Policy and Practice Audiences With the 1997 Amendments of IDEA (84.326A)

Background

The Individuals with Disabilities Education Act Amendments of 1997 (P.L. 105–17) made improvements to the IDEA that will help ensure that each child (ages birth through 21) with a disability is provided with a high quality individually designed program of services to meet his or her developmental and educational needs. The IDEA Amendments of 1997 build on the original purposes of the law: each child must be ensured a free appropriate public education, each child's education must be determined on an individualized basis, a program must be designed to meet the child's particular needs in the least restrictive appropriate environment, and the rights of children and their families must be ensured and protected through procedural safeguards.

The new IDEA provisions begin to shift the focus of the law from providing access to education and early intervention services to improving results for children with disabilities. For example, the IDEA Amendments of 1997 include additional requirements to help ensure that children with disabilities have access to challenging curricula, that their developmental and educational programs are based on high expectations, and that their progress is regularly assessed and their parents are kept informed.

Educational and professional associations, parent organizations, and other entities concerned with early intervention and the education of children with disabilities played an important role in the reauthorization of IDEA. Each supported and advocated for a clear focus on results as well as on access. These same entities, and their grassroots constituents, will be critical to the implementation of the new law by helping to ensure that the changes made by the IDEA Amendments of 1997 are understood and put into practice by their members at the State and local levels.

Priority

The Secretary establishes an absolute priority to support four partnerships among associations and other entities so they can contribute to the successful implementation of IDEA, including Part C. These partnerships will be established in order to inform and provide support to partnership's members and constituents in understanding the changes to the law, the implications of these changes for their respective roles in improving results for children with disabilities, and how research-based best practices can be used to implement the law. Associations and other entities forming partnerships must—

(a) Collaborate to meet the needs of one of four audiences: (1) policy makers (e.g., chief State school officers, State boards of education, local school boards, State directors of special education, State directors of mental health programs, State directors of vocational rehabilitation programs, State directors of programs for children with special health care needs, deans of education and special education department chairs, school superintendents, governors, State legislators); (2) service providers, (e.g., general and special education teachers, early childhood specialists, community-based providers, vocational educators, related service providers, paraprofessionals); (3) local-level administrators (e.g., elementary, middle and secondary school principals; special education administrators; and administrators of private schools); and (4) families and advocates (e.g., parents and family members of general and special education students and infants with disabilities, and disability advocacy organizations). One partnership will be supported for each collective audience. Each partnership must include—

(i) From 5 to 10 associations and entities representing general and special education interests; and

(ii) One project director responsible for the leadership and management of the partnership.

(b) Conduct needs assessments of member associations and other entities prior to submitting an application in order to identify the needs of their respective memberships and constituents regarding the implementation of the amended IDEA.

Partnerships must—

(1) Describe in the application the strategies (e.g., questionnaires, telephone surveys, focus groups, the use of documents in electronic formats) used to obtain input and need-based information from their respective memberships and constituents;

(2) Provide an analysis of the needs assessment data with the application and submit the analysis to the Coordinating Committee described in paragraph (e) once the committee is established.

(c) Develop a joint agreement among its participating associations and other entities to be included in the application. This agreement must describe—

(1) The audience whose needs the partnership will address;

(2) The roles and responsibilities of each member organization or other entity in the partnership;

(3) The activities that the partnership is proposing to conduct. Activities must include dissemination and outreach. Each partnership must also employ information specialists to answer questions and provide materials to audience members and constituents upon request; and

(4) How resources are proposed to be allocated to ensure the success of the partnership activities.

(d) Budget for the participation of three partnership members in up to five days of training on the IDEA Amendments of 1997. This training will be conducted by OSEP staff in Washington DC.

(e) Propose an approach for establishing and operating a Coordinating Committee comprised of representatives of each of the four partnerships supported under this priority. The Coordinating Committee shall include, at a minimum, the project director of each partnership and appropriate OSEP staff, and may also include other partnership staff for purposes of carrying out committee responsibilities, including assisting partnerships in implementing their projects. The proposal under this paragraph must address each of the committee functions listed below and include a method for allocating partnership resources to support committee activities. Committee members will convene during the second month of the award to reach consensus on a single approach based on the proposals in one or more of the partnership's respective applications. The Coordinating Committee shall—

(1) Provide technical assistance and develop materials to ensure clarity, accuracy, consistency of message and efficient use of resources across the partnerships;

(2) Provide partnerships timely information, including information on pertinent research;

(3) Implement an external review process in which experts review partnership materials for technical accuracy and clarity. Experts must be knowledgeable in the IDEA Amendments of 1997, supporting legislative history, and regulations implementing the Amendments, and also must be familiar with related OSEP policy guidance. The external expert review process shall be finalized in consultation with, and approved by, OSEP;

(4) Implement a joint marketing, training, dissemination, and outreach plan, based on the results of the partnerships' needs assessments, for reaching each of the four target audiences in an efficient and timely manner. This plan must include a timeline and a range of strategies, with differing degrees of intensity, to reach each of the four audiences (e.g., mailouts to members and constituents, training trainers, providing on-site technical assistance, preparing and disseminating materials). The marketing plan must explain: how partners will use funds provided under this priority to supplement their ongoing organizational efforts to improve results for children with disabilities; how partners intend to create a cadre of individuals who have in-depth knowledge of the IDEA Amendments of 1997 and can provide necessary training; how these representatives of the various partnerships will participate in training members of other partnerships; how partners will reach

their members and constituents at the local level; how partners will address the level of awareness, knowledge, and skill of their respective targeted audiences; and how the partners will use the knowledge from research-based best practices to effectively implement the IDEA Amendments of 1997; and

(5) Design and conduct a communication campaign that includes the successful implementation of researched-based practices and that increases public awareness of how children with disabilities are being served appropriately and how appropriate services affect results for children. Appropriate resources must be allocated to the communication campaign. The communication campaign also must be based on the needs assessments, and should use a range of strategies. Elements of the campaign might include, but need not be limited to: an 800 number to provide accurate answers to inquiries related to the IDEA Amendments of 1997 and to provide information about the partnerships' successes; one or more web sites with shared information among the partnerships and links to other information providers; a database of material developed by the partnerships; regular information updates keeping abreast of new developments in the law; and a media campaign highlighting the exemplary practices of the partnerships through television, radio and print public service announcements, a press package, regional events and conferences, and targeted mailings. The communication campaign will culminate in the third and fifth years with a national conference on best practices for achieving positive results for children with disabilities.

Project Period

Under this priority, The Secretary will make an award for a cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue a partnership for the fourth and fifth years of the project period, the Secretary, in addition to the requirements of 34 CFR 75.253(a), will consider—

(a) The recommendation of a review team consisting of three experts selected by the Secretary. The team's review is to be performed during the last half of the partnership's second year. The cost of this review, which is estimated to be approximately $4,000, must be included in the partnership's budget for year two;

(b) The quality and accuracy of materials and information provided by the partnership, as well as the timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the partnership; and

(c) The degree to which the partnership assists audience members in using best practices to implement the IDEA Amendments of 1997.

Number of Awards: Four partnership awards will be made: policy maker partnership; local-level administrator partnership; service provider partnership; and family and advocate partnership.

Review and Approval by OSEP: Information products produced under this award may not be disseminated to outside audiences without prior approval by OSEP.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $1,500,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: In Part III of the application (the application narrative), applicants must address the selection criteria that are used by reviewers in evaluating an application. An applicant must limit Part III to the equivalent of no more than 40 double-spaced number of pages, using the following standards: (1) A "page" is 8½" X 11" (on one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

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Special Education—Technology and Media Services for Individuals With Disabilities [CFDA No. 84.327]

Purpose of Program: The purpose of this program is to promote the development, demonstration, and utilization of technology and to support educational media activities designed to be of educational value to children with disabilities. This program also provides support for some captioning, video description, and cultural activities.

Eligible Applicants: State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 85, and 86; and (b) The selection criteria included in regulations for these programs in 34 CFR 332.32 for the Captioned Films and Videos Distribution System priority, and CFR 333.21 for the Steppingstones of Technology Innovation for Students with Disabilities priority.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority

Under section 687 and 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet any one of the following priorities. The Secretary funds under these competitions only those applications that meet these absolute priorities:

Absolute Priority 1—Captioned Films and Videos Distribution System (84.327N)

Background

This priority supports the operation of a distribution system of captioned films and videos that provides deaf and hard of hearing individuals, as well as other individuals with disabilities, with access to captioned educational and general interest media on a nonprofit free-loan basis. This priority provides students and other individuals with disabilities with captioned media so they may benefit from the same educational media used to enrich the educational and cultural experiences of students and other individuals who do not have disabilities. Activities under this priority include, but are not limited to:

(a) Improving the accessibility of all students and other individuals to captioned media;

(b) Circulation of free-loan captioned media;

(c) Producing and providing printed, cd-rom, and online listings and catalogs of available materials; and

(d) Outreach activities to promote the program to users and to inform school systems as to the availability of educational captioned media.

Priority

To be funded under this priority, the project must—

(a) Develop strategies and procedures to be implemented in operating a distribution system, consisting of local and regional centers, including depositories, and one central general interest and educational media center. Local and regional centers may include State schools for disabled individuals, public or private school systems, public libraries, colleges or universities, or other distribution points that distribute captioned media;

(b) Ensure that the system permits interdepository circulation of free-loan captioned educational media, and allows individuals, depositories, and local and regional centers to access booking information from the (1) computerized depositories; and (2) general interest and educational films and video center via on-line access;

(c) Establish and describe the computerized registration procedures that will be used to register users, schedule captioned media retrieval and use, and track and record consumer feedback and usage information;

(d) Develop and implement criteria and procedures for replacing irreparable captioned media;

(e) Prepare, update, and distribute copies of a catalog listing all captioned media available under this project, including copies of the lesson guides as they become available;

(f) Convene an annual meeting of depository managers, librarians, and audiovisual and other personnel from local, regional, and State educational agencies for the purpose of training, planning, sharing, brainstorming, and other activities related to improving the access of individuals to captioned media. The Washington, D.C. metropolitan area will be the site of the meeting;

(g) Implement outreach activities, especially activities that reach out to local school systems to make them aware of the open and closed captioned materials that are available to them under this program and from other sources; and

(h) Submit quarterly progress reports to the project officers.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $1,350,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: In Part III of the application, the application narrative is where an applicant addresses the selection criteria that are used by reviewers in evaluating an application. An applicant must limit Part III to the equivalent of no more than 40 double-spaced number of pages, using the following standards: (1) A "page" is 8½" x 11" (on one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

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Absolute Priority 2—Steppingstones of Technology Innovation for Students With Disabilities (84.327A)

The purpose of this priority is for the support of projects that—

(a) Select and describe a technology-based approach for achieving one or more of the following purposes: (1) Improving literacy for students with disabilities; (2) improving access to and participation in the general curriculum for students with disabilities; and (3) improving accountability and participation in educational reform for students with disabilities. The technology-based approach must consist of an innovative and emerging technology, and additional curriculum materials and instructional methodologies that enable the technology to achieve educational purposes for students with disabilities;

(b) Justify the approach on the basis of research or theory that supports the effectiveness of the technology-based approach for achieving one or more of the purposes presented in paragraph (a); and

(c) Conduct work in *ONE* of the following phases:

(1) *Phase 1—Development:* Projects funded under Phase 1 must develop and refine a technology-based approach, and test its feasibility for use with students with disabilities. Activities may include development, adaptation, and refinement of technology, curriculum materials, or instructional methodologies. Activities must include formative evaluation. The primary product of Phase 1 should be a promising technology-based approach that is suitable for field-based evaluation of effectiveness.

(2) *Phase 2—Research and Evaluation:* Projects funded under Phase 2 must select a promising technology-based approach that has been developed in a manner consistent with Phase 1, and subject the approach to rigorous field-based research and evaluation to determine effectiveness and feasibility in educational settings. Products of Phase 2 include a further refinement and description of the technology-based approach, and sound evidence that, in a defined range of real world contexts, the approach can be effective in achieving one or more of the purposes presented in paragraph (1).

(3) *Phase 3—Implementation and Validation:* Projects funded under Phase 3 must select a technology-based approach that has been evaluated for effectiveness and feasibility in a manner consistent with Phase 2, and must study the implementation of the approach in multiple, complex settings to acquire an improved understanding of the range of contexts in which the approach can be used effectively, and the factors that determine the effectiveness and sustainability of the approach in this range of contexts. Factors to be studied in Phase 3 include factors related to the technology, curriculum materials and instructional methodologies that constitute the technology-based approach. Phases 2 and 3 can be contrasted as follows: Phase 2 studies the effectiveness the approach can have, while Phase 3 studies the effectiveness the approach is likely to have in sustained use in a range of typical educational settings. The primary product of Phase 3 should be a detailed blueprint that can be used in dissemination and utilization of the technology-based approach. Also to be studied in Phase 3 are contextual factors associated with students, teacher

attitudes skills and actions, physical setting, curriculum and instruction, resources, and professional development and policy supports, etc.;

(d) In addition to the annual two-day Research to Practice Division Project Directors' meeting in Washington, D.C. mentioned above in the General Requirements section of this notice, budget for another annual trip to Washington, D.C. to collaborate with the Federal project officer and the other projects funded under this priority, and to share information and discuss findings and methods of dissemination; and

(e) Prepare products from the project in formats that are useful for specific audiences as appropriate, including parents, administrators, teachers, early intervention personnel, related services personnel, researchers, and individuals with disabilities.

Project Period: The Secretary intends to fund at least one project in each phase. Projects funded under Phase 1 will be funded for up to 24 months. Projects funded under Phase 2 will be funded for up to 24 months. Projects funded under Phase 3 will be funded for up to 36 months. During the final year of projects funded under Phase 3, the Secretary will determine whether or not to fund an optional six-month period for additional dissemination activities.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $200,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: In Part III of the application, the application narrative is where an applicant addresses the selection criteria that are used by reviewers in evaluating an application. An applicant must limit Part III to the equivalent of no more than 40 double-spaced number of pages, using the following standards: (1) A "page" is 8½" x 11" (on one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

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Research and Innovation To Improve Services and Results for Children With Disabilities

Purpose of Program: To produce, and advance the use of, knowledge to: (1) improve services provided under IDEA, including the practices of professionals and others involved in providing those services to children with disabilities; and (2) improve educational and early intervention results for infants, toddlers, and children with disabilities.

Eligible Applicants: State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Absolute Priority—Research Institute To Improve Results for Adolescents With Disabilities in General Education Academic Curricula

Background

The purpose of this priority is to support an institute that will conduct research and development activities aimed at improving results for secondary school-aged (grades 9 through 12) students with disabilities participating in the general education academic curricula. Research must be conducted on how students with disabilities learn challenging academic content, as well as on a broad array of instructional and contextual variables that influence skill acquisition among high school students with disabilities. The institute must also develop approaches to disseminating effective research-based information and practices to secondary education teachers who serve high school students with disabilities participating in general education academic curricula.

Although various school reforms have been implemented that are intended to help all students succeed academically, multiple and significant challenges face both general and special educators. For example, findings from the National Longitudinal Transition Study indicate that students with disabilities are spending, on average, nearly 70 percent of their school day in regular education classrooms where exposure to general education academic curricula is most common. However, it is uncertain if academic content is learned when fewer than one-quarter of students with disabilities move on to two or four-year colleges. Furthermore, when special education and other related services are being increasingly provided in regular education classrooms, a stronger collaboration among general and special educators is needed. For example, general educators play an increasingly prominent role in the education of students with disabilities, not only as classroom teacher for academic content, but also in the IEP process. Therefore, the redefinition of responsibilities for both general and special educators will require the learning of new content and new strategies for teaching and assessing students.

Furthermore, many high school students with disabilities have significant skill deficiencies that prevent them from benefiting from instruction offered in the general education academic curricula. Studies are needed to develop instructional strategies that enable students with disabilities to understand, remember, and integrate content information contained in academic curricula, and to examine factors which define the instructional dynamic within high school classrooms between teachers and students and between groups of students.

Some of the specific questions about which more knowledge is needed include: Are current practices sufficient for teaching complex, high school subject content within the context of restructured high schools to students with disabilities, including students who live in poverty? How do classroom teachers best structure and deliver content information? How can teachers best organize instruction within an academically diverse class to ensure that all students master and can generalize targeted content? What are the critical instructional and contextual variables that influence skill acquisition among adolescents with disabilities? How can this knowledge inform the improvement of instructional practice?

For real change to occur, secondary special and general education teachers who serve children with disabilities in the general education academic

curricula need to know of, and be able to use, research-based practices. Moreover, it is necessary to develop effective ways of disseminating research results and effective research-based practices to teachers and other school personnel. This calls for ambitious, innovative, and collaborative approaches to infuse research findings into professional practice. Effective approaches for translating research to secondary school practice can help ensure that students with disabilities have access to and achieve success in general education curricula with high, measurable standards, and that they will be prepared to succeed in post-secondary education.

Priority

The Secretary establishes an absolute priority for a research institute to improve results for high school students with disabilities by enhancing learning in general education academic curricula. A project funded under this priority must—

(a) Review and identify the critical gaps in the current knowledge in the following areas:

(1) How high school students with disabilities learn challenging academic content, specifically in core high school courses (e.g., math, science, English, social studies, and foreign language);

(2) How teachers learn and use effective and efficient, research-based instructional practices including necessary instructional accommodations and supports to help students with disabilities achieve in a rigorous, standards-based curriculum. We know that certain teaching strategies (e.g., intensive instruction; individualized, instructional decision-making and planning; curriculum that provides contextualized learning opportunities) enable students to learn in a more efficient manner; and

(3) How contextual factors in secondary classrooms and schools influence teaching and learning. For example, scheduling, cross-disciplinary teaching and cooperative teaching approaches, and the use of technology to support instruction and learning are often-cited factors that improve learning for all students;

(b) Design and conduct a strategic program of research that addresses knowledge gaps identified in paragraph (a) by:

(1) Conducting a rigorous research program and employing collaborative research team models (e.g., teacher-researcher partnership research, action research);

(2) Conducting the program of research in organizationally and demographically diverse high school settings, including high poverty rural and urban schools; and

(3) Collaborating with other research institutes supported under the Individuals with Disabilities Education Act, and other experts and researchers in related subject matter and methodological fields in designing and conducting the activities of the institute; and

(c) Design, implement, and evaluate a dissemination approach that links research to practice and promotes the use of current knowledge and ongoing research findings in the professional development of teachers. This approach must—

(1) Serve as a "blueprint" for maximizing the use of research-based knowledge to improve and sustain effective and efficient instructional practices of general and special education teachers in high school academic courses;

(2) Actively engage teachers, administrators, and related service personnel in learning, adapting, and evaluating research;

(3) Be comprehensive, flexible and responsive to new knowledge and to changing school environments;

(4) Include a rigorous evaluation methodology with multiple outcome measures to assess its effectiveness across diverse sites;

(5) Be implemented and evaluated in organizationally and demographically diverse settings including high poverty urban and rural high schools; and

(6) Be developed in coordination with other U. S. Department of Education-sponsored efforts and technical assistance providers, including other research institutes, centers, and information clearinghouses; and

(d) The project must budget three trips annually to Washington, D. C. (two trips to meet with U.S. Department of Education officials and one trip, as specified in the general requirements for all projects, to attend the Office of Special Education Programs Project Director's Conference).

Program Authority: Sections 672 and 685 of IDEA.

Project Period: Up to 60 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $700,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: In Part III of the application, the application narrative is where an applicant addresses the selection criteria that are used by reviewers in evaluating an application. An applicant must limit Part III to the equivalent of no more than 60 double-spaced number of pages, using the following standards: (1) A "page" is 8½" x 11" (on one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Special Education—Personnel Preparation To Improve Services and Results for Children With Disabilities [CFDA 84.325]

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for qualified personnel in special education, related services, early intervention, and regular education, to work with children with disabilities; and (2) to ensure that those personnel have the skills and knowledge, derived from practices that have been determined through research and experience to be successful, that are needed to serve those children.

Eligible Applicants: Institutions of higher education.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; (b) The selection criteria included in regulations in 34 CFR Part 318.22; and (c) 34 CFR Part 318.31–318.33.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority

Under section 673 and 34 CFR 75.105 (c)(3), the Secretary gives an absolute preference to applications that meet the

following priority. The Secretary funds under this competition only those applications that meet this absolute priority:

Absolute Priority—Improving the Preparation of Personnel To Serve Children With High-Incidence Disabilities

Background

The Individuals with Disabilities Education Act Amendments of 1997 clearly reflect the importance of ensuring that personnel working with children with disabilities have the skills and knowledge that are needed to effectively serve such children. Pursuant to this objective, the Department of Education supports grants to improve the preparation of personnel serving children with the full range of disabilities. A priority supporting programs for personnel to serve children with low-incidence disabilities was announced in the **Federal Register** on August 4, 1997. The following priority addresses the preparation of personnel serving children with high-incidence disabilities.

State agencies, university training programs, local schools, and other community-based agencies and organizations confirm both the importance and the challenge of improving training programs for personnel to serve children with high-incidence disabilities and of meeting the staffing needs of localities experiencing chronic shortages of these personnel.

This priority is intended to improve personnel preparation programs throughout the Nation and help meet shortages in particular areas. The project requirements in conjunction with competitive priorities also reflect a number of important factors that are common to effective personnel preparation programs. These factors are:

(a) Collaboration among governmental, educational and community-based organizations on the Federal, State and local levels in meeting personnel needs;

(b) Field-based training opportunities for students to use acquired knowledge and skills in schools reflecting wide contextual and student diversity, including high poverty schools;

(c) Multi-disciplinary training of teachers, including regular and special education teachers, and related services personnel;

(d) Coordinating personnel preparation programs aimed at addressing chronic personnel shortages with State practices for addressing such needs;

(e) Addressing shortages of teachers in particular geographic and content areas;

(f) Integration of research based curriculum and pedagogical knowledge and practices; and

(g) Meeting the needs of trainees, and of children with disabilities, from diverse backgrounds.

Priority

Consistent with section 673(e) of IDEA, the purpose of this priority is to develop or improve, and implement, programs that provide preservice preparation for special and regular education teachers and related services personnel in order to meet the diverse needs of children with high incidence disabilities and to enhance the supply of well-trained personnel to serve these children in areas of chronic shortage. Student financial assistance is authorized only for the preservice preparation of special educators and related services personnel to serve children ages 3 through 21 with high-incidence disabilities. The term "high-incidence disabilities" includes disabilities such as mild or moderate mental retardation, speech or language impairments, emotional disturbance, or specific learning disability. Training of para-professionals to serve children with high-incidence disabilities is authorized under this priority. Training of early intervention personnel is not authorized under this priority.

A preservice program is defined as one that leads toward a degree, certification, or professional licence or standard, and may be supported at the associate, baccalaureate, master's or specialist level. A preservice program may include the preparation of currently employed personnel who are seeking additional degrees, certifications, endorsements, or licences.

Projects funded under this priority must—

(a) Develop or improve, and implement, partnerships that are mutually beneficial to grantees and LEAs in order to promote continuous improvement of preparation programs;

(b) Use research-based curriculum and pedagogy to prepare personnel able to assist students with disabilities in achieving under the general education curricula and able to improve student outcomes;

(c) Develop or improve, and implement, strategies for instructing students on how special education, related services, and regular education personnel can collaborate to improve results for children with disabilities; and

(d) Include field-based training opportunities for students in schools reflecting wide contextual and student diversity, including high poverty schools;

An applicant must satisfy the following requirements contained in Section 673(f)–(h) of IDEA:

(a) Demonstrate, through letters from one or more States that the project proposes to serve, that the States:

(1) Intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities; and

(2) Need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive systems of personnel development under Part B of the Act;

(b) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies to plan the project, and will cooperate with such agency or agencies in carrying out and monitoring the project;

(c) Meet State and professionally-recognized standards for the preparation of special education and related service personnel if the project provides financial assistance to assist personnel in obtaining degrees; and,

(d) Ensure that individuals who receive financial assistance under the proposed project will subsequently provide special education and related services to children with disabilities for a period of two years for every year for which assistance was received or repay all or part of the cost of that assistance. Applicants must describe how they will notify scholarship recipients of this work or repay requirement which is specified under section 673(h)(1) of the Act (20 U.S.C. 1474(h)(1)). The requirement must be implemented consistent with section 673(h)(1) and with applicable regulations in effect prior to the awarding of grants under this priority.

Competitive preferences: Within this absolute priority the Secretary will give the following competitive preferences:

(a) Up to ten (10) points to an application that includes strategies for recruiting students from under-represented populations, including students with disabilities; and

(b) Up to ten (10) points to an application that demonstrates that a majority of the graduates of its program consistently enter jobs in which they serve children with disabilities in high poverty rural or inner city areas.

Applicants who fulfill the requirements of each of the two competitive preferences can be awarded

a total of 20 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting both of these competitive preferences could earn a maximum total of 120 points.

Project Period: The maximum funding period for awards is 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $200,000 in Federal funding for any single budget period of twelve months.

Page Limit Requirements for All Applications: In Part III of the application, the application narrative is where an applicant addresses the selection criteria that are used by reviewers in evaluating an application. An applicant must limit Part III to the equivalent of no more than 40 double-spaced number of pages, using the following standards: (1) A "page" is 8½" x 11" (on one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Program Authority: Section 673 of IDEA.

For Applications and General Information Contact: Requests for applications and general information should be addressed to the Grants and Contracts Services Team, 600 Independence Avenue, S.W., room 3317, Switzer Building, Washington, D.C. 20202–2641. The preferred method for requesting information is to FAX your request to: (202) 205–8717. Telephone: (202) 260–9182.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953. Individuals with disabilities may obtain a copy of this notice or the application packages referred to in this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Department as listed above. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Intergovernmental Review

All programs in this notice (except for Research and Innovation Projects) are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for those program.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT—APPLICATION NOTICE FOR FISCAL YEAR 1998

CFDA No. and name	Applications available	Application deadline Date	Deadline for intergovernmental review	Maximum award (per year) [1]	Page limit [2]	Estimated number of awards
84.326R Regional Resource Centers	3/6/98	6/5/98	8/5/98	[3] $1,040,000	40	6
84.326H National Postsecondary Clearinghouse	3/6/98	4/24/98	6/24/98	450,000	40	1
84.326N National Information Center	3/6/98	4/24/98	6/24/98	1,100,000	40	1
84.326A IDEA Implementation—Associations	3/6/98	4/24/98	6/24/98	1,500,000	40	4
84.327N Captioned Films and Videos Distribution	3/6/98	4/24/98	6/24/98	1,350,000	40	1
84.327A Steppingstones of Technology Innovation for Students with Disabilities	3/6/98	5/8/98	7/8/98	200,000	40	15
84.324S Research Institute to Improve Results for Adolescents with Disabilities in General Education Academic Curricula	3/6/98	4/24/98	6/24/98	700,000	60	1
84.325H Professional Development—High Incidence	3/6/98	5/1/98	7/1/98	200,000	40	32

[1] The Secretary rejects and does not consider an application that proposes a budget exceeding the amount listed for each priority for any single budget period of 12 months.

[2] Applicants must limit the Application Narrative, Part III of the Application, to the page limits noted above. Please refer to the "Page Limit" section of this notice for the specific requirements. The Secretary rejects and does not consider an application that does not adhere to this requirement.

[3] The first budget period will be 8 months, and the subsequent budget periods will be 12 months. The maximum award for the first budget period will be $1,040,000. The maximum award for the subsequent 12-month periods will be $1,500,000.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Dated: January 29, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–4577 Filed 2–23–98; 8:45 am]

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Part IV

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Test Procedures for Furnaces and Boilers; Final Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–93–501]

RIN No. 1904–AA45

Energy Conservation Program for Consumer Products: Test Procedures for Furnaces and Boilers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (the Department or DOE) adopts as a Final Rule an Interim Final rule, published on October 14, 1997, in which DOE amended a provision of its recently promulgated final rule that prescribed revised test procedures to determine the energy efficiency of furnaces and boilers. Under the amendment, the test procedures will provide that the flue collector box on a furnace or boiler with a power burner or draft inducer need not be insulated before the start of the cool-down test.

EFFECTIVE DATES: This rule was effective November 10, 1997.

FOR FURTHER INFORMATION CONTACT: Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9138, or Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

On August 23, 1993, DOE published in the **Federal Register** a proposal to amend the DOE test procedures for furnaces and boilers (58 FR 44538). On May 12, 1997, after review and evaluation of the comments received, DOE published in the **Federal Register** a final rule amending the furnace test procedure (62 FR 26140).

After the publication of the 1997 final rule, the Gas Appliance Manufacturers Association (GAMA) contacted the Department and asserted that the adoption in the DOE test procedures of a requirement to insulate the flue gas collector box of a power burner unit before the cool-down and heat-up tests will reduce the Annual Fuel Utilization Efficiency (AFUE) of many furnaces and boilers. GAMA stated that for some units the reduced AFUE would be below the minimum standard, while for others it would be below the qualifying levels for many utility rebate programs. The Department published an Interim Final Rule on October 14, 1997 (62 FR 53507) deleting from its recently adopted test procedure for furnaces and boilers the insulation requirement for power burner units. Since no comments were received following publication of the Interim Final Rule, this rule is adopted as final without change.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances, Incorporation by reference.

Issued in Washington, DC, on January 22, 1998.

Dan W. Reicher,

Assistant Secretary for Energy Efficiency and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

Accordingly, the interim final rule amending 10 CFR part 430 which was published at 62 FR 53507 on October 14, 1997, is adopted as a final rule without change.

[FR Doc. 98–4646 Filed 2–23–98; 8:45 am]

BILLING CODE 6450–01–P

federal register

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Part V

Department of Education

34 CFR Part 702

Standards for Conduct and Evaluation of Activities Carried Out by the Office of Educational Research and Improvement (OERI); Evaluation of the Performance of Recipients of Grants, Cooperative Agreements, and Contracts; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 702

RIN 1850–AA54

Standards for Conduct and Evaluation of Activities Carried Out by the Office of Educational Research and Improvement (OERI); Evaluation of the Performance of Recipients of Grants, Cooperative Agreements, and Contracts

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Assistant Secretary proposes to establish regulations pursuant to OERI's authorizing legislation, the Educational Research, Development, Dissemination, and Improvement Act of 1994. The major purpose of these standards is to ensure that the research, development, and dissemination activities carried out by the recipients of grants from and contracts and cooperative agreements with OERI meet the highest standards of professional excellence.

DATES: Comments must be received by the Department on or before April 27, 1998.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Sharon Bobbitt, U.S. Department of Education, 555 New Jersey Avenue, NW., room 508c, Washington, DC 20202–5651. Comments may also be sent through the Internet to: comments@ed.gov

You must include the term Phase III in the subject line of your electronic message.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Sharon Bobbitt. Telephone: (202) 219–2126. Internet: (Sharon__Bobbitt@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. To ensure that public comments have maximum effect in developing the final regulations, the Department urges commenters to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange comments in the same order as the proposed regulations.

The Secretary particularly requests comments on the role of Department of Education staff in the implementation of the Standards. For example, should Department staff serve as reviewers on peer review panels under these regulations? See proposed § 702.10(d) of these regulations in this regard. Should there be a maximum number or maximum percentage of Department staff on peer review panels? Should the participation of Department staff vary by size of the grant, contract, or cooperative agreement? What other issues about the role of Department staff in the peer review process should the Secretary consider?

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 600, 555 New Jersey Avenue, N.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

To assist the Department in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Background

On March 31, 1994, President Clinton signed Pub. L. 103–227, which includes Title IX, the Educational Research, Development, Dissemination, and Improvement Act of 1994 (the Act). The Act restructured OERI and provided it with a broad mandate to conduct an array of research, development, dissemination, and improvement activities aimed at strengthening the education of all students.

Statutory Requirements

The Act directed the Assistant Secretary to develop, in consultation with the National Educational Research Policy and Priorities Board (the Board), such standards as may be necessary to govern the conduct and evaluation of all research, development, and dissemination activities carried out by OERI to ensure that these activities meet the highest standards of professional excellence. The Board is responsible for reviewing and approving the standards. The legislation requires that the standards be developed in three phases.

In the first phase, standards were created and promulgated to establish the peer review process and evaluation criteria to be used for the review of applications for grants and cooperative agreements and proposals for contracts. The final regulations setting out these standards were published on September 14, 1995 (60 FR 47808). In the second phase, standards were created and promulgated to establish the criteria to be used in reviewing potentially exemplary and promising educational programs. The final regulations setting out these standards were published on November 17, 1997 (62 FR 61427).

In the third phase, which is the subject of this notice of proposed rulemaking (NPRM), the Act requires that OERI develop standards for evaluating and assessing the performance of all recipients of grants from and cooperative agreements and contracts with OERI. This evaluation must take place both during and at the conclusion of the performance of the grant, cooperative agreement, or contract, and must include the use of a system of peer review for the final assessment.

In developing the standards, the Assistant Secretary was required to review the procedures utilized by the National Institutes of Health (NIH), the National Science Foundation (NSF), and other Federal departments or agencies engaged in research and development and to solicit recommendations from research organizations and members of the general public. OERI has reviewed the procedures used to evaluate the performance of recipients of grants, contracts, or cooperative agreements by several offices within NIH and NSF, the Office of Energy Research in the

Department of Energy, the Food and Drug Administration, the National Institute of Standards and Technology, the National Aeronautics and Space Administration, and the University Research Initiative of the Department of Defense. Recommendations concerning these standards have been obtained from the American Educational Research Association, the Council for Educational Development and Research, and the Organization of Research Centers. Public comment is invited in response to this NPRM.

Standards

The standards have been developed by the Assistant Secretary in consultation with the Board. The standards in this NPRM would:

- Require interim and final assessments of the performance of recipients of grants, cooperative agreements, and contracts.
- Establish procedures for selecting peer review panels to conduct these assessments.
- Establish procedures and criteria that the peer review panels use in conducting these assessments.
- Establish specific additional criteria that peer review panels use in conducting these assessments for National Research and Development Centers, Regional Educational Laboratories, Field-Initiated Studies, and ERIC Clearinghouses.

In an effort to fulfill the law's intention of ensuring high-quality research, development, and evaluation, OERI has developed standards in which interim and final assessments may be supplemented by a self-assessment by the recipient of a grant, cooperative, agreement, or contract. The Board and the Assistant Secretary believe that the collection and review of evidence on one's own performance is itself a useful tool for improvement.

These standards cover all grants, cooperative agreements, and contracts administered by OERI, ranging from the smallest purchase orders and commissioned papers to the largest research projects and research centers. The Department will require a single interim assessment by a peer review panel for total awards of $5,000,000 or less. At least one interim review by peer review panel will be required for larger awards. A final assessment by a peer review panel will be required for all awards.

The Government Performance and Results Act requires the establishment of performance indicators for Department activities. Information collected pursuant to those indicators will be considered, as appropriate, in the evaluation of individual recipients.

Executive Order 12866

1. Potential Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary as necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

Summary of Potential Costs and Benefits

The potential costs of the proposed regulations are discussed in this preamble under the Paperwork Reduction Act of 1995. The benefit of these standards is to ensure that the research, development, and dissemination activities carried out by the recipients of grants from and contracts and cooperative agreements with OERI meet the highest standards of professional excellence.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the proposed regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the proposed regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 702.2 *What activities must be evaluated by these standards?*) (4) Is the description of the proposed regulations in the "Supplementary Information" section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the proposed regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW. (Room 5121, FB–10), Washington, D.C. 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small local educational agencies (LEAs) and private schools receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs and private schools affected because the proposed regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The proposed regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1995

Sections 702.22 and 702.23 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3504(h)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Standards for Evaluation of the Performance of Recipients of OERI Grants, Cooperative Agreements, and Contracts.

These regulations affect the following types of entities eligible to enter into

grants, cooperative agreements, or contracts: any public or private agency, organization or institution, or individual.

The public reporting burden is estimated to range from 8 to 120 hours for each interim or final assessment. The actual burden will be determined by how much descriptive information each recipient wishes to provide.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

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Note: The official version of this document is the document published in the **Federal Register**.

List of Subjects in 34 CFR Part 702

Education, Educational research, Reporting and recordkeeping requirements.

Dated: December 23, 1997.

Ricky Takai,

Acting Assistant Secretary for Educational Research and Improvement.

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary proposes to amend Chapter VII of Title 34 of the Code of Federal Regulations by adding a new part 702 to read as follows:

PART 702—STANDARDS FOR CONDUCT AND EVALUATION OF ACTIVITIES CARRIED OUT BY THE OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT (OERI)—EVALUATION OF THE PERFORMANCE OF RECIPIENTS OF GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS

Subpart A—General

Sec.

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702.2 What activities must be evaluated by these standards?
702.3 What additional activities may be evaluated by these standards?
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702.21 How does a peer review panel evaluate the performance of a recipient?
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702.24 What evaluation criteria are used for performance assessments?

Authority: 20 U.S.C. 6011(i), unless otherwise noted.

Subpart A—General

§ 702.1 What is the purpose of these standards?

(a) The standards in this part implement section 912(i) of the Educational Research, Development, Dissemination, and Improvement Act of 1994 (the Act).

(b) These standards are intended to ensure that the research, development, and dissemination activities carried out by the recipients of grants from and contracts and cooperative agreements with the Office of Educational Research and Improvement (OERI) meet the highest standards of professional excellence.

(Authority: 20 U.S.C. 6011(i)(2)(F))

§ 702.2 What activities must be evaluated by these standards?

These standards apply to activities carried out by OERI using funds appropriated under section 912(m) of the Act including activities carried out by the following entities or programs:

(a) The National Education Research Institutes.

(b) The Office of Reform Assistance and Dissemination.

(c) The Educational Resources Information Center.

(d) The Regional Educational Laboratories.

(e) The Teacher Research Dissemination Demonstration Program.

(f) The Goals 2000 Community Partnerships Program.

(g) The National Educational Research Policy and Priorities Board.

(Authority: 20 U.S.C. 6011(i)(1))

§ 702.3 What additional activities may be evaluated by these standards?

(a) The Secretary may apply these standards to other activities funded by the Department.

(Authority: 20 U.S.C. 6011(I)(1))

§ 702.4 When is performance assessed under these standards?

(a) The Secretary will assess the performance of recipients of OERI grants, contracts, and cooperative agreements subject to these standards during and at the conclusion of their period of performance.

(b) The Department requires a single interim assessment by a peer review panel for total awards of $5,000,000 or less. At least one interim review by peer review panel is required for larger awards.

(c) A final assessment by a peer review panel is required for all awards.

(d) As used in this part—

(1) Interim assessment is one conducted during a recipient's period of performance.

(2) Final assessment is one conducted at the conclusion of a recipient's period of performance.

(Authority: 20 U.S.C. 6011(I)(2)(F))

§ 702.5 What definitions apply?

(a) *Definitions in the Educational Research, Development, Dissemination, and Improvement Act of 1994.*

The following terms used in this part are defined in 20 U.S.C. 6011(1):

Development
Dissemination
Educational research

(b) *Definitions in the Education Department General Administrative Regulations.* The following terms used in this part are defined in 34 CFR 77.1:

Application
Award
Department
Grant
Project
Secretary

(c) *Definitions in the Federal Acquisition Regulation.* The following term used in this part is defined in 48 CFR Chapter 1:

Contract Proposal

(Authority: 20 U.S.C. 6011(I)(2)(F))

Subpart B—Selection of Peer Review Panels

§ 702.10 What are the characteristics of peer reviewers?

(a) The Assistant Secretary selects each peer reviewer. Each peer reviewer must have the necessary knowledge and expertise in the area of the project being reviewed to evaluate the performance of a recipient. This experience may include—

(1) Expert knowledge of subject matter in the area of the activities to be reviewed;

(2) Expert knowledge of theory or methods or both in the area of the activities to be reviewed;

(3) Practical experience in the area of the activities or type of institution or both to be reviewed;

(4) Knowledge of a broad range of education policies and practices;

(5) Experience in managing complex organizations; or

(6) Expertise and experience in evaluation theory and practice.

(b) Each peer reviewer must be free of conflict of interest, as determined in accordance with § 702.11 or 702.12.

(c) The Assistant Secretary may solicit nominations for peer reviewers from professional associations, nationally recognized experts, and other sources.

(d) OERI and other Department staff who possess the qualifications in paragraphs (a) and (b) of this section may serve as peer reviewers.

(Authority: 20 U.S.C. 6011(I)(2)(B))

§ 702.11 What constitutes a conflict of interest for grants and cooperative agreements?

A peer reviewer assessing the performance of the recipient of a grant from or cooperative agreement with OERI is considered an employee of the Department for the purposes of conflict of interest analysis. As an employee of the Department, the peer reviewer is subject to the provisions of 18 U.S.C. 208, 5 CFR 2635.502, and the Department's policies used to implement those provisions.

(Authority: 20 U.S.C. 6011(I)(2)(B))

§ 702.12 What constitutes a conflict of interest for contracts?

A peer reviewer assessing the performance of the recipient of a contract with OERI is considered an employee of the Department in accordance with the Federal Acquisition Regulation (FAR), 48 CFR 3.104–4(h)(2). As an employee of the Department, the peer reviewer is subject to the provisions of the FAR, 48 CFR Part 3, Improper Business Practices and Personal Conflict of Interest.

(Authority: 41 U.S.C. 423)

§ 702.13 How are peer reviewers selected for panels?

(a) The Assistant Secretary assigns peer reviewers to panels that conduct the performance assessments.

(b) The Assistant Secretary may establish panels by category of recipient, such as a panel to review the performance of all Regional Educational Laboratories. Each recipient is evaluated individually by reviewers who have been assigned to this type of panel.

(Authority: 20 U.S.C. 6011(I)(2)(B))

Subpart C—The Evaluation Process

§ 702.21 How does a peer review panel evaluate the performance of a recipient?

(a) In each evaluation, a peer review panel—

(1) Considers relevant information about the recipient's performance, as described in §§ 702.22 and 702.23; and

(2) Makes judgments about the recipient's performance, using the criteria in § 702.24.

(b) Each peer reviewer prepares a report based on the reviewer's assessment of the quality of the project according to the evaluation criteria.

(c) After each peer reviewer has evaluated each project independently, the panel may be convened to discuss the strengths and weaknesses of the project. Each reviewer may then independently re-evaluate each project with appropriate changes made to the written report.

(d) The report of the interim assessment must include any recommendations the peer reviewer may have for improving the recipient's performance.

(e) The report of the final assessment must contain each peer reviewer's evaluative summary of the recipient's performance, from the beginning of the contract, grant, or cooperative agreement to its conclusion.

(Authority: 20 U.S.C. 6011(I)(2)(F))

§ 702.22 What information does a peer review panel consider for an interim assessment?

(a) Sources of information for the interim assessment must include—

(1) The original request for proposals or grant announcement and the contract proposal or grant application;

(2) Documentation of any changes in the work described in the contract, grant, or cooperative agreement, including reasons for the changes;

(3) Any progress reports delivered to the Department or made available to the public by the recipient;

(4) Examples of products delivered to the Department or made available to the public by the recipient;

(5) Any relevant reports written by OERI staff, including reports of site visits by OERI staff;

(6) Any performance evaluations conducted under the FAR or the Education Department General Administrative Regulations (34 CFR part 75).

(7) Any relevant information provided by the recipient in response to Government Performance and Results Act (GPRA) (Pub. L. 103–62) requirements; and

(8) Any reports from program evaluations commissioned by the Department.

(b) Sources of information for the interim assessment may also include—

(1) A self-assessment, prepared by the recipient, addressing the criteria in § 702.24;

(2) One or more site visits by the peer review panel;

(3) One or more oral or written presentations to the panel by the recipient describing its performance; or

(4) Other information about the recipient's performance.

(Authority: 20 U.S.C. 6011(I)(2)(F))

§ 702.23 What information does a peer review panel consider for a final assessment?

(a) Sources of information for the final assessment must include—

(1) The original request for proposals or application notice and the contract proposal or grant application, together with documentation of any changes in the work described in the proposal or application, including reasons for the changes;

(2) If consistent with the recipient's contract, grant, or cooperative agreement with OERI, a written report or oral presentation or both by the recipient summarizing its activities and accomplishments;

(3) Any relevant information provided by the recipient in response to Government Performance and Results Act (GPRA) (Pub. L. 103–62) requirements; and

(4) Any reports from program evaluations commissioned by the Department.

(b) The final assessment may also include other sources of information, such as one or more of those listed in § 702.22.

(Authority: 20 U.S.C. 6011(I)(2)(F))

§ 702.24 What evaluation criteria must be used for performance assessments?

(a) Peer reviewers (and those recipients who conduct self-evaluations) shall use the criteria in paragraph (b) of this section to assess performance and, in case of interim assessments, to identify areas in which the performance of recipients may need improvement.

(b) The following evaluation criteria are to guide the assessment process undertaken by peer reviewers. The peer reviewers determine the extent to which recipients meet these criteria:

(1) *Implementation and management.* (i) Peer reviewers shall consider the degree to which the recipient has fully executed its program of work. In doing so, peer reviewers shall consider evidence on the extent to which the recipient completes the work described in the approved application or contract, including any approved modifications, in the time period proposed and in an efficient manner.

(ii) In examining the degree of implementation, peer reviewers may also consider evidence on the extent to which—

(A) The recipient implements and utilizes a quality assurance system for its products or services or both; and

(B) The recipient conducts self-assessment or self-evaluation activities, including periodically seeking out independent critiques and evaluations of its work, and uses the results to improve performance.

(2) *Quality.* (i) Peer reviewers shall consider the degree to which the recipient's work approaches or attains professional excellence. In determining quality, peer reviewers shall consider evidence on the extent to which—

(A) The recipient utilizes processes, methods, and techniques appropriate to achieve the goals and objectives for the program of work in the approved application; and

(B) The recipient applies appropriate processes, methods, and techniques in a manner consistent with the highest standards of the profession.

(ii) In determining quality, peer reviewers may also consider the extent to which the recipient conducts a coherent, sustained program of work informed by relevant research.

(3) *Utility.* (i) In determining the utility of the recipient's products or services or both, peer reviewers shall consider evidence on the extent to which the recipient's work (including information, materials, processes, techniques, or activities) is effectively used by and is useful to its customers in appropriate settings.

(ii) In determining utility, peer reviewers may also consider the extent to which the recipient has received national recognition; e.g., articles in refereed journals and presentations at professional conferences.

(4) *Outcomes and impact.* (i) Peer reviewers shall consider the results of the recipient's work. In examining outcomes and impact, peer reviewers shall consider evidence on the extent to which—

(A) The recipient meets the needs of its customers; and

(B) The recipient's work contributes to the increased knowledge or understanding of educational problems, issues, or effective strategies.

(ii) In examining outcomes and impact, peer reviewers may also consider the extent to which recipients address issues of national significance through its products or services or both.

(c) For National Research and Development Centers, peer reviewers also shall consider evidence on the extent to which recipients meet the following criteria:

(1) *Quality.* (i) The recipient uses a well-conceptualized framework and sound theoretical and methodological tools in conducting professionally rigorous studies; and

(ii) The recipient conducts work of sufficient size, scope, and duration to produce sound guidance for improvement efforts and future research.

(2) *Utility.* The recipient documents, reports, and disseminates its work in ways to facilitate the effective use of its work in appropriately targeted settings.

(3) *Outcomes and impact.* (i) The recipient's work contributes to the development and advancement of theory in the field of study, including its priority area; and

(ii) The recipient addresses issues of national significance through its products or services or both.

(d) For the Regional Educational Laboratories, peer reviewers also shall consider evidence on the extent to which recipients meet the following criteria:

(1) *Quality.* (i) The recipient utilizes a well-conceptualized framework and sound theoretical and methodological tools in conducting professionally rigorous studies;

(ii) The recipient conducts work of sufficient size, scope, and duration to produce sound guidance for improvement efforts; and

(iii) The recipient's products are well-tested and based on sound research.

(2) *Utility.* The recipient documents, reports, and disseminates its work in ways to facilitate its effective use in appropriately targeted settings, particularly in school improvement efforts of States and localities.

(3) *Outcomes and impact.* (i) The recipient assists States and localities to implement comprehensive school improvement strategies through the provision of research-based information (including well-tested models and strategies), materials and assistance; and

(ii) The recipient's work results in widespread access to information regarding research and best practices, particularly within its region.

(e) For Field-Initiated Studies, peer reviewers also shall consider evidence on the extent to which recipients meet the following criteria:

(1) *Implementation and management.* The recipient's work responds to the goals, objectives and mission of the National Institute from which it is funded.

(2) *Quality.* The recipient utilizes a well-conceptualized framework and sound theoretical and methodological tools in conducting professionally rigorous studies.

(3) *Utility.* The recipient documents, reports, and disseminates its work in ways to facilitate its effective use in appropriately targeted settings.

(4) *Outcomes and impact.* (i) The recipient's work contributes to the development and advancement of theory and knowledge in the field of study; and

(ii) The recipient addresses issues of national significance through its products or services or both.

(f) For the ERIC Clearinghouses, peer reviewers also shall consider evidence on the extent to which recipients meet the following criteria:

(1) *Quality.* The recipient applies an integrated approach to acquiring and disseminating significant and high-quality educational literature and materials to maintain and enhance the ERIC database.

(2) *Utility.* The recipient contributes to the development of the ERIC database as a source of literature and materials that reflects trends and issues within its scope.

(3) *Outcomes and impact.* (i) The recipient meets the informational and educational needs of its customers through dissemination and outreach approaches and the development of an array of print and non-print materials; and

(ii) The recipient provides national leadership on the use of current computer, networking, and information technology.

(Authority: 20 U.S.C. 6011(I)(2)(F))

[FR Doc. 98–4690 Filed 2–23–98; 8:45 am]

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Tuesday, February 24, 1998

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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Wednesday, February 25, 1998

Presidential Documents

Title 3—

The President

Presidential Determination No. 98–14 of February 9, 1998

U.S. Contribution to the Korean Peninsula Energy Development Organization (KEDO)

Memorandum for the Secretary of State

Pursuant to the requirements set forth under the heading "Nonproliferation, Anti-Terrorism, Demining and Related Programs" in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105–118), I certify that:

(1)(A) the parties to the Agreed Framework are taking steps to assure that progress is made on the implementation of the January 1, 1992, Joint Declaration on the Denuclearization of the Korean Peninsula and the implementation of the North-South dialogue, and (B) North Korea is complying with the other provisions of the Agreed Framework between North Korea and the United States and with the Confidential Minute;

(2) North Korea is cooperating fully in the canning and safe storage of all spent fuel from its graphite-moderated nuclear reactors and that such canning and safe storage is scheduled to be completed by April 1, 1998; and

(3) North Korea has not significantly diverted assistance provided by the United States for purposes for which it was not intended.

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, February 9, 1998.

[FR Doc. 98–4977
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5 CFR Part

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Rules and Regulations

Federal Register
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Wednesday, February 25, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 842, 870, and 890

RIN 3206–AI12

Retirement and Insurance—Exemption From Continuity of Coverage Requirements for Certain Decennial Census Employees With Dual Appointments

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to provide an exemption from continuity of coverage requirements for Federal retirement, health insurance, and life insurance benefits, for certain Federal employees who accept a second appointment to perform intermittent decennial census duties. The purpose of this exemption is to facilitate hiring Federal employees for the decennial census by eliminating administrative complexities that would otherwise result under current regulations. Employees will retain the retirement and insurance benefits to which they are entitled under their primary Federal jobs, while earning additional wages in their second jobs with the Census Bureau.

EFFECTIVE DATE: March 27, 1998.

FOR FURTHER INFORMATION CONTACT: For Parts 831 and 842: Robert Girouard, (202) 606–0299; and for Parts 870 and 890: Karen Leibach, (202) 606–0004.

SUPPLEMENTARY INFORMATION: On December 24, 1997, we published (at 62 FR 67295) a proposed rule to provide an exemption from continuity of coverage requirements for Federal retirement, health insurance, and life insurance benefits, for certain Federal employees who accept a second appointment to perform intermittent decennial census duties. We received no comments on the proposed rule.

Continuity of coverage rules for retirement and insurance make it difficult for the Bureau of the Census, U.S. Department of Commerce ("Census Bureau") to hire Federal employees for second appointments. While each Federal employee retains benefit coverage under his or her primary position with little or no additional benefits accruing from the intermittent Census employment, the Census Bureau would be required to coordinate closely with each employee's agency to determine the amount of additional retirement deductions and insurance premiums that would have to be withheld as a result of continuity of coverage. The administrative complexities resulting from week by week coordination with the employee's primary agency would be highly susceptible to error and would make large-scale hiring from the pool of Federal employees administratively prohibitive. Placing Federal employees hired to perform short term decennial census service on the same benefit footing as persons hired from outside the Government will significantly reduce the coordination burden, and assist the Census Bureau in meeting its unique staffing requirements. Accordingly, we are amending the continuity of coverage rules to exempt Federal employees hired by the Census Bureau under temporary, intermittent appointments to perform decennial census duties.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement and insurance benefits of Government employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects

5 CFR Parts 831 and 842

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending Title 5 of the Code of Federal Regulations as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.201(b)(1) also issued under 5 U.S.C. 8347(g); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.201(g) also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; § 831.204 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); §§ 831.663 and 831.664 also issued under section 11004(c)(2) of Pub. L. 103–66, 107 Stat. 412; § 831.682 also issued under section 201(d) of Pub. L. 99–251, 100 Stat. 23; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388–328.

Subpart B—Coverage

2. In § 831.201, paragraph (b)(1) is revised to read as follows:

§ 831.201 Exclusions from retirement coverage.

* * * * *

(b) * * *

(1) Employment in an excluded category follows employment subject to subchapter III of chapter 83 of title 5, United States Code, without a break in service or after a separation from service of 3 days or less, except in the case of:

(i) An alien employee whose duty station is located in a foreign country; or

(ii) An employee hired by the Census Bureau under a temporary, intermittent appointment to perform decennial census duties.

* * * * *

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

3. The authority citation for part 842 is revised to read as follows:

Authority: 5 U.S.C. 8461(g); §§ 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; § 842.107 also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; §§ 842.604 and 842.611 also issued under 5 U.S.C. 8417; § 842.607 also issued under 5 U.S.C. 8416 and 8417; § 842.614 also issued under 5 U.S.C. 8419; § 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under section 7001(a)(4) of Pub. L. 101–508; § 842.707 also issued under section 6001 of Pub. L. 100–203; § 842.708 also issued under section 4005 of Pub. L. 101–239 and section 7001 of Pub. L. 101–508; subpart H also issued under 5 U.S.C. 1104.

Subpart A—Coverage

4. In § 842.105, paragraph (b) is revised to read as follows:

§ 842.105 Regulatory exclusions.

* * * * *

(b) When an employee who is covered by FERS moves to a position listed in paragraph (a) of this section without a break in service or after a separation of 3 days or less, his or her FERS coverage will continue, except in the case of an employee hired by the Census Bureau under a temporary, intermittent appointment to perform decennial census duties.

* * * * *

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

5. The authority citation for part 870 is revised to read as follows:

Authority: 5 U.S.C. 8716; subpart J also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 870.302 also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251.

6. In § 870.301, add paragraph (c) to read as follows:

§ 870.301 Eligibility for life insurance.

* * * * *

(c) Notwithstanding any other provision in this part, the hiring of a Federal employee, whether in pay status or nonpay status, for a temporary, intermittent position with the decennial census has no effect on the amount of his/her Basic or Option B insurance, the withholdings or Government contribution for his/her insurance, or the determination of when 12 months in nonpay status ends.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

7. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251.

8. In § 890.102, paragraph (g) is added to read as follows:

§ 890.102 Coverage.

* * * * *

(g) Notwithstanding any other provision in this part, the hiring of a Federal employee, whether in pay status or nonpay status, for a temporary, intermittent position with the decennial census has no effect on the withholding or Government contribution for his/her coverage or the determination of when 365 days in nonpay status ends.

[FR Doc. 98–4781 Filed 2–24–98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 70

RIN 3150–AF87

Criticality Accident Requirements; Withdrawal of Direct Final Rule and Revocation of Regulatory Text

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; withdrawal.

SUMMARY: The Nuclear Regulatory Commission is withdrawing a direct final rule that would have amended the Commission's regulations to provide light-water nuclear power reactor licensees with greater flexibility in meeting the requirement that licensees authorized to possess more than a small amount of special nuclear material (SNM) maintain a criticality monitoring system in each area where the material is handled, used, or stored. The NRC is taking this action because it has received significant adverse comments in response to an identical proposed rule which was concurrently published in the **Federal Register**. Because the effective date for the direct final rule has passed, the NRC is removing the regulatory text codified in that action.

EFFECTIVE DATE: February 25, 1998.

FOR FURTHER INFORMATION CONTACT: Stan Turel, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6234 (E-mail: spt@nrc.gov).

SUPPLEMENTARY INFORMATION: On December 3, 1997 (62 FR 63825), the Nuclear Regulatory Commission published in the **Federal Register** a direct final rule amending its regulations to provide persons licensed to construct or operate light-water nuclear power reactors with the option of either meeting the criticality accident requirements of paragraph (a) of 10 CFR 70.24 in handling and storage areas for SNM, or electing to comply with requirements that would be incorporated into 10 CFR part 50 at § 50.68. The direct final rule was to become effective on February 17, 1998. The NRC also concurrently published an identical proposed rule on December 3, 1997 (62 FR 63911). In these documents, the NRC indicated that if it received significant adverse comments in response to this action, the NRC would withdraw the direct final rule and would consider the comments received as in response to the proposed rule and address these comments in a subsequent final rule. Therefore, the Commission is withdrawing the December 3, 1997, direct final rule. The public comments received will be addressed in a subsequent final rule issued in either a notice of final rulemaking or in a notice of withdrawal of the proposed rule.

Because this notice of withdrawal is being published after the February 17, 1998, effective date for the direct final rule, the regulatory text presented in the December 3, 1997, direct final rule must be removed from the Code of Federal Regulations. Therefore, the provisions added to part 50 at § 50.68 are removed and the text of § 70.24(d) is being restored to the text of the paragraph that was in effect before the December 3, 1997, amendment to that paragraph.

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C 553, the NRC is adopting the following amendments to 10 CFR parts 50 and 70.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, and 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

§ 50.68 [Removed]

2. Section 50.68 is removed.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

3. The authority citation for part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(9) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

4. In § 70.24, paragraph (d) is revised to read as follows:

§ 70.24 Criticality accident requirements.

* * * * *

(d) Any licensee who believes that good cause exists why he should be granted an exemption in whole or in part from the requirements of this section may apply to the Commission for such exemption. Such application shall specify his reason for the relief requested.

Dated at Rockville, Maryland, this 20th day of February, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–4830 Filed 2–24–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–29–AD; Amendment 39–10359; AD 98–04–46]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS 332L2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model AS 332L2 helicopters. This action requires modifying the main rotor blade vibration absorber (vibration absorber) by replacing the weight support assemblies with reinforced weight support assemblies. This amendment is prompted by a report of the failure of a weight support assembly in-flight. The actions specified in this AD are intended to prevent failure of a vibration absorber weight support assembly, which could lead to adverse vibrations, contact between the fuselage and a main rotor blade or loss of a main rotor blade; and subsequent loss of control of the helicopter.

DATES: Effective March 12, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 12, 1998.

Comments for inclusion in the Rules Docket must be received on or before April 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–29–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model AS 332L2 helicopters with vibration absorbers, part number (P/N) 332A11–0460–01, installed. The DGAC advises that failure of a vibration absorber can result in adverse vibrations, contact between the fuselage and a main rotor blade or loss of a main rotor blade; and subsequent loss of control of the helicopter.

Eurocopter France has issued Eurocopter Service Bulletin No.

62.00.43, dated February 13, 1997, which specifies converting the vibration absorbers, P/N 332A11–0460–01, to vibration absorbers, P/N 332A11–0460–02, by replacing the weight support assemblies, P/N 332A11–0470–00, with reinforced weight support assemblies, P/N 332A11–0474–00. The DGAC classified this service bulletin as mandatory and issued French AD 97–026–005(B) R2, dated March 12, 1997, applicable to Eurocopter France Model AS 332L2 helicopters with vibration absorbers, P/N 332A11–0460–01, in order to assure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS 332L2 helicopters of the same type design registered in the United States, this AD is being issued to prevent failure of a vibration absorber weight support assembly, which could lead to adverse vibrations, contact between the fuselage and a main rotor blade or loss of a main rotor blade; and subsequent loss of control of the helicopter. This AD requires modifying the main rotor blade vibration absorber by replacing the weight support assemblies with reinforced weight support assemblies. The actions are required to be accomplished in accordance with the service bulletin described previously.

None of the Eurocopter France Model AS 332L2 helicopters affected by this action are on the U.S. Register. All helicopters included in the applicability of this rule are currently operated by non-U.S. operators under foreign registry; therefore; they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject helicopters are imported and placed on the U.S. Register in the future.

Should an affected helicopter be imported and placed on the U.S. Register in the future, it would require approximately 8 work hours to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts would cost $11,300 per helicopter. Based on these figures, the cost impact of this AD would be $11,780 per helicopter.

Since this AD action does not affect any helicopter that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–29–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that notice and prior public comment are unnecessary in promulgating this regulation and therefore, it can be issued immediately to correct an unsafe condition in aircraft since none of these model helicopters are registered in the United States, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

98–04–48 Eurocopter France: Amendment 39–10359. Docket No. 97–SW–29–AD.

Applicability: Model AS 332L2 helicopters with main rotor blade vibration absorbers (vibration absorbers), part number (P/N) 332A11–0460–01, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For

helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 25 hours time-in-service (TIS) after the effective date of this AD, unless accomplished previously.

To prevent failure of a vibration absorber weight support assembly, which could lead to adverse vibrations, contact between the fuselage and a main rotor blade or loss of a main rotor blade; and subsequent loss of control of the helicopter, accomplish the following:

(a) Convert the vibration absorbers, P/N 332A11–0460–01 into P/N 332A11–0460–02 by replacing the weight support assemblies, P/N 332A11–0470–00, with weight support assemblies, P/N 332A11–0474–00, in accordance with the Accomplishment Instructions of Eurocopter France Service Bulletin No. 62.00.43, dated February 13, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(c) Special flight permits will not be issued.

(d) The modification shall be done in accordance with the Accomplishment Instructions of Eurocopter France Service Bulletin No. 62.00.43, dated February 13, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641-3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 12, 1998.

Note 3: The subject of this AD is addressed in Direction De L'Aviation Civile (France) AD 97–026–005(B) R2, dated March 12, 1997.

Issued in Fort Worth, Texas, on February 13, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–4409 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–04–AD; Amendment 39–10351; AD 98–04–39]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT8D series turbofan engines. This action requires a one-time borescope inspection of the combustion chamber outer case (CCOC) for cracks on engines identified by serial number that were ultrasonically inspected in accordance with AD 96–23–14 with defective probes. In addition, this AD requires an ultrasonic probe functional check at PW prior to using the probe to perform an ultrasonic inspection if the probe was overhauled, repaired, or otherwise altered since original manufacture and not subsequently functionally checked by PW. This amendment is prompted by reports of defective probes discovered in the field. The actions specified in this AD are intended to prevent uncontained engine failure, inflight engine shutdown, engine cowl release, and airframe damage.

DATES: Effective February 25, 1998.

The incorporation by reference of Pratt & Whitney Alert Service Bulletin No. A6202, Revision 1, dated January 4, 1996, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 2, 1997 (61 FR 63707, December 2, 1996).

Comments for inclusion in the Rules Docket must be received on or before April 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–04–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On November 7, 1996, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 96–23–14, Amendment 39–9820 (61 FR 63707, December 2, 1996), which supersedes ADs 87–11–07 R1 and 95–08–15, to require repetitive eddy current, fluorescent penetrant, fluorescent magnetic particle, or visual inspections for cracks in the rear flange, and ultrasonic, fluorescent penetrant, or fluorescent magnetic particle inspections for cracks in the PS4 boss, and drain bosses of the combustion chamber outer case (CCOC); and an additional inspection of the CCOC rear flange for intergranular cracking. In addition, AD 96–23–14 reduces the rear flange inspection interval for CCOCs when only the aft face of the rear flange has been inspected, and introduces an improved ultrasonic probe assembly. Also, AD 96–23–14 introduces a rotating eddy current probe for shop inspections in which the case is removed from the engine. Finally, AD 96–23–14 eliminates fluorescent penetrant inspection (FPI), fluorescent magnetic particle inspection (FMPI), and visual inspections from hot section disassembly level inspection procedures. That action was prompted by reports of crack origins in the forward face of the rear flange that could not be detected by the inspection methods for installed CCOCs that were mandated in the superseded ADs 87–11–07 R1 and 95–08–15. That condition, if not corrected, could result in uncontained engine failure, inflight engine shutdown, engine cowl release, and airframe damage.

Since the issuance of AD 96–23–14, the FAA has received reports of 13

defective ultrasonic inspection probes used to accomplish the ultrasonic inspections required by AD 96–23–14. Those 13 defective probes have been identified and removed from the field, but the engines inspected with the defective probes must be reinspected. Other ultrasonic inspection probes were either overhauled, repaired, or otherwise altered since original manufacture and were not subsequently functionally checked to insure that they met the necessary inspection sensitivity requirements. The calibration check contained in the ultrasonic inspection procedure does not serve as an adequate check to insure that the probe meets inspection sensitivity requirements. Currently, only PW has the capability to perform the necessary functional check to the proper standard.

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. A6202, Revision 1, dated January 4, 1996, that describes procedures for a borescope inspection of the CCOC rear flange for cracks. This ASB identifies applicability to engines installed on McDonnell Douglas DC–9 and Boeing 737 series engines only; however, the inspection requirements of paragraph 2.A.(5) of PW ASB No. A6202, Revision 1, dated January 4, 1996, are applicable to engines installed on Boeing 727 series aircraft as well.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent an uncontained engine failure. This AD requires a borescope inspection of engines, identified by serial number (S/N) that were ultrasonically inspected in accordance with AD 96–23–14 with defective probes. In addition, this AD requires a functional check at PW of all ultrasonic inspection probes that were overhauled, repaired, or otherwise altered since original manufacture and not subsequently functionally checked. The borescope inspection is required to be accomplished in accordance with the ASB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–04–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–04–39 Pratt & Whitney: Amendment 39–10351. Docket 98–ANE–04–AD.

Applicability: Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines, with combustion chamber outer case (CCOC) part numbers (P/Ns) 490547, 542155, 616315, 728829, 728829–001, 730413, 730413–001, 730414, 730414–001, 767197, 767279, 767279–001 installed. These engines are installed on but not limited to Boeing 737 and 727 series, and McDonnell Douglas DC–9 series aircraft.

NOTE 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncontained engine failure, inflight engine shutdown, engine cowl release, and airframe damage, accomplish the following:

(a) For engines identified by serial number (S/N) in Table 1 of this AD, perform a one-time borescope inspection of the CCOC rear flange in accordance with paragraph 2.A.(5) of PW Alert Service Bulletin (ASB) No. A6202, Revision 1, dated January 4, 1996, as follows:

TABLE 1

648796	653799	655969	665370	674333	695297	702602
648859	653876	655987	665372	674370	696555	702648
649077	653904	656036	665382	674513	696573	702699
649135	654043	656084	665393	674564	696645	702712
649157	654115	656121	665520	674580	696668	702772
649212	654428	656948	665529	674611	696757	707158
649262	654557	656964	665744	687407	700037	707200
649331	654804	657064	665992	687457	700053	707405
649354	654860	657119	666004	687634	700103	707922
649406	654877	657386	666019	687851	700140	708332
649451	654915	657416	666076	687891	700145	708921
649675	654949	657584	666331	687893	700156	709002
653316	654986	657613	666682	688029	700223	709168
653329	655106	657677	666715	688051	700243	709209
653363	655310	657739	666948	688054	700248	
653495	655437	665410	667042	688103	700261	
653514	655821	665412	667045	688161	700334	
653545	655842	665461	667059	688470	700383	
653574	655857	665468	667068	688491	700398	
653609	655870	665489	667110	688499	700404	
653622	655898	665497	674193	689034	700665	
653789	655900	665364	674251	695290	700133	

(1) For engines installed on McDonnell Douglas DC–9 series aircraft, inspect within 1,000 cycles in service (CIS) since the last ultrasonic inspection of the CCOC rear flange performed in accordance with AD 96–23–14, or within 100 CIS after the effective date of this AD, whichever occurs later.

(2) For engines installed on Boeing 737 series aircraft, inspect within 1,500 CIS since the last ultrasonic inspection of the CCOC rear flange performed in accordance with AD 96–23–14, or within 100 CIS after the effective date of this AD, whichever occurs later.

(3) For engines installed on Boeing 727 series aircraft, inspect within 2,500 CIS since the last ultrasonic inspection of the CCOC rear flange performed in accordance with AD 96–23–14, or within 100 CIS after the effective date of this AD, whichever occurs later.

(b) If the ultrasonic probe assembly, PWA 47942, used to inspect the CCOC rear flange in accordance with AD 96–23–14 was overhauled, repaired, or otherwise altered since original manufacture and not subsequently functionally checked at PW, within 30 days after the effective date of this AD return ultrasonic probes to PW to perform a functional check of the ultrasonic probe assembly.

Note 2: Operators should note that future inspections performed using the probe must be performed with a probe that has passed a functional check at PW since overhaul, repair, or alteration.

(1) If the ultrasonic probe assembly does not pass the functional check, PW must inform the operator, within 24 hours after the probe fails the functional check.

(2) If the ultrasonic probe assembly does not pass the functional check at PW, all engines that were ultrasonically inspected with that probe in accordance with AD 96–23–14 must be borescope inspected in accordance with paragraph 2.A.(5) of PW ASB No. A6202, Revision 1, dated January 4, 1996. Perform the inspections as follows:

(i) For engines installed on McDonnell Douglas DC–9 series aircraft, inspect within 1,000 cycles in service (CIS) since the last ultrasonic inspection of the CCOC rear flange performed in accordance with AD 96–23–14, or within 100 CIS after determining the probe is defective, whichever occurs later.

(ii) For engines installed on Boeing 737 series aircraft, inspect within 1,500 CIS since the last ultrasonic inspection of the CCOC rear flange performed in accordance with AD 96–23–14, or within 100 CIS after determining the probe is defective, whichever occurs later.

(iii) For engines installed on Boeing 727 series aircraft, inspect within 2,500 CIS since the last ultrasonic inspection of the CCOC rear flange performed in accordance with AD 96–23–14, or within 100 CIS after determining the probe is defective, whichever occurs later.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) The actions required by this AD shall be done in accordance with the following PW ASB:

Document No.	Pages	Revision	Date
A6202	1–10	1	Jan. 4, 1996.
	11	Original	Feb. 20, 1995.
NDIP–835	1–17	A	Oct. 7, 1995.
Total pages: 28.			

This incorporation by reference of Pratt & Whitney Alert Service Bulletin No. A6202, Revision 1, dated January 4, 1996, was approved previously by the Director of the Federal Register as of January 2, 1997 (61 FR 63707, December 2, 1996). Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 25, 1998.

Issued in Burlington, Massachusetts, on February 11, 1998.

James C. Jones,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–4406 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–04–AD; Amendment 39–10362; AD 98–02–51]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–02–51 that was sent previously to all known U.S. owners and operators of Boeing Model 737–300, –400, and –500 series airplanes by individual telegrams. This AD requires a one-time general visual inspection to detect any missing fasteners on the top and bottom of the leading edge skin where it attaches to the front spar of the horizontal stabilizer. This AD also requires a one-time detailed visual inspection to detect any loose or missing fasteners of the attachment of the elevator hinge plates to the horizontal stabilizer rear spar fittings. If a loose or missing fastener is detected, this AD requires installation of a new or serviceable fastener. This action is prompted by reports of loose or missing fasteners of the leading edge structure and elevator attachment fitting of the right-hand horizontal stabilizer. The actions specified by this AD are intended to prevent reduced structural integrity of the horizontal stabilizer due to loose or missing fasteners.

DATES: Effective March 2, 1998, to all persons except those persons to whom it was made immediately effective by telegraphic AD T98–02–51, issued on January 8, 1998, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before April 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–04–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Gregory L. Schneider, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2028 or (425) 227–2557; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On January 8, 1998, the FAA issued telegraphic AD T98–02–51, which is applicable to Boeing Model 737–300, –400, and –500 series airplanes.

On December 9, 1997, a Boeing Model 737–300 series airplane operated by Silkair Airlines was involved in an accident after takeoff from Jakarta Soekarno Hatta Airport in Jakarta, Indonesia. The accident is under investigation by the Indonesian authorities with assistance from the National Transportation Safety Board (NTSB) of the United States, the manufacturer, the operator, and other aviation organizations. Although there has been no determination of the cause of the accident, preliminary reports from the on-site accident investigation indicate that the horizontal stabilizer may have separated from the airplane prior to impact in the Musi River. On-site investigation has revealed that approximately 26 fasteners were missing from certain leading edge structure on the right-hand (RH) horizontal stabilizer (12 from the upper surface, and 14 from the lower surface). Additionally, early reports indicated that at least one fastener may have been missing from an elevator attachment fitting in an outboard section of the RH horizontal stabilizer.

Subsequently, there has been a report of evidence that the fastener was actually installed. However, the FAA has received a report that an operator found one loose fastener during inspection of an in-service airplane. (There have been no reports to date of any fasteners missing from the left-hand (LH) horizontal stabilizer.)

There is, as of yet, no evidence linking these missing or loose fasteners to the cause of the accident.

Loose or missing fasteners on the LH or RH horizontal stabilizer could reduce the structural integrity of the horizontal stabilizer.

Because the airplane had been placed in service a relatively short time ago (February 14, 1997), it is possible that the fasteners were missing because they had not been installed during manufacture. If such a quality control failure occurred on this airplane, it may also have occurred on others produced at approximately the same time.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued telegraphic AD T98–02–51 to require a one-time general visual inspection to detect any missing fasteners on the top and bottom of the leading edge skin where it attaches to the front spar of the horizontal stabilizer.

This AD also requires a one-time detailed visual inspection to detect any loose or missing fasteners of the attachment of the elevator hinge plates to the horizontal stabilizer rear spar fittings. If a loose or missing fastener is detected, this AD requires installation of a new or serviceable fastener.

In addition, this AD requires that operators submit a report of all inspection findings to the FAA. Since the cause of the missing fasteners of the LH and RH horizontal stabilizer is currently unknown, the intent of the required reports is to enable the FAA to determine how widespread such discrepancies may be in the affected fleet. Because the investigation is continuing, further action may be necessary. This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Publication and Effectivity of AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on January 8, 1998, to all known U.S. owners and operators of certain Boeing Model 737–300, –400, and –500 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–04–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–02–51 Boeing: Amendment 39–10362. Docket 98–NM–04–AD.

Applicability: Model 737–300, -400, and -500 series airplanes having line positions 2765 through 2977 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the horizontal stabilizer due to loose or missing fasteners of the left- or right-hand horizontal stabilizer, accomplish the following:

(a) Within 5 flight cycles or 24 clock hours after the effective date of this AD, whichever occurs later, perform the following inspections of the left- and right-hand sides of the horizontal stabilizer:

(1) Perform a general visual inspection to determine if any fasteners are missing on the top and bottom of the leading edge skin where it is attached to the front spar.

(2) Perform a detailed visual inspection to detect loose or missing fasteners of the attachment of the elevator hinge plates to the left- and right-hand sides of the horizontal stabilizer rear spar fittings. Ensure torque sealant has not been broken on the fasteners.

(b) If no discrepancies are found, no further inspections are required by this AD.

(c) If any fastener is loose or missing, or if the torque sealant has been broken on any fastener, prior to further flight, install a new or serviceable fastener.

(d) Within 5 days after accomplishing the inspections required by this AD, report inspection results, positive or negative, to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the paperwork reduction act of 1980 (44 U.S.C. 3501 *et seq.*) have been assigned OMB control number 2120–0056.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Seattle ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) This amendment becomes effective on March 2, 1998, to all persons except those persons to whom it was made immediately effective by telegraphic AD T98–02–51, issued on January 8, 1998, which contained the requirements of this amendment.

Issued in Renton, Washington, on February 18, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–4716 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–24]

Amendment of Class D Airspace; Twin Falls, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action changes the name of the airport in the Twin Falls, ID, Class D airspace legal description. During a review of Idaho airspace, it was discovered that the airport name Twin Falls-Sun Valley Regional, Joslin Field needs to be updated and changed

to Joslin Field-Magic Valley Regional. This rule also updates the coordinates for the airport which are contained herein.

DATES: Effective 0901 UTC, May 26, 1998.

Comments for inclusion in the Rules Docket must be received on or before March 27, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ANM–520, Federal Aviation Administration, Docket Number 97–ANM–24, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

The official docket may be examined in the Office of the Regional Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 97–ANM–24, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION: This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) changes the legal description title of the Class D airspace area at Twin Falls, ID, by updating the name of the airport and by updating the coordinates of the airport. The dimensions and operating requirements of the airspace remain the same.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designated as a surface area for an airport are published in Paragraph 6002 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, issues it as a direct final rule. The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a docket in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket Number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered. This rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions are extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date, for comments in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. 97–ANM–24." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ANM ID D Twin Falls, ID [Revised]

Joslin Field-Magic Valley Regional
(Lat. 42°28'55"N, long. 114°29'16"W)

That airspace extending upward from the surface to and including 6,700 feet MSL within a 4.3-mile radius of the Joslin Field-Magic Valley Regional airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on February 2, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–4770 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–13]

Establishment of Class E Airspace; Hayden, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Hayden, CO, Class E airspace. The airspace is necessary in order to fully encompass the procedures for two new Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP) at the Yampa Valley Airport, Hayden, CO.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 97–ANM–13, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On November 19, 1997, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by establishing the Class E airspace area at Hayden, CO (62 FR 61708). This action would provide airspace to fully encompass two SIAP's at Yampa Valley Airport. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes 700 foot Class E airspace at Hayden, CO. The airspace, which overlies the Yampa Valley Airport, would provide the airspace necessary to fully encompass the GPS–A SIAP and GPS–B SIAP to the Yampa Valley Airport, Hayden, CO. This rule establishes a 700-foot Class E area within a 6.9 mile radius around the Yampa Valley Airport, with an extension to the northwest and an extension to the southeast, to meet necessary airspace criteria for aircraft transitioning between the terminal and en route environments. The FAA establishes Class E airspace extending upward from 700 feet AGL, where necessary, to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under IFR at the Yampa Valley Airport and between the terminal and en route transition stages.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evlauaiton as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Hayden, CO [New]

Yampa Valley Airport, CO
(Lat. 40°28′52″ N, long. 107°13′04″ W)
Hayden VOR/DME
(Lat. 40°31′12″ N, long. 107°18′18″ W)

That airspace extending upward from 700 feet above the surface, within a 6.9-mile radius of the Yampa Valley Airport, and within 4 miles of each side of the Hayden VOR/DME 301° radial extending from the 6.9-mile radius to 10.1 miles northwest of the VOR/DME, and within 4 miles each side of the Hayden VOR/DME 118° radial extending from the 6.9-mile radius to 16.1 miles southeast of the VOR/DME; excluding the Craig, CO Class E airspace area.

* * * * *

Issued in Seattle, Washington, on February 2, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–4772 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–14]

Amendment of Class E Airspace; Big Piney, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Big Piney, WY, Class E airspace. This revision of airspace is necessary in order to fully encompass the procedures for a new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at the Big Piney-Marbleton Airport, Big Piney, WY.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No.

97–ANM–14, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On December 5, 1997, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by revising the Big Piney Class E airspace area at Big Piney, WY (62 FR 64323). This action would provide the airspace to fully encompass an SIAP for Big Piney-Marbleton Airport. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Big Piney, WY. This modification of airspace is necessary to fully encompass the GPS Runway 31 SIAP and associated missed approach holding pattern for the Big Piney-Marbleton Airport. This revision will add approximately 12 miles of additional airspace to the southeast, thus ensuring that all flight procedures associated with the new SIAP are contained within controlled Class E airspace. The FAA establishes Class E airspace extending upward from 700 feet AGL, where necessary, to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) at the Big Piney-Marbleton Airport and between the terminal and en route transition stages.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WY E5 Big Piney, WY [Revised]

Big Piney-Marbleton Airport, WY
(Lat. 42°35′06″N, long. 110°06′40″W)
Big Piney VOR/DME
(Lat. 42°34′46″N, long. 110°06′33″W)

That airspace extending upward from 700 feet above the surface within 4.8 miles southwest and 8.3 miles northeast of the Big Piney VOR/DME 134° AND 314° radius extending from 4 miles northwest to 16.6 miles southeast of the VOR/DME; that airspace extending upward from 1,200 feet above the surface within 7.9 miles southwest and 11.8 miles northeast of the Big Piney 134° and 314° radials extending from 10.1 miles northwest to 33 miles southeast of the VOR/DME.

* * * * *

Issued in Seattle, Washington, on February 2, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–4771 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–04]

Establishment of Class E Airspace; Poplar, MT; and Revision of Class E Airspace; Wolf Point, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Poplar, MT, Class E airspace and revises the Wolf Point, MT, Class E airspace. The airspace is necessary in order to fully encompass the procedures for a new Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP) at the Poplar Airport, Poplar, MT.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 97–ANM–04, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On December 5, 1997, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by establishing Class E airspace area at Poplar, MT, and revising Class E airspace at Wolf Point, MT (62 FR 64322). This action would provide the airspace to fully encompass a SIAP at Poplar Airport. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

This action is the same as the proposal except for a typographical error discovered (and corrected herein) in the coordinates for the Poplar Airport, the Wolf Point, L M Clayton Airport, and the Wolf Point NDB. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Poplar, MT, and revises adjacent airspace at Wolf Point, MT. This airspace is necessary to fully encompass the GPS Runway 9 approach and associated holding pattern for the Poplar Airport, Poplar, MT. This rule establishes a 700-foot Class E area within a 9.1-mile radius around the Poplar Airport and amends the adjacent 1200-foot Class E airspace at Wolf Point, MT, that fully encompasses the holding procedure associated with the SIAP. The FAA establishes Class E airspace extending upward from 700 feet AGL where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal would be to provide safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) at the Poplar Airport and between the terminal and en route transition stages.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Poplar, MT [New]

Poplar Airport, MT
(Lat. 48°07′00″N, long. 105°11′17″W)

That airspace extending upward from 700 feet above the surface within a 9.1-mile radius of the Poplar, MT, airport.

* * * * *

ANM MT E5 Wolf Point, MT [Revised]

Wolf Point, L M Clayton Airport, MT
(Lat. 48°05′40″N, long. 105°34′30″W)
Wolf Point NDB
(Lat. 48°06′16″N, long. 105°36′07″W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Wolf Point NDB; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 47°48′00″N, long. 104°58′00″W; to lat. 47°48′00″N, long. 106°00′02″W; to lat. 48°20′00″N, long. 106°00′02″W; to lat. 48°20′00″N, long. 104°58′00″W; thence to the point of beginning.

* * * * *

Issued in Seattle, Washington, on February 9, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–4767 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 243

[Docket No. OST–95–650]

RIN 2105–AB78

Passenger Manifest Information

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Final rule; correction.

SUMMARY: DOT published a rule on February 18, 1998, requiring certificated air carriers and large foreign air carriers to collect the full name of each U.S.-citizen traveling on flight segments to or from the United States and solicit a contact name and telephone number. This document corrects a technical error in one section of the rule language to make clear that petitions requesting a waiver from the rule because of conflicts with foreign law should be filed by October 1, 1998, or on or before beginning service between that country and the United States.

DATE: This rule is effective March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the General Counsel, DOT, (202) 366–9306.

SUPPLEMENTARY INFORMATION: On February 18, 1998, DOT published a final rule (63 FR 8258) concerning passenger manifest requirements. This document corrects a technical error in paragraph (b) of § 243.15. The February 18, 1998, version states that petitions requesting waivers should be filed, "on or before the effective date of this rule, or on or before beginning service between that country and United States." The reference to effective date is incorrect and is being replaced by the phrase, "October 1, 1998."

Accordingly, the Department is correcting the rule published February 18, 1998, as follows:

On page 8282 in the second column in § 243.15(b), the phrase "the effective date of this rule" is corrected to read, "October 1, 1998."

Issued in Washington, DC, on February 19, 1998.

Nancy E. McFadden,

General Counsel.

[FR Doc. 98–4760 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–62–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release No. 34–39677]

Commission Requirements for Registration Under Section 15 of the Exchange Act

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting Interim Form BD for the registration of brokers and dealers under the Securities Exchange Act of 1934. The Interim Form is intended to enhance the ability of the public to obtain information regarding securities professionals until the redesigned CRD system is operational.

EFFECTIVE DATE: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel, or Paul Andrews, Special Counsel at (202) 942–0073, Office of Chief Counsel,

Division of Market Regulation, Mail Stop 7–11, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background

On July 12, 1996, the Commission adopted amendments to Form BD ("1996 Amendments"), the uniform application form for broker-dealer registration under the Securities Exchange Act of 1934 ("Exchange Act").[1] In general, the amendments were adopted to provide the Commission, self-regulatory organizations ("SROs"), and state securities regulators with better information about a registrant's disciplinary history; to elicit more precise information about the business activities of broker-dealer applicants; and to facilitate the electronic retrieval of information. At the time it adopted these amendments, the Commission stated that use of Form BD, as amended, was to coincide with the implementation of the redesigned Central Registration Depository ("CRD"), a computer system operated by the National Association of Securities Dealers, Inc. ("NASD") that maintains registration information regarding broker-dealers and their registered personnel. Among other things, the redesigned CRD system will allow broker-dealers to file Form BD electronically.[2]

Although the NASD expected to implement the redesigned CRD system in September 1996, a test of the system that began in May 1996 revealed that additional changes were needed in the software that will be used by broker-dealers to make electronic filings. Furthermore, the NASD determined that broker-dealers needed additional time to prepare their internal operations and infrastructure to support electronic filings. As a result, the NASD delayed the implementation of the redesigned CRD system. Because of this delay, on September 4, 1996, the Commission suspended the compliance date for the Form BD amendments.[3] Thus, until the redesigned CRD system is fully functional, applicants continue to file old Form BD.

One of the primary goals of the enhanced CRD, as well as the Form BD as amended, is to make certain information concerning broker-dealers and their associated persons more readily available to the public until the CRD redesign is complete. The NASD has determined to make the information available through a web-based technology. To do so, however, it is necessary to reformat a segment of Form BD.

To enhance the ability of the public to obtain information regarding securities professionals, the Commission is adopting Interim Form BD for use by registrants until the redesigned CRD system is operational.[4] Interim Form BD is based on old Form BD; it requires registrants to file information called for by the 1996 Amendments. The information would be in a computer format that will allow the CRD to make the information available to the public over the WorldWide Web. The Interim Form would not change the substance of the 1996 Amendments, but only their appearance on a temporary basis.

II. Description of the Interim Form BD

Interim Form BD will consist of Form BD currently in use with one exception. Old Question 7 on Form BD will be reformatted to resemble Question 11 on the amendments to Form BD approved by the Commission in July 1996.[5] The NASD, through the CRD system, will then publish the contents of Question 7 in the interim form for public access. Question 7 requests information about the disciplinary history of the applicant and its control affiliates, including information relating to statutory disqualifications,[6] other relevant history, and the applicant's financial soundness. In order to make the disclosure more organized and complete, Question 7 is broken into broad categories: criminal, civil, regulatory, and financial. Disclosure of such offenses as military court convictions, perjury, and conspiracy to commit certain offenses is also required.

III. Effective Date

In general, the Administrative Procedure Act ("APA"), 5 U.S.C. 551, *et seq.*, requires that agency rulemaking, such as changing Form BD, must be subject to a public notice and comment period. 5 U.S.C. 553. That requirement has already been satisfied. In Securities Exchange Act Rel. No. 35224, 60 FR 4040 (Jan. 12, 1995), the Commission solicited comment on what became the 1996 Amendments to Form BD. The substance of these amendments (namely, new Question 11) will be used in Interim Form BD. Thus, Interim Form BD is not subject to a notice and comment period.[7] In addition to being unnecessary, the Commission is of the view that soliciting comment would be impractical. The proposed Interim Form BD would only be used on a temporary basis and to delay its implementation until after a notice and comment period would significantly reduce its efficacy.

Moreover, although the APA generally requires publication of such amendments at least thirty days before their effective date, this requirement does not apply if the Commission determines, for good cause, not to provide a thirty-day period. See 5 U.S.C. 533(d). In light of the previous notice and comment period in connection with the Form BD amendments, as well as the fact that Interim Form BD will provide investors with immediate and inexpensive access to the relevant information concerning broker-dealers and their associated persons, the Commission here finds that good cause exists such that Interim Form BD is effective as of 16, 1998. The use of Interim Form BD is prospective only. Registrants already registered with the Commission need not refile on Interim Form BD.

IV. Statutory Basis

15 U.S.C. 78*o*, 78q, 78w.

List of Subjects in 17 CFR Part 249

Broker-Dealers, Reporting and recordkeeping requirements, Securities.

For the reasons set forth above, the Commission hereby amends Title 17, Chapter II, part 249 of the Code of Federal Regulations as follows:

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[1] Securities Exchange Act Rel. No. 37431 (July 12, 1996), 61 FR 37357 (July 18, 1996); see also 17 CFR 249.501.

[2] The CRD is a customized electronic database that allows "one-stop" filing for broker-dealer registration among the various state and federal regulators. In 1992, the Commission began participating in the CRD system as part of its ongoing effort to reduce the costs associated with broker-dealer registration.

[3] Securities Exchange Act Rel. No. 37632 (September 4, 1996), 61 FR 47412 (September 9, 1996).

[4] At this time, that is expected to occur shortly before the year 2000.

[5] The Commission has the authority to require the filing of Form BD pursuant to Sections 15 and 17 of the Exchange Act. 15 U.S.C. 78o and 78q.

[6] Sections 15(b)(1), 15(b)(4) and 15(b)(6) of the Exchange Act authorize the Commission to deny registration to a broker-dealer if the broker-dealer or an associated person of the broker-dealer has engaged in the activities listed in those sections, 15 U.S.C. 78*o*(b)(1), (b)(4), and (b)(6). *See also* 15 U.S.C. 78*c*–3(g)(2).

[7] Alternatively, Section 553(b)(3)(B) of the APA provides that an agency may dispense with prior notice and comment when it finds, for good cause, that such notice and public comment are "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 533(b)(3)(B). Because Interim Form BD makes no substantive or material change to the 1996 Amendments, and the Commission has already solicited comment on those amendments, the Commission finds that good cause exists such that notice and comment are unnecessary for the adoption of Interim Form BD.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

Note: Form BD does not, and the Interim Form will not, appear in the Code of Federal Regulations.

2. By amending Form BD (referenced in Section 249.501) to revise Question 7 to read as follows:

BILLING CODE 8010-01-P

7A	(1)	In the past ten years has the *applicant* or a *control affiliate* been convicted of or pleaded guilty or nolo contendere ("no contest") in a domestic, foreign or military court to: a *felony* or *misdemeanor* involving: investments or an investment-related business, or any fraud, false statements or omissions, wrongful taking of property, or bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	[ ]	[ ]	3
	(2)	In the past ten years has the *applicant* or a *control affiliate* been charged with any felony or charged with a misdemeanor specified in question A(1) in a domestic, foreign or military court?	[ ]	[ ]	4
7B		Has any domestic or foreign court:			
	(1)	in the past ten years, *enjoined* the *applicant* or a *control affiliate* in connection with any *investment-related* activity?	[ ]	[ ]	5
	(2)	ever *found* that the *applicant* or a *control affiliate* was *involved* in a violation of *investment-related* statute(s) or regulation(s) -or- ever dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against the *applicant* or a *control affiliate* by a state or *foreign financial regulatory authority?*	[ ]	[ ]	6
7C		Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:			
	(1)	*found* the *applicant* or a *control affiliate* to have made a false statement or omission?	[ ]	[ ]	7
	(2)	*found* the *applicant* or a *control affiliate* to have been *involved* in a violation of its regulations or statutes?	[ ]	[ ]	8
	(3)	*found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	[ ]	[ ]	9
	(4)	entered an *order* against the applicant or a control *affiliate* in connection with *investment-related* activity?	[ ]	[ ]	10
	(5)	imposed a civil money penalty on the applicant or a control *affiliate*, or *ordered* the *applicant* or a *control affiliate* to cease and desist from any activity?	[ ]	[ ]	10A

7D
7E
7F
7G
7H
7I
7J

By the Com

7D	Has any other Federal regulatory agency or any state regulatory agency or *foreign financial regulatory authority:*			
(1)	ever *found* the *applicant* or a *control affiliate* to have made a false statement or omission or been dishonest, unfair, or unethical?	[ ]	[ ]	11
(2)	ever *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of *investment-related* regulation(s) or statue(s)?	[ ]	[ ]	12
(3)	ever *found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	[ ]	[ ]	13
(4)	in the past ten years entered an *order* against the *applicant* or a *control affiliate* in connection with investment-related activity?	[ ]	[ ]	14
(5)	ever denied, suspended, or revoked the *applicant's* or a *control affiliate's* registration or license or otherwise, by *order*, prevented it from associating with an *investment-related* business or restricted its activities?	[ ]	[ ]	15
(6)	ever revoked or suspended the *applicant's* or a *control affiliate's* authority to act as an attorney or accountant?	[ ]	[ ]	16
7E	Has any *self-regulatory organization* or commodities exchange ever:			
(1)	*found* the *applicant* or a *control affiliate* to have made a false statement or omission?	[ ]	[ ]	17
(2)	*found* the *applicant* or a *control affiliate* to have been *involved* in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the U.S. Securities and Exchange Commission)?	[ ]	[ ]	18
(3)	*found* the *applicant* or a *control affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked or restricted?	[ ]	[ ]	19
(4)	disciplined the *applicant* or a *control affiliate* by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?	[ ]	[ ]	20
7F	Is the *applicant* or a *control affiliate* now the subject of any civil *proceeding* that could result in a "yes" answer to any part of 7B?	[ ]	[ ]	21
7G	Is the *applicant* or a *control affiliate* now the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of 7C, D, or E?	[ ]	[ ]	22
7H	Has a bonding company ever denied, paid out on, or revoked a bond for the *applicant*?	[ ]	[ ]	23
7I	Does the *applicant* have any unsatisfied judgments or liens against it?	[ ]	[ ]	24
7J	In the past ten years has the applicant or a control affiliate of the applicant been a securities firm or a control affiliate of a securities firm that has been the subject of a bankruptcy petition -or- has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?	[ ]	[ ]	25

* * * * *

By the Commission.

Dated: February 18, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4711 Filed 2–24–98; 8:45 am]

BILLING CODE 8010–01–C

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–98–007]

Drawbridge Operation Regulation; Bayou Chico, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the State Route 292 bascule span bridge across Bayou Chico, mile 0.3, at Pensacola, Florida. This deviation allows the bridge to remain closed to navigation between the hours of 7:30 a.m. and 11:30 a.m. on Saturday, February 28, 1998. This closure is necessary to facilitate the running of the Blue Angel Marathon, a long distance foot race which is an event of public interest.

DATES: The deviation is effective from 7:30 a.m. until 11:30 a.m. on February 28, 1998.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, Eighth Coast Guard District at 504–589–2965.

SUPPLEMENTARY INFORMATION: The State Route 292 bridge across Bayou Chico, mile 0.3, at Pensacola, Florida has a vertical clearance of 13 feet above mean high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists primarily of tugs with tows, commercial fishing vessels, sailboats and other recreational craft. The U.S. Naval Air Station has requested a temporary deviation from the normal operation of the bridge for the running of the Blue Angel Marathon.

This deviation requires that the draw of the State Route 292 bridge across Bayou Chico at mile 0.3 remain closed to navigation between the hours of 7:30 a.m. and 11:30 a.m. on Saturday, February 28, 1998. Presently, the following special drawbridge operating regulation is in effect: The draw shall open on signal at any time for the passage of commercial vessels. The draw shall open at any time for the passage of pleasure vessels; except that, from 6 a.m. to 8 a.m., 11 a.m. to 1 p.m., and 3 p.m. to 6 p.m. Monday through Friday except Federal holidays, the draw need be opened only on the hour and half hour or when five or more pleasure vessels are waiting to pass or in emergencies or severe storms. When the draw is open for commercial vessels during these restricted periods, accumulated pleasure vessels shall be passed.

Dated: February 12, 1998.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 98–4834 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–97–072]
RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, North Carolina

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations that govern the operation of the Onslow Beach Swing Bridge across the Atlantic Intracoastal Waterway (AICW), mile 240.7, at Camp Lejeune, North Carolina, at the request of the United States Marine Corps (USMC).

The final rule continues to provide for openings on signal, except that from 7 a.m. to 7 p.m., the draw will only open on the hour and half hour, year-round. This rule is intended to reduce vehicular traffic delays while still providing for the reasonable needs of navigation.

DATES: This final rule is effective on March 27, 1998.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the office of the Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 8 a.m. and 4:30 p.m., through Friday, except Federal holidays. The telephone number is (757) 398–6222.

FOR FURTHER INFORMATION CONTACT: Ann Deaton, Bridge Administrator, Fifth Coast Guard District, (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Regulatory History

On October 16, 1997, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, North Carolina" in the **Federal Register** (62 FR 53770). The Coast Guard received one letter commenting on the proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The Onslow Beach Swing Bridge and adjoining property are part of the Marine Corps Base at Camp Lejeune military reservation, located adjacent to Jacksonville, North Carolina. The current regulations require the Onslow Beach Swing Bridge to open on signal at all times. This requirement is included in the general operating regulations at 33 CFR 117.5.

The USMC requested changes in the regulation to require the bridge to open on signal, except from 7 a.m. to 7 p.m., when the bridge would open on the hour and half hour.

Prior to publishing the NPRM, the Coast Guard reviewed the USMC's bridge logs from October 1993 through July 1997 which revealed an average of 38 bridge opening requests per day. During peak opening periods in the Fall and Spring, bridge tenders received an average of 45 bridge opening requests per day. Considering the minimal number of openings identified by the bridge logs, the Coast Guard believes that this rule will more fairly balance the competing needs of vehicular and vessel traffic.

Other drawbridges along the AICW in North Carolina are governed by specific regulations listed in 33 CFR 117.821 which require them to open on the hour or on the hour and half hour. The USMC's requested change to the regulations for the Onslow Beach Swing Bridge would make its schedule consistent with those for the other AICW drawbridges in North Carolina.

Therefore, the Coast Guard is amending § 117.821 by revising paragraph (a)(3) to require the Onslow Beach Swing Bridge across the AICW, mile 240.7, at Camp Lejeune, North Carolina, to open on signal except that openings will be limited to on the hour and half hour, between 7 a.m. and 7 p.m.

The final rule also amends § 117.821(a) by deleting the text stating that the bridge shall open on signal for public vessels of the United States, state and local government vessels, and any vessel in an emergency involving danger to life or property. This is a general requirement published at 33 CFR 117.31, which is no longer required in each specific bridge regulation. Commercial vessels will continue to pass on signal as provided in new paragraph (a).

To ensure clarity and consistency of the operating regulation, parts of former paragraph (b) have been reworded and

redesignated as paragraph (a). The final rule makes no substantive changes in paragraphs (b)(1)–(6); however minor editorial changes to the text have been made to clarity the regulation. For clarity and ease of use to the public, the Coast Guard is republishing the entire section as amended.

Discussion of Comments and Changes

The Coast Guard received one comment on the NPRM expressing support for the proposed rule. No adverse comments were received; therefore, the final rule is being implemented without change.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.'

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

This final rule does not restrict vessel navigation, but merely limits the bridge openings to on the hour and half hour, from 7 a.m. to 7 p.m. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection of information requirement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B (as amended, 59 FR 38654, 29 July 1994), this final rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.821 is revised to read as follows:

§ 117.821 Atlantic Intracoastal Waterway, Albermarle Sound to Sunset Beach.

(a) The drawbridges across the Atlantic Intracoastal Waterway in North Carolina shall open on signal for commercial vessels at all times and on signal for pleasure vessels, except at the times and during the periods specified in this paragraph:

(1) S.H. 94 Bridge, mile 113.7, at Fairfield, NC from April 1 to November 30, between 7 a.m. and 7 p.m., the draw need only open on the hour and half hour.

(2) S.R. 304 Bridge, mile 157.2, at Hobucken, NC, from April 1 to November 30, between 7 a.m. and 7 p.m., the draw need only open on the hour and half hour.

(3) Onslow Beach Swing Bridge, mile 240.7, at Cap Lejeune, NC, between 7 a.m. and 7 p.m., the draw need only open on the hour and half hour.

(4) S.R. 50 Bridge, mile 260.7, at Surf City, NC, between 7 a.m. and 7 p.m., the draw need only open on the hour.

(5) Figure Eight Swing Bridge, mile 278.1, at Scotts Hill, NC, the draw need only open on the hour and half hour.

(6) S.R. 74 Bridge, mile 283.1, at Wrightsville Beach, NC, between 7 a.m. and 7 p.m., the draw need only open on the hour.

(7) S.R. 1172 Bridge, mile 337.9, at Sunset Beach, NC, shall open on the hour on signal between 7 a.m. and 7 p.m., April 1 to November 30, except that on Saturdays, Sundays and Federal holidays, from June 1 through September 30, the bridge shall open on signal on the hour between 7 a.m. and 9 p.m.

(b) If a pleasure vessel is approaching a drawbridge which is only required to open on the hour or on the hour and half hour, and cannot reach the drawbridge on the hour or on the half hour, the drawtender may delay the required opening up to 10 minutes past the hour or half hour.

Dated: February 13, 1998.

Roger Rufe, Jr.

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 98–4836 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–14–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 251

[Docket No. 98–1 CARP]

Copyright Arbitration Royalty Panels; List of Arbitrators

AGENCY: Copyright Office, Library of Congress.

ACTION: Publication of the 1998–1999 CARP arbitrator list.

SUMMARY: The Copyright Office is publishing the list of arbitrators eligible for service on a Copyright Arbitration Royalty Panel (CARP) during 1998 and 1999. The CARP arbitrator list will be used to select the arbitrators who will serve on panels initiated in 1998 and 1999 for determining the distribution of royalty fees or the adjustment of royalty rates.

EFFECTIVE DATE: February 25, 1998.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney-Advisor, at Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

For royalty rate adjustments and distributions that are in controversy, the Copyright Act requires the selection of a Copyright Arbitration Royalty Panel (CARP) consisting of three arbitrators from "lists provided by professional

arbitration associations." See 17 U.S.C. 802(b). The Librarian of Congress selects two of the arbitrators for a CARP from a list of nominated arbitrators; those selected then choose a third arbitrator to serve as chairperson of the panel. If the two arbitrators cannot agree, the Librarian is instructed to select the third arbitrator.

On December 7, 1994, the Copyright Office issued final regulations implementing the CARP selection process. 59 FR 63025 (December 7, 1994). Subsequently, these rules were amended to provide for the generation of a new list of nominees biannually. 61 FR 63717 (December 2, 1996). Section 251.3(a) of the regulations allows any professional arbitration association or organization to nominate qualified individuals, as described in § 251.5, to serve as arbitrators on a CARP. The regulations require that the submitting arbitration association supply the following information for each person:

(1) The full name, address, and telephone number of the person.

(2) The current position and name of the person's employer, if any, along with a brief summary of the person's employment history, including areas of expertise, and, if available, a description of the general nature of clients represented and the types of proceedings in which the person represented clients.

(3) A brief description of the educational background of the person, including teaching positions and membership in professional associations, if any.

(4) A statement of facts and information which qualify the person to serve as an arbitrator under § 251.5.

(5) A description or schedule detailing fees proposed to be charged by the person for service on a CARP.

(6) Any other information which the professional arbitration association or organization may consider relevant. 37 CFR 251.3(a).

Section 251.3(b) of the regulations requires the Copyright Office to publish a list of qualified persons and mandates that this list must include between 30 and 75 names of persons who were nominated from at least three arbitration associations. The newly comprised list of arbitrators is in effect until the end of the 1999 calendar year and any and all arbitrators selected for a CARP during 1998 and 1999 would come from this list. The list includes the name of the nominee and the nominating association.

The publication of today's list satisfies the requirement of 37 CFR 251.3. The information submitted by the arbitration association with respect to each person listed is available for copying and inspection at the Licensing Division of the Copyright Office. Thus, for example, if the Librarian is required to convene a CARP in 1998 for a royalty fee distribution, parties to that proceeding may review that information as a means of formulating objections to listed arbitrators under § 251.4. The Licensing Division of the Copyright Office is located in the Library of Congress, James Madison Building, Room 458, 101 Independence Avenue, S.E., Washington, DC 20540.

Deadline for Filing Financial Disclosure Statement

Section 251.32(a) of the CARP rules provides that, within 45 days of their nomination, each nominee must "file with the Librarian of Congress a confidential financial disclosure statement as provided by the Library of Congress." The Copyright Office sent financial disclosure statements to the nominating associations, with specific instructions for completing and filing the statement, and asked each organization to distribute the forms to its nominees for the CARP arbitrator list. The Librarian of Congress will use the financial disclosure form to determine what financial conflicts of interest, if any, may preclude the nominee from serving as an arbitrator in a CARP proceeding. Unlike information submitted by the arbitration associations under § 251.3(a), the information contained in the financial disclosure statements is confidential and is not available to the public or to the parties to the proceeding. Each nominee has filed a completed financial disclosure form with the Library of Congress.

The 1998–1999 CARP Arbitration List

Miles J. Alexander, Esq.—CPR Institute for Dispute Resolution
Richard Bennett, Esq.—American Arbitration Association
Dorothy K. Campbell, Esq.—American Arbitration Association
Virginia S. Carson, Esq.—American Arbitration Association
Gray Castle, Esq.—JAMS/Endispute
Terry L. Clark, Esq.—American Arbitration Association
The Honorable John W. Cooley—Judicial Dispute Resolution, Inc.
M. Scott Donahey, Esq.—American Arbitration Association
Edward Dreyfus—American Arbitration Association
The Honorable Lenore G. Ehrig—American Arbitration Association
The Honorable John B. Farmakides—American Arbitration Association
The Honorable Thomas A. Fortkort—American Arbitration Association
The Honorable Charles W. Fowler—Arbitration and Mediation Services
Elizabeth E. Granville, Esq.—American Arbitration Association
The Honorable Lewis Hall Griffith—American Arbitration Association
The Honorable Jeffrey S. Gulin—Arbitration and Mediation Services
The Honorable Louis N. Hurwitz—Arbitration and Mediation Services
The Honorable Mel R. Jiganti—JAMS/Endispute
Sheldon Karon, Esq.—American Arbitration Association
The Honorable William B. Lawless—Judge-Net
Christine Lepera, Esq.—American Arbitration Association
Michael K. Lewis, Esq.—CPR Institute for Dispute Resolution
The Honorable Lewis A. London—Arbitration and Mediation Services
Denis R. Madigan, Esq.—JAMS/Endispute
The Honorable H. Curtis Meanor—CPR Institute for Dispute Resolution
Gloria Messinger, Esq.—American Arbitration Association
Kenneth E. Milam, Esq.—CPR Institute for Dispute Resolution
The Honorable James R. Miller, Jr.—JAMS/Endispute
The Honorable Sharon T. Nelson—American Arbitration Association
Timothy T. Patula, Esq.—American Arbitration Association
Gerald F. Phillips, Esq.—American Arbitration Association
The Honorable Kathleen A. Roberts—JAMS/Endispute
Sol Rosenthal, Esq.—American Arbitration Association
Peter C. Schaumber, Esq.—Center for Litigation Alternatives
Linda R. Singer, Esq.—CPR Institute for Dispute Resolution
Jeffrey L. Squires, Esq.—American Arbitration Association
William Stuart Taylor, Esq.—American Arbitration Association
The Honorable Curtis E. von Kann—JAMS/Endispute
The Honorable Ronald P. Wertheim—JAMS/Endispute
R. Quincy White, Esq.—American Arbitration Association
Darryl Wilson, Esq.—American Arbitration Association
Maurice L. Zilber, Esq.—American Arbitration Association

Dated: February 19, 1998.

David O. Carson,

General Counsel.

[FR Doc. 98–4749 Filed 2–24–98; 8:45 am]

BILLING CODE 1410–33–P

POSTAL SERVICE

39 CFR Part 20

Increase of Maximum Size and Weight Limits To Existing Global Package Link Premium Service to Japan

AGENCY: Postal Service.

ACTION: Interim rules with request for comments.

SUMMARY: Global Package Link (GPL) is an international mail service designed for companies sending merchandise to other countries. Current size allowances for GPL and returns services to Japan will be increased to U.S. domestic limits.

DATES: The interim regulations take effect February 25, 1998. Comments must be received on or before March 27, 1998.

ADDRESSES: Written comments should be mailed or delivered to Global Package Link Service, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 370 IBU, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection and photocopying at the above address between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert E. Michelson at the above address. Telephone: (202) 268–5731.

SUPPLEMENTARY INFORMATION:

I. Introduction

GPL service to Japan is currently limited to packages weighing up to 44 pounds and those with dimensions up to 60 inches per any side or total length plus girth of up to 108 inches. These size restrictions prevent existing mailers as well as potential new customers, with package dimensions larger than these limits, from using GPL to Japan. In response to requests from these mailers, size allowances on GPL and returns services to Japan will be increased to the domestic limits of 70 pounds and 108 inches (length plus girth combined).

II. GPL Size Increase to Japan

A. Qualifying Criteria

Customers wishing to send GPL packages to Japan that are larger than the current size restrictions of 44 pounds and maximum length of 60 inches will need to use GPL Premium Oversize service. GPL Premium Oversize service will include those packages longer than 60 inches on a side or weighing more than 44 pounds. Premium Oversize service will accommodate packages that fall within domestic limits of length plus girth up to 108 inches and weight up to 70 pounds. It will be the responsibility of the customer to choose the Premium Oversize option. Failure to choose the Premium Oversize option when dimensions or weight are over 60 inches per any side or over 44 pounds will result in the package being returned to the mailer for remailing as GPL Premium Oversize.

B. Delivery

GPL Premium Oversize service to Japan is an extension of the GPL Premium service. It will have the same attributes including trackability and up to $500 insurance at no additional cost.

C. Returns Service

The returns service weight allowance from Japan will be increased from the current 44-pound maximum to a 70-pound maximum. The maximum size will be increased to 108 inches (combined length plus girth).

D. Rates

The base rates for Premium Oversize GPL and extended returns service to Japan are set forth in the interim regulations below.

III. Conclusion

Accordingly, the Postal Service hereby adopts this size increase for GPL service and Returns service to Japan on an interim basis, at the rates set forth in the schedule below. Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written data, views, or arguments concerning this interim rule.

The Postal Service adopts the following amendments to the International Mail Manual (IMM), which is incorporated by reference in the Code of Federal Regulations (39 CFR 20.1).

List of Subjects in 39 CFR Part 20

International postal service, Foreign relations.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Effective immediately, (February 25, 1998), subchapter 620 of the International Mail Manual, Issue 19, is amended as follows:

6 Special Programs

* * * * *

623.3 Size and Weight Limits

623.31 Weight Limits

The weight limits for Global Package Link service are 70 pounds for Chile, China, and Germany; 66 pounds for Brazil, Canada, France, Singapore, and the United Kingdom; 64 pounds for Mexico; and 44 pounds for Japan with the Premium service.

GPL Premium packages to Japan weighing more than 44 pounds up to a maximum of 70 pounds must be mailed as GPL Premium Oversize. To use the GPL Premium Oversize service, the mailer has the responsibility to select GPL Premium Oversize service when selecting the class of service and use the corresponding GPL Premium Oversize rates chart. GPL Premium packages weighing more than 44 pounds, up to a maximum of 70 pounds, will be returned to the mailer for remailing if GPL Premium Oversize service is not selected.

623.32 Size Limits

The maximum length of GPL packages is 60 inches. The maximum length and girth combined is 108 inches. Exceptions: maximum size for Germany is length 47 inches, height 23 inches, width 23 inches; for Japan standard packages weighing less than 1 pound, the maximum length is 24 inches with a combined maximum height, depth, and length of 36 inches.

GPL Premium packages to Japan whose length is more than 60 inches up to a maximum length plus girth of 108 inches must be mailed as GPL Premium Oversize. To use the GPL Premium Oversize service, the mailer has the responsibility to select GPL Premium Oversize service when selecting the class of service and use the corresponding GPL Premium Oversize rates chart. GPL Premium packages longer than 60 inches up to length plus girth of 108 inches will be returned to the mailer for remailing if GPL Premium Oversize service is not selected.

All GPL packages must be large enough to accommodate the necessary labels and customs forms on the address side.

* * * * *

GLOBAL PACKAGE LINK TO JAPAN RATES

Weight not over (lbs.)	Premium	Standard	Premium oversize	Returns
1	14.50	5.50	27.50	7.20
2	16.50	8.50	31.00	9.80
3	19.00	13.00	34.50	12.40
4	21.50	16.50	38.00	15.00
5	24.00	22.00	42.50	17.60
6	27.00	25.00	47.00	20.20
7	29.50	[1] 6	51.50	22.80
8	32.00	.....	55.00	25.40
9	34.50	.....	58.00	28.00
10	37.00	.....	60.50	30.60
11	39.50	.....	63.00	33.20
12	42.00	.....	66.00	35.80
13	44.50	.....	68.50	38.40
14	47.00	.....	71.00	41.00
15	49.50	.....	73.00	43.70
16	52.00	.....	75.50	48.00
17	54.50	.....	78.00	50.70
18	57.00	.....	80.00	53.50
19	59.50	.....	83.00	56.20
20	62.00	.....	85.00	58.90
21	64.50	.....	87.00	63.90
22	67.00	.....	89.00	66.70
23	69.50	.....	91.00	69.50
24	72.00	.....	93.00	72.30
25	74.50	.....	95.00	75.10
26	77.00	.....	97.00	77.90
27	79.50	.....	99.00	80.70
28	82.00	.....	101.00	83.50
29	84.50	.....	103.00	86.30
30	87.00	.....	104.00	89.10
31	89.50	.....	106.00	91.90
32	92.00	.....	108.00	94.70
33	94.50	.....	110.00	97.50
34	97.00	.....	112.00	100.40
35	99.50	.....	114.00	103.20
36	102.00	.....	116.00	106.00
37	104.50	.....	117.00	108.80
38	107.00	.....	118.00	111.60
39	109.00	.....	119.00	114.40
40	112.00	.....	120.00	117.20
41	114.50	.....	121.00	120.00
42	117.00	.....	122.00	122.80
43	119.50	.....	123.00	125.60
44	122.00	.....	124.00	128.40
45	[1] 44	.....	125.00	[1] 44
46	.....	.....	126.00	
47	.....	.....	127.00	
48	.....	.....	128.00	
49	.....	.....	129.00	
50	.....	.....	130.00	
51	.....	.....	131.00	
52	.....	.....	132.00	
53	.....	.....	134.00	
54	.....	.....	136.00	
55	.....	.....	138.00	
56	.....	.....	140.00	
57	.....	.....	142.00	
58	.....	.....	144.00	
59	.....	.....	146.00	
60	.....	.....	148.00	
61	.....	.....	150.00	
62	.....	.....	152.00	
63	.....	.....	154.00	
64	.....	.....	156.00	
65	.....	.....	158.00	
66	.....	.....	161.00	
67	.....	.....	163.00	
68	.....	.....	165.00	
69	.....	.....	167.00	
70	.....	.....	169.00	

[1] lb. max.

Discounts for GPL service to Japan are 3 percent off the base rates for those packages sent over 100,000 during a 12-month period. Parcels sent via the Premium Oversize service weighing less than 15 pounds but measuring more than 84 inches in length and girth combined are chargeable with a minimum rate equal to that for a 15-pound parcel.

* Weights over 44 pounds, use Premium Oversize service.

** Weights over 6 pounds, use Premium service.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–4824 Filed 2–24–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–006–FON FRL–5969–8]

Finding of Failure To Submit Required State Implementation Plans for Particulate Matter; Arizona; Phoenix PM–10 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act (Act), EPA is taking final action to find that the State of Arizona has failed to make required State Implementation Plan (SIP) submittals for the metropolitan Phoenix PM–10 nonattainment area. These submittals are the regional moderate area plan requirements for the 24-hour PM–10 standard and the serious area plan requirements for annual PM–10 standard and the regional serious area requirements for the 24-hour standard. The deadline for these submittals was December 10, 1997.

This final action triggers the 18-month time clock for mandatory application of sanctions and 2-year time clock for a federal implementation plan under the Act. This action is consistent with the Act's mechanism for assuring SIP submissions.

EFFECTIVE DATE: February 6, 1998.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office of Air Planning (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California, 94105–3901, telephone (415) 744–1248.

SUPPLEMENTARY INFORMATION:

I. Background

A. Serious Area PM–10 Planning Requirements for the Phoenix Metropolitan Area

In 1990, Congress amended the Clean Air Act to address, among other things, continued nonattainment of the PM–10 NAAQS.[1] Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C., 7401–7671q (1991). On the date of enactment of the Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the amended Act were designated nonattainment by operation of law. These areas included all former Group I areas identified in 52 FR 29383 (August 7, 1987) and clarified in 55 FR 45799 (October 31, 1980), and any other areas violating the PM–10 NAAQS prior to January 1, 1989. The metropolitan Phoenix PM–10 nonattainment area (Phoenix area) was identified as a Group I area in the August 7, 1987, **Federal Register** notice. A **Federal Register** notice announcing all areas designated nonattainment for PM–10 at enactment of the 1990 amendments was published on March 15, 1991 (56 FR 11101). The boundaries of the Phoenix nonattainment area were set forth in a November 6, 1991, **Federal Register** notice (56 FR 56694, codified for the State of Arizona at 40 CFR 81.303).

Once an area is designated nonattainment, section 188 of the amended Act outlines the process for classification of the area and establishes the area's attainment date. In accordance with section 188(a), at the time of designation, the Phoenix area was initially classified as moderate by operation of law with an attainment date of December 31, 1994.

The Act further provides that moderate areas that the Administrator finds have failed to attain by their moderate area deadlines are reclassified to serious by operation of law, CAA section 188(b)(2). Reclassified areas are then required to submit revised SIPs to address the serious area PM–10 requirements within 18 months of the effective date of the reclassification, CAA section 189(a)(2).

On May 10, 1996, EPA published a final reclassification of the metropolitan Phoenix PM–10 nonattainment area to serious (61 FR 21372). Pursuant to section 189(b)(2), the State of Arizona was thus required to submit a serious area plan addressing both PM–10 NAAQS for the area by December 10, 1997, 18 months after the effective date of the reclassification.

These requirements, as they pertain to the Phoenix nonattainment area, include:

(a) Provisions to assure that the best available control measures (BACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of best available control technology (BACT)) for the control of PM–10 shall be implemented no later than 4 years after the area is reclassified, (CAA section 189(b)(1)(B));

(b) A demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 2001, or an alternative demonstration that attainment by that date would be impracticable and that the plan provides for attainment by the most expeditious alternative date practicable (CAA section 189(b)(1)(A)(i) and (ii)); and

(c) Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress toward attainment by December 31, 2001 (CAA section 189(c)).

B. Residual Moderate Area Planning Requirements in the Phoenix Metropolitan Area

On May 14, 1996—just days after the reclassification was published—the Court of Appeals for the Ninth Circuit found that the Phoenix *moderate* area PM–10 plan failed to address the 24-hour PM–10 standard as required by the Clean Air Act (*Ober* v. *EPA*, 84 F.3d 304 (9th Cir. 1996)). As a result, the Court mandated that EPA require "the State to submit a separate demonstration of the implementation of all 'reasonably available control measures' targeting the 24 hour standard violations; attainment and 'reasonable further progress' for the 24 hour standard." 84 F.3d at 316.

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[1] EPA revised the NAAQS for particulate matter on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulate with new standards applying only to particulate matter up to 10 microns in diameter (PM–10). At that time, EPA established two PM–10 standards. The annual PM–10 standard is attained when the expected annual arithmetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter (μg/m³). The 24-hour PM–10 standard of 150 μg/m³ is attained if samples taken for 24-hour periods have no more than one expected exceedance per year, averaged over 3 years. See 40 CFR 50.6 and 40 CFR part 50, appendix K.

On July 18, 1997, EPA slightly revised both the annual and the 24-hour PM–10 standard and also established two new standards for PM, both applying only to particulate matter up to 2.5 microns in diameter (PM–2.5) (62 FR 38651).

This finding applies to the outstanding obligation of the State to submit for the Phoenix metropolitan PM–10 nonattainment area a plan addressing the 24-hour and annual PM–10 standards, as originally promulgated.

Breathing particulate matter can cause significant health effects, including an increase in respiratory illness and premature death.

In order to comply with the court's order without diverting resources from the serious area planning effort, EPA—in consultation with the Arizona Department of Environmental Quality (ADEQ) and the Maricopa County Environmental Services Department (MCESD)—decided that the State would incorporate the moderate area plan elements for the 24-hour standard into the serious area plan but would split that planning effort into two related parts. Accordingly, EPA required submittal of a limited, locally-targeted plan (known as the microscale plan) meeting both the moderate and serious area requirements for the 24-hour standard by May 9, 1997 and a full regional plan meeting those requirements for both the 24-hour and annual standards by December 10, 1997. Letter from Felicia Marcus, EPA, to Russell Rhoades, ADEQ, September 18, 1996. Thus, the microscale and regional plans taken together would satisfy both the moderate area requirements mandated by the court and the serious area planning requirements for both standards.

In brief, the microscale plan was to address the 24-hour standard violations at five specific monitors in the metropolitan Phoenix area and meet the statutory RACM, BACM, attainment, and RFP requirements for moderate and serious PM–10 areas.

ADEQ submitted the *Plan for Attainment of the 24-hour PM–10 Standard—Maricopa County PM–10 Nonattainment Area* (May, 1997) to EPA on May 9, 1997. On August 4, 1997 (62 FR 41856), EPA approved in part and disapproved in part the microscale plan. For a complete discussion of the microscale plan, see the proposed approval/disapproval at 62 FR 31025 (June 6, 1997).

The regional plan, representing the balance of Phoenix's serious area plan, as well as the additional moderate area elements required by Court, was due December 10, 1997, the date established by the reclassification. This plan, which was to meet the requirements in section 189(b) and (c) of the Act, needed to assure that all statutory, regulatory, and policy requirements for serious area PM–10 plans for both the annual and 24-hour standards were fully addressed. It was to include a regional analysis, based on air quality modeling, that demonstrated implementation of BACM, RACM, and additional measures as necessary to assure expeditious attainment and quantitative milestones and RFP throughout the nonattainment area. As part of this regional plan, attainment of both PM–10 standards was to be demonstrated at all monitoring sites.

C. Consequences of a Failure To Submit Finding

The Maricopa Association of Governments (MAG), ADEQ, and MCESD have been working on the regional serious area plan since the Phoenix area was reclassified in May, 1996. These efforts have included development of a regional emission inventory, regional Urban Air Quality modeling, and evaluation of candidate BACM.[2]

Notwithstanding these significant efforts by the Maricopa Association of Governments, the Maricopa County Environmental Service Department and the Arizona Department of Environmental Quality, the State has failed to meet the December 10, 1997 deadline for the required SIP submittals. EPA is therefore compelled to find that the State of Arizona has failed to make the required SIP submittals for the Phoenix area PM–10 nonattainment area.

The CAA establishes specific consequences if EPA finds that a state has failed to meet certain requirements of the CAA. Of particular relevance here is CAA section 179(a)(1), the mandatory sanctions provision. Section 179(a) sets forth four findings that form the basis for application of a sanction. The first finding, that a State has failed to submit a plan required under the CAA, is the finding relevant to this rulemaking.

If Arizona has not made the required complete submittals within 18 months of the effective date of today's rulemaking, pursuant to CAA section 179(a) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in the affected area. If the State has still not made a complete submittal 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected area, in accordance with 40 CFR 52.31.[3] In addition, CAA section 110(c) provides that EPA must promulgate a federal implementation plan (FIP) no later than 2 years after a finding under section 179(a).

The 18-month clock will stop and the sanctions will not take effect if, within 18 months after the date of the finding, EPA finds that the State has made a complete submittal of a plan addressing the serious area PM–10 requirements for Phoenix area and the residual moderate area planning requirements for the 24-hour standard. In addition, EPA will not promulgate a FIP if the State makes the required SIP submittals and EPA takes final action to approve the submittals within 2 years of EPA's findings (section 110(c)(1) of the Act).[4]

II. Final Action

A. Rule

EPA is making findings of failure to submit for the Phoenix PM–10 nonattainment area, due to failure of the State to submit SIP revisions addressing (1) the Clean Air Act's moderate area plan requirements for the regional aspects of the 24-hour PM–10 standard and (2) the Act's serious area plan requirements for the annual PM–10 standard and the regional aspects of the 24-hour standard.

B. Effective Date Under the Administrative Procedures Act

Because EPA is issuing this action as a rulemaking, the Administrative Procedures Act (APA) applies.

The action will be effective on the date this action is signed, February 6, 1998. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. This action concerns SIP submittals that are already overdue and the State and general public are aware of applicable provisions of the CAA relating to

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[2] MAG has also worked with the cities and towns of Maricopa County to adopt measures for PM–10 control that are in addition to those adopted for the microscale plan. These measures were submitted to EPA on December 11, 1997 as a revision to the SIP and EPA found that submittal complete on February 6, 1998. See Letter, David P. Howekamp, U.S. EPA—Region 9 to Russell Rhoades, ADEQ, February 6, 1998. These measures were not intended by the State to constitute the serious area PM–10 SIP or any part of that plan and therefore their submittal does not affect the finding of failure to submit for the serious area plan. See Letter, Russell Rhoades, ADEQ to Felicia Marcus, U.S. EPA, Region 9 re: Submittal of the Particulate Matter Control Measures for the Maricopa County Nonattainment Area (dated December 1997), December 11, 1997.

[3] In a 1994 rulemaking, EPA established the Agency's selection of the sequence of these two sanctions: The offset sanction under section 179(b)(2) shall apply at 18 months, followed 6 months later by the highway sanction under section 179(b)(1) of the Act. EPA does not choose to deviate from this presumptive sequence in this instance. For more details on the timing and implementation of the sanctions, see 59 FR 39832 (August 4, 1994), promulgating 40 CFR 52.31, "Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act."

[4] EPA is already obligated to promulgate a FIP for the moderate area plan requirements by July 18, 1998. This FIP obligation arose from an incompleteness finding made on the 1991 submittal of the initial moderate area plan. Under section 179(a) of the Act, incompleteness findings also trigger both sanction and FIP clocks. While Arizona subsequently completed the submittal and turned off the sanction clock, EPA's approval of the moderate area plan was vacated in *Ober*, leaving EPA with a FIP obligation in regards to the full moderate area plan.

overdue SIPs. In addition, this action simply starts a "clock" that will not result in sanctions for 18 months, and that the State may "turn off" through the submission of a complete SIP submittal. These reasons support an effective date prior to 30 days after the date of publication.

C. Notice-and-Comment Under the Administrative Procedures Act

This action is a final agency action but is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 533(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submittals, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(d)(3). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit SIPs required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert Agency resources from the critical substantive review of submitted SIPs. See 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

As discussed in section III.C. below, findings of failure to submit required SIP revisions do not by themselves create any new requirements. Therefore, I certify that today's action does not have a significant impact on small entities.

C. Unfunded Mandates Act

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

In addition, under the Unfunded Mandates Act, before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must have developed, under section 203, a small government agency plan.

EPA has determined that today's action is not a Federal mandate. The CAA provision discussed in this notice requires states to submit SIPs. This notice merely provides findings that Arizona has not met that requirement. This notice does not, by itself, require any particular action by any State, local, or tribal government, or by the private sector.

For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of February 6, 1998. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Paperwork Reduction Act

This rule does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

F. Judicial Review

Under CAA Section 307(b)(1), a petition to review today's action may be filed in the Court of Appeals for the appropriate circuit by April 27, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2) of the Act.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, particulate matter, Intergovernmental relations.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 6, 1998.

Amy K. Zimpfer,

Acting, Regional Administrator, Region IX.

[FR Doc. 98–4821 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300615; FRL–5770–8]
RIN 2070–AB78

Norflurazon; Extension of Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends time-limited tolerances for residues of the herbicide norflurazon and its desmethyl metabolite in or on bermudagrass forage and hay at 2 and 3 parts per million (ppm), respectively, for an additional 1-year period, to November 30, 1999. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on bermudagrass for control of grassy weeds. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA)

requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective February 25, 1998. Objections and requests for hearings must be received by EPA, on or before April 27, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300615], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300615], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 272, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–308–9364; e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of April 11, 1997 (62 FR 17742–17748) (FRL–5598–2) , which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established time-limited tolerances for the residues of norflurazon and its desmethyl metabolite in or on bermudagrass forage and hay at 2 and 3 ppm, respectively, with an expiration date of November 30, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of norflurazon on bermudagrass for this year growing season due to the continuation of the emergency situation in Alabama, Georgia, Mississippi, and Texas. After having reviewed the submission, EPA concurs that emergency conditions exist for these States. EPA has authorized under FIFRA section 18 the use of norflurazon on bermudagrass for control of grassy weeds.

EPA assessed the potential risks presented by residues of norflurazon in or on bermudagrass forage and hay. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of April 11, 1997 (62 FR 17742–17748). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1-year period. Although this tolerance will expire and is revoked on November 30, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on bermudagrass forage and hay after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by April 27, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public

version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES"at the beginning of this document

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300615]. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

This final rule extends a time-limited tolerancethat was previously extended by EPA under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). IN addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

Since this extension of an existing time-limited tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. *801 et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 6, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.356 [Amended]

2. In § 180.356, by amending paragraph (b) in the table, for the commodities "Grasses, Bermuda, Forage" and "Grasses, Bermuda, Hay" by removing the date "November 30, 1998" and by adding in its place "11/30/99".

[FR Doc. 98–4522 Filed 2–24–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300614; FRL–5769–6]

RIN 2070–AB78

Kaolin; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of anhydrous kaolin when used in or on food commodities to aid in the control of insects, fungi, and bacteria (food/feed use). This regulation was requested by Engelhard Corporation.

DATES: This regulation becomes effective February 25, 1998. Objections and requests for hearings must be received by EPA on or before April 27, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300614], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburg, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number and submitted to: Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to: Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically to the OPP by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form

of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300614]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Driss Benmhend, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 5–W61, CS #1, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–9525; e-mail: benmhend.driss@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 26, 1997 (62 FR 63168)(FRL–5753–3), EPA issued a notice pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), announcing the filing of a pesticide tolerance petition for the new active ingredient kaolin (PP 7E4908) by Engelhard Corporation, Research Center, 101 Wood Avenue, Iselin, NJ 08830. The notice included a summary of the petition prepared by the petitioner. The summary contained conclusions and arguments to support its conclusion that the petition complied with the Food Quality Protection Act (FQPA) of 1996. The petition requested the establishment of a permanent tolerance exemption for kaolin for all food commodities. Kaolin is a naturally occurring aluminosilicate, used as an indirect food additive for paperboard food contact, adhesives, cellophane, etc. It is also used in pharmaceuticals (tablet diluents poultices), and in toiletries (toothpaste, etc.). Prior to the current petition request, EPA authorized the issuance of an experimental use permit (EUP) to the registrant for the end-use product, M-96-018 Kaolin (70060-EUP-R), containing 98.8% active ingredient. In conjunction with the EUP, EPA approved a petition for a temporary tolerance exemption (PP 7G4793) for the active ingredient when applied to all food commodities. The exemption from a temporary tolerance for kaolin on all food commodities was granted for purposes of the EUP (April 23, 1997, 62 FR 19683) (FRL–5712–8).

There were no comments or requests for referral to an advisory committee, received in response to the notice of filing. The data submitted in the petition and other relevant material have been evaluated and were considered in support of this tolerance.

I. Toxicological Profile

The submitted toxicology studies are acceptable for these new registrations. No additional toxicology data are required. The data reported in the acute oral toxicity studies demonstrated that the acute oral LD_{50} for kaolin in rats is >5,000 mg/kg of body weight. No toxicity or clinical abnormalities were observed throughout the study period; Toxicity Category IV. The data reported in the acute dermal toxicity study demonstrated that the acute dermal LD_{50} for kaolin in rats is >5,000 mg/kg of body weight. No toxicity or clinical abnormalities were observed throughout the study period; Toxicity Category IV. The data reported in the primary eye irritation study demonstrate that the test substance was minimally irritating. Kaolin was not corrosive and all eye irritation effects cleared within 72 hours postdosing; Toxicity Category III. The data reported in the primary-skin irritation study demonstrated that the test substance caused no dermal irritation in rabbits treated with 0.5 g kaolin for 4 hours. No toxicity or clinical abnormalities were observed throughout the study period; Toxicity Category IV.

Kaolin is used as an indirect food additive for paper/paperboard dry food contact, adhesives, polymeric coatings, rubber articles, and cellophane. Kaolin is used in pharmaceuticals, tablet diluents, poultices, and surgical dusting powders. Kaolin is used as a cosmetic in face powders, face masks, and face packs. Kaolin is used in health products and toiletries, toothpaste, and antiperspirants. Kaolin can be used directly in foods as an anti-caking agent (up to 2.5%). Kaolin has GRAS (Generally Recognized as Safe) status under 21 CFR 186.1256 and is generally recognized as safe "as an indirect human food ingredient with no limitation other than current good manufacturing practice."

II. Aggregate Exposure

1. *Dietary exposure and risk characterization.* Dietary exposure of kaolin via food or water is difficult to estimate due to the use of kaolin in thousands of products. Kaolin is an inert mineral and has no known toxicological effects

2. *Non-dietary exposure, non-occupational exposure.* The amount of kaolin currently used in the U.S. pesticide industry as an inert is between 2 million lbs. and 10 million lbs. per year.

3. *Aggregate exposure from multiple routes including dermal and inhalation.* Risks associated with dermal and inhalation aggregate exposure are measured via the acute toxicity studies submitted to support registration. Because the inhalation toxicity studies for kaolin showed no toxicity (Toxicity Category IV), the risks anticipated for this route of exposure are considered minimal. Results of the acute dermal study indicated low toxicity (Toxicity Category IV), and no significant dermal irritation (Toxicity Category IV). Based on these results, the anticipated risks from dermal exposure are also considered minimal. Therefore, the risks from aggregate exposure via dermal and inhalation exposure are a compilation of two low risk exposure scenarios and are considered negligible.

III. Safety Considerations

The lack of toxicity of kaolin is demonstrated by the above summary. Based on this information, the aggregate exposure to kaolin over a lifetime should not pose appreciable risks to human health. There is a reasonable certainty that no harm will result from aggregate exposure to kaolin residues. Exempting kaolin from the requirement of a tolerance is safe.

Consistent with section 408(b)(2)(c) of the FFDCA, EPA has assessed the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with the common mechanism of toxicity. Based on the available information, the Agency concludes that kaolin is ubiquitous in all foods including those consumed by infants and children. Furthermore, kaolin is used as an additive in several food and non food products. Like adults, infants and children are also exposed to kaolin in these products, and there is no evidence that suggests that such exposure may lead to any harm.

IV. Cumulative Effects

Kaolin has no mode of toxicity and therefore no common mechanism of toxicity with other substances.

V. International Tolerances

No international tolerance exemptions are known to exist.

VI. Summary of Findings

Kaolin is considered as GRAS by FDA under 21 CFR 186.1256. EPA has not

identified any toxicity or clinical abnormalities. Moreover, the ecological effects studies demonstrated that there were no adverse effects. As a result, the Agency concludes that the exemption from the requirement of a tolerance is safe. Therefore, the tolerance exemption is established as set forth below.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (1)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by April 27, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket number [OPP–300614] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and Pests, Reporting and recordkeeping requirements.

Dated: February 6, 1998.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1180 is amended by removing the paragraph heading for paragraph (a), revising paragraph (b), and removing paragraphs (c) and (d) to read as follows:

§ 180.1180 Kaolin; exemption from the requirement of a tolerance.

* * * * *

(b) Kaolin is exempted from the requirement of a tolerance for residues when used on or in food commodities to aid in the control of insects, fungi, and bacteria (food/feed use).

[FR Doc. 98–4652 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300603; FRL–5766–4]

RIN 2070–AB78

Bensulfuron Methyl (methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] Benzoate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of bensulfuron methyl in or on crayfish. In addition, this regulation raises the tolerance for residues of bensulfuron methyl on rice straw. E.I. duPont de Nemours and Company, Inc. requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170).

DATES: This regulation is effective February 25, 1998. Objections and requests for hearings must be received by EPA on or before April 27, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300603], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300603], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300603]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Tompkins, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, e-mail: tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 16, 1997 (62 FR 27033) (FRL-5717–7), EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of pesticide petitions (PP) 4F4367 and 5F4490. This notice included a summary of the petitions prepared by E.I. duPont de Nemours and Company, Inc., the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.445 be amended by establishing a tolerance for residues of the herbicide bensulfuron methyl, in or on rice (grain) at 0.02 parts per million (ppm), rice straw at 0.05 ppm, and crayfish at 0.05 ppm.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of

100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup was not regionally based.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of bensulfuron methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate and to make a determination on aggregate exposure, consistent with

section 408(b)(2), for tolerances for residues of bensulfuron methyl on rice straw at 0.3 ppm and crayfish at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by bensulfuron methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate are discussed below.

1. An acute oral study with an LD_{50} greater than 5,000 milligrams/kilogram (mg/kg) (limit test).

2. A 90-day dog feeding study with a no-observed-effect level (NOEL) of 32.1 milligrams/kilogram/day (mg/kg/day) in males and 36.3 mg/kg/day in females.

3. A 90-day mouse feeding study with a NOEL of 132 mg/kg/day in males and 133 mg/kg/day in females.

4. A 90-day rat feeding study with a NOEL of 93 mg/kg/day in males and 111 mg/kg/day in females.

5. A rat developmental study with a developmental NOEL of greater than 1,320 mg/kg/day, the highest dose tested.

6. A rabbit developmental study with a developmental NOEL of 300 mg/kg/day.

7. A two-generation rat reproduction study with a reproductive NOEL of 309 mg/kg/day in males and 405 mg/kg/day in females.

8. A *Salmonella*/Mammalian Activation Assay, negative with and without metabolic activation.

9. An *in vivo* bone marrow chromosome study in rats with no evidence of induced chromosome aberration in bone marrow.

10. An *in vitro* sister chromatid exchange assay in CHO cells with a slight increase in SCE frequency in nonactivated system at maximum concentration, but negative in the activated system at the same concentration.

11. A 1-year dog feeding study with a NOEL of 21.4 mg/kg/day in males and 19.9 mg/kg/day in females.

12. A 2-year mouse chronic feeding/carcinogenicity study with a NOEL of 226 mg/kg/day in males and 227 mg/kg/day in females for systemic effects and with no carcinogenic potential observed under conditions of the study up to 455 mg/kg/day in males and 460 mg/kg/day in females, the highest dose tested.

13. A 2-year rat chronic feeding/carcinogenicity study with a NOEL of 30 mg/kg/day in males and 40 mg/kg/day in females for systemic effects and with no carcinogenic potential observed under conditions of the study up to 309 mg/kg/day in males and 405 mg/kg/day in females, the highest dose tested.

Based on a NOEL of 19.9 mg/kg/day in the 1-year dog feeding study and a safety factor of 100, the acceptable daily intake has been set at 0.2 mg/kg/day. These tolerances have a theoretical maximum residue contribution of 0.000005 mg/kg/day and would utilize less than 1 percent of the reference dose (RfD) for the general US population. There are no population subgroups for which the percentage of the RfD utilized is greater than the general U.S. population.

B. Toxicological Endpoints

1. *Acute toxicity.* No toxicological effects attributable to a single exposure (dose) were identified in any of the studies. Therefore, this risk assessment is not required.

2. *Short - and intermediate - term toxicity.* EPA has concluded that available evidence doe not indicate any evidence of significant toxicity from short and intermediate term exposure.

3. *Chronic toxicity.* EPA has established the RfD for bensulfuron methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate at 0.20 mg/kg/day. This RfD is based on the systemic NOEL of 19.9 mg/kg/day for females in a one year toxicity study in beagle dogs.

4. *Carcinogenicity.* Although bensulfuron methyl has not received a carcinogenicity classification, the Health Effects Division RfD Committee found no evidence of carcinogenicity in the mouse or rat.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.445) for the residues of bensulfuron methyl, in or on rice (grain) at 0.02 ppm, rice straw at 0.05 ppm. The petitioner has proposed to increase the tolerance for rice straw to 0.3 ppm. A tolerance of 0.05 ppm for bensulfuron methyl residues in crayfish is proposed. Risk assessments were conducted by EPA to assess dietary exposures and risks from bensulfuron methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An acute risk assessment is not required as an appropriate endpoint was not identified for bensulfuron methyl.

ii. *Chronic exposure and risk.* The Agency's Dietary Risk Evaluation System (DRES) does not contain the commodity crayfish. DRES does contain the commodity fish, shellfish which includes crayfish as well as other shellfish. For human dietary exposure calculations, The Agency has substituted the commodity fish, shellfish for crayfish. In conducting this chronic dietary risk assessment, The Agency has made very conservative assumptions: (1) 100% of all commodities having bensulfuron methyl tolerances will contain residues; (2) those residues will be at the level of the tolerance; and (3) bensulfuron methyl residues in fish, shellfish will be at the proposed tolerance level for crayfish. These assumptions will result is an overestimate of dietary exposure.

Thus, in making a safety determination for this tolerance, the Agency is taking into account this conservative exposure assessment.

The existing tolerances (published and pending, and including the proposed tolerance for crayfish) result in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to less than 1% of the RfD for the U.S. population (48 states). There are no population subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 States).

2. *From drinking water— Chronic exposure and risk.* Based on the chronic dietary (food) exposure and using default body weights and water consumption figures, chronic levels of concern (LOC) for bensulfuron methyl in drinking water were calculated. For chronic exposure, based on an adult body weight of 70 kg and 2 liters consumption of water per day, the Agency's level of concern from chronic exposure in drinking water is 7,000 parts per billion for adults. For children (10 kg and consuming 1 liter water per day) our level of concern for drinking water is 2,000 parts per billion.

Because all the Agency's estimates for the levels of bensulfuron methyl in drinking water were less than 2 parts per billion, potential residues in drinking water are not greater than the Agency's level of concern.

3. *From non-dietary exposure.* There is no non-food use of bensulfuron methyl currently registered under FIFRA, as amended. No non-dietary

exposures are expected for the general population.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether bensulfuron methyl-2[[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, bensulfuron methyl-2[[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that methyl-2[[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* An acute and intermediate-term risk assessment is not required as an appropriate endpoints were not identified for bensulfuron methyl.

2. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to bensulfuron methyl-2[[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate from food will utilize <1% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to bensulfuron methyl-2[[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to bensulfuron methyl-2[[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

An acute and intermediate-term risk assessment is not required as appropriate endpoints were not identified for bensulfuron methyl.

E. Aggregate Cancer Risk for U.S. Population

A carcinogenic risk assessment is not required as there is no evidence of carcinogenicity for bensulfuron methyl in the mouse or rat or dog.

F. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of bensulfuron methyl-2[[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental and reproductive toxicity studies.* The prenatal developmental toxicity data demonstrated no indication of increased sensitivity of rabbits to in utero exposure to bensulfuron methyl. In addition, the multigeneration reproduction study data did not identify any increased sensitivity of rats to in utero or postnatal exposure. In both studies, the maternal LOEL was less than or equivalent to the NOEL for effects in the offspring. Minor

ossification variations were observed in a developmental study in rats, but only at a dose of 1,320 mg/kg/day which exceeds the limit dose of 1,000 mg/kg/day as specified in Guideline Sec. 93-3a.

For chronic dietary risk assessment, the Agency determined that based on a complete database the 10x factor to account for enhanced sensitivity of infants and children (as required by FQPA) should be removed. Removal of the 10x is based on a complete database. The present UF of 100 (10X each for inter-and intra-species variability) is adequate to ensure protection of these population subgroups from exposure to bensulfuron methyl for reasons stated below:

(a) There is no indication of increased sensitivity to young animals following pre- and/or post-natal exposure to bensulfuron methyl.

(b) There is no increased sensitivity to fetuses as compared to maternal animals following in utero exposures in rats and rabbits.

(c) There is no increased sensitivity to pups as compared to adults in a multi-generation reproduction toxicity study in rats.

(d) Considering the overall toxicity profile of bensulfuron methyl, it was noted that toxic effects were only observed at or near the Limit Dose with all short- and long-term studies.

2. *Acute risk.* An acute risk assessment is not required as an appropriate endpoints were not identified for bensulfuron methyl.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to bensulfuron methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate from food will utilize <1% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to bensulfuron methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to bensulfuron methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate residues.

4. *Short- or intermediate-term risk.* EPA has concluded that available evidence does not indicate any evidence of significant toxicity from short and intermediate term exposure.

III. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of bensulfuron methyl in plants and animals is adequately understood for purposes of this tolerance. Due to very low levels of residues with a small percentage of metabolites, these metabolites need not be regulated.

B. Analytical Enforcement Methodology

An adequate analytical method, high-pressure liquid chromatography using a photo conductivity detector, is available for enforcement purposes. The analytical method for enforcing these tolerances has been submitted for published in the Pesticide Analytical Manual, Vol II (PAM II). Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in PAM, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 119FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–305–5229).

C. Magnitude of Residues

The nature of the residue in plants is adequately understood for the purpose of this tolerance. Based on the results of animal metabolism studies it is unlikely that significant residues would occur in secondary animal commodities from this use.

D. International Residue Limits

There are no established CODEX, Canadian or Mexican residue limits for bensulfuron methyl in/on rice (grain and straw) and crayfish. Thus, harmonization of the proposed tolerances with CODEX, Canada and Mexico are not an issue for these petitions.

E. Rotational Crop Restrictions

No tolerances for inadvertent residues of bensulfuron methyl are required in rotational crops. The rotational crop restrictions contained on the current Londax DF label (EPA 352-325) are adequate.

IV. Conclusion

Therefore, the tolerances are established for residues of bensulfuron methyl in/or on crayfish at 0.05 ppm and increase tolerance on rice straw from 0.05 to 0.3 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by April 27, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be

disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300603] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 9, 1998.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.445 is revised to read as follows:

§ 180.445 Bensulfuron methyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide bensulfuron methyl (methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate) in or on the following raw agricultural commodities:

Commodity	Parts per million
Crayfish	0.05
Rice	0.02
Rice, straw	0.3

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 98–4651 Filed 2–24–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300607; FRL–5767–6]

RIN 2070–AB78

Thiabendazole; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of thiabendazole in or on lentils. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on lentils. This regulation establishes a maximum permissible level for residues of thiabendazole in this food commodity

pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on October 31, 1998.

DATES: This regulation is effective February 25, 1998. Objections and requests for hearings must be received by EPA on or before April 27, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300607], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300607], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300607]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9356; e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the fungicide thiabendazole, in or on lentils at 0.1 part per million (ppm). This tolerance will expire and is revoked on October 31, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL 5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance the legal limit for a pesticide chemical residue in or on a food only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Thiabendazole on Lentils and FFDCA Tolerances

The Applicants state that the *ascochyta blight* fungus is relatively newly occurring in the U.S., and presently available fungicides do not adequately control its spread in lentils, to prevent significant economic loss. Additionally, the Applicants state that a recently discovered strain which reproduces sexually is of even greater concern, as this sexual stage releases spores, capable of traveling long distances on the wind. This disease was initially of isolated occurrence in the United States until the last several years. The sexual strain has potential to lead to significant widespread infection of lentils. The previously known asexual strain resulted mainly in localized infections, being spread only through direct contact or waterborne splash. The Applicants stated that without the requested use of thiabendazole to control this disease, significant economic losses would occur. EPA has authorized under FIFRA section 18 the crisis provisions the use of thiabendazole on lentils for control of *ascochyta blight* in Idaho, Washington, and North Dakota. After having reviewed the submission, EPA concurs that emergency conditions exist for these states.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of thiabendazole in or on lentils. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18.

Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on October 31, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on lentils after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether thiabendazole meets EPA's registration requirements for use on lentils or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of thiabendazole by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Idaho, Washington, and North Dakota to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for thiabendazole, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including but not limited to reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor usually 100 or more to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This hundredfold MOE is based on the same rationale as the hundredfold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1–day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup non-nursing infants < 1 year old was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of thiabendazole and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of thiabendazole in or on lentils at 0.1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by thiabendazole are discussed below.

1. *Acute toxicity.* EPA has not yet established a toxicological endpoint for acute toxicity.

2. *Short- and intermediate- term toxicity.* For the purposes of this section 18 action the EPA has determined that short- and intermediate-term toxicity risk assessments are not required.

3. *Chronic toxicity.* EPA has not established the RfD for thiabendazole. However, for the purposes of this section 18 use, a RfD was calculated at 0.035 milligrams/kilogram/day (mg/kg/day), based on a human study, using 77 normal adult males, half of whom received a placebo, and half of whom received thiabendazole in a double blind manner, in divided doses over a 24 week period, at 250 mg daily. The daily doses were well-tolerated, and there were no side reactions, laboratory findings, or changes in physical findings related to the drug intake during the study. At an estimated body weight of 70 kg, this NOEL dose would be 3.5 mg/kg/day. Using an uncertainty factor of 10 to account for intraspecies differences and an additional factor of 10 due to data gaps, the provisional RfD is calculated to be 0.035 mg/kg/day.

4. *Carcinogenicity.* There is no identifiable cancer risk associated with exposure to thiabendazole because adequate studies are not available. In 1993, the registrant submitted information under section 6(A)(2) of FIFRA, concerning increased incidence of benign thyroid adenomas coupled with focal cystic follicular hyperplasia at the mid- and high-dose levels in a 2–year rat feeding study. Review of the data identified no concerns for carcinogenicity since the benign tumors occurred at levels well above the RfD, and since exposure to thiabendazole is expected to be short, less than 1–year.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.242) for the residues of thiabendazole, in or on a variety of raw agricultural commodities, ranging from 0.02 ppm in sweet potatoes (for seed) to 150 ppm in grape pomace. Tolerances have also been established for thiabendazole and its metabolite 5-hydroxythiabendazole at 0.4 ppm in milk, 0.1 ppm in eggs, and 0.1 ppm in meat, fat, and meat byproducts of livestock and poultry. Risk assessments were conducted by EPA to assess dietary exposures and risks from thiabendazole as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. Since there have been no toxicological endpoints identified for acute exposure to thiabendazole, an acute risk assessment was not conducted.

ii. *Chronic exposure and risk.* In conducting this chronic dietary risk assessment, refinements were used including anticipated residue levels for oranges and apples, and percent of crop treated information for grapefruit, lemons, oranges, and apples. The ARC is equivalent to the following percentages of the RfD: overall U.S. population, 26.5; nursing infants, 39.4; non-nursing infants, 83.1; children 1–6 years old, 60.9; children 7–12 years old, 39.3; hispanics, 27.1; and non-hispanic whites, 27.2.

2. *From drinking water.* Based on available information, thiabendazole is persistent in the environment, but not mobile. There are no established Maximum Contaminant or Health Advisory Levels for thiabendazole in drinking water.

Because the Agency lacks sufficient water-related exposure data to complete

a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause thiabendazole to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with thiabendazole in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Thiabendazole is currently registered for use on the following residential non-food sites: ornamental bulbs and turf; stored textiles, fabrics, and fibers; as a preservative/additive to adhesives, paints, paper, and plastic products; laundry equipment; and bathroom premises. However, due to the absence of toxicological endpoints for short, intermediate, and chronic exposure scenarios and sufficient residential-related quantitative exposure data, a comprehensive aggregate risk assessment of residential exposure is not possible at this time.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

Thiabendazole is a member of the benzimidazole class of pesticides; however, EPA does not have, at this time, available data to determine whether thiabendazole has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, thiabendazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that thiabendazole has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* An acute dietary toxicological endpoint has not been identified for thiabendazole, and therefore an acute aggregate risk assessment was not conducted.

2. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to thiabendazole from food will utilize 26.5% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants < 1 year old, discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to thiabendazole in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to thiabendazole residues.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of a pesticide, EPA generally considers data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species

variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete database under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Pre- and post-natal sensitivity.* The toxicology database for evaluating pre- and post-natal toxicity for thiabendazole is incomplete with respect to current data requirements. Based on this, EPA concludes that lack of reliable data support use of an additional margin/factor of 10; this additional factor was included in the analyses described above.

iii. *Conclusion.* Due to the toxicology data gaps described above, an additional tenfold uncertainty factor was used in conducting this risk assessment for thiabendazole.

2. *Acute risk.* Although there is potential for exposure to thiabendazole through drinking water, EPA does not expect that exposure would result in aggregate MOEs (food plus water) that would exceed levels of concern for acute dietary exposure.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to thiabendazole from food will utilize 83% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to thiabendazole in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to thiabendazole residues.

V. Other Considerations

A. Metabolism in Plants and Animals

The nature of the residues of thiabendazole in plants and animals is adequately understood. For the purposes of this section 18 use, the residues are as set forth in 40 CFR 180.242: the residue for plants is the parent, thiabendazole; for animal commodities, the residues of concern are thiabendazole and its metabolite 5-hydroxythiabendazole.

B. Analytical Enforcement Methodology

Adequate enforcement methodology, spectrophotofluorometric, detection for thiabendazole is available in PAM II Method I.

C. Magnitude of Residues

Residues of thiabendazole are not expected to exceed 0.1 ppm in or on lentils as a result of this section 18 use. Secondary residues are not expected to result in animal commodities from this use, since no feed items are associated with lentils.

D. International Residue Limits

There are no Codex proposals, Canadian, or Mexican limits for thiabendazole in or on lentils.

E. Rotational Crop Restrictions

Since this section 18 use is a seed treatment, rotational crop restrictions are not a concern.

VI. Conclusion

Therefore, the tolerance is established for residues of thiabendazole in or on lentils at 0.1 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by April 27, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300607] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper

record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

This action finalizes a tolerance under FFDCA section 408(e). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require special OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 6, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.242 is amended by adding text to paragraph (b) to read as follows:

§ 180.242 Thiabendazole; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the residues of thiabendazole, in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances are specified in the following table. The tolerances will expire on the dates specified in the table.

Commodity	Parts per million	Expiration/ Revocation Date
Lentils	0.1	10/31/98

* * * * *

[FR Doc. 98–4793 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50628A; FRL–5770–7]

RIN 2070–AB27

Significant New Uses of Certain Chemical Substances; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA issued a document (FR Doc. 98–1074) in the **Federal Register** of January 22, 1998 adding significant new use rules (SNUR) for 163 substances. This document inadvertently assigned notification requirements for a substance already subject to a SNUR and several notification requirements under § 721.63 for one SNUR. EPA did not intend to issue these notification requirements. This action is necessary in order to issue the correct notification requirements.

DATES: This document is effective on February 25, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a document (FR Doc. 98–1074) in the **Federal Register** of January 22, 1998 (63 FR 3394) (FRL–5720–3), which inadvertently assigned notification requirements for a substance already subject to a SNUR and several notification requirements under § 721.63 for one SNUR. This correction removes the notification requirements entirely for § 721.5730 and changes the notification requirements under § 721.63 for § 721.9662(a)(2)(i).

On page 3432, in the first column, amendatory instruction 69. and § 721.5730 should be removed.

On page 3439, in the first column, in § 721.9662(a)(2)(i), in the third line, "(a)(1), (a)(2)(i), (a)(4), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), and (a)(6)(v)." should read "(a)(1) and (a)(2)(i)."

I. Regulatory Assessment Requirements

This final rule does not impose any requirements. It only implements a correction to the Code of Federal Regulations. As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), Executive Order 12875, entitled "Enhancing the Intergovernmental Partnership" (58 FR 58093, October 28, 1993), or Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994). In addition, since this type of

action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

II. Submission to Congress and Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 17, 1998.

Rebecca S. Cool,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–4792 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50629A; FRL–5769–1]

RIN 2070–AB27

Revocation of Significant New Use Rules for Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking significant new use rules (SNURs) for 12 chemical substances promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA). Based on the new data the Agency no longer finds that activities not described in the corresponding TSCA section 5(e) consent orders or the premanufacture notices (PMN) for these chemical substances may result in significant changes in human or environmental exposure.

DATES: This rule is effective March 27, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

In the **Federal Register** referenced for each substance, OPPTS–50582, August 15, 1990 (55 FR 33303); OPPTS–50585, September 28, 1990 (55 FR 39899); OPPTS–50589, April 17, 1991 (56 FR 15784); OPPTS–50601, September 23, 1992 (57 FR 44070); OPPTS–50613, October 4, 1993 (58 FR 51706); and OPPTS–50620, March 1, 1995 (60 FR 11042) (FRL–4868–4), EPA issued a SNUR establishing significant new uses for the substances. Because of additional data EPA has received for these substances, EPA is revoking these SNURs.

I. Background

The Agency proposed the revocation of these SNURs in the **Federal Register** of December 9, 1997 (62 FR 64795) (FRL–5752–9). The background and reasons for the revocation of each individual SNUR are set forth in the preamble to the proposed revocation. The comment period closed on January 8, 1998. The Agency received no comments concerning the proposed revocation. Therefore, EPA is revoking these rules.

II. Rationale for Revocation of the Rule

During review of the PMNs submitted for the chemical substances that are the subject of this revocation, EPA concluded that regulation was warranted based on available information that indicated activities not described in the TSCA section 5(e) consent orders or the PMNs might result in significant changes in human or environmental exposure. Based on these findings, SNURs were promulgated.

EPA has revoked those TSCA section 5(e) consent orders that are the bases for these SNURs and no longer finds that activities other than those described in the TSCA section 5(e) consent orders or the PMNs may result in significant changes in human or environmental exposure. The revocation of SNUR provisions for these substances is consistent with the findings set forth in the preamble to the proposed revocation of each individual SNUR.

Therefore, EPA is revoking the SNUR provisions for these chemical substances. When this revocation becomes final, EPA will no longer require notice of intent to manufacture, import, or process these substances, except in the case where the PMN submitter has formally withdrawn the PMN. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Public Record

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–50629A (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

IV. Regulatory Assessment Requirements

This final rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, the Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Since this final rule does not impose any requirements, it does not contain any information collections subject to approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or require any other action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled "Enhancing the Intergovernmental Partnership" (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997).

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined that SNUR revocations, which eliminate requirements without imposing any new ones, have no adverse economic impacts. The Agency's generic certification for SNUR revocations appears on June 2, 1997 (62 FR 29684) (FRL–5597–1), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 13, 1998.

Ward Penberthy,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§§ 721.700, 721.2840, 721.2860, 721.2880, 721.2940, 721.3200, 721.4640, 721.5990, 721.8125, 721.9260, 721.9780, 721.9962 [Removed]

2. By removing §§ 721.700, 721.2840, 721.2860, 721.2880, 721.2940, 721.3200, 721.4640, 721.5990, 721.8125, 721.9260, 721.9780, and 721.9962.

[FR Doc. 98–4791 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[CC Docket No. 92–297; FCC 98–15]

Reconsideration of the Rules and Policies for Local Multipoint Distribution Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: The Federal Communications Commission has adopted a Third Order on Reconsideration (Third Reconsideration Order) in the Local Multipoint Distribution Service (LMDS) proceeding, reaffirming its commitment to the rapid implementation of LMDS and the broad range of one-way and two-way voice, video, and data service capabilities that LMDS offers. LMDS is a fixed, point-to-multipoint wireless service that has the flexibility and potential to promote competition in the telephony and cable distribution marketplaces, as well as to introduce new and innovative services to the public. The action is taken to resolve petitions for reconsideration of the service rules, except the competitive bidding rules, adopted in the Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking (Second Report and Order) to implement LMDS in the 27.5–28.35 GHz, 29.1–29.25 GHz , and 31.0–31.3 GHz frequency bands. The limited revisions to the Commission's rules adopted in this Third Reconsideration Order will permit certain point-to-point operations on a secondary basis to LMDS in the 31 GHz band under the previous service rules replaced by LMDS without adversely affecting LMDS or the initiation of the auction and licensing of LMDS under the LMDS service rules.

EFFECTIVE DATE: April 27, 1998.

FOR FURTHER INFORMATION CONTACT: Barbara Reideler or Jay Whaley, Policy Division, Wireless Telecommunications Bureau, (202) 418–1310.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Third Reconsideration Order in CC Docket No. 92–297, FCC 98–15, adopted on February 3, 1998, and released on February 11, 1998. The complete text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W., Washington, DC 20036.

Synopsis of Third Reconsideration Order

1. On March 11, 1997, the Commission adopted a Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking (Second Report and Order) [1] in this proceeding, which designated the 31.0–31.3 GHz frequency band (31 GHz band) for Local Multipoint Distribution Service (LMDS) and adopted competitive bidding and service rules to implement LMDS in the 27.5–28.35 GHz and 29.1–29.25 GHz frequency bands (28 GHz band) and the 31 GHz band. In this Third Order on Reconsideration (Third Reconsideration Order), the Commission addressed petitions for reconsideration and clarification of the Second Report and Order, except petitions for reconsideration of the LMDS competitive bidding rules.[2] The petitions were denied, with one exception that resulted in limited revisions to the rules adopted in the Second Report and Order. The Third Reconsideration Order deferred consideration of the comments filed in response to the Fifth Notice of Proposed Rulemaking, which was issued in conjunction with the Second Report and Order, to a separate Report and Order to be issued in the near future.

2. The Second Report and Order adopted an ownership rule that imposed a three-year restriction on the eligibility of incumbent local exchange companies (LECs) and incumbent cable companies to hold an attributable interest in the larger LMDS license of 1,150 megahertz whose geographic service area significantly overlaps such incumbent's authorized or franchised service area. The Third Reconsideration Order reviewed the portion of the eligibility restriction that permits incumbent LECs and incumbent cable companies to bid

[1] Rulemaking To Amend Parts 1, 2, 21, and 25 of the Commission's Rules To Redesignate the 27.5–29.5 GHz Frequency Band, To Reallocate the 29.5–30.0 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Petitions for Reconsideration of the Denial of Applications for Waiver of the Commission's Common Carrier Point-to-Point Microwave Radio Service Rules, CC Docket No. 92–297, Suite 12 Group Petition for Pioneer Preference, PP–22; Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 12545 (1997), 62 FR 23148, April 29, 1997, and 62 FR 16514, April 7, 1997.

[2] The petitions for reconsideration of the LMDS competitive bidding rules were considered in the Second Order on Reconsideration at 62 FR 48787, September 17, 1997.

on and acquire such an in-region LMDS license, so long as they subsequently come into compliance with the eligibility restriction through divestiture of the ineligible interests or areas within 90 days of the grant of such license.

3. The Commission affirmed that the divestiture rule is consistent with similar rules in similar ownership eligibility restrictions and would not undermine the restriction. Ineligible incumbents would not be able to distort the auction process, which is protected by several provisions that prevent various anticompetitive strategies. The rule also is consistent with the Commission's goal to structure the eligibility restriction as flexibly as possible to minimize potential adverse limitations on incumbent LECs and incumbent cable companies by permitting them to compete for the LMDS license and then decide which business to pursue or divest.

4. The Third Reconsideration Order also reviewed the portion of the eligibility rule that defines an ownership interest of 20 percent or higher as an attributable interest for eligibility purposes. The Commission affirmed that the 20 percent attribution level better serves the competitive goals for LMDS than a 10 percent attribution level for several reasons. The 20 percent level maximizes the opportunity for competition and increases the availability of financing by permitting a wide variety of players to enter the markeplace and provide financing, while preventing anticompetitive activities of incumbents. The 20 percent level was reasonably based upon a market analysis and predictive judgments that weighed and balanced several competing interests, and was adopted because it is more reasonable than other levels in achieving the goals of the eligibility restriction. In addition, there are safeguards in the LMDS attribution rule that make incumbent cable companies ineligible to hold a controlling interest in an LMDS licensee, even if their attributable ownership interest is less than 20 percent.

5. The Commission found that the 20 percent level is consistent with the ownership restriction that applies to similar wireless services and that was adopted to achieve similar goals to promote competition and prevent the concentration of spectrum among entities with the incentive to prevent competition. Although the Commission uses a 5 percent level in another ownership restriction, the circumstances are different and require a more restrictive approach than LMDS. Different ownership attribution standards have been adopted in the context of different rulemakings, depending on the particular circumstances and objectives in each case.

6. The Commission also reviewed the portion of the eligibility rule that does not treat debts, warrants and similar convertible interests as attributable interests until conversion is effected. The Third Reconsideration Order affirmed the rule, which is consistent with similar ownership restrictions adopted by the Commission. The different treatment of such debts and interests in the attributable interest provisions of the LMDS designated entity auction rules also adopted in the Second Report and Order was based on the different circumstances and objectives of the designated entity rules and was consistent with the auction rules adopted in other services. The Third Reconsideration Order found that existing Commission rules prevent incumbent LECs and incumbent cable companies that hold such convertible instruments from engaging in anticompetitive activities and undermining the eligibility restriction. In addition, the Commission has adopted ownership disclosure requirements that the Third Reconsideration Order directs LMDS applicants to address in the long-form applications to be filed by the LMDS auction winners and that provide additional safeguards to ensure that anticompetitive conduct does not materialize.

7. The Third Reconsideration Order determined that the policies and criteria used in establishing ownership restrictions in various rulemakings for different services would benefit from a comprehensive evaluation. Accordingly, the Commission decided to initiate a proceeding to examine the various ownership restrictions, including their ownership attribution standards and their treatment of convertible interests, later this year.

8. The Third Reconsideration Order reviewed the decision to apply the eligibility restriction to all incumbent LECs and incumbent cable companies, including rural incumbent LECs. The Commission affirmed that the rule is consistent with the policy objectives of section 309(j) of the Communications Act to promote competition in all areas, ensure prompt delivery of service to rural areas, and provide opportunities for rural telephone companies. Rural incumbent LECs have the same incentives for anticompetitive use of LMDS licenses as other incumbent LECs to bar the entry of new competitors. The eligibility restriction reserves the initial licensing of LMDS for entrants without market power to ensure new competitors to all areas, including rural areas.

9. The Commission also concluded that the eligibility restriction does not subject rural incumbent LECs to greater disqualification under its definition of a significant overlap, which occurs when the service area of an incumbent LEC or incumbent cable company includes at least 10 percent of the population of the LMDS licensed service area. Whether applied to an entire licensed area or a smaller partitioned licensed area, a significant overlap was determined to create the potential for exercise of undue market power by incumbent LECs, including rural incumbent LECs. The Commission affirmed that if an incumbent LEC or incumbent cable company, including a rural incumbent LEC, is prevented from acquiring an LMDS license that significantly overlaps its service area, it is not barred altogether from acquiring an LMDS license and several alternatives are available. The incumbent LEC or incumbent cable company may acquire an LMDS license that does not significantly overlap, that overlaps so long as it divests the overlapping area within 90 days of a grant of the license, or that is partitioned from a larger LMDS license and complies with the eligibility restriction. Incumbents also may acquire the 150 megahertz LMDS license to which the eligibility restriction does not apply.

10. The Third Reconsideration Order noted that in the Second Report and Order, the Commission has committed to initiate a review of the eligibility restriction in the year 2000, in order to determine whether the restriction should be extended to promote competition. The Commission determined, on reconsideration, to begin this review prior to 2000 and to provide a framework for the use of the Commission's resources in carrying out the review. Therefore, the Chief Economist, the Chief of the Cable Services Bureau, the Chief of the Common Carrier Bureau, the Chief of the Mass Media Bureau, the Chief of the International Bureau, the General Counsel, and the Chief of the Wireless Telecommunications Bureau were instructed to prepare jointly a study examining whether there has been sufficient entry and increases in competition to sunset the eligibility restriction on incumbent LECs and incumbent cable companies. The results of this study, together with a joint recommendation, are to be submitted to the Commission no later than June 30, 1999. Based on the report and joint

recommendation, the Commission intends to determine whether to initiate a rulemaking proceeding to extend the date for the termination of the eligibility restriction.

11. The Third Reconsideration Order identified safeguards that exist, even after the eligibility restriction is terminated, to ensure that proposed license acquisitions by incumbent LECs or incumbent cable operators will not be inconsistent with the pro-competitive policies on which the restriction is based. After the initial auctioning of LMDS licenses, licenses are acquired under the Commission's transfer and assignment rules, which require prior Commission approval. The Third Reconsideration Order determined that the Commission would consider whether a particular market is sufficiently competitive before granting approval, and would rely on an examination of the same factors identified in the Second Report and Order for determining whether a market is sufficiently competitive to grant a waiver of the eligibility restriction under section 101.1003(a)(2) of the Commission's Rules (47 CFR 101.1003(a)(2)).

12. The Third Reconsideration Order granted a petition for clarification of the LMDS technical rules concerning frequency coordination and emission masks. The Second Report and Order imposed a frequency coordination requirement on LMDS licensees that requires licensees to initiate the coordination procedures in the Commission's rules to avoid interference problems with any neighboring LMDS licensee located within 20 kilometers of the boundaries of its service area. The Commission clarified that the identity of any such neighboring licensees is readily available in the Commission's database in order for the LMDS licensee to fulfill its obligation to provide notification of its operations to such neighbors. The Commission further clarified that such neighbor is required to respond to the notification with specific information concerning any problem, providing the LMDS licensee with sufficient information to further enable it to fulfill its obligation to complete the coordination process. The Third Reconsideration Order also clarified that the emission mask requirements in part 101 of the Commission's Rules apply to LMDS and that LMDS will be governed by the emission specifications set out in section 101.111 of the Rules (47 CFR 101.111(a)(2)).

13. The Third Reconsideration Order reviewed whether the flexible LMDS construction rule, which requires LMDS licensees to demonstrate substantial service during the 10-year licensed period in order to be granted license renewal, adversely impacts rural LECs and is inconsistent with section 309(j) of the statute. The Commission affirmed that the flexibility of the rule will promote efficient use of the spectrum, encourage service to rural areas, and prevent the warehousing of spectrum, which are consistent with the policies in section 309 (j). The Commission affirmed that specific construction benchmarks were not devised because of the broad range of new and innovative LMDS services, many of which are in the design stage. Stricter requirements could discourage participation in LMDS because the services and equipment are under development.

14. The Third Reconsideration Order upheld the decision to designate the entire 300 megahertz in the 31 GHz band for LMDS and to terminate licensing under the previous service rules, which provided a point-to-point localized service in the 31 GHz band. In denying the petition for reconsideration to designate only 150 megahertz in the 31 GHz band plan for LMDS, the Commission found that there was adequate support for its finding that the entire 300 megahertz should be designated to LMDS to ensure its potential for development of a full range of broadband telecommunications and video distribution services and to fulfill the Commission's obligation to designate spectrum for the most effective and efficient use.

15. The Third Reconsideration Order reviewed the decision to dismiss the applications that were filed under the previous point-to-point 31 GHz service rules and were pending at the Commission when the LMDS service rules were adopted for the 31 GHz band on March 11, 1997, in the Second Report and Order. On reconsideration, the dismissed applicants were allowed to refile the dismissed applications within 60 days of the effective date of the Third Reconsideration Order under existing application rules in part 101 of the Commission's Rules (47 CFR 101.1, *et seq.*). Operating rules were modified to permit the 31 GHz operations under the technical parameters that applied to previously authorized 31 GHz licenses.

16. The Third Reconsideration Order permitted authorization of the same stations and services requested in the dismissed applications, but prohibited expansion of the authorized operations beyond the scope of the initial license. The new licensees and the existing 31 GHz licensees were directed to share the band with each other consistent with such authorizations under the previous rules. However, all operations in the new licenses will be authorized on a secondary basis to LMDS operations, and any such new 31 GHz operations are required not to interfere with LMDS operations and to accept any interference from LMDS. The Commission concluded that these unique circumstances prevented any adverse impact on LMDS operations to be provided in the 31 GHz band and on the future licensing of the band under the LMDS service rules.

17. Only entities that had applications dismissed when the Second Report and Order was adopted were eligible to refile such applications under the previous 31 GHz application rules for secondary authorization to LMDS. Similar treatment was not accorded to entirely new applications for future licensing under the previous 31 GHz services, because that would not alleviate concerns of potential harm to LMDS or benefit such future licensees in the face of incompatible LMDS operations. The Third Reconsideration Order, however, recognized the important public interest objectives of governmental entities that requested ongoing licensing of the 31 GHz band under the previous 31 GHz service rules for traffic control systems that meet Federal goals to reduce vehicular traffic congestion and air pollution. Several alternative means were identified by which such governmental entities may still acquire authorization for spectrum use or can otherwise obtain the traffic services they need.

18. The Third Reconsideration Order reviewed the Order on Reconsideration issued in conjunction with the Second Report and Order that upheld the decision to dismiss several hundred waiver applications for authority to provide LMDS in the 28 GHz band under the previous 28 GHz service rules. The Commission denied petitioners' claims on further reconsideration that dismissal of their 28 GHz waiver applications was the result of retroactive rulemaking and disparate treatment, and should not have been summarily dismissed. The Commission explained that an applicant has no vested right to a continuation of the substantive standards in effect at the time an application was filed and, thus, the waiver applicants had no vested rights that were affected. In addition, unless a waiver of the rules was granted as the applicants requested, applications that failed to comply with the 28 GHz licensing rules under which they were filed may be dismissed summarily.

Supplemental Final Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act, see 5 U.S.C. 603 (RFA), a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking (Second Report and Order) in this proceeding. The Commission's Supplemental Final Regulatory Flexibility Analysis (SFRFA) in this Third Reconsideration Order reflects revised or additional information to that contained in the FRFA. The SFRFA thus is limited to matters raised in response to the Second Report and Order that are granted on reconsideration in the Third Reconsideration Order. This SFRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 846 (1996), codified at 5 U.S.C. 601 *et seq.*

I. Need For and Objectives of the Action

20. The actions taken in this Third Reconsideration Order are in response to petitions for reconsideration or clarification of the service rules, except competitive bidding rules, adopted in the Second Report and Order to implement the new Local Multipoint Distribution Service (LMDS) in the 28 GHz and 31 GHz frequency bands. The petitions are denied, except the petitions seeking reconsideration of the decision to dismiss the pending applications requesting authorization of 31 GHz services under the previous service rules. The rule changes adopted in the Third Reconsideration Order allow the dismissed applicants to refile their applications for the same 31 GHz authorization, but on a secondary basis to LMDS. The rule changes are intended to permit the limited 31 GHz services requested in the dismissed applications that include traffic control systems, among other services in the public interest, while reaffirming the Commission's decision to terminate future licensing of new applications under the previous 31 GHz service rules and designate the 31 GHz band for LMDS, which offers a wide array of telecommunications and video programming distribution services.

II. Summary of Significant Issues Raised by the Public in Response to the Final Regulatory Flexibility Statement

21. No comments were received in direct response to the FRFA. In response generally to the Second Report and Order, the Commission received petitions, as well as *ex parte* letters and letters in support, that seek reconsideration, and also received oppositions to those petitions. Sierra Digital Communications, Inc (Sierra) requests that the dismissed 31 GHz applications be reinstated and the licensees given the same interference protections and relocation procedure that the Commission accorded incumbent 31 GHz licensees when it redesignated the 31 GHz band for LMDS. Sierra argues that the potential public interest benefits in authorizing the requested services in the dismissed applications, which include public safety services and public expenditures, outweigh any benefits that may come from licensing 31 GHz for LMDS free of the requested services. Nevada Department of Transportation (Nevada DOT) requests that its applications and the applications of the Las Vegas Cities (Cities) for a traffic control system be granted on a temporary basis and secondary to LMDS in order to allow the implementation of equipment that was purchased and installed and to provide public safety services while the licensees seek an alternative technology or frequency band.

22. CellularVision USA, Inc. (CellularVision) and Texas Instruments (TI) oppose the requests. They contend that authorization of the 31 GHz operations in the dismissed applications is inconsistent with the decision to designate the 31 GHz for LMDS and that the operations would interfere with LMDS, result in enforcement problems for LMDS, and precipitate other applications for similar relief.

III. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

23. The rule changes adopted in the Third Reconsideration Order would apply to a specific number of entities that had pending applications for authorization of 31 GHz services on file that were dismissed when the Commission adopted the Second Report and Order on March 11, 1997. We estimate that there are approximately 10 dismissed applicants with several dismissed applications, based on Commission records. The dismissed applicants are permitted to refile the dismissed applications and obtain a license to provide the 31 GHz services designated in the band before the Commission designated the band for LMDS. No new applicants may request such 31 GHz authorization. Also, no new applications may be filed by the dismissed applicants, which may only refile the dismissed applications.

24. The FRFA found that the rules adopted at that time would apply to all incumbent 31 GHz licensees providing 31 GHz services under the previous 31 GHz service rules. The Commission determined the description and estimate of the number of small entities among the total number of 31 GHz licensees based on the licensed services and their qualifications as small entities. Of the total number of 86 licensees, 59 were Local Television Transmission Service (LTTS) licensees, 8 were private business licensees, and 19 were governmental entities. To determine which of the licensees qualified as small entities, the Commission estimated the number of governmental entities with populations less than 50,000, but was unable to determine which of LTTS licensees or private business licensees were small. To ensure that no small interests were overlooked, the Commission assumed that most of the licensees were small entities and estimated that at least 50 of the 86 licensees to be small entities.

25. Since the revisions adopted in the Third Reconsideration Order do not apply to incumbent 31 GHz licensees, the estimates of small entities in the FRFA is not affected and does not need to be adjusted. The revisions instead apply to the small and specific number of dismissed applicants that requested 31 GHz licenses and are permitted to refile for the same services requested in the dismissed applications. There are a variety of dismissed applicants, including governmental entities and private businesses. Inasmuch as the total number of dismissed applicants is very small and only ten are estimated, the Commission assumed that all of these are small entities in order to ensure that no small interests are overlooked.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

26. The dismissed applicants have the option to refile applications for the same services requested in the dismissed applications within 60 days following the effective date of the Third Reconsideration Order. Not all of the dismissed applicants may decide to refile their dismissed applications. The filing fees were refunded to the dismissed applicants that paid fees. The applicants may only apply for the same stations and services contained in the dismissed applications, and the licenses will be secondary to LMDS licenses. All of the dismissed applications requested service authorizations that are governed by the established licensing, operating, and technical rules and procedures in part 101 of the Commission's Rules (47 CFR 101.1 *et seq.*). Thus, the data

required for refiling the dismissed applications were collected on the dismissed applications and the refiling requirement does not require new information nor impose any undue burdens on the dismissed 31 GHz applicants, including small businesses.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

27. The rule changes adopted in the Third Reconsideration Order are in response to petitions for reconsideration filed by entities that, for purposes of this analysis, we have considered to be small entities. The changes minimize any significant economic impact on small entities consistent with our objectives in adopting the rule changes and consistent with the comments we received.

28. The requests of Sierra, Nevada DOT, and other commenters are granted to permit the 31 GHz operations requested in the dismissed applications. Although the Commission determined that terminating future licensing under the 31 GHz rules is consistent with the public interest in designating the 31 GHz band for LMDS, the Commission found that permitting the operations reflected in the dismissed applications and modified by the Order is an exception based on unique circumstances that is in the public interest. Nevada DOT demonstrates that dismissal of the considerable number of applications to implement the Las Vegas traffic control system would not spare the unnecessary expenses identified in the Second Report and Order, but rather would prevent the use of purchased and installed equipment until a replacement technology is found. To the extent that applicants have already invested in constructing these systems, the system could be implemented during the inception of LMDS without substantial additional investment for retooling or relocation at this time.

29. Although Sierra requests that the Commission reinstate the dismissed applications, the Commission decided that providing the dismissed applicants with the opportunity to refile the applications is a more reasonable approach to licensing the dismissed applications. The filing fees were returned to the dismissed applicants that paid fees. The Third Reconsideration Order reaffirmed the dismissal of the pending applications, but without prejudice to their being refiled within 60 days of the effective date of the Third Reconsideration Order to provide applicants time to consider whether to refile. Circumstances have changed since the pending applications were filed and reinstated applications may not reflect the applicant interests or intentions. The new licenses will be secondary to LMDS licenses and limited to the scope of the services authorized, without modification for expansion. Dismissed applicants that do not wish to operate in this manner have the option to not reapply.

30. The Commissioners decided to permit the dismissed applicants to refile the applications for licensed authorization under the established licensing procedures in part 101, which governed the dismissed applications. Licenses will be issued for a 10-year period and may be renewed, which provides Nevada DOT more opportunity to implement its services than the temporary license it requested. As for CellularVision's concern that allowing the refiling of the dismissed applications will encourage the filing of similar applications, only the applications that were dismissed in the Second Report and Order may be refiled and they are limited to the same stations and services contained in the pending applications. The number of applicants are very few and the scope of their services is already identified in the dismissed applications, so that uncertainties about the impact of the refiling opportunity should be reduced.

31. The Commission decided to authorize any licenses based on the dismissed applications on a secondary basis to LMDS, so that such 31 GHz licensees may not interfere with LMDS and must accept any interference from LMDS. As noted, the Commission considered the concerns of CellularVision and TI about potential interference with LMDS operations. Under a license that is secondary to LMDS licenses, the licensees are prevented from adversely impacting LMDS and are required to modify their systems to eliminate interference or seek alternative access to frequencies. As the Commission concluded, it is in the public interest to allow these important traffic control facilities to continue to operate as long as they do not interfere with future LMDS operations. In addition, the new licensees may provide service to the full extent permitted under the license, but are not permitted any expansion or increase in operations, further minimizing any impact of the new 31 GHz services on LMDS.

32. Thus, the Commission declined to grant Sierra's request to accord the new licensees the same interference protection against LMDS that the Commission adopted in the Second Report and Order for non-LTTS licensees in the outer 150 megahertz segment of the 31 GHz band. That protection was based on the needs of existing 31 GHz licensees that had well-established traffic control systems or private business services that were licensed before LMDS was designated for the band, circumstances which do not apply here. Moreover, Nevada DOT requests that the dismissed applications, including the considerable number of its own and those of the Cities, be subject to secondary status to LMDS to accommodate LMDS concerns and facilitate the authorization of the dismissed applications in light of the redesignation of the band for LMDS. On balance, permitting the licensing of the limited operations requested in the few dismissed applications on a secondary basis to LMDS will prevent the undue economic hardships to small entities that seek to implement the proposed services, while preventing any chilling effect on the potential development of LMDS in 31 GHz by new LMDS licensees that are small entities.

VI. Report to Congress

33. The Commission will send a copy of this Supplementary Final Regulatory Flexibility Analysis, along with the Third Reconsideration Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). A copy of the Third Reconsideration Order and this SFRFA (or summary thereof) be sent to the Chief Counsel for Advocacy for the Small Business Administration.

Ordering Clauses

34. *Accordingly,* it is ordered that the actions of the Commission herein are taken pursuant to sections 4(i), 257, 303(r), and 309(j) of the Communications Act of 1934, 47 U.S.C. 154(i), 257, 303(r), 309(j).

35. *It is further ordered* that the late-filed letters of CommPare, Inc., CSG Wireless, Inc., State of Nevada Department of Transportation, Parsons Transportation Group, Inc., and Westec Communications, Inc., are accepted.

36. *It is further ordered* that the Petitions for Reconsideration filed by the Independent Alliance, LBC Communications, LDH International, Inc., M3 Illinois Telecommunications Corporation, the Rural Telecommunications Group, Sierra Communications, Inc., and Webcel Communications, Inc., are granted to the extent indicated herein and otherwise are denied.

37. *It is further ordered* that the Motion for Stay Pending Review of Petition for Reconsideration filed by LDH International, Inc., is denied.

38. *It is further ordered* that the Commission's Rules are amended as set forth in the Rule Changes.

39. *It is further ordered* that the applications that were dismissed in the Second Report and Order are permitted to be refiled under the terms and conditions in this Third Reconsideration Order and shall be filed no later than 60 days following the effective date of this Order.

40. *It is further ordered* that the provisions of this Order and the Commission's Rules, as amended in the Rule Changes, shall become effective 60 days after publication in the **Federal Register**.

41. *It is further ordered* that the Director, Office of Public Affairs, shall send a copy of this Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a).

List of Subjects in 47 CFR Part 101

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 101 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 101—FIXED MICROWAVE SERVICE

1. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 309(j), unless otherwise noted.

2. Section 101.57 is amended by revising paragraph (a)(1) to read as follows:

§ 101.57 Modification of station license.

(a)(1)(i) Except as provided in paragraph (a)(1)(ii) of this section and in § 101.59, no modification of a license issued pursuant to this part (or the facilities described thereunder) may be made except upon application to the Commission.

(ii) The provisions of paragraph (a)(1)(i) of this section shall not apply in the case of:

(A) Licenses authorized for operation in the 31,000–31,300 MHz band prior to March 11, 1997;

(B) Non-Local Multipoint Distribution Service licenses authorized for such operation in the band pursuant to applications refiled no later than April 27, 1998; and

(C) The Local Multipoint Distribution Service as provided in § 101.61(c)(10).

* * * * *

3. Section 101.103 is amended by adding paragraph (b)(3) as follows:

§ 101.103 Frequency coordination procedures.

* * * * *

(b) * * *

(3) Non-LMDS operations in the entire 31,000–31,300 MHz band licensed after March 11, 1997, based on applications refiled no later than April 27, 1998 are unprotected with respect to each other and subject to harmful interference from each other.

(i) Such operations and any operations licensed prior to March 11, 1997, in the band are unprotected with respect to each other and subject to harmful interference from each other.

(ii) Such operations are licensed on a secondary basis to LMDS operations licensed in the band, may not cause interference to LMDS operations, and are not protected from interference from LMDS operations.

(iii) Such operations licensed on a point-to-point basis may not be extended or otherwise modified through the addition of point-to-point links. Such operations licensed on a point-to-radius basis may add additional stations within the licensed area.

* * * * *

4. Section 101.107 is amended by revising footnote 8 in paragraph (a) to read as follows:

§ 101.107 Frequency tolerance.

(a) * * *

[8] For stations authorized prior to March 11, 1997, and for non-Local Multipoint Distribution Service stations authorized pursuant to applications refiled no later than April 27, 1998, the transmitter frequency tolerance shall not exceed 0.030 percent.

* * * * *

5. Section 101.113 is amended by revising footnote 8 in paragraph (a) to read as follows:

§ 101.113 Transmitter power limitations.

(a) * * *

[8] For stations authorized prior to March 11, 1997, and for non-Local Multipoint Distribution Service stations authorized pursuant to applications refiled no later than April 27, 1998, the transmitter output power shall not exceed 0.050 watt.

* * * * *

6. Section 101.147 is amended by revising footnote 16 in paragraph (a) and by revising the introductory text of paragraph (u) to read as follows:

§ 101.147 Frequency assignments

(a) * * *

[16] As of June 30, 1997, frequencies in these bands are available for assignment only to LMDS radio stations, except for non-LMDS radio stations authorized pursuant to applications refiled no later than April 27, 1998.

* * * * *

(u) *31,000–31,300 MHz.* Stations licensed in this band prior to March 11, 1997, may continue their authorized operations, subject to license renewal, on the condition that harmful interference will not be caused to LMDS operations licensed in this band after June 30, 1997. Non-LMDS stations licensed after March 11, 1997, based on applications refiled no later than April 27, 1998 are unprotected and subject to harmful interference from each other and from stations licensed prior to March 11, 1997, and are licensed on a secondary basis to LMDS. In the sub-bands 31,000–31,075 MHz and 31,225–31,300 MHz, stations initially licensed prior to March 11, 1997, except in LTTS, and LMDS operations authorized after June 30, 1997, are equally protected against harmful interference from each other in accordance with the provisions of § 101.103(b). For stations, except in LTTS, permitted to relocate to these sub-bands, the following paired frequencies are available: * * *

* * * * *

7. Section 101.803 is amended by revising note 7 of paragraph (a) and revising note 9 of paragraph (d) to read as follows:

§ 101.803 Frequencies.

(a) * * *

[7] As of June 30, 1997, frequencies in this band only are available for assignment to LMDS radio stations, except for non-LMDS radio stations authorized pursuant to applications refiled no later than April 27, 1998. Stations authorized prior to June 30, 1997, may continue to operate within the existing terms of the outstanding licenses, subject to renewal. Non-LMDS stations authorized pursuant to applications refiled no later than April 27, 1998 shall operate on an unprotected basis and subject to harmful interference from similarly licensed stations or stations licensed prior to June 30, 1997, and on a secondary basis to LMDS radio stations.

(d) * * *

* * * * *

[9] As of June 30, 1997, frequencies in this band only are available for assignment to LMDS radio stations, except for non-LMDS stations authorized pursuant to applications refiled no later than April 27, 1998. Stations authorized prior to June 30, 1997, may continue to operate within the existing terms of the outstanding licenses, subject to renewal. Non-LMDS stations authorized pursuant to applications refiled no later than April 27, 1998 shall operate on an unprotected basis and subject to harmful interference from each other or stations licensed prior to June 30, 1997, and on a secondary basis to LMDS radio stations.

* * * * *

[FR Doc. 98–4750 Filed 2–24–98; 8:45 am]

BILLING CODE 6712–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50615C; FRL–5757–2]

RIN 2070–AB27

Organotin Lithium Compound; Final Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described as an organotin lithium compound which is the subject of premanufacture notice (PMN) P–93–1119. This rule would require certain persons who intend to manufacture, import, or process this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing, importing, or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: This rule is effective March 27, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

This final SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of P–93–1119 for the significant new uses designated herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use". EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354) and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the general provisions which apply to this SNUR. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated a "User Fee Rule" (40 CFR part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting SNUR notices to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Interested persons should refer to these documents for further information.

III. Background and Response to Comments

EPA published a direct final SNUR for the chemical substance, which was the subject of PMN P–93–1119 in the **Federal Register** of May 27, 1994 (59 FR 27474). EPA received a notice of intent to submit adverse comments for this chemical substance following publication. Therefore, as required by § 721.160, the final SNUR for P–93–1119 was withdrawn on June 7, 1995 (60 FR 29992) (FRL–4916–3) and a proposed rule on the substance was issued on June 7, 1995 (60 FR 30050) (FRL–4916–4).

The background and reasons for the SNUR are set forth in the preamble to the proposed rule including EPA's response to comments to the direct final rule and the change to the proposed SNUR based on those comments and data submitted. EPA received no additional comments to the proposed rule, therefore, EPA is issuing the final rule.

IV. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the rule. Because this SNUR was first published on May 27, 1994, as a direct final rule, that date will serve as the date after which uses would be considered to be new uses. If uses which had commenced between that date and the effective date of this rulemaking were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses that would be regulated through this SNUR after March 1, 1995, would have to cease any such activity before the effective date of this rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h) (53 FR 28354, July 17, 1988), the person would be considered to have met the requirements of the SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities,

these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

V. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance at the time of the direct final rule. The analysis is unchanged for the substance in the final rule. The Agency's complete economic analysis is available in the public record for this final rule (OPPTS–50615C).

VI. Public Record

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–50615C (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA NonConfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

VII. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB). In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special considerations of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid OMB control number. The information collection requirements related to this action have already been approved by OMB pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burdens requiring additional OMB approval. The public reporting burden for this collection of information is estimated to average 100 hours per response. The burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has previously certified, as a generic matter, that the promulgation of a SNUR does not have a significant adverse economic impact on a substantial number of small entities. The Agency's generic certification for promulgation of new SNURs appears on June 2, 1997 (62 FR 29684) (FRL–5597–1) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 13, 1998.

Ward Penberthy,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.9668 to subpart E to read as follows:

§ 721.9668 Organotin lithium compound.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as an organotin lithium compound (PMN P–93–1119) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 98–4790 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–F

Proposed Rules

Federal Register
Vol. 63, No. 37
Wednesday, February 25, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1485

Agreements for the Development of Foreign Markets for Agricultural Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the regulations applicable to the Market Access Program (MAP) authorized by section 203 of the Agricultural Trade Act of 1978. This proposed rule would incorporate into the MAP allocation process the level of export contributions made by U.S. industry participants; authorize reimbursement of certain travel expenses for brand participants and certain necessary packaging and labeling design expenses; extend the activity payment deadline following the end of an activity plan year; establish a 5-year limit, per country, on CCC assistance for brand promotion by single companies; and permit reimbursement to participants based upon issuance of a credit memo as an alternative to a transfer of funds.

DATES: Written comments must be received by March 27, 1998 to be assured of consideration.

ADDRESSES: Comments should be submitted to: Kent Sisson, Director, Marketing Operations Staff, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Avenue, SW., Ag Box 1042, Room 4932S, Washington, DC 20250–1042. Fax: (202) 720–9361.

FOR FURTHER INFORMATION CONTACT: Kent Sisson or Denise Fetters at (202) 720–4327.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. It has been determined that this proposed rule would not have an annual economic effect in excess of $100 million; would not cause a major increase in costs to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have an adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This rule would have preemptive effect with respect to any State or local laws, regulations or policies which conflict with such provisions or which otherwise impede their full implementation; does not have retroactive effect; and does not require administrative proceedings before suit may be filed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (see the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule because CCC is not required by any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule.

Paperwork Reduction Act

The information collection requirements for participating in the MAP were approved for use by the Office of Management and Budget (OMB) through April 30, 2000, and assigned OMB No. 0551–0027. This proposed rule would not impose new information collection requirements.

Background

The MAP is authorized by section 203 of the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5623), which directs the Commodity Credit Corporation (CCC) to establish "a program to encourage the development, maintenance, and expansion of commercial markets for agricultural commodities through cost-share assistance to eligible trade organizations." CCC implements this provision by entering into agreements with non-profit trade associations, private organizations, State agencies, and cooperatives. These agreements provide for sharing the costs of overseas advertising, technical assistance, and other export promotion activities, and may include either generic or brand promotions.

On February 1, 1995, CCC published a final rule in the **Federal Register** (60 FR 6352) governing the operations of the MAP. Since publication of that rule, CCC has had ongoing discussions with program participants concerning program improvements. Some of the changes proposed herein are based on these discussions.

CCC proposes to take State and industry contributions into consideration during the MAP allocation process. Currently, such contributions are not considered in the allocation process. This approach does not recognize the value and significance of contributions made by the States and industries in support of foreign market development efforts. Therefore, CCC is proposing to amend § 1485.14(c)(4) to include State and industry export promotion contributions in the MAP allocation process. In order to protect the integrity of the allocation process, CCC also proposes to amend § 1485.21 to make the participant responsible to CCC for the full contribution upon which the allocation would be based. In other words, the regulations would require the participant to pay to CCC the difference between the amount actually contributed and the amount specified in the allocation approval letter.

Section 1485.16(d)(3) currently disallows reimbursement for costs associated with the design and production of packaging, labeling, and origin identification. However, CCC believes that when changes in packaging, labeling, or origin identification are necessary to meet another country's importing requirements, reimbursement is appropriate. Therefore, this rule proposes to amend § 1485.16(d)(3) and to add a § 1485.16(b)(11) which specifically authorizes reimbursement of necessary costs associated with the design and production of packaging,

labeling, and origin identification. The participant will be responsible for demonstrating that the change was necessitated by foreign importing requirements. CCC will not reimburse any cost for creative artwork and design.

MAP participants currently must transfer payment for expenditures within 4 months of the completion of the activity plan year in order to be reimbursed. For activities which occur near the end of he activity plan year, some participants occasionally fail to meet the 4-month deadline due to delays in receiving the necessary paperwork, such as invoices or purchase orders, from their overseas counterparts. Extending the period of time for payment to 6 months would facilitate participant compliance and still allow for efficient program management. Because reimbursement for these approved activities effectuates the goals of the program, CCC believes that extending the deadline to 6 months is justifiable and proposes such amendment to § 1485.16(h)(3).

CCC currently will not reimburse brand participants for any travel expenses. CCC believes that company participation in a trade show is a crucial step for entering new export markets. Because international travel can be expensive, small firms sometimes must forego attending trade shows which could greatly increase their chances for successful market entry and result in actual sales. To encourage trade show participation by brand participants, CCC is proposing to amend section 1485.16 to authorize reimbursement for the air travel and per diem associated with participation in foreign trade shows. Other travel costs would not be reimbursed. Reimbursement would be limited to travel and per diem expenses for no more than two representatives of the brand participant. Travel and per diem expenses would not be reimbursed unless the participant is an exhibitor.

The MAP currently limits any company to five years of CCC assistance per country per product for brand promotion. CCC believes, however, that it can expand export opportunities more effectively by limiting each company to five years of brand promotion in any country. In other words, after five years of receiving assistance from CCC for brand promotion in a given country, a company would "graduate" from the program in that country. Such company would remain eligible to participate in any other country in which it had received brand promotion assistance for less than five years. This would allow CCC to share its limited resources with a wider variety of American exporters and in a wider variety of markets. After five years of assistance in a country, a company should have established itself in that country and be able to finance 100 percent of its costs. CCC proposes to amend § 1485.14(d)(2) accordingly. CCC will calculate this five-year period as is done under the current rule.

Finally, another participant suggestion is to accept credit memos as documentation for participant reimbursement claims. Credit memos are widely used in business transactions throughout the world; however, CCC does not currently accept such memos as proof of eligible promotion expenditures. CCC had been concerned that monitoring compliance might be difficult if credit memos were allowed. After careful examination and review, including consultation with the Office of Inspector General, CCC believes it can adopt and implement audit controls to permit the use of credit memos while adequately protecting CCC's interests.

CCC believes this policy regarding credit memos prevents some participants, in particular small businesses who would prefer to pay for certain promotional activities using credit memos, from deriving the full benefits of the program. Therefore, CCC proposes to amend § 1485.20(a)(3)(vi) to accept credit memos as supporting documentation for reimbursement and auditing purposes. CCC proposes to add a definition of "credit memo" as a notice that a vendor has decreased an amount owed for promotional expenditures at the time the credit memo is issued. CCC also proposes to add a definition of "expenditure," in § 1485.11, to clarify that an expenditure can be either a transfer of funds or a payment via a credit memo in lieu of a transfer of funds. This rule also proposes conforming changes to accompany the six proposed substantive changes discussed herein.

List of Subjects in 7 CFR Part 1485

Agricultural commodities, Exports.

In consideration of the foregoing, the Commodity Credit Corporation proposes to amend 7 CFR part 1485 as follows:

PART 1485—[AMENDED]

1. The authority citation for 7 CFR 1485 continues to read as follows:

Authority: 7 U.S.C. 5623; 7 U.S.C. 5662–5663 and sec. 1302, Pub. L. 103–66, 107 Stat. 330.

Subpart B—Market Promotion Program

2. Section 1485.11 is amended by deleting the paragraph designations and adding the following two new definitions in alphabetical order:

§ 1485.11 Definitions.

* * * * *

Credit memo—a notice that a vendor has decreased an amount owned for promotional expenditures at the time the credit memo is issued.

* * * * *

Expenditure—the transfer of funds or payment via a credit memo in lieu of a transfer of funds.

* * * * *

3. Section 1485.14 is amended by removing paragraph (d)(3) and revising paragraphs (c)(4) and the first sentence of (d)(2) to read as follows:

§ 1485.14 Application approval and formation of agreements.

* * * * *

(c) * * *

(4) Level of participant's State's, and industry's contributions;

* * * * *

(d) * * *

(2) CCC will not provide assistance to a single company for brand promotion in a single country for more than five years. * * *

* * * * *

4. Section 1485.16 is amended by removing paragraph (a)(2); redesignating paragraph (a)(3) as paragraph (a)(2); adding paragraphs (b)(11) and (12); and revising paragraphs (a)(1), (b)(9), (d)(3), and (h)(3) to read as follows:

§ 1485.16 Reimbursement rules.

(a) * * *

(1) The expenditure was made in furtherance of an approved activity; and

* * * * *

(b) * * *

(9) Part-time contractors such as demonstrators, interpreters, translators and receptionists to help with the implementation of promotional activities such as trade shows, in-store promotions, food service promotions, and trade seminars;

* * * * *

(11) The design and production of packaging, labeling or origin identification, if necessary to meet the importing requirements in a foreign country; and

(12) Air travel not to exceed the full fare economy rate and per diem as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) for no more than two representatives of a single brand participants to participate as trade show exhibitors.

* * * * *

(d) * * *

(3) The design and production of packaging, labeling or origin

identification, except as described in paragraph (b)(11) of this section.

* * * * *

(h) * * *

(3) all expenditures were made for the activity within 6 months following the end of the activity plan year.

5. Section 1485.20 is amended by revising paragraph (a)(3)(vi) to read as follows:

§ 1485.20 Financial management, reports, evaluations and appeals.

(a) * * *

(3) * * *

(vi) Documentation with accompanying English translation supporting each reimbursement claim, including original evidence to support the financial transactions such as canceled checks, receipted paid bills, contracts or purchase orders, per diem calculations, travel vouchers, and credit memos; and

* * * * *

6. Section 1485.21 is revised to read as follows:

§ 1485.21 Failure to make required contribution.

An MAP participant's contribution requirement will be specified in the MAP allocation letter and the activity plan approval letter. The amount specified will be in the amount of contribution to be furnished by the applicant and other sources as indicated in the participant's application. The MAP participant shall pay to CCC in dollars the difference between the amount actually contributed and the amount specified in the allocation approval letter. An MAP participant shall remit such payment within 90 days after the end of its activity plan year

Signed at Washington, DC, on February 9, 1998.

Lon Hatamiya,

Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 98–4706 Filed 2–24–98; 8:45 am]

BILLING CODE 3410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–0999]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for public comment proposed amendments to Regulation C (Home Mortgage Disclosure). The proposed amendments: modify the Loan Application Register to prepare for "year 2000" data systems conversion; delete the requirement to enter the reporting institution's parent company on the Transmittal Sheet; and make certain other technical changes to the regulation and reporting forms.

DATES: Comments must be received on or before April 27, 1998.

ADDRESSES: Comments should refer to Docket No. R–0999, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Pamela C. Blumenthal, Staff Attorney, or John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) *only*, contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Board's Regulation C (12 CFR Part 203) implements the Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2801 *et seq.*). The regulation requires most mortgage lenders located in metropolitan statistical areas (MSAs) to report annually to federal supervisory agencies, and disclose to the public, information about their home mortgage and home improvement lending activity.

II. Discussion of Amendments

A. Year 2000 Changes

Among items reported on the HMDA Loan Application Register (HMDA–LAR), institutions are required to enter the date of application and the date action was taken. Currently, these dates are to be entered using two digits for the year, in the form MM/DD/YY. As part of the interagency Year 2000—Century Date Change program, the Board, on behalf of the agencies responsible for HMDA compliance, has begun modifying software to avoid the confusion of a date in the 21st century with a date in the 20th century—by adding two digits to represent the century. For example, January 15, 2002, would be reflected as 01/15/2002 rather than 01/15/02. Accordingly, the Board proposes to revise the HMDA–LAR form and the instructions (Appendix A to Regulation C) to require the date of application and date of action taken to be entered in the form MM/DD/CCYY.

The paper version of the HMDA–LAR model form in Appendix A shows sample transactions, the first an originated loan and the second a denied application. In both examples, the "date application received" and "date action taken" fields contain dates from 1992. Similarly, the instructions relating to these two fields contain references to 1992 dates. To update these examples and instructions, as well as to remind reporting institutions of the change to a four-character year in the date fields, the proposed amendments replace "92" with "1999" in the examples and instructions.

B. Deletion of Parent Company Information

The Transmittal Sheet (TS) that accompanies the HMDA–LAR currently calls for the name and address of the parent company, if any, of the institution submitting HMDA data. The Board proposes to amend the TS by deleting the requirement to enter the name and address of the submitting institution's parent company, given that in most cases this information is available from the bank structure information already collected by the agencies.

C. Reassignment of Functions of Farmers Home Administration

One of the items of information reported on the HMDA–LAR about a loan or application is the type of loan. Similarly, for loans sold, the lender reports the type of purchaser of the loan. The code sheet lists the Farmers Home Administration (FmHA) as one of the categories (as an insurer or purchaser of loans).

Reorganization within the Department of Agriculture has resulted in the functions of the FmHA being reassigned to two new units, the Farm Service Agency and the Rural Housing Service. For "type of loan," the Board proposes to replace the references to the Farmers Home Administration or FmHA (in the code sheet for the HMDA–LAR form and in the instructions regarding type of loan) with a reference to "Farm Service Agency or Rural Housing Service" (or "FSA/RHS"). With regard to "type of

purchaser," the successor agencies to FmHA do not purchase loans. A secondary market entity that does purchase loans, the Federal Agricultural Mortgage Corporation, is not currently included in the list. Accordingly, the Board proposes to revise the references to FmHA, as a purchaser of loans, to refer instead to the Federal Agricultural Mortgage Corporation or FAMC.

In the collection and reporting of 1998 data, institutions should use the existing codes for FmHA to refer to loans guaranteed by FSA or RHS, or to loans that have been sold to FAMC, as applicable.

D. Paperwork Reduction Act Requirements

Regulations issued by the Office of Management and Budget (OMB) to implement the Paperwork Reduction Act (5 CFR Part 1320) contemplate that regulations imposing data collection requirements include control numbers assigned by OMB. Currently, Regulation C, the instructions for the HMDA–LAR and TS, and the TS form itself contain an OMB control number (7100–0247) assigned to the Federal Reserve in connection with HMDA reporting requirements. The Board is making a technical amendment to the regulation, the instructions, and the TS form—adding the control numbers assigned to the Office of the Comptroller of the Currency (1557–0159), the Federal Deposit Insurance Corporation (3064–0046), and the Office of Thrift Supervision (1550–0021). The National Credit Union Administration and the Department of Housing and Urban Development are in the process of obtaining OMB control numbers; these numbers will be added at a later time. The amendment also includes a number of other minor technical changes in the instructions and the TS form.

E. Clarification Regarding Coverage of Nondepository Lending Institutions

The Board proposes a technical amendment to clarify the coverage of nondepository institutions. The definition of "financial institution" under Regulation C includes nondepository lending institutions that, in the preceding calendar year, originated home purchase loans or refinancings of home purchase loans in an amount of 10 percent or more of the institution's total loan origination volume, measured in dollars. The definition is stated in § 203.2(e)(2) and in paragraph I.D. of Appendix A to the regulation. Even if a nondepository institution meets the definition of "financial institution," however, it is not covered by Regulation C unless the institution either had assets over $10 million or originated 100 or more home purchase loans, including refinancings of home purchase loans, during the preceding calendar year. The instructions (see paragraph I.C. of Appendix A) refer expressly to refinancings, but § 203.3(a)(2)(ii) does not. Some institutions have suggested to the Board that including a reference to refinancings in § 203.3 would be useful.

The Board's notice at the time the 100-loan test was added to Regulation C made clear that refinancings of home purchase loans are included in calculating whether the coverage threshold was reached. (See 57 FR 56963, December 2, 1992.) Accordingly, the Board proposes adding a reference to refinancings of home purchase loans to § 203.3(a)(2)(ii), to conform to paragraph I.C. of Appendix A.

F. Adjustment in Exemption Threshold for Depository Institutions

The Board is required to adjust the exemption threshold for depository institutions annually based on the annual percentage change in the Consumer Price Index. In December 1997, the Board amended the Regulation C staff commentary, adjusting the exemption threshold for depository institutions for 1998 data collection to $29 million (62 FR 66259, December 18, 1997). (The figure for 1997 data collection was $28 million.) Thus, depository institutions with assets of $29 million or less as of December 31, 1997, are exempt from data collection in 1998. The Board is amending the regulation and the instructions for the HMDA–LAR to conform.

G. Effective Date of Amendments

The Board proposes to make the final amendments effective for data collected in calendar year 1998, which will be submitted to supervisory agencies by March 1, 1999. The personal computer data entry software available from the supervisory agencies for 1998 data collection already reflects the amendments relating to four-digit year and the deletion of parent company information. The Board believes that private sector software vendors (and institutions that have developed their own software) have modified their HMDA data entry software in a similar manner, or are in the process of doing so. Accordingly, the Board believes that making these amendments effective for 1998 data will not be burdensome to reporting institutions. However, the Board requests comment from any institutions that may have a problem in complying.

Other amendments in this proposal make changes to Regulation C that are technical or that merely clarify existing rules; the Board does not believe any of these changes would impose compliance burdens on reporting institutions.

These proposed amendments do not affect the reporting of calendar year 1997 data, which are due no later than March 1, 1998; the requirements for data collected in 1997 remain unchanged.

III. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 604), the Board's Office of the Secretary has reviewed the proposed amendments to Regulation C. Overall, the amendments are not expected to have a significant impact on small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

IV. Paperwork Reduction Act

A. Paperwork Burden

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the Board has reviewed the proposed rule under authority delegated to the Board by the Office of Management and Budget. 5 CFR 1320 Appendix A.1.

The proposed revisions to the information collection requirements are found in 12 CFR 203.1, 203.3, and Appendix A to Part 203 and implement the data collection and reporting requirements established by the Home Mortgage Disclosure Act. The proposed amendments would make several technical changes in the reporting requirements of Regulation C; these changes are expected to have no impact on reporting burden. The proposed amendments would also clarify existing requirements of the regulation; these amendments would have no impact on reporting burden.

Regulation C applies to all types of financial institutions and other mortgage-lending institutions that meet the coverage tests. Under the Paperwork Reduction Act, however, the Board accounts for the paperwork burden associated with Regulation C only for state member banks, their subsidiaries, subsidiaries of bank holding companies, and other entities regulated by the Federal Reserve. Any estimates of paperwork burden for other respondents are provided by the federal agency or agencies that supervise them.

The Board estimates that the effect of the amendments on the burden per response is negligible. The estimated burden per response varies from 10 to

10,000 hours, depending on individual circumstances, with estimated averages of 202 hours for state member banks and 160 hours for mortgage banking subsidiaries. The Board expects to receive HMDA–LARs covering 1997 data from 515 state member banks and 106 mortgage banking subsidiaries. Therefore, the total hour burden for institutions the Federal Reserve supervises is 120,990. Since asset data for December 31, 1997 is not yet available, the Board cannot yet estimate the number of respondents who will submit 1998 data or the total annual burden for 1998.

B. OMB Control Number

Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an organization is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers applicable to the HMDA–LAR data collection are as follows: Office of the Comptroller of the Currency, 1557–0159 (approval expires September 30, 1998); Federal Deposit Insurance Corporation, 3064–0046 (approval expires July 31, 2000); Office of Thrift Supervision, 1550–0021 (approval expires December 31, 1999); and Federal Reserve System, 7100–0247 (approval expires May 31, 2000). OMB control numbers and expiration dates for the National Credit Union Administration and the Department of Housing and Urban Development are pending.

List of Subjects in 12 CFR Part 203

Banks, Banking, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation C. New language is shown inside bold-faced arrows, while language that would be removed is set off with brackets.

Pursuant to the authority granted in section 305(a) of the Home Mortgage Disclosure Act, 12 U.S.C. 2804(a), and for the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 203 as set forth below:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

2. § 203.1 would be amended by revising the last sentence of paragraph (a) to read as follows:

§ 203.1 Authority, purpose, and scope.

(a) *Authority.* * * * The information-collection requirements have been approved by the U.S. Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and have been assigned OMB [No.] ►Numbers 1557–0159, 3064–0046, 1550–0021,◄ and 7100–0247► for institutions reporting data to the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the Federal Reserve System, respectively; numbers for the National Credit Union Administration and the Department of Housing and Urban Development are pending◄

3. § 203.3 would be amended as follows:

a. Paragraphs (a)(1) introductory text and (a)(2) introductory text are republished;

b. Paragraph (a)(1)(ii) would be revised; and

c. Paragraph (a)(2)(ii) would be revised.

The proposed revisions read as follows:

§ 203.3 Exempt institutions.

(a) *Exemption based on location, asset size, or number of home purchase loans.* (1) A bank, savings association, or credit union is exempt from the requirements of this regulation for a given calendar year if on the preceding December 31:

(i) * * *

(ii) The institution's total assets were at or below the asset threshold established by the Board. For data collection in [1997]►1998◄, the asset threshold is [$28]►$29◄ million as of December 31, [1996]►1997◄. * * *

(2) A for-profit mortgage lending institution (other than a bank, savings association, or credit union) is exempt from the requirements of this regulation for a given calendar year if:

(i) * * *

(ii) The institution's total assets combined with those of any parent corporation were $10 million or less on the preceding December 31, and the institution originated fewer than 100 home purchase loans ►(including refinancings of home purchase loans)◄ in the preceding calendar year.

4. In appendix A to part 203 under the heading PAPERWORK REDUCTION ACT NOTICE, the undesignated paragraph would be revised to read as follows:

Appendix A to Part 203—Form and Instructions for Completion of HMDA Loan/Application Register

* * * * *

Paperwork Reduction Act Notice

[Public reporting burden for collection of this information is estimated to vary from 10 to 10,000 hours per response, with an average of 202 hours per response for state member banks and 160 hours per response for mortgage banking subsidiaries, including time to gather and maintain the data needed and to review instructions and complete the information collection.] This report is required by law (12 USC 2801–2810 and 12 CFR 203). An agency may not conduct or sponsor, and an organization is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control [number] ►Numbers◄ for this information collection [is] ►are 1557–0159, 3064–0046, 1550–0021, and◄ 7100–0247 ► for institutions reporting data to the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the Federal Reserve System, respectively; numbers for the National Credit Union Administration and the Department of Housing and Urban Development are pending◄ Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to [Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551;] ►the respective agencies◄ and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

Appendix A to Part 203—[Amended]

5. Appendix A to Part 203 would be amended as follows:

a. Paragraph I.A.2. would be revised;

b. The first sentence of Paragraph V.A.2. and paragraph V.A.3. would be revised;

c. Paragraph V.B.3. introductory text would be revised; and

d. Paragraph V.E.1. introductory text is republished and paragraph V.E.1.4. would be revised.

The proposed revisions read as follows:

I. Who Must File a Report

A. Depository institutions

1. * * *

2. For data collection in [1997]►1998◄, the asset threshold is [$28]►$29◄ million in total assets as of December 31, [1996]►1997◄.

* * * * *

V. Instructions for Completion of Loan/Application Register

A. Application or Loan Information

1. * * *

2. *Date application received.* Enter the date the loan application was received by your institution by month, day, and year, using numerals in the form MM/DD/►CC◄YY (for example, 01/15/[92]►1999◄). * * *

3. *Type.* Indicate the type of loan or application by entering the applicable code from the following:

1—Conventional (any loan other than FHA, VA [or FmHA] ►, FSA, or RHS◄ loans)

2—FHA-insured (Federal Housing Administration)
3—VA-guaranteed (Veterans Administration)
4—[FmHA-insured (Farmers Home Administration)] ►FSA/RHS-guaranteed (Farm Service Agency or Rural Housing Service)◄
* * * * *

B. Action Taken

* * * * *

3. *Date of action.* Enter the date by month, day, and year, using numerals in the form MM/DD/►CC◄YY (for example, 02/22/[92]►1999◄).

* * * * *

E. Type of Purchaser

1. Enter the applicable code to indicate whether a loan that your institution originated or purchased was then sold to a secondary market entity within the same calendar year:

* * * * *

4—[FmHA (Farmers Home Administration)]FAMC (Federal Agricultural Mortgage Corporation)

* * * * *

6. In Appendix A, the LOAN/APPLICATION REGISTER Transmittal Sheet would be revised to read as follows:

BILLING CODE 6210-01-P

LOAN/APPLICATION REGISTER

Form FR HMDA-LAR.
OMB [No.] ▸Nos.1557-0159 (OCC), 3064-0046 (FDIC), 1550-0021 (OTS), and◂ 7100-0247 ▸(FRB); NCUA and HUD numbers pending◂. [Approval expires May 31, 2000.]

TRANSMITTAL SHEET

You must complete this transmittal sheet (please type or print) and attach it to the Loan/Application Register, required by the Home Mortgage Disclosure Act, that you submit to your supervisory agency.

Reporter's Identification Number | Agency Code: ⌊_⌋-⌊_⌋

Reporter's Tax Identification Number: ⌊_⌋⌊_⌋-⌊_⌋⌊_⌋⌊_⌋⌊_⌋⌊_⌋

Total line entries contained in attached Loan/Application Register: _____

The Loan/Application Register that is attached covers activity during the year _____ and contains a total of ___ pages.

Enter the name and address of your institution. The disclosure statement that is produced by the Federal Financial Institutions Examination Council will be mailed to the address you supply below:

_____
Name of Institution

_____
Address

_____
City, State, ZIP

Enter the name, telephone number, and facsimile number of a person who may be contacted about questions regarding your register:

_____ (___) _____ (___) _____
Name | Telephone Number | Facsimile Number [(if applicable)]

[If your institution is a subsidiary of another institution or corporation, enter the name of your parent:

_____
Name

_____
Address

_____
City, State, ZIP]

An officer of your institution must complete the following section.

I certify to the accuracy of the data contained in this register.

_____ _____ _____
Name of Officer | Signature | Date

7. In Appendix A, the LOAN/APPLICATION REGISTER would be revised to read as follows:

BILLING CODE 6210-01-C

LOAN/APPLICATION REGISTER Page___of___

Form FR HMDA-LAR

Name of Reporting Institution _____ City, State, ZIP _____ Reporter's Identification Number _____ Agency Code _____

All columns (except Reasons for Denial) must be completed for each entry. See the instructions for details.

Application or Loan Information						Action Taken		Property Location				Applicant Information A = Applicant CA = Co-Applicant					Type of Purchaser of Loan	Reasons for Denial (Optional)
												Race or National Origin		Sex		Gross Annual Income in thousands		
Application or Loan Number	Date Application Received (mm/dd/yy)	Type	Purpose	Owner Occupancy	Loan amount in thousands	Type	Date (mm/dd/yy)	Four-Digit MSA Number	Two-Digit State Code	Three-Digit County Code	Six-Digit Census Tract	A	CA	A	CA			
Example of Loan Originated																		
2 3 - 6 0 7 4 3 9	01/15/1999	2	1	1	65	1	02/22/1999	8840	51	059	4 3 1 9 . 0 3	3	8	1	4	24	7	
Example of Application Denied																		
0 3 5 3 4 5 6 7 8 9 - 2 5 7 6 5 4 3 2 1 0	03/20/1999	1	1	1	125	3	04/30/1999	0450	01	015	0 0 2 1 . 0 0	5	4	2	1	55	0	4 1 5

8. In Appendix A, the LOAN/APPLICATION REGISTER CODE SHEET would be revised to read as follows:

Loan/Application Register Code Sheet

Use the following codes to complete the Loan/Application Register. The instructions to the HMDA–LAR explain the proper use of each code.

Application or Loan Information

Type:

1—Conventional (any loan other than FHA,VA or FmHA loans)
2—FHA-insured (Federal Housing Administration)
3—VA-guaranteed (Veterans Administration)
4—[FmHA-insured (Farmers Home Administration)] ►FSA/RHS-guaranteed (Farm Service Agency or Rural Housing Service)◄

Purpose:

1—Home purchase (one-to-four family)
2—Home improvement (one-to-four family)
3—Refinancing (home purchase or home improvement, one-to-four family)
4—Multifamily dwelling (home purchase, home improvement, and refinancings)

Owner-Occupancy:

1—Owner-occupied as a principal dwelling
2—Not owner-occupied
3—Not applicable

Action Taken:

1—Loan originated
2—Application approved but not accepted
3—Application denied by financial institution
4—Application withdrawn by applicant
5—File closed for incompleteness
6—Loan purchased by your institution

Applicant Information

Race or National Origin:

1—American Indian or Alaskan Native
2—Asian or Pacific Islander
3—Black
4—Hispanic
5—White
6—Other
7—Information not provided by applicant in mail or telephone application
8—Not applicable

Sex:

1—Male
2—Female
3—Information not provided by applicant in mail or telephone application
4—Not applicable

Type of Purchaser

0—Loan was not originated or was not sold in calendar year covered by register
1—FNMA (Federal National Mortgage Association)
2—GNMA (Government National Mortgage Association)
3—FHLMC (Federal Home Loan Mortgage Corporation)
4—[FmHA (Farmers Home Administration)] FAMC ►(Federal Agricultural Mortgage Corporation)◄
5—Commercial bank
6—Savings bank or savings association
7—Life insurance company
8—Affiliate institution
9—Other type of purchaser

Reasons for Denial (Optional)

1—Debt-to-income ratio
2—Employment history
3—Credit history
4—Collateral
5—Insufficient cash (downpayment, closing costs)
6—Unverifiable information
7—Credit application incomplete
8—Mortgage insurance denied
9—Other

By order of the Board of Governors of the Federal Reserve System, February 18, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–4609 Filed 2–24–98; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWA–5]

RIN 2120–AE97

Proposed Establishment of Cincinnati/Northern Kentucky International Airport Class B Airspace Area and Revocation of Cincinnati/Northern Kentucky International Airport Class C Airspace Area, Covington, KY; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM); correction.

SUMMARY: This correction inserts at the end of the proposed rule a copy of the Cincinnati/Northern Kentucky International Airport Class B airspace area map, which was inadvertently omitted.

SUPPLEMENTARY INFORMATION:

On February 10, 1998 (63 FR 6818), the FAA published in the **Federal Register** an NPRM to establish a Class B airspace area at the Cincinnati/Northern Kentucky International Airport and revoke the existing Class C airspace area. Specifically, the FAA is proposing to establish a Class B airspace area that would consist of airspace within a 25-mile radius of the Cincinnati/Northern Kentucky International Airport. The airspace would extend from the surface or higher up to and including 8,000 feet above mean sea level. The FAA is proposing this action to enhance safety, reduce the potential for midair collisions, and to better manage air traffic operations into, out of, and through the Cincinnati/Northern Kentucky area.

Correction to the Proposed Amendment

On February 10, 1998, the FAA published in the **Federal Register** an NPRM to establish a Class B airspace area at the Cincinnati/Northern Kentucky International Airport and revoke the existing Class C airspace area [63 FR 6818]. This correction inserts the attached Cincinnati/Northern Kentucky International Airport Class B airspace area map at the end of the NPRM on page 6823, volume 63, number 27.

Issued in Washington, DC on February 17, 1998.

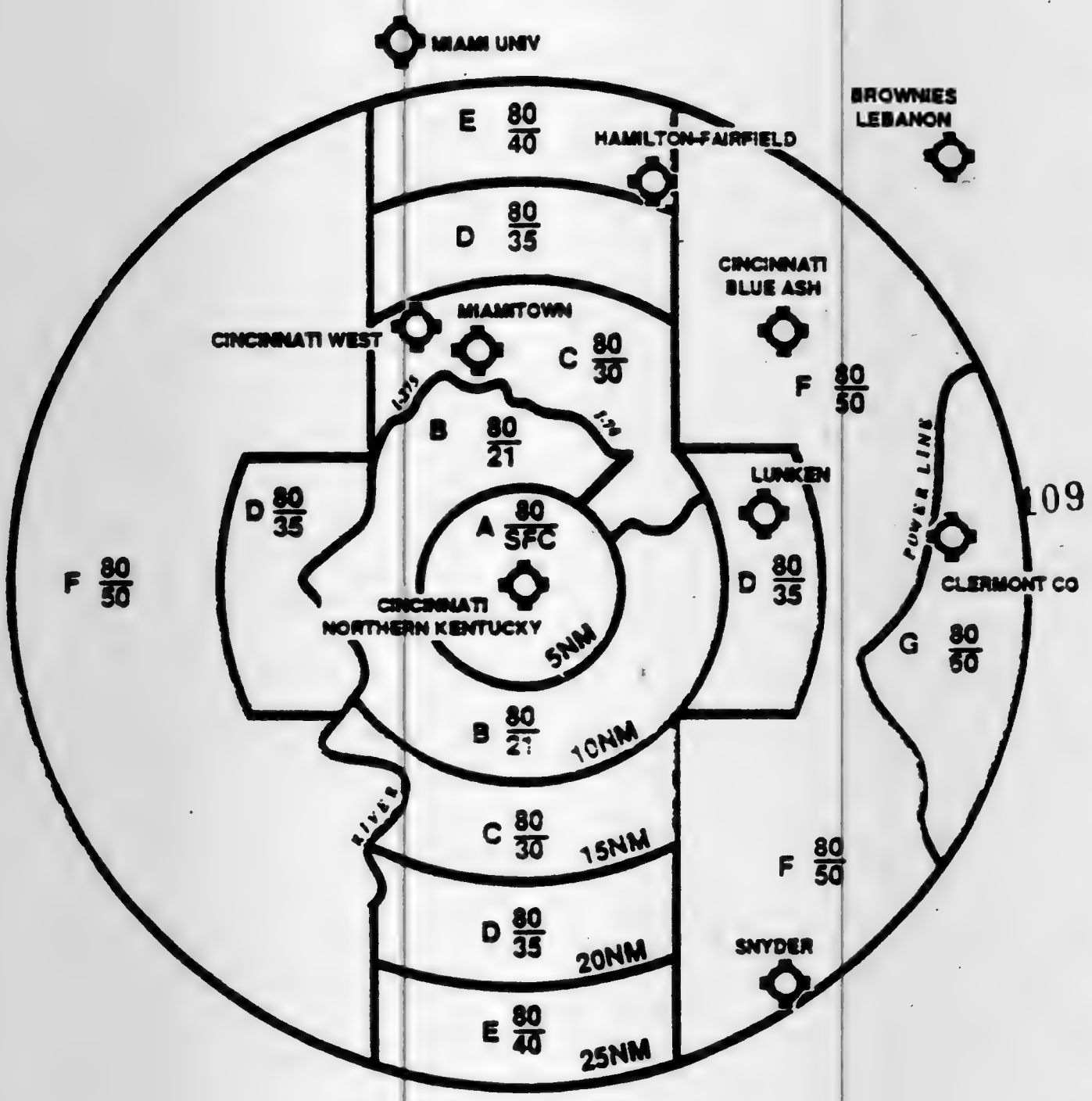
Donald P. Byrne,

Assistant Chief Counsel for Regulations Division.

BILLING CODE 4910–13–M

COVINGTON, KENTUCKY
Cincinnati Class B Airspace Area
COVINGTON/CINCINNATI/NORTHERN KENTUCKY INTERNATIONAL AIRPORT
AIRPORT ELEVATION - 897 - FEET

(Not to be used for navigation)



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Branch
ATP-120

[FR Doc. 98–4483 Filed 2–24–98; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–17]

Proposed Establishment of Class E Airspace; Stevensville, MT

AGENCY: Federeal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would establish Class E Airspace at Stevensville, MT. The establishment of Class E airspace is necessary for the development of a new Standard Instrument Approach Procedure (SIAP) utilizing the Global Positioning System (GPS) at the Stevensville Airport, Stevensville, MT. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed to accommodate this SIAP and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before April 13, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 97–ANM–17, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 97–ANM–17, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ANM–17." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future MPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR 71) to establish Class E airspace at Stevensville, MT. This amendment would provide airspace necessary to fully encompass the GPS–A SIAP to the Stevensville Airport, Stevensville, MT. This amendment proposes to make a 700-foot Class E area around the Stevensville Airport, with an extension to the northwest and an extension to the southeast, to meet necessary airspace criteria for aircraft transitioning between the terminal an en route environments. The FAA establishes Class E airspace extending upward from 700 feet AGL, where necessary, to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide safe and efficient use of the navigable airspace, to promote safe flight operations under IFR at the Stevensville Airport, and between the terminal and en route transition stages. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective

September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Stevensville, MT [New]

Stevensville Airport, MT
(Lat. 46°31'30" N, long. 114°03'04" W)

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 46°46'00" N, long. 114°07'00" W; to lat. 46°46'00" N, long. 113°58'00" W; to lat. 46°40'00" N, long. 113°50'00" W; to lat. 46°30'00" N, long. 113°50° 00" W; to lat. 46°24'00" N, long 113°58'00" W; to lat. 46°24'00" N, long. 114°10'00" W; to lat. 46°40'00" N, long. 114°10'00" W; thence to point of beginning, excluding that portion within the Missoula, MT Class E airspace area.

* * * * *

Issued in Seattle, Washington, on February 2, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98– 4769 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–20]

Proposed Revision of Class E Airspace, Livingston, MT, and Butte, MT, and Removal of Class E Airspace, Coppertown, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposed rule would combine the Coppertown, MT, Class E airspace area with the existing Butte, MT, Class E airspace area. This combined airspace area would be designated the Butte, MT, Class E airspace area. This proposal would also amend the adjacent Class E Airspace at Livingston, MT, by providing additional controlled airspace to accommodate the development of new Standard Instrument Approach Procedures (SIAP) utilizing the Global Positioning System (GPS) at the Livingston Airport.

DATES: Comments must be received on or before April 13, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 97–ANM–20, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 97–ANM–20, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2577.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ANM–20." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR 71) to remove Coppertown, MT, Class E airspace while revising Class E airspace at Livingston, MT, and Butte, MT. The proposal enlarges Butte, MT, airspace by combining it with Coppertown, MT, airspace. The incorrectly named Coppertown, MT, airspace does not serve an airport, has no associated town, and is solely a navigational aid located close to Butte, MT. This amendment would also provide the additional airspace necessary to fully encompass the GPS–A SIAP to the Livingston Airport, Livingston, MT. Additionally, this amendment proposes to revise the common airspace boundaries where Livingston, MT, and Butte, MT, airspace areas meet in order to better distribute the airspace serving the respective airports and to provide for easier cartography. The intended effect of this proposal would be to provide safe and efficient use of the navigable airspace and to promote safe Instrument Flight Rules operations between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a

significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Coppertown, MT [Removed]

* * * * *

ANM MT E5 Butte, MT [Revised]

Bert Mooney Airport, Butte, MT
(Lat. 45°57'17" N, long. 112°29'51" W)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 46°20'30" N, long. 112°48'33" W; to lat. 46°10'30" N, long. 113°07'03" W; to lat. 45°57'05" N, long. 112°47'43" W; to lat. 45°51'20" N, long. 112°27'33" W; to lat. 46°03'20" N, long. 112°20'03" W; to lat. 46°18'30" N, long. 112°30'33" W; thence to point of beginning; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 45°35'00" N, long. 113°05'00" W; to lat. 46°37'00" N, long. 113°05'00" W; to lat. 46°37'00" N; long. 112°26'00" W; to lat. 46°16'00" N, long. 112°00'00" W; to lat. 45°35'00" N, long. 112°00'00" W; thence to point of beginning; excluding that airspace within Federal airways, and the Helena, MT, the Dillion, MT, and the Missoula, MT, Class E airspace areas.

ANM MT E5 Livingston, MT [Revised]

Mission Field, Livingston, MT
(Lat. 45°41'58" N, long. 110°26'54" W)

That airspace extending upward from 700 feet above the surface within a 4.2-mile radius of the Livingston Airport, and that airspace bounded by a line beginning at lat. 45°40'30" N, long. 110°15'20" W; to lat 45°47'30" N, long. 110°15'30" W; to lat. 45°47'30" N, long. 110°23'00" W; to lat. 46°02'20" N, long. 110°31'00" W; to lat. 45°58'00" N, long. 110°47'15" W; to lat. 45°38'45" N, long. 110°37'00" W, thence to point of beginning and that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 46°16'00" N, long. 112°00'00" W; to lat. 46°37'00" N, long. 111°30'00" W; to lat. 46°37'00" N, long. 110°43'00" W; to lat. 46°00'00" N; to long. 110°29'00" W; to lat. 46°00'00" N, long. 109°30'00" W; to lat. 45°30'00" N, long. 109°30'00" W; to lat. 45°30'00" N, long. 112°00'00" W; thence to point of beginning, excluding that airspace within Federal airways, the Helena, MT, and the Billings, MT, Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on February 2, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–4768 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–95–028]

Drawbridge Operating Regulation; Red River, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice; withdrawal of proposed rule.

SUMMARY: The Coast Guard is withdrawing a notice of proposed rulemaking to amend the regulation for the draws of the two swing span railroad bridges over the Red River, miles 227.0 and 228.2, near Shreveport, Louisiana. The proposed rule did not meet the reasonable needs of navigation. The Coast Guard is withdrawing the notice of proposed rulemaking and terminating this rulemaking.

DATES: The proposed rule is withdrawn effective February 25, 1998.

ADDRESSES: Unless otherwise indicted, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. Commander (ob) maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT:

Mr. David Frank, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine St., New Orleans, LA, 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 8, 1996, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (61 FR 15437). The NPRM proposed to change the requirement that the draws of the two swing span railroad bridges over the Red River, miles 227.0 and 228.2, near Shreveport, Louisiana, be opened on signal for passage of vessels, Monday through Friday, during daylight hours only, with five days prior written notice. The draws presently open on signal with 48 hours advance notice.

The Coast Guard received 12 letters in response to the NPRM objecting to the proposed rule. The majority of the respondents objected to a five day advanced notice opening requirement as burdensome. Respondents indicated this was particularly true given the number of stabilization projects and increased trade on this stretch of the Red River. The applicant was given an opportunity to address the objections. The applicant has not addressed the concerns of these objectors and has not offered an alternative proposal.

The Coast Guard agreed with the comments that the proposal was too burdensome and did not meet the reasonable needs of vessel traffic. The Kansas City Southern Railway Company, owner of one of the bridges in question, has not offered an alternative proposal. The Coast Guard is, therefore, withdrawing the notice of proposed rulemaking and terminating further rulemaking on this proposal (CGD08–95–028).

Dated: February 10, 1998.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander Eighth Coast Guard District.

[FR Doc. 98–4835 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 22 and 59

[FRL–5966–7]

RIN 2020–AA13

Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is today proposing technical amendments and other refinements to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 CFR part 22, including the addition of new rules for administrative proceedings not governed by section 554 of the Administrative Procedure Act.

DATES: Comments must be submitted on or before April 27, 1998.

ADDRESSES: Comments should be submitted in writing to Enforcement and Compliance Docket and Information Center (2201A), Office of Enforcement and Compliance Assurance, Office of Regulatory Enforcement, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460 or via electronic mail to crop-comments@epamail.epa.gov. Comments submitted on paper must be submitted in triplicate.

EPA will make available, both in paper form and on the internet, a record of comments received in response to this document. The official docket will be a paper record of all comments received in writing or by electronic mail. This record may be reviewed at room 4033 of the Ariel Rios Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20044. Persons interested in reviewing the comments must make advance arrangements to do so by calling 202–564–2614. A reasonable fee may be charged by EPA for copying docket materials. The Agency also will publish a copy of the official docket on the Office of Enforcement and Compliance Assurance's internet home page at http:\\www.epa.gov\oeca\r*egstat2.html. The Agency intends that this internet docket should duplicate the official paper record, however, if technological or resource limitations make it infeasible to include one or more comments on the internet docket, the internet docket will identify those comments available only in the official paper docket.

FOR FURTHER INFORMATION CONTACT: Scott Garrison (202–564–4047), Office Enforcement and Compliance Assurance, Office of Regulatory Enforcement (2248A), U.S. Environmental Protection Agency, Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION:

I. Background

The Consolidated Rules of Practice ("CROP") at 40 CFR part 22 were promulgated in 1980 to establish uniform procedural rules for administrative enforcement proceedings required under various environmental statutes to be held on the record after opportunity for a hearing in accordance with section 554 of the Administrative Procedure Act, 5 U.S.C. 551 et seq. ("APA"). Aside from the addition of statute-specific amendments to subpart H (see e.g., Rules of Practice Governing the Administrative Assessment of Class II Civil Penalties Under the Clean Water Act, 55 FR 23838 (1990), codified at 40 CFR 2.38), the CROP have not been substantially revised since their initial promulgation. Today's proposal would correct a number of inconsistencies and ambiguities in the procedures which have become apparent through experience with the CROP. In addition, the Agency proposes to update and modernize the procedures to make them more "user-friendly" and to aid in streamlining administrative practice.

On July 1, 1991, EPA proposed a separate set of procedures for the administrative assessment of penalties where a hearing on the record under APA section 554 is not required, commonly referred to as "non-APA" enforcement actions. See 56 FR 29996. These procedures, to be codified at 40 CFR part 28, were authorized by Congress in various statutes. *Id.* The proposed "part 28" procedures were designed to provide a quick and understandable process by which to resolve non-APA enforcement actions, while protecting the basic due process rights of a respondent. *Id.* at 29997 (discussion of constitutional due process requirements as established in *Matthews* v. *Eldridge*, 424 U.S. 319 (1976)). EPA subsequently issued guidance in September, 1991, to the EPA Regional Offices calling for use of the proposed part 28 procedures for Class I penalty actions under section 309(g) of the Clean Water Act ("CWA") and, several months later, for Class I penalty actions under section 311(b)(6) of the CWA. Although use of these procedures did result in quicker resolution of administrative penalty cases than had occurred before, Agency experience revealed that the majority of EPA Regions were following, with some modification, the CROP procedures for non-APA enforcement actions, in large measure out of familiarity with the CROP. A side-by-side comparison of the proposed part 28 with the CROP reveals many similar sections and procedures.

The proposed part 28 introduced a number of useful concepts to EPA's administrative practice, such as limitations on written legal arguments or statements (§ 28.8), a more clearly described commenter role for certain CWA and Safe Drinking Water Act ("SDWA") cases, expansion of information exchange and restrictions on formal discovery (§ 28.24), a more structured default procedure (§ 28.21), and simplified and expedited settlement procedures (§ 28.22). Many of these concepts are the basis for today's proposed revisions to the APA procedures of the CROP. *See, e.g.,* proposed § 22.18(a) "Quick resolution" provisions. Given the many similarities between the CROP and proposed part 28, as well as the Agency's long-standing goal of enhancing administrative efficiency, the Agency believes that maintaining two stand-alone sets of procedures for its administrative enforcement practice which contain more similarities than differences would be inefficient and confusing. The specific requirements appropriate to non-APA enforcement actions can be presented effectively and efficiently as a short subpart to the CROP. Accordingly, today's proposal includes in subpart I modifications to the basic CROP suitable for non-APA proceedings. EPA expects to withdraw the part 28 proposal upon issuance of these CROP amendments as a final rule.

Similarly, the proposed revisions to the CROP would supersede and replace the anticipated rules governing non-APA hearings on field citations under section 113(d)(3) of the Clean Air Act ("CAA"). On May 3, 1994, EPA published the proposed Field Citation Program to be codified at 40 CFR 59. 59 FR 22776. EPA expects that the part 59 Field Citation Program will be promulgated as a final rule before the completion of this CROP rulemaking. Subpart B of part 59, "Rules Governing Hearings on Field Citations," will govern CAA section 113(d)(3) proceedings until these CROP revisions become final. EPA expects that upon promulgation of the CROP revisions as a final rule, subpart B of part 59 would be repealed and the revised CROP would be used for CAA section 113(d)(3) proceedings.

In addition, in order to implement the SDWA Amendments of 1996, EPA anticipates that it will soon repeal subpart J of 40 CFR part 142, "Procedures for PWS Administrative Compliance Orders." Section 142.208 of that subpart stated that the CROP procedures are to apply to administrative actions enforcing compliance orders issued under section 1414(g) of the SDWA, 42 U.S.C. 300g–3. That instruction is now part of this proposed rulemaking, and EPA intends to use the relevant CROP procedures proposed below as procedural guidance for SDWA section 1414(g)(3)(B) administrative enforcement actions during the interim period before final promulgation of revisions to the CROP.

On December 11, 1996, EPA proposed to modify the procedures for termination of National Pollutant Discharge Elimination System ("NPDES") permits issued under the CWA and for permits issued under Subtitle C of the Resource Conservation and Recovery Act ("RCRA"). 61 FR 65268. EPA proposed to substitute the procedures contained in the CROP governing revocation, termination and suspension of other EPA permits for the existing procedures in part 124, subpart E (which cover only termination of NPDES and RCRA Subtitle C permits). EPA proposed two changes to the CROP to implement this proposal: (1) EPA proposed to insert the word "termination" or "terminate" as appropriate wherever the existing CROP refers to "revocation or suspension" or "revoke or suspend" permits; (2) EPA proposed to add a set of supplemental rules at § 22.44 to cover NPDES or RCRA permit terminations. *See* 60 FR 65280 for a discussion of this proposal. The comment period on this proposal closed on February 10, 1997. For the convenience of the public, today's proposal reflects all the changes to the CROP EPA has previously proposed, with some minor editorial changes. EPA is not, however, soliciting new comments on changes previously proposed, nor will EPA respond to any such comments in the final rule to this proposal. Any comments on the proposal to terminate NPDES or RCRA permits using the CROP procedures should be directed to the docket for that proposal, referenced in the December 11, 1996 document. It should be noted, however, that such comments will be considered late-filed.

II. Proposed Revisions

A. Revisions to Part 22

1. Statement of authority

The "Authority" section is reorganized in numeric order, and updated to include additional authorities. To the extent that these additional authorities change the scope of the CROP, they are discussed below in regard to § 22.01(a).

2. Scope of the Rules

Section 22.01(a): The phrase "Consolidated Rules of Practice" would be substituted for other phrases such as "these rules of practice," "these rules," and "this part," for consistency here in paragraph (a) and throughout the CROP. The first sentence would also be revised to clarify that these procedures apply only to administrative adjudications. Substantive changes to the scope of the CROP are discussed in detail below.

The scope section will mandate that the Agency shall use the CROP procedures for all administrative adjudicatory proceedings listed therein. Although the Agency does not commit itself to apply these procedures to administrative actions other than those listed in the scope, where it has discretion to do so, the Agency may elect to informally apply these procedures for other adjudications not listed. The Agency has, however, attempted to make the proposed scope a complete list of all the proceedings likely to be commenced subject to the CROP. Note, too, that the CROP only creates a set of procedures for use in the exercise of some of EPA's statutory enforcement authorities, and neither extends nor limits the substantive jurisdiction of the Agency. Many provisions of the CROP reflect policy choices by the Agency to exercise less than the full scope of its statutory and constitutional authority (e.g., extending to 30 days the deadline for all answers (§ 22.15), procedures for issuance of default orders (§ 22.17)). As such, these limitations on the Agency's authority apply only in proceedings under the CROP, and the Agency may modify these requirements in future rulemakings.

Section 22.01(a)(2): The CROP would be expanded to include field citation proceedings under 42 U.S.C. 7413(d)(3), as discussed above. Part 22 currently applies to penalty proceedings under section 7413(d)(1), and the proposed revision would expand the scope to include all of section 7413(d).

Section 22.01(a)(3): A reference to 33 U.S.C. 1415(f) inadvertently omitted from the 1980 CROP is added for clarity and consistency.

Section 22.01(a)(4): This paragraph is revised to clarify which sections of the Solid Waste Disposal Act (SWDA) authorize the various proceedings. The scope is expanded by inclusion of proceedings to suspend or revoke a permit under sections 3005(d) and 3008(h) (42 U.S.C. 6925(d) and 6928(h)) as proposed in the Agency's December 11, 1996, proposal noted above (60 FR 65280). The scope is also expanded to include assessment of administrative civil penalties under 42 U.S.C. 6961 within the CROP. Reference to 42 U.S.C. 6992d is deleted, because the demonstration program for medical wastes and its accompanying regulations (40 CFR part 259) expired on July 22, 1991. The scope is revised to clarify that the CROP applies to the issuance of compliance orders under section 3008(a) or section 9006(a) of the SWDA (42 U.S.C. 6928(a) or 6991e(a)).

Additionally, the paragraph would be revised to specify that the CROP is applicable to both the assessment of civil penalties and the issuance of compliance orders pursuant to section 4005(c)(2) of the SWDA (42 U.S.C. 6945(c)(2)). That section, enacted as part of the 1984 Hazardous and Solid Waste Amendments, authorizes EPA to enforce the Subtitle D prohibition against open dumping in certain circumstances. Although section 4005(c)(2) refers to the enforcement authorities available under section 3008, the proposed revision would clarify that the CROP would apply to these actions.

The procedures governing most SWDA corrective action orders appear at 40 CFR part 24, but under certain circumstances the CROP may apply. A new subparagraph (B) would clarify that the CROP generally does not apply to SDWA section 3008(h) corrective action orders, but only to those that are part of a proceeding commenced under the CROP for claims under section 3008(a), to suspend or revoke authorization to operate under section 3005(e), or for penalties for non-compliance with a section 3008(h) order. A new subparagraph (C) would clarify that the CROP procedures generally do not apply to corrective action orders authorized under SWDA section 9003(h)(4) (42 U.S.C. 6991b(h)(4)), except where the Agency includes such orders in a complaint seeking civil penalties pursuant to section 9006. All other corrective action orders are subject to the part 24 procedures.

Section 22.01(a)(5): A reference would be added to include proceedings to assess civil administrative penalties pursuant to section 207 of the Asbestos

Hazard Emergency Response Act ("AHERA"), codified as Title II of the Toxic Substance Control Act, 15 U.S.C. 2647. The CROP was amended June 5, 1989, to add § 22.47, a supplemental rule governing administrative penalty proceedings under AHERA section 207, however, there was no corresponding amendment to § 22.01(a). 54 FR 24112. The proposed revision would make clear that such proceedings are governed by the CROP.

Section 22.01(a)(6): Section 4301(b) of the Oil Pollution Act of 1990 amended section 311(b)(6) of the CWA to allow administrative penalty proceedings. This proposed rule would expand the scope of the CROP to include proceedings to assess administrative civil penalties under section 311(b)(6). The limitation to Class II proceedings would be dropped from the scope, requiring use of the CROP for non-APA Class I proceedings as well as Class II penalty proceedings, under both sections 309(g) and 311(b)(6) of the CWA. Special provisions regarding the non-APA Class I proceedings would appear in subpart I of the CROP. The proposed revision of § 22.01(a)(6) also reflects the addition of proceedings to terminate a permit issued under section 402(a) of the CWA, as proposed in the December 11, 1996 FR notice discussed above. 60 FR 65,268. Pursuant to that proposed rule, the existing part 124 procedures for terminating permits would be supplanted by the CROP.

Section 22.01(a)(9): A reference would be added to include proceedings for the assessment of civil administrative penalties under 42 U.S.C. 1423(c) and 1447(b) within the scope of the CROP. A further reference would be added regarding the issuance of any order requiring both compliance and the assessment of a civil penalty under 42 U.S.C. 1423(c). These references reflect the amendments to the Safe Drinking Water Act, Public Law 104–182, 110 Stat. 1613 (1996), which affect administrative penalty assessment against public water systems and federal facilities.

Section 22.01(a)(10): A reference would be added to include proceedings for the assessment of civil penalties or the issuance of compliance orders under section 5 of the Mercury-Containing and Rechargeable Battery Management Act (42 U.S.C. 14304). The Mercury-Containing and Rechargeable Battery Management Act would phase out the use of mercury in batteries and provide for the efficient and cost-effective collection and recycling or proper disposal of batteries regulated under the Act. Section 5 of the Act authorizes administrative enforcement for violations of the Act, except for section 104 of the Act, which is enforceable under the Solid Waste Disposal Act.

Section 22.01 (b): A reference would be added to include the new subpart I, and to provide that subpart H or I provisions will supersede any conflicting provisions in subparts A—G.

Section 22.01(c): This provision would be amended to empower the Environmental Appeals Board the authority to resolve procedural matters not covered in the CROP because it has been designated by the Administrator to perform this function.

3. Definitions

Section 22.03(a): Surplus language would be deleted from the definition of "Act". No substantive change is intended.

A definition of "Business confidentiality claim" would be added in order to specifically link the treatment of confidential business information ("CBI") in CROP proceedings to the general provisions for CBI in 40 CFR part 2, subpart B. This amendment will clarify that the same protections that apply to use of CBI in other Agency actions will apply in proceedings under the CROP.

A definition of "Clerk of the Board" would be added to identify the Clerk of the Environmental Appeals Board, who should receive service of pleadings and documents in matters pending before the Board.

A definition of "Commenter" would be being added for purposes of administrative civil penalty actions under Section 309(g) of the Clean Water Act, Class II administrative civil penalty actions under Section 311(b)(6) of the Clean Water Act, and for actions under Section 1423(c) of the Safe Drinking Water Act, in order to provide commenter procedures required by those Acts.

The definition of "Complainant" would be revised to add references to the provisions covering commencement of a proceeding and the content and amendment of a complaint.

The definition of "Complaint" would be deleted, as it is fully covered by the operative provisions of the rule at § 22.14.

The definition of "Consent Agreement" would be deleted, as it is fully covered by the operative provisions of the rule at § 22.18(b)(2).

The address of the Environmental Appeals Board would be deleted from its definition, as redundant with § 22.30(a).

The definition of "Final Order" would be clarified by specifically including Consent Orders issued pursuant to § 22.18.

The definition of "Hearing Clerk" would be amended to update the mailing address.

The definition of "Initial Decision" would be expanded to include references to the operative sections of the CROP at §§ 22.17(c), 22.20(b) and 22.27, thereby distinguishing initial decisions from other decisions rendered by a Presiding Officer.

The definition of "permit" would be expanded to include permits issued under Section 402(a) of the Clean Water Act and Section 3005(d) of the Resource Conservation and Recovery Act, consistent with the December 11, 1996, proposed rule (60 FR 65,268). As used in the CROP, the term "permit" would also apply to authority to operate under interim status pursuant to section 3005(e) of the Resource Conservation and Recovery Act.

The definition of "Presiding Officer" would be clarified and amended to provide that, until an answer is filed, the Regional Judicial Officer serves as Presiding Officer. This change is one of form only, as § 22.16(c) of the existing Rule allows the Regional Administrator or a delegate to rule on motions until an answer is filed, and in practice this authority is delegated to Regional Judicial Officers. The definition also would be amended to allow Regional Judicial Officers to preside in proceedings under subpart.

The definition of "Regional Administrator" would be revised for clarity and to eliminate unnecessary language. EPA would delete from the existing rule the provision defining the term "Regional Administrator" to refer to the Environmental Appeals Board in cases commenced at EPA Headquarters. In the interests of clarity, the proposed revisions would specifically refer to the Regional Administrator where the CROP assigns responsibilities to the Regional Administrator, and to the EAB wherever the CROP assigns responsibilities to the EAB. Only one responsibility assigned to the Regional Administrators under the CROP would not also be assigned to the EAB for cases commenced at EPA Headquarters, which is the responsibility of designating Regional Judicial Officers. EPA does not anticipate any need to provide for a Regional Judicial Officer to preside in non-APA proceedings commenced at EPA Headquarters. EPA anticipates that it will use non-APA procedures primarily for cases expected to be routine and raising few, if any, new issues of law. EPA expects to rely on Administrative Law Judges to act as Presiding Officers in all cases initiated

at EPA Headquarters, because current Agency plans do not call for EPA Headquarters to initiate significant numbers of routine cases or cases which raise no significant new issues of law. For the few instances where Headquarters-based Complainants seek to file non-APA cases, such cases could be filed with a Regional Hearing Clerk and adjudicated by the appropriate Regional Judicial Officer.

The definition of "Regional Hearing Clerk" would be clarified as it pertains to cases initiated at EPA Headquarters. The Regional Office addresses now appear in Appendix A.

Redundant language would be removed from the definition of "Regional Judicial Officer".

4. Roles of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.

Section 22.04(a): The heading would be amended, and the entire section would be revised to clarify the roles of the Environmental Appeals Board, Regional Judicial Officers, and Presiding Officers in administrative enforcement proceedings under the CROP. The proposed changes better describe current practice. Paragraph (a) would be amended to clarify that the Administrator has delegated to the Environmental Appeals Board the authority to rule on appeals, and that in all cases except those in which the Environmental Appeals Board has referred a matter to the Administrator, appeals and motions must be directed to the Environmental Appeals Board to be considered. The word "direction," an uncorrected typographical error in the existing CROP, would be amended to "discretion."

Section 22.04(b): The section would be amended to clarify the role and authority of the Regional Judicial Officer, to whom the authority to act in a given proceeding is delegated by the Regional Administrator. This authority includes acting as Presiding Officer in non-APA administrative enforcement cases, acting as Presiding Officer in APA cases prior to the filing of respondent's answer and request for a hearing, and approving settlements of proceedings under the CROP.

EPA proposes to delete the prohibition that Regional Judicial Officers "shall not be employed by the Region's Enforcement Division or by the Regional Division directly associated with the type of violation at issue in the proceeding", because Regional reorganizations have made this language obsolete. EPA's Regional Offices currently have a variety of different organizational structures, and these organizational structures may continue to evolve. Accordingly, EPA proposes to substitute a more generally applicable requirement which makes no mention of organizational structures: The Regional Judicial Officer shall not "have any interest in the outcome of" any case in which he or she serves as Regional Judicial Officer. EPA interprets this clause broadly, as prohibiting anyone who has any financial interest, personal interest, or career interest in the outcome of the action from serving as Regional Judicial Officer. EPA believes this should provide the Regional Judicial Officers sufficient independence to conduct a fair hearing, because in EPA's experience no Regional Judicial Officer has been subject to improper influence by Agency officials. The limitation placed on the Regional Judicial Officer regarding any "factually related hearing" also would be deleted, because the Agency believes it improper to disqualify a Regional Judicial Officer merely because that person has participated in a hearing where similar facts were at issue.

EPA intends that the Regional Judicial Officers should be, and are in fact, fully independent of improper influence. Nevertheless, EPA requests suggestions as how this independence should be described in § 22.04(b). Commenters should be cognizant of the fact that the EPA employees who serve as Regional Judicial Officers will have duties other than acting as Regional Judicial Officer, because workloads do not generally warrant exclusive assignments to that position. One possible alternative to the language proposed would be a mandate that a Regional Judicial Officer "shall not be directly supervised by any person who directly supervises the prosecution of the case." Such a requirement would provide a more definite standard than the standard that is proposed, however it would be at odds with Agency's reinvention efforts to remove layers of management, minimize institutional barriers, promote cross-media training and promote multimedia enforcement.

Section 22.04(c): Surplus language would be deleted. No substantive change is intended by this revision.

Section 22.04(d): Several clarifications are made by deleting surplus and confusing language. The proposed rule would require parties to first request that a Regional Administrator, a member of the Environmental Appeals Board, or the Presiding Officer disqualify himself or herself before requesting that a higher Agency official disqualify that person. Although requests for disqualification are very rare, the proposed rule would reduce unnecessary delay and burdens by requiring that requests for disqualification first be made directly to the person whose disqualification is sought. If the request is denied, then the reviewing official would have more information upon which to base a ruling than if the initial request were made directly to the reviewing official. The proposed rule would also authorize the Environmental Appeals Board, rather than the Administrator, to review requests for disqualification of Regional Administrators and Presiding Officers. If a motion to disqualify a member of the Environmental Appeals Board is denied, a party may appeal that ruling to the Administrator.

EPA also requests comment on another possible change in the disqualification procedures which is not included in the text of the proposed rule published today. Under the proposed rule, both the interlocutory appeal procedures of § 22.29 and the procedures for appeal of an initial decision at § 22.30 would apply where a Presiding Officer denies a motion for disqualification. EPA is considering a prohibition on interlocutory appeals of motions for disqualification, in order to avoid unnecessary delay. After issuance of an initial decision, the parties would still have the right of appealing any adverse ruling or order of the Presiding Officer, including a refusal to disqualify himself or herself, pursuant to § 22.30. This change would make the CROP consistent with Federal court practice. See 28 U.S.C. 1292 (decisions regarding disqualification not included in the interlocutory review authority of the Courts of Appeals), *U.S.* v. *Gregory*, 656 F.2d 1132, 1136 (5th Cir. 1981) (interlocutory review of disqualification decision not available), *Dubnoff* v. *Goldstein*, 385 F.2d 717, 721 (2d Cir. 1967)("A determination of a District Judge not to disqualify himself is ordinarily reviewable only on appeal from a final decision on the [underlying cause of action]."). The Agency requests comment on this potential revision of the CROP.

5. Filing, Service, and Form of Pleadings and Documents; Business Confidentiality Claims

Section 22.05: The heading would be revised to include business confidentiality claims.

Section 22.05(a): The paragraph would be revised to clarify that the original and a copy of each pleading or other document intended to be part of the record of the proceeding shall be filed with the Regional Hearing Clerk or Clerk of the Environmental Appeals Board. Providing both an original and a copy makes it easier for the hearing

clerks to maintain both a record file and a public viewing file, in order to assure public access without risk of altering the official record. The paragraph also would be revised to clarify when a pleading or document is "filed." Requirements regarding service, as distinct from filing, are deleted from § 22.05(a)(2) and moved to § 22.05(b); the remaining sentence concerning certificates of service would be renumbered as § 22.05(a)(3). The existing § 22.05(a)(3) would be renumbered § 22.05(a)(2), and surplus language deleted. The Agency solicits comments on whether electronic filing and service should be allowed, and if so, under what conditions.

Section 22.05(b): The paragraph would be amended to consolidate and clarify service requirements, and to require a copy of each pleading or document to be served on the Presiding Officer. In paragraph (b)(1), the provisions regarding service of the complaint are changed to clarify who must be served when serving a natural person, a domestic or foreign corporation, a partnership or unincorporated association, an officer or agency of the United States, a state or local unit of government or a state or local officer, agency, department, corporation or other instrumentality. The proposed rule allows service of the complaint by any reliable commercial delivery service that provides written verification of delivery.

Paragraph (b)(2) would be amended to allow service of all pleadings and documents other than the complaint by any reliable commercial delivery service. The provision regarding mail would be revised to reflect the fact that both certified mail and return receipt requested are varieties of first class mail. The phrase "pleadings and documents" is used here and throughout the proposed rule to include all filings by the parties. The heading would be amended to reflect the change.

Section 22.05(c): Paragraph (c)(2) would be changed to require more information on the first page of every pleading and to require tables of contents and tables of authorities for all legal briefs and memoranda greater than twenty pages in length (excluding attachments) to simplify processing and review. Grammatical changes and clarifications are made in paragraphs (c)(3) and (4). In paragraph (c)(5), the provision which allowed Hearing Clerks to determine the adequacy of documents would be deleted, leaving that authority solely with Presiding Officers or the Environmental Appeals Board.

Section 22.05(d): A new paragraph would be added to specify the treatment of information claimed as Confidential Business Information ("CBI") in documents filed in CROP proceedings, and to link that treatment with the CBI rules of 40 CFR part 2, subpart B. The purpose is to facilitate the use of CBI as evidence while appropriately preserving the confidentiality of the information. Paragraph (d)(1) provides that any business confidentiality claim shall be made in the manner prescribed by 40 CFR 2.203(b). A person who files a document with a Regional Hearing Clerk without making such a claim places that document in the public record, where it is available to the public for inspection and copying pursuant to § 22.09. After a document has been placed in the public record, a subsequent claim of confidentiality will not be effective. This clarifies the obligations of the claimant and makes clear which procedures to follow, as well as the consequences for failure to follow these procedures.

Paragraph (d)(2) describes in more detail how pleadings or documents containing information claimed confidential are to be filed with the Regional Hearing Clerk, and the contents of such documents, in order to assure that such documents are properly filed and the information within such documents protected. The requirement that parties file two versions of pleadings or documents, one containing the information claimed confidential and a second redacted version, does not preclude a party from filing a single document that merely references, without disclosing, confidential information filed in earlier documents.

Paragraph (d)(3) describes the procedures for service of pleadings of documents containing claimed-confidential information on the Presiding Officer, complainant, parties, amici, or representatives thereof authorized to receive confidential information, and makes clear that only a redacted version of any pleading or document may be served on a party, amici, or other representative thereof not authorized to receive the confidential information. Paragraph (d)(4) provides that only the redacted version of a pleading or document with claimed-confidential information will become part of the public record, and further provides that an EPA officer or employee may disclose information claimed confidential only as provided by 40 CFR part 2.

6. Filing and Service of Rulings, Orders and Decisions

Section 22.06: The requirements regarding service of rulings, orders and decisions have been changed to allow the more flexible service of these documents by first class mail or any reliable commercial delivery service. References to the Regional Judicial Officer are deleted as surplusage.

7. Computation and Extension of Time

Section 22.07: In paragraph (a), "holidays" would be clarified to mean federal holidays. Paragraph (b) would be revised to require that any motion for an extension of time be filed sufficiently in advance of the due date so as to allow other parties the opportunity to respond and to allow the Presiding Officer or the EAB reasonable opportunity to issue an order. The reference to "the Regional Administrator" would be deleted as surplusage. In paragraph (c), the "mail box" rule for service would be expanded to encompass the other reliable commercial delivery services authorized in § 22.05(b). Under the proposed revision, as under the existing CROP, it is implicit that personal service is complete upon personal service, without need for a signed receipt.

8. Ex Parte Discussion of Proceeding

Section 22.08: New language would be included to explicitly allow a decision maker who has formally recused himself from all adjudicatory functions to engage in ex parte functions. For purposes of this provision, the Agency would consider the approval of consent agreements and issuance of consent orders to be adjudicatory functions.

9. Examination of Documents Filed

Section 22.09: Extraneous language would be deleted and the reference to waiver of costs for duplication of documents would be clarified.

10. Intervention and Amicus Curiae

Section 22.11: The section heading would be amended to include amicus curiae motions. Paragraph (a)(1) would be amended to more specifically describe the process for intervening, and would make the standard for intervention equivalent to the standard used in the Federal courts, Rule 24(a)(2) of the Federal Rules of Civil Procedure. The final sentence in paragraph (c) of the existing CROP ("The intervenor shall become a full party to the proceeding upon the granting of leave to intervene.") is intentionally omitted. This would grant the Presiding Officer the discretion to allow an intervenor to become a party as to part, but not all, of a proceeding. An additional five days is given to file a response to a motion to intervene, for consistency with proposed changes to § 22.16. The

changes to paragraph (a) permit the deletion of paragraphs (c) and (d). Paragraph (b) describes the procedures for motion for leave to file an amicus brief, and fifteen days is given to file a response to an amicus brief. EPA requests comment as to the appropriateness of these intervention provisions.

11. Consolidation and Severance

Section 22.12: The phrase "by motion or sua sponte" would be deleted as surplusage, and perhaps confusing to persons not trained in the law. No substantive change is intended by this revision. Paragraph (a) would be amended to clarify that proceedings brought pursuant to the non-APA procedures of subpart I may be consolidated with an action brought under the APA procedures. This paragraph prohibits the use of the non-APA procedures for hearing any action which is the result of a consolidation of an APA proceeding and non-APA proceeding. Under these circumstances, only the APA procedures of the CROP (subpart A—H) are appropriate.

The Agency considered, but rejected as unnecessary, expressly prohibiting under § 22.12 the consolidation of actions if such consolidation could result in the total penalty exceeding any applicable cap on penalty amounts. The existing language is sufficient to prevent consolidation in such circumstances because such a result would "adversely affect the rights of parties engaged in otherwise separate proceedings."

12. Commencement of a Proceeding

Section 22.13: The heading would be amended, and the section revised, to clarify how an administrative enforcement proceeding is commenced. For cases where pre-commencement negotiations result in settlement of a cause of action, paragraph (b) would provide for the simultaneous commencement and conclusion of a case upon the issuance of a consent order (provided that, in accordance with § 22.18(b)(2), the consent agreement contains that information required in a complaint set forth in § 22.14(a)(1)–(3)). Negotiations with alleged violators prior to the formal filing of a complaint may in some cases lead to more efficient and expeditious resolution of cases. See, e.g., Executive Order No. 12778 on Civil Justice Reform (56 FR 55195, October 25, 1991). Where such negotiations are productive, the filing of a consent agreement and consent order would be sufficient to commence a case, and requiring a separate filing of a complaint would merely waste paper. In cases subject to the Clean Water Act or Safe Drinking Water Act public comment provisions, this streamlined approach would not permitted. The original language of this section would be deleted as duplicative of the statutory authorizations to commence proceedings.

13. Complaint

Section 22.14: EPA proposes to consolidate paragraphs (a) and (b) of the existing CROP into a single paragraph governing the content of all complaints for assessment of civil penalties, for revocation, termination or suspension of permits, and for compliance and corrective action orders. As used here and in §§ 22.17 and 22.27, "compliance or corrective action order" includes orders requiring immediate compliance or corrective action, and orders establishing schedules for compliance or corrective action within a specified period of time.

Paragraph (a)(4) would be amended to present in a single paragraph the content requirements for all complaints, whether they seek penalties, compliance or corrective action orders, or permit actions. New language would expressly permit the filing of a complaint without specifying in the complaint the precise penalty sought, as an alternative to pleading a specific penalty. Where complainant elects not to demand a specific penalty in the complaint, complainant is nonetheless obligated to provide a brief explanation of the severity of each violation alleged and a citation to the statutory penalty authority applicable for each violation alleged in the complaint.[1] This notice pleading option would provide the Agency with added flexibility in issuing a complaint under circumstances where only the violator possesses information crucial to the proper determination of the penalty, for example, the economic benefit the violator derived from its noncompliance or the effect of a penalty on its ability to remain in business. Complaints following the notice pleading approach would give respondents in administrative enforcement proceedings at least as much notice of their potential liability as they would receive in most enforcement proceedings filed in the Federal courts. Complementary changes to §§ 22.17(b) and 22.19(a) assure that, where the Agency employs this notice pleading approach, the Agency will specify a penalty demand in its prehearing information exchange and in any motion for default. As is the case in judicial enforcement proceedings, this notice pleading option is fully compatible with the Agency's long-standing practice of working with respondents toward a fair resolution of enforcement actions.

Paragraph 22.14(a)(5) would combine the right-to-hearing provisions presently in § 22.14 (a)(6) and (b)(6), as well as new language to accommodate hearings on the appropriateness of proposed compliance or corrective action orders. The sentence requiring a copy of the CROP to accompany each complaint served would be deleted and placed in a separate § 22.14(b). The requirement of § 22.14(a)(5) in the existing CROP would be moved to § 22.14(a)(4)(i). Paragraph (a)(6) would require the complainant to specify in the complaint whether the non-APA procedures in subpart I shall apply to the proceeding. If a complaint does not contain an explicit statement that subpart I applies, the ensuing proceeding shall be conducted in conformance with section 554 of the APA.

The original paragraph (b) would be merged into the new paragraph (a). The revised paragraph (b) would contain the requirement, currently in § 22.14 (a)(6) and (b)(6), that a copy of the CROP accompany each complaint.

The text originally in paragraph (c) would be deleted, and subsequent provisions renumbered so that the text presently in § 22.14(d) would appear in 22.14(c), with minor changes. The existing provision would be deleted to avoid the possibility of conflict with the notice pleading option proposed under § 22.14(a)(4)(ii). The Agency's proposed deletion of this provision does not signal any general intent to abandon applicable penalty pleading policies. The Agency's penalty authority remains subject to any statutory penalty criteria, regardless of changes to the CROP, so deletion of the existing paragraph (c) should have no substantive effect on the penalties that would be assessed.

Paragraph (d) would contain the provision presently in paragraph (e), with minor revisions. The Agency considered, but is not proposing, language specifically allowing the withdrawal of a complaint without prejudice, because such language is not necessary. The existing language of this section does not establish a specific standard that the Presiding Officer must apply when considering a motion to withdraw a complaint without

[1] For example, a citation to the statutory penalty authority might state the following: "For the violations alleged herein, in accordance with 15 U.S.C. 2615(a), complainant seeks a penalty of up to $25,000 for each day the violations continue, taking into account the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and other matters as justice may require."

prejudice, and so, the "good cause" standard generally applicable to motions applies. The good cause standard would allow withdrawal of a complaint without prejudice in circumstances where, for example, information obtained after the commencement of the case indicates that the proper penalty should exceed an applicable penalty cap, thereby allowing the Agency to refile the case in a forum that would permit assessment of the proper penalty.

14. Answer

Section 22.15: The requirements for filing and serving copies of an answer are clarified in paragraph (a). Also, the time allowed for the filing of an answer would be changed from 20 days to 30 days. RCRA, the SDWA, and the CWA authorize 30 days to file an answer. The discrepancy between these statutory authorities and § 22.15 has caused confusion, particularly in cases involving alleged violations of more than one statute (multimedia cases), as to which time limitation applies to the overall cause of action. To avoid any potential conflict, for all causes of action, the requirement would be changed to allow answers to be filed within 30 days of service of the complaint. EPA proposes to add to paragraph (b) a new clause requiring that the answer state the basis for opposing any proposed penalty, compliance or corrective action order, or permit revocation, termination or suspension. This requirement would not add significantly to respondents' existing burdens, as it is both consistent with good pleading practice and implicit in the existing rule. Paragraph (c) would be rewritten for clarity. No substantive change is intended.

15. Motions

Section 22.16: Paragraph (a) would be revised to place explicit limits on motion practice and to provide a common understanding that the routine practice shall be the filing of a motion, a response and a reply, without any further briefing. Any further responsive documents concerning the motion would be allowed only by order of the Presiding Officer or EAB. The present CROP is silent as to whether additional briefing or argument is permitted after the filing of a response to a motion. To the extent that such replies are presently allowed, there is no limit on the time for filing a reply, nor any limit to the total number of replies. With an endless series of replies possible, neither the Presiding Officer nor the parties can be sure when a motion is ripe for decision.[2] The proposed amendments are intended to establish more control over motion practice in an effort to simplify the proceeding, and to reduce delays and litigation costs. EPA believes that a motion-response-reply structure is both necessary and sufficient to present the issues fully for the Presiding Officer. The proposed rule specifically provides the movant an opportunity for a reply because responses to motions often raise issues not addressed in the motion itself. The proposed rule then limits the scope of the reply to those issues raised in the response, in order to avoid giving an unfair advantage to the movant. For those instances where this motion-response-reply format may not be appropriate, the Presiding Officer may order an alternative approach.

The proposed rule would amend paragraph (b) to expand the time for filing a response to a motion from 10 days to 15 days. EPA anticipates that this change will improve the quality of the responses, better clarifying the issues and thereby promoting judicial economy. The proposed rule also would allow 10 days for the filing of a reply, reflecting the fact that the movant has already had an opportunity to anticipate possible objections to its motion and that somewhat less time should be needed to address such new issues as might be raised in the response. The clause pertaining to extensions of time would be deleted as redundant with §§ 22.07(b) and 22.04(c).

Paragraph (c) would be revised to clarify who renders decisions at the different stages of a proceeding. The provision concerning oral argument on motions would be deleted from this section and placed in a separate § 22.16(d), and expanded to acknowledge that Presiding Officers, as well as the EAB, have the discretion to order oral argument on motions.

16. Default

Section 22.17: The heading would be changed, and the entire section reorganized, for purposes of clarity. Paragraph (a) would describe how a party may be found in default, and the consequences of such a finding. The provisions in the current paragraph (a) describing when penalty monies come due, or when a permit revocation, termination or suspension becomes effective, would be moved to paragraph (d).

New paragraph (b) addresses content requirements for motions for default. It includes a requirement that where the motion requests the assessment of a penalty or the imposition of other relief against a defaulting party, the movant must specify the penalty or other relief sought and must put into the record the legal and factual grounds for the relief requested. This amendment accommodates the changes made in § 22.14, above, and provides for those instances in which the complaint does not contain a specific penalty proposal.

Paragraph (c) would be revised to describe the default order itself. It would provide that a default order shall be an initial decision, and treated in all respects under the CROP as an initial decision. Paragraph (c) would result in one substantive change rules regarding default orders, in regard to the standards for granting relief. Section 22.17(a) of the existing rule appears to require that a default order automatically assess the penalty proposed in the complaint, or automatically revoke or terminate the permit according to the conditions proposed in the complaint. The proposed revision would remove this apparent restriction on the Presiding Officers' discretion so that they may assure that the relief ordered is supported by the administrative record. In order to make it clear that supporting the relief proposed in a default case should be less burdensome on the Agency than it would be if the respondent chose to contest the case, the language of the revised paragraph (c) would require that the Presiding Officer grant the relief requested unless the record clearly demonstrates that the requested relief is inconsistent with the Act. The Agency would still be required to make a prima facie case in regard to the appropriateness of the proposed relief, as well as in regard to liability. The proposed change would not affect determinations of liability in default, which would remain subject to the "preponderance of the evidence" standard of § 22.24.

Subsection (d) would describe the respondent's obligations once default has been entered regarding payment of any penalty, revocation, termination or suspension of any permit, and compliance or corrective action requirements. The existing rule does not describe or explain these sanctions, and the Agency believes therefore that these new provisions provide additional clarity and information to a potentially defaulting party, and make much more clear the consequences of default. The existing rule requires payment of the penalty within 60 days after the default order was issued. This conflicts with the

[2] See, e.g., In the Matter of McLaughlin Gormley King, et al., Docket Nos. FIFRA 94–H–10 through 94–H–15, where a motion to dismiss was followed by a response, a reply, a sur-reply, a supplemental reply, and a second sur-reply.

Federal Claims Collection Standards, which require payment within 30 days after the date the order was issued, unless EPA decides an extension is appropriate. See 4 CFR 102.13(g). The proposed rule therefore requires payment within 30 days after the date the default order becomes final.

17. Quick Resolution; Settlement; Alternative Dispute Resolution

Section 22.18: This section would be substantially revised to provide expedited resolution procedures, and to clarify the process and effect of formal settlements. Paragraph (a) would provide a quick resolution process, whereby a respondent can bring the case to a close at any time simply by paying the amount proposed in the complaint. Any respondent wishing to resolve an action without filing an answer need only pay the proposed penalty within 30 days of receipt of the complaint. In cases where an answer has been filed, the respondent may resolve the action by paying the penalty proposed in the complaint. This will provide respondents the option of resolving minor and uncontested violations without engaging an attorney, much in the manner of a parking ticket. EPA anticipates that this quick resolution procedure may be of particular interest to small businesses, and recognizing that small businesses may need additional time to raise cash to pay a penalty, the provision would allow respondents 60 days from receipt of the complaint to pay the penalty without having to file an answer. In order to exercise this option, a respondent would need to file a written statement within 30 days of receiving the complaint wherein respondent promises to pay the penalty in full within 60 days from receipt of the complaint.

The commenter rights provisions of section 309(g) and 311(b)(6) of the Clean Water Act, and section 1423(c) of the Safe Drinking Water Act do not permit resolution of a case until the public has had opportunity to comment on the complaint. Commenters could provide information indicating that the violations are more serious than indicated in the administrative complaint. In order to give meaning to the public comment requirements, and to allow EPA the opportunity to act upon any such comments before resolution of a case, a respondent would not be permitted to take advantage of the quick resolution provision in a commenter-eligible action until ten days after the period for public comment has closed.

Paragraph (b) would clarify the existing settlement process, and is divided into three paragraphs. The first paragraph (b)(1), concerning discussions of settlement, incorporates existing provisions with minor editorial changes, the most significant of which corrects a citation to § 22.16 which should refer to § 22.15. Paragraph (b)(2) would specify that consent agreements be in writing, and that they include all terms and conditions of settlement. The content requirements of a consent agreement are also clarified to include compliance order or corrective action requirements, and an express waiver of the respondent's right to a hearing and appeal of the consent order. This clarification is important, so that respondents enter into settlement agreements with a full understanding that an agreement to settle involves waiving rights to a hearing and rights of appeal. Paragraph (b)(2) also establishes additional content requirements for consent agreements in cases where the complainant proposes to simultaneously commence and conclude a case through filing of a consent agreement and consent order pursuant to § 22.13(b), as a result of successful settlement through negotiations conducted before a complaint is issued. These additional content requirements should assure that the public record clearly identifies the causes of action upon which such cases are based. Paragraph (b)(3) would be revised to expressly provide that an administrative action is settled only when the Regional Judicial Officer or Regional Administrator, or, in cases commenced at EPA Headquarters, the Environmental Appeals Board, approves a consent agreement and issues a consent order. This provision is added to eliminate any uncertainty as to who has authority to conclude a proceeding.

Paragraph (c) would provide that the effect of settlements and full payment of proposed penalties is limited to those facts and violations specifically alleged in the complaint, and reserves the Agency's right to pursue injunctive relief or criminal sanctions. These provisions merely make explicit the existing law of res judicata and claim preclusion, and reflect the Agency's routine practice in settlement of cases. The statutes authorizing administrative proceedings simultaneously define the limits of the Agency's jurisdiction in those proceedings to the assessment of penalties, the issuance of corrective action or compliance orders, or the revocation, termination or suspension of permits. None of the statutes administered by EPA grant to an administrative tribunal the authority to assess criminal sanctions or compel injunctive relief. Because the statutes authorizing administrative proceedings expressly limit the Agency's authority in those proceedings, the settlement of a proceeding commenced under part 22 cannot limit the Agency's right to pursue relief that is beyond the scope of part 22. See generally Restatement (Second) of Judgments § 83 comment g (1982). Accordingly, adding this provision to the CROP does not significantly alter respondents' rights.

Paragraph (d) would recognize use of alternative dispute resolution proceedings. The Agency encourages use of alternative dispute resolution in appropriate circumstances, both as a fair means of resolving enforcement actions and as a method of reducing transaction costs for all parties. The designation of a neutral (who would not be the Presiding Officer) would not divest the Presiding Officer of overall responsibility for the case. The Presiding Officer would retain during dispute resolution proceedings all of the powers and duties assigned under § 22.04(c), including the authority to bring the case to hearing if circumstances so warrant. The Agency has considered including language specifying the impact of dispute resolution proceedings on deadlines, but instead proposes to leave this to the discretion of the Presiding Officer. As needed, the parties may request temporary stays of proceedings and extensions of deadlines.

Other requirements of the CROP (e.g., the consent agreement and consent order provisions of § 22.18(b), the ex parte prohibitions of § 22.08, the public comment provisions of § 22.38) also would continue to apply, notwithstanding any dispute resolution process.

18. Prehearing Information Exchange; Prehearing Conference; Other Discovery

Section 22.19: EPA proposes to substantially restructure and revise this section for ease of use and to make information exchange more timely and efficient. Paragraphs (a) and (b) would be reversed in order from the existing CROP, reflecting the fact that information exchange is more common than, and usually precedes, a prehearing conference. The Agency proposes to expand the scope of the standard prehearing information exchange in order to expedite resolution of cases.

The requirements for prehearing exchange would now appear in paragraph (a). In addition to the information required to be exchanged under § 22.19(b) of the existing CROP, EPA proposes that each party should be required to exchange all information it considers relevant to the assessment of

a penalty. This provision would apply whether or not the complainant identifies a specific penalty in the complaint. In addition, for penalty cases where the complainant has not specified a penalty in the complaint, the proposed rule would require that the complainant shall specify a proposed penalty and state the basis for that proposed penalty. EPA requests comment on whether it is necessary for complainant to specify a proposed penalty in prehearing exchange. As noted above, EPA has proposed to allow notice pleading under § 22.14(a)(4)(ii) in order to allow EPA to issue complaints even where it is unable to obtain information from the violator which is necessary to confidently determine the appropriate penalty. Although EPA anticipates that respondents will provide such information during the course of settlement discussions, it is possible that in some cases the necessary information will not be available until respondent submits its prehearing exchange, or even later. If the complainant is in no better position to propose a penalty at prehearing exchange than it was at the time it filed the complaint, there is little value to such a requirement. EPA requests comment on the utility of this requirement, and on the merits of allowing complainant to postpone for an additional 30 days, or indefinitely, the making of a specific penalty demand.

EPA's proposal would change the rules regarding the exchange of witness lists and documents in order to facilitate supplementing and amending prehearing exchange prior to hearing. In so doing, the proposed rule would make more clear the distinction between the filing of prehearing exchange and the admission of information into evidence. In order to prevent undue burden and delay caused by last minute supplements or amendments of the prehearing information exchange, the Agency considered proposing restrictions on amendments to prehearing exchange within 30 days of the hearing date. The Agency instead proposes that all barriers to amending prehearing exchange should be dropped in the interest of full and complete exchange of information between the parties (*see* § 22.19(f)), and proposes under § 22.22(a) to tighten the standards for admitting into evidence information that was not timely exchanged.

The Agency requests comment on the merits of requiring by rule that the parties simultaneously perform their prehearing information exchange 90 or 120 days after the filing of the answer. Making prehearing exchange automatic, rather than dependent on assignment of an ALJ and on the ALJ's issuance of an prehearing exchange order, could expedite administrative practice and move cases to a more rapid resolution. Although an early deadline could prompt the parties to focus intently on settlement at the earliest stages of a proceeding, it could also lead to wasted resources if parties were compelled to submit voluminous prehearing exchanges despite imminent settlements.

The Agency has considered, but is not proposing, amendments concerning the timing of prehearing exchange. The Agency has considered the merits of requiring that complainant file its prehearing exchange before respondent, relative to the merits of requiring that prehearing exchange be made simultaneously by both parties. Allowing respondent to submit its prehearing exchange several weeks after receiving complaint's prehearing exchange might allow respondent to focus its prehearing exchange more narrowly on what it perceives to be the weakest points of the complainant's case, thereby conserving respondent's resources and clarifying the key issues in dispute. In contrast, the traditional, simultaneous prehearing exchange gives both parties equal incentive to settle before incurring the expense and effort of preparing the exchange. Staggering the prehearing exchange creates a disparate incentive, such that the party designated to make the later exchange may adopt a "wait-and-see" attitude, preferring to review the papers of the party designated to submit first before accepting a settlement offer it knows to be in its best interest or before even engaging in serious settlement discussions. In this manner, sequential prehearing exchange can delay or even impede settlement, and causes the lead party to incur unnecessary expenditures of resources. EPA believes that the disadvantages of sequential prehearing exchange outweigh the anticipated benefits in the great majority of cases.

The disadvantages of a sequential prehearing exchange do not, however, compel the conclusion that prehearing exchange must necessarily be simultaneous in every case. There may be instances where the circumstances suggest that a case might be more expeditiously resolved if prehearing exchange were structured in some other manner. Accordingly, the Agency does not propose to make either simultaneous or sequential prehearing exchange the mandatory and exclusive option, but instead would continue to allow the Presiding Officer some discretion regarding the timing of the prehearing exchange required under this rule.

Paragraph (b) would describe the purpose of any prehearing conference which may be held, and is substantially similar to paragraph (a) of the existing CROP. The revisions would no longer compel the Presiding Officer to require the parties to "appear at a conference before him," but instead would make the nature of the conference more flexible.

In paragraph (c), the phrase "upon motion or sua sponte" would be deleted as surplusage, and as potentially confusing. In paragraph (d), additional surplus language would be deleted. No substantive changes are intended. Paragraph (e) from the existing CROP would be deleted as surplusage, as § 22.04(c) (5), (8) and (10) give the Presiding Officer ample authority in these matters.

Under the proposed revisions, as well as the existing CROP, § 22.19 is designed to streamline exchanges of information by the parties and to discourage dilatory tactics and unnecessary and time-consuming motion practice. In contrast to the Federal Rules of Civil Procedure, a formal prehearing exchange of information is the primary vehicle of information exchange under the CROP. This prehearing exchange may be supplemented in certain cases by additional discovery pursuant to paragraph (e). In order to expedite the administrative hearings process, this other discovery is limited in comparison to the extensive and time-consuming discovery typical in the Federal courts.

The proposed revisions to paragraph (e) would revise the process for seeking "other discovery". The proposed rule would require that the party seeking discovery must file a motion which "shall specify the method of discovery sought, provide the proposed discovery instruments and describe in detail the nature of the information and/or documents sought (and, where relevant, the proposed time and place where discovery would be conducted)." By "proposed discovery instruments," the Agency refers to the specific documents which would effectuate discovery if the Presiding Officer were to order the requested discovery (e.g., notices of deposition, depositions upon written questions, written interrogatories, requests for production of documents and things and entry upon land for inspection and other purposes, requests for admission).

The proposed revisions would also refine the substantive standards for issuance of a discovery order. First, discovery motions would only be

authorized after completion of the prehearing information exchange mandated under paragraph (a), so that "other discovery" supplements, rather than supplants, prehearing exchange. Second, the prohibition against discovery which would unreasonably delay the proceeding would be expanded to prohibit discovery which would unreasonably burden the other party. The Agency believes that unnecessarily burdensome discovery is inappropriate even if such discovery would not delay a proceeding. Third, the proposed rule would clarify the existing requirement that discovery seeks "information [that] has significant probative value", by the addition of the clause "on a disputed issue of material fact relevant to liability or the relief sought." This revision is intended to clarify, rather than change, the existing requirement. See, *e.g., Chautauqua Hardware Corp.*, II EPCRA–90–0223, *Order on Interlocutory Review slip op.* at 12 (June 24, 1991) ("The phrase "probative value" denotes the tendency of a piece of information to prove a fact that is of consequence in the case.")

The Agency proposes to clarify the requirement in the existing rule that prohibits discovery where "[t]he information to be obtained is not otherwise obtainable". The phrase "not otherwise obtainable" has been the source of much litigation, and the Agency proposes to substitute instead a requirement that discovery is permissible so long as it "[s]eeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily". This substitution should not substantively change the discovery standard, but instead make explicit the two most reasonable interpretations of "not otherwise obtainable". One reasonable interpretation of the "not otherwise obtainable" requirement is that parties should not resort to discovery until more collegial methods of obtaining information have been exhausted. The proposed change would effectively require a party to request voluntary disclosure of the information sought before seeking a discovery order. Another reasonable interpretation of "not otherwise obtainable" is that a party should not be burdened by discovery seeking information which is readily obtained through other sources (e.g., texts available in libraries or from the publishers, reports or materials available from other government agencies). If the rule did not encompass this interpretation of "not otherwise obtainable", it would unreasonably burden litigants by permitting discovery of all information that could be obtained through a party, or by completely prohibiting discovery of information that could be obtained from third parties. Instead, EPA proposes to limit discovery to "information that is most reasonably obtained from the non-moving party". Although this requirement would not eliminate litigation, it provides a more meaningful context than "not otherwise obtainable" for determining whether other discovery should be allowed.

Paragraph (e)(2) of the proposed revision would expressly prohibit discovery of a party's settlement positions and information regarding their development, specifically including penalty calculations for purposes of settlement based on Agency settlement policies. This would make explicit a limitation that already exists under the current rule, as § 22.19(f)(1)(iii) limits discovery to information that has "significant probative value", and existing § 22.22 prevents the introduction of evidence which would be inadmissible under Federal Rule of Evidence 408. Penalty proposals developed for settlement are offers of compromise which normally would be inadmissible under Federal Rule of Evidence 408 because they generally lack significant probative value, and in addition, because their admission would discourage settlement. In its administrative enforcement programs under the CWA and SDWA, the Agency utilizes the same settlement policies that it uses in judicial enforcement proceedings to determine the penalty amount the Agency would accept in settlement of a case. This has caused some confusion for respondents who are more familiar with the Agency's other administrative enforcement programs, which rely on penalty pleading policies, rather than settlement policies. The proposed rule would clarify that penalty calculations derived from a settlement policy, as opposed to calculations of proposed penalties from a penalty pleading policy, are not subject to discovery. This change would eliminate the potential for litigation on matters reserved for settlement discussions.

The existing CROP provides that the Presiding Officer may order depositions upon oral questions only where additional conditions, over and above those applicable to discovery in general, are met. Paragraph (e)(3) of the revised CROP would maintain this higher standard, and clarify that these requirements are in addition to those of paragraph (e)(1).

Additional conditions also apply to the issuance of a subpoena relative to other discovery, specifically, "an additional showing of the grounds and necessity therefor." The standards for issuing subpoenas do not appear in § 22.19 of the existing CROP, but instead, are repeated in six separate Supplemental rules. Paragraph (e)(4) of the proposed CROP consolidates this material, allowing elimination of several supplemental rules. This change does not expand or limit the authority of the Presiding Officer, nor does it authorize issuance of subpoenas except where authorized by the Act giving rise to the cause of action.

Paragraph (e)(5) further clarifies that Freedom of Information Act ("FOIA") requests, requests for admissions or stipulations, inspections, statutorily provided information collection requests, and administrative subpoenas issued by an authorized Agency official other than the Presiding Officer do not constitute discovery and are not restricted by the CROP. This revision does not change the CROP, because these activities have never been subject to a Presiding Officer's control. This provision should reduce uncertainty, and consequent litigation, by clarifying that these independent methods of information collection are wholly outside the Presiding Officer's authority.

Paragraph (f) would impose on each party a duty to supplement or correct prior exchanges of information when the party learns that a prior exchange is deficient. As with the subsections already described above, this subsection is intended to reinforce the practice of full and complete voluntary information exchange in order to expedite proceedings and avoid unnecessary and costly motion practice. This subsection addresses situations where a party learns that a prior response is incorrect, inaccurate or outdated. It is not intended to impose a duty on any party to continually check the accuracy of prior responses, but does prohibit knowing concealment by a party. This provision would eliminate any procedural barriers to amending prehearing exchange, however, EPA also proposes at § 22.22(a) that information that is not exchanged in a timely manner shall not be admitted into evidence. Moreover, failure to comply with a prehearing exchange order would still constitute grounds for issuance of a default order, notwithstanding these changes.

Paragraph (g) clarifies that a failure of a party to provide information within its control pursuant to an order of the Presiding Officer may lead to an inference that the information sought

would be adverse to the non-exchanging party, to exclusion of the information from evidence, or to issuance of a default order. In the existing CROP, a version of this requirement applied to information provided through other discovery, but its applicability to information provided through prehearing exchange was unclear. The proposed rule expressly applies this requirement to all information exchanges, and expressly authorizes the additional sanction that information might be excluded from evidence.

19. Accelerated Decision; Decision to Dismiss

Section 22.20: Several editorial changes are made to this section. No substantive change is intended.

20. Assignment of Presiding Officer; Scheduling the Hearing

Section 22.21: Paragraph (a) would be revised to make it clear that the Chief Administrative Law Judge presides from the time an answer is filed until he or she assigns another ALJ. This would assure that there is a Presiding Officer at every stage of a proceeding.

21. Evidence

Section 22.22(a): EPA proposes splitting this subsection into two paragraphs. Paragraph (a)(1) would addresses the admission of evidence into the record. It restates the existing standard, with only a minor editorial revision, and adds a new standard for exclusion of evidence which is not provided to opposing parties in a timely manner. It provides that the Presiding Officer shall not admit into evidence any document, exhibit, witness name or summary of expected testimony that has not been provided to all parties at least fifteen days before the hearing date, unless the non-exchanging party had good cause for failing to exchange the required information and provided the required information to all other parties as soon as it had control of the information, or had good cause for not doing so.

Paragraph (a)(2) would address treatment of confidential business information (CBI), in conformance with the Agency's general confidentiality requirements. The 40 CFR part 2, subpart B provisions regarding treatment of CBI are cross referenced and other provisions are added to clarify how and when CBI may be used as evidence in a CROP proceeding. A significant substantive change would authorize the Presiding Officer to consider CBI evidence outside the presence of a party if necessary to preserve the confidentiality of the business information. While EPA expects that the Presiding Officers will seldom need to exercise this authority, experience has demonstrated the need for it. In *In the Matter of Baker Performance*, TSCA–91–H–08, a respondent charged with manufacture of chemical substances not listed in the TSCA inventory of existing chemical substances argued that the chemicals in question were identical to chemicals already listed on the confidential TSCA inventory by competitors. This posed a dilemma for EPA, forcing EPA to choose between revealing to the respondent its competitors' trade secrets in order to prove the violation, or else foregoing full enforcement. EPA chose in that case to accept settlement on relatively unfavorable terms rather than reveal the CBI. EPA believes that allowing the independent Administrative Law Judges the discretion to review confidential evidence outside the presence of a party in similar cases would strike an appropriate balance between the right of confrontation and the statutory mandates to protect confidential business information. Other changes have been made for clarity.

Section 22.22(c): For clarity, EPA proposes that the term "written testimony" be substituted for "verified statements". As they are described in the existing paragraph (c), verified statements are in fact testimony, and differ from live testimony only to the extent that they are presented in written form. No substantive change is intended.

22. Objections and Offers of Proof

Section 22.23(b): Surplus language would be omitted in the interest of clarity. No substantive change is intended.

23. Burden of Presentation; Burden of Persuasion; Preponderance of The Evidence Standard

Section 22.24: EPA proposes to split this section into two subsections, one addressing burden of presentation and burden of persuasion, and another addressing the preponderance of the evidence standard. Paragraph (a) would revise the existing language to adopt a consistent terminology throughout its discussion of burden of presentation and burden of persuasion, and to encompass compliance orders and corrective action orders. The proposed rule would clarify that respondent bears the burden of persuasion in regard to affirmative defenses only, although it bears the burden of presentation regarding all defenses. These revisions are consistent with settled law and would not change respondents' burdens relative to the existing CROP. Paragraph (b) would consist of language from the existing CROP, without any change. The title of the section would be amended to aid readers in locating the preponderance of the evidence standard established in paragraph (b).

24. Filing the Transcript

Section 22.25: EPA proposes to add a provision disallowing motions to conform the transcript of a proceeding to the actual testimony unless filed within 20 days after notice of the availability of the transcript, in the interests of finality.

25. Initial Decision

Section 22.27: Paragraph (a) would be amended to encompass compliance orders, corrective action orders, and permit revocations, terminations and suspensions. It would further require that a copy of the initial decision be served on the Assistant Administrator for Enforcement and Compliance Assurance. Other changes are editorial, and are not intended to make substantive changes in the CROP.

Paragraph (b) would be amended to require that the Presiding Officer base the recommended penalty upon evidence in the record and in accordance with any penalty criteria set forth in the Act. A requirement that the Presiding Officer explain how the penalty corresponds to any penalty criteria set forth in the Act would be substituted for the existing requirement that the Presiding Officer explain the reasons for recommending a penalty other than the penalty proposed in the complaint. These changes will clarify the essential neutrality of the Presiding Officer, but will not result in any substantive or other procedural changes to CROP proceedings.

Paragraph (c) would be amended to clarify the circumstances under which an initial decision may become a final order of the Agency. It further clarifies that the respondent must appeal an initial decision to the EAB as a prerequisite to judicial review. This addition makes clear the point at which administrative remedies are exhausted for the purpose of appeal to Federal courts. The purpose of this latter amendment is to prevent a party from seeking judicial review prior to seeking review from EPA's administrative appellate body, the Environmental Appeals Board. This addition to the CROP is proposed to conform to the holding in *Darby* v. *Cisneros*, 509 U.S. 137 (1993). In *Darby* the Supreme Court held that in cases where the Administrative Procedure Act applies, an appeal to "superior agency

authority" is a prerequisite to judicial review *only* when expressly required by statute or when an agency rule requires appeal before review and the administrative action is made inoperative pending that review. Courts are not free otherwise to impose an exhaustion requirement where the agency action has already become "final" under section 10(c) of the APA, 5 U.S.C. 704.

The new language is an express requirement that the administrative appeals process be exhausted before a party may seek judicial review of a final agency action. Section 22.27(c) makes it clear that the initial decision of the Presiding Officer would not be operative pending review by the Environmental Appeals Board. While this holding in *Darby* applies to cases governed by section 704 of the APA, exhaustion of administrative remedies is also required in cases where APA section 10(c) is not applicable. EPA's position with regard to exhaustion of administrative remedies in CROP cases is consistent with its position on exhaustion of administrative remedies generally. See, 40 CFR 66.81 and *Bethlehem Steel Corp.* v. *EPA*, 669 F.2d 903 (1982) interpreting 40 CFR 66.81. These changes do not alter respondents' rights and do not create any right of appeal in § 22.27. Appeal is only permitted pursuant to the provisions of § 22.30.

26. Motion to Reopen a Hearing

Section 22.28: Paragraph (a) would be amended to clarify the purposes for reopening a hearing. No substantive change is intended. EPA would amend paragraph (b) to expand from 10 to 15 days the time allotted for responding to a motion to reopen a hearing, for consistency with changes to § 22.16. Other changes are made for clarity.

27. Appeal From or Review of Interlocutory Orders or Rulings

Section 22.29: EPA proposes that paragraphs (a), (b) and (c) be revised to clarify the nature of interlocutory appeals, and to allow ten days from service, rather than six days from notice, to request interlocutory review. The change in the filing deadline will give parties additional time, and it will measure that time from a date easily ascertained by all. No other substantive change is intended. Paragraph (d) would be deleted as surplusage, as the Presiding Officer's authority to stay a proceeding is inherent in § 22.04(c) and the limitations of § 22.29(d) are unnecessary.

28. Appeal From or Review of Initial Decision

Section 22.30: The procedure for filing appeals would be clarified, including, but not limited to, provisions addressing service and filing, and describing the contents of any appeal brief. Under the existing CROP, a party which is not fully satisfied by an initial decision, but who would be willing to let the decision stand as is, may feel obliged to file an appeal merely to assure that its own issues are preserved in the event that the other party appeals the initial decision on other grounds. The proposal includes a new provision whereby a party who initially declined to appeal, but who receives a notice of appeal from another party, is granted an additional 20 days to raise other issues on appeal. This change would eliminate the need for protective filings by parties who are largely content with an initial decision. Other substantive changes include extending the time to file an appeal from 20 to 30 days, and a provision expressly limiting the scope of appeals to issues raised during the course of the proceeding or by the initial decision. A new paragraph (e) specifies that the general requirements for motions at § 22.16 apply to motions made in appeals to the EAB. A new paragraph (f) would consist of language presently in § 22.31(a) concerning decisions on appeals. Moving this language into § 22.30 makes the structure of § 22.30 comparable to § 22.29. Paragraph (f) describes the scope of review by the EAB and its authority to increase or decrease a penalty, or to modify any compliance order, corrective action order, or any permit revocation, termination and suspension. The proposed revision would allow the EAB to increase the amount of a penalty assessed in a default order, but would not allow the EAB to increase the default penalty to an amount greater than that proposed in the complaint or in a motion for default, whichever is less. This change would avoid an unintended implication of the present rule, which could be interpreted as precluding the EAB from reviewing the amount of a penalty in a default order which assessed less than the penalty complainant sought.

29. Final Order

Section 22.31: Section 22.31 of the existing CROP applies to final orders on appeal only; provisions regarding other types of final orders are scattered throughout the CROP. For clarity and consistency, requirements and provisions applicable to all final orders would be consolidated in revised § 22.31. Those provisions now in § 22.31 which apply only to final orders on appeal would be moved to § 22.30, as noted above. Paragraph (a) would make clear that a final order constitutes final Agency action. It would provide that the final order resolves respondent's liability for a civil penalty, compliance or corrective action order, or the status of a permit or authority to operate, only for the violations and facts alleged in the complaint, and that it shall not affect the government's right to injunctive relief or criminal sanctions. It explicitly states that a final order will not affect a respondent's obligation to comply with all applicable provisions of the Act and regulations promulgated thereunder. These provisions do not alter respondents' rights, but merely make explicit the existing law of res judicata and claim preclusion. The Agency's routine practice is to make provisions such as these standard elements of settlement agreements. Including these provisions in the CROP would provide a clear limit to the scope of final orders, regardless of whether the final orders are consent orders, final decisions on appeal, or unappealed initial decisions.

A new paragraph (b) would clarify that final orders are effective upon issuance, except that unappealed initial decisions which become final orders pursuant to § 22.27(c) become effective at the same time they become final orders, i.e., 45 days after service of the initial decision. This clause pertains to the effective date of the order itself; the final order may establish compliance schedules, schedules for payment of penalties, dates of termination of permits, etc., notwithstanding this clause. Paragraphs (c) and (d) establish penalty payment schedules and effective dates for other relief, respectively, which shall apply unless the final order specifies otherwise. The existing rule requires payment of the penalty within 60 days after the order was received. This conflicts with the Federal Claims Collection Standards, which require payment within 30 days after the date the order was issued, unless EPA decides an extension is appropriate. See 4 CFR 102.13(g). The proposed rule therefore requires payment within 30 days after the effective date of the final order. Paragraph (c) also would require payment of penalties directly to U.S. Treasury lockboxes, rather than to the Hearing Clerks, and would make applicable to all proceedings a provision currently in § 22.39(d) regarding assessment of interest on overdue penalties. This Subsection would

specify that the collection of interest on overdue payments shall be in accordance with the Debt Collection Act, 31 U.S.C. 3717, which is applicable whether or not it is referenced in part 22. The Agency requests comment on whether the CROP should address payment of penalties by electronic transfer of funds, and if so, what procedures would be appropriate.

A new paragraph (e) would make explicit that although a respondent may choose to conclude an administrative proceeding by settlement or by allowing an initial decision to become final without appeal to the Environmental Appeals Board, each of these options falls short of exhausting the opportunities available within the CROP for administrative review. This revision would not substantively change the requirements of exhaustion of remedies, nor would it alter respondents' rights. This subsection would simply assure that respondents have notice that appeal of the final order to the Federal courts is not available where a respondent settles a case pursuant to § 22.18 or fails to exercise its right to appeal an initial decision to the Environmental Appeals Board pursuant to § 22.30.

Paragraph (f) would provide that a final order of the Environmental Appeals Board issued to a department, agency, or instrumentality of the United States pursuant to § 22.30 shall become effective (and "final" as that term is used in 42 U.S.C. 6961(b)(2)) thirty days after its service upon the parties, in order that the head of the affected department, agency, or instrumentality may request a conference with the Administrator. If the department, agency, or instrumentality requests a conference with the Administrator, then the Administrator's ensuing decision would become the final order. Essentially the same provision appeared in § 22.37(g), the Solid Waste Disposal Act supplemental rule. It is moved into § 22.31 in order that the same procedure also would be applicable to penalty actions brought against federal facilities under other statutes such as the Safe Drinking Water Act (42 U.S.C. 300j-6) and the Clean Air Act (42 U.S.C. 7413(d), 7524(c) and 7545(d)(1)). In making the language of § 22.37(g) apply to proceedings commenced under other statutes, reference to the Federal Facility Compliance Act would be deleted. The Agency still intends that a final order issued in a case brought under the Solid Waste Disposal Act shall constitute a final order for purposes of the Federal Facility Compliance Act. This opportunity to confer with the Administrator is available only after the Environmental Appeals Board has issued a final order on appeal, and only if requested in writing within 30 days. A motion for reconsideration by the Environmental Appeals Board is not necessary, however, such a motion does not toll the thirty-day limit unless specifically so ordered by the Environmental Appeals Board.

30. Supplemental Rules of Practice Applicable to Proceedings Authorized Under Specific Statutes

Section 22.33: The provisions discussing subpoenas have been deleted from this supplemental rule, as well as from §§ 22.34, 22.37, 22.39, 22.40, and 22.43, allowing the elimination of this and several other supplemental rules. The procedures for subpoenas are now consolidated in § 22.19, as discussed above. The Presiding Officer's authority to issue a subpoena remains dependant on the statute giving rise to the cause of action. Owing to the fact that the subpoena provisions were the only substantive elements of this supplemental rule, the entire supplemental rule applying to TSCA proceedings would be deleted.

Section 22.34: This section would be amended to include, in addition to proceedings for civil penalty assessment under Title II of the CAA, proceedings governing the assessment of a civil penalty under section 113(d) of the CAA. The latter proceedings are presently covered by § 22.43, which mostly mirrors § 22.34. The one substantive difference, the § 22.43(b)(2) provision allowing 30 days for filing an answer, is no longer necessary as a consequence of proposed changes to § 22.15. Paragraph (a) of this supplemental rule and each of the other supplemental rules also would be amended to eliminate the implication that the supplemental rules are not part of the Consolidated Rules of Practice. The term "final order" would be substituted for the phrase "administrative penalty order" in paragraph (b), for consistency and to encompass field citations as well as administrative penalty orders issued pursuant to section 113(d)(1) of the CAA.

A new paragraph (c) would apply to default orders for failure to answer a field citation. Section 59.5(d) of the Field Citation Rule provides that when a respondent fails to file a timely answer to a field citation (and fails to offer to pay the penalty under the quick resolution procedure at § 22.18(a)(2)), the Presiding Officer shall issue a default order assessing the penalty proposed in the complaint. This provision initially was proposed in the May 3, 1994, **Federal Register** (59 FR 22776), and EPA does not seek additional comment on it at this time.

Section 22.35: In the supplemental rules governing proceedings under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA proposes to amend the venue provision of paragraph (b) to address the situation where a respondent's place of residence is outside the U.S. FIFRA regulates the domestic conduct of foreign-based pesticide registrants, manufacturers, producers, distributors, applicators, etc. Accordingly, for a person who claims a place of residence outside the U.S., EPA interprets the phrase "place of residence", as used in 7 U.S.C. 136l(a)(3), to mean either the person's primary place of business within the U.S., or the primary place of business of the person's U.S. agent. Paragraph (c) would be deleted for consistency with changes to § 22.27(b).

Section 22.36: The supplemental rule regarding the Marine Protection, Research and Sanctuaries Act would be deleted as surplusage in light of changes made elsewhere in the CROP to accommodate permit revocation, termination and suspension proceedings, particularly in § 22.13.

Section 22.37: The scope of this supplemental rule would be expanded to include section 3005(d) of the SWDA, which authorizes termination of permits, and section 9006, which authorizes the issuance of administrative compliance orders to address violations of Underground Storage Tank ("UST") requirements. The notice requirements presently in paragraphs (b), (c) and (d) would be deleted as surplusage. On December 2, 1980 (45 FR 79808), EPA suspended these subsections until further notice, in response to amendments to the SWDA which eliminated the pre-complaint notice requirements from the Act. Today, EPA proposes to delete the requirements entirely. The proposed revision of § 22.15, allowing 30 days for filing an answer, would make paragraph (e) surplusage as well. A new paragraph (b) would specify that a complaint may contain a compliance order issued under section 3008(a) or section 9006(a), or a corrective action order issued under section 3008(h) or section 9003(h)(4) of the SWDA. This provision is included to make clear that in these circumstances, the complaint is an "order" as that term is used in the aforementioned sections of the SWDA. Any such order would automatically become a final order unless, no later than thirty (30) days after the order is served, the respondent requests a hearing pursuant to § 22.15. The provision concerning the Federal

Facilities Compliance Act contained in paragraph (g) would be moved to § 22.31(f), in order that it may be applicable to actions commenced pursuant to other statutes as well as the SWDA.

Section 22.38: In paragraph (a), the scope of this supplemental rule would be expanded to include civil penalties authorized by section 311(b)(6) of the Clean Water Act. Paragraph (b) would be amended to provide a more explicit process for implementing the statutory requirement regarding state consultation. The public notice and comment provisions would be removed from paragraphs (c), (d) and (f) and placed in a separate supplemental rule, § 22.45, which would also apply to proceedings under section 300h–2(c) of the Safe Drinking Water Act. The proposed text of § 22.45 would provide much more detailed and comprehensive process than is currently provided under § 22.38(c), (d) and (f). The applicability of § 22.45 would be noted in § 22.38(a) in order to provide additional notice that both supplemental rules apply. The provision presently in paragraph (e) would be renumbered as (c), and expanded to include proceedings under section 311(b)(6) of the Clean Water Act, consistent with changes to paragraph (a). A new paragraph (d) would require that in proceedings pursuant to section 311(b)(6) of the Clean Water Act penalties be paid into the Oil Spill Liability Trust Fund.

Section 22.39: Most of the changes to this supplemental rule are consistent with changes to other supplemental rules already discussed. In addition, language proposed to be added to the main text of the CROP at § 22.31 would be deleted from § 22.39(d) (which would be renumbered as (c)).

Section 22.40: The supplemental rule regarding the Emergency Planning and Community Right-To-Know Act would be deleted in its entirety. The subpoena provisions would be deleted from this and other supplemental rules as discussed above. In addition, the provisions regarding judicial review in paragraph (c) and collection of penalties in paragraph (d) can also be deleted as surplusage. No substantive change is intended by the deletion of this supplemental rule.

Section 22.41: The only changes to the supplemental rule regarding the Asbestos Hazard Emergency Response Act are consistent with changes to other supplemental rules already discussed. No substantive change is intended by these editorial revisions.

Section 22.42: Paragraphs (b) through (e) of the Safe Drinking Water Act supplemental rule would be deleted as surplusage. No substantive change is intended by these deletions. A new paragraph (b) would allow respondents in certain non-APA proceedings the right to choose that the hearing be conducted in accordance with section 554 of the APA, as required under section 1414(g)(3)(B) of the Safe Drinking Water Act. This provision would enable respondent to make subpart I inapplicable, notwithstanding the Agency's having commenced the proceeding under subpart I, by requesting in its answer a hearing on the record in accordance with 5 U.S.C. 554. EPA proposes that a respondent's failure to exercise this right in its answer shall constitute a waiver of that right. This limitation is necessary in order to avoid the delays, disruptions, and duplications of effort which would result if a case were reassigned from a Regional Judicial Officer to an ALJ after the proceeding was well underway.

Section 22.43: The provisions of the existing § 22.43 would be incorporated into § 22.34, as discussed above. A new supplemental rule applicable to proceedings against a federal facility pursuant to the Safe Drinking Water Act Amendments of 1996, Pub. L. No. 104–182 would be codified as § 22.43. Paragraph (b) describes the effective date of any penalty order issued under section 1447(b) of the Act. Paragraph (c) describes the public notice requirements for issuance of a final penalty order.

Section 22.44: This section presents a new supplemental rule for termination of NPDES permits issued under the Clean Water Act and for permits issued under Subtitle C of the Resource Conservation and Recovery Act. This new supplemental rule has already been proposed (60 FR 65,268), and EPA does not seek additional comment at this time.

Sections 22.45: The Agency proposes to add a new supplemental rule governing public notice and comment in proceedings under section 309(g) of the Clean Water Act and section 300h–2(c) of the Safe Drinking Water Act. The detailed procedures proposed for public notice and comment are sufficiently extensive that the Agency proposes to codify them once, in a single supplemental rule applicable to these two types of proceedings, rather than repeating the same requirements in two separate rules. This supplemental rule would complement § 22.38, such that both would apply to proceedings under section 309(g) of the Clean Water Act. These public commenter rights are separate from, and in addition to, the intervention and amicus curie provisions at § 22.11.

The substance of the proposed § 22.45 replaces and expands on the procedures presently in § 22.38 (c), (d) and (f), in order to clarify commenter provisions and to fully satisfy the statutory requirements. Section 22.45(b) would require the complainant to provide public notice and an opportunity to comment on a complaint or on a proposed consent agreement where the parties agree to settle without the filing of a complaint pursuant to § 22.13(b). This provision would require the Agency to accommodate commenters in situations where the agency proposes to settle an action without the filing of a complaint. Paragraph (b)(2) sets out the type and content of the required public notice, so that the notice will provide any potential commenter with sufficient information to make an initial determination as to whether or not he wishes to comment.

Paragraph (c) expands procedures for participation by a commenter. These procedures provide a meaningful opportunity for commenters to present evidence, as required by statute, and at the same time limit the opportunity commenters might have to delay issuance of a final order through dilatory or frivolous submissions. Paragraph (c)(1) sets out the requirements for commenter participation in a proceeding. It describes both the obligations of the commenter and those of the Presiding Officer in this context. It establishes express limits on the scope of commenter participation, and gives the Presiding Officer broad discretion to further control the extent of commenter participation. Paragraph (c)(2) sets out limitations on commenter cross-examination of witnesses, and prohibits the commenter from either participating in, or being subject to, any discovery or prehearing information exchange. Paragraph (c)(3) assures that cases are not settled before the end of a required comment period.

Paragraph (c)(4) describes the procedures governing a commenter's petition to set aside a consent order where no hearing on the merits was held. The Agency believes that this language establishes appropriate limits on such requests, while at the same time meeting the requirements of the respective statutes and avoiding inappropriate tainting of the administrative record. Paragraph (c)(4)(i) requires the complainant to provide all commenters and the Regional Administrator with a copy of the proposed consent order. The Presiding Officer and Hearing Clerk do not receive a copy of the proposed order at this juncture, in order to protect the

administrative record and assure that the Presiding Officer, who may have to adjudicate the case if settlement efforts fail, is not privy to the parties' settlement positions. Paragraph (c)(4)(ii) requires that, within 30 days of receipt of the proposed order, the commenter must provide to the Regional Administrator and the parties (but not to the Presiding Officer or Hearing Clerk) any petition to set aside the consent order. Paragraph (c)(4)(iii) then permits the complainant to withdraw the proposed order within 15 days of receipt of a petition, in order to consider the matters raised. If the complainant does not withdraw the proposed order within 15 days, the Regional Administrator shall appoint a Petition Officer to review the petition and make a determination as to the issues raised. A copy of the Regional Administrator's order of appointment shall be sent to the Presiding Officer and the parties. These procedures are designed, once again, to avoid tainting the Presiding Officer or administrative record with materials relevant to settlement negotiations only. Paragraph (c)(4)(iv) gives the complainant 30 days in which to file with the Petition Officer (*not* the Presiding Officer) the complainant's response to the petition. Copies of the response are provided to the parties and commenter(s), but not to the Presiding Officer and Hearing Clerk. Paragraph (c)(4)(v) describes the Petition Officer's duties upon receipt of complainant's response. Note here that the Petition Officer's written findings will be filed with the Hearing Clerk and Presiding Officer. Paragraph (c)(4)(vi) describes the Presiding Officer's duties where the Petition Officer rules that a hearing is required and the petition for hearing is granted. Paragraph (c)(4)(vii) describes the Petition Officer's duties where the Officer determines that a hearing is not required. Paragraph (c)(4)(viii) and (ix) describe the procedures for issuance of the consent order, for appeal of such order in the appropriate U.S. District Court, and when the order becomes final after denial of appellate review.

Sections 22.46 through 22.49: Reserved.

31. Supplemental Rules for Administrative Proceedings not Governed by Section 554 of the Administrative Procedure Act

Sections 22.50 through 22.53 comprise subpart I, which presents modifications to the main text of the CROP to facilitate use of the CROP in administrative adjudications where a hearing on the record is not required. Such adjudications are commonly referred to as "non-APA" proceedings in reference to the Administrative Procedure Act, of which sections 554, 556 and 557 apply only to "adjudication[s] required by statute to be determined on the record after opportunity for an agency hearing". 5 U.S.C. 554(a)(1). A key feature of these non-APA procedures is that the Presiding Officer need not be an Administrative Law Judge, as required in proceedings subject to APA 554, 556 and 557. Other differences include greater limitations on discovery and a prohibition on interlocutory appeals, however, it is only the absence of an Administrative Law Judge which puts the subpart I procedures outside the requirements of APA 554, 555, and 556. Owing to the retention of most of subparts A through G, the subpart I procedures provide nearly the same level of procedural protection for respondent's interests as would be available in a hearing fully conforming to the requirements of subparts A through G.

The subpart I procedures would retain the extensive prehearing exchange mandated in § 22.19(a) (requiring exchange of witness lists, summaries of expected testimony, copies of documents or exhibits, and evidence relevant to the amount of the penalty). Although courts have confirmed that there is no constitutional due process right to discovery in administrative adjudications (see e.g., Silverman v. CFTC, 549 F.2d 28 (7th Cir. 1977); NLRB v. Valley Mold Co., 530 F.2d 693 (6th Cir. 1976) cert. den. 429 US 824), the prehearing exchange under § 22.19(a) provides substantial discovery well in advance of a hearing.

The procedures provided through subpart I are adequate to assure a fair hearing, notwithstanding the absence of an ALJ, additional prehearing discovery and interlocutory review. The differences between the APA and non-APA provisions of the CROP are unlikely to affect the outcome of an administrative enforcement proceeding, and unlikely to impair the accuracy of the Agency's decisionmaking. Providing an ALJ for every case, including those lacking significant legal or factual dispute, would draw limited resources away from more complex and more significant cases. Allowing interlocutory appeals and additional discovery, such as interrogatories, depositions, requests for documents, would add significant delay to administrative enforcement and could cause extraordinary resource burdens. The absence of these additional procedural protections in non-APA proceedings poses only minor risk of impairing the regulated community's interest in fair and accurate adjudications, yet making them generally available would put substantial fiscal and administrative burdens on the government. Accordingly, EPA is not obliged to provide these additional procedural protections in non-APA proceedings in order to satisfy the requirements of the due process clause. *Matthews* v. *Eldridge*, 424 U.S. 319, 344–45 (1976); also see *Chemical Waste Management, Inc.* v. *U.S. E.P.A.*, 873 F.2d 1477 (D.C. Cir. 1989).

Although the Agency has not yet through rulemaking established formal procedures for the assessment of civil penalties through non-APA proceedings, the Agency has been conducting such proceedings under the proposed part 28 procedures and program-specific guidance. Where it is not inconsistent with other regulations, EPA intends that the procedures for non-APA proceedings proposed herein should be used in non-APA penalty proceedings pending promulgation of a final rule. Accordingly, non-APA penalty cases filed after the publication of this proposed rule should follow the procedures herein. Cases that have already commenced pursuant to the proposed part 28 procedures shall continue to be governed by the proposed part 28 procedures, however, complaints withdrawn in accordance with § 28.18(a)(1) may be refiled under the proposed CROP. In addition, a proceeding commenced under the proposed part 28 may be converted into a proceeding under the proposed CROP provided that no evidentiary hearing has been held and that all parties and the Presiding Officer agree to the change.

Section 22.50: Section 22.50 defines the scope of subpart I. Paragraph (a) indicates that the initial decision to bring a proceeding pursuant to subpart I is made by the Agency and requires that the Agency indicate such decision in the complaint. The Agency may in any case decline to apply subpart I and instead give the respondent the greater process of law afforded by a proceeding conforming to section 554 of the APA. Paragraph (a) acknowledges that the Agency may not apply subpart I where a statute requires a hearing in accordance with section 554 of the Administrative Procedure Act. Examples where Congress has authorized EPA to administratively assess penalties through proceedings that are not subject to the requirements of section 554 in certain circumstances include: CWA sections 309(g)(2)(A) and 311(b)(6)(A) & (B)(i) (33 U.S.C. 1319(g)(2)(A) and 1321(b)(6)(A) & (B)(i)); section 109(a) of the Comprehensive

Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. 9609(a)); section 325(b)(1), (c), and (d) of the Emergency Planning and Community Right-To-Know Act (EPCRA) (42 U.S.C. 11045(b)(1), (c), and (d)); SDWA section 1414(g)(3)(B) (42 U.S.C. 300g–3(g)(3)(B)); and CAA section 113(d)(3) (42 U.S.C. 7413(d)(3)); and issuance of a penalty-only order or a penalty/compliance order under SDWA section 1423(c) (42 U.S.C. 300h-2(c)). At this time, EPA does not intend to alter its present practice of providing the full APA process in CERCLA and EPCRA cases, although if circumstances warrant, the Agency may in the future exercise its authority to assess CERCLA and EPCRA penalties through non-APA proceedings. EPA welcomes comment concerning the types of CERCLA and EPCRA penalty cases for which non-APA procedures would be appropriate.

Paragraph (b) describes how the subpart works in conjunction with the preceding sections of the CROP, and also identifies those sections of the CROP which are inapplicable to a non-APA proceeding brought under subpart I.

Section 22.51: The term "Presiding Officer" would be defined for the purposes of a proceeding under this subpart to mean a Regional Judicial Officer, and provides that the Regional Judicial Officer shall rule on all motions, notwithstanding the provisions of § 22.16(c) which provide that post-answer motions be ruled on by the Administrative Law Judge.

Section 22.52: This section defines the parameters of information exchange for purposes of non-APA proceedings. The Agency's goal is to encourage complete and voluntary information exchange by the parties and limit unnecessary motion practice. Parties would be subject to the prehearing information exchange authorized in § 22.19(a), but most additional discovery would be prohibited under this subpart. The proposed § 22.52 would also require the respondent to provide in its prehearing exchange information in regard to any economic benefit it may have enjoyed as a result of the alleged non-compliance or a failure to act. Requiring this information up-front will help to clarify penalty issues early on, and avoid excessive and time-consuming motion practice.

The proposed § 22.52 would prohibit most additional discovery that would otherwise be allowed under § 22.19(e). Although it would prohibit most discovery, the complainant would be entitled to discovery of information concerning respondent's economic benefit of noncompliance and of financial records probative of respondent's ability to pay a penalty. Under several statutes, this information must be made part of the administrative record supporting a penalty determination, but it generally is not available to the Agency except through discovery of the respondent. Accordingly, discovery of this information must be permitted in order to prevent respondents from avoiding enforcement by simply withholding information.

Section 22.53: This section prohibits interlocutory appeals in proceedings under this subpart. The Agency sees little value in allowing interlocutory appeals in these relatively informal enforcement actions, particularly since parties to a proceeding under subpart I retain full appeal rights once an initial decision is issued. The Agency is particularly concerned that permitting interlocutory appeals would slow resolution of non-APA enforcement actions considerably.

32. Appendices

Appendix A: The Appendix would be amended to reflect the current addresses of EPA Regional Offices and EPA Headquarters.

Appendix B: This new appendix would be added to provide the addresses of EPA Regional and Headquarters lockboxes. These are the addresses to which, generally, the payments of civil penalties would be sent. The Agency requests comment on whether, and if so, how the CROP should address the electronic transfer of funds in addition to, or in lieu of, payment by check.

B. Revisions to Part 59

EPA anticipates that its May 3, 1994, proposed part 59 rule on field citations (59 FR 22776) will become final while these proposed revisions to the CROP are pending. Upon final promulgation of these revisions to the CROP, subpart B of part 59 would be superseded and deleted from the CFR.

III. Invitation of Public Comment

EPA invites comments on all aspects of the revisions proposed to part 22 and part 59. For the convenience of the reader only, EPA is publishing in its entirety part 22 as it would be revised. EPA is not proposing to readopt those portions of part 22 which would remain unchanged. This Notice of Proposed Rulemaking is limited to those changes from the existing regulations described in this Notice.

Information on the time period for submission of comments and directions for their submission may be found in the **DATES** and **ADDRESSES** sections of this document.

IV. Administrative Requirements

A. The Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities, i.e., small business, small organizations, and small governmental jurisdictions. The analysis is not required, however, where the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This regulation will impose no significant costs on any small entities, because it creates no new regulatory requirements, but instead simplifies existing procedural rules. The overall economic impact on small entities is therefore believed to be nominal, if any at all. Accordingly, I hereby certify that this proposed regulation will not have a significant impact on a substantial number of small entities.

B. Executive Order 12866

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

C. Paperwork Reduction Act

This proposed rule contains no information collection activities and, therefore, no information collection request (ICR) will be submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duties on any of these governmental entities or the private sector.

List of Subjects

40 CFR Part 22

Environmental protection, Administrative practice and procedure.

40 CFR Part 59

Environmental protection, Administrative practice and procedure, Air pollution control, Labeling, Penalties, Reporting and recordkeeping requirements.

Dated: February 6, 1998.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR parts 22 and 59 as follows:

1. Part 22 is revised to read as follows:

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

Sec.

22.01 Scope of this part.
22.02 Use of number and gender.
22.03 Definitions.
22.04 Roles of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
22.05 Filing, service, and form of pleadings and documents; business confidentiality claims.
22.06 Filing and service of rulings, orders and decisions.
22.07 Computation and extension of time.
22.08 Ex parte discussion of proceeding.
22.09 Examination of documents filed.

Subpart B—Parties and Appearances

22.10 Appearances.
22.11 Intervention and amicus curiae.
22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

22.13 Commencement of a proceeding.
22.14 Content and amendment of the complaint.
22.15 Answer to the complaint.
22.16 Motions.
22.17 Default.
22.18 Quick resolution; settlement; alternative dispute resolution.
22.19 Prehearing information exchange; prehearing conference; other discovery.
22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

22.21 Assignment of Presiding Officer; scheduling the hearing.
22.22 Evidence.
22.23 Objections and offers of proof.
22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
22.25 Filing the transcript.
22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

22.27 Initial Decision.
22.28 Motion to reopen a hearing.

Subpart F—Appeals and Administrative Review

22.29 Appeal from or review of interlocutory orders or rulings.
22.30 Appeal from or review of initial decision.

Subpart G—Final Order

22.31 Final order.
22.32 Motion to reconsider a final order.

Subpart H—Supplemental Rules

22.33 [Reserved]
22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.
22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.
22.36 [Reserved]
22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.
22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.
22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.
22.40 [Reserved]
22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substance Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).
22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued under part B of the Safe Drinking Water Act.
22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.
22.44 Supplemental rules governing the termination of permits under section 402(a) of the Clean Water Act or under section 3005(d) of the Resource Conservation and Recovery Act.
22.45 Supplemental rules governing public notice and comment in proceedings under section 309(g) of the Clean Water Act and section 300h–2(c) of the Safe Drinking Water Act.
22.46–22.49 [Reserved]

Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

22.50 Scope of this subpart.
22.51 Presiding Officer.
22.52 Information exchange and discovery.
22.53 Interlocutory orders or rulings.
Appendix A to Part 22—Addresses of EPA Regional Offices and Headquarters
Appendix B to Part 22—Addresses of Regional and Headquarters Lockboxes

Authority: 7 U.S.C. 136l; 15 U.S.C. 2610(c), 2615(a) and 2647; 33 U.S.C. 1319(g), 1321(b)(6) and 1342(a); 33 U.S.C. 1415(a) and (f) and 1418; 42 U.S.C. 300g–3(g)(3)(B), 300h–2(c) and 300j–6(a); 42 U.S.C. 6912, 6925, 6928, 6945(c)(2), 6961, 6991b and 6991e; 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547(d), 7601 and 7607(a); 42 U.S.C. 9609; 42 U.S.C. 11045; 42 U.S.C. 14304.

Subpart A—General

§ 22.01 Scope of this part.

(a) These Consolidated Rules of Practice govern all administrative adjudicatory proceedings for:

(1) The assessment of any administrative civil penalty conducted under section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act as amended (7 U.S.C. 136l(a));

(2) The assessment of any administrative civil penalty under sections 113(d), 205(c), 211(d) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d) and 7547(d)).

(3) The assessment of any administrative civil penalty or for the revocation or suspension of any permit conducted under section 105(a) and (f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1415(a) and (f));

(4)(i) The issuance of a compliance order pursuant to section 3008(a), section 4005(c)(2), section 6001(b), or section 9006(a), suspension or revocation of a permit pursuant to section 3005(d) or section 3008(a), or the suspension or revocation of authority to operate as an interim status facility pursuant to section 3008(h) of the Solid Waste Disposal Act ("SWDA") (42 U.S.C. 6925(d) & (e), 6928(a) & (h), 6945(c)(2), 6961(b), and 6991e(a)); or the assessment of any administrative civil penalty under sections 3008, 4005(c)(2), 6001(b), and 9006 of the SWDA (42 U.S.C. 6928, 6945(c)(2), 6961(b), and 6991e), except as provided in 40 CFR parts 24 and 124.

(ii) The issuance of corrective action orders under section 3008(h) of the SWDA only when such orders are contained within an administrative order which:

(A) Includes claims under section 3008(a) of the SWDA; or

(B) Includes a suspension or revocation of authorization to operate under section 3005(e) of the SWDA; or

(C) Seeks penalties under section 3008(h)(2) of the SWDA for non-compliance with a order issued pursuant to section 3008(h).

(iii) The issuance of corrective action orders under section 9003(h)(4) of the SWDA only when such orders are contained within administrative orders which include claims under section 9006 of the SWDA.

(5) The assessment of any administrative civil penalty conducted under sections 16(a) and 207 of the Toxic Substances Control Act (15 U.S.C. 2615(a) and 2647).

(6) The assessment of any administrative civil penalty under sections 309(g) and 311(b)(6), or the termination of any permit issued pursuant to section 402(a) of the Clean Water Act (33 U.S.C. 1319(g), 1321(b)(6) and 1342(a));

(7) The assessment of any administrative civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609);

(8) The assessment of any administrative civil penalty under section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) (42 U.S.C. 11045);

(9) The assessment of any administrative civil penalty under sections 1414(g)(3)(B), 1423(c), and 1447(b) of the Safe Drinking Water Act as amended (42 U.S.C. 300g–3(g)(3)(B), 300h–2(c), and 300j–6(b)), or the issuance of any order requiring both compliance and the assessment of an administrative civil penalty under section 1423(c).

(10) The assessment of any administrative civil penalty or the issuance of any order requiring compliance under Section 5 of the Mercury-Containing and Rechargeable Battery Management Act (42 U.S.C. 14304).

(b) The supplemental rules set forth in subparts H and I of this part establish special procedures for proceedings identified in paragraph (a) of this section where the Act allows or requires procedures different from the procedures in subparts A through G of this part. The procedures in any applicable subpart H or I of this part supplemental rule supersede any conflicting provisions of subparts A through G of this part.

(c) Questions arising at any stage of the proceeding which are not addressed in these Consolidated Rules of Practice shall be resolved at the discretion of the Administrator, Environmental Appeals Board, Regional Administrator, or Presiding Officer, as provided for in these Consolidated Rules of Practice.

§ 22.02 Use of number and gender.

As used in these Consolidated Rules of Practice, words in the singular also include the plural and words in the masculine gender also include the feminine, and vice versa, as the case may require.

§ 22.03 Definitions.

(a) The following definitions apply to these Consolidated Rules of Practice:

Act means the particular statute authorizing the proceeding at issue.

Administrative Law Judge means an Administrative Law Judge appointed under 5 U.S.C. 3105 (see also Pub. L. 95–251, 92 Stat. 183).

Administrator means the Administrator of the U.S. Environmental Protection Agency or his delegate.

Agency means the United States Environmental Protection Agency.

Business confidentiality claim means a confidentiality claim as defined in 40 CFR 2.201(h).

Clerk of the Board means the Clerk of the Board, Mail Code 1103B, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Commenter means any person (other than a party) or representative of such person who timely:

(1) Submits in writing to the Regional Hearing Clerk that he is providing or intends to provide comments on the proposed assessment of a penalty pursuant to sections 309(g)(4) and 311(b)(6)(C) of the Clean Water Act or section 1423(c) of the Safe Drinking Water Act, whichever applies, and intends to participate in the action; and

(2) Provides the Regional Hearing Clerk with a return address.

Complainant means any person authorized to issue a complaint in accordance with §§ 22.13 and 22.14 on behalf of the Agency to persons alleged to be in violation of the Act. The complainant shall not be a member of the Environmental Appeals Board, the Regional Judicial Officer or any other person who will participate or advise in the decision.

Consolidated Rules of Practice means the regulations in this part.

Environmental Appeals Board means the Board within the Agency described in § 1.25 of this chapter.

Final Order means:

(1) An order issued by the Environmental Appeals Board or the Administrator after an appeal of an initial decision, accelerated decision,

decision to dismiss, or default order, disposing of the matter in controversy between the parties.

(2) An initial decision which becomes a final order under § 22.27(c), or

(3) A final order or consent order issued in accordance with § 22.18.

Hearing means a hearing on the record open to the public and conducted under these Consolidated Rules of Practice.

Hearing Clerk means the Hearing Clerk, Mail Code 1900, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Initial Decision means the decision issued by the Presiding Officer pursuant to §§ 22.17(c), 22.20(b) or 22.27 resolving all outstanding issues in the proceeding based upon the record of the proceedings out of which it arises.

Party means any person that participates in a hearing as complainant, respondent, or intervenor.

Permit means a permit issued under section 102 of the Marine Protection, Research and Sanctuaries Act, section 402(a) of the Clean Water Act, or section 3005(d) of the Resource Conservation and Recovery Act, or authority to operate granted pursuant to section 3005(e) of the Resource Conservation and Recovery Act.

Person includes any individual, partnership, association, corporation, and any trustee, assignee, receiver or legal successor thereof; any organized group of persons whether incorporated or not; and any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

Presiding Officer means an individual who presides in an administrative adjudication until an initial decision becomes final or is appealed. The Presiding Officer shall be an Administrative Law Judge, except where §§ 22.04(b), 22.16(c) or 22.51 allow a Regional Judicial Officer to serve as Presiding Officer.

Regional Administrator means, for a case initiated in an EPA Regional Office, the Regional Administrator for that Region or any officer or employee thereof to whom his authority is duly delegated.

Regional Hearing Clerk means an individual duly authorized to serve as hearing clerk for a given region. Correspondence may be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency (address of Regional Office—see Appendix A). For a case initiated at EPA Headquarters, the term Regional Hearing Clerk means the Hearing Clerk.

Regional Judicial Officer means a person designated by the Regional Administrator under § 22.04(b).

Respondent means any person proceeded against in the complaint.

(b) Terms defined in the Act and not defined in these Consolidated Rules of Practice are used consistent with the meanings given in the Act.

§ 22.04 Roles of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.

(a) *Environmental Appeals Board.* The Environmental Appeals Board: rules on appeals from the decisions, rulings and orders of a Presiding Officer in proceedings under these Consolidated Rules of Practice; acts as Presiding Officer until the respondent files an answer in proceedings under these Consolidated Rules of Practice commenced at EPA Headquarters; and approves settlement of proceedings under these Consolidated Rules of Practice commenced at EPA Headquarters. The Environmental Appeals Board may refer any case or motion to the Administrator when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Environmental Appeals Board, all parties shall be so notified and references to the Environmental Appeals Board in these Consolidated Rules of Practice shall be interpreted as referring to the Administrator. If a case or motion is referred to the Administrator by the Environmental Appeals Board, the Administrator may consult with any EPA employee concerning the matter, provided such consultation does not violate § 22.08. Motions directed to the Administrator shall not be considered except for motions for disqualification pursuant to paragraph (d) of this section, or where the Environmental Appeals Board has referred a matter to the Administrator.

(b) *Regional Judicial Officer.* Each Regional Administrator shall designate one or more Regional Judicial Officers to act as Presiding Officer in proceedings under subpart I of these Consolidated Rules of Practice, and to act as Presiding Officer until the respondent files an answer in proceedings under these Consolidated Rules of Practice to which subpart I does not apply. The Regional Administrator may also delegate to one or more Regional Judicial Officers the authority to approve settlement of proceedings pursuant to § 22.18(b)(3). These delegations will not prevent a Regional Judicial Officer from referring any motion or case to the Regional Administrator. A Regional Judicial Officer shall be an attorney who is a permanent or temporary employee of the Agency or another Federal agency and who may perform other duties within the Agency. A Regional Judicial Officer shall not have performed prosecutorial or investigative functions in connection with, nor have any interest in the outcome of, any case in which he serves as a Regional Judicial Officer.

(c) *Presiding Officer.* The Presiding Officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay.

The Presiding Officer may:

(1) Conduct administrative hearings under these Consolidated Rules of Practice;

(2) Rule upon motions, requests, and offers of proof, and issue all necessary orders;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine witnesses and receive documentary or other evidence;

(5) Order a party, or an officer or agent thereof, to produce testimony, documents, or other non-privileged evidence, and failing the production thereof without good cause being shown, draw adverse inferences against that party;

(6) Admit or exclude evidence;

(7) Hear and decide questions of facts, law, or discretion;

(8) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings;

(9) Issue subpoenas authorized by the Act; and

(10) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these Consolidated Rules of Practice.

(d) *Disqualification, withdrawal and reassignment.* (1) The Administrator, the Regional Administrator, the members of the Environmental Appeals Board, the Regional Judicial Officer, or the Presiding Officer may not perform functions provided for in these Consolidated Rules of Practice regarding any matter in which they have a financial interest or have any relationship with a party or with the subject matter which would make it inappropriate for them to act. Any party may at any time by motion to the Regional Administrator request that the Regional Judicial Officer be disqualified from the proceeding. Any party may at any time by motion to the Administrator, Regional Administrator,

a member of the Environmental Appeals Board, or the Presiding Officer request that he or she disqualify himself or herself from the proceeding. If such a motion to disqualify the Regional Administrator or Presiding Officer is denied, a party may appeal that ruling to the Environmental Appeals Board. If a motion to disqualify a member of the Environmental Appeals Board is denied, a party may appeal that ruling to the Administrator. The Administrator, the Regional Administrator, a member of the Environmental Appeals Board, the Regional Judicial Officer, or the Presiding Officer may at any time withdraw from any proceeding in which they deem themselves disqualified or unable to act for any reason.

(2) If the Administrator, the Regional Administrator, the Regional Judicial Officer, or the Presiding Officer is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in paragraph (d)(1) of this section shall be assigned as a replacement. The Administrator shall assign a replacement for a Regional Administrator who withdraws or is disqualified. Should the Administrator withdraw or be disqualified, the Regional Administrator from the Region where the case originated shall replace the Administrator. If that Regional Administrator would be disqualified, the Administrator shall assign a Regional Administrator from another Region to replace the Administrator. The Regional Administrator shall assign a new Regional Judicial Officer if the original Regional Judicial Officer withdraws or is disqualified. The Chief Administrative Law Judge shall assign a new Administrative Law Judge if the original Administrative Law Judge withdraws or is disqualified.

(3) The Chief Administrative Law Judge, at any stage in the proceeding, may reassign the case to an Administrative Law Judge other than the one originally assigned in the event of the unavailability of the Administrative Law Judge or where reassignment will result in efficiency in the scheduling of hearings and would not prejudice the parties.

§ 22.05 Filing, service, and form of pleadings and documents; business confidentiality claims.

(a) *Filing of pleadings and documents.* (1) The original and one copy of each pleading or document intended to be part of the record shall be filed with the Regional Hearing Clerk when the proceeding is before the Presiding Officer, or filed with the Clerk of the Board when the proceeding is before the Environmental Appeals Board. A pleading or document is filed when it is received by the appropriate Clerk.

(2) When the Presiding Officer corresponds directly with the parties, the original of the correspondence shall be filed with the Regional Hearing Clerk. Parties who correspond directly with the Presiding Officer shall file a copy of the correspondence with the Regional Hearing Clerk.

(3) A certificate of service shall accompany each document filed or served in the proceeding.

(b) *Service of pleadings and documents.* A copy of each pleading or document filed in the proceeding shall be served on the Presiding Officer and on each party.

(1) *Service of complaint.* (i) Complainant shall serve on Respondent, or a representative authorized to receive service on Respondent's behalf, a copy of the signed original of the complaint, together with a copy of these Consolidated Rules of Practice. Service shall be made personally, by certified mail, return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.

(ii)(A) Where respondent is a domestic or foreign corporation, a partnership, or an unincorporated association which is subject to suit under a common name, complainant shall serve an officer, partner, a managing or general agent, or any other person authorized by appointment or by Federal or State law to receive service of process.

(B) Where respondent is an officer or agency of the United States complainant shall serve the officer or agency, or as otherwise permitted by law. If the agency is a corporation, the complaint shall be served as prescribed in paragraph (b)(1)(ii)(A) of this section.

(C) Where respondent is a State or local unit of government, agency, department, corporation or other instrumentality, complainant shall serve the chief executive officer thereof, or as otherwise permitted by law. Where respondent is a State or local officer, complainant shall serve such officer.

(iii) Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly executed receipt. Such proof of service shall be filed with the Regional Hearing Clerk immediately upon completion of service.

(2) *Service of pleadings and documents other than the complaint, rulings, orders, and decisions.* All pleadings and documents other than the complaint, rulings, orders, and decisions shall be served personally, by first class mail (including certified mail or return receipt requested), or by any reliable commercial delivery service.

(c) *Form of pleadings and documents.* (1) Except as provided herein, or by order of the Presiding Officer or of the Environmental Appeals Board there are no specific requirements as to the form of pleadings and documents.

(2) The first page of every pleading or other document (after the filing of the complaint) shall contain a caption identifying the respondent and the docket number. All legal briefs and legal memoranda greater than twenty pages in length (excluding attachments) shall contain a table of contents and a table of authorities with page references.

(3) The original of any pleading or other document (other than exhibits) shall be signed by the party filing or by its attorney or other representative. The signature constitutes a representation by the signer that he has read the pleading, letter or other document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The first pleading or document filed by any person shall contain the person's name, address, and telephone number, and those of its attorney or representative, if any. Any changes in this information shall be communicated promptly to the Regional Hearing Clerk, Presiding Officer, and all parties to the proceeding. A party who fails to furnish such information and any changes thereto shall be deemed to have waived its right to notice and service in a proceeding under these Consolidated Rules of Practice.

(5) The Environmental Appeals Board or the Presiding Officer may exclude from the record any pleading or document which does not comply with this paragraph (c) of this section. Written notice of such exclusion, stating the reasons therefor, shall be promptly given to the person submitting the document. Such person may amend and resubmit any excluded document upon motion granted by the Environmental Appeals Board or the Presiding Officer, as appropriate.

(d) *Confidentiality of Business Information.* (1) A person who wishes to assert a business confidentiality claim with regard to any information contained in any pleading or document to be filed in a proceeding under these Consolidated Rules of Practice shall assert such a claim in accordance with 40 CFR part 2 at the time that the pleading or document is filed. A pleading or document filed without a claim of business confidentiality shall

be available to the public for inspection and copying.

(2) Two versions of any pleading or document which contains information claimed confidential shall be filed with the Regional Hearing Clerk:

(i) One version of the pleading or document shall contain the information claimed confidential. The cover page shall include the information required under paragraph (c)(2) of this section and the words "Business Confidentiality Asserted". The specific portion(s) alleged to be confidential shall be clearly identified within the document.

(ii) A second version of the pleading or document shall contain all information except the specific information claimed confidential, which shall be redacted and replaced with notes indicating the nature of the information redacted. The cover page shall state that information claimed confidential has been deleted and that a complete copy of the pleading or document containing the information claimed confidential has been filed with the Regional Hearing Clerk.

(3) Both versions of the pleading or document shall be served on the Presiding Officer and the complainant. Both versions of the pleading or document shall be served on any party, amicus, or representative thereof, authorized to receive the information claimed confidential by the person making the claim of confidentiality. Only the redacted version shall be served on persons not authorized to receive the confidential information.

(4) Only the second, redacted version shall be treated as public information. An EPA officer or employee may disclose information claimed confidential in accordance with paragraph (d)(1) of this section only as authorized under 40 CFR part 2.

§ 22.06 Filing and service of rulings, orders and decisions.

All rulings, orders, decisions, and other documents issued by the Regional Administrator or Presiding Officer shall be filed with the Regional Hearing Clerk. All such documents issued by the Environmental Appeals Board shall be filed with the Clerk of the Environmental Appeals Board. Copies of such rulings, orders, decisions, or other documents shall be served personally, by first class mail (including by certified mail or return receipt requested) or any reliable commercial delivery service, upon all parties by the Clerk of the Environmental Appeals Board or the Regional Hearing Clerk, as appropriate.

§ 22.07 Computation and extension of time.

(a) *Computation.* In computing any period of time prescribed or allowed in these Consolidated Rules of Practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal holidays shall be included. When a stated time expires on a Saturday, Sunday or Federal holiday, the stated time period shall be extended to include the next business day.

(b) *Extensions of time.* The Environmental Appeals Board or the Presiding Officer may grant an extension of time for filing any pleading or document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative. Any motion for an extension of time shall be filed sufficiently in advance of the due date so as to allow other parties reasonable opportunity to respond and to allow the Presiding Officer or Environmental Appeals Board reasonable opportunity to issue an order.

(c) *Service by mail or commercial delivery service.* Service of the complaint is complete when the return receipt is signed. Service of all other pleadings and documents is complete upon mailing or when placed in the custody of a reliable commercial delivery service. Where a pleading or document is served by first class mail or commercial delivery service, five (5) days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive pleading or document.

§ 22.08 Ex parte discussion of proceeding.

At no time after the issuance of the complaint shall the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, the Regional Judicial Officer, the Presiding Officer or any other person who is likely to advise these officials in the decision on the case, discuss ex parte the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any ex parte memorandum or other communication addressed to the Administrator, the Regional Administrator, the Environmental Appeals Board, the Regional Judicial Officer, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication. The requirements of this section shall not apply to any Administrator, Regional Administrator, member of the Environmental Appeals Board, Regional Judicial Officer, or Presiding Officer who has formally recused himself from all adjudicatory functions in a proceeding.

§ 22.09 Examination of documents filed.

(a) Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during Agency business hours inspect and copy any document filed in any proceeding. Such documents shall be made available by the Regional Hearing Clerk, the Hearing Clerk, or the Environmental Appeals Board, as appropriate.

(b) The cost of duplicating documents shall be borne by the person seeking copies of such documents. The Agency may waive this cost in its discretion.

Subpart B—Parties and Appearances

§ 22.10 Appearances.

Any party may appear in person or by counsel or other representative. A partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

§ 22.11 Intervention and amicus curiae.

(a) *Intervention.* Any person desiring to become a party to a proceeding may move for leave to intervene. A motion for leave to intervene that is filed after the exchange of information pursuant to § 22.19(a) shall not be granted unless the movant shows good cause for its failure to file before such exchange of information. Any party to the proceeding may file a response to a motion to intervene within fifteen (15) days after service of the motion for leave to intervene. The Presiding Officer shall grant leave to intervene in all or part of the proceeding if: the movant claims an interest relating to the cause of action; a final order may as a practical matter impair the movant's ability to protect that interest; and the movant's interest is not adequately represented by existing parties. The intervenor shall be bound by any agreements, arrangements and other matters previously made in the proceeding unless otherwise ordered

by the Presiding Officer or the Environmental Appeals Board for good cause.

(b) *Amicus Curiae.* Any person who is not a party to a proceeding may move for leave to file an amicus brief. The motion shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable. If the motion is granted, the Presiding Officer or Environmental Appeals Board shall issue an order setting the time for filing such brief. Any party to the proceeding may file a response to an amicus curiae brief within fifteen (15) days after service of the amicus curiae brief.

§ 22.12 Consolidation and severance.

(a) *Consolidation.* The Presiding Officer may consolidate any or all matters at issue in two or more proceedings subject to these Consolidated Rules of Practice where: there exist common parties or common questions of fact or law; consolidation would expedite and simplify consideration of the issues; and consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings. Where a proceeding subject to the provisions of subpart I of this part is consolidated with a proceeding to which subpart I does not apply, the procedures of subpart I of this part shall not apply to the consolidated proceeding.

(b) *Severance.* The Presiding Officer may, for good cause, order any proceedings severed with respect to any or all parties or issues.

Subpart C—Prehearing Procedures

§ 22.13 Commencement of a proceeding.

(a) Any proceeding subject to these Consolidated Rules of Practice is commenced by filing with the Regional Hearing Clerk a complaint conforming to § 22.14.

(b) Notwithstanding paragraph (a) of this section, where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding not subject to the public notice and comment provisions of § 22.45 may be simultaneously commenced and concluded by the issuance of a consent agreement and consent order pursuant to § 22.18(b)(2) and (3).

§ 22.14 Content and amendment of the complaint.

(a) *Content of complaint.* Each complaint shall include:

(1) A statement reciting the section(s) of the Act authorizing the issuance of the complaint;

(2) Specific reference to each provision of the Act, implementing regulations, permit or order which respondent is alleged to have violated;

(3) A concise statement of the factual basis for alleging the violation;

(4) A description of all relief sought, including one or more of the following:

(i) The amount of the civil penalty which is proposed to be assessed, and a brief explanation of the proposed penalty;

(ii) Where a specific penalty demand is not made, a brief explanation of the severity of each violation alleged and a citation to the statutory penalty authority applicable for each violation alleged in the complaint;

(iii) A request for revocation, termination or suspension of all or part of a permit, and a statement of the terms and conditions of such revocation, termination or suspension; or

(iv) A request for a compliance or corrective action order and a statement of the terms and conditions thereof;

(5) Notice of respondent's right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of any proposed penalty, compliance or corrective action order, or permit revocation, termination or suspension; and

(6) Notice if subpart I of this part applies to such hearing.

(b) *Rules of practice.* A copy of these Consolidated Rules of Practice shall accompany each complaint served.

(c) *Amendment of the complaint.* The complainant may amend the complaint once as a matter of right at any time before the answer is filed. Otherwise the complainant may amend the complaint only upon motion granted by the Presiding Officer. Respondent shall have twenty (20) additional days from the date of service of the amended complaint to file its answer.

(d) *Withdrawal of the complaint.* The complainant may withdraw the complaint, or any part thereof, without prejudice one time before the answer has been filed. After one withdrawal before the filing of an answer, or after the filing of an answer, the complainant may withdraw the complaint, or any part thereof, without prejudice only upon motion granted by the Presiding Officer.

§ 22.15 Answer to the complaint.

(a) *General.* Where respondent: Contests any material fact upon which the complaint is based; contends that the proposed penalty, compliance or corrective action order, or permit revocation, termination or suspension, as the case may be, is inappropriate; or contends that it is entitled to judgment as a matter of law, it shall file an original and one copy of a written answer to the complaint with the Regional Hearing Clerk and shall serve copies of the answer on all other parties. Any such answer to the complaint must be filed with the Regional Hearing Clerk within thirty (30) days after service of the complaint.

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state: The circumstances or arguments which are alleged to constitute the grounds of any defense; the facts which respondent disputes; the basis for opposing the proposed relief; and whether a hearing is requested.

(c) *Request for a hearing.* A hearing upon the issues raised by the complaint and answer shall be held if requested by respondent in its answer. If the respondent does not request a hearing, the Presiding Officer may hold a hearing if issues appropriate for adjudication are raised in the answer.

(d) *Failure to admit, deny, or explain.* Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation.

(e) *Amendment of the answer.* The respondent may amend the answer to the complaint upon motion granted by the Presiding Officer.

§ 22.16 Motions.

(a) *General.* All motions, except those made orally on the record during a hearing, shall: be in writing; state the grounds therefor, with particularity; set forth the relief sought; and be accompanied by any affidavit, certificate, other evidence or legal memorandum relied upon. Motions shall be served as provided by § 22.05(b)(2). Upon the filing of a motion, other parties may file responses to the motion and the movant may file a reply to the response; any additional responsive documents shall be permitted only by order of the Presiding Officer or Environmental Appeals Board, as appropriate.

(b) *Response to motions.* A party's response to any written motion must be filed within fifteen (15) days after service of such motion. The movant's reply to any written response must be filed within ten (10) days after service of such response and shall be limited to issues raised in the response. The Presiding Officer or the Environmental

Appeals Board may set a shorter or longer time for response or reply, or make other orders concerning the disposition of motions. The response or reply shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. Any party who fails to respond within the designated period waives any objection to the granting of the motion.

(c) *Decision.* The Regional Judicial Officer (or in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board) shall rule on all motions filed or made before an answer to the complaint is filed. Except as provided in § 22.29(c), an Administrative Law Judge shall rule on all motions filed or made after an answer is filed and before an initial decision has become final or has been appealed. The Environmental Appeals Board shall rule as provided in § 22.29(c) and on all motions filed or made after an appeal of the initial decision is filed, except as provided pursuant to § 22.28.

(d) *Oral argument.* The Presiding Officer or the Environmental Appeals Board may permit oral argument on motions in its discretion.

§ 22.17 Default.

(a) *Default.* A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint; upon failure to comply with the information exchange requirements of § 22.19(a) or an order of the Presiding Officer; or upon failure to appear at a conference or hearing. Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the complaint and a waiver of respondent's right to a hearing on such factual allegations. Default by complainant constitutes a waiver of complainant's right to proceed on the merits of the action, and shall result in the dismissal of the complaint with prejudice.

(b) *Motion for default.* A motion for default shall set forth the grounds for finding a party in default. Where the motion requests the assessment of a penalty or the imposition of other relief against a defaulting party, the movant must specify the penalty or other relief sought and state the legal and factual grounds for the relief requested. The motion shall include as attachments any affidavit, certificate, other evidence or legal memoranda relied upon in support of the motion.

(c) *Default order.* When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party unless the record shows good cause why a default order should not be issued. This order shall constitute the initial decision under these Consolidated Rules of Practice, except that the relief proposed in the complaint or the motion for default shall be ordered unless the record clearly demonstrates that the requested relief is inconsistent with the Act. For good cause shown, the Presiding Officer may set aside a default order.

(d) *Payment of Penalty; Effective Date of Compliance or Corrective Action Orders, Revocation or Suspension of Permits.* Any penalty assessed in the default order shall become due and payable by respondent without further proceedings thirty (30) days after the default order becomes final under § 22.27(c). Any default order requiring compliance or corrective action shall be effective and enforceable without further proceedings on the date the default order becomes final under § 22.27(c). If the default order revokes or suspends a permit, the conditions of the revocation or suspension shall become effective without further proceedings on the date that the default order becomes final under § 22.27(c).

§ 22.18 Quick resolution; settlement; alternative dispute resolution.

(a) *Quick resolution.* (1) Any respondent who receives a complaint containing a specific proposed penalty may resolve the action at any time by paying the proposed penalty in full into the appropriate lockbox (see Appendix B of this part) and by filing with the Regional Hearing Clerk a copy of the check. If the respondent pays the proposed penalty in full within 30 days after receiving the complaint, then no answer need be filed. Paragraph (a) of this section shall not apply to any complaint which seeks a compliance or corrective action order, or to revoke, terminate or suspend a permit. In an action subject to the public comment provisions of § 22.45, this quick resolution is not available until ten (10) days after the close of the comment period.

(2) Any respondent who wishes to resolve an action by paying the proposed penalty instead of filing an answer, but who needs additional time to pay the penalty, may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving the complaint stating that the respondent agrees to pay the proposed penalty in accordance with paragraph (a)(1) of this section. The written statement need not contain any response to, or admission of, the allegations in the complaint. Within sixty days (60) days after receiving the complaint, the respondent shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the complaint may subject the respondent to default pursuant to § 22.17.

(3) Upon receipt of payment in full, the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board, shall issue a final order. Payment by respondent shall constitute a waiver of respondent's rights to a hearing and to appeal the final order.

(b) *Settlement.* (1) The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. The parties may engage in settlement discussions whether or not the respondent requests a hearing. Settlement discussions shall not affect the respondent's obligation to file a timely answer under § 22.15.

(2) *Consent agreement.* Any and all terms and conditions of a settlement shall be recorded in a written consent agreement signed by all parties or their representatives. The consent agreement shall state that, for the purpose of the proceeding, respondent: Admits the jurisdictional allegations of the complaint; admits the facts stipulated in the consent agreement or neither admits nor denies specific factual allegations contained in the complaint; consents to the assessment of any stated civil penalty, to the issuance of any specified compliance or corrective action order, to any conditions specified in the consent agreement, and to any stated permit revocation, termination or suspension; and waives any right to a hearing and its right to appeal the consent order accompanying the consent agreement. Where Complainant elects to commence a proceeding pursuant to § 22.13(b), the consent agreement shall also contain the elements described at § 22.14(a)(1)–(3). The parties shall forward the executed consent agreement and a proposed consent order to the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board.

(3) *Consent order.* No settlement or consent agreement shall dispose of any proceeding under the Consolidated Rules of Practice without a consent order from the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board. The consent order shall ratify the parties' consent agreement and constitute a final order.

(c) *Scope of resolution or settlement.* Full payment of the penalty proposed in

a complaint pursuant to paragraph (a) of this section or settlement pursuant to paragraph (b) of this section shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Full payment of the penalty proposed in a complaint pursuant to paragraph (a) of this section or settlement pursuant to paragraph (b) of this section shall only resolve respondent's liability for Federal civil penalties for the violations and facts alleged in the complaint.

(d) *Alternative Means of Dispute Resolution.* (1) The parties may engage in any process within the scope of the Alternative Dispute Resolution Act ("ADRA"), 5 U.S.C. 581 *et seq.*, which may facilitate voluntary settlement efforts. Such process shall be subject to the confidentiality provisions of the ADRA.

(2) Dispute resolution under paragraph (d) of this section does not divest the Presiding Officer of jurisdiction and does not automatically stay the proceeding. All provisions of these Consolidated Rules of Practice remain in effect notwithstanding any dispute resolution proceeding.

(3) The parties may choose any person to act as a neutral, or may move for the appointment of a neutral. If the Presiding Officer concurs with a motion for the appointment of a neutral, the Presiding Officer shall forward the motion to the Chief Administrative Law Judge who shall designate a qualified neutral.

§ 22.19 Prehearing information exchange; prehearing conference; other discovery.

(a) *Prehearing information exchange.* Unless otherwise ordered by the Presiding Officer, each party shall provide to all parties: the names of any expert or other witnesses it intends to call at the hearing, together with a brief narrative summary of their expected testimony, or a statement that no witnesses will be called; and copies of all documents and exhibits which it intends to introduce into evidence at the hearing. If the proceeding is for the assessment of a penalty, complainant shall specify a proposed penalty if it has not done so in the complaint and state the basis for that penalty, and respondent shall provide all factual information it considers relevant to the assessment of a penalty (except evidence relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence). Documents and exhibits shall be marked for identification as ordered by the Presiding Officer. Documents or exhibits that have not been included and testimony that has not been summarized in prehearing information exchange may not be admitted into evidence except as provided in § 22.22(a).

(b) *Prehearing conference.* The Presiding Officer, at any time before the hearing begins, may direct the parties and their counsel or other representatives to participate in a conference before him to consider:

(1) Settlement of the case;

(2) Simplification of issues and stipulation of facts not in dispute;

(3) The necessity or desirability of amendments to pleadings;

(4) The exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;

(5) The limitation of the number of expert or other witnesses;

(6) The time and place for the hearing; and

(7) Any other matters which may expedite the disposition of the proceeding.

(c) *Record of the prehearing conference.* No transcript of a prehearing conference relating to settlement shall be made. With respect to other prehearing conferences, no transcript of any prehearing conferences shall be made unless ordered by the Presiding Officer. The Presiding Officer shall prepare and file for the record a written summary of the action taken at the conference. The summary shall incorporate any written stipulations or agreements of the parties and all rulings and appropriate orders containing directions to the parties.

(d) *Location of prehearing conference.* The prehearing conference shall be held in the county where the respondent resides or conducts the business which the hearing concerns, in the city in which the relevant Environmental Protection Agency Regional Office is located, or in Washington, DC, unless the Presiding Officer determines that there is good cause to hold it at another location or by telephone.

(e) *Other discovery.* (1) After the information exchange provided for in paragraph (a) of this section, a party may move for additional discovery. The motion shall specify the method of discovery sought, provide the proposed discovery instruments, and describe in detail the nature of the information and/or documents sought (and, where relevant, the proposed time and place where discovery would be conducted). The Presiding Officer may order such other discovery only if it:

(i) Will neither unreasonably delay the proceeding nor unreasonably burden the non-moving party;

(ii) Seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily; and

(iii) Seeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought.

(2) Settlement positions and information regarding their development (such as penalty calculations based upon Agency settlement policies) shall not be discoverable.

(3) The Presiding Officer may order depositions upon oral questions only in accordance with paragraph (e)(1) of this section and upon an additional finding that:

(i) The information sought cannot be obtained by alternative methods of discovery; or

(ii) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(4) The Presiding Officer may require the attendance of witnesses or the production of documentary evidence by subpoena, if authorized under the Act, in accordance with paragraph (e)(1) of this section and upon an additional showing of the grounds and necessity therefor. Subpoenas shall be served in accordance with § 22.05(b)(1). Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Any fees shall be paid by the party at whose request the witness appears. Where a witness appears pursuant to a request initiated by the Presiding Officer, fees shall be paid by the Agency.

(5) Nothing in paragraph (e) of this section shall limit a party's right to request admissions or stipulations, a respondent's right to request Agency records under the Federal Freedom of Information Act, 5 U.S.C. 552, or EPA's authority under the Act to conduct inspections, issue information request letters or administrative subpoenas, or otherwise obtain information.

(f) *Supplementing prior exchanges.* A party who has made an information exchange under paragraph (a) of this section, or who has responded to a request for information or a discovery order pursuant to paragraph (e) of this section, shall promptly supplement or correct the exchange when the party learns that the information exchanged or response provided is incomplete,

inaccurate or outdated, and the additional or corrective information has not otherwise been disclosed to the other party pursuant to this section.

(g) Where a party fails to provide information within its control as required pursuant to this section, the Presiding Officer may:

(1) Infer that the information would be adverse to the party failing to provide it;

(2) Exclude the information from evidence; or

(3) Issue a default order under § 22.17(a).

§ 22.20 Accelerated decision; decision to dismiss.

(a) *General.* The Presiding Officer may at any time render an accelerated decision in favor of a party as to any or all parts of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law. The Presiding Officer, upon motion of the respondent, may at any time dismiss an action without further hearing or upon such limited additional evidence as he requires, on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the complainant.

(b) *Effect.* (1) If an accelerated decision or a decision to dismiss is issued as to all issues and claims in the proceeding, the decision constitutes an initial decision of the Presiding Officer, and shall be filed with the Regional Hearing Clerk.

(2) If an accelerated decision or a decision to dismiss is rendered on less than all issues or claims in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts remain controverted. He shall thereupon issue an interlocutory order specifying the facts which appear substantially uncontroverted, and the issues and claims upon which the hearing will proceed.

Subpart D—Hearing Procedures

§ 22.21 Assignment of Presiding Officer; scheduling the hearing.

(a) When an answer is filed, the Regional Hearing Clerk shall forward the complaint, the answer, and any other documents filed in the proceeding to the Chief Administrative Law Judge who shall serve as Presiding Officer or assign another Administrative Law Judge as Presiding Officer. The Presiding Officer shall then obtain the case file from the Chief Administrative Law Judge and notify the parties of his assignment.

(b) *Notice of hearing.* If the respondent requests a hearing in his answer, or one is ordered by the Presiding Officer under § 22.15(c), the Presiding Officer shall serve upon the parties a notice of hearing setting forth a time and place for the hearing. The Presiding Officer may issue the notice of hearing at any appropriate time, but not later than twenty (20) days prior to the date set for the hearing.

(c) *Postponement of hearing.* No request for postponement of a hearing shall be granted except upon motion and for good cause shown.

(d) *Location of the hearing.* The location of the hearing shall be determined in accordance with the method for determining the location of a prehearing conference under § 22.19(d).

§ 22.22 Evidence.

(a) *General.* (1) The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, unreliable, or of little probative value, except that evidence relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence is not admissible. If, however, a party fails to provide any document, exhibit, witness name or summary of expected testimony required to be exchanged under § 22.19(a) or (f) to all parties at least fifteen (15) days before the hearing date, the Presiding Officer shall not admit the document, exhibit or testimony into evidence, unless the non-exchanging party had good cause for failing to exchange the required information and provided the required information to all other parties as soon as it had control of the information, or had good cause for not doing so.

(2) In the presentation, admission, disposition, and use of oral and written evidence, EPA officers, employees and authorized representatives shall preserve the confidentiality of information claimed confidential, whether or not the claim is made by a party to the proceeding, unless disclosure is authorized pursuant to 40 CFR part 2. A business confidentiality claim shall not prevent information from being introduced into evidence, but shall instead require that the information be treated in accordance with 40 CFR part 2, subpart B. The Presiding Officer or the Environmental Appeals Board may consider such evidence in a proceeding closed to the public, and which may be before some, but not all, parties, as necessary. Such proceeding shall be closed only to the extent necessary to comply with 40 CFR part 2, subpart B, for information claimed confidential. Any affected person may move for an order protecting the information claimed confidential.

(b) *Examination of witnesses.* Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in these Consolidated Rules of Practice or by the Presiding Officer. Parties shall have the right to cross-examine a witness who appears at the hearing provided that such cross-examination is not unduly repetitious.

(c) *Written testimony.* The Presiding Officer may admit and insert into the record as evidence, in lieu of oral testimony, written testimony prepared by a witness. The admissibility of any part of the testimony shall be subject to the same rules as if the testimony were produced under oral examination. Before any such testimony is read or admitted into evidence, the witness shall deliver a copy of the testimony to the Presiding Officer, the reporter, and opposing counsel. The witness presenting the testimony shall swear to or affirm the testimony and shall be subject to appropriate oral cross-examination.

(d) *Admission of affidavits where the witness is unavailable.* The Presiding Officer may admit into evidence affidavits of witnesses who are unavailable. The term "unavailable" shall have the meaning accorded to it by Rule 804(a) of the Federal Rules of Evidence.

(e) *Exhibits.* Where practicable, an original and one copy of each exhibit shall be filed with the Presiding Officer for the record and a copy shall be furnished to each party. A true copy of any exhibit may be substituted for the original.

(f) *Official notice.* Official notice may be taken of any matter which can be judicially noticed in the Federal courts and of other facts within the specialized knowledge and experience of the Agency. Opposing parties shall be given adequate opportunity to show that such facts are erroneously noticed.

§ 22.23 Objections and offers of proof.

(a) *Objection.* Any objection concerning the conduct of the hearing may be stated orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the Presiding Officer on any objection and the reasons given for it shall be part of the record. An exception to each objection overruled shall be automatic

and is not waived by further participation in the hearing.

(b) *Offers of proof.* Whenever evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. The offer of proof for excluded documents or exhibits shall consist of the documents or exhibits excluded. Where the Environmental Appeals Board decides that the ruling of the Presiding Officer in excluding the evidence was both erroneous and prejudicial, the hearing may be reopened to permit the taking of such evidence.

§ 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.

(a) The complainant has the burdens of presentation and persuasion that the violation occurred as set forth in the complaint and that the relief sought is appropriate. Following complainant's establishment of a prima facie case, respondent shall have the burden of presenting any defense to the allegations set forth in the complaint and any response or evidence with respect to the appropriate relief. The respondent has the burdens of presentation and persuasion for any affirmative defenses.

(b) Each matter of controversy shall be decided by the Presiding Officer upon a preponderance of the evidence.

§ 22.25 Filing the transcript.

The hearing shall be transcribed verbatim. Promptly following the taking of the last evidence, the reporter shall transmit to the Regional Hearing Clerk the original and as many copies of the transcript of testimony as are called for in the reporter's contract with the Agency, and also shall transmit to the Presiding Officer a copy of the transcript. A certificate of service shall accompany each copy of the transcript. The Regional Hearing Clerk shall notify all parties of the availability of the transcript and shall furnish the parties with a copy of the transcript upon payment of the cost of reproduction, unless a party can show that the cost is unduly burdensome. Any person not a party to the proceeding may receive a copy of the transcript upon payment of the reproduction fee, except for those parts of the transcript ordered to be kept confidential by the Presiding Officer. Any party may file a motion to conform the transcript to the actual testimony within twenty (20) days after the parties are notified of the availability of the transcript.

§ 22.26 Proposed findings, conclusions, and order.

Within twenty (20) days after the parties are notified of the availability of the transcript, or within such longer time as may be fixed by the Presiding Officer, any party may submit for the consideration of the Presiding Officer, proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof. The Presiding Officer shall set a time by which reply briefs must be submitted. All submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

Subpart E—Initial Decision and Motion to Reopen a Hearing

§ 22.27 Initial Decision.

(a) *Filing and contents.* After the period for filing reply briefs under § 22.26 has expired, the Presiding Officer shall issue an initial decision. The initial decision shall contain findings of fact, conclusions regarding all material issues of law or discretion, as well as reasons therefor, and a recommended civil penalty assessment, compliance order, corrective action order, or permit revocation and suspension, if appropriate. Upon receipt of an initial decision, the Regional Hearing Clerk shall forward the record of the proceeding to the Hearing Clerk and shall forward copies of the initial decision to the Environmental Appeals Board and the Assistant Administrator for the Office of Enforcement and Compliance Assurance.

(b) *Amount of civil penalty.* If the Presiding Officer determines that a violation has occurred and the complaint seeks a civil penalty, the Presiding Officer shall determine the amount of the recommended civil penalty based on the evidence in the record and in accordance with any penalty criteria set forth in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act. If the Presiding Officer decides to assess a penalty different in amount from the penalty recommended to be assessed in the complaint, the Presiding Officer shall set forth in the initial decision the specific reasons for the increase or decrease. The Presiding Officer shall explain in detail in the initial decision how the penalty to be assessed corresponds to any penalty criteria set forth in the Act. If the respondent has defaulted, the Presiding Officer shall not assess a penalty greater than that recommended to be assessed in the complaint or in the motion for default, whichever is less.

(c) *Effect of initial decision.* The initial decision of the Presiding Officer shall become a final order forty-five (45) days after its service upon the parties and without further proceedings unless: a party moves to reopen the hearing; a party appeals the initial decision to the Environmental Appeals Board; a party moves to set aside a default order; or the Environmental Appeals Board elects to review the initial decision on its own initiative. An initial decision that is appealed to the Environmental Appeals Board shall not be final or operative pending the Environmental Appeals Board's issuance of a final order.

§ 22.28 Motion to reopen a hearing.

(a) *Filing and content.* A motion to reopen a hearing to take further evidence must be made no later than twenty (20) days after service of the initial decision and shall state the specific grounds upon which relief is sought. Where the movant seeks to introduce new evidence, the motion shall: state briefly the nature and purpose of the evidence to be adduced; show that such evidence is not cumulative; and show good cause why such evidence was not adduced at the hearing. The motion shall be made to the Presiding Officer and filed with the Regional Hearing Clerk.

(b) *Disposition of motion to reopen a hearing.* Within 15 (fifteen) days following the service of a motion to reopen a hearing, any other party to the proceeding may file with the Regional Hearing Clerk and serve on all other parties a response. A reopened hearing shall be governed by the applicable sections of these Consolidated Rules of Practice. The filing of a motion to reopen a hearing shall automatically stay the running of the time periods for an initial decision becoming final under § 22.27(c) and for appeal under § 22.30. These time periods shall begin again in full when the motion is denied or an amended initial decision is served.

Subpart F—Appeals and Administrative Review

§ 22.29 Appeal from or review of interlocutory orders or rulings.

(a) *Request for interlocutory appeal.* Appeals from orders or rulings other than an initial decision shall be allowed only at the discretion of the Environmental Appeals Board. A party seeking interlocutory appeal of such orders or rulings to the Environmental Appeals Board shall file a motion within ten (10) days of service of the

order or ruling, requesting that the Presiding Officer forward the order or ruling to Environmental Appeals Board for review, and stating briefly the grounds for the appeal.

(b) *Availability of interlocutory appeal.* The Presiding Officer may recommend any order or ruling for review by the Environmental Appeals Board when: (1) The order or ruling involves an important question of law or policy concerning which there is substantial grounds for difference of opinion; and (2) either an immediate appeal from the order or ruling will materially advance the ultimate termination of the proceeding; or review after the final order is issued will be inadequate or ineffective.

(c) *Decision.* If the Presiding Officer has recommended review and the Environmental Appeals Board determines that interlocutory review is inappropriate, or takes no action within thirty (30) days of the Presiding Officer's recommendation, the appeal is dismissed. When the Presiding Officer declines to recommend review of an order or ruling, it may be reviewed by the Environmental Appeals Board only upon appeal from the initial decision, except when the Environmental Appeals Board determines, upon motion of a party and in exceptional circumstances, that to delay review would be contrary to the public interest. Such motion shall be made within ten (10) days of service of an order of the Presiding Officer refusing to recommend such order or ruling for interlocutory review.

§ 22.30 Appeal from or review of initial decision.

(a) *Notice of appeal.* (1) Within 30 days after the initial decision is served, any party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board (Clerk of the Board (Mail Code 1103B), United States Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Hand deliveries may be made at Suite 500, 607 14th Street, NW.). Appellant shall serve a copy of the notice of appeal upon the Regional Hearing Clerk. Appellant shall simultaneously serve one copy of the notice and brief upon all other parties and amicus curiae. The notice of appeal shall summarize the order or ruling, or part thereof, appealed from. The appellant's brief shall contain tables of contents and authorities (with page references), a statement of the issues presented for review, a statement of the nature of the case and the facts relevant to the issues presented for review (with appropriate references to the record), argument on the issues presented, a short conclusion stating the precise relief sought, alternative findings of fact, and alternative conclusions regarding issues of law or discretion. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal on any issue within twenty (20) days after the date on which the first notice of appeal was served.

(2) Within twenty (20) days of service of notices of appeal and briefs under paragraph (a)(1) of this section, any other party or amicus curiae may file and serve with the Environmental Appeals Board an original and one copy of a response brief responding to argument raised by the appellant, together with reference to the relevant portions of the record, initial decision, or opposing brief. Appellee shall simultaneously serve one copy of the response brief upon each party and amicus curiae. Response briefs shall be limited to the scope of the appeal brief. Further briefs may be filed only with the permission of the Environmental Appeals Board.

(b) *Sua sponte review by the Environmental Appeals Board.* Whenever the Environmental Appeals Board determines to review an initial decision on its own initiative, it shall file notice of its intent to review that decision with the Clerk of the Environmental Appeals Board, and serve it upon the Regional Hearing Clerk and the parties within forty-five (45) days after the initial decision was served upon the parties. The notice shall include a statement of issues to be briefed by the parties and a time schedule for the filing and service of briefs.

(c) *Scope of appeal or review.* The parties' rights of appeal shall be limited to those issues raised during the course of the proceeding and by the initial decision. If the Environmental Appeals Board determines that issues raised, but not appealed by the parties, should be argued, it shall give the parties reasonable written notice of such determination to permit preparation of adequate argument. The Environmental Appeals Board may remand the case to the Presiding Officer for further proceedings.

(d) *Argument before the Environmental Appeals Board.* The Environmental Appeals Board may, at its discretion, order oral argument on any or all issues in a proceeding.

(e) *Motions on appeal.* All motions made during the course of an appeal shall conform to § 22.16 unless otherwise provided.

(f) *Decision.* The Environmental Appeals Board shall adopt, modify, or set aside the findings of fact and conclusions of law or discretion contained in the decision or order being reviewed, and shall set forth in the final order the reasons for its actions. The Environmental Appeals Board may assess a penalty that is higher or lower than the amount recommended to be assessed in the decision or order being reviewed or from the amount sought in the complaint, except that if the order being reviewed is a default order, the Environmental Appeals Board may not increase the amount of the penalty above that proposed in the complaint or in the motion for default, whichever is less. The Environmental Appeals Board may adopt, modify or set aside any recommended compliance or corrective action order or any permit revocation, termination or suspension.

Subpart G—Final Order

§ 22.31 Final order.

(a) *Effect of final order.* A final order constitutes the final Agency action in a proceeding. The final order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. The final order shall resolve respondent's liability for a civil penalty, compliance or corrective action order, or the status of a permit or authority to operate, only for the violations and facts alleged in the complaint. The final order does not waive, extinguish or otherwise affect respondent's obligation to comply with all applicable provisions of the Act and regulations promulgated thereunder.

(b) *Effective date.* A final order is effective upon filing. Where an initial decision becomes a final order pursuant to § 22.27(c), the final order is effective forty-five (45) days after the initial decision is served on the parties.

(c) *Payment of a civil penalty.* The respondent shall pay the full amount of any civil penalty assessed in the final order within thirty (30) days after the effective date of the final order unless otherwise ordered. Payment shall be made by forwarding to the appropriate lockbox (see Appendix B of this part) a cashier's check or certified check in the amount of the penalty assessed in the final order, payable to the order of the "Treasurer, United States of America", or in a case pursuant to § 22.1(a)(7), "EPA, Hazardous Substances Superfund," in the amount assessed, and noting the case title and docket

number. Respondent shall serve copies of the check on the Regional Hearing Clerk and on complainant. Collection of interest on overdue payments shall be in accordance with the Debt Collection Act, 31 U.S.C. 3717.

(d) *Other relief.* Any final order requiring compliance or corrective action, or permit revocation, termination, or suspension, shall become effective and enforceable without further proceedings on the effective date of the final order unless otherwise ordered.

(e) *Exhaustion of remedies.* Respondent may appeal a final order as provided under the Act, except that:

(1) Where a respondent fails to appeal an initial decision to the Environmental Appeals Board pursuant to § 22.30 and that initial decision becomes a final order pursuant to § 22.27(c), respondent waives its rights to judicial review; and

(2) A respondent which elects to resolve a proceeding pursuant to § 22.18 waives its rights to judicial review.

(f) *Final orders to Federal agencies on appeal.* (1) A final order of the Environmental Appeals Board issued to a department, agency, or instrumentality of the United States pursuant to § 22.30 shall become effective thirty days after its service upon the parties unless the head of the affected department, agency, or instrumentality requests a conference with the Administrator in writing and serves a copy of the request on the parties of record within thirty days of service of the final order. In that event, a decision by the Administrator shall become the final order.

(2) A motion for reconsideration pursuant to § 22.32 shall not toll the thirty-day period described in paragraph (f)(1) of this section unless specifically so ordered by the Environmental Appeals Board.

§ 22.32 Motion to reconsider a final order.

Motions to reconsider a final order shall be filed within ten (10) days after service of the final order. Motions must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision shall be directed to, and decided by, the Environmental Appeals Board. Motions for reconsideration directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered, except in cases that the Environmental Appeals Board has referred to the Administrator pursuant to § 22.04(a) and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the final order unless so ordered by the Environmental Appeals Board.

Subpart H—Supplemental Rules

§ 22.33 [Reserved]

§ 22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.01 through 22.32, in administrative proceedings to assess a civil penalty conducted under sections 113(d), 205(c), 211(d), and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d), and 7547(d)). Where inconsistencies exist between this section and §§ 22.01 through 22.32, this section shall apply.

(b) *Issuance of notice.* Prior to the issuance of a final order assessing a civil penalty, the person to whom the order is to be issued shall be given written notice of the proposed issuance of the order. Such notice shall be provided by the issuance of a complaint pursuant to § 22.13.

(c) *Default on field citation.* When a respondent fails to file a timely answer to a field citation issued pursuant to 40 CFR part 59 [1] and fails to submit a timely statement under § 22.18(a)(2) of these Consolidated Rules of Practice, the Presiding Officer shall issue a default order assessing the penalty proposed in the complaint.

§ 22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.01 through 22.32, in administrative proceedings to assess a civil penalty conducted under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 136*l*(a)). Where inconsistencies exist between this section and §§ 22.01 through 22.32, this section shall apply.

(b) *Venue.* The prehearing conference and the hearing shall be held in the county, parish, or incorporated city of the residence of the person charged, unless otherwise agreed in writing by all parties. For a person whose residence is outside the United States and outside any territory or possession of the United States, the prehearing conference and the hearing shall be held at the location listed in Appendix A of this part that is closest to either the person's primary place of business within the United States, or the primary place of business of the person's U.S. agent, unless otherwise agreed by all parties.

[1] This proposed rule on field citation program published in the **Federal Register** on May 3, 1994 at 59 FR 22776.

§ 22.36 [Reserved].

§ 22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.01 through 22.32, in administrative proceedings under sections 3005(d) and (e), 3008, 9003 and 9006 of the Solid Waste Disposal Act (42 U.S.C. 6925(d) and (e), 6928, 6991b and 6991e) ("SWDA"). Where inconsistencies exist between this section and §§ 22.01 through 22.32, this section shall apply.

(b) *Corrective action and compliance orders.* A complaint may contain a compliance order issued under section 3008(a) or section 9006(a), or a corrective action order issued under section 3008(h) or section 9003(h)(4) of the SWDA. Any such order shall automatically become a final order unless, no later than thirty (30) days after the order is served, the respondent requests a hearing pursuant to § 22.15.

§ 22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.01 through 22.32 and § 22.45, in administrative proceedings for the assessment of any civil penalty under section 309(g) or section 311(b)(6) of the Clean Water Act ("CWA")(33 U.S.C. 1319(g) and 1321(b)(6)). Where inconsistencies exist between this section and §§ 22.01 through 22.32, this section shall apply.

(b) *Consultation with states.* For proceedings pursuant to section 309(g), the complainant shall, within thirty days after issuing a complaint, provide the State agency with the most direct authority over the matters at issue in the case an opportunity to consult with the complainant.

(c) *Administrative procedure and judicial review.* Action of the Administrator for which review could have been obtained under section 509(b)(1) of the CWA shall not be subject to review in an administrative proceeding for the assessment of a civil penalty under section 309(g) or section 311(b)(6).

(d) Notwithstanding § 22.31(b), respondent shall make payment of a civil penalty assessed pursuant to section 311(b)(6) of the Clean Water Act, 33 U.S.C. 1321(b)(6), by sending to the address provided by the complainant a cashier's check or certified check in the amount of the penalty assessed in the final order payable to the "Oil Spill Liability Trust Fund".

§ 22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.10 through 22.32, in administrative proceedings for the assessment of any civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609). Where inconsistencies exist between this section and §§ 22.01 through 22.32, this section shall apply.

(b) *Judicial review.* Any person who requested a hearing with respect to a Class II civil penalty under section 109 of CERCLA and who is the recipient of a final order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia or for any other circuit in which such person resides or transacts business. Any person who requested a hearing with respect to a Class I civil penalty under section 109 of CERCLA and who is the recipient of a final order assessing the civil penalty may file a petition for judicial review of such order with the appropriate district court of the United States. All petitions must be filed within 30 days of the date the order making the assessment was issued.

(c) *Payment of civil penalty assessed.* Payment of civil penalties assessed in the final order shall be made by forwarding a cashier's check, payable to the "EPA", Hazardous Substances Superfund," in the amount assessed, and noting the case title and docket number, to the appropriate regional Superfund Lockbox Depository.

§ 22.40 [Reserved]

§ 22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substance Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).

(a) *Scope.* This section shall apply, in conjunction with §§ 22.01 through 22.32, in administrative proceedings to assess a civil penalty conducted under section 207 of the Toxic Substances Control Act ("TSCA") (15 U.S.C. 2647). Where inconsistencies exist between this section and §§ 22.01 through 22.32, this section shall apply.

(b) *Collection of civil penalty.* Any civil penalty collected under TSCA section 207 shall be used by the local educational agency for purposes of complying with Title II of TSCA. Any portion of a civil penalty remaining unspent after a local educational agency achieves compliance shall be deposited into the Asbestos Trust Fund established under section 5 of AHERA.

§ 22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued under part B of the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.01 through 22.32, in administrative proceedings to assess a civil penalty under section 1414(g)(3)(B) of the Safe Drinking Water Act. Where inconsistencies exist between this section and §§ 22.01 through 22.32, this section shall apply.

(b) *Choice of forum.* The respondent in a proceeding subject to subpart I of this part of these Consolidated Rules of Practice has a right to elect a hearing on the record in accordance with 5 U.S.C. 554. To exercise this right, the respondent in its answer must request a hearing on the record in accordance with 5 U.S.C. 554. Upon such request, the Regional Hearing Clerk shall recaption the pleadings and documents in the record as necessary.

§ 22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.01 through 22.32, in administrative proceedings to assess a civil penalty against a federal agency under section 1447(b) of the Safe Drinking Water Act. Where inconsistencies exist between this section and §§ 22.01 through 22.32, this section shall apply.

(b) *Effective date of final penalty order.* Any penalty order issued pursuant to this section and section 1447(b) of the Safe Drinking Water Act shall become effective thirty days after issuance.

(c) *Public notice of final penalty order.* Upon the issuance of a final penalty order under this section, the Administrator shall provide public notice of the order by publication, and by providing notice to any person who requests such notice. The notice shall include:

(1) The docket number of the order;

(2) The address and phone number of the Regional Hearing Clerk from whom a copy of the order may be obtained;

(3) The location of the facility where violations were found;

(4) A description of the violations;

(5) The penalty that was assessed; and

(6) A notice that any interested person may within thirty days of the date the order becomes final, obtain judicial review of the penalty order pursuant to section 1447(b) of the Safe Drinking Water Act and the notice requirements of 40 CFR part 135.

§ 22.44 Supplemental rules governing the termination of permits under section 402(a) of the Clean Water Act or under section 3005(d) of the Resource Conservation and Recovery Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.10 through 22.32, in administrative proceedings for the termination of permits under section 402(a) of the Clean Water Act or under section 3005(d) of the Resource Conservation and Recovery Act. Where inconsistencies exist between this section and §§ 22.01 through 22.32, this section shall apply.

(b) In any proceeding to terminate a permit for cause under 40 CFR 122.64 or 270.42 during the term of the permit:

(1) The complaint shall, in addition to the requirements of § 22.14, contain any additional information specified in 40 CFR 124.8;

(2) The Director (as defined in 40 CFR 124.2) shall provide public notice of the complaint in accordance with 40 CFR 124.10, and allow for public comment in accordance with 40 CFR 124.11; and

(3) The Presiding Officer shall admit into evidence the contents of the Administrative Record described in 40 CFR 124.9, and any public comments received.

§ 22.45 Supplemental rules governing public notice and comment in proceedings under section 309(g) of the Clean Water Act and section 300h–2(c) of the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.01 through 22.32, in administrative proceedings for the assessment of any civil penalty under section 309(g) of the Clean Water Act (33 U.S.C. 1319(g)), and under section 1423(c) of the Safe Drinking Water Act (42 U.S.C. 300h–2(c)). Where inconsistencies exist between this section and §§ 22.01 through 22.32, this section shall apply.

(b) *Public notice—General.* Complainant shall provide the public with notice of any complaint filed seeking the assessment of a civil penalty. Such notice shall be provided within 30 days following proof of service of the complaint on the respondent. Where the parties agree to settlement of an action without the filing of a complaint pursuant to § 22.13(b), complainant shall provide the public with notice of the proposed consent agreement at least 30 days before it will be finalized.

(2) *Type and Content of Public Notice.* The Complainant shall provide public notice of the complaint (or the proposed consent agreement if § 22.13(b) is applicable) by a method reasonably calculated to provide notice, and shall also provide notice to any person who

requests such notice. The notice shall include:

(i) The docket number of the complaint;

(ii) The name and address of the complainant and respondent, and the address of the Regional Hearing Clerk from whom information on the action may be obtained and to whom appropriate comments may be directed;

(iii) The location of the site or facility from which the violations are alleged, and any applicable permit number;

(iv) A description of the violation alleged and the relief sought;

(v) A notice that persons may submit comments on the complaint to the Regional Hearing Clerk, and the deadline for such submissions.

(c) *Comment by a person who is not a party.* The following provisions apply in regard to comment by a person not a party to a proceeding:

(1) *Participation in Proceeding.* (i) Any person wishing to participate in the proceedings must notify the Regional Hearing Clerk within 30 days of public notice. The person must provide his name, complete mailing address, and state that he wishes to participate in the action.

(ii) The Presiding Officer shall provide notice of any hearing on the merits to any person who has met the requirements of paragraph (c)(1)(i) of this section at least 20 days prior to the scheduled hearing.

(iii) Commenters may present written comments for the record at any time prior to the close of the record.

(iv) Commenters wishing to present evidence at a hearing on the merits shall notify, in writing, the Presiding Officer and the parties of their intent at least 10 days prior to the scheduled hearing. This notice must include a copy of any document to be introduced, a description of the evidence to be presented, and the identity of any witness (and qualifications if an expert), and the subject matter of the testimony.

(v) In any hearing on the merits, a commenter may present evidence, including direct testimony subject to cross examination by the parties.

(vi) The Presiding Officer shall have the discretion to establish the extent of commenter participation in any other scheduled activity.

(2) *Limitations.* A commenter may not cross-examine any witness in any hearing and shall not be subject to or participate in any discovery or prehearing exchange.

(3) *Quick Resolution and Settlement.* No proceeding subject to the public notice and comment provisions of paragraphs (b) and (c) of this section may be resolved or settled until ten (10) days after the close of the comment period provided in paragraph (d)(1) of this section.

(4) *Petition to Set Aside a Consent Order.*

(i) Complainant shall provide to each commenter, by certified mail, return receipt requested, but not to the Regional Hearing Clerk or Presiding Officer, a copy of the proposed consent order.

(ii) Within 30 days of receipt of the proposed consent order a commenter may present to the Regional Administrator (or, for cases commenced at EPA Headquarters, the Environmental Appeals Board), and to the parties, a petition to set aside the consent order and an objection to resolution of the action without a hearing on the basis that material evidence was not considered. Copies of the petition shall not be sent to the Regional Hearing Clerk or the Presiding Officer. The adequacy of the amount of the penalty to be paid in resolution of the action is not, by itself, grounds for a petition for a hearing.

(iii) Within 15 days of receipt of a petition, the complainant may, with notice to the Regional Administrator or Environmental Appeals Board and to the commenter, withdraw the proposed consent order to consider the matters raised in the petition. If the complainant does not give notice of withdrawal within 15 days of receipt of the petition, the Regional Administrator or EAB shall assign a Petition Officer to consider and rule on the petition. The Petition Officer shall be another Presiding Officer, not otherwise involved in the case. Notice of this assignment shall be sent to the parties, and to the Presiding Officer.

(iv) Within 30 days of assignment of the Petition Officer, the complainant shall present to the Petition Officer a copy of the complaint and a written response to the petition. A copy of the response shall be provided to the parties and to the commenter, but not to the Regional Hearing Clerk or Presiding Officer.

(v) The Petition Officer shall review the petition, and complainant's response, and shall file with the Regional Hearing Clerk, with copies to the parties, the commenter, and the Presiding Officer, written findings as to:

(A) The extent to which the petition states an issue relevant and material to the issuance of the consent order;

(B) Whether complainant adequately considered and responded to the petition; and

(C) Whether a resolution of the action by the parties is appropriate without a hearing.

(vi) Upon a finding by the Petition Officer that a hearing is appropriate, the Presiding Officer shall order that the proposed consent order be set aside and shall establish a schedule for a hearing.

(vii) Upon a finding by the Petition Officer that a resolution of the action without a hearing is appropriate, the Petition Officer shall deny the petition and:

(A) File with the Regional Hearing Clerk;

(B) Send copies to the parties and the commenter; and

(C) Publish, as required by law, an order denying the petition and stating the reasons for such denial.

(viii) Upon a finding by the Petition Officer that a resolution of the action without a hearing is appropriate, the Regional Administrator may issue the consent order, which shall become final 30 days after both the order denying the petition and a properly signed consent order are filed with the Regional Hearing Clerk, unless further petition for review is filed by a notice of appeal in the appropriate United States District Court, with coincident notice by certified mail to the Administrator and the Attorney General. Written notice of appeal also shall be filed with the Regional Hearing Clerk, and sent to the Presiding Officer and the parties.

(ix) If judicial review of the consent order is denied, the consent order shall become final 30 days after such denial has been filed with the Regional Hearing Clerk.

§§ 22.46—22.49 [Reserved].

Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

§ 22.50 Scope of this subpart.

(a) *Scope.* This subpart applies to any adjudicatory proceedings where the complainant designates in the complaint that subpart I shall apply, except that the procedures of this subpart shall not apply in any case where the Act makes the proceeding subject to section 554 of the Administrative Procedure Act, 5 U.S.C. 554.

(b) *Relationship to other provisions.* Sections 22011 through 22.45 apply to proceedings under this subpart, except for the following provisions which do not apply: §§ 22.11, 22.16(c), 22.21(a), and 22.29. The provisions of this subpart shall supersede any conflicting provisions of subparts A through G of this part. The provisions of subpart H of this part shall supersede any conflicting provisions of this subpart or of subparts A through G of this part.

§ 22.51 Presiding Officer.

The Presiding Officer shall be a Regional Judicial Officer. The Presiding Officer shall rule on all motions until an initial decision has become final or has been appealed.

§ 22.52 Information exchange and discovery.

Respondent's information exchange pursuant to § 22.19(a) shall include information on any economic benefit resulting from any activity or failure to act which is alleged in the administrative complaint to be a violation of applicable law, including its gross revenues, delayed or avoided costs. Discovery under § 22.19(e) shall not be authorized, except for discovery of information concerning respondent's economic benefit from alleged violations and information concerning respondent's ability to pay a penalty.

§ 22.53 Interlocutory orders or rulings.

Interlocutory review as set forth in § 22.29 is prohibited.

Appendix A to Part 22—Addresses of EPA Regional Offices and Headquarters

Environmental Protection Agency, *Region I*—John F. Kennedy Federal Building, One Congress Street, Boston, MA 02203.
Environmental Protection Agency, *Region II*—290 Broadway, New York, NY 10007–1866.
Environmental Protection Agency, *Region III*—841 Chestnut Building, Philadelphia, PA, 19107.
Environmental Protection Agency, *Region IV*—Atlanta Federal Center, 100 Alabama Street, S.W., Atlanta, GA 30365.
Environmental Protection Agency, *Region V*—77 West Jackson Boulevard, Chicago, IL 60604-3590.
Environmental Protection Agency, *Region VI*—First Interstate Bank Tower and Fountain Place, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202–2733.
Environmental Protection Agency, *Region VII*—726 Minnesota Avenue, Kansas City, KS, 66101.
Environmental Protection Agency, *Region VIII*—999 18th Street, Suite 500, Denver, CO 80202-2466.
Environmental Protection Agency, *Region IX*—75 Hawthorne Street, San Francisco, CA 94105.
Environmental Protection Agency, *Region X*—1200 6th Avenue, Seattle, WA 98101.
Environmental Protection Agency, *Headquarters*, 401 M Street, S.W., Washington, D.C. 20460.

Appendix B to Part 22—Addresses of Regional and Headquarters Lockboxes

Superfund (all Regions)—(Mellon Bank) EPA—Superfund, PO Box 371003, Pittsburgh, PA 15251–7003
Region I—(Mellon Bank) EPA Region I Hearing Clerk, PO Box 360197, Pittsburgh, PA 15251-6197
Region II—(Mellon Bank) EPA Region II Hearing Clerk, PO Box 360188, Pittsburgh, PA 15251–6188
Region III—(Mellon Bank) EPA Region III Hearing Clerk, PO Box 360515, Pittsburgh, PA 15251–6515
Region IV—(The Citizens and Southern National Bank) EPA Region IV Hearing Clerk, PO Box 100142, Atlanta, GA 30384
Region V—(The First National Bank of Chicago) EPA Region V Hearing Clerk, PO Box 70753, Chicago, Il 60673
Region VI—(Mellon Bank) EPA Region VI Hearing Clerk, PO Box 360582, Pittsburgh, PA 15251–6582
Region VII—(Mellon Bank) EPA Region VII Hearing Clerk, PO Box 360748, Pittsburgh, PA 15251–6748
Region VIII—(Mellon Bank) EPA Region VIII Hearing Clerk, PO Box 360859, Pittsburgh, PA 15251–6859
Region IX—(Mellon Bank) EPA Region IX Hearing Clerk, PO Box 360863, Pittsburgh, PA 15251–6863
Region X—(Mellon Bank) EPA Region X Hearing Clerk, PO Box 360903, Pittsburgh, PA 15251–6903
Headquarters—(Mellon Bank) EPA Headquarters Hearing Clerk, PO Box 360277, Pittsburgh, PA 15251–6277.

PART 59—[AMENDED]

1. The authority citation for Part 59 continues to read as follows:

Authority: 42 U.S.C. 7413(d)(3).

2. Part 59 proposed on May 3, 1994 at (59 FR 22776) is amended by removing subpart B.

[FR Doc. 98–4520 Filed 2–24–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300619; FRL–5772–7]

RIN 2070–AB78

Prometryn; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish tolerances for residues of prometryn in or on carrots under its own initiative to harmonize tolerances with Canada under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1966 (Pub. L. 104–170).

DATES: Comments, identified by the document control number [OPP–300619], must be received on or before March 27, 1998.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, M St., SW, Washington, DC 20460. In person, bring comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit V. of this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-5697, e-mail: tompkins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA is proposing under its own initiative that 40 CFR 180.222 be amended by establishing tolerances for residues of the herbicide prometryn, 2,4-bis(isopropylamino)-6-methylthio-s-triazine in or on carrots at 0.1 parts per million (ppm) without a U.S. registration under the Federal Insecticide Fungicide Act (FIFRA), as amended for carrots imported from Canada.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes

exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and

children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (non-nursing infants >1 year old) was not regionally based.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of prometryn, and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of prometryn and its metabolite on carrots at 0.1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by prometryn are discussed below.

1. A rat acute oral study with a LD_{50} of 1,802 milligrams/kilogram (mg/kg) for males and a LD_{50} of 2,076 mg/kg for females

2. A 28-day mice pilot feeding study with a No Observed Effect Level (NOEL) of 450 milligrams/kilogram/day (mg/kg/day) and a Lowest Observed Effect Level (LOEL) of 1,500 mg/kg/day based on decreased body weights.

3. A 21-day dermal toxicity study with a NOEL and LOEL greater than of 1,000 mg/kg/day the highest dose tested (HDT).

4. A 102-week chronic feeding/carcinogenicity study in mice with a Systemic NOEL of 100 mg/kg/day for females and a Systemic LOEL of 300 mg/kg/day for females based on decreased body weight gain. No effects were observed in males. Although significant toxicity was observed only in females, the Health Effects Division Reference Dose (RfD) committee considered the study adequate since (1) levels were close to one-half the limit dose in mice; (2) no effects were noted in the study to warrant repeating the study at high dose levels; and (3) all tumors noted with other members of the s-triazine class were mainly in rats and not mice.

5. A 2-year rat chronic feeding/carcinogenicity study with a Systemic NOEL of 29.45 mg/kg/day for males and 37.25 mg/kg/day for females and a Systemic LOEL of 60.88 mg/kg/day for males and 80.62 mg/kg/day for females based on decreased body weight and body weight gain and an increase in the incidence of renal lesions (mineralized concretions) in males. prometryn was not oncogenic under the conditions of the study.

6. A 106-week dog feeding study with a NOEL of 3.75 mg/kg/day and a LOEL of 37.5 mg/kg/day based on degenerative hepatic changes, renal tubule degeneration, and bone marrow atrophy. Prometryn was not oncogenic under the conditions of the study.

7. A developmental toxicity study in rats with a Maternal and Developmental NOEL of 50 mg/kg and a Maternal LOEL of 250 mg/kg based on salivation and decreases in body weight and food consumption. The Developmental LOEL is 250 mg/kg/day based on significantly decreased and incomplete ossification in the sternebrae and metacarpals.

8. A developmental toxicity study in rabbits with a Maternal and Developmental NOEL of 12 mg/kg/day and a Maternal LOEL of 72 mg/kg based on based on decreased food consumption, and the Developmental LOEL of 72 mg/kg/day, based on increased fetal resorptions.

9. A two-generation reproduction study in rats with a Parental Systemic NOEL of 0.6 mg/kg/day in males and 0.7 mg/kg/day in females and a Parental Systemic LOEL of 47.8 mg/kg/day in males and 53.6 mg/kg/day in females based on decreased food consumption, body weight and body weight gain. The Reproductive Systemic NOEL is 0.65 mg/kg/day and the Reproductive Systemic LOEL is approximately 50 mg/kg/day, based on decreased pup weight.

10. An Ames *salmonella* test, prometryn was negative for gene mutation up to cytotoxic solubility limits (1,000-2,000 µg/plate). A chromosomal aberration *in vivo* Chinese hamster bone marrow test, prometryn was negative for nuclear anomalies (micronuclei) when animals were dosed orally up to 5,000 mg/kg. Prometryn was negative for bacterial DNA repair and gene mutation up to precipitating levels (1,000 µg/plate). An unscheduled DNA synthesis test prometryn was negative (measured as UDS) in rat hepatocytes cultured *in vitro* up to cytotoxic levels (156.25 µg/mL).

11. Rat metabolism studies showed that radio labeled prometryn is distributed in blood greater than spleen greater than lungs (the three highest tissues measured). Distribution is not dosage-dependant. It is extensively metabolized with less than 2% of recovered ^{14}C radioactivity representing the parent compound. Twenty-eight metabolites were identified in the urine, and 28 in the feces. Ten metabolites were identified in both urine and feces. Prometryn is excreted predominantly in the urine and feces, with slightly higher concentrations in the urine. The 7-day recovery of ^{14}C radioactivity averaged 95% for all dosing groups.

B. Toxicological Endpoints

1. *Acute toxicity.* The developmental NOEL of 12 mg/kg/day from a developmental study was recommend for the acute dietary risk assessment.

2. *Short - and intermediate - term toxicity.* The developmental NOEL of 12 mg/kg/day from a developmental study was recommend for the short- and intermediate- term dermal and inhalation risk assessments.

3. *Chronic toxicity.* EPA has established the RfD for prometryn at 0.04 mg/kg/day. This RfD is based on upon the chronic feeding study in dogs with a NOEL of 3.75 mg/kg/day with a 100-fold safety factor to account for interspecies extrapolation and intraspecies variability.

4. *Carcinogenicity.* The Health Effects Division Reference Dose (RfD) Committee classified prometryn as a

Group E chemical (no evidence of human carcinogenic potential).

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.222(a)) for the residues of prometryn, 2,4-bis(isopropylamino)-6-methylthio-s-triazine, in celery at 0.5 ppm; corn forage, fresh corn and corn grain at 0.25 ppm; cotton at 1 ppm: cottonseed at 0.25 ppm; and pigeon peas at 0.25 ppm.. Tolerances with regional registration have been established (40 CFR 180.222(b)) for the residues of prometryn in dill at 0.3 ppm and parsley at 0.1 ppm. Risk assessments were conducted by EPA to assess dietary exposures and risks from prometryn as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Margin of Exposure (MOE) value for females (13 years and older) was 1,200,000. This value is significantly higher than the Agency's level of concern of 100 which is adequate to ensure protection for females 13 and older..

ii. *Chronic exposure and risk.* Assuming 100% of the crop are treated and residues are at tolerance levels the theoretical maximum residue contribution (TMRC) from the established and proposed tolerances is 0.000056 mg/kg/day and utilizes less than 1% of the RfD for the U.S. Population. For exposure of the most highly exposed subgroup in the population, non-nursing infants, the TMRC is 0.0016 mg/kg/day which utilizes less than 1% of the RfD.

2. *From drinking water.* Despite the potential for exposure through drinking water, EPA has concluded that the percentage of the RfD that will be utilized by dietary exposure (including drinking water exposure) to residues of prometryn does not exceed 100% for any of the population subgroups. Considering food only, the population subgroup with the largest percentage of the RfD occupied is 0.0000056 mg/kg/day at < 1% of the RfD. Therefore taking into account the completeness and reliability of the toxicity data and the conservative exposure assessment, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to prometryn residues.

3. *From non-dietary exposure.* Prometryn is currently not registered for residential use such as turf and ornamentals. Therefore there is no expectation of non-occupational residential exposures.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Prometryn is a member of the triazine class of pesticides. Other members of this class include atrazine, simazine, cyanazine, prometon, propazine, metribuzin, hexazinone, ametryn, terbutryne, dipropetryn, and ethiozin.

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether prometryn has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. The Agency has determined that there are no metabolites of toxicological concern associated with prometryn. For the purposes of this tolerance action, therefore, EPA has not assumed that prometryn has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of prometryn, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental and reproductive toxicity studies.* The pre- and post-natal toxicology data base for prometryn is complete with respect to current toxicological data requirements. The results of these studies indicate that infants and children are not more

sensitive to exposure, based on the results of the oral rat and rabbit developmental toxicity studies and the 2-generation reproductive toxicity study in rats. The developmental studies in rats and rabbits both have the maternal NOELs and LOELs, respectively, and demonstrate that no prenatal extra sensitivity is present. However, based on the developmental effects observed in rabbits, an acute dietary risk assessment was performed for women age 13 and older. The MOE was calculated as 1,200,000. Therefore, EPA concludes that reliable data support use of the standard 100-fold margin of exposure/uncertainty factor and that an additional tenfold safety factor is not needed to protect infants and children.

2. *Acute risk.* The acute aggregate dietary MOE was calculated to be 1,200,000 for females age 13 and older (accounts for both maternal and fetal exposure), the population subgroup of concern. The MOE calculations were based on the developmental NOEL in rabbits of 12 mg/kg. This risk assessment assumed 100% of the crop was treated with tolerance level residues on all treated crops consumed, resulting in a significant over estimate of dietary exposure. The large acute dietary MOE calculated for females age 13 and older provides assurance the there is a reasonable certainty of no harm for infants and children to prometryn.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to prometryn from food will utilize less than 1% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. There are no chronic exposure scenarios of non-dietary uses of prometryn which would contribute to the aggregate risk. Taking into account the completeness and reliability of the toxicity data and the conservative exposure assessment, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to prometryn residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of prometryn in plants and animals is adequately understood for purposes of this tolerance.

B. Analytical Enforcement Methodology

An adequate analytical method, gas chromatograph is available in PAM Vol. II, for plant to enforce the tolerance expression.

C. Magnitude of Residues

The nature of the residue in plants is adequately understood for the purposes of this tolerance. Secondary residues in animals commodities are not expected to exceed existing tolerances as result to this use in Canada.

D. International Residue Limits

There are no Codex or Mexican limits for prometryn on carrots. This proposal will harmonize tolerances with 0.1 pm Canadian maximum limit for residues in carrots.

E. Rotational Crop Restrictions

Since the use is on carrots grown in Canada, rotational crop issues are not relevant.

IV. Conclusion

There are presently no actions pending against the continued registration of this chemical. Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR 180.222 would protect the public health. Therefore, it is proposed that tolerances be established for residues of prometryn in carrots at 0.1 ppm.

V. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300619] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any from of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper from. Accordingly, EPA will transfer any copies of comments received electronically into printed, paper from as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VI. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, EPA has determined that this proposed rule is not "significant" and is therefore not subject to OMB review. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 17, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.222 by amending paragraph (a) by alphabetically adding the following commodity to the table to read as follows:

§ 180.222 Prometryn; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	* *
Carrots[1]	0.1
* * * * *	* *

[1]There are no U.S. registrations as of February 25, 1998 for use on carrots.

* * * * *

[FR Doc. 98–4804 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 50

RIN 0930–ZA00

Simplification of Grant Appeals Process

AGENCY: HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to 42 CFR Part 50, Subpart D, the Indian Health Service (IHS) and the Substance Abuse and Mental Health Services Administration (SAMHSA) (formerly, the Alcohol, Drug Abuse and Mental Health Administration) have provided an informal level of appeal on those grant related disputes subject to the departmental appeal procedures codified at 45 CFR Part 16.[1] These agencies are proposing by this notice to amend 42 CFR Part 50, Subpart D, to remove IHS and ADAMHA (now SAMHSA) from the list of agencies to which these informal appeal procedures apply and thus permit aggrieved grantees direct access to the Departmental Grant Appeals Board and that board's original jurisdiction.

DATES: Written comment must be received on or before April 27, 1998.

ADDRESSES: Written comments on the proposed rule must be sent to Thomas M. Reynolds, Room 13C–20, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: For the Indian Health Service, Ms. M. Kay Carpentier, (301) 443–5204; for the Substance Abuse and Mental Health Services Administration, Thomas M. Reynolds, (301) 443–0179.

SUPPLEMENTARY INFORMATION: When the Department first established its Departmental Grant Appeals Board (now the Departmental Appeals Board), there was no provision for the Department's subordinate agencies to first review the disputed actions of officials prior to appeal at the Departmental level. However, it quickly became apparent that a number of disputes could and would, be resolved quickly by informal means if the grantees' complaints were surfaced to management levels within the HHS subordinate agencies. As a result, the regulations at 45 CFR Part 16 were revised to permit subordinate agencies to interpose an "informal" level of appeal prior to submission of an appeal to the Departmental Appeals Board. Various agencies in the Public Health Service (which has since been reorganized) chose to institute an intermediate informal review process as is currently described in 42 CFR Part 50, Subpart D. The intermediate level of appeal provided these agencies with an opportunity to relatively quickly and economically reverse erroneous Federal decisions, or to reassure grantees that a decision adverse to them was indeed an "agency" decision. At the time these regulations were instituted, this informal process was of significant benefit to both grantees and the subordinate agencies. Based on the lessons learned from this process and other means, IHS and SAMHSA instituted a policy of reviewing carefully the adverse determinations of their employees prior to permitting them to be issued so as to avoid erroneous determinations which would be subject to reversal upon appeal at the informal level. These agencies believe that they have reached the point where the adverse determinations being issued in recent years generally represent their best judgment.

The Department therefore believes that, for these agencies and their grantees, this informal process is no longer of benefit, and the cost in time and expense to the grantee is no longer warranted. Consequently, the Department is proposing to amend 42 CFR part 50, Subpart D, to remove IHS and ADAMHA (now SAMHSA) from the list of Agencies to which the regulations apply. As a result, under this proposal, grantees wishing to appeal IHS's and SAMHSA's eligible adverse determinations would be entitled to appeal such determinations directly to the Departmental Appeals Board. In addition, 42 CFR Part 50, Subpart D, will be revised to reflect organizational changes in the Department, particularly that pertaining to the Public Health Service.

Economic Impact

This rule does not have cost implications for the economy of $100 million or otherwise meet the criteria for a major rule under Executive Order 12291, and therefore does not require a regulation impact analysis. Further, this regulation will not have a significant impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

Regulatory Evaluation

This Proposal is not a significant regulatory action under Section 3(f) of the Executive Order 12866 and does not require an assessment of the potential costs and benefits under Section 6(a)(3) of that Order and so has been exempted from review by the Office of Management and Budget under that Order.

Paperwork Reduction Act

There are no new paperwork requirements subject to the Office of Management and Budget approval under the Paperwork Reduction Act of 1980.

List of Subjects in 42 CFR Part 50

Administrative practice and procedure, Grant programs—health, Health care.

Approved: February 18, 1998.

Donna E. Shalala,

Secretary.

For the reasons set forth in the preamble, the Department proposes to amend Subpart D of Part 50 of Title 42 of the Code of Federal Regulations as follows:

[1] Section 161 of the ADAMHA Reorganization Act, Pub. L. 102–321 (July 10, 1992), provides that references in any regulations to ADAMHA shall be deemed to refer to SAMHSA and, accordingly, the informal level of appeal is available to SAMHSA's grantees.

PART 50—[AMENDED]

1. The authority citation for part 42 continues to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); 45 CFR 16.3(c).

2. Section 50.401 is revised to read as follows:

§ 50.401 What is the purpose of this subpart?

This subart establishes an informal procedure for the resolution of certain postaward grant and cooperative agreement disputes within the agencies and offices identified in § 50.402.

3. Section 50.402 is revised to read as follows:

§ 50.402 To what programs do these regulations apply?

This subpart applies to all grant and cooperative agreement programs, except block grants, which are administered by the National Institutes of Health; the Health Resources and Services Administration; The Centers for Disease Control and Prevention; the Agency for Toxic Substances and Disease Registry; the Food and Drug Administration; and the Office of the Assistant Secretary for Public Health and Science. For purposes of this subpart, these entities are hereinafter referred to as "agencies."

4. The third sentence of § 50.403 is revised to read as follows:

§ 50.403 What is the policy basis for these procedures?

* * * This subpart provides such an informal preliminary procedure for resolution of disputes in order to preclude submission of cases to the Departmental Appeals Board before an agency identified in § 50.402 has had an opportunity to review decisions of its officials and to settle disputes with grantees.

5. In § 50.404, paragraph (a) introductory text and the first sentence of paragraph (b) are revised to read as follows:

§ 50.404 What disputes are covered by these procedures?

(a) These procedures are applicable to the following adverse determinations under discretionary project grants and cooperative agreements (both referred to in this subpart as grants) issued by the agencies identified at § 50.402:

* * * * *

(b) A determination subject to this subpart may not be reviewed by the review committee described in § 50.405 unless an officer or employee of the agency has notified the grantee in writing of the adverse determination.

* * * *

6. In § 50.405 the second sentence is removed and the first sentence is revised to read as follows:

§ 50.405 What is the structure of the review committees?

The head of the agency, or his or her designee, shall appoint review committees to review adverse determinations made by officials for programs under this jurisdiction. * * *

7. In § 50.406, paragraphs (a), (c), (d) and (g), and the first sentence of (e) are revised to read as follows:

§ 50.406 What are the steps in the process?

(a) A grantee with respect to whom an adverse determination described in § 50.404(a) has been made and who desires a review of that determination must submit a request for such review to the head of the appropriate agency or his or her designee no later than 30 days after the written notification of the determination is received, except that if the grantee shows good cause why an extension of time should be granted, the head of the appropriate agency or his or her designee may grant an extension of time.

* * * * *

(c) When a request for review has been filed under this subpart with respect to an adverse determination, no action may be taken by the awarding agency pursuant to such determination until the request has been disposed of, except that the filing of the request shall not affect any authority which the agency may have to suspend assistance or otherwise to withhold or defer payments under the grant during proceedings under this subpart. This paragraph does not require the awarding agency to provide continuation funding during the appeal process to a grantee whose noncompeting continuation award has been denied.

(d) Upon receipt of a request for review, the head of the agency or his or her designee will make a decision as to whether the dispute is reviewable under this subpart and will promptly notify the grantee and the office responsible for the adverse determination of this decision. If the head of the agency or his or her designee determines that the dispute is reviewable, he or she will forward the matter to the review committee appointed under § 50.405.

(e) The agency involved will provide the review committee appointed under § 50.405 with copies of all relevant background materials (including applications(s), award(s), summary statement(s), and correspondence) and any additional pertinent information available. * * *

* * * * *

(g) The review committee may, at its discretion, invite the grantee and/or the agency staff to discuss the pertinent issues with the committee and to submit such additional information as the committee deems appropriate.

* * * * *

[FR Doc. 98–4725 Filed 2–24–98; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 021798A]

Fisheries of the Northeastern United States; Northeast Multispecies; Atlantic Sea Scallops; Atlantic Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of intent to prepare supplemental environmental impact statements (SEISs) and request for scoping comments.

SUMMARY: The New England Fishery Management Council (Council) announces its intention to prepare, in cooperation with NMFS, environmental impact statements to assess the potential effects on the human environment of management measures to bring the fishery management plans for Northeast Multispecies, Atlantic Sea Scallops, and Atlantic Salmon (FMPs) into compliance with the Magnuson-Stevens Fishery Conservation and Management Act as amended by the Sustainable Fisheries Act (SFA).

The Council plans to amend these FMPs to possibly include, but not be limited to, the following: Revise overfishing definitions based on achieving maximum sustainable yield (MSY), stock rebuilding targets and programs, designations and recommendations for preserving essential fish habitat (EFH), and measures to monitor and to minimize, to the extent practicable, bycatch and bycatch mortality.

The Council will develop the amendments through a series of publicly announced meetings together with its Multispecies, Sea Scallop, and Habitat Oversight Committees, Advisory Panels, and Plan Development Teams. Separate notices of intent already have

been prepared for FMPs under development to manage Atlantic sea herring, monkfish, and silver hake (whiting).

DATES: Written comments must be received by March 23, 1998.

ADDRESSES: Send scoping comments to Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, telephone 781–231–0422, Fax 617–565–8937.

SUPPLEMENTARY INFORMATION: Revisions to overfishing definitions based on achieving MSY, stock rebuilding targets, and rebuilding programs may require substantial reductions in fishing mortality from those currently scheduled under the Atlantic Sea Scallop FMP. The current Atlantic Salmon FMP prohibits fishing in the exclusive economic zone (EEZ) and, therefore, no further reductions in fishing in the EEZ are possible.

Timetable

The Council expects to receive information from its Overfishing Definition Review Panel concerning revised overfishing definitions at its February 25–26, 1998, meeting. The Council plans to propose measures for the purpose of developing draft SEIS's and conducting public hearings for an amendment to the Sea Scallop and the Multispecies FMPs at its April 15–16, 1998, meeting. The Council is addressing SFA requirements, except for EFH, for monkfish in a separate amendment to the Multispecies FMP.

Designation of EFH for multispecies finfish, including monkfish and whiting, Atlantic sea scallops, and Atlantic salmon also will be discussed at these meetings. The Council will hold separate public hearings and may prepare separate amendments to meet EFH requirements.

To meet the deadlines established by the SFA, the Council plans to take final action on amendments for all SFA requirements, except for EFH, by its August 10–11, 1998, meeting.

The Council anticipates final action on the EFH amendment at its September 23–24, 1998, meeting.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: February 20, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–4784 Filed 2–24–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 37
Wednesday, February 25, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 96–007N]

National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The National Advisory Committee on Microbiological Criteria for Foods (NACMCF) will meet from March 3 to March 6, 1998, to discuss Good Agricultural Practices and Good Manufacturing Practices for fresh produce and research strategies to meet the goals of the Food Safety Initiative and the Domestic and Imported Produce Food Safety Initiative. The Committee also will be discussing Foods Exposed to Refrigeration Failure, Hazard Analysis and Critical Control Point (HACCP) concepts for the very small slaughter plant, Codex issues, and developing guidelines for food safety objectives.

DATES: The Fresh Produce Subcommittee will meet from 8:30 a.m. to 5:00 p.m. on March 3, 1998. The full Committee will meet on March 4, 1998, from 8:30 a.m. until 12:00 noon. Subcommittee groups will meet March 4, 1998, from 1:30 to 5:00 p.m. and from 8:30 a.m. to 5:00 p.m. on March 5. The full Committee will meet March 6, 1998, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Georgia International Convention Center, 1902 Sullivan Road, College Park, GA 30337–0508.

FOR FURTHER INFORMATION CONTACT: The Committee encourages persons with information or data on the above matters to present their comments. Persons interested in making presentations, submitting technical papers, or providing comments are requested to mail or FAX (202) 501–7628 their name, title, firm name, address, and telephone number to Ms. Amelia L. Wright, Advisory Committee Specialist, Scientific Research Oversight Staff, Department of Agriculture, Suite 6913, Franklin Court, 1400 Independence Avenue, SW, Washington, DC 20250–3700. Comments and requests also may be provided by E-mail to amelia.wright@usda.gov. Persons requiring a sign language interpreter or other special accommodations should notify the contact person referenced above by February 19, 1998.

SUPPLEMENTARY INFORMATION:

The meeting will be open to the public on a space-available basis. Persons wishing to make an oral presentation should notify the contacts listed above. Presentations will be scheduled on a time-available basis in accordance with the timeliness of the written request. Comments may be made before or after the meeting. Technical papers also will be accepted and made part of the public record. All comments and proceedings will become part of the public record of the meeting.

NACMCF provides advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services about the development of microbiological criteria to assess the safety and wholesomeness of food. The Committee also provides guidance to the Departments of Commerce and Defense.

Done at Washington, DC, on: February 19, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–4941 Filed 2–24–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention to request an extension for a currently approved information collection in support of the regulations governing the entry of speciality sugar under the tariff-rate quota into the United States.

DATES: Comments on this notice must be received by April 27, 1998 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Mail or deliver comments to Stephen C. Hammond, Director, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1021, Washington, DC 20250–1021, (202) 720–1061.

SUPPLEMENTARY INFORMATION:

Title: Speciality Sugar Import Licensing.

OMB Number: 0551–0025.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of a currently approved information collection.

Abstract: The quota system established by Presidential Proclamation No. 4941 prevented the importation of certain refined sugars used for specialized purposes originating in countries which did not have quota allocations. Therefore, the Department of Agriculture published the regulations at 15 CFR part 2011—Allocation of Tariff-Rate Quota on Imported Sugars, Syrups and Molasses, Subpart B—Speciality Sugar, requiring certificates of quota eligibility for entering specialty sugar. Applicants must supply the information required by 15 CFR 2011.205 to apply for a speciality sugar certificate. In order to grant the certificates, ensure that imported specialty sugar does not disrupt the current domestic sugar support program, and effectively administer the issuance of the certificates, certain specific information on an application must be collected from those who wish to participate in the program established by the regulation.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Importers.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 60 hours.

Copies of this information collection can be obtained from Valerie Countiss, the Agency Information Collection Coordinator, at (202) 720–6713.

Request for Comments

Send comments regarding the accuracy of the burden estimate, ways to minimize the burden including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to: Stephen C. Hammond, Director, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1021, Washington, DC 20250–1021, and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503. Comments on the issues covered by the Paperwork Reduction Act are most useful to OMB if received within 30 days of publication of the Notice and Request for Comments, but must be submitted no later than 60 days from the date of publication to be assured of consideration.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC. February 4, 1998.

Lon Hatamiya,

Administrator, Foreign Agricultural Service.

[FR Doc. 98–4707 Filed 2–24–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath, Northwest Sacramento, and California Coastal Provincial Advisory Committees (PACs)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath, Northwest Sacramento, and California Coastal Provincial Advisory Committees will meet on March 5 and 6, 1998 at the Holiday Inn, 1900 Hilltop Drive, Redding, California. On March 5, the meeting will begin at 9:00 a.m. and adjourn at 5:15 p.m. The meeting on March 6 will resume at 8:00 a.m. and adjourn at 4:00 p.m.

The purpose of the three PAC meeting is to better understand the issues involved in implementing the Northwest Forest Plan. Also attending the meeting are members of the State Community Economic Revitalization Team (SCERT). The PACs and SCERT members will work together in small groups defining and refining implementation issues and will share them with the larger group. Each PAC and the SCERT will meet separately to develop proposed next steps for moving forward on the issues and will present these to the large group as well as share accomplishments/learnings from the past 4 years. There are public comment periods scheduled throughout the 2 days. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, at 1312 Fairlane Road, Yreka, California 96097; telephone 530–842–6131, (FTS) 700–467–1309.

Dated: February 19, 1998.

Barbara Holder,

Designated Federal Official and Forest Supervisor.

[FR Doc. 98–4748 Filed 2–24–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Telecommunications

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 27, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawnielle Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

These reporting and recordkeeping requirements are necessary to allow for the increased export of telecommunications equipment to proscribed destinations. The requirements also place conditions on approved export licenses, such as requiring inspections and the retention of repair records. The information is used for licensing decisions and for enforcement purposes once a license is issued.

II. Method of Collection

Reports or written plans submitted to BXA.

III. Data

OMB Number: 0694–0078.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 75.

Estimated Time Per Response: 1 minute to 2 hours per response.

Estimated Total Annual Burden Hours: 92 hours.

Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 19, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4743 Filed 2–24–98; 8:45 am]

BILLING CODE 3510–DT–P

VOL 63 ISS 37 FE 25 998 UMI

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Multi-Purpose Application

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 27, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection is required in compliance with U.S. export regulations. The information furnished by U.S. exporters provides the basis for decisions to grant licenses for export, reexport, and classifications of commodities, goods and technologies that are controlled for reasons of national security and foreign policy. This revision includes the burden associated with 3rd party disclosures, certifications and notification requirements imposed on the public.

II. Method of Collection

Submitted on form BXA–748P.

III. Data

OMB Number: 0694–0088.
Form Number: BXA–748P.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 18,917.
Estimated Time Per Response: 52.5 minutes per response.
Estimated Total Annual Burden Hours: 17,106.
Estimated Total Annual Cost: $342,120.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 19, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4744 Filed 2–24–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Export Controls of Supercomputers (To Be Renamed, Export Controls of High Performance Computers)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 27, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawnielle Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC, 20230.

SUPPLEMENTAL INFORMATION:

I. Abstract

These recordkeeping and reporting requirements are clear statements of normal business records for high performance computers (HPC) that are expected to be maintained by end-users in destinations where there is a potential for diversion to unauthorized end users. The records must be available for inspection by U.S. officials to maintain surveillance of HPC usage and implementation of appropriate safeguards.

II. Method of Collection

Reports and recordkeeping.

III. Data

OMB Number: 0694–0073.
Form Number: Not applicable.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 30.
Estimated Time Per Response: 16 minutes to 2 hours per response.
Estimated Total Annual Burden Hours: 92 hours.
Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 19, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4745 Filed 2–24–98; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Procedures for Supporting Documentation

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 27, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawnielle Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Exporters will retain in their files for a period of five years (1) certain supporting documents that previously accompanied the request for an export license and then were retained by BXA, and (2) all other records that they had previously been required to be retained for two years. Also outlined are the procedures for returning unused or partially used import certificates, or their equivalent, to the foreign importer.

II. Method of Collection

Record retention and submission of documents.

III. Data

OMB Number: 0694–0064.
Form Number: Not applicable.
Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 3,558.

Estimated Time Per Response: 1 to 30 minutes per response.

Estimated Total Annual Burden Hours: 313 hours.

Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 19, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4746 Filed 2–24–98; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021898A]

Advisory Committee to the United States Section to the International Commission for the Conservation of Atlantic Tunas Bluefin Tuna Rebuilding Workshop

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas announces a bluefin tuna rebuilding workshop.

DATES: The workshop is scheduled for Tuesday, March 10, 1998, 8:00 a.m. to 5:30 p.m.

ADDRESSES: The workshop will be held at the Clarion Hotel in Charlotte, North Carolina.

FOR FURTHER INFORMATION CONTACT: Jonathon Krieger,(301)713-2276.

SUPPLEMENTARY INFORMATION: The workshop has the following objectives: (1) To evaluate and review current stock assessment knowledge for bluefin tuna; (2) to discuss items/issues to be considered relative to establishing a rebuilding program for bluefin tuna; (3) to consider a matrix of rebuilding scenarios; (4) to discuss additional rebuilding scenario alternatives, and (5) to make recommendations.

Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jonathon Krieger at (301)713–2276 at least five days prior to the meeting date.

Dated: March 18, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–4783 Filed 2–24–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021998B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of applications for scientific research permits (1130, 1131, 1132, 1133) and an amendment to an application for a scientific research permit (1102).

SUMMARY: Notice is hereby given that the U.S. Geological Survey, Cook, WA (USGS) (1130), the Port of Portland, Portland, OR (POP) (1131), S. Gordon Rogers, Satilla Management Associates, Inc. (1132), and Andre M. Landry, Texas A&M University (1133), have applied in due form for permits, and that the Washington Department of Fish and Wildlife at Vancouver, WA (WDFW) (1102) has submitted in due form an amendment to an application for a

permit to take listed species for the purpose of scientific research.

DATES: Written comments or requests for a public hearing on this application must be received on or before March 27, 1998.

ADDRESSES: The application and related documents are available for review by appointment in the following offices:

For permits 1102, 1130, and 1131: Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400); and

For permits 1132 and 1133: Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141).

All documents may also be reviewed by appointment in the Office of Protected Resources, Endangered Species Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permits 1102, 1130, and 1131: Robert Koch, Protected Resources Division (503–230–5424).

For permit 1132: Terri Jordan, Endangered Species Division, Office of Protected Resources, (301–713–1401).

For permit 1133: Michelle Rogers, Endangered Species Division, Office of Protected Resources, (301–713–1401).

SUPPLEMENTARY INFORMATION: USGS (1130), POP (1131), S. Gordon Rogers (1132), Andre M. Landry (1133), and WDFW (1102) request permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217-227).

USGS (1130) requests a five-year permit for takes of juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*); juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*); juvenile, endangered, artificially-propagated, upper Columbia River steelhead (*Oncorhynchus mykiss*); and juvenile, threatened, Snake River steelhead (*Oncorhynchus mykiss*) associated with research designed to determine the movement, distribution, and passage behavior of radio-tagged juvenile salmonids at Bonneville, The Dalles, and John Day Dams on the Columbia River. USGS also requests a take of juvenile lower Columbia River steelhead (*Oncorhynchus mykiss*) which is currently proposed as threatened. The results of the research will be used by the U.S. Army Corps of Engineers to assess fish passage efficiency at John Day and The Dalles Dams and to increase bypass efficiency for juvenile salmonids at the dams by effectively designing and positioning prototype surface bypass/collection structures. ESA-listed fish are proposed to be acquired from Smolt Monitoring Program (SMP) personnel at Bonneville, John Day, and McNary Dams; implanted with radio transmitters; transported; held for as long as 24 hours; released; and tracked electronically. SMP personnel are authorized to collect ESA-listed fish under the authority of permit 822. Indirect mortalities of ESA-listed juvenile fish associated with the scientific research are also requested.

POP (1131) requests a two-year permit for takes of juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon; juvenile, threatened, Snake River fall chinook salmon; juvenile, endangered, naturally-produced and artificially-propagated, upper Columbia River steelhead; and juvenile, threatened, Snake River steelhead associated with research designed to determine the presence and distribution of fish in shallow water habitats between the lower end of Hayden Island and the Sandy River delta on the Columbia River. POP also requests a take of juvenile lower Columbia River steelhead which is currently proposed as threatened. Information obtained as a result of research activities will be used to: 1) develop a comprehensive management plan for the lower Columbia River steelhead evolutionarily significant unit in cooperation with the states of OR and WA; 2) prepare environmental impact assessments associated with shoreline development projects, such as a proposed marine terminal facility on the western half of Hayden Island; and 3) design mitigation plans to compensate for the loss of shallow water habitat due to future shoreline development projects. ESA-listed fish are proposed to be captured using electrofishing, seines, or bottom trawls; handled; and released. ESA-listed juvenile fish indirect mortalities associated with research activities are also requested.

S. Gordon Rogers, Satilla Management Associates, Inc. (1132), requests a one year permit to collect tissue samples and morphometric measurements from 30 shortnose sturgeon in Georgia rivers. In addition, the any fish that samples were collected from would also be marked with conventional and PIT tags. Collection method would be tended gill and trammel nets.

Andre M. Landry, Texas A&M University (1133), requests a five-year permit (1133) to take listed sea turtles for the purpose of conducting studies on population status and recovery potential, habitat preference, movement and migration, foraging patterns, and impact of man's activities such as commercial and recreational fishing, dredging and habitat alteration/pollution. The applicant requests authorization to take up to 200 Kemp's ridley (*Lepidochelys kempii*), 20 hawksbill (*Eretmochelys imbricata*), 300 green (*Chelonia mydas*), and 200 loggerhead (*Caretta caretta*) turtles annually from locations within the Gulf of Mexico, primarily through the use of entanglement nets. Captured turtles may be weighed, photographed, and measured; tagged with flipper, PIT, radio and/or satellite tags; and blood, fecal and tissue sampled. Additionally, stomach lavage techniques may be deployed where necessary.

On October 31, 1997, a notice was published (62 FR 58942) that NMFS received an application (1102) for a three-year permit from WDFW that would authorize takes of ESA-listed adult salmon and steelhead, including adult, threatened, Snake River steelhead, for the purpose of scientific research. NMFS has received an amendment to the application requesting: 1) That the permit be valid for a duration of five years; and 2) a take of adult lower Columbia River steelhead, which is currently proposed as threatened. Indirect mortalities of ESA-listed adult steelhead associated with research activities are also requested.

To date, protective regulations for threatened Snake River steelhead under section 4(d) of the ESA have not been promulgated by NMFS. This notice of receipt of applications requesting takes of this species is issued as a precaution in the event that NMFS issues protective regulations that prohibit takes of Snake River steelhead. The initiation of a 30-day public comment period on the applications, including their proposed takes of Snake River steelhead, does not presuppose the contents of the eventual protective regulations. To date, a listing determination for lower Columbia River steelhead under the ESA has not been promulgated by NMFS. This notice of receipt of applications requesting takes of this species is issued as a precaution in the event that NMFS issues a listing determination. The initiation of a 30-day public comment period on the applications, including their proposed takes of lower Columbia River steelhead, does not presuppose a listing determination.

Those individuals requesting a hearing should set out the specific

reasons why a hearing on this particular application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: February 19, 1998.

Nancy I. Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–4782 Filed 2–24–98; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the CME for Designation as a Contract Market in Futures and Options on the Russian Ruble

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) applied for designation as a contract market in futures and options on the Russian ruble. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before March 27, 1998.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the CME Russian ruble futures and options.

FOR FURTHER INFORMATION CONTACT: Please contact Michael Penick of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW., Washington, DC 20581, telephone (202) 418–5279. Facsimile number: (202) 418–5527. Electronic mail: mpenick@cftc.gov.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commissions, Three Lafayette Centre, 21st Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on February 18, 1998.

John R. Mielke,

Acting Director.

[FR Doc. 98–4715 Filed 2–24–98; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 63 F.R. 8167.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m., Thursday, February 26, 1998.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission changed the meeting to discuss enforcement matters to March 5, 1998 at 2:00 p.m.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–4982 Filed 2–23–98; 3:20 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Golden Field Office; Notice of Time Variance

AGENCY: Golden Field Office, DOE.

ACTION: Notice of time variance.

SUMMARY: The Department of Energy's Golden Field Office is reducing the standard 14 day review and comment period for Notice Of Scoping and Review of Predecisional Draft Environmental Assessment in connection with the proposed granting of a Right-Of-Way Easement to the Public Service Company of Colorado. In accordance with 10 CFR 1021.343(b) Reduction of Time Periods, DOE is reducing the time period for review and comment from 14 days to 7 days.

DATES: Comments to the notice of Scoping and Predecisional Draft will be due to DOE 7 days after the date of issuance.

ADDRESSES: Comments should be addressed to Deborah A. Turner, U.S. Department of Energy, 1617 Cole Boulevard, Golden CO, 80401, Phone (303) 275–4746, Fax (303) 275–4788.

FOR FURTHER INFORMATION ON GENERAL DOE NEPA REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, Phone (202) 586–4600 or 1–800–472–2756, Fax (202) 586–7031.

SUPPLEMENTARY INFORMATION: The Public Service Company of Colorado has conducted extensive public and state agency outreach and coordination regarding the installation of a 26 mile high pressure natural gas line in the state of Colorado. The outreach and coordination activities have been ongoing since August 1996 and all other Federal, State, and local approvals have been obtained. A 0.25 mile portion of this pipeline is proposed to cross the South Table Mountain (STM) Site located in Golden, Colorado. The Golden Field Office is preparing an Environmental Assessment in relation to the potential granting of the Right-of-Way Easement that will allow the 0.25 mile portion of pipeline to be installed across our STM site. Construction and installation of the pipeline has already

commenced on both boundaries to the STM site under Right-of-Way easements from other parties.

Issued in Golden, Colorado, on February 13, 1998.

Frank M. Stewart,

Manager, Golden Field Office.

[FR Doc. 98–4775 Filed 2–24–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

NAME: Secretary of Energy Advisory Board—Electric System Reliability Task Force.

DATES AND TIMES: Tuesday, March 10, 1998, 8:30 AM–4:00 PM.

ADDRESSES: ANA Hotel, Ballroom I, 2401 M Street, NW, Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION:

Background

The electric power industry is in the midst of a complex transition to competition, which will induce many far-reaching changes in the structure of the industry and the institutions which regulate it. This transition raises many reliability issues, as new entities emerge in the power markets and as generation becomes less integrated with transmission.

Purpose of the Task Force

The purpose of the Electric System Reliability Task Force is to provide advice and recommendations to the Secretary of Energy Advisory Board regarding the critical institutional, technical, and policy issues that need to be addressed in order to maintain the reliability of the Nation's bulk electric system in the context of a more competitive industry.

Tentative Agenda

Tuesday, March 10, 1998

8:30–8:45 AM Opening Remarks & Objectives—Philip Sharp, ESR Task Force Chairman
8:45–10:15 AM Working Session: Discussion of Draft Position Paper on Technical Issues in Transmission System Reliability—Facilitated by Philip Sharp
10:15–10:30 AM Break
10:30–11:45 AM Working Session: Discussion of a Draft Position Paper on the Role and Shape of the Independent System Operator—Facilitated by Philip Sharp
11:45–12:45 PM Lunch
12:45–1:45 PM Working Session: Discussion of a Draft Position Paper on Ancillary Services and Bulk-Power Reliability—Facilitated by Wm. Newman
1:45–2:45 PM Working Session: Discussion of a Draft Position Paper on Incentives for Transmission Enhancement—Facilitated by Susan Tierney
2:45–3:30 PM Working Session: Guest Presentation & Discussion of State and Regional Reliability Issues—Philip Carver, Oregon Office of Energy and Facilitated by Roger Hamilton
3:30–4:00 PM Public Comment Period
4:00 PM Adjourn

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation

The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, D.C., the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Minutes

Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays. Information on the Electric System Reliability Task Force and the Task Force's interim report may be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on February 20, 1998.

Althea T. Vanzego,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 98–4774 Filed 2–24–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1170–000]

CLECO Energy, L.L.C.; Notice of Issuance of Order

February 19, 1998.

CLECO Energy, L.L.C. (CLECO Energy) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, CLECO Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by CLECO Energy. On February 17, 1998, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's February 17, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by CLECO Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set fourth in Ordering Paragraph (C) above, CLECO Energy is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of CLECO Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of CLECO Energy's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 19, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4732 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–406–010]

CNG Transmission Corporation; Notice of Pro Forma Tariff Sheet Filing

February 19, 1998.

Take notice that on February 13, 1998, CNG Transmission Corporation (CNG), tendered for filing the following pro forma tariff sheets corresponding to its FERC Gas Tariff, First Revised Volume No. 1:

Pro Forma Sheet Nos. 31–35
Pro Forma Sheet No. 37
Pro Forma Sheet No. 37A

CNG states that the purpose of this filing is to comply with Ordering Paragraph D of the "Order Accepting and Suspending Certain Tariff Sheets Subject To Conditions and Rejecting Other Tariff Sheet," issued by the Commission on January 29, 1998.

CNG states that it is submitting these pro forma tariff sheets and supporting work papers to reflect current procedural status of CNG's filings in the captioned proceedings.

CNG states that it has: (1) Removed the Accelerated Cost Recovery Mechanism ("ACRM"); (2) recalculated computer depreciation expenses utilizing the 20% rate requested in CNG's July 1, 1997 filing; and (3) reversed the conditional, voluntary reduction of shrinkage and fuel costs that reflected in the December 31 motion rate filing in Docket No. RP97–406.

CNG states that copies of its filing have been mailed to active parties to the captioned proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4738 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–231–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Request Under Blanket Authorization

February 19, 1998.

Take notice that on February 13, 1998, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, Suite 1600, Detroit, Michigan 48226, filed in Docket No. CP98–231–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a linetap in Beltrami County, Minnesota, under Great Lakes' blanket certificate issued in Docket No. CP90–2053–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Great Lakes states that the proposed linetap, consisting of a side tap, a four-inch valve and approximately four feet of four-inch-diameter steel pipe, will provide flexibility for potential deliveries of natural gas to Northwood Panelboard Company (Northwood), which currently utilizes propane to meet its requirements at its Beltrami County, Minnesota plant. Great Lakes states that the proposed new linetap will be constructed within its right-of-way and within the property boundaries of Northwood's plant. Great Lakes also states that the cost of its proposed facilities is estimated to be $14,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4728 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–373–011]

Koch Gateway Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

February 19, 1998.

Take notice that on February 13, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, to be effective December 1, 1997:

Second Substitute Fourth Revised Sheet No. 1807

Koch is submitting this substitute tariff sheet to revise a previously suspended version of Sheet 1807 with a modification that was made and accepted during its suspension period. Koch is also requesting the withdrawal of Substitute Fourth Revised Sheet No. 1807 filed on February 10, 1998.

Koch states that copies of this filing have been served upon each party designated in the official service list as compiled by the Secretary in the above captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4737 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–253–004]

Natural Gas Pipeline Company of America; Notice of Compliance Support for Revised Rates in FERC Gas Tariff

February 19, 1998.

Take notice that on January 23, 1998, Natural Gas Pipeline Company of America (Natural) filed work papers to support revised Rate Schedule DSS rates to comply with the OPR Director Letter Order issued December 30, 1997, (December 30 order) in Docket No. RP96–253–004.

On November 18, 1997, Natural filed in Docket No. RP96–253–004 to implement a change in the currently effective rates applicable to Rate Schedule DSS to reflect Settlement factors in accordance with a July 5, 1996, order issued in Docket No. RP96–253–000 and 001.

The December 30 order accepted natural's revised Rate Schedule DSS rates effective December 1, 1997, subject to Natural filing data to support its revisions proposed on November 18, 1997, in Docket No. RP96–253–004.

Natural states that copies of the filing have been mailed to Natural's customers, interested state regulatory agencies and all parties set out on the official service list at Docket No. RP96–253–000, *et al.*

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 26, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4736 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–431–002]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

February 19, 1998.

Take notice that on February 13, 1998, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain pro forma tariff sheets.

Natural states that the purposes of this filing is to comply with the Commission's order issued January 16, 1998 in Docket No. RP97–431–000, which required Natural to submit modified tariff changes detailing new procedures for the posting, auctioning, allocating and awarding of firm capacity.

Natural states that copies of the filing are being mailed to Natural's customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP97–431.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4739 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–127–001]

Northern Natural Gas Company; Notice of Compliance Filing

February 19, 1998.

Take notice that on February 13, 1998, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective March 1, 1998:

16 Revised Sheet No. 52
17 Revised Sheet No. 60

Northern states that the reason for this filing is to resubmit Sheet Nos. 52 and 60 with corrected pagination in compliance with the Commission's February 5 Letter Order in Docket No. RP98–127–000. No change has been made to Sheet Nos. 52 and 60, as filed on January 30, 1998, other than the numbering of the sheets, as follows:

—Sheet No. Fifteenth Revised Sheet No. 52 is herein resubmitted as Sixteenth Revised Sheet No. 52, and

—Sheet No. Sixteenth Revised Sheet No. 60 is herein resubmitted as Seventeenth Revised Sheet No. 60.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E. Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4742 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–627–000, ER98–628–000, ER98–630–000, and ER98–631–000]

Ocean Vista Power Generation, L.L.C.; Oeste Power Generation, L.L.C.; Mountain Vista Power Generation, L.L.C.; Alta Power Generation, L.L.C.; Notice of Issuance of Order

February 19, 1998.

Ocean Vista Power Generation, L.L.C., Oeste Power Generation, L.L.C., Mountain Vista Power Generation, L.L.C., and Alta Power Generation, L.L.C. (collectively, Applicants) are affiliates of Houston Lighting & Power Company and wholly-owned subsidiaries of Houston Industries Power Generation, Inc., which in turn is a wholly-owned subsidiary of Houston Industries. Each Applicant filed separate applications for authorization to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, Applicants requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Applicants. On February 11, 1998, the Commission issued an Order Conditionally Accepting for Filing Proposed Market-Based Rates and Granting Waiver of Notice (Order), in the above-docketed proceeding.

The Commission's February 11, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering paragraphs (E), (F), and (H):

(E) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Applicants should file a motion to intervene or protest with the Federal Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Applicants' issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 13, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4731 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–15–001]

Overthrust Pipeline Company; Notice of Tariff Filing

February 19, 1998.

Take notice that on February 13, 1998, Overthrust Pipeline Company (Overthrust), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Fourth Revised Sheet No. 77 to be effective February 27, 1998.

Overthrust states that this tariff sheet corrects the pagination of Third Revised Sheet No. 77 as tendered with Overthrust's January 28, 1998, FERC Gas Tariff filing in Docket No. GT98–15–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4733 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP85–60–011]

Overthrust Pipeline Company; Notice of Report of Refunds

February 19, 1998.

Take notice that on February 6, 1998 Overthrust Pipeline Company (Overthrust) tendered for filing a refund report. Overthrust states that the report documents refunds of amounts pertaining to and detailing the Deferred Income Tax (DIT) refund payments for the year 1997.

Overthrust states that it is filing the refund report pursuant to a Commission order dated May 21, 1991, "Order Approving Settlement with Modifications" in Docket Nos. RP85–60–000 and –002. Overthrust explains that Article V of the settlement as modified, requires Overthrust to file an annual report 60-days after making the actual DIT refunds.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 first Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 26, 1998. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4735 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2114, WA]

Public Utility District No. 2 of Grant County, Washington; Notice of Public Utility District No. 2 of Grant County's Request for Alternative Procedures in Preparing a License Application

February 19, 1998.

By letter dated January 22, 1998, Public Utility District No. 2 of Grant County, Washington (Grant) has asked to use an alternative procedure in preparing to relicense their Priest

Rapids Project No. 2114.[1] Specifically, Grant is asking for a waiver of Section 16.6(c)(1) of the Commission's regulations, and for early National Environmental Policy Act (NEPA) scoping.

Section 16.6(c)(1) of the Commission's regulations requires an applicant to file a notice of intent to relicense a project no earlier than five and one-half years before license expiration.[2] Grant intends to negotiate pre-filing settlements during the 3-stage consultation period before filing their relicense application, and in order to do so would like to start formal consultation before the year 2000. Grant is also asking that Commission staff conduct NEPA scoping during the pre-filing stages to facilitate the early identification of issues.

Grant has demonstrated that they have made an effort to contact resource agencies, Indian tribes, nongovernmental organizations (NGOs), and others affected by their proposal, and that a consensus exists that the use of an alternative procedure is appropriate in this case.

The purpose of this notice is to invite comments on Grant's request to use the alternative procedure, as required under the final rule for Regulations for the Licensing of Hydroelectric Projects.[3] Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date.

Comments

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on Grant's proposal to use the alternative procedures to prepare an application to relicense the Priest Rapids Project.

Filing Requirements

The comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE., Washington, DC 20426.

All comment filings must bear the heading "Comments on the Alternative Procedure," and include the project name and number (Priest Rapids Hydroelectric Project, No. 2114).

For further information, please contact Vince Yearick of the Federal Energy Regulatory Commission at 202–219–3073.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4734 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

[1] The 1,946-megawatt Priest Rapids project is located on the Columbia River in Chelan, Douglas, Kittitas, Grant, Yakima, and Benton Counties, Washington. The project consists of two developments; Priest Rapids Dam and Wanapum Dam.

[2] The license for the Priest Rapids project was issued on November 4, 1955 (14 FPC 1067), effective November 1, 1995, and expires by its terms on October 31, 2005.

[3] 81 FERC ¶ 61,103 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–43–000]

Sithe Wyman LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

February 19, 1998.

On February 11, 1998, Sithe Wyman LLC, 450 Lexington Avenue, 37th Floor, New York, NY 10017 (Sithe Wyman), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Sithe Wyman states that it will own a 5.89% interest in an electric generating facility, entitling Sithe Wyman to receive 36 MW of electricity. The facility is located in Yarmouth, Maine.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or protests with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy of the application. All such motions and protests should be filed on or before March 4, 1998, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4730 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–135–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

February 19, 1998.

Take notice that on February 13, 1998, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, First Revised Sheet No. 676, Original Sheet No. 678 and Original Sheet No. 679, with an effective date of March 15, 1998.

Tennessee states that the tariff sheets propose certain modifications of its Pro Forma Electronic Data Interchange (EDI) Agency Authorization Agreement in that the limited agent under the EDI Agency Authorization Agreement will have responsibility for the data sets identified in Exhibit I to the EDI Agency Authorization Agreement, rather than for the data sets identified in Exhibit A to the Trading Partner Agreement between the limited agent and Tennessee, as contemplated by Tennessee's current Pro Forma EDI Agency Authorization Agreement. Tennessee further states that this change permits a shipper to delegate to the limited agent responsibility for some, but not all, of the data sets identified in the trading partner agreement thereby giving the shipper greater flexibility with regard to its EDI transactions with Tennessee.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4741 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–232–000]

Williams Gas Pipelines Central, Inc.; Notice of Application

February 19, 1998.

Take notice that on February 13, 1998, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed an abbreviated application in Docket No. CP98–232–000 pursuant to section 7(b) of the Natural Gas Act, and Part 157 of the Commission's Regulations for an order granting permission and approval to abandon by reclaim the Haysville compressor units located in Sedgwick County, Kansas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Williams seeks authority to abandon by reclaim the Haysville compressor station consisting of two 2,400 horsepower Cooper GMVH reciprocating units and auxiliary equipment. Williams will retain the station site since other facilities, which also occupy the site, will remain in operation. The cost of the proposed abandonment is approximately $447,885 with an estimated salvage value of $1,942,815.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 12, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211 and the Regulations under the Natural Gas Act (18 CFR 157.10. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williams to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4729 Filed 2–24–98; 8:45am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–104–001]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

February 19, 1998.

Take notice that on February 13, 1998 Williston Basin Interstate Pipeline Company (Williston Basin), filed further explanations in compliance with the Commission's "Order Accepting Tariff Sheets Subject to Conditions" issued on January 30, 1998, in support of certain provisions of its proposed pooling service, as more fully explained in the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4740 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1795–000, et al.]

Louisville Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

February 19, 1998.

Take notice that the following filings have been made with the Commission:

1. Louisville Gas and Electric Company

[Docket No. ER98–1795–000]

Take notice that on February 10, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Minnesota Power & Light Company under LG&E's Open Access Transmission Tariff.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Long Beach Generation LLC

[Docket No. ER98–1796–000]

Take notice that on February 9, 1998, Long Beach Generation LLC, tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, to be effective upon closing of its purchase of the Long Beach Generating Station, which is scheduled to occur on or before March 31, 1998.

Long Beach Generation LLC intends to sell electric power at wholesale. In transactions where Long Beach Generation LLC sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Rate Schedule No. 1, provides for the sale of energy and capacity at agreed prices.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. NGE Generation, Inc.

[Docket No. ER98–1798–000]

Take notice that on February 10, 1998, NGE Generation, Inc. (NGE), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with New York State Electric & Gas Corporation (NYSEG), for the sale of power at cost based rates to NYSEG to meet NYSEG's

supplemental capacity and energy requirements. The agreement also provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NGE will sell to NYSEG and NYSEG will purchase from NGE either capacity and associated energy or energy only as the parties may mutually agree.

NGE requests that the agreement become effective on February 11, 1998, in accordance with the terms set forth in the Agreement. NGE has requested waiver of the notice requirements for good cause shown.

NGE served copies of the filing upon the New York State Public Service Commission and NYSEG.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Houston Lighting & Power Company

[Docket No. ER98–1799–000]

Take notice that on February 10, 1998, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA), with (1) Questar Energy Trading Co. (Questar), and (2) PECO Energy Company—Power Team for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of February 10, 1998.

Copies of the filing were served on Questar, PECO and the Public Utility Commission of Texas.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. PECO Energy Company

[Docket No. ER98–1800–000]

Take notice that on February 10, 1998, PECO Energy Company (PECO), filed a Service Agreement dated December 10, 1997 with South Jersey Energy Company (SJEC), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds SJEC as a customer under the Tariff.

PECO requests an effective date of January 15, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to SJEC and to the Pennsylvania Public Utility Commission.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Company of Oklahoma

[Docket No. ER98–1801–000]

Take notice that on February 10, 1998, Public Service Company of Oklahoma (PSO), tendered for filing a Contract for Electric Service, dated January 15, 1996, between PSO and South Coffeyville Public Works Authority (South Coffeyville). The Contract extends requirements service to South Coffeyville through January 20, 2001.

PSO seeks an effective date of January 21, 1996, and accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served upon South Coffeyville and the Oklahoma Corporation Commission.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric Company

[Docket No. ER98–1802–000]

Take notice that on February 10, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing a Consent of Assignment form between LG&E and Coastal Electric Services Company which has been assigned to Engage Energy US, L.P.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Illinois Power Company

[Docket No. ER98–1803–000]

Take notice that on February 11, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Constellation Power Source, Inc., will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of December 21, 1997.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Commonwealth Edison Company

[Docket No. ER98–1804–000]

Take notice that on February 10, 1998, Commonwealth Edison Company (ComEd), submitted for filing two Service Agreements establishing Amoco Energy Trading Corporation (AMOCO), and Tennessee Valley Authority (TVA), as non-firm transmission customers under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of February 2, 1998, for the service agreements, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon AMOCO, TVA and the Illinois Commerce Commission.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Maine Public Service Company

[Docket No. ER98–1806–000]

Take notice that on February 10, 1998, Maine Public Service Company (Maine Public), filed an executed Service Agreement with Eastern Maine Electric Cooperative.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Western Resources, Inc.

[Docket No. ER98–1807–000]

Take notice that on February 10, 1998, Western Resources, Inc., tendered for filing four non-firm transmission agreements between Western Resources and American Electric Power Service Corporation, Western Resources and Amoco Energy Trading Corporation, Western Resources and Columbia Power Marketing Corporation, and Western Resources and Oklahoma Municipal Power Authority. Western Resources states that the purpose of the agreements is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreements are proposed to become effective January 14, 1998, January 30, 1998, January 23, 1998, and February 3, 1998.

Copies of the filing were served upon American Electric Power Service Corporation, Amoco Energy Trading Corporation, Columbia Power Marketing Corporation, Oklahoma Municipal Power Authority, and the Kansas Corporation Commission.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER98–1808–000]

Take notice that on February 10, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E), and PSI Energy, Inc. (PSI), an Interchange Agreement, dated December 1, 1997, between Cinergy, CG&E, PSI and Continental Energy Services, L.L.C. (CES).

The Interchange Agreement provides for the following service between Cinergy and CES:

1. Exhibit A—Power Sales by CES
2. Exhibit B—Power Sales by Cinergy

Cinergy and CES have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on Continental Energy Services, L.L.C., the Oklahoma Corporation Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Kansas City Power & Light Company

[Docket No. ER98–1809–000]

Take notice that on February 10, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated January 27, 1998, between KCPL and American Electric Power. KCPL proposes an effective date of February 2, 1998, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER98–1810–000]

Take notice that on February 10, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E), and PSI Energy, Inc. (PSI), an Interchange Agreement, dated February 1, 1998, between Cinergy, CG&E, PSI and New Energy Ventures, L.L.C. (NEV).

The Interchange Agreement provides for the following service between Cinergy and NEV:

1. Exhibit A—Power Sales by NEV
2. Exhibit B—Power Sales by Cinergy

Cinergy and NEV have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on New Energy Ventures, L.L.C., the Massachusetts Department of Utilities, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER98–1811–000]

Take notice that on February 10, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E), and PSI Energy, Inc. (PSI), an Interchange Agreement, dated January 1, 1998, between Cinergy, CG&E, PSI and Entergy Power Marketing Corp. (EPMC).

The Interchange Agreement provides for the following service between Cinergy and EPMC:

1. Exhibit A—Power Sales by EPMC
2. Exhibit B—Power Sales by Cinergy

Cinergy and EPMC have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on Entergy Power Marketing Corp., the Texas Public Utility Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Cinergy Services, Inc.

[Docket No. ER98–1812–000]

Take notice that on February 10, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E), and PSI Energy, Inc. (PSI), an Interchange Agreement, dated February 1, 1998, between Cinergy, CG&E, PSI and DTE Energy Trading, Inc., (DTE ET).

The Interchange Agreement provides for the following service between Cinergy and DTE ET:

1. Exhibit A—Power Sales by DTE ET
2. Exhibit B—Power Sales by Cinergy

Cinergy and DTE ET have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on DTE Energy Trading, Inc., the Michigan Public Service Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4801 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice

February 19, 1998.

The Federal Energy Regulatory Commission has determined that the following employees are "Covered Executive Branch Officials" under the Lobbying Disclosure Act of 1995, Public Law 104–65, 109 Stat. 691.

Chairman James J. Hoecker

Commission Vicky A. Bailey

Commissioner Linda K. Breathitt

Jean Womack, Confidential Assistant

Michael Alexander, Technical Advisor

Commissioner Curtis L. Hebert, Jr.

Mechalle Myers, Confidential Assistant

Commissioner William L. Massey

Donna Glasgow, Confidential Assistant

Robert HIrasuna, Attorney-Advisor, Office of the General Counsel

Margaret Passerini, Special Assistant, Office of External Affairs

This list will be revised as necessary to reflect any changes in personnel or government-wide interpretive rulings.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4727 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5970–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NSPS Subpart E: New Source Performance Standards (NSPS) for Municipal Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Reporting and Recordkeeping Requirements for the New Source Performance Standards (NSPS) for Municipal Incinerators, OMB Control Number 2060–0040, expiration date March 31, 1998. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 27, 1998.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr/icr.htm, and refer to EPA ICR No. 1058.06.

SUPPLEMENTARY INFORMATION:

Title: NSPS Subpart E: New Source Performance Standards (NSPS) for Incinerators (OMB Control No. 2060–0040; EPA ICR No. 1058.06) expiring 3/31/98. This is a request for extension of a currently approved collection.

Abstract: The Agency is required under section 111 of the Clean Air Act, as amended, to establish standards of performance for new stationary sources of air pollutants that reflect: * * * Application of the best technological system of continuous emissions reduction which (taking into consideration the cost of achieving such emissions reduction, or any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

Section 114(a) states that: * * * The Administrator may require any owner or operator subject to any requirement of this Act to (A) establish and maintain such records, (B) make such reports, (C) install, use and maintain such monitoring equipment or methods (in accordance with such methods at such locations, at such intervals, and in such manner as the Administrator may prescribe), and (D) provide such other information, as he may reasonably require.

In the Administrator's judgement, particulate matter emissions from municipal incinerators causes or contributes to air pollution that may reasonably be anticipated to endanger public health or welfare. Consequently, the NSPS for municipal incinerators were developed for this source category (municipal incinerators charging more than 45 megagrams per day).

The control of emissions of particulate matter from municipal incinerators requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. Certain records and reports are necessary to enable the Administrator to: (1) Identify existing, new, and reconstructed sources subject to the standards; (2) determine a source's initial capability to comply with the emission standard; and (3) ensure that the standards are being achieved. These records and reports are required under subpart E and the General Provisions of 40 CFR part 60.

Owners or operators of affected facilities must provide notification of: (1) The date of construction or reconstruction; (2) the anticipated date of startup; (3) the actual date of startup; (4) any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; (5) the date of the initial performance test; and (6) results of the initial performance test, including information necessary to determine the conditions of the performance test, and performance test measurements and results. A report on the results of the initial performance test is also required. Owners or operators of affected facilities must record: (1) The initial performance test; (2) the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative; (3) the daily charging rates and hours of operation; (4) periods when the monitoring system is inoperative; and (5) malfunctions of the air pollution control equipment. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records.

State or local agencies can be delegated authority by EPA to enforce the provisions of this part and be granted authority to receive and/or request these reports. If there is no such delegated authority, the reports are sent directly to the EPA Regional Office. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated and the standard is being met. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless a currently valid OMB control number is displayed. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice, required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 20, 1997 (62 FR 44271). No comments were received prior to closure of the comment period. Comments regarding the capital/start-up and operating and maintenance costs associated with the recordkeeping and reporting requirements were received after closure of the comment period.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 89 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Operators of Municipal Incinerators.

Estimated Number of Respondents: 96.

Frequency of Response: Daily, Monthly, and Semi-annually.

Estimated Total Annual Hour Burden: 8544 hours.

Estimated Total Annualized Cost Burden: $240,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses.

Please refer to EPA ICR No. 1058.6 and OMB Control No. 2060–0040 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: February 19, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–4815 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5970–6]

Government-Owned Inventions: Available for Licensing

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government and are available for licensing in the United States in accordance with 35 U.S.C. 207 and 37 CFR part 404. Pursuant to 37 CFR 404.7, beginning three months after the date of this notice, the Government may grant exclusive or partially exclusive licenses on any of the inventions listed below.

Copies of the listed patents, the patent application, and 37 CFR part 404 can be obtained from Alan Ehrlich, Acting Patent Counsel, at the address indicated below. Requests for copies of patents or patent applications must include the patent number or patent application serial number listed in this notice. Requesters of patent applications will be asked to sign a Confidentiality Agreement before the application is mailed.

If a party is interested in obtaining a license, they must apply to EPA, including providing the information set forth in 37 CFR 404.8, and including the license applicant's plan for development or marketing the invention.

Prior to granting an exclusive or partially exclusive license on any of the inventions listed herein, EPA, pursuant to 37 CFR 404.7, will publish in the **Federal Register** an additional notice identifying the specific invention and the prospective licensee.

FOR FURTHER INFORMATION CONTACT: Alan Ehrlich, Acting Patent Counsel, Office of General Counsel (2377), Environmental Protection Agency, Washington, D.C. 20460, telephone (202) 260–7510.

Patents

U.S. Patent No. 5,476,788: Solid Phase Bioremediation Methods Using Lignin-Degrading Fungi; issued December 19, 1995; and U.S. Patent Application No. 08/881,312: Solid Phase Bioremediation Methods Using Lignin-Degrading Fungi; filed June 24, 1997. These two documents comprise one invention for which a patent application was first filed June 10, 1993.

U.S. Patent No. 5,549,087: Combined Cycle Engine; issued August 27, 1996.

U.S. Patent No. 5,577,522: Transportable Electronically Controlled System for On-Site Decontamination of Solid and Hazardous Waste; issued November 26, 1996.

U.S. Patent No. 5,601,791: Electrostatic Precipitator for Collection of Multiple Pollutants; issued February 11, 1997.

U.S. Patent No. 5,604,348: Measurement of Acid Sulfate Levels in Aerosols; issued February 18, 1997.

U.S. Patent No. 5,619,937: Sorbent Melts for Capture of Metals from Combustion Gases; issued April 15, 1997.

U.S. Patent No. 5,652,485: Fuzzy Logic Integrated Electrical Control to Improve Variable Speed Wind Turbine Efficiency and Performance; issued July 29, 1997.

U.S. Patent No. 5,711,020: Method for Remediating Environmental Contaminants; issued January 20, 1998; and U.S. Patent Application No. 08/897,203: Method for Remediating Environmental Contaminants; filed July 21, 1997. These two documents comprise one invention for which a patent application was first filed April 9, 1993.

Patent Applications

U.S. Patent Application No. 08/419,948: Elimination of Products of Incomplete Combustion; filed April 11, 1995.

U.S. Patent Application No. 08/440,965: Hydrogel Alginate Compositions; filed May 15, 1995.

U.S. Patent Application No. 08/466,437: Method and Apparatus for Altering Ionic Interactions with Chemicals and Chemical Processes Using Magnetic Fields; filed June 6, 1995.

U.S. Patent Application No. 08/535,405: A Method for Improving Process Control by Reducing Lag Time of Sensors Using Artificial Neural Networks; filed September 28, 1995.

U.S. Patent Application No. 08/739,842: Remediation of Environmental Contaminants Using a Metal and a Sulfur-Containing Compound; filed October 30, 1996.

U.S. Patent Application No. 08/827,310: Adsorbent-Filled Membranes for Pervaporation; filed March 26, 1997.

U.S. Patent Application No. 08.847,507: Thermophilic Methanotrophs for High Temperature Oxidations; filed April 25, 1997.

U.S. Patent Application No. 08/862,308: Recovery of Volatile Organic Compounds in Water by Pervaporation; filed May 23, 1997.

U.S. Patent Application No. 08/933,832: Dual-Service Evaporator System for Refrigerators; filed September 19, 1997.

U.S. Patent Application No. 08/933,946: Rotating Disk Evaporative Cooler; filed September 19, 1997.

Dated: February 17, 1998.

Ray E. Spears,

Associate General Counsel.

[FR Doc. 98–4819 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30448; FRL–5773–7]

Ecogen, Inc.; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application submitted by Ecogen Inc., to register a pesticide product containing a new active ingredient not included any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by March 27, 1998.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30448] and the file symbols to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-

docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Alan Reynolds, Regulatory Action Leader, Biopesticides and Pollution Prevention Division, (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 5th floor, CS1, 2800 Crystal Drive, Arlington, VA. 22202, (703) 605–0515; e-mail: reynolds.alan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received an application from Ecogen Inc., 2005 Cabot Blvd. West, P.O. Box 3023 Langhorne, PA 19047–3023 to register the pesticide product BTI Technical Powder Bioinsecticide (EPA File Symbol 55638–UR), containing the active ingredient *Bacillus thuringiensis* subspecies *israelensis* strain EG2215 at 20 percent, an ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA. The product is for manufacture of bioinsecticide end-use products to control of mosquitoes. Notice of receipt of the application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30448] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30448]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: February 13, 1998.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 98–4805 Filed 2-24-98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30447; FRL–5773–6]

FMC Corporation; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by March 27, 1998.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30447] and the file symbols to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM-23), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703 305–6224, e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 279–GRIE. Applicant: FMC Corporation, Agricultural Chemical Group, 1735 Market St., Philadelphia, PA 19103. Product Name: Carfentrazone-ethyl (F8426) 50DF. Herbicide. Active ingredient: Carfentrazone: ethyl α,2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate at 50 percent. Proposed classification/Use: None. For agricultural or commercial use only to

control broadleaf weeds on cereal grain groups and soybeans.

2. File Symbol: 279–GRIR. Applicant: FMC Corporation. Product Name: Carfentrazone-ethyl (F8426) Technical. Herbicide. Active ingredient: Carfentrazone: ethyl α,2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate at 90 percent. Proposed classification/Use: None. For formulation use only.

3. File Symbol: 279–GROU. Applicant: FMC Corporation. Product Name: Carfentrazone-ethyl (F8426) 40DF. Herbicide. Active ingredient: Carfentrazone: ethyl α,2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate at 40 percent. Proposed classification/Use: None. For agricultural or commercial use only to control broadleaf weeds on cereal grain groups and soybeans.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30447] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30447]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: February 12, 1998.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–4814 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–790; FRL–5768–4]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–790, must be received on or before March 27, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number/e-mail address	Address
George LaRocca (PM 21).	Rm. 204, CM #2, 703–305–6100, e-mail: larocca.george@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
James A. Tompkins (PM 25).	Rm. 239, CM #2, 703–305–5697, e-mail: tompkins.james@epamail.epa.gov.	Do.
Hoyt Jamerson (PM 05)	Rm. 268, CM #2, 703–308–9368, e-mail: jamerson.hoyt@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various raw food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports grantinig of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice, as well as the public version, has been established for this notice of filing under docket control number PF–790 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (insert docket number) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 21 U.S.C. 346a.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 11, 1998.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Below summaries of the pesticide petitions are printed. The summaries of the petitions were prepared by the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. DowElanco

PP 1F3935

EPA has received a pesticide petition (PP 1F3935) from DowElanco, 9330 Zionsville Road, Indianapolis, IN 46268–1054 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of triclopyr, (3,5,6-trichloro-2-pyridinyl)oxyacetic acid and its metabolites 3,5,6-trichloro-2-pyridinol (TCP) and 2-methoxy-3,5,6-trichloropyridine (TMP) in or on the raw agricultural commodity fish at 3.0 parts per million (ppm), and shellfish at 5.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Analytical method.* Adequate methodology is available for the enforcement of tolerances for triclopyr residues of concern. Gas chromatography methods are available for the determination of triclopyr residues of concern. Residues of triclopyr, 3,5,6-trichloro-2-pyridinol, and 2-methoxy-3,5,6-trichloropyridine can be separately determined. The limits of quantitation are 0.01 - 0.05 ppm in fish and shellfish, depending on the compound being analyzed. The water method has a limit of quantitation of 0.1 ppb.

2. *Magnitude of residues.* In field studies, triclopyr and its metabolites in water have half-lives of 0.5 – 15 days. Triclopyr residues in lake water treated at the maximum label rate were below 0.5 ppm within 3 – 14 days. In pond water where whole ponds were treated at the maximum label rate, residues were below 0.5 ppm by 28 days after treatment. After 42 days in both lakes and ponds, residues were non-detectable (<0.010 ppm) to 0.013 ppm.

Residues of triclopyr and its metabolites 3,5,6-trichloro-2-pyridinol and 2-methoxy-3,5,6-trichloropyridine reach a maximum concentration in fish at 3-14 days after treatment of water, and total residues of triclopyr and its metabolites were detectable in the edible flesh at a maximum level of 3.0 ppm in fish and 5.0 ppm in shellfish. Residues in fish and shellfish decline as residues in water dissipate.

B. Toxicological Profile

1. *Acute toxicity.* The developmental no-effect level (NOEL) of 30 milligram/kilogram/day (mg/kg/day) from a rabbit developmental study was recommended for the acute dietary risk assessment. At the lowest effect level (LEL) of 100 mg/kg/day, there were embryotoxic and fetotoxic effects associated with significant maternal toxicity, including death. Acute exposure assessment will evaluate risk to pregnant females age 13 and older.

2. *Short- and Intermediate-Term Toxicity.* Based on the available data, short- and intermediate-term dermal and inhalation risk assessments are not required. A systemic NOEL of 1,000 mg/kg/day, the highest dose tested (HDT), was determined in a 21–day dermal toxicity study in rabbits. The LC_{50} from the acute inhalation study in rats was determined to be > 2.6 mg/L (Toxicity Category III).

3. *Chronic toxicity.* The Reference Dose (RfD) for triclopyr is 0.05 mg/kg/day. This RfD is based on a 2-generation reproductive toxicity study in rats with a NOEL of 5.0 mg/kg/day using an uncertainty factor of 100. At the next higher dose level of 25 mg/kg/day, an increased incidence of slight degeneration of the proximal tubules of the kidneys was observed in some P1 and P2 parents of both sexes. Chronic exposure assessment will evaluate risk using this RfD.

4. *Carcinogenicity.* Environmental Protection Agency's Cancer Peer Review Committee (CPRC) concluded that triclopyr should be classified as a "Group D chemical" - not classifiable as to human carcinogenicity. A cancer risk assessment is not required.

5. *Animal metabolism.* Disposition and metabolism of ^{14}C-triclopyr in rats demonstrated that triclopyr was well absorbed after oral administration. Excretion was relatively rapid with a majority of radioactivity eliminated in the urine by 24 hours. At the high dose of 60 mg/kg, urinary elimination of ^{14}C-triclopyr was decreased due to apparent saturation of renal elimination mechanisms. Fecal elimination of ^{14}C-triclopyr was a minor route of excretion, as was elimination via exhaled air. Unmetabolized parent chemical represented >90% of urinary radioactivity, with the remainder accounted for by the metabolite 3,5,6-trichloro-2-pyridinol (3,5,6-TCP), and possible glucuranide and/or sulfate conjugates of 3,5,6-TCP. Plasma elimination following intravenous administration of ^{14}C-triclopyr was consistent with a one-compartment model with an elimination half-life of 3.6 hour and zero-order kinetics from 0–12 hours at the 60 mg/kg dose.

6. *Bioequivalency.* Toxicology studies conducted with triclopyr have been performed using both the free acid or the triethylamine salt from of triclopyr. Bioequivalency of the two chemical forms of triclopyr has been addressed through the conduct of special studies with the triethylamine from of triclopyr. These studies, which included data on comparative disposition, plasma half-life, tissue distribution, hydrolytic cleavage under physiological and environmental conditions for triclopyr triethylamine salt were found to adequately address the issue of Bioequivalency. In addition, subchronic toxicity studies supported the pharmacokinetics data in demonstrating bioequivalence. Therefore, studies conducted with any one from of triclopyr can be used to support the toxicology database as a whole.

7. *Endocrine Effects.* An evaluation of the potential effects on the endocrine systems of mammals has not been

determined; However, no evidence of such effects were reported in the chronic or reproductive toxicology studies described above. There was no observed pathology of the endocrine organs in these studies. There is no evidence at this time that triclopyr causes endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure.* The RfD for triclopyr is based upon the 2-generation reproduction toxicity study in rats with a NOEL of 5.0 mg/kg/day, the lowest dose tested. An uncertainty factor of 10 for interspecies differences in response and an uncertainty factor of 10 for intraspecies differences in response was applied. Thus, the RfD for triclopyr was established at 0.05 mg/kg/day by the RfD Peer Review Committee on September 4, 1996.

A chronic dietary exposure analysis was performed using tolerance level residues and 100 percent crop treated information to estimate the Theoretical Maximum Residue Contribution (TMRC) for the general population and 22 subgroups. Existing tolerances, including the proposed tolerances for fish and shellfish, result in a TMRC that represents 1.25% of the RfD for the U.S. general population. The highest subgroup, Non-Nursing Infants (<1 year old) occupies 2.65% of the RfD. The chronic analysis for triclopyr is a worse case estimate of dietary exposure with all residues at tolerance level and 100 percent of the commodities assumed to be treated with triclopyr. Based on the risk estimates calculated in this analysis, the chronic dietary risk from the uses currently registered is not of concern.

Since the toxicological endpoint to which exposure is being compared in the acute dietary risk analysis is a developmental NOEL (30 mg/kg/day), females (13+ years) are the sub population of particular interest. The Margin of Exposure (MOE) is a measure of how close the high end exposure comes to the NOEL (the highest dose at which no effects were observed in the laboratory test), and is calculated as the ratio of the NOEL to the exposure (NOEL/exposure = MOE.) Generally, acute dietary margins of exposure greater than 100 tend to cause no dietary concern. The high end MOE value of 1,639 is above the acceptable level and demonstrates no acute dietary concern.

An acute dietary exposure analysis was performed using tolerance level residues and 100 percent crop treated to estimate the high end exposure for the general population and females (13+, pregnant, non-nursing). The high end exposure was assumed to be the upper 0.5% of consumers, that is, the 99.5 percentile. The resulting exposure estimates and margins of exposure are as follows:

Population Subgroup	Exposure (mg/kg BW/day)	MOE
U.S. Population	0.01359	2208
Females	0.01831	1639

These high end MOE values are above the acceptable level and demonstrate no acute dietary concerns.

2. *Drinking water.* The use of triclopyr as described on the label allows only slight additional exposure of triclopyr to humans. The proposed labeling requires that the product not be applied within one-quarter mile of a potable water intake and that treated water not be used for domestic purposes until the residue level is demonstrated to be at or below 0.5 ppm as determined by laboratory analysis or immunoassay. The basis for these restrictions is a series of aquatic dissipation studies conducted in lakes and ponds. In these studies, triclopyr was applied to lakes and ponds at the maximum concentration of 2.5 ppm triclopyr in water. Triclopyr residues in the lakes at one-quarter mile from the treatment areas were well below 0.1 ppm throughout the study, with a maximum reported value of 0.058 ppm. Within the treatment area, triclopyr residues of less than 0.5 ppm were reported at 3 - 14 days after treatment in the Lake Minnetonka and Lake Seminole studies. In seven test ponds treated with triclopyr at a water concentration of 2.5 ppm, total residues of triclopyr were less than 0.5 ppm by 28 days after application, with the highest residue value being 0.193 ppm. At 42 days after treatment, total residues in both treated lakes and ponds ranged from non-detectable to 0.013 ppm.

If the proposed labeling is followed precisely, that is, potable water is not collected within one-quarter mile of a treated area, there will be little contribution from water to the "risk cup" for triclopyr. If drinking water is collected from the treatment area when water analysis indicates triclopyr residues are 0.5 ppm or less, the risk is still acceptable on an acute basis. On a chronic basis, the value of 0.013 ppm, found to be the highest triclopyr residue at 42 days after treatment in all studies, uses only 0.9% of the RfD for females (13+, pregnant, not nursing) and 2.6% of the RfD for children (1–6 years).

For a worst case estimate of potential drinking water exposure, the water residue at the proposed allowable water level at 0.5 ppm was utilized. When this residue level is considered, the following analysis indicates no level of concern for acute exposure:

For a 60 kg pregnant female consuming 2 liters a day (Acute)

(0.5 mg/L × 2 L/day) / 60 kg = 0.0167 mg/kg/day

MOE = NOEL / Exposure = (30 mg/kg/day) / (0.0167 mg/kg/day) = 1796

For a 60 kg pregnant female consuming 2 liters a day (Chronic)

(0.013 mg/kg/day × 2 L/day) / 60 kg = 0.00043 mg/kg/day

% RfD = (0.00043 mg/kg/day × 100) / (0.05 mg/kg/day) = 0.9 %

For a 10 kg child consuming 1 liter a day (Acute)

(0.5 mg/L × 1 L/day) / 10 kg = 0.05 mg/kg/day

MOE = (30 mg/kg/day) / (0.05 mg/kg/day) = 600

For a 10 kg child consuming 1 liter a day (Chronic)

(0.013 mg/L × 1 L/day) / 10 kg = 0.0013 mg/kg/day

% RfD = (0.0013 mg/kg/day × 100) / (0.05 mg/kg/day) = 2.6 %

3. *Non-dietary exposure.* There are potential exposures to homeowners during usual use-patterns associated with triclopyr. These involve application of triclopyr-containing products by means of aerosol cans, pump spray bottles, squeeze bottles, "weed sticks," hose-end sprayers, power sprayers, paint brush, rotary and drop spreaders. It is unlikely that power sprayers will be used by homeowners; this is an application method requiring special applicator equipment more apt to be used by agricultural or commercial applicator.

Homeowner exposure will not be significant for the following reasons: the

percent ai in products for homeowner use is less than that for agricultural or industrial use; the areas treated are usually limited in size; all products are intended for outdoor use which is likely to reduce the concentration in the environment by allowing dissipation in the outdoor air; the application methods recommended or commonly used by homeowners are not expected to provide significant exposure. Additionally, no toxicological endpoints of concern have been identified by EPA for dermal exposure to triclopyr, therefore, no exposure assessment is required for this exposure; an inhalation exposure assessment is also not required and no chronic use pattern is expected for homeowner use of triclopyr products.

There is a potential for post-application exposure to swimmers following applications to aquatic sites that may be used for recreational purposes. There are no triclopyr-specific exposure data to assess swimmer exposure. However, an assessment was conducted using information provided in EPA's Dermal Exposure Assessment: Principles and Applications. The dermal permeability constant (Kp) was calculated to be 6.5×10^{-8} mg/cm²/hr. The assessment of swimmer exposure was based on a 6–year old boy having a body weight of 21.9 kg and a surface area of 0.88 m². The swimming period was assumed to be 3 hours on the day of treatment in water containing 2.5 ppm triclopyr.

Total dermal exposure (mg) = 3 hr/day × 0.88 m² × 10^4 cm²/m² × 6.5×10^{-8} mg/cm²/hr = 1.716×10^{-3} mg/day

Oral absorption could also account for a portion of the exposure. It was assumed that 1% of the water in residence in the mouth while breathing will be swallowed.

Oral exposure = 3 hr/day × 0.05 L/hr × 2.5 mg/L = 0.375 mg/day

Combining the dermal exposure and oral exposure for a 21.9 kg child, the swimming exposure for one day was estimated to be 0.377 mg/day ÷ 21.9 kg = 0.017 mg/kg/day. Compared to the acute NOEL of 30 mg/kg/day, an MOE of 1,765 was obtained. No dermal or inhalation endpoint has been established for triclopyr, so this represents a very conservative estimate of the risk due to swimming in triclopyr-treated waters.

D. Cumulative Effects

The potential for cumulative effects of triclopyr and other substances that have a common mechanism of toxicity was considered. The mammalian toxicity of triclopyr is well defined. However, the biochemical mechanism of toxicity of this compound is not known. No reliable information exists to indicate that toxic effects produced by triclopyr would be cumulative with those of other similar compounds. Therefore, consideration of a common mechanism of toxicity with other compounds is not appropriate. Thus, only the potential risks of triclopyr are considered in the aggregate exposure assessment.

E. Safety Determination

1. *U.S. population.* Because of the toxicological characteristics of triclopyr (no dermal endpoint of concern), post-application exposure assessment was not necessary. Residential exposure is considered to be negligible. Swimming in treated water was shown to be a minimal risk. Therefore, residential and swimming exposure were not considered in the aggregate risk calculation.

For the population subgroup of concern, pregnant females age 13 and older, an MOE of 857 was estimated for the acute aggregate dietary risk (food + water) from exposures to triclopyr residues.

MOE = (30 mg/kg/day) / (0.0183 + 0.0167) mg/kg/day = 857

Using the TMRC exposure assumptions described above, the percentage of the RfD that will be utilized by aggregate exposures (food + water) to residues of triclopyr ranges from 2.1% to 5.3% for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants <1 year old. The water exposure value used the highest water residue concentration at 42 days after treatment of lakes and ponds (the longest sampling time interval common to all studies), 0.013 ppm, in the calculations below:

Total U.S. Population (Dietary + Drinking Water)

(0.00062 + 0.00043) mg/kg/day × 100 / (0.05 mg/kg/day) = 2.1% RfD

Non-nursing Infants (Dietary + Drinking Water)

(0.00133 + 0.0013) mg/kg/day × 100 / (0.05 mg/kg/day) = 5.3% RfD

Determination of Safety for U.S. Population

Based on the current state of knowledge for this chemical, the RfD approach accurately reflects the exposure of the U.S. population, infants and children to triclopyr.

2. *Infants and children.* Studies cited earlier in this document indicate that triclopyr is not a selective developmental toxicant, and an additional uncertainty factor for infants and children is unnecessary. This decision is based on the following data.

Since the developmental and reproductive NOELs were either the same or greater than the maternal or parental, it is unlikely that there is additional risk concern for immature or developing organisms which is not reflected by the risk assessment utilizing the established reference dose. The effects noted for the RfD NOEL are parental effects, not developmental.

F. International Tolerances

There are no established or proposed Codex MRLs for triclopyr residues. Therefore, there are no issues of compatibility with respect to U.S. tolerances and Codex MRLs. (PM 25)

2. DuPont Agricultural Products

PP 4F3003, 4F3120, 0F3852

EPA has received a pesticide petition (PP 4F3003, 4F3120, 0F3852) from DuPont Agricultural Products, PO Box 80038, Wilmington, DE 19880–0038. proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of esfenvalerate (Asana XL Insecticide), ((*S*)-cyano-(3-phenoxyphenyl) methyl (*S*)-4-chloro-alpha-(1-methylethyl) benzeneacetate) in or on the raw agricultural commodities sorghum, sugarbeets and head lettuce (see section A3 for specific tolerance levels). The proposed analytical method involves homogenization, filtration, partition and cleanup with analysis by high performance liquid chromatography using ultra violet (UV) detection. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant and Animal metabolism.* The metabolism and chemical nature of residues of fenvalerate in plants and animals are adequately understood. The fate of fenvalerate has been extensively studied using radioactive tracers in plant and animal metabolism/nature of the residue studies previously submitted to the Agency. These studies have demonstrated that the parent compound is the only residue of toxicological significance. EPA has concluded that the qualitative nature of

the residue is the same for both fenvalerate and esfenvalerate.

2. *Analytical method.* There is a practical analytical method utilizing electron-capture gas chromatography with nitrogen phosphorous detection available for enforcement with a limit of detection that allows monitoring food with residues at or above tolerance levels. The limit of detection for updated method is the same as that of the current PAM II, which is 0.01 ppm.

3. *Magnitude of residues.* Fenvalerate is a racemic mixture of four isomers (*S,S*; *R,S*; *S,R*; and *R,R*). Technical Asana® (esfenvalerate) is enriched in the insecticidally active *S,S*-isomer (84%). Tolerance expressions are proposed for esfenvalerate based on the sum of all isomers. Tolerance of 5 parts per million (ppm) for head lettuce, 5.0 ppm for sorghum grain, 10.0 ppm for sorghum forage, 10.0 ppm for sorghum fodder, 0.03 ppm for whole eggs, 0.03 ppm for poultry meat, 0.3 ppm for poultry fat, 0.3 ppm for poultry meat by-products (except liver), and 0.03 ppm for poultry liver, 5 ppm for sugarbeet tops, 0.5 ppm for sugarbeet roots and 2.5 ppm sugarbeet pulp are proposed. Magnitude of residue studies support the proposed tolerance.

B. Toxicological Profile

1. *Acute toxicity.* A battery of acute toxicity studies places technical esfenvalerate in Toxicity Category II for acute oral toxicity (rat LD_{50} 87.2 mg/kg), Category III for acute dermal (rabbit LD_{50} >2,000 mg/kg) and primary eye irritation (mild irritation in rabbits), and Category IV for primary skin irritation (minimal skin irritation in rabbits that reversed within 72 hours after treatment). Acute inhalation on technical grade a.i. waived due to negligible vapor pressure. A dermal sensitization test on esfenvalerate in guinea pigs showed no sensitization.

2. *Genotoxicty.* Esfenvalerate was not mutagenic in reverse mutation assays in *S. typhimurium* and *E. Coli* and did not induce mutations Chinese hamster V79 cells or chromosome aberrations in Chinese hamster ovary cells. Esfenvalerate did not induce micronuclei in bone marrow of mice given up to 150 mg/kg intraperitoneally. Esfenvalerate did not induce unscheduled DNA synthesis in HeLa cells. Other genetic toxicology studies submitted on racemic fenvalerate indicate that the mixture containing equal parts of the four stereoisomers is not mutagenic in bacteria. The racemic mixture was also negative in a mouse host mediated assay and in a mouse dominant lethal assay.

3. *Reproductive and developmental toxicity.* Esfenvalerate was administered to pregnant female rats by gavage in a pilot developmental study at doses of 0, 1, 2, 3, 4, 5, and 20 mg/kg/day and a main study at 0, 2.5, 5, 10, and 20 mg/kg/day. Maternal clinical signs (abnormal gait and mobility) were observed at 2.5 mg/kg/day and above. A maternal NOEL of 2 mg/kg/day was established on the pilot study. The developmental NOEL was >20 mg/kg/day.

Esfenvalerate was administered by gavage to pregnant female rabbits in a pilot developmental study at doses of 0, 2, 3, 4, 4.5, 5, and 20 mg/kg/day and a main study at does of 0, 3, 10, and 20 mg/kg/day. Maternal clinical signs (excessive grooming) were observed at 3 mg/kg/day and above. A maternal NOEL of 2 mg/kg/day was established on the pilot study. The developmental NOEL was > 20 mg/kg/day.

A two-generation feeding study with esfenvalerate was conducted in the rat at dietary levels of 0, 75, 100, and 300 ppm. Skin lesions and minimal (non biologically significant) parental body weight effects occurred at 75 ppm. The NOEL for reproductive toxicity was 75 ppm (4.2–7.5 mg/kg/day) based on decreased pup weights at 100 ppm.

4. *Subchronic toxicity.* Two 90-day feeding studies with esfenvalerate were conducted in rats - one at 50, 150, 300, and 500 ppm esfenvalerate, and a second at 0, 75, 100, 125, and 300 ppm to provide additional dose levels. The NOEL was 125 ppm (6.3 mg/kg/day) based on clinical signs (jerky leg movements) observed at 150 ppm (7.5 mg/kg/day) and above. A 90-day feeding study in mice was conducted at 0, 50, 150, and 500 ppm esfenvalerate with a NOEL of 150 ppm (30.5 mg/kg) based on clinical signs of toxicity at 500 ppm (106 mg/kg). Three-month subchronic study in dogs was satisfied by one-year oral study in dogs, in which the NOEL was 200 ppm (5 mg/kg/day). A 21-day dermal study in rabbits with fenvalerate conducted at 100, 300, and 1,000 mg/kg/day with an NOEL of 1,000 mg/kg/day.

5. *Chronic toxicity.* In a one-year study, dogs were fed 0, 25, 50, or 200 ppm esfenvalerate with no treatment related effects at any dietary level. The NOEL was 200 ppm (5 mg/kg/day). An effect level for dietary administration of esfenvalerate for dogs of 300 ppm had been established earlier in a three week pilot study used to select dose levels for the chronic dog study.

One chronic study with esfenvalerate and three chronic studies with fenvalerate have been conducted in mice.

In an 18-month study, mice were fed 0, 35, 150, or 350 ppm esfenvalerate. Mice fed 350 ppm were sacrificed within the first two months of the study after excessive self-trauma related to skin stimulation and data collected were not used in the evaluation of the oncogenic potential of esfenvalerate. The NOEL was 35 ppm (4.29 and 5.75 mg/kg/day for males and females, respectively) based on lower body weight and body weight gain at 150 ppm. Esfenvalerate did not produce carcinogenicity. In a 2-year feeding study, mice were administered 0, 10, 50, 250 or 1,250 ppm fenvalerate in the diet. The NOEL was 10 ppm (1.5 mg/kg/day) based on granulomatous changes (related to fenvalerate only, not esfenvalerate) at 50 ppm (7.5 mg/kg/day). Fenvalerate did not produce carcinogenicity. In an 18-month feeding study, mice were fed 0, 100, 300, 1,000, or 3,000 ppm fenvalerate in the diet. The NOEL is 100 ppm (15.0 mg/kg/day) based on fenvalerate-related microgranulomatous changes at 300 ppm (45 mg/kg/day). No compound related oncogenicity occurred. Mice were fed 0, 10, 30, 100, or 300 ppm fenvalerate for 20 months. The NOEL was 30 ppm (3.5 mg/kg/day) based on red blood cell effects and granulomatous changes at 100 ppm (15 mg/kg/day). Fenvalerate was not carcinogenic at any concentration.

In a two-year study, rats were fed 1, 5, 25, or 250 ppm fenvalerate. A 1,000 ppm group was added in a supplemental study to establish an effect level. The NOEL was 250 ppm (12.5 mg/kg/day). At 1,000 ppm (50 mg/kg/day), hind limb weakness, lower body weight, and higher organ-to-body weight ratios were observed. Fenvalerate was not carcinogenic at any concentration. (A conclusion that fenvalerate is associated with the production of spindle cell sarcomas at 1,000 ppm was retracted by EPA).

EPA has classified esfenvalerate in Group E - evidence of noncarcinogenicity for humans.

6. *Animal metabolism.* After oral dosing with fenvalerate, the majority of the administered radioactivity was eliminated in the initial 24 hours. The metabolic pathway involved cleavage of the ester linkage followed by hydroxylation, oxidation, and conjugation of the acid and alcohol moieties.

7. *Metabolite toxicology.* The parent molecule is the only moiety of toxicological significance appropriate for regulation in plant and animal commodities.

8. *Other potential toxicology considerations - endocrine effects.*

Estrogenic effects have not been observed in any studies conducted on fenvalerate or esfenvalerate. In subchronic or chronic studies there were no lesions in reproductive systems of males or females. In the recent reproduction study with esfenvalerate, full histopathological examination of the pituitary and the reproductive systems of males and females was conducted. There were no compound-related gross or histopathological effects. There were also no compound-related changes in any measures of reproductive performance including mating, fertility, or gestation indices or gestation length in either generation. There have been no effects on offspring in developmental toxicity studies. EPA is required to develop an endocrine disrupter screening program by August 3, 1999. EPA will decide whether further testing of esfenvalerate is required at that time.

C. Aggregate Exposure

1. *Dietary exposure.* Tolerances have been established for the residues of fenvalerate/esfenvalerate, in or on a variety of agricultural commodities. In addition, pending tolerance petitions exist for use of esfenvalerate on sugarbeets, sorghum, head lettuce, celery, pistachios, and a number of other minor use commodities. For purposes of assessing dietary exposure, chronic and acute dietary assessments have been conducted using all existing and pending tolerances for esfenvalerate. EPA recently reviewed the existing toxicology data base for esfenvalerate and selected the following toxicological endpoints. For acute toxicity, EPA established a NOEL of 2.0 mg/kg/day from rat and rabbit developmental studies based on maternal clinical signs at higher concentrations. An MOE of 100 was required. For chronic toxicity EPA established the RfD for esfenvalerate at 0.02 mg/kg/day. This RfD was also based on a NOEL of 2.0 mg/kg/day in the rat developmental study with an uncertainty factor of 100. Esfenvalerate is classified as a Group E. There is no evidence of carcinogenicity in either rats or mice.

2. *Food.* A chronic dietary exposure assessment was conducted using Novigen's DEEm (Dietary Exposure Estimate Model). Anticipated residues and adjustment for percent crop treated were used in the chronic dietary risk assessment. The percentages of the Reference Dose (RfD) utilized by the most sensitive sub-population, children 1–6 yrs., was 4.6% based on a daily dietary exposure of 0.000911 mg/kg/day. Chronic exposure for the overall Us population was 1.9% of the RfD based on a dietary exposure of 0.000376 mg/kg/day. This assessment has been approved by EPA and included pending tolerances and all food tolerances for incidental residues from use in food handling establishments. EPA has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Esfenvalerate is classified as a Group E carcinogen - no evidence of carcinogenicity in rats or mice. Therefore, a carcinogenicity risk analysis is not required.

Potential acute exposures from food commodities were estimated using a Tier 3 (Monte Carlo) Analysis and appropriate processing factors for processed food and distribution analysis. This analysis used field trial data to estimate exposure and federal and market survey information to derive the percent of crop treated. EPA considered these data reliable and used the upper end estimate of percent crop treated in order to not underestimate any significant subpopulation. Regional consumption information was taken into account. The Margins of Exposure (MOEs) for the most sensitive sub-population (children 1–6 yr.) were 202 and 103 at the 99th, and 99.9th percentile of exposure, respectively, based on daily exposures of 0.009908 and 0.019445 mg/kg/day. The MOEs for the general population are 355 and 171 at the 99th and 99.9th percentile of exposure, respectively, based on daily exposure estimates of 0.005635 and 0.011717 mg/kg/day. The EPA has stated there is no cause for concern if total acute exposure calculated for the 99.9th percentile yields an MOE of 100 or larger. This acute dietary exposure estimate is considered conservative and EPA considered the MOEs adequate in a recent final rule (62 FR 63019).

3. *Drinking water.* Esfenvalerate is immobile in soil and will not leach into groundwater. Due to the insolubility and lipophilic nature of esfenvalerate, any residues in surface water will rapidly and tightly bind to soil particles and remain with sediment, therefore not contributing to potential dietary exposure from drinking water. A screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM). Based on this screening assessment, the potential concentrations of a pyrethroid in ground water at depths of 1 and 2 meters are essentially zero (much less than 0.001 parts per billion).

Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using Standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 parts per billion. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would be treated before consumption. Chronic drinking water exposure was estimated to be 0.000001 mg/kg/day for both the U.S. general population and for non-nursing infants. Less than 0.1% of the RfD was occupied by both population groups.

Using these values, the contribution of water to the acute dietary risk estimate was estimated for the U.S. population to be 0.000019 mg/kg/day at the 99th percentile and 0.000039 mg/kg/day at the 99.9th percentile resulting in MOEs of 105,874 and 51,757, respectively. For the most sensitive subpopulation, non-nursing infants less than 1 year old, the exposure is 0.000050 mg/kg/day and 0.000074 mg/kg/day at the 99th and 99.9th percentile, respectively, resulting in MOEs of 39,652, and 27,042, respectively. Therefore there is reasonable certainty of no harm from drinking water.

4. *Non-dietary exposure.* Esfenvalerate is registered for non-crop uses including spray treatments in and around commercial and residential areas, treatments for control of ectoparasites on pets, home care products including foggers, pressurized sprays, crack and crevice treatments, lawn and garden sprays, and pet and pet bedding sprays. For the non-agricultural products, the very low amounts of active ingredient they contain, combined with the low vapor pressure (1.5×10^{-9} mm Mercury at 25° C.) and low dermal penetration, would result in minimal inhalation and dermal exposure.

To assess risk from (nonfood) short and intermediate term exposure, EPA has recently selected a toxicological endpoint of 2.0 mg/kg/day, the NOEL from the rat and rabbit developmental studies. For dermal penetration/absorption, EPA selected 25% dermal absorption based on the weight-of-evidence available for structurally related pyrethroids. For inhalation exposure, EPA used the oral NOEL of 2.0 mg/kg/day and assumed 100% absorption by inhalation. Individual non-dietary risk exposure analyses were conducted using a flea infestation scenario that included pet spray, carpet

and room treatment, and lawn care, respectively. The total potential short- and intermediate-tern aggregate non-dietary exposure including lawn, carpet, and pet uses are: 0.000023 mg/kg/day for adults, 0.00129 mg/kg/day for children 1–6 years and 0.00138 mg/kg/day for infants less than one year old. EPa concluded (62 FR 63019) that the potential non-dietary exposure for esfenvalerate are associated with substantial margins of safety.

5. *Aggregate exposure - dietary and non-dietary exposure.* EPA has concluded that aggregate chronic exposure to esfenvalerate from food and drinking water will utilize 1.9% of the RfD for the U.S. population based on a dietary exposure of 0.000377 mg/kg/day. The major identifiable subgroup with the highest aggregate exposure are children 1–6 years old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

The acute aggregate risk assessment takes into account exposure from food and drinking water. The potential acute exposure from food and drinking water to the overall U.S. population provides an acute dietary exposure of 0.011756 mg/kg/day with an MOE of 170. This acute dietary exposure estimate is considered conservative, using anticipated residue values and percent crop-treated data in conjunction with Monte Carlo analysis.

Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. The potential short- and intermediate-term aggregate risk for the U.S. population is an exposure of 0.0082 mg/kg/day with an MOE of 244.

It is important to acknowledge that these MOEs are likely to significantly underestimate the actual MOEs due to a variety of conservative assumptions and biases inherent in the exposure assessment methods used for their derivation. Therefore, it can be concluded that the potential non-dietary and dietary aggregate exposures for esfenvalerate are associated with a substantial degree of safety. EPA has previously determined (62 FR 63019) that there was reasonable certainty that no harm will result from aggregate exposure to esfenvalerate residues. Head lettuce was included in that risk assessment.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity". In a recent Final Rule on esfenvalerate (62 FR 63019) EPA concluded, "Available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed). Although esfenvalerate is similar to other members of the synthetic pyrethroid class of insecticides, EPA does not have, at this time, available data to determine whether esfenvalerate has a common method of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, esfenvalerate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that esfenvalerate has a common mechanism of toxicity with other substances.

E. Safety Determination

Both the chronic and acute toxicological endpoints are derived from maternal NOEL's of 2.0 mg/kg/day in developmental studies in rats and rabbits. There were no fetal effects. In addition, no other studies conducted with fenvalerate or esfenvalerate indicate that immature animals are more sensitive than adults. Therefore, the safety factor used for protection of adults is fully appropriate for the protection of infants and children; no additional safety factor is necessary as described below.

1. *U.S. population.* A chronic dietary exposure assessment using anticipated residues, monitoring information, and percent crop treated indicated the percentage of the Reference Dose (RfD) utilized by the General Population to be 1.9%. There is generally no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

For acute exposure, a Margin of Exposure (MOE) of greater than 100 is considered an adequate MOE. A Tier 3 acute dietary exposure assessment found the General Population to have MOE's of 355 and 171 at the 99th and 99.9th percentile of exposure, respectively. These values were generated using actual field trial residues and market share data for percentage of crop treated. These results depict an accurate exposure pattern at an exaggerated daily dietary exposure rate.

Short- and intermediate-term aggregate exposure risk from chronic dietary food and water plus indoor and outdoor residential exposure for the U.S. population is an exposure of 0.0082 mg/kg/day with an MOE of 244. Therefore, there is a reasonable certainty that no harm will result from chronic dietary, acute dietary, non-dietary, or aggregate exposure to esfenvalerate residues.

2. *Infants and children.* FFDCA section 408 provides that EPA shall

apply an additional tenfold margin of safety for infants and children unless EPA determines that a different margin of safety will be safe for infants and children. EPA has stated that reliable data support using the standard MOE and uncertainty factor (100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor. In a recent Final Rule (62 FR 63019), EPA concluded that reliable data support use of the standard 100-fold uncertainty factor for esfenvalerate, and that an additional uncertainty factor is not needed to protect the safety of infants and children. This decision was based on: no evidence of developmental toxicity at a doses up to 20 mg/kg/day (ten times the maternal NOEL) in prenatal developmental toxicity studies in both rats and rabbits; offspring toxicity only at dietary levels which were also found to be toxic to parental animals in the two generation reproduction study; and no evidence of additional sensitivity to young rats or rabbits following pre- or postnatal exposure to esfenvalerate.

A chronic dietary exposure assessment found the percentages of the RfD utilized by the most sensitive sub-population to be 4.6% for children 1–6 yr based on a dietary exposure of 0.000912 mg/kg/day. The % RfD for nursing and non-nursing infants was 1.1% and 2.7%, respectively. The Agency has no cause for concern if RfD are below 100%.

The most sensitive sub-population, children 1–6 year, had acute dietary MOEs of 202 and 103 at the 99th and 99.9th percentile of exposure, respectively. Nursing infants had MOEs of 195 and 146 at the 99th, and 99.9th percentile of exposure, respectively. Non-nursing infants had MOEs of 304 and 158 at the 99th and 99.9th percentile of exposure, respectively. The Agency has no cause for concern if total acute exposure calculated for the 99.9th percentile yields a MOE of 100 or larger.

EPA has recently concluded that the potential short- or intermediate-term aggregate exposure of esfenvalerate from chronic dietary food and water plus indoor and outdoor residential exposure to children (1–6 years old) is 0.0113 mg/kg/day with an MOE of 177. For infants (less than 1 year old) the exposure is 0.0098 mg/kg/day with an MOE of 204. There is reasonable certainty that no harm will result to infants and children from aggregate exposure to esfenvalerate residues (62 FR 63019).

F. International Tolerances

Codex maximum residue levels (MRL's) have been established for residues of fenvalerate on a number of crops that also have U.S. tolerances. There is a Codex MRL of 2 ppm fenvalerate on head lettuce. Thus any imported head lettuce is expected to have lower residue values than the proposed section 408 tolerance of 5 ppm esfenvalerate on head lettuce. There are also some minimal differences between the section 408 tolerances and certain Codex MRl values for other commodities. These differences could be caused by differences in methods to establish tolerances, calculate animal feed, dietary exposure, and as a result of different agricultural practices. Therefore, some harmonization of these maximum residue levels will be required. (PM 13)

3. Interregional Research Project No. 4 (IR-4)

PP 5E4598

EPA has received a pesticide petition (PP) from the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180.472 by extending the effective date for the time-limited tolerance established for indirect or inadvertant combined residues of the insecticide imidacloprid in or on the raw agricultural commodity cucurbit vegetable crop group at 0.2 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the imidacloprid residue in plants and livestock is adequately understood. The residues of concern are combined residues of imidacloprid and it metabolites containing the 6–chloropyridinyl moiety, all calculated as imidacloprid.

2. *Analytical method.* The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridinyl moiety using a permanganate oxidation, silyl derivatization, and capillary GC-MS selective ion monitoring. This method has successfully passed a petition method validation in EPA labs. There is a confirmatory method specifically for imidacloprid and several metabolites utilizing GC/MS HPLC-UV which has been validated by the EPA as well. Imidacloprid and its metabolites are stable for at least 24 months in the commodities when frozen.

B. Toxicological Profile

1. *Acute toxicity.* The acute oral LD_{50} values for imidacloprid technical ranged from 424 – 475 milligram (mg)/kilogram (kg) body weight (bwt) in the rat. The acute dermal LD_{50} was greater than 5,000 mg/kg in rats. The 4–hour rat inhalation LC_{50} was > 69 mg/meter3 (m3) air (aerosol). Imidacloprid was not irritating to rabbit skin or eyes. Imidacloprid did not cause skin sensitization in guinea pigs.

2. *Genotoxicty.* Extensive mutagenicity studies conducted to investigate point and gene mutations, DNA damage and chromosomal aberration, both using *in vitro* and *in vivo* test systems show imidacloprid to be non-genotoxic.

3. *Reproductive and developmental toxicity.* A 2–generation rat reproduction study gave a no-observed-effect level (NOEL) of 100 ppm (8 mg/kg/bwt). Rat and rabbit developmental toxicity studies were negative at doses up to 30 mg/kg/bwt and 24 mg/kg/bwt, respectively.

4. *Subchronic toxicity.* 90-day feeding studies were conducted in rats and dogs. The NOEL's for these tests were 14 mg/kg bwt/day (150 ppm) and 5 mg/kg bwt/day (200 ppm) for the rat and dog studies, respectively.

5. *Chronic toxicity.* A 2-year rat feeding/carcinogenicity study was negative for carcinogenic effects under the conditions of the study and had a NOEL of 100 ppm (5.7 mg/kg/ bwt in male and 7.6 mg/kg/bwt female) for noncarcinogenic effects that included decreased body weight gain in females at 300 ppm and increased thyroid lesions in males at 300 ppm and females at 900 ppm. A 1–year dog feeding study indicated a NOEL of 1,250 ppm (41 mg/kg/bwt). A 2–year mouse carcinogenicity study that was negative for carcinogenic effects under conditions of the study and had a NOEL of 1,000 ppm (208 mg/kg/day).

6. *Plant and animal metabolism.* The nature of the imidacloprid residue in plants and livestock is adequately understood. The residues of concern are combined residues of imidacloprid and

it metabolites containing the 6-chloropyridinyl moiety, all calculated as imidacloprid.

7. *Endocrine disruption.* The toxicology database for imidacloprid is current and complete. Studies in this database include evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following short- or long-term exposure. Bayer has concluded that these studies revealed no primary endocrine effects due to imidacloprid.

C. Aggregate Exposure

Imidacloprid is a broad-spectrum insecticide with systemic and contact toxicity characteristics with both food and non-food uses: Imidacloprid is currently registered for use on various food crops, tobacco, turf, ornamentals, buildings for termite control, and cats and dogs for flea control. These potential exposures are addressed below:

1. *Dietary exposure.* For purposes of assessing the potential acute and chronic dietary exposure, Bayer has estimated exposure based on the Theoretical Maximum Residue Contribution (TMRC). The TMRC is obtained by using a model which multiplies the tolerance level residue for each commodity by consumption data. The consumption data, based on the National Food Consumption Survey data base, estimates the amount of each commodity and products derived from the commodities that are eaten by the U.S. population and various population subgroups.

2. *Food —i. Acute.* For acute dietary exposure the model calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. The EPA has determined that a NOEL of 24 mg/kg/day from a developmental toxicity study in rabbits should be used to assess acute toxicity.

The MOE for imidacloprid derived from previously established tolerances and pending tolerances, including IR-4's cucurbit petition, would be 366 for the U.S. population (48 states), 323 for non-nursing infants, 101 for children (ages 1–6 years), 420 for children (ages 7–12 years), 622 for males 13+ years, and 554 for females 13+ years at the 99.9 percentile. These MOEs do not exceed the EPA's level of concern for acute dietary exposure.

ii. *Chronic.* For purposes of assessing the potential chronic dietary exposure, the model uses the reference dose (RfD) which the EPA has determined to be 0.057 mg/kg/day. This is based on the 2–year rat feeding/carcinogenic study with a NOEL of 5.7mg/kg/bwt and 100–fold uncertainty factor. In conducting this exposure assessment, very conservative assumptions (100% of all commodities contain imidacloprid residues and those residues are at the level of the tolerance) result in a large overestimate of human exposure.

3. *Drinking water.* The EPA has determined that imidacloprid is persistent and could potentially leach into groundwater. However, there is no established Maximum Contamination Level (MCL) or health advisory levels established for imidacloprid in drinking water. EPA's "Pesticides in Groundwater Database" has no entry for imidacloprid. In addition, Bayer is not aware of imidacloprid being detected in any wells, ponds, lakes, streams, etc. from its use in the U.S. In studies conducted in 1995, imidacloprid was not detected in 17 wells on potato farms in Quebec, Canada. Therefore, Bayer concludes that contributions to the dietary burden from residues of imidacloprid in water would be inconsequential.

4. *Non-dietary exposure* —i. *Residential Tur.* Bayer has conducted an exposure study to address the potential exposures of adults and children from contact with imidacloprid treated turf. The population considered to have the greatest potential exposure from contact with pesticide treated turf soon after pesticides are applied are young children. Margins of safety (MOS) of 7,587 – 41,546 for 10–year-old children and 6,859 – 45,249 for 5–year-old children were estimated by comparing dermal exposure doses to the imidacloprid no-observable effect level of 1,000 mg/kg/day established in a 15–day dermal toxicity study in rabbits. The estimated safe residue levels of imidacloprid on treated turf for 10–year-old children ranged from 5.6 – 38.2 μg/cm² and for 5–year-old children from 5.1 – 33.5 μg/cm². This compares with the average imidacloprid transferable residue level of 0.080 μg/cm² present immediately after the sprays have dried. These data indicate that children can safely contact imidacloprid-treated turf as soon after application as the spray has dried.

ii. *Termiticide.* Imidacloprid is registered as a termiticide. Due to the nature of the treatment for termites, exposure would be limited to that from inhalation and was evaluated by EPA's Occupational and Residential Exposure Branch's (OREB) and Bayer. Data indicate that the Margins of Safety for the worst case exposures for adults and infants occupying a treated building who are exposed continuously (24 hours/day) are 8.0×10^7 and 2.4×10^8, respectively - and exposure can thus be considered negligible.

iii. *Tobacco Smoke.* Studies have been conducted to determine residues in tobacco and the resulting smoke following treatment. Residues of imidacloprid in cured tobacco following treatment were a maximum of 31 ppm (7 ppm in fresh leaves). When this tobacco was burned in a pyrolysis study only 2 percent of the initial residue was recovered in the resulting smoke (main stream plus side stream). This would result in an inhalation exposure to imidacloprid from smoking of approximately 0.0005 mg per cigarette. Using the measured subacute rat inhalation NOEL of 5.5 mg/m3, it is apparent that exposure to imidacloprid from smoking (direct and/or indirect exposure) would not be significant.

iv. *Pet Treatment.* Human exposure from the use of imidacloprid to treat dogs and cats for fleas has been addressed by EPA's Occupational and Exposure Branch (OREB) who have concluded that due to the fact that imidacloprid is not an inhalation or dermal toxicant and that while dermal absorption data are not available, imidacloprid is not considered to present a hazard via the dermal route.

D. Cumulative Effects

No other chemicals having the same mechanism of toxicity are currently registered, therefore, Bayer concludes that there is no risk from cumulative effects from other substances with a common mechanism of toxicity.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data, it can be concluded that total aggregate exposure to imidacloprid from all current uses including those currently proposed will utilize little more than 14.3% of the RfD for the U.S. population from food, water and non-occupational sources. EPA generally has no concerns for exposures below 100% of the RfD, because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. In addition, the MOEs for all population groups does not exceed the EPA's level of concern for acute dietary exposure. Thus, Bayer concludes that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of

infants and children to residues of imidacloprid, the data from developmental studies in both rat and rabbit and a 2-generation reproduction study in the rat have been considered. The developmental toxicity studies evaluate potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development. The reproduction study evaluates effects from exposure to the pesticide on the reproductive capability of mating animals through two generations, as well as any observed systemic toxicity.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post- natal effects and the completeness of the toxicity database. Based on current toxicological data requirements, the toxicology database for imidacloprid relative to pre- and post- natal effects is complete. Further for imidacloprid, the NOEL of 5.7 mg/kg/bwt from the 2–year rat feeding/ carcinogenic study, which was used to calculate the RfD (discussed above), is already lower than the NOELs from the developmental studies in rats and rabbits by a factor of 4.2 to 17.5 times. Since a 100–fold uncertainty factor is already used to calculate the RfD, it is surmised that an additional uncertainty factor is not warranted and that the RfD at 0.057 mg/kg/bwt/day is appropriate for assessing aggregate risk to infants and children.

Using the conservative exposure assumptions described above under aggregate exposure, Bayer has determined from a chronic dietary analysis that the percent of the RfD utilized by aggregate exposure to residues of imidacloprid ranges from 9.3% for nursing infants up to 32.2% for children (1–6 years). EPA generally has no concern for exposure below 100 percent of the RfD. In addition, the MOEs for all infant and children population groups do not exceed EPA's level of concern for acute dietary exposure. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Bayer concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of imidacloprid, including all anticipated dietary exposure and all other non-occupational exposures.

F. International Tolerances

No Codex Maximum Residue Levels (MRLs) have been established for residues of imidacloprid on any crops at this time. (PM 05)

[FR Doc. 98–4803 Filed 2-24-98; 8:45 am]
BILLING CODE 6560–60–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–795; FRL–5775–3]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–795, must be received on or before March 27, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Paul Schroeder, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460. Office location and telephone number: Rm. 255, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–6602, e-mail: schroeder.paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–795] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–795] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 18, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required

by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Uniroyal Chemical Company

PP 6G4771

EPA has received a pesticide petition (PP 6G4771) from Uniroyal Chemical Co., Inc., Bethany, Connecticut proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the combined residues of the insect growth regulator, diflubenzuron and metabolites convertible to p-chloroaniline, expressed as diflubenzuron in or on rice at 0.02 parts per million (ppm) and rice straw at 0.8 ppm. The proposed analytical method for detecting and measuring residues of diflubenzuron and 4-chloroaniline is gas chromatography with electron capture detection. p-Chloroaniline is determined using an internal standard method and detected by mass spectrometry.

Pursuant to the section 408(d)(2)(A)(I) of the FFDCA, as amended, Uniroyal Chemical Company has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Uniroyal Chemical and EPA has not fully evaluated the merits of the petition. EPA edited the summary to clarify that the conclusions and arguments were the petitioners and not necessarily EPA's and to remove certain extraneous material.

A. Toxicology Profile

1. *Data summary.* Diflubenzuron is not acutely toxic and is not an irritant. In a 3-week dermal toxicity study in rats the no observed effect level (NOEL) for systemic toxicity was 20 milligrams/kilograms (mg/kg/day). In developmental toxicity studies in rats and rabbits, diflubenzuron was without maternal or developmental effects at doses up to 1,000 mg/kg/day. Systemic effects were seen on parental animals in a rat reproduction study at doses of 1,000 and 100,000 ppm; however, there were no reproductive effects and the NOEL for reproductive toxicity was greater than 5,000 mg/kg/day. In a chronic dog feeding study, target organ effects were seen in the blood and liver. Methemoglobinemia was evident at dose levels of 10 mg/kg/day and greater. The NOEL for chronic toxicity in dogs was 2 mg/kg/day. In a chronic rat feeding study, target organ effects were seen in the blood, liver, spleen and bone marrow. Methemoglobinemia was evident at doses of 160 ppm and greater. The NOEL for chronic toxicity in rats was 2 mg/kg/day. Diflubenzuron was negative in a complete battery of mutagenicity assays. In a mouse oncogenicity study, diflubenzuron was negative at doses up to 1,429 mg/kg/day. Additionally, diflubenzuron was negative for carcinogenicity in a rat chronic feeding study at doses up to 500 mg/kg/day. None of the studies conducted on diflubenzuron have provided evidence of endocrine organ involvement.

2. *Acute toxicity.* Studies for diflubenzuron technical indicate the acute oral toxicity in rats and mice is >4,640 mg/kg, and the acute dermal toxicity in rats is >10,000 mg/kg. The acute inhalation LC_{50} in rats is >35 mg/l (6 hours). Diflubenzuron technical is not an eye or skin irritant to rabbits, and is not a dermal sensitizer in guinea pigs.

To assess subacute dermal toxicity, diflubenzuron was applied to the backs of male and female CD rats for 3 weeks at dose levels of 20, 500 and 1,000 mg/kg/day. Hematology evaluation showed reductions in red blood cell (RBC), hemoglobin (Hgb) and hematocrit values at 500 and 1,000 mg/kg/day. An increased incidence of polychromasia, hypochromasia and anisocytosis was seen at 500 and 1,000 mg/kg/day. An increase in methemoglobin and sulfhemoglobin values was seen at 1,000 mg/kg/day. The NOEL for systemic toxicity was 20 mg/kg/day.

3. *Developmental/reproductive effects.* In a rat developmental toxicity study, diflubenzuron was administered by oral gavage to pregnant female rats at dosage levels of 0, 1, 2 and 4 mg/kg/day. No treatment related effects were seen. A subsequent study was conducted in pregnant Sprague Dawley rats at a dose of 0 and 1,000 mg/kg/day. No maternal toxicity was observed. The incidence of fetuses with skeletal abnormalities was slightly increased in the treated group, but was within historical background range. The NOEL for maternal and developmental toxicity in rats was greater than 1,000 mg/kg/day.

Diflubenzuron was also administered by oral gavage to pregnant New Zealand White rabbits at dosage levels of 0, 1, 2 and 4 mg/kg/day. No treatment related effects were seen. A subsequent study was conducted in pregnant rabbits at a dose of 0 and 1,000 mg/kg/day. No maternal or developmental toxicity was seen. The NOEL for maternal and developmental toxicity in rabbits was greater than 1,000 mg/kg/day.

In a rat reproduction study, diflubenzuron was fed to two generations of male and female rats at dietary concentrations of 0, 10, 20, 40, and 160 ppm. No effects were seen on parental body weight gain and there were no reproductive effects. A subsequent study was conducted on 1-generation (one litter) of rats at dietary concentrations of 0, 1,000 and 100,000 ppm. Systemic effects were seen in adults at these doses but there was no effect on reproductive parameters. The NOEL for reproductive toxicity was greater than 100,000 ppm (5 g/kg/day).

4. *Chronic effects.* Diflubenzuron was given by capsule to male and female Beagle dogs for one year at dose levels of 0, 2, 10, 50 and 250 mg/kg/day. Body weight gain was slightly reduced in females at 250 mg/kg/day. Absolute liver and spleen weights were increased in males given 50 and 250 mg/kg/day. A reduction in hemoglobin and mean corpuscular hemoglobin concentration, with an elevation in reticulocyte count, was seen at 50 and 250 mg/kg/day. Methemoglobin and sulfhemoglobin values were increased at doses of 10 mg/kg/day and greater. Histopathological findings were limited to pigmented macrophages and Kupffer cells in the liver at doses of 50 and 250 mg/kg/day. The NOEL for chronic toxicity in dogs was 2 mg/kg/day.

Diflubenzuron was fed to male and female Sprague Dawley rats for 2 years at dose levels of 0, 156, 625, 2,500 and 10,000 ppm. Methemoglobin values were elevated in female rats at all dose levels and in male rats at the two highest dose levels. Sulfhemoglobin was elevated in females, only, at dose levels of 2,500 and 10,000 ppm. Mean corpuscular volume (MCV) and reticulocyte counts were increased in high dose females. Spleen and liver weights were elevated at the two highest doses. Histopathological examination demonstrated an increase in hemosiderosis of the liver and spleen, bone marrow and erythroid hyperplasia and areas of cellular alteration in the liver. In another study diflubenzuron was administered to male and female CD rats for 2 years at dose levels of 0, 10, 20, 40 and 160 ppm. Elevated methemoglobin levels were seen in high dose males and females. No additional effects, including carcinogenic findings, were observed. The NOEL for chronic toxicity in rats was 40 ppm (2 mg/kg/day).

5. *Carcinogenicity.* A 91-week oncogenicity study in CFLP mice was conducted at doses of 0, 16, 80, 400, 2,000 and 10,000 ppm. There was no increase in tumor incidence as a result of diflubenzuron administration. Target organ effects included: increased methemoglobin and sulfhemoglobin values, Heinz bodies, increased liver and spleen weight, hepatocyte enlargement and vacuolation, extramedullary hemopoiesis in the liver and spleen, siderocytosis in the spleen and pigmented Kupffer cells. A NOEL for these effects was 16 ppm (2 mg/kg/day).

Diflubenzuron was fed to male and female Sprague Dawley rats for 2 years at dose levels of 0, 156, 625, 2,500 and 10,000 ppm. Methemoglobin values were elevated in female rats at all dose levels and in male rats at the two highest dose levels. Blood sulfhemoglobin was elevated in females, only, at dose levels of 2,500 and 10,000 ppm. MCV and reticulocyte counts were increased in high dose females. Spleen and liver weights were elevated at the two highest doses. Histopathological examination demonstrated an increase in hemosiderosis of the liver and spleen, bone marrow and erythroid hyperplasia and areas of cellular alteration in the liver. There was no increase in tumor formation. In another study diflubenzuron was administered to male and female CD rats for 2 years at dose levels of 0, 10, 20, 40 and 160 ppm. Elevated methemoglobin levels were seen in high dose males and females. No additional effects, including carcinogenic findings, were observed.

NCI/NTP conducted chronic feeding and gavage studies with p-chloroaniline (PCA), a minor metabolite of diflubenzuron, in Fischer 344 rats and B6C3F1 mice.

PCA was administered in the diet to Fischer 344 rats at dietary concentrations of 250 and 500 ppm for 78 weeks, followed by a 24-week observation period. A slight body weight depression was seen in high dose females rats, compared to controls. Survival was reduced in high dose males compared to controls. In male rats there was a slight increase in uncommon fibromas or fibrosarcomas of the spleen, which was not statistically significant. Non-neoplastic proliferative and chronic inflammatory lesions were found in spleens of treated rats. It was concluded that, under the conditions of the assay, sufficient evidence was not found to establish the carcinogenicity of PCA for Fischer 344 rats.

PCA was administered 5 days/week by oral gavage, as a hydrochloride salt in water, to male and female F344/N rats at doses of 0, 2, 6 or 18 mg/kg/day. Mean body weights of dosed rats were generally within 5% of those of controls throughout the study. High dose animals generally showed mild hemolytic anemia and dose-related methemolglobinemia. Non-neoplastic lesions seen were bone marrow hyperplasia, hepatic hemosiderosis and splenic fibrosis, suggesting treatment related effects on the hematopoietic system. Adrenal medullary hyperplasia was observed in high dose female rats. The incidence of uncommon sarcomas of the spleen was significantly increased in high dose male rats. A marginal increase in pheochromocytomas of the adrenal gland was seen in high dose male and female rats. It was concluded that, under the conditions of this 2 year gavage study, there was clear evidence of carcinogenic activity of PCA hydrochloride for male F344/N rats and equivocal evidence of carcinogenic activity of PCA hydrochloride for female F344/N rats.

PCA was administered in the diet to B6C3F6 mice at dietary concentrations of 2,500 and 5,000 ppm for 78 weeks followed by a 13-week observation period. A body weight depression was seen in treated mice of both sexes, compared to controls. An increased incidence of hemangiomas and hemangiosarcomas in spleen, kidney, liver and other sites was seen in treated mice of both sexes, however this increase was not statistically significant compared to controls. Non-neoplastic proliferative and chronic inflammatory lesions were found in spleens of treated mice. The evidence was considered insufficient to conclusively relate the hemangiomatous tumors in mice to compound administration. It was concluded that, under the conditions of the assay, sufficient evidence was not found to establish the carcinogenicity of PCA for B6C3F1 mice.

PCA hydrochloride was administered 5 days/week by oral gavage to male and female B6C3F1 mice at doses of 0, 3, 10, or 30 mg/kg/day. Mean body weights of high dose male and female mice were generally within 5% of those of controls throughout the study. The incidence of hepatocellular adenomas or carcinomas (combined) was increased in a non-dose-dependent manner in treated male mice. Metastasis of carcinoma to the lung was seen in the high dose group. An increased incidence of hemangiosarcomas of the liver or spleen was seen in high dose male mice. It was concluded that, under the conditions of this 2 year gavage study, there was some evidence of carcinogenic activity of PCA hydrochloride for male B6C3F1 mice and no evidence of carcinogenic activity of PCA hydrochloride for female B6C3F1 mice.

6. *Mutagenicity.* Diflubenzuron did not show any mutagenic activity in point mutation assays employing *S. typhimurium, S. cerevisiae,* or L5178Y Mouse Lymphoma cells. Diflubenzuron did not induce chromosomal aberrations in Chinese Hamster Ovary cells and it did not induce unscheduled DNA synthesis in human WI-38 cells. Diflubenzuron was also negative in Mouse Micronucleus and Mouse Dominant Lethal assays and it did not induce cell transformation in Balb/3T3 cells.

7. *Endocrine effects.* The standard battery of required studies has been completed and evaluated to determine potential estrogenic or endocrine effects of diflubenzuron. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects. No such effects were noted in any of the studies with diflubenzuron.

8. *Rat metabolism.* Diflubenzuron (DFB) in rats at a single dose of 100 mg/kg and 5 mg/kg single and multiple oral doses depicted limited absorption from the gastrointestinal tract. No major difference was observed between the single and multiple doses. In single dose treatments, after 7 days, 20 and 3% of the applied dose 5 and 100 mg/kg, respectively, were excreted in urine while 79 and 98% of the applied dose 5 and 100 mg/kg, respectively, were eliminated in the feces. Very little bioaccumulation in the tissues was observed. Several metabolites were observed in the urine which are, among others, 2,6-diflurobenzoic acid (DFBA), 2,6-difluorophippuric acid, 2,6-difluorobenzamide (DFBAM), and 2-hydroxydiflubenzuron (2-HDFB). An unresolved peak that was p-chloroaniline (PCA) and/or p-chlorophenylurea (CPU) was found. This latter peak accounted for about 2% of the administered dose (5 mg/kg). In the feces, only unchanged parent compound was detected.

B. Aggregate Exposure

1. *Dietary exposure*—i. *Diflubenzuron.* The dietary exposure from diflubenzuron (DFB) was estimated based on the average residue values from the various currently labeled raw agricultural commodities (RACs) and the proposed rice use. Percent of crop treated was also factored into the estimate. Current animal commodity tolerances, which

adequately cover the rice use, were used for meat, milk, and egg products. The dietary exposure analysis was estimated based on 1977 USDA food consumption data.

For the general U.S. population (48 states, all seasons), the dietary exposure of diflubenzuron was estimated as 0.000706 mg/kg/day. For nursing and non-nursing infants, the exposure was estimated as and 0.000799 and 0.003461 mg/kg/day, respectively. For children, the exposure was 0.001888 and 0.001178 mg/kg/day for 1-6 year olds and 7-12 year olds, respectively.

ii. *p-Chloroaniline and related product.* The dietary exposure estimate for PCA and related products is a conservative estimate, in that it includes rice straw as an animal feed. Rice straw, however, will be restricted as a animal feed, in the proposed Experimental Use Program. The dietary exposure from p-chloroaniline (PCA) and a related product, 4-chlorophenylurea (CPU), which have been detected in some food products was also determined. EPA has used a 2% *in vivo* conversion factor of DFB to PCA for foods derived from plant products. For mushrooms, PCA and CPU average residue data was combined with a 2% *in vivo* conversion of DFB to PCA. Calculations for levels of PCA/CPU in animal products were based on metabolism studies, extrapolation to anticipated animal dietary burdens and the 2% conversion of DFB to PCA. The percent treated of each crop was also factored into the exposure estimate.

For the general U.S. population, the dietary exposure of PCA/CPU was estimated as 0.000001 mg/kg/day. For nursing and non-nursing infants, the exposure was estimated as 0.000002 and 0.000006 mg/kg/day, respectively. For children, the exposure was 0.000004 and 0.000002 mg/kg/day for 1-6 year olds and 7-12 year olds, respectively.

2. *Drinking water exposure.* Diflubenzuron degrades in soil relatively quickly with an aerobic half-life ranging from 3-7 days. Major degradates include difluorobenzoic acid (DFBA) and CPU. DFBA is further metabolized through decarboxylation and ring cleavage by soil microbes whereas CPU is slowly degraded to soil-bound entities. Under anaerobic aquatic conditions, diflubenzuron has a half-life of 34 days with the main degradates being DFBA and CPU. In surface water, diflubenzuron is degraded by microbes with a half-life of 5-10 days. The soil mobility of diflubenzuron is considered quite limited based on a number of experimental studies as well as by computer modeling. CPU has also been shown to be relatively immobile in soil. Although DFBA shows mobility in soil, it is rapidly degraded. Therefore, based on results of laboratory and field studies, it is not likely that diflubenzuron or its degradates will impact ground water quality to any significant extent. Thus the aggregate risk to diflubenzuron does not include drinking water.

3. *Non-occupational exposure.* Diflubenzuron is a restricted use pesticide based on its toxicity to aquatic invertebrates. This restricted use classification makes it unavailable for use by homeowners. Occupational uses of diflubenzuron may expose people in residential locations, parks, or forests treated with diflubenzuron. Based on very low residues detected in forestry dissipation studies, low dermal absorption rate (0.05%), and extremely low dermal and inhalation toxicity, these uses are expected to result in insignificant risk, and will, therefore, not be included in the aggregate risk assessment. Reference: "Reregistration Eligibility Document: Diflubenzuron," EPA, August 1997.

C. Cumulative Risk

Uniroyal Chemical Co. has considered the potential for cumulative effects of diflubenzuron and other substances with a common mechanism of toxicity. The mammalian toxicity of diflubenzuron is well defined. We are not aware of any other pesticide product registered in the United States that could be metabolized to p-chloroaniline. For this reason, consideration of potential cumulative effects of residues from pesticidal substances with a common mechanism of action as diflubenzuron is not appropriate. Thus only the potential exposures to diflubenzuron were considered in the total exposure assessment.

D. Safety Determination

1. *U.S. population.* Based on the available toxicology and exposure data base for diflubenzuron, Uniroyal has determined that the total possible non-occupational aggregate exposure from diflubenzuron would occur from the dietary exposure route. Dietary exposure to the general U.S. population from diflubenzuron was estimated at 0.000706 mg/kg/day. Based on the 0.02 mg/kg/day RfD (reference dose) derived from the dog chronic NOEL of 2 mg/kg/day and a 100-fold safety factor, this dietary exposure is 3.5% of the RfD.

For PCA and CPU, Uniroyal has also determined that the total possible non-occupational aggregate exposure would occur from the dietary exposure route. Dietary exposure to the general U.S. population from PCA/CPU was estimated as 0.000001 mg/kg/day. The risk from diflubenzuron-derived PCA/CPU can be estimated using a linear extrapolation of the dose-response from the rat chronic study conducted by the National Toxicology Program in which rats were dosed via gavage with p-chloroaniline hydrochloride 5 days/week for 103 weeks (NTP TR 351). EPA has determined the $q1^*$ as 0.059 by combining the incidences of splenic sarcomas from both male and female rats.

Although EPA has assumed that CPU is also carcinogenic purportedly based on its structural similarity to PCA, Uniroyal has indicated to the Agency in previous correspondence that this assumption is not warranted. It may be more appropriate to compare the carcinogenicity potential of CPU to acetanilide, which is also a structural analog of CPU, and for which no evidence of carcinogenicity has been demonstrated possibly because the *N*-hydroxy metabolite is not formed in significant amounts. Formation of the *N*-hydroxy metabolite of CPU is also remote. Uniroyal has also argued that it is unlikely that significant degradation of CPU to form PCA would occur, since based on the known animal metabolism of phenylureas, only a small amount of aniline derivatives are produced. The major metabolic pathway for the phenylureas is ring hydroxylation and n-dealkylation, a process that would maintain the integrity of the parent urea molecule. Therefore, it would not be appropriate to combine CPU residues with PCA. However, for this safety assessment we have conservatively estimated the risk from dietary exposure to both PCA and CPU combined.

Using the $q1^*$ of 0.059 from the combined male and female incidence of splenic tumors in rats, the risk to the general U.S. population from dietary exposure to diflubenzuron-derived PCA/CPU is 8.7×10^{-8}.

2. *Infants and children.* The same assumptions as for the general U.S. population were used for the dietary exposure risk determination in infants and children. The dietary exposure of diflubenzuron was calculated as 0.000799 mg/kg/day and 0.003461 mg/kg/day respectively for nursing and non-nursing infants. These values are 4% and 17.3% respectively of the RfD for diflubenzuron. The dietary exposure from diflubenzuron in children 1-6 and 7-12 years old was determined as 0.001888 mg/kg/day and 0.001178 mg/kg/day, respectively. These values are 9.4% and 5.9% of the RfD, respectively.

As previously discussed, the NOELs for maternal and developmental toxicity in rats and rabbits were greater than

1,000 mg/kg/day, and the NOEL for reproductive toxicity was greater than 5,000 mg/kg/day. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Uniroyal concludes that there is reasonable certainty that no harm will result in infants and children from aggregate exposure to residues of diflubenzuron and its conversion products containing the p-chloroaniline moiety.

E. Residues in the Raw Agricultural Commodity and Processed Food/Feed

1. *Nature of residues in plants and livestock.* The nature of the residue in plants and livestock is adequately understood. In plants, the metabolism of diflubenzuron was investigated in soybeans, oranges and rice. The main component of residues in rice was CPU; levels of PCA were negligible to non-detectible. The main component of the residues in soybeans and oranges was the parent diflubenzuron (DFB). A considerable portion of the residues were bound. DFB showed very limited absorption and translocation in plants with most of the residues remaining on the surface.

In livestock, goats treated for three days at about 1X (10 ppm feeding level) the dietary burden of $^{C}14$ DFB gave DFB equivalent of $^{C}14$ = 7-9 ppb in milk, 217-262 ppb in liver, 16-19 ppb in kidney, about 1 ppb in muscle, and about 4 ppb in fat. Milk residues were mainly CPU and DFBAM. PCA was not detectable. Liver residues were DFB, 2-hydroxy DFB, CPU, and DFBAM. Again, PCA was not detected at this dose however, it was detected in studies conducted at about 22X dose. Chickens were dosed with $^{C}14$ DFB at 5 ppm level for 1-28 days. Residues in tissues as DFB equivalent were highest in liver and kidney. The main residues in tissues and eggs were DFB and DFBA. Trace amount of PCA and its acetanilide were detected, but not confirmed, in liver kidney and egg white.

2. *Magnitude of residues and proposed tolerances.* An adequate number of separate residue trials have been conducted with diflubenzuron on rice. Analyses of these trials show that the maximum total residue for diflubenzuron and its conversion products PCA and CPU will be at or below 0.01 ppm.

A tolerance has been requested for the combined residues of diflubenzuron and metabolites convertible to p-chloroaniline expressed as diflubenzuron on rice at 0.01 ppm. The proposed tolerance is adequate to cover residues likely to be present from the use of diflubenzuron on rice. Therefore, no special processing to reduce the residues will be necessary.

The meat by-products tolerances are adequate to cover residues resulting from the rice use. Uniroyal Chemical has submitted calculations from a goat metabolism study which supports the 0.05 ppm tolerance in meat by-products. Therefore, no increase in the meat by-products tolerances should be necessary.

F. Practical Analytical Method

Practical analytical methods for detecting levels of DFB, CPU and PCA, in or on food with a limit of detection that allows monitoring of the residue at or above the level set in the tolerance was used to determine residues in rice and its respective processed fractions.

Residues of the individual analytes are detectable and quantifiable using three separate analytical methods. Residues of DFB are extracted from rice with dichloromethane. Extracts are purified with deactivated florisil. An aliquot of the extract is hydrolyzed with phosphoric acid and the DFB is partitioned into hexane. The resulting extract is derivatized in heptafluorobutyric anhydride (HFBA). Quantification of DFB is accompanied by gas chromatography using an electron capture detector.

The analytical method for quantitation of the 4-chlorophenylurea requires ethyl acetate extraction of the residue from the matrix. Column chromatography is utilized for clean-up of the extract immediately prior to derivitization with HFBA. Derivatized extracts are analyzed by gas chromatography equipped with an electron capture detector.

The analysis for the determination of PCA residues in rice matrices utilizes an internal standard method. Samples of matrix to be analyzed are fortified with the internal standard. Residues of 12C-PCA and the internal standard are subjected to acid and base hydrolysis. The final extract is passed through florisil column for clean-up and derivatized with HFBA in hexane. An aliquot of the derivatized extract is analyzed by gas chromatography using a mass spectrometry detector in the selective ion monitoring mode. Recovery of PCA is determined by the combined peak areas for the two mass spectral ions obtained from the derivatized 12C-PCA relative to the response factor derived from the combined areas of the corresponding two mass spectral ions from the internal standard.

G. List of All Pending Tolerances and Exemptions

A tolerance for diflubenzuron on range grass at 4.0 ppm is pending. There are no exemptions from tolerance for diflubenzuron.

H. List International Tolerances (Code MRLs)

There are no Codex Alimentarius Commission maximum residue levels for residues of diflubenzuron on rice. The Codex MRL on citrus is 1.0 mg/kg vs. 0.05 ppm for U.S. tolerance. The Codex MRL for mushrooms is 0.1 mg/kg vs. 0.2 ppm for U.S. tolerance. The Codex MRL for soybeans is 0.1 mg/kg/ vs. 0.05 ppm for the U.S. The Codex MRL is 1 mg/kg for apples, Brussels sprouts, cabbage, pears, plums and tomatoes for which there are no U.S. tolerances. The Codex MRL for meat, milk and eggs is 0.05 mg/kg/ which is the same as the established U.S. tolerances.

[FR Doc. 98-4812 Filed 2-24-98; 8:45 am]
BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[PF-789; FRL-5767-5]

Notice of Filing of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by the docket control number PF-789, must be received on or before March 27, 1998.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket @epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as

"Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 237, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–789] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (PF–789) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 11, 1998

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Valent U.S.A Corporation

PP 9F3798

EPA has received a pesticide petition (PP 9F3798) from Valent U.S.A Corporation, 1333 North California Blvd., Suite 600, Walnut Creek, California 94596-8025 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by extending a time-limited tolerance for residues of lactofen, 1-(carboethoxy)ethyl 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate and its associated metabolites containing the diphenyl ether linkage in or on the raw agricultural commodity cottonseed at 0.05 parts per million (ppm). The tolerance would expire on December 31, 1999. The time limitation on the tolerance would allow Valent to complete, and EPA to evaluate, additional prospective groundwater study data. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Lactofen, formulated as COBRA Herbicide, is used to control broadleaf weeds in soybeans by pre- and/or post-emergent application and in cotton by post-directed application. Pre-harvest intervals are extended, 45 to 70 days. Plant metabolism protocols (cotton, peanut, soybean and tomato) have been designed to mimic the field applications with respect to application methods and timing. In the studies, plant material has been treated at rates exceeding normal field application to facilitate identification of metabolites. Postdirected application to cotton was simulated in the field using radiocarbon labeled lactofen and demonstrated that no radioactivity (> 0.001 ppm lactofen equivalent) was detected in the bolls.

The lactofen molecule is rapidly degraded in the environment and in plants. Therefore, the consistent result of all detailed plant metabolism studies using radiolabeled lactofen has been:

i. Low concentrations of radiocarbon are distributed throughout the plant,

ii. Much of the radiocarbon is irreversibly bound and unextractible,

iii. Very low concentrations of radiocarbon is found in the RAC (seeds), and

iv. Very little of the terminal residue is identifiable as finite metabolites as a result of the extensive degradation and binding.

To demonstrate plant metabolic pathways and to validate that the residue analytical methodology can extract, identify and quantitate lactofen and its metabolites as aged residues, plant samples from radiocarbon metabolism studies were analyzed soon after application, well before normal harvest. It is from these early samples that the definition of the regulated residue in RAC has been obtained. The residue of concern is defined by the Agency as parent and four degradates containing the intact diphenyl ether moiety. Parent lactofen (PPG-844) is degraded hydrolytically to corresponding carboxylic acid-lactate ester (PPG-947), and further to the benzoic acid (PPG-847). In a separate pathway, the esters remain intact and the aromatic nitro group is reduced to the corresponding aniline (PPG-1576) and the aniline is formylated (PPG-2597). Further, there is good evidence that these lactofen metabolites are further degraded by cleavage of the

diphenyl ether. The sodium salt of the benzoic acid (PPG-847) is the commercial herbicide acifluorfen. All five of the compounds in the regulated residue as defined have never been found in a single RAC sample either from plant metabolism or from crop field studies. For example, at maximum treatment rates in crop field trials, only one soybean seed sample was found to have a residue of parent lactofen greater than the limit of detection, but less than the limit of quantitation and only a single cotton gin trash sample was found to contain a finite residue of lactofen. Even at exaggerated rates in metabolism or crop residue studies, residues are rarely above the limit of detection for any analyte. In fact, more than one analyte has never been found above the limit of detection in a single RAC sample from crop field trials.

2. *Analytical method.* Adequate analytical methodology is available for detecting and measuring levels of lactofen and regulated metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the level set in the time-limited tolerance on cotton. The method involves extraction with triethylamine/aqueous ethanol, partitioning, methylation of the carboxylic acids, column clean-up, and separation and quantitation by gas chromatography with electron capture detection. The method, RM-28D, has been validated by an independent laboratory on both cottonseed and peanuts and was found to be acceptable with comments for enforcement in cottonseed by the EPA Analytical Chemistry Laboratory. In general, the analytical method has a limit of detection of 0.005 ppm and limit of quantitation of 0.01 ppm in crops.

3. *Magnitude of residues.* Lactofen is the active ingredient in COBRA Herbicide (EPA Reg. No. 59639-34). There are existing tolerances for lactofen on soybeans, and snap beans. A time limited tolerance supported use on cotton, and a tolerance is pending for peanuts. Lactofen is a broad-spectrum broadleaf herbicide with the following use pattern on cotton:

Post-emergence directed spray applications with a single application maximum of 0.2 lb. a.i./acre, a seasonal maximum total application of 0.4 lb. a.i./acre, and a PHI of 70 days.

Because of relatively long pre-harvest interval, post-directed applications, and extensive degradation, finite lactofen residues have not been found in cottonseed or processed cottonseed commodities. Reports covering field residue trials from twenty-one sites in all cotton growing states, several at exaggerated rates, along with processing studies have failed to show detectable residues of lactofen or its regulated degradates in any sample. Consequently, a tolerance on cottonseed is proposed at 0.05 ppm, based on the sum of the 0.01 ppm limits of quantitation for lactofen and its four regulated metabolites containing the diphenyl ether linkage. Field residue data for cotton gin trash has recently been submitted. All other lactofen tolerances to date have been established similarly at 0.05 ppm.

B. Toxicological Profile

1. *Acute toxicity.* Lactofen (PPG-844) Technical has been placed in EPA Toxicity Category III for dermal toxicity and Category IV for the other four acute toxicity tests. It has also been found to be a weak skin sensitizer. This chemical therefore represents a minimal acute toxicity risk.

2. *Genotoxicty.* Lactofen Technical has been tested and produced negative results in genotoxicity tests including unscheduled DNA synthesis in rat hepatocytes, DNA covalent binding in mouse liver, chromosomal aberration in CHO cells. Lactofen technical was also negative in an Ames assay. In repeat Ames assays, lactofen was shown to be positive without metabolic activation at 5,000 µg/plate and above. Overall lactofen is not a genetic hazard.

3. *Reproductive and developmental toxicity.* Reproduction and teratology studies indicate that adverse effects, including embryotoxicity, occur only at doses that are also maternally toxic. Since lactofen causes effects only at levels which also produce systemic toxicity the compound is not a reproductive hazard.

4. *Reproduction— Rats.* Groups of male and female rats were fed 0, 50, 500 or 2,000 ppm of Lactofen Technical continuously in their diets for 2–generations. Adult systemic toxicity (mortality, reduced body weight, increased liver and spleen weight, decreased kidney weight and histological changes in the liver and testes) was observed at levels of 500 ppm and greater. Reproductive toxicity (lower pup survival rates, reduced pup weight and pup organ weight effects) was also observed at levels of 500 ppm and greater. The No-Observed Effect-Level (NOEL) for both systemic and reproductive toxicity was 50 ppm (2.5 milligram/kilogram/day (mg/kg/day).

5. *Developmental toxicity— Rats.* Pregnant rats were administered oral doses of 0, 15, 50 and 150 mg/kg/day Lactofen Technical on days 6–19 of gestation. Maternal toxicity (death, abortion and reduced body weight gain) was observed at 150 mg/kg/day. Developmental toxicity (reduced fetal weight, slightly reduced ossification, bent ribs and bent limb bones) was also observed at 150 mg/kg/day. The NOEL for this study was 50 mg/kg/day.

6. *Developmental toxicity— Rabbits.* 2 developmental toxicity studies were conducted in rabbits with Lactofen Technical. In the first study, pregnant rabbits were administered oral doses of 0, 5, 15 or 50 mg/kg/day Lactofen Technical on days 6–18 of gestation. Maternal toxicity (clinical signs and reduced weight gain) and developmental effects (increased embryonic death, decreased litter size and increased post-implantation loss) were reported at 15 and 50 milligram/kilogram (mg/kg). The Agency concluded that the data were insufficient to establish a clear NOEL. In the second rabbit developmental toxicity study, pregnant rabbits were exposed to 0, 1, 4 or 20 mg/kg/day oral doses on days 6–18 of gestation. Maternal toxicity (reduced food consumption) was observed at 20 mg/kg/day, while no developmental effects were observed at any dose. Therefore, the maternal NOEL was 4 mg/kg/day and the developmental NOEL was greater than 20 mg/kg/day.

C. Subchronic Toxicity

1. *Subchronic feeding— Rat— 4-week.* Male and female rats were fed diets containing Lactofen Technical at concentrations of 0, 200, 1,000, 5,000, and 10,000 ppm for four weeks. A slight increase in spleen weight was the basis for a Lowest-Observed Effect-Level (LOEL) of 200 ppm (lowest dose tested). At doses of 1,000 ppm or higher the following findings were reported: clinical signs of toxicity; decreased RBC, hemoglobin, hematocrit, and increased WBC; increased relative liver and spleen weights; and necrosis and pigmentation of hepatocytes. At 10,000 ppm severe toxic signs were observed by day 7 and all animals were dead or killed in extremis by day 11. Hypocellularity of the spleen, thymus and bone marrow was also observed in animals exposed to 10,000 ppm.

2. *Subchronic feeding— Rat— 3-month.* Lactofen Technical was fed to male and female rats at dietary concentrations of 0. 40, 200, and 1,000 ppm for 13–weeks. Histopathological changes in the liver and significant changes in clinical chemistry associated with the liver were observed in rats exposed to 1,000 ppm Lactofen Technical dosage. Decreased RBC, hemoglobin and hematocrit values were also observed at 1,000 ppm. The NOEL in this study was 200 ppm.

3. *Subchronic feeding— Dog— 4-week.* In a range finding study Lactofen Technical was fed in the diet of dogs at 0. 1,000, 3,000, and 10,000 ppm for 4-weeks. Toxic effects noted in dogs fed 10,000 ppm included decreased rbc count and hemocrit, and increased BUN and SGPT. Food palatability problems led to greatly decreased feed consumption at higher dosages. The NOEL appeared to be 1,000 ppm.

4. *Subchronic feeding— Mice— 3-month.* Groups of Male and female mice were fed diets containing Lactofen Technical at concentrations of 0, 40, 200, 1,000, 5,000, and 10,000 for 13-weeks. At week 5, the dosage of the 40 ppm groups was increased to 2,000 ppm. Treatment related mortality occurred at dosages above 1,000 ppm. The LOEL was 200 ppm based on: increased WBC; decreased hematocrit, hemoglobin and RBC; increased alkaline phosphatase, SGOT, SGPT, cholesterol and total serum protein levels; increased weights or enlargement of the spleen, liver, adrenals, heart and kidney; histopathological changes of the liver, kidney, thymus, spleen, ovaries and testes. In general, effects were slight in the 200 ppm groups, and moderate to severe in the 1,000 ppm groups.

5. *Peroxisome proliferation— Mice— 7-weeks.* Butler et al (1988) studied the effects of lactofen on peroxisome proliferation in mice exposed for 7-weeks to dietary concentrations of 2, 10, 50 and 250 ppm. Liver-weight to body-weight ratio, liver catalase, liver acyl-CoA oxidase, liver cell cytoplasmic eosinophilia, nuclear and cellular size, and peroxisomal staining were increased by the tumorigenic dose of lactofen, i.e. 250 ppm. Lower doses of lactofen had little to no effect on these parameters. Thus, this study indicates that lactofen induces peroxisome proliferation and further, that 50 ppm (7 mg/kg/day), a dose which is not tumorigenic, would be considered a threshold dose in mice for peroxisome proliferation produced by lactofen. Peroxisome Proliferation -- Chimpanzees 14-weeks: A subchronic study conducted in chimpanzees (Couch and Erickson, 1986), indicated no effect on clinical chemistry or histological endpoints that would suggest liver toxicity or peroxisome proliferation at doses up to 75 mg/kg/day administered for 93 days. Therefore, Valent believes that 75 mg/kg/day is a clear NOEL for peroxisome proliferation observed in a species closely related to man.

D. Chronic Toxicity

A complete chronic data base supported by appropriate subchronic studies for lactofen is available to the Agency. Lactofen Technical causes adverse health effects when administered to animals for extended periods of time. These effects include proliferative changes in the liver, spleen, and kidney; hematological changes; and blood biochemistry changes. Based on the Lowest Effect Level (LEL) of 1.5 mg/kg/day in the 18-month mouse feeding study and an uncertainty factor of 1,000, a reference dose (RfD) of 0.002 mg/kg/day has been established for lactofen. An uncertainty factor of 1,000 was used since a clear NOEL was not established.

1. *Chronic/carcinogenicity feeding study— Mouse— 24-month.* In a dietary 18-month oncogenicity study in mice at dosages of 10, 50 and 250 ppm Lactofen Technical, an increase in liver adenomas and carcinomas, cataracts and liver pigmentation was observed at 250 ppm. The lowest dose, 10 ppm, was the LOEL based on increased liver weight and hepatocytomegaly.

2. *Chronic/carcinogenicity feeding study— Rat— 24-month.* In a 2-year chronic feeding/oncogenicity study of Lactofen Technical in rats at dosages of 0, 500, 1,000 and 2,000 ppm in the diet, an increase in liver neoplastic nodules and foci of cellular alteration was observed in both sexes at 2,000 ppm. The NOEL for systemic toxicity is 500 ppm based on kidney and liver pigmentation.

3 *Oral toxicity study— Dog— 12-month.* In a 1-year study in dogs exposed to 40, 200, and 1,000 (wk.1-17) or 3,000 ppm (wk 18-52) Lactofen Technical in their diet, the NOEL was determined to be 200 ppm based on renal dysfunction and decreased RBC, hemoglobin hematocrit and cholesterol observed at 1,000/3,000 ppm.

4. *Carcinogenicity.* The Toxicology Branch Peer Review Committee has determined that lactofen meets the criterion for a B2 (possible human) carcinogen since it caused an increase in liver tumors (adenomas and/or carcinomas) in two species. Based on the mouse oncogenicity study, a human upper-bound potency estimate (Q_1^*) was calculated as 0.17 (mg/kg/day).

The calculated human Q_1^* is based on the standard interspecies scaling factor of $BW^{0.67}$. Recent EPA guidance indicates that $BW^{0.75}$ is a more appropriate factor for general use. This change alone would result in a reduction of the calculated human potency factor and a reduction in the calculated carcinogenic risk by about 20%.

More importantly, evidence summarized above suggest that carcinogenic effects observed in rodent liver related to long term lactofen consumption are attributable to peroxisomal proliferation as opposed to a direct genotoxic effect. This mechanism of action would more appropriately be regulated as a threshold effect (similar to RfD comparisons) as opposed to a non-threshold effect with a quantitative potency factor derived from low dose extrapolations. This change in the hazard assessment process for lactofen would have a profound effect on the exposure and risk assessments for this chemical.

5. *Animal metabolism.* Single high, single low, and repeated low dose radiocarbon labeled lactofen metabolism studies have been performed in male and female rats. Radiocarbon is almost completely eliminated (>95%) in excreta within 3-days of oral dosing. Generally about 60% of orally administered radioactivity (^{14}C-lactofen) is found in the feces with lactofen itself being the major component. About 40% of radioactivity is recovered in urine and PPG-847 (hydrolyzed side chain) is the major metabolite. Other metabolites include PPG-947, PPG-1576, and PPG-2053. Except for the formyl derivative (PPG-2597), a minor plant metabolite, there were no plant metabolites detected that were not also produced in mammals.

Additional pharmacokinetic studies using both radiocarbon labeled and unlabeled lactofen were performed in rats, mice, rhesus monkeys, and chimpanzees. Little parent was seen in the plasma of any species tested. At steady state, the primary metabolite in the circulation of rodents was PPG-847. In the primates, PP-2053 was the primary circulating metabolite. Mice appeared to be least efficient in clearing PPG-844 and other lactofen metabolites from the circulation, while rats, and especially primates appeared to be more efficient.

6. *Metabolite toxicology.* A major hydrolytic metabolite of lactofen is PPG-847, the benzoic acid. The sodium salt of this benzoic acid, sodium 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate, is the registered herbicide acifluorfen. This product has a complete data base supporting registration with a RfD of 0.013 mg/kg/day and a Cancer Potency Factor of 0.107 $(mg/kg/day)^{-1}$. Exposure to acifluorfen from all sources must be evaluated to perform a cumulative risk analysis.

7. *Endocrine disruption.* No special studies to investigate the potential for estrogenic or other endocrine effects of lactofen have been performed. However, as summarized above, a large and

detailed toxicology data base exists for the compound including studies acceptable to the Agency in all required categories. These studies include evaluations of reproduction and reproductive toxicity and detailed pathology and histology of endocrine organs following repeated or long term exposure. These studies are considered capable of revealing endocrine effects and no such effects were observed.

E. Aggregate Exposure

1. *Dietary exposure.* A chronic dietary toxicity endpoint of concern, RfD, has been identified by the Agency based on the Lowest Effect Level (LEL) of 1.5 mg/kg/day in the 18-month mouse feeding study and an uncertainty factor of 1,000. The RfD is 0.002 mg/kg/day for lactofen. An uncertainty factor of 1,000 was used since a clear NOEL was not established. The Toxicology Branch Peer Review Committee has determined that lactofen meets the criterion for a B2 (possible human) carcinogen since it caused an increase in liver tumors (adenomas and/or carcinomas) in two species. Based on the mouse oncogenicity study, a human upper-bound potency estimate (Q_1^*) was calculated as 0.17 $(mg/kg/day)^{-1}$. An acute or short term dietary endpoint of concern has not been established by the Agency. Valent has chosen to use the maternal NOEL for systemic toxicity of 4 mg/kg/day from the rabbit developmental toxicity study for acute and short term dietary risk analyses. Lactofen has no uses not associated with commercial agriculture. Therefore the only potential exposure possible to the U.S. Population is through the diet in food and drinking water. Risk analyses via other exposure routs, inhalation, dermal, are not necessary. Thus, only chronic and acute dietary exposure and risk analyses are necessary.

2. *Food.* Lactofen is registered for use in the production of commercial agricultural crops including soybeans, cotton, snap beans, and conifer seedlings. Dietary exposures are expected to represent the major route of exposure to the public.

3. *Chronic.* A chronic dietary assessment for lactofen has been conducted using Anticipated Residue Contributions (ARC) for existing and proposed uses of lactofen. This exposure/risk analysis has been submitted to the Agency along with a detailed description of the methodology and assumptions used. Since crop field trial data indicate that quantifiable residues of lactofen are rarely found in raw agricultural and processed commodities, ARCs were estimated based on the analytical method limit of detection (LOD) for each commodity. When available, analytical results for control samples were used to determine the method LOD for lactofen and its related metabolites. When all control samples contained no detectable residues, the limit of detection was determined to be 0.005 ppm. Mean anticipated residues were determined based on the sum of residues found above the LOD, or when no detectable residues were present for lactofen or any metabolite, one-half the greatest LOD for any analyte was used as the anticipated residue level. The chronic exposure analysis also considered the percent of crop treated with lactofen as follows: 5% of soybeans, 2.5% of cotton, 4.5% of snap beans, and 5% of peanuts. The soybean and cotton values are based on 1995 marketing research data (Maritz) and the snap bean and peanut values are estimates of future market penetration. Note that a lactofen peanut tolerance is still pending at the Agency and no lactofen is used on this crop even though peanuts are included in the dietary exposure assessment Dietary exposure was calculated for the U.S. population and 26 population subgroups. Chronic dietary exposure was less than 0.1% of the RfD for all subpopulations.

4. *Acute.* A first tier acute exposure and risk analysis was performed for lactofen assuming tolerance level residues in soybeans, snapbeans, cotton, and peanuts (0.05 ppm) and 0.02 ppm in all meat and milk commodities. Using the acute dietary endpoint of 4.0 mg/kg/day, the NOEL from the rabbit developmental toxicity study, the calculated exposures and margins of exposure (MOE) for the higher exposed proportions of the subgroups are listed below. It should be noted that the population sizes are small at the lower probability exposures (e.g. 99th and 99.9th percentiles) oftentimes leading to unrealistically high calculated exposures. In all cases, margins of exposure exceed 1,000.

Calculated Acute Dietary Exposures to Lactofen Residues in Food

Population Subgroup	99th Percentile		99.9th Percentile	
	Exposure (mg/kg bw/day)	MOE	Exposure (mg/kg bw/day)	MOE
U.S. Population	0.001199	3,337	0.002211	1,809
Females 13-50	0.000464	8,619	0.000712	5,616
Children 1-6	0.001911	2,094	0.002781	1,438
Children 7-12	0.001019	3,927	0.001472	2,717
All Infants	0.002887	1,385	0.003870	1,034
Non-Nursing Infants(<1)	0.002956	1,353	0.003901	1,025

5. *Drinking water.* Drinking water represents a potential route of acute or chronic dietary exposure for lactofen and should be considered in an aggregate exposure assessment. Since lactofen is applied outdoors to growing agricultural crops, the potential exists for lactofen or its metabolites to leach into ground water or reach surface water that are used for drinking. There is no established Maximum Concentration Level for residues of lactofen in drinking water under the Safe Drinking Water Act.

6. *Ground water.* Based on available lactofen studies used in EPA's assessment of environmental risk, EPA required a small scale prospective ground water study for lactofen. Valent conducted a study using the maximum application rate applied to a site which was extremely vulnerable to leaching to a shallow aquifer. The water table was at a depth of 6 to 9 feet, the top two feet of soil were classified as loamy sand (78 - 82% sand), and the deeper soil was classified as sand (88 - 94% sand). The final report demonstrated that lactofen degrades rapidly without downward movement in soil and did not contaminate even shallow ground water beneath light, sandy soils. There were no detections of lactofen (< 1 ppb) in lysimeter or monitoring well water samples. Lactofen degrades to acifluorfen, which was also monitored in the study. Since acifluorfen results from lactofen degradation, but is not the only degradation product, concentrations are expected to be lower for acifluorfen than for lactofen. Acifluorfen was found to degrade

somewhat more slowly than lactofen, and it did not leach to ground water during the study. There were no detections of acifluorfen (> 1 ppb) in lysimeter or monitoring well samples.

Assuming that all ground water contains lactofen at one-half the limit of quantitation from this study, 0.005 ppm, is non-determinate, and overly conservative. SCI-GROW modeling, using the same environmental fate parameters utilized below gave a Ground Water Screening Concentration of 0.002 ppb.

7. *Surface Water.* Potential surface water concentrations for lactofen were estimated using GENEEC and the following conservative use, physical property, and environmental fate parameters: use rate, 0.2 lb a.i./a; applications, 2 aerial broadcast; application interval, 14 days; K_{OC}, 6,600; water solubility 0.945 ppm; aerobic soil half-life, 2.2–days; hydrolysis (pH 7) half-life 11–days; and photolysis in water half-life, 2.75–days. The maximum concentration predicted in the hypothetical small stagnant farm pond water was 1.05 ppb and 0.17 ppb for the 4 and 56 day average GEEC, respectively.

Potential lactofen concentrations in actual drinking water would be much lower than one-half of the quantitation limit in the ground water study or the concentration modeled in ground water from the SCI-GROW Ground Water Screening Concentration or the concentration modeled by GENEEC in the hypothetical small stagnant farm pond. For this risk analyses, the finite concentrations modeled by GENEEC are selected. Based on this analyses, the lactofen exposure contribution from drinking water to realistic dietary risk analyses is negligible.

Exposure to Lactofen from Drinking waterfor Adults and Children from GENEEC Modeling

Exposure	Exposure (mg/kg bw/day)	
	Adult (70 kg, 2 liter/day)	Child (10 kg, 1 liter/day)
Acute (4-day average)	0.000030	0.000105
Chronic (56-day average)	0.0000049	0.000017

1. *Summary— Aggregate chronic dietary exposure.* Aggregate chronic dietary exposure to lactofen is the sum of the contributions from food and water as shown in the table below. It can be seen that the total potential chronic exposure to lactofen to two representative population subgroups is dominated by the conservative estimation of residues in water, but even so, there is no cause for concern.

Aggregate Chronic Exposure to Lactofenfor Two Representative U.S. Populations

Exposure Medium	Exposure (mg/kg bw/day)	
	U.S. Population (all seasons)	Non-Nursing Infant (less than 1 year)
Food	0.0000001	0.0000001
Drinking Water	0.0000049	0.000017
Sum of Chronic Exposures	0.000005	0.000017
Occupancy of RfD(percent)	0.25	0.85

2. *Summary— Aggregate acute exposure.* It is possible to sum calculated acute exposures from dietary sources as shown in the table below. However, summation is exceedingly conservative because the approach assumes that two low probability events occur simultaneously. For example, it is highly unlikely that an individual in a single day consumes the 99.9th percentile dietary exposure (one-in-a-thousand), and also consumes all the daily drinking water from a pond surrounded by treated cotton fields. Even so, the acute exposures shown below that sum exposures from food and drinking water gives MOE values at or above 1,000. These calculated acute and short term exposures are very conservative, and are small enough to be of little significance.

Aggregate Acute Exposure to Lactofenfor Two Representative U.S. Populations(summation of low probability maximum values)

Exposure Medium	Exposure (mg/kg bw/day)	
	U.S. Population (all seasons)	Non-Nursing Infant (less than 1 year)
Food	0.002211	0.003901
Drinking Water	0.000030	0.000105
Sum of Acute Exposures	0.002241	0.004006
Margin of Exposure	1785	999

3. *Non-dietary exposure.* Lactofen is currently approved only for the commercial production of agricultural crops including cotton, soybeans, snap beans, and pine seedlings. The potential for non-occupational exposure to the general public, other than through the diet or drinking water, is therefore insignificant.

F. Cumulative Effects

Section 408(b)(2)(D)(v) requires that the Agency must consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." "Available information" in this context includes not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk

assessments. Valent will submit information for EPA to consider concerning potential cumulative effects of lactofen consistent with the schedule established by EPA at (62 FR 42020; August 4, 1997) (FRL 5734-6) and other EPA publications pursuant to the Food Quality Protection Act.

There are several other pesticide compounds which are structurally related to lactofen and may have similar effects on animals. Specifically, lactofen, acifluorfen, fomesafen, oxyfluorfen, and diclofop methyl are all diphenyl ethers and all have caused liver tumors in rodents. These chemicals are approved for food uses in the U.S. and could be considered in a cumulative exposure assessment. It is premature to simply add the risk from all these chemicals. Exposure considerations as well as toxicity endpoint, pharmacokinetic, and pharmacodynamic considerations may indicate that it is inappropriate to add the risks. Dietary exposures to these other diphenyl ethers are expected to represent the major route of exposure to the public.

A major hydrolytic metabolite of lactofen representing perhaps 50% of the applied dose in animal and environmental fate studies, is PPG-847, the benzoic acid. The sodium salt of this benzoic acid, sodium 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate, is the registered herbicide acifluorfen. This product has a complete data base supporting registration with a RfD of 0.013 mg/kg/day and a Cancer Potency Factor of 0.107 $(mg/kg/day)^{-1}$. Because lactofen and acifluorfen have a "common metabolite", exposure to both acifluorfen and lactofen from all sources must be evaluated to perform a cumulative risk analysis.

It should be noted that acifluorfen, and the other related diphenyl ethers, would benefit from the use of the larger interspecies scaling factor as well as lactofen. Further, the rodent liver tumor effects of these other diphenyl ethers may be due to peroxisome proliferation which would more appropriately be regulated as a threshold effect. The carcinogenic risk assessments performed to date are, therefore, highly conservative.

G. Safety Determination

The Food Quality Protection Act introduces a new standard of safety, a reasonable certainty of no harm. To make this determination exposure and consequent risk to both acifluorfen and lactofen from all sources must be evaluated.

In evaluating chronic dietary exposures, the food and water consumed for a lifetime is assumed to contain a baseline amount of residues. Chronic risks are evaluated by comparing a conservatively calculated baseline exposure to the RfD. A long term exposure in mg/kg bw/day is compared to a NOEL from an appropriate long term animal exposure study adjusted by a safety factor. It is quite reasonable to suppose that daily baseline exposures to two or more compounds could occur simultaneously. That is, a consumer could have chronic dietary exposure to lactofen residues and acifluorfen residues at the same time, and because acifluorfen is a metabolite of lactofen, a cumulative risk analysis is appropriate. The situation is very different for acute dietary exposures. In an acute dietary risk analysis, exposures to residues are related to the probability of occurrence of a daily diet containing the residues. At its most simplified, the probability of consuming a diet simultaneously containing both lactofen and acifluorfen at the 99.9 th percentile diet is one in one-million. A simple, additive cumulative risk analysis cannot take the probability of simultaneous exposure into account and is not appropriate.

1. *U.S. population* —i. *Chronic*— Food. Using the dietary exposure assessment procedures described above (and performed by Valent) for lactofen, and a recent assessment for acifluorfen published in the 61 FR 16740; (April 17, 1996) (FRL 5356-6) chronic dietary exposures resulting from existing and proposed uses of lactofen and acifluorfen were compared to their respective reference doses. The following contributions to the RfD were found for the U.S. Population and all of the subpopulations for which dietary consumption data are available:

ii. *Lactofen*. Exposure 0.0000001 (mg/kg bw/day) less than 0.01% for all subpopulations.

iii. *Acifluorfen*. Exposure 0.0000052 (mg/kg bw/day, 61 FR 16740) less than 0.04 % for all subpopulations.

iv. *Chronic*— Drinking water— Lactofen. Using the conservative assumption that all drinking water contains lactofen at levels calculated by GENEEC for a small farm pond surrounded by lactofen treated fields, a very conservative estimate of risk can be made. Using standard assumptions about body weight and water consumption, the adult chronic exposure from this drinking water would be 4.9×10^{-6} mg/kg bw/day, 0.25% of the RfD.

2. *Acifluorfen*. Acifluorfen that may be in drinking water can be derived directly from acifluorfen applied to crops, or may be acifluorfen derived from degradation of lactofen. The physical properties and soil stability of acifluorfen indicate that the compound may dissolve in surface water, or leach to groundwater that may be used for drinking water.

The U.S. Geological Survey is engaged in a National Water Quality Assessment (NAWQA). This program samples both ground and surface water and analyzes the samples for 75 pesticides and metabolites including acifluorfen, but not lactofen. The data through August 1997 are available from USGS, on the internet at http://water.wr.usgs.govpnsp/gwsw1.html. The NAWQA sampling program was designed to provide an overview of pesticide occurrence in water that could be used for drinking water. Specific types of agriculture or specific products, including acifluorfen, were not targeted. While the program is not exhaustive, it probably provides a reasonably unbiased estimate of the occurrence of agricultural chemical contaminants in potential drinking water. A table summarizing the data for acifluorfen is presented below.

USGS NAWQA data on Acifluorfen

Water Type	Number of Samples		Maximum Concentration (ppb)
	Total	>0.05 ppb	
Agricultural Streams	1148	10	2.2
Urban Streams	418	ND	-
Large Streams	282	6	0.44
Total Surface Water	1848	16	
Agricultural Shallow Ground Water	1069	ND	–
Urban Shallow Ground Water	314	1	0.070
Major Ground Water Aquifer	965	1	0.190

USGS NAWQA data on Acifluorfen

Water Type	Number of Samples		Maximum Concentration (ppb)
	Total	>0.05 ppb	
Total Groundwater	2348	2	

It is noteworthy that there were only 18 detections of acifluorfen in the nearly 4,200 samples analyzed for acifluorfen. More detections and highest concentrations were found in surface water than in groundwater. In light of all these monitoring data, it is unreasonable to choose the single highest concentration value from a small agricultural stream as representative of all drinking water. Accordingly, using the conservative assumption that all drinking water contains acifluorfen at 0.00044 ppm, the highest value in the USGS NAWQA data on acifluorfen from large streams, a very conservative estimate of risk can be made. Using standard assumptions about body weight and water consumption, the chronic exposure from this drinking water would be 1.26 x 10^{-5} mg/kg bw/day for adults, 0.1% of the RfD of 0.013 mg/kg bw/day.

Chronic exposure to drinking water:

i. *Lactofen.* Less than 0.25% for the U.S. Population.

ii. *Acifluorfen.* Less than 0.1% for the U.S. Population.

1. *Summary- cumulative aggregate chronic dietary risk*— i. U.S. population. The aggregate chronic dietary risks from both food and drinking water exposure expressed as a percentage of their respective RfD values is presented below for both lactofen and acifluorfen. It is noteworthy that the calculated exposures and consequent risks are very small, yet dominated by the very conservative estimates of residues in water.

ii. *Lactofen.* Exposure 0.000005 (mg/kg bw/day) less than 0.25% for all subpopulations.

iii. *Acifluorfen.* Exposure 0.0000178 (mg/kg bw/day) less than 0.14 % for all subpopulations.

EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The current and proposed uses of these two chemicals, even when considered collectively, represent a minimal chronic toxicological risk to the general public and it can be concluded that there is reasonable certainty of no harm from chronic exposures..

2. *Acute.* Assessment of aggregate acute exposure to food and drinking water residues of lactofen to the U.S. Population has demonstrated that exposures are small. MOE values using very conservative exposure assumptions and a conservative toxicity endpoint are all greater than 1,000 and it can be concluded that there is reasonable certainty of no harm to the U.S. Population from acute dietary exposures to lactofen residues.

3. *Carcinogenicity.* Carcinogenic risks for both lactofen and acifluorfen can be calculated from the aggregate chronic dietary exposures presented above. Because both products are only used in agriculture, the exposure to the general population is exclusively dietary from potential residues in food and drinking water.

4. *Food.* For lactofen, carcinogenic risks from exposure to residues in food were calculated by Valent using a potency factor (Q_1^*) of 0.17 (mg/kg/day)$^{-1}$. The resulting carcinogenic risk from existing and proposed uses of lactofen was calculated at 1.54 x 10^{-6} or less for several lifetime population groups. This is approximately 65 times lower than the acceptable level of one-in-a-million additional lifetime cancers. It should be noted that the proposed use on peanuts, which is not being considered in the current action, accounts for more than a third of the exposure contributing to the calculated carcinogenic risk. Therefore, these estimates of carcinogenic risk from lactofen residues in food are conservative and are well within acceptable levels.

For acifluorfen, carcinogenic risks from exposure to residues in food were published by EPA (61 FR 16740; April 17, 1996) (FRL-5356-6) using a Q_1^* value of 0.107 (mg/kg/day)$^{-1}$. The resulting carcinogenic risk from existing and proposed uses of acifluorfen is calculated at 5.6 x 10^{-7} or less. This is lower than the generally acceptable level of one-in-a-million additional lifetime cancers.

5. *Drinking water.* In the discussions above, very conservative estimates of lactofen and acifluorfen residues in potential drinking water have been presented. The estimates are conservative in that common concentrations of the compounds in real drinking water are zero, or orders of magnitude below the estimates. Using the conservative exposure estimates and the corresponding cancer potency factors, the cancer risk from drinking water is 8.5 x 10^{-7} and 6.7 x 10^{-6} or less for lactofen and acifluorfen, respectively.

6. *Summary- cumulative aggregate chronic cancer risk*— i. *U.S. population.* The aggregate chronic dietary risks of cancer from exposure to food and drinking water residues is presented below for both lactofen and acifluorfen.

ii. *Lactofen.* Chronic Exposure less than 0.000005 mg/kg bw/day Q^* 0.17 (mg/kg bw/day)$^{-1}$ Cancer Risk: 8.5 x 10^{-7}.

iii. *Acifluorfen chronic exposure.* Less than 0.0000178 mg/kg bw/day Q^* 0.107 (mg/kg bw/day)$^{-1}$ Cancer Risk 1.9 x 10^{-6}.

It is noteworthy that the calculated exposures and consequent risks are dominated by the very conservative estimates of potential residues in water. The Agency has expressed concern about the potential for excess oncogenic risk of acifluorfen in drinking water. To evaluate drinking water exposures, groundwater monitoring studies have been required for both acifluorfen and lactofen. Additional time is required to allow registrants to complete the studies, to present real data in potential drinking water, and for EPA to evaluate the information and adequately address the drinking water exposure issue. The calculated cancer risks are for lifetime exposure to levels of all potential acifluorfen in drinking water little of which could possibly be attributable to lactofen use on cotton. There is a reasonable certainty of no harm during the time necessary to obtain and evaluate real exposure data.

7. *Non-dietary exposure.* Lactofen and acifluorfen are currently approved only for the commercial production of agricultural crops. The potential for non-occupational exposure to the general public, other than through the diet or drinking water, is therefore insignificant.

8. *Infants and children — Safety factor for infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of lactofen, FFDCA section 408 provides that EPA shall apply an additional margin of safety, up to 10-fold, for added protection for infants and children in the case of threshold

effects unless EPA determines that a different margin of safety will be safe for infants and children. The toxicological data base for evaluating pre- and post-natal toxicity for lactofen is complete with respect to current data requirements. There are no special pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the reproductive toxicity study in rats. Systemic toxicity effects, and not reproductive or developmental toxicity determined the no effect levels for these studies of 50, 4, and 2.5 mg/kg bw/day, respectively. Valent concludes that reliable data support use of the standard 100-fold uncertainty factor with respect to protection of infants and children, and that an additional uncertainty factor is not needed to be further protective.

Furthermore, the chronic RfD for lactofen is based on the Lowest Effect Level (LEL) of 1.5 mg/kg/day in the 18-month mouse feeding study with an uncertainty factor of 1,000. An additional margin of safety, 10-fold, was used since a clear NOEL was not established in the mouse study. Thus, although an extra safety factor is not needed to further protect infants and children, an extra 10-fold uncertainty factor has been included because of the lack of a clear NOEL in the mouse study.

9. *Chronic— Food.* Using the dietary exposure assessment procedures described above (and performed by Valent) for lactofen, and a recent assessment for acifluorfen published in the **Federal Register** (61 FR 16740; April 17, 1996) total chronic dietary exposures resulting from existing and proposed uses of lactofen and acifluorfen were compared to their respective reference doses. The following contributions to the RfD were found for all of subpopulations including infants and children for which dietary consumption data are available:

i. *Lactofen.* Exposure 0.0000001 (mg/kg bw/day) less than 0.01% of RfD.

ii. *Acifluorfen.* Exposure 0.0000052 (mg/kg bw/day), (61 FR 16740; April 17, 1996) less than 0.04% of RfD.

10. *Chronic- drinking water- lactofen.* Using the conservative assumption that all drinking water contains lactofen at levels calculated by GENEEC for a small farm pond surrounded by lactofen treated fields, a very conservative estimate of risk can be made. Using standard assumptions about body weight and water consumption, the child chronic exposure from this drinking water would be 1.7×10^{-5} mg/kg bw/day, 0.85 percent of the RfD.

11. *Acifluorfen.* Using the very conservative assumption that all drinking water contains acifluorfen at 0.00044 ppm, from the USGS NAWQA data on acifluorfen, a very conservative estimate of risk can be made. Using standard assumptions about body weight and water consumption, the child chronic exposure from this drinking water would be 4.4×10^{-5} mg/kg bw/day, 0.34 percent of the RfD.

Summary - Cumulative aggregate chronic dietary risk— Infants and children. The aggregate chronic dietary risks from both food and drinking water exposure expressed as a percentage of their respective RfD values is presented below for children for both lactofen and acifluorfen. It is noteworthy that the calculated exposures and consequent risks are very small, yet dominated by the very conservative estimates of residues in water.

(a) *Lactofen.* Less than 0.86 % for all infant and children subpopulations.

(b) *Acifluorfen.* Less than 0.38 % for all infant and children subpopulations.

EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The current and proposed uses of these two chemicals, even when considered collectively, represent a minimal chronic toxicological risk to infants and children and it can be concluded that there is reasonable certainty of no harm from chronic exposures.

1. *Acute.* Assessment of aggregate acute exposure to food and drinking water residues of lactofen to non-nursing infants has demonstrated that exposures are small. MOE values using very conservative exposure assumptions and a conservative toxicity endpoint approximate 1,000. It can be concluded that there is reasonable certainty of no harm to infants and children from acute dietary exposures to lactofen residues.

G. International Tolerances

There are no Codex Maximum Residue Limits (MRL) established for lactofen on any commodity.

[FR Doc. 98–4811 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00232; FRL–5770–1]

Lithographic Printing Industry Pollution Prevention and Risk Reduction Materials

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: The EPA's Design for the Environment (DfE) Program is announcing the availability of two documents providing pollution prevention and human health and environmental risk reduction information for the lithographic printing industry. The two documents being made available are:

The Cleaner Technologies Substitutes Assessment (CTSA): Lithographic Blanket Washes (document number EPA 744–R–97–006) is a comparison of 37 different blanket wash formulations in terms of performance, cost, risk, resource conservation and other aspects. The CTSA contains the technical data and analyses of the DfE Lithography Project. A draft of this report was released in September 1996 and comments have been addressed in this final version.

Solutions for Lithographic Printers: An Evaluation of Substitute Blanket Washes (document number EPA 744–F–96–003) is a simple, user friendly summary of the information developed through the DfE Lithography Project. This booklet will help printers to choose the best blanket wash for their facilities. The 35 page document describes how to identify, select and use substitute blanket washes and other ways to reduce pollution in a lithographic printing facility.

ADDRESSES: Both documents are available free of charge for a limited time from the Pollution Prevention Information Clearinghouse (PPIC), Environmental Protection Agency (7409), 401 M St., SW., Washington, DC 20460 telephone 202–260–1023, fax 202–260–4659 and e-mail at ppic@epamail.epa.gov. Also, both documents will be viewable and downloadable from the DfE Program web site at HTTP://www.epa.gov/dfe after March 14, 1998.

FOR FURTHER INFORMATION CONTACT: Karen Seeh, Economics, Exposure, and Technology Division, Office of Pollution Prevention and Toxics, (7406), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, telephone 202–260–1714, fax 202–260–

0981, e-mail seeh.karen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

The Design for the Environment (DfE) Lithography Project is a voluntary, cooperative partnership between the EPA and the printing industry to develop a comparative assessment of blanket washes used by lithographers. The partnership has completed the comparative analysis of 37 blanket wash formulations entitled "Cleaner Technologies Substitutes Assessment (CTSA): Lithographic Blanket Washes." The CTSA contains information that helps lithographers in making decisions that incorporate environmental concerns along with cost and performance information when purchasing these chemicals. The full report is intended for technical audiences, formulators and suppliers, and environmental health personnel.

To convey better the results of the assessment to small business printers, the DfE Lithography Project created a summary document entitled "Solutions for Lithographic Printers: An Evaluation of Substitute Blanket Washes." This booklet is designed to help printers evaluate their current blanket wash and compare it to substitute washes. How safe are they to use? How do they perform? How much do they cost to use? What are their environmental risks? This booklet tells how to answer these questions in a direct, easy to understand style for small business printers and press operators.

Dated: February 17, 1998.

William H. Sanders, III,

Director, Office of Pollution Prevention and Toxics

[FR Doc. 98–4813 Filed 2-24-98; 8:45 am]

BILLING CODE 6560–60–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5970–5]

Superfund Program; Revisions to Model CERCLA RD/RA Consent Decree

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Agency is today publishing revisions to selected provisions of the Model CERCLA RD/RA Consent Decree. The revisions, which will supersede counterpart provisions in the previously effective version of the Model published in 1995, have been jointly adopted by EPA and the Department of Justice. The primary effect of the revisions is to amend or supplement language in the Model dealing principally with the subjects of access to Superfund site property and "institutional controls" designed to restrict land/water use on such properties. By publishing these revisions to Model language EPA seeks to broadly inform affected members of the public of changes in the government's policy with respect to settlements for the performance of remedial design/remedial action (RD/RA).

FOR FURTHER INFORMATION CONTACT:

Steve Botts, Mail Code 2272–A, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202)564–4217.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

Memorandum

Subject: Revisions to the Access and Institutional Control Provisions of the Model CERCLA RD/RA Consent Decree

From: Steven A. Herman, Assistant Administrator; Lois J. Schiffer, Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice.

To: EPA Regional Administrators, Regions I–X.

We herewith transmit to you final language revising selected provisions of the Model CERCLA RD/RA Consent Decree published in the July 28, 1995 **Federal Register** (60 Fed. Reg. 38,817). The attached language is designed to completely supplant that now appearing in (1) the definition of "Future Response Costs" contained in Section IV of the 1995 Model, (2) Paragraph 9 of the 1995 Model (entitled "Notice of Obligations to Successors-in-Title") and (3) Section IX of the 1995 Model (entitled "Access [and Institutional Controls]"). The new Model language has been developed over the last two years by an Institutional Controls Workgroup comprised of representatives from the Department of Justice and EPA Headquarters and Regional offices. A draft of the new Model language has been subjected to review and comment by all interested offices.

One important impetus behind the development of this revised Model language has been EPA's continued heavy reliance on Superfund remedies which are designed to contain discovered contamination on-site. At sites where the remedial strategy is to consolidate wastes on-site or contain them in place, it is particularly important to develop effective means of preventing the public from coming into contact with contaminated wastes or disturbing important features of the remedial technology. The revisions to the access and institutional control provisions of the Model have accordingly been drafted to provide the government with a broader range of options and more efficacious mechanisms for ensuring not only that government representatives and responsible private parties performing remedial work will have continuing access to sites as necessary to implement, operate, and maintain remedies, but also that needed restrictions on land and water use at Superfund site properties can be enforced against all persons, including subsequent purchasers of contaminated site property.

Legal research suggests that in most jurisdictions the most powerful tool available to government for guaranteeing site access and restricting site activities on a long-term basis is acquisition of a property interest (generally an easement or restrictive covenant) running with the land. Thus, the revised Model language contains procedures pursuant to which owners of contaminated site property can effectively convey to the United States (or other responsible entities) a right of access and a right to enforce needed land/water use restrictions that run with the land. It should be emphasized here that State law generally governs the conveyance of real property interests. It is therefore important that Regional offices be alert to the possible need to modify or supplement Model language regarding any such conveyance as necessary to comport with the requirements of applicable State law.

We also wish to remind the Regions that whenever EPA acquires an interest in real property in order to effectuate remedial action at a Superfund site (as, for example, in the case where EPA is granted an easement including access rights or the right to enforce land/water use restrictions on certain property), EPA must comply with the requirements of CERCLA Section 104(j) and the federal land acquisition regulations. Section 104(j) requires that the State in which the property is located agree in advance to accept transfer of any property interest held by EPA upon completion of the remedial action. The federal land acquisition regulations impose additional requirements designed to ensure the United States obtains a valid property interest. The Regions should consult with EPA's Office of General Counsel

regarding the requirements of CERCLA Section 104(j) and the land acquisition regulations whenever they are considering acquiring an interest in property.

The attached revisions to Model language will become effective upon the date of this memorandum. To the extent the revised Model language applies to the circumstances of any particular settlement, the responsible government negotiation team should incorporate it into both future consent decrees and those under negotiation on the date of this memorandum.

If you have any questions regarding these revisions to the Model CERCLA RD/RA Consent Decree, please contact Donald Frankel, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, (617) 450–0442, or Steve Botts, Regional Support Division, Office of Site Remediation Enforcement, Environmental Protection Agency, (202) 564–4217.

Proposed Revisions to Access & Institutional Controls Language for RD/RA CDs

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV, and Paragraph 85 of Section XXI. Future Response Costs shall also include all Interim Response Costs, and all Interest on the Past Response Costs that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from [insert the date identified in the Past Response Costs definition] to the date of entry of this Consent Decree.

[Note: For Consent Decrees in which there is an Owner Settling Defendant, add Paragraph 9, below. Paragraph 9(a) may be deleted if an easement will be recorded pursuant to Paragraph 26(c).]

9. *Notice to Successors-in-Title.*

a. With respect to any property owned or controlled by the Owner Settling Defendant(s) that is located within the Site, within 15 days after the entry of this Consent Decree, the Owner Settling Defendant(s) shall submit to EPA for review and approval a notice to be filed with the Recorder's Office [or Registry of Deeds or other appropriate office], _____ County, State of _____, which shall provide notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site on _____, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. Such notice(s) shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Owner Settling Defendant(s) shall record the notice(s) within 10 days of EPA's approval of the notice(s). The Owner Settling Defendant(s) shall provide EPA with a certified copy of the recorded notice(s) within 10 days of recording such notice(s).

b. At least 30 days prior to the conveyance of any interest in property located within the Site including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Owner Settling Defendant(s) conveying the interest shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section IX (Access and Institutional Controls), and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section IX (Access and Institutional Controls). At least 30 days prior to such conveyance, the Owner Settling Defendant(s) conveying the interest shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

c. In the event of any such conveyance, the Owner Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the Owner Settling Defendant(s). In no event shall the conveyance release or otherwise affect the liability of the Owner Settling Defendant(s) to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

IX. Access and Institutional Controls

[Note: Subparagraphs 26(a) and 27(a) should routinely be included in consent decrees. Subparagraphs 26(b) and 27(b) should be included where EPA determines that land/water use restrictions are needed on property owned by settling or non-settling landowners to ensure the integrity or protectiveness of the remedial action. Subparagraphs 26(c) and 27(c) should be included where EPA determines that a property interest running with the land (granting either a right of access or a right to enforce land/water use restrictions) should be acquired by EPA or another grantee from settling or non-settling landowners.]

26. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States[, the State,] and its [their] representatives, including EPA and its contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

i. Monitoring the Work;

ii. Verifying any data or information submitted to the United States [or the State];

iii. Conducting investigations relating to contamination at or near the Site;

iv. Obtaining samples;

v. Assessing the need for, planning, or implementing additional response actions at or near the Site;

vi. Implementing the Work pursuant to the conditions set forth in Paragraph 85 of this Consent Decree;

vii. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information);

viii. Assessing Settling Defendants' compliance with this Consent Decree; and

ix. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the integrity or

protectiveness of the remedial measures to be implemented pursuant to this Consent Decree. Such restrictions include, but are not limited to, [LIST SPECIFIC RESTRICTIONS]; and

c. execute and record in the Recorder's Office [or Registry of Deeds or other appropriate land records office] of _____ County, State of _____, an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 26(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to [(i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the other Settling defendants and their representatives, and/or (iv) other appropriate grantees].[1] Such Settling Defendants shall, within 45 days of entry of this Consent Decree,[2] submit to EPA for review and approval with respect to such property:

i. A draft easement, in substantially the form attached hereto as Appendix ___, that is enforceable under the laws of the State of _____, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States* (1970) (the "Standards").

Within 15 days of EPA's approval and acceptance of the easement, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement with the Recorder's Office [or Registry of Deeds or other appropriate office] of ____ County. Within 30 days of recording the easement, such Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

27. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants, Settling Defendants shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Settling Defendants, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree;

b. an agreement, enforceable by the Settling Defendants and the United States, to abide by the obligations and restrictions established by Paragraph 26(b) of this Consent Decree, or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and

c. the execution and recordation in the Recorder's Office [or Registry of Deeds or other appropriate land records office] of _____ County, State of _____, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 26(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to [(i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the other Settling defendants and their representatives, and/or (iv) other appropriate grantees].[3] Within 45 days of entry of this Consent Decree,[4] Settling Defendants shall submit to EPA for review and approval with respect to such property:

i. A draft easement, in substantially the form attached hereto as Appendix ___, that is enforceable under the laws of the State of ____, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States* (1970) (the "Standards").

Within 15 days of EPA's approval and acceptance of the easement, Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, the easement shall be recorded with the Recorder's Office [or Registry of Deeds or other appropriate office] of _____ County. Within 30 days of the recording of the easement, Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

28. For purposes of Paragraph 27 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, and/or restrictive easements.

Note: It may be appropriate to delete the preceding sentence if the property where access or land/water use restrictions are needed is owned by a non-settling party who EPA determines is a PRP. (See guidance entitled "Model RD/RA Consent Decree: Acceptable Modifications to Model Language (Directive No. 2)," March 25, 1992)]

If any access or land/water use restriction agreements required by Paragraphs 27(a) or 27(b) of this Consent Decree are not obtained within 45 days

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[1] If, at the time that a consent decree is being negotiated, EPA is not able to determine which persons should be the grantees of the easement, Paragraph 26(c) should be redrafted to insert the phrase "one or more of the following persons, as determined by EPA," prior to the bracketed list of potential grantees.

[2] If, at the time that a consent decree is being negotiated, EPA is unable to determine whether it wants to obtain an easement that runs with the land, but believes that it might want to obtain such an interest in the future, Paragraph 26(c) should be redrafted to insert the phrase "if EPA so requests," at the beginning of the subparagraph, and the Settling Defendants should be required to submit the draft easement a certain number of days from the date of EPA's request.

[3] If, at the time that a consent decree is being negotiated, EPA is not able to determine which persons should be the grantees of the easement, Paragraph 27(c) should be redrafted to insert the phrase "one or more of the following persons, as determined by EPA," prior to the bracketed list of potential grantees.

[4] If, at the time that a consent decree is being negotiated, EPA is unable to determine whether it wants to obtain an easement that runs with the land, but believes that it might want to obtain such an interest in the future, Paragraph 27(c) should be redrafted to begin with the phrase "if EPA so requests," and the Settling Defendants should be required to submit the draft easement within a certain number of days from the date of EPA's request.

of the date of entry of this Consent Decree, or any access easements or restrictive easements required by Paragraph 27(c) of this Consent Decree are not submitted to EPA in draft form within 45 days of the date of entry of this Consent Decree,[5] Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 27 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land. Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access and/or land/water use restrictions including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

29. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's [and the State's] efforts to secure such governmental controls.

30. Notwithstanding any provision of this Consent Decree, the United States [and the State] retain[s] all of its access authorities and rights, as well as all of its [their] rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

[FR Doc. 98–4820 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–59363; FRL–5773–3]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–97–10. The test marketing conditions are described below.

DATES: This notice becomes effective February 13, 1998. Written comments will be received until March 12, 1998.

ADDRESSES: Written comments, identified by the docket control number [OPPT–59363] and the specific TME number should be sent to: TSCA Nonconfidential Information Center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NEB–607 (7407), 401 M Street, SW., Washington, DC 20460. (202) 554–1404, TDD (202) 554–0551.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by [OPPT–59363]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Geraldine Hilton, New Chemicals Notice Management Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–435, 401 M St. SW., Washington, DC 20460; (202) 260–3992. email address: Hilton.geraldine@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–97–10. EPA has determined that test marketing of these new chemical substances described below, under the conditions set out in the TME applications, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–97–10. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–97–10

Date of Receipt: July 29, 1997.

Notice of Receipt: October 1, 1998 (62 FR 51527).

Applicant: Reichhold Chemicals, Inc.

Chemical: (G) Polyurethane Adhesive.

Use: (G) Hot melt adhesive for paper, wood, vinyl, etc.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential, commencing on first day of commercial manufacture.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: February 13, 1998.

Flora Chow,

Chief, New Chemicals Notice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 98–4806 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–F

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[5] If the obligation to obtain an easement pursuant to Paragraph 27(c) runs from the date of EPA's request for such an easement, as opposed to from the date of entry of the consent decree, this language should be revised accordingly.

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–59364; FRL–5773–6]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–97–11. The test marketing conditions are described below.

DATES: This notice becomes effective February 13, 1998. Written comments will be received until March 12, 1998.

ADDRESSES: Written comments identified by the docket number [OPPT–59364] and the specific TME number should be sent to: TSCA Nonconfidential Information Center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NEB–607 (7407), 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov.

Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by [OPPT–59364]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Geraldine Hilton, New Chemicals Notice Management Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–435, 401 M St. SW., Washington, DC 20460, (202) 260–3992. e-mail: hilton.geraldine@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–97–11. EPA has determined that test marketing of this new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the applications and in this notice must be met.

Notice of receipt of this application was not published in advance of approval. Therefore, an opportunity to submit comments is being offered at this time. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that this test marketing activity will not present an unreasonable risk of injury.

The following additional restrictions apply to TME–97–11. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–97–11

Date of Receipt: September 12, 1997. The extended comment period will close March 12, 1998.

Applicant: Reichhold Chemicals, Inc.

Chemical: (G) Polyurethane Adhesive.

Use: (G) Hot melt adhesive for paper, wood, vinyl, etc.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential, commencing on first day of commercial manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: February 13, 1998.

Flora Chow,

Chief, New Chemicals Notice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 98–4807 Filed 2-24-98; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5970–7]

Proposed Administrative Penalty Assessment

The Environmental Protection Agency (EPA) is providing notice of a proposed Administrative Penalty Assessment against McCune Development Company and Negus-Sons, Inc., and a proposed Administrative Penalty Assessment against Lamp, Rynearson & Associates, Inc. for alleged violations of the Clean Water Act (CWA). The EPA is also providing notice of opportunity to comment on the proposed assessments.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Clean Water Act. EPA provides notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(A).

The EPA is proposing a penalty against Respondents McCune Development Company, Lamp, Rynearson & Associates, Inc. and Negus-Sons, Inc. based on activities conducted by Respondents at the Willow Park Development Project located near Gretna, Nebraska. These penalties are related to the discharge and disposal of approximately 1600 cubic yards of dredged and fill material into a wetland area, which is a water of the United States, without a permit issued pursuant to section 404 of the CWA, 33 U.S.C. 1344. This discharge violated section 301 of the CWA, 33 U.S.C. 1311.

The procedures by which the public may submit written comments on a

proposed order, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The deadline for submitting public comment on an order is thirty (30) days after issuance of a public document.

On December 15, 1997, EPA commenced proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following complaint:

In the Matter of McCune Development Company, Lamp, Rynearson & Associates, Inc. and Negus-Sons, Inc., Docket No. VII–98–W–0007.

According to the terms of one Consent Agreement, Respondents McCune Development Company and Negus-Sons, Inc. shall each pay a civil penalty of five thousand dollars. According to the terms of a second Consent Agreement, Respondent Lamp, Rynearson & Associates, Inc. shall pay a penalty of five thousand dollars; however, this penalty shall be deferred, pending the performance by Respondent Lamp, Rynearson & Associates, Inc. of the Restoration of wetlands, as required by Order for Compliance, EPA Docket No. VII–98–0008. In the event the costs of Restoration are less than five thousand dollars, Respondent Lamp, Rynearson & Associates shall pay the difference between such costs and five thousand dollars.

For Further Information: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Consent Orders/Consent Agreements or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by McCune Development Company, Lamp, Rynearson & Associates, Inc. and Negus-Sons, Inc., is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this document.

Dated: February 3, 1998.

Dennis Grams,

Regional Administrator.

[FR Doc. 98–4787 Filed 2–24–98; 8:45 am]

BILLING CODE [illegible]

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 232–011544–003.

Title: The Lykes/APL Space Charter Agreement.

Parties:

Lykes Lines Limited, LLC ("Lykes")
American President Lines, Ltd.
APL Co. Pte Ltd. ("APL Co.")

Synopsis: The proposed amendment adds APL Co. as a party to the Agreement. It also clarifies the amount of space to be chartered and clarifies the circumstances under which Lykes may charter space to parties outside the Agreement. The amendment also extends the term of the Agreement indefinitely, establishes a date before which a party may not give notice of withdrawal, and makes other, administrative changes to the Agreement. The parties have requested a shortened review period.

Agreement No.: 232–011611.

Title: MOL/APL Slot Transfer Agreement.

Parties:

American President Lines, Ltd. ("APL")
APL Co. PTE Ltd ("APL")
Mitsui O.S.K. Lines, Ltd. ("MOL")

Synopsis: The proposed Agreement authorizes (1) the sale of space by APL to MOL from space APL charters from Lykes Lines Limited, LLC, pursuant to FMC Agreement No. 232–011544; (2) the sale or exchange of space between the parties on vessels chartered or operated by them; and (3) agreement on the terms and conditions relating to sailing schedules, service frequency, ports served, and other matters in the trade between United States Atlantic and Gulf Coast ports, and U.S. points via those ports, and ports and points in the United Kingdom, Continental Europe and on the Mediterranean Sea.

Agreement No.: 224–200686–002.

Title: Lake Charles—Lake Charles Stevedores Terminal Agreement.

Parties:

Lake Charles Harbor & Terminal District
Lake Charles Stevedores, Inc.

Synopsis: The proposed amendment replaces the previous understanding between the parties and concerns the terms and conditions under which the contractor handles cargo at the port. The proposed amendment also concerns the transfer of automated cargo handling equipment to the port and the operation of that equipment at the port. The term of the agreement runs until January 31, 1999 but may be further extended by the parties for one year periods.

Dated: February 19, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–4721 Filed 2–24–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 23, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. South Beach Limited Partnership, Little Rock, Arkansas; to acquire additional voting shares of P & W Bancshares, Inc., Little Rock, Arkansas,

and thereby indirectly acquire Central Bank & Trust, Little Rock, Arkansas.

Board of Governors of the Federal Reserve System, February 20, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4799 Filed 2–24–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 23, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Citizens Bancshares, Inc., Salineville, Ohio; to acquire 100 percent of the voting shares of Century Financial Corporation, Rochester, Pennsylvania, and thereby indirectly acquire Century National Bank and Trust Company, Rochester, Pennsylvania.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of First Bank, Katy, Texas.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Bethany Bancshares, Inc., Bethany, Missouri; to acquire up to 100 percent of the voting shares of Gallatin/New Hampton Bancshares, Inc., Albany, Missouri, and thereby indirectly acquire Bank of Gallatin/First State Bank, Gallatin, Missouri.

Board of Governors of the Federal Reserve System, February 20, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4797 Filed 2–24–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 23, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Republic Bancshares, Inc., St. Petersburg, Florida; to engage *de novo* through its subsidiary, Republic Bank, F.S.B., St. Petersburg, Florida, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4) of the Board's Regulation Y. The proposed activities will be performed throughout the State of Florida.

Board of Governors of the Federal Reserve System, February 20, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4798 Filed 2–24–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 11:00 a.m., Monday, March 2, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposal regarding a software contract within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 20, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4887 Filed 2–20–98; 4:48 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 962–3211]

Eye Research Associates, Inc., et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 27, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Judy Shepherd, FTC, Dallas Regional Office, 1999 Bryan St., Suite 2150, Dallas, TX 75201. (214) 979–9383. Matt Daynard, FTC/H–200, Washington, D.C. 20580. (202) 326–3291.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 19, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed Consent Order ("proposed order") from Eye Research Associates, Inc. d/b/a Eye Care Associates, ICKRS, d/b/a/ International Controlled Kerato Reformation Society, and Sami G. El Hage, O.D., the sole owner and President of the corporations.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns print advertisements and videotapes provided directly to consumers, and to optometrists for distribution under their own name to consumers, for proposed respondents' "CKR") ("Controlled Kerato Reformation") orthokeratology service ("CKR ortho-k"). CKR ortho-k is an eye care service involving the use of a series of contact lenses purportedly to reshape the cornea gradually for the treatment of myopia, or nearsightedness (difficulty seeing at a distance), hyperopia, or farsightedness (difficulty seeing up close), and astigmatism (blurred vision).

The Commission's complaint charges that the proposed respondents engaged in deceptive advertising in violation of Sections 5 and 12 of the FTC Act by making false and unsubstantiated claims that: (1) CKR ortho-k corrects nearsightedness and astigmatism thereby permanently eliminating the need for all corrective eyewear, including eyeglasses and contact lenses for nearsightedness and astigmatism; and (2) all or most people can achieve normal vision without eyeglasses or contact lenses on a permanent basis if they wear CKR ortho-k devices occasionally or at night.

The complaint further alleges that proposed respondents made false claims that: (1) Four named University studies prove that CKR ortho-k is safe and effective in correcting, controlling, or improving nearsightedness, farsightedness and astigmatism; and (2) consumer testimonials for respondents' CKR ortho-k services reflect the typical or ordinary experience of members of the public who receive those services, which experience is that CKR ortho-k patients typcially achieve 20/20 vision and no longer need corrective eyewear.

The complaint further alleges that proposed respondents made unsubstantiated claims that: (1) A significant number of people can achieve normal vision without eyeglasses or contact lenses on a permanent basis if they wear CKR ortho-k devices occasionally or at night; (2) all or most people will experience stabilized vision after only a few weeks or months of CKR otho-k treatments; (3) CKR ortho-k prevents and reverses deteriorating nearsightedness in children; (4) CKR ortho-k is as safe as contact lens wear; (5) CKR ortho-k is as effective as refractive surgical methods in correcting, controlling, or improving nearsightedness, farsightedness, and astigmatism; (6) CKR ortho-k has helped thousands of people achieve normal vision; and (7) CKR ortho-k provides commerical pilots and other career professionals with stable 20/20 vision thereby enabling them to meet occupational requirements for unaided vision.

The proposed order contains provisions designed to remedy the violations charged and to prevent proposed respondents from engaging in similar acts in the future.

Paragraph I of the proposed order prohibits proposed respondents from claiming that CKR ortho-k, or any substantially similar service (defined as any ophthalmic service or procedure using contact lenses or similar devices to modify the shape of the cornea and reduce or eliminate nearsightedness, farsightedness, and astigmatism): (1) Corrects nearsightedness and astigmatism thereby permanently eliminating the need for all corrective eyewear, including eyeglasses and contact lenses for those conditions; and (2) all or most people can achieve normal vision without eyeglasses or contact lenses on a permanent basis if they wear devices used with CKR ortho-k or any substantially similar service occasionally or at night. Paragraph I further prohibits proposed respondents from representing that four named University studies prove that CKR ortho-k or any substantially similar service is safe and effective in correcting, controlling, or improving nearsightedness, farsightedness, and astigmatism.

Paragraph II of the proposed order prohibits proposed respondents from making any representation for CKR ortho-k, or any substantially similar service, about: (1) The number of people who can achieve normal vision without eyeglasses or contact lenses on a permanent basis if they wear devices used with such service occasionally or at night; (2) the number of people will experience stabilized vision after only a few weeks or months of treatments under such service; (3) the ability of such service to prevent or reverse deteriorating nearsightedness in children; (4) the comparative safety of such service and contact lens wear; (5) the comparative effectiveness of such service and refractive surgical methods in eliminating nearsightedness,

farsightedness, or any form a astigmatism; (6) the number of people whom such service has helped achieve normal vision; and (7) the ability of such service to provide pilots and other career professionals with stable visual acuity sufficient to meet occupational vision requirements, unless, at the time the representation is made, proposed respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph III of the proposed order prohibits proposed respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, survey, or report.

Paragraph IV of the proposed order prohibits proposed respondents from representing that the experience represented by any user testimonial or endorsement of any service, procedure, or product represents the typical or ordinary experience of members of the public who use the service, procedure, or product, unless the representation is true, and competent and reliable scientific evidence substantiates that claim, or respondents clearly and prominently disclose either: (1) What the generally expected results would be for program participants; or (2) the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to achieve similar results.

Paragraph V of the proposed order prohibits proposed respondents from making any representation about the relative or absolute efficacy, performance, or benefits of any ophthalmic service, procedure, or product purporting to treat, mitigate, or cure nearsightedness, farsightedness, or astigmatism, unless the representation is true and, at the time the representation is made, proposed respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph VI of the proposed order requires that proposed respondents: (1) Not disseminate to any optometrist or eye care provider any material containing any representations prohibited by the order; (2) send a required notice to each optometrist or eye care provider who has attended one of proposed respondents' seminars since January 1, 1994 requesting that the optometrist cease using any materials previously received from proposed respondents that contain any claims violative of the order, informing the optometrist of this settlement, and attaching a copy of this proposed complaint and order; (3) in the event that proposed respondents receive any information that subsequent to receipt of the required notice any optometrist or eye care provider with whom the proposed respondents have an agreement to market and/or perform CKR services is using or disseminating any advertisement or promotional material that contains any representation prohibited by the order, immediately notify the optometrist or eye care provider that proposed respondents will terminate the optometrist or eye care provider's right to market and/or perform CKR ortho-k if he or she continues to use such advertisements or promotional materials; (4) terminate any such optometrist or eye care provider about whom proposed respondents receive any information that such person has continued to use advertisements or promotional materials that contain any representation prohibited by the order after receipt of the required notice; and (5) for a period of three (3) years following service of the order, send the required notice to each optometrist or eye care provider who attends proposed respondents' seminars who has not previously received the notice; the notices shall be sent no later than the earliest of: (1) The execution of a sales or training agreement or contract between proposed respondents and the prospective optometrist or eye care provider; or (2) the receipt and deposit of payment from a prospective optometrist or eye care provider of any consideration in connection with the sale of any service or rights associated with CKR ortho-k. The mailing shall not include any other documents.

Paragraph VII of the proposed order contains record keeping requirements for materials that substantiate, qualify, or contradict covered claims and requires the proposed respondents to keep and maintain all advertisements and promotional materials containing any representation covered by the proposed order. In addition, Paragraph VIII requires distribution of a copy of the consent decree to current and future officers and agents. Further, Paragraph IX provides for Commission notification upon a change in the corporate respondents. Paragraph X requires proposed respondent Sami G. El Hage, O.D. to notify the Commission when he discontinues his current business or employment and of his affiliation with any new business or employment. The proposed order, in paragraph XI, also requires the filing of a compliance report.

Finally, Paragraph XII of the proposed order provides for the termination of the order after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 98–4753 Filed 2–24–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[Dkt. 9284]

Mesa County Physicians Independent Practice Association, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts cr practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 27, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William Baer or Robert Leibenluft, FTC/H–374, Washington, D.C. 20580. (202) 326–2932 or 326–3688.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text to the consent agreement package can be obtained from the FTC Home Page (for February 19, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained

from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (Commission) has accepted, subject to final approval, an agreement to a proposed consent order from Mesa County Physicians Independent Practice Association, Inc. (Mesa IPA), a physician organization in Mesa County, Colorado. The agreement would settle ongoing litigation concerning charges by the Commission that Mesa IPA has violated Section 5 of the Federal Trade Commission Act by: (1) Conspiring to obstruct the entry of third-party payers into Mesa County; (2) acting as the *de facto* exclusive bargaining agent for its physician members; (3) fixing the terms on which its members deal with payers; and (4) collectively refusing to deal with payers.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order to modify in any way their terms. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by Mesa IPA that the law has been violated as alleged in the complaint.

The Complaint

The complaint, issued by the Commission on May 13, 1997, charges that Mesa IPA has restrained competition in the provision of physician services in the Mesa County area by fixing the prices and other terms on which its members deal with third-party payers. The allegations in the Commission's complaint are summarized below.

Mesa IPA, an organization of more than 180 physicians, includes at least 85% of all the physicians, and at least 90% of the primary care physicians (family practitioners, general practitioners, internists, and pediatricians), in private practice in Mesa County, Colorado, an area of over 100,000 people. The IPA was formed in 1987 to protect the economic interests of Mesa County physicians in their dealings with third-party payers. Mesa IPA contracted with Rocky Mountain Health Maintenance Organization, a third-party payer based in Mesa County, whose enrollees comprise at least 50% of the total patient volume of Mesa IPA's members. in 1993, Mesa IPA began negotiating on behalf of its members with several third-party payers seeking to enter Mesa County.

Mesa IPA operated as the *de facto* exclusive bargaining agent for its physician members in dealing with third-party payers. Mesa IPA encouraged its physician members not to deal individually with third-party payers, or to do so only on terms that were approved by the IPA's Contract Review Committee. Mesa IPA's Board of Directors approved a set of guidelines and a schedule of fee conversion factors to be used by the IPA's Contract Review Committee in reviewing contract offers from payers. Mesa IPA's fee conversion factors resulted in significantly higher prices for physician services being charged to several payers than would have been charged absent the agreement among the IPA's members.

Mesa IPA's members have not integrated their medical practices so as to create efficiencies sufficient to justify their collective contract negotiations and other conduct alleged in the complaint.

As a result of Mesa IPA's activities, a wide range of third-party payers of physician services, including preferred provider organizations, health maintenance organizations, and employer health care purchasing cooperatives, were excluded from doing business in Mesa County. Although most payers sought alternatives to Mesa IPA, they were forced either to contract with the IPA to obtain the physician services they needed to market viable plans to employers and consumers, or else to abandon their efforts to enter Mesa County. Mesa IPA's actions have harmed consumers in Mesa County by, among other things, increasing the prices paid by consumers for physician services, depriving consumers of the benefits of competition in the purchase of physician services, and hindering the development of alternative health care financing and delivery systems in Mesa County.

The Proposed Consent Order

The proposed consent order is designed to prevent the illegal concerted action alleged in the complaint, while allowing Mesa IPA to engage in legitimate joint conduct. Paragraph II of the proposed order contains the core operative provisions. It prohibits Mesa IPA from: (1) Engaging in collective negotiations on behalf of its members; (2) orchestrating concerted refusals to deal; (3) acting as an exclusive bargaining agent for its members; (4) restricting the ability of its members to deal with third-party payers and others individually or through arrangements other than Mesa IPA; (5) coordinating the terms of contracts with third-party payers with other physician groups in Mesa County or in any county contiguous to Mesa County; (6) exchanging or facilitating the exchange of information among physicians concerning the terms upon which physicians are willing to deal with third-party payers; and (7) encouraging or pressuring others to engage in any activities prohibited by the order.

Paragraph II also sets forth terms that Mesa IPA must observe, for a period of five years, if it seeks to act as an agent for individual physicians in dealings with third-party payers. Arrangements that do not involve agreements among competing providers on price or price-related terms, sometimes referred to as a "messenger model," can facilitate contracting between physicians and third-party payers. Although messenger models can take various forms, the key in any such arrangement is that it does not create or facilitate any agreement among competitors on price or price-related terms. The order permits Mesa IPA to use a messenger model, but prescribes the manner in which Mesa IPA may structure and operate such an arrangement (should it chose to employ one). This provision is necessary to guard against collusion, especially because the IPA has incorrectly claimed that some of its prior dealings with third-party payers were based on a messenger model. Thus, the messenger model specified in the order is tailored to the particular facts and circumstances of this case.

Paragraph II includes a proviso allowing Mesa IPA to engage in conduct (including collectively determining reimbursement and other terms of contracts with payers) that is reasonably necessary to operate (a) any "qualified risk-sharing joint arrangement," or (b) provided the IPA complies with the order's prior notification requirements,

any "qualified clinically integrated joint arrangement." The proviso addresses the arrangements that the IPA may enter into, rather than the overall nature of the group, because of physician group may enter into legitimate arrangements with some third-party payers but engage in illegal conduct with respect to others. For the purposes of the order, a "qualified risk-sharing joint arrangement" must satisfy two conditions. First, it must be one in which participating physicians share substantial financial risk. The order lists ways in which physicians might share financial risk. These track the four types of financial risk sharing set forth in the *Statements of Antitrust Enforcement Policy in Health Care*, issued jointly by the FTC and the Department of Justice.[1]

Second, to be a "qualified" risk-sharing arrangement, the arrangement must also be non-exclusive, both in name and in fact. An arrangement that either restricts the ability of participating physicians to contract outside the arrangement (individually or through other networks) with third-party payers, or facilitates refusals to deal outside the arrangement by participating physicians, does not fall within the proviso. Although exclusive physician joint arrangements are not necessarily anticompetitive, they can impair competition, particularly when they include a large portion of the physicians in a market. In light of Mesa IPA's large share of the physician market, this definition does not permit the IPA to form exclusive arrangements.

A "qualified clinically integrated joint arrangement" includes arrangements in which the physicians undertake cooperative activities to achieve efficiencies in the delivery of clinical services, without necessarily sharing substantial financial risk. For purposes of the order, such arrangements are ones in which the participating physicians have a high degree of interdependence and cooperation through their use of programs to evaluate and modify their clinical practice patterns, in order to control costs and assure the quality of physician services provided through the arrangement. As with risk-sharing arrangements, the definition of clinically integrated arrangements reflects the analysis contained in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care. In addition, as with risk-sharing arrangements, the clinically integrated arrangements must be non-exclusive.

[1] Statements of Antitrust Enforcement Policy in Health Care, issued August 28, 1996, 4 Trade Reg. Rep. (CCH) ¶ 13,153 (also available at http://www.ftc.gov).

The definition of a clinically integrated arrangement is by necessity less premise than that of a risk-sharing arrangement. Therefore, in order for a qualified clinically integrated joint arrangement to fall within the proviso, Mesa IPA must comply with the order's requirements for prior notification. The prior notification mechanism will allow the Commission to evaluate a specific proposed arrangement and assess its likely competitive impact, in order to help guard against the recurrence of acts and practices that have restrained competition and consumer choice.

Paragraph III requires that Mesa IPA (1) notify its members and certain third parties about the order; (2) amend its "Physician Manual" to bring the manual in compliance with the order; and (3) abolish its Contract Review Committee, which the complaint charges was one of the instruments through which the IPA orchestrated its anticompetitive activities. This paragraph also will require termination of any existing contracts with third-party payers that do not comply with Paragraph II of the order, at the earlier of the termination or renewal date of the contract, or receipt of a written request from the payer to terminate the contract. Automatic termination of such contracts is not required, to order to avoid disruption that might result from applying the order's prohibitions to existing contractual arrangements between Mesa IPA and third-party payers. In addition, Mesa IPA must, for the next five years, distribute copies of the complaint and order to new members; annually publish to members a copy of the complaint and order; and annually brief members on the meaning and requirements of the order and the antitrust laws. These provisions are aimed at monitoring, and hence preventing, possible anticompetitive conduct.

Paragraphs IV, V, and VI consist of various reporting procedures, consistent with those found in other Commission consent orders, that are designed to assist the Commission in monitoring compliance with the order. Finally, Paragraph VII terminates the order twenty years after the date it is issued, in accordance with Commission policy.

The consent order does not require Mesa IPA to reduce its share of primary care physicians in Mesa County. Although the "Notice of Contemplated Relief" issued along with the complaint in this case included such a structural change as a possible form of relief, the Commission has determined that structural relief is not necessary given changes in the market since the Commission issued its complaint. In particular, evidence suggests that significant numbers of IPA members are now contracting with third-party payers outside Mesa IPA on competitive terms, alternatives to Mesa IPA are developing, and a number of third-party payers have been able to enter the market or expand their presence in the market. Accordingly, the Commission has concluded that a consent order governing Mesa IPA's conduct will provide the necessary relief.

Donald S. Clark,

Secretary.

[FR Doc. 98–4754 Filed 2–24–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 971–0091]

PacifiCorp, et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 27, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Joseph Krauss, FTC/S–3627, Washington, D.C. 20580. (202) 326–2713.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 18, 1998), on the World Wide Web, at "http://

www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission has accepted from PacifiCorp and The Energy Group PLC (TEG), for public comment, an Agreement Containing Consent Order (Proposed Consent Order). The Commission has also entered into a Hold Separate Agreement that requires Proposed Respondents to hold separate and maintain certain assets until they are divested. The purpose of the Proposed Consent Order is to remedy the likely anticompetitive effects of PacifiCorp's acquisition of TEG.

II. Description of the Parties and the Transaction

PacifiCorp, which is headquartered in Portland, Oregon, provides retail electric utility service in seven western states: Oregon, Washington, California, Utah, Idaho, Wyoming, and Montana. PacifiCorp's 1996 retail electricity sales totaled 2.1 billion dollars. PacifiCorp also makes wholesale electricity sales to other utilities in the western United States. PacifiCorp's 1996 wholesale electricity sales totaled 739 million dollars. Finally, PacifiCorp also operates five coal mines in the northwestern United States and owns a power marketer that trades electric power throughout the United States.

TEG is a diversified energy company headquartered in London, England. TEG owns Peabody Coal Company (Peabody), which produces roughly 15 percent of the coal mined in the United States. TEG also owns a power marketer, which trades electric power throughout the United States and owns both electric power plants and an electric power transmission system in England. TEG's total revenue for the fiscal year ending September 30, 1996 was roughly 6 billion dollars.

PacifiCorp seeks to acquire 100 percent of the voting securities of TEG.

III. Industry Background

The generation and marketing of electricity is moving from a regulated environment to a competitive environment.[1] Currently, utilities in most states own both generating facilities and transmission facilities. State public utility commissions regulate rates charged by these utilities. In this regulated environment, utilities trade electricity to some extent in a wholesale market. To meet its electricity needs, a utility can purchase electricity from another utility or from an independent producer. The Federal Energy Regulatory Commission ("FERC") regulates interstate wholesale electricity sales and transmission. FERC permits wholesale electricity sales to be made at market rates if a power generator can show that it does not possess market power in the region in which it operates. Consequently, wholesale electricity rates are determined by the balance of supply and demand.

Many states are in the process of deregulating their electric utility industries. As this process progresses, the vertical integration that has historically characterized the industry is likely to diminish, and transmission and generation functions will be separated. In the deregulatd environment, electricity transmission would remain a regulated monopoly in which the operator of the transmission system is prohibited by FERC Orders 888 and 889 from discriminating against particular users. Electric power generator, however, would become competitive, allowing customers to choose their supplier of electricity. The end result of this deregulation process will be a market in which retail rates are no longer regulated by state utility commissions, but are determined by the balancing of supply and demand in a competitive market. The differences between wholesale and retail electricity rates, which are largely a product of their different regulatory environments, will disappear or will be significantly reduced.

In the current wholesale electricity market, short periods of time (e.g., hour or one-half hour periods) often represent distinct product markets because electricity demand cannot easily be shifted from one time period to another and because electricity cannot easily be stored in large quantities. As retail electricity sales are deregulated, retail rates will also likely be priced on an hour-by-hour basis.

Constraints on transmission capacity typically delimit geographic markets as regional areas comprised of several states. One such geographic market is the area included within the Western Systems Coordinating Council ("WSCC"). The WSCC coordinates interchange of electricity among power plants and transmission systems located within the eleven western states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, and parts of southwestern Canada and northwestern Mexico.

While transmission constraints limit the geographic area within which electricity is generated and consumed, trading among buyers and sellers in the wholesale electricity market links electricity markets into larger trading areas, one of the largest being the United States as a whole.

Electricity demand in a particular region at a particular time is met by utilizing or "dispatching" power plants in an order that is likely to be based substantially on plants' variable cost of generating electricity. Given current technology and fuel prices, nuclear power plants have low variable costs and are dispatched first. Hydroelectric plants operating on a run-of-stream basis also have very low variable costs and are usually dispatched as long as they are operating on that basis.[2] Coal-fired power plants have higher variable costs, and natural gas plants generally have even higher variable costs.

As a consequence of the dispatch order discredited above, competition between a small number of plants can be critical in setting price. In the WSCC, during periods of lower or off-peak demand, gas-fired plants generally are not utilized because of their high variable costs.[3] Consequently, for off-peak periods in the WSCC, coal-fired power plants frequently are the price-setting, marginal plants.

California is one of the first states that has started to deregulate its retail electricity sales. California is currently in the process of establishing a power exchange ("PX"), modeled on the

[1] See Timothy Brennan, *A shock to the System: Restructuring America's Electricity Industry* (1996); Joskow, *Restructuring, Competition and Regulatory Reform in the U.S. Electricity Sector, 11(3) Journal of Economic Perspectives 119–138 (1997); and Comment of the Staff of the Bureau of Economics of the Federal Trade Commission before the Federal Energy Regulatory Commission* (August 7, 1995).

[2] Although hydroelectric power plants have low variable costs, river flow is often insufficient to dispatch these plants at full capacity 24 hours a day. When river flow is low, some hydroelectric capacity is held back during off-peak periods and dispatched at periods of peak electricity demand.

[3] Off-peak hours in the western U.S. are generally recognized by the industry to consist of the eight hours between 11:00 PM and 7:00 AM Monday through Saturday, and all day Sunday. Peak hours are recognized by the industry to consist of consist of the sixteen hours between 7:00 AM and 11:00 PM Monday through Saturday.

system used in the United Kingdom, which will run a centralized auction for the purchase of electricity. Under the California reforms, each generating plant will bid to supply power to the state's PX. The PX will then rank generators' bids from lowest to highest prices, and choose the lowest-cost bids necessary to meet projected demand. All suppliers will receive the price of the last increment of supply necessary to fulfill demand, even if they bid a lower price. Consequently, in the system anticipated to be used in California, the marginal supplier will set the price for the entire system.

Entry into an electricity market can occur through the construction of a new power plant or the construction of new transmission capacity, which would enable distant electricity producers to compete more effectively. However, the time required for obtaining regulatory approval and for construction prevents either type of entry from quickly correcting anticompetitive behavior.

IV. Threat to Competition

A. Raising Rivals' Costs

Navajo Generating Station (Navajo) is a 2,250-megawatt coal-fired power plant located in the north-central section of Arizona. Navajo is supplied exclusively from Peabody's Kayenta mine via an 80-mile dedicated rail line. Mohave Generating Station (Mohave) is a 1,580-megawatt coal-fired power plant located in southern Nevada. Mohave is supplied exclusively from Peabody's Black Mesa Mine through a 275-mile coal slurry pipeline. Long-term contracts govern the terms on which Peabody supplies Navajo and Mohave.

Navajo and Mohave are absolutely dependent upon the Kayenta and Black Mesa coal mines for their fuel supply because of their extreme isolation relative to rail lines and other coal mines. There are no other economic sources of fuel, coal or otherwise, for these two large power plants.

PacifiCorp owns roughly 9,000 megawatts capacity in the Western Systems Coordinating Council (WSCC), an organization of electric utilities and power marketers organized to improve the reliability of power transmission and delivery in the western United States and parts of southwestern Canada and northwestern Mexico. The WSCC represents a geographic market since transmission constraints severely limit imports. The WSCC represents a geographic market since transmission constraints severely limit imports. Sub-regions within the WSCC may also represent geographic markets, at certain times, given that the transmission capacity connecting subregions is limited and may be inadequate to balance supply and demand across the subregions.

A firm can sell its product at a higher price if its rivals charge higher prices. Thus, a firm can profitably increase its own price if it can take actions at low cost to itself that raise the costs, and subsequently the price, of its rivals. By vertically integrating with suppliers of a large share of some key input, a firm may be able to increase its rivals' costs. Given this, PacifiCorp's acquisition of Peabody, which is the exclusive supplier of coal to certain power plants that compete with PacifiCorp's own power plants, raises antitrust concern. Specifically, PacifiCorp would have an incentive to increase fuel costs at Navajo and Mohave in order to drive up the market price of electricity in the western United States. In the near term, PacifiCorp would be able to realize this higher price on its net wholesale electricity sales. In the long-term, assuming deregulation, PacifiCorp might also be able to realize this higher price on some of its retail electricity sales.

The extent of the anticompetitive harm caused by PacifiCorp's acquisition of Peabody depends on two factors: First, how much discretion does the mine owner have to affect the fuel costs at Navajo and Mohave given the long-term contracts between Peabody and the plan owners? Second, over what periods, if any, and to what extent will changing the costs of Navajo and Mohave affect the market price of electricity?

The long-term contracts that govern the supply of coal to Navajo and Mohave have a modified cost-plus format that makes them vulnerable to cost manipulation. A long history of cost disputes between the parties underlines the supplier's discretion to determine cost levels at the power plants. Consequently, post-merger, PacifiCorp could increase Navajo and Mohave's costs. Alternatively, an independent, profit-maximizing Peabody might find it in its interests to grant the power plants a discount on coal pricing. A merged PacifiCorp/Peabody, however, might decline to grant such discounts because increased output at Navajo and Mohave might decrease wholesale electricity prices in the WSCC and cause PacifiCorp/Peabody to earn less on its electricity sales. In this context, failure to grant a price concession amounts to a price increase.

Peabody documents reveal that price concessions in the near future for both Navajo and Mohave are a real possibility. Peabody documents show that the company has considered granting Navajo price discounts, because the plant has been underutilized during off-peak hours in the recent past. Moreover, Peabody documents also reveal that it expects the coming deregulation of the electricity industry will intensify competitive pressures on both coal-fired power plants and their coal suppliers. Peabody documents also reveal that Mohave will face a costly decision in the next several years on whether to install scrubbers to comply with environmental regulations and will implicitly be looking to its coal supplier for cost relief.

PacifiCorp's roughly 9,000 megawatts of generating capacity, Navajo's 2,250 megawatts of generating capacity, and Mohave's 1,580 megawatts of generating capacity represent a comparatively small share of the 138,000 megawatts of generating capacity in the WSCC. In a market with numerous competitors such as electricity generation in the WSCC, one might assume if coal costs at two plants such as Navajo and Mohave were to increase and their generation consequently declined, other plants would simply increase output and there would be no effect on the market-clearing price. However, there is substantial evidence that manipulating fuel cost at Navajo could have a significant effect on the market price for wholesale electricity.[4] A Peabody document recognizes that if Navajo were to go to full capacity utilization during off-peak hours, it would produce 1,200 megawatts of additional power, depressing electricity prices. Also, computer modeling using programs well-accepted in the industry shows that manipulating prices at Navajo would have an effect on wholesale electricity prices in the WSCC.

How can participation of suppliers comprising only a small fraction of capacity affect the market price for electric power? The answer lies in the way in which power plants are dispatched. Power plants tend to have very flat cost functions until they reach their capacity.

Thus, power plants tend to operate at maximum capacity if they can economically do so at the prevailing price. Otherwise, they tend to be idled.[5]

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[4] At current electricity prices, Mohave operates at full capacity. Hence Mohave is currently an infra-marginal producer and unlikely to be a price setter. However, as California deregulates its electricity market, prices are likely to fall and Mohave could then be in a position to be a marginal, price-setting plant.

[5] Because coal-fired plants require a start-up period of several days, their output would be cut

Continued

Consequently, most of the power plants generating electricity, at any particular time period, have almost no ability to expand output and offset anticompetitive behavior. Given these circumstances, the power plants that could defeat anticompetitive behavior here would be those power plants with excess capacity that could produce and deliver to the areas served by Navajo and Mohave electricity at the same cost (or slightly above) Navajo's or Mohave's. The evidence indicates that there are no such power plants here.

During periods of low electricity demand in the WSCC (e.g., nighttime hours during the spring), electricity demand is met using some hydroelectric capacity, nuclear power plants, and some coal-fired power plants. Gas-fired power plants tend to be idled during these periods. Since coal-fired power plants are the last plants to be dispatched during these time periods, the market price of electricity during these periods is determined by the price at which the last-dispatched coal-fired power plant supplies electricity. Since periods of low electricity demand represent a substantial portion of the year and since fuel costs at Navajo and Mohave affect market price during these times, higher fuel prices at Navajo and Mohave can cause significant harm to consumers. Indeed, to give a rough sense of how this acquisition could increase concentration in markets for wholesale electricity during off-peak hours, a hypothetical merger of PacifiCorp's electric plants with Mohave and Navajo would make the market for coal-fired electricity in the WSCC highly concentrated and give PacifiCorp a 35% share, a level at which, under the *Merger Guidelines*, could lead to unilateral anticompetitive effect.

Cost manipulation at Navajo and Mohave could affect electricity prices in the WSCC not only during those off-peak hours when Navajo and Mohave are the marginal, price-setting plants, but also during a broader period of time. As noted above, power plants are dispatched in large part based on their variable cost, which in turn is largely determined by their fuel costs. This dispatch order can be thought of as a supply curve for electricity. Given this supply curve, if the fuel price at one power plant increases, then this power plant is removed from its current position in the supply curve and placed in a position further along the supply curve. This reorders the supply curve as higher priced plants are dispatched earlier along the affected section of the supply curve. This leads to higher prices every time electricity demand in a particular period intersects the affected section of the supply curve. Higher fuel prices at Navajo and Mohave could have a significant effect on price along a significant portion of the supply curve. If either plant were forced to close down, its removal would affect prices at all points above the plant on the supply curve.

back to some minimal level (e.g., 40 percent of capacity) when they are uneconomic for short periods of time (e.g., nighttime).

B. Abuse of Proprietary Information

Power plant operators currently compete to supply electricity in informal wholesale markets characterized by bilateral contracts. In some states (e.g., California), power plant operators will soon compete in formal auctions to supply electricity. In all of these situations, power plant operators buy and sell both directly and through "power marketing" affiliates that have been expressly created to compete in the deregulating wholesale market for electric power.

Competition in the wholesale electricity market could be adversely affected by this acquisition throughout the United Stats because PacifiCorp may gain access, through Peabody's coal contracts and coal supply relationships, to highly sensitive data on competitors' costs and to real-time information relating to operating conditions of competing generators of electrical power.

A coal supplier is able to obtain competitively-sensitive information about the day-to-day operation of the power plant it supplies, including when the plant is experiencing downtime and when it is facing transmission bottlenecks. In addition, because coal costs comprise 90% of a coal-fired power plant's variable cost of generating electricity, a coal supplier will know cost information sufficient to predict the price the power plant will likely bid.

Peabody is a significant supplier of coal to coal-fired plants, supplying 27% of the coal that goes to such plants in the WSCC and 15% of the coal going to such plants in the United States. Many of Peabody's coal supply contracts have no protection against the transfer of such competitively-sensitive information, since they were executed prior to regulatory reform and before purchasers under these contracts had reason to be concerned about the competitive sensitivity of the information that could be revealed to competitors through such contracts or through the day-to-day relationship between the coal supplier and customer. Consequently, by acquiring Peabody, PacifiCorp will gain an invaluable window on real-time information relating to operating conditions and production plans at many of the approximately 150 power plants supplied by Peabody. By enabling PacifiCorp to predict supply shifts and consequent price movements in the market, this information gives PacifiCorp a significant competitive advantage in power marketing.

PacifiCorp will be able to trade on that information at the expense of other traders of wholesale electricity. Expected profits for both incumbents and prospective entrants will be lower if PacifiCorp possesses inside information regarding competitors' costs, supply conditions, and future operating plans. Consequently, as a result of PacifiCorp's perceived information advantage regarding electricity supply and costs, competitive entry in power marketing will be discouraged, and existing power marketing companies may defer greater investments in such enterprises and perhaps even exit, making the market for wholesale electricity operate less efficiently.

V. The Proposed Complaint and Consent Order

The Federal Trade Commission has accepted for public comment an Agreement Containing Consent Order with PacifiCorp and TEG in settlement of the charges in the proposed complaint. The proposed complaint alleges that PacifiCorp's acquisition of TEG violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The proposed complaint alleges that the Acquisition will lessen competition in the supply of electricity in the WSCC and in various geographic markets in the United States as a whole.

To remedy the alleged harm to competition from raising rivals costs, the proposed Consent Order would require PacifiCorp to divest Peabody Western Coal Company (PWCC), the Peabody subsidiary that owns the Black Mesa and Kayenta mines, to an acquirer approved by the Commission. The required divestiture solves the competitive concerns raised in this acquisition in the WSCC by assuring the PacifiCorp would not have an anticompetitive incentive to raise fuel prices at Navajo and Mohave in order to raise the price of electricity in the WSCC.[6] The divestiture remedy is

[6] Disvestiture is unnecessary elsewhere because there is no evidence that other captive coal-fired power plants are marginal price-setters in their geographic market as Navajo and Mohave are.

consistent with longstanding Commission policy which favors the structural approach to remedies, rather than the behavioral approach which seeks to govern conduct through the use of rules.[7]

The fuel supply contracts between PWCC and Navajo and Mohave give the Navajo owners a right of first refusal to buy the Kayenta mine and Mohave owners a right of first refusal to buy the Black Mesa mine. Because these rights of first refusal could delay the divestiture process, the proposed Consent Order affords PacifiCorp a period of nine months following the Acquisition to complete the required divesture, and under certain circumstances, extends the time for divestiture to as late as March 1, 2000. Under the circumstances of this case, the Commission believes that the unusually long time afforded Respondents to complete the divestiture and possible extension of that time under the terms of the proposed Consent Order are likely to lead to substantial economic harm. PacifiCorp's incentive to increase the fuel price at Navajo and Mohave depends on PacifiCorp's sales of electricity at the market price. In the near-term, most of PacifiCorps electricity sales are at regulated rates or a prices specified by long-term contracts. Thus, in the near-term, PacifiCorp will not have a strong incentive the increase fuel prices at Navajo and Mohave because PacifiCorp has limited net sales of electricty at the market price. However, as PacifiCorp's wholesale contracts are renegotiated and as PacifiCorp's retail sales are deregulated, PacifiCorp gains an ever greater incentive to increase electricity prices by raising the fuel price at Navajo and Mohave.

To remedy the alleged threat to competition from abuse of confidential customer information, the proposed consent order forbids Peabody from transferring PacifiCorp non-public information regarding Peabody customers who object to such disclosure and who either purchase coal from Peabody under contracts with a term of one-year or longer or who purchased in excess of one million tons of coal from Peabody during the preceding year. By preventing the transfer of this information, the Proposed Consent Order prevents PacifiCorp from trading on proprietary information in a way that is likely to retard development of a fully competitive market in the wholesaling of electric power.

VI. Opportunity for Public Comment

The proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested person. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the proposed Consent Order and the comments received and will decide whether it should withdraw from the Agreement Containing Consent Order, make final the Consent Order, or take such other action as the Commission may determine to be in the public interest.

The Commission anticipated that the proposed Consent Order will cure the anticompetitive effects of the Acquisition as alleged in the proposed complaint. The purpose of this analysis is to invite public comment on the proposed Consent Order, including the proposed divestitures, to aid the Commission in its determination of whether to make final the proposed Consent Order. This analysis is not intend to constitute an official interpretation of the proposed Consent Order, nor is it intended to modify the term of the proposed Consent Order in any way.

Donald S. Clark,

Secretary.

[FR Doc. 98–4755 Filed 2–24–98; 8:45 am]

BILLING CODE 6750–01–M

[7] *See* William J. Baer, *FTC Perspectives on Competition Policy and enforcement Initiatives in Electric Power*, before the Conference on the New Rules of the Game for Electric Power: Antitrust & Anticompetitive Behavior (Washington D.C., Dec. 4, 1997) at 12–13

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR); Revision of Medical Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The following Standard Form is revised to add standard information fields and change the stocking to local reproduction: SF 515, Medical Record—Tissue Examination.

You can obtain the updated camera copy in three ways: From the "U.S. Government Management Policy CD-ROM; On the internet. Address: http://www.gsa.gov/forms, or ; From CARM, Attn.: Barbara Williams, (202) 501–0581.

DATES: Effective upon publication in the **Federal Register** (February 25, 1998).

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: February 18, 1998.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 98–4796 Filed 2–24–98; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration; Delegation of Authority

Notice is hereby given that I have delegated to the Commissioner of Food and Drugs the authorities vested in the Secretary of Health and Human Services under Title III, Section 354 of the Public Health Service Act (43 U.S.C. 262 *et seq*), as amended hereafter.

This delegation supersedes the delegation memorandum from the Acting Assistant Secretary for Health to the Commissioner of Food and Drugs dated, June 1, 1993, titled "Delegation of Authority for Section 354 of the Public Health Service Act, as amended by Public Law 102–539, the Mammography Quality Standards Act of 1992."

This delegation shall be exercised under the Department's existing delegation of authority and policy on regulations. In addition, I have affirmed and ratified any actions taken by you or your subordinates which involved the exercise of the authorities delegated herein prior to the effective date of the this delegation. This delegation is effective upon signature.

Dated: February 11, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–4723 Filed 2–24–98; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

HHS Management and Budget Office; Office of Facilities Services; Statement of Organization, Functions and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services is being amended at Chapter AM, HHS Management and Budget Office, Chapter AMR, Office of Facilities Services, as last amended at 61 FR 55988–90, October 30, 1996. The functional statement for the Office of Facilities Services is being amended to reflect its current responsibility for

Health and Wellness Centers. The change is as follows:

Under paragraph, "C. AMR.20 Functions," subparagraph "2", Division of Policy Coordination (AMR1), delete item g and replace with the following:

g. Establishes, maintains, and promulgates HHS policy for the Health and Wellness and Day Care Centers. Provides technical assistance on a Department-wide basis as required.

Dated: February 12, 1998.

John J. Callahan,

Assistant Secretary for Management and Budget.

[FR Doc. 98–4724 Filed 2–24–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research; Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following subcommittees scheduled to meet during the month of March 1998:

Name: Health Care Policy and Research Special Emphasis Panel "Effectiveness of Children's Mental Health and Substance Abuse Treatment in the General Sector".

Date and Time: March 19–20, 1998, 8 a.m.

Place: Doubletree Hotel, 1750 Rockville Pike, Parklawn Room, Rockville, Maryland 20852.

Open March 19, 9:00 a.m. to 9: 15 a.m.
Closed for remainder of meeting.

Name: Health Care Policy and Research Special Emphasis Panel "Quality of Care Under Varying Features of Managed Care Organizations".

Date and Time: March 26–27, 1998, 8 a.m.

Place: Doubletree Hotel, 1750 Rockville Pike, Halpine Room, Rockville, Maryland 20852.

Open March 26, 8 a.m. to 8:30 a.m.
Closed for remainder of meeting.

Purpose: To review and evaluate grant applications.

Agenda: The open session of the meetings will be devoted to business covering administrative matters and reports. During the closed sessions, the Subcommittees will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c) (6), the Administrator, Agency for Health Care Policy and Research, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Mrs. Sheila Simmons, Committee Management Officer, Office of Scientific Affairs, Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1452 x 1627.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: February 17, 1998.

John M. Eisenberg,

Adminstrator.

[FR Doc. 98–4752 Filed 2–24–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Request for Applications Under the Office of Community Services' Fiscal Year 1998 Combined Program Announcement

AGENCY: Office of Community Services, ACF, DHHS

ACTION: Announcement of availability of funds and request for applications under the Office of Community Services' Combined Program Announcement for FY 1998.

SUMMARY: The Office of Community Services (OCS) invites eligible entities to submit applications for FY 1998 funding of competitive grants serving low income persons and families under the following OCS programs:

(1) Urban and Rural Community Economic Development
(2) Community Food and Nutrition
(3) Job Opportunities for Low-Income Individuals
(4) Residential Energy Assistance Challenge Option (REACH) Program
(5) CSBG/Training, Technical Assistance and Capacity Building
(6) Family Violence Prevention and Services

Applications will be screened and evaluated as indicated in this Combined Program Announcement. Awards will be contingent on the outcome of the competition and the availability of funds. There is no limit on the number of applications that can be submitted under a specific Program/Priority Area as long as each application contains a proposal for a different project. However, an applicant can receive only one grant in each Program/Priority Area. Also, applicants that receive more than one grant for a common budget/project period must be mindful that salaries and wages claimed for the same persons cannot collectively exceed 100% of total annual salary.

ADDRESSES: Prior to submitting an application, potential applicants must obtain a copy of the Application Kit, containing additional program information, forms, and instructions. Application Kits are available by writing or calling the Office of Community Services at 5th Floor West, Aerospace Building, 370 L'Enfant Promenade, S.W., Washington DC 20447.

To obtain a copy of the applicable Application Kit, call: (202) 401–9354 and 401–9345 for Community Economic Development, (202) 401–9354 and 401–9345 for Community Food and Nutrition Kit, (202) 401–1195 for REACH and/or JOLI Kit (202) 401–4787 for CSBG/T&TA and/or Family Violence Kit.

FOR FURTHER INFORMATION CONTACT: Requests for program-specific technical information should be directed to the Program Contact Person identified for each program covered by this Combined Program Announcement.

A copy of the **Federal Register** containing this Combined Program Announcement is available for reproduction at most local libraries and Congressional District Offices. It is also available on the Internet through GPO Access at the following web address: http://www.access.gpo/su__docs/aces/aces140.html

If this Combined Program Announcement is not available at these sources, it may be obtained by writing to the office listed under **ADDRESSES** above.

APPLICATION DEADLINES: The closing dates for submission of applications are provided in the Supplementary Information section of this Combined Program Announcement. Mailed applications postmarked after the closing date will be classified as late. Refer to application submission below for other details.

SUPPLEMENTARY INFORMATION:

A. Program Announcements

Individual Program Announcements for FY 1998 will not be published in the **Federal Register**. Rather, OCS is publishing this Combined Program Announcement in the **Federal Register**. Where applicable, this Combined Program Announcement contains the following information for each of the above-listed programs: Legislative Authority; Eligible Applicants and Availability of Funds; Eligible Activities; Review Criteria; Project Period and Budget Period; Type of Awards; Matching Requirement; Date of Application Kit; Application Due Date; and Program Contact Person. Detailed information on how to obtain Application Kits containing additional

program information, forms, and instructions for preparing and submitting applications can be found in the next paragraph.

B. General Instructions

In order to be considered for a grant under this Combined Program Announcement, an application must be submitted on the forms supplied and in the manner prescribed by OCS. Detailed descriptions of evaluation criteria which will be used to determine award selection is contained in the Application Kit. When requesting an Application Kit, the applicant must specify the particular Program for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any program-specific evaluation criteria. Applications Kits for each program include all necessary forms and instructions; they are available for reading and downloading from the Internet at the OCS Website at: http://www.acf.dhhs.gov/programs/ocs

C. Application Submission

Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants and Audit Resolution, 370 L'Enfant Promenade, S.W., Mail Stop 6C–462, Washington, D.C. 20447; with the note "Attention: [insert Name of Program or CFDA #]". Mailed applications for the REACH program should be addressed to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services, Division of Community Demonstration Programs, 370 L'Enfant Promenade, S.W., 5th Floor West, Washington, D.C. 20447; Attention: Application for REACH Program.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications handcarried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants and Audit Resolution, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/ package containing the application with the note "Attention: [insert Program Name or CFDA #]". (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.) ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late Applications

Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines

ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of the mail service. Determinations to extend or waive deadline requirements rest with ACF's Chief Grants Management Officer.

D. Programs Included in This Combined Program Announcement

Pertinent information of concern for potential applicants for each of the above-listed programs is set forth below:

*1. Urban and Rural Community Economic Development (CFDA * 93.570)*

Deadline Date: May 15, 1998.

(A) *Legislative Authority:* Section 681(a) and 681(b)

(2) of the Community Services Block Grant Act, as amended.

(B) *Eligible Applicants and Availability of Funds:* The OCS is authorized to make funds available to support program activities of national or regional significance to alleviate the causes of poverty in distressed communities with special emphasis on community and economic development activities:

(1) Operational Grants (Sub-Priority Area 1.1)

Funds are awarded for the purpose of providing employment and ownership opportunities for low-income people through business, physical or commercial development. Eligible applicants are private, locally initiated, non-profit community development corporations (CDCs), governed by a board consisting of low income residents of the community and business and civic leaders which has as a principal purpose planning, developing, or managing low income housing or community development projects.

Funds Available: $17,000,000. Approximately 25 grants will be awarded competitively.

(2) Historically Black Colleges and Universities (Sub-Priority Area 1.2)

Funds are awarded to CDCs in conjunction with HBCUs for the purposes stated above. The CDC must partner with an HBCU and the HBCU must play a significant role in the project. Maximum grant award will not exceed $350,000. Funds Available: $2,100,000. Approximately 6 grants will be awarded competitively.

(3) Pre-Development Grants (Sub-Priority Area 1.3)

Funds are provided to recently established CDCs which need funds for evaluating the feasibility of potential projects which address identified needs in low income communities, develop a business plan related to one of those projects, and mobilize resources to be contributed to one of those projects. Eligible applicants are private, locally initiated, non-profit community development corporations (CDCs), governed by a board consisting of low income residents of the community and business and civic leaders. In addition, the CDCs must not have received prior OCS funding; have been in existence for no more than 3 years or have been in existence longer than 3 years, but have no record of participating in economic development-type projects. Maximum grant award will not exceed $75,000. Funds Available: $750,000. Approximately 10 grants will be awarded competitively.

(4) Developmental Grants (Sub-Priority Area 1.4)

Funds are awarded in the form of discretionary grants through a competitive process to provide employment and community

development opportunities for low income individuals through business, physical or commercial development. Maximum grant award will not exceed $250,000. Eligible applicants are organizations which received pre-development grants from OCS in FY 1995 and FY 1996.

Funds Available: $2,500,000. Approximately 10 grants will be awarded competitively.

(5) Administration and Management Expertise (Sub-Priority Area 1.5)

Funds are awarded in the form of discretionary grants through a competitive process to provide administrative and management expertise to OCS funded grantees who have less experience in dealing with the day-to-day issues and challenges presented in promoting community economic development as well as to those grantees who have encountered difficulties in operationalizing their work program. Eligible applicants are OCS funded grantees that have completed several successful projects.

Funds Available: $500,000. Approximately 1 grant will be awarded competitively.

(6) Training and Technical Assistance (Sub-Priority Area 1.6)

Funds are awarded in the form of discretionary grants through a competitive process to develop instructional programs, national conferences, seminars, and other activities to assist community development corporations (CDCs). Eligible applicants are private non-profit organizations. Applicants must operate on a national basis and have significant and relevant experience in working with CDCs. Funds Available: $210,000. Approximately 1 grant will be awarded competitively.

Review Criteria for Applications Submitted Under Sub-Priority Areas 1.1, 1.2, and 1.4

(a) Criterion I: Analysis of Need (Maximum: 5 points).
(b) Criterion II: Organizational Experience in Program Area and Staff Responsibilities.
(i) Organizational Experience in Program Area (0–15 points).
(ii) Staff Skills, Resources and Responsibilities (0–10 points).
(c) Criterion III: Project Implementation (Maximum: 25 points).
(d) Criterion IV: Significant and Beneficial Impact.
(i) Significant and Beneficial Impact (0–5 points).
(ii) Community Empowerment Consideration and Partnership with Child Support Enforcement Agency (0–5 points).
(iii) Cost-per-Job (0–5 points).
(iv) Career Development Opportunities (0–5 points).
(e) Criterion V: Public-Private Partnerships.
(i) Mobilization of resources: (15 points).
(ii) Integration/coordination of services: (5 points).
(f) Criterion VI: Budget Appropriateness and Reasonableness (Maximum: 5 points).

Review Criteria for Applications Submitted Under Sub-Priority Areas 1.3

(a) Criterion I: Analysis of Need (Maximum: 15 points).
(b) Criterion II: Organizational Capability and Capacity.
(i) Organizational experience in program area (5 points).
(ii) Management capacity (5 points).
(iii) Staffing (5 points).
(iv) Staffing responsibilities (5 points).
(c) Criterion III: Project Design, Implementation and Evaluation.
(i) Project implementation component (25 points).
(ii) Evaluation component (5 points).
(d) Criterion IV: Significant and Beneficial Impact (Maximum: 25 Points).
(e) Criterion V: Budget Appropriateness and Reasonableness (Maximum: 10 points).

Review Criteria for Applications Submitted Under Sub-Priority Areas 1.5

(a) Criterion I: Organizational Experience in Program Area and Staff Responsibilities.
(i) Organizational Experience in Program Area (0–10 points).
(ii) Staff Skills, Resources and Responsibilities (0–10 points).
(b) Criterion II: Work Program (Maximum: 30 points).
(c) Criterion III: Significant and Beneficial Impact (Maximum: 30 points).
(d) Criterion IV: Public Private Partnerships (15 Points).
(e) Criterion V: Budget Appropriateness and Reasonableness (Maximum: 5 points).

Review Criteria for Applications Submitted Under Sub-Priority Area 1.6

(a) Criterion I: Need for Assistance (Maximum: 10 points).
(b) Criterion II: Organizational Experience in Program Area and Staff Responsibilities (Maximum: 20 points).
(i) Organizational Experience.
(ii) Staff Skills.
(c) Criterion III: Work Plan (Maximum 35 points).
(d) Criterion IV: Significant and Beneficial Impact (Maximum: 25 points).
(e) Criterion V: Budget Reasonableness (Maximum: 10 points).

(7) Rural Community Development Activities (Sub-Priority 2.0)

Funds are provided to help low income rural communities develop the capability and expertise to establish and/or maintain affordable, adequate and safe water and waste water treatment facilities. Eligible applicants are multi-state, regional private non-profit organizations that can provide training and technical assistance to small, rural communities in meeting their community facility needs. Funds Available: $3,500,000. Approximately 8 grants will be awarded competitively.

Review Criteria for Applications Submitted Under Sub-Priority Area 2.0

(a) Criterion I: Analysis of Need (Maximum: 5 points).
(b) Criterion II: Organizational Experience in Program Area and Staff Responsibilities.
(i) Organizational Experience in Program Area (0–5 points).
(ii) Staff Skills, Resources and Responsibilities (0–10 points).
(c) Criterion III: Project Implementation (Maximum: 25 points).
(d) Criterion IV: Significant and Beneficial Impact (Maximum: 30 points).
(e) Criterion V: Public-Private Partnerships (Maximum: 20 points).
(f) Criterion VI: Budget Appropriateness and Reasonableness (Maximum: 5 points).
(C) *Project Periods and Budget Periods:* Refer to Application Kit for details.
(D) *Type of Awards:* Grants.
(E) *Date of Application Kit:* March 16, 1998.
(F) *Application Deadline:* Applications must be *Postmarked* by May 15, 1998. Detailed application submission instructions are included in the Application Kit.
(G) *Program Contact Person:* Thornell Page (202) 401–5333.

2. Community Food and Nutrition (CFN) (CFDA # 93.571)

Deadline Date: May 1, 1998.
(A) *Legislative Authority:* Section 681A of the CSBG Act; Section 681A is also known as Community Food and Nutrition, the Community Services Block Grant Act, as amended.
(B) *Eligible Applicants and Availability of Funds:* Eligible applicants are States and public and private non-profit agencies/

organizations with a demonstrated ability to successfully develop and implement such programs and activities. Funds Available: $1,600,000. Approximately 33 grants will be awarded competitively.

(C) *Eligible Activities:* The OCS is authorized to make funds available for the purpose of coordinating existing private and public food assistance resources, whenever such coordination is determined to be inadequate, to better serve low income populations; assisting low income communities to identify potential sponsors of child nutrition programs and to initiate new programs in underserved or unserved areas; and developing innovative approaches to meet the nutrition needs of low income people. Funds are provided to improve the health and nutrition status of low income persons through improved access to healthy nutritious foods or by other means.

(D) *Review Criteria for CFN Applications* CRITERION I—Analysis of Needs/Priorities.

(1) Target area and population to be served (0–4 points).

(2) Nature and extent of problem(s) and/or need(s) to be addressed (0–6 points).

Criterion II—Adequacy of Work Program.

(1) Realistic quarterly time targets (0–10 points).

(2) Activities are adequately described and appear reasonably (0–15 points).

Criterion III—Significant and Beneficial Impact.

(a) Applicant proposes to significantly improve or increase nutrition services to low-income people and such improvements or increases are quantified (0–15 points).

(b) Project incorporates promotional health and social services activities for low-income people, along with nutritional services (0–5 points).

(c) Project will significantly leverage or mobilize other community resources and such resources are detailed and quantified (0–5 points).

(d) Project addresses problem(s) which can be resolved by one-time OCS funding or demonstrates that non-Federal funding is available to continue the project without federal support (0–5 points).

Criterion IV—Coordination/Services Integration.

(a) Project shows evidence of coordinated community-based planning in its development. (0–10 points).

(b) Community Empowerment Consideration (0–5 points).

Criterion V—Organization Experience in Program.

Area and Staff Responsibilities (Maximum 15 points).

(a) Organizational experiences in program area. (0–5 points).

(b) Management History (0–5 points).

(c) Staffing Skills, Resources and Responsibilities (0–5 points).

Criterion VI—Adequacy of Budget (Maximum: 5 points).

(E) *Project Period and Budget Period:* For most projects, OCS will grant funds for 1 year. However, in rare instances, depending on the characteristics of any individual project and on the justification presented by the applicant in its application, a grant may be made for up to 17 months..

(F) *Type of Awards:* Grants.

(G) *Date of Application Kit:* March 2, 1998.

(H) *Application Deadline:* Applications must be *Postmarked* by May 1, 1998. Detailed application submission instructions are included in the Application Kit.

(I) *Program Contact Person:* Thornell Page (202) 401–5333.

3. Job Opportunities for Low Income Individuals (JOLI) (CFDA # 93–593)

Deadline Date: May 18, 1998.

(A) *Legislative Authority:* Section 505 of the Family Support Act of 1988, Public Law 100–485, as amended, authorizes the Secretary of DHHS to enter into agreements with non-profit organizations (including community development corporations) for the purpose of conducting projects designed to create employment and business opportunities for certain low income individuals. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, reauthorized Section 505 of the Family Support Act of 1988 with certain amendments effective July 1, 1997.

(B) *Eligible Applicants and Availability of Funds:* Applicants eligible to apply for grants under the JOLI program must be not-for-profit organizations exempt from taxation under Section 501(c)(3) or (4) of the Internal Revenue Code. Applicants are encouraged to mobilize resources. Funds Available: $5,500,000. Approximately 5 to 10 grants will be awarded. JOLI grant awards are approved for up to 5 year project periods and are funded for up to a maximum of $500,000 for the full project period.

(C) *Eligible Activities:* Projects funded under the JOLI Program are for the creation of new jobs and employment opportunities, through micro-business/self-employment, the start-up of a new business, or the expansion of an existing business. Project activities may include training, technical assistance, and support of participants to enable them successfully to fill such jobs; but proposed projects for the training and placement of low income individuals in already existing jobs or jobs expected to be available independent of any job creation activity of the proposed project, will not be considered for funding.

(D) *Review Criteria for JOLI Applications.*

(1) Criterion I: Organizational Experience in Program Area and Staff Skills, Resources and Responsibilities (Maximum: 20 points).

(2) Criterion II: Project Theory, Design and Plan (Maximum: 30 points).

(3) Criterion III: Significant and Beneficial Impact (Maximum: 20 points).

(4) Criterion IV: Project Evaluation (Maximum: 15 points).

(5) Criterion V: Public-Private Partnerships (Maximum: 10 points).

(6) Criterion VI: Budget Appropriateness and Reasonableness (Maximum: 5 points).

(E) *Project Periods and Budget Periods:* Refer to Application Kit for details.

(F) *Type of Awards:* Grants.

(G) *Date of Application Kit:* March 2, 1998.

(H) *Application Deadline:* Applications must be *POSTMARKED* by May 18, 1998. Detailed application submission instructions are included in the Application Kit.

(I) *Program Contact Person:* Nolan Lewis (202) 401–5282 or Richard Saul (202) 401–9341.

4. Residential Energy Assistance Challenge (REACH) Option Program (CFDA # 93.568) Deadline Date: May 25, 1998.

(A) *Legislative Authority:* Section 2607B of the Low Income Home Energy Assistance Act, Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97–35, as amended [42 U.S.C. 8626b].

(B) *Eligible Applicants and Availability of Funds:* Eligible applicants are States, Indian Tribes and Tribal Organizations (including Alaskan Native Villages), and Insular Areas that receive direct grants from the Department of HHS under LIHEAP which are expended for implementing a LIHEAP program. Funds are awarded to LIHEAP grantees on the basis of a competitive application process. Funds available: $6,250,000. Up to 10 grants will be awarded competitively to States under Priority Area 1.0. Approximately 4 to 12 grants will be awarded competitively to Indian Tribes and Tribal Organizations under Priority Area 2.0.

(C) *Eligible Activities:* The OCS is authorized to provide competitive grants to LIHEAP grantees that develop innovative programs, administered by community-based organizations, to reduce the energy vulnerability of LIHEAP-eligible households.

(D) *Program Priority Areas:* Under Priority Area 1.0, funds will be awarded to States, District of Columbia, and Puerto Rico for REACH projects administered by non-profit Community Based Organizations, with a priority given to Community Action Agencies and other eligible entities under Section 673 of the Community Services Block Grant Act [42 U.S.C. 9902(1)]. Under Priority Area 2.0, funds will be awarded to Indian Tribes and Tribal Organizations and other Insular Areas.

(E) *Review Criteria for REACH Plans.*

Program Elements, Review and Assessment Criteria for REACH Plans under Priority Area 1.0 (States, District of Columbia, and Puerto Rico).

(a) Criterion I: Organizational Experience and Capability (Maximum: 20 points).

(b) Criterion II: Project Theory, Design and Plan (Maximum: 30 points).

(c) Criterion III: Holistic Program Strategies, Mobilization of Resources, and Project Innovations (Maximum: 10 points).

(d) Criterion IV: Budget Appropriateness (Maximum: 10 points).

(e) Criterion V: Significant and Beneficial Impact (Maximum: 10 points).

(f) Criterion VI: Community Empowerment Consideration (Maximum: 5 points).

(g) Criterion VII: Management and Organization of Project (Maximum: 5 points).

(h) Criterion VIII: Project Evaluation (Maximum: 10 points).

Program Elements, Review and Assessment Criteria for REACH Plans under Priority Area 2.0 (Tribes and Insular Areas other than Puerto Rico).

(a) Criterion I: Organizational Experience and Capability (Maximum: 10 points).

(b) Criterion II: Project Theory, Design and Plan (Maximum: 50 points).

(c) Criterion III: Management and Organization of Project (Maximum: 10 points).

(d) Criterion IV: Budget Appropriateness (Maximum: 10 points).

(e) Criterion V: Significant and Beneficial Impact (Maximum: 10 points).

(f) Criterion VI: Project Evaluation (Maximum: 10 points).

(F) *Type of Awards:* Grants.

(G) *Date of Application Kit:* February 23, 1998.

(H) *Application Deadline:* Applications must be *POSTMARKED* by May 25, 1998. Detailed application submission instructions are included in the Application Kit.

(I) *Program Contact Person:* Anna Guidery (202) 401–5318 or Richard Saul (202) 401–9341.

5. CSBG Training, Technical Assistance and Capacity Building (CSBG/T&TA) (CFDA # 93.570) Deadline Date: May 22, 1998.

(A) *Legislative Authority:* Section 674(a)(1) of the CSBG Act.

(B) *Eligible Applicants and Availability of Funds:* The OCS is authorized to make grants and award contracts to eligible entities, organizations whose membership is composed of CSBG-eligible entities or agencies that administer programs for CSBG-eligible entities.

Funds available: Approximately $3.6 million. Approximately 35 grants will be awarded competitively.

(C) *Program Priority Areas:* Refer to Application Kit for details.

(D) *Review Criteria for CSBG/T&TA Applications* Criterion I: Need for Assistance (Maximum: 20 points).

Criterion II: Work Program (Maximum: 30 points).

Criterion III: Significant and Beneficial Impact (Maximum: 15 points).

Criterion IV: Evidence of Significant. Collaborations (Maximum: 10 points).

Criterion V: Ability of Applicant to Perform (Maximum: 20 points).

Criterion VI: Adequacy of Budget (Maximum: 5 points).

(E) *Project Periods and Budget Periods:* This announcement is inviting applications for project periods up to 1 year. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for up to 17 months.

Refer to Application Kit for further details.

(F) *Type of Awards:* Grants.

(G) *Date of Application Kit:* March 23, 1998.

(H) *Application Deadline:* Applications must be *POSTMARKED* by May 22, 1998. Detailed application submission instructions are included in the Application Kit.

(I) *Program Contact Person:* Margaret Washnitzer (202–401–2333)

6. Family Violence Prevention Program (CFDA # 93.592)

Deadline Date: May 2, 1998.

(A) *Legislative Authority:* The Family Violence Prevention and Services Act (FVPSA) was enacted as Title III of the Child Abuse Amendments of 1984, P.L. 98–457. It was reauthorized and amended for FY 1995 through FY 2000 by Public Law 103–322, the Violent Crime Control and Law Empowerment Act of 1994 (The Crime Bill). The reauthorization of the Child Abuse Prevention and Treatment Act on October 3, 1996 contained a technical amendment affecting funding levels under the FVPSA.

(B) *Eligible Applicants and Availability of Funds:* Grants are awarded to assist States in supporting the establishment, maintenance, and expansion of programs and projects to prevent incidents of family violence and provide immediate shelter and related assistance for victims of family violence and their dependents. There are no income eligibility requirements.

Funds Available: $1.5 million. Approximately 16 grants will be awarded competitively.

(C) *Priority Areas for FY 1998*

#1—Developing and Enhancing Services for Immigrant, *Migrant and Refugee Battered Women.*

#2—Training Grant Stipends in Domestic Violence for Historically Black, Hispanic-Serving and Tribal Colleges and Universities.

#3—Public Information Community Awareness Campaign Projects for the Prevention of Family Violence.

(D) *Review Criteria for Family Violence Prevention Program Competitive Discretionary Grants*

Criterion I: Need for the Project (Maximum: 10 points).

Criterion II: Goals and Objectives (Maximum: 10 points).

Criterion III: Approach (Maximum: 30 points).

Criterion IV: Results and Benefits (Maximum: 20 points).

Criterion V: Level of Effort (Maximum: 30 points).

(E) Project Periods and Budget Period.

Priority Area #1—Project period not to exceed 17 months.

Priority Area #2—Project period is 36 months (12 month budget periods).

Priority Area #3—Project period not to exceed 12 months.

(F) *Type of Awards:* Grants.

(G) *Matching Requirement:* Successful grantees must provide at least 25 percent of the total cost of the project. The total cost of the project is the sum of the ACF share and the non-Federal share. The non-federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirement through cash contributions. Therefore, a project requesting $75,000 in Federal funds (based on an award of $75,000 per budget period) must include a match of at least $25,000 (25% of total project

cost). Therefore, a total project cost of $100,000 would be comprised of $75,000 Federal funds and $25,000 non-Federal funds. If approved for funding, grantees will be held accountable for commitments of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds. This Matching Requirement applies to all 3 Priority Areas.

(H) *Date of Application Kit:* March 2, 1998.

(I) *Application Deadline:* Applications must be POSTMARKED by May 4, 1998. Detailed application submission instructions are included in the Application Kit.

(J) *Program Contact Persons:* William Riley (202) 401–5529; James Gray (202) 401–5705; Gertrude Knight (202) 401–4787.

Additional Requirement

Applicants for grants must also meet the following requirement:

A. Paperwork Reduction Act of 1995 #0970–0062

Under the Paperwork Reduction Act of 1995, Public Law 104–13, the Department is required to submit to OMB for review and approval any reporting and recordkeeping requirements in regulations, including Program Announcements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This Combined Program Announcement does not contain information collection requirements beyond those approved for ACF grant announcements/applications under OMB Control Number 0970–0062.

B. Intergovernmental Review

The programs discussed in this Combined Program Announcement are covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. NOTE: State/Territory participation in the Intergovernmental Review process does not signify applicant eligibility for financial assistance under a program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its SPOC, if applicable, or to ACF.

As of September 1997, a number of jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally recognized Indian Tribes need take no action in regard to E.O. 12372.

A list of these non-participating jurisdictions can be found in the Application Kit.

Although the non-participating jurisdictions no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions.

Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule. When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants and Audit Resolution, 370 L'Enfant Promenade, S.W., Mail Stop 6C–462, Washington, D.C. 20447.

Dated: February 19, 1998.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 98–4828 Filed 2–24–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0095]

FDA Modernization Act of 1997: Guidance for the Recognition and Use of Consensus Standards; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is: (1) Announcing the availability of a guidance entitled "Guidance on the Recognition and Use of Consensus Standards," the purpose of which is to provide guidance to industry and reviewers within the Center for Devices and Radiological Health (CDRH) on the use of recognized consensus standards, including declarations of conformity to the standards, during the evaluation of premarket submissions for medical devices; (2) publishing the initial list of standards that will be recognized for use in the premarket review process; and (3) announcing the agency's policy on updating the list of recognized standards. This guidance will assist manufacturers who elect to declare conformity with consensus standards to meet all or part of medical device review requirements.

DATES: This guidance is effective on February 19, 1998; however, written comments concerning this guidance may be submitted at any time.

ADDRESSES: Written comments concerning this guidance must be submitted to the first contact person listed below. Comments should be identified with the docket number found in brackets in the heading of this document. Submit written requests for single copies of "Recognition and Use of Consensus Standards" to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance. This guidance document may also be accessed via the Internet at FDA's web site "http://www.fda.gov/cdrh".

FOR FURTHER INFORMATION CONTACT:

To comment on this guidance: Melvyn R. Altman, Associate Director for Standards Policy, enter for Devices and Radiological Health (HFZ–101),

Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–4766, ext. 103.

To recommend additional standards for recognition:

James J. McCue, Director, Standards Program Coordination Staff, enter for Devices and Radiological Health (HFZ–101), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–4766, ext. 137.

SUPPLEMENTARY INFORMATION:

I. Background

Many domestic and international consensus standards address relevant aspects of safety and/or effectiveness of medical devices. Many of these consensus standards have been developed with the participation of FDA staff. Section 204 of the Food and Drug Administration Modernization Act of 1997, Pub. L. 105–115, 111 Stat. 2296 (1997) (FDAMA) amends section 514 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d), allowing the agency to recognize consensus standards established by international and national standards development organizations that may be used to satisfy identified portions of device review requirements. This notice announces the availability of a guidance document entitled "Guidance on the Recognition and Use of Consensus Standards," which describes how FDA will implement that part of the FDAMA.

The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). Although "Guidance on the Recognition and Use of Consensus Standards" is Level 1 guidance under the GGP's, this guidance will become effective upon issuance. Under the GGP's the agency may elect not to solicit public comment prior to implementation when there is a new statutory requirement * * * that requires immediate implementation and guidance is needed to help effect such implementation" (62 FR 8961 at 8968). However, comments may be submitted at any time by interested parties, and these comments will be considered in any future revisions to the guidance.

This guidance document may contain collections of information that require OMB clearance under the Paperwork Reduction Act of 1995. FDA will seek such approval and provide an opportunity for comment, as appropriate.

II. Use of Recognized Standards

A person required to submit a premarket application (i.e., Premarket Notification (510(k)), Investigational Device Exemptions application (IDE), Premarket Approval application (PMA), Humanitarian Device Exemption application (HDE), or Product Development Protocol (PDP)) must provide information as required by the statute and regulations to allow FDA to make an appropriate decision regarding the clearance or approval of the submission. This guidance document describes how FDA will recognize consensus standards and use conformance with recognized standards to satisfy review requirements. It does not affect FDA's ability to obtain any information authorized by the statute or regulations. Use of consensus standards in this manner is authorized by section 514 of the act, as amended by FDAMA.

FDA believes that conformance with applicable recognized consensus standards can provide a reasonable assurance of safety and/or effectiveness for many devices. Therefore, information submitted on conformance with such standards will have a direct bearing on determinations of safety and effectiveness made during the review of IDE's, HDE's, PMA's, and PDP's. In case of 510(k)s, information on conformance with recognized consensus standards may help establish the substantial equivalence of a new device to a legally marketed predicate device. This information can serve as a surrogate for comparative information to show that the new device is as safe and effective as the predicate in the areas covered by the standards. Moreover, if a premarket submission contains a declaration of conformity to recognized consensus standards, this will, in most cases, eliminate the need to review actual test data for those aspects of the device addressed by the standards. The content of a declaration of conformity is described in the guidance document and is consistent with the ISO/IEC Guide 22.

Conformance with recognized consensus standards in and of itself, however, may not always be a sufficient basis for regulatory decisions. For example, a specific device may raise a safety or effectiveness issue not addressed by any standard, or a specific FDA regulation may require additional information beyond that which conformity to the recognized consensus standards provides. Under such circumstances, conformity with recognized standards will not satisfy all requirements for marketing, or investigating, the product in the United States.

The guidance document, "Guidance on the Recognition and Use of Consensus Standards", represents the agency's current thinking on the use of recognized consensus standards for medical devices. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

III. List of Recognized Standards

The initial list of consensus standards to be recognized for use in premarket review is presented at the end of this document. This list is also maintained on the FDA web site "http://www.fda.gov/cdrh". Also posted on the web site are supplemental data sheets for each recognized standard. These data sheets list the address(es) where the standard can be obtained, information on any limitations to the application of the standard in medical device review, and a list of devices for which declarations of conformity with the recognized standard will be routinely accepted by agency reviewers. In addition to these documents, the web site contains answers to frequently asked questions regarding the use of recognized standards.

IV. Recommendation of Standards for Recognition by FDA

Modifications to the list of recognized consensus standards related to medical devices will be announced in the **Federal Register** at least once a year, or more often if necessary. FDA intends that the next revision to the list of recognized standards will include standards to be recognized by the Center for Biologics Evaluation and Research as well as by CDRH.

Any person may recommend consensus standards as candidates for recognition under new paragraph © of section 514 of the act, by submitting such recommendations, with justification, to the address identified at the beginning of this document. To be properly considered, such recommendations should contain at a minimum the following information: (1) Title of the standard, (2) any reference number and date, (3) name and address of the nationally or internationally recognized standards development organization, (4) a proposed list of devices for which a declaration of conformity should routinely apply, and (5) a brief identification of the testing or performance or other characteristics of

the device(s) that would be addressed by a declaration of conformity.

V. Electronic Access

In order to receive the guidance document "Recognition and Use of Consensus Standards," via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at the second voice prompt press 2, and then enter the document number 321, followed by the pound sign (#). Then follow the remaining voice prompts to complete your request. Persons interested in obtaining a copy of the guidance may also do so by using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH Home Page includes the guidance Document "Guidance on the Recognition and Use of Consensus Standards", as well as the list of recognized standards and details on their application and information on obtaining copies. The CDRH home page may be accessed at "http://www.fda.gov/cdrh".

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA Bulletin Board Service. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select Center for Devices and Radiological Health for general information, or arrow down for specific topics.

VI. Comments

Interested persons may, at any time, submit to the contact person listed above written comments regarding the guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments will be considered in determining whether to amend the current guidance.

	Title of standard	Reference number and date	Name of standards development organization
Generally Applicable Standards			
1	Biological Evaluation of Medical Devices—Part 1: Guidance on Selection of Tests—First Edition.	ANSI/AAMI/ISO 10993–1	Association for the Advancement of Medical Instrumentation.
2	Medical Electrical Equipment—Part 1: General Requirements for Safety.[1].	IEC 60601–1	International Electrotechnical Commission (IEC).
3	Biological Evaluation of Medical Devices—Part 1: Guidance on Selection of Tests—First Edition (Corrigendum 1–1992)(CEN EN 30993–1:1994).	ISO 10993–1	International Organization for Standardization (ISO).
In Vitro Devices			
1	How to Define, Determine and Utilize Reference Intervals in the Clinical Laboratory; Approved Guideline.	C28–A (1995)	National Committee for Clinical Laboratory Standards (NCCLS).
2	Method Comparison and Bias Estimation Using Patient Samples; Approved Guideline.	EP9–A (1995)	NCCLS.
3	Assessment of the Clinical Accuracy of Laboratory Tests Using Receiver Operating Characteristic (ROC) Plots; Approved Guideline.	GP–10–A (1995)	NCCLS.
4	Labeling of Home-Use In Vitro Testing Products; Approved Guideline.	GP14–A (1996)	NCCLS.
5	Procedures for the Handling and Processing of Blood Specimens; Approved Guidelines.	H18–A (1990)	NCCLS.
6	Specifications for Immunological Testing for Infectious Diseases; Approved Guideline.	ILA18–A (1994)	NCCLS.
7	Assessing the Quality of Radioimmunassay Systems—Second Edition; Approved.	LAI–A2 (1994)	NCCLS.
8	Performance Standards for Antimicrobial Disk Susceptibility Tests—Sixth Edition; Approved Standard.	M2–A6 (1997)	NCCLS.
9	Methods for Antimicrobial Susceptibility Testing of Anaerobic Bacteria—Third Edition; Approved Standard.	M11–A3 (1993)	NCCLS.
10	Development of In Vitro Susceptibility Testing Criteria and Quality Control Parameters.	M23A	NCCLS.
11	Molecular Diagnostic Methods for Infectious Diseases; Approved Guideline.	MM3–(1995)	NCCLS.
OB–GYN/Gastroenterology			
1	Hemodialysis Systems	ANSI/AAMI RD5–1992	Association for the Advancement of Medical Instrumentation (AAMI).
2	Standard Performance Specifications for Rubber Contraceptives (Male Condom).	ASTM–D3492–96	American Society for Testing and Materials (ASTM).
3	Standard Performance Specifications for Foley Catheters.	ASTM F623–89	ASTM.

	Title of standard	Reference number and date	Name of standards development organization
	Ophthalmic		
1	Optics and Optical Instruments—Contact Lenses—Determination of the Diameters.	ISO 9338:1996	International Organization for Standardization (ISO).
2	Optics and Optical Intruments—Contact Lenses—Determination of the Thickness—Part 1: Rigid Contact Lenses.	ISO 9339–1:1996	ISO.
3	Optics and Optical Intruments—Contact Lenses—Determination of Strains for Rigid Contact Lenses.	ISO 9340:1996	ISO.
4	Optics and Optical Intruments—Contact Lenses—Determination of Inclusions and Surface Imperfections for Rigid Contact Lens.	ISO 9341:1996	ISO.
5	Optics and Optical Intruments—Contact Lenses—Determination of Cytotoxicity of Contact Lens Material—Part 1: Agar Overlay Test and Growth Inhibition Test.	ISO 9363–1:1994	ISO.
6	Optics and Optical Intruments—Contact Lenses—Determination of Biological Compatibility of Contact Lens Material—Testing of the Contact Lens System by Ocular Study with Rabbit Eyes.	ISO 9394:1994	ISO.
7	Optics and Optical Intruments—Contact Lenses—Determination of Oxygen Permeability and Transmissibility with the FATT Method.	ISO 9913–1:1996	ISO.
8	Optics and Optical Intruments—Contact Lenses—Determination of Curvature.	ISO 10338:1996	ISO.
9	Optics and Optical Intruments—Contact Lenses—Determination of Water Content of Hydrogel Lenses.	ISO 10339:1997	ISO.
10	Optics and Optical Intruments—Contact Lenses—Method for Determining the Extractable Substances.	ISO 10340:1995	ISO.
11	Optics and Optical Intruments—Contact Lenses—Saline Solution for Contact Lens Testing.	ISO 10344:1996	ISO.
12	Optics and Optical Intruments—Contact Lenses and Contact Lens Care Products— Guidance for Clinical Investigations.	ISO 11980:1997	ISO.
	Orthopaedics		
1	Standard Specifications for Unalloyed Titanium for Surgical Implant Applications.	ASTM F67–95	American Society for Testing and Materials (ASTM)
2	Standard Specifications for Cast Cobalt-Chromium-Molybdenum Alloy for Surgical Implant Applications.	ASTM F75–92	ASTM.
3	Standard Practice for Surface Preparation and Marking of Metallic Surgical Implants.	ASTM F86–91	ASTM.
4	Standard Specification for Wrought Cobalt-20 Chromium-15 Tungsten-10 Nickel Alloy for Surgical Implant Aplications (UNS R30605).	ASTM F90–96	ASTM.
5	Standard Specification for Wrought Titanium-6 Aluminum-4 Vanadium ELI (Extra Low Interstitial) Alloy (R56401) for Surgical Implant Applications.	ASTM F136–96	ASTM.
6	Standard Specification for Stainless Steel Bar and Wire for Surgical Implants (Special Quality).	ASTM F138–92	ASTM.
7	Standard Specification for Wrought-18 Chromium-14 Nickel-2.5 Molybdenum Stainless Sheet and Strip for Surgical Implants (UNS S31673).	ASTM F–139–96	ASTM.
8	Standard Specification for Fixation Pins and Wires.	ASTM F366–82(r1993)	ASTM.
9	Standard Specification for Unalloyed Tantalum for Surgical Implant Applications.	ASTM F560–92	ASTM.
10	Standard Practice for Analysis of Retrieved Metallic Orthopaedic Implants.	ASTM F561–87	ASTM.
11	Wrought Cobalt-35 Nickel-20 Chromium-10 Molybdenum Alloy for Surgical Implant Applications.	ASTM F562–95	ASTM.
12	Standard Practice for Care and Handling of Orthopaedic Implants and Instruments.	ASTM F565	ASTM.
13	Standard Practice for Fluorescent Penetrant Inspection of Metallic Surgical Implants.	ASTM F601–86(1992)	ASTM.

	Title of standard	Reference number and date	Name of standards development organization
14	Standard Specification for High-Purity Dense Aluminum Oxide for Surgical Implants.	ASTM F603	ASTM.
15	Standard Specification Classifications for Silicone Elastomers Used in Medical Applications.	ASTM F604	ASTM.
16	Standard Specification for Titanium 6A1–4V E11 Alloy Forgings for Surgical.	ASTM F620	ASTM.
17	Standard Specification for Stainless Steel Forgings for Surgical Implants.	ASTM F621	ASTM.
18	Standard Practice for Radiography of Cast Metallic Surgical Implants.	ASTM F629–86	ASTM.
19	Standard Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants.	ASTM F648–84	ASTM.
20	Standard Specification for Wrought Cobalt-35 Nickel-20 Chromium-10 Molybdenum Alloy Plate, Sheet, and Foil for Surgical Implants.	ASTM F688–95	ASTM.
21	Standard Specification for 18 Chromium—12.5 Molybdenum Stainless Steel for Cast and Solution-Annealed Surgical Implant Applications.	ASTM F745–95	ASTM.
22	Standard Test Method for Pitting or Crevice Corrosion of Metallic Surgical Implant Materials.	ASTM F746–87	ASTM.
23	Standard Specification for Metallic Bone Plates	ASTM F786–82	ASTM.
24	Standard Specification for Metallic Nail-Plate Appliances.	ASTM F787–82	ASTM.
25	Standard Specification for Cobalt-28 Chromium-6 Molybdenum Alloy Forgings for Surgical Implants (UNS R31537).	ASTM F799–96	ASTM.
26	Standard Test Method for Measuring Fretting Corrosion of Osteosynthesis Plates and Screws.	ASTM F897–84 (r1993)	ASTM.
27	Standard Specification for Stainless Steel Billet, Bar, and Wire for Surgical Instruments.	ASTM F899–95	ASTM.
28	Standard Specification for Cobalt-Nickel-Chromium-Molybdenum Alloy Forgings for Surgical Implant Applications.	ASTM F961–96	ASTM.
29	Standard Practice for Permanent Marking of Orthopaedic Implant Components.	ASTM F983–86	ASTM.
30	Standard Test Method for Shear Testing of Porous Metal Coatings.	ASTM F1044–95	ASTM.
31	Standard Specification for Beta-Tricalcium Phosphate for Surgical Implantation.	ASTM F1088–87(R1992)	ASTM.
32	Standard Test Method for Corrosion of Surgical Instruments.	ASTM F1089–87	ASTM.
33	Standard Specification for Wrought Cobalt-20 Chromium-15 Tungsten-20 Nickel Alloy Surgical Fixation Wire UNS R30605.	ASTM F1091–91 (R1996)	ASTM.
34	Standard Specification for Titanium-6 Aluminum-4 Vanadium Alloy Castings for Surgical Implants (UNS R56406).	ASTM F1108–97	ASTM.
35	Standard Test Method for Tension Testing of Porous Metal Coatings.	ASTM F1147–95	ASTM.
36	Standard Test Method for Constant Stree Amplitude Fatigue Testing of Porous Metal-Coated Metallic Materials.	ASTM F1160–91	ASTM.
37	Standard Specification	ASTM F1185–88(1993)	ASTM.
38	Standard Guide for Mechanical Performance Considerations for Intramedualllary Fixation Devices.	ASTM F1264–96a	ASTM.
39	Standard Specification for Wrought Titanium-6 Aluminum-7 Niobium Alloy for Surgical Implant Applications.	ASTM F1295–97	ASTM.
40	Standard Specification for Wrought Nitrogen Strengthened-22 Chromium-12.5 Nickel-5 Manganese-2.5 Molybdemum Stainless Steel Bar and Wire for Surgical Implants.	ASTM F1314–95	ASTM.
41	Standard Specification for Unalloyed Titanium Wire for Surgical Implant Applications.	ASTM F1341–92	ASTM.
42	Standard Specification for Wrought 18 Chromium-14 Nickel-2.5 Molybdenum Stainless Steel Surgical Fixation Wire (UNS S31673).	ASTM F1350–96	ASTM.
43	Standard Specification for Cobalt-Chromium-Molybdenum Powder for Coating of Orthopaedic Implants.	ASTM F1377–92	ASTM.
44	Standard Specification for Wrought T1–6A1–4V Alloy for Surgical Implant Applications.	ASTM F1472–93	ASTM.

	Title of standard	Reference number and date	Name of standards development organization
45	Standard Test Methods for Tension Testing of Calcium Phosphate Coatings.	ASTM F1501–95	ASTM.
46	Standard Specification For Wrought Cobalt-28-Chromium-6-Molybdenum Alloy for Surgical Implants.	ASTM F1537–94	ASTM.
47	Standard Classification of External Skeletal Fixators.	ASTM F1541–94	ASTM.
48	Standard Specification for Titanium and Titanium-6% Aluminum-4% Vanadium Alloy Powders for Coatings of Surgical Implants.	ASTM F1580–95	ASTM.
49	Standard Terminology Relating to Spinal Implants	ASTM F1582–95	ASTM.
50	Standard Specification for Wrought Nitrogen Strengthened-21 Chromium-10 Nickel-3 Manganese-2.5 Molybdenum Stainless Steel Bar for Surgical Implants.	ASTM F1586–95	ASTM.
51	Standard Specification for Calcium Phosphate Coatings for Implantable Materials.	ASTM F1609–95	ASTM.
52	Standard Practice for Cydic Fatigue Testing of Metallic Stemmed Hip Arthroplasty Femoral Components With Torsion.	ASTM F1612–95	ASTM.
53	Standard Test Method for Shear Testing of Calcium Phosphate Coatings.	ASTM F1658–95	ASTM.
54	Standard Test Method for Bending and Shear Fatigue Testing of Calcium Phosphate Coatings on Solid Metallic Substrates.	ASTM F1659–95	ASTM.
55	Standard Specification for Resurfacing Patellar Prosthesis.	ASTM F1672–95	ASTM.
56	Standard Specification for Wrought Titanium-13 Niobium-13 Zirconium Alloy for Surgical Implant Applications.	ASTM F1713–96	ASTM.
57	Standard Test Methods for Static and Fatigue for Spinal Implant Constructs in a Corpectomy Model.	ASTM F1717–96	ASTM.
58	Standard Specification for Elastomeric Flexible Hinge Finger Total Joint Implants.	ASTM F1781–97	ASTM.
59	Standard Test Methods for Evaluating the Static and Fatigue Properties of Interconnection Mechanisms and Subassemblies Used in Spinal Arthrodesis.	ASTM F1798	ASTM.
60	Cyclic Fatigue Testing of Metal Tibial Tray Components of TKR.	ASTM F1800	ASTM.
61	Standard Recommended Practice for Corrosion Fatigue Testing of Metallic Implant Materials.	ASTM F1801	ASTM.
62	Implants for Surgery—Metallic Materials—Part 1: Wrought Stainless Steel.	ISO 5832–1 (1997)	ISO.
63	Implants for Surgery—Metallic Materials—Part 2: Unalloyed Titanium.	ISO5832–2–93	ISO.
64	Implants for Surgery—Metallic—Part 3: Wrought Titanium 6-Aluminum 4-Vanadium Alloy Third Edition (CAN/CSA-Z310.8–M91).	ISO 5832–3 (1996)	ISO.
65	Implants for Surgery—Metallic Materials—Part 4: Cobalt-Chromium-Molybdenum Casting Alloy.	ISO 5832–4–96	ISO.
66	Implants for Surgery—Metal Materials—Part 5: Wrought Cobalt-Chromium-Tungsten-Nickel Alloy.	ISO 5832–5–93	ISO.
67	Implants for Surgery—Metallic Materials—Part 6: Wrought Cobalt-Nickel-Chromium-Molybdenum Alloy.	ISO 5832–6	ISO.
68	Implants for Surgery—Metallic Materials—Part 9: Wrought High Nitrogen Stainless Steel First Edition.	ISO 5832–9 (1992)	ISO.
69	Implants for Surgery—Metallic Materials—Part 10: Wrought Titanium 5-Aluminum 2.5-Iron.	ISO 5832–10:1996	ISO.
70	Implants for Surgery—Metallic Materials—Part 11: Wrought Titanium 6-Aluminum 7-Niobium Alloy First Edition; CABN/CSA–Z310.7:M91.	ISO 5832–11 (1994)	ISO.
71	Implants for Surgery—Metalic Materials—Part 12: Wrought Cobalt-Chromium-Molybdenum Alloy.	ISO 5832–12–96	ISO.
72	Implants for Surgery—Ultra-High Molecular Weight Polyethylene—Part 2: Moulded Forms.	ISO 5834–2:1985	ISO.
73	Implants for Surgery—Skeletal Pins and Wires—Part 1: Material and Mechanical Requirements.	ISO 5838–1:1995	ISO.
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	Title of standard	Reference number and date	Name of standards development organization
74	Implants for Surgery—Skeletal Pins and Wires—Part 2: Steinmann Skeletal Pins—Dimensions.	ISO 5838–2:1991	ISO.
75	Implants for Surgery—Skeletal Pins and Wires—Part 3: Kirschner Skeletal Wires.	ISO 5838–3:1993	ISO.
76	Implants for Surgery—Ceramic Materials Based on High Purity Alumina.	ISO 6474–94	ISO.
77	Surgical Instruments—Metallic Materials—Part 1: Stainless Steel.	ISO 7153–1:1991	ISO.
78	Implants for Surgery—Partial and Total Hip Joint Prosthesis—Part 4: Determination of Endurance Properties of Stemmed Femoral Components with Application of Torsion.	ISO 7206–4:1989	ISO.
79	Implants for Surgery—Partial and Total Hip Joint Prosthesis—Part 8: Endurance Performance of Stemmed Femoral Components with Application of Torsion.	ISO 7206–8:1995	ISO.
80	Implants for Surgery—Guidance on Care and Handling of Orthopaedic Implants.	ISO 8828	ISO.
81	Implants for Surgery—Non Destructive Testing—Liguid Penetrant Inspection of Metallic Surgical Implants.	ISO 9583:1993	ISO.
82	Implants for Surgery—Non Destructive Testing—Radiological Examination of Cast Metallic Surgical Implants.	ISO 9584:1993	ISO.
83	Surgical and Dental Hand Instruments—Determination of Resistance Against Autoclaving, Corrosion and Thermal Exposure.	ISO 13402	ISO.
84	Implants for Surgery—Metallic Materials—Unalloyed Tantalum for Surgical Implant Applications.	ISO 13782: 1996	ISO.
85	Non-Active Surgical Implants—General Requirements.	ISO 14630:1997	ISO
	Physical Medicine		
1	Determination of Static Stability	ANSI/RESNA WC/01–1990	Rehabilitation Engineering and Assistive Technology Society of North American (RESNA).
2	Determination of Dynamic Stability of Electric Wheelchairs.	ANSI/RESNA WC/02–1991	RESNA.
3	Determination of the Effectiveness of Brakes	ANSI/RESNA WC/03–1990	RESNA.
4	Determination of Energy Consumption of Electric Wheelchairs.	ANSI/RESNA WC/04–1990	RESNA.
5	Determination of Overall Dimensions, Mass and Turning Space—Wheelchair.	ANSI/RESNA WC/05–1990	RESNA.
6	Determination of Maximum Speed, Acceleration, and Retardation of Electric Wheelchairs.	ANSI/RESNA WC/06–1991	RESNA.
7	Wheelchairs—Determination of Seating and Wheel Dimensions.	ANSI/RESNA WC/07–1991	RESNA.
8	Wheelchairs—Static, Impact and Fatigue Strength Tests.	ANSI/RESNA WC/08–1991	RESNA.
9	Climatic Tests for Electric Wheelchairs	ANSI/RESNA WC/09–1991	RESNA.
10	Determination of the Obstacle-Climbing Ability of Electric Wheelchairs.	ANSI/RESNA WC/10–1990	RESNA.
11	Wheelchairs—Test Dummies	ANSI/RESNA WC/11–1991	RESNA.
12	Coefficient of Friction of Test Surfaces	ANSI/RESNA WC/13–1991	RESNA.
13	Wheelchairs—Testing of Power and Control Systems for Electric Wheelchairs.	ANSI/RESNA WC/14–1991	RESNA.
14	Wheelchairs—Requirements for Information Disclosure, Documentation and Labelling.	ANSI/RESNA WC/15–1991	RESNA.
15	Wheelchairs—Determination of Flammability	ANSI/RESNA WC/16–1991	RESNA.
16	Wheelchairs—Part 1: Determination of Static Stability.	ISO 7176–1:1986	ISO.
17	Wheelchairs—Part 2: Determination of Dynamic Stability of Electric Wheelchairs.	ISO 7176–2:1990	ISO.
18	Wheelchairs—Part 3: Determination of Efficiency of Brakes.	ISO 7176–3:1988	ISO.
19	Wheelchairs—Part 4: Energy Consumption of Electric Wheelchairs and Scooters for Determination of Theoretical Distance Range.	ISO 7176–4:1997	ISO.
20	Wheelchairs—Part 5: Determination of Overall Dimensions, Mass and Turning Space.	ISO 7176–5:1986	ISO.

	Title of standard	Reference number and date	Name of standards development organization
21	Wheelchairs—Part 6: Determination of Maximum Speed, Acceleration and Retardation of Electric Wheelchairs.	ISO 7176–6:1988	ISO.
22	Wheelchairs—Part 9: Climatic Tests for Electric Wheelchairs.	ISO 7176–9:1988	ISO.
23	Wheelchairs—Part 10: Determination of Obstacle-Climbing Ability of Electric Wheelchairs.	ISO 7176–10:1988	ISO.
24	Wheelchairs—Part 11: Test Dummies	ISO 7176–11:1992	ISO.
25	Wheelchairs—Part 13: Determination of Coefficient of Friction of Test Surfaces.	ISO 7176–13:1989	ISO.
26	Wheelchairs—Part 14: Power and Control Systems for Electric Wheelchairs—Requirements and Test Methods.	ISO 7176–14:1997	ISO.
27	Wheelchairs—Part 15: Requirements for Information Disclosure, Documentation and Labeling.	ISO 7176–15:1996	ISO.
28	Wheelchairs—Part 16: Resistance to Ignition of Upholstered Parts—Requirements and Test Methods.	ISO 7176–16:1997	ISO.
	Radiology		
1	Medical X-Ray Screen-Film-Processing Systems, Method for the Sensitometry.	ANSI PH2.43–1982	American National Standards Institute (ANSI).
2	Photography (films)—Medical Hard Copy Imaging Films—Dimensions and Specifications.	ANSI/NAPM IT1.49–1995	National Association of Photographic Manufacturers, (NAPM).
3	Photography (Films)—Medical Radiographic Cassettes/Screens/Films—Dimensions.	ANSI/NAPM IT1.49–1995	NAPM.
4	Medical Ultrasound Safety	AIUM–1994	American Institute of Ultrasound in Medicine (AIUM).
5	Photography-Direct—Exposing Medical and Dental Radiographic Film/Process Systems—Determination of ISO Speed and ISO Average Gradient.	ANSI/NAPM IT2.48–1993	NAPM.
6	Determination of the Maximum Symmetrical Radiation Field from a Rotating Anode X-Ray Tube for Medical Diagnosis.	IEC 806(R1984)	IEC.
7	Information Technology-Digital Compression and Coding of Continuous-Tone Still Images: Requirements and Guidelines.	ISO/IEC 10918–1:1994	ISO or IEC.
8	X-Ray Tube Assemblies for Medical Diagnosis Characteristics of Focal Spots.	IEC60336(R1993)	IEC.
9	Performance Measurements of Scintillation Cameras.	NEMA NU1–1994	NEMA.
10	Determination of Signal to Noise Ratio (SNR) in Magnetic Resonance Images.	NEMA MS1–1988(R1994)	NEMA.
11	Determination of Two-Dimensional Geometric Distortion in Diagnostic Magnetic Resonance Images.	NEMA MS2–1989	NEMA.
12	Determination of Image Uniformity in Diagnostic Magnetic Resonance Images.	NEMA MS3–1989	NEMA.
13	Acoustic Noise Measurement Procedure for Diagnostic Magnetic Resonance Imaging Devices.	NEMA MS4–1989	NEMA.
14	Determination of Slice Thickness in Diagnostic Magnetic Resonance Imaging.	NEMA MS5–1991	NEMA.
15	Characterization of Special Purpose Coils for Diagnostic Magnetic Resonance Images.	NEMA MS6–1991	NEMA.
16	Measurement Procedure for Time-Varying Gradiant Fields (dB/dt) for Magnetic Resonance Imaging Systems.	NEMA MS7–1993	NEMA.
17	Characterization of the Specific Absoption Rate for Magnetic Resonance Imaging Systems.	NEMA MS8–1993	NEMA.
18	Performance Measurements of Positron Emission Tomographs.	NEMA NU2–1994	NEMA.
19	DICOM set—Digital Imaging and Communications in Medicine—Set Includes PS3.1 through PS3.13.	NEMA PS3 (Set)	NEMA.
20	Acoustic Output Measurement Standard for Diagnostic Ultrasound Equipment.	NEMA UD2–1992	NEMA.
21	Standard for Real-Time Display of Thermal and Mechanical Acoustic Output.	NEMA UD3–1992	NEMA.
22	Measurement of Dimensions and Properties of Focal Spots of Diagnostic X-Ray Tubes.	NEMA XR5–1992	NEMA.

	Title of standard	Reference number and date	Name of standards development organization
23	Measurement of the Maximum Symmetrical Radiation Field from a Rotating Anode X-Ray Tube Used for Medical Diagnosis.	NEMA XR10–1986 (R1992)	NEMA.
24	Test Standard for Determination of the Limiting Spatial Resolution of X-Ray Image Intensifier Systems.	NEM XR11–1993	NEMA.
25	Test Standard for the Determination of the Visible Entrance Field Size of an X-Ray Image Intensifier System.	NEMA XR15–1991	NEMA.
26	Test Standard for the Determination of the System Contrast Ratio and the System Veiling Glare Index of an X-Ray Image Intensifier System.	NEMA XR16–1991	NEMA.
27	Test Standard for the Measurement for the Image Signal Uniformity of an X-Ray Image Intensifier System.	NEMA XR17–1993	NEMA.
28	Test Standard for the Determination of the Radial Image Distortion of an X-Ray Image Intensifier System.	NEMA XR18–1993	NEMA.
29	Electrical Thermal and Loading Characteristics of X-Ray Tubes Used for Medical Diagnosis.	NEMA XR19–1993	NEMA.
30	Standard for Safety: Photographic Equipment	UL–122	Underwriters Laboratory (UL).
31	Standard for Safety: X-Ray Equipment	UL–187	UL.
32	Standard for Safety: Medical and Dental Equipment—Third Edition.	UL–544	UL.

[1] The recognition of this standard for all devices was proposed for comment January 13, 1998 (63 FR 1974), and is not yet final. *This listing applies only to radiological imaging devices.*

Dated: February 13, 1998.

D. B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–4843 Filed 2–20–98; 3:59 pm]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Guidance for Industry on Medical Device Appeals and Complaints: A Guidance on Dispute Resolution; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "Medical Device Appeals and Complaints: A Guidance on Dispute Resolution." FDA currently has a myriad of dispute resolution and regulatory appeal processes that manufacturers of medical devices and radiological products can avail themselves of in situations where they disagree with a regulatory decision or action initiated by the agency. The agency's Center for Devices and Radiological Health (CDRH) is making this guidance document available in an effort to clarify these various processes and assist the industry in determining which process or processes are appropriate in a given circumstance.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written comments concerning this guidance document to the contact person listed below. Submit written requests for single copies of the guidance document entitled "Medical Device Appeals and Complaints: A Guidance on Dispute Resolution" to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: John F. Stigi, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–7491.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance document represents an effort by the agency to catalogue the various types of processes for seeking and achieving resolution of disputes that arise between manufacturers of medical devices and radiological products and components of FDA that are involved in clinical, scientific, and regulatory decisionmaking that affects these industries. Although this guidance document does not advocate one process over another, it intends to: (1) Explain the dispute resolution processes that exist by virtue of Federal law, agency regulations, and administrative practices; and (2) provide general guidance on which processes are most suited for particular situations. In addition, the guidance document offers practical, easy-to-use information on how and where to file requests for reconsideration of agency actions and decisions, as well as requests for dispute resolution, and gives useful information that sets forth the variety of FDA and Department of Health and Human Services components that are responsible for reviewing, investigating, and resolving disputes and external complaints. Because dispute resolution processes for medical devices and radiological products and the agency components charged to administer them will likely undergo change over time, this guidance document is subject to periodic revision. For example, the recently enacted Food and Drug Administration Modernization Act of 1997 mandates the agency to establish discrete processes for the resolution of disputes related to the regulation of medical devices. The guidance document lays the groundwork for new agency procedures which, in the coming months, will be articulated in more detail and incorporated into the document.

This is a level 2 guidance document under FDA's Good Guidance Practices policy. This guidance document does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

II. Electronic Access

In order to receive the "Medical Device Appeals and Complaints: A Guidance On Dispute Resolution" guidance document via your fax machine, call the CDRH Facts-on-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt, press 1 to access DSMA Facts, at the second voice prompt press 2, and then enter the document number (396) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance document may also do so by using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a PC with access to the Web. The CDRH home page is updated on a regular basis and includes the "Medical Device Appeals and Complaints: A Guidance On Dispute Resolution" guidance document, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. "Medical Device Appeals and Complaints: A Guidance On Dispute Resolution" is also available on the medical device reporting page at http://www.fda.gov/cdrh/modact/modern.html.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there, follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there, select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

III. Request for Comments

Interested persons, may at any time, submit to the contact person listed above written comments regarding this guidance document. Comments will be considered in determining whether to revise or revoke the guidance.

Dated: February 11, 1998.

D. B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–4842 Filed 2–20–98; 4:00 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 98D–0078, 98D–0079, 98D–0080, 98D–0081, 98D–0082, and 98D–0083]

FDA Modernization Act of 1997; Guidance Documents for the Medical Device Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of six guidance documents that represent the Center for Devices and Radiological Health's (CDRH) initial approach to implementation of revelant sections of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115). Many of the procedural changes for CDRH that are required by the FDAMA are being implemented initially through these six guidance documents. Due to the timing of the required implementation, the use of guidance documents is the most expeditious way to initially implement the FDAMA. The agency requests comments on these six guidance documents.

DATES: Submit written comments by May 26, 1998. After the close of the comment period, written comments may be submitted at any time to Ron Jans (address below)

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Comments should be identified with the docket number for the appropriate guidance document found in the SUPPLEMENTARY INFORMATION section. Submit written requests for an IBM PC compatible diskette containing the documents to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the SUPPLEMENTARY INFORMATION section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT:

For information on this document contact: Ronald P. Parr, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–7491, ext. 128.

To submit comments after the close of the comment period contact: Ron Jans, Center for Devices and Radiological Health (HFZ–205), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3744.

SUPPLEMENTARY INFORMATION:

I. Background

The FDAMA was signed by the President on November 21, 1997. Several of the provisions of FDAMA go into effect 90 days after enactment. CDRH has issued a guidance document outlining the general approaches FDA intends to take to implement the highest priority provisions of the new law. FDA published a notice of availability of this general guidance (referred to as the "Day 1 guidance") in the **Federal Register** of February 6, 1998 (63 FR 6193).

The agency is announcing the availability of the following six guidance documents (each with a separate docket number) that represent CDRH's initial approach to implementation of the various relevant sections of the FDAMA:

(1) "Early Collaboration Meetings Under the FDA Modernization Act (FDAMA), Guidance for Industry and CDRH Staff, Final Document" (Docket Number 98D–0078) (FOD # 310),

(2) "Guidance on PMA Interactive Procedures for Day-100 Meetings and Subsequent Deficiencies—for Use by CDRH and Industry" (Docket Number 98D–0079) (FOD # 322),

(3) "30-Day Notices and 135-day PMA Supplements for Manufacturing Method or Process Changes, Guidance for Industry and CDRH" (Docket Number 98D–0080) (FOD # 795),

(4) "Determination of Intended Use for 510(k) Devices; Final Document" (Docket Number 98D–0081) (FOD # 857),

(5) "New section 513(f)(2)—Evaluation of Automatic Class III Designation; Guidance for Industry and

CDRH Staff" (Docket Number 98D–0082) (FOD # 199), and

(6) "Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff" (Docket No. 98D–0083) (FOD # 159).

These guidance documents represent the agency's current thinking on CDRH's implementation of the FDAMA. These guidance documents do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both. Under FDA's "Good Guidance Practices" policy (62 FR 8961, February 27, 1997), each of these guidance documents is a Level 1 guidance document that may be implemented immediately because it is the subject of a new statute. FDA will review the comments received in order to determine whether to revise or revoke the guidance.

These guidance documents may contain collections of information that require OMB clearance under the Paperwork Reduction Act of 1995. FDA will seek such approval and provide an opportunity to comment, as appropriate.

II. Electronic Access

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the World Wide Web for easy access to information including text, graphics, and files that may be downloaded to a PC with access to the Web. Updated on a regular basis, the CDRH Home Page includes these guidance documents, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh/modact/modern.html.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

In order to receive these guidance documents via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number followed by the pound sign (#). The appropriate FOD number is listed next to the title of the document in the list above. Then follow the remaining voice prompts to complete your request.

III. Comments

Interested persons may, by or before May 26, 1998 submit to the Dockets Management Branch (address above) written comments regarding these guidance documents. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number for each guidance listed next to the title of the document in the list found previously. If you wish to comment on more than one guidance document, please submit a separate comment for each guidance document for which you wish to submit a comment. The guidance documents and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

After May 26, 1998, written comments may be submitted at any time to Ron Jans (address above).

Dated: February 12, 1998

D. B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–4841 Filed 2–20–98; 4:00 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 98D–0106, 98D–0107, 98D–0108]

Medical Devices; Postmarket Surveillance; Guidance Documents; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of three guidance documents on postmarket surveillance of medical devices. These guidance documents are being issued in order to facilitate the implementation of the postmarket surveillance provisions of the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Food and Drug Administration Modernization Act of 1997. FDA will issue further guidance in the near future.

DATES: Submit written comments concerning these guidance documents by May 26, 1998.

ADDRESSES: Submit written to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written requests for single copies of these guidance documents on a 3.5" diskette to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to these guidance documents.

FOR FURTHER INFORMATION CONTACT: Anita Rayner, Center for Devices and Radiological Health (HFZ–543), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–0639.

SUPPLEMENTARY INFORMATION:

I. Background

The Safe Medical Devices Act of 1990 amended the act, among other things, to add section 522 (21 U.S.C. 360(l)) to require postmarket surveillance for certain medical devices. Section 522 was further amended by the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105-115). As amended, section 522 of the act revises the criteria for determining which devices are subject to postmarket surveillance and revises the procedures for implementing postmarket surveillance. The revised provisions of section 522 become effective on February 19, 1998.

FDA is making the following guidance documents available at this time in order to facilitate the initial implementation of the revised postmarket surveillance provisions:

1. Guidance on Procedures to Determine Application of Postmarket Surveillance Strategies (Docket No. 98D–0106 (FOD # 316));

2. Guidance on Procedures for Review of Postmarket Surveillance Submissions (Docket No. 98D–0107 (FOD # 317)); and

3. SMDA to FDAMA: Guidance on FDAs Transition Plan for Existing Postmarket Surveillance Protocols (Docket No. 98D–0108 (FOD # 318)).

These guidance documents represent the agency's current thinking on postmarket surveillance. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

II. Electronic Access

In order to receive these guidance documents via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number found next to the title of the document listed above followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). The Center for Devices and Radiological Health (CDRH) maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a PC with access to the Web. Updated on a regular basis, the CDRH Home Page includes information on the FDA Modernization Act, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. Information on the FDA Modernization Act is available at http://www.fda.gov/cdrh/modern/modact.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

III. Comments

Interested persons may, by or before May 26, 1998, submit to the Dockets Management Branch written comments regarding these guidance documents. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments will be considered in determining whether to revise or revoke the guidance documents.

Dated: February 19, 1998.

D. B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–4844 Filed 2–20–98; 3:59 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–86]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: April 27, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing and Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Marion Connell, telephone number (202) 708–6409 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information: to (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Technical Suitability of Products Program Section 521 of National Housing Act.

OMB Control Number: 2502–0313.

Description of the need for the information and proposed use: HUD will use this engineering data to make a determination of technical suitability. Organizational and production data are used to establish company authority and whether the facilities and capability to produce the material or product are adequate. This prevents design organizations from using the government as a review board.

Form numbers: None.

Members of affected public: Manufacturer seeking acceptance of their product by HUD.

An estimation of the total numbers of hours needed to prepare the information collection is less than 1 hour and a more complex application could take up to 80 hours. The number of respondents is 50, frequency of response is one-time a year.

Status of the proposed information collection: reinstatement.

Authority: Section 236 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 19, 1998.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 98–4719 Filed 2–24–98; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–87]

Notice of Proposed Information Collection; Comment Request

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: April 27, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 9152, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Contact person, Stuart Margulies, telephone number 202–708–6409 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Manufactured Home Construction and Safety Standards Act Reporting Requirements.

OMB Control Number, if applicable: 2502–0253.

Description of the need for the information and proposed use: Agency form numbers, if applicable: This information is a requirement under the National Manufactured Housing Construction and Safety Standards Act (the Act) 42 U.S.C. 5400 *et seq.*, Public Law 93–383 and authorizes HUD to establish construction and safety standards for manufactured (mobile) homes and to enforce these standards. To meet these requirements HUD requires the manufacturer to maintain complete records of all information that may indicate the existence of a problem in a manufactured home for which the manufacturer is responsible for providing notification and correction as required by 24 CFR 3282.403.

Members of affected public: Manufacturer, distributor and dealer of manufactured housing.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 338,950 total annual hours are estimated for 402 respondents. The frequency of reporting is one per home for manufacturer/retailer and the hours of response 1,441,500 hours of response.

Status of the proposed information collection: reinstatement without change.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 18, 1998.

Nicolas P. Retsinas,

A/S Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 98–4720 Filed 2–24–98; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4295–N–01]

Notice of Operating Cost Adjustment Factors for Low-Income Housing Preservation and Resident Homeownership Projects Assisted With Section 8 Housing Assistance Payments

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: The Low-Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA") requires that future rent adjustments for LIHPRHA projects be made by applying an annual factor to be determined by the Secretary to the portion of rent attributable to operating expenses for the project and, where the owner is a priority purchaser, to the portion of rent attributable to project oversight costs. This notice announces Operating Cost Adjustment Factors ("OCAF(s)"), to be used for rent increases under LIHPRHA, which are based on a formula using data from the Bureau of Labor Statistics that measure changes in wages and the costs of non-food consumer goods. The most recent published OCAF will be applied on the anniversary date of the housing assistance payments contract. An explanation of the methodology employed to develop the OCAFs is set forth below.

EFFECTIVE DATE: April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ulyses Brinkley, Office of Multifamily Housing Management, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410; telephone (202) 708–0558; (This is not a toll-free number). A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

I. OCAFs

The Low-Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA") (see, in particular, section 222(a)(2)(G)(i) of LIHPRHA, 12 U.S.C. 4112(a)(2)(G) and the regulations at 24 CFR 248.145(a)(9)) requires that future rent adjustments for LIHPRHA projects be made by applying an annual factor to be determined by the Secretary to the portion of project rent attributable to operating expenses for the project and, where the owner is a priority purchaser, to the portion of project rent attributable to project oversight costs. The Secretary has determined to use the OCAF as the annual factor.

II. Budget-Based Method of Calculating Contract Rent Increases

If an owner believes that the contract rents approved by the Secretary pursuant to the OCAF are not adequate, an owner may request that its contract rent increase be calculated using the budget-based method. Owners shall: (1) Submit documentation to HUD pursuant to the procedures in Chapter 7 of HUD Handbook 4350.1, Insured Project Servicing Handbook, and (2) demonstrate that an increase in contract rents above that provided by the OCAF is necessary to reflect extraordinary necessary expenses of owning and maintaining the Housing. If the Secretary determines that the project rents pursuant to the OCAF are insufficient to cover project operating expenses, the Secretary may increase contract rents in excess of the amount determined pursuant to the OCAF to reflect extraordinary necessary expenses of owning and maintaining the project. Any contract rent increase resulting

from using the budget-based method shall be effective for the year approved.

III. Method for Calculating OCAF

In seeking to find the best operating cost adjustment factors for this purpose, the Department analyzed several sources of data. HUD's own data on rental project operating costs formed the largest and most reliable set of time-series data on actual project expenses. Bureau of Labor Statistics (BLS) data on wages and prices were found to offer the most reliable surrogate data sources.

After exploring alternative approaches, two methods of developing OCAFs were considered for detailed review. One was to use administrative and operating expense data for unsubsidized FHA-insured projects as the basis for developing factors. The other was to use BLS data on wages and prices as a surrogate indicator of operating cost changes.

An analysis of the HUD FHA data from the Form HUD–92410 showed that utility, tax, and insurance expenses had such a high degree of variability that measurements of area- or regional-level average or median expense changes had little relevance to most projects, and that these data could not be used to provide meaningful measures of change. Analysis efforts were therefore concentrated on the "Administrative" and "Operating and Maintenance" expense items reported on the HUD 92410. It was found that a large percentage of FHA-insured, unassisted projects had unusual changes in year-to-year administrative and operating costs, possibly due to expensing of major repairs using reserve funds that are transferred into the operating expense account. This is of concern, since using operating expense change factors that partly reflect unspecified inclusions of reserve expenditures means that the data do not provide a good indicator of normal, on-going operating expenses or of changes in those expenses. This also appears to explain why change factors developed using FHA-insured administrative and operating expense data do not have a significant central grouping tendency, but instead are spread relatively evenly over a wide range of values. Use of an average or median value has less meaning in such situations than it normally does, since only a few projects have values near the average.

Starting in 1993, HUD began to collect more detailed budget information for all FHA-insured projects, including information on funds transferred from project reserves to cover work reported as operating and maintenance expenses. In future years, this information may make it feasible to develop reliable OCAFs based on costs incurred by unassisted, FHA-insured projects. The Department intends to re-examine the feasibility of this approach as more data become available, but believes that actual operating expense data are not a reliable basis for developing OCAFs at this time and does not intend to use these data to calculate OCAFs.

The second option studied takes advantage of the fact that nearly all administrative and operating expenses are either labor-related or are tied to the cost of non-food producer goods. Labor-related costs should normally tend to move with regional changes in wages, while the cost of most producer goods should change in a similar manner throughout the country. The cost of changes in goods used in administrative and maintenance work can be measured by the BLS Producer Price Index. Wage and employment data are collected on a comprehensive and highly reliable basis by the Bureau of Labor Statistics (BLS). HUD uses BLS wage data in calculating median family income levels, and it uses BLS government wage data as the main determinant of the annual increases for Public Housing Allowed Expense Levels.

Research on Public Housing program administrative and operating expenses has shown that approximately 60 percent of such expenses are labor-related and 40 percent are tied to purchased goods. Since 1983 HUD has used this 60-percent-wage/40-percent-price-index ratio to update Public Housing Allowed Operating Expenses. The approach has been the subject of research and has been found to work well. It was used to develop OCAF factors that measure changes in "Administrative" and "Operating and Maintenance" expenses, as follows:

OCAF = (60%*BLS private sector wage change + 40%*BLS non-food PPI change) * (avg. operating and maintenance costs/avg. non-debt service costs)

The FY 1998 OCAF figures, shown on the accompanying appendix, were produced for the metropolitan and nonmetropolitan area parts of each of the ten HUD Regions using the BLS data from the final annual ES–202 series data on employment and wages. This is the same level of geography used for Section 8 Annual Adjustment Factors (AAFs), and has the advantage of capturing regional economic trends while avoiding the sometimes erratic changes that would result from use of more localized data. Future OCAF factors will be published on an annual basis.

IV. Findings and Certifications

Environmental Impact

In accordance with 24 CFR 50.19(c)(6) of the HUD regulations, the policies and procedures contained in this notice set forth rate determinations and related external administrative requirements and procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites, and therefore are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel,as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. This notice pertains to Operating Cost Adjustment Factors ("OCAF(s)"), to be used for rent increases under LIHPRHA, and does not substantially alter the established roles of the Department, the States, and local governments.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 14.187.

Date: January 23, 1998.

Andrew Cuomo,

Secretary.

APPENDIX—LOW INCOME HOUSING PRESERVATION AND RESIDENT HOMEOWNERSHIP ACT OF 1990

[FY 1998 Operating Cost Adjustment Factors]

HUD region	Area	Total (percent)	Metro (percent)	Nonmetro (percent)
1	NEW ENGLAND	1.0	1.1	0.9
2	NEW YORK-NEW JERSEY	1.0	1.0	0.2
3	MID-ATLANTIC	1.2	1.2	0.8
4	SOUTHEAST	1.3	1.2	1.6
5	MIDWEST	1.4	1.4	1.5
6	SOUTHWEST	1.0	1.1	0.7
7	GREAT PLAINS	1.2	1.1	1.7
8	ROCKY MOUNTAINS	1.7	1.7	1.6
9	PACIFIC/HAWAII	1.2	1.2	1.7
10	NORTHWEST/ALASKA	0.8	0.8	0.4
U.S. TOTAL		1.1	1.1	1.3

[FR Doc. 98–4717 Filed 2–24–98; 8:45 am]
BILLING CODE 4210–27–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

North Belts Travel Plan/Magpie-Confederate Vegetation Restoration Project; Including Timber Harvest, Prescribed Fire, Watershed Improvement, Road Reconstruction and Obliteration, Trail Relocation, and Travel Management

Travel management will be addressed on both Forest Service and Bureau of Land Management jurisdictions. Bureau of Land Management, Butte District, Headwaters Resource Area, Helena National Forest, Broadwater, Lewis & Clark, and Meagher Counties, Montana.

AGENCY: Forest Service, USDA/Bureau of Land Management, USDI.

ACTION: Notice; intent to prepare Environmental Impact Statement and a BLM Resource Management Plan (RMP) amendment.

SUMMARY: The USDA, Forest Service and Bureau of Land Management USDI are gathering information and preparing an Environmental Impact Statement (EIS) for the North Belts Travel Plan/ Magpie-Confederate Vegetation Restoration Project located approximately 25 air miles east of Helena, Montana.

The Forest Service proposes to treat forested areas with approximately 1480 acres of commercial timber harvest and 3725 acres of prescribed fire. An estimated three miles of new construction and three miles of road reconstruction will be needed to access the treatment areas. All new construction will be obliterated following harvest, Prescribed fire is also proposed for 6452 acres of grasslands (315 acres of which belong to the BLM). The Bureau of Land Management and Forest Service propose to develop long-term travel management plans for the northern Big Belt Mountains and Spokane Hills. The proposal includes corrective measures to facilitate watershed improvement and reduce or eliminate various problems on existing roads and trails. The proposed action would implement new travel management plans that identify designated routes which would be available for motorized vehicle use with a mix of seasonal and vehicle type restrictions.

The proposal is designed to help achieve the goals and objectives of the 1986 Helena National Forest Plan, move selected areas towards the desired conditions identified from the Forest Plan, and BLM Headwaters Resource Management Plan of 1984. These needs are supported by the findings of the Big Belts Integrated Resource Analysis. The purpose is to maintain healthy, sustainable ecosystems that (1) reduce fire risk, (2) provide wildlife habitat similar to the habitat that existed when fire was a natural component of the ecosystem, (3) enhance soil and water, (4) provide recreation opportunities, and (5) provide reasonable long-term travel management.

No Forest Plan amendments are proposed. Further analysis of the proposed action and alternatives to the proposal may result in a decision(s) that include amendments to the Forest Plan. Amendments to the BLM Headwaters Resource Management Plan are expected to be identified and therefore plan amendment procedures will be followed from the onset.

DATES: Comments should be received in writing on or before March 31, 1998.

ADDRESSES: The responsible official for the USDA Forest Service is Thomas J. Clifford, Forest Supervisor, Helena National Forest, Supervisor's Office, 2880 Skyway Drive, Helena, MT 59601. Phone: (406) 449–5201. The responsible official for the USDI Bureau of Land Management is Merle Good, Headwaters Resource Area Manager, Butte District Office, P.O. Box 3388, Butte, Montana 59702.

FOR FURTHER INFORMATION CONTACT: George Weldon, District Ranger, Townsend Ranger District, or Quinn Carver, Interdisciplinary Team Leader, Townsend Ranger District, 415 S. Front, Townsend, MT 59644. Phone: (406) 266–3425.

SUPPLEMENTARY INFORMATION: The project would occur on Bureau of Land Management lands of the Butte District and National Forest lands of the Helena and Townsend Ranger Districts. The activities would take place within portions of T.11, T.12 and 13N., R.2W., T.9–13N., R.1W., T.10–13N., R.1E., T.9–12N., R.2E., and T.9–11N., R.3E., Montana Principle Meridian.

Portions of the timber harvest and prescribed fire treatment units are within the Hellgate Gulch and Cayuse Mountain roadless areas. No road construction is proposed within either roadless area.

The decisions to be made, based on this environmental analysis, are:

1. Whether or not to treat the vegetation at this time, and if so, how would the treatments be accomplished.

2. What type of transportation systems will be necessary to accommodate the long-term needs of the public while considering other resource needs and objectives.

This EIS will tier to the Helena Forest Plan Final EIS of April 1986 and the BLM Headwaters Resource Management Plan of 1984, which provide program goals, objectives, and standards and

guidelines for conducting management activities in these areas. All activities associated with the proposal will be designed to maintain or enhance the resource objectives identified in the BLM Headwaters Resource Management Plan and Helena Forest Plan further refined in the Big Belts Integrated Resource Analysis.

The Forest Service and Bureau of Land Management are seeking information and comments from Federal, State, and local agencies together with organizations or individuals who may be interested in or affected by the proposed action. The Forest Service and Bureau of Land Management invite written comments and suggestions on the issues for the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS.

Preparation of the EIS will include the following steps:

1. Identification of issues to be analyzed in depth.
2. Identification of additional reasonable alternatives.
3. Identification of potential environmental effects of the alternatives.

Timber harvest includes even-aged management treatments such as clearcutting with reserves, seed tree with reserves, and shelterwood with reserves. Intermediate treatments such as commercial thinning will also be considered. Prescribed burning will be used to treat nonforested and forested vegetation. Alternatives to this proposal will include the "no action" alternative, in which none of the proposed treatments would be implemented. Other alternatives will examine variations in the location, amount and method of vegetative management.

The preliminary issues identified are:

1. The effects on forest health and sustaining ecosystems.
2. The effects on recreation and visual resources.
3. The effects on wildlife.
4. The effects on the roadless and wilderness character of the Roadless Areas.
5. The effects on fish, water quality, and riparian areas.
6. The potential for increase in noxious weed populations or distribution.

The Forest Service and Bureau of Land Management will jointly analyze and disclose in the DEIS and FEIS the environmental effects of the proposed action pertaining to each agency and a reasonable range of alternatives. The DEIS and FEIS will disclose the direct, indirect and cumulative environmental effects of each alternative and its associated site specific mitigation measures.

Public participation is especially important at several points of the analysis. Interested parties may visit with the Forest Service/Bureau of Land Management officials at any time during the analysis. However, two periods of time are specifically identified for the receipt of comments. The first comment period is during the scoping process when the public is invited to give written comments to the Forest Service and Bureau of Land Management. The second review period is during the 90 day review of the DEIS when the public is invited to comment on the DEIS

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in March of 1999. At that time, the EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the DEIS will be 90 days from the date the notice of availability is published in the **Federal Register**.

At this early stage in the scoping process, the Forest Service and Bureau of Land Management believe it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviews of DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Secondly, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1022 (9th cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service and Bureau of Land Management at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service and Bureau of Land Management in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service and Bureau of Land Management in preparing the FEIS. The FEIS is expected to be filed in February of 2000.

Dated: February 18, 1998.

Thomas J. Clifford,

Forest Supervisor.

Dated: February 18, 1998.

Merle Good,

Headwaters Resource Area Manager, Bureau of Land Management.

[FR Doc. 98–4708 Filed 2–24–98; 8:45 am]

BILLING CODE 3410–11–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–401]

Certain CD-Rom Controllers and Products Containing Same; Notice of Commission Determination not To Review Initial Determination Granting Motion To Amend the Complaint and Notice of Investigation To Add an Additional Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") granting complainant's motion to amend the complaint and notice of investigation to add an additional respondent.

FOR FURTHER INFORMATION: Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3107.

SUPPLEMENTARY INFORMATION: The Commission instituted the above-captioned patent-based section 337 investigation on August 20, 1997, on a complaint filed by Oak Technology, Inc. of Sunnyvale, California. The complaint and subsequent notice of investigation originally named four respondents—Winbond Electronics Corp. of Hsinchu, Taiwan; Winbond Electronics North America Corp. of San Jose, California; Wearnes Technology (Private) Ltd. of Singapore; and Wearnes Electronics

Malaysia Sendirian Berhad of Johor, Malaysia (collectively, the "original respondents").

On October 14, 1997, Oak Technology filed a motion pursuant to Commission rule 210.14(b), 19 CFR 210.14(b), to amend the notice of investigation and complaint by adding Wearnes Peripherals International (Private) Ltd. of Singapore ("WPI") as an additional respondent. WPI and the original respondents opposed the motion to amend. The Commission investigative attorney filed a response in support of the motion. Oak Technology was granted leave to reply to WPI's opposition, and WPI was granted leave to file a sur-reply.

On January 23, 1998, the ALJ issued an initial determination (Order No. 5) granting Oak Technology's motion to add WPI as a respondent. No petitions for review were filed. The Commission has determined not to review the subject ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

Issued: February 18, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–4788 Filed 2–24–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–370 Sanctions Proceeding]

Certain Salinomycin Biomass and Preparations Containing Same; Termination of Sanctions Proceeding; Vacatur of Recommended Determination; Cancellation of Commission Hearing

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission determined to grant a joint motion to terminate the sanctions proceedings and vacate the presiding administrative law judge's (ALJ) recommended determination (RD) on monetary sanctions. The Commission reserved its authority, in an appropriate case, to pursue sanctions on its own initiative under rule 210.4(d)(1)(ii) without regard to whether there has been a private settlement agreement.

FOR FURTHER INFORMATION CONTACT: Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 6, 1995, based on a complaint filed by Kaken Pharmaceutical Co. Inc. (Kaken). On November 6, 1995, the ALJ issued his final initial determination (ID) in this investigation, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, by respondents Hoechst Aktiengesellschaft, Hoechst Veterinar GmbH, and Hoechst-Roussel Agri-Vet Co. (collectively, Hoechst). His determination was based on his findings that the patent at issue was invalid for failure to disclose the best mode of operation and unenforceable due to inequitable conduct during prosecution of the patent before the U.S. Patent and Trademark Office. The ALJ's ID was not reviewed by the Commission and was ultimately upheld on appeal to the U.S. Court of Appeals for the Federal Circuit, *Kaken Pharmaceutical Co.* v. *USITC*, Appeal Nos. 96–1300,-1302, nonprecedential opinion dated March 31, 1997.

On January 19, 1996, Hoechst filed a motion for sanctions against Kaken, which the Commission referred to the presiding ALJ for issuance of an RD. Hoechst's motion alleged, *inter alia*, that Kaken committed sanctionable conduct by filing a complaint totally lacking in merit. On May 14, 1997, the ALJ issued his RD in which he recommended that the Commission impose on Kaken and its attorneys joint and several liability for an amount of money equal to double the entire attorneys fees and costs of the Hoechst respondents incurred in both the section 337 investigation on the merits and in the proceeding on sanctions. All parties filed comments on the RD. On August 8, 1997, Kaken and its attorneys requested an opportunity to present oral argument before the Commission and leave to reply to Hoechst's comments. On October 24, 1997, the Commission granted the motion for oral argument and issued notice of a hearing date of December 10, 1997. 62 FR 58746 (Oct. 30, 1997).

On November 5, 1997, Hoechst, Kaken, and Kaken's attorneys filed a joint motion for termination of the sanctions proceedings based on Hoechst's withdrawal of its motion for sanctions. The parties also moved that the RD be vacated. They stated that Hoechst and Kaken have entered into a worldwide settlement agreement with respect to salinomycin that includes the reissue patent that formed the basis of Kaken complaint at the Commission. They stated that, as a result, all issues between Hoechst and Kaken have been fully resolved. On November 17, 1997, the Commission investigative attorney (IA) supported the motion to terminate. On November 21, 1997, the Commission determined to postpone the oral argument indefinitely while it considered the joint motion to terminate. 62 FR 63193 (Nov. 26, 1997).

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov or ftp://ftp.usitc.gov).*

Issued: February 18, 1998

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–4789 Filed 2–24–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

National Institute of Justice

[OJP(NIJ)–1160]

RIN 1121–ZA97

Meeting Announcement of the National Commission on the Future of DNA Evidence

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of meeting.

SUMMARY: Announcement of the first meeting of the National Commission on the Future of DNA Evidence.

DATES: March 18, 1998.

ADDRESSES: Great Hall, Department of Justice, 10th and Constitution Ave. NW, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Christopher H. Asplen, AUSA, Executive Director (202) 616–8123.

SUPPLEMENTARY INFORMATION: Individuals interested in attending the meeting must call Laura Lacky at (202) 307–5847 two weeks in advance of meeting and provide name, date of birth and social security number for security purposes. Attendees must also present government issued photo identification at the time of the meeting. All attendees are subject to metal detection devices.

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The purpose of the National Commission on the Future of DNA Evidence is to provide the Attorney General with recommendations on the use of current and future DNA methods, applications and technologies in the operation of the criminal justice system, from the Crime scene to the courtroom. Over the course of its Charter, the Commission will review critical policy issues regarding DNA evidence and provide recommended courses of action to improve its use as a tool of investigation and adjudication in criminal cases.

The Commission will address issues in five specific areas: (1) The use of DNA in post-conviction relief cases, (2) legal concerns including *Daubert* challenges and the scope of discovery in DNA cases, (3) criteria for training and technical assistance for criminal justice professionals involved in the identification, collection and preservation of DNA evidence at the crime scene, (4) essential laboratory capabilities in the face of emerging technologies, and (5) the impact of future technological developments in the use of DNA in the criminal justice system. Each topic will be the focus of the in-depth analysis by separate working groups comprised of prominent professionals who will report back to the Commission.

John Schwarz,

Acting Director, National Institute of Justice.

[FR Doc. 98–4800 Filed 2–24–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning two information collections: (1) Employment Information Form (WH–3 and WH–3–Spanish); and (2) Survivor's Form for Benefits (CM–912), formerly, Survivor's Claim for Benefits (CM–912) and Survivor's Notification of Beneficiary's Death (CM–1089). Copies of the proposed information collection requests can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before April 27, 1998. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Contact Ms. Patricia Forkel at the U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–3201, Washington, DC 20210, telephone (202) 219–7601. The Fax number is (202) 219–6592. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Employment Information Form

I. Background

Section 11(a) of the Fair Labor Standards Act, 29 U.S.C. 201 et seq., provides that the Secretary of Labor may investigate and gather data regarding the wages, hours, or other conditions and practices of employment in any industry subject to the Act. Similar provisions are also contained in the Public Contracts Act, the Service Contracts Act, the Davis Bacon Act, the Consumer Credit Protection Act, the migrant and Seasonal Agricultural Worker Protection Act, and the Family and Medical Leave Act of 1993, all of which are enforced by the Wage and Hour Division of the U.S. Department of Labor. The Form WH–3 is an optional form used by complainants and others to provide information about alleged violations of the labor standards provisions of the Acts cited above. The form is provided in both English and Spanish versions.

II. Current Actions

The Department of Labor (DOL) seeks approval of this revised information collection in order to meet the statutory requirements to investigate alleged violations of the various labor standards laws enforced by the Wage and Hour Division. The form has been revised from the current version in order to incorporate information regarding the Family and Medical Leave Act, to clarify the form, and to add and delete certain data elements.

Type of Review: Revision.

Agency: Employment Standards Administration.

Title: Employment Information Form.

OMB Number: 1215–0001.
Agency Numbers: WH–3 and WH–3 Spanish.
Affected Public: Individuals or households, farms, businesses or other for-profit; not-for-profit institutions; Federal Government; State, local or Tribal Government.
Total Respondents: 37,000.
Frequency: On occasion.
Total Responses: 37,000.
Average Time Per Response: 20 minutes.
Estimated Total Burden Hours: 12,333.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

Survivor's Form for Benefits

I. Background

This collection of information is required to administer the benefit payment provision of the Black Lung benefits Act for survivors of deceased coal miners. Completion of this form constitutes the application for benefits by survivors and assists in determining the survivor's entitlement to benefits.

II. Current Actions

The Department of Labor (DOL) seeks approval of this revised information collection in order to carry out its responsibility to meet the statutory requirements of the Black Lung Benefits Act to pay benefits to eligible survivors of Black Lung beneficiaries. This information clearance request revises the current form CM–912, Survivor's Form for Benefits, to simplify the information collection and to incorporate information formerly collected on the Form CM–1089, Survivor's Notification of Beneficiary's Death, approved under OMB 1215–1089. Upon OMB approval of the revised CM–912, the CM–1089 will be eliminated.
Type of Review: Revision.
Agency: Employment Standards Administration.
Title: Survivor's Form for Benefits.
OMB Number: 1215–0069.
Agency Numbers: CM–912.
Affected Public: Individuals or households.
Total Respondents: 3,300.
Frequency: On time application.
Total Responses: 3,300.
Average Time Per Response for Reporting: 8 minutes.
Estimated Total Burden Hours: 440.
Total Burden Cost (capital/startup): 0.
Total Burden Cost (operating/maintenance): $945.00.

Dated: February 19, 1998.
Margaret J. Sherrill,
Chief, Branch of Management, Review and Internal Control, Office of Management, Administration and Planning, Employment Standards Administration.
[FR Doc. 98–4827 Filed 2–24–98; 8:45 am]
BILLING CODE 4510–27–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 63, No. 32, at 82222, February 18, 1998.
PREVIOUSLY ANNOUNCED TIME AND DATE: 10:00 a.m., Thursday, March 5, 1998.
PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.
STATUS: Open.
CHANGES IN THE MEETING: The status of the Commission meeting to consider and act upon the following item has been changed from open to closed:
1. *Secretary of Labor* v. *Wayne R. Steen, employed by Ambrosia Coal & Construction Co.*, Docket No. PENN 94–15 (Issues include whether on second remand the judge properly assessed a $2,000 penalty against Wayne R. Steen under sections 110(c) and 110(i) of the Mine Act for violating 30 CFR § 77.404(a)).
It was determined by a unanimous vote of the Commission to change the status of this meeting from open to closed [Pursuant to 5 U.S.C. § 552b(c)(10)].
CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: February 20, 1998.
Jean H. Ellen,
Chief Docket Clerk.
[FR Doc. 98– 4983 Filed 2–23–98; 3:36 p]
BILLING CODE 6735–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that its business required the deletion of the following item from the previously announced open meeting (Federal Register, page 9019, February 23, 1998) scheduled for Wednesday, February 25, 1998.

4. Final Amendments to Interpretive Ruling and Policy Statement (IRPS) 94–1, (Chartering Manual).
The Board voted unanimously that Agency business required that this item be deleted from the open agenda and earlier announcement of this change was not possible.
The previously announced items were:
1. Requests from Three (3) Federal Credit Unions to Convert to Community Charters.
2. Request from a Federal Credit Union to Convert to a Federal Mutual Savings Association.
3. Request from a Corporate Federal Credit Union for a Field of Membership Amendment.
4. Final Amendments to Interpretive Ruling and Policy Statement (IRPS) 94–1, (Chartering Manual).
5. Final Rule: Concerning Sections 701.26(b) and 701.27, and Part 712, NCUA's Rules and Regulations, Credit Union Service Contracts, Credit Union Service Organizations, and Advertising.
6. Final Rule: Amendments to Part 708a, Appendix A, NCUA's Rules and Regulations, Mergers or Conversions of Federally Insured Credit Unions to Non Credit Union Status.
7. Final Rule: Amendments to Part 708b, Subpart C, NCUA's Rules and Regulations, Mergers of Federally Insured Credit Unions; Voluntary Termination or Conversion of Insured Status.
FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.
Becky Baker,
Secretary of the Board.
[FR Doc. 98–4984 Filed 2–23–98; 3:44 pm]
BILLING CODE 7535–01–M

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Institute of Museum and Library Services, Office of Library Services; Submission for OMB Review, Comment Request; 1998 Indian Library Services Application and Guidelines; 1998 Native Hawaiians Library Services Application and Guidelines

AGENCY: Institute of Museum and Library Services.
ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services has submitted the following public information request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13,44 U.S.C. Chapter 35).

Currently, the Institute of Museum and Library Services is soliciting comment concerning a two new collections entitled, 1998 Indian Library Services Application and Guidelines and 1998 Native Hawaiians Library Services Application and Guidelines. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Institute of Museum and Library Services, Director of Discretionary Programs, Director, Dr. Joyce Ray (202) 606–8536. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–8636.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Background

Public Law 104–208 enacted on September 30, 1996 contains the Library Services and Technology Act, a reauthorization and refocusing of federal library programs. This legislation calls upon the Director of the Institute of Museum and Library Services to award grants to Indian tribes and to organizations that primarily serve and represent Native Hawaiians (as the term is defined in section 9212 of the Native Hawaiian Education Act (20 U.S.C. 7912) to enable such tribes and organizations to carry out activities to:

- Establish or enhance electronic linkages among or between libraries; electronically link libraries with educational, social or information services; assist libraries in accessing information through electronic networks;
- Encourage libraries in different areas, and encourage different types of libraries, to establish consortia and share resources; or
- Pay costs for libraries to acquire or share computer systems and telecommunications technologies; and
- Target library and information services to persons having difficulty using a library and to underserved urban and rural communities, including children (from birth through age 17) from families and incomes below the poverty line (as defined by the Office of Management and Budget) and revised annually in accordance with section 673(2) applicable to family size involved.

Type of Review: New collection.
Agency: Institute of Museum and Library Services.
Title: 1998 Indian Library Services Application and Guidelines.
OMB Number: N/A.
Affected Publics: Indian Tribes.
Total Respondents: 225.
Frequency: Annually.
Total Responses: 250.
Average Time per Response: 2 hours.
Estimated Total Burden Hours: 500.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

Type of Review: New Collection.
Agency: Institute of Museum and Library Services.
Title: 1998 Native Hawaiians Library Services Application and Guidelines.
OMB Number: N/A.
Affected Publics: Organizations that primarily serve and represent Native Hawaiians (as the term is defined in section 9212 of the Native Hawaiian Education Act (20 U.S.C. 7912).
Total Respondents: 1.
Frequency: Annually.
Total Responses: 1.
Average Time per Response: 4 hours.
Esimated Total Burden Hours: 4.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Director Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., N.W., Washington, DC 20506.

Dated: February 20, 1998.

Mamie Bittner,

Director Public and Legislative Affairs.

[FR Doc. 98–4776 Filed 2–24–98; 8:45 am]
BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 70—Domestic Licensing of Special Nuclear Material.
2. *Current OMB approval number:* 3150–0009.
3. *How often the collection is required:* Required reports are collected and evaluated on a continuing basis as events occur. Applications for new licenses and amendments may be submitted at any time. Renewal applications are submitted every five years. Applications for renewal for certain major fuel cycle facilities are submitted every ten years, with updates of the safety demonstration section submitted every two years. Nuclear material control and accounting information is submitted in accordance with specified instructions. Nuclear criticality safety training program information pursuant to DG–3008 is submitted with the application or renewal.
4. *Who is required or asked to report:* Applicants for and holders of specific NRC licenses to receive title to, own, acquire, deliver, receive, possess, use, or initially transfer special nuclear material.
5. *The number of annual responses:* 1,138.
6. *The number of hours needed annually to complete the requirement or request:* 81,575 (an average of approximately 67.3 hours per response for applications and reports, plus approximately 23.6 hours per recordkeeper).
7. *Abstract:* 10 CFR Part 70 establishes requirements for licenses to own, acquire, receive, possess, use, and transfer special nuclear material. Draft Regulatory Guide DG–3008 provides guidance on an acceptable nuclear criticality safety training program. The information in the applications, reports

and records is used by NRC to make licensing and other regulatory determinations concerning the use of special nuclear material. The revised estimate of burden reflects an increase primarily because of the addition of requirements for documentation for termination or transfer of licensed activities.

Submit, by April 27, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 19th day of February, 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–4763 Filed 2–24–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review of continued approval of information collection under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* State Agreements Program, as authorized by Section 274(b) of the Atomic Energy Act.

3. *Current OMB approval number:* 3150–0029.

4. *How often the collection is required:* One time or as needed.

5. *Who is required or asked to report:* Thirty Agreement States who have signed Section 274(b) agreements with NRC.

6. *An estimate of the number of responses:* 95.

7. *An estimated number of annual respondents:* 30.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 570 (approximately six hours per response).

9. *An indication of whether Section 3507(d), Public Law 104–13 applies:* Not applicable.

10. *Abstract:* Agreement States are surveyed on a one-time or as-needed basis, i.e., in response to a specific incident, to gather information on licensing and inspection practices and other technical and statistical information. The results of such information requests, which are authorized under Section 274(b) of the Atomic Energy Act, are utilized in part by NRC in preparing responses to Congressional inquiries. Agreement State comments are also solicited in the areas of proposed procedure and policy development.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by March 27, 1998: Martin Offutt, Office of Information and Regulatory Affairs (3150–0029), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 19th day of February, 1998.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–4762 Filed 2–24–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication; Laboratory Testing of Nuclear-Grade Activated Charcoal (M97978)

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter concerning the laboratory testing of nuclear-grade activated charcoal that is used in the safety-related air-cleaning units of engineered safety feature ventilation systems of nuclear power plants to reduce the potential onsite and offsite consequences of a radiological accident by adsorbing iodine. The purpose of the proposed generic letter is to: (1) Alert addressees that the NRC has determined that testing nuclear-grade activated charcoal to standards other than American Society for Testing and Materials (ASTM) D3803–1989, "Standard Test Method for Nuclear-Grade Activated Carbon," does not provide assurance for complying with their current licensing basis as it relates to the dose limits of General Design Criterion (GDC) 19 of Appendix A to 10 CFR Part 50 and Subpart A of 10 CFR Part 100, and that ASTM D3803–1989 should be used for both new and used charcoal because it allows for accurately monitoring the degradation of the charcoal over time; (2) request that addressees determine whether their technical specifications (TS) reference ASTM D3803–1989 for charcoal filter laboratory testing and if not, either amend their TS to reference ASTM D3803–1989 or propose an alternative test protocol and provide the requested information; (3) alert addressees of NRC intent to exercise enforcement discretion under certain conditions; and (4) require that addressees submit written responses to this generic letter.

The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading.

The proposed generic letter has been endorsed by the Committee to Review Generic Requirements (CRGR). Relevant information that was sent to the CRGR will be placed in the NRC Public Document Room. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of the technical position and, as appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the NRC Public Document Room.

DATES: Comment period expires March 27, 1998. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules and Directives Branch, Division of Administrative Services, U.S. Nuclear Regulatory Commission, Mail Stop T6–D69, Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John P. Segala, (301) 415–1858.

SUPPLEMENTARY INFORMATION:

NRC Generic Letter 97–XX: Laboratory Testing of Nuclear-Grade Activated Charcoal

Addressees

All holders of operating licenses for nuclear power reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to:

(1) Alert addressees that the NRC has determined that testing nuclear-grade activated charcoal to standards other than American Society for Testing and Materials (ASTM) D3803–1989, "Standard Test Method for Nuclear-Grade Activated Carbon," does not provide assurance for complying with their current licensing basis as it relates to the dose limits of General Design Criterion (GDC) 19 of Appendix A to 10 CFR Part 50 and Subpart A of 10 CFR Part 100. In addition, the staff has determined that ASTM D3803–1989 should be used for both new and used charcoal because it allows for accurately monitoring the degradation of the charcoal over time.

(2) Request that all addressees determine whether their technical specifications (TS) reference ASTM D3803–1989 for charcoal filter laboratory testing. Addressees whose TS do not reference ASTM D3803–1989 should either amend their TS to reference ASTM D3803–1989 or propose an alternative test protocol and provide the information discussed in the requested actions.

(3) Alert addressees of the staff's intent to exercise enforcement discretion under certain conditions.

(4) Require that all addressees send the NRC written responses to this generic letter, relating to implementation of the requested actions.

Background

Safety-related air-cleaning units used in the engineered safety feature (ESF) ventilation systems of nuclear power plants reduce the potential onsite and offsite consequences of a radiological accident by adsorbing radioiodine. To ensure that the charcoal filters used in these systems will perform in a manner that is consistent with the licensing basis of a facility, most licensees have requirements in their facility TS to periodically test (in a laboratory) samples of charcoal taken from the air-cleaning units.

The NRC's and the nuclear industry's understandings of the appropriate laboratory tests for nuclear-grade charcoal have evolved over the years since the issuance of Regulatory Guide (RG) 1.52, "Design, Testing, and Maintenance Criteria for Postaccident Engineered-Safety-Feature Atmosphere Cleanup System Air Filtration and Adsorption Units of Light-Water-Cooled Nuclear Power Plants," which is referenced in many plant TS. It was initially assumed that high-temperature/high-relative humidity (RH) conditions were the most severe. Later, with more testing experience, it became clear that the most conservative test is at low temperature/high humidity. The use of outdated test protocols or inappropriate test conditions can lead to an overestimation of the charcoal's ability to adsorb radioiodine following an accident.

Problems associated with the performance of the laboratory test of charcoal under inappropriate test conditions were discussed in Attachment 1 of Information Notice (IN) 86–76. Attachment 1, "Summary of Control Room Habitability Reviews," noted that charcoal was being tested at much higher temperatures than any expected during the course of an accident, and that the performance of the laboratory test at that temperature can result in erroneously high efficiency measurements.

In 1982, the American Society of Mechanical Engineers (ASME) Committee on Nuclear Air and Gas Treatment (CONAGT) conducted an inter-laboratory comparison test using ASTM D3803–1979 and found that seven U.S. laboratories and eight foreign laboratories obtained vastly different results when testing samples of the same charcoal. After efforts to resolve the differences failed, the NRC contracted with EG&G at Idaho National Engineering Laboratory (INEL) to assess the problem. As a result of this assessment, the NRC issued IN 87–32. Through IN 87–32, the NRC informed licensees of deficiencies in the testing of nuclear-grade charcoal, specifically noting serious problems with the capabilities of the testing laboratories and with the testing standard (ASTM D3803–1979). The NRC contractor detailed the specific problems in its technical evaluation report, EGG–CS–7653, "Final Technical Evaluation Report for the NRC/INEL Activated Carbon Testing Program." Specifically, EG&G reported that ASTM D3803–1979 had unacceptable test parameter tolerances and instrument calibration requirements, and that ASTM D3803–1979 was nonconservative in not requiring humidity pre-equilibration of used charcoal. The information notice indicated that the protocol developed by EG&G could be utilized for performing the laboratory test until the D–28 committee responsible for ASTM D3803 revised the standard. The committee completed the revision and issued it in December 1989. The problems associated with the testing laboratories were resolved after the number of U.S. firms performing such tests dropped from seven to the current two.

On April 29, 1993, representatives from ASME and CONAGT met with the NRC staff to express their concerns about laboratory testing of charcoal. CONAGT discussed the variation in laboratory test results obtained (methyl iodide penetration) when temperature, RH, face velocity, bed depth, test protocol, and impregnate were varied. CONAGT stated that the 1989 version of

ASTM D3803 is the only acceptable test method for TS applications and compared the results of laboratory tests performed using the 1986 version of ASTM D3803 (which is the 1979 version with editorial changes) to results using the 1989 version. The results from the 1986 protocol showed significantly higher iodine-removal capabilities than the results from the 1989 version.

In addition, CONAGT indicated that testing charcoal at temperatures greater than 30 °C [86 °F] almost always results in the charcoal meeting the TS acceptance criteria, even when the charcoal is deficient. To support this premise, CONAGT presented the results of laboratory tests conducted at temperatures of 30 °C [86 °F], 80 °C [176 °F], and 130 °C [266 °F]. The data show significant increases in iodine-removal capabilities as the test temperature increases. CONAGT indicated that all systems located outside of containment should be tested at 30 °C [86 °F], which is more representative of the limiting accident conditions. Tests conducted at 80 °C [176 °F] or 130 °C [266 °F] are inappropriate because tests at these temperatures result in the regeneration of the charcoal. At elevated temperatures, the charcoal contains less moisture than at 25 °C [77 °F] and 30 °C [86 °F] which results in the charcoal having more surface area available for adsorption of iodine. Therefore, testing at the elevated temperatures results in an overestimation of the actual iodine-removal capability of the charcoal, and testing at 25 °C [77 °F] or 30 °C [86 °F] gives results that represent a more realistic assessment of the capability of the charcoal. CONAGT concluded its presentation by stating that the major problems associated with the laboratory test of charcoal are the designation of the test protocol and the TS that designate the test to be performed.

On November 6, 1996, the staff visited the two remaining laboratories that test nuclear-grade activated charcoal, NCS Corporation and NUCON International, Inc. Both laboratories have resolved the poor reproducibility problem identified in the EG&G report by performing all tests with calibrated equipment that is capable of maintaining the tight tolerances of the test parameters as specified in ASTM D3803–1989. Tight tolerances are very important when tests are performed at high RH, because slight variations in RH result in unacceptably large differences in the tested efficiency of the charcoal.

Discussion

Although some licensees have changed their TS to reference the latest testing standard (ASTM D3803–1989), many still use outdated standards and/or test conditions that may overestimate the capability of the charcoal in their ESF systems. As a result, the ability of the charcoal filters in these systems to perform in a manner consistent with the licensing basis for the facility may be in question.

The licensees of three plants (V.C. Summer, Davis-Besse and Oconee) determined that the tests they performed were not in compliance with their TS and submitted emergency TS amendments (see Enclosure 1 for details). As a result of the emergency TS changes, the staff has performed an internal survey of the TS of operating plants to determine whether other plants have the potential for similar compliance problems. The survey indicated that at least one-third of operating reactor licensees may be out of compliance with their TS because, although the plant TS reference RG 1.52 or American National Standards Institute (ANSI) N509–1976, "Nuclear Power Plant Air-Cleaning Units and Components," the licensees may have used later versions of the standards for the laboratory tests of their nuclear-grade charcoal. On the basis of this survey, the staff established the following four groups of plants:

(1) Plants in compliance with their TS that test in accordance with ASTM D3803–1989.

(2) Plants in compliance with their TS that test in accordance with a test protocol other than ASTM D3803–1989.

(3) Plants not in compliance with their TS that test in accordance with ASTM D3803–1989.

(4) Plants not in compliance with their TS that test in accordance with a test protocol other than ASTM D3803–1989.

Licensees in Group 1 have TS that require charcoal to be tested in accordance with ASTM D3803–1989, which adequately demonstrates the capability of the charcoal. As discussed in Enclosure 1, the staff considers ASTM D3803–1989 to be the most accurate and most realistic protocol for testing charcoal in ESF ventilation systems because it offers the greatest assurance of accurately and consistently determining the capability of the charcoal. For example, it requires the test to be performed at a constant low temperature of 30°C [86°F]; it provides for smaller tolerances in temperature, humidity, and air flow; and it has a humidity pre-equilibration.

Licensees in Group 2 have TS that require charcoal to be tested in accordance with test standards other than ASTM D3803–1989. On the basis of available laboratory test results for more than 50 charcoal samples, there were significant differences in filter efficiencies for about 15 to 20-percent of the tested samples when comparing the test results from ASTM D3803–1979 and ASTM D3803–1989. When the charcoal samples were tested in accordance with ASTM D3803–1979, they always appeared to have very high efficiencies. However, when the same charcoal samples were tested in accordance with ASTM D3803–1989, significant reduction in efficiency was noted. Depending on the system arrangement, this reduction in filter efficiency can result in calculated doses to the control room operators exceeding the GDC 19 limits by as much as a factor of 1.5 to 2. For pressurized-water reactors (PWRs) with secondary containments and for all boiling-water reactors (BWRs), this reduction in filter efficiency can result in offsite doses from a filtered pathway increasing by as much as a factor of 10 to 15. As a result, the testing of nuclear-grade activated charcoal to standards other than ASTM D3803–1989 does not provide assurance for complying with the plant's licensing basis as it relates to the dose limits of GDC 19 and Part 100.

In addition, the staff has determined that ASTM D3803–1989 should be used for both new and used charcoal because it allows for accurately monitoring the degradation of the charcoal over time. The original rationale for testing used and new charcoal differently was the belief that a long equilibration period would regenerate the used charcoal by removing contaminants adsorbed by the charcoal during normal plant use. However, an EG&G technical evaluation report, described in Enclosure 1, demonstrated that this is not true. As a result, ASTM D3803–1989 specifies testing both used and new charcoal in the same manner.

Currently, before shipping, suppliers test most new charcoal with the ASTM D3803–1989 protocol at 30°C [86°F] and 95-percent RH in addition to the test protocol and test conditions the addressee records on the purchase order. The results from the new charcoal tested via ASTM D3803–1989 present a solid baseline for the initial capability of the charcoal. Using ASTM D3803–1989 to test used charcoal is a very accurate and reproducible method for determining the capability of the charcoal. By comparing the results of the used charcoal tests with the new charcoal test baseline, the addressee can be certain of the charcoal's level of degradation.

Analyses of design-basis accidents assume a particular engineered safety features (ESF) charcoal filter adsorption

efficiency when calculating offsite and control room operator doses. Licensees then test charcoal filter samples to determine whether the filter adsorber efficiency is greater than that assumed in the design-basis accident analysis. The laboratory test acceptance criteria contain a safety factor to ensure that the efficiency assumed in the accident analysis is still valid at the end of the operating cycle. Because ASTM D3803–1989 is a more accurate and demanding test than older tests, addressees that upgrade their TS to this new protocol will be able to use a safety factor as low as 2 for determining the acceptance criteria for charcoal filter efficiency. This safety factor can be used for systems with or without humidity control because the lack of humidity control is already accounted for in the test conditions (systems without humidity control test at 95-percent RH and systems with humidity control can test at 70-percent RH). The staff has previously approved reductions in the safety factor for plants adopting the ASTM D3803–1989 standard on a case-by-case basis. (The staff plans to make conforming changes to RG 1.52.)

The licensees that received emergency TS changes were in Groups 3 and 4. Licensees in Groups 3 and 4 have TS that require charcoal to be tested in accordance with RG 1.52 or ANSI N509–1976, and are not in compliance with their TS because the specified test protocol can not be successfully completed as discussed in Enclosure 1. These licensees are either (1) testing in accordance with the desired ASTM D3803–1989 (Group 3) or (2) using earlier revisions of ASTM D3803 or an older standard which they believe are acceptable (Group 4). The staff does not have confidence that the results from RG 1.52 or ANSI N509–1976 meet the intent of the TS which is to ensure that the doses are within the required limits. Therefore, licensees in these groups have not adequately demonstrated compliance with their licensing basis as it relates to the dose limits of GDC 19 and Part 100.

The staff believes that (1) conflicting guidance, (2) complex and ambiguous standards, and (3) licensee belief that using later versions of the standard would satisfy their TS requirements, contributed to confusion regarding charcoal testing. These factors may explain why licensees did not adopt ASTM D3803–1989 (See Enclosure, for further discussion). In addition, based on the available laboratory test results, the staff believes that most charcoal in use is not degraded to an extent that would adversely affect control room habitability or public health and safety. This confidence in charcoal performance and given the low probability of a design basis accident, justify the time frames for the resolution of this matter. Therefore, the staff intends to exercise enforcement discretion, consistent with Section VII.B.6 of the Enforcement Policy, for all addressees in Groups 3 and 4, provided:

- Within 60 days of the date of this generic letter, either charcoal samples are tested in accordance with ASTM D3803–1989 and the results meet the current TS acceptance criteria or all of the charcoal is replaced with new charcoal that has been tested in accordance with ASTM D3803–1989;
- Acceptable charcoal sample test results discussed in the first condition are submitted to the NRC within 60 days of the date of this generic letter;
- A TS amendment request is submitted to the NRC within 60 days of the date of this letter; and
- The charcoal samples continue to be tested in accordance with ASTM D3803–1989 until the TS amendment is approved by the NRC.

In cases in which the charcoal samples have been previously tested in accordance with ASTM D3803–1989 for the last scheduled laboratory test and the results met the current TS acceptance criteria (Group 3), the results can be used to satisfy the first condition above.

Licensees in Group 2 have been complying with their TS by testing their charcoal in accordance with their TS. Therefore, enforcement discretion is not required.

Requested Actions

Addressees are requested to take the following actions:

1. If your current TS require the laboratory testing of charcoal samples for each ESF ventilation system to be conducted in accordance with ASTM D3803–1989, then no TS amendment is required.

2. If your current TS do not require the laboratory testing of charcoal samples to be conducted in accordance with ASTM D3803–1989, then:

(i) Your charcoal samples should be tested in accordance with ASTM D3803–1989 and the results should be submitted to the NRC within 60 days of the date of this generic letter. If your charcoal samples were already tested in accordance with ASTM D3803–1989 for the last scheduled laboratory test and the results met the current TS acceptance criteria, then the results should be submitted to the NRC within 60 days of the date of this generic letter. In either case, the charcoal samples should continue to be tested in accordance with ASTM D3803–1989 until the TS amendment is approved by the NRC, and

(ii) Your TS should be amended to require the laboratory testing of charcoal samples to be conducted in accordance with:

(a) ASTM D3803–1989, or

(b) An alternate test protocol should be proposed for the laboratory testing of charcoal and the following information should be submitted for staff review to determine the acceptability of the alternate protocol:

1. Summary of the test method
2. Precision of the method
3. Description of the test apparatus along with tolerances
4. Parameter specifications
5. Material requirements
6. Hazards
7. Preparation of the apparatus before initiation of the test
8. Calibration requirements of the test equipment
9. Test procedure
10. Manner of calculating penetration and error
11. Repeatability and reproducibility of the results for 1-percent and 10-percent penetration and the penetration at a 95-percent confidence interval for charcoal tested at 70-percent RH and at 95-percent RH
12. Bias associated with the method
13. Results from an independent laboratory which demonstrate that the alternate test protocol gets results that are consistent with, or more conservative than, that associated with ASTM D3803–1989

The demonstration identified in Item 13 above should be based upon a series of tests comparing the alternate test protocol and ASTM D3803–1989, and it should apply to both new and used charcoal tested at 70-percent RH and at 95-percent RH. The independent laboratory should be able to demonstrate that the alternate protocol is at least as conservative as ASTM D3803–1989, and should be able to perform the ASTM D3803–1989 test and achieve repeatable and reproducible results. The laboratory should not be engaged in the measurement of iodine penetration of charcoal as a business either for TS compliance purposes or for the sale and/or production of activated charcoal for nuclear power plant applications.

Requested Information

Within 60 days of the date of this generic letter, addressees are requested to provide to the NRC the following information:

1. Identify the current TS requirements for the laboratory testing

of charcoal samples for each ESF ventilation system including the specific test protocol, temperature, RH, and penetration at which the TS require the test to be performed. If your current TS specifically require testing in accordance with the ASTM D3803–1989 protocol, and you have been testing in accordance with this standard, then no additional information is required.

2. If you choose to adopt the ASTM D3803–1989 protocol, then submit a TS amendment request to require testing to this protocol. The request should contain the test temperature, RH, and penetration at which the proposed TS will require the test to be performed and the basis for these values. If the system has a face velocity greater than 10 percent of 0.203 m/s [40 ft/min], then the revised TS should specify the face velocity. Also, indicate when the next laboratory test is scheduled to be performed. (Enclosure 2 is a sample TS that the NRC considers acceptable.)

3. If you are proposing an alternate test protocol, then address the attributes discussed in Section 2(ii) of the Requested Actions and submit a TS amendment request to require testing to this alternate protocol. The request should contain the test temperature, RH, and penetration at which the proposed TS will require the test to be performed and the basis for these values. If the system has a face velocity greater than 10 percent of 0.203 m/s [40 ft/min], then the revised TS should specify the face velocity. Also, indicate when the next laboratory test is scheduled to be performed.

Required Response

Within 30 days of the date of this generic letter, addressees are required to submit a written response indicating: (1) Whether the requested actions will be completed, (2) whether the requested information will be submitted and (3) whether the requested information will be submitted within the requested time period. Addressees who choose not to complete the requested actions, or choose not to submit the requested information, or are unable to satisfy the requested completion date, must describe in their response any alternative course of action that is proposed to be taken, including the basis for establishing the acceptability of the proposed alternative course of action and the basis for continued operability of affected systems and components as applicable.

Address the required written response to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555–0001, under oath or affirmation, under the provisions of Section 182a, Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). In addition, send a copy to the appropriate regional administrator.

Backfit Discussion

Appendix A to 10 CFR Part 50, General Design Criteria (GDC) for Nuclear Power Plants, and the plant safety analyses require and/or commit that licensees design and test safety-related structures, systems and components to offer adequate assurance that they can perform their safety functions. Specifically, GDC 19 of Appendix A to 10 CFR Part 50 specifies dose limits to ensure that control room operators are provided with adequate radiation protection under accident conditions. Following the accident at Three Mile Island (TMI), TMI Action Plan Item III.D.3.4, "Control Room Habitability Requirements," as specified in NUREG–0737, "Clarification of TMI Action Plan Requirements," required all licensees to perform evaluations and identify appropriate modifications to ensure that control room operators are adequately protected from the release of radioactive gases and that the nuclear power plant can be safely operated or shut down under design-basis accident conditions (GDC 19). When modifications were proposed by licensees, the NRC issued Orders confirming licensee commitments. As a result, all licensees are required to meet the dose limits of GDC 19. In addition, Subpart A of 10 CFR Part 100 specifies reference dose values which can be used in the evaluation of the suitability of proposed sites for nuclear power plants with respect to potential reactor accidents that could result in the release of significant quantities of radioactive fission products. The expectation is that the site location and the engineered safety features included as safeguards against the hazardous consequences of an accident, should one occur, should ensure a low risk of public exposure. In this regard, licensees commit to dose limits that can be used as the basis for assessing the performance of safety-related structures, systems and components. Accordingly, licensees are required to test the nuclear-grade activated charcoal of their engineered safety feature ventilation systems in accordance with a suitable testing standard to ensure that the charcoal filters are capable of performing their required safety function and that the licensing bases of their respective facilities regarding onsite and offsite dose consequences continue to be satisfied.

The actions requested in this generic letter are considered compliance backfits under the provisions of 10 CFR 50.109. If some licensees test their charcoal in accordance with their TS which reference an outdated test standard, the staff does not have confidence that the results of those tests will demonstrate compliance with the plant's licensing basis as it relates to the dose requirements of GDC 19 and Part 100, including commitment to the resolution of TMI Action Plan Item III.D.3.4. Therefore, the staff has endorsed the testing standard ASTM D3803–1989 for referencing in plant TS. In accordance with the provisions of 10 CFR 50.109(a)(4)(i), regarding compliance backfits, a full backfit analysis was not performed. However, an evaluation was performed in accordance with NRC procedures, including a statement of the objectives of and reasons for the requested actions and the basis for invoking the compliance exception and is reflected in this backfit discussion.

Federal Register Notification

(To be completed after the public comment period.)

Paperwork Reduction Act Statement

This Generic Letter contains information collections that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These information collections were approved by the Office of Management and Budget, approval number 3150–0011, which expires September 30, 2000.

The public reporting burden for this mandatory information collection is estimated to average 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the generic letter and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of this information collection, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Enclosures:

(1) Background Information on the Laboratory Testing of Nuclear-Grade Activated Charcoal.

(2) Sample Technical Specifications.

Enclosure 1

Background Information on the Laboratory Testing of Nuclear-Grade Activated Charcoal

Charcoal Testing Requirements

Analyses of design-basis accidents assume a particular engineered safety features (ESF) charcoal filter adsorption efficiency when calculating offsite and control room operator doses. Licensees then test charcoal filter samples to determine whether the filter adsorber efficiency is greater than that assumed in the design-basis accident analysis. The laboratory test acceptance criteria contain a safety factor to ensure that the efficiency assumed in the accident analysis is still valid at the end of the operating cycle.

Guidance on the frequency of, and the test method for, the laboratory testing of charcoal appears in various documents, including all revisions of Regulatory Guide (RG) 1.52, "Design, Testing, and Maintenance Criteria for Postaccident Engineered-Safety-Feature Atmosphere Cleanup System Air Filtration and Adsorption Units of Light-Water-Cooled Nuclear Power Plants," and other NRC documents on plant technical specifications (TS). Guidance on the laboratory test protocol appears in such standards as American National Standards Institute (ANSI) N509, "Nuclear Power Plant Air-Cleaning Units and Components;" ANSI N510, "Testing of Nuclear Air-Cleaning Systems;" Military Specification RDT M 16–1T, "Gas Phase Adsorbents for Trapping Radioactive Iodine and Iodine Components;" and American Society for Testing and Materials (ASTM) Standard D3803, "Standard Test Method for Nuclear-Grade Activated Carbon."

All of the standards describe a pre-equilibration period, a challenge period, and an elution period. During the pre-equilibration (pre-sweep) period, the charcoal is exposed to a flow of air controlled at the test temperature and relative humidity (RH) before the challenge gas is fed through the charcoal. The pre-equilibration period ensures that the charcoal has stabilized at the specified test temperature and RH for a period of time, which results in the charcoal adsorbing all available moisture before the charcoal is challenged with methyl iodide. During the challenge period, air at the test temperature and RH with radio-labeled methyl iodide is injected through the charcoal beds to challenge the capability of the charcoal. During the elution (post-sweep) period, air at the test temperature and RH is passed through the charcoal beds to evaluate the ability of the charcoal to hold the methyl iodide once it is captured.

The ASTM D3803–1989 standard has two additional testing periods that are not required by other standards: the stabilization period and the equilibration period. During the stabilization period, air at the test temperature is passed through the charcoal beds to bring the system up to the operating temperature before the start of pre-equilibration. During the equilibration period, air at the test temperature and RH is passed through the charcoal beds to ensure the charcoal adsorbs all the available moisture before the feed period. During this period, the system is more closely monitored than in the pre-equilibration period to ensure that all parameters are maintained within their limits.

Depending upon the plant's TS, typical test temperatures are usually one of the following: 25°C [77°F], 30°C [86°F], 80°C [176°F], or 130°C [266°F]. In addition, the TS usually require that the test be conducted at 70-percent RH if the ESF system controls the RH to 70-percent or less, or at 95-percent if the RH is not controlled to 70-percent.

The standard technical specifications (STS) and many plant-specific TS specify Regulatory Position C.6.a of RG 1.52, Revision 2, as the requirement for the laboratory testing of the charcoal. Regulatory Position C.6.a refers to Table 2 of RG 1.52. Table 2 references Test 5.b of Table 5–1 of ANSI N509–1976, "Nuclear Power Plant Air-Cleaning Units and Components." Test 5.b references the test method from paragraph 4.5.3 of Military Specification RDT M 16–1T, "Gas Phase Adsorbents for Trapping Radioactive Iodine and Iodine Components" (date not indicated), but specifies that the test is to be conducted at 80°C [176°F] and 95-percent RH with preloading and postloading sweep at 25°C [77°F]. This test is referred to as the "25–80–25 test." The essential elements of this test are as follows:

- 70-percent or 95-percent RH.
- 5-hour pre-equilibration (pre-sweep) time, with air at 25°C [77°F] and plant-specific RH.
- 2-hour challenge, with gas at 80°C [176°F] and plant-specific RH.
- A 2-hour elution (post-sweep) time, with air at 25°C [77°F] and plant-specific RH.

The latest acceptable methodology for the laboratory testing of the charcoal is ASTM Standard D3803–1989, "Standard Test Method for Nuclear-Grade Activated Carbon." ASTM D3803–1989 is updated guidance based on an NRC verification and validation effort on ASTM D3803–1979, which is updated guidance based on RDT M 16–1T. The essential elements of the ASTM D3803–1989 test are as follows:

- 70-percent or 95-percent RH.
- 2-hour thermal stabilization, with air at 30°C [86°F].
- 16-hour pre-equilibration (pre-sweep) time, with air at 30°C [86°F] and plant-specific RH.
- 2-hour equilibration time, with air at 30°C [86°F] and plant-specific RH.
- 1-hour challenge, with gas at 30°C [86°F] and plant-specific RH.
- 1-hour elution (post-sweep) time, with air at 30°C [86°F] and plant-specific RH.

The major differences between the ANSI N509–1976 and ASTM D3803–1989 standards for charcoal testing are as follows:

Major differences	ASTM D3803–1989	ANSI N509–1976
Pre-Equilibration (Pre-Sweep) Temperature	30°C [86°F]	25°C [77°F].
Challenge Temperature	30°C [86°F]	80°C [176°F].
Elution (Post-Sweep) Temperature	30°C [86°F]	25°C [77°F].
Total Pre-Test Equilibration	18 hours	5 hours.

Major differences	ASTM D3803–1989	ANSI N509–1976
Tolerances of Test Parameters	Smaller	Larger.

As stated above, ASTM D3803–1989 challenges the representative charcoal samples at 30°C [86°F] rather than at 80°C [176°F]. The quantity of water retained by charcoal is dependent on temperature, and less water is retained as the temperature rises. The water retained by the charcoal decreases its efficiency in adsorbing other contaminants. At 30°C [86°F] and 95-percent RH, charcoal will retain about 40 weight-percent water. At 80°C [176°F] and 95-percent RH, charcoal retains only about 2 to 3 weight-percent water. Because most charcoal is anticipated to be challenged at a temperature closer to 30°C [86°F] rather than 80°C [176°F], the lower temperature test condition of ASTM D3803–1989 will yield more realistic results than would a test performed at 80°C [176°F].

ASTM D3803–1989 specifies a test temperature of 30°C [86°F] for both the pre- and post-test sweep rather than 25°C [77°F]. There is little difference in the adsorption behavior of charcoal between these two temperatures. A temperature of 25°C [77°F] is more conservative; however, the increase from 25°C [77°F] to 30°C [86°F] does not represent a significant variation in the test results.

ASTM D3803–1989 provides results that are reproducible compared to RDT M 16–1T because it has smaller tolerances on various test parameters, and it requires that the charcoal sample be pre-equilibrated for a much longer period. The longer pre-equilibration time is more conservative because it will completely saturate the representative charcoal sample until it is in the condition to which the subject charcoal adsorbers are expected to be exposed during design-basis conditions. Therefore, testing in accordance with ASTM D3803–1989 will result in a more realistic prediction of the capability of the charcoal.

TS Testing Reference

Laboratory tests of the charcoal are typically required (1) once every refueling outage, (2) when certain events occur that could adversely affect the ability of the charcoal to perform its intended function, and (3) following a defined period of ESF system operation. The TS require demonstration by laboratory testing that the charcoal is capable of performing at a level greater than that assumed in the NRC staff's safety evaluation report. If it fails to perform at that level, the charcoal must be replaced.

The determination of the appropriate test conditions, test protocol, and acceptance criteria for laboratory testing of nuclear-grade activated charcoal is frequently not a straightforward process. It sometimes requires a complex journey through a number of documents to ascertain the appropriate test conditions, test protocol, and acceptance criteria. As described earlier, if the plant has STS, the STS reference Regulatory Position C.6.a of RG 1.52 for the requirements for the laboratory testing of charcoal. Regulatory Position C.6.a refers to Table 2 of the regulatory guide. Table 2 references Test 5.b of Table 5–1 of ANSI N509–1976. Test 5.b from Table 5–1 references the test method from paragraph 4.5.3 of RDT M 16–1T (date not indicated), but specifies that the test is to be conducted at 80°C [176°F] and 95-percent RH with pre-loading and postloading sweep at 25°C [77°F]. This test is referred to as the "25–80–25 test."

Also contributing to the potential confusion are the various ways in which TS are written, and conflicting NRC guidance on testing, particularly NRC letters to the nuclear industry and NRC papers presented at national conferences. This problem arose from the evolving understanding of what constituted an appropriate test. At various times, the NRC has stated that the newest version of a standard can be used and the test can be conducted at a temperature of 30 °C [86 °F]. At other times, the NRC indicated that the TS are requirements and that the tests must be performed at the 25–80–25 conditions. In various forums, the NRC has also stated that a technical argument may be made for using the newer standard. However, in some instances when newer standards were utilized to demonstrate conformance with the TS, the NRC required licensees to submit TS amendment requests because the newer standards were not referenced in the TS. Therefore, it is understandable that licensees may be confused about laboratory testing protocols, testing conditions, and acceptance criteria. As a result, many licensees are not testing charcoal in accordance with their TS, although the tests they conduct may be more conservative than the tests required by the TS.

Additionally, the 25–80–25 test has difficulties in that none of the protocols in any version of RDT M 16–1T or ASTM D3803 addresses performing the laboratory test at multiple temperatures as required by ANSI N509–1976. If the test protocol described in paragraph 4.5.3 of RDT M 16–1T (1973) is followed verbatim, a thermal step change must be made after the 5-hour pre-equilibration period to increase the temperature from 25 °C [77 °F] to 80 °C [176 °F] for the challenge period. The problem with such thermal step changes is that they result in condensation forming on the charcoal. The condensation of free water in the sample bed is cause for aborting the test, according to the 1977 version of RDT M 16–1T and subsequent versions of ASTM D3803. Therefore, the 25–80–25 test cannot be performed pursuant to any existing test protocol.

Because paragraph 4.5.3 cannot be followed verbatim, a few licensees have changed the 25–80–25 test to thermally equilibrate the charcoal before introducing the challenge gas. Following the pre-sweep conditioning at 25 °C [77 °F], the bed temperature is raised to 80 °C [176 °F] before introducing the challenge gas. Although such testing does not cause condensation in the test rig, it is not acceptable because the results are not easily reproducible, and even when the test is successfully completed, the results may not be conservative.

Section 2 of ANSI N509–1976 states for the various documents that supplement ANSI N509 that the issuance of a document in effect at the time of the purchase order shall apply unless otherwise specified. In the case of charcoal, the purchase order date could be considered the date that the charcoal is procured. Therefore, TS that have the STS wording may allow the licensee the flexibility to use a more recent laboratory protocol than the 1973 version of RDT M 16–1T, depending on the procurement date for the charcoal, without a TS change. However, although the flexibility of protocol selection exists, the requirement to perform a 25–80–25 test for those plants that have TS that reference either Revision 1 or Revision 2 of RG 1.52, Table 5–1 of ANSI N509–1976, or ANSI N510–1975 can only be relieved by license amendment.

Categorization of Plants

Since February 1996, the staff has issued three emergency TS changes to licensees that had determined that the tests they performed were not in compliance with their TS, because the required testing standards and test protocols did not support a test in which the temperature is changed as required by the TS. If the temperature in the test apparatus is changed from 25 °C [77 °F] to 80 °C [176 °F] during the test without modifying the test protocol, water condenses on the charcoal, thereby causing the test to be aborted (to fail). The emergency TS changes were issued for the V.C. Summer, Davis-Besse, and Oconee facilities. The details of these TS changes are discussed below.

On February 10, 1996, the licensee for the V.C. Summer Nuclear Station, South Carolina Electric & Gas Company (SCE&G), requested an emergency TS change. The systems involved were the control room emergency ventilation system and the fuel handling building exhaust system. On February 10, 1996, the NRC granted the emergency TS change. The emergency TS change was requested because SCE&G had determined that laboratory tests of the charcoal of the control room ventilation system and the fuel-handling building system had not been performed in compliance with the V.C. Summer TS. The laboratory test performed for V.C. Summer was a 25–25–25 test in lieu of the 25–80–25 required by its TS. The licensee had been performing the 25–25–25 test because, in consultation with its testing laboratory, it concluded that performance of the 25–80–25 test would result in condensation on the charcoal and, thus, an invalid test.

On March 29, 1996, the Toledo Edison Company requested an emergency TS change for the Davis-Besse plant. The systems involved were the hydrogen purge, the shield building emergency ventilation, and the control room. The TS for Davis-Besse required the laboratory test to be performed in accordance with RG 1.52, Revision 2. In this case, the licensee was performing a 30–30–30 test using the testing protocol of ASTM D3803–1979 in lieu of the 25–80–25 test. On March 29, 1996, the NRC granted the emergency TS change to allow the 30–30–30 test.

On April 2, 1996, Duke Power Company requested an emergency TS change for the Oconee Nuclear Station. The systems involved were the reactor building purge, the spent fuel pool ventilation, and the penetration room ventilation. The TS for Oconee required the laboratory test of charcoal to be performed in accordance with ANSI N510–1975, which requires the performance of the 25–80–25 test. However, the licensee was actually performing a 30–30–30 test using the test protocol of ASTM D3803–1989. The NRC granted an emergency TS change on April 2, 1996, to permit the 30–30–30 test.

In each of these cases, the test performed to demonstrate compliance with TS provided results that the staff considered closer to reflecting the capability of the charcoal than the test required by the TS. In addition, the licensees believed that using the newer standard would satisfy their TS requirement. Their bases for this belief were the limitations of the test referenced in RG 1.52, their interpretation of ANSI N509 as allowing the use of later versions of the test protocol, and some of the guidance provided by the NRC. In the case of Oconee, the test actually performed is the test that the staff believes is the appropriate one, ASTM D3803–1989. However, because these tests had not been conducted in compliance with the plant's TS, each licensee would have had to shut down its plant or remain in a cold-shutdown mode until the test required by the TS could be successfully performed, or until the TS were amended.

On March 21, 1996, Carolina Power & Light Company flew a charcoal sample from the Brunswick standby gas treatment system (SGTS) to its testing laboratory in Ohio for the performance of the 25–80–25 test to comply with the Brunswick TS before restart of an idle unit. The Brunswick TS required that the laboratory tests be performed in accordance with Revision 1 of RG 1.52. Previously, the licensee directed its testing laboratory to perform an 80–80–80 test. To perform the 25–80–25 test, the laboratory equilibrated the charcoal to 80 °C [176 °F] before introducing the challenge gas. The licensee has not requested a TS change for Brunswick to correct the problem and is awaiting guidance from the NRC.

As a result of the emergency TS changes, the staff has performed an internal survey of operating plant TS to determine whether other plants have the potential for similar problems with compliance. The survey indicated that at least one-third of operating reactor licensees may not be in compliance with their TS because they reference the flawed 25–80–25 testing protocol and may have used later versions of the standards for the laboratory tests of their nuclear-grade charcoal. On the basis of this survey, the staff established the following four categories of plants:

(1) Plants in compliance with their TS that test in accordance with ASTM D3803–1989.

(2) Plants in compliance with their TS that test in accordance with a test protocol other than ASTM D3803–1989.

(3) Plants not in compliance with their TS that test in accordance with ASTM D3803–1989.

(4) Plants not in compliance with their TS that test in accordance with a test protocol other than ASTM D3803–1989.

The licensees in Category 1 have TS that require charcoal to be tested in accordance with ASTM D3803–1989, which adequately demonstrates the capability of the charcoal. The licensees in Category 2 have TS that require charcoal to be tested in accordance with test standards other than ASTM D3803–1989. The licensees that received emergency TS changes were in Categories 3 and 4. Licensees in Categories 3 and 4 have TS that require charcoal to be tested in accordance with the 25–80–25 test.

Enclosure 2

Sample Technical Specifications

For Plants With Improved Standard Technical Specifications

C. Demonstrate for each of the ESF systems that a laboratory test of a sample of the charcoal adsorber, when obtained as described in [Regulatory Guide 1.52, Revision 2], shows the methyl iodide penetration less than the value specified below when tested in accordance with ASTM D3803–1989 at a temperature of ≤ 30°C [86°F] and greater than or equal to the relative humidity specified below.

ESF Ventilation System	Penetration	RH
[ ]	[ ]	[ ]
| |	| |	| |
| |	| |	| |
[ ]	[ ]	[ ]

Note: The use of any standard other than ASTM D3803–1989 to test the charcoal sample may result in an overestimation of the capability of the charcoal to adsorb radioiodine. As a result, the ability of the charcoal filters to perform in a manner consistent with the licensing basis for the facility is indeterminate.

ASTM D3803–1989 is a more stringent testing standard because it does not differentiate between used and new charcoal, it has a longer equilibration period performed at a temperature of 30°C [86°F] and a relative humidity (RH) of 95% (or 70% RH with humidity control), and it has more stringent tolerances that improve repeatability of the test

$$\text{Allowable Penetration} = \frac{[100\% - \text{Methyl Iodide Efficiency For Charcoal Credited in SER}]}{\text{Safety Factor}}$$

When ASTM D3803–1989 is used with 30°C [86°F] and 95% RH (or 70% RH with humidity control) is used, the staff will accept the following:

Safety factor ≥ 2 for systems with or without humidity control.]

For Plants With Older Technical Specifications

Each engineered safety feature (ESF) ventilation system shall be demonstrated OPERABLE:

a. At least once per 18 months or (1) after any structural maintenance on the HEPA filter or charcoal adsorber housings, or (2) following painting, fire, or chemical release in any ventilation zone communicating with the system by:

(1) Verifying, within 31 days after removal, that a laboratory test of a sample of the charcoal adsorber, when obtained in accordance with Regulatory Position C.6.b of Regulatory Guide 1.52, Revision 2, March 1978, shows the methyl iodide penetration less than [see note in preceding section titled "For Plants With Improved Standard Technical Specifications"]% when tested in accordance with ASTM D3803–1989 at a temperature of ≤ 30°C [86°F] and greater than or equal to a relative humidity of [see note in preceding section titled "For Plants With Improved Standard Technical Specifications"]%.

b. After every 720 hours of charcoal adsorber operation, by verifying, within 31 days after removal, that a laboratory test of a sample of the charcoal adsorber, when obtained in accordance with Regulatory Position C.6.b of Regulatory Guide 1.52, Revision 2, March 1978, shows the methyl iodide penetration less than [see note in preceding section titled "For Plants With Improved Standard Technical Specifications"]% when tested in accordance with ASTM D3803–1989 at a temperature of ≤ 30°C [86°F] and greater than or equal to a relative humidity of [see note in preceding section titled "For Plants With Improved Standard Technical Specifications"]%.

Dated at Rockville, Maryland, this 19th day of February 1998.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–4761 Filed 2–24–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 2, 1998, through February 12, 1998. The last biweekly notice was published on February 11, 1998 (63 FR 6968).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received

within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By March 27, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: October 4, 1996, as supplemented by letters dated June 6, September 19, November 7, and December 16, 1997.

Description of amendment request: The proposed amendment for each unit identified above would change the distance criterion in Action b to Limiting Condition for Operation (LCO) 3/4.1.3, "Movable Control Assemblies," by which more than one full-length or part-length control element assembly (CEA) is misaligned from any other CEA in its group. Action b states, in part, that if the misalignment is greater than the specified distance criterion, the reactor core is to be placed in at least hot standby within 6 hours. The proposed amendment would reduce the distance criterion from 19 inches to 9.9 inches, and replace hot standby in 6 hours by "open the reactor trip breakers."

This proposed amendment is included as a "more restrictive" change in the conversion of the current Technical Specifications (CTS) to the Improved Technical Specifications, which was noticed in the **Federal Register** (62 FR 18153) on April 14, 1997. The proposed amendment would be included in Action F to LCO 3.1.5, "Movable Control Assemblies," of the Improved Technical Specifications. This proposed amendment is a change to the current Technical Specifications and is in addition to the six proposed changes to the CTS or proposed deviations to the Improved Standard Technical Specifications (NUREG–1432) which were identified in the notice of April 14, 1997.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes provide more stringent requirements than previously existed in the CTS. The more stringent requirements will not result in operation that will increase the probability of initiating an analyzed event. If anything, the new requirements may decrease the probability or consequences of an analyzed event by incorporating the more restrictive changes discussed in the specific Discussion of Changes [for specification 3.1.5]. These changes will not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements will not alter the operation and will continue to ensure process variables, structures, systems, or components are maintained consistent with safety analyses and licensing basis [for the plant]. These changes have been reviewed to ensure that no previously evaluated accident has been adversely affected. Therefore, these changes will not involve a significant increase in the probability or consequences of an accident evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Making existing requirements more restrictive and adding more restrictive requirements to the CTS will not alter the plant configuration (no new or different type of equipment will be installed) or change the methods governing normal plant operation. These changes do impose different requirements. However, they are consistent with the assumptions made in the safety analyses, licensing basis, and NUREG–1432 [for the plant]. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes provide more stringent requirements than previously existed in the CTS. An evaluation of these changes concluded that adding these more restrictive requirements either increases or has no impact on the margin of safety. The changes provide additional restrictions which may enhance plant safety. These changes maintain requirements of the safety analysis, licensing basis, and NUREG–1432 [for the plant]. As such, no question of safety is involved. Therefore, these changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Project Director: William H. Bateman.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: September 19, 1997.

Description of amendment request: The proposed amendment would relocate the Radioactive Effluent Technical Specifications (RETS) and the Radiological Environmental Monitoring Program to the Offsite Dose Calculation Manual (ODCM), in accordance with the recommendations of Generic Letter 89–01 and NUREG–1433. In addition, changes to other sections of the TSs are being proposed to align the current TSs with NUREG–1433.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Operation of PNPS in accordance with the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated because of the following:

Definitions

Definitions perform a supporting function for other sections of the TS. The proposed change to incorporate the definition for the Offsite Dose Calculations Manual (ODCM) into Section 5.0, "Programs and Manuals", subsection 5.5.1 of the proposed TS will carry forward the requirements contained in the DEFINITION, with minor editorial rewording to be consistent with NUREG 1433, and result in no technical changes. Since the requirements will remain, the impact on initiators of analyzed events or the assumptions assumed in the mitigation of accidents or transient events will not change. Editorial rewording (either adding or deleting) and reformatting is proposed to provide clarity and does not change any technical requirements.

The definitions being proposed for relocation do not impact reactor operation, identify a parameter which is an initial condition assumption for a DBA or transient, identify a significant abnormal degradation of the reactor coolant pressure boundary, and do not

provide any mitigation of a design basis event.

RAD Effluents

All editorial rewording (either adding or deleting) and renumbering is made to restructure the section accounting for the requirements relocated in accordance with Generic Letter 89–01. During the editorial rewording and renumbering of the Improved Technical Specifications, no technical changes (either actual or interpretational) to the TS were made unless they were identified and justified.

Adding a note to clearly indicate that the first sample for noble gas activity is not required for 31 days after SJAE is placed in operation has always been considered the intent of this surveillance requirement. This allowance is consistent with the frequency for the required surveillance and allows time for concentrations of longer lived isotopes to reach equilibrium. In addition, other instrumentation continuously monitors the offgas to alert operators of significant increases in radioactivity.

The proposed change provides more stringent requirements than previously existed in the Technical Specifications. The more stringent requirements will not result in operation that will increase the probability of initiating an analyzed event. If anything, the new requirements may decrease the probability or consequences of an analyzed event by incorporating the more restrictive changes discussed above. The change will not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, or components as described in the safety analyses.

These proposed changes relocate requirements from the Technical Specifications to the T. S. BASES, FSAR, or ODCM. The licensee controlled document containing the relocated requirements will be maintained using the provisions of 10 CFR 50.59 or a change control process in the Administrative Controls Section of the Technical Specifications. Since any changes to these licensee controlled documents will be evaluated per an NRC approved change control process, no increase in the probability or consequences of an accident previously evaluated will be allowed.

Basing the potential fission product release rate on gross gamma activity rate is more representative of the whole body dose that would be received by an individual at the site boundary should a release occur. Therefore, reasonable assurance that the potential whole body accident dose to an individual at the exclusion area boundary will not exceed a small fraction of the limits specified in 10 CFR Part 100 is maintained.

Allowing the sample to be taken from either pretreatment monitor station will have no effect on the objective of assuring that the potential whole body accident dose to an individual at the exclusion area boundary will not exceed a small fraction of the limits specified in 10 CFR Part 100, because both monitor stations are prior to treatment, adsorption, or delay of the noble gases.

RAD Material Source

The requirements for miscellaneous radioactive materials do not impact reactor operation, identify a parameter which is an initial condition assumption for a DBA or transient, identify a significant abnormal degradation of the reactor coolant pressure boundary, and do not provide any mitigation of a design basis event.

Major Design Features

The reformatting, renumbering, and rewording along with the other changes listed involve no technical changes to existing Technical Specifications. The proposed changes are administrative in nature and do not impact initiators or assumptions of analyzed accidents or transient events.

The proposed change provides more stringent requirements than previously existed in the Technical Specifications. The more stringent requirements will not result in operation that will increase the probability of initiating an analyzed event. If anything, the new requirements may decrease the probability or consequences of an analyzed event by incorporating the more restrictive changes discussed above. The change will not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, or components as described in the safety analyses.

These proposed changes relocate requirements from the Technical Specifications to the FSAR. Since any changes to the FSAR must be evaluated per 10 CFR 50.59, no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed.

Administrative Controls

The reformatting, renumbering, and rewording along with the other changes listed involves no technical changes to existing Technical Specifications. The change to the existing Technical Specifications was done in order to be consistent with the NUREG–1433. During development of NUREG–1433, certain wording preferences or English language conventions were adopted. The proposed change to this section is administrative in nature and does not impact initiators of analyzed events. It also does not impact the assumed mitigation of accidents or transient events.

The proposed change provides more stringent requirements than previously existed in the Technical Specifications. These more stringent requirements are administrative in nature (*e.g.*, specifying additional responsibilities for plant personnel, ensuring overtime control, incorporating program and manual requirements already in place, and adding details to reports). These additional requirements will not alter the plant configuration (no new or different type of equipment will be installed) or changes in methods governing normal plant operation, not alter assumptions relative to the mitigation of an accident or transient event, or alter the operation of process variables, structures, systems, or components as described in the safety analyses.

This proposed change relocates requirements from the Technical Specifications to licensee controlled documents. The licensee controlled documents containing the relocated requirements are required to meet the applicable regulation and any change process invoked by the regulation. Since any changes to the licensee controlled document must continue to meet the regulation, no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed.

This change proposes to provide flexibility in meeting the minimum shift staffing for up to two hours in order to provide for unexpected absence. The proposed change does not affect the probability of an accident. The actions of an individual are not assumed to be an initiator of any analyzed event. Also, the change does not negate the requirement to have licensed individuals in the control room. This proposed change does not impact the assumptions of any design basis accident. This change will not alter assumptions relative to the mitigation of an accident or transient event.

This change proposes to relax the requirement to have an individual qualified in radiation protection procedures to be onsite when fuel is in the reactor. The proposed change will allow the position to be vacant for up

to two hours in order to provide for unexpected absence.

The proposed change does not affect the probability of an accident. The actions of an individual qualified in radiation protection procedures are not assumed to be an initiator of any analyzed event. Also, the consequences of an accident are not affected by the presence of an individual qualified in radiation protection. This proposed change does not impact the assumptions of any design basis accident. This change will not alter assumptions relative to the mitigation of an accident or transient event. This change will not have any impact on the plant safety because the presence of a person qualified in radiation protection is not required for the mitigation of any accident.

This change proposes to relax the requirement for submitting the Radioactive Effluent Release Report and to relocate the report details outside the TS. The current TS require the report to be submitted semi-annually. This proposed change will allow the report to be submitted annually as required by 10 CFR 50.36a. The proposed change does not affect the probability of an accident. Neither the submittal requirements nor the contents of the Radioactive Effluent Release Report is assumed to be an initiator of any analyzed event. Also, the consequences of an accident are not affected by submittal requirements nor the contents of the Radioactive Effluent Release Report. This proposed change does not impact the assumptions of any design basis accident. This change will not alter assumptions relative to the mitigation of an accident or transient event. This change has no impact on the safe operation of the plant. The report will still be required to be submitted and does not affect any plant equipment or requirements for maintaining plant equipment. The submittal of this report is not required for the mitigation of any accident.

The proposed alternatives for control of access to high radiation areas are consistent with the intent of 10 CFR 20.1601(a) and (b). The proposed changes do not affect the probability of an accident. The controls used for access to high radiation areas are not assumed in the initiation of any analyzed event. Also, the consequences of an accident are not affected by these changes. These changes are both consistent with good radiological safety practice and will provide an adequate level of radiation protection. These proposed changes do not impact the assumptions of any design basis accident. These changes will not alter assumptions relative to the mitigation of an accident or transient event. These changes have no impact on safe operation of the plant.

Radiological Environmental Monitoring

The proposed changes only alter the format and location of procedural details and administrative controls of the radioactive effluents, radiological environmental monitoring, and solid radioactive waste programs. The changes are administrative in nature and do not involve any change to the configuration or operation of plant equipment. The Radiological Effluent Technical Specifications (RETS) procedural details are being moved to the Offsite Dose Calculation manual (ODCM). In addition, new administrative controls have been added to the Technical Specifications which will provide an equivalent level of assurance that activities involving radioactive effluents, solid radioactive waste, and radiological environmental monitoring are conducted in full compliance with regulatory requirements. Since any changes to these requirements will require NRC approval, no increase in the probability or consequences of an accident previously evaluated will be allowed.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Operation of PNPS in accordance with the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated because of the following:

Definitions

These proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change will not impose any new or different requirements or eliminate any existing requirements.

Relocating these definitions will not alter the plant configuration (no new or different type of equipment will be installed) or change methods governing normal plant operation. Relocating requirements will not impose different requirements and adequate control of information will be maintained. Relocating these definitions will not alter assumptions made in the safety analysis and licensing basis.

RAD Effluents

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change will not impose any new or different requirements or eliminate any existing requirements.

Making existing requirements more restrictive and adding more restrictive requirements to the Technical Specifications will not alter the plant configuration (no new or different type of equipment will be installed) or change methods governing normal plant operation. These changes are consistent with current design bases, licensing bases or assumptions made in the safety analysis.

These changes do not alter the plant configuration (no new or different type of equipment will be installed) or methods governing normal plant operation. These changes will not impose different requirements and adequate control of information will be maintained. These changes do not alter assumptions made in the safety analysis and licensing basis.

The proposed change will not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. Operation of the plant will not be altered by this change. This change will not place the plant in any new condition or introduce any mode of operation not previously analyzed.

The proposed change will not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. Operation of the plant will not be altered by this change. This change will not place the plant in any new condition or introduce any mode of operation not previously analyzed.

RAD Material Source

Relocating these requirements will not alter the plant configuration (no new or different type of equipment will be installed) or change methods governing normal plant operation. Relocating requirements will not impose different requirements and adequate control of information will be maintained. Relocating requirements does not alter assumptions made in the safety analysis and licensing basis.

Major Design Features

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change will not impose any new or different requirements or eliminate any existing requirements.

Making existing requirements more restrictive and adding more restrictive requirements to the Technical Specifications will not alter the plant configuration (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The change does impose different requirements. However, the change is consistent with assumptions made in the safety analyses.

These changes relocate requirements to the FSAR. These changes do not alter the plant configuration (no new or different type of equipment will be installed) or the methods governing normal plant operation. These changes do not impose different requirements and adequate control of information will be maintained. This change will not alter assumptions made in the safety analysis and licensing basis.

Administrative Controls

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change will not impose any new or different requirements or eliminate any existing requirements.

Making existing requirements more restrictive and adding new requirements to the Technical Specifications will not alter the plant configuration (no new or different type of equipment will be installed) or changes in the methods governing normal plant operation.

This change relocates requirements to a licensee controlled document. This change will not alter the plant configuration (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. This change will not impose different requirements and adequate control of information will be maintained. This change will not alter assumptions made in the safety analysis and licensing basis.

This change proposes to provide flexibility in meeting the minimum shift staffing for up to two hours in order to provide for an unexpected absence. The proposed change will not create the possibility of an accident. This change will not physically alter the plant (no new or different type of equipment will be installed) or the methods of operation.

This change will not physically alter the plant (no new or different type of equipment will be installed). The changes in methods governing normal plant operation are consistent with the current safety analysis assumptions.

The proposed change will not create the possibility of an accident. This change will not physically alter the plant (no new or different type of equipment will be installed). The changes in methods governing normal plant operation are consistent with the current safety analysis assumptions.

Radiological Environmental Monitoring

The procedural requirements of the RETS will be maintained in the ODCM. Operation of the plant will not be altered by the changes proposed to the administration of the RETS. This change will not place the plant in any new condition or introduce any mode of operation not previously analyzed.

3. Does this change involve a significant reduction in a margin of safety?

Operation of PNPS in accordance with the proposed change will not involve a significant reduction in a margin of safety because of the following:

Definitions

Definitions perform a supporting function for other sections of the TS and the proposed editing, omission or relocation of definitions associated with this change will not, by itself, reduce existing restrictions on plant operations.

The definitions to be transposed from the Technical Specifications to the ODCM are the same as the existing Technical Specifications. Future changes to the ODCM will be controlled in accordance with proposed technical specification 5.5.1 "Offsite Dose Calculation Manual (ODCM)".

RAD Effluents

The change is administrative in nature and does not involve any technical changes. The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumptions. Also, because the change is administrative in nature, no question of safety is involved.

Adding these new requirements and making existing ones more restrictive does not affect any safety analysis assumptions. As such, no question of safety is involved.

The requirements to be relocated from the Technical Specifications to the FSAR T.S. BASES, or ODCM are the same as the existing Technical Specifications and any future changes to this licensee controlled document will be evaluated per an NRC approved change control process.

Specifying a release rate based only on gamma activity is more representative of the whole body dose that would be received by an individual at the site boundary should a release occur. The actual margin of safety could be increased because potential errors in converting beta activity to whole body exposures are eliminated

The sample used to determine the gaseous activity rate will continue to be taken prior to treatment, adsorption, or delay of the noble gases.

RAD Material Source

This change relocates requirements from the Technical Specifications to a licensee controlled document. This change will not reduce a margin of safety since it has no impact on any safety analysis assumptions. In addition, the requirements to be transposed from the Technical Specifications to the licensee controlled documents are the same as the existing Technical Specifications. Since any future changes to these licensee controlled documents must be evaluated per the cited regulations or requirements of 10 CFR 50.59, no reduction (significant or insignificant) in a margin of safety will be allowed.

Major Design Features

The changes are administrative in nature and do not involve any technical changes. The proposed changes do not impact initiators or assumptions of analyzed accidents or transient events.

These new or more restrictive requirements are consistent with the current design and licensing bases; therefore, a margin of safety is not affected.

These changes relocate requirements from the Technical Specifications to the FSAR. The requirements to be are the same as the existing Technical Specifications. Since any future changes to the FSAR must be evaluated per the requirements of 10 CFR 50.59, no reduction (significant or insignificant) in a margin of safety will be allowed.

Administrative Controls

The change is administrative in nature and will not involve any technical changes. The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumptions.

Adding these new requirements and making existing ones more restrictive does not introduce any new tests or changes in methods governing normal plant operation. Therefore, the changes do not impact any safety analysis assumptions.

This change relocates requirements from the Technical Specifications to a licensee controlled document. The licensee controlled documents containing the relocated requirements are required to meet the applicable regulation and any change process invoked by the regulation. Since any changes to a licensee controlled document must continue to meet the regulation, no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed.

This change proposes to provide flexibility in meeting the minimum shift staffing for up to two hours in order to provide for unexpected absence. This proposed change has no effect on the assumptions of a design basis accident. The safety analysis assumptions will still be maintained; thus, no question of safety exists.

This change proposes to relax the requirement to have an individual qualified in radiation protection procedures to be onsite when fuel is in the reactor. The proposed change will allow the position to be vacant for up to two hours in order to provide for unexpected absence. The margin of safety is not affected by the presence or absence on site of an individual qualified in radiation protection procedures. This proposed change has no effect on the assumptions of the design basis accident. This change will not have any impact on the plant safety because the presence of a person qualified in radiation protection is not required for the mitigation of any accident. The safety analysis assumptions will still be maintained; thus, no question of safety exists.

This proposed change has no effect on the assumptions of the design basis accident. This change has no impact on the safe operation of the plant. The report will still be required to be submitted and does not affect any plant equipment or requirements for maintaining plant equipment. The safety analysis assumptions will still be maintained; thus, no question of safety exists.

The proposed alternatives for control of access to high radiation areas are consistent with the intent of 10 CFR 20.1601(a) and (b). The margin of safety is not reduced due to these proposed changes. These changes are both consistent with good radiological safety practices and have been found to provide an adequate level of radiation protection. In addition, these changes provide the benefit of ensuring radiation dose to all workers is minimized by providing the flexibility to select the best means of providing a barrier and access control to a high radiation area given the plant location and radiological conditions. These proposed changes have no impact on the safe operation of the plant. The safety analysis assumptions will still be maintained; thus, no question of safety exists.

Radiological Environmental Monitoring

The proposed changes relocate the procedural details and Bases for RETS from the Technical Specifications to the ODCM. The RETS procedural details and Bases will be maintained by these programs. In addition, new administrative controls have been added to the Technical Specifications which assure the proper control and maintenance of these documents and provide an equivalent level of assurance that activities involving radioactive effluents, solid radioactive waste, and radiological environmental monitoring are conducted in full compliance with regulatory requirements.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 0236.

Attorney for licensee: W.S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Cecil O. Thomas.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: November 7, 1997.

Description of amendment request: The proposed amendment would revise the technical specifications and associated bases to allow the licensee to perform 10 CFR Part 50, Appendix J, Type A testing on Byron, Unit 2, and Braidwood, Unit 2, containments at least once per 10 years based on a single successful Type A test, rather than two successful Type A tests.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Performance of Type A tests at a different interval does not involve a change to any structures, systems, or components, does not affect reactor operations, is not an accident initiator, and does not change any existing safety analysis previously evaluated in the UFSAR [Updated Final Safety Analysis Report]. Therefore, there is no significant increase in the probability of an accident previously evaluated.

Several tables of UFSAR Chapter 15, "Accident Analyses," provide containment leak rate values used in assessing the consequences of accidents discussed in this chapter. Although decreasing the test frequency can increase the probability that an increase in containment leakage could go undetected for an extended period of time, the risk resulting from this proposed change is inconsequential as documented in NUREG–1493, "Performance-Based Containment Leakage Test Program". This document indicated that given the insensitivity of reactor risk to containment leakage rate and a small fraction of leakage paths are detected solely by Type A testing, increasing the interval between integrated leak rate tests is possible with minimal impact on public risk. Further, industry experience presented in this document indicated that Type A testing has had insignificant impact on uncertainties involved with containment leak rates.

Based on risk information presented in NUREG–1493, the proposed change does not increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant design, systems, components, or reactor operations, only the frequency of test performance. New conditions or parameters that contribute to the initiation of accidents would not be created as a result of this proposed change. The change does not involve new equipment and existing equipment does not have to be operated in a

different manner, therefore there are no new failure modes to consider.

Changing test intervals as shown in NUREG–1493 has no impact on, nor contributes to the possibility of a new or different kind of accident as evaluated in the UFSAR. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

With the exception of the test frequency, the actual tests will not change. Quantitative risk studies documented in NUREG–1493 regarding extended testing intervals demonstrated that there was minimal impact on the public health and safety. Reducing the frequency, as stated in the NUREG resulted in an "imperceptible" increase in risk to public safety. Further, a table in this NUREG regarding risk impacts due to a reduction in testing frequency suggested that there was also minimal difference in risk to the public safety when the test frequency was relaxed.

The proposed change will not reduce the availability of systems and components associated with containment integrity that would be required to mitigate accident conditions nor are any containment leakage rates, parameters or accident assumptions affected by the proposed change.

The proposed change does not involve a significant reduction in a margin of safety, based on the above information.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: December 30, 1997.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) 3.7.1.3, "Condensate Storage Tank," (CST) and its associated Bases for Byron and Braidwood to raise the minimum allowable CST level to ensure that a sufficient volume of water is available to meet the design basis requirements for the auxiliary feedwater (AFW) system supply. The proposed amendment would also revise the AFW system transfer to essential service water (SX) trip setpoint and allowable value in Table 3.3–4 to ensure that the design basis requirements for the AFW system are accurately reflected in the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The amount of water in the CST [Condensate Storage Tank] at the beginning of an accident and the setpoint for AF [auxiliary feedwater] pump suction pressure-low trip have no impact on the probability of occurrence of any accident analyzed in the UFSAR [Updated Final Safety Analysis Report]. This is due to the availability of the safety-related SX [essential service water] water supply as a backup system. Therefore, the probability of an accident previously evaluated is unchanged.

The loss of the Safety Category II CST under accident conditions has already been evaluated in the UFSAR. The SX system is the emergency source of water supply to the AF system under accident conditions. The design basis analysis for the essential service water (SX) system and the Limiting Condition for Operation requirements for the ultimate heat sink ensure that a sufficient supply of water is available to plant operators to mitigate the consequences of all analyzed accidents. None of the proposed changes to the CST minimum level or the setpoints documented in TS Table 3.3–4, functional unit 6.g. has any negative impact on the assumptions or results of these analyzed accidents. To the contrary, the proposed changes will ensure that the CST remains available as the primary supply of water to the AF system and that automatic suction transfer will occur for circumstances where the Safety Category II CST becomes unavailable (*e.g.*, seismic event or tornado).

The level in the CST and the associated instrumentation and setpoints help ensure that sufficient water is available to plant operators to mitigate the consequences of accidents that are analyzed in the UFSAR. The SX system is the emergency source of water credited in the UFSAR. However, the proposed Technical Specification Bases require that sufficient water be maintained in the CST to respond to postulated events where the CST remains available (*e.g.*, non-seismic related events and events with no tornado assumed). The proposed CST levels ensure that this requirement is met. The water level requirement for the CST provides additional assurance that plant operators remain capable of responding to postulated events as described in the UFSAR. Therefore, the proposed changes do not increase the consequences of an accident previously evaluated.

Therefore this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are being implemented to account for instrument accuracy and AF system suction requirements that affect the volume of useable water in the CST. The amendment request incorporates the full design requirements of the AF System and components to ensure that sufficient water is maintained in the CST. The changes reduce the probability of an undesirable introduction of lower quality essential service (SX) system water into the steam generators unless required due to the unavailability of the CST during emergency conditions (*e.g.*, seismic event or tornado). Although the SX system is the safety-related water supply to AF, the water contains high levels of impurities and sediment that could eventually degrade the steam generators. The CST contains demineralized water. Therefore, the long term reliability and availability of the steam generators is enhanced by precluding introduction of SX water into the steam generators unless required under emergency conditions. The proposed CST levels account for the incremental increase in CST water

volume required due to the larger metal mass and primary volume of the replacement steam generators for Byron Unit 1 and Braidwood Unit 1. Finally, the trip setpoint and allowable values in Table 3.3–4 of the TS are being updated to reflect the current design basis of the AF system. The required CST level changes when plant modifications are completed. Each configuration has been evaluated and the associated CST level maintains a sufficient water volume to perform its design function.

The modification to the suction pressure circuitry involves the addition of an electronic "lead-lag" circuit card for the motor-driven AF pump, which experiences the most severe startup suction pressure transients. This circuit card will be set up for "lag" only operation and will filter the suction pressure signal during transients associated with pump startup or other sudden changes in flow or pressure. This will prevent an inadvertent trip during transient conditions when the CST is available. In situations where the CST is unavailable, the suction pressure will decrease with no recovery until switchover. Under this condition, the output of the lead-lag card will continue to decrease as well until the switchover setpoint is reached. The time constant of the lead-lag card was selected such that the resulting time delays in actuating SX switchover and pump trip are consistent with pump protection requirements.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. This conclusion is also valid when considering the planned modifications to the AF suction pressure transient circuitry.

3. The change does not involve a significant reduction in a margin of safety.

The proposed change is made in the conservative direction with respect to the current TS requirements for minimum CST level and AF pump CST to SX switchover setpoints. Increasing the volume of water contained in the CST level provides redundancy to the safety-related source of water to the AF supply, which is the SX system. In combination, the CST and the SX system ensure that sufficient water is available to feed the steam generators under all anticipated normal and emergency conditions to cool a unit from full power conditions down to 350 degrees Fahrenheit, when the residual heat removal system can be placed into service. The proposed changes ensure the CST will have sufficient water to meet all normal operating conditions and mitigate the consequences of all analyzed accidents except those that result in CST unavailability. In addition, automatic switchover of the AF water supply from the CSTs to SX will occur as assumed in the current safety analyses for events where the CST becomes unavailable. The SX system remains capable of supplying the emergency source of water to the AF supply.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: January 28, 1998 (NRC–98–0002).

Description of amendment request: The proposed amendment would revise technical specification (TS) surveillance requirements 4.8.2.1.a.2, 4.8.2.1.b, and 4.8.2.1.c.4 to accommodate differences in the monitored parameters between the existing batteries and the batteries that will be installed for Division II during the sixth refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a change in the manner in which the plant is operated. TS Section 4.8.2.1 is being revised to reflect the new Division II battery cell/system characteristics and associated requirements. The new battery will have an increased capacity over the present battery, while maintaining the existing battery system voltage requirements. This is possible because the present and new battery specific gravity (1.215) and type (lead calcium) are the same. Also, the end of battery system discharge voltage remains the same as 210 VDC. The Division II batteries will continue to furnish power to redundant essential loads as required and as designed. The new surveillance requirement voltages are based on the same volts/cell criteria used for the existing batteries. Furthermore, failure or malfunction of the station batteries does not initiate any of the analyzed accidents previously evaluated in the UFSAR [updated final safety analysis report]. The changes described will therefore not involve an increase in the probability or consequences of an accident previously evaluated.

2. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The new battery is Class 1E qualified equipment and is being maintained within the same overall design parameters as the existing battery. That is, the battery terminal voltage on float voltage conditions (2.167 volt[s]/cell), overvoltage conditions (2.5 volts/cell) and charger capability (2.15 volts/cell) are the same as the original design. Furthermore, the end of system discharge voltage of the battery system is maintained the same; therefore, there is no negative impact to plant loads supplied by the batteries. Failures of the batteries and chargers have been considered in both the existing and modified configurations. The proposed changes will not change performance or reliability nor introduce any new or different failure modes or common mode failure and will therefore not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The changes do not involve a significant reduction in the margin of safety.

The changes act to increase overall battery capacity from 560 ampere-hours to 1200 ampere-hours with the minimum battery discharge voltage remaining at 210 VDC (or 105 VDC per battery). The battery terminal voltage on float voltage conditions (2.167 volt[s]/cell), overvoltage conditions (2.5 volts/cell) and charger capability (2.15 volts/cell) are the same as the original design. The new surveillance requirement voltages are based on the same volts/cell criteria used for the existing batteries. The batteries' ability to satisfy the design requirements (battery duty cycle) of the dc system will not be reduced from original plant design and will therefore not have any negative impact to plant loads the battery supplies. The

proposed changes therefore do not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Cynthia A. Carpenter.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: January 28, 1998 (NRC–98–0003).

Description of amendment request: The proposed amendment would revise technical specification (TS) 3.4.10, TS Figure 3.4.10–1 and the associated bases by changing the prohibited and restricted operating regions associated with core thermal-hydraulic stability. TS 3.4.1.4, TS Figure 3.4.1.4–1, and the associated bases would also be revised to reflect stability-related improvements in operating restrictions for idle recirculation loop startup. Finally, in an unrelated change, TS Tables 3.3.7.5–1 and 4.3.7.5–1 would be revised to delete neutron flux from the parameters the licensee is required to monitor by TS 3.3.7.5, Accident Monitoring Instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Thermal Hydraulic Stability and Idle Recirculation Loop Startup

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

These changes act to prohibit operations which have been found to carry a significant potential for the formation of core thermal-hydraulic instabilities and eliminates inappropriate technical specifications for maintaining <50% recirculation loop flow before starting the idle recirculation pump. As such, operation in compliance with the proposed provisions does not affect any initiating mechanism for previously evaluated accidents or the response of the plant to a previously evaluated accident. The actions taken lead to placing the plant in a safe condition and are not themselves associated with an initiator for a previously evaluated accident. Therefore, the change does not represent a significant increase in the probability or consequences of any previously evaluated accident.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the change acts to restrict operations previously allowed. The change also provides remedial actions that act to place the plant in a safe condition. The actions specified are within the analyzed domain of plant operations. Unless an instability event is in progress, the new allowance to use a core flow increase to leave the Exit Region is no different than normal plant maneuvering. If an instability event is in progress, the new ACTION 3.4.10.c to scram the reactor takes precedence. The allowance to start an idle loop with the active loop flow <50% of rated flow has been shown to have no adverse [e]ffect on scram avoidance or jet pump riser brace vibration. Therefore, the proposed changes do not create a new or different type of accident.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

Consistent with the latest BWROG [Boiling Water Reactor Owners Group] guidance, the changes act to expand the Exit region compared to the current TS for core thermal-hydraulic instability and provide improved remedial actions which promptly terminate the potential for instability. These changes therefore do not involve a significant reduction in a margin of safety.

Post-Accident Monitoring

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a change in plant design or a change in the manner in which the plant is operated. The long term post-accident design requirements of the Neutron Monitoring System (NMS) are not based on operator use for transients with scram, accidents with scram, and other occurrences without scram (Reference 6 [of January 28, 1998, application]). For lesser events such as transients without scram, the NMS enhances the operator actions, since successful verification that power is below approximately 3% power can avoid non-routine operator actions (Reference 6). These lesser events establish design requirements for the NMS. The failure of this instrumentation during post-accident conditions will not prevent the operator from determining reactor power levels. Alternate parameter status will be available from which reactor power may be inferred. Based on the multiple inputs available to the operator, sufficient information will be available upon which to base operational decisions and to conclude that reactivity control has been accomplished. This change will therefore not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not introduce a new mode of plant operation and does not involve the installation of any new equipment or modifications to the plant. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed change eliminates a TS listing of a function to reflect the actual safety significance. As such it has no effect on actual plant operation and thus no impact on any margin of safety.

Based on the above, Detroit Edison has determined that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Cynthia A. Carpenter.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: January 28, 1998 (NRC–98–0006).

Description of amendment request: The proposed amendment would revise technical specification (TS) surveillance requirement 4.4.3.2.2.a to extend the interval for leak rate testing of pressure isolation valves from 18 months to 24 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises the periodicity of TS Surveillance Requirement (SR) 4.4.3.2.2.a from "At least once per 18 months" to "At least once per 24 months." This change revises the testing periodicity only; no other testing methodology is being affected. The testing periodicity is being revised to be consistent with other Category "A" valves since the Pressure Isolation Valves (PIVs) are classified as Category "A" valves. Both ASME [American Society of Mechanical Engineers] [Code] Section XI and NUREG–1482 require Category "A" valves to be leak tested on a periodicity of at least once every 2 years.

The function of the PIVs is to protect the low pressure portions of safety systems from the RCS [reactor coolant system] pressure. Periodic valve leak rate testing is performed on the PIVs to assure system integrity is maintained and to prevent the design pressure of the low pressure systems from being exceeded. The frequency of the inservice test could increase the probability that an increase in PIV seat leakage may occur. If this were to occur and the leakage was significant (assuming leakage through both the inboard and outboard valves of the same penetration), the excess leakage would be detected by the system leakage detection instrumentation which would require corrective actions to be taken to assure that leakage remained within allowable limits. Considering that past test results show very minimal seat leakage changes over years of service, the consequences and probabilities resulting from the proposed change is considered minimal.

The proposed change does not impose or eliminate any testing requirements. This change is only a change to the frequency (testing interval) for measuring the seat leakage through the PIVs. The PIVs will continue to be tested in accordance with ASME Code Section XI. This change does not affect any of the parameters or conditions that could contribute to the initiation of any accidents previously evaluated and therefore cannot increase the consequences or probabilities of any accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any of the parameters or conditions that could contribute to the initiation of any accidents. This change only involves the lengthening of the PIVs' testing frequency from 18 months to 24 months. The method for performing the actual tests are not changed. No new accident scenarios are created by extending the testing intervals. No safety-related equipment or safety functions are altered as a result of this change. Therefore, extending the test frequency does not create the possibility of a new or different kind of accident or malfunction from those previously analyzed.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The proposed change only affects the frequency of the PIVs' seat leakage tests. The frequency is proposed to be extended to reflect the ASME Section XI, 1980 Edition, Winter 1980 Addenda, Section IWV–3422 seat leakage testing periodicity requirement of 24 months. No other testing methodology is being changed. The allowable leakage limits will not be affected by this change. The margin of safety as defined in the bases of any Technical Specification will, therefore, not be reduced by extending the testing periodicity of the subject valves.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Cynthia A. Carpenter.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: January 28, 1998 (NRC–98–0008).

Description of amendment request: The proposed amendment would revise the technical specifications (TSs) by modifying the "#" footnote to Table 1.2 and the "*" footnote to surveillance requirements 4.9.1.2 and 4.9.1.3 to permit the Reactor Mode Switch to be placed in the Run or Startup/Hot Standby positions to test switch interlock functions provided that all control rods are verified to remain fully inserted in core cells containing one or more fuel assemblies.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would permit the Reactor Mode Switch to be placed in the Run or Startup/Hot Standby positions to test the switch interlock functions provided that all control rods are verified to remain inserted in core cells containing one or more fuel assemblies. The existing TS requires that all control rods be verified to remain inserted regardless of whether core cells are defueled. The reactor mode switch refuel position interlocks restrict the operation of refueling equipment or withdrawal of control rods to reinforce unit procedures that prevent the reactor from achieving criticality during refueling operations. As such, the refueling equipment interlocks preserve the assumptions for the analyses of a control rod withdrawal event or loading of a fuel assembly into an uncontrolled cell during refueling operations. The reactor mode switch refuel position interlocks are not initiators of any previously evaluated accident. The revised footnote requires that all control rods remain fully inserted in core cells containing one or more fuel assemblies while the mode switch is moved to support interlock testing. Additionally, when the reactor mode switch is unlocked to support interlock testing, TS 3.9.1 prohibits core alterations. With all control rods fully inserted in core cells containing one or more fuel assemblies and no core alterations in progress, there are no credible mechanisms to initiate a reactivity excursion during the interlock

testing. Therefore, the proposed change does not involve a significant increase in the probability of a previously evaluated accident.

The proposed change accommodates reactor mode switch refuel position interlock testing with one or more control rods removed as permitted by TS 3.9.10.1 and 3.9.10.2. In addition to requiring all fuel assemblies to be removed from core cells associated with removed control rods, TS 3.9.10.1 and 3.9.10.2 require minimum shutdown margin to be maintained in accordance with TS 3/4.1.1. Under these conditions, it is not possible for criticality to occur in the event of a withdrawal of a single control rod or loading of fuel assemblies into a single core cell with no control rod inserted. Therefore, the proposed change does not involve a significant increase in the consequences of a previously evaluated accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Repositioning of the reactor mode switch to test refueling position interlocks is permitted by both the existing and proposed TS. The proposed change affects only the conditions under which the mode switch can be repositioned. The proposed changes do not change underlying principles affecting the way in which the plant is operated and no new or different failure modes are introduced by the proposed change for any plant system or component. No new limiting single failure has been identified as a result of the proposed changes. Therefore, no new or different types of failures or accident initiators are introduced by the proposed changes.

3. The change does not involve a significant reduction in the margin of safety.

The proposed change described above affects the conditions under which the reactor mode switch can be repositioned to accommodate refuel position interlock testing. The proposed change in combination with existing restrictions within the TS provide assurance that there is no credible mechanism to initiate a reactivity excursion during interlock testing. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Cynthia A. Carpenter.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: January 28, 1998 (NRC–98–0011).

Description of amendment request: The proposed amendment would revise technical specification (TS) 3.4.2.1 by changing the tolerance for the as-found setpoints of the safety/relief valves (SRVs) from [plus or minus] 1 percent to [plus or minus] 3 percent of the nominal setpoint. The revised tolerance would be used when evaluating whether setpoint test results were acceptable. However, after initial testing, the as-left setpoints of the SRVs would be adjusted to within [plus or minus] 1 percent of the nominal setpoint.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does this change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change allows an increase in the SRV setpoint tolerance, determined by test after the valves have been removed from service, from [plus or minus] 1% to [plus or minus] 3%. The proposed change does not alter the SRV lift setpoints, the SRV lift setpoint test frequency, or the number of SRVs required to be operable. This change does not involve physical changes to the SRVs, nor does it change the operating characteristics or safety function of the SRVs. This change requires that the SRVs be adjusted to within [plus or minus] 1% of their nominal lift setpoints following testing and prior to installation in the plant.

The only change, other than the change in setpoint tolerance, will be to increase the maximum rated speed of the RCIC [reactor core isolation cooling] turbine and pump. The increased speed is within the design limits of the system and the overspeed trip function retains adequate margin; therefore, RCIC operability is not affected by this change. Additionally, SRV actuation is not a precursor to any design basis accident analyzed for the Fermi 2 plant. Therefore, this change will not significantly increase the probability of an accident previously evaluated.

Generic considerations related to the change in setpoint tolerance were addressed in NEDC–31753P, "BWROG In-Service Pressure Relief Technical Specification Revision Licensing Topical Report," and were reviewed and approved by the NRC. The plant specific evaluations identified in the NRC['s] Safety Evaluation for NEDC–31753P were performed in order to support the proposed change (Cycle 6 reload licensing report, Power Uprate Safety Analysis, and NEDC–32788P, "Safety Review for Enrico Fermi Energy Center Unit 2 Safety/Relief Valve Setpoint Tolerance Relaxation Analyses"). These evaluations included transient analysis of the anticipated operational occurrences (AOOs); analysis of the design basis overpressurization event; evaluation of the performance of high pressure systems, motor operated valves, and vessel instrumentation and associated piping; and evaluation of the containment response during LOCA [loss of coolant accident] and the hydrodynamic loads on the SRV discharge lines and containment. Although not specified in the generic topical report NEDC–31753P, an analysis of the short term pressurization phase of an ATWS [anticipated transient without scram] event was also performed. These analyses show that there is adequate margin to the design core thermal limits and to the reactor vessel pressure limits using a [plus or minus] 3% SRV setpoint tolerance. They also show that operation of the high pressure injection systems will not be adversely affected; and the containment response during LOCA will be acceptable. Therefore, this change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does this change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change to allow an increase in the SRV setpoint tolerance from [plus or minus] 1% to [plus or minus] 3% does not alter the SRV lift setpoints, the minimum SRV lift setpoint test frequency, or the number of SRVs required to be operable. This change does not involve physical changes to the SRVs, nor does it change the operating characteristics or the safety function of the SRVs. The only change to plant equipment will be to increase the RCIC turbine/pump maximum rated speed from 4550 rpm to 4600 rpm. The RCIC pump and turbine

have been verified to be capable of operating at the increased speed, pressure and temperature associated with this increase in maximum rated speed. These changes do not result in any changed component interactions. The SRVs and the RCIC System will continue to function as designed. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

While the calculated peak vessel pressures for the ASME [American Society of Mechanical Engineers] overpressure event and the ATWS MSIVC [main steam isolation valve closure] event are higher than those calculated without the setpoint tolerance relaxation, both are still within the respective licensing acceptance limits associated with these events. Similarly, although the loads associated with SRV blowdown could increase slightly, containment loadings have been determined to remain within acceptance limits. These licensing acceptance limits have been determined by the NRC to provide a sufficient margin of safety. Additionally, the increased setpoint tolerances have been determined to have a negligible effect on the other accidents and transients analyzed. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Cynthia A. Carpenter.

Duquesne Light Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: January 17, 1998.

Description of amendment request: The proposed amendment would revise the waste gas system line break accident analysis. The proposed changes would affect Beaver Valley Power Station, Unit No. 1 Updated Final Safety Analysis Report (UFSAR) Tables 11.3–7, "Postulated Control Room Accident Dose," and 14.2–8, "Parameters Used In Control Room Habitability Analysis Of The Waste Gas System Failure Analysis." The analysis references on Tables 11.3–7 and 14.2–8 would be revised due to the reanalysis of the waste gas system line break accident. In Table 11.3–7, the waste gas system line break accident gamma dose value would be revised from 0.0031 Rem to less than 0.01 Rem and the beta dose value would be revised from 0.013 Rem to less than 1.0 Rem.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change has no effect on the probability of an accident previously evaluated. The proposed change results from the correction of values and change to assumptions utilized in the original calculation to address resultant dose to Control Room operators in the event of the postulated Waste Gas System line break.

The proposed change also corrects an error in UFSAR Table 14.2–8 whereby the fraction of fuel with defects was assumed to be one percent, not 0.0026. This correction reflects the value used in the calculation and does not alter the results.

The proposed change does not significantly increase the consequences of an accident previously analyzed. Although the correction to the calculation and revision to the assumptions used result in an insignificant increase to the postulated dose to the Control Room operators, the results remain below the acceptance limit of other postulated accidents presented in the UFSAR (Table 11.3–7) and the acceptance approved by the NRC in the NRC Safety Evaluation Report, Section 15.1, dated October 1974. The proposed change does not alter the currently approved Technical Specification. The proposed change does not affect the dose to the public.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not alter the physical plant or modify the modes of operation. The proposed change does not involve modifications to plant equipment nor does it alter operation of plant systems. Therefore operation of the facility with the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change does not reduce the margin of safety. The proposed change does not affect any plant systems or equipment. Therefore, the response of the plant to any actual events will not be affected, and the change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Attorney for Licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3 (Waterford 3), St. Charles Parish, Louisiana

Date of amendment request: November 13, 1997.

Description of amendment request: The proposed change will modify Technical Specification (TS) 6.8.4.a, "Primary Coolant Sources Outside Containment," to add portions of the containment vacuum relief (CVR) system and the primary sampling system to the program at Waterford 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change adds the containment vacuum relief (CVR) system and the primary sampling system to the Primary Coolant Sources Outside Containment Program in the Technical Specifications. The program will require preventative maintenance

and periodic visual inspection, and leak rate testing on appropriate portions of these systems to ensure leakage of radioactive fluids are as low as practicable. The addition of these two systems to the program will not affect the probability of an accident. Neither the CVR system nor the primary sampling system are initiators of any analyzed event. The consequences of an accident are not affected by this change. The maximum allowed leakage limits are not being increased due to the addition of these two systems. Any leakage from the CVR system will be factored into the overall leakage limits and any leakage from the primary sampling system will be kept to a minimum by performing required maintenance. This change does not affect the mitigation capabilities of any component or system nor does it affect the assumptions relative to the mitigation of accidents or transients. The addition of these systems to the program also helps ensure that the systems will perform their intended function. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: No.

The proposed change adds the CVR system and the primary sampling system to the Primary Coolant Sources Outside Containment Program in the Technical Specifications. The program will require preventative maintenance and periodic visual inspection, and leak rate testing on appropriate portions of these systems to ensure leakage of radioactive fluids are as low as practical. Neither the design nor configuration of the plant is being changed due to the addition of the CVR system to the program. Also, as a result of the CVR system being added to the program, there has been no physical change to plant systems, structures or components nor will the addition of the CVR system reduce the ability of any of the safety-related equipment required to mitigate anticipated operational occurrences (AOOs) or accidents.

Although the addition of the primary sampling system to the program was a result of a change to the configuration of the plant, it does not reduce the ability of any safety-related equipment required to mitigate AOOs or accidents. Any leakage from the primary sampling system will be kept to a minimum by performing required maintenance.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change adds the CVR system and the primary sampling system to the Primary Coolant Sources Outside Containment Program in the Technical Specifications. The program will require preventative maintenance and periodic visual inspection, and leak rate testing on appropriate portions of these systems to ensure leakage of radioactive fluids are as low as practical. This change will not affect the maximum containment leakage allowed in the Technical Specifications. The leakage from the CVR system will be added to the overall containment leakage rate. Any leakage from the primary sampling system will be kept to a minimum by performing required maintenance. The overall containment leakage requirement is required to be met and therefore, this change will not result in an increase in the analyzed dose consequences assumed in the Waterford 3 safety analysis. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005–3502.

NRC Project Director: John N. Hannon.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: December 31, 1997.

Description of amendment request: The proposed amendment will revise Technical Specification 5.6.1 and associated Figure 5.6–1, and Specification 5.6.3, to permit an increase in the allowed Spent Fuel Pool (SFP) storage capacity. The analyses supporting this request, in part, assume credit for up to 1266 ppm boron concentration existing in the SFP.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Analyses to support the proposed fuel pool capacity increase have been developed using conservative methodology. The analysis of the potential accidents summarized below has shown that there is no significant increase in the consequences of any accident previously analyzed. A review of relevant plant operations has also demonstrated that there is no significant increase in the probability of occurrence of any accident previously analyzed. This conclusion is also discussed below.

Previously evaluated accidents that were examined for this proposed license amendment include: Fuel Handling Accident, Spent Fuel Cask Drop Accident, and Loss of all Fuel Pool Cooling.

There will be no change in the mode of plant operation or in the availability of plant systems as a result of this proposed change; the systems interfacing with the spent fuel pool have previously encountered borated pool water and are designed to interact with irradiated spent fuel and remove the residual heat load generated by isotopic decay. The proposed amendment does not require a change in the maintenance interval or maintenance scope for the fuel pool cooling system or for the spent fuel cask crane. The frequency of cask handling operations and the maximum weight carried by the crane is not increased as a result of the proposed license amendment. Thus, there will be no increase in the probability of a loss of fuel pool cooling or in the probability of a failure of the cask crane as a result of the proposed amendment.

There will not be a significant increase in the frequency of handling discharged assemblies in the fuel pool as a result of this change; any handling of fuel in the spent fuel pool will continue to be performed in borated water. If the license amendment is approved, there will be a one-time repositioning of certain discharged assemblies stored in the fuel pool to comply with the revised positioning requirements, but the increased pool storage capacity will permit the deferral of spent fuel handling associated with cask loading operations. Fuel manipulation during the repositioning activity will be performed in the same

manner as for fuel placed in the spent fuel pool during refueling outages. There will be no changes in the manner of handling fuel discharged from the core as a result of refueling; administrative controls will continue to be used to specify fuel assembly placement requirements. The relative positions of Region I and Region II storage locations will remain the same within the fuel pool. Therefore, the probability of a fuel handling accident has not been significantly increased.

The consequences of a fuel handling accident have been evaluated. The radioactive release consequences of a dropped fuel assembly are not affected by the proposed increase in fuel pool storage capacity. They remain bounded by the results of calculations performed to justify the existing St. Lucie Unit 2 fuel storage racks and burnup limits. At the limiting fuel assembly burnup, radioactive releases from a dropped assembly would be only a small fraction of NRC guidelines. The input parameters employed in analyzing this event are consistent with the current values of fuel enrichment, discharge burnup and uranium content used at St. Lucie Unit 2 and with future use of the "value-added" fuel pellet design. Thus, the consequences of the fuel assembly drop accident would not be significantly increased from those previously evaluated.

The capability of the fuel pool cooling system to handle the increased number of discharged assemblies has been examined. The impact of a total loss of spent fuel pool cooling flow on available equipment recovery time and on fuel cladding integrity has also been evaluated. For the limiting full core discharge, sufficient time remains available to restore cooling flow or to provide an alternate makeup source before boiloff results in a fuel pool water level less than that needed to maintain acceptable radiation dose levels. Analysis has shown that in the event of a total loss of fuel pool cooling fuel cladding integrity is maintained. Therefore, the consequences of a loss of fuel pool cooling event, including the effect of the proposed increase in fuel pool storage capacity, have not been significantly increased from previously analyzed results for this type of accident.

The analysis of record pertaining to the radiological consequences of the hypothetical drop of a loaded spent fuel cask just outside the Fuel Handling Building was examined to determine the impact of the increased fuel storage capacity on this accident's results. The results of the previously performed analysis were determined to bound the conditions described by the proposed license amendment, thus the consequences of the cask drop accident would not be significantly increased as a result of this change.

It is concluded that the proposed amendment to increase the storage capacity of the St. Lucie Unit 2 spent fuel pool will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different type of accident from any accident previously evaluated.

In this license amendment FPL proposes to credit the negative reactivity associated with a portion of the soluble boron present in the spent fuel pool. Soluble boron has always been present in the St. Lucie Unit 2 spent fuel pool; as such the possibility of an inadvertent fuel pool dilution has always existed. However, the spent fuel pool dilution analysis demonstrates that a dilution of the Unit 2 spent fuel pool which could increase the pool k_{eff} to greater than 0.95 is not a credible event. Neither implementation of credit for the reactivity of fuel pool soluble boron nor the proposed increase in the fuel pool storage capacity will create the possibility of a new or different type of accident at St. Lucie Unit 2.

An examination of the limiting fuel assembly misload has determined that this would not represent a new or different type of accident. None of the other accidents examined as a part of this license submittal represent a new or different type of accident; each of these situations has been previously analyzed and determined to produce acceptable results.

The proposed license amendment will not result in any other changes in the mode of spent fuel pool operation at St. Lucie Unit 2 or in the method of handling irradiated nuclear fuel. The spatial relationship between the fuel storage racks and the cask crane range of motion is not affected by the proposed change.

As a result of the evaluation and supporting analyses, FPL has determined that the proposed fuel pool capacity increase does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

FPL has determined, based on the nature of the proposed license amendment that the issue of margin of safety, when applied to this fuel pool capacity increase, should address the following areas:

(1) Fuel Pool reactivity considerations
(2) Fuel Pool boron dilution considerations
(3) Thermal-Hydraulic considerations
(4) Structural loading and seismic considerations

The Technical Specification changes proposed by this license amendment, the proposed spent fuel pool storage configuration and the existing Technical Specification limits on fuel pool soluble boron concentration provide sufficient safety margin to ensure that the array of fuel assemblies stored in the spent fuel pool will always remain subcritical. The revised spent fuel storage configuration is based on a Unit 2 specific criticality analysis performed using methodology consistent with that approved by the NRC. Additionally, the soluble boron concentration required by current Technical Specifications ensures that the fuel pool k_{eff} will always be maintained substantially less than 0.95.

The Unit 2 criticality analysis established that the k_{eff} of the spent fuel pool storage racks will be less than 1.0 with no soluble boron in the fuel pool water, including the effect of all uncertainties and tolerances. Credit for the soluble boron actually present is used to offset uncertainties, tolerances, off-normal conditions and to provide margin such that the spent fuel pool k_{eff} is maintained less than or equal to 0.95. FPL has also demonstrated that a decrease in the fuel pool boron concentration such that k_{eff} exceeds 0.95 is not a credible event.

Current Technical Specifications require that the fuel pool boron concentration be maintained greater than or equal to 1720 ppm. This boron value is substantially in excess of the 520 ppm required by the uncertainty and reactivity equivalencing analyses discussed in this evaluation and the 1266 ppm value required to maintain k_{eff} less than or equal to 0.95 in the presence of the most adverse mispositioned fuel assembly.

The St. Lucie Unit 2 fuel pool boron concentration will continue to be maintained significantly in excess of 1266 ppm; the proposed license amendment will not result in changes in the mode of operation of the refueling water tank (RWT) or in its use for makeup to the fuel pool. Thus, operation of the spent fuel pool following the proposed change, combined with the existing fuel pool boron concentration Technical Specification limit of 1720 ppm, will continue to ensure that k_{eff} of the fuel pool will be substantially less than 0.95.

Even if this not-credible dilution event was to occur, no radiation would be released; the only consequence would be a reduction of shutdown margin in the fuel pool. The volume of unborated water required to dilute the fuel pool to a k_{eff} of 0.95 is so large (in excess of 358,900 gallons to dilute the fuel pool to 520 ppm boron) that only a limited number of water sources could be considered potential dilution sources. The likelihood that this level of water use could remain undetected by plant personnel is extremely remote.

In meeting the acceptance criteria for fuel pool reactivity, the proposed amendment to increase the storage capacity of the existing fuel pool racks does not involve a significant reduction in the margin of safety for nuclear criticality.

Calculations of the spent fuel pool heat load with an increased fuel pool inventory were performed using ANSI/ANS–5.1–1979 methodology. This method was demonstrated to produce conservative results through benchmarking to actual St. Lucie Unit 2 fuel pool conditions and by comparison of its results to those generated by a calculation using Auxiliary Systems Branch Technical Position 9–2 methodology. Conservative methods were also used to demonstrate fuel cladding integrity is maintained in the absence of cooling system forced flow. The results of these calculations demonstrate that, for the limiting case, the existing fuel pool cooling system can maintain fuel pool conditions within acceptable limits with the increased inventory of discharged assemblies. Therefore, the proposed change does not result in a significant reduction in the margin of safety with respect to thermal-hydraulic or spent fuel cooling considerations.

The primary safety function of the spent fuel pool and the fuel storage racks is to maintain discharged fuel assemblies in a safe configuration for all environments and abnormal loadings, such as an earthquake, a loss of pool cooling or a drop of a spent fuel assembly during routine spent fuel handling. The proposed increase in spent fuel inventory on the fuel pool and the existing storage racks have been evaluated and show that relevant criteria for fuel rack stresses and floor loadings have been met and that there has been no significant reduction in the margin of safety for these criteria.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Project Director: Frederick J. Hebdon.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: November 22, 1996, as revised and replaced on February 2, 1998.

Description of amendment request: The licensee proposed to change the Technical Specifications (TS) to allow the use of a temporary fuel oil storage system for up to 10 days in order to perform a surveillance requirement on the Unit 3 fuel oil storage tank with Unit 3 in Modes 5, 6, or defueled.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Question 1 Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed amendment will allow the installation of a temporary fuel oil storage and transfer system for up to 10 days, once every 10 years. EDGs [emergency diesel generators] are designed as backup AC power sources for essential safety systems in the event of a loss of offsite power. Since the EDGs are not accident initiators, the probability of occurrence of accidents previously analyzed has not been increased.

The temporary fuel oil storage tanks will be located greater than fifty (50) feet from safety related or safe shutdown components or circuits. This does not produce any threat to fire protection or safe shutdown capability and therefore represents a configuration that is bounded by existing fire hazards analysis.

The proposed amendment will not change the condition or minimum amount of operating equipment assumed in the plant safety analyses for accident mitigation. The temporary fuel storage and transfer system provides a reliable means of performing the required delivery support function for the Unit 3 EDGs.

An insignificant increase in the consequences of an accident previously evaluated is possible since the temporary storage and transfer system will not meet requirements for Seismic Category I or Class 1E. However, the probability of a seismic event will be very low due to the limited time that the temporary storage system will be in use.

The increase in the consequences of an accident previously evaluated is insignificant due to the following:

Manual actions required to provide a 7 day supply of fuel to the EDGs can easily be accomplished in the 17 hours of EDG operation provided by the 3880 gallon capacity of a single EDG day and skid tank. The location of the temporary fuel oil supply inside the protected area security fence by the Central Receiving Facility provides multiple access routes to transfer fuel to the Unit 3 EDGs and is in close proximity to a severe weather shelter for the mobile tanker.

Additionally, more than 17 hours will be available to manually transfer fuel from the temporary fuel storage tanks located inside the protected area, by filling the Unit 4 EDG storage tanks with approximately 8600 gallons of fuel oil above that required for Unit 4 EDG operability. This extra capacity will be available to the Unit 3 EDGs prior to taking the permanent Unit 3 storage tank out of service. This will be done by filling the Unit 4 fuel tanks to 39,000 gallons, which is just below the high level alarm. This gives a capacity of 4300 gallons in each tank above the Unit 4 Technical Specification minimum required volume of 34,700 gallons. The Unit 4 tanks are contained within a Seismic Class 1 structure and protected by installed fire protection equipment.

Combining the excess available fuel from the Unit 4 storage tanks and the nominal volume of the Unit 3 day and skid tanks gives a total of 12,480 gallons (4300×2+3880) of available fuel to either of the Unit 3 EDGs. This allows a run time for a Unit 3 EDG of 55 hours (assuming fuel oil transfer from Unit 4) prior to reaching the Technical Specification minimum volume for the Unit 4 fuel oil storage tanks. Manual actions to replenish the Unit 4 or Unit 3 fuel oil storage tanks from the temporary storage tanks, via the mobile tanker, can easily be accomplished within the 55 hours. Procedures currently exist for the transfer of fuel from (1) the mobile tanker to the auxiliary fill station at the Unit 3 EDGs, and (2) from the Unit 4 EDG storage tanks to the Unit 3 day tanks by using either of the Unit 4 transfer pumps. The

Unit 4 transfer pumps are powered from redundant Class 1E power supplies.

The temporary storage tanks will be located inside the protected area in the vicinity of the Nuclear Plant Central Receiving Facility. The temporary tanks will be located greater than fifty (50) feet from safety related or safe shutdown components or circuits. This does not produce any threat to fire protection or safe shutdown capability and therefore represents a configuration that is bounded by existing fire hazards analysis.

A dedicated mobile tanker staged inside the protected area to transfer fuel from the temporary storage tanks to the permanent day/skid tank system. The mobile tanker will have an integral transfer pump to facilitate movement of fuel to either of the two truck fills at the Unit 4 EDG building or day tank truck fills (auxiliary fill station) at the Unit 3 EDGs. One truck fill at the Unit 4 EDG building supplies fuel to the 4A and 4B storage tanks, the other truck fill at the Unit 4 EDG building can provide fuel directly to the Unit 3 day tanks. This fuel supply will provide continued operation for 7 days. The temporary storage and transfer system will not meet requirements for Seismic Category I or Class 1E.

The capability to operate an Unit 3 EDG for 7 days during the tank cleaning evolution will be assured by an approved plant procedure that controls the following:

- A minimum fuel supply of 3880 gallons from the Unit 3 day and skid tank. This provides 17 hours of operation.
- The extra fuel supply of 8600 gallons in the Unit 4 EDG tanks which will be transferred by using one of the installed Unit 4 transfer pumps. This provides an additional 38 hours of operation.
- Three temporary tanks containing a minimum fuel supply of 38,000 gallons. This fuel supply will provide continued operation for 7 days.

Consequently, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Question 2 Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed amendment will not change the physical plant or modes of plant operation defined in the Turkey Point Units 3 and 4 operating license. The change will not involve addition or modification of equipment for Unit 3 EDG fuel storage and transfer. The temporary fuel supply system provides a reliable means of performing the required fuel delivery support function for the Unit 3 EDGs.

Consequently, operation of either unit in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Question 3 Does the proposed amendment involve a significant reduction in the margin of safety?

The proposed amendment is designed to provide flexibility to schedule and perform required surveillance activities. Surveillance intervals or operating requirements are not changed by the proposal; only the method of fuel oil storage on a temporary basis for a single operable EDG is addressed. The proposed change will not alter the basis for any Technical Specification that is related to the establishment of, or maintenance of, a nuclear safety margin.

Consequently, operation of Turkey Point Units 3 and 4 in accordance with this proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Project Director: Frederick J. Hebdon.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: January 9, 1998.

Description of amendment request: The licensee proposed to change the Technical Specifications (TS) to allow the use of ZIRLO™ fuel rod clad material.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Question 1 Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Implementation of ZIRLO™ fuel rod cladding will have no impact on the probability or consequences of any Design Basis Event occurrences which were previously evaluated. The determination that fuel design limits are met will continue to be performed using NRC approved fuel performance analysis methodology. Changing to ZIRLO™ fuel rod cladding poses no significant increase in the probability or consequences of any accident previously evaluated.

No new performance requirements are being imposed on any system or component in order to support implementation of ZIRLO™ fuel rod cladding. Since the LOCA and Non-LOCA analysis results will remain within design limits, the inputs to the radiation dose analysis do not change. Therefore, the consequences to the public resulting from any accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR) is not increased.

Fuel rod design criteria will be evaluated every cycle to ensure proper compliance with fuel rod design limits and therefore the UFSAR. The evaluation of the fuel design against fuel design limits will be performed in accordance with 10 CFR 50.59, which ensures that the reload will not involve an increase in the probability or consequence of an accident previously evaluated.

Question 2 Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Implementation of ZIRLO™ fuel rod cladding will have no impact, nor does it contribute in any way to the probability or consequences of an accident.

No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of using ZIRLO™ fuel rod cladding. The institution of ZIRLO™ fuel rod cladding will have no adverse effect on, and does not challenge the performance of, any safety related system.

The determination that the fuel rod design limits are met will be performed using NRC approved methodology. Therefore, the proposed amendment does not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

Question 3 Does the proposed amendment involve a significant reduction in the margin of safety?

The margin of safety is not affected by the implementation of ZIRLO™ fuel rod cladding. Use of ZIRLO™ fuel rod cladding has been approved by the NRC and does not constitute a significant reduction in the margin of safety.

The margin of safety provided in the fuel design limits is acceptable and will be maintained and not reduced.

In addition, each future reload will involve a 10 CFR 50.59 review to assure that operation of the units within the cycle specific limits will not involve a reduction in the margin of safety. Therefore, the proposed amendment does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Project Director: Frederick J. Hebdon.

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: January 22, 1998.

Description of amendment request: The amendment would incorporate the proposed revision into Chapter 9 of the Millstone Unit 3 Final Safety Analysis Report. The proposed revision to the Millstone Unit 3 licensing basis would accept the existing use of epoxy coatings on safety-related components.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed revision in accordance with 10CFR50.92 and has concluded that the revision does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not satisfied. The proposed revision does not involve [an] SHC because the revision would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

Past experience indicates that failure of previous ARCOR applications may have degraded the performance of SWS [service water system] heat exchangers within one train, but there is no indication that failure of multiple heat exchangers on both trains is feasible. Furthermore, the likelihood of ARCOR material being released has been reduced by improving the application procedure and performing destructive testing to detect disbondment. In addition, the completion of normal heat exchanger performance surveillance's and periodic visual inspections minimizes the potential for disbonded ARCOR to degrade SWS components.

Therefore, the presence of ARCOR coating material within the SWS does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The application of ARCOR material may lead to the degradation of SWS heat exchangers. However, multiple ARCOR application failures occurring simultaneously either instantaneously or gradually resulting in failure of all SWS heat exchangers in both trains is not considered feasible. An instantaneous failure is discounted by analysis which concludes that normal system operations are more likely to cause the release of degraded ARCOR than what might be expected following a seismic event. Gradual degradation is not expected since normal SWS heat exchanger performance surveillance's will identify heat exchanger tubesheet fouling and thus, provide early detection of coating failures. Therefore, the use of ARCOR coating material within the SWS does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

Although the gradual release of ARCOR material creates the potential to simultaneously degrade the performance of mitigating equipment in both trains of safety systems, it is determined to be unrealistic due to normal heat exchanger performance surveillance's. These surveillance's are expected to identify heat exchanger tubesheet fouling and provide early detection and mitigation of a problem with the pipe coatings. Therefore, the application of ARCOR coating within the SWS does not involve a significant reduction in the margin of safety.

In conclusion, based on the information provided, it is determined that the proposed revision does not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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NRC Deputy Director: Phillip F. McKee.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: July 26, 1996, as supplemented September 5 and December 4, 1997.

Description of amendment request: The proposed amendment would, as part of the licensee's power rerate program, increase the maximum power level to 1775 megawatts thermal (MWt). This change is approximately 6.3 percent above the current maximum power level of 1670 MWt.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment will not involve a significant increase In the probability or consequences of an accident previously evaluated.

The probability of occurrence and consequences of an [accident] previously evaluated have been evaluated for MNGP [Monticello Nuclear Generating Plant] Power Rerate. This evaluation has concluded that MNGP Power Rerate will not involve a significant increase in the probability of occurrence or consequences of previously evaluated accidents.

1. Evaluation of Accident Consequences

(a) ECCS–LOCA Analysis

The Emergency Core Cooling System Loss of Coolant Accident (ECCS–LOCA)

performance analysis has been evaluated for MNGP Power Rerate using methodology which has been approved by the NRC for LOCA 10CFR50.46 analyses [requirements]. The current ECCS performance requirements were used in the power rerate analysis; no further parameter relaxations were included in the analysis. The ECCS–LOCA analysis was performed for MNGP Power Rerate for the existing licensed rated thermal power and at a bounding thermal power level of 1880 MWt that is approximately 6% greater than the proposed power rerate to 1775 MWt [megawatts thermal]. In addition, the bounding thermal power level was increased by an additional 2% in accordance with regulatory guidance. The licensing peak clad temperature for the bounding analyzed thermal power level remains below the 10CFR50.46 required limit of 2,200°F. Therefore the analysis demonstrates that MNGP will continue to comply with 10CFR50.46 and 10CFR50, Appendix K at rerated conditions thus the consequences of a LOCA is not significantly increased for the proposed power rerate.

(b) Abnormal Operating Transient Analysis

An evaluation of the Updated Safety Analysis Report (USAR) and reload transients has been performed for MNGP Power Rerate to demonstrate that the proposed power rerate has no adverse effect on plant safety. This evaluation was performed for a power level of 1775 MWt, with the exception that certain event evaluations were performed at 102% of the rerate power level. The transient analysis performed to demonstrate the acceptability of MNGP Power Rerate used the NRC approved methods identified in the MNGP Technical Specifications.

The limiting transient events at the power rerate conditions have been analyzed. This includes all events that establish the core thermal operating limits and the events that bound other transient acceptance criteria. These limiting transients were benchmarked against the existing rated thermal power level by performance of the event analysis at both the proposed rerate power level and the existing rated power level. In addition, an expanded group of transient events was evaluated to confirm that these events were less severe with the power rerate than the most limiting transients. The events included in the expanded group of transient events were chosen based on those events which have been demonstrated to be sensitive to initial power level. This evaluation confirmed that the existing set of limiting transient events remains valid for MNGP Power Rerate. The evaluation was performed for a representative core and demonstrated the overall capability to meet all transient safety criteria for the power rerate. Cycle specific analysis will continue to be performed for each fuel reload to demonstrate compliance with the applicable transient criteria and to establish cycle specific operating limits.

The results of the evaluation of transients demonstrate that the power rerate can be accomplished without a significant increase in the consequences of the transients evaluated. The fuel thermal-mechanical limits at the power rerate conditions are within the specific design criteria for the GE [General Electric] fuels currently loaded in the MNGP core. Also, the power-dependent and flow-dependent MCPR [minimum critical power ratio] and Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) methods developed as part of the core performance improvement program remain applicable to rerate conditions. The transient event evaluation confirmed that MNGP Power Rerate has no significant effect on the power-dependent and flow-dependent MCPR and MAPLHGR limits. The peak reactor pressure vessel bottom head pressure remains within the ASME [American Society of Mechanical Engineers] requirement for reactor pressure vessel overpressure protection.

The effects of plant transients were evaluated by assessing a number of disturbances of process variables and malfunctions or failures of equipment consistent with USAR. The transient events were evaluated against the Safety Limit Minimum Critical Power Ratio, (SLMCPR). The SLMCPR is determined using NRC-approved methods. The limiting transient events are slightly more severe when initiated from the rerate power level. The power rerate transient evaluation results show a slightly more limiting event initial CPR [critical power ratio] (less than or equal to 0.02) than that initiated from the present rated power level for the near limiting transients. However, for the most limiting transient, the evaluation of a representative core showed that no change is required to the Operating Limit MCPR for the power rerate and that the integrity of the SLMCPR is maintained. The margin of safety established by the SLMCPR is not affected and the event consequences are not significantly affected by the proposed power rerate to 1775 MWt. Cycle specific analysis will continue to be performed for each fuel reload to demonstrate compliance with the applicable transient criteria and to establish cycle specific operating limits.

The results demonstrate that the MNGP core thermal power output can be safely increased to the power rerate level without significant effect on the consequences of previously evaluated postulated transient events. The results of the rerate transient analysis are summarized as follows.

(1) Events Resulting in a Nuclear System Pressure Increase

(a) Main Generator Load Rejection with No Steam Bypass

At rerated conditions, the fuel transient thermal and mechanical overpower results remain below the NRC accepted design criteria.

(b) Main Turbine Trip with No Steam Bypass

At rerate conditions, the fuel transient thermal and mechanical overpower results remain below the NRC accepted design criteria.

(c) Main Steam Isolation Valve Closure, Flux Scram

The peak reactor pressure vessel bottom head pressure for rerate conditions is slightly higher than the reactor pressure vessel bottom head pressure at current conditions. However, the resultant pressure is still below the ASME overpressure limit of 1,375 psig [pounds per square inch].

(d) Slow Closure of a Single Turbine Control Valve

The results of this transient for the power rerate remain non-limiting as compared with other more severe pressurization events.

(2) Event Resulting in a Reactor Vessel Water Temperature Decrease

(a) Feedwater Controller Failure-Maximum Demand

The delta CPR calculated for this event at rerate conditions is about 0.01 higher than the corresponding value for the current rated power when the impact of the new condensate pumps is factored in. The trend for the Feedwater Controller Failure-Maximum Demand event is consistent with the analysis for the current rated power. The fuel thermal margin results are within the acceptable limits for the fuel types analyzed.

(b) Loss of Feedwater Heating

This event at the rerate conditions remains significantly less than the cycle operating MCPR limit. The results at low core flow conditions are actually slightly higher than for the high core

flow condition because of increased inlet coolant subcooling into the reactor core. The calculated thermal and mechanical overpower limits at the power rerate conditions for this event also meet the fuel design criteria.

(c) Inadvertent HPCI [high-pressure coolant injection] Actuation

For the limiting condition analyzed, both the high water level setpoint and the high reactor pressure vessel steam dome pressure scram setpoints are not reached. Based on the peak average fuel surface heat flux results, the HPCI actuation event will be bounded by the limiting pressurization event with respect to delta Critical Power Ratio ([delta] CPR) considerations. In addition, the fuel transient thermal and mechanical overpower limits remain within the NRC accepted design values.

(3) Event Resulting in a Positive Reactivity Insertion

(a) Rod Withdrawal Error (RWE)

The current Rod Block Monitor (RBM) system for MNGP with power dependent setpoints was analyzed for the rod withdrawal error event at the power rerate conditions using a statistical approach consistent with NRC approved methods. The analysis concluded that the transient is slightly more severe with a greater delta Critical Power Ratio ([delta] CPR) from the initial most limiting CPR. However, the fuel and mechanical overpower results remain within the NRC accepted design criteria.

(4) Event Resulting in a Reactor Vessel Coolant Inventory Decrease

(a) Pressure Regulator Failure to Full Open

The results of this transient for the power rerate remain non-limiting as compared with other more severe pressurization events.

(b) Loss of Feedwater Flow

This transient event does not pose any direct threat to the fuel in terms of a power increase from the initial conditions. Water level declines rapidly and a low level causes a reactor scram. The closure of the main steam isolation valves and the actuation of High Pressure Coolant Injection and Reactor Core Isolation Cooling terminate the event. This event was included in the power rerate evaluation to provide assurance that sufficient water makeup capability is available to keep the core covered when all normal feedwater is lost. The generic analysis performed in support of the extended power uprate program shows that at the power rerate conditions a large amount of water remains above the top of the active fuel. These sequences of events do not require any new operator actions or shorter operator response times. Therefore, the operator actions for the event do not significantly change for the power rerate.

(5) Event Resulting in a Core Coolant Flow Decrease

(a) Recirculation Pump Seizure

The recirculation pump seizure assumes instantaneous stoppage of the pump motor shaft of one recirculation pump. As a result, the core flow decreases rapidly. The heat flux decline lags core power and flow and could result in a degradation of core heat transfer. At the power rerate conditions, the transient results confirmed that the consequences of the pump seizure event remain non-limiting.

(6) Event Resulting in a Core Coolant Flow Increase

(a) Recirculation Flow Controller Failure Increasing Flow

The results of this transient for the power rerate remain non-limiting as compared with other more severe pressurization events.

(c) Design Basis Accident Challenges to the Containment

The primary containment response to the limiting design basis accident was evaluated for a bounding reactor power level approximately 6% greater than the proposed power rerate to 1775 MWt. In addition, the bounding reactor power level was increased by an additional 2% in accordance with regulatory guidance. The effect of the power rerate on the short term containment response (peak values) as well as the long term containment response for containment pressure and temperature confirms the suitability of the plant for operation at the bounding power level, thus the proposed power rerate to 1775 MWt is acceptable. Factors of safety provided in the ASME Code are maintained and safety margin is not affected for the power rerate to 1775 MWt.

Short-term containment response analyses were performed for the limiting design basis LOCA consisting of a double-ended guillotine break of a recirculation suction line, to demonstrate that operation at a bounding reactor power will not result in exceeding the containment design limits. This limiting design basis LOCA event results in the highest short-term containment pressures and dynamic loads. The analysis determined that for a bounding reactor power the maximum drywell pressure values are bounded by the current USAR analysis value and by the containment design pressure. The power rerate to 1775 MWt has no adverse effect on the containment structural design pressure.

Because there will be more residual heat with increased thermal power, the containment long term response will have slightly higher temperatures. Long term suppression chamber temperatures remain within the design temperature of the structure, thus factors of safety provided in the ASME code are maintained and safety margin is not affected. Analysis confirmed that ECCS pump NPSH is adequate for this temperature response. It was confirmed that the long term response does not adversely affect the containment structure or the environmental qualification (EQ) of equipment located in the drywell or suppression chamber room. The drywell long term temperature response is not adversely affected for a bounding reactor power. An analytical power level of 1880 MWt bounds the decay heat associated with the 1775 MWt power level with a one sided confidence interval of 95%. The containment long term response is therefore acceptable for the power rerate to 1775 MWt.

The impact of a reactor power increase on the containment dynamic loads have been determined, evaluated and found to have no adverse effects for conditions which well bound the proposed power rerate. Thus the containment dynamic loads were found to be acceptable for the power rerate to 1775 MWt.

The MNGP Power Rerate evaluation of the primary containment response to the design basis accident confirmed that the power rerate does not result in a significant increase in consequences for a bounding reactor power approximately 6% greater than the proposed power rerate to 1775 MWt.

(d) Radiological Consequences of Design Basis Accidents

For MNGP Power Rerate, the radiological consequences of the limiting design basis accidents were re-evaluated. These evaluations included the effect of the power rerate on the radiological consequences of accidents presented in USAR Section 14.7.

This evaluation was performed using inputs and evaluation techniques consistent with the current regulatory guidance, the current GE analysis methods, and the appropriate plant design basis. The inputs and analysis methods used for MNGP Power Rerate differ from those utilized in the current licensing basis evaluation presented in

the USAR and the AEC [Atomic Energy Commission] safety evaluation supporting plant initial licensing. The MNGP Power Rerate evaluations used the more contemporary staff approved methods. The inputs used in the MNGP Power Rerate evaluation provide a conservative assessment of the potential radiological consequences. The conclusions of these evaluations are consistent with the original licensing basis evaluations. The radiological consequences of the limiting design basis accidents remain well within 10CFR100 guidelines for a bounding thermal power approximately 6% greater than the proposed power rerate of 1775 MWt. In addition the bounding thermal power level was increased by an additional 2% in accordance with regulatory guidance.

To conservatively analyze the change in consequences, the evaluation of radiological consequences using the analysis inputs and methods was performed for the existing licensed rated thermal power and a thermal power bounding the proposed power rerate. This provides a conservative bounding change in consequences for the requested power rerate to 1775 MWt.

The MNGP Power Rerate evaluation of the radiological consequences of design basis accidents confirmed that the power rerate does not result in a significant increase in consequences for a bounding power level approximately 6% greater than the proposed power rerate. The results remain below the 10CFR100 guideline values as well as the licensing basis established in the March 18, 1970 AEC safety evaluation. Therefore, the postulated radiological consequences do not represent a significant change in accident consequences and are clearly within the regulatory guidelines for the proposed power rerate to 1775 MWt.

(e) Other Evaluations

(1) Performance Improvements

The MNGP Power Rerate safety analysis has been performed taking into account the implementation of the following previously approved special operational features.

(a) Maximum Extended Load Line Limit/Increase Core Flow (MELLL/ICF)

The safety analysis for rerate conditions shows that the extended operating domain as analyzed by MELLL/ICF remains valid for the power rerate conditions.

(b) Average Power Range Monitor/Rod Block Monitor Technical Specification (ARTS) Improvements

The safety analysis for rerate conditions shows that the ARTS improvements remain valid for the power rerate conditions.

(c) Single Loop Operation (SLO)

The safety analysis for rerate conditions shows that the single loop operating mode remains valid for the power rerate conditions. The MELLLA trip setpoints determined for two-loop operation were confirmed to be acceptable for single loop operation with a correction applied to account for the actual effective drive flow applied when operating in single loop. The single loop settings have been conservatively established to be consistent with the two loop settings while ensuring the appropriate corrections are applied to the MAPLHGR and the operating limit MCPR to account for single loop operation.

(2) Effect of Power Rerate on Support Systems

An evaluation was performed to address the effect of MNGP Power Rerate on accident mitigation features, structures, systems, and components within the balance of plant. The results are as follows:

Auxiliary systems such as, building heating, Ventilation and Air Conditioning (HVAC) systems, reactor building closed cooling water, service water and emergency service water, spent fuel pool cooling, process auxiliaries such as instrument air and makeup water and the post-accident sampling system were confirmed to operate acceptably under normal and accident conditions at rerate conditions.

The secondary containment and standby gas treatment system were confirmed to be able to adequately contain, process, and control the release of normal and post-accident levels of radioactivity at rerate conditions.

Instrumentation was reviewed and confirmed to be capable of performing its control and monitoring functions under rerate conditions. As required, analyses were performed to determine the need for setpoint changes for various functions (*e.g.*, APRM [average power range monitor] neutron flux scram setpoints). In general, setpoints are to be changed only to maintain adequate difference between plant operating parameters and trip setpoints, while ensuring safety performance is demonstrated. The revised setpoints have been established using the NRC reviewed methodology as guidance.

Electric power systems including the turbine generator and switchgear components were verified as being capable of providing the electrical load as a result of the rerate power levels. An evaluation of the auxiliary power system for the power rerate conditions confirmed that the system has sufficient capacity with the changes identified in Exhibit I [of the 12/4/97 submittal] to support all required loads for safe shutdown, to maintain a safe shutdown condition, and to operate the required engineered safeguards equipment following postulated accidents. No safety-related electrical loads were affected which would adversely impact the emergency diesel generators.

Piping systems were evaluated for the effect of operation at higher power levels, including transient loading. The evaluation confirmed that, with few exceptions, piping and supports are adequate to accommodate the increased loading resulting from operation at rerate power conditions. In a few cases, piping supports will be modified to accept higher forces due to rerate conditions.

The effect of rerate conditions on high energy line break (HELB) was evaluated. The evaluation confirmed structures, systems, and components important to safety are capable of accommodating the effects of jet impingement and blowdown forces and the environmental effects resulting from HELB events at rerate conditions.

Control room habitability was evaluated. With the implementation of minor hardware and non-hardware changes to the control room ventilation system, Post-accident Control Room and Technical Support Center doses at rerate conditions were confirmed to be within the guidelines of General Design Criterion 19 of 10CFR50, Appendix A.

The environmental qualification of equipment important to safety was evaluated for the effect on normal and accident operating conditions at rerate power levels. The equipment remains qualified for the new conditions. Minor adjustments will reflect some changes to maintenance frequencies. The preventative maintenance program will continue to provide for equipment maintenance or replacement to ensure equipment environmental qualification at rerate power conditions.

(3) Effect on Special Events

The consequences of special events (*i.e.*, ATWS [anticipated transient without scram], 10CFR50, Appendix R, and Station Blackout) remain within NRC accepted criteria for rerate conditions. Concurrent malfunctions assumed to occur during accidents have

been accounted for in the safety analyses for rerate conditions. The consequences of these equipment malfunctions does not change with implementation of the MNGP Power Rerate program. The generic ATWS analysis for operation at rerate conditions is being revised. The revision is not expected to affect MNGP compliance with NRC acceptance criteria.

(f) Conclusion

The evaluation of the Emergency Core Cooling System performance has demonstrated the criteria of 10CFR50.46 are satisfied, thus the margin of safety established by the criteria is maintained. The analysis demonstrated that the ECCS will function with the most limiting single failure to mitigate the consequences of the accidents and maintain fuel integrity. The system will continue to perform as required under rerate conditions to mitigate the consequences of accidents and thus the power rerate does not adversely affect ECCS performance in a manner to increase the severity of consequences. Challenges to the containment have been evaluated and the integrity of the fission product barrier has been confirmed. The radiological consequences of design basis accidents have been evaluated and it was found that the effect of the proposed power rerate on postulated radiological consequences does not result in a significant increase in accident consequences. These evaluations have been performed for a bounding reactor power approximately 6% greater than the proposed power rerate. In addition the bounding reactor power level was increased by an additional 2% in accordance with regulatory guidance. Thus the evaluations provide conservative bounding results for the proposed power rerate to 1775 MWt and demonstrate that the proposed power rerate does not result in significant increase in accident consequences.

The abnormal transients have been analyzed under the power rerate conditions, and the analysis has confirmed that the power rerate to 1775 MWt has only a minor effect on the minimum critical power ratio and that no change to the safety limit critical power ratio results, thus the margin of safety as assured by the safety limit critical power ratio is maintained. The effect of the power rerate on the consequences of abnormal transients which result from potential component malfunctions has been shown to be acceptable, thus the power rerate does not result in a significant increase in transient event consequences.

The spectrum of analyzed postulated accidents and transients has been investigated, and has been determined to meet the current regulatory criteria for the MNGP at rerate conditions. In the area of core design, the fuel operating limits will still be met at the rerate power level, and fuel reload analyses will show plant transients meet the criteria accepted by the NRC as specified in the plant Technical Specifications. The evaluation of transient and accident consequences was performed consistent with the proposed changes to the plant Technical Specifications. Therefore, the proposed Operating License and Technical Specification changes will not cause a significant increase in the consequences of an accident previously evaluated for the Monticello plant.

2. Evaluation of the Probability of Previously Evaluated Accidents

The proposed power rerate imposes only minor increases in the plant operating conditions. No changes are required to the rated core flow, rated reactor pressure, or turbine throttle pressure. The power rerate will result in moderate flow increases in those system[s] associated with the turbine cycle (*i.e.*, condensate, feedwater, main steam, etc.). For MNGP Power Rerate, the small increase in operating temperatures for balance of plant support systems has no significant effect on LOCA or other accident probabilities.

The increase in flow rates in balance of plant systems is addressed by compliance with NRC Generic Letter 89–08, "Erosion/Corrosion in Piping." The MNGP Power Rerate evaluations have confirmed that the power rerate has no significant effect on flow induced erosion/corrosion. The worst case limiting feedwater and main steam piping flow increases were evaluated to be approximately proportional to the power increase. The affected systems are currently monitored by the MNGP Erosion/Corrosion program. Continued monitoring of the systems provides a high level of confidence in the integrity of potentially susceptible high energy piping systems.

The occurrence frequency of accident precursors and transients [has] been addressed when required by applying the guidance of NRC reviewed setpoint methodology to insure that acceptable trip avoidance is provided during operational transients subsequent to implementation of rerate. The setpoint evaluation has confirmed that MNGP Power Rerate does not result in any increase in challenges to the plant protective instrumentation.

Plant systems, components, and structures have been verified to be capable of performing their intended functions under rerate conditions with a few minor exceptions. Where necessary, some components will be modified prior to implementation of the MNGP Power Rerate Program to accommodate the revised operating conditions (*e.g.*, a limited number of pipe supports changes, instrumentation setpoint changes, control room habitability improvements). MNGP Power Rerate does not significantly affect the reliability of plant equipment. Where reliability effects have been identified, modifications and administrative controls will be implemented prior to the power rerate to adequately compensate. No new components or system interactions that could lead to an increase in accident probability are created due to the power rerate.

The probability (*i.e.*, frequency of occurrence) of design basis accidents occurring is not affected by the increased power level, as the applicable criteria established for plant equipment (*e.g.*, ANSI Standard B31.1, ASME Code,) will still be followed as the plant is operated at the rerate power level. The MNGP Power Rerate analysis basis assures that the power dependent margin prescribed by the Code of Federal Regulations (CFR) will be maintained by meeting the appropriate regulatory criteria. Similarly, factors of safety specified by application of the Code design rules have been demonstrated to be maintained, as have other margin-assuring acceptance criteria used to judge the acceptability of the plant. Reactor scram setpoints as established are such that there is no significant increase in scram frequency due to rerate conditions. No new challenges to safety-related equipment will result from the power rerate. Therefore, the proposed Operating License and Technical Specifications changes do not involve a significant increase in the probability of an accident previously evaluated.

B. The proposed Operating License changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The basic Boiling Water Reactor configuration, operation and event response is unchanged by the power rerate. Analysis of transient events has confirmed that the same transients remain limiting and that no transient events result in a new sequence of events which could lead to a new accident scenario. The MNGP Power Rerate analyses confirmed that the accident progression is basically unchanged by the power rerate.

An increase in power level will not create a new fission product release path, or result in a new fission product barrier failure mode. The same fission product barriers such as the fuel cladding, the reactor coolant pressure boundary and the reactor containment, remain in place. Fuel rod cladding integrity is ensured by operating within thermal, mechanical, and exposure design limits and is demonstrated by the MNGP Power Rerate transient analysis and accident analysis. Similarly, analysis of the reactor coolant pressure boundary and primary containment have demonstrated that the power rerate has no adverse effect on these fission product barriers. The proposed changes to the plant Technical Specifications to support the power rerate implementation are consistent with the MNGP Power Rerate analyses and assure transient and accident mitigation capability in compliance with regulatory requirements.

The effect of MNGP Power Rerate on plant equipment has been evaluated. No new operating mode, safety-related equipment lineup, accident scenario, or equipment failure mode resulting from the power rerate was identified. The full spectrum of accident considerations defined in the USAR have been evaluated and no new or different kind of accident resulting from the power rerate has been identified. MNGP Power Rerate uses already developed technology and applies it within the capabilities of already existing plant equipment in accordance with presently existing regulatory criteria which includes accepted codes, standards, and methods. GE has designed BWRs of higher power levels than the rerate power of any of the currently operating BWR fleet and no new power dependent accidents have been identified. In addition, MNGP Power Rerate does not create any new sequence of events or failure modes that lead to a new type of accident.

All actions to ensure that safety-related structures, systems, and components will remain within their design allowable values and ensure they can perform their intended functions under rerate conditions will be taken prior to implementation of the power rerate. MNGP Power Rerate does not increase challenges to or create any new challenge to safety-related equipment or other equipment whose failure could cause an accident. Plant modifications required to support implementation of MNGP Power Rerate will be made to existing systems (*e.g.*, a limited number of pipe supports, instrumentation setpoints, control room habitability improvements), rather than by adding new systems of a different design which might introduce new failure modes or accident sequences. The Technical Specification changes required to implement the power rerate require little change to the plant's configuration, and all changes have been evaluated and are acceptable.

Therefore, the proposed Operating License and Technical Specification changes do not create the possibility of a new or different kind of accident from any previously evaluated.

C. The proposed Operating License changes do not involve a significant reduction in a margin of safety.

The accident analysis, as well as a majority of the plant specific evaluations performed in support of MNGP Power Rerate have been performed assuming a bounding steady state power level 112.6% of the existing licensed limit of 1670 MWt, and approximately 6% above the licensed maximum thermal power level of 1775 MWt proposed by MNGP Power Rerate. In addition, the bounding reactor power level was increased by an additional 2% in accordance with regulatory guidance when applicable for the evaluation of accidents and transients. For plant conditions associated with a bounding analysis power level, the analyses demonstrated operating margin to criteria establishing margins of safety, thus additional operating margin is demonstrated and assured for the proposed power rerate to 1775 MWt and added confidence is established in the integrity of criteria establishing margin to safety.

The cycle specific transient analysis, as well as the analysis to establish plant instrumentation set points have been performed assuming a plant steady state power level of 1775 MWt. This analysis approach was taken in order to demonstrate safety and equipment margins while ensuring appropriate cycle specific operating limits. The evaluation of transient events and instrument setpoints demonstrated operating margin to criteria establishing margins of safety for the proposed power rerate conditions.

The MNGP Power Rerate analysis basis assures that the power dependent safety margin assuring criteria prescribed by the Code of Federal Regulations (CFR) will be maintained by meeting the appropriate regulatory criteria. Similarly, factors of safety specified by application of the code design rules have been maintained, as have other margin-assuring acceptance criteria used to judge the acceptability of the plant.

1. Fuel Thermal Limits

No change is required in the basic fuel design to achieve the rerate power levels or to maintain the margins as discussed above. No increase in the allowable peak bundle power is requested for the power rerate. The abnormal transients have been evaluated under the power rerate conditions for a representative core configuration. The analysis has confirmed that the power rerate has no adverse effect on the operating limit Minimum Critical Power Ratio (MCPR) and that no change to the safety limit MCPR results, thus the margin of safety as assured by the safety limit MCPR is maintained. The fuel operating limits such as Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) and the operating limit MCPR will still be met at the rerate power level. The MNGP Power Rerate analyses have confirmed the acceptability of these operating limits for the power rerate without an adverse effect on margins to safety. Cycle specific analysis will continue to be performed for each fuel reload to demonstrate compliance with the applicable transient criteria and to establish cycle specific operating limits.

2. Design Basis Accidents Challenges to Fuel

The evaluation of the Emergency Core Cooling System performance has demonstrated the criteria of 10CFR50.46 are satisfied, thus the margin of safety established by the criteria is maintained. This evaluation was performed for a bounding reactor power level approximately 6% greater than the proposed power rerate. In addition the bounding reactor power level was increased by an additional 2% in accordance with regulatory guidance. The analysis demonstrates that MNGP will continue to comply [with] the 10 CFR 50.46 at the rerate conditions and that the margin of safety established by the regulation is maintained for the proposed power rerate.

3. Design Basis Accident Challenges to Containment

The primary containment response to the limiting design basis accident was evaluated for a bounding reactor power level approximately 6% greater than the proposed power rerate to 1775 MWt. In addition, the bounding reactor power level was increased by an additional 2% in accordance with regulatory guidance. The effect of the power rerate on the short term containment response (peak values) as well as the long term containment response for containment pressure and temperature confirms the

suitability of the plant for operation at the bounding power level, thus the proposed power rerate to 1775 MWt is acceptable. Factors of safety provided in the ASME Code are maintained and safety margin is not affected for the power rerate to 1775 MWt.

Short-term containment response analyses were performed for the limiting design basis LOCA consisting of a double-ended guillotine break of a recirculation suction line, to demonstrate that operation at a bounding reactor power will not result in exceeding the containment design limits. The analysis determined that for a bounding reactor power the maximum drywell pressure values are bounded by the current USAR analysis value and by the containment design pressure. The power rerate to 1775 MWt has no adverse effect on the containment structural design pressure.

Long term suppression chamber temperatures remain within the design temperature of the structure, thus factors of safety provided in the ASME code are maintained and safety margin is not affected. An analytical power level of 1880 MWt bounds the decay heat associated with the 1775 MWt power level with a one sided confidence interval of 95%. Analysis confirmed that ECCS pump NPSH is not adversely affected with this temperature response. It was confirmed that the long term response does not significantly affect the containment structure or the environmental qualification (EQ) of equipment located in the drywell or suppression chamber room.

The impact of a reactor power increase on the containment dynamic loads [has] been determined, evaluated and found to have no adverse effects for conditions which well bound the proposed power rerate. Thus the containment dynamic loads were found to be acceptable for the power rerate to 1775 MWt.

The MNGP Power Rerate evaluation of the primary containment response to the design basis accident confirmed that the power rerate does not result in a reduction in margins of safety for a bounding reactor power approximately 6% greater than the proposed power rerate to 1775 MWt.

4. Design Basis Accident Radiological Consequences

The Updated Safety Analysis Report (USAR) provides the radiological consequences for each of the design basis accidents. The magnitude of the potential consequences is dependent upon the quantity of fission products released to the environment, the atmospheric dispersion factors and the dose exposure pathways. For power rerate, the atmospheric dispersion factors and the dose exposure pathways do not change. Therefore, the only factor which will influence the magnitude of the consequences is the quantity of activity released to the environment. This quantity is a product of the activity released from the core and the transport mechanisms between the core and the effluent release point.

The radiological consequences of design basis accidents have been evaluated, and it was found that the consequences did not result in a significant increase in consequences for a bounding reactor power level approximately 6% greater than the proposed power rerate. In addition, the bounding reactor power level was increased by an additional 2% in accordance with regulatory guidance. The results remain below the 10CFR100 guideline values as well as the licensing basis established in the March 18, 1970 AEC safety evaluation. Therefore, the postulated radiological consequences are clearly within the regulatory guidelines and all radiological safety margins are maintained for the power rerate to 1775 MWt.

5. Transient Evaluations

The effects of plant transients were evaluated by assessing a number of disturbances of process variables and malfunctions or failures of equipment consistent with USAR. The transient events were evaluated against the Safety Limit Minimum Critical Power Ratio, (SLMCPR). The SLMCPR is determined using NRC-approved methods. The Power Rerate transient analyses were performed using the approved methodology specified in the plant Technical Specifications. The limiting transient events are slightly more severe when initiated from the rerate power level. The power rerate transient evaluation results show a slightly more limiting transient initial CPR (less than or equal to 0.02) than that initiated from the present rated power level for the near limiting transients. However, for the most limiting transient, the evaluation of a representative core showed that no change is required to the Operating Limit MCPR for the power rerate and that the integrity of the SLMCPR is maintained. Cycle specific analysis will continue to be performed for each fuel reload to demonstrate compliance with the applicable transient criteria and to establish cycle specific operating limits.

The fuel thermal-mechanical limits at the power rerate conditions are within the specific design criteria for the GE fuels currently loaded in the MNGP core. Also, the power-dependent and flow-dependent MCPR and Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) methods developed as part of the core performance improvement program remain applicable to rerate conditions. The transient event evaluation confirmed that MNGP Power Rerate has no significant effect on the power-dependent and flow-dependent MCPR and MAPLHGR limits. The peak reactor pressure vessel bottom head pressure remains within the ASME requirement for reactor pressure vessel over pressure protection.

The margin of safety established by the SLMCPR is not affected by the proposed power rerate to 1775 MWt.

6. Technical Specification Changes

The Technical Specifications ensure that the plant and system performance parameters are maintained at the values assumed in the safety analysis. The Technical Specification (setpoints, trip settings, etc.) are selected such that the actual equipment is maintained equal to or conservative with respect to the inputs used in the safety analysis. Proper account is taken of inaccuracies introduced by instrument drift, instrument accuracy, and calibration accuracy. The Technical Specifications address equipment availability and limit equipment out-of-service to assure that the plant can be expected to have at least the complement of equipment available to deal with plant transients as that assumed in the safety analysis. The evaluations and analyses performed to demonstrate the acceptability of MNGP Power Rerate were performed using inputs consistent with the proposed changes to the plant Technical Specifications.

The events that form the Technical Specification Bases were evaluated for the power rerate conditions using inputs and initial conditions consistent with the proposed Technical Specification changes. Although some changes to the Technical Specifications are required for the power rerate, no NRC acceptance limit will be exceeded. Therefore, the margins of safety assured by safety limits and other Technical Specification limits will be maintained. The changes to the Technical Specification Bases proposed by this submittal are consistent with the evaluations which demonstrated acceptability of the power rerate.

7. Conclusion

The spectrum of postulated accidents, transients, and special events has been investigated and [has] been determined to meet the current regulatory criteria

for the MNGP at the power rerate conditions. In the area of core design, the fuel operating limits will still be met at the rerate power level, and fuel reload analyses will show plant transients meet the criteria accepted by the NRC as specified in the plant Technical Specifications. Challenges to fuel or ECCS performance were evaluated and shown to meet the criteria of 10 CFR 50.46 and 10 CFR 50, Appendix K. Challenges to the containment have been evaluated and the integrity of the fission product barrier has been confirmed. Radiological release events have been evaluated and shown to meet the guidelines of 10 CFR 100. The proposed Operating License and Technical Specification changes are consistent with the MNGP Power Rerate evaluation performed. The evaluations demonstrated compliance with the margin assuring acceptance criteria contained in applicable codes and regulations. Therefore, the proposed Operating License and Technical Specifications changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: Cynthia A. Carpenter

Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station (LGS), Unit 1, Montgomery County, Pennsylvania

Date of amendment request: February 9, 1998.

Description of amendment request: The amendment request proposes to revise the LGS, Unit 1 Technical Specifications (TS) Section 2.1 and its associated TS Basis to reflect the change in the minimum critical power ratio (MCPR) safety limit due to the plant-specific evaluation performed by General Electric Company (GE) for LGS, Unit 1, Cycle 8.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The revised MCPR Safety Limits for LGS Unit 1 Technical Specifications, and their use to determine cycle-specific thermal limits, have been calculated using NRC-approved methods (*i.e.*, GESTAR–II, Rev. 13) and are based on LGS Unit 1 Cycle 8 specific inputs. The use of these methods assures that the [safety limit for minimum critical power ratio] SLMCPR value is within the existing design and licensing basis, and cannot increase the probability or severity of an accident.

The basis of the MCPR Safety Limit calculation is to ensure that greater than 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated. The MCPR Safety limit preserves the existing margin to transition boiling and fuel damage in the event of a postulated accident. The probability of fuel damage is not increased.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The MCPR Safety Limit is a Technical Specification numerical value designed to ensure that fuel damage from transition boiling does not occur as a result of the limiting postulated accident. The MCPR Safety Limit is not an accident initiator; therefore, it cannot create the possibility of any new type of accident. The new MCPR Safety Limits are calculated using NRC-approved methods (*i.e.*, GESTAR–II, Rev. 13) and are based on LGS Unit 1, Cycle 8 specific inputs.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in the margin of safety.

The margin of safety as defined in the TS Bases will remain the same. The new MCPR Safety Limits are calculated using NRC-approved methods (*i.e.*, GESTAR–II, Rev. 13), which are in accordance with the current fuel design and licensing criteria, and are based on LGS Unit 1 Cycle 8 specific inputs. The MCPR Safety Limit remains high enough to ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity.

Therefore, the proposed TS change does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Project Director: John F. Stolz.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: October 14, 1997.

Description of amendment request: The proposed changes would correct the maximum exposure dependent, infinite lattice multiplication factor for fuel bundles and provide for installation of additional storage racks to increase spent fuel capacity.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because:

A change in the infinite lattice neutron multiplication factor for a fuel bundle in the reactor core geometry which ensures the criticality limit for fuel in the spent fuel pool [SFP] geometry is met does not affect initiation of any accident.

Operation in accordance with the revised limit ensures the consequences of previously analyzed accidents are not changed. Storage of additional fuel assemblies in the pool does not affect the probability or consequences of dropping a fuel assembly, since this accident is localized to a small area of the storage array. Likewise, addition of

specifications containing details presently in plant design documents and editorial changes do not change the probability or consequences of a previously analyzed accident.

2. Create the possibility of a new or different kind of accident for any accident previously evaluated because:

A change in the infinite lattice neutron multiplication factor for a fuel bundle in the reactor core geometry which ensures the criticality limit for fuel in the spent fuel pool geometry is met does not affect the types of reactivity accidents which may occur. Therefore changing the limit will not [create the possibility of] a new or different type of accident. Maintenance of available decay heat removal systems ensures that no new type of loss of cooling accident associated with the SFP will occur as a result of storing additional irradiated fuel assemblies. Likewise, addition of specifications containing details presently in plant design documents and editorial changes do not create the possibility of a new or different type of accident.

3. Involve a significant reduction in a margin of safety because:

The revised limit on infinite lattice neutron multiplication factor for a fuel bundle in the reactor core geometry ensures maintenance of the same margin of safety with respect to criticality as presently exists for storage of fuel in the SFP. Storing additional irradiated fuel assemblies in the pool does not affect the margin of safety with regard to pool cooling since sufficient heat removal systems will be maintained available to ensure maintenance of acceptable pool temperatures. Addition of specifications containing details presently in other design documents and editorial changes have no effect on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Project Director: S. Singh Bajwa.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: February 9, 1998.

Description of amendment request: The proposed amendment would revise the Virgil C. Summer Nuclear Station Technical Specifications (TS) to remove emergency diesel generator (1) accelerated testing requirements (TS 3/4.8.1, Table 4.8–1), and (2) special reporting requirements (TS Surveillance Requirement 4.8.1.1.3) in accordance with NRC Generic Letter (GL) 94–01, "Removal of Accelerated Testing and Special Reporting Requirements for Emergency Diesel Generators."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. This request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change will provide flexibility to structure the emergency diesel generator maintenance program based on the risk significance of the structures, systems, and components that are within the scope of the maintenance rule. The removal of the diesel generator accelerated testing is acceptable as the maintenance rule applies system and train specific performance criteria to monitor diesel generator performance. These criteria include a running availability and reliability measure. The performance criteria for the diesel generator reliability and unavailability established by the maintenance rule, and the causal determinations and corrective actions required for functional failures and/or exceeding performance criteria, is considered to be an acceptable method for monitoring diesel generator performance.

As the diesel generator performance will [continue] to be assured by the maintenance rule, the proposed changes do not affect any of the initiators for an accident previously evaluated. The changes do not impact the diesel's design sources, operating characteristics, system functions, or system interrelationships. The failure mechanisms for the accidents previously analyzed are not affected, and no additional failure modes are created that could cause an accident previously evaluated. Since the changes are administrative in nature, and the diesel generator performance and reliability will continue to be assured by the maintenance rule, the proposed changes cannot involve a significant increase in the probability or consequences of an accident previously evaluated.

2. This request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any of the parameters or conditions that could contribute to the initiation of any accidents. The proposed changes only affect the methods used to monitor and assure diesel generator performance. The performance criteria for both the diesel generator reliability and unavailability established by the maintenance rule, and the causal determinations and corrective actions required for functional failures and/or exceeding performance criteria, is considered by GL 94–01 to be an acceptable method for monitoring diesel generator performance.

No SSC [structure, system, or component], method of operating, or system interface is altered by this change. The changes do not impact the diesel's design sources, operating characteristics, system functions, or system interrelationships. The failure mechanisms for the accidents are not affected, and no additional failure modes are created. Because the proposed changes are administrative in nature, and the diesel generator performance and reliability will continue to be assured by the maintenance rule, the proposed changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3. This request does not involve a significant reduction in a margin [of] safety.

The proposed changes only affect the methods used to monitor and assure diesel generator performance. The performance criteria for both the diesel generator reliability and unavailability established by the maintenance rule, and the causal determinations and corrective actions required for functional failures and/or exceeding performance criteria, is considered by GL 94–01 to be an acceptable method for monitoring diesel generator performance. No margin [of] safety as defined in the basis for any technical specification is impacted by these changes. This change does not impact any uncertainty in the design, construction, or operation of any SSC.

Diesel generator response to accident initiators is unchanged. No SSC, method of operating, or system interface is altered by this change. The changes do not impact the diesel's design sources, operating characteristics, system functions, or system interrelationships. Because the proposed changes are administrative in nature, and the diesel generator performance and reliability will continue to be assured by the maintenance rule, the proposed changes cannot involve a significant reduction in the margin [of] safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Project Director: William M. Dean.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: January 28, 1998.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Sections 6.3 and 6.12 to reflect the merger of the positions of Superintendent Radiation Protection and Superintendent Chemistry into one new position, Manager Chemistry/Radiation Protection.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a significant increase in the probability of consequences of an accident previously evaluated. These changes involve administrative changes to the WCNOC organization.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This change is administrative in nature and does not involve a change to the installed plant systems or the overall operating philosophy of Wolf Creek Generating Station.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not involve a significant reduction in a margin of safety. This change does not involve any changes in overall organizational commitments and will not affect qualification requirements of any unit staff personnel. A position and title change alone does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: William H. Bateman.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Northern States Power Company, Docket No. 50–282, Prairie Island Nuclear Generating Plant, Unit 1, Goodhue County, Minnesota

Date of amendment request: January 15, 1998.

Description of amendment request: The proposed amendment would initiate a one-time only change for Prairie Island Unit 1 Cycle 19 that would allow the use of the moveable incore detector system for measurement of the core peaking factors with less than 75% and greater than or equal to 50% of the detector thimbles available.

Date of individual notice in the **Federal Register**: January 30, 1998 (63 FR 4676).

Expiration date of individual notice: March 2, 1998.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: Cynthia A. Carpenter.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances

provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket No. 50–317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of application for amendment: May 16, 1997, as supplemented November 14, 1997.

Brief description of amendment: The amendment involves replacing the service water (SRW) heater exchangers with new plate and frame heat exchangers (PHEs), having increased thermal performance capability. The Saltwater (SW) and SRW piping configuration will be modified as necessary to allow proper fit-up to the new components. A flow control scheme to throttle saltwater flow to the heat exchangers and the associated bypass lines will be added. Saltwater strainers with an automatic flushing arrangement will be added upstream of each heat exchanger. The majority of the physical work associated with this modification is restricted to the SRW pump room. The amendment is partially denied to the extent that the licensee is not authorized to operate with one PHE secured, and removing one containment air cooler from service to enable the affected subsystem to remain operable while the one PHE is secured.

Date of issuance: February 10, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 225.

Facility Operating License No. DPR–53: Amendment revised the Updated Final Safety Analysis Report.

Date of initial notice in **Federal Register**: June 18, 1997 (62 FR 33118).

The November 14, 1997, letter provided clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: November 6, 1997, as supplemented by letter dated January 28, 1998.

Brief Description of amendments: The amendments to Technical Specification (TS) Limiting Conditions for Operation (LCO) 3.3.5.5, Instrumentation for Control Room Emergency Ventilation System (CREVS) and 3.7.2, Control Room Emergency Ventilation System, and associated Bases for the Brunswick Steam Electric Plant (BSEP) Units 1 and 2 will be limited in duration (approximately 3 months) and will allow operation of both BSEP units to continue while upgrades to the control building ventilation system, including new air conditioning (AC) units and improved ductwork supports, are being installed. Part of the planned work requires opening the ductwork at the evaporative (i.e. cooling) coils. Temporary barriers will be constructed to preserve the leakage integrity of the control room pressure boundary; however, the temporary barriers will not be seismically qualified. While the permanent AC units are out of service, temporary AC units will be utilized. During the upgrade installation, the AC for the control room will not be protected from certain external events (e.g., seismic events, environmental hazards such as tornadoes and hurricanes, radiological sabotage, and missile hazards), as required by the system design and licensing basis, and will not fully meet single failure criteria.

Date of issuance: February 6, 1998.

Effective date: February 6, 1998.

Amendment Nos.: 191 and 222.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments authorize changes to the facility's Technical Specifications.

Date of initial notice in **Federal Register**: December 3, 1997 (62 FR 63973).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 6, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: February 28, 1997. Information related to the proposed restoration of the primary coolant dose equivalent iodine-131 (DEI) to their original licensing basis had been previously submitted in Commonwealth Edison Company's (ComEd) letter dated November 13, 1996, which was supplemented in subsequent letters dated March 20, June 24, August 19 and November 3, 1997.

Brief description of amendments: The amendments revise the technical specifications (TS) to reflect the forthcoming replacement of the original steam generators (OSG) in Byron, Unit 1, and Braidwood, Unit 1, which are Westinghouse Model D4 steam generators (SG), with the replacement steam generators (RSG) which are Babcock and Wilcox, International (BWI) SG. The present revisions to the TS remove the interim plugging criteria (IPC) related to outer diameter stress corrosion cracking (ODSCC) in the OSG as well as the F* alternative repair criteria and two separate SG tube sleeving methodologies which are not needed for the RSG.

Date of issuance: February 3, 1998

Effective date: This license amendment is effective as of the date of its issuance and shall be implemented in the first operating cycle after installation of the BWI replacement steam generators

Amendment Nos.: 101, 101, 92 and 92.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 17, 1997 (62 FR 66134). The November 13, 1996, and March 20, June 24, August 19 and November 3, 1997, submittals provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 3, 1998.

No significant hazards consideration comments received: No

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for

Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: November 6, 1995, and March 11, 1996, as supplemented June 5, 1997. The June 5, 1997, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the amendment request beyond the scope of the December 20, 1995, and April 10, 1996, **Federal Register** notices.

Brief description of amendments: These amendments revise the alarm setpoints for the effluent radiation and in-containment area radiation monitors listed in Technical Specification (TS) Table 3.3–6. These revisions make these alarm setpoints consistent with criteria for the Emergency Action Levels (EALs) approved by the Nuclear Regulatory Commission in August 1994. The EALs use these monitors as an indication of fission product barrier challenges or failures. These amendments also revise Action Statement 36 of TS Table 3.3–6 to reflect a previously approved change (License Amendment Nos. 188 and 70) in reporting frequency (change from semi-annual to annual) for effluent releases. The revision to Action Statement 36 makes it consistent with the previously approved change. These amendments include several editorial changes to the TSs which do not change the intent of the TSs.

Date of issuance: February 9, 1998.

Effective date: Both units, as of date of issuance, to be implemented within 60 days.

Amendment Nos.: 211 and 89.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Dates of initial notice in **Federal Register**: December 20, 1995 (60 FR 65677) and April 10, 1996 (61 FR 15988). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 9, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Duquesne Light Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: November 4, 1997.

Brief description of amendment: The amendment revises Item 6.a.2, "4.16kV Emergency Bus (Start Diesel)," of Table 3.3–4 of Technical Specification 3.3.2.1. The change reduces the trip setpoint for starting the emergency diesel generators on emergency bus undervoltage from a trip setpoint of greater than or equal to 83 percent with a 12-cycle delay time to a setpoint of greater than or equal to 75 percent of nominal bus voltage with a time delay of less than 0.9 seconds including auxiliary relay times. The amendment also revises the allowable value from greater than or equal to 81 percent of nominal bus voltage to greater than or equal to 74 percent of nominal bus voltage with a time delay of less than 0.9 seconds including auxiliary relay times.

Date of issuance: February 11, 1998.

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment No: 212.

Facility Operating License No. DPR–66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 3, 1997 (62 FR 63976).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: August 6, 1997.

Brief description of amendment: The amendment eliminated the provisions in Technical Specification 3.8.1, "AC Sources—Operating," for accelerated testing of the emergency diesel generators (DG). The changes are the following: (1) the frequency of verifying DG starts and operation in Surveillance Requirements (SRs) 3.8.1.2 and 3.8.1.3, respectively, are changed to 31 days, from the present reference to Table 3.8.1–1, and (2) Table 3.8.1–1, "Diesel Generator Test Schedule," is deleted. The emergency diesel generators provide emergency AC power to the site with the loss of offsite AC power.

Date of issuance: February 9, 1998.

Effective date: February 9, 1998.

Amendment No: 134.

Facility Operating License No. NPF–29: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: September 24, 1997 (62 FR 50003).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 9, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit 2, New London County, Connecticut

Date of application for amendment: September 3, 1997.

Brief description of amendment: The amendment authorizes Northeast Nuclear Energy Company, through a license condition, to incorporate changes to the description of the facility in the Updated Final Safety Analysis Report (UFSAR). This change revises the UFSAR by modifying the operation of the onsite emergency diesel generators and their associated fuel oil supplies.

Date of issuance: January 23, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 212.

Facility Operating License No. DPR–65: Amendment revised the Updated Final Safety Analysis Report.

Date of initial notice in **Federal Register**: September 24, 1997 (62 FR 50009).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 23, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311. Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: October 24, 1997.

Brief description of amendments: The amendments revise the containment hydrogen analyzer Technical Specifications (TSs) surveillance requirements of TS 4.6.4.1 to increase the calibration frequency from once per refueling outage to quarterly.

Date of issuance: January 29, 1998.

Effective date: As of the date of issuance.

Amendment Nos. 204 and 186.

Facility Operating License Nos. DPR–70 and DPR–75. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 17, 1997 (62 FR 66140).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 29, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: June 13, 1997, as supplemented by letter dated January 7, 1998.

Brief Description of amendments: The amendments change Technical Specification (TS) 3.9.13 by adding a footnote to clarify the required electrical power sources for the penetration room filtration system when it is aligned to the spent fuel pool room during refueling operations. In addition, the associated Bases section of the TS will be modified to provide additional details concerning the proposed TS change.

Date of issuance: February 5, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: Unit 1–134; Unit 2–126.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register**: July 16, 1997 (62 FR 38138).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 5, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: October 16, 1997.

Brief Description of amendments: The amendments change the Farley Units 1 and 2 TS by revising the number of allowable charging pumps capable of injecting into the reactor coolant system (RCS) when the temperature of one or more of the RCS cold legs is equal to or less than 180° F.

Date of issuance: February 5, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: Unit 1–135; Unit 2–127.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register**: December 3, 1997 (62 FR 63983).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 5, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: October 28, 1996, as supplemented by letters dated August 19, 1997, and October 16, 1997.

Brief description of amendment: This amendment revises TS Section 3/4.8.1, "A.C. Sources," TS Section 3/4.8.2, "Onsite Power Distribution Systems," TS Table 4.8.1, "Battery Surveillance Requirements," and the associated bases. Surveillance requirements have been modified to account for the increase in the fuel cycle. Administrative changes were also made.

Date of issuance: February 3, 1998.

Effective date: February 3, 1998.

Amendment No.: 219.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 2, 1997 (62 FR 132).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 1998.

No significant hazards consideration comments received: No. The supplemental information provided by the Licensees did not affect the proposed no significant hazards consideration determination.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Dated at Rockville, Maryland, this 18th day of February 1998.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–4620 Filed 2–24–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Complete Management, Inc., Common Shares, $.001 Par Value; 8% Convertible Subordinated Debentures Due 2003; 8% Convertible Subordinated Debentures Due December 15, 2003) File No. 1–12848

February 17, 1998.

Complete Management, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the American Stock Exchange ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Securities also are listed for trading on the New York Stock Exchange, Inc. ("NYSE") pursuant to a Registration Statement on Form 8–A that became effective on September 5, 1997. Trading in the Securities on the NYSE commenced at the opening of business on September 8, 1997.

The Company has complied with Amex Rule 18 by filing with the Exchange a certified copy of the regulations adopted by the Company's Board of Directors authorizing the withdrawal of the Securities from listing and registration on the Amex, and by

setting forth in detail to the Exchange the reasons and facts supporting the proposed withdrawal. In making the decision to withdraw its Securities from listing and registration on the Amex, the Company considered the need for a unified market in the trading of its Securities.

By letter dated September 5, 1997, the Exchange informed the Company that it would not object to the withdrawal of the Company's Securities from listing on the Amex.

By reason of Section 12(b) of the Act and the rules thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before March 10, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–4575 Filed 2–24–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Pennsylvania Real Estate Investment Trust, Shares of Beneficial Interest, $1.00 Par Value) File No. 1–6300

February 19, 1998.

Pennsylvania Real Estate Investment Trust ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security also is listed for trading on the New York Stock Exchange, Inc. ("NYSE") pursuant to a Registration Statement on Form 8–A that became effective on November 13, 1997. Trading in the Security on the NYSE commenced at the opening of business on November 14, 1997.

The Company has complied with Amex Rule 18 by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of the Security from listing and registration on the Amex, and by setting forth in detail to the Exchange the reasons and facts supporting the proposed withdrawal. In making the decision to withdraw the Security from listing on the Exchange, the Company considered the direct and indirect costs, and the division of the market for its Security resulting from the dual-listing of the Security on the Amex and the NYSE.

By letter dated October 30, 1997, the Exchange informed the Company that it would not object to the withdrawal of the Security from listing and registration on the Exchange.

By reason of Section 12(b) of the Act and the rules thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before March 12, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–4713 Filed 2–24–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Rigel Energy Corporation, Common Shares, No Par Value) File No. 1–10750

February 19, 1998.

Rigel Energy Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security also has been listed for trading on the Toronto Stock Exchange and the Montreal Exchange since June, 1991. The Company has represented that it will maintain such listings so that holders of the Security are provided with accessible and liquid markets.

The Company has complied with Amex Rule 18 by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Director's authorizing the withdrawal of the Security from listing and registration on the Amex, and by setting forth in detail to the Exchange the reasons and facts supporting the proposed withdrawal. In making the decision to withdraw the Security from listing on the Exchange, the Company considered the volume of trading in the Security transacted on the Exchange (less than one percent of the aggregate trading volume in the Security since 1995); the relative liquidity provided by the Amex versus other securities exchanges; the trading pattern of shareholders based in the United States; and the costs associated with maintaining a multiple listing of the Security.

By letter dated June 3, 1997, the Exchange informed the Company that it would not object to the withdrawal of the Security from listing and registration on the Exchange.

By reason of Section 12(g) of the Act and the rules thereunder, the Company shall continue to file reports under Section 13 of the Act with the Commission.

Any interested person may, on or before March 12, 1998, submit by letter to the Secretary of the Securities and

Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–4712 Filed 2–24–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39679; International Series No. 1119; File No. SR–AMEX–98–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Adoption of a Definition of "Foreign Broker-Dealer"

February 18, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 3, 1998, the American Stock Exchange, Inc. (the "Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt a definition of "foreign broker-dealer" for use in certain of its rules and policies for the trading of option contracts. The text of the proposed rule change is available at the Office of Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the placed specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange has currently in place certain rules and policies for the trading of option contracts that distinguish between orders for broker-dealers and orders for customers who are not broker-dealers. Specifically, Exchange Rule 958A provides that only non-broker-dealers are eligible for the guaranteed minimum execution of ten contracts at the displayed bid or offer; Rule 950(c) allows a Registered Options Trader who is establishing or increasing a position to retain priority over or have parity with an off-floor order for the account of a broker-dealer; and Exchange policy (as codified in Exchange Rule 933 pursuant to this proposal) allows only non-broker-dealer orders to be executed through its automatic execution system. The Exchange therefore proposes to adopt a definition of foreign broker-dealer substantially to ensure that foreign broker-dealer orders under the above-mentioned rules shall receive the same treatment as U.S. broker-dealer orders, as opposed to customer treatment. The definition has been designed to provide an objective standard for the enforcement of applicable option rules and to substantially resemble the definition adopted by the Pacific Exchange ("PCX"), Philadelphia Stock Exchange ("Phlx"), and Chicago Board Options Exchange ("CBOE").[2]

In light of the current globalization of the securities market, Amex believes that Exchange rules which treat broker-dealers in a different manner than other market participants should be applied consistently so that foreign broker-dealers trading options on the Amex do not have an unfair competitive advantage over U.S. broker-dealers. Moreover, regulating all broker-dealers equally helps to ensure that the specialist's volume guarantees pursuant to Rule 958A and the use of automatic execution systems are not exhausted by broker-dealer competitors to the detriment of public customers. Similarly, allowing Registered Options Traders to retain priority over or have parity with foreign as well as domestic broker-dealers will enhance their ability to fulfill their market-making responsibilities.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5)[3] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from February 3, 1998, the date on which it is filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.[4] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

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[1] 15 U.S.C. 78s(b)(1).

[2] Exchange Act Release No. 38420 (March 19, 1997), 62 FR 14488 (March 26, 1997) (PCX); Exchange Act Release No. 39382 (December 2, 1997), 62 FR 64903 (December 9, 1997) (Phlx); and Exchange Act Release No. 39604 (January 30, 1998), 63 FR 6247 (February 6, 1998) (CBOE).

[3] 15 U.S.C. 78f(b)(5).

[4] 17 CFR 240.19b–4(e)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–AMEX–98–05 and should be submitted by March 18, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4759 Filed 2–24–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39684; File No. SR–DCC–98–01]

Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing of a Proposed Rule Change to Permit the Use of Mortgage Backed Securities as Margin Collateral

February 19, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 5, 1998, Delta Clearing Corp. ("Delta") filed with the Securities Exchange Commission ("Commission") the proposed rule change (File No. SR–DCC–98–01) as described in Items I, II, and III below, which items have been prepared primarily by Delta. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Delta proposes to modify its procedures in order to accept mortgage backed securities as margin collateral.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Delta included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Delta has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, Delta only accepts federal funds[3] or treasury securities as margin collateral. Delta proposes revisions to its procedures which would authorized Delta to accept mortgage backed securities as margin collateral.[4]

Delta's participants may clear and settle repurchase and reverse repurchase agreements in treasury securities ("treasury repos") and repurchase and reverse repurchase agreements in mortgage backed securities ("mortgage repos") through Delta's system. Some participants have chosen to clear and to settle only mortgage repos through Delta. For those participants, there is an additional cost associated with obtaining treasury securities for purposes of supplying margin collateral. Because those participants already possess mortgage backed securities related to the transactions they are clearing through Delta, it is a more straightforward process for them to honor their margin obligations with these mortgage backed securities.

Delta believes that, with the appropriate haircuts, the provision of margin in the form of mortgage backed securities poses no additional risk to the system. Delta notes that the Commission under its uniform net capital rule generally applies the same haircuts to treasury securities and mortgage backed securities.[5] Consistent with Delta's treatment of treasury securities used for margin collateral, Delta proposes that mortgage backed securities should be valued in accordance with the schedule of applicable haircuts found in Rule 15c3–1(c)(2)(vi)(A)(*1*) under the Act.[6] Delta also notes that its clearing bank, The Bank of New York, will accept mortgage backed securities in accordance with Delta's proposal without further haircuts.

Delta believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to Delta and in particular with Section 17A(b)(3)(F) of the Act[7] which requires that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. Delta believes the proposed rule changes will permit wider use of its system by providing participants with the opportunity to efficiently meet margin requirements consistent with Delta's obligation to safeguard funds and securities.

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[5] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by Delta.

[3] Federal funds are defined in Delta's procedures as cash balances available for immediate withdrawal in accounts maintained at banks that are members of the Federal Reserve System.

[4] Mortgage backed securities are defined in Delta's procedures as book entry securities directly issued by the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC") whose underlying value is represented by a pool of mortgages. These may be fixed rate or adjustable rate mortgage backed securities backed by fixed rate or adjustable rate mortgage loans, respectively. Such securities must be transferable through the federal reserve system. Delta is not authorized to clear mortgage backed securities that have underlying assets that are mortgage backed securities rather than a pool of mortgage loans. Delta also is not authorized to clear notional, interest only, principal only, accrual and partial accrual securities, or floaters and inverse floaters, as such terms are defined in Schedule A to Delta's procedures. Securities Exchange Act Release No. 39241 (October 14, 1997), 62 FR 54663 (order approving proposed rule change authorizing Delta to clear mortgage repos).

[5] Rule 15c3–1(c)(2)(vi)(A)(*1*), 17 CFR 240.15c3–1(c)(2)(vi)(A)(*1*).

[6] Section 3(a)(42)(B) of the Act defines government securities to include securities which are issued or guaranteed by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors. The Department of Treasury has designated securities issued by FNMA and by FHLMC as exempt. Notice issued by the Department of Treasury (October 7, 1987), 52 FR 38559.

[7] 15 U.S.C. 78q–1(b)(3)(F).

(B) Self-Regulatory Organization's Statement on Burden on Competition

Delta does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Delta consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of Delta. All submissions should refer to the file number SR–DCC–98–01 and should be submitted by March 18, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4756 Filed 2–24–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39680; File No. SR–PCX–97–49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Margin and Net Capital Requirements for Joint Back Office Participants and Clearing Firms

February 18, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 18, 1997, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend Exchange Rule 2.16(c)(5) and adopt a new Exchange Rule 2.16(c)(6) to establish margin and net capital requirements for joint Back Office ("JBO") participants and clearing firms.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to revise Exchange Rule 2.16(c)(5) and adopt a new Exchange Rule 2.16(c)(6) to establish margin and net capital requirements for JBO participants and clearing firms. JBO arrangements permit a participating broker-dealer to be deemed self-clearing for margin purposes and entitle the participating broker-dealer to good faith credit. Pursuant to Regulation T, a JBO participant must maintain an ownership interest in the JBO clearing firm.[2]

In recent amendments to Regulation T, the Board of Governors of the Federal Reserve System ("FRB") placed its reliance on the authority of self-regulatory organizations ("SROs") to ensure that reasonableness of JBO arrangements.[3] When the provision permitting JBO arrangements was first adopted, the FRB assumed there would be a reasonable relationship between the good faith credit extended to a JBO participant and its ownership interest in the clearing firm. However, because Regulation T does not provide an ownership standard, good faith credit has been extended to "owners" maintaining only a nominal interest in a clearing firm.

In conjunction with other SROs and representatives from the securities industry, the Exchange has established standards for JBO participants and clearing firms. These standards will permit the extension of good faith credit to clearing firm "owners" only when the owners maintain meaningful assets on deposit with the JBO clearing firm, and the clearing firm maintains sufficient net capital and risk control procedures to carry such accounts. The Exchange's proposed rule change would establish the following requirements:

(a) *Broker-Dealer Accounts.* The Exchange proposes to adopt a new Exchange Rule 2.16(c)(6)(A) that would permit a member organization to carry the proprietary account of another broker-dealer that is registered with the

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[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Regulation T, "Credit by Brokers and Dealers," requires that a JBO clearing firm be "a clearing and servicing broker or dealer owned jointly or individually by other [broker-dealers]." 12 CFR 220.11(a)(2). The Board of Governors of the Federal Reserve System issued Regulation T pursuant to the Act.

[3] See Board of Governors of the Federal Reserve System Docket No. R–0772 (Apr. 28, 1998), 61 FR 20386 (May 6, 1996).

Commission, upon a margin basis that is satisfactory to both parties, provided the requirements of Regulation T are adhered to and the account is not carried in a deficit equity condition. The rule would specify that the amount of any deficiency between the equity maintained in the account and the haircut requirements of Commission Rule 15c3–1 ("Rule 15c3–1") shall be deducted in computing the net capital of the member organization under the Exchange's capital requirements.

(b) *JBO Arrangements.* The Exchange also proposes to adopt a new Exchange Rule 2.16(c)(6)(B) which will provide that an arrangement may be established between two or more registered broker-dealers pursuant to Regulation T to form a JBO arrangement for carrying and clearing, or carrying accounts of participating broker-dealers. Member organizations must provide written notification to the Exchange prior to establishing a JBO.

The proposed rule change also sets forth certain requirements that a carrying and clearing, or carrying member organization must satisfy. First, the member organization must maintain a minimum tentative net capital [4] of $25 million as computed pursuant to Rule 15c3–1, except that a member organization whose primary business consists of the clearance of options market-maker accounts, may carry JBO accounts provided that it maintains a minimum net capital of $10 million as computed pursuant to Rule 15c3–1. Second, the member organization must include in its ration of gross options market maker deductions to net capital required by the provisions of Rule 15c3–1, gross deductions for JBO participant accounts. Clearance of options market maker accounts shall be deemed to be a broker-dealer's primary business if a minimum of 60% of the aggregate deductions in the above ratio are options market maker deductions. Third, the member organization must maintain a written risk analysis methodology for assessing the amount of credit extended to participating broker-dealers which shall be made available to the Exchange upon request. Fourth, the member organization must deduct from net capital haircut requirements pursuant to Rule 15c3–1 in excess of the equity maintained in the accounts of participating broker-dealers.

In addition, the proposed rule change specifies that a participating broker-dealer must: (a) Be a registered broker-dealer subject to Rule 15c3–1; (b) maintain an ownership interest in the carrying/clearing member organization pursuant to Regulation T, Section 220.11; and (c) maintain a minimum liquidating equity of $1 million in the JBO arrangement exclusive of the ownership interest established in (b) above. When the minimum liquidating equity decreases below the $1 million requirement, the participant must deposit an amount sufficient to eliminate this deficiency within 5 business days or become subject to margin requirements pursuant to the other provisions of Exchange Rule 2.16, "Margin Requirements."

(c) *Specialist's Accounts.* The proposed rule change also modifies Exchange Rule 2.16(c)(5)(A) to revise the manner in which debit items to a carrying member firm's net capital are calculated. Currently, the amount of any deficiency between the margin deposited by a specialist and the margin required by Exchange Rule 2.16 is considered as debit item in the computation of the net capital of the carrying member firm. Under the proposed rule change, the debit item would consist of the amount of any deficiency between the margin deposited by a specialist and the haircut requirements of Rule 15c3–1. The proposed rule change would make the identical modification to Exchange Rule 2.16(c)(5)(B) to apply to the situation where joint accounts are carried by a member firm for specialists, and the member firm participates in such joint accounts.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does no believe the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–97–49 and should be submitted by March 18, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4758 Filed 2–24–98; 8:45 am]

BILLING CODE 8010–01–M

[4] The term "tentative net capital" generally refers to a member firm's net capital before the application of haircuts and undue concentration deductions.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Electronics and Instrumentation (ISAC–5)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee on Electronics and Instrumentation (ISAC–5) will hold a meeting on February 26, 1998 from 8:30 a.m. to 2:30 p.m. The meeting will be open to the public from 1:30 p.m. to 2:30 p.m. and closed to the public from 8:30 a.m. to 1:30 a.m.

DATES: The meeting is scheduled for February 26, 1998, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce in Room 1412, located at 14th Street and Constitution Avenue, N.W., Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Duaine A. Priestley, Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230, (202) 482–2410 or Bill Daley, Office of the United States Trade Representative, 600 17th St. N.W., Washington, D.C. 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ISAC 5 will hold a meeting on February 26, 1998 from 8:30 a.m. to 1:30 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 8:30 a.m. to 1:30 p.m. The meeting will be open to the public and press from 1:30 p.m. to 2:30 p.m. when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

Pate Felts,

Acting Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 98–4780 Filed 2–24–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending February 13, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department's Procedural Regulations (See 14 CFR 302.170 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each Application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1997–3218.
Date Filed: February 9, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 9, 1998.
Description: Supplement to the Application of Delta Air Lines, Inc. submitting Request for Frequency Allocation and Request for Pendente Lite Authority.

Docket Number: OST–1996–1091.
Date Filed: February 10, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 17, 1998.
Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. 41108, applies for long-term U.S-Japan certificate authority, frequency allocation, and same-country codesharing to provide scheduled foreign air transportation of persons, property, and mail.

Docket Number: OST–1996–1121.
Date Filed: February 10, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 17, 1998.
Description: Application of Trans World Airlines, Inc. pursuant to the Department's Notice, dated February 3, 1998, request a St. Louis-Japan certificate of public convenience and necessity service, and applies for a frequency allocation of seven weekly frequencies to conduct the service.

Docket Number: OST–1996–1126.
Date Filed: February 10, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 17, 1998.
Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. 41108, applies for long-term U.S-Japan certificate authority, frequency allocation, and same-country codesharing to provide scheduled foreign air transportation of persons, property, and mail, as listed.

Docket Number: OST–1996–1213.
Date Filed: February 10, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 17, 1998.
Description: Supplement of Continental Airlines to its application for Houston-Tokyo, Newark-Tokyo and Newark-Osaka authority to comply with the requirements of the U.S.-Japan Combination Service Notice and seeks 21 weekly U.S.-Japan frequencies for operation of these proposed services.

Docket Number: OST–1997–2913.
Date Filed: February 10, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 17, 1998.
Description: Amendment No. 1 to the Application Delta Air Lines, Inc. pursuant to 49 U.S.C. 41102 and 41108 and the Department's Notice dated February 3, 1998, (1) requests that its application in OST–97–2913 for U.S.-Japan Authority be consolidated into the 1998 U.S.-Japan Combination Service Proceeding, OST–98–3419 (2) amends and supplements its application requesting certificate authority to engage in scheduled foreign air transportation of persons, property and mail between the terminal points:

1. Atlanta, Georgia and Tokyo, Japan;
2. Portland, Oregon and Osaka, Japan;
3. Portland, Oregon and Fukuoka, Japan;
4. New York, New York (JFK) and Tokyo, Japan;
5. Atlanta, Georgia and Osaka, Japan; and
6. Cincinnati, Ohio and Tokyo, Japan; and

Allocation of one weekly frequency to increase its nonstop service between Los Angeles, California and Tokyo, Japan from six weekly flights to daily service;

Allocation of twenty-one weekly frequencies to provide daily nonstop service commencing in 1998 between: (1) Atlanta and Tokyo, (2) Portland and Osaka, and (3) Portland and Fukuoka; Allocation of twenty-one weekly frequencies to provide daily nonstop

sevice after January 1, 1999, between: (1) Atlanta and Osaka, (2) Cincinnati and Tokyo; and (3) New York (JFK) and Tokyo.

Docket Number: OST–98–3419.
Date Filed: February 10, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 17, 1998.
Description: Application of Continental Micronesia, Inc. pursuant to 49 U.S.C. 41108 and 41102, and Subpart Q and the Department's Notice dated February 3, 1998, applies for an amendment to its certificates of public convenience and necessity for Route 171 to provide scheduled foreign air transportation of persons, property and mail between Honolulu, Hawaii, and Osaka, Japan.

Docket Number: OST–98–3419.
Date Filed: February 10, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 17, 1998.
Description: Application of Hawaiian Airlines, Inc. pursuant to the Department's Notice dated February 3, 1998, requests a certificate of public convenience and necessity to authorize nonstop scheduled air service of persons, property and mail between Maui, Hawaii and Narita, Japan, commencing January 1, 2000.

Docket Number: OST–98–3419.
Date Filed: February 10, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 17, 1998.
Description: Application of US airways, Inc., pursuant to 49 U.S.C. 41101, 41102, 41108 and the Department's Notice of February 3, 1998, applies for a certificate of public convenience and necessity to operate Philadelphia-Tokyo (Narita), Pittsburgh-Tokyo (Narita), Charlotte-Tokyo (Narita) and Philadelphia-Osaka, Japan.

Docket Number: OST–98–3419.
Date Filed: February 11, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 17, 1998.
Description: Amended Application of Trans World Airlines, Inc., pursuant to the Department's Notice, dated February 3, 1998, requests an allocation of 28 weekly code share frequencies in order to conduct code share service with Delta Air Lines on Portland-Osaka-Nagoya-Fukuoka routes and Los Angeles-Tokyo route. TWA requests leave to file this amended application one day late.

Docket Number: OST–1998–3464.
Date Filed: February 10, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 10, 1998.
Description: Application of All Nippon Airways Co., Ltd., pursuant to 49 U.S.C. 41301, applies for an amendment to its foreign air carrier permit to engage in the foreign air transportation of persons, property and mail, between any point or points behind Japan and any point or points in Japan, via any intermediate point or points, and any point or points in the United States, and beyond the United States to any point or points, with full traffic rights.

Docket Number: OST–1998–3475.
Date Filed: February 12, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 12, 1998.
Description: Application of Nippon Cargo Airlines Co., Ltd., pursuant to 49 U.S.C. 41301 and Subpart Q of the Regulations, applies for an amendment to its foreign air carrier permit to engage in foreign air transportation, between any point or points in Japan, via any intermediate point or points, and any point or points in the United States, and beyond the United States to any point or points, with full traffic rights.

Docket Number: OST–1998–3477.
Date Filed: February 12, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 12, 1998.
Description: Application of United Parcel Service Co., pursuant to 49 U.S.C. 41102, 41108, and Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing it to engage in the foreign air transportation of cargo (property and mail) between a point or points in the United States and two points in Japan and beyond each of those two points to two points with full traffic rights between all points on the route.

Docket Number: OST–98–3479.
Date Filed: February 12, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 12, 1998.
Description: Application of Asia Pacific Airlines, Inc., pursuant to 49 U.S.C. 41102, and Subpart Q of the Department's Economic Regulations, requests a Certificate of Public Convenience and Necessity to authorize it to engage in foreign charter air transportation of property and mail.

Docket Number: OST–98–3484.
Date Filed: February 13, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 13, 1998.
Description: Application of Japan Airlines Company, Ltd., pursuant to 49 U.S.C. 41304(a) and Subpart Q of the Regulations, applies to amend its foreign air carrier permit to authorize JAL to (i) engage in, in addition to operations permitted by its existing permit authority, both combination and all-cargo services between any point or points behind Japan, any point or points in Japan, any intermediate point or points, any point or points in the territory of the United States, and any point or points beyond the United States, without any limitation on frequency or capacity, consistent with the provisions of Tab F ("Operational Flexibility") and Tab G ("Change of Gauge") of the Memorandum of Consultations between the United States and Japan, signed January 30, 1998.

Paulette V. Twine,
Federal Register Liaison.

[FR Doc. 98–4795 Filed 2–24–98; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–3471]

Commercial Fishing Industry Vessel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) and its Subcommittee will meet to discuss various issues relating to commercial vessel safety in the fishing industry. The meetings are open to the public.

DATES: The meetings of the subcommittees of CFIVAC will be held on Wednesday, March 18, 1998, from 9 a.m. to 4:30 p.m. The general CFIVAC meeting will be held on March 19, 1998. from 9 a.m. to 4:30 p.m. Written material and requests to make oral presentations should reach the Coast Guard on or before March 11, 1998.

ADDRESSES: The meeting of the Subcommittee on Voluntary Standards for U.S. Uninspected Commercial Fishing Vessels by Utilizing the Application of Prevention Through People (PTP) Principles will be held in Room 3328, Department of Transportation Headquarters (NASSIF Building), 400 7th Street, SW., Washington, DC. The meeting of the Subcommittee on Stability Standards for Commercial Fishing Industry Vessels will be held in Room 324A at the same address. The CFIVAC meeting will be held in Room 324A at the same address.

Written material and requests to make oral presentations should be sent to Commander John J. Davin, Jr.,

Commandant (G–MSO–2), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Commander John J. Davin, Jr., Executive Director of CFIVAC, or Lieutenant Commander Randy Clark, Assistant to the Executive Director, telephone (202) 267–0214, fax (202) 267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meetings on March 18, 1998

Subcommittee on Voluntary Standards Utilizing PTP

(1) Review Voluntary Standards of Uninspected Commercial Fishing Vessels found in Navigation and Vessel Inspection Circular (NVIC) 5–86 to ascertain which standards should be continued as voluntary in light of the regulations in 46 CFR part 28.

(2) Assist the commercial fishing community by developing voluntary standards which minimize casualties and injuries through application of the principles of PTP.

(3) Review possible methods to develop these voluntary standards.

Subcommittee on Stability Standards

(1) Review existing stability standards for Uninspected Commercial Fishing Vessels less than 79 feet in length.

(2) Review possible stability standards to increase the safe operation of these vessels.

Agenda of Meetings of CFIVAC on March 19, 1998

(1) Update on the International Convention on Standards of Training, Certification, and Watchkeeping (STCW) and Standards of Training, Certification, and Watchkeeping for Fishing Vessels (STCW–F).

(2) Review of commercial fishing industry vessel casualty statistics.

(3) Report on various Fishing Vessel Safety initiatives under the purview of other agencies and Coast Guard Groups.

Procedural

All meetings are open to the public. Because of new security procedures at government buildings, each visitor should have a current picture ID to enter the NASSIF building. At the Chairperson's discretion, members of the public may make oral presentations during the meetings. Persons wishing to make oral presentations at the meetings should notify the Executive Director no later than March 11, 1998. Written material for distribution at a meeting should reach the Coast Guard no later than March 11, 1998. If a person submitting material would like a copy distributed to each member of a subcommittee in advance of a meeting, that person should submit 20 copies to the Executive Director no later than March 4, 1998.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: February 18, 1998.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98–4833 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Jackson International Airport, Jackson, Mississippi

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jackson International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 27, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA/Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306.

n addition, one copy of any comments submitted to the FAA must be mailed or delivered to Dirk Vanderleest, Executive Director of the Jackson Municipal Airport Authority at the following address: Post Office Box 98109, Jackson, MS 39298–8109.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Jackson Municipal Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: David Shumate, Project Manager, FAA Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306, telephone number 601–965–4628. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jackson International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 18, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by Jackson Municipal Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 11, 1998.

The following is a brief overview of the application.

PFC Application Number: 98–02–C–00–JAN.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 1998.

Proposed charge expiration date: December 31, 1999.

Total estimated PFC revenue: $2,828,000.

Brief description of proposed project(s): (1) Terminal roadway roundabout, (2) Rehabilitate airport roadway signage, (3) Airport communication & security system update, (4) Rehabilitate existing public roadways, and (5) Airport master plan/part 150 update.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/commercial operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the office of the Jackson Municipal Airport Authority.

Issued in Jackson, Mississippi, on February 18, 1998.

Wayne Atkinson,

Manager, Airports District Office, Southern Region, Jackson, Mississippi.

[FR Doc. 98–4766 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application #98–04–I–00–STL To Impose a Passenger Facility Charge (PFC) at Lambert-St. Louis International Airport, St. Louis, Missouri

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Lambert-St. Louis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 27, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Leonard L. Griggs, Jr., Director of Airports, Lambert-St. Louis International Airport, at the following address: St. Louis Airport Authority, P.O. Box 10212, St. Louis, Missouri 63145.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the St. Louis Airport Authority, Lambert-St. Louis International Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna K. Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at the Lambert-St. Louis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 11, 198, the FAA determined that the application to impose a PFC submitted by the St. Louis Airport Authority, St. Louis, Missouri, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 13, 1998.

The following is a brief overview of the application.

Level of the PFC: $3.00.

Proposed charge effective date: June, 1998.

Estimated charge expiration date: September, 2001.

Total estimated PFC revenue: $135,000,000.

Brief description of proposed projects: Phase I and II of property and business acquisition for Natural Bridge Road relocation; land acquisition for new Runway 12R/30L and site preparation work; early road work; design fees for roads and Runway 12R/30L.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lambert-St. Louis International Airport.

Issued in Kansas City, Missouri on February 13, 1998.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 98–4773 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement Number ANM–98–1]

Notice Policy Statement; Request for Comments

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice policy statement, request for comments.

SUMMARY: This notice announces an FAA policy statement applicable to the type certification of transport category airplanes. This notice advises the public, in particular manufacturers of certain transport category airplanes, that the FAA intends to evaluate the airplanes' wake vortex characteristics as part of the type certification process. This notice is necessary to advise the public of FAA policy and give all interested persons an opportunity to present their views on the policy statement.

DATES: Comments must be received on or before March 27, 1998.

ADDRESSES: Send all comments on this policy statement to the individual identified under **FOR FURTHER INFORMATION CONTACT** at Federal Aviation Administration, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056.

FOR FURTHER INFORMATION CONTACT: Colin Fender, ANM–111, telephone (425) 227–2191, facsimile (425) 227–1320, or email: Colin.Fender@faa.dot.gov

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this policy statement by submitting such written data, views, or arguments as they may desire. Commenters should identify the Policy Statement Number of this policy statement, and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff.

Background

Wake vortices, masses of rotating air trailing an airplane, can have serious consequences for following airplanes. According to the National Transportation Safety Board (NTSB), between 1983 and 1993 there were at least 51 accidents and incidents in the United States that resulted from probable encounters with wake vortices. In these 51 encounters, 27 occupants were killed, 8 occupants were seriously injured, and 40 airplanes were substantially damaged or destroyed.

One of the primary means the FAA uses to reduce the potential of a wake vortex upset is to specify minimum separation distances between airplanes. The relative risk of an upset from a wake vortex encounter is a function of the strength of the vortex generated by the leading airplane, the distance between airplanes, and the roll moment inertia of the trailing airplane. In general, both the strength of a vortex that can be generated by an airplane and an airplane's roll moment inertia are a function of the airplane's weight. Therefore, the FAA specifies minimum separation distances in terms of the

weights of the leading and trailing airplanes. These minimum separation distances are prescribed in FAA Order 7110.65, "Air Traffic Control." In Order 7110.65, airplane weights are specified in terms of three weight classifications—"small," "large,"or "heavy."

The fatal accidents noted above have generally been the result of "small" airplanes following "large" or "heavy" airplanes (as defined in Order 7110.65) in Visual Flight Rules (VFR) meteorological conditions at less than the minimum separation distances prescribed by Order 7110.65. During the time period quoted, the separation standards of Order 7110.65 were only applied during Instrument Flight Rules (IFR) meteorological conditions where prolonged visual contact with the lead airplane may not be possible.

In 1996, the FAA revised Order 7110.65 to change the weight ranges used to define each weight classification and to acquire air traffic controllers to notify pilots of any aircraft trailing a "heavy" aircraft of that "heavy" aircraft's type, position, altitude, and direction when in VFR conditions. The new weight ranges resulted from a recent review of existing wake vortex evaluation test data, from which the following general relationship between an airplane's weight and its wake vortex strength was developed:

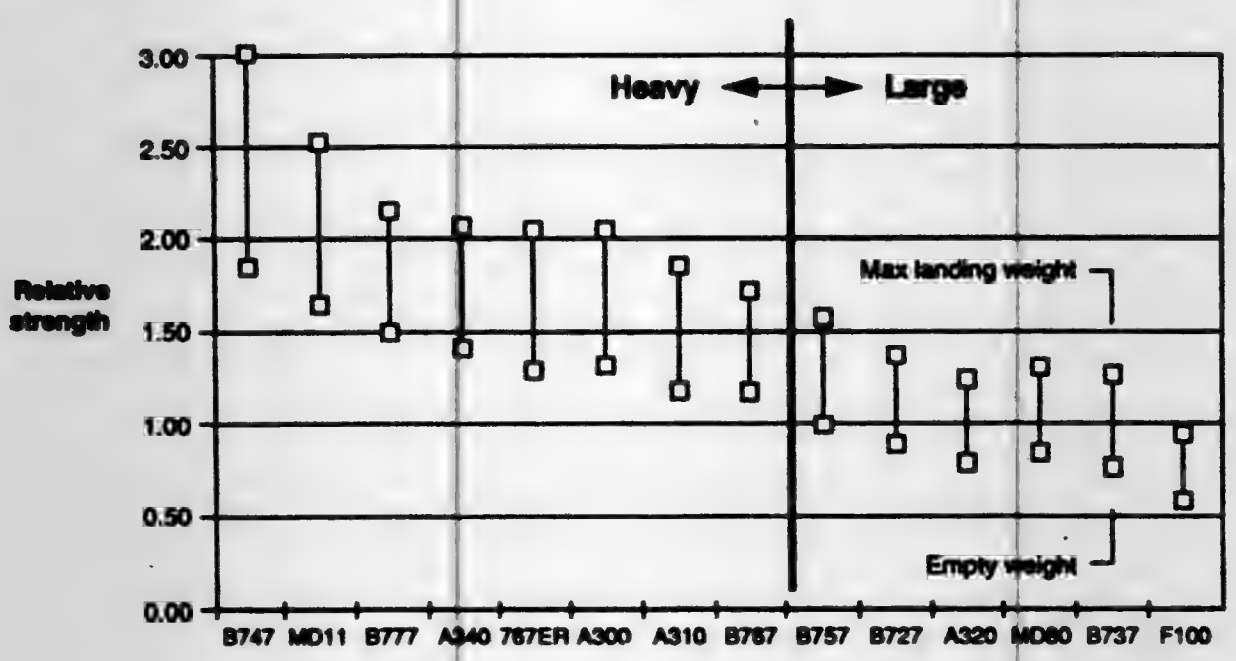

Figure 1. Wake Vortex Relative Strength

This relationship was developed from tests of conventional transport category airplanes with separate wing and fuselage elements, a midfuselage wing location with an aft-mounted horizontal stabilizer, wing lite generated by ambient airflow over airfoil surfaces (i.e., no forced blowing of wing surfaces or high lift devices), and turbojet/ turbofan powerplants.

The NTSB has expressed a concern, however, that the design of future airplanes could result in wake vortices that are unusually strong or persistent for the weight of the airplane. Also, due to the wide range of weights covered by the weight classifications, this method of defining minimum separation distances may inappropriately place a new airplane near the top of one weight category when its vortex strength characteristics are more representative of the next higher weight category.

Following a wake vortex-related fatal accident in December 1994, the NTSB's attention was again drawn to the methods used to determine aircraft separation distances. This led to the NTSB issuing Safety Recommendation No. A–94–056 that recommended the FAA, "Require manufacturers of turbojet-powered transport category airplanes to determine, by flight test or other suitable means, the characteristics of the airplanes' wake vortices during certification."

In response to Safety Recommendation No. A–94–056, the FAA proposes to establish the following general policy for addressing the potential for mis-categorization of new transport category airplanes relative to minimum separation distance for wake vortex avoidance:

Policy Statement

1. Airplanes that are of a "conventional" configuration (transport category airplanes with separate wing and fuselage elements, a midfuselage wing location with an aft-mounted horizontal stabilizer, wing lift generated by ambient airflow over airfoil surfaces, i.e., no forced blowing of wing surfaces or high lift devices, and turbojet/ turbofan powerplants) can be placed into the existing weight classification system for determining the minimum separation distances for trailing aircraft. However, if an airplane would be near the maximum weight for a particular classification, the FAA Aircraft Certification Office (ACO) reviewing the application should ensure that the classification is appropriate. The ACO may request the assistance of the applicant in making this determination.

2. For airplanes that do not fit the "conventional" configuration description, the ACO reviewing the application should ensure that the classification is appropriate, either by conservatively estimating wake vortex characteristics or, with the assistance of the applicant, by determining the wake vortex characteristics of the airplane, through flight test or other means, as part of the type certification process.

In addition to requesting comments on this policy statement, the FAA requests comments on the means of determining the appropriate classification, when necessary, for new or derivative airplane types. The FAA expects that advisory material will be necessary to provide specific guidance for evaluating wake vortex characteristics. Until new methods are developed and validated, the FAA intends to use the test methods and procedures previously used to develop the current weight classification scheme, illustrated in Figure 1, for transport category airplanes of conventional design. An example of these test methods and procedures can be found in FAA Report No. FAA–AEQ–75–1, "Investigation of the Vortex Wake Characteristics of Jet Transports During Climbout and Turning Flight," May 1975 (available through the National Technical Information System, Springfield, Virginia 22151).

Issued in Renton, Washington, on February 18, 1998.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 98–4765 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 1:30 p.m., on Monday, March 2, 1998, at the Intercontinental Hotel, 100 Chopin Plaza, Miami, Florida. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than February 26, 1998, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W., Washington, D.C. 20590; 202–366–6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, D.C. on February 19, 1998.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 98–4751 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF THE TREASURY

Commission to Study Capital Budgeting

AGENCY: Advisory Commission to the President of the United States.

ACTION: Notice of meetings.

SUMMARY: The agenda for the next meetings of the Commission to Study Capital Budgeting includes discussions and hearing of testimony on capital budgeting issues on Friday, March 6. On Saturday morning, March 7, the Commission will hear reports from its working groups studying different aspects of capital budgeting and discuss the next steps to be taken in preparation of its report. The Commission's final report on capital budgeting is due on December 13, 1998. Meetings are open to the public. Limited seating capacity is available.

Dates, Times and Places of the Next Commission Meetings

March 6, 1998, 9:00 a.m. to 5:00 p.m.

House Budget Committee Hearing Room, Room 210, Cannon House Office Building, Independence Avenue and C Street, SE, Washington, DC 20515

March 7, 1998, 9:00 a.m. to 1:00 p.m.

White House Conference Center, Truman Room 726 Jackson Place, NW, Washington, DC 20503.

The Commission is seeking all views on capital budgeting. Interested parties may submit their views to: Barry Anderson, Executive Director, President's Commission to Study Capital Budgeting, Old Executive Office Building (Room 258), Washington, DC 20503, Voice: (202) 395–4630, Fax: (202) 395–6170, E-Mail: capital__budget@oa.eop.gov Website: http://www.whitehouse.gov/wh/eop/omb/pcscb/

FOR FURTHER INFORMATION CONTACT: E. William Dinkelacker, Senior Economist, Room 4456 Main Treasury, Washington, DC 20220, Voice: (202) 622–1285, Fax: (202) 622–1294, E-Mail: william.dinkelacker@treas.sprint.com.

E. William Dinkelacker,

Designated Federal Official.

[FR Doc. 98–4714 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–25–P

United States Information Agency

Culturally Significant Objects Imported for Exhibition Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Gifts of the Nile: Ancient Egyptian Faience" (see list [1]), imported from the Petrie Museum of Egyptian Archaeology, England for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed exhibit objects at The Cleveland Museum of Art, Cleveland, Ohio from on or about May 10, 1998, to on or about July 5, 1998, and Museum of Art, Rhode Island School of Design, Providence, Rhode Island from on or about August 24, 1998, to on or about January 3, 1999, and Kimbell Art Museum, Fort Worth, Texas from on or about January 31, 1999, to on or about April 25, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

Dated: February 19, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–4839 Filed 2–24–98; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning, Assistant General Counsel, at 202/619–5997, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, S.W., Washington, DC 20547–0001.

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federal register

Wednesday
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Part II

Securities and Exchange Commission

17 CFR Parts 228, et al.
Offshore Offers and Sales; Final Rule
Registration of Securities on Form S–8; Proposed Rule
Publication or Submission of Quotations Without Specified Information; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 249

[Release No. 33–7505; 34–39668; File No. S7–8–97; International Series Release No. 1118]

RIN 3235–AG34

Offshore Offers and Sales

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting amendments to the Regulation S safe harbor procedures for offshore sales of equity securities of U.S. issuers and the reporting requirements applicable to those transactions. The amendments are designed to stop abusive practices in connection with offerings of equity securities purportedly made in reliance on Regulation S.

EFFECTIVE DATES: April 27, 1998 except §§ 249.308, 249.308a, 249.308b, 249.310 and 249.310b (the amendments to Forms 8–K, 10–Q, 10–QSB, 10–K and 10–KSB) will become effective on January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Office of International Corporate Finance, Division of Corporation Finance, at (202) 942–2990.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the "Commission") is adopting amendments to Rule 903[1] of Regulation S,[2] the issuer safe harbor under the Securities Act of 1933[3] for offshore offerings of securities, to address abusive practices that have developed. The amendments apply to the offshore sales of equity securities of domestic issuers. The Commission is also adopting amendments to Rule 144(a)(3)[4] and a new Rule 905[5] that classify these equity securities as "restricted securities," as defined in Rule 144 under the Securities Act. In addition, Rule 905 makes clear that offshore resales under Rule 904[6] of restricted equity securities of domestic issuers will not alter the status of these securities as restricted securities after the resale. The Commission also is replacing the current requirement that reporting issuers file a Form 8–K to disclose Regulation S sales of equity securities within 15 days of the transaction with a requirement that these sales be reported on Forms 10–Q, 10–QSB, 10–K or 10–KSB, as appropriate. In addition to these changes, the Commission is adopting other technical amendments to Regulation S to make the rule clearer and more concise.

I. Executive Summary

The Commission adopted Regulation S in 1990 as a safe harbor from the registration requirements of the Securities Act for offshore offers and sales of securities. Although the regulation has proved successful for many types of offerings, abuses in connection with sales of domestic equity securities have been common.

Regulation S has been used as a means of perpetrating fraudulent and manipulative schemes, especially schemes involving the securities of thinly capitalized or "microcap" companies. These types of securities are particularly vulnerable to fraud and manipulation because little information about them is available to investors.

The Commission is seeking to enhance investor protection with respect to microcap securities through various initiatives, including amendments to Regulation S. The changes to the regulation adopted today should prevent further abuses of this rule, but also allow continued reliance on Regulation S in legitimate offshore offerings.

The Regulation S amendments adopted today are as follows:

- Equity securities placed offshore by domestic issuers under Regulation S will be classified as "restricted securities" within the meaning of Rule 144, so that resales without registration or an exemption from registration will be restricted;[7]
- To avoid confusion between the holding period for "restricted securities" under Rule 144 and the "restricted period" under Regulation S, the term "restricted period" will be renamed the "distribution compliance period";
- The distribution compliance period for these securities will be lengthened from 40 days to one year;
- Certification, legending and other requirements, which currently are applicable only to sales of equity securities by non-reporting issuers, will be imposed on these equity securities;
- As a means to alert purchasers of these equity securities to potential restrictions on hedging their positions in these securities, purchasers will be required to agree that their hedging transactions with respect to such securities will be conducted in compliance with the Securities Act, such as Rule 144 thereunder; and
- Offshore resales under Rule 901[8] or 904 of equity securities of domestic issuers that are "restricted securities," as defined in Rule 144, will not affect the restricted status of these securities.

The amendments are substantially as proposed with some important differences. To avoid undue interference with offshore offering practices of foreign companies, the amendments will apply to the equity securities of U.S. issuers, but not to the equity securities of foreign issuers. The distribution compliance period applicable to issuers and distributors under Rule 903 will be extended to one year, rather than the proposed two years, to align Regulation S more precisely with the Rule 144 resale restrictions. In addition, promissory notes will not be prohibited in Regulation S transactions; rather, the notes must satisfy certain conditions set forth in Rule 144 before the purchaser can resell pursuant to that rule. These conditions should ensure that promissory notes are not used as a means to distribute securities into the United States. This refined approach will still forestall abuses related to the use of promissory notes in Regulation S transactions. Finally, the change from Form 8–K reporting to quarterly reporting will be delayed to allow the Commission staff to monitor developments under the amended rule.

II. Background of Proposals and Commenters' Concerns

The Commission has acted to stem abuses of Regulation S by issuers, affiliates and others involved in the distribution process who were using Regulation S as a guise for distributing securities into the U.S. markets without the protections to investors of registration of the securities under the Securities Act. The Commission first stated its position about these abuses in a June 1995 interpretive release that described certain problematic practices under Regulation S.[9] The Commission also has instituted enforcement proceedings against participants in abusive Regulation S transactions.[10]

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[1] 17 CFR 230.903.

[2] 17 CFR 230.901–230.905 and Preliminary Notes.

[3] 15 U.S.C. 77a *et seq.*

[4] 17 CFR 230.144(a)(3).

[5] 17 CFR 230.905.

[6] 17 CFR 230.904.

[7] Rule 905, which classifies these securities as "restricted," will not be applied retroactively. See *infra* Section III.C.3.

[8] 17 CFR 230.901.

[9] Securities Act Release No. 7190 (June 27, 1995) [60 FR 35663 (July 10, 1995)] (the "Interpretive Release").

[10] See *SEC* v. *Schiffer*, Litigation Release No. 15435 (Aug. 7, 1997); *In re GFL Ultra Fund Ltd.*, Securities Act Release No. 7423 (June 18, 1997);

As a result of the continuation of certain of these abusive practices and in response to the comment letters received on the Interpretive Release, the Commission on February 20, 1997, proposed new restrictions to Regulation S to stop these abusive practices for placements of equity securities by domestic companies.[11] In addition, the Commission proposed to make these restrictions apply to foreign companies where the principal trading market for their securities is in the United States because of concerns that abusive practices might develop in the future. The Commission proposed to classify these equity securities of domestic and foreign companies placed offshore under Regulation S as "restricted securities" within the meaning of Rule 144, and to revise the applicable offering restrictions to ensure that these equity securities could not be sold or resold to U.S. persons (unless pursuant to registration or an exemption).[12]

The comments on the proposals were mixed.[13] A number of commenters supported the proposed amendments as necessary and appropriate to curb abusive practices and to facilitate legitimate offshore capital raising by U.S. companies. Others believed the proposals would severely restrict the ability of U.S. companies to access alternative offshore sources of capital. Several commenters objected to the extension of the revisions in the rule to foreign private issuers that have their principal market in the United States. These commenters urged that the application of the new resale restrictions, including the legending and stop transfer requirements, would be inconsistent with the requirements of offshore trading markets and public offering practices.

III. Amendments Adopted Today

A. Scope of the Amendments

1. Will Not Apply to Foreign Issuers for Which the United States Is the Principal Market

Although abusive practices under Regulation S have not been evident in offerings by foreign issuers, the Commission was concerned that abusive practices might develop in the future since the economic incentives for indirect distributions and resales into the United States are the same for equity offerings of both domestic companies and foreign companies where the principal market for their securities is in the United States.[14] Therefore, the Commission proposed that the Regulation S changes would treat these offerings similarly both with respect to the new Regulation S requirements, as well as the "restricted securities" classification under Rule 144.

The commenters strongly opposed this approach. They pointed out that subjecting foreign issuer securities to these restrictions was unnecessary in light of the absence of abuses with respect to those securities. They also asserted that there should be no presumption that a foreign issuer offering securities overseas is doing so to avoid the registration and disclosure requirements of the U.S. federal securities laws, even when it has a substantial trading market for its securities in the United States. Moreover, in the view of some these commenters, there is no reason to assume that indirect unregistered distributions into the United States will occur when these foreign issuers' securities are sold offshore.

The commenters also noted that if equity securities issued by these foreign companies are deemed restricted securities, the issuers in essence would be applying to their offshore offerings many of the standard practices used in U.S. private placements. The certification and purchaser agreement requirements would impose a significant burden on foreign issuers that wish to conduct public offerings in their home jurisdictions. In addition, many foreign stock exchanges will not permit trading of legended securities. The commenters asserted that the legending and stop transfer restrictions, as well as to a lesser extent the disclosure and certification requirements that would be imposed by the rule, would impede both public offerings and trading in those securities on offshore public markets that do not accept legended stock for trading.[15] As a result, the classification of foreign equity securities as "restricted" could create a strong disincentive for foreign companies to list their securities on U.S. markets.

While the Commission remains concerned with the potential for abuse, it has determined not to extend, at this time, the new requirements to the securities of foreign private issuers, regardless of the relative size of their U.S. markets to their worldwide trading.[16] The Commission agrees that absent a showing of abuse, imposing significant new restrictions on the offshore offering practices of foreign companies is not warranted. However, the Commission will monitor practices in this area, and will revisit the issue if abuses occur. Meanwhile, purchasers of these securities are reminded that Regulation S does not provide a safe harbor for resales of securities into the United States, and any resales must be made pursuant to a registration statement or an exemption from the Securities Act. Regardless of the foreign issuer's compliance with the Regulation

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SEC v. *PanWorld Minerals Int'l, Inc.*, Litigation Release No. 15380 (June 2, 1997); *SEC* v. *Members Service Corp.*, Litigation Release No. 15371 (May 22, 1997); *SEC* v. *Rosenfeld*, Litigation Release No. 15274 (Mar. 5, 1997); *United States* v. *Sung and Feher*, Litigation Release No. 14901 (May 6, 1996); *In re Candie's Inc.*, Securities Act Release No. 7263 (Feb. 21, 1996); *SEC* v. *Scorpion Technologies, Inc.*, Litigation Release No. 14814 (Feb. 9, 1996); *SEC* v. *Sarivola;* Litigation Release No. 14704 (Oct. 31, 1995); *SEC* v. *EnvirOmint Holdings, Inc.*, Litigation Release No. 14683 (Oct. 6, 1995); *SEC* v. *Softpoint, Inc.*, Litigation Release No. 14480 (Apr. 27, 1995); *SEC* v. *Rehtorik*, Litigation Release No. 13975 (Feb. 23, 1994); *SEC* v. *Westdon Holding & Inv., Inc.*, Litigation Release No. 13263 (June 5, 1992).

[11] Securities Act Release No. 7392 (Feb. 20, 1997) [62 FR 9258 (Feb. 28, 1997)] (the "Proposing Release").

[12] The Commission proposed to revise the offering restrictions imposed by Regulation S by: (1) Aligning the Regulation S restricted period for these equity securities with the Rule 144 holding periods by lengthening the restricted period from 40 days or one year, as applicable, to two years; (2) by imposing certification, legending and other requirements; (3) by requiring purchasers of these securities to agree not to engage in hedging transactions unless the transactions comply with the Securities Act; (4) by prohibiting the use of promissory notes to pay for these securities; and (5) by clarifying that offshore resales of equity securities that are "restricted securities," as defined in Rule 144, will not "wash off" the restricted status of these securities.

[13] The 47 comment letters received are available for inspection and copying in the Commission's public reference room. Refer to file number S7–8–97. The twelve comment letters that were submitted via electronic mail may be viewed at the Commission's web site: http://www.sec.gov.

[14] The Commission proposed defining "principal market in the United States" for a security as when more than 50% of all trading in such class of securities took place in, on or through the facilities of securities exchanges and inter-dealer quotation systems in the United States in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation. This definition differs from the "substantial U.S. market interest" test that is used to determine whether a foreign issuer qualifies for less restrictive treatment under Category 1 of Rule 903. See Proposing Release at Section II.

[15] A number of commenters also noted that the 50% threshold for determining the principal market as being in the United States that was proposed by the Commission was too low and would make the restrictions applicable to a large number of foreign issuers. One commenter noted that even if the standard were 100% of the reported trading volume, 10% of the foreign companies listed in the United States are traded solely in the United States and would be subject to the new requirements. See generally, "U.S. Investors Look Across the Atlantic," The Washington Post, Aug. 31, 1997, at H2 (because of U.S. investor interest in foreign stocks, the New York Stock Exchange may be the principal market for many leading European companies).

[16] The Commission currently is considering other alternatives to prevent fraudulent practices that may occur in connection with the securities of foreign issuers. See Securities Exchange Act Release No. 34–39670 (Feb. 17, 1998).

S requirements, purchasers cannot purchase securities and resell them into the United States under circumstances in which they would be deemed statutory underwriters unless they register those resales.[17]

2. Will Apply to Public Offerings

Several commenters expressed the view that the proposed restrictions, including the designation of equity securities issued under Regulation S as restricted securities, were inconsistent with offshore public offering practices and the requirements of foreign trading markets. These commenters urged the Commission to adopt a distinction based on whether there was or will be a public trading market for the securities offshore following the offer, or whether the offering was subject to a foreign regulatory scheme governing public offerings.

Since most of the concerns in this respect were raised with regard to the extension of the requirements to foreign private issuers, those concerns are substantially addressed by the Commission's decision to limit the applicability of the new restrictions to domestic issuers. As discussed below,[18] the Commission believes that offering practices can be adopted to allow the new restrictions to be applied in the context of a public offering by domestic issuers, including share acquisitions. The existence of an offshore trading market would not eliminate the potential for abuse; for example, an offering could be made at a discount to purchasers offshore who may engage in an illegal distribution back into the United States. The Commission also is concerned that otherwise limited distributions to a small group of offshore investors easily could be structured as underwritten public offerings to avoid any additional restrictions on resales by those investors back into the United States. Accordingly, the amendments do not incorporate a distinction based upon whether a public trading market for the securities exists offshore, or whether the securities were issued in a public offering.

3. Will Apply to All Equity Securities of Domestic Companies, including Convertible Securities

Consistent with the proposal, the new procedures and restrictions and the "restricted securities" classification will apply only to offerings of equity securities. Rule 405 of Regulation C under the Securities Act defines the term "equity security" to include stock, securities convertible or exchangeable into stock, warrants, options, rights to purchase stock, and other types of equity-related securities.[19] The Commission is not applying the new restrictions to offerings of straight debt securities because the nature of the trading markets for debt securities appears not to have facilitated similar abusive practices. However, the new restrictions will apply to offerings of convertible debt securities because Regulation S abuses have involved the use of convertible or exchangeable securities and warrants.[20]

Commenters addressing the issue of whether the restrictions should apply to convertible securities urged the Commission to adopt the approach incorporated into Rule 144A. Under that approach, a convertible security is *not* treated as the same class as the underlying equity security if it has a conversion premium exceeding a specified percentage threshold over the market price of the underlying securities at the time of issuance.[21] If this approach were used in Regulation S, convertible securities with a sufficient conversion premium would not be subject to the new restrictions applicable to equity.

The new rules and restrictions will apply to all equity securities of U.S. issuers, including exchangeable or convertible securities and warrants, without regard to the conversion or exercise premium or other factors. It is clear that these securities can and have been used in abusive transactions. The potential for abuse exists whenever a domestic issuer can create offshore, in a transaction not subject to the registration provisions of the U.S. securities laws, pools of equity securities that appear to be immediately tradeable back into the United States because of their unrestricted status. The Commission is reluctant to specify a conversion premium and thus possibly be viewed as condoning abusive practices in securities set above that threshold. In any event, given the volatility of the markets for the types of small capitalization companies in which the Commission has witnessed abuses, it would be difficult to set an appropriate threshold for all types of issuers. Finally, as discussed below, even with application of the new restrictions to convertible securities, the Commission does not believe that Regulation S will eliminate the use of these securities as a means to lower a U.S. issuer's cost of capital. Many issuers do not need to rely on Regulation S with respect to their sales of convertible securities because they can use Form S–3 to register the securities.

4. Will Apply to Securities in Employee Benefit Plans

Equity securities offered and sold to non-U.S. resident employees through an employee benefit plan governed by foreign law have not been subject to a distribution compliance period regardless of the domicile of the issuer or U.S. market interest in its securities. Since new Rule 905 would extend to all equity securities of domestic issuers, however, the proposals would classify those equity securities as restricted securities within the meaning of Rule 144 when issued to the employee.

Several commenters believed that it was inappropriate to require non-U.S. resident employees to accept restricted securities pursuant to their employee benefit plans. To the extent reporting U.S. issuers believe it is necessary to give their non-U.S. resident employees immediate access to the U.S. public markets in order to sell the security, Form S–8, which is effective immediately upon filing, is available to permit the issuer to register the securities on a streamlined basis. Consequently, the Commission has determined to apply Rule 905 to these securities as proposed.

B. Distribution Compliance Periods

As explained in greater detail in the Proposing Release,[22] the issuer safe harbor distinguishes three categories of securities offerings, based upon factors such as the jurisdiction of incorporation of the company whose securities are being sold, the company's reporting status under the Securities Exchange Act of 1934 ("Exchange Act"),[23] and the degree of U.S. market interest in the issuer's securities.[24] The Commission proposed shifting U.S. reporting companies to "Category 3" and

[17] See Interpretive Release at n. 17; Proposing Release at n. 41.

[18] See *infra* Section III. C. 1.

[19] 17 CFR 230.405. Under the amendments adopted today, non-participating preferred stock and asset-backed securities would continue to be treated in the same manner as debt securities for purposes of the Regulation S safe harbors and the restricted security classification. See Rule 902(a)[17 CFR 230.902(a)], (formally Rule 903(c)(4)).

[20] See "Pirates' Play?", BARRON'S Jan. 7, 1997, at 17.

[21] See Rule 144A(d)(3)(i) [17 CFR 230.144A(d)(3)(i)]. See also Securities Act Release No. 6862 (Apr. 23, 1990) [55 FR 17933 (April 30, 1990)] at nn.25 and 26 for a discussion of how the conversion or exercise premium is determined for purposes of Rule 144A.

[22] See Proposing Release at Section II.

[23] 15 U.S.C. 78a *et seq.*

[24] See discussion at nn. 13–16 of the Proposing Release.

lengthening the distribution compliance period applicable to domestic equity securities. The effect of the proposals would have been to lengthen the distribution compliance period for U.S. reporting companies from 40 days to two years. Issuers previously subject to Category 3 for their equity offerings—non-reporting domestic issuers and foreign issuers with a significant U.S. market interest for their securities—would have had their distribution compliance period extended from one to two years. During this period, issuers, distributors, and their affiliates would have been required to comply with the documentation and disclosure requirements imposed by Rule 903, and any offers and sales during this period could not be made to a U.S. person and still qualify for the safe harbor. In response to concerns raised by commenters, the Commission is adopting a modified version of these proposals.

In addition, to further avoid confusion between the requirements applicable to issuers and distributors as a condition to perfecting their Rule 903 safe harbor and the Rule 144 safe harbor applicable to resales of the securities into the United States by the purchasers of those securities, the restricted period has been renamed the "distribution compliance period." This should clarify that the availability of the safe harbor to the issuer and distributors has no bearing on whether purchasers of Regulation S securities may be acting as statutory underwriters if they purchase with a view to reselling into the U.S. markets.

1. Extension of the Distribution Compliance Period

A distribution compliance period is required for Category 2 and Category 3 offerings under the issuer safe harbors because there is a greater likelihood that the securities will flow back into the United States. The purpose of the distribution compliance period is to ensure that during the offering period and the subsequent aftermarket trading that takes place offshore, the persons relying on the safe harbor—issuers, distributors and their affiliates—are not engaged in an unregistered, non-exempt distribution into the United States capital markets.[25] In addition to the prohibition against selling to U.S. persons during the distribution compliance period, these persons are subject to special requirements designed to provide assurance that the securities will come to rest offshore.

The Commission proposed the two-year distribution compliance period to make the restrictions on issuers and distributors consistent with the Rule 144 holding periods applicable to purchasers of the Regulation S securities under new Rule 905 and the amendments to Rule 144. The commenters generally agreed that the current 40-day distribution compliance period was insufficient to protect against use of an offshore offering to make an indirect offering into the United States, at least with respect to equity securities of domestic issuers. Some commenters argued, however, that the two-year period was not necessary and that a 90-day period, like that originally proposed when Regulation S was first formulated, would be sufficient.[26]

Consideration was given to eliminating the distribution compliance period altogether, on the premise that since the equity securities issued under Regulation S could not be sold back into the U.S. markets for a period of two years unless sold in a manner consistent with the Rule 144 requirements, the additional requirements of the distribution compliance period were unnecessary. However, the documentation, disclosure and certification requirements linked to the distribution compliance period, as well as the prohibition against offers and sales to a U.S. person during the distribution compliance period, provide important additional protections and assurance that, at least from the perspective of the distribution participants, the securities have come to rest offshore. Extending those requirements for a period of time after the closing of the offering is necessary, particularly with respect to distributors of those securities who may immediately make a market for the securities offshore. The purposes of the protections would be defeated if the requirements are applied only to the initial purchasers.

The Commission has decided to extend the distribution compliance period substantially beyond 40 days to one year. The expiration of the one-year period will coincide with the period when limited resales may begin under Rule 144. At that point, the distribution compliance period is unnecessary. A two-year distribution compliance period, as originally proposed, could be confusing to apply because the distribution compliance period under Regulation S would cover a longer period than the holding period under Rule 144.

2. Offering Restrictions

Category 2 and Category 3 of Rule 903 require that "offering restrictions"[27] be implemented during the distribution compliance period. For offerings classified as Category 3, these offering restrictions include agreements by distributors that the securities will only be sold in accordance with the Securities Act or Regulation S, and a requirement for disclosure in all offering materials to the same effect. The amendments adopted today do not affect these requirements other than to:

- Lengthen the period during which they must be implemented, as a result of the lengthening of the distribution compliance period; and
- Require that additional language be provided in the mandated agreements and on the securities themselves, so that purchasers have notice that hedging transactions not in compliance with the Securities Act are prohibited.

3. Purchaser Agreements and Certifications

Category 3 imposes additional requirements not included in Category 2 relating to purchaser certifications and agreements. Those requirements will be imposed on equity offerings of domestic reporting companies for the first time under the amendments. In addition, the issuer and distributors will be subject to the additional requirements for a longer period, as a result of the longer distribution compliance period.

In keeping with a more restrictive approach to the types of Regulation S offerings where the Commission has observed the greatest potential for abuse, the Commission is adopting amendments that will require purchasers of equity securities in Category 3 offerings to agree to resell the securities, or to engage in hedging transactions, only in accordance with the registration or exemptive provisions of the Securities Act, or in accordance with Regulation S.[28] This agreement by

[25] See Securities Act Release No. 6863 (Apr. 24, 1990)[55 FR 18306 (May 2, 1990)] the "Adopting Release") at Section III.B.

[26] The longer distribution compliance periods also extend the time during which the issuer and distributors could not engage in directed selling efforts in the United States. See Adopting Release at Sectio'n III.B.1.b One commenter expressed concern that the two-year distribution compliance period places an unworkable "black-out" restriction on publication of research regarding the issuer's securities.

[27] The term "offering restrictions," as amended, is defined in Rule 902(g) [17 CFR 230.902(g)].

[28] Issuers, however, would be free to require purchasers to agree not to engage in any hedging transactions, even if the transaction would be consistent with the Securities Act. The amendments do not impose any new restrictions on hedging

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purchasers of the covered equity securities should help ensure that purchasers have notice of the resale restrictions applicable to the securities.

Purchasers of domestic equity securities of reporting companies also will now be required to certify that they are not U.S. persons and are not acquiring the securities for the account or benefit of a U.S. person, or that they are U.S. persons who purchased securities in a transaction that did not require registration under the Securities Act. This certification procedure should make it clear to all parties involved in the Regulation S offering that the rule may not be used to circumvent the registration requirements of the Securities Act. This should prevent some of the "sham" transactions described in the Interpretive Release where issuers or distributors "park" securities offshore with affiliates or shell entities that are actually owned by U.S. persons.

4. Legending and Stop Transfer Requirements

Under the amendments, Category 3 will now require all domestic issuers of equity securities to place a legend on the securities sold offshore under Regulation S. This legend will advise that transfer of such securities is prohibited other than in accordance with Regulation S, pursuant to registration under the Securities Act, or pursuant to an available exemption from registration. The legend requirement will provide notice to any subsequent purchasers of the resale restrictions applicable to the securities. Legending equity securities of domestic reporting issuers until the expiration of the current 40-day distribution compliance period appears to be a common practice under Regulation S. The extension of the express legending requirement to reporting companies, when limited to domestic issuers, should not impose a different or new burden. In addition, as proposed, the current legending requirement is being amended, so that purchasers are aware that hedging transactions may not be conducted except in compliance with the Securities Act.

Category 3 also requires an issuer, by contract or a provision in its bylaws, articles, charter or comparable document, to refuse to register any transfer of securities unless made in accordance with the registration or exemptive provisions of the Securities Act, or in accordance with Regulation S. This requirement imposes on issuers a monitoring role similar to that which is often imposed in connection with unregistered private placements. In light of the abuses in this area, domestic reporting issuers should be held more accountable for compliance in these offerings.

Commenters were concerned that these procedures—which have existed under Category 3 since before the adoption of Regulation S [29] and now are merely being extended to a broader class of issuers—are inconsistent with public offering practices and that imposing these requirements will prevent the issuer from engaging in offshore public offerings or listings. Since these concerns were raised principally with respect to foreign issuers, they have been addressed by the decision not to extend Category 3 to reporting foreign issuers that have their principal market in the United States.[30] With respect to domestic issuers, although these requirements will not be complied with easily in an offshore public offering, the need to develop mechanisms to prevent abuse is clear. Absent measures like those required in Category 3, the Commission is concerned that abusive practices will continue.[31] Domestic reporting companies that find it too cumbersome to take advantage of the Regulation S safe harbor when conducting a public offering would simply register under the Securities Act or resort to other exempt offerings.

C. New Rule 905—Restricted Securities

Because some of the abusive practices under Regulation S have involved activities by persons other than issuers, distributors and their affiliates (investors who purchase Regulation S securities with a view to distributing those securities into the U.S. markets at the end of the 40-day distribution compliance period), the Commission believes that it is appropriate to clarify the legal obligations of purchasers of securities under Regulation S. The Commission proposed new Rule 905, and amendments to Rule 144(a)(3), to classify covered equity securities (of both reporting and non-reporting issuers) placed offshore under Regulation S as "restricted securities" within the meaning of Rule 144. By expressly defining these Regulation S securities as falling within the definition of "restricted securities" under the Rule 144 resale safe harbor, purchasers of those securities are provided with clear guidance regarding when and how those securities may be resold in the United States without registration under the Securities Act.

Several commenters believed that subjecting offshore purchasers of Regulation S securities to the Rule 144 holding periods would impair liquidity in those securities to such an extent that the safe harbor would no longer provide an alternative source of capital for U.S. companies. Instead, U.S. issuers would either have to register the offering or rely on a separate exemption, such as Regulation D or Section 4(2) under the Securities Act for private offerings.

1. Advantages of Regulation S

Notwithstanding the concerns raised by commenters, the Commission believes Regulation S will continue to offer significant advantages over the private offering exemptions. U.S. issuers can sell securities offshore without regard to the sophistication or number of purchasers in the offering or the size of the offering. Similarly, unlike Rules 505 and 506 of Regulation D, Regulation S does not contain specific information requirements. In addition, Regulation S permits issuers and distributors to advertise an offering offshore (consistent with the prohibition against directed selling efforts and the offshore transaction requirements) in a manner that would not be consistent with the prohibition against general solicitation in a private placement in the United States. Like the private offering exemptions, Regulation S will continue to afford U.S. issuers a means to sell

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practices. The Commission is considering proposed restrictions on hedging under Rule 144 that, if adopted, would be in addition to those currently applicable to restricted securities transactions under that rule. See Securities Act Release No. 7391 (Feb. 20, 1997) [62 FR 9246 (Feb. 28, 1997)] ("Rule 144 Proposing Release") (discusses current and proposed restrictions on hedging restricted securities).

[29] See *e.g.*, InfraRed Associates, Inc., SEC No-Action Letter (Sept. 13, 1985).

[30] The Category 3 requirements, other than legending, already apply to equity offerings by non-reporting foreign issuers where there is a substantial U.S. market interest in the security. The amendments do not affect this aspect of Rule 903.

[31] As the Commission noted in the Proposing Release:

Regulation S does not require, and the Commission is not proposing, that the legend contain specific language to describe these restrictions. Issuers and distributors should prepare such legends in a form that conveys to holders the restricted nature of the securities and that they can only be resold under Regulation S, pursuant to registration under the Act, or under an exemption. Nor is the legend requirement intended to require that securities sold under Category 3 be in certificated form. Issuers whose securities are in uncertificated form may satisfy the legend requirement by any means which puts holders and subsequent purchasers on notice of the applicable resale restrictions.

Proposing Release at Section III.B.4. Depending on the circumstances, the following alternatives, among others, may be sufficient to put holders on notice and prevent a public distribution into the United States: Notices of the restrictions to investors on the confirmation or allotment telex, use of global securities held in a depository, and restrictions on trading in the United States through the use of restricted CUSIP numbers.

securities without the potential delay and "market overhang" caused by registering equity securities under the Securities Act.

Purchasers will continue to have several sources of liquidity in addition to reliance on Rule 144. Offshore purchasers can continue to rely upon the Rule 904 safe harbor for offshore resales. They can also resell in the United States pursuant to exemptions other than Rule 144, including Rule 144A. Finally, and perhaps most importantly, it is possible that purchasers in Regulation S offerings could insist upon registration rights as do purchasers in private placements under Section 4(2) or Regulation D as a means of obtaining liquidity in the U.S. markets.[32] Particularly in the case of reporting companies, a Regulation S offering coupled with on demand registration rights provides an issuer with ready access to foreign capital while according purchasers access to U.S. markets for liquidity.[33]

2. Resales of Restricted Securities

Rule 905 also addresses the resale of restricted securities under Rule 904. Rule 905 clarifies that the resale of restricted securities offshore under Rule 904 does not "wash off" the restricted status of those securities to allow them to be freely resold into the United States by the purchaser. Several commenters argued that it was impossible to keep track of the restricted status of securities trading in offshore securities markets. With the widespread adoption of uncertificated securities and rules of offshore markets that prohibit the listing of legended securities, these commenters observed that the approach simply was not practicable.

By not extending Rule 905 to securities of foreign private issuers, the principal concerns of the commenters in this respect should be addressed.[34] Although some commenters have expressed concern that the certification and legending requirements may hinder free trading on offshore securities markets, without these requirements the potential for easy evasion of Rule 144's resale limitations for domestic equity securities is high. Absent the mandatory certification and legending requirements, the purchaser would not be on notice that it is subject to any restrictions on the resale of those securities into the United States.[35] It is possible that some markets can accommodate such securities, or may adapt to accommodate them in the future. Consequently, the Commission is adopting Rule 905 as proposed for domestic equity securities.

3. Retroactive Application of Rule 905

Rule 905 will not be applied retroactively to classify domestic equity securities previously sold under Regulation S as restricted securities under Rule 144. However, the provision of Rule 905 that codifies the Commission's interpretive position that resales offshore do not "wash off" restrictions will apply to offerings taking place before the effective date. This position was stated in the Interpretive Release and reiterated in the Regulation S Proposing Release.

D. Promissory Notes

Under the proposal, Regulation S would have prohibited the use of promissory notes or other executory obligations as payment for domestic equity securities. The proposal was designed to address abuses where the offshore purchaser used a promissory note to pay all or a portion of the purchase price of the securities. In some cases, the notes were secured only by the Regulation S securities; in other cases, the notes were unsecured. Some notes provided recourse to the buyer if the note was not repaid; others did not. Purchasers have resold the securities into the U.S. markets upon expiration of the 40-day distribution compliance period and used the proceeds of the resale to repay the note. Under such an arrangement, the issuer and purchaser clearly expect a U.S. resale to provide the funds necessary to repay the note; in economic substance, the issuer is raising funds from the U.S. public markets.

Rather than exclude such transactions from the coverage of the safe harbor, some commenters recommended that the Commission adopt the alternative approach suggested in the Proposing Release—that is, to toll the holding period under Rule 144 until certain conditions are satisfied, similar to the tolling approach taken under Rule 144 with respect to promissory notes and other similar obligations. The Commission has decided to adopt this approach because it is persuaded that this approach will address concerns about the use of promissory notes to raise funds in the U.S. markets, since the securities purchased pursuant to Regulation S will be fully paid for before the securities can be resold into the U.S. markets pursuant to Rule 144. In that case, the resale of the securities into the U.S. markets under Rule 144 would not be used to raise funds to repay the promissory note. Under the approach adopted, promissory notes or similar obligations or contracts can be accepted as payment to purchase domestic equity securities under Regulation S. The holding period will not begin to run for the purchaser, however, unless the following conditions are satisfied: The promissory note, obligation or contract provides for full recourse against the purchaser of the securities, and is secured by collateral (other than the securities purchased) having a fair market value at least equal to the purchase price of the securities purchased. In addition, after the holding period requirement has been satisfied, the promissory note, obligation or contract must be paid in full before the resale of the securities under Rule 144. This ensures that the funds obtained through the Rule 144 resales will not be used to pay off the promissory note.

E. Reporting of Regulation S Transactions

As a result of amendments adopted by the Commission in October 1996,[36] sales of equity securities by domestic issuers under Regulation S are required to be reported on Form 8–K within 15 days of occurrence. All other unregistered sales of equity securities by domestic issuers (*e.g.*, private placements) must be reported quarterly in the issuer's Form 10–Q and in its Form 10–K (for the last fiscal quarter). At the time the Commission adopted the Form 8–K 15-day reporting requirement, the Commission stated that if it extended the distribution compliance period for sales of equity securities under

[32] Form S–3 [17 CFR 239.13] is generally available for these types of resale registration statements, even for companies that do not meet the public float requirement for primary offerings under Form S–3, if the securities are listed on a U.S. securities exchange or quoted in the Nasdaq Stock Market.

[33] The Commission proposed to amend Rule 903 to make clear that registered or exempt sales to U.S. persons during the distribution compliance period would not impair reliance on Regulation S. Language instead has been added to Preliminary Note 5 to make clear that registered offers and sales to U.S. persons, or offers and sales made pursuant to an exemption such as Rule 144A, are permitted during the distribution compliance period without jeopardizing the issuer's reliance on Regulation S for the offshore offers and sales.

[34] For example, because of its limited scope there should be no basis for a concern that Rule 905 could restrict the ability of a foreign security that was privately placed in the United States to be sold back into its home market offshore in a Rule 904 or Rule 144A transaction.

[35] The Commission is adopting the proposed amendment to Rule 144(e)(3)(vii) that codifies the Commission staff's informal position that restricted securities resold offshore pursuant to Regulation S need not be included in the amount of securities that have been resold pursuant to Rule 144 for the purposes of the volume limitations of Rule 144(e).

[36] Exchange Act Release No. 37801 (Oct. 10, 1996) [61 FR 54506 (Oct. 18, 1996)].

Regulation S, it would consider revising the reporting requirement.

The commenters generally favored dropping the Form 8–K requirement, although some thought that the Form 8–K report was important to stop abuses, and provided timely notice to shareholders and the markets of a material development concerning the issuer. Since equity securities sold under Regulation S will now be deemed restricted securities and thus cannot enter the U.S. public markets any faster than securities issued in an exempt private placement, the benefits of expedited Form 8–K reporting is minimal. Accordingly, the Form 8–K filing requirement is being eliminated, and these sales will be reported on Forms 10–Q, 10–QSB, 10–K or 10–KSB, as applicable.[37]

The Commission has determined to delay the effectiveness of this amendment, however, to allow the Commission staff to monitor closely developments under the amended Regulation S safe harbor procedures during a transition period. Accordingly, the Form 8–K report will not be required for any Regulation S sales occurring after January 1, 1999.

Following the October 1996 adoption of the Form 8–K reporting requirement, the Commission staff received inquiries regarding the need to report on Form 8–K unregistered sales of equity securities by U.S. companies to their non-U.S. resident employees pursuant to employee benefit plans. To the extent that the sales qualify for Category 1 treatment under Rule 903 of Regulation S, issuers may report the sales on an aggregated basis on the Form 10–Q, rather than on a current basis on Form 8–K, prior to January 1, 1999.

F. Technical and Clarifying Revisions

As proposed, the Commission is adopting non-substantive technical and clarifying revisions to Regulation S to make the rule more concise and understandable. The principal changes include:

- Revising the captions of the three sections of the Rule 903 issuer safe harbor to refer to them as commonly known: "Category 1," "Category 2" and "Category 3";
- Revising the Rule 903 issuer safe harbor to state clearly for each category what procedures are to be followed and what securities are eligible for each category;
- Combining some definitions within Rule 902, the definition section of Regulation S, and moving certain definitions to the Rule 903 safe harbor to make the rule easier to read and understand;
- Updating the list of "designated offshore securities markets" in Rule 902;
- If the same terms are already defined elsewhere in the Commission's rules and regulations, deleting those definitions from Rule 902 and adding cross-references to the definitions contained elsewhere; and
- Generally editing the language in the rule to make it more understandable.

IV. Certain Findings

Section 23(a) of the Exchange Act[38] requires the Commission to consider any anti-competitive effects of any rules it adopts thereunder and the reasons for its determination that any burden on competition imposed by such rules is necessary or appropriate to further the purposes of the Exchange Act. Furthermore, Section 2[39] of the Securities Act and Section 3[40] of the Exchange Act, as amended by the National Securities Markets Improvement Act of 1996,[41] provide that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission also shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The Commission has considered the amendments discussed in this release in light of the comments received in response to the Proposing Release and the standards in Section 23(a) of the Exchange Act.[42] The Commission adopted Regulation S in 1990 to provide a safe harbor from the registration requirements of the Securities Act for offshore offers and sales of securities. Since the adoption of Regulation S, the Commission has become aware of abuses of this rule in connection with sales of domestic equity securities. The Commission is adopting the amendments to prevent further abuses of this rule.

In compliance with Section 2 of the Securities Act, which requires the Commission to consider whether the action will promote competition, it is important to note that the amendments will impose certain burdens on purchasers of equity securities issued by domestic companies, as well as on the issuers themselves, that may place domestic issuers at a competitive disadvantage in raising funds through Regulation S transactions as compared to foreign issuers. For example, purchasers of domestic equity securities sold pursuant to Regulation S may have to wait a longer period of time before they can publicly resell the securities into the United States. In addition, these purchasers will have to provide certification that they are not U.S. persons that may result in additional recordkeeping burdens on issuers and distributors who must maintain records of this compliance. Of course, any U.S. law applicable only to U.S. issuers will have some competitive effect on domestic issuers compared to foreign issuers. However, the Commission believes that such restrictions are necessary to deter abuses of the rule. Because abusive practices under Regulation S primarily have involved domestic companies, the Commission believes that it is not necessary at this time to apply additional restrictions on sales of equity securities by foreign issuers.

Although the amendments will impose certain burdens on both purchasers and issuers of equity securities issued by domestic companies, the Commission anticipates that the overall effect of the amendments will be to enhance efficient capital formation. By deterring abusive market practices, the amendments will protect investors and promote capital formation by enhancing investors' confidence in the integrity of Regulation S offerings.

The Commission is adopting amendments to relax the requirements to report unregistered sales of equity securities made pursuant to Regulation S. Such sales will now be reported on a delayed basis on Forms 10–Q, 10–QSB, 10–K and 10–KSB, rather than Form 8–K. However, investors will continue to have sufficient information regarding changes in outstanding securities of public companies. These amendments could decrease Form 8–K filing burdens for some reporting issuers, although the new requirements to report unregistered equity sales on a quarterly basis could result in an offsetting increase in reporting.

[37] The Commission is not, however, amending Item 701 of Regulation S–K [17 CFR 229.701] and Regulation S–B [17 CFR 228.701] to remove the reference to Form 8–K as proposed. To the extent an issuer chooses voluntarily to report an unregistered sale of securities on Form 8–K, in addition to Forms 10–Q, 10–QSB, 10–K or 10–KSB, the information required by Item 701 must be provided.

[38] 15 U.S.C. 78w(a).

[39] 15 U.S.C. 77b.

[40] 15 U.S.C. 78c.

[41] Pub. L. 104–290, Section 106, 110 Stat. 3416 (1996).

[42] The finding required by Section 23(a) of the Exchange Act only relates to amendments under the Exchange Act, such as amendments to Forms 8–K and 10–Q, and not to amendments under the Securities Act. In general, the Exchange Act amendments, by easing the Form 8–K reporting requirements, should not affect competition.

Nonetheless, the Commission believes the amendments will promote efficiency and capital formation, and will not unnecessarily burden competition.

V. Cost-Benefit Analysis

The Commission adopted Regulation S to enhance access to offshore securities markets for both foreign and domestic issuers. Regulation S provides a safe harbor from the registration requirements of the Securities Act for offshore offers and sales of securities. In spite of the overall success of this rule, Regulation S has been abused with respect to sales of equity securities by domestic issuers. Abuses have occurred in which these securities have inappropriately been distributed back into the United States after the Regulation S transaction in violation of U.S. laws and regulations. As a result of these abuses, fraudulent schemes involving millions of dollars have been perpetrated through the use of Regulation S.

The amendments to Regulation S will prevent further abusive practices under this rule, and will protect investors and promote capital formation by enhancing the integrity of the securities markets. At the same time, the amendments will permit continued reliance on Regulation S for legitimate offshore offerings.

The amendments will impose restrictions on purchasers of equity securities of U.S. issuers, as well as on the issuers themselves, that may make it more costly for such issuers to raise funds through Regulation S placements. For instance, some purchasers may now have to wait a longer period of time before they can publicly resell the securities into the United States. In addition, the amendments will require purchasers of domestic equity securities sold under Regulation S to provide certification that they are not U.S. persons. This may impose additional recordkeeping burdens on issuers and distributors that must maintain records of such compliance, which could make Regulation S sales of their equity securities more costly for these issuers. However, the Commission believes that these restrictions are needed to prevent abusive practices that have occurred under Regulation S. By deterring abusive market practices, the amendments will protect investors and promote capital formation by enhancing investors' confidence in the integrity of the securities markets.

Based on a review by Commission staff of Form 8–Ks filed by issuers to report equity sales made under Regulation S, the Commission estimates that approximately 500 Exchange Act reporting companies conduct approximately 550 sales pursuant to Regulation S each year and that over $5 billion in equity sales will be affected by the amendments. The total number of companies affected by the amendments is not known because non-reporting companies are not required to file Form 8–K and the Form 8–K reporting requirement only applies to sales of equity securities under Regulation S.

Although the new requirements, such as the purchaser certifications and purchaser and distributor agreements, may increase costs to issuers, the Commission believes that the increase will be negligible. According to an informal survey taken by Commission staff of attorneys in private practice whose clients could be expected to rely on these safe harbors, domestic issuers that sell equity securities under Regulation S already comply with the certification and legending requirements of Category 3 as a matter of common practice. No new costs will be imposed on domestic issuers as a result of formally extending the Category 3 requirements to sales of equity securities by domestic issuers. The new requirements with respect to hedging transactions under Regulation S are expected to have a negligible impact on costs because the amendments will only require issuers to add an additional sentence with respect to hedging on the securities, and in the purchaser agreements. Private practitioners surveyed by the Commission staff have indicated that the increased costs as a result of the amendments with respect to hedging are insignificant.

The amendments to Forms 8–K, 10–Q, 10–QSB, 10–K and 10–KSB relax the requirements to report unregistered sales of equity securities by delaying the reporting of the unregistered sale. The sufficiency of the information provided to investors about unregistered offerings made by public companies should not be affected. However, the Commission believes the reduction in burdens and costs will be negligible. As a result of these amendments, information on unregistered offerings (include private placements and Regulation S offerings) during a given time period will now be available to investors in one filing.

The Commission is amending Regulation S to clarify the legal obligations of purchasers of securities under that rule. Some of the abuses under Regulation S have involved activities by persons other than issuers, distributors and their affiliates—investors who purchased with a view to distributing the securities into the U.S. markets at the end of the distribution compliance period. The Commission is attempting to address this abuse by defining these securities as "restricted securities" under the Rule 144 resale safe harbor. However, the Commission does not believe that this classification will be unduly burdensome for purchasers in Regulation S offerings. The holding periods under Rule 144 were shortened [43] at the same time that the Regulation S amendments were proposed, and some purchasers of securities sold under Regulation S may be able to demand registration rights. If a purchaser decides to resell the securities under the Rule 144 safe harbor, the Commission does not believe that the requirement to file a Form 144 under those circumstances will be unduly burdensome, especially given the benefits of resale under that safe harbor. The Commission estimates that this amendment will result in approximately 750 additional filings on Form 144 per year, and an increase of approximately 1,500 hours per year in total annual reporting and recordkeeping burdens.[44] The Commission estimates that the total increase in costs as a result of this amendment will be approximately $45,000 per year.[45]

Restricted shares normally must be sold at a discount relative to the price of shares that are freely tradable in the public markets. The size of that price discount reflects, at least in part, the compensation buyers of shares receive for giving up the ability to readily sell the shares immediately in the public market. The size of the price discount is affected by a variety of factors including how long the restricted shares must be held before they can be sold in the public markets. Discounts are likely to increase with the length of the distribution compliance period. Therefore, the Commission expects discounts on Regulation S securities to increase as a result of the increase in the minimum distribution compliance period from 40 days to one year. However, it is difficult to determine how large that increase is likely to be, and no commenters provided any empirical data in this regard. The Commission's Office of Economic Analysis' study of recent sales of Regulation S shares indicates that they were sold at an average discount of approximately 22%. Studies that have measured price discounts of shares subject to the longer Rule 144 restricted periods found that the discounts

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[43] Securities Act Release No. 7390 (Feb. 20, 1997) [62 FR 9242 (Feb. 28, 1997)]

[44] See Proposing Release at Section IX.

[45] This estimate assumes that each Form 144 filing requires two hours of preparation at a cost of $60 per filing.

averaged about 20% in the 1980–1987 period according to one study, and 34% in the 1981–1988 period according to another study.[46] The average price discount of more recent sales of shares subject to Rule 144 may be smaller because the restricted periods were shortened by one year.[47]

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with the Regulatory Flexibility Act[48] with respect to the amendments.

A. The Need for and Objectives of the Amendments to Regulation S

The amendments to Regulation S are designed to stop abuses under Regulation S in which domestic issuers conduct offshore placements of their securities under Regulation S that result in indirect distributions of these securities into the U.S. markets without the protection of registration under the Securities Act.

B. Summary of Significant Issues Raised by the Public Comments

The Commission requested comment with respect to the Initial Regulatory Flexibility Analysis ("IRFA") prepared in connection with the Proposing Release, but did not receive any comments that specifically addressed the IRFA.

C. Description and Estimate of the Number of Small Entities That the Amendments Will Affect

These amendments will affect persons that are small entities, as defined by the Commission's rules, but only in the same manner as larger entities. The Commission is aware of approximately 1100 Exchange Act reporting companies that currently satisfy the definition of "small business" under Rule 0–10[49] of the Exchange Act. While the Commission sought comment on the number of non-reporting issuers that may be affected by the proposed changes, commenters did not provide any additional data on such number. However, there is no reliable way of determining how many non-reporting companies may be subject to Regulation S. Furthermore, there is no reliable way of determining how many small businesses may become subject to the Commission's registration and reporting obligations in the future.

Based on a review by Commission staff of a sample of the Form 8–Ks filed with the Commission to report Regulation S equity sales,[50] approximately 500 Exchange Act reporting companies conduct approximately 550 sales pursuant to Regulation S each year, and will be affected by the amendments. The Commission estimates that over 160 of these reporting companies would meet the Regulatory Flexibility Act definition of small business. However, the Commission has only been receiving data regarding offshore placements of equity securities under Regulation S since November 18, 1996, and does not have any long-term data that would enable the Commission to develop precise estimates of the number of small businesses that may actually rely on Regulation S, or that may otherwise be affected by the amendments. Commenters did not provide any additional quantitative data in that regard. In addition, the Form 8–K reporting requirement only applies to sales of equity securities by domestic reporting issuers, and does not apply at all to non-reporting companies. As a result, the total number of small entities that conduct sales under Regulation S will exceed the numbers referenced above.

D. Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Amendments

Regulation S is being amended to include new reporting, recordkeeping and other compliance requirements. In general, compliance with the new reporting and other compliance requirements will require the professional skills of attorneys and paralegals specializing in securities or corporate law. The Commission is lengthening the distribution compliance period during which persons relying on the Regulation S safe harbor may not sell to U.S. persons and must institute certain precautionary measures against such sales. The Commission also is classifying these securities as "restricted securities" within the meaning of Rule 144. As a result, purchasers of these securities may resell these securities under the Rule 144 safe harbor, and would be required to comply with the conditions of that safe harbor, including the Rule 144 holding periods. These amendments may reduce incentives to conduct equity placements under Regulation S due to a perceived reduction in the liquidity of these securities absent registration under the Securities Act or a valid exemption.

The amendments will impose on reporting domestic issuers certification, legending and other requirements that previously only applied to sales of equity securities by non-reporting issuers. These requirements are intended to assure that participants in the distribution, as well as the purchasers, are aware of the restricted nature of these securities. The amendments will expand the current purchaser and distributor agreement requirements to require that purchasers and distributors agree not to engage in hedging transactions with respect to these securities unless the transaction complies with the Securities Act,[51] and will ensure that participants in the Regulation S offerings are aware of and comply with these restrictions.

Because equity securities of domestic issuers placed under Regulation S will be treated as "restricted securities" under Rule 144, the holding period will be tolled for securities purchased with a promissory note unless certain conditions under Rule 144 are satisfied. These amendments are designed to address abuses involving hedging transactions and the use of promissory notes that result in indirect distributions of securities into the U.S. markets without the protection of registration. These additional purchaser requirements could increase recordkeeping and compliance burdens. However, they are expected to have an indirect impact on small U.S. businesses because, in most cases, the purchasers of securities sold under Regulation S would be non-U.S. persons.

The new amendments to Regulation S also will clarify that offshore resales under Rule 904 of equity securities of domestic issuers that are "restricted securities," as defined in Rule 144, will not affect the restricted status of those securities. These changes clarify the requirement that holders of restricted securities may not remove the restrictions by selling the securities offshore.

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[46] See Michael Hertzel and Richard L. Smith, *Market Discounts and Shareholder Gains for Placing Equity Privately*, J. OF FIN., June 1993; William L. Silver, *Discounts on Restricted Stock: The Impact of Illiquidity on Stock Prices*, FIN. ANALYSTS J., July–Aug. 1991.

[47] See Securities Act Release No. 7390, *supra* note 43.

[48] 5 U.S.C. 604.

[49] 17 CFR 240.0–10.

[50] Since November 18, 1996, sales of equity securities by domestic issuers under Regulation S are required to be reported on Form 8–K within 15 days of occurrence. This reporting requirement does not apply to any issuer who is not subject to the periodic reporting requirements under the Exchange Act, and generally does not apply to foreign issuers. See Exchange Act Release No. 37801, *supra* note 36.

[51] No new restrictions on hedging practices are being imposed as a result of the amendments. See *supra* note 28.

The amendments to Forms 8–K, 10–Q, 10–QSB, 10–K and 10–KSB will relax the requirements to report unregistered sales of equity securities by delaying the reporting of the unregistered sale. However, the sufficiency of the information provided to investors regarding changes in outstanding securities of public companies should not be affected. The amendments to Forms 8–K, 10–QSB and 10–KSB will affect small entities, as defined by the Commission's rules. The Commission expects that the amendments will reduce Form 8–K filing burdens for some reporting companies that qualify as small businesses. However, as a result of the requirement to report unregistered sales of equity securities on Forms 10–Q, 10–QSB, 10–K and 10–KSB, there will be an offsetting increase in reporting with no net effect on overall reporting burden.

E. Description of Steps Taken To Minimize Effect on Small Entities and Consideration of Alternative Approaches

All of the amendments are being imposed on all domestic issuers. Small businesses will be able to obtain the protections of Regulation S on the same basis as larger entities. The Commission considered and rejected several alternatives to the amendments applicable to small businesses because it believes that the alternative approaches would not be consistent with the Commission's statutory mandate of investor protection. One alternative would be to establish differing compliance or reporting requirements or timetables that take into account the resources available to small entities. This alternative would not be consistent with the intent of the amendments to forestall abusive practices under Regulation S, especially because some of the abuses have involved the securities of small issuers.

Another alternative would be to clarify, consolidate or simplify the amendments with respect to small businesses. It would be difficult to further clarify, consolidate or simplify the amendments and concurrently prevent abuses under Regulation S. The Commission believes the amendments impose the minimum requirements necessary to prevent further abuses under Regulation S.

In addition to these alternatives, the Commission has considered establishing separate requirements for small businesses that are based on performance rather than design standards. However, in the context of providing a safe harbor from the Commission's registration requirements for offshore offerings, the adoption of performance standards would be inconsistent with the Commission's statutory mandate to require full and fair disclosure of material information to investors, in compliance with the federal securities laws, and would not provide the kind of legal certainty that practitioners seek in a safe harbor rule.

Finally, the Commission has considered exempting small businesses from coverage of the amendments. However, the amendments are intended to address abusive practices that have occurred under Regulation S, including abuses that have involved the securities of small issuers, such that further distinctions between companies based on size would not be appropriate.

The Commission believes that by adopting the amendments, it is balancing its objective of preventing abuses under Regulation S with its statutory mandate of maximizing investor protection in a manner that is more appropriate than other alternatives.

Although the amendments to Regulation S may affect the ability of some small businesses to access offshore capital, the amendments should be sufficient to curb abusive practices under Regulation S without entirely foreclosing the offshore market for unregistered offshore offerings of equity securities by domestic issuers. Moreover, the recent adoption of shortened holding periods under Rule 144 should help reduce any negative effect on small businesses.

VII. Paperwork Reduction Act

As set forth in the Proposing Release, the amendments to Regulation S could affect changes to collections of information within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[52] As a result of these amendments, equity securities of domestic issuers that are issued offshore under Regulation S will be deemed "restricted securities" as defined in Rule 144 under the Securities Act. Purchasers of these securities, and any subsequent purchasers, could resell these securities into the U.S. markets according to the conditions of Rule 144. These conditions include the requirement that these purchasers file a notice of proposed sale on Form 144 that discloses information about the issuer of the securities, the seller, the securities to be sold and the proposed manner of sale. In addition, the amendments to Forms 8–K, 10–Q, 10–QSB, 10–K and 10–KSB will relax the reporting requirements pertaining to unregistered sales of equity securities by delaying the reporting of the unregistered sale. Regulation S issuers will no longer have the burden of filing Form 8–K to report unregistered sales of equity securities. However, as a result of the requirement to report unregistered sales of equity securities on Forms 10–Q, 10–QSB, 10–K and 10–KSB, there will be an offsetting increase in reporting burden, with no net effect on the reporting burden relating to these Forms.

Under the proposed amendments, reporting foreign issuers with their primary market in the United States would have been subject to additional collections of information. Several commenters objected to this aspect of the proposals. As a result, the amendments as adopted do not apply to these foreign issuers, and the overall paperwork burden is somewhat reduced.

Regulation S provides a safe harbor from registration that is available on a voluntary basis to issuers and other parties. However, if an issuer or other person chooses to rely on the Regulation S safe harbor, it is required to provide the applicable collections of information. To the extent the required collections of information are filed with the Commission, such as Form 144 and the Exchange Act periodic reports, they will not be kept confidential.

The collection of information requirements affected by the amendments were submitted to OMB for review and were approved by OMB, which assigned the following control numbers: Form 144, control number 3235–0101; Form 8–K, control number 3235–0060; Form 10–K, control number 3235–0063; Form 10–Q, control number 3235–0070; Form 10–QSB, control number 3235–0416; and Form 10–KSB, control number 3235–0420. The collection of information requirements are in accordance with Section 3507[53] of the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a valid OMB control number. The descriptions and estimated burdens for the collection of information requirements were set forth in the Proposing Release.

VIII. Statutory Bases

The amendments to Regulation S are adopted pursuant to Sections 5 and 19 of the Securities Act, as amended, and the amendments to Rule 144 are adopted pursuant to sections 2(a)(11), 4, 5 and 19 of the Securities Act, as

[52] 44 U.S.C. 3501 *et seq.*

[53] 44 U.S.C. 3507.

amended.[1] The amendments to Forms 8–K, 10–QSB, 10–Q, 10–KSB, and 10–K are adopted pursuant to sections 3(b), 4A, 12, 13, 15, and 23 of the Securities Exchange Act.[2]

List of Subjects in 17 CFR Parts 230 and 240

Reporting and recordkeeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.144 is amended by revising paragraphs (a)(3) and (e)(3)(vii) to read as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

* * * * *

(a) * * *

(3) The term *restricted securities* means:

(i) Securities acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering;

(ii) Securities acquired from the issuer that are subject to the resale limitations of § 230.502(d) under Regulation D or § 230.701(c);

(iii) Securities acquired in a transaction or chain of transactions meeting the requirements of § 230.144A;

(iv) Securities acquired from the issuer in a transaction subject to the conditions of Regulation CE (§ 230.1001); and

(v) Equity securities of domestic issuers acquired in a transaction or chain of transactions subject to the conditions of § 230.901 or § 230.903 under Regulation S (§ 230.901 through § 230.905, and Preliminary Notes).

* * * * *

(e) * * *

(3) * * *

(vii) The following sales of securities need not be included in determining the amount of securities sold in reliance upon this section: securities sold pursuant to an effective registration statement under the Act; securities sold pursuant to an exemption provided by Regulation A (§ 230.251 through § 230.263) under the Act; securities sold in a transaction exempt pursuant to Section 4 of the Act (15 U.S.C. 77d) and not involving any public offering; and securities sold offshore pursuant to Regulation S (§ 230.901 through § 230.905, and Preliminary Notes) under the Act.

* * * * *

3. Preliminary Note 5 to Regulation S (§ 230.901 through § 230.905) is amended by adding a sentence at the end of the note to read as follows:

Regulation S—Rules Governing Offers and Sales Made Outside the United States Without Registration Under the Securities Act of 1933

Preliminary Notes

* * * * *

5. * * * The availability of the Regulation S safe harbor to offers and sales that occur outside of the United States will not be affected by the subsequent offer and sale of these securities into the United States or to U.S. persons during the distribution compliance period, as long as the subsequent offer and sale are made pursuant to registration or an exemption therefrom under the Act.

* * * * *

4. Section 230.902 is revised to read as follows:

§ 230.902 Definitions.

As used in Regulation S, the following terms shall have the meanings indicated.

(a) *Debt securities.* "Debt securities" of an issuer is defined to mean any security other than an equity security as defined in § 230.405, as well as the following:

(1) Non-participatory preferred stock, which is defined as non-convertible capital stock, the holders of which are entitled to a preference in payment of dividends and in distribution of assets on liquidation, dissolution, or winding up of the issuer, but are not entitled to participate in residual earnings or assets of the issuer; and

(2) Asset-backed securities, which are securities of a type that either:

(i) Represent an ownership interest in a pool of discrete assets, or certificates of interest or participation in such assets (including any rights designed to assure servicing, or the receipt or timeliness of receipt by holders of such assets, or certificates of interest or participation in such assets, of amounts payable thereunder), provided that the assets are not generated or originated between the issuer of the security and its affiliates; or

(ii) Are secured by one or more assets or certificates of interest or participation in such assets, and the securities, by their terms, provide for payments of principal and interest (if any) in relation to payments or reasonable projections of payments on assets meeting the requirements of paragraph (a)(2)(i) of this section, or certificates of interest or participations in assets meeting such requirements.

(iii) For purposes of paragraph (a)(2) of this section, the term "assets" means securities, installment sales, accounts receivable, notes, leases or other contracts, or other assets that by their terms convert into cash over a finite period of time.

(b) *Designated offshore securities market.* "Designated offshore securities market" means:

(1) The Eurobond market, as regulated by the International Securities Market Association; the Alberta Stock Exchange; the Amsterdam Stock Exchange; the Australian Stock Exchange Limited; the Bermuda Stock Exchange; the Bourse de Bruxelles; the Copenhagen Stock Exchange; the European Association of Securities Dealers Automated Quotation; the Frankfurt Stock Exchange; the Helsinki Stock Exchange; The Stock Exchange of Hong Kong Limited; the Irish Stock Exchange; the Istanbul Stock Exchange; the Johannesburg Stock Exchange; the London Stock Exchange; the Bourse de Luxembourg; the Mexico Stock Exchange; the Borsa Valori di Milan; the Montreal Stock Exchange; the Oslo Stock Exchange; the Bourse de Paris; the Stock Exchange of Singapore Ltd.; the Stockholm Stock Exchange; the Tokyo Stock Exchange; the Toronto Stock Exchange; the Vancouver Stock Exchange; the Warsaw Stock Exchange and the Zurich Stock Exchange; and

(2) Any foreign securities exchange or non-exchange market designated by the Commission. Attributes to be considered in determining whether to designate an offshore securities market, among others, include:

(i) Organization under foreign law;

(ii) Association with a generally recognized community of brokers, dealers, banks, or other professional intermediaries with an established operating history;

(iii) Oversight by a governmental or self-regulatory body;

(iv) Oversight standards set by an existing body of law;

(v) Reporting of securities transactions on a regular basis to a governmental or self-regulatory body;

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[1] 15 U.S.C. 77b(a)(11), 77d, 77e and 77s.

[2] 15 U.S.C. 78c(b), 78d–1, 78*l*, 78m, 78*o* and 78v.

(vi) A system for exchange of price quotations through common communications media; and

(vii) An organized clearance and settlement system.

(c) *Directed selling efforts.* (1) "Directed selling efforts" means any activity undertaken for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market in the United States for any of the securities being offered in reliance on this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes). Such activity includes placing an advertisement in a publication "with a general circulation in the United States" that refers to the offering of securities being made in reliance upon this Regulation S.

(2) Publication "with a general circulation in the United States":

(i) Is defined as any publication that is printed primarily for distribution in the United States, or has had, during the preceding twelve months, an average circulation in the United States of 15,000 or more copies per issue; and

(ii) Will encompass only the U.S. edition of any publication printing a separate U.S. edition if the publication, without considering its U.S. edition, would not constitute a publication with a general circulation in the United States.

(3) The following are not "directed selling efforts":

(i) Placing an advertisement required to be published under U.S. or foreign law, or under rules or regulations of a U.S. or foreign regulatory or self-regulatory authority, provided the advertisement contains no more information than legally required and includes a statement to the effect that the securities have not been registered under the Act and may not be offered or sold in the United States (or to a U.S. person, if the advertisement relates to an offering under Category 2 or 3 (paragraph (b)(2) or (b)(3)) in § 230.903) absent registration or an applicable exemption from the registration requirements;

(ii) Contact with persons excluded from the definition of "U.S. person" pursuant to paragraph (k)(2)(vi) of this section or persons holding accounts excluded from the definition of "U.S. person" pursuant to paragraph (k)(2)(i) of this section, solely in their capacities as holders of such accounts;

(iii) A tombstone advertisement in any publication with a general circulation in the United States, provided:

(A) The publication has less than 20% of its circulation, calculated by aggregating the circulation of its U.S. and comparable non-U.S. editions, in the United States;

(B) Such advertisement contains a legend to the effect that the securities have not been registered under the Act and may not be offered or sold in the United States (or to a U.S. person, if the advertisement relates to an offering under Category 2 or 3 (paragraph (b)(2) or (b)(3)) in § 230.903) absent registration or an applicable exemption from the registration requirements; and

(C) Such advertisement contains no more information than:

(*1*) The issuer's name;

(*2*) The amount and title of the securities being sold;

(*3*) A brief indication of the issuer's general type of business;

(*4*) The price of the securities;

(*5*) The yield of the securities, if debt securities with a fixed (non-contingent) interest provision;

(*6*) The name and address of the person placing the advertisement, and whether such person is participating in the distribution;

(*7*) The names of the managing underwriters;

(*8*) The dates, if any, upon which the sales commenced and concluded;

(*9*) Whether the securities are offered or were offered by rights issued to security holders and, if so, the class of securities that are entitled or were entitled to subscribe, the subscription ratio, the record date, the dates (if any) upon which the rights were issued and expired, and the subscription price; and

(*10*) Any legend required by law or any foreign or U.S. regulatory or self-regulatory authority;

(iv) Bona fide visits to real estate, plants or other facilities located in the United States and tours thereof conducted for a prospective investor by an issuer, a distributor, any of their respective affiliates or a person acting on behalf of any of the foregoing;

(v) Distribution in the United States of a foreign broker-dealer's quotations by a third-party system that distributes such quotations primarily in foreign countries if:

(A) Securities transactions cannot be executed between foreign broker-dealers and persons in the United States through the system; and

(B) The issuer, distributors, their respective affiliates, persons acting on behalf of any of the foregoing, foreign broker-dealers and other participants in the system do not initiate contacts with U.S. persons or persons within the United States, beyond those contacts exempted under § 240.15a–6 of this chapter; and

(vi) Publication by an issuer of a notice in accordance with § 230.135 or § 230.135c.

(vii) Providing any journalist with access to press conferences held outside of the United States, to meetings with the issuer or selling security holder representatives conducted outside the United States, or to written press-related materials released outside the United States, at or in which a present or proposed offering of securities is discussed, if the requirements of § 230.135e are satisfied.

(d) *Distributor.* "Distributor" means any underwriter, dealer, or other person who participates, pursuant to a contractual arrangement, in the distribution of the securities offered or sold in reliance on this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes).

(e) *Domestic issuer/Foreign issuer.* "Domestic issuer" means any issuer other than a "foreign government" or "foreign private issuer" (both as defined in § 230.405). "Foreign issuer" means any issuer other than a "domestic issuer."

(f) *Distribution compliance period.* "Distribution compliance period" means a period that begins when the securities were first offered to persons other than distributors in reliance upon this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes) or the date of closing of the offering, whichever is later, and continues until the end of the period of time specified in the relevant provision of § 230.903, except that:

(1) All offers and sales by a distributor of an unsold allotment or subscription shall be deemed to be made during the distribution compliance period;

(2) In a continuous offering, the distribution compliance period shall commence upon completion of the distribution, as determined and certified by the managing underwriter or person performing similar functions;

(3) In a continuous offering of non-convertible debt securities offered and sold in identifiable tranches, the distribution compliance period for securities in a tranche shall commence upon completion of the distribution of such tranche, as determined and certified by the managing underwriter or person performing similar functions; and

(4) That in a continuous offering of securities to be acquired upon the exercise of warrants, the distribution compliance period shall commence upon completion of the distribution of the warrants, as determined and certified by the managing underwriter or person performing similar functions, if requirements of § 230.903(b)(5) are satisfied.

(g) *Offering restrictions.* "Offering restrictions" means:

(1) Each distributor agrees in writing:

(i) That all offers and sales of the securities prior to the expiration of the distribution compliance period specified in Category 2 or 3 (paragraph (b)(2) or (b)(3)) in § 230.903, as applicable, shall be made only in accordance with the provisions of § 230.903 or § 230.904; pursuant to registration of the securities under the Act; or pursuant to an available exemption from the registration requirements of the Act; and

(ii) For offers and sales of equity securities of domestic issuers, not to engage in hedging transactions with regard to such securities prior to the expiration of the distribution compliance period specified in Category 2 or 3 (paragraph (b)(2) or (b)(3)) in § 230.903, as applicable, unless in compliance with the Act; and

(2) All offering materials and documents (other than press releases) used in connection with offers and sales of the securities prior to the expiration of the distribution compliance period specified in Category 2 or 3 (paragraph (b)(2) or (b)(3)) in § 230.903, as applicable, shall include statements to the effect that the securities have not been registered under the Act and may not be offered or sold in the United States or to U.S. persons (other than distributors) unless the securities are registered under the Act, or an exemption from the registration requirements of the Act is available. For offers and sales of equity securities of domestic issuers, such offering materials and documents also must state that hedging transactions involving those securities may not be conducted unless in compliance with the Act. Such statements shall appear:

(i) On the cover or inside cover page of any prospectus or offering circular used in connection with the offer or sale of the securities;

(ii) In the underwriting section of any prospectus or offering circular used in connection with the offer or sale of the securities; and

(iii) In any advertisement made or issued by the issuer, any distributor, any of their respective affiliates, or any person acting on behalf of any of the foregoing. Such statements may appear in summary form on prospectus cover pages and in advertisements.

(h) *Offshore transaction.* (1) An offer or sale of securities is made in an "offshore transaction" if:

(i) The offer is not made to a person in the United States; and

(ii) Either:

(A) At the time the buy order is originated, the buyer is outside the United States, or the seller and any person acting on its behalf reasonably believe that the buyer is outside the United States; or

(B) For purposes of:

(*1*) Section 230.903, the transaction is executed in, on or through a physical trading floor of an established foreign securities exchange that is located outside the United States; or

(*2*) Section 230.904, the transaction is executed in, on or through the facilities of a designated offshore securities market described in paragraph (b) of this section, and neither the seller nor any person acting on its behalf knows that the transaction has been pre-arranged with a buyer in the United States.

(2) Notwithstanding paragraph (h)(1) of this section, offers and sales of securities specifically targeted at identifiable groups of U.S. citizens abroad, such as members of the U.S. armed forces serving overseas, shall not be deemed to be made in "offshore transactions."

(3) Notwithstanding paragraph (h)(1) of this section, offers and sales of securities to persons excluded from the definition of "U.S. person" pursuant to paragraph (k)(2)(vi) of this section or persons holding accounts excluded from the definition of "U.S. person" pursuant to paragraph (k)(2)(i) of this section, solely in their capacities as holders of such accounts, shall be deemed to be made in "offshore transactions."

(i) *Reporting issuer.* "Reporting issuer" means an issuer other than an investment company registered or required to register under the 1940 Act that:

(1) Has a class of securities registered pursuant to Section 12(b) or 12(g) of the Exchange Act (15 U.S.C. 78*l*(b) or 78*l*(g)) or is required to file reports pursuant to Section 15(d) of the Exchange Act (15 U.S.C. 78*o*(d)); and

(2) Has filed all the material required to be filed pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78*o*(d)) for a period of at least twelve months immediately preceding the offer or sale of securities made in reliance upon this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes) (or for such shorter period that the issuer was required to file such material).

(j) *Substantial U.S. market interest.* (1) "Substantial U.S. market interest" with respect to a class of an issuer's equity securities means:

(i) The securities exchanges and inter-dealer quotation systems in the United States in the aggregate constituted the single largest market for such class of securities in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation; or

(ii) 20 percent or more of all trading in such class of securities took place in, on or through the facilities of securities exchanges and inter-dealer quotation systems in the United States and less than 55 percent of such trading took place in, on or through the facilities of securities markets of a single foreign country in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation.

(2) "Substantial U.S. market interest" with respect to an issuer's debt securities means:

(i) Its debt securities, in the aggregate, are held of record (as that term is defined in § 240.12g5–1 of this chapter and used for purposes of paragraph (j)(2) of this section) by 300 or more U.S. persons;

(ii) $1 billion or more of: The principal amount outstanding of its debt securities, the greater of liquidation preference or par value of its securities described in § 230.902(a)(1), and the principal amount or principal balance of its securities described in § 230.902(a)(2), in the aggregate, is held of record by U.S. persons; and

(iii) 20 percent or more of: The principal amount outstanding of its debt securities, the greater of liquidation preference or par value of its securities described in § 230.902(a)(1), and the principal amount or principal balance of its securities described in § 230.902(a)(2), in the aggregate, is held of record by U.S. persons.

(3) Notwithstanding paragraph (j)(2) of this section, substantial U.S. market interest with respect to an issuer's debt securities is calculated without reference to securities that qualify for the exemption provided by Section 3(a)(3) of the Act (15 U.S.C. 77c(a)(3)).

(k) *U.S. person.* (1) "U.S. person" means:

(i) Any natural person resident in the United States;

(ii) Any partnership or corporation organized or incorporated under the laws of the United States;

(iii) Any estate of which any executor or administrator is a U.S. person;

(iv) Any trust of which any trustee is a U.S. person;

(v) Any agency or branch of a foreign entity located in the United States;

(vi) Any non-discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary for the benefit or account of a U.S. person;

(vii) Any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary

organized, incorporated, or (if an individual) resident in the United States; and

(viii) Any partnership or corporation if:

(A) Organized or incorporated under the laws of any foreign jurisdiction; and

(B) Formed by a U.S. person principally for the purpose of investing in securities not registered under the Act, unless it is organized or incorporated, and owned, by accredited investors (as defined in § 230.501(a)) who are not natural persons, estates or trusts.

(2) The following are not "U.S. persons":

(i) Any discretionary account or similar account (other than an estate or trust) held for the benefit or account of a non-U.S. person by a dealer or other professional fiduciary organized, incorporated, or (if an individual) resident in the United States;

(ii) Any estate of which any professional fiduciary acting as executor or administrator is a U.S. person if:

(A) An executor or administrator of the estate who is not a U.S. person has sole or shared investment discretion with respect to the assets of the estate; and

(B) The estate is governed by foreign law;

(iii) Any trust of which any professional fiduciary acting as trustee is a U.S. person, if a trustee who is not a U.S. person has sole or shared investment discretion with respect to the trust assets, and no beneficiary of the trust (and no settlor if the trust is revocable) is a U.S. person;

(iv) An employee benefit plan established and administered in accordance with the law of a country other than the United States and customary practices and documentation of such country;

(v) Any agency or branch of a U.S. person located outside the United States if:

(A) The agency or branch operates for valid business reasons; and

(B) The agency or branch is engaged in the business of insurance or banking and is subject to substantive insurance or banking regulation, respectively, in the jurisdiction where located; and

(vi) The International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, and their agencies, affiliates and pension plans, and any other similar international organizations, their agencies, affiliates and pension plans.

(l) *United States.* "United States" means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

5. Section 230.903 is revised to read as follows:

§ 230.903 Offers or sales of securities by the issuer, a distributor, any of their respective affiliates, or any person acting on behalf of any of the foregoing; conditions relating to specific securities.

(a) An offer or sale of securities by the issuer, a distributor, any of their respective affiliates, or any person acting on behalf of any of the foregoing, shall be deemed to occur outside the United States within the meaning of § 230.901 if:

(1) The offer or sale is made in an offshore transaction;

(2) No directed selling efforts are made in the United States by the issuer, a distributor, any of their respective affiliates, or any person acting on behalf of any of the foregoing; and

(3) The conditions of paragraph (b) of this section, as applicable, are satisfied.

(b) *Additional Conditions.* (1) *Category 1.* No conditions other than those set forth in § 230.903(a) apply to securities in this category. Securities are eligible for this category if:

(i) The securities are issued by a foreign issuer that reasonably believes at the commencement of the offering that:

(A) There is no substantial U.S. market interest in the class of securities to be offered or sold (if equity securities are offered or sold);

(B) There is no substantial U.S. market interest in its debt securities (if debt securities are offered or sold);

(C) There is no substantial U.S. market interest in the securities to be purchased upon exercise (if warrants are offered or sold); and

(D) There is no substantial U.S. market interest in either the convertible securities or the underlying securities (if convertible securities are offered or sold);

(ii) The securities are offered and sold in an overseas directed offering, which means:

(A) An offering of securities of a foreign issuer that is directed into a single country other than the United States to the residents thereof and that is made in accordance with the local laws and customary practices and documentation of such country; or

(B) An offering of non-convertible debt securities of a domestic issuer that is directed into a single country other than the United States to the residents thereof and that is made in accordance with the local laws and customary practices and documentation of such country, provided that the principal and interest of the securities (or par value, as applicable) are denominated in a currency other than U.S. dollars and such securities are neither convertible into U.S. dollar-denominated securities nor linked to U.S. dollars (other than through related currency or interest rate swap transactions that are commercial in nature) in a manner that in effect converts the securities to U.S. dollar-denominated securities.

(iii) The securities are backed by the full faith and credit of a foreign government; or

(iv) The securities are offered and sold to employees of the issuer or its affiliates pursuant to an employee benefit plan established and administered in accordance with the law of a country other than the United States, and customary practices and documentation of such country, provided that:

(A) The securities are issued in compensatory circumstances for bona fide services rendered to the issuer or its affiliates in connection with their businesses and such services are not rendered in connection with the offer or sale of securities in a capital-raising transaction;

(B) Any interests in the plan are not transferable other than by will or the laws of descent or distribution;

(C) The issuer takes reasonable steps to preclude the offer and sale of interests in the plan or securities under the plan to U.S. residents other than employees on temporary assignment in the United States; and

(D) Documentation used in connection with any offer pursuant to the plan contains a statement that the securities have not been registered under the Act and may not be offered or sold in the United States unless registered or an exemption from registration is available.

(2) *Category 2.* The following conditions apply to securities that are not eligible for Category 1 (paragraph (b)(1)) of this section and that are equity securities of a reporting foreign issuer, or debt securities of a reporting issuer or of a non-reporting foreign issuer.

(i) Offering restrictions are implemented;

(ii) The offer or sale, if made prior to the expiration of a 40-day distribution compliance period, is not made to a U.S. person or for the account or benefit of a U.S. person (other than a distributor); and

(iii) Each distributor selling securities to a distributor, a dealer, as defined in section 2(a)(12) of the Act (15 U.S.C. 77b(a)(12)), or a person receiving a

selling concession, fee or other remuneration in respect of the securities sold, prior to the expiration of a 40-day distribution compliance period, sends a confirmation or other notice to the purchaser stating that the purchaser is subject to the same restrictions on offers and sales that apply to a distributor.

(3) *Category 3.* The following conditions apply to securities that are not eligible for Category 1 or 2 (paragraph (b)(1) or (b)(2)) of this section:

(i) Offering restrictions are implemented;

(ii) In the case of debt securities:

(A) The offer or sale, if made prior to the expiration of a 40-day distribution compliance period, is not made to a U.S. person or for the account or benefit of a U.S. person (other than a distributor); and

(B) The securities are represented upon issuance by a temporary global security which is not exchangeable for definitive securities until the expiration of the 40-day distribution compliance period and, for persons other than distributors, until certification of beneficial ownership of the securities by a non-U.S. person or a U.S. person who purchased securities in a transaction that did not require registration under the Act;

(iii) In the case of equity securities:

(A) The offer or sale, if made prior to the expiration of a one-year distribution compliance period, is not made to a U.S. person or for the account or benefit of a U.S. person (other than a distributor); and

(B) The offer or sale, if made prior to the expiration of a one-year distribution compliance period, is made pursuant to the following conditions:

(*1*) The purchaser of the securities (other than a distributor) certifies that it is not a U.S. person and is not acquiring the securities for the account or benefit of any U.S. person or is a U.S. person who purchased securities in a transaction that did not require registration under the Act;

(*2*) The purchaser of the securities agrees to resell such securities only in accordance with the provisions of this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes), pursuant to registration under the Act, or pursuant to an available exemption from registration; and agrees not to engage in hedging transactions with regard to such securities unless in compliance with the Act;

(*3*) The securities of a domestic issuer contain a legend to the effect that transfer is prohibited except in accordance with the provisions of this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes), pursuant to registration under the Act, or pursuant to an available exemption from registration; and that hedging transactions involving those securities may not be conducted unless in compliance with the Act;

(*4*) The issuer is required, either by contract or a provision in its bylaws, articles, charter or comparable document, to refuse to register any transfer of the securities not made in accordance with the provisions of this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes), pursuant to registration under the Act, or pursuant to an available exemption from registration; *provided, however,* that if the securities are in bearer form or foreign law prevents the issuer of the securities from refusing to register securities transfers, other reasonable procedures (such as a legend described in paragraph (b)(3)(iii)(B)(*3*) of this section) are implemented to prevent any transfer of the securities not made in accordance with the provisions of this Regulation S; and

(iv) Each distributor selling securities to a distributor, a dealer (as defined in section 2(a)(12) of the Act (15 U.S.C. 77b(a)(12)), or a person receiving a selling concession, fee or other remuneration, prior to the expiration of a 40-day distribution compliance period in the case of debt securities, or a one-year distribution compliance period in the case of equity securities, sends a confirmation or other notice to the purchaser stating that the purchaser is subject to the same restrictions on offers and sales that apply to a distributor.

(4) *Guaranteed securities.* Notwithstanding paragraphs (b)(1) through (b)(3) of this section, in offerings of debt securities fully and unconditionally guaranteed as to principal and interest by the parent of the issuer of the debt securities, only the requirements of paragraph (b) of this section that are applicable to the offer and sale of the guarantee must be satisfied with respect to the offer and sale of the guaranteed debt securities.

(5) *Warrants.* An offer or sale of warrants under Category 2 or 3 (paragraph (b)(2) or (b)(3)) of this section also must comply with the following requirements:

(i) Each warrant must bear a legend stating that the warrant and the securities to be issued upon its exercise have not been registered under the Act and that the warrant may not be exercised by or on behalf of any U.S. person unless registered under the Act or an exemption from such registration is available;

(ii) Each person exercising a warrant is required to give:

(A) Written certification that it is not a U.S. person and the warrant is not being exercised on behalf of a U.S. person; or

(B) A written opinion of counsel to the effect that the warrant and the securities delivered upon exercise thereof have been registered under the Act or are exempt from registration thereunder; and

(iii) Procedures are implemented to ensure that the warrant may not be exercised within the United States, and that the securities may not be delivered within the United States upon exercise, other than in offerings deemed to meet the definition of "offshore transaction" pursuant to § 230.902(h), unless registered under the Act or an exemption from such registration is available.

6. Section 230.904 is revised to read as follows:

§ 230.904. Offshore resales.

(a) An offer or sale of securities by any person other than the issuer, a distributor, any of their respective affiliates (except any officer or director who is an affiliate solely by virtue of holding such position), or any person acting on behalf of any of the foregoing, shall be deemed to occur outside the United States within the meaning of § 230.901 if:

(1) The offer or sale are made in an offshore transaction;

(2) No directed selling efforts are made in the United States by the seller, an affiliate, or any person acting on their behalf; and

(3) The conditions of paragraph (b) of this section, if applicable, are satisfied.

(b) *Additional conditions. (1) Resales by dealers and persons receiving selling concessions.* In the case of an offer or sale of securities prior to the expiration of the distribution compliance period specified in Category 2 or 3 (paragraph (b)(2) or (b)(3)) of § 230.903, as applicable, by a dealer, as defined in Section 2(a)(12) of the Act (15 U.S.C. 77b(a)(12)), or a person receiving a selling concession, fee or other remuneration in respect of the securities offered or sold:

(i) Neither the seller nor any person acting on its behalf knows that the offeree or buyer of the securities is a U.S. person; and

(ii) If the seller or any person acting on the seller's behalf knows that the purchaser is a dealer, as defined in Section 2(a)(12) of the Act (15 U.S.C. 77b(a)(12)), or is a person receiving a selling concession, fee or other remuneration in respect of the securities

sold, the seller or a person acting on the seller's behalf sends to the purchaser a confirmation or other notice stating that the securities may be offered and sold during the distribution compliance period only in accordance with the provisions of this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes); pursuant to registration of the securities under the Act; or pursuant to an available exemption from the registration requirements of the Act.

(2) *Resales by certain affiliates.* In the case of an offer or sale of securities by an officer or director of the issuer or a distributor, who is an affiliate of the issuer or distributor solely by virtue of holding such position, no selling concession, fee or other remuneration is paid in connection with such offer or sale other than the usual and customary broker's commission that would be received by a person executing such transaction as agent.

7. By adding § 230.905 to read as follows:

§ 230.905 Resale limitations.

Equity securities of domestic issuers acquired from the issuer, a distributor, or any of their respective affiliates in a transaction subject to the conditions of § 230.901 or § 230.903 are deemed to be "restricted securities" as defined in § 230.144. Resales of any of such restricted securities by the offshore purchaser must be made in accordance with this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes), the registration requirements of the Act or an exemption therefrom. Any "restricted securities," as defined in § 230.144, that are equity securities of a domestic issuer will continue to be deemed to be restricted securities, notwithstanding that they were acquired in a resale transaction made pursuant to § 230.901 or § 230.904.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

8. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

9. By amending Form 8–K (referenced in § 249.308) by removing the last sentence of General Instruction B.1. and Item 9.

(**Note:** The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.)

10. By amending Form 10–Q (referenced in § 249.308a) by revising paragraph (c) of Item 2 of Part II prior to the Instruction to read as follows:

(**Note:** The text of Form 10–Q does not, and these amendments will not, appear in the Code of Federal Regulations.)

Form 10–Q

* * * * *

Part II

* * * * *

Item 2. Changes in Securities and Use of Proceeds.

* * * * *

(c) Furnish the information required by Item 701 of Regulation S–K (§ 229.701 of this chapter) as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act.

* * * * *

11. By amending Form 10–QSB (referenced in § 249.308b) by revising paragraph (c) to Item 2 of Part II prior to the Instruction to read as follows:

(**Note:** The text of Form 10–QSB does not, and these amendments will not, appear in the Code of Federal Regulations.)

Form 10–QSB

* * * * *

Part II

* * * * *

Item 2. Changes in Securities and Use of Proceeds.

* * * * *

(c) Furnish the information required by Item 701 of Regulation S–B (§ 228.701 of this chapter) as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act.

* * * * *

12. By amending Form 10–K (referenced in § 249.310) by revising paragraph (a) of Item 5 of Part II to read as follows:

(**Note:** The text of Form 10–K does not, and these amendments will not, appear in the Code of Federal Regulations.)

Form 10–K

* * * * *

Part II

* * * * *

Item 5. Market for Registrant's Common Equity and Related Stockholder Matters.

(a) Furnish the information required by Item 201 of Regulation S–K (§ 229.201 of this chapter) and Item 701 of Regulation S–K (§ 229.701 of this chapter) as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act. If the Item 701 information previously has been included in a Quarterly Report on Form 10–Q or 10–QSB (§ 249.308a or 249.308b of this chapter), however, it need not be furnished.

* * * * *

13. By amending Form 10–KSB (referenced in § 249.310b) by revising paragraph (a) of Item 5 of Part II to read as follows:

(**Note:** The text of Form 10–KSB does not, and these amendments will not, appear in the Code of Federal Regulations.)

Form 10–KSB

* * * * *

Part II

Item 5. Market for Common Equity and Related Stockholder Matters.

(a) Furnish the information required by Item 201 of Regulation S–B and Item 701 of Regulation S–B as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act. If the Item 701 information previously has been included in a Quarterly Report on Form 10–Q or 10–QSB, however, it need not be furnished.

Dated: February 17, 1998.

* * * * *

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4458 Filed 2–24–98; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230 and 239

[Release No. 33–7506, 34–39669; File No S7–2–98]

RIN 3235–AG94

Registration of Securities on Form S–8

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is publishing for comment proposed amendments to Form S–8 and related rules under the Securities Act and Regulations S–K and S–B to restrict the use of the form for the sale of securities to consultants and advisors, and to allow the use of the form for the exercise of stock options by family members of employee optionees. The first set of proposals is intended to eliminate the abuse of Form S–8 purportedly to register offerings to consultants and advisors who then act as statutory underwriters to sell the securities to the general public, and to register securities issued as compensation to consultants who promote the registrant's securities. The second set of proposals is intended to facilitate legitimate employee estate planning transactions and other intra-family transfers.

DATES: Comments should be submitted on or before April 27, 1998.

ADDRESSES: All comments concerning the proposed amendments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–2–98; this file number should be included on the subject line if e-mail is used. Comment letters will be available for inspection and copying in the public reference room at the same address. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Anne M. Krauskopf, Special Counsel, Office of Chief Counsel, Division of Corporation Finance, at (202) 942–2900.

SUPPLEMENTARY INFORMATION: The Commission today proposes amendments to Rules 401 [1] and 405 [2] under the Securities Act of 1933 ("Securities Act"),[3] Item 402 [4] of Regulations S–B and S–K, and Securities Act Forms S–3 [5] and S–8.[6]

I. Executive Summary and Background

The Commission today proposes rule amendments to address two separate problems associated with the use of Form S–8 to register employee benefit plan securities. First, the Commission proposes to restrict the availability of streamlined registration on Form S–8 to deter abuse of the form to make sales to the general public through so-called "consultants and advisors," and to eliminate registration on the form of securities issued to stock promoters. These amendments are proposed as part of the Commission's comprehensive agenda to deter registration and trading abuses, particularly by small capitalization issuers.[7] Second, the Commission proposes to expand Form S–8 to facilitate option exercises by employees' family members, so that the rules governing use of the form do not impede legitimate intra-family transfers by employees, such as transfers for estate planning purposes or transfers pursuant to domestic relations orders.

Form S–8 is used to register securities for offer and sale to employees [8] of the issuer in a compensatory or incentive context. In 1990, the Commission adopted substantial revisions to Form S–8, including an abbreviated disclosure format that eliminated the need to file a separate prospectus that duplicated information otherwise provided to plan participants.[9] The delivery of regularly prepared materials to advise employees about benefit plans was permitted to satisfy prospectus delivery requirements. This revision reflected a distinction the Commission traditionally has recognized between offerings made to employees primarily for compensatory and incentive purposes and offerings made by registrants for capital-raising purposes. Specifically, employees' familiarity with the business of the issuer through the employment relationship and the compensatory purpose of the offering justify the use of abbreviated disclosure that would not be adequate in the context of a capital-raising offer of securities to the non-employee public.[10]

The 1990 revisions also made Form S–8 available for offers and sales of securities to consultants and advisors who render *bona fide* services to the registrant, provided that such services are not rendered in connection with the offer or sale of securities in a capital-raising transaction. Where securities are issued for compensatory rather than capital-raising purposes, there appeared to be no meaningful basis for distinguishing between transactions with regular employees and those with consultants and advisors retained by the registrant. As a result of the 1990 revisions, for example, a physician on the faculty of a medical school who advises a company regarding a pharmaceutical product in development could be compensated for this service with company securities registered on Form S–8.

A. "Consultant" Abuses

Since the adoption of the 1990 revisions, some issuers have used Form S–8 improperly as a means to distribute securities to the public without the protections to investors of registration under Section 5 of the Securities Act. In a typical pattern, an issuer registers on Form S–8 securities underlying options issued nominally to so-called "consultants" where, by prearrangement, the issuer directs the consultants' exercise of the options and resale of the underlying securities by the consultants in the public markets. In some cases, these consultants perform little or no other service for the issuer. The consultants then either remit to the issuer the proceeds from the sale of the underlying shares, or apply the proceeds to pay debts of the issuer that are not related to any service provided by the consultants.[11]

The registration of the underlying shares on Form S–8 does *not* register these public sales under Section 5 of the

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[1] 17 CFR 230.401.

[2] 17 CFR 230.405.

[3] 15 U.S.C. 77a *et seq.*

[4] 17 CFR 228.402 and 17 CFR 229.402.

[5] 17 CFR 239.13.

[6] 17 CFR 239.16b.

[7] See Securities Act Release No. 7505, adopting amendments to Regulation S [17 CFR 230.901 *et seq.*], and Release No. 39670 under the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78a *et seq.*], proposing amendments to Exchange Act Rule 15c2–11 [17 CFR 240.15c2–11].

[8] For this purpose, "employees" includes also the employees of the issuer's subsidiaries or parents. See General Instruction A.1(a) to Form S–8.

[9] Securities Act Release No. 6867 (June 6, 1990) [55 FR 23909].

[10] Form S–8 also provides for incorporation by reference of the registrant's reports filed under the Exchange Act regardless of the length of the registrant's reporting history or the size of its public float. Incorporation by reference from Exchange Act reports into a Securities Act registration statement is not otherwise available unless the eligibility requirements for Form S–2 [17 CFR 239.12] or Form S–3 are satisfied.

[11] See, *e.g.*, In the Matter of Spectrum Information Technologies, Inc. ("Spectrum"), Securities Act Release No. 7428, Exchange Act Release No. 38774, Accounting and Auditing Enforcement Release No. 930 (June 25, 1997). For additional discussion, see Section II.A below.

Securities Act. The transaction that actually takes place (a capital-raising transaction with the public) is not the transaction that is registered (a compensatory transaction with consultants). Form S–8 is available solely to register compensatory sales of securities to "employees," including certain consultants and advisors.[12] While the issuer purports to sell the securities to employees, the actual public sale of securities is not made to employees. Instead, the "employees" act as conduits by selling the securities to the public and remitting the proceeds (or their economic benefit) to the issuer. This public sale of securities by the issuer has not been registered, as is required by the Securities Act. Public investors accordingly are deprived of the accountability and disclosure that the liability provisions of the Securities Act and the opportunity for Commission staff review of the registration statement provide in registered public distributions.

The form also has been misused to register securities issued to compensate "consultants" whose service to the issuer is the promotion of the issuer's securities. This practice facilitates securities fraud by providing inexpensive compensation to persons who hype the issuer's stock, and expands the market for the issuer's securities through resales by these persons.

The Commission seeks to prevent future abuse of Form S–8 while, to the extent possible, preserving the original goal of making Form S–8 available for the registration of compensatory transactions between the registrant and consultants and advisors who render *bona fide* services outside the capital-raising context, as well as traditional employees. To this end, the Commission today issues proposals that would:

- Clarify that Form S–8 is not available for sales to consultants and advisors who directly or indirectly promote or maintain a market for the company's securities;
- Exclude certain registration statements and post-effective amendments that automatically become effective upon filing from the general rule that a registration statement or amendment is deemed filed on the proper form unless the Commission objects to the form before the effective date; and
- Require disclosure in Part II of Form S–8 of the names of any consultants or advisors to whom the registrant will issue securities under the registration statement, the number of securities to be issued to each of these persons, and the specific services that each will provide to the registrant.

In addition, the Commission solicits comment on a number of other approaches to the problem, such as limiting the percentage of the total number of the registrant's securities outstanding that may be registered on Form S–8 for issuance to consultants and advisors. The Commission also solicits comment as to whether specific certification as to the *bona fide* nature of consultants' or advisors' services should be required; whether each consulting or advisory agreement under which securities are proposed to be issued should be filed as an exhibit to the Form S–8; and whether disclosure of sales to consultants and advisors should be required on Forms 8–K or 10–Q.

B. Option Exercises by Family Transferees; Executive Compensation Disclosure

Currently, Form S–8 is available for the exercise of employee benefit plan options only if the option is exercised by the employee/optionee. The form is unavailable to non-employee option transferees, such as an adult son or daughter of an employee. If a company wishes to permit a family member transferee to exercise an employee benefit plan option, it must register the sale of the underlying securities on a separate, less streamlined registration statement.

In the 1996 amendments to the rules under Section 16[13] of the Securities Exchange Act of 1934 ("Exchange Act"),[14] the Commission revised Rule 16b–3[15] to provide a broader, simplified exemption from short-swing profit recovery for transactions between an issuer and its directors or officers, whether or not in the context of an employee benefit plan. Among other things, the amendments eliminated the requirement of former Rule 16b–3 that a derivative security issued under an employee benefit plan be non-transferable.[16]

Under current tax law, significant estate tax savings may be obtained if an employee, during his or her lifetime, transfers a vested option to a family member, who then exercises it. In comparison, the exercise of the option by the employee with the underlying security later passing to the family member through the employee's taxable estate is more costly from a tax standpoint. The Rule 16b–3 revisions simplified the transfer of options and other derivative securities by employees to their immediate family members, and to trusts and partnerships established for the benefit of immediate family members, for estate planning purposes. Other aspects of the 1996 Amendments facilitated the transfer of securities to a former spouse in divorce proceedings.[17] For the first time, many companies are issuing transferable options to their officers and directors.

The Commission believes that making Form S–8 available for registration of employee benefit plan option exercises by an employee's family members may be appropriate. Because of the family relationship to an employee and the compensatory—rather than capital-raising—character of the transaction, the abbreviated disclosure format of Form S–8 may be suitable for these transactions. The fact that only companies that are required to file Exchange Act reports are eligible to use Form S–8 supports this approach.

The proposals issued today would:

- Make Form S–8 available for the exercise of employee benefit plan options by an employee's family member who has acquired the options from the employee through a gift or domestic relations order;
- Make Form S–8 available to former employees for the exercise of transferable, as well as non-transferable, options; and
- Revise executive compensation disclosure requirements to clarify how options and stock appreciation rights ("SARs") that have been transferred should be reported.

In addition, the Commission proposes to make Form S–3 equally available for the offer and sale of securities underlying both warrants and options, without regard to whether either class of securities is transferable.

II. Consultant Abuses

A. Consultants and Advisors Eligible for Form S–8 Transactions

[12] "Employee" is defined in General Instruction A.1.(a) of the form to include consultants and advisors who render *bona fide* services not in connection with the offer or sale of securities in a capital-raising transaction, exclusive insurance agents of the registrant and, in certain circumstances, former employees and the estates of employees or former employees.

[13] 15 U.S.C. 78p.

[14] 15 U.S.C. 78a *et seq.*

[15] 17 CFR 240.16b–3. See Exchange Act Release No. 37260 (May 31, 1996).

[16] Former Rule 16b–3(a)(2) prohibited transfers except (i) by will or the laws of descent and distribution, or (ii) pursuant to a qualified domestic relations order as defined by the Internal Revenue Code.

[17] Rule 16a–12 [17 CFR 240.16a–12] exempts from both the reporting requirements of Section 16(a) and the short-swing profit recovery requirements of Section 16(b) the acquisition or disposition of equity securities pursuant to a domestic relations order.

General Instruction A.1(a) to Form S–8 restricts the form's availability to the offer and sale of the registrant's securities to its employees, or employees of its subsidiaries or parents, pursuant to any employee benefit plan. For this purpose, "employee" is defined to include a consultant or advisor who provides *bona fide* services to the registrant other than in connection with the offer or sale of securities in a capital-raising transaction. Like a traditional employee, a consultant or advisor must be a natural person, and privity must exist between the registrant and the consultant or advisor both as to the consulting contract and the issuance of the securities registered on Form S–8.[18] In response to telephone inquiries, the Division of Corporation Finance staff has interpreted the phrase "in connection with the offer or sale of securities in a capital-raising transaction" to preclude the issuance of securities on Form S–8 to consultants either (i) as compensation for any service that directly or indirectly promotes or maintains a market for the registrant's securities, or (ii) as conduits for a distribution to the general public.

Despite express limitations set forth in Form S–8 and related staff interpretations, some companies have taken advantage of the automatic effectiveness—and resultant absence of staff review—applicable to Form S–8 to register securities for issuance in capital-raising transactions.[19] In the typical fact pattern, a company issues shares registered on Form S–8 to purported employees or other nominees designated as "consultants" or "advisors," who frequently do not provide any *bona fide* services to the company. At the direction of the company, these nominees then resell the shares on an unregistered basis and remit all or part of the proceeds back to the company. These distributions deprive the ultimate public purchasers of the disclosure and liability benefits of Securities Act registration. In some cases, a series of Forms S–8 is used to effect the distributions, so that the aggregate number of shares distributed constitutes a significant percentage—if not the preponderance—of the company's shares outstanding.[20]

In distributing the shares to the public on behalf of the company, these consultants or employees act as "underwriters," as defined in Section 2(a)(11) of the Securities Act.[21] The company's registration statement on Form S–8 registers only offers and sales of stock to employees and consultants or advisors. However, the company's distribution of securities does not come to rest with these persons. Instead, the company uses these nominal "consultants" as conduits for unregistered offers and sales of securities to the public for which no exemption is available. In these circumstances, the Commission has charged companies with violations of Sections 5(a) and 5(c) of the Securities Act.[22] Consultants acting as nominees have been charged with violating Section 5 as underwriters.[23]

In other circumstances, companies have misused Form S–8 by using it to register securities issued to consultants or advisors as compensation for their services as stock promoters. Public investors who repurchase these securities in effect pay the salaries of individuals whose services for the issuer may result in the dissemination of material fraudulent information. These transactions are outside the scope of transactions that currently are permitted to be registered on Form S–8, whether or not they result in unregistered sales of securities to the public in violation of Section 5.

The Commission believes that one means to deter these abuses of Form S–8 is to restrict further the definition of consultants and advisors who may be compensated with securities registered on the form. The Commission proposes to amend General Instruction A.1(a) to Form S–8 to clarify that the consultant or advisor must provide to the registrant *bona fide* services that do not directly or indirectly promote or maintain a market for the registrant's securities.[24] This limitation would be in addition to the existing provision that these services may not be in connection with the offer or sale of securities in a capital-raising transaction. The amended instruction also would codify the existing requirement that the consultant or advisor be a natural person who has contracted directly with the registrant. The Commission proposes similarly to amend the definition of "employee benefit plan" contained in Securities Act Rule 405, so that a consultant or advisor may participate in an employee benefit plan only if the same conditions are met.

Under the proposed amendment to Form S–8, issuers could not use the form to register securities as compensation for the services of financial consultants who advise the company regarding a potential capital restructuring because this service is a predicate to capital-raising and market maintenance. In contrast, issuers would be able to register on Form S–8 securities issued as compensation for the services of financial consultants who assist the company in structuring its compensation scheme, or attorneys who defend the company in litigation, because these activities do not have a capital-raising connection.

Commenters are asked to address whether, in the context of the other proposals set forth in this Release, the proposed restriction regarding consultant promotional services effectively will deter or prevent the use of "consultants" as underwriters. Commenters also should address whether this proposed restriction would unduly hinder the use of Form S–8 to register securities as compensation to consultants for legitimate purposes. If so, how should the restriction otherwise be crafted to distinguish activities that do not promote or maintain securities markets—and thus assist capital-raising—from those that do? Alternatively, should the Commission simply amend Form S–8 so that it is no longer available at all for the issuance of securities to consultants and advisors?

In light of the proposal to deter the Form S–8 abuse described above, and consistent with the Commission's broader goal of harmonizing its regulations, the Commission is considering whether to limit the categories of people who are permitted to participate, as "consultants and

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[18] See *Image Entertainment* (Mar. 6, 1992). However, where the consultant or advisor performs services for the registrant through a wholly-owned corporate alter ego, the registrant may contract with and register securities on Form S–8 as compensation to that corporate entity. See *Aaron Spelling Productions, Inc.* (July 1, 1987).

[19] Rule 462(a) provides that a registration statement on Form S–8 becomes effective upon filing with the Commission. Rule 464(a) provides that a post-effective amendment filed on Form S–8 also becomes effective upon filing with the Commission.

[20] See In the Matter of Sky Scientific, Inc. ("Sky Scientific"), Securities Act Release No. 7372, Exchange Act Release No. 38049, Accounting and Auditing Enforcement Release No. 863 (Dec. 16, 1996), in which the company conducted an unregistered distribution to the public through 106 registration statements and post-effective amendments filed on Form S–8, covering a total of approximately 30 million shares of common stock.

[21] 15 U.S.C. 77b(a)(11), which states, in pertinent part: "The term 'underwriter' means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking [* * *]."

[22] See, *e.g.*, Spectrum, cited at n. 11 above.

[23] In addition to Spectrum, see Sky Scientific, cited at n. 20 above.

[24] Whether activities that otherwise promote the registrant would indirectly promote the registrant's securities would depend upon the facts and circumstances.

advisors," in private companies' compensatory transactions exempted from Securities Act registration under Rule 701.[25] Specifically, the Commission is considering interpreting "consultants and advisors" for Rule 701 purposes in the narrower manner it has interpreted these terms for Form S–8 eligibility purposes.

Under current staff interpretation of Rule 701, "consultants and advisors" is construed more broadly than under Form S–8. For example, staff interpretive letters have permitted Rule 701 offers and sales to be made to:

- Independent sales representatives who distribute the company's products;[26]
- Franchisees;[27]
- Physicians who contract to provide medical services pursuant to various managed care arrangements;[28] and
- Golf pros who serve as independent agents for the distribution of golf products through their pro shops.[29]

In contrast, companies are not currently permitted to register on Form S–8 securities issued to compensate these persons, unless there is a *de facto* employment relationship between the person and the company. Such a relationship may exist where a person not employed by a company provides services to the company that traditionally are performed by an employee, and the compensation paid by the company for those services is the primary source of the person's earned income.[30]

These differences in interpretation have caused some confusion because the terms "consultants and advisors" appear in both rules, and both rules relate to compensation involving securities. It is not clear why a broader interpretation should be appropriate for exempt sales by a private company, as compared to registered sales by a public company, although it should be noted that securities issued in a Rule 701 plan are "restricted securities"[31] for resale purposes.

Should the availability of Rule 701 to compensate consultants and advisors be interpreted consistently with the availability of Form S–8? Would a consistent interpretation further the Commission's goal of preventing the use of "consultants" as underwriters in the Form S–8 context? On the other hand, is there good reason to interpret "consultant or advisor" more narrowly for purposes of Form S–8, because it results in the issuance of freely-tradeable registered securities, whereas Rule 701 results in the issuance of restricted securities?

Alternatively, would it be more appropriate to change the interpretations under Form S–8 to conform with the less restrictive approach in Rule 701? If so, should Form S–8 be amended to remove the specific requirement that insurance agents be "exclusive," given that independent insurance agents are eligible participants in a Rule 701 plan?[32] If this approach were adopted, should independent insurance agents and other independent sales representatives be required to derive a specified minimum percentage of income from the company—such as 10, 20 or 50 percent—in order to qualify for both Rule 701 and Form S–8?

Employee benefit plans also are addressed in Regulation S, the exemptive rule for offshore offers and sales, using language similar to the current wording of Form S–8 and Rule 405.[33] No parallel amendment to Regulation S is proposed in this Release, in light of the other changes to the regulatory structure of Regulation S proposed today in a companion release.[34] However, the Commission is considering whether such an amendment should be adopted, and solicits comment on whether this would be necessary.

B. Requirement as to Proper Securities Act Form

Securities Act Rule 401(g) currently states that any registration statement or amendment is deemed to be filed on the proper form unless the Commission objects to the form before the effective date. This rule requires the Commission and the registrant to resolve any dispute as to whether a filing is on the appropriate form before effectiveness. Because the disclosure requirements of different forms are tailored for the transactions for which they are prescribed, in some cases registration on a form other than the form prescribed for the specific transaction may deprive public investors of the disclosure benefits of Securities Act registration.

Of course, for registration statements filed on Form S–8 and other forms that become effective immediately upon filing,[35] the Commission has no opportunity to object to the form in a timely manner. The Commission proposes to remedy this situation by amending Rule 401(g) so that all registration statements and post-effective amendments that become effective automatically upon filing under Securities Act Rules 462 and 464 would be excluded from its scope.[36] Accordingly, there no longer would be a presumption that any Securities Act filing that is automatically effective under these rules is on the proper form.

The proposed amendment would clarify that the Commission, by failing to object in the absence of an opportunity for pre-effective review, does not concede that the proper form has been used. Where a form that is solely available for a specified purpose

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[25] 17 CFR 230.701.

[26] Herff Jones, Inc. (Nov. 13, 1990), Microchip Technology, Inc. (Nov. 4, 1992) and Optika Imaging Systems, Inc. (Oct. 1, 1996).

[27] USWeb Corporation (Nov. 7, 1996).

[28] The Morgan Health Group, Inc. (Dec. 18, 1995), Princeton Medical Management Resources, Inc. (Sept. 12, 1997), PHM Management, Inc. (Sept. 16, 1997) and Talbert Medical Management Corporation (Sept. 16, 1997).

[29] Golfpro, Inc. (Oct. 3, 1989).

[30] See Foundation Health Corporation (July 12, 1993), which permitted registration on Form S–8 of stock underlying employee benefit plan options granted to physicians employed by an affiliated professional corporation to provide medical services at the registrant's HMO, where the company had the right to require the physicians to provide medical services exclusively at the HMO.

[31] As defined in Rule 144(a)(3)(ii) [17 CFR 230.144(a)(3)(ii)].

[32] Agents who serve as independent sales representatives for an affiliate of an insurance company are considered "consultants or advisors" under Rule 701. See Exceptional Producers Holding Company (Aug. 17, 1989). In contrast, General Instruction A.1(a) to Form S–8 currently requires an insurance agent to be an exclusive agent of the registrant to be considered an "employee." See First Centennial Corporation (Feb. 25, 1992).

[33] Securities Act Rule 903(c)(1)(iv)(A) [17 CFR 230.903(c)(1)(iv)(A)], which requires securities offered and sold to employees of the issuer or its affiliates pursuant to an employee benefit plan administered under the laws of a foreign country to be issued in compensation for *bona fide* services not rendered in connection with the offer and sale of securities in a capital raising transaction.

[34] Securities Act Release No. 7505.

[35] Securities Act Rule 462 [17 CFR 230.462] makes the following registration statements effective immediately upon filing: (a) Rule 462(a) covers Forms S–3 and F–3 for dividend and interest reinvestment plans, and Form S–8; (b) Rule 462(b) covers registration statements filed in specified limited circumstances to increase by no more than 20% the number of shares of the same class previously registered for the same offering, and post-effective amendments to those registration statements; (c) Rule 462(c) covers post-effective amendments filed in specified limited circumstances to provide only price-related information omitted from the registration statement in reliance on Rule 430A; and (d) 462(d) covers post-effective amendments filed solely to add exhibits. Where the issuer continues to meet the requirements for filing on the appropriate form, Rule 464 [17 CFR 230.464] makes effective upon filing post-effective amendments on Form S–8; Forms S–3, F–2 and F–3 relating to dividend or interest reinvestment plans; and Form S–4 [17 CFR 239.25] (if filed in reliance on General Instruction G to that form).

[36] Investment company registration statements and post-effective amendments that become effective immediately upon filing under Securities Act Rules 485(b) [17 CFR 230.485(b)] and 486(b) [17 CFR 230.486(b)] would not be affected by the amendment proposed today.

is used for a different type of transaction, the registration may not be valid. Where a registration statement is filed on a Securities Act registration form available only for the offer and sale of securities to a different class of persons than the persons to whom the securities are in fact offered and/or sold, the Commission staff will, in appropriate cases, assert that the securities are offered and sold in violation of Section 5.

Although, to date, significant abuses in this area have been limited primarily to Form S–8, the Commission proposes to exclude from Rule 401(g) all registration statements and post-effective amendments that become effective immediately upon filing under Rules 462 and 464 in order to preclude abuses involving the other automatically effective forms. Commenters should address whether this approach is appropriate, or, alternatively, whether the proposed amendment should be limited to registration statements and post-effective amendments on Form S–8.

It is noted that Rule 464 requires the issuer to continue to meet the requirements of the specified forms as a condition for automatic effectiveness of post-effective amendments. In light of this specific condition, should post-effective amendments to Forms S–4 filed pursuant to General Instruction G (applicable to bank or savings and loan holding company formations) and dividend reinvestment plan registration statements on Forms S–3, F–2 and F–3 be excluded from the proposed amendment to Rule 401(g)?

C. Information About Consultants and Advisors

Today's proposals would amend Part II of Form S–8 to require the company to name any consultants or advisors to whom securities will be sold under the registration statement, to specify the number of securities to be issued to each of these persons, and to describe specifically the services that each of these persons will provide to the company. If this information is not available at the time the Form S–8 is filed, the company would be required to file it by post-effective amendment before the securities are sold to the consultants or advisors. The failure to provide any part of this information in the Form S–8 would result in a disclosure violation.

The requirement to name these persons in the registration statement is designed to have a chilling effect on their use as conduits for unregistered public offerings. Further, this requirement would facilitate objective verification that the consultant or advisor is a natural person. The requirement to specify the number of securities to be issued to each person would discourage the use of Form S–8 as a vehicle to distribute significant quantities of securities into the public markets. Finally, the requirement to specify the services to be provided by consultants and advisors would permit an objective determination whether these services are *bona fide*, non-capital-raising and non-promotional services that legitimately may be compensated with securities registered on Form S–8. Generic disclosure, such as "consulting services," would result in a disclosure violation.

Commenters are asked to address whether these proposals would reduce the likelihood of securities being sold on Form S–8 to "consultants" who act as statutory underwriters, or otherwise promote or maintain a market for the registrant's securities. Are there any specific circumstances under which these disclosures would not be warranted, or would create difficulty? For example, would these amendments unduly burden companies in industries—such as computer technology—that routinely conduct their businesses through numerous consultants, who are compensated with securities registered on Form S–8? If so, would any specific compensatory practices be impeded? How should the proposal be tailored to alleviate any inappropriate burdens while retaining its prophylactic effect?

Would other potential amendments to Form S–8—either in addition to, or substitution for, those proposed today—more effectively promote this goal? For example, in addition to the proposed amendments, should the Form S–8 cover page include a box that a registrant would be required to check if any of the securities registered are to be offered and sold to consultants or advisors? If so, in order to facilitate the location of this information in the EDGAR database, should filers also be required to include an electronic "tag" in the header of their EDGAR filings or other electronic means of identifying this information? In addition to—or as an alternative to—the proposed Part II disclosure of consultant services, should registrants be required to file consulting and advisory contracts as exhibits to Form S–8?[37]

The signature requirements to Form S–8 require the registrant to certify "that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S–8[.]"[38] A registrant cannot in good faith make this certification, in its current form, for a Form S–8 under which securities are issued to consultants and advisors who act as underwriters or otherwise promote the registrant's securities. Should this certification be expanded to require the registrant, or an officer of the registrant, to certify specifically that any consultant or advisor who will receive securities under the registration statement is not hired for capital-raising or promotional activities?

In addition to, or substitution for the proposed amendments to Part II of Form S–8, should companies be required to disclose issuances of securities to consultants and advisors that occurred during the most recently completed fiscal quarter in their Exchange Act annual and quarterly reports? If so, should the names of the recipients and amounts of securities be included? Are these issuances of sufficient market significance that their disclosure instead should be required in a Form 8–K? Should either form of Exchange Act disclosure be mandated only in particular circumstances, for example where the securities issued equal or exceed one percent of the issuer's total securities outstanding, or where the issuer's total market capitalization does not exceed a specified dollar amount, such as $200 million, $250 million or $300 million? Would it be appropriate to require Exchange Act disclosure by registrants that do not satisfy the "float test" for registrant eligibility to make a primary offering on Form S–3 (aggregate market value of voting and non-voting common equity held by non-affiliates of $75 million or more)?[39] Alternatively, should the proposed amendments to Part II of Form S–8 apply only to issuers that meet one or more of these criteria?

D. Percentage of Securities Registrable on Form S–8

As noted above, in some cases issuers have used Form S–8 to distribute to the public a significant percentage of the total number of securities outstanding.[40] One means to eliminate this abusive practice would be to limit the aggregate percentage of securities that may be sold

[37] In the absence of an exhibit requirement, companies would remain obligated to furnish these agreements, as supplemental information, to the Commission staff promptly upon request under Securities Act Rule 418 [17 CFR 230.418].

[38] Similar registrant certification provisions are included in the signature requirements to Securities Act Forms S–2, S–3, S–11 [17 CFR 239.18], S–20 [17 CFR 239.20], SB–1 [17 CFR 239.9], SB–2 [17 CFR 239.10], F–1 [17 CFR 239.31], F–2 [17 CFR 239.32], F–3 [17 CFR 239.33], F–6 [17 CFR 239.36], F–7 [17 CFR 239.37], F–8 [17 CFR 239.38], F–9 [17 CFR 239.39], F–10 [17 CFR 239.40], and F–80 [17 CFR 239.41].

[39] General Instruction I.B.1 to Form S–3.

[40] See Sky Scientific, discussed at n. 20 above.

to consultants or advisors pursuant to Form S–8 during the registrant's fiscal year. For example, these securities could be limited to ten percent of the number of securities of the same class outstanding, computed based on the registrant's most recent balance sheet.

While no specific rule proposal is included among the amendments proposed today, the Commission is considering this approach. Comment is solicited as to whether such an annual limitation is a necessary or desirable means to prevent the abuse of Form S–8 to conduct unregistered public offerings. If such a limitation were adopted, should the annual percentage limit be set higher (for example, at 15 percent) or lower (such as at five percent) to achieve this goal? Would a ten percent limitation leave an adequate pool of securities available to compensate consultants for legitimate purposes? Finally, should a different standard apply to companies in industries (such as computer technology) that rely extensively on the services of consultants in the ordinary conduct of their business?

III. Transferable Options and Proxy Reporting

A. Form S–8 Availability for Family Member Transferees

The past decade has witnessed the increased use of options by corporations as a component of the employee compensation package. As executives and other employees receive an increasing proportion of their compensation—and thereby accumulate an increasing proportion of their wealth—in the form of options,[41] these instruments assume greater significance in the context of estate planning transactions and other intra-family transfers, such as property settlements in connection with divorce. Particularly in the estate planning context, an option transfer to a family member during the employee's lifetime can confer significant tax advantages.[42]

Because Form S–8 is available only for the offer and sale of employee benefit plan securities to employees (including consultants and advisors) of the registrant and its subsidiaries or parents, family member transferees have not been allowed to exercise options on Form S–8.[43] However, because of the family relationship to an employee and the compensatory—rather than capital-raising—character of the transaction, the abbreviated disclosure format of Form S–8 may be suitable for these transactions, particularly in light of the fact that companies eligible to use Form S–8 must file Exchange Act reports. The theories of compensatory purpose and access to information about the company/employer that justify streamlined registration on Form S–8 for transactions with employees also appear to encompass option exercises by family members.

Consistent with the 1996 amendments to the Section 16 rules that facilitated intra-family option transfers, discussed above,[44] the Commission today proposes to amend Form S–8 so that it is available for the exercise of employee benefit plan options by an employee's family member who has acquired the options from the employee through a gift or a domestic relations order.[45] For this purpose, "family member" would be defined as in the Exchange Act Rule 16a–1(e) definition of "immediate family" to include any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships. In addition, unlike Rule 16a-1(e), for Form S–8 purposes "family member" would include trusts for the exclusive benefit of these persons, and any other entity owned solely by these persons.[46]

Commenters are asked to address whether other relatives, such as nieces and nephews, should be added to the Form S–8 definition of "family member," particularly to facilitate estate planning transfers to these people. In the interest of harmonizing regulations, should these relatives also be added to the Rule 16a–1(e) definition of "immediate family," so that a Section 16 insider would be deemed to have an indirect pecuniary interest in securities that are held by these persons if they share the insider's household? Or do the differences in purposes between Form S–8 eligibility and pecuniary interest under Section 16 justify different treatment of these or any other people?

Assuming this amendment is adopted, it is contemplated that "family members" would be treated like employees for all purposes under Form S–8. For example, under General Instruction C, the Form S–3 resale prospectus would be available for (i) the resale by a "family member" who is an affiliate of the issuer of securities that were registered on the Form S–8; and (ii) the resale by a "family member" of restricted securities acquired upon the exercise of transferred employee benefit plan options before the Form S–8 was filed. Similarly, if the employee/optionee left the company following the option transfer, Form S–8 would remain available to the "family member" for the option exercise to the same extent it would be available to a former employee.

Moreover, consistent with current practice, registration of shares underlying employee benefit plan options would continue to be permitted at any time before the option is exercised, without regard to when the option becomes exercisable. This departure from the general requirement that a registration statement must be on file before an option becomes exercisable (*i.e.*, before an offering of the underlying security is deemed to be made) if the exercise will be registered is based on a policy determination that transactions registered on Form S–8 should be afforded more flexibility because of the unique character of the employer/employee relationship and the compensatory purpose involved.[47]

As drafted, the proposal would make the form available to "family members" of any person who satisfies the Form S–

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[41] The total value of shares set aside for option grants in the United States during 1996 has been estimated as $600 billion, as compared to approximately $59 billion in 1985. See estimates calculated by Sanford C. Bernstein & Co., as cited in J. Fox, "The Next Best Thing to Free Money," Fortune (July 7, 1997).

[42] For example, if an employee makes a lifetime gift of a vested option to a family member, the gift will be subject to federal gift tax at the time of the gift, based on the option's then fair market value. If the employee instead exercises the option and retains the underlying stock, the fair market value of that stock at the date of the employee's death will be included in his or her taxable estate. A donor is subject to gift taxes to the extent the value of a gift exceeds the $10,000 annual exclusion and the $600,000 unified estate and gift tax credit (as indexed for inflation pursuant to Section 501 of the Taxpayer Relief Act of 1997). Assuming that the option's fair market value at the time of gift is substantially lower than the fair market value of the underlying stock at the time it would be transferred to the family member from the employee's taxable estate, the earlier lifetime transfer would exclude the difference from estate and gift taxation (or from reducing any remaining available annual exclusion or unified credit).

[43] Currently, shares underlying options transferred to certain family members may be registered on Form S–3, in reliance on Instruction I.B.4 to that form. See Use of Form S–3 for Transferred Options (Aug. 7, 1997), discussed in Section III.C, below.

[44] See Section I.B above.

[45] Of course, making Form S–8 available for these transactions would not compel companies to permit employees to transfer options to family members. The decision whether to allow this practice would remain with the company.

[46] Rule 16a–1(a)(2)(ii)(A) provides that a Section 16 insider has an indirect pecuniary interest in securities held by members of a person's immediate family (as defined in Rule 16a–1(e)) sharing the same household. Whether an insider has a pecuniary interest in securities held by a trust or other entity is determined by reference to Rules 16a–8(b) and 16a–1(a)(2), respectively.

[47] See Division of Corporation Finance Manual of Publicly Available Telephone Interpretations (July, 1997), at Section G (Securities Act Forms), Interpretation No. 61.

8 definition of "employee," including consultants and advisors. Commenters should address whether this aspect of the proposal is too broad, given that consultants and advisors have more remote connections to the registrant than do traditional employees. Moreover, do the consultant abuses discussed above justify limiting the proposal to "family members" of traditional employees?

As proposed, the form would be available only for options transferred through a gift or domestic relations order. Other than options transferred pursuant to domestic relations orders, should Form S–8 be available for the exercise of any option transferred for value to a "family member"? In addition to trusts for the exclusive benefit of family members, should Form S–8 be made available to any other entity solely owned by "family members," as proposed, or should only entities other than trusts that are used for estate planning purposes, such as limited partnerships, specifically be permitted? Alternatively, is the limitation to entities solely owned by "family members" too restrictive for legitimate estate planning purposes? For example, should Form S–8 be available for the exercise of options transferred by gift by the employee (and/or a "family member" transferee) to a charity? Would extending Form S–8 to any entity not solely owned by "family members" exceed the boundaries of the employment connection that justifies the abbreviated disclosure format of Form S–8?

As proposed, the "family member" transferee would not be required to have received the option directly from the employee for Form S–8 to be available to the transferee. Instead, the form would be available to a subsequent transferee, provided that he or she is a "family member" of the employee, and receives the option either by gift or through a domestic relations order from another "family member" of the employee. Is it more consistent with the theory of compensatory purpose to require the "family member" to receive the option directly from the employee? Would making the form available for options transferred indirectly from employees impose burdensome recordkeeping obligations on issuers? [48]

As for "reload" options,[49] it is assumed that following the exercise of the original employee benefit plan option by a "family member," the reload option would be issued to the employee/optionee, who would decide whether to exercise or transfer it. Should the form be made available for reload options issued directly to the immediate family member transferee? In this regard, would a gift be completed for tax purposes if the donor received the reload option?

B. Technical Change to Form S–8 to Allow Registration of Shares Underlying Transferable Options

To implement the proposal to permit family member transferees to exercise employee benefit plan options on Form S–8, the form must be available to the issuer for the registration of shares underlying transferable options. Current General Instruction A.1(a) to Form S–8 provides that the form is available to former employees, and guardians and executors of both current and former employees, for the exercise of non-transferable employee benefit plan stock options and the subsequent sale of the underlying securities,[50] if such exercises and sales are not prohibited under the plan. The proposed amendment would eliminate this non-transferability restriction.[51] As a result, an issuer always would be able to register shares underlying any employee benefit plan option on Form S–8, whether or not the option is transferable.[52]

Commenters are asked to address whether unlimited transferability is appropriate for option shares registered on Form S–8. Alternatively, should the existing restriction be lifted only for options that may be transferred to "family members" by gift or pursuant to a domestic relations order, consistent with the proposed amendment to expand the scope of offerees who may exercise options registered on Form S–8?

C. Registration on Form S–3 of Shares Underlying Transferable Warrants or Options

Currently, General Instruction I.B.4 to Form S–3 allows registration on Form S–3 of the offer and sale of securities to be received upon the exercise of outstanding transferable warrants issued by the same issuer.[53] The Instruction requires, as a condition to Form S–3 availability, that the issuer have sent, within twelve calendar months immediately before the Form S–3 is filed, specified annual report information [54] to all record holders of the transferable warrants.

By interpretation, the staff of the Division of Corporation Finance has expressed the view that employee benefit plan options transferred by gift from employees to their immediate family members [55] would be considered "transferable warrants" for purposes of this Instruction.[56] If Form S–8 is amended as proposed to permit family members to exercise employee benefit plan options on Form S–8, there should be no further need for this interpretation because the proposed amendments will provide more favorable relief.

However, in considering this interpretation, the staff concluded that it may be appropriate generally to treat options (including options not issued under employee benefit plans) the same as warrants for purposes of Form S–3 availability, in each case without regard to transferability. Securities offered pursuant to options, like securities offered pursuant to rights, convertible securities and warrants, are offered to existing security holders of the issuer, who are presumed to "follow" the issuer through corporate communications and Exchange Act filings.[57]

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[48] Issuers would not, of course, have to permit these transfers.

[49] "Reload" options generally are replacement options granted upon the exercise of an earlier-granted option.

[50] Instruction A.1(a) also makes Form S–8 available to the issuer's former employees, and guardians and executors of both current and former employees, for the acquisition of registrant securities pursuant to intra-plan transfers among plan funds, to the extent permitted by the specific plan.

[51] By its terms, this restriction applies only to the exercise of options by former employees. However, issuers often apply it to all Form S–8 optionees because of practical difficulties in replacing options when current employees become former employees.

[52] If this amendment is adopted as proposed, issuers no longer would need to rely on the staff's interpretive position in Merrill Lynch & Co., Inc. (May 16, 1996), which permitted former employees to exercise on Form S–8 options transferable only to children, step-children, grandchildren or trusts established for their exclusive benefit, provided such options had never been transferred previously.

[53] Instruction I.B.4 also makes Form S–3 available for securities offered upon exercise of outstanding rights granted by the same issuer, pursuant to dividend or interest reinvestment plans, or upon the conversion of outstanding convertible securities. In each case, these securities may be registered on Form S–3 whether or not the $75 million public float test is satisfied.

[54] The Instruction specifically refers to material containing the information required by Rule 14a–3(b) under the Exchange Act and Regulation S–K Items 401 (Directors, Executive Officers, Promoters and Control Persons), 402 (Executive Compensation) and 403 (Security Ownership of Certain Beneficial Owners and Management).

[55] For purposes of this interpretation, the definition of "immediate family" in Exchange Act Rule 16a–1(e) applies.

[56] Use of Form S–3 for Transferred Options (Aug. 7, 1997). The letter addresses the procedures (including fee transfer) for transferring such shares underlying a transferred option from a Form S–8 to a Form S–3. (Fee transfers in other circumstances are distinguished in Ropes & Gray (Oct. 30, 1997).)

[57] See Release 33–6331 (Aug. 6, 1981).

Accordingly, the Commission proposes to amend General Instruction I.B.4 to Form S–3 so that the form will be available equally for securities underlying options and warrants in a broader context outside the employee benefit area. The proposed amendment also re-writes the Instruction so that it is more clear.

Commenters should address whether any differences between an issuer's relationships with option holders and warrant holders justify different treatment of the underlying securities for purposes of Form S–3 availability. Do any similar distinctions arise based on whether the instrument is transferable? For example, is it more likely that a warrant holder would have purchased the warrant, whereas an option holder would have been granted it under a plan or received it as a gift? If so, does that make any difference in determining whether the holder would have knowledge about the company for purposes of making Form S–3 available? If transferability makes a difference, should instruments with limited transferability be treated the same for S–3 purposes as fully transferable instruments?

D. Executive Compensation Disclosure of Transferred Options

The growing practice of transferring employee benefit plan stock options raises questions on how transferred (or transferable) options should be reported under the executive compensation disclosure requirements of Item 402 of Regulations S–K and S–B.[58] These issues arise under the summary compensation table,[59] the option/SAR grants table,[60] and the aggregated option/SAR exercises and fiscal year-end option/SAR value table.[61] Today's proposals and requests for comment reflect the staff's current interpretation[62] that the transfer of an option by an executive does not negate the option's status as compensation that should be reported.

1. Summary Compensation Table

The summary compensation table prescribed by Item 402(b) requires a three year reporting history of compensation, including the number of securities for which options were granted, for each person serving as the issuer's chief executive officer (the "CEO") during the last fiscal year and the four other most highly compensated executive officers serving at the end of that year (together with the CEO, the "named executive officers"). Item 402(b)(2)(iv)(B) would be amended so that the sum of the number of securities underlying stock options granted required to be reported in column (g) of the table would include options that subsequently have been transferred by the officer. This amendment would codify the staff's current interpretation of this disclosure Item. Commenters should address whether this codification is necessary or desirable.

2. Option/SAR Grants Table

This table must show, among other things, the number of options granted during the most recent fiscal year to the named executive officers, together with footnote disclosure of the material terms of those options. Consistent with current staff interpretation, Item 402(c)(1) would be amended so that the information required by the table would apply to all options and SARs granted during the year, including options and SARs that subsequently have been transferred.

Although the staff is of the view that transferability is an option term that should be disclosed in a footnote to this table, no rule proposal codifying this position is included among the amendments proposed today. However, comment is solicited whether Instruction 3 to Item 402(c) should be amended to include transferability among the material terms requiring footnote disclosure. If so, should the instructions to the table also be amended to require footnote disclosure that specifies the date of any transfer of an option or SAR that has occurred? Should such a footnote require that a transfer be characterized as "donative" or "for value received?"

Should the footnote name a family member—or any other—transferee? Alternatively, would generic disclosure of the transferee's status, such as an "immediate family member" or "unaffiliated charity" be sufficient? Should a similar footnote description of transfers also be required in the summary compensation table, so that disclosure will be required of transfers that take place in the two years following the year in which an option is granted?

3. Aggregated Option/SAR Exercises and Fiscal Year-End Option/SAR Value Table ("Option Exercises and Year-End Value Table")

This table must present, among other things, both the option exercises by the named executive officers during the last fiscal year and the value of options held by the named executive officers at fiscal year end. That value is computed based on the difference between the exercise price of the options and the year-end fair market value of the covered shares.

The proposed amendments to the summary compensation and the option/SAR grants tables are designed to ensure that executive compensation disclosure continues to provide investors meaningful information as to all option and SAR compensation awarded by the issuer. In order to make executive compensation disclosure complete, is it necessary to amend the option exercises and year-end value table to include all option and SAR compensation from which the named executive officer's family members continue to derive benefits?

Such an instruction has not been included among the rule proposals published today. However, comment is solicited whether a new instruction should be added to Item 402(d)(2) to require that options and SARs exercised or held by a "family member" (as defined in the proposed amended Instructions to Form S–8) of the named executive officer be included in the table. If so, should the family member be named in a footnote to the table? Where the transferee is controlled by the named executive officer's family, such as a charitable foundation, should the option or SAR be included in the option exercises and year-end value table? Should the result depend on whether the named executive officer's family continues to benefit financially from securities held by the entity?

IV. General Request for Comment

Any interested person is invited to submit written comments on the proposed rule and form amendments, or to suggest additional changes or comments on other matters that might have an impact on the proposals set forth in this release. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

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[58] An issuer must include, or incorporate by reference, this disclosure in Securities Act registration statements filed on Forms S–1 [17 CFR 239.11], S–2, S–3, S–4, S–8, S–11 and SB–2. An issuer also must include this disclosure in its Exchange Act registration statement on Form 10 or Form 10–SB [together, 17 CFR 249.210], and its proxy or information statement (if action is to be taken as to the election of directors or the approval of specified director or executive compensation, as provided in Item 8 of Schedule 14A [17 CFR 240.14a–101]). Finally, an issuer must include, or incorporate by reference from its definitive proxy or information statement, this disclosure in its annual report on Form 10–K [17 CFR 249.310] or Form 10–KSB [17 CFR 249.310b].

[59] Item 402(b) of Regulations S–B and S–K.

[60] Item 402(c) of Regulations S–B and S–K.

[61] Item 402(d) of Regulations S–B and S–K.

[62] This interpretation and the other interpretations referenced in this section have been given by the staff in response to telephone inquiries.

Comment is requested as to the impact of the proposals from the point of view of the public, as well as public companies and their employees affected by the proposed rule and form amendments. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 19(a) of the Securities Act.[63]

Comment letters should refer to File No. S7–2–98. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted to the Commission's Internet Web site (http://www.sec.gov).

V. Cost-Benefit Analysis

The proposed rule and form changes have two objectives. The changes pertaining to the sale of shares to consultants and advisers are intended to eliminate misuses of Form S–8 and thus enhance investor protection. The changes pertaining to interfamily transfers are intended to facilitate such transfers and, thereby, provide significant benefits to issuers and their employees. The costs and benefits of these changes are discussed below. The Commission requests comment on this analysis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

A. Shares Issued to Consultants and Advisers

Currently, some issuers are using Form S–8 inappropriately to make distributions of their securities to the general public, or to compensate consultants for services that promote or maintain the market for their securities. The proposal is intended to preclude the use of Form S–8 to register transactions in which consultants act as conduits to distribute securities to the public, or transactions in which consultants are compensated for other capital-raising services. This will discourage filers from misusing the form to register transactions for which it currently is not available. The Commission believes this will provide a substantial investor protection benefit. Other forms remain available to register securities for these purposes.

The Commission's records indicate that 5340 Forms S–8 were filed during the fiscal year ending September 30, 1997.[64] The Commission does not have the data to determine how many of those filings would have been precluded if the proposed amendments to Form S–8 had been in effect. To the extent any reduction is due to the fact that the transaction was not eligible for Form S–8, however, the Commission believes this effect is a benefit rather than a cost. Commenters are requested to provide data that would enable the Commission to quantify this effect.

The proposals also would require disclosure of: (a) The identity of consultants and advisors who will be compensated with securities registered on Form S–8, (b) the services they provide to the issuer, and (c) the number of securities to be issued to each. This may require registrants to incur some additional costs. However, these costs should not be significant since they will primarily involve the transmission of information that is readily available. Where the information must be provided by post-effective amendment, the additional burden should not be significant because the post-effective amendment filing procedure does not require registrants to refile materials that previously were filed in the original Form S–8. The Commission estimates the total reporting and recordkeeping burden that will result from the collection of this additional information to be one hour per form.

Currently, issuers are not required to indicate whether Form S–8 is being used to compensate a consultant or advisor; therefore, the Commission cannot estimate the number of Forms S–8 under which securities were issued to consultants and advisors. For purposes of cost estimation, the Commission is assuming that one tenth of the Forms S–8 registered securities for issuance to consultants and advisors, and that the average number of consultants and advisors is two. The Commission further assumes that future filings will reflect the same proportions. Based on these assumptions, the additional annual aggregate cost of reporting and recordkeeping is estimated to be approximately $110,000 (1,100 hours × $100/hour). Commenters are asked to provide data that would help the Commission ensure that this estimate of burden hours and cost is as accurate as possible.

B. Facilitating Intra-Family Transfers

The exercise of employee benefit plan options by family members of the employee optionees is not currently permitted on Form S–8. Form S–3 currently is not available for the exercise of outstanding nontransferable warrants or outstanding options (whether or not transferable) without regard to the "float test" applicable to primary offerings by the issuer, except under limited circumstances based on staff interpretation. The proposal to make Form S–8 available for option exercises by an employee's family members should reduce recordkeeping and compliance burdens by eliminating the need to file a different, less streamlined registration form for these option exercises. By reducing these costs for issuers, option transferability may become more widespread, allowing families to incur estate tax savings as a result. Because information on interfamily transfers is not reported, the Commission does not have any data upon which to estimate these savings. The Commission estimates that issuers could save an average of four hours by using Form S–8 rather than one of the more detailed registration forms.

The proposal to make Form S–3 available for the exercise of options to the same extent as it is available for the exercise of warrants also should reduce recordkeeping and compliance burdens by making this streamlined registration form available for a broader group of transactions. The Commission does not have a basis for quantifying this effect. Commenters are requested to provide data on how many additional Forms S–3 would be filed if the proposed amendment is adopted, and quantify cost savings where possible.

The proposed amendments to Item 402 of Regulations S–B and S–K should not increase recordkeeping and compliance burdens because they will not require the reporting of any compensatory transactions that are not already required to be reported. Commenters recommending changes that have not been proposed but for which comment is requested, such as reporting of options exercised or held by an executive officer's family members, should estimate any additional recordkeeping burden, and quantify costs where possible.

Comment is requested on whether the proposed rule amendments would be a "major rule" for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission preliminarily believes that the proposed rule amendments would not result in a major increase in costs or prices for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, innovation or small business. The Commission believes that persons affected by the proposed amendments will not have significantly increased costs for providing information. Comments are requested

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[63] 15 U.S.C. 77s(a).

[64] During the same period, 684 post-effective amendments were filed on Form S–8.

on whether the proposed rule amendments are likely to have a $100 million or greater annual effect on the economy. Commenters are requested to provide empirical data to support their views.

VI. Initial Regulatory Flexibility Analysis

The Commission has prepared an initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendments.

As noted in the analysis, the amendments to Form S–8, Rules 401 and 405 are proposed to deter abusive practices in which Form S–8 is used to make capital-raising distributions of securities to the general public, or to compensate consultants and advisors for promotional and other capital-raising activities, in contravention of the express purposes of the form. Other amendments to Form S–8 and the amendments to Item 402 of Regulations S–B and S–K result from concerns expressed by representatives of industry that the current limited scope of persons permitted to exercise options under Form S–8 has a chilling effect on intra-family transfers for estate planning and other purposes. The amendments to Form S–3 result from the staff's analysis that shares underlying options should be treated the same as shares underlying warrants for purposes of form availability. The Commission believes that the proposed amendments will not result in any impairment of protection for the investing public, and should result in improved protection by assuring that capital-raising offerings are registered on the forms prescribed for those offerings.

As the IRFA describes, the staff is aware of approximately 1100 Exchange Act reporting companies that currently satisfy the definition of "small business" under Rule 157 of the Securities Act. Overall, 13,226 companies are Exchange Act reporting companies. However, the Commission has no empirical data upon which it may quantify the effects of the proposed changes on small businesses. The IRFA states that the proposals will not significantly increase reporting, recordkeeping or compliance burdens, and in some cases may reduce those burdens for smaller businesses.

The proposals to require disclosure of the identity of consultants and advisors who will be compensated with securities registered on Form S–8, to specify the services that will be provided to the issuer, and to quantify the number of securities to be issued to each consultant or advisor may require registrants to incur some additional costs. However, these costs should not be significant, since they will be limited to the transmission of limited additional information in the Securities Act registration statement. Where the information must be provided by post-effective amendment, the additional burden should not be significant because post-effective amendment filing procedure does not require registrants to refile materials that previously were filed in the original Form S–8.

The Commission estimates the total reporting and recordkeeping burden that will result from the collection of this additional information to be one hour per form. The Commission's records indicate that 5340 Forms S–8 were filed during the fiscal year ended September 30, 1997. However, the Commission cannot estimate with certainty either the number of those filings that were made by small business issuers or the number under which securities were issued to consultants and advisors. For purposes of the analysis, the Commission assumes that one-tenth of the Forms S–8 filed during fiscal 1997 registered securities for issuance to two consultants apiece, and that small issuers accounted for one-twelfth of all such filings.[65] Based on these assumptions, 45 small issuers would have an annual aggregate reporting and recordkeeping cost of approximately $9,000 (90 hours × $100/hour).

The proposal to make Form S–8 available for option exercises by an employee's family members should reduce recordkeeping and compliance burdens by eliminating the need to file a different, less streamlined registration form for these option exercises. While the Commission cannot quantify the number of small businesses that would be affected, the Commission estimates the average reporting and recordkeeping burden that would be avoided by eliminating the need to file a different form rather than Form S–8 as approximately four hours. Thus, even if there were only 26 Forms S–8 filed by small businesses per year, the savings to small businesses would exceed the costs of providing the new disclosures about consultants and advisors.

The proposal to make Form S–3 available for the exercise of options to the same extent as it is available for the exercise of warrants will further reduce recordkeeping and compliance burdens by making this streamlined registration form available for a broader group of transactions.

The proposed amendments to Item 402 of Regulations S–B should not increase recordkeeping and compliance burdens because they will not require the reporting of any compensatory transactions that are not already required to be reported. Regulation S–K does not generally apply to small issuers.

The Commission invites written comments on any aspect of the IRFA. In particular, the Commission requests comment on: (i) The number of small entities that would be affected by the proposed rule amendments; and (ii) the determination that the proposed rule amendments would reduce reporting, recordkeeping and other compliance requirements for small entities. Commenters should address whether the proposed amendments to Forms S–3 and S–8 will increase the number of registration statements filed on these forms, increase the dollar amount of securities sales on these forms, or make the forms generally more available to small entities. Commenters should address how much time and money may be saved by making more streamlined forms available for more transactions.

Any commenter who believes that the proposals will significantly impact a substantial number of small entities should describe the nature of the impact and estimate the extent of the impact. For purposes of making determinations required by the Small Business Regulatory Enforcement Act of 1996, the Commission also requests data regarding the potential impact of the proposed amendments on the economy on an annual basis. All comments will be considered in the preparation of the Final Regulatory Flexibility Act Analysis if the proposed amendments are adopted. A copy of the Initial Regulatory Flexibility Act Analysis may be obtained from Anne M. Krauskopf, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

VII. Paperwork Reduction Act

Certain provisions of the proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*). The Commission staff has submitted the proposals for review by the Office of Management and Budget ("OMB") in accordance with the PRA . An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. This collection of information has been assigned OMB Control No. 3235–0066. The title to the affected information collection is: "Form S–8."

[65] Small issuers account for approximately one-twelfth of all reporting issuers.

The proposed amendments, if adopted, will require registrants filing Form S–8 for the issuance of securities to consultants and advisors to disclose the identity of these persons in the form, to specify the services that they will provide to the issuer, and to specify the number of securities to be issued to each consultant and advisor. As discussed above, the Commission estimates the total reporting and recordkeeping burden that will result from the collection of this additional information to be one hour per form. Of the 5340 Forms S–8 filed during the fiscal year ended September 30, 1997, the Commission cannot estimate with certainty the number of Forms S–8 under which securities were issued to consultants and advisors. Assuming that one-tenth of these filings registered securities for issuance to two consultants apiece,[66] the additional annual aggregate reporting and recordkeeping burden should be approximately 1100 hours. Commenters should address whether these assumptions are accurate.

The proposed amendments to Form S–8, if adopted, also would permit the form to be used for the exercise of employee benefit plan options by family members of employee optionees. By eliminating the need to file different, less streamlined registration statements for these transactions, the proposed amendments may encourage registrants to permit intra-family transfers of employee benefit plan options. The Commission believes that, to the extent registrants have filed separate registration statements for option exercises by family member transferees, the form most often used was Form S–3.[67] The Commission is unable to estimate with certainty the number of Forms S–3 that have been filed for this purpose, but believes it to be a negligible percentage of the 3137 Forms S–3 filed during the fiscal year ending September 30, 1997.[68] Because option transferability is a relatively new and limited practice, it is difficult to quantify burden hours that will be saved by the proposed amendments. However, by permitting family members' option exercises to be registered on the least burdensome registration form, the proposed amendments, like prior rule amendments and staff interpretations,[69] should make transferability substantially more attractive. The Commission estimates that an average of four burden hours per Form S–8 will be saved by this proposal.

The proposed amendment to General Instruction I.B.4 Form S–3 to make the form available for the registration of shares underlying options as well as warrants, in each case without regard to transferability, would allow the registration of additional transactions on Form S–3, a relatively streamlined registration form. While the Commission cannot state with certainty the number of Forms S–3 filed during fiscal 1997 that were filed in reliance on General Instruction I.B.4, the Commission estimates that it was a relatively small percentage of the 3137 Forms S–3 filed. Commenters are asked to estimate, to the extent possible, the number of additional Forms S–3 that would be filed and the number of burden hours that would be saved if this amendment were adopted. Even if only 275 additional Forms S–3 are filed per year, the savings due to the use of Form S–3 will exceed the costs described above.

In accordance with 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment on the following: Whether the proposed changes in the collection of information is necessary; the accuracy of the estimated burden of the proposed changes to the collection of information; the quality, utility and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Persons desiring to submit comments on the collection of information requirement should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20549, with reference to File No. S7–2–98. The Office of Management and Budget ("OMB") is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VIII. Effects on Efficiency, Competition, and Capital Formation

Sections 2(b) of the Securities Act[70] and 3(f) of the Exchange Act[71] require the Commission, when engaged in rulemaking, to consider in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.[72] In addition, section 23(a)(2) of the Exchange Act[73] requires the Commission, in adopting rules under the Exchange Act, to consider the impact any rule would have on competition and not to adopt rules that would impose a burden on competition not necessary or appropriate in the public interest. Several of the proposed amendments are intended to prevent issuers from abusing Form S–8 by registering their stock sold to so-called consultants and advisors who act as promoters and statutory underwriters; other proposed amendments provide a simplified form to facilitate certain intra-family transfers of stock options.

The Commission's preliminary view is that the proposed amendments would not have any anticompetitive effects that are not necessary or appropriate. Because Form S–8 was never intended for capital-raising transactions, but solely for purposes of compensating employees, the proposed amendments should have no effect on legitimate capital-raising. To the extent the proposed amendments make it easier for reporting companies to compensate their employees, the Commission believes the amendments would promote efficiency.

The Commission requests comments on the competitive benefits that may result from the proposals and any anticompetitive effects that may result if the Rule is adopted as proposed. The Commission requests data and analysis on what effect the proposed changes may have on efficiency and capital formation.

IX. Statutory Basis and Text of Amendments

The amendments to Securities Act Forms S–8 and S–3 and Rules 401(g) and 405 are being proposed pursuant to the authority set forth in Sections 6, 7, 8, 10 and 19 of the Securities Act of 1933. The proposed amendments to Item 402 of Regulations S–B and S–K also are being proposed pursuant to Exchange Act Sections 12, 13, 14, 15 and 23.

List of Subjects in 17 CFR Parts 228, 229, 230 and 239

Reporting and recordkeeping requirements, Securities.

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[66] See Cost-Benefit Analysis at Section V, above.

[67] See Use of Form S–3 for Transferred Options (Aug. 7, 1997), discussed at n. 43 and n. 56 above.

[68] This number does not include Forms S–3 filed to register dividend or interest reinvestment plans, or to register additional securities pursuant to Rule 462(b).

[69] See Sections I.B, III.A and III.C, above.

[70] 15 U.S.C. 77b(b).

[71] 15 U.S.C. 78c(f).

[72] 15 U.S.C. 77b(b) and 78c(f).

[73] 15 U.S.C. 78w(a)(2).

Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o 78u–5, 78w, 78ll, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. In § 228.402, paragraph (b)(2)(iv) introductory text is republished and paragraphs (b)(2)(iv)(B) and (c)(1) introductory text are revised to read as follows:

§ 228.402 (Item 402) Executive compensation.

* * * * *

(b) *Summary compensation table*—(1) *General* * * *

(2) * * *

(iv) Long-term compensation (columns (f), (g) and (h)), including:

(A) * * *

(B) The sum of the number of securities underlying stock options granted (including options that subsequently have been transferred), with or without tandem SARs, and the number of freestanding SARs (column (g)); and

* * * * *

(c) *Option/SAR grants table.*—(1) The information specified in paragraph (c)(2) of this item, concerning individual grants of stock options (whether or not in tandem with SARs) and freestanding SARs (including options and SARs that subsequently have been transferred) made during the last completed fiscal year to each of the named executive officers shall be provided in the tabular format specified below:

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

4. In § 229.402, paragraph (b)(2)(iv) introductory text is republished and paragraphs (b)(2)(iv)(B) and (c)(1) introductory text are revised to read as follows:

§ 229.402 (Item 402) Executive compensation.

* * * * *

(b) *Summary Compensation Table.*

(1) *General.* * * *

(2) * * *

(iv) Long-term compensation (columns (f), (g) and (h)), including:

(A) * * *

(B) The sum of the number of securities underlying stock options granted (including options that subsequently have been transferred), with or without tandem SARs, and the number of freestanding SARs (column (g)); and

* * * * *

(c) *Option/SAR Grants Table.* (1) The information specified in paragraph (c)(2) of this item, concerning individual grants of stock options (whether or not in tandem with SARs) and freestanding SARs (including options and SARs that subsequently have been transferred) made during the last completed fiscal year to each of the named executive officers shall be provided in the tabular format specified below:

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

5. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

6. By amending § 230.401 to revise paragraph (g) to read as follows:

§ 230.401 Requirements as to proper form.

* * * * *

(g) Except for registration statements and post-effective amendments that become effective automatically pursuant to §§ 230.462 and 230.464, a registration statement or any amendment thereto is deemed filed on the proper form unless the Commission objects to the form before the effective date.

7. By amending § 230.405 to revise the definition of "Employee benefit plan" to read as follows:

§ 230.405 Definition of terms.

* * * * *

Employee benefit plan. The term *employee benefit plan* means any written purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan or written compensation contract solely for employees, directors, general partners, trustees (where the registrant is a business trust), officers, or consultants or advisors. However, a consultant or advisor may participate in an employee benefit plan only if:

(1) The consultant or advisor renders *bona fide* services to the registrant;

(2) The services rendered by the consultant or advisor are not in connection with the offer or sale of securities in a capital-raising transaction, and do not directly or indirectly promote or maintain a market for the registrant's securities; and

(3) The consultant or advisor is a natural person who has contracted directly with the registrant to render those services.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

8. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

9. By amending § 239.13 to revise paragraph (b)(4) to read as follows:

§ 239.13 Form S–3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

* * * * *

(b) *Transaction requirements.*

* * *

(4) *Rights offerings, dividend or interest reinvestment plans, and conversions, warrants and options.* (i) Securities to be offered:

(A) Upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted on a *pro rata* basis to all existing security holders of the class of securities to which the rights attach;

(B) Under a dividend or interest reinvestment plan; or

(C) Upon the conversion of outstanding convertible securities or the exercise of outstanding warrants or options issued by the issuer of the securities to be offered, or an affiliate of that issuer.

(ii) However, Form S–3 is available for registering these securities only if the issuer has sent, within the twelve

calendar months immediately before the registration statement is filed, material containing the information required by § 249.14a–3(b) of this chapter under the Exchange Act to:

(A) All record holders of the rights;

(B) All participants in the plans; or

(C) All record holders of the convertible securities, warrants or options, respectively.

(iii) The issuer also must have provided, within the twelve calendar months immediately before the Form S–3 registration statement is filed, the information required by Items 401, 402 and 403 of Regulation S–K (§§ 229.401 through 229.403 of this chapter) to:

(A) Holders of rights exercisable for common stock;

(B) Holders of securities convertible into common stock; and

(C) Participants in plans that may invest in common stock, securities convertible into common stock, or warrants or options exercisable for common stock, respectively.

* * * * *

10. By amending Form S–3 (referenced in § 239.13) by revising paragraph B.4 of General Instruction I to read as follows:

[Note—The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.]

Form S–3 Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form S–3

* * * * *

B. Transaction Requirements. * * *

4. *Rights Offerings, Dividend or Interest Reinvestment Plans, and Conversions, Warrants and Options.*

(a) Securities to be offered (1) upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted on a *pro rata* basis to all existing security holders of the class of securities to which the rights attach, (2) under a dividend or interest reinvestment plan, or (3) upon the conversion of outstanding convertible securities or the exercise of outstanding warrants or options issued by the issuer of the securities to be offered, or an affiliate of that issuer.

(b) However, Form S–3 is available for registering these securities only if the issuer has sent, within the twelve calendar months immediately before the registration statement is filed, material containing the information required by Rule 14a–3(b) (§ 249.14a–3(b) of this chapter) under the Exchange Act to:

(1) All record holders of the rights,

(2) All participants in the plans, or

(3) All record holders of the convertible securities, warrants or options, respectively.

(c) The issuer also must have provided, within the twelve calendar months immediately before the Form S–3 registration statement is filed, the information required by Items 401, 402 and 403 of Regulation S–K (§§ 229.401–229.403 of this chapter) to:

(1) Holders of rights exercisable for common stock,

(2) Holders of securities convertible into common stock, and

(3) Participants in plans that may invest in common stock, securities convertible into common stock, or warrants or options exercisable for common stock, respectively.

* * * * *

11. By amending § 239.16b to revise paragraph (a)(1) to read as follows:

§ 239.16b Form S–8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to employee benefit plans.

(a) * * *

(1) Securities of such registrant to be offered to its employees or employees of its subsidiaries or parents pursuant to any employee benefit plan. The form also is available for the exercise of employee benefit plan options by an employee's family member who has acquired the options from the employee through a gift or a domestic relations order.

* * * * *

12. By amending Form S–8 (referenced in § 239.16b) by revising paragraph 1.(a) of General Instruction A; by amending Part II by redesignating Items 8 and 9 as Items 9 and 10, respectively; and by adding Item 8 to read as follows:

[Note—The text of Form S–8 does not, and this amendment will not, appear in the Code of Federal Regulations.]

Form S–8 Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

A. Rule as to Use of Form S–8.

1. * * *

(a) Securities of such registrant to be offered pursuant to any employee benefit plan to its employees or employees of its subsidiaries or parents. For purposes of this form, the term "employee benefit plan" is defined in Rule 405 of Regulation C (§ 230.405).

(1) For purposes of this form, the term "employee" is defined as any employee, director, general partner, trustee (where the registrant is a business trust), officer, or consultant or advisor. Form S–8 is available for the issuance of securities to a consultant or advisor only if:

(i) The consultant or advisor renders *bona fide* services to the registrant;

(ii) The services rendered by the consultant or advisor are not in connection with the offer or sale of securities in a capital-raising transaction, and do not directly or indirectly promote or maintain a market for the registrant's securities; and

(iii) The consultant or advisor is a natural person who has contracted directly with the registrant to render those services.

(2) In addition, the term "employee" includes insurance agents who are exclusive agents of the registrant, its subsidiaries or parents.

(3) The term "employee" also includes former employees as well as executors, administrators or beneficiaries of the estates of deceased employees, guardians or members of a committee for incompetent former employees, or similar persons duly authorized by law to administer the estate or assets of former employees. The inclusion of all individuals described in the preceding sentence in the term "employee" is only to permit registration on Form S–8 of:

(i) The exercise of employee benefit plan stock options and the subsequent sale of the securities, if these exercises and sales are permitted under the terms of the plan; and

(ii) The acquisition of registrant securities pursuant to intra-plan transfers among plan funds, if these transfers are permitted under the terms of the plan.

(4) The term "registrant" as used in this Form means the company whose securities are to be offered pursuant to the plan, and also may mean the plan itself.

(5) The form also is available for the exercise of employee benefit plan options by an employee's immediate family member who has acquired the options from the employee through a gift or a domestic relations order. For purposes of this form, "family member" includes any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, trusts for the exclusive benefit of these persons, and any other entity owned solely by these persons.

* * * * *

Part II

Information Required in the Registration Statement

* * * * *

Item 8. Consultants and Advisors

Disclose the names of any consultants or advisors to whom securities will be issued pursuant to the registration statement. Specify the number of securities that will be issued to each of these persons pursuant to this registration statement. Describe the specific services provided to the registrant by each consultant or advisor that are compensated by securities registered on this registration statement.

* * * * *

Dated: February 17, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4459 Filed 2–24–98; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–39670; File No. S7–3–98]

RIN 3235–AH40

Publication or Submission of Quotations Without Specified Information

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is publishing for public comment proposed amendments to Rule 15c2–11 ("Rule") under the Securities Exchange Act of 1934 ("Exchange Act"). The Commission is publishing these proposals in response to increasing incidents of fraud and manipulation in the over-the-counter securities market involving thinly traded securities of thinly-capitalized issuers (*i.e.*, "microcap securities"). Rule 15c2–11 governs the publication of quotations for securities that are traded in a quotation medium other than a national securities exchange or Nasdaq. The proposals would require all broker-dealers to review information about the issuer when they first publish or resume publishing a quotation for a security subject to the Rule, document that review, annually update the information if they publish priced quotations, and make the information available to other persons upon request. In addition, the proposals would enhance the Rule's information requirements for quotations for the securities of non-reporting issuers and ease the Rule's recordkeeping requirements when broker-dealers have electronic access to information about reporting issuers. The Commission also is proposing a number of textual and structural changes in an effort to simplify and streamline the Rule. Finally, the Commission is proposing an amendment to Rule 17a–4 under the Exchange Act that would incorporate the record retention requirements currently contained in Rule 15c2–11.

DATES: Comments must be received on or before April 27, 1998.

ADDRESSES: Persons wishing to submit written comments should send three copies to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–3–98; this file number should be included on the subject line if E-mail is used. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Any of the following attorneys in the Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, at (202) 942–0772: Nancy J. Sanow, Alan Reed, Irene Halpin, Florence Harmon, Denise Landers, or Chester McPherson.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment amendments to Rule 15c2–11 [1] and Rule 17a–4 [2] under the Securities Exchange Act of 1934 ("Exchange Act").[3]

I. Executive Summary and Background

A. Executive Summary

Incidents involving fraud and manipulation of microcap securities that trade in the over-the-counter ("OTC") securities market appear to be rising.[4] This trend has been the subject of Congressional hearings,[5] state hearings [6] and numerous media reports.[7] These developments have caused the Commission to reexamine Exchange Act Rule 15c2–11, its rule governing the publication of quotations in the non-Nasdaq OTC market. As a result, the Commission is proposing comprehensive amendments to Rule 15c2–11 that address abuses involving microcap securities and more generally would enhance the integrity of quotations for securities in this market sector. The proposed amendments also would reorganize and simplify the Rule's provisions.

Microcap securities [8] generally are characterized by low share prices and little or no analyst coverage. The issuers of microcap securities typically are thinly capitalized and often are not required to file periodic reports with the Commission. Securities of microcap companies usually are quoted on the OTC Bulletin Board ("Bulletin Board") operated by the National Association of Securities Dealers, Inc. ("NASD") or in the Pink Sheets published by the National Quotation Bureau ("NQB"), but they are not exclusive to these

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[1] 17 CFR 240.15c2–11.

[2] 17 CFR 240.17a–4.

[3] 15 U.S.C. 78a *et seq.*

[4] See, *e.g.*, *M. Rimson & Co., Inc.*, 1997 WL 93628 (February 25, 1997) (Initial Decision); (Securities Exchange Act Release No. 38489 (April 9, 1997) (Finality Order)); *See also, SEC* v. *Jeffrey Szur*, No. 97 Civ. 9305 (S.D.N.Y. December 18, 1997); *SEC* v. *George Badger*, No. 97 CV 963K (D. Utah December 18, 1997); *SEC* v. *Andrew Scudiero*, No. 97 Civ. 9304 (S.D.N.Y. December 18, 1997); *SEC* v. *Leonard Alexander Ruge*, No. 97 Civ. 9306 (S.D.N.Y. December 18, 1997); *SEC* v. *Joseph Pignatiello*, No. 97 Civ. 9303 (S.D.N.Y. December 18, 1997). For a summary of the SEC's allegations in these cases, see Litigation Release No. 15595 (December 18, 1997), 1997 SEC LEXIS 2602.

[5] See United States Senate Committee on Governmental Affairs Permanent Subcommittee on Investigations, Hearing on Fraud in the Micro Capital Market (September 22, 1997) (testimony of Arthur Levitt, Chairman of the U.S. Securities and Exchange Commission) ("Senate Testimony on Microcap Fraud").

[6] N.Y. Attorney General, REPORT ON MICRO-CAP FRAUD (December 1997).

[7] See, *e.g.*, Weiss, "Investors Beware—Chop Stocks Are on the Rise," Business Week, December 15, 1997, at 112–128; Lohse and Emshwiller, "Bulletin Board Likely to Remain Wild West of Wall Street," The Wall Street Journal, December 15, 1997, at C1; Schroeder, "Despite Reforms, Penny-Stock Fraud is Roaring Back," The Wall Street Journal, September 4, 1997, at A12; Byrne, "The Real OTC Market: The Spectacular Success of Pink Sheet and Bulletin Board Trading: Why the NASD is Toughening Standards," Traders, September 1997, at 36–39; Lohse, "Fraud by Small-Stock Operators Flourishes in Long Bull Market," The Wall Street Journal, July 31, 1997, at C1.

[8] The term "microcap securities" is not defined under the federal securities laws or regulations. The use of the term "microcap securities" in this release, however, should be distinguished from its use in the mutual fund context. For example, Lipper Analytical Services, a mutual fund rating organization, generally categorizes microcap companies as companies with market capitalization of less than $300 million. Lipper-Directors' Analytical Data, Investment Objective Key, 2d ed. 1997.

mediums.[9] The Commission recognizes, however, that not all securities traded in this market sector are tainted by fraud.

Microcap fraud frequently involves issuers for which public information is limited, especially when issuers are not subject to reporting requirements.[10] Without information, it is difficult for investors, securities professionals, and others to evaluate the risks presented by microcap securities. Investors consequently can fall prey to persons who make false representations and unrealistic predictions about these securities.

As part of their manipulative schemes, unscrupulous retail brokers, operating out of "boiler rooms," frequently use high pressure sales tactics to stimulate investors to buy these securities. These brokers often publicly disseminate false press releases or make false statements about issuers (including through the Internet) to promote sales. To further the manipulative scheme, retail broker-dealers often also act as market makers or, either on their own or through the issuers' promoters, induce other firms to act as market makers in the securities.

Market makers' quotations are important to the success of microcap fraud schemes. By publishing quotations in the Bulletin Board, in the Pink Sheets, or in similar quotation mediums, broker-dealers give the market for the securities an aura of credibility. This can occur even if the market maker is not intentionally participating in improper activities, but is publishing quotes in response to escalating demand for the securities resulting from increasing retail sales. Trading volume for the security skyrockets and quotations and sales prices escalate (often at prices artificially set by the manipulators).

Eventually, broker-dealers and promoters stop stimulating interest in the security and its price drops. Too often the result is the same: innocent investors lose money. To address this microcap fraud problem, the Commission is pursuing a strategy of investor education, focused broker-dealer inspections, increased enforcement, and regulatory initiatives.[11]

The proposed amendments to Rule 15c2–11 would place greater information review and recording requirements, and thus greater accountability, on broker-dealers publishing quotations for securities in a quotation medium other than a national securities exchange or Nasdaq ("covered OTC securities"). These proposed amendments also would provide greater investor access to information about these securities. In particular, the proposed amendments would:

- Eliminate the Rule's "piggyback" provision, which currently permits broker-dealers (other than the initial broker-dealer) to quote the security without having current issuer information;
- Require broker-dealers that publish priced quotations for a security to obtain and review updated information about the issuer at least annually;
- Expand the information required about issuers that do not file periodic reports with the Commission;
- Require documentation of the broker-dealer's compliance with Rule 15c2–11; and
- Enhance investor access to the information required by Rule 15c2–11.

The proposed amendments apply to all securities covered by Rule 15c2–11, not just microcap securities. The Commission believes that the scope of the amendments is appropriate to preserve the general integrity of quotations in the OTC market and to foster greater information transparency in a marketplace where issuers often are relatively unknown and their securities are traded infrequently.

B. Operation of Current Rule 15c2–11

Rule 15c2–11 regulates the initiation and resumption of quotations in a quotation medium by a broker-dealer for certain OTC securities. The Commission adopted Rule 15c2–11 in 1971 to prevent fraudulent and manipulative trading schemes that had arisen in connection with the distribution and trading of unregistered securities issued by "shell" companies, or other issuers of infrequently-traded securities (about which there was little public information).[12] The Rule prevents broker-dealers from publishing quotations for covered OTC securities without reviewing basic information about the issuer.[13] Specifically, the Rule applies to broker-dealers publishing quotations in a "quotation medium,"[14] but it does not apply to broker-dealers publishing quotations for securities listed and traded on an exchange or quoted on Nasdaq.

Subject to certain exceptions, the Rule prohibits a broker-dealer from publishing a quotation for a security (or submitting a quotation for publication) in a quotation medium unless it has obtained and reviewed specified information about the issuer and the security. The broker-dealer also must have a reasonable basis for believing that the issuer information is accurate and that it was obtained from a reliable source.

Currently, a broker-dealer must review and maintain in its records the following issuer information:

- For an issuer that has conducted a recent public offering either registered under the Securities Act of 1933 ("Securities Act")[15] or effected pursuant to Regulation A under the Securities Act, a copy of the prospectus or offering circular;
- For an issuer that files reports with the Commission pursuant to Sections 13 or 15(d) of the Exchange Act ("reporting issuer") or is an insurance company of the kind specified in Section 12(g)(2)(G) of the Exchange Act, the issuer's most recent annual report and any quarterly or current reports filed thereafter;
- For foreign issuers that claim the registration exemption under Exchange Act Rule 12g3–2(b), the information furnished to the Commission pursuant to that rule; or
- For any other issuer, the information, including certain financial information, specified in paragraph (a)(5) of the Rule, which must be reasonably current in relation to the day a quotation is submitted.

In addition, paragraph (c) of the Rule requires a broker-dealer to review any other information about the issuer that comes to its knowledge or possession before the publication or submission for publication of a quotation.

Under the Rule's "piggyback" exception, the information requirements do not apply when a broker-dealer publishes, in an interdealer quotation system,[16] a quotation for a covered OTC

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[9] Microcap securities can also be listed on securities exchanges or Nasdaq.

[10] See *e.g., SEC* v. *Global Financial Traders, Ltd.*, Litigation Release Nos. 15291 (March 14, 1997) and 15338 (April 17, 1997); see also infra note 73.

[11] In addition, the NASD recently published for comment several proposed rules aimed at microcap stock abuses. These proposals would limit quotations on the OTC Bulletin Board to the securities of issuers that file reports with the Commission or other regulatory authority, and would require NASD members to review current issuer financial statements prior to recommending a transaction to a customer in an OTC equity security (other than securities listed on Nasdaq or an exchange) and to deliver a disclosure statement to a customer prior to an initial purchase of an OTC equity security. NASD Notices to Members 98–14 and 98–15 (January 1998).

[12] Securities Exchange Act Release No. 9310 (September 13, 1971), 36 FR 18641.

[13] See Securities Exchange Act Release No. 29094 (April 17, 1991), 56 FR 19148 ("1991 Adopting Release"); Securities Exchange Act Release No. 29095 (April 17, 1991), 56 FR 19158 ("1991 Proposing Release").

[14] See 17 CFR 240.15c2–11(e)(1) (defining *quotation medium* as any *interdealer quotation system* or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell).

[15] 15 U.S.C. 77a *et seq.*

[16] An *interdealer quotation system* is a quotation medium of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers. 17 CFR 240.15c2–11(e)(2).

security that already has been the subject of regular and frequent quotations.[17] A broker-dealer can "piggyback" on either its own or other broker-dealers' previously published quotations. The exception is grounded on the assumption that regular and frequent quotations for a security generally reflect market supply and demand forces based on independent, informed pricing decisions.

C. 1991 Proposing Release

In 1991, the Commission proposed amendments to Rule 15c2–11 that would have eliminated the piggyback provision. At the time, the Commission believed that the underlying assumption of the piggyback provision (*i.e.*, that regular and frequent quotations for a security generally reflect supply and demand forces based on independent pricing decisions) were no longer valid in the non-Nasdaq OTC market.[18]

The Commission observed that the Rule's coverage is limited to non-Nasdaq OTC securities, which usually are low-priced, speculative stocks of relatively unknown issuers, and that the market for these securities is characterized by an absence of both market making and retail competition. As a result, the Commission proposed amendments that would have required every broker-dealer to review issuer information prior to initiating or resuming quotations in a covered OTC security. These amendments would have retained a "self-piggybacking" provision for broker-dealers that quoted these securities with the required frequency.[19]

The Commission received 75 comment letters from 74 commenters in response to the 1991 Proposing Release. The vast majority of commenters opposed the Commission's proposal. These commenters believed that the proposal would discourage, or even eliminate, market making for many non-Nasdaq OTC securities. They claimed that the proposed amendments would have impaired liquidity, reduced market value, and harmed the capital-raising process. Several commenters believed that the proposed changes would have hurt the market for the securities of many substantial and legitimate companies, but would have little effect on fraud in worthless stocks. For several reasons, including the adoption of other measures aimed at curbing then-existing abuses in low-priced stocks,[20] the Commission did not take further action on this initiative.[21]

II. Proposed Amendments

A. Proposed Revisions to Rule 15c2–11

1. Activities Prohibited by the Rule

The proposed amendments restructure Rule 15c2–11 to set forth more clearly the activities prohibited by the Rule and the requirements of the Rule. The Rule would state that it is unlawful for a broker-dealer, directly or indirectly, to publish or to submit for publication any quotation for a security in any quotation medium unless the broker-dealer complies with the Rule's provisions.[22]

The Rule further would provide that, prior to publishing or submitting for publication an initial quotation for a security in a quotation medium, or upon the occurrence of enumerated events, a broker-dealer must:

- Obtain and review the Rule's information;
- Determine that it has a reasonable basis for believing that the information is accurate and current in all material respects and is obtained from reliable sources; and
- Record the date it reviewed the specified information, the sources of the information, and the person at the firm responsible for the broker-dealer's compliance with the Rule.[23]

By restructuring the Rule in this manner, the Commission believes that the obligations of broker-dealers under the Rule are more clearly set out. Moreover, by imposing a recordation requirement, broker-dealers' accountability for compliance with the Rule should be enhanced.

Q1. Do the Rule's core requirements remain appropriate or should they be amended?

Q2. Are there other compliance items that should be recorded?

Q3. Should the Rule expressly require the firm's compliance officer to review the Rule 15c2–11 information before the quote is submitted?

Q4. What type of review do broker-dealers currently undertake? What is the appropriate scope of review by a broker-dealer to comply with the Rule, as proposed to be amended? Commenters should consider the duties of a broker-dealer under Rule 15c2–11 as discussed in the 1991 Adopting Release.[24]

2. Elimination of the Piggyback Provision

The Commission proposes to eliminate the piggyback provision. As discussed above, the piggyback provision currently permits broker-dealers to publish quotations for a security without complying with the Rule's requirements if any other broker-dealer has published regular and frequent quotations for that security. In the Commission's view, microcap fraud is facilitated by broker-dealers that publish quotations for a security without reviewing any issuer information.[25] Even if they are not participating in the fraud, these other broker-dealers give the security a measure of credibility through their quotations. Some broker-dealers claim that they "trade by the numbers" (*i.e.*, they trade solely on the basis of supply and demand factors and without regard to fundamental information about the issuer).[26] The Commission believes that eliminating the piggyback provision is an essential step to preventing microcap fraud. In the Commission's view,

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[17] 17 CFR 240.15c2–11(f)(3). The security must have been the subject of quotations on at least 12 business days during the previous 30 calendar days, with no more than 4 consecutive business days elapsing without a quotation. Once this quotation frequency is established, a broker-dealer may publish a quotation for a covered security without having the required information if the 12 and 4 day tests are satisfied.

[18] 1991 Proposing Release, 56 FR at 19161.

[19] See 1991 Proposing Release. *Self-piggybacking* refers to the ability of a broker-dealer to continue publishing quotations without reviewing the Rule's required information, as long as that broker-dealer satisfies the quotation frequency tests of the piggyback provision.

[20] See Securities Exchange Act Release No. 30608 (April 20, 1992), 57 FR 18004 (adopting the Commission's Penny Stock Disclosure Rules (17 CFR 240.3a51–1, 240.15g–1 through 240.15g–6, 240.15g–8, and 240.15g–100)); see also Securities Exchange Act Release No. 32576 (July 2, 1993), 58 FR 37413 (redesignating Rule 15c2–6 under the Exchange Act as Rule 15g–9 under the Exchange Act (17 CFR 240.15g–9)).

[21] In light of the present proposals, the Commission is withdrawing the 1991 proposals.

[22] Rule 15c2–11 generally applies to the publication or submission for publication of quotations for OTC securities that do not satisfy any of the exceptions under the Rule. The exceptions are discussed in Section A.5, *infra*.

[23] See 1991 Adopting Release, 56 at 19150 (discussing of the nature of the review that a broker-dealer must conduct to satisfy its obligations under Rule 15c2–11 and the determination of whether the source of the information is reliable).

[24] *Id.*

[25] See General Bond & Share Co., 51 S.E.C. 411 (1993) *aff'g Market Surveillance Committee* v. *General Bond & Share Co.*, 1992 NASD Discip. Lexis 99 (January 30, 1992), *affirmed in part, vacated in part, and remanded*, 39 F.3d 1451 (10th Cir. 1994). In this case, the Commission affirmed a decision of the NASD's National Business Conduct Committee Securities Dealers ("NBCC"), which found that General Bond & Share Co. ("General Bond"), a registered broker-dealer, violated Article III, Section 1 of the NASD's Rules of Fair Practice by accepting issuer-paid compensation for listing itself as a market maker in the Pink Sheets for the securities of numerous issuers. The NBCC also found that General Bond's Pink Sheet entries paved the way for other market makers to piggyback onto those quotations without complying with the requirements of Rule 15c2–11.

[26] See D.H. Blair & Co., 44 S.E.C. 320, 332 (1970) (trading by the numbers cannot be completely separated from the investment value of the security or the need for supervision with a view to detecting possible signs of manipulation).

responsible broker-dealers would be deterred from publishing quotations if they were aware of basic information about the issuer that suggested a possible fraud.

Under the proposal, each broker-dealer that publishes a quotation for a covered OTC security for the first time in a particular quotation medium [27] other than the exchanges or Nasdaq would be required to review fundamental information about the issuer and have a reasonable basis for believing that the information is accurate, current, and from reliable sources. The Commission recognizes that many commenters on the 1991 Proposing Release raised issues about the perceived costs of compliance and the possible resulting loss of liquidity for some securities if the piggyback provision were eliminated and annual information updating were required. As discussed below, the availability of the EDGAR system should reduce the information gathering and recordkeeping costs for those broker-dealers that publish quotes for the securities of reporting issuers. Also, the Commission encourages the development of central repositories of information about issuers that are not participating in its public disclosure system.[28]

Q5. Are there any circumstances in which it would be appropriate to retain a piggyback provision? If so, how should such a provision be structured?

3. The Occurrence of Events Requiring Actions under the Rule

After a broker-dealer publishes its first quotation [29] in compliance with the Rule for a security in a particular quotation medium it can continue to publish quotations (either priced or unpriced) for the security in that medium without reviewing updated information until the occurrence of either of the following events:

- A period of five or more consecutive business days in which the broker-dealer does not publish quotations for the security; or
- The Commission has ordered a trading suspension pursuant to Section 12(k) [30] of the Exchange Act for any of the issuer's securities.

Following one of these events, a broker-dealer must gather and review the information required by the Rule before publishing quotations. In the Commission's view, if a broker-dealer has not quoted the security for five or more consecutive business days, that fact may reflect the broker-dealer's nominal interest in publishing quotations for the security, and thus the broker-dealer may not be aware of significant events involving the issuer.

The Rule also would require a broker-dealer to gather and review the specified information annually if the broker-dealer publishes priced quotations for the security. The purpose of this requirement is to make sure that a broker-dealer publishing priced quotations periodically reviews fundamental information about the issuer. A broker-dealer should know if there is no current information about the issuer or if the current information reflects a significant change in the issuer's ownership, operations, or financial condition.

The annual update requirement would apply only to broker-dealers publishing priced quotations. The Commission believes that priced quotations have been used in microcap fraud and manipulation schemes, (*e.g.*, when a broker-dealer publishes quotations at increasing prices to obtain bank loans or to value customer securities' positions). In addition, priced quotations are used as indicia of value for a variety of purposes (*e.g.*, pledges of securities). The Commission will reconsider its position, however, if it discovers that unpriced entries are also used to facilitate unlawful schemes.

The broker-dealer would have two optional dates as measuring points for conducting the annual review: the anniversary date of its initial quotation for the security; or the date that is four months after the end of the issuer's fiscal year (or, for a foreign private issuer, the date that is seven months after the end of the issuer's fiscal year). The annual review must be conducted before the broker-dealer publishes a priced quotation following the review date option that it selects. The Commission believes that four months (or seven months for foreign private issuers) would give a broker-dealer sufficient time to obtain and review updated issuer information about reporting and non-reporting issuers.

Q6. Should the annual update requirement apply to unpriced quotations?

Q7. Should the annual update requirement be eased or eliminated when a reporting issuer is current in its Exchange Act reporting obligations?

Q8. Should the provision triggering the review of updated information following a break in quotations provide for a period of more or less than five consecutive business days?

Q9. In addition to a trading suspension, should any other significant events involving the issuer (*e.g.*, a merger or acquisition, significant offering, name change, change of business, resignation of accountants, or bankruptcy proceeding) trigger the Rule's obligations to obtain, review, and document updated information?

Q10. Should the Rule include other optional dates triggering the annual review requirement for priced quotations (*e.g.*, by January 1 of each year)?

Q11. For domestic issuers, should the period within which a broker-dealer must conduct an annual review be longer than four months after an issuer's fiscal year end (for example, five or six months) or shorter than four months (for example, three months, or 14 weeks)?

Q12. For foreign issuers, should the period within which a broker-dealer must conduct an annual review be longer than seven months after an issuer's fiscal year end (for example, as long as nine months) or shorter than seven months (for example, four or six months)?

Q13. For foreign issuers, should the annual updating requirement apply if trading is suspended on any exchange or organized market on which its securities trade?

Q14. Would either the requirement to review updated information after a five-day lapse or the annual update requirement adversely affect the liquidity of covered OTC securities? Commenters responding to this question are urged to provide data and analysis.

4. Information Required by the Rule

a. Issuer Information. Current Rule 15c2–11 specifies the information that a broker-dealer must review before publishing quotations for five categories of issuers: (1) Issuers that had a recent registered offering; (2) issuers that had a recent offering under Regulation A under the Securities Act;[31] (3) reporting issuers and insurance companies

[27] See Section C, *infra*, for a discussion of the definition of quotation medium.

[28] See Section D, *infra*.

[29] The term *quotation* is defined as any bid or offer at a specified price with respect to a security, or any indication of interest by a broker or dealer in receiving bids or offers from others for a security, or any indication by a broker or dealer that advertises its general interest in buying or selling a particular security. For the purposes of this release, a "priced quotation" is a bid or offer at a specified price and an "unpriced quotation" is any indication by a broker or dealer in receiving bids or offers from others or any indication by a broker or dealer that advertises its general interest in buying or selling a particular security.

[30] 15 U.S.C. 78*l*(k).

[31] Regulation A provides an exemption from registration under the Securities Act for offerings not exceeding $5 million, less the aggregate offering price of any other Regulation A offering during the prior 12 months. 17 CFR 230.251–230.263.

exempted from Section 12(g) of the Exchange Act [32] by reason of Section 12(g)(2)(G) ("exempt insurance companies");[33] (4) foreign private issuers that are exempt from Section 12(g) of the Exchange Act by reason of compliance with Rule 12g3–2(b) thereunder;[34] and (5) other issuers. The proposals would revise the Rule's information requirements with respect to reporting issuers and would enhance the requirements for non-reporting issuers. In addition, the proposals would add an information provision that covers certain non-reporting financial institutions.

i. Reporting issuers and exempt insurance companies. Currently, a broker-dealer publishing quotations for the securities of a reporting issuer (or exempt insurance company) must review the issuer's most recent annual report, together with any subsequently filed quarterly or current reports. The proposed amendments retain this requirement and clarify that the issuer must be current in its reporting obligations. Therefore, broker-dealers publishing quotations for the securities of any issuer delinquent in its reporting obligations ("delinquent issuer") no longer would be able to rely on the Rule's provision containing the information requirements designed for non-reporting issuers.[35]

For reporting issuers, broker-dealers would be able to access and review the required information on the Commission's EDGAR system, available through the Commission's Internet website (http://www.sec.gov). Broker-dealers using this method would have to document the date of their review and satisfy the Rule's information retention requirements, discussed later in this release.

Under the proposals, a broker-dealer could not publish its initial quote without reviewing the Rule's required information, nor could it continue to publish priced quotations without updating that information annually. This means that, in the case of a delinquent issuer, a broker-dealer would not be permitted to publish an initial quotation or continue to publish *priced* quotations after the annual review date because it would not be able to obtain current reports. Broker-dealers that initiated a quotation in compliance with the Rule prior to the issuer's delinquency could continue to publish *unpriced* quotations after the annual review date.

While the market for a delinquent issuer's securities may be somewhat constrained by this proposal, this requirement furthers the Rule's purpose of limiting the fraudulent and manipulative potential of priced quotations in the absence of accurate and current information about the issuer. The Commission recently brought several enforcement actions against issuers for failure to file timely reports.[36] In many of these actions, an active trading market for the issuer's securities existed even though adequate and current issuer information was not available to broker-dealers or investors. In these circumstances, priced quotations have a substantial potential to facilitate improper retail sales practices where broker-dealers recommend securities to investors, without adequate information to support the recommendation, and refer investors to the market price (*i.e.*, priced quotes) as an indication of value.

In the past, commenters have suggested marking the quotation with a designator to indicate that issuer information was not available.[37] The Commission does not view this alternative as responding adequately to the problem of active trading facilitated by priced quotations without current information. Moreover, that approach would remove an incentive that delinquent issuers may have to provide current information to their shareholders and the marketplace.

Q15. Under what circumstances, if any, should broker-dealers be able to initiate quotations, or continue publishing priced quotations, for the securities of delinquent issuers?

ii. Other issuers. Rule 15c2–11(a)(5) [38] specifies the information that broker-dealers must obtain and review for issuers other than those covered by paragraphs (a)(1) through (a)(4). For the most part, this provision covers the securities of U.S. non-reporting issuers. Currently, a broker-dealer is required to review basic information about these issuers, including: the issuer's most recent balance sheet, profit and loss, and retained earnings statements; a description of the issuer's business, products or services offered, and facilities; and a description of any relationship between the broker-dealer and the issuer's insiders.

Based on recent experience, broker-dealer review of additional items of information should reduce the potential for fraud in this segment of the capital market.

Therefore, the Commission proposes to expand the information that broker-dealers must review before publishing a quotation for a non-reporting issuer's securities and to make that information more readily available to the marketplace.

The proposed amendments would require broker-dealers to review more information about the issuer's outstanding securities, its officers and directors, its financial condition, and certain significant events, among other items. This enhanced information would give a broker-dealer that is considering whether to publish quotations a greater understanding of the issuer's operations and a better indication of whether potential or actual fraud or manipulation may be present.

Securities Information. The Rule would require a broker-dealer to obtain and review information regarding each class of the non-reporting issuer's outstanding securities, including the number of securities outstanding, the number of securities issuable upon exercise or conversion of outstanding derivative securities of the issuer, and the total number of securityholders of record as of the end of the issuer's most recent fiscal year (or a more recent date if the data is available). The Commission believes that this information is relevant because it provides broker-dealers with a greater awareness of the issuer's equity structure, particularly as recent incidents of fraud have involved transactions in derivative securities,

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[32] 15 U.S.C. 78*l*(g).

[33] 15 U.S.C. 78*l*(g)(2)(G).

[34] 17 CFR 240.12g3–2(b).

[35] Currently, a broker-dealer can rely on paragraph (a)(5) of the Rule pertaining to non-reporting issuers when a report or statement of a reporting issuer or exempt insurance company is not "reasonably available" (*i.e.*, not on file with the Commission). 17 CFR 240.15c2–11(a)(5). See e.g., Robin Rushing, [1995–1996] Fed. Sec. L. Rep. (CCH) ¶ 85,731 (Initial Decision), Securities Exchange Act Release No. 36910 (February 29, 1996) (Finality Order) (where the company was delinquent in Exchange Act filing, the market maker was required to obtain paragraph (a)(5) information to comply with Rule 15c2–11).

[36] *SEC* v. *Wincanton*, No. 96–CV–02152 (D.D.C. September 17, 1996) (Litigation Release No. 15052 (D.D.C. September 17, 1996)); *SEC* v. *Equity AU, Inc.*, 96–CV–01775 (D.D.C. July 30, 1996)(Litigation Release No. 14993 (July 30, 1996)); *SEC* v. *Cayman Resources*, 96–CV–00968 (D.D.C. July 24, 1996) (Litigation Release No. 14996 (D.C.C. July 31, 1996; *SEC* v. *American Cascade*, 96–CV–00626 (D.D.C. March 29, 1996) (Litigation Release No. 14857 (March 29, 1996)); *SEC* v. *Parallel Technologies, Inc.*, 96–CV00545 (D.D.C. March 19, 1996) (Litigation Release No. 14848 (March 20, 1996)).

[37] In response to the 1991 Proposing Release, 17 commenters suggested some form of special designation indicating the broker-dealers's lack of required information. See, *e.g.*, Letter dated February 24, 1992, from Stephen D. Hickman, Secretary, NASD, to Jonathan G. Katz, Secretary, SEC ("1992 NASD Letter"), p.7.

[38] 17 CFR 240.15c2–11(a)(5).

such as warrants.[39] This enhanced information requirement would indicate to the broker-dealer whether any persons had access to large quantities of securities that could dilute the value of the public float.

Q16. Are there other items of information regarding the issuer's outstanding securities that would be helpful to broker-dealers publishing quotations of covered OTC securities?

Control Person Information. For non-reporting issuers, the Rule would require broker-dealers to obtain the names, addresses, and holdings in the issuer's securities of the issuer's insiders (including promoters and control persons), and information about the disciplinary histories of the issuer's insiders (including promoters and control persons). Specifically, the broker-dealer must review information about the following events involving persons related to the issuer in: Any criminal charges or convictions; any court-issued injunctions, bars or other limitations involving any type of business, securities, commodities, or banking activities; any violation of federal or state securities or commodities law; or any bars or suspensions by a self-regulatory organization ("SRO"). This information must be provided if the events occurred during the five-year period preceding the publication of the quotation. Reviewing these items of information should help broker-dealers evaluate the degree of control over the issuer exerted by insiders and alert the broker-dealer to possible "red flags" regarding the issuer's insiders and control persons.

Two alternative options for the broker-dealer to satisfy this requirement are proposed. The broker-dealer could obtain a statement from the issuer that none of the specified actions had occurred; or the broker-dealer could document the steps taken to obtain the required information and the issuer's response, including whether the issuer refused to cooperate. The second alternative would allow the broker-dealer to publish quotations when it has difficulty obtaining the information. However, the broker-dealer should consider the issuer's refusal to supply this information when the broker-dealer ascertains whether it has a reasonable basis for believing that the other Rule 15c2–11 information it obtained and reviewed is accurate and the sources are reliable.

Q17. Is it appropriate to allow a broker-dealer to publish quotations if the issuer refuses to supply disciplinary history information regarding its insiders, control persons, or promoters?

Q18. Should any other disciplinary history or other background information about the issuer's insiders, control persons, or promoters be required? Would this information be helpful to broker-dealers in determining whether to publish quotations?

Financial Information. The Commission is proposing to expand the financial information that a broker-dealer must gather and review about a non-reporting issuer. The proposal includes different requirements with respect to domestic and foreign private issuers. Currently, paragraph (a)(5)(xii) requires a broker-dealer to obtain and review an issuer's most recent balance sheet and profit and loss and retained earnings statements. The Rule does not require this financial information to be audited or presented in a particular format.

Domestic non-reporting issuers. The proposed amendments would require a broker-dealer to obtain and review the issuer's most recent balance sheet, statement of operations (income), statement of cash flows, statement of shareholders' equity, and statement of comprehensive income. It also would require these items to be prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP"). This requirement for the financial statements to be prepared in accordance with a comprehensive body of generally accepting accounting principles would create greater uniformity for these financial statements. This uniformity would assist the review by broker-dealers and surveillance by regulators.

The Commission understands that in the case of non-reporting U.S. issuers, the financial statements submitted on NASD Form 211 to the NASD pursuant to NASD Marketplace Rule 6740 typically are prepared in accordance with U.S. GAAP and some, but not all, are audited.[40] Accordingly, the Commission's preliminary view is that the proposed U.S. GAAP standard would not impose substantial costs on issuers.

Q19. Do most domestic non-reporting issuers already prepare their financial statements in accordance with U.S. GAAP?

Q20. Should the Rule require that these financial statements be audited?

Foreign non-reporting issuers. The proposals would require a broker-dealer to obtain and review the following information for a foreign private issuer (other than an issuer furnishing information to the Commission pursuant to Rule 12g3–2(b)): the issuer's most recent balance sheet and statement of operations (income) and, to the extent prepared by the issuer, statements of cash flows, comprehensive income and changes in shareholders' equity. These statements must be prepared in accordance with a comprehensive body of accounting principles. This proposal would provide broker-dealers with financial information about issuers that do not participate in the Exchange Act reporting programs. Preparation of U.S. GAAP financial statements would be permitted but not required.

The proposal would permit broker-dealers to obtain information prepared using a number of different comprehensive bodies of accounting which will limit the uniformity of the information reviewed. Although the Commission has not included specific amendments to address this concern, the Commission is seeking comments on possible alternative measures that could be adopted to improve the level of financial information relied upon by broker-dealers when submitting priced quotations for foreign non-reporting issuers' securities.

Q21. The proposal requires a broker-dealer to obtain and review statements of cash flows, comprehensive income and changes in shareholders' equity only to the extent prepared by the issuer. Should broker-dealers be prohibited from publishing quotations if certain of those financial statements are not available? If so, which ones should be required?

Q22. Do most foreign non-reporting issuers already prepare their financial statements in accordance with a comprehensive body of accounting principles?

Q23. Should broker-dealers be required to obtain and review financial statements for foreign non-reporting issuers prepared in accordance with or that are reconciled to U.S. GAAP?[41]

Q24. Should broker-dealers be required to obtain and review financial statements for foreign non-reporting issuers prepared in accordance with or reconciled to U.S. GAAP[42] only when the principal market for their securities is the United States?

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[39] See Michael J. Markowski, Securities Exchange Act Release No. 38424 (March 20, 1997) (instituting an administrative proceeding alleging manipulation in connection with the initial public offering of units made up of common stock and warrants of three different issuers); Securities Exchange Act Release No. 38425 (March 20, 1997) (order of settlement).

[40] See NASD Manual, Marketplace Rules, Rule 6740.

[41] Requirements for quantitative and qualitative reconciliations of non-U.S. GAAP financial information to U.S. GAAP are specified in Items 17 and 18 of Form 20–F. 17 CFR 249.220F.

[42] *Id.*

Q25. Should the Rule require that these financial statements be audited? If so, should they be required to be audited in accordance with U.S. generally accepted auditing standards?

Significant Events. In addition, the proposals would require a description of significant events regarding the issuer during the last two years, including: A change in control; a 10% or more increase in an outstanding class of equity securities; a merger or acquisition; an acquisition or disposition of significant assets; bankruptcy proceedings; or delistings by a securities exchange or Nasdaq. This information seems relevant because broker-dealers would be made aware of information about significant events involving the issuer. The Commission is also proposing to add a provision, similar to the disciplinary history requirement, that would give broker-dealers the alternative of either obtaining a statement from the issuer that none of these events had occurred or providing its own statement of the steps it took to obtain the significant event information in cases where the issuer failed or refused to provide it.

Q26. Are there other significant events involving the issuer that a broker-dealer should review before publishing a quotation?

Q27. Is it appropriate to allow a broker-dealer to publish quotations if the issuer refuses to provide information regarding a significant event?

iii. Certain foreign issuers. Rule 15c2–11 [43] currently permits a broker-dealer to obtain and review the information submitted to the Commission by a foreign private issuer pursuant to Rule 12g3–2(b) under the Exchange Act.[44] Rule 12g3–2(b) exempts securities of any foreign private issuer from registration pursuant to Section 12(g) of the Exchange Act if the issuer furnishes to the Commission information that the issuer has: Made or is required to make public pursuant to the law of the country in which the foreign private issuer is domiciled or incorporated; filed or is required to file with a stock exchange on which the securities are traded and which the exchange made public; or distributed or is required to distribute to its securityholders.[45]

The Commission has not included a specific proposal to change the Rule's requirements for Rule 12g3–2(b) issuers.[46] This is consistent with the general incorporation of Section 12 issuer information requirements and exemptions into the Rule. The Commission notes, however, that Rule 12g3–2(b) has no specific information requirements. As a result, there is no assurance that broker-dealers will have the same types of information for foreign private issuers that claim the Rule 12g3–2(b) exemption as broker-dealers will be required to have with respect to other issuers. In addition, many of the companies that claim the Rule 12g3–2(b) exemption are foreign microcap companies that can be subject to the same type of abusive practices as U.S. microcap companies.[47] Accordingly, the Commission is considering whether to limit a broker-dealer's reliance under Rule 15c2–11 on an issuer's 12g3–2(b) exempt status at least with respect to priced quotations.

Q28. Should the reference to Rule 12g3–2(b) be deleted from Rule 15c2–11? This would mean that broker-dealers publishing quotations for Rule 12g3–2(b) issuers' securities would be required to obtain and review the same information as required for all other foreign non-reporting issuers whose securities are subject to Rule 15c2–11. Comment is specifically requested with respect to Question 23 in the context of the requirements of Rule 15c2–11 as applied to Rule 12g3–2(b) issuers. Should a distinction in this respect be made depending upon whether the quotation is priced or unpriced?

Q29. Should reliance under Rule 15c2–11 on the Rule 12g3–2(b) exception not be permitted for those issuers whose principal market is the United States? If so, how should the principal market be determined? [48]

Q30. What difficulty, if any, would broker-dealers encounter in obtaining the information specified in proposed paragraph (d)(6) for a Rule 12g3–2(b) issuer?

Q31. Should the exception for Rule 12g3–2(b) issuers apply only to larger foreign private issuers, so that quotations for smaller issuers would require the information specified in proposed paragraph (d)(6)? If so, how should such distinction be measured? For example, if market value of public float is used, what would be the appropriate threshold (*e.g.*, $25 million, $75 million, $150 million, or some other amount)? If dollar value of average daily trading volume is used, what would be the appropriate threshold (*e.g.*, $100,000, $1 million, $5 million, or some other amount)?

Q32. Should the Rule 12g3–2(b) exception be available only for foreign private issuers that satisfy Nasdaq SmallCap quantitative listing standards (*i.e.*, at least $4 million in net tangible assets, or a market capitalization of at least $50 million, or net income in two of the last three fiscal years of at least $750,000, and a market value of public float of at least $5 million)?

Q33. Should there be a separate Commission rule requiring broker-dealers, whether or not they recommend a transaction in a security, to inform customers about available information regarding the issuer of the foreign security?

Q34. Should there be a separate Commission rule requiring broker-dealers, before recommending a transaction in a foreign security, to review financial information about the foreign issuer that is the basis of the recommendation and to document that review?

iv. Exempt financial institutions. Proposed paragraph (d)(4) would apply to financial institutions that are exempt from Exchange Act reporting requirements,[49] but file reports with other governmental agencies ("exempt financial institutions").[50] The Commission has determined that,

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[43] 17 CFR 240.15c2–11(a)(3).

[44] 17 CFR 240.12g3–2(b).

[45] The information may be submitted by a government official or agency of the country of the issuer's domicile or in which it is incorporated or organized.

[46] See proposed paragraph (d)(5) of the Rule. Broker-dealers publishing quotations for the securities of Rule 12g3–2(b) issuers would be subject to the updating requirements of proposed paragraph (b). Accordingly, broker-dealers would have to review updated information about these foreign private issuers following a Commission trading suspension or a five-day lapse in quotations. Broker-dealers also would have to review the issuer information on an annual basis in order to publish priced quotations. The Commission staff is considering whether Rule 12g3–2(b) continues to serve its original purpose and will evaluate whether changes to that rule should be proposed. If Rule 12g3–2(b) is amended, the interaction if that exemption with the requirements of Rule 15c2–11 could be affected.

[47] See *SEC* v. *Chelekis*, Litigation Release No. 15264 (February 25, 1997) (over half of the companies involved claimed the Rule 12g3–2(b) exemption).

[48] *See, e.g.*, definition of "principal market" contained in Rule 100 of Regulation M. 17 CFR 242.100.

[49] 15 U.S.C. 77(c)(a)(2), 78*l*(i).

[50] See *e.g.*, 12 CFR 363.4 (requiring insured banks to file annual reports with their respective bank supervisory agencies); 12 CFR 208.16 (requiring state member banks to file periodic reports with the Federal Reserve); 12 CFR 18.3 through .5 (requiring national banks to file annual disclosure statements with the Office of the Comptroller of the Currency ("OCC")); FFIEC Forms 031–034 (requiring national banks to file annual call reports with the OCC and Federal Deposit Insurance Corporation); 12 CFR 562.2 (requiring federally chartered savings associations to file annual regulatory reports with the Office of Thrift Supervision ("OTS")); NY Bank Section 37 and NY ADC § 24.1 (requiring all New York state chartered banks to file annual reports with the New York Banking Department); and Ca Fin Section 689 (requiring California state chartered banks to file annual reports with the California Department of Banking).

because the reports filed with federal or state bank supervisory agencies are readily available and contain information analogous to Exchange Act reports, broker-dealers should be required to obtain and review that information rather than the information required under proposed paragraph (d)(6) for other non-reporting issuers. Broker-dealers that quote the securities of financial institutions that file periodic reports with the Commission would have to obtain and review the information specified in proposed paragraph (c)(3) of the Rule.[51]

Q35. Should the Rule contain a separate provision relating to exempt financial institutions?

Q36. Would broker-dealers face any difficulties in obtaining information about exempt financial institutions that is filed with the appropriate regulatory authority?

v. Bankruptcy situations. *Issuers in Bankruptcy.* When the Commission issued a release in 1989 seeking comment on the piggyback provision (among other things), it inquired whether there were situations, such as issuer bankruptcies, that should be addressed if the piggyback provision were eliminated.[52] Many commenters on the 1989 Release argued that it was appropriate to permit broker-dealers to continue quoting the securities of issuers that had filed for bankruptcy because it provided liquidity for these securities. Commenters, including the NASD,[53] suggested that issuers in bankruptcy be designated as such in the quotation system by affixing a special indicator to the security's symbol. The NASD also recommended that this indicator be required on all confirmations of transactions involving the bankrupt issuer's securities and that broker-dealers publishing quotations for these securities be required to obtain, at a minimum, the most recent financial statements on file with the bankruptcy court.

The Commission disagreed with these views and stated that the initiation of any quotations, or indefinite continuation of priced quotations, for securities where the basic information required by the Rule is not available to the marketplace would undercut the prophylactic purposes of the Rule and might even encourage the abuses sought to be prevented.[54]

Commenters also suggested that broker-dealers could satisfy the Rule's requirements by reviewing court filings for an issuer in reorganization pursuant to Chapter 11 of the Bankruptcy Code.[55] However, these Chapter 11 filings generally are periodic reports that ordinarily contain only receipts and disbursements.[56] These periodic reports do not provide the type of issuer financial information contemplated by the Rule. In particular, where a bankrupt issuer meets the criteria for Exchange Act reporting, it would be inconsistent with the public interest and protection of investors to permit broker-dealers to facilitate trading by publishing quotations without reviewing Exchange Act information. Therefore, under the proposals, broker-dealers would not be able to initiate or resume quotations for the securities of issuers in bankruptcy and could not publish priced quotations for those securities as of the annual update requirement, unless they have obtained and reviewed the Rule's required information.

Q37. What difficulties does this position present for broker-dealers quoting securities of issuers that file for bankruptcy?

Issuers Emerging from Bankruptcy. The Commission recently received a petition for rulemaking seeking a revision of the financial statement requirements for non-reporting issuers emerging from bankruptcy.[57] In addition to the issuer's most recent financial statements, the Rule currently requires that a broker-dealer review similar financial information for the two preceding years. This requirement could result in a review of pre-bankruptcy financial information that has little bearing on the financial condition of the issuer emerging from a Chapter 11 reorganization. The Commission agrees with the suggestion made in the petition and proposes to amend Rule 15c2–11 to limit a broker-dealer's review to the court-approved disclosure statement[58] for the issuer's plan of reorganization and the issuer's financial information from the date the bankruptcy court confirms the reorganization plan.

Q38. Does the proposed amendment deal appropriately with issuers emerging from bankruptcy?

b. Supplemental Information. Rule 15c2–11(b)(2) currently requires a broker-dealer to maintain in its records a copy of any trading suspension order issued in the 12 months preceding the publication or submission of the quotation.[59] In addition, Rule 15c2–11(b)(3) requires a broker-dealer to preserve material information regarding the issuer which comes to the broker-dealer's attention before publishing the quotation or submitting the quotation for publication.[60] The Commission is proposing to retain these provisions. As under the current Rule, a broker-dealer would be required to consider this supplemental information, along with the issuer information, when it determines whether it has a reasonable basis for believing that both the issuer information and supplemental information are accurate, current, and from reliable sources.[61]

c. Significant Relationship Information. Currently, Rule 15c2–11 requires a broker-dealer to record information regarding the broker-dealer's relationship with those non-reporting issuers whose securities are being quoted. Specifically, broker-dealers must document whether:

- The broker-dealer or any associated person is affiliated with the issuer;
- The quotation is being entered on behalf of another broker-dealer and, if so, its name; and
- Whether the quote is being submitted on behalf of an insider or control person of the issuer, the name of the person, and the basis for any exemption from the federal securities laws for sales by such person.

The purpose of this information is to alert regulators and others of possible "red flags," such as potential violations of the registration provisions of the Securities Act.

The proposed amendments would retain these requirements and apply

[51] Broker-dealers publishing quotes for securities of exempt financial institutions may obtain the regulatory reports from the financial institution by contracting their primary bank regulatory agency. Broker-dealers can access the Federal Reserve System's National Information Center of Banking Information website, www.ffiec.gov/NIC, the Federal Deposit Insurance Corporation's ("FDIC") website, www.fdic.gov, which provides the most recent Call Reports for all FDIC insurance banks, or the OCC's website, www.occ.treas.gov, which has information about individual nationally chartered banks. Broker-dealers that access exempt financial institution information through these websites would be able to satisfy the Rule's requirements by recording their review and preserving the information in the same manner as for EDGAR information discussed above.

[52] Securities Exchange Act Release No. 27247 (September 14, 1989), 54 FR 39194 ("1989 Release").

[53] See 1992 NASD Letter, *supra* note 37.

[54] 1991 Proposing Release, 56 FR at 19158.

[55] 11 U.S.C. 1101 *et seq.*

[56] See Federal Rule of Bankruptcy Procedure 2015.

[57] See Letter from Daniel J. Demers to Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC (November 14, 1997). This petition for rulemaking is available in File No. 4–405 in the Commission's Pubic Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

[58] 11 U.S.C. 1125. The disclosure statement includes, among other things, a description of the issuer's business plan, a description of any securities to be issued, and financial information.

[59] 17 CFR 240.15c2–11(b)(2). Information regarding recent trading suspension orders can be obtained by calling (800) SEC–0330.

[60] 17 CFR 240.15c2–11(b)(3).

[61] *Cf.* Robin Rushing, *supra* note 35.

them to all covered OTC securities, not just those of non-reporting issuers. In addition, the proposals would require the broker-dealer to record whether it had any arrangement to receive any compensation for publishing the quotation and, if so, a description of the compensation and the name of the person providing it.

Microcap fraud often involves payments by the issuer (or insiders or promoters of the issuer) or other broker-dealers to the broker-dealer to create a market in the issuer's stock.[62] The Commission believes that the records created by the broker-dealer under the proposals would help expose improper arrangements, which can mislead market participants as to the quality of a broker-dealer's quotations.[63] Moreover, this information also would assist regulators in identifying broker-dealers that may be acting as "fronts" for other broker-dealers or the issuer by publishing ostensibly independent quotes.

Q39. Is there a better way to identify when compensation has been paid to broker-dealers for publishing quotations?

5. Exceptions to the Rule

Under the proposed amendments, the current exceptions relating to quotations representing a customer's indication of interest and not involving the solicitation of a customer's interest, quotations for municipal securities, and quotations representing a security listed and traded on a national securities exchange or authorized for quotation on Nasdaq remain substantively the same.

Q40. Is there any reason to continue the requirement in the exception regarding exchange-listed securities that the security be traded on the exchange in proximity to the day the OTC quotation is published?

The Commission is concerned that the proposed changes may result in misuse of the exception covering unsolicited customer orders, particularly if a broker-dealer wants to publish quotations for a security but cannot obtain the requisite issuer information. The unsolicited status of the underlying customer orders would be called into question if a broker-dealer repeatedly publishes quotations on the basis of this exception.[64] In that circumstance, the broker-dealer's activities would suggest that it is acting as a market maker, rather than a broker or dealer attempting to fill unsolicited customer orders.

Q41. How frequently and under what circumstances do broker-dealers rely on the unsolicited customer order exception?

Q42. Is it appropriate for the Rule to retain an exception for unsolicited customer orders?

Q43. Should unsolicited customer orders be required to be identified as such in the quotation medium?[65]

Q44. Should there be a limited exception for a quotation reflecting isolated proprietary transactions by the broker-dealer? What should be the parameters of any such exception?

Debt Securities. Rule 15c2–11 covers debt securities, although the Commission recognizes that broker-dealers publishing quotations for debt securities may not have focused on this aspect of the Rule. Debt securities frequently are held by institutional investors, and it does not appear that they have been the subject of the abuses that the Rule is intended to address.

Q45. In light of these considerations, should the Rule continue to apply to debt securities? Should the Rule except all non-convertible debt securities or just non-convertible investment grade debt securities?

6. Information Available upon Request

Rule 15c2–11(a)(5) currently provides that the information described in that paragraph must be made available upon request to any person expressing an interest in a transaction in that security with the broker-dealer.[66] This requirement may have little practical effect because only the first broker-dealer to publish quotations must have the information, and an investor might find it difficult to identify that broker-dealer.[67] In fact, that broker-dealer may no longer be publishing quotations. The proposed amendments would require every broker-dealer that publishes quotations for covered OTC securities to obtain, review, and preserve the specified information. The Commission believes that some microcap fraud could be prevented if there were greater investor access to information about these securities and their issuers. Accordingly, the Commission is proposing to enhance the accessibility of this information by requiring a broker-dealer publishing quotations for any covered OTC security to make the information promptly available upon request by any person.

The Commission believes that the cost of requiring broker-dealers to make the information available (including to other broker-dealers) upon request is minimal. Also, the requirement to provide the requested information would prevent a broker-dealer from arranging with the issuer to have exclusive access to the issuer's information and thereby have sole access to Rule 15c2–11 information. This result would be anti-competitive and detrimental to the marketplace.

The proposed amendments would retain in substantial form the current clause that providing information to others does not constitute a representation by the broker-dealer that the information is accurate. Providing the information to others instead would constitute a representation that the information is current in relation to the date the information was reviewed, and that the broker-dealer has a reasonable basis for believing that the information is accurate and from reliable sources.

Q46. Under what circumstances do broker-dealers currently provide Rule 15c2–11 information to others?

Q47. Should the proposed rule specifically permit broker-dealers to charge a reasonable fee to offset their costs of providing the information?

Q48. Should the scope of this provision be limited to non-reporting issuers because information about reporting issuers is available to investors, such as on EDGAR through the Internet? If this requirement should be limited to non-reporting issuer information, should broker-dealers be required to furnish the supplemental and significant relationship information about reporting issuers?

7. Preservation of Documents and Information

To facilitate compliance with the Rule's recordkeeping requirements, the Commission believes that it is appropriate to codify the Rule's record preservation requirements in Rule 17a–4,[68] rather than in Rule 15c2–11.

Rule 17a–4 obligates broker-dealers to preserve documents and information that they must compile pursuant to Commission rules for the time period and in the manner specified in the

[62] See *Butcher & Singer, Inc.*, 48 S.E.C. 640 (1987); *Douglass and Co., Inc.*, 14 S.E.C. 537 (1978); *Gotham Securities Corporation*, 46 S.E.C. 723 (1976). See also NASD Rule 2460 (prohibiting broker-dealers from receiving payment from an issuer or a promoter for publishing a quotation or acting as a market marker).

[63] See *General Bond & Share Co.*, 51 S.E.C. at 413–414.

[64] *Cf. D.H. Blair & Co.*, 44 S.E.C. 320, (1970) (noting that insertion of both bid and ask quotations in the Pink Sheets for a customer is a highly unusual practice).

[65] Currently the exception for unsolicited customer orders is not available for customer orders representing both a bid and an offer at specified prices, unless the quotation medium identifies the quotations as customer orders.

[66] See 17 CFR 240.15c2–11(a)(5).

[67] As discussed above, this is a consequence of the current piggyback exception.

[68] 17 CFR 240.17a–4.

various provisions of Rule 17a–4. The Commission therefore is proposing to amend Rule 17a–4 to add the information specified in proposed paragraphs (d), (e), and (f) of Rule 15c2–11 to the other information that broker-dealers are already required to preserve under Rule 17a–4. Rule 15c2–11, as proposed to be amended, also would cross reference this proposed requirement.

With regard to issuer information that is accessible to broker-dealers through the Commission's EDGAR system, the proposed revisions would provide that if broker-dealers satisfied the Rule's requirements by obtaining and reviewing the information contained on EDGAR, they would not need to preserve such information independently, as long as they document the review and the information is accessible on EDGAR for the same period of time that the broker-dealers are obligated to preserve such information pursuant to Rule 17a–4. For example, if a broker-dealer is required by Rule 15c2–11 to obtain and review an issuer's Annual Report on Form 10–K and to preserve that information for three years, then as long as the broker-dealer can electronically access the Form 10–K for that three-year period, it does not have to preserve the document independently in a separate location. Broker-dealers still would need to preserve information about reporting issuers that is not available on EDGAR, *e.g.*, other information that comes to their attention before entering a quotation.

Q49. Are there other ways to ease the Rule's recordkeeping requirements for broker-dealers?

8. Information Provided to the NASD

Rule 15c2–11 currently requires any broker-dealer covered by the Rule to submit the information required under paragraph (a)(5) (*i.e.*, for non-reporting issuers) to the interdealer quotation system, in the form prescribed by the system, at least three business days before submitting a quotation for publication. The Commission is proposing to amend this obligation by requiring broker-dealers to submit the information that they must obtain and review pursuant to Rule 15c2–11 to the NASD only, in accordance with the NASD's rules. Previously, this information was not obtained by an SRO (a substantial proportion of the documents were submitted to the National Quotation Bureau, Inc., the publisher of the Pink Sheets). Presently, NASD Marketplace Rule 6740 requires broker-dealers to submit the Rule 15c2–11 information to the NASD before they can publish a quotation for a covered OTC equity security in any quotation medium. The proposed amendment would recognize broker-dealers' obligation under NASD rules and avoid any possible need to make multiple submissions of the same information (*e.g.*, to the NASD and to one or more interdealer quotation systems). The NASD uses this information for surveillance and enforcement purposes and routinely provides copies of this information to the Commission.

Q50. Does there continue to be any need for the Rule to require that the information be supplied to the operator of each interdealer quotation system?

B. Central Information Repository

The elimination of the piggyback provision and the increased costs of compliance that may result suggest the desirability of having a central data base of information, particularly for the securities of non-reporting issuers. Such a data base also would enhance the availability of information about little known issuers to investors, other professionals, and regulators. For these reasons, the Commission encourages the development of one or more repositories for Rule 15c2–11 information.

In the 1991 Proposing Release, the Commission contemplated that a Rule 15c2–11 repository would:

(1) collect information about a substantial segment of issuers of securities subject to the Rule;

(2) maintain current and accurate information about such issuers;

(3) use effective acquisition, retrieval, and dissemination systems;

(4) charge reasonable fees; and

(5) operate in a manner that would permit it reasonably to carry out the purposes of the Rule.[69] The Commission seeks comments concerning the features and the feasibility of a central information repository.

Q51. Should the Rule incorporate the standards above? Are there other standards that should be included?[70]

Q52. Should the Commission promote the development of central information repositories through other means?

C. Definitions

The proposals would revise or eliminate several definitions now contained in Rule 15c2–11 and add a few new definitions. The current definitions of "issuer" and "quotation" would be retained.

Q53. Are the proposed definitions appropriate in light of the Rule's purposes?

Quotation Medium. The definition of "interdealer quotation system" would be incorporated into the definition of "quotation medium."[71] This definition is quite inclusive: it covers any publication or electronic communications network, or other device that is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell. The Commission has been advised by the NASD that almost all Forms 211 that it receives are filed for quotations to be published in the OTC Bulletin Board or the Pink Sheets. Transaction data indicates, however, that there is significant trading in OTC securities that are not quoted in these quotation mediums. While there can be many explanations for this phenomenon, it is possible that broker-dealers view Rule 15c2–11 as applying only to quotations published in the Bulletin Board or the Pink Sheets. In fact, the Rule applies to quotations published in any quotation medium.

Q54. What is the experience of broker-dealers under the Rule when publishing quotations in quotation mediums other than the Bulletin Board or the Pink Sheets?

Q55. Is the scope of the definition of quotation medium too broad?

Q56. Should the Rule except mediums that do not identify broker-dealers publishing quotations (*i.e.*, where quotations are anonymous) and/or that do not provide automatic execution facilities? Why would this be appropriate or inappropriate?

Q57. Should the definition draw any distinction between "quotations" and "orders"?

Q58. Should the Rule apply to quotation systems devoted exclusively to a single issuer's securities? If so, would an aggregation of such systems be a quotation medium?

Q59. Should the Rule apply to quotation systems devoted exclusively to a single broker-dealer's quotations? If so, would an aggregation of such systems be a quotation medium?

Q60. Should the definition of "interdealer quotation system" be retained?

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[69] 56 FR at 19163.

[70] Commenters may also wish to consider the need for a process to recognize repositories that meet such standards. *Cf.* Securities Exchange Act Release No. 39457 (December 17, 1997), 62 FR 68018 (proposing the process for designating "nationally recognized statistical rating organizations" for purposes of the New Capital Rule, 17 CFR 240.15c3–1).

[71] A separate definition of "interdealer quotation system" no longer would be necessary because of the elimination of the piggyback provision and the revision that the information be furnished to the NASD in accordance with NASD rules, rather than to interdealer quotation systems.

D. Transition Provision

The Commission is proposing a transition provision covering quotations by broker-dealers that were initiated prior to the effective date of the proposed amendments. Broker-dealers could continue their market-making activities until the occurrence of one of the events set forth in the Rule, as proposed to be amended. The Commission believes that this proposed transition provision would be necessary to maintain liquidity in covered OTC securities while broker-dealers adjust to the amended requirements. Broker-dealers initiating quotations for these securities, however, would need to obtain and review the requisite information.

Q61. Does the proposed transition provision adequately address securities that broker-dealers may have been quoting for significant periods of time, and for which they may be unable to obtain current information from the issuer?

Q62. Under what circumstances should the Rule accommodate those broker-dealers that would like to initiate quotations for securities covered by the transition paragraph but for which they cannot obtain the requisite issuer information?

III. General Request for Comments

The Commission solicits comment on all aspects of its proposed amendments to Rule 15c2–11, as well as on any other matter that might have an impact on the proposals discussed above. In particular, the Commission seeks comment on whether the proposals would help promote information transparency in the OTC market and help curb abuses in the trading of microcap securities. Commenters are asked to consider whether the proposed revisions would have any adverse impact on the liquidity of covered OTC securities and should provide data and analysis to support their views. Commenters are invited to address whether the Rule's text is sufficiently clear and understandable. In addition, commenters are asked to discuss whether the Rule and/or proposed amendments should apply to quotations for all securities covered by Rule 15c2–11, or whether certain amendments (*e.g.*, disciplinary histories of an issuer's insiders and promoters) should be limited to quotations for microcap securities.

Persons submitting written comments should send three copies of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and should refer to File No. S7–3–98. Comments also may be sent electronically to the following e-mail address: rule-comments@sec.gov and should include the file number on the subject line of the e-mail.

IV. Costs and Benefits of the Proposed Amendments

The Commission requests commenters to evaluate the costs and benefits associated with the proposed amendments to Rule 15c2–11. The Commission has identified certain costs and benefits relating to the proposals, which are discussed below, and encourages commenters to discuss any additional costs or benefits.[72] In particular, the Commission requests comment on the potential costs for any necessary modifications to information gathering, management, and recordkeeping systems or procedures that would be necessary to implement the proposals, as well as any potential benefits resulting from the proposals for issuers, investors, broker-dealers, securities industry professionals, regulators or others. Commenters should provide analysis and data to support their views on the costs and benefits associated with the proposals.

A. Benefits

The Commission believes that the proposed amendments generally would help improve the quality of the markets for securities subject to Rule 15c2–11 and would help protect investors from fraudulent schemes involving these securities. Traders of the securities of legitimate microcap issuers also would benefit if the integrity of this market sector is improved. The Commission believes that the specific benefits set forth below would flow from the proposed amendments.

The Commission does not routinely collect, as part of its examinations or investigations, data for the dollar value of fraudulent activity and therefore cannot quantify investor losses due to recent microcap frauds. However, from its enforcement investigations and interactions with other regulators, and review of investor complaints, the Commission believes microcap trading abuses are on the rise and overall involve significant dollar amounts.

Microcap fraud frequently involves issuers for which public information is limited.[73] Without information, it is difficult for investors, securities professionals, and others to evaluate the risks presented by these securities. Many investors consequently fall prey to persons who make false representations and unrealistic predictions about these securities. The publication of quotations by broker-dealers can facilitate the fraudulent promotion of microcap securities. Currently, not all broker-dealers are required to review certain basic information about an issuer before initiating quotations.

To reduce the potential for fraud in the OTC market, the proposed amendments require every broker-dealer, before initiating a quotation for a covered OTC security in a quotation medium, to gather and review the issuer information and to update that information annually when it publishes priced quotations. The proposed amendments would require more information than the Rule currently requires about the issuer's outstanding securities, its officers and directors, and its financial condition. In particular, by requiring that all broker-dealers obtain and review issuer information and update it annually, the proposed amendments should substantially assist a broker-dealer in its consideration of whether to publish quotations for an issuer's securities. Provided with this additional information, the broker-dealer would gain a greater understanding of the issuer's business and a better indication of whether potential or actual fraud or manipulation may be present.

After reviewing the information, responsible broker-dealers should refrain from publishing quotations for questionable securities. This will prevent responsible broker-dealers from becoming unwitting participants in manipulative or fraudulent schemes of unscrupulous broker-dealers and/or promoters. Because all broker-dealers must have issuer information before initiating quotations for covered OTC securities, issuer information would be more widely available to market professionals. Additionally, broker-dealers must provide this information to any person upon request.

The proposals, if adopted, would serve an important surveillance function. Currently, only the first broker-dealer quoting a security must gather, review, and preserve the information. The proposed amendments would require all broker-dealers

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[72] In 1985, the Commission issued a release for the purpose of seeking comment on the costs and benefits associated with Rule 15c2–11. Securities Exchange Act Release No. 21914 (April 1, 1985), 50 FR 14111. The comment letters are available in File No. S7–14–85. Generally, the commenters failed to provide data to support costs or benefits.

[73] See, *e.g.*, *SEC* v. *Global Financial Traders, Ltd.*, Litigation Release Nos. 15291 (March 14, 1997), and 15338 (April 17, 1997); see also *supra* note 10.

initiating quotations to satisfy the Rule's current requirements and would add a recordation requirement. Moreover, under NASD Marketplace Rule 6740, the broker-dealer demonstrates its compliance with that rule by filing the Rule 15c2–11 information with the NASD. Recently, the review of Forms 211 filed with the NASD has resulted in a number of Commission trading suspensions and other enforcement actions.

The proposed amendments would ease significantly the Rule's recordkeeping requirement when broker-dealers have access to reporting issuer information on the Commission's EDGAR system. Access to EDGAR is free on the Internet. Given that approximately 42% of securities on the OTC Bulletin Board ("OTCBB") and Pink Sheets are issued by reporting companies, whose reports are included on EDGAR, a significant recordkeeping cost savings to broker-dealers should result.

The Commission does not have data to quantify the value of the benefits described above. The Commission seeks comments on the value of these benefits and on any benefits, not already identified, that may result from the adoption of these proposed amendments.

B. Costs

The Commission has identified various costs that may result if the proposals are adopted. The proposals would eliminate the piggyback provision, which now effectively limits the Rule's application to those broker-dealers that publish quotations during the first 30 days of the security's trading. Under the proposals, each broker-dealer would need to obtain and review the Rule's required information when it initiates quotations for the security or initiates or resumes quotations following specified events. Moreover, an annual update requirement would apply to all broker-dealers that publish priced quotations. As a result of these proposals, each broker-dealer publishing quotations for a security would have to obtain issuer information and possibly incur costs when it first publishes a quotation and when it conducts the required update. To the extent a broker-dealer does not already have this information, it would incur costs for the collection and review of this information. Moreover, a broker-dealer also would incur costs associated with creating the records required by the Rule and retaining the Rule's required information for the specified period of time pursuant to the proposed amendment to Rule 17a–4.

The Commission estimates that it would cost a broker-dealer $35 per hour to comply with the requirements of the Rule based on a blended compensation rate of $35 per hour for clerical and supervisory compliance staff. As identified in the Paperwork Reduction Act section of this release, the Commission estimates that the additional annual burden hours to broker-dealers in the aggregate would be approximately 127,000 hours. The Commission, therefore, estimates that the cost to broker-dealers in the aggregate to obtain and review the required information if the proposed amendments are adopted would be approximately $4,445,000. The Commission seeks comments on the reasonableness of its estimates for the additional annual hourly and dollar costs to broker-dealers.

The Commission believes that any additional costs to broker-dealers should be offset, however, by the fact that those broker-dealers conducting a retail business already may have the information required to satisfy their obligations under the federal securities laws and the rules of the SROs when they recommend a security to an investor.

Although Rule 15c2–11 does not regulate issuers, there may be some indirect costs imposed on issuers, particularly non-reporting issuers, because they may be contacted by broker-dealers to provide the information specified in the Rule. Non-reporting issuers would incur the cost of having to collect and provide the requested information to each requesting broker-dealer. In addition, the proposals would expand the scope of the information required for quotations of non-reporting issuers' securities. However, the Commission is assuming that non-reporting issuers maintain their financial information in compliance with prevailing accounting standards and, in most instances, would have available updated financial information prepared in accordance with GAAP. The NASD has informed us that the financial statements filed with the Form 211 generally are prepared in accordance with GAAP, and many are audited.

The Commission assumes that for non-reporting issuers, it will cost approximately $15 per hour for clerical staff to obtain and provide the information required if the proposed amendments are adopted.[74] As identified in the PRA section of this release, the Commission estimates that the additional annual reporting burden hours to non-reporting issuers in the aggregate would be approximately 50,000 hours, or approximately $750,000 per year. The Commission seeks comments on the reasonableness of its estimates for the additional annual hourly and dollar costs to issuers.

Regarding start-up, operating, and maintenance costs, the Commission believes that broker-dealers that now collect, review, and retain the information required by the current Rule would incur only marginal start-up, operating, and maintenance costs (*i.e.*, to expand systems already in place). Further, some broker-dealers may be collecting the information required by the proposals for other purposes. However, the Commission believes some broker-dealers may not have adequate systems in place to retain issuer information and would, therefore, incur start-up, operating, and maintenance costs in order to comply with the requirements of the proposed amendments.

As discussed in the PRA section of this release, the Commission estimates that an average of 4.3 broker-dealers provide quotations for each of the 7,038 covered OTC securities that would be affected if the proposed amendments are adopted. The Commission estimates that broker-dealers would incur start-up, operating, and maintenance costs of approximately $17,736 associated with reporting issuer information, and approximately $97,968 associated with non-reporting issuer information. The total start-up, operating and maintenance cost burden for broker-dealers is estimated to be $115,704 ($17,736+$97,968). The Commission seeks comments on the reasonableness of its estimates for the total start-up, operating and maintenance cost burdens to broker-dealers.

Finally, the Rule could affect the liquidity of some securities. If broker-dealers are unable to obtain the required issuer information, they would have to refrain from publishing priced quotations in that security. This could make it more difficult for investors to determine what prices other market participants are willing to bid or offer for the security. However, broker-dealers may still publish unpriced quotes and publish priced quotes representing unsolicited customer interest in buying or selling securities. It should also be possible for some broker-dealers to continue to make

[74] The Commission assumes that because the required information should be available in house, someone in a clerical position should be able to copy and forward the information in response to a request. Accordingly, the Commission believes that $15 per hour is a reasonable estimate of this cost.

markets without publishing quotations in a quotation medium. Thus, while investors are still able to obtain price information, the cost of obtaining this information may increase. Any effect on liquidity must be weighed against the benefit of stopping potential fraud or manipulation. Greater investor access to information should result in more informed investor decisions and potentially could result in additional trading and thus liquidity for covered OTC securities. The Commission's preliminary view is that the benefits of the proposed rule changes should justify any adverse impact on liquidity.

The Commission seeks comments on the cost estimates identified in this section and comments on any cost, not already identified, should the amendments be adopted as proposed. Commenters are requested to supply specific data and analysis.

V. Effects on Efficiency, Competition, and Capital Formation

In adopting rules under the Exchange Act, Section 23(a)(2) requires the Commission to consider the impact any rule would have on competition and to not adopt any rule that would impose a burden on competition not necessary or appropriate in the public interest. Section 3(f) of the Exchange Act requires the Commission, when engaged in rulemaking, to consider or determine whether an action is necessary or appropriate in the public interest, and whether the action would promote efficiency, competition, and capital formation.[75] The proposed amendments are intended to protect investors by requiring broker-dealers that initiate or resume quotations for a covered OTC security in a quotation medium, and that are publishing priced quotations as of the annual update requirement, to have fundamental information about the issuer.

When reports of fraud and manipulation in a particular market sector are common, legitimate participants in that marketplace are adversely affected. For example, legitimate small issuers seeking capital in the public markets may find that their costs of raising capital are increased because of underwriters' and, ultimately, investors' reluctance to participate in these transactions. Measures to reduce microcap fraud should result in enhanced capital formation by legitimate small issuers.

The Commission believes that the requirement to obtain and review issuer information should improve the level of competition among broker-dealers because all broker-dealers would be affected equally. With the elimination of the piggyback provision, every broker-dealer must obtain and review the information in connection with a decision to publish quotations. Absent these requirements, the Commission believes that some broker-dealers would submit quotations without regard to basic information about relatively unknown issuers, and therefore, would be more likely to cause investors to fall prey to fraudulent and manipulative pricing schemes. Because all broker-dealers would now be subjected to the same requirements to gather and review the information before publishing quotations, fairness and competition in this segment of the industry should improve.

The Commission's preliminary view is that the proposed amendments to the Rule would not have any anticompetitive effects that are not necessary or appropriate in the public interest. There may be isolated cases where some broker-dealers can continue to publish unpriced quotations for a security because issuer information was available when they initiated quotations or the security qualifies for the transition provision covering quotations occurring prior to the amendment's effective date, yet other broker-dealers later cannot initiate or resume quotations because current issuer information is no longer available. Because of the proposed annual updating requirement, the broker-dealer would only be able to publish unpriced quotations after the updating period (if current issuer information was not available). Although in such cases some broker-dealers may be precluded from publishing quotations in a quotation medium, the Commission preliminarily considers this possible burden on competition to be justified by the benefits to investors of broker-dealers having accurate and current issuer information before they initiate or resume publication of quotations in a quotation medium.

The Commission requests comments on the competitive benefits that may result to broker-dealers under the proposed amendments to the Rule and also is requesting comments on any anticompetitive effects that may result if the Rule is adopted as proposed. The Commission is aware that requiring broker-dealers to collect information more regularly may cause some broker-dealers to stop publishing quotations, thus reducing the liquidity of some securities. The Commission requests data and analysis on what effect the proposed changes may have on the liquidity of this market. Finally, the Commission seeks comment on what impact the proposals, if adopted, would have on efficiency and capital formation.

VI. Initial Regulatory Flexibility Act

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA")[76] regarding the proposed amendments to Rule 15c2–11 and the companion amendment to Rule 17a–4 under the Exchange Act. The following summarizes the IRFA.

As discussed in the IRFA, the Rule specifies the information that a broker-dealer must gather and review before publishing quotations for covered OTC securities. The Rule is intended to prevent broker-dealers from publishing quotations for covered OTC securities in a quotation medium without obtaining, reviewing, and retaining current information about the issuer. The Commission is proposing these amendments because of increased incidence of fraud and manipulation in securities subject to Rule.

The amendments to the Rule would affect all broker-dealers, including a number of small broker-dealers, seeking to publish quotations for covered OTC securities. The Commission's Office of Economic Analysis ("OEA") estimated that as of December 31, 1996, there were 3,444 small public broker-dealers. Based on Exchange Act Rule 0–10(c)(1), OEA considered a small broker-dealer as a broker-dealer reporting total capital of less than $500,000 at year-end 1996. The number of these small broker-dealers that submit quotations for covered OTC securities to quotation mediums is unknown. However, the Commission believes that, at any given time, there are approximately 400 broker-dealers, including small broker-dealers, that submit quotations for covered OTC securities. The Commission seeks comments on the number of small broker-dealers that quote covered OTC securities in quotation mediums.

The proposed amendments would indirectly affect those small issuers that may be requested to provide the information required by the proposed amendments to broker-dealers publishing quotations in those issuers' securities. Based on Exchange Act Rule 0–10(a), a small issuer is one that on the last day of its most recent fiscal year had total assets of $5,000,000 or less. The total number of small issuers of covered OTC securities is not known at this time. The Commission seeks comment on the total number of issuers of covered OTC securities; the number (or

[75] 15 U.S.C. 78c(f).

[76] 5 U.S.C. 603.

percentage) of these issuers that are small issuers; and the total number (or percentage) of small issuers of covered OTC securities that are reporting and non-reporting issuers, respectively.

As discussed above in this release, the proposed amendments would eliminate the piggyback provision and would specify that every broker-dealer must gather and review the required information when it initiates or resumes publishing quotations for a covered OTC security. At least once a year thereafter in the case of priced quotations, or following a break in quotations of five or more business days or upon the termination of a Commission trading suspension order, a broker-dealer would have to gather and review the information required by the Rule.

In addition, a broker-dealer would be required to maintain information concerning its compliance with the Rule, including whether: the broker-dealer is affiliated with the issuer; a quotation is being submitted on behalf of another broker-dealer or associated person (including the name of such broker-dealer); the quotation is being submitted on behalf of the issuer or persons affiliated with the issuer; and the broker-dealer has received any monetary or other compensation to publish the quotation.

The Commission is also proposing to require broker-dealers to acquire and review the annual and other periodic reports that financial institutions file with their respective regulatory agencies other than the Commission. The Commission believes that because non-reporting financial institutions file periodic reports containing information similar or identical to information that reporting financial institutions file with the Commission, a broker-dealer quoting such financial institutions' securities should obtain these reports in order to achieve the informational goals of the Rule.

The possible addition of recordkeeping costs for broker-dealers as a result of eliminating the piggyback provision and enhancing the required issuer information further highlights the desirability of creating a central data base for information on covered issuers and their securities. In that regard, the Commission encourages the development in the private sector of one or more central repositories for Rule 15c2–11 information. Such repositories may provide a more efficient vehicle for meeting the record-assembly needs of brokers and dealers, including firms seeking to comply not only with the Rule, but also with other applicable investor protection requirements, such as general anti-fraud and suitability rules of the Commission and SROs.

The IRFA notes that the availability of the Commission's EDGAR system for broker-dealers to collect and review the reports required by the Rule should lessen the costs and burdens associated with compliance with any expanded information gathering, review, and updating requirements. In addition, the prevalent use of computers and the Internet, on which access to EDGAR is free, should also reduce the recordkeeping and compliance costs for all broker-dealers by automating the information collection and retention process.

The IRFA recognizes that the proposed amendments indirectly affect certain issuers, particularly non-reporting issuers. The proposed amendments would require all broker-dealers, before initiating or resuming publication of a quotation, to obtain, review, and retain more issuer information than is currently required under Rule 15c2–11 and, when publishing priced quotations, to update that information annually. Consequently, non-reporting issuers must collect and provide the required information for each requesting broker-dealer. The Commission assumes that non-reporting issuers maintain their financial information in compliance with prevailing accounting standards and that the cost incurred by non-reporting issuers to prepare the necessary information in response to broker-dealers' requests would be minimal.

The IRFA discusses the kinds of possible alternative proposals that the Commission has considered. These include, among others, creating differing compliance or reporting requirements or timetables that take into account the resources available to small entities, and whether such entities could be exempted from any of the proposed rules, or any part thereof. Therefore, having considered the foregoing alternatives in the context of the proposed amendments, the Commission does not believe they would accomplish the stated objectives of the proposal.

The Commission encourages the submission of written comments regarding any aspect of the IRFA. In particular, the Commission seeks comments on: (i) The number of small entities that would be affected by the amended Rule, including the number of small broker-dealers and issuers; (ii) the number of small entities that are issuers of covered OTC securities; and (iii) the number of small entities that are reporting and non-reporting issuers of covered OTC securities, respectively. Comments should also specify the costs of compliance with the proposed amendments, and suggest alternatives that would provide the OTC market with more information about the issuers of these securities. In describing the nature of any impact that the proposals would have, empirical data supporting these views should be provided.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed amendments on the economy on an annual basis. In particular, comments should address whether the proposed changes, if adopted, would have a $100,000,000 annual effect on the economy, cause a major increase in costs or prices, or have a significant adverse effect on competition, investment, or innovations. Commenters should provide empirical data to support their views.

Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–3–98; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will also be posted on the Commission's Internet web site (httpp://www.sec.gov).

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Chester A. McPherson, Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, at (202) 942–0772.

VII. Paperwork Reduction Act

Certain provisions of the proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA");[77] the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is: "Publication or submission of quotations without specified information." This collection of

[77] 44 U.S.C. 3501 *et seq.*

information has previously been assigned OMB Control No. 3235–0202.

A. Collection of Information Under the Proposed Amendments

Rule 15c2–11 under the Exchange Act currently requires the very first broker-dealer publishing a quotation for certain over-the-counter ("OTC") securities in a quotation medium to obtain and review the information specified in the Rule. Generally, the Rule applies to securities that are not listed and traded on a national securities exchange or quoted on Nasdaq ("covered OTC securities"). Most covered OTC securities are quoted in the OTC Bulletin Board ("OTCBB"), which is operated by the National Association of Securities Dealers, Inc. ("NASD"), or in the Pink Sheets (containing quotations for equity securities) or Yellow Sheets (containing quotations for debt securities), which are published by the National Quotation Bureau, Inc. ("NQB").

The proposed amendments to Rule 15c2–11 would require every broker-dealer to collect, review, and retain specific information about the security's issuer before initiating or resuming a quotation for a covered OTC security. Broker-dealers submitting priced quotations for the security would be required to collect, review, and retain the Rule's specified information annually. Broker-dealers would also have to record the sources of their information, the date their review occurred, and the person responsible for the review. Also, the proposals would require broker-dealers publishing quotations for a covered OTC security to collect, review, and retain more information than is required currently.

Under Rule 15c2–11, the information that is collected pursuant to the Rule must be submitted to the NASD at least three business days before any quotation is published.[78] Finally, the proposed amendments would require broker-dealers to provide the information specified to any member of the public that requests it.

B. Proposed Use of Information

Broker-dealers must collect and review the information required under the proposed amendments before publishing a quotation. Moreover, the Rule requires that broker-dealers have a reasonable basis for believing that the information about the issuer and related persons is current, accurate, and from reliable sources. This information collection protects investors by deterring fraudulent or manipulative quotations for thinly-traded securities whose issuers are relatively unknown. Because information about these issuers is not widely disseminated and often is not current, fraudulent and manipulative schemes are easier to perpetrate. Moreover, this collection of information helps broker-dealers guard against becoming unwitting participants in fraudulent or manipulative schemes. The Rule 15c2–11 information gathering requirements also serve an important surveillance function for both the Commission and the NASD. Recently, the Commission has used the Rule 15c2–11 information to suspend trading in the issuers' securities pursuant to Section 12(k) of the Exchange Act where publicly available information about the issuer raised questions about the accuracy and adequacy of the issuers' disclosures.

C. Respondents

The proposed amendments would apply to those broker-dealers that initiate or resume publishing quotations for a covered OTC security in a quotation medium and that are publishing priced quotations as of the annual update requirement. The proposed amendments also indirectly affect issuers that are asked by broker-dealers to provide this information. Most of the Rule 15c2–11 information that would be required for issuers that publicly file periodic reports with the Commission ("reporting issuers") is available electronically on EDGAR or through the Internet. Thus, the proposals are likely to have a greater paperwork burden when broker-dealers publish quotations for the securities of issuers that do not participate in the Commission's public reporting program ("non-reporting issuers").

D. Total Annual Reporting and Recordkeeping Burden

The proposed amendments would require broker-dealers to collect, review, retain, and record certain issuer and supplemental information when they initiate or resume publishing quotations of the issuer's securities or continue to publish priced quotations as of the annual anniversary date. The proposed amendments contain an initial information gathering and review requirement for broker-dealers and, in the case of priced quotations, a subsequent annual updating requirement. The discussion below estimates the collection of information burden one year after the anticipated date of effectiveness of the proposed amendments when broker-dealers that publish quotes for covered OTC securities qualifying for the proposed transition provision must fully comply with the Rule's information requirements. The discussion below also provides estimates for the same period for issuers that may be contacted to provide the information. In particular, the following analysis measures the cost to broker-dealers of: (1) collecting, reviewing, recording, and retaining the required issuer information and supplying it to the NASD; (2) responding to requests for issuer information from the public; and (3) starting-up or maintaining systems for the collection and retention of issuer information. The analysis below also addresses the indirect cost to issuers who must furnish information to requesting broker-dealers.

1. Burden-Hours for Broker-Dealers

In 1997, the NASD reports receiving 1,576 applications from broker-dealers to initiate or resume publication of quotations for covered equity securities in the OTCBB and/or the Pink Sheets, and 1,107 of these applications were cleared for publication of quotations. Although there are other OTC quotation mediums, the NASD reports that it generally does not receive any submissions from broker-dealers publishing quotations in these other systems. Data about quotations for covered OTC securities in these other systems is unavailable.

Also, taking into account newly-published quotations in the Yellow Sheets, the Commission estimates that approximately 1,200 new covered OTC securities would be eligible for quotations in the year following the Rule's effective date. Based on information provided by the NASD and NQB, the Commission estimates that as of December 31, 1997, there were approximately 6,200 covered OTC securities quoted in the OTCBB; 3,000 quoted in the Pink Sheets; and 2,000 quoted in the Yellow Sheets for a total of 11,200 covered OTC securities quoted in all three mediums.

According to NASD and NQB estimates, the Commission believes that, on average, there are approximately 4.3 broker-dealers publishing quotations for each of these covered OTC securities, and that at any given time there are no more than 400 broker-dealers that submit quotations for covered OTC securities. Further, according to these estimates, priced quotations are published for approximately 89 percent of the 6,200 (5,518) OTCBB securities, 10 percent of the 3,000 (300) Pink Sheets securities, and 1 percent of the

[78] The NASD has a rule requiring broker-dealers that initiate or resume quotations for covered equity securities to submit verification that they have collected the information necessary to comply with NASD requirements, as well as Rule 15c2–11. See NASD Manual, Marketplace Rules, 6740.

2,000 (20) Yellow Sheets for a total of 5,838 issues with priced quotations. Because the proposed amendments would not require broker-dealers to collect issuer information for priced quotations until the annual update requirement is triggered in the year after the date of the amendments' effectiveness, the Commission estimates that, as of the annual update, approximately 30,263 ((5,838+1,200)×4.3) quotations would be subject to the Rule 15c2–11 proposed amendments.

For purposes of developing a burden estimate, the Commission assumes that each of the 5,838 priced quotations and the 1,200 new applications represent a different issuer. The Commission, therefore, estimates, at most, 7,038 issuers of covered OTC securities will be affected by the proposals in the year following the effective date of the amendments.[79]

Based on information from the NASD and NQB, the Commission estimates that of the 7,038 affected issuers of covered OTC securities, 42 percent (2,956) are reporting issuers, and 58 percent (4,082) are non-reporting issuers. The Commission estimates that it will take a broker-dealer about three hours to collect, review, record, retain, and supply to the NASD the information pertaining to a reporting issuer, and five hours to collect, review, record, retain, and supply to the NASD the information pertaining to a non-reporting issuer. The Commission estimates that broker-dealers will annually require 38,132 (2,956×3×4.3) hours or 95.33 (38,132/400) hours per broker-dealer to collect, review, record, retain, and supply to the NASD the information for the 2,956 affected reporting issuers. The Commission estimates that broker-dealers will annually require 87,763 (4,082×5×4.3) hours or 219.41 (87,763/400) hours per broker-dealer to collect, review, record, retain, and supply to the NASD the information from the 4,082 affected non-reporting issuers. Additionally, the broker-dealers, upon request from the public, must provide the issuer information. Based on information from the NQB, the Commission estimates that broker-dealers will receive 1,000 requests from the public annually, which would take a broker-dealer approximately one-half hour per request to provide for an annual burden of 500 hours. Therefore, the Commission estimates the total annual burden hours to broker-dealers to be 126,395 (38,132+87,763+500), or an average of 316 (126,395/400) burden hours per broker-dealer.

[79] This number overstates the number of affected issuers because some issuers have more than one security with priced quotes.

2. Burden-Hours for Issuers

Regarding the burden on issuers to provide broker-dealers with the required information, the Commission estimates that the 2,956 affected reporting issuers of covered OTC securities will not bear any additional hourly burdens under the proposed amendments because such issuers already report the required information to the Commission through periodic filings made pursuant to the federal securities laws. Further, reporting issuer information is widely available to broker-dealers through a variety of media. However, non-reporting issuer information is not widely available, and consequently, these issuers must provide the information required by the proposed amendments to requesting broker-dealers before quotations in their securities can be published. The Commission estimates that the 4,082 affected non-reporting issuers of covered OTC securities will spend an average of nine hours each to collect, prepare, and supply the information required by the proposals to the first broker-dealer that requests this information. Thereafter, the Commission estimates that it will take an average of one hour for an issuer to provide the same information to the remaining 3.3 broker-dealers that request the information. Accordingly, the Commission estimates the 4,082 non-reporting issuers annually will incur 36,738 (4,082×9×1) hours to comply with the first broker-dealer's request for information, and 13,471 (4,082×1×3.3) hours to comply with the subsequent 3.3 broker-dealer requests for an annual total of 50,209 (36,738+13,471) burden hours. On average, therefore, each non-reporting issuer would spend approximately 12 (50,209/4,082) burden hours per year to comply with these requests.

3. Total Burden-Hour Costs to Broker-Dealers and Issuers

For both broker-dealers and issuers combined and in the aggregate, the Commission estimates the collection of information will require approximately 176,604 burden hours annually (126,395+50,209).

4. Capital Cost to Broker-Dealers and Issuers

The Commission believes that broker-dealers that now collect, review, and retain the information required by the current Rule will not incur any significant start-up costs to expand systems already in place. Further, broker-dealers that are collecting the information required by the proposals for other purposes also will not incur significant start-up costs. However, the Commission believes some broker-dealers may not have adequate systems in place to retain issuer information and will incur start-up costs in order to comply with the requirements of the proposed amendments. The Commission assumes that of the 4.3 broker-dealers that provide quotations for each covered OTC security, on average one broker-dealer will incur additional start-up costs, while the remaining 3.3 broker-dealers will only incur incremental costs. Because the information for reporting issuers will be generally available on EDGAR and such availability satisfies the recordkeeping requirements of the proposals, the Commission is assuming that the start-up costs associated with retaining information on reporting issuers will be $6.00 per quotation, whereas the same costs will be $24.00 per quotation for non-reporting issuer information. The Commission estimates that broker-dealers in the aggregate will incur start-up costs of $17,736 (2,956×$6×1) associated with reporting issuer information, and $97,968 (4,082×$24×1) associated with non-reporting issuer information. The total start-up, operating and maintenance cost burden for broker-dealers is estimated to be $115,704 ($17,736+$97,968) or an average of $289 ($115,704/400) per broker-dealer.

The Commission assumes that non-reporting issuers, because they maintain their financial information in compliance with prevailing accounting standards, will not incur any start-up costs to prepare the required information in response to broker-dealers' requests. The Commission also believes that reporting issuers of covered OTC securities will not incur start-up costs as a result of the proposed amendments since such issuers already provide the required information to the Commission under the federal securities laws.

Therefore, the Commission believes issuers will not incur start-up costs as a consequence of the adoption of the Rule amendments, as proposed.

E. General Information About the Collection of Information

The collection of information under the proposed amendments is mandatory and would be required before broker-dealers could initiate or resume publication of quotations in securities that are traded in a quotation medium other than an exchange or Nasdaq and before broker-dealers could continue to

publish priced quotations when the annual review date occurs. Broker-dealers would be required to retain the information they collect for a period of not less than three years. Information collected under the Rule would not be kept confidential. Any agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

F. Request for Comments

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. The Commission seeks data about quotations for covered OTC securities in OTC quotation mediums other than the OTC Bulletin Board, Pink Sheets and Yellow Sheets. The Commission asks for comments on its estimate of the number of issuers affected by the proposed Rule. The Commission also seeks comments on the time estimates made for broker-dealers and issuers to comply with the proposals' information collection requirements.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and refer to File No. S7–3–98. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release in the **Federal Register**, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication.

VIII. Statutory Basis and Text of Proposed Amendments and Rule

The rule amendments are being proposed pursuant to Sections 3, 10(b), 15(c), 15(g), 17(a), and 23(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78c, 78j(b), 78o(c), 78o(g), 78q(a), and 78w(a).

List of Subjects in 17 CFR Part 240

Broker-dealers, Fraud, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule

In accordance with the foregoing, Title 17, chapter II, part 240 of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.15c2–11 and the section heading are revised to read as follows:

§ 240.15c2–11. Publication or submission of quotations without current information.

(a) *Unlawful activity.* As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for a broker or dealer, directly or indirectly, to publish or to submit for publication any quotation for a security in any quotation medium unless the broker or dealer complies with the provisions of this section.

(b) *Covered brokers or dealers.* A broker or dealer shall satisfy the requirements of this section prior to publishing or submitting for publication any one of the following kinds of quotations for a security in a quotation medium:

(1) An initial quotation;

(2) An initial or resumed quotation following:

(i) The lapse of five or more consecutive business days during which period the broker or dealer did not publish or submit for publication any quotations for the security in a quotation medium; or

(ii) The termination of a Commission trading suspension ordered pursuant to section 12(k) of the Act (15 U.S.C. 78*l*(k)) in any securities of the issuer; or

(3) A quotation at a specified price following:

(i) The anniversary date of the initial quotation by the broker or dealer; or

(ii) The date that is four months following the end of the issuer's fiscal year; or

(iii) In the case of a foreign private issuer, the date that is seven months following the end of the issuer's fiscal year.

(c) *Requirements.* A broker or dealer subject to paragraph (b) of this section shall:

(1) Review the information described in paragraphs (d) and (e) of this section;

(2) Determine that it has a reasonable basis under the circumstances for believing that the issuer information described in paragraph (d) of this section, when considered in conjunction with the supplemental information in paragraph (e) of this section, is accurate and current in all material respects, and that it is obtained from reliable sources; and

(3) Make a record of:

(i) The information required by paragraph (f) of this section;

(ii) The sources from which it obtained the information described in paragraphs (d) and (e) of this section;

(iii) The date that the broker or dealer reviewed the information required by this section; and

(iv) The person responsible for the broker or dealer's compliance with the requirements of this section.

(d) *Issuer information.* (1) *Issuers with a recent public offering.* For an issuer that has filed a registration statement under the Securities Act, other than a registration statement on Form F–6 (17 CFR 239.36), which became effective less than 90 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium, the prospectus specified by section 10(a) of the Securities Act of 1933 (15 U.S.C. 77j(a)): *Provided,* That such registration statement has not thereafter been the subject of a stop order that is still in effect when the quotation is published or submitted.

(2) *Issuers with a recent Regulation A offering.* For an issuer that has filed a notification under Regulation A and was authorized to commence the offering less than 40 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium, the offering circular provided for under Regulation A under the Securities Act (§§ 230.251 through 230.263): *Provided,* That the offering circular provided for under Regulation A has not thereafter become the subject of a suspension order which

is still in effect when the quotation is published or submitted.

(3) *Certain reporting issuers or exempted insurance companies.* For an issuer required to file reports pursuant to section 13 or 15(d) of the Act (15 U.S.C. 78m or 78o(d)) and that is current in filing such reports, or for an issuer of a security covered by section 12(g)(2) (B) or (G) of the Act (15 U.S.C. 78*l*(g)(2) (B) or (G)), the issuer's most recent annual report filed pursuant to section 13 or 15(d) of the Act or a copy of the annual statement referred to in section 12(g)(2)(G)(i) of the Act, together with any subsequent quarterly and current reports filed under the provisions of the Act by the issuer: *Provided,* That until such issuer has filed its first annual report pursuant to section 13 or 15(d) of the Act or annual statement referred to in section 12(g)(2)(G)(i) of the Act, the broker or dealer obtains and reviews a copy of the prospectus specified by section 10(a) of the Securities Act (15 U.S.C. 77j(a)) included in a registration statement filed by the issuer under the Securities Act that became effective within the prior 16 months, or a copy of any registration statement filed by the issuer under section 12 of the Act that became effective within the prior 16 months (other than a registration statement on Form F–6 (17 CFR 239.36)), together with any quarterly and current reports filed thereafter under section 13 or 15(d) of the Act.

(4) *Certain financial institutions.* For an issuer that is not required to file reports pursuant to section 13 or 15(d) of the Act (15 U.S.C. 78m or 78o(d)) and that is a bank or savings association, as those terms are defined in 12 U.S.C. 1813, a copy of the issuer's most recent annual report and any subsequent reports filed with its "appropriate Federal banking agency" or "State bank supervisor," as those terms are defined in 12 U.S.C. 1813.

(5) *Certain foreign issuers.* For an issuer exempt from section 12(g) of the Act (15 U.S.C. 78*l*(g)) by reason of compliance with the provisions of § 240.12g3–2(b), the information furnished by the issuer to the Commission pursuant to § 240.12g3–2(b) since the beginning of the issuer's last fiscal year.

(6) *Other issuers.* For an issuer that is not covered by paragraphs (d)(1) through (d)(5) of this section: *Provided,* That this paragraph (d)(6) shall not be available in the case of an issuer that is required to file reports pursuant to section 13 or 15(d) of the Act (15 U.S.C. 78m or 78o(d)), the following information:

(i) The exact name of the issuer and any predecessor;

(ii) The address and telephone number of the issuer's principal executive offices;

(iii) The state of incorporation of the issuer, if it is a corporation;

(iv) The date on which the issuer's fiscal year ends;

(v) A description of each class of the issuer's securities outstanding, including its exact title; the par or stated value of the security; the number of securities or total principal amount outstanding; the class and the number of securities issuable upon exercise, exchange or conversion of a class of the issuer's securities; and the total number of securityholders of record for each class of the issuer's securities as of the end of the issuer's most recent fiscal year or a more recent date;

(vi) The exact title and class of the security that will be quoted;

(vii) The name, address and telephone number of the transfer agent;

(viii) A description of the issuer's business and facilities;

(ix) A description of products or services offered by the issuer;

(x) The full names and business addresses of the executive officers, directors, general partners, promoters, and control persons of the issuer, and the number of securities of each class of the issuer's securities that are beneficially owned by each such person as of the end of the issuer's last fiscal year or a more recent date;

(xi) One of the following alternatives:

(A) A description of any of the following events that occurred during the preceding five years involving any executive officer, director, general partner, promoter, or control person of the issuer:

(*1*) Conviction in a criminal proceeding or being named as a defendant in a pending criminal proceeding (excluding traffic violations and other minor offenses);

(*2*) Entry of an order, judgment, or decree, not subsequently reversed, suspended or vacated, by a court of competent jurisdiction, permanently or temporarily enjoining, barring, suspending or otherwise limiting involvement in any type of business, securities, commodities, or banking activities;

(*3*) Being found by a court of competent jurisdiction (in a civil action), the Commission, the Commodity Futures Trading Commission, or a state securities regulator to have violated federal or state securities or commodities law, and the judgment or finding has not been reversed, suspended, or vacated; and

(*4*) Entry of an order by a self-regulatory organization permanently or temporarily barring, suspending or otherwise limiting involvement in any type of business or securities activities;

(B) A statement from the issuer that none of these has occurred, if none has occurred; or

(C) A statement by the broker or dealer of the steps taken by it to obtain the information contained in paragraph (d)(6)(xi)(A) or (B) of this section from the issuer and that the issuer failed or refused to provide this information;

(xii) The following financial information:

(A) In the case of an issuer other than a foreign private issuer, the issuer's most recent balance sheet, statement of cash flows, statement of comprehensive income, and statement of operations (income), prepared in accordance with U.S. generally accepted accounting principles; or

(B) In the case of a foreign private issuer, the issuer's most recent balance sheet and statement of operations (income), and to the extent prepared by the issuer, statement of cash flows, statement of comprehensive income, and statement of changes in shareholders' equity, prepared in accordance with a comprehensive body of accounting principles.

(xiii) The same financial information required by paragraph (d)(6)(xii)(A) of this section for such part of the two preceding fiscal years as the issuer or any predecessor has been in existence, prepared in accordance with U.S. generally accepted accounting principles (except in the case of a foreign private issuer), *Provided* That in the case of an issuer that has emerged from reorganization pursuant to Chapter 11 of the Bankruptcy Code, the court-approved disclosure statement filed pursuant to 11 U.S.C. 1125 and the information required by this paragraph (d)(6)(xiii) from the date of the entry of the bankruptcy court order confirming the issuer's reorganization plan pursuant to 11 U.S.C. 1129, if the reorganization plan has been effective less than two years; and

(xiv) One of the following alternatives:

(A) A description of any of the following events involving the issuer or its predecessor, or any of its majority-owned subsidiaries, that have occurred in the two years preceding the publication or submission for publication of the quotation:

(*1*) A change in control of the issuer;

(*2*) Increase in equity securities involving 10% or more of the same class of securities outstanding at the time of the offering;

(*3*) Any merger, acquisition, or business combination;

(4) Acquisition or disposition of significant assets;

(5) Bankruptcy proceedings;

(6) Delisting by any securities exchange or the Nasdaq Stock Market; or

(B) A statement from the issuer that none of these events has occurred, if none has occurred; or

(C) A statement by the broker or dealer of the steps taken by it to obtain the information contained in paragraph (d)(6)(xi)(A) or (B) of this section from the issuer and that the issuer failed or refused to provide this information.

(e) *Supplemental information.* (1) A copy of any trading suspension order issued by the Commission pursuant to section 12(k) of the Act (15 U.S.C. 78*l*(k)) for any securities of the issuer or its predecessor (if any) during the 12 months preceding the date of the publication or submission of the quotation, or a copy of the public release issued by the Commission announcing such trading suspension order.

(2) A copy or a written record of any other material information (including adverse information) regarding the issuer which comes to the broker's or dealer's knowledge or possession before the publication or submission of a quotation.

(f) *Significant relationship information.* (1) A statement describing any direct or indirect affiliation between the issuer and the broker or dealer publishing or submitting the quotation for publication, or any of its associated persons.

(2) A statement whether the quotation is being published or submitted on behalf of any other broker or dealer, or any of its associated persons, and, if so, the name of such broker or dealer, or the associated person, and the terms of the arrangement.

(3) A statement whether the broker or dealer has received or has any arrangement to receive any monetary or other consideration from any person in connection with publishing the quotation and, if so, a description of the consideration and the name of the person providing the consideration.

(4) A statement whether the quotation directly or indirectly is being published or submitted for publication on behalf of the issuer, or any executive officer, director, general partner, promoter, control person, or any person, directly or indirectly the beneficial owner of more than 10 percent of the outstanding units or shares of any equity security of the issuer, and, if so, the name of such person, and the basis for any exemption under the federal securities laws for any sales of such securities on behalf of such person.

(g) *Exceptions.* The provisions of this section shall not apply to the publication or submission for publication of a quotation for:

(1) A security admitted to trading on a national securities exchange and which is traded on such an exchange on the same day as, or on the business day next preceding, the day the quotation is published;

(2) A security that is listed in the Nasdaq Stock Market, and such authorization is not suspended, terminated, or prohibited;

(3) An exempted security, as defined in section 3(a)(12) of the Act (15 U.S.C. 78c(a)(12)), or a municipal security as defined in section 3(a)(29) of the Act (15 U.S.C. 78c(a)(29)); or

(4) A security, solely on behalf of a customer (other than a person acting as or for a dealer), that represents the customer's order or indication of interest and does not involve the solicitation of the customer's order or interest.

(h) *Preservation of documents and information.* The broker or dealer shall preserve the information specified in paragraphs (d), (e), and (f) of this section in accordance with the provisions of § 240.17a–4(b)(11): *Provided, however,* That if the broker or dealer satisfied the requirements of paragraph (d) of this section by obtaining and reviewing such information on the EDGAR system, the broker or dealer shall be deemed to have preserved the information described in paragraph (d) of this section if the broker or dealer has the means to access such information electronically for the period described by § 240.17a–4(b)(11).

(i) *Information submitted to the NASD.* (1) At least three business days before the quotation is published, the broker or dealer shall submit to the NASD, in accordance with NASD rules, the information required in paragraphs (d), (e), and (f) of this section.

(2) For any security of an issuer included in paragraph (d)(3) of this section:

(i) A broker or dealer shall be in compliance with the requirement to obtain current reports filed by the issuer if the broker or dealer obtains all current reports filed with the Commission by the issuer as of a date up to three business days in advance of the earlier of the date of submission of the quotations to the quotation medium and the date of submission of information to the NASD pursuant to NASD rules; and

(ii) A broker or dealer shall be in compliance with the requirement to obtain the annual, quarterly, and current reports filed by the issuer, if the broker or dealer has made arrangements to receive all such reports when filed by the issuer and it has regularly received reports from the issuer on a timely basis.

(j) *Information available upon request.* A broker or dealer that publishes any quotation for a security pursuant to this section shall make the information specified in paragraphs (d), (e), and (f) of this section promptly available upon request to any person. Providing such information to others pursuant to this paragraph (j) shall not constitute a representation by such broker or dealer that the information is accurate, but it shall constitute a representation by such broker or dealer that the information is current in relation to the date recorded pursuant to paragraph (c)(3)(iii) of this section, that the broker or dealer has a reasonable basis under the circumstances for believing the information is accurate in all material respects, and that the information was obtained from sources which the broker or dealer has a reasonable basis for believing are reliable.

(k) *Definitions.* For purposes of this section:

(1) *Initial quotation* means the first quotation for a security published or submitted for publication in a quotation medium by the broker or dealer.

(2) *Issuer,* in the case of quotations for American Depositary Receipts, means the issuer of the deposited shares represented by such American Depositary Receipts.

(3) *NASD* means the National Association of Securities Dealers, Inc., including its wholly owned subsidiaries (including, but not limited to, NASD Regulation, Inc. and The Nasdaq Stock Market, Inc.).

(4) *Nasdaq Stock Market* means the Nasdaq National Market and the Nasdaq SmallCap Market, both operated by the Nasdaq Stock Market, Inc.

(5) *Promoter* has the same meaning contained in § 230.405 of this chapter.

(6) *Quotation* means any bid or offer at a specified price with respect to a security, or any indication of interest by a broker or dealer in receiving bids or offers from others for a security, or any indication by a broker or dealer that advertises its general interest in buying or selling a particular security.

(7) *Quotation medium* means any:

(i) System of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers; or

(ii) Publication or electronic communications network, or other device that is used by brokers or dealers to make known to others their interest in transactions in any security,

including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

(8) *Securities Act* means the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*).

(l) Unless the broker or dealer knows or has reason to know that more current information is available, the information specified in paragraph (d)(6) of this section will be presumed to be current, if:

(1) The balance sheet is as of a date less than 16 months before the publication or submission of the quotation, the statement of cash flows, statement of comprehensive income, and statement of operations (income) (and in the case of foreign issuers, the statement of changes in shareholders' equity) are for the 12 months preceding the date of such balance sheet; and if such balance sheet is not as of a date less than 6 months before the publication or submission of the quotation, it shall be accompanied by an additional statement of cash flows, statement of comprehensive income, and statement of operations (and in the case of foreign issuers, statement of changes in shareholders' equity) for the period from the date of such balance sheet to a date less than 6 months before the publication or submission of the quotation.

(2) Other information regarding the issuer specified in paragraph (d)(6) of this section is as of a date within 12 months prior to the publication or submission of the quotation.

(m) *Transition provision.* A broker or dealer that was publishing a quotation for a security on the business day immediately prior to [effective date of amendments in the final rule] may continue to publish quotations for such security without complying with paragraph (c) of this section until the occurrence of any of the events set forth in paragraphs (b)(2) or (b)(3) of this section.

(n) This section shall not prohibit any publication or submission of any quotation if the Commission, upon written request or upon its own motion, exempts such quotation either unconditionally or on specified terms and conditions, as not constituting a fraudulent, manipulative or deceptive practice comprehended within the purpose of this section.

3. Section 240.17a–4 is amended by adding paragraph (b)(11) to read as follows:

§ 240.17a–4. Records to be preserved by certain exchange members, brokers and dealers.

* * * * *

(b) * * *

(11) The records required to be obtained pursuant to § 240.15c2–11.

* * * * *

Dated: February 17, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4460 Filed 2–24–98; 8:45 am]

BILLING CODE 8010–01–P

federal register

Wednesday
February 25, 1998

Part III

Department of Housing and Urban Development

24 CFR Part 570

Hispanic-Serving Institutions Work Study Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4269–I–01]

RIN 2528–AA07

Hispanic-Serving Institutions Work Study Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Interim rule.

SUMMARY: On April 9, 1997, HUD published a final rule for the Hispanic-serving Institutions Work Study Program (HSI–WSP). That rule established, among other things, eligibility for the program. Eligibility was limited to certain public and private non-profit two-year institutions of higher education. This interim rule broadens eligibility to a larger universe of these institutions.

DATES: Effective Date: March 27, 1998.

Comment Due Date: April 27, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships. U.S. Department of Housing and Urban Development, Room 8110, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1537, extension 218. Hearing-or speech-impaired individuals may call HUD's TTY number, (202) 708–1455, or 1–800–877–8399 (Federal Information Relay Service TTY). (Other than the "800" number, these are not toll-free numbers.) Ms. Karadbil can also be contacted via the Internet at Jane__.R.__Karadbil@hud.gov.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in this interim rule were submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2528–0182. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

II. Background

The HSI–WSP is authorized by section 107(c) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5307, 88 Stat. 647). This section provides authority to "* * * make grants to institutions of higher education * * * for the purposes of providing assistance to economically disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time * * * undergraduate programs in community or economic development, community planning, or community management."

On April 9, 1997 (62 FR 17492), HUD issued a final rule governing the program. The final rule limited eligibility for HUD's HSI–WSP to certain Hispanic-serving Institutions (HSIs). Specifically, only public or private institutions of higher education that offer two-year associate degrees and qualify as HSIs are eligible for HSI–WSP. While the statute authorizing the program does not require it, HUD decided to determine eligibility by using the definition of an HSI contained in section 316 of the Higher Education Amendments of 1992 (20 U.S.C. 1059c; 106 Stat. 448, 473). The Act defines an HSI as: an institution that has an enrollment of undergraduate full-time students that is at least 25 percent Hispanic; in which not less than 50 percent of the Hispanic students are low-income individuals (i.e., 150 percent of the poverty level) who are first generation college students (i.e., whose parent(s) did not complete a baccalaureate degree) and another 25 percent are either low-income individuals or first generation college students. The U.S. Department of Education determines the eligibility of specific institutions as HSIs and issues a list of institutions meeting this definition. HUD's final rule noted that a list of HSI–WSP-eligible community colleges that are included in the U.S. Department of Education's list of HSIs would appear with each Notice of Funding Availability (NOFA) for the program. Only institutions on this list, or HSI–WSP-eligible institutions subsequently added to the U.S. Department of Education's list prior to that NOFA's application deadline, are eligible to apply for HSI–WSP funds.

III. A Change in the Procedure To Determine Eligibility

HUD has decided to eliminate the use of the U.S. Department of Education's list to determine eligibility and, instead, allow institutions to certify that they meet the statutory definition.

The process for an institution to be put on the U.S. Department of Education's list has several steps. First, an institution must apply for and receive Title III (of the Higher Education Amendments of 1992). (This eligibility applies to a broader universe of institutions, not just HSIs, and allows these institutions to compete for Title III grants.) Second, with this eligibility, an institution must apply for the U.S. Department of Education's Hispanic-serving Institutions Program (which is a capacity building program for institutions of higher education, not a work study program). Third, the U.S. Department of Education must receive, as part of the application for their HSI program, a certification from the institution that it meets the statutory HSI definition. Fourth, as a result of this certification, the U.S. Department of Education puts the institution on its HSI list. Based on the language in the HSI–WSP final rule, only when all of these steps have occurred is the institution eligible for HUD's HSI–WSP.

HUD's use of the U.S. Department of Education's list means that some Hispanic-serving institutions are not eligible for HSI–WSP for one of two reasons. First, institutions that meet the eligibility requirements but do not apply for the U.S. Department of Education's program (and are therefore not on the U.S. Department of Education's list) cannot apply for the HUD program. Second, because the U.S. Department of Education had no funding for new grants for its HSI Program in FY 1996, FY 1997, and FY 1998, there was no call for applications for three years, and, thus, no additional determinations of HSI eligibility which could be added to the list of HSIs that Department produces. HUD has determined that it may be unfairly penalizing institutions if it relies on a potentially out-of-date and overly restrictive eligibility list. HUD has, therefore, decided not to base eligibility on the U.S. Department of Education's list, but instead allow applicants to certify to HUD that they are eligible to apply for the HSI–WSP.

IV. Justification for an Interim Rule

In general, HUD publishes a rule for public comments before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for

exceptions from the general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1)

The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is contrary to the public interest. The purpose of the rule is to expand eligibility to additional institutions of higher education. If the rule were issued for public comment, it could not take effect before the next round of competition, preventing otherwise eligible schools from competing. This, in turn, would deny eligible students from entering these community colleges and moving on to careers in community building. Although the rule will take effect 30 days from the date of publication, HUD solicits comments from the public on this interim rule.

V. Findings and Certifications

Environmental Impact

In accordance with 24 CFR 50.19(b)(9) of the HUD regulations, the policies and procedures contained in this rule relate only to training grants and technical assistance, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Regulatory Flexibility

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing, certifies that it will not have a significant economic impact on a substantial number of small entities. The rule only affects applicants and participants in the Hispanic-Serving Institutions Work Study Program and will not have any meaningful economic impact on any other entity.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies and procedures contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. Specifically, the rule solicits participation by institutions of higher education in creating community development work study programs for some of their economically disadvantaged and minority students. The rule does not impinge upon the relationships between the Federal government and State or local governments.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This interim rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

The Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.513.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, 24 CFR part 570, subpart E is amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Subpart E—Special Purpose Grants

1. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

2. Section 570.416 is amended by revising the definition of "Hispanic-serving institution" in paragraph (b) to read as follows:

§ 570.416 Hispanic-serving institutions work study program.

* * * * *

(b) Definitions. * * *

* * * * *

Hispanic-serving institution is an institution of higher education that certifies to the satisfaction of the Secretary that it meets the criteria set out at 20 U.S.C. 1059c(b)(1), including the following: An institution that has an enrollment of undergraduate full-time students that is at least 25 percent Hispanic; in which not less than 50 percent of the Hispanic students are low-income individuals (i.e., their families' taxable income for the preceding year did not exceed 150 percent of the poverty level) who are first generation college students; and in which another 25 percent are either low-income individuals or first generation college students.

* * * * *

Dated: January 22, 1998.

Paul A. Leonard,

Deputy Assistant Secretary for Policy Development.

[FR Doc. 98–4718 Filed 2–24–98; 8:45 am]

BILLING CODE 4210–62–P

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federal register

Wednesday
February 25, 1998

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1000, et al.
Milk in the New England and Other Marketing Areas; Proposed Rule Corrections

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1000

[DA–97–12]

Milk in the New England and Other Marketing Areas; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects four inadvertent errors which were made in a proposed rule published in the **Federal Register** of January 30, 1998 (63 FR 4802), regarding Federal milk marketing orders.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Branch Chief, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

Corrections

In proposed rule FR Doc. 98–1758, beginning on page 4802 in the **Federal Register** issue of January 30, 1998, the following corrections to sections 1000.15, 1000.40, 1000.44, and 1000.52 are made.

1. On page 4969, in the third column, § 1000.15, paragraph (b)(1) is corrected to read as follows:

§ 1000.15 Fluid milk product.

(a) * * *

(b) * * *

(1) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, formulas especially prepared for infant feeding or meal replacement, products packaged in all-metal, hermetically-sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

2. Beginning on page 4971, in the third column, § 1000.40, paragraphs (b)(2) and (b)(3) are redesignated as paragraphs (b)(3) and (b)(4), respectively, and a new paragraph (b)(2) is added to read as follows:

§ 1000.40 Classes of utilization.

* * * * *

(b) * * *

(1) * * *

(2) In fluid milk that is packaged in all-metal, hermetically-sealed containers;

§ 1000.44 [Corrected]

3. On page 4974, in the first column, § 1000.44, paragraphs (a)(1)(iv) and (a)(2), the reference "(a)(3)(iv)" is corrected to read as "(a)(3)(v)".

§ 1000.52 [Corrected]

4. On pages 4976 through 5020, § 1000.52, the following table entries were published incorrectly and are corrected to read as follows:

County/parish	State	Option 1A differential	Option 1B differential (per year)				
			1999	2000	2001	2002	2003 & beyond
ARCHULETA	CO	1.90	2.13	2.06	2.00	1.93	1.86
EL PASO	CO	2.55	2.45	2.18	1.90	1.63	1.35
ELBERT	CO	2.45	2.43	2.13	1.83	1.53	1.23
LA PLATA	CO	1.90	2.13	2.06	1.98	1.91	1.84
LAKE	CO	1.90	2.29	2.08	1.87	1.66	1.45
MONTEZUMA	CO	1.90	2.12	2.04	1.97	1.89	1.81
DE KALB	GA	3.10	2.96	2.83	2.71	2.58	2.46
DECATUR	GA	3.45	3.32	3.24	3.15	3.07	2.99
MACON	GA	3.30	3.15	3.01	2.88	2.74	2.61
MADISON	GA	3.10	2.93	2.79	2.64	2.50	2.35
MARION	GA	3.30	3.16	3.03	2.91	2.78	2.66
LA SALLE	IL	1.80	1.62	1.63	1.65	1.66	1.67
LAKE	IL	1.80	1.43	1.46	1.49	1.52	1.55
MACON	IL	1.80	1.73	1.71	1.70	1.68	1.66
MACOUPIN	IL	2.00	1.86	1.80	1.73	1.67	1.61
MADISON	IL	2.00	1.93	1.85	1.78	1.70	1.62
MARION	IL	2.00	1.84	1.76	1.68	1.60	1.52
MARSHALL	IL	1.80	1.64	1.67	1.70	1.73	1.76
MASON	IL	1.80	1.63	1.65	1.68	1.70	1.72
MASSAC	IL	2.20	2.03	1.96	1.89	1.82	1.75
MCDONOUGH	IL	1.80	1.60	1.59	1.59	1.58	1.57
MCHENRY	IL	1.80	1.37	1.40	1.42	1.45	1.48
MCLEAN	IL	1.80	1.75	1.75	1.74	1.74	1.74
DE KALB	IN	1.80	1.62	1.54	1.45	1.37	1.29
DEARBORN	IN	2.20	1.98	1.85	1.71	1.58	1.45
DECATUR	IN	2.20	1.81	1.73	1.64	1.56	1.47
LA PORTE	IN	1.80	1.65	1.60	1.54	1.49	1.44
LAGRANGE	IN	1.80	1.61	1.52	1.44	1.35	1.26
LAKE	IN	1.80	1.55	1.55	1.56	1.56	1.56
SCOTT	IN	2.20	1.89	1.77	1.66	1.54	1.43
SHELBY	IN	2.00	1.82	1.74	1.66	1.58	1.50
SPENCER	IN	2.20	2.00	1.90	1.79	1.69	1.58
ST. JOSEPH	IN	1.80	1.63	1.55	1.48	1.40	1.33
MARION	KS	2.20	2.10	1.90	1.71	1.51	1.31
MARSHALL	KS	2.00	1.81	1.71	1.60	1.50	1.39
MCPHERSON	KS	2.20	2.10	1.90	1.69	1.49	1.29
MADISON	KY	2.20	1.98	1.85	1.73	1.60	1.47
MAGOFFIN	KY	2.20	2.08	1.97	1.85	1.74	1.63
MARION	KY	2.20	1.97	1.83	1.70	1.56	1.42
MARSHALL	KY	2.40	2.27	2.15	2.04	1.92	1.80
MARTIN	KY	2.20	2.09	1.99	1.89	1.79	1.69
MASON	KY	2.20	1.99	1.88	1.76	1.65	1.53
MCCRACKEN	KY	2.40	2.27	2.15	2.03	1.91	1.79

County/parish	State	Option 1A differential	Option 1B differential (per year)				
			1999	2000	2001	2002	2003 & beyond
MCCREARY	KY	2.40	2.27	2.09	1.92	1.74	1.56
MCLEAN	KY	2.20	2.02	1.92	1.83	1.73	1.64
LA SALLE	LA	3.40	3.19	2.98	2.78	2.57	2.36
LAFAYETTE	LA	3.60	3.44	3.23	3.01	2.80	2.59
LAFOURCHE	LA	3.60	3.41	3.18	2.94	2.71	2.47
SOMERSET	MD	3.00	2.64	2.46	2.27	2.09	1.91
ST. MARY'S	MD	3.00	2.77	2.52	2.26	2.01	1.75
MAHNOMEN	MN	1.65	1.13	1.05	0.98	0.90	0.83
MARSHALL	MN	1.65	1.12	1.05	0.97	0.90	0.82
MARTIN	MN	1.70	1.20	1.20	1.21	1.21	1.21
MCLEOD	MN	1.70	1.14	1.14	1.14	1.14	1.14
SCOTT	MN	1.70	1.15	1.15	1.16	1.16	1.17
SHERBURNE	MN	1.70	1.14	1.14	1.13	1.13	1.13
SIBLEY	MN	1.70	1.14	1.15	1.15	1.16	1.16
ST. LOUIS	MN	1.65	1.18	1.16	1.15	1.13	1.11
MACON	MO	1.80	1.67	1.62	1.56	1.51	1.46
MADISON	MO	2.20	2.09	1.99	1.88	1.78	1.68
MARIES	MO	2.00	2.05	1.92	1.78	1.65	1.51
MARION	MO	1.80	1.65	1.59	1.52	1.46	1.39
MCDONALD	MO	2.20	2.01	1.82	1.64	1.45	1.27
SALINE	MO	2.00	1.84	1.76	1.67	1.59	1.51
MADISON	MT	1.60	1.45	1.31	1.16	1.02	0.87
MCCONE	MT	1.60	1.50	1.40	1.30	1.20	1.10
MADISON	NE	1.80	1.64	1.53	1.41	1.30	1.19
MCPHERSON	NE	1.80	1.27	1.22	1.16	1.11	1.05
SAN JUAN	NM	1.90	2.13	2.06	1.98	1.91	1.84
SAN MIGUEL	NM	2.35	2.26	2.16	2.07	1.97	1.88
SANDOVAL	NM	2.35	2.27	2.19	2.12	2.04	1.96
MACON	NC	2.95	2.76	2.59	2.42	2.25	2.08
MADISON	NC	2.95	2.71	2.50	2.28	2.07	1.85
MARTIN	NC	3.20	3.04	2.86	2.67	2.49	2.30
MCDOWELL	NC	2.95	2.71	2.49	2.27	2.05	1.83
MAJOR	OK	2.40	2.35	2.11	1.87	1.63	1.39
MARSHALL	OK	2.80	2.68	2.37	2.05	1.74	1.42
MAYES	OK	2.40	2.35	2.11	1.86	1.62	1.38
MCCLAIN	OK	2.60	2.50	2.24	1.97	1.71	1.44
MCCURTAIN	OK	2.80	2.71	2.42	2.13	1.84	1.55
MCINTOSH	OK	2.60	2.51	2.25	1.98	1.72	1.46
MARSHALL	SD	1.70	1.15	1.10	1.06	1.01	0.96
MCCOOK	SD	1.70	1.42	1.35	1.27	1.20	1.12
MCPHERSON	SD	1.70	1.15	1.10	1.05	1.00	0.95
DE KALB	TN	2.60	2.43	2.25	2.08	1.90	1.73
DECATUR	TN	2.60	2.47	2.34	2.22	2.09	1.96
MACON	TN	2.60	2.36	2.17	1.97	1.78	1.59
MADISON	TN	2.60	2.49	2.39	2.28	2.18	2.07
MARION	TN	2.80	2.62	2.46	2.31	2.15	2.00
MARSHALL	TN	2.60	2.44	2.27	2.11	1.94	1.78
MAURY	TN	2.60	2.44	2.27	2.11	1.94	1.78
MCMINN	TN	2.80	2.62	2.47	2.33	2.18	2.03
MCNAIRY	TN	2.80	2.63	2.50	2.36	2.23	2.09
DE WITT	TX	3.60	3.34	3.11	2.87	2.64	2.40
DEAF SMITH	TX	2.40	2.28	2.07	1.85	1.64	1.43
DELTA	TX	3.00	2.81	2.46	2.10	1.75	1.40
DENTON	TX	3.00	2.84	2.51	2.19	1.86	1.54
EL PASO	TX	2.25	2.15	1.95	1.75	1.55	1.35
ELLIS	TX	3.00	2.89	2.62	2.35	2.08	1.81
LA SALLE	TX	3.45	2.71	2.62	2.52	2.43	2.34
LAMAR	TX	3.00	2.81	2.46	2.12	1.77	1.42
LAMB	TX	2.40	2.28	2.07	1.85	1.64	1.43
LAMPASAS	TX	3.15	3.02	2.74	2.45	2.17	1.88
MADISON	TX	3.30	3.14	2.92	2.69	2.47	2.25
MARION	TX	3.00	2.88	2.60	2.33	2.05	1.77
MARTIN	TX	2.40	2.71	2.47	2.24	2.00	1.76
MASON	TX	2.80	2.46	2.32	2.18	2.04	1.90
MATAGORDA	TX	3.60	3.38	3.19	2.99	2.80	2.60
MAVERICK	TX	3.30	2.67	2.55	2.42	2.30	2.17
MCCULLOCH	TX	2.80	2.45	2.29	2.14	1.98	1.83
MCLENNAN	TX	3.15	3.05	2.79	2.52	2.26	2.00
MCMULLEN	TX	3.45	2.72	2.64	2.57	2.49	2.41
EMPORIA CITY	VA	3.00	2.87	2.66	2.45	2.24	2.03
FRANKLIN CITY	VA	3.00	2.76	2.60	2.43	2.27	2.10

County/parish	State	Option 1A differential	Option 1B differential (per year)				
			1999	2000	2001	2002	2003 & beyond
FREDERICK	VA	2.80	2.77	2.46	2.15	1.84	1.53
PITTSYLVANIA	VA	2.80	2.70	2.47	2.24	2.01	1.78
POWHATAN	VA	3.10	2.81	2.54	2.27	2.00	1.73
MARION	WV	2.10	1.93	1.86	1.78	1.71	1.64
MARSHALL	WV	2.10	1.92	1.85	1.77	1.70	1.62
MASON	WV	2.20	2.09	1.98	1.88	1.77	1.67
MCDOWELL	WV	2.80	2.56	2.35	2.13	1.92	1.71

Dated: February 19, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–4726 Filed 2–24–98; 8:45 am]

BILLING CODE 3410–02–P

VOL 63 ISS 37 FE 25 998 UMI

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Corrections

Federal Register
Vol.63, No. 37
Wednesday, February 25, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138 and 1139

[DA–97–12]

Milk in the New England and Other Marketing Areas; Proposed Rule and Opportunity to File Comments, Including Written Exceptions, on Proposed Amendments to Marketing Agreements and Orders

Correction

In proposed rule document 98–1758, beginning on page 4802 in the issue of Friday, January 30, 1998, page 4954 was inadvertently omitted. The online version is correct. Page 4954 should read as follows:

* * * * *

administrators be given the authority to adjust shipping requirements in all orders.

A number of comments addressed the issue of where a plant should be regulated and whether there should be a "lock-in" provision which would keep a distributing plant regulated under the order where it is located rather than where it may have the most sales. SDFA supports the adoption of lock-in provisions in the consolidated southeast orders. Prairie Farms Dairy, Inc. states that pool distributing plants should be regulated where located rather than where route disposition occurs. Another cooperative association, Milk Marketing Inc. (MMI), states that competition for local milk supply and a competitive pay price with neighboring plants is much more important to both producers and processors than a price that is competitive with other plants that compete for sales in a given area. Therefore, MMI recommends regulating a distributing plant in the market where it is located rather than on the location of its sales. MMI contends that the Federal milk order program should be concerned with attracting milk to a plant, not the retail location. The cooperative states that plants in unregulated areas should continue to be regulated based on sales areas.

Some comments received addressed supply plant requirements. SDFA recommends that for the southeastern orders the supply plant shipping requirement be 60% of a plant's receipts during July through November and 40% during December through June. However, SDFA also acknowledges that specific exceptions to this principle may be necessary to accommodate specific needs and should be considered on a case by case basis.

SDFA states that supply plant performance requirements should not be changed in an effort to allow all Grade A milk to be included in a marketwide pool. Such a change, it contends, would result in disorderly marketing and jeopardize the viability of local supplies. SDFA requested year-round shipping requirements for supply plants under Orders 5, 6, and 7.

SDFA also states that automatic pooling should be provided for manufacturing or receiving plants located in the marketing area if the plant is operated by a cooperative association, but only if the cooperative has a substantial association with the market.

MMI maintains that southeastern orders would be well-served by provisions which allow reserve supply plants in the North and West to participate in higher blend prices throughout the year, in exchange for greater assurance of a milk supply in the short production months when additional milk is needed. Land O'Lakes (LOL) recommended the elimination of shipping requirements for supply plants, but suggested that supply plant operators make a commitment to supply the market when additional milk is needed. LOL also supports the adoption of a "call" provision in each order that would allow the market administrator to require supply plant shipments on an as-needed basis.

Another cooperative operating in the Southeast wrote that reserve supply plant qualification should be based on total cooperative performance but that such plants should not be required to be located in the marketing area. This cooperative contends that if a cooperative is performing a balancing function for the market, it should not be discriminated against just because its plant is not located in the marketing area.

Suggestions were also received concerning certain specialty plants that are located in the Southeast. SDFA recommended amending the *route disposition* definition to accommodate a specialty fluid milk plant in Jacksonville that disposes of long shelf life dairy products. SDFA states that although a large portion of its fluid supply is disposed for Class I use, because of the nature of its business, it is likely that the plant would not meet the 50% route disposition requirement for pool status.

Proposal: The Secretary proposes that the pool plant provisions for the Appalachian, Florida, and Southeast orders under consideration should closely follow the provisions now contained in the southeast orders. The performance standards proposed are appropriate for the needs of these seasonally-deficit markets.

Section 7(a) of each Federal milk order describes the pooling standards for a distributing plant. To qualify for pooling under each of the 3 orders, a distributing plant must dispose of 50 percent of the total fluid milk products received at the plant as route disposition. In addition, at least 10 percent of the plant's receipts must be disposed of as route disposition in the marketing area. These standards would indicate that a distributing plant is closely associated with the fluid market and, therefore, should be part of the marketwide pool.

Paragraph (b) of Section 7 would accommodate the pooling of plants that specialize in aseptically-packaged products. There are at least two such plants in the southeast markets: the Ryan Foods Company plants in Jacksonville, Florida and Murray, Kentucky.

Unlike a typical distributing plant, a plant specializing in aseptically packaged products may have a more erratic processing schedule, reflecting the longer shelf life of the products packaged at the plant. Consequently, a plant's Class I utilization may vary considerably from month to month. In the past, such variability has resulted in shifting pool status for some of these plants from one order to another. In some months, the plant may have been partially regulated, even though all of the milk received at the plant was priced under the order. This type of regulatory instability is not conducive to orderly marketing. To guarantee greater regulatory stability for these plants, they should be fully regulated pool plants if they are located in the marketing area and have route disposition in the marketing area. However, if the plant has no route disposition in the marketing area during the month, the plant operator may request nonpool status for the plant.

The Secretary proposes that each of the three orders also should specify pooling standards for a supply plant. For the Appalachian and Southeast orders, a supply plant must ship at least 50 percent of the milk physically received during the month from dairy farmers and cooperative bulk tank handlers. In the case of the Florida order, the shipping percentage should be slightly higher at 60 percent.

Unlike supply plant provisions in other orders, the supply plant provisions in the three southeast orders should not recognize shipments directly from producers' farms as qualifying shipments for a supply plant. At the present time, there are no plants qualifying as "pool supply plants" under any of the southeast orders.

Almost all of the plants that balance the fluid needs of the Southeast are operated by cooperative associations. These "balancing plants" qualify for pooling based upon the performance of the cooperative association and not based upon shipments from the plant alone. The Secretary proposes that balancing plant provisions should be maintained for the three southeast orders.

A balancing plant may qualify based upon shipments directly from producers' farms as well as shipments from the plant. To qualify as a balancing plant, the plant must be located within the order's marketing area. This requirement ensures that milk pooled through the balancing plant is economically available to processors of fluid milk if needed. However, in the

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Part V

Department of Education

Privacy Act of 1974; Systems of Records; Notice

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Systems of Records

AGENCY: Department of Education.

ACTION: Notice of deleted systems of records under the Privacy Act of 1974.

SUMMARY: The Department deletes 25 systems of records in its inventory of systems of records subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. These deletions are a result of reorganizations, program terminations or transfers to other agencies.

DATES: This notice is effective February 25, 1998.

FOR FURTHER INFORMATION CONTACT: Chiquitta Thomas, Privacy Act Officer, Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, 600 Independence Avenue, SW, Room 5624, General Services Administration (GSA) Regional Office Building #3, Washington, DC 20202–4561. Telephone: (202) 708–9265. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The Department of Education has reviewed its inventory of systems of records and found that 25 of these systems of records are no longer being maintained by the Department due to reorganizations, program terminations or transfers to other agencies that have taken place since the notices were last published. Therefore, the Department deletes these 25 systems of records, listed below, from its inventory of systems of records. These deletions are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of an altered systems report. The Department does not plan to reinstate these systems in the future.

1. The following systems of records are no longer being maintained by the Department of Education and, therefore, are deleted from the Department's inventory of systems of records:

System No.	System name	Publication date
18–05–0002	Elementary School Essays on the Bicentennial of the U.S. Constitution. ED/OHA/DUS	52 FR 8954, March 20, 1987.
18–09–0004	Federal Private Relief Legislation. ED/OGC	46 FR 29605, June 2, 1981.
18–11–0001	Department of Education Motor Vehicle Operator Records. OASM	46 FR 29608, June 2, 1981.
18–11–0022	Volunteer EEO Support Personnel Records. ED/AMS/EEOS	46 FR 29621, June 2, 1981.
18–15–0001	Consultants for Federal Technical Assistance Program, Vocational Rehabilitation Services. ED/OSERS/RSA.	46 FR 29623, June 2, 1981.
18–15–0002	Office of Rehabilitation Services Mailing Lists. ED/OSERS/RSA	46 FR 29623, June 2, 1981.
18–15–0003	Mailing Keys. ED/OSERS/RSA	46 FR 29624, June 2, 1981.
18–15–0004	Correspondence Files. ED/OSERS/RSA	46 FR 29625, June 2, 1981.
18–40–0010	Law Enforcement Education System. ED/OPE/OSFA. The information in this system of records is included under system 18–40–0045—Student Financial Assistance Collection Files.	48 FR 55159, December 9, 1983.
18–40–0011	Upward Bound Information Systems. ED/ASDE/HE	46 FR 29631, June 2, 1981.
18–40–0012	Migration and Refugee Assistance Act of 1962—United States Loan Program for Cuban Students. ED/OPE/OSFA. The information in this system of records is included under system 18–40–0045—Student Financial Assistance Collection Files.	48 FR 55159, December 9, 1983.
18–40–0013	National Defense Direct Student Loan Program—Request for Cancellation of Loan on Ground of Permanent and Total Disability. ED/OPE/OSFA.	48 FR 55159, December 9, 1983.
18–40–0016	Pell Grant Alternate Disbursement System. ED/OPE/OSFA	48 FR 55160, December 9, 1983.
18–40–0034	Teacher Corps Application for Intern Teacher Position. ED/OERI/EPDD	46 FR 29647, June 2, 1981.
18–40–0036	Oral History of the Office of Education as Dictated by Former Commissioners of Education. ED/OL.	46 FR 29648, June 2, 1981.
18–40–0080	Training and Development Awards for Vocational Education Personnel— Applications and Awards. ED/OVAE.	46 FR 29653, June 2, 1981.
18–40–0081	Women Administrators in Vocational Education. ED/OVAE	46 FR 29654, June 2, 1981.
18–42–0016	Northwest Regional Educational Laboratory, Experience Based Career Education Record System. ED/NIE.	46 FR 29655, June 2, 1981.
18–42–0019	Far West Laboratory Experience Based Career Education Records System. ED/OERI/NIE.	46 FR 29656, June 2, 1981.
18–42–0056	National Institute of Education, Sources and Effects of Teacher Expectations. ED/OERI/NIE.	46 FR 29657, June 2, 1981.
18–42–0078	Travel—Official Travel of NIE Personnel. ED/OERI/NIE	46 FR 29658, June 2, 1981.
18–42–0079	NIE Controlled Correspondence. ED/OERI/NIE	46 FR 29658, June 2, 1981.
18–42–0082	National Council on Educational Research Mailing Lists. ED/OERI/NIE	46 FR 29659, June 2, 1981.
18–42–0083	National Council on Educational Research—Current and Past Information on Members of the Council and Consultants. The information in this system of records is included under 18–01–0002—Federal Advisory Council Membership Files.	46 FR 29660, June 2, 1981.

2. The following system of records was transferred to another Federal agency, and, therefore, is deleted from the Department of Education's inventory of systems of records:

System No.	System name	Publication date
18–40–0018	Mutual Educational and Cultural Exchange Act/Teacher Exchange Participants and Applicants. ED/OPE/IE. This program was transferred to USIA in 1983.	47 FR 16832, April 20, 1982.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Dated: February 19, 1998.

Donald Rappaport,

Chief Financial and Chief Information Officer.

[FR Doc. 98–4794 Filed 2–24–98; 8:45 am]

BILLING CODE 4000–01–P

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Part VI

International Development Cooperation Agency

Overseas Private Investment Corporation

Request for Comments on Draft Environmental Handbook; Notice

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Request for Comments on Draft Environmental Handbook; Notice.

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Notice of publication and request for comments.

SUMMARY: The Overseas Private Investment Corporation (OPIC, or the "Corporation") has published a second version of its Environmental Handbook (Handbook) which represents the current environmental policies and procedures in use at the Corporation. Section 231(n) of the Foreign Assistance Act of 1961 (22 U.S.C. 2191(k)(2), as amended), requires OPIC to: "Refuse to insure, reinsure, guarantee, or finance any investment in connection with a project which the Corporation determines will pose an unreasonable or major environmental, health, or safety hazard, or will result in the significant degradation of national parks or similar protected areas."

An earlier draft of the Handbook was published as a notice in the **Federal Register** on February 6, 1997. Based on the comments received in response to that notice, OPIC has revised the Handbook. Comments are now invited on the revised version of the Handbook that appears in this document.

The Handbook consolidates a number of sources of information into a single, easy-to-review and easily accessible document. The Handbook is also available on OPIC's Internet web site at WWW.OPIC.GOV.OPIC will consider further revision of the Handbook based on the comments we receive.

DATES: Comments must be received on or before June 25, 1998.

ADDRESSES: Comments should be submitted to Mr. Jonathan Sohn, Department of Financial Management and Statutory Review, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527, or via Internet e-mail at JSOHN@OPIC.GOV.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Sohn by telephone at (202) 408–6265, by facsimile transmission at (202) 218–0288, or via Internet e-mail at JSOHN@OPIC.GOV.

SUPPLEMENTARY INFORMATION: Message from OPIC President George Muñoz:

OPIC has a 27-year history of mobilizing private capital and skills in the economic and social development of less developed nations while supporting the foreign policy and economic goals of the United States. OPIC is releasing this draft of its Environmental Handbook for public comment as part of a process to ensure we are meeting the mandate of our statute to decline support for "a project which * * * will pose an unreasonable or major environmental, health or safety hazard." OPIC has been a leader among agencies in international investment in fairly applying environmental standards. The new draft guidelines were developed to clarify current policies and strengthen them where appropriate.

While it is difficult to address all concerns, our goal is a fair balance between the public's interest in environmental safeguards and business' legitimate need to make prompt decisions as they consider international projects—projects which are critical for the fulfillment of OPIC's mission. OPIC is also mindful that companies supported by our foreign counterparts often do not have to meet comparable environmental standards. This will be an important issue going forward. OPIC is committed to leveling the playing field through international harmonization of standards for all countries.

Developing nations are confronted with a range of environmental challenges. We believe that in the long run a transparent decision-making process involving public disclosure of environmental impact assessments is good for business and good for sustainable development. It can promote consensus building and broad support for the long-term economic and environmental sustainability of OPIC-supported projects in developing countries.

The new draft guidelines include:

- A 60-day public comment period to review a project's environmental impact assessment;
- Adoption of the new 1997 World Bank draft guidelines;
- Clarification of prohibitions; and
- An independent audit requirement for environmentally sensitive projects.

OPIC welcomes comments from all interested members of the public. OPIC will make use of the information highway to broaden its reach and to accommodate input in its decision making; OPIC may be contacted via Internet e-mail at WWW.OPIC.GOV. There will be a 120-day comment period from the date hereof before the guidelines are made final. OPIC will carefully review comments on the draft guidelines and will be particularly interested in hearing views on the importance of the guidelines in ensuring fulfillment of OPIC's mission.

OPIC looks forward to your thoughts and comments.

OPIC Environmental Handbook

February 1998 Edition

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OPIC'S Mission Statement

OPIC's mission is to mobilize and facilitate the participation of United States private capital and skills in the economic and social development of less developed countries and areas, and countries in transition from nonmarket to market economies. In accomplishing its mission, OPIC will promote positive U.S. effects and host country development effects. OPIC will assure that the projects it supports are consistent with sound environmental and worker rights standards. In conducting its programs, OPIC will also take into account guidance from the Administration and Congress on a country's observance of, and respect for, human rights. In accomplishing its mission, OPIC will operate on a self-sustaining basis.

Introduction: Statement of Purpose and Objectives

This Handbook is intended to provide information to OPIC's users, as well as the interested public, with respect to the general environmental guidelines, assessment and monitoring procedures that OPIC applies, in its discretion, to prospective and ongoing investment projects. The standards and procedures described in this Handbook generally reflect existing practice at OPIC as it has evolved since the enactment in 1985 of

statutory environmental provisions applicable to OPIC. (The environmental provisions contained in OPIC's statute are reprinted in Appendix A.) (OPIC is also subject to Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions." Environmental Assessment Procedures for EO 12114 are included in Appendix A, as well as a reprint of a 1979 FR notice implenting the EO.) Additionally, the Handbook reflects general policy initiatives announced by President Clinton at the United Nations Special Session on the Environment in June of 1997 as well as comments from OPIC's users and other members of the public in response to OPIC's publication of the Handbook in the **Federal Register** as a notice on February 6, 1997. OPIC received comments on that notice for four months after its publication. The provisions noted in this Handbook apply to all political risk insurance, project finance and OPIC-supported financial intermediaries unless otherwise noted.

Since 1985, OPIC has been required by statute to assess the environmental impacts of projects under consideration for political risk insurance and financing. OPIC's authorizing statute was also amended at that time to direct the Corporation to decline assistance to projects posing an "unreasonable or major hazard to the environment, health or safety" or resulting in the "significant degradation of a national park or similar protected area." OPIC was also directed to operate its programs consistent with the intent of sections 117, 118 and 119 of the Foreign Assistance Act relating to environmental impact assessment, tropical forests, biological diversity and endangered species. Then and since Congress has continued to express its intent that "great care * * * be paid to assuring the environmental soundness of U.S. Government supported foreign assistance projects." This is particularly important given OPIC's self-sustaining mandate. OPIC strongly supports these principles on their own merits.

Over the years OPIC has worked with counterpart organizations providing similar services to investors in the U.S., overseas and on a multilateral basis as environmental procedures were developed. Many of the OPIC standards and procedures described in this Handbook are also applied by organizations such as the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), both affiliates of the World Bank; the European Bank for Reconstruction and Development (EBRD); and the U.S. Export-Import Bank (US Exim). In OPIC's experience, the progressive harmonization of standards and procedures similar to those used by these and other similar organizations worldwide has facilitated co-financing and co-insurance arrangements and made it simpler for clients to address environmental requirements.

The Handbook is not designed to be a static document but rather an evolving process. OPIC welcomes comments from business and public interest organizations seeking to enhance OPIC's environmental assessment and management process.

Summary of OPIC Environmental Procedures

OPIC projects receive thorough yet efficient environmental review, following the process described below. Applicants should carefully review the entire Environmental Handbook, including all Appendices, to ensure full understanding of OPIC's Environmental Procedures.

(1) OPIC screens the application to determine whether its support of the project would violate any categorical prohibitions required by OPIC's statute or policy (See "Categorical Prohibitions", Appendix F) to the extent possible at this early stage. If the project is ineligible, OPIC informs the applicant immediately so as to avoid any unnecessary effort or expense on the part of the applicant.

(2) If the project is not categorically ineligible, OPIC continues to screen the application to determine the level of environmental sensitivity associated with the industry sector or site involved (See " Environmental Screening") and to request the appropriate type of information from the applicant.

(3) If the project is identified as a Category A project, an Environmental Impact Assessment (EIA) or Initial Environmental Audit (IEAU) is required. Category B projects are subject to internal OPIC assessment based on information supplied by the applicant that need not take the form of an EIA. Category C projects do not have material impacts on the environment and are not subject to environmental assessment (See "Environmental Assessment").

(4) OPIC requires that applicants for Category A projects submit the EIA or IEAU in a form that can be made public without compromising business confidential information. With the consent of the applicant, the country and industry sector involved in a Category A project (but not the name of the applicant), are listed on OPIC's Internet Web Site and the EIA or IEAU is made publicly available on request for a designated comment period of 60 days prior to any final OPIC commitment to a project. No application for a Category A project can be processed without this public disclosure and review process. Environmentally sensitive projects are also subject to host government notification prior to final commitment (See "Public Consultation and Disclosure" and Appendix H).

(5) Concurrent with this public notification process, OPIC conducts an internal assessment of the project based on the EIA and other available information, including any comments it receives from the public. Category B projects are also subject to an internal environmental assessment. Through this review process, OPIC environmental staff assess the impacts of the project and the standards and mitigative conditions applicable to OPIC support (See "Environmental Standards").

(6) These conditions are discussed with the applicant and included as representations, warranties and covenants in the loan agreement or political risk insurance contract (See "Conditionality").

(7) OPIC monitors project compliance with contractual conditions throughout the term of the OPIC loan agreement or insurance contract (See "Monitoring and Compliance").

(8) Category A projects are also required to conduct at least one independent environmental audit during the first three years of OPIC support (See "Compliance Audit").

Similar procedures, but with restrictions on public disclosure and consultation, apply to OPIC consideration and support of projects supported by an OPIC-guaranteed investment fund or other financial intermediaries (See ""Investment Funds Policy").

Environmental Screening

Environmental screening is the process of identifying, at the earliest stage possible, the potential adverse environmental impacts of a proposed project that could preclude OPIC support on categorical grounds. If a project is determined to be categorically prohibited, OPIC will promptly notify the investor that the application cannot be considered for environmental clearance and ultimate project approval. Examples of such projects include large dams that disrupt natural ecosystems, infrastructure and raw material extraction in primary tropical forests and other protected or ecologically fragile areas. (A complete list of Categorical Prohibitions is provided in Appendix F.)

For projects that are not categorically ineligible for further consideration,

OPIC continues its screening process to determine the level of effort and public disclosure required for the satisfaction of OPIC's environmental assessment requirements. OPIC's Environmental Unit assigns each project to one of the following categories:

Category A: The appropriate category for projects likely to have significant adverse environmental impacts that are sensitive (e.g., irreversible, affect vulnerable population groups, involve involuntary resettlement, affect cultural heritage sites, etc.), diverse, or unprecedented.[1] Such projects can be readily identified on the basis of industry sector or site sensitivity. They require a full-scale EIA or IEAU, as well as an EMMP or ENR. A fairly comprehensive list of industries and sites within this category is provided in Appendix E.

Category B: The appropriate category for projects likely to have adverse environmental impacts that are less significant than those of Category A projects, meaning that few if any of the impacts are likely to be irreversible, that they are site-specific, and that mitigatory measures can be designed more readily than for Category A projects.[2] The EA normally consists of a limited environmental review, identifying suitable mitigating and management measures, and incorporating them into the project. Projects not included in Categories A, C, D or E (as defined below) can be expected to belong to Category B. Examples of such project categories include: agriculture, electrical distribution, electronics, food processing, light manufacturing, telecommunications (involving infrastructure such as new telephone lines with rights of way and towers, or that manufacture telecommunications equipment), textiles and tourism. Information required from the applicant typically includes the following: site description; processes involved; materials used and stored on site; air, liquid, and solid wastes generated in relation to applicable standards; and occupational health and safety measures.

Category C: The appropriate category for projects that are likely to have minimal or no adverse environmental impacts. Projects in this category that are normally exempt from all environmental assessment.[3] Examples of such projects include branch banking, computer software development and telecommunications (involving privatization of existing service or other projects involving no infrastructure).

Category D: This category includes financial intermediaries (FIs) that make investments in or provide financing (loans, leases, etc.) to identifiable projects or enterprises ("subprojects") engaged in activities within categories A and B. OPIC screens these subprojects to determine the type of environmental review required. Also taken into account is the nature and size of the FI's involvement in the subproject. Expedited reviews are conducted for Category B subprojects involving less than $5.0 million in investment, subject to further review if the FI proceeds with additional investments in the same subproject. (See section on Investment Funds' Policy.)

Category E: This category includes small-scale, stand-alone business ventures that have demonstrable environmentally beneficial impacts.[4] Such projects may seek to promote conservation of natural ecosystems or biological diversity and attempt to involve local indigenous peoples and non-governmental organizations (NGOs) in the management process. Ecotourism (as defined below) projects are an example of this category of project. Certain Category E projects may be subject to OPIC's public consultation and disclosure processes, as described on page A–13, due to site sensitivity.

Category F: Categorical Prohibitions: This category includes projects that OPIC will not support due to negative environmental impacts or siting concerns. If a project is determined to be categorically prohibited, OPIC will promptly notify the investor that the application cannot be considered for environmental clearance and ultimate project approval. Examples of such projects include large dams that disrupt natural ecosystems, infrastructure or raw material extraction in primary tropical forests and other protected or ecologically fragile areas. (A complete list of Categorical Prohibitions is provided in Appendix F.)

Environmental Assessment (EA)

The primary purpose of OPIC's environmental review is to determine the eligibility of the project based on OPIC's statutory obligation to decline support for projects posing "unreasonable or major environmental, health or safety hazards." OPIC interprets "health or safety" to apply both to project employees and to the affected public living or working in the vicinity of the project.

In addition, OPIC is also required by statute to operate its programs in a manner consistent with Sections 117, 118 and 119 of the Foreign Assistance Act (FAA). These provisions pertain to environmental assessment, and the protection of tropical forests, biodiversity and endangered species, respectively.

Grounds for Declining Assistance to Projects. In addition to the Categorical Prohibitions outlined above (See Screening and Appendix F) there are several other circumstances under which OPIC will decline support for a project on environmental grounds:

- The applicant fails to provide OPIC with an EIA for a Category A project or with adequate information about a Category B project to conduct a review sufficient to determine project eligibility on environmental grounds.
- The project will, in OPIC's determination, result in
  - —Significant degradation of a national park, similar protected area or tropical rainforest;
  - —The destruction of or significant degradation in the habitat of an endangered species; and/or
  - —Other "unreasonable or major environmental health or safety hazards."

Environmental assessment (EA) is the tool used by OPIC to make these determinations and is the process of evaluating the environmental and social impacts of a project and identifying ways to improve the project by preventing, minimizing, mitigating, remediating or compensating for adverse impacts as a condition of OPIC support. In a broader sense, EA is the process of managing the environmental aspects[5] of a policy, strategy, program or project, from the earliest stages of identifying potential actions to their completion and evaluation. The process encompasses identification of potential adverse environmental impacts; assessment of these impacts and comparison with impacts of alternative approaches; design and implementation of measures and plans to avoid, minimize, mitigate, or compensate for adverse impacts; and design and implementation of associated management and monitoring measures.

[1] World Bank Group Pollution Prevention and Abatement Handbook, September 1997.

[2] World Bank Group Pollution Prevention and Abatement Handbook, September 1997.

[3] World Bank Group Pollution Prevention and Abatement Handbook, September 1997.

[4] Projects that seek to environmentally enhance particular aspects of a larger project are not screened into Category E.

[5] World Bank Group Pollution Prevention and Abatement Handbook, September 1997. The term 'environment' encompasses the natural environment (air, water, and land); human ecology and health and safety; and sociocultural aspects (including involuntary resettlement and indigenous peoples) and transboundary and global environmental aspects.

EA considers natural and social aspects in an integrated way.

By statute, OPIC is required to provide some degree of EA to every project considered for insurance or finance in determining whether to provide support for the project. This requirement extends to subprojects undertaken by OPIC-supported investment funds and on-lending facilities. (See the discussion of financial intermediaries, below.) OPIC cannot provide a final commitment to a project (i.e., issue an insurance contract, disburse a loan, or approve a transaction by a financial intermediary) until its environmental assessment is complete and a determination is made by OPIC that the environmental, health and safety impacts of the project are acceptable.

Different types of EAs are conducted by the applicant depending on the nature of the project. The actual work may be conducted by the applicant/sponsor or by a third party, such as an environmental consultant. On the basis of its considerable experience reviewing such materials, OPIC can advise applicants regarding many aspects of EA preparation. OPIC can provide technical guidance to small businesses as well as first time applicants on the scope and resources available for preparing an assessment.

EAs and other environmental reports must be provided to OPIC as early as possible in the application process. This enables OPIC to identify environmental issues that may require additional attention before the EA can be considered complete. Collaboration between OPIC and other official and private lenders and insurers (which begins after OPIC receives consent from the applicant) in reviewing environmental information is in the interest of the applicant as it expedites the review process and avoids delays and needless duplication with the requirements of other lenders and insurers.

OPIC will make every effort to review the material thoroughly and efficiently taking public comment period requirements (see below, p. A–13) for Category A projects into account. In circumstances where OPIC confronts a particularly full project pipeline, OPIC may contract for outside expertise to enable it to complete the review process in a timely manner. Any consultant hired to assist in the review would be required to sign a confidentiality agreement to protect business sensitive information.

In all cases, the cost of preparing the original EA is borne by the applicant, sponsor or foreign enterprise. When OPIC engages independent consultants to review all or part of the EA materials submitted by the investor, to undertake an original assessment of the project and/or to undertake a site visit as part of the environmental review process, it requires the applicant to reimburse the associated costs.

OPIC may require one or more of the following documents to satisfy a project's EA requirements:

Environmental Impact Assessment (EIA). An EIA is a comprehensive assessment of the diverse impacts of a project on the natural and human environment. It includes a detailed description of pre-existing conditions ("baseline assessment"), all project activities having a potential environmental impact (from pre-construction through decommissioning and site reclamation), and the net impacts of the project, taking into account alternative mitigative measures. It also considers the relationship of the project to the natural and human environment in the affected area and the cumulative impacts of those activities. The content and format for an EIA will vary depending on industry sector, the site and other project-specific factors. (A generic format for an EIA is provided in Appendix B). If requested by the client, OPIC will provide guidance with regard to the content of the EIA.

Environmental Management and Monitoring Plan (EMMP). An EMMP is designed to specify in detail the actions—both technical and managerial—that the applicant or sponsor will undertake in order to mitigate anticipated adverse impacts of the project on the environment, health and safety. It also describes the technology and methodology used to monitor the actual impacts of the projects on the environment and the standards and procedures to be used for adjusting mitigative measures as necessary to maintain impacts within an acceptable range. (A generic format for an EMMP is suggested in Appendix C). While ISO 14000 Environmental Management Systems implementation is not a substitute for a project-specific EMMP, a project sponsor's adherence to the ISO criteria can facilitate the process of developing an acceptable EMMP.

Major Hazard Assessment (MHA). An MHA is a specialized form of EA designed to identify and assess the risks of catastrophic events resulting from the operation of an industrial facility. For projects requiring an MHA, OPIC requires completion of the MHA, preferably as part of the EIA process, but no later than the commencement of project operations. The categories of facilities subject to an MHA as well as the content and format of an MHA are outlined in the "World Bank Guidelines for the Identification, Analysis and Control of Major Hazard Installations in Developing Countries," a copy of which is available from OPIC.

Initial Environmental Audit (IEAU). If the investment involves the acquisition of a pre-existing facility or a site on which industrial activity previously occurred, the project may also be subject to an IEAU. An IEAU is designed to identify pre-existing adverse environmental, health or safety conditions that could affect future impacts from the facility or site. (A generic format for an IEAU is suggested in Appendix D.) ISO Environmental Auditing criteria are a useful adjunct to, although not a substitute for, performance-based auditing that is required to meet OPIC IEAU requirements.

Environmental Remediation Plan (ENR). The project may involve the remediation of environmentally adverse conditions at a site. In this case the applicant will be required to provide OPIC with an ENR, similar in format to an EMMP, and designed to address the issues raised in the audit.

An EMMP, IEAU or ENR may be included as part of an EIA. Other documents prepared to satisfy the requirements of other lenders may be submitted to OPIC so long as the documentation addresses the substantive issues needed for OPIC to complete its review of the project.

Environmental Impact Statement (EIS). By statute and Executive Order (EO) 12114 (See Appendix A), OPIC is required to prepare, and to take fully into account, an EIS for any project "significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica)." Given the discrete nature of projects assisted by OPIC, it is considered unlikely that any single project assisted by OPIC would meet the test of "significant impact" on the global commons to warrant an EIS. However, the cumulative impacts of several large projects could conceivably have an impact on extraterritorial waters or the atmosphere sufficient to trigger the requirement.

As prescribed by EO 12114, such an EIS should be concise and no longer than necessary to permit an informed consideration of the environmental effects of the proposed project and the reasonable alternatives. It should include the following sections: (1) Purpose and need for the proposed project; (2) a sufficient description of the environment of the global commons affected by the proposed action; (3) an

analysis, in comparative form, of the environmental consequences on the global commons of the proposed action; and (4) reasonable alternative means of structuring the project.

In lieu of preparing a new EIS, the Executive Order permits OPIC to rely on one of the following: a pre-existing EIS for the same project or a project involving similar environmental issues; a generic EIS covering a number of similar projects; or an EIS obtained by other agencies.

Public Consultation and Disclosure

The environmental assessment process has become an increasingly public and transparent process among environmental regulatory agencies in the United States and in some, although not all, foreign countries. Likewise, multilateral development agencies that provide assistance to governments and other public sector clients have also made their activities more transparent to the public in both donor and host countries.

OPIC recognizes the added value that interested and well-informed members of the public can bring to the environmental assessment process undertaken by its clients as well as by OPIC itself. Host country as well as international non-governmental organizations (NGOs) often have access to information and perceptions about potential environmental impacts and resulting social, economic and cultural impacts that need to be carefully considered as early as possible in the assessment process. As a result, OPIC provides the public with a full opportunity to comment on all Category A projects before making a final commitment to such projects. A final commitment takes the form of a contract or loan agreement for an insurance or finance project respectively.

At the same time, certain aspects of the plans and proposals of private sector investors may contain sensitive business information. While OPIC is subject to the disclosure requirements of the Freedom of Information Act, those requirements contain an exemption for business confidential information that is protected from disclosure under the Trade Secrets Act.[6]

Because OPIC's goal is to provide the public with a level of comfort about its environmental process, applicants for OPIC assistance for Category A insurance and finance projects are required to submit Environmental Impact Assessments or Initial Environmental Audits (to be distinguished from the independent third-party compliance audit) in a form that can be shared with the public. In an effort to save copying time and expenses, OPIC encourages applicants to provide the EIA on a "read only" computer disc.

Applicants must sign a waiver agreeing to public release of their EIA or IEAU. Because EIAs and IEAUs are the property of the applicant, OPIC cannot release these documents if the applicant does not consent. However, if an applicant does not agree to EIA or IEAU release, OPIC will be unable to proceed with further consideration of the application.

In submitting project-specific information to OPIC, including audits, management and remediation plans as well as monitoring reports, applicants must specify which information has been or will be made public in any format, including in the host country. Any additional information that is identified as a public document will be treated as such by OPIC in response to a specific request for such information. Business confidential information will be accorded confidential treatment to the full extent permitted by law.

World Wide Web Posting. The first step in OPIC's public consultation and disclosure process is posting a notice of OPIC's potential support for a Category A project on the World Wide Web. When OPIC's Environmental Unit receives an environmental clearance request in connection with an insurance or finance application for a Category A project or subproject, OPIC will list the nature of the project and its location (but not the name of the applicant or sponsor, e.g. "Gas-Fired Power Plant, Turkey") on OPIC's Home Page on the World Wide Web (HTTP://WWW.OPIC.GOV). No business confidential information will be disclosed. This list will be updated at least monthly, and any comments received will be considered in OPIC's processing of the application. Additional information about projects may be provided to OPIC at any time throughout the term of the project.

Comment Period. As a second step in the public consultation and disclosure process, OPIC will provide the public with a full opportunity to comment on all Category A projects before making a final commitment to such projects. OPIC will consider all public comments received and take them into account in its environmental assessment and decision-making process. Should additional information be required based on comments received, OPIC will pass these requests to the applicant. The comment period varies depending on the type of support an investor seeks:

Project Finance & Political Risk Insurance. Before making a final decision to support a Category A project with political risk insurance, OPIC will disclose the applicant's EIA or IEAU to the public for a comment period of 60 days. OPIC will indicate on its World Wide Web site and on a list server[7] when OPIC receives a publicly releasable copy of the EIA or IEAU, thus commencing the 60 day comment period. OPIC also encourages the sponsor to release the EIA or IEAU in the host country whenever feasible. A 60 day comment period is consistent with the comment periods applied by multilateral institutions that issue project finance and political risk insurance.

Financial Intermediaries (FIs). For FI investments: (A) OPIC will post the nature of the investment and country where it is located on OPIC's World Wide Web site and on a list server as soon as a request for approval of a Category A investment is received. FI investments are identified by an asterisk (*) unless only one fund is active in a given country or the identity of the fund is self-evident by the nature of the project. (B) OPIC will indicate when the EIA or IEAU for investments has been received by OPIC on the World Wide Web site. OPIC recognizes that the competitive nature of investment fund portfolio activity may require more restrictive treatment of fund EIAs, etc. than is the case for conventional investments.

Host Country Notification. In addition to public consultation, when OPIC supports an environmentally sensitive project, OPIC notifies appropriate host country government officials of all applicable environmental, health and safety standards applicable to the project (See Appendix H).

Annual OPIC Report. OPIC will report annually to Congress and the public regarding its implementation of and compliance with internal, national and international environmental policies, laws, treaties and agreements to which its programs are subject. No confidential business information will be disclosed in these reports.

Environmental Standards

In determining whether a project will pose an unreasonable or major environmental, health or safety hazard,

[6] Certain requests for information may have to be obtained through Freedom of Information Act (FOIA) requests. For more information about OPIC's FOIA process visit OPIC's web page: HTTP://WWW.OPIC.GOV/SUBDOCS/CONTACT/FOIA.HTM

[7] A list server is a mechanism for automatically updating OPIC users of new Category A projects via the internet.

or will result in significant degradation of national parks or similar protected areas, Congress advised OPIC to "rely primarily upon guidelines and standards adopted by international organizations such as the World Bank * * * and nongovernmental organizations with expertise in this area." (House Report 99–285, September 23, 1985, page 5.)

1997 World Bank Group Pollution Prevention and Abatement Handbook. In an effort to strengthen its standards, OPIC will rely on the most current version of the World Bank standards for the majority of its projects. The most current version was issued by the World Bank Group in September of 1997 for the majority of industrial categories.

The 1997 Handbook received extensive review by several governments (including U.S. federal environmental agencies), branches of the United Nations, non-governmental organizations, industry associations and individual companies.[8]

Use of international standards is consistent with the current practice of the IFC, MIGA and other organizations involved in international investment. For particular industries not included in the 1997 draft, OPIC will consider compliance with the 1994 draft guidelines acceptable. As the Bank continues to update its guidelines, OPIC will substitute more current versions of particular guidelines on a case-by-case basis by industry. (See Appendix G.)

Where there are gaps in World Bank standards on a given environmental or natural resource issue, OPIC incorporates U.S. federal standards, World Health Organization standards, and standards set by other international authorities in its environmental assessment and decision making process. In addition, OPIC has adopted particular standards with respect to Ecotourism and Forestry.

Host Country Standards. All projects must comply with host country environmental regulations. Therefore, whenever possible, applicants must provide OPIC with summaries or copies of applicable host country regulations as part of their EIS or EIA (for Category A projects) or as information provided in support of their application (for Category B projects). Government permits and certifications of compliance are necessary in this regard, although not always sufficient to establish compliance.

Cumulative and Associated Impact Assessment. In considering project applications, OPIC takes into account in its decision-making process the overall environmental effects of which its involvement is part. The agency will avoid support where OPIC involvement in a project results in cumulative or associated impacts that violate OPIC standards. In the environmental assessment process, the term "cumulative impacts" means recognition of the total environmental impact of pre-existing projects, the proposed project, and imminent future projects.[9] Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. Assessing associated impacts recognizes that certain other industrial processes are directly and indirectly linked with the project being assessed and their environmental impacts must be incorporated into the environmental assessment.[10]

Other Applicable Standards

In addition to the World Bank Group 1997 Pollution Prevention and Abatement Handbook, the Bank has issued policies on Natural Habitats, Involuntary Resettlement, Pest Management, Dams and International Waterways. OPIC uses these policies to the extent applicable to private sector investments.[11]

Protected Area Standards

With respect to the identification of national parks and similar protected areas, OPIC relies on World Bank guidelines and standards stated in Operational Policy (OP) 4.04 on "Natural Habitats" issued in September 1995. World Bank OP 4.04 defines "critical natural habitats" as "protected areas and areas officially proposed by governments as protected areas (e.g. reserves that meet the criteria of International Union for the Conservation of Nature [IUCN][12] classifications) * * * as indicated in Guidelines for Protected Area Management Categories (Gland, Switzerland, and Cambridge, UK: IUCN/1994) and the United Nations List of National Parks and Protected Areas or by a similar list acceptable to the Bank, published by another competent organization."

United Nations List of National Parks and Protected Areas (UN List). The UN list was first issued in December 1962, and most recently in 1993. For purposes of the UN list, a protected area was defined as an "area of land and/or sea [no smaller than 1,000 hectares] especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means." The UN list is compiled by the IUCN and the World Conservation Monitoring Centre (WCMC). Projects in or adversely impacting areas on the UN List are categorically prohibited. (See Appendix F.) Projects that are near national parks and protected areas have the potential to adversely impact such areas.

In 1994 the IUCN published its Guidelines for Protected Area Management, the purpose of which was to establish international standards for the definition, identification and management of protected areas. The relevant categories and primary management objectives of each are summarized below:

Category	Designation	General management objectives
Category 1a	Strict Nature Reserve	Managed mainly for science, preservation of species and genetic diversity.
Category 1b	Wilderness Area	Managed mainly for wilderness protection.

[8] World Bank Group Pollution Prevention and Abatement Handbook, September 1997.

[9] International Finance Corporation, "Environmental Analysis and Review of Projects," September 1993. World Bank OD 4.00-Annex A. In addition, regional environmental assessments are applied by the World Bank where a number of significant development activities with potentially cumulative impacts are planned for a reasonably localized area.

[10] World Bank Operational Directive 4.00-Annex A: "Indirect impacts are induced consequences of the project which occur later or in another part of the environment." Direct effects are caused by the action and occur at the same time and place. Indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

[11] World Bank/IFC policies on Indigenous Peoples and Cultural Properties are forthcoming.

[12] The IUCN is a quasi-governmental organization established in 1948 and is comprised of governments (including the U.S., Japan, UK, Brazil, Sweden, etc.), government agencies, and international and local non-governmental organizations. The U.S. Government is an active participant in the IUCN. Six U.S. Government agencies are members of the IUCN (State Department, Interior Department, Agriculture Department, Commerce Department, Environmental Protection Agency, and the U.S. Agency for International Development). The IUCN's Commission on National Parks and Protected Areas (CNPPA) is the leading international scientific and technical body concerned with the selection, establishment and management of national parks and other protected areas.

Category	Designation	General management objectives
Category II	National Park	Managed mainly for ecosystem protection and recreation.
Category III	Natural Monument	Managed mainly for conservation of specific natural features.
Category IV	Habitat/Species Management Area.	Managed mainly for conservation through management intervention.
Category V	Protected Landscape/Seascape	Managed mainly for landscape/seascape conservation and recreation.
Category VI	Managed Resource Protected Area.	Managed mainly for the sustainable use of natural ecosystems.

OPIC applies the IUCN's management category definitions to derive two general categories of protected areas:

(1) *Management Categories I–IV.* Strict Nature Reserves/Wilderness Areas, National Parks, Natural Monuments and Habitat/Species Management Areas. Projects in or impacting these sensitive locations are categorically prohibited unless determined to be Category E projects. (See Appendix F.)

(2) *Management Categories V–VI.* Protected Landscape/Seascapes, Managed Resource Protected Areas. Projects in or impacting these two areas, including any extractive projects, must be consistent with IUCN management objectives. For example, projects in Category V areas must be consistent with recreation and conservation objectives in those areas. Likewise, projects in Category VI areas must be consistent with sustainable use of natural ecosystem objectives in those areas.

Resettlement Standards

Projects that require large-scale (more than 5,000 persons) involuntary resettlement are categorically prohibited (See Appendix F). For any potential project involving the resettlement of 100 or more households, OPIC will assess the ability of the project sponsor to carry out an effective resettlement program consistent with IFC Operational Policy 4.12: Involuntary Resettlement and any subsequent policy revisions or updates from the IFC. Copies of the Involuntary Settlement Policy are available from OPIC.

Hydroelectric Dam Standards

OPIC does not support the construction of large dam projects that disrupt natural ecosystems or the livelihoods of local inhabitants (See Appendix F).

All other hydroelectric dam projects must, at a minimum, address the issues noted in U.S. Export-Import Bank's Guidelines for Hydropower and Water Resources Management (Dams & Reservoirs) as well as the World Bank/IUCN Checklist For Key Potential Environmental & Social Impacts Caused By Large Dam Projects.[13] Copies of the Ex-Im guidelines and the World Bank/IUCN checklist are available from OPIC.

Costs and benefits of large dams have been debated for many years. Proponents note that dams provide electric power, irrigation for agriculture, and water supply to developing areas. Critics claim that project sponsors, public and private, systematically downplay the adverse environmental, social and economic impacts of dams.[14] Negative impacts associated with hydroelectric dams have included population decline in certain species, involuntary resettlement of indigenous people and reduced water quality.[15] As a result, certain large dam projects are categorically prohibited by OPIC. (See Appendix F.)

World Commission on Dams. At a Workshop in Gland, Switzerland in April 1997 jointly hosted by the World Bank and IUCN, stakeholder representatives from governments, civil society organizations, international financial institutions, and the private sector agreed to establish a World Commission on Dams. An independent commission was established and has a two year mandate to review the development effectiveness of large dams and develop standards, criteria and guidelines to advise future decision making. Pending completion of the commission's report, EIAs prepared for hydroelectric dam projects should, at a minimum, address the issues noted above.

Forestry Standards/Certification

Infrastructure and extractive projects, including commercial timber harvesting, in primary tropical forests are categorically prohibited (See Appendix F).

Due to the difficulty of implementing consistent sustainability across a broad range of ecological conditions, all other OPIC-supported projects involving extraction from natural forests, including all boreal/temperate forests and all secondary forests, must be and remain certified by an independent non-governmental organization. Such organizations must be accredited by an international accreditation body (such as the Forest Stewardship Council) that can hold the certifier accountable to a common set of principles and procedural protocols, including periodic review and re-accreditation. Accredited certifiers are required to adhere to an internationally agreed set of forest management performance standards which incorporate a comprehensive range of environmental and social criteria developed by a diverse group of interests, organizations and stakeholders. Any forest product labeling associated with a certified forest must be guaranteed by a separate certification that credibly connects the labeled product to its certified forest-of-origin.

Ecotourism Standards

All ecotourism projects should address the following issues: (1) A comprehensive plan to protect ecological integrity and enhance community participation. (2) Local community capacity building that provides necessary skills for ecotourism development, while ensuring that this development merges with traditional practices. (3) The primary revenue source of the project must be directly linked to the conservation effort. As a result, OPIC-supported ecotourism projects can be a profitable conservation and community development model.

Ecotourism is a means of enabling tourist dollars to flow into local communities in developing countries while simultaneously conserving ecosystems and wildlife through responsible travel that preserves cultures and natural environments.

Tourism in natural areas can generate significant adverse impacts beyond those normally associated with large-scale tourism in commercial areas. The World Bank Guideline on Tourism and Hotels is designed for tourism in a conventional setting and does not address the specialized impacts of tourism in natural ecosystems. OPIC-

[13] World Bank Group/IUCN, Large Dams: Learning Frm the Past, Looking at the Future, Workshop Proceedings, Gland Switzerland, April 11–12, 1997.

[14] World Bank Group/IUCN World Commission on Dams.

[15] World Bank Gruop/IUCN World Commission on Dams, April 1997 Conference Report.

supported Ecotourism projects seek to balance profitability with ecological sustainability and respect for indigenous cultures.

Best Practices. OPIC does not attempt to prescribe to its potential users the choice of technologies or processes they must use to meet the applicable guidelines. However, standards of best practice developed by governments, industry and non-governmental organizations can be useful in providing guidance to OPIC and its users in assessing alternatives and their feasibility. For this purpose OPIC makes use of international best practice guidelines for sectors of particular importance to OPIC's environmental mandate.

Climate Change and Renewable Energy

In 1992 the U.S. signed the UN Framework Convention on Climate Change (FCCC) and committed the U.S. to "stabilization of greenhouse gas concentrations at a level that would prevent dangerous anthropogenic interference with the climate system." In December 1997, agreement was reached at Kyoto requiring mandatory limitations and reductions in greenhouse gases by developed countries. However, it is important to note that the U.S. Government recognizes that any effective international effort to reduce greenhouse gas emissions must include meaningful participation of developing countries.[16] OPIC seeks to support this policy via the following mechanisms:

Joint Implementation. To encourage U.S. companies, particularly small business, to participate in efforts to reduce global greenhouse gas emissions, OPIC will provide customized pricing for small business projects intended to reduce such emissions, in particular those projects certified by the U.S. Initiative for Joint Implementation (the sharing of technology and resources, particularly transfers from Developed to Developing nations, to limit and reduce GHG emissions). OPIC will continually strive to make its portfolio more climate friendly by proactively seeking renewable energy projects and by seeking to harmonize its approach to climate change issues with that of other U.S. Government entities.

Climate Change Reporting. In an effort to support the management of global greenhouse gas emissions, OPIC tracks and reports, on an aggregate basis, the annual greenhouse gas emissions from its power sector projects. OPIC will track and report, on an aggregate basis, the annual greenhouse gas emissions from other greenhouse gas emitting projects to the extent an appropriate framework is available. Aggregate tracking results will be available to the public and reported annually to Congress.

Conditionality

In many cases, determinations of eligibility rely on critical representations made by the client with respect to baseline environmental conditions, mitigative measures and net impacts of proposed projects. In addition to the EMMP or ENR submitted by the applicant, OPIC may require the application of additional mitigative measures in order to ensure that a project will not pose an unreasonable or major environmental, health or safety hazard. These critical representations and those undertakings agreed to by the applicant or sponsor may be included in OPIC project documentation as preconditions to contract execution, conditions of disbursement and/or ongoing covenants, depending on the type of agreement entered into between OPIC and the applicant. Where OPIC insures an institutional lender, contract conditions are incorporated into the loan documentation.

Environmental conditions and covenants are developed in close consultation with the client to minimize the cost to the project and to ensure that they are consistent with the host country's legal framework, objectively measurable and verifiable, and allow for sufficient flexibility to address issues if circumstances change. Upon approval and in response to public requests, OPIC documents its determination as to applicable substantive/technical standards and conditions in an EA Summary.

Monitoring and Compliance

OPIC's environmental assessment process is an ongoing one and continues through the full term of OPIC's relationship with the project sponsor.

Monitoring. OPIC reserves the right to monitor projects' compliance with environmental representations and undertakings throughout the term of its insurance or financing. Monitoring may take the form of self-reporting by the investor of summaries and, in specified cases, raw data obtained from monitoring a project's environmental performance (emissions, effluents or other waste discharges) as well as its environmental impacts (e.g., on ambient conditions and biological resources). OPIC requires investors to submit annual self-monitoring reports for Category A projects. These annual reports must provide OPIC with regular testing results for any emission standards, effluent standards, ambient air limitations or water quality limitations that were represented by the investor. Monitoring may also take the form of third party evaluation, including compliance information developed by host government authorities, co-lenders and independent auditors.

OPIC routinely conducts on-site monitoring of projects, using OPIC staff and/or consultants, for environmental and environmentally-based social impacts as well as U.S. economic and host country development effects. OPIC endeavors to monitor all Category A projects on-site at least once during the first three years of project commitment, and more frequently depending on the environmental sensitivity of the project. Category B, D and E projects are also subject to monitoring on a random and selective basis.

Compliance Audits. OPIC requires project sponsors to conduct third-party independent audits for all Category A projects. These audits are designed to take place after an OPIC supported project begins construction or is operational.[17] The purpose of these audits is to evaluate a project's compliance with all environmental and social conditions (and underlying representations) that are reflected in OPIC's environmental or related social requirements with respect to the project and to validate the methodology used for all self-monitoring reports. At least one independent third-party audit must be conducted generally within the first three years of all Category A projects and the sponsor must provide certification to OPIC that OPIC's contract conditions have been met. OPIC retains the right to review all compliance audits.

Category A projects will be required to conduct further certified independent audits if the investor fails to submit contractually required annual self-monitoring reports in a timely manner or if monitoring trips or other information indicates a need for further independent audits.

Business confidential information in these audits will be accorded confidential treatment to the full extent permitted by law.

Independent third-party compliance audits allow OPIC-supported projects to be evaluated in an objective and

[16] Speech of President Clinton on July 24, 1997; Byrd-Hagel Resolution on Climate Change (S. Res. 98).

[17] The independent third-party audit is distinct from the IEAU conducted during the application process for existing projects. It is further distinguished because the IEAU may be conducted by the sponsor, whereas the compliance audit is to be conducted by an independent third-party.

systematic manner based on defined criteria. Proper execution of an audit requires active cooperation of project owners and/or managers, good coordination of all interviews and sampling activities in order to reduce costs and a carefully documented inspection to support all findings and recommendations.[18]

Non-compliance, Remediation and Termination. Material misrepresentation or non-compliance with environmental undertakings may constitute an event of default under the terms of OPIC insurance contracts and loan agreements. Depending on the severity and reversibility of the environmental impact and the investor's responsibility and due diligence in attempting to prevent the default and in curing the problem, OPIC may treat the default as curable or incurable. In the case of a curable default, OPIC works with the investor to develop a feasible timetable for remediation. In the case of an incurable default, OPIC may require contract termination in the case of insurance, or acceleration of repayment or other available lenders' remedies, in the case of a loan. If an equity investment on the part of a financial intermediary (FI) is involved, divestiture by the FI may be required. Additionally, failure to meet contractually required reporting requirements can constitute a default. In all cases, OPIC seeks to work cooperatively with investors and lenders to arrive at an equitable resolution of the situation, taking into account the requirements of other lenders and insurers.

Investment Funds Policy

The investment funds are one type of OPIC-supported FI. OPIC provides financing to support a number of privately owned and managed direct investment funds that have the capability to provide equity capital to facilitate business formation and expansion. The investment funds are privately owned, privately managed, and make their own commercially based investment decisions. Typically, OPIC-supported investment funds invest in five to forty percent of the equity capital of each of their portfolio companies (although they may hold a majority position), and may hold equity interests in ten to twenty companies when fully invested. It has been OPIC's experience that the majority of Category A projects involve the expansion or acquisition of existing projects as opposed to "greenfield" projects.

All Category A investment fund projects are subject to a full Environmental Impact Assessment or Audit and resulting terms and conditions unique to the project. Additionally, where a fund proposes to invest in a company rather than a specific project, the fund must narrow the scope of the company's proposed use of the proceeds of the fund's investment to specific projects that can readily be assessed.

All non-Category A portfolio investments involving a fund commitment greater than $5 million require OPIC screening and assessment in accordance with the procedures noted in this Handbook.

All non-Category A portfolio investments involving a fund commitment of $5 million or less (a "Non-Sensitive Small Project" or "NSSP") can be invested in by the Fund prior to receiving formal environmental clearance subject to the following conditions:

- The fund must explicitly request that the proposal be reviewed under an expedited process.
- OPIC may ask follow-up questions for five business days following the date of initial submission of the subproject, in order to determine whether the proposed investment qualifies for expedited review.
- The fund must represent that it has taken commercially reasonable efforts to obtain and provide all relevant environmental information to OPIC and has no reason to believe that the project would pose an unreasonable or major environmental, health or safety hazard. Furthermore, the fund must represent that it will continue to obtain and disclose to OPIC any material supplemental environmental, health or safety information as received.
- Any follow-on investment in the project will be subject to OPIC review and clearance prior to the date of such further investment.
- At OPIC's discretion, further review of an NSSP may occur within a reasonable time period following the date of investment. Possible outcomes of this review are:

i. Class I—The project is satisfactory and no further conditions are placed on the NSSP.

ii. Class II—The project poses certain non-critical environmental, health or safety issues. A remediation plan must be developed and implemented. No further fund investment in the project will be authorized prior to development of the remediation plan.

iii. Class III—The project poses unreasonable or major environmental, health or safety hazards. No further investments in the project are authorized and divestment must occur.

Finally, following OPIC review, investments may be authorized for non-Category A investments involving a fund commitment greater than $5 million (and for follow-on investments in Class I and II NSSP projects) that do not initially meet World Bank Guidelines, under the following terms and conditions:

- A detailed and time-sensitive remediation plan is developed;
- The remediation plan is incorporated into the fund's investment arrangements with the portfolio company in a manner that provides the fund with legally binding enforcement rights in the event of material non-compliance;
- At a minimum, the fund reports annually to OPIC regarding implementation of the remediation plan;
- OPIC will require the fund to implement its enforcement rights or divest its position in the event of material non-compliance with the approved remediation plan.

Appendix A—OPIC Statute (Environmental Provisions) and Executive Order 12114 (and Reprint of a 1979 FR Notice Implementing the EO)

All references are to the Foreign Assistance Act of 1961, as amended, most recently by the Jobs Through Exports Act of 1992.

Section 231 * * *. The Corporation, in determining whether to provide insurance, financing or reinsurance for a project, shall especially—

(3) Ensure that the project is consistent with the provisions of section 117, (as so redesignated by the Special Foreign Assistance Act of 1986), section 118, and section 119 of this Act relating to the environment and natural resources of, and tropical forests and endangered species in, developing countries, and consistent with the intent of regulations issued pursuant to sections 118 and 119 of this Act.

In carrying out its purpose, the Corporation, utilizing broad criteria, shall undertake—(n) to refuse to insure, reinsure, guarantee or finance any investment in connection with a project that the Corporation determines will pose an unreasonable or major environmental, health or safety hazard, or will result in the significant degradation of national parks or similar protected areas.

Section 237. General Provisions Relating to Insurance, Guaranty and Financing Programs

(m)(1) Before finally issuing insurance, reinsurance, guarantees, or financing under this title for any environmentally sensitive investment in connection with a project in a country, the Corporation shall notify appropriate government officials of that country of—

(A) all guidelines and other standards adopted by the International Bank for Reconstruction and Development and any other international organization relating to

[18] World Bank Group Pollution Prevention and Abatement Handbook, September 1997.

the public health and safety or the environment which are applicable the project; and

(B) to the maximum extent practicable, any restriction under any law of the United States relating to public health or safety or the environment that would apply to the project if the project were undertaken in the United States.

The notification under the preceding sentence shall include a summary of the guidelines, standards and restrictions referred to in subparagraphs (A) and (B), and may include any environmental impact statement, assessment, review or study prepared with respect to the investment pursuant to section 239(g).

Section 239. General Provisions and Powers

(g) The requirements of section 117(c) of this Act relating to environmental impact statements and environmental assessments shall apply to any investment which the Corporation insures, reinsures, guarantees, or finances under this title in connection with a project in a country.

Environmental Assessment Procedures For Executive Order 12114

On January 4, 1979 the President issued Executive Order 12114 (44 FR 1957) entitled "Environmental Effects Abroad of Major Federal Actions". The Executive Order requires federal agencies taking action encompassed by the Order, and not exempted from it, to effectuate procedures to implement the Order. The Overseas Private Investment Corporation (OPIC) is implementing the Executive Order by the adoption of the following procedures to take effect on September 4, 1979.

Section 1. Purpose

As required by Executive Order 12114. issued January 4, 1979, which is incorporated herein by reference, the following procedures shall be used by OPIC to ensure that all significant environmental effects of its actions outside the United States are considered by OPIC in its review of proposed insurance and finance projects. These procedures shall supplement OPIC's existing environmental procedures and guidelines required by the Foreign Assistance Act as amended (the "Act"), as set forth in OPIC Board of Directors and the "OPIC Environmental Handbook."

Section 2. Definition

A. Application. The term "application" means a formal request to OPIC in the manner specified by OPIC for assistance under an OPIC program from an eligible private party interested in investing in a project in a foreign nation.

B. Environment. The term "environment" means the natural and physical environment and excludes social, economic, and other environments.

C. Global Commons. the term "global commons" means areas outside the exercise of any national jurisdiction.

D. Host Country. The term "host country" means the foreign country in which a project for which OPIC assistance is sought is or will be located.

E. Major Action. The term "major action" means a contractual commitment by OPIC to provide assistance under an OPIC program involving at least $ 1 million of insured investment, loan guaranties or direct loans. If the applicant therefor has or will have sufficient control over the design and/or operation of the project to mitigate environmental concerns raised by OPIC.

F. OPIC Programs. The term "OPIC programs" includes OPIC's insurance, direct loan and loan guaranty programs as authorized by the Act.

G. Significant Effects. With respect to effects on the environment outside the United States, a proposed action has a significant effect on the environment if it does significant harm to the environment even though on balance the action is believed to result in beneficial effects on the environment.

Section 3. Applicability of Procedures

A. Scope. Except as provided in Subsections B, C, and D below, these procedures shall apply with respect to OPIC's review of each new application for assistance under an OPIC program, whether for new projects or expansions of existing projects, if a favorable decision on such application will result in a major action by OPIC.

B. Exemptions. If upon the initial review of an application the OPIC insurance or finance officer making such review determines that the project for which OPIC assistance is sought has no significant effects upon the environment outside the United States, these procedures shall not apply. If upon further review of the application, and prior to taking action, it is determined that the project may have a significant effect upon the environment, this exemption shall no longer apply. Also exempt from these procedures are actions falling within the categories listed in Section 2–5(ii) through (vii) of the Executive Order, as limited by Section 2–5(d). A concise administrative record will be prepared to document these determinations.

C. Categorical Exclusions. These procedures shall not apply to the review of an application for any project falling within the scope of any category of projects that are determined to involve no significant effects on the environment. OPIC's Investment Committee shall have the authority to establish such categorical exclusions.

D. Special Exemptions. These procedures shall not apply to the review of any application for which the General Counsel determines that an exemption is necessary as a result of emergency circumstances, situations involving exceptional foreign policy or national security sensitivity or other special circumstances (except as limited by Section 2–5(d) of the Executive Order). In utilizing any such special exemption, OPIC, through its designated Environmental Officer, shall consult as soon as feasible with the Department of State and the Council of Environmental Quality.

Section 4. Initial Determinations

A. With respect to any application for OPIC assistance falling within the scope of Section 3(A) above, the OPIC officer reviewing such application shall make the following determinations that shall be documented by a concise administrative record:

1. Whether the proposed project is likely to have a significant effect on the environment of the global commons;

2. Whether the proposed project is likely to have a significant effect on the environment of a foreign country other than the host country; and

3. Whether the proposed project is likely to have a significant effect on the environment of a foreign country because it would provide to that country;

(a) a product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk, such as asbestos, vinyl chloride, acrylonitrile, isocyanates, polychlorinated biphenyls, mercury, beryllium, arsenic, cadmium, and benzene; or

(b) a physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

4. Whether the proposed project is likely to have a significant effect on natural or ecological resources of global importance hereafter designated for protection by the President or in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State.

B. The determination required in Subsection A above shall be based upon the information contained in the application, information reasonably available to OPIC and such additional information from the applicant as deemed necessary by the reviewing officer.

C. In the event that the reviewing officer makes a positive determination with respect to any of the categories specified in Subsection A above (i.e. that a significant effect is likely to result), and such determination is not reversed upon review by a supervisory officer or by the Investment Committee, the finance or insurance department, as the case may be, in consultation with OPIC's Environmental Officer, shall take the following actions, as appropriate, prior to acting on the application:

1. If the harmful effect is of the type described in Subsection A(1) above, an environmental impact statement shall be obtained in the manner specified in Section 5 below. Such an environmental impact statement shall consider only the effects described in Subsection A(1), regardless of whether the project would result in other kinds of environmental effects.

2. If the harmful effect is of the type described in Subsection A(2), A(3) or A(4) above, an environmental study or an environmental review shall be prepared in the manner specified in Section 6 below.

Section 5. Environmental Impact Statement

A. If a department within OPIC is required by Section 4(C)(1) to cause the preparation of an environmental impact statement for a particular project, it shall do so in accordance with Subsection B below. If an environmental impact statement for the proposed project, a project involving similar environmental issues or a generic statement

covering a host of similar projects already exists, no new environmental impact statement shall be required. When one or more other agencies are also involved in a particular project requiring an environmental impact statement OPIC may rely upon an environmental impact statement obtained by one or more of the other agencies.

B. Environmental impact statements shall be concise and no longer that necessary to permit an informed consideration of the environmental effects of the proposed project and the reasonable alternatives. The statement shall include a section on the consideration of the purpose of and need for the proposed project; a section that provides a succinct description of the environment of the global commons affected by the proposed action: and a section that analyzes, in comparative form, the environmental consequences on the global commons of the proposed action and of reasonable alternative means of structuring the project.

Section 6. Environmental Studies and Reviews

A. If a department is required under Section 4(C)(2) to produce an environmental study or review, it shall, in consultation with the Environmental Officer, determine whether an environmental study as described in Subsection B below which deals with the environmental aspects of the proposed project is available or will be undertaken elsewhere. If no relevant environmental study is or will be available, the OPIC department, in consultation with the Environmental Officer, shall undertake the preparation of an environmental review as described in Subsection C below with, as appropriate, the assistance of the applicant and of other federal agencies having jurisdiction by law or special expertise. If an environmental review for the proposed project or a project involving similar environmental issues or a generic review covering a class of similar projects already exists, no new environmental review shall be required hereunder. When one or more agencies are involved with OPIC on a particular project, a lead agency may be designated to prepare the environmental review.

B. An environmental study shall consist of a bilateral or multilateral study by the United States and one or more foreign nations or by an international body or organization in which the United States is a member or participant.

C. An environmental review shall consist of a concise analysis of important environmental issues relating to a proposed project, including identification of such issues and of the significant effects to the environment. The department involved in the preparation of an environmental review shall consider the following factors in deciding the scope, substance, and timing of review and the availability of the review to other agencies:

1. The need to avoid infringement or the appearance of infringement on the sovereign responsibilities and internal affairs of another government;

2. The availability of meaningful information on the environment of a foreign nation;

3. The need to protect confidential business information and trade secrets of the applicant;

4. The desirability of acting promptly upon applications under OPIC programs;

5. The desirability of the project in terms of its export promotion and developmental effects;

6. OPIC's ability to influence the design and/or implementation of the proposed project; and

7. The need to protect sensitive foreign affairs information and information received from another government with the understanding that it will be protected from disclosure.

Section 7. Decision

The required environmental documents developed in accordance with these Procedures shall accompany the application through the review process to enable officers responsible for approving an application and, if necessary, the Board of Directors, to be informed and to take account of the environmental consideration covered by such documents.

Section 8. Availability

Subject to the consideration of Section 6(C), environmental documents developed under these procedures shall be available to the Department of State, Council on Environmental Quality and other federal agencies and shall be included in the public information files for the pertinent applications. Foreign governments affected thereby may also be informed of such documents after coordinating with the Department of State regarding such communication with the foreign government.

Effective Date. These procedures became effective on September 4, 1979.

Dated: August 27, 1979.

J. Bruce Llewellyn,

President.

Appendix B—Recommended Content and Format for Environmental Impact Assessment Category A Projects

I. Executive Summary
- A. Concise project description
- B. Identification of project sponsors, operators and contractors
- C. Baseline environmental conditions
- D. Applicable environmental standards
- E. Proposed mitigation measures
- F. Net environmental impacts

II. Policy, Legal and Administrative Framework
- A. Applicable host country environmental and occupational safety and health laws and regulations
- B. Relevant international agreements
- C. Requirements of potential investors, lenders and insurers

III. Baseline Conditions in Area Potentially Affected by Project ("Project Area")
- A. Designation of project area perimeters
- B. Physical geography (climate, geology, topography)
- C. Natural events history (earthquakes, floods, fires, storms, volcanic eruptions, etc.)
- D. Biological environment
  1. Proximity to national parks and other protected areas
  2. Identification of unique or sensitive natural habitats of internationally or locally recognized rare, threatened or endangered species
  3. Renewable and non-renewable natural resources
- E. Human environment
  1. Distribution of residential and occupational population in project area
  2. Description of previous, current and planned land use activities in or near project area
  3. Habitation or use of project area by indigenous peoples
- F. Environmental quality of project area
  1. Ambient air conditions (including seasonal variations)
  (a) Sulfur dioxide
  (b) Particulates
  (c) Nitrogen oxides
  (d) Carbon monoxides
  (e) Airborne toxics
  2. Water supply, quality and end use (human consumption agriculture, plant and animal habitat)
  (a) Marine waters including estuaries
  (b) Surface waters (rivers, streams, lakes)
  (c) Groundwater
  3. Noise levels
  4. Soil conditions including contamination from previous or current activities
- G. Archaeological, historical or cultural resources

IV. Potential (Unmitigated) Environmental, Health and Safety Impacts
- A. Sources and volumes of untreated airborne, liquid, and solid waste and potential impacts of unmitigated discharge on the environment
- B. Potential impacts on natural and biological resources
- C. Potential human impacts:
  1. Positive: employment, services, economic opportunities
  2. Negative: resettlement and economic displacement
- D. Potential occupational health and safety hazards
- E. Potential for major safety and health hazards beyond the workplace

V. Proposed Environmental Prevention and Mitigation Measures (including a thorough discussion of alternatives and justifications for measures selected)
- A. Waste minimization measures
- B. Waste treatment and disposal measures
- C. Natural resource management (*e.g.* sustainable management of biological resources and protection of endangered species and their habitats)
- D. Mitigation of human impacts: compensation, training, etc.
- E. Occupational safety and health measures
- F. Major hazard prevention and emergency response

VI. Projected Net Environmental Impacts (post-mitigation)
- A. Physical impacts (*e.g.* topography, ground and surface water supply, soil conservation)
- B. Biological impacts (flora, fauna and related habitat with particular attention to threatened and endangered species; natural resources, *e.g.* primary forests, coral reefs, mangroves, etc.)
- C. Net discharges of airborne, liquid and solid wastes and resulting ambient

impacts as compared to applicable host country, World Bank and other relevant regulatory standards and guidelines
D. Net exposures by workers to safety and health hazards
E. Net potential for major hazards
F. Consistency with applicable international agreements
VII. Appendices
A. Permits issued and pending from environmental authorities
B. Author information
1. Names, affiliations and qualifications of project team
2. Relationship of authors to project sponsors
C. Record of meetings held as part of EIA, including public hearings and consultations with government and non-governmental organizations
D. Reference bibliography
E. Technical data not included in text

Appendix C—Recommended Content and Format for Environmental Management and Monitoring Plan

I. Applicable Regulatory Standards and Guidelines
A. Host country laws and regulations
B. Sponsor, investor, lender and insurance requirements
C. International agreements
II. Environmental Management Measures
A. Potential impacts and corresponding preventive and mitigative measures
B. Equipment specifications for preventative and mitigative measures
C. Operational and maintenance procedures
III. Organizational Responsibilities and Management Issues
A. Operations
B. Supervision
C. Internal enforcement
D. Monitoring
E. Remedial actions
IV. Training Requirements
V. Monitoring and reporting procedures
A. Perimeters to be monitored
1. Airborne emissions and corresponding ambient air impacts
2. Liquid effluents and corresponding ambient impacts on receiving water
3. Physical impacts
4. Natural resource and biological impacts
5. Human impacts
(a) Standard of living of local inhabitants
(b) Impact on local economy
(c) Perceptions and attitudes of local inhabitants
6. Workplace conditions
(a) Accident frequency and severity
(b) Worker exposures to hazardous substances
7. Impacts on dedicated offsite infrastructure and facilities
B. Frequency of monitoring
C. Monitoring techniques and procedures
1. Equipment and instrumentation
2. Quality assurance/quality control (QA/QC procedures)
3. Personnel and training requirements
D. Reporting procedures
1. Internal
2. External (*e.g.* to local authorities)

Appendix D—Recommended Content and Format for Initial Environmental Audit (IEAU)

I. Executive Summary
A. Environmental, safety and health areas of concern
B. Recommended mitigation measures/enhancement opportunities: priorities
C. Implementation schedule
II. Project Description
A. location
B. past operations history
C. current operations
III. Applicable regulations and guidelines
IV. Audit procedure (protocol)
A. historical research
B. records review
C. interviews
D. site inspections
E. sampling and analysis (quality assurance and control) procedures
V. Review of environmental management
A. environmental management structure
B. emergency, security and safety plans
C. company-community interaction program
D. handling of complaints and media coverage
VI. Environmental Impacts
A. air emissions
B. liquid effluents
C. solid (non-hazardous) waste treatment
D. hazardous materials and management
E. noise and vibration
F. groundwater and soil contamination
VII. Occupational Safety and Health
A. summary of accident reporting, recording and investigation
B. health and safety management safety procedures
D. medical monitoring program
E. air quality
F. noise level exposure
G. chemical/material handling
H. temperature exposure
I. personal protective equipment
J. emergency response capability
K. fire protection
L. training programs
VIII. Conclusions
IX. Mitigation Recommendations
A. Identify appropriate measures
B. Priorities
C. Implementation schedule
X. Environmental Enhancement Opportunities
A. energy and energy conservation
B. waste minimization
C. cleaner technology initiatives
D. training programs
XI. Annexes
A. names of those responsible for preparing audit
B. written material references used
C. records of consultations
D. other data

Appendix E—Category A: Projects Requiring Environmental Impact Assessment

Any projects supported by OPIC in this Category that subsequently change in nature from the description provided in application materials, and will thereby cause material impacts to the environment, shall be required to submit additional EA documents to OPIC that must be acceptable to OPIC in its sole discretion.

I. Industrial categories
A. Large-scale industrial plants
B. Industrial estates
C. Crude oil refineries
D. Large thermal power projects (200 megawatts or more)
E. Major installations for initial smelting of cast iron and steel and production of non-ferrous metals
F. Chemicals
1. manufacture and transportation of pesticides
2. manufacture and transportation of hazardous or toxic chemicals or other materials
G. All projects which pose potential serious occupational or health risks
H. Transportation infrastructure
1. roadways
2. railroads
3. airports (runway length of 2,100 meters or more)
4. large port and harbor developments
5. inland waterways and ports that permit passage of vessels of over 1,350 tons
I. Major oil and gas developments
J. Oil and gas pipelines
K. Disposal of toxic or dangerous wastes
1. incineration
2. chemical treatment
L. Landfill
M. Construction or significant expansion of dams and reservoirs not otherwise prohibited
N. Pulp and paper manufacturing
O. Mining
P. Offshore hydrocarbon production
Q. Major storage of petroleum, petrochemical and chemical products
R. Forestry/large scale logging
S. Large scale wastewater treatment
T. Domestic solid waste processing facilities
U. Large-scale tourism development
V. Large-scale power transmission
W. Large-scale reclamation
X. Large-scale agriculture involving the intensification or development of previously undisturbed land
Y. All projects with potentially major impacts on people or serious socioeconomic concerns
Z. Projects, not categorically prohibited, but located in or sufficiently near sensitive locations of national or regional importance to have perceptible environmental impacts on:
1. wetlands (not covered by the RAMSAR Convention).
2. areas of archeological significance
3. areas prone to erosion and/or desertification
4. areas of importance to ethnic groups/indigenous peoples
5. primary temperate/boreal forests

6. coral reefs
7. mangrove swamps
8. nationally-designated seashore areas
9. Managed resource protected areas, Protected Landscape/seascape (IUCN categories V and VI) as defined by IUCN's Guidelines for Protected Area Management Categories; additionally, these projects must meet IUCN's management objectives and follow the spirit of IUCN definitions.

Appendix F—Categorical Prohibitions

I. Infrastructure and extractive projects located in primary tropical forests (see Glossary). Extractive projects include oil, gas, mineral resources, steam/geothermal and surface resources such as timber.

II. Projects involving the construction of 'large dams' that significantly and irreversibly: (A) disrupt natural ecosystems upstream or downstream of the dam, or (B) alter natural hydrology, or (C) inundate large land areas, or (D) impact biodiversity, or (E) displace large numbers of inhabitants (5,000 persons or more) or (F) impact local inhabitants' ability to earn a livelihood.

III. Projects involving the commercial manufacturing of ozone-depleting substances or the production or use of persistent organic pollutants. Investors may obtain a list of these substances and chemicals from OPIC.

IV. Projects that require resettlement of 5,000 or more persons.

V. Projects in or impacting areas protected by the RAMSAR Convention (Designated wetlands of international importance).

VI. Projects in or impacting natural World Heritage Sites (Areas of significant ecological value that have been internationally recognized as necessary for strict protection by members of the World Heritage Convention).

VII. Projects in or impacting areas on the United Nations List of National Parks and Protected Areas.

VIII. Extraction or infrastructure projects in or impacting Strict Nature Reserves/ Wilderness Areas, National Parks, Natural Monuments or Habitat/Species Management Areas as defined by the World Conservation Union's (IUCN) Guidelines for Protected Area Management Categories, with the exception of projects specifically intended to improve the environment and those meeting recognized environmentally appropriate ecotourism guidelines. Investors may obtain a copy of these guidelines from OPIC.

Appendix G—1997 World Bank Group: Pollution Prevention and Abatement Handbook

1. Aluminum Manufacturing
2. Base Metal and Iron Ore Mining
3. Breweries
4. Cement Manufacturing
5. Chlor-Alkali Plants
6. Coal Mining and Production
7. Coating Manufacturing (in preparation)
8. Coke Manufacturing
9. Construction Terminals (in preparation)
10. Copper Smelting
11. Dairy Industry
12. Detergent Manufacturing (in preparation)
13. Dye and Pigment Manufacturing
14. Electronics Manufacturing
15. Engine-Driven Power Plants
16. Foundries
17. Fruit and Vegetable Processing
18. Fish and Shellfish Industries (in preparation)
19. Forestry Operations (in preparation)
20. General Manufacturing
21. Geothermal Power Plants (in preparation)
22. Glass Manufacturing
23. Hazardous Waste Management (in preparation)
24. Heavy Machinery (in preparation)
25. Industrial Estates
26. Infrastructure (in preparation)
27. Iron and Steel Manufacturing
28. Lead and Zinc Smelting
29. Meat Processing and Rendering
30. Medical Waste Management (in preparation)
31. Metal Fabrication (in preparation)
32. Mini Steel Mills
33. Mixed Fertilizer Plants
34. Monitoring
35. Municipal Waste Management (in preparation)
36. Nickel Smelting and Refining
37. Nitrogenous Fertilizer Plants
38. Oil and Gas Development-Onshore
39. Oil and Gas Development-Offshore (in preparation)
40. Pesticides Formulation
41. Pesticides Manufacturing
42. Petrochemicals Manufacturing
43. Petroleum Refining
44. Pharmaceuticals Manufacturing
45. Phosphate Fertilizer Plants
46. Pipelines and Terminals (in preparation)
47. Plywood and Wood Products Industry (in preparation)
48. Precious Metal Industry (in preparation)
49. Printing
50. Pulp and Paper Mills
51. Rubber and Plastic Manufacturing (in preparation)
52. Small Boilers (in preparation)
53. Sugar Manufacturing
54. Tanning and Leather Finishing
55. Textiles
56. Thermal Power-Guidelines for New Plants
57. Thermal Power-Guidelines for Existing Plants
58. Tourism and Hospitality Development
59. Vegetable Oil Processing
60. Wood Preserving

Appendix H—Format for Host Government Notification Letter

[date]
Minister of State for Environment,
Republic of _____

Dear Mr./Ms. Minister: The Overseas Private Investment Corporation (OPIC) is proposing to issue financing and insurance for an investment in [name of host country] by a U.S. company. OPIC is an agency of the United States Government, with the mandate of facilitating economically productive and environmentally sound U.S. private investments in developing countries and emerging economies.

OPIC is required by U.S. law to notify appropriate host government authorities of investments under consideration for OPIC assistance, which have the potential to pose significant consequences for the environment. The project that is the subject of this notification involves an investment by [name of applicant] in the construction and operation of [concise description of project].

The potential environmental hazards associated with [industry sector] includes [air, water, solid/hazardous waste, etc./].

Based on information provided to us by the investor, the project does not appear to pose significant hazards to the environment, public health, or safety resulting from the diverse impacts of [industry sector].

OPIC is also required to provide your government with information about standards and guidelines applicable to such investments that have been developed by international organizations or by federal environmental regulatory authorities of the United States. The relevant World Bank and U.S. Environmental Protection Agency (EPA) guidelines are attached for your information.

We understand, of course, that the project will be subject to the laws of [name of host country] with respect to the protection of the environment as well as occupational health and safety.

If you have any questions about OPIC's environmental assessment of this project, you may contact OPIC's Director of Environmental Affairs at the above address.

Sincerely yours,

[Name],

President and Chief Executive Officer.

Enclosures

APPENDIX I—GLOSSARY

Environmental Assessment (EA)—analytical tool used to anticipate potential impacts of particular activities on the natural environment and on humans dependent on that environment

Initial Environmental Audit (I+EAU)—assessment of environmental and related human impacts of pre-existing or ongoing activities

Environmental Impact Assessment (EIA)—comprehensive analytical effort designed to anticipate environmental impacts of major projects having the potential to have significant, diverse and irreversible impacts on the natural environment and on humans dependent on that environment

Environmental Impact Statement (EIS)—comprehensive analytical effort designed to anticipate environmental impacts of major federal actions affecting the global commons outside of the jurisdiction of any nation

Environmental Management and Monitoring Plan (EMMP)—systematic program designed to prevent, mitigate and monitor anticipated environmental and related human impacts of prospective and ongoing activities

Environmental Remediation Plan (ENR)—systematic program designed to reverse adverse environmental impacts of previous activities at a site

European Bank for Reconstruction and Development (EBRD)—multilateral development bank established in 1990 to assist in the economic, social and political development of Central and Eastern Europe and the New Independent States of the former Soviet Union. Other members include the European Community and the United States.

Export-Import Bank of the United States (Exim)—independent U.S. government agency that helps finance the overseas sales of U.S. goods and services

Financial Intermediary (FI)—investment funds, bank or other financial institution that lends directly to projects or investment funds guaranteed or insured by OPIC that invest in projects ("subprojects") subject to OPIC approval on policy grounds.

Foreign Assistance Act (FAA)—Foreign Assistance Act of the United States

International Finance Corporation (IFC)—affiliate of the World Bank group that makes loans to and investments in private sector projects in developing countries and emerging markets

ISO 14000—basic elements of an effective environmental management system as developed by the Technical Committee of the International Organization for Standardization (ISO) to provide organizations worldwide with a common approach to environmental management.

Major Hazard Assessment (MHA)—analytical tool used for identifying, analyzing and controlling potential major hazards to human health and safety resulting from storage and processing of toxic and hazardous substances

Natural Forests—An area in which the cover has evolved naturally so as to provide significant economic and/or ecological benefits, or one that is sufficiently advanced in regeneration and recovery from disturbance as to be judged in near-natural condition. Forests that are not the result of man-made plantations, tree farms or similar operations. All primary and secondary forests are considered natural forests.

Primary Forests—Relatively intact forest that has been essentially unmodified by human activity for the past sixty to eighty years; an ecosystem characterized by an abundance of mature trees. Human impacts in such forests have been limited to low levels of artisanal hunting, fishing and harvesting of forest products, and, in some cases, to low density, migratory shifting agriculture.[19]

World Bank (WB)—International Bank for Reconstruction and Development.

(Authority: 22 U.S.C. § 2191(k)(2), as amended)

James R. Offutt,

Assistant General Counsel for Administrative Affairs.

[FR Doc. 98–4802 Filed 2–24–98; 8:45 am]

BILLING CODE 3201-01-U

[19] Tropical dry forest is deciduous to semi-evergreen during the dry season, has a canopy with few epiphytes, and ranges from 2 to 40 meters in height in its undisturbed state. In the rainy season it receives 500 to 3500 millimeters of precipitation, and the rain-free dry season is 4 to 8 months long. Tropical moist forests is generally defined as forest in areas that receive not less than 100mm of rain in any month for two out of three years and have an annual mean temperature of 24 degrees Celsius or higher. Also included in this category, however, are some forests (especially in Africa) where dry periods are longer but high cloud cover causes reduced evapotranspiration. Rene Dubos Center for Human Environment's Environmental Encyclopedia; IFC OP 4.36, "Forestry."

VOL
6 3
ISS
3 7
FE
2 5
9 98
UMI

federal register

Wednesday
February 25, 1998

Part VII

Environmental Protection Agency

Certain Chemicals; Premanufacture Notices

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51875; FRL–5756–9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from September 15, 1997 to September 19, 1997. This document also includes a premanufacture notice that was inadvertently omitted and was received in the week of August 25, 1997 to August 29, 1997. It will appear first in "(I) PMNs received...".

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51875]" and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51875]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under "SUPPLEMENTARY INFORMATION".

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number "[OPPTS–51875]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to

indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above.

Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 20 Premanufacture Notices Received From: 09/15/97 to 09/19/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–1023	08/26/97	11/24/97	CBI	(G) Inhibitor	(G) Phosphonomethylated polyamine
P–97–1058	09/15/97	12/08/97	Jowat Corporation	(S) Production of hot melts	(G) Polyisoxyanate of 2,4′ and 4,4′-diphenylmethane-diisocyanate and hydroxy terminated polyethers
P–97–1059	09/16/97	12/15/97	Engelhard Corporation	(S) Coatings; plastics; inks	(G) Naphthol red pigment
P–97–1060	09/16/97	12/15/97	CBI	(G) Catalyst for automotive polymers	(G) Sodium salt of phenol
P–97–1061	09/16/97	12/15/97	CBI	(G) Catalyst for automotive polymers	(G) Sodium salt of phenol
P–97–1062	09/16/97	12/15/97	CBI	(G) Catalyst for automotive polymers	(G) Sodium salt of phenol
P–97–1063	09/15/97	12/14/97	CBI	(S) Curative for epoxy resin	(G) Polyamide
P–97–1064	09/15/97	12/14/97	CBI	(G) Open, non-dispesive use	(G) Methacrylate polymer
P–97–1065	09/16/97	12/15/97	CBI	(G) Open, non-dispersive use in a coating application	(G) Aqueous polyurethane dispersion
P–97–1066	09/15/97	12/14/97	Akzo Nobel Resins	(S) Resin used to manufacture industrial coatings	(S) Fatty acid, C_{16-18}, polymers with bu acrylate, hexahydro-1,3-isobenzofurandione, 2-hydroxyethyl methacrylate, styrene, 3,5,5-trimethylhexanoic acid and trimethylolpropane
P–97–1067	09/18/97	12/17/97	CBI	(G) Fiber treatment chemical-intermediate	(G) Ethoxylated phosphoric acid
P–97–1068	09/17/97	12/16/97	Cytec Industries	(G) Polymeric coating additive	(G) Vinyl alkyl polyester copolymer
P–97–1069	09/16/97	12/15/97	Cytec Industries	(G) Polymeric coating additive	(G) Alkyl polyester polymer
P–97–1070	09/18/97	12/17/97	CBI	(G) Fiber treatment chemical	(G) Ethoxylated phosphoric acid ester salts
P–97–1071	09/18/97	12/17/97	CBI	(G) Fiber treatment chemical	(G) Ethoxylated phosphoric acid ester salts
P–97–1072	09/18/97	12/17/97	CBI	(G) Fiber treatment chemical	(G) Ethoxylated phosphoric acid ester salts
P–97–1073	09/18/97	12/17/97	CBI	(G) General use coating	(G) Polymer of an alkoxy functional silanes, siloxanes, acrylics, silicones, and fluorinated alcohol
P–97–1074	09/17/97	12/16/97	CBI	(G) UV radiation cure agent	(G) Aliphatic acrylate
P–97–1075	09/18/97	12/17/97	Henkel Corporation (Emery Group)	(G) Synethetic fiber lubricant	(S) Amides, from acetic acid, C_{5-9} carboxylic acids and diethylene triamine-ethyleneimine polymer
P–97–1076	09/18/97	12/17/97	Henkel Corporation (Emery Group)	(G) Synethetic fiber lubricant	(S) Amides, from acetic acid, C_{5-9} carboxylic acids and diethylene triamine-ethyleneimine polymer, acetates

II. 19 Notices of Commencement/Import Received Date 09/15/97 to 09/19/97

Case No.	Received date	Commencement/ Import	Chemical
P–91–0732	09/16/97	08/20/97	(G) Ammonium organo phosphonate
P–96–0021	09/15/97	08/18/97	(G) Polyalkenyl succinic anhydride, reaction products with polyethylenepolyamine and alkylalde hyde; metalated
P–96–0022	09/15/97	08/18/97	(G) Polyalkenyl succinic anhydride, reaction products with polyethylenepolyamine and alkylalde hyde metalated
P–96–1029	09/16/97	08/26/97	(S) Polymer of: 1,3,5-triazine-2,4,4(1*h*,3*h*,5*h*)-trione,1,3,5-tris(2-hydroxyethyl)-, polymer with 2-aminoethanol, 2,2-dimethyl-1,3-propanediol, 2,5-furandione and 3*a*,4,7,7*a*-tetrahydro-1,3-isobenzofurandione (9cl)
P–96–1276	09/18/97	09/09/97	(G) Substituted heterocycle
P–96–1325	09/16/97	08/30/97	(G) Substituted benzene, [[[polysubstituted-heterominocycle]-(substituted)-oxoalkyl]amino]-
P–97–0122	09/15/97	08/22/97	(G) Adipamide
P–97–0367	09/16/97	08/22/97	(G) Ethylene oxide, polymer with propylene oxide, alkylphenol, formaldehyde and alkenoic acids

II. 19 Notices of Commencement/Import Received Date 09/15/97 to 09/19/97—Continued

Case No.	Received date	Commencement/ Import	Chemical
P–97–0566	09/19/97	09/05/97	(S) 2-Propenedoic acid, 2-methyl,2-(1-oxy-4-azoptrol (4,5)dec-4-yl)ethyl ester, polymer with butyl -2-propenoate (1,2-propenpate, mono-2-propenoat, 2,2 ' azobis 1-2,methylbutylbutanenitrile initiated
P–97–0630	09/15/97	08/19/97	(G) Epoxy acid ester
P–97–0631	09/18/97	09/11/97	(G) Alkoxy silane ester
P–97–0632	09/18/97	09/11/97	(G) Alkoxy silane ester
P–97–0633	09/18/97	09/11/97	(G) Alkoxy silane ester
P–97–0634	09/18/97	09/11/97	(G) Alkoxy silane ester
P–97–0726	09/15/97	09/08/97	(G) Sodium salt of aromatic sulfonic acid formaldehyde condensate
P–97–0770	09/15/97	09/10/97	(G) Acrylic emulsion polymer
P–97–0771	09/15/97	09/10/97	(G) Acrylic emulsion polymer
P–97–0772	09/15/97	09/10/97	(G) Acrylic emulsion polymer
P–97–0773	09/15/97	09/10/97	(G) Acrylic emulsion polymer

List of Subjects

Environmental protection, Premanufacture notices.

Dated: February 18, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–4808 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51876; FRL–5757–1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from September 22, 1997 to September 26, 1997.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51876]" and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51876]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under "SUPPLEMENTARY INFORMATION".

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number "[OPPTS–51876]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into

printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; (II) TMEs received; and (III) Notices of Commencement to manufacture/import.

I. 12 Premanufacture Notices Received From: 09/22/97 to 09/26/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–1077	09/23/97	12/22/97	CBI	(G) Component of manufactured consumer article-contained use	(G) Benzenesulfonamide, 3-[(3-substituted-4,5-dihydro-5-oxo-1-phenyl-1*H-pyrazol-4-yl)azo]-N–N*-bis[3-[[3-(5,5-dimethyl-3-octadecyl-2-thiazolidinyl) 4-hydroxyphenyl]sulfonyl]aminopropyl]-
P–97–1078	09/23/97	12/22/97	Dow Corning	(S) Silicone fabic softener	(G) Amide-functional siloxane
P–97–1079	09/22/97	12/21/97	CBI	(G) Automatic transmission fluid	(G) Alkyl methacrylate copolymer
P–97–1080	09/22/97	12/21/97	Insulating Materials Incorporated	(S) Electrical insulating varnish for motor, generators, transformers, etc.; same use and functions	(S) 1,3-propanediol, 2-ethyl-2-(hydroxymethyl), polymer with benzoic acid, 4-hydroxy, ethanol, 2,2′-oxbis, 2,2-dimethyl-1,3-propanediol, 1,3-benzenedicarboxylic acid, hexanedioic acid, and 5-isbenzofuran carboxylic acid, 1,3-dihydro-1,3-dioxo
P–97–1081	09/23/97	12/22/97	Dover Chemical Corporation	(S) Extreme pressure lubricant add.	(S) Amines, C_{12}–C_{4}-tert-alkyl, amidosulfites
P–97–1082	09/22/97	12/21/97	Reichhold Chemicals Inc.	(G) Polyurethane reactive hot melt adhesive	(G) Polyurethane adhesive
P–97–1083	09/23/97	12/22/97	Engelhard Corporation	(S) A colorant for plastics	(G) Metallized azo yellow pigment
P–97–1084	09/25/97	12/24/97	CBI	(S) UV or electron beam radiation cure agent used in the formulation of radiation curable inks and varnishes for metal container exterior surface coatings	(G) Alkoxylated acrylic acid polyester
P–97–1085	09/25/97	12/24/97	CBI	(S) Intermediate in the manufacture of acrylic acid adduct	(G) Alkoxylate polyether
P–97–1086	09/24/97	12/23/97	Firestone Building Products Company	(G) Rubber primer used for application onto epmd membrane; rubbersplice adhesive used for adhering epdm membrane to itself	(G) Brominated isobutylene-isoprene-synthetic polyurethane
P–97–1087	09/25/97	12/24/97	Dow Corning	(S) Petrochemical processing aid	(G) Alkyl me siloxanes
P–97–1088	09/24/97	12/23/97	CBI	(S) Leuco sulfur dye for dyeing cellulosic fibers	(G) Substituted diphenylamine reaction product with sodium sulfides, reduced

II. 3 Test Marketing Exemption Notices Received 09/22/97 to 09/26/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–97–0012	09/22/97	11/06/97	Reichhold Chemicals Inc.	(G) Adhesive for panel and profile lamination	(G) Polyurethane adhesive
T–97–0013	09/22/97	11/06/97	Reichhold Chemicals Inc.	(G) Adhesive for panel and profile lamination	(G) Polyurethane adhesive
T–97–0014	09/22/97	11/06/97	Reichhold Chemicals Inc.	(G) Adhesive for panel and profile lamination	(G) Polyurethane adhesive

III. 2 Notices of Commencement/Import Received Date 09/22/97 to 09/26/97

Case No.	Received Date	Commencement/ Import	Chemical
P–96–1629	09/23/97	08/23/97	(G) Substituted aminophenol
P–97–0791	09/22/97	08/16/97	(G) Halo alkene

List of Subjects

Environmental protection, Premanufacture notices.

Dated: February 17, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–4809 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51877; FRL–5768–5]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from September 29, 1997 to October 3, 1997.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51877]" and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51877]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under "SUPPLEMENTARY INFORMATION".

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number "[OPPTS–51877]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

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Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 33 Premanufacture Notices Received From: 09/29/97 to 10/03/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–1099	09/30/97	12/29/97	BASF Corporation	(S) Thermoset coatings; chemical intermediate	(G) Poly-lactone derivative
P–97–1100	09/30/97	12/29/97	CBI	(S) Automotive coatings	(G) Polyacrylic resin
P–97–1101	09/30/97	12/29/97	BASF Corporation	(S) Thermoset coatings	(G) Lactone-derived carbamate functional resin
P–97–1102	09/30/97	12/29/97	BASF Corporation	(S) Thermoset coatings	(G) Lactone-derived carbamate functional resin
P–97–1103	09/30/97	12/29/97	Ciba Specialty Chemicals Corporation	(S) Intermediate fine chemical	(G) Substituted 2-amino diethyl sulfide
P–97–1104	09/30/97	12/29/97	Nagase California Corporation	(S) Material for photoresist	(G) Substituted triphenyl sulfonyl ester
P–97–1105	09/30/97	12/29/97	Nagase California Corporation	(S) Material for photoresist	(G) Substituted phenol tetrakis sulfonyl ester
P–98–0001	10/01/97	12/30/97	CBI	(G) Surface active agent	(G) Alkarylsulfonic acid, alkylamine salt*
P–98–0002	10/01/97	12/30/97	CBI	(G) Contained use- battery additive	(G) Metal oxide
P–98–0003	10/01/97	12/30/97	ABCO Industries Inc	(S) Adhesion promotoer for textile warps sizes	(S) 1,3-benzenedicarboxylic acid, 5-sulfo-, monosodium salt, polymer with 1,3-benzenedicarboxylic acid, 1,3-dihydro-1,3-dioxo-5-isobenzofurancarboxylic acid, 1,2-ethanediol and 2,2'-oxybis [ethanol]
P–98–0004	10/03/97	12/30/97	3m Company	(G) Coating additive	(G) Acrylate polymer
P–98–0005	10/01/97	12/30/97	CBI	(G) Coating curative	(G) Polyamine adducts
P–98–0006	10/01/97	12/30/97	CBI	(G) Coating curative	(G) Polyamine adducts
P–98–0007	10/01/97	12/30/97	CBI	(G) Coating curative	(G) Polyamine adducts
P–98–0008	10/01/97	12/30/97	CBI	(G) Coating curative	(G) Polyamine adducts
P–98–0009	10/01/97	12/30/97	CBI	(G) Coating curative	(G) Polyamine adducts
P–98–0010	10/01/97	12/30/97	CBI	(G) Coating curative	(G) Polyamine adducts
P–98–0011	10/02/97	12/31/97	Union Carbide Corporation	(G) Combination of alkoxyl groups	(G) Sodium alkyl alkoxide
P–98–0012	10/02/97	12/31/97	Union Carbide Corporation	(G) Combination of alkoxyl groups	(G) Sodium alkyl alkoxide
P–98–0013	10/02/97	12/31/97	CBI	(G) Open, non-dispersive use	(G) Acetoacetate oligomer

I. 33 Premanufacture Notices Received From: 09/29/97 to 10/03/97—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0014	10/02/97	12/31/97	Loctite Corporation	(S) Component in adhesive formulations	(S) 1,2,4-benzenetricarboxylic acid, mixed hexyl and octyl triesters
P–98–0015	10/02/97	12/31/97	H. B. Fuller Company-World Headquarters	(S) Fabric adhesive	(G) Polyester isocyanate prepolymer
P–98–0016	10/02/97	12/31/97	H. B. Fuller Company-World Headquarters	(S) Fabric adhesive	(G) Polyester polyether prepolymer
P–98–0017	10/02/97	12/31/97	H. B. Fuller Company-World Headquarters	(S) Fabric adhesive	(G) Polyester polyether isocyanate prepolymer
P–98–0018	10/02/97	12/31/97	H. B. Fuller Company-World Headquarters	(S) Fabric adhesive	(G) Polyester polyether isocyanate prepolymer
P–98–0019	10/02/97	12/31/97	CBI	(G) Destructive use	(G) Monocyclic aldehyde
P–98–0020	10/02/97	12/31/97	CBI	(G) Destructive use	(G) Monocyclic aldehyde
P–98–0021	10/02/97	12/31/97	CBI	(G) Destructive use	(G) Tricyclic terpene
P–98–0022	10/02/97	12/31/97	CBI	(G) Destructive use	(G) Tricyclic terpene
P–98–0023	10/02/97	12/31/97	Toagosei America Inc	(S) Powder coating automobile	(G) Saturated polyester resin
P–98–0025	10/03/97	01/01/98	CBI	(S) Curing agent for epoxy coating systems	(G) Polyamine adduct

II. 15 Notices of Commencement Received Date 10/01/97 to 10/03/97

Case No.	Received Date	Commencement/ Import	Chemical
P–95–1905	10/01/97	09/03/97	(G) Cobalt aluminum complexes
P–96–0250	10/10/97	09/29/97	(G) Neutralized waterborne acrylic polymer
P96–1595	10/02/97	09/20/97	(G) Vinyl chloride, polymer with vinyl acetate and sulfonate salt monomer
P96–1596	10/02/97	09/20/97	(G) Vinyl chloride, polymer with vinyl acetate and sulfonate salt monomer
P–97–0008	10/01/97	09/26/97	(S) Polymer of: ethanol,2,2′-oxybis; 1,2-propanediol; 2-butenedioic acid; 1,3,-isobenzofurandione, 3a,4,7,7a-tetrahydro-; 1-butanol, 2,2-bis[(2-propenyoloxy)methyl]-
P–97–0190	10/09/97	09/30/97	(S)
P–97–0427	10/01/97	09/18/97	(G) Polyamide
P–97–0444	10/10/98	10/04/97	(S) 2,7-Naphthalenedsulfonic acid, 6-((4-chloro-6-(substituted amino)-1,3,5-triazin-2-yl(amino)-3-((6-((2,3-dibromo-1-oxopropyl)amino amino)-2-sulfonophenyl[azo)4-hydroxy-, sodium salt
P–97–0577	10/08/97	10/02/97	(G) Benzenesulfonic acid, diamino)-3-(4-2-sulfoxyethyl sulfoxyy) phenyl azo)-5-(4-(2-sulfoxyethyl)-sodium-potassium salt-
P–97–0582	10/06/97	09/29/97	(G) Substituted heteroaromatic -2([(4-(dimethylamino) phenyl]azo-3-methyl-, salt
P–97–0614	10/10/97	09/18/97	(G) Polyester resin
P–97–0710	10/06/97	09/21/97	(G) Cycloaliphatic polyisocyanate
P–97–0745	10/30/97	09/08/97	(G) Alaki metal salts of fatty acid distilation residues
P–97–0761	10/08/97	09/16/97	(G) Aromatic boron complex with halide
P–97–0794	10/02/97	09/26/97	(G) Carboxylic acid amides

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Dated: February 17, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–4810 Filed 2–24–98; 8:45 am]

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Presidential Documents

Title 3—

The President

Executive Order 13076 of February 24, 1998

Ordering the Selected Reserve of the Armed Forces to Active Duty

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 121 and 12304 of title 10, United States Code, I hereby determine that it is necessary to augment the active armed forces of the United States for the effective conduct of operations in and around Southwest Asia. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, to order to active duty any units, and any individual members not assigned to a unit organized to serve as a unit, of the Selected Reserve.

This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

William J. Clinton

THE WHITE HOUSE,
February 24, 1998.

[FR Doc. 98–5119
Filed 2–25–98; 8:45 am]
Billing code 3195–01–P

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RIN 0584–A

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AGENCY: F
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ACTION: In
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Rules and Regulations

Federal Register
Vol. 63, No. 38
Thursday, February 26, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Chapter II and Part 226

RIN 0584–AC20

Child Nutrition and WIC Reauthorization Act Amendments

AGENCY: Food and Consumer Service, USDA.

ACTION: Interim rule, with request for comments.

SUMMARY: This rule incorporates changes to the Child and Adult Care Food Program (CACFP) required by the Child Nutrition and WIC Reauthorization Act of 1989 and the Healthy Meals for Healthy Americans Act of 1994 by: providing administrative funds to family day care home sponsors for expansion into low-income or rural areas; granting federally funded income-eligible Head Start participants automatic eligibility for free CACFP meals without further application or eligibility determination; and allowing the use of administrative funds to assist unlicensed day care homes in becoming licensed. These revisions are intended to encourage Program participation in low-income and rural areas and to reduce the level of administrative and paperwork burden for Federal, State and local Program administrators and for Program participants. In addition, this rule amends 7 CFR chapter II to reflect the renaming of the Food and Consumer Service as the Food and Nutrition Service.

DATES: This rule is effective April 27, 1998 with the exception of the amendments to the heading of 7 CFR chapter II and to the references in the chapter, which are effective November 25, 1997. To be assured of consideration, comments must be postmarked on or before August 25, 1998.

ADDRESSES: Comments should be addressed to Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 1006, Alexandria, Virginia 22302. All written submissions will be available for public inspection at this location, Monday through Friday, 8:30 a.m. to 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Eadie or Ed Morawetz at the above address or by telephone at (703) 305–2620.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or in the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Child and Adult Care Food Program is listed in the Catalog of Federal Domestic Assistance under No. 10.558. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V, and related notice (published at 48 FR 29115, June 24, 1983) CACFP is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary, Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. Even though Head Start agencies will benefit from the reduction of paperwork for those participants who qualify for automatic free meal eligibility, these benefits will not have a significant economic impact. The Department of Agriculture does not anticipate any adverse fiscal impact which would result from implementation of this rulemaking.

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless it is so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the CACFP, the administrative procedures are set forth under the following regulations: (1) Institution appeal procedures in 7 CFR 226.6(k), and (2) Disputes involving procurement by State agencies and institutions must follow administrative appeal procedures to the extent required by 7 CFR 226.22 and 7 CFR Part 3015.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), this notice invites the general public and other public agencies to comment on the information collection.

Written comments must be received on or before April 27, 1998.

Comments concerning the information collection aspects of this interim rule should be sent to the Office

of Information and Regulatory Affairs, OMB, Room 3208, New Executive Building, Washington, D.C. 20503, Attention: Wendy Taylor, Desk Officer for the Food and Nutrition Service. A copy of these comments may also be sent to Mr. Eadie at the address listed in the **ADDRESSES** section of this preamble. Commenters are asked to separate their information collection requirements from their comments on the remainder of the interim rule.

OMB is required to make a decision concerning the collection of information contained in this interim regulation between 30 to 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the interim regulation.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: 7 CFR Part 226, Child and Adult Care Food Program.

OMB Number: 0584–0055.

Expiration Date: July 31, 2000.

Type of Request: Revision of existing collection.

Abstract: The rule, Child Nutrition and WIC Reauthorization Act Amendments, implements the provision included in Pub. L. 103–448, the Healthy Meals for Healthy Americans Act of 1994, that allows a Federally funded income eligible Head Start participant to be eligible for free meals under CACFP without further application. In addition, the rule also implements the provision included in Pub. L. 101–147, the Child Nutrition and WIC Reauthorization Act of 1989, that makes additional administrative funds available to family day care home sponsors to reach children located in low-income or rural areas. In accordance with the Paperwork Reduction Act of 1995, the Department is providing the public with the opportunity to provide comments on the information collection requirements of the interim rule as noted below:

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
7 CFR 226.12(b), Day care home sponsors submit application and enter into agreement for expansion funds:				
Existing	0	0	0	0
Proposed	388	1	2.5	970
7 CFR 226.12(b), State agency approval of expansion funds requests:				
Existing	0	0	0	0
Proposed	54	7	1.5	567
7 CFR 226.23(e), All households except for those with income eligible Head Start participants:				
Existing	687,562	1	.05	34,378
Proposed	336,304	1	.075	25,223

Estimated Total Annual Burden on Respondents:

Total Existing Burden Hours 34,378
Total Proposed Burden Hours 26,760
Total Difference –7,618

Public Participation

In accordance with the requirements of 5 U.S.C. 553, the Under Secretary for Food, Nutrition, and Consumer Services has determined that good cause exists for not requiring notice and comment before making this rule effective. In Section 708(k)(3)(A) of Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Congress directed the Secretary of Agriculture to issue as interim regulations by January 1, 1997 those provisions of this rulemaking applicable to expansion funds and the use of administrative funds to assist day care home licensing. Therefore, notice and public comment before the regulations in this rulemaking on those matters are implemented is impracticable. The Under Secretary for Food, Nutrition, and Consumer Services has also determined that the remaining provisions of this rulemaking may also be implemented without prior notice and comment. Those provisions related to Head Start participant eligibility for CACFP are nondiscretionary. Thus, prior notice and comment are unnecessary as it would serve no practical purpose. As specified above, the Department will consider comments on all regulations implemented by this rulemaking and will address those comments in future rulemakings.

Background

On November 10, 1989, the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101–147) made a number of changes to the Child Care Food Program by amending Section 17 of the National School Lunch Act (NSLA) (42 U.S.C. 1766). In addition to changing the name of the Program to the Child and Adult Care Food Program (CACFP) in Section 105(a), Pub. L. 101–147 contained provisions which: (1) simplified the free and reduced price application process, (2) established a ⅓ daily Recommended Dietary Allowance (RDA) nutritional requirement for lunches served in adult day care centers, (3) made additional administrative funds available to family day care home sponsors to reach children located in low-income or rural areas, (4) permitted State agencies to allow every-other-year applications by institutions, (5) allowed State governors to designate a separate State agency to administer the adult portion of the CACFP, (6) changed the basis for

making commodities available to State agencies, and (7) made two miscellaneous technical changes.

In response to the above-referenced legislative provisions, the Department published a final rule on January 16, 1990 at 55 FR 1376 which changed the name of the Program from the Child Care Food Program to the Child and Adult Care Food Program and a final rule on July 14, 1993 at 58 FR 37847 on a meal pattern to be used in adult day care centers. The adult meal pattern rule contained the requirement found in section 105(b)(3)(A) of Pub. L. 101–147 that lunches served in adult day care centers provide approximately one-third of the Recommended Dietary Allowances established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences to participating individuals. Finally, the Department has issued a final rule which implemented those provisions of Pub. L. 101–147 related to the content and processing of free and reduced price applications (61 FR 25550, May 22, 1996) and an interim Child Nutrition and WIC Reauthorization Act of 1989 and Other Amendments Rule concerning provisions 5, 6, and 7 above (62 FR 23613, May 1, 1997). The expansion funds provision contained in Pub. L. 101–147 is included in this interim regulation, while the provision regarding two-year applications is discussed below.

On October 6, 1994, the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448) amended section 17 of the NSLA. Pub. L. 103–448 included provisions which: (1) allow a Federally-funded income eligible Head Start child to be considered automatically eligible for free CACFP meals without further application or eligibility determination; (2) allow the use of administrative funds to assist unlicensed day care homes in becoming licensed; and (3) permit State agencies to allow three-year applications from institutions.

The preamble to this interim rulemaking provides an in-depth discussion of the first two provisions. The third, which amended the provision from Pub. L. 101–147 permitting State agencies to take two-year applications from institutions, will be proposed in a future regulation which is designed to streamline current Program requirements, where feasible, for State and local Program administrators.

1. Expansion Funds for Low-Income or Rural Areas

Section 105(b)(1)(A) of Pub. L. 101–147 amended section 17(f)(3)(C) of the NSLA (42 U.S.C. 1766(f)(3)(C)) to provide for additional administrative payments to day care home sponsoring organizations wishing to expand into low-income or rural areas. This amendment was made to the NSLA because of evidence demonstrating that low-income and rural areas are generally underserved by family and group day care homes participating in the CACFP and that sponsoring organizations may encounter higher-than-normal costs when expanding into those areas. Current section 226.12(b) of the Program regulations contains a reference to the availability of start-up payments to develop or *expand* Program operations in day care homes. In the past, these funds have been employed to extend the Program without specific regard for income or geographic considerations. "Expansion funds," as that term is used in section 105(b)(1)(A) of Pub. L. 101–147, are only to be available for extending the Program into low-income or rural areas presently unserved or underserved by the Program. Given the broad similarity between the intended use of expansion funds provided for by Pub. L. 101–147 and start-up payments presently provided by the Department to stimulate Program growth, the Department has been guided extensively by its experience with start-up payments in developing the interim implementation of expansion payments discussed below.

Accordingly, this interim rulemaking amends section 226.2 to add a new definition of "expansion payments" which limits the availability of these funds to expanding the Program to day care homes located in low-income or rural areas and amends the existing definitions of the terms "administrative costs" and "start up payments" for consistency.

Basic Eligibility

Under section 226.12(b) of existing CACFP regulations, four types of organizations are eligible for start-up funds to develop or expand day care operations. They are: (1) prospective sponsoring organizations of day care homes; (2) participating sponsoring organizations of child care centers or outside-school-hours care centers which intend to sponsor day care homes; (3) independent centers which intend to sponsor day care homes; and (4) participating day care home sponsoring organizations with fewer than 50 homes. These four categories were established in regulations issued by the Department on January 22, 1980 (45 FR 4960, 4966).

The Department believes that expansion funds should be made available only to currently participating sponsoring organizations of family day care homes. Because of their experience with Program requirements these organizations will be best suited to efficiently and effectively expand the Program. Sponsors eligible for start-up funds would have access to expansion funds once they became active family day care home sponsoring organizations if they wish to expand into low-income or rural areas.

Accordingly, this interim rulemaking amends section 226.12(b) to limit the availability of expansion funds to participating sponsoring organizations of family day care homes.

Time Restrictions

Section 105(b)(1)(F) of Pub. L. 101–147 amended section 17(f)(3)(C) of the NSLA (42 U.S.C. 1766 (f)(3)(C)) to provide that "[i]nstitutions that have received start-up funds may also apply at a later date for expansion funds." In order to implement this provision in an orderly manner, the Department believes that it is appropriate to require some minimum amount of time to elapse between the receipt and expenditure of start-up funds and the receipt of expansion funds. While sponsors may add homes on a regular basis without start-up funds, the relatively large number of homes brought into a sponsorship as a result of receiving start-up funds will make significant demands on a sponsor's resources. Sponsoring organizations which have just begun Program operations or have expanded their operations with start-up funds need adequate time to adjust to their new responsibilities. We believe that a full year's experience with its new homes should be adequate to accomplish this.

Accordingly, this interim rulemaking amends section 226.12(b) by prohibiting a sponsoring organization which has received start-up funds from applying for expansion funds until 12 months after it has satisfied all its obligations under its start-up agreement with the State agency.

Payment Limitations

Section 226.12(d) of current regulations limits the number of homes on which the *start-up* funds calculation is based to 50 homes or, for existing sponsors of homes, 50 minus the number of homes already operated by the sponsor. Consistent with this start-up limitation, we are limiting to 50 the number of homes on which expansion funds calculations are based. Unlike the start-up funds limitation, this 50-home limit does not include homes already operated by the sponsoring organization

requesting the funds. We are extending the 50-home limitation to expansion funds because we believe that payments in that amount give sponsoring organizations a significant level of funding with which to expand into low-income or rural areas, as well as an amount which provides support for a manageable level of expansion.

Section 17(f)(3)(C) of the NSLA (42 U.S.C. 1766(f)(3)(C)), as amended by section 105(b)(1) of Pub. L. 101–147, limits the amount of expansion funds that may be paid to a sponsoring organization to "not less than the institution's anticipated reimbursement for administrative expenses under the program for one month and not more than the institution's anticipated reimbursement for administrative expenses under the program for two months."

The current maximum per-home administrative reimbursement rate for the first 50 homes is $75 (62 FR 37702, July 14, 1997). Therefore, using these rates, sponsoring organizations applying for expansion funds are eligible for an amount not less than: one month times the number of expansion homes (up to 50) times $75 per home; and not more than two months times 50 homes times $75 per home (i.e., $7,500). As with start-up funds, the amount of expansion funds ultimately received by a sponsoring organization may not exceed the amount actually expended by it. Also, the State agency must consider the anticipated amount of expansion funding to be paid and alternate sources of funds available to the sponsoring organization for such purposes when evaluating the sponsor's plans for expansion. Finally, the Department wishes to emphasize that State agencies should carefully review a sponsoring organization's expansion plans to ensure that the activities described in the plan support the amount requested.

Accordingly, this interim rulemaking amends section 226.12(b) by establishing limits on expansion funds to not less than one and not more than two months of administrative payments for up to 50 homes at the maximum current per home/per month payment.

The Department anticipates that most sponsoring organizations will be approved for expansion payments only once. However, if a sponsoring organization has satisfactorily expanded into the area(s) for which expansion fund applications were originally made, it may apply for a second round of expansion payments for expansion into other low-income and rural areas. This application must justify the need for further expansion and must be approved by the State agency. A sponsoring organization is not eligible to apply for a second round of expansion funds until at least 12 months after the sponsoring organization has satisfied all obligations under its initial or prior agreement.

Accordingly, this interim rulemaking amends section 226.12(b) to allow sponsoring organizations to receive expansion payments once, unless 12 months have elapsed and the sponsor reapplies and can justify the receipt of further funds for expansion into other areas.

Definitions of Low-Income or Rural Area

As discussed above, section 105(b)(1)(A) of Pub. L. 101–147 requires that expansion funds be used to help reach homes in low-income or rural areas. The statute is silent, however, with regard to how "low-income" and "rural" are to be defined. In the absence of any specific statutory direction, the Department has been guided in this interim rulemaking by the corresponding definitions established in 7 CFR part 225 for the Summer Food Service Program (SFSP) and, more recently, in the definition of tier I homes promulgated in section 17(f)(3)(A)(ii) of the NSLA as amended by section 708(e)(1) of Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and section 226.2 of the CACFP regulations.

The SFSP regulations (7 CFR 225.2) define *rural* as: "(a) any area in a county which is not a part of a Metropolitan Statistical Area or (b) any 'pocket' within a Metropolitan Statistical Area which, at the option of the State agency and with FCSRO concurrence, is determined to be geographically isolated from urban areas." This definition was promulgated in part 225 in response to a provision in section 13(b)(4) of the NSLA (42 U.S.C. 1761(b)(4)) which directed the Department to study the administrative costs associated with operating the SFSP and, thereafter, to establish administrative reimbursement rates which reflect the variable costs incurred by different types of sponsors. This study indicated that sponsors which prepare their own meals and those which operate in rural areas incur costs higher than those of other sponsors (44 FR 36365, January 2, 1979). Therefore, a higher reimbursement rate was established for sponsors meeting the aforementioned definition of "rural". Given the fact that expansion funds were provided under Pub. L. 101–147 in order to help defray the costs associated with moving into rural areas, and the fact that the definition of "rural" in part 225 has been successfully used to distinguish between urban and rural sponsors in the SFSP for more than 15 years, the Department believes it appropriate to incorporate the same definition of "rural" for the CACFP. The Department periodically updates the list of Metropolitan Statistical Areas, as defined by the Census Bureau, and State administrators of the CACFP will be notified when future updates are made.

Accordingly, this interim rulemaking amends section 226.2 by adding a definition of "rural area" as described above to be used by State agencies when determining the eligibility of sponsoring organizations for expansion funds.

With regard to "low-income" areas, SFSP regulations reflect the definition found in section 13(a)(1)(C) of the NSLA (42 U.S.C. 1761(a)(1)(C)) for "areas in which poor economic conditions exist." The statute defines such areas as those "in which at least 50 percent of the children are eligible for free or reduced price school meals, as determined by information provided from departments of welfare, zoning commissions, census tracts, by the numbers of free and reduced price lunches or breakfasts served to children attending public and nonprofit private schools located in the area of program food service sites, or from other appropriate sources * * *." Similarly, section 17(f)(3)(A)(ii) of the NSLA as amended by section 708(e)(1) of Pub. L. 104–193 defines low-income areas in which tier I homes are located as areas in which at least 50 percent of the children are eligible for free or reduced priced meals, as defined by elementary school or census data.

The Department sees considerable similarity between the intended application of these statutory definitions and their potential application for determining eligibility for expansion funds in the CACFP. Because the SFSP is intended to provide free meals to children in low-income areas, the statute defines ways in which local sponsors can document the socioeconomic status of areas, not households or individuals. Similarly, the statute governing CACFP intends to target Program benefits to low-income areas through an eligibility definition based primarily on geographic areas. The Department also believes that sponsoring organizations wishing to obtain expansion funds to move into low-income areas should only be expected to demonstrate the need of the area in broad terms. Using the precedent already set in SFSP and CACFP, the Department believes it appropriate and reasonable to apply similar criteria to the CACFP expansion funds provisions. Specifically, the Department will utilize

the area-based definition of low-income eligibility established in paragraphs (b) and (c) of the definition of "tier I day care home" in section 226.2, as promulgated in the recently published rule concerning the two-tier reimbursement system for family day care homes (62 FR 889, January 7, 1997).

The Department does *not* believe that it would be appropriate to permit sponsoring organizations to target individual day care home providers outside of low-income areas with expansion funding. The statutory language which makes expansion funds available speaks of using these funds to target providers in low-income or rural *areas*, not low-income providers located outside of such areas. Although the two-tiered reimbursement system for day care homes does permit low-income providers outside of low-income areas to receive tier I rates, use of expansion funds to reach these providers will not necessarily promote the targeting of Program benefits to low-income children. For these reasons, this interim rule prohibits sponsors from using expansion funds to target individual day care homes that are not located in low-income areas; only homes in rural areas or in low-income areas, as defined in paragraphs (b) and (c) of the definition of tier I day care home in section 226.2, may be targeted for use of expansion funds.

Over time in the SFSP, it has been found that there are two primary sources of data that may be used to determine whether an area is one in which poor economic conditions exist-school data and census data. Of these, school data should always be consulted first since it is collected annually and is, therefore, generally more current and accurate than census data. Census data should be used when school data is unavailable or does not accurately represent the economic status of the area in question.

To establish an area's eligibility for expansion funding using school data, 50 percent or more of the children in the local area into which the sponsor wishes to expand must be eligible for free or reduced price school meals under the National School Lunch and School Breakfast Programs. In accordance with procedures established in the interim rule concerning the two-tier reimbursement system, sponsors will annually receive from their State agency a list of all elementary schools in the State in which at least 50 percent of the enrolled children are eligible for free or reduced price meals. As required by section 226.6(f)(9), the first such list will be available to sponsors no later than April 1, 1997, while subsequent lists will be provided by February 15 of each year. In many cases, this information alone will enable sponsors to target their expansion efforts to the neighborhoods served by these elementary schools. The State agency would then determine whether the areas targeted for expansion by the sponsor were areas served by a school with 50 percent or greater free or reduced price enrollment.

As discussed above, experience with the SFSP has shown school data to be the best indicator of low-income areas. However, sponsors may also choose to document the area's eligibility for expansion by using census data. The Department expects that census data should be used only when school data is unavailable or does not accurately represent an area's economic status. Circumstances which might warrant the use of census data instead of school data include: (1) the area targeted for expansion is part of a rural area, where geographically large elementary school attendance areas may obscure localized pockets of poverty which can be identified through the use of census data; (2) school data show a target area to be close to the 50 percent threshold, and census data may reveal specific portions of the school's attendance area which meet the 50 percent criterion; or (3) mandatory bussing has affected the percentage of free or reduced price eligibles in neighborhood schools, and the school is unable to "factor out" the pupils bussed in from other areas and provide the sponsor with data on the percentage of free and reduced price eligibles in the area targeted for expansion. In any of these circumstances, use of census data may help a sponsor or State agency to more precisely ascertain a neighborhood's true current income poverty status.

State CACFP administering agencies which also administer the SFSP are aware that the Department recently contracted with the Bureau of the Census for a "special tabulation" (or computerized list) of the number and percentage of children eligible for free or reduced price meals in every census "block group" in America. Census block groups are sub-units of census tracts. Census tracts vary in size from 2,500 to 8,000 persons, with an average of approximately 4,000 persons per tract. Census block groups, on the other hand, are defined by housing units, numbering between 250 and 550 units, with an average of 400 units (or roughly 900 persons) per block group.

Because block groups generally include a relatively limited number of children, we believe that the information contained in the special tabulation will be an excellent tool for determining whether a target area is eligible for expansion funding. This may be especially true in rural areas, where pockets of poverty may be harder to identify in school attendance areas and census tracts which are geographically much larger than in urban areas. In order to facilitate implementation of the two-tier reimbursement system, State agencies are already required at section 226.6(f)(9) to provide sponsors with relevant census data.

Accordingly, this interim rulemaking amends section 226.2 by adding a definition of "low-income area" which is based on paragraphs (b) and (c), definition of tier I day care home, in section 226.2.

2. Automatic Eligibility of Federally Funded Income Eligible Head Start Participants

Section 109(b) of Pub. L. 103–448 amended section 17(c)(5) of the NSLA (42 U.S.C. 1766 (c)(5)) to make children who are enrolled in the Head Start Program automatically eligible for free meal benefits in the CACFP without further application or eligibility determination on the basis of Head Start's low-income criteria. Specifically, amended section 17(c)(5) of the NSLA states that a child shall be considered automatically eligible for benefits under the CACFP without further application or eligibility determination, if the child is "enrolled as a participant in a Head Start program authorized under the Head Start Act (42 U.S.C. 9831 *et seq.*), on the basis of a determination that the child is a member of a family that meets the low-income criteria prescribed under section 645(a)(1)(A) of the Head Start Act (42 U.S.C. 9840(a)(1)(A))."

The Head Start Program, administered by the U.S. Department of Health and Human Services, is a national grant program providing comprehensive child development services to low-income children and their families. The number of children (slots) which the Head Start grantee is to serve, as indicated on the grant award, is termed the "funded enrollment." Although many States fund additional Head Start slots in order to expand program access, these slots are not part of the Head Start Program authorized under the Head Start Act. Therefore, children in such State-funded slots are not covered by the above-mentioned provision of Pub. L. 103–448 and are not automatically eligible for free meals in the CACFP.

Head Start Program regulations (45 CFR 1305.4) require that at least 90 percent of the children who are enrolled in each Head Start Program must be from low-income families. That means

up to 10 percent of the children enrolled may be from families that exceed the low-income guidelines. A low-income family is defined in 45 CFR 1305.2 as "a family whose total annual income before taxes is equal to, or less than, the income guidelines. For the purposes of eligibility, a child from a family that is receiving public assistance or a child in foster care is eligible even if the family income exceeds the income guidelines." The term "income guidelines," also defined in 45 CFR 1305.2, means 100 percent of the Federal poverty guidelines, which are adjusted for family size and to reflect annual changes in the Consumer Price Index.

During the initial enrollment, applicant families must submit an application which provides income information. For income-eligible applicants, a Head Start employee signs a statement identifying the documents examined and stating that the child is income eligible to participate in the Program. If a child has been found income eligible and is participating in a Head Start Program, he or she remains income eligible through that enrollment year and the immediately succeeding enrollment year. Generally, each child enrolled in a Head Start program must be allowed to remain in Head Start until the child has entered kindergarten or first grade. However, 45 CFR 1305.7 does allow a Head Start Program to choose not to enroll a child where there are compelling reasons for the child not to remain in Head Start, such as when there is a change in the child's family income and there is a child with a greater need for Head Start services.

The statutory language implementing this provision in the CACFP sets forth two conditions regarding automatic eligibility for free meals for Head Start participants. First, the child must be enrolled as a participant in the Head Start Program under the Head Start Act (i.e., the children must be in a Federally-funded slot as part of Head Start's "funded enrollment"). Under Head Start Program regulations (45 CFR 1305.2), "enrollment" means the official acceptance of a family by a Head Start Program and the completion of all procedures necessary for a child and family to begin receiving services.

Second, the child must be determined to be a member of a family that meets the low-income criteria prescribed under the Head Start Act. Such a determination is made by the Head Start grantee based on the low-income criteria specified in 45 CFR 1305.2 of the Head Start Program regulations (i.e., the household must be at or below 100 percent of the Federal poverty guidelines or must be eligible due to receipt of public assistance or foster care). Children who participate in Head Start but who are not determined to be income eligible, or children who participate in a State-funded Head Start program, must submit a free and reduced price application and be determined eligible in order to receive free or reduced price CACFP meals.

In order to minimize the paperwork burden associated with the automatic eligibility process, the Department has decided that the Head Start statement of income eligibility completed upon initial enrollment in the Head Start Program constitutes sufficient documentation of automatic eligibility for free CACFP meals for the period of time the child is enrolled as an income-eligible Head Start participant. If this documentation is readily available to the official(s) designated by the institution to determine eligibility for free CACFP meals, no further action is necessary.

In those cases where the statement is not readily available, (e.g., "wrap around" programs where the food service and the Head Start Program are administered by separate entities), the CACFP determining official must obtain documentation of the Head Start participants' income eligibility in order to confer automatic eligibility for free meals. Such documentation may simply consist of a list of the children's names and a statement certifying that those children are currently enrolled as participants in the Head Start Program based on a determination that they are from families that meet the low-income criteria prescribed under the Head Start Act. The documentation must also include the date and the signature of a Head Start employee authorized to provide the certification on behalf of the Head Start office. At the beginning of each year, the CACFP determining official must establish whether each child meets or continues to meet the conditions for automatic eligibility. Finally, the Head Start statement of income eligibility or, if applicable, the list of eligibles, are subject to the same record retention requirements as other CACFP records.

Accordingly, this interim rulemaking amends section 226.2 by adding a new definition of "Head Start participant" and revising the definitions of "documentation," "free meal," and "verification" to grant Federally-funded income eligible Head Start participants automatic eligibility for free CACFP meals without further application or eligibility determination. To reflect the addition of these new definitions, this rulemaking also amends relevant parts of sections 226.23(d) and 226.23(e)(1).

3. Administrative Funds for Licensing

As previously discussed in this preamble, section 105(b)(1) of Pub. L. 101–147 amended section 17(f)(3)(C) of the NSLA (42 U.S.C. 1766(f)(3)(C)) by providing expansion funds to family or group day care home sponsoring organizations to reimburse such institutions for administrative expenses related to expansion into low-income or rural areas. Section 116(c) of Pub. L. 103–448 further amended section 17(f)(3)(C) of the NSLA by allowing funds for administrative expenses to be used by family or group day care home sponsoring organizations "to conduct outreach and recruitment to unlicensed family or group day care homes so that the day care homes may become licensed." (Note: Pub. L. 104–193 clarified the intent of this provision by deleting the words "outreach and recruitment", but left intact the authority for sponsors to use administrative funds to assist family day care homes in becoming licensed.) This amendment to the NSLA was designed to ensure that family and group day care homes desiring to participate in the CACFP are not denied access to the Program strictly because they lack the funds to comply with licensing standards.

In the past, the Department has always viewed outreach and recruitment expenses as allowable administrative costs for the sponsoring organization; however, the costs of meeting licensing standards or of obtaining a license were viewed as an expense to the day care home. Section 17(f)(3)(C) now allows sponsoring organizations to use administrative, start-up, or expansion funds to assist family and group day care providers who cannot get licensed simply because they lack the funding to comply with licensing standards. For example, a sponsoring organization may wish to assist family day care homes which cannot be licensed or approved because they lack the funds to purchase smoke detectors. As with all proposed administrative costs, under this new provision, the sponsoring organization may request, in its administrative budget, line item approval for the cost of the smoke detectors or other items necessary for licensing, thereby assisting day care homes in becoming licensed and eligible to participate in the CACFP. Further guidance on this subject will be provided in an upcoming revision to FNS Instruction 796–2, "Financial Management—Child and Adult Care Food Program."

Because Pub. L. 103–448 does not mandate that administrative funds be

limited to use by sponsoring organizations of family and group day care homes that are physically located in low-income or rural areas, regular administrative or start-up funds may be used for licensing-related expenses, regardless of where the home is located. However, section 17(f)(3)(C)(i) of the NSLA specifically limits the use of expansion funds to administrative expenses in support of homes located in low-income or rural areas. This would include the use of expansion funds for licensing-related expenses. The Department wants to stress that this amendment to the NSLA does not increase the sponsor's potential maximum total reimbursement levels; rather it authorizes a new allowable expense category for the use of administrative funds (i.e., regular administrative, start-up, and expansion funds).

Although the law does not specifically mandate that administrative fund requests for licensing-related expenses be limited to use by family and group day care homes that are physically located in low-income or rural areas, the Department believes that the law intended for these funds to be made available only to those providers who are financially in need. Therefore, we are requiring that providers applying to participate in the CACFP also complete a free and reduced price meal application when requesting administrative funds to cover license-related expenses in order to verify their eligibility for free or reduced price meals.

Requiring that providers meet the income eligibility requirements for free and reduced price meals will ensure that public funds are targeted to providers most in need of financial assistance in meeting licensing standards and are not provided to individuals who have the financial means to comply with licensing requirements on their own. In addition, it will add very little burden for providers or sponsors, since providers must already demonstrate free or reduced price eligibility in order to receive reimbursement for meals served to their own children.

The law itself places no dollar limit on the amount of administrative funds which may be spent on license-related expenses. However, the Department believes that it would be prudent to set a cap, or ceiling, on such expenses. Given the lack of assurance that a home-based provider will remain in the child care business for a given length of time, the Department is establishing a $300 total limit per home on license-related expenses so that payments can be controlled.

Examples of administrative expenses that the Department feels are reasonable under this provision and which could readily be purchased for less than $300, might include: (1) small items/equipment such as smoke detectors, fire extinguishers, etc.; (2) licensing fees and related expenses such as fingerprinting costs, the cost of health and fire inspections, etc.; or (3) minor repairs such as the installation of railings on a staircase to a basement where the day care operation is being conducted. The Department is particularly interested in receiving comments on whether this dollar limit (which is based on the Low-Income Family Day Care Home Demonstration Project Final Report, USDA, FNS, March 1993, which was designed to test various strategies intended to increase low-income day care home participation in the Program) will adequately protect against potential misuse of Federal funds. The sponsor must have documented receipts to support these administrative claims. Reimbursement may only be claimed for the actual cost incurred. In addition, consistent with normal Program practice, all claims under this provision must be submitted to the State agency for the fiscal year in which the expense is incurred.

This new provision does not require day care home providers receiving administrative funds from a sponsoring organization to stay with the CACFP for any given period of time after receiving the funds. However, CACFP sponsoring organizations will have some assurance that day care home providers requesting these funds will join CACFP and their sponsorship since providers will be required to complete both a Program application through their sponsorship, and a free or reduced price application before receiving any funding support. In addition, in order to deter unnecessary requests, day care home providers must provide to the sponsoring organization evidence of their application for licensing and official documentation of the defects that are impeding their licensing approval. These documents will be kept on file in the sponsors office for later review by State Program staff and need not accompany the sponsor's administrative budget or request for budget adjustment. Finally, the Department wishes to emphasize that these funds may only be used to assist a provider to comply with licensing requirements. They may not be used for general remodeling or renovation.

Accordingly, this interim rulemaking amends section 226.2 by revising the definitions of "Administrative costs" and "Start-up payments", and by adding a second sentence to the new definition of "Expansion payments", to allow sponsoring organizations of family or group day care homes to use these funds for outreach and recruitment of unlicensed day care homes as specified above. This interim rulemaking also amends section 226.18(a) and adds a new section 226.16(k) to establish requirements for day care homes requesting administrative funds to cover license-related expenses.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR chapter II and part 226 are amended as follows:

Chapter II-Food and Nutrition Service, Department of Agriculture

1. The heading of 7 CFR chapter II is revised to read as set forth above.

Chapter II—[Amended]

2. In 7 CFR chapter II (consisting of parts 210 through 299) all references to "Food and Consumer Service" are revised to read "Food and Nutrition Service" and all references to "FCS" are revised to read "FNS".

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

3. The authority citation for Part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

4. In section 226.2:

a. New definitions of *Expansion payments, Head Start participant, Low-income area,* and *Rural area* are added in alphabetical order.

b. The definitions of *Administrative costs* and *Start-up payments* are amended by adding a new sentence to the end of each paragraph.

c. The definition of *Documentation* is amended by removing the period at the end of paragraph (d)(2), adding the word ";or", and adding new paragraph (e).

d. The definition of *Free meal* is amended by revising the first sentence.

e. The definition of *Program payments* is amended by adding the words "expansion payments," between the words "payments," and "advance".

f. The definition of *Verification* is amended by revising all text after the third sentence.

The additions and revisions specified above read as follows:

§ 226.2 Definitions.

* * * * *

Administrative costs * * * These administrative costs may include administrative expenses associated with outreach and recruitment of unlicensed family or group day care homes and the allowable licensing-related expenses of such homes.

* * * * *

Documentation * * *

(e) For a child who is a Head Start participant, the Head Start statement of income eligibility issued upon initial enrollment in the Head Start Program or, if such statement is unavailable, other documentation from Head Start officials that the child's family meets the Head Start Program's low-income criteria.

* * * * *

Expansion payments means financial assistance made available to a sponsoring organization for its administrative expenses associated with expanding a food service program to day care homes located in low-income or rural areas. These expansion payments may include administrative expenses associated with outreach and recruitment of unlicensed family or group day care homes and the allowable licensing-related expenses of such homes.

* * * * *

Free meal means a meal served under the Program to a participant from a family which meets the income standards for free school meals; or to a child who is automatically eligible for free meals by virtue of food stamp, FDPIR, or AFDC recipiency; or to a child who is a Head Start participant; or to an adult participant who is automatically eligible for free meals by virtue of food stamp or FDPIR recipiency or is a SSI or Medicaid participant. * * *

* * * * *

Head Start participant means a child currently receiving assistance under a Federally-funded Head Start Program who is categorically eligible for free meals in the CACFP by virtue of meeting Head Start's low-income criteria.

* * * * *

Low-income area means a geographical area in which at least 50 percent of the children are eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined in accordance with paragraphs (b) and (c), definition of tier I day care home.

* * * * *

Rural area means any geographical area in a county which is not a part of a Metropolitan Statistical Area or any "pocket" within a Metropolitan Statistical Area which, at the option of the State agency and with FNSRO concurrence, is determined to be geographically isolated from urban areas.

* * * * *

Start-up payments * * * These start-up payments may include administrative expenses associated with outreach and recruitment of unlicensed family or group day care homes and the allowable licensing-related expenses of such homes.

* * * * *

Verification * * * However, if a food stamp, FDPIR or AFDC case number is provided for a child, verification for such child shall include only confirmation that the child is included in a currently certified food stamp or FDPIR household or AFDC assistance unit. If a Head Start statement of income eligibility is provided for a child, verification for such child shall include only confirmation that the child is a Head Start participant. For an adult participant, if a food stamp or FDPIR case number or SSI or Medicaid assistance identification number is provided, verification for such participant shall include only confirmation that the participant is included in a currently certified food stamp or FDPIR household or is a current SSI or Medicaid participant.

* * * * *

5. In section 226.4:

a. Paragraph (e) is amended by adding the words "and expansion" after the word "start-up" in the paragraph heading and each time it appears in the text.

b. Paragraph (f) is amended by adding the word ", expansion" between the words "start-up" and "and".

6. In section 226.6:

a. Paragraph (c)(3) is amended by adding the words "or expansion" between the words "start-up" and "payments".

b. Introductory text of (k) is amended by adding the words "or expansion" between the words "start-up" and "payments" in the first sentence.

7. In section 226.7:

a. Paragraph (h) is amended by adding the words "and expansion" after the word "start-up" in the paragraph heading and text.

b. Paragraph (j) is amended by adding the word ", expansion" between the words "start-up" and "and".

8. In section 226.12:

a. Paragraph (a) is amended by adding the heading "*General.*" before the first sentence.

b. Paragraphs (b) through (e) are removed and a new paragraph (b) is added to read as follows:

§ 226.12 Administrative payments to sponsoring organizations for day care homes.

* * * * *

(b) *Start-up and expansion payments.* (1) Prospective sponsoring organizations of day care homes, participating sponsoring organizations of child care centers or outside-school-hours care centers, independent centers, and participating sponsoring organizations of less than 50 homes which meet the criteria in paragraph (b)(2) of this section shall be entitled to receive start-up payments to develop or expand successful Program operations in day care homes. Participating sponsoring organizations of day care homes which meet the criteria in paragraph (b)(2) of this section shall be entitled to receive expansion payments to initiate or expand Program operations in day care homes in low-income or rural areas. The State agency shall approve start-up payments only once for any eligible sponsoring organization, but may approve expansion payments for any eligible sponsoring organization more than once, provided that: the request must be for expansion into an area(s) other than that specified in their initial or prior request; and 12 months has elapsed since the sponsoring organization has satisfied all obligations under its initial or prior expansion agreement. Eligible sponsoring organizations which have received start-up payments shall be eligible to apply for expansion payments at a date no earlier than 12 months after it has satisfied all its obligations under its start-up agreement with the State agency.

(2) Sponsoring organizations which apply for start-up or expansion payments shall evidence:

(i) Public or tax-exempt status, or moving toward compliance with the requirements for IRS tax-exempt status, in accordance with § 226.15(a);

(ii) An organizational history of managing funds and ongoing activities (i.e., administering public or private programs);

(iii) An acceptable and realistic plan for recruiting day care homes to participate in the Program (such as the method of contacting providers), which may be based on estimates of the number of day care homes to be recruited and information supporting their existence, and in the case of

sponsoring organizations applying for expansion payments, documentation that the day care homes to be recruited are located in low-income or rural areas; and

(iv) An acceptable preliminary sponsoring organization management plan including, but not limited to, plans for preoperational visits and training.

(3) The State agency shall deny start-up and expansion payments to applicant sponsoring organizations which fail to meet the criteria of paragraph (b)(2) of this section or which have not been financially responsible in the operation of other programs funded by Federal, State, or local governments. The State agency shall notify the sponsoring organization of the reasons for denial and allow the sponsoring organization full opportunity to submit evidence on appeal as provided for in § 226.6(k). Any sponsoring organization applying for start-up or expansion funds shall be notified of approval or disapproval by the State agency in writing within 30 calendar days of filing a complete and correct application. If a sponsoring organization submits an incomplete application, the State agency shall notify the sponsoring organization within 15 calendar days of receipt of the application and shall provide technical assistance, if necessary, to the sponsoring organization for the purpose of completing its application.

(4) Sponsoring organizations which apply for and meet the criteria for start-up or expansion payments shall enter into an agreement with the State agency. The agreement shall specify:

(i) Activities which the sponsoring organization will undertake to initiate or expand Program operations in day care homes;

(ii) The amount of start-up or expansion payments to be issued to the sponsoring organization, together with an administrative budget detailing the costs which the sponsoring organization shall incur, document, and claim;

(iii) The time allotted to the sponsoring organization for the initiation or expansion of Program operations in family day care homes;

(iv) The responsibility of the applicant sponsoring organization to repay, upon demand by the State agency, start-up or expansion payments not expended in accordance with the agreement.

(5) Upon execution of the agreement, the State agency shall issue a start-up or expansion payment to the sponsoring organization in an amount equal to not less than one, but not more than two month's anticipated administrative reimbursement to the sponsoring organization as determined by the State agency. However, no sponsoring organization may receive start-up or expansion payments for more than 50 day care homes. Eligible sponsoring organizations with fewer than 50 homes under their jurisdiction at the time of application for start-up payments may receive such payments for up to 50 homes, less the number of homes under their jurisdiction. Eligible sponsoring organizations applying for expansion funds may receive at a maximum such payments for up to 50 homes at the currently assigned administrative payment for the first 50 homes. In determining the amount of start-up or expansion payments to be made to a sponsoring organization, the State agency shall consider the anticipated level of start-up or expansion costs to be incurred by the sponsoring organization and alternate sources of funds available to the sponsoring organization.

(6) Upon expiration of the time allotted to the sponsoring organization for initiating or expanding Program operations in day care homes, the State agency shall obtain and review documentation of activities performed and costs incurred by the sponsoring organization under the terms of the start-up or expansion agreement. If the sponsoring organization has not made every reasonable effort to carry out the activities specified in the agreement, the State agency shall demand repayment of all or part of the payment. The sponsoring organization may retain start-up or expansion payments for all day care homes which initiate Program operations. However, no sponsoring organization may retain any start-up or expansion payments in excess of its actual costs for the expenditures specified in the agreement.

9. In section 226.16, a new paragraph (k) is added to read as follows:

§ 226.16 Sponsoring organization provisions.

* * * * *

(k) Before sponsoring organizations expend administrative funds to assist family day care homes in becoming licensed, they shall obtain the following information from each such home: a completed free and reduced price application which documents that the provider meets the Program's income standards; evidence of its application for licensing and official documentation of the defects that are impeding its licensing approval; and a completed CACFP application. These funding requests are limited to $300 per home and are only available to each home once.

10. In section 226.17, paragraph (b)(7) is amended by adding a new sentence at the end of the paragraph to read as follows:

§ 226.17 Child care center provisions.

* * * * *

(b) * * *

(7) * * * In addition, Head Start participants need only have a Head Start statement of income eligibility, or a statement of Head Start enrollment from an authorized Head Start representative, to be eligible for free meal benefits under the CACFP.

* * * * *

11. In section 226.18, the introductory text of paragraph (a) is revised to read as follows:

§ 226.18 Day care home provisions.

(a) Day care homes shall have current Federal, State or local licensing or approval to provide day care services to children. Day care homes which cannot obtain their license because they lack the funding to comply with licensing standards may request a total limit per home of $300 in administrative funds from a sponsoring organization to assist them in obtaining their license. Day care homes that, at the option of their sponsoring organization, receive administrative funds for licensing-related expenses must complete documentation requested by their sponsor as described in § 226.16(k) prior to receiving any funds. Day care homes which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates that renewal will be denied. If licensing or approval is not available, a day care home may participate in the Program if:

* * * * *

12. In Section 226.23:

a. Paragraph (d) is amended by revising the fifth sentence.

b. Paragraph (e)(1)(i) is amended by adding a new sentence to the end of the paragraph.

c. Paragraph (e)(1)(ii)(F) is amended by revising the first and fifth sentences.

The addition and revisions specified above read as follows:

§ 226.23 Free and reduced price meals.

* * * * *

(d) * * * The release issued by child care institutions shall also announce that children who are members of AFDC assistance units, food stamp or FDPIR households, or are Head Start participants are automatically eligible to receive free meal benefits. * * *

(e)(1) * * *

(i) * * * Furthermore, such forms and materials distributed by child care

institutions shall state that if a child is a Head Start participant, the child is automatically eligible to receive free Program meal benefits, subject to submission by Head Start officials of a Head Start statement of income eligibility or income eligibility documentation.

(ii) * * *

(F) A statement which includes substantially the following information: "Section 9 of the National School Lunch Act requires that, unless you provide a food stamp, FDPIR or AFDC case number for your child, or unless a Head Start statement of income eligibility or income eligibility verification is provided for your child, you must provide the social security numbers of all adult members of your household in order for your child to be eligible for free or reduced price meals." * * * These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting a food stamp, Indian tribal organization, welfare, or Head Start office to determine current certification for receipt of food stamps, FDPIR or AFDC benefits, or participation in Head Start, contacting the State employment security office to determine the amount of benefits received, and checking the documentation produced by household members to prove the amount of income received. * * *

* * * * *

Dated: February 13, 1998.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 98–4949 Filed 2–25–98; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–44–AD; Amendment 39–10326; AD 98–04–14]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4164, PW4168, and PW4168A Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Pratt & Whitney PW4164, PW4168, and PW4168A series turbofan engines. This action requires initial and repetitive inspections for loose or broken front pylon mount bolts, replacement, if necessary, with new bolts, and establishment of a new cyclic life limit. This amendment is prompted by new flight test data that indicate higher than predicted loads. The actions specified in this AD are intended to prevent front pylon mount bolt failure, which could result in engine separation from the aircraft.

DATES: Effective March 13, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 1998.

Comments for inclusion in the Rules Docket must be received on or before April 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–44–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7130, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received data from flight testing of Pratt & Whitney PW4164 and PW4168 series turbofan engines installed on Airbus Industrie A330 series aircraft. The flight testing revealed higher than predicted loads for front pylon mount bolts, resulting in decreased service life. At this time, there are no U.S. operators of this aircraft/engine combination. This condition, if not corrected, could result in front pylon mount bolt failure, which could result in engine separation from the aircraft.

The FAA has reviewed and approved the technical contents of Pratt & Whitney Service Bulletin (SB) No. PW4G–100–A71–9, Revision 1, dated November 24, 1997, that describes procedures for initial and repetitive inspections for loose or broken front pylon mount bolts, replacement, if necessary, with new bolts, and removal of bolts from service upon reaching a prescribed service life limit.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent front pylon mount bolt failure. This AD requires initial and repetitive inspections for loose or broken front pylon mount bolts, replacement, if necessary, with new bolts, and establishment of a new cyclic life limit of 11,000 cycles in service (CIS). When parts accumulate 6,000 and 8,000 cycles since new (CSN), this AD requires different inspection procedures to be followed, but the manufacturer has informed the FAA that they are developing new material front pylon mount bolts that may be ready and certified for installation prior to any parts currently in service accumulating 6,000 CSN. When the new material parts are available, future rulemaking may be forthcoming that may constitute terminating action to the repetitive inspections required by this AD. The actions would be required to be accomplished in accordance with the SB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD

action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 9–ANE–44–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–04–14 Pratt & Whitney: Amendment 39–10326. Docket 97–ANE–44–AD.

Applicability: Pratt & Whitney PW4164, PW4168, and PW4168A series turbofan engines, with front pylon mount bolts, Part Number (P/N) 54T670, installed. These engines are installed on but not limited to Airbus Industrie A330 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent front pylon mount bolt failure, which could result in engine separation from the aircraft, accomplish the following:

(a) Perform initial and repetitive torque checks of front pylon mount bolts, and replace, if necessary, with new bolts, in accordance with the Accomplishment Instructions of Pratt & Whitney Service Bulletin (SB) No. PW4G–100–A71–9, Revision 1, dated November 24, 1997, as follows:

(1) For front pylon mount bolts with more than 1,000 cycles since new (CSN) but less than 5,750 CSN on the effective date of this AD, accomplish the following in accordance with Part (A) of the Accomplishment Instructions of the SB:

(i) Perform an initial torque check within 250 cycles in service (CIS) after the effective date of this AD, or prior to the next engine removal for any cause, whichever occurs first.

(ii) Thereafter, perform torque checks at intervals not less than 750 or greater than 1,250 CIS since last torque check, not to exceed 11,000 CSN.

(2) For front pylon mount bolts with 5,750 or more CSN but less than 8,000 CSN on the effective date of this AD, accomplish the following in accordance with Part (B) of the Accomplishment Instructions of the SB:

(i) Perform an initial torque check within 250 CIS after the effective date of this AD, or prior to the next engine removal for any cause, whichever occurs first.

(ii) Thereafter, perform torque checks at intervals not less than 750 or greater than 1,250 CIS since last torque check, not to exceed 11,000 CSN.

(3) For front pylon mount bolts with 8,000 or more CSN but less than 11,000 CSN on the effective date of this AD, perform an inspection in accordance with the schedule and procedures of the Appendix to the SB.

(4) Prior to further flight, replace all four bolts in accordance with Part (A), Paragraph 1(D) of the Accomplishment Instructions of the SB, if any are found loose or broken.

(b) This AD establishes a new life limit of 11,000 CSN for front pylon mount bolts, P/N 54T670. Except as provided in paragraph (c) of this AD, no front pylon mount bolts may exceed this new life limit after the effective date of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

(e) The actions required by this AD shall be done in accordance with the following PW SB:

Document No.	Pages	Revision	Date
PW4G–100–A71–9	1	1	November 24, 1997.
	2	Original	July 31, 1997.
	3	1	November 24, 1997.
	4–7	Original	July 31, 1997.
	8, 9	1	November 24, 1997.
	10, 11	Original	July 31, 1997.

Total pages: 11.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 13, 1998.

Issued in Burlington, Massachusetts, on February 6, 1998.

James C. Jones,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–3799 Filed 2–25–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–13; Amendment 39–10327; AD 98–04–15]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. TPE331 Series Turboprop and TSE331 Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to AlliedSignal Inc., (formerly Garrett Engine Division, Garrett Turbine Engine Company and AiResearch Manufacturing Company of Arizona) TPE331 series turboprop and TSE331 turboshaft engines, that requires replacement or radiographic inspection, and replacement, if necessary, of certain third stage turbine stators with serviceable parts. This amendment is prompted by a report of an outer band weld that cracked subsequent to a radiographic inspection required by a previous AD. The actions specified by this AD are intended to prevent third stage turbine wheel separation due to thermal fatigue cracking and shifting of the third stage turbine stator, which could contact the third stage turbine wheel and result in an uncontained engine failure and damage to the aircraft.

DATES: Effective April 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 27, 1998.

ADDRESSES: The service information on AlliedSignal Alert Service Bulletin No. TPE331–A72–0861, Revision 2, dated April 23, 1997, referenced in this rule may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. The service information on National Flight Services Alert Service Bulletin No. NF–TPE331–A72–10961, dated April 28, 1997, referenced in this rule may be obtained from either National Flight Services, Inc. 10971 E. Airport Services Road, Toledo Express Airport, Swanton, OH 43558; telephone (419) 865–2311, fax (419) 867–4224, or http://www.natfs.com, or National Flight Services of Arizona, Inc., 5170 W. Bethany Home Road, Glendale, AZ 85301; telephone (602) 931–1143, fax (602) 931–7264. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5246; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to AlliedSignal Inc., (formerly Garrett Engine Division, Garrett Turbine Engine Company and AiResearch Manufacturing Company of Arizona) TPE331 series turboprop and TSE331 turboshaft engines was published in the **Federal Register** on July 31, 1997 (62 FR 40985). That action proposed to require replacement of certain third stage turbine stators or radiographic inspection, and replacement, if necessary, with serviceable parts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 1,000 engines of the affected design in the worldwide fleet. The FAA estimates that 700 engines installed on aircraft of U.S. registry will be affected by this AD. The FAA estimates that 210 engines will require unscheduled replacement, that it will take approximately 40 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $6,500 per engine. Approximately 350 engines will require replacement during hot section inspection, which will take approximately 2 work hours per engine, with a parts cost of $6,500. Approximately 14 engines will require unscheduled inspection, which will take approximately 50 work hours to accomplish, with a parts cost of $1,500. Approximately 21 engines will require inspection during hot section inspection, which will take approximately 10 work hours to accomplish, with zero parts cost. Approximately 35 engines will require unscheduled inspection and replacement, which will take approximately 50 work hours to accomplish, with a $6,500 parts cost. Approximately 70 engines will require inspection and replacement during hot section inspection, which will take approximately 10 work hours to accomplish, with a $5,000 parts cost. The FAA has been informed by AlliedSignal Inc. that they will provide a redesigned third stage turbine stator assembly at a special program price and will pay for the labor to install this assembly. Based on these figures, without the special price program from the manufacturer, the total cost impact of the AD on U.S. operators is estimated to be $4,986,100.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy

of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–04–15 AlliedSignal Inc.: Amendment 39–10327. Docket 97–ANE–13.

Applicability: AlliedSignal Inc., (formerly Garrett Engine Division, Garrett Turbine Engine Company and AiResearch Manufacturing Company of Arizona) Model TPE331–1, –2, –2UA, –3U, –3UW, –5, –5A, –5AB, –5B, –6, and –6A turboprop and TSE331–3U turboshaft engines with third stage turbine stators, Part Number (P/N) 868379–3, except those engines with turbine stators listed by Serial Number (S/N) in Table 1 of the National Flight Services Alert Service Bulletin (ASB) No. NF–TPE331–A72–10961, dated April 28, 1997. These engines are installed on but not limited to: Mitsubishi MU–2B series (MU–2 series); Construcciones Aeronauticas, S.A. (CASA) C–212 series; Fairchild SA226 series (Swearingen Merlin and Metro series); Prop-Jets, Inc. Model 400; Twin Commander 680 and 690 (Jetprop Commander); Rockwell Commander S–2R; Shorts Brothers and Harland, Ltd. SC7 (Skyvan); Dornier 228 series; Beech 18 and 45 series and Models JRB–6, 3N, 3NM, 3TM, and B100; Pilatus PC–6 series (Fairchild Porter and Peacemaker); De Havilland DH 104 series 7AXC (Dove); Ayres S–2R series; Grumman American G–164 series; and Schweizer G–164 series airplanes; and Sikorsky S–55 series (Helitec Corp. S55T) helicopters.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent third stage turbine wheel separation due to fatigue cracking and shifting of the third stage turbine stator, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) For engines with third stage turbine stators with S/Ns listed in Table 1 of National Flight Services ASB No. NF–TPE331–A72–10961, dated April 28, 1997, no action is required.

(b) For engines with third stage turbine stators with S/Ns not listed in Table 1 of National Flight Services ASB No. NF–TPE331–A72–10961, dated April 28, 1997, remove the unserviceable third stage turbine stator assembly in accordance with the applicable engine maintenance manual and the following schedule:

Third stage turbine stator cycles in service (CIS) since radiographic inspection in accordance with AD 87–19–02 paragraph (b) or AD 93–05–09 paragraph (h)	Removal schedule
Unknown CIS since inspection	Remove within 600 CIS after the effective date of this AD, at next access, or prior to March 31, 2002, whichever occurs first.
2200 or more CIS since inspection	Remove within 600 CIS after the effective date of this AD, at next access, or prior to March 31, 2002, whichever occurs first.
Less than 2200 CIS since inspection	Remove prior to accumulating 2,800 CIS, at next access, or prior to March 31, 2002, whichever occurs first.

(c) For the purpose of this AD, the next access to the third stage stator assembly is defined as disassembly of the turbine beyond the removal of the third stage rotor.

Note 2: This AD does not supersede AD 93–05–09. The removal schedule in paragraph (b) of this AD does not affect the requirements of AD 93–05–09.

(d) For the purpose of determining third stage turbine stator removal under paragraph (b) of this AD, third stage turbine stator hours time in service (TIS) may be converted to CIS since inspection by multiplying by 1.5 the number of hours since radiographic inspection in accordance with paragraph (b) of AD 87–19–02 or paragraph (h) of AD 93–05–09.

(e) For third stage turbine stator assemblies removed in accordance with paragraph (b) of this AD, accomplish either a radiographic inspection for inadequate weld penetration and fatigue cracking, and, if necessary, replace with a serviceable assembly in accordance with the Accomplishment Instructions of National Flight Services ASB No. NF–TPE331–A72–10961, dated April 28, 1997; or replace with a serviceable assembly in accordance with the Accomplishment Instructions of AlliedSignal Inc. ASB No. TPE331–A72–0861, Revision 2, dated April 23, 1997. Accomplishing the radiographic inspection required by this paragraph constitutes compliance with the radiographic inspection requirement of paragraph (h) of AD 93–05–09.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(h) The actions required by this AD shall be done in accordance with the following ASBs:

Document No.	Pages	Revision	Date
National Flight Services ASB No. NF–TPE331–A72–10961	1–11	Original	Apr. 28, 1997.
Total Pages:	11.		
AlliedSignal Inc. ASB No. TPE331–A72–0861	1	2	Apr. 23, 1997.
	2	1	Oct. 25, 1996.

Document No.	Pages	Revision	Date
	3–5	2	Apr. 23, 1997.
	6	1	Oct. 25, 1996.
	7	2	Apr. 23, 1997.
	8	1	Oct. 24, 1996.
Total Pages:	8.		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of AlliedSignal Alert Service Bulletin No. TPE331–A72–0861, Revision 2, dated April 23, 1997, may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. Copies of National Flight Services ASB No. NF–TPE331–A72–10961, dated April 28, 1997, may be obtained from either National Flight Services, Inc. 10971 E. Airport Services Road, Toledo Express Airport, Swanton, OH 43558; telephone (419) 865–2311, fax (419) 867–4224, or http://www.natfs.com, or National Flight Services of Arizona, Inc., 5170 W. Bethany Home Road, Glendale, AZ 85301; telephone (602) 931–1143, fax (602) 931–7264. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(i) This amendment becomes effective on April 27, 1998.

Issued in Burlington, Massachusetts, on February 6, 1998.

James C. Jones,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–3798 Filed 2–25–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–131–AD; Amendment 39–10342; AD 98–04–30]

RIN 2120–AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Model DG–500M Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Glaser-Dirks Flugzeugbau GmbH (DG Flugzeugbau) Model DG–500M gliders. This AD requires repetitively inspecting the propeller mounting plate for cracks, replacing any cracked propeller mounting plate, and modifying the bolt connections of the propeller mounting plate. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified in this AD are intended to prevent the propeller mounting plate from separating from the glider, which could result in propeller separation and possible loss of control of the glider.

DATES: Effective May 15, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 15, 1998.

Comments for inclusion in the Rules Docket must be received on or before March 19, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–131–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from DG Flugzeugbau GmbH, P.O. Box 4120, 76625 Bruchsal, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–131–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on all DG Flugzeugbau Model DG–500M airplanes. The LBA reports that, during an inspection, cracks were found on the lower end of the propeller mounting plate near the bolt connections on one of the affected gliders.

This condition, if not corrected in a timely manner, could result in separation of the propeller mounting plate from the glider, which could result in propeller separation and possible loss of control of the glider.

Relevant Service Information

DG Flugzeugbau has issued Technical Note TN 843/8, dated April 10, 1997, which specifies procedures for inspecting the propeller mounting plate for cracks, replacing any cracked propeller mounting plate, and modifying the bolt connections of the propeller mounting plate.

The LBA classified this technical note as mandatory and issued German AD 97–224, dated July 31, 1997, in order to assure the continued airworthiness of these airplanes in Germany.

The FAA's Determination

This glider model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other DG Flugzeugbau Model DG–500M gliders of the same type design registered in the United States, the FAA is issuing an AD. This AD requires inspecting the propeller mounting plate for cracks, replacing any cracked propeller mounting plate, and modifying the bolt connections of the propeller mounting plate.

Accomplishment of the actions of this AD would be required in accordance with the previously referenced technical note.

Cost Impact

The FAA estimates that 5 gliders in the U.S. registry will be affected by this AD, that it will take approximately 5 workhours per glider to accomplish the initial inspection required by this AD, and that the average labor rate is approximately $60 per work hour. Parts cost approximately $120 per glider. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $2,100, or $420 per airplane. These figures are only based on the cost of the initial inspection and do not take into account the cost of repetitive inspections. The FAA has no way of determining the number of repetitive inspections each owner/operator of the affected gliders will incur.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. The requirements of this direct final rule address an unsafe condition identified by a foreign civil airworthiness authority and do not impose a significant burden on affected operators. In accordance with section 11.17 of the Federal Aviation Regulations (14 CFR 11.17), unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, a written adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–131–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For reasons discussed in the preamble, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–04–30 Glaser-Dirks Flugzeugbau GmbH: Amendment 39–10342; Docket No. 97–CE–131–AD.

Applicability: Model DG–500M gliders, all serial numbers, certificated in any category.

Note 1: This AD applies to each glider identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For gliders that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the propeller mounting plate from separating from the glider, which could result in propeller separation and possible loss of control of the glider, accomplish the following:

(a) Within the next 5 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 25 hours TIS, inspect the propeller mounting plate for cracks in accordance with the Instructions section of DG Flugzeugbau Technical Note TN 843/8, dated April 10, 1997.

(b) If any cracked propeller mounting plate is found during any inspection required by paragraph (a) of this AD, prior to further flight, replace any cracked propeller mounting plate with a new propeller mounting plate or FAA-approved propeller mounting plate in accordance with the above-referenced technical note.

(c) Within the next 5 hours TIS after the effective date of this AD, modify the bolt connections of the propeller mounting plate by inserting an aluminum plate between the

propeller mounting plate and the washers of the bolt connections. Accomplish this modification in accordance with DG Flugzeugbau Technical Note TN 843/8, dated April 10, 1997.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the glider to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be used if approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) Questions or technical information related to DG Flugzeugbau Technical Note TN 843/8 dated April 10, 1997, should be directed to DG Flugzeugbau GmbH, P.O. Box 4120, 76625 Bruchsal, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City.

(g) The inspections and replacements required by this AD shall be done in accordance with DG Flugzeugbau Technical Note TN 843/8 dated April 10, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from DG Flugzeugbau GmbH, P.O. Box 4120, 76625 Bruchsal, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 97–224, dated July 31, 1997.

(h) This amendment (39–10342) becomes effective on May 15, 1998.

Issued in Kansas City, Missouri, on February 6, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3795 Filed 2–25–98; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 250

[Release No. 35–26826, File No. S7–11–95]

RIN 3235–AG45

Exemption of Issuance and Sale of Securities by Public Utility and Nonutility Subsidiary Companies of Registered Public Utility Holding Companies; Rescission of Statements of Policy

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending rule 52 under the Public Utility Holding Company Act of 1935 ("Act") to exempt from the requirement of prior Commission approval under the Act the issue and sale of any security by a subsidiary company in a registered holding company system, where the conditions of the rule are otherwise met. The Commission is also amending rule 45 under the Act to conform the exemption from section 12(b) of the Act, which is provided by rule 45, to the exemption from section 6(a), which is provided by rule 52. These amendments are intended to eliminate unnecessary regulatory and paperwork burdens associated with seeking Commission approval for routine financings by companies in registered holding company systems.

EFFECTIVE DATE: February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Catherine A. Fisher, Assistant Director, or Martha Cathey Baker, Senior Special Counsel, at (202) 942–0545, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Subject to stated terms and conditions, rule 52 (17 CFR 250.52) under the Act exempts from the requirement of prior Commission approval under section 6(a) of the Act the issuance and sale of certain specified types of securities by a subsidiary of a registered holding company. Rule 52 also exempts from the requirement of prior Commission authorization under section 9(a) of the Act the acquisition by a company in a registered holding company system of the securities issued by an associate company under the rule. The Commission is amending rule 52 to exempt all types of securities issued and sold by subsidiary companies, subject to the satisfaction of the other conditions of the rule. Additionally, the Commission is adopting a conforming change to rule 45 to exempt from the requirement of prior Commission approval under section 12(b) any guaranty by a subsidiary company of debt securities issued by any other subsidiary company, so long as the issuance of the guaranty and the underlying obligation are exempt under rule 52. The Commission is also rescinding the statements of policy with respect to first mortgage bonds and preferred stock ("Statements of Policy").[1] The Commission proposed these amendments and rescission of the Statements of Policy by release issued on June 20, 1995.[2]

Discussion

Rule 52 exempts from the requirement of prior Commission authorization under section 6(a) the issue and sale of certain types of securities by subsidiary companies of registered holding companies.[3] The rule also exempts from the requirement of prior Commission authorization under section 9(a)(1) the acquisition by a company in a registered system of any securities issued by an associate company under the rule.[4]

[1] The Statements of Policy were adopted by the Commission on February 16, 1956 (Holding Co. Act Release Nos. 13105 and 13106) and amended on May 8, 1969 and June 22, 1970 (Holding Co. Act Release Nos. 16369 and 16758, respectively).

[2] Holding Co. Act Release No. 26312 (June 20, 1995), 60 FR 33640 (June 28, 1995) ("Proposing Release").

[3] Section 6(a) requires Commission approval under the standards of section 7 for the issue and sale of any security of a registered holding company or its subsidiary company. Section 6(b) authorizes the Commission to exempt from the requirements of section 6(a):

> The issue or sale of any security by any subsidiary company of a registered holding company, if the issue and sale of such security are solely for the purpose of financing the business of such subsidiary company and have been expressly authorized by the State commission of the State in which such subsidiary company is organized and doing business, or if the issue and sale of such security are solely for the purpose of financing the business of such subsidiary company when such subsidiary company is not a holding company, a public utility company, an investment company or a fiscal or financing agency of a holding company, a public utility company or an investment company.

Congress intended "to exempt the issue of securities by subsidiary companies in cases where holding company abuses are unlikely to exist." H.R. Conf. Rep. No. 1903, 74th Cong., 1st Sess. 66–67 (1935). *See generally* Holding Co. Act Release No. 25058 (Mar. 19, 1990), 55 FR 11362 (Mar. 28, 1990) (adopting rule 52); Holding Co. Act Release No. 25573 (July 7, 1992), 57 FR 31120 (July 14, 1992) (amending rule 52); and Holding Co. Act Release No. 26311 (June 20, 1995), 60 FR 33634 (June 28, 1995) (further amending rule 52).

[4] Section 9(a)(1) in pertinent part requires prior Commission approval under the standards of section 10 of the Act for an acquisition of securities by a registered holding company or its subsidiary company. Section 9(c)(3) provides a limited exception from this requirement for the acquisition of:

At present, the rule provides a conditional exemption from the requirement of prior Commission approval only with respect to the issue and sale by public utility and certain nonutility subsidiaries of a registered holding company of any common stock, preferred stock, bond, note or other form of indebtedness. The issue and sale of the securities must be solely for the purpose of financing the business of the issuing subsidiary and, if the issuer is a public utility subsidiary, must be expressly authorized by the relevant state commission. If the issuing subsidiary is an "energy-related company" as defined in rule 58 under the Act, it is subject to additional limitations on the amount of securities it may issue to associate companies without Commission approval.[5] Additionally, the interest rate and maturity date of any debt security issued to an associate company must be designed to parallel the effective cost of capital of that associate company. By its terms, rule 52 currently excludes "any guaranty and other form of assumption of liability on the obligations of another" from the exemption provided by the rule.

Rule 45 prohibits registered holding companies and their subsidiaries from extending credit to or indemnifying a company in the same holding company system, without filing a declaration and obtaining a Commission order.[6] Rule 45(b) provides limited exceptions from the general provision.

In the Proposing Release, the Commission proposed amendments that would (a) expand the exemption provided by rule 52 to cover all types of securities that may be issued by registered holding company subsidiaries, including guaranties; and (b) conform rule 45 to the proposed amendments to rule 52 so as conditionally to exempt from the requirement of prior Commission approval under section 12(b) any guaranty by a subsidiary company of securities issued by any other subsidiary company. The Commission also requested comment on the following issues: (a) Whether interest rate swap agreements and related instruments should be covered by rule 52; (b) whether compliance with rule 52(b)(2)[7] should be required where a nonutility subsidiary of a registered holding company issues a security to an associate nonutility company; (c) whether exemption of nonutility financing should be subject to other limitations based on, for example, capitalization ratios, financial condition, or past losses incurred in connection with nonutility ventures; (d) whether notice of financing transactions by nonutility companies should be required to be submitted to interested state commissions; and (e) whether the Statements of Policy should be rescinded.

The Commission received comments submitted by seven registered holding companies,[8] Wisconsin Energy Corporation ("WEC"),[9] the American Gas Association ("AGA" and, together with the registered holding companies and WEC, "Industry Commenters"), and the Council of the City of New Orleans ("New Orleans"). The Industry Commenters generally support adoption of the proposed amendments, which they state would: (a) Reduce unnecessary delays and burdensome administrative costs;[10] (b) provide necessary flexibility to respond to rapidly changing market opportunities and unforeseen events;[11] and (c) improve registered holding companies' competitive position relative to non-registered holding companies.[12]

New Orleans opposes adoption of the proposed amendments. New Orleans states that the proposed amendments would permit system companies to proceed "in an unregulated environment," since "state commissions may have limits on their authority to act."[13] New Orleans further states that the amendments, together with then-proposed rule 58, are "unlawful," and goes on to state that the amendments "do not possess the strong factual basis necessary to support the conclusion that no abuses will occur if [they] are implemented."[14] New Orleans asks that the Commission either abandon the proposed amendments, reissue them for further comments, or modify them to reflect the Congressional intent that the Commission be responsible for the protection of consumers through review of registered holding company system financings.

A discussion follows of the principal features of the proposed amendments, the specific issues on which the Commission requested comment in the Proposing Release, and other issues raised by commenters.

1. Expansion of Types of Securities Exempt Under Rule 52

As originally adopted, rule 52 exempted the issue and sale of common stock, preferred stock, first mortgage bonds, and general and refunding mortgage bonds by public utility subsidiaries of registered holding companies, subject to various conditions.[15] In 1992, the rule was amended to cover all types of mortgage bonds and notes.[16] Further amendments to rule 52 in 1995 ("1995 Amendments")[17] broadened the types of securities that may be issued by public utility subsidiaries to include all

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Such commercial paper and other securities, within such limitations, as the Commission may by rules and regulations or order prescribe as appropriate in the ordinary course of business of a registered holding company or subsidiary company thereof and as not detrimental to the public interest or the interest of investors or consumers.

The exemption under rule 52 does not apply to the issuance of securities to form a new subsidiary of a registered holding company. *See* rule 52(d).

[5] Rule 58, 17 CFR 150.58(a)(1), was proposed concurrently with the proposed amendments to rule 52 and rule 45 that are adopted today. Rule 58 provides that the acquisition by a company in a registered holding company system of securities of an energy-related company, as defined in the rule, does not require prior approval of the Commission, subject to certain conditions and subject to an aggregate investment limitation of the greater of $50 million or 15% of the consolidated capitalization of the registered holding company. When rule 58 was adopted, rules 52 and 45 were amended to conform the exemption for intrasystem financing by nonutility energy-related companies afforded by those rules to the investment limitations in rule 58. *See* Holding Co. Act Release No. 26667 (Feb. 14, 1997), 62 FR 7900 (Feb. 20, 1997) ("Rule 58 Release").

[6] Rule 45 was adopted under section 12(b), which provides that:

It shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly, to lend or in any manner extend its credit to or indemnify any company in the same holding-company system in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

[7] Rule 52(b)(2) requires that the interest rate and maturity date of a debt security issued by a nonutility company to an associate company be designed to parallel the effective cost of capital of the associate company.

[8] The registered holding companies submitting comments were American Electric Power Company, Inc. ("AEP"), Allegheny Power System, Inc. ("Allegheny"), Consolidated Natural Gas Company ("Consolidated"), The Columbia Gas System, Inc. (now Columbia Energy Group) ("Columbia"), General Public Utilities Corporation (now GPU, Inc.) ("GPU"), Northeast Utilities ("Northeast") and The Southern Company ("Southern").

[9] WEC is an exempt holding company under section 3(a)(1) of the Act.

[10] Comments of Allegheny, AGA, AEP, Columbia and Southern.

[11] Comments of AEP, AGA, GPU, Northeast and WEC.

[12] Comments of AEP, AGA, GPU, Northeast and WEC.

[13] Comments of New Orleans.

[14] *Id.*

[15] Holding Co. Act Release No. 25058 (Mar. 19, 1990), 55 FR 11362 (Mar. 28, 1990).

[16] Holding Co. Act Release No. 25573 (July 7, 1992), 57 FR 31120 (July 14, 1992).

[17] Holding Co. Act Release No. 26311 (June 20, 1995), 60 FR 33634 (June 28, 1995).

debt securities [18] and expanded the exemption to allow nonutility subsidiaries to issue the securities under the rule. In the Proposing Release, the Commission requested comment on further expansion of rule 52 to include within its exemption all types of securities issued by subsidiaries of registered holding companies, subject to satisfaction of the other conditions of the rule.

The Industry Commenters support expanding the types of securities covered by the exemption, because the expansion gives companies in registered holding company systems the flexibility to raise capital at the lowest possible cost, regardless of the form of security being issued, just as their competitors do.[19] In addition to its more general objections to the proposed amendments, New Orleans is concerned that the amendments will "facilitate more complex forms of financings of nonutility businesses," without any state or federal review of the attendant risks.

In adopting the 1995 Amendments and expanding the exemption under rule 52 to all debt securities, the Commission noted that rule 52, in its then-current form, was of limited use.[20] The Commission stated that permitting utility subsidiaries to issue all types of debt securities under the rule was "appropriate in view of the continuing requirement of express approval by the [relevant] state commission * * *."[21] With respect to the issuance by nonutility subsidiaries of securities, the Commission stated that requiring prior Commission approval was "no longer necessary" in view of the extensive reporting requirements required by the Act and other federal securities laws and the level of scrutiny applied to issuances by investors and the financial community.[22]

For similar reasons, the Commission believes it is appropriate to expand the exemption provided by rule 52 to include all types of securities.[23] In the case of public utility subsidiaries, the exemption will continue to be available only if the appropriate state commission has expressly approved the issue and sale and, in this case, any further review by the Commission would only duplicate efforts and unnecessarily delay financing activities. In the case of both public utility and other subsidiaries, the exemption will be available only if the proceeds are used in connection with an existing business. Thus, absent another available exemption, the Commission will continue to review any financing the proceeds of which are used to enter into a new business endeavor, to determine if the standards of the Act have been satisfied. In addition, the Commission will retain jurisdiction over the financing activities of the registered holding company, including any guaranty of obligations of its subsidiaries.

2. Guaranties

Rule 52, in its current form, does not extend to guaranties. The Commission sought comment in 1992 on whether guaranties should be afforded an exemption under the rule, but declined to modify the rule in this respect in the 1995 Amendments.[24] The Proposing Release again requested comment on whether guaranties should be afforded an exemption under the rule.

A guaranty of debt securities issued by another subsidiary company is itself a security under the Act,[25] the issuance and sale of which are subject to the declaration requirement of section 6(a), unless exempted under section 6(b). In addition, the guaranty by a subsidiary company of any obligation of another subsidiary company is subject to section 12(b) and rule 45(a).[26] An agreement to assume joint liability, as co-maker or otherwise, with respect to the indebtedness of another company is the functional equivalent of a guaranty, and is also subject to both sections 6(a) and 12(b).

The Industry Commenters support the proposal to include guaranties and other assumptions of liability in rule 52's exemption.[27] New Orleans opposes extending the exemption in this respect, stating that the proposed rule changes "will make it difficult to determine the level of corporate financial exposure and the degree of risk associated with nonutility ventures."[28] As New Orleans itself notes, however, the rule would preclude utility subsidiaries from assuming liability without state commission authorization.[29] Also, as AEP notes, the risks of nonutility subsidiary activities are imposed on utility associates through the holding company, and the Commission retains its jurisdiction over the exposure of the holding company to these activities.[30]

The reasons stated above for extending rule 52 to all types of securities apply equally to extending the rule's coverage to guaranties. Under the conditions provided in rule 52, the Commission believes it appropriate to exempt guaranties and other assumptions of liabilities from the prior approval requirements of section 6(a).

Rule 45(a), with exceptions not relevant here, also prohibits the issuance of guaranties and similar undertakings by a subsidiary company without the filing of a declaration.[31] A guaranty may be both a security under section 6(a) and an extension of credit under section 12(b). The Commission's view is that any guaranty or similar undertaking should be exempt under rule 45, if the guaranty is itself exempt under rule 52 and it is issued with respect to the security of another subsidiary company that is likewise exempt under rule 52. Otherwise, rule 52 would not effectively exempt the issuance of the guaranty from the requirement of prior Commission approval. Accordingly, the Commission is adopting the proposed amendment to rule 45(b), in substantially the form proposed,[32] to conform the related exemptions.

3. Interest Rate Swaps and Similar Arrangements

In the Proposing Release, the Commission noted that it has exercised jurisdiction under sections 6(a) and 7 of the Act over interest rate swap

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[18] The 1995 Amendments specifically excluded guaranties from the scope of rule 52, and the issue of whether guaranties should be exempt was reproposed for consideration and comment in the broader context of extending the rule to cover all securities. The subject of guaranties is discussed below.

[19] *See, e.g.*, comments of Consolidated, GPU and WEC.

[20] 60 FR at 33635. For example, the issuance by public utility subsidiary of a registered holding company of a debt instrument other than a mortgage bond or note required prior Commission approval, whether or not such issuance had been explicitly approved by a state commission.

[21] 60 FR at 33635.

[22] 60 FR at 33636.

[23] As amended, rule 52 will exempt the issue of guaranties and certain interest rate swap agreements (*see* the separate discussions of guaranties and derivative instruments below). GPU specifically suggests that partnership and other similar types of interests are a common vehicle for nonutility subsidiary financing and should be exempt under the rule. The Commission's view is that such interests are similar to the types of instruments covered by the definition of a security in section 2(a)(16) of the Act and therefore should be included in the coverage of the rule.

[24] 60 FR at 33635, n.10.

[25] Section 2(a)(16) of the Act (definition of security).

[26] Section 12(a) of the Act prohibits the guaranty by subsidiary companies of debt issued by a registered holding company.

[27] Comments of Allegheny, Northeast and WEC.

[28] Comments of New Orleans.

[29] *Id.*

[30] Comments of AEP.

[31] At present, rule 45(b)(6) exempts certain guaranties "in the ordinary course of business." The rule by its terms does not apply to a guaranty of a subsidiary's indebtedness for borrowed money.

[32] Minor revisions have been made in the rule as adopted, to clarify that the assumption of liability must be exempt under rule 52 in order for it to be exempt under rule 45(b)(7).

agreements [33] and related instruments,[34] and requested comment on the extent, if any, to which these transactions should be exempt from prior Commission approval under rule 52. All commenters that addressed this issue support exempting swaps under rule 52.[35] Also, Northeast requested that the Commission clarify the basis of its jurisdiction over these transactions and Southern requested that registered holding companies "be given a fuller opportunity to address the legal basis" on which jurisdiction rests.

The types of derivative transactions over which the Commission has taken jurisdiction under sections 6(a) and 7 of the Act are swaps that are tied to the interest or dividend rate on a bond, share of preferred stock, or other security issued by a company in a registered holding company system. These types of derivative transactions are typically entered into as a means of reducing the company's capital costs, by trading the interest or dividend rate on an outstanding security for an interest or dividend rate based on current or expected market changes. In entering into the swap transaction, the company accomplishes the same result as it would by issuing a new security bearing the current interest or dividend rate and using the proceeds to refund the outstanding one, without incurring the accompanying issuance costs.

In these limited circumstances, entry into a derivative transaction is the functional equivalent of issuing a new security. As a result, it is consistent with the underlying principles of the Act and the provisions of section 6(b) to exempt these limited types of swaps from the requirement of prior Commission review.[36] Provided that the other conditions of the rule are satisfied,[37] the types of derivative transactions entered into by registered system companies to manage the capital costs associated with their own obligations will be afforded the exemption of rule 52.

Entry by a company in a registered holding company system into derivative transactions not related to outstanding obligations of the company are not intended to be exempted by rule 52. Further, the fact that the limited types of derivative transactions described above are afforded the exemption of the rule is not intended to indicate any position on the issue of whether swaps and other types of derivative instruments would be deemed to be securities for other purposes under the Act, or under the other federal securities laws.[38]

4. Additional Conditions to Exemption

In the Proposing Release, the Commission noted concerns that public utility subsidiaries of registered holding companies and their customers may need protection from the financial effects of financing transactions, particularly in connection with nonutility financing that is not subject to state oversight. Comment was sought on whether additional conditions to exemption should be imposed, in the form of limitations based on capitalization ratios, financial condition, past losses in connection with nonutility ventures, or any other basis.[39]

The Industry Commenters uniformly state that no additional conditions are needed.[40] However, New Orleans states that, if the proposed amendments to rules 52 and 45 are not rejected, additional conditions are necessary to facilitate an accurate determination of the capital structure of public utility subsidiaries and, in turn, the cost of capital of those subsidiaries. Specifically, New Orleans asks the Commission (a) to assure that both the FERC and state commissions have access to the books and records of all registered holding company affiliates and audit authority sufficient to preclude cross-subsidization; and (b) to establish cost allocation rules.[41] Additionally, New Orleans requests that these conditions should include an "affirmative evaluation of the effects of additional affiliate investments on a utility's cost of capital, capital structure, cost of debt, and debt ratings." [42]

With respect to the suggestions of New Orleans concerning access to information, the Commission notes that it maintains an ongoing effort to assure that the FERC and relevant state commissions are afforded the opportunity to review relevant information provided to the Commission on various transactions subject to its jurisdiction. Also, as discussed below, the Commission is adopting a requirement that registered holding companies provide notice of certain nonutility financings to state commissions having jurisdiction over the rates charged by the utility associates of the subsidiaries.[43]

Regarding the request by New Orleans for cost allocation rules, the Commission notes that the exemption afforded by rule 52 with respect to intrasystem financings is conditioned on the use of terms that parallel the effective cost of capital of the associate company lender. This provision should serve to avoid any material cross-subsidization of nonutility companies at the expense of public utility subsidiaries and their ratepayers.

The Commission appreciates the need of state commissions to evaluate the effects of investments by a registered holding company in nonutility associates on the cost of capital of a jurisdictional utility associate. However, the Commission believes that the reporting requirements of rule 52, as currently in effect and as amended today, will assist state commissions in guarding against improper increases in the cost of capital as a result of any nonutility financing transactions that directly affect their utility constituents. The Commission agrees with the arguments advanced by the Industry

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[33] *See, e.g., South West Electric Power Co.*, Holding Co. Act Release No. 25755 (March 5, 1993); *Consolidated Natural Gas Co.*, Holding Co. Act Release No. 25651 (Oct. 8, 1992); *General Public Utilities Corp.*, Holding Co. Act Release No. 25625 (Sept. 10, 1992); *New England Power Co.*, Holding Co. Act Release No. 25592 (July 30, 1992); *New England Energy Inc.*, Holding Co. Act Release No. 25378 (Sept. 19, 1991); *Northeast Utilities*, Holding Co. Act Release No. 25221 (Dec. 21, 1990); and *Georgia Power Co.*, Holding Co. Act Release No. 25197 (Nov. 30, 1990).

[34] These related instruments include products referred to as interest rate caps, floors and collars.

[35] Comments of AGA, Columbia, GPU, Northeast and Southern.

[36] Alternatively, this type of derivative transaction can be viewed as a change in the terms of an existing security.

[37] In the case of public utility subsidiaries of registered holding companies, state commission approval of entry into the derivative will be required in order to qualify for exemption under rule 52(a).

[38] In general, whether a derivative instrument will be determined to be a security under the federal securities laws depends on a number of factors, including the terms of the instrument and the manner in which it is marketed and sold. *See In re BT Securities Corp.*, Securities Exchange Act Release No. 35136 (Dec. 22, 1994).

[39] 60 FR at 33641.

[40] *See, e.g.*, comments of AEP, AGA, Allegheny, Columbia, Consolidated, GPU, Northeast and Southern. These commenters, in support of this view, cite protections provided by: continuing Commission review of holding company financings; state commission review of utility financings; powers of the Federal Energy Regulatory Commission ("FERC") and state commissions to protect ratepayers in the context of ratemaking; safeguards inherent in the financial markets, including those provided by ratings agencies and securities exchanges; protection of investors through the other securities laws; the routine nature of the transactions that would be exempted; and the limitation on intrasystem "energy-related" subsidiary financings in rule 58.

[41] Comments of New Orleans.

[42] *Id.*

[43] In addition, as provided in the Rule 58 Release, each registered holding company is required to provide on Form U–9C–3 extensive financial information to the Commission on investments in nonutility ventures that are exempted from prior Commission approval under rule 58. A copy of that information is required to be filed with each state commission having jurisdiction over the rates charged by the public utility subsidiaries of the registered holding company in question.

Commenters in this regard, and concludes that it is unnecessary to impose additional conditions on the use of the exemption as proposed.

5. Need for "Mirror Image" Requirement in Nonutility Financing Transactions

In the Proposing Release, the Commission requested comment on the question of whether compliance with rule 52(b)(2)[44] should be required in situations where a nonutility subsidiary of a registered holding company issues a security that is acquired by another nonutility subsidiary in the same holding company system. All Industry Commenters addressing this issue support an exception from the "mirror image" requirement of subsection (b)(2) for this type of transaction, taking the position that financings solely between nonutility associates of a registered holding company pose no risk of cross-subsidization or other issues of protection of ratepayers.[45] The Commission agrees that, absent a guaranty or other involvement by the holding company or its public utility subsidiaries, the costs of these transactions are unlikely to have a direct effect on ratepayers. There is some concern, however, that public utility subsidiaries that have transactional relationships with these nonutility associates may be burdened with financing costs indirectly, and thus adversely affected by the terms of the transactions.[46] Accordingly, the Commission has determined to defer action on the issue and study it further.

6. Notice of Nonutility Financings to State Commissions

The Commission recognizes the need of state commissions, in connection with carrying out their regulatory functions, for information concerning financing transactions involving public utility companies subject to their jurisdiction and other companies (particularly nonutility companies) in the same holding company system. As a result, the Commission also sought comment in the Proposing Release on whether the rules should incorporate any requirements of notice to interested state commissions of the consummation of financing by nonutility subsidiaries of registered holding companies.

New Orleans supports additional disclosure of nonutility financings, stating that information on associate company financing would be appropriate "to ascertain any at risk companies." All Industry Commenters who responded on this issue oppose notifying state commissions of nonutility financings. According to these parties, notices would be unnecessary because state commissions (a) can protect ratepayers through ratemaking proceedings and review of affiliate transactions[47] and (b) already receive "sufficient information on the financial health of their jurisdictional utilities."[48] Additionally, two of the Industry Commenters assert that public disclosure could harm legitimate competitive and commercial interests.[49] These commenters recommend that, if any disclosure is required, it be (a) limited to information on sales of securities to affiliates and (b) provided on the Form U–9C–3 that is required in connection with rule 58.[50]

The Commission has previously noted that the ability of state commissions to obtain information about registered holding company activities varies greatly from state to state.[51] The need of state commissions having retail rate jurisdiction over public utility companies for information regarding financing activities of nonutility associate companies of those utility companies, and their potential inability to obtain this information, must be carefully considered.

The Commission believes that delivery to interested state commissions of only the financing information that will have a direct bearing on their jurisdictional public utility companies should be required. Rule 52, as amended today, includes a requirement that copies of each Form U–6B–2 that is filed with the Commission to report an issue of securities by a nonutility company, and the related acquisition by an associate public utility company, must be submitted to each state commission having jurisdiction over the retail rates of the public utility company.[52]

7. Statements of Policy

In the Proposing Release, the Commission noted that the Statements of Policy, promulgated nearly forty years ago to specify the terms to be included in new issues of first mortgage bonds and preferred stock, have not kept pace with changes in the securities markets and hinder the ability of registered companies to raise capital.[53] The proposal to rescind the Statements of Policy met with no opposition from any of the parties submitting comments. For the reasons outlined above and in the Proposing Release, the Commission is rescinding the Statements of Policy.

8. Other Comments

Some Industry Commenters note that rule 42 requires prior Commission approval for intrasystem redemption of securities, notwithstanding that the issuance of these securities could be exempt from prior Commission review under proposed rule 52.[54] These registered holding companies request that rule 42 be amended so that security acquisitions, retirements and redemptions will be exempt from review to the extent the issuance of those securities was exempt under rule 52. While this type of transaction among associate companies raises cross-subsidization issues, the suggestion regarding rule 42 warrants further consideration, particularly in connection with transactions among nonutilities. The Commission anticipates addressing this issue at a later date.

Conclusion

The Commission has carefully reviewed the proposed amendments to rules 52 and 45 in light of the comments received, and has concluded that the proposed amendments are lawful. As amended, rule 52 retains the

[44] Rule 52(b)(2) requires that the interest rate and maturity date of a debt security issued by a nonutility company to an associate company be designed to parallel the effective cost of capital of the associate company.

[45] Comments of Consolidated, GPU, Southern and WEC.

[46] *See also* comments of Consolidated (suggesting that consumer interests may be implicated where the financing involves funds "directly traceable back to the holding company financings").

[47] Comments of Consolidated and Columbia.

[48] Comments of Columbia.

[49] Comments of Allegheny and Southern.

[50] *See* the Rule 58 Release. The Commission notes that there is some duplication of information between Form U–6B–2 and Form U–9C–3 with respect to reporting financing transactions for energy-related and gas-related companies. Form U–9C–3, however, includes only information relating to these types of companies, not all nonutility subsidiaries of registered holding companies. As a result, it is not an appropriate mechanism for reporting many transactions that are exempt under rule 52.

[51] *See The Regulation of Public-Utility Holding Companies*, Report of the Division of Investment Management, Securities and Exchange Commission (June 1995) ("Report"), at 134–36.

[52] The information on financing transactions contained in Form U–6B–2 is necessarily narrow and relates only to the financing activities of nonutility associate companies. The Commission notes, however, that extensive information on investments in nonutility companies under rule 58 is required to be delivered to interested state commissions. Also, information concerning registered holding company investments in exempt wholesale generators and foreign utility companies is required to be submitted to state commissions pursuant to rule 53. The Commission believes that the aggregation of this information should assist state commissions in the performance of their regulatory duties, and directs the Commission staff to coordinate with state commissions to assure that the information provided to them is sufficient for this purpose.

[53] *See* Report at 51.

[54] Comments of Allegheny, Northeast, and Southern.

requirement that security issuances by utility subsidiaries (including guaranties of obligations of associate companies) be explicitly approved by the state commission having authority over the rates of that utility.[55] Further, the Commission will continue to have jurisdiction to review entry into new nonutility businesses under sections 9(a) and 10 and any related financing of these businesses.[56] In the course of the reviews, interested parties may express their views on the impact of the investments on consumers. As a further protection, both utility and nonutility financing activities remain subject to the ongoing reporting and auditing provisions of the Act. In light of these factors, and considering the need for companies in registered holding company systems to respond to market opportunities in a rapidly changing competitive environment,[57] the Commission finds that a case-by-case review of the issuance of any type of security by subsidiaries of registered holding companies is no longer necessary in the public interest or for the protection of investors or consumers.

The Commission believes that subsidiaries of registered holding companies should be able to engage in routine financings without the regulatory burden of prior Commission authorization where possible without jeopardizing the interests the Act is designed to protect. The rule amendments adopted today are consistent with this objective.

These amended rules are not "major rules" within the meaning of 5 U.S.C. 801 *et seq.* They are substantive rules that grant an exemption or relieve restrictions, within the meaning of 5 U.S.C. 553(d)(1), and therefore may become effective immediately.

[55] Columbia requests that the Commission consider not requiring express approval of a security issuance by the relevant state commission where state law exempts the issuance from the need for approval. As stated in the release adopting the 1995 Amendments, it appears that section 6(b) does not offer a basis for this action. 60 FR at 33635.

[56] Entry into many of these new businesses will require case-by-case review and separate Commission authorization. As noted above, however, the Commission recently adopted rule 58, which exempts investment in some new business activities from the requirement of prior Commission review. The Commission has determined, as discussed in the Rule 58 Release, that the activities covered by rule 58 are so closely related to the utility business, that case-by-case review of these investments is no longer required in order to find that the standards of the Act are met.

[57] Noting that certain securities, such as partnership interests, are "commonplace in the financing of non-utility * * * projects," GPU states that having the same ability as non-registered holding company associates to engage in such financings is "crucial" to the ability of registered holding company systems to remain competitive. Comments of GPU.

Regulatory Flexibility Act Certification

Under section 605(b) of the Regulatory Flexibility Act, the Chairman of the Commission has certified as follows:

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that proposed amendments to rules 45 and 52 under the Public Utility Holding Company Act of 1935, as amended [15 U.S.C. 79 *et seq.*], together concerning the sale of securities by a subsidiary of a registered holding company, without a filing requirement, will not have a significant impact on a substantial number of small businesses. The reason for this certification is that it does not appear that any small businesses would be affected by the proposed rule amendments.

Dated: June 19, 1995.

Arthur Levitt,

Chairman.

The Commission did not receive any comments with respect to the Chairman's certification.

Costs and Benefits

Amended rule 52 will substantially decrease regulatory compliance costs for the registered holding companies. There were 150 applications filed in calendar year 1996 by companies in registered holding company systems; in approximately 35 of these applications, specific requests for financing authorization would not have been filed, had the proposed amended rule 52 been in place. Estimated savings per application would have been approximately $20,000 per application, and related legal, accounting, and management costs. Thus, for 35 applications filed in calendar year 1996, the aggregate savings would have been approximately $700,000. Moreover, the reduction in Commission staff hours associated with reviewing and analyzing these applications would have been approximately 1,250 hours per year (approximately ½ staff year). The only cost to the registered holding companies in complying with the amended rule will be the cost of completing a Form U–6B–2 after the issue or sale of any security under the rule. It is estimated that approximately one hour will be required to complete each form at an estimated cost of $100 per hour. Assuming 35 financing applications per year, the cost of compliance reporting would approximate $3,500 per year.

Paperwork Reduction Act

These rules are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been submitted to the Office of Management and Budget for approval to use them through September 30, 1998.

Statutory Authority

The Commission is amending rules 45 and 52 under sections 6, 9, 12 and 20 of the Public Utility Holding Company Act of 1935.

List of Subjects in 17 CFR Part 250

Electric utilities, Holding companies, Natural gas, Reporting and recordkeeping requirements, Securities.

Text of Final Rules

For the reasons set forth in the preamble, part 250 of chapter II, title 17, of the *Code of Federal Regulations* is amended as follows:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

2. Section 250.45 is amended by adding paragraph (b)(7) to read as follows:

§ 250.45 Loans, extensions of credit, donations and capital contributions to associate companies.

* * * * *

(b) *Exceptions.* * * *

(7) An agreement by any subsidiary company of a registered holding company to assume liability (as guarantor, co-maker, indemnitor, or otherwise) with respect to any security issued by any other subsidiary company in the same holding company system, provided that the issuance and sale of such security is exempt, and such assumption of liability constitutes the issuance of a security that is exempt, from the declaration requirements of section 6(a) of the Act (15 U.S.C. 79f(a)) under § 250.52.

* * * * *

3. Section 250.52 is amended by revising paragraphs (a) and (b), and by adding paragraph (e), to read as follows:

§ 250.52 Exemption of issue and sale of certain securities.

(a) Any registered holding-company subsidiary which is itself a public-utility company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and rules thereunder with respect to the issue and sale of any security, of which it is the issuer if:

(1) The issue and sale of the security are solely for the purpose of financing the business of the public-utility subsidiary company;

(2) The issue and sale of the security have been expressly authorized by the state commission of the state in which the subsidiary company is organized and doing business; and

(3) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company.

(b) Any subsidiary of a registered holding company which is not a holding company, a public-utility company, an investment company, or a fiscal or financing agency of a holding company, a public-utility company or an investment company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and related rules with respect to the issue and sale of any security of which it is the issuer if:

(1) The issue and sale of the security are solely for the purpose of financing the existing business of the subsidiary company; and

(2) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company; *Provided,* That any security issued to an associate company by any energy-related company subsidiary, as defined in § 250.58, shall not be exempt under these provisions unless, after giving effect to the issue of the security, the aggregate investment by a registered holding company or its subsidiary in the energy-related company subsidiary and all other energy-related company subsidiaries does not exceed the limitation in § 250.58(a)(1).

* * * * *

(e) A copy of any Certificate of Notification on Form U–6B–2 (§ 259.206) that is filed with this Commission under this section with respect to any security issued by a subsidiary of a registered holding company under paragraph (b) of this section and acquired by a public-utility company that is an associate company of the issuer, shall be submitted concurrently to each state commission having jurisdiction over the retail rates of the public-utility company.

Dated: February 20, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4855 Filed 2–25–98; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 30 and 202

[Docket No. FR–4106–F–02]

RIN 2502–AG78

Approval of Lending Institutions and Mortgagees Streamlining; Correction

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule; correction.

SUMMARY: On April 24, 1997, HUD issued a final rule that streamlined 24 CFR part 202 and made related changes to other parts of title 24. This document corrects technical errors that appeared in that final rule.

EFFECTIVE DATE: February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Lynn S. Herbert, Director, Lender Approval and Recertification Division, Room B–133–P3214, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 708–3976. (This is not a toll free number.) For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: As published on April 24, 1997, the final rule contains some technical errors that are in need of correction. In the April 24, 1997 final rule, an amendment was made to § 30.320(k) was in error. The amendment should have been made to current § 30.35(a)(4). In the second sentence of § 202.5(i), a reference was made to "the mortgagee" instead of "the Secretary". In the third sentence of § 202.7(a), a reference was made to a "supervised" lender or mortgagee instead of to a "nonsupervised" lender or mortgagee, and a reference to insured loans was inadvertently omitted. In § 202.9(a), a reference to an investing lender was inadvertently omitted

Accordingly, FR Doc. 97–10282, a final rule that amended 24 CFR parts 30 and 202, among other parts, is corrected as follows:

§ 30.320 [Corrected]

1. On page 20081, in the third column, the rule is corrected by removing the amendment to § 30.320, and in lieu of the amendment to § 30.320 revising § 30.35(a)(4) to read:

§ 30.35 Mortgages and lenders.

(a) * * *

(4) Makes a payment that is prohibited under § 202.5(l).

* * * * *

§ 202.5 [Corrected]

2. On page 20084, in the third column, the rule is corrected by removing "mortgagee" from the second sentence of § 202.5(i), and adding in its place, "Secretary".

3. On page 20085, in the third column, the third sentence of § 202.7(a) is corrected to read:

§ 202.7 Nonsupervised lenders and mortgagees.

(a) * * * A nonsupervised lender or mortgagee may originate, purchase, hold, service or sell insured mortgages, respectively.

* * * * *

4. On page 20086, third column, the third sentence of § 202.9(a) is corrected to read as follows:

§ 202.9 Investing lenders and mortgagees.

(a) * * * An investing lender or mortgagee may not service Title I loans or Title II mortgages without prior approval of the Secretary.

* * * * *

Dated: February 20, 1998.

Camille E. Acevedo,

Assistant General Counsel, Regulations.

[FR Doc. 98–4867 Filed 2–25–98; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS BONHOMME RICHARD (LHD 6) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January 8, 1998.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate, General, Navy Department,

200 Stovall Street, Alexandria, Virginia, 22332–2400, Telephone Number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS BONHOMME RICHARD (LHD 6) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS: Rule 21(a), pertaining to the location of the masthead lights over the fore and aft centerline of the ship; Annex I, section 2(g), pertaining to the distance of the sidelights above the hull; Annex I, section 3(a), petaining to the location of the foreward masthead light in the forward quarter of the ship; and the horizontal distance between the forward and after masthead lights; and Annex I, section 3(b), pertaining to the positioning of the sidelights in relationship to the forward masthead light, without interfering with its special functions as an amphibious assault ship. The Deputy Assistant Judge Advocate General (Admiralty) of the Navy has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Two of § 706.2 is amended by adding, in numerical order, the following entry for USS BONHOMME RICHARD:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE TWO

Vessel	Number	Masthead lights, distance to stbd of keel in meters; rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(K), annex I	Forward anchor light, number of; rule 30 (a)(i)	AFT anchor light, distance below flight dk in meters; rule 21(e), rule 30(a)(ii)	AFT anchor light, number of; rule 30(a)(ii)	Side lights, distance below flight dk in meters; 2(g), annex I	Side light, distance forward of forward masthead light in meters; § 2(b), annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), annex I
• • • • • • • • •									
USS BONHOMME RICHARD	LHD 6	9.0					2.9	89.6	
• • • • • • • • •									

* * * * *

3. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS BONHOMME RICHARD:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Fordward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
• • • • • • • • •					
USS BONHOMME RICHARD	LHD 6		X	X	39.6
• • • • • • • • •					

Dated: January 8, 1998.

R.R. Pixa,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 98–4933 Filed 2–25–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS DENVER (LPD 9) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 21, 1997.

FOR FURTHER INFORMATION CONTACT: Captain R. R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, Virginia, 22332–2400, Telephone Number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1065, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS DENVER (LPD 9) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special functions as a naval ship: Annex I, section 2(a)(i), pertaining to the height of the forward masthead light; Annex I, section 2 (g), pertaining to the distance of the sidelights above the hull; and, Annex I, section 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty) of the Navy has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table One of § 706.2 is amended by adding, in numerical order, the following entry for the USS DENVER:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), annex I
* * * * *	*	*
USS DENVER	LPD 9	4.4
* * * * *	*	*

* * * * *

3. Table Four, Paragraph 19 of § 706.2 is amended by adding, in numerical order, the following entry for the USS DENVER:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Distance in meters of sidelights above maximum allowed height
* * * * *	*	*
USS DENVER	LPD 9	4.9
* * * * *	*	*

* * * * *

4. Table Five of § 706.2 is amended by revising the entry for the USS DENVER to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than 2 ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS DENVER	LPD 9	N/A	N/A	X	54.7

Dated: November 21, 1997.

R.R. Pixa,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 98–4932 Filed 2–25–98; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208296–7296–01; I.D. 022098A]

Fisheries of the Exclusive Economic Zone Off Alaska; Offshore Component of Pollock in the Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the proposed first seasonal allowance of pollock apportioned to vessels harvesting pollock for processing by the offshore component in the BS.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 20, 1998, until 1200 hrs, A.l.t., April 15, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. processors is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(2)(ii), the proposed first seasonal allowance of pollock for vessels catching pollock for processing by the offshore component in the BS of the BSAI was established as 280,946 metric tons (mt) by the Interim 1998 Harvest Specifications of Groundfish for the BSAI (62 FR 65626, December 15, 1998).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the proposed first seasonal allowance of pollock for vessels catching pollock for processing by the offshore component in the BS has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 253,946 mt, and is setting aside the remaining 27,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the Bering Sea subarea of the BSAI.

This closure is effective from February 20, 1998, through 1200 hrs, A.l.t., April 15, 1998. Under § 679.20(a)(5)(i), the second seasonal allowance of pollock TAC will become available for directed fishing at 1200 hrs, A.l.t., September 1, 1998. Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the proposed first seasonal allowance of pollock for vessels catching pollock for processing by the offshore component in the BS of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. The fleet has already taken the proposed first seasonal allowance of pollock for vessels catching pollock for processing by the offshore component in the BS of the BSAI. Further delay would only result in overharvest which would disrupt the FMP's objective of providing sufficient pollock as bycatch to support other anticipated groundfish fisheries. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

Classification

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 20, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–4847 Filed 2–20–98; 3:51 pm]

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Proposed Rules

Federal Register
Vol. 63, No. 38
Thursday, February 26, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

[SPATS No. AR–030–FOR]

Arkansas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Arkansas regulatory program (hereinafter the "Arkansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to and/or additions of regulations pertaining to definitions; reclamation plans; disposal of excess spoil; steep slope mining; permits incorporating variances from approximate original contour restoration requirements for steep slope mining; prime farmlands; performance standards for coal exploration and prime farmland; signs and markers; topsoil and subsoil; hydrologic balance; backfilling and grading; procedures for assessment conference; and request for adjudicatory public hearing. The amendment is intended to revise the Arkansas program to be consistent with the corresponding Federal regulations and to enhance enforcement of the State program.

This document sets forth the times and locations that the Arkansas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.s.t., March 30, 1998. If requested, a public hearing on the proposed amendment will be held on March 23, 1998. Requests to speak at the hearing must be received by 4:00 p.m., c.s.t. on March 13, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

Copies of the Arkansas program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Arkansas Department of Pollution Control and Ecology, Surface Mining and Reclamation Division, 8001 National Drive, Little Rock, Arkansas 72219–8913, Telephone (501) 682–0744.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas program. Background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the November 21, 1980, **Federal Register** (45 FR 77003). Arkansas amended its program by submitting provisions that satisfied all of the conditions of the Secretary's approval of November 21, 1980. Effective January 22, 1982, OSM removed the conditions of the approval of the Arkansas permanent regulatory program. Information on the removal of the conditions can be found in the January 22, 1982, **Federal Register** (47 FR 3108). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 904.12, 904.15, and 904.16.

II. Description of the Proposed Amendment

By letter dated February 6, 1998 (Administrative Record No. AR–561), Arkansas submitted a proposed amendment to its program pursuant to SMCRA. Arkansas submitted the proposed amendment in response to a June 17, 1997, letter (Administrative Record No. AR–559) that OSM sent to Arkansas in accordance with 30 CFR 732.17(c), and at its own initiative. Arkansas proposes to amend the Arkansas Surface Coal Mining and Reclamation Code (ASCMRC). The full text of the proposed program amendment submitted by Arkansas is available for public inspection at the locations listed above under **ADDRESSES**. A brief discussion of the proposed amendment is presented below.

1. Editorial and Reference Changes

Arkansas proposes to make editorial and reference changes in the following sections of the ASCMRC: 780.18(b)(7), Reclamation plan: general requirements; 785.15(b) and (c), Steep slope mining; 785.16(a), (c)(6), and (d)(1), Permits incorporating variances from approximate original contour restoration requirements for steep slope mining; 815.15(k), Performance standards for coal exploration; 816.11(g), Signs and markers; 816.43(e) and (f)(5), Hydrologic balance: diversions and conveyance of overland flow, shallow groundwater flow, (and ephemeral streams); 816.44(c), Hydrologic balance: stream channel diversions; 816.48(b), Hydrologic balance: acid-forming and toxic-forming spoil; and 816.107, Backfilling and grading previously mined areas.

2. Section 761.5, Definitions

Arkansas proposes to delete the word "no" from the term "No significant recreational, timber, economic or other values incompatible with surface coal mining operations" so that it reads "Significant recreational, timber, economic or other values incompatible with surface coal mining operations."

3. Section 780.25(a)(3)(i), Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams and Embankments

Arkansas proposes to amend this section by deleting all language following "qualified registered professional engineer."

4. Section 780.35, Disposal of Excess Spoil

At paragraph (b), Arkansas proposes to amend the introductory text by adding the phrase "Except for the disposal of excess spoil on preexisting benches," to the beginning sentence.

5. Section 785.17, Prime Farmlands

Arkansas proposes to add new paragraph (d)(5) to read as follows:

(5) The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the Director and the consent of all affected property owners within the permit area must be obtained.

6. Sections 816.21, Topsoil: General Requirements; 816.22, Topsoil: Removal; 816.23, Topsoil: Storage; 816.24, Topsoil: Redistribution; and 816.25, Topsoil: Nutrients and Soil Amendments

Arkansas proposes to revise section 816.22, Topsoil: removal, by deleting the existing language, adding new language, and changing the section name to Topsoil and subsoil. The revised section pertains to topsoil removal, substitution, storage, and redistribution, and subsoil segregation. Arkansas also proposes to remove existing sections 816.21, 816.23, 816.24, and 816.25 and to combine their provisions into revised section 816.22.

7. Section 816.56, Hydrologic Balance: Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities

Arkansas proposes to amend this section to read as follows:

Before abandoning the permit area or seeking bond release, the person who conducts the (surface mining activities) [underground mining activities] shall ensure that all temporary structures are removed and reclaimed, and renovate, if necessary, all permanent sedimentation ponds, diversions, impoundments, and treatment facilities to meet criteria specified in the detailed design plan for the permanent structures and impoundments, and the requirements of this Chapter.

8. Section 816.74, Disposal of Excess Spoil: Pre-Existing Benches

a. Arkansas proposes to revise paragraphs (a) through (d), redesignate existing paragraph (e) as paragraph (h), and add new paragraphs (e), (f), and (g).

b. Revised paragraph (a) will allow the Department to approve the disposal of excess spoil through placement on a pre-existing bench if the affected portion of the pre-existing bench is permitted and the standards in sections 816.102(c), (e) through (h), and (i) and the requirements of this section are met.

c. Revised paragraph (b) will require that all vegetation and organic materials be removed from the affected portion of the pre-existing bench before the placement of the excess spoil. Also, any available topsoil on the bench shall be removed, stored and redistributed in accordance with section 816.22. Substitute or supplemental materials may be used in accordance with section 816.22(b).

d. Revised paragraph (c) will require that fill be designed and constructed using current, prudent engineering practices and that the design be certified by a registered professional engineer. Paragraph (c) also specifies how the spoil shall be handled.

e. Arkansas proposes new paragraphs (e) through (g) to read as follows:

(e) All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(f) Permanent impoundments may not be constructed on preexisting benches backfilled with excess spoil under this regulation.

(g) Final configuration of the backfill must be compatible with the natural drainage patterns and the surrounding areas, and support the approved postmining land use.

9. Sections 816.102, Backfilling and Grading: General Grading Requirements and 816.103, Backfilling and Grading: Covering Coal and Acid and Toxic Forming Materials

Arkansas proposes to delete all existing language in this section and replace it with new language pertaining to general backfilling and grading requirements that are applicable to surface and underground coal mining operations. The parts of this section that apply strictly to surface coal mining operations are enclosed in parentheses. The parts that apply strictly to underground coal mining operations are italicized and are enclosed in brackets. Arkansas also proposes to remove existing section 816.103 and to incorporate its content into revised section 816.102(f).

10. Section 816.104–S, Backfilling and Grading: Thin Overburden

Arkansas proposes to delete all existing language in this section and replace it with new language that provides a definition for "thin overburden" and performance standards for backfilling and grading where thin overburden occurs.

11. Section 816.105–S, Backfilling and Grading: Thick Overburden

Arkansas proposes to delete all existing language in this section and replace it with new language that provides a definition for "thick overburden" and performance standards for backfilling and grading where thick overburden occurs.

12. Section 816.106, Backfilling and Grading: Steep Slopes and Part 826, Special State Program Performance Standards—Operations on Steep Slopes

Arkansas proposes to add new section 816.106 regarding backfilling and grading and performance standards for surface coal mining activities on steep slopes. Arkansas also proposes to remove existing part 826 and to incorporate its provisions into new section 816.106.

13. Section 816.107, Backfilling and Grading Previously Mined Areas

Arkansas proposes to revise this section by deleting paragraph (b) regarding the backfilling and grading of pre-existing highwalls at remaining operations.

14. Part 823, Special State Program Performance Standards—Operations on Prime Farmland

Arkansas proposes to delete the existing language in this part and to replace it with new language. The new language pertains to special environmental protection performance, reclamation, and design standards for surface coal mining and reclamation operations on prime farmland.

15. Section 845.18, Procedures for Assessment Conference

At paragraph (b), Arkansas proposes to revise the start of the 60-day period in which an assessment conference must be held. Currently the assessment conference is to be held within 60 days from the date of issuance of the proposed assessment. Arkansas proposes that the assessment conference

be held within 60 days from the date the conference request is received.

16. Section 845.19, Request for Adjudicatory Public Hearing

At paragraph (a), Arkansas proposes to revise the amount of time in which a person charged with a violation may contest the proposed penalty or the fact of the violation from the date of service of the conference officer's action. Currently the person charged with a violation has 15 days, from the date of service of the conference officer's action, to contest the proposed penalty or the fact of the violation. Arkansas proposes to increase the time to 30 days.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Arkansas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on March 13, 1998. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsection (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1291(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(3)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 19, 1998.

Russell W. Frum,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98–4862 Filed 2–25–98; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51, 53, and 64

[CC Docket No. 95–20, FCC 98–8]

Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review—Review of Computer III and ONA Safeguards and Requirements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing this Notice of Proposed Rulemaking seeking comment on the remand from the United States Court of Appeals for the Ninth Circuit relating to the replacement of structural separation requirements for Bell Operating (BOC) provision of enhanced services with nonstructural safeguards, as well as the effectiveness of the Commission's *Computer III* and ONA nonstructural rules in general. The Commission believes it is necessary not only to respond to the issues remanded by the Ninth Circuit, but also to reexamine the Commission's nonstructural safeguards regime governing the provision of information services by the BOCs in light of the Telecommunications Act of 1996 and ensuing changes in telecommunications technologies and markets.

DATES: Comments are due on or before March 27, 1998 and Reply Comments are due on or before April 23, 1998. Written comments by the public on the proposed information collections are due March 27, 1998. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before April 27, 1998.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th St., N.W., Washington, D.C. 20036. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Lisa Sockett, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. For additional information concerning the information collections contained in this NPRM contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted January 29, 1998 and released January 30, 1998 (FCC 98–8). This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the OMB for review under the PRA. The OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. The full text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., N.W., Room 239, Washington, D.C. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc988.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

Paperwork Reduction Act

This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due April 27, 1998. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None.

Title: Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review—Review of *Computer III* and ONA Safeguards and Requirements.

Form No.: N/A.

Type of Review: New collection.

Information collection	No. of respondents (approx.)	Estimated time per response	Total annual burden
Consolidation of generic information in semi-annual reports	5	4 hours (2 hours twice a year)	20 hours.

Respondents: Bell Operating Companies.

Estimated costs per respondent: $0.

Needs and Uses: The NPRM seeks comment on a number of issues, the result of which could lead to the imposition of information collections.

Synopsis of Notice of Proposed Rulemaking

I. Introduction

1. In the Commission's *Computer III* and *Open Network Architecture* (ONA) proceedings, the Commission sought to establish appropriate safeguards for the provision by the Bell Operating Companies (BOCs) of "enhanced" services.[1] Examples of enhanced services include, among other things, voice mail, electronic mail, electronic store-and-forward, fax store-and-forward, data processing, and gateways to online databases. Underlying this effort, as well as our reexamination of the *Computer III* and ONA rules in this Further Notice of Proposed Rulemaking (Further Notice), are three complementary goals. First, we seek to enable consumers and communities across the country to take advantage of innovative "enhanced" or "information" services[2] offered by both

[1] Basic services, such as "plain old telephone service" (POTS), are regulated as tariffed services under Title II of the Communications Act. Enhanced services use the existing telephone network to deliver services that provide more than a basic transmission offering. *Bell Operating Companies' Joint Petition for Waiver of Computer II Rules*, Memorandum Opinion & Order, 10 FCC Rcd 1724 n.3 (1995) (*Interim Waiver Order*); 47 CFR 64.702(a). The terms "enhanced service" and "basic service" are defined and discussed more fully *infra* at ¶ 38.

[2] The terms "enhanced services" and "information services" are used interchangeably in this Further Notice.

the BOCs and other information service providers (ISPs). Second, we seek to ensure the continued competitiveness of the already robust information services market. Finally, we seek to establish safeguards for BOC provision of enhanced or information services that make common sense in light of current technological, market, and legal conditions.

2. Under *Computer III* and ONA, the BOCs are permitted to provide enhanced services on an "integrated" basis (*i.e.*, through the regulated telephone company), subject to certain "nonstructural safeguards," as described more fully below. These rules replaced those previously established in *Computer II*, which required AT&T (and subsequently the BOCs) to offer enhanced services through structurally separate subsidiaries. On February 21, 1995, the Commission released a Notice of Proposed Rulemaking (*Computer III Further Remand Notice*) following a remand from the United States Court of Appeals for the Ninth Circuit (*California III*). The *Computer III Further Remand Notice* sought comment on both the remand issue in *California III* relating to the replacement of structural separation requirements for BOC provision of enhanced services with nonstructural safeguards, as well as the effectiveness of the Commission's *Computer III* and ONA nonstructural rules in general.

3. Since the adoption of the *Computer III Further Remand Notice*, significant changes have occurred in the telecommunications industry that affect our analysis of the issues raised in this proceeding. Most importantly, on February 8, 1996, Congress passed the Telecommunications Act of 1996 (1996 Act) to establish "a pro-competitive, de-regulatory national policy framework" in order to make available to all Americans "advanced telecommunications and information technologies and services by opening all telecommunications markets to competition." As the Supreme Court recently noted, the 1996 Act "was an unusually important legislative enactment" that changed the landscape of telecommunications regulation.

4. The 1996 Act significantly alters the legal and regulatory framework governing the local exchange marketplace. Among other things, the 1996 Act opens local exchange markets to competition by imposing new interconnection, unbundling, and resale obligations on all incumbent local exchange carriers (LECs), including the BOCs. In addition, the 1996 Act allows the BOCs, under certain conditions, to enter markets from which they previously were restricted, including the interLATA telecommunications and interLATA information services markets. In some cases, the 1996 Act requires a BOC to offer services in these markets through a separate affiliate.[3] In addition, the 1996 Act incorporates new terminology and definitions that differ from those the Commission had been using.

5. In light of the 1996 Act and ensuing changes in telecommunications technologies and markets, we believe it is necessary not only to respond to the issues remanded by the Ninth Circuit, but also to reexamine the Commission's nonstructural safeguards regime governing the provision of information services by the BOCs. Congress recognized, in passing the 1996 Act, that competition will not immediately supplant monopolies and therefore imposed a series of safeguards to prevent the BOCs from using their existing market power to engage in improper cost allocation and discrimination in their provision of interLATA information services, among other things. These statutory safeguards seek to address many of the same anticompetitive concerns as, but do not explicitly displace, the safeguards established by the Commission in the *Computer II*, , and ONA proceedings. We therefore issue this Further Notice to address issues raised by the interplay between the safeguards and terminology established in the 1996 Act and the regime. These 1996 Act-related issues were not raised in the *Computer III Further Remand Notice*. We therefore ask interested parties to respond to the issues raised in this Further Notice and, to the extent that parties want any arguments made in response to the *Computer III Further Remand Notice* to be made a part of the record for this Further Notice, we ask them to restate those arguments in their comments.

6. We note, in addition, that Congress required the Commission to conduct a biennial review of regulations that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be "no longer necessary in the public interest." Accordingly, the Commission has begun a comprehensive 1998 biennial review of telecommunications and other regulations to promote "meaningful deregulation and streamlining where competition or other considerations warrant such action." In this Further Notice, therefore, we seek comment on whether certain of the Commission's current and ONA rules are "no longer necessary in the public interest." To the extent parties identify additional *Computer III* and ONA rules they believe warrant review under the Act, we invite those comments as well.

7. Consistent with the 1996 Act, in this Further Notice we seek to strike a reasonable balance between our goal of reducing and eliminating regulatory requirements when appropriate as competition supplants the need for such requirements to protect consumers and competition, and our recognition that, until full competition is realized, certain safeguards may still be necessary. We want to encourage the BOCs to provide new technologies and innovative information services that will benefit the public, as well as ensure that the BOCs will make their networks available for the use of competitive providers of such services. We therefore seek comment in this Further Notice on, among other things, the following tentative conclusions:

—Notwithstanding the 1996 Act's adoption of separate affiliate requirements for BOC provision of certain information services (most notably, interLATA information services), the Act's overall pro-competitive, de-regulatory framework, as well as our public interest analysis, support the continued application of the Commission's nonstructural safeguards regime to BOC provision of intraLATA information services [paragraphs 43–59];

—Given the protections established by the 1996 Act and our ONA rules, we should eliminate the requirement that BOCs file Comparably Efficient Interconnection (CEI) plans and obtain Common Carrier Bureau (Bureau) approval for those plans prior to providing new intraLATA information services [paragraphs 60–65];

—At a minimum, we should eliminate the CEI-plan requirement for BOC intraLATA information services provided through an Act-mandated affiliate under section 272 or 274 [paragraphs 66–72]; and

—The Commission's network information disclosure rules established pursuant to section 251(c)(5) should supersede certain,

[3] We note that on December 31, 1997, the United States District Court for the Northern District of Texas held that sections 271–275 of the Act are a bill of attainder and thus are unconstitutional as to SBC Corporation and U S WEST. *SBC Communications, Inc.* v. *Federal Communications Comm'n*, No. 7:97–CV–163–X, 1997 WL 800662 (N.D. Tex. Dec. 31, 1997) (*SBC* v. *FCC*) (ruling subsequently extended to Bell Atlantic), *request for stay pending*. In general, the analysis in this Further Notice assumes the continued applicability of these provisions to the Bell companies. At appropriate places in this Further Notice, however, we ask commenters to assess the impact of *SBC* v. *FCC* on our analysis.

but not all, of the Commission's previous network information disclosure rules established in *Computer II* and *Computer III* [paragraph 122].

We also generally seek comment on, among other things, the following issues:

—Whether enactment and implementation of the 1996 Act, as well as other developments, should alleviate the Ninth Circuit's concern about the level of unbundling mandated by ONA [paragraphs 29–36];

—Whether the Commission's definition of the term "basic service" and the 1996 Act's definition of "telecommunications service" should be interpreted to extend to the same functions [paragraphs 38–42];

—Whether the Commission's current ONA requirements have been effective in providing ISPs with access to the basic services that ISPs need to provide their own information service offerings [paragraphs 85–90];

—Whether the Commission, under its general rulemaking authority, should extend to ISPs some or all section 251-type unbundling rights, which the Commission previously concluded was not required by section 251 of the Act [paragraphs 94–96]; and

—How the Commission's current ONA reporting requirements should be streamlined and modified [paragraphs 99–116].

8. As set forth in the 1998 appropriations legislation for the Departments of Commerce, Justice, and State, the Commission is required to undertake a review of its implementation of the provisions of the 1996 Act relating to universal service, and to submit its review to Congress no later than April 10, 1998. The Commission must review, among other things, the Commission's interpretations of the definitions of "information service" and "telecommunications service" in the 1996 Act, and the impact of those interpretations on the current and future provision of universal service to consumers, including consumers in high cost and rural areas. We recognize that there is a some overlap between the inquiry in this Further Notice about the relationship between the Commission's definition of the term "basic service" and the 1996 Act's definition of "telecommunications service," and the issues to be addressed in the Commission's report to Congress. Furthermore, we recognize that other aspects of this Further Notice also may be affected by the analysis in the Universal Service Report. We note that the inquiry in this Further Notice is primarily focused on the rules and terminology the Commission should be using in the context of its *Computer II* and *Computer III* requirements. We also note that the order in this proceeding will be issued after the Universal Service Report is submitted to Congress, and will thus take into account any conclusions made in that report.

II. Background

A. Overview of Computer III/ONA and Related Court Decisions

9. We discussed in detail the factual history of *Computer III*/ONA in the *Computer III Further Remand Notice*. One of the Commission's main objectives in the *Computer III* and ONA proceedings has been to permit the BOCs to compete in unregulated enhanced services markets while preventing the BOCs from using their local exchange market power to engage in improper cost allocation and unlawful discrimination against ESPs. The concern has been that BOCs may have an incentive to use their existing market power in local exchange services to obtain an anticompetitive advantage in these other markets by improperly allocating to their regulated core businesses costs that would be properly attributable to their competitive ventures, and by discriminating against rival, unaffiliated ESPs in the provision of basic network services in favor of their own enhanced services operations. In *Computer II*, the Commission addressed these concerns by requiring the then-integrated Bell System to establish fully structurally separate affiliates in order to provide enhanced services. Following the divestiture of AT&T in 1984, the Commission extended the structural separation requirements of *Computer II* to the BOCs.

10. In *Computer III*, after reexamining the telecommunications marketplace and the effects of structural separation during the six years since *Computer II*, the Commission determined that the benefits of structural separation were outweighed by the costs, and that nonstructural safeguards could protect competing ESPs from improper cost allocation and discrimination by the BOCs while avoiding the inefficiencies associated with structural separation. The Commission concluded that the advent of more flexible, competition-oriented regulation would permit the BOCs to provide enhanced services integrated with their basic network facilities. Towards this end, the Commission adopted a two-phase system of nonstructural safeguards that permitted the BOCs to provide enhanced services on an integrated basis. The first phase required the BOCs to obtain Commission approval of a service-specific CEI plan in order to offer a new enhanced service. In these plans, the BOCs were required to explain how they would offer to ESPs all the underlying basic services the BOCs used to provide their own enhanced service offerings, subject to a series of "equal access" parameters. Thus, the CEI phase of nonstructural safeguards imposed obligations on the BOCs only to the extent they offered specific enhanced services. The Commission indicated that such a CEI requirement could promote the efficiencies of competition in enhanced services markets by permitting the BOCs to participate in such markets provided they open their networks to competitors.

11. During the second phase of implementing *Computer III*, the Commission required the BOCs to develop and implement ONA plans. The ONA phase was intended to broaden a BOC's unbundling obligations beyond those required in the first phase. ONA plans explain how a BOC will unbundle and make available to unaffiliated ESPs network services in addition to those the BOC uses to provide its own enhanced services offerings. These ONA plans were required to comply with a defined set of criteria in order for the BOC to obtain structural relief on a going-forward basis. This means that a BOC would not need to obtain approval of CEI plans prior to offering specific enhanced services on an integrated basis. The Commission also required the BOCs to comply with various other nonstructural safeguards in the form of rules related to network disclosure, customer proprietary network information (CPNI), and quality, installation, and maintenance reporting. All of these nonstructural safeguards were designed to promote the efficiency of the telecommunications network, in part by permitting the technical integration of basic and enhanced services and in part by preserving competition in the enhanced services market through the control of potential anticompetitive behavior by the BOCs.

12. In 1990, the Court of Appeals for the Ninth Circuit vacated three orders in the *Computer III* proceeding, finding that the Commission had not adequately justified the decision to rely on (nonstructural) cost accounting safeguards as protection against cross-subsidization of enhanced services by the BOCs. In response to this remand, the Commission adopted the *BOC Safeguards Order*, which strengthened

the cost accounting safeguards, and reaffirmed the Commission's conclusion that nonstructural safeguards should govern BOC participation in the enhanced services industry, rather than structural separation requirements.

13. During the period from 1988 to 1992, the Commission approved the BOCs' ONA plans, which described the basic services that the BOCs would provide to unaffiliated and affiliated ESPs and the terms on which these services would be provided. During the two-year period from 1992 to 1993, the Bureau approved the lifting of structural separation for individual BOCs upon their showing that their initial ONA plans complied with the requirements of the *BOC Safeguards Order*, and these decisions were later affirmed by the Commission.

14. After *California I* and the Commission's response in the *BOC Safeguards Order*, the Ninth Circuit in *California II* upheld the Commission's orders approving BOC ONA plans. In *California II*, the court concluded that the Commission had scaled back its vision of ONA since *Computer III* by approving BOC ONA plans before "fundamental unbundling" had been achieved. The court also concluded that the issue of whether implementation of ONA plans justified the lifting of structural separation, as the Commission had determined, was not properly before it.

15. In *California III*, the Court of Appeals for the Ninth Circuit partially vacated the Commission's *BOC Safeguards Order*. The *California III* court found that, in granting full structural relief based on the BOC ONA plans, the Commission had not adequately explained its apparent "retreat" from requiring "fundamental unbundling" of BOC networks as a component of ONA and a condition for lifting structural separation. The court was therefore concerned that ONA unbundling, as implemented, failed to prevent the BOCs from engaging in discrimination against competing ESPs in providing access to basic services. The court did find, however, that the Commission had adequately responded to its concerns regarding cost-misallocation by strengthening its cost accounting rules and introducing a system of "price cap" regulation; the court indicated its belief that these strengthened safeguards would significantly reduce the BOCs' incentive and ability to misallocate costs. The court also upheld the scope of federal preemption adopted in the *BOC Safeguards Order*.

16. In response to *California III*, the Bureau issued the *Interim Waiver Order*, which reinstated the requirement that BOCs must file CEI plans, and obtain Commission approval of those plans, to continue to provide specific enhanced services on an integrated basis. Also in response, the Commission issued the *Computer III Further Remand Notice*, 60 FR 12529, March 7, 1995, which sought comment on the *California III* court's remand question regarding the sufficiency of ONA unbundling as a condition of lifting structural separation, and on the general issue of whether relying on nonstructural safeguards serves the public interest.

B. Overview of the 1996 Act

17. Since the *California III* remand and the Commission's release of the *Computer III Further Remand Notice*, the 1996 Act became law and the Commission has conducted a number of proceedings to implement its provisions. These developments give us a fresh perspective from which to evaluate the Commission's current regulatory framework for the provision of information services. In this section, we describe some of the major provisions of the 1996 Act, and in later sections we examine how those provisions may affect our current rules.

1. Opening the Local Exchange Market

18. Various provisions of the 1996 Act are intended to open local exchange markets to competition. Section 251(c) of the Act requires, among other things, incumbent LECs, including the BOCs and GTE, to provide to requesting telecommunications carriers interconnection and access to unbundled network elements at rates, terms, and conditions that are just, reasonable, and nondiscriminatory, and to offer telecommunications services for resale. Section 253(a) bars state and local governments from imposing certain legal requirements that prohibit or have the effect of prohibiting the ability of any entity to provide any telecommunications service, and section 253(d) authorizes the Commission to preempt such legal requirements to the extent necessary to correct inconsistency with the Act. As a result, telecommunications carriers may now enter the local exchange market, and compete with the incumbent LEC, through access to unbundled network elements, resale, or through construction of network facilities.

19. In implementing section 251 of the Act, the Commission prescribed certain minimum points of interconnection necessary to permit competing carriers to choose the most efficient points at which to interconnect with the incumbent LEC's network. The Commission also adopted a minimum list of unbundled network elements (UNEs) that incumbent LECs must make available to new entrants, upon request. In Parts III and IV below, we discuss and seek comment on the potential impact of these unbundling requirements in more detail, both with respect to the issue in *California III* regarding the Commission's justification of ONA unbundling as a condition of lifting structural separation, as well as our overall reexamination of the Commission's current nonstructural safeguards framework.

2. BOC Provision of Information Services

20. The 1996 Act conditions the BOCs' entry into the market for many in-region interLATA services, among other things, on their compliance with the separate affiliate, accounting, and nondiscrimination requirements set forth in section 272. In the *Non-Accounting Safeguards Order*, 62 FR 2927, January 21, 1997, we noted that these safeguards are designed to prohibit anticompetitive discrimination and improper cost allocation while still permitting the BOCs to enter markets for certain interLATA telecommunications and information services, in the absence of full competition in the local exchange marketplace. We also concluded in the *Non-Accounting Safeguards Order* that the Commission's *Computer II*, *Computer III*, and ONA requirements are consistent with section 272 of the Act, and continue to govern the BOCs' provision of intraLATA information services, since section 272 only addresses BOC provision of interLATA services.

21. Sections 260, 274, and 275 of the Act set forth specific requirements governing the provision of telemessaging, electronic publishing, and alarm monitoring services, respectively, by the BOCs and, in certain cases, by incumbent LECs. Section 260 delineates the conditions under which incumbent LECs, including the BOCs, may offer telemessaging services. We affirmed our conclusion in the *Non-Accounting Safeguards Order* that, since telemessaging service is an "information service," BOCs that offer interLATA telemessaging services are subject to the separation requirements of section 272. We further concluded that the *Computer III*/ONA requirements are consistent with the requirements of section 260(a)(2), and, therefore, BOCs may offer intraLATA telemessaging services on an integrated basis subject to both *Computer III*/ONA and the requirements in section 260.

22. Section 274 permits the BOCs to provide electronic publishing services, whether interLATA or intraLATA, only through a "separated affiliate" or an "electronic publishing joint venture" that meets certain separation, nondiscrimination, and joint marketing requirements in that section. The Commission found that there was no inconsistency between the nondiscrimination requirements of *Computer III*/ONA and section 274(d). We therefore found that the *Computer III*/ONA requirements continue to govern the BOCs' provision of intraLATA electronic publishing. We also noted that the nondiscrimination requirements of section 274(d) apply to the BOCs' provision of both intraLATA and interLATA electronic publishing.

23. Section 275 of the Act prohibits the BOCs from providing alarm monitoring services until February 8, 2001, although BOCs that were providing alarm monitoring services as of November 30, 1995 are grandfathered. Section 275 of the Act does not impose any separation requirements on the provision of alarm monitoring services. We concluded in the *Alarm Monitoring Order*, 62 FR 16093, April 4, 1997 that the *Computer III*/ONA requirements are consistent with the requirements of section 275(b)(1), and therefore continue to govern the BOCs' provision of alarm monitoring service. We discuss the potential impact of the Act's new requirements for BOC provision of certain information services on our cost-benefit analysis of structural versus nonstructural safeguards in more detail in Part IV.B.

III. California III Remand

A. Background

24. In *California III*, the Ninth Circuit reviewed the *BOC Safeguards Order*, in which the Commission reaffirmed its earlier determination to remove structural separation requirements imposed on a BOC's provision of enhanced services, based on a BOC's compliance with ONA requirements and other nonstructural safeguards. The court found that, in the *BOC Safeguards Order*, and in the orders implementing ONA, the Commission had "changed its requirements for, or definition of, ONA so that ONA no longer contemplates fundamental unbundling." Because, in the Ninth Circuit's view, the Commission had not adequately explained why this perceived shift did not undermine its decision to rely on the ONA safeguards to grant full structural relief, the court remanded the proceeding to the Commission.

25. In the *Computer III Phase I Order*, (51 FR 24350 (July 3, 1986)) the Commission declined to adopt any specific network architecture proposals or specific unbundling requirements, but instead set forth general standards for ONA. BOCs were required to file initial ONA plans presenting a set of "unbundled basic service functions that could be commonly used in the provision of enhanced services to the extent technologically feasible." The Commission stated that, by adopting general requirements rather than mandating a particular architecture for implementing ONA, it wished to encourage development of efficient interconnection arrangements. The Commission also noted that inefficiencies might result from "unnecessarily unbundled or splintered services."

26. The *Computer III Phase I Order* required the BOCs to meet a defined set of unbundling criteria in order for structural separation to be lifted. In the *BOC ONA Order*, (54 FR 3435 (January 24, 1989)) the Commission generally approved the "common ONA model" proposed by the BOCs. The common ONA model was based on the existing architecture of the BOC local exchange networks, and consisted of unbundled services categorized as basic service arrangements (BSAs), basic service elements (BSEs), complementary network services (CNSs), and ancillary network services (ANSs).

27. In the *BOC ONA* proceeding, certain commenters criticized the common ONA model. The commenters argued that the BOCs had avoided the *Computer III Phase I Order* unbundling requirements by failing to "disaggregate communications facilities and services on an element-by-element basis." They urged the Commission to adopt a more "fundamental" concept of unbundling in the ONA context, by requiring the BOCs to unbundle facilities such as loops, as well as switching functions, inter-office transmission, and signalling. Specifically, they claimed that BSAs could be further unbundled; *e.g.*, trunks could be unbundled from the circuit-switched, trunk-side BSA, so that ESPs could connect their own trunks to BOC switches.

28. In the *BOC ONA Order*, the Commission rejected arguments that ONA, as set forth in the *Computer III Phase I Order*, required unbundling more "fundamental" than that set forth in the "common ONA model" proposed by the BOCs. The Commission indicated that the *Computer III Phase I Order* anticipated that the BOCs would unbundle network services, not facilities, and determined that the ONA services developed by the BOCs under the common ONA model were consistent with the examples of service unbundling set forth in the *Computer III Phase I Order*. The Ninth Circuit, however, agreed with the view that the Commission's approval of the BOC ONA plans, and subsequent lifting of structural separation, was a retreat from a "requirement" of "fundamental unbundling."

B. Subsequent Events May Have Alleviated the Ninth Circuit's California III Concerns

29. In this section, we seek comment on whether the enactment and implementation of the 1996 Act, as well as other developments, should alleviate the Ninth Circuit's underlying concern about the level of unbundling mandated by ONA. Section 251 of the Act requires incumbent LECs, including the BOCs and GTE, to provide to requesting telecommunications carriers interconnection and access to unbundled network elements at rates, terms, and conditions that are just, reasonable, and nondiscriminatory, and to offer telecommunications services for resale. Section 251 also requires incumbent LECs to provide for physical collocation at the LEC's premises of equipment necessary for interconnection or access to unbundled network elements, under certain conditions.

30. In its regulations implementing these statutory provisions, the Commission identified a minimum list of network elements that incumbent LECs are required to unbundle, including local loops, network interface devices (NIDs), local and tandem switching capabilities, interoffice transmission facilities (often referred to as trunks), signalling networks and call-related databases, operations support systems (OSS) facilities, and operator services and directory assistance. Additional unbundling requirements may be specified during voluntary negotiations between carriers, by state commissions during arbitration proceedings, or by the Commission as long as such requirements are consistent with the 1996 Act and the Commission's regulations. We note that the 1996 Act creates particular incentives for the BOCs to unbundle and make available the elements of their local exchange networks. For example, section 271 provides that a BOC may gain entry into the interLATA market in a particular state by demonstrating, *inter alia*, that it has entered into access and interconnection agreements with competing telephone exchange service providers that satisfy the "competitive

checklist" set forth in section 271(c)(2)(B).

31. In our view, the unbundling requirements imposed by section 251 and our implementing regulations (hereinafter referred to as "section 251 unbundling") are essentially equivalent to the "fundamental unbundling" requirements proposed by certain commenters, and rejected by the Commission as premature, in the *BOC ONA Order*. These commenters asked the Commission to require the BOCs to unbundle network elements such as loops, switching functions, inter-office transmission, and signalling. Section 251(c)(3) and the Commission's implementing regulations require those elements, and others, to be unbundled by the BOCs, and by other incumbent LECs that are subject to the requirements of section 251(c). In addition, the type and level of unbundling under section 251 is different and more extensive than that required under ONA. This may be because one of Congress's primary goals in enacting section 251—to bring competition to the largely monopolistic local exchange market—is more far-reaching than the Commission's goal for ONA, which has been to preserve competition and promote network efficiency in the developing, but highly competitive, information services market.

32. We recognize that, according to the terms of section 251, only "requesting telecommunications carriers" are directly accorded rights to interconnect and to obtain access to unbundled network elements.[4] In that regard, the section 251 unbundling requirements do not provide access and interconnection rights to the identical class of entities as does the ONA regime, since these rights do not extend to entities that provide solely information services ("pure ISPs"). We also recognize that the development of competition in the local exchange market has not occurred as rapidly as some expected since the enactment of the 1996 Act.

33. We believe, however, that section 251 is intended to bring about competition in the local exchange market that, ultimately, will result in increased variety in service offerings and lower service prices, to the benefit of all end-users, including ISPs. Moreover, because local telecommunications services are important inputs to the information services ISPs provide, ISPs are uniquely positioned to benefit from an increasingly competitive local exchange market. There is evidence, for example, that carriers that have direct rights under section 251 will compete with the incumbent LECs to provide pure ISPs with the basic network services that ISPs need to create their own information service offerings, either by obtaining unbundled network elements for the provision of telecommunications services or through the resale of such services. As a result, incumbent LECs have an incentive to provide an increased variety of telecommunications services to pure ISPs at lower prices in response to the market presence of such competitors. Pure ISPs also could enter into partnering or teaming arrangements with carriers that have direct rights under section 251. In addition, ISPs can obtain certification as telecommunications service providers in order to receive direct benefits under section 251. We also note that many ISPs that currently provide both telecommunications services and information services will have the benefit of both section 251 unbundling as well as ONA.

34. For all these reasons, the fact that section 251's access and interconnection rights apply by their terms only to a "requesting telecommunications carrier" does not, in our view, change our conviction that the 1996 Act, as well as other factors, should alleviate the court's underlying concern in *California III* that the level of unbundling required under ONA does not provide sufficient protection against access discrimination. We seek comment on this analysis. In light of several recent court decisions bearing on these issues, we also ask commenters to address how the opinions of the Eighth Circuit Court of Appeals, including the decision regarding the recombination of unbundled network elements, as well as the decision of the United States District Court for the Northern District of Texas concerning the constitutionality of sections 271 through 275 of the Act, affect our analysis.

35. In addition to the changes engendered by the 1996 Act, there have been other regulatory and market-based developments that, we believe, also should alleviate the court's underlying concern about whether the level of unbundling mandated by ONA provides sufficient protection against access discrimination. For example, the Commission's *Expanded Interconnection* proceeding requires Class A LECs, including the BOCs and GTE, to allow all interested parties to provide competitive interstate special access, transport, and tandem switched transport by interconnecting their transmission facilities with the LECs' networks. Competing ISPs that utilize transmission facilities thus may provide certain transport functions as part of their enhanced services independent of the *Computer III* framework. These additional interconnection requirements, together with section 251 unbundling and the Commission's current ONA requirements, further help to protect ISPs against access discrimination by the BOCs. We seek comment on this analysis.

36. In addition, the level of competition within the information services market, which the Commission termed "truly competitive" as early as 1980, has continued to increase markedly as new competitive ISPs have entered the market. The phenomenal growth of the Internet over the past several years illustrates how robustly competitive one sector of the information services market has become. Recent surveys suggest that there are some 3,000 Internet access providers in the United States; these providers range from small start-up operations, to large providers such as IBM and AT&T, to consumer online services such as America Online. We believe that other sectors of the information services market have also continued to grow, as we observed in the *Computer III Further Remand Notice*. The presence of well-established participants in the information services market, such as EDS, MCI, AT&T, Viacom, Times-Mirror, General Electric, and IBM, may make it more difficult for BOCs to engage in access discrimination. For example, the *California I* court indicated that "the emergence of powerful competitors such as IBM, which have the resources and expertise to monitor the quality of access to the network, reduces the BOCs' ability to discriminate in providing access to their competitors." We seek comment on whether the sustained growth of competition within the information services market,

[4] *See* 47 U.S.C. 251(c)(2), (c)(3). The Commission determined that entities that provide both telecommunications services and information services are classified as telecommunications carriers for the purposes of section 251, and are subject to the general interconnection obligations of section 251(a), to the extent that they are acting as telecommunications carriers. *Local Competition Order*, 61 FR 45476, August 29, 1996. The Commission further concluded that telecommunications carriers that have obtained interconnection or access to unbundled network elements under section 251 in order to provide telecommunications services, may offer information services through the same arrangement, so long as they are offering telecommunications services through the same arrangement as well. *Id. See infra* paragraphs 92–96 for a more complete discussion of section 251 unbundling vis-a-vis ONA. *See also* paragraph 8 for a discussion of the Universal Service Report.

including the continued participation of large information service competitors, serves to diminish further the threat of access discrimination and, consequently, the court's concern about whether the level of unbundling mandated by ONA is sufficient.

IV. Effect of the 1996 Act

37. As detailed in the background section, the Commission issued the *Computer III Phase I Order* more than ten years ago, shortly after divestiture, and before the BOCs had obtained authorization from the MFJ court to begin to provide information services. Similarly, the implementation of ONA primarily took place between 1988 and 1992. Our objective is now, as it was then, to promote efficiency and increased service offerings while controlling anticompetitive behavior by the BOCs. We therefore reevaluate below the continuing need for these safeguards, in light of the 1996 Act and the significant technological and market changes that have taken place since the *Computer III* nonstructural safeguards were first proposed. This reevaluation is also part of the Commission's 1998 biennial review of regulations as required by the 1996 Act.

A. Basic/Enhanced Distinction

38. In the *Computer II* proceeding, the Commission adopted a regulatory scheme that distinguished between the common carrier offering of basic transmission services and the offering of enhanced services. The Commission defined a "basic transmission service" as the common carrier offering of "pure transmission capability" for the movement of information "over a communications path that is virtually transparent in terms of its interaction with customer-supplied information." The Commission further stated that a basic transmission service should be limited to the offering of transmission capacity between two or more points suitable for a user's transmission needs. The common carrier offering of basic services is regulated under Title II of the Communications Act. In contrast, the Commission defined enhanced services as:

> services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.

Enhanced services are not regulated under Title II of the Communications Act.

39. The 1996 Act does not utilize the Commission's basic/enhanced terminology, but instead refers to "telecommunications services" and "information services." The 1996 Act defines *telecommunications* as:

> the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications service is defined as:

> the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of facilities used.

The 1996 Act defines *information service* as:

> the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

40. We concluded in the *Non-Accounting Safeguards Order* that, although the text of the Commission's definition of "enhanced services" differs from the 1996 Act's definition of "information services," the two terms should be interpreted to extend to the same functions. We found no basis to conclude that, by using the term "information services," Congress intended a significant departure from the Commission's usage of "enhanced services." We further explained that interpreting "information services" to include all "enhanced services" provides a measure of regulatory stability for telecommunications carriers and ISPs by preserving the definitional scheme under which the Commission exempted certain services from traditional common carriage regulation.

41. Consistent with our conclusion in the *Non-Accounting Safeguards Order* that "enhanced services" fall within the statutory definition of "information services," we seek comment in this Further Notice on whether the Commission's definition of "basic service" and the 1996 Act's definition of "telecommunications service" should be interpreted to extend to the same functions, even though the two definitions differ. We ask parties to address whether there is any basis to conclude that, by using the term "telecommunications services," Congress intended a significant departure from the Commission's usage of "basic services." As noted in the *Non-Accounting Safeguards Order*, we believe the public interest is served by maintaining the regulatory stability of the definitional scheme under which the Commission exempted certain services from traditional common carriage regulation. To the extent parties believe that "telecommunications services" differ from "basic services" in any regard, they should identify the distinctions that should be drawn between the two categories, describe any overlap between the two categories, and delineate the particular services that would come within one category and not the other.

42. In light of our conclusion in the *Non-Accounting Safeguards Order* that the statutory term "information services" includes all services the Commission has previously considered to be "enhanced," and our decision in this proceeding to seek comment on whether the statutory term "telecommunications services" includes all services the Commission has previously considered to be "basic services," we seek comment on whether the Commission hereafter should conform its terminology to that used in the 1996 Act. We ask commenters to discuss whether the Commission's rules, which previously distinguished between basic and enhanced services, should now distinguish between telecommunications and information services. For example, we ask whether the Commission's *Computer II* decision should now be interpreted to require facilities-based common carriers that provide information services to unbundle their telecommunications services and offer such services to other ISPs under the same tariffed terms and conditions under which they provide such services to their own information services operations.

B. Cost-Benefit Analysis of Structural Safeguards

1. Background

43. The Commission's goals in addressing BOC provision of information services have been both to promote innovation in the provision of information services and to prevent access discrimination and improper cost allocation. Because the BOCs control the local exchange network and the provision of basic services, in the absence of regulatory safeguards they may have the incentive and ability to engage in anticompetitive behavior against ISPs that must obtain basic network services from the BOCs in order

to provide their information service offerings. For example, BOCs may discriminate against competing ISPs by denying them access to services and facilities or by providing ISPs with access to services and facilities that is inferior to that provided to the BOCs' own information services operations. BOCs also may allocate costs improperly by shifting costs they incur in providing information services, which are not regulated under Title II of the Act, to their basic services.

44. Under rate-of-return regulation, which allows carriers to set rates based on the cost of providing a service, the BOCs may have had an incentive to shift costs incurred in providing information services to their basic service customers. In 1990, the Commission replaced rate-of-return regulation with price cap regulation of the BOCs and certain other LECs to discourage improper cost allocation, among other things. Recently, the Commission revised its price caps regime to eliminate the sharing mechanism, which required price cap carriers to "share" with their access customers half or all their earnings above certain levels in the form of lower rates. This revision substantially reduces the BOCs' incentive to misallocate costs.

45. Since the adoption of *Computer I* in 1971, the Commission has employed various regulatory tools, including structural separation, to prevent access discrimination and cost misallocation, first by AT&T and then, after divestiture, by the BOCs, in providing information services. In *Computer I*, we imposed a "maximum separation policy" on the provision of "data processing" services by common carriers other than AT&T and its Bell System subsidiaries. We continued to impose structural separation on the provision of enhanced services by AT&T and its Bell System subsidiaries in *Computer II*, until we replaced structural separation with a system of nonstructural safeguards in 1986, in *Computer III*.

46. The Commission has long recognized both the benefits as well as the costs of structural separation as a regulatory tool. The Commission noted in *Computer II* that a structural separation requirement reduces firms' ability to engage in anticompetitive activity without detection because the extent of joint and common costs between affiliated firms is reduced, transactions must take place across corporate boundaries, and the rates, terms, and conditions on which services will be available to all potential purchasers must be made publicly available. Structural separation thus is useful as an enforcement tool and as a deterrent, because firms are less likely to engage in anticompetitive activity the more easily it can be detected. As for costs, the Commission recognized that structural separation increases firms' transaction and production costs, but did not agree with arguments presented at the time that structural separation reduces innovation.

47. The Commission similarly weighed the benefits and costs of structural separation in *Computer III* when, with the passage of time and the accumulation of experience, it replaced the *Computer II* structural separation requirements with a system of nonstructural safeguards. The Commission concluded in Computer III that the benefits of structural separation are not significantly greater than the benefits of nonstructural safeguards in preventing anticompetitive practices by the BOCs, and that structural separation imposes greater costs on the public and the BOCs than nonstructural safeguards. The Commission also found that the benefits of structural separation had decreased since the adoption of the *BOC Separation Order*, 49 FR 1190, January 10, 1984 due to technological and market developments that diminished the BOCs' ability to misallocate costs and engage in access discrimination. Further, the Commission found, based on its experience, that the introduction of new information services by the BOCs was slowed or prevented altogether by structural separation, thus denying the public the benefits of innovation. The Commission also found that structural separation imposed direct costs on the BOCs resulting from duplication of facilities and personnel, limitations on joint marketing, and deprivation of economies of scope. The Ninth Circuit upheld the Commission's analysis of the costs of structural separation in *California I* and *California III*.

2. Effect of the 1996 Act and Other Factors

48. In the *Computer III Further Remand Notice*, the Commission sought comment on how various factors, including reports of anticompetitive behavior by the BOCs and the increase in the number of BOC information service offerings since the elimination of structural separation, affected the Commission's cost-benefit analysis of structural separation in *Computer III*. The 1996 Act was enacted after the Commission issued the *Computer III Further Remand Notice*, and raises additional issues that may affect this cost-benefit analysis. As discussed in more detail below, we tentatively conclude that the Act's overall pro-competitive, de-regulatory framework, as well as our public interest analysis, support the continued application of the Commission's nonstructural safeguards regime to the provision by the BOCs of intraLATA information services. We also tentatively conclude that allowing the BOCs to offer intraLATA information services subject to nonstructural safeguards serves as an appropriate balance of the need to provide incentives to the BOCs for the continued development of innovative new technologies and information services that will benefit the public with the need to protect competing ISPs against the potential for anticompetitive behavior by the BOCs. We thus propose to allow the BOCs to continue to provide intraLATA information services on an integrated basis, subject to the Commission's *Computer III* and ONA requirements as modified or amended by this proceeding, or on a structurally separate basis. If a BOC chooses to provide intraLATA information services on a structurally separate basis, we seek comment on whether we should permit the BOC to choose between a *Computer II* and an Act-mandated affiliate under section 272 or section 274, or whether we should mandate one of these types of affiliates.

a. Section 251 and Local Competition

49. Competition in the local exchange and exchange access markets is the best safeguard against anticompetitive behavior. BOCs are unable to engage successfully in discrimination and cost misallocation to the extent that competing ISPs have alternate sources of access to basic services. Stated differently, when other telecommunications carriers, such as interexchange carriers (IXCs) or cable service providers, compete with the BOCs in providing basic services to ISPs, the BOCs are less able to engage successfully in discrimination and cost misallocation because they risk losing business from their ISP customers for basic services to these competing telecommunications carriers.

50. As discussed above, the 1996 Act affirmatively promotes local competition. Sections 251 and 253, among other sections, are intended to eliminate entry barriers and foster competition in the local exchange and exchange access markets. Indeed, the market for local exchange and exchange access services has begun to respond to some degree to the pro-competitive mandates of the 1996 Act. Some ISPs, for example, currently are obtaining basic services that underlie their information services from competing

providers of telecommunications services that have entered into interconnection agreements with the BOCs pursuant to section 251.

51. We recognize that the BOCs remain the dominant providers of local exchange and exchange access services in their in-region states, and thus continue to have the ability and incentive to engage in anticompetitive behavior against competing ISPs. On the other hand, the movement toward local exchange and exchange access competition should, over time, decrease and eventually eliminate the need for regulation of the BOCs to ensure that they do not engage in access discrimination or cost misallocation of their basic service offerings. The Commission has previously concluded that the nonstructural safeguards established in *Computer III* could combat such anticompetitive behavior as effectively as structural separation requirements, but in a less costly way. We thus tentatively conclude that the de-regulatory, pro-competitive provisions of the 1996 Act, and the framework the 1996 Act set up for promoting local competition, are consistent with, and provide additional support for, the continued application of the Commission's current nonstructural safeguards regime for BOC provision of intraLATA information services. We seek comment on this tentative conclusion.

b. Structural Separation and the 1996 Act

52. In the *Computer III Further Remand Notice*, we sought comment on the issue of whether some form of structural separation should be reimposed for the provision of information services by the BOCs, and we discussed briefly the costs and benefits that the Commission previously identified in granting structural relief to the BOCs. In this section, we seek comment on the extent to which the Act-mandated separation requirements may affect this cost-benefit analysis.

53. The 1996 Act permits the BOCs to enter markets from which they were previously restricted, allowing the BOCs to develop and market innovative new technologies and information services. In doing so, Congress in certain cases imposed structural separation requirements on the BOCs. Section 272, for example, allows the BOCs to provide certain interLATA information services as well as in-region, interLATA telecommunications services, and to engage in manufacturing activities, only through a structurally separate affiliate. Section 274 imposes structural separation requirements on BOC provision of intraLATA and interLATA electronic publishing services. Congress did not, however, mandate separation requirements for BOC provision of other information services.

54. In the *Non-Accounting Safeguards Order* we recognized that section 272 on its face does not require the BOCs to offer intraLATA information services through a separate affiliate, and deferred to this proceeding the question of whether the Commission should exercise its general rulemaking authority to do so. We find it significant that Congress limited the separate affiliate requirement in section 272 to BOC provision of most interLATA information services, interLATA telecommunications services, and manufacturing, and in section 274 to BOC provision of electronic publishing services. We therefore tentatively conclude that Congress' decision to impose structural separation requirements in sections 272 and 274, while relevant to our cost-benefit analysis, does not in itself warrant a return to structural separation for BOC provision of intraLATA information services not subject to those sections. We seek comment on this tentative conclusion.

55. Congress's decision to mandate structural separation only for certain information services does not necessarily foreclose the Commission from mandating or allowing structural separation for other information services. We recognize that, for example, the statutory separate affiliate requirements may reduce the cost of returning to a structural separation regime for BOC provision of intraLATA information services, given that the BOCs already are required to establish at least one structurally separate affiliate in order to provide the services covered by sections 272 and 274. Some BOCs may find it more efficient to provide all of their information services through a statutorily-mandated affiliate. In addition, it may be in the public interest for the Commission to prescribe a uniform set of regulations for BOC provision of both intraLATA and interLATA information services, by requiring, for example, that BOCs provide all information services through an affiliate that complies with the statute. This approach would eliminate the need to distinguish between intraLATA and interLATA information services for purposes of regulation and, consequently, lower compliance and enforcement costs.

56. On the other hand, mandatory structural separation would entail increased transaction and production costs for the BOCs, as discussed above. In addition, in the *Computer III Further Remand Notice* we noted that all of the BOCs currently are offering some information services on an integrated basis pursuant to CEI plans approved by the Commission. Thus, our cost-benefit analysis should take into account the costs today of returning to structural separation. These would include the personnel, operational, and other changes the BOCs would have to undergo in order to reinstate a regime of structural separation, and the service disruptions, lower service quality, reduced innovation, and higher user rates that may result. We must also consider the effect on the public of the potential delay in the development of new technologies and information services by the BOCs that may result. In addition, once the separation requirements under sections 272 and 274 sunset, structural separation for intraLATA information services based on the existence of the statutorily-mandated affiliates would have to be reexamined.

57. We also recognize the benefits of a flexible, regulatory framework that would allow the BOCs, consistent with the public interest, to structure their operations as they see fit in order to maximize efficiencies and thus provide greater benefits to consumers. We note that, under our current rules, a BOC may provide an intraLATA information service either on an integrated basis pursuant to an approved CEI plan or on a structurally separated basis pursuant to the Commission's *Computer II* rules. SBC has argued that the BOCs continue to need this type of flexibility to provide intraLATA information services either on an integrated basis, subject to appropriate safeguards, or through a separate affiliate, because the most appropriate form of regulation varies service-by-service, depending on the relative significance of cost considerations and other factors. Although the Commission may need to devote more resources to administer and enforce multiple regulatory regimes, this approach would allow the BOCs to structure their intraLATA information service offerings more in accordance with their business needs. In addition, such an approach may minimize the risk of service disruptions, since the BOCs would not have to change the manner in which they are providing their current intraLATA information service offerings.

58. In addition to the factors cited by the Commission in the *Computer III Phase I Order*, more recent events may affect the analysis of the relative costs and benefits of structural and nonstructural safeguards. In particular,

we earlier discussed how our *Price Caps Fourth Report and Order*, 62 FR 31939, June 11, 1997 eliminates the sharing mechanism from the price caps regime, thereby reducing the BOCs' incentive to misallocate costs. We also described previously how the local competition provisions of the 1996 Act provide for alternate sources of access to basic services, thereby diminishing the BOCs' ability to engage in anticompetitive behavior against competing ISPs.

59. In light of this analysis, we continue to believe it is preferable, as a matter of public interest, to continue with the Commission's nonstructural safeguards regime rather than to reimpose structural separation, notwithstanding the affiliate requirements of sections 272 and 274 of the Act. We thus tentatively conclude that the BOCs should continue to be able to choose whether to provide intraLATA information services either on an integrated basis, subject to the Commission's *Computer III* and ONA requirements as modified or amended by this proceeding, or pursuant to a separate affiliate. We seek comment on this tentative conclusion. In addition, if a BOC chooses to provide intraLATA information services through a separate affiliate, we seek comment on whether we should permit the BOC to choose between a *Computer II* and an Act-mandated affiliate, or whether we should mandate one of these types of affiliates. Finally, we seek comment on how the recent *SBC* v. *FCC* decision in the United States District Court for the Northern District of Texas affects this analysis.

C. Comparably Efficient Interconnection (CEI) Plans

1. Proposed Elimination of Current Requirements

60. In the *Interim Waiver Order* adopted in response to the *California III* decision, the Bureau allowed the BOCs to continue to provide existing enhanced services on an integrated basis, provided that they filed CEI plans for those services. In addition, the Bureau required the BOCs to file CEI plans for new enhanced services they propose to offer, and to obtain the Bureau's approval for these plans before beginning to provide service. We concluded that the partial vacation of the *BOC Safeguards Order* in *California III* reinstated the service-specific CEI plan regime, augmented by implementation of ONA, until the Commission concluded its remand proceedings. BOCs were also required to comply with the requirements established in their approved ONA plans, because we had previously determined that ONA requirements are independent of the removal of structural separation requirements.

61. In this Further Notice, we tentatively conclude that we should eliminate the requirement that BOCs file CEI plans and obtain Bureau approval for those plans prior to providing new information services. We note that CEI plans were always intended to be an interim measure, designed to bridge the gap between the Commission's decision to lift structural separation in the *Computer III Phase I Order* and the implementation of ONA. While CEI plans have been effective as interim safeguards, we tentatively conclude that they are not necessary to protect against access discrimination once the BOCs are providing information services pursuant to approved ONA plans, which they have been for several years. ONA provides ISPs an even greater level of protection against access discrimination than CEI. Under ONA, not only must the BOCs offer network services to competing ISPs in compliance with the nine CEI "equal access" parameters, but the BOCs must also unbundle and tariff key network service elements beyond those they use to provide their own enhanced services offerings. BOCs are also subject to ONA amendment requirements that constitute an additional safeguard against access discrimination following the lifting of structural separation.

62. Further, under the 1996 Act, the BOCs are now subject to additional statutory requirements that will help prevent access discrimination, including the section 251 unbundling requirements and the network information disclosure requirements of section 251(c)(5). These statutory requirements all serve as further protections against access discrimination, both by requiring the BOCs to open the local exchange market to competition, and by ensuring that the BOCs publicly disclose on a timely basis information about changes in their basic network services.

63. Given the protections afforded by ONA and the 1996 Act, we believe that the substantial administrative costs associated with BOC preparation, and agency review, of CEI plans outweigh their utility as an additional safeguard against access discrimination. Moreover, the time and effort involved in the preparation and review of the CEI plans may delay the introduction of new information services by the BOCs, without commensurate regulatory benefits. Such a result is contrary to one of the Commission's original purposes in adopting a nonstructural safeguards regime, which was to promote and speed introduction of new information services, benefiting the public by giving them access to innovative new technologies.

64. For the reasons outlined above, we tentatively conclude that we should eliminate the requirement that BOCs file CEI plans and obtain Bureau approval for those plans prior to providing new information services. We believe the significant burden imposed by these requirements on the BOCs and the Commission outweighs their possible incremental benefit as additional safeguards against access discrimination. In this light, we tentatively conclude that lifting the CEI plan requirement will further our statutory obligation to review and eliminate regulations that are "no longer necessary in the public interest." We seek comment on this tentative conclusion and our supporting analysis.

Parties who disagree with this tentative conclusion should address whether there are more streamlined procedures that could be adopted as an alternative to the current CEI filing requirements.

65. We recognize that, as part of our effort to reexamine our nonstructural safeguards regime, we seek comment in this Further Notice on whether we should modify or amend certain ONA requirements. Because we base our tentative conclusion that we should eliminate the CEI-plan filing requirement in part on the adequacy of ONA, we ask that parties comment on how any of the modifications the Commission proposes in Part IV.D., or proposed by commenters in response to our questions, may affect this tentative conclusion. We also seek comment on whether the requirements that the 1996 Act imposes on the BOCs, such as those relating to section 251 unbundling and network information disclosure, are sufficient in themselves to provide a basis for eliminating CEI plans.

2. Treatment of Services Provided Through 272/274 Affiliates

a. Section 272

66. In the *Non-Accounting Safeguards Order*, we noted that section 272 of the Act imposes specific separate affiliate and nondiscrimination requirements on BOC provision of "interLATA information services," but does not address BOC provision of intraLATA information services. We concluded that, pending the conclusion of the *Computer III Further Remand* proceeding, BOCs may continue to provide intraLATA information services on an integrated basis, in compliance

with the Commission's nonstructural safeguards established in *Computer III* and ONA.

67. *The Non-Accounting Safeguards Order* also raised the related issue of whether a BOC that provides all information services (both intraLATA and interLATA) through a section 272 separate affiliate satisfies the Commission's *Computer II* separate subsidiary requirements, and therefore does not have to file a CEI plan for those services. We noted that the record in the *Non-Accounting Safeguards Order* was insufficient to make this determination, and that we would examine this issue in the *Computer III Further Remand* proceeding.

68. If we do not adopt our tentative conclusion in this proceeding to eliminate the CEI plan filing requirement for the BOCs, we tentatively conclude that the BOCs should not have to file CEI plans for information services that are offered through section 272 separate affiliates, notwithstanding that section 272's requirements are not identical to the Commission's *Computer II* requirements (all other applicable *Computer III* and ONA safeguards, however, as amended or modified by this proceeding, would continue to apply). We note that, to the extent certain or all BOCs no longer have to provide interLATA services through a section 272 affiliate as a result of the *SBC* v. *FCC* decision by the United States District Court for the Northern District of Texas, then this tentative conclusion would not apply.

69. We reach our tentative conclusion for several reasons. First, we believe that the concerns underlying the Commission's *Computer II* requirements regarding access discrimination and cost misallocation are sufficiently addressed by the accounting and non-accounting requirements set forth in section 272 and the Commission's orders implementing this section. Second, after a BOC receives authority under section 271 to provide interLATA services through a section 272 affiliate, the BOC in many cases may want to provide a seamless information service to customers that would combine both the inter-and intraLATA components of such service. For the Commission to require that the BOC also receive approval under a CEI plan for the intraLATA component of such service is, in our view, unnecessary, and likely to delay the provision of integrated services that would be beneficial to consumers. We seek comment on this tentative conclusion and supporting analysis.

70. We also noted in the *Non-Accounting Safeguards Order* that other issues raised regarding the interplay between the 1996 Act and the Commission's *Computer III/ONA* regime would be addressed in the *Computer III Further Remand* proceeding. These included whether: (1) the Commission should harmonize its regulatory treatment of intraLATA information services provided by the BOCs with the section 272 requirements imposed by Congress on interLATA information services; (2) the 1996 Act's CPNI, network disclosure, nondiscrimination, and accounting provisions supersede various of the Commission's *Computer III* nonstructural safeguards; and (3) section 251's interconnection and unbundling requirements render the Commission's *Computer III* and *ONA* requirements unnecessary. These issues are either being addressed in this Further Notice or have been covered in other proceedings.

b. Section 274

71. In the *Telemessaging and Electronic Publishing Order*, 62 FR 7690, February 20, 1997 we concluded that the Commission's *Computer II*, *Computer III*, and ONA requirements continue to govern the BOCs' provision of intraLATA electronic publishing services. We found, however, that the record was insufficient to determine whether BOC provision of electronic publishing through a section 274 affiliate satisfied all the relevant requirements of *Computer II*, such that the BOC would not have to file a CEI plan for that service. We noted that we would consider that issue, as well as other issues raised regarding the revision or elimination of the *Computer III/ONA* requirements, in the *Computer III Further Remand* proceeding.

72. If we do not adopt our tentative conclusion in this proceeding to eliminate the CEI plan filing requirement for the BOCs, we tentatively conclude, as we do above for information services that are provided through a section 272 affiliate, that BOCs should not have to file CEI plans for electronic publishing services or other information services provided through their section 274 affiliate (as noted above, however, all other applicable *Computer III* and ONA safeguards, as amended or modified by this proceeding, would continue to apply). As noted above, to the extent certain or all BOCs no longer are subject to section 274 for their provision of electronic publishing as a result of the *SBC* v. *FCC* decision by the United States District Court for the Northern District of Texas, then this tentative conclusion would not apply.

73. Again, we reach our tentative conclusion for several reasons. First, we believe the section 274 separation and nondiscrimination requirements, and the Commission's rules implementing those requirements, are sufficient to address concerns regarding access discrimination and misallocation of costs in general. Second, given that Congress set forth detailed rules in section 274 for the specific provision of electronic publishing services, we do not believe the Commission should continue to require the BOCs to file, and the Commission to approve, CEI plans before the BOCs may provide such services. We seek comment on this tentative conclusion and supporting analysis.

3. Treatment of Telemessaging and Alarm Monitoring Services

74. In the *Telemessaging and Electronic Publishing Order* and the *Alarm Monitoring Order*, respectively, we concluded that the Commission's *Computer II*, *Computer III*, and ONA requirements continue to govern the BOCs' provision of intraLATA telemessaging services and alarm monitoring services. Because neither section 260 nor section 275 imposes separation requirements for the provision of intraLATA telemessaging services or alarm monitoring services, respectively, BOCs may provide those services, subject both to other restrictions in those sections, as applicable, as well as the Commission's current nonstructural safeguards regime, as modified by the proposals that we may adopt in this proceeding.

4. Related Issues

75. If we adopt our tentative conclusion to eliminate the CEI plan filing requirement for the BOCs, we seek comment on whether we should dismiss all CEI matters pending at that time (including pending CEI plans, pending CEI plan amendments, and requests for CEI waivers), on the condition that the BOCs must comply with any new or modified rules that may be established as a result of this Further Notice. We also seek comment on whether we should require a BOC with CEI approval to continue to offer service under the CEI requirements. To the extent that parties involved in pending CEI matters raise issues other than those directly related to the CEI requirements (*e.g.*, whether the service for which the BOC is seeking CEI-plan approval is a true information service, as opposed to a telecommunications service that should be offered under tariff), we seek comment on how and in what forum those issues should be addressed.

76. We note that section 276 directs the Commission to prescribe a set of nonstructural safeguards for BOC provision of payphone service, which must include, at a minimum, the "nonstructural safeguards equal to those adopted in" the *Computer III* proceeding. In implementing section 276, the Commission required the BOCs, among other things, to file CEI plans describing how they would comply with various nonstructural safeguards. The Bureau approved the BOCs' CEI plans to provide payphone service on April 15, 1997.

77. We seek comment on whether the changes that may be made to the Commission's *Computer III* and ONA rules as a result of this Further Notice should also apply to the nonstructural safeguards regime established in the *Payphone Order* proceeding for BOC provision of payphone service. For example, to the extent that we adopt our tentative conclusion to eliminate the CEI plan filing requirement, should we also relieve the BOCs from the requirement of filing amendments to their CEI plans for payphone service? How does this comport with the statutory requirement in section 276? We seek comment on these issues.

D. ONA and Other Nonstructural Safeguards

1. ONA Unbundling Requirements

a. Introduction

78. The Commission's ONA unbundling requirements serve both to safeguard against access discrimination and to promote competition and market efficiency in the information services industry. As described above, the Commission conditioned the permanent elimination of the *Computer II* structural separation requirements imposed on the BOCs upon the evolutionary implementation of ONA and other nonstructural safeguards. The ONA requirements, however, have a significance independent of whether they provide the basis for lifting structural separation. In 1990, during the course of the remand proceedings in response to *California I*, the Commission required the BOCs to implement ONA regardless of whether ONA provided the basis for elimination of structural separation. As discussed below, the Commission stated that "[a] major goal of ONA is to increase opportunities for ESPs to use the BOCs" regulated networks in highly efficient ways, enabling ESPs to expand their markets for their present services and develop new offerings as well, all to the benefit of consumers." It was for this reason that the Commission applied the ONA requirements to GTE in 1994.

79. ONA is the overall design of a carrier's basic network services to permit all users of the basic network, including the information services operations of the carrier and its competitors, to interconnect to specific basic network functions and interfaces on an unbundled and "equal access" basis. The BOCs and GTE through ONA must unbundle key components of their basic services and make them available under tariff, regardless of whether their information services operations utilize the unbundled components. Such unbundling ensures that competitors of the carrier's information services operations can develop information services that utilize the carrier's network on an economical and efficient basis.

b. ONA Unbundling Requirements

80. In the *Computer III Phase I Order* we declined to adopt any specific network architecture proposals for ONA and instead specified certain standards that carriers' ONA plans must meet. The unbundling standard for the BOCs required that: (1) the BOCs' enhanced services operations obtain unbundled network services pursuant to tariffed terms, conditions, and rates available to all ISPs; (2) BOCs provide an initial set of basic service functions that could be commonly used in the provision of information services to the extent technologically feasible; (3) ISPs participate in developing the initial set of network services; (4) BOCs select the set of network services based on the expected market demand for such elements, their utility as perceived by information service competitors, and the technical and costing feasibility of such unbundling; and (5) BOCs comply with CEI requirements in providing basic network services to affiliated and unaffiliated ISPs. In the *BOC ONA Order* that reviewed the initial BOC ONA plans for compliance with the Commission's requirements, the Commission generally approved the use of the "common ONA model" that described unbundled services BOCs would provide to competing ISPs. Under the common ONA model, ISPs obtain access to various unbundled ONA services, termed Basic Service Elements (BSEs), through access links described as Basic Service Arrangements (BSAs). BSEs are used by ISPs to configure their information services. Other ONA elements include Complementary Network Services (CNSs), which are optional unbundled basic service features (such as stutter dial tone) that an end user may obtain from carriers in order to obtain access to or receive information services, and Ancillary Network Services (ANSs), which are non-Title II services, such as billing and collection, that may be useful to ISPs.

81. The BOCs and GTE are also subject to the ONA amendment requirement. Under this requirement, if a subject carrier itself seeks to offer an information service that uses a new BSE or otherwise uses different configurations of underlying basic services than those included in its approved ONA plan, the carrier must amend its ONA plan at least ninety days before it proposes to offer that information service. The Commission must approve the amendment before the subject carrier can use the new basic service for its own information services.

82. In addition to the ONA services that BOCs and GTE currently provide, there are mechanisms to help ISPs obtain the new ONA services they require to provide information services. When an ISP identifies a new network functionality that it wants to use to provide an information service, it can request the service directly from the BOC or GTE through a 120-day process specified in our rules, or it can request that the Network Interconnection Interoperability Forum (NIIF) sponsored by the Alliance for Telecommunications Industry Solutions (ATIS) consider the technical feasibility of the service.

83. Under the Commission's 120-day request process, an ISP that requests a new ONA basic service from the BOC or GTE must receive a response within 120 days regarding whether the BOC or GTE will provide the service. The BOC or GTE must give specific reasons if it will not offer the service. The BOC or GTE's evaluation of the ISP request is to be based on the ONA selection criteria set forth in the original *Phase I Order:* (1) market area demand; (2) utility to ISPs as perceived by the ISPs themselves; (3) feasibility of offering the service based on its cost; and (4) technical feasibility of offering the service. If an ISP objects to the BOC or GTE's response, it may seek redress from the Commission by filing a petition for declaratory ruling.

84. Additionally, ISPs can ask the NIIF for technical assistance in developing and requesting new network services. Upon request, the NIIF will establish a task force composed of representatives from different industry sectors to evaluate the technical feasibility of the service, and through a consensus process, make recommendations on how the service can be implemented. ISPs can then take the information to a specific BOC or GTE and request the service under the

120-day process using the NIIF result to show that the request is technically feasible.

85. As part of the Commission's 1998 biennial review of regulations, we seek comment on whether ONA has been and continues to be an effective means of providing ISPs with access to the BOC/GTE unbundled network services they need to structure efficiently and innovatively their information service offerings. To the extent that commenters assert that ONA is effective or ineffective, we request that they cite to specific instances to support their claims.

86. In addition, we seek comment on whether the "common ONA model" through which ISPs gain access to BSEs, BSAs, CNSs, and ANSs is adequate to provide ISPs with the network functionalities they need. If not, what specific changes to the ONA unbundling framework should be made? Some parties have argued that the common ONA model forces ISPs to purchase unnecessary services or functionalities that are embedded within the BSEs, BSAs, CNSs, and ANSs. We seek comment on this argument. In addressing these issues, commenters should take note of our separate inquiry below regarding the impact of section 251 and its separate unbundling regime.

87. We further seek comment on whether ISPs make use of the ONA framework to acquire unbundled network services or whether they use other means to obtain such services in order to provide their information service offerings. Commenters that have used means other than ONA to acquire or provide unbundled network services should identify those means, state why ONA was not used, and discuss why the alternative approach was more effective and efficient.

88. In addition, we seek comment on whether the ONA 120-day request process established to help ISPs obtain new ONA services has been effective. We seek comment, from ISPs in particular, regarding whether they have made use of the 120-day request process, and the results from using that process. If ISPs have not used the 120-day request process, we request that they explain why they have not done so. We further request that parties comment, with specificity, on what, if anything, we should do to streamline the 120-day request process to make it more useful. In the alternative, we seek comment on whether the 120-day request process should be eliminated, in light of the fact that the issues that must be resolved between the carrier and the requesting ISP are technical and operational in nature, and may be most appropriately addressed in an industry forum, such as the NIIF. We also seek comment on whether the ONA amendment process has been effective.

89. We further seek comment regarding the role of the NIIF in helping ISPs obtain basic services from the BOCs and GTE. We seek comment, from ISPs in particular, regarding whether they have requested assistance from the NIIF in determining the technical feasibility of offering particular network functionalities as new basic services, and if so, the results obtained. If ISPs have not done so, we request that they tell us why not. We further seek comment on whether we should continue to request that the NIIF perform the function of facilitating ISP ONA requests or whether some other forum or industry group would be more appropriate.

90. Finally, we seek comment on whether and how the development of new information services, including, for example, Internet services, should affect our analysis of the effectiveness of the Commission's current ONA rules for ISPs. As we noted in the *Information Service and Internet Access NOI*, 62 FR 4657, January 31, 1997, many of the Commission's existing rules have been designed for traditional circuit-switched voice networks rather than the emerging packet-switched data networks. While the *Information Service and Internet Access NOI* sought comment, in general, on identifying ways in which the Commission could facilitate the development of high-bandwidth data networks while preserving efficient incentives for investment and innovation in the underlying voice network, we seek comment in this Further Notice specifically on whether and how the Commission should modify the *Computer III* and ONA rules in light of these technological developments.

91. Specifically, we seek comment on how the Commission's *Computer III* or ONA rules may impact the BOCs' incentive to invest in and deploy data network switching technology. For example, the Commission's existing ONA rules require the BOCs to unbundle and separately tariff all basic services. We have interpreted this rule to require a BOC to unbundle and separately tariff a basic service used in the provision of an information service provided by the BOC affiliate, even where the basic service is solely located in, and owned by, the BOC affiliate, not the BOC. This situation may arise, for example, when a frame relay switch is located in, and owned by, the BOC affiliate rather than the BOC. We seek comment on the appropriate treatment of these types of services.

c. Effect of the 1996 Act

(1) Section 251 Unbundling

92. Section 251 of the Act requires incumbent LECs, including the BOCs and GTE, to provide to requesting telecommunications carriers interconnection and access to unbundled network elements at rates, terms, and conditions that are just, reasonable, and nondiscriminatory, and to offer telecommunications services for resale. The Act defines "telecommunications carrier" as "any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226)." As we concluded in the *Local Competition Order*, the term "telecommunications carrier" does not include ISPs that do not also provide domestic or international telecommunications. Thus, as discussed above, companies that provide both information and telecommunications services are able to request interconnection, access to unbundled network elements, and resale under section 251, but companies that only provide information services ("pure ISPs") are not accorded such rights under section 251.

93. Despite this limitation, there are several ways that pure ISPs may be able to obtain benefits from section 251, as discussed in Part III.B. We recognize, however, that section 251 provides a level of unbundling that pure ISPs do not receive under the Commission's current ONA framework. Unbundling under section 251 includes the physical facilities of the network, together with the features, functions, and capabilities associated with those facilities. Section 251 also requires incumbent LECs to provide for the collocation at the LEC's premises of equipment necessary for interconnection or access to unbundled network elements, under certain conditions. Unbundling under ONA, in contrast, emphasizes the unbundling of basic services, not the substitution of underlying facilities in a carrier's network. ONA unbundling also does not mandate interconnection on carriers' premises of facilities owned by others. These differences may be due to the different policy goals that the two regimes were designed to serve.

94. Section 251 unbundling raises a number of issues relating to the Commission's ONA framework. In the *Non-Accounting Safeguards Order*, for example, some parties stated that section 251's interconnection and

unbundling requirements render the Commission's *Computer III* and ONA requirements unnecessary. A related issue is whether the Commission, pursuant to our general rulemaking authority, should extend section 251-type unbundling to "pure ISPs."

95. In this Further Notice, we seek comment on whether section 251, as currently applied, obviates the need for ONA. We ask commenters to analyze this issue with respect to both pure ISPs as well as ISPs that are also telecommunications carriers. For example, is ONA unbundling still necessary for ISPs that are also telecommunications carriers for whom section 251 unbundling is available? As for pure ISPs, does the fact that they can obtain the benefits of section 251 by becoming telecommunications carriers, or by partnering with or obtaining basic services from competitive telecommunications providers, render ONA unnecessary? Commenters should address whether ONA should still be available for pure ISPs or other ISPs in areas where there may not be sufficient competition in the local exchange market.

96. We also seek comment on whether it is in the public interest for the Commission to extend section 251-type unbundling to pure ISPs. Put differently, we seek comment regarding whether, pursuant to our general rulemaking authority contained in section 201–205 of the Act, and as exercised in the *Computer III, ONA,* and *Expanded Interconnection* proceedings, we can and should extend some or all rights accorded by section 251 to requesting telecommunications carriers to pure ISPs. Commenters who contend that it is in the public interest to extend section 251-type unbundling should address why it is necessary to do so, given the alternative options pure ISPs have to obtain the benefits of section 251 unbundling, as well as the unbundling rights ISPs currently enjoy under the Commission's existing ONA regime. Commenters should also address whether the extension of section 251-type unbundling to pure ISPs would be inconsistent with section 251, which by its terms applies only to telecommunications carriers. Similarly, commenters should address whether section 251-type unbundling is appropriate for pure ISPs, given the different purposes section 251 and ONA serve, and the different approaches to unbundling they encompass. Furthermore, commenters that argue that we should extend the section 251 unbundling framework to pure ISPs should explain what such a framework would include. For example, commenters should address, among other things, whether extending section 251-type unbundling rights to pure ISPs necessarily requires the extension to pure ISPs of any obligations under section 251 or other Title II provisions. Commenters should also address whether extending section 251-type unbundling to pure ISPs obviates the need for ONA.

(2) InterLATA Information Services

97. As discussed, we tentatively conclude in this Further Notice that the Commission's nonstructural safeguard regime should continue to apply to BOC provision of intraLATA information services. Prior to the enactment of the 1996 Act, however, we did not distinguish between intraLATA and interLATA information services, and we did not explicitly apply our *Computer III* and ONA rules to BOC provision of interLATA information services since the BOCs were prevented under the MFJ from providing interLATA services. Section 272 of the 1996 Act, however, does distinguish between intraLATA and interLATA information services by imposing separation and nondiscrimination requirements on BOC provision of interLATA information services. We seek comment, therefore, on whether the Commission's ONA requirements, as modified or amended by this proceeding, should be interpreted as encompassing BOC provision of interLATA information services. We also seek comment on whether it would be inconsistent with section 272 for the Commission to apply ONA requirements to BOC provision of interLATA information services.

98. In addressing this issue, we ask that commenters take note of the following policy considerations. As noted above, the Commission required the BOCs to implement ONA regardless of whether ONA provided the basis for elimination of structural separation. We stated that ONA serves the public interest, not only by serving as a critical nonstructural safeguard against anticompetitive behavior by the BOCs, but also by promoting the efficient use of the network by ISPs, to the benefit of consumers. On the other hand, section 272 already sets forth the statutory requirements for BOC provision of interLATA information services and, therefore, including such services within the Commission's ONA framework may be unnecessary to protect the public interest. Moreover, as discussed above, section 251 unbundling may obviate ONA in some or all respects, including its application to BOC provision of interLATA information services. We also seek comment, to the extent commenters believe that ONA should encompass BOC provision of interLATA information services, on how the Commission's current ONA requirements, including ONA reporting requirements, may need to be changed or supplemented, if at all, to take account of such services.

2. ONA and Nondiscrimination Reporting Requirements

a. Introduction

99. In this section of the Notice, we examine the various reporting requirements imposed on the BOCs and GTE by the *Computer III* and *ONA* regimes. These reporting requirements were originally intended as a safeguard, in that the BOCs and GTE must disclose information that would allow detection of patterns of access discrimination. In addition, certain reporting requirements were intended to promote competition, by providing interested parties (including ISPs and equipment manufacturers) with information about service introduction and deployment by the subject carriers, which may assist such parties in structuring their own operations.

100. We recognize, however, that a number of years have passed since certain of these reporting requirements were imposed, and that some of the information we require to be disclosed may no longer be useful, relevant, or related to either the safeguard or competition promotion functions identified above. Thus, as part of the Commission's 1998 biennial review of regulations, we intend in this proceeding to reexamine each of the reporting obligations imposed on the BOCs and GTE by the *Computer III* and *ONA* regimes, to determine whether any of these requirements should be eliminated or modified, consistent with the 1996 Act. We also seek comment on what, if any, different or additional reporting requirements should be imposed to safeguard against anticompetitive behavior by the BOCs and GTE and to promote competition in the provision of information services. In particular, we also seek comment on methods to facilitate access to and use of this information by unaffiliated entities, including small entities.

101. We set forth the ONA reporting reporting requirements and make specific inquiries regarding each requirement. The following are general inquiries that apply to all ONA reporting requirements. We ask parties to respond to both the specific and general inquiries in their comments on each ONA reporting requirement.

a. Is the information reported necessary to or helpful in monitoring the compliance of the subject carriers with their unbundling and nondiscrimination obligations? If not, why not? Would other types of information be more useful for compliance monitoring or enforcement purposes?

b. Is this requirement duplicative? In other words, does the Commission currently require other reports that disclose the same or substantially similar information, or serve the same purposes? If so, how should the Commission streamline these requirements?

c. Do industry groups, such as ATIS and/or NIIF, collect and compile information that is duplicative of that required by the Commission? If so, is that information readily available to interested parties?

d. Should we continue to require the subject carriers to file this report with the Commission both on paper and on disk, or should we adopt streamlined filing proposals similar to those set forth in the Further Notice of Proposed Rulemaking in the *Non-Accounting Safeguards* proceeding? Specifically, should we require either:

(i) a certification process whereby the subject carrier must maintain the required information in a standardized format, and file with the Commission an annual affidavit stating: (1) the information is so maintained; (2) the information will be updated in compliance with our rules; (3) the information will be maintained accurately; and (4) how the public will be able to access the information; or

(ii) electronic posting whereby the subject carriers must make the required information available on the Internet (for example, by posting it on their website) or through another similar electronic mechanism?

e. If we continue to maintain a paper filing requirement, is the information presented in a clear, comprehensible format? If not, what modifications to the format would improve clarity and accessibility?

f. If we continue to maintain a paper filing requirement, should we alter the frequency with which we require this report to be filed? If so, what alteration should be made, and what is the basis for that alteration? In the alternative, if we impose a certification process or electronic posting requirement, how often should subject carriers be required to update the information they must maintain? How must the subject carriers maintain historical data, and for what length of time?

102. In conjunction with our inquiries elsewhere in this item, we seek to examine, and, if possible, clarify the relationship between the ONA reporting requirements and the other obligations imposed on the subject carriers by ONA. For example we seek comment above on whether we should modify or eliminate the ONA unbundling requirements. To the extent that parties argue that we should do so, we request that they comment upon the effect that such action would have on the reporting obligations of the subject carriers. It seems that if the subject carriers were no longer required to unbundle and tariff ONA services, much of the information we currently require to be disclosed in the annual and semi-annual ONA reports would cease to exist. Does this mean that all such reporting requirements should be eliminated? Are there other meaningful reporting requirements that should be imposed instead?

b. Annual ONA Reports

103. The BOCs and GTE are required to file annual ONA reports that include information on: (1) annual projected deployment schedules for ONA service, by type of service (BSA, BSE, CNS), in terms of percentage of access lines served system-wide and by market area; (2) disposition of new ONA service requests from ISPs; (3) disposition of ONA service requests that have previously been designated for further evaluation; (4) disposition of ONA service requests that were previously deemed technically infeasible; (5) information on Signaling System 7 (SS7), Integrated Services Digital Network (ISDN), and Intelligent Network (IN) projected development in terms of percentage of access lines served system-wide and on a market area basis; (6) new ONA services available through SS7, ISDN, and IN; (7) progress in the IILC (now NIIF) on continuing activities implementing service-specific and long-term uniformity issues; (8) progress in providing billing information including Billing Name and Address (BNA), line-side Calling Number Identification (CNI), or possible CNI alternatives, and call detail services to ISPs; (9) progress in developing and implementing Operation Support Systems (OSS) services and ESP access to those services; (10) progress on the uniform provision of OSS services; and (11) a list of BSEs used in the provision of BOC/GTE's own enhanced services. In addition, the BOCs are required to report annually on the unbundling of new technologies arising from their own initiative, in response to requests by ISPs, or resulting from requirements imposed by the Commission.

104. We believe that certain aspects of the annual reporting requirements may be outdated and should be streamlined. We seek comment, for example, on whether we should continue to require the subject carriers to continue to report on projected deployment of ONA services (item 1), particularly as this information does not appear to change appreciably from year to year. Should we instead require the subject carriers to make a one-time filing of a 5-year deployment schedule at the time a new ONA service is introduced? In addition, should we require the subject carriers to continue to report on the disposition of ONA service requests from ISPs (items 2, 3, and 4), despite evidence that the frequency of such requests has declined appreciably since the initial implementation of ONA?

105. We seek comment on whether we should continue to require the subject carriers to report on deployment of SS7 (items 5 and 6), which has become available in most service areas. We further seek comment on whether we should continue to require the subject carriers to report on the availability and deployment of ISDN, IN, and AIN services (items 5 and 6). In addition, we seek comment regarding whether the requirement that the BOCs report on "new ONA services available through SS7, ISDN, and IN, and plans to provide these services" (item 6) overlaps so significantly with the requirement that they report on the unbundling of new technologies that one of these requirements should be eliminated.

106. In addition, we seek comment on whether, and to what extent, we should alter the requirement that carriers report on progress in industry forums regarding uniformity issues. Currently, subject carriers are required to report on progress in the IILC on continuing activities implementing service-specific and long-term uniformity issues (item 7). As a preliminary matter, we note that the functions that used to be performed by the IILC were transferred, as of January 1, 1997, to the NIIF. We tentatively conclude that, at a minimum, the ONA reporting requirement should be updated to reflect this change. We believe that the BOCs have agreed to provide to the NIIF periodic updates regarding issues that have been resolved. We seek comment on the nature of such updates to the NIIF, including specifically what information the BOCs provide. We further seek comment regarding whether the information from such updates is comprehensive enough, and sufficiently accessible to interested parties, to allow

us to eliminate the ONA reporting requirement covering progress of matters in the NIIF. In the alternative, we seek comment regarding whether there are other sources of information produced by or for ATIS or the NIIF that may reasonably substitute for this ONA reporting requirement.

107. We seek comment on whether we should continue to require the subject carriers to report on progress in providing billing information and call detail services to ISPs (item 8). We seek comment on whether we should continue to require the subject carriers to report on progress in developing, implementing, and providing access to Operation Support Systems (OSS) services (items 9 and 10). We believe it is important for such information to continue to be publicly available. We recognize, however, that such information may be more appropriately provided pursuant to other statutory provisions. For example, we issued a Public Notice on June 10, 1997, asking for comment on LCI's petition for expedited rulemaking to establish reporting requirements, performance, and technical standards for OSS in the context of section 251 of the Act. We seek comment on the appropriate forum for collecting information about OSS and whether continued reporting under *Computer III* is necessary in light of other pending Commission proceedings. We further seek comment on what, if any, changes we should make to the ONA OSS reporting requirements, to better reflect the obligations with respect to OSS imposed on carriers in the *Local Competition Order*.

c. Semi-Annual ONA Reports

108. In addition to the annual ONA reports discussed above, the BOCs and GTE are required to file semi-annual ONA reports. These semi-annual reports include: (1) a consolidated nationwide matrix of ONA services and state and federal ONA tariffs; (2) computer disks and printouts of data regarding state and federal tariffs; (3) a printed copy and a diskette copy of the *ONA Services User Guide;* (4) updated information on 118 categories of network capabilities requested by ISPs and how such requests were addressed, with details and matrices; and (5) updated information on BOC responses to the requests and matrices.

109. Considerable portions of the semi-annual reports filed by the BOCs appear to be redundant, as each of the BOCs files identical information. This generic information includes the ONA service matrix and the Services Description section of the ONA Services User Guide, as well as information on the 118 network capabilities originally requested by ISPs, and how the BOCs collectively have responded to these requests. Bell Communications Research, Inc. (Bellcore) originated and, until its spin-off earlier this year, prepared these portions of the BOCs' semi-annual reports; currently, an organization called the National Telecommunications Alliance (NTA) has assumed this responsibility. We see no benefit to continuing to require each of the BOCs separately to file the generic portions of the semi-annual report, particularly as there appear to be few changes in this information from year to year. Thus, we tentatively conclude that the BOCs should be permitted to make one consolidated filing (or posting) for all generic information they currently submit in their semi-annual reports. We seek comment on this tentative conclusion. We further seek comment on whether we should allow GTE to join in this consolidated filing or posting (to the extent that this arrangement would be mutually agreeable to the parties) with respect to the information it files that overlaps with that filed by the BOCs.

110. In addition, we seek comment on the frequency with which we require the subject carriers to file the information contained in the semi-annual ONA reports. In particular, we inquire as to whether we should reduce the filing frequency, and restructure the semi-annual reports to become part of the annual ONA reports filed by the subject carriers. A reduction in filing frequency would decrease the burden imposed on the subject carriers, without, we believe, significantly affecting the quality or utility of the information supplied, much of which is either generic or rather static in nature, or is available through other means (for example, in the state and federal tariffs filed by the subject carriers).

111. We also seek comment regarding whether certain information required in the semi-annual reports overlaps with the information required in the annual reports. For example, in the annual ONA reports, the Commission requires the BOCs and GTE to supply information on the disposition of several categories of ONA requests, whereas in the semi-annual reports, the Commission requires the BOCs and GTE to supply information regarding how they have responded to ISP requests for the existing 118 categories of network capabilities. These separate requirements seem to elicit similar, if not identical, information. To the extent there is overlap, we seek comment regarding whether these requirements may be simplified and consolidated, or, in the alternative, whether either or both sets should be eliminated entirely. We also seek comment on other, similar, overlaps among the ONA reporting requirements, and what we should do to eliminate the burdens or inefficiencies associated with them.

d. Nondiscrimination Reports

112. The BOCs and GTE are also required to establish procedures to ensure that they do not discriminate in their provision of ONA services, including the installation, maintenance, and quality of such services, to unaffiliated ISPs and their customers. For example, they must establish and publish standard intervals for routine installation orders based on type and quantity of services ordered, and follow these intervals in assigning due dates for installation, which are applicable to orders placed by competing service providers as well as orders placed by their own information services operations. In addition, they must standardize their maintenance procedures where possible, by assigning repair dates based on nondiscriminatory criteria (e.g., available work force and severity of problem), and handling trouble reports on a first-come, first-served basis.

113. In order to demonstrate compliance with the nondiscrimination requirements outlined above, the BOCs and GTE must file quarterly nondiscrimination reports comparing the timeliness of their installation and maintenance of ONA services for their own information services operations versus the information services operations of their competitors. If a BOC or GTE demonstrates in its ONA plan that it lacks the ability to discriminate with respect to installation and maintenance services, and files an annual affidavit to that effect, it may modify its quarterly report to compare installation and maintenance services provided to its own information services operations with services provided to a sampling of all customers. In their quarterly reports, the BOCs and GTE must include information on total orders, due dates missed, and average intervals for a set of service categories specified by the Commission, following a format specified by the Commission.

114. We tentatively conclude that the nondiscrimination obligations for provisioning and performing maintenance activities established by *Computer III* continue to apply to the BOCs and GTE. We seek comment, however, on whether the current quarterly installation and maintenance reports are an appropriate and effective mechanism for monitoring the BOCs'

and GTE's compliance with these nondiscrimination obligations. Are there ways in which the quarterly reports, and the accompanying annual affidavits, may be simplified, clarified, or otherwise made more useful to the Commission and the interested public? Along these lines, we note that the Commission issued a Further Notice of Proposed Rulemaking in conjunction with its *Non-Accounting Safeguards Order*, seeking comment on what types of reporting requirements are necessary to implement the specific nondiscrimination requirement set forth in section 272(e)(1) of the Communications Act. While we acknowledge that the nondiscrimination obligations imposed on the BOCs by section 272(e)(1) differ from those imposed by *Computer III*, we seek comment regarding whether the information required to demonstrate compliance with both sets of nondiscrimination requirements is sufficiently similar that we should harmonize the ONA nondiscrimination reporting requirements with the reporting requirements adopted in response to the Further Notice of Proposed Rulemaking in the *Non-Accounting Safeguards* proceeding. We also seek comment on whether we should harmonize the ONA nondiscrimination reporting requirements with reporting requirements being considered in other proceedings, such as in the LCI OSS Petition.

115. We note that, like the BOCs, AT&T was originally required to file quarterly nondiscrimination reports on the provision of installation and maintenance services to unaffiliated providers of enhanced services. The Commission modified and reduced these reporting requirements in 1991 and in 1993. In 1996, the Bureau eliminated the requirement that AT&T file quarterly installation and maintenance nondiscrimination reports, as well as the requirement that AT&T file an annual affidavit that its quarterly reports are true and that it has not discriminated in providing installation and maintenance services.

116. The Bureau declined to eliminate the requirement that AT&T file a second affidavit, which affirms that AT&T has followed the installation procedures in its ONA plan and has not discriminated in the quality of network services provided to competing enhanced service providers, deferring that determination to the instant proceeding. We tentatively conclude that we should no longer require AT&T to file this second affidavit because the level of competition in the interexchange services market is an effective check on AT&T's ability to discriminate in the quality of network services provided to competing ISPs. This tentative conclusion is consistent with our previous finding that the competitive nature of the interexchange market provides an important assurance that access to those services will be open to ISPs, and that much of the information of greatest use to ISPs is controlled by LECs such as the BOCs, and not by interexchange carriers. We also find that this tentative conclusion comports with our statutory obligation to eliminate regulations that are no longer necessary due to "meaningful economic competition" between providers of such service. We seek comment on this tentative conclusion.

3. Other Nonstructural Safeguards

a. Network Information Disclosure Rules

117. The Commission's network information disclosure rules seek to prevent anticompetitive behavior by ensuring that ISPs and other interested parties can obtain timely access to information affecting the interconnection of information services to the BOCs', AT&T's, and other carriers' networks. Prior to the 1996 Act, the rules set forth in the Commission's *Computer II* and *Computer III* proceedings governed the disclosure of network information. Section 251(c)(5) of the Act requires incumbent LECs to "provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities or networks." The Commission recently adopted network information disclosure requirements to implement section 251(c)(5) in the *Local Competition Second Report and Order*, 61 FR 47284, September 6, 1996. Although we discussed our preexisting network information disclosure requirements in conjunction with the requirements of section 251(c)(5) in the *Local Competition Second Report and Order*, we did not address in that proceeding whether our *Computer II* and *Computer III* network information disclosure requirements should continue to apply independently of our section 251(c)(5) network information disclosure requirements. We address that issue in this proceeding as part of our 1998 biennial review of regulations, in an effort to eliminate unnecessary and possibly conflicting requirements.

118. The rules established pursuant to section 251(c)(5) in some respects appear to duplicate and even exceed the rules established under *Computer II* and *Computer III*, while in other respects they do not. For example, section 251(c)(5) of the Act, and the Commission's rules implementing that section, only apply to incumbent LECs, while some of the *Computer II* network information disclosure requirements apply more broadly to "all carriers owning basic transmission facilities." We seek comment, therefore, on the extent to which the Commission should retain its network information disclosure rules established in the Commission's *Computer II* and *Computer III* proceedings in light of the disclosure requirements stemming from section 251(c)(5) of the 1996 Act. As a starting point, we set forth in the following paragraphs a general description of the current network disclosure requirements under *Computer II*, *Computer III*, and section 251(c)(5), and then we ask parties to comment on whether, and why, specific requirements should be retained or eliminated. The following descriptions are not intended to be an exhaustive list of every feature of the Commission's current network disclosure requirements. These descriptions are intended, rather, to serve as a basis for comparison by parties commenting in this proceeding.

119. *Computer II Network Disclosure Obligations.*

a. *Application of the Network Disclosure Obligations.* The *Computer II* network information disclosure rules consist of two requirements: (1) a disclosure obligation which depends on the existence of a *Computer II* separate subsidiary; and (2) a disclosure obligation that applies independent of whether the carrier has a *Computer II* separate subsidiary. The Commission initially imposed both requirements on AT&T in the *Computer II Final Decision*. The Commission extended disclosure requirement (2) in the *Computer II Reconsideration Order*, 46 FR 5984, January 21, 1981, to "all carriers owning basic transmission facilities" (hereinafter the "all-carrier" rule). After divestiture, the Commission extended disclosure requirement (1) to the BOCs insofar as they are providing information services in accordance with the structural separation requirements of *Computer II*.

b. *Events Triggering the Public Notice Requirement.* The *Computer II* "all-carrier" rule is triggered by implementation of "change[s] * * * to the telecommunications network that would affect either intercarrier interconnection or the manner in which interconnected CPE must operate

* * *." The *Computer II* separate affiliate disclosure obligation is triggered by any of three events: (1) the BOC communicates the relevant network information directly to its *Computer II* separate affiliate; (2) such information is used by the BOC or a third party to develop services or products which reasonably can be expected to be marketed by the *Computer II* separate affiliate; or (3) the BOC engages in joint research and development with its *Computer II* separate affiliate, leading to the design or manufacture of any product that either affects the network interface or relies on a not-yet implemented interface.

c. *Timing of Public Notice.* Under *Computer II*, the disclosure obligation of the "all-carrier" rule must be met "in a timely manner and on a reasonable basis." The *Computer II* separate affiliate network disclosure obligation requires that disclosure be made to information service competitors of the *Computer II* affiliate "at the same time" disclosure is made directly to the *Computer II* separate affiliate as described in item (1). If the disclosure requirement is triggered by the events described in items (2) and (3), then disclosure must be made at the "make/buy" point, i.e., when the BOC or an affiliated company decides, in reliance on previously undisclosed information, to produce itself or to procure from a non-affiliated company any product, whether it be hardware or software, the design of which either affects the network interface or relies on the network interface.

d. *Types of Information To Be Disclosed.* The *Computer II* "all-carrier" rule encompasses "all information relating to network design * * *, insofar as such information affects * * * intercarrier interconnection * * *." For the separate affiliate network disclosure requirement, the information required to be disclosed consists of, "at a minimum, * * * any network information which is necessary to enable all [information] service * * * vendors to gain access to and utilize and to interact effectively with [the BOCs'] network services or capabilities, to the same extent that [the BOCs' *Computer II* separate affiliate] is able to use and interact with those network services or capabilities." This requirement includes information concerning "network design, technical standards, interfaces, or generally, the manner in which interconnected * * * enhanced services will interoperate with [any of the BOCs'] network." In addition to technical information, the information required includes marketing information, such as "commitments of the carrier with respect to the timing of introduction, pricing, and geographic availability of new network services or capabilities."

e. *How Public Notice Should Be Provided.* Under *Computer II*, carriers subject to the "all-carrier" rule must disclose in their tariffs or tariff support material either the relevant network information or a statement indicating where such information can be obtained, that will allow competitors to use network facilities in the same manner as the subject carrier. The separate affiliate network disclosure obligation requires that the BOCs "file with the Commission, within seven calendar days of the date the disclosure obligation arises, a notice apprising the public that the disclosure has taken place and indicating in summary form the nature of the information which has been disclosed [to its *Computer II* separate affiliate], the identity of any source documents and where interested parties can obtain additional details." Moreover, when a BOC "files a tariff for a new or changed network service where there has been a prior disclosure to or for the benefit of [the *Computer II* separate affiliate], the tariff support materials must list any disclosure notices previously filed with the Commission that are relevant to the tariffed offering."

120. *Computer III Network Disclosure Obligations.*

a. *Application of the Network Disclosure Obligations.* The *Computer III* network information disclosure rules initially were imposed on AT&T and the BOCs in the *Phase I Order* and *Phase II Order*, 52 FR 20714, June 3, 1987. The Commission later extended the *Computer III* network information disclosure rules and other nondiscrimination safeguards to GTE in the *GTE ONA Order*, 59 FR 26756, May 24, 1994.

b. *Events Triggering the Public Notice Requirement.* The *Computer III* public notice requirement is triggered at the "make/buy" point; that is, when AT&T, any of the BOCs, or GTE "makes a decision to manufacture itself or to procure from an unaffiliated entity, any product the design of which affects or relies on the network interface."

c. *Timing of Public Notice.* AT&T, the BOCs, and GTE must disclose the relevant information concerning planned network changes at two points in time. First, they must disclose the relevant technical information at the "make/buy" point. They are permitted, however, to condition this "make/buy" disclosure on the recipient's signing of a nondisclosure agreement, upon which the relevant technical information must be disclosed within 30 days. Second, they must make public disclosure of the relevant technical information a minimum of twelve months before implementation of the change; however, if the planned change can be implemented between six and twelve months following the "make/buy" point, then public notice is permitted at the "make/buy" point, but at a minimum of six months before implementation.

d. *Types of Information To Be Disclosed.* Under *Computer III*, the range of information encompassed by the network information disclosure requirements is adopted from, and identical to, the *Computer II* requirements. Specifically, at the "make/buy" point, AT&T, the BOCs, and GTE must disclose that a network change or network service is under development. The notice itself need not contain the full range of relevant network information, but it must describe the proposed network service with sufficient detail to convey what the new service is and what its capabilities are. The notice must also indicate that technical information required for the development of compatible information services will be provided to any entity involved in the provision of information services and may indicate that such information will be made available only to such entities willing to enter into a nondisclosure agreement. Once an entity has entered into a nondisclosure agreement, AT&T, the BOCs, or GTE must provide the full range of relevant information.

e. *How Public Notice Should Be Provided.* Under the *Computer III* rules, public notice is made through direct mailings, trade associations, or other reasonable means.

121. *Section 251(c)(5) Network Disclosure Obligations.*

a. *Application of the Network Disclosure Obligations.* These rules apply to all incumbent LECs, as the term is defined in section 251(h) of the Act.

b. *Events Triggering the Public Notice Requirement.* The incumbent LEC makes a decision to implement a network change that either: (1) affects "competing service providers' performance or ability to provide service; or (2) otherwise affects the ability of the incumbent LEC's and a competing service provider's facilities or network to connect, to exchange information, or to use the information exchanged." Examples of network changes that would trigger the section 251(c)(5) public disclosure obligations include, but are not limited to, changes that affect (1) transmission, (2) signalling standards, (3) call routing, (4)

network configuration, (5) logical elements, (6) electronic interfaces, (7) data elements, and (8) transactions that support ordering, provisioning, maintenance, and billing.

c. *Timing of Public Notice.* Incumbent LECs must disclose planned network changes at the "make/buy" point, but at least twelve months before implementation of the change. If the planned change can be implemented within twelve months of the "make/buy" point, then public notice must be given at the "make/buy" point, but at least six months before implementation. If the planned changes can be implemented within six months of the make/buy point, then the public notice may be provided less than six months before implementation, if additional requirements set forth in section 51.333 of the Commission's rules are met.

d. *Types of Information To Be Disclosed.* Under the Commission's regulations, incumbent LECs are required to disclose, at a minimum, "complete information about network design, technical standards and planned changes to the network." Public notice of planned network changes, at a minimum, shall consist of: (1) the carrier's name and address; (2) the name and telephone number of a contact person who can supply additional information regarding the planned changes; (3) the implementation date of the planned changes; (4) the location(s) at which the changes will occur; (5) a description of the type of changes planned (including, but not limited to, references to technical specifications, protocols, and standards regarding transmission, signalling, routing, and facility assignment as well as references to technical standards that would be applicable to any new technologies or equipment, or that may otherwise affect interconnection); and (6) a description of the reasonably foreseeable impact of the planned changes.

e. *How Public Notice Should Be Provided.* Network disclosure may be made either: (1) by filing public notice with the Commission in accordance with section 51.329 of the Commission's rules; or (2) providing public notice through industry fora, industry publications, or on the incumbent LEC's own publicly accessible Internet sites, as well as a certification filed with the Commission in accordance with section 51.329 of the Commission's rules.

122. We tentatively conclude that the Commission's rules established pursuant to section 251(c)(5) for incumbent LECs should supersede the Commission's previous network information disclosure rules established in *Computer III*. We also tentatively conclude that the Commission's network disclosure rules established in *Computer II* should continue to apply—specifically, the *Computer II* separate affiliate disclosure rule should continue to apply to any BOC that operates a *Computer II* subsidiary, and the all-carrier rule should continue to apply to all carriers owning basic transmission facilities. We reach our tentative conclusion regarding the *Computer III* network disclosure rules since, in our view, the 1996 Act disclosure rules for incumbent LECs are as comprehensive, if not more so, than the Commission's *Computer III* disclosure rules. Parties who disagree with this view should explain why all or some aspects of the Commission's *Computer III* disclosure rules are still needed for incumbent LECs in light of the rules established pursuant to section 251(c)(5) of the Act.

123. We recognize, however, that some BOCs may still be providing certain intraLATA information services through a *Computer II* subsidiary, rather than on an integrated basis under the Commission's *Computer III* rules. We tentatively conclude, therefore, that the *Computer II* separate subsidiary disclosure rule should continue to apply in such cases because, for instance, it encompasses marketing information which is not included within the scope of information to be disclosed under section 251(c)(5) and it requires disclosure under a more stringent timetable than that required under section 251(c)(5). We also tentatively conclude that the all-carrier rule should continue to apply to all carriers owning basic transmission facilities, since it is broader in certain respects than section 251(c)(5). First, it applies to all carriers, whereas section 251(c)(5) just applies to incumbent LECs. In addition, the all-carrier rule requires, among other things, the disclosure of network changes that affect end users' CPE, whereas our rules interpreting section 251(c)(5) only require the disclosure of information that affects "competing service providers." We seek comment on these tentative conclusions and analyses.

b. Customer Proprietary Network Information (CPNI)

124. The Commission first established its CPNI rules in the *Computer II Final Decision* in 1980 to encourage AT&T, the BOCs, and GTE to develop and market efficient, integrated combinations of information and basic services without the marketing restrictions imposed by structural separation, while protecting the competitive interests of information service competitors. While the CPNI rules are an integral part of the Commission's current nonstructural regulatory framework for the provision of information services by AT&T, the BOCs, and GTE, we defer consideration of all CPNI issues relating to our *Computer II* and *Computer III* rules to our *CPNI* rulemaking proceeding.

125. Section 702 of the 1996 Act, which added a new section 222 to the Communications Act of 1934, as amended, sets forth requirements for use of CPNI by telecommunications carriers, including the BOCs. Although the requirements of section 222 were effective upon enactment of the 1996 Act, we issued a *CPNI Notice* on May 17, 1996, 61 FR 26483, May 28, 1996, which sought comment on, among other things, what regulations we should adopt to implement section 222. We stated in the *CPNI Notice* that the CPNI requirements the Commission previously established in the *Computer II* and *Computer III* proceedings remain in effect pending the outcome of the rulemaking, to the extent they do not conflict with section 222. The *CPNI* proceeding will address whether these pre-existing requirements should be retained, eliminated, extended, or modified in light of the Act.

126. Under the *Computer II* structural separation requirements, AT&T, the BOCs, and GTE were prohibited from jointly marketing their basic services with the enhanced services provided through their separate affiliate. Under the *Computer III* nonstructural safeguards regime, AT&T, the BOCs, and GTE were permitted to engage in joint marketing of basic and enhanced services subject to restrictions on their use of CPNI. In the *BOC Safeguards Order*, the Commission strengthened the CPNI rules by requiring that, for customers with more than twenty lines, BOC personnel involved in marketing enhanced services obtain written authorization from the customer before gaining access to its CPNI.

127. On March 6, 1992, the Association of Telemessaging Services International, Inc. (ATSI) filed a petition for reconsideration of the *BOC Safeguards Order* in CC Docket No. 90–623, the *Computer III Remand* proceeding. ATSI asked the Commission to modify the *BOC Safeguards Order* by: (1) prohibiting joint marketing of basic and information services; (2) extending the prior authorization requirement for CPNI to all users, regardless of size; and (3) ensuring that users who restrict access to their CPNI continue to receive nondiscriminatory treatment and an adequate level of service. On May 17, 1996, the Commission issued an order dismissing issues (2) and (3) as moot

because of the passage of the Telecommunications Act of 1996 and our commencement of a new proceeding to address the obligations of telecommunications carriers with respect to CPNI in light of the new statute. The order also noted that issue (1) remained to be addressed by the Commission. ATSI filed a motion to withdraw its petition for reconsideration in CC Docket No. 90–623 and to incorporate its petition into the Commission's *Computer III Further Remand* proceeding in CC Docket No. 95–20, as well as other proceedings, on December 10, 1996. On May 14, 1997, the Common Carrier Bureau partially granted the ATSI Motion by agreeing to address in this proceeding whether joint marketing of basic services and information services by the BOCs should be prohibited.

128. We therefore seek comment on the issue raised in the ATSI Petition: whether, to the extent the Commission continues to allow the BOCs to provide information services subject to a nonstructural safeguards regime, the BOCs should be prohibited from jointly marketing basic services and information services when these services are provided on an intraLATA basis. To the extent parties support the view that the term "telecommunications service" in the Act encompasses the same set of services as the term "basic service" did under the Commission's previous rules, parties should discuss the issue raised in the ATSI petition in terms of whether joint marketing should be allowed between telecommunications services and information services. As noted in the *ATSI Order*, we do not address this question with respect to interLATA information services, since under section 272 of the Act BOCs must provide interLATA information services pursuant to a section 272 affiliate and subject to the joint marketing provisions in that section. Also, under section 274, BOCs providing electronic publishing, whether on an interLATA or intraLATA basis, must do so pursuant to a section 274 affiliate and subject to the joint marketing rules in that section.

129. In its petition, ATSI argues that joint marketing of basic services and information services harms consumers and diminishes overall competition in the information services market. ATSI alleges that the BOCs have abused the Commission's joint marketing rules by: (1) routing calls to subscribers of competing voice messaging providers to the BOC's own voice messaging service instead; (2) soliciting customers of competing voice messaging providers who contact the BOCs to request other BOC services; (3) providing customers with misleading and disparaging information about the voice messaging services offered by competing providers; and (4) engaging in other unfair practices. ATSI therefore requests that the Commission prohibit the BOCs from using the same personnel and facilities to market basic services and information services. We seek comment on these issues. We also seek comment on the costs and operational efficiencies or inefficiencies of allowing the BOCs to provide intraLATA information services on an integrated basis, but requiring different personnel and facilities to market basic services and information services.

V. Jurisdictional Issues

130. Our authority, pursuant to section 2(a) of the Communications Act, to establish, enforce, modify, or eliminate a regime of safeguards for the provision of information services by the BOCs and GTE is well settled. In addition, the scope of our authority to preempt inconsistent regulation on the part of the states has been established by the Commission in the previous *Computer III* orders and has been affirmed on appeal.

131. In the *Computer III Phase I Order*, the Commission preempted: (1) all state structural separation requirements applicable to the provision of enhanced services by AT&T and the BOCs; and (2) all state nonstructural safeguards applicable to AT&T and the BOCs that were inconsistent with federal safeguards. The *California I* court vacated these preemption actions, on the ground that the Commission had not adequately justified imposing them. In response to the *California I* remand, the Commission narrowed the scope of federal preemption to cover only: (1) state requirements for structural separation of facilities and personnel used to provide the intrastate portion of jurisdictionally mixed enhanced services; (2) state CPNI rules requiring prior authorization that is not required by federal regulation; and (3) state network disclosure rules that require initial disclosure at a time different than the federal rules. The Commission reasoned that such state requirements would thwart or impede the nonstructural safeguards pursuant to which the BOCs may provide interstate enhanced services, and the federal goals such safeguards were intended to achieve. The *California III* court upheld the Commission's narrowly tailored preemption, stating that the Commission had met its burden of demonstrating that it was preempting only state regulations that would negate valid federal regulatory goals.

132. Thus, we believe that the proposals we make in the current Further Notice, and the options upon which we seek comment, fall within the scope of our authority previously established in the context of this proceeding, as outlined above. To the extent that our proposals go beyond our recognized preemption authority, we ask that commenters identify those proposals and comment on our authority to adopt them.

VI. Procedural Matters

A. Ex Parte Presentations

133. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's revised *ex parte* rules, which became effective June 2, 1997. *See Amendment of 47 CFR 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings*, GC Docket No. 95–21, Report and Order, 62 FR 15852, April 3, 1997, (citing 47 CFR 1.1204(b)(1)) (1997). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.

B. Initial Paperwork Reduction Act Analysis

134. This Further Notice contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Further Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this Further Notice; OMB comments are due 60 days from the date of publication of this Further Notice in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and

clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

C. Initial Regulatory Flexibility Certification

135. The Regulatory Flexibility Act (RFA) requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

136. This Further Notice pertains to the Bell Operating Companies (BOCs), each of which is an affiliate of a Regional Holding Company (RHC), as well as to GTE and AT&T. Neither the Commission nor SBA has developed a definition of "small entity" specifically applicable to the BOCs, GTE, or AT&T. The closest definition under SBA rules is that for establishments providing "Telephone Communications, Except Radiotelephone," which is Standard Industrial Classification (SIC) code 4813. Under this definition, a small entity is one employing no more than 1,500 persons. We note that each BOC is dominant in its field of operation and all of the BOCs as well as GTE and AT&T have more than 1,500 employees. We therefore certify that this Further Notice will not have a significant economic impact on a substantial number of small entities. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this Further Notice, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration. A copy will also be published in the **Federal Register**.

D. Comment Filing Procedures

137. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before March 27, 1998, and reply comments on or before April 23, 1998. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C., 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C., 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C., 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C., 20554.

138. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

139. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C., 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labeled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

140. You may also file informal comments or an exact copy of your formal comments electronically via the Internet at <http://www.fcc.gov/e-file/> or via e-mail <computer3@comments.fcc.gov>. Only one copy of electronically-filed comments must be submitted. You must put the docket number of this proceeding in the subject line if you are using e-mail (CC Docket No. 95–20), or in the body of the text if by Internet. You must note whether an electronic submission is an exact copy of formal comments on the subject line. You also must include your full name and Postal Service mailing address in your submission.

VII. Ordering Clauses

141. Accordingly, *It is ordered* that, pursuant to sections 1, 2, 4, 10, 11, 201–205, 251, 271, 272, and 274-276, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 160, 161, 201–205, 251, 271, 272, and 274–276, a *Further notice of proposed rulemaking is adopted.*

142. *It is Further Ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *shall send* a copy of this *Further notice of proposed rulemaking*, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act, *see* 5 U.S.C. 605(b).

List of Subjects

47 CFR Part 51

Communications common carriers, Interconnection.

47 CFR Part 53

Bell Operating Companies, Communications common carriers, InterLATA services, Separate affiliate safeguards, Telephone.

47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–4650 Filed 2–25–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 980212038–8038–01; I.D. 020298A]

RIN 0648–AF41

Fisheries of the Northeastern United States; Amendment 10 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NOAA proposes regulations to implement Amendment 10 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP). Amendment 10 would establish management measures for the fishery for small ocean quahogs (mahogany quahogs) which occurs off the coast of Maine, north of 43°50' N. latitude.

DATES: Comments must be received on or before April 13, 1998.

ADDRESSES: Send comments on this proposed rule to Andrew Rosenberg, Ph.D., Regional Administrator, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930-3799. Mark the outside of the envelope "Comments on Amendment 10 to the Surf Clam and Ocean Quahog FMP."

Copies of Amendment 10 and its supporting documents, including the environmental assessment, and the regulatory impact review (RIR), are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council (Council), Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 978-281-9104.

SUPPLEMENTARY INFORMATION:

Background

Proposed Amendment 10 was prepared by the Mid-Atlantic Fishery Management Council (Council), in cooperation with the New England Fishery Management Council and the Maine Department of Natural Resources. A notice of availability of the amendment was published in the **Federal Register** on February 9, 1998 (63 FR 6510), soliciting public comments on the amendment through April 10, 1998. All comments received by the end of the comment period on the proposed amendment, whether specifically directed to Amendment 10 or to the proposed rule, will be considered in the approval/disapproval decision on Amendment 10. Comments received after that date will not be considered in the approval/disapproval decision of Amendment 10.

While the surf clam and ocean quahog fisheries have been managed under an individual transferable quota (ITQ) system since 1990 when Amendment 8 to the FMP was approved, the Maine mahogany quahog fishery operated under a series of experimental fishery authorizations from October 1990 through September 1997. These experimental fisheries allowed vessels to fish in the exclusive economic zone (EEZ), north of 43°50' N. latitude without being subject to the ITQ program requirements. These requirements include the use of 32–bushel (1,700–L) metal cages to offload quahogs, and the placement of tags on cages to indicate that the harvest is counted toward the appropriate individual allocation. The requirement to use 32–bushel (1,700–L) metal cages is infeasible for the smaller Maine mahogany quahog vessels and docks due to the cage size. Additionally, Maine mahogany quahog vessels harvest relatively few bushels of mahogany quahogs on any trip. Therefore, the use of a 32–bushel (1,700–L) container to measure landings was considered inappropriate.

For the past several years, NMFS has informed the Council and the State of Maine that it was inappropriate to continue authorizing the experimental fishery after compilation of all necessary data to profile the fishery. In response, the Council and staff from the Maine Department of Marine Resources cooperatively developed Amendment 10 to specify management measures for the historical Maine mahogany quahog fishery that recognizes the traditional small scale, small vessel characteristics of the fishery. They were unable to come to a consensus on management measures prior to the expiration of the experimental fishery authorization on September 30, 1997. Since that time, the participants in the Maine mahogany quahog fishery have been required to comply with the ITQ management measures in order to fish in the EEZ. Some participants were able to obtain ocean quahog allocations and fish under the ITQ regime. Others may have continued to harvest ocean quahogs in state waters. The fishery is relatively inactive in the winter, with only 10 percent of the landings historically occurring during this period.

Management Measures

Amendment 10 would (1) establish a Maine mahogany quahog management zone north of 43°50' N. latitude (zone); (2) establish a Maine mahogany quahog permit; (3) establish an initial annual quota of 100,000 Maine bushels (35,150 hectoliters (hL)); (4) require the Council to establish a Maine Mahogany Quahog Advisory Panel to make management recommendations; (5) allow for the revision of the annual quota within a range of 17,000 to 100,000 Maine bushels (5,975 to 35,150 hL); (6) require vessels harvesting ocean quahogs from the zone to fish only in areas that have been certified by the State of Maine to be within Interstate Shellfish Sanitation Conference (ISSC) limits for the toxin responsible for paralytic shellfish poisoning (PSP); (7) require vessels fishing under a Maine mahogany quahog permit to land ocean quahogs in Maine; (8) require vessels fishing in the zone under an ITQ and landing their catch outside of Maine to land at a facility participating in an overall program that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with those food safety-based procedures used by the State of Maine for such purpose; and, (9) give the Regional Administrator the authority to suspend the existing vessel notification requirement for vessels possessing a Maine mahogany quahog permit and fishing in the zone, if it is determined that notification is unnecessary for enforcement. A Maine bushel would be defined as 1.2445 cubic ft (35.24 L).

In addition to these management measures, all vessels prosecuting the Maine mahogany quahog fishery would have to continue to abide by the vessel and dealer reporting and recordkeeping requirements set forth in 50 CFR part 648.

NMFS herein publishes all of the regulations submitted by the Council to implement Amendment 10 despite concern about the provision concerning future replacement of a vessel issued a Maine mahogany quahog permit. This provision is inconsistent with similar provisions in other fishery management plans in the region, including recent plans enacted by the Council for the black sea bass and summer flounder fisheries. However, because the New England and Mid-Atlantic Fishery Management Councils have expressed their intent to address this issue in upcoming amendments, NMFS is publishing the provision as proposed by

the Council. However, this issue must be resolved.

Maine Mahogany Quahog Permit

The Maine mahogany quahog permit would be available only to vessels that reported the harvest of at least one Maine bushel (35.24 L) of ocean quahogs from the zone while enrolled in the Maine mahogany quahog experimental fishery. The Maine mahogany quahog permit would authorize such vessels to fish in the EEZ within the zone without complying with the ITQ requirements set forth in 50 CFR 648.70 and 648.75. Other vessels would have to comply with ITQ requirements to fish in the EEZ within the zone.

Maine Mahogany Quahog Quota

Recorded landings from the Maine mahogany quahog fishery have varied from a high of 125,000 Maine bushels (43,937 hL) in 1986 to a low of 17,000 bushels (5,975 hL) in 1993. In Amendment 10, the Council proposed that the initial quota for the fishery be specified at 100,000 bushels (35,150 hL), which may be modified within the range of 17,000 to 100,000 bushels (5,975 to 35,150 hL). This quota is consistent with the range of landings over the history of the fishery. The quota could be adjusted in future years as part of the annual quota-setting process for surf clams and ocean quahogs. The Council would consult with the Maine Mahogany Quahog Advisory Panel and would review available information to determine whether the quota level requires adjustment.

Amendment 10 notes that the next ocean quahog stock assessment will be conducted in June 1998. The status of ocean quahogs in the zone has never been formally assessed. However, limited non-random sampling in the area has shown evidence that there is substantial recruitment of ocean quahogs in the areas sampled. The June 1998 stock assessment may provide some additional management advice for the Council.

The 100,000 Maine bushel (35,150 hL) quota for the Maine fishery is in addition to the 4.0 million bushel (2,122,000 hL) quota specified for the ITQ fishery. The ITQ fishery quota is specified in standard bushels of 1.88 cubic ft/bushel (53.24 L/bushel). When the two quota amounts are added together, the total allowable harvest is lower than the level that would result in overfishing for the entire stock, as defined in the FMP.

Landings of ocean quahogs made by vessels fishing under the Maine mahogany quahog permit or those fishing exclusively in State waters within the zone would count against the Maine quota. Landings made by vessels fishing under an ITQ allocation permit would count against the ocean quahog quota allocated to the ITQ fishery.

PSP Management Issues

Amendment 10 provides for the protection of the public health by establishing procedures designed to ensure that marketed shellfish do not exceed tolerances for PSP toxins accepted by the ISSC. These procedures include seasonal harvesting restrictions for vessels, selected sampling and analysis of clams at the dealer level, and restricting the harvest of mahogany quahogs in the zone to those areas tested by the State of Maine and deemed to be within ISSC acceptable limits for the toxin that causes PSP. All ocean quahogs harvested by vessels fishing under a Maine mahogany quahog permit or under a State of Maine fishing permit would have to be landed in Maine and would be subject to the State's shellfish safety controls in place for the zone. Other vessels fishing in the zone under an ITQ could land their catch outside of Maine. However, the shellfish would have to be sampled and analyzed consistent with the safety-based procedures for shellfish harvested from the zone and landed in Maine.

Suspension of Notification Requirements

The Regional Administrator would be authorized by Amendment 10 to suspend the call-in requirements found at 50 CFR 648.15 (b)(1) and (2) for vessels issued a Maine mahogany quahog permit fishing within the zone if it is not deemed necessary for enforcement. Based on advice from NMFS Law Enforcement, the Regional Administrator announces his intent to suspend the call-in requirements if Amendment 10 is approved. The vessel notification requirement would remain in effect for vessels fishing under an ITQ allocation permit within the zone.

Maine Mahogany Quahog Advisory Panel

The Maine Mahogany Quahog Advisory Panel would be established by the Council consisting of representatives of harvesters, dealers, and the Maine Department of Marine Resources. The panel would be responsible for making management recommendations, including revisions to the annual quota, through the Surf Clam and Ocean Quahog Committee of the Council. Quota adjustments would occur through the annual quota-setting process for surf clams and ocean quahogs.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The analysis of impacts relative to the Regulatory Flexibility Act indicates that, while a substantial number of small entities may be impacted by this action, the proposed regulatory actions or regulations in Amendment 10 would not result in a significant economic impact on such entities. A significant economic impact would occur if gross revenues decreased more than 5 percent as a result of this action.

The initial quota of 100,000 Maine bushels (35,150 hL) in 1998 may potentially allow landings to increase by 30,933 Maine bushels (10,873 hL) from the 1996 level. The potential increase in revenues in the fishery would depend on the increase in the landing level. Using 1996 as the base year, effects were examined assuming an increase in landings in 1998 of 0 percent, 10 percent, 25 percent, up to the entire 100,000 Maine bushel quota (35,150 hL) of the Maine mahogany quahog quota. Estimated gross revenue effects are increases of $0, $199,258, $408,146, and $892,417, respectively. The Council estimates that 83 vessels will qualify for the Maine mahogany quahog permit. Revenue effects were estimated based on the 43 vessels that landed mahogany quahogs in 1996. If the gross revenue increases are evenly shared among these vessels, each business unit would potentially gain from $0 to $20,754. However, the sensitivity analysis conducted in the RIR, showed that ex-vessel price was constant regardless of the amount of ocean quahogs landed. In reality, it would be expected that, as the quantity of ocean quahogs landed increased, the ex-vessel price for this commodity would decrease. Therefore, the increase in revenues shown above may be considerably lower. This action should not have a significant affect on a substantial number of small entities. Ex-vessel revenues are not expected to decrease by as much as 5 percent for 20 percent or more of the vessels. No vessels currently in the mahogany quahog fishery are expected to cease business operations as a result of this action.

The establishment of the proposed zone would allow for the continual monitoring of harvest of ocean quahogs from areas that are tested by the State of Maine and deemed to be within ISSC acceptable limits for PSP. It is not possible to quantify this benefit due to lack of information. However, it is expected that positive economic benefits will be derived from preventing the costs associated

with an occurrence of PSP contamination in landings of mahogany quahogs. Such costs would be those associated with medical costs, costs of lost time, and decreases in profits to the fishery due to a decrease in demand for mahogany quahogs that could result.

The provision dealing with the implementation of a new vessel permit will provide positive benefits to the historical participants of the fishery by avoiding potential dissipation of revenues due to a future increase in the number of non-ITQ entrants. At the same time, this would also reduce the potential of overcapitalization in the fishery. This provision is expected to provide positive benefits to the overall management system.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the PRA. These requirements have been submitted to the Office of Management and Budget for approval. The public reporting burdens for these collections of information is estimated to average 30 minutes for a new vessel permit, 30 minutes for an appeal, 15 minutes for a renewal application for a permit, and two minutes for a call-in. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The notification requirement is not a new reporting requirement. The requirement was implemented in 1993 and applied to all federally permitted ocean quahog vessels. It was not, however, determined to be a necessary condition for vessels participating in the Maine mahogany quahog experimental fisheries so these vessels were never reflected in the estimated number of affected entities. Since the Regional Administrator intends to suspend notification requirements for those fishing under the new Maine mahogany quahog permit if Amendment 10 is approved, there will be no additional burden hours required under the call-in provision. Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility: the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 20, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648, is proposed to be amended as follows:

PART 648—FISHERIES OF NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.2, definitions for "Maine bushel" and "Maine mahogany quahog zone" are added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Maine bushel means a standard unit of volumetric measurement equal to 1.2445 cubic feet (35.24 L) of ocean quahogs in the shell.

Maine mahogany quahog zone means the area bounded on the east by the U.S.-Canada maritime boundary, on the south by a straight line at 43°50' N. latitude, and on the north and west by the shoreline of Maine.

* * * * *

3. In § 648.4, paragraph (a)(4)(i) is added and (a)(4)(ii) is reserved to read as follows:

§ 648.4 Vessel and individual commercial permits.

(a) * * *

(4) * * *

(i) *Maine mahogany quahog permit.* (A) A vessel is eligible for a Maine mahogany quahog permit to fish for ocean quahogs in the Maine mahogany quahog zone if it meets the following eligibility criteria:

(*1*) The vessel was issued a Federal Maine Mahogany Quahog Experimental Permit during one of the experimental fisheries authorized by the Regional Administrator between September 30, 1990, and September 30, 1997; and,

(*2*) The vessel landed at least one Maine bushel of ocean quahogs from the Maine mahogany quahog zone as documented by fishing or shellfish logs submitted to the Regional Administrator prior to January 1, 1998.

(B) *Application/renewal restriction.* No one may apply for a Maine mahogany quahog permit for a vessel after [insert date one year after effective date of the final rule].

(C) *Replacement vessels.* To be eligible for a Maine mahogany quahog permit, a replacement vessel must be replacing a vessel of substantially similar harvesting capacity that is judged unseaworthy by the USCG, for reasons other than lack of maintenance, or that involuntarily left the fishery. Both the entering and replaced vessels must be owned by the same person. Vessel permits issued to vessels that involuntarily leave the fishery may not be combined to create larger replacement vessels.

(D) *Appeal of denial of a permit.*

(*1*) Any applicant denied a Maine mahogany quahog permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator's designee erred in concluding that the vessel did not meet the criteria in paragraph (a)(4)(i)(A) of this section. The appeal must set forth the basis for the applicant's belief that the decision of the Regional Administrator's designee was made in error.

(*2*) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Administrator.

(*3*) The hearing officer shall make a recommendation to the Regional Administrator.

(*4*) The Regional Administrator will make a final decision based on the criteria in paragraph (a)(4)(i)(A) of this section and the available record, including any relevant documentation submitted by the applicant and, if a hearing is held, the recommendation of the hearing officer. The decision on the appeal by the Regional Administrator is the final decision of the Department of Commerce.

(ii) [Reserved]

* * * * *

4. In § 648.14, paragraphs (a)(23), (24), and (25) are revised, paragraphs (a)(105) through (109) are added, and paragraph (x)(1)(ii) and the first sentence of paragraph (x)(1)(iii) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(23) Land unshucked surf clams or ocean quahogs harvested in or from the EEZ outside of the Maine mahogany quahog zone in containers other than cages from vessels capable of carrying cages.

(24) Land unshucked surf clams and ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone in containers other than cages from vessels capable of carrying cages unless, with respect to ocean quahogs, the vessel has been issued a Maine mahogany quahog permit under this part and is not fishing for an individual allocation of quahogs under § 648.70.

(25) Fail to comply with any of the notification requirements specified in § 648.15(b).

* * * * *

(104) [Reserved]

(105) Offload unshucked surf clams or ocean quahog harvested in or from the EEZ outside of the Maine mahogany quahog zone from vessels not capable of carrying cages other than directly into cages.

(106) Offload unshucked surf clams harvested in or from the EEZ within the Maine mahogany quahog zone from vessels not capable of carrying cages other than directly into cages.

(107) Offload unshucked ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone from vessels not capable of carrying cages other than directly into cages unless the vessel has been issued a Maine mahogany quahog permit under this part and is not fishing for an individual allocation of quahogs under § 648.70.

(108) Purchase, receive for a commercial purpose other than transport to a testing facility or process or attempt to purchase, receive for commercial purpose other than transport to a testing facility or process outside of Maine, ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone except at a facility participating in an overall food safety program that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with procedures used by the State of Maine for such purpose.

(109) Land or possess ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone after the effective date published in the **Federal Register** notifying participants that Maine mahogany quahog quota is no longer available, unless the vessel is fishing for an individual allocation of ocean quahogs under § 648.70.

* * * * *

(x) * * *

(1) * * *

(ii) Surf clams or ocean quahogs landed from a trip for which notification was provided under § 648.15(b) or § 648.70(b) are deemed to have been harvested in the EEZ and count against the individual's annual allocation unless the vessel has a valid Maine mahogany quahog permit issued pursuant to § 648.4(a)(4)(i) and is not fishing for an individual allocation under § 648.70.

(iii) Surf clams or ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ and to be part of an individual's allocation unless the vessel has a valid Maine mahogany quahog permit issued pursuant to § 648.4(a)(4)(i) and is not fishing for an individual allocation under § 648.70; or, unless the preponderance of available evidence demonstrates that he/she has surrendered his/her surf clam and ocean quahog permit issued under § 648.4 and he/she conducted fishing operations exclusively within waters under the jurisdiction of any state. * * *

* * * * *

5. In § 648.15, paragraph (b)(4) is added to read as follows.

§ 648.15 Facilitation of enforcement.

* * * * *

(b) * * *

(4) *Suspension of notification requirements.* The Regional Administrator may suspend notification requirements for vessels fishing under a Maine mahogany quahog permit issued pursuant to § 648.4(a)(4)(i). If he determines that such notification is not necessary to effectively enforce the management measures in the Maine mahogany quahog zone, the Regional Administrator may rescind such suspension if he concludes that the original determination is no longer valid. A suspension or recision of suspension of the notification requirements by the Regional Administrator shall be published in the **Federal Register**.

* * * * *

6. In § 648.73, paragraph (d) is added to read as follows.

§ 648.73 Closed areas.

* * * * *

(d) *Areas closed due to the presence of paralytic shellfish poisoning toxin*—(1) *Maine mahogany quahog zone.* The Maine mahogany quahog zone is closed to fishing for ocean quahogs except in those areas of the zone that are tested by the State of Maine and deemed to be within Interstate Shellfish Sanitation Conference acceptable limits for the toxin responsible for paralytic shellfish poisoning. Harvesting is allowed in such areas during the periods specified by the Maine Department of Marine Resources during which quahogs are safe for human consumption. For information regarding those areas contact the State of Maine Division of Marine Resources at (207–624–6550).

(2) [Reserved]

7. In § 648.75, introductory text is added to read as follows:

§ 648.75 Cage identification.

Except as provided in § 648.76, the following cage identification requirements apply to all vessels issued a Federal fishing permit for surf clams and ocean quahogs:

* * * * *

8. Section § 648.76 is added to subpart E to read as follows.

§ 648.76 Maine mahogany quahog zone.

(a) *Landing requirements.* (1) A vessel fishing under a valid Maine mahogany quahog permit pursuant to § 648.4(a)(4)(i), fishing for or possessing ocean quahogs within the Maine mahogany quahog zone, must land its catch in the State of Maine.

(2) A vessel fishing under an individual allocation permit, regardless of whether it has a Maine mahogany quahog permit, fishing for or possessing ocean quahogs within the zone, may land its catch in the State of Maine, or, consistent with applicable state law, any other state that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with those food safety-based procedures used by the State of Maine for such purpose, and must comply with all requirements in §§ 648.70 and 648.75. Documentation as required by the state and other laws and regulations applicable to food safety-based procedures must be made available by federally- permitted dealers for inspection by NMFS.

(b) *Quota monitoring and closures*—(1) *Catch quota.* (i) The annual quota for harvest of mahogany quahogs from within the Maine mahogany quahog zone is 100,000 Maine bushels (35,150 hL). The quota may be revised annually within the range of 17,000 to 100,000 Maine bushels (5,975 to 35,150 hL) following the procedures set forth in § 648.71.

(ii) All mahogany quahogs landed for sale in Maine by vessels issued a Maine mahogany quahog permit and not fishing for an individual allocation of ocean quahogs under § 648.70 shall be

applied against the Maine mahogany quahog quota, regardless of where the mahogany quahogs are harvested.

(iii) All mahogany quahogs landed by vessels fishing in the Maine mahogany quahog zone for an individual allocation of quahogs under § 648.70 will be counted against the ocean quahog allocation for which the vessel is fishing.

(iv) The Regional Administrator will monitor the quota based on dealer reports and other available information and shall determine the date when the quota will be harvested. NMFS shall publish notification in the **Federal Register** advising the public that, effective upon a specific date, the Maine mahogany quahog quota has been harvested and notifying vessel and dealer permit holders that no Maine mahogany quahog quota is available for the remainder of the year.

(2) *Maine Mahogany Quahog Advisory Panel.* The Council shall establish a Maine Mahogany Quahog Advisory Panel consisting of representatives of harvesters, dealers, and the Maine Department of Marine Resources. The Advisory Panel shall make recommendations, through the Surf Clam and Ocean Quahog Committee of the Council, regarding revisions to the annual quota and other management measures.

[FR Doc. 98–4848 Filed 2–25–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 38
Thursday, February 26, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 20, 1998.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Services

Title: Mexicali Valley of Mexico-Karnal Bunt.

OMB Control Number: 0579–New.

Summary of Collection: The information collection would allow the Department of Agriculture to properly monitor imports of wheat from the Mexicali Valley of Mexico to prevent the incursion and spread of Karnal Bunt.

Need and Use of The Information: USDA would use information collected on a phytosanitary certificate to ensure that the wheat being brought into the United States was grown in the designated Karnal bunt free area of the Mexicali Valley of Mexico.

Description of Respondents: Business or other for-profit; Individuals or households; Farms.

Number of Respondents: 20

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 120.

Food and Consumer Services

Title: Employment and Training (E&T) Program Report.

OMB Control Number: 0584–0339.

Summary of Collection: The Food and Consumer Service Agency (FCS) is proposing collecting from State governments quarterly Employment and Training Program reports containing monthly figures for participation in the program. The form FCS–583 would be used to report participants newly work registered; work registrants exempt by the State from participation in an E&T program; participants who volunteer for and commence participation in an approved E&T component; E&T mandatory participants who commence an appoved E&T components; work registrants sent a Notice of Adverse Action for failure to comply with E&T requirements, and the number of applications who were denied food stamp certification or recertification for failure to comply with an E&T component.

Additionally, the passage of the Balance Budget Act of 1997 resulted in additional provisions which impact the Employment and Training Program. Accordingly, FCS is proposing collecting from State governments quarterly reports on the average number of monthly waiver exemptions for able-bodied adults without dependents; the number of filled and offered workfare slots; the amount of 100 percent Federal funds spent on workfare slots. This information can be attached to the FCS–583 report until that form is redesigned.

Need and Use of The Information: The information collection will enable USDA to determine whether States have met their mandated performance standards stipulated by the Employment and Training Program and all provisions of the Balanced Budget Act of 1997.

Description of Respondents: State, Local, or Tribal Government; Individuals or households.

Number of Respondents: 4,870,542.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 224,587.

Emergency Processing of This Submission Has Been Requested by March 1, 1998.

National Food and Agricultural Council

Title: USDA Service Center Customer Service Card.

OMB Control Number: 0575–New.

Summary of Collection: The USDA Service Center Initiative is proposing the establishment of a pilot project to test a comment and complaint system that would provide its field customers with a formal process for filing and resolving complaints. Customer Service Cards would be available in each field service center and would allow customers to voluntarily comment or complain about the service they receive.

Need and Use of The Information: The information collection will enable USDA customers to formally register their comments and complaints. This information will be used (1) to identify and resolve individual customer complaints about service or processes, (2) to facilitate a means for ongoing communication between customers, (3) as input for improving service and process, (4) motivate and encourage employees to provide excellent customer service. Additionally, information gained during the pilot project will be used to modify the Customer Service Cards before nationwide implementation would occur.

Description of Respondents: Individuals or households.

Number of Respondents: 13,500.

Frequency of Responses: Recordkeeping; Reporting: As needed.

Total Burden Hours: 1,125.

Emergency Processing of this Submission has been requested by March 1, 1998.

Forest Services

Title: 36 CFR Part 228, Subpart G—Smith River National Recreational Area.

OMB Control Number: 0596–0138.

Summary of Collection: The proposed information collection affects parties or individuals who desire Forest Service approval to conduct mineral operations in the Smith River National Recreation Area. Information requirements associated with this collection include a standard operating plan or plan of operation as well as identification of hazardous materials, toxic materials, and similar chemical substances to be used during the mineral operation and how they will be disposed of. Additionally, the operator will have to provide the identity if the character and composition of the mineral that will be used/generated, a proposed method/strategy for the placement, control, isolation, or removal of the wastes, and how public health and safety are to be maintained.

Need and Use of the Information: The Forest Service needs this information to assess the impact of a proposed mineral operations on the land and surrounding resources within the Smith River National Recreation Area and provide the requested approvals to proceed. By receiving and reviewing the plan of operations and other information required by this collection, Forest Service authorized officers can ensure the resources, public safety, and health are protected when mineral activities are being conducted in the Smith River National Recreation Area.

Description of Respondents: Business or other for-profit; Individuals or households.

Number of Respondents: 2.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 40.

Nancy Sternberg,

Departmental Clearance Officer.

[FR Doc. 98–4889 Filed 2–25–98; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Public Briefings on Development of a U.S. Action Plan on Food Security

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a public workshop regarding development of the domestic portion of a U.S. Action Plan on Food Security will be held on March 6, 1998. The workshop is for the purpose of briefing the public on the domestic food security discussion paper, responding to questions and receiving individual reactions to the paper in order to facilitate public participation in the process of developing the U.S. Action Plan on Food Security.

DATES: The workshop on the domestic paper will be on March 6, 1998, 9 a.m. to 4 p.m. in Room 107A, Administration Building, U.S. Department of Agriculture in Washington, D.C.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The discussion paper is available from the Office of the National Food Security Coordinator, Foreign Agricultural Service, Room 3008 South Building, U.S. Department of Agriculture, 14th and Independence Ave., SW, Washington, D.C. 20250 telephone (202) 690–0776 or fax (202) 720–6103. The paper is also posted on the U.S. Government Food Security Home Page (http://www.fas.usda.gov/icd/summit/summit.html).

Signed in Washington, D.C. February 19, 1998.

Lon Hatamiya,

Administrator, Foreign Agricultural Service.

[FR Doc. 98–4861 Filed 2–25–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Collection of Public Information With Use of a Survey

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request to extend the clearance for an existing information collection in order to render service to associations of producers of agricultural, forestry, and fisheries products and federations and subsidiaries thereof as authorized in the Cooperative Marketing Act of 1926.

DATES: Comments on this notice must be received by April 27, 1998 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Tracey L. Kennedy, Agricultural Economist, RBS, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 3252, Washington, DC. 20250–3252, Telephone (202) 690–1428.

SUPPLEMENTARY INFORMATION:

Title: Annual Survey of Cooperative Involvement in International Markets.

Type of Request: Information collection.

Abstract: The mission of the Rural Business-Cooperative Service (RBS), formerly Agricultural Cooperative Service (ACS), is to assist farmer-owned cooperatives in improving the economic well-being of their farmer-members. This is accomplished through a comprehensive program of research on structural, operational, and policy issues affecting cooperatives; technical advisory assistance to individual cooperatives and to groups of producers who wish to organize cooperatives; and development of educational and informational material. The authority to carry out RBS's mission is defined in the Cooperative Marketing Act of 1926 (44 Stat. 802–1926). Authority and Duties of Division (7 U.S.C. 453).

(a) The division shall render service to associations of producers of agricultural products, and federations and subsidiaries thereof, engaged in the cooperative marketing of agricultural products including processing, warehousing, manufacturing, storage, the cooperative purchasing of farm supplies, credit, financing, insurance, and other cooperative activities.

(b) The division is authorized to:

(1) Acquire, analyze and disseminate economic, statistical, and historical information regarding the progress, organization, and business methods of cooperative associations in the United States and foreign countries.

(2) Conduct studies of the economic, legal, financial, social and other phases of cooperation, and publish the results thereof. Such studies shall include the analyses of the organization, operation, financial and merchandising problems of cooperative organizations.

(3) Make surveys and analyses if deemed advisable of the accounts and business practices of representative cooperative associations upon their request; to report to the association so surveyed the results thereof; and with the consent of the association so surveyed to publish summaries of the results of such surveys, together with similar facts, for the guidance of cooperative associations and for the purpose of assisting cooperative associations in developing methods of business and market analysis.

(4) Acquire from all available sources, information concerning crop prospects,

supply, demand, current receipts, exports, imports, and prices of agricultural products handled or marketed by cooperative associations, and to employ qualified commodity marketing specialists to summarize and analyze this information and disseminate the same among cooperative associations and others."

RBS also has a stated objective to "assist U.S. farmer cooperatives to expand their participation in international trade of agricultural products and supplies and to review their progress."

As trade agreements are implemented and domestic farm supports are reduced, a global presence is increasingly important to producers, their communities, and to job-creation and retention in agri- and food-related industries. Measurement and monitoring of cooperatives' global presence are stated objectives of RBS's International Trade Program. In order to carry out the agency's mission and objectives, RBS needs to collect information from the cooperative community. This information collection is designed to provide time-series data that will provide a better understanding of the opportunities and limitations of producer-owned cooperatives in global markets. The data provide the basis for research on trade-related issues affecting cooperatives, and background for trade-related policy analysis.

Beginning in 1980, RBS's predecessor agency Agricultural Cooperative Service (ACS) collected cooperative trade data at five year intervals. Value of cooperative exports by commodity and destination were measured, as well as information related to method of sale.

Values of imports by cooperatives, by commodity and country of origin were collected in 1986 and 1991. However, data collected at five-year intervals did not provide for meaningful analysis. Further, previous collections were strictly limited to exports and imports, neglecting other important international arrangements such as strategic alliances and foreign direct investment. As a result, a more comprehensive, annual information collection has been developed to accomplish RBS objectives and paint a more accurate picture of cooperative involvement in international markets. These data are generally not available to RBS unless provided by the cooperatives.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average one (1) hour per response.

Respondents: Cooperatives involved in international activities.

Estimated Number of Respondents: 170.

Estimated Number of Responses per Respondent: one per year.

Estimated Total Annual Burden on Respondents: 170 hours.

Copies of this information collection can be obtained from Jean Mosley, Regulations and Paperwork Management Branch, at (202) 690–1587.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jean Mosley, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, 1400 Independence Avenue SW., Stop 0743, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of a public record.

Dated: February 18, 1998.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 98–4854 Filed 2–25–98; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the North Dakota Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 5:00 p.m. on Thursday, March 19, 1998, at the Radisson Inn-Bismarck, 800 South Third Street, Bismarck, North Dakota 58504. The purpose of the meeting is to update members on civil rights enforcement issues including presentations from the North Dakota Fair Housing Council and the North Dakota Indian Affairs Commission.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1400 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 19, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–4921 Filed 2–25–98; 8:45 am]

BILLING CODE 6335–01–P

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, March 6, 1998, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda

II. Approval of Minutes of February 6, 1998 Meeting

III. Announcements

IV. Staff Director's Report

V. State Advisory Committee Appointments for Maine, North Carolina, and Texas

VI. Los Angeles Hearing Report

VII. Future Agenda Items

11:00 a.m.—Staff Briefing on Americans with Disabilities Project

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications, (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 98–5126 Filed 2–24–98; 2:41 p.m.]

BILLING CODE 6335–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Special Assistant to the Deputy Secretary of Defense for Gulf War Illnesses.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Special Assistant to the Deputy Secretary of Defense for Gulf War Illnesses announces the proposed extension of a public information collection that was submitted for emergency review and approved in concept on November 21, 1997, and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 27, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Special Assistant to the Deputy Secretary of Defense for Gulf War Illnesses, 5113 Leesburg Pike, Suite 901, Falls Church, VA 22041, ATTN: Lieutenant Colonel Art Nalls.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the Office of the Special Assistant for Gulf War Illnesses at (703)–578–8500.

Time and OMB Number: Department of Defense M256A1 Outreach; OMB Number 0704–0399.

Needs and Uses: The information collection is necessary to facilitate the investigation of possible, positive M256A1 chemical warfare agent detections at different dates and locations in the Kuwait Theater of Operations. The information collected will be used to determine which Gulf War units and veterans may have further information about these incidents, to discover if there any other observed detections, to contribute to a better understanding of the events during and after the Gulf War, and to encourage veterans to enroll in a Department of Defense or Veterans Affairs medical program.

Affected Public: Individuals or Households.

Annual Burden Hours: 583.

Number of Respondents: 777.

Responses per Respondent: 1.

Average Burden per Response: 45 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are Gulf War veterans who are not serving on active duty and whose units were in the vicinity of the detection. Through this outreach, veterans will contact the Office of the Special Assistant on their own initiative. Veterans who call will be called back by Contact Managers who will collect basic information. This information will be passed on to investigators/analysts, who will pursue more in-depth questions. The information sought by the outreach letter will allow the Office of the Special Assistant to determine which Gulf War units and veterans may have further information that could contribute to the investigation of specific, possible M256A1 chemical detections; if there were any other M256A1 chemical detections observed; and, if veterans are enrolled in either the DoD or Department for Veteran Affairs medical programs. Relevant historical accounts provided by veterans will be integrated in case narratives from which private information will be removed. When approved for publication, these case narratives will appear on the Office of the Special Assistant's website, GulfLINK, which is fully open to the public.

Dated: February 20, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–4850 Filed 2–25–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Center for Character Development, United States Air Force Academy (USAFA)

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Center for Character Development, United States Air Force Academy, announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 27, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Center for Character Development, ATTN: Lt Col Lynn Stone, 2354 Fairchild Hall, Suite 4A, USAF Academy, CO 80840–6260.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call Lt Col Stone at 719–333–2987/4904, DSN 333–2987/4904.

Title, Associated Form, and OMB Number: USAFA Character Development Survey.

Needs and Uses: The information collection requirement is a necessary part of outcomes validation research, and program evaluation and management related to the Center's eight character development outcomes. This approval is specified by Title 37, United States Code, Section 908. This statute delegates such approval authority of Congress to the respective service secretaries and to the Secretary of State.

Affected Public: Individuals

Annual Burden Hours: 10,000

Number of Respondents: 30,000

Responses Per Respondent: 1

Average Burden Per Response: 10 minutes

Frequency: Once

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are United States Air Force Academy graduates (active duty, retired, and separated). Information in

the survey asks questions about eight character development outcomes (i.e. integrity, selfless service, excellence, human dignity, decisiveness, taking responsibility, self-discipline, and spirituality). The information solicited will be collected via U.S. mail, using scan sheets to record responses. It will be used as part of outcomes validation research, and program evaluation and management.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–4924 Filed 2–25–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 30, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 23, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New
Title: The Blue Ribbon Schools Program
Frequency: One-time
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs
Reporting Burden and Recordkeeping:
Responses: 515
Burden Hours: 25,750
Abstract: The Blue Ribbon Schools award is a national school improvement strategy with a threefold purpose: (1) to identify and give public recognition to outstanding public and private schools across the nation; (2) to make available a comprehensive framework of key criteria for school effectiveness that can serve as a basis for participatory self-assessment and planning in schools; (3) to facilitate communication and sharing of best practices within and among schools based on a common understanding of criteria related to success. The information collected will be used to determine by peer review which schools receive the award and information on their exemplary practices and policies will be made available to other schools.

Office of the Under Secretary

Type of Review: New
Title: Institutional Survey of the Operation of the Federal Work-Study Program
Frequency: One time
Affected Public: Business or other for-profit; Not-for-profit institutions
Reporting and Recordkeeping Hour Burden:
Responses: 850
Burden Hours: 1,700
Abstract: This study will describe the operation of the Federal Work-Study program at postsecondary education institutions nationwide. This survey will provide, for the first time, nationally-representative data on the workings of this program. Results will be used by Congress during the reauthorization of the Higher Education Act and for other oversight responsibilities.

[FR Doc. 98–4950 Filed 2–25–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Outreach; Electric and Magnetic Field Effects Research and Public Information Dissemination Program; Solicitation for Non-Federal Financial Contributions for Fiscal Year 1998

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice.

SUMMARY: The Department of Energy solicits financial contributions from non-Federal sources to at least match $3,446,500 in Federal funding, in support of the national, comprehensive Electric and Magnetic Field Effects Research and Public Information Dissemination Program, described in the Notice of Intent to Solicit Non-Federal Contributions, published November 9, 1993 (58 FR 59461). Section 2118 of the Energy Policy Act of 1992 (42 U.S.C. 13475) requires the Department of Energy to solicit funds from non-Federal sources to offset at least 50 percent of the total funding for all activities under this program. Section 2118 also precludes the Department of Energy from obligating funds for program activities in any fiscal year unless funds received from non-Federal sources are available in an amount at least equal to 50 percent of the amount appropriated by Congress. Appropriations for expenditure under section 2118 have been enacted under the Energy and Water Development Appropriation Act, 1998 (Pub. L. 105–271) in the amount of $3,446,500 for fiscal year 1998. Fiscal year 1998 is the final year of the Electric and Magnetic Field Effects Research and Public Information Dissemination Program.

DATES: Non-Federal contributions are requested as soon as possible in order to implement the fiscal year 1998 program in a timely manner. No portion of the $3,446,500 in appropriated funds may be expended for fiscal year 1998 program activities until DOE has received from non-Federal sources at least an aggregate sum of $1,723,250.

ADDRESSES: Contributions should be made in the form of a check payable to "U.S. Department of Energy" and should include the following annotation: "For EPAct 2118, EMF Program." Contributions are to be mailed to: U.S. Department of Energy; Office of Headquarters Accounting Operations; Fiscal Operations Division, CR–54; P.O. Box 500; Germantown, MD 20875–0500.

FOR FURTHER INFORMATION CONTACT: For additional information contact Dr. Imre Gyuk, Office of Energy Outreach, EE–14, U.S. Department of Energy, Washington, DC 20585.

Issued in Washington, DC, on February 20, 1998.

Dan W. Reicher,

Assistant Secretary for Energy Efficiency and Renewable Energy.

[FR Doc. 98–4947 Filed 2–25–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald

DATES: Saturday, March 14, 1998: 8:30 a.m.—12:30 p.m. (public comment session: 12:15 p.m.—12:30 p.m.)

ADDRESSES: Alpha Building, 10967 Hamilton-Cleves Highway, Harrison, Ohio.

FOR FURTHER INFORMATION CONTACT: John S. Applegate, Chair of the Fernald Citizens' Advisory Board, P.O. Box 544, Ross, Ohio 45061, or call the Fernald Citizens' Advisory Board office (513) 648–6478.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels; waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda

8:30 a.m. Call to Order
8:30–8:50 Opening Remarks
8:50–9:50 White Metal Box/Systems Discussion
9:50–10:05 Copper Recycling
10:05–10:15 Break
10:15–11:00 Review of Past Recommendations
11:00–11:15 Conflict of Interest Statement
11:15–12:00 1998 Priorities and Schedule
12:00–12:15 Committee Updates
12:15–12:30 Public Comment
12:30 p.m. Adjourn

A final agenda will be available at the meeting, Saturday, March 14, 1998.

Public Participation

The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer, Gary Stegner, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to John S. Applegate, Chair, the Fernald Citizens' Advisory Board, P.O. Box 544, Ross, Ohio 45061 or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC, on February 20, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–4944 Filed 2–25–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy.

ACTION: Notice of open meeting

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia).

DATE AND TIME: Wednesday, March 18, 1998: 6:00 p.m.—9:00 p.m. (Mountain Standard Time).

ADDRESS: Palo Duro Senior Center, 5251 Palo Duro NE, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:00 p.m. Call to Order/Roll Call
7:00 p.m. Public Comments
7:10 p.m. Approval of Agenda
7:12 p.m. Approval of 02/18/98 Minutes
7:17 p.m. Chairperson's Report—Jamie Welles
7:20 p.m. Sandia National Laboratory's Environmental Restoration/Waste Management Presentation/Discussion
7:45 p.m. Break
7:55 p.m. Sandia National Laboratory's Environmental Restoration/Waste Management Issues Discussion
8:42 p.m. New/Other Business
8:52 p.m. Public Comments
8:58 p.m. Announcement of Next Meeting
9:00 p.m. Adjourn

A final agenda will be available at the meeting Wednesday, March 18, 1998.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be

received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC, on February 20, 1998.

Althea T. Vanzego,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 98–4945 Filed 2–25–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Department of Energy, Los Alamos National Laboratory

AGENCY: Department of Energy

ACTION: Notice of open meeting

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EMSSAB), Los Alamos National Laboratory.

Dates and time: Saturday, March 21, 1998: 9:00 a.m.–12:00 p.m., 11:30 a.m. to 12:00 p.m. (public comment session).

ADDRESS: San Ildefonso Pueblo, Tewa Center, Governor's Office, State Route 502.

FOR FURTHER INFORMATION CONTACT: Ms. Ann DuBois, Northern New Mexico Citizens' Advisory Board, Los Alamos National Laboratory, 528 35th Street, Los Alamos, New Mexico 87544, (505) 665–5048.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

9:00 a.m.
Call to Order
Adoption of Bylaws
Election of Officers
9:30 a.m.
Old Business
10:00 a.m. New Business
11:30 a.m. Public Comment Session
12:00 p.m. Adjourn

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ms. Ann DuBois, at (505) 665–5048. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Mr. Mat Johansen, Deputy Designated Federal Officer, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on February 20, 1998.

Althea T. Vanzego,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 98–4946 Filed 2–25–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–100–000]

Algonquin Gas Transmission Company; Notice of Extension of Time

February 20, 1998.

The Massachusetts Energy Facilities Siting Board (EFSB) filed a request asking for an extension of time in which to file comments on the Notice of Intent to Prepare an Environmental Assessment for the Proposed ANP Bellingham Lateral Project and Request for Comments on Environmental Issues (NOI), issued January 16, 1998 (63 FR 3560, 1/23/98). Comments were due February 17, 1998.

Upon consideration, notice is hereby given that an extension of time is granted to the EPSB until March 20, 1998, for the filing of comments on the NOI.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4899 Filed 2–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3189–013]

Atlantic City Electric Company; Baltimore Gas & Electric Company; Delmarva Power & Light Company; Jersey Central Power & Light Company; Metropolitan Edison Company; Peco Energy Company; Pennsylvania Electric Company; Pennsylvania Power Company; Potomac Electric Power Company; Public Service Electric and Gas Company; Notice of Filing

February 20, 1998.

Take notice that on January 26, 1998, PECO Energy Company (PECO), tendered for filing its compliance filing in response to Ordering Paragraph (P) of the Commission's order in Pennsylvania-New Jersey-Maryland Interconnection, 81 ¶61,257 (1997).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 27, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4895 Filed 2–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1797–000]

Cinergy Services, Inc.; Notice of Filing

February 20, 1998.

Take notice that on February 10, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated February 1, 1998, between Cinergy, CG&E, PSI and Griffin Energy Marketing, L.L.C. (Griffin).

The Interchange Agreement provides for the following service between Cinergy and Griffin:

1. Exhibit A—Power Sales by Griffin
2. Exhibit B—Power Sales by Cinergy

Cinergy and Griffin have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on Griffin Energy Marketing, L.L.C., the Public Service Commission of Wisconsin, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 5, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4893 Filed 2–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–492–008]

CNG Transmission Corporation, Notice of Compliance Filing

February 20, 1998.

Take notice that on February 13, 1998, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective January 1, 1998:

Fifth Revised Sheet No. 1
Sheet No. 36
Third Revised Sheet No. 114
Third Revised Sheet No. 115
Second Revised Sheet No. 119
Third Revised Sheet No. 124
Second Revised Sheet No. 125
Second Revised Sheet No. 126
Third Revised Sheet No. 127
Second Revised Sheet No. 129
Second Revised Sheet No. 130
Second Revised Sheet No. 140
Third Revised Sheet No. 141
Third Revised Sheet No. 142
Second Revised Sheet No. 144
Second Revised Sheet No. 145
Second Revised Sheet No. 146
Second Revised Sheet No. 147
Third Revised Sheet No. 148
Third Revised Sheet No. 149
Second Revised Sheet No. 150
Second Revised Sheet No. 151
Second Revised Sheet No. 152
Second Revised Sheet No. 153
Second Revised Sheet No. 154
Fourth Revised Sheet No. 155
Second Revised Sheet No. 156
Second Revised Sheet No. 157
First Revised Sheet No. 158
Second Revised Sheet No. 159
Second Revised Sheet No. 160
Third Revised Sheet No. 161
Third Revised Sheet No. 162
Sixth Revised Sheet No. 163
Second Revised Sheet No. 164
Second Revised Sheet No. 165
Second Revised Sheet No. 166
Third Revised Sheet No. 169
Second Revised Sheet No. 170
Second Revised Sheet No. 171
Second Revised Sheet No. 172
Second Revised Sheet No. 173
Second Revised Sheet No. 174
Fourth Revised Sheet No. 175
Second Revised Sheet No. 176
Sheet No. 177
Sheet No. 181
Fifth Revised Sheet No. 251
Second Revised Sheet No. 256
Third Revised Sheet No. 272
Third Revised Sheet No. 274
Second Revised Sheet No. 306
Third Revised Sheet No. 307
Second Revised Sheet No. 307A
Second Revised Sheet No. 310
Third Revised Sheet No. 314
Fourth Revised Sheet No. 346
Third Revised Sheet No. 381
Second Revised Sheet No. 381A
Third Revised Sheet No. 382
First Revised Sheet No. 394
First Revised Sheet No. 395
Original Sheet No. 396
Sheet No. 397
Second Revised Sheet No. 400
Second Revised Sheet No. 401
Second Revised Sheet No. 402
Second Revised Sheet No. 403
Second Revised Sheet No. 404
Second Revised Sheet No. 405
Sheet No. 406

CNG states that the tendered tariff sheets were filed in compliance with the Commission's Order dated September 11, 1997 in Docket No. CP96–492–000, *et al.* CNG states that it submitted tariff sheets on November 10, 1997, that were intended to (1) designate Rate Schedule GSS as CNG's open-access storage service pursuant to Order No. 636 and Part 284 of the Commission's regulations; (2) revise Rate Schedule GSS–II to clarify its availability; and (3) remove Rate Schedule OSS from CNG's tariff. However, CNG states that the Commission, in its order of January 29, 1998, determined that CNG did not adequately establish separate rate schedules for Part 157 storage service. CNG was directed to file tariff sheets within 15 days of the January 29, 1998 order, to be effective December 15, 1997.

CNG re-submits its revised tariff sheets to remove Rate Schedule OSS, and proposes two separate rate schedules for Part 157 storage service. These proposed rate schedules are designated "Rate Schedule GSS, Section 7(c)," and "Rate Schedule GSS–II, Section 7(c)." CNG states that it will continue to provide its open-access, Part 284 storage service under Rate Schedule GSS, and proposes to conduct GSS storage services that have been authorized under Part 157 case-specific authorization pursuant to "Rate Schedule GSS, Section 7(c)." CNG submits that Rate Schedule GSS–II, Section 7(c), will not be made available for new or expanded service. Further, CNG submits that the Part 284 version of Rate Schedule GSS–II is available to existing Part 284 GSS–II customers, and for any subsequent conversions of GSS–II service entitlements from Part 157 to Part 284.

CNG proposes to reflect the Section 11B and Section 34 consolidation that is pending in Docket No. RP97–406. CNG states that those pending tariff sheets in Docket No. RP97–406 consolidate the lengthy storage transfer and OFO provisions from Sections 10 and 11 under Rate Schedules GSS and GSS–II, at Section 11B and a newly-proposed Section 34 of the General Terms and Conditions of CNG's tariff. CNG requests waiver of Section 154.203(b) of the

Commission's regulations, in order to adopt a January 1, 1998 effective date rather than December 15, 1997.

Finally, CNG states that it seeks to consolidate the remaining identical provisions from all of its GSS and GSS–II rate schedules at a new Section 35 of the General Terms and Conditions.

Any person desiring to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before March 4, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of CNG's filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4898 Filed 2–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–190–012]

Colorado Interstate Gas Company; Notice of Filing of Refund Report

February 20, 1998.

Take notice that on February 17, 1998, Colorado Interstate Gas Company (CIG), filed a refund report in Docket No. RP96–190–000.

CIG states that the filing and refunds were made to comply with the Commission's Order of October 16, 1997. CIG states that these amounts were paid by CIG on December 15, 1997.

CIG states that the refund report summarizes transportation and gathering refund amounts for the period October 1, 1996 through September 30, 1997, pursuant to Article 2.2 of CIG's Stipulation and Agreement as approved in the Commission's October 16, 1997 Order.

CIG states that the copies of CIG's filing are being mailed to all holders of the tariff and to public bodies and that the filing is available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 27, 1998. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4901 Filed 2–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1671–000]

Fitchburg Gas and Electric Company; Notice of Filing

February 20, 1998.

Take notice that on January 30, 1998, Fitchburg Gas and Electric Company tendered for filing a summary of activity for the quarter ending December 31, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 3, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4894 Filed 2–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP87–39–005]

Granite State Gas Transmission, Inc.; Notice of Amendment

February 20, 1998.

Take notice that on February 13, 1998, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581, filed an application with the Commission, pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations, requesting an extension to April 30, 1999, of the limited-term certificate to operate an interstate pipeline facility leased from Portland Pipe Line Corporation (Portland), with pregranted abandonment, consistent with a recently negotiated agreement between Granite State and Portland to extend the lease of the pipeline facility. Granite State further requests the Commission to confirm that the amended lease will not convert Portland into a jurisdictional natural gas company and that the revenues received by Portland from the amended lease will not be considered in deriving Portland's rates for the transportation of oil, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

According to Granite State, it has leased from Portland an 18-inch pipeline extending approximately 166 miles from a connection with its pipeline near Portland, Maine, to the U.S-Canadian border in the Township of North Troy, Vermont, opposite Highwater, Quebec. The pipeline was originally built and operated as a crude oil pipeline; Granite state converted the pipeline for natural gas service in 1987 (40 FERC ¶61,165); operated the pipeline pursuant to an amended lease with Portland and a limited-term certificate issued by the Commission expiring March 31, 1997 (69 FERC ¶61,186). Granite State further says that it currently operates the pipeline pursuant to a second amended lease with Portland and a limited-term certificate issued by the Commission expiring April 30, 1998 (76 FERC ¶61,247).

Granite State states that it has negotiated a third extension of the lease with Portland for 12-months, to April 30, 1999, to ensure that the leased Portland pipeline will be in standby availability for use during the 1998–99 winter season, if the recently certificated pipeline proposed by

Portland Natural Gas Transmission System (PNGTS) is not completed and ready for service by November 1, 1998, in order to provide continuous firm transportation services for its customers, Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities). Granite State also says that Bay State and Northern Utilities have independently proposed to replace the seasonal base load gas supplies delivered over the leased pipeline with transportation capacity that each has reserved on PNGTS. Granite State further states that it has the option to terminate the proposed third lease extension by notice to Portland 90 days (August 1, 1998) prior to November 1, 1998, if it develops during the spring and summer of 1998 that PNGTS is actually being constructed on schedule for completion by November 1, 1998. According to Granite State, no new facilities are required to operate the leased pipeline during the extension of the lease, and no new services are proposed in the application.

According to Granite State, the principal provisions of the third lease extension shows that Granite State, whether or not it exercises the option to terminate the extension early, will have to pay Portland: (1) A one-time payment of $1,500,000 on October 25, 1998 for the opportunity to hold the pipeline available for use in natural gas transportation beginning November 1, 1998; and (2) $8,500,000 reimbursement toward the cost of reconverting the leased line to oil transportation service. Granite State also says that the other provisions of the third lease extension, which are discussed in the application, include the: (1) Time when the leased line will be idled (May 1 through October 31, 1998) for pre-conversion work by Portland; and (2) rental costs which include fixed costs and contingent obligations. Granite State further says that costs related to the third lease extension will not be recovered in the present rates and Granite State intends to file a Section 4 rate filing no later than May 1, 1998 to propose an increase in its rates to recover the costs of the third lease extension.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 13, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken on the request for a permanent certificate but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on the application, if no motion to intervene is filed within the time requested herein, and if the Commission on its own review of the matter finds that a grant of the certificate is required by public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Granite State to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4897 Filed 2–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–108–002]

Koch Gateway Pipeline Company; Notice of Filing

February 20, 1998.

Take notice that on February 17, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing its report of the PAL Service after one year of operation.

Koch states that this filing is in compliance with Section 9 of the PAL Rate Schedule. The Commission required Koch to file a report 45 days after the first year of operating experience.

Koch states that copies of this filing have been served upon each party contained in the official service list as compiled by the Secretary in the above captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 27, 1998. All protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4902 Filed 2–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–373–000]

Koch Gateway Pipeline Company; Notice Rescheduling Informal Settlement Conference

February 20, 1998.

Take notice that the informal settlement conference scheduled to convene in this proceeding on February 24, 1998 has been canceled and rescheduled for February 25, 1998, at 1:00 p.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Edith A. Gilmore at (202) 208–2158 or Sandra J. Delude at (202) 208–0583.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4904 Filed 2–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1748–000]

Montaup Electric Company; Notice of Filing

February 20, 1998.

Take notice that on January 30, 1998, Montaup Electric Company (Montaup), tendered for filing a newly executed Standard Offer Service Agreement between Montaup and Eastern Edison Company, its retail affiliate doing business in the Commonwealth of Massachusetts. Montaup has asked that this service agreement be accepted and made effective as of March 1, 1998. Montaup states that by its filing it is seeking to implement the provisions of the settlement approved by the Commission on December 19, 1997, in this proceeding.

Copies of the filing were served upon all parties shown on the Commission's official service list in the captioned proceedings and upon affected state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 2, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4892 Filed 2–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–006]

Northern Natural Gas Company; Notice of Compliance Filing

February 20, 1998.

Take notice that on February 17, 1998, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets.

Third Substitute Second Revised Sheet No. 252
Second Substitute Original Sheet No. 287A
Substitute First Revised Sheet No. 287A
Third Substitute First Revised Sheet No. 299
Substitute Second Revised Sheet No. 299

Northern states that the above-referenced tariff sheets are filed in compliance with the Commission's Order issued January 30, 1998 in Docket No. RP96–272–004, addressing Northern's negotiated rate provisions.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4903 Filed 2–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–130–001]

Questar Pipeline Company; Notice of Tariff Filing

February 20, 1998.

Take notice that on February 18, 1998, Questar Pipeline Company, (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 164, to be effective March 11, 1998.

Questar states that this tariff sheet corrects the pagination of Third Revised Sheet No. 164 as tendered with Questar's February 9, 1998, FERC Gas Tariff filing in Docket No. RP98–130–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4906 Filed 2–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–84–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

February 20, 1998.

Take notice that on February 17, 1998, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets, with an effective date of February 1, 1998:

Substitute Second Revised Sheet No. 160
Substitute Second Revised Sheet No. 166
Substitute Third Revised Sheet No. 172
Substitute Second Revised Sheet No. 366
Substitute Original Sheet No. 366A
Substitute Original Sheet No. 366B

Tennessee states that the revised tariff sheets are filed in compliance with the Commission's January 30, 1998 Order in the above-referenced docket. Tennessee Gas Pipeline Company, 82 FERC ¶61,081 (1998). Tennessee states that the revised tariff sheets incorporate certain clarifications to its policy regarding the construction and financing of receipt and delivery facilities on its system. In accordance with the January 30 Order, Tennessee requests that these tariff sheets be deemed effective on February 1, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4905 Filed 2–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–136–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

February 20, 1998.

Take notice that on February 13, 1998, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Fifth Revised Sheet No. 405A, with an effective date of March 15, 1998.

Tennessee states that Fifth Revised Sheet No. 405A proposes a minimum bid period of 3 business days for service offerings with terms of more than 92 days but not greater than 365 days. Service offerings with terms greater than 365 days will retain the current minimum bid period of 5 business days.

Tennessee further states that this proposal is supported by its past experience that shippers seeking primary point amendments in long-term capacity open seasons found the 5 day bid period too long to wait to find out if they are awarded the primary point amendments. In addition, Tennessee's current proposal captures the Commission's policy as stated in Columbia Gulf Transmission Company, 80 FERC ¶ 61,021 (1997).

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4907 Filed 2–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–137–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 20, 1998.

Take notice that on February 13, 1998, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, revised tariff sheets listed on Appendix A to the filing to become effective April 1, 1998.

Texas Eastern states that these revised tariff sheets are being filed to revise on an interim basis Texas Eastern's ASA percentages and Spot Fuel Components to be effective for the period, April 1, 1998 through November 30, 1998. Texas Eastern states that interim revisions to Texas Eastern's ASA percentages are permitted by Section 15.6(E), of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, subject to Commission approval.

Texas Eastern requests that the Commission approve this proposed interim revision to the ASA percentages and the Spot Fuel Components which are prescribed by the Global Settlement Docket No. RP85–177–119, et al. to be filed as a compenent of Texas Eastern's annual ASA filings under Section 15.6 of the tariff.

Texas Eastern states that the increase in ASA percentages is necessary because of the termination of the supply of gas for use as fuel from Marathon Oil Company due to an agreement on a buyout of Texas Eastern's obligations under a gas supply contract. Texas Eastern states that there is no net economic impact on the customers, since the increase to the ASA percentages projected herein is exactly offset by the decrease in rates.

Texas Eastern states that the impact on Texas Eastern's ASA percentages and rates of this interim filing based on typical long haul service from the Access Area Zone East Louisiana to Market Zone 3 (ELA–M3) is as follows:

	ASA percentage increase	Spot fuel component decrease
ELA–M3 Impact	0.66	$(0.0168)/dth

Texas Eastern states that copies of its filing has been mailed to all affected customers of Texas Eastern and interested state commissions, as well as all parties to the Global Settlement in Docket No. RP85–177–119, et al.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4908 Filed 2–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–233–000]

Transwestern Pipeline Company; Notice of Application

February 20, 1998.

Take notice that on February 13, 1998, Transwestern Pipeline Company (Transwestern), P.O. Box 3330, Omaha, Nebraska 68103, filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Commission's Regulations thereunder, requesting authority for Transwestern to abandon, by sale to KN Interstate Gas Transmission Co. (KN) certain compression, pipeline, and receipt and delivery point facilities, with appurtenances, located in Oklahoma and Texas, and transportation services rendered thereby, all as more fully set forth in the application on file with the Commission and open to public inspection.

Transwestern states that the subject facilities, the Lipscomb Mocane Lateral, Delhi Feldman/Leedy Lateral and Feldman Lateral, consist of approximately 92 miles of 12-inch and 26 miles of 16-inch pipeline and one compressor station, the Ivanhoe Compressor Station, with appurtenances. The subject facilities are located north and east of the station block valve at Transwestern's Canadian River Compressor Station. Transwestern further states that KN will integrate the subject facilities into its interstate pipeline system upon approval of the proposed abandonment.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 13, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Transwestern to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4896 Filed 2–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–226–000]

Williams Gas Pipelines Central, Inc.; Notice of Application

February 20, 1998.

Take notice that on February 11, 1998, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP98–226–000 an abbreviated application pursuant to Section 7 of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's Regulations thereunder, for permission and approval to abandon from interstate service a Natural gas storage service between Williams and Kansas Gas Service Company, now Western Resources, a division of Oneok, Inc., (KGSC), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williams states that the natural gas storage agreement dated December 6, 1989, was originally authorized in Docket No. CP90–1297. Williams further states that the agreement was terminated by mutual agreement between Williams and KGSC. Williams asserts that at the same time the storage agreement was executed, KGSC entered into a firm transportation agreement to transport the storage gas. Williams further asserts that the firm transportation maximum daily quantity is equal to the maximum daily withdrawal quantity under the storage agreement, or 75,000 Dth per day. Williams also asserts that both the storage agreement and the firm transportation agreement have a primary term of six years ending March 31, 1997, and year to year thereafter unless terminated by either party by giving two years written notice. Williams indicates that on March 12, 1996, KGSC provided Williams with such notice.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 13, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Williams to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4900 Filed 2–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–774–000]

CNG Transmission Corporation; Texas Eastern Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Market Area Storage Project and Request for Comments on Environmental Issues

February 20, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Market Area Storage Project.[1] This EA will be used by the Commission in its decision-making process to determine whether

[1] CNG Transmission Corporation's and Texas Eastern Transmission Corporation's application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

the project is in the public convenience and necessity.

Summary of the Proposed Project

CNG Transmission Corporation (CNG) and Texas Eastern Transmission Corporation (Texas Eastern) (together referred to as the Applicants) want to expand the capacity of the jointly-owned storage facilities to allow for the storage of an additional 10 billion cubic feet (Bcf) of natural gas at the Oakford Storage Field in Westmoreland County, Pennsylvania. Also, the proposed facilities would add about 200 million cubic feet per day (MMcf/d) of injection capability and about 393 MMcf/d of additional end-of-January withdrawal capability at the Oakford Storage Field. The Applicants seek authority to construct and operate these facilities in spring 1998:

- 12,000 horsepower (hp) of additional electric motor-driven compression and related piping and appurtenant facilities at the existing Oakford Compressor Station in Westmoreland County, Pennsylvania;
- About 6 miles of new and replacement storage field well lines of various sizes and lengths;
- Various valves, piping, filter separators, buildings, and appurtenant facilities at the Oakford Compressor Station;
- A replacement dehydration system at the Oakford Compressor Station capable of processing an additional 400 MMcf/d; and
- 325 feet of 10-inch-diameter suction line at the Lincoln Height Compressor Station in Westmoreland County, Pennsylvania replacing an 8-inch-diameter pipeline and related aboveground facilities.

A nonjurisdictional 138 kilovolt (kV) electric substation would be installed at the Oakford Compressor Station by Allegheny Power Company. The Substation would be constructed on a 0.75 acre site on compressor station property along the south side and outside of the existing fence line. It would consist of a 138 kV transformer, poles, breakers, and a 30-foot-long access road all within the existing compressor station facility. About 2 miles of transmission lines would be constructed to the substation.

CNG also seeks authority to increase the deliverability of its Greenlick Compressor Station in Potter County, Pennsylvania, from 912 MMcf/d to 1,062 MMcf/d by modifying certain facilities and constructing and operating related facilities in spring 1999. These activities would include:

- Reworking 4 existing crossover heaters by adding a new electronic panel board, electronic ignition system, and heat turbulator;
- Installing 1 new vertical filter/separator;
- Reworking six 10-inch ANSI 1500# Ball Valves;
- Replacing two 10-inch ANSI 1500# Ball Valves;
- Removing and installing a new Regan Pump of the same size;
- Reworking nine-12-inch-diameter existing orifice runs; and
- Installing new beads in the existing towers.

The location of the project facilities is shown in appendix 1.[2]

Land Requirement for Construction

Construction of the proposed facilities would require about 110.4 acres of land. Following construction, about 21 acres would be maintained as new aboveground facility sites (mostly within the existing compressor stations) and about 34.6 acres would be within pipeline rights-of-way. The remaining 54.8 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to taken into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Land use
- Cultural resources
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by CNG and Texas Eastern. This preliminary list of issues may be changed based on your comments and our analysis.

- The addition of 12,000 hp of compression may increase the noise level near the Oakford Compressor Station.
- A high-quality cold-water fishery, Beaver Run, would be crossed near milepost 0.65 on storage pipeline JP–302, about 2 miles upstream from the headwaters of Beaver Run Reservoir which is the main drinking water source for Westmoreland County, Pennsylvania.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send *two* copies of your letter to: David P. Boergers, Acting Secretary,

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426;

• Label *one* copy of the comments for the attention of the Environmental Review and Compliance Branch II, PR–11;

• Reference Docket No. CP97–774–000; and

• Mail your comments so that they will be received in Washington, DC on or before March 23, 1998.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

If you are interested in obtaining procedural information please write to the Secretary of the Commission.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor." Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

Your do not need intervenor status to have your comments considered.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4909 Filed 2–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for New Major License

February 20, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2674–003.

c. *Date Filed:* May 30, 1997.

d. *Applicant:* Green Mountain Power Corporation.

e. *Name of Project:* Vergennes Hydroelectric Project.

f. *Location:* On Otter Creek in the City of Vergennes, Addison County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Michael Scarzello, Green Mountain Power Corporation, 25 Green Mountain Drive, P.O. Box 850, South Burlington, VT 05402, (802) 660–5835.

i. *FERC Contact:* Lee Emery, (202) 219–2779.

j. *Deadline Date:* See attached paragraph D9.

k. *Status of Environmental Analysis:* The application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of the Project:* The Vergennes Project's existing facilities consist of the following features: (1) Three concrete overflow dams, each about 10 feet high, with a total length of 231 feet, each having a crest elevation of about 132.78 feet above mean sea level (msl), surmounted by 1.5-foot-high flashboards, and a 29-foot-long, non-overflow dam; (2) an 8.8-mile-long, 133 acre surface area reservoir having a 200 acre-foot usable storage capacity at normal water surface elevation of 134.28 feet msl; (3) the north forebay with trashracks, headgates, and two 7-foot-diameter steel penstocks; (4) the north powerhouse, known as Plant 9B, with a 1,000-kW generating unit; (5) the south forebay, with trashracks, headgates, two surge tanks, and two 10-foot-diameter penstocks; (6) the south powerhouse, known as Plant 9, with two 700-kW generating units; (7) the generator leads from Plant 9 to the Vergennes substation and the 950-foot-long, 2,400-volt overhead generator leads from Plant 9B to the Vergennes substation; and (8) appurtenant facilities.

The total project generating capacity would be 2,400 kW, and the total average annual generation would be 9.455 MWh. The applicant owns the dam and existing project facilities.

m. This notice also consists of the following standard paragraphs: D9.

n. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at: 888 First St., NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at 25 Green Mountain Drive, South Burlington, VT 05402, (802) 864–5731 and at the City of Vergennes, City Manager's Office, Route 22A (Main Street), Vergennes, VT 05491, or by calling (802) 877–3637.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991), that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Licensing and Compliance, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4910 Filed 2–25–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5971–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; State Small Business Stationary Source Technical and Environmental Compliance Assistance Program (SBTCP) Under the Clean Air Act as Amended in 1990

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB):

State Small Business Stationary Source Technical and Environmental Compliance Assistance Program (SBTCP), EPA ICR number 1748.02, OMB Control Number 2060–0337, expiration 7/31/98. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 27, 1998.

ADDRESSES: Office of the Small Business Ombudsman, U.S. Environmental Protection Agency, 401 M Street, SW (2131), Waterside Mall Room 3423, Washington, DC 20460, 202–260–1390. Interested persons may receive a copy of the ICR without charge by writing or calling the above Office. The ICR also is posted on the Small Business Environmental Assistance homepage at http://www.smallbiz-enviroweb.org.

FOR FURTHER INFORMATION CONTACT: Karen V. Brown, Small Business Ombudsman, telephone 202–260–1390, fascimilie 202–401–2302, and e-mail brown.karen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which are in *one* of the following state or territory offices, including the District of Columbia: environmental agency, commerce or economic development department, governor's office, or ombudsman's office.

Title: State Small Business Stationary Source Technical and Environmental Compliance Assistance Program (SBTCP), EPA ICR number 1748.02, OMB Control Number 2060–0337, expiration 7/31/98.

Abstract: As part of the Clean Air Act Amendments of 1990, the U.S. Congress included, as part of section 507, the requirement that each state establish a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (SBTCP) to assist small businesses comply with the Act. EPA must provide the Congress with periodic reports from the EPA Small Business Ombudsman (SBO) on these programs, including their effectiveness, difficulties encountered, and other relevant information. Each state assistance program will submit requested information to EPA for compilation and summarization.

This collection of information in mandatory pursuant to section 507 (a), (d), and (e) of the Clean Air Act as amended in 1990, Pub. L. 101–549, November 15, 1990. This Act directs EPA to monitor the SBTCPs and to provide a report to Congress. This responsibility has been delegated to the EPA SBO.

Response to the collection is not required to obtain or retain a benefit.

Information in the Annual Report to Congress is aggregated and is not of a confidential nature. None of the information collected by this action results in or requests sensitive information of any nature from the states.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• The EPA SBO shall report the results of the collection to Congress, including an objective summary of conclusions and recommendations relative to funding or other environmental legislative considerations. This information also will be provided to Congressional staffs and committees interested in environmental matters and small business assistance activities at the state and local levels. In addition, this information will be provided to small business trade associations for their further use in promoting the utility and viability of assistance programs to EPA Headquarters and regional offices, to other federal agencies such as the Small Business Administration, to all state small business ombudsmen and small business assistance program directors, state environmental commissioners, state Governors, and other interested state environmental officials.

Both state and federal officials have used the information not only to evaluate how well the programs are functioning, but also in planning how to render more effective, less costly and more timely assistance. The constantly evolving nature of these programs means that information of this nature should be made available to decision-makers, whether they be at federal, state, or local levels.

(ii) Evaluate the accuracy of the agency's burden estimate for the proposed information collection, including the validity of the methodology and assumptions used.

• The Reporting Form was discussed with the state ombudsmen or small business assistance program directors from 6 of the 53 section 507 reporting programs (i.e., the 50 states, the District of Columbia, and the territories of Puerto Rico and the Virgin Islands). A general consensus was taken to establish how long it would take to complete the Reporting Form and who would likely be responsible from each state to complete the task.

From the pretest, the information requested was confirmed to be, for the most part, the normal program activity information the SBTCPs collect on an on-going basis. Where a few state environmental agencies have delegated or contracted management of their technical assistance program, this information is part of the project management responsibilities. The requested reporting information typically would be compiled by either an entry-level technical person or maintained by experienced clerical staff.

On an average, the requested information can be compiled readily and maintained by the state within 80 hours (assuming the state organization continuously maintains their records in a reasonably efficient manner) using a mix of management, entry-level technical people, and experienced clerical staff. The 80-hour forecast includes 4 hours for record keeping and 76 hours for reporting the required information.

The respondent information will be compiled electronically and summarized by an outside contractor using a mix of management, technical, and clerical staff. EPA will provide oversight of all contractor activities. An estimated 274 EPA hours and 1,564.5

contractor hours will be required to complete the Report to Congress.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

• Recent revisions to the Reporting Form were conducted by representatives from the SBTCPs, who have been reporting on the activities of their programs since 1995 and are familiar with these reporting requirements. They provided extensive review of the proposed Reporting Form and suggested modifications, which then were incorporated into the Reporting Form.

Pretesting of the original collection instrument was accomplished by consolidating all comments received following the states' review of a draft of the Reporting Form and an extensive discussion of the Form at the 1995 National Small Business Ombudsman and Small Business Assistance Program Conference.

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

• Each year, every state will be provided with the Reporting Form on disk and in hard copy along with instructions for gathering the data and completing the Form. States may complete their Report by typing the information on the disk and submitting the disk to the EPA SBO.

As more states gain Internet access, the Reporting Form also may be made available online, downloaded for completion, and returned via Internet to the EPA SBO.

Burden Statement: This annual information collection involves responses from all 50 states, 2 territories (Puerto Rico and the Virgin Islands), and the District of Columbia, for a total of 53 respondents.

The requested information, for the most part, is collected as normal program activity information for the SBTCPs. On an average, the information can be compiled and maintained by the state within 80 hours annually (assuming the state organization continuously maintains their records in a reasonably efficient manner). The 80 hour per state estimate includes 4 hours for record keeping and 76 hours for reporting.

For each respondent, the annual cost burden is estimated to be $2,102.76. Total capital and start-up cost component annualized over its expected useful life is $0. Total operations and maintenance is estimated at $0, and the cost for purchase of services is estimated at $0.

Total annual burden for the 53 respondents is estimated at 4,240 hours at a cost of $111,446.28.

Federal burden is estimated to be 274 hours at an annual labor cost of $14,085.32. Total capital and start-up costs are $0. Total operations and maintenance costs are estimated to be $11,506. The cost to purchase services is $75,000.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: February 19, 1998.

Thomas E. Kelly,

Director, Office of Regulatory Management and Information, Office of Policy, Planning, and Evaluation.

[FR Doc. 98–4939 Filed 2–25–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5971–3]

National Advisory Committee to the U.S. Representative to the North American Commission on Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (P.L. 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the National Advisory Committee (NAC) to the U.S. Government Representative to the North American Commission on Environmental Cooperation (CEC).

The Committee is established within the U.S. Environmental Protection Agency (EPA) to advise the Administrator of the EPA in her capacity as the U.S. Representative to the CEC. The Committee is authorized under Article 17 of the North American Agreement on Environmental Cooperation, North America Free Trade Implementation Act, P.L. 103–182 and is directed by Executive Order 12915, entitled "Federal Implementation of the North American Agreement on Environmental Cooperation." The Committee is responsible for providing advice to the U.S. Representative on implementation and further elaboration of the agreement.

The Committee consists of 12 independent representatives drawn from among environmental groups, business and industry, public policy organizations and educational institutions.

DATES: The Committee will meet on March 5, 1998 from 8:30 a.m. to 5:00 p.m. and March 6, 1998 from 8:00 a.m. to 4:30 p.m.

ADDRESSES: The Horton Grand Hotel, 311 Island Avenue, San Diego, California. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Kenyon, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–8169.

Dated: February 9, 1998.

Gregory Kenyon,

Acting Designated Federal Officer, National Advisory Committee.

[FR Doc. 98–4937 Filed 2–25–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5971–2]

Governmental Advisory Committee to the U.S. Representative to the North American Commission on Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (P.L. 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the Governmental Advisory Committee (GAC) to the U.S. Government Representative to the North American Commission on Environmental Cooperation (CEC).

The Committee is established within the U.S. Environmental Protection Agency (EPA) to advise the Administrator of the EPA in her capacity as the U.S. Representative to

the CEC. The Committee is authorized under Article 18 of the North American Agreement on Environmental Cooperation, North America Free Trade Implementation Act, P.L. 103–182 and is directed by Executive Order 12915, entitled "Federal Implementation of the North American Agreement on Environmental Cooperation." The Committee is responsible for providing advice to the U.S. Representative on implementation and further elaboration of the agreement.

The Committee consists of a group of 10 representatives drawn from state, local and tribal governments.

DATES: The Committee will meet on March 5,1998 from 8:30 a.m. to 5:00 p.m. and March 6, 1998 from 8:00 a.m. to 4:30 p.m.

ADDRESSES: The Horton Grand Hotel, 311 Island Avenue, San Diego, California. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hardaker, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–2477.

Dated: February 9, 1998.

Robert Hardaker,

Designated Federal Officer, Governmental Advisory Committee.

[FR Doc. 98–4938 Filed 2–25–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Approved by Office of Management and Budget

February 19, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995, 44 USC 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Jerry Cowden, Federal Communications Commission, (202) 418–0447.

Federal Communications Commission.

OMB Control No.: 3060–0291.
Expiration Date: 2/28/2001.
Title: 90.477 Interconnected systems.
Form Number: Not applicable.Estimated annual burden: 1,000 hours; 1 hour per response; 1,000 respondents.

Description: This section allows private land mobile radio licensees to use common point telephone interconnection with telephone service costs distributed on a non-profit cost sharing basis. Records of such arrangements must be placed in the licensee's station records and made available to participants in the sharing arrangement and the Commission upon request.

OMB Control No.: 3060–0224.
Expiration Date: 2/28/2001.
Title: 90.151 Requests for waiver.
Form Number: Not applicable.
Estimated Annual Burden: 120 hours; 2 hours per respondent; 60 respondents.

Description: The Commission has the responsibility to establish and administer rules for the orderly and efficient use of the radio spectrum. Circumstances do arise, however, where general rules cannot properly address the needs of the public, and waiver of those rules is desirable. In order to enable the Commission to make an informed decision on the desirability of such waivers, applicants are required to submit information justifying why a waiver is needed.

OMB Control No.: 3060–0226.
Expiration Date: 2/28/2001.
Title: 90.135(d) & (e) Modification of license.
Form Number: Not applicable.Estimated Annual Burden: 276 hours; 0.167 hour per respondent; 1,656 respondents.

Description: These rule paragraphs require licensees who have changed their name, address, number and location of station control points, number of mobile units, interconnection status, and/or sharing status to notify the Commission. This information collection applies only to licensees who elect to inform the Commission by letter of these changes. Licensees may also use forms to notify us of these changes. Notification is necessary to maintain an accurate database that is used by both the Commission, frequency coordinators and the public in corresponding with licensees regarding interference resolution and licensing matters.

OMB Control No.: 3060–0281.
Expiration Date: 2/28/2001.
Title: 90.651 Supplemental reports required of licensees authorized under this subpart.
Form Number: Not applicable.
Estimated Annual Burden: 2,724 hours; 0.166 hour per respondent; 16,408 respondents.

Description: The radio facilities addressed in this subpart of the rules are allocated on and governed by regulations designed to award facilities on a need basis determined by the number of mobile units served by each base station. This is necessary to avoid frequency hoarding by applicants. This rule section requires licensees to report the actual number of mobile units served. The various subparagraphs of this rule apply to different categories of licensees and define exactly what reports are required of each category.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–4914 Filed 2–25–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2256]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

February 23, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by March 13, 1998. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures (WT Docket No. 97–82)

Number of Petitions Filed: 7

Federal Communications Commission.

Magalie Roman Salas,

Acting Secretary.

[FR Doc. 98–4915 Filed 2–25–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATES AND TIME: Tuesday, March 3, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, March 5, 1998 at 2:00 p.m.

PLACE: 999 E Street, N.W., Washington, D.C. (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinion 1997–28: W. Ben Bius.
Advisory Opinion 1998–02: Reform Party of the United States of America, by Russell J. Verney, Chairman.
Advisory Opinion 1998–03: Reform Party of Idaho, by Gary G. Allen, Chairman.
Audit: San Diego Host Committee/Sail to Victory '96 (continued from meeting of February 26, 1998).
Audit: Committee on Arrangements for the 1996 Republican National Convention (continued from meeting of February 26, 1998).
Legislative Recommendaiton—1998 (continued from Meeting of February 26, 1998).
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 98–5083 Filed 2–24–98; 12:12 pm]

BILLING CODE 6715–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Joint Meeting of the Dermatologic and Opthalmic Drugs Subcommittee and the Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of public advisory committees of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Joint meeting of the Dermatologic and Ophthalmic Drugs Subcommittee and the Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on March 11, 1998, 8 a.m. to 5 p.m.

Location: Holiday Inn, Walker Room, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Tracy Riley or Kathleen R. Reedy, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), codes 12534 and 12536. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss scientific clinical trial design for products intended for the treatment of diabetic retinopathy.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 4, 1998. Oral presentations from the public will be scheduled between approximately 8 a.m. and 8:30 a.m., and between approximately 1 p.m. and 1:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 4, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the joint meeting of the Dermatologic and Opthalmic Drugs Subcommittee and the Endocrinologic and Metabolic Drugs Advisory Committee. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Dermatologic and Opthalmic Drugs Subcommittee and the Endocrinologic and Metabolic Drugs Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 20, 1998.

Michael A. Friedman,
Deputy Commissioner for Operations.

[FR Doc. 98–5050 Filed 2–24–98; 11:42 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on March 23, 1998, 7:45 a.m. to 6:20 p.m.

Location: Ramada Inn, Embassy Ballroom, 8400 Wisconsin Ave., Bethesda, MD.

Contact Person: Nancy T. Cherry or Denise H. Royster, Canter for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will: (1) Discuss scientific and ethical considerations of a human challenge model using virulent *Salmonella typhi* bacteria; (2) complete recommendations pertaining to the influenza virus vaccine formulation for 1998 and 1999; and (3) hear short briefings on research programs in the Laboratories of DNA Viruses, Hepatitis Viruses, and Bacterial Polysaccharides.

Procedure: On March 23, 1998, from 7:45 a.m. to 4:50 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 16, 1998. Oral presentations from the public will be scheduled between approximately 8 a.m. to 8:15 a.m. and between approximately 3:30 p.m. to 4:15 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 16, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On March 23, 1998, from 4:50 p.m. to 6:20 p.m., the meeting will be closed to review data of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). This portion of the meeting will be closed to permit discussion of this information.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 20, 1998.

Michael A. Friedman,

Deputy Commissioner of Operations.

[FR Doc. 98–4964 Filed 2–25–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0040]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Food Safety Survey" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 12, 1997 (62 FR 43169), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0345. The approval expires on October 31, 2000.

Dated: February 18, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–4846 Filed 2–25–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0046]

Comprehensive List of Current Guidance Documents at the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a comprehensive list of all guidance documents currently in use at the agency. FDA committed to publishing this list in its February 1997 "Good Guidance Practices" (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents. This list is intended to inform the public of the existence and availability of all current guidance documents, including those documents that were issued prior to the adoption of the GGP's.

DATES: General comments on this list and on agency guidance documents are welcome at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFD–305), Food and Drug Administration, 12420 Parklawn Dr., rm 1–23, Rockville, MD 20857. Information on where to obtain single copies of a listed guidance document is provided for each agency center individually in the specific center's list of guidance documents.

FOR FURTHER INFORMATION CONTACT: Lisa L. Barclay, Office of Policy (HF–22), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 27, 1997 (62 FR 8961), FDA published a notice announcing its "Good Guidance Practices" (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents. The agency adopted the GGP's to ensure public involvement in the development of guidance documents and to enhance public understanding of the availability, nature, and legal effect of such guidance.

As part of FDA's effort to ensure meaningful interaction with the public regarding guidance documents, the agency committed to publish a comprehensive list of all guidance documents that are currently in effect. This comprehensive list is maintained on the FDA World Wide Web home page. The list will be updated and published annually in the **Federal Register**. FDA also has committed to publish quarterly a **Federal Register** notice that lists all guidance documents that were issued and withdrawn during that quarter. FDA also has undertaken to publish, on a quarterly basis, a list of all new "Level 2" guidance documents issued by the agency under the GGP's. In a separate notice in a future issue of the **Federal Register**, FDA will publish its first quarterly update including a list of Level 2 guidance documents issued during that quarter.

The following list of guidance documents represents all guidances issued by FDA that are currently in effect. The documents are organized by the issuing Center or Office within FDA, and are further grouped by the intended users or regulatory activities to which they pertain. Dates provided in the following list refer to the date of issuance or, where applicable, the date of last revision of the document. Document numbers are provided where available, and guidance documents that are still in draft form and on which public comment has been requested are so identified.

This cumulative list includes guidance documents that were issued prior to the adoption of the GGP's. At the time such documents are substantively revised, FDA will update them to include the standard guidance elements and nomenclature described in the GGP's.

II. Guidance Documents Issued by the Center for Biologics Evaluation and Research (CBER)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Requirements for Infrequent Plasmapheresis Donors	August 27, 1982	FDA Regulated Industries	Office of Communication, Training and Manufacturers Assistance, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–1800 or 1–800–835–4709, FAX Information System: 1–888–CBER–FAX (within U.S.) 301–827–3844 (outside U.S. and local to Rockville, MD) Internet access: http://www.fda.gov/cber/
Recommendations to Decrease the Risk of Transmitting AIDS from Plasma Donors	March 24, 1983	Do	Do
Deferral of Blood Donors Who Have Received the Drug Accutane (isotretinoin/Roche); 13-cis-retinoic acid)	February 28, 1984	Do	Do
Equivalent Methods for Compatibility Testing	December 14, 1984	Do	Do
Plasma Derived from Therapeutic Plasma Exchange	December 14, 1984	Do	Do
Reduction of the Maximum Platelet Storage Period to 5 Days in an Approved Container	June 2, 1986	Do	Do
Deferral of Donors Who Have Received Human Pituitary-Derived Growth Hormone	November 25, 1987	Do	Do
Recommendations for the Management of Donors and Units That Are Initially Reactive for Hepatitis B Surface Antigen (HBsAg)	December 2, 1987	Do	Do
Extension of Dating Period for Storage of Red Blood Cells, Frozen	December 4, 1987	Do	Do
To Licensed In-Vitro Diagnostic Manufacturers: Handling of Human Blood Source Materials	December 23, 1987	Do	Do
Recommendations for Implementation of Computerization in Blood Establishments	April 6, 1988	Do	Do
Control of Unsuitable Blood and Blood Components	April 6, 1988	Do	Do
Discontinuance of Prelicensing Inspection for Immunization Using Licensed Tetanus Toxoid and Hepatitis B and Rabies Vaccines	July 7, 1988	Do	Do
Physician Substitutes	August 15, 1988	Do	Do
To Licensed Manufacturers of Blood Grouping Reagents: Criteria for Exemption of Lot Release	August 26, 1988	Do	Do
To Manufacturers of HTLV–I Antibody Test Kits: Antibody to Human T-Cell Lymphotropic Virus, Type I (HTLV–I) Release Panel I	October 18, 1988	Do	Do
HTLV–1 Antibody Testing	November 29, 1988	Do	Do
Use of Recombigen HIV–1 LA Test	February 1, 1989	Do	Do
Guidance for Autologous Blood and Blood Components	March 15, 1989	Do	Do
HTLV–I Antibody Testing	July 6, 1989	Do	Do
Use of Recombigen HIV–1 Latex Agglutination (LA) Test	August 1, 1989	Do	Do
Requirements for Computerization of Blood Establishments	September 8, 1989	Do	Do
Abbott Laboratories' HIVAG–1 Test for HIV–1 Antigen(s) Not Recommended for Use as a Donor Screen	October 4, 1989	Do	Do
Autologous Blood Collection and Processing Procedures	February 12, 1990	Do	Do
Use of Genetic Systems HIV–2 EIA	June 21, 1990	Do	Do
Deficiencies Relating to the Manufacture of Blood and Blood Components	March 20, 1991	Do	Do
Responsibilities of Blood Establishments Related to Errors & Accidents in the Manufacture of Blood and Blood Components	March 20, 1991	Do	Do
Revision to October 26, 1989 Guideline for Collection of Blood or Blood Products from Donors with Positive Tests for Infectious Disease Markers (High Risk Donors)	April 17, 1991	Do	Do
FDA Recommendations Concerning Testing for Antibody to Hepatitis B Core Antigen (Anti-HBc)	September 10, 1991	Do	Do
Disposition of Blood Products Intended for Autologous Use That Test Repeatedly Reactive for Anti-HCV	September 11, 1991	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Clarification of FDA Recommendations for Donor Deferral and Product Distribution Based on the Results of Syphilis Testing	December 12, 1991	Do	Do
Revised Recommendations for the Prevention of Human Immunodeficiency Virus (HIV) Transmission by Blood and Blood Products	April 23, 1992	Do	Do
Use of Fluorognost HIV–1 Immunofluorescent Assay (IFA)	April 23, 1992	Do	Do
Revised Recommendations for Testing Whole Blood, Blood Components, Source Plasma and Source Leukocytes for Antibody to Hepatitis C Virus Encoded Antigen (Anti-HCV)	April 23, 1992	Do	Do
Exemptions to Permit Persons with a History of Viral Hepatitis Before the Age of Eleven Years to Serve as Donors of Whole Blood and Plasma; Alternative Procedures (21 CFR 640.120)	April 23, 1992	Do	Do
Changes in Equipment for Processing Blood Donor Samples	July 21, 1992	Do	Do
Nomenclature for Monoclonal Blood Grouping Reagents	September 28, 1992	Do	Do
Volume Limits for Automated Collection of Source Plasma	November 4, 1992	Do	Do
Revision of October 7, 1988 Memo Concerning Red Blood Cell Immunization Programs	December 16, 1992	Do	Do
Recommendations Regarding License Amendments and Procedures for Gamma Irradiation of Blood Products	July 22, 1993	Do	Do
Deferral of Blood and Plasma Donors Based on Medications	July 28, 1993	Do	Do
Revised Recommendations for Testing Whole Blood, Blood Components, Source Plasma and Source Leukocytes for Antibody to Hepatitis C Virus Encoded Antigen (Anti-HCV)	August 19, 1993	Do	Do
Changes in Administrative Procedures	September 9, 1993	Do	Do
Guidance Regarding Post Donation Information Reports	December 10, 1993	Do	Do
Donor Suitability Related to Laboratory Testing for Viral Hepatitis and a History of Viral Hepatitis	December 22, 1993	Do	Do
Recommendations for the Invalidation of Test Results When Using Licensed Viral Marker Assays to Screen Donors	January 3, 1994	Do	Do
Recommendations for Deferral of Donors for Malaria Risk	July 26, 1994	Do	Do
Use of and FDA Cleared or Approved Sterile Docking Device (STCD) in Blood Bank Practices (transmittal memo 8/12/94) (corrects 7/29/94 Memo)	August 5, 1994	Do	Do
Recommendations to Users of Medical Devices That Test for Infectious Disease Markers by Enzyme Immunoassay (EIA) Test Systems	December 20, 1994	Do	Do
Timeframe for Licensing Irradiated Blood Products	February 3, 1995	Do	Do
Revision of 8/27/82 FDA Memo: Requirements for Infrequent Plasmapheresis Donors	March 10, 1995	Do	Do
To All Establishments Performing Red Blood Cell Immunizations: Revised Recommendations for Red Blood Cell Immunization Programs for Source Plasma	March 14, 1995	Do	Do
Recommendations for the Deferral of Current and Recent Inmates of Correctional Institutions as Donors of Whole Blood, Blood Components, Source Leukocytes and Source Plasma	June 8, 1995	Do	Do
Disposition of Products Derived from Donors Diagnosed with, or at Known High Risk for, Creutzfeldt-Jakob Disease	August 8, 1995	Do	Do
Recommendations for Labeling and Use of Units of Whole Blood, Blood Components, Source Plasma, Recovered Plasma or Source Leukocytes Obtained from Donors with Elevated Levels of Alanine Aminotransferase (ALT)	August 8, 1995	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Precautionary Measures to Further Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease by Blood and Blood Products	August 8, 1995	Do	Do
Recommendations for Donor Screening with a Licensed Test for HIV–1 Antigen	August 8, 1995	Do	Do
Guidance Concerning Conversion to FDA–Reviewed Software Products	November 13, 1995	Do	Do
Donor Deferral Due to Red Blood Cell Loss During Collection of Source Plasma by Automated Plasmapheresis	December 4, 1995	Do	Do
Additional Recommendations for Donor Screening With a Licensed Test for HIV–1 Antigen	March 14, 1996	Do	Do
Additional Recommendations for Testing Whole Blood, Blood Components, SourcePlasma and Source Leucocytes for Antibody to Hepatitis C Virus Encoded Antigen (Anti-HCV)	May 16, 1996	Do	Do
Recommendations and Licensure Requirements for Leukocyte-Reduced Blood Products	May 29, 1996	Do	Do
Recommendations for the Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Tests for Hepatitis B Virus (HBV), Hepatitis C Virus (HCV) and Human T–Lymphotropic Virus Type I (HTLV–I)	July 19, 1996	Do	Do
Interim Recommendations for Deferral of Donors at Increased Risk for HIV–1 Group O Infection	December 11, 1996	Do	Do
Revised Precautionary Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) by Blood and Blood Products	December 11, 1996	Do	Do
Interstate Shipment of Interferon for Investigational Use in Laboratory Research Animals or Tests in Vitro	November 21, 1983	Do	Do
Alternatives to Lot Release	July 20, 1993	Do	Do
Application of Current Statutory Authorities to Human Somatic Cell Therapy Products and Gene Therapy Products; Notice	October 14, 1993	Do	Do
Home Specimen Collection Kit Systems Intended for Human Immunodeficiency Virus (HIV–1 and/or HIV–2) Antibody Testing; Revisions to Previous Guidance	February 23, 1995	Do	Do
Interim Definition and Elimination of Lot-by-Lot Release for Well-Characterized Therapeutic Recombinant DNA-Derived and Monoclonal Antibody Biotechnology Products	December 8, 1995	Do	Do
Guidance for Industry in Designing Clinical Programs for Developing Human Drugs, Medical Devices, or Biological Products Intended for the Treatment of Rheumatoid Arthritis; Availability of Draft Guidance; Notice of Public Workshop on Juvenile Rheumatoid Arthritis	June 24, 1996	Do	Do
Draft Public Health Service Guideline on Infectious Disease Issues in Xenotransplantation; Notice	September 23, 1996	Do	Do
The Food and Drug Administration's Development, Issuance, and Use of Guidance Documents	February 27, 1997	Do	Do
Preclearance of Promotional Labeling; Clarification	March 5, 1997	Do	Do
Draft Guidance for Industry: Computerized Systems Used in Clinical Trials; Availability	June 18, 1997	Do	Do
Recommended Methods for Short Ragweed Pollen Extracts	November 1, 1985	Do	Do
Information Relevant to the Manufacture of Acellular Pertussis Vaccine	August 23, 1989	Do	Do
Recommended Methods for Blood Grouping Reagents Evaluation	March 1, 1992	Do	Do
Recommended Methods for Evaluating Potency, Specificity and Reactivity of Anti-Human Globulin	March 1, 1992	Do	Do
Methods of the Allergenic Products Testing Laboratory	October 1, 1993	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Guide to Inspections of Blood Banks, Division of Field Investigations, Office of Regional Operations, Office of Regulatory Affairs	September 1, 1994	Do	Do
Guide to Inspections of Infectious Disease Marker Testing Facilities	June 1, 1996	Do	Do
Guide to Inspections of Source Plasma Establishments (Division of Field Investigations, Office of Regional Operations, Office of Regulatory Affairs)	June 1, 1997	Do	Do
Notification Process for Transfusion Related Fatalities and Donation Related Deaths (revised telephone number)	October 7, 1997	Do	Do
Submission Requirements for Requesting Certificates for Exporting Products to Foreign Countries	October 15, 1997	Do	Do
CBER Refusal to File (RTF) Guidance for Product and Establishment License Applications	July 12, 1993	Do	Do
OELPS, Advertising and Promotional Labeling Staff Procedural Guidance Document (Draft)	August 1, 1994	Do	Do
Guidance on Alternatives to Lot Release for Licensed Biological Products	October 27, 1994	Do	Do
Content and Format of Investigational New Drug Applications (INDs) for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-derived Products	November 1, 1995	Do	Do
Computer Assisted Product License Application (CAPLA) Guidance Manual	March 1, 1996	Do	Do
FDA Guidance Concerning Demonstration of Comparability of Human Biological Products, Including Therapeutic Biotechnology-Derived Products	April 26, 1996	Do	Do
Guidance for Industry—The Content and Format for Pediatric Use Supplements	May 23, 1996	Do	Do
Guidance on Applications for Products Comprised of Living Autologous Cells Manipulated Ex Vivo and Intended for Structural Repair of Reconstruction	May 24, 1996	Do	Do
Guidance for Industry for the Submission of Chemistry, Manufacturing, and Controls Information for a Therapeutic Recombinant DNA–Derived Product or a Monoclonal Antibody Product for In Vivo Use	August 15, 1996	Do	Do
Draft Guidance for Industry: Manufacture, Processing or Holding of Active Pharmaceutical Ingredients	September 20, 1996	Do	Do
Draft Guidance for Industry; Submitting Application Archival Copies in Electronic Format	November 4, 1996	Do	Do
Draft Guidance for Industry; Electronic Submission of Case Report Forms and Case Report Tabulations	November 4, 1996	Do	Do
Guidance for the Submission of Chemistry, Manufacturing, and Controls Information and Establishment Description for Autologous Somatic Cell Therapy Products	January 10, 1997	Do	Do
Proposed Approach to Regulation of Cellular and Tissue-Based Products	February 28, 1997	Do	Do
Tables 1 and 2 from Proposed Approach to Regulation of Cellular and Tissue-Based Products	March 4, 1997	Do	Do
Guidance for Industry-FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products	March 13, 1997	Do	Do
Guidance for Industry-Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products	March 13, 1997	Do	Do
Guidance for Industry for the Evaluation of Combination Vaccines for Preventable Diseases: Production, Testing and Clinical Studies	April 10, 1997	Do	Do
Guidance for Industry—Changes to an Approved Application: Biological Products	July 24, 1997	Do	Do
Guidance for Industry—Changes to an Approved Application for Specified Biotechnology and Specified Synthetic Biological Products	July 24, 1997	Do	Do
Guidance for Industry—Screening and Testing of Donors of Human Tissue Intended for Transplantation	July 29, 1997	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Guidance for Industry—Donor Screening for Antibodies to HTLV–II	August 15, 1997	Do	Do
Guidance for Industry on Testing Limits in Stability Protocols for Standardized Grass Pollen Extracts	August 25, 1997	Do	Do
Guidance for Industry - Postmarketing Adverse Experience Reporting for Human Drug and Licensed Biological Products: Clarification of What to Report	August 27, 1997	Do	Do
Guidance for Industry Efficacy Evaluation of Hemoglobin-and Perfluorocarbon-Based Oxygen Carriers	September 1, 1997	Do	Do
Guidance for Industry—The Sourcing and Processing of Gelatin to Reduce the Potential Risk Posed by Bovine Spongiform Encephalopathy (BSE) in FDA–Regulated Products for Human Use	October 7, 1997	Do	Do
Draft Guidance for Industry—For Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Plasma-Derived Biological Products or Animal Plasma or Serum-Derived Products	December 29, 1997	Do	Do
FDA's Policy Statement Concerning Cooperative Manufacturing Arrangements for Licensed Biologics	November 25, 1992	Do	Do
FDA Guidance Document Concerning Use of Pilot Manufacturing Facilities for the Development and Manufacture of Biological Products; Availability	July 11, 1995	Do	Do
Changes to be Reported for Product and Establishment License Applications; Guidance	April 6, 1995	Do	Do
Advertising and Promotion; Guidance; Notice	October 8, 1996	Do	Do
Interpretative Guidelines of the Source Plasma (Human) Standards	October 2, 1973	Do	Do
Guidelines for Reviewing Amendments to Include Plasmapheresis of Hemophiliacs	July 20, 1976	Do	Do
Package Insert: Immune Serum Globulin (Human)	March 30, 1978	Do	Do
Guidelines for Interpretation of Potency Test Results for All Forms of Adsorbed Diphtheria and Tetanus Toxoids	April 12, 1979	Do	Do
Guidelines for Immunization of Source Plasma (Human) Donors with Blood Substances	June 1, 1980	Do	Do
Collection of Human Leukocytes for Further Manufacturing (Source Leukocytes)	January 28, 1981	Do	Do
Platelet Testing Guidelines—Approval of New Procedures and Equipment	July 1, 1981	Do	Do
Revised Guideline for Adding Heparin to Empty Containers for Collection of Heparinized Source Plasma (Human)	August 1, 1981	Do	Do
Guidelines for Meningococcal Polysaccharide Vaccines	July 17, 1985	Do	Do
Guideline for the Uniform Labeling of Blood and Blood Components	August 1, 1985	Do	Do
Guideline for Submitting Documentation for the Stability of Human Drugs and Biologics	February 1, 1987	Do	Do
Guideline for Submitting Documentation for Packaging for Human Drugs and Biologics	February 1, 1987	Do	Do
Guideline On General Principles of Process Validation	May 1, 1987	Do	Do
Guideline On Sterile Drug Products Produced by Aseptic Processing	June 1, 1987	Do	Do
Guideline On Validation of the Limulus Amebocyte Lysate Test as an End-Product Endotoxin Test for Human and Animal Parenteral Drugs, Biological Products, and Medical Devices	December 1, 1987	Do	Do
Revised Guideline for the Collection of Platelets, Pheresis	October 7, 1988	Do	Do
Draft Guideline for the Design of Clinical Trials for Evaluation of Safety and Efficacy of Allergenic Products for Therapeutic Uses	November 1, 1988	Do	Do
Guidelines for Release of Pneumococcal Vaccine, Polyvalent	February 1, 1989	Do	Do
FDA Regulated Industries for Drug Master Files	September 1, 1989	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
FDA Regulated Industries for Collection of Blood or Blood Products from Donors With Positive Tests for Infectious Disease Markers ("High Risk" Donors)	October 26, 1989	Do	Do
Guideline for Determination of Residual Moisture in Dried Biological Products	January 1, 1990	Do	Do
Guideline on the Preparation of Investigational New Drug Products (Human & Animal)	March 1, 1991	Do	Do
Draft Guideline for the Validation of Blood Establishment Computer Systems	September 28, 1993	Do	Do
Guideline for Adverse Experience Reporting for Licensed Biological Products	October 15, 1993	Do	Do
Guideline for Quality Assurance in Blood Establishments	July 11, 1995	Do	Do
To Biologic Product Manufacturers—controlling materials of bovine or ovine origin	May 3, 1991	Do	Do
To Sponsors of INDs using Retroviral Vectors	September 20, 1993	Do	Do
To Manufacturers: Bovine Derived Materials (BSE)	December 17, 1993	Do	Do
To Blood Establishment Computer Software Manufacturers	March 31, 1994	Do	Do
To Sponsors of INDs for Human Immunoglobulin Products	May 23, 1994	Do	Do
To Manufacturers of Licensed Anti-HIV Test Kits	May 26, 1994	Do	Do
To Manufacturers of Immune Globulin Products: Testing for Hepatitis C Virus RNA Immunoglobulin	December 27, 1994		
To Blood Establishment Computer Software Manufacturers	February 10, 1995	Do	Do
To Manufacturers of Intramuscular Immune Globulin Products: HCV RNA testing by PCR	March 3, 1995	Do	Do
To Manufacturers of Intramuscular Immune Globulin Products: Additional information regarding HCV RNA testing by PCR	March 13, 1995	Do	Do
To Health Professionals: implementation of testing for HCV RNA by PCR for immune globulin products for intramuscular administration	March 14, 1995	Do	Do
Dear Colleague: Regarding Reverse Transcriptase Activity in Viral Vaccines Produced in Chicken Cells	January 4, 1996	Do	Do
To Manufacturers of FDA—Regulated Drug/Biological/Device Products, Bovine Spongiform Encephalopathy (BSE)	May 9, 1996	Do	Do
To Manufacturers: Implementation of testing for Hepatitis C virus RNA by polymerase chain reaction (PCR) of intramuscular immune globulin preparations	June 13, 1996	Do	Do
To Manufacturers: HIV–1 Group O	July 31, 1996	Do	Do
To All Plasma Derivative Manufacturers and to ABRA: Warning Statement for Plasma Derivative Product Labeling	October 7, 1996	Do	Do
To Biologic Product Manufacturers: Revised procedures for internal labeling review number assignment	December 3, 1996	Do	Do
To In Vitro Diagnostic Reagent Manufacturers: Guidance On the Labeling of Human Blood Derived In Vitro Diagnostic Devices In Regard to Labeling for HTLV–III/LAV Antibody Testing	December 6, 1985	Do	Do
PTC in the Manufacture of In Vitro Monoclonal Antibody Products Subject to Licensure	June 20, 1983	Do	Do
Draft PTC in the Production and Testing of Interferon Intended for Investigational Use in Humans (Interferon Test Procedures)	July 28, 1983	Do	Do
Draft PTC in the Production and Testing of New Drugs and Biologicals Produced by Recombinant DNA Technology	April 10, 1985	Do	Do
Draft PTC in the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Antibodies to Human Immunodeficiency Virus Type 1 (1989)	August 8, 1989	Do	Do
PTC in the Collection, Processing and Testing of Ex Vivo Activated Mononuclear Leukocytes for Administration to Humans	August 22, 1989	Do	Do

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Cytokine and Growth Factor Pre-Pivotal Trial Information Package	April 2, 1990	Do	Do
PTC in the Safety Evaluation of Hemoglobin-Based Oxygen Carriers	August 21, 1990	Do	Do
Draft PTC in Human Somatic Cell Therapy and Gene Therapy	August 27, 1991	Do	Do
PTC in the Design and Implementation of Field Trials for Blood Grouping Reagents and Anti-Human Globulin	March 1, 1992	Do	Do
PTC in the Manufacture of In Vitro Monoclonal Antibody Products for Further Manufacturing into Blood Grouping Reagent and Anti-Human Globulin	March 1, 1992	Do	Do
Supplement to the PTC in the Production and Testing of New Drugs and Biologicals Produced by Recombinant DNA Technology: Nucleic Acid Characterization and Genetic Stability	April 6, 1992	Do	Do
Draft PTC in the Characterization of Cell Lines Used to Produce Biologicals	July 12, 1993	Do	Do
PTC in the Manufacture and Testing of Therapeutic Products for Human Use Derived from Transgenic Animals	August 22, 1995	Do	Do
Draft Addendum to the PTC in Human Somatic Cell and Gene Therapy	January 2, 1996	Do	Do
PTC on Plasmid DNA Vaccines for Preventive Infectious Disease Indications	December 22, 1996	Do	Do
PTC in the Manufacture and Testing of Monoclonal Antibody Products for Human Use	February 28, 1997	Do	Do
Reviewer Guidance, Computer Software	April 26, 1995	FDA Personnel	Do
Informed Consent for Plasmapheresis/Immunization	October 1, 1995	Do	Do
Draft Reviewers' Guide: Changes in Personnel	October 1, 1995	Do	Do
Disease Associated Antibody Collection Program	October 1, 1995	Do	Do
Centerwide Policy on Issuance of and Response to Clinical Hold Letters for Investigational New Drug Applications	August 20, 1996	Do	Do
Reviewer Guidance for a Premarket Notification Submission for Blood Establishment Computer Software	January 13, 1997	Do	Do

III. Guidance Documents Issued by the Center for Devices and Radiological Health (CDRH)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
MDR Reporting Guidance For Breast Implants—E1996002	August 7, 1996	Office of Surveillance and Biometrics (OSB)	Division of Small Manufacturers Assistance, 1–800–638–2041 or 301–827–0111 or (Fax) Facts on Demand at 1–800–899–0381 or Internet at http://www.fda.gov/cdrh
Instructions for Completing Form 3417: Medical Device Reporting Baseline Report [MDR]	March 31, 1987	OSB	Do
MDR Guidance Document No. 1—IOL—E1996004	August 7, 1996	Do	Do
MDR Guidance Document No. 3—Needlestick & Blood Exposure—E1996003	August 9, 1996	Do	Do
Statistical Guidance for Clinical Trials of Non Diagnostic Medical Devices (Replaces Clinical Study Guidance)	January 1, 1996	Do	Do
Medical Device Reporting: An Overview	April 1996	Do	Do
Instructions for Completing FDA Form 3500A with Coding Manual for Form 3500A (MEDWATCH)	December 15, 1995	Do	Do
MEDWATCH FDA Form 3500A for Use by User Facilities, Distributors, and Manufacturers for Mandatory Reporting	June 1, 1993	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Amendment to Guidance on Discretionary Postmarket Surveillance on Pacemaker Leads	March 30, 1994	Do	Do
Proposed Draft Guidance to Sponsors Regarding Required Postmarket Surveillance Studies of Plasma—Sprayed Porous-Coated Hip Prostheses	October 7, 1994	Do	Do
Required Postmarket Surveillance Section 522(a) Initial Device Categories Revised	July 31, 1997	Do	Do
MDR Guidance Document: Remedial Action Exemption—E1996001	July 30, 1996	Do	Do
MDR Internet List Server (listserv) Instruction sheet	August 29, 1996	Do	Do
Semi-Annual Report, Form 3419 (MDR)	September 24, 1996	Do	Do
Variance from Manufacturer Report Number Format (MDR letter)	July 16, 1996	Do	Do
Guidance to Manufacturers on the Development of Required Postmarket Surveillance Study Protocols Under Section 522(a)(1) of the Federal Food, Drug, and Cosmetic Act	November 8, 1991	Do	Do
Medical Device Reporting for Distributors	April 1996	Do	Do
Medical Device Reporting for Manufacturers	March 1997	Do	Do
Guidance to Sponsors on the Development of a Discretionary Postmarket Surveillance Study for Permanent Implantable Cardiac Pacemaker Electrodes (Leads)	June 9, 1993	Do	Do
Instructions for Completing Semi-Annual Report, Form 3419 (MDR)	September 24, 1996	Do	Do
Variance from Manufacturer Report Number Format	August 12, 1996	Do	Do
Variance from Manufacturer Report Number Format	July 16, 1996	Do	Do
Statistical Aspects of Submissions to FDA: A Medical Device Perspective (also includes as Appendix the article Observed Uses and Abuses of Statistical Procedures in Medical Device	June 1, 1984	Do	Do
Investigational Device Exemptions [IDE] Manual (FDA 96–4159)/DSMA	June 1, 1996	Office of Health and Industry Programs (OHIP), Division of Small Manufacturer's Assistance (DSMA)	Do
Additional Guidance for Testing Immunity to Radiated Electromagnetic Fields—Infant Apnea Monitor Standard	September 1, 1993	Do	Do
Premarket Approval (PMA) Manual (FDA 93–4214)	April 1, 1993	Do	Do
Comparison Chart: 1996 Quality System Reg vs. 1978 Good Manufacturing Practices Reg vs. ANSI/ISO/ASQC Q9001 and ISO/DI 13485:1996 (include 126)		Do	Do
Obtaining CDRH Guidance Documents	October 21, 1997	Do	Do
Regulatory Requirements for Devices for the Handicapped (FDA 87–4221)	August 1, 1987	Do	Do
Small Business Guide to FDA (FDA 96–1092)	January 1, 1996	Do	Do
MDR Documents Access Information	May 10, 1996	Do	Do
MDR Documents Access Information for CDRH Electronic Docket (ED)	February 29, 1996	Do	Do
MDR Documents Access Information for CDRH Facts-On-Demand (FOD)	February 29, 1996	Do	Do
MDR Documents Access Information for Industry Organizations	May 8, 1996	Do	Do
MDR Documents Access Information for National Technical Information Service (NTIS)	May 10, 1996	Do	Do
MDR Documents Access Information for World Wide Web (WWW)	February 29, 1996	Do	Do
Addendum to What a Mammography Facility Should do to Prepare for an MQSA Inspection	July 31, 1996	OHIP/Division of Mammography Quality and Radiation Programs (DMQRP)/Mammography Quality Standards Act (MQSA)	MQSA
Handbook of Selected Tissue Doses for Fluoroscopic and Cineangiographic Examination of the Coronary Arteries (in SI Units) FDA 95–8289, (Units of milliray (mmmGy) tissue	September 1, 1995	Do	Do
Policy Statements in Question and Answer Format	October 7, 1997	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
What a Mammography Facility Should Do to Prepare for an MQSA Inspection	June 30, 1995	Do	Do
Classification Names for Medical Devices and In Vitro Diagnostic Products (FDA Pub No. 95–4246)	March 1, 1995	Do	Do
Import of Medical Devices—A Workshop Manual (FDA 93–4228)	March 1, 1993	Do	Do
Labeling—Regulatory Requirements for Medical Devices (FDA 89–4203)	September 1, 1989	Do	Do
List of Current CDRH Addresses for Report Submission and Ordering of CDRH Forms	July 30, 1996	Do	Do
Premarket Notification: 510(k)—Regulatory Requirements for Medical Devices (FDA 95–4158)	August 1, 1995	Do	Do
Procedures for Laboratory Compliance Testing of Television Receivers—part of TV Packet	May 1, 1986	Do	Do
U.S. Food and Drug Administration Regulation of Medical Devices—Background Information for Foreign Officials	May 1, 1996	Do	Do
Instructions for Completion of Medical Device Registration and Listing Forms FDA 2891, 2891a and 2892	July 1, 1997	Do	Do
In Vitro Diagnostic Devices: Guidance for the Preparation of 510(k) Submissions (supersedes FDA 87–4224)	January 1, 1997	Do	Do
An Introduction to Medical Device Regulations (FDA 92–4222)	January 1, 1992	Do	Do
Do It By Design—An Introduction to Human Factors in Medical Devices	December 1, 1996	OHIP/Division of Device User Programs and Systems Analysis (DDUPSA)	Do
Good Guidance Practices Standard Operating Procedures Manual for the Development and Use of Guidance Documents in CDRH	October 17, 1997	Do	
Human Factors Principles for Medical Device Labeling	September 1, 1993	Do	Do
Medical Device Reporting for User Facilities	April 1996	Do	Do
Write it Right	August 1, 1993	Do	Do
Human Factors Points to Consider for IDE Devices	January 17, 1997	Do	Do
Medical Devices and EMI: The FDA Perspective	January 1, 1995	Office of Compliance	Do
Enforcement Policy; Recalls (Including Product Corrections)—Guidelines on Policy; Procedures; and Industry Responsibilities	June 16, 1978	Do	Do
Sec. 300.600 Commercial Distribution with Regard to Premarket Notification [Section 510(k)] [CPG 7124.19]	September 24, 1987	Do	Do
Procedures for Obtaining FDA Approval to Export Unapproved Medical Devices	January 13, 1995		Do
The FDA Export Reform and Enhancement Act of 1996/Export Certification	October 1, 1996	Do	Do
FDA Regulatory Procedures Manual Chapter 8–10 Warning Letters	May 23, 1991	Do	Do
A Pocket Guide to Device GMP Inspections—Inspections of Medical Device Manufacturers and GMP Regulation Requirements	November 1, 1991	Do	Do
Commercial Distribution/Exhibit Letter (Use instead of Hile letter) (Display)	April 10, 1992	Do	Do
Diagnostic Ultrasound Guidance Update	January 30, 1987	Office of Compliance (OC)/Division of Enforcement I (DOE I)	Do
Doppler Ultrasound Guidance Update	March 7, 1986	Do	Do
Manufacturers/Assemblers of Diagnostic X-ray Systems: Enforcement Policy for Positive-Beam Limitation (PBL) Requirements in 21 CFR 1020.31(g)	October 13, 1993	Do	Do
A Guide for the Submission of Abbreviated Radiation Safety Reports on Cephalometric X–Ray Devices: Defined as Dental Units with an Attachment for Mandible Work that Holds a	March 1, 1996	Do	Do
A Guide for the Submission of Abbreviated Radiation Safety Reports on Image Receptor Support Devices for Mammographic X–Ray Systems	March 1, 1996	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
A Guide for the Submission of an Abbreviated Radiation Safety Report on X–Ray Tables, Cradles, Film Changers or Cassette Holders Intended for Diagnostic Use	March 1, 1996	Do	
All Diagnostic Ultrasound Manufacturers and Importers-Exemption from Reporting under 21 CFR 1002	February 24, 1986	Do	Do
Clarification of Radiation Control Regulations for Diagnostic X–Ray Equipment (FDA 89–8221)	March 1, 1989	Do	Do
Guide for the Submission of Initial Reports on Diagnostic X–Ray Systems and their Major Components	January 1, 1982	Do	Do
Letter to Medical Device Industry on Endoscopy and Laparoscopy Accessories (Galdi)	May 17, 1993	Do	Do
Medical Device Tracking: Questions and Answers Based on the Final Rule	August 26, 1993	Do	Do
Guideline for the Manufacture of In Vitro Diagnostic Products	January 10, 1994	Do	Do
Retention of Records Required by 21 CFR 1002	August 24, 1981	Do	Do
Letter to Manufacturers/Repackers Using Cotton	April 22, 1994	OC/Division of Enforcement II (DOE II)	Do
Condoms: Inspection and Sampling at Domestic Manufacturers and of all Repackers; Sampling from all Importers (Damaska Memo to Field on 4/8/87)	April 8, 1987	Do	Do
Hazards of Volume Ventilators and Heated Humidifiers	September 15, 1993	Do	Do
Compliance Guide for Laser Products (FDA 86–8260)	September 1, 1985	Do	Do
Dental Handpiece Sterilization (Dear Doctor Letter)	September 28, 1992	Do	Do
Ethylene Oxide; Ethylene Chlorohydrin; and Ethylene Glycol; Proposed Maximum Residue Limits and Maximum Levels of Exposure	June 23, 1978	Do	Do
GLOVES Information About Medical Gloves	September 1, 1993	Do	Do
Letter—Manufacturers, Distributors and Importers of Condom Products [included in Condom Packet #398]	February 23, 1994	Do	Do
Letter—Manufacturers, Importers, and Repackagers of Condoms for Contraception or Sexually-Transmitted Disease Prevention (Holt) [included in Condom Packet #398]	February 13, 1989	Do	Do
Pesticide Regulation Notice 94–4: Interim Measures for the Registration of Antimicrobial Products/Liquid Chemical Germicides with Medical Device Use Claims Under the	June 30, 1994	Do	Do
Regulatory Requirements for Medical Gloves—A Workshop Manual FDA Publication No. 96–4257	September 1, 1996	Do	Do
Standard Specification for Rubber Contraceptives (Condoms) [included in Condom Packet #398]	October 28, 1983	Do	Do
Sterilization: Questions and Answers from FDA, from Medical Device and Diagnostic Industry for January, 1985, page 132	January 1, 1985	Do	Do
All U.S. Condom Manufacturers, Importers and Repackagers	April 7, 1987	Do	Do
Letter to Ophthalmologists about Lasers for Refractive Surgery	June 27, 1997	Do	Do
Manufacturers and Initial Distributors of Hemodialyzers	May 23, 1996	Do	Do
Manufacturers and Users of Lasers for Refractive Surgery	October 10, 1996	Do	Do
Manufacturers of Laparoscopic Trocars, used for Abdominal Access	August 23, 1996	Do	Do
Prospective Manufacturers of Barrier Devices used during Oral Sex for STD Protection	October 31, 1996	Do	Do
Impact Resistant Lenses: Questions and Answers (FDA 87–4002) [see shelf—# 460]	September 1, 1987	Do	Do
Letter to Industry, Powered Wheelchair Manufacturers from RMJohnson	May 10, 1993	Do	Do

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Manufacturers and Initial Distributors of Sharps Containers and Destroyers Used by Health Care Professionals	February 3, 1994	Do	Do
Guide for Preparing Product Reports for Lasers and Products Containing Lasers	September 1, 1995	Do	Do
Letter—Condom Manufacturers and Distributors	April 5, 1994	Do	Do
Suggested State Regulations for Control of Radiation—Volume II Nonionizing Radiation—Lasers (FDA Pub No. 83–8220)	January 1, 1982	OC/Division of Enforcement III (DOE III)	Do
Quality Assurance Guidelines for Hemodialysis Devices	February 1, 1991	Do	Do
Quality Control Guide for Sunlamp Products (FDA 88–8234)	March 1, 1988	Do	Do
Quality Control Practices for Compliance with the Federal Mercury Vapor Lamp Performance Standard	May 1, 1980	Do	Do
Reporting and Compliance Guide for Television Products including Product Report, Supplemental Report, Radiation Safety Abbreviated Report, Annual Report, Informational Guidance	October 1, 1995	Do	Do
Policy on Lamp Compatibility (sunlamps)	September 2, 1986	Do	Do
Policy on Maximum Timer Interval and Exposure Schedule for Sunlamp Products	August 21, 1986	Do	Do
Policy on Warning Label Required on Sunlamp Products	June 25, 1985	Do	Do
Imports Radiation-Producing Electronic Products (FDA 89–8008)	November 1, 1988	Do	Do
Information Requirements for Cookbooks and User and Service Manuals	October 31, 1988	Do	Do
Keeping Up With the Microwave Revolution (FDA Pub No. 91–4160)	March 1, 1990	Do	Do
Laser Light Show Safety—Who's Responsibility (FDA 86–8262)	May 1, 1986	Do	Do
Letter to All Foreign Manufacturers and Importers of Electronic Products for Which Applicable FDA Performance Standards Exist	May 28, 1981	Do	Do
General Principles of Software Validation; Draft Guidance	June 9, 1997	Do	Do
Reporting Guide for Laser Light Shows and Displays (21 CFR 1002) (FDA 88–8140)	September 1, 1995	Do	Do
Reporting Guide for Product Reports on High Intensity Mercury Vapor Discharge Lamps (21 CFR 1002)	September 1, 1995	Do	Do
Revised Guide for Preparing Annual Reports on Radiation Safety Testing of Laser and Laser Light Show Products (replaces FDA 82–8127)	September 1, 1995	Do	Do
Safety of Electrically Powered Products: Letter To Medical Device and Electronic Product Manufacturers From Lillian Gill & BHB correction memo	September 18, 1996	Do	Do
Unsafe Patient Lead Wires and Cables	September 3, 1993	Do	Do
Design Control Guidance for Medical Device Manufacturers	March 11, 1997	Do	Do
Final Design Control Inspectional Strategy	March 1, 1997	Do	Do
Guide for Preparing Abbreviated Reports of Microwave and RF Emitting Electronic Products Intended for Medical Use	September 1, 1996	Do	Do
Guide for Preparing Annual Reports for Ultrasonic Therapy Products	September 1, 1996	Do	Do
Guide for Preparing Product Reports for Medical Ultrasound Products	September 1, 1996	Do	Do
Guide for Preparing Product Reports for Ultrasonic Therapy Products (physical therapy only)	August 1, 1996	Do	Do
Application for a Variance from 21 CFR 1040.11(c) for a Laser Light Show, Display, or Device	March 1, 1987	Do	Do
Letter to Trade Association: ReUse of Single-use or Disposable Medical Devices	December 27, 1995	Do	Do
Letter: Changes in Regulations Concerning Records and Reports on Radiation-Emitting Electronic Products	October 27, 1995	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Medical Device Electromagnetic Interference Issues, Problem Reports, Standards, and Recommendations		Do	Do
Computerized Devices/Processes Guidance—Application of the Medical Device GMP to Computerized Devices and Manufacturing Processes	May 1, 1992	Do	Do
Keeping Medical Devices Safe from Electromagnetic Interference	July 1, 1995	Do	Do
Latex Labeling Letter (Johnson)		Do	Do
Guide for Preparing Annual Reports on Radiation Safety Testing of Mercury Vapor Lamps (replaces FDA 82–8127)	September 1, 1995	Do	Do
Guide for Preparing Annual Reports on Radiation Safety Testing of Sunlamps and Sunlamp Products (replaces FDA 82–8127)	September 1, 1995	Do	Do
Guide for Preparing Product Reports on Sunlamps and Sunlamp Products (21 CFR 1002)	September 1, 1995	Do	Do
Abbreviated Reports on Radiation Safety for Microwave Products (Other Than Microwave Ovens)—e.g., Microwave Heating, Microwave Diathermy, RF Sealers, Induction, Dielectric	August 1, 1995	Do	Do
Abbreviated Reports on Radiation Safety of Non-Medical Ultrasonic Products	August 1, 1995	Do	Do
Guidance for the Submission of Cabinet X–Ray System Reports Pursuant to 21 CFR 1020.40	February 1, 1975	Do	Do
Guide for Preparing Annual Reports on Radiation Safety Testing of Electronic Products (General)	October 1, 1987	Do	Do
Guide for Preparing Initial Reports and Model Change Reports on Medical Ultraviolet (UV) Lamps and Products Containing Such Lamps (21 CFR 1002.10 and 1002.12)	April 1, 1989	Do	Do
Guide for Preparing Reports on Radiation Safety of Microwave Ovens	March 1, 1985	Do	Do
Guide for Submission of Information on Accelerators Intended to Emit X–Radiation Required Pursuant to 21 CFR 1002.10	April 1, 1971	Do	Do
Guide for Submission of Information on Analytical X–Ray Equipment Required Pursuant to 21 CFR 1002.10	April 30, 1974	Do	Do
Guide for Submission of Information on Industrial Radiofrequency Dielectric Heater and Sealer Equipment Pursuant to 21 CFR 1002.10 and 1002.12 (FDA 81–8137)	September 1, 1980	Do	Do
Guide for Submission of Information on Industrial X–Ray Equipment Required Pursuant to 21 CFR 1002.10	March 1, 1973	Do	Do
Guide for the Filing of Annual Reports for X–Ray Components and Systems	July 1, 1980	Do	Do
Guide for the Submission of Initial Reports on Computed Tomography X–Ray Systems	September 1, 1984	OC/DOE I and III	Do
Additional Information for Initial Reports	April 9, 1993	Do	Do
All Diagnostic Ultrasound Manufacturers and Importers Exemption from Reporting under 21 CFR 1002	February 24, 1986	Do	Do
Guideline for Preparing Notices of Availability of Investigational Medical Devices	November 1, 1985	OC/Bioresearch Monitoring (BIMO)	Do
Recommended Test Methods Infant Apnea Monitor Standard	September 1, 1993	Office of Standards and Technology (OST)	Do
Draft Document—A Primer on Medical Device Interactions with Magnetic Resonance Imaging Systems	February 7, 1997	Do	Do
Letter to Medical Device Manufacturer on Pentium Processors	February 14, 1995	CDRH, Office of the Director (OD)	Do
"Real-Time" Review Program for Premarket Approval Application (PMA) Supplements	April 22, 1997	Office of Device Evaluation (ODE)	Do
A New 510(k) Paradigm—Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications	June 13, 1997	Do	Do
Freedom of Information/510(K) Process Changes	May 15, 1997	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Reexamination of the Evaluation Process for Liquid Chemical Sterilant and High Level Disinfectants	May 19, 1997	Do	Do
Center for Devices and Radiological Health's Investigational Device Exemption (IDE) Refuse to Accept Policy	June 30, 1993	Do	Do
Center for Devices and Radiological Health's Premarket Notification [510(k)] Refuse to Accept Policy—(updated Checklist 3/14/1995)	June 30, 1993	Do	Do
4-of-A-Kind PMA's	October 1, 1991	Do	Do
Application of the Device Good Manufacturing Practice (GMP) Regulation to the Manufacture of Sterile Devices	December 1, 1983	Do	Do
Biotechnology and FDA Regulation of Hybridoma In-Vitro Diagnostic Products: List of Current Devices and Guidelines for Manufacturers	January 1, 1986	Do	Do
CDRH's 510(k)/IDE/PMA Refuse to Accept/Accept/File Policies (see #D94–1, #K94–1, & #P94–1)	June 30, 1993	Do	Do
Classified Convenience Kits	April 30, 1993	Do	Do
Color Additive Petitions (p. II–19 of PMA Manual)	June 1, 1987	Do	Do
Color Additive Status List (Inspection Operations Manual)	February 1, 1989	Do	Do
Color Additives for Medical Devices (Sneska)	November 15, 1995	Do	Do
Deciding When to Submit a 510(k) for a Change to an Existing Device [see CDRH F–O–D #1935]	January 10, 1997	Do	Do
Device Specific Guidance Documents (List)	May 11, 1993	Do	Do
FDA Clinical Investigator Information Sheets	May 1, 1989	Do	Do
FDA Guide for Validation of Biological Indicator Incubation Time (Source: Sterilization Committee; through Virginia Roes; HFZ–332)	January 1, 1986	Do	Do
FDA Policy For The Regulation Of Computer Products (DRAFT) [See 2099]	November 13, 1989	Do	Do
Format for IDE Progress Reports		Do	Do
Guidance for Preparation of PMA Manufacturing Information	August 1, 1992	Do	Do
Guide for Establishing and Maintaining a Calibration Constancy Intercomparison System for Microwave Oven Compliance Survey Instruments (FDA 88–8254)	March 1, 1988	Do	Do
Guideline for the Monitoring of Clinical Investigations	January 1, 1988	ODE	Do
Guideline on General Principles of Process Validation	May 1, 1987	Do	Do
Guideline on Sterile Drug Products Produced by Aseptic Processing	June 1, 1987	Do	Do
Guideline on Validation of the Limulus Amebocyte Lysate (LAL) Test as an End-Product Endotoxin Test	December 1, 1987	Do	Do
Indications for Use Statement	January 2, 1996	Do	Do
Industry Representatives on Scientific Panels	March 27, 1987	Do	Do
Labeling Reusable Medical Devices for Reprocessing in Health Care Facilities: FDA Reviewer Guidance (see 1198)	April 1, 1996	Do	Do
Limulus Amebocute Lysate; Reduction of Samples for Testing	October 23, 1987	Do	Do
Master Files Part III; Guidance on Scientific and Technical Information	June 1, 1987	Do	Do
Memorandum: Electromagnetic Compatibility for Medical Devices: Issues and Solutions	June 13, 1995	Do	Do
Methods for Conducting Recall Effectiveness Checks	June 16, 1978	Do	Do
Necessary Information for Diagnostic Ultrasound 510(k) (Draft)	November 24, 1987	Do	Do
Perspectives on Clinical Studies for Medical Device Submissions (Statistical)		Do	Do
PMA Review Schedule	March 31, 1988	Do	Do
PMA Review Statistical Checklist		Do	Do
Points to Consider in the Characterization of Cell Lines Used to Produce Biological Products (from John C. Petricciani, M.D.)	June 1, 1984	Do	Do
Preamendment Class III Devices	March 11, 1992	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Premarket Notification [510(k)] Status Request Form, revised	March 7, 1994	Do	Do
Premarket Submission Coversheet, Instructions, and Survey	January 19, 1995	Do	Do
Preproduction Quality Assurance Planning: Recommendations for Medical Device Manufacturers (FDA 90–4236)	September 1, 1989	Do	Do
Proposal for Establishing Mechanisms for Setting Review Priorities Using Risk Assessment and Allocating Review Resources (include with 926–930)	June 30, 1993	Do	Do
Questions and Answers for the FDA Reviewer Guidance: Labeling Reusable Medical Devices for Reprocessing in Health Care Facilities	September 3, 1996	Do	Do
Reviewer Guidance for Computer Controlled Medical Devices Undergoing 510(k) Review	August 29, 1991	Do	Do
Shelf Life of Medical Devices	March 1, 1991	Do	Do
Substantial Equivalence (SE) Decision Making Documentation ATTACHED: "SE" Decision Making Process (Detailed) i.e. the decision making tree	January 1, 1990	Do	Do
Suggested Content for Original IDE Application Cover Letter—Version 4	February 27, 1996	Do	Do
Suggestions for Submitting a Premarket Approval (PMA) Application	April 1, 1993	Do	Do
Threshold Assessment of the Impact of Requirements for Submission of PMA's for 31 Medical Devices Marketed Prior to May 28, 1976	January 1, 1990	Do	Do
Viable Bacteriophage in Co2 Laser Plume: Aerodynamic Size Distribution		Do	Do
Drugs of Abuse Screening Test Devices	July 21, 1987	Do	Do
Letter—Vascular Graft Industry (Philip Phillips)	November 22, 1995	Do	Do
Letter to Industry, Powered Wheelchair/Scooter or Accessory/Component Manufacturer from Susan Alpert, Ph.D.,M.D.	May 26, 1994	Do	Do
Preamendments Class III Strategy; SXAlpert	April 19, 1994	Do	Do
Draft Guidance to Firms on Biliary Lithotripsy Studies	August 2, 1990	ODE/Division of Reproductive, Abdominal, ENT, and Radiological Devices (DRAERD)	Do
Letter: Notice to Manufacturers of Bone Mineral Densitometers	September 25, 1997	Do	Do
510(k) Checklist for Sterile Lubricating Jelly Used With Transurethral Surgical Instruments	September 19, 1994	Do	Do
CDRH Interim Regulatory Policy for External Penile Rigidity Devices	September 10, 1997	Do	Do
Checklist for Mechanical Lithotripters and Stone Dislodgers used in Gastroenterology and Urology	November 1, 1994	Do	Do
Draft—510(k) Checklist for Conditioned Response Enuresis Alarms	November 23, 1994	Do	Do
Draft 510(k) Checklist for Condom Catheters	February 23, 1995	Do	Do
Draft 510(k) Checklist for Endoscopic Electrosurgical Unit (ESU) and Accessories Used in Gastroenterology and Urology	August 16, 1995	Do	Do
Draft 510(k) Checklist for Endoscopic Light Sources Used in Gastroenterology and Urology	June 22, 1995	Do	Do
Draft 510(k) Checklist for Non-Implanted Electrical Stimulators Used for the Treatment of Urinary Incontinence	June 6, 1995	Do	Do
Draft 510(k) Checklist for Urological Irrigation System and Tubing Set	August 1, 1995	Do	Do
Draft Guidance for Clinical Investigations of Devices Used for the Treatment of Benign Prostatic Hyperplasia (BPH)	November 11, 1994	Do	Do
Draft Guidance for Information on Clinical Safety and Effectiveness Data for Extracorporeal Shock Wave Lithotripsy of Upper Urinary Tract (Renal Pelvis, Renal)	February 5, 1992	Do	Do
Draft Guidance for Preclinical and Clinical Investigations of Urethral Bulking Agents Used in the Treatment of Urinary Incontinence	November 29, 1995	Do	Do

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Draft Guidance for Preparation of PMA Applications for Penile Inflatable Implants	March 16, 1993	Do	Do
Draft Guidance for Preparation of PMA Applications for Testicular Prostheses	March 16, 1993	Do	Do
Draft Guidance for Preparation of PMA Applications for the Implanted Mechanical/Hydraulic Urinary Continence Device (Artificial Urinary Sphincter)	May 1, 1995	Do	Do
Draft Guidance for the Clinical Investigation of Urethral Stents	November 2, 1995	Do	Do
Draft Guidance for the Content of Premarket Notifications for Endoscopes used in Gastroenterology and Urology	March 17, 1995	Do	Do
Draft Guidance for the Content of Premarket Notifications for Penile Rigidity Implants	May 30, 1995	Do	Do
Draft Guidance for the Content of Premarket Notifications for Urological Balloon Dilatation Catheters	January 24, 1992	Do	Do
Draft Guidance Outline—Points to Consider for Clinical Studies for Vasovasostomy Devices	November 30, 1993	Do	Do
Guidance for the Content of Premarket Notifications for Biopsy Devices Used in Gastroenterology and Urology	February 10, 1993	Do	Do
Guidance for the Content of Premarket Notifications for Conventional and Antimicrobial Foley Catheters	September 12, 1994	Do	Do
Guidance for the Content of Premarket Notifications for Ureteral Stents	February 10, 1993	Do	Do
Guidance for the Content of Premarket Notifications for Urine Drainage Bags	June 7, 1994	Do	Do
Guidance for the Content of Premarket Notifications for Urodynamic/Uroflowmetry Systems	July 29, 1994	Do	Do
Guidance to Manufacturers on the Development of Required Postapproval Epidemiologic Study Protocols for Testicular Implants		Do	Do
510(k) Guide for Measuring and Reporting Acoustic Output of Diagnostic Ultrasound Medical Devices	December 1, 1985	Do	Do
Draft Guidance for Review of Bone Densitometer 510(k) Submissions	November 9, 1992	Do	Do
Draft MRI Guidance Update for dB/dt [update, include with 8/2/88 document]	October 11, 1995	Do	Do
Guidance for Magnetic Resonance Diagnostic Devices—Criteria for Significant Risk Investigations	September 29, 1997	Do	Do
Guidance for the Comment and Review of 510(k) Notifications for Picture Archiving and Communications Systems (PACS) and Related Devices [See 2099]	August 1, 1993	Do	Do
Guidance for the Submission of 510(k)s for Solid State X–Ray Imaging Devices	June 1, 1997	Do	Do
Information for Manufacturers Seeking Marketing Clearance of Diagnostic Ultrasound Systems and Transducers	April 11, 1997	Do	Do
Information for Manufacturers Seeking Marketing Clearance of Digital Mammography Systems	June 19, 1996	Do	Do
Reviewer Guidance for Automatic X–Ray Film Processor 510(k)	February 1, 1990	Do	Do
Simplified 510(k) procedures for certain radiology devices:3 letters 12/21/93; 1/31/94 and 3/31/94	1994	Do	Do
ORDB 510(k) Sterility Review Guidance	July 3, 1997	Do	Do
Condom Packet: 4/13/94 RJRivera Letter, Condom Guidance & 7 Tabs, General Guidance for Modifying Condom Labeling to Include Shelf Life	April 13, 1994	Do	Do
Draft Guidance for the Content of Premarket Notifications for Loop and Rollerball Electrodes for GYN Electrosurgical Excisions	July 29, 1991	Do	Do
Draft Guidance for the Content of Premarket Notifications for Menstrual Tampons	May 25, 1995	Do	Do
Draft Thermal Endometrial Ablation Devices (Submission Guidance for an IDE)	March 14, 1996	Do	Do
Guidance ("Guidelines") for Evaluation of Fetal Clip Electrode	March 8, 1977	Do	Do

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Guidance ("Guidelines") for Evaluation of Hysteroscopic Sterilization Devices	May 10, 1978	Do	Do
Guidance ("Guidelines") for Evaluation of Laparoscopic Bipolar and Thermal Coagulators (and Accessories)		Do	Do
Guidance ("Guidelines") for Evaluation of Tubal Occlusion Devices	November 22, 1977	Do	Do
Guidelines for Evaluation of Non-Drug IUD's	September 28, 1976	Do	Do
Hysteroscopes and Gynecology Laparoscopes—Submission Guidance for a 510(k)—includes 00192	March 27, 1996	Do	Do
Hysteroscopes and Laparoscopic Insufflators: Submission Guidance for a 510(k)	August 1, 1995	Do	Do
In-vivo Devices for the Detection of Cervical Cancer and its Precursors: Submission Guidance for an IDE Draft Document	June 14, 1997	Do	Do
Intrapartum Continuous Monitors for Fetal Oxygen Saturation and Fetal pH; Submission Guidance for a PMA; Draft Document	June 14, 1997	Do	Do
Premarket Testing Guidelines for Falloposcopes	November 20, 1992	Do	Do
510(k) Diagnostic Ultrasound Guidance4/91 Use of Medical Index in Place of Spatial Peak Intensity in Determining Substantial Equival for Diagnostic Ultrasound Equip/Access/Rel Meas. Dev	February 1993	Do	Do
Premarket Testing Guidelines for Female Barrier Contraceptive Devices also intended to prevent sexually transmitted diseases	April 4, 1990	Do	Do
Premarket Testing Guidelines for Home Uterine Activity Monitors	March 31, 1993	Do	Do
Testing guidance for Male Condoms Made from New Material (Non-Latex)	June 29, 1995	Do	Do
Information for a Latex Condom 510K Subm. for Obstetrics-Gynecology Branch (draft)	March 1994	Do	Do
Guidance for Content and Review of a Magnetic Resonance Diagnostic Device 510(k) Applic.	October 11, 1995	Do	Do
Draft Guidance for Hemodialyzer Reuse Labeling	October 6, 1995	Do	Do
Draft Guidance for the Content of Premarket Notifications for Water Purification Components and Systems for Hemodialysis	May 30, 1997	Do	Do
Guidelines for Premarket Testing of New Conventional Hemodialyzers, High Permeability Hemodialyzers, and Hemofilters	March 1, 1982	Do	Do
Draft of Suggested Information for Reporting Extracorporeal Shock Wave Lithotripsy Device Shock Wave Measurements	January 1, 1991	Do	Do
Draft Guidance to Hearing Aid Manufacturers for Substantiation of Claims	August 5, 1994	Do	Do
Guidance for Submission of a 510(k) Premarket Notification for an Air Conduction Hearing Aid	April 1, 1991	Do	Do
Guidance For The Arrangement and Content of a Premarket Approval (PMA) Application For A Cochlear Implant in Children Ages 2 through to 17 Years	May 1, 1990	Do	Do
Guidance for the Content of Premarket Notification for Disposable, Sterile, Ear, Nose and Throat Endoscope Sheaths with Protective Barrier Claims	October 21, 1996	Do	Do
Guideline for the Arrangement and Content of a Premarket Approval (PMA) Application for a Cochlear Implant in Adults at Least 18 Years of Age	May 1, 1990	Do	Do
Guidance for the Technical Content of a Premarket Approval (PMA) Application for an Endolymphatic Shunt Tube with Valve	April 1, 1990	Do	Do
Amendment 1: Draft Premarket Notification [510(k)] Guidance Document for Class II Daily Wear Contact Lenses	June 28, 1994	ODE/Division of Opthalmics Devices (DOD)	Do
Certification Statement for the Impact Resistance Test		Do	Do
Draft Premarket Notification 510(k) Guidance for Contact Lens Care Products	May 1, 1997	Do	Do

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Eye Valve Implant (and all glaucoma drainage devices) manufacturers letter from NCBrogdon	November 16, 1995	Do	Do
FDA Public Health Advisory: Retinal Photic Injuries from Operating Microscopes During Cataract Surgery	October 16, 1995	Do	Do
New FDA Recommendations & Results of Contact Lens Study (7 day letter)	May 30, 1989	Do	Do
Sunglass Letter including 510(k) format	October 8, 1996	Do	Do
Sunglass Package	February 3, 1995	Do	Do
Third Party Review Guidance for Aspiration and Cutting Device Premarket Notification (510(k))	January 31, 1997	Do	Do
Third Party Review Guidance for Phacofragmentation System Device Premarket Notification (510(k))	January 31, 1997	Do	Do
Announcement by Dr Alpert at 7/26/96 Ophthalmic Panel Meeting concerning Manufacturers & Users of Lasers for Refractive Surgery [excimer]	August 26, 1996	Do	Do
Announcement: Information for Manufacturers & Users of Lasers for Refractive Surgery [excimer]	September 22, 1997	Do	Do
Checklist of Information Usually Submitted in an Investigational Device Exemptions (IDE) Application for Refractive Surgery Lasers [excimer]	October 10, 1996	Do	Do
Discussion Points for Expansion of the "Checklist of Information Usually Submitted in an Investigational Device Exemption (IDE) Application for Refractive Surgery Lasers"	September 5, 1997	Do	Do
Letter to Manufacturers and Users of Lasers for Refractive Surgery [excimer]	October 10, 1996	Do	Do
Owners Certification of Lasers as PMA Approved Devices [excimer]	September 26, 1996	Do	Do
Update on Excimer Lasers for Nearsightedness	May 20, 1996	Do	Do
Draft Version Guidance for Clinical Data to be Submitted for Premarket Approval Application for Cranial Electrotherapy Stimulators	August 20, 1992	ODE/Division of General and Restorative Devices (DGRD)	Do
Guidance for the Preparation of Premarket Notifications for Extended Laparoscopy Devices	August 30, 1994	Do	Do
510K Sterility Review Guidance	July 3, 1997	Do	Do
Technological Reporting for Powered Muscle Stimulator 510k Submissions	January 1, 1992	Do	Do
Draft Version Guide for Cortical Electrode 510(k) Content	August 10, 1992	Do	Do
Electrical Muscle Stimulator (EMS) Labeling Indications, Contraindications, Warnings, etc.	July 11, 1985	Do	Do
Galvanic Skin Response Measurement Devices—Draft Guidance for 510 (k) Content	August 23, 1994	Do	Do
Guidance Document for the Preparation for Premarket Notification (510(k)) Applications for Therapeutic Massagers and Vibrators	July 26, 1995	Do	Do
Guidance Document for the Preparation of IDE and PMA Applications for Bone Growth Stimulator Devices	August 12, 1988	Do	Do
Guidance Document for the Preparation of IDE and PMA Applications for Intra-Articular Prosthetic Knee Ligament Devices	February 18, 1993	Do	Do
Guidance Document for the Preparation of Notification (510(k)) Applications for Communication Systems (Powered and Nonpowered) and Powered Environmental Control	July 26, 1995	Do	Do
Guidance Document for the Preparation of Notification (510(k)) Applications for Electromyograph Needle Electrodes	July 26, 1995	Do	Do
Guidance Document for the Preparation of Notification (510(k)) Applications for Heating and Cooling Devices	July 26, 1995	Do	Do
Guidance Document for the Preparation of Notification (510(k)) Applications for Powered Muscle Stimulators and Ultrasound Diathermy and Muscle Stimulator	July 26, 1995	Do	Do

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Guidance Document for the Preparation of Notification (510(k)) Applications for Powered Tables and Multi-function Physical Therapy Tables	July 26, 1995	Do	Do
Guidance Document for the Preparation of Notification (510(k)) Applications for Submerged (underwater) Exercise Equipment	July 26, 1995	Do	Do
Guidance Document for the Preparation of Notification (510(k)) Applications of Immersion Hydrobaths	July 26, 1995	Do	Do
Guidance Document for the Preparation of Premarket Notification (510(k)) Application for Beds	July 26, 1995	Do	Do
Guidance Document for the Preparation of Premarket Notification [510k)] Applications for Mechanical and Powered Wheelchairs, and Motorized Three-Wheeled Vehicles	July 26, 1995	Do	Do
Guidance for Studies for Pain Therapy Devices—Gen. Consid. in the Design of Clinical Studies for Pain-Alleviating Devices	May 12, 1988	Do	Do
Guide for TENS 510(k) Content (Draft)	August 1, 1994	Do	Do
Alternate Suture Labeling Resulting from the January 11, 1993 Meeting with HIMA		Do	Do
Draft Guidance for Preparation of PMA Applications for Silicone Inflatable (Saline) Breast Prostheses	January 18, 1995	Do	Do
Draft Guidance for Preparation of PMA Submissions of Silicone Gel-Filled Breast Prosthesis	May 11, 1992	Do	Do
Draft Guidance for Testing of Alternative Breast Prostheses (Nonsilicone Gel-filled)	September 1, 1994	Do	Do
Draft Guidance for the Preparation of a Premarket Notification for a Non-Interactive Wound and Burn Dressing [510(k)]	March 31, 1995	Do	Do
Draft Guidance for the Preparation of IDE Submission for Interactive Wound and Burn Dressing	April 1, 1995	Do	Do
Guide for 510(k) Review of Processed Human Dura Mater	June 26, 1990	Do	Do
Letter: Core Study for Silicone Breast Implants	January 11, 1996	Do	Do
510(k) Information Needed for Hydroxyapatite Coated Orthopedic Implants	February 20, 1997	Do	Do
Draft Guidance for Preparation of FDA Submissions of Silicone Gel-Filled Breast Prosthesis	May 11, 1992	Do	Do
Calcium Phosphate (Ca-P) Coating Draft Guidance for Preparation of FDA Submissions for Orthopedic and Dental Endosseous Implants	February 21, 1997	Do	Do
Draft Data Requirements for Ultrahigh Molecular Weight Polyethylene (Uhmupe) Used in Orthopedic Devices	March 28, 1995	Do	Do
Draft Guidance Document for Femoral Stem Prostheses	August 1, 1995	Do	Do
Draft Guidance Document for Testing Acetabular Cup Prostheses	May 1, 1995	Do	Do
Draft Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Orthopedic Devices-The Basic Elements	September 5, 1996	Do	Do
Draft Guidance for the Preparation of Premarket Notifications [510(k)]s for Cemented, Semi-Constrained Total Knee Prostheses	April 1, 1993	Do	Do
Draft Guideline for Reviewing Spinal Fixation Device Systems	January 9, 1997	Do	Do
Draft of Guidance Document for Testing of Orthopedic Implants with Metallic Plasma Sprayed Porous Coatings Subject to Required Post Market Surveillance	October 25, 1995	Do	Do
Draft Outline for a Guidance Document for Testing Orthopedic Bone Cement, request for comments by December 10, 1993	November 1, 1993	Do	Do
Guidance Document for Testing Biodegradable Polymer Implant Devices	April 20, 1996	Do	Do
Guidance Document for Testing Bone Anchor Devices Draft	April 20, 1996	Do	Do

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Guidance Document for Testing Non-Articulating "Mechanically Locked" Modular Implant Components	May 1, 1995	Do	Do
Guidance Document for Testing Orthopedic Implants with Modified Metallic Surfaces Apposing Bone Or Bone Cement	April 28, 1994	Do	Do
Guidance Document For The Preparation of Premarket Notification For Ceramic Ball Hip Systems	January 10, 1995	Do	Do
510(k) Sterility Review Guidance	July 3, 1997	Do	Do
Reviewers Guidance Checklist for Intramedullary Rods	February 21, 1997	Do	Do
Reviewers Guidance Checklist for Orthopedic External Fixation Devices	February 21, 1997	Do	Do
Draft 510(k) Guideline for General Surgical Electrosurgical Devices	May 10, 1995	Do	Do
Draft Guidance for Arthroscopes and Accessory 510(k)s	May 1, 1994	Do	Do
Draft Premarket Notification Review Guidance for Evoked Response Somatosensory Stimulators	June 1, 1994	Do	Do
Draft Version 1—Biofeedback Devices—Draft Guidance for 510(k) Content	August 1, 1994	Do	Do
Draft Version Cranial Perforator Guidance	July 13, 1994	Do	Do
Draft Version Neuro Endoscope Guidance	July 7, 1994	Do	Do
Guidance on the Content and Organization of a Premarket Notification for a Medical Laser	June 1, 1995	Do	Do
Guidelines for Reviewing Premarket Notifications that Claim Substantial Equivalence to Evoked Response Stimulators		Do	Do
Review of "YAG" Lasers for Neurosurgery		Do	Do
Draft Version—Guidance on Biocomatibility Requirements for Long Term Neurological Implants: Part 3—Implant Model	September 12, 1994	Do	Do
Protocol for Dermal Toxicity for Devices in Contact with Skin (Draft)		Do	Do
Addendum to Guidance on the Content and Format of Premarket Notification [510(k)] Submissions for General Purpose Disinfectants	March 9, 1994	ODE/Division of Dental Infection Control and General Hospital Devices (DDIGD)	Do
Guidance on Premarket Notification [510(k)] Submissions for Automated Endoscope Washers, Washer/Disinfectors, and Disinfectors Intended for Use in Health Care Facilities	August 1, 1993	Do	Do
Guidance on Premarket Notification [510(k)] Submissions for Surgical Gowns and Surgical Drapes	August 1, 1993	Do	Do
Guidance on the Content and Format of Premarket Notification 510(k) Submissions for Liquid Chemical Germicides	December 6, 1996	Do	Do
Guidance on the Content and Format of Premarket Notification [510(k)] Submissions for General Purpose Disinfectants	October 1, 1993	Do	Do
Guidance on the Content and Format of Premarket Notification [510(k)] Submissions for Sharps Containers	October 1, 1993	Do	Do
Draft Supplementary Guidance on the Content of Premarket Notification [510(k)] Submissions for Medical Devices with Sharps Injury Prevention Features (Anti-stick)	March 1, 1995	Do	Do
Guidance on 510(k) Submissions for Implanted Infusion Ports	October 1, 1990	Do	Do
Guidance on Premarket Notification [510(K)] Submissions for Short-Term and Long-Term Intravascular Catheters	March 16, 1995	Do	Do
Guidance on the Content of Premarket Notification [510(K)] Submissions for Clinical Electronic Thermometers	March 1, 1993	Do	Do
Guidance on the Content of Premarket Notification [510(k)] Submissions for External Infusion Pumps	March 1, 1993	Do	Do
Guidance on the Content of Premarket Notification [510(K)] Submissions for Hypodermic Single Lumen Needles	April 1, 1993	Do	Do

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Guidance on the Content of Premarket Notification [510(K)] Submissions for Piston Syringes	April 1, 1993	Do	Do
510(k) Guidance for Screw Type Endosseous Implants for Prosthetic Attachment	August 11, 1992	Do	Do
510(k) Information Needed for Hydroxyapatite Coated Titanium Endosseous Implants	July 6, 1993	Do	Do
510(k) Information Needed for Metallurgical Endosseous Implants	August 12, 1993	Do	Do
510(k) Information Needed for Ti-Powder Coated Titanium Endosseous Implants	July 13, 1993	Do	Do
Draft Guidance Document for the Preparation of Premarket Notification [510(k)'S] for Dental Alloys	March 3, 1997	Do	Do
Guidance Document for the Preparation of Premarket Notifications (510(k)'s) for Temporomandibular Joint Implants	January 23, 1995	Do	Do
Guidance For The Arrangement and Content of a Premarket Approval (PMA) Application For An Endosseous Implant For Prosthetic Attachment	May 16, 1989	Do	Do
Guidance for the Preparation of Premarket Notification [510(k)] for Resorbable Periodontal Barriers		Do	Do
Information Necessary for Premarket Notification Submissions For Screw-Type Endosseous Implants	December 9, 1996	Do	Do
Outline of Recommended Procedures for a Clinical Investigation of Endosseous Implants Under a 510(k)		Do	Do
Outline of Recommended Procedures for Animal Laboratory Studies of Endosseous Implants		Do	Do
Recommendations of the Dental Products Panel Subcommittee on Dental Lasers		Do	Do
Guidance Document on Dental Handpieces	July 1, 1995	Do	Do
Groups Capable of Testing for Latex Skin Sensitization (Addendum to #994)	July 28, 1997		
Draft Percutaneous Transluminal Coronary Angioplasty Package Insert Template	February 7, 1995	ODE/Division of Cardiovascular, Respiratory and Neurological Devices (DCRND)	Do
Medical Device Labeling—Suggested Format and Content; Draft Document	April 25, 1997	Do	Do
Guidance for Off-the-Shelf Software Use in Medical Devices; Draft Document	June 4, 1997	Do	Do
Carotid Stent—Suggestions for Content of Submissions to the Food and Drug Administration in Support of Investigational Devices Exemption (IDE) Applications	October 26, 1996	Do	Do
Non-Invasive Blood Pressure (NIBP) Monitor Guidance	March 10, 1997	Do	Do
Draft Guidance for the Content of Preliminary Investigational Device Exemptions (Pre-IDE) Presentations: Teleconferences, Meetings and Written Submissions	August 22, 1995	Do	Do
Electrocardiograph (ECG) Electrode—Version 1.0 Electrocardiograph (ECG) Lead Switching Adapter—Version 1.0	February 11, 1997	Do	Do
Electrocardiograph (ECG) Surface Electrode Tester—Version 1.0	February 11, 1997	Do	Do
Guidance for the Preparation and Content of Applications to the Food and Drug Administration for Ventricular Assist Devices and Total Artificial Hearts (draft)	December 4, 1987	Do	Do
Guidance for the Submission of 510(k) Premarket Notifications for Cardiovascular Intravascular Filters		Do	Do
Preliminary Guidance for Ambulatory Electrocardiograph for Data to be Submitted to FDA in Support of Premarket Notification Applications	September 1, 1994	Do	Do
Preliminary Guidance for Data to be Submitted in Support of Premarket Notifications for Analyzing ECGs/Interpretive ECGs	December 1, 1994	Do	Do

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Preliminary Guidance for Data to be Submitted to the FDA in Support of Premarket Notification Applications for External Cardioverters and Defibrillators	April 25, 1994	Do	Do
Reviewer Checklist for Monitors: EMC, Battery and Software	January 24, 1996	Do	Do
510(k) Reviewer Guidelines—Tracheostomy Tubes 868.5800		Do	Do
Automated Defibrillators: Operator's Shift Checklist and Manual Defibrillators: Operator's Shift Checklist	August 8, 1991	Do	Do
Balloon Valvuloplasty Guidance For The Submission Of an IDE Application and a PMA Application	January 1, 1989	Do	Do
Battery Guidance (Draft) (Albert Moyal)	July 12, 1993	Do	Do
Catheter Guidance	May 15, 1991	Do	Do
Coronary and Cerebrovascular Guidewire Guidance	January 1, 1995	Do	Do
DCRND—Draft Guidance for Format and Content for Premarket Notification 510(k) [replaces 906] [cardiovascular, respiratory, neurological]	July 19, 1995	Do	Do
Determining Equivalence of Intraaortic Balloon Catheters Under the 510(k) Regulations	January 24, 1989	Do	Do
Draft 510(K) Submission Requirements for Peak Flow Meters	January 13, 1994	Do	Do
Draft Emergency Resuscitator Guidance	April 14, 1993	Do	Do
Draft Guidance for Implantable Cardioverter-Defibrillators	June 19, 1996	Do	Do
Draft Guidance for the Preparation of Research and Marketing Applications for Vascular Graft Prostheses	August 1, 1993	Do	Do
Draft Guidance for the Submission of Research and Marketing Applications for Interventional Cardiology Devices: PTCA Catheters, Atherectomy Catheters, Lasers, Intravascular	May 1, 1995	Do	Do
Draft Guidance: Human Heart Valve Allografts	June 21, 1991	Do	Do
Draft Premarket Notification Review Guidance for Evoked Response Somatosensory Stimulators	June 1, 1994	Do	Do
Draft Replacement Heart Valve Guidance	October 14, 1994	Do	Do
Draft Reviewer Guidance for Ventilators	July 1, 1995	Do	Do
Draft Reviewer Guidance on Face Masks and Shield for CPR	March 16, 1996	Do	Do
Draft Version—Guidance on Biocompatibility Requirements for Long Term Neurological Implants: Part 3—Implant Model	September 12, 1994	Do	Do
Draft Version 1—Bioleedback Devices—Draft Guidance for 510(k) Content	August 1, 1994	Do	Do
Draft Version Cardiac Ablation Preliminary Guidance (Data to be Submitted to the FDA in Support Investigation Device Exemption Application	March 1, 1995	Do	Do
Draft Version Cranial Perforator Guidance	July 13, 1994	Do	Do
Draft Version Electrode Recording Catheter Preliminary Guidance (Data to be Submitted to the FDA in Support of Premarket Notifications	March 1, 1995	Do	Do
Draft Version Guidance for Clinical Data to be Submitted for Premarket Approval Application for Cranial Electrotherapy Stimulators	August 20, 1992	Do	Do
Draft Version Guide for Cortical Electrode 510(k) Content	August 10, 1992	Do	Do
Draft Version Neuro Endoscope Guidance	July 7, 1994	Do	Do
Excerpts Related to EMI from November 1993 Anesthesiology and Respiratory Devices Branch (to be used with EMI standard)	November 1, 1993	Do	Do
Galvanic Skin Response Measurement Devices—Draft Guidance for 510(k) Content	August 23, 1994	Do	Do
General Guidance Document: Non-Invasive Pulse Oxymeter	September 7, 1992	Do	Do
Guidance for Oxygen Conserving Device 510(k) Review 73 BZD 868.5905 Non-continuous Ventilator Class II	February 1, 1989	Do	Do
Guidance for Peak Flow Meters for Over-the-Counter Sale		Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Guidance for Safety and Effectiveness Data Required in Premarket Notification (510(k)) Applications for Blood Oxygenators	March 1, 1983	Do	Do
Guidance for Studies for Pain Therapy Devices—General Considerations in the Design of Clinical Studies for Pain-Alleviating Devices	May 12, 1988	Do	Do
Guidance for the Preparation of the Annual Report to the PMA Approved Heart Valve Prostheses	April 1, 1990	Do	Do
Guide for 510(k) Review of Processed Human Dura Mater	June 26, 1990	Do	Do
Guide for TENS 510(k) Content (Draft)	August 1, 1994	Do	Do
Guidelines for Reviewing Premarket Notifications that Claim Substantial Equivalence to Evoked Response Stimulators		Do	Do
Heated Humidifier Review Guidance	August 30, 1991	Do	Do
Implantable Pacemaker Lead Testing Guidance For The Submission of a Section 510(k) Notification	September 1, 1989	Do	Do
Implantable Pacemaker Testing Guidance	January 12, 1990	Do	Do
Policy for Expiration Dating (DCRND RB92–G)	October 30, 1992	Do	Do
Protocol for Dermal Toxicity Testing for Devices in Contact with Skin (Draft)		Do	Do
Review Guidelines for Oxygen Generators and Oxygen Equipment		Do	Do
Review of "YAG" Lasers for Neurosurgery		Do	Do
Reviewer Guidance for Nebulizers, Metered Dose Inhalers, Spacers and Actuators	November 9, 1990	Do	Do
Reviewer's Guidance for Oxygen Concentrator	August 30, 1991	Do	Do
Draft Intravascular Brachytherapy—Guidance for Data to be Submitted to the Food and Drug Administration in Support of Investigational Device Exemption (IDE) Applications	May 24, 1996	Do	Do
Assessing the Safety/Effectiv. of Home-use In Vitro Diagnostic Devices (IVDs): Draft Points to Consider Regarding Labeling and Premarket Submissions	October 1, 1988	ODE/Division of Clinical Laboratory Devices (DCLD)	Do
Review Proposal for Reagents and Analyzer Systems	March 14, 1995	Do	Do
Data for Commercialization of Original Equipment Manufacturer, Secondary and Generic Reagents for Automated Analyzers	June 10, 1996	Do	Do
DCLD Tier/Triage lists (include 931)	May 31, 1996	Do	Do
Draft Criteria for Assessment of In Vitro Diagnostic Devices for Drugs of Abuse Assays Using Various Methodologies	August 31, 1995	Do	Do
Draft Document entitled Proposed Format: Package Insert for Immunohistochemistry Products (cover memo dated 5/12/92)	April 28, 1992	Do	Do
Draft Guidance Document for 510(k) Submission of Fecal Occult Blood Tests	July 29, 1992	Do	Do
Draft Guidance Document for 510(k) Submission of Glycohemoglobin (Glycated or Glycosylated) Hemoglobin for IVDs	September 30, 1991	Do	Do
Draft Guidance Document for 510(k) Submission of Immunoglobulins A,G,M,D and E Immunoglobulin System In Vitro Devices	September 1, 1992	Do	Do
Draft Guidance for 510(k) Submission of Lymphocyte Immunophenotyping IVDs using Monoclonal Antibodies	September 26, 1991	Do	Do
Draft Guidance For Submission of Immunohistochemistry Applications to the FDA/ cover letter	April 17, 1995	Do	Do
Draft Review Criteria for Nucleic Acid Amplification Based In Vitro Diagnostic Devices for Direct Detection of Infectious Microorganisms	June 14, 1993	Do	Do
Draft: Premarketing Approval Review Criteria for Premarket Approval of Estrogen (ER) or Progesterone (PGR) Receptors In Vitro Diagnostic Devices Using Steroid Hormone	September 10, 1992	Do	Do
Guidance Criteria for Cyclosporine PMAs	January 24, 1992	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Labeling Requirements for Drugs of Abuse Screening Test Kits	January 27, 1987	Do	Do
Points to Consider & Questions and Answers on Immunohistochemistry Products (cover memo dated 10/18/1993)	October 19, 1993	Do	Do
Points to Consider for Cervical Cytology Devices	July 25, 1994	Do	Do
Points to Consider for Collection of Data in Support of In-Vitro Device Submissions for 510(k) Clearance	September 26, 1994	Do	Do
Points to Consider for Portable Blood Glucose Monitoring Devices Intended for Bedside Use in the Neonate Nursery	February 20, 1996	Do	Do
Points to Consider for Review of Calibration and Quality Control Labeling for In Vitro Diagnostic Devices/Cover Letter dated 3/14/1996	February 1, 1996	Do	Do
Review Criteria for In Vitro Diagnostic Devices for the Assessment of Thyroid Autoantibodies using Indirect Immunofluorescence Assay (IFA), Indirect	February 1, 1994	Do	Do
Review Criteria for Assessment of Alpha-Fetoprotein (AFP) in vitro Diagnostic Devices for Fetal Open Neural Tube Defects Using Immunological Test Methodologies	July 15, 1994	Do	Do
Review Criteria for Assessment of Antimicrobial Susceptibility Devices	May 31, 1991	Do	Do
Review Criteria for Assessment of Cytogenetic Analysis Using Automated and Semi-Automated Chromosome Analyzers	July 15, 1991	Do	Do
Review Criteria for Assessment of Human Chorionic Gonadotropin (hCG) In Vitro Diagnostic Devices (IVDs)	September 27, 1995	Do	Do
Review Criteria for Assessment of In Vitro Diagnostic Devices for Direct Detection of Chlamydiae in Clinical Specimens	January 1, 1992	Do	Do
Review Criteria for Assessment of In Vitro Diagnostic Devices for Direct Detection of Mycobacterium Spp. [Tuberculosis (TB)]	July 6, 1993	Do	Do
Review Criteria for Assessment of Laboratory Tests for the Detection of Antibodies to Helicobacter pylori	September 17, 1992	Do	Do
Review Criteria for Assessment of Portable Blood Glucose In Vitro Diagnostic Devices Using Glucose Oxidase, Dehydrogenase, or Hexokinase Methodology	February 14, 1996	Do	Do
Review Criteria for Blood Culture Systems	August 12, 1991	Do	Do
Review Criteria for Devices Assisting in the Diagnosis of C. Difficile Associated Diseases	May 31, 1990	Do	Do
Review Criteria for Devices Intended for the Detection of Hepatitis B "e" Antigen and Antibody to HBe	December 30, 1991	Do	Do
Review Criteria for In Vitro Diagnostic Devices for Detection of IGM Antibodies to Viral Agents	August 1, 1992	Do	Do
Review Criteria for In Vitro Diagnostic Devices that Utilize Cytogenetic In Situ Hybridization Technology for the Detection of Human Genetic Mutations (Germ Line and	February 15, 1996	Do	Do
Review Criteria For Premarket Approval of In Vitro Diagnostic Devices for Detection of Antibodies to Parvovirus B19	May 15, 1992	Do	Do
Review Criteria for the Assessment of Allergen-Specific Immunoglobulin E (IGE) In-Vitro Diagnostic Devices Using Immunological Test Methodologies	March 2, 1993	Do	Do
Review Criteria for the Assessment of Anti-nuclear Antibodies (ANA) In-Vitro Diagnostic Devices Using Indirect Immunofluorescence Assay (IFA),	September 1, 1992	Do	Do
Guidance Document for the Submission of Tumor Associated Antigen Premarket Notification [510(k)] to FDA	September 19, 1996	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Review Criteria for Assessment of Rheumatoid Factor (RF) In Vitro Diagnostic Devices Using Engzyme-Linked Immunoassay (EIA), Enzyme Linked Immunosorbent Assay (ELISA), Particle	February 21, 1997	Do	Do
Guidance for 510(k)s on Cholesterol Tests for Clinical Laboratory, Physicians' Office Laboratory, and Home Use	July 14, 1995	Do	Do
Clinical Utility and Premarket Approval #P91–1 (blue book memo)	May 3, 1991	ODE	Do
Criteria for Panel Review of PMA Supplements #P86–3 (blue book memo)	January 30, 1986	Do	Do
Panel Report and Recommendations on PMA Approvals #P86–5 (blue book memo)	April 18, 1986	Do	Do
Panel Review of "Me-Too" Devices #P86–6 (blue book memo)	July 1, 1986	Do	Do
Panel Review of Premarket Approval Applications #P91–2 (blue book memo)	May 3, 1991	Do	Do
PMA Compliance Program #P91–3 (blue book memo)	May 3, 1991	Do	Do
PMA Filing Decisions #P90–2 (blue book memo)	May 18, 1990	Do	Do
PMA Refuse to File Procedures #P94–1 (blue book memo)	May 20, 1994	Do	Do
PMA Supplements: ODEs letter to manufacturers; identifies situations which may require the submission of a PMA supplement (When PMA Supplements are Required) #P90–1 (blue book memo)	April 24, 1990	Do	Do
PMAs—Early Review and Preparation of Summaries of Safety and Effectiveness #P86–1 (blue book memo)	January 27, 1986	Do	Do
Premarket Approval Application (PMA) Closure #P94–1 (blue book memo)	July 8, 1994	Do	Do
Review and Approval of PMAs of Licensees #P86–4 (blue book memo)	October 22, 1990	Do	Do
Review of Final Draft Medical Device Labeling #P91–4 (blue book memo)	August 29, 1991	Do	Do
Assignment of Review Documents #I90–2 (blue book memo)	August 24, 1990	Do	Do
Document Review Processing #I91–1 (blue book memo)	February 12, 1992	Do	Do
Integrity of Data and Information Submitted to ODE #I91–2 (blue book memo)	May 29, 1991	Do	Do
Meetings with the Regulated Industry #I89–3 (blue book memo)	November 20, 1989	Do	Do
Nondisclosure of Financially Sensitive Information #I92–1 (blue book memo)	March 5, 1992	Do	Do
Policy Development and Review Procedures #I90–1 (blue book memo)	February 15, 1990	Do	Do
Telephone Communications Between ODE Staff and Manufacturers #I93–1 (blue book memo)	January 29, 1993	Do	Do
Delegation of IDE Actions #D88–1 (blue book memo)	April 26, 1988	Do	Do
Goals and Initiatives for the IDE Program #D95–1 (blue book memo)	July 12, 1995	Do	Do
IDE Refuse to Accept Procedures #D94–1 (blue book memo)	May 20, 1994	Do	Do
Implementation of the FDA/HCFA Interagency Agreement Regarding Reimbursement Categorization of Investigational Devices, Att. A Interagency Agreement, Att. B Criteria	September 15, 1995	Do	Do
Overdue IDE Annual Progress Report Procedures #D93–1 (blue book memo)	July 23, 1993	Do	Do
Review of IDEs for Feasibility Studies #D89–1 (blue book memo)	May 17, 1989	Do	Do
Consolidated Review of Submissions for Diagnostic Ultrasound Equipment, Accessories and Related Measurement Devices #G90–2 (blue book memo)	October 19, 1990	Do	Do
Consolidated Review of Submissions for Lasers and Accessories #G90–1 (blue book memo)	October 19, 1990	Do	Do
Device Labeling Guidance #G91–1 (blue book memo)	March 8, 1991	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Documentation and Resolution of Differences of Opinion on Product Evaluations #G93–1 (blue book memo)	December 23, 1993	Do	Do
ODE Regulatory Information for the Office of Compliance - Information Sharing Procedures #G87–2 (blue book memo)	May 15, 1987	Do	Do
PMA/510(k) Expedited Review #G94–2 (blue book memo)	May 20, 1994	Do	Do
PMA/510(k) Triage Review Procedures #G94–1 (blue book memo)	May 20, 1994	Do	Do
Review of Laser Submissions #G88–1 (blue book memo)	April 15, 1988	Do	Do
Toxicology Risk Assessment Committee #G89–1 (blue book memo)	August 9, 1989	Do	Do
Use of International Standard ISO-10993, "Biological Evaluation of Medical Devices Part 1: Evaluation and Testing" (Replaces #G87–1 #8294) (blue book memo)	May 1, 1995	Do	Do
510(k) Additional Information Procedures #K93–1 (blue book memo)	July 23, 1993	Do	Do
510(k) Refuse to Accept Procedures #K94–1 (blue book memo)	May 20, 1994	Do	Do
510(k) Sign-Off Procedures #K94–2 (blue book memo)	June 3, 1994	Do	Do
510(k) Sterility Review Guidance - and Revision of 11/18/1994 #K90–1 (blue book memo)	February 12, 1990	Do	Do
Cover Letter: 510(k) Requirements During Firm-Initiated Recalls; Attachment A: Guidance on Recall and Premarket Notification Review Procedures During Firm-Initiated Recalls of Legally Marketed Drugs (blue book #K95–1)	November 21, 1995	Do	Do
Guidance on the Center for Devices and Radiological Health's Premarket Notification Review Program #K86–3 (blue book memo)	June 30, 1986	Do	Do
Premarket Notification - Consistency of Reviews #K89–1 (blue book memo)	February 28, 1989	Do	Do
Review of 510(k)s for Computer Controlled Medical Devices #K91–1 (blue book memo)	August 29, 1991	Do	Do
Continued Access to Investigational Devices During PMA Preparation and Review (blue book memo)	July 15, 1996	Do	Do
Use of IEC 60601 Standards Medical Electrical Equipment; Draft Document [blue book memo #G97–X]	October 10, 1997	Do	Do
(blue book memo #K97–1) Deciding When to Submit a 510(k) for a Change to an Existing Device [see CDRH F–O–D #935]	January 10, 1997	Do	Do
Memorandum of Understanding Regarding Patient Labeling Review (blue book memo #G96–3))	August 9, 1996	Do	Do
#D95–2, Attachment A (Interagency Agreement between FDA & HCFA)	September 15, 1995	Do	Do
#D95–2, Attachment B (Criteria for Categorization of Investigational Devices (HCFA)	September 15, 1995	Do	Do
510(k) Quality Review Program (blue book memo)	March 29, 1996	Do	Do
Distribution and Public Availability of PMA Summary of Safety and Effectiveness Data Packages	October 10, 1997	Do	Do
Document Review by the Office of the Chief Counsel (blue book memo G96–1))	June 6, 1996	Do	Do
Draft Guidance for Testing MR Interaction with Aneurysm Clips	May 22, 1996	Do	Do
HCFA Reimbursement Categorization Determinations for FDA-approved IDEs	September 15, 1995	Do	Do
ODE Executive Secretary Guidance Manual	August 7, 1987	Do	Do
Tripartie Biocompatibility Guidance	April 24, 1984	Do	Do
Guidance for Submitting Reclassification Petition		Do	Do
Product Development Protocol	October 1, 1997	Do	Do
Exemption from Reporting and Record keeping Requirements for Certain Sunlamp Product Manufacturers	September 16, 1981	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Reporting of New Model Numbers to Existing Model Families	June 14, 1983	Do	Do

IV. Guidance Documents Issued by the Center for Drug Evaluation and Research (CDER)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Consumer-Directed Broadcast Advertisements	August 12, 1997	Advertising (Draft)	Office of Training and Communications, Drug Information Branch, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573 or Internet at http://www.fda.gov/cder/guidance/index.htm
Promoting Med Products (Multicenter)	January 5, 1998	Do	Do
Aerosol Steroid Product Safety Information in Prescript. Drug Advertising and Promotional Labeling DDMAC 2	January 12, 1998	Do	Do
Dissemination of Reprints of Certain Published, Original Data	October 8, 1996	Advertising	Do
Funded Dissemination of Reference Texts	October 8, 1996	Do	Do
Antifungal (topical)	February 24, 1990	Biopharmaceutic (Draft)	Drug Information Branch
Antifungal (vaginal)	February 24, 1990	Do	Do
Food-Effect Bioavailability and Bioequivalence	December 30, 1997	Do	Do
In Vivo Bioequivalence Studies Based on Population and Individual Bioequivalence Approaches	December 30, 1997	Do	Do
Pharmacokinetics and Pharmacodynamics in Patients with Impaired Renal Function: Study Design, Data Analysis, and Impact on Dosing and Labeling	June 16, 1997	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Population Pharmacokinetics	September 18, 1997	Do	Do
Waiver Policy	March 29, 1993	Do	Drug Information Branch
Acetohexamide (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 1, 1988	Biopharmaceutic	Do
Albuterol Inhalation Aerosols (Metered Dose Inhalers) In Vivo Bioequivalence and In Vitro Dissolution Testing	January 27, 1994	Do	Do
Albuterol Sulfate (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	May 29, 1987	Do	Do
Allopurinol (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	July 15, 1985	Do	Do
Alprazolam Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	November 27, 1992	Do	Do
Amiloride Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	March 29, 1985	Do	Do
Aminophylline (suppositories) In Vivo Bioequivalence and In Vitro Dissolution Testing	July 5, 1983	Do	Do
Amitriptyline Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	July 5, 1983	Do	Do
Amoxapine (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 5, 1988	Do	Do
Amoxicillin (capsules, tablets and suspension) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 10, 1988	Do	Do
Approaches to Statistical Data Analysis of Bioavailability/Bioequivalence Studies	November 1, 1985	Do	Do
Atenolol (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	October 6, 1988	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Baclofen (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	May 5, 1986	Do	Drug Information Branch
Bioavailability Policies and Guidelines		Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Bumetanide Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Drug Information Branch or Interent at http://www.fda.gov/cder/guidance/index.htm
Buspirone Hydrochloride Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	August 13, 1993	Do	Do
Captopril Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	May 13, 1993	Do	Do
Carbamazepine (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	January 20, 1988	Do	Drug Information Branch
Carbidopa and Levodopa Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	June 19, 1992	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Cefaclor Capsules and Suspension In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Cefadroxil (capsules, tablets and suspension) In Vivo Bioequivalence and In Vitro Dissolution Testing	October 7, 1986	Do	Drug Information Branch
Cephalexin (tablets and capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	March 19, 1987	Do	Do
Cephradine (Capsule and Suspension)	September 10, 1986	Do	Do
Chlordiazepoxide (Tablets)	July 5, 1983	Do	Do
Chlordiazepoxide Hydrochloride (Capsules)	July 5, 1983	Do	Do
Chlorpropamide (Tablets)	July 5, 1983	Do	Do
Chlorthalidone (Tablets)	July 5, 1983	Do	Do
Cholestyramine Powder In Vitro Bioequivalence	July 15, 1993	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Cimetidine Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	June 12, 1992	Do	Do
Clindamycin Hydrochloride (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	May 31, 1988	Do	Drug Information Branch
Clofibrate (Capsules)	April 7, 1986	Do	Do
Clonidine Hydrochloride (Tablets)	December 5, 1984	Do	Do
Clorazepate Dipotassium (Capsules and Tablets)	February 17, 1987	Do	Do
Clozapine (Tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	November 15, 1996	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Controlled Release Dosage Forms: Issues and Controversies (Conference Report)	September 10, 1985	Do	Drug Information Branch
Corticosteroids, Dermatologic (topical) In Vivo	June 2, 1995	Do	Do
Cyclobenzaprine Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	January 25, 1988	Do	Do
Desipramine Hydrochloride (Tablets)	September 22, 1987	Do	Do
Diazepam (Tablets)	July 8, 1985	Do	Do
Diclofenac Sodium (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	October 6, 1994	Do	Do
Dicyclomine Hydrochloride (Tablets and Capsules)	August 1, 1984	Do	Do
Diflunisal Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	May 16, 1992	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Diltiazem Hydrochloride Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	May 16, 1992	Do	Do
Dipyridamole (Tablets)	September 25, 1987	Do	Drug Information Branch
Disopyramide Phosphate (Capsules)	July 9, 1985	Do	Do
Dissolution Testing (General)	April 1, 1978	Do	Do
Dissolution Testing of Immediate Release Solid Oral Dosage Forms	August 25, 1997	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Division Guidelines for the Evaluation of Controlled Release Drug Products	April 18, 1984	Do	Drug Information Branch
Doxepin Hydrochloride (Capsules)	October 9, 1986	Do	Do
Doxycycline Hyclate (Capsules and Tablets)	April 11, 1988	Do	Do
Erythromycin Capsules (Enteric Coated Pellets)	September 21, 1988	Do	Do
Estropipate Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	August 26, 1992	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Extended Release Oral Dosage Forms: Development, Evaluation, and Application of In Vitro/In Vivo Correlations (BP2)	September 26, 1997	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Fenoprofen (capsules and tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	February 3, 1988	Do	Drug Information Branch
Flurazepam Hydrochloride (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	October 15, 1985	Do	Do
Flurbiprofen (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 8, 1995	Do	Do
Format and Content of the Human Pharmacokinetics and Bioavailability Section of an Application*[1]	February 1, 1987	Do	Do
Gemfibrozil Capsules or Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	June 15, 1992	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Glipizide (Tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Glyburide Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Guanabenz Acetate Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Haloperidol (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 30, 1987	Do	Drug Information Branch
Hydrochlorothiazide (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	September 28, 1987	Do	Do
Hydroxychloroquine Sulfate (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	December 28, 1995	Do	Do
Hydroxyzine Hydrochloride (tablets) (dissolution only)	March 4, 1986	Do	Do
Hydroxyzine Pamoate (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	September 28, 1987	Do	Do
Indapamide (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Indomethacin (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	January 27, 1988	Do	Do
Isopropamide Iodide (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	May 12, 1982	Do	Do
Isosorbide Dinitrate (chewable tablets, oral tablets, and sublingual tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	September 22, 1987	Do	Do
Isosorbide Dinitrate Controlled Release Products	November 6, 1985	Do	Do
Ketoprofen (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Leucovorin Calcium (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 4, 1988	Do	Do
Lorazepam (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	September 16, 1987	Do	Do
Loxapine Succinate (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	September 10, 1987	Do	Do
Maprotiline Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 27, 1987	Do	Do
Meclofenamate Sodium (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	November 12, 1986	Do	Do
Medroxyprogesterone Acetate (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	September 17, 1987	Do	Do
Megestrol Acetate (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 17, 1987	Do	Do
Metaproterenol Sulfate (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	March 18, 1988	Do	Do
Metaproterenol Sulfate and Albuterol Metered Dose Inhalers In Vitro	June 27, 1989	Do	Do
Metaproterenol Sulfate and Albuterol Metered Dose Inhalers In Vitro	June 27, 1989	Do	Do
Methylprednisolone (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 12, 1986	Do	Do
Metoclopramide Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	December 27, 1984	Do	Do
Metoprolol Tartrate (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 12, 1992	Do	Do
Minoxidil (Tablets)	June 12, 1986	Do	Do
Nadolol (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	May 16, 1992	Do	Do
Nafcillin Sodium (Capsules and Tablets)	September 10, 1987	Do	Do
Nalidixic Acid (Tablets)	August 19, 1997	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Naproxen (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 8, 1995	Do	Do
Nitrofurantion Macrocrystalline (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	January 10, 1996	Do	Do
Nitroglycerin (Ointment)	December 17, 1996	Do	Do
Norethindrone and Ethinyl Estradiol (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	March 18, 1988	Do	Do
Norethindrone and Mestranol (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	May 13, 1988	Do	Do
Nortriptyline Hydrochloride (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 12, 1992	Do	Do
Oral Extended (controlled) Release In Vivo Bioequivalence and In Vitro Dissolution Testing	September 9, 1993	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Orphenadrine Citrate (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	July 22, 1983	Do	Drug Information Branch
Pentoxifylline (extended-release tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	December 22, 1995	Do	Do
Perphenazine (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 27, 1987	Do	Do
Perphenazine/Amitriptyline (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 27, 1987	Do	Do
Pharmacokinetic Considerations in Drug Studies	N/A	Do	Do
Phenylbutazone Oxyphenbutazone (capsules and tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	September 28, 1987	Do	Do
Phenytoin/Phenytion Sodium (capsules, tablets, suspension) In Vivo Bioequivalence and In Vitro Dissolution Testing	March 4, 1994	Do	Do
Pindolol (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Piroxicam (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	June 15, 1992	Do	Do
Potassium Chloride (slow-release tablets and capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	May 15, 1987	Do	Do
Prazepam (capsules and tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	July 26, 1988	Do	Do
Prednisone (tablets) (dissolution only)	July 10, 1985	Do	Do
Probenecid (Tablets)	July 26, 1983	Do	Do
Procainamide Hydrochloride	September 28, 1987	Do	Do
Propoxyphene Napsylate with Acetaminphen (Tablets)	March 26, 1980	Do	Do
Propranolol Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 1, 1984	Do	Do
Propylthiouracil (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 13, 1986	Do	Do
Quinidine Gluconate (tablets, controlled release) In Vivo Bioequivalence and In Vitro Dissolution Testing	September 22, 1987	Do	Do
Ranitidine Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 23, 1993	Do	Do
Rifampin (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	September 8, 1988	Do	Do
Ritodrine Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 27, 1987	Do	Do
Selegiline Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	December 22, 1995	Do	Do
Silver Sulfadiazine (cream)	May 7, 1987	Do	Do
Spironolactone (Tablets)	January 1, 1986	Do	Do
Statistical Procedure for Bioequivalence Studies Using a Standard Two-Treatment Crossover Design	July 1, 1992	Do	Do
Submission of Data for Bioequivalence Studies in Computer Format	N/A	Do	Do
Sulfasalazine (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	October 8, 1987	Do	Do
Sulfinpyrazone (Capsules and Tablets)	September 25, 1987	Do	Do
Sulfones (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	November 7, 1986	Do	Do

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Sulindac (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	July 18, 1988	Do	Do
Temazepam (Capsules)	August 8, 1985	Do	Do
Theophylline (conventional dosage form) In Vivo Bioequivalence and In Vitro Dissolution Testing	September 1, 1984	Do	Do
Timolol Maleate (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 9, 1988	Do	Do
Tolazamide (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	May 30, 1986	Do	Do
Tolbutamide (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	December 1, 1983	Do	Do
Tolmetin Sodium (tablets and capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	October 6, 1994	Do	Do
Trazodone Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	April 30, 1988	Do	Do
Triazolam (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	December 24, 1992	Do	Do
Trimipramine Maleate (capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing	August 18, 1987	Do	Do
Verapamil Hydrochloride (tablets) In Vivo Bioequivalence and In Vitro Dissolution Testing	July 18, 1985	Do	Do
Submission of Documentation in Drug Applications for Container Closure Systems Used for the Packaging of Human Drugs and Biologics	July 15, 1997	Chemistry (Draft)	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Submitting Supporting Chemistry Documentation in Radiopharmaceutical Drug Applications*	November 1, 1991	Do	Drug Information Branch
Tracking of NDA and ANDA Reformulations for Solid, Oral, Immediate Release Drug Products (Docket No. 89N–0066)	N/A	Do	Do
Drug Master Files	September 1, 1989	Chemistry	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
FDA's Policy Statement for the Development of New Stereoisomeric Drugs	May 1, 1992	Do	Do
Format and Content for the CMC Section of an Annual Report (CMC 1)	September 1, 1994	Do	Do
Format and Content of the Chemistry, Manufacturing and Controls Section of an Application*	February 1, 1987	Do	Drug Information Branch
Format and Content of the Microbiology Section of an Application* (Docket No. 85D–0245)	February 1, 1987	Do	Do
Reviewer Guidance: Validation of Chromatographic Methods (CMC 3)	November 1, 1994	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Submission of an Environmental Assessment in Human Drug Applications and Supplements (CMC 6)	November 13, 1995	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Submission of Chemistry, Manufacturing and Controls Information for Synthetic Peptide Substances (CMC 4)	November 1, 1994	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Submission of Documentation for Sterilization Process Validation Applications for Human and Veterinary Drug Products (CMC 2)	November 1, 1994	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Submitting Documentation for Packaging for Human Drugs and Biologics*	February 1, 1987	Do	Do
Submitting Documentation for the Manufacturing of and Controls for Drug Products*	February 1, 1987	Do	Drug Information Branch
Submitting Documentation for the Stability of Human Drugs and Biologics*	February 1, 1987	Do	Do
Submitting Samples and Analytical Data for Methods Validation*	February 1, 1987	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Submitting Supporting Documentation in Drug Applications for the Manufacture of Drug Substances*	February 1, 1987	Do	Do
SUPAC IR–Immediate-Release Solid Oral Dosage Forms: Scale-Up and Post-Approval Changes: Chemistry, Manufacturing and Controls, In Vitro Dissolution Testing, and In Vivo Bioequivalence Documentation (CMC 5)	November 30, 1995	Do	Drug Information Branch or or Internet at http://www.fda.gov/cder/guidance/index.htm

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SUPAC–IR: Immediate Release Solid Oral Dosage Forms; Manufacturing Equipment Addendum (CMC 9)	October 21, 1997	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
SUPAC–IR Questions and Answers	February 18, 1997	Do	Do
SUPAC–MR: Modified Release Solid Oral Dosage Forms: Scale-Up and Postapproval Changes: Chemistry, Manufacturing, and Controls, In Vitro Dissolution Testing, and In Vivo Bioequivalence Documentation (CMC 8)	October 6, 1997	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
SUPAC–SS—Nonsterile Semisolid Dosage Forms; Scale-Up and Postapproval Changes: Chemistry, Manufacturing, and Controls; In Vitro Release Testing and In Vivo Bioequivalence Documentation (CMC 7)	June 13, 1997	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Abuse Liability Assessment	July 1, 1990	Clinical (Draft)	Drug Information Branch
Clinical Development Programs for Drugs, Devices, and Biological Products for the Treatment of Rheumatoid Arthritis (RA)	January 10, 1997	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Clinical Evaluation of Agents Used in the Prevention or Treatment of Postmenopausal Osteoporosis	April 1, 1994	Do	Drug Information Branch
Clinical Evaluation of Anti-Anginal Drugs	January 1, 1989	Do	Do
Clinical Evaluation of Anti-Arrhythmic Drugs	July 1, 1985	Do	Do
Clinical Evaluation of Antihypertensive Drugs	May 1, 1988	Do	Do
Clinical Evaluation of Drugs for the Treatment of Congestive Heart Failure	December 1, 1987	Do	Do
Clinical Evaluation of Drugs for the Treatment of Peripheral Vascular Disease	N/A	Do	Do
Clinical Evaluation of Drugs for Ulcerative Colitis (3rd draft)	N/A	Do	Do
Clinical Evaluation of Motility-Modifying Drugs	N/A	Do	Do
Clinical Evaluation of Weight-Control Drugs	July 12, 1995	Do	Do
Conducting a Clinical Safety Review of a New Product Application and Preparing a Report on the Review (96N–0443)	November 22, 1996	Do	Do
Development and Evaluation of Drugs for the Treatment of Psychoactive Substance Use Disorders	February 12, 1992	Do	Do
Evaluating Clinical Studies of Antimicrobials in the Division of Anti-Infective Drug Products	February 18, 1997	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products	March 13, 1997	Do	Do
Points to Consider for System Inflammatory Response Syndrome (SIRS) 1st Draft	N/A	Do	Drug Information Branch
Points to Consider in the Preparation of IND Applications for New Drugs Intended for the Treatment of HIV-Infected Individuals	September 1, 1991	Do	Do
Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products	March 13, 1997	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Clinical Evaluation of Analgesic Drugs (FDA 93–3083)	December 1, 1992	Clinical	Drug Information Branch
Clinical Evaluation of Antacid Drugs (FDA 78–3065)	April 1, 1978	Do	Drug Information Branch
Clinical Evaluation of Anti-Infective Drugs (Systemic) (FDA 77–3046)	November 1, 1992	Do	Drug Information Branch
Clinical Evaluation of Anti-Inflammatory and Antirheumatic Drugs (adults and children)	May 26, 1993	Do	Drug Information Branch
Clinical Evaluation of Antianxiety Drugs (FDA 77–3043)	N/A	Do	Drug Information Branch
Clinical Evaluation of Antidepressant Drugs (FDA 77–3042)	September 1, 1977	Do	Drug Information Branch
Clinical Evaluation of Antidiarrheal Drugs (FDA 78–3049)	September 1, 1977	Do	Drug Information Branch
Clinical Evaluation of Antiepileptic Drugs (adults and children) (FDA 81–3110)	January 1, 1981	Do	Drug Information Branch
Clinical Evaluation of Bronchodilator Drugs (FDA 79–3073)	N/A	Do	Drug Information Branch
Clinical Evaluation of Combination Estrogen/Progestin-Containing Drug Products Used for Hormone Replacement Therapy of Postmenopausal Women	March 20, 1995	Do	Drug Information Branch

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Clinical Evaluation of Drugs to Prevent, Control and/or Treat Periodontal Disease (FDA 79–3074)	November 1, 1978	Do	Drug Information Branch
Clinical Evaluation of Gastric Secretory Depressant (GSD) Drugs (FDA 78–3050)	September 1, 1977	Do	Drug Information Branch
Clinical Evaluation of General Anesthetics (FDA 78–3052)	May 1, 1982	Do	Drug Information Branch
Clinical Evaluation of Hypnotic Drugs (FDA 78–3051)	September 1, 1977	Do	Drug Information Branch
Clinical Evaluation of Laxative Drugs (FDA 78–3067)	April 1, 1978	Do	Drug Information Branch
Clinical Evaluation of Lipid-Altering Agents in Adults and Children (FDA 80–3103)	N/A	Do	Drug Information Branch
Clinical Evaluation of Local Anesthetics (FDA 82–3053)	May 1, 1982	Do	Drug Information Branch
Clinical Evaluation of Psychoactive Drugs in Infants and Children (FDA 79–3055)	July 1, 1979	Do	Drug Information Branch
Clinical Evaluation of Radiopharmaceutical Drugs (FDA 81–3120)	October 1, 1981	Do	Drug Information Branch
Content and Format for Pediatric Use Supplements (CLIN 1)	May 24, 1996	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Content and Format of Investigational New Drug Applications (INDs) for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-Derived Products (CLIN 2)	November 20, 1995	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Development of Vaginal Contraceptive Drugs (NDA) (95D–0004)	April 19, 1995	Do	Drug Information Branch
Drug Metabolism/Drug Interaction Studies in the Drug Development Process: Studies In Vitro (CLIN 3)	April 7, 1997	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
FDA Requirements for Approval of Drugs to Treat Non-Small Cell Lung Cancer	January 29, 1991	Do	Drug Information Branch
FDA Requirements for Approval of Drugs to Treat Superficial Bladder Cancer	June 20, 1989	Do	Do
Format and Content of the Clinical and Statistical Sections of New Drug Applications*	July 1, 1988	Do	Drug Information Branch or Internet a http://www.fda.gov/cder/guidance/index.htm
Format and Content of the Summary for New Drug and Antibiotic Applications*	February 1, 1987	Do	Drug Information Branch
Formatting, Assembling and Submitting New Drug and Antibiotic Applications*	February 1, 1987	Do	Do
General Considerations for the Clinical Evaluation of Drugs (FDA 77–3040)	December 1, 1978	Do	Drug Information Branch
General Considerations for the Clinical Evaluation of Drugs in Infants and Children (FDA 77–3041)	N/A	Do	Drug Information Branch
Oncologic Drugs Advisory Committee Discussion on FDA Requirements for Approval of New Drugs for Treatment of Ovarian Cancer	April 13, 1988	Do	Drug Information Branch
Oncologic Drugs Advisory Committee Discussion on FDA Requirements for Approval of New Drugs for Treatment of Colon and Rectal Cancer	N/A	Do	Do
OTC Treatment of Hypercholesterolemia (CLIN 5)	October 27, 1997	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Points to Consider in the Clinical Development and Labeling of Anti-Infective Drug Products	October 26, 1992	Do	Drug Information Branch
Points to Consider in the Preclinical Development of Antiviral Drugs	November 1, 1990	Do	Do
Points to Consider in the Preclinical Development of Immunomodulatory Drugs for the Treatment of HIV Infection and Associated Disorders	May 1, 1993	Do	Do
Points to Consider: Clinical Development Programs for MDI and DPI Drug Products	September 19, 1994	Do	Do
Postmarketing Adverse Experience Reporting for Human Drugs and Licensed Biological Products; Clarification of What to Report (CLIN 4)	August 27, 1997	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Postmarketing Reporting of Adverse Drug Experiences (85D–0249)	March 1, 1992	Do	Drug Information Branch
Preparation of Investigational New Drug Products (Human and Animal)	March 1, 1991	Do	Drug Information Branch

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Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs	July 22, 1993	Do	Do
Study of Drugs Likely to be Used in the Elderly	November 1, 1989	Do	Do
Computerized Systems Used in Clinical Trials	June 18, 1997	Compliance (Draft)	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Manufacture, Processing or Holding of Active Pharmaceutical Ingredients	September 20, 1996	Do	Do
Repackaging of Solid Oral Dosage Form Drug Products (92D–0345)	February 1, 1992	Do	Drug Information Branch
Supplements to New Applications, Abbreviated New Drug Applications or Abbreviated Antibiotic Applications for Nonsterile Drug Products (93D–0403)	December 12, 1994	Do	Drug Information Branch
A Review of FDA's Implementation of the Drug Export Amendments of 1986	N/A	Compliance	Drug Information Branch
Compressed Medical Gases	December 1, 1989	Do	Do
Current Good Manufacturing Practices for Positron Emission Tomographic (PET) Drug Products (CP 1)	April 22, 1997	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Expiration Dating and Stability Testing of Solid Oral Dosage Form Drugs Containing Iron (CP 2)	June 27, 1997	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
General Principles of Process Validation	May 1, 1987	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Good Laboratory Practice Regulations Questions and Answers	N/A	Do	Drug Information Branch
Monitoring of Clinical Investigations	January 1, 1988	Do	Do
Nuclear Pharmacy Guideline Criteria for Determining When to Register as a Drug Establishment	May 1, 1984	Do	Do
Sterile Drug Products Produced by Aseptic Processing	May 1, 1987	Do	Do
Validation of Limulus Amebocyte Lysate Test as an End-Product Endotoxin Test for Human and Animal Parenteral Drugs, Biological Products, and Medical Devices	December 1, 1987	Do	Do
Content and Format of an Abbreviated New Drug Application (ANDA)—Positron Emission Tomography (PET) Drug Products—With Specific Information for ANDAs for Fludeoxyglucose F18 Injection	April 18, 1997	Generic Drug (Draft)	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Letter announcing that the OGD will now accept the ICH long-term storage conditions as well as the stability studies conducted in the past.	August 18, 1995	Generic Drug	Drug Information Branch
Letter describing efforts by the CDER and the ORA to clarify the responsibilities of CDER chemistry review scientists and ORA field investigators in the new and abbreviated drug approval process in order to reduce duplication or redundancy	October 14, 1994	Do	Do
Letter on incomplete Abbreviated Applications, Convictions Under GDEA, Multiple Supplements, Annual Reports for Bulk Antibiotics, Batch Size for Transdermal Drugs, Bioequivalence Protocols, Research, Deviations from OGD Policy	April 8, 1994	Do	Do
Letter on the provision of new information pertaining to new bioequivalence guidelines and refuse-to-file letters	July 1, 1992	Do	Do
Letter on the provision of new procedures and policies affecting the generic drug review process	March 15, 1989	Do	Do
Letter on the request for cooperation of regulated industry to improve the efficiency and effectiveness of the generic drug review process, by assuring the completeness and accuracy of required information and data submissions	November 8, 1991	Do	Do
Letter on the response to 12/20/84 letter from the Pharmaceutical Manufacturers Association about the Drug Price Competition and Patent Term Restoration Act	March 26, 1985	Do	Do

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Letter to all ANDA and AADA applicants about the Generic Drug Enforcement Act of 1992 (GDEA), and the Office of Generic Drugs intention to refuse-to-file incomplete submissions as required by the new law	January 15, 1993	Do	Do
Letter to regulated industry notifying interested parties about important detailed information regarding labeling, scale-up, packaging, minor/major amendment criteria, and bioequivalence requirements	August 4, 1993	Do	Do
Organization of an Abbreviated New Drug Application and an Abbreviated Antibiotic Application (OGD 1)	April 7, 1997	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Positron Emission Tomography Questions and Answers 1	October 24, 1996	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Positron Emission Tomography Questions and Answers 2	April 18, 1997	Do	Do
A Revision in Sample Collection Under the Compliance Program Pertaining to Pre-Approval Inspections	July 15, 1996	Industry letters	Drug Information Branch
Certification Requirements for Debarred Individuals in Drug Applications	July 27, 1992	Do	Do
Continuation of a series of letters communicating interim and informal generic drug policy and guidance. Availability of Policy and Procedure Guides, and further operational changes to the generic drug review program	June 1, 1990	Do	Do
Fifth of a series of letters providing informal notice about the Act, discussing the statutory mechanism by which ANDA applicants may make modifications in approved drugs where clinical data is required	April 10, 1987	Do	Do
Fourth of a series of letters providing informal notice to all affected parties about policy developments and interpretations regarding the Act. Three year exclusivity provisions of Title I	October 31, 1986	Do	Do
Implementation of the Drug Price Competition and Patent Term Restoration Act. Preliminary Guidance	October 11, 1984	Do	Do
Implementation Plan USP injection nomenclature	October 2, 1995	Do	Do
In Vivo Bioequivalence Studies of Clozapine	April 22, 1996	Do	Do
Instructions for Filing Supplements Under the Provisions of SUPAC–IR	April 11, 1996	Do	Do
Seventh of a series of letters about the Act providing guidance on the "180-day exclusivity" provision of section 505(j)(4)(B)(iv) of the FD&C	July 29, 1988	Do	Do
Sixth of a series of informal notice letters about the Act discussing 3- and 5-year exclusivity provisions of sections 505(c)(3)(D) and 505(j)(4)(D) of the FD&C Act	April 28, 1988	Do	Do
Streamlining Initiatives	December 24, 1996	Do	Do
Supplement to 10/11/84 letter about policies, procedures and implementation of the Act (Q & A format)	November 16, 1984	Do	Do
Third of a series of letters regarding the implementation of the Act	May 1, 1985	Do	Do
Archiving Submissions in Electronic Format—NDAs (IT 1)	September 23, 1997	Information Technology	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
CANDA (Computer Assisted New Drug Application) Guidance Manual (92D–0296)	October 1, 1994	Do	Drug Information Branch
Acetaminophen and Codeine Phosphate Oral Solution/Suspension	December 1, 1993	Labeling	Drug Information Branch
Acetaminophen and Codeine Phosphate Tablets/Capsules	December 1, 1993	Do	Do
Acetaminophen, Aspirin and Codeine Phosphate Tablets/Capsules	December 1, 1993	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Alprazolam Tablets	May 1, 1993	Do	Do

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Amiloride Hydrochloride and Hydrochlorothiazide Tablets USP	October 1, 1992	Do	Do
Amlodipine Besylate Tablets (OGD–L–1)	September 1, 1997	Do	Do
Antihistamine Guidance	April 1, 1983	Do	Drug Information Branch
Astemizole Tablets (OGD–L–16)	September 1, 1997	Do	Do
Atenolol Tablets	June 1, 1995	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Barbiturate, Single Entity-Class Labeling	March 1, 1981	Do	Drug Information Branch
Butalbital, Acetaminophen and Caffeine Capsules/Tablets	April 1, 1993	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Butalbital, Acetaminophen, Caffeine and Hydrocodone Bitartrate Tablets (OGD–L–6–R1)	September 21, 1997	Do	Drug Information Branch
Butorphanol Tartrate Injection USP	October 1, 1992	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Captopril and Hydrochlorothiazide Tablets	April 1, 1995	Do	Do
Captopril Tablets	February 1, 1995	Do	Drug Information Branch
Carbidopa and Levodopa Tablets	February 1, 1992	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Chlordiazepoxide Hydrochloride Capsules	January 1, 1988	Do	Drug Information Branch
Cimetidine Hydrochloride Injection	September 1, 1995	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Cimetidine Tablets	September 1, 1995	Do	Do
Cisapride Oral Suspension (OGD–L–3)	September 1, 1997	Do	Do
Cisapride Tablets (OGD–L–4)	September 1, 1997	Do	Do
Clindamycin Phosphate Injection USP	May 1, 1992	Do	Do
Clorazepate Dipotassium Capsules/Tablets	March 1, 1993	Do	Drug Information Branch
Combination Oral Contraceptives—Physician and Patient Labeling	January 1, 1994	Do	Do
Cyproheptadine Hydrochloride Tablets/Syrup	December 1, 1986	Do	Do
Diclofenac Sodium Delayed-Release Tablets	February 1, 1995	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Diltiazem Hydrochloride Extended-Release Capsules (twice a day dosage)	September 1, 1995	Do	Do
Diphenoxylate Hydrochloride and Atropine Sulfate Oral Solution	April 1, 1995	Do	Do
Diphenoxylate Hydrochloride and Atropine Sulfate Tablets	April 1, 1995	Do	Do
Dipivefrin Hydrochloride Ophthalmic Solution, 0.1%	May 1, 1992	Do	Drug Information Branch
Ergoloid Mesylates Tablets	January 1, 1988	Do	Do
Estrogen Class Labeling Guidance	August 1, 1992	Do	Do
Fludeoxyglucose F18 Injection	January 1, 1997	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Flurbiprofen Tablets USP	January 1, 1994	Do	Do
Fluroxamine Maleate Tablets (OGD–L–15)	September 1, 1997	Do	Do
Gentamicin Sulfate Ophthalmic Ointment and Solution	April 1, 1992	Do	Do
Heparin Sodium Injection USP	March 1, 1991	Do	Do
Hydrocodone Bitartrate and Acetaminophen Tablets	April 1, 1994	Do	Do
Hydroxyzine Hydrochloride Injection	December 1, 1989	Do	Drug Information Branch
Hydroxyzine Hydrochloride Tablets/Syrup	May 1, 1986	Do	Do
Hypoglycemic Oral Agents—Federal Register	April 1, 1984	Do	Do
Indomethacin Capsules USP	September 1, 1995	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Informal Labeling Guidance Texts for Estrogen Drug Products—Patient Labeling	December 1, 1992	Do	Drug Information Branch
Informal Labeling Guidance Texts for Estrogen Drug Products—Professional Labeling	December 1, 1992	Do	Do
Isoetharine Inhalation Solution	March 1, 1989	Do	Do
Leucovorin Calcium for Injection	N/A	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Leucovorin Calcium Tablets, USP	July 1, 1996	Do	Drug Information Branch

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Local Anesthetics—Class Labeling	September 1, 1982	Do	Do
Meclofenamate Sodium Capsules	July 1, 1992	Do	Do
Medroxy-progesterone Acetate Tablets, USP OGD–L–36	November 1, 1997	Do	Do
Metaproterenol Sulfate Inhalation Solution, 5%	May 1, 1992	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Metaproterenol Sulfate Syrup	May 1, 1992	Do	Do
Metaproterenol Sulfate Tablets	May 1, 1992	Do	Do
Metoclopramide Tablets USP/Oral Solution	February 1, 1995	Do	Do
Naphazoline Hydrochloride Ophthalmic Solution	March 1, 1989	Do	Drug Information Branch
Naproxen Sodium Tablets, USP OGD–L–10–R1	September 1, 1997	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Naproxen Tablets, USP OGD–L–9–R1	September 1, 1997	Do	Do
Niacin Tablets	July 1, 1992	Do	Drug Information Branch
Paclitaxel Injection OGD–L–6	September 1, 1997	Do	Do
Phendimetrazine Tartrate Capsules/Tablets, and Extended-Release Capsules	February 1, 1991	Do	Do
Phentermine Hydrochloride Capsules/Tablets	August 1, 1988	Do	Do
Promethazine Hydrochloride Tablets	March 1, 1990	Do	Do
Propantheline Bromide Tablets	August 1, 1988	Do	Do
Pyridoxine Hydrochloride Injection	June 1, 1984	Do	Do
Quinidine Sulfate Tablets/Capsules	October 1, 1995	Do	Do
Ranitidine Tablets	November 1, 1993	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Risperidone Oral Solution OGD–L–18	September 1, 1997	Do	Do
Risperidone Tablets OGD–L–17	September 1, 1997	Do	Do
Sulfacetamide Sodium and Prednisolone Acetate Ophthalmic Suspension and Solution	January 1, 1995	Do	Do
Sulfacetamide Sodium Ophthalmic Solution/Ointment	August 1, 1992	Do	Do
Sulfamethoxazole and Phenazopyridine Hydrochloride Tablets	February 1, 1992	Do	Drug Information Branch
Sulfamethoxazole and Trimethoprim Tablets and Oral Suspension	August 1, 1993	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Theophylline Immediate-Release Dosage Forms	February 1, 1995	Do	Drug Information Branch
Theophylline Intravenous Dosage Forms	February 9, 1996	Do	Do
Thiamine Hydrochloride Injection	February 1, 1988	Do	Do
Tobramycin Sulfate Injection	May 1, 1993	Do	Drug Information Branch Internet at http://www.fda.gov/cder/guidance/index.htm
Topical Corticosteroids Class Labeling	N/A	Do	Drug Information Branch
Venlafaxine Hydrochloride Tablets OGD–L–30	October 1, 1997	Do	Do
Verapamil Hydrochloride Tablets	October 1, 1991	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm
Vitamin A Capsules	February 1, 1992	Do	Drug Information Branch
Zolpidem Tartrate Tablets OGD–L–13	September 1, 1997	Do	Do
Points to Consider for OTC Actual Use Studies	July 22, 1994	OTC (Draft)	Do
Enforcement Policy on Marketing OTC Combination Products (CPG 7132b.16)	N/A	OTC	Do
General Guidelines for OTC Combination Products (78D–0322)	N/A	Do	Do
OTC Nicotine Sustitutes	March 1, 1994	Do	Drug Information Branch
Upgrading Category III Antiperspirants to Category I (43 FR 46728–46731)	N/A	Do	Do
Format and Content of the Nonclinical Pharmacology/Toxicology Section of an Application*	February 1, 1987	Pharmacology/Toxicology	Do
Points to Consider in the Nonclinical Pharmacology/Toxicology Development of Topical Drugs Intended to Prevent the Transmission of Sexually Transmitted Diseases (STD) and/or for the Development of Drugs Intended to Act as Vaginal Contraceptives	N/A	Do	Drug Information Branch or Internet at http://www.fda.gov/cder/guidance/index.htm

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Reference Guide for the Nonclinical Toxicity Studies of Antiviral Drugs Indicated for the Treatment of Non-Life Threatening Disease: Evaluation of Drug Toxicity Prior to Phase I Clinical Studies	February 1, 1989	Do	Drug Information Branch (REMOVE)

[1] Star (*) indicates that the guidance is one of 13, formerly known as the "NDA Guidelines," or "Rainbow Pack," that are available as a set from the Drug Information Branch.

V. Guidance Documents Issued by the Center for Food Safety and Applied Nutrition (CFSAN)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Compliance Policy Guides Manual, PB96–920500	1996	FDA Regulated Industries	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161
Compliance Programs Guidance Manual, PB95–915499	1995	Do	NTIS
FDA Recall Policy	1995	Do	Industry Activities Staff (HFS–565), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204
Inspection Operations Manual, PB–95–913399	October 1994	Do	NTIS
Regulatory Procedures Manual, PB96–265534	August 1995	Do	NTIS
Requirements of Laws and Regulations Enforced by the U.S. Food and Drug Administration "Blue Book"	1997	Do	Superintendent of Documents, Government Printing Office, Washington, DC 20402
Action Levels for Poisonous or Deleterious Substances in Human Food and Animal Feed, PB96–920500	1995	Food and Animal Feed Industries	Industry Activities Staff
Pesticides Analytical Manual, PB94–911899	1994	Food Industry	NTIS
FDA Advisory for Deoxynivanol (DON) in Finished Wheat Products Intended for Human Consumption and in Grain and Grain By-Products for Animal Feed	September 16, 1993	Food and Animal Feed Industries	Office of Plant and Dairy Foods and Beverages, Food and Drug Administration (HFS–306), 200 C St. SW., Washington, DC 20204, 202–205–4581
FDA's Cosmetic Labeling Manual	October 1991	Cosmetic Industry	Office of Colors and Cosmetics (HFS–105), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4493
Statement of Policy: Foods Derived from New Plant Varieties: Notice	May 29, 1992 (57 FR 22984)	Developers of New Plant Food Varieties	Office of Premarket Approval, Food and Drug Administration (HFS–200), 200 C St. SW., Washington, DC 20204, 202–418–3100
A Food Labeling Guide	September 1994	Food Industry	Superintendent of Documents,
Appendix I—Model Small Business Food Labeling Exemption Notice	August 7, 1993	Do	Industry Activities Staff
Food Labeling: Questions and Answers	August 1993	Do	Industry Activities Staff
Food Labeling: Questions and Answers: Volume II	August 1995	Do	Superintendent of Documents
Fair Packaging and Labeling Act Requirements and Interpretations, PB–83–222117	June 1978	Do	NTIS
Bacteriological Analytical Manual, 7th Edition	1992	FDA Regulated Industries	AOAC International, 481 N. Frederick Ave., Suite 500, Gaithersburg, MD 20877–2417, 301–924–7077
FDA Food Importer's Guide for Low-Acid Canned and Acidified Foods	1995	Food Industry	Industry Activities Staff
Fabrication of Single Service Containers and Closures for Milk and Milk Products	1995	States	Milk Safety Branch (HFS–626), Center for Food Safety and Applied Nutrition, 200 C St. SW., Washington, DC 20204, 202–205–9175
Evaluation of Milk Laboratories	1995	Do	Do
Methods of Making Sanitation Ratings Of Milk Supplies	1995	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Dry Milk Ordinance	1995	Do	Do
Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers	1995	Dairy Industry	Do
Frozen Dessert Processing Guidelines	1989	Do	Office of Plant and Dairy Foods and Beverages (HFS–302), Center for Food Safety and Applied Nutrition, 200 C St. SW., Washington, DC 20204, 202–205–9175
Pasteurized Milk Ordinance	1995	States	Milk Safety Branch
FDA Nutrition Labeling Manual: A Guide for Developing and Using Databases	1993	Food Industry	Office of Food Labeling, Food and Drug Administration (HFS–150), 200 C St. SW., Washington, DC 20204, 202–205–4561
Guidelines for Determining Metric Equivalents of Household Measures	October 1, 1993	Do	Do
List of Food Defect Action Levels (DALS)	1995	Food and Animal Feed Industries	Industry Activities Staff
Action Levels for Poisonous or Deleterious Substances in Human Food and Feed (Also Found in CPG's)	1995	Do	Do
1997 FDA Food Code	1997	States	NTIS
Seafood List	1993	Seafood Industry	Superintendent of Documents
Manual of Operations National Shellfish Sanitation	1992	States	Office of Seafood (HFS–407), Shellfish Sanitation Branch, 200 C St. SW., Washington, DC 20204, 202–418–3150
Fish and Fisheries Products Hazards and Controls Guide	1996	Seafood Industry	Office of Seafood, Food and Drug Administration (HFS–400), 200 C St. SW., Washington, DC 20204, 202–418–3150
Guidance for Submitting Requests under 21 CFR 170.39, Threshold of Regulation for Substances Used in Food Articles	1996	Food Packaging Industry	Office of Premarket Approval
Guidelines for the Preparation of Petition Submissions	1996	Food Ingredient or Packaging Industry	Do
Guidelines for Approval of Color Additives in Contact Lenses Intended as Colors	1996	Color or Contact Lens Industry	Do
FDA Recommendations for Submission of Chemical and Technological Data on Color Additives for Food, Drugs or Cosmetics Use	February 1993	Color Additives Industry	Do
Points to Consider for the Use of Recycled Plastics in Food Packaging: Chemistry Considerations	December 1992	Food Packaging Industry	Do
Recommendations for Submission of Chemical and Technological Data for Direct Food Additive and GRAS Food Ingredient Petitions	May 1993	Do	Do
Recommendations for Chemistry Data for Indirect Food Additive Petitions	June 1995	Do	Do
Enzyme Preparations: Chemistry Recommendations for Food Additive and GRAS Affirmation Petitions	January 1993	Food Enzyme Industry	Do
Estimating Exposure to Direct Food Additive and Chemical Contaminants in the Diet	September 1995	Food and Food Ingredient Industry	Office of Premarket Approval
Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food (also known as Redbook I), PR–83–170696	1982	Petitioners for Food or Color Additives	NTIS
Environmental Assessment Technical Handbook, PB87175345–AS, A–01	March 1987	Do	Do
Preparing Environmental Assessments: General Suggestions	August 1990	Do	Office of Premarket Approval
Step-by-Step Guidance for Preparing Environmental Assessments	March 1987	Do	Do
Environmental Assessment of Food-packaging Materials with Enhanced Degradation Characteristics	February 1994	Do	Do
Color Additive Petitions Information and Guidance	1996	Petitioners for Color Additives	Do
Toxological Testing of Food Additives	1983	Petitioners for Food or Color Additives	Do
List of Products for Each Product Category	October 8, 1992	Food Industry	Office of Food Labeling

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Label Declaration of Allergenic Substances in Foods; Notice to Manufacturers	June 10, 1996	Do	Do
Guidance on Labeling of Foods that Need Refrigeration by Consumers	February 24, 1997 (62 FR 8248)	Do	Do
Interim Guidance on the Voluntary Labeling of Milk and Milk Products that have not been treated with Recombinant Bovine Somatropin	February 10, 1994 (59 FR 6279)	Do	Do
Guidelines Concerning Notification and Testing of Infant Formula	1985	Infant Formula Manufacturers	Office of Special Nutritionals (HFS–450), Food and Drug Administration, 200 C St. SW., Washington, DC 20204
Clinical Testing of Infant Formulas with Respect to Nutritional Suitability for Term Infants	1985	Do	Do
Guidelines for the Evaluation of the Safety and Suitability of New Infant Formulas for Feeding Infants with Allergic Diseases	1988	Do	Do
Guidelines for the Evaluation of the Safety and Suitability of Infant Formulas for Feeding Infants with Allergic Diseases	1990	Do	Do
Guidelines for the Clinical Evaluation of New Products Used in the Dietary Management of Infants, Children and Pregnant Women with Metabolic Disorders	1987	Do	Do
Guidance Document for Arsenic (Trace Elements in Seafood)	January 1993	States	Office of Seafood (HFS–400) or via Internet: FDA Home Page at http://vm.cfsan.fda.gov/list.html
Guidance Document for Cadmium (Trace Elements in Seafood)	January 1993	Do	Office of Seafood (HFS–400) or via Internet: FDA Home Page at http://vm.cfsan.fda.gov
Guidance Document for Chromium (Trace Elements in Seafood)	January 1993	Do	Do
Guidance Document for Lead (Trace Elements in Seafood)	August 1993	Do	Do
Guidance Document for Nickel (Trace Elements in Seafood)	January 1993	Do	Do
FDA's Policy for Foods Developed by Biotechnology	1995	Food Industry	Office of Premarket Approval or via Internet: FDA Home Page at http://vm.cfsan.fda.gov
Bovine Spongiform Encephalopathy (BSE) In Products for Human Use	1997	Do	Office of Plant and Dairy Foods and Beverages or via Internet: FDA Home Page at http://www.fda.gov/opacom/morechoices /industry/guidance/gelguide.htm
Shellfish Sanitation Model Ordinance	1995	States	Shellfish Program Implementation Branch, Division of Cooperative Programs, Office of Field Programs (HFS–628), 200 C St. SW., Washington, DC 20204, 202–205–8137

VI. Guidance Documents Issued by the Center for Veterinary Medicine (CVM)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Citizen Petitions: Policy and Procedures (Guide No. 1240.2030)	June 7, 1994	Do	Do
CVM's Implementation of the Agency's Fraud, Untrue Statements of Material Facts, Bribery & Illegal Gratuities Policy (Guide No. 1240.2040)	June 15, 1994	Do	Do
Intra-Agency Relationship (Guide No. 1240.2100)	August 11, 1993	Do	Do
Procedures for Resolving Disagreements within CVM (Guide No. 1240.2110)	April 10, 1991	Do	Do
Product Manager (Guide No. 1240.2120)	August 11, 1993	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
CVM P & P Manual Utilization and Maintenance (Guide No. 1240.2140)	September 3, 1997	Do	Do
CVM Small Business (Guide No. 1240.2150)	April 10, 1991	Do	Do
CVM Public Affairs Program (Guide No. 1240.2152)	April 7, 1995	Do	Do
Evaluation of Proposed Legislation (Guide No. 1240.2154)	April 7, 1995	Do	Do
Voluntary Compliance (Guide No. 1240.2202)	August 11, 1992	Do	Do
Approval of New Animal Drug Applications and their Supplements (Guide No. 1240.2210)	August 11, 1992	Do	Do
Classification of OTC and Rx Drugs (Guide No. 1240.2220)	January 15, 1985	Do	Do
Processing General Correspondence by Individual Offices in CVM (Guide No. 1240.2300)	June 28, 1993	Do	Do
Routing of Congressional Correspondence (Guide No. 1240.2302)	April 9, 1997	Do	Do
Correspondence to Practicing Veterinarians, Vet Med Associations, and other Scientific Disciplines (Guide No. 1240.2310)	June 28, 1993	Do	Do
Communication and Liaison with other Centers and Agencies (Guide No. 1240.2320)	May 7, 1991	Do	Do
Intercommunication between CVM and Office of Chief Counsel (Guide No. 1240.2322)	June 28, 1993	Do	Do
CVM Guidance on Media Inquiries (Guide No. 1240.2325)	July 1, 1997	Do	Do
Consultative Reviews and Opinions (Guide No. 1240.2330)	May 7, 1991	Do	Do
Freedom of Information Requests (Guide No. 1240.2500)	September 4, 1997	Do	Do
Public Availability of Food Additive Petitions (Guide No. 1240.2501)	June 25, 1993	Do	Do
Advisory Opinions and Informal Requests for Information (Guide No. 1240.2510)	October 23, 1985	Do	Do
Confidentiality of Center Files (Guide No. 1240.2520)	June 25, 1993	Do	Do
Industry Conferences (Guide No. 1240.2600)	June 11, 1990	Do	Do
Meetings with Representatives from Foreign Governments (Guide No. 1240.2601)	September 8, 1994	Do	Do
Trade Media Visits to CVM (Guide No. 1240.2610)	September 8, 1994	Do	Do
New Animal Drugs for Investigational Use (Guide No. 1240.3000)	September 30, 1996	Do	Do
Processing Original Investigational New Animal Drug Applications (Guide No. 1240.3010)	September 30, 1996	Do	Do
Processing Amendments to An Investigational New Animal Drug Application (Guide No. 1240.3020)	September 30, 1996	Do	Do
Non-Routine Invest. New Animal Drugs (Guide No. 1240.3025)	September 30, 1996	Do	Do
Initial Processing of an NADA (Guide No. 1240.3100)	March 25, 1991	Do	Do
Review of Animal Safety and Effectiveness Data (Guide No. 1240.3101)	August 1, 1989	Do	Do
Use of Foreign Non-Clinical and Clinical Data in an NADA (Guide No. 1240.3102)	September 6, 1989	Do	Do
Review of Vet. Med. Guidelines (Guide No. 1240.3103)	November 23, 1993	Do	Do
Specialty Reviews of NADAs (Guide No. 1240.3110)	December 17, 1993	Do	Do
Preparation of NADA Decision Package (Guide No. 1240.3120)	November 23, 1993	Do	Do
Routing of NADA Decision Package (Guide No. 1240.3122)	November 23, 1993	Do	Do
CVM Appeals Procedure Guide (Guide No. 1240.3130)	November 23, 1993	Do	Do
Animal Drug Applications Expedited Review Guideline (Guide No. 1240.3135)	November 23, 1993	Do	Do
Labeling Policy for Animal Drugs that may be Human Carcinogens (Guide No. 1240.3140)	October 13, 1994	Do	Do
NADA Review of Dosage Form Oral Electrolytes (Guide No. 1240.3150)	October 13, 1994	Do	Do
Food Additive Petition Review (Guide No. 1240.3300)	December 7, 1993	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Nutritional Ingredients in Animal Drugs and Feeds (Guide No. 1240.3420)	March 23, 1993	Do	Do
New Animal Drug Determination (Guide No. 1240.3500)	July 24, 1989	Do	Do
New Animal Drug Regulation (Guide No. 1240.3502)	September 4, 1991	Do	Do
Drug Experience Reporting Requirements (Guide No. 1240.3510)	November 23, 1993	Do	Do
Additional Sources of Adverse Reaction and Injury Reports (Guide No. 1240.3512)	November 23, 1993	Do	Do
Drug Experience Reporting by Veterinarians (Guide No. 1240.3514)	May 7, 1997	Do	Do
Adverse Reactions as a Basis for Regulatory Action (Guide No. 1240.3520)	November 23, 1993	Do	Do
Animal Health Hazard Evaluation Committee (Guide No. 1240.3521)	March 28, 1986	Do	Do
Review and Evaluation of Drug Experience Reports (Guide No. 1240.3522)	November 23, 1993	Do	Do
Criteria for Veterinary Medical Review of Establishment Inspection Reports (Guide No. 1240.3524)	November 23, 1993	Do	Do
Procedures for Processing Drug Experience Reports (Guide No. 1240.3530)	November 23, 1993	Do	Do
Consumer Complaint Letters (Guide No. 1240.3532)	September 6, 1989	Do	Do
NADAs, Withdrawal of Approvals (Guide No. 1240.3540)	November 23, 1993	Do	Do
Implementation of Causal Reviews (Guide No. 1240.3542)	November 23, 1993	Do	Do
Surveillance at Professional and Trade Meetings (Guide No. 1240.3550)	November 23, 1993	Do	Do
Registration of Producers of Drugs and Listing Of Drugs in Commercial Distribution (Guide No. 1240.3560)	September 9, 1997	Do	Do
Types of Enforcement Activities (Guide No. 1240.3600)	September 9, 1997	Do	Do
Types of Regulatory Actions (Guide No. 1240.3601)	September 9, 1997	Do	Do
Regulating Animal Foods with Drug Claims (Guide No. 1240.3605)	September 9, 1997	Do	Do
Request for CGMP Establishment Inspections (Guide No. 1240.3620)	September 9, 1997	Do	Do
Good Manufacturing Practice Compliance Status (Guide No. 1240.3622)	September 9, 1997	Do	Do
Tissue Residue Reporting (Guide No. 1240.3630)	September 9, 1997	Do	Do
Diversion of Unfit Food to Animal Use (Guide No. 1240.3650)	September 9, 1997	Do	Do
Development of Compliance Policy Guides Affecting Veterinary Products (Guide No. 1240.3660)	September 9, 1997	Do	Do
Preparation of Compliance Programs and Program Circulars (Guide No. 1240.3661)	September 9, 1997	Do	Do
Management of Formal Evidentiary Hearings (Guide No. 1240.3670)	September 9, 1997	Do	Do
Center for Veterinary Medicine Research Activities (Guide No. 1240.3700)	November 3, 1993	Do	Do
Initiation and Approval of Research Projects (Guide No. 1240.3710)	November 3, 1993	Do	Do
Identification/Promotion of NADA Product Approval (Guide No. 1240.4000)	September 10, 1997	Do	Do
Procedure for Center Recommended Labeling Changes (Guide No. 1240.4005)	September 10, 1997	Do	Do
Antibacterials Labeled for Secondary Infections (Guide No. 1240.4010)	September 10, 1997	Do	Do
Uniformity in Labeling (Guide No. 1240.4020)	September 10, 1997	Do	Do
General Policies for Animal Drug Label Review (Guide No. 1240.4021)	September 10, 1997	Do	Do
Therapeutic Use Directions for Medicated Feed and Drinking Water (Guide No. 1240.4025)	September 10, 1997	Do	Do
Established Names (Guide No. 1240.4030)	September 10, 1997	Do	Do
Clinical Investigator Sanctions & the Videotex Method of Obtaining Information on Ineligible Investigators (Guide No. 1240.4040)	September 10, 1997	Do	Do
Criteria for the Approval of Euthanasia Products (Guide No. 1240.4112)	January 5, 1987	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Sterility of Ophthalmic Products (Guide No. 1240.4120)	December 7, 1993	Do	Do
Sterility and Pyrogen Requirements for Injectable Drug Products (Guide No. 1240.4122)	November 27, 1989	Do	Do
Overformulation in Animal Drug Products (Guide No. 1240.4130)	January 2, 1992	Do	Do
Continuous Use Production Drugs & Short-Term Therapeutic Treatments in Feeds (Guide No. 1240.4145)	April 16, 1990	Do	Do
Ownership Transfer or Corporate Identity Change of an Application (Guide No. 1240.4150)	January 2, 1992	Do	Do
Policy on Sterilization of New Animal Drug Products and Containers by Irradiation (Guide No. 1240.4160)	September 10, 1997	Do	Do
CVM Medically Necessary Veterinary Drug Product Shortage Management (Guide No. 1240.4170)	June 30, 1994	Do	Do
Drug Use in Aquaculture Enforcement Priorities (Guide No. 1240.4200)	October 29, 1997	Do	Do
Extra-label Use of Approved Drugs in Aquaculture (Guide No. 1240.4210)	October 29, 1997	Do	Do
Drug-Pesticide Issues (Guide No. 1240.4220)	October 29, 1997	Do	Do
Regulation of Fish Identification Products (Guide No. 1240.4230)	October 29, 1997	Do	Do
Safe Levels of Unapproved Drugs in Aquaculture (Guide No. 1240.4240)	October 29, 1997	Do	Do
Classification of Aquaculture Species/Population as Food or Non-Food (Guide No. 1240.4260)	October 29, 1997	Do	Do
Use of Drugs in Outdoor Aquatic Research Facilities (Guide No. 1240.4270)	October 29, 1997	Do	Do
Generic Animal Drug and Patent Term Restoration Act (GADPTRA) Policy Letter 1.—Describes patent and exclusivity information to be submitted to FDA by holders of approved NADAs and NADA applicants	November 23, 1988	Animal drug industry	Communications Staff (HFV–12), FDA/CVM, 7500 Standish Pl., Rockville, MD 20855, 301–594–1755, FAX 301–594–1831
GADPTRA Policy Letter 2.—Describes format and content for suitability petitions, format and content for ANADAs, manufacturing requirements for ANADAs, and environmental review of generic animal drugs	June 7, 1989	Do	Do
GADPTRA Policy Letter 3.—"Exclusivity for human food safety data submitted in supplemental application," "Withdrawal period for generic drugs," "Substitution of an active ingredient in a combination drug or in a feed use combination," "Labeling Requirements for Generic Drugs," "Can a generic animal drug sponsor obtain exclusivity for an innovation approved under a supplement to an ANADA and can the pioneer drug sponsor copy the generic innovation without submitting additional data?"	July 2, 1989	Do	Do
GADPTRA Policy Letter 4.—"Actions concerning ANADAs when a pioneer drug has been withdrawn from sale," "Effect of GADPTRA on approval of pre-62 drugs under the DESI program," "Generic feed use combination drugs"	November 2, 1989	Do	Do
GADPTRA Policy Letter 5.—Bioequivalence Guideline	April 12, 1990	Do	Do
GADPTRA Policy Letter 6.—"Withdrawal period for generic animal drug products," "Eligibility of a new salt or ester for a pioneer animal drug"	October 17, 1990	Do	Do
GADPTRA Policy Letter 7.—"Guidance for analytical methods for ANADAs," "ANADAs, NADAs and supplemental approvals for subtherapeutic antibiotics," "Hybrid applications," "Waivers of In Vivo bioequivalence studies for topical products"	March 20, 1991	Do	Do
GADPTRA Policy Letter 8.—Generic copying of certain drugs that were subject to review under the Drug Efficacy Study Implementation (DESI) program	July 23,1991	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
GADPTRA Policy Letter 9.—"Policy Statement on Environmental Review of Generic Animal Drugs" (Revision of a policy statement of the same title in Generic Policy Letter #2	June 27, 1995	Do	Do
Guide for Reporting Drug Shipment(s) for Clinical Trials in Non-Food Animals	June 19, 1992	Do	Do
Guide for Reporting The Details of Clinical Trials Using Investigational New Animal Drug(s) in Food-Producing Animals	no date	Do	Do
Aquaculture Drug Use: Answers to Commonly Asked Questions	June 1995	Do	Do Internet via http://www.cvm.fda.gov/
Guideline 3.—General Principles for Evaluating the Safety of Compounds Used in Food-Producing Animals	July 1994	Do	Do
Guideline 4.—Guidelines for Efficacy Studies for Systemic Sustained Release Sulfonamide Boluses for Cattle	no date	Do	Do
Guideline 5.—Stability Guidelines	December 1990	Do	Do
Guideline 6.—Guidelines for Submitting NADA's for Generic Drugs Reviewed by NAS/NRC	March 1976	Do	Do
Guideline 9.—Preclearance Guidelines for Production Drugs	October 1975	Do	Communications Staff
Guideline 10.—Amendment of Section II(G)(1)(b)(4) of the Preclearance Guidelines	October 1975	Do	Do Internet at http://www.cvm.fda.gov/
Guideline 13.—Guidelines for Evaluation of Effectiveness of New Animal Drugs for Use in Free-Choice Feeds (revision of Medicated Block)	January 1985	Do	Do
Guideline 14.—Guideline and Format for Reporting the Details of Clinical Trials Using An Investigational New Animal Drug in FOOD Producing Animals	no date	Do	Do
Guideline 15.—Guideline and Format for Reporting the Details of Clinical Trials Using An Investigational New Animal Drug in NON–FOOD Producing Animals	February 1977	Do	Do
Guideline 16.—FOI Summary Guideline	May 1985	Do	Do
Guideline 18.—Antibacterial Drugs in Animal Feeds: Human Health Safety Criteria	no date	Do	Do
Guideline 19.—Antibacterial Drugs in Animal Feeds: Animal Health Safety Criteria	no date	Do	Do
Guideline 20.—Antibacterial Drugs in Animal Feeds: Antibacterial Effectiveness Criteria	no date	Do	Do
Guideline 22.—Guideline Labeling of Arecoline Base Drugs Intended for Animal Use	no date	Do	Do
Guideline 23.—Medicated Free Choice Feeds—Manufacturing Control	July 1985	Do	Do
Guideline 24.——Guidelines for Drug Combinations for Use in Animals	October 1983	Do	Do
Guideline 25.—Guidelines for the Efficacy Evaluation of Equine Anthelmintics	January 1979	Do	Do
Guideline 26.—Guidelines for the Preparation of Data to Satisfy the Requirements of Section 512 of the Act Regarding Animal Safety, Effectiveness, Human Food Safety and Environmental Considerations for Minor Use of New Animal Drugs	April 1986	Do	Do
Guideline 29.—Guidelines for the Effectiveness Evaluation of Swine Anthelmintics	September 1980	Do	Do
Guideline 31.—Guidelines for the Evaluation of Bovine Anthelmintics	July 1981	Do	Do
Guideline 33.—Target Animal Safety Guidelines for New Animal Drugs	June 1989	Do	Do
Guideline 35.—Bioequivalence Guideline—Final (1996)	1996	Do	Do
Guideline 36.—Guidelines for Efficacy Evaluation of Canine/Feline Anthelmintics	July 1985	Do	Do
Guideline 37.—Guidelines for Evaluation of Effectiveness of New Animal Drugs for Use in Poultry Feed for Pigmentation	March 1984	Do	Do
Guideline 38.—Guideline for Effectiveness Evaluation of Topical/Otic Animal Drugs	August 1984	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Guideline 40.—Draft Guideline for the Evaluation of the Efficacy of Anticoccidial Drugs and Anticoccidial Drug Combinations in Poultry	April 1992	Do	Do
Guideline 41.—Draft Guideline: Formatting, Assembling, and Submitting New Animal Drug Applications	June 1992	Do	Do
Guideline 42.—Series of four guidelines entitled "Animal Drug Manufacturing Guidelines, 1994"	1994	Do	Do
Guideline 43.—Guidance on Generic Animal Drug Products Containing Fermentation-Derived Drug Substances	October 1995	Do	Do
Guideline 45.—Guideline for Uniform Labeling of Drugs for Dairy and Beef Cattle	August 1993	Do	Do
Guideline 48.—Guidance for Industry for the Submission of Documentation for Sterilization Process Validation in Applications for Human and Veterinary Drug Products	November 1994	Do	Communications Staff
Guideline 49.—Guidance Document for Target Animal Safety and Drug Effectiveness Studies for Anti-Microbial Bovine Mastitis Products	April 1996	Do	Do
Guideline 50.—Draft Guideline for Target Animal and Human Food Safety, Drug Efficacy, Environmental and Manufacturing Studies for Teat Antiseptic Products	February 1993	Do	Do
Guideline 51.—Points to Consider Guideline—Development of a Pharmacokinetic Guideline Enabling Flexible Labeling of Therapeutic Antimicrobials	1993	Do	Do
Guideline 52.—Guidance—Microbiological Testing of Antimicrobial Drug Residues in Food	January 1996	Do	Do
Guideline 53.—Guideline for the Evaluation of the Utility of Food Additives in Diets Fed to Aquatic Animals	May 1994	Do	Do
Guideline 54.—Draft Guideline for Utility Studies for Anti-Salmonella Chemical Food Additives in Animal Feeds	June 1994	Do	Do
Guideline 55.—Supportive Data for Cat Food Labels Bearing "Reduces Urinary pH Claims: Guideline in Protocol Development"	June 1994	Do	Do
Guideline 56.—Protocol Development Guideline for Clinical Effectiveness and Target Animal Safety Trials	November 1994	Do	Do
Guideline 57.—Master Files—Guidance for Industry for the Preparation and Submission of Veterinary Master Files	July 1995	Do	Do
Guideline 58.—Guidance for Industry for Good Target Animal Study Practices: Clinical Investigators and Monitors	May 1997	Do	Do
Guideline 59.—Guidance to Industry Submitting Notices of Claimed Investigational Exemption in Electronic Format to CVM Via E-mail	June 1997	Do	Do
Guideline 60.—Guidance for Industry Animal Proteins Prohibited From Animal Feed, Small Entity Compliance Guide	June 1997	Do	Do
Guideline 61.—Draft Guidance for Industry—FDA Approval of Animal Drugs for Minor Uses and for Minor Species	September 1997	Do	Do
Guideline 62.—Draft Guidance for Industry—Consumer-Directed Broadcast Advertisements	August 1997	Do	Do
NADA Pre-approval Inspections (No. 7368.001)	November 1, 1993	FDA investigators and analysts and regulated industry	Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6310, FAX 301–443–1726
Drug Process and New Animal Drug Inspections (No. 7371.001)	October 8, 1996	Do	Do
Illegal Sales of Veterinary Prescription Drugs (No. 7371.002)	August 17, 1993	Do	Do
Feed Contaminants (No. 7371.003)	November 1, 1993 (July 31, 1996—Partial Revision)	Do	Do
Medicated Feeds (No. 7371.004)	July 7, 1995	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Type A Medicated Articles (No. 7371.005)	January 1, 1992	Do	Do
Illegal Drug Residues in Meat and Poultry (No. 7371.006)	September 9, 1996	Do	Do
Imported Bulk New Animal Drugs (No. 7371.007)	October 1, 1991	Do	Do
Center for Veterinary Medicine Public Affairs Specialist Program (No. 7371.826)	May 3, 1996	Do	Do
CVM Initiates Veterinary Drug Listing Verification	February 3, 1994	Public information	Communications Staff, FDA/CVM, 7500 Standish Pl. (HFV–12), Rockville, MD 20855, 301–594–1755, FAX 301–594–1831
FDA Position on the Extra-Label Use of Fluoroquinolones	September 14, 1995	Do	Do
CVM Announces Opinion on Dipyrone Products	December 6, 1995	Do	Do
Regulation of Animal Electronic Identification Products	January 17, 1996	Do	Do
Update on Extra-Label Use of Fluoroquinolones	July 16, 1996	Do	Do Internet via http://www.cvm.fda.gov/
Caution Urged in Using Warbex	October 4, 1996	Do	Do
Revised Labeling for Some Medicated Feed Products	January 30, 1997	Do	Do
Colloidal Silver Not Approved For Treating Animals	February 12, 1997	Do	Do
CVM Policy on Competitive Exclusion Products	February 21, 1997	Do	Do
Updated Policy on the Use of Animal Electronic Identification Products in Swine	March 14, 1997	Do	Do
Human Drug Product not Equivalent to Veterinary Cefiofur	July 16, 1997	Do	Do
FDA Requests That Ball Clay Not be Used in Animal Feeds	October 14, 1997	Do	Do

VII. Guidance Documents Issued by the Office of Policy

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
FDA's Development, Issuance and Use of Guidance Documents	February 1997	Internal FDA and regulated industry	Internet via www.fda.gov/opacom/morechoices/moreindu.html or Office of Policy 301–827–3360
Industry Supported Scientific and Educational Activities	December 1997	Regulated industry	Internet via www.fda.gov/cder/guidance/index.htm or Office of Policy 301–827–3360
Draft Guidance on Consumer Directed Broadcast Advertisements	February 1997	Do	Do
Direct Final Rule Guidance	November 1997	Internal FDA	Internet via www.fda.gov/opacom/morechoices/industry/preguide.htm or Marquita Steadman 301–443–3480
Small Entities Compliance Guide On: Regulations to Restrict the Sale and Distribution of Cigarettes and Smokeless Tobacco in Order to Protect Children and Adolescents (21 CFR Part 897)	February 1997	Regulated industry	Internet via www.fda.gov/opacom/campaigns/tobacco/tobret.htm or 1–888–FDA–4KIDS
Children and Tobacco—Frequently Asked Questions About the New Regulations-Draft Guidance	July 1997	Do	Internet via www.fda.gov/opacom/campaigns/tobacco/tobret.htm or 1–888–FDA–4KIDS
Children & Tobacco—A Retailer's Guide to the New Federal Regulations	October 1997	Do	Internet via www.fda.gov/opacom/campaigns/tobacco/tobret.htm or 1–888–FDA–4KIDS
Children & Tobacco—A Guide to the New Federal Regulations	October 1997	Do	Internet via www.fda.gov/opacom/campaigns/tobacco/tobret.htm or 1–888–FDA–4KIDS
FDA's Standards Policy	October 1995	Internal FDA and regulated industry	60 FR 53078, October 11, 1995 or Office of Policy 301–827–3360

VIII. Guidance Documents Issued by the Office of Regulatory Affairs

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Compliance Policy Guides Manual (PB96–915499)	August 1996	FDA Staff Personnel	National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161 or via Internet at www.fda.gov/ora/compliance—ref/cpg/cpgtc.html
FDA/ORA International Inspection Manual and Travel Guide	May 1997	Do	FDA, Division of Emergency and Investigational Operations (HFC–130), 5600 Fishers Lane, Rockville, MD 20857 or via Internet at www.fda.gov/ora/inspect—ref/itob/itob.html
Glossary of Computerized System and Software Development Terminology (PB96–127352)	August 1995	Do	NTIS or via Internet at www.fda.gov/ora/inspect—ref/igs/iglist.html
Import Alerts	continuously	Do	FDA, Freedom of Information Staff (HFI–35), 5600 Fishers Lane, Rockville, MD 20857, or via Internet at www.fda.gov/ora/fiars/ora—import—alerts.html
Investigations Operations Manual (PB96–913399)	May 1996	Do	NTIS or via Internet at www.fda.gov/ora/inspect—ref/iom/iomtc.html
Laboratory Procedures Manual	June 1994	Do	FDA, Division of Field Science (HFC–141), 5600 Fishers Lane, rm. 12–41, Rockville, MD 20857, ATTN: Denise I. Jones or via Internet at www.fda.gov/ora/science—ref/lpm/lpmtc.html
Regulatory Procedures Manual (PB97–196182)	August 1997	Do	NTIS or via Internet at www.fda.gov/ora/compliance—ref/rpm/rpmtc.html
Guide to Inspections of Bulk Pharmaceutical Chemicals (PB96–127154)	May 1994	Do	NTIS or via Internet at www.fda.gov/ora/inspect—ref/igs/iglist.html
Guide to Inspections of Pharmaceutical Quality Control Laboratories (PB96–127279)	July 1993	Do	Do
Guide to Inspections of Microbiological Pharmaceutical Quality Control Laboratories (PB96–127287)	July 1993	Do	Do
Guide to Inspections of Validation of Cleaning Processes (PB96–127246)	July 1993	Do	Do
Guide to Inspections of Lyophilization of Parenterals (PB96–127253)	July 1993	Do	Do
Guide to Inspections of High Purity Water Systems (PB96–127261)	July 1993	Do	Do
Guide to Inspections of Dosage Form Drug Manufacturers-CGMPs (PB96–127212)	October 1993	Do	Do
Guide to Inspections of Oral Solid Dosage Forms Pre/Post Approval Issues for Development and Validation (PB96–127345)	January 1994	Do	Do
Guide to Inspections of Topical Drug Products (PB96–127394)	July 1994	Do	Do
Guide to Inspections of Sterile Drug Substance Manufacturers (PB96–127295)	July 1994	Do	Do
Guide to Inspections of Oral Solutions and Suspensions (PB96–127147)	August 1994	Do	Do
Guide to Inspections of Nutritional Labeling and Education Act (NLEA) Requirements (PB96–127378)	February 1995	Do	Do
Guide to Inspections of Interstate Carriers and Support Facilities (PB96–127386)	April 1995	Do	Do
Guide to Inspections of Dairy Product Manufacturers (PB96–127329)	April 1995	Do	Do
Guide to Inspections of Miscellaneous Foods Vol. I (PB96–127220)	May 1995	Do	Do
Guide to Inspections of Miscellaneous Foods Vol. II (PB97–196133)	September 1996	Do	Do
Guide to Inspections of Low Acid Canned Foods Manufacturers, Part 1—Administrative Procedures/Scheduled Processes (PB97–196141)	November 1996	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Guide to Inspections of Low Acid Canned Foods - Manufacturers, Part 2— Processes/Procedures (PB97–196158)	April 1997	Do	Do
Guide to Inspections of Cosmetic Product Manufacturers (PB96–127238)	February 1995	Do	Do
Guide to Inspections of Blood Banks (PB96–127303)	September 1994	Do	Do
Guide to Inspections of Source Plasma Establishments (PB96–127360)	December 1994	Do	Do
Guide to Inspections of Infectious Disease Marker Testing Facilities (PB96–199476)	June 1996	Do	Do
Biotechnology Inspections Guide (PB96–127402)	November 1991	Do	Do
Guide to Inspections of Computerized Systems in Drug Processing (PB96–127337)	February 1983	Do	Do
Guide to Inspections of Foreign Medical Device Manufacturers (PB96–127311)	September 1995	Do	Do
Guide to Inspections of Foreign Pharmaceutical Manufacturers (PB96–199468)	May 1996	Do	Do

IX. International Conference on Harmonization Guidances (CDER)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
E1A The Extent of Population Exposure to Assess Clinical Safety: for Drugs Intended for Long-Term Treatment of Non-Life-Threatening Conditions	March 1, 1995	Do	Do
E2A Clinical Safety Data Management: Definitions and Standards for Expedited Reporting	March 1, 1995	Do	Do
E2B Data Elements for Transmission of Individual Case Safety Reports	October 1, 1996	Do	Do
E2C Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs	May 19, 1997	Do	Do
E3 Structure and Content of Clinical Study Reports	July 17, 1996	Do	Do
E4 Dose-Response Information to Support Drug Registration	November 9, 1994	Do	Do
E5 Ethnic Factors in the Acceptability of Foreign Clinical Data	July 31, 1997	Do	Do
E6 Good Clinical Practices; Consolidated Guideline	May 9, 1997	Do	Do
E7 Studies in Support of Special Populations: Geriatrics	August 2, 1994	Do	Do
E8 General Considerations for Clinical Trials	May 30, 1997	Do	Do
E9 Statistical Principles for Clinical Trials	May 9, 1997	Do	Do
M3 Timing of Nonclinical Studies for the Conduct of Human Clinical Trials for Pharmaceuticals	May 2, 1997	Do	Do
Q1A Stability Testing of New Drug Substances and Products	September 22, 1994	Do	Do
Q2A Text on Validation of Analytical Procedures	March 1, 1995	Do	Do
Q3A Impurities in New Drug Substances	January 4, 1996	Do	Do
Q5A Biotechnological/Biological Pharmaceutical Products; Viral Safety Evaluation	May 10, 1996	Do	Do
Q6A Specifications; Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products Chemical Substances	November 25, 1997	Do	Do
Q1B Photostability Testing of New Drug Substances and Products	May 16, 1997	Do	Do
Q1C Stability Testing for New Dosage Forms	May 9, 1997	Do	Do
Q2B Validation of Analytical Procedures: Methodology	May 19,1997	Do	Do
Q3B Impurities in New Drug Products	May 19, 1997	Do	Do
Q5B Quality of Biotechnology Products: Analysis of the Expression Construct in Cells Used for Production of r-DNA Derived Protein Products	February 23, 1996	Do	Do
Q3C Impurities: Residual Solvents	May 2, 1997	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Q5C Quality of Biotechnological Products: Stability Testing of Biotechnology/Biological Products	July 10, 1996	Do	Do
Q5D Quality of Biotechnological/Biological Products: Derivation and Characterization of Cell Substrates Used for Production of Biotechnological/Biological Products	May 2, 1997	Do	Do
S1A The Need for Long-Term Rodent Carcinogenicity Studies of Pharmaceuticals	March 1, 1996	Do	Do
S3A Toxicokinetics: The Assessment of Systemic Exposure in Toxicity Studies	March 1, 1995	Do	Do
S5A Detection of Toxicity to Reproduction for Medicinal Products	September 22, 1994	Do	Do
S1C Dose Selection for Carcinogenicity Studies of Pharmaceuticals	March 1, 1995	Do	Do
S1C (R) Carcinogenicity Studies of Pharmaceuticals: Addendum to Dose Selection	April 2, 1997	Do	Do
S2A Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals	April 24, 1996	Do	Do
S3B Pharmacokinetics: Guidance for Repeated Dose Tissue Distribution Studies	March 1, 1995	Do	Do
S2B Genotoxicity: Standard Battery Testing	April 3, 1997	Do	Do
S4A Duration of Chronic Toxicity Testing in Animals (Rodent and Nonrodent Toxicity)	November 18, 1997	Do	Do
S5B Detection of Toxicity to Reproduction for Medicinal Products: Addendum on Toxicity to Male Fertility	April 5, 1996	Do	Do
S6 Preclinical Testing of Biotechnology-Derived Pharmaceuticals	April 4, 1997	Do	Do

Dated: February 20, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–4916 Filed 2–25–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–339]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Provider Cost Report Reimbursement Questionnaire and Supporting Regulations in 42 CFR 405.465, 405.481, 413.20, and 413.24; *Form No.:* HCFA–339 (OMB# 0938–0301); *Use:* The Medicare Provider Cost Report Reimbursement Questionnaire must be completed by all providers to assist in preparing an acceptable cost report, to ensure proper Medicare reimbursement, and to minimize subsequent contact between the provider and its fiscal intermediary; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and State, local and tribal government; *Number of Respondents:* 30,607; *Total Annual Responses:* 30,607; *Total Annual Hours:* 1,239,584.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 18, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–4865 Filed 2–25–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–229]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (PRA), the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, part 1320. We are requesting emergency clearance so that we can meet the requirements under the Balanced Budget Act (BBA) (section 4421(j)(2)(A)) which requires implementation of a prospective payment system with case mix groups for inpatient rehabilitation hospitals by October 1, 2000.

HCFA is requesting OMB review and approval of this collection by 03/10/98, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by 03/09/98. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: New collection.

Title of Information Collection: Development of an Assessment System for Post Acute Care.

Form Number: HCFA–R–229 (OMB approval #: 0938–NEW).

Use: The Minimum Data Set-Post Acute Care (MDS–PAC) will be used to establish patient case mix groups including classes of patients in the rehabilitation facility for the payment system. It will also provide data and seek input from the rehabilitation industry for HCFA to formulate policy and promulgate regulations.

Frequency: On occasion.

Affected Public: Individuals or Households, Business or other for-profit, Not-for-profit.

Number of Respondents: 10,465.

Total Annual Responses: 10,465.

Total Annual Hours Requested: 23,301.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, and HCFA form number(s) referenced above, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by 03/09/98:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850, Fax Number: (410) 786–1415, Attn: John Rudolph HCFA–R–229,

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: February 13, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–4866 Filed 2–25–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–216]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Procedures for Advisory Opinions Concerning Physician Referrals and Supporting Regulations in 42 CFR 411.370 through 411.389; *Form No.:* HCFA–R–216 (OMB# 0938–0714); *Use:* Section 4314 of Public Law 105–33, in establishing section 1877(g)(6) of the Act, requires the Department to provide advisory opinions to the public regarding whether a physician's referrals for certain designated health services are prohibited under the other provisions in section 1877 of the Act. These regulations provide the procedures under which members of the public may request advisory opinions from HCFA. Because all requests for advisory opinions are purely voluntary, respondents will only be required to

provide information to us that is relevant to their individual requests; *Frequency:* On occasion; *Affected Public:* Not-for-profit institutions, Business or other for-profit, and Individuals and Households; *Number of Respondents:* 200; *Total Annual Responses:* 200; *Total Annual Hours:* 2,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 18, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–4928 Filed 2–25–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–102/105]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* CLIA Budget Workload Reports and Supporting Regulations in 42 CFR 493.1–.2001; *Form No.:* HCFA–102/105 (OMB# 0938–0599); *Use:* This information will be used by HCFA to determine the amount of Federal reimbursement for compliance surveys. In addition, the HCFA 102/105 is used for program evaluation, budget formulation and budget approval; *Frequency:* Quarterly and Annually; *Affected Public:* State, local or tribal government; *Number of Respondents:* 50; *Total Annual Responses:* 50; *Total Annual Hours:* 2,650.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 19, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–4935 Filed 2–25–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–372]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Annual Report on Home and Community Based Services Waivers and Supporting Regulations in 42 CFR 440.180 and 441.300–.305; *Form No.:* HCFA–372 (OMB# 0938–0272); *Use:* States request waivers in order for beneficiaries to have the option of receiving hospital services in their homes. States with an approved waiver under section 1915(c) of the Act are required to submit the HCFA–372 or HCFA–372(S) annually in order for HCFA to: (1) Verify that State assurances regarding waiver cost-neutrality are met, and (2) determine the waiver's impact on the type, amount and cost of services provided under the State plan and health and welfare of recipients; *Frequency:* Annually; *Affected Public:* State, local or tribal government; *Number of Respondents:* 50; *Total Annual Responses:* 223; *Total Annual Hours:* 16,725.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone

number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 18, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–4864 Filed 2–25–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Opportunity for a Cooperative Research and Development Agreement (CRADA) To Develop Live Attenuated Dengue Viruses for Use as Vaccines in Humans

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institute of Allergy and Infectious Diseases (NIAID) of the National Institutes of Health (NIH) is seeking capability statements from parties interested in entering into a Cooperative Research and Development Agreement (CRADA) on a project to develop live attenuated dengue viruses for use as vaccines to prevent dengue hemorrhagic fever and dengue shock syndrome in humans. This project is part of ongoing vaccine development activities in the Laboratory of Infectious Diseases (LID), Division of Intramural Research, NIAID.

DATES: Only written CRADA capability statements which are received by the NIAID on or before March 30, 1998 will be considered.

ADDRESSES: Capability statements should be submitted to Dr. Michael R. Mowatt, Office of Technology Development, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 31 Center Drive MSC 2137, Building 31, Room 3B62, Bethesda, MD 20892–2137; Tel: 301/496–2644, Fax: 301/402–7123; Electronic mail: mmowatt@nih.gov.

SUPPLEMENTARY INFORMATION: The CRADA will employ attenuated dengue virus strains (types 1 through 4) developed in LID using recombinant DNA methodologies to (1) Identify and characterize the mutations responsible for attenuation, (2) engineer viral strains suitably attenuated for use as human vaccines, and (3) evaluate the attenuated viruses as live vaccines in animals and humans. The Public Health Service (PHS) has filed patent applications both in the U.S. and internationally related to these technologies.

The LID has extensive experience in evaluating the safety, antigenicity, immunogenicity and efficacy of various human viral pathogens and vaccines thereof both in experimental animals and human volunteers. The Collaborator in this endeavor would be required to provide and maintain at least four scientists off-site to support the CRADA Research Plan. These scientists would coordinate the production and release testing of the candidate vaccines, generate monoclonal antibodies needed for manufacture of clinical lots and for their clinical evaluation, and use molecular virologic techniques to generate attenuating mutations suitable for use in live vaccine candidates. In addition, it is expected that the Collaborator would provide funds to supplement LID's research budget for the project and would make a major funding commitment to support the safety, immunogenicity and efficacy studies for candidate vaccines developed and licensed under the CRADA.

The capability statement should include detailed descriptions of: (1) The technical expertise of the Collaborator's Principal Investigator and laboratory group in molecular virology, (2) Ability of Collaborator to manufacture at least four experimental vaccine lots per year, and (3) Ability to provide adequate and sustained funding to support the requisite vaccine safety and efficacy studies.

Dated: February 19, 1998.

Mark L. Rohrbaugh,

Director, Office of Technology Development, NIAID.

[FR Doc. 98–4880 Filed 2–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Polyvalent Vaccine Phase III Trial—Stage VI—Melanoma. Telephone Conference Call.

Date: March 17, 1998.

Time: 1 p.m. to Adjournment.

Place: National Cancer Institute, Executive Plaza North, Room 611C, 6130 Executive Boulevard, Bethesda, MD 20892–7403.

Contact Person: John L. Meyer, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 611C, 6130 Executive Boulevard, MSC 7403, Bethesda, MD 20892–7403, Telephone: 301/496–7721.

Purpose/Agenda: To review, discuss and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 19, 1998.

LaVeen Ponds,

Acting Committee Management Officer, National Institutes of Health.

[FR Doc. 98–4869 Filed 2–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. Appendix 2) notice is hereby given of the advisory committee meetings listed below of the National Cancer Institute (NCI).

The meetings will be open to the public as indicated below, with attendance by the public limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Linda Quick-Cameron, Committee Management Officer, at (301) 496–5708, in advance of the meetings.

A portion of the meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), 552b(c)(6), and 552b(c)(9)(B), Title 5 U.S.C., and section 10(d) of the FACA, for the review, discussion and evaluation of individual programs and for discussion of issues pertaining to programmatic areas and/or NCI personnel. These discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning the individuals associated with the programs, including consideration of personnel qualifications and performances, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy and premature disclosure of recommendations which would likely significantly frustrate the subsequent implementation of recommendations.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 609, 6130 Executive Boulevard, MSC 7410, Rockville, Maryland 20892–7410, (301) 496–5708, will provide summaries of the meetings and rosters of the committee members, upon request.

Name of Committee: Advisory Committee to the Director, National Cancer Institute.

Contact Person: Susan J. Waldrop, Executive Secretary, National Cancer Institute, NIH, Federal Building, Room 312, Bethesda, MD 20892, (301) 496–1458.

Date of Meeting: March 1, 1998.

Place of Meeting: Hyatt Regency—Bethesda, One Bethesda Metro Center, Congressional Room, Bethesda, MD 20814.

Open: 7 p.m. to Adjournment.

Agenda: To update the Committee on the activities of the NCI Working Groups and on the groups reporting to the Advisory Committee to the Director, NCI.

Committee Name: Joint Meeting—National Cancer Institute Board of Scientific Advisors and Board of Scientific Counselors, National Cancer Institute.

Date: March 2, 1998.

Place: Building 31C, 6th Floor, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Open: 8 a.m. to 9:20 a.m.

Agenda: Report of the Director, NCI.

Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600, 6130 Executive Blvd., MSC 7405, Bethesda, 20892–7405, (301) 496–4218.

Committee Name: National Cancer Institute Board of Scientific Advisors.

Date: March 2–3, 1998.

Place: Building 31C, 6th Floor, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Open: March 2–9:30 a.m. to Recess; March 3–8 a.m. to Adjournment.

Agenda: RFA Concept Reviews, Report of the Deputy Director for Extramural Science, Status Reports of Implementing Program, Review Group(s) Recommendations, Budget Presentation and Status Reports from the Extramural Divisions.

Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20892–7405, (301) 496–4218.

Committee Name: Joint Meeting—Board of Scientific Counselors, National Cancer Institute, Clinical Sciences and Epidemiology—Subcommittee A, Basic Sciences—Subcommittee B.

Date: March 2, 1998.

Place: Building 31C, 6th Floor, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: 9:20 a.m.–10:15 a.m.

Agenda: Discussion of Intramural Review Issues.

Contact Person: Florence Farber, Ph.D., Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 643G, 6130 Executive Blvd., MSC 7410, Bethesda, MD 20892–7410, (301) 496–2378.

Committee Name: Board of Scientific Counselors, National Cancer Institute, Clinical Sciences and Epidemiology—Subcommittee A.

Date: March 2, 1998.

Place: Building 31C, 6th Floor, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: 10:30 a.m. to Adjournment.

Agenda: To discuss administrative confidential matters pertaining to the Division of Clinical Sciences and the Division of Cancer Epidemiology and Genetics.

Contact Person: Judy Mietz, Ph.D., Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600, 6130 Executive Blvd., MCS 7410, Bethesda, MD 20892–7410, (301) 496–2378.

Committee Name: Board of Scientific Counselors, National Cancer Institute Basic Sciences—Subcommittee B.

Date: March 2, 1998.

Place: Building 31C, 6th Floor, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: 10:30 a.m. to Adjournment.

Agenda: To discuss administrative confidential matters and site visit reports pertaining to the laboratories in the Division of Basic Sciences.

Contact Person: Florence Farber, Ph.D., Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 643G, 6130 Executive Blvd., MSC 7410, Bethesda, MD 20892–7410, (301) 496–2378.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 17, 1998.

LaVeen Ponds,

Acting Committee Management Officer, National Institutes of Health.

[FR Doc. 98–4881 Filed 2–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Center for Research Resources Special Emphasis Panel (SEP) meeting:

Name of SEP: Comparative Medicine.

Date: March 9–10, 1998.

Time: March 9, 7–9 p.m.; March 10, 1–3 p.m.

Place: Clarion Hotel and Conference Center, 4345 North Lincoln Boulevard, Oklahoma City, OK 73105, (405) 528–2741.

Contact Person: Dr. Bela J. Gulyas, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0811.

Purpose/Agenda: To evaluate and review grant applications.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.306, Laboratory Animal Science and Primate Research, National Institutes of Health, HHS)

Dated: February 18, 1998.

LaVeen M. Ponds,

Acting Committee Management Officer, National Institutes of Health.

[FR Doc. 98–4876 Filed 2–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Sleep Disorders Research Advisory Board, National Heart, Lung, and Blood Institute, March 11, 1998, which was published in the **Federal Register** on February 9, 1998 (63 FR 6575).

In accordance with provisions set forth in section 552(c)(6) of Title 5 U.S.C. and section 10(d) of Pub. L. 92–463, a portion of this meeting will be closed to the public from approximately 3:45 p.m. to adjournment for the discussion of personnel qualifications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: February 19, 1998.

LaVeen Ponds,

Acting Committee Management Officer, National Institutes of Health.

[FR Doc. 98–4872 Filed 2–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meetings:

Name of SEP: PDay Cardiovascular Specimen and Data Library (R24), (Telephone Conference Call).
Date: March 16, 1998.
Time: 1 p.m.
Place: 6701 Rockledge Drive, Room 7214, Bethesda, Maryland 20892.
Contact Person: Joyce A. Hunter, Ph.D., Two Rockledge Center, Room 7192, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0287.
Purpose/Agenda: To review and evaluate grant applications.
Name of SEP: Pediatric Cardiovascular Disease SCOR.
Date: May 18–19, 1998.
Time: 8 a.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910–3763.
Contact Person: Deborah Beebe, Ph.D., Two Rockledge Center, Room 7178, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0270.
Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: February 19, 1998.

LaVeen M. Ponds,

Policy Analyst, National Institutes of Health, Committee Management Officer.

[FR Doc. 98–4877 Filed 2–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: The Use of Dual Methods of Protection From Pregnancy and STD/HIV.
Date: April 9–10, 1998.
Time: April 9—6 p.m.–10 p.m.; April 10—8 a.m.–adjournment.
Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Hameed Khan, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, Room 5E01, Rockville, MD 20852, Telephone: 301–496–1485.
Purpose/Agenda: To evaluate and review research grant applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institutes of Health, HHS)

Dated: February 19, 1998.

LaVeen Ponds,

Acting Committee Management Officer, National Institutes of Health.

[FR Doc. 98–4870 Filed 2–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.
Date: April 2, 1998.
Time: 7:30 a.m.–5 p.m.
Place: Double Tree Hotel Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Richard S. Fisher, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, Bethesda MD 20892–7180, 301–496–8683.
Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: February 18, 1998.

LaVeen Ponds,

Acting Committee Management Officer, National Institutes of Health.

[FR Doc. 98–4874 Filed 2–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code

Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: March 25, 1998.

Time: 9 a.m. to adjournment.

Place: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: George M. Barnas, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, Bethesda MD 20892–7180, 301–496–8693.

Purpose/Agenda: To review and evaluate three contract proposals.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: February 18, 1998.

LaVeen Ponds,

Acting Committee Management Officer, National Institutes of Health.

[FR Doc. 98–4875 Filed 2–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 19, 1998.

Time: 3 p.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis D. Artis, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 25, 1998.

Time: 10 a.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis D. Artis, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: April 6–April 7, 1998.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–3936.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: February 19, 1998.

LaVeen Ponds,

Acting Committee Management Officer, National Institutes of Health.

[FR Doc. 98–4878 Filed 2–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: February 27, 1998.

Time: 8:30 a.m.

Place: One Washington Circle, One Washington Circle, NW., Washington, DC 20037.

Contact Person: Jean G. Noronha, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–6470.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: February 18, 1998.

LaVeen M. Ponds,

Acting Committee Management Officer, National Institutes of Health.

[FR Doc. 98–4879 Filed 2–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 2, 1998.

Time: 4 p.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gloria B. Levin, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–1340.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: February 17, 1998.

LaVeen Ponds,

Acting Committee Management Officer, National Institutes of Health.

[FR Doc. 98–4882 Filed 2–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.
Date: March 3, 1998.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 4144, Telephone Conference.
Contact Person: Dr. Syed Quadri, Scientific Review Administrator, 6701 Rockledge Drive, Room 4144, Bethesda, Maryland 20892, (301) 435–1211.

Name of SEP: Multidisciplinary Sciences.
Date: March 12, 1998.
Time: 2:30 p.m.
Place: NIH, Rockledge 2, Room 5116, Telephone Conference.
Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892, (301) 435–1171.

Name of SEP: Clinical Sciences.
Date: March 13, 1998.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4208, Telephone Conference.
Contact Person: Dr. Nancy Shinowara, Scientific Review Administrator, 6701 Rockledge Drive, Room 4208, Bethesda, Maryland 20892, (301) 435–1173.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 16, 1998.
Time: 8:30 p.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Bruce Maurer, Scientific Review Administrator, 6701 Rockledge Drive, Room 5108, Bethesda, Maryland 20892, (301) 435–1167.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.
Date: March 20, 1998.
Time: 1 p.m.
Place: Holiday Inn-National Airport, Crystal City, VA.
Contact Person: Dr. Everett Sinnett, Scientific Review Administrator, 6701 Rockledge Drive, Room 4120, Bethesda, Maryland 20892, (301) 435–1016.

Name of SEP: Behavioral and Neurosciences.
Date: March 27, 1998.
Time: 8:30 a.m.
Place: Ramada Inn, Rockville, MD.
Contact Person: Dr. Joseph Kimm, Scientific Review Administrator, 6701 Rockledge Drive, Room 5178, Bethesda, Maryland 20892, (301) 435–1249.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 27, 1998.
Time: 8 a.m.
Place: American Inn, Bethesda, MD.
Contact Person: Dr. Sami Mayyasi, Scientific Review Administrator, 6701 Rockledge Drive, Room 5106, Bethesda, Maryland 20892, (301) 435–1166.

Name of SEP: Multidisciplinary Sciences.
Date: March 29–31, 1998.
Time: 7 p.m.
Place: Marriott Courtyard, Dallas, TX.
Contact Person: Dr. Nadarajen Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda, Maryland 20892, (301) 435–1176.

Name of SEP: Biological and Physiological Sciences.
Date: April 2–3, 1998.
Time: 8:30 a.m.
Place: Holiday Inn, Bethesda, MD.
Contact Person: Dr. Mushtaq Khan, Scientific Review Administrator, 6701 Rockledge Drive, Room 4124, Bethesda, Maryland 20892, (301) 435–1778.

Name of SEP: Microbiological and Immunological Sciences.
Date: April 13, 1998.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 4182, Telephone Conference.
Contact Person: Dr. William Branche, Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda, Maryland 20892, (301) 435–1148.

Name of SEP: Chemistry and Related Sciences.
Date: April 20–22, 1998.
Time: 4 p.m.
Place: Four Points Hotel, Pleasaton, CA.
Contact Person: Dr. Ronald Manning, Scientific Review Administrator, 6701 Rockledge Drive, Room 4158, Bethesda, Maryland 20892, (301) 435–1723.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 5, 1998.
Time: 8:30 a.m.
Place: Hilton Resorts, Palm Springs, CA.
Contact Person: Dr. Bruce Maurer, Scientific Review Administrator, 6701 Rockledge Drive, Room 5108, Bethesda, Maryland 20892, (301) 435–1167.

Name of SEP: Clinical Sciences.
Date: March 10–11, 1998.
Time: 2 p.m.
Place: Ramada Inn, Rockville, MD.
Contact Person: Dr. Shirley Hilden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4218, Bethesda, Maryland 20892, (301) 435–1198.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 13, 1998.
Time: 8:30 a.m.
Place: Olympia Park Hotel, Park City, UT.
Contact Person: Dr. Mohindar Poonian, Scientific Review Administrator, 6701 Rockledge Drive, Room 5110, Bethesda, Maryland 20892, (301) 435–1168.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 26–27, 1998.
Time: 8:30 a.m.
Place: Ramada Inn, Rockville, MD.
Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435–1146.

Name of SEP: Biological and Physiological Sciences.
Date: March 30, 1998.
Time: 8 a.m.
Place: Ramada Inn, Rockville, MD.
Contact Person: Dr. Abubakar Shaikh, Scientific Review Administrator, 6701 Rockledge Drive, Room 6166, Bethesda, Maryland 20892, (301) 435–1042.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 19, 1998.

LaVeen Ponds,

Acting Committee Management Officer, National Institutes of Health.

[FR Doc. 98–4871 Filed 2–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting that is being held to review grant applications:

Health Promotion and Disease Prevention Initial Review Group

Study section/contact person	Mar. 1998 meeting	Time	Location
Epidemiology & Disease Control–1, Dr. Scott Osborne, 301–435–1782.	Mar. 23–25	8:30 a.m	Ramada Inn, Bethesda, MD.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 19, 1998.

LaVeen Ponds,

Acting Committee Management Officer, National Institutes of Health.

[FR Doc. 98–4873 Filed 2–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 1998 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS), Center for Substance Abuse Prevention (CSAP) and Center for Substance Abuse Treatment (CSAT) announce the availability of FY 1998 funds for grants and cooperative agreements for the following activities. These activities are discussed in more detail under Section 4 of this notice. This notice is not a complete description of the activities; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA) before preparing an application.

Activity	Application deadline	Estimated funds available (millions)	Estimated number of awards	Project period (years)
SAMHSA Conference Grants	05/11/98	$1.25	25	1
HIV/AIDS Cost Study	05/11/98	6.0	8	5

Note: SAMHSA also published notices of available funding opportunities in FY 1998 in the **Federal Register** (Vol. 63 , No. 3) on January 6, 1998 and (Vol. 63, No. 12) on January 20, 1998.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the volume and quality of applications. Awards are usually made for grant periods from one to three years in duration. FY 1998 funds for activities discussed in this announcement were appropriated by the Congress under Public Law No. 105–78. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

General Instructions Applicants must use application form PHS 5161–1 (Rev. 5/96; OMB No. 0937–0189). The application kit contains the GFA (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for each activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of each of the activities (i.e., the GFA) described in Section 4 are available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission: Unless otherwise stated in the GFA, applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710.*

(* Applicants who wish to use express mail or courier service should change the zip code to 20817.)

Application Deadlines: The deadlines for receipt of applications are listed in the table above. Please note that the deadlines may differ for the individual activities.

Competing applications must be received by the indicated receipt dates to be accepted for review. An application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an

address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for each activity covered by this notice (see Section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for each activity covered by this notice (see Section 4).

SUPPLEMENTARY INFORMATION: To facilitate the use of this Notice of Funding Availability, information has been organized as outlined in the Table of Contents below. For each activity, the following information is provided:

- Application Deadline.
- Purpose.
- Priorities.
- Eligible Applicants.
- Grants/Cooperative Agreements/ Amounts.
- Catalog of Federal Domestic Assistance Number.
- Contacts.
- Application Kits.

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1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 1998 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a "menu" of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 1998 KD&A programs will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and in its question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, preparation of special materials will be used, in addition to normal communications means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Special Concerns

SAMHSA's legislatively-mandated services programs do provide funds for mental health and/or substance abuse treatment and prevention services. However, SAMHSA's KD&A activities do not provide funds for mental health and/or substance abuse treatment and prevention services except sometimes for costs required by the particular activity's study design. Applicants are required to propose true knowledge application or knowledge development and application projects. Applications seeking funding for services projects under a KD&A activity will be considered nonresponsive.

Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

3. Criteria for Review and Funding

Consistent with the statutory mandate for SAMHSA to support activities that will improve the provision of treatment, prevention and related services, including the development of national mental health and substance abuse goals and model programs, competing applications requesting funding under the specific project activities in Section 4 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures.

3.1 General Review Criteria

As published in the **Federal Register** on July 2, 1993 (Vol. 58, No. 126), SAMHSA's "Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals," peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;
- Adequacy and appropriateness of the proposed approach and activities;
- Adequacy of available resources, such as facilities and equipment;
- Qualifications and experience of the applicant organization, the project director, and other key personnel; and
- Reasonableness of the proposed budget.

3.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council (if applicable) review process.

Other funding criteria will include:

- Availability of funds.

Additional funding criteria specific to the programmatic activity may be

included in the application guidance materials.

4. Special FY 1998 Mental Health Activities

4.1 Grants

4.1.1 Substance Abuse and Mental Health Services Administration Knowledge Dissemination Conference Grants (SAMHSA Conference Grants—PA No. PA 98–090)

- Initial Application Deadline: May 11, 1998 (and depending on the availability of funds, annual receipts dates of September 10, January 10, and May 10 thereafter).
- Purpose: SAMHSA's Center for Mental Health Services (CMHS), Center for Substance Abuse Prevention (CSAP), and Center for Substance Abuse Treatment (CSAT) will provide support for up to 75 percent (to a maximum of $50,000) of the total direct costs of domestic conferences for the purpose of knowledge synthesis and dissemination. The goal of SAMHSA's knowledge synthesis and dissemination activities is to improve the quality of the Nation's substance abuse and mental health treatment and prevention services and systems. Conferences supported will involve coordinating, exchanging and dissemination knowledge to improve the provision of effective treatment, recovery, early intervention, and prevention services for individuals who suffer from, or are at risk for, problems related to mental illness and/or substance abuse.

Each of the SAMHSA Centers maintains responsibility for its respective areas of expertise—substance abuse prevention, substance abuse treatment, and treatment and prevention of mental illness. However, many of the topics that the Conference Grant Program solicits are of a cross-cutting nature, such as HIV/AIDS, workplace issues, managed care, co-occurring disorders and special populations. Accordingly, each of the Centers is interested in synthesizing and disseminating conference findings with the broadest application for these fields. To ensure against duplication of effort or funding, when the subject of an application is of interest to more than one Center, SAMHSA program staff will communicate to determine which Center will take lead authority for the grant.

Each conference is expected to yield a product (report or publication) of specific relevance to the particular Center's mission at the national, State or community level. Since the purpose is knowledge synthesis and dissemination, applying for support under this program requires both disseminating treatment/prevention knowledge to conference participants and, once the conference is over, sharing that knowledge with wider audiences.

- Priorities: None.
- *Eligible Applicants:* Applications may be submitted by public and domestic private nonprofit and for-profit entities. An individual is not eligible to receive grant support for a conference.
- *Grants/Amounts:* It is estimated that approximately $250,000 from CMHS, $500,000 from CSAP, and $500,000 from CSAT will be available to support awards under this program in FY 1998. Actual funding levels for future years will depend upon annual appropriations.
- *Catalog of Federal Domestic Assistance Number:* 93.218.
- *Program Contact:* For programmatic or technical assistance contact:

Teddi Fine, M.A., Office of the Director, Center for Mental Health Services, Parklawn Building, Room 15–99, Tele: (301) 443–0553; Fax: (301) 443–1563; E-mail: tfine@samhsa.gov

Terri Stover, Division of Prevention Application and Education, Center for Substance Abuse Prevention, Rockwall II Building, Suite 800, Tele: (301) 443–0378; Fax: (301) 443–5592; E-mail: tstover@samhsa.gov

Roberta Messalle, Office of Scientific Evaluation, Analysis, and Synthesis Center for Substance Abuse Treatment, Rockwall II Building, Room 8A123, Tele: (301) 443–4080; Fax (301) 480–3144; E-mail: rmessall@ngmsmtp.samhsa.gov

- For grants management assistance, contact: Peggy Jones, Grants Management Specialist, Division of Grants Management, OPS, Rockwall II Building, Suite 630, (301) 443–9666.

The complete mailing address for the four individuals listed above is: Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857.

- Application Kits: Application kits are available from: Center for Mental Health Services, Knowledge Exchange Network (KEN), P.O. Box 42490, Washington, D.C. 20015, Tele: (800) 789–2647

or

- National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, Tele: (800) 729–6686; TDD: (800) 487–4889.

4.2 Cooperative Agreements

A major activity for a SAMHSA cooperative agreement program is discussed below. Substantive Federal programmatic involvement is required in cooperative agreement programs. Federal involvement will include planning, guidance, coordination, and participating in programmatic activities (e.g., participation in publication of findings and on steering committees). Periodic meetings, conferences and/or communications with the award recipients may be held to review mutually agreed-upon goals and objectives and to assess progress. Additional details on the degree of Federal programmatic involvement will be included in the application guidance materials.

4.2.1 Cooperative Agreements for an HIV/AIDS Treatment Adherence, Health Outcomes, and Cost Study (Short Title: HIV/AIDS Cost Study—GFA No. SM 98–007)

- *Application Deadline:* May 11, 1998.
- *Purpose:* This is a collaborative program among the following components of the Department of Health and Human Services (DHHS): the Center for Mental Health Services (CMHS) within the Substance Abuse and Mental Health Services Administration (SAMHSA), the HIV/AIDS Bureau (HAB) within the Health Resources and Services Administration (HRSA), the National Institute of Mental Health (NIMH) and the National Institute on Drug Abuse (NIDA) within the National Institutes of Health (NIH).

The purpose of this program is to determine the effectiveness of treatment adherence models, health outcomes, and costs associated with the provision of integrated mental health, substance abuse, and HIV/AIDS primary care services for individuals 14 years and older living with HIV/AIDS who have both a mental and a substance abuse disorder. It is also the intent of this cooperative agreement program to advance scientific knowledge about the effectiveness of mental health, substance abuse, and HIV/AIDS primary care treatment for individuals with HIV/AIDS as it is typically practiced by conducting analyses addressing a wide range of questions of scientific and policy relevance.

Each study site applicant will be expected to implement an intervention model that integrates mental health, substance abuse, and HIV/AIDS primary care treatment, not outreach or engagement, for their target population of individuals living with HIV/AIDS who have both a mental and a substance abuse disorder. Study site applicants should propose studies to investigate well-conceptualized questions. It is

expected that these studies will utilize the most rigorous methodology consistent with the purposes of these studies.

Applications are being solicited for up to seven study sites and a Coordinating Center to provide programmatic and evaluation technical assistance to the study sites.

- *Priorities:* None.
- *Eligible Applicants:* The study sites and Coordinating Center applicants should be public or domestic private non-profit entities, including community-based organizations, units of State or local governments, tribes, universities or for-profit organizations. While not required in order to submit an application, it is expected that applicants will have expertise in large-scale multisite demonstration studies.

Note: Separate applications are being solicited for study sites and a Coordinating Center to participate in this collaborative study. If an institution chooses to apply for multiple awards, there should be no overlap in research/evaluation and support personnel.

- *Cooperative Agreement/Amounts:* It is estimated that up to $6 million (total costs, i.e., direct and indirect costs) will be available to support up to seven study site awards and one Coordinating Center under this GFA in FY 1998. The amount of grant funds used by study sites for mental health and/or substance abuse services cannot exceed one third of the total budget (direct and indirect costs).
- *Catalog of Federal Domestic Assistance:* 93.230.
- *Program Contact:* For programmatic or technical assistance (not for application kits), contact: Elaine Dennis, Senior Health Policy Analyst, Office of the Associate Director for Medical Affairs, Center for Mental Health Services, Substance Abuse and Mental Health Services, Administration, Parklawn Building, Room 15–81, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–7817.
- For grants management assistance, contact: Stephen Hudak, Grants Management Specialist, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 15C–05, 5600 Fishers Lane, (301) 443–4456.
- *Application Kits:* Application kits are available from: Center for Mental Health Services, Knowledge Exchange Network (KEN), P.O. Box 42490, Washington, D.C. 20015, Voice: (800) 789–2647, TTY: (301) 443–9006, FAX: (301) 984–8796.

The full text of the GFA is available electronically via the Center for Mental Health Services Knowledge Exchange Network (KEN) on www.mentalhealth.org, voice line 800–789–2647, or Electronic Bulletin Board 800–790–2647 (please reference GFA No. SM 98–007).

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 1998 activity described above is/is not subject to the Public Health System Reporting Requirements.

6. PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

7. Executive Order 12372

Applications submitted in response to all FY 1998 activities listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Office of Extramural Activities Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: February 22, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–4965 Filed 2–25–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA); Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in March 1998.

A summary of the meeting may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA, Office of Program Planning and Coordination (OPPC), Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301) 443–7390.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with

the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(3), (4), and (6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Date: March 16–18, 1998.

Place: Residence Inn, Calvert Room, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Closed: March 16–17, 1998, 9:00 a.m.–5:00 p.m.; March 18, 1998, 9:00 a.m.–adjournment.

Contact: Michael S. Backenheimer, Ph.D., Room 17–89, Parklawn Building, Telephone: (301) 443–4783 and FAX: (301) 443–3437.

Dated: February 20, 1998.

Jeri Lipov,

Committee Management Officer, SAMHSA.

[FR Doc. 98–4849 Filed 2–25–98; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in March 1998.

A summary of the meeting may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA, Office of Program Planning and Coordination (OPPC), Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. *Telephone:* (301) 443–7390.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(3), (4), and (6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel II

Meeting Date: March 2, 1998

Place: Rockwall II Building 9th Floor, Conference Room #2 5515 Security Boulevard Rockville, MD 20852

Closed: March 2, 1998 9:30 a.m.—Adjournment

Contact: George Lewis, Room 17–89, Parklawn Building, Telephone: (301) 443–3042 and FAX: (301) 443–3437.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: February 20, 1998.

Jeri Lipov,

Committee Management Officer, SAMHSA.

[FR Doc. 98–4919 Filed 2–25–98; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent to Revise and Combine the Alaska Peninsula/Becharof National Wildlife Refuge Complex Comprehensive Conservation Plans and to Prepare an Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice and solicitation of comments.

SUMMARY: The U.S. Fish and Service (Service) intends to revise and combine the comprehensive conservation plans (comprehensive plans) for the Alaska Peninsula and Becharof National Wildlife Refuges, Alaska. The Service furnishes this notice in compliance with the National Environmental Policy Act (NEPA) and its implementing regulations to advise agencies and the public of its intentions, and to obtain suggestions and information regarding the scope of issues to be addressed in the revised comprehensive management plan and its accompanying environmental impact statement. The outdated plans need to be revised to respond to changed laws, regulations, and circumstances. A revised plan covering the entire refuge complex will enable the Service to better manage the Refuge and will reduce the general management direction to one document from the 12 documents covering the topics today.

DATES: Comments should be received no later than June 1, 1998.

ADDRESSES: Address comments to Bob Steven, Refuge Planning Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503, telephone (907) 786–3499; fax (907) 786–3965.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Helen Clough, Refuge Planning, at (907) 586–7240 ext. 239, fax (907) 586–9391.

SUPPLEMENTARY INFORMATION:

The Alaska National Interest Lands Conservation Act (NILCA) (16 U.S.C. 3101 et seq.) was signed into law on December 2, 1980. The broad purpose of this law is to provide for the disposition and use of a variety of federally owned lands in Alaska. Section 303 of ANILCA established Alaska Peninsula and Becharof National Wildlife Refuges. ANILCA states that the purposes for which Alaska Peninsula and Becharof Refuges were established and shall be managed include: to conserve fish and wildlife populations and habitats in their natural diversity; to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; to provide the opportunity for continued subsistence uses by local residents; and to ensure water quality and necessary water quantity within the refuge.

The Alaska Peninsula comprehensive plan was completed in 1987. The Becharof comprehensive plan was completed in 1985. In 1988, draft and final supplemental environmental impact statements and records of decision were prepared for the Alaska Peninsula and Becharof comprehensive plans addressing their wilderness reviews.

In 1987, the Service decided to manage the Ugashik and Chignik units of Alaska Peninsula Refuge, the 5,800 acre Seal Cape area of Alaska Maritime Refuge, and Becharof Refuge as a "complex." These units share a contiguous boundary and common resources and resource issues. A public use management plan was prepared for the refuge complex and approved in 1994. All together, there are 12 documents that comprise the comprehensive plan for the refuge complex. The Pavlof Unit of the Alaska Peninsula Refuge is managed as part of the Izembek National Wildlife Refuge Complex and changes to its management will be addressed when that plan is revised.

Section 304(g) of ANILCA states that comprehensive conservation plans shall

be prepared and "from time to time" revised for each refuge. Before plans are prepared the following shall be identified and described: the populations and habitats of the fish and wildlife resources of the refuge; the special values of the refuge, as well as any other archaeological, cultural, ecological, geological, historical, paleontological, scenic, or wilderness value of the refuge; areas of the refuge that are suitable for use as administrative sites or visitor facilities, or for visitor services; present and potential requirements for access; and significant problems which may adversely affect the populations and habitats of fish and wildlife. Plans shall: designate areas within the refuge according to their respective resources and values; specify programs for conserving fish and wildlife and maintaining the special values of the refuge; specify uses which may be compatible with the major purposes of the refuge; and identify opportunities to be provided for fish and wildlife-oriented recreation, ecological research, environmental education and interpretation of refuge resources and values, if they are compatible with the purposes of the refuge.

In preparing and revising plans consultation is required with appropriate State agencies and Native corporations and public hearing are to be held at "locations as may be appropriate to insure that residents of local villages and political subdivisions of the State which will be primarily affected by the administration of the refuge concerned have opportunity to present their views with respect to the plan or revisions." Before adopting a plan, public notice in the **Federal Register** and an opportunity for public views and comment was required.

The plans state that every three to five years the Service will review public comments, local and state government recommendations, staff recommendations, and research studies to determine if revisions to the plan are necessary. If major changes are proposed, public meetings may be held, or new environmental assessment/environmental impact statements may be necessary. Full review and updating of the plans will occur every 15 to 20 years, more often if necessary.

In 1996 the Service began reviewing the numerous documents that comprise the comprehensive plan for the complex to determine if the "plan" should be revised. A number of discrepancies between the two plans were noted including: (1) Conflicting management direction (where one plan allows an activity in a management category and the other plan does not); (2) topics are not addressed by both plans (one plan has management direction for a topic and the other plan does not mention the topic); and (3) format inconsistencies (in some cases the management direction is organized so differently that it is almost impossible to accurately compare). Much of the management direction in the plans is out of date due to changes in laws, regulations, and circumstances (e.g. federal management of subsistence hunting on Alaska refuges which began in 1991). Therefore, the Service decided to revise the plans and prepare one revised comprehensive conservation plan for the refuge complex.

This notice formally begins the revision of the comprehensive plan for the Alaska Peninsula/Becharof National Wildlife Refuge Complex. In addition to soliciting public comments through this notice, public comments on issues to be addressed in the revision will be solicited through a newsletter to be mailed to approximately 6,000 individuals and organizations on the mailing list. The comprehensive plan revision will be one agenda topic during a series of community meetings to be held in Chignik, Chignik Lagoon, Chignik Lake, Egegik, Ivanof Bay, Naknek, Perryville, Pilot Point, Port Heiden, and South Naknek in March and April 1998. Once issues are identified, the Service will identify options to address the issues and prepare a draft comprehensive plan and draft environmental impact statement. This document is scheduled to be released for public review in the fall of 1999. After public review and comment on the draft plan and environmental impact statement, including public hearings, a final plan and environmental impact statement will be prepared and released.

Electronic Access

Interested persons may submit comments and data by electronic mail (E-mail) to: Bob__Stevens@fws.gov.

Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. WordPerfect file format up to Version 6.1 is also acceptable. Additional information may be obtained electronically by contacting Helen Clough at Helen__Clough@fws.gov.

Dated: February 17, 1998.

David B. Allen,

Regional Director, Anchorage, Alaska.

[FR Doc. 98–4936 Filed 2–25–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Proposed Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the Bureau's estimate of the burden of the collection information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: User Survey for National Biological Information Infrastructure.

OMB Approval Number: New Collection.

Abstract: The U.S. Geological Survey is leading the cooperative development of the National Biological Information Infrastructure (NBII). The NBII is a distributed electronic federation of biological data and information which is available publicly on the Internet/World Wide Web (http://www.nbii.gov). Internet users from government agencies, non-government organizations, universities, and from the general public use the NBII to locate and access data and information on biological resources and resource issues. In order to better understand the requirements of NBII users and to continue to make improvements to the NBII system, both in content and in functionality, a voluntary survey will be conducted whereby "visitors" to the

NBII World Wide Web site will have the opportunity (optional) to provide feedback on the utility and effectiveness of the NBII operation and contents in meeting their needs.

Bureau Form Number: None.

Frequency: One time per respondent.

Description of Respondents: Individuals or households, Federal Government, State, Local, or Tribal Government, Business or other for-profit, Not-for-profit institutions.

Estimated completion time: 3 minutes per respondent (approximate).

Number of respondents: 320 per month (estimated based on an average of 1600 different visitors to the NBII World Wide Web site each month, and, of the total number of site visitors, an estimated survey response rate of 20 percent).

Burden hours: 192 hours. (Estimate of annual burden hours based on an estimated 20 percent survey response rate for an average of 1600 web site visitors per month, and an estimate of 3 minutes to complete each survey.)

Dated: February 13, 1998.

Dennis B. Fenn,

Chief Biologist.

[FR Doc. 98–4863 Filed 2–25–98; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Operation and Maintenance Rate Adjustment: San Carlos Irrigation Project, Arizona

ACTION: Notice of Proposed Irrigation Operation and Maintenance (O&M) Rate Adjustment.

SUMMARY: On September 17, 1997, a notice was published in the **Federal Register**, Volume 62, Number 180, Page 48882 (62 FR 48882), by the Bureau of Indian Affairs proposing to change the assessment rates for operating and maintaining the San Carlos Irrigation Project for 1998 and 1999 and subsequent years. See 62 FR 48882 for additional information concerning the proposed rate change. The notice of proposed rate adjustment provided a 30-day period for public comment. At the written request of the San Carlos Irrigation and Drainage District, a second public comment period is being provided for the proposed change in the assessment date for 1999 and subsequent years.

DATES: Interested parties may submit comments on the proposed rate adjustment. Comments must be submitted on or before March 30, 1998.

ADDRESSES: All comments concerning the proposed rate change must be in writing and addressed to: Director, Office of Trust Responsibilities, Attn.: Irrigation and Power, MS–4513–MIB, Code 210, 1849 "C" Street, NW, Washington, D.C. 20240, Telephone (202) 208–5480.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385). The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8.1A, and memorandum dated January 25, 1994, from the Chief of Staff, Department of the Interior, to the Assistant Secretaries and heads of bureaus and offices.

Dated: February 17, 1998.

Kevin Gover,

Assistant Secretary, Indian Affairs.

[FR Doc. 98–4912 Filed 2–25–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–038–6330–01 24 1A]

Extension of Currently Approved Information Collection; OMB Approval Number: 1004–0173

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request extension of approval to collect information from those contractors who are awarded contracts under the Jobs-in-the-Woods Program. This program was created through the President's Northwest Economic Adjustment Initiative to create jobs in the timber-impacted communities of Washington State, Oregon and northern California. BLM collects this information to gauge the effectiveness of the Jobs-in-the-Woods Program in achieving its intent of employing workers displaced by severe reductions in timber harvests in the northwestern United States in recent years.

DATES: Submit comments on the proposed information collection by April 27, 1998.

ADDRESSES: Comments may be mailed to: Bureau of Land Management, Oregon State Office (OR–910), 1515 SW Th Ave., Portland, Oregon 97201, or by way of Internet to brheiner@or.blm.gov.

FOR FURTHER INFORMATION CONTACT: Robert Rheiner, Jr., (503) 952–6015.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), B.M. is required to provide 60-day notice in the **Federal Register** concerning an approved collection of information to solicit comments on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (2) the accuracy of the agency's estimate of the burden of collecting the information, including the validity of methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collecting the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Jobs-in-the-Woods Program is a result of the President's Northwest Initiative to provide funding for assisting workers displaced by reduced logging activities on public lands in the Pacific northwest. The funding is intended for jobs which would restore forest ecosystems in the region. The Jobs-in-the-Woods Employment Evaluation, which is the subject of this information collection, consists of four items of information to be requested in each Jobs-in-the-Woods contract issued. The BLM Contracting Officer supplies the contractors with these four items before each Jobs-in-the-Woods contract is signed. The four items are: (1) The number of workers employed on the contract, including managers, supervisors and support personnel; (2) the number of days these workers worked on the contract, the total being based on an 8-hour work day; (3) the total amount of wages and benefits paid to these workers; and (4) the number of workers, if any, considered to be displaced timber workers. Each contractor must submit responses to these items to BLM's Contracting Officer, along with the final invoice, before being paid the final contract amount.

BLM and other Federal land management agencies, as well as Administration officials and Congress,

use this information to gauge the effectiveness of the Jobs-in-the-Woods Program in employing displaced timber workers and in restoring damaged forest ecosystems.

Based on past experience, BLM estimates that approximately 125 contractors will spend 8 hours each reading the instructions, collecting the data and reporting the data to BLM. The total estimated information burden is 1,000 hours. The frequency of response is once, as a condition of receiving final payment on each contract.

Dated: February 23, 1998.

Carole J. Smith,

Information Collection Officer.

[FR Doc. 98–4913 Filed 2–25–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–128–6332–00; GP8–0100]

Establishment of Supplementary Rules

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Proposed establishment of supplementary rules for the Loon Lake Recreation Area.

SUMMARY: The Coos Bay District is proposing to establish new supplementary rules to set new camping limits at the Loon Lake Recreation Area. The rules apply only to the Loon Lake Recreation Area in Douglas County. These rules are designed to augment and further define the existing Code of Federal Regulations, and to ensure safe, orderly, enjoyable and environmentally sound visitation by the public. These rules superseded the camping limit set forth and published April 8, 1996 pertaining to the Loon Lake Recreation Area.

Camping Limits

Maximum length of stay in the campground is 14 days, after which the occupant must vacate the campground for a minimum of 2 days. Occupants may return for an additional stay of 14 days after the minimum 2-day vacancy. Maximum stay is 28 days in any 30-day period.

Reserved reservation campsites will have a maximum length of stay of 10 days after which the occupant must vacate the campground for a minimum of 2 days vacancy. Maximum stay is 20 days in any 30-day period.

Comment Period

This will become effective 45 days after it has been published in the **Federal Register** notices, if no substantiative comments are received from the general public.

Dated: February 17, 1998.

Neal R. Middlebrook,

Acting District Manager.

[FR Doc. 98–4929 Filed 2–25–98; 8:45 am]

BILLING CODE 4310–84–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–1220–00]

Occupancy and Camping Closure on Certain Public Lands Managed by the Bureau of Land Management, Las Vegas Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Occupancy and camping closure on selected public lands in Clark County, Nevada.

SUMMARY: The Manager of the Las Vegas Field Office announces an occupancy and camping closure on selected public lands under its administration. The increase in population and growth in employment in the Las Vegas area, has attracted many short term and transient residents and workers. Many of these individuals set up residence on public lands under the guise of "camping." This problem is particularly prone to occur on public lands within the urban Las Vegas Valley. Trash accumulations and human refuse are impacting public and private lands. There are no public facilities on any of these lands. The existing 14 day camping stay limit has not been effective in correcting this situation. In addition, many of these lands are now adjacent to, or included within, private residential and commercial developments due to the inter-mixed public-private land ownership pattern in Las Vegas Valley. This action is being taken to help ensure public safety, prevent unnecessary environmental degradation and prevent long-term occupancy of public lands.

EFFECTIVE DATE: The closure will be effective March 12, 1998.

Closure Area

Public Lands affected are within the following generally described area and townships: Lake Mead Blvd. (State Route 147), on the South; West to the Red Rock Canyon National Conservation Area Boundary; on the North Lee Canyon (State Route 156) and the southern boundary of the Desert Game Range; and on the East the Lake Mead National Recreation Area Boundary. Including lands within Townships 17 S to T 22 and Ranges 59 E to 63 E MDM.

Maps depicting the area affected by this closure order are available for public inspection at the Las Vegas, Field Office, Bureau of Land Management.

Exceptions to Closure

Camping locations which may be designated by the Las Vegas Field Office Manager for over night use. Such designations may be by posting of appropriate signs, by publications in the federal register, or be made available to the public by other means deemed appropriate by the authorized officer.

Closure Restrictions

Unless otherwise authorized, within the closure area no person shall:

a. Camp or engage in camping.

b. Park, stop, or stand personal property, whether attended or unattended.

c. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement, create a safety hazard, or endanger any person, property, or natural feature. Vehicles so parked are subject to citation and impoundment at the owner's expense.

d. Take, drive, or operate any vehicle through, around or beyond a restrictive sign, barricade, fence, or traffic control barrier or device.

e. Fail to follow orders or directions of an authorized officer relating to this closure order.

f. Obstruct, resist, or attempt to elude a law enforcement officer, or fail to follow their orders or directions.

g. Unless specifically addressed by regulations set forth in 43 CFR, the laws of the State of Nevada shall govern the use and operation of vehicle. Such state law which are now or later may be in effect are here by adopted and made part of this closure.

Definitions

Camp or Camping means the erection of a tent or shelter, preparing a sleeping bag or other bedding material for use, or the parking of a vehicle, motor home, or trailer for the apparent purpose of sleeping or overnight occupancy.

Personal Property includes but is not limited to bicycles, vehicles (whether propelled by living or non-living power sources), motor vehicles, trailers, tents campers, pets, and livestock.

This closure order is issued under the authority of 43 CFR 8364.1. Violation of any of the terms, conditions, or restrictions contained within this closure order, may subject the violator to citation or arrest, with a penalty of fine or imprisonment or both as specified by law.

FOR FURTHER INFORMATION CONTACT: Dave Wolf, Recreation Manager, or Ron Crayton, Ranger, Ken Burger, Ranger, at the Bureau of Land Management, Las Vegas, Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada 89108, telephone number (702) 647–5000.

Dated: February 17, 1998.

Michael F. Dwyer,

District Manager.

[FR Doc. 98–4927 Filed 2–25–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–1220–00]

Shooting Closure on Certain Public Lands Managed by the Bureau of Land Management, Las Vegas Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Shooting closure on selected public lands in Clark County, Nevada.

SUMMARY: The Manager of the Las Vegas Field Office announces a Shooting Closure on selected Public Lands, under it's administration within the Las Vegas Valley. The Closure is intended to compliment and supplement an existing Clark County shooting closure. The rapid increase in population and growth of the Las Vegas Valley has created conflicts between new urban areas and traditional public land users accustomed to target shooting on public lands around Las Vegas. There have been incidents of indiscriminate shooting toward residential areas and other public land users, destruction of property, injury, and one fatality. Trash accumulation from items being used as targets are impacting public lands. This action is being taken to help ensure public safety, prevent environmental degradation, and provide consistency with the Clark County shooting closure. This Closure does not apply to hunting under the laws and regulations of the State of Nevada.

EFFECTIVE DATE: The closure will be effective March 12, 1998.

Closure Area

Public Lands affected are within the following generally described area and townships: Lake Mead Blvd. (State Route 147), on the South; West to the Red Rock Canyon National Conservation Area Boundary; on the North Lee Canyon (State Route 156) and the southern boundary of the Desert Game Range; and on the East the Lake Mead National Recreation Area Boundary. Including lands within Townships 17 S to 22 S and Ranges 59 E to 63 E MDM. Also included but not described above are public lands contained within the portions of the existing Clark County Shooting Closure that are outside the above boundaries (Goodsprings Township).

Maps depicting the area affected by this closure order are available for public inspection at the Las Vegas, Field Office, Bureau of Land Management, 4765 W. Vegas Drive, Las Vegas, Nevada.

Exceptions to Closure

(1) Hunting with valid state hunting license and in accordance with the laws and regulations of the State of Nevada; and (2) Areas which may be designated by the Las Vegas Field Office Manager as target shooting areas. Such designation may be made by the publishing of notices in the local media and by the posting of appropriate signs marking the boundary of such area(s).

Closure Restrictions

Unless otherwise authorized, within the closure area no person shall:

a. Discharge any firearm.

b. Possess an unregistered firearm, when registration of firearms is required by the State of Nevada or Clark County.

c. Possess an illegally obtained firearm.

d. Possess any firearm in violation of Federal, State or County regulations.

e. Unless specifically addressed by regulations set forth in 43 CFR, the laws and regulations of the State of Nevada and Clark County shall govern the use and possession of firearms. Such state and county laws and regulations which are now or may later be in effect are here by adopted and made part of this closure.

Definitions

Firearm: Any weapon capable of firing a projectile including but not limited to rifle, shotgun, handgun, BB-gun, pellet gun, etc.

This closure order is issued under the authority of 43 CFR 8364.1. Violations of any of the terms, conditions, or restrictions contained within this closure order, may subject the violator to citation or arrest, with penalty of fine or imprisonment or both as specified by law.

FOR FURTHER INFORMATION CONTACT: Dave Wolf, Assistant District Manager, Recreation; Ron Crayton, Law Enforcement Ranger; and Ken Burger, Law Enforcement Ranger; Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada 89108, telephone number (702) 647–5000.

Dated: February 17, 1998.

Michael F. Dwyer,

Field Office Manager.

[FR Doc. 98–4926 Filed 2–25–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–1220–00]

Off-Highway Vehicle Closure of Certain Public Lands in the Las Vegas Valley Managed by the Bureau of Land Management, Las Vegas Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure of selected public lands in Clark County, Nevada to use by off highway vehicles.

SUMMARY: The Field Office Manager of the Las Vegas Field Office announces the Closure of certain public lands under its administration in the Las Vegas Valley to Off Highway Vehicle (OHV) use. The lands included are public lands managed by the Bureau of Land Management which, due to urban expansion, are now included with or are immediately adjacent to urban areas developed for residential or business purposes. This action is being taken to reduce the amount of dust and particulate matter generated from the use of the public lands, ensure health and public safety and prevent environmental degradation. This action will assist local governmental efforts to meet Environmental Protection Agency air quality standards and to reduce dust production from unpaved roads within the Las Vegas Valley Non-attainment Area.

EFFECTIVE DATE: March 12, 1998.

Closure Area

Public Lands affected are within the following generally described area and townships: Lake Mead Blvd. (State Route 147), on the South; West to the Red Rock Canyon National Conservation Area Boundary; on the North, Lee Canyon (State Route 156) and the southern boundary of the Desert Game Range; and on the East the Lake Meade National Recreation Area Boundary. Including lands within Townships 17 S to 22 S and Ranges 59 E to 63 E MDM. Maps depicting the area affected by this closure order are available for public inspection at the Las Vegas Field Office, Bureau of Land Management, 4765 W. Vegas Drive, Las Vegas, Nevada.

Exceptions to Closure

(1) OHV use areas which may be designated by the Las Vegas Field Office Manager. Such designations may be made by the publishing of notice in the local media and by the posting of appropriate signs and marked boundaries; (2) Roads and trails designated and signed for OHV use; and (3) Roads included within transportation systems managed by Clark County and/or the cities of Las Vegas, North Las Vegas, and Henderson.

Closure Restrictions

Unless otherwise authorized, within the closure area no person shall:

a. Operate an OHV or motor vehicle off of designated roads and/or trails within the area closure.

b. Take, drive, or operate any OHV or motor vehicle through, around or beyond a restrictive sign, barricade, fence, or traffic control barrier or device.

c. Failure to follow orders or directions of an authorized officer relating to this closure order.

d. Obstruct, resist, or attempt to elude a law enforcement officer, or fail to follow their orders or directions.

e. If under 21 years of age, possess or consume any alcoholic beverages.

f. Unless specifically addressed by regulations set forth in 43 CFR, the laws of the State of Nevada and Clark County shall govern the use and operation of motor vehicles. Such state and county laws which are now in effort or may be added later, are hereby adopted and made part of this closure.

Definitions

Designated Road means a road or roads identified on a map of designated roads which will be available for public inspection at the Las Vegas Field Office, Bureau of Land Management.

Designated Trails means a trail, trails or routes, identified on a map or by appropriate posted signs.

Designated Areas means areas that are designated within the closed area by the Las Vegas Field Office Manager as OHV use areas. These areas will be signed with set boundaries. Maps will be made available at the Las Vegas Field Office. "Off-Highway Vehicle" (OHV) means any motorized or non-motorized mechanized vehicle designed for or capable of travel off maintained roadways including but not limited to 2 and 4 wheel drives vehicles, motorcycles, ATVs, and mountain bikes.

This closure order is issued under the authority of 43 CFR 8364.1. Violation of any of the terms, conditions or restrictions contained within this closure order, may subject the violator to citation or arrest, with a penalty of fine or imprisonment or both as specified by law.

FOR FURTHER INFORMATION CONTACT: Dave Wolf, Assistant District Manager, Recreation; Ron Crayton, Law Enforcement Ranger; or Ken Burger, Law Enforcement Ranger, at the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada 89108, Telephone Number (702) 647–5000.

Dated: February 17, 1998.

Michael F. Dwyer,

Field Officer Manager.

[FR Doc. 98–4925 Filed 2–25–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–027–1220–00]

Modification of Firearms Closure To Allow the Use of Shotguns During the Spring Turkey Season on Howrey Island, Treasure County, MT

AGENCY: Bureau of Land Management, Montana, Miles City District, Powder River Resource Area, Interior.

SUMMARY: On May 31, 1994, the Bureau announced, through the **Federal Register**, a rule to close Howrey Island to firearms from December 16 through August 31 annually. During the rulemaking BLM inadvertently overlooked the spring turkey season. Therefore, BLM is proposing to change the rule as follows: The area of public land known as Howrey Island is closed to discharge of firearms from December 16 through August 31 annually, except that shotguns are allowed during the legal spring turkey hunting season. For the purpose of this rule, firearms are rifles, pistols and shotguns. The public land affected by this closure is described as:

Principal Meridian, Montana

T. 6N., R. 35E.,
Sec. 15, Lots 5, 6, 7, 8, 9, SW¼SE¼
Sec. 21, Lot 5
Sec. 22, Lots 1, 2, 6, 7, 8 and 9
Consisting of 864.3 acres of surface estate.

DATES: Comments on the proposed rule change must be submitted on or before April 6, 1998.

ADDRESSES: Comments may be submitted to Area Manager, Powder River Resource Area, 111 Garryowen Rd, Miles City, MT 59301.

FOR FURTHER INFORMATION CONTACT: Todd Christensen, Area Manager, BLM, Powder River Resource Area, 111 Garryowen Rd, Miles City, MT 59301, or call (406) 233–2829.

SUPPLEMENTARY INFORMATION: Barring any comments that cause BLM to reconsider the modification, the proposed rule will become a final rule after the public comment period and without further public notice. Opening this area will require public participation and an opening order published in the **Federal Register**. Authority for this action is outlined in Title 43, Code of Federal Regulations, subpart 8364 (43 CFR 8364.1). Any person who fails to comply with this closure is subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: February 17, 1998.

Todd Christensen,

Powder River Area Manager.

[FR Doc. 98–4930 Filed 2–25–98; 8:45 am]

BILLING CODE 4310–DN–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–00] ES–49341, Group 34, Missouri

Notice of Filing of Plat of Survey; Missouri

The plat, in three sheets, of the survey of the Lock and Dam No. 26 acquisition boundary, Township 48 North, Range 6 East, Fifth Principal Meridian, Missouri, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on March 30, 1998.

The survey was requested by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., March 30, 1998.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: February 17, 1998.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 98–4920 Filed 2–25–98; 8:45 am]

BILLING CODE 4310–GJ–M

OVERSEAS PRIVATE INVESTMENT CORPORATION MARCH 10, 1998 BOARD OF DIRECTORS MEETING

Sunshine Act Meeting

TIME AND DATE: Tuesday, March 10, 1998, 1:00 PM (OPEN Portion), 1:30 PM (CLOSED Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW., Washington, DC.

STATUS: Meeting OPEN to the Public from 1:00 PM to 1:30 PM. Closed portion will commence at 1:30 PM (approx.)

MATTERS TO BE CONSIDERED:

1. President's Report
2. Approval of December 9, 1997 Minutes (Open Portion)
3. Meeting schedule through December, 1998

FOR FURTHER INFORMATION CONTACT: (Closed to the Public 1:30 PM).

1. Finance Project in Yemen
2. Insurance Project in Thailand
3. Insurance Project in Thailand
4. Insurance Project in Russia
5. Approval of December 9, 1997 Minutes (Closed Portion)
6. Pending Major Projects
7. Report on OPIC's Small Business Initiative

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: February 24, 1998.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 98–5123 Filed 2–24–98; 2:37 pm]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA NUMBER 170M3]

Task Force on Suspicious Orders Meeting

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Suspicious Orders Task Force will be held on April 07–08, 1998. The panel will meet from 9:00 a.m. to 5:00 p.m. both days at Adam's Mark Hotel, Fourth and Chestnut, St. Louis, Missouri 63102.

This meeting will be open to the public on a space available basis. Any interested person may observe meetings or portions thereof and shall be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Designated Federal Official (DFO) in attendance.

In addition to presenting limited verbal statements, interested parties shall be permitted to file written statements with Task Force members. Written statements will be taken at any time during the meeting and distributed to the Task Force as soon as feasible. Presenters of written statements are requested to provide 25 copies of the statement to expedite distribution to the Task Force members. If the presenter does not/can not provide the requested copies, the DFO will arrange for the copies and the Task Force will consider the statement when the copies are available. Verbal comments may be limited in time by the DFO to insure adequate opportunity for testimony by as many presenters as possible. Any person wishing to submit agenda items or desiring to present formal testimony should contact the DFO at least ten (10) days prior to the meeting. This will be the last opportunity for the public to present testimony before the TASK FORCE. Any future meetings will be solely for the purpose of composing the finished report to be submitted to the attorney general.

DATES: April 07, 08, 1998.

FOR FURTHER INFORMATION CONTACT: Michael Leser, Program Analyst, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–4026, Facsimile (202) 307–8570.

SUPPLEMENTARY INFORMATION:

If you need special accommodations due to a disability, please contact the Office of Diversion Control, Drug Enforcement Administration, 600 Army Navy Drive, Arlington, Virginia, 22202, (202) 307–4026 at least seven (7) days prior to the meeting.

Dated: February 18, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 98–4943 Filed 2–25–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health (MACOSH); Request for Nominations

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Request for nominations of persons to serve on MACOSH.

SUMMARY: OSHA announces its intent to renew the charter of the Maritime Advisory Committee for Occupational Safety and Health (MACOSH). MACOSH will advise the Secretary of Labor on matters relating to occupational safety and health programs, policies and standards in the maritime industries of the United States. The Committee will consist of approximately 15 members and will include a cross-section of individuals representing the following affected interests: Employers, employees; federal and state safety and health organizations; professional organizations; and national groups setting standards. OSHA invites interested parties to submit nominations for Committee membership.

DATES: Nominations for MACOSH membership should be postmarked by April 13, 1998.

ADDRESSES: Nominations for MACOSH membership should be sent to: Mr. Larry Liberatore, Office of Maritime Standards, Room N–3621, Occupational Safety and Health Administration (OSHA), U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, OSHA, Office of Information and Consumer Affairs, Room N–3647, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210; Telephone:(202) 219–8151.

SUPPLEMENTARY INFORMATION:

I. Background

MACOSH was established to advise the Secretary on various issues pertaining to the maritime industry, including streamlining regulatory efforts and improving training and outreach programs. In addition, MACOSH recommends enforcement initiatives that will help improve the working conditions and the safety and health of men and women working in the maritime industry.

II. Nominations

The agency is seeking men and women with an interest in the safety and health of workers in the maritime industry. Interested persons may submit their own name or the name of another whom they believe to be qualified to serve on MACOSH. The Agency is looking for nominees to represent the following interests:

Employees
Employers
State or Federal Safety and Health Organizations
Professional Organizations or National Standards-Setting Groups

The Agency invites all persons appropriately qualified by experience or training to apply for membership on this important committee. Nominations of women and minorities are encouraged.

Nominations and applications should be submitted to Mr. Larry Liberatore, Office of Maritime Standards, Room N–3621, Occupational Safety and Health Administration (OSHA), U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D.C. 20210.

III. Authority

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D.C. 20210, pursuant to Sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 and the Federal Advisory Committee Act, 5 U.S.C. App.2.

Signed at Washington, D.C. this 20th day of February 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–4987 Filed 2–25–98; 8:45 am]

BILLING CODE 4510–26–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. H–372]

RIN: 1218–AB58

Metalworking Fluids Standards Advisory Committee: Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Metalworking Fluids Standards Advisory Committee: Notice of meeting.

SUMMARY: Notice is hereby given that the Metalworking Fluids Standards Advisory Committee (MWFSAC), established under section 7 of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor on appropriate actions to protect workers from the hazards associated with occupational exposure to metalworking fluids, will meet in Sharonville (Cincinnati), Ohio on Wednesday and Thursday, March 25 and 26, 1998 at the Woodfield Suites Hotel, 11029 Dowlin Drive (1–800–338–0008).

DATES: The meeting will be held on March 25 and 26, 1998. On March 25, the meeting will begin at 9:00 A.M. and adjourn at approximately 5:00 P.M. The meeting will reconvene at approximately noon on March 26, after an information gathering visit to the Ford Motor Company Sharonville plant by various working groups of the committee, and will adjourn at approximately 4:00 P.M.

ADDRESSES: The meeting will take place at the Woodfield Suites Hotel, 11029 Dowlin Drive, Sharonville (Cincinnati), Ohio 45211. Mail comments, views or statements in response to this notice to Dr. Peter Infante, U.S. Department of Labor, OSHA, Directorate of Health Standards Programs, Metalworking Fluids Standards Advisory Committee, Room N–3718, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, OSHA, (202) 219–8151.

SUPPLEMENTARY INFORMATION: All interested persons are invited to attend the public meetings of the Metalworking Fluids Standards Advisory Committee, including this one, at the time and place indicated above. Individuals with disabilities wishing to attend should contact Theresa Berry at (202) 219–8615 ext. 106 (Fax: 202–219–5986) no later than March 20, 1998, to obtain appropriate accommodations.

Meeting Agenda

This meeting will focus on technology used in large plants to control employee exposure to metalworking fluids. There will be presentations and the committee will discuss general techniques used to control metalworking fluid mist; considerations in selecting and implementing metalworking fluid control technology; ventilation considerations for the design, installation and use of machine tools using metalworking fluids; performance evaluation of mist control filtration systems; exposure comparisons between transfer lines with different levels of control technology on mist control performance, problems with maintenance of control technology and economic and technological feasibility of reducing metalworking fluid mist exposure in the American automobile industry. The Metalworking Fluids Standards Advisory Committee will meet as a whole and also in small working groups.

Public Participation

Written data, views or comments for consideration by the MWFSAC on the various agenda items listed above may be submitted, preferably with 20 copies, to Dr. Peter Infante at the address provided above. Submissions received by March 20, 1998 will be provided to the members of the committee and will be included in the record of the meeting. At this meeting it is unlikely that there will be any time for oral presentations by members of the public. However, anyone wishing to make a presentation to the committee should notify Dr. Peter Infante of this fact at the address listed above. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Requests to make oral presentations to the Committee may be granted if time permits.

Authority: This notice is issued under the authority of sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR part 1912.

Signed at Washington, D.C. this 20th day of February, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–4922 Filed 2–25–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10410, et al.]

Proposed Exemptions; SmartRetirement: The OLDE 401(k) Plan

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

SmartRetirement: The OLDE 401(k) Plan (the Plan) Located in Detroit, MI

[Application No. D–10410]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, shall not apply, (1) effective October 4, 1996, to the past and continuing receipt, by OLDE Discount Corporation (OLDE Discount), a wholly owned subsidiary of OLDE Financial Corporation (OLDE Financial), the Plan sponsor, of a portion of certain distribution fees that are paid by third party mutual funds (the Funds) to OLDE Discount pursuant to Rule 12b–1 (Rule 12b–1; the 12b–1 Fees) under the Investment Company Act of 1940 (the 1940 Act) and which are attributable to Plan assets that are invested in the Funds; and (2) the proposed cash rebate of such 12b–1 Fees, by OLDE Discount, to either the Plan or to the individually-directed accounts (the Accounts) of the participants in the Plan.[2]

The transactions are conditioned on the requirements set forth below in Section II.

Section II. General Conditions

(a) The decision to invest the assets of an Account in the Funds is made by a Plan participant and not by OLDE nor is OLDE providing "investment advice" to the participant within the meaning of section 3(21) of the Act.

(b) No sales commissions, other than 12b–1 Fees, are paid by an Account in connection with the purchase or sale of shares in the Funds and no redemption fees are paid by an Account with respect to the sale of shares of the Funds.

(c) The Plan, or if applicable, Account, receives a rebate from OLDE Discount in the form of cash equal to such Plan's or Account's *pro rata* portion of all 12b–1 Fees charged by OLDE Discount to the Funds under a rebate program (the Rebate Program).

(d) For purposes of the Rebate Program:

(1) During the course of each calendar year, as it receives 12b–1 Fees from the Funds, OLDE Discount calculates that portion of the 12b–1 Fees that are attributable to the Plan, including interest based on the Federal Funds Rate plus 2 percent.

(2) Within 30 days of receipt by OLDE Discount of the 12b–1 Fees, OLDE Discount separates and transfers the Plan's allocable portion of the 12b–1 Fees, together with interest earned on such fees (as determined in Step 1 above), to a money market account that has been established in the Plan's name with an unrelated bank, Comerica Bank of Detroit, Michigan (Comerica).

(3) The Plan may draw upon its Comerica money market account during the course of the year for the purpose of paying the Plan's administrative expenses owed to third parties.

(4) Immediately following the end of each calendar year, any remaining rebated 12b–1 Fees that are not drawn upon, after the payment of the Plan's administrative expenses, are allocated by the Plan to the participant Accounts.

(5) OLDE establishes and maintains a system of internal and external accounting controls for the Rebate Program.

(6) OLDE retains an independent auditor outside of the control of OLDE to audit, on an annual basis, OLDE Discount's rebating of 12b–1 Fees to either the Plan or the Accounts.

(e) Prior to purchasing shares in the Funds, each Plan participant receives full written disclosure of information concerning the Funds, including, but not limited to the following:

(1) Copies of applicable prospectuses for the Funds discussing the investment objectives of the Funds, the policies employed to achieve these objectives, the relationship, if any, existing between OLDE Discount with the parties who act as sponsors, distributors, administrators, investment advisers and sub-advisers, custodians and transfer agents to the Funds and a statement describing the fee structure and the 12b–1 Fees. (OLDE will

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[1] For purposes of this proposed exemption, reference to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] Unless otherwise noted, OLDE Financial and its affiliates are collectively referred to herein as OLDE.

supplement such disclosures with information describing the Rebate Program.)

(2) Upon written or oral request to OLDE, a statement of additional information supplementing the applicable prospectus, which describes the types of securities and other instruments in which the Funds may invest, the investment policies and strategies that the Funds may utilize, including a description of the risks.

(3) Upon written request to OLDE, a copy of OLDE Discount's distribution agreements pertaining to the various Funds.

(4) Copies of the proposed exemption and grant notice describing the exemptive relief provided herein.

(f) After receiving the disclosures noted above, the participant acknowledges receipt of the documents in writing and provides authorization to OLDE with respect to investing in the Funds.

(g) Each additional purchase or redemption of shares in the Funds is directed by the participant, provided OLDE makes available to the participant, copies of the applicable Fund prospectus and disclosures regarding the fee structure and the 12b–1 Fees.

(h) Each Plan participant receives the following written or oral disclosures from OLDE with respect to ongoing investment in the Funds:

(1) Written confirmations of each purchase or redemption transaction involving shares of a Fund.

(2) Telephone quotations of such participant's Account balance.

(3) A monthly statement of account specifying the net asset value of the assets in a participant's Account, a summary of current year contributions, contributions since inception, beginning and ending account balances, summaries of contributions, purchases and sales during the month, a summary of the participant's final Account portfolio and, to the extent applicable during one month per year only, any rebated fees that are allocated to the participant's Account.

(4) Semiannual and annual reports that include financial statements for the Funds as well as the fees paid to OLDE Discount.

(5) Investment performance histories and other information provided by the Funds to OLDE;

(6) Ratings information received about the Funds from independent sources such as Morningstar;

(7) Responses to oral or written inquiries of participants upon request.

(i) The terms of each purchase or redemption of shares in the Funds remain at least as favorable to an Account as those obtainable in an arm's length transaction with an unrelated party.

(j) OLDE maintains for a period of six years the records necessary to enable the persons described below in paragraph (k) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of OLDE, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest, other than OLDE, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (k) below; and

(k)(1) Except as provided in paragraph (k)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (j) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (the SEC), and

(B) Any participant or beneficiary of the Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (k)(1)(B) shall be authorized to examine trade secrets of OLDE, or commercial or financial information which is privileged or confidential.

III. Definitions

For purposes of this proposed exemption:

(a) The term "OLDE" means OLDE Financial Corporation and any affiliate of OLDE Financial, as defined in paragraph (b) of this Section III.

(b) An "affiliate" of OLDE includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with OLDE.

(2) Any officer, director or employee or relative of such person, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "participant" includes participants in the Plan and their beneficiaries who may invest in the Funds.

(e) The term "Fund" or "Funds" means any open-end management investment company or companies registered under the 1940 Act for which OLDE Discount provides distribution and related services.

(f) The term "net asset value" means the amount calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such fund, less the liabilities chargeable to each portfolio, by the number of outstanding shares.

(g) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of October 4, 1996 with respect to transactions involving the past and continuing receipt, by OLDE Discount, of 12b–1 Fees that are attributable to the Plan from the Funds. However, it will be prospective for transactions involving the cash rebate, by OLDE Discount, of such fees to either the Plan or to the Accounts.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with a 401(k) cash or deferred feature permitting employee pre-tax deferrals. The Plan was established by OLDE Financial, effective July 1, 1995, and it allows participants to direct the investment of their account balances among a menu of investment options. Currently, these investment alternatives consist of a series of "load-type" Funds that are offered by parties unrelated to OLDE Financial and whose net asset values are listed daily in financial and other news publications.[3] The Funds have been offered to the Plan at "no-load" pursuant to agreements with the Fund sponsors.

The trustees of the Plan are Randal J. Mudge, President of OLDE Financial, and Mack Sutton, Vice President and Chief Financial Officer of OLDE Discount. As of December 31, 1997, the

[3] Among the mutual funds offered to Plan participants are the Franklin Age High Income Fund I, the American Mutual Fund, the Franklin Equity Income Fund, the GT Global International Growth Fund, the Growth Fund of America and the Templeton Global Real Estate Fund.

Plan had 1,146 participants and total assets of approximately $14,872,000.

2. OLDE Financial, the Plan sponsor, is a holding company with several subsidiaries, the largest being OLDE Discount. OLDE Financial maintains its principal place of business in Detroit, Michigan. It generally performs administrative functions relating to the Plan, including recordkeeping, reporting and disclosure and the purchases of investments under the Plan. In this regard, the Plan Administration Committee, which is comprised of five voting members, all of whom are employees of OLDE, has the responsibility as a fiduciary for selecting the investment alternatives that are available under the Plan from which participants may choose, including the subject transactions that are described herein. As such, the Plan Administration Committee is empowered to add or remove mutual fund families that it makes available to the Plan.[4] No fee is charged to the Plan or to any participants and beneficiaries for the services provided by OLDE directly or through the Administration Committee.[5]

3. OLDE Discount is a full service discount broker with offices located throughout the United States. OLDE Discount maintains its principal place of business in Detroit, Michigan and its employees participate in the Plan.

4. In its role as broker, OLDE Discount is often engaged in arrangements whereby it receives certain fees from the Funds for dividend distribution, tax reporting and statement distribution services provided to shareholders who have purchased their Fund shares through OLDE Discount. These 12b–1 Fees, which are paid to OLDE Discount in accordance with Distribution Plans and Related Agreements adopted under Rule 12b–1 of the 1940 Act, are calculated quarterly by the Funds based on the dollar volume of mutual fund shareholders that are customers of a given broker (i.e., who purchased the shares through the broker and who are receiving shareholder services from that broker).[6]

5. OLDE Discount has 12b–1 Fee arrangements with virtually every mutual fund that is utilized by participants as investment alternatives for their Accounts in the Plan.[7] Although OLDE Discount receives no commissions or fees from the Plan, or for that matter, the participant Accounts, the Funds treat such transactions as purchases for which annualized fees (ranging from 0.15 percent to 0.50 percent) are due and payable to OLDE Discount.

6. OLDE Discount has attempted to identify that portion of the 12b–1 Fees it receives which are related to purchases made by it on behalf of the Plan. With nearly every Fund, this is accomplished by coding purchases made by OLDE Discount on behalf of the Plan in a distinct manner. While 12b–1 Fees are received by OLDE Discount from each Fund in a lump sum, these payments are generally accompanied by a detailed breakdown of those fees that are attributable to the Plan. For those Funds which do not provide such a breakdown, OLDE Discount calculates the breakdown of Plan's portion of the 12b–1 Fees based on its own internal coding system. Then, OLDE Discount applies the result to the formula used by the Fund to calculate the 12b–1 Fees.

7. Because there is a time lag between the accrual and payment of 12b–1 Fees, few have been paid to OLDE Discount which are attributable to the Plan. Such fees are, however, being maintained in a segregated account titled "OLDE Trailer Fee Segregation Account." The special purpose account has been established in OLDE Financial's name with Comerica, an unrelated bank. Between October 4, 1996 and December 31, 1997, the amount of 12b–1 Fees and interest held in the segregated account totaled $24,826.

8. Due to potential prohibited transactions that may arise from its receipt of 12b–1 Fees from the Funds which are attributable to the Plan, OLDE has considered a number of options to remove these concerns. First, OLDE considered an option that would allow OLDE Discount to waive the receipt of all 12b–1 Fees, provided the Funds would agree to remove their automatic 12b–1 Fee deductions from the Plan's investments. However, in discussions with representatives for the Funds, it became clear to OLDE that any waiver of 12b–1 Fees by OLDE Discount would not result in the removal of the 12b–1 Fee deduction presumably because the internal system for each Fund could not accommodate this action. Thus, OLDE Discount's waiver of Plan-related 12b–1 Fees, would result in the Fund's retention of the Plan's deduction. In other words, Plan participants would be still paying 12b–1 Fees even if OLDE Discount did not receive them.

As a second option, OLDE considered offering mutual funds to the Plan for which it did not have 12b–1 Fee arrangements. However, OLDE deemed this option to be untenable because it would remove virtually all Funds as investment options for Plan participants.

As a third option, OLDE considered hiring another brokerage firm to facilitate the purchase and sale of Fund shares on behalf of the Plan. Aside from the level of concern this alternative would create in participants regarding the use of a competitor to perform transactions with their Accounts, OLDE noted that this arrangement would result in transaction fees as well as 12b–1 Fees being charged to Plan participants.

Bearing these options in mind, OLDE considered a fourth alternative for Plan participants and beneficiaries which would involve the rebating, to the Plan by OLDE Discount, of the Plan's *pro rata* portion of all 12b–1 Fees received by OLDE Discount. This option is the basis for the exemptive relief that has been requested herein. Specifically, OLDE requests an administrative exemption from the Department, which will be effective as of October 4, 1996, with respect to the past and continuing receipt, by OLDE Discount, of 12b–1 Fees that are attributable to the Plan from the Funds. In addition, OLDE

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[4] In ERISA Advisory Opinion 97–15A (May 22, 1997), involving the Frost National Bank, the Department stated, in part, in a footnote reference (see Footnote 9, page 5) to the final regulation regarding participant-directed individual account plans (the ERISA Section 404(c) Plans) (57 FR 46906, 46924, n. 27 (October 12, 1992) that "the act of limiting or designating investment options which are intended to constitute all or part of the investment universe of an ERISA Section 404(c) Plan is a fiduciary function which, whether achieved through fiduciary designation or express plan language, is not a direct or necessary result of any participant direction of such plan."

[5] The applicants believe that such services are covered by the statutory exemptive relief provided under section 408(b)(2) of the Act. However, the Department expresses no opinion herein on whether such services are statutorily exempt.

[6] Historically, the SEC has taken the position that section 12(b) of the 1940 Act makes it illegal for a mutual fund to finance the distribution of its shares. Thus, the primary method used by mutual funds to finance sales of their shares has been a front-end sales charge deducted from the offering price of a mutual fund's shares.

In 1980, the SEC adopted Rule 12b–1 under the 1940 Act. Rule 12b–1 allows a mutual fund to use a portion of its assets to pay for charges related to the distribution of its shares. In effect, Rule 12b–1 provides a limited exception to the general principle stated in section 12(b) of the 1940 Act by permitting a mutual fund to bear expenses pursuant to a Rule 12b–1 Plan, provided such plan is adopted and approved by the mutual fund shareholders as well as its board of directors. Once these requirements are met, a mutual fund may pay a percentage of its net assets on a periodic basis in accordance with the Rule 12b–1 Plan the mutual fund has adopted.

[7] In the case of the Plan, OLDE Discount serves in a facilitative role with regard to purchases of Fund shares. Based on instructions received from the Plan, OLDE Discount utilizes participant contributions that have been made to the Plan to acquire Fund shares directly from the Funds on behalf of participant Accounts. Under no circumstances will the Plan purchase Fund shares from existing holdings of OLDE Discount.

requests prospective exemptive relief that would permit OLDE Discount to make cash rebates of such 12b–1 Fees to the Plan or to the Accounts of individual participants.

9. To implement the proposed Rebate Program, OLDE has developed the following procedures:

(a) During the course of each calendar year, as it receives 12b–1 Fees from the Funds, OLDE Discount will calculate that portion of the 12b–1 Fees that are attributable to the Plan, including interest based on the Federal Funds Rate plus 2 percent. (It is represented that this interest rate will approximate the expected returns on the 12b–1 Fees during the period prior to their segregation by OLDE Discount.)

(b) Within 30 days of receipt by OLDE Discount of the 12b–1 Fees, OLDE Discount will separate and transfer the Plan's allocable portion of the 12b–1 Fees, together with interest earned on such fees (as determined in Step (a) above), to a money market account that will be established in the Plan's name with Comerica.

(c) The Plan may draw upon its Comerica money market account during the course of the year for the purpose of paying its administrative expenses owed to unrelated parties.[8]

(d) All facets of the Plan and the use of the Comerica money market account will be subject to audit each year by the Plan's independent auditors.

(e) Immediately following the end of each calendar year, any remaining rebated 12b–1 Fees, after the payment of the administrative expenses, will be allocated to the Accounts of Plan participants (including alternate payees under Qualified Domestic Relations Orders and beneficiaries of deceased participants) who had Account balances in the Plan as of the last day of the calendar year for which the calculation was made. This allocation will be made based on the relative Account balance of each such participant as of the last day of the calendar year for which the calculations was made.

10. As stated above, OLDE will establish a system of internal and external accounting controls with respect to the Rebate Program. In this regard, internal audit employees of OLDE will review the records and statements with respect to the special purpose accounts established by OLDE with Comerica. In addition, OLDE will retain the services of Ernst & Young, an independent accounting firm, to audit, on an annual basis, the OLDE Discount's rebating of 12b–1 Fees to either the Plan or the Accounts. Such audits will provide independent verification of the proper crediting of such fees. Specifically, the independent auditors will be instructed to (a) review and test compliance with the operational controls established by OLDE for purposes of the rebating; (b) verify, on a test basis, the rebates made; (c) verify, on a test basis, the coding system utilized by OLDE in making the rebates; and (d) recompute, on a test basis, rebated amounts at the discretion of the auditors. In the event any shortfalls are uncovered during the audit as a result of errors made by OLDE, OLDE will make a cash payment to the Plan equal to the amount of the error plus interest paid at money market rates under the Comerica money market account for the period of time of the error until the correction is made. Any excess rebates will be corrected by a corresponding adjustment of future rebates to the Plan in the amount of the excess rebate and will not require that the Plan pay any interest.

11. It is represented that participants with Account balances in the Plan will receive full written disclosures from OLDE concerning the Funds, including, but not limited to, the following: (a) copies of applicable prospectuses for the Funds discussing the investment objectives of the Funds, the policies employed to achieve these objectives, the relationship, if any, existing between OLDE Discount and parties who act as sponsors, distributors, administrators, investment advisers and sub-advisers, custodians and transfer agents to the Funds; and (b) a statement describing the fee structure and the 12b–1 Fees. (OLDE will supplement such disclosures with information describing the Rebate Program.); (c) upon written or oral request to OLDE, a statement of additional information supplementing the applicable prospectus, which describes the types of securities and other instruments in which the Funds may invest, the investment policies and strategies that the Funds may utilize, including a description of the risks; (d) upon written request to OLDE, a copy of OLDE Discount's distribution agreements pertaining to the various Funds; and (e) copies of the proposed exemption and grant notice describing the exemptive relief provided herein.

After receiving the foregoing disclosures, the participant will acknowledge receipt of the documents in writing and provide authorization to OLDE with respect to investing in the Funds. Each additional purchase or redemption of shares in the Funds that is directed by the participant will be conditioned on OLDE's making available to the participant, copies of the applicable Fund prospectus and disclosures regarding the fee structure and the 12b–1 Fees.

With respect to ongoing disclosures, OLDE[9] will provide each participant investing in the Funds with (a) written confirmations of each purchase or redemption transaction involving shares of a Fund; (b) telephone quotations of such participant's Account balance; (c) a monthly statement of account specifying the net asset value of the assets in a participant's Account, a summary of current year contributions, contributions since inception, beginning and ending account balances, summaries of contributions, purchases and sales during the month, a summary of the participant's final Account portfolio, and, to the extent applicable during one month per year only, any rebated fees that are allocated to the participant's Account; (d) semiannual and annual reports that include financial statements for the Funds as well as the fees paid to OLDE Discount; (e) investment performance histories and other information provided by the Funds to OLDE; (f) ratings information received about the Funds from independent sources such as Morningstar; and (g) responses to oral or written inquiries of participants upon request.

Finally, OLDE will maintain, for a period of six years, written records that will enable the Department, Plan participants and others to determine whether the conditions of this exemption have been met.

12. In summary, it is represented that the transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The decision to invest in the Funds has been made and will be made by a Plan participant and not by OLDE.

(b) No sales commissions, other than 12b–1 Fees, have been paid or will be paid by an Account in connection with the purchase or sale of shares in the

[8] In this regard, the Department notes that the use of amounts in the Comerica money market account to pay third party expenses would be permissible under section 408(b)(2) of the Act and the corresponding regulations only if such expenses were incurred in connection with a service otherwise exempt under section 408(b)(2) and the Plan is obligated to pay such expenses under applicable Plan provisions.

[9] As noted above, OLDE Financial represents that it is a fiduciary with respect to the Plan by reason of its ability to select investment alternatives for the Plan or to add or remove mutual fund families that it decides to make available to the Plan. However, OLDE Financial represents that neither it nor OLDE Discount provides investment advice to Plan participants that would make either entity a fiduciary with respect to the Plan within the meaning of section 3(21) of the Act.

Funds and no redemption fees have been or will be paid by an Account with respect to the sale of shares of the Funds.

(c) The Plan or, if applicable, an Account, will receive a rebate from OLDE Discount in the form of cash equal to its *pro rata* portion of all 12b–1 Fees charged by OLDE Discount to the Funds under the Rebate Program.

(d) Participants with Accounts in the Plan have received or will receive full written disclosure of information concerning the Funds at the time of, and subsequent to, such investment.

(e) The terms of each purchase or redemption of shares in the Funds have remained and will remain at least as favorable to an Account as those obtainable in an arm's length transaction with an unrelated party.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Consolidated Associations of Railroad Employees Health Care Plan (the Plan) Located in Topeka, Kansas

[Application No. L–10527]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act shall not apply, effective June 10, 1997 to: (1) The current leasing (the Lease) of certain real property (the Property) by the Plan to Century Health Solutions, Inc. (Century), a party in interest with respect to the Plan; (2) the proposed new leasing of substantially the same Property by the Plan to Century effective April 1, 1998 (the New Lease); and (3) the possible future sale of the Property by the Plan to Century pursuant to a right of first refusal under the terms of the Lease, provided the following conditions are satisfied: (a) The Property represents no more than 25% of the value of the Plan's assets; (b) The terms of the Lease are, and will remain, at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (c) the fair market rental value is determined on an annual basis by a qualified, independent appraiser; (d) the Plan's independent fiduciary has determined that the transaction is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries; (e) the Plan's independent fiduciary will continue to monitor the transaction and the conditions of the exemption and take whatever action is necessary to enforce the Plan's rights under the Lease; and (f) the Plan's independent fiduciary acts to ensure that any sale of the Property by the Plan to Century is properly effected under the terms of the Lease, pursuant to Century's right of first refusal in the event the Plan receives a bona fide offer from a third party to purchase the Property, and Century is not in default on any of its obligations under the Lease.

EFFECTIVE DATE: If this proposed exemption is granted, it will be effective June 10, 1997.

Summary of Facts and Representations

1. The Consolidated Associations of Railroad Employees (CARE) and the Plan are the successors to the A.T. & S.F. Employees' Benefit Association (EBA) and the EBA Health Care Plan, respectively. EBA was the entity which, on behalf of the EBA Health Care Plan, initiated the Lease which is the subject of this proposed exemption. EBA was a traditional railroad hospital and medical benefit association whose sole function was to sponsor and maintain a health care arrangement for employees of the Santa Fe Railroad and their dependents. It did so for more than 100 years. By 1993, EBA no longer provided point-of-service hospitalization, but continued to provide point-of-service medical care and pharmaceuticals through a medical clinic and pharmacy located at its Topeka offices, and continued to provide indemnity benefits through its Health Care Plan, which relied exclusively on a comprehensive provider network.

2. EBA had a closely-related sister organization, the Santa Fe Employees Hospital Association (EHA). EHA provided similar medical benefits to Santa Fe Railroad employees in the southern and southwestern United States. To achieve economies of scale, and thereby to provide better benefits, EBA and EHA merged in July 1996, and became CARE, a not-for-profit Kansas corporation. Following the merger, the EBA and EHA Health Care Plans and their related trusts merged (on or about January 1, 1997) so that CARE maintains a single welfare plan, i.e., the Plan. The Plan currently has approximately 18,500 participants, and has assets of approximately $16 million. The Property has a fair market value of approximately $3.6 million, and the Lease, which encompasses 25% of the office space in the Property, thus involves approximately 6% of the assets of the Plan.

3. In late 1992, a group of former (or soon to be former) EBA employees formed Century. Century is a Missouri not-for-profit corporation. The applicant represents that its principals and employees are wholly independent of CARE. Its aim was to provide third party claims administration and other medically related services to employee welfare benefit plans. EBA and Century expected that Century would perform third party claims administration for the EBA Health Care Plan and also provide, directly to plan participants, point-of-service health care in a medical clinic, not just to EBA Health Care participants but to participants in other plans as well.

4. Accordingly, in late 1992, EBA (on behalf of the EBA Health Care Plan) and Century entered into various agreements, including the Lease and a services agreement. The applicant represents that the arrangement for services by Century on behalf of the EBA Health Care Plan are exempt pursuant to the provisions of section 408(b)(2) of the Act and the regulations thereunder.[10] The Lease, which first became effective on April 1, 1993, was for approximately 17,145 square feet of office space in the Property, which consists of an office building located at 620 S.E. Madison, Topeka, Kansas. The Lease was amended effective October 1, 1993, September 1, 1994 and May 1, 1995 for the sole purpose of increasing the space leased to Century and the rent paid to the EBA Health Care Plan, accordingly. The Lease, providing for a three year term with two potential extensions of one year each, will (with the extensions) expire on March 31, 1998. The parties are contemplating entering into the New Lease, with terms that are similar to the terms of the current Lease, to take effect April 1, 1998. The Lease had an initial term of three years and the possibility of two one-year extensions, and the New Lease is expected to have a similar term. The Lease built in increases in rent in each of the first three years and provided for increases based on the Consumer Price Index (CPI) in each of the two one-year extensions. The Plan's independent fiduciary (see rep. 7, below) has recommended a rent schedule for the New Lease that is based in part on CPI increases, as well as increases in operating costs.

5. Except as provided below with respect to storage space, the rent per square foot paid by Century under the Lease was $12 for the first year, $13 for

[10] The Department expresses no opinion herein as to the applicability of Act section 408(b)(2) to the provision of such services by Century.

the second year, and $14 for the third year. The Lease provides for increases, based on the Consumer Price Index, in each of the two one-year extensions. For the first one-year extension, the rate in effect for the last year of the Lease served as the floor rent. For the second one-year extension, the rate in effect for the first one-year extension served as the floor rent. The modifications to the original Lease (the modifications were effective in 1993 and 1994) provided for Century's lease of additional space in the Property at the same rates which applied to the original Lease agreement. The 1995 modification provided for the leasing to Century of 308 square feet of uninhabitable storage space, with the rent for that space set at $2.50 per square foot.

6. The applicant represents that prior to entering into the Lease with Century, EBA had received inquiries from several potential third party tenants, but none was willing to pay more than $8 or $9 per square foot. On August 12, 1996, independent appraisers Kevin Nunnink and Brian Coup of Nunnink Associates, Inc. (Nunnink), Kansas City, Missouri, determined that as of April 1, 1993, a rate of $12 per square foot for the Property, without any escalation, would have been a fair market rental rate for the Property for a five year lease.

7. Effective May 1, 1997, CARE retained KOLL, The Real Estate Services Company (KOLL), Kansas City, Missouri, to act as the Plan's independent fiduciary with respect to the subject transaction. KOLL is an international real estate company based in Newport Beach, California which has 350 offices in the United States with 2,700 employees. The Kansas City office manages over 1 million square feet of space and provides third party brokerage services for local and national clients. KOLL represents that it is not related to CARE or Century nor to any of their principals, nor does KOLL have any business dealings with them. KOLL further represents that it understands and accepts its position as a qualified independent fiduciary with respect to the Plan, and its duties, responsibilities and liabilities as such under the Act. KOLL reviewed the Lease as of June 10, 1997 and made a detailed report as of that date. KOLL represents that it has made a determination, as of that date, that the Lease and retention of Century as a tenant at a market rental rate for an additional Lease term are in the best interests of the Plan and its participants and beneficiaries. KOLL represents that it has reviewed the terms of the Lease document, considered the Lease with respect to the Plan's diversification of investments and also considered Century's performance of its obligations under the Lease. KOLL notes that if Century left the Property, roughly 30% of the Property would need to be released, which could take up to 6–12 months to accomplish. KOLL relied in part on the appraisal performed by Nunnink in light of Nunnink's independence and the quality and timing of the appraisal. KOLL represents that it will perform or cause to be performed an updated fair market rental analysis in the 60 day period preceding the date (April 1, 1998) of the New Lease, and further represents that the terms of the New Lease will be no less favorable to the Plan than the fair market rental rates as indicated by that independent fair market rental analysis. KOLL represents that it will continue to monitor the Lease and confirm the collection by the Plan of rents paid by Century, determine whether it is appropriate to renew, continue or extend the Lease to Century, set the terms and conditions of any renewal or extension of the Lease, and take all actions necessary to ensure that the Lease with Century, and the New Lease, remain in the best interests of the Plan.

8. Under Section 44 of the Lease, Century has a right of first refusal to purchase the Property from the EBA (now CARE) Health Care Plan in the event the Plan receives a bona fide offer from a third party to purchase the Property and Century is not in default of any of its obligations under the Lease. Century's right (and obligation should it choose to exercise its right) is to purchase the Property under the terms and conditions that are contained in the third party's offer. Century also has a right of first refusal over expansion space in the Property. This proposed exemption would extend to the purchase of the Property by Century pursuant to this right of first refusal. KOLL has agreed, as part of its independent fiduciary's responsibilities, to act on behalf of the Plan to ensure that this Section 44 of the Lease is properly effected (or that modifications to the Lease are made if KOLL considers such modifications necessary or advisable). Thus, KOLL will ensure that any offer made to the Plan for the purchase of the Property is, in fact, a bona fide third party purchase offer and that a sale of the Property to Century, upon the exercise of Century's right of first refusal, would be consistent with the rights and obligations of the parties under the Lease.

9. The applicant represents that CB Commercial Real Estate Group, Inc. (CB), has purchased KOLL. CB represents that it agrees to assume, and shall assume, as the successor to KOLL, the duties and responsibilities of the independent fiduciary with respect to the subject transactions. CB endorses, ratifies and affirms all representations made by KOLL with respect to the subject transactions.

10. The applicant represents that not later than 30 days after the grant of the exemption proposed herein is published in the **Federal Register**, notice of the exemption will be sent to the appropriate Regional Office of the Department's Pension and Welfare Benefits Administration. The appropriate parties in interest agree to pay any civil penalty that may be due and owing by them under section 502(i) of the Act with respect to the leasing of the Property by the Plan to Century for the period before the exemption becomes effective.

11. In summary, the applicant represents that the subject transactions satisfy the criteria contained in section 408(a) of the Act for the following reasons: (a) The Lease represents approximately 6% of the Plan's total assets; (b) the rental for the Property has been demonstrated to be in excess of fair market rental terms as established by a qualified, independent appraiser, and future terms for the New Lease will be not less favorable to the Plan than those established by a qualified, independent appraiser; (c) the Plan's independent fiduciary, KOLL, has determined that the Lease is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries; (d) KOLL and its successor independent fiduciary, CB, will continue to monitor the Lease and take whatever action is necessary to protect the Plan's rights under the Lease; (e) before entering into the New Lease, CB will determine that the New Lease is appropriate for the Plan, in the best interests of its participants and beneficiaries and protective of their rights; and (f) CB, as the Plan's independent fiduciary, will ensure that any future sale of the Property by the Plan to Century is properly effected under the terms of the Lease, pursuant to Century's right of first refusal in the event the Plan receives a bona fide third party purchase offer.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Thornton, Hegg, Reif, Johnston & Dolan Profit Sharing Plan and Trust (the Plan) Located in Alexandria, Minnesota

[Application No. D–10563]

Proposed Exemption

The Department of Labor is considering granting an exemption

under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale (the Sale) by the Plan of certain real property (the Property) to Robert M. Hegg (Mr. Hegg), a party in interest with respect to the Plan; provided the following conditions are satisfied:

(A) The terms and conditions of the transaction are no less favorable to the Plan than those which the Plan would receive in an arm's-length transaction with an unrelated party;

(B) The Sale is a one-time transaction for cash;

(C) The Plan incurs no expenses from the Sale; and

(D) The Plan receives as consideration from the Sale the greater of either the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale, or an amount equal to the funds expended in acquiring and maintaining the Property, less any income produced by the Property.

Summary of Facts and Representations

1. Thornton, Hegg, Reif, Johnston & Dolan, P. A., a Minnesota professional association, is the sponsoring employer of the Plan (the Employer). The Employer is in the general practice of law in Alexandria, Minnesota, which includes advising clients in various legal matters involving real estate matters.

2. The Plan is a defined contribution plan that is intended to qualify under section 401(a) of the Code. The applicant represents that as of December 31, 1997, the Plan had $1,668,933.96 and 12 participants. The fiduciaries of the Plan, who have investment discretion over all the assets of the Plan, include Mr. Hegg and Messrs. Thomas J. Reif, Scott T. Johnston, and Michael J. Dolan. All the fiduciaries are shareholders and officers of the Employer.

3. The Property is agricultural land, located at 452 County Road 5, Alexandria, Minnesota, approximately 10 miles from Alexandria, Minnesota, and consists of 70 acres of unimproved land with approximately 54 acres in tillable land and the remaining acreage in woodland and pasture. The Property consists of four separate parcels that were acquired over three years beginning in 1981 from an unrelated party for the total sum of $45,000, and the applicant represents that no expenses were incurred by the Plan when purchasing the Property. The applicant represents that the Property has been leased to Daryl R. Krohfeldt, an unrelated person, for farming purposes since 1981 through 1997 for the total sum of $ 23,210. The only expenses the Plan has incurred from owning the Property is $5,602 for real estate taxes for the years from 1981 through December 31, 1997, and $50.00 for fence posts.

The Property was appraised by Virginia M. Swartz, of the Swartz Appraisal Service, located in Alexandria, Minnesota, who determined that the Property had a fair market value of $30,500, as of June 8, 1996. The Property was listed for sale, commencing April 23, 1997, through April 1, 1998, with Jerry-Ginny Swartz Realty, Inc., located in Alexandria, Minnesota. The realtor represents in a letter dated December 31, 1997, that the Property has been advertised by various methods, including signs posted on the site and advertisements in local newspapers. Also, the realtor represents that no serious inquiries have been received regarding the Property, and that at this time the demand is limited for agricultural property in the area.

4. Mr. Hegg proposes to purchase the Property for cash in a one-time transaction with no expenses incurred by the Plan. The applicant represents that the Plan will receive as consideration from the Sale the greater of either the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser, or an amount equal to the funds expended by the Plan in acquiring and maintaining the Property, less any income produced by the Property

Mr. Hegg is prompted to take this action because of the decreasing value of the Property since its acquisition by the Plan, and because of the low yields to the Plan from its investment. Also, at this time, Mr. Hegg desires to purchase the Property because of its illiquidity as an investment as demonstrated by the inability of the Plan's realtor to generate interest in the Property from prospective purchasers or to sell the Property in the open market for its fair market value. The applicant represents that the Plan desires to convert the funds from the Sale into more liquid assets with greater yields, and assets requiring less expenses in administration for the Plan.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because (a) the Sale is a one-time transaction for cash; (b) the Plan will not incur any expenses from the transaction; (c) the Plan will be able to convert the funds from the Sale into more liquid and higher yielding assets which will be less expensive to manage and administer for the fiduciaries of the Plan; and (d) the Plan will receive the greater of either the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser, or an amount equal to the funds expended by the Plan in acquiring and maintaining the Property, less any income produced by the Property.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express

condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of February, 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–4840 Filed 2–25–98; 8:45 am]

BILLING CODE 4510–29–P

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Mississippi River Commission.

TIME AND DATE: 8:30 a.m., March 30, 1998.

PLACE: On board MISSISSIPPI V at City Front, Cairo, IL.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on matters pertaining to the flood control, navigation, and environmental features of the Mississippi River and Tributaries project; and (3) District Commander's report on the Mississippi River and Tributaries project in Memphis District.

TIME AND DATE: 8:30 a.m., March 31, 1998.

PLACE: On board MISSISSIPPI V at City Front, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries project and major accomplishments since the last meeting; and (2) Views and suggestions from members of the public on matters pertaining to the flood control, navigation, and environmental features of the Mississippi River and Tributaries project.

TIME AND DATE: 8:30 a.m., April 1, 1998.

PLACE: On board MISSISSIPPI V at City Front, Greenville, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on matters pertaining to the flood control, navigation, and environmental features of the Mississippi River and Tributaries project; and (3) District Commander's report on the Mississippi River and Tributaries project in Vicksburg District.

TIME AND DATE: 8:30 a.m., April 3, 1998.

PLACE: On board MISSISSIPPI V at New Orleans District Office, New Orleans, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on matters pertaining to the flood control, navigation, and environmental features of the Mississippi River and Tributaries project; and (3) District Commander's report on the Mississippi River and Tributaries project in New Orleans District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Noel D. Caldwell, telephone 601–634–5766.

Noel D. Caldwell,

Executive Assistant, Mississippi River Commission.

[FR Doc. 98–5124 Filed 2–24–98; 2:37 pm]

BILLING CODE 3710–PU–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–025)]

NASA Advisory Council (NAC), Technology and Commercialization Advisory Committee (TCAD); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Technology and Commercialization Advisory Committee.

DATES: Thursday, March 5, 1998, 8:30 a.m. to 5:00 p.m. and Friday, March 6, 1998, 8:00 a.m. to 12:30 p.m.

ADDRESSES: Lyndon B. Johnson Space Center, National Aeronautics and Space Administration, Houston, Texas Building 17, Room 2037.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory M. Reck, Code AF, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4700).

SUPPLEMENTARY INFORMATION: The meeting will be open to the pubic up to the seating capacity of the room. The agenda for the meeting is as follows:

—Report from liaison members with other advisory committees on activities relatives related to technology

—Review of NASA space commercialization activities

—Discussion of charter for review of the Human Exploration and Development Enterprise technology program.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: February 19, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–4852 Filed 2–25–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–024)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that TekQuest, Inc., of Hendersonville, North Carolina, has applied for an exclusive license to practice the invention described and claimed in U.S. Patent No. 5,333,931, entitled "Portable Seat Lift," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Marshall Space Flight Center.

DATES: Responses to this notice must be received by April 27, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. James J. McGroary, Patent Attorney, Marshall Space Flight Center, Mail Code CC01, Huntsville, Alabama 35812, telephone number (205) 544–0013.

Dated: February 17, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–4851 Filed 2–25–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Computer-Communication Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Computer-Computation Research (1192)
Date: March 19 and 20, 1998
Time: 8:00 a.m.–5:00 p.m.
Place: Rooms 1120, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed
Contact Person: Dr. Robert Grafton, Program Director, C–CR, room 1155, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, 703–306–1910.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.
Agenda: To review and evaluate Design Automation proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 23, 1998.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 98–4960 Filed 2–25–98; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Electrical and Communications System (1196).
Date and Time: March 16–19, 1998: 8:30 a.m. to 5:00 p.m.
Place: Room 360 and 330 on 3/16–17, Room 580 on 3/18–19, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. Tien P. Lee and Dr. Magdy Iskander, Program Directors, Physical Foundations of Enabling Technologies (PFET), Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230, Telephone: (703) 306–1339.
Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate research proposals in the Physical Foundations of Enabling Technologies program as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 23, 1998.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 98–4959 Filed 2–25–98; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for the Experimental Program To Stimulate Competitive Research (EPSCoR); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel for the Experimental Program to Stimulate Competitive Research (EPSCoR) #1198.
Dates: March 19–20, 1998.
Times: 11:30 a.m.–6:00 p.m.; March 19, 1998; 8:00 a.m.–12:00 noon; March 20, 1998.
Place: Washington National Airport Hilton, 2399 Jefferson Davis Highway, Arlington, Virginia 22202, (703) 418–6800 FAX (703) 418–3762.
Type of Meeting: Closed.
Contact Person: Dr. Richard J. Anderson, Head, Office of Experimental Program to Stimulate Competitive Research (EPSCoR), National Science Foundation, Suite 875, 4201 Wilson Blvd., Arlington, VA 22230, (703) 306–1683.
Purpose of Meeting: To provide advice and recommendations concerning EPSCoR Grant proposals and EPSCoR Cooperative Agreement proposals submitted to the NSF program for financial support.
Agenda: To review and evaluate EPSCoR proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 23, 1998.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 98–4961 Filed 2–25–98; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (1756).
Date and Time: March 16 1998; 8:00 A.M.–5:00 P.M.
Place: Room #770, 4201 Wilson Blvd., Arlington, VA.
Type of Meeting: Closed.
Contact Person: Dr. Michael Mayhew, Program Director, Education and Human Resources Program, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone (703) 306–1557.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Postdoctoral Fellowship Panel proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 23, 1998.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 98–4963 Filed 2–25–98; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).
Date and Time: March 22–25, 1998: 8:00 a.m. to 5:00 p.m.
Place: National Science Foundation, 4201 Wilson Boulevard, Room 330, Arlington, VA 22230.
Type of Meeting: Closed

Contact Person: Margrete Klein, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1637.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate formal proposals submitted to the Women and Girls program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 23, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–4962 Filed 2–25–98; 8:45 am]

BILLING CODE 7555–01–M

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of annual meeting.

SUMMARY: The Compact Commission will hold its first annual meeting. The Commission will consider matters relating to administration, and issues relating to the price regulation.

DATES: The meeting is scheduled for March 4, 1998 commencing at 10:00 a.m. to adjournment.

ADDRESSES: The meeting will be held at the Holiday Inn, Capitol Room, 172 North Main Street, Concord, NH (exit 14 off Interstate 93).

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Executive Director, Northeast Dairy Compact Commission, 43 State Street, PO Box 1058, Montpelier, VT 05601. Telephone (802) 229–1941.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Northeast Dairy Compact Commission will hold its first annual meeting. The Commission will consider administration matters, including the annual report, and issues relating to the price regulation, including certain requests for amendment and milk production in the Compact region.

(Authority: (a) Article V, Section 11 of the Northeast Interstate Dairy Compact, and all other applicable Articles and Sections, as approved by Section 147, of the Federal Agriculture Improvement and Reform Act (FAIR ACT), Pub. L. 104–127, and as thereby set forth in S.J. Res. 28(1)(b) of the 104th Congress; Finding of Compelling Public Interest by United States Department of Agriculture Secretary Dan Glickman, August 8, 1996 and March 20, 1997. (b) Bylaws of the Northeast Dairy Compact Commission, adopted November 21, 1996.)

Daniel Smith,

Executive Director.

[FR Doc. 98–4980 Filed 2–25–98; 8:45 am]

BILLING CODE 1650–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company; Notice of Withdrawal of Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Commonwealth Edison Company (ComEd, the licensee) to withdraw its November 7, 1996, applications for proposed amendments to Facility Operating License Nos. DPR–39 and DPR–48, issued to the licensee for operation of the Zion Nuclear Power Station, Units 1 and 2, located in Ogle County, Illinois. Notice of Consideration of Issuance for these amendments was published in the **Federal Register** on December 18, 1996 (61 FR 66704–05).

The first proposed amendment would have modified the facility technical specification (TS) surveillance requirements from verifying greater than or equal to 17 percent steam generator secondary side wide range water level to greater than or equal to 17 percent steam generator secondary side narrow range water level. The second proposed amendment would have changed the TS values for the reduced power range neutron flux high setpoint trip that are specified when one or more code main steam safety valves are inoperable. The third proposed amendment would have clarified the TS operability requirements for the residual heat removal loops during core alteration operations. By letter dated February 12, 1998, ComEd withdrew the amendment requests because they are no longer needed. By letter dated February 13, 1998, ComEd certified that they have permanently ceased operations at Zion Nuclear Power Station, Units 1 and 2. Since ComEd has permanently ceased operations at Zion Station, the license amendment requests submitted on November 7, 1996, are no longer needed.

For further details with respect to this action, see (1) The three applications for amendment dated November 7, 1996, and (2) the staff's letter dated February 23, 1998.

These documents are available for public inspection at the Commissions Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 23rd day of February 1998.

For the Nuclear Regulatory Commission.

Lawrence W. Rossbach,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–4956 Filed 2–25–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331]

IES Utilities Inc., Central Iowa Power Cooperative, Corn Belt Power Cooperative; Notice of Consideration of Issuance of Amendment to Facility Operating License Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–49 issued to IES Utilities Inc., Central Iowa Power Cooperative, and Corn Belt Power Cooperative (the licensee) for operation of the Duane Arnold Energy Center, located in Linn County, Iowa.

The proposed amendment would change the operability requirement for the Standby Liquid Control system to Run/Power Operations and Startup.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. In STARTUP and RUN/POWER OPERATIONS, the standby liquid control (SLC) system is required to provide shutdown capability. In HOT SHUTDOWN and COLD SHUTDOWN, control rods are not able to be withdrawn since the reactor mode switch is in Shutdown and a control rod block is applied. This provides adequate controls to ensure that the reactor remains subcritical. In REFUELING mode, only a single control rod can be withdrawn from a core cell containing fuel assemblies. Demonstration of adequate SDM (LCO 3.1.1, "SHUTDOWN MARGIN") ensures that the reactor will not become critical. The SLC System is not required to be OPERABLE when only a single control rod can be withdrawn. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, the SLC system is only required to provide shutdown capability to mitigate accidents in the STARTUP and RUN/POWER OPERATIONS modes. The proposed change does not affect this requirement. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety. The proposed change does not affect the ability of the SLC system to achieve plant shutdown under analyzed conditions. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice.

Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 30, 1998 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2.

Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any

limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by close of business on the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jack Newman, Al Gutterman, Morgan, Lewis & Brockius, 1800 M Street, NW., Washington, DC 20036–5869, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 3, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401.

Dated at Rockville, Maryland, this day of February 1998.

For the Nuclear Regulatory Commission.

John B. Hickman,

Acting Project Manager, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–4957 Filed 2–25–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331]

IES Utilities Inc. Central Iowa Power Cooperative, Corn Belt Power Cooperative; Notice of Consideration of Issuance of Amendment to Facility Operating License; Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–49 issued to IES Utilities Inc., Central Iowa Power Cooperative, and Corn Belt Power Cooperative (the licensee) for operation of the Duane Arnold Energy Center, located in Linn County, Iowa.

The proposed amendment would revise the definitions of Cold Condition and Cold Shutdown and add a new section, 3.17, Vessel Hydrostatic Pressure and Leak Testing, to the Technical Specifications to specifically allow reactor vessel hydrostatic pressure testing to be performed during plant shutdown.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. Under this proposed change the secondary containment, secondary containment automatic isolation valves, and standby gas treatment systems would be required to be operable during the performance of hydrostatic and leak testing and would be capable of handling any airborne radioactivity or steam leaks that could occur. The required pressure testing conditions provide adequate assurance that the consequences of a steam leak will be conservatively bounded by the consequences of the postulated main steam line break outside of primary containment. The proposed change will not result in a significant change in the stored energy in the reactor vessel during the performance of the testing.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change will not alter the way hydrostatic pressure and leak testing is performed or significantly change the temperatures and pressures achieved to perform the test.

3) The proposed amendment will not involve a significant reduction in a margin of safety. The proposed changes and additions result in increased system operability requirements above those that currently exist during the performance of hydrostatic and leak testing and are consistent with the requirements of NUREG 1433 Rev. 1, and the DAEC submittal for Improved Technical Specifications. The incremental increase in stored energy in the vessel during testing will be conservatively bounded by the consequences of the postulated main steam line break outside of primary containment. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will

publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 30, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by close of business on the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jack Newman, Al Gutterman, Morgan, Lewis & Brockius, 1800 M Street, NW., Washington, DC 20036–5869, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 3, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401.

Dated at Rockville, Maryland, this 20th day of February 1998.

For the Nuclear Regulatory Commission.

John B. Hickman,

Acting Project Manager, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–4958 Filed 2–25–98; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Application and Claim for Sickness Benefits.

(2) *Form(s) submitted:* SI–1a, SI–1b, SI–3, SI–7, SI–8, ID–7H, ID–11A.

(3) *OMB Number:* 3220–0039.

(4) *Expiration date of current OMB clearance:* 4/30/1998.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households, business or other for profit.

(7) *Estimated annual number of respondents:* 55,400.

(8) *Total annual responses:* 270,900.

(9) *Total annual reporting hours:* 27,921.

(10) *Collection description:* Under Section 2 of the Railroad Unemployment Insurance Act, sickness benefits are provided for qualified railroad employees. The collection obtains information from employees and physicians needed for determining eligibility for and amount of such benefits.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–4942 Filed 2–25–98; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning April 1, 1998, shall be at the rate of 35 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning April 1, 1998, 30.3 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 69.7 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: February 19, 1998.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 98–4931 Filed 2–25–98; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 23033; 812–10748]

Franklin Floating Rate Trust, et al.; Notice of Application

February 20, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under sections 6(c) and 23(c) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicants seek an order to permit certain registered closed-end investment companies to impose early withdrawal charges ("EWCs").

APPLICANTS: Franklin Floating Rate Trust (the "Fund"), Franklin Advisers, Inc. (the "Adviser"), Franklin/Templeton Distributors, Inc. (the "Distributor"), and Franklin/Templeton Investor Services, Inc. (the "Administrator").

FILING DATES: The application was filed on August 6, 1997. Applicants have agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 16, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, 777 Mariners Island Boulevard, San Mateo, CA 94404.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Attorney, at (202) 942–0572, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549 (telephone (202) 942–8090).

Applicants' Representations

1. The Fund is a closed-end management investment company registered under the Act. The Fund invests primarily in senior secured corporate loans and senior secured debt securities that are made or issued by U.S. companies and U.S. subsidiaries of non-U.S. companies and that have floating or variable interest rates. The Adviser, registered under the Investment Advisers Act of 1940, serves as investment adviser for the Fund. The Distributor serves as distributor to the Fund and the Administrator serves as the Fund's administrator. The Adviser, Distributor, and Administrator are wholly-owned subsidiaries of Franklin Resources, Inc.

2. Applicants request that the order apply to any registered closed-end investment company for which the Adviser, the Distributor, the Administrator, or any entity controlling, controlled by, or under common control with the Adviser, the Distributor, or the Administrator acts as principal underwriter, investment adviser, or administrator (collectively with the Fund, the "Funds"), provided that any

Fund that in the future relies on the order will do so in a manner consistent with the terms and conditions of the application.

3. The Funds intend to continuously offer their shares to the public at net asset value. Initially, the Fund will be sold without a front-end sales charge, but the Fund and certain other Funds may be in the future impose a front-end sales charge. The Funds do not intend to list their shares on any national securities exchange or over-the-counter market and there will be no secondary market for shares of the Funds. The Funds intend to operate as "interval funds" pursuant to rule 23c–3 under the Act and make periodic repurchase offers to their shareholders.

4. The Funds propose to impose EWCs on shares accepted for repurchase that have been held for less than a certain period of time. The EWCs will be paid to the Distributor to allow it to recover a portion of its distribution expenses. The EWC to be imposed by the Fund is expected to be 1% of the lesser of the then current net asset value or the original purchase price of the shares being tendered for shares held less than twelve months. The Funds may in the future impose EWCs in different amounts or for different time periods.

5. In the future, the Funds may pay service fees that will meet the requirements of Rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. (the "NASD") as if the Fund were an open-end fund.[1] Any service fee payments will be in amounts not to exceed .25% of a Fund's average daily net assets for any fiscal year. Any front-end sales charge imposed by a Fund also will comply with the NASD's Conduct Rule 2830(d) as if the Fund were an open-end fund.

6. The Funds propose to waive the EWC for certain categories of shareholders or transactions to be established in the future. With respect to any waiver of, scheduled variation in, or elimination of the EWC, the Funds will comply with rule 22d–1 under the Act as if the Funds were open-end funds.[2]

[1] The Funds will not impose any distribution fees similar to those charged by open-end funds under rule 12b–1 under the Act.

[2] The Funds may offer their shareholders an option to exchange their shares for shares of registered open-end investment companies in the Franklin/Templeton group of investment companies (as defined in rule 11a–3 under the Act). Any such exchange option will comply with rule 11a–3 as if the Funds were open-end investment companies subject to the rule. In complying with rule 11a–3, the Funds will treat the EWC as if it were a contingent deferred sales charge.

Applicants' Legal Analysis

1. Section 23(c) of the Act provides in relevant part that no registered closed-end fund will purchase any securities of which it is the issuer except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the SEC may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c–3 under the Act permits a registered closed-end fund (an "interval fund") to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the fund. Rule 23c–3(b)(1) provides that an interval fund may deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is reasonably intended to compensate the fund for expenses directly related to the repurchase. Applicants request relief from this provision pursuant to sections 69(c) and 23(c) to the extent that it would prohibit the imposition of an EWC on tendered shares that have been held for less than a specified period.

3. Rule 6c–10 under the Act permits open-end funds to impose deferred sales charges, subject to certain conditions. Applicants state that EWCs are functionally equivalent to contingent deferred sales charges ("CDSLs") that open-end funds may charge under rule 6c–10. Applicants believe that EWCs are necessary for the Distributor to recover distribution costs from Fund shareholders who redeem early. The Funds will comply with rule 6c–10 as if the rule were applicable to them. The Funds also will disclose EWCs in accordance with the requirements of Form N–1A concerning CDSLs. Finally, as permitted under rule 6c–10, any waiver of EWCs will comply with the requirements of rule 22d–1 under the Act.

4. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard for the reasons stated above.

5. Section 23(c)(3) provides that the SEC may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased. Applicants believe that the requested relief meets this standard. Applicants state that the Funds will apply the EWC (and any waivers or scheduled variations of the EWC) uniformly to all shareholders in a given class and consistent with the requirements of rule 22d–1 under the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Funds that impose an EWC will comply with rule 6c–10 under the Act as if the rule were applicable to the Funds.

2. The Funds that impose a service fee will comply with Rule 2830(d) of the NASD's Conduct Rules as if the rule were applicable to the Funds.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4917 Filed 2–25–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23032; 812–10656]

Van Kampen American Capital Distributors, Inc., et al.; Notice of Application

February 20, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 26(a)(2)(D) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain unit investment trusts to deposit trust assets in the custody of foreign banks and securities depositories.

APPLICANTS: Van Kampen American Capital Distributors, Inc. (the "Sponsor"), and Van Kampen American Capital Equity Opportunity Trust (the "Trust").

FILING DATES: The application was filed on November 3, 1997 and amended on February 18, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 17, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, at (202) 942–7120 or Nadya Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicant's Representations

1. The Sponsor, a wholly-owned indirect subsidiary of Morgan Stanley, Dean Witter, Discover & Co., specializes in the underwriting and distribution of unit investment trusts ("UITs") and mutual funds. The Sponsor is also a broker-dealer registered under the Securities Exchange Act of 1934.

2. The Trust is registered under the Act and consists of several UITs registered or to be registered under the Securities Act of 1933 ("Series" or "Trust Series"). Each Series is created under the laws of the United States pursuant to a trust agreement that will contain information specific to that Trust Series and which will incorporate by reference a master trust indenture (the "Indenture") among the Sponsor, a financial institution that is a bank within the meaning of section 2(a)(5) of the Act and that satisfies the criteria of section 26(a) of the Act (the "Trustee"), an evaluator and a supervisor. Applicants request that any order granted pursuant to the application extend to any future UIT sponsored by the Sponsor or an entity controlled by or under common control with the Sponsor (together with the Trust, the "Trusts").

3. Several Series have investment objectives that specify the investment of assets in non-United States securities. To date, the existing Trust Series that invest in foreign securities have been able to deposit those securities in the custody of a foreign branch of a U.S. bank or with the securities clearance and depository facilities operated by Morgan Guaranty Trust Company of New York, in its capacity as operator of the Euroclear System ("Euroclear"), or with Central de Livraison de Valeurs Mobilieres, S.A. ("Cedel"), under an exemptive order granted to the Series' Trustee, the Bank of New York.[1] Applicants currently contemplate creating a Trust Series (the "EAFE Trust") that will invest in the twenty companies with the highest dividend yield selected from a subset of the Morgan Stanley Capital International Europe, Australasia, Far East Index. The EAFE Trust will invest in foreign securities traded in several countries (such as Australia, France and New Zealand) that either are not eligible for settlement through Euroclear or Cedel or for which those depositories are not used in the ordinary course of settling transactions in those securities. Applicants therefore request an order to permit the Trust Series to deposit investments, including foreign currencies, for which the primary market is outside the United States and such cash and cash equivalents as necessary to effect the Series' transactions in those investments (collectively, "Foreign Investments"), with any foreign bank or securities depository that meets the requirements described below.

4. Without the requested relief, purchases of certain foreign securities by the EAFE Trust require that the securities must be physically transported in certificate form for deposit with a foreign branch of a U.S. bank and then retransported and redeposited upon sale. The costs and risks of this process are borne by the Series. Applicants also represent that, increasingly, transactions in foreign securities must be settled by book entry through specified clearing systems with related depositories. In addition, certain countries by law or regulation mandate use of a particular depository as the only means of holding a security. In other markets, maintaining securities outside a depository is not consistent with prevailing custodial practices. In some markets, anticipated time delays, as well as the costs, of maintaining securities with the nearest branch of a qualified U.S. bank have led the Sponsor to determine not to invest in those securities.

[1] Investment Company Act Release Nos. 20444 (August 5, 1994) (notice) and 20521 (August 31, 1994) (order).

Applicants' Legal Analysis

1. Under sections 2(a)(5) and 26(a)(1) of the Act, the trustee of a UIT must be a bank that is subject to regulation by the U.S. government or one of the states. Section 26(a)(2)(D) also requires that the trust indenture provide that the trustee "shall have possession of all securities and other property in which the funds of the trust are invested * * * and shall segregate and hold the same in trust * * * until distribution thereof to the security holders of the trust." Under these provisions, the only foreign entity that qualifies as a UIT custodian is an overseas branch of a U.S. bank.

2. Section 6(c) provides that the SEC may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act or any rule or regulation under the Act if, and to the extent that, the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Rule 17f–5 under the Act governs the custody of assets of registered management investment companies overseas. Applicants seek an order under section 6(c) exempting them and any U.S. bank that acts as Trustee for any Trust Series from section 26(a)(2)(D) of the Act to the extent necessary to permit a Trustee to deposit Foreign Investments with an eligible foreign custodian as that term is defined in rule 17f–5 under the Act ("Eligible Foreign Custodian"). Rule 17f–5 defines Eligible Foreign Custodian to include an entity incorporated or organized under the laws of a foreign country that is (i) a banking institution or trust company regulated as a bank or trust company by the foreign country's government or government agency or a majority-owned direct or indirect subsidiary of a U.S. bank or bank holding company; (ii) a securities depository or clearing agency that acts as a system for the central handling of securities or equivalent book-entries in the country that is regulated by a foreign financial regulatory authority; or (iii) a securities depository or clearing agency that acts as a transnational system for the handling of securities or equivalent book-entries.

4. Under the proposed arrangements, a Trust Series would comply with all of the requirements of rule 17f–5, except

that the Trustee would perform the duties that rule 17f–5 requires to be performed by a "foreign custody manager." Rule 17f–5 defines "Foreign Custody Manager" as the board of directors of a management investment company or a person serving as the board's delegate.

5. Under the proposed arrangements, the Sponsor, in determining the composition of the Trust Series' portfolio, will evaluate the risks of a Trust Series' investing in a particular country. In making the foreign investment decisions, the Sponsor may seek and rely on the information and opinion of the Trustee who may have information and experience concerning the financial systems and practices of the particular foreign market. The risks associated with the investment, if material, will be disclosed in the Trust Series' prospectus.

6. Consistent with the requirements of rule 17f–5, the Trustee, as Foreign Custody Manager, will select an Eligible Foreign Custodian after determining that the Series's assets will be subject to reasonable care; that the foreign custody contract will provide reasonable care for the Series' assets; and after establishing a system to monitor the appropriateness of maintaining the Series' assets with the custodian. The Trustee will make these determinations according to the requirements of the rule. The Indenture will contain provisions under which the Trustee agrees to indemnify the Trust Series against the risk of loss of Trust Series assets held in accordance with the foreign custody contract. In addition, the Indenture will contain provisions under which the Trustee agrees to exercise reasonable care, prudence and diligence such as a person having responsibility for the safekeeping of Trust Series assets would exercise, and to be liable to the Trust Series for any loss occurring as a result of the Trustee's failure to do so.

7. Applicants believe the Trustee can fulfill the duties of a Foreign Custody Manager under rule 17f–5 to select a foreign custodian and monitor the foreign custody arrangements. Applicants also assert that the Trustee will have the necessary expertise and generally be in the best position to make the determinations required by the rule. Applicants believe that permitting the use of Eligible Foreign Custodians by Trust Series would result in efficiencies, cost savings and enhanced liquidity of the Series' Foreign Investments.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The Indenture will contain provisions under which the Trustee agrees to indemnify the Trust Series against the risk of loss of Trust Series assets held in accordance with the foreign custody contract.

2. The Indenture will contain provisions under which the Trustee agrees to exercise reasonable care, prudence and diligence such as a person having responsibility for the safekeeping of Trust Series assets would exercise, and to be liable to the Trust Series for any loss occurring as a result of the Trustee's failure to do so.

3. The Indenture will contain provisions under which the Trustee agrees to perform all of the duties assigned by rule 17f–5, as now in effect or as it may be amended in the future, to the Foreign Custody Manager. A Trustee's duties under this condition will not be delegated.

4. The Trust Series' prospectus will contain such disclosure regarding foreign securities and foreign custody as is required for management investment companies by Forms N–1A and N–2.

5. The Trustee will maintain and keep current written records regarding the basis for the choice or continued use of each foreign custodian. These records will be preserved for a period of not less than six years from the end of the fiscal year in which the Trust Series was terminated, the first two years in an easily accessible place. The records will be available for inspection at the Trustee's main office during the Trustee's usual business hours, by unitholders and by the SEC or its staff.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4857 Filed 2–25–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39681; International Series Release No. 1120]

List of Foreign Issuers Which Have Submitted Information Under the Exemption Relating to Certain Foreign Securities

February 19, 1998.

Foreign private issuers with total assets in excess of $10,000,000 and a class of equity securities held of record by 500 or more persons, of which 300 or more reside in the United States, are subject to registration under Section 12(g) of the Securities Exchange Act of 1934 [1] (the "Act").[2]

Rule 12g3–2(b) [3] provides an exemption from registration under Section 12(g) of the Act with respect to a foreign private issuer that submits to the Commission, on a current basis, the material required by the Rule. The informational requirements are designed to give investors access to certain information so they have the opportunity to inform themselves about the issuer. The Rule requires the issuer to provide the Commission with information that it has: (1) Made or is required to make public pursuant to the law of the country of its domicile or in which it is incorporated or organized; (2) filed or is required to file with a stock exchange on which its securities are traded and that was made public by such exchange; and/or, (3) distributed or is required to distribute to its securities holders.

On October 6, 1983, the Commission revised Rule 12g3–2(b) by terminating the availability of the exemptive rule for certain foreign issuers with securities quoted on an automated inter-dealer quotation system—including the Nasdaq stock market.[4] The Commission grandfathered indefinitely securities of non-Canadian issuers that were in compliance with the Rule as of October 6, 1983 and quoted on Nasdaq on that date.[5]

When the Commission adopted Rule 12g3–2(b) and other rules [6] relating to foreign securities, it indicated that from time to time it would publish lists showing those foreign issuers that have claimed exemptions from the registration provisions of Section 12(g) of the Act.[7] The purpose of this release is to call to the attention of brokers, dealers and investors, that some form of relatively current information concerning the issuers included in this list is available in the Commission's

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[1] 15 U.S.C. 78a et seq.

[2] Foreign issuers may also be subject to such requirements of the Act by reason of having securities registered and listed on a national securities exchange in the United States, and may be subject to the reporting requirements of the Act by reason of having registered securities under the Securities Act of 1933, 15 U.S.C. 77a et seq.

[3] 17 CFR 240.12g3–2(b).

[4] Exchange Act Release No. 20264 (Oct. 6, 1983).

[5] If, however, the securities are delisted from an automated inter-dealer quotation system or if the issuer fails to meet the requirements of the Rule, the grandfather provision will cease to apply. In addition, effective April 1, 1998, the securities of foreign private issuers that claim the Rule 12g3–2(b) exemption will no longer be able to be quoted on the OTC Bulletin Board Service. See Exchange Act Release No. 38456 (March 31, 1997).

[6] Exchange Act Release No. 8066 (Apr. 28, 1967).

[7] Exchange Act Release No. 38235 (Feb. 4, 1997) was the last such list.

public files.[8] The Commission also wishes to bring to the attention of brokers, dealers, and investors the fact that current information concerning foreign issuers may not necessarily be available in the United States.[9] The Commission continues to expect that brokers and dealers will consider this fact in connection with their obligations under the federal securities laws to have a reasonable basis for recommending those securities to their customers.[10]

Direct any questions regarding Rule 12g3–2 or the list of issuers in this release to Rani Doyle, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549, ((202) 942–2990). This release is available on the Commission's Web site: www.sec.gov. Requests for copies may also be directed to the Public Reference Room, Securities and Exchange Commission, Washington, D.C. 20549 ((202) 942–8090).

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

Issuer	Country	File No.
A&B Geoscience Corp	Canada	82–4254
A.C.T. Industrial Corp	Canada	82–1071
AAPC Ltd	Australia	82–3688
AAXIS Ltd	Canada	82–1278
ABB AG	Switzerland	82–2871
ACOM Co. Ltd	Japan	82–4121
AGC Americas Gold Corp	Canada	82–2622
AIC International Resources Corp	Canada	82–1911
AME Resource Capital Corp	Canada	82–3435
AO Mosenergo	Russia	82–4475
AO TD GUM	Russia	82–4132
AO Tatneft	Russia	82–4226
APAC Telecommunications Corp	Canada	82–4157
ATOS	France	82–4323
AUR Resources Inc	Canada	82–4624
AVL Information Systems Inc	Canada	82–4010
Abitibi Mining Corp	Canada	82–4321
Aboitiz Equity Ventures	Phillipines	82–4650
Accor SA	France	82–4672
Adamas Resources Corp	Canada	82–4355
Adex Mining Corp	Canada	82–2796
AdvantEdge International Inc	Canada	82–4658
Agen Ltd	Australia	82–2330
Aggreko PLC	Scotland	82–4659
Ainsworth Lumber Co. Ltd	Canada	82–4606
Airgen Corporation	Canada	82–4731
Alantra Venture Corp	Canada	82–3307
Albert Fisher Group PLC	United Kingdom	82–1020
All Nippon Airways Co. Ltd	Japan	82–1569
Allied Colloids Group plc	United Kingdom	82–4038
Allied Domecq plc	United Kingdom	82–878
Alpargatas, S.A.I.C	Argentina	82–3122
Alpha Airports Group PLC	United Kingdom	82–3694
Altai Resources, Inc	Canada	82–2950
Altair International Inc	Canada	82–1770
AmSteel Corp Berhad	Malaysia	82–3318
Amalgamated Banks of South Africa Ltd	South Africa	82–4589
Amera Industries Corp	Canada	82–3263
American Comstock Exploration Ltd	Canada	82–3283
American Manor Corp	Canada	82–4158
American Mineral Fields Inc	Canada	82–1840
Amoy Properties Ltd	Hong Kong	82–3410
Anderson Exploration Ltd	Canada	82–4169
Andhra Valley Power Supply Co Ltd	India	82–3732
Angkasa Marketing Berhad	Malaysia	82–3319
Anglo American Corp. of South Africa Ltd	South Africa	82–97
Anglo American Gold Investment Co. Ltd	South Africa	82–146
Annova Business Group Inc	Canada	82–2384
Antares Mining and Exploration Corp	Canada	82–3858
Anthian Resources Corp	Canada	82–4096
Apasco SA de CV	Mexico	82–3103
Applied High Technology AHT Corp	Canada	82–4562
Applied Inventions Management Inc	Canada	82–3763
Aqua Pure Ventures Inc	Canada	82–4523

[8] Inclusion of an issuer on the list in this release is not an affirmation by the Commission that the issuer has complied or is complying with all the conditions of Rule 12g3–2(b). The list does identify those issuers that have both claimed the exemption and have submitted relatively current information to the Commission as of February 11, 1997.

[9] Paragraph (a)(4) of Rule 15c2–11 [17 CFR 240.15c2–11] requires a broker-dealer initiating a quotation for securities of a foreign private issuer to review, maintain in its files, and make reasonably available upon request, the information furnished to the Commission pursuant to Rule 12g3–2(b) since the beginning of the issuer's last fiscal year.

[10] See, e.g., *Hanley* v. *SEC*, 415 F.2d 589 (2d Cir. 1969) (broker-dealer cannot recommend a security unless an adequate and reasonable basis exists for such recommendation).

Issuer	Country	File No.
Aquaterre Mineral Development Ltd	Canada	82–3945
Archon Minerals Ltd	Canada	82–4171
Argenta Systems Inc	Canada	82–1320
Arisawa Manufacturing Co	Japan	82–4620
Arisco Produtos Alimenticos SA	Brazil	82–4651
Arjo Wiggins Appleton PLC	United Kingdom	82–4185
Arkona Resources Inc	Canada	82–711
Armada Gold Corp	Canada	82–3965
Arvind Mills Ltd	India	82–3708
Asia Fiber PLC	Thailand	82–2842
Assurances Generales de France	France	82–4517
Astra Compania Argentina de Petroleo SA	Argentina	82–3930
Astris Energi Inc	Canada	82–4325
Athabaska Gold Resources Ltd	Canada	82–1906
Atna Resources Ltd	Canada	82–1556
Augen Capital Corp	Canada	82–4712
Augusta Resource Corp	Canada	82–3529
Auridiam Consolidated NL	Australia	82–3452
Australian National Industries Ltd	Australia	82–3351
Australian Oil & Gas Corp Ltd	Canada	82–4576
Austria Tabak AG	Austria	82–4715
Autoliv AB	Sweden	82–3810
Autumn Industries Inc	Canada	82–3219
Avalon Ventures Ltd	Canada	82–4427
Avmin Limited	South Africa	82–4519
Aztek Technologies Inc	Canada	82–1474
BAT Industries	United Kingdom	82–33
BYG Natural Resources Inc	Canada	82–2038
BASM Resources Corp	Canada	82–4667
BC Gas Inc	Canada	82–3909
BCS Technology Inc	Canada	82–4558
BHF Bank AG	Germany	82–3404
BT Industries AB	Sweden	82–4212
BTR PLC	United Kingdom	82–898
BWI Resources Ltd	Canada	82–2914
Banca Commerciale Italiana	Italy	82–3707
Banca Popolare di Brescia SA	Italy	82–4662
Banco La Previsora SA	Equador	82–4133
Banco Mercantil SA	Bolivia	82–4296
Banco Santander Mexicano	Mexico	82–3508
Banco Venezolano de Credito SACA	Venezuela	82–4422
Bandai Co. Ltd	Japan	82–3919
Bank Handlowy w Warszawie SA	Poland	82–4613
Bank Vozrozhdeniye	Russia	82–4257
Bank of East Asia Ltd	Hong Kong	82–3443
Bank of Nova Scotia	Canada	82–132
Bank of Scotland	United Kingdom	82–3240
BankInter SA	Spain	82–2972
Bayerische Hypotheken-und Wechsel-Bank	Germany	82–3777
Beatrix Mines Ltd	South Africa	82–1054
Bellevue Capital Corp	Canada	82–4687
Benz Energy Ltd	Canada	82–2491
Berjaya Group Berhad	Malaysia	82–2677
Berjaya Industrial Berhad	Malaysia	82–2580
Berkshire Int'l Mining Ltd	Canada	82–1914
Bespak PLC	United Kingdom	82–3349
Beta Systems Software AG	Germany	82–4631
Big Valley Resources Inc	Canada	82–1600
Billiton PLC	United Kingdom	82–4647
Biota Holdings Ltd	Australia	82–3570
Blackrock Ventures Inc	Canada	82–4555
Blackstone Resources Inc	Canada	82–4520
Blue Circle Industries PLC	United Kingdom	82–927
Blue Desert Mining Inc	Canada	82–4386
Blue Power Energy Corp	Canada	82–2213
Blue Range Resource Corp	Canada	82–3302
Body Shop International PLC	United Kingdom	82–3534
Bohler Uddeholm AG	Austria	82–4089
Boliden Limited	Canada	82–4707
Bombardier Inc	Canada	82–3123
Bombril SA	Brazil	82–3651
Bompreco SA Supermercados do Nordeste	Brazil	82–4467
Bonton AS	Czech Republic	82–4684
Borealis Exploration Ltd	Canada	82–1656

Issuer	Country	File No.
Borneo Gold Corp	Canada	82-4702
Bracken Mines Ltd	South Africa	82-219
Braddick Resources Ltd	Canada	82-4414
Braiden Resources Ltd	Canada	82-2121
Brandselite International Corp	Canada	82-4042
Breckenridge Resources Ltd	Canada	82-1647
Bren Mar Resources Ltd	Canada	82-2143
Briana Bio-Tech Inc	Canada	82-3073
Bridgestone Corp	Japan	82-1264
Bright Star Ventures	Canada	82-4737
British Aerospace PLC	United Kingdom	82-3136
British Energy PLC	United Kingdom	82-4426
Brocker Investments Ltd	Canada	82-4186
Bronx Minerals Inc	Equador	82-966
Burmah Castrol PLC	United Kingdom	82-5
Burns Philip & Company Ltd	Australia	82-1565
Burwill Holdings Ltd	Bermuda	82-4266
C.A. Venezolana de Pulpa y Papel SACA	Venezuela	82-3202
CAPEX SA	Argentina	82-3862
CDL Hotels International Ltd	Cayman Islands	82-3667
CSK Corp	Japan	82-781
CSL Ltd	Australia	82-3785
CTM Citras SA	Brazil	82-3555
CVL Resources Ltd	Canada	82-1991
Cadre Resources Ltd	Canada	82-2911
Calais Resources Inc	Canada	82-3525
Calypso Developments Ltd	Canada	82-4692
Cambridge Minerals Ltd	Canada	82-4569
Camelot Resources Ltd	Australia	82-4550
Campagnie Financiere de Paribas	France	82-4559
CanBaikal Resources Inc	Canada	82-4694
Canadian Airlines Corp	Canada	82-3203
Canadian Hydro Developers Inc	Canada	82-3347
Canadian Medical Legacy Corp	Canada	82-4729
Canadian Oil Sands Trust	Canada	82-4726
Canadian Western Bank	Canada	82-4478
Caradon PLC	United Kingdom	82-4542
Carbite Gold Inc	Canada	82-4305
Cardo AB	Sweden	82-4020
Caribbean Cement Company	Jamaica	82-3715
Caribgold Resources Inc	Canada	82-4104
Carlin Resources Corp	Canada	82-4111
Carta Resources Ltd	Canada	82-4553
Casamiro Resources Corp	Canada	82-1431
Cash Resources Ltd	Canada	82-4106
Castello Casino Corp	Canada	82-1918
Castellum AB	Sweden	82-4683
Castle Rock Exploration Corp	Canada	82-2472
Catalyst Ventures Corp	Canada	82-2930
Cathay Pacific Airlines Ltd	Hong Kong	82-1390
Cathedral Gold Corp	Canada	82-1990
Celanese Canada Inc	Canada	82-171
Cementos Lima SA	Peru	82-3911
Cemex SA de CV	Mexico	82-2744
Centaur Mining & Exploration Ltd	Australia	82-4313
Central Costanera SA	Argentina	82-3868
Central Pacific Minerals NL	Australia	82-354
Centrica PLC	United Kingdom	82-4516
Cerveceria Nacional SA	Panama	82-4704
Ceska Sporitelna AS	United Kingdom	82-4384
Challenger Minerals Ltd	Canada	82-3666
Champion Gold Resources Inc	Canada	82-4485
Champion Resources Inc	Canada	82-4286
Charters Towers Gold Mines NL	Australia	82-4493
Chauvco Resources Ltd	Canada	82-3316
Chen Hsong Holding Ltd	Bermuda	82-3953
Chengdu Telecommunications Cable Co Ltd	China	82-4573
Cheung Kong (Holdings) Ltd	Hong Kong	82-4138
China Overseas Land and Investment Ltd	Hong Kong	82-3987
China Pharmaceutical Enterprise & Inv Co	Hong Kong	82-4135
China Resources Enterprise Ltd	Hong Kong	82-4177
China Strategic Holdings Ltd	Hong Kong	82-3596
Cho Hung Bank	Korea	82-4506
Christiana Bank OG Kredithasso	Norway	82-3018

Issuer	Country	File No.
Christies International PLC	United Kingdom	82–1180
Churchill Resources Ltd	Philippines	82–3927
Ciba Specialty Chemicals Holding Inc	Switzerland	82–4541
Cifra SA de CV	Mexico	82–4609
Circle Energy Inc	Canada	82–4586
Circumpacific Energy Corp	Canada	82–3102
Claude Resources Inc	Canada	82–1742
Clear Creek Resources Ltd	Canada	82–4690
Climax International Co	Bermuda	82–4062
Coca-Cola Amatil Ltd	Australia	82–2994
Colony Pacific Explorations Ltd	Canada	82–1115
Columbia Yukon Resources Ltd	Canada	82–4290
Comac Food Group Inc	Canada	82–2456
Commerzbank AG	Germany	82–2523
Compagnie Financiere Richemont AG	Switzerland	82–4102
Companhia Acos Especiais Itabira Acesita	Brazil	82–3769
Companhia Cervejaria Brahma SA	Brazil	82–4352
Companhia Energetica Minas Gerais	Brazil	82–3465
Companhia Energetica de Sao Paulo	Brazil	82–3691
Companhia Suzano De Papel e Celulose	Brazil	82–3550
Companhia de Tecidos Norte	Brazil	82–4714
Companion Building Material (Holding) Ltd	Hong Kong	82–3982
Compass Group PLC	United Kingdom	82–4445
Concept Industries PLC	Canada	82–4003
Concert Industries Ltd	Canada	82–1003
Consolidated Gold City Mining Corp	Canada	82–2753
Consolidated Magna Ventures Ltd	Canada	82–1370
Consolidated Pine Channel Gold Corp	Canada	82–2583
Consolidated Westview Resources Inc	Canada	82–2601
Consorcio Hogar SA de CV	Mexico	82–4604
Consorcio Inversionista Mercantil CIMA	Venezula	82–4377
Continental AG	Germany	82–1357
Continental Precious Minerals Inc	Canada	82–3358
Copene Petroquimica do Nordeste SA	Brazil	82–3367
Cora Resources Ltd	Canada	82–4571
Corner Bay Minerals Inc	Canada	82–4698
Corporacion Financiera del Valle SA	Columbia	82–3437
Corriente Resources Inc	Canada	82–3775
Cream Minerals Ltd	Canada	82–4739
Credit Communal Holding/Dexia Belguim	Belguim	82–4606
Credit Lyonnais SA	France	82–3662
Credit Suisse First Boston	Switzerland	82–4705
Credit Suisse Group	Switzerland	82–3477
Crestar Energy Inc	Canada	82–3641
Cross Lake Minerals Ltd	Canada	82–2636
Crown Ltd	Australia	82–4498
Cultor Ltd	Finland	82–1643
Curiofi Venture Corp	Canada	82–3602
Curlew Lake Resources Inc	Canada	82–1978
DIS Deutscher Industrie	Germany	82–4716
Da Capo Resources Ltd	Canada	82–3931
Dah Sing Financial Holdings Ltd	Hong Kong	82–4272
Dai'ei Inc	Japan	82–230
Dairy Farm International Holdings Ltd	Hong Kong	82–2962
Daiwa Associate Holding Ltd	Bermuda	82–4402
David Jones Ltd	Australia	82–4230
De Beers Centenary AG	Switzerland	82–3069
De Beers Consolidated Mines Ltd	South Africa	82–91
Debenhams PLC	United Kingdom	82–4747
Debonair Holdings PLC	United Kingdom	82–4634
Deelkraal Gold Mining Co. Ltd	South Africa	82–246
Delpet Resources Ltd	Canada	82–1535
Delphi Group Public Ltd Co.	United Kingdom	82–4424
Den Danske Bank AG	Denmark	82–1263
Den Norske Bank AS	Norway	82–3967
Denstone Resources Ltd	Canada	82–4680
Deutsche Bank AG	Germany	82–334
Deutsche Lufthansa AG	Germany	82–4691
Development Bank of Singapore	Singapore	82–3172
Dixons Group PLC	United Kingdom	82–3331
Dofasco Ltd	Canada	82–3226
Dorel Industries Inc	Canada	82–2800
Dresdner Bank AG	Germany	82–229
Driefontein Consolidated Ltd	South Africa	82–124

Issuer	Country	File No.
Dynamic Ventures Ltd	Canada	82-4080
ED& F Man Group PLC	United Kingdom	82-4214
ERG Australia Ltd	Australia	82-2372
EI Environmental Engineering Concepts Ltd	Canada	82-1598
EMI Group PLC	United Kingdom	82-373
ERG SPA	Italy	82-4745
ERI Ventures Ltd	Canada	82-4430
East Daggafontein Mines Ltd	South Africa	82-42
East India Hotels Ltd	India	82-3921
East Rand Gold & Uranium Co.	South Africa	82-289
East Rand Proprietary Mines Ltd	United Kingdom	82-239
East West Resources Corp	Canada	82-787
Eastman Resources Inc	Canada	82-4421
Egana International Holdings Ltd	Cayman Islands	82-4268
Eisai Co Ltd	Japan	82-4015
Elandsrand Gold Mining Co	South Africa	82-266
Eldorado Gold Corp	Bermuda	82-3578
Electrolux do Brasil SA	Brazil	82-3794
Elektrim SA	Poland	82-4665
Elevadores Atlas SA	Brazil	82-4409
Elite Industries Ltd	Israel	82-2958
Email Limited	Australia	82-2951
Emperor (China Concepts) Inv. Ltd	Bermuda	82-3886
Emperor Mines Ltd	Australia	82-969
Empire Alliance Properties Inc	Canada	82-2215
Energy Africa Limited	South Africa	82-4306
Engil Sociedade Gestora de Participacoes	Portugal	82-4246
Enterra Holdings Ltd	Canada	82-4335
Essex Resource Corp	Canada	82-4410
Evander Gold Mines Ltd	South Africa	82-220
Evergreen Marine Corp Taiwan Ltd	China	82-4420
Exall Resources Ltd	Canada	82-3535
Expatriate Resources Ltd	Canada	82-4603
Exploration Brex Inc	Canada	82-4269
FH Faulding & Company Ltd	Australia	82-2882
FCA International Ltd	Canada	82-1310
FVI Fondo de Valores	Venezuela	82-4695
Fairfield Minerals Ltd	Canada	82-1784
Fairyoung Holdings Ltd	Hong Kong	82-4236
Falcon Point Resources Ltd	Canada	82-1713
Falcon Ventures International Corp	Canada	82-1748
Fancamp Resources Ltd	Canada	82-3929
Far-Ben SA de CV	Mexico	82-3600
Fastighets AB Tornet	Sweden	82-4322
Fedsure Holdings Ltd	South Africa	82-3839
Fenway Resources Ltd	Canada	82-2303
Ferreyos SA	Peru	82-4567
Finance One Public Co Ltd	Thailand	82-3536
Findore Minerals Inc	Canada	82-4163
First Australian Resources NL	Australia	82-3494
First Pacific Co Ltd	Hong Kong	82-836
First Quantum Minerals	Canada	82-4461
First Silver Reserve Inc	Canada	82-3449
Flextech Holdings Ltd	Singapore	82-4539
Flying Disc Entertainment Inc	Canada	82-1931
Footmaxx Holdings Inc	Canada	82-4079
Forbes Medi Tech Inc	Canada	82-3139
Foreningssparbanken AB	Sweden	82-4092
Foschini Ltd	South Africa	82-4044
Founder Resources Inc	Canada	82-3264
Frankie Dominion International Ltd	Bermuda	82-3649
Free State Consolidated Gold Mines Ltd	South Africa	82-44
Frutarom Industries Ltd	Israel	82-4357
Fuji Bank Ltd	Japan	82-4492
Fuji Photo Film Co. Ltd	Japan	82-78
Future Media Technologies Corp	Canada	82-2406
G. Accion SA de CV	Mexico	82-4590
GAR Ltd	Canada	82-3489
GGT Group	United Kingdom	82-2884
GHP Exploration Corp	Canada	82-4600
GKN PLC	United Kingdom	82-1042
GMD Resources Corp	Canada	82-4071
Gala-Bari International Inc	Canada	82-2511
GalaVu Entertainment Inc	Canada	82-4587

Issuer	Country	File No.
Gallery Resources Ltd	Canada	82-2877
Genbel South Africa Ltd	South Africa	82-235
Gencor Ltd	South Africa	82-311
Genetronics Biomedical Ltd	Canada	82-4080
Geo2 Ltd	Australia	82-4499
Gerdav SA	Brazil	82-4663
Gerle Gold Ltd	Canada	82-1209
Gesham Resources Inc	Canada	82-3625
Ghana Gold Mines Ltd	Australia	82-4547
Giordano Holdings Ltd	Hong Kong	82-3780
Gitenne Exploration Inc	Canada	82-4170
Glencar Explorations PLC	Ireland	82-1421
Global Cogenix Industrial Corp	Canada	82-2990
Global Metals Ltd	Canada	82-4676
Globex Mining Enterprises Inc	Canada	82-4025
Glorius Sun Enterprises Ltd	Bermuda	82-4501
Gold Fields of South Africa Ltd	South Africa	82-204
Gold Peak Industries (Holdings) Ltd	Canada	82-3604
Gold Ridge Resources Inc	Canada	82-1903
Goldcliff Resources Corp	Canada	82-2748
Golden Hill Mining Corp	Canada	82-4261
Golden Kootenay Resources Inc	Canada	82-2546
Golden Peaks Resources Ltd	Canada	82-3343
Golden Resources Development Int'l Ltd	Bermuda	82-4026
Golden Thunder Resources Ltd	Canada	82-1052
Goldhill Industries Inc	Canada	82-4162
Goldnev Resources Inc	Canada	82-1080
Goldtex Resources Ltd	Canada	82-4526
Goodman Fielder Ltd	Australia	82-2009
Govett Strategic Investment Trust PLC	United Kingdom	82-287
Gran Cadena de Almacenes Colombianos SA	Colombia	82-3974
Grand Hotel Holdings Ltd	Hong Kong	82-3408
GrandVision SA	France	82-4710
Grande Portage Resources Ltd	Canada	82-1767
Granges AB	Sweden	82-4589
Grasim Industries Ltd	India	82-3322
Great Eagle Holdings Ltd	Bermuda	82-3940
Greenfields Coal Co. Ltd	Australia	82-4227
Groupo Financiero GBM Atlantico SA de CV	Mexico	82-3742
Grupo Continental SA	Mexico	82-4211
Grupo Financiero Banamex Accival SA de CV	Mexico	82-3325
Grupo Financiero Bancomer SA de CV	Mexico	82-3273
Grupo Financiero Bital	Mexico	82-3548
Grupo Financiero Invermexico SA de CV	Mexico	82-3447
Grupo Gigante SA de CV	Mexico	82-3142
Grupo Herdez SA de CV	Mexico	82-3818
Grupo Mexico SA de CV	Mexico	82-4582
Grupo Posadas SA de CV	Mexico	82-3274
Guandong Kelon Electrical Holdings Co	China	82-4374
Guangdon (Holdings) Limited	Hong Kong	82-4725
Guangdong Provincal Expressway Dev	China	82-4570
Guangzhou Investment Co. Ltd	Hong Kong	82-4247
Guangzhou Shipyard Int'l Co. Ltd	China	82-4036
Guardian Enterprises Ltd	Canada	82-857
Guongdong Investments Ltd	Hong Kong	82-3772
Guyana Gold Fields Inc	Canada	82-4532
Gwalia Consolidated Ltd	Australia	82-2126
H.J. Forest Products Inc	Canada	82-4141
H2O Entertainment Corp	Canada	82-4607
HB International Holdings Ltd	Bermuda	82-3949
HSBC Holdings PLC	United Kingdom	82-683
Hai Sun Hup Group Ltd	Singapore	82-3575
Hang Lung Development Co. Ltd	Hong Kong	82-1439
Hang Seng Bank Ltd	Hong Kong	82-1747
Hannover Ruckversicherunge AG	Germany	82-4627
Hanny Holdings Ltd	Bermuda	82-3638
Hansabank Ltd	Estonia	82-4643
Harbour Petroleum Company Ltd	Canada	82-3427
Hardman Resources NL	Australia	82-3472
Harmac Pacific Inc	Canada	82-4122
Hartstone Group PLC	United Kingdom	82-3022
Havas SA	France	82-2879
Henderson Investment Ltd	Hong Kong	82-3964
Henderson Land Development Co. Ltd	Hong Kong	82-1561

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Issuer	Country	File No.
Henkel KGAA	Germany	82-4437
Hera Resources Inc	Canada	82-3656
Herald Resources Ltd	Australia	82-4295
Highgrade Ventures Ltd	Canada	82-2257
Highveld Steel & Vanadium Corp. Ltd	South Africa	82-696
Hilasal Mexicana SA de CV	Mexico	82-4743
Hillsdown Holdings PLC	United Kingdom	82-1407
Hilton Petroleum Ltd	Canada	82-4709
Hindalco Industries Ltd	India	82-3428
Hino Motors Ltd	Japan	82-1388
Hoganas AB	Sweden	82-3754
Hokuriku Bank Ltd	Japan	82-1045
Holderbank Financiere Glaris Ltd	Switzerland	82-4093
Hong Kong & China Gas Co. Ltd	Hong Kong	82-1543
Hong Kong Daily News Holding Ltd	Bermuda	82-3887
Hopewell Holdings Ltd	Hong Kong	82-1547
Hornbach-Baumarkt AG	Germany	82-3729
Howard Smith Ltd	Australia	82-4538
Hualing Holdings Ltd	Hong Kong	82-4195
Hunter Douglas NV	Netherlands	82-3741
Hyatt Financial Corp. Ltd	Canada	82-4656
Hysan Development Co	Hong Kong	82-1617
Hyundai Motor Company	Korea	82-3423
I.T.C. Ltd	India	82-3470
I.T.C. Microcomponents Inc	Canada	82-4508
ICI Australia Ltd	Australia	82-4625
IDT Holdings (Singapore) Ltd	Singapore	82-4722
IDT International Limited	Bermuda	82-4727
IGT Pharmaceutical, Inc	Canada	82-4098
Image Power Inc	Canada	82-4641
Image Processing Systems Inc	Canada	82-4244
Imasco Ltd	United Kingdom	82-118
Impala Platinum Holdings Ltd	South Africa	82-359
Imperial Holdings Ltd	South Africa	82-4087
Imperial Metals Corp	Canada	82-1032
Imperial Mining NL	Australia	82-1257
Imperial Tobacco Group	United Kingdom	82-4440
Inca Pacific Resources Inc	Canada	82-1665
Insular Explorations Ltd	Canada	82-1827
Insulpro Industries Inc	Canada	82-3281
Integrated Media Communications Inc	Canada	82-2263
Inter West Energy Corp	Canada	82-4510
Intercontinental Mining Corp	Canada	82-3058
International Ballatar Resources Inc	Canada	82-2237
International Bioremediation Services Inc	Canada	82-3828
International Chargold Resources Ltd	Canada	82-4385
International Curator Resources Ltd	Canada	82-1540
International PBX Ventures Ltd	Canada	82-2635
International Panorama Resource Corp	Canada	82-1965
International Parkside Products Inc	Canada	82-2794
International Pipe Ltd	Hong Kong	82-3850
International Road Dynamics Inc	Canada	82-3899
International Roraima Gold Corp	Canada	82-3988
International Telepresence Canada Inc	Canada	82-4686
International Tower Hill Mines Ltd	Canada	82-3248
International Training Rinks Corp	Canada	82-4626
International Wayside Gold Mines Ltd	Canada	82-1606
International Wex Technologies Inc	Canada	82-3304
Interpump Group SPA	Italy	82-4511
Interstar Mining Group Inc	Canada	82-3759
Iron Carbide Australia Ltd	Australia	82-1386
Iscor Ltd	South Africa	82-3826
Istituto Bancario San Paolo	Italy	82-3265
Ittierre Holding SPA	Italy	82-4728
J Sainsbury PLC	United Kingdom	82-913
JD Group Ltd	South Africa	82-4401
JD Wetherspoon PLC	England	82-4416
JG Summit Holdings Inc	Philippines	82-3572
JNR Resources Inc	Canada	82-4720
JSC Kubanelectrosvyaz	Russia	82-4721
JSC Nizhegorodsvyasinform	Russia	82-4642
JSC Petersburg Telephone Network	Russia	82-4649
JSC Primorsk Shipping Corp	Russia	82-4717
JSC Samaraenergo	Russia	82-4708

Issuer	Country	File No.
JSC Silvinit	Russia	82-4706
JSC Vralsvyasinform	Russia	82-4545
Jamaica Broilers Group Ltd	Jamaica	82-3720
Japan Airlines Company Ltd	Japan	82-122
Japan Telecom Co.	Japan	82-3943
Japan Tobacco Inc	Japan	82-4362
Jardine Matheson Holdings Ltd	Hong Kong	82-2963
Jardine Strategic Holdings Ltd	Bermuda	82-3085
Jilbey Exploration Ltd	Canada	82-1629
Jinhui Holdings Co.	Hong Kong	82-3765
Jinhui Shipping and Transportation Ltd	Bermuda	82-4054
John Keells Holdings Ltd	Sri Lanka	82-3854
Johnson Electric Holdings Ltd	Canada	82-2416
Johnson Matthey Plc	United Kingdom	82-2272
Joint Stock Co. Buryatzoloto	Russia	82-4619
Joint Stock Co. Rosenftegazstroy	Russia	82-4597
Joint Stock Co. Trading House	Russia	82-4563
Joint Stock Co. Aeroflot Russia Int'l Airlines	Russia	82-4592
Jordex Resources Inc	Canada	82-3200
Jot-It Software Corp	Canada	82-4525
Joutel Resources Ltd	Canada	82-502
Julius Meinl International AG	Austria	82-4554
K&M Moebel AG	Germany	82-4572
K. Wah International Holdings Ltd	Bermuda	82-3853
KGHM Polska Miedz SA	Poland	82-4639
Kap Resources Ltd	Canada	82-2319
Karlshamns AB	Sweden	82-4601
Kawasaki Heavy Industries Ltd	Japan	82-4389
Kawasaki Steel Corp	Japan	82-3389
Kelso Technologies Inc	Canada	82-2441
Kettle River Resources Ltd	Canada	82-666
Kidston Gold Mines Ltd	Australia	82-2351
Kik Tire Technologies Inc	Canada	82-2367
King George Development Corp	Canada	82-1446
Kingboard Chemical Holdings Ltd	Caymen Islands	82-4082
Kingfisher PLC	United Kingdom	82-968
Kirin Brewery Co	Japan	82-188
Klondike Gold Corp	Canada	82-3017
Kloof Gold Mining Co Ltd	South Africa	82-205
Kobe Steel Ltd	Japan	82-3371
Komercni Banka AS	Czech Republic	82-4154
Koninklijke Wessanen NV	Netherlands	82-1306
Kookaburra Resources Ltd	Canada	82-2740
Kookmin Bank	Korea	82-4447
Krones AG	Germany	82-3871
Kumagai Gumi (H.K.) Ltd	Hong Kong	82-4029
LG Electronics Inc	Korea	82-3857
Ladbroke Group PLC	United Kingdom	82-1571
Lafarge Coppee	France	82-3369
Lai Sun Development Ltd	Hong Kong	82-3878
Lasermedia Communications Corp	Canada	82-4646
Latas de Aluminos SA	Brazil	82-4598
Laura Ashley Holdings PLC	United Kingdom	82-1356
Leader Mining Corp	Canada	82-2467
Leeward Capital Corp	Canada	82-3640
Legend Holding Ltd	Hong Kong	82-3950
Lenzing AG	Austria	82-3207
Leslie Gold Mines Ltd	South Africa	82-223
Levelland Energy and Resources Ltd	Canada	82-3590
Lion Land Berhad	Malaysia	82-3342
Lloyds Group PLC	United Kingdom	82-4235
London Electricity PLC	United Kingdom	82-3037
Lonrho PLC	United Kingdom	82-191
Louis Dreyfus Citrus SA	France	82-4505
Lucero Resource Corp	Canada	82-1756
Lukoil Co	Russia	82-4006
MCB Investments Corp	Canada	82-3512
MCK Mining Corp	Canada	82-3938
MGI Software Corp	Canada	82-4666
MIM Holdings Ltd	Australia	82-173
Madison Enterprises Corp	Canada	82-4533
Magician Industries Holdings Inc	Bermuda	82-4358
Mahindra & Mahindra	India	82-4479
Malbak Ltd	South Africa	82-3751

Issuer	Country	File No.
Mandarin Oriental International Ltd	Hong Kong	82-2955
Mannesmann AG	Germany	82-4232
Manufacturas De Papel CA	Venezuela	82-4240
Maple Minerals Inc	Canada	82-3650
Mar-West Resources Ltd	Canada	82-4546
Marcopolo SA	Brazil	82-4310
Marks and Spencer PLC	United Kingdom	82-1961
Marubeni Corp	Japan	82-616
Mediaset SPA	Italy	82-4515
Menatep Bank	Russia	82-4155
Menora Resources Inc	Canada	82-4289
Menzies Gold NL	Australia	82-4536
Meranto Technology Ltd	Canada	82-4452
Mercury Scheduling Systems Inc	Canada	82-4531
Merita Ltd	Finland	82-4365
Metrowerks Inc	Canada	82-4049
Metsa Serla OY	Finland	82-3696
Micromedical Industries Ltd	Australia	82-4630
Mill City Gold Mining Corp	Canada	82-3076
Minco Mining & Metals Corp	Canada	82-4160
Minebea Co Ltd	Japan	82-4551
Minera Rayrock Inc	Canada	82-3471
Minorco SA	Luxembourg	82-206
Minto Explorations Ltd	Canada	82-4119
Mishibishu Gold Corp	Canada	82-2682
Mispec Resources Inc	Canada	82-4661
Misr International Bank SAF	Egypt	82-4629
Mitsubishi Chemical Corp	Japan	82-1191
Mitsubishi Corp	Japan	82-3784
Mitsui Trust & Banking Co Ltd	Japan	82-4677
Mol Rt	Hungary	82-4224
Molson Companies Ltd	Canada	82-2954
Moulin International Holding Ltd	Bermuda	82-3970
Mount Burgess Gold Mining Co NL	Australia	82-1235
Mount Real Corp	Canada	82-4689
Mt. Leyshon Gold Mines Ltd	Canada	82-1753
Multivision Communications Corp	Canada	82-2260
Mustang Gold Corp	Canada	82-4724
NCC Mining Corp	Canada	82-3580
NDU Resources Ltd	Canada	82-2292
NTS Computer Systems Ltd	Canada	82-4354
NTT Resources Ltd	Canada	82-3786
NV Verenigd Bezit VNU	Netherlands	82-2876
Nadro SA de CV	Mexico	82-4611
Nampak Ltd	South Africa	82-3714
Naneco Minerals Ltd	Canada	82-2618
National Bank of Canada	Canada	82-3764
National Challenge Systems Inc	Canada	82-4222
National Grid Holding PLC	United Kingdom	82-4207
National Mutual Holdings Ltd	Australia	82-4438
Natsteel Ltd	Singapore	82-4652
Nedcor Ltd	South Africa	82-3893
Nestle SA	Switzerland	82-1252
Net Nanny Software Int'l Inc	Canada	82-2476
New Oji Paper Co Ltd	Japan	82-4112
New World Developments Co	Hong Kong	82-2971
New World Infrastructure Ltd	Hong Kong	82-4218
NewCoast Silver Mines Ltd	Canada	82-4123
Newport Petroleum Corp	Canada	82-4557
Newsquest PLC	United Kingdom	82-4735
Newstar Resources Inc	Canada	82-4400
Nichiei Go Ltd	Japan	82-4664
Nissan Motor Co	Japan	82-207
Nomura Securities Co Ltd	Japan	82-3872
Nora Exploration Inc	Canada	82-3329
Norcan Resources Ltd	Canada	82-3934
Nordbanken AB	Sweden	82-4184
Normandy Mining Ltd	Australia	82-1975
Noront Resources Ltd	Canada	82-2304
North Ltd	Australia	82-2531
Northern Electric PLC	United Kingdom	82-3039
Northpoint Resources Ltd	Canada	82-4645
Northstar Energy Corp	Canada	82-4577
Novartis AG	Switzerland	82-4412

Issuer	Country	File No.
Novawest Resources, Inc	Canada	82-3822
Novogen Ltd	Australia	82-4730
Nu-Apex Energy Corp	British Columbia	82-4425
Nuigini Mining	New Guinea	82-1230
Nuinsco Resources Ltd	Canada	82-1846
OJS Kuzbassenergo	Russia	82-4633
OJSC Tyumentelecom	Russia	82-4535
OTP Nat'l Savings & Commercial Bank Ltd	Hungary	82-4685
Ocean Diamond Mining Holdings Ltd	South Africa	82-4046
Odessa Petroleum Corp	Canada	82-2353
Okak Bay Resources Ltd	Canada	82-4584
Oliver Gold Corp	Canada	82-4537
Olympus Optical Co Ltd	Japan	82-3326
Omni Resources Inc	Canada	82-385
Onfem Holdings Ltd	Bermuda	82-3735
Opawica Explorations	Canada	82-4509
Orbit Oil and Gas Ltd	Canada	82-3107
Orient Telecom and Technology Holdings Ltd	Bermuda	82-3946
Orkla AS	Norway	82-3998
Osterreichische Elcktrizitatswirtschafts	Austria	82-4381
Outokumpu OY	Finland	82-3680
Oxiteno SA	Brazil	82-4148
PT Jakarta Int'l Hotels & Dev	Indonesia	82-4397
PT Hero Supermarket	Indonesia	82-4566
Pacific Andes Int'l Holdings Ltd	Bermuda	82-4031
Pacific Falkon Resources Corp	Canada	82-2204
Pacific Galleon Mining Ltd	Canada	82-3258
Pacific Rim Mining Corp	Canada	82-3611
Pacific Vista Industries Inc	Canada	82-2829
Palmer Resources Ltd	Canada	82-1882
Pangea Goldfields Inc	Canada	82-3917
Pannonplast RT	Hungary	82-4548
Panterra Minerals Inc	Canada	82-3597
Paramount Ventures & Finance Inc	Canada	82-2207
Parkcrest Explorations Ltd	Canada	82-4090
Parkland Industries Ltd	Canada	82-4644
Paul Y ITC Construction Holdings Ltd	Hong Kong	82-4217
Paxton Pacific Resource Products Inc	Canada	82-4614
Pearl Oriental Holdings Ltd	Bermuda	82-4350
Pearson PLC	United Kingdom	82-4019
Peartree Software Inc	Canada	82-4675
Pelorus Navigation Systems Inc	Canada	82-4393
Pender Capital Corp	Canada	82-4405
Pentland Industries PLC	United Kingdom	82-1219
Pepkor Ltd	South Africa	82-3925
Perdigao SA	Brazil	82-4628
Perdigao SA Comercio e Industria	Brazil	82-4431
Peregrine Investments Holdings	Hong Kong	82-3466
Perez Companc SA	Argentina	82-3295
Perfect Fry Corp	Canada	82-1609
Petrolem Brasilerio SA Petrobras	Brazil	82-4448
Phoenix Canada Oil Co. Ltd	Canada	82-3936
Pilat Technologies International	Israel	82-4535
Pioneer International Ltd	Australia	82-2701
Pittencrief Resources PLC	United Kingdom	82-3985
Placer Pacific Ltd	Australia	82-1952
Platexco Inc	Canada	82-4679
Pokphand C.P. Co. Ltd	Bermuda	82-3260
Poly-Pacific International	Canada	82-4596
Polyphalt Inc	Canada	82-4585
Position Inc	Canada	82-4536
Power Corp. of Canada	Canada	82-137
Power Financial Corp	Canada	82-1716
Premier Group Ltd	South Africa	82-3892
Premier Oil PLC	United Kingdom	82-2617
President Enterprises Co	Taiwan	82-3424
Pricer AB	Sweden	82-4723
Prime Resources Group Inc	Canada	82-1503
Princeton Mining Corp	Canada	82-1243
Prokom Software SA	Poland	82-4700
Promatek Industries Ltd	Canada	82-1351
Prosieben Media AG	Germany	82-4621
Prudential Corporation PLC	United Kingdom	82-1477
Puma AG Rudolf Dassler Sport	Germany	82-4369

Issuer	Country	File No.
Python Oil & Gas	Canada	82–4703
QNI Limited	Australia	82–3834
RAO Gazprom	Russia	82–4670
RAO Unified Energy Systems	Russia	82–4077
RBS Participacoes SA	Brazil	82–4338
RBS RV de Florianopolis SA	Brazil	82–4340
RJK Explorations Ltd	Canada	82–2629
RWE AG	Germany	82–4018
Radio Gaucha SA	Brazil	82–4341
Railtrack Group PLC	United Kingdom	82–4282
Raindrop Resources Ltd	Canada	82–4565
Rampton Resource Corp	Canada	82–4579
Rand Mines Ltd	South Africa	82–304
Randfontein Estates Gold Mining	South Africa	82–267
Raptor Capital Corporation	Canada	82–4599
Rautaruukki Oy	Finland	82–3981
Rayrock Yellowknife Resources Inc	Canada	82–378
Raytec Capital Corp	Canada	82–3553
Redex Gold Inc	Canada	82–4529
Redwood Energy Ltd	Canada	82–4349
Regeena Resources Inc	Canada	82–3560
Rembrandt Group Ltd	South Africa	82–3760
Renong Berhad	Malaysia	82–4166
Rentokil Group PLC	United Kingdom	82–3806
Resorts World Berhad	Malaysia	82–3229
Rex Diamond Mining Corp	Canada	82–4719
Rhodia-Ster SA	Argentina	82–3942
Rich Minerals Corp	Canada	82–2832
Richland Mines Inc	Canada	82–3192
Rivera Explorations Inc	Canada	82–2945
Rock Resources Inc	Canada	82–4504
Rolls-Royce PLC	United Kingdom	82–2821
Roly International Holdings Ltd	Bermuda	82–4364
Root Industries Inc	Canada	82–4457
Rossi Residencial SA	Brazil	82–4638
Royal Nedlloyd Group NV	Netherlands	82–1056
Royaledge Resources Inc	Canada	82–4388
Roycefield Resources Ltd	Canada	82–4149
Rustenburg Platinum Holdings Ltd	South Africa	82–241
SAP AG	Germany	82–4045
SEAT SPA	Italy	82–4561
SNG Telecom Inc	Canada	82–4580
Sadia Concordia SA Industria	Brazil	82–4678
Sage Group Ltd	South Africa	82–4241
Sakura Bank Ltd	Japan	82–3055
Salhus Brandon Gold Corp	Canada	82–842
Samsung Heavy Industries Co. Ltd	Korea	82–4091
San Miguel Corp	Philippines	82–306
Sancor Cooperatives Unidas Ltd	Argentina	82–4476
Sandvik AB	Sweden	82–1463
Santos Ltd	Australia	82–34
Sanwa Bank Ltd	Japan	82–4711
Sanyo Electric Co. Ltd	Japan	82–264
Sanyo Securities Co. Ltd	Japan	82–1857
Sao Paulo Alpargatas SA	Brazil	82–3692
Sasol Ltd	South Africa	82–631
Scandinavian Mobility International AS	Sweden	82–4231
Scottish Hydro-Electric PLC	United Kingdom	82–3099
Scottish Power PLC	United Kingdom	82–3100
Sedex Mining Corp	Canada	82–3587
Sega Enterprises Ltd	Japan	82–3439
Seine River Resources Inc	Canada	82–2942
Selecta Group	Switzerland	82–4594
Senco Sensors Inc	Canada	82–3711
Senetek PLC	United Kingdom	82–875
Sennen Resources	Canada	82–2238
Sentrachem Ltd	South Africa	82–3914
Servgro International Ltd	South Africa	82–3898
Sharp Corp	Japan	82–1116
Shenhzen Special Economic Zone Real Estate Group	China	82–3783
Shinawatra Satellite PLC	Thailand	82–4527
Shiseido Company Ltd	Japan	82–3311
Shun Tak Holdings Ltd	Hong Kong	82–3357
Siam Commercial Bank PLC	Thailand	82–4345

Issuer	Country	File No.
Sidel	France	82-4396
Siderar SAIC	Argentina	82-4328
Siebe PLC	United Kingdom	82-2142
Sikaman Gold Resources Ltd	Canada	82-1651
Simsmetal Ltd	Australia	82-3838
Singapore Telecommunications Ltd	Singapore	82-3622
Sino Pacific Development Ltd	Canada	82-1979
Slovnaft AS	Russia	82-3721
Smedvig AS	Norway	82-3551
Societe Generale	France	82-3501
Solomon Resources Ltd	Canada	82-2893
Sons of Gwalia NL	Australia	82-1039
Soranzo International Spirits Inc	Canada	82-4408
South African Breweries Ltd	South Africa	82-303
South African Land & Exploration Co	South Africa	82-59
South China Morning Post Holdings Ltd	Hong Kong	82-3327
Southcorp Holdings Ltd	Australia	82-2692
Southern Pacific Petroleum NL	Australia	82-353
Southern Water PLC	United Kingdom	82-2797
Southvaal Holdings Ltd	South Africa	82-197
Spokane Resources Ltd	Canada	82-4391
Sportsmate International Inc	Canada	82-4356
St. Barbara Mines Ltd	Australia	82-3747
St. Dupont SA	France	82-4552
St. George Bank Ltd	Australia	82-3809
St. Jude Resources Ltd	Canada	82-4014
St. Laurent Paperboard Inc	Canada	82-3896
Stackpal International Corp	Canada	82-4264
Stampede Oils Inc	Canada	82-3605
Star Choice Communications Inc	Canada	82-4136
Star Telecom International Holding Ltd	Bermuda	82-3654
Starlight International Holdings Ltd	Bermuda	82-3594
Starrex Mining Corp	Canada	82-3755
State Bank of India	India	82-4524
Stef International Corp	Canada	82-4070
Stilfontein Gold Mining Co	South Africa	82-301
Stina Resources Ltd	Canada	82-2062
Stirrup Creek Gold Ltd	Canada	82-4464
Stratabound Minerals Corp	Canada	82-3284
Strathmore Resources Ltd	Canada	82-2723
Stryker Resources Ltd	Canada	82-883
Sudamtex de Venezuela SA de CV	Venezuela	82-3653
Sultan Minerals Inc	Canada	82-4741
Sumitomo Bank Ltd	Japan	82-4395
Sumitomo Metal Industries Ltd	Japan	82-3507
Sumitomo Trust & Banking	Japan	82-4617
Summit Resources Ltd	Canada	82-2922
Sun Hung Kai Properties Ltd	Hong Kong	82-1755
Svedala Industri AB	Sweden	82-3593
Swire Pacific Ltd	Hong Kong	82-2184
Synex International Inc	Canada	82-862
Tabcorp Holdings Ltd	Australia	82-3841
Tai Cheung Holdings Ltd	Bermuda	82-3528
Takefuji Corporation	Japan	82-4622
Tapajos Gold Inc	Canada	82-4496
Tappit Resources Ltd	Canada	82-3813
Tata Hydro-Electric Power Supply Co	India	82-3704
Tata Power Company Ltd	India	82-3733
Taylor Nelson AGB PLC	England	82-4668
Technip	France	82-3959
Techtronic Industries Co. Ltd	Hong Kong	82-3648
Telebackup Systems Inc	Canada	82-4701
Telecel Cominicacoes Pessoais	Portugal	82-4528
Televisao Gaucha SA	Brazil	82-4339
Television Broadcasts Ltd	Hong Kong	82-1072
Tenaga Nasional Berhod	Malaysia	82-3677
Tenke Mining Corp	Canada	82-2946
Teollisuuden Voima Oy	Finland	82-2973
Teuton Resources Corp	Canada	82-1394
Thai Telephone and Telecommunications PLC	Thailand	82-3744
Theme International Holdings Ltd	Bermuda	82-4441
Thermal Control Technologies Corp	Canada	82-4260
Thyssen Avtiengesellschaft	Germany	82-4681
Tiberon Minerals Ltd	Canada	82-4488

Issuer	Country	File No.
Tofas Turk Otomobil Fabrikasi A.S	Turkey	82–3699
Tomorrow International Holdings Ltd	Bermuda	82–4256
Tomra Systems A/S	Norway	82–3334
Topper Gold Corp	Canada	82–2694
Toscana Resources Ltd	Canada	82–4434
Totally Hip Software Inc	Canada	82–4556
Totem Sciences Inc	Canada	82–4417
Toyobo Co	Japan	82–1172
Toyota Motor Co., Ltd	Japan	82–206
Trans Hex Group Ltd	South Africa	82–4011
Transportadora de Gas del Norte S.A	Argentina	82–3845
Treminco Resources Ltd	Canada	82–1384
Tri-Vision International Ltd	Canada	82–4501
Triband Resources Corp	Canada	82–4574
Trikem S.A	Brazil	82–4612
Trimin Resources Inc	Canada	82–1833
Trinity International Holdings PLC	United Kingdom	82–3043
Trio Gold Corp	Canada	82–2127
Trivalence Mining Corp	Canada	82–4688
Troymin Resources Ltd	Canada	82–3503
Truly International Holdings Ltd	Cayman Islands	82–3700
Trust Company of Australia Ltd	Australia	82–1443
Tsingtao Brewery Company Ltd	China	82–4021
Tung Fong Hung Holdings Ltd	Cayman Islands	82–4152
Tusk Energy Inc	Canada	82–3297
Twin Star Minerals Ltd	Canada	82–4733
Tyler Resources Inc	Canada	82–3881
UDL Holdings Ltd	Hong Kong	82–4260
UPM Kymmene Corporation	Finland	82–4333
USA Video Interactive Corp	Canada	82–1601
Ungava Minerals Corp	Canada	82–4436
Union Bank of Switzerland	Switzerland	82–3804
United Biscuits PLC	United Kingdom	82–3079
United Film & Video Holdings Ltd	Canada	82–3859
United Reef Ltd	Canada	82–4331
Univa Inc	Canada	82–2570
Universal Gun Loc Industries Ltd	Canada	82–828
Universal SA	Poland	82–4502
Unuk Gold Corp	Canada	82–4653
Upland Global Corp	Canada	82–4346
Upton Resources Inc	Canada	82–3290
Usinas Siderurgicas de Minas Gerais SA	Brazil	82–3902
Vaal Reefs Exploration & Mining Co. Ltd	South Africa	82–56
Vanguard Petroleum Ltd	Australia	82–3478
Vannessa Ventures Ltd	Canada	82–4473
Vantex Oil, Gas & Minerals	Canada	82–4530
Vasogen Inc	Canada	82–4372
Vedior NV	Netherlands	82–4654
Velcro Industries NV	Neth. Ant	82–145
Ventures Resource Corp	Canada	82–4575
Vescan Equities Inc	Canada	82–4516
Vestel Elektronik Sanayi	Turkey	82–4718
Vetta Ventures Ltd	Canada	82–4673
Viag Ag	Germany	82–4343
Viceroy Resource Corp	Canada	82–1193
Vickers PLC	United Kingdom	82–1359
Viking Gold Corporation	Canada	82–4560
Village Roadshow Limited	Australia	82–4513
Voice-It Solutions Inc	Canada	82–1743
Volkswagen AG	Germany	82–2188
Vortex Energy & Minerals Ltd	Canada	82–3462
Vtech Holdings Ltd	Bermuda	82–3565
Wace Group PLC	United Kingdom	82–2369
Waite Dufault Mines Ltd	Canada	82–4324
War Eagle Mining Co Inc	Canada	82–2008
Wattachak Public Co Ltd	Thailand	82–4549
Wayburn Resources Inc	Canada	82–3740
Wedderburn Securities PLC	United Kingdom	82–4696
West Rand Consolidated Mines Ltd	South Africa	82–314
Western Deep Levels Ltd	South Africa	82–58
Western Pacific Gold Inc	Canada	82–4521
Westgold Resources NL	Australia	82–4540
Westley Mines International Inc	Canada	82–1088
Westpine Metals Ltd	Canada	82–3116

Issuer	Country	File No.
Wienerberger Baustoffindustrie AG	Austria	82-4316
Williams Creek Explorations Ltd	Canada	82-3146
Willow Resources Ltd	Canada	82-3843
Windarra Minerals Ltd	Canada	82-581
Wing Tai Holdings Ltd	Singapore	82-4632
Winkelhaak Mines Ltd	South Africa	82-221
Wolford AG	Austria	82-4403
Woolworths Ltd	Australia	82-3544
Wrightson Ltd	New Zealand	82-3646
X-Cal Resources Ltd	Canada	82-1655
Yaletown Entertainment Corp	Canada	82-4336
Yamaichi Securities Co Ltd	Japan	82-4697
Yasuda Trust & Banking Co	Japan	82-4583
Yeebo International Holdings Ltd	Bermuda	82-3869
Yiu Wing International Holdings Ltd	Bermuda	82-3655
Yorkshire Electricity Group PLC	United Kingdom	82-3034
Yorkshire Food Group PLC	United Kingdom	82-4242
Yukong Ltd	Korea	82-3901
Yukos	Russia	82-4209
Zanex N.L.	Australia	82-932
Zero Hora-Editora Jornalistica SA	Brazil	82-4337
Zodiac Hurricane Technologies Inc	Canada	82-1281
Ztest Electronics Inc	Canada	82-4637
Zurich Insurance Company	Switzerland	82-4319

[FR Doc. 98-4918 Filed 2-25-98; 8:45 am]
BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39671; File No. SR-NASD-98-13]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Appointment of Members of the National Adjudicatory Council as Panelists in Appeals of Disciplinary Proceedings

February 17, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 13, 1998, the National Association of Securities Dealers, Inc., through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Item I below, which Item has been prepared by NASD Regulation.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is filing a proposed rule change to Rule 9120(v) and Rule 9331 of the Rules of the National Association of Securities Dealers, Inc. ("NASD" or "Association") to clarify that current and former members of the National Adjudicatory Council may serve as Panelists on a Subcommittee or an Extended Proceeding Committee in the appeal or review of disciplinary proceedings undertaken pursuant to the Rule 9300 Series of the newly revised Code of Procedure.[3] During the most recent revisions undertaken to conform the Code of Procedure and related rules to the corporate restructuring of the Association, the Association did not specifically permit former members of the National Adjudicatory Council to serve on National Adjudicatory Council subcommittees. To remedy this omission, the Association is proposing to add in Rule 9331 an explicit reference to the members of the National Adjudicatory Council. A conforming change is required in Rule 9120(v). Below is the text of the proposed rule change; proposed new language is italicized.

* * * * *

9000. CODE OF PROCEDURE

9120. Definitions

(a) through (u)
No change.
(v) "Panelist"
The term "Panelist," as used in the Rule 9200 Series, means a member of a Hearing Panel or Extended Hearing Panel who is not a Hearing Officer. As used in the Rule 9300 Series, the term means a current *or former member of the National Adjudicatory Council* or *a* former Director or a former Governor who is appointed to serve on a Subcommittee or an Extended Proceeding Committee.
(w) through (bb)
No change.

* * * * *

9331. Appointment of Subcommittee or Extended Proceeding Committee

(a) Appointment by National Adjudicatory Council

No change.
(1) Subcommittee
Except as provided in subparagraph (2), for each disciplinary proceeding appealed or called for review, the National Adjudicatory Council or the Review Subcommittee shall appoint a Subcommittee to participate, subject to Rule 9345, in the appeal or review. A Subcommittee shall be composed of two or more persons who shall be *current or former members of the National Adjudicatory Council or* former Directors or Governors.

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[1] 15 U.S.C. 78s(b)(1).

[2] Several additional technical amendments are also included in this Notice. Telephone call between Sharon Zackula, Office of General Counsel, NASD Regulation and Mandy S. Cohen, Office of Market Supervision, Commission dated February 13, 1998.

[3] The most recent changes to the Code of Procedure were approved in Securities Exchange Act Release No. 39470 (December 19, 1997), 62 FR 67927 (Dec. 30, 1997) (approving File No. SR-NASD-97-81). *See also* Securities Exchange Act Release No. 38908 (August 7, 1997), 62 FR 43385 (August 13, 1997) (approving File No. SR-NASD-97-28).

(2) Extended Proceeding Committee

Upon consideration of the volume and complexity of the certified record, or other factors the National Adjudicatory Council or the Review Subcommittee deems material, the National Adjudicatory Council or the Review Subcommittee may determine that a disciplinary proceeding appealed or called for review shall be designated an Extended Proceeding and shall appoint an Extended Proceeding Committee to participate, subject to Rule 9345, in the appeal or review. The Extended Proceeding Committee shall be composed of two or more persons who shall be *current or former members of the National Adjudicatory Council or* former Directors or former Governors. The Review Subcommittee shall have discretion to compensate any or all Panelists of an Extended Proceeding Committee at the rate then in effect for arbitrators appointed under the Rule 10000 Series.

(b) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Association is filing a proposed rule change to Rule 9331 and Rule 9120 (v) to clarify that current and former members of the National Adjudicatory Council may serve as Panelists on Subcommittees or Extended Proceeding Committees in the appeal or review of a disciplinary proceeding undertaken pursuant to the Rule 9300 Series of the recently revised Code of Procedure (the Rule 9000 Series). Members of the National Adjudicatory Council (formerly, the National Business Conduct Committee) have served as the primary pool from which Panelists are drawn to serve on disciplinary Subcommittees or Extended Proceeding Committees. However, due to the reconfiguration of the National Business Conduct Committee as the National Adjudicatory Council, which was part of the corporate restructuring of the Association, an explicit reference to the members of the National Adjudicatory Council as such Panelists is now required in Rule 9331 (a)(1) and (2). The explicit reference in Rule 9331 is now required because formerly, a reference to the members of the NASD Regulation Board included the members of the National Adjudicatory Council. During the most recent revisions to the Code of Procedure, the Association failed to add in Rule 9331 an explicit reference to the members of the National Adjudicatory Council, which was required because another defined term in the rule, "Director," was amended, resulting in the exclusion of members of the National Adjudicatory Council from its scope. A conforming change is required in Rule 9120(v).

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b) of the Act,[4] and, in particular, paragraphs (b)(7) and (b)(8). The proposed rule change is consistent with Section 15A(b)(7) in that it furthers the statutory mandate that the Association establish rules providing that its members and persons associated with its members shall be appropriately disciplined for violation of any provision of this title, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the rules of the Association. The rule change is consistent with Section 15A(b)(8) in that it furthers the statutory goals of providing a fair procedure for disciplining members and persons associated with members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD Regulation has requested that the Commission to find good cause pursuant to Section 19(b)(2) of the Act to approve the proposed rule change prior to the 30th day after its publication in the **Federal Register**. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder. Specifically, the proposed rule change will allow the National Adjudicatory Council to fully and efficiently fulfill its responsibility to consider disciplinary proceedings on appeal or review under the Rule 9300 Series, and the proposed amendments to Rule 9331 and Rule 9120(v) reflect a part of a procedure that the Association's Rules contained in the Code of Procedure prior to the most recent amendments,[5] which the Association intended to continue under the Code of Procedure, as amended. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the publication of notice of filing thereof since immediate approval will allow the Association's disciplinary process to proceed without interruption, and because the substantive concepts underlying this rule change, *i.e.*, creation of the National Adjudicatory Council and the operation thereof, were previously approved, after a full notice and comment period, in SR–NASD–97–71.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

[4] 15 U.S.C. § 78*o*–3.

[5] The most recent amendments, set forth in File No. SR–NASD–97–81 and approved on December 19, 1997, became effective on January 16, 1998. *See* n. 1, *supra*.

[6] Securities Exchange Act Release No. 39326 (November 14, 1997), 62 FR 62385 (November 21, 1997). No comments were received on this filing.

the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by March 19, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change ST–NASD–98–13, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

[FR Doc. 98–4860 Filed 2–25–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39657; File No. SR–PCX–98–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Expansion of the LMM Book Pilot Program To Include Non-Multiply-Listed Option Issues

February 13, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 23, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX.[3] On February 9, 1998, the PCX filed Amendment No. 1 to the rule proposed redesignating the proposal as a "non-controversial" rule filing pursuant to Rule 19b–4(e)(6), which constitutes a substantive change in the proposal.[4] This redesignation renders the rule proposed effective upon receipt of Amendment No. 1 by the Commission pursuant to Section 19(b)(3)(A) of the Act and provides that the rule change become operative 30 days after the date of the filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to expand its Lead Market Maker ("LMM") Book Pilot Program by allowing qualified LMMs to trade non-multiply-listed option issues under the pilot program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

On October 11, 1996, the Commission approved an Exchange proposal to adopt a one-year pilot program under which a limited number of LMMs would be able to assume operational responsibility for the options public limit order book ("Book") in certain option issues.[5] On September 22, 1997, the Commission approved an Exchange proposed to extend the program for one year, so that it is currently set to expire on October 12, 1998.[6]

Under the pilot program, approved LMMs manage the Book function, take responsibility for trading disputes and errors, set rates for Book execution, and pay the Exchange a fee for systems and services.[7] Only multiply-listed option issues are currently eligible to be traded under the pilot program.[8] Initially, the program was limited by allowing no more than three LMMs to participate in the program and no more than 40 option symbols to be used. But on April 1, 1997, the Commission approved an Exchange proposal to expand the program so that up to nine LMMs may participate and up to 150 option symbols may be used.[9]

The Exchange is now proposing to expand the program by allowing LMMs to include non-multiply-listed options within the scope of the program. This change will give program participants greater flexibility in setting Book rates for option issues that they trade, and thus will make the program a better tool for the Exchange to compete with other exchanges for options order flow by lowering transaction costs to the customer.

Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5), in particular, in that it is designed to facilitate transactions in securities, promote just and equitable principles of trade, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PCX initially filed the proposed rule change with the Commission on January 23, 1998, pursuant to Rule 19b–4(e)(1), designating the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, and rendering the rule change effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act. However, the PCX filed Amendment No. 1 on February 9, 1998 redesignating the proposal as a "non-

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The PCX filed this proposed rule change pursuant to Rule 19b–4(e)(1), designating the rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, and thereby rendering it effective upon filing pursuant to Section 19(b)(3)(A) of the Act.

[4] *See* letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Ann L. Vlcek, Office of Market Supervision, Division, of Market Regulation, Commission, dated February 6, 1998.

[5] *See* Exchange Act Release No. 37810 (October 11, 1996), 61 FR 54481 (October 18, 1996) (approved File NO. SR–PSE–96–09).

[6] *See* Exchange Act Release No. 39106 (September 22, 1997), 62 FR 51172 (September 30, 1997) (approving File No. SR–PSE–97–32).

[7] *See* Exchange Act Release No. 37874 (October 28, 1996), 61 FR 56597 (November 1, 1996) (approving File No. SR–PSE–96–38, establishing a staffing charge for LMMs who participate in the pilot program).

[8] *See* Exchange Act Release No. 38462 (April 1, 1997), 62 FR 16886 (April 8, 1997) (approving File No. SR–PSE–96–45).

[9] *See* Exchange Act Release No. 38462, *supra.*

controversial" rule filing under Rule 19b–4(e)(6). This redesignation constituted a substantive change in the proposal, thus rendering the rule change effective upon filing of Amendment No. 1 and providing that it become operative 30 days after the date of the filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to Section 19(b)(3)(A)(iii) of the Act.

Because the foregoing proposed rule change (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from February 9, 1998, the date on which Amendment No. 1 was filed; and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date,[10] the rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–01 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4856 Filed 2–25–98; 8:45 am]

BILLING CODE 8010–01–M

[10] The Commission considers the original January 23, 1998 rule filing to be sufficient written notice of PCX's intent to file the proposed rule change that was submitted in the form of Amendment No. 1 on February 9, 1998. The date of the January 23, 1998 rule filing also satisfies the requirement of a minimum prefiling time period of five business days.

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of a currently approved collection. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 17, 1997 [62 FR 66175].

DATES: Comments must be submitted on or before March 30, 1998.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2811.

SUPPLEMENTARY INFORMATION:

Maritime Administration

Title: Voluntary Tanker Agreement.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0505.

Affected Public: Tanker companies that operate in international trade and who have agreed to participate in the Voluntary Tanker Agreement.

Abstract: The collection consists of a request from MARAD that each participant in the Voluntary Tanker Agreement submit a list of the names of ships owned, chartered, or contracted for by the participant, and their size and flags of registry. There is not prescribed format for this information.

Need and Use of the Information: The collected information is necessary to evaluate tanker capability and make plans for the use of this capability to meet national emergency requirements. This information will be used by both MARAD and Department of Defense to establish overall contingency plans.

Estimated Annual Burden Hours: 20 hours.

ADDRESS: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on February 19, 1998.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–4890 Filed 2–25–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA; Government Industry Meeting to Review RTCA Recommendations on Free Flight Phase I

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given that the FAA will host a Government/Industry meeting to be held March 2, 1998, starting at 2:00 p.m., to review the RTCA recommendations regarding Free Flight Phase I and attendant risk mitigation plans for creating the Century II aviation system. The meeting will be held at The MITRE Corporation, Wilson Building, 7600 Old Springhouse Road, McLean, VA, in Room1B02.

The agenda will include: (1) Welcome/Opening Remarks by RTCA and the FAA; (2) Presentation of the recommendations by the Co-chairs of

the Select Committee on Free Flight Implementation; (3) Closing Remarks.

Attendance is open to the interested public but limited to space availability. With prior approval of the designated Federal representative, members of the public may present oral statements at the meeting. Persons wishing to attend, present statements, or obtain information should contact the RTCA, Inc., at (202) 833–9339 (phone), (202) 833–9434 (fax), or electronic mail (dclarke@rtca.org). Members of the public may present a written statement at any time.

Exceptional circumstances and the need to accomplish this review prior to the congressional appropriations hearings necessitate the public notice of this meeting in less than 15 days.

Issued in Washington, DC, on February 23, 1998.

Terry R. Hannah,

Designated Official.

[FR Doc. 98–4955 Filed 2–23–98; 4:17 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3465; Not. 1]

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice; correction.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) published a document in the **Federal Register** of February 19, 1998, concerning emergency processing public information collection request (ICRS) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). NHTSA inadvertently did not include this item in the notice.

FOR FURTHER INFORMATION CONTACT: Michael A. Robinson, (202) 366–6946.

Correction

In the **Federal Register** issue of February 19, 1998, in FR Doc.98–4089, on page 8517–8522, number eighteen was omitted. Number eighteen is the following:

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration (NHTSA)

(18) *Title:* 49 CFR 583 Automobile Parts Content Labeling.

OMB Control Number: 2127–0573.

Affected Public: Business or other for-profits.

Abstract: The American Automobile Labeling Act (AALA) or Section 210 of the Motor Vehicle Information and Cost Savings Act mandates this information collection. The Act requires all new passenger motor vehicles (including passenger cars, certain small buses, all trucks and multipurpose passenger vehicles with a gross vehicle weight rating of 8,500 pounds or Less), beginning on October 1, 1994, to bear labels providing information about the domestic and foreign content of their equipment. The following information must appear on the label:

(a) The percentage (by Value) of the equipment in the vehicles that originated in the United States and Canada;

(b) Names of the countries, other than the U.S. or Canada, if any, that contributed the two highest Percentages (15 percent or more) to the total value of the equipment that comprises the vehicle and the percentage those countries contributed;

(c) The city, state and country of final assembly of the vehicle;

(d) The country of origin for the transmission of the vehicle (i.e., the country that contributed the greatest percentage to the total value of the equipment in that engine); and

(e) The country of origin for the transmission of the vehicle (i.e., the country that contributed the greatest percentage to the total value of the equipment in the transmission).

The information submitted under this collection provides the justifying rational for labeling content affixation to each new passenger motor.

Estimated Annual Burden: 7080 hours.

Number of Respondents: 70.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 98–4951 Filed 2–25–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

February 17, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 30, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0746.

Regulation Project Number: LR–100–78 Final.

Type of Review: Extension.

Title: Creditability of Foreign Taxes.

Description: The information needed is a statement by the taxpayer that it has elected to apply the safe harbor formula of § 1.901–2A(e) of the foreign tax credit regulations. This statement is necessary in order that the IRS may properly determine the taxpayer's tax liability.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents: 110.

Frequency of Response: Other (nonrecurring).

Estimated Total Reporting Burden: 37 hours.

OMB Number: 1545–0768.

Regulation Project Number: EE–178–78 Final (TD 7898).

Type of Review: Extension.

Title: Employers' Qualified Educational Assistance Programs.

Description: Respondents include employers who maintain education assistance programs for their employees. Information verifies that programs are qualified and that employees may exclude educational assistance from their gross incomes.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 5,200.

Estimated Burden Hours Per Respondent/Recordkeeper: 7 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 615 hours.

OMB Number: 1545–1568.

Announcement Number: Announcement 97–122.

Type of Review: Extension.

Title: Interim Guidance for Roth IRAs.

Description: This announcement provides interim guidance concerning the establishment of Roth IRAs (described in section 408A of the Internal Revenue Code as added by section 302 of the Taxpayer Relief Act of 1997). The guidance is directed mainly at banks, etc., that will market prototype Roth IRAs to the public.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 4,000.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 8,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–4883 Filed 2–25–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 17, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before March 30, 1998 to be assured of consideration.

Special Request: In order to begin the focus group interviews described below in early March 1998, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by March 3, 1998. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1349.

Project Number: SOI–38.

Type of Review: Revision.

Title: Form 1040 Instructions Focus Group Interviews.

Description: The objectives of the focus groups are to:

1. Obtain the initial reactions of taxpayers to the graphic elements of the revised instructions.

2. Obtain the reactions of taxpayers to the wording of the revised instructions.

3. Obtain reactions of taxpayers to other design elements and instructional keys provided, such as headings, algorithms, charts, and decision trees.

4. Determine by actual use of the instructions by taxpayers in hypothetical scenarios if the revised instructions would improve error rates, reduce time spent, increase taxpayer satisfaction, or represent in any other way an improvement over the current instructions.

5. Obtain taxpayer reactions to different envelope arrangements in the tax instruction packages.

6. Identify and evaluate any suggestions taxpayers may have for further improvements to the tax forms instructions.

7. Identify any perceived disadvantages to the proposed revised instructions.

There will be two focus groups in each of the following fives cities across the country, to represent a geographical diversity: San Francisco, California; Dallas, Texas; Richmond, Virginia; St. Louis, Missouri; and Jacksonville, Florida.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Response: 2 hours, 30 minutes (including travel time).

Frequency of Response: Other (one-time only).

Estimated Total Reporting Burden: 250 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–4884 Filed 2–25–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 19, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 30, 1998 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0500.

Form Number: ATF F 5630.5R and ATF F 5630.5RC.

Type of Review: Extension.

Title: Special Tax "Renewal" Registration and Return (5630.5R); and Special Tax Location Registration Listing (5630.5RC).

Description: 26 U.S.C. Chapters 51, 52 and 53 authorize collection of special taxes from persons engaging in certain businesses. ATF Forms 5630.5R and 5630.5RC are used to compute tax and as an application for registry.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 350,000.

Estimated Burden Hours Per Respondent:

ATF F 5630.5R—15 minutes

ATF F 5630.5RC—15 minutes

Frequency of Response: Annually.

Estimated Total Reporting Burden: 100,500 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–4885 Filed 2–25–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

February 19, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995,

Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 30, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0735.
Regulation Project Number: LR–189–80 (TD 7927) Final.
Type of Review: Extension.
Title: Amortization of Reforestation Expenditures.
Description: Section 194 allows taxpayers to elect to amortize certain reforestation expenditures over a 7-year period if the expenditures meet certain requirements. The regulations implement this election provision and allow the Service to determine if the election is proper and allowable.
Respondents: Individuals or households, Business or other for-profit, Farms.
Estimated Number of Respondents: 12,000.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 6,001 hours.
OMB Number: 1545–0755.
Regulation Project Number: LR–58–83 Final.
Type of Review: Extension.
Title: Related Group Election With Respect to Qualified Investments in Foreign Base Company Shipping Operations.
Description: The computational information required is necessary to assure that the U.S. shareholder correctly reports any shipping income of its controlled foreign corporations which is taxable to that shareholder.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 2 hours, 3 minutes.
Frequency of Response: Other (nonrecurring).
Estimated Total Reporting Burden: 205 hours.
OMB Number: 1545–1570.
Notice Number: Notice 97–65.
Type of Review: Extension.
Title: Income Tax Return Preparer Penalties—1997 Federal Income Tax Returns Due Diligence Requirements for Earned Income Credit.
Description: Income tax return preparer who satisfy the due diligence requirements in the notice will avoid the imposition of the penalty under section 6695(g) of the Internal Revenue Code for 1997 returns and claims for refund. The due diligence requirements include soliciting the information necessary to determine a taxpayer's eligibility for the earned income credit (EIC) and the amount of the EIC, and the retention of this information.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 1,200,000.
Estimated Burden Hours Per Recordkeeper: 8 minutes.
Estimated Total Recordkeeping Burden: 160,000 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–4886 Filed 2–25–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

February 19, 1998

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 30, 1998 to be assured of consideration.

INTERNAL REVENUE SERVICE (IRS)

OMB Number: 1545–0007.
Form Number: IRS Form T.
Type of Review: Extension.
Title: Forest Activities Schedules.
Description: Form T is filed by individuals and corporations to report income and deductions from the timber business. The IRS used Form T to determine if the correct amount of income and deductions are claimed.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 37,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—37 hours, 4 minutes
Learning about the law or the form—42 minutes
Preparing and sending the form to the IRS—1 hour, 20 minutes
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 1,446,700 hours.
OMB Number: 545–0045.
Form Number: IRS Form 976.
Type of Review: Extension.
Title: Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.
Description: Form 976 is filed by corporations that wish to claim deficiency dividend deduction. The deduction allows the corporation to eliminate all or a portion of a tax deficiency. The IRS uses Form 976 to determine if shareholders have include amounts in gross income.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 500.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—5 hours, 44 minutes
Learning about the law or the form—53 minutes
Preparing, copying, assembling, and sending the form to the IRS—1 hour, 2 minutes
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 3,830 hours.
OMB Number: 1545–0117
Form Number: IRS Form 1099–OID.
Type of Review: Extension.
Title: Original Issue Discount.
Description: The form is used for reporting original issue discount as required by section 6049 of the Internal Revenue Code. It is used to verify that income earned on discount obligations is properly reported by the recipient.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 9,185.
Estimated Burden Hours Per Respondent/Recordkeeper: 10 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 765,000 hours.

OMB Number: 1545–1161.
Regulation Project Number: CO–8–90 Final.
Type of Review: Extension.
Title: Consolidated Return Regulations—Deferred Gain or Loss.
Description: This regulation requires a statement to be attached to a consolidated federal income tax return by those groups which entered into certain intercompany transaction before the effective date of the temporary regulation (March 15, 1990), and the treatment of these transactions will be different than that of transactions entered into after March 15, 1990.
Respondents: Business or other for-profit, Farms.
Estimated Number of Respondents: 10.
Frequency of Response: Other (one time only).
Estimated Total Reporting Burden: 20 hours.
OMB Number: 1545–1300.
Regulation Project Number: FI–46–89 Final.
Type of Review: Extension.
Title: Treatment of Acquisition of Certain Financial Institutions: Certain Tax Consequences of Federal Assistance to Financial Institutions.
Description: Recipients of Federal financial assistance ("FFA") must maintain an account of FFA that is deferred from inclusion in gross income and subsequently recaptured. This information is used to determine the recipient's tax liability. Also, tax not subject to collection must be reported and information must be provided if certain elections are made.
Respondents: Business or other for-profit, Federal Government.
Estimated Number of Respondents/Recordkeepers: 500.
Estimated Burden Hours Per Respondent/Recordkeeper: 4 hours, 24 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 2,200 hours.
OMB Number: 1545–1569.
Form Number: IRS Form 8861.
Type of Review: Revision.
Title: Welfare-to-Work Credit.
Description: Section 51A of the Internal Revenue Code allows employers an income tax credit of 35% of the first $10,000 of first-year wages paid to and 50% of the first $10,000 of second-year's wages paid to long-term family assistance recipients. The credit is part of the general business credit.
Respondents: Business or other for-profit, Farms.
Estimated Number of Respondents/Recordkeepers: 500.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 hours, 39 minutes
Learning about the law or the form—1 hour, 5 minutes
Preparing and sending the form to the IRS—1 hour, 16 minutes
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 5,000 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer
[FR Doc. 98–4888 Filed 2–25–98; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice of information collections submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: On October 2, 1997, the OCC, the Board, and the FDIC (the agencies) requested public comment for 60 days on proposed revisions to the Consolidated Reports of Condition and Income (Call Report), which are currently approved collections of information. After considering the comments the agencies received, the Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, made several modifications to the proposed revisions.

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid Office of Management and Budget (OMB) control number. Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility; (b) the accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collections on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

DATES: Comments must be submitted on or before March 30, 1998.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC

Written comments should be submitted to the Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219; Attention: Paperwork Docket No. 1557–0081 (FAX number (202) 874–5274; Internet address: regs.comments@occ.treas.gov). Comments will be available for inspection and photocopying at that address.

Board

Written comments should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

FDIC

Written comments should be addressed to Robert E. Feldman,

Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (Fax number: (202) 898–3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, D.C. between 9:00 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed revised collection of information may be requested from any of the agency clearance officers whose names appear below.

OCC

Jessie Gates, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219.

Board

Mary M. McLaughlin, Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve Systems, 20th and C Streets, N.W., Washington, D.C. 20551.

FDIC

Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: Request for OMB approval to extend, with revision, the following currently approved collections of information:

Report Title: Consolidated Reports of Condition and Income (Call Report).

Form Number: FFIEC 031, 032, 033, 034.[1]

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

Type of Review: Revisions of currently approved collections.

For OCC:

OMB Number: 1557–0081.

Estimated Number of Respondents: 2,700 national banks.

Estimated Time per Response: 39.92 hours.

Estimated Total Annual Burden: 431,164 hours.

For Board:

OMB Number: 7100–0036.

Estimated Number of Respondents: 1,002 state member banks.

Estimated Time per Response: 45.80 hours.

Estimated Total Annual Burden: 183,566 hours.

For FDIC:

OMB Number: 3064–0052.

Estimated Number of Respondents: 6,131 insured state nonmember banks.

Estimated Time per Response: 29.67 hours.

Estimated Total Annual Burden: 727,672 hours.

The estimated time per response in an average which varies by agency because of differences in the composition of the banks under each agency's supervision (e.g., size distribution of banks, types of activities in which they are engaged, and number of banks with foreign offices). The time per response for a bank is estimated to range from 15 to 400 hours, depending on individual circumstances.

General Description of Report

This information collection is mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), and 12 U.S.C. 1817 (for insured state nonmember banks). Except for select sensitive items, this information collection is not given confidential treatment. Small businesses (i.e., small banks) are affected.

Abstract

Banks file Consolidated Reports of Condition and Income with the agencies each quarter for the agencies' use in monitoring the condition and performance of reporting banks and the industry as a whole. Call Reports are also used to calculate banks' deposit insurance and Financing Corporation assessments and for monetary policy and other public policy purposes.

Current Actions

Revisions initially proposed for the Call Report consisted of: reducing the frequency for reporting "Preferred deposits" and reducing the level of detail in the trading assets and liabilities schedule filed by larger banks; replacing existing items for "High-risk mortgage securities" and "Structured notes" with items for securities with significant price volatility; adding new items for reporting on transactions with affiliates, low level recourse transactions, and (for larger banks) capital requirements for market risk; clarifying the reporting requirements relating to allowances and provisions for credit losses; changing the reporting basis used for reporting holdings of available-for-sale securities in the domestic office assets and liabilities schedule completed by banks with foreign offices; and modifying the categorization of securitized consumer loans for the purchase of certain types of vehicles in two items collected annually from larger banks.

After considering the comments, the FFIEC decided not to proceed with the proposed changes relating to securities with significant price volatility and transactions with affiliates at this time. The FFIEC also is revising the instructions for reporting industrial development bonds for conformity with a bank's other public reporting. The comments on the initial proposal and the changes made in response to the comments are discussed below.

Discussion of Comments Received and Changes Made

On October 2, 1997, the FDIC, the OCC, and the Board jointly published a notice soliciting comments for 60 days on proposed revisions to the Call Report (62 FR 51715). The notice described the specific changes that the agencies, with the approval of the FFIEC, were proposing to implement as of March 31, 1998.

In response to this notice, the FDIC, the OCC, and the Board collectively received 14 comment letters: 1 from a community bank, 9 from large banks, and 4 bankers' associations. In general, most of the commenters that specifically addressed the revisions to the Call Report that are being submitted for OMB review were supportive. On the other hand, those commenters who discussed the proposed changes relating to securities with significant price volatility and transactions with affiliates, which the agencies are not currently planning to implement, disagreed with those parts of the proposal. Some commenters urged the FFIEC and the agencies to pursue

[1] The FFIEC 031 report form is filed by banks with domestic and foreign offices. The FFIEC 032 report form is filed by banks with domestic offices only and total assets of $300 million or more. The FFIEC 033 report form is filed by banks with domestic offices only and total assets of $100 million or more but less than $300 million. The FFIEC 034 report form is filed by banks with domestic offices only and total assets of less than $100 million.

greater reductions in reporting burden and to eliminate items not needed for safety and soundness purposes. Three commenters also indicated that the agencies should provide guidance on the regulatory capital treatment of certain transactions that must be recorded as secured borrowings under Financial Accounting Standards Board (FASB) Statement No. 125 because of the effect of this accounting treatment on the amount of assets reported on the balance sheet. The agencies and the FFIEC have considered all of the comments received on the proposal.

More specific information on the comments received is presented below.

Reductions in Frequency and Detail—Four commenters specifically addressed the proposals to reduce the reporting frequency for the "Preferred deposits" item from quarterly to annually for all banks and the level of detail collected on trading assets each quarter from large banks. Each commenter supported this proposed change. However, one of these four commenters also suggested that the agencies establish a consistent reporting date for all items collected only once each year, i.e., annually as of December 31. The agencies had not proposed to use a common reporting date for those Call Report items collected once each year. For many of the annual items in the Call Report that are reported at dates other than December 31, the agencies' decision to collect this information at other quarter-end dates was made in response to requests from banks over the years. These banks have indicated that it would be less burdensome for them to have the reporting of various annual items spread throughout the year rather than having them concentrated at year-end when many once-a-year tax and other external reporting requirements demand their attention. Thus, the agencies concluded that they should not change the reporting dates for some or all annual items to a common date without first seeking industry comment. The FFIEC and the agencies are implementing the change in reporting frequency for preferred deposits and the reduction in detail on trading assets as proposed.

Investment Securities with Significant Price Volatility—Five commenters addressed the proposal to replace existing items on "High-risk mortgage securities" and "Structured notes" with items covering certain mortgage-backed securities and all other securities whose price volatility exceeds a specified threshold level under a specified interest rate scenario. This reporting change was intended to enhance the Call Report data used in the monitoring of interest rate risk. However, the proposal did not describe the specific test that banks would have to use to measure price volatility for purposes of the revised items. Three of the five commenters compared this proposed reporting change to the proposed Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities which the FFIEC had issued for comment on October 3, 1997 (21 FR 51862). These commenters indicated that the proposed Call Report items with their specific test for significant price volatility are inconsistent with the proposed FFIEC supervisory policy statement which would eliminate specific "high-risk" tests in favor or broader risk management guidance. According to these commenters, stress test requirements removed by the proposed supervisory policy should not be reinstated through Call Report requirements.

The fourth commenter expressed concern about not having the opportunity to comment on the specific price volatility test to be used for reporting the revised items. This commenter stated that the need to use a specific price test will require systems changes and therefore the test must be defined well in advance of the effective date of revised items. This commenter and the fifth commenter indicated that the specific price volatility test should be issued for public comment to ensure that the test does not result in excessive reporting burden.

After considering the comments, the agencies and the FFIEC decided not to implement the proposed Call Report change in 1998. The existing items on "high-risk mortgage securities" and "structured notes" will continue to be collected during 1998. Changes to these items can be reconsidered for implementation at some future date after the industry has had an opportunity for notice and comment on a more specific proposal. In the interim, the agencies' staffs will study alternatives for obtaining data on highly price sensitive securities, including the related reporting burden, based on how such data is intended to be used in the agencies' monitoring systems and interest rate risk testing procedures.

Transactions Between Banks and Their Affiliates—The agencies proposed to add four new items to the Call Report that would provide data on a bank's "covered transactions" (loans or extensions of credit and other transactions that expose that expose the bank to risk) with affiliates. Section 23A of the Federal Reserve Act regulates certain covered transactions in order to safeguard the resources of banks against misuse for the benefit of organizations under common control with the bank. The four proposed items would collect data on the quarter-end amount and the quarter's maximum amount of covered transactions with transactions subject to Section 23A's collateral requirements and those not subject to the collateral requirements reported separately.

All eight of the commenters that addressed this proposed reporting change opposed it. These commenters were concerned about the additional reporting burden of the proposed items, especially the items collecting data on the maximum amount of covered transactions during the quarter, and did not believe the benefit of the new information would be commensurate with the additional burden. They stated that compliance with Section 23A can be monitored more efficiently through the examination process, which is currently how the agencies evaluate a bank's transactions with affiliates. One commenter noted that the agencies had not presented evidence to show that compliance with this statutory requirement has become a serious problem. Another stated that if compliance is a problem at a few banks, the agencies should resolve this matter with those banks individually rather than by adding new reporting requirements for all banks.

One commenter suggested that, if the agencies decide to collect data on affiliate transactions in the Call Report, banks should report only the quarter-end amounts to limit reporting burden. Two other commenters recommended that, if the data must be reported, that the reporting requirement apply only if covered transactions exceed a specified amount. Two commenters also urged the agencies to treat affiliate transaction information, if it were to be reported at all, as confidential.

After considering the comments, the FFIEC decided that the agencies should not proceed with the implementation of the proposed affiliate transaction items at this time. Further consideration will be given to alternative methods for the collection of information related to Section 23A. Moreover, evaluating the risk of a bank's transactions with its affiliates and its compliance with Section 23A will continue to be an important element of the agencies' examination process.

Reporting of Low Level Recourse Transactions for Risk-Based Capital Purposes—Under the agencies' risk-based capital standards, the amount of risk-based capital that must be maintained for assets transferred with limited recourse should not exceed the maximum amount of recourse for which

a bank is contractually liable under the recourse agreement. The low level recourse rule also may apply to sales and securitizations of assets in which contractual cash flows (e.g., interest-only strips receivable and so-called spread accounts), retained subordinated interests, or other assets (e.g., collateral invested amounts or cash collateral accounts) act as credit enhancements.

Current Call Report instructions require a bank to report its low level recourse transactions in Schedule RC–R—Regulatory Capital using the so-called "gross-up" method. In general, this method requires the bank to multiply the maximum amount of its recourse exposure by the reciprocal of the full effective minimum risk-based capital requirement for the assets transferred and to report the resulting dollar amount as an off-balance sheet credit equivalent amount in the risk weight category appropriate to the assets transferred. However, another method of handling the bank's low level recourse transactions—the so-called "direct reduction" method—in many cases results in a more accurate measure of the bank's risk-based capital ratios, but this method is not currently permitted. Therefore, the agencies proposed to allow banks to use the "direct reduction" method. Under the direct reduction method, a bank generally would reduce its risk-based capital by the maximum amount of its recourse exposure (and would exclude this amount from its assets if the exposure were in the form of an on-balance sheet asset). Banks electing this reporting method would begin to complete a new Schedule RC–R item to disclose the amount by which assets and total risk-based capital have been reduced through the application of the direct reduction method.

Half of the commenters addressed this proposed change and all of them supported it. One commenter requested that the agencies ensure that the Call Report instructions for low level recourse transactions clearly describe the mechanics of the risk-based capital calculation under each method. The FFIEC and the agencies are adding an item for the direct reduction method as proposed and will provide appropriate instructions for reporting low level recourse exposures.

Capital Requirements for Market Risk—Effective January 1, 1998, banks with substantial trading activity must hold capital based on their market risk exposure. The market risk rule supplements the risk-based capital ratio calculations that focus principally on credit risk and adjusts both the risk-based capital ratio denominator and numerator. To enable the agencies and other users of the Call Report to calculate the risk-based capital ratios of those banks subject to the market risk rule, the agencies proposed to add items for "Market risk equivalent assets" and "Tier 3 capital" to Schedule RC–R—Regulatory Capital on the FFIEC 031 and 032 report forms only.

Two commenters addressed the market risk proposal. One supported the proposed changes while the second did not express an overall opinion. However, the second commenter observed that the Board's interim guidance to bank holding companies for the reporting on the market risk in the FR Y–9C bank holding company report indicates that "covered positions,"[2] except those that must also be risk weighted for credit risk, should be reported as zero percent risk weight assets, while the agencies' proposal stated that these covered positions should be reported in the Call Report in "On-balance sheet asset values excluded from and deducted in the calculation of the risk-based capital ratio" (Schedule RC–R, item 8) and not as zero percent risk weight assets. The agencies acknowledge this differing treatment for covered positions in the two types of reports. This difference arises because of the different structures of the regulatory capital schedules in these two reports: the bank holding company schedule does not have an item comparable to item 8 of the bank schedule, which is used to capture the amount of all on-balance sheet assets that are not risk-weighted for credit risk. The covered positions that are on-balance sheet assets possess this characteristic. Nevertheless, the difference in report structures has no impact on the overall calculation of risk-based capital.

This commenter also recommended that, with the advent of capital requirements for market risk, the Call Report instructions should be reworded to indicate that a bank's allowance for credit losses can be included in Tier 2 capital up to a maximum of 1.25 percent of risk-weighted assets plus market risk equivalent assets. The FFIEC and the agencies agree with this recommendation and will revise the instructions accordingly.

Reporting by Banks With Foreign Offices of Investment Securities Holdings in the Domestic Office Assets and Liabilities Schedule—The agencies proposed to require banks with foreign offices that file the FFIEC 031 version of the Call Report forms to report all investment securities held in domestic offices on a cost basis in items 10 through 17 of Schedule RC–H—Selected Balance Sheet Items for Domestic Offices. At present, these investment securities are reported in these Schedule RC–H items on the same basis as they are reported on these banks' consolidated balance sheet (Schedule RC), i.e., held-to-maturity securities are reported at amortized cost while available-for-sale securities are reported at fair value.

One commenter stated that this proposed change is contrary to generally accepted accounting principles (GAAP). This commenter also noted that, although the amortized cost data for these securities are available, its existing reporting systems compile cost data only on a consolidated basis and not for domestic offices only. Therefore, for this commenter, the proposed reporting change would require a costly and time consuming collection effort.

While the agencies recognize that adopting this reporting change will cause some banks to adjust their reporting systems, the FFIEC and the agencies are implementing this change as proposed because the revised securities data will better satisfy agency data needs, thereby increasing the utility of the domestic office securities data. These data are used in analyses and comparisons which also include data on securities that are held domestically by nonbank sectors and reported on a cost basis. Thus, the uses for which these Call Report data are collected are not a function of their balance sheet categorization and accounting basis under GAAP.

Allowance for Credit Losses—Accounting guidance issued by the American Institute of Certified Public Accountants in 1996 clarified that a bank must allocate its allowance for credit losses between on-balance sheet financial instruments and off-balance sheet credit exposures. Previously, these allowance components often were reported in the aggregate on the balance sheet in the allowance for loan and lease losses. In 1997, the FFIEC advised banks to allocate their allowance for credit losses on the Call Report balance sheet consistent with their allocation methodology for other financial reporting purposes. Banks were further advised to aggregate these components of the allowance for credit losses when completing Schedule RI–B, part II—Changes in Allowance for Loan and Lease Losses and for risk-based capital purposes.

The agencies proposed to retain this method of reporting the allowance for

[2] The term "covered positions" means all positions in the trading account, and all foreign exchange and commodity positions, whether or not in the trading account.

credit losses on the balance sheet, in Schedule RI–B, and in the regulatory capital schedule (Schedule RC–R). For consistency, the agencies also proposed to recaption the items labelled "Provision for loan and lease losses" as "Provision for credit losses" in the income statement (Schedule RI) and in Schedule RI–B. Two commenters addressed this proposal. One supported it while the second favored only the risk-based capital treatment of the allowance for credit losses, preferring to have Schedule RI–B, part II, cover only the allowance for loan and lease losses. The FFIEC and the agencies considered this suggestion, but did not accept it. There has been an absence of bank objections during 1997 to the reporting method which the agencies proposed to retain for Schedule RI–B, part II.

Reporting of Securitized Consumer Loans for Vehicle Purchases—The agencies proposed to revise the instructions for reporting securitized consumer loans so that loans for the purchase of pickup trucks, other light trucks, and vans for personal use would be included in "Loans to purchase private passenger automobiles" rather than in "All other consumer credit." The only commenter commenting on this instructional change agreed with the change. The FFIEC and the agencies are implementing the change as proposed.

Categorization of Industrial Development Bonds on the Balance Sheet—In September 1997, the FFIEC printed and distributed revised, updated Call Report instruction books to all banks and invited comments on the accuracy, adequacy, and clarity of the revised instructions. One commenter recommended that the agencies simplify the instructions for reporting industrial development bonds (IDBs) in the Call Report. More specifically, the commenter suggested that the agencies replace the existing Call Report instructions governing whether a bank should report its IDBs as securities or as loans with instructions stating that IDBs should be reported as securities or as loans on the Call Report consistent with the manner in which the bank reports these instruments on its balance sheet for other financial reporting purposes. The FFIEC and the agencies agree and are revising the instructions accordingly.

Other Comments—Three commenters discussed the effect of the provisions of FASB Statement No. 125, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities," that took effect for transfers occurring after December 31, 1997. These newly effective provisions relate to the accounting for collateral and secured borrowings, repurchase agreements, securities lending, and similar transactions. If certain conditions are met, collateral received by a creditor must be recorded as an asset on the creditor's balance sheet. Under previous GAAP, the collateral may not have been recorded on the creditor's balance sheet. As a result of this change in accounting standards, some banks will see their total on-balance sheet assets increase, which would increase the denominators in the calculation of these banks' leverage capital and risk-based capital ratios. The effect of these provisions of FASB Statement No. 125 will appear for the first time in the March 31, 1998, Call Report.

These commenters stated that regulatory capital ratios should be computed using a pre-FASB Statement No. 125 approach to collateralized transactions so that regulatory capital is not allocated twice for the same transaction. These commenters recommended that the FFIEC change the Call Report instructions in 1998 to say that amounts added to the balance sheet because of the collateral provisions of FASB Statement No. 125 should be excluded from average total assets and risk-weighted assets. When it considered these comments, the FFIEC concluded that this was primarily a regulatory capital issue that should be addressed as a supervisory matter under the FFIEC's Task Force on Supervision. The Task Force on Supervision has requested that its capital working group evaluate the issue these commenters have raised.

Five commenters indicated that the proposed changes do not significantly reduce the reporting burden imposed by the Call Report. They urged the FFIEC and the agencies to do more to reduce burden, eliminate items not related to safety and soundness, and work to fulfill the mandate of Section 307 of the Riegle Community Development and Regulatory Improvement Act of 1994. Section 307 requires the four federal banking and thrift agencies to work jointly to develop a single form for the filing of core information by banks, savings associations, and bank holding companies. It also directs the agencies to review the information they collect from these institutions that supplements the core information and eliminate those reporting requirements that are not warranted for safety and soundness or other public purposes. Thus, it is clear from Section 307 that Call Report data should not be collected exclusively to meet the agencies' safety and soundness needs. Nevertheless, the agencies regularly review the existing Call Report requirements in order to identify items that are no longer sufficiently useful to warrant their continued collection. Since 1995 these reviews have led to the elimination of numerous items and reductions in the level of detail in several areas. For 1998, as discussed above, the FFIEC and the agencies also decided not to implement certain proposed revisions about which commenters' expressed concern about burden.

In addition to eliminating a number of items that were considered unnecessary for safety and soundness and other public purposes, the FFIEC and the agencies have, as part of their Section 307 efforts, adopted GAAP as the reporting basis for the Call Report, combined the four sets of Call Report instructions into a single comprehensive set which includes an index, made the Call Report forms and instructions available on the Internet, and implemented an electronic filing requirement for the Call Report. The FFIEC and the agencies are continuing to analyze the specific uses of the individual Call Report items in order to ascertain their relative importance to the agencies and assist in the agencies' ongoing effort to eliminate information with the least practical utility. Furthermore, the banking and thrift agencies are continuing their work on a common core report that will satisfy the requirements of Section 307.

Board of Governors of the Federal Reserve System, February 17, 1998.

William W. Wiles,

Secretary of the Board.

Dated: February 17, 1998.

Karen Solomon,

Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Dated at Washington, DC, this 20th day of February, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–4859 Filed 2–25–98; 8:45 am]

BILLING CODE 4810–33–M, 6210–01–M, 6714–01–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 98–17]

Bonds; Approval To Use Authorized Facsimile Signatures and Seal

The use of facsimile signatures and seal on Customs bonds by the following corporate surety has been approved

effective this date: Aegis Security Insurance Company.

Authorized facsimile signature on file for: Gary C. Bhojwani, Attorney-in-Fact, Deborah A. Briner, Attorney-in-Fact.

The corporate surety has provided the Customs Service with copies of the signatures to be used, a copy of the corporate seal, and a certified copy of the corporate resolution agreeing to be bound by the facsimile signatures and seal. This approval is without prejudice to the surety's right to affix signatures and seals manually.

Dated: February 19, 1998.

Jerry Laderberg,

Chief, Entry Procedures and Carriers Branch.

[FR Doc. 98–4954 Filed 2–25–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts and refunds of Customs duties. For the quarter beginning January 1, 1998, the rates will remain at 8 percent for overpayments and 9 percent for underpayments. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298–1200, extension 1349.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Interest rates are determined based on the short-term Federal rate. The interest rate that Treasury pays on overpayments will be the short-term Federal rate plus two percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus three percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less, and fluctuate quarterly. The rates effective for a quarter are determined during the first-month period of the previous quarter.

The IRS announced December 15, 1997, that the rates of interest for the second quarter of fiscal year (FY) 1998 (the period of January 1–March 31, 1998) will remain at 8 percent for overpayments and 9 percent for underpayments. These interest rates are subject to change for the third quarter of FY–1998 (the period of April 1–June 30, 1998).

For the convenience of the importing public and Customs personnel the following list of Internal Revenue Service interest rates used, since July 1, 1975 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)
070175 ..	013176	9	9
020176 ..	013178	7	7
020178 ..	013180	6	6
020180 ..	013182	12	12
020182 ..	123182	20	20
010183 ..	063083	16	16
070183 ..	123184	11	11
010185 ..	063085	13	13
070185 ..	123185	11	11
010186 ..	063086	10	10
070186 ..	123186	9	9
010187 ..	093087	9	8
100187 ..	123187	10	9
010188 ..	033188	11	10
040188 ..	093088	10	9
100188 ..	033189	11	10
040189 ..	093089	12	11
100189 ..	033191	11	10
040191 ..	123191	10	9
010192 ..	033192	9	8
040192 ..	093092	8	7
100192 ..	063094	7	6
070194 ..	093094	8	7
100194 ..	033195	9	8
040195 ..	063095	10	9
070195 ..	033196	9	8
040196 ..	063096	8	7
070196 ..	033198	9	8

Dated: February 23, 1998.

Samuel H. Banks,

Acting Commissioner of Customs.

[FR Doc. 98–4953 Filed 2–25–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6478

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6478, credit for Alcohol Used as Fuel.

DATES: Written comments should be received on or before April 27, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Credit for Alcohol Used as Fuel.

OMB Number: 1545–0231.

Form Number: 6478.

Abstract: IRC section 38(b)(3) allows a nonrefundable income tax credit for businesses that sell or use alcohol mixed with other fuels or sold as straight alcohol. Small ethanol producers are also allowed a nonrefundable credit for production of qualified ethanol. Form 6478 is used to compute the credits.

Current Actions: Line 13c was added for the new child tax credit under Internal Revenue Code section 24, and line 13d was added for the new education credits under Code section 25A.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,600.

Estimated Time Per Respondent: 14 hr., 16 min.

Estimated Total Annual Burden Hours: 79,912.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the 3 collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 18, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–4966 Filed 2–25–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8586

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8586, Low-Income Housing Credit.

DATES: Written comments should be received on or before April 27, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit.

OMB Number: 1545–0984.

Form Number: 8586.

Abstract: Internal Revenue Code section 42 permits owners of residential rental projects providing low-income housing to claim a tax credit for part of the cost of constructing or rehabilitating such low-income housing. Form 8586 is used by taxpayers to compute the credit and by the IRS to verify that the correct credit has been claimed.

Current Actions: Line 9c was added for the new child tax credit under Internal Revenue Code section 24, and line 9d was added for the new education credits under Code section 25A.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 13 hrs., 4 min.

Estimated Total Annual Burden Hours: 653,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the 3 collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 18, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer

[FR Doc. 98–4967 Filed 2–25–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5884

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5884, Work Opportunity Credit.

DATES: Written comments should be received on or before April 27, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Work Opportunity Credit.

OMB Number: 1545–0219.

Form Number: 5884.

Abstract: Internal Revenue Code section 38(b)(2) allows a credit against income tax to employers hiring individuals from certain targeted groups such as welfare recipients, etc. The employer uses Form 5884 to compute this credit. The IRS uses the information on the form to verify that the correct amount of credit was claimed.

Current Actions: Line 6(c) was added for the new child tax credit under Internal Revenue Code section 24 and line 6(d) was added for the new education credits under Code section 25A.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 85,000.

Estimated Time Per Respondent: 8 hr., 11 min.

Estimated Total Annual Burden Hours: 696,150.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 19, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–4968 Filed 2–25–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 990–T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 990–T, Exempt Organization Business Income Tax Return.

DATES: Written comments should be received on or before April 27, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Exempt Organization Business Income Tax Return.

OMB Number: 1545–0687.

Form Number: 990–T.

Abstract: Form 990–T is used to report and compute the unrelated business income tax imposed on exempt organizations by Internal Revenue Code section 511 and the proxy tax imposed by Code section 6033(e). The form provides the IRS with the information necessary to determine that the tax has been properly computed.

Current Actions: Two new checkboxes have been added to Item B. These additions reflect sections 302 and 213 of the Taxpayer Relief Act of 1997 (TRA), which created Roth IRAs and Educational IRAs and subjected them to the unrelated business income tax.

The "408(a) trust" and "220(d) trust" checkboxes were deleted from Item G, and a new checkbox titled "Other trust" was added. This new checkbox will be used by the former users of the two deleted boxes plus 408A(b) and 530(b) trusts, which were created by sections 302 and 213 of the TRA. The four types of trusts that will check this box are IRA trusts, Roth IRA trusts, Education IRA trusts, and Medical Savings Account Trusts.

Type of Review: Revision of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 37,103.

Estimated Time Per Respondent: 133 hr., 57 min.

Estimated Total Annual Burden Hours: 4,969,947.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 19, 1998.
Garrick R. Shear,
IRS Reports Clearance Officer.
[FR Doc. 98–4969 Filed 2–25–98; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041–QFT

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1041–QFT, U.S. Income Tax Return for Qualified Funeral Trusts.

DATES: Written comments should be received on or before April 27, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instruction should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Qualified Funeral Trusts.

OMB Number: 1545–1593.

Form Number: Form 1041–QFT.

Abstract: Internal Revenue Code section 685 allows the trustee of a qualified funeral trust to elect to report and pay the tax for the trust. Form 1041–QFT is used for this purpose. The IRS uses the information on the form to determine that the trustee filed the proper return and paid the correct tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 15,000.

Estimated Time Per Respondent: 14 hrs. 34 min.

Estimated Total Annual Burden Hours: 218,550.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 19, 1998.
Garrick R. Shear,
IRS Reports Clearance Officer.
[FR Doc. 98–4970 Filed 2–25–98; 8:45 am]
BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Multi-Regional Project for International Visitors "Ethics in Government and Business"

ACTION: Notice, request for proposals.

SUMMARY: The Office of International Visitors (IV) of the United States Information Agency's (USIA) Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private nonprofit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to develop a Multi-Regional Group of International Visitors traveling in the United States for 24 days. The group will be comprised of from 12 to 30 American Embassy contacts in the fields of government officials, business leaders, politicians, civic and community leaders, journalists and educators.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and to the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Program and project must conform with Agency requirements and guidelines outlined in the Solicitation Package. The U.S. Information Agency projects, programs and assistance award are subject to the availability of funds and sufficient number of participant nominations.

Announcement Title and Number: All communications with USIA concerning this announcement should refer to the above title and reference number E/VP–98–1.

To download a solicitation package via Internet: Information about USIA's IV Program is available via Internet at website: http://www.usia.gov. The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps.

To receive a solicitation package via FAX on demand: The entire Solicitation Package may be received via the Bureau's "Grants Information Fax on Demand System", which is accessed by calling 202/401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC, time on May 19, 1998. Faxed documents will not be accepted, nor will documents postmarked on the proposal due date but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the due date which has been established for each available project, as follows:

Title: Ethics in Government and Business.

Type: Multi-Regional (English-Speaking).

Proposal Due Date: May 19, 1998.

Project Dates: August 20–September 10, 1998.

Contact: Susan Lockwood.

Telephone: (202) 619–6889, FAX: (202) 205–0792.

Project Goals:

• To enhance knowledge of the structure and function of ethics systems in government and business in the United States.

• To explore how ethical issues impact civil society;

• To explore similarities, contrasts and connections between ethics in government and in the private sector in the U.S.

Participants

This project is intended for government officials, business leaders, politicians, civic and community leaders, journalists and educators.

Summary: For a democratic form of government in a pluralistic society to be effective, citizens must have confidence in its integrity. This program will provide a venue for a diverse group of participants to discuss the meaning and implications of ethical standards and how they are defined, monitored, and enforced. Topics for discussion will include the common ethical values that underlie democratic systems, comparison of administrative structures of ethics programs and the implementation of ethics laws and codes of conduct (e.g., financial disclosure systems, education of employees, methods of enforcement, resolution of conflicts of interest). Through visits with representatives from private industry, participants will explore the link between government and business to discover how this relationship can support democratic values. At a relevant point in the three-week program, the group should be divided into teams to permit more intensive discussions with American colleagues.

The project will open in Washington, DC with an overview of the U.S. political system and economic system. An emphasis will be placed on explaining the principles of separation of powers and accountability of elected officials to the electorate and on the responsibilities of corporate leaders to stockholders and consumers. The role of government and private oversight organizations will be addressed. An appointment with officials of the Federal Election Commission to discuss the issues of election and campaign regulation, including campaign financing and campaign fund raising will be included. A discussion of ethics law will be arranged, perhaps with an official of the American Bar Association's Center for Professional Responsibility. A session will be organized to address practical techniques for establishing and maintaining ethics systems in democracies. Additionally, the uniquely American concept of "lobbying" will be the focus of one segment of the Washington program. One-half day of the Washington program should be left free for the participants to pursue specific individual interests (which will be ascertained before their arrival in the U.S.).

Participants will travel outside Washington to meet with and observe ethics officials on the state and local levels. Participants will also meet with corporate ethics officials to understand their responsibilities in dealing with government agencies. Topics for discussion will include: the "watchdog" role of the media; citizens' involvement through advocacy organizations; and how businesses promote high ethical conduct among their members and employees.

The itinerary will include a combination of geographically diverse areas of the country as well as communities of varying sizes and ethnic composition. An in-depth orientation tour of each community visited will be arranged at the beginning of each city segment. Opportunities for the participants to attend cultural and social events, met with and address local groups experience local hospitality, will be incorporated throughout the program; these events will relate to the themes of the project to the extent possible.

To receive a solicitation package by mail, contact: The Office of International Visitors, Group Projects Division (E/VP), Room 255, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547 telephone 202/205–3058, fax 202/205–0792. The Solicitation Package contains more detailed information including required application forms, and standard guidelines for preparing proposals, as well as specific criteria for preparation of the proposal budget.

On all inquiries and correspondence, please specify the name of the USIA Program Officer as it appears on the "Contact" line of the above project. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and 12 copies of the application should be sent to: U.S. Information Agency, Ref.: E/VP–98–1, Project Title: Ethics in Government and Business, Contract Officer: Susan Lockwood, Office of Grants Management, E/XE, 301 4th Street, SW., Room 336, Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, freedom and democracy guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 204–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy", USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Overview

Programs must maintain a non-partisan character. Programs and awards must conform to all Agency requirements and guidelines and are subject to final review by the USIA Grants Officer, Bureau of Management, Office of Contracts, Grants Division,

(M/KG).

Guidelines

USIA seeks proposals from non-profit organizations for development and implementation of a professional program for USIA-sponsored International Visitors to the U.S. who will participate in a Multi-Regional Group Project (MRP). Participants in the project will be foreign leaders or potential leaders selected by U.S. embassy committees abroad. The group will typically consist of from 12 to 30 foreign visitors in addition to the two to three American escort officers (ELEOs) selected by USIA, who accompany them. The project will be a 24 days in length and will begin in Washington, DC, with an orientation and overview of the issues and a central examination of federal policies regarding these issues. Well-paced project itineraries include programs in four or five communities. Project itineraries will ideally include urban and rural small communities and diverse geographical and cultural regions of the U.S., as appropriate to the project theme. The project should provide opportunities for participants to experience the diversity of American society and culture. Depending on the size and theme of the project, the participants can be divided into smaller sub-groups for simultaneous visits to different communities, with subsequent opportunities to share their experiences with the full group once it is reunited. The project may provide opportunities for the visitors to share a meal or similar experience (home hospitality) in the homes of Americans of diverse occupational, age, gender and ethnic groups. The participants may be provided opportunities to address student, civic and professional groups in relaxed and informal settings. "Shadowing" experiences with American professional colleagues may be proposed. As appropriate, opportunities for site visits and hands-on experiences that are relevant to project themes may be included. Time should also be allowed for participants to reflect on their experiences and share observations with project colleagues. Participants should have opportunities to visit cultural and tourist sites. Arrangements for community visits must be made through affiliates of the National Council for International Visitors (NCIV). (The NCIV is a national network of private citizen organizations located in more than one hundred U.S. communities, which arrange local programs for international visitors.) In cities where there is no such council, the applicant will arrange for coordinator of local programs.

The applicant is expected to have e-mail capability to consult with USIA program officers, and access to internet resources. USIA will provide close coordination and guidance throughout the duration of the award.

Visa Requirements

Program participants will travel on J–1 visas arranged by USIA. The project must comply with J–1 visa regulations.

Please refer to program specific guidelines in the Solicitation Package for further details.

Budget

Organizations are required to submit a comprehensive line-item budget in accordance with the instructions in the Solicitation Package. Cost items must be clearly categorized as administrative costs, group project costs, or program costs. Applicants must use the budget format presented in the "1998 Guidelines for Proposals Submitted to the USIA Office of International Visitors" for all budget submissions. There must be a summary budget as well as a detailed breakdown showing the administrative budget, group project budget and program budget. Proposed staffing and costs associated with staffing must be appropriate to fulfillment of all project requirements, which will include close consultation with the responsible E/VP Program Officer throughout development and implementation of the program. Proposed costs may not exceed the guideline amounts. Combined administrative and indirect costs proposed should be controlled and are subject to negotiation. Cost sharing is encouraged and, if applicable, must be shown in the budget presentation. The Agency anticipates that awards to cover administrative and indirect costs (where applicable) will be less than $20,400.

Organizations that have received a renewal assistance award from the Agency for the Office of International Visitors must submit a budget showing all administrative costs associated with the project for which application is made. Any award to such an organization pursuant to this announcement may be adjusted to reflect the status of the renewal award. Renewal award recipients must identify individuals or organizations to who they have already paid honoraria in FY 1998 if they propose to pay an additional honorarium for any project included in this announcement.

The Agency welcomes proposals from organizations that have not received USIA grants or assistance awards in the past. Agency requirements stipulate that "Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000." It is not expected that the project in this announcement will cost $60,000 or less. It is, therefore, incumbent on organizations to demonstrate four years of successful experience in conducting international exchange programs to be eligible for an assistance award.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA's Geographic Area Offices and the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to Agency mission, and be responsive to all goals and requirements stated in the RFP, Preliminary Project Summaries and the "1998 Guidelines for Proposals Submitted to the United States Information Agency Office of International Visitors."

2. Program planning: The proposed program and work plan should include a planning and implementation time-line, describe any preliminary planning undertaken, and demonstrate logistical capability to implement the program as described.

3. Ability to achieve project objectives: Objectives should be well designed, reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the project's objectives.

4. Multiplier effect/impact: The proposed project should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-

term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (program venue and project evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve effective implementation and fulfillment of the project's goals.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Federal assistance awards, if any. The Agency will consider the past performance of prior USIA award recipients and the demonstrated potential of new applicants. All applicants must demonstrate a minimum of four years of successful experience in conducting international exchange programs.

8. Cost-effectiveness: The administrative and indirect cost components of the proposal, including salaries, should be kept as low as possible and should not exceed the amount stated above.

9. Cost-sharing: Consideration will be given to proposed cost-sharing through other private sector support as well as institutional contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: February 19, 1998.

Robert Earle,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–4838 Filed 2–25–98; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Future of Long-Term Care Advisory Committee, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Future of Long-Term Care Advisory Committee has been renewed for a period beginning February 17, 1998, through September 30, 1998.

Dated: February 17, 1998.

By direction of the Acting Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–4911 Filed 2–25–98; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 63, No. 38

Thursday, February 26, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

National Park Service

REVISION- Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of Tonto National Forest, United States Forest Service, Phoenix, AZ

Correction

In notice document 98–4013 beginning on page 8209, in the issue of Wednesday, February 18, 1998, make the following correction:

On page 8210, in the second column, in the eighth line, "[thirty days after publication in the **Federal Register**]" should read "March 20, 1998".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-AGL-42]

Modification of Class D and Class E Airspace, and Removal of Class E Airspace; Belleville, IL

Correction

In rule document 98–2450 beginning on page 5229, in the issue of Monday, February 2, 1998, make the following corrections:

§ 71.1 [Corrected]

On page 5230, in the second column, in § 71.1:

a. In the second line, under **AGL IL D Belleville, IL [Revised]**, "long. 89°32′01″W" should read "long. 89°50′01″W".

b. In the fourth line, under **AGL IL E5 Belleville, IL [Revised]**, "Lat. 38°32′41″N" should read "Lat. 38°32′42″N".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

[Docket No. 28743; Notice No. 98-1]

RIN 2120-AG55

Commerical Passenger-Carrying Operations in Single-Engine Aircraft Under Instrument Flight Rules

Correction

In proposed rule notice document 98–3344 beginning on page 6826, in the issue of Tuesday, February 10, 1998, make the following correction:

On page 6826, in the first column, the Docket line should be set forth as above.

BILLING CODE 1505-01-D

federal register

Thursday
February 26, 1998

Part II

Environmental Protection Agency

Science Advisory Board; Emergency Cancellation of a Public Advisory Committee Meeting; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5972–2]

Science Advisory Board; Emergency Cancellation of a Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notification is hereby given that the March 12–13, 1998 meeting of the Drinking Water Committee of the Science Advisory Board (SAB) has been canceled. This meeting had been announced in the **Federal Register**, February 19, 1998 (63 FR 8451). The meeting will be rescheduled as soon as practical. The new meeting date will be announced in the **Federal Register**.

Anyone desiring additional information should contact Mr. Thomas O. Miller, Designated Federal Official, Science Advisory Board (1400), US EPA, 401 M Street, SW, Washington DC 20460, telephone (202) 260–5886, fax (202) 260–7118, or Email on: miller.tom@epamail.epa.gov.

Dated: February 23, 1998.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 98–5088 Filed 2–25–98; 8:45 am]

BILLING CODE 6560–60–P

federal register

Thursday
February 26, 1998

Part III

Department of Transportation

Coast Guard

46 CFR Chapter I

Emergency Response Plans for Passenger Vessels; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Chapter I

[USCG–1998–3473]

RIN 2115–AF61

Emergency Response Plans for Passenger Vessels

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard seeks public comments on potential rules that would require owners or operators of U.S.-flag inspected passenger vessels, including small passenger vessels, operating in domestic service to develop and exercise emergency response plans. These plans would establish ways of mitigating the consequences of collisions, allisions, groundings, fires, and other emergencies. The plans' elements would address possible emergencies, passengers' evacuation, crews' training, and available emergency response and rescue resources both on vessels and in their operating areas.

DATES: Comments must reach the Coast Guard on or before June 26, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility [USCG–1998–3473], U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address, between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the same address, between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

Copies of NVIC 8–93 and NVIC 1–97, referred to in this advance notice, are available either from the Coast Guard point of contact designated in **FOR FURTHER INFORMATION** or from the Home Page of the Coast Guard for Marine Safety and Environmental Protection on the Internet at http://www.uscg.mil/hq/g-m/nmc/genpub.htm.

FOR FURTHER INFORMATION CONTACT: For information on the public docket, call Carol Kelley, Coast Guard Dockets Team Leader, or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, telephone 202–366–9329. For information concerning the advance notice of proposed rulemaking provisions, call Lieutenant John G. White, Project Manager, U.S. Coast Guard Headquarters, Office of Standards Evaluation and Development (G–MSR–2), telephone 202–267–6885.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in the early stages of this potential rulemaking by submitting written data, views, or arguments on the questions that follow the analysis of environmental impact. Persons submitting comments should include their names and addresses, identify this advance notice [USCG–1998–3473] and the specific section or question in this notice to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you want acknowledgment of receipt of your comments, you should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. If it proposes a rule, it will both consider these and invite more.

The Coast Guard may schedule a public meeting depending on the response to this advance notice. You may request a public meeting by submitting a comment requesting one to the address under **ADDRESSES.** The request should include the reasons why a meeting would be beneficial. If the Coast Guard determines that a meeting should be held, we will announce the time and place in a later notice in the **Federal Register**.

Purpose

The Coast Guard needs your feedback on the issues addressed in this advance notice to help it define the scope of potential rules requiring emergency response plans and exercises for inspected passenger vessels operating in domestic service. Passenger vessels operate in diverse environments and face hazards that may result in what are referred to as "low-probability—high-consequence" incidents. While the overall safety record for inspected passenger vessels is very good, their operations are not risk-free. Emergency response planning is a cornerstone in developing effective safety management systems that address "low-probability—high-consequence" incidents. It offers a systematic means by which to constantly balance the interaction among the elements of management, the work environment, individual behavior, and appropriate technology. The primary goal of this potential rulemaking would be to obtain industry participation in efforts toward emergency planning and coordination. The need for planning is clear in light of the pressures and multiple tasks facing personnel when confronted by an emergency. Effective planning will prevent confusion, mistakes, and the failure to advise key people. Without it—and practice—a single incident could easily overwhelm the emergency response resources of a vessel and a local community, resulting in passengers' injuries.

Developing universal planning criteria for passenger vessels is difficult because of the diversity of the vessel population and operating environments. Among the affected vessels are ferries of various types, sport-fishing vessels, dinner excursion vessels, cruise vessels, riverboat gaming vessels, and offshore gaming vessels. These vessels operate everywhere from busy commercial ports located in major metropolitan areas to remote sections of rivers or interstate lakes away from large cities. Some operate in the same port or municipal jurisdiction, while others travel to several ports and routinely cross political jurisdictions. Any rulemaking would address these differences and provide flexibility according to type and size of vessel, passenger capacity, shore-based management structure, availability of resources and facilities for search and rescue, routes, number of municipalities involved, and traffic and weather.

The Coast Guard recognizes that many owners and operators of passenger vessels have already engaged in contingency planning. For example, many owners and operators of cruise vessels have engaged in emergency planning by preparing planning documents and by participating in related training and exercises. Others, such as riverboat gaming vessel operators, have also engaged in the planning process. Furthermore, there are cooperative efforts under way between the Coast Guard and representatives of the industry to address risk management for the industry, of which contingency planning may be one component. The Coast Guard intends to build upon such

efforts during this potential rulemaking by incorporating lessons learned from current plans and past exercises and gathering significant public input. The Coast Guard is particularly interested in information that you can provide on current planning—its scope, successes, problems, and so forth. Any rules that resulted would aim at assisting the maritime community by clarifying authority and expectations for plans and exercises, and by providing a level of consistency between ports. Your input will be particularly useful during the early stage of any rulemaking arising from this advance notice.

Hazards Faced by Passenger Vessels

The Coast Guard estimates that there are about 6,100 inspected passenger vessels operating in the United States. Of these, about 5,100 are small passenger vessels inspected under 46 CFR Subchapter T; most of these vessels carry fewer than 50 passengers.

Although the safety record for domestic passenger vessels is very good, it cannot reliably predict an absence of serious accidents. Passenger vessels do experience fires, groundings, collisions, allisions, loss of propulsion, loss of steering control, and other equipment failures. For example, from the end of 1992 until the end of 1996, passenger vessels experienced an average of over 575 such incidents a year. Most of these were minor, and very few resulted in injuries. However, such incidents—aggravated by other factors such as bad weather, strong currents, or heavy vessel traffic—could lead to serious injuries indeed. It is difficult to make a general statement about risk to passenger vessels because of the variables involved. However, the key to effective planning is determining the level of risk and taking appropriate steps to address that risk. The Coast Guard is interested in your feedback regarding that level and those steps.

Existing Guidance for Planning

A key component of any future rulemaking would be requirements on the scope and content of emergency response plans. The Coast Guard would like to learn about any existing guidance for the development of plans or other information relevant to preparing plans. There are two Coast Guard Navigation and Inspection Circulars (NVICs) that address emergency response plans for passenger vessels. Both NVICs provide options or alternatives for compliance with certain rules for the safety of passenger vessels.

NVIC 8–93, "Equivalent Alternatives to 46 CFR Subchapter H Requirements Related to Means of Escape, Safe Refuge Areas, and Main Vertical Zone Length," elaborates equivalent means of egress, safe refuge areas, and limitations of length of main vertical zones for certain passenger vessels required to meet 46 CFR Subchapter H on structural fire protection. Some passenger vessels built to the standards of Subchapter H after the publication of NVIC 8–93 practice the alternatives provided by the NVIC.

One alternative provided by NVIC 8–93 involves the preparation of an Emergency Evacuation Plan (EEP). The EEP tells the master and crew what procedures they must carry out in the event of a shipboard fire. An EEP is generally in the form of a pamphlet describing the various safety features and emergency procedures. It sets out simplified diagrams of the vessel's emergency egress and refuge systems and explains fire protection equipment. Each member of the crew should be familiar with these systems and equipment so they can direct passengers to safe refuge in an emergency and can help to contain and combat the fire. The Coast Guard verifies the crew's performance during fire and lifesaving drills conducted as part of regularly scheduled vessel inspections.

EEPs address issues such as the number of persons in each enclosed space and on each part of the weather deck, possible fire scenarios, dimensions and capacities of egress components, characteristics and capacities of refuge areas, identity of embarkation areas and how passengers would be evacuated from those areas, and how passengers would be informed of emergency procedures. Because many gaming vessels have passengers on board while the vessels are moored, some Officers in Charge of Marine Inspection (OCMIs) require addenda to EEPs for gaming vessels to address passengers' egress in case of an emergency evacuation when moored.

Although EEPs deal only with fires and need not cover availability of and coordination with local emergency resources, passengers' egress under EEPs may apply to more comprehensive emergency response plans. The Coast Guard is interested in comments from the public regarding EEPs and their applicability to these more comprehensive plans. Copies of NVIC 8–93 are available either from the Coast Guard point of contact designated in **FOR FURTHER INFORMATION** or from the Home Page of the Coast Guard for Marine Safety and Environmental Protection on the Internet at http://www.uscg.mil/hq/g-m/nmc/genpub.htm.

NVIC 1–97, "Shipboard Safety Management and Contingency Plan for Passenger Vessels," may be another valuable model for developing emergency response plans. The NVIC was developed to provide guidance on preparing a Shipboard Safety Management and Contingency Plan for some passenger vessels as an alternative to certain survival craft requirements specified in 46 CFR Subchapter W. This alternative is discussed in the Interim Rule on Lifesaving Equipment published in the **Federal Register** on May 20, 1996 [61 FR 25272].

NVIC 1–97 offers guidance on preparing plans that address contingencies such as medical emergencies, oil spills, fires, collisions, allisions, and groundings. It stresses that planners should conduct an initial risk assessment addressing navigation and safety in a vessel's operating environment (distance from shore, depth of water, temperature, current, visibility, proximity of other vessels, availability and suitability of onshore or offshore facilities, etc.). In general, plans should identify local facilities for firefighting, ambulances, and search and rescue, including local telephone numbers and contact points, for both underway and dockside situations. Plans should also contain protocols for company drills and crew training. The NVIC stresses that a plan is necessary because of the multiple tasks a vessel's crew may encounter in an emergency. If a crew is properly prepared, passengers will more likely be aware of the environment, be informed of emergency procedures, and be prepared to follow directions.

NVIC 1–97 recommends that any plan should be tailored to a particular vessel, be easy to use, be understood by management personnel of the vessel both on board and ashore, and be updated regularly. According to the NVIC, any plan should comprise: Guidance assisting a vessel's crew to deal with catastrophic vessel damage; procedures to mobilize emergency response teams; procedures for moving passengers off the vessel; lists of external organizations that may assist; communications; arrangements for passengers with physical or mental impairments; and training for personnel with identified roles in the plan.

NVIC 1–97 recommends the following specific components and characteristics for plans:

- Plans should inform the vessel's master and crew how to handle an emergency and to stop or minimize damage and the effects of an emergency.
- Plans should fit the particular vessels for which they are developed.
- Plans should establish procedures to get passengers from various spaces on

the vessel to an assembly station (stage 1 egress); direct them on to the embarkation stations (stage 2 egress); and evacuate them to points of safety (stage 3 egress) in an emergency.

- Plans should describe the method and procedure for providing timely instructions to passengers.
- Plans should list external organizations that the plan-holder would call for assistance in emergencies. Among the organizations may be governmental agencies, fire departments, hospitals, vessel or equipment providers, and contractors offering specialized services such as towing and barge services, and trained personnel related to control, triage, or recovery.
- Plans should describe the different kinds of training to prepare the crew for handling various emergencies.
- Plans should be realistic, practical, and easy to use, and understood by company personnel, both on board and ashore.
- Plans should have a designated space to allow for recording lessons learned during exercises.
- Plans should be reviewed, evaluated, exercised, and updated regularly.
- Plans should be kept in loose-leaf binders to facilitate updating.
- Plans should have flow charts or checklists to guide personnel through various actions and decisions required during incidents.
- Plans should be readily available on board and located throughout the vessel so that crew members are aware of their responsibilities during each type of emergency.
- Plans should discuss and practice the means of providing safety information to passengers such as emergency signals and announcements; announcements of evacuation procedures; announcements of assistance for disabled, elderly, or young passengers; identification of crew members; life jacket instructions; and announcements of procedures for disembarking from the vessels in emergencies.
- Plans should include lists of specific acts, taken sequentially or concurrently, to counteract each potential emergency and prevent or minimize damage. The NVIC recommends acts for the following scenarios: vessel's loss of steering or control; collision and grounding; fire and explosion; oil spill; bomb threat; flooding; abandonment of ship; person overboard; emergency on another vessel; and medical emergency.

NVIC 1–97 also provides guidance on how plans should be exercised. It establishes three levels of exercises to ensure the practice of main components on a regular basis.

Level 1 exercises involve the vessel's crew. They emphasize developing and practicing the vessel's initial response such as alerting key personnel, starting emergency systems, securing nonessential machinery, starting evacuation procedures, controlling and directing passengers, and deploying on-site personal protective and lifesaving equipment. The NVIC recommends conducting *Level 1* exercises at least once a month.

Level 2 exercises involve the local response community. Plan holders should drill with some or all of the external organizations listed in their plans. Tabletop exercises focusing on organizations' response management teams are appropriate. Although several organizations may participate, plan holders usually design, control, exercise, and evaluate their own plans. The NVIC recommends the conduct of *Level 2* exercises once a year.

Level 3 exercises involve several plan holders' coming together as equals to cooperatively design and execute a response exercise to a marine incident.

The Coast Guard encourages you to review NVIC 1–97 and provide feedback on its applicability to comprehensive emergency response planning for passenger vessels. Copies of NVIC 1–97 are available either from the Coast Guard point of contact designated in FOR FURTHER INFORMATION or from the Home Page of the Coast Guard for Marine Safety and Environmental Protection on the Internet at http://www.uscg.mil/hq/g-m/nmc/genpub.htm. The Coast Guard is also interested in other planning guidance that you think may be useful in the development of any potential rulemaking.

Crews' Training

As discussed in NVIC 1–97, crews' training is an important component of emergency response planning. If crew members are properly trained in emergency procedures, they will likely help evacuate passengers from the vessel and mitigate the emergency. It is important that crew members be familiar with their positions and roles during an emergency, and have the opportunity to practice these roles on a routine basis. The Coast Guard is interested in learning about training programs you may be involved in that address the safety of passengers, and what you believe are key components of such programs.

Regulatory Assessment

At this early stage in what is still just a potential rulemaking, the Coast Guard has not determined whether any future rulemaking may be considered a significant regulatory action under section 3(f) of E.O. 12866 or the regulatory policies and procedures of the Department of Transportation [44 FR 11030 (February 26, 1979)]. The Coast Guard anticipates that any future rulemaking will require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866.

Any future rulemaking may have substantial effects on owners and operators of passenger vessels who have yet to develop and implement emergency response plans, and it may generate substantial public interest. The primary economic impact of any rule would be on those owners and operators who would have to comply with any new requirements. Because there are no such requirements now, we cannot quantify the full extent of the economic and operational impacts now. A primary purpose of this advance notice is to help the Coast Guard develop a proposal and determine the costs and benefits of any new requirements, to the extent that they exceed current statutory and regulatory requirements or current industry practices. We expect that the public response to the questions and issues addressed in this notice will help us in writing a proposed rule and a draft regulatory assessment. We seek your feedback on what costs you incur by developing and exercising emergency response plans as well as what economic incentives you envision for complying with such requirements.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Coast Guard must consider whether any potential rulemaking, if it led to an actual rule, would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Because there are not yet any new requirements, the Coast Guard cannot yet determine potential effects upon small entities. Accordingly, an initial Regulatory Flexibility Analysis discussing the impact of this potential rulemaking on small entities has not been prepared. However, the Coast Guard anticipates that any future rulemaking may have potential impacts on small businesses, and State and local

governments. The Coast Guard expects that comments received on this advance notice will help it in determining the number of potentially affected small entities, and in weighing the impacts of various regulatory alternatives for the purpose of drafting new requirements.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this advance notice so that they can better evaluate the potential effects of any future rulemaking on them and participate in the rulemaking. If you believe that your small business, organization, or agency may be affected by any future rulemaking, and if you have questions concerning this notice, please consult the Coast Guard point of contact designated in **FOR FURTHER INFORMATION**. The Coast Guard is particularly interested in how any future rulemaking may affect small entities. If you are a small entity and believe you may be affected by such a rulemaking, please tell how, and what flexibility or compliance alternatives the Coast Guard should consider to minimize the burden on small entities while promoting passenger safety.

Collection of Information

Under the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. As defined in 5 CFR 1320.3(c), "collection of information" includes reporting, record-keeping, monitoring, posting, labeling, and other, similar actions.

The Coast Guard cannot yet estimate the paperwork burden associated with this potential rulemaking because it has not yet proposed any new requirements. However, at a future stage, it may require that owners and operators of certain passenger vessels develop and maintain emergency response plans. It expects that comments received in response to this advance notice will help it in estimating the potential paperwork burden, as required under the Paperwork Reduction Act. After estimating the burden and deciding to go ahead with the rulemaking, it would submit the proposed record-keeping requirement to the Office of Management and Budget (OMB) for approval. The Coast Guard is interested in your input regarding potential collection-of-information burdens imposed by any future rulemaking.

Federalism

The Coast Guard has analyzed this advance notice under the principles and criteria contained in Executive Order 12612. From the information available at this time, the Coast Guard cannot determine whether this potential rulemaking would have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Potential issues include introducing some level of standardization of requirements for emergency response plans among Federal, State, and local governments. Because some passenger vessels move from port to port in the national marketplace, separate requirements for each port could be economically burdensome and even unsafe. The Coast Guard specifically seeks public comment on the federalism implications of this potential rulemaking.

Unfunded Mandates

Under the Unfunded Mandates Reform Act [Pub. L. 104–4], the Coast Guard must consider whether this potential rulemaking would result in an annual expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). The Act also requires (in Section 205) that the Coast Guard identify and consider a reasonable number of regulatory alternatives and, from those alternatives, select the least costly, most cost-effective, or least burdensome alternative that achieves the objective.

Currently, several States and local governments operate passenger ferries and may have to comply with any future requirements. They could bear unfunded mandates in that they would incur costs to develop and exercise emergency response plans for those ferries. Privately-owned vessels, fire departments, ambulances, police, etc., could incur costs as well. The Coast Guard is interested in comments addressing the import of any such requirements for unfunded mandates.

Environment

The Coast Guard anticipates that any potential rulemaking would be categorically excluded from further environmental documentation in accordance with Commandant Instruction M16475.1B. Any such rulemaking should enhance the safety and survivability of passengers on board passenger vessels, and should enhance the effectiveness of search and rescue. Therefore, this potential rulemaking should have no environmental impact. The Coast Guard invites comments addressing possible effects that any such rulemaking may have on the human environment, or addressing possible inconsistencies with any Federal, State, or local law or administrative determinations relating to the environment. It will reach a final determination regarding the need for an environmental assessment after receipt of relevant comments.

Questions

We especially need your help in answering the following questions, although additional information is welcome. In responding to each question, please explain your reasons for each answer so that we can carefully weigh the consequences and impacts of any future requirements we may propose.

1. What are the primary hazards faced by passenger vessels? Do current regulations, industry programs, and voluntary initiatives for emergency response planning adequately address them? Why or why not?

2. Which vessels currently have emergency response plans?

3. What vessels should have emergency response plans? What factors determine whether or not a passenger vessel should have an emergency response plan? (Possible factors to consider may include, but are not limited to, availability of local resources for emergency response, vessel type, vessel route, local weather, vessel traffic, passenger capacity, etc.)

4. What information should a response plan contain? Should vessels that face different levels of risk (passenger capacity, vessel route, vessel traffic, etc.) have different types of plans?

5. Should vessels that operate in larger metropolitan areas with many available resources for emergency response have plans like those vessels operating in relatively isolated areas? Or should port and routes determine the scope and content of plans but not affect the requirement to have them?

6. Have you already prepared an emergency response plan for a passenger vessel? If so, please describe the planning process. If possible, please cover the following issues: (a) what prompted the preparation of the plan; (b) what guidance you used to develop the plan; (c) what contingencies the plan addresses; (d) how the plan addresses coordination with shoreside resources for emergency response; (e) what kind of training is in place for the vessel's crew and its shoreside support personnel; (f) how often you have

exercised the plan during the last 5 years; (g) who participated in these exercises; (h) what was the nature of the exercises (table-top, full-scale, etc.); (i) how exercise performance was evaluated; (j) how often you update the plan; and (k) whether the plan fits with a broader plan (port-level plan, company-wide plan, etc.)?

7. If you have already prepared a plan, how many pages long is it? How long did it take you to prepare?

8. What impacts would any future rulemaking have on existing State-mandated or voluntary initiatives for emergency response planning? Are there non-regulatory alternatives that the Coast Guard should consider? If so, what are they, and how would they promote an adequate level of passenger safety?

9. Should a plan developer conduct a risk assessment to focus the emergency response plan? Should the plan center on the hazards a particular vessel will most likely face rather than on hazards common to all passenger vessels?

10. Should a vessel on a route that crosses several political jurisdictions identify emergency resources in each jurisdiction rather than prepare a basic plan with a port-specific annex for each port it visits?

11. Are NVICs 8–93 and 1–97 good models for developing plans and exercises? Why or why not? Is the information addressed in the NVICs similar to that in existing plans? What are the significant differences, if any? Are there different standards or guidelines that the Coast Guard should rely on when developing any future rulemaking, as from States?

12. Should any future rulemaking prescribe a particular format for plans rather than simply focus on elements of plans? Why or why not? If any format, which?

13. When developing any future rulemaking, how should the Coast Guard address owners and operators of passenger vessels who have already prepared plans? Should it give them credit for these plan? If so, how and how much?

14. What agencies or organizations should review emergency response plans to ensure that they meet minimum standards? Should an agency or organization approve plans? If so, which agencies or organizations? Should State or local authorities conduct reviews or issue approvals of emergency response plans for passenger vessels?

15. Should performance standards that plan holders should be able to meet through planning, such as mandatory evacuation times, be established? If so, who should establish them (Coast Guard, third parties, plan holders, etc.)?

16. What lessons have you learned when developing and exercising existing emergency response plans? Which components of the plans work well and which need improvement?

17. Should ports prepare emergency response plans that address risks to passenger vessels from their perspectives? If so, what information should be included in such plans? How should such plans relate to vessel-specific plans? How should a port-level planning program be implemented?

18. How often should plans be reviewed and updated? What actions or events should trigger plans' reviews and updates (time interval, drill evaluations, actual incidents, changes in operating area, changes in personnel, etc.)?

19. Should any future rules include requirements that plans be exercised? If so, what should be the scope and frequency of the exercises and who should participate? Should these requirements differ according to vessels' classes, operating areas, etc.? If so, how?

20. What might induce diverse jurisdictions and agencies to participate in exercises? What problems might a vessel's operator face in getting full participation in exercises?

21. Who should organize and control exercises (third parties, plan holders, the Coast Guard, etc.)?

22. How should exercise performance be measured (i.e., time to notify resources for response, time to mobilize response, etc.)? Should exercise records be maintained? If so, what information should they contain?

23. Should lessons learned from exercises be shared? If so, how? Should a system of lessons learned be administered at the national rather than the local level? By whom?

24. How should exercises be scheduled? Who should do the scheduling? Should scheduling be done at the local level? At the national? At both?

25. Should there be specific requirements on training for vessels' crews and shoreside emergency response personnel? Why or why not? If so, what should be the components of the training (passenger safety, crowd management, human behavior, etc.)? Who should conduct the training?

26. Should the issuance of a Certificate of Inspection (COI) be contingent upon submission of an acceptable emergency response plan and participation in emergency response exercises?

27. Should any future rulemaking require that plans include evidence of a commitment of shore-based resources to respond? Is obtaining such a commitment practical? Why or why not?

28. What are the potential costs associated with preparing, implementing, and exercising emergency response plans? If possible, please break down costs according to different components of planning (preparing, drafting, distributing, and updating plans; preparing and conducting exercises; incorporating lessons learned; training crews and whole companies; etc.).

29. How would costs vary depending on a vessel's type and size, its operating area, and other factors? Would the per-vessel cost to develop plans for a fleet of passenger vessels be lower than the cost to prepare a plan for a single vessel? What would be the per-vessel cost of periodic review and updating of emergency response plans? What would be the per-fleet cost?

30. Is data available regarding the effectiveness of existing emergency response plans in improving search and rescue and avoiding or minimizing passengers' casualties?

31. What would be the economic impact of potential requirements for planning on "small entities", as defined by section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)]? What flexibility or alternatives for compliance should any future rulemaking incorporate to minimize the burden on small entities while promoting passengers' safety?

32. What would be the economic impact of potential requirements for planning on State and local governments (especially small ones) and on tribes? What flexibility or alternatives for compliance should the Coast Guard consider that would minimize the cost and burden of such requirements while promoting passengers' safety?

Dated: February 19, 1998.

R.C. North,

Read Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–4825 Filed 2–25–98; 8:45 am]

BILLING CODE 4910–14–P

federal register

Thursday
February 26, 1998

Part IV

The President

Notice of February 25, 1998—Continuation of the National Emergency Relating to Cuba and of the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

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Presidential Documents

Title 3—

The President

Notice of February 25, 1998

Continuation of the National Emergency Relating to Cuba and of the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

On March 1, 1996, by Proclamation 6867, I declared a national emergency to address the disturbance or threatened disturbance of international relations caused by the February 24, 1996, destruction by the Government of Cuba of two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba. In July 1995, the Government of Cuba demonstrated a ready and reckless use of force against U.S.-registered vessels that entered into Cuban territorial waters that resulted in damage and injury to persons on board. In July 1996, the Government of Cuba stated its intent to forcefully defend its sovereignty against any U.S.-registered vessels or aircraft that might enter Cuban territorial waters or airspace while involved in a memorial flotilla and peaceful protest. Since these events, the Government of Cuba has not demonstrated that it will refrain from the future use of reckless and excessive force against U.S. vessels or aircraft that may engage in memorial activities or peaceful protest north of Cuba. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Cuba and the emergency authority relating to the regulation of the anchorage and movement of vessels set out in Proclamation 6867.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
February 25, 1998.

[FR Doc. 98–5242
Filed 2–25–98; 11:09 am]
Billing code 3195–01–M

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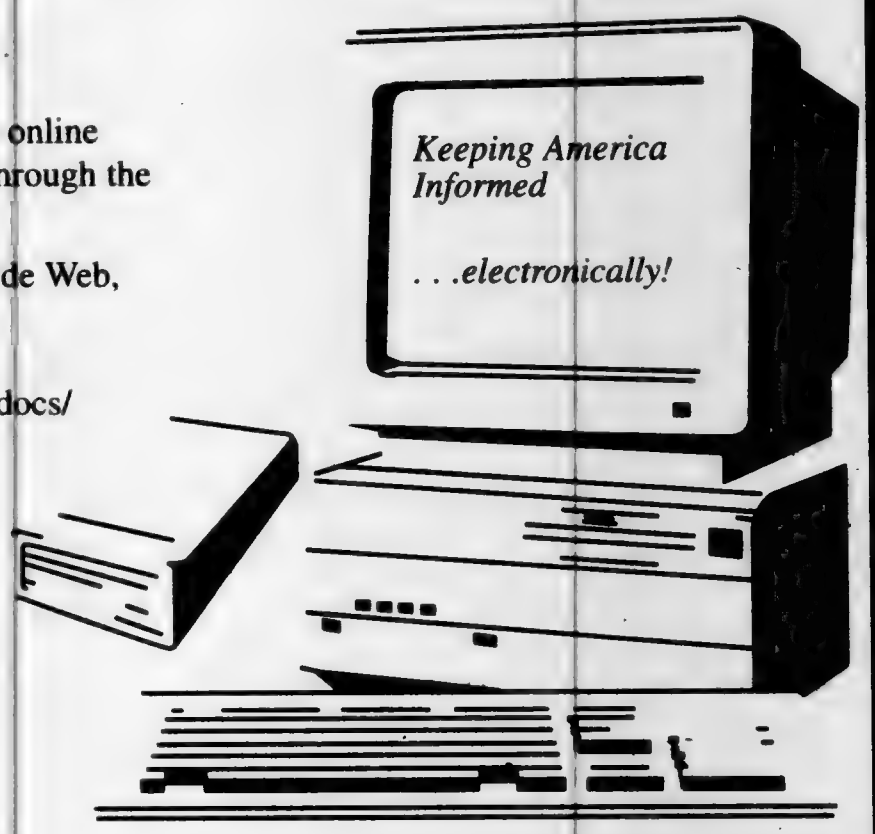

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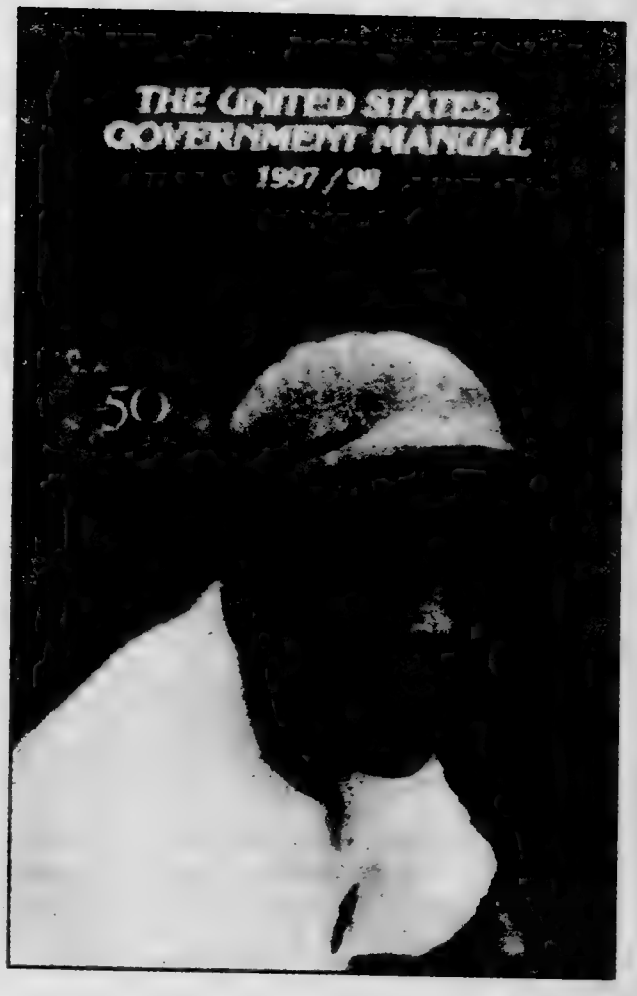

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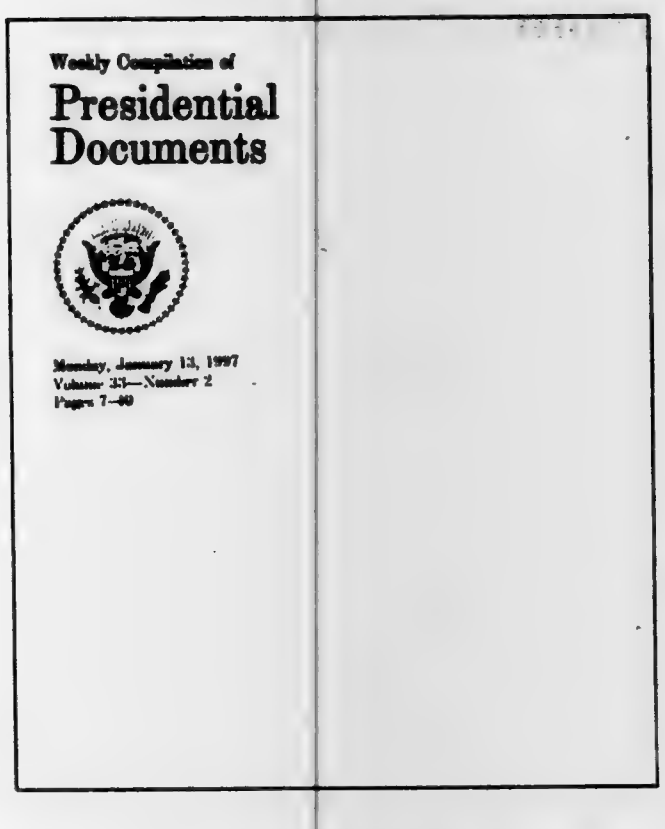

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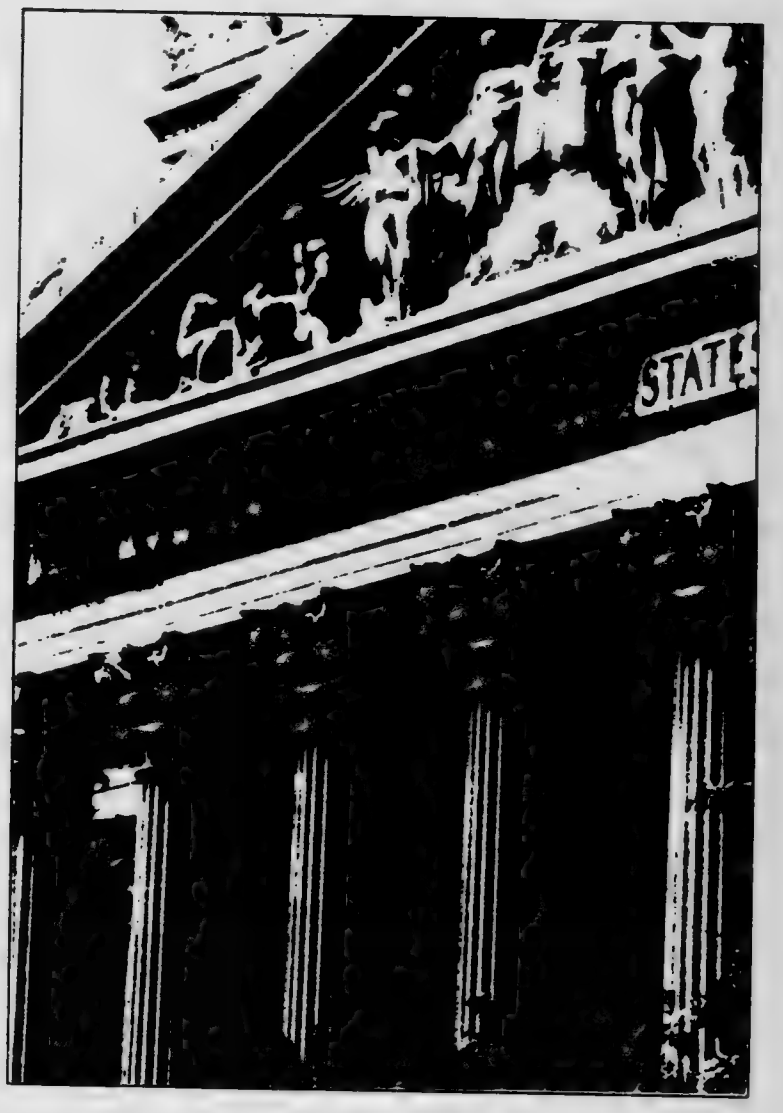

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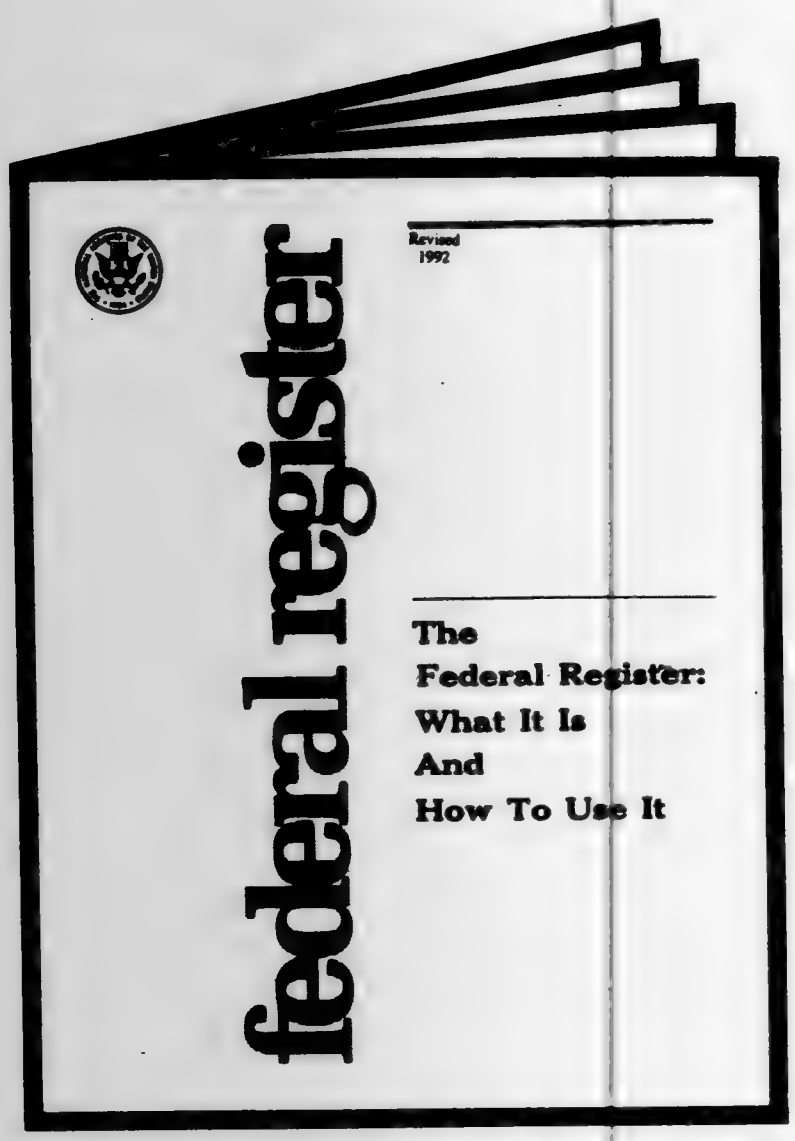

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–101–AD; Amendment 39–10357; AD 98–04–46]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Model ASW–19 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Alexander Schleicher Segelflugzeugbau (Alexander Schleicher) Model ASW–19 sailplanes. This AD requires modifying the inspection hole cover in the fuselage area. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent loss of aileron control caused by an inspection hole cover entering the fuselage, which could result in loss of control of the sailplane.

DATES: Effective April 3, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 3, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–101–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes/Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Alexander Schleicher Models ASW–19 sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 19, 1997 (62 FR 66563). The NPRM proposed to require modifying the inspection hole cover in the fuselage area. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with Alexander Schleicher Technical Note No. 7, September 11, 1978.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 30 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 3 workhours per sailplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $40 per sailplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,600, or $220 per sailplane.

Differences Between German AD, the Technical Note, and This AD

Alexander Schleicher Technical Note No. 7 specifies taping the inspection hole cover prior to each flight before the modification to assure that it doesn't enter the fuselage, and taping the inspection hole after the modification to reduce noise and rattle and improve the aerodynamics.

German AD No. 78–303, dated November 13, 1978, requires taping the inspection hole cover prior to each flight until the modification is accomplished at the next annual inspection.

The FAA does not have service history to require taping the inspection hole cover prior to each flight before accomplishment of the modification. Instead the FAA has determined that 6 calendar months is a reasonable time period for the affected sailplane owners/operators to have the inspection hole cover modified. In addition, although the FAA believes that taping the inspection hole cover after the modification to reduce noise and rattle and improve the aerodynamics is a good idea, there is nothing unsafe about the sailplanes if not accomplished. The FAA is including a note in this AD to recommend this action.

Compliance Time of This AD

Although the inspection hole cover would only enter the fuselage and jam the aileron controls during flight, this unsafe condition is not a result of the number of times the sailplane is operated. The chance of this situation occurring is the same for a sailplane with 10 hours time-in-service (TIS) as it would be for a sailplane with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all sailplanes in a reasonable time period.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the

States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–04–46 Alexander Schleicher Segelflugzeugbau: Amendment 39–10357; Docket No. 97–CE–101–AD.

Applicability: Model ASW–19 sailplanes, serial numbers 19001 through 19232, certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 6 calendar months after the effective date of this AD, unless already accomplished.

To prevent loss of aileron control caused by an inspection hole cover entering the fuselage, which could result in loss of control of the sailplane, accomplish the following:

(a) Modify the inspection hole cover in the fuselage area in accordance with the *Instructions:* section of Alexander Schleicher Technical Note No. 7, dated September 11, 1978.

Note 2: Alexander Schleicher Technical Note No. 7 specifies taping the inspection hole cover after the modification to reduce noise and rattle and improve the aerodynamics. Although this action does not address the unsafe condition specified in this AD, the FAA recommends taping the inspection hole cover after accomplishing the modification required by paragraph (a) of this AD.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Alexander Schleicher Technical Note No. 7, dated September 11, 1978, should be directed to Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City.

(e) The modification required by this AD shall be done in accordance with Alexander Schleicher Technical Note No. 7, dated September 11, 1978. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in German AD No. 78–303, dated November 13, 1978.

(f) This amendment (39–10357) becomes effective on April 3, 1998.

Issued in Kansas City, Missouri, on February 11, 1998.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–4244 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–70–AD; Amendment 39–10358; AD 98–04–47]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Models TB9, TB10, and TB200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain SOCATA—Groupe AEROSPATIALE (Socata) Models TB9, TB10, and TB200 airplanes. This AD requires inspecting the main landing gear (MLG) support ribs for cracks, replacing MLG support ribs that have cracks beyond a certain level, and incorporating a certain MLG support rib reinforcement kit. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to prevent MLG failure caused by cracks in the support ribs, which could result in loss of control of the airplane during landing operations.

DATES: Effective April 3, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 3, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from the SOCATA—Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; telephone: 62.41.74.26; facsimile: 62.41.74.32; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 964–

6877; facsimile: (954) 964–1668. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–70–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Socata Models TB9, TB10, and TB200 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 24, 1997 (62 FR 67300). The NPRM proposed to require inspecting the MLG support ribs for cracks, replacing any MLG support ribs that have cracks beyond a certain level, and incorporating a certain MLG support rib reinforcement kit if cracks beyond a certain level are not found. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Socata Service Bulletin No. SB 10–085, Amdt. 2, dated April 1996. Accomplishment of the kit modifications, as applicable, would be in accordance with either the technical instructions included with the kit or the maintenance manual.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 146 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this inspection on U.S. operators is estimated to be $8,760, or $60 per airplane.

The required modification will take approximately 1 workhour to incorporate the applicable kits on each wing (total of 2 workhours), and the average labor rate is approximately $60 per hour. Parts cost approximately $1,200 per airplane ($300 per kit; 2 kits per wing × 2 wings per airplane). Based on these figures, the total cost impact of this modification on U.S. operators is estimated to be $192,720, or $1,320 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–04–47 Socata—Groupe Aerospatiale: Amendment 39–10358; Docket No. 95–CE–70–AD.

Applicability: Models TB9, TB10, and TB200 airplanes, serial numbers 1 through 9999, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent main landing gear (MLG) failure caused by cracks in the support ribs, which could result in loss of control of the airplane during landing operations, accomplish the following:

Note 2: The compliance times of this AD are presented in landings instead of hours time-in-service (TIS). If the number of landings is unknown, hours TIS may be used by multiplying the number of hours TIS by 1.5.

Note 3: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.

Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

(a) For TB9, serial numbers (S/N) 1 through 1442 and 1444 through 1574; and TB10, S/N 1 through 803; 805; 806; 809 through 815; 820; 821; and 822, airplanes that are not equipped with either wing rib reinforcement kit No. OPT10910800 (TB9 and TB10 airplanes) or do not have reinforced ribs (TB10 airplanes), part number (P/N) TB10 11008001 and P/N TB10 11008002, accomplish the following:

(1) Upon accumulating 1,500 landings on the MLG support ribs or within the next 75 landings after the effective date of this AD, whichever occurs later, inspect the MLG support ribs for cracks at all four locations (two per wing) in accordance with the ACCOMPLISHMENT INSTRUCTIONS

section of Socata Service Bulletin No. SB 10–085, Amdt. 2, dated April 1996.

(2) If any cracks are found that are out of the tolerances specified in the maintenance manual, prior to further flight, replace the ribs with reinforced ribs, P/N TB10 11008001 and P/N TB10 11008002. Accomplish the replacement in accordance with the maintenance manual.

(3) If any cracks are found that are within the tolerances specified in the maintenance manual, prior to further flight, incorporate wing rib reinforcement kit No. OPT10 910800 in accordance with the maintenance manual.

(4) If no cracks are found, upon accumulating 3,000 landings on the MLG support ribs or within the next 100 landings after the effective date of this AD, whichever occurs later, incorporate wing rib reinforcement kit No. OPT10 910800 in accordance with the maintenance manual.

(b) For Models TB10 and TB200 airplanes, S/N 804; 807; 808; 816 through 819; 823 through 1701; 1707 through 1733; and 1737 to 1761, accomplish the following:

(1) Upon accumulating 6,000 landings on the MLG support ribs or within the next 75 landings after the effective date of this AD, whichever occurs later, inspect the MLG support ribs for cracks at all four locations (two per wing) in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Socata Service Bulletin No. SB 10–085, Amdt. 2, dated April 1996.

(2) At the applicable compliance time presented below, incorporate wing rib reinforcement kit No. OPT10 920100 in accordance with the Technical Instruction of Modification, OPT10 9201–57, Reinforcement of the Main Landing Gear Support Ribs, which incorporates the following pages:

Pages	Revision level	Date
1 and 2	Amendment 1	Apr. 1996.
3 through 27.	Original Issue	Nov. 1995.

(i) Prior to further flight if any cracks are found.

(ii) Upon accumulating 7,500 landings on the MLG support ribs or within the next 100 landings after the effective date of this AD, whichever occurs later, if no cracks are found.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to the service information referenced in this AD should be directed to SOCATA—Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; telephone: 62.41.74.26; facsimile: 62.41.74.32; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 964–6877; facsimile: (954) 964–1668. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(f) The inspections required by this AD shall be done in accordance with Socata Service Bulletin No. SB 10–085, Amdt. 2, dated April 1996. The modification required by this AD should be done in accordance with the Technical Instruction of Modification, OPT10 9201–57, Reinforcement of the Main Landing Gear Support Ribs, which incorporates the following pages:

Pages	Revision level	Date
1 and 2	Amendment 1	Apr. 1996.
3 through 27.	Original Issue	Nov. 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SOCATA—Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French AD 94–265(A)R4, dated June 19, 1996.

(g) This amendment (39–10358) becomes effective on April 3, 1998.

Issued in Kansas City, Missouri, on February 11, 1998.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–4243 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–108–AD; Amendment 39–10356; AD 98–04–45]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes, that currently requires revisions to the Airplane Flight Manual (AFM) to advise the flight crew of the need to perform daily checks to verify proper operation of the elevator control system, and to restrict altitude and airspeed operations under certain conditions. That AD also requires removal of all elevator flutter dampers. That AD was prompted by reports that the installation of certain shear pins may jam or restrict movement of the elevator. The actions specified by that AD are intended to prevent such jamming or restricting movement of the elevator and the resultant adverse effect on the controllability of the airplane. This amendment adds inspections of certain airplanes to detect deformation or discrepancies of the flutter damper hinge fittings and lug of the horizontal stabilizer, the elevator hinge/damper fitting, and the shear pin lugs; and requires replacement of discrepant parts with serviceable parts. This amendment also requires installation of new elevator flutter dampers, and replacement of shear pins and shear links with new, improved pins and links.

DATES: Effective April 3, 1998.

The incorporation by reference of Canadair Regional Jet Service Bulletin S.B. 601R–27–040, Revision 'B,' dated September 11, 1995, as listed in the regulations, is approved by the Director of the Federal Register as of April 3, 1998.

The incorporation by reference of Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–041, dated October 28, 1994, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 14, 1994 (59 FR 60888, November 29, 1994).

ADDRESSES: The service information referenced in this AD may be obtained

from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7526; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–24–02, amendment 39–9075 (59 FR 60888, November 29, 1994), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes, was published in the **Federal Register** on February 3, 1997 (62 FR 4941). That action proposed to continue to require the removal of the originally installed elevator dampers. That action also proposed to continue to require revisions to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to restrict altitude and airspeed operations under conditions of single or double hydraulic system failure, and to advise the flight crew of the need to perform daily checks to verify proper operation of the elevator control system.

For certain airplanes, this new action proposes to add inspections of certain airplanes to detect deformation or discrepancies of the flutter damper hinge fittings and lug of the horizontal stabilizer, the elevator hinge/damper fitting, and the shear pin lugs; and requires replacement of discrepant parts with serviceable parts. For those and other airplanes, the proposed AD also would require installation of new elevator flutter dampers, and replacement of shear pins and shear links with new, improved pins and links.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 21 Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 94–24–02, and retained in this AD, take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the previously required actions on U.S. operators is estimated to be $7,560, or $360 per airplane. The FAA estimates that all affected U.S. operators have previously accomplished these requirements, therefore, the future cost impact of these requirements is minimal.

For operators that are required to accomplish the inspections in this new AD, it will take approximately 26 work hours per airplane to accomplish them, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new inspection requirements of this AD on U.S. operators is estimated to be $1,560 per airplane.

The installations that are required in this AD will take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the installations required by this AD on U.S. operators is estimated to be $15,120, or $720 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9075 (59 FR 60888, November 29, 1994), and by adding a new airworthiness directive (AD), amendment 39–10356, to read as follows:

98–04–45 Bombardier, Inc. (Formerly Canadair): Amendment 39–10356. Docket 96–NM–108–AD. Supersedes AD 94–24–02, Amendment 39–9075.

Applicability: Model CL–600–2B19 (Regional Jet Series 100) series airplanes, having serial numbers 7003 through 7054 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of lugs and/or pins, which may increase the likelihood of jamming or restricting movement of the elevator and the resultant adverse effect on controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 94–01–09

(a) Within 30 days after January 26, 1994 (the effective date of AD 94–01–09, amendment 39–8791), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following restrictions of altitude and airspeed operations under conditions of single or double hydraulic system failure; and advise the flight crew of these revised limits. Revision of the AFM may be accomplished by inserting a copy of this AD or AFM Revision 34, dated June 12, 1995, in the AFM.

SINGLE HYDRAULIC SYSTEM FAILURE

Altitude limit (maximum)	Airspeed limit (maximum)
31,000 feet	0.55 Mach (199 KIAS).
30,000 feet	0.55 Mach (204 KIAS).
28,000 feet	0.55 Mach (213 KIAS).
26,000 feet	0.55 Mach (222 KIAS).
24,000 feet	0.55 Mach (232 KIAS).
22,000 feet	0.55 Mach (241 KIAS).
20,000 feet and below.	252 KIAS.

DOUBLE HYDRAULIC SYSTEM FAILURE

Altitude limit (maximum)	Airspeed limit (maximum)
10,000 feet	200 KIAS.

Note 2: The restrictions described in the AFM Temporary Revision (TR) RJ/30, dated December 16, 1993, meet the requirements of this paragraph. Therefore, inserting a copy of TR RJ/30 in lieu of this AD in the AFM is considered an acceptable means of compliance with this paragraph.

Restatement of Requirements of AD 94–24–02

(b) Within 7 days after December 14, 1994 (the effective date of AD 94–24–02, amendment 39–9075), accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD:

(1) Until the requirements of paragraph (c)(2) of this AD are accomplished, remove the elevator dampers in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–041, dated October 28, 1994.

(2) Revise the Limitations Section of the FAA-approved AFM to include the following, which advises the flight crew of daily checks to verify proper operation of the elevator control system. Revision of the AFM may be accomplished by inserting a copy of this AD or AFM Revision 32, dated March 30, 1995, in the AFM.

Note 3: The daily check described in the AFM Temporary Revision (TR) RJ/40, dated October 28, 1994, meets the requirements of this paragraph. Therefore, inserting a copy of TR RJ/40 into the AFM in lieu of this AD is considered an acceptable means of compliance with this paragraph.

"Elevator, Before Engine Start (First Flight of Day)

(1) Elevator — Check
Travel range (to approximately ½ travel) using each hydraulic system in turn, with the other hydraulic systems depressurized."

New Requirements of This AD

(c) Within 12 months after the effective date of this AD, perform the requirements of paragraphs (c)(1) and (c)(2) of this AD, as applicable, in accordance with Canadair Regional Jet Service Bulletin S.B. 601R–27–040, Revision 'B,' dated September 11, 1995.

(1) For airplanes having serial numbers 7003 through 7049, inclusive: Perform the inspections specified in paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii) of this AD in accordance with Section 2.B., Part A, of the service bulletin.

(i) Remove the shear pins and shear links of the flutter dampers and perform a visual inspection to detect any deformation or discrepancy of the flutter damper hinge fitting and lug of the horizontal stabilizer. Prior to further flight, replace any deformed or discrepant part with a serviceable part in accordance with the service bulletin.

(ii) Perform a visual inspection to detect any deformation or discrepancy of the elevator hinge/damper fitting and shear pin lugs. Prior to further flight, replace any discrepant part with a serviceable part in accordance with the service bulletin.

(iii) Perform a fluorescent penetrant inspection and a dimensional inspection to detect any deformation or discrepancy of the shear pin lugs. If any deformation or discrepancy is found on the lugs, prior to further flight, replace the elevator with a new or serviceable elevator in accordance with the service bulletin.

(2) For airplanes having serial numbers 7003 through 7054, inclusive: Install new shear pins [part number (P/N) 601R24063–953] and new elevator flutter dampers (P/N 601R75142–7) in accordance with Section 2.B., Part B, of the service bulletin:

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Canadair Regional Jet Service Bulletin S.B. 601R–27–040, Revision 'B,' dated September 11, 1995, and Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–041, dated October 28, 1994.

(1) The incorporation by reference of Canadair Regional Jet Service Bulletin S.B. 601R–27–040, Revision 'B,' dated September 11, 1995, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–041, dated October 28, 1994 was approved previously by the Director of the Federal Register as of December 14, 1994 (59 FR 60888, November 29, 1994).

(3) Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in Canadian airworthiness directive CF–94–21R1, dated November 3, 1995.

(g) This amendment becomes effective on April 3, 1998.

Issued in Renton, Washington, on February 12, 1998.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–4250 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–280–AD; Amendment 39–10354; AD 98–04–43]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model

ATR72 series airplanes, that requires removal of certain landing gear attachment pins, and replacement of the pins with serviceable pins. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent wear of the attachment pins, which could result in collapse of the main landing gear.

DATES: Effective April 3, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 3, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR72 series airplanes was published in the **Federal Register** on December 9, 1997 (62 FR 64777). That action proposed to require removal of certain landing gear attachment pins, and replacement of the pins with serviceable pins.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 39 airplanes of U.S. registry will be affected by this AD, that it will take approximately 18 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $42,120, or $1,080 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–04–43 Aerospatiale: Amendment 39–10354. Docket 97–NM–280–AD.

Applicability: Model ATR72 series airplanes; as identified in Aerospatiale Service Bulletin No. ATR72–32–1036, dated June 19, 1996, and Aerospatiale Service Bulletin No. ATR72–32–1037, dated June 19, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent wear of the landing gear attachment pins, which could result in collapse of the main landing gear (MLG), accomplish the following:

(a) Within 12 months after the effective date of this AD, remove the MLG leg hinge pins and side brace assembly center pins having the part numbers (P/N) specified in paragraph B. of the Planning Information of Aerospatiale Service Bulletin No. ATR72–32–1036, dated June 19, 1996; and replace the pins with serviceable pins, in accordance with the Aerospatiale service bulletin and Messier-Dowty Service Bulletin No. 631–32–125, dated May 7, 1996.

(b) Prior to the accumulation of 15,000 landings since the last overhaul of the MLG, or within 8 years since the last overhaul of the MLG, whichever occurs first: Remove the MLG swinging lever/barrel pins and shock absorber/universal joint hinge pins having the P/N's specified in paragraph B. of the Planning Information of Aerospatiale Service Bulletin No. ATR72–32–1037, dated June 19, 1996; and replace the pins with serviceable pins; in accordance with the Aerospatiale service bulletin and Messier-Dowty Service Bulletin No. 631–32–126, dated May 7, 1996.

Note 2: Serviceable pins include those that have been removed, inspected, and marked with green paint in accordance with Messier-Dowty Service Bulletin No. 631–32–125, dated May 7, 1996; or Messier-Dowty Service Bulletin No. 631–32–126, dated May 7, 1996; as applicable.

(c) As of the effective date of this AD, no person shall install any MLG pin having a part number identified in Aerospatiale Service Bulletin No. ATR72–32–1036, dated June 19, 1996, or Aerospatiale Service Bulletin No. ATR72–32–1037, dated June 19, 1996, on any airplane unless that pin is considered to be serviceable in accordance with the applicable service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Aerospatiale Service Bulletin No. ATR72–32–1036, dated June 19, 1996; Aerospatiale Service Bulletin No. ATR72–32–1037, dated June 19, 1996; Messier-Dowty Service Bulletin No. 631–32–125, dated May 7, 1996; and Messier-Dowty Service Bulletin No. 631–32–126, dated May 7, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 96–096–029(B), dated May 9, 1996.

(g) This amendment becomes effective on April 3, 1998.

Issued in Renton, Washington, on February 12, 1998.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–4247 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–340–AD; Amendment 39–10355; AD 98–04–44]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A340 series airplanes. This action requires replacement of the groove pins on the doors of the center main landing gear (MLG) with new pins, modification of the bolt head, installation of an antirotation plate, and modification of the hinge pins on the doors of the MLG by the installation of oversize bolts. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent detachment of the center MLG door during flight, which could pose a hazard to persons or property on the ground.

DATES: Effective March 16, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 16, 1998.

Comments for inclusion in the Rules Docket must be received on or before March 30, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–340–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A340 series airplanes. The DGAC advises that, during fatigue testing performed by the manufacturer, it was discovered that the hinge pins on the door of the center main landing gear (MLG) had broken. Further investigation has revealed that the cause of the pin failure may have been incorrect orientation of the pin. This condition, if not corrected, could result in detachment of the center MLG door during flight, which could pose a hazard to persons or property on the ground.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A340–53–4070, Revision 1, dated July 18, 1997, which describes procedures for replacement of the groove pins on the doors of the center MLG with new pins, modification of the bolt head, and installation of an antirotation plate.

In addition, Airbus has issued Service Bulletin A340–53–4031, Revision 1, dated June 10, 1997, which describes procedures for modifying the hinge pins on the doors of the center MLG by installing oversize bolts. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 97–114–060(B), dated May 7, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent detachment of the center MLG door during flight, which could pose a hazard to persons or property on the ground. This AD requires accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by

non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 16 work hours to accomplish the actions specified in Airbus Service Bulletin A340–53–4070, at an average labor rate of $60 per work hour. Parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of this action would be $960 per airplane.

It would require approximately 10 work hours to accomplish the actions specified in Airbus Service Bulletin A340–53–4031, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,677 per airplane. Based on these figures, the cost impact of this action would be $2,277 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–340–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–04–44 Airbus Industrie: Amendment 39–10355. Docket 97–NM–340–AD.

Applicability: Model A340 series airplanes; as listed in Airbus Service Bulletins A340–53–4070, Revision 1, dated July 18, 1997, and A340–53–4031, Revision 1, dated June 10, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent detachment of the center main landing gear (MLG) door during flight, which could pose a hazard to persons or property on the ground, accomplish the following:

(a) Prior to the accumulation of 8,400 total flight cycles, or within the next 100 flight cycles after the effective date of this AD, whichever occurs later, accomplish either (a)(1) or (a)(2) below, as applicable:

(1) For airplanes listed in Airbus Service Bulletin A340–53–4070, Revision 1, dated July 18, 1997: Replace the groove pins on the doors of the center MLG with new pins, modify the bolt head, and install an antirotation plate; in accordance with the service bulletin.

(2) For airplanes listed in Airbus Service Bulletin A340–53–4031, Revision 1, dated June 10, 1997: Modify the hinge pins on the doors of the center MLG by installing oversize bolts; in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions required by this AD shall be done in accordance with Airbus Service Bulletin A340–53–4070, Revision 1, dated July 18, 1997, or Airbus Service Bulletin A340–53–4031, Revision 1, dated June 10, 1997, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–114–060(B), dated May 7, 1997.

(e) This amendment becomes effective on March 16, 1998.

Issued in Renton, Washington, on February 12, 1998.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–4246 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–152–AD; Amendment 39–10360; AD 98–04–49]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111, –211, –212, –214, –231, –232, and –233 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A320–111, –211, –212, –214, –231, –232, and –233 series airplanes, that requires repetitive ultrasonic inspections to detect fatigue cracking in the wing/fuselage joint cruciform fittings, and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracks on the wing/fuselage joint cruciform fittings, which could result in reduced structural integrity of the wing/fuselage.

DATES: Effective April 3, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 3, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A320–111, –211, –212, –214, –231, –232, and –233 series airplanes was published in the **Federal Register** on December 1, 1997 (62 FR 63476). That action proposed to require repetitive ultrasonic inspections to detect fatigue cracking in the wing/fuselage joint cruciform fittings, and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

All of the commenters support the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 132 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $63,360, or $480 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–04–49 Airbus Industrie: Amendment 39–10360. Docket 97–NM–152–AD.

Applicability: Model A320–111, –211, –212, –214, –231, –232, and –233 series airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or

repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracks on the wing/fuselage joint cruciform fittings, which could result in reduced structural integrity of the wing/fuselage, accomplish the following:

(a) Prior to the accumulation of 28,000 total landings, or within 60 days after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection to detect fatigue cracking in the wing/fuselage joint cruciform fittings, in accordance with Airbus Service Bulletin A320–57–1051, Revision 01, dated March 21, 1996.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 20,000 landings.

(2) If any crack is detected, prior to further flight, repair it in accordance with the service bulletin. Thereafter, repeat the inspection at the times specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) If the crack that was detected and repaired was greater than 2.5 mm: Repeat the inspection prior to the accumulation of 32,000 landings since accomplishment of the repair; and thereafter at intervals not to exceed 32,000 landings.

(ii) If the crack that was detected and repaired was less than or equal to 2.5 mm: Repeat the inspection prior to the accumulation of 28,000 landings since accomplishment of the repair; and thereafter at intervals not to exceed 20,000 landings.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Airbus Service Bulletin A320–57–1051, Revision 01, dated March 21, 1996, which contains the specified effective pages:

Page No.	Revision level shown on page	Date shown on page
1–29, 31–37, 39–40.	1	Mar. 21, 1996.
30, 38	Original	Mar. 30, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 96–299–094(B), dated December 18, 1996.

(e) This amendment becomes effective on April 3, 1998.

Issued in Renton, Washington, on February 13, 1998.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification. Service.

[FR Doc. 98–4400 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–274–AD; Amendment 39–10361; AD 98–04–50]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and F.28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 0070 and F.28 Mark 0100 series airplanes, that requires modification of the wing leading edge torsion box. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent a possible ignition hazard due to accumulation of water and fuel between the front spar and auxiliary spar, which could result in increased risk of an in-flight fire.

DATES: Effective April 3, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 3, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 0070 and F.28 Mark 0100 series airplanes was published in the **Federal Register** on November 28, 1997 (62 FR 63291). That action proposed to require modification of the wing leading edge torsion box.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request To Extend Compliance Time

One commenter requests that the proposed compliance time for accomplishment of the modification be extended from 12 months to 18 months after the effective date of this AD. The commenter states that the 18-month compliance time would be in agreement with the industry-accepted time limit for AD's requiring minor modifications, and would allow the work to be accomplished during normally scheduled maintenance programs. The FAA infers that the commenter considers that the adoption of the proposed compliance time of 12 months would require operators to schedule, at additional expense, special times for the accomplishment of this modification.

The FAA does not concur with the commenter's request to extend the compliance time. In developing an

appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but also the manufacturer's and foreign airworthiness authority's recommendations regarding an appropriate compliance time, and an appropriate interval of time that parallels the normally scheduled maintenance for the majority of affected operators.

In consideration of all of these factors, and in consideration of the amount of time that has already elapsed since issuance of the original NPRM, the FAA has determined that further delay of this modification is not appropriate. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted that substantiate that such an adjustment would provide an acceptable level of safety.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 129 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required action, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $30,960, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–04–30 Fokker: Amendment 39–10361. Docket 97–NM–274–AD.

Applicability: Model F.28 Mark 0070 and Model F.28 Mark 0100 series airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a possible ignition hazard due to accumulation of water and fuel between the front spar and auxiliary spar, which could result in increased risk of an in-flight fire, accomplish the following:

(a) Within 12 months after the effective date of this AD, modify the wing leading edge torsion box, in accordance with Fokker Service Bulletin SBF100–57–034, dated December 20, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Fokker Service Bulletin SBF100–57–034, dated December 20, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive BLA No. 1996–153(A), dated December 31, 1996.

(e) This amendment becomes effective on April 3, 1998.

Issued in Renton, Washington, on February 13, 1998.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–4412 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–09–AD; Amendment 39–10363; AD 98–05–01]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Eurocopter France Model SA–366G1 helicopters, with certain main rotor head frequency adapters

(frequency adapters) installed. This proposal requires inspecting the frequency adapter to determine if a certain frequency adapter is installed, and if so, removing and discarding the frequency adapter and replacing it with an airworthy frequency adapter before further flight. This amendment is prompted by a report of disbonding of the metal center section of a frequency adapter from the elastomer, caused by a lack of adherence during the production process. The actions specified by this AD are intended to prevent vibrations caused by disbonding of the center section of a frequency adapter from the elastomer, that could result in loss of control of the helicopter.

EFFECTIVE DATE: April 3, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Aerospace Engineer, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Eurocopter France Model SA–366G1 helicopters was published in the **Federal Register** on August 26, 1997 (62 FR 45183). That action proposed to require inspecting the frequency adapter to determine if a certain frequency adapter is installed, and if so, removing and discarding the frequency adapter and replacing it with an airworthy frequency adapter before further flight.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except that Note 4 is added to this rule to provide a reference to the French AD. The FAA has determined that this change will neither increase the economic burden on an operator nor increase the scope of the AD.

The FAA estimates that 91 helicopters of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $5,200 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $505,960.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–05–01 Eurocopter France: Amendment 39–10363. Docket No. 97–SW–09–AD.

Applicability: Model SA–366G1 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within the next 100 hours time-in-service or 6 months after the effective date of this AD, whichever occurs first, unless accomplished previously.

To prevent vibrations caused by disbonding of the center section of a frequency adapter from the elastomer, that could result in loss of control of the helicopter, accomplish the following:

(a) Determine the part number, serial number, and date of manufacture of the main rotor head frequency adapter (frequency adapter).

(b) After making the determination in paragraph (a) and before further flight, if frequency adapter, part number (P/N) 704A33–640–031 (E1T2624–01A), or delivered in pairs under the P/N 365A31–1858–01, manufactured before April 1, 1991, with serial number (S/N) equal to or less than 8188; or P/N 704A33–640–046 (E1T3023–01), or delivered in pairs under the P/N 365A31–1858–02, manufactured before April 1, 1991, with S/N equal to or less than 3122 is installed, remove the frequency adapter and replace it with an airworthy frequency adapter.

Note 2: Eurocopter France SA–366 Service Bulletin No. 01.23, dated May 9, 1996, pertains to this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, FAA Rotorcraft Directorate, Rotorcraft Standards Staff. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 96–116–019(B), dated June 19, 1996.

Issued in Fort Worth, Texas, on February 19, 1998.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–4979 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–38–AD; Amendment 39–10364; AD 98–05–02]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 750 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Cessna Model 750 airplanes. This action requires repetitive lubrication of the aileron feel cartridge assembly shaft. This action also requires replacement of the roll feel and centering bungee assembly with an improved assembly, which constitutes terminating action for the repetitive lubrication. This amendment is prompted by reports of partial to full jamming of the aileron control circuit during flight of the airplane. The actions specified in this AD are intended to prevent the possibility of accumulation of ice on the aileron feel cartridge assembly shaft, which could result in jamming of the aileron control circuit, and consequent reduced controllability of the airplane.

DATES: Effective March 16, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 16, 1998.

Comments for inclusion in the Rules Docket must be received on or before April 28, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–38–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joel Ligon, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4138; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: The FAA recently received reports of four separate incidents of partial to full jamming of the aileron control circuit during flight of Cessna Model 750 airplanes. In each instance, control of the airplane was maintained by reversion to the backup manual control of the flight controls, yaw input, or by application of secondary roll control input. In the reported occurrences, the affected airplanes were exposed to precipitation on the ground prior to flight, or had encountered precipitation while in flight. Investigation revealed that water contamination and subsequent accretion of ice on the center aileron roll feel and centering assembly can prevent free movement of the bungee shaft, which may cause jamming of the aileron control circuit. This condition, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Cessna has issued Citation Alert Service Letter ASL750–12–02, dated September 29, 1997, which describes procedures for repetitive lubrication of the aileron feel cartridge assembly shaft.

The FAA has reviewed and approved Cessna Citation Service Bulletin 750–27–10, dated January 16, 1998, which includes Supplemental Data to Service Bulletin 750–27–10, dated January 16, 1998, which describes procedures for replacement of the roll feel and centering bungee assembly with an improved assembly that would prevent ice accumulation on the aileron feel cartridge assembly shaft. Accomplishment of this replacement eliminates the need for the repetitive lubrications of the aileron feel cartridge assembly shaft.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on airplanes of the same type design, this AD is being issued to prevent the possibility of accumulation of ice on the aileron feel cartridge assembly shaft, which could result in jamming of the aileron control circuit, and consequent reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the alert service letter and the service bulletin described previously, except as discussed below.

Differences Between the AD and the Relevant Service Bulletin

Operators should note that, although the service bulletin recommends accomplishing the replacement within 90 days after the release of the service bulletin, the FAA has determined that an interval of 90 days would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the replacement. In light of all of these factors, the FAA finds 60 days to be an appropriate compliance time for initiating the required actions in that it represents the maximum interval of time allowable for affected airplanes to continue to operate without compromising safety.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to

modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–38–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–05–02 Cessna Aircraft Company: Amendment 39–10364. Docket 98–NM–38–AD.

Applicability: Model 750 airplanes, serial numbers 0001 through 0053 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the possibility of the accumulation of ice on the aileron feel cartridge assembly shaft, which could result in jamming of the aileron control circuit, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 10 hours time-in-service after the effective date of this AD, lubricate the aileron feel cartridge assembly shaft in accordance with Cessna Citation Alert Service Letter ASL750–12–02, dated September 29, 1997. Thereafter, repeat the action at intervals not to exceed 30 days until the requirements of paragraph (b) are accomplished.

(b) Within 60 days after the effective date of this AD, replace the roll feel centering bungee assembly with an improved bungee assembly in accordance with Cessna Citation Service Bulletin 750–27–10, dated January 16, 1998, which includes Supplemental Data to Service Bulletin 750–27–10, dated January 16, 1998. Accomplishment of this replacement constitutes terminating action for the repetitive actions required by paragraph (a) of this AD.

(c) Airplanes on which the replacement required by paragraph (b) of this AD is performed within the compliance time specified in paragraph (a) of this AD are not required to accomplish the action required by paragraph (a).

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Cessna Citation Alert Service Letter ASL750–12–02, dated September 29, 1997; and Cessna Citation Service Bulletin 750–27–10, dated January 16, 1998, which includes Supplemental Data to Service Bulletin 750–27–10, dated January 16, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 16, 1998.

Issued in Renton, Washington, on February 23, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–5197 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–22]

RIN 2120–AA66

Modification of VOR Federal Airway V–204; Yakima, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on December 30, 1997 (Airspace Docket No. 97–ANM–22). In that rule, the airway legal description contained an inadvertent error. This action corrects that error.

EFFECTIVE DATE: February 27, 1998.

FOR FURTHER INFORMATION CONTACT: William C. Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: **Federal Register** Document 97–33866, Airspace Docket No. 97–ANM–22, published on December 30, 1997 (62 FR 67711), modified a portion of V–204 by reducing the width of the Federal airway from 4 to 3 nautical miles north of the airway centerline. However, the legal description contained superfluous information. This action corrects the legal description by removing the unnecessary information.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for VOR Federal Airway V–204, published in the **Federal Register** on December 30, 1997 (62 FR 67711); **Federal Register** Document 97–33866, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Corrected]

On page 67712, in the second column, near the middle of the page, beginning on the fourth line of the description of V–204, remove the following text: "INT Yakima 087° and Pasco, WA, 269° radials;"

Issued in Washington, DC, on February 25, 1998.

John S. Walker,

Program Director for Air Traffic Airspace Management.

[FR Doc. 98–5270 Filed 2–25–98; 2:18 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–97–135]

RIN 2115–AA97

Safety Zone: Swift Creek Channel, Freeport, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone that includes all waters within 200 yards of the Loop Parkway Bridge which spans Swift Creek channel, Freeport, NY. The safety zone is needed to facilitate the construction of the new loop parkway bridge. Entry into this safety zone is prohibited unless authorized by the Captain of the Port, Long Island Sound, New Haven, CT.

EFFECTIVE DATE: This temporary regulation is effective on January 9, 1998, from 4 p.m. until April 30, 1998.

ADDRESSES: Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Group/MSO Long Island Sound, 120 Woodward Ave, New Haven, CT 06512. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be faxed to this address. The fax number is (203) 468–4445.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T.J. Walker, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4444.

SUPPLEMENTARY INFORMATION:

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective immediately. Due to the need to ensure vessel safety, this office had insufficient time to publish proposed rule in advance of the event. Publishing a NPRM and delaying its effective date would effectively suspend work on the new bridge which would be contrary to the public interest.

Background and Purpose

At 4 p.m. on January 9, 1998 COTP Long Island Sound established a safety zone to prevent vessels from transitting the Swift Creek channel beneath the Loop Parkway bridge as a result of the construction of the new bridge.The safety zone is needed to facilitate the building of the center of the bridge and to protect construction personnel and the maritime community. Entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into this zone will be prohibited until April 30, 1998. Although this regulation prevents traffic from transiting a portion of Swift Creek Channel, Freeport, NY, the effect of this regulation will not be significant for several reasons: There are alternate routes around the channel; the closure is during the off-season for recreational boating; and extensive, advance maritime advisories have been made of the channel closure and will continue to be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include: (1) Small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields; and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard finds that this rule will not have a significant impact on a substantial number of small entities. If however, you think that your business or organization qualifies as a small entity and that this rule will have a significant impact upon your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, as revised by 59 FR 38654, July 29, 1994, this rule is categorically excluded from further environmental documentation.

A Categorical Exclusion Determination and an Environmental Analysis Checklist are included in the docket and are available for inspection or copying at the location indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary section, § 165.T01–135, is added to read as follows:

§ 165.T01–135 Swift Creek Channel, Freeport, NY.

(a) *Location.* The safety zone includes all waters surrounding the Loop Parkway Bridge where it spans Swift Creek channel, within a 200 yard distance on either side of the bridge.

(b) *Effective date.* This section is effective on January 9, 1998, from 4 p.m. until April 30, 1998, unless terminated sooner by the Captain of the Port, Long Island Sound.

(c) *Regulations.* The general regulations contained in § 165.23 apply.

Dated: January 9, 1998.

P.K. Mitchell,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 98–5114 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego, 98–006]

RIN 2115–AA97

Safety Zone: Mission Bay, San Diego, CA; Oceanside Harbor, Oceanside, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones in the navigable waters of the channel entrances to Mission Bay, San Diego, CA, and Oceanside Harbor, Oceanside, CA, respectively. Both of these safety zones have been established for the same reason: To safeguard vessels from the severe swell and waves that are being encountered at the channel entrances to Mission Bay and Oceanside Harbor. The safety zones will consist of all navigable waters located within a 400 yard circular radius surrounding the end of the Mission Bay Channel entrance north jetty, and within a 400 yard circular radius surrounding the north jetty at the Oceanside Harbor entrance, respectively.

The safety zones are established to restrict vessel capsizing, groundings, and other navigational mishaps that may occur due to severe weather and navigation conditions currently being encountered at the channel entrances to Mission Bay and Oceanside Harbor. Entry into, transiting through, or anchoring within these zones is prohibited unless authorized by the Captain of the Port. The Captain of the Port retains the discretion to authorize entry into, transit through, or anchoring within these zones as weather and navigation conditions permit.

DATES: This temporary rule becomes effective at 7:30 a.m. (PST) on February 17, 1998, and runs until 8 p.m. (PST) on March 31, 1998.

ADDRESSES: Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego, CA 92101–1064.

FOR FURTHER INFORMATION CONTACT: Lt. Michael Arguelles, U.S. Coast Guard Marine Safety Office San Diego at (619) 683–6484.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publication of a notice of proposed rulemaking and delay of its effective date would be contrary to the public interest because emergency weather and navigation conditions require the immediate closure of both of these respective areas.

Background and Purposes

These safety zones have both been established for the same reason: To safeguard vessels from severe swell and waves that are being encountered at the channel entrances to Mission Bay and Oceanside Harbor. The safety zones will consist of all navigable waters located within a 400 yard circular radius surrounding the end of the Mission Bay Channel entrance north jetty, and within a 400 yard circular radius surrounding the north jetty at the Oceanside Harbor entrance, respectively. The safety zones will be in place from 7:30 a.m. (PST) on February 17, 1998, until 8 p.m. (PST) on March 31, 1998, unless canceled earlier by the Captain of the Port.

Discussion of Regulation

This regulation is necessary to safeguard vessels from the severe swell and waves that are being encountered at the channel entrances to Mission Bay and Oceanside Harbor. The safety zones will be enforced by U.S. Coast Guard personnel and local authorities working in conjunction with U.S. Coast Guard personnel. No persons or vessels will be allowed to enter into, transit through, or anchor within the safety zones unless authorized by the Captain of the Port. The Captain of the Port retains the discretion to authorize entry into, transit through, or anchoring within these zones as weather and navigation conditions permit.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). Due to the short duration and limited scope of the implementation of this safety zone, the Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of Department of Transportation is unnecessary.

Collection of Information

This rule contains no collection of information requirements under this Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, it will have no significant environmental impact and its is categorically excluded from further environmental documentation. A categorical exclusion determination and an environmental analysis check list have been completed and are available

for inspection and copying at the address listed in **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbor, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart F of part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for 33 CFR part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T11–018 is added to read as follows:

§ 165.T11–048 Safety Zone: Mission Bay, San Diego, CA; Oceanside Harbor, Oceanside, CA.

(a) *Location*. These two safety zones will consist of all navigable waters located within a 400 yard circular radius surrounding the end of the Mission Bay Channel entrance north jetty, and within a 400 yard circular radius surrounding the north jetty at the Oceanside Harbor entrance, respectively.

(b) *Effective Date*. This temporary regulation becomes effective at 7:30 a.m. (PST) on February 17, 1998, and runs until 8 p.m. (PST) on March 31, 1998, unless canceled earlier by the Captain of the Port.

(c) *Regulations*. In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within these zones is prohibited unless authorized by the Captain of the Port.

Dated: February 17, 1998.

J.A. Watson IV,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 98–5106 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 05–98–004]

RIN 2115–AE84

Regulated Navigation Area Regulation: Ice Operations in Chesapeake Bay

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule.

SUMMARY: By this direct final rule, the Coast Guard is removing a regulation for an ice navigation season Regulated Navigation Area (RNA) within the northern portion of Chesapeake Bay and its tributaries, including the Chesapeake and Delaware Canal. The Coast Guard is removing the regulation because it believes the regulation places unnecessary general restrictions on vessels, which can more appropriately be imposed individually on a case-by-case basis.

DATES: This rule is effective on May 28, 1998, unless the Coast Guard receives written adverse comments or written notice of intent to submit adverse comments on or before April 28, 1998. If the Coast Guard receives a written adverse comment or written notice of intent to submit a written adverse comment, the Coast Guard will publish a timely withdrawal of all or part of this Direct Final Rule.

ADDRESSES: Comments may be mailed to Commander, U.S. Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1797, or may be delivered to the same address between 7:30 and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (410) 576–2547. Comments will become part of this docket and will be available for inspection or copying at the above address, between 7:30 and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Brooks Minnick, U.S. Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226, (410) 576–2585.

SUPPLEMENTARY INFORMATION:

Request for Comments

Any comments must identify the names and address of the person submitting the comment, specify the rulemaking docket (CGD 05–98–004) and the specific section of this rule to which each comment applies, and give the reason for each specific comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Regulatory Information

The Coast Guard is publishing a direct final rule, the procedures of which are outlined in 33 CFR 1.05–55, because this rule removes a regulatory burden and no adverse comments are anticipated. If no adverse comments or written notices of intent to submit adverse comment are received within the specified comment period, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days prior to the effective date, the Coast Guard will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if the Coast Guard receives written adverse comments or written notices of intent to submit adverse comment, the Coast Guard will publish a document announcing withdrawal of all or part of this direct final rule. If adverse comments apply to only part of this rule, and it is possible to remove that part without defeating the purpose of this rule, the Coast Guard may adopt as final those parts of this rule on which no adverse comments were received. The part of this rule that was the subject of adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of adverse comments, a separate Notice of Proposed Rulemaking (NPRM) will be published and a new opportunity for comment provided.

A comment is considered "adverse" if the comment explains why this rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.

Background and Purpose

Ice conditions frequently exist during the winter months on the northern portion of Chesapeake Bay and its tributaries, including the Chesapeake and Delaware Canal. Severe ice conditions may threaten the safety of persons, vessels and the environment. In the past, the Coast Guard annually activated by a notice of implementation, a Regulated Navigation Area (RNA) in which the Captain of the Port (COTP) Baltimore imposed certain operational restrictions on vessels in response to ice conditions. COTP Baltimore is the only zone in the Coast Guard that has an established RNA to control vessel movement during the ice season.

Recent practice has been to place restrictions in effect continuously through the winter months because it is difficult to forecast exact dates when severe ice conditions may begin and end. The Coast Guard now believes that a regulation that imposes general, continuous restrictions on all applicable vessels is unnecessary. The Coast Guard believes that prudent mariners can

adequately decide, based on prevailing ice conditions, whether to transit, taking into account individual vessel handling characteristics and specifications. If necessary to enhance safety, however, the Captain of the Port Baltimore may still impose restrictions on individual vessels on a case-by-case basis. This change will also make procedures in the COTP Baltimore zone consistent with other zones' ice season procedures.

The Captain of the Port Baltimore plans to establish a hot line that mariners can call for information about ice conditions and recommendations about which channels to transit. Because the ice season varies with the weather, Activities Baltimore will announce by Broadcast Notice to Mariners and publication in Local Notice to Mariners the start of the hot line and the phone number to call. The information about the hot line will be announced at least four times daily, and the broadcasts will continue throughout the ice season.

Discussion of Rules

This direct final rule removes the regulation in 33 CFR 165.503 that established a Regulated Navigation Area in the Chesapeake Bay during the ice season, typically between December and March of each year.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. If has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

This direct final rule removes a regulation that imposed restrictions on vessels identified in 33 CFR 165.510(c) that transited in the described Regulated Navigation Area between December and March. Therefore, the Coast Guard finds that this rule will not have a significant economic impact on a substantial number of small entities. Any comments submitted in response to this finding will be evaluated under the criteria described earlier in the preamble for comments.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.lB, (as revised by 59 FR 38654, July 29, 1994), this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 33 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

§ 165.503 [Removed]

2. Remove § 165.503.

Dated: February 11, 1998.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 98–5105 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 222

Delegations of Authority

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends Postal Service regulations on delegation of authority to bring this regulation in line with the Postal Service's current Human Resources organizational structure.

EFFECTIVE DATE: March 30, 1998.

FOR FURTHER INFORMATION CONTACT: Beth Campbell, Employment and Placement Specialist, Human Resources, (202) 268–3973.

SUPPLEMENTARY INFORMATION: Amendment of § 222.5(a)(7) is needed to identify delegation level consistent with the Human Resources organizational structure.

The Manager, Selection, Evaluation, and Recognition is making this revision. This is a change in agency rules of organization that does not substantially affect any rights or obligations of private parties. Therefore, it is appropriate for their adoption by the Postal Service to become effective immediately.

List of Subjects in 39 CFR Part 222

Authority delegations (Government agencies).

Accordingly, the Postal Service adopts this amendment to 39 CFR part 222 as specifically set forth below:

PART 222—[AMENDED]

1. The authority citation for part 222 continues to read as follows:

Authority: 39 U.S.C. 203, 204, 401(2), 402, 403, 404, 409; Inspector General Act of 1978, as amended (Pub. L. No. 95–452, as amended), 5 U.S.C. App. 3.

§ 222.5 [AMENDED]

2. Section 222.5(a)(7) is amended by striking "EAS–16 and above" and inserting "EAS–15 and above".

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–5012 Filed 2–26–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[FRL–5963–8]

Technical Amendments to National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On September 12, 1996 (61 FR 48207), the Environmental Protection Agency published in the **Federal Register** a final rule promulgating national emission standards for hazardous air pollutants (NESHAP) from existing and new plant sites that emit organic hazardous air pollutants (HAP) identified on the EPA's list of 189 HAP during manufacture of Group IV polymers and resins. The September 12, 1996, document stated the rule would be effective September 12, 1996. On January 14, 1997, and June 6, 1997, EPA amended this rule to change some of the compliance dates. This document corrects the effective date of the rule to February 27, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808, and amends certain compliance dates.

EFFECTIVE DATE: This rule is effective on February 27, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, OAR, at (202) 260–9766

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated September 12, 1996, by operation of law, the rule did not take effect on September 12, 1996, as stated therein. The two documents of January 14, 1997, and June 6, 1997, however, were submitted to Congress and GAO as required under CRA. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Certain compliance dates in the September 12, 1996, final rule were amended in a direct final rule published January 14, 1997 (62 FR 1835) which was effective on March 5, 1997, and by a direct final rule published June 6, 1997, (62 FR 30993) which was effective on July 27, 1997. Because of the change in the effective date of the September 12, 1996, final rule made in this document, the compliance dates for new affected sources in 40 CFR 63.1311(b), and existing affected sources in 40 CFR 63.1311(d) and (d)(1), are being amended to be the effective date of this amendment. Except to the extent compliance dates are amended by this document, the compliance dates in the September 12, 1996, final rule, as amended by the January 14, 1997, and June 6, 1997, direct final rules, remain unchanged.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date and compliance dates of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter, and because EPA must amend certain compliance dates as a result of the amended effective date. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since September 12, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the September 12, 1996, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 27, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule and related compliance dates; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended dates. Pursuant to section 307(b)(1) of the Clean Air Act, challenges to this amendment must be brought within 60 days of publication of the amendment.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 6, 1998.

Carol Browner,

Administrator.

For reasons set out in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 63.1311 is amended by revising paragraphs (b), (d) introductory text, and (d)(1) introductory text to read as follows:

§ 63.1311 Compliance schedule and relationship to existing applicable rules.

* * * * *

(b) New affected sources that commence construction or reconstruction after March 29, 1995, shall be in compliance with this subpart upon initial start-up or February 27, 1998, whichever is later, as provided in § 63.6(b), except that new affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is poly(ethylene terephthalate) (PET) shall be in compliance with § 63.1331 upon initial start-up or by September 12, 1999, whichever is later.

* * * * *

(d) Except as provided for in paragraphs (d)(1) through (d)(6) of this section, existing affected sources shall be in compliance with § 63.1331 no later than February 27, 1998 unless a request for a compliance extension is granted pursuant to section 112(i)(3)(B) of the Act, as discussed in § 63.182(a)(6).

(1) Compliance with the compressor provisions of § 63.164 shall occur no later than February 27, 1998 for any compressor meeting one or more of the criteria in paragraphs (d)(1)(i) through (d)(1)(iii) of this section if the work can be accomplished without a process unit shutdown, as defined in § 63.161:

* * * * *

[FR Doc. 98–4940 Filed 2–26–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AK 17–1705; FRL–5971–4]

Clean Air Act Reclassification; Fairbanks, Alaska Nonattainment Area; Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this document EPA is making a final finding that the Fairbanks North Star Borough, Alaska, carbon monoxide (CO) nonattainment area has not attained the CO national ambient air quality standards (NAAQS) by December 31, 1995, the Clean Air Act (CAA) mandated attainment date for moderate nonattainment areas. This finding is based on EPA's review of monitored air quality data for compliance with the CO NAAQS. As a result of this finding, the Fairbanks North Star Borough CO nonattainment area is reclassified as a serious CO nonattainment area by operation of law. As a result of the reclassification, the State is to submit within 18 months from the effective date of this action a new State Implementation Plan (SIP) demonstrating attainment of the CO NAAQS as expeditiously as practical but no later than December 31, 2000, the CAA attainment date for serious areas.

EFFECTIVE DATE: This action is effective March 30, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Montel Livingston, Office of Air Quality, U.S. Environmental Protection Agency, Region 10, Seattle, Washington, (206) 553–0180.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements and EPA Actions Concerning Designation and Classifications

The Clean Air Act Amendments of 1990 (CAA) were enacted on November 15, 1990. Under section 107(d)(1)(C) of the CAA, each CO area designated nonattainment prior to enactment of the 1990 Amendments, such as the Fairbanks North Star Borough nonattainment area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. Under section 186(a) of the CAA, each CO area designated nonattainment under section 107(d) was also classified by operation of law as either "moderate" or "serious" depending on the severity of the area's air quality problem. CO areas with design values between 9.1 and 16.4 parts per million (ppm), such as the Fairbanks nonattainment area, were classified as moderate. These nonattainment designations and classifications were codified in 40 CFR part 81. See 56 FR 56694 (November 6, 1991).

States containing areas that were classified as moderate nonattainment by operation of law under section 107(d) were required to submit SIPs designed to attain the CO NAAQS as expeditiously as practicable but no later than December 31, 1995.[1]

B. Effect of Reclassification

CO nonattainment areas reclassified as serious are required to submit, within 18 months of the area's reclassification, SIP revisions providing for attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000. In addition, the State must submit a SIP revision that includes: (1) a forecast of vehicle miles traveled (VMT) for each year before the attainment year and provisions for annual updates of these forecasts; (2) adopted contingency measures; and (3) adopted transportation control measures and strategies to offset any growth in CO emissions from growth in VMT or number of vehicle trips. See CAA sections 187(a)(7), 187(a)(2)(A), 187(a)(3), 187(b)(2), and 187(b)(1). Finally, upon the effective date of this reclassification, contingency measures in the moderate area plan for the Fairbanks nonattainment area must be implemented.

C. Attainment Determinations for CO Nonattainment Areas

EPA makes attainment determinations for CO nonattainment areas based upon whether an area has two years (or eight consecutive quarters) of clean air quality data.[2] Section 179(c)(1) of the CAA states that the attainment determination must be based upon an area's "air quality as of the attainment date."

EPA determines a CO nonattainment area's air quality status in accordance with 40 CFR 50.8 and EPA policy.[3] EPA has promulgated two NAAQS for CO: an 8-hour average concentration and a 1-hour average concentration. Because there were no violations of the 1-hour standard in the Fairbanks nonattainment area, this document addresses only the air quality status of the Fairbanks nonattainment area with respect to the 8-hour standard. The 8-hour CO NAAQS requires that not more than one non-overlapping 8-hour average in any consecutive two-year period per monitoring site can exceed 9.0 ppm (values below 9.5 are rounded down to 9.0 and they are not considered exceedances). The second exceedance of the 8-hour CO NAAQS at a given monitoring site within the same two-year period constitutes a violation of the CO NAAQS.

D. Proposed Finding of Failure to Attain

On August 8, 1997 EPA proposed to find that the Fairbanks North Star Borough CO nonattainment area had failed to attain the CO NAAQS by the applicable attainment date. 62 FR 42717. Fairbanks did not have two

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[1] The moderate area SIP requirements are set forth in section 187(a) of the CAA and differ depending on whether the area's design value is below or above 12.7 ppm. The Fairbanks area has a design value below 12.7 ppm. 40 CFR 81.302.

[2] See generally memorandum from Sally L. Shaver, Director, Air Quality Strategies and Standards Division, EPA, to Regional Air Office Directors, entitled "Criteria for Granting Attainment Date Extensions, Making Attainment Determinations, and Determinations of Failure to Attain the NAAQS for Moderate CO Nonattainment Areas," October 23, 1995 (Shaver memorandum).

[3] See memorandum from William G. Laxton, Director, Technical Support Division, entitled "Ozone and Carbon Monoxide Design Value Calculations", June 18, 1990. See also Shaver memorandum.

consecutive clean years of CO data. This proposed finding was based on air quality data showing violations of the CO NAAQS at three monitoring sites during 1995, with the number of readings exceeding the 8 hour standard totaling 19. For the specific data considered by EPA in making this proposed finding, see 62 FR 42719.

E. Reclassification to a Serious Nonattainment Area

EPA has the responsibility, pursuant to sections 179(c) and 186(b)(2) of the CAA, for determining whether the Fairbanks North Star Borough CO nonattainment area attained the CO NAAQS by December 31, 1995. Under section 186(b)(2)(A), if EPA finds that the area has not attained the CO NAAQS, the area is reclassified as serious by operation of law. There were 26 CO exceedances recorded in the years 1994–1995. Additional control strategies are needed to further reduce CO concentrations in order to attain the CO standard. Pursuant to section 186(b)(2)(B) of the Act, EPA is publishing this notice to identify the Fairbanks area as failing to attain the standard and therefore reclassified as serious by operation of law.

II. Response to Comments on Proposed Finding

During the public comment period on EPA's proposed finding, EPA received several comments. Below is EPA's response to all substantive comments received.

Air Quality Monitoring Data

A commenter represented an association which had undertaken a detailed review of the air quality monitoring data from a variety of areas around the country using the Aerometric Information Retrieval System data base. Specifically, the report alleged that the Fairbanks North Star Borough Air Quality Division does not monitor the ambient air temperature within their CO monitor instrument enclosures to ensure that the station temperature remained within the 20–30 degree C range specified by the EPA reference method designation for the TECO 48 CO analyzers used at the sites where exceedances were recorded. Thus, the report concluded, these exceedances were measured by equipment that was being operated under untested specifications for which the analyzer has not been certified and are therefore open to question.

Response: EPA Region 10 prepared a report dated August 27, 1997 (located in our docket), regarding the quality of CO monitoring data collected in Fairbanks for the time period 1994 through 1996. The study focused on time periods when CO exceedances occurred (27 times at three sites in Fairbanks during the time period 1994 through 1996). The evaluation relied upon EPA monitoring guidelines in 40 CFR Part 58, the Quality Assurance Handbook for Air Pollution Measurement Systems—Volume II: Ambient Air Specific Methods (Red book), and manufacturer recommended operations guidelines for CO analyzers. CO monitoring data, precision, and accuracy data used in EPA's analysis were extracted from the EPA Aerometric Information Retrieval System. Zero, span checks, audit results, site logs, and strip charts were obtained from ADEC and the local air pollution control agencies in Fairbanks. Specifications for the operation of individual CO analyzers were obtained from the instrument manufacturers and from the EPA list of air monitoring reference and equivalent methods.

The analysis revealed that ADEC and the Fairbanks North Star Borough have closely followed EPA regulations and guidelines in the collection and quality assurance of CO monitoring data. While the building environment where the monitors were located was not monitored 24 hours a day for every day of the year to show the area was always controlled to 20°–30° C, the analysis showed that:

(a) all monitors were operated indoors.

(b) all buildings containing monitors controlled their indoor temperatures to values within the specified 20°–30° during the workday.

(c) ADEC's quality assurance program verified that monitors were operating properly during periods of standard exceedances. The strip chart data used to identify any suspect behavior of the analyzers was investigated. No "drift" or "cycling" of readings were found on the strip charts. The strip charts showed that the instruments were operating properly at all times during periods of standard exceedances.

(d) ADEC configured their CO monitors to show that both precision and accuracy checks exceeded required frequencies for all sites in Fairbanks for the entire time period of 1994–1996.

(e) At least eight exceedances were recorded in Fairbanks during 8 hour periods when the buildings in which the monitors were located were being heated to employee "comfort" temperatures (usually at the low end of the 20°–30° range).

(f) No exceedances of the 8 hour NAAQS occurred on weekends during this time period.

For these reasons, EPA has concluded that it is very unlikely that enclosure temperature has caused CO levels in Fairbanks to be "over measured" to the extent that a violation of the 8 hour NAAQS could not be confidently demonstrated. EPA's view is that ADEC's data is of high quality and clearly shows repeated exceedances of the CO NAAQS. EPA has no reason to question any of the CO exceedances measured during the 1994 through 1996 time period. Questions have arisen that monitor readings could have been influenced by temperature fluctuations in the buildings where the instruments were operated. Although no daily temperatures were measured in the rooms where monitors were housed, information from the building managers shows that temperatures were maintained at a comfort level for workers in all of the buildings where monitors were housed. The indoor temperatures were well within the range of temperatures that the instrument manufacturers recommend for operation of CO monitors. Also, outside temperatures in Fairbanks were considerably above normal during times of standard exceedances which would minimize a lowering of temperatures indoors even if thermostats were lowered. In addition, no CO exceedances occurred on weekends when thermostats in some buildings could be lowered slightly. For these reasons it is unlikely that CO exceedances were influenced by fluctuations in building temperatures.

Unique Weather Conditions

Several commenters felt that Fairbanks should be given an allowance or exemption from the serious status because of the severity and consistency of its cold weather, as well as the intensity and regularity of its temperature inversions.

Response: EPA prepared a report, dated August 27, 1997, and which is part of the docket, showing CO violations and outside temperature data by monitor location for all the dates exceedances were recorded during 1995. Fairbanks outside temperatures in 1995 were considerably above normal during times of CO air quality standard exceedances (i.e., highs recorded at +44, +34, +32, +30, +29, etc.). Thus, CO exceedances occur in Fairbanks at varying degrees of winter temperatures, not just very low winter temperatures.

Stagnation and inversions are frequent climatological occurrences that must be considered in evaluating whether a control program is adequate to attain and maintain the NAAQS. Meteorological events such as these are

almost never accepted as justification for waiving the NAAQS. Inversions occur very frequently, are usually short-lived, and disperse shortly after sunrise. Because inversions are expected to occur frequently and are part of normal weather patterns, they are not considered special events warranting exemptions from reclassification.

In some parts of the United States, stagnation episodes usually persist for an extended period of time, and they can affect an entire air basin. While stagnations may not occur frequently, they are not uncommon; therefore, they are not considered sufficiently exceptional to waive application of the NAAQS.

Number of Violations Declining—Why Reclassify?

Commenters asked why Fairbanks is being reclassified when air quality has improved over the last 10–15 years; is reclassification necessary?

Response: Reclassification does not mean that the air quality in Fairbanks has deteriorated. Congress established the attainment dates of reclassification requirements to allow additional planning time to meet the CO NAAQS. The attainment date under the CAA of 1990 for a serious CO nonattainment area is December 31, 2000, and authorizes more time for Fairbanks North Star Borough, together with ADEC, to devise an air pollution control plan to meet the CO air quality standard. EPA recognizes the progress Fairbanks has achieved thus far toward improving air quality and decreasing the ambient levels of CO. However, Congress mandated reclassification under section 186(b) of the CAA in specific circumstances, and the Administrator does not have flexibility to decide otherwise once EPA determines the area has failed to meet the CO NAAQS. Fairbanks currently has an inspection and maintenance program as its base control measure. The general public will have the opportunity to comment on additional control measures that would be most effective towards improving air quality in Fairbanks.

Timeliness of Reclassification Notice

A commenter stated concern that it is unrealistic to expect a community like Fairbanks to complete the planning and implementation of control measures necessary to achieve the NAAQS by a December 31, 2000 deadline. If this determination and notice requirement were published by June 30, 1996 as envisioned in the Clean Air Act, Fairbanks would have had four years to plan and implement a revised CO strategy and achieve attainment.

Response: Language in the 1996 budget legislation, section 308, H.R. 1099, restricted EPA from taking reclassification action for Fairbanks within six months after the applicable attainment date of December 31, 1995: "Sec. 308. None of the funds appropriated under this Act may be used to implement the requirements of section 186(b)(2), section 187(b) or section 211(m) of the Clean Air Act * * * with respect to any moderate nonattainment area in which the average daily temperature is below 0 degrees Fahrenheit. The preceding sentence shall not be interpreted to preclude assistance from the EPA to the State of Alaska to make progress toward meeting the CO standard in such areas and to resolve remaining issues regarding the use of oxygenated fuels in such areas." In the meantime, Fairbanks had no violations of the CO standard in 1996. However, in 1997, while EPA began the reclassification process, CO violations were once again repeated.

When a nonattainment CO area such as Fairbanks is reclassified, the timetable given for planning requirements allows the state 18 months from the date of final reclassification to submit its new SIP revisions to EPA. In the meantime, the adopted CO contingency measure is implemented immediately to strengthen the air quality control measures already in place. The CAA defines specific timetables by which nonattainment areas must meet the requirements for moderate and serious CO classified areas. These requirements include attainment deadlines, area classifications, and the required provisions of the SIP's for these nonattainment areas. The revised general requirements for all SIPs appear early in Title I of the CAA. It is unlikely that significant regulatory changes would occur affecting stationary sources in that section 187(c)(1) of the Act only requires redefining "major stationary source" if stationary sources "contribute significantly" to CO levels, i.e., if a facility by itself would cause a violation of the national CO standard. No existing facility in the nonattainment area meets this criterion and it seems unlikely that a new facility, which would emit a large amount of CO, would meet such a standard unless it were sited in an area already identified as prone to CO buildup in the nonattainment area.

EPA feels that by working closely with the Borough and ADEC, an approvable plan meeting reclassification requirements can be developed and taken through the public hearing process in a timely way.

III. Today's Action

EPA is today taking final action to find that the Fairbanks North Star Borough CO nonattainment area did not attain the CO NAAQS by December 31, 1995, the CAA attainment date for moderate CO nonattainment areas. As a result of this finding, the Fairbanks North Star Borough CO nonattainment area is reclassified by operation of law as a serious CO nonattainment area as of the effective date of this document. This finding is based upon air quality data showing exceedances of the CO NAAQS during 1995. The Fairbanks North Star Borough CO nonattainment area was not eligible for an extension from the mandated attainment date of December 31, 1995.

IV. Executive Order (E.O.) 12866

Under E.O. 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities".

The Agency has determined that the finding of failure to attain finalized today would result in none of the effects identified in section 3(f). Under section 186(b)(2) of the CAA, findings of failure to attain and reclassification of nonattainment areas are based upon air quality considerations and must occur by operation of law in light of certain air quality conditions. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities.

V. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. As discussed in section IV of this document, findings of failure to attain and reclassification of nonattainment areas under section 186(b)(2) of the CAA do not in-and-of-themselves create any new requirements. Therefore, I certify that today's action does not have a significant impact on small entities.

VI. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA believes, as discussed above, that the finding of failure to attain and reclassification of the Fairbanks nonattainment area are factual determinations based upon air quality considerations and must occur by operation of law and, hence, do not impose any Federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

VII. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 20, 1998.

Chuck Findley,

Acting Regional Administrator, Region 10.

For the reasons set out in the preamble, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In section 81.302, the table for "Alaska-Carbon Monoxide" is amended for the Fairbanks area by replacing "moderate" with "serious" under the classification column to read as follows:

§ 81.302 Alaska.

* * * * *

ALASKA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Fairbanks Area, Fairbanks Election District (part), Fairbanks nonattainment area boundary.	.....	Nonattainment	Mar. 30, 1998	Serious.
* * *	*	*	*	*

[FR Doc. 98–5090 Filed 2–26–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5970–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Browning-Ferris Industries—South Brunswick Landfill superfund site from the National Priorities List.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces the deletion of the Browning-Ferris Industries—South Brunswick Landfill Site in South Brunswick Township, Middlesex County, New Jersey from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of New Jersey have determined that the Site poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA are appropriate.

EFFECTIVE DATE: February 27, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Anne Rosa, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866, (212) 637–4407.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Browning-Ferris Industries—South Brunswick Landfill Site, South Brunswick Township, Middlesex County, New Jersey.

A Notice of Intent to Delete for this Site was published in the **Federal**

Register on *November 6, 1997* (62 FR 60058). The closing date for comments on the Notice of Intent to Delete was *December 8, 1997*. No comments were received therefore, EPA has not prepared a Responsiveness Summary.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, and Water supply.

Dated: February 2, 1998.

William J. Muszynski,

Acting Regional Administrator.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the entry for the South Brunswick Landfill site in South Brunswick, NJ.

[FR Doc. 98–4817 Filed 2–26–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 61

RIN 0991–AA96

Service Fellowships

AGENCY: Office of the Secretary, HHS.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of Health and Human Services (HHS) is amending the regulations governing service fellowships by revising the current authority citation, extending the time limitation on initial appointments from 2 years to 5 years, permitting extensions of appointments for up to 5 years rather than year-to-year, and deleting obsolete references to the Surgeon General. These changes are being made to provide HHS health agencies with greater flexibility to recruit and retain talented scientists and to update obsolete references.

DATES: *Effective Date:* February 27, 1998. *Comment Date:* The Secretary is requesting written comments on this interim final rule which must be received on or before April 28, 1998.

ADDRESSES: Written comments on the interim final rule may be sent to Jerry Moore, NIH Regulations Officer, National Institutes of Health, 31 CENTER DR MSC 2075, BETHESDA, MD 20892–2075. Comments may also be sent electronically by facsimile (301–402–0169) or by e-mail (jm40z@nih.gov).

FOR FURTHER INFORMATION CONTACT: Jerry Moore at the address above or by telephone (301) 496–4607; (not a toll-free number). For information with regard to service fellowships contact Edie Bishop, Office of Human Resource Management, National Institutes of Health, 31 CENTER DR MSC 0424, BETHESDA, MD 20892–0424, telephone (301) 402–9484 (not a toll-free number.

SUPPLEMENTARY INFORMATION: Section 207(g) of the Public Health Service Act, as amended, authorizes the Secretary to designate individual scientists, other than Commissioned Officers of the Public Health Service (PHS), to receive fellowships; to be appointed for duty with the Service and compensated without regard to the civil service classification laws; to hold their fellowships under conditions prescribed therein; and to be assigned for studies or investigations either in the United States or foreign countries during the terms of their fellowships.

Consistent with the legislative intent of the PHS Act, § 61.32 of the implementing regulations codified at 42 CFR Part 61, states that service fellowships "may be provided to secure the services of talented scientists for a period of limited duration for health-related research, studies, and investigations where the nature of the work or the character of the individual's services render customary employing methods impracticable or less effective."

Section 61.38 currently restricts initial fellowship appointments to a period not to exceed two years, with extensions on a year-to-year basis. HHS is amending § 61.38 of the service fellowship regulations to make time limitations more flexible. Specifically, HHS is extending the current time limitation on initial appointments from 2 to 5 years, and revising the requirements with respect to extensions to permit extensions for up to 5 years rather than year-to-year. These changes are being made to provide HHS health agencies with greater flexibility to recruit and retain their scientists. It is anticipated that the increased flexibility will provide for simplified recruitment and classification. Employment will continue to be linked to scientific excellence as determined by agency peer review processes.

The authority citation and the references to the Surgeon General in § 61.33, § 61.34, § 62.35, § 61.36, § 61.37, and § 61.38 are being revised to reflect that the authority for the service fellowships are vested in the Secretary, § 61.30 is amended to remove the paragraph designations and the definition for the term "Surgeon General" and to add the definition for the term "Secretary," and § 61.34 is amended to remove clause (b) and redesignate clause (c) as (b) to reflect current policy.

Notice and public comment and delayed effective date have been waived for these amendments because it has been found for good cause in accordance with 5 U.S.C. 553(b)(B) that notice and comment are "impracticable, unnecessary or contrary to the public interest." Notice and comment are unnecessary and contrary to the public interest because the changes in the duration of service fellowship appointments will not in any way adversely affect service fellowship recipients or others, and the other changes are not substantive or remove obsolete requirements regarding the qualifications of applicants. Extending the permissible duration of the fellowships will make it possible for the Public Health Service to better fulfill the purpose of encouraging and promoting research through the fellowships and provide a broader range of research options for the fellows. For the same reasons, this regulation is effective immediately. This will enable both the Public Health Service and the service fellows to benefit promptly from appointments of longer duration. Applicants for fellowships or recipients do not need any lead time to prepare for the changes because all application requirements and conditions of the

appointment remain the same. The only substantive change is that the permissible duration of the appointment is extended.

Although the amendments are published as an interim final rule and are effective immediately, the Secretary requests comments on the regulations. The Secretary will consider all comments and thereafter will promptly publish a final rule.

The following statements are provided for public information.

Executive Order No. 12866

Executive Order No. 12866, Regulatory Planning and Review, requires that all regulatory actions reflect consideration of the costs and benefits they generate, and that they meet certain standards, such as avoiding the imposition of unnecessary burdens on the affected public. If an action is deemed to fall within the scope of the definition of the term "significant regulatory action" contained in § 3(f) of the Order, a pre-publication review by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) is necessary. This interim final rule was reported to OIRA, and it was deemed not to be a significant regulatory action.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6) requires that regulatory actions be analyzed to determine whether they will have a significant economic impact on a substantial number of small entities. The Secretary certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities and, therefore, a regulatory flexibility analysis, as defined under the Regulatory Flexibility Act of 1980 is not required. This rule applies to individuals who apply for and may receive service fellowships. The rule does not apply or affect "small entities" as that term is defined in 5 U.S.C. 601.

Paperwork Reduction Act

This interim final rule does not contain any information collection requirements that are subject to OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

List of Subjects in 42 CFR Part 61

Fellowships.

Approved: November 6, 1997.

Harold Varmus,

Director, National Institutes of Health.

Dated: February 12, 1998.

Donna Shalala,

Secretary.

Accordingly, subpart B of part 61 of title 42 of the Code of Federal Regulations is amended to read as set forth below.

PART 61—FELLOWSHIPS

Subpart B—Service Fellowships

1. The authority citation to subpart B is revised to read as follows:

Authority: 42 U.S.C. 209, 210, 216.

2. Section 61.30 is revised to read as follows:

§ 61.30 Definitions.

As used in this part:

Continental United States does not include Hawaii or Alaska.

Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved may be delegated.

Service Fellowship is one which requires the performance of services, either full or part time, for the Public Health Service.

3. Sections 61.33, 61.34, 61.35, and 61.36 are revised to read as follows:

§ 61.33 Establishment of service fellowships.

All service fellowships shall be established by the Secretary. In establishing a service fellowship, or a series of service fellowships, the Secretary shall prescribe in writing the conditions (in addition to those provided in the regulations in this part) under which service fellows will be appointed and will hold their fellowships.

§ 61.34 Qualifications.

Scholastic and other qualifications shall be prescribed by the Secretary for each service fellowship, or series of service fellowships. Each individual appointed to a service fellowship shall:

(a) Have presented satisfactory evidence of general suitability, including professional and personal fitness; and

(b) Possess any other qualifications as reasonably may be prescribed.

§ 61.35 Method of application.

Application for a service fellowship shall be made in accordance with procedures established by the Secretary.

§ 61.36 Selection and appointment of service fellows.

The Secretary shall:

(a) Prescribe a suitable professional and personal fitness review and an examination of the applicant's qualifications;

(b) Designate in writing persons to receive service fellowships; and

(c) Establish procedures for the appointment of service fellows.

3a. Section 61.37a is amended by redesignating the undesignated paragraph following paragraph (b)(3) as paragraph (b)(4), and revising paragraphs (a), (b) introductory text, and newly designated (b)(4) to read as follows:

§ 61.37 Stipends, allowances, and benefits.

(a) *Stipends.* Service fellows shall be entitled to such stipend as is authorized by the Secretary for each service fellowship or series of service fellowships.

(b) *Travel and transportation allowances.* Under conditions prescribed by the Secretary, an individual appointed as a service fellow may be authorized personal travel allowances or transportation and per diem, travel allowances or transportation for his or her immediate family, and transportation of household goods and personal effects, in conjunction with travel authorized by the Secretary.

* * * * *

(4) A service fellow shall be entitled to travel allowances or transportation and per diem while traveling on official business away from his or her permanent duty station during the term of the fellowship. Except as otherwise provided herein, a service fellow shall be entitled to travel and transportation allowances authorized in this part at the same rates as may be authorized by law and regulations for other civilian employees of the Public Health Service. If a service fellow dies during the term of a fellowship, and the place of residence that was left by the service fellow to accept the fellowship was outside the continental United States, the payment of expenses of preparing the remains for burial and transporting them to the place of residence for interment may be authorized. In the case of deceased service fellows whose place of residence was within the continental United States, payment of the expenses of preparing the remains and transporting them to the place of residence for interment may be authorized as provided for other civilian employees of the Public Health Service.

* * * * *

4. Section 61.38 is revised to read as follows:

§ 61.38 Duration of service fellowships.

Initial appointments to service fellowships may be made for varying periods not in excess of 5 years. Such an appointment may be extended for varying periods not in excess of 5 years for each period in accordance with procedures and requirements established by the Secretary.

[FR Doc. 98–4837 Filed 2–26–98; 8:45 am]
BILLING CODE 4140–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7683]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Georgia: Screven County, unincorporated areas	130160	Jan. 6, 1998.	
Arkansas: Guion, town of, Izard County	050248	.....do	Mar. 18, 1977.
Nebraska: Campbell, village of, Franklin County	310256	.....do	Aug. 22, 1975.
Georgia: Atkinson County, unincorporated areas	130558	Jan. 13, 1998.	
Iowa: Harrison County, unincorporated areas	190143	Jan. 14, 1998.	
Michigan:			
Wilcox, township of, Newaygo County	261013	Jan. 15, 1998.	
Springvale, township of, Emmet County	261017	.....do.	
Lenox, township of, Macomb County	261014	.....do.	
St. Charles, township of, Saginaw County	261015	.....do.	
Union, township of, Branch County	261016	.....do.	
North Dakota: Dickey County, unincorporated areas	380701	Jan. 22, 1998.	

State/location	Community No.	Effective date of eligibility	Current effective map date
Texas: Mingus, city of, Palo Pinto County	480518	Jan. 28, 1998	May 2, 1975.
New Eligibles—Regular Program			
California: Pacific Grove, city of, Monterey County	060201	Jan. 12, 1998	NSFHA.
Florida: [1] Deltona, city of, Volusia County	120677	Jan. 22, 1998	Feb. 2, 1996.
Reinstatements			
Pennsylvania: Fleetwood, borough of, Berks County	420133	Apr. 17, 1975, Emerg; Feb. 2, 1989, Reg; Dec. 5, 1997, Susp; Jan. 15, 1998, Rein.	Dec. 5, 1997.
Wisconsin: Ephraim, village of, Door County	550611	Dec. 26, 1986, Emerg., Nov. 1, 1995, Withd., Jan. 15, 1998, Rein.	Dec. 5, 1995.
Pennsylvania:			
Caernarvon, township of, Berks County	421055	Nov. 26, 1974, Emerg., Jan. 16, 1981, Reg., Dec. 5, 1997, Susp., Jan. 21, 1998, Rein.	December 5, 1997.
Exeter, township of, Berks County	421063	Sept. 27, 1974, Emerg., Mar. 15, 1982, Reg., Dec. 5, 1997, Susp., Jan. 27, 1998, Rein.	Do.
Withdrawn			
Ohio: Creston, village of, Wayne County	390575	Oct. 17, 1994, Reg., Jan. 15, 1998, Withd	May 3, 1993.
Regular Program Conversions			
Region I			
Connecticut: Westport, town of, Fairfield County	090019	Jan. 7, 1998, Suspension Withdrawn	January 7, 1998.
Maine: Richmond, town of, Sagadahoc County	230121	.....do	Do.
Region II			
New Jersey: Island Heights, borough of, Ocean County.	340374	.....do	Do.
Region V			
Michigan:			
Broomfield, township of, Isabella County	260815	.....do	Do.
Chippewa, township of, Isabella County	260824	.....do	Do.
Coe, township of, Isabella County	260819	.....do	Do.
Deerfield, township of, Isabella County	260816	.....do	Do.
Denver, township of, Isabella County	260817	.....do	Do.
Fremont, township of, Isabella County	260818	.....do	Do.
Isabella, township of, Isabella County	260820	.....do	Do.
-Mount Pleasant, city of, Isabella County	260104	.....do	Do.
Rolland, township of, Isabella County	260422	.....do	Do.
Sherman, township of, Isabella County	260822	.....do	Do.
Union, charter township of, Isabella County	260812	.....do	Do.
Vernon, township of, Isabella County	260825	.....do	Do.
Wise, township of, Isabella County	260823	.....do	Do.
Region VI			
Arkansas: Ashdown, city of, Little River County	050129	.....do	Do.
Region VIII			
Utah: St. George, city of, Washington County	490177	.....do	Do.
Region IX			
California:			
Ferndale, city of, Humboldt County	060445	.....do	Do.
St. Helena, city of, Napa County	060208	.....do	Do.
Region II			
New York: Yonkers, city of, Westchester County	360936	Jan. 21, 1998, Suspension Withdrawn	Jan. 21, 1998.
Region III			
Pennsylvania: Castanea, township of, Clinton County	420322	.....do	Do.
Region IV			
Florida: Century, city of, Escambia County	120084	.....do	Do.
North Carolina:			
Surf City, town of, Pender & Onslow Counties	370186	.....do	Do.
Topsail Beach, town of, Pender County	370187	.....do	Do.
Tennessee:			
Jackson, city of, Madison County	470113	.....do	Do.
Madison County, unincorporated areas	470112	.....do	Do.
Region V			
Illinois: Lake in the Hills, village of, McHenry County	170481	.....do	Do.
Ohio: Butler County, unincorporated areas	390037	.....do	Do.
Region X			
Idaho:			

State/location	Community No.	Effective date of eligibility	Current effective map date
Blackfoot, city of, Bingham County	160019	.....do	Do.
Bingham County, unincorporated areas	160018	.....do	Do.

[1] The City of Deltona has adopted the Volusia County (CID# 125155) Flood Insurance Rate Map dated February 2, 1996.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Supp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: February 13, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–5177 Filed 2–26–98; 8:45 am]

BILLING CODE 6718–05–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1802, 1803, 1804, 1805, 1814, 1815, 1816, 1817, 1832, 1834, 1835, 1842, 1844, 1852, 1853, 1871, and 1872

Contracting by Negotiation

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: This is an interim rule amending the NASA FAR Supplement (NFS) parts to conform to the regulatory changes effected by Federal Acquisition Circular (FAC) 97–02, FAR Part 15 Rewrite; reflect the expiration of the waiver to the requirement to publish synopsis in the Commerce Business Daily for certain acquisitions under NASA's MidRange procedures; and specify that the NASA Acquisition Internet Service (NAIS) is the Agency Internet site for posting solicitations and other acquisition information.

DATES: This rule is effective February 27, 1998. All comments on this rule should be in writing and must be received by April 28, 1998.

ADDRESSES: Tom O'Toole, Code HK, NASA Headquarters, 300 E Street, SW., Washington, DC 20456–0001.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, (202) 358–0478.

SUPPLEMENTARY INFORMATION:

A. Background

FAC 97–02, published in the **Federal Register** (62 FR 51224) on September 30, 1997, completely revised FAR part 15, Contracting by Negotiation. The final rule allowed agencies to delay implementation until January 1, 1998. The NASA FAR Supplement (NFS) is in substantive compliance with the revised FAR, but extensive redesignation of NFS subparts and sections is required for structural conformance. Accordingly, NFS part 1815, Contracting by Negotiation, is revised in its entirety, and parts 1852, Solicitation Provisions and Contract Clauses, and 1853, Forms, are amended. Regulatory references in other parts are also amended to reflect revised FAR numbering. In addition, NASA is revising its MidRange procedures in part 1871 to reflect the expiration of the waiver of the requirement to publish synopses in the Commerce Business Daily for certain acquisitions under NASA's MidRange procedures. Previously, these synopses had been posted only on the Internet. Finally, changes are made to indicate that the NASA Acquisition Internet Service (NAIS) is the single Agency Internet site for posting solicitations and other acquisition information. NASA considers all these revisions to be either administrative or editorial, and no significant changes in Agency policy are implemented.

B. Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

C. Interim Rule

In accordance with 41 U.S.C. 418b(d), NASA has determined that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This determination is made on the following bases: (1) The required implementation date of the revised FAR part 15 is January 1, 1998; (2) NFS part 1815 coverage is of critical importance to the effective and efficient accomplishment of NASA acquisitions; and (3) the substance of the NFS coverage was published previously for public comment in the **Federal Register** (61 FR 52325) on October 7, 1996.

Lists of Subjects in 48 CFR Parts 1801, 1802, 1803, 1804, 1805, 1814, 1815, 1816, 1817, 1832, 1834, 1835, 1842, 1844, 1852, 1853, 1871, and 1872

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1801, 1802, 1803, 1804, 1805, 1814, 1815, 1816, 1817, 1832, 1834, 1835, 1842, 1844, 1852, 1853, 1871, and 1872 are amended as follows:

1. The authority citation for 48 CFR Parts 1801, 1802, 1803, 1804, 1805, 1814, 1815, 1816, 1817, 1832, 1834, 1835, 1842, 1844, 1852, 1853, 1871, and 1872 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. In section 1801.106, paragraph (1) is revised to read as follows:

1801.106 OMB approval under the Paperwork Reduction Act. (NASA paragraphs (1) and (2))

(1) NFS requirements. The following OMB control numbers apply:

NFS segment	OMB control No.
1819	2700–0073
1819.72	2700–0078
1827	2700–0052
1843	2700–0054
NF 533	2700–0003
NF 667	2700–0004
NF 1018	2700–0017

* * * * *

PART 1802—DEFINITIONS OF WORDS AND TERMS

3. In section 1802.101, the following definition is added in alphabetical order to read as follows:

1802.101 Definitions.

NASA Acquisition Internet Service (NAIS) means the Internet service (URL: hhtp://procurement.nasa.gov) NASA uses to broadcast its business opportunities, procurement regulations, and associated information.

PART 1804—ADMINISTRATIVE MATTERS

Subpart 1804.5—[Added]

4. Subpart 1804.5 is added to read as follows:

Subpart 1804.5—Electronic Commerce in Contracting

1804.570 NASA Acquisition Internet Service (NAIS).

1804.570–1 General.

The NASA Acquisition Internet Service (NAIS) provides an electronic means for posting procurement synopses, solicitations, procurement regulations, and associated information on the Internet.

1804.570–2 Electronic posting system.

(a) The NAIS Electronic Posting System (EPS) enables the NASA procurement staff to:

(1) Electronically create and post synopses on the Internet and in the Commerce Business Daily (CBD); and

(2) Post solicitation documents and other procurement information on the Internet.

(b) The EPS maintains an on-line index linking the posted synopses and solicitations for viewing and downloading.

(c) The EPS shall be used to:

(1) Create and post all synopses in accordance with FAR part 5 and NFS 1805; and

(2) Post all competitive solicitation files, excluding large construction and other drawings, for acquisitions exceeding $25,000.

(d) The NAIS is the official site for solicitation postings. In the event supporting materials, such as program libraries, cannot be reasonably accommodated by the NAIS, Internet sites external to NAIS may be established after coordination with the Contracting Officer. Such sites must be linked from the NAIS business opportunities index where the solicitations reside. External sites should not duplicate any of the files residing on the NAIS.

PART 1805—PUBLICIZING CONTRACT ACTIONS

1805.201 [Removed]

5. Section 1805.201 is removed.

6. In section 1805.207, paragraph (a) is added to read as follows:

1805.207 Preparation and transmittal of synopses. (NASA supplement paragraph (a))

(a) Synopses shall be transmitted in accordance with 1804.570.

PART 1815—CONTRACTING BY NEGOTIATION

7. Part 1815 is revised to read as follows:

PART 1815—CONTRACTING BY NEGOTIATION

Subpart 1815.2—Solicitation and Receipt of Proposals and Information

1815.201 Exchanges with industry before receipt of proposals.
1815.203 Requests for proposals.
1815.203–70 Installation reviews.
1815.203–71 Headquarters reviews.
1815.204 Contract format.
1815.204–2 Part I—The Schedule.
1815.204–5 Part IV—Representations and instructions.
1815.204–70 Page limitations.
1815.207 Handling proposals and information.
1815.207–70 Release of proposal information.
1815.207–71 Appointing non-Government evaluators as special Government employees.
1815.208 Submission, modification, revision, and withdrawal of proposals.
1815.209 Solicitation provisions and contract clauses.
1815.209–70 NASA solicitation provisions.

Subpart 1815.3—Source Selection

1815.300 Scope of subpart.
1815.300–70 Applicability of subpart.
1815.303 Responsibilities.
1815.304 Evaluation factors and significant subfactors.
1815.304–70 NASA evaluation factors.
1815.305 Proposal evaluation.
1815.305–70 Identification of unacceptable proposals.
1815.305–71 Evaluation of a single proposal.
1815.306 Exchanges with offerors after receipt of proposals.
1815.307 Proposal revisions.
1815.308 Source selection decision.
1815.370 NASA source evaluation boards.

Subpart 1815.4—Contract Pricing

1815.403 Obtaining cost or pricing data.
1815.403–1 Prohibition on obtaining cost or pricing data.
1815.403–170 Acquisitions with the Canadian Commercial Corporation (CCC).
1815.403–3 Requiring information other than cost or pricing data.
1815.403–4 Requiring cost or pricing data.
1815.404 Proposal analysis.
1815.404–2 Information to support proposal analysis.
1815.404–4 Profit.
1815.404–470 NASA structured approach for profit or fee objective.
1815.404–471 Payment of profit or fee under letter contracts.
1815.406 Documentation.
1815.406–1 Prenegotiation objectives.
1815.406–170 Content of the prenegotiation position memorandum.
1815.406–171 Installation reviews.
1815.406–172 Headquarters reviews.
1815.406–3 Documenting the negotiation.
1815.407 Special cost or pricing areas.
1815.407–2 Make-or-buy programs.
1815.408 Solicitation provisions and contract clauses.
1815.408–70 NASA solicitation provisions and contract clauses.

Subpart 1815.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

1815.504 Award to successful offeror.
1815.506 Postaward debriefing of offerors.
1815.506–70 Debriefing of offerors—Major System acquisitions.

Subpart 1815.6—Unsolicited Proposals

1815.602 Policy.
1815.604 Agency points of contact.
1815.606 Agency procedures.
1815.606–70 Relationship of unsolicited proposals to NRAs.
1815.609 Limited use of data.
1815.609–70 Limited use of proposals.
1815.670 Foreign proposals.

Subpart 1815.70—Ombudsman

1815.7001 NASA Ombudsman Program.
1815.7002 Synopses of solicitations and contracts.
1815.7003 Contract clause.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1815.2—Solicitation and Receipt of Proposals and Information

1815.201 Exchanges with industry before receipt of proposals. (NASA supplements paragraphs (c) and (f))

(c)(6)(A) Except for acquisitions described in 1815.300–70(b) contracting officers shall issue draft requests for proposals (DRFPs) for all competitive negotiated acquisitions expected to exceed $1,000,000 (including all options or later phases of the same project). DRFPs shall invite comments from potential offerors on all aspects of the draft solicitation, including the requirements, schedules, proposal instructions, and evaluation approaches. Potential offerors should be specifically requested to identify unnecessary or inefficient requirements. When considered appropriate, the statement of work or the specifications may be issued in advance of other solicitation sections.

(B) Contracting officers shall plan the acquisition schedule to include adequate time for issuance of the DRFP, potential offeror review and comment, and NASA evaluation and disposition of the comments.

(C) When issuing DRFPs, potential offerors should be advised that the DRFP is not a solicitation and NASA is not requesting proposals.

(D) Whenever feasible, contracting officers should include a summary of the disposition of significant DRFP comments with the final RFP.

(E) The procurement officer may waive the requirement for a DRFP upon written determination that the expected benefits will not be realized given the name of the supply or service being acquired. The DRFP shall not be waived because of poor or inadequate planning.

(f)(i) Upon release of the formal RFP, the contracting officer shall direct all personnel associated with the acquisition to refrain from communicating with prospective offerors and to refer all inquiries to the contracting officer or other authorized representative. This procedure is commonly known as a "blackout notice" and shall not be imposed before release of the RFP. The notice may be issued in any format (e.g., letter or electronic) appropriate to the complexity of the acquisition.

(ii) Blackout notices are not intended to terminate all communication with offerors. Contracting officers should continue to provide information as long as it does not create an unfair competitive advantage or reveal proprietary data.

1815.203 Requests for proposals.

1815.203–70 Installation reviews.

(a) Installations shall establish procedures to review all RFPs before release. When appropriate given the complexity of the acquisition or the number of offices involved in solicitation review, centers should consider use of a single review meeting called a Solicitation Review Board (SRB) as a streamlined alternative to the serial or sequential coordination of the solicitation with reviewing offices. The SRB is a meeting in which all offices having review and approval responsibilities discuss the solicitation and their concerns. Actions assigned and changes required by the SRB shall be documented.

(b) When source evaluation board (SEB) procedures are used in accordance with 1815.370, the SEB shall review and approve the RFP prior to issuance.

1815.203–71 Headquarters reviews.

For RFPs requiring Headquarters review and approval, the procurement officer shall submit ten copies of the RFP to the Associate Administrator for Procurement (Code HS). Any significant information relating to the RFP or the planned evaluation methodology omitted from the RFP itself should also be provided.

1815.204 Contract format.

1815.204–2 Part I—The Schedule. (NASA supplements paragraph (c))

(c) To the maximum extent practicable, requirements should be defined as performance based specifications/statements of work that focus on required outcomes or results, not methods of performance or processes.

1815.204–5 Part IV—Representations and Instructions. (NASA supplements paragraph (b))

(b) The information required in proposals should be kept to the minimum necessary for the source selection decision.

1815.204–70 Page limitations.

(a) Technical and contracting personnel will agree on page limitations for their respective portions of an RFP. Unless approved in writing by the procurement officer, the page limitation for the contracting portion of an RFP (all sections except Section C, Description/specifications/work statement) shall not exceed 150 pages, and the page limitation for the technical portion (Section C) shall not exceed 200 pages. Attachments to the RFP count as part of the section to which they relate. In determining page counts, a page is defined as one side of a sheet, 8½" x 11", with at least one inch margins on all sides, using not smaller than 12-point type. Foldouts count as an equivalent number of 8½" x 11" pages. The metric standard format most closely approximating the described standard 8½" x 11" size may also be used.

(b) Page limitations shall also be established for proposals submitted in competitive acquisitions. Accordingly, technical and contracting personnel will agree on page limitations for each portion of the proposal. Unless a different limitation is approved in writing by the procurement officer, the total initial proposal, excluding title pages, tables of content, and cost/price information, shall not exceed 500 pages using the page definition of 1815.204–70(a). Firm page limitations shall also be established for final proposal revisions, if requested. The appropriate page limitations for final proposal revisions should be determined by considering the complexity of the acquisition and the extent of any discussions. The same page limitations shall apply to all offerors. Pages submitted in excess of specified limitations will not be evaluated by the Government and will be returned to the offeror.

1815.207 Handling proposals and information.

1815.207–70 Release of proposal information.

(a) NASA personnel participating in any way in the evaluation may not reveal any information concerning the evaluation to anyone not also participating, and then only to the extent that the information is required in connection with the evaluation. When non-NASA personnel participate, they shall be instructed to observe these restrictions.

(b)(1) Except as provided in paragraph (b)(2) of this section, the procurement officer is the approval authority to disclose proposal information outside the Government. This authorization may be granted only after compliance with FAR 37.2 and 1837.204, except that the determination of unavailability of Government personnel required by FAR 37.2 is not required for disclosure of proposal information to JPL employees.

(2) Proposal information in the following classes of proposals may be disclosed with the prior written approval of a NASA official one level above the NASA program official responsible for overall conduct of the evaluation. The determination of unavailability of Government personnel required by FAR 37.2 is not required for disclosure in these instances.

(i) NASA Announcements of Opportunity proposals;

(ii) Unsolicited proposals;

(iii) NASA Research Announcement proposals;

(iv) SBIR and STTR proposals.

(3) If JPL personnel, in evaluating proposal information released to them by NASA, require assistance from non-JPL, non-Government evaluators, JPL must obtain written approval to release the information in accordance with paragraphs (b)(1) and (b)(2) of this section.

1815.207–71 Appointing non-Government evaluators as special Government employees.

(a) Except as provided in paragraph (c) of this section, non-Government evaluators, except employees of JPL, shall be appointed as special Government employees.

(b) Appointment as a special Government employee is a separate action from the approval required by paragraph 1815.207–70(b) and may be processed concurrently. Appointment as a special Government employee shall be made by:

(1) The NASA Headquarters personnel office when the release of proposal information is to be made by a NASA Headquarters office; or

(2) The installation personnel office when the release of proposal information is to be made by the installation.

(c) Non-Government evaluators need not be appointed as special Government employees when they evaluate:

(1) NASA Announcements of Opportunity proposals;

(2) Unsolicited proposals;

(3) NASA Research Announcement proposals; and

(4) SBIR and STTR proposals.

1815.208 Submission, modification, revision, and withdrawal of proposals. (NASA supplements paragraph (b))

(b) The FAR late proposal criteria do not apply to Announcements of Opportunity (see 1872.705–1 paragraph VII), NASA Research Announcements (see 1852.235–72), and Small Business Innovative Research (SBIR) Phase I and Phase II solicitations, and Small Business Technology Transfer (STTR) solicitations. For these solicitations, proposals or proposal modifications received from qualified firms after the latest date specified for receipt may be considered if a significant reduction in cost to the Government is probable or if there are significant technical advantages, as compared with proposals previously received. In such cases, the project office shall investigate the circumstances surrounding the late submission, evaluate its content, and submit written recommendations and findings to the selection official or a designee as to whether there is an advantage to the Government in considering it. The selection official or a designee shall determine whether to consider the late submission.

1815.209 Solicitation provisions and contract clauses. (NASA supplements paragraph (a))

(a) The contracting officer shall insert FAR 52.215–1 in all competitive negotiated solicitations.

1815.209–70 NASA solicitation provisions.

(a) The contracting officer shall insert the provision at 1852.215–77, Preproposal/Pre-bid Conference, in competitive requests for proposals and invitations for bids where the Government intends to conduct a prepoposal or pre-bid conference. Insert the appropriate specific information relating to the conference.

(b) The contracting officer shall insert the clause at 1852.214–71, Grouping for Aggregate Award, in solicitations when it is in the Government's best interest not to make award for less than specified quantities solicited for certain items or groupings of items. Insert the item numbers and/or descriptions applicable for the particular acquisition.

(c) The contracting office shall insert the clause at 1852.214–72, Full Quantities, in solicitations when award will be made only on the full quantities solicited.

(d) The contracting officer shall insert the provision at 1852.215–81, Proposal Page Limitations, in all competitive requests for proposals.

Subpart 1815.3—Source Selection

1815.300 Scope of subpart.

1815.300–70 Applicability of subpart.

(a)(1) Except as indicated in paragraph (b) of this section, NASA competitive negotiated acquisitions shall be conducted as follows:

(i) Acquisitions of $50 million or more—in accordance with FAR 15.3 and this subpart.

(ii) Other acquisitions—in accordance with FAR 15.3 and this subpart except section 1815.370.

(2) Estimated dollar values of acquisitions shall include the values of multiple awards, options, and later phases of the same project.

(b) FAR 15.3 and this subpart are not applicable to acquisitions conducted under the following procedures:

(1) MidRange (see part 1871).

(2) Announcements of Opportunity (see part 1872).

(3) NASA Research Announcements (see 1835.016–70).

(4) The Small Business Innovative Research (SBIR) program and the Small Business Technology Transfer (STTR) pilot program under the authority of the Small Business Act (15 U.S.C. 638).

(5) Architect and Engineering (A&E) services (see FAR 36.6 and 1836.6).

1815.303 Responsibilities. (NASA supplements paragraphs (a) and (b))

(a) The SSA shall be established at the lowest reasonable level for each acquisition. Notwithstanding the FAR designation of the contracting officer as SAA, the SSA for center acquisitions shall be established in accordance with center procedures. For acquisitions designated as Headquarters selections, the SSA will be identified as part of the Master Buy Plan process (see 1807.71).

(b)(i) The source selection authority (SSA) is the Agency official responsible for proper and efficient conduct of the source selection process and for making the final source selection decision. The SSA has the following responsibilities in addition to those listed in the FAR:

(A) Approve the evaluation factors, subfactors, and elements, the weight of the evaluation factors and subfactors, and any special standards of responsibility (see FAR 9.104–2) before release of the RFP, or delegate this authority to appropriate management personnel;

(B) Appoint the source selection team. However, when the Administrator will serve as the SSA, the Official-in-Charge of the cognizant Headquarters Program Office will appoint the team; and

(C) Provide the source selection team with appropriate guidance and special instructions to conduct the evaluation and selection procedures.

(b)(2) Approval authorities for Acquisition Plans and Acquisition Strategy Meetings are in accordance with 1807.103.

1815.304 Evaluation factors and significant subfactors.

1815.304–70 NASA evaluation factors.

(a) Typically, NASA establishes three evaluation factors: Mission Suitability, Cost/Price, and Past Performance. Evaluation factors may be further defined by subfactors. Although discouraged, subfactors may be further defined by elements. Evaluation subfactors and any elements should be structured to identify significant discriminators, or "key swingers"—the essential information required to support a source selection decision. Too many subfactors and elements undermine effective proposal evaluation. All evaluation subfactors and elements should be clearly defined to avoid overlap and redundancy.

(b) Mission Suitability factor. (1) This factor indicates the merit or excellence of the work to be performed or product to be delivered. It includes, as appropriate, both technical and management subfactors. Mission Suitability shall be numerically weighted and scored on a 1000-point scale.

(2) The Mission Suitability factor may identify evaluation subfactors to further define the content of the factor. Each Mission Suitability subfactor shall be weighted and scored. The adjectival rating percentages in 1815.305(a)(3)(A) shall be applied to the subfactor weight to determine the point score. The number of Mission Suitability subfactors is limited to four. The Mission Suitability evaluation subfactors and their weights shall be identified in the RFP.

(3) Although discouraged, elements that further define the content of each subfactor may be identified. Elements, if used, shall not be numerically weighted and scored. The total number of elements is limited to eight. Any Mission Suitability elements shall be identified in the RFP.

(4) For cost reimbursement acquisitions, the Mission Suitability evaluation shall also include the results of any cost realism analysis. The RFP shall notify offerors that the realism of proposed costs may significantly affect their Mission Suitability scores.

(c) Cost/Price factor. This factor evaluates the reasonableness and, if necessary, the cost realism, of proposed costs/prices. The Cost/Price factor is not numerically weighted or scored.

(d) Past Performance factor. (1) This factor indicates the relevant quantitative and qualitative aspects of each offeror's record of performing services or delivering products similar in size, content, and complexity to the requirements of the instant acquisition.

(2) The RFP shall instruct offerors to submit data (including data from relevant Federal, State, and local governments and private contracts) that can be used to evaluate their past performance. Typically, the RFP will require:

(i) A list of contracts similar in size, content, and complexity to the instant acquisition, showing each contract number, the type of contract, a brief description of the work, and a point of contact from the organization placing the contract. Normally, the requested contracts are limited to those received in the last three years. However, in acquisitions that require longer periods to demonstrate performance quality, such as hardware development, the time period should be tailored accordingly.

(ii) The identification and explanation of any cost overruns or underruns, completion delays, performance problems, and terminations.

(3) The contracting officer may start collecting past performance data before proposal receipt. One method for early evaluation of past performance is to request offerors to submit their past performance information in advance of the proposal due date. The RFP could also include a past performance questionnaire for offerors to send their previous customers with instructions to return the completed questionnaire to the Government. Failure of the offeror to submit its past performance information early or of the customers to submit the completed questionnaires shall not be a cause for rejection of the proposal nor shall it be reflected in the Government's evaluation of the offeror's past performance.

1815.305 Proposal evaluation. (NASA supplements paragraphs (a) and (b))

(a) Each proposal shall be evaluated to identify and document:

(i) Any deficiencies;

(ii) All strengths and weaknesses, classified as significant or insignificant;

(iii) The numerical score and/or adjectival rating of each Mission Suitability subfactors and for the Mission Suitability factor in total;

(iv) Cost realism, if appropriate;

(v) The Past Performance evaluation factor; and

(vi) Any technical, schedule, and cost risk. Risks may result from the offeror's technical approach, manufacturing plan, selection of materials, processes, equipment, etc., or as a result of the cost, schedule, and performance impacts associated with their approaches. Risk evaluations must consider the probability of success, the impact of failure, and the alternatives available to meet the requirements. Risk assessments shall be considered in determining Mission Suitability strengths, weaknesses, deficiencies, and numerical/adjectival ratings. Identified risk areas and the potential for cost impact shall be considered in the cost or price evaluation.

(a)(1) Cost or price evaluation.

(A) Cost or pricing data shall not be requested in competitive acquisitions. See 1815.403–1(b)(1) and 1815.403–3(b).

(B) When contracting on a basis other than firm-fixed-price, the contracting officer shall perform price and cost realism analyses to assess the reasonableness and realism of the proposed costs. A cost realism analysis will determine if the costs in an offeror's proposal are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the various elements of the offeror's technical proposal. The analysis should include:

(a) The probable cost to the Government of each proposal, including any recommended additions or reductions in materials, equipment, labor hours, direct rates, and indirect rates. The probable cost should reflect the best estimate of the cost of any contract which might result from that offeror's proposal.

(b) The differences in business methods, operating procedures, and practices as they affect cost.

(c) A level of confidence in the probable cost assessment for each proposal.

(C) The cost realism analysis may result in adjustments to Mission Suitability scores in accordance with the procedure described in 1815.305(a)(3)(B).

(a)(2) Past performance evaluation.

(A) The Past Performance evaluation assesses the contractor's performance under previously awarded contracts.

(B) The evaluation may be limited to specific areas of past performance considered most germane for the instant acquisition. It may include any or all of the items listed in FAR 42.1501, and/or any other aspects of past performance considered pertinent to the solicitation requirements or challenges. Regardless of the areas of past performance selected for evaluation, the same areas shall be evaluated for all offerors in that acquisition.

(C) Questionnaires and interviews may be used to solicit assessments of the offerors's performance, as either a prime or subcontractor, from the offeror's previous customers.

(D) All pertinent information, including customer assessments and any offeror rebuttals, will be made part of the source selection records and included in the evaluation.

(a)(3) Technical Evaluation.

(A) Mission Suitability subfactors and the total Mission Suitability factor shall be evaluated using the following adjectival ratings, definitions, and percentile ranges.

Adjectival rating	Definitions	Percentile range
Excellent	A comprehensive and thorough proposal of exceptional merit with one or more significant strengths. No deficiency or significant weakness exists.	91–100
Very Good	A proposal having no deficiency and which demonstrates over-all competence. One or more significant strengths have been found, and strengths outbalance any weaknesses that exist.	71–90
Good	A proposal having no deficiency and which shows a reasonably sound response. There may be strengths or weaknesses, or both. As a whole, weaknesses not off-set by strengths do not significantly detract from the offeror's response.	51–70
Fair	A proposal having no deficiency and which has one or more weaknesses. Weaknesses outbalance any strengths.	31–60

Adjectival rating	Definitions	Percentile range
Poor	A proposal that has one or more deficiencies or significant weaknesses that demonstrate a lack of overall competence or would require a major proposal revision to correct.	0–30

(B) When contracting on a cost reimbursement basis, the Mission Suitability evaluation shall reflect the results of any required cost realism analysis performed under the cost/price factor. A structured approach shall be used to adjust Mission Suitability scores based on the degree of assessed cost realism. An example of such an approach would:

(a) Establish a threshold at which Mission Suitability adjustments would start. The threshold should reflect the acquisition's estimating uncertainty (i.e., the higher the degree of estimating uncertainty, the higher the threshold);

(b) Use a graduated scale that proportionally adjusts a proposal's Mission Suitability score for its assessed cost realism;

(c) Affect a significant number of points to induce realistic pricing;

(d) Calculate a Mission Suitability point adjustment based on the percentage difference between proposed and probable cost as follows:

Services	Hardware development	Point adjustment
±5 percent	±30 percent	0
±6 to 10 percent	±31 to 40 percent	−50
±11 to 15 percent	±41 to 50 percent	−100
±16 to 20 percent	±51 to 60 percent	−150
±21 to 30 percent	±61 to 70 percent	−200
±more than 30 percent	±more than 70 percent	−300

(a)(4) The cost or price evaluation, specifically the cost realism analysis, often requires a technical evaluation of proposed costs. Contracting officers may provide technical evaluators a copy of the cost volume or relevant information from it to use in the analysis.

(b) The contracting officer is authorized to make the determination to reject all proposals received in response to a solicitation.

1815.305–70 Identification of unacceptable proposals.

(a) The contracting officer shall not complete the initial evaluation of any proposal when it is determined that the proposal is unacceptable because:

(1) It does not represent a reasonable initial effort to address the essential requirements of the RFP or clearly demonstrates that the offeror does not understand the requirements;

(2) In research and development acquisitions, a substantial design drawback is evident in the proposal, and sufficient correction or improvement to consider the proposal acceptable would require virtually an entirely new technical proposal; or

(3) It contains major technical or business deficiencies or omissions or out-of-line costs which discussions with the offeror could not reasonably be expected to cure.

(b) The contracting officer shall document the rationale for discontinuing the initial evaluation of a proposal in accordance with this section.

1815.305–71 Evaluation of a single proposal.

(a) If only one proposal is received in response to the solicitation, the contracting officer shall determine if the solicitation was flawed or unduly restrictive and determine if the single proposal is an acceptable proposal. Based on these findings, the SSA shall direct the contracting officer to:

(1) Award without discussions provided for contracting officer determines that adequate price competition exists (see FAR 15.403–1(c)(1)(ii));

(2) Award after negotiating an acceptable contract. (The requirement for submission of cost or pricing data shall be determined in accordance with FAR 15.403–1); or

(3) Reject the proposal and cancel the solicitation.

(b) The procedure in 1815.305–71(a) also applies when the number of proposals equals the number of awards contemplated or when only one acceptable proposal is received.

1815.306 Exchanges with offerors after receipt of proposals. (NASA supplements paragraphs (c), (d), and (e))

(c)(2) A total of no more than three proposals shall be a working goal in establishing the competitive range. Field installations may establish procedures for approval of competitive range determinations commensurate with the complexity or dollar value of an acquisition.

(d)(3)(A) The contracting officer shall advise an offeror if, during discussions, an offeror introduces a new deficiency or significant weakness. The offeror can be advised during the course of the discussions or as part of the request for final proposal revision.

(B) The contracting officer shall identify any cost/price elements that do not appear to be justified and encourage offerors to submit their most favorable and realistic cost/price proposals, but shall not discuss, disclose, or compare cost/price elements of any other offeror. The contracting officer shall question inadequate, conflicting, unrealistic, or unsupported cost information; differences between the offeror's proposal and most probable cost assessments; cost realism concerns; differences between audit findings and proposed costs; proposed rates that are too high/low; and labor mixes that do not appear responsive to the requirements. No agreement on cost/price elements or a "bottom line" is necessary.

(C) The contracting officer shall discuss contract terms and conditions so that a "model" contract can be sent to each offeror with the request for final proposal revisions. If the solicitation allows, any proposed technical performance capabilities above those specified in the RFP that have value to the Government and are considered proposal strengths should be discussed with the offeror and proposed for inclusion in that offeror's "model" contract. These items are not to be discussed with, or proposed to, other offerors. If the offeror declines to include these strengths in its "model" contract, the Government evaluators

should reconsider their characterization as strengths.

(e)(1) In no case shall the contacting officer relax or amend RFP requirements for any offeror without amending the RFP and permitting the other offerors an opportunity to propose against the relaxed requirements.

1815.307 Proposal revisions. (NASA supplements paragraph (b))

(b)(i) The request for final proposal revisions (FPRs) shall also:

(A) Identify any remaining deficiencies and significant weaknesses;

(B) Instruct offerors tc incorporate all changes to their offers resulting from discussions, and require clear traceability from initial proposals;

(C) Require offerors to complete and execute the "model" contract, which includes any special provisions or performance capabilities the offeror proposed above those specified in the RFP;

(D) Caution offerors against unsubstantiated changes to their proposals; and

(E) Establish a page limit for FPRs.

(ii) Approval of the Associate Administrator for Procurement (Code HS) is required to reopen discussions for acquisitions of $50 million or more. Approval of the procurement officer is required for all other acquisitions.

(iii) Proposals are rescored based on FPR evaluations. Scoring changes between initial and FPRs shall be clearly traceable.

1815.308 Source selection decision. (NASA paragraphs (1), (2) and (3))

(1) All significant evaluation findings shall be fully documented and considered in the source selection decision. A clear and logical audit trail shall be maintained for the rationale for ratings and scores, including a detailed account of the decisions leading to the selection. Selection is made on the basis of the evaluation criteria established in the RFP.

(2) Before aware, the SSA shall sign a source selection statement that clearly and succinctly justifies the selection. Source selection statements must describe: the acquisition; the evaluation procedures; the substance of the Mission Suitability evaluation; and the evaluation of the Cost/Price and Past Performance factors. The statement also addresses unacceptable proposals, the competitive range determination, late proposals, or any other considerations pertinent to the decision. The statement shall not reveal any confidential business information. Except for certain major system acquisition competitions (see 1815.506–70), source selection statements shall be releasable to competing offerors and the general public upon request. The statement shall be available to the Debriefing Official to use in postaward debriefings of unsuccessful offerors and shall be provided to debriefed offerors upon request.

(3) Once the selection decision is made, the contracting officer shall award the contract.

1815.370 NASA source evaluation boards.

(a) The source evaluation board (SEB) procedures shall be used for those acquisitions identified in 1815.300–700(a)(1)(i).

(b) *General.* The SEB assists the SSA by providing expert analyses of the offerors' proposals in relation to the evaluation factors, subfactors, and elements contained in the solicitation. The SEB will prepare and present its findings to the SSA, avoiding trade-off judgments among either the individual offerors or among the evaluation factors. The SEB will not make recommendations for selection to the SSA.

(c) *Designation.* (1) The SEB shall be comprised of competent individuals fully qualified to identify the strengths, weaknesses, and risks associated with proposals submitted in response to the solicitation. The SEB shall be appointed as early as possible in the acquisition process, but not later than acquisition plan or acquisition strategy meeting approval.

(2) While SEB participants are normally drawn from the cognizant installation, personnel from other NASA installations or other Government agencies may participate. When it is necessary to disclose the proposal (in whole or in part) outside the Government, approval shall be obtained in accordance with 1815.207–70.

(3) When Headquarters retains SSA authority, the Headquarters Office of Procurement (Code HS) must concur on the SEB appointments. Qualifications of voting members, including functional title, grade level, and related SEB experience, shall be provided.

(d) *Organization.* (1) The organization of an SEB is tailored to the requirements of the particular acquisition. This can range from the simplest situation, where the SEB conducts the evaluation and factfinding without the use of committees or panels/consultants (as described in paragraphs (d)(4) and (5) of this section) to a highly complex situation involving a major acquisition where two or more committees are formed and these, in turn, are assisted by special panels or consultants in particular areas. The number of committees or panels/consultants shall be kept to a minimum.

(2) The SEB Chairperson is the principal operating executive of the SEB. The Chairperson is expected to manage the team efficiently without compromising the validity of the findings provided to the SSA as the basis for a sound selection decision.

(3) The SEB Recorder functions as the principal administrative assistant to the SEB Chairperson and is principally responsible for logistical support and recordkeeping of SEB activities.

(4) An SEB committee functions as a factfinding arm of the SEB, usually in a broad grouping of related disciplines (e.g., technical or management). The committee evaluates in detail each proposal, or portion thereof, assigned by the SEB in accordance with the approved evaluation factors, subfactors, and elements, and summarizes its evaluation in a written report to the SEB. The committee will also respond to requirements assigned by the SEB, including further justification or reconsideration of its findings. Committee chairpersons shall manage the administrative and procedural matters of their committees.

(5) An SEB panel or consultant functions as a factfinding arm of the committee in a specialized area of the committee's responsibilities. Panels are established or consultants named when a particular area requires deeper analysis than the committee can provide.

(6) The total of all such evaluators (committees, panels, consultants, etc. excluding SEB voting members and ex officio members) shall be limited to a maximum of 20, unless approved in writing by the procurement officer.

(e) *Voting members.* (1) Voting members of the SEB shall include people who will have key assignments on the project to which the acquisition is directed. However, it is important that this should be tempered to ensure objectivity and to avoid an improper balance. It may even be appropriate to designate a management official from outside the project as SEB Chairperson.

(2) Non-government personnel shall not serve as voting members of an SEB.

(3) The SEB shall review the findings of committees, panels, or consultants and use its own collective judgment to develop the SEB evaluation findings reported to the SSA. All voting members of the SEB shall have equal status as rating officials.

(4) SEB membership shall be limited to a maximum of 7 voting individuals. Wherever feasible, an assignment to SEB membership as a voting member shall be on a full-time basis. When not

feasible, SEB membership shall take precedence over other duties.

(5) The following people shall be voting members of all SEBs:

(i) Chairperson.

(ii) A senior, key technical representative for the project.

(iii) An experienced procurement representative.

(iv) A senior Safety & Mission Assurance (S&MA) representative, as appropriate.

(v) Committee chairpersons (except where this imposes an undue workload).

(f) *Ex officio members.* (1) The number of nonvoting ex officio (advisory) members shall be kept as small as possible. Ex officio members should be selected for the experience and expertise they can provide to the SEB. Since their advisory role may require access to highly sensitive SEB material and findings, ex officio membership for persons other than those identified in paragraph (f)(3) of this section is discouraged.

(2) Nonvoting ex officio members may state their views and contribute to the discussions in SEB deliberations, but they may not participate in the actual rating process. However, the SEB recorder should be present during rating sessions.

(3) For field installation selections, the following shall be nonvoting ex officio members on all SEBs:

(i) Chairpersons of SEB committees, unless designated as voting members.

(ii) The procurement officer of the installation, unless designated a voting member.

(iii) The contracting officer responsible for the acquisition, unless designated a voting member.

(iv) The Chief Counsel and/or designee of the installation.

(v) The installation small business specialist.

(vi) The SEB recorder.

(g) *Evaluation.* (1) If committees are used, the SEB Chairperson shall send them the proposals or portions thereof to be evaluated, along with instructions regarding the expected function of each committee, and all data considered necessary or helpful.

(2) While oral reports may be given to the SEB, each committee shall submit a written report which should include the following:

(i) Copies of individual worksheets and supporting comments to the lowest level evaluated;

(ii) An evaluation sheet summarized for the committee as a whole; and

(iii) A statement for each proposal describing any strengths, deficiencies, or significant weaknesses which significantly affected the evaluation and stating any reservations or concerns, together with supporting rationale, which the committee or any of its members want to bring to the attention of the SEB.

(3) Clear traceability must exist at all levels of the SEB process. All reports submitted by committees or panels will be retained as part of the SEB records.

(4) Each voting SEB member shall thoroughly review each proposal and any committee reports and findings. The SEB shall rate or score the proposals for each evaluation factor and subfactor according to its own collective judgment. SEB minutes shall reflect this evaluation process.

(h) *SEB presentation.* (1) The SEB Chairperson shall brief the SSA on the results of the SEB deliberations to permit an informed and objective selection of the best source(s) for the particular acquisition.

(2) The presentation shall focus on the significant strengths, deficiencies, and significant weaknesses found in the proposals, the probable cost of each proposal, and any significant issues and problems identified by the SEB. This presentation must explain any applicable special standards of responsibility; evaluation factors, subfactors, and elements; the significant strengths and significant weaknesses of the offerors; the Government cost estimate, if applicable; the offerors' proposed cost/price; the probable cost; the proposed fee arrangements; and the final adjectival ratings and scores to the subfactor level.

(3) Attendance at the presentation is restricted to people involved in the selection process or who have a valid need to know. The designated individuals attending the SEB presentation(s) shall:

(i) Ensure that the solicitation and evaluation processes complied with all applicable agency policies and that the presentation accurately conveys the SEB's activities and findings;

(ii) Not change the established evaluation factors, subfactors, elements, weights, or scoring systems; or the substance of the SEB's findings. They may, however, advise the SEB to rectify procedural omissions, irregularities or inconsistencies, substantiate its findings, or revise the presentation.

(4) The SEB recorder will coordinate the formal presentation including arranging the time and place of the presentation, assuring proper attendance, and distributing presentation material.

(5) For Headquarters selections, the Headquarters Office of Procurement (Code HS) will coordinate the presentation, including approval of attendees. When the Administrator is the SSA, a preliminary presentation should be made to the center director and to the Official-in-Charge of the cognizant Headquarters Program Office.

(i) *Recommended SEB presentation format.* (1) *Identification of the acquisition.* Identifies the installation, the nature of the services or hardware to be acquired, some quantitative measure including the Government cost estimate for the acquisition, and the planned contractual arrangement. Avoids detailed objectives of the acquisition.

(2) *Background.* Identifies any earlier phases of a phased acquisition or, as in the case of continuing support services, identifies the incumbent and any consolidations or proposed changes from the existing structure.

(3) *Evaluation factors, subfactors, and elements.* Explains the evaluation factors, subfactors, and elements, and any special standards of responsibility. Lists the relative order of importance of the evaluation factors and the numerical weights of the Mission Suitability subfactors. Presents the adjectival scoring system used in the Mission Suitability and Past Performance evaluations.

(4) *Sources.* Indicates the number of offerors solicited and the number of offerors expressing interest (e.g., attendance at a preproposal conference). Identifies the offerors submitting proposals; indicating any small businesses, small disadvantaged businesses, and women-owned businesses.

(5) *Summary of findings.* Lists the initial and final Mission Suitability ratings and scores, the offerors' proposed cost/prices, and any assessment of the probable costs. Introduces any clear discriminator, problem, or issue which could affect the selection. Addresses any competitive range determination.

(6) *Significant strengths, deficiencies, and significant weaknesses of offerors.* Summarizes the SEB's findings, using the following guidelines:

(i) Present only the significant strengths, deficiencies, and significant weaknesses of individual offerors.

(ii) Directly relate the significant strengths, deficiencies, and significant weaknesses to the evaluation factors, subfactors, and elements.

(iii) Indicate the results and impact, if any, of discussions and FPRs on ratings and scores.

(7) *Final mission suitability ratings and scores.* Summarizes the evaluation subfactors and elements, the maximum points achievable, and the scores of the offerors in the competitive range.

(8) *Final cost/price evaluation.* Summarizes proposed cost/prices and any probable costs associated with each offeror including proposed fee arrangements. Presents the data as accurately as possible, showing SEB adjustments to achieve comparability. Identifies the SEB's confidence in the probable costs of the individual offerors, noting the reasons for low or high confidence.

(9) *Past performance.* Reflects the summary conclusions, supported by specific case data.

(10) *Special interest.* Includes only information of special interest to the SSA that has not been discussed elsewhere, e.g., procedural errors or other matters that could affect the selection decision.

(j) A source selection statement shall be prepared in accordance with 1815.308. For installation selections, the installation Chief Counsel or designee will prepare the source selection statement. For Headquarters selections, the Office of General Counsel or designee will prepare the statement.

Subpart 1815.4—Contract Pricing

1815.403 Obtaining cost or pricing data.

1815.403–1 Prohibition on obtaining cost or pricing data. (NASA supplements paragraphs (b) and (c))

(b)(1) The adequate price competition exception is applicable to both fixed-price and cost-reimbursement type acquisitions. Contracting officers shall assume that all competitive acquisitions qualify for this exception.

(c)(4) Waivers of the requirement for submission of cost or pricing data shall be prepared in accordance with FAR 1.704. A copy of each waiver shall be sent to the Headquarters Office of Procurement (Code HK).

1815.403–170 Acquisitions with the Canadian Commercial Corporation (CCC).

NASA has waived the requirement for the submission of cost or pricing data when contracting with the CCC. This waiver applies through March 31, 1999. The CCC will provide assurance of the fairness and reasonableness of the proposed prices, and will also provide for follow-up audit activity to ensure that excess profits are found and refunded to NASA. However, contracting officers shall ensure that the appropriate level of information other than cost or pricing data is submitted to permit any required Government cost/price analysis.

1815.403–3 Requiring information other than cost or pricing data. (NASA supplements paragraph (b))

(b) As indicated in 1815.403–1(b)(1), the adequate price competition exception applies to all competitive acquisitions. For other than firm-fixed-price competitions, only the minimum information other than cost or pricing data necessary to ensure price reasonableness and assess cost realism should be requested. For firm-fixed-price acquisitions, the contracting officer shall not request any cost information, unless proposed prices appear unreasonable or unrealistically low given the offeror's proposed approach and there are concerns that the contractor may default.

1815.403–4 Requiring cost or pricing data. (NASA supplements paragraph (b))

(b)(2) If a certificate of current cost or pricing data is made applicable as of a date other than the date of price agreement, the agreed date should generally be within two weeks of the date of that agreement.

1815.404 Proposal analysis.

1815.404–2 Information to support proposal analysis. (NASA supplements paragraph (a))

(a)(1)(A) A field pricing report consists of a technical report and an audit report by the cognizant contract audit activity. Contracting officers should request a technical report from the ACO only if NASA resources are not available.

(B) When the required participation of the ACO or auditor involves merely a verification of information, contracting officers should obtain this verification from the cognizant office by telephone rather than formal request of field pricing support.

(C) When the cost proposal is for a product of a follow-on nature, contracting officers shall ensure that the following items, at a minimum are considered: actuals incurred under the previous contract, learning experience, technical and production analysis, and subcontract proposal analysis. This information may be obtained through NASA resources or the cognizant DCMC ACO or DCAA.

(D) Requests for field pricing assistance may be made on NASA Form 1434, Letter of Request for Pricing-Audit-Technical Evaluation Services.

1815.404–4 Profit. (NASA supplements paragraph (b))

(b)(1)(i) The NASA structured approach for determining profit or fee objectives, described in 1815.404–470, shall be used to determine profit or fee objectives for conducting negotiations in those acquisitions that require cost analysis.

(ii) The use of the NASA structured approach for profit or fee is not required for:

(a) Architect-engineer contracts;

(b) Management contracts for operation and/or maintenance of Government facilities;

(c) Construction contracts;

(d) Contracts primarily requiring delivery of material supplied by subcontractors;

(e) Termination settlements;

(f) Cost-plus-award-fee contracts (however, contracting officers may find it advantageous to perform a structured profit/fee analysis as an aid in arriving at an appropriate fee arrangement); and

(g) Contracts having unusual pricing situations when the procurement officer determines in writing that the structured approach is unsuitable.

1815.404–470 NASA structured approach for profit or fee objective.

(a) General. (1) The NASA structured approach for determining profit or fee objectives is a system of assigning weights to cost elements and other factors to calculate the objective. Contracting officers shall use NASA Form 634 to develop the profit or fee objective and shall use the weight ranges listed after each category and factor on the form after considering the factors in this subsection. The rationale supporting the assigned weights shall be documented in the PPM in accordance with 1815.406–170(d)(3).

(2)(i) The structured approach was designed for determining profit or fee objectives for commercial organizations. However, the structured approach shall be used as a basis for arriving at fee objectives for nonprofit organizations (FAR subpart 31.7), excluding educational institutions (FAR subpart 31.3), in accordance with paragraph (a)(2)(ii) of this section. (It is NASA policy not to pay profit or fee on contracts with educational institutions.)

(ii) For contracts with nonprofit organizations under which profits or fees are involved, an adjustment of up to 3 percent shall be subtracted from the total profit/fee objective. In developing this adjustment, it will be necessary to consider the following factors:

(A) Tax position benefits;

(B) Granting of financing through letters of credit;

(C) Facility requirements of the nonprofit organization; and

(D) Other pertinent factors that may work to either the advantage or disadvantage of the contractor in its position as a nonprofit organization.

(b) Contractor effort. (1) This factor takes into account what resources are necessary and what the contractor must do to meet the contract performance requirements. The suggested cost categories under this factor are for reference purposes only. The format of individual proposals will vary, but these broad categories provide a sample structure for the evaluation of all categories of cost. Elements of cost shall be separately listed under the appropriate category and assigned a weight from the category range.

(2) Regardless of the categories of cost defined for a specific acquisition, neither the cost of facilities nor the amount calculated for the cost of money for facilities capital shall be included as part of the cost base in column 1.(a) in the computation of profit or fee.

(3) Evaluation of this factor requires analyzing the cost content of the proposed contract as follows:

(i) Material acquisition (subcontracted items, purchased parts, and other material).

(A) Consider the managerial and technical efforts necessary for the prime contractor to select subcontractors and administer subcontracts, including efforts to introduce and maintain competition. These evaluations shall be performed for purchases of raw materials or basic commodities; purchases of processed material, including all types of components of standard or near-standard characteristics; and purchases of pieces, assemblies, subassemblies, special tooling, and other products special to the end item. In performing the evaluation, also consider whether the contractor's purchasing program makes a substantial contribution to the performance of a contract through the use of subcontracting programs involving many sources, new complex components and instrumentation, incomplete specifications, and close surveillance by the prime contractor.

(B) Recognized costs proposed as direct material costs, such as scrap charges, shall be treated as material for profit/fee evaluation. If intracompany transfers are accepted at price in accordance with FAR 31.205–26(e), they shall be evaluated as a single element under the material acquisition category. For other intracompany transfers, the constituent elements of cost shall be identified and weighted under the appropriate cost category, i.e., material, labor, and overhead.

(ii) Direct labor (engineering, service, manufacturing, and other labor). (A) Analysis of the various items of cost should include evaluation of the comparative quality and level of the engineering talents, service contract labor, manufacturing skills, and experience to be employed. In evaluating engineering labor for the purpose of assigning profit/fee weights, consideration should be given to the amount of notable scientific talent or unusual or scarce engineering talent needed, in contrast to journeyman engineering effort or supporting personnel.

(B) Evaluate service contract labor in a like manner by assigning higher weights to engineering, professional, or highly technical skills and lower weights to semiprofessional or other skills required for contract performance.

(C) Similarly, the variety of engineering, manufacturing and other types of labor skills required and the contractor's manpower resources for meeting these requirements should be considered. For purposes of evaluation, subtypes of labor (for example, quality control, and receiving and inspection) proposed separately from engineering, service, or manufacturing labor should be included in the most appropriate labor type. However, the same evaluation considerations as outlined in this section will be applied.

(iii) Overhead and general management (G&A). (A) Analysis of overhead and G&A includes the evaluation of the makeup of these expenses, how much they contribute to contract performance, and the degree of substantiation provided for rates proposed in future years.

(B) Contracting officers should also consider the historical accuracy of the contractor's proposed overheads as well as the ability to control overhead pool expenses.

(C) The contracting officer, in an evaluation of the overhead rate of a contractor using a single indirect cost rate, should break out the applicable sections of the composite rate which could be classified as engineering overhead, manufacturing overhead, other overhead pools, and G&A expenses, and apply the appropriate weight.

(iv) Other costs. Include all other direct costs associated with contractor performance under this item, for example, travel and relocation, direct support, and consultants. Analysis of these items of cost should include their nature and how much they contribute to contract performance.

(c) Other factors.

(1) Cost risk. The degree of risk assumed by the contractor should influence the amount of profit or fee a contractor is entitled to anticipate. For example, if a portion of the risk has been shifted to the Government through cost-reimbursement or price redetermination provisions, unusual contingency provisions, or other risk reducing measures, the amount of profit or fee should be less than for arrangements under which the contractor assumes all the risk. This factor is one of the most important in arriving at prenegotiation profit/fee objectives.

(i) Other risks on the part of the contractor, such as loss of reputation, losing a commercial market, or losing potential profit/fee in other fields, shall not be considered in this factor. Similarly, any risk on the part of the contracting office, such as the risk of not acquiring an effective space vehicle, is not within the scope of this factor.

(ii) The degree of cost responsibility assumed by the contractor is related to the share of total contract cost risk assumed by the contractor through the selection of contract type. The weight for risk by contract type would usually fall within the 0 to 3 percent range for cost-reimbursement contracts and 3 to 7 percent range for fixed-price contracts.

(A) Within the ranges set forth in paragraph (c)(1)(ii) of this subsection, a cost-plus-fixed-fee contract normally would not justify a reward for risk in excess of 0 percent, unless the contract contains cost risk features such as ceilings on overheads, etc. In such cases, up to 0.5 percent may be justified. Cost-plus-incentive-fee contracts fill the remaining portion of the range, with weightings directly related to such factors as confidence in target cost, share ratio of fees, etc.

(B) The range for fixed-price type contracts is wide enough to accommodate the various types of fixed-price arrangements. Weighting should be indicative of the price risk assumed and the end item required, with only firm-fixed-price contracts with requirements for prototypes or hardware reaching the top end of the range.

(iii) The cost risk arising from contract type is not the only form of cost risk to consider.

(A) The Contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a particular contract type. This consideration should be a part of the contracting officer's overall evaluation in selecting a weight to apply for cost risk. It may be determined, for instance, that the prime contractor has effectively transferred real cost risk to a subcontractor, and the contract cost risk weight may, as a result, be below the range that would otherwise apply for the contract type proposed. The contract cost risk weight should not be lowered, however, merely on the basis that a

substantial portion of the contract costs represents subcontracts unless those subcontract costs represent a substantial transfer of the contractor's risk.

(B) In making a contract cost risk evaluation in an acquisition that involves definitization of a letter contract, unpriced change orders, or unpriced orders under BOAs, consideration should be given to the effect on total contract cost risk as a result of having partial performance before definitization. Under some circumstances it may be reasoned that the total amount of cost risk has been effectively reduced. Under other circumstances it may be apparent that the contractor's cost risk is substantially unchanged. To be equitable, determination of a profit/fee weight for application to the total of all recognized costs, both incurred and yet to be expended, must be made with consideration of all attendant circumstances and should not be based solely on the portion of costs incurred, or percentage of work completed, before definitization.

(2) Investment. NASA encourages its contractors to perform their contracts with a minimum of financial, facilities, or other assistance from the Government. As such, it is the purpose of this factor to encourage the contractor to acquire and use its own resources to the maximum extent possible. Evaluation of this factor should include an analysis of the contractor's facilities and the frequency of payments.

(i) To evaluate how facilities contribute to the profit/fee objective requires knowledge of the level of facilities utilization needed for contract performance, the source and financing of the required facilities, and the overall cost effectiveness of the facilities offered. Contractors furnishing their own facilities that significantly contribute to lower total contract costs should be provided additional profit/fee. On the other hand, contractors that rely on the Government to provide or finance needed facilities should receive a correspondingly lower profit/fee. Cases between the examples in this paragraph should be evaluated on their merits, with either a positive or negative adjustment, as appropriate, in the profit/fee objective. However, where a highly facilitized contractor is to perform a contract that does not benefit from this facilitization, or when a contractor's use of its facilities has a minimum cost impact on the contract, profit/fee need not be adjusted.

(ii) In analyzing payments, consider the frequency of payments by the Government to the contractor and unusual payments. The key to this weighting is proper consideration of the impact the contract will have on the contractor's cash flow. Generally, negative consideration should be given for payments more frequent than monthly, with maximum reduction being given as the contractor's working capital approaches zero. Positive consideration should be given for payments less frequent than monthly.

(3) Performance. The contractor's past and present performance should be evaluated in such areas as product quality, meeting performance schedules, efficiency in cost control (including the need for and reasonableness of costs incurred), accuracy and reliability of previous cost estimates, degree of cooperation by the contractor (both business and technical), timely processing of changes and compliance with other contractual provisions.

(4) Subcontract program management. Subcontract program management includes evaluation of the contractor's commitment to its competition program and its past and present performance in competition in subcontracting. If a contractor has consistently achieved excellent results in these areas in comparison with other contractors in similar circumstances, such performance merits a proportionately greater opportunity for profit or fee. Conversely, a poor record in this regard should result in a lower profit or fee.

(5) Federal socioeconomic programs. In addition to rewarding contractors for unusual initiative in supporting Government socioeconomic programs, failure or unwillingness on the part of the contractor to support these programs should be viewed as evidence of poor performance for the purpose of establishing this profit/fee objective factor.

(6) Special situations. (i) Occasionally, unusual contract pricing arrangements are made with the contractor under which it agrees to accept a lower profit or fee for changes or modifications within a prescribed dollar value. In such circumstances, the contractor should receive favorable consideration in developing the profit/fee objective.

(ii) This factor need not be limited to situations that increase profit/fee levels. A negative consideration may be appropriate when the contractor is expected to obtain spin-off benefits as a direct result of the contract, for example, products with commercial application.

(d) Facilities capital cost of money. (1) When facilities capital cost of money is included as an item of cost in the contractor's proposal, it shall not be included in the cost base for calculating profit/fee. In addition, a reduction in the profit/fee objective shall be made in the amount equal to the facilities capital cost of money allowed in accordance with FAR 31.205–10(a)(2).

(2) CAS 417, cost of money as an element of the cost of capital assets under construction, should not appear in contract proposals. These costs are included in the initial value of a facility for purposes of calculating depreciation under CAS 414.

1815.404–471 Payment of profit or fee under letter contracts.

NASA's policy is to pay profit or fee only on definitized contracts.

1815.406 Documentation.

1815.406–1 Prenegotiation objectives. (NASA supplements paragraph (b))

(b)(i) Before conducting negotiations requiring installation or Headquarters review, contracting officers or their representatives shall prepare a prenegotiation position memorandum setting forth the technical, business, contractual, pricing, and other aspects to be negotiated.

(ii) A prenegotiation position memorandum is not required for contracts awarded under the competitive negotiated procedures of FAR 15.3 and 1815.3.

1815.406–170 Content of the prenegotiation position memorandum.

The prenegotiation position memorandum (PPM) should fully explain the contractor and Government positions. Since the PPM will ultimately become the basis for negotiation, it should be structured to track to the price negotiation memorandum (see FAR 15.406–3 and 1815.406–3). In addition to the information described in FAR 15.406–1 and, as appropriate, 15.406–3(a), the PPM should address the following subjects, as applicable, in the order presented:

(a) Introduction. Include a description of the acquisition and a history of prior acquisitions for the same or similar items. Address the extent of competition and its results. Identify the contractor and place of performance (if not evident from the description of the acquisition). Document compliance with law, regulations and policy, including JOFOC, synopsis, EEO compliance, and current status of contractor systems (see FAR 15.406–3(a)(4)). In addition, the negotiation schedule should be addressed and the Government negotiation team members identified by name and position.

(b) Type of contract contemplated. Explain the type of contract

contemplated and the reasons for its suitability.

(c) Special features and requirements. In this area, discuss any special features (and related cost impact) of the acquisition, including such items as—

(1) Letter contract or precontract costs authorized and incurred;

(2) Results of preaward survey;

(3) Contract option requirements;

(4) Government property to be furnished;

(5) Contractor/Government investment in facilities and equipment (and any modernization to be provided by the contractor/Government); and

(6) Any deviations, special clauses, or unusual conditions anticipated, for example, unusual financing, warranties, EPA clauses and when approvals were obtained, if required.

(d) Cost analysis. For the basic requirement, and any option, include—

(1) A parallel tabulation, by element of cost and profit/fee, of the contractor's proposal and the Government's negotiation objective. The negotiation objective represents the fair and reasonable price the Government is willing to pay for the supplies/services. For each element of cost, compare the contractor's proposal and the Government position, explain the differences and how the Government position was developed, including the estimating assumptions and projection techniques employed, and how the positions differ in approach. Include a discussion of excessive wages found (if applicable) and their planned resolution. Explain how historical costs, including costs incurred under a letter contract (if applicable), were used in developing the negotiation objective.

(2) Significant differences between the field pricing report (including any audit reports) and the negotiation objectives and/or contractor's proposal shall be highlighted and explained. For each proposed subcontract meeting the requirement of FAR 15.404–3(c), there shall be a discussion of the price and, when appropriate, cost analyses performed by the contracting officer, including the negotiation objective for each such subcontract. The discussion of each major subcontract shall include the type of subcontract, the degree of competition achieved by the prime contractor, the price and, when appropriate, cost analyses performed on the subcontractor's proposal by the prime contractor, any unusual or special pricing or finance arrangements, and the current status of subcontract negotiations.

(3) The rationale for the Government's profit/fee objectives and, if appropriate, a completed copy of the NASA Form 634, Structured Approach—Profit/Fee Objective, and DD Form 1861, Contract Facilities Capital Cost of Money, should be included. For incentive and award fee contracts, describe the planned arrangement in terms of share lines, ceilings, and cost risk.

(e) Negotiation approval sought. The PPM represents the Government's realistic assessment of the fair and reasonable price for the supplies and services to be acquired. If negotiations subsequently demonstrate that a higher dollar amount (or significant term or condition) is reasonable, the contracting officer shall document the rationale for such a change and request approval to amend the PPM from the original approval authority.

1815.406–171 Installation reviews.

Each contracting activity shall establish procedures to review all prenegotiation position memoranda. The scope of coverage, exact procedures to be followed, levels of management review, and contract file documentation requirements should be directly related to the dollar value and complexity of the acquisition. The primary purpose of these reviews is to ensure that the negotiator, or negotiation team, is thoroughly prepared to enter into negotiations with a well-conceived, realistic, and fair plan.

1815.406–172 Headquarters reviews.

(a) When a prenegotiation position has been selected for Headquarters review and approval, the contracting activity shall submit to the Office of Procurement (Code HS) one copy each of the prenegotiation position memorandum, the contractor's proposal, the Government technical evaluations, and all pricing reports (including any audit reports).

(b) The required information described in paragraph (a) of this section shall be furnished to Headquarters as soon as practicable and sufficiently in advance of the planned commencement of negotiations to allow a reasonable period of time for Headquarters review. Electronic submittal is acceptable.

1815.406–3 Documenting the negotiation. (NASA supplements paragraph (a))

(a)(i) The price negotiation memorandum (PNM) serves as a detailed summary of: the technical, business, contractual, pricing (including price reasonableness), and other elements of the contract negotiated; and the methodology and rationale used in arriving at the final negotiated agreement.

(ii) A PNM is not required for a contract awarded under competitive negotiated procedures. However, the information required by FAR 15.406–3 shall be reflected in the evaluation and selection documentation to the extent applicable.

(iii) When the PNM is a "stand-alone" document, it shall contain the information required by the FAR and NFS for both PPMs and PNMs. However, when a PPM has been prepared under 1815.406–1, the subsequent PNM need only provide any information required by FAR 15.406–3 that was not provided in the PPM, as well as any changes in the status of factors affecting cost elements (e.g., use of different rates, hours, or subcontractors; wage rate determinations; or the current status of the contractor's systems).

1815.407 Special cost or pricing areas.

1815.407–2 Make-or-buy programs. (NASA supplements paragraph (e))

(e)(1) Make-or-buy programs should not include items or work efforts estimated to cost less than $500,000.

1815.408 Solicitation provisions and contract clauses.

1815.408–70 NASA solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 1852.215–76, Make-or-Buy Program Requirements, in solicitations requiring make-or-buy programs as provided in FAR 15.407–2(c). This provision shall be used in conjunction with the clause at FAR 52.215–9, Changes or Additions to Make-or-Buy Program. The contracting officer may add additional paragraphs identifying any other information required in order to evaluate the program.

(b) The contracting officer shall insert the clause at 1852.215–79, Price Adjustment for "Make-or-Buy" Changes, in contracts that include FAR 52.215–9 with its Alternate I or II. Insert in the appropriate columns the items that will be subject to a reduction in the contract value.

Subpart 1815.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

1815.504 Award to successful offeror.

The reference to notice of award in FAR 15.504 on negotiated acquisitions is a generic one. It relates only to the formal establishment of a contractual document obligating both the Government and the offeror. The notice is effected by the transmittal of a fully approved and executed definitive contract document, such as the award portion of SF 33, SF 26, SF 1449, or SF

1447, or a letter contract when a definitized contract instrument is not available but the urgency of the requirement necessitates immediate performance. In this latter instance, the procedures in 1816.603 for approval and issuance of letter contracts shall be followed.

1815.506 Postaward debriefing of offerors.

1815.506–70 Debriefing of offerors—Major System acquisitions.

(a) When an acquisition is conducted in accordance with the Major System acquisition procedures in part 1834 and multiple offerors are selected, the debriefing will be limited in such a manner that it does not prematurely disclose innovative concepts, designs, and approaches of the successful offerors that would result in a transfusion of ideas.

(b) When Phase B awards are made for alternative system design concepts, the source selection statements shall not be released to competing offerors or the general public until the release of the source selection statement for Phase C/D without the approval of the Associate Administrator for Procurement (Code HS).

Subpart 1815.6—Unsolicited Proposals

1815.602 Policy. (NASA paragraphs (1) and (2))

(1) An unsolicited proposal may result in the award of a contract, grant, cooperative agreement, or other agreement. If a grant or cooperative agreement is used, the NASA Grant and Cooperative Agreement Handbook (NPG 5800.1) applies.

(2) Renewal proposals (i.e., those for the extension or augmentation of current contracts) are subject to the same FAR and NFS regulations, including the requirements of the Competition in Contracting Act, as are proposals for new contracts.

1815.604 Agency points of contact. (NASA supplements paragraph (a))

(a) Information titled "Guidance for the Preparation and Submission of Unsolicited Proposals" is available on the Internet at http://procure.msfc.nasa.gov/nashdbk.html. A deviation is required for use of any modified or summarized version of the Internet information or for alternate means of general dissemination of unsolicited proposal information.

1815.606 Agency procedures. (NASA supplements paragraphs (a) and (b))

(a) NASA will not accept for formal evaluation unsolicited proposals initially submitted to another agency or to the Jet Propulsion Laboratory (JPL) without the offeror's express consent.

(b)(i) NASA Headquarters and each NASA field installation shall designate a point of contact for receiving and coordinating the handling and evaluation of unsolicited proposals.

(ii) Each installation shall establish procedures for handling proposals initially received by other offices within the installation. Misdirected proposals shall be forwarded by the point of contact to the proper installation. Points of contact are also responsible for providing guidance to potential offerors regarding the appropriate NASA officials to contact for general mission-related inquiries or other preproposal discussions.

(iii) Points of contact shall keep records of unsolicited proposals received and shall provide prompt status information to requesters. These records shall include, at a minimum, the number of unsolicited proposals received, funded, and rejected during the fiscal year; the identity of the offerors; and the office to which each was referred. The numbers shall be broken out by source (large business, small business, university, or nonprofit institution).

1815.606–70 Relationship of unsolicited proposals to NRAs.

An unsolicited proposal for a new effort or a renewal, identified by an evaluating office as being within the scope of an open NRA, shall be evaluated as a response to that NRA (see 1835.016–70), provided that the evaluating office can either:

(a) State that the proposal is not at a competitive disadvantage, or

(b) Give the offeror an opportunity to amend the unsolicited proposal to ensure compliance with the applicable NRA proposal preparation instructions. If these conditions cannot be met, the proposal must be evaluated separately.

1815.609 Limited use of data.

1815.609–70 Limited use of proposals.

Unsolicited proposals shall be evaluated outside the Government only to the extent authorized by, and in accordance with, the procedures prescribed in, 1815.207–70.

1815.670 Foreign proposals.

Unsolicited proposals from foreign sources are subject to NMI 1362.1, Initiation and Development of International Cooperation in Space and Aeronautical Programs.

Subpart 1815.70—Ombudsman

1815.7001 NASA Ombudsman Program.

NASA's implementation of an ombudsman program is in NPG 5101.33, Procurement Guidance.

1815.7002 Synopses of solicitations and contracts.

In all synopses announcing competitive acquisitions, the contracting officer shall indicate that the clause at 1852.215–84, Ombudsman, is applicable. This may be accomplished by referencing the clause number and identifying the installation Ombudsman.

1815.7003 Contract clause.

The contracting officer shall insert a clause substantially the same as the one at 1852.215–84, Ombudsman, in all solicitations (including draft solicitations) and contracts.

PART 1816—TYPES OF CONTRACTS

8. In section 1816.402–270, paragraph (e)(1) is revised to read as follows:

1816.402–270 NASA technical performance incentives.

* * * * *

(e) * * *

(1) For a CPFF contract, the sum of the maximum positive performance incentive and fixed fee shall not exceed the limitations in FAR 15.404–4(c)(4)(i).

* * * * *

PART 1834—MAJOR SYSTEM ACQUISITION

1834.7003–1 [Amended]

9. In section 1834.7003–1, paragraph (c) is amended by adding "and 1804.570–2," after the reference "FAR 5.205,".

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Part 1852 is amended as set forth below:

1852.215–73, 1852.215–74, 1852.215–75 [Removed]

11. Sections 1852.215–73, 1852.215–74 and 1852.215–75 are removed.

1852.215–77 [Amended]

12. In section 1852.215–77, the prescription "1815.407–70(d)" is revised to read "1815.209–70(a)".

1842.215–78 [Amended]

13. In section 1852.215–78, the prescription "11815.708–70(a)" is revised to read "1815.408–70(a)", the

provision date "(December 1988)" is revised to read February 1998, and in the introductory text to the provision, the reference "FAR 15.705" is revised to read "FAR 15.407–2".

1852.215–79 [Amended]

14. In section 1852.215–79, the prescription "1815.708–70(b)" is revised to read "1815.407–70(b)".

1852.215–81 [Amended]

15. In section 1852.215–81, the introductory text, provision date, and in the provision, the first sentence of paragraph (b), and paragraph (d) are revised to read as follows:

1852.215–81 Proposal page limitations.

As prescribed in 1815.209–70(d), insert the following provision:

Proposal Page Limitations

February 1998.

* * * * *

(b) A page is defined as one side of a sheet, 8½" x 11", with at least one inch margins on all sides, using not smaller than 12 point type. * * *

* * * * *

(d) If final proposal revisions are requested, separate page limitations will be specified in the Government's request for that submission.

* * * * *

1852.215–82 [Removed]

16. Section 1852.215–82 is removed.

1852.243–70 [Amended]

17. In section 1852.243–70, the clause date "(MAR 1997)" is revised to read (Insert month and year of **Federal Register** publication), and in paragraph (d)(1) to the clause, the reference "FAR 15.804–6" is revised to read "FAR 15.403–5" and the reference "FAR 15.804–2" is revised to read "FAR 15.403–4".

PART 1853—FORMS

1853.215–2 [Amended]

18. Section 1853.215–2 is redesignated as section 1853.215–70.

1853.215–70 [Amended]

19. In paragraph (a) to the newly designated section 1853.215–70, the reference "1815.970–1(a)" is revised to read "1815.404–470".

1853.232 [Amended]

20. Section 1853.232 is redesignated as section 1853.232–70.

1853.245 [Amended]

21. Section 1853.245 is redesignated as section 1853.245–70.

1853.249 [Amended]

22. Section 1853.249 is redesignated as section 1853.249–70.

PART 1871—MIDRANGE PROCUREMENT PROCEDURES

1871.103 [Amended]

23. In the first sentence to paragraph (b) of section 1871.103, the phrase "greater than the simplified acquisition threshold (SAT) (FAR Part 1813) and" is removed.

1871.104 [Amended]

24. In section 1871.104, paragraph (a) is removed, and paragraphs (b) through (e) are redesignated as paragraphs (a) through (d).

25. In the newly designated paragraph (c), the reference "FAR 15.601" is revised to read "FAR 15.306".

1871.105 [Amended]

26. In section 1871.105, paragraph (a) is revised to read as follows:

1871.105 Policy.

(a) Under MidRange procedures, pricing requirements shall be determined in accordance with FAR 15.402 and 15.403.

* * * * *

Subpart 1871.3—[Removed]

27. Subpart 1871.3 is removed.

1871.401–3 [Amended]

28. In section 1871.401–3, paragraph (a)(3) is added to read as follows:

1871.401–3 Competitive negotiated procurement not using qualitative criteria.

(a) * * *

(3) See FAR 15.304, FAR 15.305(a)(2), and 1815.305(a)(2) regarding the evaluation of past performance.

* * * * *

1871.401–4 [Amended]

29. In section 1871.401–4, paragraph (a)(4) is added to read as follows:

1871.401–4 Competitive negotiations using qualitative criteria (Best Value Selection).

(a) * * *

(4) See FAR 15.304, FAR 15.305(a)(2), and 1815.305(a)(2) regarding the evaluation of past performance.

* * * * *

1871.401–5 [Amended]

30. In section 1871.401–5, paragraph (b)(2) is revised to read as follows:

1871.401–5 Noncompetitive negotiations.

* * * * *

(b) * * *

(2) The buying team shall request pricing information in accordance with FAR 15.402 and 15.403.

* * * * *

1871.403 [Removed]

31. Section 1871.403 is removed.

1871.604–2 [Amended]

32. In section 1871.604–2, the third sentence to paragraph (a) and paragraph (d) are revised to read as follows:

1871.604–2 Determination of "Finalists".

(a) * * * Finalists will include the most highly rated offerors in accordance with FAR 15.306(c)(1) and 1815.306(c)(2). * * *

* * * * *

(d) Offerors determined not to be finalists or not selected for contract award will be electronically notified.

PART 1872—ACQUISITIONS OF INVESTIGATIONS

1872.302 [Amended]

33. In section 1872.302, paragraph (b)(1) is revised to read as follows:

1872.302 Preparatory effort.

* * * * *

(b) * * *

(1) Synopsize the AO in the Commerce Business Daily and on the NAIS prior to release.

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1872.403–2 [Amended]

34. In paragraph (c)(2) to section 1872.403–2, the phrase "and the conditions set forth in 1815.413–2 Alternate II" is removed.

35. Amend the internal references throughout the NFS as indicated in the following table.

NFS location	Remove	Insert
1803.104–5(a)(i)	1815.612–70	1815.370
1814.201–670(d)	1815.407–70(d)	1815.209–70(a)
1816.405–270(b)(2)(ii)	FAR 15–9 and 1815.9	FAR 15.404–4, 1815.404–4 and 1815.404–470

NFS location	Remove	Insert
1817.503(a)(2)	FAR 15.405	FAR 15.201
1832.409–170(d)	1815.9	1815.404–470
1835.016–70(d)(1)	1815.508–70 and 1815.509–70	FAR 15.608, FAR 15.609, and 1815.609–70
1835.016–70(d)(2)	1815.412–70	1815.208
1835.016–70(d)(3)	FAR 15.413–2(f) and 1815.413–2	1815.207
1835.016–70(d)(3)	FAR 15.601	FAR 15.306
1835.016–70(d)(5)	FAR 15.610(e)(1)	FAR 15.306(e)
1835.016–70(d)(7)	FAR 15.1004	FAR 15.5
1844.201–2(c)(2)	FAR 15.806–2(a)(1) or (2)	FAR 15.404–3(c)
1853.242–70(g)	1815.805–5(a)(1)(E)	1815.404–2(a)(1)(D)
1871.105(f)	FAR 15.406	FAR 15.204
1871.401–3(a)(2)	FAR 52.215–16, Alternate II	FAR 52.215–1
1871.401–3(b)(4)	FAR 15.610	FAR 15.306
1871.401–4(a)(2)	FAR 52.215–16, Alternate II	FAR 52.215–1
1871.402(d)	15.402(i)	FAR 15.203(d)
1871.505 introductory text	FAR 15.1001	FAR 15.503
1871.604–3(a)	FAR 15.610	FAR 15.306
1872.505 introductory text	FAR 15.1004	FAR 15.5
1872.702(b)(1)	1815.412	1815.208
1872.705–1 paragraph VI	FAR 15.8	FAR 15.403–5

[FR Doc. 98–4853 Filed 2–26–98; 8:45 am]
BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Decision on Designation of Critical Habitat for the Gulf Sturgeon

AGENCIES: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce; and Fish and Wildlife Service, Interior.

ACTION: Notice of decision on critical habitat designation.

SUMMARY: The National Marine Fisheries Service (NMFS) and the Fish and Wildlife Service (FWS), collectively the Services, announce a decision on designation of critical habitat for the Gulf sturgeon (*Acipenser oxyrinchus desotoi*), a federally listed threatened species pursuant to the Endangered Species Act of 1973, as amended. Based on lack of benefit to the species, the Services have determined that critical habitat designation is not prudent. This constitutes the Services' not prudent finding for the designation of critical habitat for the Gulf sturgeon.

DATES: The finding announced in this notice was made on February 24, 1998.

ADDRESSES: Information, comments, or questions should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216; or the Regional Director, U.S. Department of Commerce, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, Florida 33702. The administrative record supporting this decision is available for public inspection, by appointment, during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT: Dr. Michael M. Bentzien, Assistant Field Supervisor, FWS, see **ADDRESSES** section above or telephone 904/232-2580, extension 106; or Ms. Colleen Coogan, NMFS, see **ADDRESSES** section above or telephone 813/570–5312.

SUPPLEMENTARY INFORMATION:

Background

The Gulf sturgeon (*Acipenser oxyrinchus* (=*oxyrhynchus*) *desotoi*), also known as the Gulf of Mexico sturgeon, is a nearly cylindrical fish with an extended snout, ventral mouth, chin barbels, and with the upper lobe of the tail longer than the lower. Adults range from 1.8 to 2.4 meters (m) (6 to 8 feet (ft)) in length, with adult females larger than males. It is a subspecies of Atlantic sturgeon, *Acipenser oxyrinchus* (=*oxyrhynchus*), and is distinguished from *Acipenser oxyrinchus oxyrinchus*, the East Coast subspecies, by its longer head, pectoral fins, and spleen. The Gulf sturgeon is restricted to the Gulf of Mexico and its drainages, primarily from the Mississippi River to the Suwannee River, within the States of Louisiana, Mississippi, Alabama, and Florida. Sporadic occurrences are known as far west as Texas (Rio Grande), and marine waters in Florida south to Florida Bay (Wooley and Crateau 1985, Reynolds 1993). An anadromous species, the Gulf sturgeon migrates between fresh and salt water.

The Services' involvement with the Gulf sturgeon began with monitoring and other studies of the Apalachicola River population by the FWS Panama City, Florida, Fisheries Assistance Office in 1979. The fish was included as a category 2 species in the FWS December 30, 1982 (47 FR 58454) and September 18, 1985 (50 FR 37958) vertebrate review notices and in the January 6, 1989 (54 FR 554) animal notice of review. Category 2 designation was given at that time to species for which listing as threatened or endangered was possibly appropriate, but for which additional biological information was needed to support a proposed rule. In 1980, the FWS Jacksonville, Florida, Office contracted a status survey report on the Gulf sturgeon (Hollowell 1980). The report concluded that the fish had been reduced to a small population due to overfishing and habitat loss. In 1988, the Panama City Office completed a report (Barkuloo 1988) on the conservation status of the Gulf sturgeon, recommending that the subspecies be listed as a threatened species pursuant to the Act. The Services jointly proposed the Gulf sturgeon for listing as a threatened species on May 2, 1990 (55 FR 18357). In that proposed rule, the Service maintained that designation of

critical habitat was not determinable due to the sturgeon's broad range and the lack of knowledge of specific areas utilized by the subspecies. The final rule for the Gulf sturgeon was published on September 30, 1991 (56 FR 49653). It included special rules promulgated under Section 4(d) of the Act for a threatened species, allowing taking of Gulf sturgeon in accordance with applicable State laws, for educational and scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes. The final rule found that critical habitat designation "may be prudent but is not now determinable." Further comments on the critical habitat issue were solicited from all interested parties following listing. A final decision on designation of critical habitat was to have been made by May 2, 1992.

On August 11, 1994, the Sierra Club Legal Defense Fund, Inc. (Fund), on behalf of the Orleans Audubon Society and Florida Wildlife Federation, gave written notice of their intent to file suit against the Department of the Interior for failure to designate critical habitat for the Gulf sturgeon within the statutory time limits established under the Act. The Fund filed suit (Orleans Audubon Society v. Babbitt, Civ. No. 94–3510 (E.D. La)) following a combined meeting and teleconference with the Service on October 11, 1994.

On August 23, 1995, the Services published a notice of decision (60 FR 43721) on critical habitat designation for the Gulf sturgeon. The Services determined that critical habitat designation was not prudent based on the lack of additional conservation benefit to the species.

On November 23, 1995, the above mentioned plaintiffs again gave notice of their intent to file suit against the Departments of the Interior and Commerce for failing to designate critical habitat for the Gulf sturgeon. On January 31, 1996, the Court denied both the Services' motion to dismiss the suit and the plaintiffs' motion to find the Services in contempt. On October 28, 1997, the Court rejected the plaintiffs' request for a Court order requiring the Services to designate critical habitat. The plaintiffs' motion for summary judgment was granted, with relief restricted to a remand of the matter to the agencies for further consideration based on the best scientific information available.

Critical Habitat Definition and Requirements

Critical habitat is defined in section 3(5)(A) of the Act as "(i) the specific areas within the geographic area occupied by a species * * * on which are found those physical or biological features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed * * * upon determination by the Secretary that such areas are essential for the conservation of the species." The term "conservation," as defined in Section 3(3) of the Act, means "* * * to use and the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary," i.e., the species is recovered and can be removed from the list of endangered and threatened species. Section 4(a)(3) of the Act requires that critical habitat be designated at the time any species is listed as an endangered or threatened species, to the extent prudent and determinable. If a final regulation listing a species finds that critical habitat is not determinable, a critical habitat designation must be made within one additional year (within two years of the date on which the species was proposed for listing).

Section 4(b)(2) of the Act requires the Services to consider the economic impact of designating any particular area as critical habitat. The Services' regulations for listing endangered and threatened species and designating critical habitat (50 CFR 424.19) require that, in analyzing such impacts, the Services identify any significant activities that would either affect an area considered for designation as critical habitat or be likely to be affected by the designation, and after proposing the designation for such an area, consider the probable economic and other impacts of the designation upon proposed or ongoing activities. An area may be excluded from critical habitat if it is determined that the economic benefits of such exclusion outweigh the conservation benefits of including the area in critical habitat. Exclusions may not be made if the failure to designate them as critical habitat would result in the extinction of the species concerned. This standard approximates the jeopardy standard of the Act, but may be less stringent because it requires a determination that the exclusion "* * * will result in the extinction * * *" rather than more probabilistic criterion "* * * likely to jeopardize the continued existence * * *" of section 7(a)(2).

If no exclusions are made to critical habitat, it should (presuming adequate biological and distributional information is available) include all areas necessary to recover the species. If areas are excluded from critical habitat for economic reasons, final critical habitat designation could range from an area just under that required for recovery to an area barely sufficient to prevent the species' extinction, and insufficient for its recovery. In summary, while the Act defines "conservation" to mean recovery of the species, section 4(b)(2) does not require the Services to designate critical habitat sufficient for the recovery of the species if economic benefits of excluding certain areas outweigh the conservation benefit to the species from their inclusion.

In accordance with the definition of critical habitat provided by section 3(5)(A)(i) of the Act, the Services' regulations (50 CFR 424.12) require the Services to consider the principal biological or physical features that are essential to the conservation of the species. General requirements of species include, but are not limited to:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The regulations further require the Services to focus on principal biological or physical constituent elements within the defined area that are essential to the conservation of the species. Primary constituent elements may include, but are not limited to, roost sites, nesting grounds, spawning sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinators, geological formation, vegetation type, tide, and specific soil types.

The regulations state that a designation of critical habitat is not prudent if either of the two following situations exist:

(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or

(2) Such designation of critical habitat would not be beneficial to the species.

Potential benefits of critical habitat designation derive from section 7(a)(2) of the Act, which requires Federal

agencies, in consultation with the Service, to ensure that their actions are not likely to jeopardize the continued existence of listed species or to result in the destruction or adverse modification of critical habitat of such species. Implementing regulations (50 CFR 402.14) require each Federal agency to review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat. If a determination is made that a Federal action may adversely affect a listed species a formal consultation is required. All consultations result in a finding of whether or not the proposed action is likely to jeopardize the continued existence of the species, and, if critical habitat is designated, whether the action is likely to destroy or adversely modify critical habitat.

Critical habitat, by definition, applies only to Federal agency actions. 50 CFR 402.02 defines "jeopardize the continued existence of" as meaning to engage in an action that would reasonably be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species. "Destruction or adverse modification" is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical. Thus, in the section 7(a)(2) consultation process, the jeopardy analysis focuses on potential effects on the species' populations, whereas the destruction or adverse modification analysis focuses on habitat value, specifically on those constituent elements identified in the critical habitat listings in 50 CFR 17.95, 17.96 (FWS), or 226 (NMFS). However, either a jeopardy or a destruction or adverse modification biological opinion requires the Services to find an appreciable effect on both the species' survival and recovery.

Federal actions satisfying the standard for adverse modification are nearly always found to also jeopardize the species concerned, and the existence of critical habitat designation does not materially affect the outcome of consultation. Biological opinions which conclude that a Federal agency action is likely to adversely modify critical habitat but is not likely to jeopardize the species for which it is designated are extremely rare historically; none have been issued in recent years. Such situations might involve a Federal action in critical habitat outside of current range of the species, where the action would not reduce the current reproduction, distribution, or numbers of the species, but would appreciably reduce the value of critical habitat for both survival and recovery. For some highly endangered species whose survival and recovery in its current range was unlikely, and which depended on the expansion of its range and numbers into currently unoccupied habitat, the designation of unoccupied critical habitat may in certain rare instances provide additional protection to that afforded by the jeopardy standard. Since threatened species such as the Gulf sturgeon are, by definition, not currently at risk of extinction, but are rather anticipated to become so in the foreseeable future, unoccupied critical habitat would not be immediately required for their survival.

It should be noted also that regardless of critical habitat designation, Federal agencies are required by section 7(a)(1) of the Act to utilize their authorities in furtherance of the Act's purposes by carrying out conservation (i.e., recovery) activities for listed species. For no jeopardy (or no destruction or adverse modification) biological opinions, the Services may provide discretionary conservation recommendations to the consulting Federal agency to assist them in this responsibility. Recovery plans also provide guidance on specific tasks that Federal and other agencies can carry out to assist in the recovery of listed species.

Ecology of the Gulf Sturgeon

The Gulf sturgeon is an anadromous species inhabiting the Gulf of Mexico and Gulf Coast rivers from Louisiana to Florida. Adults and subadults spend eight to nine months each year in rivers where they spawn and three to four of the coolest months in estuaries or Gulf waters.

Migration

In Florida, both adults and subadults begin moving from the Gulf of Mexico into the Suwannee and Apalachicola rivers in early spring until early May (Carr 1983, Wooley and Crateau 1985, Odenkirk 1989, Clugston *et al.* 1995). River water temperatures at that time range from 16.0 °C to 23.0 °C (60.8 °F to 75.0 °F). Large females apparently prefer migrating upstream in shallow water areas, whereas deep water areas are preferred during downstream or post spawning migrations. This preference does not apply to males (Huff 1975). Downstream migration in the Apalachicola River begins in late September when water temperatures reach about 23.0 °C (75.0 °F), and extends into November (Wooley and Crateau 1985). During the fall migration from fresh to salt water, Gulf sturgeon in the Apalachicola River enter the Brothers River, a tributary located about 19.2 kilometers (km) (12.0 miles (mi)) above the Gulf of Mexico. It is believed that the Brothers River is used as a staging area for Gulf sturgeon to osmoregulate (adjust to changed salinity) prior to entering the Gulf of Mexico. The sturgeon occupy a microhabitat 8.0 to 18.0 m (26.2 to 59.0 ft) in depth with a sand and clay substrate covered with Asiatic clams (*Corbicula fluminea*) and detritus (Wooley and Crateau 1985). The fish remain in the Brothers River for an average of twelve days (Wooley and Crateau 1985, Odenkirk 1989). Very little is known about the estuarine and neritic (shallow coastal waters) habitat use of migrating Gulf sturgeon. Parauka (U.S. Fish and Wildlife Service 1997) found that subadult Gulf sturgeon immigrating from the Choctawhatchee River into the estuarine waters of Choctawhatchee Bay moved generally along the shoreline. Water depths ranged from 2.0 to 7.0 m (6.5 to 23.0 ft) with a sand and mud substrate.

Freshwater Habitat

Foster and Clugston (1997) found that telemetered Gulf sturgeon in the Suwannee River were frequently located close to springs throughout the warmest period, but none were located within a spring or the thermal plume emanating from a spring. The substrate of much of the Suwannee River is sand and limerock, especially in those areas near springs and spring runs. Wooley and Crateau (1985) reported that Gulf sturgeon in the Apalachicola River utilized the area immediately downstream from Jim Woodruff Lock and Dam (JWLD) from May through September. The area occupied consisted of the tailrace and spillway basin of JWLD and a large scour hole below the lock. The area consisted of sand and gravel substrate with water depths ranging from 6.0 to 12.0 m (19.7 to 39.4 ft). Telemetry studies conducted on Gulf sturgeon in the Choctawhatchee River found that they did not distribute themselves uniformly throughout the river and did not occupy the deepest and coolest water available (Potak *et al.* 1995). Fish remained within two primary summer holding areas staying outside the main channel where water velocities were less than the maximum available. Most fish were in water depths of 1.5 to 3.0 m (4.9 to 9.9 ft) and substrates were silt or clay. Morrow *et*

al. (in press) reported that the lower part of the West Middle River (lower Pearl River system) was an important summer habitat for juvenile and sub-adult Gulf sturgeon. The habitat is characterized with water depths ranging from 9.0 to 19.0 m (29.5 to 62.3 ft) with sluggish flows and a hard substrate of sand and gravel.

Estuarine Habitat

Mason and Clugston (1993) noted that the estuarine seagrass beds with mud and sand substrates appear to be important winter habitats for Gulf sturgeon where most of the feeding is thought to occur. Clugston *et al.* (1995) reported that the young Gulf sturgeon in the Suwannee River, weighing between 0.3 and 2.5 kilograms (kg) (0.7 to 5.5 pounds (lb)), remained in the vicinity of the river mouth and estuary during the winter and spring. Fox and Hightower (1997) captured adult Gulf sturgeon in the early spring in Choctawhatchee Bay prior to their migration into the Choctawhatchee River. Fish were collected in stationary gill nets set 455.0 m (1,500 ft) from shore at depths of 2.0 to 4.0 m (6.5 to 13.0 ft). The bay at that site is about 5.5 km (3.4 mi) wide and with depths up to 6.7 m (22.0 ft). Parauka (U.S. Fish and Wildlife Service 1997) collected 6 subadult Gulf sturgeon in the Choctawhatchee River, equipped them with acoustic tags, and monitored their movement in the estuary during the winter. Five of six fish remained in the estuary the entire winter occupying nearshore habitats, 1.2 to 4.6 m (4 to 15 ft) in depth with a sand and mud substrate.

Food Habits

Mason and Clugston (1993) reported that in the spring, immigrating subadult and adult Gulf sturgeon collected from the mouth of the Suwannee River contained gammarid, haustoriid, and other maphipods, polychaete and oligochaete annelids, lancelets, and brachiopods. However, once in fresh water, these Gulf sturgeon did not eat as evidenced by the presence of only a greenish-tinged mucus in their guts from June through October. The stomach contents of a 79.5 kg (175 lb) Gulf sturgeon collected in Choctawhatchee Bay during the winter contained adult ghost and commensal shrimp (R. Head, Gulf Coast Research Laboratory, personal communication 1997). Clugston *et al.* (1995) concluded that Gulf sturgeon appear to gain weight only during the winter and spring while in marine or estuarine waters and lose weight during the eight to nine month period while in fresh water. Carr (1983) reported that marked Gulf sturgeon from the Suwannee River gained up to 30 percent of body weight in one year but showed little or no growth when recaptured during the same season. Wooley and Crateau (1985) noted that Gulf sturgeon 80.0 to 114.0 centimeters (cm) (31.5 to 44.9 inches (in)) long that were captured and recaptured in the Apalachicola River during the summer period exhibited weight losses of 4 to 15 percent or 0.5 to 2.3 kg (1.1 to 5.1 lb).

River-Specific Fidelity

The results of tagging studies suggest that Gulf sturgeon exhibit a high degree of river fidelity. From 1981 to 1993, 4,100 fish were tagged in the Apalachicola and Suwannee rivers, with 860 fish recaptured in the river of initial collection and only 8 sub-adults exhibiting inter-river movement (Wooley and Crateau 1985, U.S. Fish and Wildlife Service and Gulf States Marine Fisheries Commission 1995, Carr *et al.* 1996, Foster and Clugston 1997). Foster and Clugston (1997) noted that telemetered Gulf sturgeon in the Suwannee River returned to the same areas as the previous summer suggesting that chemical cuing may influence distribution. Wooley and Crateau (1985) indicate that the results of tagging Gulf sturgeon in the Apalachicola River would suggest the fish are genetically or behaviorally imprinted to the chemosensory environment of their home rivers. Stabile *et al.* (1996) analyzed Gulf sturgeon populations from eight drainages along the Gulf of Mexico for genetic diversity. He noted significant differences among Gulf sturgeon stocks and suggested that they displayed region-specific affinities and may exhibit river-specific fidelity. Stabile *et al.* (1996) identified five regional or river-specific stocks (from west to east)—(1) Lake Ponchartrain and Pearl River, (2) Pascagoula River, (3) Escambia and Yellow rivers, (4) Choctawhatchee River, and (5) Apalachicola, Ochlockonee, and Suwannee rivers.

Reproduction

Gulf sturgeon are long-lived, reaching at least 42 years in age (Huff 1975). Age at sexual maturity for females ranges from 8 to 17 years, and for males from 7 to 21 years (Huff 1975). Fertilized Gulf sturgeon eggs were collected at 2 upriver locations on the Suwannee River (Marchent and Shutters 1996) and 6 upriver sites on the Pea and Choctawhatchee rivers (Fox 1997). Habitat at the egg collection sites consisted of limestone bluffs and outcroppings, cobble, limestone gravel and sand with water depths ranging from 1.4 to 7.9 m (4.5 to 26.0 ft). Water temperatures ranged from 18.3 °C to 22.0 °C (65.0 °F to 71.6 °F). Chapman *et al.* (1993) reported that three mature Gulf sturgeon had 458,080; 274,680; and 475,000 eggs and were estimated to have an average fecundity of 20,652 eggs/kg (9,366 eggs/lb).

Population

Population estimates for Gulf sturgeon in the Apalachicola River have been conducted from 1984 to 1993. During that period, estimates of fish exceeding 45.0 cm (17.7 in) in length ranged from 96 to 131 fish with a mean of 115 (F. Parauka, FWS, personal communication; U.S. Fish and Wildlife Service and Gulf States Marine Fisheries Commission 1995). In the Suwannee River, a mark/recapture study implemented from 1986 to 1994 estimated a population of 1,504 to 3,066 for Gulf sturgeon weighing between 3.0 and 81.0 kg (6.6 to 178.2 lb) (Carr *et al.* 1996). Morrow *et al.* (in press) estimated that the summer population of Gulf sturgeon in the West Middle Pearl River, 459 to 1143 mm (18 to 46 in) in length, ranged from 67 to 124 fish.

Habitat Needs

The Gulf sturgeon requires nearshore (bays and estuaries) and offshore (Gulf of Mexico) feeding areas, and freshwater rivers for spawning and resting habitat. Specific habitat needs of the Gulf sturgeon, in the context of the constituent elements discussed above, include:

1. Migration corridors which support subspecies' distribution throughout its primary range. Primary range for the Gulf sturgeon in freshwater extends from the Mississippi River to the Suwannee River in Florida (Wooley and Crateau 1985). A migration corridor is a Gulf Coast river drainage within the primary range through which sturgeon pass between marine and estuarine environments to freshwater spawning and resting sites. Records of Gulf sturgeon through sightings, incidental captures, and tagging studies have been made over the last ten years from most major drainages and a number of smaller river systems (Reynolds 1993, U.S. Fish and Wildlife Service and Gulf States Marine Fisheries Commission 1995). Tagging studies in the Apalachicola and Suwannee rivers demonstrated the high probability of recapturing fish in the same river where they were first tagged (Wooley and Crateau 1985, Foster and Clugston 1997). A small number of sub-adult fish exhibited inter-river movement; however, the data obtained from capture and recapture studies suggest that Gulf sturgeon have a high degree of river

fidelity. Stabile *et al.* (1996) noted significant genetic differences among Gulf sturgeon stocks and suggested that they displayed region-specific affinities and may exhibit river-specific fidelity which further defines an essential migratory corridor. The significance of this study to critical habitat is discussed in the section on proposed designation.

2. Silt-free, consolidated bottom substrate composed of rock, gravel or hard sand. This material can be the predominant benthic substrate in some drainages, while in others it can be more patchily distributed (U.S. Fish and Wildlife Service and Gulf States Marine Fisheries Commission 1995). This feature is often associated with springs, geologic outcroppings, and deep holes. Adult, sub-adult, and juvenile Gulf sturgeon frequent such sites and these areas are thought to be important for spawning and resting (Wooley and Crateau 1985, Odenkirk 1989, Carr *et al.* 1996, Marchent and Shutters 1996, Foster and Clugston 1997). Telemetry and tagging studies further suggest that individuals return to the same areas of the river inhabited the previous summer (Foster 1993, Carr *et al.* 1996, Foster and Clugston 1997, U.S. Fish and Wildlife Service 1989, 1990, 1991, 1992, 1993).

3. Adequate water quantity and quality for normal behavior in both fresh and brackish environments. Normal behavior includes, but is not limited to, migration of adult, subadult, and juvenile sturgeon; local movement and feeding by larval and juvenile stages; and reproduction. Natural surface and groundwater discharges influence a river's characteristic fluctuations in volume, depth, and velocity (Torak *et al.* 1993, Leitman *et al.* 1993). Migrating sturgeon and planktonic larvae are adapted to conditions in their natal rivers which affect distance traveled and survival. These demographics may be influenced by changes in the water quantity parameters (U.S. Fish and Wildlife Service and Gulf States Marine Fisheries Commission 1995).

Temperature, sediment load, and chemical constituents are important water quality features. Seasonal changes in water temperature trigger sturgeon migration into and out of rivers (Wooley and Crateau 1985). Cooler waters associated with deep holes, springs and spring runs appear to be important for spawning (Marchant and Shutters 1996, Smith and Clugston 1997) and also as refugia from ambient water temperatures during summer and fall (Carr *et al.* 1996). Sturgeon access to these springs, spring runs, and deep holes may depend upon the maintenance of stream bed elevation through the natural removal and deposition of sediment (U.S. Army Corps of Engineers 1986). Changes in flow dynamics resulting from surface and groundwater withdrawals for drinking and irrigation (Torak *et al.* 1993, Leitman *et al.* 1993), and excessive sedimentation resulting from riverbed elevation changes due to dams and other navigation activities (U.S. Army Corps of Engineers 1986) have impacted these sites.

Undesirable chemicals contaminating river water may enter sturgeon through contact with water, sediment, or food sources. Bateman and Brim (1994, 1995) found heavy metals, other inorganics, organochlorine compounds, and polycyclic aromatic hydrocarbons in juvenile and adult Gulf sturgeon from Florida. A variety of toxic effects to fish from these contaminants have been demonstrated (Mayer and Mehrle 1977, Armstrong 1979, Johnson and Finley 1980, White *et al.* 1983, Fox 1992).

Historical and Current Threats to the Species

Identified threats for the Gulf sturgeon include historic overexploitation, incidental take, habitat loss and degradation, contaminants, and potential hybridization with a non-native species, the white sturgeon (*Acipenser transmontanus*), used in aquaculture.

The Gulf sturgeon historically was considered important because its eggs and smoked flesh were valued foods, its oil was used in paints, and the swim bladder yielded isinglass, a gelatin used in food products and glues (Smith and Clugston 1994). The resulting demand produced an intense and directed fishing industry. Available landing records indicate that the principal commercial, recreational, and subsistence fisheries were in west Florida, especially in the Apalachicola and Suwannee rivers (Burgess 1963, Huff 1975, Swift *et al.* 1977, Futch 1984, Barkuloo 1988). Directed commercial harvest of Gulf sturgeon in other Gulf states was minor or incidental. Most commercial fishing occurred from the late 19th century until the 1970's, with peak catches in Florida recorded around 1900. Harvest thereafter declined swiftly and averaged around three percent of peak until the fishery collapsed by the late 1970's. From 1972 to 1990, State regulatory agencies in Alabama, Mississippi, Florida, and Louisiana enacted laws prohibiting any take of Gulf sturgeon within their jurisdictional waters.

The historic decline of Gulf sturgeon populations (Barkuloo 1988) begun by over-exploitation was later exacerbated by habitat destruction, degradation, and inaccessibility. Water control structures, high- and low-head dams, and sills within a number of river drainages throughout its range prevent or severely restrict sturgeon access to historic migration routes and spawning areas (Boschung 1976, Murawski and Pacheco 1977, Wooley and Crateau 1985, McDowell 1988). Dredging, spoil disposal, and other navigation maintenance may have adversely affected Gulf sturgeon habitats through lowering of river elevations, elimination of deep holes, and altering of rock substrates (Carr 1983, Wooley and Crateau 1985). Cool waters emanating from springs are believed to be important thermal refugia for sturgeon and other anadromous fish during warm weather (see below).

S. Carr (pers. comm.) believed that cool water habitats which appear to serve as thermal refugia during summer months may be impacted by reduction in groundwater flows. Leitman *et al.* (1993) indicated that the major spring-fed flow component of Georgia's Flint River, a major flow contributor to the Apalachicola River during low-flow periods, has been reduced since the early 1970's from groundwater and surface water irrigation withdrawals. More specifically, increased groundwater withdrawal for irrigation in southwest Georgia may result in a 30 percent reduction of discharge to streams (Hayes *et al.* 1983). These actions, in conjunction with drought, may have caused the observed reduction and cessation of water flow from several springs and spring runs in the upper Apalachicola River. Reduction of cool water flows or their complete loss during critical summer periods could subject sturgeon to increased environmental stress.

Agricultural and industrial contaminants also may be affecting fish populations. DDT and its DDD/DDE metabolites were detected in Gulf sturgeon samples collected from Florida Gulf river drainages between 1985 to 1991 (Bateman and Brim 1994). A second organochlorine insecticide, toxaphene, was detected in fish from the Apalachicola River during the same study. General organochlorine effects on fish include reproductive failure, reduced survival of young, and physiological alterations affecting their ability to withstand stress (White *et al.* 1983). DDT compounds are also known to be endocrine disrupters (Fox 1992). Toxaphene has been shown to impair reproduction, reduce growth in adults and juveniles, and alter collagen formation in fry, resulting in "broken back syndrome" (Mayer and Mehrle

1977). Bateman and Brim (1994, 1995) also detected heavy metals including arsenic, cadmium, lead, mercury, and polycyclic aromatic hydrocarbons, the latter at levels which could adversely affect development and survival of eggs and larval and juvenile fish.

Accidental or intentional introductions of cultured stocks and non-endemic species, such as the white sturgeon (*Acipenser transmontanus*), could also potentially harm wild Gulf sturgeon stocks. In addition to these anthropogenic impacts, the life history of Gulf sturgeon complicates recovery efforts. Breeding populations take years to establish due to their advanced age at sexual maturity. The subspecies appears to be a home stream spawner, with little if any natural repopulation by migrants from other rivers.

Application of Critical Habitat Designation to Threats

Take of Gulf sturgeon is prohibited throughout its range by section 9 of the Act and by State laws. Critical habitat designation would provide no benefit to the application of these prohibitions.

Habitat loss and degradation and contaminant threats are directly related to physical and biological features essential to the conservation of the Gulf sturgeon. Additional protection from critical habitat designation would apply in the case of Federal actions that were likely to destroy or adversely modify critical habitat yet not jeopardize the continued existence of the species. The Services believe this scenario is highly unlikely. The U.S. Army Corps of Engineers' navigation maintenance activities, dam and water control construction and operations, and permitting program have the potential to affect all of the constituent elements discussed above—(1) migration corridors could be affected by dams and possibly reduced water flow, (2) bottom substrate could be affected by dredging or deposition of dredged materials, and (3) water quality could be affected by increased turbidity or changed temperature, and water quantity could be reduced. In order to trigger an adverse modification biological opinion without jeopardy, such effects would have to appreciably reduce the value of designated critical habitat for both the survival and recovery of the Gulf sturgeon without reducing its reproduction, distribution, or numbers. Most of the Corps' activities will take place in occupied habitat and a significant reduction in habitat value within occupied habitat of the Gulf sturgeon will inevitably reduce its reproduction, distribution, or numbers, thus providing the protection of the jeopardy prohibition. Unoccupied upstream habitat will still be subject to consultation, regardless of critical habitat designation, if a proposed project would affect downstream occupied habitat (e.g., changed water flows). An example would be the Flint and Chattahoochee rivers in Georgia, where the disappearance of Gulf sturgeon occurred following the construction of Jim Woodruff Dam and its locks in Florida in 1956.

On July 25, 1996, the FWS provided the Corps with a biological opinion on the proposed West Pearl River Navigation Project in Louisiana and Mississippi. The project involved dredging three river segments. The Gulf sturgeon was one of the federally listed species considered in the opinion. Regardless of the lack of designated critical habitat, the FWS considered features of the Gulf sturgeon's habitat (resuspension of sediments, spread of contaminants, turbidity increases from increased navigation, geomorphic changes) in reaching the decision that the project was not likely to jeopardize the continued existence of the Gulf sturgeon. The no jeopardy finding was based on two factors—(1) existing stable populations of the Gulf sturgeon are found in off-project portions of the Lower Pearl River Basin; and (2) The proposed project activities were localized and temporary in nature.

This biological opinion demonstrates that habitat features are an essential part of the analysis for any biological opinion under the jeopardy standard; that is, any analysis of the effects on reproduction, distribution, or numbers of the Gulf sturgeon would have to consider the effects of changes to the fish's habitat. Critical habitat designation would not have added additional protection—it would not have been possible to arrive at a destruction of adverse modification biological opinion because habitat value for both survival and recovery of the species was not appreciably reduced.

Permitting under the Environmental Protection Agency's (EPA) National Pollution Discharge Elimination System (NPDES), water quality standards, and pesticide registration have the potential to affect water quality for the Gulf sturgeon. Since the Gulf sturgeon inhabits larger channel areas, the effects of any point discharge into its habitat would likely be minimized by dilution, and the States of Louisiana, Mississippi, Alabama, and Florida set water quality standards that are believed to be protective of aquatic life. The Service believes that if current Federal water quality standards under the CWA are maintained, there will be no need to modify the State's water quality standards to protect habitat for the Gulf sturgeon. Pesticide registration would have to be evaluated on a case-by-case basis. The Services believe that, for these activities to reach the survival and recovery criteria, reproduction, distribution, or numbers of the Gulf sturgeon would be affected and that potential threats can be effectively addressed under the jeopardy standard.

Relation of Critical Habitat Designation to Recovery/Management Plan

Section 4(f)(1) of the Act requires the Services to develop and implement recovery plans for endangered and threatened species, unless such a plan would not promote the conservation of the species.

The Services classify recovery tasks according to three priorities:

(1) Priority 1 tasks are actions that must be taken to prevent extinction or to prevent the species from declining irreversibly in the foreseeable future.

(2) Priority 2 tasks are actions that must be taken to prevent a significant decline in species population, habitat quality, or some other significant negative impact short of extinction.

(3) Priority 3 tasks are all other actions necessary to meet the recovery objectives.

The section 7 consultation process is closely linked with recovery through both section 7(a)(1) and 7(a)(2). Because priority 1 and 2 tasks are closely related to a species' survival and recovery, they provide guidance on Federal activities that could result in jeopardy or destruction or adverse modification biological opinions. Priority 3 tasks provide guidance on activities that could further the conservation of the species, and which would be included by the Services as conservation recommendations, pursuant to 50 CFR 402.14(j) in biological opinions.

The Recovery/Management Plan (Plan) for the Gulf sturgeon (U.S. Fish and Wildlife Service and Gulf States Marine Fisheries Commission, 1995) was written by a recovery/management team including representatives from the affected States, the Services, the U.S. Army Corps of Engineers, the Caribbean Conservation Corporation, the University of Florida, and a commercial fisherman. The Plan was approved by the Services and the Gulf States Marine Fisheries Commission in September 1995. The basic objectives of the Plan are:

(1) In the short term, prevent further reductions of wild Gulf sturgeon populations throughout the range.

(2) For recovery, establish population levels that would allow delisting of the

Gulf sturgeon by management units based on river drainages.

(3) Establish, following delisting, a self-sustaining population that could support fishing pressure within management units.

When a recovery plan has been prepared for a species it incorporates the management actions necessary for the conservation of the species. If the recovery tasks involve Federal actions, they are subject to consultation under section 7 of the Act, either between the implementing agency and the Services or, if carried out by FWS or NMFS, within the agency.

Critical habitat designation is not included as a task in the Plan. However, since potential benefits of critical habitat designation are linked to recovery tasks through the section 7 consultation process, the Services have analyzed priority 1 and 2 recovery actions (those which are required for the survival of the Gulf sturgeon) for potential added protection if critical habitat were designated. The analysis is based on the assumption that loss of habitat value to the point of affecting survival in occupied habitat will, by definition, reduce reproduction, distribution, or numbers of the Gulf sturgeon. Critical habitat designation, therefore, will not add protection in occupied habitat because the definition of destruction or adverse modification and that of jeopardy both require an effect on survival (and recovery) of the species. The high priority tasks are summarized as follows:

Priority	Task	Habitat value affected, not reproduction, numbers, or distribution	Net benefit from critical habitat?
1	1.3.1 Develop and implement monitoring techniques	No	No.
1	2.5.3 Regulate accidental and intentional introductions	No	No.
1	2.1.2 Reduce or eliminate incidental mortality	No	No.
1	2.4.5 Restore natural river habitats	No	No.
1	2.3.1 Protect habitat with existing laws or additional laws or incentives	Potentially	No.
2	2.1.1 Effectively enforce take prohibitions	No	No.
2	1.1.1 Locate important habitats	No	No.
2	1.1.2 Characterize essential habitat areas	No	No.
2	1.2 Conduct life history studies	No	No.
2	2.2.1 Identify contaminants	No	No.
2	2.2.2 Eliminate contaminants	Potentially	No.
2	2.4.6 Coordinate consistent water projects	No	No.
2	2.4.1 Identify dam/lock sites for restoration	Yes	No.
2	2.4.4 Minimize effects of navigation projects	Potentially	No.
2	4.3 Implement projects to achieve recovery plan objectives	No	No.
2	4.2 Seek funding for recovery activities	No	No.
2	2.2.4 Eliminate impacts to water quality and quantity	Potentially	No.
2	2.2.5 Assess effects of groundwater pumping on riverine habitat	No	No.

Tasks 1.3.1, 2.5.3, 2.1.2, and 2.1.1 are not habitat related and would not benefit from critical habitat designation. Tasks 1.1.1, 1.1.2, 1.2, 2.2.1, 2.4.6, 2.4.1, 4.3, 4.2, and 2.2.5 are informational or procedural and are, therefore, also independent of potential critical habitat benefits.

Tasks 2.4.5 and 2.3.1 address both occupied and unoccupied habitat; however, there is no priority 1 or 2 task in the plan requiring additional authority for protecting unoccupied habitat. Protection of unoccupied habitat is, therefore, essential for full recovery, but not for survival of the Gulf sturgeon.

Under tasks 2.2.2, 2.2.4 and 2.4.4 navigation and water quality and quantity projects in unoccupied habitat will not affect survival of the Gulf sturgeon unless they indirectly affect its reproduction, distribution, or numbers in occupied areas. The criterion requiring harm to both "survival and recovery" is not met by projects affecting only unoccupied habitat.

Most of the Plan tasks involve activities that affect the reproduction, numbers, and distribution of the Gulf sturgeon, and, therefore, for which critical habitat designation would afford no additional protection. Tasks that would potentially receive additional protection from the section 7 prohibition on destruction or adverse modification of critical habitat are those that involve unoccupied habitat, where habitat might be reduced in value without affecting reproduction, numbers, or distribution of the Gulf sturgeon. However, habitat related tasks in the Plan involving unoccupied habitat do not meet the "survival and recovery" criterion in the definition of destruction or adverse modification. In summary, no high priority recovery plan actions (those which are designed to ensure survival of the Gulf sturgeon) have been identified that would benefit from critical habitat designation. Known or anticipated Federal agency actions that would appreciably diminish the value of critical habitat of the Gulf sturgeon (thereby invoking the destruction or adverse modification standard) would also reduce appreciably the likelihood of both the survival and recovery of the species by reducing its reproduction, numbers, or distribution (thus triggering the jeopardy standard). Both definitions require impairment of survival and recovery and are functionally equivalent.

Based on the above discussion, the Services have determined that the lack of additional conservation benefit from critical habitat designation for this species makes such designation not prudent.

References Cited

A complete list of all references cited herein is available upon request from the Jacksonville Field Office (see **ADDRESSES** section).

Authors: The primary authors of this document are Dr. Michael M. Bentzien and Mr. Francis M. Parauka, FWS; and Ms. Colleen Coogan, NMFS (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq*).

Dated: February 20, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

Dated: February 24, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–5193 Filed 2–26–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971206296–7296–01; I.D. 022098B]

Fisheries of the Exclusive Economic Zone Off Alaska; Offshore Component of Pollock in the Aleutian Islands Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the proposed first seasonal allowance of pollock apportioned to vessels catching pollock for processing by the offshore component in the AI of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 23, 1998, until 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. processors is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(2)(ii), the proposed first seasonal allowance of pollock apportioned to vessels catching pollock for processing by the offshore component in the AI of the BSAI was established as 15,470 metric tons (mt) by the Interim 1998 Harvest Specifications of Groundfish for the BSAI (62 FR 65626, December 15, 1997).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the proposed first seasonal allowance of pollock apportioned to vessels catching pollock for processing by the offshore component in the AI of the BSAI soon will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 13,470 mt, and is setting aside the remaining 2,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the AI of the BSAI.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the proposed first seasonal allowance of pollock apportioned to vessels catching pollock for processing by the offshore component in the AI of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. The fleet has already taken the proposed first seasonal allowance of pollock apportioned to vessels catching pollock for processing by the offshore component in the AI of the BSAI. Further delay would only result in overharvest which would disrupt the FMP's objective of providing sufficient pollock as bycatch to support other anticipated groundfish fisheries. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–4971 Filed 2–23–98; 2:52 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 39
Friday, February 27, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[TM–98–00–4]

Information Meeting for National Organic Program Proposed Rule; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meetings; correction.

SUMMARY: The Agricultural Marketing Service published a document in the **Federal Register** of February 2, 1998, (63 FR 6285), concerning four public information meetings to discuss the proposed rule for the National Organic Program. The document contained an incorrect location for the March 5 session. The March 5 session will be held at the location listed below.

ADDRESSES: *March 5, 1998:* Rutgers University, Livingston Student Center, 84 Joyce Kilmer Avenue, Piscataway, New Jersey 08854, (732) 445–3561.

FOR FURTHER INFORMATION CONTACT: Eileen S. Stommes, Deputy Administrator, USDA–AMS–TM–NOP, Room 4007–So., Ag Stop 0275, P.O. Box 96456, Washington, D.C. 20090–6456. Phone (202) 690–1300.

The meeting will be held during the hours of 9 a.m. to 4 p.m.

Dated: February 25, 1998.

Eileen S. Stommes,

Deputy Administrator, Transportation and Marketing.

[FR Doc. 98–5249 Filed 2–25–98; 2:18 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket Numbers EE–RM–93–201 and EE–RM–S–97–700]

RIN 1904–AA84

Energy Conservation Program for Consumer Products: Cooking Products (Kitchen Ranges and Ovens) Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Notice of limited reopening of the record and opportunity for public comment.

SUMMARY: The Department of Energy reopens the record of its rulemaking to revise energy conservation standards for cooking products under the Energy Policy and Conservation Act for the following classes: Gas cooktops, gas ovens, and electric non-self-cleaning ovens. This notice provides an opportunity for public comment regarding supplemental analyses on the potential impact of alternative efficiency levels, written comments on these analyses, new factual information, and the principal policy options now under consideration.

DATES: Comments must be received on or before March 30, 1998.

ADDRESSES: A copy of the 1996 Draft Report on the Potential Impact of Alternative Energy Efficiency Levels for Residential Cooking Products (Draft Report), supplemental analysis, and other post comment period correspondence is available for public inspection and copying at the Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7574, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Written comments are welcome. Please submit 10 copies (no faxes) to: Kathi Epping, U. S. Department of Energy, Office of Energy Efficiency and Renewable Energy, "Energy Conservation Program for Consumer Products: Cooking Products, Docket No. EE–RM–S–97–700", EE–43, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

FOR FURTHER INFORMATION CONTACT: Kathi Epping, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–43, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7425, or Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: Pursuant to section 325 of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6295, the Department of Energy (DOE) proposed to revise the energy conservation standards applicable to cooking products, as well as a variety of other consumer products. 59 FR 10464 (March 4, 1994). Cooking products include conventional ranges, cooktops, and ovens and microwave ovens. Section 325(o)(2) requires that any amended standard be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. 42 U.S.C. 6295(o)(2). DOE proposed performance standards for all conventional ovens and cooktops and microwave ovens.

DOE held public hearings and received 59 comments on its proposed revisions to the cooking products energy conservation standards. After reviewing the comments, DOE concluded that a number of significant issues had been raised that required additional analysis. DOE also decided to separate the rulemaking on cooking products from the rulemakings for the other consumer products covered by the notice of proposed rulemaking.

The Department, in response to comments on the proposed rule, prepared a Draft Report containing DOE's revised analysis examining five alternative efficiency levels. The Draft Report indicated that standards based on the described venting and insulating improvements to non-self-cleaning conventional electric ovens and eliminating standing pilot lights for non-self-cleaning conventional gas ovens and conventional gas cooktops could be determined to be technologically feasible and economically justified and to save significant energy. The analysis did not support any new or more stringent

efficiency standard for any other cooking products.

On May 5, 1996, DOE distributed a copy of the Draft Report to interested parties including all of the commenters on the proposed rule on cooking products. (EE–RM–S–97–700, No. 1 and No. 2.) The Department invited comment on the Draft Report by no later than July 1, 1996. A copy of the cover letter and the Draft Report has been added to the record on file for inspection in the DOE Freedom of Information Reading Room.

In commenting on the 1994 proposed rule, AHAM argued that standards are not warranted for any product, though AHAM proposed that, if a standard is set, DOE should adopt a prescriptive design standard prohibiting standing pilot lights on conventional gas ranges in lieu of all performance standards proposed for cooking products. Significant energy savings, consistency with current standards, minimal design change, and no compliance program were cited as benefits. AHAM also commented that eliminating standing pilot lights could disproportionately affect low-income and rural consumers. (EE–RM–93–201, No. 1.)

On April 23, 1996, the American Council for an Energy Efficient Economy (ACEEE) and the Natural Resources Defense Council (NRDC) sent a letter to the Association of Home Appliance Manufacturers (AHAM) stating their support for a prescriptive design standard banning pilot lights from all conventional gas ranges. (EE–RM–S–97–700, No. 3.)

DOE received three comments on the Draft Report. NRDC recommended banning all standing pilot lights. In addition to cost effective energy savings, NRDC emphasized the health and safety benefits which would result from banning pilot lights. (EE–RM–S–97–700, No. 4.)

Betty Crocker expressed concern over the impact of standards for consumers. Betty Crocker expressed concern about the maintenance required for electric coil cooktop reflective pans and commented that an oven separator would have low consumer acceptance. (EE–RM–S–97–700, No. 5.) The results of the Draft Report indicated that neither of these design options were economically justified.

Whirlpool stated that none of the proposed design options are economically justified, several of the design options lessen consumer utility, and the energy use by ranges and ovens has declined significantly over the past two years. In addition, Whirlpool stated that the cost of compliance testing for any performance standard would offset the potential energy savings. Whirlpool did not discuss prescriptive design standards such as the elimination of pilot lights for gas products. (EE–RM–S–97–700, No. 6.)

Based on the analysis in the Draft Report and the comments received, the Department is inclined to believe the record is complete with respect to microwave ovens, electric self-cleaning ovens, and electric cooktops. The analysis in the Draft Report indicates that establishing new or revised standards for these types of cooking products is not economically justified. For example, the analysis for microwave ovens indicated paybacks exceeding the 10-year product life, increased life-cycle costs, and a negative net present value. Based on the consideration of this analysis, the Department does not expect to establish new or revised standards for these products in this rulemaking.

In addition, the analysis in the Draft Report and the comments received prompted further examination of gas cooktops, gas ovens, and electric non-self-cleaning ovens. DOE prepared an analysis to supplement the Draft Report that focuses exclusively on the possible elimination of standing pilot lights for gas products and improving non-self-cleaning conventional electric ovens by venting and insulating them like self-cleaning electric ovens. The supplemental analysis uses the latest available data from AHAM regarding the trends over time of shares of sales of non-self-cleaning conventional ovens and gas products with pilot lights. It also uses the latest utility price forecasts from the Annual Energy Outlook of the Energy Information Administration, AEO 97, and the Gas Research Institute, GRI 97. A copy of the supplemental analysis has been added to the record on file for inspection in the DOE Freedom of Information Reading Room, and DOE is sending a copy to all commenters on the proposed rule for cooking products. (EE–RM–S–97–700, No. 7.)

The Department's supplemental analysis indicates that extending the statutory prescriptive design standard banning standing pilot lights to cover all conventional gas ranges would be technically feasible and economically justified and would result in significant energy savings. The current statutory standard bans pilot lights for gas kitchen ranges and ovens equipped with an electric cord. Some consumers would need to add an electrical outlet to accommodate electrical service to a conventional gas range. While it is unknown what percent of homes do not have electrical outlets available, based on the limited data available, the Department believes that this percentage would be small. In those homes where an electrical outlet is available, the estimated first-cost increase to consumers for conventional gas ranges is $37, with life-cycle cost savings of $91–$104 and paybacks of 2.9–3.2 years. In those homes where an outlet needs to be added, the additional $90 cost of installing a new outlet [1] almost negates the savings. In homes where an electric outlet is not available, the total cost increase of $127, for conventional gas ranges, would result in life-cycle cost savings of $1–$14 with paybacks of 10–11 years.

The impacts are more substantial for separate conventional gas cooktops and ovens. For separate conventional gas cooktops, the cost increase is $116, resulting in a life-cycle cost increase of $41–48 and paybacks of 17–19 years. For separate conventional gas ovens, the cost increase of $113 results in a life-cycle cost increase of $68–$75 and paybacks of 27–32 years. Thus, the Department believes extending the ban to these separate products is not economically justified. Based on AHAM shipment data, the Department estimates the percent of separate conventional gas cooktops and separate conventional gas ovens with standing pilot lights to be approximately 3 and 0 percent, respectively, by the year 2000. Therefore, a standard extending the prohibition of standing pilot lights to include separate gas cooktops and ovens in addition to ranges results in very little incremental energy savings. Permitting separate conventional gas cooktops and ovens to use pilot lights could also accommodate special circumstances where electrical service is not practically available. Based on AHAM's comments regarding the elimination of pilot lights and the fact that no testing program would be required to implement such a prescriptive design standard, the Department believes that there would not be any significant adverse impacts on manufacturers. Given the analysis and public comments to date, the Department expects to extend the prescriptive design standard prohibiting standing pilot lights to all conventional gas ranges but not to include the extension to separate conventional gas cooktops and ovens without an electrical cord.

The Department's supplemental analysis indicates that establishing

[1] The $90 estimate for adding an electrical outlet comes from a GRI report submitted by AHAM as a comment. It was derived from an informal survey of electricians to install an outlet accessible to a gas water heater and is comprised of $50 parts and labor and $40 for a service call.

standards for electric non-self-cleaning ovens could be technically feasible and could save significant energy. However, because ovens are not tested currently and therefore performance data on specific ovens does not exist, it is unknown whether all non-self-cleaning electric ovens, if insulated and vented as their self-cleaning counterparts, would meet a specific performance standard. Consequently, there is a risk that in order to bring some electric non-self-cleaning ovens into compliance with a performance standard, manufacturers would need to use additional design options. The analysis found no other design options for either gas or electric ovens to be cost effective. Thus, the Department does not expect to establish performance standards for any cooking products including non-self-cleaning electric ovens.

The Department is changing the name for this rulemaking from "kitchen ranges and ovens" to "cooking products." This change is made because the term "kitchen ranges and ovens" does not accurately describe the products considered which include conventional ranges, cooktops and ovens and microwave ovens. To be consistent with this change, the Department expects to add a regulatory definition of "cooking products" that is the same as the existing definition of "kitchen ranges and ovens."

The Department solicits public comment on the supplemental analysis and its implications for this rulemaking, specifically with regard to the extension of the prohibition on standing pilot lights.

Issued in Washington, DC, on January 26, 1998.

Dan W. Reicher,

Assistant Secretary for Energy Efficiency and Renewable Energy.

[FR Doc. 98–5084 Filed 2–26–98; 8:45 am]

BILLING CODE 6450–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 33

Proposed Rulemaking Concerning Voting by Interested Members of Self-Regulatory Organization Governing Boards and Committees

AGENCY: Commodity Futures Trading Commission.

ACTION: Reopening of comment period on proposed rulemaking.

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission has proposed a new Commission Regulation 1.69 which would require self-regulatory organizations ("SRO") to adopt rules prohibiting governing board, disciplinary committee, and oversight panel members from deliberating or voting on certain matters where the member had either a relationship with the matter's named party in interest or a financial interest in the matter's outcome. The proposed rulemaking also would amend Commission Regulations 1.41 and 1.63 to make modifications made necessary by proposed Commission Regulation 1.69. The proposed rulemaking was initially published for comment on January 23, 1998 (63 FR 3492) with comments on the proposal due by February 23, 1998. In response to a request from the Futures Industry Association, the Commission has determined to reopen the comment period on this proposal for an additional 30 days. The new deadline for comments on this proposed rulemaking is March 25, 1998.

Any person interested in submitting written data, views, or arguments on the proposal should submit their views and comments by the specified date to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov.

DATES: Comments must be received on or before March 25, 1998.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5481.

Issued in Washington, DC., on this 24th day of February, 1998, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–5061 Filed 2–26–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–98–002]

RIN 2115–AE46

Special Local Regulations for Marine Events; Delaware River, Philadelphia, Pennsylvania

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend permanent special local regulations established for marine events held annually in the Delaware River adjacent to Penns Landing, Philadelphia, Pennsylvania, by increasing the regulated area and by identifying specific events for which the regulated area will be in effect. This action is intended to update the regulation in order to enhance the safety of life and property during the events.

DATES: Comments must be received on or before April 28, 1998.

ADDRESSES: Comments may be mailed to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or hand delivered to Room 119 at the same address between 7:30 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone numoer is (757) 398–6204. Comments will become part of this docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: S.L. Phillips, Project Manager, Operations Division, Auxiliary Section, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD OS–98–002) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in

view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address listed under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

33 CFR 100.509 establishes special local regulations for marine events held annually in the Delaware River adjacent to Penns Landing, Philadelphia, Pennsylvania. The purpose of these regulations is to control vessel traffic during marine events to enhance the safety of participants, spectators, and transiting vessels. In the past, these regulations were implemented at various times for various events throughout the year by publishing a notice in the **Federal Register**. The Coast Guard is concerned that the lengthy process cycle time required to implement the regulated area in this manner may unnecessarily burden event sponsors. Incorporating a table that identifies the specific events during which the regulated area will be in effect, will streamline the marine event permit process and significantly reduce process cycle time.

The majority of marine events for which the regulations will be in effect involve a parade of boats, consisting of approximately 40 to 50 vessels ranging in length from 20′ to 200′. The Coast Guard is concerned that the current size of the regulated area may not be adequate to ensure the safety of these events, because the size and number of participating vessels continues to expand. The Coast Guard is also concerned that vessel operators have had difficulty in determining the position of the existing southern boundary of the regulated area due to the lack of easily identifiable landmarks. The Walt Whitman Bridge is easily identifiable and in close proximity to the current southern boundary.

Discussion of Proposed Amendments

The Coast Guard proposes to amend the special local regulations previously established for this event area by increasing the size of the regulated area to include those waters of the Delaware River between the Benjamin Franklin Bridge and the Walt Whitman Bridge, and by incorporating a table that identifies the specific events during which the regulated area will be in effect. Since the Coast Guard Patrol Commander may stop any event to assist transit of vessels through the regulated area, normal marine traffic should not be severely disrupted.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The impact on routine navigation is expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.b.2.e(34)(h) of Commandant Instruction M16475.1b (as amended, 61 FR 13564; 27 March 1996), this proposal is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.509 is amended by revising paragraphs (a)(1), (b)(2), introductory text, and (c) and adding Table 1 to read as follows:

§ 100.509 Delaware River, Philadelphia, Pennsylvania.

(a) * * *

(1) *Regulated Area:* The waters of the Delaware River from shore to shore, bounded to the south by the Walt Whitman Bridge and bounded to the north by the Benjamin Franklin Bridge.

* * * * *

(b) * * *

(1) * * *

(2) The operator of any vessel in this area shall: * * *

* * * * *

(c) *Effective Period:* This section is effective annually for the duration of each marine event listed in Table 1, or as otherwise specified in the Coast Guard Local Notice to Mariners and a **Federal Register** notice. The Coast Guard Patrol Commander will announce by Broadcast Notice to Mariners the specific time periods during which the regulations will be enforced.

TABLE 1 OF § 100.509

Welcome America Celebration:
Sponsor: Welcome America!
Date: On or about July 4.
Columbus Day Celebration:
Sponsor: Roberts Event Group.
Date: On or about Columbus Day.
New Years Eve Celebration:
Sponsor: City of Philadelphia.
Date: December 31.

Dated: February 12, 1998.

Roger T. Rufe, Jr.,

Vice Admiral, USCG Commander Atlantic Area.

[FR Doc. 98–5103 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–98–006]

RIN 2115–AE46

Special Local Regulations for Marine Events; New Jersey Offshore Grand Prix

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend permanent special local regulations established for the New Jersey Offshore Grand Prix, a marine event held annually in the Atlantic Ocean along the coast of New Jersey between Asbury Park and Seaside Park, by identifying the specific date on which the regulated area will be in effect. This action is intended to provide more accurate notice of the date on which the event will occur.

DATES: Coments must be received on or before April 28, 1998.

ADDRESSES: Comments may be mailed to Commander (Aoax) Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or hand-delivered to Room 119 at the same address between 7:30 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6204. Comments will become part of this docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: S.L. Phillips, Project Manager, Operations Division, Auxiliary Section, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 05–98–006) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address listed under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The current regulations at 33 CFR 100.505 establish special local regulations for the New Jersey Offshore Grand Prix, a marine event held annually in the Atlantic Ocean along the coast of New Jersey between Asbury Park and Seaside Park. The purpose of these regulations is to control vessel traffic during the event to enhance the safety of participants, spectators, and transiting vessels. In the past, these regulations were implemented by publishing a notice in the **Federal Register**.

Discussion of Proposed Rule

The Coast Guard proposes to amend the special local regulations previously established for this event area by identifying the specific date on which the regulated area will be in effect.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This proposal merely identifies the effective date of an existing regulation and does not impose nay new restrictions on vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no Collection of Information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.b.2.e (34)(h) of Commandant Instruction M16475.1b (as amended, 61 FR 13564; 27 March 1996), this proposal is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.505 is amended by revising paragraph (b) to read as follows:

§ 100.505 New Jersey Offshore Grand Prix.

* * * * *

(b) *Effective Period*: This section is effective annually on the third Wednesday in July. If the event is canceled due to weather, this section is effective the following day. The Coast Guard Patrol Commander will announce by Broadcast Notice to Mariners the specific time periods during which the regulations will be enforced.

* * * * *

Dated: February 17, 1998.

Roger T. Rufe, Jr.,

Vice Admiral, USGC Commander Atlantic Area.

[FR Doc. 98–5104 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

46 CFR Parts 25, 27, and 32

[CGD 97–064]

RIN 2115–AF53

Towing Vessel Safety

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meetings; and reopening of comment period.

SUMMARY: The Coast Guard is reopening the comment period and holding two public meetings on its proposed rule to improve the safety of towing vessels and tank barges. The rule would require the installation of equipment to suppress fires on towing vessels and would strengthen current standards for anchoring or retrieving a drifting tank barge. The Coast Guard is responding to requests for public meetings and another comment period to receive additional views on the issues raised in the notice of proposed rulemaking published at 62 52057 on October 6, 1997.

DATES: Comments on the notice of proposed rulemaking must be received in or before May 11, 1998. The meeting in St. Louis, Missouri, will be held on March 23, 1998, from 9 a.m. to 5 p.m. The meeting in Newport, Rhode Island, will be held on April 9, 1998, from 9 a.m. to 5 p.m..

ADDRESSES: The St. Louis meeting will be held at the conference room accessible through entrances 2.308 and 2.206, Second Floor, Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, MO 63103. The Newport meeting will be held at the Naval Education & Training Center Newport, Perry Hall, Building 440, Meyerkord Avenue, Newport, RI 02841–1644. You may send written comments to the Executive Secretary, Marine Safety Council (G–LRA) [CGD 97–064], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Markle, Project Manager (Fire Protection), 202–267–1076; or Mr. Allen Penn, Project Manager (Emergency Control Systems), 202–267–2997, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD 97–064] and the specific section of the proposed rule to which each comment applies, and give the reasons for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change the proposed rule in view of the comments.

Public Meeting

Attendance is open to the public. Persons who are hearing-impaired may request sign translation by asking the person under **FOR FURTHER INFORMATION CONTACT** at lease one week before the meeting. With advance notice, and as time permits, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the person listed under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted before, during, or after the meeting. Persons unable to attend the public meetings should submit written comments as explained previously under **ADDRESSES** and **SUPPLEMENTARY INFORMATION** by May 11, 1998.

Dated: February 23, 1998.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98–5099 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 212

RIN 0596–AB67, 0596–AB68

Administration of the Forest Development Transportation System; Temporary Suspension of Road Construction in Roadless Areas

AGENCY: Forest Service, USDA.

ACTION: Extension of public comment period on proposed interim rule and schedule of public meetings on proposed interim rule and advance notice of proposed rulemaking.

SUMMARY: On January 28, 1998, the Forest Service published in the **Federal Register** for public review and comment, a proposed interim rule that would, if adopted, temporarily suspend road construction and reconstruction in most roadless areas of the National Forest System. The public comment period was to end February 27, 1998. Several organizations have indicated that the 30-day review period is not sufficient time to review and analyze the proposed interim rule and its potential impacts on matters of interest to their organizations and have requested additional time to prepare comments. Additionally, some individuals and groups have also expressed a desire for the agency to hold public meetings on the proposed interim rule and the Advance Notice of Proposed Rulemaking (ANPR) which was also published in the **Federal Register** on January 28. Therefore, to facilitate public understanding and comment, the Forest Service has decided to extend the comment period through March 30, 1998, and to hold public meetings for the proposed interim rule and the ANPR.

DATES: Comments must be postmarked by March 30, 1998. Dates, times, and locations of the public meetings are listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: Send written comments to Director, Ecosystem Management Coordination Staff, MAIL STOP 1104, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090. Comments also may be sent via the Internet to roads/wo@fs.fed.us.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying at the Forest Service National Headquarters Offices, 14th and Independence Avenue, SW., Washington, DC. Persons wishing to inspect the comments are encouraged to

call ahead (202–205–0895) to facilitate entrance into the building.

Addresses for the public meetings are listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Gerald (Skip) Coghlan, Engineering Staff, 202–205–1400 or Rhey Solomon, Ecosystem Management Coordination Staff, 202–205–0939. Local contacts for public meetings are listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

SUPPLEMENTARY INFORMATION: On January 28, 1998, at 63 FR 4351, the Forest Service published for public review and comment a proposed interim rule that would temporarily suspend road construction and reconstruction in most roadless areas of the National Forest System. The proposed interim rule was published in association with an ANPR (63 FR 4350). In the ANPR, the Forest Service gave notice of its intention to revise the regulations concerning the management of the National Forest System transportation system to address changes in how the road system is developed, used, maintained, and funded.

Until new and improved analytical tools can be developed and implemented to evaluate the positive benefits and adverse impacts of roads, the adoption of an interim rule to temporarily suspend road construction or reconstruction within National Forest System roadless areas is viewed as critical to preserve land and resource management options. The temporary suspension of road construction and reconstruction would expire upon the application of the new and improved analysis tools or 18 months, whichever is sooner.

In response to the January 28 **Federal Register** documents, the Forest Service has received many requests for information on implications and impacts of implementing the proposed interim rule. In response to these requests, the agency is publishing, as part of this announcement, the timber data and information used to help formulate the proposed interim rule. The information available prior to the January 28 notices related only to potential affects on timber sales in inventoried roadless areas. These data are displayed in Appendix 1 and Appendix 2 at the end of this document.

The preliminary information in Appendix 1 and Appendix 2 does not account for other types of activities that may involve road construction or reconstruction and that might be affected if the proposed interim rule were adopted. Data and information are being collected on road construction and reconstruction projects proposed for such activities as access required for authorized special uses, private property, recreation, and mining and for other activities that may require construction or reconstruction of roads. In addition, data are being analyzed to evaluate the environmental and economic impacts including impacts to recreation, wildlife, fish, and watersheds. The new information will be used to evaluate and compare alternatives and environmental effects for a final interim rule. To the extent feasible, the agency will post this new information on the Forest Service internet home page at www.fs.fed.us/news/roads/.

Public Meetings

In addition to the public comment period, the agency will hold public meetings across the country for the purpose of adding to the record of public comment on the proposed interim rule. Persons who wish to comment will be provided opportunity for a brief oral comment for the record. Also, written comments may be submitted at the meeting sites. At these meetings, the public also will be able to provide comments in response to the ANPR concerning the management of the National Forest System transportation system to address changes in how the road system is developed, used, maintained, and funded. An open house format will be used. The public should be aware that, for the portion of the open houses during which persons may enter comments into the record for the interim rulemaking agency employees will be available only to answer questions to clarify the proposed interim rule.

The dates, times, and locations of the public meetings are as follows:

State	Date and time	Location	Contact person
Alaska	March 10, 2–7 p.m	Ted Ferry Civic Center, 888 Venetia Avenue, Ketchikan.	Dave Arrasmith, 907–228–6304.
Alaska	March 11, 2–7 p.m	Spenard Community Recreation Center, 2020 West 48th Avenue, Anchorage.	Anne Jeffery, 907–271–2508.
California	March 21, 9–5 p.m	Sacramento Convention Center, 1400 J Street, Sacramento.	Christie Kalkowski, 415–705–1841.
Colorado	March 17, 2–8 p.m	Grand Junction Hilton, 743 Horizon Drive, Grand Junction.	Matt Glasgow, 970–874–6674.
Colorado	March 17, 2–7 p.m	Rocky Mountain Regional Office, USDA Forest Service, 740 Simms Street, Golden.	Lynn Young, 303–275–5346.
Georgia	March 26, 6–9 p.m	Sheraton Hotel, 1850 Cotillion Drive, Atlanta.	Angela Coleman, 404–347–7226.
Idaho	March 19, 1–7 p.m	Idaho Panhandle National forests, 3815 Schreiber Way, Coeur d'Alene.	Brad Gilbert, 208–765–7438.
Idaho	March 21, 10–3 p.m	Boise Center on the Grove, 850 West Front, Boise.	Brian Harris, 208–373–4106.
Minnesota	March 19, 6–9 p.m	Earle Brown Continuing Education Center, University of Minnesota, St. Paul Campus, 1890 Buford Avenue, Room 280, St. Paul.	Mary Nordeen, 218–335–8658.
Montana	March 12, 3–8 p.m	Helena National Forest, 2880 Skyway Drive, Helena.	Jerry Adelblue, 406–449–5201, ext. 264.
Montana	March 14, 10–5 p.m	Ruby's Reserve Street Inn, 4825 North Reserve Street, Missoula.	Barb Beckes, 406–329–3809.
Montana	March 23, 6:30–9:30 p.m.	Libby City Hall, 952 East Spruce Street, Libby.	Joan Dickerson, 406–293–6211.

State	Date and time	Location	Contact person
New Hampshire	March 18, 6–9 p.m	New Hampshire Technical College, 11 Institute Drive, Concord.	Colleen Mainville, 603–528–8796.
New Mexico	March 18, 3–7 p.m	Holiday Inn Mountain View, 2020 Menaul Northeast, Albuquerque.	Al Koschmann, 505–842–3370.
North Dakota	March 12, 9–3 p.m	Expressway Suites, 180 East Bismarck Expressway, Bismarck.	Steve Williams, 701–250–4443.
Oregon	March 16, 10–4 p.m	Doubletree Hotel Lloyd Center, 1000 Northeast Multnomah, Portland.	Patty Burel, 503–808–2221.
Oregon	March 17, 10–4 p.m	National Guard Armory, 875 Southwest Simpson, Bend.	Carrie Sammons, 541–383–5536.
Oregon	March 18, 10:30–4:30 p.m.	Reston Hotel, 2300 Crater Lake Highway, Medford.	Steve Waterman, 541–858–2213.
South Dakota	March 16, 3–8 p.m	Pactola District Office, Black Hills National Forest, 803 Soo San Drive, Rapid City.	Glen McNitt, 605–673–3104.
Utah	March 21, 10–3 p.m	Provo Park Hotel, 101 West, 100 North, Provo.	Lola Murray, 801–342–5137.
Virginia	March 24, 6–9 p.m	Jefferson/George Washington, National Forests, 5162 Valleypointe Parkway, Roanoke.	Donna Wilson, 540–265–5100.
Washington	March 17, 10–4 p.m	Ramada Inn at Northgate, 2140 North Northgate Way, Seattle.	Lorette Ray, 425–744–3571.
Washington	March 18, 10–4 p.m	Four Seasons Inn, 11 West Grant Road East, Wenatchee.	Paul Hart, 509–662–4314.
Washington DC	March 19, 2–7 p.m	Holiday Inn Capitol, 550 C Street Southwest, Washington, DC.	Alan Polk, 202–205–1134.
Wyoming	March 19, 2–7 p.m	Parkway Plaza Hotel, 123 West E Street, Casper.	Stan Sylva, 307–777–6087.

Dated: February 24, 1998.

Mike Dombeck,

Chief, Forest Service.

BILLING CODE 3410–11–M

Appendix 1
Preliminary Estimates for FY 1998 Timber Sale Volume Effects of the Proposed Interim Roads Policy in Inventoried Roadless Areas
(excludes all forests with a revised land and resource management plan ROD and forests covered by the PNW Plan)
(Data Current as of January 13, 1998 /1)

REGION / FORESTS	PLANNED FY 1998 PROGRAM MMBF	PLANNED SALES WITHIN INVENTORIED ROADLESS AREAS Sales	MMBF	Road Miles	FY 1998 PROG. W/O ROADLESS AREA SALES MMBF
Region 1					
Clearwater	35	1	3	0	32
Helena	12	2	9	15	3
Idaho Panhandle	63	1	2	9	61
Kootenai	90	1	1	0	89
Nez Perce	36	3	17	5	19
Region Total - All Forest	330	8	32	29	298
Region 2					
Bighorn	7	1	2	6	5
Med. Bow-Routt	20	1	2	4	18
GMUG	16	1	3	2	7
White River	17	1	4	1	13
Region Total - All Forest	180	4	11	12	169
Region 3					
Region Total - All Forest	95	0	0	0	95
Region 4					
Boise	84	3	27	16	57
Bridger Teton	10	3	4	3	5
Caribou	8	4	7	11	1
Dixie	15	3	7	4	11
Fishlake	5	6	5	3	0
Manti-LaSal	17	1	1	1	15
Payette	53	5	33	11	20
Salmon	15	5	8	5	7
Uinta	7	1	1	2	6
Region Total - All Forest	255	31	93	56	162
Region 5					
Region Total - All Forest	451	0	0	0	451
Region 6					
Colville	60	2	3	0	57
Malheur	95	4	38	0	57
Okanogan	30	4	13	14	17
Umatilla	60	2	0	0	60
Region Total - All Forest	1,005	12	55	15	950
Region 8					
Chatt-Oconee	31	1	2	0	29
Cherokee	18	3	3	0	15
NF of North Carolina	37	3	1	0	36
Region Total - All Forest	689	7	5	0	684
Region 9					
Monongahela	21	1	3	3	18
Region Total - All Forest	585	1	3	3	582
Region 10					
Region Total - All Forest	201	0	0	0	201
Total - All Forests	3,791	63	196	106	3,593

NOTES: Planned sales only include those where at least scoping has been completed, and excludes those that have been advertised or awarded.

/1 These data represent a snapshot in time and are used as estimates of future sale activities --as plans are refined and as sales are prepared, the data represented here will change. Field offices have been asked to update this information--when that data is available, it will replace the information here.

Appendix 2

January 28, 1998 Proposed Interim Roadless Policy
Preliminary Estimates of Fiscal Year 1998
National Forest Timber Sale Program Related Effects

If the proposed interim rule were adopted, some timber sale effects might occur in the short-term (i.e., some timber planned for sale in fiscal year (FY) 1998 may not be sold if the proposed rule were implemented in its current form) (Table 1). It is very difficult to estimate the program effects due to considerable variation in site-specific factors, the fact that projects are in various stages of development, the fact that some project work can be shifted away from roadless areas to sites in roaded areas and the discretionary nature of most projects from year-to-year. In the **Federal Register** notice proposing the temporary suspension, the agency stated:

> "Nationwide the agency estimates that of the 3.8 billion board feet planned for FY 1998, the volume of timber actually offered for sale will be reduced by 100-275 million board feet. Although actual amounts are very difficult to estimate, this reduction in timber volume offered could lead to corresponding reductions in employment and in payments to states. It is expected that the Intermountain and Northern Regions of the National Forest System will experience a disproportionately higher effect from the suspension than other geographic regions of the country, due to the higher dependence on roadless areas for timber production in these regions." (63 FR 4353, January 28, 1998).

The Forest Service is currently gathering additional facts related to timber proposed for sale in FY's 1998 and 1999. The updated data will be used to analyze various alternatives to the proposed interim rule that will be developed in response to public comment. With respect to the "100-275 million board feet" preliminary effects estimate in the **Federal Register** notice, the following information is relevant:[1]

- Timber Sale Levels. Approximately 100-275 million board feet (mmbf) of timber planned for sale in FY 1998 may not be offered if the proposed interim rule were implemented. Some volume might be substituted for the reduced volume, but the amount is unknown at this time. Also, some of the reduced volume might be offered in the future if requirements of the anticipated long-term policy are met.
- Effect of Administrative and Legal Challenges. While the sale preparation work for most of the sales planned in roadless areas may be completed in FY 1998, it is not possible to predict precisely how many of these sales would actually be sold and proceed as planned during the fiscal year. Timber sales in roadless areas generally result in more public controversy, leading to administrative appeals and litigation. It is estimated that up to 50 percent of the sales could be delayed beyond FY 1998 due to unresolved appeals and litigation. Accordingly, the total volume planned in

[1] Based on data current as of January 13, 1998.

roadless areas for FY 1998 has been reduced by 50 percent to arrive at the low end (100 mmbf) of the volume effect range.

- 3-Year Harvest Assumption and Effects of Market Fluctuations. This analysis assumes that sales sold in FY 1998 would take three years to harvest, starting in FY 1998--one third of the harvest would occur in each year from FY 1998-2000. Purchasers are generally given three years to complete timber sale contracts. Market ffuctuations make it difficult to estimate federal receipts and other economic effects. If there were a significant decrease in lumber or other wood product prices, the volume of timber harvested in FY 1998 could be substantially less than a third of the sale volume. Price increases for wood products could produce the opposite effect.
- Volume Under Contract Effect. In FY 1997, purchasers of national forest timber harvested 3.3 billion board feet (bbf). They currently hold contracts on about 6.5 bbf of unharvested timber, some of which is scheduled for harvest in FY 1998 and also is in roadless areas. If the 100-275 mmbf is not offered for sale in FY 1998, the effects might not be immediately felt because harvesting some of the 6.5 bbf would proceed as planned, thereby further diluting the effects estimated here by spreading them over a longer time period and providing more opportunity for mitigation. The estimates for receipts, employment, and payments to states are not adjusted for the volume under contract effect--any use of volume under contract in place of the unsold sales could reduce these effects in FY 1998, although not without some corresponding reduction in the availability of timber volume in years beyond FY 1998.
- Employment. As a result of the reduced sales volume, the program would support approximately 500-1,400 fewer jobs in FY 1998. This represents approximately 2-7 percent of the total jobs associated with the current 3.8 bbf programmed for sale in FY 1998. As with receipts, the employment effect is spread over a 3-year period and similar reductions in employment could be expected for FY's 1999 and 2000. The employment figure includes estimated direct, indirect, and induced jobs based on job coefficients reported in the FY 1996 Forest Management Program Annual Report. The jobs directly attributable to the timber harvest activities average approximately 60 percent of the total employment effect (300-900 of the total jobs would be considered "direct" jobs). The employment effects take into account an estimate of the volume that mills might substitute from non-national forest lands. These estimates are based on substitution rates experienced historically by region.
- Payments to States. Payments to states could decrease by an estimated $1-4 million in FY 1998. A similar reduction in payments to states could be expected for FY's 1999 and 2000. Payment to states are assumed to be 25 percent of the estimated reduction in receipts. This analysis assumes that payments to states would continue to be linked to agency receipts. Proposals have been made to calculate payments to states based on historical levels. These proposals, if adopted, would mitigate or eliminate the effect on payments to states.

The agency plans to update and reevaluate these estimates as new data is available.

Table 1

Preliminary Estimate of FY 1998 Potential Effects of Proposed Interim Roads Policy on Planned Sales in Inventoried Roadless Areas

(Excludes all forests with a revised land and resource management plan ROD and forests covered by the PNW Plan)

(Data current as of January 13, 1998)

Forest Service Region	FY 1998 Planned Program	Planned Sales Affected by Policy	Low Volume Effect	High Volume Effect	Low Jobs Effect	High Jobs Effect	Low PTS Effect	High PTS Effect
Unit of Measure	*(mmbf)*	*(mmbf)*	*(mmbf)*	*(mmbf)*	*(jobs)*	*(jobs)*	*($million)*	*($million)*
footnotes	*1*	*2*	*3*	*4*	*5*	*6*	*7*	*8*
Region 1	330	32	16	44	200	500	$0.2	$0.6
Region 2	180	11	6	15	0	0	$0.1	$0.2
Region 3	95	0	0	0				
Region 4	255	93	47	130	200	600	$0.5	$1.4
Region 5	451	0	0	0				
Region 6	1005	55	27	76	100	300	$0.5	$1.3
Region 8	689	5	3	6	0	0	$0.0	$0.1
Region 9	585	3	2	3	0	0	$0.0	$0.0
Region 10	201	0	0	0				
Agency wide	3791	199	100	275	500	1,400	$1	$4

footnotes:

mmbf = millions of board feet; mbf = thousand board feet

1 Total planned timber offered for sale program for FY 1998

2 Timber sales planned in inventoried roadless areas that are potentially affected by the interim policy

3 Low Volume Effect = the Planned Sales Volume Affected by the Policy times a subjective factor based on professional judgement that takes into consideration the fact that some of the planned sales in early stages of development may not have been offered for sale in FY 1998 due to controversy and resulting appeals/litigation.

4 High Volume Effect = the Planned Sales Volume Affected by the Policy times a subjective factor based on professional judgement that takes into account the fact that additional volume above the planned level could have been produced and would be affected by the proposed interim policy. This factor varies between the East and the West due to the higher concentration of roadless areas in the West.

5 Low Total Jobs effect represents the Low Volume Effect times jobs per mmbf less the amount of non-NF substitution expected to occur. The jobs figures take into account an estimate of the volume that mills might substitute from non-national forest lands. In addition, they assume that one-third of the volume sold in FY 1998 would have been harvest in FY 1998.

6 Same as 5 for the high volume effect.

7 Low Payments to States (PTS)effect = 25% of the low volume effect times the receipts estimate ($/mbf) from the FY 1998 budget. PTS effects are spread over 3 years--only FY 1998 effects are displayed here--similar effects could be expected for FY 1999 and 2000.

8 Same as 7 for the high volume effect.

[FR Doc. 98–5130 Filed 2–25–98; 8:45 am]
BILLING CODE 3410–11–C

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AB59

Land Uses; Appeal of Decisions Relating To Occupancy and Use of National Forest System Lands; Mediation of Grazing Disputes

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Forest Service requests comment on a proposed rule that would modify the agency's administrative appeal regulations relating to occupancy and use of National Forest System lands to offer mediation of certain grazing permit disputes in those States that have USDA certified mediation programs. This action is authorized by the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994. The intended effect is to incorporate mediation for certain grazing disputes into established agency dispute resolution processes. Public comment is invited and will be considered in adoption of a final rule.

DATES: Comments must be received in writing by April 28, 1998.

ADDRESSES: Send written comments to Director, Range Management Staff, Mail Stop 1103, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed rule in the Office of the Director, 3rd Floor, South Central Wing, Auditor's Building, 14th and Independence Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m. Those wishing to inspect comments are encouraged to call ahead (202/205–1462) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Berwyn L. Brown, Range Management Staff, Forest Service, (202) 205–1457.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 502 of the Agricultural Credit Act of 1987 (Pub. L. 100–233) (7 U.S.C. 5101, *et seq.*), the Department of Agriculture offers a mediation program that provides borrowers and creditors an opportunity to resolve disputes prior to bankruptcy or litigation. This Act authorizes USDA to help States develop certified mediation programs and to participate in them.

Section 282 of Title II of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (1994 amendments) amended the 1987 Act to expand the number and type of issues subject to mediation under the State Mediation Program. One of the issues subject to mediation in the 1994 amendments was grazing on National Forest System lands. The Secretary must promulgate regulations to interpret the mediation provisions of the 1994 amendments.

Under the Secretary's grazing rules at 36 CFR 222.4, the Chief of the Forest Service may cancel a permit when one or more of the following conditions exist:

When a permittee refuses to accept modification of the terms and conditions of an existing permit (§ 222.4(a)(2)(i));

When a permittee refuses or fails to comply with eligibility or qualification requirements (§ 222.4(a)(2)(ii));

When a permittee fails to restock the allotted range after full extent of approved personal convenience non-use has been exhausted (§ 222.4(a)(2)(iv)); and

When a permittee fails to pay grazing fees within established time limits (§ 222.4(a)(2)(v)).

The provisions of this section also authorize the Chief to cancel or suspend a permit when one or more of the following conditions exist:

When a permittee fails to pay grazing fees within established time limits (§ 222.4(a)(3));

When a permittee does not comply with provisions and requirements in the grazing permit or the regulations of the Secretary of Agriculture on which the permit is based (§ 222.4(a)(4));

When a permittee knowingly and willfully makes a false statement or representation in the grazing application or amendments thereto (§ 222.4(a)(5)); and

When a permittee is convicted for failing to comply with Federal laws or regulations or State laws relating to protection of air, water, soil and vegetation, fish and wildlife, and other environmental values when exercising the grazing use authorized by the permit (§ 222.4(a)(6)).

These cancellation or suspension actions are generally referred to as "permit enforcement actions" and may be appealed under part 251, subpart C, of Title 36 of the Code of Federal Regulations, which pertain generally to enforcement actions by an authorized officer regarding written instruments authorizing occupancy and use of National Forest System lands. Since only holders of such authorizations may appeal under 36 CFR part 251, subpart C, it is this rule that the Forest Service proposes to amend to incorporate a mechanism for the mediation of certain grazing disputes, as required by the 1994 amendments.

Section 5101(c)(3)(D) of the Agriculture Credit Act, as amended, specifies that, in order to be certified, States shall provide for confidential mediation sessions. This statutory requirement necessitates a rule of rather narrow parameters. The types of decisions subject to mediation under this proposed rule are not subject to public disclosure and, therefore, can be mediated in confidence, since they relate to grazing permits and involve only the Deciding Officer or designee, the holder of a term grazing permit who seeks relief from a written decision to cancel or suspend a permit, and, in some circumstances, the holder's creditors.

Holders of other written authorizations to occupy and use National Forest System lands who may appeal written decisions of Forest Service line officers (§ 251.86) will not be affected by the modifications in this proposed rule.

Proposed section 251.103 Mediation of Term Grazing Permit Disputes

This proposed rule would add a new section § 251.103 that focuses solely on mediation of certain term grazing permit disputes and integration of mediation into the appeal process.

Proposed paragraph (a) specifies that in those States with USDA certified mediation programs, any holder of a term grazing permit may request mediation as part of an administrative appeal when a Deciding Officer issues a decision to suspend or cancel a term grazing permit, in whole or in part, in accordance with 36 CFR 222.4(a)(2)(i), (ii), (iv), (v) and (a)(3)–(a)(6). The States with mediation programs currently certified by USDA for fiscal year 1998 include Alabama, Arkansas, Arizona, Florida, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

Proposed paragraph (b) of new § 251.103 would limit the parties who may participate in mediation of term grazing permit disputes to those persons directly affected by the action. Since the 1994 amendments specify that mediation sessions must be confidential, this paragraph would permit only the State certified mediator, the Deciding Officer or designee, the

holder of the term grazing permit who seeks relief from a written decision to cancel or suspend a permit, creditors of the permittee, and legal counsel to participate in a mediation. Broader participation would pose a risk to the need to maintain confidentiality.

Proposed paragraph (b) makes clear that a permittee may be accompanied or represented by legal counsel. The Forest Service will be accompanied by legal counsel only if the permittee does also. This provision is necessary to ensure that one party does not have an unfair advantage over another party in the mediation process.

Proposed paragraph (c) specifies that, when an appellant simultaneously requests mediation at the time an appeal is filed (§ 251.84), the Reviewing Officer shall immediately notify, by certified mail, all parties to the appeal that, in order to allow for mediation , the appeal is suspended for 30 calendar days. If agreement has not been reached at the end of 30 calendar days but it appears to the Deciding Officer that a mediated agreement may soon be reached, the Reviewing Officer may extend the period for mediation up to 15 calendar days from the end of the 30-day appeal suspension period. If an agreement cannot be reached under the specified time periods, the Reviewing Officer shall immediately notify, by certified mail, all parties to the appeal that mediation was unsuccessful and that the appeal procedures and timeframes are reinstated as of the date of such notice. This provision is necessary to ensure that meaningful mediation can take place and, at the same time, that the Agency's administrative review process can be completed in a timely manner in the event mediation is unsuccessful in resolving a dispute. Without fixed time periods for mediation, and adverse decision to cancel or suspend a permit for cause could be postponed indefinitely. In many cases, this delay could result in damage to National Forest System resources.

Proposed paragraph (d) specifies that, as required by the Act, mediation sessions shall be confidential. However, consistent which the public disclosure provisions of the National Environmental Policy Act and the National Forest Management Act, this proposed rule makes clear that the final terms of any mediated agreement are subject to public disclosure after mediation ends.

Proposed paragraph (e) specifies that notes and factual material from mediation sessions are not to be entered as part of the appeal record. This is consistent with the confidentiality requirement of 7 U.S.C. 5101(c)(3)(D) and with the administrative appeal procedures of 36 CFR part 251, subpart C.

Proposed paragraph (f) specifies that the United States Government shall cover only the expenses incurred by its own employees in mediation sessions. This provision recognizes USDA's ongoing contribution of annual funding through grants to the States to develop and administer state certified mediation programs, as authorized by the Agriculture Credit Improvement Act of 1992.

Proposed paragraph (g) makes explicit that, except for the purpose of authorizing a time extension or of communicating the results of mediation, the Deciding Officer, or designee, shall not discuss mediation and/or appeal matters with the Reviewing Officer.

Conforming Amendments

In order to integrate mediation with the appeal procedures of part 251, subpart C, a number of conforming amendments to other sections of subpart C are necessary. A description of these proposed revisions follows.

Proposed Revision of § 251.84 Obtaining Notice

Under this section, the Deciding Officer must give written notice of an adverse decision subject to appeal under subpart C to applicants and holders as defined in § 251.86 and to any holder of like instruments who has made a written requests to be notified of a specific decision. The notice must include a statement of the Deciding Officer's willingness to meet with applicants or holders to discuss issues (§ 251.93), specify the name and address of the officer to whom an appeal of the decision may be filed, and the deadline for filing an appeal.

The proposed rule would redesignate the current text of 0251.84 as paragraph (a) and add a new paragraph (b) to require that, when a Deciding Officer suspends or cancels a term grazing permit pursuant to 36 CFR 222.4(a)(2)(ii), (iv), (v) and (a)(3)–(a)(6) in a State with a USDA certified mediation program, the Deciding Officer must give written notice of the opportunity for the affected term grazing permit holder to request mediation.

Under proposed paragraph (b), the Deciding Officer must notify a permit holder that a request for mediation must be incorporation in the notice of appeal.

Proposed Revision of § 251.90 Content of Notice of Appeal

This section specifies the information that an appellant must include in a notice of appeal. The proposed rule would amend § 251.90(c) to allow the holder of a term grazing permit being cancelled or suspended to request mediation pursuant to § 251.103 with filing of the appeal in those States with USDA certified mediation programs.

Proposed Revision of § 251.91 Stays

Paragraph (a) of this section of the appeal rule specifies that a decision may be implemented during the appeal process, unless the Reviewing Officer grants a stay. The proposed rule would modify paragraph (a) of § 252.91 to provide for an automatic stay when a term grazing permit holder appeals a decision and simultaneously requests mediation. As provided in proposed § 251.103, in the event mediation fails, the stay would be lifted and appeal procedures and timeframes would be reinstated for the remainder of the appeal period. This requirement is necessary in order to allow for meaningful mediation prior to implementation of the decision.

Proposed Revision of § 251.92 Dismissal

This section of the appeal rule lists the actions that warrant closing an appeal record without a decision on the merits of an appeal. Under this proposed rule, paragraph (a) would be revised to provide that the Reviewing Officer would close an appeal if a mediated agreement is reached.

Paragraph (c) of this section currently provides for discretionary review of a Reviewing Officer's dismissal decision, except when a dismissal decision results from withdrawal of an appeal by an appellant or withdrawal of the initial decision by the Deciding Officer. This proposed rule would modify this paragraph to also exempt a mediated agreement from discretionary review. Without such an exemption, any mediation agreement could be reopened at the discretion of the next higher level officer and, thus, undermine resolution of issues through mediation.

Proposed Revision of § 251.93 Resolution of Issues

Paragraph (b) of this section of the appeal rule specifies that when decisions are appealed, the Deciding Officer may discuss the appeal with the appellant(s) and intervenor(s) together or separately to narrow issues, agree on facts, and explore opportunities to resolve the issues by means other than review and decision on the appeal. At the request of the Deciding Officer, the Reviewing Officer may extend the time periods for review, except at the discretionary level, and specify a

reasonable duration to allow for conduct of meaningful negotiations. This proposed rule would revise paragraph (b) by making clear that the Reviewing Officer may extend additional time to resolve grazing disputes only for 15-additional days, as provided in § 251.103.

Proposed Revision of § 251.94 Responsive Statement

Paragraph (b) of this section specifies that, unless the Reviewing Officer has granted an extension or dismissed the appeal, the Deciding Officer shall prepare a responsive statement and send it to the Reviewing Officer and all parties to the appeal within 30 days of receipt of the notice of appeal. If a mediated agreement is reached, the Reviewing Officer would close the appeal (§ 251.92), and no responsive statement would be necessary. Therefore, a conforming amendment is necessary to allow a Deciding Officer to delay the preparation of a responsive statement until mediation is concluded.

Summary

This proposed rule would implement the requirements of 7 U.S.C. 5101, as amended, by integrating a process for mediating certain types of National Forest System grazing permit disputes into the appropriate administrative appeal procedures. The proposed rule is limited in scope and applicability to holders of Forest Service term grazing permits that have been cancelled or suspended in those States with USDA certified mediation program.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients of such programs. Accordingly, this proposed rule is not subject to OMB review under Executive Order 12866.

Moreover, this proposed rule has been considered in light of the limited number of States and grazing permits involved and the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), and it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. The proposed rule does not compel small entities to do anything. Election of mediation of grazing disputes is strictly at the option of an individual permittee. The requirements of the proposed rule are the minimum necessary to protect the public interest, are not administratively burdensome or costly to meet, and are well within the capability of individuals and small entities to perform.

Controlling Paperwork Burdens on the Public

This proposed rule does not contain any new recordkeeping or reporting requirements or other new information collection requirements as defined in 5 CFR part 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq) and implementing regulations at 5 CFR part 1320 do not apply.

Environmental Impact

This proposed rule would establish uniform direction to allow for mediation of certain types of grazing disputes. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 41380; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's preliminary assessment is that this proposed rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final rule.

Civil Justice Reform Act

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule were adopted, (1) all state and local laws and regulations that are in conflict with this proposed rule or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally-protected private property.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This proposed rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

List of Subjects in 36 CFR Part 251

Electric power, Mineral resources, National forests, Public lands-rights-of-way, Water resources.

Therefore, for the reasons set forth in the preamble, Subpart C of Part 251 of Title 36 of the Code of Federal Regulations is proposed to be amended as follows:

PART 251—LAND USES

Subpart C—Appeal of Decisions Relating to Occupancy and Use of National Forest System Lands

1. The authority citation for subpart C is revised to read as follows:

Authority: 7 U.S.C. 5101–5106; 16 U.S.C. 472, 551.

§ 251.84 [Amended]

2. Amend § 251.84 by designating the existing text as paragraph (a) and by adding a paragraph (b) to read as follows:

§ 251.84 Obtaining notice.

* * * * *

(b) In States with USDA certified mediation programs, a Deciding Officer shall also give written notice of the opportunity for the affected term grazing permit holder to request mediation of decisions to suspend or cancel term grazing permits, in whole or in part, pursuant to 36 CFR 222.4(a)(2)(i), (ii), (iv), (v) and (a)(3) through (a)(6). Such notice must inform the permit holder that, if mediation is desired, the permit holder must request mediation as part of the filing of an appeal.

§ 251.90 [Amended]

3. Amend § 251.90 by revising paragraph (c) to read as follows:

§ 251.90 Content of notice of appeal.

* * * * *

(c) An appellant may also include one or more of the following in a notice of appeal: a request for oral presentation (§ 251.97); a request for stay of implementation of the decision pending decision on the appeal (§ 251.91); or, in those States with a USDA certified mediation program, a request for mediation of grazing permit cancellations or suspensions pursuant to § 251.103.

4. Amend § 251.91 by revising paragraph (a) to read as follows:

§ 251.91 Stays.

(a) A decision may be implemented during the appeal process, unless the Reviewing Officer grants a stay or unless a term grazing permit holder appeals a decision and simultaneously requests mediation pursuant to § 251.103. In the case of mediation requests, a stay is granted automatically upon receipt of the notice of appeal for the duration of the mediation period as provided in § 251.103 of this subpart.

* * * * *

5. Amend § 251.92 by adding a new paragraph (a)(8) and by revising paragraph (c) to read as follows:

§ 251.92 Dismissal.

(a) * * *

(8) A mediated agreement is reached (§ 251.103).

* * * * *

(c) A Reviewing Officer's dismissal decision is subject to discretionary review at the next administrative level as provided for in § 251.87(d) of this subpart, except when a dismissal decision results from withdrawal of an appeal by an appellant, withdrawal of the initial decision by the Deciding Officer, or a mediated resolution of the dispute.

6. Amend § 251.93 by revising paragraph (b) to read as follows:

§ 251.93 Resolution of issues.

* * * * *

(b) When decisions are appealed, the Deciding Officer may discuss the appeal with the appellant(s) and intervenor(s) together or separately to narrow issues, agree on facts, and explore opportunities to resolve the issues by means other than review and decision on the appeal, including mediation pursuant to § 251.103. At the request of the Deciding Officer, the Reviewing Officer may extend the time period to allow for meaningful negotiations, except for appeals under review at the discretionary level. In the event of mediation of a grazing dispute under § 251.103, the Reviewing Officer may extend the time for mediation only as provided in § 251.103.

* * * * *

7. Amend 251.94 by revising paragraph (b) to read as follows:

§ 251.94 Responsive statement.

* * * * *

(b) *Timeframe.* Unless the Reviewing Officer has granted an extension or dismissed the appeal, or unless mediation has been requested under this subpart, the Deciding Officer shall prepare a responsive statement and send it to the Reviewing Officer and all parties to the appeal within 30 days of receipt of the notice of appeal. Where mediation occurs but fails to resolve the issues, the Deciding Officer shall prepare a responsive statement and send it to the Reviewing Officer and all parties to the appeal within 30 days of the reinstatement of the appeal timeframes (§ 251.103(c)).

* * * * *

8. Add a new § 251.103 to subpart c to read as follows:

§ 251.103 Mediation of term grazing permit disputes.

(a) *Decisions subject to mediation.* In those States with USDA certified mediation programs, any holder of a term grazing permit may request mediation, if a Deciding Officer issues a decision to suspend or cancel a term grazing permit, in whole or in part, as authorized by 36 CFR 222.4(a)(2) (i), (ii), (iv), (v), and (a)(3) through (a)(6).

(b) *Parties.* Notwithstanding the provisions addressing parties to an appeal at 36 CFR 251.86, only the following may participate in mediation of term grazing permit disputes under this section:

(1) A mediator authorized to mediate under a USDA state certified mediation program;

(2) The Deciding Officer who made the decision being mediated, or designee;

(3) The holder whose term grazing permit is the subject of the Deciding Officer's decision and who has requested mediation in the notice of appeal;

(4) The holder's creditors, if applicable; and

(5) Legal counsel, if applicable. The Forest Service will have legal counsel participate only if the permittee chooses to have legal counsel.

(c) *Timeframe.* When an appellant simultaneously requests mediation at the time an appeal is filed (§ 251.84), the Reviewing Officer shall immediately notify, by certified mail, all parties to the appeal that, in order to allow for mediation, the appeal is suspended for 30 calendar days from the date of the Reviewing Officer's notice. If agreement has not been reached at the end of 30 calendar days, but it appears to the Deciding Officer that a mediated agreement may soon be reached, the Reviewing Officer may notify, by certified mail, all parties to the appeal that the period for mediation is extended for a period of up to 15 calendar days from the end of the 30-day appeal suspension period. If a mediated agreement cannot be reached under the specified timeframes, the Reviewing Officer shall immediately notify, by certified mail, all parties to the appeal that mediation was unsuccessful, that the stay granted during mediation is lifted, and that the timeframes and procedures applicable to an appeal (§ 251.89) are reinstated as of the date of such notice.

(d) *Confidentiality.* Mediation sessions shall be confidential; moreover, dispute resolution communications, as defined in 5 U.S.C. 571(5), shall be confidential. However, the terms of a final mediated agreement are subject to public disclosure.

(e) *Records.* Notes taken or factual material received during mediation sessions are not to be entered as part of the appeal record.

(f) *Cost.* The United States Government shall cover only the incurred expenses of its own employees in mediation sessions.

(g) *Exparte Communications.* Except to request a time extension or communicate the results of mediation pursuant to paragraph (d) of this section, the Deciding Officer, or designee, shall not discuss mediation and/or appeal matters with the Reviewing Officer.

Dated: February 12, 1998.

Robert Lewis, Jr.,

Acting Associate Chief.

[FR Doc. 98–5102 Filed 2–26–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AJ03

Reconsideration of Denied Claims

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs' "Medical" regulations by adding a new section to set forth reconsideration procedures available if requested by an individual or entity who made a claim for benefits administered by the Veterans Health Administration and who disagrees with the initial decision denying the claim. It is anticipated that these procedures would not only allow for more reflective decisions at the local level but would also allow some disputes to be resolved without the need for further appeal to the Board of Veterans Appeals.

DATES: VA must receive comments on or before April 28, 1998.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AJ03." All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Troy L. Baxley, Health Administration Service (10C3), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington DC, 20420, telephone (202) 273–8301. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: This document proposes to amend the "Medical" regulations (38 CFR part 17) by adding a new § 17.133 to set forth reconsideration procedures available if requested by an individual or entity who made a claim for benefits administered by the Veterans Health Administration (VHA) (e.g., reimbursement for non-VA care not authorized in advance, reimbursement for beneficiary travel expenses, reimbursement for home improvements or structural alterations) and who disagrees with the initial decision denying the claim in whole or in part. These procedures would not be mandatory and a claimant may choose to appeal the denied claim to the Board of Veterans Appeals pursuant to 38 USC 7105 without using the new reconsideration procedures. The new reconsideration procedures would not be applicable in those cases where other specific reconsideration procedures apply. For example, there are specific reconsideration provisions applicable to denied claims for CHAMPVA and spina bifida benefits.

As set forth in the text portion of this document, the reconsideration procedures would provide for a written request for reconsideration, reasons why the decision is in error, submission of any new and relevant information, opportunity for an informal meeting (with transcription upon request), and a written decision.

This informal reconsideration procedure would allow for more reflective decisions at the local level and would allow some disputes to be resolved without the need for further appeal to the Board of Veterans Appeals.

This regulation would supersede manual provisions for appeals of VHA decisions found at M–1, Part I, Chap. 1, Section X. The manual provisions are outdated and confusing, and included references to specific procedures that were previously rescinded.

Paperwork Reduction Act of 1995

The Office of Management and Budget (OMB) has determined that proposed 38 CFR 17.133 contains collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collections of information.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the proposed collections of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AJ03".

Reconsideration of Denied Claims—Section 17.133

Title: Reconsideration process available if requested by an individual or entity who made a claim for benefits administered by the Veterans Health Administration and who disagrees with the initial decision denying the claim in whole or in part.

Summary of collection of information: The provisions of proposed 38 CFR 17.133 would add a new informal voluntary review process to existing appellate rights procedures. The person or entity requesting reconsideration would be required to submit such request to the Director of the VA healthcare facility of jurisdiction. It must be submitted in writing within one year of the date of the initial decision. The request must state why the decision is in error and include any new and relevant information not previously considered. The request for reconsideration may include a request for a meeting with the VA decisionmaker, the claimant, and the claimant's representative (if the claimant wishes to have a representative present). Such a meeting shall only be for the purpose of discussing the issues and shall not include formal procedures (such as presentation and cross-examination of witnesses). The meeting will be taped and transcribed by VA, if requested by the claimant, and a copy of the transcription shall be provided to the claimant. After reviewing the matter, the decisionmaker (the Chief, Health Administration Service, or equivalent) shall issue a written decision that affirms, reverses, or modifies the initial decision.

Description of need for information and proposed use of information: The information proposed to be collected under 17.133 appears to be necessary to initiate the reconsideration process.

Description of likely respondents: Individuals or other entities who make a claim for benefits administered by VHA and are denied.

Estimated number of respondents: 101,652.

Estimated frequency of responses: one time.

Estimated total annual reporting and recordkeeping burden: 16,942 hours.

Estimated annual burden per collection: 10 minutes per item.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

• Enhancing the quality, usefulness, and clarity of the information to be collected; and

• Minimizing the burden of the collections of information on those who are to respond, including responses through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of the proposed rule would not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Although the adoption of the proposed rule could affect small businesses, it would not have a significant impact on any small business. Therefore, pursuant to 5 U.S.C. 605(b), the proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

There are no Catalog of Federal Domestic Assistance program numbers.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: February 23, 1998.

Togo D. West, Jr.,

Acting Secretary.

For the reasons set forth in the preamble, 38 CFR part 17 is proposed to be amended as follows:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501(a), 1721, unless otherwise noted.

2. In part 17, an undesignated center heading and § 17.133 are added to read as follows:

RECONSIDERATION OF DENIED CLAIMS

§ 17.133 Procedures.

(a) *Scope.* This section sets forth reconsideration procedures available to an individual or entity who made a claim for benefits administered by the Veterans Health Administration (VHA) and who disagrees with the initial decision denying the claim in whole or in part. These procedures are not mandatory, and a claimant may choose to appeal the denied claim to the Board of Veterans Appeals pursuant to 38 U.S.C. 7105 without utilizing the provisions of this section. These procedures do not apply when other regulations providing reconsideration procedures do apply (e.g., CHAMPVA (38 CFR 17.84), spina bifida (38 CFR 17.904)). Otherwise, this section applies to all claims for VHA benefits (e.g., reimbursement for non-VA care not authorized in advance, reimbursement for beneficiary travel expenses, reimbursement for home improvements or structural alterations, etc.). Submitting a request for reconsideration shall constitute a notice of disagreement for purposes of filing a timely notice of disagreement under 38 U.S.C. 7105(b).

(b) *Process.* A request for reconsideration under this section must be submitted in writing to the Director of the healthcare facility of jurisdiction within one year of the date of the initial decision. The request must state why it is concluded that the decision is in error and must include any new and relevant information not previously considered. Any request for reconsideration that does not identify the reason for the dispute will be returned to the sender without further consideration. The request for reconsideration may include a request for a meeting with the VA decisionmaker, the claimant, and the claimant's representative (if the claimant wishes to have a representative present). Such a meeting shall only be for the purpose of discussing the issues and shall not include formal procedures (such as presentation and cross-examination of witnesses). The meeting will be taped and transcribed by VA if requested by the claimant and a copy of the transcription shall be provided to the claimant. After reviewing the matter, the decisionmaker (the Chief, Health Administration Service, or equivalent) shall issue a written decision that affirms, reverses, or modifies the initial decision.

Note to § 17.133: The final decision of the decisionmaker will inform the claimant of further appellate rights for an appeal to the Board of Veterans Appeals.

(Authority: 38 U.S.C. 511)

[FR Doc. 98–5122 Filed 2–26–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 414

RIN 1006–AA40

Offstream Storage of Colorado River Water and Interstate Redemption of Storage Credits in the Lower Division States

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of proposed rulemaking; extension of deadline for comments.

SUMMARY: The Bureau of Reclamation (Reclamation) published a notice of proposed rulemaking on December 31, 1997 (62 FR 68491), which included the text of a proposed rule titled, "Offstream Storage of Colorado River Water and Interstate Redemption of Storage Credits in the Lower Division States." That notice specified that comments on the proposed rule must be received by Reclamation on or before March 2, 1998. Reclamation will extend the comment deadline an additional 32 days, until close of business on Friday, April 3, 1998.

DATES: Any comments must be received by Reclamation on or before April 3, 1998, in accordance with the criteria set forth in the December 31, 1997, notice of proposed rulemaking (62 FR 68491).

FOR FURTHER INFORMATION CONTACT: Mr. Dale Ensminger, telephone (702) 293–8659 or fax (702) 293–8042.

SUPPLEMENTARY INFORMATION: Reclamation received several requests for an extension of the deadline for comments on the proposed rule. In the interest of encouraging public participation, Reclamation is extending the deadline for written comments. If you have already prepared written comments to meet the March 2, 1998, deadline, you may supplement or replace those comments with an additional written response.

Dated: February 20, 1998.

William E. Rinne,

Area Manager, Boulder Canyon Operations Office.

[FR Doc. 98–5032 Filed 2–26–98; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–117; Notice 4]

RIN 2137–AC87

Low-Stress Hazardous Liquid Pipelines Serving Plants and Terminals

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to exclude from RSPA's safety regulations for hazardous liquid pipelines low-stress pipelines regulated for safety by the U.S. Coast Guard and certain low-stress pipelines less than one mile long serving plants and terminals. Difficulties involving compliance with RSPA's regulations do not appear warranted by risk and may cause operating errors that impair safety. It is RSPA's policy toward effective government to eliminate duplicative and unnecessarily burdensome regulations.

DATES: RSPA invites interested persons to submit comments by close of business April 28, 1998. Late comments will be considered as far as practicable.

ADDRESSES: Send comments in duplicate to the Dockets Unit, Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh St., SW, Washington, D.C. 20590. Comments should identify the docket and the notice number stated in the heading of this notice. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard. All comments and docketed material will be available for inspection and copying in Room 8421 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow at (202) 366–4559 or furrowl@rspa.dot.gov. For copies of this notice or other material in the docket, contact the Dockets Unit at (202) 366–5046.

SUPPLEMENTARY INFORMATION:

I. Background

When RSPA's safety regulations for hazardous liquid [1] pipelines (49 CFR part 195) were first published, the regulations did not apply to low-stress pipelines [2] (34 FR 15473; Oct. 4, 1969). In recent years, however, during a time of increased environmental awareness, critical accidents involving low-stress pipelines led Congress to restrict DOT's discretion to except these lines from regulation. So, in an amendment to the pipeline safety laws, Congress directed the Secretary of Transportation not to except from regulation a hazardous liquid pipeline facility only because the facility operates at low internal stress (49 U.S.C. § 60102(k)).

In response to this change in the law, RSPA extended the Part 195 regulations to cover certain low-stress pipelines (Docket No. PS–117; 59 FR 35465; July 12, 1994). Except for onshore rural gathering lines and gravity-powered lines, the following categories of low-stress pipelines were brought under the regulations: pipelines that transport highly volatile liquids, pipelines located onshore and outside rural areas, pipelines located offshore, and pipelines located in waterways that are currently used for commercial navigation (§ 195.1(b)(3)). Because the rulemaking record showed that many low-stress pipelines probably were not operated and maintained consistent with Part 195 requirements, operators were allowed to delay compliance of their existing lines until July 12, 1996 (§ 195.1(c)).

II. Interfacility Transfer Lines

A. Description

The largest proportion of low-stress pipelines brought under Part 195 consisted of interfacility transfer lines (about two-thirds of the pipelines and one-third of the overall mileage). The remainder included trunk lines and gathering lines located outside rural areas.

Interfacility transfer lines move hazardous liquids locally between facilities such as truck, rail, and vessel transportation terminals, manufacturing plants (including petrochemical plants), and oil refineries, or between these facilities and associated storage or long-distance pipeline transportation.[3] The lines usually are short, averaging about a mile in length. Typically they are operated in association with other transfer piping on the grounds of the industrial plants and terminals they serve.

B. Related Federal Regulations

Segments of interfacility transfer lines located on the grounds of industrial plants and transportation terminals are subject to the Process Safety Management regulations of the Occupational Safety and Health Administration (OSHA) (29 CFR 1910.119). These regulations, which involve hazard analysis and control, operating and maintenance procedures, and personnel training, are intended to reduce the risk of fires and explosions caused by the escape of hazardous chemicals from facility processes.

Although on-grounds segments of interfacility transfer lines generally are excepted from Part 195 (§ 195.1(b) (6) and (7)),[4] the on-grounds segment and regulated off-grounds segment of a line function together as a unit. Thus, OSHA's Process Safety Management regulations, though applicable only to on-grounds segments, affect the operation of off-grounds segments. And, similarly, compliance with part 195 for off-grounds segments affects operation of the unregulated on-grounds segments.

In addition, most transfer lines between vessels and marine transportation-related facilities are subject to safety regulations of the U.S. Coast Guard (33 CFR parts 154 and 156). The Coast Guard applies these regulations to transfers of hazardous liquid from the dock loading arm or manifold up to the first valve after the line enters the Spill Prevention Control and Countermeasure (SPCC) containment or secondary containment if the facilities are not protected by SPCC plans.

C. Compliance Difficulties

Information we received in response to Notice 1 of Docket PS–117 (55 FR 45822; Oct. 31, 1990) showed that bringing interfacility transfer lines into full compliance with part 195 would be difficult for many operators. The primary difficulty is that their lines are not installed and operated on the basis of part 195 standards. For example,

[1] "Hazardous liquid" means petroleum, petroleum products, or anhydrous ammonia.

[2] "Low-stress pipeline" means a hazardous liquid pipeline that is operated in its entirety at a stress level of 20 percent or less of the specified minimum yield strength (SMYS) of the line pipe.

[3] The interfacility transfer lines did not include piping that connect high-stress pipelines with surge tanks located at plants and terminals. This piping was already subject to the part 195 regulations as part of the pipeline systems for which the tanks relieve surges.

[4] Segments of interfacility transfer lines on plant or terminal grounds are subject to Part 195 if the segment connects a regulated pipeline (including off-grounds segments of interfacility transfer lines) to a surge tank or other device necessary to control the operating pressure of the regulated pipeline.

considering the short length and low operating stress of the lines, additional pipe wall thickness is often used instead of cathodic protection to resist expected corrosion. But, regardless of this feature, under part 195, cathodic protection systems would have to be developed and installed as required. Other part 195 requirements that may not bring commensurate benefits for short, low-stress transfer lines involve modifying operations and maintenance manuals, installing pressure control equipment, and establishing programs to carry out drug and alcohol rules under 49 CFR part 199. Also, operating personnel would have to be trained to carry out part 195 requirements.

After publication of the Final Rule in Docket PS–117, we learned about another significant compliance difficulty. Transfer line operators and their representatives said that coping with the separate federal regulatory regimes of RSPA, OSHA, and the Coast Guard over transfer lines was a strain on resources. As explained above, OSHA's Process Safety Management regulations and RSPA's part 195 standards have an overlapping effect on operation of interfacility transfer lines. This overlap results in analogous administrative costs for records, procedures, and manuals. Worse yet it creates opportunities for mistakes when operating personnel have to meet different requirements with similar objectives.

For transfers between vessels and marine transportation-related facilities, the Coast Guard safety regulations compound the RSPA-OSHA overlap problem. Moreover, applying part 195 to these marine terminal transfer lines duplicates agency efforts within DOT. It also leaves the industry uncertain which DOT safety standards apply to particular facilities. So the upshot of these separate regulatory regimes of RSPA, OSHA, and the Coast Guard is not only the added costs of meeting separate requirements directed at similar safety objectives, but also possible confusion of operating personnel.

The low-stress pipeline regulations also present RSPA and its cooperating State agencies with related compliance difficulties. Carrying out adequate compliance inspections on interfacility transfer lines would require a significant increase in resources. We estimate that about 11,000 miles of low-stress pipelines are now under part 195, with over a third of the mileage composed of short interfacility transfer lines. Just the job of finding and educating the many operators of these short lines would likely be a major, protracted effort.

D. Stay of Enforcement

We weighed these industry and government compliance difficulties against the need for risk reduction on low-stress interfacility transfer lines. Our conclusion was that the potential benefits of complying with part 195 do not justify the compliance difficulties if the line is short and does not cross an offshore area or a commercially navigable waterway, or if the line is regulated by the Coast Guard. There were several reasons for this decision. First, RSPA's pipeline safety data do not show that short interfacility transfer lines have been a source of significant safety problems. Another reason was that the low operating hoop stress of interfacility transfer lines is itself a safeguard against several accident causes. And, from the consequence perspective, a short length means the potential spill volume would be limited should an accident occur. Also, public exposure is typically limited in the industrial areas where most low-stress interfacility transfer lines are located. For marine transfer lines, the risk is reduced even further by the Coast Guard regulations and inspection force. At the same time, except for Coast Guard regulated lines, the potential of transfer lines crossing offshore or a commercially navigable waterway to cause environmental harm tipped the scale toward continued compliance with part 195.

In view of the above considerations, we became concerned that the continued application of part 195 to Coast Guard regulated lines and other short interfacility transfer lines not crossing an offshore area or a commercially navigable waterway was not in the public interest. Consequently, we announced a stay of enforcement of part 195 against these lines (61 FR 24245; May 14, 1996). The stay applies to low-stress pipelines that are regulated by the Coast Guard or that extend less than 1 mile outside plant or terminal grounds without crossing an offshore area or any waterway currently used for commercial navigation. The stay will remain in effect until modified or until the part 195 regulations are finally revised as a result of the present action.

Since announcement of the stay, we have not received any request to lift it. More important, we have explained this new enforcement policy at two public meetings of the Technical Hazardous Liquid Pipeline Safety Advisory Committee, a statutory panel that reviews RSPA's pipeline safety program. We also explained our plan to revise the part 195 regulations consistent with the stay. Neither the Committee members nor the public attendees raised any significant objection to the enforcement policy or planned rule change. Further, State agencies who cooperate with RSPA in enforcing safety standards over interfacility transfer lines have not objected to the stay.

E. Direct Final Rule

Following publication of the stay of enforcement, we issued a direct final rule to expand the low-stress pipeline exclusion under § 195.1(b)(3) to include interfacility transfer lines that are covered by the stay (62 FR 31364; June 9, 1997).

The direct final rule changed § 195.1(b)(3) to read as follows:

(b) This part does not apply to—

* * * * *

(3) Transportation through the following low-stress pipelines:

(i) An onshore pipeline or pipeline segment that—

(A) Does not transport HVL;

(B) Is located in a rural area; and

(C) Is located outside a waterway currently used for commercial navigation;

(ii) A pipeline subject to safety regulations of the U.S. Coast Guard; and

(iii) A pipeline that serves refining, manufacturing, or truck, rail, or vessel terminal facilities, if the pipeline is less than 1 mile long (measured outside facility grounds) and does not cross an offshore area or a waterway currently used for commercial navigation;

* * * * *

The procedures governing issuance of direct final rules are in 49 CFR 190.339. These procedures provide for public notice and opportunity for comment subsequent to publication of a direct final rule. They also provide that if an adverse comment or notice of intent to file an adverse comment is received, RSPA will issue a timely notice in the **Federal Register** to confirm that fact and withdraw the direct final rule in whole or in part. Under the procedures, RSPA may then incorporate the adverse comment into a subsequent direct final rule or may publish a notice of proposed rulemaking.

Four persons submitted comments on the direct final rule: American Petroleum Institute (API), California Department of Fish and Game (CDF&G), California Independent Petroleum Association (CIPA), and Western States Petroleum Association (WSPA). API made an editorial comment, while CIPA and WSPA argued that the direct final rule should be expanded to also exclude from part 195 short low-stress pipelines serving production shipping facilities in urban areas.

However, CDF&G opposed the direct final rule. This State agency contended the Coast Guard's regulations are not an

adequate substitute for RSPA's because the Coast Guard regulations do not specify a hold time for pressure tests, do not apply to transfer lines that only serve small vessels (less than 250 barrels of cargo capacity), and do not require cathodic protection to guard against corrosion. CDF&G also said the exclusion of short plant and terminal transfer lines should apply only if a discharge would not impact marine waters of the United States.

Because of the adverse comment from CDF&G, we withdrew the direct final rule (62 FR 52511; October 8, 1997). As a result, § 195.1(b)(3) remains as it was before issuance of the direct final rule. In the withdrawal notice, we said we would follow up the withdrawal with a notice of proposed rulemaking based on the direct final rule and the comments we received on it. The present action is that notice of proposed rulemaking.

F. Proposed Rule

In commenting on the direct final rule, API suggested we clarify that a low-stress pipeline would be excluded from part 195 if it comes under any one of the three categories of excluded low-stress pipelines ((i), lines previously excluded; (ii), lines subject to Coast Guard regulations; and (iii), certain lines serving plants and terminals). API further suggested that replacing the word "and" between categories (ii) and (iii) with the word "or" would accomplish this objective. In addition to adopting this comment, to avoid any further misunderstanding, we are proposing to modify the introductory phrase of § 195.1(b)(3) to read "transportation through any of the following low-stress pipelines."

CIPA and WSPA argued that our rationale for excluding certain short transfer lines serving refineries, manufacturing plants, and truck, rail, or vessel terminals applies equally to similar transfer lines serving production shipping facilities in urban areas. These two commenters also said that until the direct final rule was published, many of their members thought the stay of enforcement covered these transfer lines (otherwise known as gathering lines) located in urban areas because of the reference to low-stress pipelines outside "plant" grounds in the operative words of the stay.

Despite the parallels these commenters drew, we are not proposing to exclude from part 195 short low-stress pipelines serving production shipping facilities in urban areas. First of all, we never intended the stay to apply to urban gathering lines.[3] Our notice of the stay discussed part 195 compliance problems associated with short transfer lines that interconnect refineries; manufacturing plants; petrochemical plants; truck, rail, or vessel transportation terminals; and long-distance pipelines. It is within this context that the term "plant" was used. Also, when the notice of the stay referred to gathering lines, the context distinguished gathering lines from other kinds of transfer lines. Moreover, the primary reason for the stay, as well as the direct final rule, was the overlapping effect of part 195 and OSHA's Process Safety Management regulations (29 CFR 1910.119) on plant and terminal transfer lines. However, these OSHA regulations do not apply to oil production operations. So, although there may be similarities between urban gathering lines and transfer lines covered by the stay, the absence of an overlap with the OSHA regulations significantly weakens CIPA's and WSPA's argument for excluding short urban gathering lines from part 195. Not only do the OSHA regulations not compound the difficulties these lines may have in meeting part 195, neither can the OSHA regulations be counted on to lower the risk of the lines. And this latter point is even more important because urban gathering lines are not as likely to exist in uninhabited industrial areas as are the transfer lines covered by the stay.

We share CDF&G's concern that any exclusion of plant and terminal transfer lines not increase the risk to marine waters. But we do not agree that the Coast Guard's regulations do not afford as much protection as RSPA's. Although the Coast Guard's regulations do not specify a hold time for pressure tests and do not require cathodic protection, they do require that existing transfer lines be pressure tested annually to at least 150 percent of the pipeline's maximum allowable working pressure. This requirement is more rigorous than RSPA's pressure testing standard (subpart E of part 195) for low-stress pipelines. Not only does the RSPA standard exempt most existing low-stress pipelines (49 CFR 195.302(b)(3)), low-stress transfer lines that are subject to testing under the standard only have to be tested once to no more than 125 percent of maximum operating pressure. We also believe the higher safety margin of the Coast Guard test (50% above maximum allowable working pressure) and the higher frequency of testing, with on-scene Coast Guard inspection, makes the lack of a cathodic protection requirement less important. As to the concern over transfers to small capacity vessels, any low-stress marine transfer lines that are not subject to Coast Guard regulations would continue to be covered by part 195, unless they are otherwise excluded under § 195.1(b)(3).

In light of CDF&G's comment about the impact on marine waters of plant and terminal transfer lines, we also considered broadening in this notice the provision in the direct final rule that kept under part 195 short lines crossing offshore or commercially navigable waters. As mentioned above, our reason for not excluding these short pipelines from regulation was their potential for environmental harm. This potential is increased by the presence of the lines in important water resources and by the vulnerability of the lines to outside force damage. In weighing the need for risk reduction against the difficulties of compliance with part 195, we decided this increased potential for environmental harm was reason enough to keep the lines under part 195. CDF&G's suggestion to exclude short lines only if a discharge would not impact marine waters would possibly keep even more lines under part 195; for example, lines that are proximate to, but do not cross, marine waters. But unlike lines crossing offshore or commercially navigable waterways, we do not believe that as a whole these additional short lines pose a level of risk that outweighs their compliance difficulties. Therefore, the proposed rule would exclude from part 195 the same low-stress pipelines that were covered by the direct final rule.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Policies and Procedures

The Office of Management and Budget (OMB) does not consider this action to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; October 4, 1993). Therefore, OMB has not reviewed this final rule document. DOT does not consider this action significant under its regulatory policies and procedures (44 FR 11034; February 26, 1979).

RSPA prepared a study of the costs and benefits of the Final Rule that extended part 195 to cover certain low-stress pipelines (Final Regulatory Evaluation, Docket No. PS–117). That study, which encompassed short or Coast Guard regulated interfacility transfer lines, showed that the Final Rule would result in net benefits to society, with a benefit to cost ratio of 1.5.

[3] Rural gathering lines are excluded from part 195 by § 195.1(b)(4).

The Final Regulatory Evaluation determined costs and benefits of the Final Rule on a mileage basis. But while costs were evenly distributed, most of the expected benefits were projected from accident data that did not involve short or Coast Guard regulated interfacility transfer lines. Since the present action affects only these lines, it is reasonable to believe the action will reduce more costs than benefits. Thus, the present action should enhance the net benefits of the Final Rule. Because of this likely economic effect, a further regulatory evaluation of the Final Rule in Docket No. PS–117 or of the present action is not warranted.

B. Regulatory Flexibility Act

Low stress interfacility transfer lines covered by the present action are associated primarily with the operation of refineries, petrochemical and other industrial plants, and materials transportation terminals. In general, these facilities are not operated by small entities. Nonetheless, even if small entities operate low-stress interfacility transfer lines, their costs will be lower because this action reduces compliance burdens. Therefore, based on the facts available about the anticipated impact of this rulemaking action, I certify, pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this rulemaking action will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12612

RSPA has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 (52 FR 41685). RSPA has determined that the action does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

D. Paperwork Reduction Act

This action reduces the pipeline mileage and number of operators subject to part 195. Consequently, it reduces the information collection burden of part 195 that is subject to review by OMB under the Paperwork Reduction Act of 1995. OMB has approved the information collection requirements of part 195 through May 31, 1999 (OMB No. 2137–0047).

E. Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects in 49 CFR Part 195

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA proposes to amend 49 CFR part 195 as follows:

PART 195—[AMENDED]

1. The authority citation for Part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. In § 195.1, the introductory text of paragraph (b) is republished, and paragraph (b)(3) would be revised to read as follows:

§ 195.1 Applicability.

* * * * *

(b) This part does not apply to—

* * * * *

(3) Transportation through any of the following low-stress pipelines:

(i) An onshore pipeline or pipeline segment that—

(A) Does not transport HVL;

(B) Is located in a rural area; and

(C) Is located outside a waterway currently used for commercial navigation;

(ii) A pipeline subject to safety regulations of the U.S. Coast Guard; or

(iii) A pipeline that serves refining, manufacturing, or truck, rail, or vessel terminal facilities, if the pipeline is less than 1 mile long (measured outside facility grounds) and does not cross an offshore area or a waterway currently used for commercial navigation;

* * * * *

Issued in Washington, D.C. on February 23, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–5115 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 63, No. 39
Friday, February 27, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

South Babione Project, Bighorn National Forest, Sheridan and Johnson Counties WY

AGENCY: Forest Service, USDA.

ACTION: Cancellation notice.

SUMMARY: The Forest Service is cancelling notice for preparation of an environmental impact statement on a proposal to harvest timber in the South Babione area, located on the Bighorn National Forest within Sheridan and Johnson Counties, Wyoming. The notice of intent was published in Volume 62 No. 167, page 45619 on August 28, 1997.

FOR FURTHER INFORMATION CONTACT: Craig Yancey, Tongue District Ranger, Bighorn National Forest, 1969 South Sheridan Avenue, Sheridan, Wyoming 82801 or (307) 672–0751.

SUPPLEMENTARY INFORMATION: Since August, 1997, when the Bighorn National Forest published the Notice of Intent to prepare an environmental impact statement to harvest timber in the South Babione area, the Forest Service has proposed to revise the regulations concerning the management of the national forest transportation system to address changes in how the road system is developed, used, maintained and funded.

On January 28, 1998, the Forest Service published notice in the **Federal Register** to suspend temporarily road construction and reconstruction in most roadless areas of the national forest system. The South Babione area is in a RARE II roadless area. The project area is located south of Forest Development Road 299 and west of Antler Creek. The project area covers approximately 5,000 acres.

This project is cancelled until a long range policy and rulemaking for the Forest Service transportation system is developed.

Abigail Kimbell, Forest Supervisor, is the Responsible Official for decisions on timber harvest.

Dated: February 13, 1998.

Abigail R. Kimbell,

Forest Supervisor.

[FR Doc. 98–5108 Filed 2–26–98; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Notice of Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, D.C. on Tuesday and Wednesday, March 10–11, 1998 at the times and location noted below.

DATES: The schedule of events is as follows:

Monday, March 9, 1998

1:00 p.m.–3:30 p.m.—Tour of MCI Arena

Tuesday, March 10, 1998

9:00 a.m.–Noon and 1:30–3:30 p.m.—Committee of the Whole—Architectural Barriers Act Guidelines (Closed Meeting)

3:30 p.m.–5:00 p.m.—Committee of the Whole—Recreation Guidelines Notice of Proposed Rulemaking (Closed Meeting)

Wednesday, March 11, 1998

9:00 p.m.–9:45 p.m.—Planning and Budget Committee

9:45 p.m.–11:30 a.m.—Technical Programs Committee

1:00 p.m.–2:30 p.m.—Board Meeting

ADDRESSES: The meetings will be held at: Marriott at Metro Center, 775 12th Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434, ext. 14 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items. Specific voting items are noted next to each committee report.

Open Meeting

- Executive Director's Report.
- Approval of the Minutes of the September 10, 1997 and January 14, 1998 Board Meetings.
- Planning and Budget Committee Report—Fiscal Year 1998 Spending Plan, Fiscal Year 1999 Budget Status, and Agency Goals—Progress Report.
- Technical Programs Committee Report—Report on Access to Toilet and Bath Facilities Project, Status Report on Fiscal Year 1996–1998 Research Projects, and Status of Technical Assistance Materials.

Closed Meeting

- Committee of the Whole Report—Architectural Barriers Act Guidelines.
- Committee of the Whole Report—Recreation Guidelines Notice of Proposed Rulemaking (voting).

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 98–5085 Filed 2–26–98; 8:45 am]

BILLING CODE 8150–01–P

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATE: March 10, 1998.

PLACE: ARRB, 600 E Street, NW, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Review and Accept Minutes of Closed Meeting
2. Review of Assassination Records
3. Other Business

CONTACT PERSON FOR MORE INFORMATION: Eileen Sullivan, Press Officer, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

T. Jeremy Gunn,

Executive Director.

[FR Doc. 98–5292 Filed 2–25–98; 12:56 pm]

BILLING CODE 6118–01–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: March 30, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 17, November 7, December 19, 1997, January 5, 9 and 16, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 FR 54041, 60218, 66597 63 FR 202, 1422 and 2659) of proposed additions to and deletions from the Procurement List.

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Office and Miscellaneous Supplies
(Requirements for Hurlburt Field Air Force Base, Florida)

Office and Miscellaneous Supplies
(Requirements for the Naval Support Activity Memphis, Millington, Tennessee)

Fly Tent, Nylon, Polyurethane Coated
8340–00–102–6370
8340–01–185–5512

Services

Grounds Maintenance, Veterans Affairs Medical Center, Menlo Park, California

Janitorial/Custodial, Naval Air Station Atlanta, 1000 Halsey Avenue, Marietta, Georgia

Janitorial/Custodial, Department of Veterans Affairs Service and Distribution Center, Building #37—Warehouse, Hines, Illinois

Janitorial/Custodial, Defense Finance and Accounting Service (DFAS), Rome, New York

Janitorial/Custodial, Administrative (versus Industrial) Areas (approximately 150 buildings), Tinker Air Force Base, Oklahoma

Janitorial/Custodial, U.S. Army Reserve Center, Buildings 3270 A & B, Charleston, South Carolina

Laundry Service, Naval Hospital, San Diego, California

Mailing Service, Department of Housing and Urban Development, Albany, New York

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Napkin, Junior Dispenser
8540–01–350–6419

Napkin, Paper, Various
8540–01–350–6418

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–5094 Filed 2–26–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 30, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial

number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Office and Miscellaneous Supplies
(Requirements for the Westover Air Force Reserve Base, Chicopee, MA) NPA: In-Sight, Providence, Rhode Island

Candle Shipper, Spring Scents
M.R. 508
NPA: South Texas Lighthouse for the Blind, Corpus Christi, Texas

Fuel Kit and Oil Filter Element
2945–00–019–0280
NPA: Coastal Center for Developmental Services, Inc., Savannah, Georgia

Services

Administrative Services

National Center for Toxicological Research
3900 NCTR Road
Jefferson, Arkansas
NPA: Jenkins Memorial Children's Center and Jenkins Industries, Inc., Pine Bluff, Arkansas

Janitorial/Custodial

Marine Corps Air Base
Camp Pendleton, California
NPA: Job Options, Inc., San Diego, California

Janitorial/Custodial

Veterans Integrated Support Network 16
Ridgeland, Mississippi
NPA: Goodwill Industries of Mississippi, Jackson, Mississippi

Janitorial/Custodial

National Park Service
Visitor Center and Headquarters
Tupelo, Mississippi
NPA: Allied Enterprises of Oxford, Oxford, Mississippi

Janitorial/Custodial

Naval and Marine Corps Reserve Center
Rochester, New York
NPA: Lifetime Assistance, Inc., Rochester, New York

Janitorial/Custodial

Basewide (except Commissary, Hospital and Base Industrial Areas)
Minot Air Force Base, North Dakota
NPA: Minot Vocational Adjustment Workshop, Inc., Minot, North Dakota

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–5095 Filed 2–26–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 30, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Janitorial/Custodial

Buildings 300 and 301
Robins Air Force Base, Georgia
NPA: Goodwill Industries of Middle Georgia, Inc., Macon, Georgia.

Operation of Postal Service Center

Charleston Air Force Base, South Carolina
NPA: Goodwill Industries of Lower SC, Inc., Charleston, South Carolina.

Janitorial/Custodial

VA Outpatient Clinic
Mobile, Alabama
NPA: Lakeview Center, Inc., Pensacola, Florida.

Janitorial/Custodial

Postwide
Fort Belvoir, Virginia
NPA: The Chimes, Inc., Baltimore, Maryland.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–5096 Filed 2–26–98; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 971230315–7315–01]

Termination of Certification of Eligibility-Team One USA, Inc.

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Notice.

SUMMARY: The Economic Development Administration (EDA) hereby gives Notice pursuant to Title II, Chapter 3 of the Trade Act of 1975, as amended (19 U.S.C. 2341 *et seq.*) (Trade Act) and EDA's rules at 13 CFR 315 that pursuant to the provisions of the Trade Act at

section 2342, the Certification of Eligibility awarded to Team One USA, Inc., (TeamOne) Keyport, Washington, on July 17, 1997, is for good cause shown, terminated effective [insert date of publication in the FR]. TeamOne has been notified by certified return receipt mail of EDA's intent to terminate this eligibility for its failure to meet the production and sales criteria set forth in the Trade Act and EDA's implementing regulations at 13 CFR part 315.

Appeal procedures are set forth in the Trade Act at section 2391 and 13 CFR 315.11. Any party having a substantial interest in the proceedings may request a public hearing on this matter. A request for a hearing must be delivered by hand or registered mail to the Coordinator, Trade Adjustment and Technical Assistance, Room 7317, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, by no later than the close of business of the tenth calendar day following the publication of this Notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which this action is taken is 11.313 Economic Development—Trade Adjustment Assistance.

Dated: February 2, 1998.

Phillip A. Singerman,

Assistant Secretary for Economic Development.

[FR Doc. 98–5033 Filed 2–26–98; 8:45 am]

BILLING CODE 3510–34–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to Comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 01/16/97–02/15/98

Firm name	Address	Date petition accepted	Product
Century Manufacturing, Inc	4858 U.S. Route 35, East, West Alexandria, OH 45381.	01/23/98	Stainless Steel Tanks for Use by the Beverage Industry.
Ponderay Valley Fibre, Inc	137 5th Street, USK, WA	01/23/98	Wood Chips.
Pacific Metal Tech., Inc	22614 66th Avenue South, Kent, WA 98032.	01/26/98	Bicycle Caliper and Cantilever Brakes, Frames, Forks, Parts and Accessories.
Gabris Surgical Corp	1432 North Great Neck Road, Virginia Beach, VA 23454.	01/26/98	Surgical Instruments and Cannulas.
Trager Manufacturing Co., Inc	90 South Dearborn Street, Seattle, WA 98134.	02/02/98	Backpacks, Briefcases and Similar Travel Bags.
Service Plastics, Inc	1850 Touhy Avenue, Elk Grove Village, IL 60007.	02/02/98	Injection Molded Plastic Cabinets, Housewares, Service Racks, Stands and Bases.
Capitol Manufacturing Company, Inc.	710 Locust Street, Fayetteville, NC 28302.	02/02/98	Picture Frame Moldings and Picture Frames.
Price Manufacturing Company	372 North Smith Avenue, Corona, CA 91720.	02/02/98	Fasteners for Aircraft Fuselage Rivets, and Automotive Airbag.
Amyx Manufacturing Limited Partnership.	648 Missouri Avenue, West Plains, MO 65775.	02/06/98	Wooden Chairs and Turnings.
Johansen Brothers Shoe Company, Inc.	983 Gardenview Office Parkway, St. Louis, MO 63141.	02/06/98	Women and Men's Shoes.
Darman Manufacturing Company, Inc.	1410 Lincoln Avenue, Utica, NY 13502.	02/06/98	Cloth Roll Towel Dispensers, Winding and Unwinding Equipment.
Charles Emerson	RD #1, Box 337, Alfred Station, NY 14803.	02/09/98	Bulk Maple Syrup and Maple Cream and Sugar, Hay and Gravel.
P.B. & H. Moulding Corporation	124 Pickard Drive East, Syracuse, NY 13211.	02/09/98	Wood Molding Picture Frames.
Florence Eiseman, Inc	342 North Water Street, Milwaukee, WI 53202.	02/09/98	Children's Apparel.
Henson Garment Company, Inc	125 Paradise Boulevard, Athens, GA 30607.	02/10/98	Men's Apparel.
Ross & White Company	1090 Alexander Court, Cary, IL 60013.	02/10/98	Wash Systems for Motor Vehicles.
Sea Hawk Seafood, Inc	1900 W. Nickerson Street, Seattle, WA 98119.	02/11/98	Fresh and Frozen Salmon.
Hasty Bake, Inc	7656 East 46th Street, Tulsa, OK 74145.	02/11/98	Bar-B-Que Pits.
Tasnet, Inc	5271 102nd Avenue North, Pinellas Park, FL 33782.	02/11/98	Softwear and Automation Tools for Electric Utility Companies.
River Ltd	115 Anawan Street, Fall River, MA 02721.	02/17/98	Women's Slacks and Shorts.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States to articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in

sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: February 17, 1998.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 98–5053 Filed 2–26–98; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

International Trade Administration

Application of License To Enter Watches and Watch Movements into the Customs Territory of the United States

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 28, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230. Phone number: (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Faye Robinson, Statutory Import Programs Staff, Room 4211, U.S. Department of Commerce, Washington, DC 20230; Phone number: (202) 482–3526, and fax number: (202) 482–0949.

SUPPLEMENTARY INFORMATION:

I. Abstract

Pub. L. 97–446, as amended by Pub. L. 103–465, requires the Department of Commerce and the Interior to administer the distribution of duty-exemptions and duty-refunds to watch producers in the U.S. insular possessions and the Northern Mariana Islands. The primary consideration in collecting information is the enforcement of the law and the information gathered is limited to that necessary to prevent abuse of the program and to permit a fair and equitable distribution of its benefits. Form ITA–334P is the principal program form used for recording the annual operational data on the basis of which program entitlements are distributed among the producers (and the provision of which to the Departments constitutes their annual application for these entitlements).

II. Method of Collection

The Department of Commerce sends Form ITA–334P to each watch producer annually. A company official completes the form and returns it to the Department of Commerce.

III. Data

OMB Number: 0625–0040.
Form Number: ITA–334P.
Type of Review: Revision-Regular Submission.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 5.
Estimated Time Per Response: 1 hour.
Estimated Total Annual Burden Hours: 5 hours.
Estimated Total Annual Costs: The estimated annual cost for this collection is $30,125.00 ($125 for respondents and $30,000 for federal government (included are most administration costs of program)).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 24, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–5100 Filed 2–26–98; 8:45 am]

BILLING CODE: 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Watch Duty-Exemption Program Forms

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2) (A)).

DATES: Written comments must be submitted on or before April 28, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230. Phone number: (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Faye Robinson, Statutory Import Programs Staff, Room 4211, U.S. Department of Commerce, Washington, DC 20230; Phone number: (202) 482–3526, and fax number: (202) 482–0949.

SUPPLEMENTARY INFORMATION:

I. Abstract

Pub. L. 97–446, as amended by Pub. L. 103–465, requires the Department of Commerce and the Interior to administer the distribution of duty-exemptions and duty-refunds to watch producers in the U.S. insular possessions and the Northern Mariana Islands. The primary consideration in collecting information is the enforcement of the law and the information gathered is limited to that necessary to prevent abuse of the program and to permit a fair and equitable distribution of its benefits. Form ITA–340P provides the data to assist in verification of duty-free shipments and make certain the allocations are not exceeded. Forms

ITA–360P and ITA–361P are necessary to implement the duty-refund program.

II. Method of Collection

The Department of Commerce issues Form ITA–360P to each watch producer annually. No information is requested unless the recipient wishes to transfer the certificate. Form ITA–361P is obtained from the Department of Commerce and must be completed each time a certificate holder wishes to obtain a portion, or all, of the duty-refund authorized by the certificate. The form is then sent to the Department of Commerce for validation and returned to the producer. Form ITA–340P may be obtained from the territorial government or may be produced by the company in an approved computerized format or any other medium or format approved by the Department of Commerce and the Interior. The form is completed for each duty-free shipment of watches and watch movements into the U.S. and a copy is transmitted to the territorial government. Only if entry procedures are not transmitted electronically through Customs' automated broker interface, do the regulations require a copy of the permit be sent to Customs along with other entry paperwork.

III. Data

OMB Number: 0625–0134.

Form Number: ITA–340P, 360P, 361P.

Type of Review: Revision-Regular Submission.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 5.

Estimated Time Per Response: 10 minutes.

Estimated Total Annual Burden Hours: 83 hr. 10 min.

Estimated Total Annual Costs: The estimated annual cost for this collection is $10,831.67 ($831.67 for respondents and $10,000 for federal government (included are some administration costs of program)).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 24, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

(FR Doc. 98–5101 Filed 2–26–98; 8:45 am)

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing, duty administrative reviews and requests for revocation in part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with January anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke three antidumping duty orders in part.

EFFECTIVE DATE: February 27, 1998.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(1997), for administrative reviews of various antidumping and countervailing duty orders and findings with January anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on certain cut-to-length carbon steel plate and corrosion-resistant carbon steel plate from Canada, and elemental sulphur from Canada. The request for revocation in part with respect to certain cut-to-length carbon steel plate and corrosion-resistant carbon steel plate from Canada was inadvertently omitted from initiation notice (62 FR 50292, September 25, 1997), and the request for revocation in part with respect to elemental sulphur from Canada was inadvertently omitted from the previous initiation notice (63 FR 3702, January 26, 1998).

Initiation of Review

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than January 31, 1999.

	Period to be reviewed
Antidumping Duty Proceedings	
Canada: Brass Sheet & Strip A–122–601 ..... Wolverine Tube (Canada), Inc.	1/1/97–12/31/97
France: Anhydrous Sodium Metasilicate (ASM) A–427–098 ..... Rhode-Poulene, S.A.	1/1/97–12/31/97
Republic of Korea: Welded Stainless Steel Pipe,* A–580–810 ..... SeAH Steel Corporation.	1/1/97–12/31/97
*Inadvertently omitted from previous notice.	
The People's Republic of China: Potassium Permanganate,* A–570–001	1/1/97–12/31/97

	Period to be reviewed
Guizhou Provincial Chemical I/E Corp. Zunyi Chemical Factory. *If one of the above named companies does not qualify for a separate rate, all other exporters of potassium permanganate from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.	
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
None.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: February 20, 1998.

Louis Apple,

Acting Deputy Assistant Secretary, Group II, Import Administration.

[FR Doc. 98–5178 Filed 2–26–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration, Commerce

Export Trade Certificate of Review

ACTION: Notice of issuance of an Amended Export Trade Certificate of Review, Application No. 95–2A006.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to Water and Wastewater Equipment Manufacturers Association ("WWEMA") on June 21, 1996. Notice of issuance of the Certificate was published in the **Federal Register** on July 12, 1996 (61 FR 36708).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1997).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 95–00006, was issued to Water and Wastewater Equipment Manufacturers Association on June 21, 1996 (61 FR 36708, July 12, 1996), and previously amended on May 20, 1997 (62 FR 29104, May 29, 1997).

WWEMA's Export Trade Certificate of Review has been amended to:

1. Add the following company as a new "Member" of the Certificate within the meaning of Section 325.2(1) of the Regulations (15 CFR 325.2(1)): Conservatek Industries, Inc. of Conroe, Texas;

2. Delete ABB Kent Meters, Inc. of Ocala, Florida and Galaxy Environmental Corporation of Warminster, Pennsylvania as Members of the Certificate; and

3. Change the listing of the company name for the current Member "Capital Controls Co., Inc." to the new listing "The Capital Controls Group".

The effective date of the amended certificate is November 26, 1997. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: February 23, 1998.

Morton Schnabel,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 98–5060 Filed 2–26–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration, Commerce

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 89–3A018.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to Outdoor Power Equipment Institute, Inc. ("OPEI") on March 19, 1990. Notice of issuance of the Certificate was published in the **Federal Register** on March 26, 1990 (55 FR 11041).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to

issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1997).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 89–3A018, was issued to Outdoor Power Equipment Institute, Inc. on March 19, 1990 (55 FR 11041, March 26, 1990), and previously amended on July 6, 1990 (55 FR 29398, July 19, 1990).

OPEI's Export Trade Certificate of Review has been amended. The only change in the OPEI Certificate was in its membership. The members of the OPEI Certificate are currently as follows: Ariens Company, Brillion, WI; Deere & Company for the activities of its division, Worldwide Lawn & Grounds Care Division, Moline, IL; Dixon Industries, Inc. A Blount Company, Coffeyville, KS; Excel Industries, Inc., Hesston, KS; Exmark Manufacturing Company, Inc., Beatrice, NE; Frigidaire Home Products, Augusta, GA; Garden Way, Inc., Rensselaer, NY; Hoffco, Inc., Richmond, IN; Honda Power Equipment Manufacturing, Inc., Swepsonville, NC; Howard Price Turf Equipment, Chesterfield, MO; Ingersoll Equipment Company, Inc., Winnecone, WI; Kut-Kwick Corporation, Brunswick, GA; Maxim Manufacturing Corporation, Sebastopol, MS; MTD Products, Inc., Valley City, OH; Murray Inc., Brentwood, TN; Ransomes, Inc., Johnson Creek, WI; Scag Power Equipment, Inc., Mayville, WI; Simplicity Manufacturing, Inc., Port Washington, WI; Solo Incorporated, Newport News, VA; Southland Mower Company, Selma, AL; Textron, Inc. for the activities of Bunton, a division of Jacobsen, a division of Textron, Inc., Louisville, KY; Toro Company, The, Minneapolis, MN; and Yazoo Manufacturing Company, Inc., Jackson, MS.

The effective date of the amended certificate is September 16, 1997. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: February 23, 1998.

Morton Schnabel,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 98–5062 Filed 2–26–98; 8:45 am]

BILLING CODE 3510–DR–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Public Comment Period on the Elimination of the Paper Visa Requirement with the Government of Malaysia

February 23, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Seeking public comments on the elimination of the paper visa requirement with the Government of Malaysia.

FOR FURTHER INFORMATION CONTACT: Lori Mennitt, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3821.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Electronic Visa Information System (ELVIS) allows foreign governments to electronically transfer shipment information to the U.S. Customs Service on textile and apparel shipments subject to quantitative restrictions. On November 9, 1995, a notice was published in the **Federal Register** (60 FR 56576) seeking public comments on the implementation of ELVIS. Subsequently, documents published on April 17, 1997 (62 FR 18758) announced that the Government of Malaysia, starting on May 1, 1997, would begin an ELVIS test implementation phase. This test phase does not eliminate the requirement for a valid paper visa to accompany each shipment for entry into the United States.

As a result of successful use of the dual visa system, preparations are under way to move beyond the current dual system to the paperless ELVIS system with Malaysia. However, exempt goods will still require a proper and correct exempt certification.

The Committee for the Implementation of Textile Agreements is requesting interested parties to submit comments on the elimination of the paper visa requirement for Malaysia and utilization of the ELVIS system exclusively. Comments must be received on or before April 28, 1998. Comments may be mailed to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, room 3001, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C.553(a)(1).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–4976 Filed 2–26–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Proposed Amendments to Chicago Mercantile Exchange Butter Futures Contract Regarding Locational Price Differentials

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendments.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has proposed amendments to Chicago Mercantile Exchange butter futures contract which will revise the contract's locational price differentials. The proposal was submitted under the Commission's 45-day Fast Track procedures. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before March 16, 1998.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to

secretary@cftc.gov. Reference should be made to the CME butter contract.

FOR FURTHER INFORMATION, CONTACT: Please contact John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic mail: jbird@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the existing butter futures contract, delivery may be made from approved domestic facilities located within the 48 contiguous states of the U.S. The par delivery area includes Chicago and all locations east of the western boundaries of lower Michigan, Indiana, Kentucky, Tennessee, and Mississippi. Deliveries outside the par delivery area currently are subject to discounts which increase by $.005 per pound for every 400 miles west of Chicago, beginning at $.005 for locations up to 400 miles outside Chicago, and ending at $.025 per pound for locations beyond 1600 miles.

Under the proposed amendments, the futures contract's par delivery location will consist of Chicago only. All other locations would be subject to discounts based on the following schedule: (1) locations up to 400 miles outside Chicago, at a discount of $.010 per pound; (2) locations between 400 and 800 miles outside Chicago, at a discount of $.020 per pound; (3) locations between 800 and 1200 miles outside Chicago, at a discount of $.025 per pound; (4) locations between 1200 and 1600 miles outside Chicago, at a discount of $.030 per pound; (5) locations between 1600 and 2000 miles outside Chicago, at a discount of $.040 per pound; and (6) locations greater than 2000 miles outside Chicago, at a discount of $.045 per pound. The CME proposes to apply the amendments to all newly listed contract months, commencing with the February 1999 contract month.

The Exchange states that the current price differentials "no longer accurately reflect the true level of price differentials that exist during the majority of the year and are no longer based on the majority of cash butter transactions that occur in locations outside of Chicago." The CME indicated that the proposed par delivery location and locational price differentials for alternative delivery points were selected based on the Exchange's analysis of quoted cash butter price differences between Chicago and California, prevailing transportation rates for shipping butter from West Coast locations to Chicago, and information obtained from industry sources. The Exchange also notes that the proposed locational price differentials conform to the locational differentials specified for the Exchange's spot call market for butter.

The proposed amendments were submitted pursuant to the Commission's Fast Track procedures for streamlining the review of futures contract rule amendments (62 FR 10434). Under those procedures, the proposal, absent any contrary action by the Commission, may be deemed approved at the close of business on April 6, 1998, 45 days after receipt of the proposal. In view of the limited review period provided under the Fast Track procedures, the Commission has determined to publish for public comment notice of the availability of the terms and conditions for 15 days, rather than 30 days as provided for proposals submitted under the regular review procedures.

The Commission is specifically requesting comment on the extent to which the proposal conforms to the Commission's policy on the establishment of locational price differentials. That policy provides that locational price differentials specified in futures contracts should reflect normal commercial price differences between the delivery points specified for the contracts. When cash market conditions result in unstable price relationships among delivery points, the policy provides that locational price differentials be set at levels that fall within the range of values commonly observed or expected to occur in the future.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the internet on the CFTC website at www.cftc.gov under "What's Pending".

Other materials submitted by the CME in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on February 23, 1998.

John R. Mielke,

Acting Director.

[FR Doc. 98–5059 Filed 2–26–98; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Headquarters Air Force, Air Force Personnel Center, Officer Accession Branch.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Officer Accessions Branch, Air Force Personnel Center, announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 28, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to: Air Force Personnel Center, Officer Accessions Branch (DPPAO), ATTN: Mr. Stephen Mohacey, or Ms. Blanche Rigney, 550 C Street West, Suite 10, Randolph Air Force Base TX 78159–4712.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and

associated collection instruments, please write to the above address or call: Mr. Stephen Mohacey, or Ms. Blanche Rigney at 210–652–4382.

Title, Associated Form, and OMB Number: "Application for Appointment as Reserves of the Air Force or USAF without Component," Air Force Form 24, OMB Number 0701–0096.

Needs and Uses: The information collection requirement is necessary for providing information to determine if applicant meets qualifications established for appointment as a Reserve (ANGUS and USAFR) or in the USAF without component. Use of the SSN is necessary to make positive identification of an applicant and his or her records.

Affected Public: Individuals and Households.

Annual Burden Hours: 1,116.

Number of Respondents: 3,350.

Responses per Respondent: 1.

Average Burden per Response: 20 minutes.

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION: The information contained on AF Form 24 supports the Air Force as it applies to direct appointment (procurement) programs for civilian and military applicants. It provides necessary information to determine if an applicant meets qualifications established for appointment to fill authorized ANGUS and USAFR position vacancies and active duty requirements. Eligibility requirements are outlined in Air Force Instruction 36–2005.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–5120 Filed 2–26–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Headquarters Air Force, Officer Accession Branch, Air Force Personnel Center.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Officer Accessions Branch, Air Force Personnel Center, announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 28, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to: Air Force Personnel Center, Officer Accessions Branch (DPPAO), ATTN: Mr. Stephen Mohacey, or Ms. Blanche Rigney, 550 C Street West, Suite 10, Randolph Air Force Base TX 78159–4712.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call: Mr. Stephen Mohacey, or Ms. Blanche Rigney at 210–652–4382.

Title, Associated Form, and OMB Number: "Application for Training Leading to a Commission in the United States Air Force," Air Force Form 56, OMB Number 0701–0001.

Needs and Uses: The information collection requirement is necessary for providing information to determine if applicant meets qualifications established for training leading to a commission. Air Force selection boards use the information to determine suitability for officer training. If the information was not collected, Air Force efforts to select qualified applicants would be severely hampered. Use of the SSN is necessary to make positive identification of an applicant and his or her records.

Affected Public: Individuals and Households.

Annual Burden Hours: 967.

Number of Respondents: 2,900.

Responses Per Respondent: 1.

Average Burden Per Response: 20 minutes.

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION: Information contained on AF Form 56 supports that Air Force as it applies to officer training (procurement) programs for civilian and military applicants. It is imperative that only persons fully qualified for receipt of Air Force commissions are selected for the training leading to commissioning. Data supports the Air Force in verifying the eligibility of applicants and in the selection of those best qualified for dedication of funding and training resources. Eligibility requirements are outlined in Air Force Instruction 36–2013.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–5121 Filed 2–26–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) for the Disposal of Portions of the Former Homestead Air Force Base (AFB), Florida

The United States Air Force (Air Force) and the Federal Aviation Administration (FAA) will prepare an SEIS analyzing the proposed transfer of airfield and airfield-related properties at the former Homestead AFB. The SEIS will supplement the 1994 EIS titled Disposal and Reuse of Homestead Air Force Base, Florida. It will be used by the Air Force and the FAA in making decisions concerning the proposed disposal of the property. The Air Force and the FAA will be the lead agencies for preparing the SEIS. The National Park Service, the Fish and Wildlife Service, and the Environmental Protection Agency will be cooperating agencies.

The SEIS will address the potential environmental impacts of the disposal and reuse of surplus airfield facilities made available by the realignment of Homestead AFB pursuant to the Defense Base Closure and Realignment Act. The Air Force seeks to transfer the facilities in a manner that supports local plans for economic revitalization of South Florida and protects Biscayne Bay and the nearby national parks. The SEIS will address the proposed transfer of a one-runway airport and airport facilities at the former base. It also will address the potential environmental impacts of any reasonable disposal alternatives and include possible mitigation measures.

The scoping period for this SEIS formally begins with this Notice of Intent and will extend through April 30, 1998. The Air Force and FAA invite the participation of federal, state, and local agencies, any affected Indian tribal governments, organizations, and interested persons. Several public scoping meetings will be held at a time and location to be announced at a later

date. The purpose of such meetings is to provide a public foram for officials and the community to provide information and comments and to identify environmental issues and concerns that should be addressed in the SEIS. During the meetings the Air Force and FAA will provide information on the proposal to dispose of the property, describe the process to be used in preparing the SEIS, and ask for input on the scope of the SEIS including any reasonable alternatives to the proposed disposal. In addition to the public scoping meetings, written input is welcome, and informal meetings may be scheduled if requested.

To ensure sufficient time to adequately consider public inputs on issues to be included in the SEIS, comments should be presented to the Air Force and FAA in meetings or forwarded to the address listed below by April 30, 1998. For further information concerning the SEIS, please contact: AFBCA/EX, Attn: M. J. Jadick, Homestead AFB SEIS, 1700 N. Moore Street, Suite 2300, Arlington, VA 22209–2802, 703) 696–5529.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–5118 Filed 2–26–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory (INEEL).

DATES: Tuesday, March 17, 1998 from 8:00 a.m. to 6:00 p.m., Mountain Standard Time (MST). Wednesday, March 18, 1998 from 8:00 a.m. to 5:00 p.m., MST. There will be public comment sessions on Tuesday, March 17, 1998 from 5:00 p.m. to 6:00 p.m. MST and Wednesday, March 18, 1998 from 1:00 p.m. to 1:30 p.m. MST.

ADDRESSES: Quality Inn 1555 Pocatello Creek Road, Pocatello, Idaho 83201.

FOR FURTHER INFORMATION CONTACT: INEEL Information (1–800–708–2680) or Wendy Green Lowe, Jason Associates Corp. (208–522–1662).

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The EM SSAB, Idaho will discuss the Draft Focus on 2006 Plan, Proposed Plan for Test Area North Remediation, Work Plan for Pit 9, amendments to Board procedures, Board agendas for the next 12 months, Snake River Alliance concerns regarding the Advanced Mixed Waste Treatment Project, 100-Year Flood Plain Report, and committee reports. The board will also receive a presentation on Idaho State University Research Endeavors at INEEL. For a most current copy of the agenda, contact Woody Russell, DOE-Idaho, (208) 526–0561, or Wendy Green Lowe, Jason Associates Corp., (208) 522–1662. The final agenda will be available at the meeting.

Public Participation: The two-day meeting is open to the public, with public comment sessions scheduled for Tuesday, March 17, 1998 from 5:00 p.m. to 6:00 p.m. MST and Wednesday, March 18, 1998 from 1:00 p.m. to 1:30 p.m. MST. The Board will be available during this time period to hear verbal public comments or to review any written public comments. If there are no members of the public wishing to comment or no written comments to review, the board will continue with it's current discussion. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the INEEL Information line or Wendy Green Lowe, Jason Associates Corp., at the addresses or telephone numbers listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Charles M. Rice, INEEL Citizens' Advisory Board Chair, 477 Shoup Ave., Suite 205, Idaho Falls, Idaho 83402 or by calling Wendy Green Lowe, the Board Facilitator, at (208) 522–1662.

Issued at Washington, DC on February 23, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–5081 Filed 2–26–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Monticello

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board, Monticello Site.

DATE AND TIME: Wednesday, April 15, 1998, 6:00 p.m.–8:00 p.m.

ADDRESSES: San Juan County Courthouse, 2nd Floor Conference Room, 117 South Main, Monticello, Utah 84535.

FOR FURTHER INFORMATION CONTACT: Audrey Berry, Public Affairs Specialist, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO, 81502 (970) 248–7727.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to advise DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Update on future land use, Monticello surface and groundwater, and project status, and reports from subcommittees on local training and hiring, and health and safety.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Audrey Berry's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to

present their comments at the end of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Audrey Berry, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502, or by calling her at (303) 248–7727.

Issued at Washington, DC, on February 23, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–5080 Filed 2–26–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1827–000]

Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, the Potomac Edison Company and West Penn Power Company (Allegheny Power); Notice of Filing

February 23, 1998.

Take notice that on February 11, 1998, Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 39 to add three (3) new Customers to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of February 10, 1998, to The Energy Authority, Inc., Northern Indiana Public Service Company, and South Carolina Electric & Gas Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission and all parties of record.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5009 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1825–000]

American Electric Power Service Corporation; Notice of Filing

February 23, 1998.

Take notice that on February 11, 1998, The American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after January 13, 1998.

AEPSC also filed a notice to terminate service agreement under AEP Companies' FERC Electric Tariff Original Volume No. 1, pursuant to request of Delhi Energy Services, Inc.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5007 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1821–000]

Bollinger Energy Corporation; Notice of Filing

February 23, 1998.

Take notice that on February 11, 1998, Bollinger Energy Corporation petitioned the Commission for acceptance of Bollinger Energy Corporation Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Bollinger Energy Corporation intends to engage in wholesale and retail electric power and energy purchases and sales as a marketer. Bollinger Energy Corporation is not in the business of generating or transmitting electric power. Bollinger Energy Corporation is a Maryland Corporation and owns Chesapeake Transit, Inc., which is a trucking company that transports a small portion of Bollinger Energy Corporation's petroleum sales in one 3,800 gallon tank truck to Bollinger Energy Corporation customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not service to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on

file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5003 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1831–000]

Carolina Power & Light Company; Notice of Filing

February 23, 1998.

Take notice that on February 12, 1998, Carolina Power & Light Company (Carolina), tendered for filing executed Service Agreements between Carolina and the following Eligible Entities: American Municipal Power—Ohio; NGE Generation, Inc.; and Associated Electric Cooperative, Inc. Service to each Eligible Entity will be in accordance with the terms and conditions of Carolina's Tariff No. 1, for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copes of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5019 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No, ER98–1822–000]

Cinergy Services, Inc.; Notice of Filing

February 23, 1998.

Take notice that on February 11, 1998, Cinergy Services, Inc. (Cinergy) tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff) entered into between Cinergy and NGE Generation, Inc., (NGE).

Cinergy and NGE are requesting an effective date of one day after the filing of this Power Sales Service Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests must be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. An person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5004 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1829–000]

Eastern Pacific Energy; Notice of Filing

February 23, 1998.

Take notice that on February 11, 1998, Eastern Pacific Energy (EPE), applied to the Commission for acceptance of EPE Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

EPE intends to engage in wholesale electric power and energy purchases and sales as a marketer.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5017 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. SA98–3–000, SA98–4–000 and SA98–5–000]

Edgar W. White; Notice of Petitions for Adjustment

February 23, 1998.

Take notice that on February 18, 1998, Edgar W. White (White), filed petitions for adjustment under Section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] in Docket Nos. SA98–3–000, SA98–4–000, and SA98–5–000. In his petitions, White requests: (1) To be relieved of his obligation to make Kansas ad valorem tax refunds to three interstate pipeline companies, with respect to his interest in various wells; (2) to be relieved of the obligation, as operator, to make such refunds for the other interest owners in those wells, otherwise required by the Commission's September 10, 1997, order in Docket Nos. GP97–3–000, GP97–4–000, GP97–5–000, and RP97–369–000;[2] and (3) if this relief is not granted, that he be authorized to amortize the refund obligations. White's petitions are on file with the Commission and open to public inspection.

The Commission's September 10, order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission's September 10, order also provided that first sellers could, with

[1] 15 U.S.C. § 3142(c) (1982).

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

the Commission's prior approval, amortize their Kansas ad valorem tax refunds over a 5-year period, although interest would continue to accrue on any outstanding balance.

[Docket No. SA98–3–000]

In this petition, White asserts that requiring him to make the refunds sought by Williams Gas Pipeline Central, Inc. [formerly: Williams Natural Gas Company] (Williams) would constitute the taking of property without due process.

White's SA98–3–000 petition pertains to one well in Morton County, Kansas. White became the operator of the well and bought a single lease in the gas unit, which gave White approximately a 10 percent interest in the well. White asserts that leases in this gas unit should have the same 6-year statute of limitations for the retention of records as Federal leases do under U.S. Code 30 Section 1713. Noting that Kansas law imposes a 5-year statute of limitations on any contract in writing, White also suggests that there should be a statute of limitations on the refunds sought by Williams, and that the time period should have run out by now. White further asserts that the doctrine of "Laches" should apply, i.e., that "after an unreasonable period of time elapses, no action can be brought." White also claims that there is no way he can collect a refund from certain deceases prior owners, or their heirs.

[Docket No. SA98–4–000]

In this petition, White asserts that requiring him to make the refunds sought by Colorado Interstate Gas Company (CIG) would constitute the taking of property without due process.

White's SA98–4–000 petition pertains to six wells in Morton County, Kansas. White became the operator of these wells, and states that he bought-out one of the other three original owners, which gave White a 66 percent interest in these six wells. White adds that, although he initially made distributions to an unspecified number of royalty owners, the mineral rights reverted to the United States Government in 1987. White states that since that time, he has been making royalty payments to the Minerals Management Service, in Denver, Colorado, and that he has lost all contact with the former owners. White claims that there is no way he can collect a refund from prior owners, that he has nothing to withhold from, and that he does not know the whereabouts of the prior owners. White also asserts that the 6-year statute of limitations for retaining records under U.S. Code 30 Section 1713 should apply to these wells, since all of the leasehold have been entirely Federal since 1987. Noting the aforementioned 5-year, Kansas statute of limitations on written contracts, White asserts that there should be a statute of limitations on the refunds sought by CIG, and that the doctrine of Laches should apply to these refunds.

[Docket No. SA98–5–000]

In this petition, White asserts that requiring him to make the refunds sought by Panhandle Eastern Pipe Line Company (Panhandle) would constitute the taking of property without due process.

White's SA98–5–000 petition pertains to four wells in Morton County, Kansas. White became the operator of these wells, and states that he holds a 50 percent interest in the four wells. White asserts that these leases should have the same 6-year statute of limitations on the retention of records as Federal leases do under U.S. Code 30 Section 1713. White adds that the royalty ownership of the Schweizer No. 3 well reverted to the United States Government in 1987, that he has been making payments to the Minerals Management Service, in Denver, Colorado, since that time, and that he has had no contact with the prior minerals owners since May of 1987. White asserts that there is no way he can collect a refund from the prior owners. White also claims that there is no way he can collect a refund from certain deceased prior owners, or their heirs. Noting the aforementioned 5-year, Kansas statute of limitations on written contracts, White asserts that there should be a statute of limitations on the refunds sought by Panhandle, and that the doctrine of Laches should apply to these refunds.

In view of the above, White requests to be relieved of: (1) His obligation to make Kansas ad valorem tax refunds to Williams, CIG and Panhandle, with respect to this interest the subject wells; and (2) the obligation, as operator, to make such refunds for the other interest owners, on the basis that paying the refunds would cause him a special hardship, that requiring him to make all of the refunds is inequitable, and that requiring him to make all of the refunds unfairly distributes the refund burden. In the alternative, if the Commission will not grant the relief requested, White requests that he be authorized to amortize the refund obligations.

Any person desiring to be heard or to make any protest with reference to any of these petitions should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5029 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1828–000]

FirstEnergy Corp. and Pennsylvania Power Company; Notice of Filing

February 23, 1998.

Take notice that on February 11, 1998, FirstEnergy Corp., tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for Network Integration Service under the Pennsylvania Retail Pilot with Energis Resources pursuant to the FirstEnergy System Open Access Tariff. This Service Agreement will enable the party to obtain Network Integration Service under the Pennsylvania Retail Pilot in accordance with the terms of the Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5010 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1813–000]

Fitchburg Gas and Electric Light Company; Notice of Filing

February 23, 1998.

Take notice that on February 11, 1998, Fitchburg Gas and Electric Light Company (Fitchburg), tendered for filing a service agreement between Fitchburg and Montaup Electric Company for service under Fitchburg's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2463–000. Fitchburg requests an effective date of January 13, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4995 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1830–000]

Idaho Power Company; Notice of Filing

February 23, 1998.

Take notice that on February 11, 1998, Idaho Power Company (ICP), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company FERC Electric Tariff, Third Revised, Volume No. 1, between Amoco Energy Trading Corporation and Idaho Power Company.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All motions or protests should be filed on or before March 6, 1998. Protests will be considered by the Commission determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5018 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DR98–53–000]

Kansas City Power & Light Company; Notice of Filing

February 23, 1998.

Take notice that on February 18, 1998, Kansas City Power & Light Company, filed a request for approval of depreciation rates for accounting purposes only pursuant to Section 302 of the Federal Power Act. The proposed rates were approved for retail purposes by the Kansas Corporation Commission (KCC), effective January 1, 1998. Kansas City Power & Light Company requests that the Commission allow the proposed depreciation rates to become effective as of January 1, 1998, for accounting purposes also.

Any person desiring to be heard or to protest said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 23, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4994 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1826–000]

Kansas City Power & Light Company; Notice of Filing

February 23, 1998.

Take notice that on February 11, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated January 27, 1998, between KCPL and American Electric Power. KCPL proposes an effective date of February 2, 1998 and requests a waiver of the Commission's notice requirement to allow the requested effective date. This Agreement provides for the rates and charges for Short-term Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5008 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1815–000]

Louisville Gas and Electric Company; Notice of Filing

February 23, 1998.

Take notice that on February 11, 1998, Louisville Gas and Electric Company (LG&E) tendered for filing an unexecuted Service Agreement between LG&E and Western Resources, Inc., under LG&E's Rate Schedule GSS.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4997 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1819–000]

Louisville Gas and Electric Company; Notice of Filing

February 23, 1998.

Take notice that on February 11, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an unexecuted Purchase and Sales Agreement between LG&E and Tenaska Power Services under LG&E's Rate Schedule GSS.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5001 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1820–000]

Louisville Gas and Electric Company; Notice of Filing

February 23, 1998.

Take notice that on February 11, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an unexecuted Service Agreement between LG&E and Illinois Power Company under LG&E's Rate Schedule GSS.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5002 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES98–20–000]

MDU Resources Group, Inc.; Notice of Filing

February 23, 1998.

Take notice that on February 19, 1998, MDU Resources Group, Inc. (MDU Resources), a corporation organized under the laws of the State of Delaware and qualified to transact business in the States of Montana, North Dakota, South Dakota, and Wyoming, with its principal business office at Bismarck, North Dakota, filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act (Act), seeking an Order (a) authorizing the issuance of up to $200,000,000 worth of Common Stock, par value $3.33 (the Common Stock), and (b) exempting MDU Resources from the competitive bidding requirements and the negotiated placement requirements of the Act if Common Stock is issued directly to a seller or sellers of a business and/or its assets as consideration for the acquisition of such business and/or assets.

The securities are proposed to be issued from time to time over a two-year period.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All motions or protests should be filed on or before March 23, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5027 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1817–000]

Minnesota Power & Light Company; Notice of Filing

February 23, 1998.

Take notice that on February 11, 1998, Minnesota Power & Light Company and Superior Water, Light and Power Company, tendered for filing a signed Service Agreement for Firm Point-to-Point Transmission Service and Specifications for Long-Term Firm Point-to-Point Service with Minnkota Power Cooperative under its Transmission Service Agreement to satisfy its filing requirements under this tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4999 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG98–6–000]

Natural Gas Pipeline Company of America; Notice of Filing

February 23, 1998.

Take notice that on February 17, 1998, Natural Gas Pipeline Company of America (Natural), filed its compliance plan and revised standards of conduct in response to the Commission's January 16, 1998, Order, 82 FERC ¶ 61,038 (1998).

Natural states that it has served copies of its revised standards of conduct upon all of its jurisdictional customers, all interested state Commissions and each person on the official service list compiled by the Secretary in the proceeding relating to Docket No. RP97–232–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before March 10, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5028 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1836–000]

New Century Services, Inc.; Notice of Filing

February 23, 1998.

Take notice that on February 12, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and AMOCO Energy Trading Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5024 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1835–000]

New Century Services, Inc.; Notice of Filing

February 23, 1998.

Take notice that on February 12, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and American Electric Power Service Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5023 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1837–000]

New Century Services, Inc.; Notice of Filing

February 23, 1998.

Take notice that on February 12, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and OGE Energy Resources, Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5025 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–229–000]

Northern Natural Gas Company; Notice of Application

February 23, 1998.

Take notice that on February 13, 1998, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP98–229–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to K N Gas Gathering, Inc. (KN), certain pipeline and receipt and delivery point facilities, with appurtenances, located in Texas County, Oklahoma and Seward County, Kansas and certain services rendered thereby, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that it would convey to KN, facilities consisting of approximately 33 miles of pipeline with diameters ranging between 10 and 24 inches, all receipt and delivery points located along the length of the pipelines, and all other appurtenant facilities.

Northern states further that the facilities would be conveyed to KN for an estimated purchase price of $1,632,216 at the time of closing.

Any person desiring to be heard or any person desiring to make any protest with reference to said application should on or before March 16, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4992 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1824–000]

Pacific Energy & Development Corporation; Notice of Filing

February 23, 1998.

Take notice that on February 11, 1998, Pacific Energy & Development Corporation (Pacific), petitioned the Commission for acceptance of Pacific Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and waiver of certain Commission Regulations.

Pacific intends to engage in wholesale electric power and energy purchases and sales as a marketer. Pacific is not engaged in the business of generating or transmitting electric power. Pacific has no affiliates. All of the outstanding stock of Pacific is owned by William R. Connors, an individual residing in the state of Washington.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5006 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1833–000]

PacifiCorp; Notice of Filing

February 23, 1998.

Take notice that on February 12, 1998, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Non-Firm and Short-Term Firm Point-to-Point Transmission Service Agreements with American Electric Power Co., Inc. (AEP) under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to AEP, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5021 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1816–000]

Portland General Electric Company; Notice of Filing

February 23, 1998.

Take notice that on February 11, 1998, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), executed Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service with American Electric Power Service Corporation.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Service Agreement to become effective January 22, 1998.

A copy of this filing was caused to be served upon American Electric Power Service Corporation as noted in the filing letter.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4998 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1838–000]

Public Service Company of New Mexico; Notice of Filing

February 23, 1998.

Take notice that on February 12, 1998, Public Service Company of New Mexico (PNM), submitted for filing executed service agreements, for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff with Colorado Springs Utilities (2 agreements, dated February 5, 1998, for Non-Firm and Firm Service). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5026 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–240–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

February 23, 1998.

Take notice that on February 17, 1998, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed a prior notice request with the Commission in Docket No. CP98–240–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a delivery point in Bibb County, Georgia, under Southern's blanket certificates issued in Docket Nos. CP82–406–000 and CP88–316–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Southern proposes to construct and operate a delivery point on its system which would include a meter station with three 8-inch orifice meters, one 2-inch rotary meter, two 6-inch regulators, 350 feet of 8-inch diameter connecting pipe between the tap and the meter station and other appurtenant facilities, for the delivery of natural gas to Georgia Power Company (Georgia Power). Southern states that Georgia Power would reimburse Southern for the estimated $647,000 in construction cost for the proposed facilities.

Southern states that it would deliver up to 66,237 MMBtu equivalent of natural gas per day to Georgia Power at the proposed delivery point. Southern

states that it would transport gas on an interruptible basis pursuant to Rate Schedule IT of Southern's FERC Gas Tariff.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4993 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1834–000]

United Regional Energy, LLC; Notice of Filing

February 23, 1998.

Take notice that on February 12, 1998, United Regional Energy, LLC, filed pursuant to Part 35 of the Commission's Rules and Regulations under 18 CFR 35.16, a Notice of Succession in Ownership. United Regional Energy, LLC, succeeds United Regional Energy Corp., and in so doing United Regional Energy, LLC, adopts FERC Electric Rate Schedule No. 1.

United Regional Energy, LLC, is not affiliated with any generation or transmission facilities, nor does it have an electric utility affiliation with a franchised service territory.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5022 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1814–000]

Unitil Power Corp.; Notice of Filing

February 23, 1998.

Take notice that on February 11, 1998, Unitil Power Corp. (UPC), tendered for filing a service agreement between UPC and Montaup Electric Company for service under UPC's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2460–000. UPC requests an effective date of January 13, 1998, for the service agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4996 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1832–000]

Vermont Electric Power Company, Inc., Notice of Filing

February 23, 1998.

Take notice that on February 11, 1998, Vermont Electric Power Company, Inc. (VELCO), submitted four non-firm point-to-point service agreements establishing the following as customers under the terms of VELCO's Local Open Access Transmission Tariff: Constellation Power Source, Inc., NP Energy, Inc., New York State Electric & Gas Corporation and Cinergy Capital & Trading, Inc. VELCO also filed a revised Index of Customers.

VELCO asks that these service agreements become effective as of the respective dates of the agreements and that the revised Index become effective as of December 19, 1997, (the date of the most recent of the four service agreements). Accordingly, VELCO requests waiver of the Commission's notice requirements. Copies of this filing were served on the four customers and the Vermont Department of Public Service and the Vermont Public Utility Board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5020 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1818–000]

Wisconsin Public Service Corporation; Notice of Filing

February 23, 1998.

Take notice that on February 11, 1998, Wisconsin Public Service Corporation, tendered for filing an executed service agreement with Madison Gas & Electric under its Market-Based Rate Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C.

20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 6, 1998. Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5000 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1823–000]

The XERXE Group; Notice of Filing

February 23, 1998.

Take notice that on February 11, 1998, The XERXE Group (TXG), petitioned the Commission for acceptance of TXG Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

TXG intends to engage in wholesale electric power and energy purchases and sales as a marketer. TXG is not in the business of generating or transmitting electric power. TXG is a wholly-owned subsidiary of TXG Buggy Whips Manufacturing Corporation, which, through its affiliates, produces farm equipment and produces and distributes building supplies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–5005 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL98–27–000, et al.]

Delmarva Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

February 20, 1998.

Take notice that the following filings have been made with the Commission:

1. Delmarva Power & Light Company

[Docket No. EL98–27–000]

Take notice that on February 9, 1998, Delmarva Power & Light Company tendered for filing a motion to collect PJM network transmission service charges from the City of Dover, for the period April 1, 1997 through April 1, 1998.

Comment date: March 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Berkshire Power Company LLC

[Docket No. EG98–27–000]

Take notice that on February 18, 1998, Berkshire Power Company LLC (Berkshire), 200 High Street, Boston, Massachusetts 02110, filed with the Federal Energy Regulatory Commission (Commission) an amended application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Berkshire is a Massachusetts limited liability company that proposes to construct and own a two hundred seventy-two (272) megawatt natural gas-fired electric generation facility, including ancillary and appurtenant structures, on a site in the town of Agawam, Massachusetts. Berkshire states that it will be engaged directly, or indirectly through one or more affiliates, as defined in Section 2(a)(11)(B) of PUHCA, and exclusively in the business of owning and/or operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: March 13, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application.

3. Sithe Framingham LLC

[Docket No. EG98–41–000]

Take notice that on February 11, 1998, Sithe Framingham LLC, 450 Lexington Avenue, 37th Floor, New York, NY 10017 (Sithe Framingham), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Sithe Framingham will own an electric generating facility with a capacity of approximately 33 MW located in Framingham, Massachusetts.

Comment date: March 6, 1998, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Sithe Mystic LLC

[Docket No. EG98–46–000]

Take notice that on February 11, 1998, Sithe Mystic LLC, 450 Lexington Avenue, 37th Floor, New York, NY 10017 (Sithe Mystic), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Sithe Mystic will own an electric generating facility with a capacity of approximately 990 MW located in Everett, Massachusetts.

Comment date: March 6, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Duke Power Company

[Docket No. ER97–2398–002]

Take notice that on February 9, 1998, Duke Power Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: March 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. PJM Interconnection, L.L.C.

[Docket ER98–1794–000]

Take notice that on February 10, 1998, the PJM Interconnection, L.L.C. (PJM), filed on behalf of the Members of the LLC, membership applications of CMS Marketing, Services and Trading. PJM requests an effective date on the day after this Notice of Filing is received by FERC.

Comment date: March 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Chicago Housing Authority

[Docket No. TX98–1–000]

Take notice that on February 17, 1998, Chicago Housing Authority tendered for filing an amendment in the above-referenced docket.

Comment date: March 6, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4990 Filed 2–26–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5489–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 09, 1998 through February 13, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1998 (62 FR 16154).

Draft EISs

ERP No. D–AFS–E65024–KY Rating EC2, Daniel Boone National Forest Off-Highway Vehicle (OHV) Management Policy, Modification, Several Counties, KY.

Summary: EPA expressed environmental concerns about effective implementation of the proposed action.

ERP No. D–AFS–L65296–OR Rating EO2, Crown Pacific Limited Partnership Land Exchange Project, Implementation, Consolidate Land Ownership and Enhance Future Resource, Deschutes, Fremont and Winema National Forests, Deschutes, Jefferson, Klamath and Lake Counties, OR.

Summary: EPA expressed environmental objections over the proposed land exchanges. EPA suggests that the final EIS offer a wider range of alternatives and fully disclose impact from the no-action and preferred action alternatives.

ERP No. DD–NPS–K61029–CA Rating LO, Yosemite Valley Comprehensive Implementation Plan, General Management Plan, Yosemite National Park, Mariposa, Madera and Tuolumne Counties, CA.

Summary: EPA expressed no objection to the proposed action.

ERP No. D1–NPS–K61123–CA Rating LO, Backcounty and Wilderness Management Plan, General Management Plan Amendment, Joshua Tree National Park, Riverside and San Bernardino Counties, CA.

Summary: EPA expressed a lack of objections to the proposed action.

Dated: February 24, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–5131 Filed 2–26–98; 8:45 am]

BILLING CODE 6560–60–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5489–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed February 16, 1998 Through February 20, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980045, FINAL EIS, COE, LA, Mississippi River—Gulf Outlet (MRGO) New Lock and Connecting Channels Replacement and Construction for Connection to the Mississippi River, Implementation, Orleans and St. Bernard Parishes, LA, Due: March 30, 1998, Contact: Richard Boe (504) 862–1505.

EIS No. 980046, DRAFT EIS, DOA, MN, SD, Lincoln-Pipestone Rural Water (LPRW), Development and Expansion of Existing System North/Lyon County Phase and Northeast Phase Expansion Project, Yellow Medicine, Lincoln and Lyon Counties, MN and Deuel County, SD, Due: April 13, 1998, Contact: Mark S. Plank (202) 720–1649.

EIS No. 980047, FINAL EIS, NPS, MA, Cape Cod National Seashore General Management Plan, Implementation, Barnstable County, MA, Due: March 30, 1998, Contact: Maria Burks (508) 349–3785.

EIS No. 980048, FINAL EIS, BLM, CO, Plateau Creek Pipeline Replacement Project, Operation and Maintenance, Ute Water Conservancy District, Right-of-Way Permit, Mesa County, CO, Due: March 30, 1998, Contact: Dave Stevens (970) 244–3009.

EIS No. 980049, FINAL EIS, FHW, MD, US 113 Planning Study, Transportation Improvement from south of Snow Hill, Maryland to Delaware State Line, Funding and COE Section 404 Permit, Worcester County, MD, Due: March 30, 1998, Contact: Ms. Renee Sigel (410) 962–4342.

EIS No. 980050, REVISED DRAFT EIS, DOI, TT, Palau Compact Road Construction, Revision to Major Transportation and Communication Link on the Island of Babeldaob, Implementation, Funding, Republic of Palau, Babeldaob Island, Trust Territory of the Pacific Islands, Due: March 30, 1998, Contact: Allen Chin (808) 438–6974.

EIS No. 980051, FINAL SUPPLEMENT, NOA, CA, Monterey Bay National Marine Sanctuary Management Plan, Updated Information, To Amend the Designation Document and Regulations to Allow Jade Collecting in the Sanctuary, San Mateo, Santa Cruz and Monterey Counties, CA, Due: March 30, 1998, Contact: Elizabeth Moore (301) 713–3141.

EIS No. 980052, DRAFT EIS, COE, CA, Hansen Dam Water Conservation and Supply Study, Flood Protection, Implementation, Los Angeles County, CA, Due: April 13, 1998, Contact: David Compas (213) 452–3850.

EIS No. 980053, DRAFT EIS, FHW, IA, US–63, Eddyville Bypass Transportation Improvements, Funding and COE Section 404 Permit, the City of Eddyville, Mahaska, Monroe and Wapello Counties, IA, Due: April 14, 1998, Contact: Robert Lee (515) 233–7300.

EIS No. 980054, FINAL EIS, BLM, WY, Jonah Field II Natural Gas Development Project, Exploration, Development and Production, Applications for Permit to Drill, Right-of-Way Grant, COE Section 404

Permit and NPDES Permit, Pinedale Resource Area and Green River Resource Area, Rock Spring District, Sublette County, WY, Due: March 30, 1998, Contact: Jon Johnson (307) 775–6161.

EIS No. 980055, LEGISLATIVE DRAFT EIS, BLM, AL, Squirrel River Wild and Scenic River Suitability Study, Designation and Non-Designation, National Wild and Scenic Rivers System, AL, Due: April 28, 1998, Contact: Susan Will (907) 474–2338.

EIS No. 980056, FINAL EIS, AFS, ID, Paradise Integrated Resource Management Project, Implementation, To Commercial Thin and Timber Salvage Harvest Boise National Forest, Mountain Home Ranger District, Elmore County, ID, Due: March 30, 1998, Contact: Frank Marsh (208) 587–7961.

EIS No. 980057, DRAFT EIS, FTA, OR, WA, South/North Corridor Project, Improvements to the Existing Urban Transportation, Funding, Multnomah, Clackamas and Washington Counties, OR and Clark County, WA, Due: April 24, 1998, Contact: Nick Hockens (206) 220–7954.

Dated: February 24, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–5132 Filed 2–26–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5972–1]

Water Conservation Plan Guidelines Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On March 17–18, 1998, the Water Conservation Plan Guidelines Subcommittee of the Local Government Advisory Committee will hold a meeting in Washington, D.C. Section 1455 of the Safe Drinking Water Act, as amended, requires EPA to publish guidelines for water conservation plans for three size ranges of public water systems. The Subcommittee will discuss EPA's draft water conservation plan guidelines for public water systems, including the section of the draft guidelines which provides information to States on implementation of the guidelines. States may require water systems to submit a water conservation plan consistent with EPA's guidelines as a condition of receiving a loan from a State Drinking Water Loan Fund. The Subcommittee meeting is open and all interested persons are invited to attend on a space-available basis. Members of the public interested in attending the Subcommittee meeting should call the Designated Federal Official to reserve space.

DATES: The Subcommittee meeting will be held from 8:30 a.m. to 5:00 p.m. on Tuesday, March 17, 1998, and from 8:30 a.m. to 12:00 noon on Wednesday, March 18, 1998.

ADDRESSES: The meeting will be held at the Park Hyatt Hotel, 1201 24th Street, NW, Washington, D. C. 20037. Requests for a summary of the meeting can be obtained by writing to John E. Flowers, U. S. Environmental Protection Agency, Office of Wastewater Management (Mail Code 4204), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Official for this Subcommittee is John E. Flowers. He is the point of contact for information concerning any Subcommittee matters and can be reached by calling (202) 260–7288.

Dated: February 23, 1998.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 98–5089 Filed 2–26–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act of 1974: Systems of Records

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice of a new system of records.

SUMMARY: This notice meets the requirements of the Privacy Act of 1974 regarding the publication of an agency's notice of systems of records. It documents the establishment of a new FCC's system of records.

DATES: Written comments on the proposed new system should be received by March 30, 1998. Office of Management and Budget, which has oversight responsibility under the Privacy Act to review the system, may submit comments on or before April 8, 1998. The proposed system shall be effective without further notice on April 8, 1998, unless the FCC receives comments that require a contrary determination. As required by 5 U.S.C. 552a(o) of the Privacy Act, the FCC submitted reports on this altered system to both Houses of Congress.

ADDRESSES: Comments should be mailed to Judy Boley, Privacy Act Officer, Performance Evaluation and Records Management, Room 234, FCC, 1919 M Street, NW., Washington, DC 20554. Written comments will be available for inspection at the above address between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Judy Boley, Privacy Act Officer, Performance Evaluation and Records Management, Room 234, FCC, 1919 M Street, NW., Washington, DC 20554, (202) 418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), this document sets forth notice of the existence, character and content of the system of records maintained by the FCC. This agency previously gave complete notice of its systems of records by publication in the **Federal Register** on May 18, 1992, 57 FR 21091. This notice is a summary of more detailed information which may be viewed at the location and hours given in the **ADDRESSES** section above.

The proposed new system is as follows:

FCC/CIB–4, "Telephone and Electronic Contacts." This system is used by Commission personnel to handle and process complaints and inquires received from individuals, companies, and other entities.

FCC/CIB–4

SYSTEM NAME:

Telephone and Electronic Contacts.

SYSTEM LOCATION:

Federal Communications Commission (FCC), Compliance and Information Bureau, National Call Center, Gettysburg, PA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or entities who have made complaints or inquires.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaints and related information, company or business replies to complaints, letters of inquiry and Commission letters regarding or responding to such complaints and inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 4(i) and (j) of the Communications Act of 1934, as amended, 47 U.S.C 154(i) and (j).

PURPOSE(S):

These records are used by Commission personnel to handle, respond and process inquires received

from individuals, companies and other entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Where there is an indication of a violation or potential violation of any statute, regulation, rule, or order, records from this system may be referred and disclosed to the appropriate Federal, state, or local agency responsible for investigating or prosecuting a violation or for enforcing or implementing the statute, rule, regulation or order.

2. A record on an individual in this system of records may be disclosed, where pertinent, in any legal proceeding to which the Commission is a party before a court or any other administrative body.

3. A record from this system of records may be referred and disclosed to the Department of Justice or in a proceeding before a court or any adjudicative body when:

(a) The United States, the Commission, a component of the Commission, or, when represented by the government, an employee of the Commission, is a party to litigation or anticipated litigation or has an interest in such litigation, and

(b) The Commission determines that the disclosure is relevant or necessary to the litigation.

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in the stand alone computer database.

RETRIEVABILITY:

Records are retrieved by telephone number, name of caller, address, subject or reason for call.

SAFEGUARDS:

The stand alone computer is stored within a secured area.

RETENTION AND DISPOSAL:

The records are retained in this Commission and then destroyed according to the record schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, National Call Center, CIB, FCC, Gettysburg, PA.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the system manager indicated above.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about themselves should contact the system manager indicated above.

An individual requesting access must also follow FCC Privacy Act regulations regarding verification of identity and access to records (47 CFR 0.554 and 0.555).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the system manager indicated above.

An individual requesting amendment must also follow the FCC Privacy Act regulations regarding verification of identity and amendment of records (47 CFR 0.556 and 0.557).

RECORD SOURCE CATEGORIES:

The individual to whom the information applies.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–5065 Filed 2–26–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting; Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, February 24, 1998, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's liquidation and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Joseph H. Neely (Appointive), seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Ms. Leann Britton, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street NW., Washington, DC.

Dated: February 24, 1998.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 98–5231 Filed 2–25–98; 11:13 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1203–DR]

State of California; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA–1203–DR), dated February 9, 1998, and related determinations.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 9, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of California, resulting from severe winter storms and flooding beginning on February 2, 1998, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288 as amended, ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, reimbursement for debris removal and emergency protective measures under the Public Assistance program, and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Dorothy M. Lacey of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of California to have been affected adversely by this declared major disaster:

Alameda, Butte, Calaveras, Colusa, Contra Costa, Glenn, Humboldt, Lake, Marin, Mendocino, Merced, Monterey, Napa, San Benito, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Sonoma, Sutter, Tehama, Ventura, Yolo, and Yuba Counties for Individual Assistance and reimbursement for debris removal and emergency protective measures under the Public Assistance program (Categories A and B).

All counties within the State of California are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–5141 Filed 2–26–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1203–DR]

State of California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California, (FEMA–1203–DR), dated February 9, 1998, and related determinations.

EFFECTIVE DATE: February 13, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of California, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 9, 1998:

Amador, Fresno, Sacramento, and Solano Counties for Individual Assistance and reimbursement for debris removal and emergency protective measures under the Public Assistance program (Categories A and B).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–5142 Filed 2–26–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1200–DR]

State of North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA–1200–DR), dated January 15, 1998, and related determinations.

EFFECTIVE DATE: February 13, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 12, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–5137 Filed 2–26–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1200–DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA–1200–DR), dated January 15, 1998, and related determinations.

EFFECTIVE DATE: February 17, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Carolina, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 15, 1998:

Dare County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–5138 Filed 2–26–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1200–DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina, (FEMA–1200–DR), dated January 15, 1998, and related determinations.

EFFECTIVE DATE: February 5, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Carolina, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 15, 1998:

Madison and Yancey Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–5139 Filed 2–26–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1200–DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina, (FEMA–1200–DR), dated January 15, 1998, and related determinations.

EFFECTIVE DATE: February 10, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Carolina, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 15, 1998:

Robeson County for Individual Assistance.
Haywood County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–5140 Filed 2–26–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1197–DR]

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1197–DR), dated January 13, 1998, and related determinations.

EFFECTIVE DATE: February 17, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 13, 1998:

White County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–5133 Filed 2–26–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1197–DR]

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1197–DR), dated January 13, 1998, and related determinations.

EFFECTIVE DATE: February 12, 1998

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 13, 1998:

Campbell, Cannon, Clay, DeKalb, Fentress, Morgan, Overton, Pickett, Putnam, Scott, and Warren Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–5134 Filed 2–26–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1197–DR]

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA–1197–DR), dated January 13, 1998, and related determinations.

EFFECTIVE DATE: February 12, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 12, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–5135 Filed 2–26–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1197–DR]

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA–1197–DR), dated January 13, 1998, and related determinations.

EFFECTIVE DATE: February 5, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 13, 1998:

Johnson County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–5136 Filed 2–26–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Eagle USA Airfreight, Inc., 15350 Vickery Road, Houston, TX 77032, Officers: James R. Crane, President, John McVaney, Exec. Vice President

VAI Freight Forwarding, Inc., 8807 N.W. 23 Street, Miami, FL 33172–2419, Officers: Mitchell E. Asher, President, Marylou Harwood, Vice President

Marina-Ocean Air International, 811 Grandview Drive, So. San Francisco, CA 94080, Marina Perez, Mark W. Palasits, Partnership

Dated: February 24, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–5046 Filed 2–26–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Board hereby gives notice that it has submitted to the Office of Management and Budget (OMB) on behalf of the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Board (the agencies) a request for approval of the information collection system described below. The Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before March 30, 1998.

ADDRESSES: Comments, which should refer to the OMB control number, should be addressed to the OMB desk officer for the Board: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503. Comments should also be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act Submission (OMB 83-I), supporting

statement, and other documents that have been submitted to OMB for review and approval may be requested from the agency clearance officer, whose name appears below.Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. For Telecommunications Device for the Deaf (TDD) users only, Dorothea Thompson, (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Proposal to request approval from OMB of the extension, with revision, of the following report:

1. Report title: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks
Form number: FFIEC 002
OMB control number: 7100-0032
Frequency of Response: Quarterly
Reporters: U.S. branches and agencies of foreign banks
Number of respondents: 513
Total Annual Responses: 2,052
Estimated average hours per response: 23.25
Annual reporting hours: 47,709

General description of report: This information collection is mandatory (12 U.S.C. 3105(c)(2), 1817(a)(1) and (3), and 3102(b)). Except for select sensitive items, this information collection is not given confidential treatment (5 U.S.C. 552(b)(8)). Small businesses (that is, small U.S. branches and agencies of foreign banks) are affected.

Abstract: On November 4, 1997, the Board published on behalf of the three agencies, a notice in the *Federal Register* (62 FR 59704) describing in detail and inviting comment on the proposed changes to this collection of information. This notice provides the public with the opportunity to obtain, review, and comment on, the Board's supporting statement.

On a quarterly basis, all U.S. branches and agencies of foreign banks (U.S. branches) are required to file detailed schedules of assets and liabilities in the form of a condition report and a variety of supporting schedules. This balance sheet information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy purposes. The Federal Reserve System collects and processes this report on behalf of all three agencies.

Current Actions: Effective with the March 31, 1998, report date, the existing data collected on Schedule A, item 4.b for balances due from "Other banks in foreign countries and foreign central banks" would be modified to exclude data on balances due from banks in the U.S. branches' home country. This modified data would be collected in renumbered item 4.c. A new item 4.b for balances due from "Banks in home country and home country central bank" would be added. The Agencies are also proposing to add a new memorandum item to Schedule RAL for pledged securities. The new item would identify the amount of U.S. government securities included in Schedule RAL items 1.b.(1), "U.S. Treasury securities," and 1.b.(2), "U.S. Government agency obligations," that are pledged to secure deposits, repurchase transactions, borrowings, or for any other purpose.

The Board received one letter of comment in response to the notice published in the *Federal Register* requesting comment on the proposed revisions to the FFIEC 002 for 1998. The commenter supported the proposed changes. In addition, the agencies received five comment letters from commercial banks in response to the proposed changes related to the reporting of investment securities with high price volatility on the domestic commercial bank Reports of Condition and Income (Call Report)(FFIEC 031-034; OMB No. 7100-0036). Similar to the Call Report proposal, the agencies proposed to replace existing items on "high-risk mortgage securities" and "structured notes" in the FFIEC 002 with items covering certain mortgage-backed securities and all other securities whose price volatility exceeds a specified threshold level under a specified interest rate scenario. This reporting change was intended to enhance the FFIEC 002 data used in the monitoring of interest rate risk. However, the proposal did not describe the specific test that respondents would have to use to measure price volatility for purposes of the revised items.

After considering the comments, the agencies and the FFIEC decided not to implement that proposed Call Report change in 1998. For purposes of reporting consistency, the FFIEC will not implement the change to the FFIEC 002 in 1998. The existing items on "high-risk mortgage securities" and "structured notes" would continue to be collected during 1998. Changes to these items can be reconsidered for implementation at some future date after the industry has had an opportunity for notice and comment on a more specific proposal. In the interim, the agencies' staffs will study alternatives for obtaining data on highly price sensitive securities, including the related reporting burden, based on how such data is intended to be used in the agencies' monitoring systems and interest rate risk testing procedures.

Board of Governors of the Federal Reserve System, February 23, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–5044 Filed 2–26–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 23, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. N.A. Corporation, Roseville, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of North American Banking Company, Roseville, Minnesota, a *de novo* bank.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Keene Bancorp, Inc., 401(k) Employee Stock Ownership Plan & Trust, Keene, Texas; to acquire 41.37 percent of the voting shares of Keene Bancorp, Inc., Keene, Texas, and thereby indirectly acquire First State Bank of Keene, Keene, Texas.

Board of Governors of the Federal Reserve System, February 23, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4981 Filed 2-26-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 26, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. F.N.B. Corporation, Hermitage, Pennsylvania, and Southwest Banks, Inc., Naples, Florida; to acquire 100 percent of the voting shares of Seminole Bank, Seminole, Florida, and Southwest Interim National Bank No. 4, N.A., Seminole, Florida.

Board of Governors of the Federal Reserve System, February 24, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–5092 Filed 2–26–98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, March 4, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 25, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–5278 Filed 2–25–98; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Submission to OMB Under Delegated Authority

Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Chief, Financial Reports Section—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829)

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860)

Final approval under OMB delegated authority of the extension for three years, with revision, of the following reports:

1. Report titles: Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer; Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer

Agency form numbers: FR MSD-4, FR MSD-5

OMB Control numbers: 7100-0100, 7100-0101

Frequency: On occasion

Reporters: State member banks, bank holding companies, and foreign dealer banks engaging in activities as municipal securities dealers, and persons who are or seek to be associated with such dealers as municipal securities principals or representatives

Annual reporting hours: 369 (FR MSD-4), 94 (FR MSD-5)

Estimated average hours per response: 1.00 (FR MSD-4), 0.25 (FR MSD-5)

Number of respondents: 369 (FR MSD-4), 377 (FR MSD-5)

Small businesses are not affected.

General description of reports: These information collections are mandatory (15 U.S.C. 78o-4, 78q, and 78u) and are given confidential treatment under the Freedom of Information Act (5 U.S.C. 552(b)(6)). The collection of the data on the FR MSD-4 and FR MSD-5 is compiled in a "system of records" within the meaning of the Privacy Act (5 U.S.C. 552a(a)(5)).

Abstract: Rule G-7, "Information Concerning Associated Persons," of the Municipal Securities Rulemaking Board (MSRB) requires a person who is or seeks to be associated with a municipal securities dealer to provide certain background information to the dealer, and conversely, requires the dealer to

obtain such information. The FR MSD-4 collects information, such as personal history and professional qualifications, on an employee whom the dealer wishes to assume the duties of a municipal securities principal or representative. The FR MSD-5 collects the date of, and the reason for termination of, such an employee and whether there occurred any investigations or actions by agencies or securities industry self regulating organizations (SROs) involving the associated person during the period of employment.

The FR MSD-4 instructions were revised as follows:

1. References to the rules and regulations of the Board, the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) in instruction 2 were removed;

2. Text was added to instruction 3.a that "a State branch or agency of a foreign bank" must file with the Federal Reserve;

3. A filing deadline was added to instruction 5; and 4. a grandfather clause (instruction 15) was removed.

The FR MSD-5 was revised by adding to instruction 3.a that "a State branch or agency of a foreign bank" must file with the Federal Reserve. These revisions ensure conformity with reporting forms issued by the OCC and the FDIC and do not change the information collected.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

1. Report title: Transfer Agent Registration and Amendment Form
Agency form number: FR TA-1
OMB Control number: 7100-0099
Frequency: on occasion
Reporters: State member banks and their subsidiaries, bank holding companies, and certain nondeposit trust company subsidiaries of bank holding companies who are, or wish to register as, transfer agents
Annual reporting hours: 28
Estimated average hours per response: 1.25 (registrations); 0.17 (amendments)
Number of respondents: 41
Small businesses are not affected.

General description of report: This information collection is mandatory (sections 17A(c), 17(a), and 23(a) of the Securities Exchange Act, as amended (15 USC §§78q-1(c)(1) and (2), 78q(a)(3), and 78w(a)(1)) and is not given confidential treatment.

Abstract: The Securities Exchange Act requires any person acting as a transfer agent to register and to amend registration information as it changes. State member banks and their subsidiaries, bank holding companies, and certain nondeposit trust company subsidiaries of bank holding companies register with the Federal Reserve by submitting Form TA-1. The information collected includes the company name, all business addresses, and several questions about the registrant's proposed activities as a transfer agent. The Federal Reserve uses the information, which is available to the public upon request, to act upon registration applications and to aid in performing supervisory duties.

Final approval under OMB delegated authority of the implementation of the following reports:

1. Report title: Central Bank Survey of Foreign Exchange and Derivatives Market Activity
Agency form number: FR 3036
OMB Control number: 7100-0285
Frequency: one-time survey
Reporters: The turnover portion of the survey includes all financial institutions that are significant dealers in the foreign exchange market in the United States. The derivatives outstanding portion of the survey covers a smaller set of firms because market making in derivatives markets is more concentrated.
Effective Date: Turnover survey: April 1-30, 1998; Derivatives outstanding survey: June 30, 1998.
Annual reporting hours: 8,187
Estimated average hours per response: Pre-survey questionnaire: 5 minutes; Turnover survey: 50 hours; Derivatives outstanding survey: 15 hours for FR 2436 respondents (there are proposed to be thirteen), 60 hours for others
Number of respondents: Pre-survey questionnaire and turnover survey: 144; Derivatives outstanding survey: 26.
Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 248(a)(2), 353-359, and 3105(c)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The Central Bank Survey of Foreign Exchange and Derivatives Market Activity is part of an ongoing triennial series. The data from the survey provide information about the size and structure of the global markets for foreign exchange and financial derivatives transactions. The Federal Reserve is one of forty-four central banks conducting surveys. Aggregate results from each central bank's survey will be provided to the Bank for International Settlements, which will compile global market statistics. The survey will be conducted by the Federal Reserve Bank of New York.

The survey has two parts, a turnover survey and a survey of outstanding derivatives contracts. The changes from the 1995 survey are intended to reduce the reporting burden. The most significant revisions are those made to the derivatives outstandings part of the survey to align it with the Semiannual Report of Derivatives Activity (FR 2436) which is discussed below.

2. Report title: Semiannual Report of Derivatives Activity
Agency form number: FR 2436
OMB Control number: 7100-0286
Effective Date: June 30, 1998
Frequency: semiannual
Reporters: large U.S. dealers of over-the-counter (OTC) derivatives
Annual reporting hours: 2,600
Estimated average hours per response: 100
Number of respondents: 13
Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 248(a), 353-359, and 461) and will be given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The FR 2436 will collect derivatives market statistics from a sample of thirteen large U.S. dealers of OTC derivatives. The report will collect information on notional amounts and gross market values of the volumes outstanding of broad categories of foreign exchange, interest rate, equity- and commodity-linked over-the-counter derivatives instruments across a range of underlying currencies, interest rates, and equity markets.

This collection of information will complement the ongoing triennial Survey of Foreign Exchange and Derivatives Market Activity (FR 3036) and will be implemented concurrently with the 1998 FR 3036. The FR 2436 will collect similar data on the outstanding volume of derivatives, but not on derivatives turnover. As with the FR 3036, the Federal Reserve will conduct this report in coordination with other central banks and will forward the aggregated data furnished by U.S. reporters to the Bank for International Settlements, which will publish global market statistics that are aggregations of national data.

3. Report title: 1998 Survey of Consumer Finance
Agency form number: FR 3059
OMB Control number: 7100-0287
Effective Date: June 1, 1998
Frequency: One-time survey
Reporters: U.S. families
Annual reporting hours: 6,900
Estimated average hours per response: 1.5
Number of respondents: 4,600
Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. §§ 225a, 1821, 1828(c), 1842, and

1843) and is given confidential treatment (5 U.S.C. 552(b)(6)).

Abstract: The 1998 Survey of Consumer Finances is the sixth triennial Survey of Consumer Finance since 1983, the beginning of the current series. This survey is the only source of representative information on the structure of U.S. families' finances. The survey, to be conducted between June and December 1998, will collect data on the assets, debts, income, work history, pension rights, use of financial services, and attitudes of a sample of U.S. families.

Board of Governors of the Federal Reserve System, February 23, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–5043 Filed 2–26–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Public Information Collection Requirement Submitted to the Office of Management and Budget for Clearance

AGENCY: Administration on Aging.

SUMMARY: The Administration on Aging (AoA), Department of Health and Human Services, in compliance with the Paperwork Reduction Act (Public Law 96–511), is submitting to the Office of Management and Budget for clearance and approval an information collection instrument, namely, Performance (Progress) Reports for Title IV Grantees.

Type of Request: Extension of currently approved collection.

Use: Consistent with 45 CFR Part 74, Subpart J, the AoA requires grantees funded under Title IV of the Older Americans Act to report on the performance of their projects. The report is used by the AoA to review and monitor the grantee's progress in achieving project objectives, provide advice and assistance, and to take corrective action as necessary.

Frequency: Semiannually.

Respondent: Title IV grantees.

Estimated Number of Respondents: 60.

Estimated Burden Hours: 20 hours for each semiannual report.

Additional Information: Each progress report, typically 5 pages in length, is expected to cover the following subjects: recent major activities and accomplishments; problems encountered; significant findings and events; dissemination activities; and activities planned for the next 6 months.

Written comments and recommendations for the proposed information collection should be sent to the following address on or before March 30, 1998: Administration on Aging, Wilbur J. Cohen Federal Building, 330 Independence Avenue, SW, Washington, DC 20201, ATTN: Alfred P. Duncker.

Dated: February 19, 1998.

William F. Benson,

Acting Principal Deputy Assistant Secretary for Aging.

[FR Doc. 98–5011 Filed 2–26–98; 8:45 am]

BILLING CODE 4130–40–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Clinical Laboratory Improvement Advisory Committee, of the Centers for Disease Control and Prevention (CDC), of the Department of Health and Human Services, has been renewed for a two-year period beginning February 19, 1998, through February 19, 2000.

For further information, contact Edward L. Baker, M.D., Executive Secretary, Clinical Laboratory Improvement Advisory Committee, CDC, 1600 Clifton Road, NE, M/S G–25, Atlanta, GA 30333, telephone 770/488–2402 or fax 770/488–2420.

Dated: February 19, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–5039 Filed 2–26–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Fernald Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Fernald Health Effects Subcommittee.

Times and Dates: 1 p.m.–9 p.m., March 18, 1998; 8:30 a.m.–5 p.m., March 19, 1998.

Place: The Plantation, 9660 Dry Fork Road, Harrison, Ohio 45020, telephone 513/367–5610.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as

advice and recommendations to CDC and ATSDR.

Matters To Be Discussed: Agenda items include presentations from the National Center for Environmental Health (NCEH), the National Institute for Occupational Safety and Health and ATSDR on updates regarding the progress of current studies.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Steven A. Adams, Radiation Studies Branch, Division of Environmental Hazards and Health, NCEH, CDC, 4770 Buford Highway, NE, M/S F–35, Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: February 19, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–5038 Filed 2–26–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Allergenic Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Allergenic Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on March 24, 1998, 1 p.m. to 4:30 p.m. by teleconference.

Location: Food and Drug Administration, Bldg. 29, conference room 121, 8800 Rockville Pike, Bethesda, MD. This meeting will be held by telephone conference call. A speaker phone will be provided in the conference room to allow public participation in the meeting.

Contact Person: William Freas or Sheila D. Langford, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314 or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12388. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will receive an update on the status of standardized grasses and discuss how candidate allergens for future standardization should be identified.

Procedure: On March 24, 1998, from 1 p.m. to 3 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 18, 1998. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal presentations should notify the contact person before March 18, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On March 24, 1998, from 3 p.m. to 4 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). This portion of the meeting will be closed to hear and review trade secret and/or confidential information on pending investigational new drugs.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 20, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–5049 Filed 2–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92F–0392]

Hoechst Aktiengesellschaft; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 2B4344) proposing that the food additive regulations be amended to provide for the safe use of polyhydric alcohol esters and calcium salts of oxidatively refined (Gersthofen process) montan wax acids as lubricants for all polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 7, 1993 (58 FR 3027), FDA announced that a food additive petition (FAP 2B4344) had been filed by Hoechst Aktiengesellschaft, c/o 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 178.3770 *Polyhydric alcohol esters of oxidatively refined (Gersthofen process) montan wax acids* (21 CFR 178.3770) to provide for the safe use of polyhydric alcohol esters and calcium salts of oxidatively refined (Gersthofen process) montan wax acids as lubricants for all polymers intended for use in contact with food. Hoechst Aktiengesellschaft has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: February 12, 1998.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–5129 Filed 2–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Health Education Assistance Loan (HEAL)

Program: Physicians's Certification of Borrower's Total and Permanent Disability Form (OMB No. 0915–0204)

—Extension and Revision—The Health Education Assistance Loan (HEAL) program provides federally-insured loans to students in schools of allopathic medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, allied health, or chiropractic, and graduate students in health administration or clinical psychology. Eligible lenders, such as banks, savings and loan associations, credit unions, pension funds, State agencies, HEAL schools, and insurance companies, make HEAL loans which are insured by the Federal Government against loss due to borrower's death, disability, bankruptcy, and default. The basic purpose of the program is to assure the availability of funds for loans to eligible students who need to borrow money to pay for their educational loans.

The HEAL borrower, the borrower's physician, and the holder of the loan completes the Physician's Certification form to certify that the HEAL borrower meets the total and permanent disability provisions.

The HEAL program is being phased out and no new loans will be made after September 30, 1998 unless reauthorization is enacted. We are, however, requesting a 3-year extension of the OMB approval of the HEAL Physician's Certification of Borrower's Total and Permanent Disability Form, HRSA–539 because this form will be used throughout the repayment period for existing loans. The Department uses this form to obtain information about disability claims which includes the following: (1) the borrower's consent to release medical records to the Department of Health and Human Services and to the holder of the borrower's HEAL loans, (2) pertinent information supplied by the certifying physician, (3) the physician's certification that the borrower is unable to engage in any substantial gainful activity because of a medically determinable impairment that is expected to continue for a long and indefinite period of time or to result in death, and (4) information from the lender on the unpaid balance. Failure to submit the required documentation will result in disapproval of a disability claim. The form is being revised to make submission of medical documentation mandatory rather than optional.

The estimate of burden for the Physician's Certification form is as follows:

Type of respondent	Number of respondents	Responses per respondent	Number of responses	Hours per response	Total burden hours
Borrower	100	1	100	5 minutes	8
Physician	100	1	100	90 minutes	150
Loan Holder	32	3.1	100	10 minutes	17
Total	232		300		175

Written comments and recommendations concerning the proposed information collection should be sent on or before March 30, 1998 to: Laura Oliven, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 24, 1998.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 98–5051 Filed 2–26–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of the HRSA Competitive Grants Preview; Correction

AGENCY: Health Resources and Services Administration, HHS.

ACTION: General notice; Correction.

SUMMARY: On October 9, 1997 (62 FR 52892), HRSA published a general notice announcing the Availability of the HRSA Competitive Grants Preview. This notice corrects information on new grant awards which appeared in that general notice, FR Doc. 97–26645, on page 52907. In the sections on the Rural Outreach Grant Program and Rural Network Development Grant Program, under the headings "Estimated Number of Awards", it was indicated that approximately 10–12 new Rural Health Outreach Grants and approximately 10–15 New Rural Network Developments Grants would be awarded in FY 1998. The revised estimate is that no more than 6–10 new competing grants will be funded in FY 1998 for these two programs combined.

Dated: February 23, 1998.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 98–5052 Filed 2–26–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: February 23, 1998.

Time: 3 p.m.

Place: Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Jean Speas, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–1340.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: February 20, 1998.

LaVeen Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 98–5107 Filed 2–26–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–0525.

Proposed Project: Development and Implementation of Opioid Treatment Program Accreditation, New

OMB approval will be sought for information collections related to the development and implementation of opioid treatment program (OTP) accreditation by the Commission on Accreditation of Rehabilitation Facilities, under contract to the Center for Substance Abuse Treatment, SAMHSA. CSAT and other Federal agencies are proposing the planning and developing of an accreditation process for OTPs. The proposed project will focus on developing standards and procedures, training surveyors and accrediting up to 170 OTPs. The information collections include an Accreditation Application, Accreditation Standards, Site Visit Performance Questionnaire, Site Visit Process Questionnaire, and Performance Improvement Plan. The estimated annualized burden for this four-year project is summarized below.

	Number of respondents	Number of responses/ respopedent	Hours/response	Total burden hours	Total annualized burden hours
Accreditation Application	170	1	2	340	85
Accreditation Standards	170	1	60	10,200	2,550
Site Visit Performance Questionnaire	170	1	0.5	85	21
Site Visit Process Questionnaire	170	1	0.5	85	21
Performance Improvement Plan	170	1	3	510	128
Total				11,220	2,805

Proposed Project: Confidentiality of Alcohol and Drug Abuse Patient Records, Extension

SAMHSA will seek an extension of OMB approval of the information disclosure and recordkeeping requirements in the regulation, Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR part 2). Statute (42 U.S.C. 290dd–2) requires Federally conducted, regulated, or directly or indirectly assisted alcohol and drug abuse programs to keep patient records confidential. The regulation implements the statute. Information requirements are: (1) Written disclosure to patients, and (2) documenting "medical personnel" status of recipient of a disclosure to meet a medical emergency. The estimated annualized burden is shown below.

	Number of respondents	Number of responses/ respondent	Hours/response	Annualized burden hours
Disclosure: 42 CFR 2.22	10,000	150	0.017	22,500
Recordkeeping: 42 CFR 2.51	10,000	1.5	0.250	3,750
Total				26,250

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Send comments to Deborah Trunzo, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received on or before April 28, 1998.

Dated: February 20, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–5030 Filed 2–26–98; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–44]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: February 27, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD

publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: February 19, 1998.

Kenneth C. Williams,

Deputy Assistant Secretary for Grant Programs.

[FR Doc. 98–4858 Filed 2–26–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4322–N–01]

Statement of Policy on Disclosure of Mortgage Loan Sales Information

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of FOIA Mortgage Loan Sales Policy.

SUMMARY: This notice sets forth the policy of the Department of Housing and Urban Development regarding information that will be provided when responding to Freedom of Information Act requests for information on the Department's Mortgage Loan Sales Program. This notice sets forth that policy and its rationale.

EFFECTIVE DATE: February 27, 1998.

FOR FURTHER INFORMATION CONTACT: Irwin P. Raij, Assistant Managing Attorney, FOIA Division, Room 10250, Department of Housing and Urban Development, 451 Seventh Street SW, Washington DC 20410; telephone (202) 708–3866 (this is not a toll-free number). Speech or hearing impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The purposes of the Department of Housing and Urban Development's mortgage loan sales program are to (1) reduce losses to the Federal Housing Administration (FHA) fund and provide the greatest return to U.S. taxpayers; (2) reduce the inventory of Department-held mortgages; (3) improve mortgage loan servicing and rental services for residents of projects by returning the mortgage loans secured by these mortgages to the private sector; and (4) improve the servicing of the Department's insured mortgages to minimize losses to the FHA fund. (See, also, the mortgage sales notices published by HUD in the **Federal Register** on July 14, 1995 (60 FR 36336); July 24, 1996 (61 FR 38467); November 15, 1996 (61 FR 58585); and July 7, 1997 (62 FR 86298, July 7, 1997.))

This notice sets forth the Department's policy pertaining to the release of records regarding those bids that the Department or its contractors have received to date under its mortgage loan sale program. When requested to provide records pursuant to the Freedom of Information Act (FOIA), the Department will produce relevant records in its files including, where available: (1) All potential bidders receiving bid materials; (2) all successful bidders and their successful bids and the mortgage loans attributable to such bids; (3) all unsuccessful bidders and their unsuccessful bids and the mortgage loans attributable to such bids; (4) the aggregate proceeds the Department received from the sale; and (5) the aggregate number of bidders.

Members of the public submitting FOIA requests pursuant to this notice should be advised that many of the original relevant records pertaining to HUD's Mortgage Loan Sales Program were compiled by contractors, and were not in the custody of, or subject to the control of HUD. Therefore, HUD's files may not contain complete records pertaining to mortgage loan sales.

A significant period of time has elapsed between the Department's last mortgage sale and the present. Thus, release of these records does not have material adverse consequences upon the economic interests of the participants of those mortgage sales. Moreover, this policy strikes a balance among the Department's policy of disclosing as much information as possible to the public within the spirit of the FOIA and harm to the U.S. taxpayer by restricting the Department's ability to meet its policy objectives, as stated above, and the mandates of section 203(k) of the Housing and Community Development Amendments of 1978, as amended. See 12 U.S.C. 1701z–11.

Dated: February 20, 1998.

Nicolas Retsinas,

Assistant Secretary for Housing Federal Housing Commissioner.

[FR Doc. 98–4868 Filed 2–26–98; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–839466

Applicant: Richard Nelson Beckert, Addison, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–838345

Applicant: Columbus Zoological Gardens, Powell, OH.

The applicant requests a permit to import one male captive-born Pygmy chimpanzee (*Pan paniscus*) from Zoologico de Morelia, Morelia, Michoacan, Mexico for the purpose of enhancement of the survival of the species through captive propagation.

PRT–839520

Applicant: Ringling Bros. and Barnum & Bailey, Vienna, VA.

The applicant requests a permit to export and reimport captive born Asian elephants (*Elephas maximus*), tigers (*Panthera tigris*), and a leopard (*Panthera pardus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–839376

Applicant: Jeffrey Covey, Scottsdale, AZ.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–839378

Applicant: Randolph S. Young, DDS, Yorba Linda, CA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–839359

Applicant: Robert H. Karbowski, Bena MN.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director on or before March 30, 1998.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: February 23, 1998.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–4988 Filed 2–26–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*).

Permit No. 779910

Applicant: William E. Haas, San Diego, California

The applicant requests an amendment to his permit to: take (harass by survey; capture, mark, release; relocate) the southwestern arroyo toad (*Bufo microscaphus californicus*) in Orange, Riverside, San Diego, and Imperial Counties, California; take (locate and monitor nests; capture, band, color-band, release) the least Bell's vireo (*Vireo bellii pusillus*) throughout its range; take (harass by survey) the light-footed clapper rail (*Rallus longirostris levipes*) in San Diego County, California; take (capture, measure, and release) the Pacific pocket mouse (*Perognathus longimembris pacificus*) throughout its range; and take (capture, measure, and release) the Stephens' kangaroo rat (Dipodomys stephensi) throughout its range in California in conjunction with presence or absence surveys, population monitoring, and ecological research for the purpose of enhancing their survival.

Permit No. 796012

Applicant: Foster Wheeler Environmental Corporation, Sacramento, California

The applicant requests an amendment to its permit to take (harass by survey, capture and release, collect voucher specimens) the Riverside fairy shrimp (*Streptocephalus wootoni*) and San Diego fairy shrimp (*Branchinecta sandiegonensis*) throughout the species' range in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 825576

Applicant: Richard N. Wales Jr., Tustin, California

The applicant requests a permit to take (capture, measure, and release) the southwestern arroyo toad (*Bufo microscaphus californicus*) in conjunction with ecological research in Orange, Los Angeles, San Diego, San Bernardino, and Riverside Counties, California, for the purpose of enhancing its survival.

Permit No. 804203

Applicant: Steve Myers, Riverside, California

The applicant requests an amendment to his permit to take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with population monitoring and removal of brown-headed cowbird (*Molothrus ater*) eggs and chicks from parasitized nests throughout the species range in California, and take (capture, handle, and release) the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) in conjunction with presence or absence surveys and population monitoring in San Bernardino and Riverside Counties, California, for the purpose of enhancing their survival.

Permit No. 745541

Applicant: Stephen J. Montgomery, San Diego, California

The applicant requests an amendment to his permit to take (capture, handle, and release) the Amargosa vole (*Microtus californicus scirpensis*) in conjunction with life history studies in Inyo County, California, and the Ash Meadows National Wildlife Refuge, Nevada, for the purpose of enhancing its survival.

Permit No. 839480

Applicant: Richard Zembal, Laguna Niguel, California

The applicant requests an amendment to his permit to take (harass by survey; capture, band, color-band, and release; collect eggs and capture juveniles; and translocate) the light-footed clapper rail (*Rallus longirostris levipes*) in Orange, San Diego, and Los Angeles Counties, California, in conjunction with ecological research, population monitoring, augmenting existing populations by translocating eggs, and developing a captive breeding protocol at the Chula Vista Nature Center, San Diego, California, for the purpose of enhancing its survival. The ecological and population monitoring were previously authorized under subpermit Zembrl-5.

Permit No. 838091

Applicant: Michael S. Cooperman, Corvallis, Oregon

The applicant requests a permit to take (capture, collect, and sacrifice) larvae of the Lost River sucker (*Deltistes luxatus*) and the shortnose sucker (*Chasmistes brevirostris*) in conjunction with ecological research and life history studies in southern Oregon for the purpose of enhancing their survival.

Permit No. 832945

Applicant: Lisa M. Kegarice, San Bernardino, California

The applicant requests an amendment to her permit to take (harass by survey) the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in conjunction with presence or absence surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. 813545

Applicant: Brock Ortega, Encinitas, California

The applicant requests an amendment to his permit to take (harass by survey, collect and sacrifice) the Riverside fairy shrimp (*Streptocephalus wootoni*), San Diego fairy shrimp (*Branchinecta*

sandiegonensis), and vernal pool fairy shrimp (*Branchinecta lynchi*) in conjunction with presence and absence surveys and population monitoring in San Diego, Riverside, and Orange Counties, California, for the purpose of enhancing their survival.

Permit No. 817400

Applicant: East Bay Regional Park District, Oakland, California

The applicant requests an amendment to his permit to take (harass by survey using a motorized boat) the California clapper rail (*Rallus longirostris obsoletus*) in conjunction with presence or absence surveys in Alameda and Contra Costa Counties, California, for the purpose of enhancing its survival.

Permit No. 785564

Applicant: Parsons Harland Bartholomew & Associates, Sacramento, California

The applicant requests an amendment to his permit to take (harass by survey) the California clapper rail (*Rallus longirostris obsoletus*) in conjunction with presence or absence surveys throughout the species range in California for the purpose of enhancing its survival.

Permit No. 839093

Applicant: Thomas Wang, San Francisco, California

The applicant requests a permit to take (harass by survey; mark larvae) the mission blue butterfly (*Icaricia icarioides missionensis*) in conjunction with scientific research in San Mateo County, California, for the purpose of enhancing its survival.

Permit No. 815537

Applicant: Karen Swaim, Livermore, California

The applicant requests a permit amendment to take (capture, handle, and release) the Alameda whipsnake (*Masticophis lateralis euryxanthus*) and to take (harass by survey) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus wootoni*) throughout the range of the species in California in conjunction with presence or absence surveys, general aquatic surveys, and scientific research for the purpose of enhancing their survival.

Permit No. 836517

Applicant: Chet McGaugh, Riverside, California

The applicant requests a permit amendment to take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with population monitoring and removal of brown-headed cowbird (*Molothrus ater*) eggs and chicks from parasitized nests throughout the species' range in California for the purpose of enhancing its survival.

Permit No's. 832717, 794784, 797665

Applicants: Rodrick Dossey, El Cajon, California; Affinis, El Cajon, California; RECON, San Diego, California

The applicants request a permit amendment to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys and ecological research throughout the species' range in California, for the purpose of enhancing its survival.

Permit No. 810768

Applicant: Harmsworth Associates, Dove Canyon, California

The applicant requests a permit amendment to take (harass by survey; nest monitor) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with presence or absence surveys and nest monitoring throughout the species' range in California, for the purpose of enhancing its survival.

Permit No. 801346

Applicant: Geoffrey L. Rogers, San Diego, California

The applicant requests a permit amendment to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with presence or absence surveys in San Diego, Orange, Imperial, and Riverside Counties, California, for the purpose of enhancing its survival.

Permit No. 839211

Applicant: Marnie Crook, Redland, California

The applicant requests a permit to take (capture, handle, and release) the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) in conjunction with presence or absence surveys and population monitoring in San Bernardino County, California, for the purpose of enhancing its survival.

Permit No. 839483

Applicant: University of Nevada, Reno, Nevada

The applicant requests a permit to take (harass by survey, collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*) and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with the collection of soil samples at the Beale Air Force Base and Jepson Prairie Reserve, California, for the purpose of enhancing their survival.

Permit No. 839578

Applicant: David Evans and Associates, Inc., Bellevue, Washington

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) throughout the states of Utah and Nevada in conjunction with presence or absence surveys for the purpose of enhancing its survival.

DATES: Written comments on these permit applications must be received on or before March 30, 1998.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: February 20, 1998.

William F. Shake,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–5037 Filed 2–26–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Corrections Corporation of America, California City Prison Project, Kern County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Corrections Corporation of America of Nashville, Tennessee, has

applied to the Fish and Wildlife Service for an incidental take permit pursuant to the Endangered Species Act of 1973, as amended (Act). The Service proposes to issue an incidental take permit for the federally threatened desert tortoise (*Gopherus agassizii*) at the proposed California City Prison Project site, located in Kern County, California. Corrections Corporation of America has requested that the Service include the Mojave ground squirrel (*Spermophilus mohavensis*), a species listed as threatened by the State of California, and the burrowing owl (*Athene cunicularia*), a California species of special concern, as covered species in the Habitat Conservation Plan submitted with their application. This notice announces the availability of the permit application and the Environmental Assessment for the proposed action. The permit application includes the Habitat Conservation Plan for the California City Prison Project and an Implementing Agreement. The Service specifically requests comment on the appropriateness of the "No Surprises" assurances contained in this application. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

DATES: Written comments on the permit application, Habitat Conservation Plan, Environmental Assessment, and Implementing Agreement should be received on or before March 30, 1998.

ADDRESSES: Comments regarding the application or adequacy of the Environmental Assessment and Implementing Agreement should be addressed to the Field Supervisor, Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. Written comments may also be sent by facsimile to (805) 644–3958. Individuals wishing copies of the documents should immediately contact the Service's Ventura Fish and Wildlife Office at the above referenced address or facsimile, or at the telephone number listed below. Documents will also be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Denise Washick, Fish and Wildlife Biologist, at the above address or call (805) 644–1766.

SUPPLEMENTARY INFORMATION: The "take" of threatened and endangered species is prohibited under Section 9 of the Act and its implementing regulations. "Take" is defined, in part, as killing, harming or harassing listed species, including significant habitat modification that results in death of or injury to listed species. Under limited circumstances, the Service may issue permits to take listed species if such taking is incidental to otherwise lawful activities. Regulations governing permits are found at Title 50, Code of Federal Regulations, sections 17.22 and 17.32.

The Service proposes to issue a section 10(a)(1)(B) permit to the applicant for incidental take of the desert tortoise, Mojave ground squirrel, and the burrowing owl (covered species) during the construction and operation of the prison. The proposed development of the prison would result in a permanent loss of habitat for the covered species as the project site is bladed and the vegetative communities are permanently removed during the construction of the prison. The construction and operation of the prison could directly and indirectly affect the covered species.

Background Information

Corrections Corporation of America proposes the construction and operation of a new 2,304-bed medium security prison facility located on undeveloped land in the northern one-half of section 13 of Township 32 South, Range 38 East in California City, Kern County, California. The proposed prison would occupy approximately 105 acres of a 320-acre property characterized by creosote bush scrub vegetation. This site is known to support a population of the threatened desert tortoise and may support populations of Mojave ground squirrels and burrowing owls, the latter species being listed as threatened and sensitive, respectively, by the State of California.

The proposed action would authorize the incidental take of all desert tortoises on the 105-acre site in the form of harassment as a result of being moved out of harm's way. Additionally, two desert tortoises may be taken in the form of direct mortality associated with construction and operational activities and travel on the access road. Burrowing owls are unlikely to be killed or injured by the proposed action. If Mojave ground squirrels are present on the site, they would likely be killed during the initial grading of the construction areas. The proposed acquisition and management of the habitat off-site would be the primary means of compensating for the loss of habitat and direct take of the Mojave ground squirrel and burrowing owl.

The Habitat Conservation Plan proposes several measures to mitigate and minimize the effects of the prison development on the desert tortoise. Before construction activities commence, an amount of habitat of the covered species equal to that being destroyed will be purchased and placed in management for recovery of the desert tortoise. A fence to prevent desert tortoises from entering the construction site will be constructed under the supervision of a biologist and the area enclosed by the fence will be systematically searched. All desert tortoises found will be relocated to adjacent habitat in a manner consistent with current handling procedures and guidelines. Workers at the construction site will be educated about the status of the desert tortoise and procedures to take if desert tortoises are found during work activities or while traveling on access roads. The Corrections Corporation of America or their contractor will ensure that trash is handled in a way that does not lure predators of the desert tortoise into the area or increase their presence on-site.

In compliance with the National Environmental Policy Act, the Environmental Assessment examines the environmental consequences of four alternatives. These include the proposed action, a smaller project that would impact 40 acres, an alternate site that would also require the issuance of a section 10(a)(1)(B) permit for the incidental take of the desert tortoise, and a no take alternative.

This notice is provided pursuant to section 10(a)(1)(B) of the Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). The Service will evaluate the application, its associated documents, and submitted comments to determine whether the application meets the requirements of law. If the Service determines that the requirements are met, a permit will be issued for the incidental take of the listed species. A final decision on permit issuance will be made no sooner than 30 days from the date of this notice.

Dated: February 23, 1998.

David L. McMullen,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–5054 Filed 2–26–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Letters of Authorization To Take Marine Mammals

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with section 101(a)(5) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations [50 CFR 18.27(f)(3)], notice is hereby given that Letters of Authorization to take polar bears incidental to oil and gas industry exploration, development, and production activities have been issued to the following companies:

Company	Activity	Location	Date issued
ARCO Alaska, Inc.	Development.	Alpine Dev Project.	Jan. 27, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: Letters of Authorization were issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations "Marine Mammals; Incidental Take During Specified Activities" (58 FR 60402; November 16, 1993); modified and extended (60 FR 42805; August 17, 1995).

Dated: February 10, 1998.

Robyn Thorson,

Acting Regional Director.

[FR Doc. 98–4413 Filed 2–26–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Amendment to Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved amendments to Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment V to the Gaming Compact Between the Confederated Tribes of the Umatilla Indian Reservation and the State of Oregon, which was executed on December 22, 1997.

DATES: This action is effective February 27, 1998.

FOR FURTHER INFORMATION CONTACT: Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: February 19, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–5071 Filed 2–26–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approval for Amendment III to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment III to the Tribal-State Compact For Regulation of Class III Gaming Between the Confederated Tribes of Siletz Indians Tribe and the State of Oregon, which was executed on December 30, 1997.

DATES: This action is effective February 27, 1998.

FOR FURTHER INFORMATION CONTACT: Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: February 19, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–5072 Filed 2–26–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment III to the Confederated Tribes of the Warm Springs Reservation of Oregon and the State of Oregon Gaming Compact, which was executed on December 30, 1997.

DATES: This action is effective February 27, 1998.

FOR FURTHER INFORMATION CONTACT: Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: February 19, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–5073 Filed 2–26–98; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. § 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment III to the Tribal-State Compact for Regulation of Class III Gaming between the Coquille Indian Tribe and the State of Oregon which was executed on December 30, 1997.

DATES: This action is effective February 27, 1998.

FOR FURTHER INFORMATION CONTACT: Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4068.

Dated: February 19, 1998.
Kevin Gover,
Assistant Secretary—Indian Affairs.
[FR Doc. 98–5074 Filed 2–26–98; 8:45 am]
BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment IV to the Tribal-State Compact for Regulation of Class III Gaming Between The Klamath Tribes and the State of Oregon, which was executed on December 31, 1997.

DATES: This action is effective February 27, 1998.

FOR FURTHER INFORMATION CONTACT: Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: February 18, 1998.
Kevin Gover,
Assistant Secretary—Indian Affairs.
[FR Doc. 98–5070 Filed 2–26–98; 8:45 am]
BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–1430–01; CACA 7291, CACA 7294, and CACA 7313]

Termination of Classifications of Public Lands for Small Tract Classification Numbers 236, 243, and 388, and Opening Order; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates, in their entirety, the following three classifications, which classified public lands for disposition pursuant to the Small Tract Act of June 1, 1938: CACA 7291—Small Tract Classification Number 236, CACA 7294—Small Tract Classification Number 243, CACA 7313—Small Tract Classification Number 388 The Small Tract Act of June 1, 1938 was repealed by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), which contained provisions providing broad authority that replaced the repealed act. Of the 1,000 acres described under the above described classifications, 774.375 acres have been conveyed out of public ownership pursuant to the Small Tract Act of June 1, 1938. The mineral estates of those conveyed lands were reserved to the United States. Until appropriate rules and regulations are issued by the Secretary of the Interior, the reserved minerals on the conveyed lands will not be subject to location under the U.S. mining laws. A total of 225.625 acres still remain in public ownership. Those lands will be opened to the operation of the public land laws including the mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All of the lands have been and remain open to the operation of the mineral leasing laws. The terminations are necessary to facilitate the completion of a pending land exchange. The lands, remaining in public ownership, will be opened to exchange only, because they are currently segregated from the public land laws, including the mining laws, by the pending land exchange.

EFFECTIVE DATE: Termination of the classifications are effective on February 27, 1998. The public lands will be opened to entry at 10 a.m. on March 30, 1998.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2135 Butano Drive, Sacramento, California 95825–0451; telephone number 916–978–4675.

SUPPLEMENTARY INFORMATION:

1(a). CACA 7291—Small Tract Act Classification Number 236

T. 9 N., R. 2 W., San Bernardino Meridian
Sec. 12, W½NW¼NE¼.

The area described contains 20 acres in San Bernardino County.

On September 15, 1950, 20 acres of public land (as described above) were classified as suitable for lease under the Act of June 1, 1938, as amended (43 U.S.C. 682a–e). The classification decision was published in the **Federal Register** on October 7, 1950 (15 FR 6790). The land was segregated from all appropriation under the public land laws, including mineral location under the general mining laws. The land has been and will remain open to the mineral leasing laws.

Of the 20 acres originally classified, 18.125 acres have been conveyed out of public ownership, with 1.875 acres remaining in public ownership. The mineral estates of those conveyed lands were reserved to the United States.

(b). CACA 7294—Small Tract Act Classification Number 243

T. 9 N., R. 2 W., San Bernardino Meridian
Sec. 11, S½.
sec. 12, S½N½ and S½.

The area described contains 800 acres in San Bernardino County.

On October 6, 1950, 800 acres of public land (as described above) were classified as suitable for lease under the Act of June 1, 1938, as amended (43 U.S.C. 682a–e). The classification decision was published in the **Federal Register** on October 20, 1950 (15 FR 7032). The land was segregated from all appropriation under the public land laws, including mineral location under the general mining laws. The land has been and will remain open to the mineral leasing laws.

Of the 800 acres originally classified, 648.75 acres have been conveyed out of public ownership, with 151.25 acres remaining in public ownership. The mineral estates of those conveyed lands were reserved to the United States.

(c). CACA 7313—Small Tract Act Classification Number 388

T. 9 N., R. 2 W., San Bernardino Meridian
Sec. 11, W½NE¼NE¼, NW¼NE¼, S½NE¼, and SW¼NW¼.

The area described contains 180 acres in San Bernardino County.

On October 28, 1953, 180 acres of public land (as described above) were classified as suitable for lease under the Act of June 1, 1938, as amended (43 U.S.C. 682a–e). The classification decision was published in the **Federal Register** on November 4, 1953 (16 FR 6971). The land was segregated from all appropriation under the public land laws, including mineral location under the general mining laws. The land has been and will remain open to the mineral leasing laws.

Of the 180 acres originally classified, 107.50 acres have been conveyed out of public ownership, with 72.50 acres remaining in public ownership. The mineral estates of those conveyed lands were reserved to the United States.

2. Pursuant to the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*), and the regulations contained in 43 CFR 2091.7–1(b)(2), Small Tract Act Classification Numbers 236, 243, and 388 are hereby terminated in their

entirety. The classifications no longer serve a needed purpose as to the lands described above.

3. Until appropriate rules and regulations are issued by the Secretary of the Interior, the reserved minerals on 774.375 acres of conveyed lands, as described above, will not be subject to location under the U.S. mining laws.

4. At 10 a.m. on March 30, 1998, 225.625 acres of public lands, as described above, will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirement of applicable law. All valid applications received at or prior to 10 a.m. on March 30, 1998 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. At 10 a.m. on March 30, 1998, 225.625 acres of public lands, as described above, will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this notice under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: February 18, 1998.

Ed Hastey,

State Director.

[FR Doc. 98–5041 Filed 2–26–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–020–08–1220–00–241A]

Notice of Availability of the Squirrel River Draft Environmental Impact Statement

SUMMARY: The Northern District of the Bureau of Land Management in Alaska has prepared a draft environmental impact statement on a proposal to make the Squirrel River, located in northwestern Alaska, a component of the national wild and scenic rivers system. The draft EIS is available February 27, 1998. The Wild and Scenic Rivers Act identifies the Squirrel River in Section 5(a), and requires the Department of the Interior to conduct a study on the suitability of the river as a worthy addition to the national system. That authority was delegated to the BLM. A draft environmental impact statement has been prepared because the National Environmental Protection Act calls for the preparation of draft and final environmental impact statements whenever a proposal results from a study process required by statute.

Dates and Locations: Written comments must be received or postmarked on or before April 28, 1998. Public meetings will be held at:

Kiana, Alaska: April 9, 1998; old City Office. Open House 10:30 a.m. to 12:30 p.m.; Public meeting begins 1 p.m.

Kotzebue, Alaska: April 10, 1998, Alaska Technical Center. Open House 9 a.m. to 12:30 p.m.; Public Meeting begins 1 p.m.

Fairbanks, Alaska: April 16, 1998; BLM-Northern District Office Building, 1150 University Ave. Open House 2 to 5 p.m.; Public Meeting begins 5 p.m.

FOR FURTHER INFORMATION CONTACT: General information: Susan Will, (907) 474–2338. Technical information: Lon Kelly, (907) 474–2368. Public meetings in Kiana and Kotzebue: Randy Meyers, (907) 442–3430.

SUPPLEMENTARY INFORMATION: An electronic version of the document is available on the Internet at: http://aurora.ak.blm.gov/squirrel.

Copies of the Draft Environmental Impact Statement can be obtained by writing to: Bureau of Land Management, 1150 University Ave., Fairbanks, AK, 99709–3899; or by calling 1–800–437–7021 or (907) 474–2200.

Dated: February 20, 1998.

Lon Kelly,

Squirrel River Coordinator.

[FR Doc. 98–5040 Filed 2–26–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–0777–30]

BLM Nevada State Office Moves From 850 Harvard Way, Reno, NV to 1340 Financial Blvd., Reno, NV 89502, on March 10, 1998

AGENCY: Bureau of Land Management, Interior.

ACTION: Bureau of land management Nevada State Office Move Location and date.

SUMMARY: The Bureau of Land Management's Nevada State Office will move March 10, 1998, to 1340 Financial Blvd. Near McCarran and Mill Streets. The public room at 850 Harvard Way will close for business at noon, March 10, 1998, and will reopen at 1340 Financial Blvd. on March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Atanda Clinger, Records Administrator, Public Contact and Records Sub-Unit, Bureau of Land Management Nevada State Office, 850 Harvard Way, Reno, Nevada, 89502–2055, telephone for 850 Harvard Way, 702–785–6632, for 1340 Financial Blvd., 702–861–6400.

Dated: February 20, 1998.

Jo Simpson,

Chief, External Affairs, BLM Nevada State Office.

[FR Doc. 98–5034 Filed 2–26–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–1430–00; –N–41566–40]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Recreation and Public Purpose Lease/Conveyance.

SUMMARY: The following public lands in Clark County, Nevada, have been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands are needed for development of a Senior High School.

Mount Diablo Meridian, Nevada

T.22 S., R. 60 E.,
Section 9, SW¼NE¼

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe, and well be subject to:

1. Easements in accordance with the City of North Las Vegas Transportation Plan and as stated by letter to the Bureau of Land Management dated November 17, 1997.

2. All valid and existing rights.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purpose Act, leasing under the mineral leasing laws and disposal under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas District, 4765 Vegas Drive Las Vegas, Nevada, 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for the senior high school. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for a school site.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: February 17, 1998.

Mark R. Chatterton,

Assistant District Manager, Non-Renewable Resources, Las Vegas, Nevada.

[FR Doc. 98–5075 Filed 2–26–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ030–1010–00; AZA–29861]

Notice of Intent To Amend the Kingman Resource Management Plan

AGENCY: Bureau of Land Management.

ACTION: Notice of intent.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management, Kingman Field Office, Arizona, will be preparing an EIS-level plan amendment to the Kingman Resource Management Plan. The plan amendment will assess impacts of proposed changes to land tenure classification decisions and resource management of federal lands in Mohave County in western Arizona.

DATES: Written comments will be accepted until April 1, 1998.

ADDRESSES: Comments should be sent to the Team Leader, Hualapai Mountain Project, Bureau of Land Management, Kingman Field Office, 2475 Beverly Ave., Kingman, Arizona 86401–3629.

FOR FURTHER INFORMATION CALL: Don McClure, phone: (520) 692–4400.

SUPPLEMENTARY INFORMATION: The planning area will include both public and non-public land in Mohave County in western Arizona, encompassing approximately 150,000 acres.

On June 11, 1997, Arizona BLM published a notice of intent to prepare an EIS-level analysis for a proposed land exchange near Kingman, Arizona, referred to as the Hualapai Mountain Exchange. As the offered and selected lands became more clearly defined during development of the draft EIS, it became apparent that adjustments in land tenure decisions of the Kingman Resource Management Plan would also be needed. The amendment is needed because approximately 15,000 acres selected by the Proponent were not identified for disposal in the Kingman Resource Management Plan by Township, Range, and Section. Also, the Proponent for the land exchange selected lands within the White Margined Penstemon Area of Critical Environmental Concern (ACEC). The boundary of the ACEC will not change but the amount of acreage of designated ACEC lands will change. The language used for designating the ACEC was for the public acres within the boundary and not the boundary itself. The proposed change in the acreage of the ACEC involves approximately 1800 acres going out of public ownership with approximately 3950 acres coming into public ownership. The 1800 acres would lose its designation as ACEC lands while the approximately 3950 acres would be designated as part of the ACEC.

Proposed modifications to the Kingman Resource Management Plan will be integrated with the proposed Hualapai Mountain Exchange, and the impacts thereof will be presented in a single EIS-level analysis. The interdisciplinary EIS team will consist of specialists representing wildlife, recreation, minerals, archaeology, lands, surface protection, vegetation, range, soil and watershed, social and economic conditions. Specialists with other expertise will be added if needed.

Description of Possible Alternatives

Reasonable alternatives including the no-action alternative will be analyzed in the EIS. One alternative will be selected as the agency-preferred alternative before the draft environmental impact statement is released for public review.

Anticipated Issues and Criteria

Some issues expected to be addressed by the plan amendment include the following: proposed land tenure adjustments, and proposed management of lands and resources acquired by BLM through the proposed exchange.

The following criteria are proposed to guide resolution of the issues: actions must comply with laws, executive, orders, and regulations; consider long-term benefits to the public in relation to short-term benefits; be reasonable and achievable; use of the best available scientific information; use an interdisciplinary approach to land management; and contribute to or sustain the productivity and diversity of natural systems and the health of the land.

Other Relevant Information

A comprehensive public participation plan has been prepared. The interested public will be involved throughout the plan amendment process. The tentative project schedule is as follows:

Begin Public Comment Period on Draft Environmental Impact Statement—April 1998

File Final Environmental Impact Statement—September 1998

Record of Decision—January 1999.

Public Input Requested

Comments should address issues to be considered, if the planning criteria are adequate for the issues, feasible and reasonable alternatives to examine, and relevant information having a bearing on the EIS-level plan amendment.

Dated: February 20, 1998.

John R. Christensen,

Field Manager.

[FR Doc. 98–5036 Filed 2–26–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1110–00; NMNM 95104]

Notice of Intent To Prepare A Resource Management Plan (RMP) Amendment; Socorro Resource Area, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of intent to prepare an Environmental Assessment (EA)/RMP amendment and an invitation for public participation.

SUMMARY: The BLM will prepare an EA/RMP Amendment for the purpose of addressing impacts of implementing a proposed 20-year withdrawal of 5,607.52 acres of public land in Socorro County, New Mexico from settlement, sale, location and entry under the general land laws, including the mining laws. The public is invited to participate in this planning effort with the identification of additional issues and planning criteria. The purpose of the proposed withdrawal is protection of desert bighorn sheep habitat.

DATES: Comments must be received on or before March 30, 1998.

ADDRESSES: Written comments should be sent to the EA/RMP Amendment Team Leader, BLM, Socorro Resource Area Office, 198 Neel Ave., NW, Socorro, NM 87801.

FOR FURTHER INFORMATION CONTACT: Lois Bell, BLM Socorro Resource Area at (505) 835–0412.

SUPPLEMENTARY INFORMATION: The proposed action is to amend the existing Socorro RMP to allow for the withdrawal of 5,607.52 acres of public land in the vicinity of Devil's Backbone in Socorro County, New Mexico described as:

New Mexico Principal Meridian,

T. 5 S., R. 3 W.,
Sec. 16, lots 5 to 8, inclusive, N½ and N½S½;
Secs. 21, 28, 29 and 32.
T. 6 S., R. 3 W.,
Sec. 4, lots 3 and 4, inclusive, and SW¼;
Sec. 9, W½;
Sec. 15, W½;
Sec. 16;
Sec. 22, NE¼, N½NW¼, SE¼NW¼, E½SW¼, and SE¼.
T. 5 S., R. 4 W.,
Sec. 25, E½.

The areas described aggregate 5,607.52 acres in Socorro County, New Mexico.

Types of Issues Anticipated

1. Does the existing Socorro RMP provide adequate protection for desert bighorn sheep habitat in the Devil's Backbone area?

2. Is a withdrawal necessary to properly protect desert bighorn sheep habitat in the Devil's Backbone area?

Criteria to Guide Development of the Planning Action

The following planning criteria were identified to help guide the resolution of issues.

Non-Discretionary Criteria

1. The proposed action must comply with laws, executive orders and regulations.

2. The proposed action must be reasonable and achievable with available technology.

Discretionary Criteria

1. Identify areas and resource values critical to desert bighorn sheep habitat in the area of Devil's Backbone.

2. Determine how critical wildlife habitat values should best be managed in the Devil's Backbone area.

Disciplines To Be Represented on Interdisciplinary Team

The plan amendment will be prepared by an interdisciplinary team consisting of an archaeologist, environmental coordinator, geologist, range land management specialist, realty specialist, recreation planner, surface protection specialist and a wildlife biologist.

Kind and Extent of Public Participation To Be Provided

A copy of this notice will be published in a local newspaper. Public participation will be in the form of written comments submitted to the Socorro Resource Area Office.

Location and Availability of Documents Relative to the Planning Process

All pertinent information is available in the BLM Socorro Resource Area Office, 198 Neel Avenue, Socorro, New Mexico 87801 and is available for public review weekdays during regular office hours, from 7:45 a.m. to 4:30 p.m.

Dated: February 20, 1998.

Linda S.C. Rundell,

District Manager.

[FR Doc. 98–5035 Filed 2–26–98; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Consultation Meeting

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of consultation meeting.

SUMMARY: This notice announces that MMS will hold a meeting to consult with industry before setting up criteria to implement a disqualification provision in the proposed rule on Postlease Operations Safety, published on February 13, 1998 (63 FR 7335). A new regulation has been proposed to provide criteria that MMS will consider, individually or collectively, in evaluating whether to disqualify operators with repeat poor safety performance. MMS may also disapprove or revoke a company's status as a designated operator.

DATES: MMS will hold the meeting on March 24, 1998, from 8:00 a.m. to 12 noon at the location listed in the **ADDRESSES** section. Preregistration will be held at 7:30 a.m.

ADDRESSES: Sheraton Crown Hotel, 15700 JFK Blvd., Houston, Texas 77032, telephone: (713) 442–5100.

FOR FURTHER INFORMATION CONTACT: Dough Slitor, Performance and Safety Branch at (703) 787–1591.

Dated: February 23, 1998.

E.P. Danenberger,

Cheif, Engineering and Operations Division.

[FR Doc. 98–5087 Filed 2–26–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Proposed Rule Making for Offstream Storage of Colorado River Water and Interstate Redemption of Storage Credits in the Lower Division States

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of draft programmatic environmental assessment (DPEA); extension of deadline for comments.

SUMMARY: The Bureau of Reclamation (Reclamation) published a notice of availability of a DPEA on December 31,

1997 (62 FR 68465). That notice specified how to obtain a copy of the DPEA and stated that comments on the DPEA will be accepted through March 2, 1998. Reclamation will extend the comment deadline an additional 32 days, until close of business on Friday, April 3, 1998.

DATES: Any comments must be received by Reclamation on or before April 3, 1998, in accordance with the criteria set forth in the December 31, 1997, notice of availability of the DPEA (62 FR 68465).

FOR FURTHER INFORMATION CONTACT: Mr. James Green, telephone (702) 293–8519 or fax (702) 293–8146.

SUPPLEMENTARY INFORMATION: Reclamation received several requests for an extension of the deadline for comments on the DPEA. In the interest of encouraging public participation, Reclamation is extending the deadline for written comments. If you have already prepared written comments to meet the March 2, 1998, deadline, you may supplement or replace those comments with an additional written response.

Dated: February 20, 1998.

William E. Rinne,

Area Manager, Boulder Canyon Operations Office.

[FR Doc. 98–5031 Filed 2–26–98; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Notice of Consent Decree Under the Resource Conservation and Recovery Act

Notice is hereby given that a consent decree in *United States* v. *Metech International, Inc.*, Civil Action No. 98–085T (D.R.I.) was lodged with the United States District Court for the District of Rhode Island on February 18, 1998.

In this action the United States sought injunctive relief and civil penalties under Sections 3008 (a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6928 (a) and (g), against Metech International, Inc. ("Metech," formerly known as Boliden Metech, Inc.) The consent decree resolves these claims.

The consent decree requires Metech to: Comply with specified provisions of RCRA, including limits on the manner and duration of storage of hazardous waste and requirements to make certain waste determinations; make specified process changes in Metech's leaching department; apply for a variance from the definition of solid waste for certain solid materials generated by Metech; and pay a civil penalty to the United States of up to $300,000.

The Department of Justice will accept written comments relating to the proposed consent decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States* v. *Metech International, Inc.* (D.R.I.), DJ # 90–7–1–840.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, 10 Dorrance Street, Tenth Floor, Providence, Rhode Island 02903; at the U.S. Environmental Protection Agency, Region I, One Congress Street, Boston, Massachusetts 02203; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the consent decree may also be obtained in person or by mail at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. When requesting a copy of the consent decree by mail, please enclose a check in the amount of $24.25 for a copy including exhibits, or $14.75 for a copy excluding exhibits (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 98–5016 Filed 2–26–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Advanced Lead-Acid Battery Consortium

Notice is hereby given that, on January 15, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Advanced Lead-Acid Battery Consortium ("ALABC"), a program of International Lead Zinc Research Organization, Inc., filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Bridgestone Corporation, Tokyo, JAPAN; Dowa Mining Co., Tokyo, JAPAN, FIAMM SpA, Montecchio, ITALY; Industrial Technical Research Institute, TAIWAN, R.O.C.; Matsushita, Osaka, JAPAN; Metaleurop Recherche, Fontenay-sous-Bois Cedex, FRANCE; Mitsubishi Materials Corp., Saitma, JAPAN; Nippon Mining & Metals, Tokyo, JAPAN; Shin Kobe Electric Machine, Tokyo, JAPAN; and Teledyne Continential Motors, Redlands, CA have withdrawn from the ALABC.

No other changes have been made in either the membership or planned activity of the Consortium. Membership in the Consortium remains open and ALABC intends to file additional written notification disclosing any future changes in membership.

On June 15, 1992, the ALABC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 29, 1992, 57 FR 33522. The last notification was filed with the Department on July 24, 1997. A notice was published in the **Federal Register** on October 16, 1997, 62 FR 62074.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–5013 Filed 2–26–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Key Recovery Alliance ("KRA")

Notice is hereby given that, on October 20, 1997, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Key Recovery Alliance ("KRA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiff's to actual damages under specified circumstances. Pursuant to § 6(b) of the Act, the identities of the parties are: Apple Computer, Inc., Cupertino, CA; Cylink Corporation, Sunnyvale, CA; Data Securities International, Inc., San Diego, CA; Digital Equipment Corporation, Nashua, NH; Golden Star Technology, Inc.,

Cerritos, CA; Information Resource Engineering, Inc., Baltimore, MD; Intel Corporation, Hillsboro, OR; International Business Machines, Inc., Somers, NY; Motorola, Scottsdale, AZ; NCR, West Columbia, SC; Novell Inc., Provo, UT; Sourcefile, Atlanta, GA; Sun Microsystems, Inc., Mountain View, CA; Trusted Information Systems, Inc., McLean, VA.

KRA was formed for the following purposes: (a) Stimulate global electronic commerce by encouraging the harmonization of market driven solutions available globally for secure communication using strong encryption; (b) serve as a focal point for industry efforts to develop commercially acceptable solutions for recovery of encrypted information; (c) determine interoperability concerns and potential architectural solutions among key recovery technologies and non-key recovery technologies; (d) support the development of a global infrastructure that supports recovery of encrypted information and (e) promote the implementation, deployment and use of interoperable key recovery technologies in the market. In furtherance of the foregoing purposes, KRA may undertake research, development, analysis, testing, study, and experimentation concerning or relating to key recovery technologies, and it may engage in the collection, exchange and analysis of research information concerning key recovery technologies.

Additional parties may become members of KRA. KRA will file supplemental written notifications disclosing all new members.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–5014 Filed 2–26–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Michigan Materials and Processing Institute

Notice is hereby given that, on December 16, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Michigan Materials and Processing Institute ("MMPI"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following companies were recently accepted as Class A Shareholders in MMPI, Lambda Technologies, Inc., Morrisville, NC and Vehicle Recycling Partnership, Southfield, MI. Applied Sciences, Inc., Cedarville, OH and Cybernet Systems Corporation, Ann Arbor, MI are no longer Class A Shareholders in MMPI.

No other changes have been made in the membership or planned activity of the group research project. Membership in this group research project remains open, and MMPI intends to file additional written notifications disclosing all changes in shareholders.

On August 7, 1990, MMPI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 6, 1990, 55 FR 36710.

The last notification was filed with the Department on April 15, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 22, 1997, 62 FR 28066.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–5015 Filed 2–26–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–2]

Teodoro A. Ando, M.D.; Revocation of Registration

On May 23, 1997, the Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Teodoro A. Ando, M.D., (Respondent) of Montoursville, Pennsylvania. The Order to Show Cause notified him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AA8218249, and deny any pending applications for renewal of his registration pursuant to 21 U.S.C. 823(f) and 824(a)(3), for reason that he is not currently authorized to handle controlled substances in the Commonwealth of Pennsylvania.

Subsequently, Respondent filed a request for a hearing. While this request was not timely filed, the Government indicated that it did not object to the untimeliness of Respondent's request for a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On October 23, 1997, Judge Bittner issued an Order for Prehearing Statements. On November 13, 1997, the Government filed a Motion for Summary Disposition and Request for Extension of Time to File Prehearing Statement, alleging that Respondent is without state authority to handle controlled substances in the Commonwealth of Pennsylvania. By order dated November 20, 1997, Judge Bittner provided Respondent with an opportunity to file a response to the Government's motion. No response was received from Respondent.

On December 19, 1997, Judge Bittner issued her Opinion and Recommended Decision finding that Respondent lacked authorization to handle controlled substances in the Commonwealth of Pennsylvania; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her opinion, and on January 22, 1998, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Acting Deputy Administrator finds that by affidavit dated October 27, 1997, the custodian of records for the Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs, State Board of Medicine stated that Respondent's license was revoked on March 11, 1996, and remained revoked as of the date of the affidavit. Respondent did not offer any evidence to the contrary, and therefore the Acting Deputy Administrator finds that Respondent is not currently authorized to practice medicine in the Commonwealth of Pennsylvania. The Acting Deputy Administrator further finds it reasonable to infer that Respondent is also not authorized to handle controlled substances in the Commonwealth of Pennsylvania, where he is currently registered with DEA to handle controlled substances.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21

U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Romeo J. Perez, M.D.*, 62 FR 16193 (1997); *Demetris A. Green, M.D.*, 61 FR 60728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993).

Here it is clear that Respondent is not authorized to practice medicine or handle controlled substances in the Commonwealth of Pennsylvania. Since Respondent lacks this state authority, he is not entitled to a DEA registration in that state.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. Here, the parties did not dispute the fact that Respondent is unauthorized to handle controlled substances in Pennsylvania. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See *Phillip E. Kirk, M.D.*, 48 FR 32887 (1983); *aff'd sub nom Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977); *United States* v. *Consolidated Mines & Smelting Co.*, 44 F.2d 432 (9th Cir. 1971).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AA8218249, previously issued to Teodoro A. Ando, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective March 30, 1998.

Dated: February 20, 1998.

Peter F. Gruden,

Acting Deputy Administrator.

[FR Doc. 98–4975 Filed 2–26–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Eric Jones, M.D.; Revocation of Registration; Denial of Request To Modify Registration

On September 18, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Eric E. Jones, M.D., (Respondent) of Atlanta, Georgia, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BJ2942440, deny any pending applications for modification of his registration to change his address to Georgia, and deny any pending applications for renewal of such registration under 21 U.S.C. 823(f) and 824(a)(1) and (a)(3). The Order to Show Cause alleged that Respondent materially falsified his application for renewal of his DEA Certificate of Registration and that he was not currently authorized to handle controlled substances in the State of Georgia.

By letter dated December 15, 1997, Respondent waived his right to a hearing, but submitted a written statement regarding this matter pursuant to 21 CFR 1301.43(c). In addition, the Director of Morehouse School of Medicine's Family Medicine Residency Program submitted a letter in support of Respondent. The Acting Deputy Administrator hereby enters his final order in this matter based upon the investigative file and Respondent's written statement pursuant to 21 CFR 1301.43(e) and 1301.46.

The Acting Deputy Administrator finds that by final order dated June 28, 1994, the Maryland Board of Physician Quality Assurance (Maryland Board) suspended Respondent's license to practice medicine for three years, but stayed the suspension and placed Respondent on probation for a period of three years subject to various terms and conditions. One reason for the Board's action was Respondent's failure to disclose on his renewal application for his Maryland medical license that his clinical privileges and employment at a local hospital had been terminated for disciplinary reasons.

On March 6, 1995, Respondent executed an application for a new DEA Certificate of Registration. The application was preprinted with an address for Respondent in Los Angeles, California. Respondent had crossed out that address and handwritten in an address in Washington, D.C. The Acting Deputy Administrator considers this a request by Respondent to modify his address on his registration to Washington, D.C.

One question on the application, hereinafter referred to as "the liability question," asks, "Has the applicant ever been convicted of a crime in connection with controlled substances under State or Federal law, or ever surrendered or had a Federal controlled substance registration revoked, suspended, restricted or denied, or ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?" Respondent answered "no" to this question.

On February 4, 1997, Respondent submitted a request to further modify his registration by changing his address to a location in Atlanta, Georgia. Respondent noted on this request that, "I do not hold a Georgia License." A letter from the Georgia Composite State Board of Medical Examiners dated August 11, 1997, states that "Eric E. Jones is not now nor has he ever been licensed as a physician in the State of Georgia."

The Deputy Administrator may revoke or suspend a DEA Certificate of Registration under 21 U.S.C. 824(a), upon a finding that the registrant:

(1) Has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) Has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State relating to any substance defined in this subchapter as a controlled substance;

(3) Has had his State license or registration suspended, revoked, or denied by component State authority and is no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of his registration recommended by competent State authority;

(4) Has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section; or

(5) Has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a–7(a) of Title 42.

The Acting Deputy Administrator finds that Respondent is not currently authorized to practice medicine in the State of Georgia, where he wants to modify his DEA registration. Respondent, in his written statement, concedes that he does not possess a Georgia medical license. The Acting Deputy Administrator further finds that since Respondent is not currently authorized to practice medicine in the State of Georgia, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in

which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

Here it is clear that Respondent is not currently authorized to handle controlled substances in the State of Georgia. Therefore, Respondent is not entitled to a DEA registration in that state and his request for modification of his registration to an address in Georgia must be denied.

Regarding the revocation of Respondent's DEA Certificate of Registration under 21 U.S.C. 824(a)(1), the Acting Deputy Administrator finds that DEA has previously held that in finding that there has been a material falsification of an application, it must be determined that the applicant knew or should have known that the response given to the liability question was false. See *Bobby Watts, M.D.*, 58 FR 4699 (1993); *Herbert J. Robinson, M.D.*, 59 FR 6304 (1994).

Respondent states in his written statement that, "the material falsification of my application for DEA Certificate renewal was a grave and profound error of ignorance of the facts concerning the nature of the determination made by the Maryland Board. It was a serious error of omission because I understood the three year probation as a 'second change' in this matter, and the stayed suspension as not equivalent, in fact, to an outright suspension of my license. It was because of this misunderstanding on my behalf that I did not include this information on the DEA Certificate renewal application in March of 1995. I had no intent to beguile or manipulate; profoundly I did not know or tru[sic] understand."

The Acting Deputy Administrator finds that Respondent's explanation does not relieve him of his responsibility to properly answer the liability question. The fact that Respondent viewed his being placed on probation by the Maryland Board as "a second change" is irrelevant. Respondent does not deny that he knew that his license was placed on probation. Likewise, his contention that he did not understand is not credible. Respondent knew or should have known that his Maryland medical license was placed on probation for three years. Therefore, the Acting Deputy Administrator concludes that by answering "no" to the liability question, Respondent materially falsified his March 6, 1995 renewal application.

The Director of Morehouse School of Medicine's Family Medicine Residency Program submitted a letter on behalf of Respondent, stating that Respondent "has always been very honest about his status with licensing organizations." The Acting Deputy Administrator concludes that the Director's support does not negate the fact that Respondent is not currently authorized to handle controlled substances in Georgia or that he materially falsified his application for renewal of his DEA Certificate of Registration.

The Acting Deputy Administrator finds that since Respondent did not offer any other explanation for the falsification of his application or any mitigating evidence, revocation of Respondent's DEA Certificate of Registration is warranted. Even if Respondent did not intentionally falsify his application, his negative answer to the liability question demonstrates a lack of attention to detail and carelessness, both of which are of great concern to the Acting Deputy Administrator. This is made even more troublesome by the fact that part of the basis for the Maryland Board's action was that Respondent failed to disclose certain information on his application for renewal of his medical license. If anything, Respondent should have been even more careful in answering questions on his applications.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in his by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BJ2942440, issued to Eric E. Jones, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator furthers orders that Dr. Jones' request to modify his registration, and any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective March 30, 1998.

Dated: February 20, 1998.

Peter F. Gruden,

Acting Deputy Administrator.

[FR Doc. 98–4973 Filed 2–26–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Rafael A. Segrera, D.O. Revocation of Registration

On June 5, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Rafael A. Segrera, D.O., of Odebolt, Iowa, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BS1828788, under 21 U.S.C. 824(a)(3), and deny any pending applications for registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Iowa. The order also notified Dr. Segrera that should no request for a hearing be filed within 30 days of receipt, his hearing right would be deemed waived.

The DEA received a signed receipt indicating that the order was received by Dr. Segrera on June 12, 1997. No request for a hearing or any other reply was received by the DEA from Dr. Segrera or anyone purporting to represent him in this matter. Therefore, the Acting Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Segrera is deemed to have waived his hearing right. After considering relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Acting Deputy Administrator finds that on October 20, 1994, the Board of Medical Examiners of the State of Iowa (Board) issued an Order of Summary Suspension of Dr. Segrera's license to practice osteopathic medicine and surgery. Following a hearing, the Board indefinitely suspended Dr. Segrera's license effective February 23, 1996. Thereafter, by letter dated March 18, 1996, the Iowa Board of Pharmacy Examiners notified Dr. Segrera of the suspension of his Iowa controlled substance registration.

The Acting Deputy Administrator finds that Dr. Segrera is not currently authorized to handle controlled substances in the State of Iowa, where he is registered with DEA. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

Here it is clear that Dr. Segrera is not currently authorized to handle controlled substances in the State of

Iowa. Therefore, Dr. Segrera is not entitled to a DEA registration in that state.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BS1828788, previously issued to Rafael A. Segrera, D.O., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective March 30, 1998.

Dated: February 20, 1998.

Peter F. Gruden,

Acting Deputy Administrator.

[FR Doc. 98–4974 Filed 2–26–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB Emergency Approval; Application to Register the Annual Survey of Jails, Form CJ–5.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (BJS) has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. OMB approval has been requested by December 2, 1997. If granted, the emergency approval is only valid for 180 days. All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Patrick Boyd, (202) 395–5871, Department of Justice Desk Officer, Washington, DC 20503. You may also submit comments to Mr. Boyd via facsimile and (202) 395–7285.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until; April 28, 1998. During the 60-day regular review all comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Allen J. Beck, Ph.D., Chief, Corrections Statistics, Bureau of Justice Statistics, U.S. Department of Justice, 810 Seventh Street, NW, Washington, DC 20531. Your comments should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Annual Survey of Jails.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form CJ–5. Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: County and City jail authorities. The "Annual Survey of Jails" (AJS) is the only collection effort that provides an ability to maintain important jail statistics in years between the jail censuses. The AJS enables the Bureau; Federal, State, and local correctional administrators; legislators; researchers; and planners to track growth in the number of jails and their capacities nationally; as well as, track changes in the demographics and supervision status of the jail population and the prevalence of crowding.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 825 respondents at .75 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Annual burden hours are 619.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Allen J. Beck, Ph.D., Chief, Corrections Statistics, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW, Washington, DC 20531 (202–616–3277).

If additional information is required contact Robert B. Briggs, Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: February 23, 1998.

Robert B. Briggs,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 98–5042 Filed 2–26–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, Time and Place: March 17, 1998, 10:00 a.m., U.S. Department of Labor, C5525, Seminar Room 5, 200 Constitution Ave., NW., Washington, DC 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information, contact: Jorge Perez-Lopez, Director, Office of International Economic Affairs, Phone: (202) 219–7597.

Signed at Washington, DC, this 23rd day of February 1998.

Andrew J. Samet,

Deputy Under Secretary, International Affairs.

[FR Doc. 98–5125 Filed 2–26–98; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decision

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and States:

Volume VII

California
CA980041 (Feb. 27, 1998)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Delaware
DE980002 (Feb. 13, 1998)
DE980005 (Feb. 13, 1998)
Pennsylvania
PA980013 (Feb. 13, 1998)

Volume III

None

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 20th day of February 1998.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–4747 Filed 2–26–98; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Safety Defects, Examination, Correction and Records

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Safety Defects, Examination, Correction and Records. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or others forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: Submit comments on or before April 28, 1998.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: George M. Fesak, Director, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mr. Fesak can be reached at gfesak@msha.gov (Internet E-mail), (703) 235–8378 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Title 30 CFR Sections 56.13015 and 57.13015 require compressed-air receivers and other unfired pressure vessels be inspected by inspectors holding a valid National Board Commission and in accordance with the applicable chapters of the National Board Inspection Code, a manual for Boiler and Pressure Vessels Inspectors, 1979. Safety defects found on compressed-air receivers and other unfired pressure vessels could cause injuries and fatalities in the mining industry. Records of inspections are kept in accordance with the requirements of the National Board Inspection Code and the records are made available to the Secretary or his authorized representative.

Title 30 CFR Sections 56.13030 and 57.13030 require that fired pressure vessels (boilers) be equipped with safety devices approved by the American Society of Mechanical Engineers to protect against hazards from overpressure, flameouts, fuel interruptions and low water level. These sections also require that records of inspection and repairs be retained by the mine operator in accordance with the requirements of the ASME Boiler and Pressure Vessel Code and the National Board Inspection Code (progressive records—no limit on retention time) and shall be made available to the Secretary or his authorized representative.

Title 30 CFR Sections 56.14100 and 57.14100 require equipment operators to inspect equipment, machinery, and tools that are to be used during a shift for safety defects before the equipment is placed in operation. Defects affecting safety are required to be corrected in a timely manner. In instances where the defect makes continued operation of the equipment unsafe, the standards require removal from service, tagging to identify that it is out of use, and repair before use is resumed.

Title 30 CFR Sections 56.18002 and 57.180002 require that a competent person designated by the operator shall examine each working place at least once each shift for conditions which may adversely affect safety or health. A record of such examinations shall be kept by the operator for a period of one year and shall be made available for review by the Secretary or his authorized representative.

II. Current Actions

The records are used by industry management and maintenance personnel to ensure that defects are not overlooked, that repairs are made, and to monitor when and how often maintenance is performed on certain equipment. Additionally, the inspection records denote any hazards that were discovered and how the hazards or unsafe conditions were abated. Federal inspectors use the records to ensure that unsafe conditions are identified early and corrected.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Safety Defects, Examination, Correction and Records.

OMB Number: 1219–0089.

Affected Public: Business of other for-profit.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (minutes)	Burden hours
56/57.13015	1,745	Annually	1,745	10	291
56/57.13030	3,140	Annually	3,140	10	524
56/57.14100	11,000	Daily	10,522,828	5	876,902
56/57.18002	11,000	Daily	2,738,630	12	547,726
Totals			13,266,343		1,425,443

Estimated Total Burden Cost: $37,061,518.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 24, 1998.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 98–5117 Filed 2–26–98; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 98–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; Cotton Dust

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collections instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection request for the Cotton Dust Standard 29 CFR 1910.1043. A copy of the proposed information collection request (ICR) can be obtained by contacting the employee listed below in the addresses section of this notice. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be sumbitted by April 28, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 98–5, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210, telephone number (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Adrian Corsey, Directorate of Health Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3718, telephone (202) 219–7075. A copy of the referenced information collection request is available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Adrian Corsey at (202) 219–7075 extension 105 or Barbara Bielaski at (202) 219–8076 extension 142. For electronic copies of the Information Collection Request on Cotton Dust, contact OSHA's WebPage on the Internet at http://www.osha.gov/ and click on standards.

SUPPLEMENTARY INFORMATION:

I. Background

The Cotton Dust standard and its information collection requirements provide protection for employees from the adverse health effects associated with occupational exposure to Cotton Dust. The standard requires that employers establish a compliance program, including exposure monitoring and medical surveillance records. These records are used by employees, physicians, employers and OSHA to determine the effectiveness of the employers' compliance efforts. Also the standard requires that OSHA have access to various records to ensure that employers are complying with the disclosure provisions.

Type of Review: Extension.

Agency: Occupational Safety and Health Administration.

Title: Cotton Dust 29 CFR 1910.1043.

OMB Control Number: 1218–0061.

Affected Public: Business or other for-profit, Federal government, State and Local governments.

Total Respondents: 597.

Frequency: On occasion.

Fatal Responses: 451,225.

Average Time per Response: Ranges from 5 minutes to maintain records to 1.5 hours for an employee to have a medical exam.

Estimated Total Burden Hours: 132,221.

Total Annualized capital/startup costs: 0.

Total initial annual costs (operating/maintaining systems or purchasing services): $12,111,320.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection. The comments will become a matter of public record.

Signed at Washington, DC, this 20 day of February, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–5116 Filed 2–26–98; 8:45 am]

BILLING CODE 4510–26–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION NOTICE

Notice of Public Meeting

AGENCY: Border Environment Cooperation Commission (BECC).

ACTION: Notice of Public Meeting.

SUMMARY: This notice announces the XV public meeting of the BECC Board of Directors on Tuesday, March 31, 1998, from 10:00 a.m.–2:00 p.m. at the Airport Marriott Hotel on 1600 Airway Blvd., telephone (915) 779–3300.

FOR FURTHER INFORMATION CONTACT: M.R. Ybarra, Secretary, United States Section, International Boundary and Water Commission, telephone: (915) 832–4105; or Angeles Villarreal, Public Participation Officer, Border Environment Cooperation Commission, P.O. Box 221648, El Paso, Texas 79913, telephone: (011–52–16) 25–91–60; fax: (011–52–16) 25–26–99; e-mail: becc@cocef.interjuarez.com.

SUPPLEMENTARY INFORMATION: The U.S. Section, International Boundary and Water Commission, on behalf of the Border Environment Cooperation Commission (BECC), cordially invites the public to attend the XV Public Meeting of the Board of Directors on Tuesday, March 31, from 10:00 a.m.–2:00 p.m., at the Airport Marriott Hotel in El Paso, Texas.

Proposed Agenda, 10:00 a.m.–2:00 p.m.

1. Approval of Agenda (Action)
2. Approval of Minutes of Meeting of January 7, 1998 (Action)
3. Manager's Report (Information)
4. Executive Committee Report (Information)
5. Sustainable Development Committee Report (Information)
6. Review of Projects for Certification (Action)
   - Wastewater System Improvements Project for Reynosa, Tamaulipas
   - Potable Water System Improvements Project for Del Rio, Texas
7. Public Comments

Anyone interested in submitting written comments to the Board of Directors on any agenda item should send them to the BECC 15 days prior to the public meeting. Anyone interested in making a brief statement to the Board may do so during the public meeting.

Dated: February 23, 1998.

M.R. Ybarra,

Secretary, U.S, IBWC.

[FR Doc. 98–5047 Filed 2–26–98; 8:45 am]

BILLING CODE 4710–03–P

NATIONAL GAMBLING IMPACT STUDY COMMISSION

Notice of Public Meeting

AGENCY: National Gambling Impact Study Commission.

ACTION: Notice of public meeting.

DATES: Monday, March 16, 8:30 a.m. to 10:30 p.m., and Tuesday, March 17, 8:30 a.m. to 6:00 p.m.

ADDRESSES: The meeting site will be: The Westin, Copley Place, 10 Huntington Avenue, Boston, MA.

Written comments can be sent to the Commission at 800 North Capitol Street, N.W., Suite 450, Washington, D.C. 20008.

STATUS: The meeting will be open to the public both days.

SUMMARY: At its second on-site meeting the National Gambling Impact Study Commission, established under Pub. L. 104–169, dated August 3, 1996, will hear presentations from invited panels of speakers, conduct site visits, receive public comment, and conduct its normal meeting business.

CONTACT PERSON: For further information contact Amy Ricketts at (202) 523–8217 or write to 800 North Capitol St., N.W, Suite 450, Washington, D.C. 20002.

SUPPLEMENTARY INFORMATION: The meeting agenda will include presentations from State and local officials; testimony from invited panels of experts on who plays lotteries, who wins and loses, lottery operations, and an introduction to Native American gaming; site visits to Foxwoods casino and lottery sales locations; normal meeting business; and an open forum period for public comment.

The meeting will recess at 5:00 p.m. on March 16, while the Commissioners go on site visits. An open forum for public participation will be held from 4:00 p.m. to 5:45 p.m. on March 17 on items relevant to the Commission's work; the Commission is particularly interested in comments on lotteries and Native American gaming. Anyone wishing to make an oral presentation at the meeting must speak with Mr. Doug Seay by telephone at (202) 523–8217 no later than 5:00 p.m. on Wednesday, March 11, 1998. No requests will be accepted before 9:00 a.m. (EST) the day this notice appears in the **Federal Register**.

Open forum participants will be asked to provide name, organization (if applicable), address, and telephone number. No requests will be accepted via mail, facsimile, voice-mail or e-mail. A waiting list will be compiled once the allotted number of slots becomes filled. Oral presentations will be limited to three (3) minutes per speaker. If this is not enough time to complete comments, please restrict the three minutes to a summary of your comments and bring a typed copy of full comments to file with the Commission. Persons speaking at the forum are requested, but not required, to supply twenty (20) copies of their written statements to the registration desk prior to the evening session on March 17. Members of the public, on the waiting list or otherwise, are always invited to send written comments to the Commission at any time. However, if individuals wish to have their written comments placed into the record of the meeting, they must be received by the Commission by April 6, 1998. Each speaker is kindly asked to be prepared prior to their presentation; to refrain from any use of profanity, vulgar language, or obscene signage; to refrain from making any comments or disrupting sounds during the presentation of another speaker; and to remain seated. If visual aids are necessary during the course of a speaker's presentation, each speaker is responsible for providing the equipment to run the visual aid.

Nancy Mohr Kennedy,

Executive Director.

[FR Doc. 98–5086 Filed 2–26–98; 8:45 am]

BILLING CODE 6802–ET–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Chemistry (#1191).

Date and Time: March 20, 1998.

Place: Room, 330, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Margaret Cavanaugh, Program Coordinator, Chemistry Division, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1842.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for Environmental Molecular Science Institutes (EMSI): Special Research Opportunity (NSF 97–135) as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including

technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 23, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–5055 Filed 2–26–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Power Panel in Civil and Mechanical Systems (1205).

Date & Time: March 17, 1998; 8:30 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Rooms 530 Arlington, Virginia 22230.

Contact Person: Dr. Jorn Larsen-Basse, Program Director, Control, Mechanics and Materials Cluster, Division of Civil and Mechanical Systems, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230. 703/306–1361, x 5068.

Purpose of Meeting: To provide advice and recommendation concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government Sunshine Act.

Dated: February 23, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–5056 Filed 2–26–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Public Workshop: Decommissioning for Routine Materials Cases

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of workshop for routine materials decommissioning cases.

SUMMARY: The NRC will host a public decommissioning workshop in Rockville, Maryland, as part of a program to identify and evaluate new and different approaches to the decommissioning review process for materials licensees. This program is one of several initiatives which resulted from NRC's recent Strategic Assessment and Rebaselining Initiative, which is intended to guide future NRC decision-making and help NRC continue to meet its responsibility for protecting the public health and safety and the environment.

The objectives of the workshop are to: (1) Discuss NRC's decommissioning requirements and NRC's expectations of licensees in demonstrating compliance with these requirements; (2) elicit comments, both favorable and critical, from workshop participants related to the existing decommissioning review process and procedures; (3) obtain ideas from participants on, and discuss potential improvements in, the regulatory process for decommissioning; (4) discuss plans for a pilot program to evaluate improvements to the decommissioning review process, using sites of volunteer licensees; and (5) determine licensee interest in participating in a pilot program.

The NRC staff will use the comments and information obtained during the workshop to develop recommendations for improvements in the decommissioning process. After consulting with the Commission concerning these recommendations, the staff will conduct a pilot program with volunteer licensees, implementing the improvements on a limited basis. As the pilot decommissioning cases are completed, the NRC will use the lessons learned to improve the regulatory process. Materials licensees who are interested in the pilot program should express interest during the workshop, or should contact NRC as listed below by April 3, 1998.

Note that the workshop will address non-complex, routine materials decommissioning cases. The workshop and pilot program are not intended for power reactor sites or complex sites such as those identified in the NRC Site Decommissioning Management Plan. Further information on the Site Decommissioning Management Plan can be obtained in the **Federal Register** notice published on April 16, 1992 (57 FR 13389).

DATES: The workshop will be held on March 19, 1998, beginning at 9 a.m. and ending at about 3:30 p.m. The meeting is open to the public. Persons who wish to attend the workshop should contact NRC at least one week prior to the workshop.

ADDRESSES: The public workshop will be held in the NRC's auditorium at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland (near Washington, DC). Visitor parking around the NRC building is limited; however, the workshop site is located adjacent to the White Flint Station on the Metro Red Line.

FOR FURTHER INFORMATION: For information or questions on meeting arrangements, contact Richard H. Turtil, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–415–6721, fax 301–415–5369, E-mail: RHT@NRC.GOV.

Dated at Rockville, Maryland, this 23rd day of February, 1998.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management.

[FR Doc. 98–5063 Filed 2–26–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26831]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 20, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 16, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in cases of an attorney at law, by certificate) should be field with the request. Any request for hearing shall identify specifically the issues of face or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of

any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central and South West Corporation et al. (70–8557)

Central and South West Corporation ("CSW"), a registered holding company, 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, its utility subsidiaries, Central Power and Light Company ("CP&L"), 539 North Carancahua Street, Corpus Christi, Texas 78401–2802, Public Service Company of Oklahoma ("PSO"), 212 East Sixth Street, Tulsa, Oklahoma 74119–1212, Southwestern Electric Power Company ("SWEPCO"), 428 Travis Street, Shreveport, Louisiana 71156–0001 and West Texas Utilities Company ("WTU"), 301 Cypress Street, Abilene, Texas 79601–5820, its service company, Central and South West Services, Inc. ("Services"), and two nonutility subsidiaries, EnerShop, Inc. ("EnerShop") and CSW Energy Services, Inc. ("ESI"), each of 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, have filed a post-effective amendment under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45 and 54 under the Act to their application-declaration ("Application") under sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and rules 43, 45, 50(a)(5) and 54 under the Act.

CSW, CP&L, PSO, SWEPCO, WTU, Services, EnerShop and ESI (collectively, "Applicants") propose to increase the amount of authorized borrowings under the existing CSW system of intracorporate borrowings ("Money Pool"), and related transactions.

By orders of the Commission,[1] CSW, CP&L, PSO, SWEPCO, WTU and Services ("Current Money Pool Participants") are authorized to participate in the Money Pool through March 31, 2002.

CSW now proposes to increase the maximum aggregate amount of its short-term borrowings from $1.2 billion to $2.5 billion. The Applicants further propose that the borrowing limitations of the other Current Money Pool Participants be increased as follows: CP&L—from $300 million to $600 million, PSO—from $125 million to $300 million, SWEPCO—from $150 million to $250 million, WTU—from $65 million to $165 million and Services—from $110 million to $210 million.

CSW states that the proposed increase in short-term borrowings will cover incremental borrowings of the New Participants, defined below, authorize CSW to issue commercial paper for interim financing of acquisitions and investments consistent with the conversion of CSW's commercial paper program, provide a source of interim funding for open market repurchases of CSW common stock and support the proposed increased borrowing limits of the Current Money Pool Participants.

Applicants propose to use proceeds of commercial paper issuances and other borrowings requested in this Application as a source of interim financing for acquisitions and investments, other than for exempt wholesale generators ("EWGs"),[2] foreign utility companies ("FUCOs")[3] or exempt telecommunications companies ("ETCs").[4] CP&L, PSO, SWEPCO and WTU may each use its proposed additional borrowing capacity for general corporate purposes and as a source of interim financing for the reacquisition of its securities. Services may use its proposed additional borrowing capacity for general corporate purposes and to refinance currently outstanding bank borrowings.

The Applicants further seek authorization either (a) for EnerShop,[5] ESI[6] and any other existing or future CSW first tier subsidiary (other than an EWG, FUCO or ETC) or company formed under rule 58 ("Rule 58 Company") that CSW may wish to include (collectively, "New Participants") to participate in the Money Pool by making loans to, and borrowing from, the Money Pool, or (b) for CSW and the New Participants to form and participate in a separate system of intercorporate borrowings ("New Participants Money Pool") should CSW deem proper the formation of a separate money pool based on then existing regulatory or business considerations.[7]

With respect to participation by the New Participants in the Money Pool, CSW states that their available cash and/or short-term borrowing requirements would be matched on a daily basis with those of the Current Money Pool Participants and, therefore, minimize the need of the CSW system for external short-term borrowing. CSW anticipates that funds will be loaned from the Money Pool to the New Participants in the form of open account advances under the same terms and limitations that currently apply.

If and when a New Participants Money Pool is formed, the New Participants would not participate in the Money Pool, but CSW would rely on the increased borrowings requested in this Application to support both the Money Pool and the New Participants Money Pool. CSW anticipates that a New Participants Money Pool would be established and administered in the same manner and subject to the same conditions as the Money Pool. The aggregate borrowing limits under the New Participants Money Pool and the Money Pool would not exceed the aggregate borrowing limit under the Money Pool in effect immediately prior to establishment of the New Participants Money Pool.

Pending completion of the record, Applicants request the Commission to reserve jurisdiction over the participation of the New Participants in the Money Pool and over the formation of, and participation of the New Participants in, the New Participants Money Pool.

Eastern Utilities Associates, et al. (70–8955)

Eastern Utilities Associates ("EUA"), a registered holding company, and its subsidiaries, Blackstone Valley Electric Company ("Blackstone"), Montaup Electric Company ("Montaup"), and Newport Electric Corporation ("Newport"), each at P.O. Box 2333, Boston, Massachusetts 02107, and Eastern Edison Company ("Eastern"), 110 Mulberry Street, Brockton, Massachusetts 02403, (collectively,

[1] *See* Holding Co. Act Release Nos. 26697 (Mar. 28, 1997), 26254 (Mar. 21, 1995), 26226 (Feb. 1, 1995), 26066 (June 15, 1994), 26007 (Mar. 18, 1994), 25897 (Sep. 28, 1993) and 25777 (Mar. 31, 1993).

[2] EWGs are defined in section 32 of the Act.

[3] FUCOs are defined in section 33 of the Act.

[4] ETCs are defined in section 34 of the Act.

[5] EnerShop is an energy-related company, as defined under rule 58, and is primarily engaged in the business of providing demandside management services to industrial and commercial customers of both associate and nonassociate companies. EnerShop proposes to use Money Pool borrowings for general corporate purposes and as interim financing for the expansion of its business and investments in energy-related businesses under rule 58.

[6] ESI is an energy-related company, as defined under rule 58, and is primarily engaged in the business of marketing and brokering energy commodities, and other business activities permitted by rule 58. ESI also proposes to use Money Pool borrowings for general corporate purposes and as interim financing for the expansion of its business and investments in other energy-related businesses under rule 58.

[7] Applicants state that CSW system companies may from time to time organize additional Rule 58 Companies and CSW may from time to time organize additional first tier subsidiaries under an exemption from the Act or by Commission order. So long as these additional future companies do not fall within the definition of an EWG, FUCO or ETC, CSW proposes that these companies, as well as EnerShop and ESI, be eligible to participate as New Participants in the Money Pool or the New Participants Money Pool. Money Pool borrowings by the New Participants are limited by the aggregate investment limit under rule 58.

"Declarants") have filed a post-effective amendment under sections 6(a), 7, 12(b), 32 and 33 of the Act and rule 53 under the Act to their declaration previously filed under sections 6(a), 7 and 12(b) of the Act and rule 53 under the Act.

By order dated April 15, 1997 (HCAR No. 26704) ("April 1997 Order"), Declarants were authorized, among other things, to issue notes ("Notes") under a revolving credit facility ("Facility"). Under the Facility, Declarants and certain other EUA subsidiaries were permitted to borrow up to $150 million in the aggregate through a period ending five years after the closing date of the agreement forming the Facility.[8] The April 1997 Order provided that the Notes would be issued and sold in aggregate amounts not to exceed: $100 million for EUA; $75 million for Cogenex; $20 million for Blackstone; $75 million for Eastern; $30 million for Montaup; $25 million for Newport; $15 million for ESC; and $10 million for Ocean State.

Declarants now propose to make short-term borrowings to supplement the Facility, from time to time through the period ending July 31, 2002, through the issuance and sale of short-term notes to commercial banks and other lending institutions ("New Notes"), subject to the terms and conditions stated below and other customary and reasonable terms as may be negotiated between the Declarant(s) and the lenders and incorporated in the New Notes.

The New Notes will be issued and sold in aggregate amounts outstanding at any one time, together with amounts outstanding under the Facility, not to exceed the following amounts: $100 million for EUA; $75 million for Cogenex; $20 million for Blackstone; $75 million for Eastern; $30 million for Montaup; $25 million for Newport; $15 million for ESC; and $10 million for Ocean State. These amounts are the same aggregate borrowing limits authorized in the April 1997 Order, except for the following increases: $25 million for EUA; $5 million for Montaup; and $5 million for ESC. The New Notes will be renewed from time to time as funds are required prior to July 31, 2002, provided no New Notes mature after July 31, 2002.

[8] The other subsidiaries, EUA Cogenex Corporation ("Cogenex"), EUA Ocean State Corporation ("Ocean State"), EUA Service Corporation ("ESC"), EUA Energy Investment Corporation ("EEIC"), and EUA Energy Services, Inc. ("EUA Energy") (collectively, "Associates"), proposed to finance authorized activities through the Facility. The Associates did not join the Declaration as parties because financing with exempt from prior approval under rule 52 under the Act.

The New Notes may be issued to banks pursuant to informal credit line arrangements which provide for borrowings at a floating prime rate or at available fixed money market rates with a commitment fee equal to no greater than ¼ of 1% multiplied by the line of credit. New Notes bearing interest at the floating prime rate will be subject to prepayment at any time without premium. New Notes bearing interest at available money market rates, which in all cases will be less than the prime rate at time of issuance, will not be prepayable. The New Notes may also be issued to banks under more formal credit agreements, similar to the agreements formed as part of the Facility, with commercially reasonable terms governing those agreements. The choice of whether the Declarants enter into informal credit line arrangements or formal credit agreements with the lending banks will be reserved to the discretion of the Declarants.

The proceeds from the New Notes will be used for the following: (i) to pay, reduce, or renew outstanding notes payable to banks as they become due; (ii) to finance the Declarant's respective cash construction expenditures; (iii) to acquire, retire or redeem securities in accordance with rule 42; (iv) in the case of EUA, to make short-term loans, capital contributions, and open account advances in accordance with rule 45(b)(4) or rule 52 or as authorized by the Commission to Cogenex (within the dollar limitation set forth in the April 1997 Order), EEIC, and EUA Energy and to acquire, retire, or redeem EUA common stock in accordance with rule 42; (v) for the Declarants' respective working capital requirements; (vi) for investment in exempt wholesale generators, as defined in section 32 of the Act ("EWGs"), and foreign utility companies, as defined in section 33 of the Act ("FUCOs"); and (vii) for other general corporate purposes; provided, that the aggregate proceeds of borrowings under the Facility and the New Notes at any time invested in EWGs and FUCOs shall not, when added to EUA's "aggregate investment" in all EWGs and FUCOs, exceed 50% of EUA's "consolidated retained earnings," each as defined in rule 53 under the Act; and, provided further, that at the time of each investment of proceeds of borrowings in an EWG or FUCO, EUA shall be in compliance with the other requirements of rule 53(a) under the Act, and none of the circumstances stated in rule 53(b) shall exist.

New England Electric System (70–9167)

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and rule 54 under the Act.

NEES proposes to issue, no later than December 31, 2002, up to one million shares of its common stock to be used to acquire the stock or assets of one or more "energy-related companies," as defined in rule 58 under the Act. The acquisitions may be made either directly by NEES or indirectly through a direct or indirect nonutility subsidiary of NEES.

Wisconsin Energy Corporation (70–9161)

Wisconsin Energy Corporation ("WEC") 231 West Michigan Street, Milwaukee, Wisconsin 53203, an electric public utility holding company exempt from registration under section 3(a)(1) from all provisions of the Act except section 9(a)(2), has filed an application for an order under sections 9(a)(2) and 10 of the Act authorizing its proposed acquisition of all of the issued and outstanding common stock of ESELCO, Inc. ("ESELCO"), a Michigan electric public utility holding company exempt from registration under section 3(a)(1) from all provisions of the Act except section 9(a)(2), and through such acquisition, ESELCO's Michigan public utility subsidiary company Edison Sault Electric Company ("Edison Sault"). WEC also requests an order under section 3(a)(1) continuing its exemption from all provisions of the Act except section 9(a)(2), following consummation of the proposed transaction ("Transaction").[9]

Edison Sault operates as a public utility exclusively in the state of Michigan.[10] It is subject to regulation with respect to retail electric rates and other matters by the Michigan Public Service Commission ("Michigan Commission").

ESELCO has two nonutility subsidiaries. Northern Tree Service, Inc. ("NTS") is a tree trimming company that provides tree-related services to Edison Sault and others. NTS also owns a radio tower near Engadine, Michigan. ESEG, Inc. is an inactive subsidiary of ESELCO formed to take title to two submarine electric cables being purchased from Consumers Energy Company under the Straits of Mackinac. If the purchase of the cables is

[9] The Commission granted WEC a 3(a)(1) exemption by order in *Wisconsin Energy Corp.*, Holding Co. Act Release No. 24267 (Dec. 18, 1996).

[10] Edison Sault is engaged in the generation, purchase, transmission, distribution and sale of electric energy in the Eastern Upper Peninsula of Michigan, an area with a population estimated at 55,000.

completed, the applicant represents that, upon the approval of the Federal Energy Regulatory Commission, ESEG, Inc. will be merged into Edison Sault simultaneously with the proposed transaction and will then cease to exist.

For the twelve months ended June 30, 1997, ESELCO's operating revenues on a consolidated basis were approximately $38.1 million, of which approximately $38 million was derived from Edison Sault's electric operations. Consolidated assets of ESELCO and its subsidiaries at June 30, 1997 were approximately $57.7 million, of which approximately $57.4 million consists of utility assets. As of June 30, 1997, there were: (1) 1,593,180 outstanding shares of the common stock, no par value of ESELCO; and (2) 673,929 shares of common stock, no par value of Edison Sault.

The applicant states that the Transaction is expected to create significant benefits to the investors and consumers through the reduction of corporate and operations labor costs and savings are expected to be achieved through pruchasing economies, a lower cost of financing for Edison Sault and reduced production and dispatch costs.

ESELCO and WEC have entered into a Reorganization Agreement which provides for the acquisition of ESELCO by WEC. The Transaction will be accomplished through the use of a wholly owned subsidiary of WEC incorporated in the State of Michigan for the sole purpose of consummating the merger ("Acquisition Sub"). Acquisition Sub will be merged with ELSELCO, with ESELCO surviving as a wholly owned subsidiary of WEC. At the effective time of the merger, each outstanding share of ESELCO common stock will be cancelled and converted into that number of shares of WEC common stock as is equal to the Exchange Ratio determined under the Reorganization Agreement. The Exchange Ratio will be equal to that number (carried to the fourth decimal place) obtained by dividing $44.50 by the average (calculated as provided in the Reorganization Agreement) WEC common stock prive.[11] Based on the number of shares of WEC and ESELCO common stock outstanding on September 30, 1997, and the average WEC common stock price for the ten trading days ending on that date, ELSELCO shareholders would own 2.4% of WEC's outstanding common stock on that date on a fully diluted basis. Immediately thereafter, ESELCO will be merged into WEC with WEC as the surviving corporation.

As a result of the Transaction, WEC will be a holding company as defined in section 2(a)(7) of the Act with ownership of two public utility subsidiaries, Wisconsin Electric Power Company ("WEPCO")[12] and Edison Sault. WEC states that following consummation of the Transaction, it will be entitled to continue its exemption under section 3(a)(1) from all provisions of the Act except section 9(a)(2) because it and each of its public utility subsidiaries from which it derives a material part of its income will be predominantly intrastate in character and will carry on their utility businesses substantially within the state of Wisconsin.[13]

Columbia Energy Group, et al. (70–9131)

Columbia Energy Group ("CEG") formerly Columbia Gas System), a registered holding company, and its nonutility subsidiaries ("Nonutility Subsidiaries"), Columbia Energy Group Service Corporation (formerly Columbia Gas System Service Corporation), Columbia LNG Corporation, Columbia Atlantic Trading Corporation, Columbia Power Marketing Corporation, Columbia Energy Services Corporation, Columbia Assurance Agency, Inc., Columbia Energy Marketing Corporation, Columbia Service Partners, Inc., Energy.Com Corporation, and Columbia Deep Water Services Corporation, each located at 12355 Sunrise Valley Drive, Suite 300, Reston, Virginia 20191–3420, Columbia Electric Corporation (formerly TriStar Ventures Corporation), Tristar Capital Corporation, Tristar Pedrick Limited Corporation, Tristar Pedrick General Corporation, Tristar Binghamton Limited Corporation, Tristar Binghamton General Corporation, Tristar Vineland Limited Corporation, Tristar Vineland General Corporation, Tristar Rumford Limited Corporation, Tristar Georgetown General Corporation, Tristar Georgetown Limited Corporation, Tristar Fuel Cells Corporation, TVC Nine Corporation, TVC Ten Corporation, and Tristar System,Inc., each located at 205 Van Buren, Herndon, Virginia 22070, Columbia Natural Resources, Inc., Alamco, Inc., Alamco-Delaware, Inc., and Hawg Hauling & Disposal, Inc., each located at 900 Pennsylvania Avenue, Charleston, West Virginia 25302, Columbia Gas Transmission Corporation, 12801 FairLakes Parkway, Fairfax, Virginia 22030–0146, Columbia Network Services Corporation and CNS Microwave, Inc., each located at 1600 Dublin Road, Columbus, Ohio 43215–1082, Columbia Propane Corporation, 9200 Arboretum Parkway, Suite 140, Richmond, Virginia 23236, and Columbia Gulf Transmission Corporation, 2603 Augusta, Suite 125, Houston, Texas 77057, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), and 13(b) of the Act and rules 43(a), 45(a), 54, 87 and 90(d)(1) under the Act.

CEG is currently authorized under an order dated March 25, 1996 (HCAR No. 26498) ("Existing CEG Order") to offer certain consumer programs. These programs may be offered to customers of associate distribution companies and of nonassociate distribution companies served by associate transmission companies ("Authorized Customers"). These programs include: energy-related safety inspections to residential and small commercial customers; short-term appliance financing (less than ten years); bill payment insurance for up to $400 a month for six months if the customer becomes unemployed, disabled or dies; appliance repair warranties for heating and air conditioning systems and other major appliances; gas line repair warranties; sale of various energy related goods; commercial equipment repair warranties; bill risk management to gas customers interested in hedging energy price or consumption fluctuations; consulting and fuel management services to commercial and industrial customers regarding energy consumption and its measurement; electronic measurement services to commercial and industrial customers to monitor their energy consumption and expenditures; and incidental services and sales of goods related to the consumption of energy and the maintenance of property owned by an Authorized Customer, the need for which arises as a result of, or evolves out of, the above services and which do not differ materially from these services.

[11] No fractional shares will be issued and holders of fractional share amounts will receive cash for such fractional shares. Under the Michigan Business Corporation Act, ESELCO stockholders do not have dissenters' rights.

[12] WEPCO is engaged in the business of generating, transmitting, distributing and selling electric energy to approximately 969,000 customers as of December 31, 1996 in a service area of approximately 12,000 square miles with a population estimated at 2.3 million in southeastern, central and northern Wisconsin and in the Upper Peninsula of Michigan.

WEPCO also distributes and sells natural gas to retail customers and transports customer-owned natural gas, and also purchases, distributes and sells steam supplied by its Valley Power plant to customers in the Milwaukee metropolitan area.

[13] WEC states that, including the Michigan activities of Edison Sault, it would derive only 8.8% and 8.6% of its utility revenues for the year ended December 31, 1996 and the twelve months ended June 30, 1997, respectively, from outside of Wisconsin.

CEG and the Nonutility Subsidiaries now request that the Commission remove certain of the restrictions imposed in the Existing CEG Order. One of these restrictions is the requirement that revenues from sales in states served by associate distribution companies exceed revenues from customers in all other states. Other restrictions include limits on the amounts and term of customer financing and of billing insurance and the requirement that the authorized services be offered only to Authorized Customers.

In addition, CEG and the Nonutility Subsidiaries request authority, to the extent not previously granted, to offer an expanded range of goods and services to customers both within the and outside the United States. These services include:

1. Energy management services involving the marketing, sale, installation, operation and maintenance of various products and services related to both the business of energy management and a demand-side management ("Energy Management Services"). Energy Management Services may include energy and efficiency audits; facility design and process control and enhancements; construction, installation, testing, sales and maintenance of (and training client personnel to operate) energy conservation equipment; design, implementation, monitoring and evaluation of energy conservation programs; development and review of architectural, structural and engineering drawings for energy efficiencies, design and specification of energy consuming equipment; and general advice on programs.

In addition, Energy Management Services may include the design, construction, installation, testing, sales and maintenance of new and retrofit heating, ventilating, and air conditioning ("HVAC"), electrical and power systems, alarm and warning systems, motors, pumps, lighting, water, water-purification and plumbing systems, and related structures, in connection with energy-related needs. Energy Management Services may also include the provision of services and products designed to prevent, control, or mitigate adverse effects of power disturbances on a customer's electrical system.

2. Performance contracting services aimed at assisting customers in realizing energy and other resource efficiency goals. Specific functions include process control, fuel management, and asset management services [14] in respect of energy-related systems, facilities and equipment located on or adjacent to the premises of a customer and used by that customer in connection with its business activities. Energy-related systems, facilities and equipment could include: (a) distribution systems and substations, (b) transmission, storage and peak-shaving facilities, (c) gas supply and/or electric generation facilities (i.e., stand-by generators and self-generation facilities), (d) boilers and chillers (i.e., refrigeration and coolant equipment), (e) alarm/warning systems, (f) HVAC, water and lighting systems, and (g) environmental compliance, energy supply and building automation systems and controls. These services may be provided to, among others, qualifying and non-qualifying cogeneration and small power production facilities, as defined in the Public Utility Regulatory Policies Act of 1978. In addition, asset management services may be provided to municipalities and electric cooperatives, and CEG may directly or indirectly act as agent for these customers on energy management matters, including the operation and dispatch of generating facilities.

3. Consulting services with respect to energy- and gas-related matters for associate and nonassociate companies, and for individuals ("Consulting Services"). These services include technical and consulting services involving technology assessments, power factor correction and harmonics mitigation analysis, meter reading and repair, rate schedule design and analysis, environmental services, engineering services, billing services (including consolidation billing and bill disaggregation tools), risk management services, communication systems, information systems/data processing, system planning, strategic planning, finance, feasibility studies, and other similar or related services. In addition, CEG and the Nonutility Subsidiaries request authority for nonutility associates to provide these services to other nonutility associates at prices other than cost.

4. Certain retail services, which include the provision of centralized bill payment centers for payment of all utility and municipal bills and related services, and annual inspection, maintenance and replacement of energy-related equipment and appliances. These services also include providing service line repair and extended warranties with respect to all of the utility- or energy-related service lines internal and external to a customer's premises, and other similar or related services, including surge protection. In addition, these services include marketing services to associate and nonassociate businesses in the form of bill insert and automated meter-reading services.

5. Monitoring and response goods and services, which include products used in connection with energy and gas-related activities that enhance safety, increase energy/process efficiency, or provide energy-related information, as well as repair services in connection with such problems as carbon monoxide leaks and faulty equipment wiring. These may also include the operation of call/dispatch centers on behalf of associate and nonassociate companies in connection with the proposed sale of goods and services or with activities that CBG associates are otherwise authorized to engage in under the Act.

6. Energy-peaking services via propane-air or liquified natural gas ("LNG"), which involves the provision of back-up electricity or gas supply in periods of high or "peak" energy demand using a propane-air mixture or LNG as fuel sources for such back-up services.

7. Project development and ownership activities, which involves the installation and ownership of gas-fired turbines for on-site generation and consumption of electricity/

8. Customer appreciation programs, which include the offering of prepaid phone cards or affinity credit cards to promote customer goodwill.

In addition, CEG and the Nonutility Subsidiaries request authority to provide other energy-related goods and services. These include incidental goods and services closely related to the consumption of energy and the maintenance of energy consuming property by customers. The need for these goods and services would arise as a result of, or evolve out of, the goods and services described above or the goods and services approved in the Existing CEG Order and do not differ materially from those goods and services. The proposed incidental goods and services would not involve the manufacture of energy consuming equipment but could be related to, among other things, the maintenance,

[14] Asset management services include: development; engineering; design; construction and construction management; pre-operational start-up testing and commissioning; long-term operations and maintenance, including system overhaul; load control and network control; fuel procurement, transportation and storage; fly-ash and other waste disposal; management and supervision; technical, training and administrative support; and any other managerial or technical services required to operate, maintain and manage energy-related assets physically associated with customer premises.

financing, sale or installation of such equipment.

CEG may provide these services through one or more direct or indirect subsidiaries, either independently or through a joint venture or an alliance with a nonassociate company. In addition, CEG requests authority to acquire, directly or indirectly, the securities or an interest in the business of nonassociate companies that derive substantially all of their revenues from the proposed activities and those approved in the Existing CEG Order.

CEG seeks authority to provide or broker, directly or indirectly, financing to or for customers in connection with the proposed activities and those approved in the Existing CEG Order. Financing for purchases by CEG utility customers would be provided by nonassociates.

CEG also requests authority for associate distribution companies to assist in providing customer billing, accounting and other energy-related services in connection with the proposed sale of those goods and services and the sale of those goods and services approved in the Existing CEG Order that are marketed to CEG utility customers. All such services will be rendered at cost in accordance with section 13(b) of the Act.

In an order dated December 23, 1996 (HCAR No. 26634), the Commission reserved jurisdiction over participation by new direct or indirect subsidiaries of CEG engaged in new lines of business in CEG's money pool. CEG now requests that the Commission release this jurisdiction with respect to participation in the money pool by those direct and indirect subsidiaries that are formed or acquired to engage in the proposed activities. In addition, CEG and the Nonutility Services request that the Commission reserve jurisdiction over the proposed sale of goods and services outside the United States, other than Energy Management Services and Consulting Services and related customer financing.

CEG states that it will not seek recovery through higher rates to customers of the utility subsidiaries to compensate it for any losses or inadequate returns it may sustain from the proposed sale of goods and services. CEG additionally states that no associate company will engage in any of the proposed activities without further Commission approval if it would become a public utility company within the meaning of the Act as a result of that activity.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–5069 Filed 2–26–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39689; File No. SR–Amex–98–09]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Amendments to Amex Rule 117 (Circuit Breakers)

February 20, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 17, 1998, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend procedures relating to circuit breaker trading halts. The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1991).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rule 117 provides for temporary halts in the trading of all securities on the Exchange for one-half hour if the Dow Jones Industrial AverageSM (DJIA")[3] declines 350 points or more from the previous day's closing value and for one hour if the DJIA declines 550 points from the previous day's close. The Commission recently approved amendments to Rule 117 (and comparable rules of other self-regulatory organizations) relating to the timing and duration of trading halts under the rule.[4] If the DJIA declines 350 points prior to 3:00 p.m. (Eastern time), trading will halt for one-half hour; at or after 3:00 p.m., trading will not halt unless the DJIA declines 550 points. If the DJIA falls 550 points prior to 2:00 p.m., trading will halt for one hour; and, at or after 2:00 p.m., trading will halt for 30 minutes instead of one hour. If the 550 point trigger is reached at or after 3:00 p.m., trading on the Exchange will halt for the remainder of the day. These procedures have been approved on a pilot basis until April 30, 1998.

The Exchange proposes to amend Rule 117 to provide for circuit breakers to be triggered at 10 percent, 20 percent and 30 percent threshold levels. The specific threshold level would be adjusted quarterly, rounded to the nearest 50 points, based on the closing DJIA calculation for each trading day in the month preceding the beginning of the quarter.

Under the proposed amendments, a 10 percent decline before 2:00 p.m. (all times are in Eastern time) will result in a one-hour halt and, such a decline at or after 2:00 p.m. but before 2:30 p.m. will result in a 30-minute halt. At or after 2:30 p.m., the 10 percent threshold would be removed and, therefore, trading would continue unless the 20 percent threshold is reached, in which case, trading would halt for the remainder of the day. Generally, a 20 percent decline before 1:00 p.m. will result in a two-hour halt. If the 20 percent threshold is reached at or after 1:00 p.m. but before 2:00 p.m., there will be a one-hour halt. If the 20 percent threshold is reached at or after 2:00 p.m., trading will halt for the remainder of the day. A third circuit breaker, triggered at a 30 percent decline, will

[3] "Dow Jones Industrial Average" is a service mark of Dow Jones & Company, Inc.

[4] *See* Exchange Act Release No. 39582 (January 26, 1998), 63 FR 5408 (February 2, 1998).

close the market for the day regardless of when hit.

The Exchange has continued to discuss changes to circuit breaker parameters with the Commission and other self-regulatory organizations, particularly following the first triggering of circuit breakers on October 27, 1997, when the 350 and 550 point parameters represented moves in the DJIA of about 4.5 percent and 7.2 percent, respectively. These trigger levels represented market declines that were, in percentage terms, far less than the 250 and 400 point triggers implemented by all markets in October 1988, when they represented moves in the DJIA of about 12 percent and 19 percent, respectively. Therefore, a number of industry participants have expressed the view that the October 27, 1997 halt was unnecessary, and that circuit breaker parameters should be triggered only during periods of extraordinary market volatility. In addition, the Amex and other options exchanges have recognized the importance of maximizing the opportunity to allow the markets to have a normal end of the day close, particularly on Expiration Fridays. The proposed amendments to Rule 117 are responsive to these views, and provide the advantage of regular adjustments to circuit breaker thresholds to account for DJIA fluctuations.

The adoption of the proposed amendments to Exchange Rule 117 would be contingent upon the adoption of amended rules or procedures substantively identical to Rule 117 by:

(1) All United States securities exchanges and the National Association of Securities Dealers with respect to the trading of stocks, stock options and stock index options; and

(2) All United States futures exchanges with respect to the trading of stock index futures and options on such futures.

2. Basis

The Exchange believes that the proposal is consistent with Section 6(b)[5] of the Act, in general, and Section 6(b)(5)[6] of the Act, in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, located at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All submissions should refer to File No. SR–Amex–98–09 and should be submitted by March 20, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–5066 Filed 2–26–98; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice #2747]

Delegation of Authority

By virtue of the authority vested in me by the laws of the United States, including the State Department Basic Authorities Act of 1956, and the National Defense Authorization Act for Fiscal Year 1998 (P.L. 105–85) (The "Act"), I hereby delegate the authority vested in me by section 1211 of the Act to the Under Secretary of State for Arms Control and International Security Affairs or, in the absence of the Under Secretary of State for Arms Control and International Security Affairs, to any of the other Under Secretaries of State.

The Secretary or Deputy Secretary of State may at any time exercise any of the functions described above.

This delegation of authority shall be published in the **Federal Register**.

Dated: February 6, 1998.

Madeleine Albright,

Secretary of State.

[FR Doc. 98–4978 Filed 2–26–98; 8:45 am]

BILLING CODE 4710–10–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39685; File No. SR–GSCC–97–09]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Changes to the Fee Structure

February 19, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1935 ("Act"),[1] notice is hereby given that on January 5, 1998, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–GSCC–97–09) as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The prupose of the proposed rule change is to amend GSCC's fees for processing of term repurchase agreements ("repos").[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC currently provides a settlement service for repos with treasury securities as collateral.[4] When CSCC clears and settles repos, it guarantees settlement of the repo from the date the repo is compared by GSCC. This proposed rule change amends GSCC's fees for clearance of term repos.

As it currently exists and as it will be enhanced in the future, GSCC's repo netting service requires significant risk management resources and represents a large ongoing expense particularly from an operational and technological perspective. In light of this, the board of directors of GSCC now believes it is appropriate to revise the pricing structure for the netting and guaranteed settlement of term repos to cover the true cost of the service and to more closely reflect the benefits derived by members from the service. The board also believes it is appropriate to revise the pricing structure to cover the costs of other repo netting services and enhancements (such as the development effort to net same-day start legs) that are important from a settlement and risk management perspective and that provide operational and cost benefits to members but are not a significant source of revenue for GSCC.

GSCC believes that these goals are best accomplished by shifting from a transactional charge to a basis point charge. A transactional charge is an inadequate pricing method because it does not reflect the size of the repo in dollar terms. Thus, a member carrying a $50 million repo incurs the same charge as a member carrying only a million dollar repo. GSCC believes this is inequitable because the former member brings more risk to GSCC and derives more benefit than the latter member.

The proposed rule change will eliminate a two cents per calendar day fee on outstanding start and close term repo legs. Instead, there will be new fees for the processing of an outstanding term repo that has been compared and netted but has not yet settled. These basis point fees will be applied each calendar day but calculated on an annualized basis.

A fee of a .015 basis point charge will be applied to the gross dollar amount of a member's term repos that have been entered into GSCC's netting system. This fee reflects the potential balance sheet offset benefit derived by the member from its repo activity. In addition, a fee of a .060 basis point charge will be applied to the net dollar amount of a member's term repo activity within a CUSIP. This fee reflects the guarantee of settlement and other risk management benefits provided by GSCC once a member's activity has been netted by CUSIP.

GSCC believes that the proposed rule change is consistent with the requirements of section 17A(b)(3)(A) of the Act[5] and the rules and regulations thereunder because it will promote the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[6] of the Act and Rule 19b–4(e)(2)[7] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by the self-regulatory agency. At any time within sixty days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise win furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office GSCC. All submissions should refer to the file number SR–GSCC 97–09 and should be submitted by March 20, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4986 Filed 2–26–98; 8:45 am]

BILLING CODE 8010–01–M

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[2] A term repo is a repo for which the settlement date for the close leg is more than one business day after the settlement date for the start leg.

[3] The Commission has modified the text of the summaries submitted by GSCC.

[4] Securities Exchange Act Release No. 36491 (November 17, 1995), 60 FR 61577.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(e)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39688; File No. SR–NASD–98–16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change By the National Association of Securities Dealers, Inc. Relating to Peer Review of Auditors of Foreign Issuers Listed on the Nasdaq SmallCap Market

February 20, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 18, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing a rule change to NASD Rule 4320 ("Rule 4320") to make a technical correction clarifying the application of the peer review requirement to the auditors of foreign issuers and conforming the text of Rule 4320 to the text of Rule 4460. Below is the text of the proposed rule change. Proposed new language is in italics.

Rule 4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

(a)–(d) No change.

(e) In addition to the requirements contained in paragraphs (a), (b), or (c) and (d), the security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(2) No change.

(21) Corporate Governance Requirements—No provisions of this subparagraph *or of subparagraph (23)* shall be construed to require any foreign issuer to do any act that is contrary to a law, rule or regulation of any public authority exercising jurisdiction over such issuer or that is contrary to generally accepted business practices in the issuer's country of domicile. Nasdaq shall have the ability to provide exemptions from the applicability of these provisions as may be necessary or appropriate to carry out this intent.

Nasdaq shall review the issuer's past corporate governance activities. This review may include activities taken place while the issuer is listed on Nasdaq or an exchange that imposes corporate governance requirements, as well as activities taking place after the issuer is no longer listed on Nasdaq or an exchange that imposes corporate governance requirements. Based on such review, Nasdaq may take any appropriate action, including placing of restrictions on or additional requirements for listing, or the denial of listing of a security if Nasdaq determines that there have been violations or evasions of such corporate governance standards. Determinations under this subparagraph shall be made on a case-by-case basis as necessary to protect investors and the public interest.

(A)–(H) No change.

(22)–(23) No change.

(f) No change.

II Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On August 23, 1997, the SEC approved changes to the listing requirements for the Nasdaq Stock Market. *See* Release 34–38961 (Aug. 22, 1997), 62 FR 45895 (Aug. 29, 1997). Among the changes approved was the extension of the corporate governance requirements that applied to National Market issuers to the SmallCap Market. In addition, a new corporate governance requirement was added to both the National Market and the SmallCap Market that auditors of Nasdaq listed companies be subject to a practice monitoring program under which the auditor's quality control system would be reviewed by an independent peer auditor on a periodic basis ("peer review requirement").

In general, a corporate governance requirement does not apply to a foreign issuer if the requirement is contrary to a law, rule or regulation of any public authority exercising jurisdiction over the issuer or is contrary to generally accepted business practices in the issuer's country of domicile. *See* NASD Rule 4460(a). This provision expressly applies to the new peer review requirement for National Market issuers. However, as a result of the way the revised rules were drafted, the provision could be clarified to more clearly apply to the peer review requirement for Nasdaq SmallCap issuers. This proposed rule change makes that clarification by amending Rule 4320(e)(21) to conform it with Rule 4460, thereby facilitating easier understanding of the rule. In summary, the proposed rule change clarifies that the peer review requirement applies in exactly the same manner for a SmallCap Market issuer as it does for a National Market issuer; a foreign issuer, whether listed on the Nasdaq National Market or The Nasdaq SmallCap Market, is required to be audited by an auditor subject to the peer review requirement to the extent that the requirement is consistent with the generally accepted business practices in the issuer's country of domicile.

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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[1] 15 U.S.C. 78s(b)(1).

[2] Technical amendments were made to the proposal on the same date. Telephone conversation between Arnold Golub, Office of General Counsel, Nasdaq, and Kenneth Rosen, Attorney, Division of Market Regulation, Commission (February 18, 1998).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Nasdaq is filing this proposed rule change as a "non-controversial" rule change under Rule 19b–4(e)(6) [3] because the proposed change: (1) will not significantly affect the protection of investors or the public interest; (2) will not impose any significant burden on competition; and (3) will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate. The SEC approved the substance of the change for Nasdaq National Market companies in Release 34–38961 [4] and, in so doing, did not find that an exception for foreign issuers would affect impermissibly the protection of investors or the public interest. Similarly, the correction in this proposed rule change should not significantly affect the protection of investors or the public interest. Because the maintenance requirements approved by the SEC in Release 34–38961 will take effect for all issuers on the Nasdaq SmallCap Market on February 23, 1998, Nasdaq requests acceleration of the operative date of this proposed change to February 23, 1998, The Commission finds that it is consistent with the protection of investors and the public interest to permit the proposed rule change to become operative on February 23, 1998.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–98–16 and should be submitted by March 20, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–5068 Filed 2–26–98; 8:45 am]

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[3] 17 CFR 240.19b–4(e)(6). In reviewing this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[4] SR–NASD–97–16 (Aug. 22, 1997), 62 FR 45895 (Aug. 29, 1997).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39693; File No. SR–NSCC–97–13]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Changes in Membership Standards

February 23, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 30, 1997, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on December 31, 1997, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend NSCC's rules regarding membership standards to allow for consideration of applicants' and participants' regulatory history.

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC believes that when a person with significant managerial responsibility for a firm or who otherwise has significant ability to influence the policies and actions of a firm has a record that fails to reflect a history of good character, citizenship, commercial honor, and a respect for the letter and intent of the legal and regulatory structure in which the firm operates, there is an increased likelihood that the firm will present additional risk to NSCC's participants. Currently NSCC's rules provide that it will establish, as deemed necessary or appropriate, standards of financial responsibility, operational capability, experience, and competence for membership, as well as guidelines for the application of membership standards.[3] The purpose of the proposed rule change is to provide definition to the bases upon which NSCC may take action to deny an applicant membership or to cease to act for a participant by establishing specific membership standards for NSCC applicants and participants.[4]

The revised rule will allow NSCC to deny membership to any applicant or to cease to act for any participant when a person with significant managerial responsibility or with significant ability to influence the policies and actions of the applicant or participant (through ownership interest, contract, or otherwise), whether or not the person

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Rule 15 of NSCC's Rules and Procedures.

[4] NSCC has taken note of the findings set forth in the April 15, 1997, memorandum entitled, "The Joint Regulatory Sales Practice Sweep; Heightened Supervisory Procedures," which was the product of an initiative involving the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Securities and Exchange Commission, and the North American Securities Administrators Association, Inc.

currently acts as a principal or registered representative, has a record that reflects:

(1) Any felony conviction or plea of guilty or nolo contendere, pending felony indictment, information of or other institution of felony proceedings, any investment-related [5] misdemeanor conviction or plea of guilty or nolo contendere, or pending investment-related misdemeanor;

(2) A permanent bar or temporary suspension from acting as a principal or registered representative or otherwise to be associated with or perform designated functions for a firm engaging in an investment-related business other than any temporary suspension for minor or technical violations;

(3) Other disciplinary or adverse regulatory or administrative actions (except for actions that are both isolated and minor) taken by any governmental, regulatory, or self-regulatory body or authority;

(4) Arbitrations, administrative proceedings, civil actions, or other proceedings not resolved in favor of the person except for proceedings that are both minor and isolated, including but not limited to proceedings ending in settlements involving a payment and proceedings that have not yet been adjudicated,[6] provided however that (a) unadjudicated proceedings brought by someone other than a regulatory authority shall not by themselves constitute grounds for NSCC to deny membership to an applicant or to cease to act for a participant and (b) unadjudicated proceedings brought by a regulatory authority shall not by themselves constitute grounds to cease to act for a participant but may constitute grounds to deny membership to an applicant;

(5) Multiple customer complaints;

(6) A termination or permitted resignation after an investigation or allegation of sales practice problems or violation of investment-related statutes, regulations, rules, or industry standards of conduct; or

(7) Being subject to heightened supervision in accordance with guidelines or recommendations promulgated by a regulatory authority.

any action, complaint, or proceeding referred to in the enumerated items above that is not taken against a person will nonetheless be deemed to be taken against that person if his or her activities are cited in whole or in part as being a contributing cause.

Single instances under items (3) or (4) above may also be considered as part of the adverse regulatory history if there exists other instances of actions constituting an adverse regulatory history or if that single instance indicates that the person has a propensity to act in a manner that could cause significant financial cost to the applicant or participant. However, no person will be deemed to have an adverse regulatory history under items (4) or (5) above due to being named in customer complaints or adverse civil proceedings merely because of the person's management or ownership position in the applicant or participant (as opposed to actually engaging in wrongful conduct, including failure to supervise) unless the number of complaints or proceedings are disproportionate to the size of the firm.

The proposed rule will also allow NSCC to deny membership to an applicant or to cease to act for a participant if a correspondent of the applicant or participant or any entity for which the applicant or participant is financially responsible would fail to meet the above membership standards but only if the size of the business of the correspondent or other entity is significant relative to the capital of the applicant or participant.

NSCC intends to construe the new rule so as to not limit its authority to deny membership to, to cease to act for, or to obtain further assurances from any applicant or participant in accordance with the NSCC's rules and procedures when the circumstances warrant even if such circumstances include or consist solely of items that are specifically not grounds for such action under the proposed rule. For example, any unadjudicated proceeding that could create significant financial difficulties for an applicant or participant may be grounds for such action even if it would not constitute adverse regulatory history as defined in the proposed rule.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [7] and the rules and regulations thereunder because it will clarify the rules of NSCC relating to standards required for membership and thereby facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

NSCC received one comment letter on the proposed rule change.[8] NSCC will notify the Commission of any other written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Acting

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should

[5] The term "investment-related" pertains but is not limited to securities, commodities, banking, insurance, or real estate.

[6] The term "adjudicated" for purposes of the rule means any arbitration, proceeding, or action that has been resolved subject to appeal, whether or not the resolution has been stayed pending appeal.

[7] 15 U.S.C. 78q–1.

[8] Letter from William C. Alsover, President, Centennial Securities Company, to David F. Hoyt, NSCC (November 7, 1997).

refer to File No. SR–NSCC–97–13 and should be submitted by March 20, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–5067 Filed 2–26–98; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending February 20, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–3538.
Date Filed: February 19, 1998.
Parties: Members of the International Air Transport Association.
Subject: PTC2 AFR 0027 dated January 30, 1998, Within Africa Resos r1–27, Minutes—PTC2 AFR 0026 dated January 27, 1998, Tables—PTC2 AFR Fares 0013 dated February 13, 1998, Correction—PTC2 AFR 0028 dated February 6, 1998, PTC2 AFR 0029 dated February 13, 1998, Intended effective date: April 1, 1998.

Docket Number: OST–98–3539.
Date Filed: February 19, 1998.
Parties: Members of the International Air Transport Association.
Subject: PTC12 NMS–AFR 0034 dated February 3, 1998, North Atlantic-Africa Reso 311g, Intended effective date: May 1, 1998.

Docket Number: OST–98–3540.
Date Filed: February 19, 1998.
Parties: Members of the International Air Transport Association.
Subject: PTC12 MEX–EUR 0014 dated January 30, 1998, Mexico-Europe Resos r1–23, Minutes—PTC12 MEX–EUR 0015 dated February 13, 1998, Tables—PTC12 MEX–EUR Fares 0005, dated January 30, 1998, Intended effective date: May 1, 1998.

Docket Number: OST–98–3541.
Date Filed: February 19, 1998.
Parties: Members of the International Air Transport Association.
Subject: PTC12 NMS–AFR 0035 dated February 3, 1998, North Atlantic-Africa Resos r1–22, Intended effective date: May 1, 1998.

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98–5057 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–62–P

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending February 20, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–3491.
Date Filed: February 17, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 17, 1998.
Description Application of Polar Air Cargo, pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, requests an amendment to its certificate of public convenience and necessity for Route 727 authorizing polar to engage in scheduled foreign air transportation of property and mail between any point or points in the United States and two points in Japan, and beyond each of those points to one point, with full traffic rights between all points on the route, and to integrate these operations with all services Polar is otherwise authorized to conduct pursuant to its exemption and certificate authority consistent with applicable international agreements.

Docket Number: OST–98–3510.
Date Filed: February 18, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 18, 1998.
Description Application of Consorcio Aviacsa, S.A. de C.V., pursuant to 49 U.S.C. Section 41302 and Subpart Q, applies to amend its foreign air carrier permit application to engage in scheduled foreign air transportation of persons, property and mail between points in Mexico and points in the United States, and subject to applicable regulations of the Department, between points in the United States and other points worldwide.

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98–5058 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–3481]

Navigation Safety Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Navigation Safety Advisory Council (NAVSAC) will meet to discuss various issues relating to commercial and recreational boat safety. The meetings are open to the public.

DATES: NAVSAC will meet on Saturday, March 21, 1998, from 8 a.m. to 5 p.m. and on Sunday, March 22, 1998, from 8 a.m. to 3 p.m. Written material and requests to make oral presentations should reach the Coast Guard on or before March 13, 1998.

ADDRESSES: NAVSAC will meet at the Holiday Inn Select, 111 West Fortune Street, Tampa, FL 33602. Send written material and requests to make oral presentations to Margie G. Hegy, Commandant (G–M–2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Executive Director of NAVSAC, telephone (202) 267–0415, fax (202) 267–4700, or Diane Schneider, NAVSAC Executive Secretary, telephone (202) 267–0352.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda includes the following:
(1) Monterey Bay National Marine Sanctuary Panel efforts to determine what, if any, vessel regulations are needed to protect Sanctuary resources.
(2) Vessel Traffic Information Services (VTIS) in Tampa.
(3) Vessels that lose propulsion or experience steering problems during transit.
(4) Permitting of Artificial Reefs.
(5) Waterways Management Workshop.

Procedural

All sessions are open to the public. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than March 13, 1998. If you would like a copy of your material distributed to each member of the Council or Committee in advance of the meeting, please submit 25 copies to

the Executive Director no later than March 10, 1998.

Information on Services for the Handicapped

For information on facilities or services for individuals with disabilities or requests for special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: February 23, 1998.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–5098 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Manchester Airport; Manchester, NH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure map for Manchester Airport, as submitted by the Manchester Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150, is in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Manchester Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before August 5, 1998.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure map and of the start of its review of the associated noise compatibility program is February 6, 1998. The public comment period ends on April 7, 1998.

FOR FURTHER INFORMATION CONTACT: John C. Silva, Federal Aviation Administration, New England Region, Airports Division, ANE–600, 12 New England Executive Park, Burlington, Massachusetts 01803.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure map submitted for Manchester Airport is in compliance with applicable requirements of Part 150, effective February 6, 1998. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before August 5, 1998. This notice also announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such map to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted a noise exposure map that is found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken, or proposes, for the introduction of additional noncompatible uses.

The Manchester Airport Authority submitted to the FAA on February 6, 1997, a noise exposure map, descriptions, and other documentation which were produced during the Airport Noise Compatibility Planning (Part 150) study at Manchester Airport from May 1995 to January 1997. It was requested that the FAA review this material as the noise exposure map, as described in Section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act.

The FAA has completed its review of the noise exposure map and related descriptions submitted by Manchester Airport Authority. The specific maps under consideration were Figures 11.1, "1995 Existing Noise Exposure Map", and Figure 15.1, "Future Noise Exposure Map", along with the supporting documentation in "Manchester Airport; FAR Part 150 Update". The FAA has determined that the maps for Manchester Airport are in compliance with applicable requirements. This determination is effective on February 6, 1998.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours or in interpreting the noise exposure map to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted the map, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 or FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Manchester Airport, also effective on February 6, 1998. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 5, 1998. The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, Section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non compatible land uses and

preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure map, the FAA's evaluation of the map, and the proposed noise compatibility program are available for examination at the following locations:

Manchester Airport, One Airport Road, Suite 300, Manchester, New Hampshire 03103–3395

Federal Aviation Administration, New England Region, Airports Division, ANE–600, 16 New England Executive Park, Burlington, Massachusetts 01803

Questions may be directed to the individual named above under the heading:

FOR FURTHER INFORMATION CONTACT

Issued in Burlington, Massachusetts on February 6, 1998.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 98–5113 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC Approvals and Disapprovals. In January 1998, there were 12 applications approved. This notice also includes information on two applications, approved in December 1997, inadvertently left off the December 1997 notice. Additionally, 13 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Port of Portland, Portland, Oregon.

Application Number: 97–05–U–00–PDX.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue to be Used in This Decision: $12,824,000.

Charge Effective Date: November 1, 1994.

Estimated Charge Expiration Date: October 1, 2000.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Projects Approved for Use:

Taxiway A and connectors rehabilitation.

Runway 3/21 rehabilitation.

Taxiway F rehabilitation.

Decision Date: December 3, 1997.

For Further Information Contact: Mary Vargas, Seattle Airports District Office, (425) 227–2660.

Public Agency: County of Eagle, Eagle, Colorado.

Application Number: 97–04–C–00–EGE.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $300,000.

Earliest Charge Effective Date: March 1, 2012.

Estimated Charge Effective Date: July 1, 2012.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Snow removal equipment.

Decision Date: December 11, 1997.

For Further Information Contact: Christopher Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: City of Fresno, Department of Airports, Fresno, California.

Application Number: 97–02–C–00–FAT.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $58,303,992.

Earliest Charge Effective Date: April 1, 1998.

Estimated Charge Expiration Date: July 1, 2028.

Class of Air Carriers Not Required To Collect PFC'S: Air Taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of Fresno Yosemite International Airport's total annual enplanements.

Brief Description of Projects Approved for Collection and Use:

Baggage claim expansion.

Lobby and ticketing area.

Terminal entryway reconfiguration.

Concourse expansion.

Building utility systems.

Storm water retention basin expansion and improvement.

Ramp reconstruction/taxiway A relocation, additional parking stands, terminal ramp drainage, oil-water separator improvements, and terminal pavement markings.

Reconstruction of concourse ramp sections.

Brief Description of Project Approved in Part for Collection and Use: Entrance road gateway improvements construction, Clinton Way infrastructure access improvements, and employee parking lot relocation.

Determination: Partially approved for the collection and use of PFC revenue. Relocation of the employee parking lot has been determined to be ineligible in accordance with paragraph 595(a) of FAA Order 5100.38A, Airport Improvement Program (AIP) Handbook (October 24, 1989). Eligibility for this component is limited to the costs of demolition and removal of the employee parking lot.

Decision Date: January 2, 1998.

For Further Information Contact: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: Tupelo Airport Authority, Tupelo, Mississippi.

Application Number: 97–02–U–00–TUP.

Application Type: Use PFC revenue

PFC Level: $3.00

Total PFC Revenue To Be Used in This Decision: $225,400.

Charge Effective Date: November 1, 1994.

Estimated Charge Expiration Date: December 1, 2007.

Class of Air Carriers Not Required To Collect PFC'S: No change from previous decision.

Brief Description of Projects Approved for use:

Overlay and groove runway 18/36.

Expand airport terminal building.

Decision Date: January 5, 1998.

For Further Information Contact: David Shumate, Jackson Airports District Office, (601) 965–4628.

Public Agency: Melbourne Airport Authority, Melbourne, Florida.

Application Number: 98–02–C–00–MLB.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $614,362.

Earliest Charge Effective Date: May 1, 1998.
Estimated Charge Expiration Date: February 1, 1999.
Class of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of Melbourne International Airport's total annual enplanements.
Brief Description of Project Approved for Collection and Use: Runway 9R/27L improvements—phase 1.
Decision Date: January 6, 1998.
For Further Information Contact: Vernon P. Rupinta, Orlando Airports District Office, (407) 812–6331.

Public Agency: City of McAllen, Texas.
Application Number: 97–01–C–00–MFE.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in this Decision: $1,853,711.
Earliest Charge Effective Date: April 1, 1998.
Estimated Charge Expiration Date: July 1, 2000.
Class of Air Carriers Not Required to Collect PFC's: None.
Brief Description of Projects Approved for Collection and Use:
East and west terminal apron.
Airfield guidance signs and vault upgrade.
Widen taxiway A.
Runway 13/31 safety improvements.
Master plan update.
Terminal Drive relocation.
General aviation apron overlay.
Cargo apron overlay and associated taxiway development.
PFC administrative fees.
Decision Date: January 6, 1998.
For Further Information Contact: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: St. Louis Airport Authority, St. Louis, Missouri.
Application Number: 97–03–U–00–STL.
Application Type: Use PFC revenue.
PFC Level: $3.00.
Total PFC Revenue to be Used in this Decision: $52,000,000.
Charge Effective Date: April 1, 1996.
Estimated Charge Expiration Date: July 1, 1998.
Class of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of Lambert—St. Louis International Airport's total annual enplanements.
Brief Description of Project Approved for Use: Airport noise land acquisition/relocation program (phase II).
Decision Date: January 8, 1998.
For Further Information Contact: Lorna Sandridge, Central Region Airports Division, (816) 426–4730.

Public Agency: County of Marquette, Marquette, Michigan.
Application Number: 97–04–C–00–MQT.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in this Decision: $672,968.
Earliest Charge Effective Date: April 1, 1998.
Estimated Charge Expiration Date: June 1, 2000.
Class of Air Carriers Not Required To Collect PFC's: Part 135 air taxi charter operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of Marquette County Airport's total annual enplanements.
Brief Description of Projects Approved for Collection at Marquette County Airport/Sawyer Airport and Use at Sawyer Airport:
Airport master plan.
Medium intensity approach lighting system with runway end identifier lights installation on runway 01.
Terminal building (design and engineering services).
Runway lighting.
Construct airport terminal building.
Install fencing.
Brief Description of Project Disapproved: Exhibit "A" property map.
Determination: Disapproved. The FAA has determined that this project is an administrative requirement for AIP funding and does not meet the requirements of §§ 158.15(a) and 158.15(b).
Decision Date: January 16, 1998.
For Further Information Contact: Jon Gilbert, Detroit Airports District Office, (313) 487–7281.

Public Agency: Toledo-Lucas County Port Authority, Toledo Ohio.
Application Number: 97–03–C–00–TOL.
Application Type: Imose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $6,750,400.
Earliest Charge Effective Date: July 1, 1998.
Estimated Charge Expiration Date: November 1, 2004.
Class of Air Carriers Not Required To Collect PFC's: Air taxi commercial operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of Toledo Express Airport's total annual enplanements.
Brief Description of Projects Approved for Collection and Use:
Noise mitigation.
Terminal entrance road rehabilitation.
Environmental—runway 16/34.
Runway 7/25 rehabilitation.
Terminal building expansion—phase I.
Decision Date: January 16, 1998.
For Further Information Contact: Jack D. Roemer, Detroit Airports District Office, (313) 487–7282.

Public Agency: City of La Crosse, Wisconsin.
Application Number: 97–04–C–00–LSE.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $615,000.
Earliest Charge Effective Date: December 1, 2000.
Estimated Charge Expiration Date: March 1, 2002.
Class of Air Carriers Not Required To Collect PFC's: None.
Brief Description of Projects Approved for Collection and Use:
Relocate runway 13/31.
Airfield sealcoating.
Reconstruct runway 18/36 phase 1.
Construct airport entrance sign.
PFC administration.
Decision Date: January 16, 1998.
For Further Information Contact: Sandra E. DePottey, Minneapolis Airports District Office, (612) 713–4363.

Public Agency: County of Humboldt, Eureka, California.
Application Number: 97–04–C–00–ACV.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $1,482,300.
Earliest Charge Effective Date: April 1, 1998.
Estimated Charge Expiration Date: June 1, 2003.
Class of Air Carriers Not Required To Collect PFC's: None.
Brief Description of Projects Approved for Collection at Arcata-Eureka Airport (ACV) and Use at ACV:

Emergency safety area erosion control.
Taxiway A overlay.
Boarding assistance device.
Property purchase.
Aircraft rescue and firefighting (ARFF) fire truck replacement.
ARFF building improvements.
Ramp area extension.

Brief Description of Projects Approved for Collection at ACV and Use at Rohnerville Airport:
Pavement rehabilitation of taxiway, runway, and aprons.
Entrance road reconstruction and perimeter fencing.

Brief Description of Project Approved for Collection at ACV and Use at Murray Field: Pavement overlay.

Brief Description of Project Approved for Collection at ACV and Use at Kneeland Airport: Airport rehabilitation.

Brief Description of Disapproved Projects: T-hangar taxiway construction.

Determination: Disapproved. The installation of utility conduit for future building construction and hangar building demolition was determined to be ineligible under AIP criteria, paragraphs 568 and 301(a) of FAA Order 5100.38A, AIP Handbook (October 24, 1989). Based on the information provided in the application, an accurate prorated share of eligible costs could not be determined. Therefore, this project, as proposed, was disapproved.

Fire protection systems replacement.

Determination: Disapproved. The replacement of fire hydrant and water supply lines in the airport building area was determined to be ineligible under AIP criteria, paragraph 568 of FAA Order 5100.38A, AIP Handbook (October 24, 1989). Based on the information provided in the application, an accurate prorated share of eligible costs could not be determined. Therefore, this project, a proposed, was disapproved.

Decision Date: January 23, 1998.

For Further Information Contact: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: Niagara Frontier Transportation Authority, Buffalo, New York.

Application Number: 98–03–C–00–BUF.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $2,659,807.

Earliest Charge Effective Date: November 1, 2014.

Estimated Charge Expiration Date: July 1, 2015.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of Greater Buffalo International Airport's total annual enplanements.

Brief Description of Projects Approved for Use:
Purchase one front end loader.
Pavement strengthening/taxiway C and perimeter road.
Pavement overlay/taxiways D and F.
Pavement study.
Rehabilitation/overlay runway 14/32.

Brief Description of Projects Approved for Collection and Use:
Relocate airport beacon.
Glycol storage facility.
Aircraft deicing area.
Common-use gate positions and holdrooms.
Rehabilitate storm drainage.

Brief Description of Projects Approved for Collection and Use: Purchase snow removal, safety, and ARFF equipment.

Determination: Partially approved. The purpose of the airfield safety vehicle, as described in the application, is to perform operations and maintenance functions. Thus, in accordance with paragraph 501 of FAA Order 5100.38A, AIP Handbook (October 24, 1989), and § 158.15(b), the airfield safety vehicle is not AIP or PFC eligible.

Decision Date: January 27, 1998.

For Further Information Contact: Philip Brito, New York Airports District Office, (516) 227–3800.

Public Agency: City of Idaho Falls, Idaho.

Application Number: 98–02–C–00–IDA.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $820,404.

Earliest Charge Effective Date: February 1, 1998.

Estimated Charge Expiration Date: November 1, 2000.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:
Rehabilitation of runway 2/20.
Airport master plan.
ARFF station.
Mandatory runway lighting/signage.
Apron replacement upgrade.
Snow removal equipment.
Runway 17/35 lighting system replacement.
Ramp reconstruction.

Decision Date: January 29, 1998.

For Further Information Contact: Mary E. Vargas, Seattle Airports District Office, (425) 227–2660.

Public Agency: Texas A and M University, College Station, Texas.

Application Number: 98–02–C–00–CLL.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $429,159.

Earliest Charge Effective Date: August 1, 1998.

Estimated Charge Expiration Date: June 1, 2000.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:
Install high intensity runway lights, runway 16/34.
Install medium intensity taxiway lights.
Sealcoat runway 10/28 and taxiways B and E.
Construct taxiway F and G fillets.
Construct taxiway H.
Install new signage and signage modifications.
ARFF facility.
ARFF vehicle.
Pavement management system.
PFC administrative costs.

Decision Date: January 29, 1998.

For Further Information Contact: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
93–01–C–01–HVN, New Haven, CT	12/10/97	$2,490,450	$1,108,060	06/01/99	04/01/98
94–02–C–02–MSP, Minneapolis, MN	12/29/97	107,376,001	126,226,001	05/01/99	01/01/00
93–01–C–09–ORD, Chicago, IL	12/30/97	522,045,837	517,271,740	07/01/04	07/01/04

AMENDMENTS TO PFC APPROVALS—Continued

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
96–05–C–02–ORD, Chicago, IL	12/30/97	412,918,431	423,692,528	07/01/04	07/01/04
97–04–C–01–GFK, Grand Forks, ND	12/31/97	339,864	551,993	01/01/98	09/01/98
93–01–C–01–GUC, Gunnison, CO	01/05/98	702,133	807,453	03/01/98	04/01/98
96–04–C–01–YKM, Yakima, WA	01/06/98	432,000	662,515	07/01/98	02/01/99
95–02–C–02–STL, St. Louis, MO	01/08/98	86,214,867	92,214,867	02/01/98	03/01/98
95–02–C–03–STL, St. Louis, MO	01/08/98	92,214,867	108,214,867	03/01/98	07/01/98
94–02–C–02–FLL, Fort Lauderdale, FL	01/09/98	72,931,754	54,048,754	08/01/99	09/01/98
95–01–C–02–MKE, Milwaukee, WI	01/13/98	26,629,277	25,522,277	01/01/99	12/01/05
95–02–U–01–MKE, Milwaukee, WI	01/13/98	0	0	01/01/99	12/01/05
95–03–C–01–MKE, Milwaukee, WI	01/13/98	32,037,000	66,117,000	04/01/02	12/01/05

Issued in Washington, DC on February 17, 1998.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 98–5112 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

CSX Transportation, Incorporated (Waiver Petition Docket Number PB–97–10)

CSX Transportation, Incorporated (CSXT) seeks a temporary waiver of compliance from certain provisions of the Railroad Power Brake and Drawbars regulations, 49 CFR Section 232.25(d), concerning the calibration of the front unit of a two-way end-of-train device. CSXT had originally requested relief from the calibration and labeling requirements for all front units until December 31, 1997, PB–97–10, 62 FR 49291 (September 19, 1997). In a letter dated December 12, 1997, CSXT requested the date for this temporary relief be extended to May 1, 1998.

Section 232.25(d) states, The telemetry equipment shall be calibrated for accuracy according to the manufacturer's specifications at least every 365 days. The date of the last calibration, the location where the calibration was made, and the name of the person doing the calibration shall be legibly displayed on a weather-resistant sticker or other marking device affixed to the outside of both the front unit and rear unit. The Two-Way End-of-Train Device Final Rule was published on January 2, 1997, and became effective July 1, 1997. FRA provided a grace period until September 1, 1997, for railroads to accomplish the calibration and labeling requirements of front units.

CSXT indicates they have calibrated and labeled approximately 700 of its nearly 2,700 total HTDs. This work was performed on all new units purchased and on all units that were removed from a locomotive and sent to the communications shop for any reason. Completion of the calibration requirements for units that did not enter the radio shop was dependent on development and availability of an on-board tester being developed by Pulse Electronics. This on-board tester was a cooperative effort by Pulse and Hewlett-Packard, which took longer to complete than was originally anticipated. CSXT was originally promised the tester in October, but a prototype was not delivered until November 24. The final product was available on December 8, 1997. In view of the unavoidable delay which was necessary to properly develop this device, CSXT states it will be unable to comply with the calibration and labeling requirements by December 31, 1997. CSXT believes they will be able to calibrate all locomotives by May 1, 1998, as the locomotives receive their periodic inspections. CSXT also points out that they feel they have provided a service to the entire industry by facilitating the development of an on-board device which can be used to meet the requirements of 232.25(d)

For all of the reasons set forth in the original waiver petition, CSXT feels there is absolutely no reason to believe that any adverse effect on safety would result from granting this short extension of their original temporary waiver request.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number PB–97–10) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, N.W., Room 7051, Washington, D.C. 20005.

Issued in Washington, D.C. on February 24, 1998.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 98–5078 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA Docket No. 94–021; Notice 4]

Highway Safety Programs; Model Specifications for Devices To Measure Breath Alcohol

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice amends the Conforming Products List for instruments that conform to the Model Specifications for Evidential Breath Testing Devices (58 FR 48705).

EFFECTIVE DATE: February 27, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. James F. Frank, Office of Traffic Injury Control Programs, Impaired Driving Division (NTS–11), National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590; Telephone: (202) 366–5593.

SUPPLEMENTARY INFORMATION: On November 5, 1973, the National Highway Traffic Safety Administration (NHTSA) published the Standards for Devices to Measure Breath Alcohol (38 FR 30459). A Qualified Products List of Evidential Breath Measurement Devices comprised of instruments that met this standard was first issued on November 21, 1974 (39 FR 41399).

On December 14, 1984 (49 FR 48854), NHTSA converted this standard to Model Specifications for Evidential Breath Testing Devices, and published a Conforming Products List (CPL) of instruments that were found to conform to the Model Specifications as Appendix D to that notice (49 FR 48864).

On September 17, 1993, NHTSA published a notice (58 FR 48705) to amend the Model Specifications. The notice changed the alcohol concentration levels at which instruments are evaluated, from 0.000, 0.050, 0.101, and 0.151 BAC, to 0.000, 0.020, 0.040, 0.080, and 0.160 BAC; added a test for the presence of acetone; and expanded the definition of alcohol to include other low molecular weight alcohols including methyl or isopropyl. On January 30, 1996, the most recent amendment to the Conforming Products List (CPL) was published (61 FR 3078), identifying those instruments found to conform with the Model Specifications.

Since the last publication of the CPL, six (6) instruments have been evaluated and found to meet the model specifications, as amended on September 17, 1993, for mobile and non-mobile use. They are: (1) Alcohol Data Sensor, manufactured by Life Loc, Inc.; (2) PBA3000C, jointly manufactured by Life Loc, Inc. and Alcohol Countermeasure Systems Corp. (3) RBT IV with CEM ("cell enhancement module"), manufactured by Intoximeters, Inc.; (4) Intoxilyzer 5000EN, an enhanced version of the Intoxilyzer 5000 CD/FG5 already on the CPL, manufactured by CMI, Inc. The Intoxilyzer 5000 EN is also sold by Lion Laboratories, a subsidiary of MPH, Inc., the same parent company that also owns CMI, Inc. Therefore, the Intoxilyzer 5000 EN is also listed under Lion Laboratories; (5) DataMaster cdm, manufactured by National Patent Analytical Systems, Inc.; and (6) Alco Master, manufactured in France by Seres and sold in the United States by Sound-Off, Inc. Therefore, it is listed under Seres as well as under Sound-Off, Inc.

The CPL has been amended to add these six instruments to the list. The CPL has also been amended to reflect the following changes:

(1) The Alcotest 7110 MK III, manufactured by National Draeger, Inc., is now also made with an internal computer communications feature as a standard capability of the instrument. The enhanced version of the device with the new computer communications capability, will be sold as the Alcotest 7110 MKIII–C. This new designation is added to the CPL, though NHTSA made the judgment that additional testing of the enhanced device was not necessary because the enhancements have no bearing on the alcohol measuring capability of the device.

(2) The Breathalyzer 7410–II, manufactured by National Draeger, has been enhanced with a version that allows the transfer of data to a computer. The new version will be designated as the Alcotest 7410 Plus. This new designation is added to the CPL, though NHTSA made the judgment that additional testing of the enhanced device was not necessary because the enhancements have no bearing on the alcohol measuring capability of the device.

(3) The BAC Systems Breath Analysis Computer, last tested in 1981, was previously listed only as a non-mobile device. It should have been listed as a mobile and non-mobile device. This error has been corrected in this CPL.

(4) Alcohol Countermeasure Systems, Inc. was previously located in Ft. Huron, MI. The company is now located in Mississauga, Ontario, Canada, and it has changed its name to Alcohol Countermeasure Systems Corp. This change is reflected in the amended CPL.

(5) Each of the National Patent Analytical Systems, Inc. DataMaster instruments are now available with a "Delta-1" optional accessory. This accessory allows for the discrimination of toluene and methanol, an additional feature that is not required in the NHTSA model specifications for evidential breath test devices. NHTSA has determined that additional testing of the enhanced devices with the Delta-1 optional accessory was not necessary because this additional feature does not affect the alcohol measurement capabilities of the DataMaster instruments.

In accordance with the foregoing, the CPL is therefore amended, as set forth below.

Conforming Products List of Evidential Breath Measurement Devices

Manufacturer and model	Mobile	Nonmobile
Alcohol Countermeasure Systems Corp., Mississauga, Ontario, Canada:		
Alert J3AD*	X	X
PBA3000C	X	X
BAC Systems, Inc., Ontario, Canada: Breath Analysis Computer*	X	X
CAMEC Ltd., North Shields, Tyne and Ware, England: IR Breath Analyzer*	X	X
CMI, Inc., Owensboro, KY:		
Intoxilyzer Model:		
200	X	X
200D	X	X
300	X	X
400	X	X
1400	X	X
4011*	X	X

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer and model	Mobile	Nonmobile
4011A*	X	X
4011AS*	X	X
4011AS–A*	X	X
4011AS–AQ*	X	X
4011 AW*	X	X
4011A27–10100*	X	X
4011A27–10100 with filter*	X	X
5000	X	X
5000 (w/Cal. Vapor Re-Circ.)	X	X
5000 (w/⅜″ ID Hose option)	X	X
5000CD	X	X
5000CD/FG5	X	X
5000EN	X	X
5000 (CAL DOJ)	X	X
5000VA	X	X
PAC 1200*	X	X
S–D2	X	X
Decator Electronics, Decator, IL: Alco-Tector model 500*	.....	X
Gall's Inc., Lexington, KY: Alcohol Detection System-A.D.S. 500	X	X
Intoximeters, Inc., St. Louis, MO:		
Photo Electric Intoximeter*	.....	X
GC Intoximeter MK II*	X	X
GC Intoximeter MK IV*	X	X
Auto Intoximeter*	X	X
Intoximeter Model:		
3000*	X	X
3000 (rev B1)*	X	X
3000 (rev B2)*	X	X
3000 (rev B2A)*	X	X
3000 (rev B2A) w/FM option*	X	X
3000 (Fuel Cell)*	X	X
03000 D*	X	X
3000 DFC*	X	X
Alcomonitor	.....	X
Alcomonitor CC	X	X
Alco–Sensor III	X	X
Alco-Sensor IV	X	X
RBT III	X	X
RBT III–A	X	X
RBT IV	X	X
RBT IV with CEM (cell enhancement module)	X	X
Intox EC–IR	X	X
Portable Intox EC–IR	X	X
Komyo Kitagawa, Kogyo, K.K.:		
Alcolyzer DPA–2*	X	X
Breath Alcohol Meter PAM 101B*	X	X
Life-Loc, Inc., Wheat Ridge, CO:		
PBA 3000B	X	X
PBA 3000–P*	X	X
PBA 3000C	X	X
Alcohol Data Sensor	X	X
Lion Laboratories, Ltd., Cardiff, Wales, UK:		
Alcolmeter Model:		
300	X	X
400	X	X
AE–D1*	X	X
SD–2*	X	X
EBA*	X	X
Auto-Alcolmeter*	.....	X
Intoxilyzer Model:		
200	X	X
200D	X	X
1400	X	X
5000 CD/FG5	X	X
5000 EN	X	X
Luckey Laboratories, San Bernadino, CA:		
Alco-Analyzer Model:		
1000*	.....	X
2000*	.....	X
National Draeger, Inc., Durango, CO:		
Alcotest Model:		
7010*	X	X

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer and model	Mobile	Nonmobile
7110*	X	X
7110 MKIII	X	X
7110 MKIII–C	X	X
7410	X	X
Breathalyzer Model:		
900*	X	X
900A*	X	X
900BG*	X	X
7410	X	X
7410–II	X	X
7410 Plus	X	X
National Patent Analytical Systems, Inc., Mansfield, OH:		
BAC DataMaster (with or without the Delta–1 accessory)	X	X
BAC Verifier Datamaster (with or without the Delta–1 accessory)	X	X
DataMaster cdm (with or without the Delta–1 accessory)	X	X
Omicron Systems, Palo Alto, CA:		
Intoxilyzer Model:		
4011*	X	X
4011AW*	X	X
Plus 4 Engineering, Minturn, CO: 5000 Plus4*	X	X
Seres, Paris, France: Alco Master	X	X
Siemans-Allis, Cherry Hill, NJ:		
Alcomat*	X	X
Alcomat F*	X	X
Smith and Wesson Electronics, pringfield, MA:		
Breathalyzer Model:		
900*	X	X
900A*	X	X
1000*	X	X
2000*	X	X
2000 (non-Humidity Sensor)*	X	X
Sound-Off, Inc., Hudsonville, MI:		
AlcoData	X	X
Seres Alco Master	X	X
Stephenson Corp.: Breathalyzer 900*	X	X
U.S. Alcohol Testing, Inc./Protection Devices, Inc., Rancho Cucamonga, CA:		
Alco-Analyzer 1000		X
Alco-Analyzer 2000		X
Alco-Analyzer 2100	X	X
Verax Systems, Inc., Fairport, NY:		
BAC Verifier*	X	X
BAC Verifier Datamaster	X	X
BAC Verifier Datamaster II*	X	X

*Instruments marked with an asterisk (*) meet the Model Specifications detailed in 49 FR 48854 (December 14, 1984) (i.e., instruments tested at 0.000, 0.050, 0.101, and 0.151 BAC). Instruments not marked with an asterisk meet the Model Specifications detailed in 58 FR 48705 (September 17, 1993), and were tested at BACs = 0.000, 0.020, 0.040, 0.080, and 0.160.

(23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501.1)

Issued on: February 24, 1998.

James L. Nichols,

Acting Associate Administrator for Traffic Safety Programs.

[FR Doc. 98–5093 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3514]

Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

SUMMARY: This notice announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

DATE: These decisions are effective February 27, 1998.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally

manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. § 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 23, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

Annex A—Nonconforming Motor Vehicles Decided to be Eligible for Importation

1. Docket No. NHTSA–97–3067
   Nonconforming Vehicles: 1992–1994 Kawasaki EL250 Motorcycles
   Substantially similar U.S.-certified vehicles: 1992–1994 Kawasaki EX–250 Motorcycles
   Notice of Petition published at: 62 FR 60558 (November 20, 1997)
   Vehicle Eligibility Number: VSP–233
2. Docket No. NHTSA–97–3137
   Nonconforming Vehicles: 1974 Alfa Romeo GTV
   Substantially similar U.S.-certified vehicles: 1974 Alfa Romeo GTV
   Notice of Petition published at: 62 FR 63412 (November 28, 1997)
   Vehicle Eligibility Number: VSP–234
3. Docket No. NHTSA–97–3189
   Nonconforming Vehicles: 1994–1998 Mercedes-Benz S320
   Substantially similar U.S.-certified vehicles: 1994–1998 Mercedes-Benz S320
   Notice of Petition published at: 62 FR 65126 (December 10, 1997)
   Vehicle Eligibility Number: VSP–236
4. Docket No. NHTSA–97–3190
   Nonconforming Vehicles: 1994–1997 Mercedes-Benz S500
   Substantially similar U.S.-certified vehicles: 1994–1997 Mercedes-Benz S500
   Notice of Petition published at: 62 FR 65124 (December 10, 1997)
   Vehicle Eligibility Number: VSP–235

[FR Doc. 98–5076 Filed 2–26–98; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3513]

Decision That Nonconforming 1972–1979 Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Beetle Sedans Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1972–1979 Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Beetle Sedans are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1972–1979 Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Beetle Sedans not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 1972–1979 Volkswagen Beetle Convertible and 1972–1977 Volkswagen Beetle Sedan), and they are capable of being readily altered to conform to the standards.

DATE: This decision is effective February 27, 1998.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) petitioned NHTSA to decide whether 1972–1979 Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Beetle Sedans are eligible for importation into the United States. NHTSA published notice of the petition under Docket No. 97–066; Notice 1 on September 30, 1997 (62

FR 51179) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition, from Volkswagen of America, Inc. ("Volkswagen"), the United States representative of Volkswagenwerke A.G., the vehicles' manufacturer. In this comment, Volkswagen stated that because the Volkswagen Beetle was provided for the United States market in a number of configurations during the 1972–1979 model years, it is not possible to establish standardized modification requirements for all of the vehicles available during those years. Volkswagen noted that there were differences in equipment and construction between the Custom Beetle series, the Super Beetle series, and the Convertible series that were manufactured during the 1972–1979 model years. As a consequence, Volkswagen contended that it would be necessary to compare vehicles by model year and series to their U.S. certified counterparts to determine which modifications would be necessary to achieve full compliance with all applicable Federal motor vehicle safety standards.

Volkswagen also contended that modifications would have to be performed on the vehicles to meet standards in addition to those identified by Champagne. Specifically, Volkswagen stated that non-U.S. certified Beetles would have to be equipped with different wiper blades and wiper arms to meet Standard No. 103, *Windshield Defrosting and Defogging Systems*, and 104, *Windshield Wiping and Washing Systems*. Volkswagen also noted that non-U.S. certified Beetles may have to be equipped with different tires to meet Standard No. 109, *New Pneumatic Tires*. Volkswagen further contended that U.S. certified Beetles were equipped with head restraints or high backed seats to meet Standard No. 202, *Head Restraints*, and that non-U.S certified models would have to be similarly equipped before they could meet that standard. Additionally, Volkswagen observed that some steering wheel configurations on non-U.S. certified Beetles may not comply with Standard No. 203, *Impact Protection for the Driver from the Steering Control System*. Volkswagen also noted that non-U.S. certified Beetles in some cases were not equipped with laminated windshields, as required by Standard No. 205, *Glazing Materials*. Volkswagen further contended that in order to meet Standard No. 208, *Occupant Crash Protection*, the seat belts in non-U.S. certified Beetles would have to be compared to those on their U.S. certified counterparts and replaced if their part numbers were not the same. Although it acknowledged that non-U.S. certified Beetles have doors with side impact bars, Volkswagen stated that these vehicles may have door latches and hinges that differ from those on U.S. certified models, and that these components would have to be replaced for the vehicles to comply with Standard No. 214, *Side Impact Protection*. Additionally, Volkswagen contended that non-U.S. certified Beetles have different windshields and incorporate different windshield mounting methods than those used on U.S. certified models, affecting the vehicles' compliance with Standard Nos. 212, *Windshield Mounting*, and 219, *Windshield Zone Intrusion*. Finally, Volkswagen contended that in order to determine whether a non-U.S. certified Beetle complies with the Bumper Standard found in 49 CFR Part 581, not only must the bumper components themselves be compared to those on U.S. certified models, but the bumper reinforcements and upgraded body structure elements must be compared as well.

NHTSA accorded Champagne an opportunity to respond to Volkswagen's comment. In its response, Champagne stated that it will compare the wiper blades and wiper arms on all non-U.S. certified Beetles that it imports to those found on U.S. certified models and replace any such components that are not identical to assure compliance with Standard Nos. 103 and 104. Champagne stated that it will perform a similar comparison and component replacement, where necessary, to assure that the vehicles are equipped with tires that meet Standard No. 109, with headrests or seats that meet Standard No. 202, with steering wheels that meet Standard No. 213, with glazing that meets Standard No. 205, with seat belts that meet Standard No. 208, and with windshields that are installed in compliance with Standard Nos. 212 and 219. Champagne disputed Volkswagen's contention that some non-U.S. certified Beetles do not comply with Standard No. 203 and have door hinges and latches that do not meet Standard No. 214. Champagne contended that the installation of side impact beams is the only modification necessary to conform a non-U.S. certified Beetle to Standard No. 214. Additionally, Champagne denied that it would be necessary to reinforce or upgrade body or structural elements for a non-U.S. certified Beetle to meet the Bumper Standard. Champagne contended instead that the structural mounting points for both U.S. certified and non-U.S. certified models are identical. In conclusion, Champagne confirmed that each vehicle it imports under the petition would be reviewed on a case-by-case basis to assure that any nonconformity is addressed during the conversion process.

NHTSA believes that Champagne's response adequately addresses the issues that Volkswagen has raised regarding the petition. NHTSA further notes that the modifications described by Champagne, which have been performed with relative ease on thousands of motor vehicles imported over the years, would not preclude non-U.S. certified Volkswagen Beetles from being found "capable of being readily altered to comply with applicable motor vehicle safety standards."

NHTSA has accordingly decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–237 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1972–1979 Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Beetle Sedans are substantially similar to 1972–1979 Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Beetle Sedans car originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 23, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–5077 Filed 2–26–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20916][1]

Coach USA, Inc., and Coach XXIII Acquisition, Inc.—Control—Americoach Tours, Ltd.; Keeshin Charter Services, Inc.; Keeshin Transportation, L.P.; Niagara Scenic Bus Lines, Inc.; and Pawtuxet Valley Bus Lines

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: Coach USA, Inc. (Coach), a noncarrier, and its wholly owned noncarrier subsidiary, Coach XXIII Acquisition, Inc. (Coach Acquisition) (collectively, applicants), filed an application under 49 U.S.C. 14303 to acquire control of Americoach Tours, Ltd. (Americoach), Keeshin Charter Services, Inc. (Keeshin), Keeshin Transportation, L.P. (KTLP), Niagara Scenic Bus Lines, Inc. (Niagara), and Pawtuxet Valley Bus Lines (Pawtuxet), all motor passenger carriers. Persons wishing to oppose the application must follow the rules under 49 CFR part 1182, subpart B. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments are due by April 13, 1998. Applicants may file a reply by May 4, 1998. If no comments are received by April 13, 1998, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of comments referring to STB Docket No. MC–F–20916 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representatives: Betty Jo Christian and David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Coach currently controls 35 motor passenger carriers.[2] In this transaction, it seeks to acquire direct control of Americoach,[3] Niagara,[4] and Pawtuxet,[5] by acquiring all of the outstanding stock of these carriers, and indirect control of Keeshin[6] and KTLP,[7] through the acquisition, by Coach Acquisition,[8] of all of the outstanding stock of Keeshin and the general partnership interest in KTLP. According to applicants, the stock (or, in the case of KTLP, the partnership interest) of each of the carriers to be acquired is currently held in separate, independent voting trusts to avoid any unlawful control pending disposition of this proceeding.

Applicants submit that there will be no transfer of any federal or state operating authorities held by the acquired carriers. Following the consummation of the control transactions, each of the acquired carriers will continue operating in the same manner as before and, according to applicants, granting the application will not reduce competitive options available to the traveling public. They assert that the acquired carriers do not compete to any meaningful degree with one another or with any Coach-owned carrier. Applicants submit that each of the acquired carriers is relatively small and each faces substantial competition from other bus companies and transportation modes.

Applicants also submit that granting the application will produce substantial benefits, including interest cost savings from the restructuring of debt and reduced operating costs from Coach's enhanced volume purchasing power. Specifically, applicants claim that the carriers to be acquired will benefit from the lower insurance premiums negotiated by Coach and from volume discounts for equipment and fuel. Applicants indicate that Coach will provide each of the carriers to be acquired with centralized legal and accounting functions and coordinated purchasing services. In addition, they state that vehicle sharing arrangements will be facilitated through Coach to ensure maximum use and efficient operation of equipment and that, with Coach's assistance, coordinated driver training services will be provided, enabling each carrier to allocate driver resources in the most efficient manner possible. Applicants also state that the proposed transaction will benefit the employees of the acquired carriers and that all collective bargaining agreements will be honored by Coach.

Coach plans to acquire control of additional motor passenger carriers in the coming months. It asserts that the financial benefits and operating efficiencies will be enhanced further by these subsequent transactions. Over the long term, Coach states that it will provide centralized marketing and reservation services for the bus firms that it controls, thereby further enhancing the benefits resulting from these control transactions.

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[1] This proceeding was originally docketed as STB Finance Docket No. 33534.

[2] In addition to the instant proceeding in which it seeks to acquire control of five additional motor passenger carriers, Coach has two pending proceedings: *Coach USA, Inc.—Control Exemption—Browder Tours, Inc. and El Expreso, Inc.*, STB Finance Docket No. 33506 (STB filed Oct. 31, 1997), in which it seeks to acquire control of two additional motor passenger carriers; and *Coach USA, Inc.—Control—Airport Limousine Service, Inc. and Black Hawk-Central City Ace Express, Inc.*, STB MC–F–20917 (STB filed Feb. 12, 1998), in which it seeks to acquire control of two additional motor passenger carriers.

[3] Americoach is a Tennessee corporation. It holds federally issued operating authority in MC–212649 and intrastate operating authority issued by the Tennessee Public Service Commission. Americoach provides charter operations primarily in Tennessee, Arkansas, Mississippi and Missouri, with occasional operations in other states. The carrier operates 25 buses; it has 51 employees; and it earned revenues of approximately $2.9 million in 1996. Prior to the transfer of its stock into a voting trust, it had been owned by Shearon L. Breazeale and Philip L. Breazeale.

[4] Niagara is a New York corporation. It holds federally issued operating authority in MC–30787, intrastate operating authority issued by the New York Department of Transportation, and authority issued by the Province of Ontario, Canada. Niagara provides regular-route commuter service along routes within western New York and charter and tour operations between points in western New York and points in the United States. The carrier operates 21 buses; it has 75 employees; and it earned revenues of approximately $6.6 million in 1996. Prior to the transfer of its stock into a voting trust, it had been owned by Keith A. Fisher and Molly J. Schmitt.

[5] Pawtuxet is a Rhode Island corporation. It holds federally issued operating authority in MC–115432, intrastate operating authority in Connecticut, and operating authority within the Province of New Brunswick, Canada. Pawtuxet provides special and charter operations between points in Massachusetts, Connecticut, and Rhode Island and other points in the United States. The carrier operates 30 buses; it has 57 employees; and it earned revenues of approximately $2.5 million in 1996. Prior to the transfer of its stock into a voting trust, it had been owned by Ernest A. Archambault and Stephen P. Archambault.

[6] Keeshin is an Illinois corporation. It holds federally issued operating authority in MC–118044. Keeshin provides charter, group tours and shuttle operations from points in Illinois to various points in the United States. The carrier operates 47 buses; it has 102 employees; and it earned gross revenues of approximately $13.03 million in 1996. Prior to the transfer of its stock into a voting trust, it had been owned by Paul A. Keeshin.

[7] KTLP is a Delaware limited partnership. It holds federally issued operating authority in MC–263222. KTLP provides charter and special operations between points in the United States (except Hawaii) and commuter and shuttle bus services in the Chicago area. KTLP also owns a limited partnership interest in O'Hare Shuttle Partners, L.P., a non-federally regulated entity, which provides shuttle bus service at Chicago's O'Hare Airport. The carrier operates 18 buses; it has 75 employees; and it earned revenues of approximately $3.6 million in the first 9 months of 1996. Prior to the transfer of the general partnership interest in KTLP into a voting trust, the general partnership interest had been held by Keeshin. Paul A. Keeshin Trust, Brett Keeshin O'Hare Trust, and Neal Keeshin O'Hare Trust also held limited partnership interests in KTLP.

[8] Coach Acquisition is a Delaware corporation that was established for the purpose of serving as a holding company with respect to the transaction involving Keeshin and KTLP.

Applicants certify that the pertinent carrier parties hold satisfactory safety ratings from the U.S. Department of Transportation; that they have sufficient liability insurance; that they are neither domiciled in Mexico nor owned or controlled by persons of that country; and that approval of the transaction will not significantly affect either the quality of the human environment or the conservation of energy resources. Additional information may be obtained from applicants' representatives.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) the effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If opposing comments are timely filed, this finding will be deemed vacated and a procedural schedule will be adopted to reconsider the application. If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed vacated.

3. This decision will be effective on April 13, 1998, unless timely opposing comments are filed.

4. A copy of this notice will be served on the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530.

Decided: February 20, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–5109 Filed 2–26–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20915]

Suburban Transit Corp., et al.—Pooling—American Limousine Service, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed coordinated service and revenue pooling application.

SUMMARY: Suburban Transit Corp. (Suburban Transit) and Suburban Trails, Inc. (Suburban Trails) (collectively Suburban), both of New Brunswick, NJ, and American Limousine Service, Inc. (American), of Hamilton Township, NJ, jointly seek approval of a coordinated service and revenue pooling agreement under 49 U.S.C. 14302, with respect to their motor passenger transportation services between a park and ride facility near Exit 8A of the New Jersey Turnpike and routes feeding that facility, and New York, NY (the "8A Area Service").

DATES: Comments on the proposed agreement may be filed with the Board in the form of verified statements on or before March 30, 1998. If comments are filed, applicants' rebuttal statement is due on or before April 20, 1998.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20915 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of any comments to each of applicants' representatives: (1) Betty Jo Christian, Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, DC 20036; and (2) Joseph J. Ferrara, Ferrara & Associates, 921 Bergen Avenue, #806, Jersey City, NJ 07306.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Under the proposed pooling agreement, applicants seek approval to pool a portion of their services over routes which they both operate and to share the revenues derived from their operations over those routes.

Suburban Transit, a commuter bus carrier, holds operating authority in No. MC–115116 and operates from Middlesex, Somerset and Mercer counties in central New Jersey to New York City along numerous routes.

Suburban Trails holds operating authority in No. MC–149081 and operates two regular routes: the Route 9 corridor service, in coordination with New Jersey Transit, and the Hightstown "8A Area Service," the route involved in the instant pooling application. Suburban Trails also operates domestic and international charter service.

American holds operating authority in No. MC–186879 and operates, in addition to the routes involved here, two intrastate routes between points in Middlesex and Mercer Counties and Atlantic City, NJ, as well as interstate and intrastate charter service.

Applicants are competitors on the "8A Area Service" route. Because their competing services are performed at nearly the same scheduled times, which causes both carriers to operate only partially loaded buses, applicants claim that their operations are inefficient and costly. As a consequence, they state that they are unable to compete effectively with Amtrak, New Jersey Transit, van pools, and private automobiles.

Applicants assert that there is substantial intermodal competition on the pooled route to protect the public and that the pooling agreement does not threaten to produce an unreasonable restraint on competition. They note keen competition from other modes of passenger travel in the area, including 4 commuter hour trains operated by Amtrak, 12 commuter hour trains operated by New Jersey Transit, vanpools, and private automobiles.

Pooled services, according to applicants, will enable them to increase their passenger load per bus, thereby reducing their overall cost of operations, and, in turn, make their services more competitive. In addition, applicants point out that pooling their operations will benefit passengers by: (1) Providing a greater choice of departure times; (2) allowing applicants to honor each other's tickets; (3) arranging for PM departures from the same departure area; (4) utilizing a common dispatcher where feasible; and (5) accepting passengers from disabled buses in the event of a breakdown. By pooling their revenues, applicants expect to enhance their financial stability in a manner that neither could achieve alone through individual operations in the 8A Area Service. This, in turn, will improve service to the public by allowing applicants to better manage their pricing structures and capital improvements, including the replacement of vehicles.

Applicants state that they are not domiciled in Mexico and are not owned or controlled by persons of that country. Moreover, they assert that approval of the application will not significantly affect either the quality of the human environment or the conservation of energy resources. Rather, they claim that

the transaction will result in the conservation of fuel and the reduction of emissions.

Copies of the pooling application may be obtained free of charge by contacting applicants' representatives. Alternatively, the pooling application may be inspected at the offices of the Surface Transportation Board, Room 755, during normal business hours. A copy of the notice will be served on the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530.

Decided: February 18, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–4831 Filed 2–26–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33554]

Twin Cities & Western Railroad Company, Corporate Family Transaction Exemption, Minnesota River Bridge Company

Twin Cities & Western Railroad Company (TCW) and Minnesota River Bridge Company (MRBC),[1] Class III railroads, have jointly filed a verified notice of exemption. The exempt transaction is a merger of MRBC into TCW, with TCW as the surviving corporation.

The transaction is expected to be consummated on or after February 24, 1998.

The proposed merger will enable the surviving carrier to operate the rail lines more efficiently without affecting the current operations over the rail lines.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33554, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Jo A. DeRoche, Esq., Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, N.W., Suite 800, Washington, DC 20005–4797.

Decided: February 23, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–5110 Filed 2–26–98; 8:45 am]

BILLING CODE 4915–00–P

[1] TCW and MRBC are owned and controlled by Douglas M. Head, Kent P. Shoemaker, and Charles H. Clay. TCW operates in the States of Minnesota and South Dakota, and MRBC operates in the State of Minnesota.

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ISS
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federal register

Friday
February 27, 1998

Part II

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

February 20, 1998.

Dear Mr. President:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report 24 proposed rescissions of budgetary resources, totaling $20 million.

These proposed rescissions affect programs of the Departments of Agriculture, the Interior, and Transportation.

Sincerely,

William J. Clinton

The Honorable Albert Gore, Jr.
President of the Senate
Washington, D.C. 20510

February 20, 1998.

Dear Mr. Speaker:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report 24 proposed rescissions of budgetary resources, totaling $20 million.

These proposed rescissions affect programs of the Departments of Agriculture, the Interior, and Transportation.

Sincerely,

William J. Clinton

The Honorable Newt Gingrich
Speaker of the House of Representatives
Washington, D.C. 20515

BILLING CODE 3110-01-P

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	Total, rescissions	20,060

Department of Agriculture

Agricultural Research Service

Of the funds made available under this heading in Public Law 105–86, $223,000 are rescinded.

Rescission Proposal No. R98-1

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $ 744,605,000 (P.L. 105-86)
BUREAU: Agricultural Research Service	Other budgetary resources.. $ 42,000,000
Appropriations title and symbol: Agricultural Research Service 1261400	Total budgetary resources... $ 786,605,000
	Amount proposed for rescission..... $ 223,000
OMB identification code: 12-1400-0-1-352	**Legal authority (in addition to sec. 1012):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [X] Annual [ ] Multi-year: _____ (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: The Agricultural Research Service (ARS) conducts research to provide the means for a safer, more economical supply of agricultural products for the Nation and to provide producers with technologies to supply these products competitively. The proposed rescission is based on the affected program's FTE level and an estimate of its impact on the Department's civil rights resources, and is intended to offset supplemental appropriations for the Department's Civil Rights Initiative. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None. These reductions can be absorbed within the available resources and would have a negligible impact on the program.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
743,000	742,822	-178	-45	—	—	—	—

Department of Agriculture

Animal and Plant Health Inspection Service

Salaries and expenses

Of the funds made available under this heading in Public Law 105–86, $350,000 are rescinded.

Rescission Proposal No. R98-2

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... (P.L. 105-86) $ 426,282,000 Other budgetary resources.. $ 151,000,000 Total budgetary resources... $ 577,282,000
BUREAU: Animal and Plant Health Inspection Service	
Appropriations title and symbol: Salaries and expenses 1281600 12X1600	Amount proposed for rescission..... $ 350,000
OMB identification code: 12-1600-0-1-352	**Legal authority (in addition to sec. 1012):** ☒ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☒ Annual ☐ Multi-year: _____ (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: The major objectives of the Animal and Plant Health Inspection Service (APHIS) are to protect the animal and plant resources of the Nation from destructive pests and diseases. The proposed rescission is based on the affected program's FTE level and an estimate of its impact on the Department's civil rights resources, and is intended to offset supplemental appropriations for the Department's Civil Rights Initiative. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None. These reductions can be absorbed within the available resources and would have a negligible impact on the program.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
406,000	405,705	-295	-55	—	—	—	—

Department of Agriculture

Food Safety and Inspection Service

Of the funds made available under this heading in Public Law 105–86, $502,000 are rescinded.

Rescission Proposal No. R98-3

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $ 589,263,000 (P.L. 105-86)
BUREAU: Food Safety and Inspection Service	Other budgetary resources.. $ 83,000,000
Appropriations title and symbol: Salaries and expenses 1283700 12X3700	Total budgetary resources... $ 672,263,000 Amount proposed for rescission..... $ 502,000
OMB identification code: 12-3700-0-1-554	**Legal authority (in addition to sec. 1012):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [X] Annual [ ] Multi-year: _____ (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: The primary objectives of the Food Safety and Inspection Service (FSIS) are to ensure that meat, poultry, and egg products are wholesome, unadulterated, and properly labeled and packaged. The proposed rescission is based on the affected program's FTE level and an estimate of its impact on the Department's civil rights resources, and is intended to offset supplemental appropriations for the Department's Civil Rights Initiative. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None. These reductions can be absorbed within the available resources and would have a negligible impact on the program.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
589,000	588,518	-482	-20	—	—	—	—

Department of Agriculture

Grain Inspection, Packers and Stockyards Administration

Salaries and expenses

Of the funds made available under this heading in Public Law 105–86, $38,000 are rescinded.

Rescission Proposal No. R98-4

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $ 23,928,000 (P.L. 105-86)
BUREAU: Grain Inspection, Packers and Stockyards Administration	Other budgetary resources.. $ _____
Appropriations title and symbol: Salaries and expenses 1282400	Total budgetary resources... $ 23,928,000
	Amount proposed for rescission..... $ 38,000
OMB identification code: 12-2400-0-1-352	**Legal authority (in addition to sec. 1012):** ☒ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☒ Annual ☐ Multi-year: _____ (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: The Grain Inspection, Packers and Stockyards Administration (GIPSA) establishes official United States standards for grain, promotes the uniform application thereof by official inspection personnel, provides for an official inspection system for grain, and regulates the weighing and certification of the weight of grain shipped in interstate or foreign commerce. The goal of the Packers and Stockyards program is to ensure the integrity of the livestock, meat, and poultry markets and the marketplace in order to protect producers against unfair, deceptive, or discriminatory practices as well as those that are predatory or monopolistic in nature. The proposed rescission is based on the affected program's FTE level and an estimate of its impact on the Department's civil rights resources, and is intended to offset supplemental appropriations for the Department's Civil Rights Initiative. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None. These reductions can be absorbed within the available resources and would have a negligible impact on the program.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
24,000	23,966	-34	-4	—	—	—	—

Department of Agriculture

Agricultural Marketing Service

Marketing services

Of the funds made available under this heading in Public Law 105–86, $25,000 are rescinded.

Rescission Proposal No. R98-5

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... (P.L. 105-86) $ 46,592,000
BUREAU: Agricultural Marketing Service	Other budgetary resources.. $ 98,000,000
Appropriations title and symbol: Marketing services 1282500	Total budgetary resources... $ 144,592,000
	Amount proposed for rescission..... $ 25,000
OMB identification code: 12-2500-0-1-352	**Legal authority (in addition to sec. 1012):** ☒ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☒ Annual ☐ Multi-year: _____ (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: The Agricultural Marketing Service (AMS) assists producers and handlers of agricultural commodities by providing a variety of marketing services. The proposed rescission is based on the affected program's FTE level and an estimate of its impact on the Department's civil rights resources, and is intended to offset supplemental appropriations for the Department's Civil Rights Initiative. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None. These reductions can be absorbed within the available resources and would have a negligible impact on the program.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
42,000	41,978	-22	-3	—	—	—	—

Department of Agriculture

Farm Service Agency

Salaries and expenses

Of the funds made available under this heading in Public Law 105–86, $1,080,000 are rescinded.

Rescission Proposal No. R98-6

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $ 700,659,000 (P.L. 105-86)
BUREAU: Farm Service Agency	Other budgetary resources.. $ 290,000,000
Appropriations title and symbol: Salaries and expenses 1280500	Total budgetary resources... $ 990,659,000
	Amount proposed for rescission..... $ 1,080,000
OMB identification code: 12-0600-0-1-351	**Legal authority (in addition to sec. 1012):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [X] Annual [ ] Multi-year: _____ (expiration date) [ ] No-Year	**Type of budget authority:** [X] Apprcpriation [ ] Contract authority [ ] Other _____

Justification: The Farm Service Agency (FSA) administers a variety of activities, such as farm income support programs; the Conservation Reserve Program and the Emergency Conservation Program; the warehouse examination function; farm ownership, farm operating, emergency disaster, and other loan programs; price support and production control programs for tobacco and peanuts; and the Non-insured Crop Disaster Assistance Program, which provides crop loss protection for growers of many crops for which crop insurance is not available. The proposed rescission is based on the affected program's FTE level and an estimate of its impact on the Department's civil rights resources, and is intended to offset supplemental appropriations for the Department's Civil Rights Initiative. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None. These reductions can be absorbed within the available resources and would have a negligible impact on the program.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
601,000	600,075	-925	-155	—	—	—	—

Department of Agriculture

Natural Resources Conservation Service

Conservation operations

Of the funds made available under this heading in Public Law 105–86, $378,000 are rescinded.

Rescission Proposal No. R98-7

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $ 644,421,000 (P.L. 105-86)
BUREAU: Natural Resources Conservation Service	Other budgetary resources . $ 131,000,000
Appropriations title and symbol: Conservation operations 12X1000	Total budgetary resources... $ 775,421,000
	Amount proposed for rescission..... $ 378,000
OMB identification code: 12-1000-0-1-300	**Legal authority (in addition to sec. 1012):** ☒ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: The Natural Resources Conservation Service (NRCS) provides technical assistance through conservation districts or special districts; conducts soil surveys and investigations; conducts snow survey water forecasting; operates plant materials centers; and, provides water resource assistance. The proposed rescission is based on the affected program's FTE level and an estimate of its impact on the Department's civil rights resources, and is intended to offset supplemental appropriations for the Department's Civil Rights Initiative. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None. These reductions can be absorbed within the available resources and would have a negligible impact on the program.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
654,000	653,667	-333	-45	—	—	—	—

Department of Agriculture

Rural Housing Service

Salaries and expenses

Of the funds made available under this heading in Public Law 105–86, $846,000 are rescinded.

Rescission Proposal No. R98-8

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... (P.L. 105-86) $ 58,804,000 Other budgetary resources.. $ 412,000,000 Total budgetary resources... $ 470,804,000
BUREAU: Rural Housing Service	
Appropriations title and symbol: Salaries and expenses 1281952	Amount proposed for rescission..... $ 846,000
OMB identification code: 12-1852-0-1-452	**Legal authority (in addition to sec. 1012):** ☒ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☒ Annual ☐ Multi-year: _____ (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: The Rural Housing Service (RHS) delivers rural housing and community facility programs through a series of State, area, and local offices. The proposed rescission is based on the affected program's FTE level and an estimate of its impact on the Department's civil rights resources, and is intended to offset supplemental appropriations for the Department's Civil Rights Initiative. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None. These reductions can be absorbed within the available resources and would have a negligible impact on the program.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
6,000	5,272	-728	-118	—	—	—	—

Department of Agriculture

Food and Nutrition Service

Child nutrition programs

Of the funds made available under this heading in Public Law 105–86, $114,000 are rescinded.

Rescission Proposal No. R98-9

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... (P.L. 105-86) $ 7,773,716,000
BUREAU: Food and Nutrition Service	Other budgetary resources.. $ 1,026,100,000
Appropriations title and symbol: Child nutrition programs 128/93539 127/83539	Total budgetary resources... $ 8,799,816,000
	Amount proposed for rescission..... $ 114,000
OMB identification code: 12-3539-0-1-605	**Legal authority (in addition to sec. 1012):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [X] Multi-year: September 30, 1999 (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: Payments are made for cash and commodity meal subsidies and certain discretionary activities as authorized by the School Lunch, School Breakfast, Summer Food Service, and Child and Adult Care Food programs. The proposed rescission of discretionary funds for computer support is based on the affected program's FTE level and an estimate of its impact on the Department's civil rights resources, and is intended to offset supplemental appropriations for the Department's Civil Rights Initiative. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None. These reductions can be absorbed within the available resources and would have a negligible impact on the program.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
8,796,000	8,795,886	-114	—	—	—	—	—

Department of Agriculture

Forest Service

National forest system

Of the funds made available under this heading in Public Law 105–83, $1,094,000 are rescinded.

Rescission Proposal No. R98-10

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... (P.L. 105-83) $ 1,348,377,000 Other budgetary resources.. $ 270,000,000 Total budgetary resources... $ 1,618,377,000
BUREAU: Forest Service	
Appropriations title and symbol: National forest system 12X1106	Amount proposed for rescission..... $ 1,094,000
OMB identification code: 12-1106-0-1-302	**Legal authority (in addition to sec. 1012):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: The national forest system (NFS) provides for the delivery of goods and services associated with the principal NFS programs of land management planning, inventory, and monitoring; recreation use; wildlife and fisheries habitat management; rangeland management; forestland management; soil, water, and air management; minerals and geology management; landownership management; infrastructure management; law enforcement; and general administration. The proposed rescission is based on the affected program's FTE level and an estimate of its impact on the Department's civil rights resources, and is intended to offset supplemental appropriations for the Department's Civil Rights Initiative. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None. These reductions can be absorbed within the available resources and would have a negligible impact on the program.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
1,400,000	1,399,070	-930	-164	—	—	—	—

Department of Agriculture

Forest Service

Reconstruction and construction

Of the funds made available under this heading in Public Law 105–83, $30,000 are rescinded.

Rescission Proposal No. R98-11

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $ 166,045,000 (P.L. 105-83)
BUREAU: Forest Service	Other budgetary resources.. $ 145,000,000
Appropriations title and symbol: Reconstruction and construction 12X1103	Total budgetary resources... $ 311,045,000
	Amount proposed for rescission..... $ 30,000
OMB identification code: 12-1103-0-1-302	**Legal authority (in addition to sec. 1012):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: This account provides for reconstruction, rehabilitation, upgrade, construction, and acquisition of facilities and for construction of roads and trails. The proposed rescission is based on the affected program's FTE level and an estimate of its impact on the Department's civil rights resources, and is intended to offset supplemental appropriations for the Department's Civil Rights Initiative. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None. These reductions can be absorbed within the available resources and would have a negligible impact on the program.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
178,000	177,983	-17	-13	—	—	—	—

Department of Agriculture

Forest Service

Forest and rangeland research

Of the funds made available under this heading in Public Law 105–83, $148,000 are rescinded.

Rescission Proposal No. R98-12

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $ 187,944,000 (P.L. 105-83)
BUREAU: Forest Service	Other budgetary resources.. $ 29,000,000
Appropriations title and symbol: Forest and rangeland research 12X1104	Total budgetary resources... $ 216,944,000
	Amount proposed for rescission..... $ 148,000
OMB identification code: 12-1104-0-1-302	**Legal authority (in addition to sec. 1012):** ☒ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: The mission of this account is to serve society by developing and communicating the scientific information and technology needed to protect, manage, use, and sustain the natural resources of the Nation's forests and rangelands. The proposed rescission is based on the affected program's FTE level and an estimate of its impact on the Department's civil rights resources, and is intended to offset supplemental appropriations for the Department's Civil Rights Initiative. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None. These reductions can be absorbed within the available resources and would have a negligible impact on the program.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
169,000	168,880	-120	-28	—	—	—	—

Department of Agriculture

Forest Service

State and private forestry

Of the funds made available under this heading in Public Law 105–83, $59,000 are rescinded.

Rescission Proposal No. R98-13

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... (P.L. 105-83) $ 161,237,000 Other budgetary resources.. $ 22,000,000 Total budgetary resources... $ 183,237,000
BUREAU: Forest Service	
Appropriations title and symbol: State and private forestry 12X1105	Amount proposed for rescission..... $ 59,000
OMB identification code: 12-1105-0-1-302	**Legal authority (in addition to sec. 1012):** ☒ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: This account provides assistance to manage, use, and protect forest resources on State, urban, and private lands to meet domestic and international demands for goods and services. The proposed rescission is based on the affected program's FTE level and an estimate of its impact on the Department's civil rights resources, and is intended to offset supplemental appropriations for the Department's Civil Rights Initiative. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None. These reductions can be absorbed within the available resources and would have a negligible impact on the program.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
161,000	160,956	-44	-15	—	—	—	—

Department of Agriculture

Forest Service

Wildland fire management

Of the funds made available under this heading in Public Law 105–83, $148,000 are rescinded.

Rescission Proposal No. R98-14

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... (P.L. 105-83) $ 584,707,000
BUREAU: Forest Service	Other budgetary resources.. $ 151,000,000
Appropriations title and symbol: Wildland fire management 12X1115	Total budgetary resources... $ 735,707,000
	Amount proposed for rescission..... $ 148,000
OMB identification code: 12-1115-0-1-302	**Legal authority (in addition to sec. 1012):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: This account provides for fire management, presuppression, and suppression on national forest system lands, adjacent State and private lands, and other lands under fire protection agreements. The proposed rescission is based on the affected program's FTE level and an estimate of its impact on the Department's civil rights resources, and is intended to offset supplemental appropriations for the Department's Civil Rights Initiative. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None. These reductions can be absorbed within the available resources and would have a negligible impact on the program.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
679,000	678,853	-147	-1	—	—	—	—

Department of the Interior

Bureau of Land Management

Management of lands and resources

Of the funds made available under this heading in Public Law 104–208, $1,188,000 are rescinded.

Rescission Proposal No. R98-15

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of the Interior	New budget authority..... (P.L. 105-83) $ 583,270,000
BUREAU: Bureau of Land Management	Other budgetary resources.. $ 103,850,000
Appropriations title and symbol: Management of lands and resources 14X1109	Total budgetary resources... $ 687,120,000
	Amount proposed for rescission..... $ 1,188,000
OMB identification code: 14-1109-0-1-302	**Legal authority (in addition to sec. 1012):** ☒ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: This account funds the management of land resources, wildlife and fisheries, threatened and endangered species, recreation management, energy and minerals, realty and ownership management, resource protection and maintenance, automated lands and minerals records system, workforce and organizational support, and Alaska mineral assessment. A rescission is proposed because balances remain from emergency funds provided in P.L. 104-208 to restore public lands damaged by fire. Actual restoration costs were lower than anticipated, in part because the treatment methods used cost less than the treatments originally anticipated. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
571,000	570,073	-927	-261	...	...	...	...

Department of the Interior

Bureau of Land Management

Oregon and California grant lands

Of the funds made available under this heading in Public Law 104–208, $2,500,000 are rescinded.

Rescission Proposal No. R98-16

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of the Interior	New budget authority..... $ 101,406,000 (P.L. 105-83)
BUREAU: Bureau of Land Management	Other budgetary resources.. $ 23,140,000
Appropriations title and symbol: Oregon and California grant lands 14X1116	Total budgetary resources... $ 124,546,000
	Amount proposed for rescission..... $ 2,500,000
OMB identification code: 14-1116-0-1-302	**Legal authority (in addition to sec. 1012):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: This account funds Western Oregon resources management, Western Oregon information and resource data systems, Western Oregon facilities management, Western Oregon construction and acquisition, and Jobs in the Woods. A rescission is proposed because balances remain from emergency funds provided in P.L. 104-208 to restore public lands in Oregon damaged by fire. Actual restoration costs were lower than anticipated, in part because the treatment methods used cost less than the treatments originally anticipated, and regular appropriations were used to treat damaged lands. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
116,000	114,350	-1,650	-750	-100	...	...	...

Department of the Interior

Bureau of Reclamation

Water and related resources

Of the funds made available under this heading in Public Law 104–206, $532,000 are rescinded.

Rescission Proposal No. R98-17

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of the Interior	New budget authority..... $ 694,348,000 (P.L. 105-62)
BUREAU: Bureau of Reclamation	Other budgetary resources.. $ 148,461,383
Appropriations title and symbol: Water and related resources 14X0680	Total budgetary resources... $ 842,809,383
	Amount proposed for rescission..... $ 532,000
OMB identification code: 14-0680-0-1-301	**Legal authority (in addition to sec. 1012):** ☒ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: This account funds the development, management, and restoration of water and related natural resources in the 17 Western States. A rescission is proposed because there will be project savings by taking rigorous steps to reduce costs for individual projects. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
806,000	805,569	-431	-101	...	...	...	...

Department of the Interior

Bureau of Mines

Mines and minerals

The following amounts, totaling $1,604,860, are rescinded from funds made available under this heading: in Public Law 103–332, $1,255,368; in Public Law 103–138, $59,831; in Public Law 102–381, $172,634; and in Public Law 102–154, $117,027.

Rescission Proposal No. R98-18

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of the Interior	New budget authority.....	$ _____
BUREAU: Bureau of Mines	Other budgetary resources..	$ 4,625,890
Appropriations title and symbol: Mines and minerals 14X0959	Total budgetary resources...	$ 4,625,890
	Amount proposed for rescission.....	$ 1,605,000
OMB identification code: 14-0959-0-1-306	**Legal authority (in addition to sec. 1012):** [X] Antideficiency Act [ ] Other _____	
Grant program: [ ] Yes [X] No		
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____	

Justification: This account funded the development and demonstration of environmental technologies to protect public lands and aquatic areas, improvements in worker health and safety, and development of minerals information and policy analysis. The program was terminated in 1996 and certain functions were transferred to other agencies. A rescission is proposed because funds from grants projects have been recaptured and are not available for other purposes. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
15,000	13,395	-1,605	...	...	...	...	...

Department of the Interior

United States Fish and Wildlife Service

Construction

Of the funds made available under this heading in Public Law 104–208, $1,188,000 are rescinded.

Rescission Proposal No. R98-19

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of the Interior	New budget authority..... $ 45,006,000 (P.L. 105-83)
BUREAU: United States Fish and Wildlife Service	Other budgetary resources.. $ 156,289,155
Appropriations title and symbol: Construction 14X1612	Total budgetary resources... $ 201,295,155
	Amount proposed for rescission..... $ 1,188,000
OMB identification code: 14-1612-0-1-303	**Legal authority (in addition to sec. 1012):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: This account funds facility construction and rehabilitation, energy conservation, pollution abatement and hazardous materials cleanup, and the repair and inspection of dams and bridges. A rescission is proposed because there will be project savings by taking rigorous steps to reduce costs for individual projects through value engineering, reducing scope, or using standardized designs. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
109,000	108,762	-238	-653	-297	...	...	...

Department of the Interior

National Park Service

Construction

Of the funds made available under this heading in Public Law 104–208, $1,638,000 are rescinded.

Rescission Proposal No. R98-20

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of the Interior	New budget authority..... (P.L. 105-83) $ 214,901,000
BUREAU: National Park Service	Other budgetary resources.. $ 292,234,428
Appropriations title and symbol: Construction 14X1039	Total budgetary resources... $ 507,135,428
	Amount proposed for rescission..... $ 1,638,000
OMB identification code: 14-1039-0-1-303	**Legal authority (in addition to sec. 1012):** ☒ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: This account funds construction; emergency, unscheduled, and housing projects; planning; general management plans; equipment replacement; and Elwha River restoration. A rescission is proposed because there will be project savings by taking rigorous steps to reduce costs for individual projects through value engineering reducing scope, or using standardized designs. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
217,000	216,754	-246	-491	-410	-328	-163	...

Department of the Interior

Bureau of Indian Affairs

Construction

Of the funds made available under this heading in Public Law 104–208, $737,000 are rescinded.

Rescission Proposal No. R98-21

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of the Interior	New budget authority..... (P.L. 105-83) $ 125,051,000
BUREAU: Bureau of Indian Affairs	Other budgetary resources.. $ 108,000,000
Appropriations title and symbol: Construction 14X2301	Total budgetary resources... $ 233,051,000
	Amount proposed for rescission..... $ 737,000
OMB identification code: 14-2301-0-1-452	**Legal authority (in addition to sec. 1012):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: This account funds education construction, public safety and justice construction, resources management construction, general administration, and tribal government construction. A rescission is proposed because there will be project savings by taking rigorous steps to reduce costs for individual projects through value engineering, reducing scope, or using standardized designs. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
128,000	127,830	-170	-221	-184	-162	...	...

Department of Transportation

Office of the Secretary

Payments to air carriers

Of the funds made available under this heading in Public Law 101–516 and subsequently obligated, $2,499,000 shall be deobligated and are hereby rescinded.

Rescission Proposal No. R98-22

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Transportation	New budget authority.....	$ 0
BUREAU: Office of the Secretary	Other budgetary resources..	$ 0
Appropriations title and symbol: Payments to air carriers 69X0150	Total budgetary resources...	$ 0
	Amount proposed for rescission.....	$ 2,499,000
OMB identification code: 69-0150-0-1-402	**Legal authority (in addition to sec. 1012):** [X] Antideficiency Act [ ] Other _____	
Grant program: [ ] Yes [X] No		
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [ ] Appropriation [X] Contract authority [ ] Other _____	

Justification: Prior to 1992, this account funded the Essential Air Services (EAS) program, which subsidized air transportation at small remote communities. Beginning in 1992, the program was funded from the Airport and Airway tust fund. This rescission is proposed because the obligated balances in the account will not be expended and can be deobligated. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
2,000	...	-2,499	...	...	...	...	...

Department of Transportation

Office of the Secretary

Payments to air carriers

(Airport and Airway trust fund)

Of the budgetary resources provided for "Small Community Air Service" by Public Law 101-508 for fiscal years prior to fiscal year 1998, $1,000,000 are rescinded.

Rescission Proposal No. R98-23

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Transportation	New budget authority.....	$	0
BUREAU: Office of the Secretary	Other budgetary resources..	$	3,976,152
Appropriations title and symbol: Payments to air carriers (Airport and airway trust fund) 69X8304	Total budgetary resources...	$	3,976,152
	Amount proposed for rescission.....	$	1,000,000
OMB identification code: 69-8304-0-7-402	**Legal authority (in addition to sec. 1012):** [X] Antideficiency Act [ ] Other _____		
Grant program: [ ] Yes [X] No			
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [ ] Appropriation [X] Contract authority [ ] Other _____		

Justification: This account funded the Essential Air Services (EAS) program, which subsidized air transportation at small remote communities, from the Airport and airway trust fund. The Federal Aviation Administration (FAA) Reauthorization Act of 1996 converted the EAS program funding to mandatory supported by FAA overflight fees, and increased the program level from $25.9 million to $50 million annually. This rescission is proposed because not all of the unobligated balances will be obligated. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
10,000	10,000	...	...	...	...	...	...

Department of Transportation

Maritime Administration

Maritime guaranteed loan (Title XI) program account

Of the funds made available under this heading in Public Law 105–119, $2,138,000 are rescinded.

Rescission Proposal No. R98-24

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Transportation	New budget authority..... (P.L. 105-119) $ 35,725,000
BUREAU: Maritime Administration	Other budgetary resources.. $ 61,989,330
Appropriations title and symbol: Maritime guaranteed loan (Title XI) program account 69X1752	Total budgetary resources... $ 97,714,330
	Amount proposed for rescission..... $ 2,138,000
OMB identification code: 69-1752-0-1-999	**Legal authority (in addition to sec. 1012):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: This program provides guaranteed loans for purchasers of ships from the U.S. shipbuilding industry and for modernization of U.S. shipyards. This rescission is proposed because, in FY 1998, more than $61 million in unobligated balances was brought forward from FY 1997, approximately twice the enacted level of $32 million, to cover the cost of loans guaranteed in FY 1998. This large carryover reflects lower demand in recent years for these loan guarantees. In addition, new loan guarantees will be less risky than previous loans, resulting in a 30 percent lower subsidy rate. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect (in thousands of dollars):

1998 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
91,000	88,862	-2,138	...	...	...	...	...

[FR Doc. 98–4991 Filed 2–26–98; 8:45 am]
BILLING CODE 3110–01–C

federal register

Friday
February 27, 1998

Part III

Northeast Dairy Compact Commission

7 CFR Part 1301
Compact Over-Order Price Regulation; Final Rule
Results of Producer Referendum on Compact Over-Order Price Regulation; Final Rule

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Part 1301

• **Compact Over-Order Price Regulation**

AGENCY: Northeast Dairy Compact Commission.

ACTION: Final rule.

SUMMARY: This rule amends the current Compact Over-Order Price Regulation to exempt from the regulation any fluid milk sold in eight-ounce containers distributed by handlers under open competitive bid contracts and sold by School Food Authorities in New England during the 1998–1999 contract year, to the extent an increased cost of such milk is documented as attributable to operation of the price regulation. The Compact Commission will reimburse School Food Service Authorities for such documented increased costs.

EFFECTIVE DATE: April 1, 1998.

ADDRESSES: Northeast Dairy Compact Commission, 43 State Street, P.O. Box 1058, Montpelier, Vermont 05601.

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229-1941 or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

Background

The Compact Commission was established under authority of the Northeast Interstate Dairy Compact ("Compact"). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–320; Maine—Pub. L. 89–437, as amended, Pub. L. 93–370; Massachusetts—Pub. L. 93–370; New Hampshire—Pub. L. 93–106; Vermont—Pub. L. 89–95, as amended, 93–57. Consistent with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 104–127 (FAIR ACT), Section 147, codified at 7 U.S.C. sec. 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. sec. 7256(1) authorized implementation of the Compact.

Section 8 of the Compact empowers the Compact Commission to engage in a broad range of activities designed to "promote regulatory uniformity, simplicity and interstate cooperation." For example, the Compact authorizes the Compact Commission to engage in a range of inquiries into the existing milk programs of both the participating states and the federal milk marketing system, to make recommendations to participating states, and to work to improve industry relations as a whole. See Compact, Art. IV, section 8.

In addition to the powers conferred by Section 8, the Compact also authorizes the Compact Commission to consider adopting a compact Over-order Price Regulation. See Compact, Art. IV, section 9. A *compact over-order price* is defined as:

> A minimum price required to be paid to producers for Class I milk established by the Commission in regulations adopted pursuant to sections nine and ten of this compact, which is above the price established in federal marketing orders or by state farm price regulation in the regulated area. Such price may apply throughout the region or in any part or parts thereof as defined in the regulations of the Commission.

Compact, Art. II, section 2(8).

The regulated price authorized by the Compact is actually an incremental amount above, or "over-order" the minimum price for the same milk established by Federal Milk Market Order #1. The price regulation establishes the minimum procurement price to be paid by fluid milk processors for milk that is ultimately utilized for fluid milk consumption in the New England region. Price regulation also provides for payment of a uniform "over-order" price, out of the proceeds of the price regulation, to dairy farmers making up the New England milkshed, regardless of the utilization of their milk. See Compact, Art. IV, section 9 ("The Commission is hereby empowered to establish the minimum price for milk to be paid by pool plants, partially regulated plants and all other handlers receiving milk from producers located in a regulated area.")

Section 11 of the Compact delineates the administrative procedure the Compact Commission must follow in deciding whether to adopt or amend a price regulation:

> Before promulgation of any regulations establishing a compact over-order price or commission marketing order, including any provision with respect to milk supply under subsection 9(f), or amendment thereof, as provided in Article IV, the Commission shall conduct an informal rulemaking proceeding to provide interested persons with an opportunity to present data and views. Such rulemaking proceeding shall be governed by section four of the Federal Administrative Procedures Act, as amended (5 U.S.C. § 553). In addition, the Commission shall, to the extent practicable, publish notice of rulemaking proceedings in the official register of each participating state. Before the initial adoption of regulations establishing a compact over-order price or a commission marketing order and thereafter before any amendment with regard to prices or assessments, the Commission shall hold a public hearing. The Commission may commence a rulemaking proceeding on its own initiative or may in its sole discretion act upon the petition of any person including individual milk producers, any organization of milk producers or handlers, general farm organizations, consumer or public interest groups, and local, state or federal officials.

As part of any rulemaking procedure to establish or amend a price regulation, Section 12(a) of the Compact, directs the Commission to make four findings of fact with respect to:

> (1) Whether the public interest will be served by the establishment of minimum milk prices to dairy farmers under Article IV.
>
> (2) What level of prices will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.
>
> (3) Whether the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.
>
> (4) Whether the terms of the proposed regional order or amendment are approved by producers as provided in section thirteen.

Compact, Art. V, Section 12.

Pursuant to Section 11 of the Compact, the Compact Commission initiated its first rulemaking procedure in December, 1996.[1] The rulemaking culminated on May 30, 1997 with the issuance of a final rule establishing a compact over-order price regulation for the period July 1, 1997–December 31, 1997.[2] On September 8, 1997, the Compact Commission issued notice of proposed rulemaking to consider whether to extend the price regulation beyond the present December 31, 1997 expiration date and whether to amend the regulation generally.[3] On November 25, 1997, a final rule was issued extending the price regulation through to sunset of the Compact enabling

[1] The Commission issued a notice of Hearing on December 13, 1996, 61 FR 65604, and held public hearings on December 17 and 19, 1996. The notice also invited the public to submit written comments through January 2, 1997. Following the close of this comment period, the Commission met on January 16, 1997 and established three working groups to consider the testimony and data submitted. The Commission issued a notice of Additional Comment Period on March 14, 1997, 62 FR 12252. This comment period closed on March 31, 1997; the reply comment period closed April 9, 1997. Based on the testimony and comment received, the Compact Commission issued a proposed rule on April 28, 1997 to adopt price regulation, 62 FR 23032. As part of the proposed rule, the Commission published for comment technical regulations to be codified at 7 CFR 1300, *et seq.* Minor corrections to the proposed rule were published May 8, 1997, 62 FR 25140, to provide clarification and to correct errors. The Compact Commission received additional comment in response to the proposed rule issued April 28, 1997.

[2] 62 FR 29627 (May 30, 1997).

[3] 62 FR 47156 (September 8, 1997)

legislation, and amending the technical regulation in certain instances.[4]

On December 11, 1997 (62 FR 65226), the Compact Commission issued a notice of proposed rulemaking[5] to exempt from the regulation fluid milk distributed by handlers under open and competitive bid contracts for the 1998–1999 contract year with New England School Food Authorities for child nutrition programs qualified for reimbursement under the National School Lunch Act and the Child Nutrition Act.[6] The Notice set a public hearing for December 29, 1997, as required by Section 11 of the Compact, and, pursuant to the Commission's bylaws, invited the public to submit written comments through January 12, 1998.

Based on the oral testimony and written comment received, and by reference to the reasoning set forth in its previous and final rules, the Compact Commission hereby amends the current Compact Over-order Price Regulation to exempt from the regulation fluid milk distributed by handlers under open and competitive bid contracts for the 1998–1999 contract year and sold by School Food Authorities, to the extent that an increased cost for such milk can be documented as attributable to operation of the price regulation.

The technical provisions of the Compact Over-order Price Regulation is codified at 7 CFR 1300 through 1308.1. The rule amends the regulation by adding a new paragraph (e) to 7 CFR 1301.13 *Exempt milk.*

Immediately following is a summary analysis and response to the comments received during the present rulemaking procedure. A more detailed review and response follows, organized around the finding analysis required by Section 12 of the Compact.

I. Summary Analysis of Comments Received in Response to the Proposed Rule and Compact Commission's Response

The Commission duly considered oral and written comment received at the December 29, 1997[7] hearing and the considered additional comments received by the Compact Commission's published deadline of January 12, 1998. The Compact Commission met on January 26, 1998 to consider and act on the comment received.[8]

Fifty-one separate comments were received during the hearing and written comment period. Of the total commenters, thirty-one expressed support for the regulation's amendment and fifteen expressed opposition to its amendment. The remaining five commenters took no apparent position on the proposal.

Ten of the fourteen commenters opposing the amendment were farmers. The remainder included representatives of farmer groups or organizations representing farmers. Five farmers spoke in support of the exemption.[9] Nine of the remainder of the thirty-two commenters supporting the amendment were directly employed in providing school lunches to schools, including representatives from Canton, Walpole, Pittsfield, Wakefield, Essex, and Quincy, Massachusetts. The remaining commenters in support of the exemption are a diverse group, including representatives of the region's departments of agriculture, officials of dairy farmer cooperatives and other farmer organizations, and a state legislative representative from Massachusetts.

Those farmers opposed to the amendment spoke of their strong support for the Compact and the need to keep the price regulation intact. Most of these commenters spoke in specific terms of the importance of the price regulation to the viability of their farming operations, but only in general terms with regard to its possible impact on school food service programs. The commenters who testified in favor of the exemption as food service program administrators provided specific evidence of the potential cost to their programs caused by the price regulation, and the importance of exemption from such cost. They described how food service programs are non-profit and predominantly self-supporting, and can absorb increased cost inputs only by price increases for meals or a la carte items. These commenters also emphasized the nutritional importance of milk. Many referred to the existing exemption in the price regulation for the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) as a justification for treating school food service programs in a similar manner.

Other commenters who spoke in favor of establishing an exemption for school food service programs cautioned against making the exemption broader than necessary. Rather than exempting all milk sold to schools for the entire amount of the over-order price regulation, as in the WIC model, these commenters stressed the need for an exemption procedure by which only the actual, documented, amount of increased cost for milk sold in eight-ounce containers directly attributable to the price regulation would be reimbursed.[10]

The November 25, 1997 final rule establishing the present Compact over-order price regulation, as well as its predecessor promulgated May 30, 1997, defined as a governing principle the importance of assuring that the regulation does not adversely affect operation of child nutrition programs. Stemming in part from this governing principle, despite the Commission's overall determination that the end-consumer market would be positively affected by operation of the price regulation over time, the Commission established an exemption for the WIC program. This exemption was established in part because of the determination that the WIC program is unique as a capped entitlement program, but also out of an abundance of caution to assure that the program would be "held harmless" against any unanticipated short-term market distortions or other consequences attributable to the price regulation.

Following from this underlying, governing principle, the Commission is persuaded by the comment received in the present rulemaking procedure of the need to establish a limited exemption for school food service programs.[11] The Commission is responding, at bottom, to the universal understanding of the nutritional importance of milk for child nutrition, and the central role that school food service programs play in providing for child nutrition.

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[4] 62 FR 62810 (November 25, 1997)

[5] The proposed rulemaking stemmed from the report of a Commission Ad Hoc Committee established pursuant to the final rule adopted on November 25, 1997. The rule charged the task force with assessing the impact of the Compact over-order price regulation on school food service programs and to "make recommendations as to whether the region's school food service programs should receive reimbursement for some or all of any increased costs attributable to the price regulation and, if so, the method for reimbursing the appropriate authorities." 62 FR 62820.

[6] National School Lunch Act of 1946, Pub. L. 79–396; Child Nutrition Act of 1966, Pub.L. 89–642.

[7] December 11, 1997, 62 FR 65226.

[8] Public Notice of the January 26, 1998 meeting was published originally on January 9, 1998, 63 FR 1396. The meeting was rescheduled for January 26, 1998 (63 FR 3267, published January 22, 1998).

[9] One farmer, Bill Peracchio, initially testified against the exemption at the public hearing, but subsequently submitted written testimony in support of the exemption.

[10] These commenters included representatives from the Connecticut Farm Bureau, Agri-Mark, Inc., Massachusetts Cooperative Milk Producer's Federation, Independent Dairymen's Association, St. Albans Cooperative Creamery, Inc. and the Connecticut, Massachusetts and Vermont Departments of Agriculture.

[11] As explained below, the comment received makes clear that the exemption should apply to all milk served by school food service programs rather than only milk provided through government supplemental nutrition programs by schools, as set forth in the proposed rule.

Accordingly, the Commission hereby amends the price regulation to exempt milk sold in eight-ounce containers by school food service programs during the 1998–1999 school year, to the extent an increased cost attributable to operation of the price regulation is documented.

The comments received with regard to the significant concerns and relative positions on the critical issues invoked by the finding analysis mandated by Section 12(a) of the Compact are now addressed in detail.

II. Summary and Further Explanation of Findings Regarding Amendment

As noted above, Section 12(a) of the Compact directs the Commission to make four findings of fact before an amendment of the over-order price regulation can become effective.

The first finding considers whether the establishment of an exemption mechanism for milk sold in eight-ounce containers by school food service programs serves the public interest. The Compact Commission finds that the public interest will be served by a reimbursement process for the school year contract period for 1998–1999, or September, 1998–June, 1999.[12]

The second finding considers the level of producer price needed to cover costs of production and to assure an adequate local supply of milk. The Compact Commission finds that the exemption for milk sold in eight-ounce containers by school food service programs will reduce the net producer price established under the regulation by approximately three percent. Such a reduction will adversely affect to some degree the regulation's intended function as contemplated under this finding analysis. Nonetheless, the Commission concludes that this impact must be balanced within the overall context of the public interest contemplated under the first finding analysis, in which the paramount importance of child nutrition programs is overriding.

The fourth finding, requiring the determination of whether the amendment has been approved by producer referendum pursuant to Article IV, Section 12 of the Compact, is invoked in this instance given that the amendment will affect the level of the price regulation on the producer side. In this final rule, as in the previous final rules, the Compact Commission makes this finding premised upon certification of the referendum's results published separately in this **Federal Register**. The procedure for such certification is set forth infra in the section of this rule addressing the fourth finding.[13]

A. Whether an Amendment to the Price Regulation Establishing A Reimbursement Provision for Milk Sold in Eight-Ounce Containers by School Food Service Programs Will Serve the Public Interest

As one of the four underlying findings required for the establishment of price regulation, the Compact Commission must determine:

(1) Whether the public interest will be served by the establishment of minimum milk prices to dairy farmers under Article IV.

Compact, Art. V., Section 12(a)(1).

In its prior rulemakings, as part of a broad ranging consideration of the public interest in price regulation, the Compact Commission directly addressed the anticipated impact of the price regulation on child supplemental nutrition programs. The Commission there determined that school food services programs operate essentially in accordance with the broad parameters of the competitive retail marketplace, whereby the price for school milk sold in eight-ounce containers is set through an open, competitive, bid process. Based on a direct reference to a General Accounting Office study's description of the programs, the Commission determined that:

The National School Lunch Act of 1946 (Pub. L. 79–396) and the Child Nutrition Act of 1966 (Pub. L. 89–642) authorize USDA to reimburse state and local school authorities—under grant agreements—for some or all of the costs of these programs. Reimbursements are based on either the number of meals served or the number of half pints served. The schools use these funds, as well as state and local funds and moneys collected from students, to purchase food, including milk, for these programs. These purchases are made through either sealed bid or negotiated procurements. USDA's regulations require that these procurements be conducted in a manner that provides for the maximum amount of open and free competition.[14]

All commenters in the present rulemaking procedure, whether for or against an exemption, agree on the importance of school food service programs in ensuring that children have the opportunity to eat a nutritious and balanced meal at lunchtime during the school day (and at breakfast, where such meals are available). According to the comment received, milk provides 23–38 percent of the daily calcium requirement critical to bone development, depending on age, as well as other important nutrients and vitamins.[15]

One registered dietician explained why milk is such a valued and critical source of child nutrition:

Now there are other sources of calcium. They include broccoli, kale, turnip and beet greens, canned fish, tofu, dried peas and beans. Frankly, none of these are really popular with children. So you can see that not only the most economical but the most acceptable source of calcium is milk or milk products.[16]

One farm couple, though opposed to an exemption, summed up the universal understanding of milk's importance as a nutritional source:

Nutritionally, young children should consume their minimum daily requirements of calcium to avoid later skeletal problems. Calcium is stored as money in the bank for use in later life.[17]

The Commission received extensive, additional comment from directors of school food services programs about the operation and financing of these programs, and about the significance and relative cost of milk to the success of these programs.[18] The food service program directors described how their programs are for the most part self-funding, or without external funding from municipalities or state government, and receive only partial reimbursement from the federal government. The non-profit nature of the programs was also delineated. For example, the profit and loss statement for one program disclosed a total profit of $707.48 against total expenditures of $701,218.05, and it was explained that this surplus was intended as a carry-

[12] As developed further below, the Commission notes that the Compact sunsets by law no later than April, 1999, so that the actual term of the exemption is in reality from September, 1998–April, 1999.

[13] The third finding requires a determination of whether the provisions of the regulation other than those establishing minimum milk prices are in the public interest. The amendment serves only to establish a direct exemption from the price regulation itself. The matter of the public interest is thereby addressed under the first required finding and not under this finding. In any event, the Commission concludes that the price regulation, with operation of the amendment, remains in the public interest in the manner contemplated by this finding.

[14] GAO Report 13–239877 at p. 2 (October 16, 1992) submitted by Jim Jeffords as Additional Reply Comment, April 9, 1997; *see also* 62 FR 23050.

[15] Nancy E. Sandbach, Director of Nutrition Education, New England Dairy and Food Council, WC, January 5, 1998.

[16] Lois Black, Registered Dietician, Hamilton-Wenham Regional School District, December 29, 1997, Public Hearing at 43.

[17] Jacqueline and Dale Lewis, WC, January 12, 1998.

[18] Tina Lauersdorf, Food Service Director, Wakefield, MA Public Schools, December 29, 1997, Public Hearing at p. 25; Lois Black, Registered Dietician, Hamilton-Wenham, MA Regional School District, PH at p. 41; and Jaqueline Morgan, Food Services Director, Walpole, MA Public Schools, PH at p. 80. See also Allen Brown, Kenneth Leon and Marsha J. Maher, Canton, MA Public Schools, WC, December 22, 1997.

over to cover initial costs for the subsequent school year.[19]

Sales of milk by school food service programs, predominantly in eight-ounce containers, were described as occurring in two forms, either as part of a breakfast or lunch meal package or a la Carte. Lunch meal prices, including the milk container, are in the range of $1.00–$1.75.[20] A la Carte milk prices ranged from $0.35–$0.50 per container.

These commenters, as well as others,[21] described the milk procurement process for school food service programs. Supply contracts for a subsequent school year are put out to bid by individual districts or consortiums of districts, usually in April or May. After a review process, the contracts are let in July. By law, Massachusetts' school districts must accept the lowest bid received.

Bids and contracts take two forms, variable or fluctuating, and fixed. Fluctuating bids and contracts account for the variability in the vendor/processor's procurement cost, attributable to the monthly changes in federal milk market order pricing for fluid, or Class I milk. Fluctuating bids and contracts account for these changes by the establishment of a benchmark price as of a particular month, with allowance for subsequent changes in the market order price. Fixed bids and contracts do not allow for any such variability in the school program procurement price; the inherent variability in the processor's cost is built into the price upfront, and applies for the duration of the contract.[22]

According to statistics provided by the Massachusetts Department of Agriculture, approximately half each of all contracts are let by the fixed and variable methods. Also according to the Department's statistics, school food service program sales of milk amount to approximately three to four percent of all total fluid milk sales in the New England region.

All commenters associated with school food service programs were unanimous in expressing their concern that the programs are extremely sensitive to cost increases for milk. All expressed the concern that increases in milk costs could adversely affect their ability to provide milk to schoolchildren. These commenters all indicated that they understood the Compact price regulation as causing such a price increase, with the resulting adverse impact on their programs. For this reason, all commenters associated with school food service programs requested an exemption from the price regulation for their milk purchases.

As noted by many other commenters, however, the commenters associated with the school food service programs based their calculations of the potential or actual impact of the price regulation on a clearly inaccurate and incomplete understanding of the price regulation's operation.[23] Despite their apparent knowledge of the monthly variability in milk pricing, the food service program commenters expressed their opinions of the regulation's potential annual impact by reference to a letter from one vendor, describing the regulation's impact for only the one month of September, 1997. Even accounting for the well-understood arcane nature of milk market regulation, such incomplete analysis is by definition limited in terms of its benefit for understanding the dynamics between the price regulation and the region's school lunch programs.

The Commission further notes that the stated concerns expressed with regard to the potential impact of the price regulation come predominantly from food service programs in the state of Massachusetts. While comment in support of the exemption was received from a Food Service program provider in New Hampshire and in Vermont, all other commenters associated with food service programs were from Massachusetts. From the comment received, it is apparent that the concerns of many of these Massachusetts-based programs stemmed from the unsuccessful attempt by one vendor, West Lynn Creamery, Inc., to increase the fixed contract price to a number of school districts the vendor supplied, after the price regulation went into effect. Though unsuccessful, the attempt apparently served to bring operation of the price regulation to the attention of these commenters.[24]

Notwithstanding these vagaries in the testimony, the Compact Commission is persuaded that the comment received indicates that the price regulation may serve, at least in the short-term, to increase the cost of milk provided by school food service programs, and that such increase would have an adverse impact on the effectiveness of these vital child nutrition programs. Accordingly, the Commission hereby determines that the establishment of an exemption from the price regulation to preclude such an adverse impact best serves the public interest.

Many commenters other than representatives of school food service programs support this conclusion. For example, Leon Graves, Vermont Commissioner of Agriculture, testified that:

> The agricultural community understands the need to err on the side of caution regarding supplemental nutrition programs. As farmers are benefiting from the Compact Regulation, we recognize that the nutrition and well-being of children should not be at risk as a result of our efforts. If there is evidence in the record to demonstrate that increased milk contract prices are harming schools involved in child nutrition programs, then as was done with WIC, it would be prudent for the Commission to grant an exemption for milk in school meal programs as well.[25]

Frank Mattheson, a dairy farmer from Littleton, MA echoed the Commissioner's sentiment:

> I am concerned that even one child or school district is hurt by the Compact.[26]

The Commission accepts the approach of those commenters supporting an exemption premised on reimbursement of only higher costs that can be documented as attributable to the

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[19] Jaqueline Morgan, Food Services Director, Walpole, MA Public Schools, WC, January 9, 1998.

[20] Lois Black, Registered Dietician, Hamilton-Wenham Regional School District, December 29, 1997, Public Hearing at 77; Jaqueline Morgan, Food Services Director, Walpole, MA Public Schools, December 29, 1997, Public Hearing at p. 129.

[21] See e.g. William J. Gillmeister, Economist, Massachusetts Department of Agriculture, WC, January 12, 1998.

[22] See Jaqueline Morgan, WC January 9, 1998, "Cooperative Purchasing, Specifications for Milk and Milk Products, FY 1997–98"; see also William J. Gillmeister, WC, January 12, 1998.

[23] See e.g. Leon Berthiaume, WC, January 12, 1998; Bob Wellington, WC, January 9, 1998.

[24] "When food service directors got this letter [from West Lynn Creamery announcing the intended price increase] the phone was ringing * * *" Jaqueline Morgan, December 29, 1997, Public Hearing, p. 119.

The comment about this vendor's competitive conduct in the 1997–1998 bid process, and that of others, also may indicate that the price regulation could have created a downward pressure on milk prices in the manner contemplated by the Commission's analysis in the final rule adopting the price regulation. According to the testimony, West Lynn's attempt to increase the contract price for its milk after the price regulation went into effect may have ultimately been unsuccessful because "* * * they would no longer be the lowest bidder so instead of going out to re-bid, West Lynn absorbed the cost into their price." Jaqueline Morgan, PH p. 119. This commenter subsequently qualified her statement by indicating that she was describing the experience of a program other than her own. While somewhat uncertain, the hearing testimony indicated further that more than the one vendor used this pricing strategy of not incorporating the price regulation into their bid price. "We were informed by Nature's Best that they were not going to pass the price along to our collaborative." Jaqueline Morgan, PH at p. 109; see also Lois Black, PH at p. 47–48, indicating that Turner's Dairy did not include the price regulation in its bid. Such a pricing strategy of not incorporating anticipated price increases into a bid, whether based on the regulation's establishment of a flat procurement price or otherwise, could thus in fact have resulted in the positive, competitive-based, impact on prices anticipated by the rulemaking process.

[25] Leon Graves, PH at p.145.

[26] Frank Mattheson, WC, January 9, 1998.

price regulation.[27] Simple reference to the difference between the federal milk market order price structure and the compact "over-order" price regulation would, for most months at least, result by definition in the determination that the price regulation causes an increased procurement cost to the school food service programs. It is apparent from the comment received, however, that the bid process is in fact competitive and that, while changes in the federal milk market order price are used as a benchmark, the federal pricing structure is not the only component of the vendors' respective cost structures. Diverse costs associated with the particular circumstances of the multi-varied school food service programs,[28] as well as differing overheads, all can affect a vendor's particular bid. Given that some vendors apparently chose not to include it in their bids, incorporation of the price regulation's impact into the cost structure, itself, may also be a consideration, strategic or otherwise.

The Commission concludes that it is appropriate to establish the exemption in this format based on the further determination that such a requirement will not work undue hardship on the school food service programs. The programs currently document and report monthly milk sales for purposes of receiving federal reimbursement. Under this system of reimbursement, all food service programs in each state report to the respective state department of education.[29] The data and procedure for reporting sales currently in use can be relied upon and tailored for purposes of the compact price regulation exemption.

The procedure utilized will be modified to include a certification process from each school food service program vendor, establishing that the compact price regulation has been included in whole or in part in the contract price, and identifying the precise unit cost amount attributable to the price regulation. Vendors will be required to disclose in their bids the underlying cost components resulting in the identified unit price amount. These should include overhead and other standard cost components and the manner and degree to which the federal pricing structure has been incorporated. The Commission again concludes that such a requirement will not work a hardship, given that the vendors must currently make certain certifications as part of the current bid process, as well as account for the interplay between compact and federal price regulation in their composition of fixed and variable bids.[30]

To establish the precise mechanics of the reimbursement procedure, the Compact Commission will enter into a memorandum of understanding with the state departments of education, or other agency as appropriate, not later than May 1, 1998. The memorandum of understanding shall include provisions for certification by supplying vendor/processors that their bid and contract cost structures do in fact incorporate the over-order price obligation, in whole or in part, and provisions for defining the components of cost structure to be provided in support of such certification. The memorandum shall also establish the procedure for providing reimbursement to the school food service programs. This procedure shall provide for quarterly reimbursement, unless it is determined that a different reimbursement time frame would be more efficient and appropriate, and the appropriate amount to be escrowed by the Commission. The memorandum of understanding shall in addition contain provisions to ensure the confidentiality of the bid process.

The exemption is made applicable to all milk sold by school food service programs, rather than only milk qualified for reimbursement under federal child nutrition programs. According to the comment, the reimbursements are imbedded into the revenue structure for the school food service programs. The degree to which the reimbursements reduce program costs for milk, as opposed to the total food costs, cannot thereby be readily identified. As a result, to accomplish its purpose, all milk must be covered by the exemption.[31]

The exemption is limited with regard to its application in time and duration. Based on the comment received describing a competitive bidding process for the 1997–1998 contract year, it is apparent that the exemption must be made prospective, only. It would not be appropriate to interfere with or alter contractual arrangements already established. It is also apparent that the exemption must be limited to apply only to the 1998–1999 contract year, given the Compact's scheduled sunset of no later than April, 1999.

Some of the school food service program directors testifying at the December 29, 1997 Hearing suggested use of the WIC Program exemption procedure as the means to establish the exemption for school milk sales. The WIC Program exemption procedure is not applicable to the school food service programs. As noted, milk is provided in bulk deliveries by single vendors directly to the school food service programs. By contrast, there is no differentiation between or among the variety of fluid milk brands and products supplied to retailers for sale to WIC Program participants and that supplied for sale to all other consumers. On the other end of the transaction, school food service programs sell only program milk in a narrow readily definable transaction pattern, in contrast to the diverse pattern of retail sales to WIC Program participants.

Several commenters opposed establishment of the exemption based on the concern that petitions for additional exemptions would necessarily follow.[32] The Commission declines to rely on this stated concern as wholly speculative. A number of farmer commenters also expressed concern that the Commission was making its decision for political reasons.[33] The Commission responds by emphasizing that the decision arises only out of its assessment of the public interest as expressly required by the Compact, based on the record before it as developed through the regulatory hearing process, pursuant to Art. IV, section 12 of the Compact.

Some commenters indicated that the marginal cost to the school food service programs which may be attributed to the price regulation does not justify the exemption. The Commission responds

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[27] Dan Stevens, President, Massachusetts Cooperative Milk Producer's Federation, WC, January 9, 1998; Sally Beach, General Manager, Independent Dairymen's Cooperative Association, December 29, 1997, Public Hearing at p. 12; Leon Berthiaume, General Manager, and Diane Bothfeld, St. Albans Cooperative Creamery, Inc., WC, January 12, 1998 and December 29, 1997, Public Hearing at p. 8; Gabe Moquin, Connecticut Department of Agriculture, WC, January 9, 1998; Leon Graves, Commissioner, Vermont Department of Agriculture, December 29, 1997, Public Hearing at p. 14; Bob Wellington, Senior Vice President, Agri-Mark, Inc., WC, January 9, 1998.

[28] Bids and contracts must expressly account for equipment use and even the provision of straws. (Provided free of charge by Nature's Best). Other considerations are frequency of delivery and the number of "drops" per territory. Jaqueline Morgan, December 29, 1997, Public Hearing at p. 103–104.

[29] Jaqueline Morgan, WC, January 9, 1998; William J. Gillmeister, WC, January 12, 1998.

[30] Jaqueline Morgan, WC, January 9 and 12, 1998.

[31] The exemption is limited to the sale of half-pint containers, the basic sales unit for the school food service programs. See Gabe Moquin, Connecticut Department of Agriculture, WC, January 9, 1998.

[32] See e.g. Doug Carlson, December 29, 1997, Public Hearing at p. 167.

[33] See e.g. Mathew Freund, PH at p. 154; and Dave Jacquier, PH at p. 159. In this regard, the Commission is responding particularly to the testimony of Mr. Jacquier, as well as that of Douglas P. Gillespie, Director of Governmental Relations, MA Farm Bureau Federation, Inc., WC, January 12, 1998.

by referring to the substantial and diverse comment highlighting the specific importance of school food service programs to the promotion of child nutrition. The Commission's decision to establish this exemption is in large part based on the determination that any adverse impact on these particular programs, so targeted for the promotion of child nutrition, is significant and must be avoided.

On the diametrically opposed end of the spectrum, two commenters expressing support for the exemption based their position on the view that the demonstrated need for the exemption should serve in effect as the basis for extinguishing the entire price regulation.[34] The Commission responds to these commenters by reference to the reasoning of the price regulation describing the expected positive impact on all segments of the marketplace, from farmgate to retail, including low-income consumers.

Finally, the Compact Commission notes that the public interest analysis of the rules establishing and extending the price regulation included a balancing of the interests of all persons affected by the price regulation. In this instance, the interests of farmers and processors must be balanced with the interests of the school food service programs, and their clients-children.

The Compact Commission determines that establishment of the instant exemption will not adversely affect the interests of processors. As described above, processor/vendors will retain the discretion to make strategic bid pricing decisions with regard to incorporation of the impact of the price regulation on their costing structures, including a simple pass through, should that be their strategic choice. As also described above, the Commission concludes that the certification and documentation procedure to be established by the memorandum of understanding will not cause undue hardship for processor/vendors.

With regard to the farmer interest, the Commission concludes that the exemption will have an adverse impact by reducing the net payment to producers. As explained in detail below, it is expected that the net payment will be reduced by approximately three percent for the ten-month period September 1998-June 1999. It is to be noted that the over-order price regulation will remain in effect for the summer months of July and August, when federally-established milk prices are traditionally at their low point, and the over-order price at the corresponding highest amounts. The Commission nonetheless concludes that this adverse impact on the farmer pay price must be balanced against the documented potential for harm to the school food service programs.

For all the reasons set forth above, the Commission concludes that the public interest will best be served by the establishment of an exemption from the price regulation and reimbursement procedure for fluid milk distributed by handlers under open competitive bid contracts and sold by School Food Authorities in New England during the 1998–1999 contract year, to the extent an increased cost of such milk is documented as attributable to operation of the over-order price regulation.

B. The Exemption's Impact on the Price Level Needed To Assure a Sufficient Price to Producers and an Adequate Local Supply of Milk

As one of the four underlying findings required for the establishment of price regulation, the Commission must determine:

(2) What level of prices will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.[35]

Compact Art. V, Section 12(a).

In the prior rulemakings, the Commission's deliberations regarding the level of price required to cover costs of production focused again on the variety of cost inputs identified in Section 9(e) of the Compact. With regard to the price needed to elicit an adequate local supply of milk, the Commission reviewed the nature of the balance of production and consumption in the region, as also called for by Section 9(e) of the Compact. This required review prompted the determination that farm prices have been insufficient to cover costs of production over time ("price insufficiency"), and the degree to which such insufficiency has affected the balance of production and consumption in the region. Assessment of this issue also required consideration of the wide swings over time in farmer pay prices under federal regulation, which have caused farm financial stress and made it difficult for farmers to plan financially ("price instability"), and the failure of farmer pay prices to keep up with inflation.

To determine the required benchmark cost of production, the Commission's analysis surveyed the various cost inputs as required under Section 9(e) of the Compact, including by reference to the numerous studies on the subject.[36] Based on data received from farmers and a comprehensive assessment of a number of these studies, the Commission concluded that the range of the costs of production for New England is somewhere between $14.06 and $16.46. By reference to prevailing federal milk market order prices, the Commission concluded that an over-order pay price in the range of $0.46–$1.90 was necessary to bring farmer pay prices up to the level necessary to cover cost of production.[37] Assuming Class I utilization of 50 percent, this means that price regulation in the amounts of $0.92–$3.80 would be necessary to achieve the necessary range of over-order payment.

In addition to the relatively discrete assessment of the level needed to cover cost of production, the required finding with regard to pay price accounts for the broader assessment of the price level needed to elicit an adequate supply of milk. In the prior rulemaking, the Compact Commission determined that the Compact, Section 9(e) scrutiny of the balance of production and consumption of fluid, or beverage, milk in the region is critical to this additional assessment.[38] The Commission determined that production and consumption are presently in balance, but in a state of balance of pronounced and unsustainable stress that must be alleviated.

Assessment of how to alleviate the stress on the region's supply of milk through price regulation required the Commission to consider how best to alleviate the stress under which producers operate. This inquiry naturally reverted back to the issue of the degree to which farmer pay prices are not sufficient to cover costs of production. In addition, as previously determined, the review led the Commission to conclude that the nature of the persistently unstable farmer pay prices and the degree to which farmer prices have failed to keep pace with inflation are also structural factors of stress.

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[34] Arthur S. Jaeger, Executive Director, Public Voice for Food & Health Policy, WC, January 12, 1998; Joyce Campbell, Massachusetts ACORN, WC January 12, 1998.

[35] The Commission limited its assessment to issues relating to the fluid milk market, given the limitations on its authority to regulate the price of milk used for manufacturing purposes. *See* Compact, section 9(a); *see also* 7 U.S.C. Sec. 7256(2). At the same time, for purposes of this analysis, it must be recognized that the present supply needs for manufacturing purposes are not available for fluid usage.

[36] 62 FR 29632–33.

[37] See 62 FR 29633 (final rule); 62 FR 23040–41 (proposed rule)

[38] See 62 FR 29634–35.

Based on this combined analysis, the Commission determined that a compact over-order price of $16.94 would yield sufficient return to farmers to bring the producer price into the low range of that required to cover cosf of production. The Commission further concluded that establishment of the over-order Class I obligation as a flat price would also serve to stabilize the producer price, yielding benefits to producers in this regard as well.

The following chart indicates that the price regulation is yielding the anticipated results with regard to producer prices. The current, average, producer price of $0.93 is at the low end of the range identified as required to bring producer prices up to a level sufficient to cover costs of production. Similarly, the current, average, regulated blend price of $14.07 is just over the low end of the identified threshold of $14.06 which defines the price needed to cover costs of production. The chart also indicates that the price regulation is providing stability to producer pay prices relative to what they would have been in its absence.

	Fed order #1 class I price (Zone 1)	Compact over-order obligation	Fed order #1 blend price (Zone 21)	Company producer price	Combined producer price
July	$13.94	$3.00	$11.97	$1.28	$13.25
Aug	13.98	2.96	12.26	1.31	13.57
Sept	14.10	2.84	12.54	1.36	14.17
Oct	15.31	1.63	13.60	0.81	14.44
Nov	16.03	0.91	14.10	0.44	14.54
Dec	16.07	0.87	14.06	0.40	14.46
Jan	16.20	0.74	.....	.....	.....
Feb	16.53	0.41	.....	.....	.....
Avg	15.27	1.67	13.09	0.93	14.07

It is estimated that the exemption and reimbursement for school food service programs will cause a 3 percent decrease in the producer pay price.[39] Based on the current average pay price of $0.93, this would result in a decrease in the pay price of approximately $0.03.

This decrease will bring the producer pay price still nearer to the bottom range of that identified as necessary to bring prices in relative alignment with costs. It is of course apparent that any reduction in the producer pay price will adversely affect the price regulation's intended function with regard to enhancement of producer income. Nonetheless, the amount of the decrease must be understood in view of the fact that the regulation will continue to provide significant stability to producer prices. Accordingly, the Commission concludes that the price regulation, as amended to include an exemption for milk sold by school food service programs will remain at a level sufficient to assure that producer costs of production are covered and to elicit an adequate supply of fluid milk for the region.

III. Required Findings of Fact

Pursuant to Compact Art. V, Sec. 12, the Compact Commission hereby finds:

(1) That the public interest will be served by the establishment [amendment] of minimum milk price [regulation] to dairy farmers under Article IV.

(2) That a level price of $16.94, [accounting for a school lunch exemption], will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

(3) That the terms of the proposed price regulation were approved by producers by referendum.[40]

[39] See William J. Gillmeister, WC, January 12, 1998.

[40] Section 13 of the Compact requires that the Commission conduct a referendum among producers and that, at least, two-thirds of the voting producers approved the regulation. A separate notice in the **Federal Register** certifies the results of the referendum pursuant to the following Referendum Approval Certification Procedure:

The Compact Commission resolves and adopts this procedure for certifying whether the price regulation adopted by this final rule has been duly approved by producer referendum in accordance with Compact Article V, section 12.

Mae Schmidle, Vice-Chair is hereby designated as "Referendum Agent" and authorized to administer this procedure.

The designated Referendum Agent shall:

1. Verify all ballots with respect to timeliness, producer eligibility, cooperative identification, authenticity and other steps taken to avoid duplication of ballots. Verification of ballots shall include those cast individually by block vote. Ballots determined by the Referendum Agent to be invalid shall be marked "disqualified" with a notation of the reason for disqualification. Disqualified ballots shall not be considered in determining approval or disapproval of the regulation.

2. Compute and certify the following:

A. The total number of ballots cast.

B. The total number of ballots disqualified.

C. The total number of verified ballots cast in favor of the price.

D. The total number of verified ballots cast in opposition to the price regulation.

E. Whether two-thirds of all verified ballots were cast in the affirmative.

3. Report to the Executive Director of the Compact Commission the certified computations and results of the referendum under Section 2.

4. At the completion of his or her work, seal all ballots, including the disqualified ballots, and shall submit a final report to the Executive Director stating all actions taken in connection with the referendum. The final report shall include all ballots cast and all other information furnished to or compiled by the Referendum Agent. The ballots cast, the identity of any person or cooperative, or the manner in which any person or cooperative voted, and all information furnished to or compiled by the Referendum Agent shall be regarded as confidential.

The Executive Director shall publish the certified results of the referendum in the **Federal Register**.

List of Subjects in 7 CFR Part 1301

Milk.

Codification in Code of Federal Regulations

For the reasons set forth in the preamble, the Commission amends 7 CFR part 1301 as follows:

PART 1301—[AMENDED]

1. The authority for part 1301 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Section 1301.13 is amended by adding paragraph (e) to read as follows:

§ 1301.13 Exempt milk.

* * * * *

(e) Effective April 1, 1998, all fluid milk distributed by handlers in eight-ounce containers under open and competitive bid contracts for the 1998–1999 contract year with School Food Authorities in New England, as defined by 7 CFR 210.2, to the extent that the school authorities can demonstrate and document that the costs of such milk have been increased by operation of the Compact Over-order Price Regulation. In no event shall such increase exceed the amount of the Compact over-order obligation. Documentation of increased costs shall be in accordance with a memorandum of understanding entered into between the Compact Commission and the appropriate state agencies not

later than May 1, 1998. The memorandum of understanding shall include provisions for certification by supplying vendor/processors that their bid and contract cost structures do in fact incorporate the over-order price obligation, in whole or in part, and provisions for defining the components of cost structure to be provided in support of such certification. The memorandum shall also establish the procedure for providing reimbursement to the school food service programs, including the scheduling of payments and the amount to be escrowed by the Commission to account for such payments.

Daniel Smith,

Executive Director.

[FR Doc. 98–4140 Filed 2–26–98; 8:45 am]

BILLING CODE 1650–01–P

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Part 1301

Results of Producer Referendum on Compact Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of referendum results.

SUMMARY: The Northeast Dairy Compact Commission adopted an over-order price regulation by Final Rule on January 26, 1998, which is published elsewhere in this issue. To become effective the price regulation must be approved by at least two-thirds of all producers voting by referendum. A producer referendum was held during the period of February 10 through February 20, 1998. The Commission's price regulation was approved by more than two-thirds of all producers voting in the referendum.

ADDRESSES: Northeast Dairy Compact Commission, 43 State Street, P.O. Box 1058, Montpelier, Vermont 05601.

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941 or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION: The Compact Commission was established under the authority of the Northeast Interstate Dairy Compact ("Compact"). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–320; Maine—Pub. L. 89–437, as amended, Pub. L. 93–274; Massachusetts —Pub. L. 93–370; New Hampshire—Pub. L. 93–336; Rhode Island—Pub. L. 93–106; Vermont—Pub. L. 89–95, as amended, 93–57. Consistent with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 104–127 (FAIR ACT), Section 147, codified at 7 U.S.C. § 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. § 7256(1), authorized implementation of the Compact.

Article V, Section 13(a) of the Compact provides that to ascertain whether a price regulation established by the Commission is approved by producers the Commission shall conduct a referendum among producers. Section 13(b) provides further that a price regulation shall be deemed approved by producers if the Commission determines that it is approved by at least two-thirds of the voting producers who, during a representative period, have been engaged in the production of milk subject to Commission price regulation. Section 13(c) directs the Commission to consider the approval or disapproval of any qualified cooperative association by block vote as the approval or disapproval of the producers who are members or stockholders in the cooperative association. Section 13 (c)(4) provides that producers who are members of cooperatives may express their approval or disapproval of the order by ballot, and the Commission shall remove their vote from the total certified by the Cooperative.

By Final Rule, published in this **Federal Register**, the Commission adopted an amendment to the over-order price regulation on January 26, 1998, which is published elsewhere in this issue. The Final Rule includes specific findings of fact required under Section 12(a)(1)–(4) of the Compact. The following notice provides certification of the finding required under Section 12(a)(4), specifically: "Whether the terms of the proposed regional order or amendment are approved by producers as provided in section 13."

The Commission adopted the following resolution for certifying a referendum vote at its January 26, 1998 meeting:

The Compact Commission resolves and adopts this procedure for certifying whether the price regulation adopted by this final rule has been duly approved by producer referendum in accordance with Compact Article V, section 12.

Mae Schmidle, Vice-Chair, is hereby designated as "Referendum Agent" and authorized to administer this procedure.

The designated Referendum Agent shall:

1. Verify all ballots with respect to timeliness, producer eligibility, cooperative identification, authenticity and other steps taken to avoid duplication of ballots. Verification of ballots shall include those cast individually by block vote. Ballots determined by the Referendum Agent to be invalid shall be marked "disqualified" with a notation of the reason for disqualification. Disqualified ballots shall not be considered in determining approval or disapproval of the regulation.

2. Compute and certify the following:

A. The total number of ballots cast.

B. The total number of ballots disqualified.

C. The total number of verified ballots cast in favor of the price.

D. The total number of verified ballots cast in opposition to the price regulation.

E. Whether two-thirds of all verified ballots were cast in the affirmative.

3. Report to the Executive Director of the Compact Commission the certified computations and results of the referendum under Section 2.

4. At the completion of his or her work, seal all ballots, including the disqualified ballots, and shall submit a final report to the Executive Director stating all actions taken in connection with the referendum. The final report shall include all ballots cast and all other information furnished to or compiled by the Referendum Agent.

The ballots cast, the identity of any person or cooperative, or the manner in which any person or cooperative voted, and all information furnished to or compiled by the Referendum Agent shall be regarded as confidential.

The Executive Director shall publish the certified results of the referendum in the **Federal Register**.

A referendum was held during the period of February 10 through February 20, 1998. All producers who were producing milk pooled in Federal Order #1 or for consumption in New England, during August of 1997, the representative period determined by the Commission were deemed eligible to vote. The mailing of ballots to eligible producers was completed on February 10, 1998 by the Federal Order #1 Market Administrator. The ballots included an official summary of the Commission's action. Producers were notified that, to be counted, their ballots had to be returned to the Commission offices by 5:00 pm on February 20, 1998.

Twelve Cooperative Associations were notified of the procedures necessary to block vote by letter dated February 4, 1998. Cooperatives were required to provide prior written notice of their intention to block vote to all members on a form provided by the Commission, and to certify to the Commission that (1) timely notice was provided, (2) the number of eligible producers for whom they claimed to be voting, and (3) that they were qualified under the Capper-Volstead Act. Cooperative Associations were further notified that Cooperative Association block vote reporting forms had to be

returned to the Commission offices by 5:00 pm on February 20, 1998.

Notice

On February 23, 1998 the referendum agent [1] verified all Ballots according to procedures and criteria established by the Commission. A total of 4,193 ballots were mailed to eligible producers. All ballots and Block Vote Reporting Forms received by the Commission were opened and counted. A total of 392 producer ballots and 10 cooperative association Block Vote Reporting forms were received in the Commission office. Ballots and Block Vote Reporting forms were verified or disqualified based on criteria established by the Commission, including timeliness, cooperative identification by cooperative members, producer eligibility, appearance of authenticity, appropriate certifications by cooperative associations and other steps taken to avoid duplication of ballots. Ballots determined by the referendum agent to be invalid were marked "disqualified" with a notation as to the reason. A total of 66 ballots were disqualified by the referendum agent.

Block votes cast by Cooperative Associations were then counted. A total of 10 Cooperative Associations cast affirmative block votes on behalf of a total of 2,435 producer members. No cooperative associations cast a block vote in opposition to the price regulation. Producer votes against their cooperative associations block vote were then counted for each cooperative association. A total of 27 producer cooperative association members cast votes in opposition to the price regulation and to their cooperative association's vote. These votes were deducted from the cooperative association's total and were counted as a No vote. A total of 59 ballots were returned by cooperative members who cast votes in the affirmative.

Votes of independent producers were then counted. A total of 201 independent producers returned ballots marked in the affirmative. A total of 74 independent producers returned ballots marked in opposition.

The referendum agent then certified the following:

A total of 4,193 ballots were mailed to eligible producers.

A total of 2,741 ballots were returned to the Commission.

A total of 66 ballots were disqualified.

A total of 2,675 ballots were verified.

A total of 2,563 verified ballots were cast in favor of the price regulation.

A total of 112 verified ballots were cast in opposition to the price regulation.

Accordingly, pursuant to the Referendum Approval Certification Procedure resolution adopted by the Northeast Dairy Compact Commission on January 26, 1998, I hereby provide notice that 2,563 verified ballots of 2,675 verified ballots cast were in favor of the price regulation, and therefore two-thirds of all verified ballots were cast in the affirmative.

Daniel Smith,

Executive Director.

[FR Doc. 98–5048 Filed 2–26–98; 8:45 am]

BILLING CODE 1650–01–P

[1] Chair of the Commission Michael Wiers substituted for Mae Schmidle as referendum agent on the designated date.

federal register

Friday
February 27, 1998

Part IV

Department of Education

National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

ACTION: Notice of Public Meetings and Request for Comments.

SUMMARY: The National Institute on Disability and Rehabilitation Research (NIDRR) is interested in gathering information from consumers, families, service providers, advocacy organizations, community groups, State agencies, and other stakeholders on existing and future needs for assistive technology services and devices, systemic barriers to meeting those needs, and successful approaches that have been used to remove barriers to the acquisition of assistive technology services and devices for individuals with disabilities.

NIDRR invites interested parties to submit written comments or present oral comments at four public meetings on current assistive technology needs and issues, as well as future directions for meeting those needs. The purpose of these meetings is to help formulate future policy related to assistive technology for persons with disabilities.

Date, Time, and Location of Meetings

The meeting sites are accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The first public meeting is scheduled to be held in:

Washington: Wednesday, March 4, 1998 from 9:30 a.m. to 4:30 p.m., Microsoft Campus, Building 43, Room 1560 at the intersection of 156th NE Avenue and NE 31st Street, Redmond, Washington.

For Further Information and Oral Comments Contact: Persons desiring further information and those who plan to provide oral comments at the March 4, 1998 public meeting should telephone Jovine Umali on (206) 685–4181. Individuals who use a telecommunications device for the deaf (TDD) may call (206) 685–4181. Requests to provide oral comments may also be sent through the Internet: uwat@u.washington.edu.

The second public meeting is scheduled to be held in:

Missouri: Wednesday, March 18, 1998 from 9:30 a.m. to 4:00 p.m., Courtyard by Marriott, 7901 Northwest Tiffany Springs Parkway, Kansas City, Missouri.

For Further Information and Oral Comments Contact: Persons desiring further information and those who plan to provide oral comments at the March 18, 1998 public meeting should telephone Diane Golden on (800) 647–8557. Individuals who use a telecommunications device for the deaf (TDD) may call (800) 647–8558. Requests to provide oral comments may also be sent through the Internet: matpmo@qni.com.

The third public meeting is scheduled to be held in:

Boston: Wednesday, March 25, 1998 from 9:30 a.m. to 4:00 p.m., Massachusetts Archives Building at Columbia Point, 220 Morrissey Boulevard, Boston, Massachusetts.

For Further Information and Oral Comments Contact: Persons desiring further information and those who plan to provide oral comments at the March 25, 1998 public meeting should telephone Marion Pawlek on (603) 224–0630. Individuals who use a telecommunications device for the deaf (TDD) may call (603) 224–0630. Requests to provide oral comments may also be sent through the Internet: mjpawlek@christa.unh.edu.

The fourth public meeting is scheduled to be held in:

Florida: Thursday April 2, 1998 from 9:00 a.m. to 4:00 p.m., Florida State University, Center for Professional Development, 555 West Pensacola Street, Tallahassee, Florida.

For Further Information and Oral Comments Contact: Persons desiring further information and those who plan to provide oral comments at the public meeting should telephone Terry Ward on (850) 487–3278. Individuals who use a telecommunications device for the deaf (TDD) may call (850) 487–2805. Requests to provide oral comments may also be sent through the Internet: faast@faast.org.

Written Comments

NIDRR invites written comments from those who will be unable to provide oral comments at the public meetings. Written comments should be received by April 30, 1998. Written comments should be addressed to Ms. Nell Bailey, RESNA Technical Assistance Project, 1700 N. Moore St., Suite 1540, Arlington, VA 22209. Written comments may also be sent through the Internet: nbailey@resna.org.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to Nell Bailey.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text of portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Dated: February 23, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–4972 Filed 2–26–98; 8:45 am]

BILLING CODE 4000–01–P

federal register

Friday
February 27, 1998

Part V

Department of Commerce

Economic Development Administration

Economic Development Assistance Programs—Availability of Funds; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 980129024–8024–01]

RIN 0610–ZA05

Economic Development Assistance Programs—Availability of Funds

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Notice.

SUMMARY: The Economic Development Administration (EDA) announces its policies and application procedures during fiscal year 1998 to support projects designed to alleviate conditions of substantial and persistent unemployment and underemployment in economically-distressed areas and regions of the Nation, to address economic dislocations resulting from sudden and severe job losses, and to administer the Agency's programs.

DATES: This announcement is effective for applications considered for fiscal year 1998. Unless otherwise noted below, applications are accepted on a continuous basis and will be processed as funds are available. Normally, two months are required for a final decision after the receipt of a completed application that meets all EDA requirements.

ADDRESSES: Interested parties should contact the EDA office in their area, or in Washington, D.C., as appropriate (see Section XII).

FOR FURTHER INFORMATION CONTACT: See information in Section XII for the EDA regional office and Economic Development Representative (EDR), or for programs handled out of Washington, D.C., as appropriate.

SUPPLEMENTARY INFORMATION:

I. General Policies

In light of its limited resources and the demonstrated widespread need for economic development, EDA encourages only project proposals having the greatest potential to benefit areas experiencing or threatened with substantial economic distress. EDA will focus its scarce financial resources on communities most in distress. Distress may exist in a variety of forms, including high levels of unemployment, low income levels, large concentrations of low income families, significant decline in per capita income, substantial loss of population because of the lack of employment opportunities, large numbers (or high rates) of business failures, sudden major layoffs or plant closures, and/or reduced tax bases.

Potential applicants are responsible for demonstrating to EDA, through the provision of statistics and other appropriate information, the nature and level of the distress their project efforts are intended to alleviate. In the absence of evidence of high levels of distress, EDA funding is unlikely.

In FY 1998, EDA's strategic funding priorities are a continuation of the general goals in place over the past five fiscal years, refined to reflect the priorities of the U.S. Department of Commerce. Unless otherwise noted below, the funding priorities, as listed below, will be applied by the Selecting Official (depending upon the program, either the Regional Director or Assistant Secretary) after completion of a review based upon evaluation criteria described in EDA's regulations at 13 CFR Chapter III. During FY 1998, EDA is interested in receiving projects which support the priorities of the U.S. Department of Commerce, including:

- The construction and rehabilitation of essential public works infrastructure and economic development facilities that are necessary to achieve long-term growth and provide stable and diversified local economies in the Nation's distressed communities.
- Export promotion;
- The commercialization and deployment of technology; particularly information technology and telecommunications, and efforts that support technology transfer, application and deployment for community economic development;
- Sustainable development which will provide long-term economic development benefits, including responses to economic dislocation caused by national environmental policies (hazardous waste clean-up, etc.); also considered a priority are projects involving reuse of "brownfields," especially pilot projects selected under the Environmental Protection Agency's "Brownfields Initiative" program; also considered priority are projects involving eco-industrial parks, which have been broadly defined by the President's Council on Sustainable Development, as a community of businesses that cooperate with each other and with the local community to efficiently share resources (information, materials, water, energy, infrastructure and natural habitat), leading to economic gains, gains in environmental quality, and equitable enhancement of human resources for the business and local community;
- Entrepreneurial development, especially local capacity building, and including small business incubators and community financial intermediaries (e.g., revolving loan funds);
- Economic adjustment, especially in response to base and Federal laboratory closures and downsizing, defense industry downsizing, and post-disaster, long-term economic recovery;
- Infrastructure and development facilities located in federally-authorized and designated rural and urban Enterprise Communities and Empowerment Zones and state enterprise zones;
- Projects that demonstrate innovative approaches to economic development; and/or
- Projects that support locally-created partnerships that focus on regional solutions for economic development will be given priority over proposals that are more limited in scope. For example, projects that evidence collaboration in fostering an increase in regional (multi-county and/or multi-state) productivity and growth will be considered to the extent that such projects demonstrate a substantial benefit to economically-distressed areas of the region.

II. Other Information and Requirements

- See EDA's regulations at 13 CFR chapter III.
- Additional information and requirements are as follows:

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

Prospective participants (as defined at 15 CFR part 26, section 105) "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

- Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts

for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DoC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DoC in accordance with the instructions contained in the award document.

No award of Federal funds will be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received; or

3. Other arrangements satisfactory to DoC are made.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Applicants should be aware that a false statement on the application is grounds for denial of the application or termination of the grant award and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. This notice involves a collection of information requirement subject to the provisions of the PRA and has been approved by OMB under Control Number 0610–0094.

Applicants seeking an early start, i.e. to begin a project before EDA approval, must obtain a letter from EDA allowing such early start. The letter allowing the early start will be null and void if the project is not subsequently approved for funding by the grants officer. Approval of an early start does not constitute project approval. Applicants should be aware that if they incur any costs prior to an award being made they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DoC to cover preaward costs.

EDA also requires that compliance with environmental regulations, in accordance with the National Environmental Policy Act (NEPA), be completed before construction begins.

The total dollar amount of the indirect costs proposed in an application under any EDA program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

If an application is selected for funding, EDA has no obligation to provide any additional future funding in connection with an award. Renewal of an award to increase funding or extend the period of performance is at the sole discretion of EDA.

Unless otherwise noted below, eligibility, program objectives and descriptions, application procedures, selection procedures, evaluation criteria and other requirements for all programs are set forth in EDA's regulations at 13 CFR Chapter III.

III. Funding Availability

Under EDA's fiscal year 1998 appropriation, Public Law 105–119, November 13, 1997, EDA's program funds total $340,000,000. EDA has already received and begun processing requests for funding its programs during fiscal year 1998. New requests submitted that require approval during this fiscal year will face substantial competition. Potential applicants are encouraged to contact first the appropriate EDR for their area and then, if necessary, the appropriate Regional Office listed in Section XII of this Notice.

IV. Authority

The authority for programs listed in Parts V through X is the Public Works and Economic Development Act of 1965, (Pub. L. 89–136, 42 U.S.C. 3121–3246h), as amended (PWEDA). The authority for the program listed in Part XI is Title II Chapters 3 and 5 of the Trade Act of 1974, as amended, (19 U.S.C. 2341–2355; 2391) (Trade Act).

V. Program: Public Works and Development Facilities Assistance

(Catalog of Federal Domestic Assistance: 11.300 Economic Development Grants and Loans for Public Works and Development Facilities. 11.304 Economic Development Public Works Impact Program)

Funding Availability

Funds in the amount of $178,000,000 have been appropriated for this program. The average funding level for a grant is $886,000.

VI. Program: Technical Assistance-Local Technical Assistance; National Technical Assistance; University Centers

(Catalog of Federal Domestic Assistance: 11.303 Economic Development-Technical Assistance)

Funding Availability

Funds in the amount of $9,100,000 have been appropriated for this program. The average funding level for a local TA grant is $27,000; university centers is $100,000; and national TA is $176,000.

A separate FR Notice will set forth the specific funding priorities, application process, and time frames for National Technical Assistance projects.

VII. Program: Planning—Planning Assistance for Economic Development Districts, Indian Tribes, and Redevelopment Areas; Planning Assistance for States and Urban Areas

(Catalog of Federal Domestic Assistance: 11.302 Economic Development—Support for Planning Organizations); 11.305 Economic Development—State and Urban Area Economic Development Planning) 6

Funding Availability

Funds in the amount of $24,000,000 have been appropriated for this program. The funding levels for planning grants range from $10,000 to $200,000.

VIII. Program: Research and Evaluation

(Catalog of Federal Domestic Assistance: 11.312 Economic Development—Research and Evaluation Program)

Funding Availability

Funds in the amount of $500,000 have been appropriated for this program. The average funding level for a grant is $171,000.

A separate FR Notice will set forth the specific funding priorities, application

process, and time frames for research and evaluation projects.

IX. Program: Economic Adjustment Assistance

(Catalog of Federal Domestic Assistance: 11.307 Special Economic Development and Adjustment Assistance Program—Long Term Economic Deterioration and Sudden and Severe Economic Dislocation)

Funding Availability

Funds in the amount of $29,900,000 have been appropriated for this program. The average funding level for a grant is $236,000.

X. Program: Defense Economic Conversion

(Catalog of Federal Domestic Assistance: 11.307 Special Economic Development and Adjustment Assistance Program—Long Term Economic Deterioration and Sudden and Severe Economic Dislocation; 11.300 Economic Development Grants and Loans for Public Works and Development Facilities; 11.304 Economic Development Public Works Impact Program; 11.303 Economic Development-Technical Assistance; 11.302 Economic Development—Support for Planning Organizations); 11.305 Economic Development—State and Urban Area Economic Development Planning; 11.312 Economic Development—Research and Evaluation Program and 11.313 Economic Development—Trade Adjustment Assistance)

Funding Availability

Funds in the amount of $89,000,000 have been appropriated for this program. The average funding level for a grant is $1,260,000.

XI. Program: Trade Adjustment Assistance

(Catalog of Federal Domestic Assistance: 11.313 Economic Development—Trade Adjustment Assistance)

Funding Availability

Funds in the amount of $9,500,000 have been appropriated for this program. The average funding level for a grant is $791,000.

XII. EDA Washington D.C., Regional Offices and Economic Development Representatives

The EDA Washington, D.C. offices, regional and field offices, states covered and the economic development representatives (EDRs) are listed below.

Washington, D.C. Offices

For Research and National Technical Assistance contact: John J. McNamee, Director, Research and National Technical Assistance Division, Economic Development Administration, Room 7019, U.S. Department of Commerce, Washington, DC 20230; Telephone: (202) 482–4085, Internet Address: jmcnamee@doc.gov

For Trade Adjustment Assistance contact: Anthony J. Meyer, Coordinator, Trade Adjustment and Technical Assistance, Economic Development Administration, Room 7317, U.S. Department of Commerce, Washington, DC 20230; Telephone: (202) 482–2127, Internet Address: tmeyer2@doc.gov

EDA Regional Offices

William J. Day, Jr., Regional Director, Atlanta Regional Office, 401 West Peachtree Street, NW., Suite 1820, Atlanta, Georgia 30308; Telephone: (404) 730–3002; Fax: (404) 730–3025; Internet Address: wday@doc.gov

Economic development representatives	States covered
PATTERSON, Gilbert 401 West Peachtree Street, N.W. Suite 1820 Atlanta, GA 30308 Telephone: (404)730–3018 Internet Address: gpatters@doc.gov	Georgia. Mississippi.
HUNTER, Bobby D 771 Corporate Drive, Suite 200 Lexington, KY 40503–5477 Telephone: (606)224–7426 Internet Address: bhunter@doc.gov	Kentucky. Tennessee.
DIXON, Patricia M Strom Thurmond Federal Building 1835 Assembly Street, Room 307 Columbia, SC 29201 Telephone: (803)765–5676 Internet Address: pdixon@doc.gov	North Carolina. South Carolina.
DENNIS, Bobby 401 West Peachtree Street, N.W. Suite 1820 Atlanta, GA 30308 Telephone: (404)730–3020 Internet Address: bdennis@doc.gov	Alabama.
TAYLOR, Willie 401 West Peachtree Street, N.W. Suite 1820 Atlanta, GA 30308 Telephone: (404)730–3032 Internet Address: wtaylor5@doc.gov	Florida.

Pedro R. Garza, Regional Director, Austin Regional Office, Thornberry Building, Suite 121, 903 San Jacinto Boulevard, Austin, Texas 78701; Telephone: (512) 916–5461; Fax: (512) 916–5613; Internet Address: pgarza1@doc.gov

Regional office contacts	States covered
FRERKING, Sharon T	Oklahoma.

Regional office contacts	States covered
Austin Regional Office Thornberry Building, Suite 121 903 San Jacinto Boulevard Austin, Texas 78701 Telephone: (512) 916–5217 Internet Address: sfrerking@doc.gov	New Mexico. Texas (north).
LEE, Ava J Austin Regional Thornberry Building, Suite 121 903 San Jacinto Boulevard Austin, TX 78701 Telephone: (512) 916–5824 Internet Address: alee6@doc.gov	Louisiana. Arkansas. Texas (south).

C. Robert Sawyer, Regional Director, Chicago Regional Office, 111 North Canal Street, Suite 855, Chicago, IL 60606; Telephone: (312) 353–7706; Fax: (312) 353–8575; Internet Address: rsawyer@doc.gov

Economic development representatives	States covered
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HICKEY, Robert F Federal Building, Room 607 200 North High Street Columbus, Ohio 43214 Telephone: (800–686–2603) Internet Address: rhickey@doc.gov	Ohio. Indiana.
PECK, John E Chicago Regional Office 111 North Canal Street, Suite 855 Chicago, IL 60606 Telephone: 888–249–7597 Internet Address: jpeck@doc.gov	Michigan. Wisconsin.

John Woodward, Regional Director, Denver Regional Office, 1244 Speer Boulevard, Room 670, Denver, Colorado 80204; Telephone: (303) 844–4715; Fax: (303) 844–3968; Internet Address: jwoodwa3@doc.gov

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ZENDER, John 1244 Speer Boulevard, Room 632 Denver, CO 80204 Telephone: (303) 844–4902 Internet Address: jzender@doc.gov	Colorado. Kansas.
CECIL, Robert Federal Building, Room 593A 210 Walnut Street Des Moines, IA 50309 Telephone: (515) 284–4746 Internet Address: bcecil@doc.gov	Iowa. Nebraska.
HILDEBRANDT, Paul Federal Building, Room B–2 608 East Cherry Street Columbia, MO 65201 Telephone: (573) 442–8084 Internet Address: phildeb1@doc.gov	Missouri.
ROGERS, John C. Federal Building, Room 196 301 South Park Ave. Drawer 10074 Helena, MT 59626 Telephone: (406) 441–1175 Internet Address: jrogers6@doc.gov	Montana.
JUNGBERG, Cip	South Dakota.

Economic development representatives	States covered
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OCKEY, Jack Federal Building, Room 2105 125 South State Street Salt Lake City, UT 84138 Telephone: (801) 524–5119 Internet Address: jockey@doc.gov	Utah. Wyoming.

John E. Corrigan, Regional Director, Philadelphia Regional Office, Curtis Center, Independence Square West, Suite 140 South, Philadelphia, PA 19106; Telephone: (215) 597–4603; Fax: (215) 597–6669; Internet Address: jcorriga@doc.gov

Economic development representatives	States covered
BEACH, Tyrone Philadelphia Regional Office The Curtis Center—Suite 104 South Independence Square West Philadelphia, PA 19106 Telephone: (215) 597–7883 Internet Address: tbeach@doc.gov.	Delaware District of Columbia.
WILKINSON, Cassandra Philadelphia Regional Office Curtis Center Independence Square West Suite 140 South Philadelphia, PA 19106 Telephone: (215) 597–4360 Internet Address: cwilkins@doc.gov	Rhode Island.
GRADY, Stephen Philadelphia Regional Office Curtis Center Independence Square West Suite 140 South Philadelphia, PA 19106 Telephone: (215) 597–0642 Internet Address: sgrady@doc.gov	Connecticut.
KUZMA, John Philadelphia Regional Office Curtis Center Independence Square West Suite 140 South Philadelphia, PA 19106 Telephone: (215) 597–8797 Internet Address: jkuzma@doc.gov	Massachusetts.
POTTER, Rita V 143 North Main Street, Suite 209 Concord, NH 03301 Telephone: (603) 225–1624 Internet Address: rpotter@doc.gov	New Hampshire. Vermont. Maine.
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MARSHALL, Harold J. II 620 Erie Boulevard West, Suite 104 Syracuse, NY 13204 Telephone: (315) 448–0938 Internet Address: hmarshal@doc.gov	New York.
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CRUZ, Ernesto L	Puerto Rico.

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IBM Building, Room 620 654 Munoz Rivera Avenue Hato Rey, PR 00918 Telephone: (809) 766–5187 Internet Address: ecruz@doc.gov	Virgin Islands.
NOYES, Neal E Room 474 400 North 8th Street P.O. Box 10229 Richmond, VA 23240 Telephone: (804) 771–2061 Internet Address: nnoyes@doc.gov	Virginia. Maryland.
DAVIS, R. Byron 405 Capital Street Room 411 Charleston, WV 25301 Telephone: (304) 347–5252 Internet Address: bdavis3@doc.gov	West Virginia.

A. Leonard Smith, Regional Director, Seattle Regional Office, Jackson Federal Building, Room 1856, 915 Second Avenue, Seattle, Washington 98174; Telephone: (206) 220–7660; Fax: (206) 220–7659; Internet Address: LSmith7@doc.gov.

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RICHERT, Bernhard E. Jr 605 West 4th Avenue, Room G–80 Anchorage, AK 99501 Telephone: (907) 271–2272 Internet Address: brichert@doc.gov	Alaska.
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CHURCH, Dianne V Seattle Regional Office Jackson Federal Building 915 Second Avenue, Room 1856 Seattle, WA 98174 Telephone: (206) 220–7690 Internet Address: dchurch@doc.gov	California. Bay and coastal).
MCCHESNEY, Frank P.O. Box 50264 Federal Building, Room 4106 Honolulu, HI 96850 Telephone: (808) 541–3391 Internet Address: fmcchesn@doc.gov	Hawaii, Guam. American Samoa. Marshall Islands. Micronesia. Northern Marianas.
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SVENDSEN, David E Seattle Regional Office Jackson Federal Building 915 Second Avenue, Room 1856 Seattle, WA 98174 Telephone: (206) 220–7703 Internet Address: dsvendse@doc.gov	California. (southern).
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Dated: February 24, 1998.

Phillip A. Singerman,

Assistant Secretary for Economic Development.

[FR Doc. 98–5111 Filed 2–26–98; 8:45 am]

BILLING CODE 3510–24–P

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Passed over the President's veto:

H.R. 2631/P.L. 105–159

Disapproving the cancellations transmitted by the President on October 6, 1997, regarding Public Law 105-45. (Feb. 25, 1998; 112 Stat. 19)

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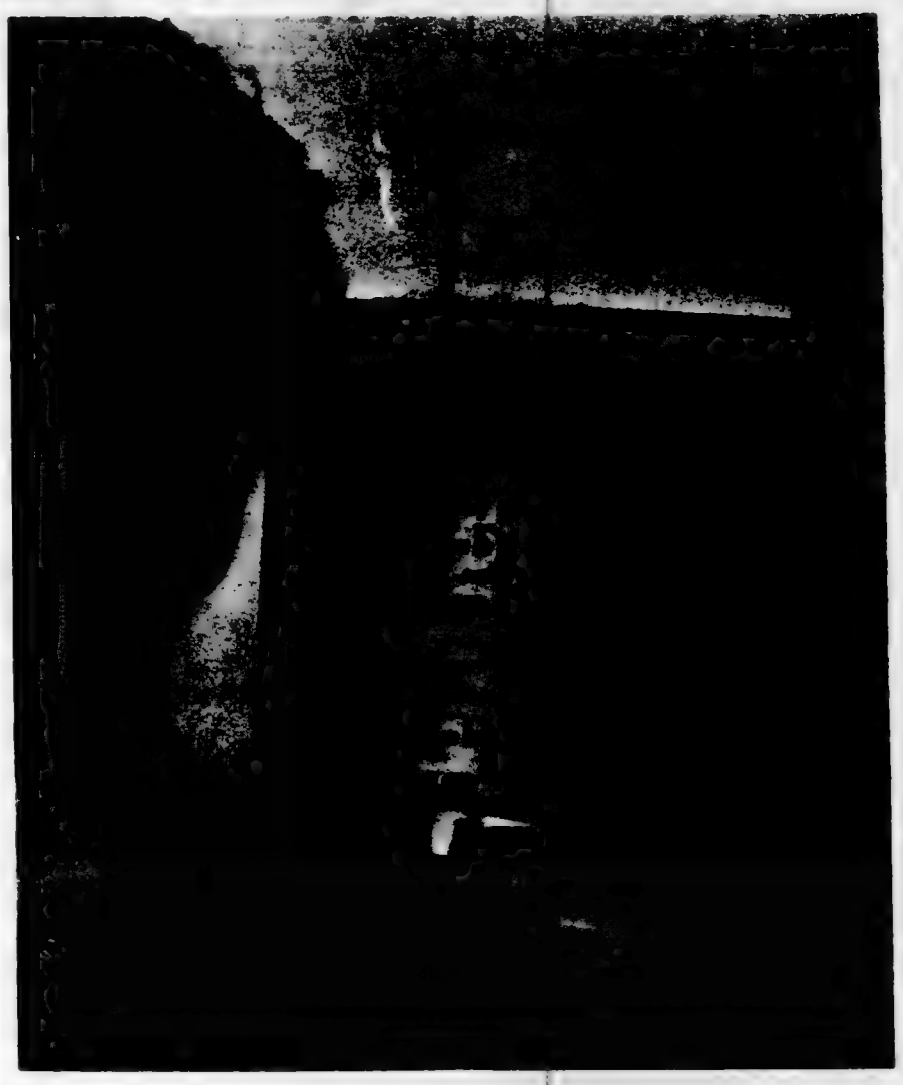

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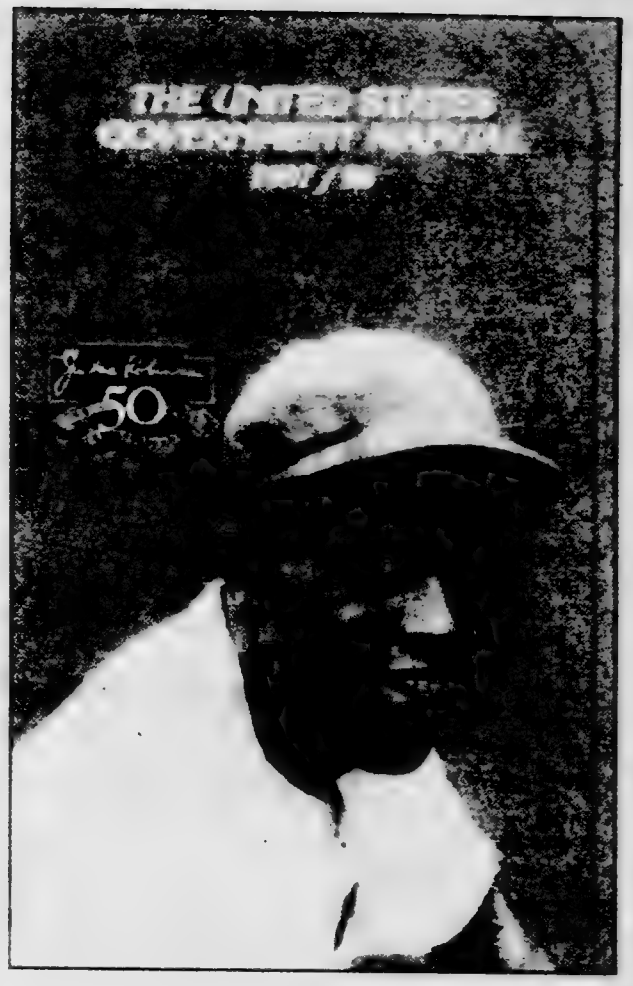

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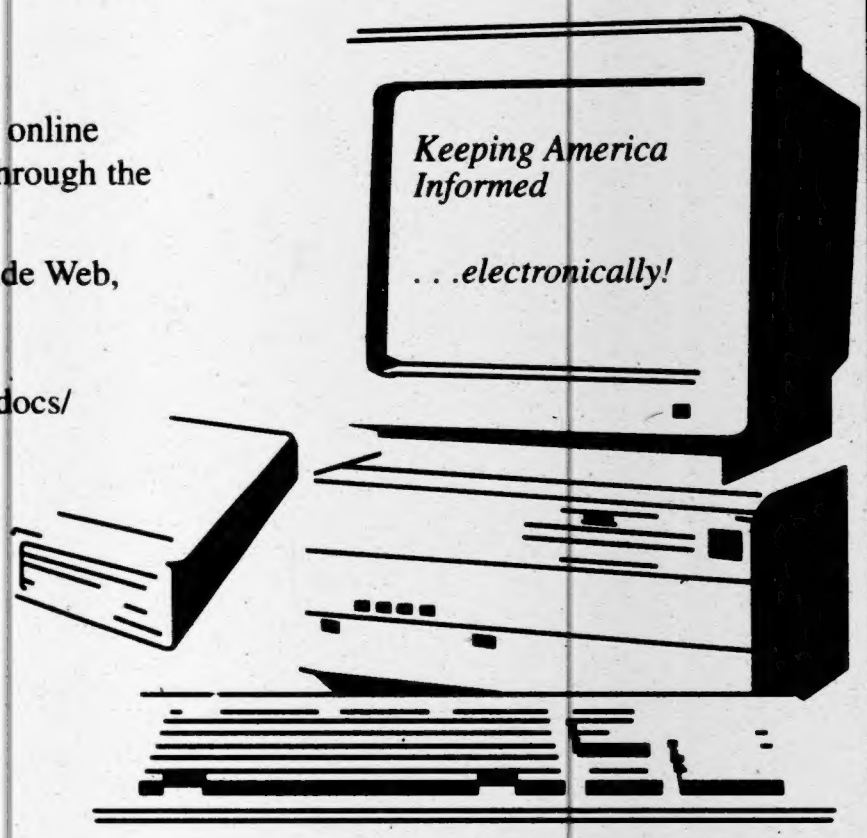

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